

REVISED MEMO

TO: City Council

FROM: Lisa Anderson-Ogilvie, AICP
Deputy Community Development Director and
Planning Administrator

DATE: August 1, 2023

SUBJECT: **Appeal of Subdivision Tentative Plan / Urban Growth Area Preliminary Declaration / Class 3 Site Plan Review / Class 2 Adjustment / Tree Regulation Variance / Class 1 Design Review Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02 – 2100 Block of Doaks Ferry Rd NW; Open Record**

On July 24, 2023, the City Council held a public appeal hearing for SUB-UGA-SPR-ADJ-TRV-DR23-02. The hearing was closed, and the record was left open until July 31, 2023, at 5:00 p.m. for anyone to provide additional written testimony. Any party may submit rebuttal to testimony given in the open record period until August 7, 2023, at 5:00 p.m. The applicant has until August 14, 2023, at 5:00 p.m. to submit final written rebuttal.

Attached are the comments received during the first open record period ending on July 31, 2023 at 5:00 PM.

Attachments:

- A. Staff Response to Testimony – July 31, 2023
- B. Comment from Geoffrey James – July 26, 2023
- C. Comment from Ronald Rhodehamel – July 26, 2023
- D. Comment from Evan West – July 31, 2023
- E. Comment from Glenn Gibson Creek Watershed Council submitted by Kenneth Bierly – July 31, 2023
- F. Comment from Sara Williams – July 31, 2023
- G. Comment from Linda Bierly – July 31, 2023
- H. Comment from Joaquin Midkiff – July 31, 2023
- I. Comment from Aaron Felton and others – July 31, 2023
- J. Comment from Michael Freitas – July 31, 2023
- K. Comment from EM Easterly – July 31, 2023
- L. Additional Comment from EM Easterly – July 31, 2023
- M. Comment from WSNM submitted by Steven Anderson – July 31, 2023
- N. Comment from Applicant submitted by Natalie Janney – July 31, 2023
- O. Additional Comment from Micheal Freitas – July 31, 2023

cc: SUB-UGA-SPR-ADJ-TRV-DR23-02 File

**SUBDIVISION TENTATIVE PLAN, URBAN GROWTH AREA PRELIMINARY
DECLARATION, CLASS 3 SITE PLAN REVIEW, CLASS 2 ADJUSTMENT,
TREE REGULATION VARIANCE, AND CLASS 1 DESIGN REVIEW
CASE NO. SUB-UGA-SPR-ADJ-TRV-DR23-02**

**QUESTIONS RAISED IN TESTIMONY FOR THE APPEAL HEARING BEFORE
CITY COUNCIL ON JULY 24, 2023**

Questions and concerns raised in written or verbal testimony are summarized below and followed by a response from staff.

1. **Procedural Errors:** Comments submitted express concerns that the summary description for the decision and/or appeal notice incorrectly identified the zone of the property; incorrectly identified the size of the property as 34.72 acres; and that there was a discrepancy in the acreage cited for the property, versus the square footage of the combined lots resulting from the subdivision.

Staff Response: These items were addressed in the presentation to City Council on July 24, 2023, indicating that because the northern portion and the multi-family development are the focus of the application, the summary statement only noted the RM-II zone. However, both zones of the property were called out in the decision, with the indication that the proposal was only reviewed for the RM-II zoning standards that apply to the development of the northern portion of the property. Staff was not able to find where the property was indicated as 34.72 acres in the decision issued by the Planning Administrator. Polk County records indicate the subject property measures 36.72 acres, which was indicated in the decision. After the land division, Lots 1 through 6 will equal 31.96 acres, or 1,392,286 square feet as cited in testimony received. The difference is attributed to right-of-way dedication for the new internal streets within the subdivision, as well as dedication for the boundary streets and water quality facility tracts; only the size of the lots created were addressed in the subdivision analysis for review of conformance with lot standards.

As conditioned with the street realignment of Condition 22, Lots 1 and 2 would be combined for a total of 223,655 square feet, or 5.13 acres, resulting in the same total area for all parcels indicated above of 31.96 acres. This change was addressed on page 13 of the Planning Administrator's decision, indicating that the change still provides parcels that exceed the minimum lot standards, thereby meeting the criteria.

Questions were raised whether this change requires the applicant to modify the application. Because the change results from a condition of approval and is not a substantial change in the proposal, it does not require a modification of the applicant's proposal. It is not uncommon to see lot dimensions and configurations, and even a minimal change in the number of lots created through the platting and review phases. A subdivision plan in the land use phase is called a Tentative Subdivision Plan to show how the land can be divided and meet applicable zoning standards, tentatively.

2. **Completeness Review:** Questions were raised regarding deeming the application complete and the Planning Administrator's authority to deem an application complete.

Staff Response: Submittal items are listed in SRC Chapter 300.210 with additional requirements, if any, in specific chapters related to various application types.

Testimony received indicates that submittal requirements are approval criteria because the code requires the Planning Administrator to find that the “tentative subdivision plan complies with the standards of this chapter and with all applicable provisions of the UDC.” Submittal requirements are not approval criteria and instead are intended to ensure the applicant has provided enough information to allow staff to review the application and issue a decision.

Testimony also suggested that the Planning Administrator had waived submittal requirements. Pursuant to SRC 300.210(b) the Planning Administrator may waive any submittal requirement “if the Planning Administrator determines that the specific requirement would not provide evidence needed to satisfy any of the applicable criteria.” However, in this case the Planning Administrator did not waive any submittal requirements.

Under Oregon Revised Statutes (ORS) 277.178(2) and SRC 300.222(d), when an application is deemed incomplete, the applicant has the following options:

- Provide all of the missing information;
- Provide some of the missing information and written notice that no other information will be provided; or
- Written notice from the applicant that none of the missing information will be provided.

In this case, the applicant provided some of the missing information on January 26, 2023 and requested the application be deemed complete under this state code, thereby requiring staff to issue a decision without all the information requested. While staff would prefer to receive a complete application, Staff cannot deny an application due to a missing item, an error, or incomplete information, if we have enough information to determine if the proposal meets the approval criteria or can meet the approval criteria with conditions.

3. **Burden of Proof:** Several comments and testimony received indicate that the applicant did not meet the burden of proof for approval of their application.

Staff Response: While the applicant does have the burden of proof on all elements of the proposal, the decision issued shall be based on the applicable standards and criteria set forth in the UDC, Salem Area Comprehensive Plan, and any other land use standards imposed by state law or administrative rule, if applicable. Pursuant to SRC 300.820, the Review Authority may impose conditions on land use actions to the extent allowed by law in order to protect the public and adjacent property owners from adverse impacts resulting from the proposed development, to fulfill an identified need for public services or infrastructure caused by or required for the proposed development, or to ensure conformance with the applicable development standards and criteria in the UDC. If a development standard can be met by imposing a condition of approval, then the decision can be issued based on the ability for the proposal to meet the applicable standards during the subsequent permit review processes. If there is no reasonable condition that can be applied or enforced, then a denial of the application or request is considered. In this case, the request to increase the maximum parking was not approved in favor of saving the trees. With 63

conditions of approval in place, a decision was issued for a proposal that would meet all applicable standards once the conditions have been satisfied.

Any opponents may submit to the Review Authority a set of written findings or statements of factual information which are intended to demonstrate the proposal complies or fails to comply with any or all applicable standards and criteria. Discretionary applications require critical thinking and judgment to determine if a proposal can meet the applicable standards, and if staff can find a path forward with the applicant with conditions of approval in place, then a decision can be issued. The Planning Administrator does not generally deny any application that does not provide every detail of information, if that information is easily obtainable by staff.

SUBDIVISION DESIGN AND SURVEY

4. **Dimensions of Land to be Divided:** Comments received, and testimony heard at the hearing, question the legal description (metes and bounds) of the property.

Staff Response: Prior to this development application, the property received approval for a Validation of Unit of Land application, Case Number VUL21-04, to validate the subject property which was unlawfully created when it was divided from its parent tract by deed in 1974. In review of the VUL application, the Survey Department reviews the historical deeds and chain-of-title to determine how the unit of land was created into its current configuration, and reviews what can lawfully be established as the boundary of the property when the plat is recorded with the County. That review is not a part of this application, and the change in metes and bounds for the property since 1946 are not a criterion for approval for the Subdivision application; that process was done with the Validation of the property. In addition, the survey used for the Zone Change Case CPC-ZC21-06 referenced in written testimony was an informational survey to conceptualize the zoning boundaries; it was not an official Record of Survey that was recorded with Polk County. The plat for the validation was recorded in June 2023, which supersedes any previous documents; therefore, any meets and bounds descriptions are no longer necessary to describe the subject property.

Comments received request the application be denied for not complying with SRC 205.030(a). It should be noted that SRC 205.030(a) lists *Submittal Requirements* and is not a criterion for approval or denial of an application. The City Surveyor reviewed the tentative plan submitted by the applicant, and while some required information was missing, deemed that the tentative plat had a path towards recording. Prior to the subdivision plat being recorded with Polk County, the applicant will provide a required field survey and subdivision plat as per the statute and code requirements outlined in the Oregon Revised Statutes (ORS) and the Salem Revised Code (SRC). This will be reviewed and approved by the City Surveyor prior to recording with Polk County.

5. **Right-of-Way Dedications:** Questions were raised about how many linear feet of right-of-way dedication is required.

Staff Response: The following table includes approximate measurements from the applicant's "Lot Site Plan", included in the record:

| Street | Length* |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| Doaks Ferry Road NW | 1,657 linear feet measured from property corner to property corner |
| Orchard Heights Road NW | 543 linear feet measured from property corner to property corner |
| Landaggard Drive NW | 1,230 linear feet measured from the existing terminus of Landaggard Drive NW to the northern property boundary. |
| Proposed Street A | 1,325 linear feet measured from the eastern property boundary to the western property boundary |
| Proposed Street B | 189 linear feet measured from the centerline intersection with Landaggard Drive NW. |
| Proposed Street C | 132 linear feet measures from the centerline intersection with Landaggard Drive NW. |
| <i>*The lengths provided are only the linear feet of the right-of-way being dedicated. The widths of dedications vary. Additional survey work is required to verify the final dimensions of the right-of-way and lots created through the subdivision.</i> | |

6. **Improvement Agreements:** Appellants question whether or not the applicant intends to request deferral for any of the listed conditions pursuant to SRC 205.035(c)(7)(B).

Staff Response: Staff cannot speak to the applicant's intention; a formal request has not been submitted at this time. As stated in the Planning Administrator's Decision, all subdivision conditions shall be completed prior to final plat approval or shown on the final plat. Apart from conditions 4-7, 12, 13, 17-21, 24, 30, and 31, which may be completed prior to final plat approval or may be delayed pursuant to an improvement agreement per SRC 205.035(c)(7)(B). Improvement Agreements are commonly used for subdivisions to allow the final plat to be recorded ahead of all public improvements being fully constructed and accepted by the City. As stipulated in SRC 205.035(c)(7)(B), the improvements must be completed within 18 months of final plat approval, unless an extension is granted.

Condition 41 requires that the plat for Titan Hill be recorded prior to issuance of building permits for the multi-family development, therefore; the public improvements would either need to be constructed or the developer would have had to entered into an Improvement Agreement with the City, prior to recording the plat and issuing building permits.

7. **Easement to Landlocked Parcel:** Comments received, and testimony heard at the hearing, express concerns over the applicant's proposal to provide easement access through a proposed parking lot for the land-locked property with the development.

Staff Response: This item was addressed in the Planning Administrator's decision, and during the public hearing. The property owner indicated there have been no discussions with the applicant regarding the easement, but the condition in place requires this to take place prior to final plat. The access easement in questions is a private easement between the two property owners. Pursuant to SRC 110.060, the City does not enforce any easement, covenant, condition, restriction, or other agreement between private parties, nor is the UDC generally intended to abrogate, annul, or impair such easements, covenants, conditions, restrictions, or agreements.

The conditions of approval ensure the land-locked property will have access to a public street.

TRANSPORTATION

8. **Traffic:** Comments received, and testimony heard at the hearing, express concerns for the additional traffic that will be generated by the proposed development; the underimproved condition of Doaks Ferry Road NW; and the pedestrian and bike safety within the immediate area.

Staff Response: As a condition of development, the applicant is required to construct a boundary street improvement along Doaks Ferry Road NW, which will include a sidewalk, bike lane, and streetlights along the frontage of the property. Pavement widening is also required as part of the boundary street improvement to ensure safe travel lanes are provided for all uses.

In addition to the required boundary street improvements, the applicant's Traffic Impact Analysis (TIA) requires improvements to mitigate the impact of the development on the transportation system. The TIA identified the following needed improvements:

- i. Construct a left-turn lane on Doaks Ferry Road NW at the intersection with the new "Street A." The left-turn lane shall include a minimum 75 feet of vehicle storage.
- ii. Construct sidewalks along Doaks Ferry Road NW from the intersection of Orchard Heights Road NW to the northern boundary of the site.
- iii. Construct a linked ADA pedestrian connection from the proposed development across Orchard Heights Road NW, including a raised pedestrian refuge on the west side of the intersection. Improvements shall include upgraded ADA ramps on both sides of Landaggard Drive NW and the western side of the West Salem High School driveway, and a sidewalk extension along the north side of Orchard Heights Road NW to the intersection with Doaks Ferry Road NW. Pursuant to SRC 200.035(a)(4), sidewalks shall also be provided along the frontage of 2357 Orchard Heights Road NW (Polk County Assessors Tax Lot No. 073W17D00900).

The Assistant City Traffic Engineer has reviewed the TIA, agreed with the findings, and imposed conditions on the development to construct the required improvements. Conditions 12, 13, 21, 30, and 31 address boundary street improvements and mitigation required by the Applicant's Traffic Impact Analysis.

Condition 30(iii) specifically requires a "linked ADA connection" from the proposed development across Orchard Heights Road NW to West Salem High School, near the intersection of Landaggard Drive NW. Because the improvement is required to be "linked", sidewalks would be constructed along the property frontage on Orchard Heights Road NW and across the frontage of Polk County Taxlot No. 073W17CA00300 in order to "link" the development site to the American with Disabilities Act (ADA) crossing.

Testimony heard at the hearing indicated that the existing intersection of Doaks Ferry Road NW and Orchard Heights Road NW did not meet ADA standards and was difficult to cross. The existing intersection of Orchard Heights Road NW and Doaks Ferry Road NW met the ADA standards that were in place when it was constructed in 1999. It would not be the responsibility of this developer to improve the existing ADA ramps at this intersection. All new improvements within the public right-of-way that will be constructed by this development are required to meet the current ADA requirements. This includes all new street intersections within the development and the new pedestrian crossing of Orchard Heights Road at Landaggard Drive NW. This new crossing of Orchard Heights Road NW, with linked sidewalks along Doaks Ferry and Orchard Heights will provide an alternative to crossing at the Doaks Ferry and Orchard Heights intersection.

Above and beyond the TIA mitigation and minimum boundary street improvements required, the Assistant City Traffic Engineer required speed bumps along Landaggard Drive NW to slow traffic on the existing street and also prohibit construction traffic for the development from using Landaggard Drive NW as a construction entrance. The speed bumps will be required prior to occupancy of any buildings and will be permanent.

9. Salem Transportation System Plan Amendment: Testimony received related to the applicant's proposed Salem Transportation System Plan Amendment.

Staff Response: Landaggard Drive NW is currently classified as a Collector Street according to the Salem Transportation System Plan (TSP). The current TSP Collector Street alignment extends from the existing portion of Landaggard Drive NW through the site to the western property line. The applicant has submitted a separate application for a Transportation System Plan Amendment to change the classification of Landaggard Street NW to a Local Street, and to change the alignment of the Collector Street to follow proposed Street A (Application No. 22-121104-GP). The proposed change in classification is intended to recognize the condition of Landaggard Street NW and its unsuitability for higher volumes of traffic. Amendments to the TSP are subject to City Council approval. The two alignments are shown in Attachment D, Exhibit A of the Planning Administrator's Decision.

Staff has conditioned the application on two outcomes of the TSP Amendment. If the TSP amendment is approved, the applicant would construct the internal streets in accordance with Conditions 17 and 18 of the Planning Administrator's Decision. If the TSP amendment is not approved, the applicant would construct the internal streets in accordance with Conditions 19 and 20 of the Planning Administrators Decision.

City Council will be asked to approve, or deny, the TSP amendment prior to issuance of Public Construction Permits for the internal streets within the subdivision. Staff cannot approve public construction permits without knowing the street classification to which the streets shall be designed as "local" and "collector" streets have different cross sections for construction according to the Salem TSP; hence the condition states that the TSP Amendment must be completed prior to Public Construction permits, thereby ensuring the condition is enforceable.

- 10. Unenforceable Conditions:** Testimony heard at the hearing, and comments received, allege that conditions are not enforceable and/or rely on the actions of a third party before compliance with code can be achieved.

Staff Response: Staff addressed this in the staff report submitted to City Council for the public hearing conducted on July 24, 2023. However, additional testimony was received inaccurately relating the TSP Amendment conditions to the applicability of EV Charger requirements, stating “that it seems contrary to logic why a future action of the City Council can be considered a valid condition of approval, [given that staff indicated they cannot enforce a future standard in the case of the EV Chargers].” However, neither instance involves applying future standards. The application for development was received prior to the effective date of the new code related to EV charging station standards. Pursuant to ORS 227.178(3) and SRC 300.220(e) an application can only be reviewed on Criteria and Standards effective at the time the application is submitted, and therefore the City cannot retroactively require developments to comply with codes that were not in effect at the time their development process started.

The TSP Amendment is a separate application applied for concurrently, where there are existing street classifications in place already. Only two scenarios are possible with the TSP Amendment, and both have been accounted for with conditions of approval that provide a path forward in each instance. If the TSP Amendment is not approved, then the street classifications remain the same and the conditions in place for that scenario apply. If the TSP Amendment is approved, then the applicant has designed the development to fit that scenario as well, and the conditions of approval for the change in street classifications apply. This is not an application of future standards, but a signal as to which standards apply as the development moves forward in the public construction process; hence why the TSP Amendment is conditioned to receive a final decision from City Council prior to issuance of Public Construction Permits to ensure that the conditions are enforceable during permit review.

- 11. Easements for Public Vehicular and Pedestrian Access:** Questions were raised regarding Conditions 26 and 27, relating to dedications of public vehicular and pedestrian access through the development site and how they interact with each other.

Staff Response: Condition 26 required a pedestrian access easement from proposed Street A to proposed Lot 6 whereas Condition 27 required a vehicular and pedestrian access easement from proposed Street A to Lot 6. These easements were required because the applicant submitted a request for Alternative Street Standards to deviate from the block spacing and connectivity requirements in SRC Chapter 803. Staff found that due to the topography of the site, and providing vehicular and pedestrian easements as conditioned, the Alternative Street Standards could be approved. The easements will ensure there is adequate connectivity between the proposed development and future development on Lot 6 without requiring full street connections.

12. Relocation of Proposed Street C: Testimony heard indicated that Condition 22 to move Street C was unnecessary, citing the belief that the existing structure it aligned with would likely be demolished when the property develops; future streets could meander around the structure; and that the street would never be able to connect to Doaks Ferry due to the topography of the site.

