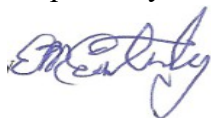


Mayor Hoy and Salem Council Members

I offer rebuttal testimony below to the staff responses to questions addressed in the first version of the Salem Transportation System Plan staff report sent to me by Julie Hanson.

Respectfully



E.M. Easterly

CITY OF SALEM Staff Report

File #: 23-431

Version: 1

Date: 11/27/2023

Item #: 4.b.

Pages 5-7

“Public Comments

As of the writing of this report, the following public comments have been received. Public comments are included in full as Attachment 4.”

Citizen Query No 1. “The declared purpose of the TSP change is to redirect Colorado from Orchard Heights to Doaks Ferry.

Staff Response: The amendment to the TSP proposes to redirect the collector street alignment from Orchard Heights to Doaks Ferry (see Attachment 1, Exhibit Map).”

E.M. Easterly rebuttal:

The statement is correct; however, reference to the Exhibit Map and all assumptions that presume Transportation System Plan maps are actual policy determinants does not conform to **SRC 64.010. Rules of construction.**¹ While the revised Attachment 1, Exhibit Map clearly updates the map previously submitted to Council on October 9th, the new map does confirm that staff is asking council to approve a collector street alignment that fails to meet the standards of SRC 803.065(a)(3).

Citizen Query No 2. “The map given to council was incorrect. Landaggard is currently a local street and in the current TSP it is only a "possible" link between Colorado and Orchard Heights. Other possible Colorado to Orchard Heights links were previously identified.

Staff Response: Landaggard Drive NW is identified as a collector street in the Salem Transportation System Plan, Map 3-1. The text acknowledges that the alignment for the collector street may be in a different location; however, the map alignment establishes Landaggard as a collector street.”

E.M. Easterly rebuttal:

1 **SRC 64.010. - Rules of construction.**

In the event of an ambiguity or conflict in the provisions or components of the comprehensive plan, the following rules of construction shall be used:

- (c) In the event of irreconcilable conflict in or between a particular component of the comprehensive plan, the *text* shall control over maps, and the more specific *text* provisions shall control over the more general. In the event of a conflict, all other components of the comprehensive plan shall take precedence over a neighborhood plan.

The staff response incorrectly and illegally places map information ahead of Salem TSP text. Landaggard Drive is not and has not, according to the Transportation System Plan text, been anything other than a local street. The Salem TSP text states: “possibly” the Colorado Drive link to Orchard Heights will be via Landaggard Drive. More over, staff has provided no evidence that affirms the future Colorado Drive alignment meets the requirements of TSP Street Policy 4.4. Please note TSP Street Policy 4.5 allows the City move the center line of a future collector street 200-feet left or right of a designated collector street center line. For staff to insist Landaggard is a designated collector street because the TSP map appears to identify Landaggard as a future collector street is a misrepresentation of fact. Text always supersedes maps.

Citizen Query No 3. “The map given to council members incorrectly extends Landaggard up to the proposed alignment of the proposed link of Colorado to Doaks Ferry.

Staff Response: The Titan Hill Subdivision (SUB-UGA-SPR-ADJ-TRV-DR23-02) establishes a street connection from the current northern terminus of Landaggard Drive NW to connect to Colorado Drive NW. If the TSP amendment is approved, then this street connection will be downgraded to a local street. If the TSP amendment is denied, then the Landaggard connection will serve as the collector street.”

E.M. Easterly rebuttal:

Reference to SUB-UGA-SPR-ADJ-TRV-DR23-02 is accurate and does include a Landaggard Drive intersection crossing of Street “A” which the staff report declares is the actual alignment of the future collector street Colorado Drive as falsely depicted on the original October 9th Attachment 1, Exhibit Map. The new Exhibit Map falsely continues the claim that Landaggard Drive is a future collector street that will revert to local street status - a status it already has. Moreover, the declaration “If the TSP amendment is denied, then the Landaggard connection will serve as the collector street” is an inaccurate and inappropriate interpretation of the Salem TSP Colorado Drive collector street text. To actually designate Landaggard Drive collector street status will require additional Council action.

Citizen Query No 4. “What is the legal basis upon which Council may modify the Salem TSP by adopting a collector street alignment that does not nor will not conform to the cited requirements of the Salem Revised Code?

Staff Response: The Salem TSP establishes the policy basis and framework for the City’s transportation system. Part of this policy framework directs that the City shall develop Street Design Standards (Street System Element Policy 2.4). The TSP recognizes (page 3-10) that there are many factors that influence the ability for a street to be constructed to the “typical” standard. Topography is noted as one possible limiting factor. For this reason, the Salem Revised Code (SRC) 803.065 includes criteria for approval of an Alternative Street Standard.”

