

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

****AMENDED****

DECISION OF THE HEARINGS OFFICER

**QUASI-JUDICIAL ZONE CHANGE / CLASS 3 SITE PLAN REVIEW/ CLASS 1 & 2
ADJUSTMENTS CASE NO: ZC-SPR-ADJ17-02**

APPLICATION NO: 17-106180-ZO, 17-106181-RP, 17-106182-ZO & 17-106183-ZO

NOTICE OF DECISION DATE: JUNE 30, 2017

SUMMARY: An application for a zone change, site plan review, and zoning adjustments to allow construction of an 82-room hotel on a property of approximately 2.7 acres.

REQUEST: A consolidated application containing the following requests:

- 1) A Quasi-Judicial Zone Change to change the zoning from IBC (Industrial Business Campus) to IP (Industrial Park);
- 2) A Class 3 Site Plan Review for development of an 82-room hotel;
- 3) Class 2 Adjustments to reduce landscaped setbacks from 10 feet to 0 feet from an existing accessway, from 10 feet to 0 feet from the southern property boundary, and from 10 feet to 5 feet from the eastern property boundary;
- 4) A Class 1 Adjustment to increase the building height by 15.6% from the maximum of 45 feet to approximately 52 feet.

The subject property is approximately 2.7 acres and located at 390 Hawthorne Avenue SE 97301 (Marion County Assessor Map and Tax Lot 073W36A00300).

APPLICANT: Salem Hotel Investors II LLC (Barton G. Colson, Bradley A. Colson, Colson & Colson Construction Co., Norman L. Brenden, Patrick F. Kennedy, Mark J. Burnham and Thorn Family Trust U/A 4/14/10)

LOCATION: 390 Hawthorne Ave SE / 97301

CRITERIA: Quasi-Judicial Zone Change: SRC Chapter 265.005(e)
Class 3 Site Plan Review: SRC Chapter 220.005(f)(3)
Class 2 Adjustment: SCR Chapter 250.005(d)(2)
Class 1 Adjustment: SRC Chapter 250.005(d)(1)

FINDINGS: The findings are in the attached Order.

DECISION: The Hearings Officer **GRANTED** Quasi-Judicial Zone Change / Class 3 Site Plan Review / Class 1 & 2 Adjustments Case No. ZC-SPR-ADJ17-02 subject to the following conditions of approval:

NOTICE OF DECISION

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

CITY OF Salem
AT YOUR SERVICE

- Condition 1:** The proposed development shall be consistent with the site plan included as Attachment C in the staff report, as modified by the conditions of approval.
- Condition 2:** The proposed trash enclosure shall have a concrete or asphalt pad surface that meets the thickness, slope, and stormwater discharge requirements set forth in SRC 800.055(b).
- Condition 3:** The development must provide measures to prevent damage to the solid waste service area that meet the standards set forth in SRC 800.055(e)(2).
- Condition 4:** The development must provide gates for the solid waste service area that swing a minimum of 120 degrees and have restrainers in the open and closed positions.
- Condition 5:** The development must reconfigure the parking and vehicle use area or modify the existing access easement so that no part of any parking space or curbed landscape area encroaches into the access easement. The development must provide and maintain signage and otherwise enforce a restriction on the overhang of any portion of vehicles of any kind from parking areas immediately adjoining the existing access easement, so that vehicles, bumpers, hitches, trailers, or any part thereof do not extend or intrude into the existing access easement.
- Condition 6:** The proposed development is located in the regulatory floodplain and shall obtain a floodplain development permit pursuant to SRC Chapter 601.
- Condition 7:** The building sewer must be constructed pursuant to Oregon State Plumbing Specialty Code as determined by the Building and Safety Administrator, including construction of an individual private sewer service and acquisition or dedication of utility easement(s), if necessary.
- Condition 8:** The applicant must record private reciprocal access easements for the driveways and parking lot drive aisles across the property line shared with the property at 510 Hawthorne Avenue SE.
- Condition 9:** The development must provide, within the 5-foot-wide landscaped setback at the east property line, either (1) one plant unit per 10 square feet of area, with plantings of shade trees and evergreen shrubs, or (2) one plant unit per 20 square feet of area and a 6-foot-tall sight-obscuring fence or wall along the east property line.

The rights granted by the attached decision for Class 3 Site Plan Review Case No. ZC-SPR-ADJ17-02 must be exercised by **July 18, 2021** or this approval shall be null and void.

The rights granted by the attached decision for Class 1 & 2 Adjustments Case No. ZC-SPR-ADJ17-02 must be exercised or an extension granted by **July 18, 2019** or this approval shall be null and void.

Application Deemed Complete: May 3, 2017
Public Hearing Date: May 24, 2017
Notice of Decision Mailing Date: June 30, 2017
Decision Effective Date: July 18, 2017
State Mandate Date; September 21, 2017

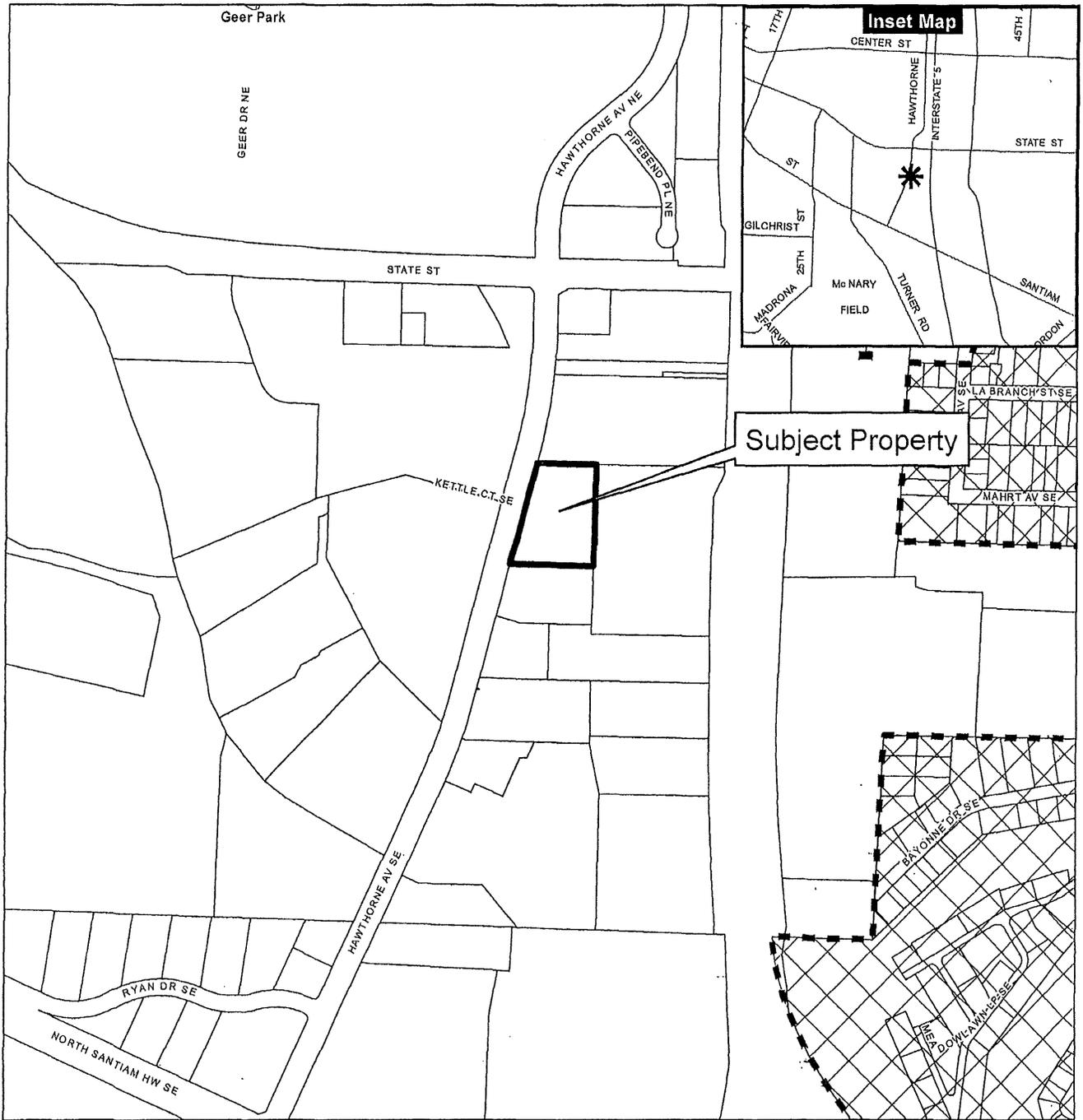
Case Manager: Pamela Cole, pcole@cityofsalem.net; 503.540.2309 *AP FOR*

This decision is final unless written appeal from an aggrieved party is filed with the City of Salem Planning Division, Room 305, 555 Liberty Street SE, Salem OR 97301, **no later than 5:00 p.m., Monday, July 17, 2017.** Any person who presented evidence or testimony at the hearing may appeal the decision. 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 in SRC Chapters 265, 220 and 250. The appeal must be filed in duplicate with the City of Salem Planning Division. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The **City Council** will review the appeal at a public hearing. After the hearing, the **City Council** may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review at the Planning Division office, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

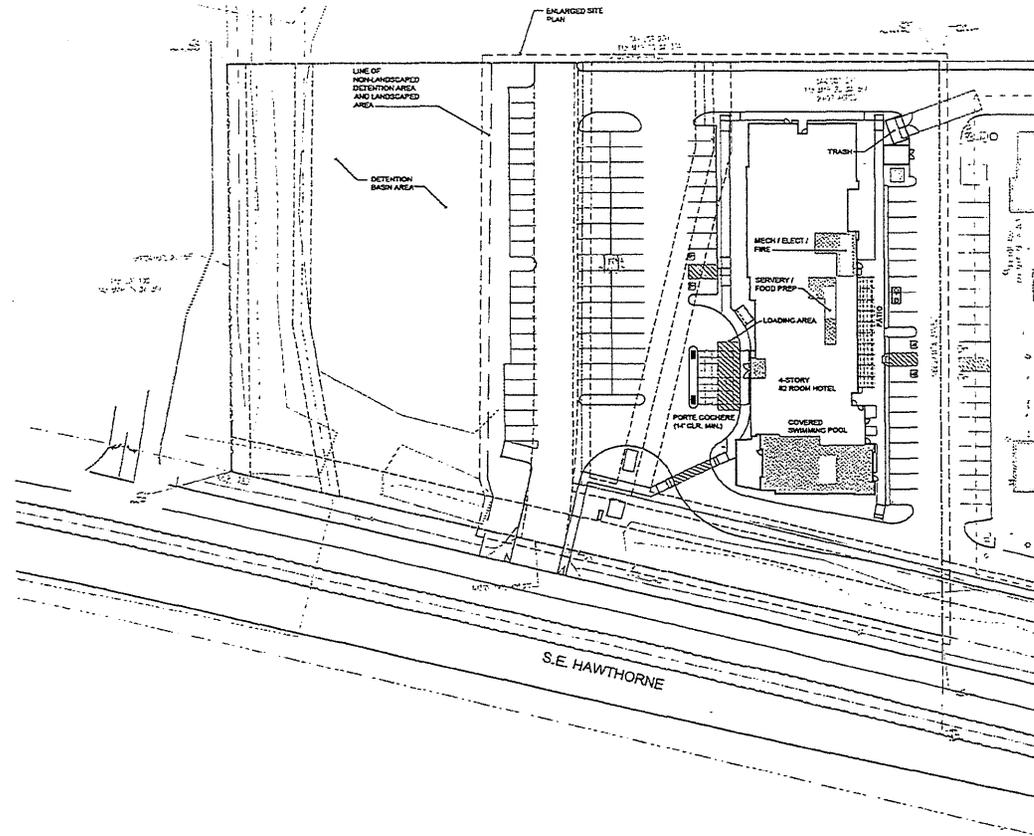
<http://www.cityofsalem.net/planning>

Vicinity Map 390 Hawthorne Avenue SE



Legend

- | | | | |
|-----------------------|---------------------------|--|--|
| Taxlots | Outside Salem City Limits | Parks |
CITY OF Salem
AT YOUR SERVICE
Community Development Dept. |
| Urban Growth Boundary | Historic District | | |
| City Limits | Schools | This product is provided as is, without warranty. In no event is the City of Salem liable for damages from the use of this product. This product is subject to license and copyright limitations and further distribution or resale is prohibited. | |
| 0 100 200 400 Feet | | | |



PROJECT STATISTICS:

Existing zone: ISC
Proposed zone: IP

PROJECT AREA:
TOTAL AREA: 3,265 Acres

Total Building Coverage: 14,459 SQ. FT. 12.3%
Drives and Parking: 41,790 SQ. FT. 35.8%
Walks & Paths: 3,360 SQ. FT. 4.5%
Landscaped Openspace: 17,700 SQ. FT. 15.0%
(Interior Landscape
Parking Area: 3,726 SQ. FT. 8.9%
Non-Landscaped
Detention Area: 38,173 SQ. FT. 32.6%
* No Street Trees Existing or Proposed Along
Hawthorne Frontage and Existing Drainage Channel.