Staff Response: Pursuant to SRC 803.035(a), Local Streets shall be extended to adjoining undeveloped properties for eventual connection with the existing street system. The applicant's tentative plan shows Street C that stubs to neighboring property for an eventual connection to Doaks Ferry Road NW. This stub is required in order to provide for the 600-foot block spacing required under SRC 803.030(a) and meet street connectivity standards. The applicant's location of proposed "Street C" conflicts with an existing dwelling and accessory structure located at 2217 Doaks Ferry Road NW (Polk County Tax Lot No. 073W17B00300) while there is undeveloped property northerly that the street can be stubbed to (Polk County Taxlot No. 073W17B00200). Condition 22 ensures there are no conflicts with existing homes in the future, and fewer obstacles for the potential to develop the street with its connection to an undeveloped portion of property.

13. Pedestrian Access to Parks: Testimony received indicated staff erred in the findings for the subdivision criteria SRC 205.010(d)(6) regarding the location of parks within one-half mile of the development.

Staff Response: The purpose of the Subdivision Chapter 205 is to provide regulations governing the land division and reconfiguration of land. The subdivision tentative plan as part of this application includes the entire 36.72-acre property, which includes Lot 6 south of the multi-family development. Most subdivision applications are not consolidated with a site plan review application, and any single-family subdivision does not include the development plans for each residence on each individual lot; therefore, this measurement is always taken from the boundaries of the property subject to the subdivision review. The term "development" in association with this criterion refers to any future development of the property, including any future development of Lot 6. If the applicant chose to apply for the subdivision of the property separately from the site plan review of the multi-family development, the findings would have reflected the same measurements from the southeast corner of Lot 6 and would likely not be challenged as not being measured from the development portion.

There is no standard or approval criterion that requires multi-family development to be within a certain distance of parks, neighborhood centers, etc. The subject property is across the street from Straub Nature Park and within walking distance to Grice Hill Park and West Salem High School Park. Requiring the applicant to build additional off-site sidewalks and street improvements is not warranted and would not be proportional to the development proposed. As previously discussed, the applicant will be making substantial pedestrian upgrades in the vicinity which will benefit current and future residents' ability to access the area parks. Additionally, the development includes a common open space that has a clubhouse, pool, basketball court, covered pavilion and a children's playground, exceeding the minimum common open space requirements of the code.

An additional question was raised about Condition 45 requiring a pedestrian connection between Buildings 21 and 22, and how it supports the findings of SRC 205.010(d)(6). Condition 45 is related to the multi-family Design Review standard to orient buildings to the street and provide pedestrian access from the residential building to the street; it is not related to the subdivision criteria to provide pedestrian access from the subdivided property to neighboring activity centers, nor is related to Condition 30 which involves right-of-way construction requirements based on the TIA mitigation. However, requiring the applicant to provide adequate pedestrian connections from residential buildings to the streets within the development ensures that residential areas are connected to the boundaries of the site, where the subdivision ensures that there are amenities within range of the boundaries of the property.

UTILITIES

- 14. Urban Growth Area Preliminary Declaration:** Questions were raised regarding the City's Urban Growth Area Preliminary Declaration criteria and findings within the Decision.

Staff Response: The Urban Growth Area Preliminary Declaration (UGA) is a declaration that identifies *needed improvements* to serve a property that is outside the City's Urban Service Area; it is not a development permit and therefore does not impose conditions. For the purposes of Chapter 200, SRC 205.005 defines development as "the subdivision of land; the construction of a planned unit development; the establishment of a mobile home park; or the construction or structural alteration of a building or structure which will result in increased usage of a public facility." Therefore, in order to ensure the conditions are enforceable, the conditions of approval apply to the Subdivision development and establish the requirements to serve the development based on the identified needed improvements listed in the UGA.

- 15. City of Salem Water:** Questions were raised regarding where the development would connect to the public water system.

Staff Response: A utility plan was provided with the application materials and shows the apartment site will be served by the existing 18-inch public water main in Doaks Ferry Road NW. City of Salem 18-inch W-1 water mains are available in Doaks Ferry Road NW and Orchard Heights Road NW. As shown on the applicant's utility plan, water mains will be extended into the internal streets within the development site. City of Salem public water mains will not be extended into the existing portion of Landaggard Drive NW as part of this development.

- 16. Orchard Heights Water District:** Questions were raised regarding how the development could impact customers currently served by the Orchard Heights Water District.

Staff Response: Properties on Emerald Drive NW are outside of Salem City Limits and are within the Orchard Heights Water District. The Orchard Heights Water District is served by City of Salem Mains through an agreement between the District and the

City. Many properties within the Orchard Heights Water District are served by existing wells and supplement water supply by purchasing water through the water district.

Properties on Emerald Drive NW are served by the City of Salem main in Doaks Ferry Road NW.

Properties on Landaggard Drive NW are within Salem City Limits and are served by the City of Salem main in Orchard Heights Road NW. The Orchard Heights Water District private main extends from Orchard Heights Road NW to the northern terminus of the existing portion of Landaggard Drive NW. The GIS mapping shows the private main extending through the development site; however, the Orchard Heights Water District manager confirmed this private main was previously abandoned.

City of Salem public water mains are not currently located in Landaggard Drive NW as the street is served by the Orchard Heights Water District. The proposed development is not required to construct public water mains in the existing portion of Landaggard Drive NW, nor are they proposing to construct City utilities within the developed portion of Landaggard Drive NW. The development will provide public water in the new internal streets. As shown on the applicant's utility plan, the public water main will terminate in the proposed extension of Landaggard Drive NW at the intersection of Landaggard Drive NW and proposed Street B.

Written testimony indicates that the landlocked parcel within the development site is served by the Orchard Heights Water District. Because the parcel is landlocked, the private lateral for this service would traverse through the development site, within a private utility and/or access easement. The City does not maintain records for the Orchard Heights Water District private services nor is the service shown on the applicant's existing conditions and utility plans. Utility field locates would be needed to determine the location of the private water service.

At time of Public Construction Plan review, the applicant will be required to submit plans that show all existing public and private utilities within Landaggard Drive NW and on the subject property and ensure that no disruptions to existing services occur.

17. City of Salem Sewer: Questions were raised regarding the extent of the required sewer main extension to serve the development.

Staff Response: The subject property is not served by public sewer. The nearest public sewer main is located in Doaks Ferry Road NW, approximately 1,250 feet north of the subject property; however, this main does not have adequate capacity to serve the proposed development. The Salem Wastewater Management Plan identifies a future public main of various sizes within Doaks Ferry Road NW and on the subject property. The master plan main extends from the intersection of Doaks Ferry Road NW and Brush College Road NW to the site, from approximately one-half-mile north. The applicant shall be required to construct the master plan sewer main in Doaks Ferry Road NW and through the site, to serve the proposed development and mains to the boundaries of the site that can be extended in the future to serve neighboring property.

The Salem Wastewater Master Plan shows the main extending from the intersection of Brush College Road NW and Doaks Ferry Road NW and into the development site. Public Sewer will be extended within the internal streets within the subdivision. Due to topography, the natural drainage of the area slopes northeast towards Doaks Ferry Road NW and gravity flows north into the existing sewer in Brush College Road NW. Extending the main in Orchard Heights Road NW would be redundant because the applicant is extending mains within the internal streets of the subdivision to provide sewer service to the westerly neighbors.

- 18. Bancrofting:** Testimony heard and provided in writing question whether or not properties on Landaggard Drive NW would be eligible to “Bancroft” System Development Charges and other fees associated with connection to the City of Salem Public Utility System. Bancrofting allows a property owner assessed for local improvement charges to finance said assessment with the City rather than paying one lump sum for the assessment charge.

Staff Response: As discussed above, public water and sewer mains are not being extended into the existing developed portion of Landaggard Drive NW. If at such time sewer were extended in Landaggard Drive NW by the City, property owners would have the ability to Bancroft the associated System Development Charges for connection to the new system per SRC 21.100 and ORS 22.210.

- 19. Stormwater Management:** Issues relating to stormwater management submittal information for the development were raised at the public hearing and in written testimony.

Staff Response: As part of the application package, the applicant submitted a Preliminary Drainage Report which did not include the appendices that were referenced in the report. As such, Public Works could not confirm whether or not the design of the facility would comply with SRC Chapter 71 and PWDS. Conditions of approval require a complete design to be submitted that meets SRC Chapter 71 and PWDS relating Green Stormwater Infrastructure (GSI) for treatment and detention of stormwater for the impervious surfaces within the development. The level of detail submitted at time of Tentative Plan Approval varies. A complete drainage report at the time of Tentative Plan Approval can better indicate conformance with PWDS but it is expected to be preliminary in nature and can change. A detailed conformance review will be performed at the final design stage to ensure the design of the stormwater management system adequately treats drainage from the proposed development and controls flows to limit post development runoff rates to pre-existing conditions.

- 20. Public Utility Easements:** Questions we raised regarding required dedications of Public Utility Easements for proposed Lot 6 of the Subdivision.

Staff Response: A 10-foot-wide public utility easement (PUE) is required along street frontages pursuant to SRC 803.035(n). The applicant’s tentative plan shows a PUE along the new internal streets and along Doaks Ferry Road NW abutting the proposed water quality parcels. No PUE is shown along Doaks Ferry Road NW and Orchard Heights Road NW abutting Lot 6. Development plans for Lot 6 have not yet been

submitted; at time of site plan review for Lot 6, the depth of the PUE will be established and may be dedicated by separate document.

Lot 6 is zoned mixed-use, which has a minimum setback of zero feet and a maximum setback of ten feet, unless an adjustment to the standard is approved. Therefore, development within the setback range would conflict with the standard ten-foot width of the Public Utility Easement (PUE). Staff recommended deferring dedication of a PUE until development plans for proposed Lot 6 are provided, to ensure easements and buildings on-site do not conflict. Condition 15 of the Planning Administrators Decision establishes that the PUE for lot 6 will be determined at time of development.

NATURAL RESOURCES

21. Removal of City-Owned Trees: Testimony heard at the hearing, and comments received, indicate that the applicant submitted an incomplete Tree Inventory because the trees within the Doaks Ferry right-of-way were not shown on the Inventory.

Staff Response: Staff agrees that there are many trees along Doaks Ferry Road NW that were not shown on the applicant's Tree Inventory, however; because these trees are within the right-of-way and considered City-owned Street Trees, they are not required to be shown on the applicant's Tree Inventory. Staff addressed this in the staff report submitted to City Council for the public hearing conducted on July 24, 2023. Pursuant to SRC 808.045(c)(1)(C), an application for a tree variance shall include the identification of the type, size, and location of all existing trees on the property. Trees located adjacent to the property are not required to be shown on the applicant's plans and are not reviewed as part of the land use application.

Staff observed Oregon White Oaks and other large trees along the west side of Doaks Ferry Road NW and Orchard Heights Road NW that appear to be largely within the existing right-of-way and are considered City-owned Street Trees. Removal of City-owned street trees is reviewed through permitting under SRC Chapter 86 – *Trees on City Owned Property*, and not SRC Chapter 808 – *Preservation of Trees and Vegetation*. Pursuant to 86.050(a)(1) a permit is required prior to removal of any City-owned trees. Criteria for removal of City-owned trees is listed in SRC 86.090; it is the applicant's responsibility to demonstrate how the criteria for removal are met. If the applicant proposes removal of City-owned trees, a valid permit would be required prior to construction of the required improvements that necessitated removal of the tree. At this time, no applications for removal of the City-owned Trees in Doaks Ferry Road NW or Orchard Heights Road NW have been submitted.

In order to fully review an application for City-owned tree removals along Doaks Ferry Road NW, staff will need to review engineered plans for the necessary boundary street improvements. It is not clear what impact these improvements will have on existing oaks. A future design might include an Alternative Street Standard to allow preservation of White Oak trees while also providing necessary sidewalks, bike lanes, and adequate travel lanes to ensure safe and efficient transportation is provided along the boundary streets of the development. Without seeing a design for the streets, staff cannot determine what alternatives may be appropriate and would be beneficial for tree preservation.

22. Street Tree Planting: Questions were raised regarding the planting of Street Trees and the definition of the “maximum extent feasible”.

Staff Response: Condition 24 requires the applicant to *install street trees to the maximum extent feasible along Doaks Ferry Road NW, Orchard Heights Road NW, and internal streets constructed within the subdivision*. The “maximum extent feasible” is not defined in SRC Chapter 86. Staff has interpreted this in the past to mean that as many trees as possible shall be planted in the right-of-way considering minimum spacing standards, vehicular sight distance, utilities, and driveways and other obstructions.,,. Public Works Design Standards and Administrative Rule 109-500 Public Works Trees on City Owned Property provide guidance for how and where street trees should be planted.

Oregon White Oaks are an approved street tree according to *Administrative Rule 109-500 Public Works Trees on City Owned Property Appendix A-Table A-1: Salem Recommended Street Trees List 2015*.

23. “Intent to Preserve”: Several comments submitted express concerns how staff evaluates the “intent to preserve” significant trees as declared in SRC Chapter 808 versus the applicant’s request to remove trees for development. WSNA cited in their testimony that “the applicant’s starting point was placing the maximum number of dwelling units. Every time on their plan drawings a dwelling unit conflicted with a tree; the tree was to be removed. Maximizing the number of dwelling units onsite appears to be the priority.”

Staff Response: Staff initially addressed this in the staff report submitted to City Council for the public hearing conducted on July 24, 2023, as well as the Tree Regulation Variance Criteria in Section 13 of the Planning Administrator’s decision, which establishes the standards to potentially allow removal. Further analysis was also made during the presentation to City Council on July 24, 2023, showing where areas of redesign happened during the review process to save trees, or where areas of redesign did not happen and conditions of approval were applied to save more trees, both significant and non-significant. With conditions of approval in place, the applicant is saving 43 percent of the significant trees on site, and 31 percent of all the trees on site. If this property was subdivided for single-family housing, a Tree Conservation Plan in conjunction with the application would only require a minimum of 30 percent of all the trees on site saved, with no minimum requirement for the percentage of significant trees to be saved. The applicant has provided the equivalent percentage requirement for the multi-family development through the Tree Variance process. Out of the total number of trees to be removed from the site, only 13 percent are significant trees ($42 / 322 = 13$).

Updated Tree Count with Conditions of Approval:

| Tree Type | Remain | Remove | Total | % Saved |
|-----------------|--------------|----------------|------------|-----------|
| Significant | 32 (28 + 4) | 42 (46 - 4) | 74 | 43 |
| Non-Significant | 68 (58 + 10) | 180 (190 - 10) | 248 | 24 |
| Total | 100 | 222 | 322 | 31 |

It should also be noted that the applicant did not start the application with the maximum number of dwelling units, which is 769 units; nor have they proposed the maximum number of dwelling units that would be allowed with the trip cap placed on the property through CPC-ZC21-06, which is 500 units. The minimum density for multi-family development in the RM-II zone is 15 dwelling units per acre, or 372 units for the 24.8-acre portion of the property. The applicant's proposal of 436 units provides a density of 18 dwelling units per acre ($436 / 24.8 = 17.58$), which is under the maximum allowed density of 31 units per acre by 333 units; the applicant has provided only 56 percent of the units that would otherwise be allowed for a 24.8-acre property in the RM-II zone in a time when housing is a necessity. The rezoning of this portion of property under CPC-ZC21-06 brought the City closer to their housing needs for multi-family zoned land, but there is still a need to develop those lands with units that can provide the needed housing.

Additionally, the purpose statement of Chapter 808 is to "provide for the protection of heritage trees, significant trees, and trees and native vegetation in riparian corridors, as natural resources for the City, and to increase tree canopy over time by requiring tree preservation and planting of trees in all areas of the City." However, purpose statements are not a criterion for approval or denial of an application. Staff has reviewed the proposal and balanced the intent to preserve trees with the intent to provide needed housing to meet the City's Housing Needs Analysis by denying the request to increase maximum parking, and conditioning the preservation of enough trees to bring the preservation rate to the same 30 percent threshold that would apply if the site was developed as a single-family subdivision with a Tree Conservation Plan. In addition, other conditions of approval require the applicant to plant over 500 trees throughout the development, as well as to replant two trees for every that is removed within a required setback, meeting the purpose to increase the tree canopy over time and ensuring the development will provide a livable community and climate benefits for future generations.

24. Value and Age of Trees: Testimony and comments received indicate that the value and the age of an existing tree has not been considered in the removal or preservation of trees, and alternative methods for parking surfacing, like pervious pavement, should be considered.

Staff Response: Staff considers the type, size, and location of all existing trees on site; the value of a tree is not a required standard for review or an approval criterion. A tree's critical root zone measures one-foot in radius for every one-inch of diameter-at-breast-height (dbh); meaning a tree with a 44-inch dbh has a critical root zone that spans 88 feet, and a tree with a 60-inch dbh has a critical root zone that spans 120 feet. Comments were received to consider the preservation of two trees of this size located near each other in the southeast portion of the multi-family development. These trees are located near each other and at least 45 feet away from the boundary of the property where topography of the site requires significant grading to ensure the safe construction of residential buildings, sidewalks, drive-aisles, and streets.

Surfacing standards for streets and vehicle use areas are set forth in the Salem Revised Code and Public Works Design Standards (PWDS). Pursuant to PWDS, *Pervious pavement can be used for private streets, driveways, and parking*

lots under certain circumstances, but is not approved for use in the public right-of-way. However; the SRC and PWDS do not establish whether or not this method would be appropriate within the Critical Root Zone of a tree in order to preserve it. In this case, because of the significant topography of the site, the installation of pervious pavement would still require significant grading within the large critical root zones of these trees in order to provide safe parking slopes and grade that would meet the surrounding development, and thereby threaten the survival of the tree. The size, location, and topography of the site are special conditions of the property that create a hardship or practical difficulty that is most effectively relieved by a variance, meeting the criteria for their removal, as indicated in the Planning Administrator's decision.

25. Accurate Tree Inventory: Testimony received claims that subdivision criteria SRC 205.010(d)(9) has not been met because the finding that "all existing conditions of topography or vegetation have been identified on the site which would necessitate variances during future development of the property and evaluated with this decision" is not accurate when the Tree Inventory is incomplete on proposed Lot 6, and that Condition 51 is improper as a future condition to circumvent compliance with SRC 205.010(d)(9).

Staff Response: The applicant's tree plan is only required to indicate all trees ten inches or more dbh, as defined in Chapter 808, located on the property. The applicant stated that the tree plan has been reviewed for accuracy and is an accurate representation of the trees that exist on the subject property. Condition 51 requires the applicant to provide an updated plan to reflect all conditions of approval requiring tree preservation or allowing additional tree removal (due to street realignment), and verification of trees located on property lines due to trees proposed for removal located on property lines or on adjacent property; this condition is not in place to allow the applicant to submit revised plans with changes that have not gone through the appropriate review, or to circumvent compliance with the subdivision criteria but to ensure that the tree plan is updated to reflect conditions of approval. The tree preservation requirements will be tracked throughout the development process, ensuring trees are marked for preservation on all relevant plans, including grading permits, public construction plans and building permits for each structure. Inspections are conducted throughout the development process.

Subdivision criteria SRC 205.010(d)(9) specifically states that "the tentative subdivision plan *takes into account* the topography and vegetation of the site, such that the *least disruption* of the site, topography, and vegetation will result from the reasonable development of the lots." The corresponding finding from staff cites:

"As explained in the findings establishing conformance with SRC 205.010(d)(8) above, the tentative subdivision plan configures lots and streets to allow residential development of the site, which has been reviewed in conjunction with a Tree Regulation Variance application to ensure the proposal minimizes disruptions to topography and vegetation. The proposed lots are of sufficient size and dimension to permit future development of uses allowed within the zone. This approval criterion is met."

