

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the) Case No. ZC/CP 18-002
Application of:) Clerk's File No.
CHRIST GOOD SHEPHERD LUTHERAN) Comprehensive Plan Amendment/
CHURCH) Zone Change

RECOMMENDATION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Christ Good Shepherd Lutheran Church to change the comprehensive plan designation from Single Family Residential to Multi-Family Residential and the zone from RS (Single-Family Residential) to RM (Multiple-Family Residential) on a 3.4-acre portion of a 6.01-acre parcel at 4440 State Street NE, Salem, Marion County, Oregon (T7S, R2W, 30DD, tax lot 4200).

II. Relevant Criteria

The standards and criteria relevant to this application are found in the Salem Area Comprehensive Plan (SACP) and the Marion County Code (MCC) Title 16, especially chapters 16.39 and 16.43.

III. Public Hearing

A public hearing was held on this matter on April 11, 2018. Prior to hearing, applicant requested a continuance to a date after May 8, 2018. The hearings officer agreed and set the continued hearing for May 16, 2018 at 4:00 p.m. in the Senator Hearing room at 555 Court Street NE, Salem, Oregon. Notice for the April 11, 2018 had already been mailed so the hearing convened and testimony taken. At the hearing, the Planning Division file was made part of the record. The following persons provided testimony on the application:

1. Joe Fennimore Marion County Planning Division
2. Chris Anderson For Applicant
3. Karl Hester For applicant
4. A.J. Nash Proponent
5. Kevin Peterson Opponent
6. Gail Weedman Opponent
7. Joy Efseaff Opponent
8. Tom Carrigan Opponent
9. Karl Anderson Opponent
10. Michael Johnson East Salem Suburban Neighborhood Association (ESSNA), General

The following documents were presented, marked and entered into the record as exhibits:

- Ex. 1 April 10, 2018 letter from Christ Good Shepherd Lutheran Church executive committee and church council
- Ex. 2 Fifty-five petition pages
- Ex. 3 April 11, 2018 statement from Morrie and Joy Efseaff, with attached real estate comparison documents
- Ex. 4 Zoning map annotated to show potential single family residential development layout

No objections were raised to jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing. Michael Johnson, who spoke on behalf of ESSNA, stated that ESSNA was not notified of the April 11, 2018 hearing. The list attached to the mailing certification for the April 11, 2018 hearing does not show ESSNA or Mr. Johnson was notified. Because Mr. Johnson attended the hearing for ESSNA, Mr. Johnson and ESSNA had actual notice. The hearings officer announced the time, place and location for the continued hearing, giving Mr. Johnson and ESSNA opportunity to prepare for and appear at the May 16, 2018 hearing. The hearings officer also announced that the Marion County Board of Commissioners (BOC) would conduct its own hearing, and notice for the BOC hearing would be sent to all hearing attendees who provided names and addresses on the hearing signup sheets. The substantial rights of neither Mr. Johnson nor ESSNA were prejudiced.

At hearing and in written documents, people questioned why everyone in the neighborhood was not notified of the hearing. The hearings officer read a portion of ORS 197.763(2)(a) that states the notification area within an urban growth boundary (UGB) is 100' from the subject property's boundary. In an April 9, 2018 letter, opponents Karl and Janice Sloan stated that the notice mailing list included 13 of 28 addresses of people who do not physically live at the properties shown in the notification area, so the people who actually live on the properties were not notified. Under ORS 197.763(2)(a), notice of a hearing shall be sent to the applicant and to owners of record of property on the most recent property tax assessment roll. Hearing notice goes, by state law, to owners of property at the addresses where tax correspondence is mailed. Notice to the property address is not required under state law or under MCC 16.44.030(A).

The Sloans also stated that the notice did not detail the physical site of the property as 4400 block of Mahrt Avenue SE. Under ORS 197.763(3)(c), notice shall set forth the street address or other easily understood geographical reference to the subject property. Notice for the April 11, 2018 hearing states:

PURPOSE OF HEARING: to receive testimony on a request to change the Comprehensive Plan designation from Single Family Residential to Multiple Family Residential and to change the zone from RS (Single Family Residential) to RM (Multiple Family Residential) on an approximately 3.4 acre portion of a 6.01 acre parcel located at 4440 State Street SE, Salem. (T7S; R2W; Section 30DD; tax lot 04200).

APPLICANTS: Christ Good Shepherd Lutheran Church

The subject 6.01-acre parcel has frontage on Mahrt Avenue and State Street. The application is specifically for the portion of the property with Mahrt Avenue frontage. According to the Amerititle property profile in the record, the 6.01-acre parcel has a site address of 4440-4444 State Street in Salem, and mailing address of 4440 State Street. The hearing notice identified the parcel by the 4440 State Street address and the township, range, section and tax lot number. It identified the applicant as Christ Good Shepherd Lutheran Church, a name and land mark reference, because the church sits on the property. The hearings officer could find no case law interpreting ORS 197.763(3)(c) requirements, but from the information provided in the notice, the hearings officer believes that, with reasonable diligence, the property would likely be located. Still, a Mahrt Avenue reference could be included in the notice of the BOC hearing to clear up any real or perceived ambiguity.