Parking:

Standard: 60 Spaces
Compact: 22 Spaces (25 %)
Accessible: 4 Spaces
TOTAL: 86 Spaces
Bike: 4 Spaces
Loading: 1 Space

Building Calculations:

Building Footprint: 13,403 SQ. FT.
Canopy: 1,056 SQ. FT.
Building Height: 52'-2"
Number of stories: 4 Story
Number of Rooms: 82 Rooms
Gross Floor Area: 47,378 SQ. FT.

Guest Room Mix							
	1ST FL.	2ND FL.	3RD FL.	4TH FL.	RM COUNT	TOTAL TYPE	%
STANDARD SUITE	3	17	17	17	54	41	50%
ACCESSIBLE BATH SUITE	1	1	1	1	4	4	5%
STANDARD SUITE	1	1	1	1	4	4	5%
ACCESSIBLE BATH SUITE	1	1	1	1	4	4	5%
STANDARD SUITE	3	17	17	17	54	54	65%
ACCESSIBLE BATH SUITE	1	1	1	1	4	4	5%
TOTAL	10	38	38	38	144	144	100%

Site Plan

SCALE: 1" = 32'-0"
Date: 4/20/2017



lenity
architecture, inc.

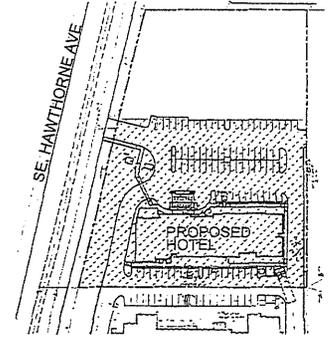
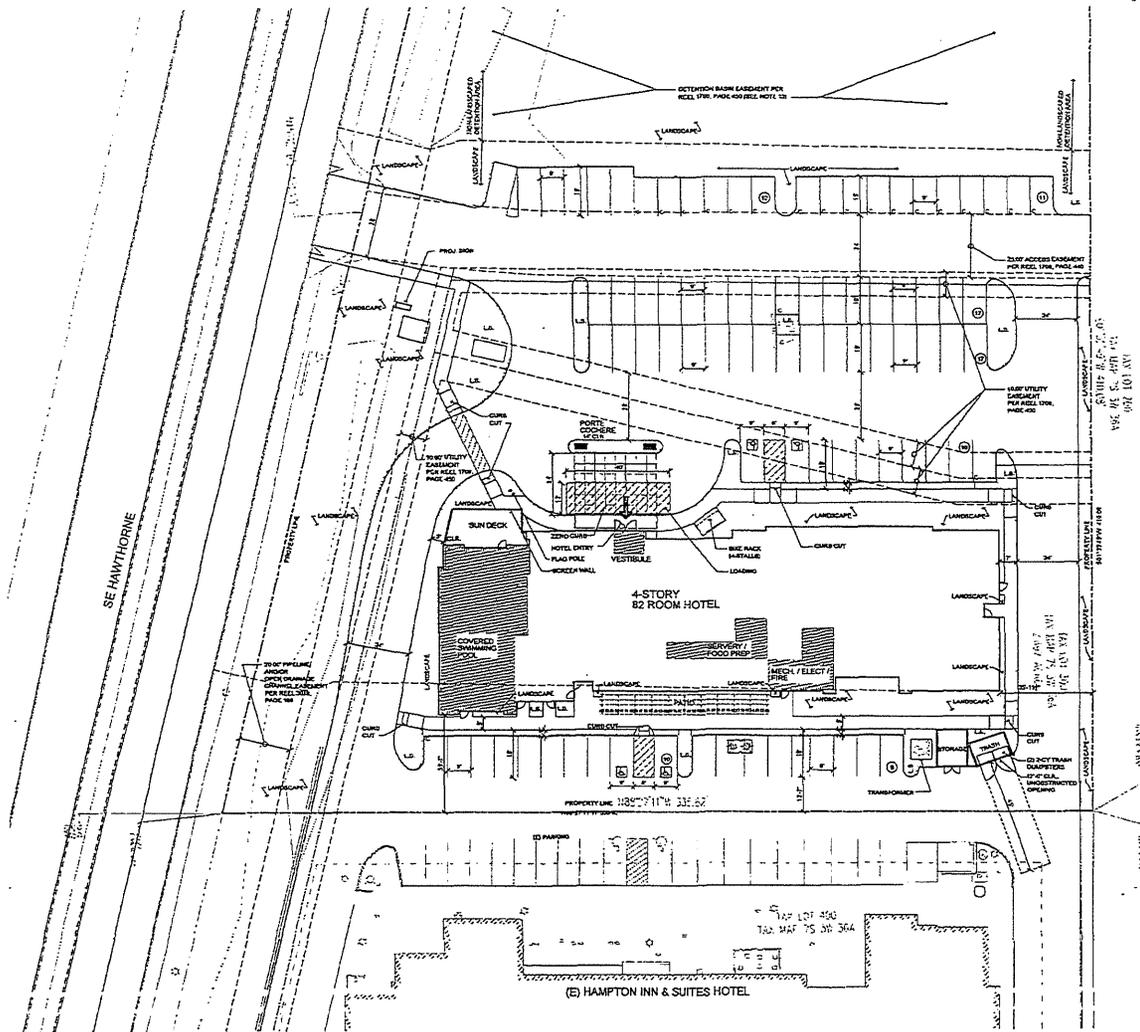
3150 Kettle Court SE, Salem, Oregon 97301
P: 503 399 1090 F: 503 399 0565 W: lenityarchitecture.com

Home2 Suites by Hilton

350 Hawthorne Ave. SE
Salem, Oregon 97301



SALEM HOTEL INVESTORS 2
5210 NE VANCOUVER MALL DR., SUITE 200
VANCOUVER, WA 98662-8210



Vicinity Map
SCALE: Not To Scale

PROJECT STATISTICS:

Existing zone: IBC
Proposed zone: SP

PROJECT AREA:
TOTAL AREA 2.88 Acres 117,482 SQ. FT.
Total Building Coverage: 14,450 SQ. FT. 12.3%
Drives & Parking: 41,790 SQ. FT. 35.6%
Walks & Paths: 5,300 SQ. FT. 4.5%
Landscaped OpenSpace: 17,700 SQ. FT. 15.0%
(Interior Landscaping)
Parking Area: 3,728 SQ. FT. 3.2%
Non-Landscaped
Disturbance Area: 38,173 SQ. FT. 32.8%
* No Street Trees Existing or Proposed Along
NewHome Frontage and Existing Drainage Channel.

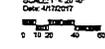
Parking:
Standard: 60 Spaces
Compact: 22 Spaces (25%)
Accessible: 4 Spaces
TOTAL: 86 Spaces
Bike: 4 Spaces
Loading: 1 Space

Building Calculations:
Building Footprint: 13,400 SQ. FT.
Capacity: 1,037 SQ. FT.
Building Height: 55'-0"
Number of stories: 4 Story
Number of Rooms: 82 Rooms
Gross Floor Area: 47,378 SQ. FT.

Guest Room Mix

	1ST FL.	2ND FL.	3RD FL.	4TH FL.	NET COUNT	TOTAL	%
QUEEN SLEET	5	32	32	32	101	123	100%
ADJUSTABLE QUEEN SLEET	1	1	1	1	4	4	100%
ADJUSTABLE QUEEN SLEET	1	1	1	1	4	4	100%
ADJUSTABLE QUEEN SLEET	2	1	1	1	5	5	100%
TOTAL	10	36	36	36	108	108	100%

Enlarged Site Plan



lenity
architecture, inc.

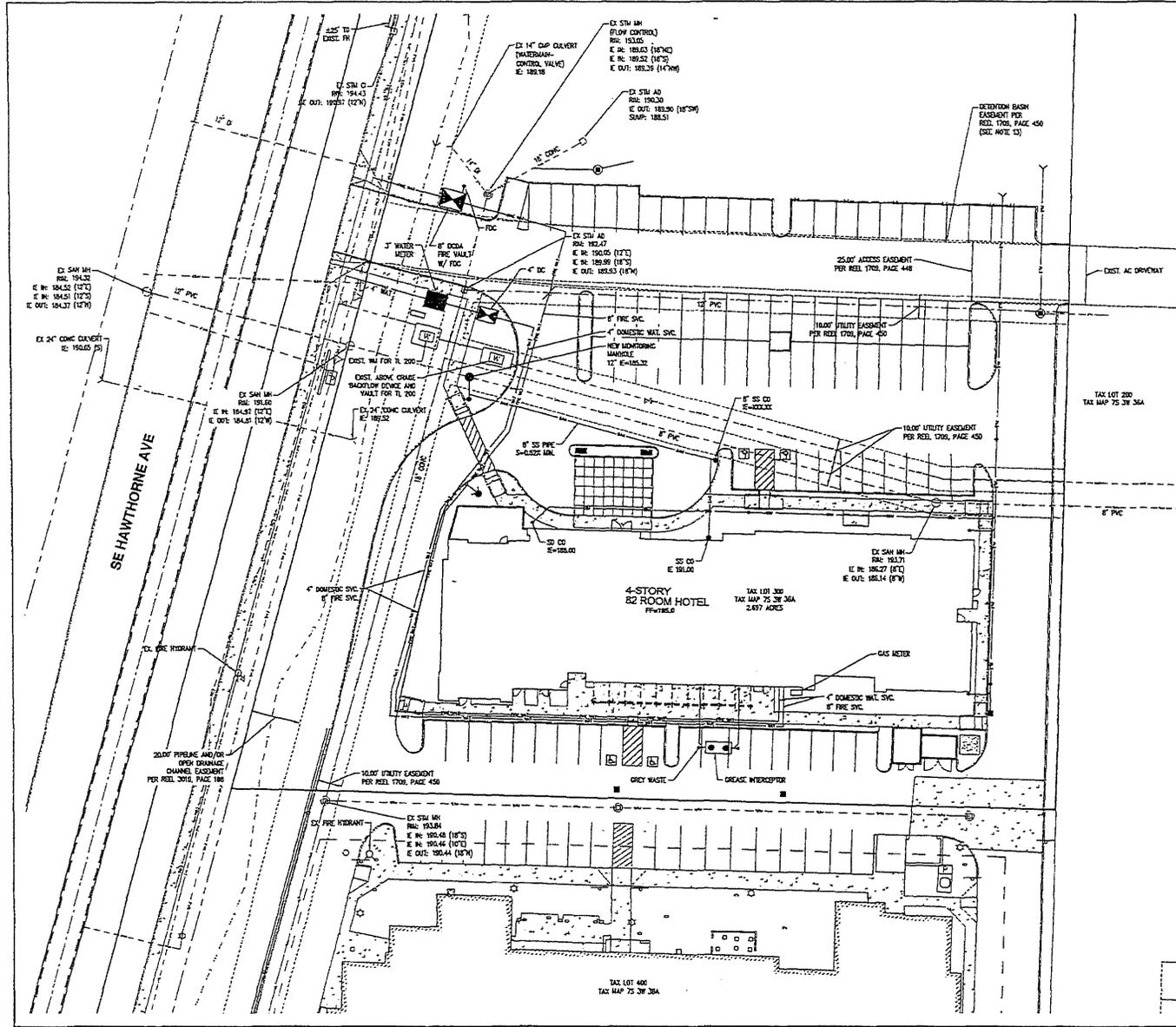
3150 Kettle Court SE, Salem, Oregon 97301
503.339.1090 503.339.0565 lenityarchitecture.com

Home2 Suites by Hilton

380 Hawthorne Ave. SE
Salem, Oregon 97301



SALEM HOTEL INVESTORS 2
1810 NE VANCOUVER MALL, DR., SUITE 200
VANCOUVER, WA 98662-8210



AKS
 ARCHITECTURAL & ENGINEERING, LLC
 1000 N. W. 10th St.
 Suite 100
 Ft. Lauderdale, FL 33304
 Phone: 561-531-1111
 Fax: 561-531-1112

HAWTHORNE AVE. SE
SALEM
OREGON
 TAX LOT 200
 TAX MAP 75 3W 36A
 TAX LOT 300
 TAX MAP 75 3W 36A

PRELIMINARY UTILITY PLAN

DESIGNED BY: [Signature]
 DRAWN BY: [Signature]
 CHECKED BY: [Signature]
 DATE: 01/15/2017
 SCALE: AS NOTED