E.M. Easterly rebuttal:

What are the Street System Policy 2.4 standards that were applied when staff elected to recommend approval of an Alternative Street Standard for street “A”? What is the legal principle in the SRC alternative standard language that allows the city to not comply with the Salem Revised Code prescribes 8% collector street slope or the Federal ADA standards? What are the circumstances that allows “difficult” to mean impossible or undesirable? Why are the Street System Policy 2.4 standards not listed in the findings Council is being asked to approve?

Citizen Query No 5. “Does the proposed future alignment of Colorado Drive meet the Polk County partition conditions providing for a future road upon the creation of Tax Lot 100?”

Staff Response: Tax lot 073W17B00100 is located outside of city limits. Polk County was provided notice of the Titan Hill development proposal (Case No. SUB-UGA-SPR-ADJ-TRV-DR23-02) and did not provide any objection or comments to the proposal or about any required street connection. Notice of the public hearing for this amendment to the Salem TSP (CA23-05) was provided to Polk County and to date no comments have been received. Any previous conditions of approval established by Polk County through a partition decision for tax lot 073W17B00100 would be under Polk County jurisdiction to enforce as that parcel is outside Salem’s city limits.”

E.M. Easterly rebuttal:

I find this staff response appropriate and legally defensible.

Citizen Query No 6. “The tentative Titan Hill subdivision includes a future Colorado Drive slope greater than 8 percent. Why? Has the Tax Lot 400 owner provided evidence that there are no alignments across the Tax Lot 400 (Titan Hill) topography that will permit Colorado Drive to maintain an 8 percent or less slope between Tax Lot 500 and Doaks Ferry Road?”

Staff Response: As part of the Titan Hill Subdivision Decision (SUB-UGA-SPR-ADJ-TRV-DR23-02), a request for an Alternative Street Standard was granted to allow the proposed Colorado Drive through the subdivision boundary to have a street grade in excess of eight percent, but not to exceed 12 percent. Salem Revised Code (SRC) 803.065 includes criteria² for approval of an Alternative Street Standard. Staff and City Council found these criteria have been met, as discussed in the analysis of the subdivision decision. As part of the request, the applicant is not “required” to provide alternative alignments. As discussed in the analysis and findings included in the Subdivision Decision, Staff and City Council find that the development site had existing natural topography that would make construction that strictly adhered to the eight percent grade standard *difficult* and approved the Alternative Street Standard pursuant to SRC 803.065(a)(3).”

E.M. Easterly rebuttal:

“Difficult” is not a SRC 803.065(a)(3) approval criteria. The criteria are “impossible” or “undesirable”. No where in the above staff response is evidence provided that explains why an 8% Colorado Drive grade to Doaks Ferry Road is impossible. No where in the May 10, 2023 staff findings or the response above does staff attempt to justify why both staff and City council approved the Alternative Street Standard that does not and did not conform to “the impossible or undesirable” SRC 803.065(a)(3) standard. Nor do the proposed findings explain how a collector street alignment that exceeds 8% can also meet the ADA 1:12 collector street sidewalk grade of just a 3-inch rise for each yard traveled.

2 SRC 803.065. - Alternative street standards.

- (a) The Director may authorize the use of one or more alternative street standards:
 - (1) Where existing development or physical constraints make compliance with the standards set forth in this chapter impracticable;
 - (2) Where the development site is served by fully developed streets that met the standards in effect at the time the streets were originally constructed; or
 - (3) Where topography or other conditions make the construction that conforms to the standards impossible or undesirable.
- (b) Authorization of an alternative street standard may require additional or alternative right-of-way width, easements, and improvements to accommodate the design and construction using the alternative standard.

The Titan Hill subdivision Alternative Street Standard for Colorado Drive Council was made in error because the adopted future alignment of Colorado Drive meets neither the impossible nor the undesirable SRC 803.065(a)(3) standard. The staff response simply declares an eight percent collector street grade is “difficult” without further explanation. Nor does the staff report provide an answer to the second Query 6 question, “are there alignments ... that will permit Colorado Drive to maintain an 8 percent or less slope?”

Therein lies the rub. The developer had already designed and engineered a local street from Doaks Ferry Road, Street “A”, to the west with a 12% grade. Re-aligning Street “A” to meet the city’s collector street 8% maximum grade would be costly and, therefore, “difficult”. Bottom line, Council is being asked to modify the Salem TSP because a developer submitted a local street layout before seeking TSP approval for a collector street alignment extension of Colorado Drive. According to the current TSP there is to be a link between Colorado Drive and Orchard Heights Road via “possibly” Landaggard Drive. Such an alignment has never been surveyed or certified. City engineers and/or planners sidestepped this problem by repeatedly implying maps supersede written Salem TSP statements to claim (1) Landaggard Drive is the single access to Orchard Heights Road and (2) agreed a Colorado Drive alignment to Doaks Ferry Road was an acceptable alternative.

The collector street slope problem was solved by proposing an Alternative Street Standard - the re-labeling of Street “A” to a collector street status. This simple label switch justified by claiming the topography is “difficult” avoids the redesign of a Street “A” to meet collector street slope requirements between the existing the Colorado Drive alignment northwest of the Titan Hill site and Doaks Ferry Road.

