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September 15, 2022

VIA EMAIL

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City of Salem Planning Division
555 Liberty St SE, Room 320
Salem OR 97301

Subject: **NOTICE OF APPEAL** by PHELAN-MJD2, LLC (“Phelan”);
Case No: UGA-SPR-ADJ-DAP-TRV22-01

Dear Planning Division:

This letter is provided in support of the land use appeal of the revised decision in case number UGA-SPR-ADJ-DAP-TRV22-01 (the “Decision”) concerning applications numbers 22-104268-LD, 22-104269-RP, 22-104271-ZO, 22-109908-ZO, and 22-110432-NR. The Decision is captioned as:

IN THE MATTER OF APPROVAL OF FINDINGS AND ORDER URBAN
GROWTH PRELIMINARY DECLARATION, CLASS 3 SITE PLAN
REVIEW, CLASS 2 ADJUSTMENT, CLASS 2 DRIVEWAY APPROACH
PERMIT AND TREE REGULATION VARIANCE, CASE NO. UGA-SPR-
ADJ-DAP-TRV22-01, 4400 BLOCK OF TURNER ROAD SE

The Decision was issued on August 31, 2022. The notice of the Decision is attached.

Pursuant to Salem Revised Code (SRC) 300.1010 to 300.1030, set forth below is the information required for Phelan’s notice of appeal.

A. Standing

Phelan has standing to initiate this appeal because it is the applicant in the applications at issue and is aggrieved by the Decision, including condition of approval 8, which requires Phelan to construct certain on-site and off-site street improvements.

B. Reasons for Appeal

Phelan appeals the Decision because it fails to conform to the following code provisions, as explained below:

1. SRC 200.025(d) – Urban Growth Preliminary Declaration – (d) Determination.

The Director shall review a completed application for an Urban Growth Preliminary Declaration in light of the applicable provisions of the master plans and the area facility plans and determine:(1)The required facilities necessary to fully serve the development;(2)The extent to which the required facilities are in place or fully committed.

In determining the facility improvements required as part of the Urban Growth Preliminary Declaration, the Administrator failed to determine what improvements to facilities were “necessary to fully serve the development.”

2. SRC 200.025(e) – Urban Growth Preliminary Declaration – (e) Contents:

The Urban Growth Preliminary Declaration shall list all required facilities necessary to fully serve the development and their timing and phasing which the developer must construct as conditions of any subsequent land use approval for the development.

The Decision includes facility improvements that were not first determined to be “necessary to fully serve the development.”

3. SRC 200.055(c) – Standards for street improvements, subsection c:

Within the boundaries of the property on which development is to occur, all streets shall be fully improved. All streets abutting the property boundaries shall be designed and improved by the developer to the greater of the standards specified in SRC chapter 803 and the standards for linking streets in this section.

Condition of approval 8 requires Phelan to complete improvements to streets that are not within or abut the development property. In requiring improvements to non-abutting street frontage, the Decision appears to conflate this section with SRC 200.035, which only provides that the Administrator “shall *identify*” facilities that either abut or are within 260 feet of the

subject property. This same language was not included in SRC 200.055(c) or incorporated into the section through a code definition of “abut” —which is likely because requiring improvements to non-abutting streets that do not address impacts from the development would constitute an unconstitutional exaction.

4. SRC 200.055(d) – Standards for street improvements, subsection d:

Standards for geometric design, construction, and materials shall be as specified for the appropriate classification of street, arterial, collector, or local, as contained in the Public Works Design Standards.

The requirement in the Decision that Phelan provide a left-turn lane for the north driveway is not supported by this section or any other code provision because it is not required under the applicable Public Works Design Standards (Section 6.3—Lanes and Transitions, (b) Left Turn Lanes). Moreover, the traffic impact assessment (TIA) submitted by Phelan concluded that this turning lane was not necessary under industry design standards.

5. SRC 220.005(f)(3)(B) – Class 3 site plan review, subsection B:

The transportation system provides for the safe, orderly, and efficient circulation of traffic into and out of the proposed development, and negative impacts to the transportation system are mitigated adequately.