NOT FOR CONSTRUCTION

JOB NUMBER: 4542
 SHEET: P1.0



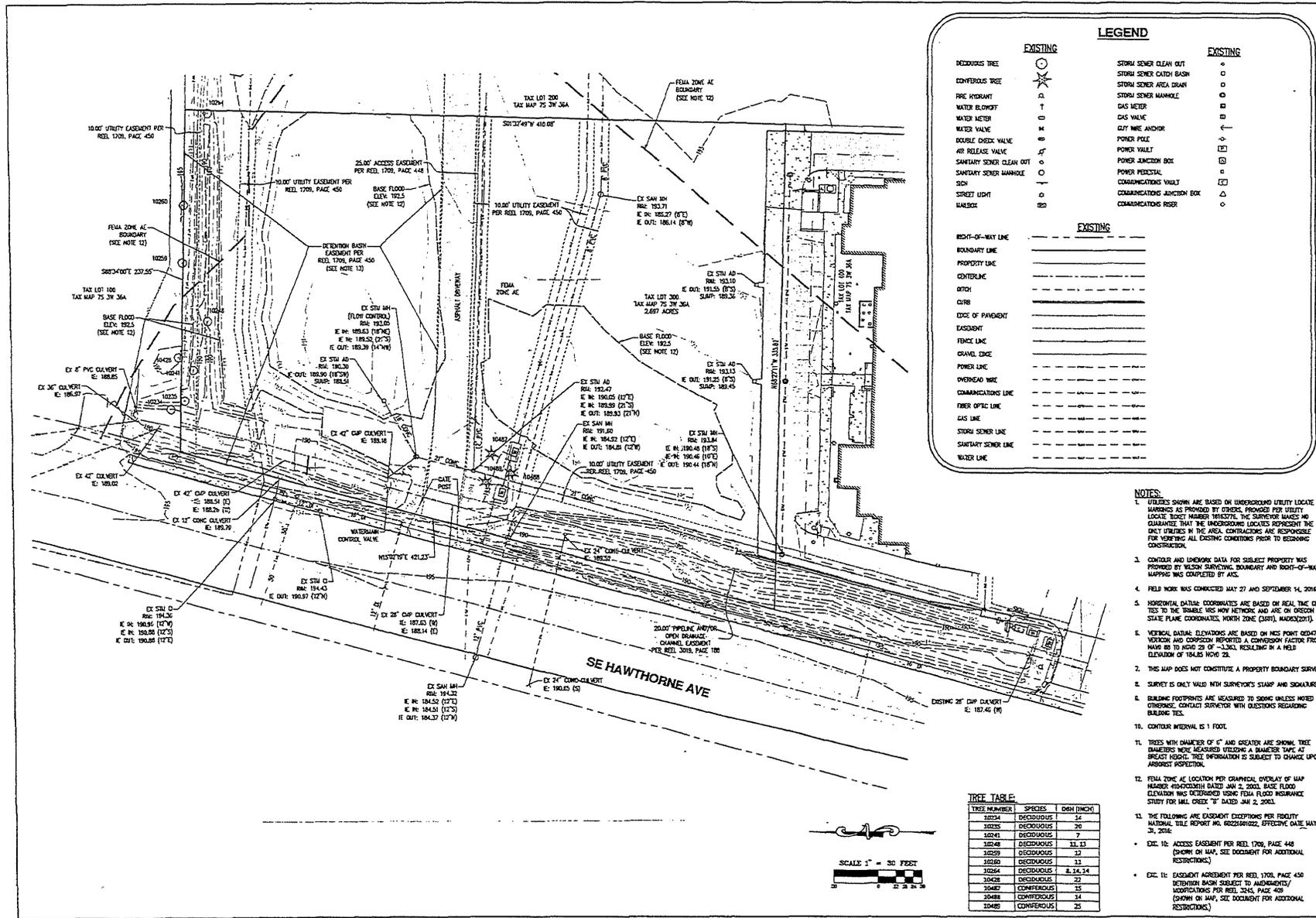


**HAWTHORNE AVENUE
SE HOTEL**
SALEM
1000 SW 10TH AVENUE, SUITE 200
SALEM, OREGON 97301

**EXISTING CONDITIONS
PLAN**
Scale: As Shown
Drawing No. 2018-001
Project: Hawthorne Ave SE Hotel
Class: 2. Adjustment and class 1 adjustment

DESIGNED BY: BSH
CHECKED BY: ASH
DATE: 3/22/2018
REGISTERED PROFESSIONAL LAND SURVEYOR
RENEWAL: 3/22/2018

JOB NUMBER: 4542
SHEET: C101



LEGEND

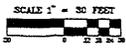
EXISTING	EXISTING
DECIDUOUS TREE	STORM SEWER CLEAN OUT
CONIFEROUS TREE	STORM SEWER CATCH BASIN
FIRE HYDRANT	STORM SEWER AREA DRAIN
WATER BLOWOFF	STORM SEWER MANHOLE
WATER METER	GAS METER
WATER VALVE	GAS VALVE
DOUBLE CHECK VALVE	GUY WIRE AND/OR
AIR RELEASE VALVE	POWER POLE
SAWNEY SEWER CLEAN OUT	POWER VAULT
SAWNEY SEWER MANHOLE	POWER JUNCTION BOX
SIGN	POWER PESTICIDE
STREET LIGHT	COMMUNICATIONS VAULT
WALDOX	COMMUNICATIONS JUNCTION BOX
	COMMUNICATIONS RISER

EXISTING
RIGHT-OF-WAY LINE
BOUNDARY LINE
PROPERTY LINE
CONTROLE LINE
DOTS
CURB
EDGE OF PAVEMENT
EASEMENT
FENCE LINE
GRAVEL EDGE
POWER LINE
OVERHEAD WIRE
COMMUNICATIONS LINE
FIBER OPTIC LINE
GAS LINE
STORM SEWER LINE
SAWNEY SEWER LINE
WATER LINE

- ### NOTES
- UTILITIES SHOWN ARE BASED ON UNDERGROUND UTILITY LOCATE MAPPING AS PROVIDED BY OTHERS. PROVIDED PER UTILITY LOCATE TOLERANCE REQUIREMENTS, THE SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND LOCATED REPRESENT THE ONLY UTILITIES IN THE AREA. CONTRACTORS ARE RESPONSIBLE FOR VERIFYING ALL EXISTING CONDITIONS PRIOR TO BEGINNING CONSTRUCTION.
 - CONTOUR AND ELEVATION DATA FOR SUBJECT PROPERTY WAS PROVIDED BY NELSON SURVEYING, SCARLETTARY AND BODD-OF-WAY MAPPING WAS COMPLETED BY AKS.
 - FIELD WORK WAS CONDUCTED MAY 27 AND SEPTEMBER 14, 2016.
 - HORIZONTAL DATUM: COORDINATES ARE BASED ON REAL TIME GPS TIES TO THE TRIMBLE VRS NOW NETWORK AND ARE ON OREGON STATE PLANE COORDINATES, NORTH ZONE (SPT), NAD83(2011).
 - VERTICAL DATUM: ELEVATIONS ARE BASED ON MEAS POINT GEODETIC NETWORK AND CORRECTION REPORTED A CORRECTION FACTOR FROM MAY BE TO ACHIEVE 29 OF -3.363, RESULTING IN A MEAN ELEVATION OF 1645.100 NA.
 - THIS MAP DOES NOT CONSTITUTE A PROPERTY BOUNDARY SURVEY.
 - SURVEY IS ONLY VALID WITH SURVEYOR'S STAMP AND SIGNATURE.
 - BUILDING FOOTPRINTS ARE MEASURED TO 50MM UNLESS NOTED OTHERWISE. CONTACT SURVEYOR WITH QUESTIONS REGARDING BUILDING TIES.
 - CONTOUR INTERVAL IS 1 FOOT.
 - TREES WITH DIAMETER OF 4" AND GREATER ARE SHOWN. TREE DIAMETERS WERE MEASURED UTILIZING A DIAMETER TAPE AT BRANCH POINT. TREE INFORMATION IS SUBJECT TO CHANGE UPON ARBORIST INSPECTION.
 - FEHA ZONE AC LOCATION PER GRAPHICAL OVERLAY OF MAP NUMBER 410-000001H DATED JAN 2, 2002. BASE FLOOD ELEVATION WAS DETERMINED USING FEHA FLOOD INSURANCE STUDY FOR HILL CREEK 7' DATED JAN 2, 2003.
 - THE FOLLOWING ARE EASEMENT CONDITIONS PER PUBLICITY NATIONAL TITLE REPORT NO. 60222161022, EFFECTIVE DATE MAY 31, 2016.
 - EXC 10: ACCESS EASEMENT PER REEL 1709, PAGE 448 (SHOWN ON MAP, SEE DOCUMENT FOR ADDITIONAL RESTRICTIONS).
 - EXC 11: EASEMENT AGREEMENT PER REEL 1709, PAGE 438 (DETERMINATION BASIN SUBJECT TO ADJUSTMENTS/ MODIFICATIONS PER REEL 3016, PAGE 409 (SHOWN ON MAP, SEE DOCUMENT FOR ADDITIONAL RESTRICTIONS)).

TREE TABLE

TREE NUMBER	SPECIES	DBH (INCH)
10224	DECIDUOUS	34
10225	DECIDUOUS	20
10241	DECIDUOUS	7
10242	DECIDUOUS	11, 13
10250	DECIDUOUS	22
10250	DECIDUOUS	11
10264	DECIDUOUS	8, 14, 24
10428	DECIDUOUS	22
10429	CONIFEROUS	15
10485	CONIFEROUS	14
10485	CONIFEROUS	25



**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

A CONSOLIDATED APPLICATION TO REZONE A 2.7-ACRE PROPERTY LOCATED AT 390 HAWTHORNE AVENUE SE FROM IBC (INDUSTRIAL BUSINESS CAMPUS) TO IP (INDUSTRIAL PARK) WITH ASSOCIATED SITE PLAN REVIEW AND ZONING ADJUSTMENTS TO ALLOW CONSTRUCTION OF A 82-ROOM HOTEL.	}	ZC-SPR-ADJ17-02 FINDINGS OF FACT, CONCLUSIONS AND DECISION
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DATE AND PLACE OF HEARING:

Wednesday, May 24, 2017, Council Chambers, Room 240, Civic Center, 555
Liberty St. SE, Salem, OR.

APPEARANCES:

<u>Staff:</u>	Pamela Cole, Planner II
<u>Neighborhood Association:</u>	No Appearance by Southeast Salem Neighborhood Association
<u>Proponents:</u>	Salem Hotel Investors II, LLC, Applicant; Joey Shearer, Land Use Planner, AKS Engineering & Forestry, LLC, Applicant's Consultant, submitted additional written testimony and exhibits to Planner Pamela Cole, dated May 31, 2017; email exchanges with Planner Pamela Cole requesting an opportunity to submit a final argument, received on June 9, 2017; final argument submitted to Pamela Cole on June 14, 2017.
<u>Opponents:</u>	Garten Services, Inc., Opponent; Andrew Sprauer, Opponent's Attorney, submitted additional testimony, dated on May 31, 2017, submitted rebuttal testimony, dated June 7, 2017.

SUMMARY OF THE APPLICATION AND HEARING

The Applicant requests a zone change, site plan review, and zoning adjustments to allow construction of an 82-room hotel on a property of approximately 2.7 acres. The City of Salem held a duly authorized and noticed public hearing on May 24, 2017. Following the close of the public hearing, the record remained open for seven additional days to allow additional written testimony, seven days to allow the parties to rebut that testimony. The record closed for testimony and rebuttal on June 7, 2017. The applicant's final written argument was received before 5:00 PM on June 14, 2017.

FINDINGS OF FACT AND CONCLUSIONS

1. Salem Area Comprehensive Plan (SACP) Designation

The Salem Area Comprehensive Plan (SACP) map designates the subject property as "Industrial." This designation indicates the location of industrial uses and the intent of the designation is to provide a variety of industrial sites for all types of industrial uses throughout the Salem urban area.

Because the proposed IP (Industrial Park) zoning is consistent with the Comprehensive Plan designation, a concurrent Comprehensive Plan Map Amendment is not required.

The Comprehensive Plan designations of surrounding properties include:

North: "Industrial Commercial"
South: "Industrial"
East: "Industrial Commercial"
West: (Across Hawthorne Avenue SE) "Industrial"

The property is outside of the Urban Service Area, but the proposed development does not precede construction of required facilities. No Urban Growth Area permit is required.

2. Zoning and Surrounding Properties

The subject property is zoned IBC (Industrial Business Campus).

