

From: [Call, Brandi](#)
To: [CityRecorder](#)
Cc: [citycouncil](#); [Cahn, Bruce H.](#); [Tran-Caffee, Cozette](#)
Subject: Pioneer Alley LLC | Public Comment on File # 20-470
Date: Monday, January 11, 2021 4:03:47 PM
Attachments: [Pioneer Alley - Ltr to Salem City Council for 2021-01-11 hearing.pdf](#)

Sent on behalf of Bruce Cahn.

The attached is a public comment/written testimony submission in opposition to File # 20-470.



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BRUCE H. CAHN
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January 11, 2021

VIA ELECTRONIC MAIL

Salem City Council
555 Liberty St SE
Room 220
Salem, OR 97301
E-Mail: cityrecorder@cityofsalem.net

Re: Public Comment on File # 20-470, entitled *Additional information regarding a potential path connecting Candalaria and Fairmount neighborhoods and involving Pioneer Cemetery, City View Cemetery, or both* (the "Path")

Dear Salem City Council:

This office represents Pioneer Alley LLC ("Pioneer"), which owns the planned unit development known as Pioneer Alley.¹ We write on Pioneer's behalf to call attention to significant cost and other related issues with the above-referenced Path that were not addressed in the City's Staff Report dated December 14, 2020, File # 20-470 (the "Staff Report").

As we understand the present posture of this matter, City Council passed a motion on April 27, 2020 requesting that staff prepare a report summarizing options for a pedestrian connection between the neighborhoods west of Commercial Street S, which are currently divided by the two cemeteries in that area (the City-owned Pioneer Cemetery and the privately owned City View Cemetery). Staff prepared a report dated June 22, 2020 (File # 20-223) which summarized six (6) options for such connection (including the option of doing nothing).

At its August 10, 2020 meeting, City Council directed staff to provide further information regarding two potential path routes identified in the prior report. Specifically, City Council asked for a "planning-level estimate of costs" for constructing the Path through either of the two cemeteries. City Council is now assessing two potential routes for the Path, the first

¹ The Pioneer Alley PUD encompasses the real property located at 470 and 490 Rural Avenue South, and 2020, 2030, and 2040 John Street South.

running through Pioneer Cemetery² and the second running through City View Cemetery.³ Both options are analyzed in the Staff Report, including the “planning-level costs estimates” for each.

However, the Staff Report is based on certain inaccurate but material information, would require obtaining an easement from Pioneer over its private driveway in order to connect John Street to the cemetery properties, and purposefully excludes expenses which would materially increase the cost of the Path well beyond what is reasonable for the City to expend on the project.⁴ Further, both options would require significant excavation and stormwater system costs that have not been adequately addressed. These overlooked cost items could easily increase the estimates for the Path shown in the Staff Report many times over.

Accordingly, we submit the following in order to correct and make more complete the record for City Council’s deliberation.

The City does not have an easement along the southern boundary of 490 Rural Avenue South, and Pioneer has no desire to voluntarily grant such an easement

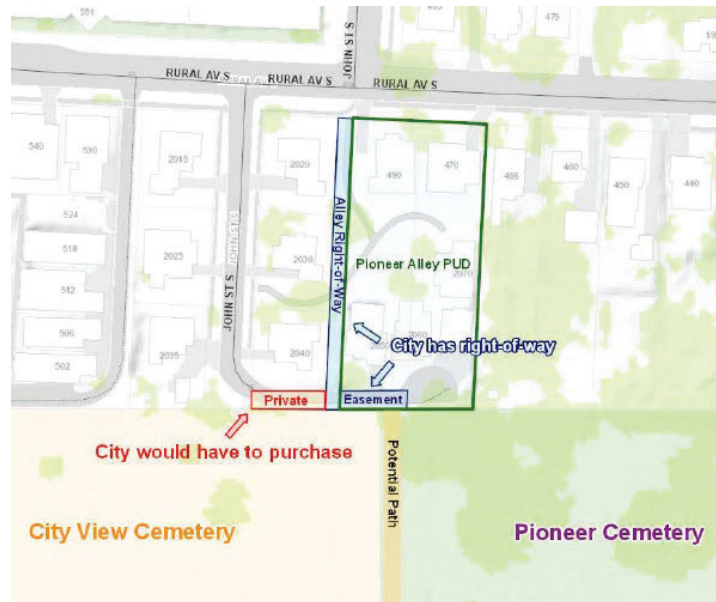
First and foremost, throughout this planning process the City has assumed that it has a valid pedestrian easement along the southern boundary of 490 Rural Avenue South (“490 Rural”). The location of this purported easement is most easily identified by reference to the June 22, 2020 Staff Report⁵ regarding the Path:

² Shown in Attachment 2 to (and identified as “Option 5” in) the Staff Report.

³ Shown in Attachment 3 to (and identified as “Option 6” in) the Staff Report.

⁴ Specifically, among other omissions, at the urging of City Council, staff purposefully excluded the cost of “acquiring a property or purchasing an easement or exercising its right of eminent domain and condemning a property for the purpose of obtaining the necessary easement.” Staff Report, page 4. As discussed in greater detail below, this omission significantly understates the estimated cost of the Path.

