

BEFORE THE CITY COUNCIL OF THE CITY OF SALEM

**IN THE MATTER OF AMENDING) ORDER NO. 2018-07 CPC-ZC-UGA 18-04
THE DECISION OF THE PLANNING) COMPREHENSIVE PLAN CHANGE /
COMMISSION FOR) ZONE CHANGE / URBAN GROWTH
COMPREHENSIVE PLAN CHANGE /) PRELIMINARY DECLARATION
ZONE CHANGE / URBAN GROWTH) CASE NO. CPC-ZC-UGA18-04
PRELIMINARY DECLARATION)
CASE NO. CPC-ZC-UGA18-04)**

This matter coming regularly for hearing before the City Council, at its September 24, 2018, meeting, and the City Council, having received evidence and heard testimony, makes the following findings, and adopts the following order amending the decision of the Planning Commission in Comprehensive Plan Change/Zone Change/Urban Growth Preliminary Declaration Case No. CPC-ZC-UGA18-04, and approving the application.

PROCEDURAL FINDINGS:

- (a) On July 19, 2018, the Planning Commission issued an order approving a consolidated application for a Comprehensive Plan Change/Zone Change/ Urban Growth Preliminary Declaration (Case No. CPC-ZC-UGA18-04) subject to conditions of approval.
- (b) On August 3, 2018, Mark Shipman, on behalf of Mark E. Krautmann, filed a timely appeal pursuant to SRC 300.1010.
- (c) On August 27, 2018, the City Council opened a hearing to receive evidence and testimony regarding the application and immediately continued the public hearing to September 24, 2018 at the applicant's request. On September 24, 2018, the City Council received evidence and testimony regarding the application; the public hearing was closed on September 24, 2018. The City Council conducted deliberations on September 24, 2018 and voted to amend the decision of the Planning Commission.

SUBSTANTIVE FINDINGS:

The City Council adopts the following as findings for this decision:

- (a) The analysis, conclusions and findings in, and incorporated into, the July 19, 2018 Planning Commission Order and the analysis in the Applicant's August 24, 2018 Response to the Appeal are adopted as the Findings of the Salem City Council ("Findings") in support of this decision.
- (b) Based upon the Findings as supplemented herein, the Comprehensive Plan Change, as proposed and subject to conditions adopted in the Planning Commission's July 19, 2018 decision order, meets all of the criteria for a minor comprehensive plan map amendment approval set forth in SRC 64.025(e)(2).
 - 1) Given the residential and commercial development that is approved for, and has occurred in the area surrounding the property, Applicant provided sufficient evidence to meet the flexible standard set forth in SRC 64.025(e)(2). The evidence of existing and proposed development in the area demonstrates a change from Community Service-

Government to Industrial-Commercial Comprehensive Plan Map designation will not have a significant impact on the area and Applicant provided sufficient evidence to demonstrate the criteria are satisfied given the level of impact of the proposed amendment.

(c) Based upon the Findings, as supplemented herein, the Zone Change, as proposed and subject to conditions adopted in the Planning Commission's July 19, 2018 decision order, meets all of the criteria for a zone change set forth in SRC 265.005(e), with the following additional condition to reduce possible conflicts between future development on the subject property and uses on the nearby properties due to agricultural practices on those nearby properties:

Condition 16: Prior to any development activities on the property, the property owner shall sign and record on the real property, the following declaratory statement recognizing the provisions of ORS 30.936 and 30.937. In addition, the property owner shall provide a copy of this declaratory statement to any tenants who buy/lease any residential unit on the property:

The property herein described is situated in or near a farm or forest zone or area in Marion County, Oregon, where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws that ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantors, including their heirs, assigns and lessees do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling, structure or use in this area, and acknowledge the need to avoid activities that conflict with nearby farm and forest uses and practices. Grantors will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937. This covenant will run with the land and is intended to and hereby bind owners, their successor, heirs, assigns and lessees.

- 1) Given the residential and commercial development that is approved for, and has occurred in the area surrounding the property, Applicant provided sufficient evidence to meet the flexible standard set forth in SRC 265.005(e)(2). The evidence of existing and proposed development in the area demonstrates a change from PH to IC Zoning will not have a significant impact on the area and Applicant provided sufficient evidence to demonstrate the criteria are satisfied given the level of impact of the proposed zone change.

(d) Based upon the Findings as supplemented herein, the request for an Urban Growth Preliminary Declaration, as proposed sufficiently identified potential uses to allow consideration of the request and determination of required facilities for development and subject to conditions adopted in the Planning Commission's July 19, 2018 decision order, meets all of the criteria for an Urban Growth Preliminary Declaration determination set forth in SRC 200.025(d).

- (e) Testimony submitted by Mark Krautmann (the appellant) and Jolly Krautmann for the June 19, 2018 Planning Commission hearing and included in the record for the appeal asserts that development of the subject property would create conflict with adjoining exclusive farm use (EFU) activities such as dust from lime applications, application of pesticides and herbicides, and use of propane cannons because neighbors on the subject property may not understand or may misunderstand these practices. Testimony submitted by Mark Hoyt on behalf of the appellant at the September 24, 2018 City Council hearing noted the applicant did not object to the adoption of a condition requiring a declaratory statement recognizing the provisions of ORS 30.936 and 30.937 to be recorded on the subject property and provided to future tenants who buy/lease any residential unit on the subject property. The City Council adopted the requested condition as a condition of the zone change.
- (f) The City Council therefore AMENDS the application for a Comprehensive Plan Change/Zone Change/Urban Growth Preliminary Declaration, as proposed and subject to conditions adopted in the Planning Commission's July 19, 2018 order, with the following additional condition of the zone change:

Condition 16: Prior to any development activities on the property, the property owner shall sign and record on the real property, the following declaratory statement recognizing the provisions of ORS 30.936 and 30.937. In addition, the property owner shall provide a copy of this declaratory statement to any tenants who buy/lease any residential unit on the property:

The property herein described is situated in or near a farm or forest zone or area in Marion County, Oregon, where the intent is to encourage, and minimize conflicts with, farm and forest use. Specifically, residents, property owners and visitors may be subjected to common, customary and accepted farm or forest management practices conducted in accordance with federal and state laws that ordinarily and necessarily produce noise, dust, smoke and other impacts. The grantors, including their heirs, assigns and lessees do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a dwelling, structure or use in this area, and acknowledge the need to avoid activities that conflict with nearby farm and forest uses and practices. Grantors will not pursue a claim for relief or course of action alleging injury from farming or forest practice for which no action is allowed under ORS 30.936 or 30.937. This covenant will run with the land and is intended to and hereby bind owners, their successor, heirs, assigns and lessees.

NOW, THEREFORE, IT IS HEREBY ORDERED BY THE CITY COUNCIL OF THE CITY OF SALEM, OREGON:

Section 1. The Planning Commission's July 19, 2018 decision for Comprehensive Plan Change/Zone Change/ Urban Growth Preliminary Declaration Case No. CPC-ZC-UGA18-04, together with the conditions of approval contained therein, as supplemented herein and by the analysis in the Applicants

August 24, 2018 Response to the Appeal is adopted as the Decision of the City Council as hereby amended.

Section 2. This order constitutes the final land use decision and any appeal must be filed with the Oregon Land Use Board of Appeals within 21 days of the date that notice of this decision is mailed to persons with standing to appeal.

ADOPTED by the City Council this 22nd day of October, 2018.

ATTEST:

City Recorder

Checked by: Pamela Cole