The zoning of surrounding properties is described as follows:

North: IC (Industrial Commercial)
South: IBC (Industrial Business Campus)
East: IC (Industrial Commercial)
West: (Across Hawthorne Avenue SE) IP (Industrial Park)

3. Neighborhood and Citizen Comments

The subject property is located within the boundaries of Southeast Salem Neighborhood Association (SESNA). Notification was sent on May 4, 2017 to the neighborhood associations and surrounding property owners within 250 feet of the property. As of the date of the staff report, no comments had been received from the neighborhood association or property owners. The Hearings Officer notes that at the May 24, 2017, public hearing, Andrew Sprauer, representing Garten Services, Inc., submitted testimony opposing the application. During the period, the record was open for additional written testimony and rebuttal. Mr. Sprauer submitted additional written testimony dated May 31, 2017, and on June 7, 2017, submitted written rebuttal to additional written materials provided by the applicant.

4. City Department and Public Agency Comments

The Public Works Department reviewed the proposal and provided a memorandum.

The Building and Safety Division reviewed the proposal, identified no issues with the site, and commented that fire-rated construction will be required at building permit if the building is less than 10 feet to property lines.

The Fire Department reviewed the proposal, had no concerns with the zoning or adjustment request, and commented that they would have requirements at the time plans are submitted for building permits, such as fire hydrants, sprinklers, alarms, access, aerial access, vault, fire lanes, and water supply.

5. Public Agency and Private Service Providers Comments

No comments were received from public agencies or private service providers.

6. Criteria for Granting a Quasi-Judicial Zone Change

The following analysis addresses the proposed change of zoning to IP (Industrial Park) for a portion of the property.

SRC Chapter 265.005(e) provides the criteria for approval for Quasi-Judicial Zone Changes. In order to approve a Quasi-Judicial Zone Map amendment request, the Hearings Officer must make findings based on evidence provided by the applicant demonstrating that all the following criteria and factors are satisfied. The extent of the consideration given to the various factors set forth below will depend on the degree of impact of the proposed change, and the greater the impact of a proposal on the area, the greater the burden on the applicant to demonstrate that, in weighing all the factors, the zone change is appropriate.

The applicable criteria and factors are stated below in bold print. The Hearings Officer's response, analysis or finding relative to the application follows.

(A) The zone change is justified based on one or more of the following:

(i) A mistake in the application of a land use designation to the property.

The Hearings Officer notes that the applicant did not allege an error in the current land use designation and so this criterion is not applicable.

(ii) A demonstration that there has been a change in the economic, demographic, or physical character of the vicinity such that the zone would be compatible with the vicinity's development pattern.

The Hearings Officer notes that the applicant did not allege or rely on any change of the nature addressed by this criterion, and so this criterion is not applicable.

(iii) A demonstration that the proposed zone change is equally or better suited for the property than the existing zone. A proposed zone is equally or better suited for the property than an existing zone if the physical characteristics of the property are appropriate for the proposed zone and the uses allowed by the proposed zone are logical with the surrounding land uses.

The Hearings Officer notes that the application is based on the position that the zone change is justified under this criterion, without argument that one of the alternative justifications applies.

Mr. Sprauer, on Garten's behalf, disagrees with the applicant's explanation (and staff's agreement), pointing out a distinction between the proposed zoning being equally or better suited for the property, and the zoning being better because it allows the proposed development. Both the applicant and Garten provided oral testimony, written testimony, and written rebuttal regarding this criterion. The applicant also provided a final written argument that discussed this issue. The Hearings Officer appreciates the well-reasoned and clearly expressed arguments representing the applicant and Garten.

The staff agreed with the applicant's reasoning that the proposed zone is equally or better suited for the property.

The Hearings Officer notes that in its final written argument, the applicant also points out that the consideration of the zone change should be independent from the consideration of the motivation for the zone change, and also independent from the consideration of the adjustments and site plan review. The Hearings Officer agrees

that these are separate decisions. The plain language of the zone change criteria does not lend itself to review of the zone change from the standpoint of whether a specific development proposal is a desired result. That viewpoint, however, does not lead the Hearings Officer to the conclusion that the zone change should be denied. As the applicant points out in its final written argument, Garten also bases some of its arguments related to the zone change criteria more in the context of the desirability of the proposed use than in the abstract. Of course, Garten has no burden of persuasion or proof. That burden is the applicant's. The applicant has made it quite clear that the purpose of the zone change is to allow the development of a hotel with 85 rooms, which it could not do under the current zone, due to the restriction on the total number of rooms on a development site.

The Hearings Officer notes that the consideration under this criterion is whether the "the proposed change is *equally* or better suited for the property," and not whether the proposed change is "better suited for the property." The distinction between the property being "equally suited" for the proposed zone as opposed to "better suited" is a significant distinction in this case. The Hearings Officer notes that the Industrial Comprehensive Plan designation may be implemented by a number of industrial zones. For purposes of this application, the Hearings Officer need only consider the current IBC - Industrial Business Campus zone and the proposed IP-Industrial Park zone. For purposes of comparison with another possible zone, the Hearings Officer includes discussion of the IC- Industrial Commercial zone. All three of these zones have similar allowed and conditional uses, as set out in the various tables found in SRC Section 551, 552, and 553. As the staff report sets out in some detail, much of the distinction between the zones involves physical development standards, with some relatively minor differences in allowed uses.

This leaves the Hearings Officer with the question of whether the physical characteristics of the subject property are equally (or better) appropriate for the proposed IP zone. The purpose statement for the existing IBC zone indicates an intent to provide well-landscaped, attractive, and cohesive developments, while the purpose statement for the proposed IP zone indicates an intent to provide developments with a park-like setting. The Hearings Officer notes that there is nothing about the physical characteristics or features or restraints of the property that would prohibit development that could meet the standards set out in either zone, depending on the details of any given proposal. That the proposed development in this case would equally meet the intent of either the IBC or IP zone is merely an illustration of this. The Hearings Officer notes that both the IBC zone and proposed IP zone have no minimum standards for lot area, width, or depth and have a minimum requirement of 16 feet of street frontage for commercial uses; the subject property has more than 400 feet of street frontage. The application proposes development with landscaped setbacks of approximately 60 feet to the building and 30 feet to vehicle use areas, exceeding the minimum setbacks of 40 feet for buildings and 20 feet for vehicle use areas in the IBC zone and the minimum setback of 20 feet for buildings and vehicle use areas in the proposed IP zone. Under the development plan, approximately 2/3

of the site would be developed, with landscaped open space meeting the standard of 15 percent of the development site, while the stormwater detention basin in the northern 1/3 of the site will remain as additional open space without formal landscaping. Taking the proposed development plan as an illustration that the property could physically meet the development standards for the proposed zone as easily as it can meet the development standards for the current zone, the Hearings Officer finds that the property is equally suited to meet these standards.

The Hearings Officer views the question of whether the uses allowed in the proposed zone are logical with the surrounding land uses in the context of whether the property is equally or better suited for the proposed zone. The IBC zone allows a mixture of light industrial, employment, office, and small-scale commercial uses. The IP zone allows industrial uses, along with uses providing services and support to industry. Both zones allow services that support industry, including short-term commercial lodging. The Hearings Officer notes that the applicant is requesting the zone change to the IP zone because the IBC zone limits short-term commercial lodging to no more than 100 guest rooms within a development site. As noted in the staff report, because the subject property shares driveways and parking lot access aisles with the hotel property to the south (510 Hawthorne Avenue SE), the two properties are considered a single development site. The addition of the proposed 82-room hotel on the subject property would cause the number of guest rooms to exceed the limit within the development site. The Hearings Officer does not see the specific motivation of the applicant at this time as being particularly relevant to this criterion. Development plans may change for a variety of reasons. For purposes of the requested zone change, the Hearings Office sees that given the current zoning and land uses on surrounding lands, and the very similar uses permitted or conditionally permitted in proposed zone, the uses allowed in the IP zone are logical with the surrounding land uses.

Garten raises traffic impacts as an example of specific negative impact that the proposed development will have on surrounding uses. The applicant provided a number of hypothetical developments that could be built on the site, with potentially greater traffic impacts. Garten takes exception to these examples for a number of reasons, largely based on assumptions about building size, and the accompanying parking and landscaping ratios, concluding that the trip counts for the hypothetical provided by the applicant are inflated or not possible given the size and constraints on the property. The Hearings Officer notes that while the specific examples provided lead to speculation about the likelihood of that use on the site, and the expected size of the building for such a use relative to the required parking and so on, based on the lists provided in Tables 552-1 and 553-1, the Hearings Officer finds that the most intensive uses allowed under either the current zone or the proposed zone, would have a greater impact on traffic than the proposed hotel use. More to the point the Hearings Officer finds that these traffic impacts are equally likely in either zone, so that the zone change has no negative traffic impact beyond what is already possible in the current zone.

Garten testified that a number of short-term commercial lodging uses are already present on the neighboring property and in the general area, and argues that more of these establishments are not needed and therefore are not logical. Consistent with Industrial Land Inventory Policy 2(3), discussed below, the Hearings Officer views adjacent identical commercial uses as an indication that the proposed uses are logical. The Hearings Officer does not view the question of whether uses allowed in the proposed IP zone are logical with the surrounding land uses as extending to market conditions involving the supply, demand or need within permitted uses. The Hearings Officer considers the question to largely involve whether the permitted uses in a proposed zone are compatible or conflict with the existing uses on surrounding properties. When the uses are the same, or are already permitted on a property, the Hearings Officer concludes that the question of whether uses allowed in proposed zone are logical with surrounding land uses is largely resolved. In this case, the distinction between the permitted short-term commercial lodging use in the existing zone and the permitted short-term commercial lodging use in the proposed zone is the number of permitted rooms. The Hearings Officer notes that if there were not a common driveway with the neighboring hotel development, the existing zone would allow the same number of hotel rooms as proposed. On the other hand, in the context of this zone change component of a consolidated application, consideration of the logic of the zone change with surrounding uses seem to require some certainty about the use that will be developed under the requested zone. In moving from the abstract to the more concrete, the Hearings Officer does see value in considering how to give surrounding properties the assurance that the specific development will be logical, even if all allowed uses are logical in the abstract.

The Hearings Officer notes that Garten argues that consideration of the consolidated application should result in denial, because the zone change is intended to allow the number rooms, but adjustments from the development standards for setbacks and building height will be required as a result. Garten is correct, but state law and local regulations allow consolidated applications for efficiency and to provide some certainty for all parties. Nothing would prevent an applicant from seeking a serial application, where the same development would be reviewed piecemeal over time. The objection to that is typically that an applicant was not forthcoming about their intended development. The Hearings Officer does not see any inconsistency or convincing reason to deny an application just because an applicant seeks adjustments from standards through the allowed processes. The Hearings Officer does see that each component of a consolidated application must meet the required criteria separately and has reviewed this application in that manner.

Along those lines, the Hearings Officer notes that as part of this consolidated application, the applicant is requesting adjustments for reductions in the landscaped setbacks abutting the eastern and southern property lines (which would be consistent with previously approved adjustments to landscaped setbacks for the hotel development to the south), along with an increase in the maximum height of the

proposed hotel building, which would result in a height under the maximum height of 70 feet allowed in the current IBC zone. The Hearings Officer notes that the staff report recommends that the zone change should be conditioned to be consistent with the site plan. The Hearings Officer finds that in order to mitigate immediate impacts on the adjacent properties and to ensure that development of the proposed IP zone is logical with respect to the surrounding land uses, and to provide certainty to all of the parties, the following condition of approval is necessary:

Condition 1: The proposed development shall be consistent with the site plan, as modified by the conditions of approval.

The Hearings Officer finds that with the proposed condition, the application of the IP zone is consistent with the Comprehensive Plan designation for the subject property, will be appropriate for the characteristics of the subject property, and will be logical with respect to surrounding uses. The Hearings Officer concludes that with this condition, the proposal satisfies this criterion.

(B) If the zone change is City-initiated, and the change is for other than City-owned property, the zone change is in the public interest and would be of general benefit.

The Hearings Officer notes that the proposal is not a City-initiated zone change. Therefore, this criterion does not apply.

(C) The zone change complies with the applicable provisions of the Salem Area Comprehensive Plan.

The Comprehensive Plan Map designates the subject property as "Industrial." Goals and policies for Industrial Development are contained in section IV.I of the Salem Area Comprehensive Plan (SACP). The Hearings Officer notes that the applicant objects to some degree on the consideration of various goals and policies from the staff report which the applicant sees as aspirational or directed to the City for implementation through regulations. The Hearings Officer notes that even if the applicable goal and related policies are purely aspirational, they provide interpretative guidance and policy direction that are considerations in the application of code language. In particular, the Hearings Officer sees value in considering the goals and policies in review of whether the uses allowed in the requested zone are logical given the uses on surrounding properties.

Goal I. To encourage and promote industrial development which strengthens the economic base of the community by increasing traded-sector employment, especially in sectors that pay higher-than average wages, and minimizes air and water pollution.