⁵ This image is a portion of Attachment 3 to the June 22, 2020 Staff Report.



The City believes that this purported pedestrian easement was reserved by Ordinance No. 15-12 (passed November 5, 2012). The ordinance was intended to vacate a purported alley right-of-way along the north property line of Pioneer and City View Cemeteries, with the reservation of “a non-exclusive, perpetual pedestrian only easement for the use and enjoyment of the public[.]”

However, the deed referenced in both the Staff Report and Ordinance 15-12 (Marion County, Volume 314, Pages 8, 9) does not provide the access easement that the staff relied on in connection with these options. Rather, while there is a grant to the City through a trust deed recorded in 1940 for a 12 foot “alley” that runs north to south on the west side of 490 Rural, that alley does not continue easterly along the southern boundary of 490 Rural.

Pioneer had previously also (mistakenly) assumed that the City’s claimed right-of-way was existing and valid. Nevertheless, we more recently reviewed the relevant recorded title documents and have not identified any instrument conveying a right-of-way going east to west along the southern boundary of 490 Rural to the City.⁶ Rather, the deed referenced in the Staff Report creates only a north/south passage. Specifically, the trust deed conveyed the following property—

Beginning at the Northeast corner of the following described property:

⁶ We can provide the Title Plant Records Reports relative to this matter to City Council if requested, but the salient aspects are summarized in this submission.

“Beginning at a point 30 feet South of the center line of Rural Street, extended Westerly from Commercial Street, 1504 feet Westerly of the center line of Commercial Street; thence Southerly 243.3 feet; thence Westerly 176.6 feet; thence Northerly 251.3 feet to a point 30 feet South of the center line of Rural Street; thence Easterly 176.4 feet to the Place of Beginning.”

Thence Southerly along the East line of the above-described property to the Southeast corner; thence 12 feet Westerly along the South line; thence Northerly parallel to the East line to a point 12 feet Westerly of the Northeast corner of said above-described property; thence Westerly to the Place of Beginning.⁷

Accordingly, the City has never owned a right-of-way along the southern boundary of 490 Rural, and Ordinance No. 15-12 could not have vacated that nonexistent right-of-way or reserved a pedestrian easement across the same area.⁸ **The Ordinance references a survey, which is not sufficient to establish legal ownership by a conveyance of rights.**

In our initial discussion with the City Attorney and staff regarding this issue, they were unable to identify how the alleged east/west right-of-way was initially conveyed to the City, which is also consistent with public statements by City representatives.⁹

As you are likely aware, Pioneer opposes the plans for the Path, and does not intend to voluntarily grant an easement across any portion of its property for those purposes. If the City pushes forward with these plans, obtaining the required access rights will involve a condemnation action, payment to Pioneer for the property taken and for the severance damages to the remaining property,¹⁰ and the high likelihood of paying Pioneer’s attorney fees. Further, if the City persists in its unsupported claim of an easement along the southern boundary of 490

⁷ In plain English this describes a 12 ft. wide trapezoid running parallel to the west side of 490 Rural, from Rural Ave S to the north boundary of City View Cemetery.

⁸ Ordinance 15-12 references the same trapezoid alley found in Volume 314, Pages 8 and 9 of the Marion County Records, but does not reference any further recorded documents in connection with the purported right of way.

⁹ In an article in the Statesman Journal, the City’s Transportation Planning manager was reported as advising that the City has “no legal egress to” the Pioneer Alley property. <https://www.statesmanjournal.com/story/news/2020/03/08/salem-pioneer-cemetery-oregon-history/4813651002/>.

¹⁰ Initial assessment of the damage to the remainder is well in excess of \$1 million.

Rural, then resolving these issues will likely involve additional costly litigation to quiet title to the purported pedestrian easement area.

On the City Council's prior motion, none of these costs are included in the Staff Report and are specifically excluded from the staff's analysis of the Path.

The Staff Report does not address additional significant construction costs

In addition to the litigation and acquisition costs discussed above, the Staff Report makes a number of assumptions without actually assessing the physical characteristics of the impacted property and omits significant construction costs relating to those physical conditions. These include, but are not limited to, excavation and grading costs, and stormwater system costs.

The Staff Report assumes that grading will be limited to a total depth of no more than two feet for a distance of no more than 30 feet along the west boundary of Pioneer Cemetery. However, Pioneer has obtained a preliminary assessment and it is clear that the Staff Report materially understates the amount and scope of excavation needed to construct the Path. Additionally, this will require the installation of a retaining wall either under or immediately adjacent to the private City View Cemetery fence, which would significantly add to the cost.

The Staff Report also fails to address the stormwater drainage issues that the Path will cause Pioneer Alley, which occupies the low point and does not have a stormwater drainage system capable of handling runoff from the entire Path area. Any stormwater runoff created by the Path will need to be mitigated by the City.¹¹ It does not appear feasible to adapt Pioneer Alley's storm water system to handle the excess run off, in which case the low point of the Path would have to be in Pioneer Cemetery, increasing the extent and depth of excavation to accommodate storm water retention and meet ADA grade. Additionally, stormwater retention will be required along the private City View Cemetery property.¹² Thus, available remedies (re-grading, upgrading the existing stormwater drainage system, installing stormwater drainage reservoirs and other similar stormwater retention) will add considerably to the project costs and were not considered at by staff.