The continued hearing was resumed on May, 16, 2018. Documents received for the record between hearings were inventoried as a part of the record. The following persons appeared and provided testimony on the application:

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| 1. | Lisa Milliman | Marion County Planning Division |
| 2. | John Rasmussen | Marion County Public Works Engineering Section |
| 3. | Wes Hill | Applicant's attorney |
| 4. | Frank Walker | For applicant |
| 5. | Chris Blackburn | Proponent |
| 6. | A.J. Nash | Proponent |
| 7. | Karl Anderson | Opponent |
| 8. | Tom Carrigan | Opponent |
| 9. | Bruce Bjorkman | Opponent |
| 10. | Scott Jenkins | Opponent |
| 11. | Karl Sörensen | Opponent |
| 12. | Gail Weedman | Opponent |
| 13. | Daniel Finlayson | Opponent |

The following documents were presented, marked and entered into the record as exhibits:

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| Ex. 5 | Oregon.gov, statewide planning goal 10, and SACP printouts |
| Ex. 6 | City of Salem zoning map |
| Ex. 7 | April 30, 2018 response to Planning findings and analysis |
| Ex. 8 | Packet of documents (zone map, etc) from Karl Anderson |
| Ex. 9 | Statement of Karl Anderson |
| Ex. 10 | Statement of Scott Jenkins |
| Ex. 11 | Statement of Daniel Finlayson, with attached annotated site plan and photographs |

No objections were raised to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing. The record remained open until May 30, 2018 for applicant and June 13, 2018 for opponents to submit additional information and until June 27, 2018 for applicant's rebuttal. No rebuttal documents were received. The following documents were submitted to the record as exhibits during the open record period:

- Ex. 12 Comments from Bruce Bjorkman
- Ex. 13 May 29, 2018 findings of fact statement from Frank Walker with attached exhibits 1 through 3
- Ex. 14 June 8, 2018 comments from Karl Anderson with two attached site plans
- Ex. 15 April 27, 2018 flyer for a May 8, 2018 development meeting (received between hearings but not marked earlier, so marked and added here)

IV. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject 6.01-acre property is within the City of Salem UGB. The SACP designates the northern portion of the property Multi-Family Residential and the southern portion Single-Family Residential. Under MCC title 17, the northern portion of the property is zoned RM and the southern portion is zoned RS. Marion County has land use authority over the property. The property is within the Airport Overlay (OA) zone for Salem's McNary Field.
2. The rectangular property has 335' of frontage on State Street to the north and Mahrt Avenue to the south. The parcel is about 780' deep, and has about 323' of frontage on Brink Court SE along the southeast portion of the property line. The northern RM zoned portion contains a church. The approximately 3.4-acre RS zoned portion of the property, the subject of the comprehensive plan amendment and zone change request, is mostly vacant but contains a church-related dwelling.
3. Properties to the north, along State Street, are zoned RM and developed with various types of residences, including multiple-family housing. Properties west along 44th Avenue, south along Mahrt Avenue and east along Brink Court are zoned RS and developed with single family dwellings.
4. Applicant proposes amending the SACP designation on the southern portion of the property from Single-Family Residential to Multi-Family Residential, and changing the RS zoning to RM and The change would allow the church to sell a portion of the property for RM development.
5. The Planning Division requested comments on the proposal from various governmental agencies.

Marion County Department of Public Works (DPW) Land Development Engineering and Permits (LDEP) commented:

ENGINEERING REQUIREMENTS

- A. Driveways must meet sight distance, design, spacing, and safety standards [MCC 11.10]. Access related commentary is given below:
 - 1) Access to Mahrt Avenue for the multi-family development shall be from a single (1) shared access. The centerline of that

access shall align with the centerline of Eastland Place to minimize traffic conflict points.

- 2) Brink Court is of limited paved width serving a small number (7) of single-family dwellings. It is not seen as desirable to load-up Brink Court with traffic, including inevitable street parking. Therefore, no direct access to Brink Court for daily apartment traffic will be allowed; however, a gated fire access could be allowed if secondary access is required by MCFD.
- B. During the future development process, Developer should anticipate being required to replace degraded curb and sidewalk along Mahrt Avenue frontage, install sidewalk on Brink Court, and construct a Mahrt/Brink corner ramp with development of the property.
 - C. The Developer should anticipate the possibility of being required to dedicate a sufficient amount of public R/W width on Brink Court to accommodate a curblin sidewalk.
 - D. All multi-family vehicle parking will need to be accommodated for on private property; street-side parking will not be allowed. The Developer should consider providing in excess of the minimum amount of parking as other developments in the general vicinity seem to be deficient in this regard.
 - E. The subject property is within the City of Salem Urban Growth Boundary and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits [Marion County SDC Ordinances #97-39R and 98-40R].

Marion County Fire District 1 (MCFD1) commented:

This project must meet the following requirements per Marion County Fire District No. 1:

1. Fire-flow requirements: The minimum fire flow and flow duration for buildings other than one and two family dwellings shall be determined according to 2014 Oregon Fire Code (OFC) Appendix B. The required fire flow for a building shall not exceed the available GPM in the water delivery system at 20 psi.

Note: before the application can be deemed complete a stamped engineered fire flow analysis will be required.

2. Fire Department Connection: The location of fire department connections shall be approved by the fire code official. 2014 Oregon Fire Code 903.3.7.

3. Fire Safety During Construction: Approved fire department access road, required water supply, fire hydrants, and safety precautions shall be

installed and serviceable prior to and during the time of construction. 2014 Oregon Fire Code Chapter 33.

4. Fire apparatus road distance from building and turnaround: Access roads shall be within 150' of all portions of the exterior wall of a building as measured by an approved route around the exterior of the building. An approved turnaround is required if the remaining distance to an approved intersection roadway, as measured along the fire apparatus access road, is greater than 150'. 2014 Oregon Fire Code 503.1.1.

5. Fire Apparatus Access Road Width and Vertical Clearance: Fire apparatus access roads shall have an unobstructed driving surface width of not less than 20 feet; 26 feet adjacent to fire hydrants 2014 Oregon Fire Code (OFC) Appendix D 103.1 and an unobstructed vertical clearance of not less than 13 feet 6 inches. 2014 Oregon Fire Code (OFC) Section 503.2.1 and Appendix D103.1

6. Turning radius: The inside turning radius and outside turning radius shall not be less than 28 feet and 48 feet respectively, measured from the same center point. (2014 OFC 503.2.4 & Appendix D)

