

Olivia Glantz

From: RONALD EACHUS <re4869@comcast.net>
Sent: Sunday, July 21, 2019 10:31 AM
To: Olivia Glantz
Subject: SUB-ADJ19-02 Council Hearing written comments
Attachments: SUB-ADJ19-02 Council comments.docx; SUB-ADJ19-02 Exhibit-RE-1.docx

Attached are my written comments submitted for the Monday, July 22 City Council hearing on SUB-ADJ19-02.
I will file a hard copy with the City Record Monday morning and I will provide testimony during the period allocated for appellants.

Thank you for all of your assistance during this process.

RON EACHUS

940 Salem Heights Ave S
Salem, OR 97302

July 21, 2019

City Recorder
Room 205
555 Liberty Street SE
Salem, OR 97301

TO: Members of the Salem City Council

RE: City Council Review of Planning Administrator's Decision on Subdivision / Class 1
Adjustment Case No. SUB-ADJ19-02

My name is Ron Eachus. I live at 940 Salem Heights Ave S, Salem, OR, 97302 and I am one of the appellants in this case. The following are my written comments for your consideration at the July 22, Public Hearing.

I'd like to thank the City Council for agreeing to consider the appeals in this case and hold a public hearing at which the residents of the Salem Heights Ave S neighborhood can be heard. I was among those who asked the Council to call-up the case because I believe it has some serious implications for how the City approaches streets like Salem Heights Ave S which are unsafe and unimproved and do not meet the theoretical capacity and design criteria for their given classification. In this case the residents of Salem Heights Ave S and the neighborhood are being asked to bear the brunt of a development now that is being evaluated on assumed safety improvements that may not occur for another 25 years.

RELEVANT UNDERLYING FACTS

To understand my appeal, and the general concerns of others in the neighborhood, it is helpful to first establish some basic facts which I do not believe are in contention in this case, but which provide a context for considering the order in this case.

1. Salem Heights is an unimproved, tree-lined street, with narrow traffic lanes, restricted sight lines, no sidewalks, no bike lanes, and no curbs, but with substantial levels of pedestrian traffic. **(See Exhibit-RE-A)** It is less than ¼ of a mile long running East-West connecting Sunridge Road S to Liberty Rd S. between the Candalaria and Salem Heights Elementary Schools.
2. The Salem Transportation System Plan (TSP) designates Salem Heights Ave S as a "Collector" street. It also identifies Salem Heights as an unimproved collector not built to urban standards. The Public Works Department has also characterized the street as an under-

improved collector street that does not meet current standards for right-of-way and improvement widths.

The TSP lists Salem Heights as a “Low Priority” Street for which construction is needed “sometime within the next 25 years,” as opposed to other streets for which construction is needed with 10 to 15 years. According to the TSP, the “Ultimate Design Average Daily Traffic” for a Collector Street ranges from 1,600 to 10,000 vehicle trips per day.

3. Many “Local” streets connecting to Salem Heights Ave and in the surrounding area have wider traffic lanes than Salem Heights and sidewalks on one or both sides.
4. The City staff has conducted traffic and speeding information gathering on Salem Heights in the past year. In August of 2108 the City used traffic counters in two locations and a speed trailers to collect data. This initial count indicated a weekday average of 1406 at the higher Western location and Southwest Area Neighborhood Association meeting, City staff reported that average speeds were 32 at the higher end and 35 at the lower end in a 25-mph zone and admitted that there were obviously speeding issues. At the request of area residents to take a traffic count when schools were in session, the City conducted another traffic count at the same locations in May of 2019. The traffic count then was a weekday average of 1629 trips at the higher Western location and 1938 at the lower Eastern location,
5. Consistent with Policy 4.1 in the TSP, The City of Salem has formed a Policy Advisory Committee to help develop preferred alternatives for a “Salem Heights Avenue S. Street Refinement Plan” in preparation for future funding opportunities to improve the street. The development of preferred alternatives is expected to take between nine months and a year. In meetings with residents the City Community Development staff has assured area residents that there will be flexibility in how the guidelines for a typical connector street will be applied.

Policies 2.8 and 4.6 of the TSP clearly state that City-funded improvements projects on existing streets “may necessitate a variation from the typical right-of-way requirements to minimize impacts to abutting businesses, historic properties, schools, and other significant community features. Whenever possible, the design of the street shall be sensitive to the livability of the surrounding neighborhood.”