The reference back to criteria (d)(8) is in regard to the lot configuration and standards. The sentence from the (d)(8) finding that corresponds to this reference reads:

“...the lot and street configuration established by the proposed subdivision meet applicable development standards; and the configuration of the proposed lots makes logical use of the developable land.”

Subdivision criteria SRC 205.010(d)(8) also states that “the tentative subdivision plan takes into account the topography and vegetation of the site so the need for variances is *minimized to the greatest extent* practicable.” Neither of these criteria require that there can be no variances granted with the subdivision, or no additional variances reviewed for any future development after any division of land. The intent of the criteria is to ensure that natural features, topography, and vegetation are *taken into account*, and that land division is proposed to provide the *least disruption* to the site and *minimize* the need for variances. With the analysis of the Tree Regulation Variance and the conditions of approval applied to the proposal, staff found these criteria to be met.

26. Citizen Review of Changes: Testimony received requested a process for citizen review of any changes to the building layout.

Staff Response: Staff has issued a decision with 63 conditions of approval to ensure a development that conforms to the standards of the code. Findings as to how those conditions will bring the development into conformance have been included in the decision. The items that are conditioned as part of the project would not constitute any substantial changes that would affect the overall development proposal, and can therefore be made with the subsequent permit reviews.

Substantial changes would include, but are not limited to, a change in the number of units, removal of required pedestrian connections, a change in access or required street connectivity, or removal of any additional protected trees. Substantial changes to the proposal would require an application for a Modification, which is subject to the same review process as the original application, or additional permits or applications depending on the request. All land use applications are classified by a Type, per SRC Chapter 300, which establishes a standardized review process for the public. For instance, if the applicant was to request the removal of additional protected trees, a new Tree Variance application would be processed as a Type II procedure, and would go out for noticing and public comment.

The changes anticipated with in order to comply with conditions of approval include removal of excess parking, a shift in setbacks to meet minimum requirements, the preservation of additional trees and planting of new trees, required street improvements and utility connections, etc. All items that will benefit the development by meeting the applicable standards. Minimal building layout changes do not constitute further reviews of the public for each step in the permitting process, as they have already been addressed as to how the change is necessary to meet the code in the decision findings. However, the City does offer an online search through the Permit Application Center where the public can view the status of development

permits throughout the City, or a Public Records Request to provide specific information that might be requested.

27. Wilark Brook: Stormwater Management as it relates to Wilark Brook was also raised as an issue. Specifically, how temperature and hydrologic flow, groundwater recharge, and nutrient levels could be impacted as a result of the proposed development. In addition, questions were raised regarding how the proposed tree removals and change to the urban forest canopy could impact Wilark Brook.

Staff Response: According to SRC Chapter 71.001, The Objectives of City of Salem Stormwater Standards are to:

- a. Establish requirements for discharges into stormwater systems, receiving waters, and the environment;*
- b. Protect, to the greatest extent practicable, life, property, receiving waters, aquatic life, and the environment from loss, injury, degradation, or damage by pollution, erosion, low flows, excessive flows, flooding, landslides, and other potential hazards, whether from natural causes or from human activity;*
- c. Protect the public stormwater system from damage;*
- d. Meet the requirements of state and federal law and the City's National Pollutant Discharge Elimination System (NPDES) Municipal Stormwater Permit;*
- e. Implement site-specific practices, including using green stormwater infrastructure, to mimic natural hydrologic functions as much as practicable.*

As stated previously, the applicant is required to comply with SRC Chapter 71 and Public Works Design Standards relating to Green Stormwater Infrastructure (GSI) for treatment and detention of stormwater. The code and standards are applied in order to meet the purpose and intent of the chapter. Temperature, hydrologic flow, groundwater recharge, and nutrient levels are not standards in the SRC or adopted Stormwater Administrative rules and cannot be applied to this development. applicant's design will be required to comply with any other applicable State or Federal laws relating to stormwater (SRC 71.035). The applicant will be required to obtain any State or Federal Permits necessary for discharge into Wilark Brook. Additionally, Condition 28 requires dedication of an open channel-drainage easement along the banks of Wilark Brook, which will allow the City to inspect and maintain the channel, as needed. This easement will be shown on the final plat, or dedicated by separate document, prior to final plat approval.

The applicant submitted testimony indicating a revision that would ensure the survival of the single riparian tree that was initially designated for removal. While this revision to the adjacent stormwater facility still requires review to comply with Public Works Design Standards, the applicant has agreed to designate the riparian tree for preservation, and will reflect the change with the updated tree plans required by Condition 51. At this time, there are no trees proposed for removal with the riparian corridor on the subject property. As stated previously, trees within the right-of-way are considered City-owned Street Trees. Pursuant to 86.050(a)(1) a permit is required prior to removal of any City-owned trees. However, at this time, no applications for removal of the City-owned Trees in Doaks Ferry Road NW near Wilark Brook have been submitted.

Jamie Donaldson

From: Geoffrey James A.I.A. <gjamesarchitect@gmail.com>
Sent: Wednesday, July 26, 2023 3:18 PM
To: Jamie Donaldson; Lisa Anderson-Ogilvie; CityRecorder
Subject: TITAN DEVELOPMENT APPEAL
Attachments: TITAN APARTMENTS TESTIMONY.pdf

APPEAL of Subdivision Tentative Plan, Urban Growth Preliminary Declaration, Class 3 Site Plan Review, Class 2 Adjustment, Tree Variance, and Class 1 Design Review Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02

Attached is my letter of testimony regarding the Titan Apartments land use case that was appealed by WSNA and heard by Salem City Council but continued for written testimony.

Please enter this letter into the Record and provide copies to the council.

--

Geoffrey James A.I.A. Architect
ARCHITECTURE & PLANNING
Telephone: 503-931-4120
gjamesarchitect@gmail.com
www.gjamesarchitect.com

Geoffrey James

July 26, 2023

Mayor and City Council
City of Salem
555 Liberty St. SE
Salem, Oregon 97301

**APPEAL of Subdivision Tentative Plan, Urban Growth
Preliminary Declaration, Class 3 Site Plan Review, Class 2
Adjustment, Tree Variance, and Class 1 Design Review Case No.
SUB-UGA-SPR-ADJ-TRV-DR23-02**

Dear Mayor and Council Members:

These are my comments and observations regarding this proposed TITAN development off Doaks Ferry Road NW.

As a past President of the Salem Planning Commission I follow most all land use cases in Salem, plus I watch all City Council and Planning Commission Meetings live.

There is a **flaw in the process**, and this is reflected in this **imperfect proposal**.

FACT: Significant Trees are PROTECTED in Salem by ordinance.

This protection is not adequately enforced.

An applicant can request removal of Significant Trees if they are in the way.

I say, the City of Salem should **try harder** to enforce its own rules.

Of course, when trees, and their root zones, are protected by law, it can gobble up real estate, and affect the number of dwelling units that can fit, so invariably the land use applications come in with proposals to remove Significant Trees.

In this case, 46 Significant Trees.

That is understandable, but **tree removal of Significant Trees should NOT be allowed**.

They can remove 70% of other no-significant trees.

But NOT the actual Significant trees.

Site grading can often be extensive, and these huge cuts and fills are often needed, for example to meet ADA, and the accessible walkway slope for a wheelchair.

Finding: The applicant has proposed removal of 46 significant trees on site which are not excepted under SRC 808.030(a)(2), and do not meet the criteria for a tree removal permit under SRC 808.030(d); therefore, an application for a Tree Regulation Variance has been submitted pursuant to SRC 808.045.

Geoffrey James

TREE PLAN MISSING?

The Tree Plan was not included in the Staff Report and is a critical item or exhibit that is missing. Here is the “Demolition Plan” from the Staff Report.



This is totally inadequate.

WHAT SHOULD BE REQUIRED

#1.

The staff report should include a Tree Plan.

Every Significant Tree should be highlighted in color, e.g. **GREEN**, showing the surveyed diameter of the root zone or tree canopy drip line as a green circle.

#2

The applicant should present a Plan for all “improvements” to be located to **MISS** all the green circles.

That means, roads, driveways, walkways, parking lots, plus all buildings and structures.

SO ... This applicant needs a re-design.

The applicant will throw up his or her hands and say it does no longer “pencil out” or “I will lose too many units”.

HOWEVER, HERE IS A SOLUTION.

Geoffrey James

THE SOLUTION

Four story apartments buildings are permitted by the OSSC building code as typical Type 5 wood framed construction for walk up apartments.

So ... adding one more floor to selected apartment buildings will increase the number of units by 25%.

That **increase in unit count** compensates for units that would displace significant trees.

Of course, that is not a good idea where apartment buildings are close to existing single-family homes, but this extra story should only be permitted in interior locations where apartment balconies do not overlook neighboring homes back yards etc.

THE MATH

Currently the RM-II zone has the same height restriction as the RS single family zone, i.e., 35 ft. height. An apartment floor to floor height is typically 9 ft. so 3 floors at 27 ft. plus the roof equals 35 ft.

To allow a 4th. Floor or story the height increases by 9 ft., so a height limit of 45 ft., should be allowed by Adjustment for these interior apartment buildings.

The Salem Planning commission should consider a modification to the UDC to increase the permitted height in the RM-II zone, or where significant trees affect the desired density or unit count.

IN SUMMARY

1. **DENY ALL SIGNIFICANT TREE REMOVAL (NO EXCEPTIONS)**
2. **REQUIRE RECONFIGURATION TO MISS ALL SIGNIFICANT TREES**
3. **ALLOW SOME 45 FT. HEIGHT APARTMENT BUILDINGS TO COMPENSATE**

Sincerely,



Geoffrey James



July 27, 2023

From Ronald Rhodehamel, 2488 Emerald Drive NW, Salem. OR 97304.

To Jamie Donaldson, Planner II, City of Salem Planning Division, 555 Liberty Street SE, Room 305, Salem, Oregon 97301

APPEAL of Subdivision Tentative Plan, Urban Growth Preliminary Declaration, Class 3 Site Plan Review, Class 2 Adjustment, Tree Variance, and Class 1 Design Review Case No. SUV-UGA-SPR-ADJ-TRV-DR23-02

In my oral testimony at the City Council meeting July 24, 2023, I stated "we want to be good neighbors". (Attached)

Ms Donaldson has long been aware of Errors and Omissions in the significant tree locations and species, importantly along the sensitive boundary lines. It would seem difficult for Council to approve documents including a Tree Variance Request for trees saved or destroyed. Those inaccuracies still exist. For example, an oak tree is not a maple tree, big difference. Attached is a November 23 email to Ms Donaldson, who has been responsive by including Condition 51 in the Planning Officer's decision, which should be rigidly enforced.

The proposed relocation of C Street to the north line of Titan Hill's proposed lot 2, Condition 22, has unintended and unnecessary consequences on my adjacent property, and is not feasible. Several oaks, more than two oaks as stated by planning's presentation to Council will be destroyed, when an accurate tree survey is made.(Condition 51). C Street, as originally shown, abuts the neighbor's property at the side of a greenhouse, a temporary structure. With development of adjacent Polk County farmlands, in the very far distant future, C Street can be curved away from any residences. Subdivision streets are normally curved to help slow local traffic. However, if the Street must be relocated, by reversing the position of C Street and Building 11, the total space required should be as before, and the setbacks from the boundary line MUST be maintained as before, to protect the oaks.

Regarding the extension of Landaggard Street to Titan Hill's boundary lines, it does not appear to be reasonable logic. The Public Works Administrator has the authority to deviate from standards when there are unique circumstances. Connectivity to Titan Hill pavements and utility lines to extend to boundary lines has very adverse impacts to oak trees. These extensions should terminate at the building setback limits. And future developments to adjacent farmlands will cost many millions of dollars, and the minor cost of connecting to streets and utilities within the Titan Hill development will be insignificant.

Oak Trees to be Destroyed
If C Street is moved to the
North Line of Lot 2 (Right)

Huge Oak Tree 5' inside Titan
Hill Boundary. Plans Show it
12' inside the boundary, a 7' error.
This tree can be saved. (Below)



RE: Titan Hill Development Review by City Council 7/24/2023

Good Evening. My comments will be brief and concise. I am Ronald Rhodehamel, 2488 Emerald Dr/ NW, and with my wife Mary Gaines own a Polk County tree farm, where we have resided for over 30 years. We share a common boundary with the proposed development, over 600 feet, our south boundary and Titan's north. We completely understand the City's need to provide additional rental housing units, and want to be good neighbors.

I am a civil engineer, licensed P.E. in Oregon and own a consulting business.

The issue of appeal concerns the preservation of large oak trees, more than a dozen, along our common boundary line, several over 30 inches in diameter. All of them should be preserved, not just some.

Planning's staff report to Council tonight states on page 5 that no other design alternatives are found that will save trees, I disagree. That may be accomplished by a minor revision to the setback of grading limits and construction of small segmented concrete block retaining walls, very common, to protect the oak trees, many of which were growing before Europeans ever lived nearby. Additional efforts are feasible and must be made to preserve these oak trees, as required by section 808 of City code.

Titan Hill's development can proceed with minor adjustments, including revision of the drawings to show proper location and species of all boundary trees. Resolution of this issue is a win-win situation for both the Titan Hill development and adjacent neighbors. When Council makes a final decision, they have the ability to require additional actions.

Thank you for considering my comments.

Jamie Donaldson

From: Amy Johnson
Sent: Monday, July 31, 2023 9:10 AM
To: Zachery Cardoso; Jamie Donaldson
Subject: FW: Comment for Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02
Attachments: Evan West Comment Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02.docx

From: Evan West <evanwest714@gmail.com>
Sent: Saturday, July 29, 2023 10:33 PM
To: CityRecorder <CityRecorder@cityofsalem.net>; citycouncil <citycouncil@cityofsalem.net>
Subject: Comment for Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02

Please see the attached PDF file for comment regarding Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02. Thank you.

--

Evan West, M.A.
He/Him/His
970-980-1445
evanwest714@gmail.com

July 28, 2023

City of Salem
551 Liberty Street SE
Salem, Oregon 97301
ATTN: Mayor Hoy and Members of the City Council

Re: Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02

To Whom It May Concern:

I write to you today in support of the West Salem Neighborhood Association, that has appealed the decision of the Planning Administrator regarding case number SUB-UGA-SPR-ADJ-TRV-DR23-02. The West Salem Neighborhood Association has clearly and carefully presented concerns that were not addressed in the Planning Administrator decision. I have little, if any, substantive information to add to what the Neighborhood Association has presented. Instead, I'm writing in response to a public comment submitted to City Council on July 24, 2023, by Marissa Theve.

In her letter, Marissa accuses those opposed to the development of what she calls "greenwashing," a term new to me, and NIMBYSM. The latter is sadly a term that is not so new. While my heart breaks for someone who evidently never read Dr. Seuss' *The Lorax*, my greater point to the Council is that I hope you will not be deceived by these platitudes.

"Greenwashing" is a concept that is laughable at face value. Developers and builders have a monetary interest in securing permission to build. Anyone who speaks for trees and wetlands does so only out of a desire to see a livable community planned and developed. Their plea is not that no further development should occur anywhere. It is that planning and government rulemaking exist, in part, to prevent the interests of money from bulldozing livability.

NIMBYSM is more complicated, but I urge the City Council to permanently retire any use of the phrase. "Not in my backyard" was first said by minority populations, in desperate attempts to prevent pollution, storage of radioactive waste, and other activities that would quite literally make residential neighborhoods unlivable. Unfortunately, it was later co-opted by special interests, as a way of forcefully brushing aside any logical opposition. Used by large corporations and corrupt government, NIMBY has become a cause of terrible damage to minority and under-represented populations across the United States.

In no comments that I have heard or read has anyone asked that development be stopped in our community entirely. Your constituents are simply asking that it be done according to code, and with a livable future at the forefront of your concern. Thank you.

Sincerely,

Evan West

Jamie Donaldson

From: Amy Johnson
Sent: Monday, July 31, 2023 9:09 AM
To: Zachery Cardoso; Jamie Donaldson
Subject: FW: Comments on Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02
Attachments: 7-30-2023 Memo Titan Hill.docx

From: Kenneth Bierly <bierlykenneth@gmail.com>
Sent: Monday, July 31, 2023 8:43 AM
To: CityRecorder <CityRecorder@cityofsalem.net>
Subject: Comments on Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02

Please accept the attached comments



Glenn and Gibson Creeks Watershed Council

2308 Ptarmigan St. NW, Salem, OR 97304

July 30, 2023

To: Mayor Chris Hoy & Salem City Councilors

From: Ken Bierly, chair, Glenn Gibson Creek Watershed Council
2308 Ptarmigan St. NW in Ward 8

Subject: Glenn Gibson Creek Watershed Council Comments on Subdivision Tentative Plan, Urban Growth Preliminary Declaration, Class 3 Site Plan Review, Class 2 Adjustment, Tree Variance, and class 1 Design Review Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02 proposed project at 2100 block of Doakes Ferry Road.

Recognition of Development

The watershed council recognizes the right of the landowner to develop under the Comprehensive Plan, Zoning designation, and development codes of the City of Salem. We also recognize that there is a balancing of competing goals for housing, environmental conservation, and neighborhood livability that compete in City of Salem policy. The zoning of the 24.56 property allows for the construction of between 15 and 31 dwelling units (368 to 761). The proposal is for approval of 436 dwelling units on the 24.56 acres of five lots.

Focus of the Council's Comments

In a way we are playing the Lorax we are speaking for the trees. The proposal to remove 42 significant trees including at least three Oregon White Oaks with diameters between 50 and 66 inches. These trees were here before Europeans were here. Our argument with the proposal is the lack of balance between development interests and environmental and neighborhood interests. If significant trees were identified as assets to the property and development planned around their occurrence, a different outcome could be achieved. It is our clear impression that development maximization was the priority in the design and layout of the proposal which led to a tree removal proposal and request for a Tree Regulation Variance.

There is clear scientific evidence that mature trees have a significantly greater effect on carbon sequestration, water quality protection, heat island reduction, and diverse wildlife habitat values than any plantings to replace them. By allowing the removal of 42 significant trees from the site the City is demonstrating that developer's housing goals take precedence over neighborhood relations and environmental goals despite the adopted city goals for tree canopy and strategies in the Climate Action Plan.

Comments on Issues Outside of the Specific Proposal

While our role as Lorax focuses on the trees, trees do not exist in a vacuum. A significant concern about the protection of the soil and shallow groundwater that supports the vegetation of the site is also of great concern. Significant regrading and conversion to impervious surfaces (asphalt, roofs, lawn, etc.) will affect the infiltration and flow paths of shallow groundwater.

The site under consideration is in the headwaters of Wilark Brook in the Glenn Creek system. The site is in a groundwater limited management area as well. The soils of the site are characterized as silty clay loam and gravelly clay loam. The gravelly clay loam (Ritner gravelly silty clay loam) is a significant area for groundwater recharge on the northern portion of the site. As the project replaces pervious surfaces



Glenn and Gibson Creeks Watershed Council

2308 Ptarmigan St. NW, Salem, OR 97304

with impervious surfaces, the headwaters will be starved and downgradient wells as well. While this is not a subject of the evaluation, it shows that the City has not fully considered the environmental effects of development. Perhaps as the City considers developing Goal 5 (Natural Resources) such considerations will be identified as appropriate.

Mitigation measures such as porous pavement or infiltration galleries appear not to have been considered. Current porous pavement technology can maintain infiltration and has been used in development at Fairview.