7. No parking signs: Where fire apparatus roadways are not of sufficient width to accommodate parked vehicles and 20 feet of unobstructed driving surface, "No Parking" signs shall be installed on one or both sides of the roadway and in turnarounds as needed. Roads 26 feet wide or less shall be posted on both sides as a fire lane. Roads more than 26 feet wide to 32 feet wide shall be posted on one side as a fire lane. Signs shall read "NO PARKING - FIRE LANE" and shall be installed with a clear space above grade level of 7 feet. Signs shall be 12 inches wide by 18 inches high and shall have red letters on white reflective background. (2014 OFC D103.6) You may contact the Fire Marshal if you would like code requirement for painted curbs. (2014 OFC 503.3)

8. Premise identification: Buildings shall have address numbers or approved identification placed in a position that is plainly legible and visible from the access road fronting the property. Numbers shall contrast with the background and shall be a minimum of 4 inches height within a minimum stroke width of ½ inch. (2014 OFC 505.1)

9. Gates: Gates securing fire apparatus roads shall comply with the following: (2014 OFC D103.5)

- Minimum unobstructed width shall be 16 feet.
- Gates shall be set back a minimum of 30 feet from the intersecting roadway.
- Gates shall be of the swinging type or sliding type.
- Manual operation shall be capable by one person.
- Electric gates shall be equipped with a means for operation [by] fire department personnel.
- Locking devices shall be approved.

10. Fire Extinguishers: Provide 2-A:10-BC fire extinguishers inside the building maximum travel distance 75 feet. Fire extinguishers shall be mounted in an approved location with top of extinguisher no higher than 5 feet. 2014 Oregon Fire Code Section 906.2

11. Key boxes: A key box for building access may be required. Please contact the appropriate jurisdiction for location requirements or for an order form and instructions regarding installation and placement. 2014 Oregon Fire Code Section 506. Please contact Fire Marshals Division to order key box.

12. FDC Locking Caps: Locking caps on fire department connections may be required for water based protection systems where the responding fire department carries appropriate key wrenches for removal. 2014 Oregon Fire Code 912.3. Please contact Fire Marshals Division to order locking caps.

All other contacted agencies either failed to respond, or stated no objection to the proposal.

V. Additional Findings of Fact and Conclusions of Law

1. Applicant has the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

'Preponderance of the evidence' means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted.)

Applicant must prove, by substantial evidence in the whole record, it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely, applicant has not met its burden and the application must be denied. If the evidence for every criterion is a hair in applicant's favor, then the burden of proof is met and the application is approved.

COMPREHENSIVE PLAN AMENDMENT

2. The subject property is outside the Salem city limits but within the Salem UGB. Marion County has jurisdiction in this area but must coordinate land use applications with the City of Salem. Comments from the City of Salem were requested but none were received.

3. The Department of Land Conservation and Development (DLCD) must be notified of any proposed comprehensive plan amendment. DLCD was notified as required but provided no comment on the proposal.
4. Under MCC 16.43.000(A), a non-legislative plan amendment involves a change to the land use designation of five or fewer different ownerships. This application involves one ownership and is a non-legislative plan amendment.
5. MCC 16.43.020 contains the following criteria for non-legislative plan amendments:
 - A. Conformance with the Comprehensive Plan goals, policies and intent, and any plan map amendment criteria in the plan, or intergovernmental planning coordination agreement, pertaining to unincorporated lands.
 - B. The addition of the subject property to the inventory of lands in the proposed map designation and the corresponding inventory reduction in the current designation are consistent with projected needs for such lands in the Comprehensive Plan.
 - C. Uses allowed in the proposed designation will not significantly adversely affect planned uses on adjacent lands.
 - D. Public facilities and services necessary to support uses allowed in the proposed designation are available or are likely to be available in the near future.
6. The subject property is within the Salem UGB and subject to the SACP. SACP III(B)(4), reflects an agreement between the city and the county which grants Marion County exclusive jurisdiction over land use actions outside the city limits but within the Salem UGB. Under SACP II(A)(1), the SACP is intended to project the most desirable pattern of land use in the Salem area as represented on the comprehensive plan map. One way Salem meets its urban land needs is through annexation and rezoning in response to demands for specific land uses over time. The city's intent is to retain the flexibility to be responsive to changing conditions, yet recognize the legitimacy of existing zoning. If a land use proposal is inconsistent with the comprehensive plan map or policies, an applicant may, as done here, file for a comprehensive plan map amendment.

Under SACP II(A)(3)(a), the three categories of residential uses are Single-Family Residential, Multi-Family Residential and Developing Residential. The Single-Family and Multi-Family Residential categories apply to the portion of the Salem urban area that is currently developed with housing or served by public facilities and suitable for residential development at urban densities. The area of the subject property is currently developed with single-family and multiple-family housing and is served by public facilities. Whether the subject property is suitable for residential development at multiple-family density will be determined by the BOC in this land use process.

The Single Family and Multi-Family Residential categories encompass all types of housing. Changes in use designation to permit higher residential densities are governed by the goals and policies of the SACP and the local rezoning process. The intent of SACP residential designations is:

- (a) To retain and conserve the existing sound housing stock;
- (b) To provide for the systematic conversion of sites to more intensive residential uses in accord with development policies and standards;
- (c) To provide and maintain an overall land use pattern in the urban area that is consistent with the service capabilities of the jurisdictions;
- (d) To ensure a compatible transition between various types of housing;
- (e) To provide and maintain a supply of serviced, developable land throughout the urban area for residential and other urban uses, as demand warrants and service capabilities permit;
- (f) To stabilize and protect the essential characteristics of residential environments, including natural features;
- (g) To encourage locating residential development where full urban services, public facilities, and routes of public transportation are available;
- (h) To permit multifamily housing developments which are consistent with development standards and growth policies to blend into the overall fabric of the Salem urban area.

The criteria that will be used to develop an acceptable residential land use pattern will include the following:

- (a) The changing social, physical, and economic factors which take place within an area and its potential long-range effect on land use.
- (b) The desirability for redevelopment and infill within existing neighborhoods to higher densities.
- (c) The necessity of managing urban growth over time in accordance with the ability to provide urban support services such as sewer, water, streets, and recreation, which would occur after annexation.
- (d) The provision of a transitional land use pattern from the urbanized core to the rural area outside the Urban Growth Boundary.
- (e) The need to ensure opportunities for a variety of housing alternatives throughout the urban area.
- (f) The need to provide land for support services to the residents of an area, such as neighborhood shopping facilities, schools, parks, and churches.