THE CONCLUSION THAT NO TRAFFIC IMPACT ANALYSIS IS REQUIRED IS IN ERROR

In my appeal I have asserted that the conclusion reached in the order, and based on City staff comments, that no Traffic Impact Analysis is required is not consistent with the provisions of SRC 803.015(b). This is because the staff and the order did not consider all the criteria in this section to determine whether or not a Traffic Impact Analysis is required.

SRC 803.015(b) says that an applicant shall provide a traffic impact analysis **“if one of the following exists:”**

It then lists three criteria to consider, any one of which could exist and trigger the need for a TIA.

The City staff, and consequently the order, relies on only one criterion, 803.015(b)(1) which states that if a development will generate 1,000 daily vehicle trips onto a collector, then a TIA is required. Since the development in question generates an estimated 345 vehicle trips, the City staff correctly concluded that the conditions in this criterion do not exist and do not necessitate a TIA.

However, the criteria in 803.015(b)(2) have been completely ignored. This subsection provides that a TIA is required if “The increased traffic resulting from the development will contribute to documented traffic problems based on the current accident rates, traffic volumes or speeds, and identified locations where pedestrian and/or bicyclist safety is a concern.”

I maintain that the conditions in (b)(2) exist on Salem Heights. The City staff has stated in a neighborhood association meeting that a speeding problem exists. Their traffic counts show that estimated daily trips could increase by as much as 20% on Salem Heights Ave, a narrow, hilly street with significant pedestrian traffic. The record contains testimony from residents of safety concerns on the street due to the lack of sidewalks and speeding.

SRC 803.015(b)(2) cannot be dismissed simply because it was determined that 803.015(b)(1) did not apply. All the conditions in this subsection must be considered.

The criteria in (b)(2) cannot be summarily dismissed simply because Salem Heights is a collector street and does not meet the collector street criteria for a TIA in (b)(1). There is a critical distinction. 803.015(b)(1) is based on a classification with an inferred theoretical capacity and design of a collector street. 803.015(b)(2) does not rely on a classification, but on the current conditions of a street.

By stating the “if one of the conditions apply” 803.015(b) should be read to mean that all of the listed criteria must be examined to determine if any of them apply.

In interpreting the meaning of laws or rules it also helpful to look at what the language does not say, since, if there was a desire for a different interpretation of the law, the language could have plainly stated it.

For example, the code does not say that if a TIA is rejected under one applicable criterion, then others can't be applied. The code is written in the positive, not the negative. It says if one applies then a TIA is required. The fact that the conditions for a TIA are not met under application of (b)(1) to the street does not eliminate the other criteria from consideration. For example, the code does not say "for streets not classified as collector streets." That is not what distinguishes (b)(1) from (b)(2).

The distinguishing factor between the two is that one depends upon a classification, while the other does not. The criteria in (b)(1) is based on a classification and has nothing to do with the actual condition of the street. Criteria (b)(2) is based on the actual condition of the street regardless of classification and should also be considered.

Furthermore, the order and the staff reports related to this question do not address the criteria. No analysis is provided as to why (b)(2) should not be considered and why it should not apply to Salem Heights. There is no argument that the condition of Salem Heights doesn't meet the criteria of (b)(2).

Simply put (b)(2) is completely ignored. The only conclusion that can be reached from this is that staff believes that if the classification of a street is as a collector than no other criteria can apply.

That is not what the code says. The code seems clear. A TIA is required if the conditions of one of the criteria apply. It does not mean that if one does not apply, the others cannot. A criterion not based on classification should not be dismissed because another is based on classification.

IGNORING 803.015(b)(2) DOES NOT MAKE SENSE

It simply does not make sense that if a street is a collector street under (b)(1), the current condition of the street cannot be considered under (b)(2). To do so is to assert that a collector street cannot by definition ever have documented traffic problems and unsafe conditions.

The range of Average Daily Traffic for collector streets is between 1,600 and 10,000. The traffic counts show current traffic levels barely exceeding the lower range. **By this logic the development could add as much as 950 trips a day to Salem Heights Ave, a 50 percent increase, and a TIA would still not be required.**

I am not prejudging what the TIA would conclude. It is possible that a TIA would find the impact is insignificant. The point is that the residents of the neighborhood deserve to have such an analysis if they are going to have to endure the consequences. Ignoring the criteria in 803(b)(2) is a legal and procedural flaw. Proceeding without considering it or explaining why the conditions on (b)(2) do not apply to Salem Heights assures an appeal to LUBA and further delay in any final decision.