Beyond increased impervious area in the watershed, there is significant scientific information that shows that headwater areas of watersheds are crucial for stream flow and eventual watershed health. These areas contribute to the aquifer that feeds the stream system (Wilark Brook) and supports the aquatic life of the stream.

Balanced Decision Making

The watershed council would like to raise a governance issue and a specific request.

As you direct staff on the implementation of policies, look towards balancing competing policies without advantaging one over another. By this I mean, we can have development, but it needs to be planned with the environment and neighborhoods in mind. Strict adherence to development codes may be necessary but is not the starting point for project planning and development. It might be reasonable to talk about tree preservation at the first interaction with a developer. Tree preservation could be seen as an asset rather than a detriment to development.

Specifically for this project we ask that the Tree Regulation Variance be denied and the developed asked to provide a design that protects at least 50% of the "significant trees" on the property with special consideration of protecting White Oak trees 30" or greater in diameter.

The watershed council recognizes that the City staff and the attorney for Titan Hill Estates have responded to our previous request, however that response is dominantly a description of what "removal" means and declaration that "Where the applicant has not met the burden of proof to remove a tree, a condition has been imposed to provide such proof, or redesign to save the tree. The adjustment request to increase maximum parking was also denied in preference for saving additional trees."

While those efforts on the part of the staff are laudable the larger issue remains that there has been no demonstration that either alternative configurations or designs have been considered that could reduce the impact to tree canopy and reduce the number of "significant trees" removed from the site. Simple assertion that there is no reasonable alternative is not a demonstration of anything but opinion. The argument that any change in tree retention will cause an "unreasonable cost or delay" is a very subjective standard and such a demonstration of alternative configurations could be done with minimal cost and/or delay.

I am not asking for denial of the development, simple the factual consideration of alternative designs that better meets the competing policies of the City of Salem.

Jamie Donaldson

From: Sara <turtylgysl@gmail.com>
Sent: Monday, July 31, 2023 10:14 AM
To: CityRecorder; Jamie Donaldson
Subject: NO: 22-119071-PLN (Landaggard/Orchard Heights/Doaks Ferry)
Attachments: City Council 7.31.23.pdf

Please see the attached letter.

Thank you,
Sara Williams

--
And though she be but little, she is fierce. -Shakespeare (A Midsummer Night's Dream)

July 31, 2023

Mayor Hoy and City Council Members,

My name is Sara Williams and I live at 2005 Landaggard Dr NW. I am a neighbor of the proposed development and a concerned citizen of Salem, Oregon. I appreciate you leaving the record open for additional submissions until today. I have reviewed the application for the apartment complex with the identification number NO.: 22-119071-PLN, and I would like to raise some questions and concerns regarding the developer's adherence to city development codes and conditions set forth by the city's plan approval process.

As you know, there are standards for sewer improvements, as outlined in SRC 200.060. This section clearly states that the proposed development must be linked to adequate sewer facilities, and the applicant is required to construct the Salem Wastewater Management Master Plan improvements to ensure connectivity to existing facilities that are defined as adequate under 200.005(a).

However, I find it concerning that there are no specific conditions associated with these findings. The lack of conditions leaves room for ambiguity and raises questions about how the applicant will fulfill their obligation to connect to the nearest adequate sewer. It is essential that the council address this issue and ensure that the developer is held accountable for meeting these requirements.

Furthermore, there is a vital question that needs addressing: Does the SRC 200.060 findings require the applicant to include sewer facilities along the Orchard Heights frontage or along Landaggard? We need clarification on this matter to ensure that the developer is fulfilling their responsibilities appropriately.

Moving on to SRC 200.070, which deals with standards for water improvements, it states that the proposed development must be linked to existing water service facilities, and the applicant shall provide linking water mains consistent with the Water System Master Plan. Again, I'm concerned about the lack of reference or conditions associated with existing Orchard Heights Water District service to Landaggard, portions of tax lot 400, and properties north of the Titan Hill development. This omission leaves room for uncertainty, and we must demand clarity on this issue to ensure that all parties involved are on the same page.

Additionally, the applicant's demolition plan indicates the vacation of an existing water line that serves tax parcels north of the Titan Hill property. We need to know precisely which Orchard Heights Water District lines will be replaced, as this could have significant implications for the affected properties' water supply.

There are many other concerns that I have that I am not addressing in this letter. I know that all residents have the same concerns. While this letter discusses some of my concerns, it does not

touch upon the water or sewer infrastructure issues that are also a concern. I do not believe that we have answers to questions for water infrastructure like: where exactly will the required potable water link be made to the Salem public water main? And how will the proposed development protect Orchard Heights Water District customers and ensure their access to potable water service on Emerald Lane? I also do not believe that we have answers to questions for sewer infrastructure like: Is the diameter of the proposed sewer line adequate to serve all future developments west of Doaks Ferry and north of Orchard Heights. How will the sewer system serve Landaggard properties abutting Orchard Heights Rd without extending the Doaks Ferry sewer line facility up to Landaggard along Orchard Heights Road. And lastly, will the 8-inch line extend to the northwest termination of Street A, and if not, what alternatives are in place to ensure adequate sewer service?

In conclusion, I urge the council to address these critical questions and put pressure on the developer to meet their burden of proof in demonstrating compliance with city development codes and conditions. The lack of specific conditions in the findings raises concerns about accountability and transparency, and the potential impacts on sewer and water facilities demand further investigation.

As residents of this community, we deserve clear answers and assurance that this proposed development will adhere to all necessary standards and regulations to protect the well-being of both current and future residents. Thank you for your time and consideration.

Very truly yours,

Sara Williams

SARA WILLIAMS
503-951-7930
2005 Landaggard Dr NW
Salem, Oregon 97304

Jamie Donaldson

From: Linda Bierly <bierlyskl@gmail.com>
Sent: Monday, July 31, 2023 10:33 AM
To: Jamie Donaldson; CityRecorder
Subject: Comment on Appeal of Subdivision, Urban Growth Preliminary Declaration, Site Plan Review, Adjustment, Tree Variance, and Design Review Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02 for 2100 Block of Doaks Ferry Rd NW.
Attachments: Comments on WSNA's appeal of SUB-UGA-SPR-ADL-TRV-DR23-02.pdf

Jamie Donaldson Case Manager ,
My comments on the WSNA's Appeal of Subdivision, Urban Growth Preliminary Declaration, Site Plan Review, Adjustment, Tree Variance, and Design Review Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02 for 2100 Block of Doaks Ferry Rd NW are attached.
Linda Bierly
Ward 8
2308 Ptarmigan St. NW
Salem, OR 97304

July 31, 2023

Mayor Chris Hoy and City Council,

Thank you for the opportunity to provide written testimony to support the Case No. SUB-UGA-SPRADJ-TRV-DR23-02 appeal.

Issue: Shall the City Council affirm, amend, or reverse the Planning Administrator's decision for Subdivision Tentative Plan, Urban Growth Area Preliminary Declaration, Class 3 Site Plan Review, four Class 2 Adjustments, Tree Regulation Variance, and Class 1 Design Review, Case No. SUB-UGA-SPR-ADJTRV-DR23-02?

I ask that you amend the Planning Administrator's decision by denying the tree regulation variance.

Criteria: SRC 808.045(d)(1), SRC 205.010(8) and SRC 205.010(9)

SRC 808.045(d)(1) is the hardship claim the applicant makes to justify his request for a variance to remove 72 significant trees.

(d)Approval criteria. A tree variance shall be granted if either of the following criteria is met (1) Hardship. (A)There are special conditions that apply to the property which create unreasonable hardships or practical difficulties which can be most effectively relieved by a variance; and (B)The proposed variance is the minimum necessary to allow the otherwise lawful proposed development or activity; or

SRC 205.010(8) and SRC 205.010(9) address the need to ask for a variance.

(8) The tentative subdivision plan takes into account the topography and vegetation of the site so the need for variances is minimized to the greatest extent practicable.

(9) The tentative subdivision plan takes into account the topography and vegetation of the site, such that the least disruption of the site, topography, and vegetation will result from the reasonable development of the lots.

SRC 808.045(d)(1), SRC 205.010(8) and SRC 205.010(9) all state the standard of minimums. The code is less clear about what is required to demonstrate that this standard has been achieved. We have only the word of the applicant that the proposed development meets this standard. There is no demonstration in the record that the applicant has explored alternatives with less impact to significant trees.

Throughout the process, the only way trees have been spared is through the planning staff's denial of additional parking beyond the maximum allowed.

But SRC 514 that covers the zone RMII is specific about a minimum. For the Zone RMII, 6 – 15 dwelling units per acre are the minimums allowed per Table 514-3.¹ That

¹ Table 514-3 in SRC 514 shows a minimum of 6 dwelling units per acre for Multiple Family at the low end, 15 at the high end.

adds up to 148.8 - 372 dwelling units for this property. Using the number of dwelling units per building in this proposed development, that translates into 10 - 26 buildings for this acreage of 24.8 acres. This range of minimum dwelling units per acre results in opportunities to preserve significant trees, and it is lawful development of the property. This covers part (A) of the hardship part of SRC 808.045(d)(1).

Fewer buildings mean fewer parking places, if any, are necessary. SRC 514 also speaks to parking. There is no minimum number of off-street parking spaces required. The applicant does not have to provide off-street parking at all. This would save many trees.

SRC 808.045(d)(2) (B) speaks to the possibility of a reduction of economic value of the property, resulting in a "taking". This is an invalid argument. Saving the trees will significantly increase the property value. Large trees increase property values from 3 percent to 15 percent.² I cite one study, but a quick internet search will provide many more. Trees boost property values. Large trees boost property values higher.

Further, there is no reason that fewer buildings need reduce the number of dwelling units. Adding more stories would allow the same number of dwelling units in fewer buildings, resulting in a lighter footprint. Another option is putting parking under the buildings, creating more room and more opportunities to save trees.

There is no demonstration in the record that the applicant has explored alternatives with less impact to significant trees. SRC 808.045 (d) (1) clearly specifies that the applicant demonstrates the proposal is the minimum necessary to be considered for a variance. Without such demonstration, it seems the City Council would be negligent in approving the tree variance request.

Denying the request for a tree variance does not deny the property owner lawful use of the property. The applicant may preserve the significant trees and build the minimum allowed by SRC 514, 10 - 26 buildings. Saving the trees will significantly increase the property value. Large trees increase property values from 3 percent to 15 percent.³

Does this establish that the applicant has not met the minimum standards stated by SRC 808.045(d)(1)?

I believe that it does establish that fact, and I ask denial of the tree variance request, based on that failure.

² Wolf, Kathleen L, PhD, University of Washington (2007) *City Trees and Property Values*. *Arborist News*. 16, 4:34-36.

³ Wolf, Kathleen L, PhD, University of Washington (2007) *City Trees and Property Values*. *Arborist News*. 16, 4:34-36.

SRC 205.010(8) and SRC 205.010(9) require “taking into account” the vegetation and the topography so that the “least disruption” of the site will occur from “reasonable development” of the site.

It would seem logical that the “least disruption” to a steeply sloped and wooded site would lead to the plan of building the minimum number of dwelling units allowed under SRC 514 and providing fewer parking places, if any.

Both “Reasonable development” and “lawful development” of this site allow fewer buildings and less grading. If greater density is desired, adding a story to the buildings achieves that goal and preserves more trees. Parking placed in the same footprint as the building would further lower the development’s impact. Not providing parking is another option allowed under SRC 514.

I ask denial of the tree variance request.

Thank you,

Linda Bierly Ward 8

2308 Ptarmigan St. NW

Salem, Oregon 97304

Jamie Donaldson

From: Amy Johnson
Sent: Monday, July 31, 2023 1:53 PM
To: Zachery Cardoso; Jamie Donaldson
Subject: FW: written testimony 7/31
Attachments: Titan Hill written testimony 7_31_2023.pdf

From: Joaquín Lara Midkiff <joaquin.laramidkiff@yale.edu>
Sent: Monday, July 31, 2023 1:36 PM
To: CityRecorder <CityRecorder@cityofsalem.net>
Subject: written testimony 7/31

Good afternoon,

I would like to submit this written testimony on the question of the proposed Titan Hill development in Ward 8. It was listed under agenda item [4.a.](#) last Monday (7/24) and remains open for written testimony until today by 5 PM. My testimony is attached PDF to this e-mail.

Please let me know if this is the appropriate place to be submitting testimony.

Thank you.

—Best, Joaquín

Mr. Mayor and Councilors,

July 31, 2023

My name is Joaquín and I have been a resident of Ward 8 for over 15 years. I'm writing today concerning the proposed 37-acre Titan Hill development bounded by Doaks Ferry, Orchard Heights and Landaggard.

I begin by expressing my support for many of the concerns that have been raised by the WSNA around the potential ecological impacts of this development project. Among these concerns: the preservation of white oaks and the degradative impact on the Wilark Brook riparian corridor that transverses the property and feeds a limited salmon habitat stream. As stewards of this land, we must find a balance between the demands of a growing population and urban area, and the preservation of our commons. The Applicant demonstrated insufficient consideration and care for the adverse ecological effects this project will bring to bear on the land. This alone warrants sufficient concern over the development so as to require the Applicant to amend their plans to better serve our shared vital resources and, by extension, our neighborhood.

However, I write today with another concern: the accessibility and safety of the development for aging and disabled residents.

According to SRC 205.010(d)(3), developments within the tentative subdivision plan must be adequately served by City infrastructure. The findings, as presented to Council on July 24th, read

The subject property is located outside of the Urban Service Area, and therefore, an Urban Growth Preliminary Declaration has been required. The Public Works Department reviewed the proposal and determined that the proposed development is designed to accommodate required on-site and off-site improvements, as conditioned.

p. 2 & 24

Below I will provide a quick summary about the ways in which this development is not served by existing infrastructure. It is my strong belief that the so-called Titan Hill development will not only inadequately serve the needs of the disability community but imperil the lives of pedestrians — disabled and able-bodied alike. The Applicant has made repeated mention of the difficult topography on the property which demands significant earth removal and the leveling of the aforementioned precious trees and canopy ecology. Even if such terrain engineering proves 'effective' and the site comes into ADA-compliance (a minimum threshold), there still remains the enormous question of the adjacent streets that will connect with the proposed arterial roadways.

First, and most egregious, is the section of Doaks Ferry Rd that will bound the development to the east. The speed with which drivers take the bend in that section is unacceptable. Currently, the speed limit on that road is 35 mph, though residents can attest (if asked) to the fact that drivers consistently travel much faster. This produces dangerous conditions for all pedestrians but especially wheelchair users — like me — who fall below eye-level and mobility aid users generally who are impacted by line-of-sight constraints. Further, the slope grade in that section of road far exceeds anything usable by wheelchair users and mobility aid users. It is incumbent on Council to approve plans that meet the needs of all our residents. Disabled and aging residents, for example, would be unable to meaningfully access the beautiful parks and nature for which West Salem is known. This includes, notably, Straub Nature Park which is literally across the street. While residents of the development might, in theory, have access to their living facilities, in practice their access to life is significantly curtailed.

Moreover, disabled school-aged children would be further cut out from easy access to schools despite the fact that all schools within easy walking distance (i.e., Chapman Hill Elementary, Kalapuya Elementary, Straub Middle School and West Salem High School) should be accessible to every one of our Salem-Keizer learners. In Council Chambers on Monday, when asked about what it would take to make that area of road accessible, staff estimated it would be in the millions. And more to the point, such a project would be outside of the scope of the proposed development.

Last, I mention the section of Orchard Heights that bounds the development to the south. When I attended West Salem High School nearly a decade ago, I would wheel home two miles in a manual wheelchair every day from school. I know firsthand the physicality required and conditions awaiting wheelchair users and other disabled pedestrians as they navigate the hills of West Salem. The incline of Orchard Heights in that strip of road, while a breeze when compared to Doaks Ferry, is also mightily inaccessible. When heading home, that section could take me a mere minute and half; however, traveling towards the high school, it could take me more than ten minutes depending on the day. While the hazards associated with Orchard Heights are not as alarming, the fact that the two major roadways bounding this development are inconsistent with the City's commitment to accessibility is troubling.

Every development has its challenges, and West Salem has many topographical ones, but this site in particular is especially ill prepared to meet the needs of disabled Salemites. For reasons of ecological responsibility, to protect the safety of pedestrians and our disabled community, and to promote equal access to life and living for all Salemites regardless of background, I ask that you not support the Titan Hill development in its current form. Thank you for your engagement and consideration.

Respectfully,

Joaquín M. Lara Midkiff

Jamie Donaldson

From: Aaron Home Email <aronmichele@comcast.net>
Sent: Monday, July 31, 2023 3:32 PM
To: CityRecorder; Lisa Anderson-Ogilvie; Jamie Donaldson
Subject: Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02 for 2100 Block of Doaks Ferry Rd. NW
Attachments: 07-31-23 Landaggard -Orchard Heights NW neighbors letter.pdf

Attached please find additional written testimony to be included in the post-hearing record on this case in the form of a letter of opposition from residents of Landaggard Dr. and Orchard Heights Rd. NW neighbors.

Would you be so kind as to respond to "all" that the letter was received and placed in the record prior to today's 5:00 pm deadline.

Sincerely,

Aaron Felton & Michelle Oldenkamp

July 31, 2023

Mayor Hoy and members of the Council:

We urge the Council to not affirm the Planning Administrator's approval of the Subdivision Tentative Plan in Application No.: 22-119071-PLN for the reason that the applicant has not met its burden of proof to meet applicable standards and criteria under the Salem Revised Code. We are residents of Council Ward 8 and live on the existing portion of Landaggard Drive NW that will be directly impacted by the proposed development and many of the conditions in the Administrator's Decision.

In particular, conditions 5 and 7 of the Administrator's Decision reveal significant questions are outstanding as to whether the proposed development complies with SRC 205.010(d)(3) ("Development within the tentative subdivision plan can be adequately served by City infrastructure.")

Condition 5 requires the developer to "Extend minimum a 12-inch public water main within the new internal streets to serve **neighboring property** and the proposed development pursuant to PWDS."

Condition 7 requires the developer to "Extend a minimum 8-inch public sewer main within the new internal streets to serve **neighboring property** and the proposed development pursuant to PWDS."

From their plain language, conditions 5 and 7 indicate that existing city infrastructure alone cannot serve the proposed development as completely new infrastructure is being required. The question is, what is meant by "neighboring property?" Does that mean existing Landaggard Drive residents such as us will be served by the new water and sewer mains? Will we be required to pay to hook up to these new mains? Many existing properties on Landaggard are on septic systems and not on city sewer at this point. To date, no information from the City or the developer has been shared with neighbors regarding this change and its potential financial impact.

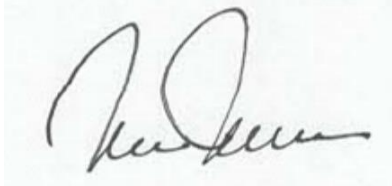
Additionally, it should not be ignored that this development is not the only one currently being proposed in the vicinity of Orchard Heights and Doaks Ferry. Developers recently presented their proposal to the West Salem Neighborhood Association for a multi-family development on Orchard Heights just west of Doaks Ferry Road that will lead to even more traffic congestion in this area.