These residential designation intentions and "criteria" are the planning lenses a decision maker uses to view SACP policies. SACP IV, Salem Urban Area Goals and Policies, contains the following applicable policies:

B. General development policy 7 - Structures and their siting in all residential, commercial, and industrial developments shall optimize the use of land. The cumulative effect of all new residential development in the

Salem urban area should average 6.5 dwelling units per gross acre of residential development. Development should minimize adverse alteration of the natural terrain and watercourses, the potential for erosion and adverse effects upon the existing topography and soil conditions.

Residential development of 72, 80 and 124 dwelling units have been mentioned variously in the application, even in the same document (exhibit 7, 72 on pages 1 and 2, and 124 on page 8). Applicant acknowledged at hearing that the number of dwelling units was up in the air, depending on the amount of land purchased and the type of development proposed. Applicant clarified in exhibit 13 that the final amount of property it would purchase was set during the open record period as 3.28 acres, and stated elsewhere in the document that 72 units are proposed. Unless a 72 unit development is conditioned, the hearings officer believes all criteria must be evaluated on a worst-case scenario, using the maximum development potential of the site. Still, it is more likely than not, that the development will have a much higher density than 6.5 units per acre.

The portion of the property subject to this request is flat and undeveloped, except for an existing church-related dwelling that will apparently be retained by the church. If the house is not to be retained and the area will become part of the proposed development, applicant should provide the BOC with updated information. Grading will be required for development, indicating erosion potential. On-site erosion control best management practices will be required during construction. There are no on-site watercourses, but applicant acknowledges there are drainage problems on the site. Applicant describes an on-site depression that could be deepened as used for stormwater detention. There will be no apparent adverse terrain alteration and deepening the depression may help with current drainage issues. General development policy 7 is met.

General development policy 15 - Exterior lighting shall be designed to provide illumination to the site and not cause glare into the public right-of-ways and adjacent properties.

Requiring a lighting plan that demonstrates how the property can be lighted to illuminate the property and not cause glare or spillage on public streets and adjacent properties will satisfy general development policy 15.

C. Urban growth policy 4 - Development of land with existing urban services shall be encouraged before the conversion of urbanizable lands to urban uses.

The proposed development area has urban services such as water, sewer and so on. Developing this property, with single-family or multi-family uses is consistent with this policy, provided the existing services have capacity to handle the level of development.

D. Growth management policy 6 - New developments shall make maximum use of available land areas with minimal environmental disturbance and be located

and designed to minimize such public costs as extension of sewer and water services, schools, parks and transportation facilities.

The subject property is flat with no watercourses, so there will be no interference with or complications from development on slopes of hills or ravines or within riparian areas. Water and sewer services, roads, schools and parks already serve the area, so new "extension" of services is not needed, but there are questions about whether existing services are adequate to support multiple family housing. Several residents point out that the subject property and Mahrt Avenue adjacent to the site, flood during the rainy season, calling into question the adequacy of the current stormwater drainage system. Residents also complained of inadequate water pressure, roadway safety problems including lack of sidewalks, overcrowded schools, and too few parks. Basic infrastructure is already in place, and there are no topographic or other features that would cause environmental problems. Applicant believes it can reduce the pressure on schools by reducing the number of bedrooms per unit, but should provide more information on school capacity to allow the BOC to determine whether capacity already exists, or whether a bedrooms-per-unit restriction is necessary. (School District 24J was asked for comments but did not respond.) Applicant has yet to prove whether facilities are adequate to support the proposed comprehensive plan amendment, and whether cost-effective development is possible, as discussed further below. Growth management policy 6 is not met.

Growth management policy 7 - Within the Salem urban area, residential subdivisions, mobile home parks, multi-family residential, commercial and industrial development shall be permitted only within the county service districts or within the City of Salem where public sewer and water services are available and other urban facilities are scheduled pursuant to an adopted growth management program. Exceptions to this policy may only be permitted if mutually agreed to by the city and the appropriate county.

The subject property is within a water and sewer service area. Growth management policy 7 is met.

Growth management policy 9 - New development shall be encouraged to locate in areas where facilities are already available and in areas which require the least public costs to provide needed facilities and services.

Facilities are in place, but people in the area question their adequacy. Applicant did not provide evidence of current capacity from the service district, or its ability to handle increased demand caused by multiple-family development. Without this information, it is difficult to evaluate water and sewer capacity and to determine cost effectiveness of any needed upgrades. Growth management policy 9 is not met.

Growth management policy 11 - Where development creates a demand for new or expanded facilities and services, a share of the costs of new or expanded facilities and services should be borne by the new development itself.

Community members have safety concerns about the traffic increase from the proposed development, pointing out that sidewalks are lacking in much of the area, including areas leading from the site to Lancaster Drive. DPW LDEP explained that requirement for a transportation impact analysis (TIA) was not triggered, but also stated that does not mean there will be no transportation impact from the proposal. The TPR letter does not address neighborhood-specific transportation systems or explain how an 80-unit worst-case scenario was determined. LDEP noted certain on-site requirements it anticipates would be provided by developer, such as curb and sidewalk replacement along the Mahrt Avenue frontage and sidewalk development along Brink Court. LDEP would likely not request off-site transportation improvements or contributions because no transportation development or improvement projects planned for the area connect sufficiently to the proposal.

Neighbors noted flooding on the subject property and adjacent Mahrt Avenue, and low water pressure in the neighborhood that might be exacerbated by 72 or more new dwelling units. Applicant believes there is an on or off-site system blockage or break in the stormwater drainage system, and said that water flow issues might be attributed to systemic problems with the East Salem Sanitary District, restricted flows in aging domestic water pipes or other causes. Applicant believes it is not required to contribute to repair. Applicant still has the burden of proving facilities and services will be adequate to support the proposed use. With little evidence on possible expansion or repair of other facilities and solutions, it is difficult to determine sources or levels of contribution that may be needed.