In short, these expenses have not been factored into the preliminary cost estimates in the Staff Report, which, in turn, understate the true cost of the Path by a significant amount.

¹¹ If the City does not address the stormwater impact of the Path, it will expose the City to a claim of inverse condemnation and the damages associated with such a taking (in addition to statutory attorney fees).

¹² Moreover, installing below grade retention ponds in the Pioneer Cemetery may not be feasible given the historic nature and historic designation of the cemetery.

Additional Inaccuracies with the Staff Report

In addition to the material omissions noted above, the Staff Report contains inaccuracies of varying degrees of materiality. For example, while the Staff Report states that the Path will only impact two (2) houses in the Pioneer Alley development, the reality is that three (3) houses would be impacted. Further, the proposed Path will sever the City-approved driveways to these three homes, including the associated driveway parking spaces and a freestanding double garage. This is of consequence to acquisition costs and damages for any taking.

Further, the statement that use of Pioneer's private driveway is "currently" restricted to residents implies that the gate is temporary and may be removed, which is inaccurate. Rather, the gate is permanent, and has significantly reduced trespassing, vandalism, and criminal activity since being installed. Any action to remove the permanent gate to allow access to the Path will cause a return of the criminal activity that has been curtailed by the gate. Also, the statement that the Path merely cuts through the backyards of residents is likewise inaccurate. Rather, the Path will also cut through the front and side yards of private residences. Importantly, it would create public common area open space adjacent to all eight (8) of the homes in Pioneer Alley. Thus, the houseless will be able to use this area as a campground and, under Ninth Circuit case law, the City will not be able to move them before finding alternative housing.

We further note that none of the impacted properties are in favor of the Path (not Pioneer, not the City View Cemetery, and not the organization that maintains the Pioneer Cemetery). They are specifically concerned with the threat of vandalism, trash accumulation and clean up, and liability related to the delicate and fragile headstones. The increased costs of patrolling the Path, cleaning up graffiti and other vandalism, and potential liabilities are more hidden costs of this project.

Finally, the purported reservation in Ordinance 15-12 is for pedestrian use only and does not allow "for other modes of transportation" such as bicycles, scooters, skateboards, and other wheeled vehicles.¹³ However, under applicable state requirements there is no such thing as a

¹³ The reservation in Ordinance 15-12 expressly states—

There is also hereby reserved, under, over, upon and across the Property described in Section 1(a) of this Ordinance a non-exclusive, perpetual *pedestrian only easement* for the use and enjoyment of the public; *this easement shall be limited to pedestrians only, and may not be used for other modes of transportation.*

(Emphasis added.) Thus, even if the easement existed, which it does not, it would only be for pedestrians, and not bicycles or other such wheeled vehicles.

low-impact walking path. The lowest impact path allowed by ODOT is multi-use path that exceeds the scope of any pedestrian-only. Accordingly, even if the City had an easement along the southern boundary of 490 Rural (which it does not), the Path would exceed the scope of that easement, and allowing bicycles or other modes of transportation would require the City to acquire that additional access right.¹⁴

We note that some of the public comments submitted in advance of tonight's City Council meeting have suggested installing a gravel or bark path as an alternative, but, as staff is aware, such a proposal is not viable. Any construction of the Path will need to meet state and local guidelines, which includes compliance with the Americans with Disabilities Act ("ADA") accessibility guidelines for paths and walkways.¹⁵ Thus, contrary to the assertions made in the other public comments, gravel or bark would not make the project cheaper. Rather, it would increase the cost necessary to make the Path ADA compliant.

In summary, as noted above, the cost of the proposed Path is likely multiple times the "total cost" identified and estimated in the Staff Report, meaning either option should be expected to cost the City's residents millions, at minimum. Given the limited benefits that the Path would provide, and the negative impact it would have on the immediately adjacent properties, we respectfully assert that these funds would be better put to a different use.

Very truly yours,

LANE POWELL PC



Bruce H. Cahn

cc: citycouncil@cityofsalem.net

719554.0001/8309693.6

¹⁴ We note that the vast majority of public comments attached the June 22, 2020 staff report which support the Path came from people who expressly stated that they wanted to use the path for bicycle access, which exceeds any rights reserved in the ordinance.

¹⁵ Title II of the ADA requires public entities that build sidewalks and trails to provide program access to existing facilities and to design and construct new facilities and altered facilities to be readily accessible to individuals with disabilities. Designers and planners of outdoor facilities are required to apply applicable sections of the ADA Standards for Accessible Design or UFAS and employ good design principles to ensure that facilities are accessible to and usable by people with disabilities.