We are not opposed to new and different types of housing being built in our neighborhood. We recognize the challenges our policymakers face in creating community for a growing Salem. We simply question whether this development, as proposed, is the best long-term solution for our area. It will be one of, if not the largest apartment complexes in West Salem. It will have 436 units in comparison to the recently completed Acero complex on Orchard Heights which has 312 units. The construction will involve the destruction on a massive scale of complex

ecosystems and wildlife habitat that have resided here since before this area was settled. In their place will be standard multi-level box style apartment units that, according to the developer, will be rented at the "market rate." And West Salem's traffic congestion will increase. It's never been disputed by city staff or the developer. The question has only been, by how much?

In sum, the City can and should do better than this particular proposal.

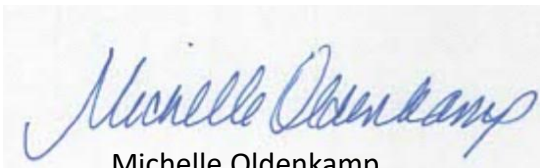
Sincerely,



Aaron Felton
1985 Landaggard Dr. NW
Salem, OR 97304



Christie Dalke
2090 Landaggard Dr. NW
Salem, OR 97304



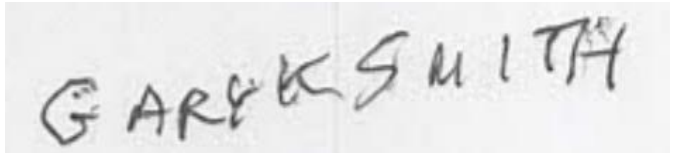
Michelle Oldenkamp
1985 Landaggard Dr. NW
Salem, OR 97304



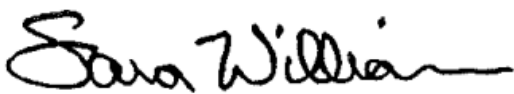
Fernando Coronado
1975 Landaggard Dr. NW
Salem, OR 97304



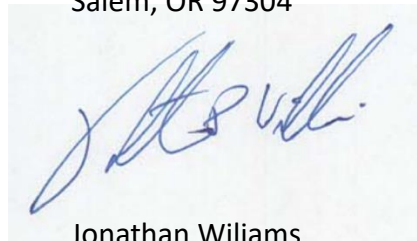
James Schiess
1995 Landaggard Dr. NW
Salem, OR 97304



Gary Smith
1975 Landaggard Dr. NW
Salem, OR 97304



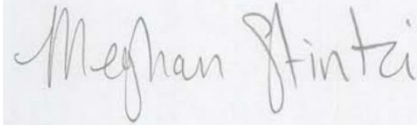
Sara Williams
2005 Landaggard Dr. NW
Salem, OR 97304



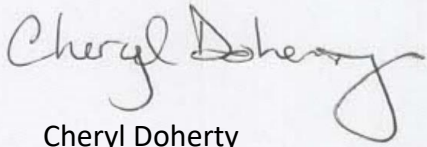
Jonathan Williams
2005 Landaggard Dr. NW
Salem, OR 97304



Carolyn J. Jones
2000 Landaggard Dr. NW
Salem, OR 97304



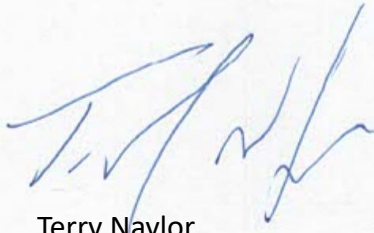
Meghan Stintzi
1960 Landaggard Dr. NW
Salem, OR 97304



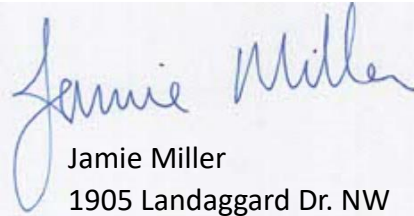
Cheryl Doherty
1910 Landaggard Dr. NW
Salem, OR 97304



Mark Holmes
1980 Landaggard Dr. NW
Salem, OR 97304



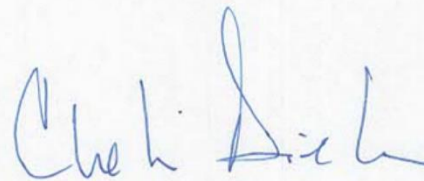
Terry Naylor
1990 Landaggard Dr. NW
Salem, OR 97304



Jamie Miller
1905 Landaggard Dr. NW
Salem, OR 97304



Raphaella Miller
1905 Landaggard Dr. NW
Salem, OR 97304



Chelli Diehm
2511 Orchard Heights Road NW
Salem, OR 97304



Nicole Hutchison
1961 Landaggard Dr. NW
Salem, OR 97304

Jamie Donaldson

From: Amy Johnson
Sent: Monday, July 31, 2023 3:47 PM
To: michaelfreitas9459@att.net
Cc: Zachery Cardoso; Jamie Donaldson
Subject: FW: Post SUB-UGA-SPRADJ-TRV-DR23-02 Hearing Written Testimony
Attachments: Additional Testimony 20230731.pdf

Thank you for your testimony.

Amy Johnson
Deputy City Recorder
City of Salem
555 Liberty Street SE, Rm. 225
Salem, OR 97301
ajohnson@cityofsalem.net | 503-588-6091

From: michael freitas <michaelfreitas9459@att.net>
Sent: Monday, July 31, 2023 3:25 PM
To: CityRecorder <CityRecorder@cityofsalem.net>
Subject: Re: Post SUB-UGA-SPRADJ-TRV-DR23-02 Hearing Written Testimony

Ms. Johnson:

Please transmit the attached document to members of the Salem City Council.

Please confirm receipt of this email.

Respectfully,

Michael Freitas

West Salem Neighborhood Association Chair

C#408-439-4193

July 31,2023

Re: No. SUB-UGA-SPR-ADJ-TRV-DR23-02

Councilors,

I am writing today to expand on the discussion that took place at the city council Titan Hill Development appeal hearing.

The applicant stated that the site for this development is centrally located near schools. The applicant also stated that they are required to meet federal law and comply to the Americans with Disabilities Act requirements and that they said that they would do this. I must assume that the new development will meet the Americans with Disabilities Act requirements.

However, if you review appendix B in the original documentation presented (also attached below) by Mr. Anderson it shows some of the issues around the safe and convenient bicycle and pedestrian access from this development do not appear to comply with SRC 205.010(d)(6).

Furthermore, you heard testimony from a handicap individual and how difficult it is to use a wheelchair at the crossing of Doaks Ferry and Orchards Height Road. The city's traffic expert also stated that it is difficult because of the incline.

What I want to bring to your attention is while within the new development all the Americans with Disabilities Act requirements are planned, Landaggard Drive is a problem if a person is attempting to go to West Salem High School and tries to go in the most direct route, they will have to travel down Landaggard Drive with no sidewalks. Any wheelchair bound person will have to travel in the middle of the street. Will the developer install a traffic light or pedestrian crossing signal to slow traffic down or will the city? How does traveling from Titan Hill development to the high school meet ADA requirements?

In closing there have been numerous issues /concerns raised regarding the Titan Hill development. The ADA issue is one that I felt needed to be highlighted.

I respectfully ask that you all act as jurors and again, remind you that your task is not to judge whether the project is an appropriate project for West Salem. To judge whether the applicant has complied with every element of the Salem development code.

Respectively,

Michael Freitas

West Salem Neighborhood Association Chair

C#408-439-4193

Jamie Donaldson

From: Amy Johnson
Sent: Monday, July 31, 2023 12:34 PM
To: Zachery Cardoso; Jamie Donaldson
Subject: FW: Post SUB-UGA-SPRADJ-TRV-DR23-02 Hearing WrittenTestimony
Attachments: TH Added Testimony 7-31-23.pdf

From: E Easterly <emeasterly@comcast.net>
Sent: Monday, July 31, 2023 12:25 PM
To: CityRecorder <CityRecorder@cityofsalem.net>
Cc: jeld@livebsl.com; asorem@sglaw.com; Lisa Anderson-Ogilvie <LMAnderson@cityofsalem.net>
Subject: Post SUB-UGA-SPRADJ-TRV-DR23-02 Hearing WrittenTestimony

Ms. Johnson:

Please transmit the attached document to members of the Salem City Council.

Please confirm receipt of this email.

Respectfully,

E.M. Easterly

Re: Post SUB-UGA-SPRADJ-TRV-DR23-02 Hearing Testimony

Councilors,

As a member of the quasi-judicial Salem land use appeal decision making body, I encourage you to take WSNA Chairman Freitas's words to heart. You are a member of the Salem land use "supreme court" charged with reviewing evidence and interpreting the Salem Unified Development Code. Take Councilor Nordyke's request to receive and review the written record seriously. Think of the written testimony as legal briefs to be reviewed by you, a member of the Salem quasi-judicial body before you render a final decision.

Please reject the inaccurate statements quoted below. My oral testimony regarding the applicant's failure to meet the requirements of SRC 205.030(a) was dismissed by the applicant's legal representative.

Mr. Sorem claimed during rebuttal that the "application completeness criteria are not in themselves approval criteria" and that "application completeness criteria can be modified by the Planning Administrator." 1:46:40-48

I challenge Mr. Sorem's above statements. The Salem Revised Code standards for approval of a tentative subdivision at SRC 205.010 include all standards in SRC Chapter 205 as well as the standards in SRC Chapter 300.¹ SRC 205.010 states:

"(d) Criteria. A tentative subdivision plan shall be approved if all of the following criteria are met:

- (1) The tentative subdivision plan complies with the standards of this chapter and with all applicable provisions of the UDC, ..."

Again, the standards of SRC 205.010 include the standards and criteria for submitting a tentative subdivision application described at SRC 205.030 as follows:

"Applications to subdivide, partition, or replat land shall include, in addition to the submittal requirements under SRC chapter 300,² the following:

(a) A tentative plan map, of a size and form and in the number of copies meeting the standards established by the Director, containing the following information:

- (4) The boundaries, dimensions, and area of each proposed lot or parcel;

¹ **SRC 300.220. - Completeness review.**

(b) Determination of completeness shall be based upon the information required under SRC 300.210 and shall not be based on opinions as to quality or accuracy.

² **SRC 300.210. - Application submittal.**

(a) Land use applications shall be submitted on forms prescribed by the Planning Administrator. A land use application shall not be accepted in partial submittals. All of the following must be submitted to initiate completeness review under SRC 300.220. All information supplied on the application form and accompanying the application shall be complete and correct as to the applicable facts.

- (5) The location, width, and names of all existing streets, flag lot accessways, and public accessways abutting the perimeter of the subject property;"

The requirements of SRC 205.030 are Council adopted standards that subdivision applicants shall meet. There is no Council adopted code giving the Planning Administrator authority to modify those standards.

Yes, staff has the authority to declare a subdivision application complete, but that authority is tempered by the staff obligation to comply with the adopted requirements of the Salem Revised Code and to affirm that the application does comply with each element listed under SRC 205.030 and SRC 300.210.

For the Planning Administrator to deem an application complete when specific information is not included is an error in judgment. Yes, the Planning Administrator under SRC 300.220(b) is not required to judge the accuracy of the applicant submissions, only the completeness of the submission. It is for the applicant to demonstrate that the submitted material is "complete and correct as to applicable facts." For example, the submitted elevation data was spot checked and is accurate.

However, the SRC 205.030(a) information previously cited remains incomplete and, therefore, the Planning Administrator erred when declaring the submissions complete. I ask that council direct staff to secure the missing code specified information before approving this application.

The evidence I presented in my 24 pages of written testimony clearly demonstrates that the applicant failed to submit the complete and accurate information listed in SRC 205.030(a) 4 & 5 and, therefore, the Titan Hill application did not meet all the approval standards of SRC 205.010 or SRC 300.210.

Questions previously raised that have yet to be answered.

1. Why is the proposed subdivision northern boundary length reduced from the original deed legal description of that boundary by a distance of 4.79-feet? Who benefits?
2. Why is the northern boundary of lot 6 reduced by only 1.47-feet when the surveyed Doaks Ferry half street center line allocation is 45-feet from the Titan Hill property line and the Planning Administrator's approval requires the applicant to dedicate 3 more feet for a total of 48-feet?
3. Why does the proposed subdivision return 3.75-feet of public right-of-way along Orchard Heights Road to private ownership without compensation to the City?

Respectfully,



E.M. Easterly
503-363-6221

Jamie Donaldson

From: E Easterly <emeasterly@comcast.net>
Sent: Monday, July 31, 2023 4:08 PM
To: CityRecorder
Cc: Brandie Dalton (BDalton@mtengineering.net); Jamie Donaldson
Subject: 2nd Post SUB-UGA-SPRADJ-TRV-DR23-02 Hearing WrittenTestimony
Attachments: DF Area discrepancies 7-31-23.pdf

Please transmit the attached document to members of the Salem City Council.

Please confirm receipt of this email.

How may I access other testimony submitted by 5 p.m. this date in order to determine whether I wish to rebut such testimony?

Respectfully,

E.M. Easterly
503-363-6221

July 31, 2023

Re: Post SUB-UGA-SPRADJ-TRV-DR23-02 Hearing Testimony

Mayor Hoy and City Councilors;

Attachment A of my July 24th testimony documented an email exchange between me and a Multi-Tech Eng. representative. That exchange implied my June 5th questions would be addressed during City Council public hearing. They were not. The data and queries below expand upon the applicant's apparent unwillingness or inability to provide information that is "complete and correct as to applicable facts."

E.M. Easterly



The applicant's 2021 zone change application claimed Tax Lot 400 contained:

1,605,704 Sq Ft.

A modified metes and bounds¹ review of the applicant's 2021 survey data shows that Tax Lot 400 less Tax Lot 1100 (1,707,479 Sq Ft – 65,538 Sq Ft) contains an unexplained:

1,641,941 Sq Ft.

The applicant's 2023 Titan Hill subdivision/development application claimed Tax Lot 400 contains:

1,599,598 Sq Ft.

What explains the applicant's total area 6,106 Sq Ft reduction between 2021 and 2023?

The 2021 graphic claims the proposed five lot RM-2 area contains:

1,081,872 Sq Ft.

The proposed 2023 five RM-2 lots totals 206,793 Sq Ft + 16,862 Sq Ft + 151,298 Sq Ft + 104,572 Sq Ft + 393,067 Sq Ft which totals:

872,592 Sq Ft.

The proposed 2023 new roadway within the Tax Lot 400 RM-2 area is approximately 2,850 linear feet times a 60-foot public right-of-way width equals:

171,000 Sq Ft.

The addition of 872,592 Sq Ft and 171,000 Sq Ft equals:

1,043,592 Sq Ft.

Why is the area of the five lots plus estimated new roadway area less than the 2021 Council approved RM-2 area by:

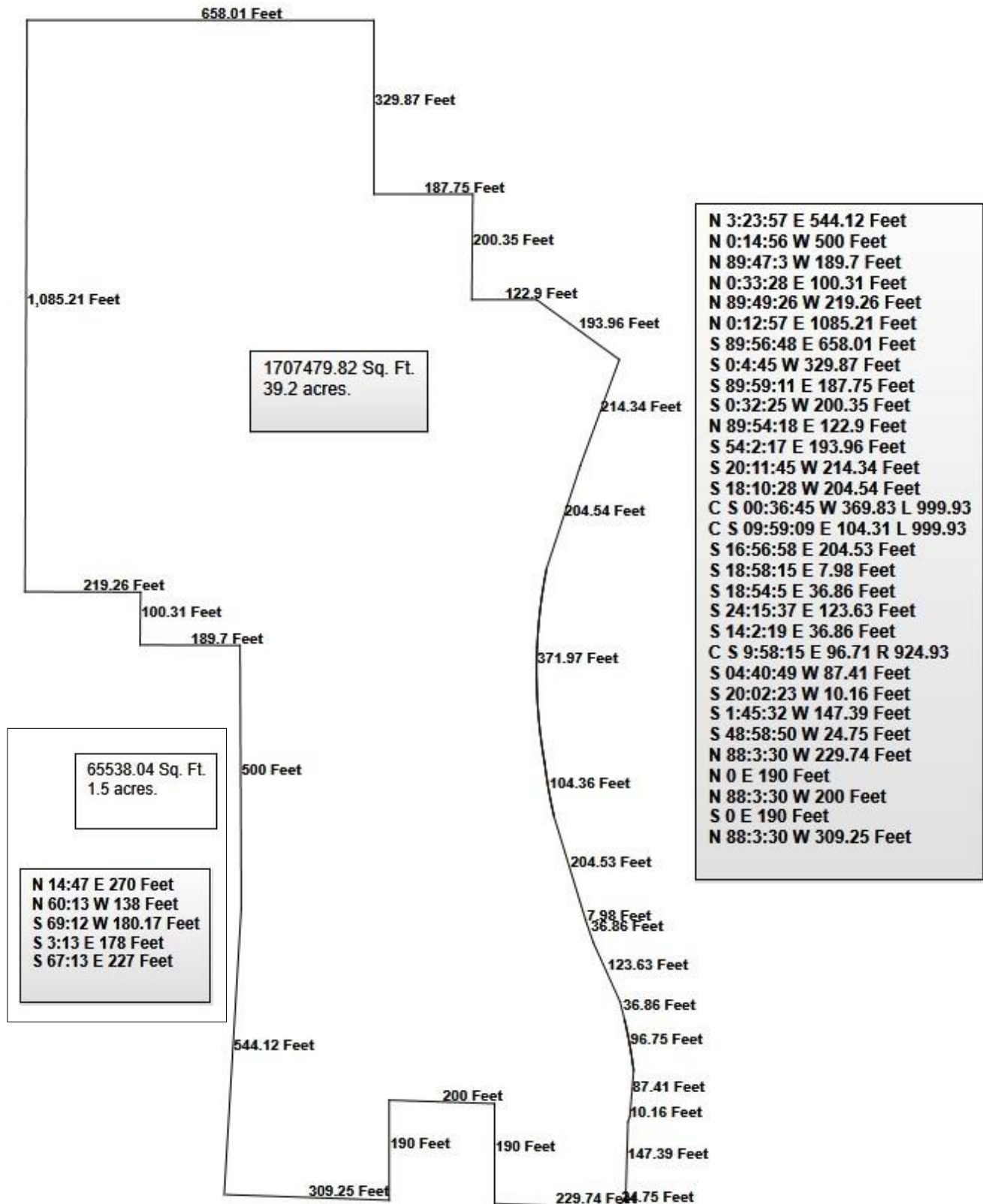
38,280 Sq Ft?

What is the length of the RM-2 portion of Tax Lot 400 along Doaks Ferry Road bordering lots 1 and 5?

How much more square footage will be removed from Lot 1 and Lot 5 to increase the public right-of-way width along Doaks Ferry Road? Does that area equal 38,280 Sq Ft?

¹ See attachment F.

Attachment F: 2021 Tax Lot 400 Modified Applicant legal description



Received At Council Meeting
Meeting Date: 7/24/23
Agenda Item: 4.a.
Received by: A. Johnson
From: E.M. Easterly

E.M. Easterly, Ward 8

Mayor Hoy and Council Members:

I ask that approval of the Titan Hill project be denied or suspended until the application contains the complete and required **SRC 205.030(a)** boundary information.

Specifically, subsections of the Salem revised code require the applicant to identify and submit:

- “(4) The boundaries, dimensions, and area of each proposed lot or parcel; (and)
- (5) The location, width, and names of all existing streets, flag lot access ways, and public access ways abutting the perimeter of the subject property;”

The applicant's submissions do not include all the above cited information and, contrary to the Planning Administrator's May 10th approval decision, the Titan Hill project does not meet the requirements of **SRC 205.030(a)(4) and (5)**.