E. Residential development policy 1 - The location and density of residential uses shall be determined after consideration of the following factors;

- a. The type and distribution of housing units required to meet expected population growth within the Salem urban growth boundary.
- b. The capacity of land resources given slope, elevation, wetlands, flood plains, geologic hazards and soil characteristics.
- c. The capacity of public facilities, utilities and services. Public facilities, utilities and services include, but are not limited to municipal services such as water, sanitary and storm sewer, fire, police protection and transportation facilities.
- d. Proximity to services. Such services include, but are not limited to, shopping, employment and entertainment opportunities, parks, religious institutions, schools and municipal services. Relative proximity shall be determined by distance, access, and ability to provide services to the site.
- e. The character of existing neighborhoods based on height, bulk and scale of existing and proposed development in the neighborhood.

- f. Policies contained in facility plans, urban renewal plans, residential infill studies and neighborhood and specific development plans.
- g. The density goal of General Development Policy 7.

Factor 1(a). Exhibit 6 shows that multiple-family residential development is currently spread throughout most areas of Salem. There is a City of Salem identified need for additional multiple-family development, and multiple-family development already exists near the proposed development site, though on State Street and not on Mahrt Avenue.

Factor 1(b). The capacity of land resources given slope, elevation, wetlands, flood plains, geologic hazards and soil characteristics.

The subject property contains no identified wetlands. The property is flat and not within a geologic slide hazard or floodplain overlay zone, though it floods locally during the wet season. Applicant cites to the Soil Survey of Marion County Area, Oregon, stating that the property is comprised of the Concord-Dayton-Amity association soils, described as nearly level, poorly drained and somewhat poorly drained. The major limitation for the soil is drainage, which is consistent with the drainage problem reported at the site. Applicant must prove the land has drainage capacity to fully address this factor. Other items, such as erosion control measures, can be satisfactorily enforced during the building permit stage of development.

Factor 1(c). The capacity of public facilities, utilities and services. Public facilities, utilities and services include, but are not limited to municipal services such as water, sanitary and storm sewer, fire, police protection and transportation facilities.

Site drainage is an issue, and applicant, believing the problem to be an on or off-site break in or blockage of the system, put in a repair request to MCPW. It is not clear this is an adequate response. It is applicant's burden to prove drainage capacity exists, as well as water capacity, which was brought into question by neighborhood resident reports of existing low water pressure problems. Applicant states in exhibit 7 that its "project engineer has already determined that the existing public facilities are adequate to maintain current levels of services after the proposed project is completed." Applicant provided no comments directly from the project engineer or other supporting documents to evaluate. In exhibit 13, applicant states the water flow issues may be due to "systemic problems with the East Salem Sanitary District..." or other reasons, indicating applicant recognizes capacity may not be available. The hearings officer recommends applicant provide the BOC with evidence to substantiate its claims of sufficient public facility capacity for all services.

MCFD1 did not confirm or deny capacity to serve the proposed development, but provided a list of fire and life safety requirements that applicant must meet. Some standards could clearly be made conditions of approval or will be handled at development, but others, such as access issues (for

example, having all exterior building walls within 150' of fire roads), depend on land capacity and feasibility should be shown. Applicant states in exhibit 7 that it has a carefully designed layout prepared by an engineering firm, but the only site plan provided by applicant so far is a very preliminary, hand drawn site plan that is insufficient to determine whether fire district access requirements can be met. Community members provided a different site plan that was given out at a community outreach and information meeting, but applicant did not submit this or any other alternate site plan to the record. The site plan from the meeting has a more easily understood layout that might show it is feasible to meet fire access requirements but the plan shows no dimensions. It may or may not be applicant's intent to have the BOC consider this plan. The hearings officer believes that the BOC would benefit by a more illustrative preliminary site plan when evaluating this factor and other criteria.

Police protection services are provided by Marion County Sheriff's Office (MCSO). At least one community member testified that crime in the area has increased and said the MCSO sent out information on the possibility of assessing a \$10.00 per month charge for increased law enforcement coverage in the area. This indicates there may be an existing capacity issue that could be compounded by this 72 or more unit housing proposal.

Community members have safety concerns about the traffic increase from the proposed development, pointing out that sidewalks are lacking in much of the area, including along portions of the streets leading from the site to Lancaster Drive. Applicant responds, in part, that roadways in the area have capacity to handle the increase in traffic, surrounding streets that have patchwork facilities such as sidewalks, are typical in many parts of Salem because development takes place over time, and infrastructure standards change over time. DPW LDEP explained that the requirement for a transportation impact analysis (TIA) was not triggered by the proposal, but also stated that does not mean there will be no transportation impacts from the proposal. LDEP noted certain on-site requirements it anticipates will be provided by developer, such as curb and sidewalk replacement along the Mahrt Avenue frontage and sidewalk development along Brink Court. LDEP would likely not request off-site transportation improvements or contributions because no transportation development or improvements are projected that would connect sufficiently to the proposal. LDEP's comments at hearing indicate capacity for pedestrian and vehicle traffic, while not optimum, is available, especially with applicant's revision allowing traffic to exit onto State Street via church property, and not just onto Mahrt Avenue.

Factor 1(d). Proximity to services. Such services include, but are not limited to, shopping, employment and entertainment opportunities, parks, religious institutions, schools and municipal services. Relative proximity shall be determined by distance, access, and ability to provide services to the site.

Applicant notes that public bus transit is available along State Street to the north, Lancaster Drive to the west and Cordon Road to the east and can fairly directly get bus passengers pretty much anywhere in the Salem urban area. Community members argue that the bus stop on State Street, west of the church, has one limited route that takes riders farther away from most destinations rather than to them. Applicant notes that two new transit centers, one north and one south, will improve bus routes and access to more destinations without circuitous routing. Applicant provided no estimated implementation date for the additional transit centers.