1045 Candlewood Dr. NE | Salem, OR | Tel: 503-390-2715 | pastor@salemmennonitechurch.org

"Racism, antipathy and alienation stand in the way of Christ's kingdom of love, justice and peace. As missional communities we will seek to dismantle individual and systemic racism in our church. We will also seek to develop intercultural competence, which means that we work to heal racial divisions, learn to live and work in a multicultural context, and value all the gifts of God's diverse people." -Mennonite Church USA, Statement on Racism

Congregational Statement

To: Salem-Keizer, OR Area Community Leaders – Chiefs of Police, Mayors, City Council, Marion County Commissioners, Oregon State Police
From: Salem Mennonite Church
RE: Racism and White Nationalism Concerns for the Salem-Keizer Community

Greetings Public Servants and Elected Officials. Thank you for the time and effort you dedicate to serving our cities. We implore you to ensure our communities are safe for everyone by denouncing hate, racism, and white nationalism. Additionally, for everyone in the communities we love to thrive, we all must own and address the roots and consequences of systemic racism.

As followers of Christ and members of the Salem Mennonite Church faith community, we unequivocally denounce white nationalism, systemic racism, and acts of hate. We have become increasingly concerned for the safety and wellbeing of community members because of the prevalence of incidents motivated by racism and hate in and around Salem. Our concern is heightened, especially for Black, Indigenous, and People of Color (BIPOC) community members, by the presence of White Nationalist groups in our community, particularly when these groups are carrying guns and other weapons through public areas and residential neighborhoods. The most egregious incidents include the racially motivated murder of Herman Graham III and physical attacks on peaceful protesters. We have enclosed a timeline of incidents through Nov. 2020 for your review. More targeted, hate-filled incidents have occurred since then.

Seeing messages and actions of hate happening in our community is gut-wrenching and we believe that it is preventable. If current laws such as allowing open-carry weapons or open-containers for alcohol are hindering police from having the appropriate tools to protect the public we implore you to make changes. The discrepancy in how members of the community are policed also must be addressed. This disparity is chronicled by a report on Nov. 29 in the Statesman Journal, "A common refrain that keeps coming up over and over again from the members of the community who talk to me...there's a double standard on how protests are being handled depending on one's political persuasion or the color of their skin." –Vanessa Nordyke, Salem City Councilor.

This is a critical moment to engage in the work of dismantling systemic racism in partnership with our BIPOC communities. What opportunity gaps in education, healthcare, transportation, financial services, and housing has systemic oppression created? What are the organizations, public and private, that need to be involved in these conversations? This work must start now. How can we partner with you?

Salem is the City of Peace, but we must consciously make it so. We reached out to you because you serve in an important leadership position and we value the contribution you make to the Salem-Keizer community. We are asking each Community Leader that has received this letter to specifically and publicly denounce hate, racism and White Nationalism. Our Black and Brown sisters and brothers, and all of us, cannot question where you stand.

We join our names with the millions across the country that took to the streets to mourn the senseless killing of George Floyd, and all the senseless killing that has come both before and after, including in our own city. We join our names with the other faith and community organizations here in Salem including Sacred Circle groups, Salem Methodist churches, Black Joy Oregon, Latinos Unidos Siempre, and Salem-Keizer NAACP, – that are reaching out to you and echoing Martin Luther King Jr., "The time is always right to do what is right."

Faithfully in Christ - ***Salem Mennonite Church***

Chadwick K. Hochstetler
Angie Walker
Joyce Yoder
Randall Toews
Brent Mobley-Oorthuys
Shawn Newswanger
Kate Newswanger
Marj Mobley-Oorthuys
Claudia Mobley
Jon Newswanger
Florence Gingrich
Juel Russell
Louise Newswanger
June Smucker-Handrich
Sarah Acosta
Bethany Renata Loberg
Marlene Harder Bogard
Jeanette Flaming
Bruce Flaming

Kelly Swartzentruber
Rev. Jennifer Lyn Gingerich,
BCC
Lori Christy
Julie Stauffer
Kelsey Preuit
Michelle Burger
Steven Burger
Hendrik Mobley
Julie A Graber
Kendra Snyder
Kyle Miller
Leo Zook
Sierra Williams
Frances Loberg
Debbie Pauls
Ron Pauls
Ruth Reimer-Berg
Jeff Aeschliman

Margaret Aeschliman
Roy E. Blackstone
Pastor Jerrell Williams
Sierra Williams
Mariana Acosta
Joseph Penner
Carl Snyder
Emily Pérez
Bonnie Heppner
Brenda Kauffman
Roy E. Blackstone
Beth Yutzie Sell
Jason Sell
Caleb Sell
Dennis and Carol Kauffman
Sarah Deumling
Karen Perez

Timeline of Concerning Local Events: (Please note that this is not a comprehensive list)

On Nov. 29 Patriot Prayer staged a protest outside an OSHA inspector's home because an OSHA fine was levied against a business that did not follow state health guidelines to stop the spread of COVID-19. Their language, manner and intent was intimidating and harassing.

On Oct. 23 Herman Graham III was murdered by a White man charged with first degree bias crime. Salem police have released very little information regarding progress with the case; much of what the community knows is based on social media posts.

