



RIETMANN LAW, P.C.

April 10, 2019

City of Salem Planning Division  
Attn: Olivia Glantz  
555 Liberty Street SE, Room 305  
Salem, Oregon 97301

RE: Response to Notice of Filing “Wren Heights – Case No. SUB-ADJ19-02.

Ms. Glantz:

My wife Crystal Rietmann and I are the owners of the real property located at 475 Salem Heights Ave. S., Salem, Oregon 97302. This letter is provided in response to the Notice of Filing of Land Use Request dated March 27, 2019 for Amanda Application No. 18-125034-LD & 18-1250345. We strongly oppose the Tentative Plan the Class 1 adjustments for the reasons set forth below.

1. A developer is required to obtain an Urban Growth Preliminary Declaration if the development “is within the urban service area (USA), but precedes city construction of required facilities...” SCR 200.020(a). “Required facilities” are defined as “all major and minor facilities necessary to provide adequate...transportation...for a development for which an Urban Growth Preliminary Declaration must be obtained.” SCR 200.005. In turn, a “major facility is defined as “an arterial or collector street as shown in the Salem Transportation System Plan.” *Id.*

The construction of Salem Heights (i.e. a “required facility”) will not be complete until, *inter alia*, the sidewalk/infill provided for along Salem Heights in the Pedestrian System Element of the Salem Transportation Plan is completed. Because Salem Heights is not a completely constructed collector street until the sidewalk/infill provided for in the Pedestrian System Element of the Salem Transportation Plan is complete, a “required facility” is lacking. Therefore an Urban Growth Preliminary Declaration is required.

2. The Applicant is wrong in asserting a traffic impact analysis is not required under SRC 803.015 because it does not think the development will generate more 1000 trips per day. The assertion that the development must generate 1000

trips per day to trigger a traffic impact analysis is based on the contention that Salem Heights Ave. S. is a collector street. However, Salem Heights Ave. S *does not* meet the requirements for a collector street. The Applicant cannot treat Salem Heights Ave as a collector street for purposes of determining whether a traffic impact statement is required when, in fact, it does not meet the requirements of a collector street. The 1000 trip per day threshold for requiring a traffic impact statement on collector streets is based on the assumption that collector streets are in fact collector streets and can handle a 1000 trip per day increase in traffic without endangering lives. This is not the circumstance with Salem Heights Ave because, in fact, it does not meet the safety requirements of a collector street, is a highly dangerous street, and any increase in traffic upon it directly threatens lives.

3. The Tentative Plans impedes the future use or development of the property or adjacent land. *See*, SRC 205.010(d)(2). The Tentative Plan proposes to crowd six small incompatible lots along the western boundary of our property. This will have a very substantial impact on the livability (i.e. use) of our property, which we cannot self-mitigate, and devalue our property. Devaluing our property in this manner will have a very significant adverse impact on the use and development of our property.
4. The street system in and adjacent to the tentative subdivision plan does not conform to the Salem Transportation Plan. SRC 205.010(d)(4). Specifically, Salem Heights does not conform because, *inter alia*, it does not have sidewalks.
5. The street system in and adjacent to the tentative subdivision plan is not designed so as to provide for the safe, orderly, and efficient circulation of traffic into, through, and out of the subdivision. *See*, SRC 205.010(d)(5).
6. The Tentative Plan does not provided safe and convenient bicycle and pedestrian access from within the subdivision to adjacent residential areas and transit stops, and to neighborhood activity centers within one-half mile of the development. *See*, SRC 205.010(d)(6). Salem Heights is narrow, does not have sidewalks, and is already very dangerous to bicyclists and pedestrians. The increased traffic from and through the proposed subdivision will substantially exacerbate what is already a very dangerous situation. This is true because the Tentative Plan, insofar as we are aware, does not propose a sidewalk down to Liberty Street or road widening or bike lanes or traffic control devides to facilitate safe pedestrian and bicycle access to schools, shopping areas, parks, and employment centers that may otherwise be accessed from walking at the sidewalks beginning on Liberty street.

Irrespective of whether a traffic impact analysis is required or how Salem Heights or other streets are designated on paper, the adjacent street system is not compatible and the Tentative plan does not provide bicycle/pedestrian access as a matter of fact.

7. The Tentative Plan does not mitigate impacts to the transportation system consistent with the approved Traffic Impact Analysis because the required analysis has not been conducted. *See*, SRC 205.010(d)(7).
8. The street system in and adjacent to the tentative subdivision plan is not designed so as to provide for the safe, orderly, and efficient circulation of traffic into, through, and out of the subdivision. SRC 205.010(d)(5)
9. Applicants are seeking an alternative street standard for Earhart Street S and Felton Street South; in addition, a Class 1 Adjustment to reduce the minimum lot depth for Lot 7 from 120 feet, as required, to approximately 106 feet. These requests should be denied. Applicants have not produced any *evidence* that the property cannot be reasonably developed unless the adjustments being requested are granted. All Applicants have asserted is they can't develop the property exactly like they want if they have to comply with the rules that apply to everyone else. Applicants' desire to develop the property precisely as they want is not an appropriate justification for granting an exception to generally applicable rules. If the rules may be avoided whenever they are inconvenient, the exceptions swallow the rule and the rule is meaningless.

The adjustments/allowances Applicants are seeking are aimed at allowing more development upon the property than would otherwise be permitted if the rules were adhered to without adjustment. In fact, this is the one and only purpose of the proposed adjustments. An applicant's desire to have more development on the property than is otherwise permitted is not a permissible basis for adjusting the applicable rules.

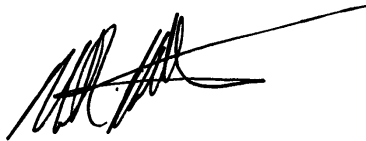
We generally object to all other deviations from the design standards and other requirements which are referenced in Applicant's application (or any other that might be granted). Applicant has not provided sufficient evidence or rationale—other than a desire to develop the project in the particular manner Applicant desires – for the deviations from the general rules and standards.

10. People have reported witnessing bald eagles flying over or around the subject of the application on repeat occasion. Although the bald eagle is no longer listed under the Endangered Species Act, it is still afforded protections under federal law. *See e.g.*, 16 U.S.C. 668-668(d) and 50 CFR 22.26 (and surrounding

regulations). Before granting any approvals, the City and developers should undertake efforts to determine the presence of bald eagles through monitoring and ensure that neither the City, nor the Applicant, are in violation federal laws and have obtained all necessary permits.

11. With this application, similar to the one prior to it, it appears there are real and substantial issues legal issues as to whether the applicant is the proper applicant. If the City grants this application before these types of issues are fully and finally resolved, protracted litigation will be the net result.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. Rietmann', with a long horizontal line extending to the right.

Nathan R. Rietmann