Factor 1(e). The character of existing neighborhoods based on height, bulk and scale of existing and proposed development in the neighborhood.

Applicant proposes at least 72 dwelling units divided among four, three-story buildings (if the site plan provided in exhibit 14 is considered applicable) concentrated on three acres. Neighbors point out that multiple-family housing is common near the State Street portion of the subject property, there are no multiple-family housing units and no three-story buildings along Mahrt Avenue where this development is proposed. The planning map for the Salem urban area shows RM and RS properties border each other in several areas, including in this neighborhood, and single-family dwellings back up to multiple-family developments along the fairly straight east-west dividing line between the RM and RS zoning here. In one instance, RM property already protrudes across this RM/RS dividing line, but does not reach all the way to Mahrt Avenue like this proposal would. Applicant surveyed multiple-family housing developments within a one square mile area surrounding the subject property. Applicant found 19 apartment buildings north of State Street and south of Auburn Road, with nine multi-family units northwest of the subject property and 10 units north of Monroe Street, east of Lancaster Drive; each with multiple dwelling units. Thirty units are to the east and 33 to the west. Elevations of the buildings (one, two or three stories) were not noted. No multi-family housing was found south of Mahrt Avenue. Although RM and RS zoning coexist, viewing the map at exhibit 8, it is not common for multiple-family housing to be surrounded on three full sides by single-family housing, and it is not clear that the proposed RM development will be on the same height, bulk and scale as the existing multiple-family housing units.

Factor 1(f). Policies contained in facility plans, urban renewal plans, residential infill studies and neighborhood and specific development plans.

These plans and studies were not discussed by applicant.

Factor 1(g). The density goal of General Development Policy 7.

As discussed above and incorporated here by reference, General Development Policy 7 was found to be met.

Balancing all of the factors above, the hearings officer finds some factors favor applicant but more factors do not. With substantial evidence to

support applicant's claims, the balance may come out in applicant's favor, and residential policy 1 might be met.

Residential development policy 2 - Residential uses and neighborhood facilities and services shall be located to:

- a. Accommodate pedestrian, bicycle and vehicle access;
- b. Accommodate population growth;
- c. Avoid unnecessary duplication of utilities, facilities and services; and
- d. Avoid existing nuisances and hazards to residents.

2(a). With applicant's revised plan allowing access onto State Street, rather than just Mahrt Avenue, will improve vehicle access and provide improved access to dedicated bicycle lanes on State Street. Pedestrian access is available but is less favorable due to lack of available sidewalks in portions of the neighborhood.

2(b). There is an acknowledged shortage of RM zoned land in the Salem urban area and this proposal will help accommodate predicted population growth.

2(c). Facilities, utilities and services are already in place and will not be duplicated, but there is still a question of whether there is adequate capacity to serve the site.

2(d). As noted above, sidewalk facilities are not available throughout the area, even along routes to Lancaster Drive, a commercial area with transit connections, and a likely destination for pedestrians. There is also an open question about adequacy of drainage and water services.

If service and safety questions are adequately addressed for the proposed level of development, this policy could be met.

Residential development policy 3 - City codes and ordinances shall encourage the development of passed-over or underutilized land to promote the efficient use of residential land and encourage the stability of neighborhoods.

This is a directive for code and ordinance drafters rather than a criterion for applicants, but this infill development proposal is consistent with this policy.

Residential development policy 4 - Rehabilitation and maintenance of housing in existing neighborhoods shall be encouraged to preserve the housing stock and increase the availability of safe and sanitary living units.

This site is undeveloped. This policy is not applicable.

Residential development policy 5 - Subsidized housing shall be provided at a variety of locations within the urban area.

This policy is aimed at governing bodies and is outside of applicant's control. This policy is not applicable.

Residential development policy 6 - Multi-family housing shall be located in areas proximate to existing or planned transportation corridors, public facilities and services:

- a. To encourage the efficient use of residential land and public facilities, development regulations shall require minimum densities for multiple family development zones;
- b. Development regulations shall promote a range of densities that encourage a variety of housing types;
- c. Multiple family developments should be located in areas that provide walking, auto or transit connections to:
 - (1) Employment centers;
 - (2) Shopping areas;
 - (3) Transit service;
 - (4) Parks;
 - (5) Public buildings.

State Street is an arterial street as is Lancaster Drive. The subject site is in an area of existing public facilities and services, though there are open questions of the adequacy of some facilities and services. Applicant addressed this policy and identified the Mill Creek industrial area as an employment center that is "relatively close to this area but probably is not within easy walking distance * * * The current Cherrlots Route map does not show transit access to the new Mill Creek Industrial Area..." Applicant states transit options are available for reaching the Fairview Industrial Area, downtown Salem and the Chemeketa Community College area, and that transit access will be enhanced when two new transit centers come on line. No timeline for the new transit hubs was mentioned. Lancaster Drive is a shopping and service area relatively nearby. Applicant pointed to the planned new transit hubs that are near shopping areas north and south, and would allow local residents to travel north without first going south. Again, no timeline for the new hubs was indicated. Applicant noted that the Santana Village neighborhood park is five blocks southeast of the site, Geer Park, with soccer fields and baseball diamonds is nine blocks west, and Cascade Gateway regional park is an eight minute automobile trip from the site. Applicant defined public building, but did not provide the origin of the definition. Applicant then identified a City of Salem Fire Station as a public building across Lancaster Drive, but the subject site is served by MCFD1 and not the City of Salem, and has no relationship to this proposal. Applicant also identified "the shopping complex at south Lancaster and Highway 22, the Lancaster Mall..." as public buildings, but SACP at IV(M), Public and Semi-Public Buildings and Lands, talks about principal local government, state and federal offices, the capitol mall,

the J building at the Oregon State Hospital, and a convention and conference center as public buildings. Lancaster Mall and the Lancaster Drive/Highway 22 shopping centers are not SACP public type buildings. The only relevant public building identified by applicant is the nearby MCFD1 fire station, not normally a destination type public building whether accessed by walking, auto or public transit.