On Oct. 17 members of the Proud Boys walked around Bush's Pasture Park carrying guns, knives and other weapons while intoxicated, pointing their guns at people to intimidate and threaten them. In this same manner they walked through surrounding residential neighborhoods to protest in front of the Governor's mansion. We ask you, would a group of inebriated Black persons open carrying guns have been allowed to proceed without intervention?

On Labor Day the Proud Boys and other hate groups protested at the Oregon State Capitol, equating members of the LGBTQ community to pedophiles and calling for Democratic leaders to be shot down. Police made several arrests after this group attacked and injured BLM counter-protestors.

On August 15, 2020 members of The American Patriot Society attacked peaceful protesters at the Oregon State Capitol. One member, Vincent Burroughs, physically assaulted multiple women. He approached them, running, then applied a chokehold to Julianne Jackson from behind and bodily threw her to the ground. He also attacked two other women who came to her aid. The Oregon State Police has yet to press any charges for these assaults.

On May 5 and June 1 heavily armed Proud Boys and members of other hate groups stood guard outside a downtown Salem hair salon, after the owner refused to close in response to state health guidelines to stop the spread of COVID-19.

On March 31 "Whites Only" was written on the side of McKinley Grade School. No one has been charged.

The Oregon Legislature canceled a session after members of the Three Percenters, an extremist hate group, threatened to storm the State Capitol during the 2019 Republican walk-out.

Patriot Prayer, The Three Percenters, and Proud Boys have all been identified as hate groups by the Southern Poverty Law Center. All are associated explicitly or tangentially with the White Nationalism movement. In his 2017 article "As White Supremacy Sits Down, White Nationalism Stands Up" Eric Ward, Executive Director of the Western States Center explains that White Nationalism seeks not simply to marginalize, but to eliminate people of color from the U.S.

Definition of White Supremacy: *White supremacy in the United States is a system of social control and disparities formed to exploit indigenous populations, Blacks, poor whites, immigrants, and women's sexual reproduction to maintain the political, cultural, economic, and social domination of those identified as white.*

Definition of White Nationalism: *White nationalism seeks the complete removal of Jews and people of color from the United States altogether. White nationalists seek to dismantle the current state and replace it with a white only ethno-state. In short, ethnic cleansing.*

From: [Brian Sund](#)
To: [citycouncil](#); [CityRecorder](#)
Subject: Hoyt/Rural connection... a strong yes vote!
Date: Monday, January 11, 2021 4:50:57 PM

Mayor Bennett, Salem City Councilors and City Staff:

I am aware that some of you on Council are new to this duty. Welcome, and thank you for your willingness to represent the Salem Community. You join the returnees, with many “irons in the fire”, some easy to hammer out, others not so much. This particular one, a potential connection between the neighborhoods of Fairmount and Candalaria, is one “iron” that should be relatively easy to resolve and move forward. It is no secret I have been actively supporting such a connection for several years. I was initially greatly encouraged when, last Fall, Council voted to refer the matter to City staff for a more detailed study of options. However, when Mr. Chandler’s report was released last month, well, quite frankly, I was not only dismayed, but also irritated, by the unnecessary complexity of his proposals and the extreme costs of each option.

From the very beginning, I have advocated for a connection that is “KISS” based—**Keep It Simple** ___ (you fill in the 2nd “S”). I have done so as a Salem citizen, as a Board member of our neighborhood association (SCAN), as a member of SCAN’s committee on transportation issues and as a volunteer of Friends of Pioneer Cemetery (FOPC). By installing a gate at a certain point along the north-side cyclone fence that separates the Fairmount area and either of the cemeteries, we would create that essential connectivity with not only minimal financial impact, but also minimal intrusion into and onto historical ground. There is no need for any type of path—both cemeteries already have adequate paths. We strongly agree that this gate access should follow the same open/locked hours as the one at Hoyt and managed directly by cemetery staff.

You ask, what are the advantages of this connecting gate? They are many and varied, both community-minded and personal:

1) Easier, safer and city-appropriate connectivity from Fairmount neighborhood to Candalaria neighborhood.

-Walking Commercial Street, along Pioneer Cemetery, is not fun-loud, potentially unsafe and much longer in distance to get to the cemetery entrance.

-The option of Fairmount Park Trail is not viable. It is in poor condition and poses safety concerns.

-Salem is a City that thrives on connectivity, especially as it relates to pedestrian mobility. Our current TSP Plan endorses many connection points within our City borders. A goal is to reduce car traffic, thereby reducing pollution. And, think of the opportunities for the more healthy act of walking! I believe the “Just Walk” group, organized within the Candalaria area, would enjoy this alternative route!

2) Easier, safer and city-appropriate connectivity from Candalaria neighborhood to Fairmount neighborhood.

-Back in the days before the intrusive north-side cyclone fence was installed, Candalaria residents could freely walk over to enjoy Fairmount Park. We have a wonderful park and would certainly welcome those residents back over, especially if they can access on foot in a “as the crow flies” manner.

3) More eyes and ears to what's going on within the cemeteries.