THERE IS AN ALTERNATIVE REMEDY

There is, however, another potential remedy. One that the developer has already suggested. That is to temporarily close off the connection of Doughton street to Salem Heights until there is a plan for the design and timing of improvements to make Salem Heights safer. The concept of delaying the Doughton/Salem Heights connection is already part of the record.

In its April 10 comments on this case, the Southwest Area Neighborhood Association suggested such an option: “This extra traffic will make conditions worse for bicycles on the narrow shared road and for pedestrians who must walk where there are no sidewalks, in particular children walking to and from nearby Candalaria and Salem Heights schools. The subdivision plan should be redesigned to divert traffic away from Salem Heights, or any through street connecting to Salem Heights should be postponed until collector urban standards are met on Salem Heights”.

In an April 29 letter to the hearings officer the developer suggested this as an alternative to address concerns over safety on Salem Heights and preservation of trees. Pursuant to a request from the hearings officer, the developer offered the following:

“Alternative #3: Another alternative would be to place a barricade at the entrance to Doughton Street, effectively eliminating additional traffic, onto Salem Heights Avenue until such time as the city brings the street up to collector standards. This would require that vehicular traffic access the property from the north on either Felton or Doughton Street but would provide for safe bicycle and pedestrian circulation to the elementary school. At such time as Salem Heights Avenue is brought up to collector standards, the barricade would then be removed.”

The concept of delaying the connection has some merit. The basic overriding issue in this case is the impact of the additional traffic from the development on the safety of Salem Heights in its current condition. If there was a temporary barricade:

1. There would be no need for a TIA since there is no real traffic impact on Salem Heights.
2. It provides time for the neighborhood residents to develop preferred alternatives for improvement of Salem Heights through the current Salem Heights Avenue S. Street Refinement Plan.

One impact of this would be to funnel the traffic solely into the Hansen collector. However, since it is an improved collector street it is already designed to handle the increased traffic. No TIA would be required because it is below the 1000 trip standard. The local streets of Earhart, Felton and Doughton are all improved with sidewalks on much of the traffic lanes. According to City traffic data on the traffic count web page, the traffic on the improved collector Hansen at peak is only a few hundred trips more than that on Salem Heights, which is unimproved. The Hansen collector and its local connecting street are far more capable of handling the added traffic than the unimproved Salem Heights.

This is not a request asking the Council to violate from the TSP and the objective for connectivity. Any deviation from the City's desire for as much connectivity as possible would only be temporary and when the time is right connectivity could be easily completed.

Since this has already been proposed by the developer, I believe the applicant would not oppose this.

However, I also recognize that it may warrant allowing deferral or a revisiting of the right-of-way and improvement requirements imposed on the applicant in the order. The alternative was proposed in the April 29 letter as an alternative to the current design standards. And given the City staff assurances that flexibility will be encouraged, and indeed necessary, in developing preferred alternatives for Salem Heights, it is possible that other designs besides what is currently in the order would be compatible with what comes out of the planning group.

I do not believe the developer should be absolved from making right-of-way improvements on the property being developed, but I do believe that if the Doughton-Salem Heights connection is delayed, it would be proper to provide time for further examination and discussion so the requirements for right-of-way dedication and improvement can be revisited in light of expectation of developing preferred alternatives for the improvement of Salem Heights Ave S.

For these reasons, I'd urge you to consider adopting the proposed barricade of Doughton and delay of the connection to Salem Heights. Otherwise a TIA should be conducted under the requirements of SRC 803.015(b)(2) because this criterion is not based upon a street classification but rather the current condition of the street. And given the current condition of the street, the subsection is applicable to Salem Heights and a TIA should be performed,

REQUEST FOR KEEPING RECORD OPEN

I would also like to request that the record be kept open for a period of time beyond the close of the public hearing. I believe that the appellants, the applicants, and residents of the neighborhood will benefit from additional time for consultation which could enable increased understanding and identification of further options or potential agreements which could be advanced to the Council before the issuance of a decision.