The Hearings Officer notes that the proposed zone change would allow development of a hotel with full kitchenettes and a business center. This hotel may provide needed lodging for persons who are meeting with or engaged in short-term work assignments with nearby industrial businesses in the area, as well as lodging for general customers. The Hearings Officer finds that the proposed zone change is consistent with this Goal.

Industrial Land Inventory

Policy 1. Maintain a long-term (20 year) industrial land inventory which provides a full range of small, medium, and large parcel sizes and locations to sustain a competitive market for industrial sites. Maintaining a long-term supply of industrial land will require identifying and preserving key high value industrial land, especially areas where the City has made substantial investments infrastructure. High value industrial land has the following characteristics: it is designated for industrial uses, in flat parcels, most frequently in large parcels at least 10 acres in size, located within an industrial district, has direct access to a state highway or I-5, and is serviced or planned to be serviced with water and wastewater infrastructure.

The Hearings Officer notes that the subject property is designated for industrial uses, is flat, is located within an industrial district, is adjacent to I-5, and is serviced with water and wastewater infrastructure. However, it is only 2.7 acres, and the northern third of the property is designated as a stormwater detention facility, partially mapped as a wetland. Therefore, it is not high value industrial land. The Hearings Officer finds that the proposed Industrial Park zoning conforms to this policy.

Policy 2. Identify areas that may be appropriate for converting from industrial to commercial or other non-industrial uses over the long term. The characteristics of industrial land that may be appropriate for conversion to commercial or other non-industrial uses include some or all of the following: (1) located outside of industrial area or isolated from other industrial uses, (2) surrounded by incompatible uses (such as housing), (3) located adjacent to properties that have converted to commercial uses, (4) have limited or no access to major roads (such as arterial streets, collector streets, or highways), or (5) lacks rail access.

The Hearings Officer notes that the property has several characteristics that make it appropriate for conversion to commercial uses such as short-term commercial lodging. The property development is located in an industrial area and surrounded by a mix of light industry, as well as a business park, call center, hotel, and other commercial uses. It has access to a major arterial but has no rail access. As noted above, under this policy, the existing adjacent short term commercial lodging

use would seem to encourage conversion of this property to commercial uses. The Hearings Officer finds that the proposal conforms to this policy.

Policy 3. Ensure a sufficient short-term supply of serviced industrial land that is suitable for construction within one year of application for a building permit or request for service extension.

As noted above, development proposals may change. Under the proposed zone, the subject property will remain in the inventory of serviced industrial land, and the subject property would be available for industrial uses and other uses allowed in the IP zone. The Hearings Officer finds that the proposal conforms to this policy.

Policy 4. Monitor and report on the supply of industrial land and conversions to commercial uses on an annual basis, to ensure a long-term and short-term supply of industrial land.

The subject property will remain as industrial land. City records will be updated to reflect conversion to commercial use upon the proposed development of a hotel. The Hearings Officer finds the proposal conforms to this policy.

Employee Services

Policy 9. The zone districts shall allow appropriate on-site employee services and facilities, such as restaurants and personal service businesses, in industrial areas.

The proposed IP zone would allow eating and drinking establishments and some other employee services and facilities, but would not allow personal service businesses. The proposed zoning would allow the proposed development of a hotel with breakfast room available to guests. No restaurant open to the general public is proposed. The Hearings Officer find the proposal conforms to this policy.

Traffic

Policy 10. Traffic generated by industrial uses shall be diverted away from residential areas when feasible and should have convenient access to arterial or collector streets.

The proposed IP zone would allow industrial uses should the proposed hotel development not occur. There are no residential areas nearby, and the property has direct access to an arterial street. The Hearings Officer finds the proposal conforms to this policy.

Limited Supporting Non-Industrial Uses

Policy 12. Supporting non-industrial uses are allowed in limited amounts in industrial area. These non-industrial uses should primarily support industrial businesses or employees at industrial businesses.

The proposed IP zone would allow a limited number of non-industrial uses to support industrial businesses or their employees. These include short-term commercial lodging, retail financial services, some types of offices, laboratory research and testing, health clubs, child day care, and repair services. Garten argues that the possible conflicts with its access and the proposed hotel's parking requirements demonstrate that the proposal does not support Garten's industrial use, and that the proposal does not comply with this policy. The Hearings Officer notes that the policy does not require any particular non-industrial use to directly support any particular industrial use. The policy does not include any indication that support should be based on proximity, or that impacts on one industrial business would demonstrate that the use does not comply with the policy. The Hearings Officer views the listed permitted uses in industrial zones as a legislative determination by the City Council that those uses allowed in industrial areas by the code support industrial uses.

The Hearings Officer finds the proposal conforms to this policy.

(D) The zone change complies with applicable Statewide Planning Goals and applicable administrative rules adopted by the Department of Land Conservation and Development.

The City's adopted Comprehensive Plan implements the Statewide Planning Goals and applicable administrative rules, and is acknowledged to be in compliance with the Statewide Planning Goals. The proposed IP (Industrial Park) zoning designation is consistent with the existing "Industrial" Comprehensive Plan Map designation, its intent, and its applicable provisions. Therefore, the Hearings Officer finds the proposal satisfies this criterion.

(E) If the zone change requires a comprehensive plan change from an industrial use designation to a non-industrial use designation, or from a commercial or employment designation to any other use designation, a demonstration that the proposed zone change is consistent with the most recent economic opportunities analysis and the parts of the Comprehensive Plan which address the provision of land for economic development and employment growth; or be accompanied by an amendment to the Comprehensive Plan to address the proposed zone change; or include both the demonstration and an amendment to the Comprehensive Plan.

The comprehensive plan designation of "Industrial" is not proposed to be altered. Therefore, the Hearings Officer finds this criterion does not apply.

(F) The zone change does not significantly affect a transportation facility, or, if the zone change would significantly affect a transportation facility, the significant effects can be adequately addressed through the measures associated with, or conditions imposed on, the zone change.

The subject property has frontage on Hawthorne Avenue SE, designated as a Major Arterial in the Transportation System Plan. The proposed zoning is consistent with the existing comprehensive plan map designation; there is no change in the comprehensive plan map; the City has an acknowledged Transportation System Plan; and the proposed zoning is consistent with that Transportation System Plan. Therefore, pursuant to Oregon Administrative Rule 660-012-0060(9), the proposed zone change does not significantly affect the transportation facility and will not trigger analysis or improvements to the surrounding transportation system. Adequate urban services are available at the boundaries of the subject property. Infrastructure requirements to serve any development on the property are addressed as part of the Site Plan Review process. The Hearing Officer finds that the proposal satisfies this criterion.

(G) The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed zone.

Although the subject property is outside of the Urban Service Area, the required public facilities -- water, sewer, and storm infrastructure -- are available within Hawthorne Avenue SE and surrounding area and appear to be adequate to serve the possible uses allowed in the IP zone. Site-specific infrastructure requirements will be addressed in the Site Plan Review process in SRC Chapter 220. The Hearings Officer finds that the proposal meets this criterion.

(2) The greater the impact of the proposed zone change on the area, the greater the burden on the applicant to demonstrate that the criteria are satisfied.

The Hearings Officer notes that in order to measure the impact of this request, staff considered the area of the land to be rezoned, the neighborhood compatibility of the uses allowed under the proposed zone as compared to the current IBC zoning, and the character of the existing land uses immediately surrounding the property. The proposed zone change would affect a 2.7-acre property. Approximately 2/3 of the subject property could be developed because a stormwater detention facility occupies the northern 1/3 of the property. Many of the nearby properties are larger than this parcel.

The Hearings Officer notes that the proposed zone change to IP would allow many of the same uses as the existing IBC zoning, but would allow a size of hotel on the subject property that would be prohibited under the current IBC zoning. The development standards of the IP zone would result in landscaping, setbacks, and building heights that would be similar to and compatible with those in the surrounding zones.

Considering the relatively small area subject to the zone change, the smaller area that can be developed due to the stormwater detention area, and the minor impact on the surrounding area, the Hearings Officer finds that the applicant has met its burden and has addressed the factors listed under SRC Chapter 265.005(e) in a manner that corresponds to the anticipated impact of the zone change proposal.

Conclusion:

The Hearings Officer concludes that the proposal is consistent with and in compliance with the applicable goals and policies of the Salem Area Comprehensive Plan and the Statewide Planning Goals.

Based upon the facts and findings presented in the staff report and by the applicant, and considering the objections from Garten, the Hearings Officer concludes that the proposed zone change from IBC (Industrial Business Campus) to IP (Industrial Park) satisfies the criteria for approval and that the applicant has met the required burden of proof in demonstrating compliance with those criteria. The applicant met the burden of proof in satisfying the Statewide Planning Goals through compliance with the Salem Area Comprehensive Plan, and the evaluation of factors for a zone change defined under SRC 265.005(e), thereby meeting the approval criteria for a zone change.

7. Criteria for Granting a Class 3 Site Plan Review

Salem Revised Code (SRC) 265.005(f)(3) sets forth the criteria that must be met for the Hearings Officer to approve an application for a Class 3 Site Plan Review. The discussion below is organized with approval criteria shown in bold, followed by an evaluation of the proposed development's conformance with the criteria.

(1) **The application meets all applicable standards of the UDC;**

The Hearings Officer notes that the property is currently zoned IBC (Industrial Business Campus). The applicant has applied for a zone change to IP (Industrial Park). The Hearings Officer has concluded above that the application, as conditioned, meets the requirements for the zone change to be approved. The findings and conclusions related to the Site Plan Review are dependent upon and contingent on approval of the zone change application.

Development Standards – IP (Industrial Park) Zone:

SRC 553.005. Uses:

The permitted, special, conditional and prohibited uses in the IP zone are set forth in SRC Chapter 553, Table 553-1.

The Hearings Officer notes that the proposed development is for a hotel, classified as Short-Term Commercial Lodging. Short-Term Commercial Lodging is a permitted use in the IP zone pursuant to SRC Chapter 553, Table 553-1.

SRC 553.010(a) – Lot Standards:

Lot standards for the IP zone are set forth in SRC Chapter 553, Table 553-2. There are no minimum lot area, lot width, or depth requirements. All uses other than single family residential are required to have a minimum of 16 feet of street frontage.

The Hearings Officer notes that the subject property has approximately 420 feet of street frontage, exceeding the minimum frontage standard of 16 feet. The Hearings Officer finds this standard is satisfied.

SRC 553.010(b) – Setbacks:

The following is a summary of the applicable setback requirements.

North: Abutting the north is an IC (Industrial Commercial) zone. The north property line is an interior side property line. The applicable zone-to-zone setbacks are set forth in SRC Chapter 553, Table 553-4. Buildings, accessory structures, and vehicle use areas must be set back a minimum of 10 feet from the property line. A flag lot access easement bisects the subject property from Hawthorne Avenue SE to the east property line. For properties with a flag lot access easement, SRC 112.050(c) requires setbacks to be measured from either the property line or the most interior access easement line, whichever is most interior to the lot or parcel. In this case, the interior access easement line is the most interior. Therefore, the required minimum setback of 10 feet must be measured from the access easement line.

South: Abutting the south is an IBC (Industrial Business Campus) zone. The south property line is an interior side property line. The applicable zone-to-zone setbacks are set forth in SRC Chapter 553, Table 553-4. Buildings, accessory structures, and vehicle use areas must be set back a minimum of 10 feet from the property line.

East: Abutting the east is an IC (Industrial Commercial) zone. The east property line is an interior side property line. The applicable zone-to-zone setbacks are set forth in SRC Chapter 553, Table 553-4. Buildings, accessory structures, and vehicle use areas must be set back a minimum of 10 feet from the property line.

West: The west property boundary abuts Hawthorne Avenue SE. Buildings, accessory structures, and vehicle use areas must be set back a minimum of 20 feet.

The Hearings Officer notes that the proposal includes a vehicle use area setback of approximately 30 feet and a building setback of approximately 60 feet from the Hawthorne Avenue SE right-of-way, complying with the standard of 20 feet.

The Hearings Officer notes that the applicant has requested Class 2 Adjustments to reduce landscaped setbacks from 10 feet to 0 feet from the existing accessway, from 10 feet to 0 feet from the southern property boundary, and from 10 feet to 5 feet from the eastern property boundary.

SRC 553.010(c) - Lot Coverage; Height:

There is no maximum lot coverage for buildings and accessory structures in the IP zone. The maximum height in the IP zone is 45 feet for buildings and accessory structures.

The Hearings Officer notes that the proposal is for the building to be 52 feet in height. The applicant has requested a Class 1 Adjustment to exceed the maximum height.