Missing information and conflicting data undermine the application. Distance measurements change without explanation between the council approved 2021 zone change map and the subdivision/development application map submitted in 2023. Some compass directions and even boundary distances are missing from the 2023 map. The submitted graphics show no survey monuments. Accurate roadway center lines and widths are absent.

Last Friday I submitted 24 pages in five documents detailing the applicant's failure to comply with the Salem subdivision application requirements.

Please ask yourselves:

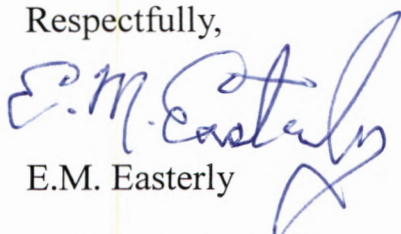
Did the applicant comply with all the city submission requirements?

Did city staff, in an effort to support a complex application, skip over the requirements of SRC 205.030(a)?

These questions are neither trivial nor nit picking. They focus upon the Titan Hill applicant's legal obligation to conform to Salem Revised Code standards and criteria.

I welcome your questions and ask that the hearing be held open so both the applicant and council members can review all the evidence submitted.

Respectfully,


E.M. Easterly

A. Multi-Tech – Easterly email exchange. B. Original 1946 parcel purchase measurements and extractions. C. Salem Utility map TL 400 measurements. D. Comparing Titan Hill Parcel 2 and Lot 6 survey graphics. E. Comparing Doaks Ferry – Orchard Heights intersection survey data.

Jamie Donaldson

From: Amy Johnson
Sent: Monday, July 31, 2023 4:41 PM
To: Lisa Anderson-Ogilvie; Zachery Cardoso; Jamie Donaldson
Subject: FW: WSNA Titan Hill Testimony
Attachments: WSNAAP~1.PDF

From: Steve Anderson <andersonriskanalysis@comcast.net>
Sent: Monday, July 31, 2023 3:55 PM
To: CityRecorder <CityRecorder@cityofsalem.net>
Subject: WSNA Titan Hill Testimony

ATTN:

In the matter of record continuance (Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02) Titan Hill, please forward the attached West Salem Neighborhood Association testimony to the mayor and city council and include in the record. Please advise of receipt of this email and requested actions. Thank you.

Steven A. Anderson, West Salem Neighborhood Association Land Use Chair



Mayor Hoy and Salem City Council Members:

Please note that this case is not about multi-family development at this location in West Salem. In fact, we worked with the Our Salem project team to rezone multi-family here and other property close to West Salem High School.

The issue is that this application has systemic problems related to its poor design and engineering flaws. The preponderance of evidence presented has shown that these design and engineering flaws result in a proposed project and application that does not meet Salem Revised Codes and criteria. Testimony from Mr. Geoffrey James, former chair of the Salem Planning Commission, said that this project needs to be redesigned and redone to meet Salem's tree code (details below).

July 20, 2023, we presented testimony with an Exhibit 1 highlighting 51 specific examples, with multiple questions per example, not addressed in the May 10th Decision of the Planning Administrator. This July 20, 2023, testimony highlighted five themes from within Exhibit 1 of the failure of the applicant to meet their burden of proof standard. Testimony presented during the Public Hearing at City Council July 24, 2023, focused on four examples. These were detailed examples supported by attached appendices where reference to specific code, staff comments, and omission of required information requested by staff clearly showed and document that the design flaws and engineering errors are significant. The WSNA requested that the council consider and address the evidence in each of the 51 issues specifically, not in a summary judgement. Until this is done, the applicant has not met the burden of proof on all elements of their proposal, and the proposal is not supported by confirmatory proof that it conforms to all applicable standards and criteria per city council rules.

The council is faced with a Decision of Approval document with 63 conditions of approval. A large body of this evidence is technically difficult to follow, including the numerous exhibits and appendices documenting our assertions of not complying with the code. Councilor Nordyke's admonition is most instructive and will require a commitment by each council member to read and ponder the evidence herein to fulfill their judiciary responsibility. Frankly, my concern is: Will the council have the will to fulfill their investigative duty and carry out the provisions of city council rules and not approve this flawed application?

Example 5

An examination of a most egregious failure to follow Salem Revised Code relates to the request for a tree code variance and the proposed removal of 46 significant White Oak trees. This application does not comply with SRC 808 regarding preservation of significant trees and White Oaks, and the provisions of SRC 808.045(d)(1). Additionally:



- SRC 205.010(8) [The tentative subdivision plan takes into account the topography and vegetation of the site so the need for variances is minimized to the greatest extent practicable], and
- SRC 205.010(9) [The tentative subdivision plan takes into account the topography and vegetation of the site, such that the least disruption of the site, topography, and vegetation will result from the reasonable development of the lots].

These provisions of the Salem Revised Code have not been met by the applicant.

In fact, written testimony from Geoffrey James, July 26, 2023, argues that significant trees are protected by city ordinances and should not be removed. Further, he asserts that the city should try harder to enforce its own rules. He confirms our testimony of missing trees, and that a Tree Plan was not included in the Staff Report; a critical item missing from the record. He asserts that “There is a flaw in the process, and this is reflected in this imperfect proposal.” He goes on to offer design alternatives to those proposed by the applicant; further evidence that the applicant has not considered all options for this site before requesting a variance. Mr. James proposes an actionable design approach for development at this site that allows the number of dwelling units (density) sought by the applicant, while preserving all the significant trees.

The Problem

When you start down the wrong path you will arrive at a destination you did not intend to.

The applicant started with tree removal, not with the “Intent to Preserve” significant trees. Their focus was upon the intent to place the maximum number of dwelling units based upon the limitations of the 500-unit trip cap approved previously. This is documented in the original application materials showing the location of 500 dwellings units, and every time a tree was in the way of a dwelling unit, it was to be removed. Assumptions and goals of the Traffic Impact Analysis report demonstrate the intent to provide evidence to support sitting 436 dwelling units on this site in compliance with the trip cap and maximum allowable trips per day allowed for this site.

The Correct Approach

The provisions of the code and law are specific in how this analysis should have proceeded.

- Start with the intent to preserve significant trees and white oaks
 - The purpose of saving significant trees is at the beginning of Sec. 808.001
 - **Purpose:** The purpose of this chapter is to provide for the protection of heritage



trees, significant trees, and trees and native vegetation in riparian corridors, as natural resources for the city, and to increase tree canopy over time by requiring tree preservation and planting of trees in all areas of the city.

- Special conditions are not defined, unreasonable hardship is not defined, practical difficulties are not defined.
- **The purpose clearly states the priority: the protection of significant trees.**
- There needs to be a Tree Plan (this is missing in this case and/or incomplete) showing all trees, the diameter of their root zone, or tree canopy drip line.

NOTE: *There is no arborist report in this case. Without a detailed, complete Tree Plan none of the requirements of purpose statement above of this city ordinance could be expected to be achieved. You are walking blind down the wrong path as was the case in this application.*

- The applicant next presents a site plan for all improvements to be so located to miss all trees and root zone or drip line. This includes roads, driveways, walkways, parking lots, plus all buildings and structures.
 - Here the site plan showing all improvements must address and evaluate adherence as well to:
 - SRC 205.010(8) [The tentative subdivision plan takes into account the topography and vegetation of the site so the need for variances is **minimized to the greatest extent practicable**], and
 - SRC 205.010(9) [The tentative subdivision plan takes into account the topography and vegetation of the site, such that the **least disruption** of the site, topography, and vegetation will result from the reasonable development of the lots].
- Having completed the above checks, a hardship variance as listed in SRC 808.045(d)1 may be considered. The applicant applied for a hardship variance in this case; however, none of the required preparatory work was done.
- SRC 808.045 (d)1 - Tree variances. (1) Hardship
 - (A) There are special conditions that apply to the property which create unreasonable hardships or practical difficulties which can be most effectively relieved by a variance; and



- (B) The proposed variance is the minimum necessary to allow the otherwise lawful proposed development or activity
- The phrase “the minimum necessary to allow the otherwise proposed development or activity” is a key phrase defining just where one starts the analysis for the variance.
- What is the minimum necessary to allow in this case?
- Since the applicant is asking to develop 24.8 acres of RM-2 land, the minimum dwelling density is 15 per acre per SRC Chapter 514 Table 414-3.
- Math for determining the minimum number of dwellings then is:
 - $15 \text{ dwelling units/acre} \times 24.8 \text{ acres} = 372 \text{ dwellings}$
 - 372 is less than the requested 436
 - 372 is the starting point, not 436
- How many buildings this equates to is a design question. Mr. James has suggested design options for consideration in his testimony that preclude a “taking” and allows the applicant to achieve their desired density while preserving significant and heritage trees on the site.
- What is important here is that this is where the “Intent to Preserve” focus of the tree ordinance demands that we start. Not with having the maximum dwelling units allowed per the traffic impact analysis.
- From here one proceeds as described above to address the hardship requirements of the ordinance including SRC 205.010(8) and SRC 205.010(9).

The applicant did not do this! They have not met the requirements for granting a hardship variance. This application must either **not be approved outright** on this point as well as with many others, or **the requested hardship tree code variance should be denied.**

Staff’s Trek Down the Wrong Path

The Planning Administrator explained in her answer to a councilor’s question that they proceeded with a balancing approach to try to reduce the number of trees to be cut. First, there is the assumption that 46 significant trees was the correct number. This clearly is not the case. Starting here placed staff in an awkward position.



Next, she explained staff's balancing approach: This is acceptable for a tree plan, but it is nowhere part of the SRC 808.045(d)1 tree code variance requirements.

Again, when you start down the wrong path you will arrive at a destination you did not intend to.

This balancing methodology is not the right approach or decision strategy for use in approving tree code variances under SRC 808.045(d)1.

In Conclusion

We have provided significant and documented evidence that the applicant has not met their burden of proof standard, in that, they have not complied with **Council Rule 19 "Burden of Proof; Standards and Criteria."**

- The applicant has the burden of proof on all elements of the proposal, and the proposal must be supported by proof that it conforms to **all applicable standards and criteria**.
- The decision shall be based on the **applicable standards and criteria set forth in the Salem Revised Code**, the Salem Area Comprehensive Plan, and, if applicable, any other land use standards imposed by state law or administrative rule.

It is our recommendation that the council not approve this application outright, a hard thing, but the evidence presented in this case supports this decision. At a minimum, the council should not approve the request for a Tree Code Variance.

If the applicant was to be required to redesign the project after rejecting the requested Tree Code Variance, the starting point is at 372 units and then proceed per the methodology shown above. Specifically:

1. Create a Tree Plan showing all trees, the diameter of their root zone, or tree canopy drip line.
 - a. Every Significant Tree should be highlighted in color (e.g., GREEN) showing the surveyed diameter of the root zone or tree canopy drip line as a green circle.
2. Incorporate this into a site plan where all improvements are located so as to **miss** all trees and root zone or drip line. This includes roads, driveways, walkways, parking lots, plus all buildings and structures. All significant trees are protected.



3. Correct all metes and bounds and map errors identified in the testimony from the record.
4. Provide staff's requested information and appendices, not supplied by the applicant, for the storm water management plan.
5. Show that all infrastructure changes resulting from the new site plan comply with applicable Salem Revised Code and Criteria.

It is important in the rejection of the Tree Code Variance that the council offer instructions like those suggested above, and others they see fit to include, to ensure not going down the wrong path again.

Respectively,

Steven A. Anderson, West Salem Neighborhood Association Land Use Chair

MEMO



Date: July 31, 2023

To: Jamie Donaldson
City of Salem Planning Department

From: Natalie G. Janney, P.E.

RE: **Appeal Memorandum for Titan Hill Estates/Titan Hill Apartments City of Salem Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02; Application No. 22-119071-PLN**



I provided oral testimony at the public hearing on July 24, 2023. Due to the time limit, I was not able to give as full an explanation as would probably be helpful. This document will explain some of the physical site constraints this property has, as well as discuss the delicate balance we have to try to achieve as designers and engineers for projects like this.

The site plan with contour lines showing the topography can be seen in Figure 2. There's 110 feet of fall across the project. In addition to providing streets and utilities that must meet maximum grade requirements set out by the City of Salem Design standards for things like fire access and ADA accessibility, we also have to match into all surrounding properties, as well as the Dalke property.

Both written and oral testimony were received discussing the impact of this development on the access to the Dalke's property. The Dalke's have an existing access easement across the subject property to get to their driveway. We have endeavored with this site plan and proposed grading to maintain the Dalke's access easement, not only in location, but in size and grade. There is no current intention to change the Dalke's easement or to change the location of their driveway. They will have access to their property the same way they currently do. In fact, given the construction of A Street, they will be able to reach their easement and driveway from Doaks Ferry or Orchard Heights. The location of their proposed easement can be seen on Figure 1 in RED.

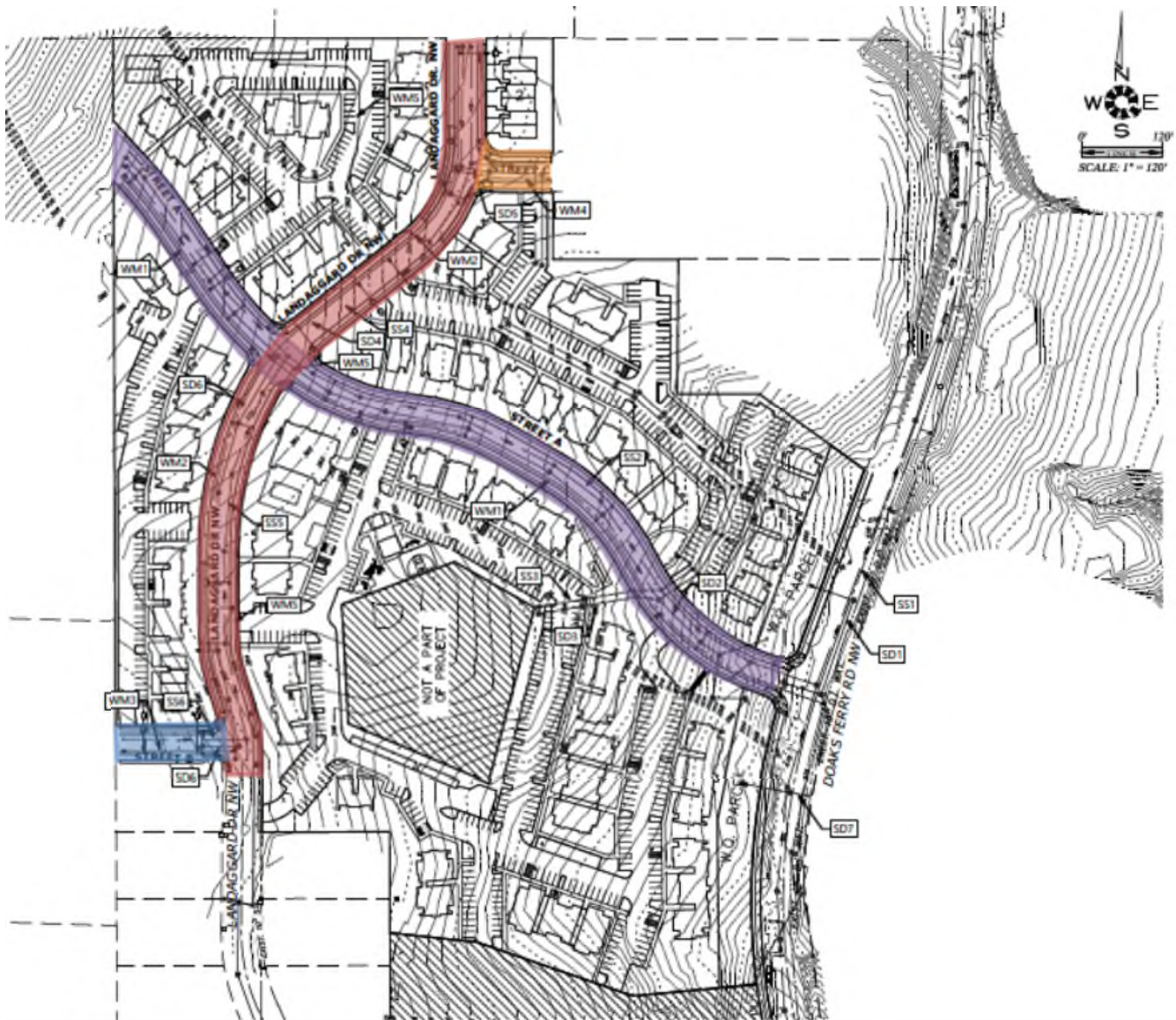


Figure 2: Overall site plan. The streets highlighted show the connecting streets required by City of Salem design standards.

Because of this, A Street is designed as the collector street. Streets have certain vertical and horizontal criteria that need to be met based on City design standards. For horizontal curves, you can't have the roadway be too windy or it becomes unsafe for drivers, especially when topography and higher volume roadways are concerned. The curvature of the roadway is needed to help lengthen the road and give more time for the vertical design of the roadway. We worked with Public Works to ensure that the horizontal curves of the roadway are acceptable.

Vertical design requirements established in the City of Salem Design Standards set forth criteria for the slope of the road. Intersections have to be designed fairly flat in order to meet ADA requirements and there are maximum slope requirements in order to meet fire access. So while we have these limits on

how quickly the street can climb up, we need to get up in order to be able to match in with the surrounding properties.



Figure 3: Plan view (top) and profile view (bottom) of the proposed A Street. This street is designed to "Collector B" standards and has been allowed to use Alternative Street Standards to have a street grade exceed 8%.

These can be seen in this profile (Figure 3). It takes over 1000 feet to get the street to catch, and that's with the additional length achieved from curving the road. The location of the intersection with Doaks Ferry was chosen because it matched into the existing topography the quickest. The area circled (as well as the enlarged image of this section of roadway visible in Figure 4) show a cut of over 14 feet from existing ground surface, to the proposed finished grade of the new street.

Concerns were given by the appellants regarding the slope of the street. However, designing A street at 8% would result in the road being an additional 6 feet into the ground, for a total of 20 feet below the ground surface.

Now imagine the street were six feet lower. That would be 6 more contour lines in there. That driveway would need to go up 13 feet instead of 7.

There is only one revision to the site plan that has not been made to date. Condition 22 requires Street C be moved to the northern property line (shown in **RED** on Figure 6). Staff wants the street moved because they believe the alignment as proposed (shown in **BLUE**) will interfere with a house on the eastern property. However, it is our belief that 1) the house would likely be demolished when the property develops, 2) if the house was to be retained, a street could be designed to meander around the house, and 3) the street will never be able to connect down to Doaks Ferry due to topography. We can make the change, but just wanted to bring it to the Council's attention that Condition 22 will result in the loss of two additional significant White Oak trees, which is why we haven't made this change yet.