Residential development policy 7 - Residential neighborhoods shall be served by a transportation system that provides access for pedestrian, bicycles, and vehicles while recognizing the neighborhoods physical constraints and transportation service needs:

- a. The transportation system shall promote all modes of transportation and dispersal rather than concentration of through traffic;
- b. Through traffic shall be addressed by siting street improvements and road networks that serve new development so that short trips can be made without driving;
- c. The transportation system shall provide for a network of streets fitted to the terrain with due consideration for safety, drainage, views, and vegetation.

The transportation system is already in place. This policy is met.

Residential development policy 8 - Residential areas shall be protected from more intensive land use activity in abutting zones.

This is already a residential area and a residential use is proposed.

Residential development policy 9 - Alternative Residential Development Patterns. Subdivision and zoning regulations shall provide opportunities for increased housing densities, alternative housing patterns, and reduced development costs. Development regulations shall promote residential development patterns that encourage:

- a. The use of all modes of transportation;
- b. Reduction in vehicle miles traveled and length of auto trips; and
- c. Efficiency in providing public services.

The subject proposal will provide for increased housing density in the area and is adjacent to existing RM zoning. Access to State Street will allow access to bicycle lanes and bus stops. Theoretically, public service efficiency would be achieved because public service facilities are already in place, but until capacity issues are addressed, it is unclear whether cost efficiency is feasible under this policy.

Residential development policy 10 - Requests for rezonings to higher density residential uses to meet identified housing needs will be deemed appropriate provided:

- a. The site is so designated on the comprehensive plan map;

- b. Adequate public services are planned to serve the site;
- c. The site's physical characteristics support higher density development; and
- d. Residential Development Policy 7 is met.

The hearings officer interprets this policy to relate to rezoning areas consistent with the *current comprehensive plan designation*, such as transitioning UD or UT zoned property already designated Multi-Family Residential to RM zoning and development, and not to comprehensive plan amendments. Under this interpretation, this policy is not applicable.

Residential development policy 11 - Design Standards shall be implemented to improve the quality of life of Salem's residents and promote neighborhood stability and compatibility.

City of Salem design standards are not implemented by MCC title 16, but the MCC has several development standards designed to improve livability within the UGB area.

Based on the current record in this case, it is not clear that the proposal conforms to SACP goals, intent and policies. MCC 16.43.020(A) is not proven met.

- 7. Applicant's consultant noted a 201-acre multifamily housing deficiency in the City of Salem Buildable Lands Inventory. Adding the subject property to the Multi-Family residential inventory would enhance the City of Salem's ability to meet its identified multi-family housing needs. No similar information about the single-family housing inventory was provided. Information on both housing categories is needed for proper analysis under this criterion. Without this information, comparison would be speculative. Applicant has not met the burden of proving removal of the property from the Single-Family Residential designation will have no significant affect on the need for Single-Family Residential designated property. More information is needed to determine whether MCC 16.43.020(B) is satisfied.
- 8. The requested designation and zoning on the subject site would allow uses compatible with the northern RM zoned portion of the church property, which currently borders multi-family housing. Properties east, south and west of the subject property are designated and zoned for and developed with single-family dwellings. Many neighbors living in the RS zoned area believe the use is incompatible with single-family residential use, or that applicant has not provided sufficient particularity about the project to know potential effects of the use. Applicant believes details will be worked out in "design review" which the hearings officer interprets to mean during building permitting. Both sides have valid points. This is a planning, not a development application, but if applicant has no reasonably particularized plan, the decision maker must assume a worst-case development scenario. The application has been confusing because applicant has used 124-unit and 2.88-acre property size numbers, while the transportation letter used an 80-unit worst-case scenario number, a

mismatch between a supposed worst-case scenario and proposed development. Differing unit and property size numbers can mean differing impacts on infrastructure. Applicant now proposes developing 72 units on 3.28 acres. The hearings officer recommends a 72-unit cap on the project since applicant proposed that number in its latest submissions and based arguments on that number of units. This provides the BOC a solid starting point for its evaluation of significant adverse affects.

A big initial concern was having all traffic exit onto Mahrt Avenue. At an assumed eight traffic trips per day per unit (under MCPW standards as explained by the PW representative at hearing) and the 72-unit figure now proposed by applicant, about 576 traffic trips per day would be added to a classified local street. Applicant's revised proposal to allow access from and to State Street through the church's traffic circulation system, relieves some stress on Mahrt Avenue. By limiting the number of units and opening up access onto State Street, applicant has lessened traffic problems, but with no updated evaluation of transportation affects attributable to the changes, it is difficult to tell whether the issues are resolved. Applicant should provide the BOC with a new analysis of transportation issues. There are also still questions related to drainage, water service, height, bulk and scale compatibility of the proposed use with the neighborhood, and other issues raised in the SACP goals/needs/policies evaluation in V(6) above. Applicant has done a good job of going from addressing hardly any applicable criteria to addressing more, but there are enough outstanding issues that, based on this record, the hearings officer cannot yet say that MCC 16.43.020(C) is satisfied.

9. Telephone, electric and some other utility services may be adequate, and with applicant's State Street access and 72-unit limitation, transportation services have been better addressed, but the overall adequacy of public facilities and services, as explained above, has not been proven. MCC 16.43.020(D) is not met.
10. **Based on the current record, the comprehensive plan amendment approval is not recommended.**

ZONE CHANGE

11. MCC 16.39.050 contains the following zone change criteria:
 - A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the description and policies for the applicable Comprehensive Plan land use classification.
 - B. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property.