-There are some in opposition who are concerned with vandalism and destructive acts. Having more people passing through would help reduce the potential of these negative actions.

4) Increased access to these beautiful cemeteries.

-I love walking in Pioneer Cemetery. Being a long time volunteer of Friends of Pioneer Cemetery (FOPC), I have come to deeply respect the entire hallowed property. I am invested in it's historical significance. By the same measure, I want others to experience this similarly.

5) Personal- I would like to have a closer route to Pioneer, when volunteering with FOPC.

-From my front porch, I can see the Civil War memorial flag at City View. When I volunteer, I have to get there by using Commercial and Hoyt Streets (Hoyt, another unsafe sidewalk due to it's narrowness). I estimate that if a gate existed, I could walk to our collective work site in less than 1/3 the time.

6) FOPC is ALWAYS looking for more volunteers.

-What better way of opening up that option, than by increasing access, providing that opportunity to view and, further, respect the beauty and historical significance of Pioneer, while also noting it's ongoing maintenance needs.

Convinced yet? If not, I would be more than willing to meet with you, socially distanced, to discuss this further.

Finally, I do take issue with those individuals in opposition, who insinuate that by opening up a north-side entrance to the cemeteries, this will result in a spate of vandalism incidents, such as what occurred some 35 years ago when there was no fence. This is absolutely NOT the same at all. Again, the gate would be open only during the dawn to dusk hours, as stated at the Hoyt entrance. Those previous incidents happened at night. Besides, if someone is intent on doing such a reckless act, they would not be deterred by any part of the fenced perimeter. And, this insinuation tends to point the blame solely on the Fairmount neighborhood.

Please consider my testimony carefully, as well as the testimony of the many others who favor having a connection at this location.

Brian Sund
582 Rural Ave S.
Salem, Oregon 97302

Sent from my iPad

From: [Kathleen Dewoina](#)
To: [CityRecorder](#); [citycouncil](#); [SALEM Manager](#)
Subject: Agenda Item 6a. Council Meeting 01.11.2021
Date: Monday, January 11, 2021 4:11:00 PM
Attachments: [Written Testimony 01.11.21.pdf](#)

Please add the attached testimony to Agenda Item 6a.

Thank you,

KD



Kathleen Dewoina, Broker, GRI,
CRIS, ABR
Berkshire Hathaway HomeServices
Real Estate Professionals
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PIONEER ALLEY LLC
SALEM'S FIRST POCKET NEIGHBORHOOD
PO Box 2134
Salem, OR 97308

January 11, 2021

Mayor Chuck Bennett & City Council Members
City of Salem
555 Liberty St. S
Salem, OR 97301

via email only

RE: Agenda Item 6.a.
Proposed Shared-Use Path through Pioneer Cemetery and Pioneer Alley

Dear Mayor and Members of the City Council:

Unfortunately, I missed the deadline for signing up for oral testimony/comment this evening. For the record, however, I do enclose a copy of my oral testimony from December 14, 2020. As you may recall, I ran out of time before completing my testimony, so I include below what was omitted that evening.

"The closest neighbors to Pioneer Cemetery are Pioneer Alley and its occupants. Option 5 will decimate Pioneer Alley. Surely, the closest neighbors to Pioneer Cemetery are just as important as others in the community, others who want to impose a lower standard of peaceful enjoyment on the Pioneer Alley households."

Thank you for your consideration.

Respectfully,
PIONEER ALLEY LLC



By Kathleen Dewoina, Managing Partner
Enclosure (as stated)

12/14/20

Mayor Bennett and Councilors,

Thank you for the opportunity once again to comment on the proposed multi-use path or mixed-use trail through the City's historic Pioneer Cemetery and the privately-owned Pioneer Alley LLC.

As you know, I am the managing partner of Pioneer Alley and, to date, the sole person legally and ethically authorized to speak to Pioneer Alley's interests. I've raised transparency and accountability concerns with you before and, with humility and the utmost respect, I do so again. Staff are presently keeping the identity from me of an individual who staff relied on for this report to speak to Pioneer Alley's interests.

No doubt about it, compared to the corporate giant Costco, Pioneer Alley is a puny little LLC. Recently, and before any development occurred, this council indicated that it would not side with the citizen neighbors who objected to the new Costco site on the principle that council earlier had made the decision to allow Costco to build at the new site. Nonetheless, in the instant case, Salem City Council previously voted not once, not twice, but three times against opening the mixed-use path through the historic Pioneer Cemetery and the now developed and built Pioneer Alley. The detrimental impact on a developed and built site is greater than on a proposed one. The council should apply the same *stare decisis*-like principle to Pioneer Cemetery and Pioneer Alley that you applied in your Costco decision. Stick with your thrice-decided determination.

By negating legal and acquisition expenses, the costs presented in the staff report are simply unrealistic. Moreover, the costs identified are—on their face—too low.