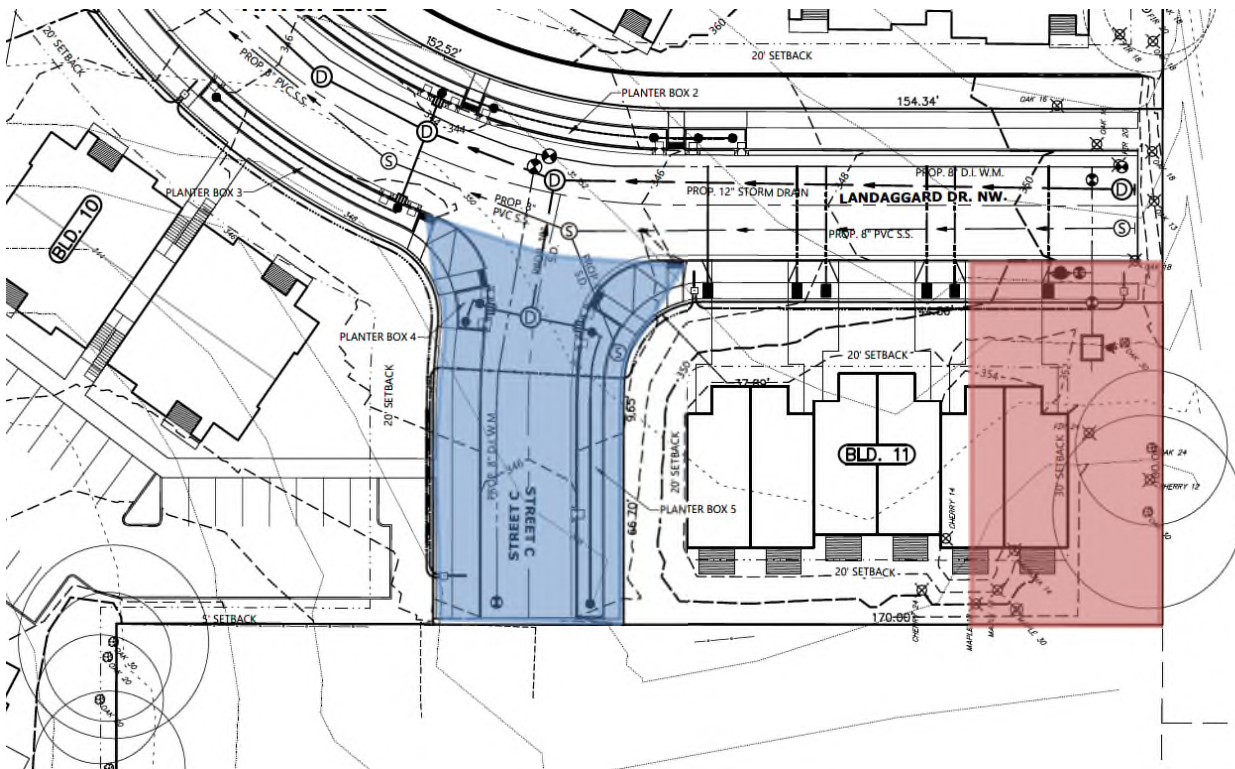


Figure 6: Condition 22 requires the stub street to the property to the east move from the proposed location (in BLUE) to the northern property line (in RED). This will require the removal of two significant White Oaks.

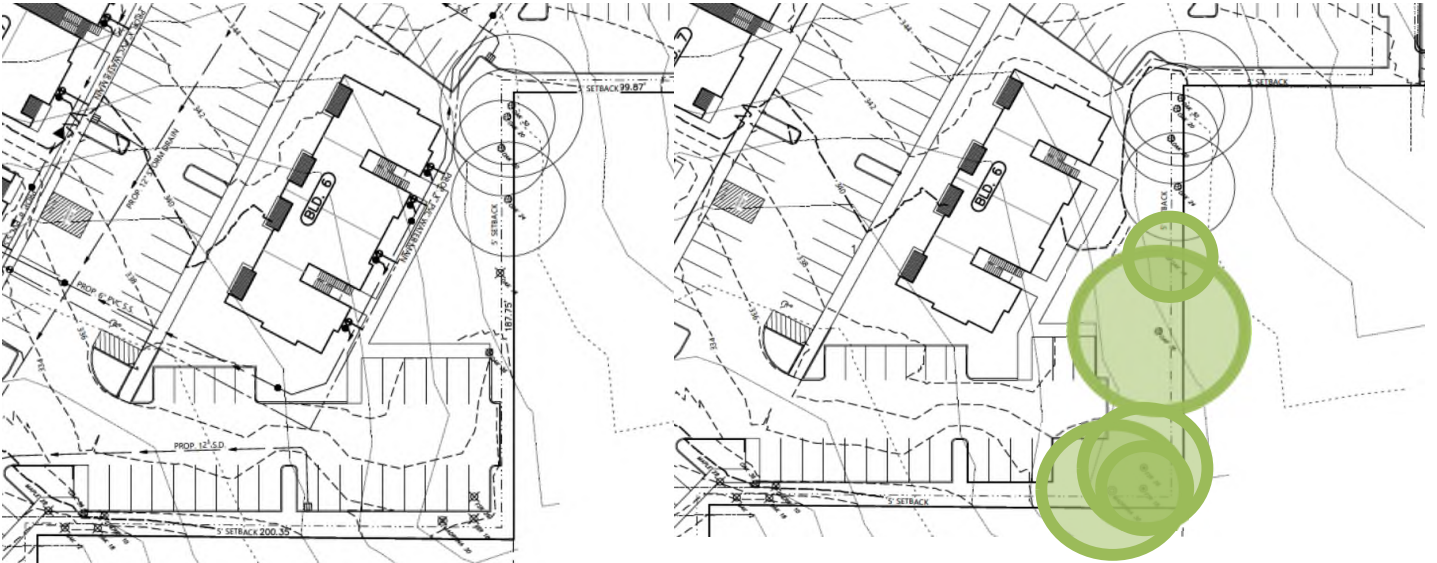


Figure 7: This is an example of a location where the site plan was modified to save additional trees (an older version of the site plan is on the left with the current version on the right). Parking spaces were removed in order to save two Oak, two Fir, and a Madrona tree.

Originally, the application included a request for additional parking over the allowable maximum. This was to help alleviate concerns expressed through the zone change process about parking extending into the neighborhood. City staff denied the request and we worked with staff to preserve more trees. We have removed parking, reshaped drive aisles, moved facilities, moved buildings, to preserve as many trees as we can. Figure 7 is the northern property line on the east side. You can see that we removed parking and changed the parking area to save these trees.

Figure 8 shows the north property line on the west side of Landagaard. We made the storage building much shallower and will need to construct a retaining wall in order to preserve these trees.



Figure 8: The northwest portion of the property showing where modifications to the site plan were made to save additional trees (the top is an older version, with the proposed site plan on the bottom). A retaining wall will also need to be constructed.

Finally, the stormwater facility and grading near Wilark Brook on the southeast side of the project to ensure we aren't impacting the riparian area or the Madrona tree. See Figure 9 below.



Figure 9: The stormwater facilities near the southeast corner of the project in order to stay away from the Riparian Corridor and the Madrona tree.

Concerns were raised regarding the project's stormwater impact on Wilark Brook. A preliminary stormwater design has been done for this project. The stormwater facilities proposed will be using green stormwater infrastructure to treat all the runoff for the water quality event per the City of Salem Design Standards. GSI facilities use a combination of physical and biological removal processes to remove suspended solids, heavy metals and nutrients from the runoff. In addition, the act of flowing through the growing media should help to cool the water. The proposed facilities will be combined facilities to control water quality and quantity. In my experience, this means they are able to filter the stormwater through the growing media very quickly which helps treat for temperature as well.

Larger events will be detained to their predeveloped runoff rates and will flow into a public conveyance system, as the water currently does.

Infiltration tests have not been performed at this stage of the design. Before the final design is completed, infiltration tests will be performed in the proposed locations of the stormwater facilities. This will give an infiltration rate that can be used for the design. If the infiltration rate allows for water to percolate into the ground and infiltration is deemed appropriate by the geotechnical engineer, the facilities will be designed to allow for infiltration. Given past professional experience, it isn't likely that the native soil will have a very large infiltration rate. But the design will incorporate infiltration where safe and appropriate to do so.

In addition, questions were asked during the public hearing regarding the extension of water and sewer on Landagaard and if the existing single family homeowners would be required to connect. During the zone change process, there were discussions with the City of Salem about what services would be required to extend through Landagaard to Orchard Heights. During the neighborhood meetings, this topic was discussed and that is likely where the confusion stems from.

However, after several discussions with the City of Salem, it was determined that utilities would terminate at the limits of the property on Landagaard as shown in Figure 10 below. Costs associated with this construction would be the responsibility of the developer. In the future, water and sewer can be extended through Landagaard but it will not be the responsibility of this property.

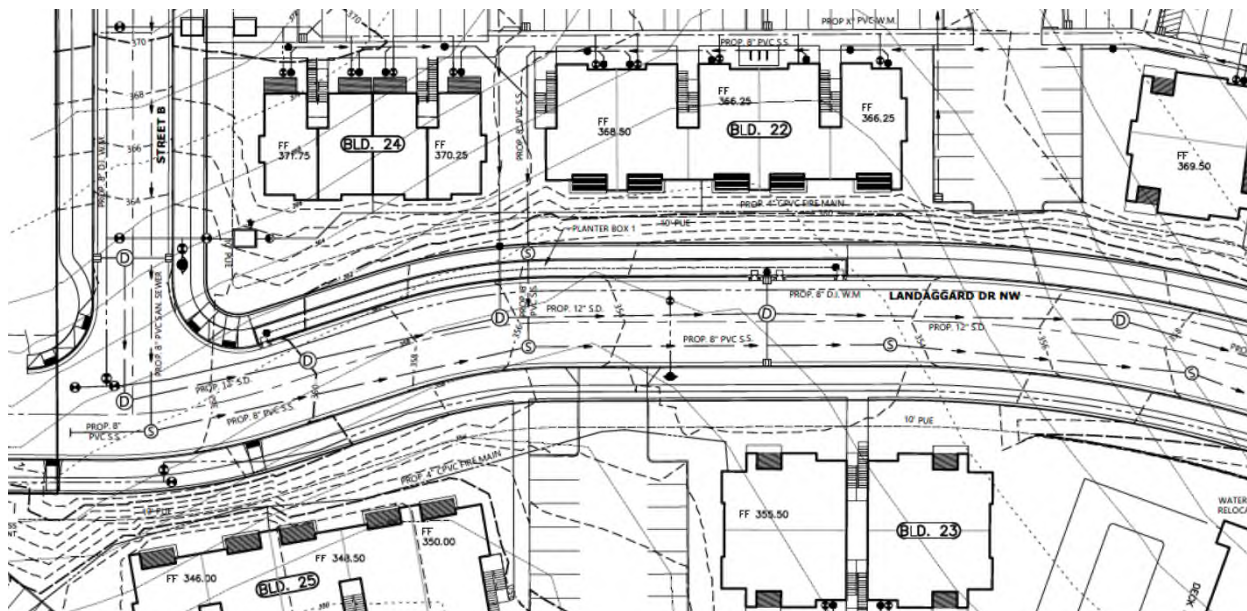


Figure 10: Shows the termination of water and sewer services to the projects boundary of Landagaard.

Designing a project like this is juggling act, trying to get the required utilities and roadways to all the necessary places, making sure ADA accessibility can be met both in the public areas as well as throughout the project, matching into the elevation of all the surrounding properties as well as the existing home in the middle of the subject property. The preservation of trees requires that the grading also match the topography of the land surrounding the critical root zones for each tree. All these factors have to work together in a careful balancing act in order to be able to produce housing on this site in a manner that is feasible for the applicant. The alteration of any one of these factors creates changes throughout the entire project.

A great deal of thought and work has gone into generating the proposed project. The site plan balances all the design requirements to produce housing units the City of Salem needs.

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 informacion, por favor llame
503-588-6173*

DECISION OF THE PLANNING ADMINISTRATOR

VALIDATION OF UNIT OF LAND CASE NO.: VUL21-04

APPLICATION NO.: 21-117845-LD

NOTICE OF DECISION DATE: January 25, 2022

REQUEST: A proposal to validate a unit of land that was divided from its parent tract by deed in ~~1976~~ 1974.

Request: An application for a Validation of Unit of Land to establish a tax lot of 36.86 acres divided from its parent tract by deed in ~~1976~~ 1974 without land division approval. The applicant is requesting to validate the property, currently split-zoned RA (Residential Agriculture) and NCMU (Neighborhood Center Mixed Use), and located at the 2100 Block of Doaks Ferry Road NW - 97304 (Polk County Assessor Map and Tax lot 073W17B / 0400).

APPLICANT: Brandie Dalton, Multi-Tech Engineering Services, on behalf of Titan Hill Property LLC (Kelley Hamilton)

LOCATION: 2100 Block of Doaks Ferry Road NW, Salem OR 97304

CRITERIA: Salem Revised Code (SRC) Chapters 205.060(d) – Validation of Unit of Land

FINDINGS: The findings are in the attached Decision dated January 25, 2022.

DECISION: The **Planning Administrator APPROVED** Validation of Unit of Land Case No. VUL21-04 based upon the application materials deemed complete on December 8, 2021 and the findings as presented in this report.

The rights granted by the attached decision must be exercised, or an extension granted, by February 15, 2024, or this approval shall be null and void.

| | |
|----------------------------------|--------------------------|
| Application Deemed Complete: | <u>December 8, 2021</u> |
| Notice of Decision Mailing Date: | <u>January 25, 2022</u> |
| Decision Effective Date: | <u>February 15, 2022</u> |
| State Mandate Date: | <u>April 7, 2022</u> |

Case Manager: Jamie Donaldson, 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. Wednesday, February 9, 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) 205. 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 Hearings Officer will review the appeal at a public hearing. After the hearing, the Hearings Officer 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>

**BEFORE THE PLANNING ADMINISTRATOR
OF THE CITY OF SALEM
(VALIDATION OF UNIT OF LAND NO. 21-04)**

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

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

| | | |
|---------------------------------|---|--------------------|
| IN THE MATTER OF THE |) | FINDINGS AND ORDER |
| VALIDATION OF UNIT OF LAND |) | |
| CASE NO. 21-04; |) | |
| 2100 BLOCK OF DOAKS FERRY RD NW |) | JANUARY 25, 2022 |

REQUEST

Summary: A proposal to validate a unit of land that was divided from its parent tract by deed in 1976.

Request: An application for a Validation of Unit of Land to establish a tax lot of 36.86 acres divided from its parent tract by deed in ~~1976~~ 1974 without land division approval. The applicant is requesting to validate the property, currently split-zoned RA (Residential Agriculture) and NCMU (Neighborhood Center Mixed Use), and located at the 2100 Block of Doaks Ferry Road NW - 97304 (Polk County Assessor Map and Tax lot 073W17B / 0400).

DECISION

The tentative plat for a validation of unit of land is **APPROVED** subject to the applicable standards of the Salem Revised Code and the findings contained herein.

PROCEDURAL FINDINGS

1. On September 27, 2021, an application was filed and accepted for a validation of unit of land to establish the subject property identified as the 2100 Block of Doaks Ferry Road NW - 97304 (Polk County Assessor Map and Tax lot 073W17B / 0400) as a lawful unit of land (**Attachment A**).
2. After additional information was requested from the applicant, the application was deemed complete for processing on December 8, 2021, and notice to surrounding property owners was mailed the same day, pursuant to Salem Revised Code. The state-mandated local decision deadline is April 7, 2022.

APPLICANT'S STATEMENT

A request for a validation of a unit of land must be supported by proof that it conforms to all applicable criteria imposed by the Salem Revised Code. The applicant submitted such statements and proof, which are included in their entirety as **Attachment B** in this land use decision. Staff utilized the information from the applicant's statements to evaluate the applicant's proposal and to compose the facts and findings within the decision.

SUMMARY OF RECORD

The following items are submitted to the record and are available upon request: All materials submitted by the applicant, including any applicable professional studies such as traffic impact

analysis, geologic assessments, and stormwater reports; any materials and comments from public agencies, City departments, neighborhood associations, and the public; and all documents referenced in this report.

SUBSTANTIVE FINDINGS

1. Salem Area Comprehensive Plan (SACP) Designation

Comprehensive Plan Map: The subject property is designated SF (“Single Family Residential”) and MU (“Mixed Use”) on the Salem Area Comprehensive Plan (SACP) Map.

Urban Growth Policies: The subject property is located inside the Salem Urban Growth Boundary and inside the corporate city limits.

Growth Management: The subject property is located inside the Urban Service Area.

2. Zoning and Surrounding Land Use

The subject property is split-zoned RA (Residential Agriculture) and NCMU (Neighborhood Center Mixed Use). The property subject to the validation request, Polk County Tax Lot 073W17B / 0400, is undeveloped. The surrounding properties are zoned and used as follows:

| | |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| North: | Polk County Suburban Residential; <i>single family</i> uses |
| South: | Across Orchard Heights Rd NW – RA (Residential Agriculture) and PE (Public and Private Education Services); <i>single family</i> and <i>basic education</i> uses |
| East: | Across Doaks Ferry Rd NW – RA (Residential Agriculture); <i>single family</i> uses |
| West: | RA (Residential Agriculture); <i>single family</i> uses |

Existing Site Conditions

The subject property is approximately 36.86 acres in size and has street frontage along Doaks Ferry Road NW to the east and Orchard Heights Road NW to the south, and Landaggard Drive NW dead ends to the property on the west. It is a large, irregular shaped property with an average depth of approximately 2,223 feet, average width of approximately 868 feet, and street frontage of approximately 1,745 feet along Doaks Ferry Rd NW and 739 feet along Orchard Heights Rd. The property is currently vacant and contains a parcel of land solely within its boundary with a single-family residence, which is not a part of this proposal.

3. Neighborhood Association and Public Comments

Neighborhood Association Comment

Notice of the application was provided to the West Salem Neighborhood Association (WSNA) pursuant to SRC 300.620(b)(2)(B)(v), which requires notice to be sent to any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property. No comments have been received from the neighborhood association.

Public Comment

Notice was also provided, pursuant to SRC 300.620(b)(2)(B)(iii), (vi), & (vii), to all property owners and tenants within 250 feet of the subject property. Prior to the comment period ending, five comments from property owners and/or tenants were received regarding the proposal, one of which indicated no objections to the proposal. The following is a summary of the remaining four comments and concerns received:

- Comments indicating several concerns with the proposal, including but not limited to:
 - Concerns with the proposed Zone Change of the property
 - Impacts of increased density
 - Increased traffic and safety of pedestrians
 - Decrease in property values

Staff Response: The applicant is applying for a validation of a unit of land which does not change the configuration of the tax lot or propose any development on the land area. These comments appear to reflect opposition to a separate application for a Minor Comprehensive Plan Amendment and Zone Change (CPC-ZC21-06). The validation of the unit of land does not affect the type of development proposed for the property, and it would need to be done to lawfully establish the parcel prior to any type of development on site. Any future development proposal will be reviewed separately, and notice will be sent to property owners and tenants within 250 feet of the subject property. The criteria for approval of the validation of a unit of land application do not require a demonstration that property values will not be adversely affected.

Homeowners Association

The subject property is not located within a Homeowners Association.

4. City Departments and Public Agency Comments

- The Public Works Department, Development Services, and City Surveyor staff reviewed the proposal and provided these comments and recommendations for plat approval.
 - At the time of final Plat submittal, the application shall provide the required field survey and Deed as per the statute and code requirements outlined in the Oregon Revised Statutes (ORS) and the Salem Revised Code (SRC). If said documents are not in compliance with the requirements outlined in the ORS and the SRC, and as per SRC 205.055, the approval of the validation of units of land plat by the City Surveyor may be delayed or held indefinitely based on the non-compliant violation.
- The Building and Safety Division reviewed the proposal and has indicated no concerns with the proposal.
- The Salem Fire Department reviewed the proposal and indicated that they have no concerns with the validation of unit of land. Items including Fire Department access and water supply will be required for any future construction.