SRC 553.010(d) - Landscaping:

- (1) Setbacks. Required setbacks shall be landscaped. Landscaping shall conform to the standards set forth in SRC Chapter 807.
- (2) Vehicle Use Areas. Vehicle use areas shall be landscaped as provided under SRC Chapter 806 and SRC Chapter 807.
- (3) Development Site. A minimum of 15 percent of the development site shall be landscaped. Landscaping shall meet the Type A standard set forth in SRC Chapter 807. Other required landscaping under the UDC, such as landscaping required for setbacks or vehicular use areas, may count towards meeting this requirement.

The Hearings Officer notes that the subject property is approximately 2.69 acres (117,482 square feet) in size, and the minimum 15 percent landscaping

standard requires 17,622 square feet of landscaped area. The site plan shows approximately 17,700 square feet of landscaped area which complies with the minimum 15 percent landscape standard for the development site. The site plan also includes 38,173 square feet of detention area (32.6 percent of the site) which will not be landscaped to meet the Type A standard of one plant unit per 20 square feet but which functions as additional open space. All building permit applications for development subject to landscaping requirements shall include landscape and irrigation plans meeting the requirements of SRC Chapter 807.

SRC 553.010(e) – Outdoor Storage:

- (1) Storage areas shall not be located within required setbacks.
- (2) Storage areas shall be enclosed by a minimum 6-foot-high sight-obscuring fence, wall, or hedge; or a berm.
- (3) Materials and equipment stored shall not exceed a maximum height of 14 feet above grade; provided, however, materials and equipment more than 6 feet in height above grade shall be screened by sight-obscuring landscaping.

The Hearings Officer notes that the site plan indicates a storage area outside of required setbacks and enclosed by a wall, meeting the standards.

SRC Chapter 800 – General Development Standards

SRC 800.055 – Solid Waste Service Areas

SRC 800.055(a) – Applicability.

Solid waste service area design standards shall apply to all new solid waste, recycling, and compostable services areas, where use of a solid waste, recycling, and compostable receptacle of 1 cubic yard or larger is proposed.

SRC 800.055(b) – Solid Waste Receptacle Placement Standards.

All solid waste receptacles shall be placed at grade on a concrete pad that is a minimum of 4 inches thick, or on an asphalt pad that is a minimum of 6 inches thick. The pad shall have a slope of no more than 3 percent and shall be designed to discharge stormwater runoff.

- 1) Pad area. In determining the total concrete pad area for any solid waste service area:
 - a. The pad area shall extend a minimum of 1-foot beyond the sides and rear of the receptacle.

- b. The pad area shall extend a minimum 3 feet beyond the front of the receptacle.

The Hearings Officer notes the site plan indicates a solid waste enclosure with two two-cubic yard receptacles but does not indicate the proposed design, materials, or grade of the proposed pad area within the enclosure. In order to ensure that the pad is designed to meet the requirements of the Solid Waste Service Areas ordinance, the Hearing Officer imposes the following condition:

Condition 2: The proposed trash enclosure shall have a concrete or asphalt pad surface that meets the thickness, slope, and stormwater discharge requirements set forth in SRC 800.055(b).

2) Minimum Separation.

- a. A minimum separation of 1.5 feet shall be provided between the receptacle and the side wall of the enclosure.
- b. A minimum separation of 5 feet shall be provided between the receptacle and any combustible walls, combustible roof eave lines, or building or structure openings.

The Hearings Officer notes that the adequate separation distance is provided within the enclosure. Receptacles will not be placed within 5 feet of a building or structure.

3) Vertical Clearance.

- a. Receptacles 2 cubic yards or less in size shall be provided with a minimum of 8 feet of unobstructed overhead or vertical clearance for servicing.

The Hearings Officer notes that the site plan does not indicate a roof for the enclosure.

SRC 800.055(e) – Solid Waste Service Area Enclosure Standards.

When enclosures are used for required screening or aesthetics, such enclosure shall conform to the following standards:

- 1) Front Opening of Enclosure. The front opening of the enclosure shall be unobstructed and shall be a minimum of 12 feet in width.

The width of the proposed enclosure is 12 feet, meeting the minimum standard.

2) Measures to Prevent Damage to Enclosure.

- a. Enclosures constructed of wood or chain link fencing material shall contain a minimum 4-inch nominal high bumper curb at ground level located 12 inches inside the perimeter of the outside walls of the enclosure to prevent damage from receptacles impacts.
- b. Enclosures constructed of concrete, brick masonry block, or similar types of material shall contain a minimum 4-inch nominal high bumper curb at ground level located 12 inches inside the perimeter of the outside walls of the enclosure, or a fixed bumper rail to prevent damage from receptacle impacts.

The Hearings Officer notes that the site plan does not specify the materials of the enclosure or any measures to prevent damage to the enclosure. In order to ensure that the enclosure is designed to meet the requirements of the Solid Waste Service Areas ordinance, the following condition shall apply:

Condition 3: The development must provide measures to prevent damage to the solid waste service area that meet the standards set forth in SRC 800.055(e)(2).

- 3) Enclosure Gates. Any gate across the front opening of an enclosure shall swing freely without obstructions. For any opening that is less than 15 feet in width, the gates shall open a minimum of 120 degrees. All gates shall have restrainers in the open and closed positions.

The proposed gates are 12 feet in width and the plan indicates they can swing 90 degrees. In order to ensure that the enclosure is designed to meet the requirements of the Solid Waste Service Areas ordinance, the following condition shall be required:

Condition 4: The development must provide gates for the solid waste service area that swing a minimum of 120 degrees and have restrainers in the open and closed positions.

SRC 800.055(f) – Solid Waste Service Area Vehicle Access.

- 1) Vehicle Operation Area.

- a. A vehicle operation area shall be provided for solid waste collection service vehicles that is free of obstructions and no less than 45 feet in length and 12 feet in width. Vehicle operation areas shall be made available in front of every receptacle, or in the case

of multiple receptacles within an enclosure, in front of every enclosure opening.

- b. For solid waste service areas having receptacles of 2 cubic yards or less, the vehicle operation area may be located:
 - i. Directly in front of the permanent location of the receptacle; or
 - ii. In a location where the receptacle can be safely maneuvered manually not more than 45 feet into a position at one end of the vehicle operation area for receptacle servicing.
 - c. The vehicle operation area may be coincident with a parking lot drive aisle or driveway, provided that such area is kept free of parked vehicles and other obstructions at all times except for the normal ingress and egress of vehicles.
 - d. In the event that access to the vehicle operation area is not a direct approach into position for operation of the service vehicle, a turnaround, designed and constructed pursuant to the Public Works Design Standards, shall be required to allow safe and convenient access for collection service.
- 2) Vehicle operation areas shall be designed so that waste collection service vehicles are not required to back onto a public street or leave the premises.

The Hearings Officer notes that the proposed site plan provides an unobstructed area for vehicle operation within the parking lot drive aisle that meets the standards. It is indicated on the site plan as a direct approach that would require backing across the southern property line and leaving the premises, but a 12 foot by 45-foot unobstructed area is available in front of the enclosure and entirely within the subject property that would meet the standards for maneuvering containers of 2 cubic yards or less for servicing.

- 3) Vehicle operation areas shall be paved with asphalt, concrete, or other hard surfacing approved by the Public Works Director, and shall be adequately designed, graded, and drained to the approval of the Public Works Director.

The Hearings Officer notes that the proposed site plan indicates hard surfacing for the vehicle operation area and meets the standard.

- 4) "No Parking" signs shall be placed in a prominent location on the enclosure, or painted on the pavement in front of the enclosure or receptacle, to ensure unobstructed and safe access for the servicing of receptacles.

The Hearings Officer notes that the proposal can meet the standard. Compliance will be verified at inspection.

The Hearings Officer finds that with the above conditions, the proposal meets the general development standards set forth in *SRC Chapter 800*.

SRC Chapter 803 – Streets and Right-of-Way Improvements

SRC 803.025 (Right-of-Way and Pavement Widths)

The Hearings Officer notes that the abutting portion of Hawthorne Avenue SE is designated as a Major Arterial in the TSP. The standard for this classification is a 68-foot-wide improvement within a 96-foot-wide right-of-way. The street has an approximate 68-foot improvement within a 100-foot-wide right-of-way abutting the subject property and meets the standard.

SRC Chapter 806 – Off-Street Parking, Loading, and Driveways

SRC 806.005 - Off-Street Parking; When Required.

Off-street parking shall be provided and maintained for each proposed new use or activity.

SRC 806.010 - Proximity of Off-Street Parking to Use or Activity Served.

Required off-street parking shall be located on the same development site as the use or activity it serves.

The Hearings Officer notes that the proposed site plan indicates that all required off-street parking spaces will be provided on the same development site as the proposed use and finds that the proposal meets this standard.

SRC 806.015 - Amount of Off-Street Parking.

- a) Minimum Required Off-Street Parking. The minimum off-street parking requirement for uses in the Short-Term Commercial Lodging category is 1 space per guest room or suite.
- b) Compact Parking. Up to 75 percent of the minimum off-street parking spaces required under this Chapter may be compact parking spaces.

- c) Carpool and Vanpool Parking. New developments with 60 or more required off-street parking spaces, and falling within the Public Services and Industrial use classifications, and Business and Professional Services use category, shall designate a minimum of 5 percent of their total off-street parking spaces for carpool or vanpool parking.
- d) Maximum Off-Street Parking. Unless otherwise provided in the SRC, off-street parking shall not exceed the amounts set forth in Table 806-2.

The Hearings Officer notes that the proposed new hotel would have 82 guest rooms. The minimum parking requirement for the Short-Term Commercial Lodging use is 1 space per guest room, which requires a minimum of 82 spaces. The maximum off-street parking allowance for the use under Table 806-2 is 144 spaces ($82 \times 1.75 = 143.5$). There are 86 off-street parking spaces indicated on the site plan, with 25 percent of these being compact spaces. No carpool or vanpool parking is required for this use. The proposal meets the standards.

SRC 806.035 - Off-Street Parking and Vehicle Use Area Development Standards.

- a) General Applicability. The off-street parking and vehicle use area development standards set forth in this section apply to the development of new off-street parking and vehicle use areas.
- b) Location. Off-street parking and vehicle use areas shall not be located within required setbacks.
- c) Perimeter Setbacks and Landscaping. Perimeter setbacks shall be required for off-street parking and vehicle use areas abutting streets, abutting interior front, side, and rear property lines, and adjacent to buildings and structures.

North: Abutting the north is an IC (Industrial Commercial) zone. The north property line is an interior side property line. The applicable zone-to-zone setbacks are set forth in SRC Chapter 553, Table 553-4. Vehicle use areas must be set back a minimum of 10 feet from the property line.

A flag lot access easement bisects the subject property from Hawthorne Avenue SE to the east property line. For properties with a flag lot access easement, SRC 112.050(c) requires setbacks to be measured from either the property line or the most interior access easement line, whichever is most interior to the lot or parcel. In this case, the interior access easement line is the most interior. Therefore, the required minimum setback of 10 feet must be measured from the access easement line.

South: Abutting the south is an IBC (Industrial Business Campus) zone. The south property line is an interior side property line. The applicable zone-to-zone setbacks are set forth in SRC Chapter 553, Table 553-4. Vehicle use areas must be set back a minimum of 10 feet from the property line.

East: Abutting the east is an IC (Industrial Commercial) zone. The east property line is an interior side property line. The applicable zone-to-zone setbacks are set forth in SRC Chapter 553, Table 553-4. Vehicle use areas must be set back a minimum of 10 feet from the property line.

West: The west property boundary abuts Hawthorne Avenue SE. Buildings, accessory structures, and vehicle use areas must be set back a minimum of 20 feet.

Adjacent to Buildings and Structures:

With the exception of drive-through lanes, off-street parking or vehicle use areas shall be setback from the exterior wall of the building or structure by a minimum 5 foot-wide landscape strip or by a minimum 5 foot wide paved pedestrian walkway.

The Hearings Officer notes that the proposal includes a vehicle use area setback of approximately 30 feet from the Hawthorne Avenue SE right-of-way, exceeding the minimum standard of 20 feet.

The applicant has requested Class 2 Adjustments to reduce landscaped setbacks from 10 feet to 0 feet from the existing accessway, from 10 feet to 0 feet from the southern property boundary, and from 10 feet to 5 feet from the eastern property boundary. Findings related to the adjustments are in Section 8 of this report.

- d) Interior Landscaping. Interior landscaping shall be provided in amounts not less than those set forth in Table 806-5. For parking areas over 5,000 square feet and less than 50,000 square feet in size, a minimum of 5 percent of the interior parking area shall be landscaped. One deciduous tree must be provided per 12 parking spaces.

The Hearings Officer notes that the proposed parking area is approximately 41,790 square feet in size and therefore requires a minimum of 5% of the interior parking lot area (2,090 square feet) to be landscaped. The site plan provides approximately 3,728 square feet of landscaping in the interior parking lot area, and therefore meets this requirement. A minimum of one deciduous tree is required per 12 off-street parking spaces provided.