- C. The request shall be consistent with the purpose statement for the proposed zone.
- D. If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the proposed zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.
12. An SACP analysis is provided above. The hearings officer finds additional information is needed to allow proper evaluation of the comprehensive plan amendment. If the BOC find the comprehensive plan amendment is proper, and with conditions regarding State Street access and a 72-unit limitation, the proposal would conform to the SACP, and MCC 16.39.050(A) would be satisfied.
13. As explained above, the hearings officer finds that some but not all public facilities will be adequate and available. MCC 16.39.050(B) is not satisfied.
14. Under MCC 16.04.000, the RM zone is primarily intended to provide for multiple-family dwellings on a lot, or attached dwellings on separate lots, at residential densities greater than permitted in the RL zone. Other uses compatible with residential development are also appropriate. RM zones are located in areas designated as multiple-family residential or an equivalent designation in the applicable urban area comprehensive plan and are provided with urban services. They are suited to locations near commercial office and retail zones and along collector and arterial streets.

If the comprehensive plan amendment is approved, the proposed property will be designated Multi-Family Residential and the RM zone will be appropriate. Mahrt Avenue is neither an arterial nor a collector street; it is a local street and would not be an appropriate location for multiple-family housing with access onto Mahrt Avenue only. The BOC will need to interpret this portion of MCC 16.04.000 to determine whether applicant's modified proposal, allowing access to State Street and to Mahrt Avenue, is sufficient to meet the purpose and intent of MCC 16.04.000. The hearings officer finds there is still a question about whether existing services are adequate to serve this proposed development, and does not believe simple existence of public services is sufficient to meet the purpose and intent statement, but that is ultimately an interpretation for the BOC to make.

Based on the current record, the hearings officer does not find MCC 16.39.050(C) is satisfied.

15. MCC 16.01.030 lists the SACP designation and compatible MCC zones. Applicant proposes the Multi-Family Residential designation for the subject site. The RL, RM, UT and UD zones are listed as appropriate for the Multi-Family designation. The RM zone is the least restrictive zone, and allows the most intensive densities and uses. Only multiple-family housing is proposed in this application, and if questions about significant adverse

affects related to the use are adequately answered, a limited use overlay zone under MCC chapter 16.22 should be applied to the subject site allowing only the proposed use, and lesser intensity uses. On the record as it currently stands, the hearings officer finds MCC 16.39.050(D) is not met.

16. **The proposed zone change is not recommended.**

AIRPORT OVERLAY ZONE

17. The subject property is within the Airport Overlay (AO) zone of Salem's McNary Field. The hearings officer asked applicant to address AO zone requirements. Applicant verified that the subject property is within the AO zone but did not address MCC chapter 16.21 requirements.

Under MCC 16.21.030, to carry out the provisions of the airport overlay zone, three airport development districts are provided within the airport overlay zone. The outside boundary of these districts is shown on the official zoning map. The airport master plan is used to identify height limits applicable in each district and boundaries between the districts.

Under local rules, the hearings officer may take official notice of judicially noticeable facts and ordinances, resolutions, rules and regulations of the United States, the State of Oregon, Marion County, and the incorporated cities within Marion County. To determine which districts apply here, the hearings officer takes official notice of the Federal Aviation Administration (FAA) approved airspace surfaces from the 2012 City of Salem draft Salem Airport master plan, page 291. The illustration shows the subject property is within the conical and horizontal surfaces of the Salem Airport.

18. Under 16.21.030(B), the Horizontal Surface District consists of the land, water and airspace above or below the horizontal surface as described in MCC 16.21.020. Under MCC 16.21.020(D)(3), horizontal surface means a horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. Under 16.21.030(B)(1), any use, accessory use, building and structure allowed in the underlying zone shall be permitted provided the following requirements are satisfied:

- a. Except as provided in subsection (D) of this section, no obstruction or object shall penetrate the horizontal surface as defined in MCC 16.21.020.
- b. Sanitary landfills, sewage lagoons or sewage sludge disposal shall not be permitted closer than 10,000 feet to the airport runway.

Under MCC 16.04.110, the height limit for structures in the RM zone, with some exceptions not applicable here, is 35'. Any structure resulting from

this application will not extend within the 150' horizontal surface. No sanitary landfills, sewage lagoons or sewage sludge disposal areas are requested or allowed by this application. MCC 16.21.030(B) is satisfied. Subsection (D) allows structures and trees up to 35' from ground level.

19. Under MCC 16.21.030(C), the Conical Surface District consists of the land, water and airspace above or below the conical surface as described in MCC 16.21.020. Under MCC 16.21.020(D)(5), conical surface means a surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to one for a horizontal distance of 4,000 feet.

Under MCC 16.21.030(C)(1), any use, accessory use, building or structure allowed in the underlying zone shall be permitted, provided the following requirements are satisfied:

- a. Except as provided in subsection (D) of this section no obstruction or object shall penetrate the conical surface as defined in MCC 16.21.020.

The illustration on page 291 of the 2012 City of Salem draft Salem Airport master plan shows the conical surface in the area of the subject property is at approximately 364' to 400'. Any structure developed as a result of this application will not extend within the conical surface. Subsection (D) allows structures and trees up to 35' from ground level.

MCC 16.21.030(B) and (C) are satisfied.

VI. Recommendation

It is hereby found applicant has not met the burden of proving applicable standards and criteria for approval of a comprehensive plan amendment and zone change have been met. The hearings officer **recommends** the Marion County Board of Commissioners **DENY** these applications if applicant does not provide sufficient additional information for the record to allow approval.

VII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this application after holding a public hearing. The Planning Division will notify all parties of the hearing date.

DATED at Salem, Oregon, this 19th day of October 2018.



Ann M. Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Ronald Mohr, Executive
Committee Members and
Church Council Members
Christ Good Shepherd
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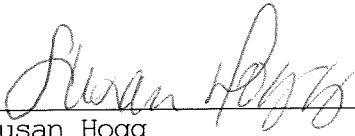
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by mailing to them copies thereof, except as specified above for agencies/parties notified by email. I further certify that said mailed copies were placed in sealed envelopes, addressed as noted above, and deposited with the United States Postal Service at Salem, Oregon, on the 19th day of October 2018, and that the postage thereon was prepaid.



Susan Hogg
Secretary to Hearings Officer