CONCLUSION

In its current state Salem Heights is unsafe. The added traffic and the subsequent loss of trees from the proposed development will increase the safety issues and alter the natural character of the street. This case raises issue of the degree to which the current conditions of a street are considered in relation to the theoretical future role and design of the street. According to the City planning staff, the residents will have to live under those traffic, and tree, impacts for as long as 25 years before the needed street improvements are made.

At the core of the issue then is whether or not the benefits of the development are sufficient to offset the impacts of the added traffic and loss of trees to an unimproved Salem Heights Ave. Without a Traffic Impact Analysis the decision that they do cannot be made.

Consequently, I request that the City Council modify the order to require a TIA or remand the decision in the case for consideration of the application of SRC 803.015(b)(2) to Salem Heights Ave S.

In the alternative, I suggest that the Council adopt the developer's proposal to temporarily barricade the Doughton-Salem Heights Ave connection and instruct the hearings officer to reopen the record for discussion of terms and conditions applicable to the removal of the barricade and revisions to the developer's right-of-way and improvement requirements.

Otherwise I believe the Council should reverse the order and deny the application because it does not meet the required conditions and unreasonably impacts the existing surrounding uses.

Ron Eachus

EXHIBIT- RE - 1

Attached are pictures of Salem Heights Ave S going downhill to the East and uphill to the West between Liberty Road and Sunridge Dr.

The pictures demonstrate the narrow lanes, hills and difficult sightlines, and lack of sidewalks.

They were purposely taken with no cars in sight so the view wasn't obstructed. Besides, it's hard to take pictures from the middle of the street when there's traffic.

The pictures begin at the top of Salem Heights and follow down the hill to the East and the light at Liberty Road. Then they go back uphill to the West toward Salem Heights and Crestview Dr. followed by pictures of the drop-off to Sunridge drive.

LOOKING EAST GOING DOWNHILL



From North intersection of Crestview Dr S and Salem Heights Ave

LOOKING WEST GOING UPHILL



To top of Salem Heights from North intersection with Holiday Dr



From between North & South intersections of Holiday Dr and Salem Heights Ave S

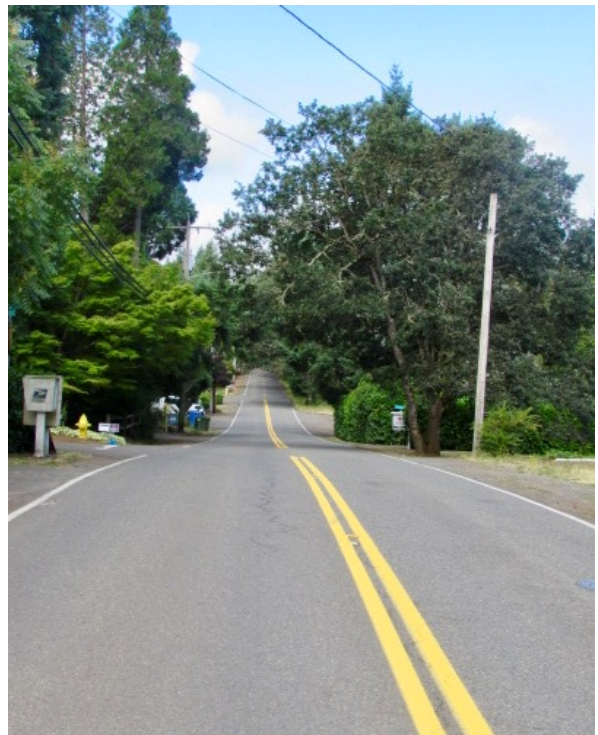


From Villa Candalaria entrance on left (South)



From East end of Villa Candalaria. Wren Heights property is on the right.

From East end of Wren Heights property



From East end of Wren Heights property

From top of the first hill



From approximately 350 Salem Heights Ave looking down to Liberty Road light



Halfway up the first hill from Liberty Road



Looking down from hill in previous picture going down to Liberty.



Looking uphill from Salem Heights Ave and Liberty Road



**THE SUNRIDGE DROPOFF
ON WEST SIDE OF INTERSECTION
OF SALEM HEIGHTS AVE S
AND
CRESTVIEW DR FROM NORTH**



Looking West downhill from just below
Salem Heights Ave and Crestview
Intersection



Looking East uphill from intersection of
Salem Heights Ave S and Sunridge Dr