- e) Off-Street Parking Area Dimensions. Off-street parking areas shall conform to the minimum dimensions set forth in Table 806-6.

The Hearings Officer notes that the proposed parking spaces, driveway and drive aisle for the off-street parking area meet the minimum dimensional requirements of SRC Chapter 806, except the northernmost row of parking spaces is depicted as encroaching into the 25-foot-wide access easement. Much of Garten's concern with this application is a result of the parking configuration immediately adjacent to the access easement, and a concern that the proposed development will interfere with Garten's access rights. Both the applicant and Garten have provided arguments regarding the nature, conditions and intent of the easement and easement agreement, giving Garten access rights. To a large degree, other than establishing that the easement exists and is not exclusive, disputes about the nature or operation of the easement are private civil matters, outside the scope of the land use approval process. Garten's concern about intrusion in to the access easement is legitimate, and requires a condition to ensure that the proposed development does not encroach. Similarly, Garten's concern about oversized or long wheel based vehicles, or recreational vehicles and trailers encroaching or interfering with the access easement should be addressed, so that the off-street parking area dimensions provide the practical restrictions on encroachment that they are intended to provide.

To ensure that these parking spaces do not encroach, the Hearings Officer imposes the following condition:

Condition 5: The development must reconfigure the parking and vehicle use area or modify the existing access easement so that no part of any parking space or curbed landscape area encroaches into the access easement. The development must provide and maintain signage and otherwise enforce a restriction on the overhang of any portion of vehicles of any kind from the parking areas immediately adjoining the existing access easement, so that vehicles, bumpers, hitches, trailers, or any part thereof do not extend or intrude into the existing access easement.

- f) Additional Off-Street Parking Development Standards 806.035(f)-(m).

The Hearings Officer notes that the proposed parking area must be developed consistent with the additional development standards for grade, surfacing, and drainage, striping, and marking and signage are required. Lighting shall be consistent with SRC Chapter 806.

SRC 806.040 - Driveway Development Standards.

- a) Access. Off-street parking and vehicle use areas shall have either separate driveways for ingress and egress, a single driveway for ingress

and egress with an adequate turnaround that is always available or a loop to the single point of access.

b) Location. Driveways shall not be located within required setbacks.

c) Additional Development Standards 806.040(c)-(g).

The Hearings Officer notes that the interior driveways proposed for the off-street parking area conform to the driveway location and dimensional requirements of SRC 806.040.

Bicycle Parking

SRC 806.045 – SRC 806.050

Bicycle parking shall be provided for each proposed new use or activity, and located on the same development site as the use or activity served.

SRC 806.055 – Amount of Bicycle Parking.

The greater of 4 bicycle parking spaces or 1 space per 50 rooms is required for Short-Term Commercial Lodging uses.

The Hearings Officer notes that the proposed 82-room hotel requires a minimum of four bicycle parking spaces. A four-stall bicycle parking area is depicted on the site plan and meets the bicycle parking development standards of SRC 806.060. The proposal meets the bicycle parking standards set forth in SRC Chapter 806.

Off-Street Loading Areas

SRC 806.065 - General Applicability.

Off-street loading areas shall be provided for each proposed new use or activity.

SRC 806.075 - Amount of Off-Street Loading.

A minimum of one off-street loading space is required for a Lodging use between 5,000-60,000 square feet in floor area. The minimum dimensions for the off-street loading space are 12 feet in width, 30 feet in length and 14 feet in height.

The Hearings Officer notes that the designated loading zone is shown on the site plan. The Hearings Officer finds the proposal meets the off-street loading requirements set forth in SRC Chapter 806.

Landscaping

All required setbacks shall be landscaped with a minimum of 1 plant unit per 20 square feet of landscaped area. A minimum of 40 percent of the required number of

plant units shall be a combination of mature trees, shade trees, evergreen/conifer trees, or ornamental trees. Plant materials and minimum plant unit values are defined in SRC Chapter 807, Table 807-2.

All building permit applications for development subject to landscaping requirements shall include landscape and irrigation plans meeting the requirements of SRC Chapter 807.

The Hearings Officer notes that the applicant's summary table shows approximately 17,700 square feet of landscaped areas on the subject property, requiring a minimum of 885 plant units ($17,700 / 20 = 885$). At least 40 percent of the plant units, or 354 ($885 \times 0.4 = 354$) shall be a combination of mature trees, shade trees, evergreen/conifer trees, or ornamental trees.

Landscape and irrigation plans will be reviewed for conformance with the requirements of SRC 807 at the time of building permit application review.

Natural Resources

SRC Chapter 601 – Floodplain Overlay Zone: The subject property is designated on the Federal Emergency Management Agency floodplain maps as a Zone "AE" floodplain. Public Works staff has reviewed the Flood Insurance Study and Flood Insurance Rate Maps and has determined the 100-year base flood elevation for the subject development is 192.5 feet. Development within the floodplain requires a floodplain development permit and is subject to the requirements of SRC Chapter 601, including elevation of new structures to a minimum of one-foot above the base flood elevation. An Elevation Certificate is required to verify the new structure's elevation. The Elevation Certificates shall be submitted to the City to verify each structure's elevation prior to pouring building foundations and again prior to final occupancy.

To ensure compliance, staff recommends and the Hearings Officer imposes the following condition:

Condition 6: The proposed development is located in the regulatory floodplain and shall obtain a floodplain development permit pursuant to SRC Chapter 601.

SRC Chapter 808 - Preservation of Trees and Vegetation: The City's tree preservation ordinance, under SRC Chapter 808, provides that no person shall remove a significant tree (Oregon White Oak greater than 24 inches in diameter at breast height) (SRC 808.015) or a tree or native vegetation in a riparian corridor (SRC 808.020), unless the removal is excepted under SRC 808.030(a)(2), undertaken pursuant to a permit issued under SRC 808.030(d), undertaken pursuant to a tree conservation plan approved under SRC 808.035, or permitted by

a variance granted under SRC 808.045. No heritage trees, significant trees, or trees and vegetation in riparian corridors appear to be present.

The Hearings Officer notes that the subject property is larger than 20,000 square feet. For a commercial development, SRC 808.025 requires that, prior to site plan review or building permit approval, a Tree and Vegetation Removal Permit or Tree Variance would be required to remove (1) more than 5 trees or 15 percent of the trees, whichever is greater, within a single calendar year; (2) more than 50 percent of the trees within any 5 consecutive calendar years; or (3) heritage trees, significant trees, or trees in riparian corridors.

The Hearings Officer notes that in the area to be affected by the proposed development, the existing conditions plan indicates three trees south of the existing driveway, which are not shown for retention on the site plan and are presumed to be removed. No permit would be required for removal of these trees. In the detention pond area, another six trees are indicated on the existing conditions plan and would not be removed.

SRC Chapter 809 - Wetlands: Grading and construction activities within wetlands are regulated by the Oregon Department of State Lands (DSL) and US Army Corps of Engineers. State and Federal wetland laws are also administered by the DSL and Army Corps, and potential impacts to jurisdictional wetlands are addressed through application and enforcement of appropriate mitigation measures.

The Hearings Officer notes that according to the Salem-Keizer Local Wetland Inventory (LWI), there are mapped wetlands on the subject property. The applicant was required to contact the Department of State Lands to verify if permits are required for the proposed development and was required to verify mapped wetland areas.

The applicant provided a letter from the Department of State Lands indicating that the Department had reviewed a wetland delineation report prepared by AKS Engineering and Forestry, and the applicant has applied for a joint permit application to the U.S. Army Corps of Engineers and Oregon Department of State Lands for a 0.17-acre complete fill to a low-functioning palustrine emergent (PEM) wetland and a 0.4-acre partial fill a second PEM wetland.

SRC Chapter 810 - Landslide Hazards: A geological assessment or report is required when regulated activity is proposed in a mapped landslide hazard area.

The Hearings Officer notes that the subject property contains areas mapped with two landslide hazard points, and a commercial building permit is assigned three activity points. The cumulative total of five points indicates a moderate landslide hazard risk. The applicant submitted a geotechnical report.

The Hearings Officer finds that the proposal meets this criterion.

SRC 220.005(f)(3)(2): The transportation system provides for the safe, orderly, and efficient circulation of traffic into and out of the proposed development, and negative impacts to the transportation system are mitigated adequately;

The Hearings Officer notes that Hawthorne Avenue SE meets the right-of-way width and pavement width standards per the Salem TSP; therefore no additional street improvements are required as a condition of the proposed development.

The Hearings Officer finds that the proposal meets this criterion.

SRC 220.005(f)(3)(3): Parking areas and driveways are designed to facilitate safe and efficient movement of vehicles, bicycles, and pedestrians;

The internal vehicular, pedestrian, and bicycle circulation provided for the site is adequate to provide safe and efficient movement for customers and employees of this development and the adjacent developments to the south and east. The existing driveway access onto Hawthorne Avenue SE provides for safe turning movements into and out of the property.

The Hearings Officer finds that the proposal meets this criterion.

SRC 220.005(f)(3)(4): The proposed development will be adequately served with City water, sewer, stormwater facilities, and other utilities appropriate to the nature of the development.

The Public Works Department has reviewed the applicant's preliminary utility plan for this site. Water and sewer infrastructure is available and appears to be adequate to serve the proposed development in accordance with the proposed conditions of approval and PWDS.

The applicant's proposed utility plan indicates sanitary sewer service will be provided by connecting to an existing 8-to-12-inch private sewer that extends into the subject property. Oregon State Plumbing Specialty Code prohibits common private sewer systems for multiple buildings on separate parcels of land except as authorized by the Building and Safety Administrator. At the time of building permit application, the applicant shall provide a utility plan demonstrating an individual sanitary sewer connection to a public sewer main or obtain approval from the City Engineer to convert a portion of the existing private sewer to a public system, including the acquisition or dedication of utility easement(s), if necessary. Sewer connection fees will be assessed based on the developed frontage of the proposed building and in accordance with SRC Chapter 21. To ensure compliance, staff recommends and Hearings Officer imposes the following condition:

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Condition 7: The building sewer must be constructed pursuant to Oregon State Plumbing Specialty Code as determined by the Building and Safety Administrator, including construction of an individual private sewer service and acquisition or dedication of utility easement(s), if necessary.

The applicant's engineer submitted a statement demonstrating compliance with Stormwater PWDS and SRC Chapter 71 under the provisions of SRC 71.080(c). The preliminary stormwater design proposes a connection to an existing private stormwater detention basin facility designed to provide capacity for the proposed development.

The Hearings Officer notes that with the recommended condition, the proposal meets this criterion.

8. Criteria for Granting a Class 2 Adjustment

The Hearings Officer notes that the property is currently zoned IBC (Industrial Business Campus). The applicant has applied for a zone change to IP (Industrial Park). The Hearings Officer has concluded above that the application, as conditioned, meets the requirements for the zone change to be approved. The Hearings Officer also has concluded, above, that the application, as conditioned, meets the requirements for the Site Plan Review to be approved. Approval of the Class 2 Adjustment is dependent upon and contingent on approval of the zone change application.

Garten has raised a concern under SRC 250's purpose statement, with whether the four proposed adjustments in this case can be seen as providing the flexibility to allow reasonable development where special conditions or unusual circumstance exist. Garten points out that the applicant has been forthright in explaining the motivation for each component of the consolidated application is to develop the property in a particular manner, which does not strictly comply with the development standards in either the existing or proposed zones. The Hearings Officer sees Garten's objection as being less related to the question of whether the requested adjustments allow for sufficient flexibility to allow reasonable development than to the question of whether that flexibility should only be extended under a narrower set of circumstances than the current proposal meets. From the Hearings Officer's perspective, the applicant is following the process set out in the code. The specific requests for adjustments, based on the specific numerical measures set out in the development standards are not unreasonably large, out of scale with what is allowed outright, or overly burdensome on neighboring properties. Some of the adjustments are requested because of a development pattern already established on the adjoining properties. The Hearings Officer does not view the code requirements for adjustments as simply restating common-law variance elements that were more restrictive. The language in the

purpose statement in SRC 250.001 is written in terms of as allowing deviations and providing flexibility, as long as the purposes of the standards can still be met. In general, as applied to all of the proposed adjustments except the height allowance, the Hearings Officer finds that the purpose of the development standards in question is to assist in providing the allowed uses in a park like setting. While buffers and setbacks that would otherwise apply are proposed to be reduced or eliminated, the special condition or unusual circumstance the Hearings Officer notes on this property is that roughly one third of the property is already devoted to an existing detention pond and wetlands, which certainly provide a parklike setting.