5. Private Agency and Service Provider Comments

Private agencies and private service providers for the subject property were mailed notification of the proposal. No comments were received.

6. Criteria for Granting a Validation of Unit of Land

SRC 205.060(d) sets forth the criteria that must be met before a unit of land can be validated.¹ In order to approve a validation of unit of land, the review authority shall make findings based on evidence provided by the applicant demonstrating that all the following criteria and factors are satisfied.

The applicable criteria are stated below in bold print. Following each criterion is a response and/or finding relative to the proposed tentative partition. The applicant provided justification for all applicable criteria (**Attachment B**).

SRC 205.060(d)(1): The unit of land is not a lawfully established unit of land.

Finding: The subject land area was annexed into the City of Salem on February 1, 2007. The subject property, in its current configuration, was created in 1974 as a remnant of a series of unlawful bifurcations, the last of which was recorded by deed (Book 66, Page 194) in the Polk County Deed records. Therefore, the remaining tax lot 073W17B / 0400 is not a lawfully-established unit of land. This criterion is met.

SRC 205.060(d)(2): The unit of land was created through sale or deed or land sales contract executed and recorded before January 1, 2007.

Finding: According to the written statement and staff research, the unit of land was created prior to January 1, 2007 as a remnant after a series of deeds were recorded to divide a parent tract (Volume 123, Page 599). A deed recorded on December 23, 1974 for tax lot 1100 (BOR 66, Page 194) was the last unit of land to be created from the original parent tract and resulted in the current configuration of the subject property. The subject unit of land was not created solely to establish a separate tax account and was not created by gift or any other method that is not considered a sale. The applicant has provided a copy of the recorded deed creating the subject unit of land through sale as evidence that this criterion is met.

SRC 205.060(d)(3): The unit of land could have complied with applicable criteria for the creation of the unit of land in effect when the unit of land was sold.

Finding: The unit of land was created while it was under the jurisdiction of Polk County. The applicant provided a Polk County zoning map from 1968 indicating the property was zoned AR (Acreage Residential Zone), and a copy of Polk County Zoning Code Chapter 128 for the AR zone which was in effect in 1974 when the unit of land was created. The development standards of the AR zone indicate the minimum lot size would be determined

¹ Notwithstanding criterion SRC205.060 (d)(3), the Review Authority may approve an application to validate a unit of land that was unlawfully created prior to January 1, 2007, if approval was issued for a permit to allow the construction of placement of a dwelling or other building on the unit of land after the sale. No approval has been issued for such construction on the subject land area.

by the Governing Body upon recommendation of the Planning Commission at the time of classification and set forth on the Official Zoning Map, and that in no case shall minimum lot size be less than one acre. The subject property is approximately 36.86 acres in size, exceeding minimum lot standards for the AR zone at the time it was created. As the property is vacant and was historically used for agricultural purposes, no other standards would have applied to the property. The Polk County land division ordinance could have allowed the parcel as a lawful parcel through a land use action in 1974; therefore, this criterion is met.

SRC 205.005(d)(4): The plat complies with SRC 205.035 and ORS 92.

Finding: The applicant submitted a copy of a proposed plat (**Attachment C**). The Public Works Department reviewed the proposal and submitted comments describing the procedure and submittal requirements for recording of a final plat.

7. Conclusion

Based upon review of SRC 205.060, the findings contained under Section 7 above, and the comments described, the validation of units of land complies with the requirements for an affirmative decision. Approval will not adversely affect the safe and healthful development and access to any adjoining lands.

IT IS HEREBY ORDERED

The tentative Plat for the Validation of Unit of Land Case No. 21-04, on property approximately 36.86 acres in size, split-zoned RA (Residential Agriculture) and NCMU (Neighborhood Center Mixed Use), and located at the 2100 Block of Doaks Ferry Road NW - 97304 (Polk County Assessor Map and Tax lot 073W17B / 0400) is hereby **APPROVED** subject to the applicable standards of the Salem Revised Code and the findings contained herein.

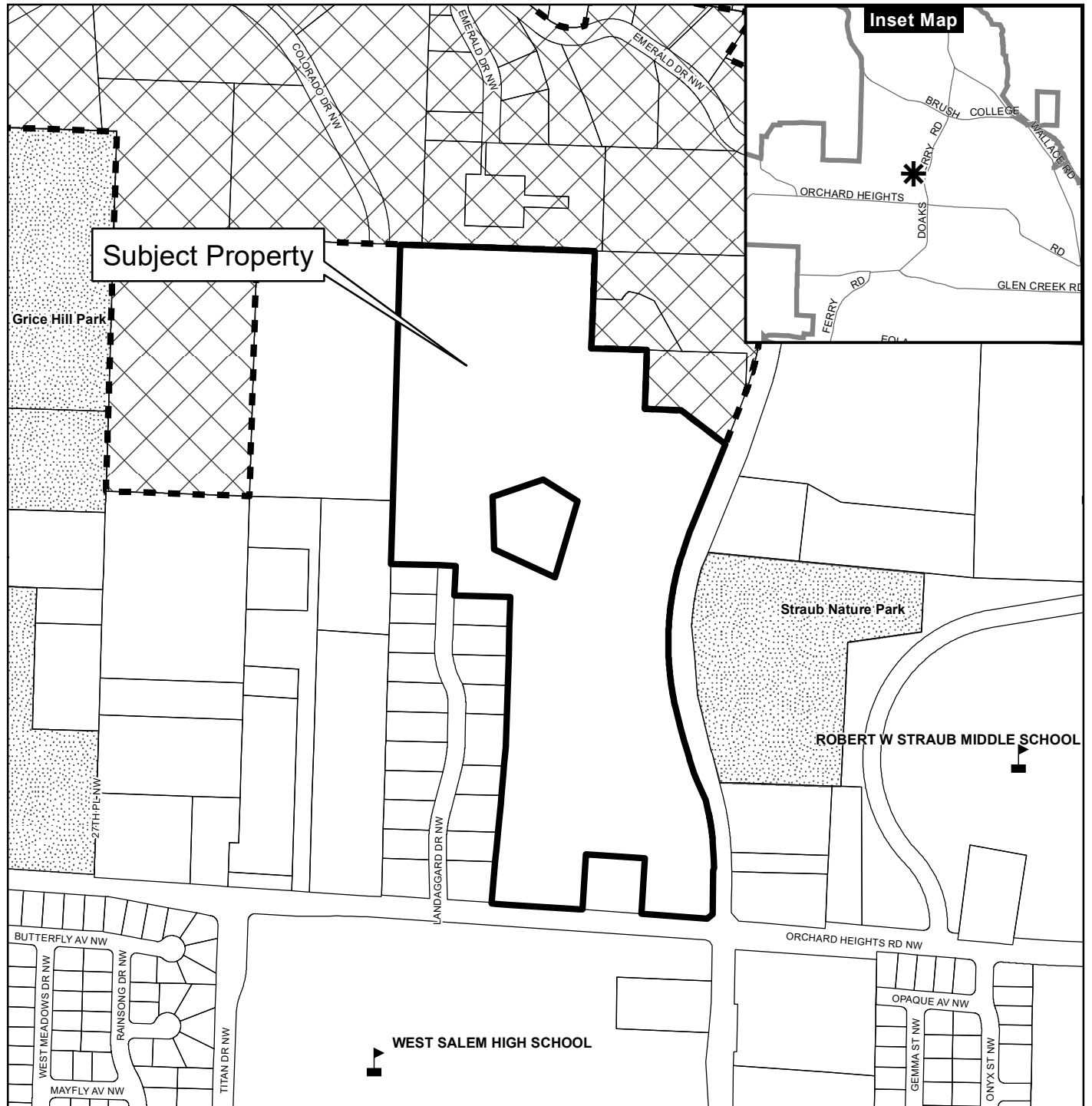


Jamie Donaldson, Planner II, on behalf of
Lisa Anderson-Ogilvie, AICP
Planning Administrator

Attachments: A. Vicinity Map
B. Applicant's Written Statement
C. Applicant's Proposed Plat

Vicinity Map

2100 Block of Doaks Ferry Road NW



Legend

- Taxlots
- Urban Growth Boundary
- City Limits
- Outside Salem City Limits
- Historic District
- Schools

- Parks

CITY OF Salem
AT YOUR SERVICE
Community Development Dept.

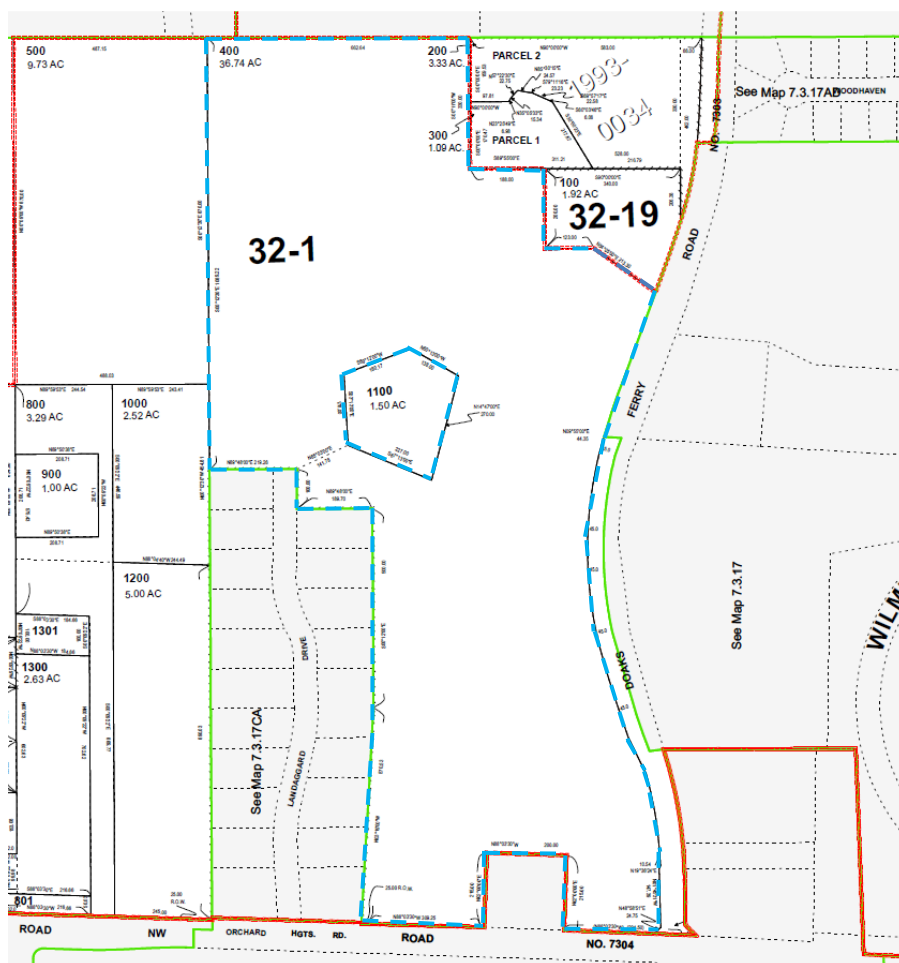
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0 100 200 400 Feet



Validation of Unit of Land

November 8, 2021



Criteria SRC 205.060(d)

1. *The unit of land is not a lawfully established unit of land;*

Findings: The subject property is identified as 7.3.17B/Tax Lot 400. It has been determined by staff that the subject property is not a unit of land that was lawfully established. Therefore, in order to lawfully establish the subject property as a legal unit of land, the applicant is requesting a Validation of Unit of Land review and approval.

The subject property is not part of a Homeowner's Association (HOA).

2. *The unit of land was created through sale by deed or land sales contract executed and recorded before January 1, 2007;*

Findings: As indicated in the attached documents, Tax Lot 400 was annexed into the City of Salem in 2007 (ANXC-628).

In 1901, the subject property (7.3.17B/Tax Lot 400) was established through a deed (B. 37/P. 96). Additional parcels were carved off over the years to establish legal parcels:

*November 14, 1901: Book 37/Page 96 (Deed)-Tax Lot 400

*July 7, 1952: Book 148/Page 21 (Warranty Deed)-Tax Lot 900

*1955: Volume 4/Page 37-Landaggard Heights Subdivision (Survey) was Platted

*December 23, 1974: Book 66/Page 194 (Warranty Deed)-Tax Lot 1100 (Not part of this application)

Tax Lot 900 is under the same ownership and was established as a separate parcel on July 7, 1952, per Warranty Deed Book 148/Page 21. Tax Lot 900 is not part of this Validation application.

Tax Lot 1100 was created in 1974 and is not part of this application. However, the creation of Tax Lot 1100 finalized the creation of Tax Lot 400 as it is today.

3. *The unit of land could have complied with applicable criteria for the creation of the unit of land in effect when the unit of land was sold; and*

Findings: Tax Lot 400 was created in 1901 through a deed as stated above. Furthermore, the subject property, Tax Lot 400 was created in 1901 prior to zone code regulations being established. The attached zone map dated November 1, 1968, indicates that the subject property was zone AR will in the County limits.

The final piece was created in 1974 (Tax Lot 1100). Per the 1974 AR Zone Chapter 128, lot size was determined through approval of the Planning Commission. At that time, the subject property, Tax Lot 400 and Tax Lot 1100 did not go before the Planning Commission for Approval.

The subject property, Tax Lot 400, was under the County AR (Acreage Residential) zoning requirements of Polk County until 2007 when it was annexed into the City of Salem (ANXC-628) with an RA (Residential Agriculture) zoning designation.

The subject property was in compliance with the 2007 RA (Residential Agriculture) zone code requirements when it was annexed into the City of Salem. The unit of land currently is in compliance with the applicable RA zone criteria.

AR Zone Requirements (1974/Chapter 128):

Lot Area:

Required: Lot area required or allowed was determined by Planning Commission Approval

RA Zone Requirements (2007 to present):

Lot Area:

Required: 4,000sq.ft. Existing: Tax Lot 400-36.74 acres

Lot Width:

Required: 40 feet Existing: 830 feet along Orchard Heights Road

4. ***The plat complies with SRC 205.035 and ORS 92. Development with the tentative partition plan can be adequately served by City infrastructure.***

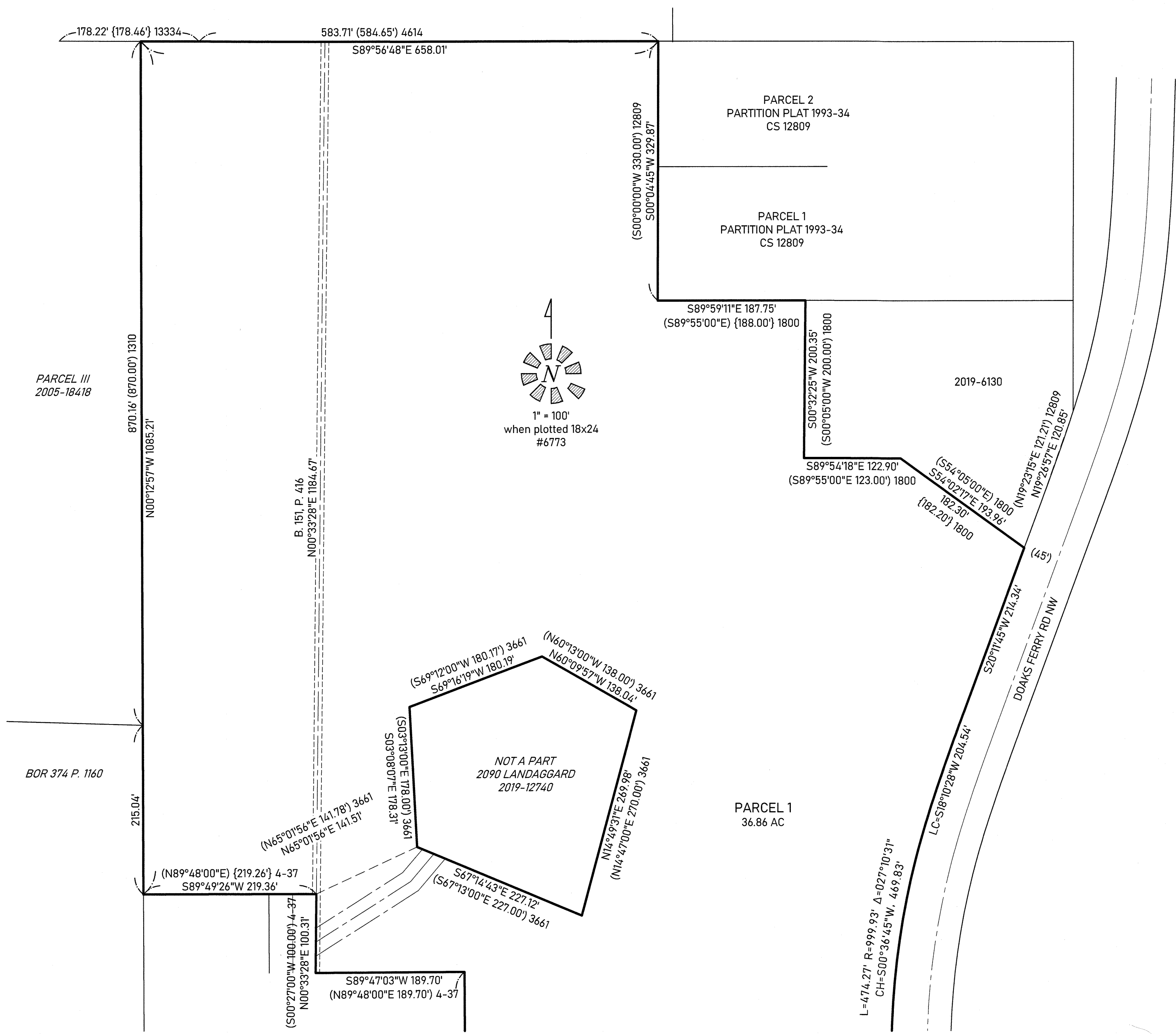
Findings: The plat has been prepared by a certified Survey and is in compliance with the requirements of SRC 205.035 and ORS 92. See the attached plat. City serves are available adjacent to the site. The subject property can be adequately served by City infrastructure.

FOR: TITAN HILL PROPERTY, LLC
3425 BOONE RD SE
SALEM, OR 97317

PROPOSED VALIDATION

IN THE NW, NE, SE, SW 1/4 SEC. 17, T. 7 S., R. 3 W., W.M.
CITY OF SALEM, POLK COUNTY, OREGON

DATE OF MAP: 10/13/2021
BY:
MULTI/TECH ENGINEERING SERVICES, INC.
1155 13TH ST. S.E. SALEM, OREGON 97302
503-363-9227



July 31,2023

Re: SUB-UGA-SPR-ADJ-TRV-DR23-02

Councilors,

As you review all the original testimony, additional testimony, and rebuttal, I have a process question that I would like to raise/ask.

My understanding is that the planning department stated that if this project is approved and moves forward that there is no involvement from the community, councilors as changes or concession are made as the development process unfolds unless a new land use application is filed.

I would like to request that there be an accounting of all change provisions made by staff and that those revisions be communicated to West Salem Neighborhood Association and yourselves so we can monitor all those changes.

This is an exercise that should be part of the planning department process and as councilors you should require them to do this as part of the Councils effort to increase transparency.

Regards,

Michael Freitas

West Salem Neighborhood Association Chair