Before you begin excavating in Pioneer Cemetery, I believe council owes Salem citizens real plans and real facts and figures on just how deep the excavation will be and just how long of a cut it will take. At least one expert disagrees with the two-foot depth for up to 30-foot in length figure estimated by the city engineers' staff. Additionally, the report omits **known** construction costs, such as

stormwater drainage control and excavation of stormwater drainage reservoirs. Please be advised that Pioneer Alley will not serve as the city's stormwater collector. Stormwater drainage reservoirs will require cemetery excavation much deeper than two feet.

As you know, Pioneer Alley is a semi-gated, locked community now. So far, the locked gate with occupant-only access has done what the police have not been able to do; the locked gate stopped the thefts, stopped the vandalism, stopped the gross littering and human waste, stopped the trespass. A mixed-use path will undo all that.

Solar lights not only create light pollution, they invite access beyond dusk to dawn, illegal access for the cemetery.

Option 5 invites criminals into Pioneer Alley's private property. Moreover, you are taking away control from the private landowner and not providing protection. I suggest to you that it sets Pioneer Alley up as attractive for an autonomous zone. I request that you take official notice of the Red House in Portland with its government and police headaches, the injuries to the innocent, the concomitant unlawfulness with the lawful property owner having to give up his private property to resolve a public matter the police and government officials could not.

The closest neighbors to Pioneer Cemetery are Pioneer Alley and its occupants. Option 5 will decimate Pioneer Alley. Surely, the closest neighbors are just as important as the other neighbors who want to impose a lower standard of peaceful enjoyment on the Pioneer Alley households.

Thank you for your time and consideration.

From: [Kathleen Dewoina](#)
To: [citycouncil](#); [CityRecorder](#); [SALEM Manager](#)
Subject: Agenda Item 6a Council Meeting 01.11.2021
Date: Monday, January 11, 2021 4:52:16 PM
Attachments: [Additional Written Testimony 01.11.21.pdf](#)

Please add the attached additional Testimony to public comments on agenda item 6a for tonight's meeting.

Thank you,

KD



Kathleen Dewoina, Broker, GRI,
CRIS, ABR
Berkshire Hathaway HomeServices
Real Estate Professionals
1220 20th Street SE
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PIONEER ALLEY LLC
SALEM'S FIRST POCKET NEIGHBORHOOD
PO Box 2134
Salem, OR 97308

January 11, 2021

Mayor Chuck Bennett & City Council Members

via email only

City of Salem
555 Liberty St. S
Salem, OR 97301

RE: Agenda Item 6.a./Staff Report 20-470
Proposed Shared-Use Path through Pioneer Cemetery and Pioneer Alley

Dear Mayor Bennett and Members of the City Council:

From April 22, 2020, the first time a cemetery path appeared on Council's agenda this go 'round, I've consistently pointed out that the path was not (1) legally viable, (2) was too expensive, and (3) alternatives have not been adequately considered.

Last month, I again pointed out problems with the legal viability of crossing the parcel of Pioneer Alley LLC's ("Pioneer's") property that is the subject of Ordinance 15-12. Please incorporate by reference Lane Powell PC's written comments submitted today regarding legal viability and the inordinate costs to Salem citizens and taxpayers of the cemetery proposals.

As you are likely aware, staff report 20-470 that is on tonight's agenda is not a substitute for the "study" required by the Transportation Systems Plan, which calls for "Location and design of a Rural-Hoyt connection to be determined through a future study." I reserve Pioneer Alley's right to address the criteria emunerated in the Transportation Systems Plan should you move forward with a path in either Pioneer Cemetery or in City View Cemetery.

The staff report does, however, provide partial insight into the cost-prohibitive factors identified for the locations selected. For example, today's *Statesman Journal* reports that the Oregon Department of Transportation is spending nearly \$800,000 to screen four overpasses on Highway 22 to provide protection on this state connector to travelers below. Please compare the cost benefit per individual per day to those travelers, who probably number in the

January 11, 2021
Mayor Bennett & Council Members
Page 2 of 2

tens of thousands per day, to the cost benefit for each of these proposals per individual per day who would, in fact, use a path through either Pioneer Cemetery or through City View Cemetery. Additionally, the staff reports to date do not identify or consider alternatives. Pioneer Alley also reserves the right to identify and discuss alternatives.

Some factual errors in the record need correction. For example, some have mischaracterized a cemetery connection as the only way to connect the heart or center of the Fairmount neighborhood to heart of the Candalaria neighborhood. This is geographically and practically incorrect.

As another example, the statement has been made that there are no developed neighborhood parks in the Candalaria neighborhood. This is plainly a false assertion. Candalaria includes the largest park in Salem, i.e., Minto Brown, several public and private neighborhood parks, Candalaria Reservoir, Nelson Park, and Crestview Glen HOA, and the Candalaria School grounds.

Other statements in support of the bicycle and pedestrian path are speculative only, such as that the risks of vandalism will be reduced and that the path will enhance public appreciation of the cemetery.

Finally, staff report 20-470 does not adequately or accurately represent Pioneer Alley's perspective.

Thank you for your attention to these details.