The applicant's complete written statement addressing the Class 2 Adjustment criteria is included as part of Attachment D in the staff report. The applicant has requested Class 2 adjustments to eliminate required 10-foot setbacks from an existing accessway and the southern property boundary and to reduce a required setback from 10 feet to 5 feet from the eastern property boundary.

Salem Revised Code (SRC) 250.005(d)(2) sets forth the following criteria that must be met before approval can be granted to an application for a Class 2 Adjustment.

(A): The purpose underlying the specific development standard proposed for adjustment is:

- (i) Clearly inapplicable to the proposed development; or
- (ii) Equally or better met by the proposed development.

The Hearings Officer notes that the applicant states, in summary, that the requested adjustments are necessary because the location of the existing driveway and access easement and the presence of wetlands and hydric soils are unique conditions that apply to this property.

The purpose of the required setbacks is to reduce impacts on adjacent properties by requiring separation and a landscaped buffer between them. The Hearing Officer takes note of the applicant's statement that the planned site design equally or better meets the purpose because the site has been designed to minimize impacts on sensitive areas, to align the proposed hotel with the existing hotel to the south by sharing a vehicle use area between the buildings and matching and continuing the landscaped setbacks along the eastern boundary, and to maximize efficient use of the site. The applicant states that the design minimizes impacts on the north and east and minimizes impervious cover by using the existing driveway/access easement as a parking aisle.

1. Adjustment to reduce landscaped setbacks from 10 feet to 0 feet from an existing accessway.

For this adjustment to eliminate the setback from the access easement, the Hearings Officer notes that the proposed design equally or better meets the purpose of the development standard. One purpose of the setback from the driveway easement is to provide unobstructed access to the flag lot property located east of the subject property. The proposed development will equally or better meet this purpose with the imposition of Condition 5 above, which requires that all parts of the parking spaces and curbed landscape areas must be removed from the easement.

The standard for a 10-foot landscaped setback from an access easement is also intended to provide a landscaped area for separation and minimization of impacts between the two properties. Access easements are often located near and parallel to a side property line. If the access easement line were closer to the north property line, the 10-foot landscaped setback would mitigate impacts. However, in this case, the access easement is located approximately 115 feet from the side property line to the north; a non-landscaped detention area approximately 100 feet wide and a landscaped area approximately 6 to 10 feet wide will separate the nearest proposed parking from the north property line; and the building itself would be approximately 200 feet from the north property line. The landscaped area and detention area mitigate impacts of the proposed development equally or better than a 10-foot landscaped area south of the access easement, which would provide little additional visual buffer to the adjacent property to the north.

The Hearings Officer concludes that this request meets the criterion.

2. Adjustment to reduce landscaped setbacks from 10 feet to 0 feet from the southern property boundary.

For the adjustment to eliminate the setback from the south property boundary, the Hearings Officer notes that the purpose of the development standard, to reduce impacts on adjacent properties by requiring separation between them, is inapplicable to the proposed development.

The applicant indicates that the site was designed to align with the existing hotel to the south by sharing a vehicle use area between the buildings.

When the hotel was developed on the property to the south, the staff report for Variance-Site Plan Review Case No. VAR-SPR10-02 stated that both properties were in the IBC zone; no bufferyard was required between a vacant commercial/industrial lot (the subject property at 390 Hawthorne Avenue SE) and a light impact use (the proposed hotel at 510 Hawthorne Avenue SE); one owner owned both properties; and because a common driveway was proposed across a property line separating two properties under the same ownership, the

requirement of the IBC zone for 10-foot-wide bufferyards along both sides of and parallel to the common driveway was inapplicable.

At the time of the current application, the two properties are owned by different LLCs. However, the common driveway has already been constructed across the shared property line and serves as maneuvering area for the existing parking developed for the adjacent hotel. It would be impossible to provide the 10-foot landscaped area at the property line without forcing relocation of the existing parking for the adjacent hotel. No easement currently exists for the common driveway; therefore, the 10-foot landscaped area setback in the IP zone is not applicable on the north side of the driveway.

SRC 806.040(c), setbacks and landscaping for commercial driveways, allows that perimeter setbacks and landscaping are not required when the driveway provides direct access to the street, alley, or abutting property or where the driveway is a shared driveway located over the common lot line and providing access to two or more uses. The existing paved area already serves as a parking lot drive aisle as well as a shared east-west driveway located over the common lot line and connects to driveways that also provide direct north-south access to the abutting property.

Because the properties are no longer under common ownership, the following condition is required to ensure that the shared driveways and drive aisle remain as justification for the adjustment to eliminate the landscaped setback:

Condition 8: The applicant must record private reciprocal access easements for the driveways and parking lot drive aisles across the property line shared with the property at 510 Hawthorne Avenue SE.

With the proposed condition, the Hearings Officer finds that this request meets the criterion.

3. Adjustment to reduce landscaped setbacks from 10 feet to 5 feet from the eastern property boundary.

For the adjustment to eliminate the setback from the east property boundary, the Hearings Officer notes that, with conditions, the proposed design equally or better meets the purpose of the development standard to reduce impacts on adjacent properties by requiring separation and a landscaped buffer.

The Hearing Officer notes that the applicant stated in the staff report that the site was designed to match and continue the landscaped setback from the property to the south. The proposed 5-foot-wide landscape buffer would continue northward from the southeast corner of the adjacent property at 510 Hawthorne Avenue SE to the southern edge of the flag lot accessway at 390 Hawthorne Avenue SE.

The purpose of the landscaped setback is to provide a visual buffer between the proposed hotel and the adjacent industrial-commercial use to the east. The development standard would require a 10-foot-wide area planted with one plant unit per 20 square feet, or approximately 2,080 square feet / 20 plant units = 104 plant units. The proposed landscaped area is approximately 1,050 square feet. In order for landscaping within the reduced width to equally or better meet the purpose of the standard, staff recommends the following condition:

Condition 9: The development must provide, within the 5-foot-wide landscaped setback at the east property line, either (1) one plant unit per 10 square feet of area, with plantings of shade trees and evergreen shrubs, or (2) one plant unit per 20 square feet of area and a 6-foot-tall sight-obscuring fence or wall along the east property.

With the proposed condition, the Hearings Officer notes that this request meets the criterion.

(B): If located within a residential zone, the proposed development will not detract from the livability or appearance of the residential area.

The Hearings Officer notes that the current zone is IBC and the proposed zone change filed as part of the consolidated application would result in IP (Industrial Park) zoning. This criterion does not apply.

(C): If more than one adjustment has been requested, the cumulative effect of all the adjustments result in a project which is still consistent with the overall purpose of the zone.

Three Class 2 adjustments have been requested. Therefore, this criterion is applicable. The overall purpose of the IP zone is to allow industrial uses, along with uses providing services and support to industry, in a park like setting. Although the applicant has requested reductions to the perimeter landscaping standards, the proposed development would still provide interior parking lot landscaping and development site landscaping that meet the required standards. By locating the proposed hotel as proposed, the development provides a wide setback from the street and retains an existing detention pond and wetland to the north, which resembles a natural area. The Hearings Officer concludes that the proposed adjustments result in a project that is consistent with the overall purpose of the proposed IP zone, meeting this criterion.

9. Criteria for Granting a Class 1 Adjustment

The findings and conclusions related to the Class 1 Adjustment are dependent upon and contingent on approval of the zone change application, above.

The applicant's complete written statement addressing the Class 1 Adjustment criteria is included as part of Attachment D in the staff report. The applicant has requested a class 1 adjustment to increase the maximum building height by 15.6 percent, from 45 feet, as set forth in SRC 553.010(c), Table 553-5, to approximately 52 feet.

Salem Revised Code (SRC) 250.005(d)(1) sets forth the following criteria that must be met before approval can be granted to an application for a Class 1 Adjustment. The following subsections are organized with approval criteria shown in bold, followed by findings evaluating the proposed development's conformance with the criteria.

(A): The purpose underlying the specific development standard proposed for adjustment is:

- (i) Clearly inapplicable to the proposed development; or
- (ii) Clearly satisfied by the proposed development.

The purpose of a maximum height allowance is to limit the impacts of a building's mass on adjacent properties.

The proposed height of 52 feet is significantly less than the maximum building height of 70 feet allowed in the abutting IC zone to the north and east or the maximum building height of 70 feet allowed in the abutting IBC zone to the south. The proposed building height would be the same as that approved for the existing hotel building at 510 Hawthorne Avenue SE, which was limited to a height of 52 feet through a variance approved in 2010. At the time of that variance approval, the IBC zone development standards included a height to setback ratio that would have limited that hotel to 38 feet in height without the variance; however, the Unified Development Code Amendments of 2014 eliminated the height to setback ratio and adopted a maximum height of 70 feet in the IBC zone.

The proposed building would be located more than 160 feet from the nearest IP zone across Hawthorne Avenue SE, where buildings would be subject to the 45-foot height limit. The proposed building will be set back more than twice the minimum of 10 feet from the east property line, more than three times the minimum of 10 feet from the south property line, almost 10 times the minimum of 10 feet from the access easement, approximately three times the minimum of 20 feet from the west property line, and almost 200 feet from the north property line. The additional setbacks further mitigate the impacts of the additional 7 feet of building height on the adjacent properties.

Therefore, because the proposed building height will be significantly less than that allowed on adjacent properties and the building will be set back more than the minimum distance from all property lines, the proposed development clearly satisfies the purpose underlying the maximum height requirement.

The Hearings Officer notes that the requested adjustment meets this criterion.

(B): The proposed adjustment will not unreasonably impact surrounding existing or potential uses or development.

The Hearings Officer notes that the proposed height will not be unreasonable in relation to surrounding existing or potential development. The proposed adjustment to increase the maximum height from 45 feet to 52 feet will result in a four-story hotel similar to the four-story hotel on the adjacent property at 510 Hawthorne Avenue NE, which was approved for a maximum height of 52 feet through a variance. Buildings in the adjacent IC and IBC zones may be constructed up to a maximum height of 70 feet. The visual impact of the difference between the proposed building height of 52 and the maximum height of 45 feet for buildings in the adjacent IP zone on the west side of Hawthorne Avenue SE will be minimal because of the distance between the properties.

The Hearings Officer notes that Garten argues that the proposed adjustment to the building height will create a sight obstruction to Garten's facility. The Hearings Officer notes that under the current zoning the property could be developed with a structure up to 70 feet high, providing a greater sight obstruction. In these circumstances, the Hearings Officer finds that an adjustment from 45 feet to 52 feet is not unreasonable. Garten also raises a concern that if the adjustment is approved, that additional height may interfere with Garten's ability to further develop its property. The Hearings Officer is aware of nothing in the record that indicates that the relative height of buildings on these properties would place a restriction on further development that is otherwise permitted under the code.

The Hearings Officer notes that the requested adjustment meets this criterion.

DECISION

The Hearings Officer approves the consolidated application for a Quasi-Judicial Zone Change, Class 3 Site Plan Review, and Class 1 & 2 Adjustment for property located at 390 Hawthorne Avenue SE, Salem, subject to the following CONDITIONS OF APPROVAL:

- Condition 1: The proposed development shall be consistent with the site plan included as Attachment C in the staff report, as modified by these conditions of approval.
- Condition 2: The proposed trash enclosure shall have a concrete or asphalt pad surface that meets the thickness, slope, and stormwater discharge requirements set forth in SRC 800.055(b).
- Condition 3: The development must provide measures to prevent damage to the solid waste service area that meet the standards set forth in SRC 800.055(e)(2).
- Condition 4: The development must provide gates for the solid waste service area that swing a minimum of 120 degrees and have restrainers in the open and closed positions.
- Condition 5: The development must reconfigure the parking and vehicle use area or modify the existing access easement so that no part of any parking space or curbed landscape area encroaches into the access easement. The development must provide and maintain signage and otherwise enforce a restriction on the overhang of any portion of vehicles of any kind from the parking areas immediately adjoining the existing access easement, so that vehicles, bumpers, hitches, trailers, or any part thereof do not extend or intrude into the existing access easement.
- Condition 6: The proposed development is located in the regulatory floodplain and shall obtain a floodplain development permit pursuant to SRC Chapter 601.
- Condition 7: The building sewer must be constructed pursuant to Oregon State Plumbing Specialty Code as determined by the Building and Safety Administrator, including construction of an individual private sewer service and acquisition or dedication of utility easement(s), if necessary.
- Condition 8: The applicant must record private reciprocal access easements for the driveways and parking lot drive aisles across the property line shared with the property at 510 Hawthorne Avenue SE.

Condition 9: The development must provide, within the 5-foot-wide landscaped setback at the east property line, either (1) one plant unit per 10 square feet of area, with plantings of shade trees and evergreen shrubs, or (2) one plant unit per 20 square feet of area and a 6-foot-tall sight-obscuring fence or wall along the east property line.

DATED: June 30, 2017



James K. Brewer, Hearings Officer