The Decision requires aesthetic and other types of street improvements that are not necessary for the safe, orderly, and efficient circulation of traffic into and out of the development site and/or are unrelated to impacts of the development on the transportation system altogether.

6. SRC 803.015(c) – Traffic impact analysis – (c)Improvements may be required.

On-site and off-site public or private improvements necessary to address the impacts identified in the traffic impact analysis may be required as conditions of development approval. Improvements include, but are not limited to, street and intersection improvements, sidewalks, bike lanes, traffic control signs and signals, parking regulation, access controls, driveway approach location and design, and street lighting.

The Decision requires off-site street improvements that were specifically determined in the TIA as not necessary to address impacts from the development.

C. Constitutional Issues

The Decision requires Phelan to construct off-site street improvements that are unrelated to impacts from the development, including landscape strips along the street frontage of the property to the north of the development site. Moreover, city code purports to require Phelan to purchase and then deed to the City any land necessary to do so. SRC 200.050. Both of these requirements are unconstitutional exactions. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 US 595, 619, 133 S Ct 2586, 186 L Ed 2d 697 (2013).

Very truly yours,



Steven G. Liday

NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
FAX: 503-588-6005



*Si necesita ayuda para comprender esta información, por favor llame
503-588-6173*

REVISED DECISION OF THE PLANNING ADMINISTRATOR

**URBAN GROWTH PRELIMINARY DECLARATION / CLASS 3 SITE PLAN
REVIEW / CLASS 2 ADJUSTMENT / CLASS 2 DRIVEWAY APPROACH PERMIT
/ TREE REGULATION VARIANCE CASE NO.: UGA-SPR-ADJ-DAP-TRV22-01**

**APPLICATION NO.: 22-104268-LD / 22-104269-RP / 22-104271-ZO /
22-109908-ZO / 22-110432-NR**

NOTICE OF DECISION DATE: August 31, 2022

SUMMARY: Development of a new industrial use building with associated site work.

REQUEST: A consolidated application including an Urban Growth Preliminary Declaration, Class 3 Site Plan Review, Class 2 Driveway Approach Permit, and Tree Regulation Variance for development of a new ~~208,000~~ 193,758 square foot industrial building with associated site improvements, and a Class 2 Adjustment to reduce the required distance between driveway approaches along a Minor Arterial from ~~370 feet to 280 feet (approximately 24.3 percent)~~. The subject property is approximately 10 acres in size, is zoned IG (General Industrial) and located in the 4400 Block of Turner Rd SE (Marion County Assessor's Map and Tax Lot No: 082W07C / 200).

APPLICANT: AAI Engineering

LOCATION: 4400 Block of Turner Rd SE

CRITERIA: Salem Revised Code (SRC) Chapters 200.025(d) & (e) – Urban Growth Preliminary Declaration; 220.005(f)(3) – Class 3 Site Plan Review; 250.005(d)(2) – Class 2 Adjustment; 804.025(d) – Class 2 Driveway Approach Permit; 808.045(d) – Tree Regulation Variance

FINDINGS: The findings are in the attached revised Decision dated August 31, 2022.

DECISION: The **Planning Administrator APPROVED** Urban Growth Preliminary Declaration / Class 3 Site Plan Review / Class 2 Adjustment / Class 2 Driveway Approach Permit / Tree Regulation Variance Case No. UGA-SPR-ADJ-DAP-TRV22-01 subject to the following conditions of approval:

- Condition 1:** At the time of building permit review, the applicant shall provide plans showing Fire Department access, fire hydrant locations, and Fire Department Connection as required.
- Condition 2:** At the time of building permit review, the applicant shall demonstrate that all required pedestrian connections conform with the design and material requirements of SRC Chapter 800, specifically SRC 800.065(b)(1) and 800.065(c).