Why staff is asking Council to confirm an alternative collector street slope alignment based upon a verbal slight of hand - offering “difficult”³ as synonymous to “impossible or undesirable” street design standards without providing supporting evidence is yet to be answered.

Citizen Query No 7. “What is the logic of the revised Salem TSP that bisects Tax Lot 500 in such a manner that the northwest corner of that tax lot is isolated from the remaining bulk of Tax Lot 500? Since Salem roadways create new tax lot boundaries, what will happen to the narrow strip of land in Tax Lot 500 east of Colorado Drive once Colorado is extended southward into TL 500 and subsequently eastward into TL 400 (Titan Hill)?

Staff Response: The proposal is to amend the TSP collector alignment through the Titan Hill Subdivision (tax lot 073W17B00400) and to downgrade the existing portion of Landaggard Drive NW to a local street (see Attachment X, Exhibit Map). The TSP Alignment through tax lot 073W17B00500 west of the Titan Hill Subdivision is not being modified through this proposal. At this time, no development proposals for tax lot 073W17B00500 have been reviewed or approved.

³ **Finding:** Specifically, the following alternative street grade for a collector street from 8 percent to 12-percent (SRC 803/35(c)).

The development site has existing topography that makes construction that conforms to the standards difficult. Pursuant to SRC 803.035(a)(3) the Director approves the alternative street standard request for increased street grades, which allow for the use of an alternative street stand where topography or other conditions make construction that conforms to standards impossible or undesirable.

At such time tax lot 073W17B00500 develops, staff will evaluate how Colorado Drive will traverse through the future development site. If a narrow strip of land is created through dedication of the future Colorado Drive through tax lot 073W17B00500, it could become right-of-way or be evaluated for development under provisions in the Salem Revised Code, depending on its ultimate size and configuration.”

E.M. Easterly rebuttal:

The declaration that Landaggard Drive will be down graded to a local street status has been addressed under Citizen Query N0 2. Yes, it appears Tax Lot 073W17B00500 “west of the Titan Hill Subdivision is not being modified through this proposal” but, realistically, linking Street “A” to the existing surveyed Colorado Drive alignment does modify opportunities open to Tax Lot 500 in the future.

Also, the Citizen Query No 7 response does not address the specific language of TSP Street System Policy 2.7: “New development occurring outside of the USA shall provide linking streets to the existing street system per the provisions of the Salem Revised Code, Chapter 66, Urban Growth Management Program.” “... shall provide linking streets ... ” is a prescriptive requirement not fully addressed in the generalities offered by the staff response. Does “shall provide linking streets” include links to roadways outside the Salem city-limits? Why or why not? Has the owner of Tax Lot 073W17B00500 had an opportunity to review the adopted tax lot 400 Colorado Drive via Street “A” alignment which will bisect Tax Lot 500? Why is the out-of-date procedure detailed in Street System Policy 2.7 not addressed?

Why have Salem planners and engineers ignored TSP Street System Policy 2.7 or have not asked Council to update the Salem Revised code Urban Growth Management Plan to conform to the Oregon Revised Statutes years ago is a mystery. Why is Salem staff not addressing the Salem revised code sidewalk ADA and roadway slope legal obligations before asking Council to approve a collector street alignment that does not appear to meet the Salem Revised Code *American with Disabilities Act* adopted requirements?

Citizen Query No 8. “How will the proposed Salem TSP modification implement the transition between the current Colorado Drive 68-foot R-O-W and the proposed TL 400 (Titan Hill) Colorado Drive 60-foot R-O-W?

Staff Response: Salem Revised Code (SRC) Chapter 803 stipulates that the minimum right-of-way width required for a collector street classification is 60-feet (SRC 803.025(a)). The right-of-way width through the Titan Hill Subdivision will be 60-feet. The right-of-way may taper from the 68-foot-wide portion down to the 60-foot-wide portion. Design of the street will be evaluated through future review of development proposed on tax lot 073W17B00500 that would be impacted. The proposed TSP amendment does not modify minimum right-of-way width requirements established in SRC Chapter 803.”

E.M. Easterly rebuttal:

I find this staff response appropriate and legally defensible.

Citizen Query No 9. “Under what circumstances may the City of Salem adopt and/or modify the Salem TSP that approves a collector street alignment that does not meet Federal ADA transportation facility requirements?

Staff Response: All City streets (collectors and others) are required to follow ADA standards at the

time they are constructed or improved.”

E.M. Easterly rebuttal:

I thank staff for this affirmative statement, but remain confused. How can Street “A” with a slope of greater than 8% also include sidewalks with a slope of less than the mandated 1:12 ADA slope requirement?

Until staff provides clear and convincing evidence that the designation of Street “A”, which has been affirmed as the future Colorado Drive alignment to Doaks Ferry Road includes sidewalks with travel slopes of less than 8.33 percent, I request Council suspend approval of Ordinance Bill 15-23 and keep the record open until staff provides legally appropriate findings.