- Condition 3:** At the time of building permit, the applicant shall adjust the parking area to include only the 67 parking spaces allowed by the maximum parking requirement.
- Condition 4:** At the time of building permit review, the applicant shall provide bumper guards or wheel barriers for the parking spaces adjacent to a walkway only five feet in width to prevent parked vehicles from encroaching into the pedestrian accessway.
- Condition 5:** Construct all new structures a minimum of one foot above the base flood elevation pursuant to SRC 601.075.
- Condition 6:** Provide an engineered overland flow analysis to ensure that the proposed development does not cause the base flood elevation to be increased in a manner that causes localized flooding during major flood events. Ensure that base flood flows are conveyed around or through the site pursuant to PWDS.
- ~~**Condition 7:** Construct a half-width turnpike improvement along the development side of Kuebler Boulevard SE from 1,200 feet south of Aumsville Highway SE to the Mill Creek Bridge.~~
- Condition 8 7:** Convey land for dedication to equal a half-width right-of-way of 36 feet on the development side of Turner Road SE.
- Condition 9 8:** Along the property frontage, and along the frontage of 4375 Turner Road SE (taxlot # 082W07C000101), construct a half-street improvement to Turner Road SE to minor arterial street standards as specified in the City Street Design Standards and consistent with the provisions of SRC Chapter 803. The configuration of the improvement shall accommodate the following traffic mitigation measures:
- a. Design and construct a left-turn lane and tapers within Turner Road SE to serve the southern driveway access.
 - b. Design and construct a left-turn lane and tapers within Turner Road SE to serve the northern driveway access. As required by the TIA the driveway shall be restricted to right-in, right-out, and left-turn-in movements. A raised median must be constructed on Turner Road SE to prohibit the left-turn-out movement. The driveway and median design must accommodate the large truck turning movements.
 - c. Minimize street tree installation as needed to provide adequate site distance as required in the TIA.
- Condition 9:** Design and construct a storm drainage system at the time of development in compliance with Salem Revised Code (SRC) Chapter 71 and Public Works Design Standards (PWDS).
- Condition 10:** The adjusted development standard shall only apply to the specific development proposal shown in the attached site plan. Any future development, beyond what is shown in the attached site plan, shall conform to all applicable development

standards of the Unified Development Code, unless adjusted through a future land use action.

Condition 11: Two significant trees, a split trunk Oregon White Oak with the largest measurement of 28 inches dbh (Tree No. 12673) and a 30-inch dbh Oregon White Oak (Tree No. 12741), shall be retained and preserved on site, with the required protection measures provided for significant trees during construction (SRC 808.046). At the time of building permit review, the applicant shall provide updated landscaping indicating the critical root zone of these trees and all protection measures, and updated plans reducing the trailer parking area to ensure protection of these trees.

Condition 12: Tree No. 12742, a split trunk Oregon White Oak with the largest measurement of 15-inch dbh, shall also be retained and preserved on site, with the required protection measures provided for significant trees during construction (SRC 808.046).

The rights granted by the attached decision must be exercised, or an extension granted, by the dates listed below, or this approval shall be null and void.

<u>Class 3 Site Plan Review</u>	<u>September 15 16, 2026</u>
<u>All other Case Types</u>	<u>September 15 16, 2024</u>

Application Deemed Complete:	<u>June 16, 2022</u>
Notice of <i>Revised</i> Decision Mailing Date:	<u>August 31, 2022</u>
Decision Effective Date:	<u>September 15 16, 2022</u>
State Mandate Date:	<u>November 5, 2022</u>

Case Manager: Jamie Donaldson, Planner II, jdonaldson@cityofsalem.net, 503-540-2328

This decision is final unless written appeal and associated fee (if applicable) from an aggrieved party is filed with the City of Salem Planning Division, Room 320, 555 Liberty Street SE, Salem OR 97301, or by email at planning@cityofsalem.net, no later than 5:00 p.m., Thursday, September 15, 2022. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 200, 220, 250, 804, and 808. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The City Council will review the appeal at a public hearing. After the hearing, the City Council may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review by contacting the case manager, or at the Planning Desk in the Permit Application Center, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

<http://www.cityofsalem.net/planning>