Respectfully,
PIONEER ALLEY LLC



By Kathleen Dewoina, Managing Partner

From: [EVAN WHITE](#)
To: [CityRecorder](#)
Cc: [Robert Chandler](#)
Subject: Hoyt-Rural Trail, City Council Meeting of January 11, 2021 agenda item #6a
Date: Monday, January 11, 2021 12:06:05 PM

I am Evan White, representing the unanimous views of the Sunnyslope Neighborhood Association.

Why is this trail important?

Based on public input, Council has set several goals for our City. Among them: "Bicycle and pedestrian use." "Walk and transit friendliness." "Reduction of air pollution from travel."

But here's the thing. In Sunnyslope, our principal east-west streets often lack sidewalks, forcing people to walk on the street, sometimes near open storm drain ditches. This is the case on Browning, Cunningham and Davis. It is no longer true on Skyline, thanks to improvements made with a City bond measure. Much safer now for pedestrians and kids going to school.

Our principal north-south route is Liberty, with no bike lanes, narrow sidewalks planted with mail boxes which get whacked by traffic. Once a week, garbage cans, recycle cans, yard debris carts. People often drive faster than the 35 mile per hour speed limit. It's especially dangerous at the sight-obscuring hill at Liberty and Ewald.

It would cost millions and millions to widen sidewalks and add bike lanes. But there is an inexpensive alternative: use the nice network of leafy little streets that lead from our neighborhood toward downtown. Connect the people in Candalaria with the nice people on Fairmont. Don't force them to make a one-mile detour.

I hope that Council has read the many comments from neighbors attached to the first staff report. School children who live on both sides of the cemetery, and want to visit their friends. Folks in Candalaria who want a safe and pleasant way to walk or bike downtown. People on Fairmount who want to go to Life Source, French Press, Panera Bread and avoid noise and pollution from traffic on Commercial.

The proposal is for a day light path. The gates would be locked at night. The hours of access would be the same. If need be, solar powered lights and security cameras could be added. Most of the people who would use the path would have cell phones, able to report problems. More eyes on the ground.

Can this trail be constructed less expensively?

Yes. The City has a pedestrian easement through the rental property adjacent to Pioneer Cemetery. The owner is adamantly against the path, but forgets to mention that she does not pay property taxes on that easement. ¹

The first thing needed is a gate somewhere along the northern fence. The cost of this gate was not separately estimated in the staff report. Fortunately, it has been estimated by Tony Vassello, a retired engineer and experienced trail builder. He estimates that a professionally installed gate, and an earthen ramp to account for the two-foot elevation difference, would cost about \$5,000.

There would be additional cost for gravel, and perhaps barkdust, for the path leading up to the ramp. If the storage area at Pioneer cannot be moved, then the path could go around it – to the left, or to the right if some of the existing bushes were removed. Excavation should be avoided so as to not trigger archaeological expense.

The City can get a good price on gravel and we can find the volunteers willing to spread that gravel.

A little more gravel would be laid for the path leading up to the existing gravel road, which is perfectly adequate for walking and biking. Paving could be added at a later time, if needed. An iron fence would improve appearance but is not needed at this time.

Just saying “no” is not responsible public policy. Let’s take a simple and low-cost step to improve the quality of life for many residents. Please, let’s move forward with the City’s transportation plan which calls for a Hoyt-Rural pedestrian and bike trail.

Respectfully,

Evan White

Co-Land Use Chair

Sunnyslope Neighborhood Association.

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¹ Vacating the easement “ *will return unused public right-of-way to the tax rolls, generating property tax revenue.*” Dr. Chandler before City Council June 25, 2012 and October 8, 2012, agenda item #4a. The easement was not vacated.

From: [lorrie walker](#)
To: [lorrie walker](#); [CityRecorder](#)
Subject: Hoyt - Rural Connection
Date: Monday, January 11, 2021 2:31:38 PM
Attachments: [SCAN Hoyt - Rural Connection .docx](#)

All,

This attachment letter is submitted by SCAN in support of a Hoyt – Rural pedestrian / bicycle connection. SCAN has been in support of a connection in our neighborhood for many years.

Respectfully,
Lorrie Walker
SCAN President

Sent from [Mail](#) for Windows 10

January 11, 2021

Mayor Bennett and City Councilors
Salem Civic Center
555 Liberty Street SE
Salem, OR 97301

Subject: City staff report of December 14: Additional information regarding a potential path connecting Candalaria and Fairmount neighborhoods and involving Pioneer Cemetery, City View Cemetery, or both.

Thank you for the opportunity to comment on the City staff report concerning a connection between the Candalaria and the Fairmount neighborhoods (Hoyt Street and Rural Street).

South Central Association of Neighbors (SCAN) has long supported a connection between the neighborhoods. As you will recall, this connection is mentioned in the City's Transportation System Plan as needing further study. In November 2019, the SCAN Board adopted a motion by a vote of ten to zero with one abstention supporting this study effort. *"SCAN supports the City undertaking this further study now with the ultimate goal of connecting the Fairmount Hill neighbors with the Candalaria neighbors."*

When City staff delivered its first report (June 22, 2020) on options for Council's consideration, SCAN supported further work on Option 5 or Option 6 with a preference toward Option 6 as it represented a cleaner connection to the (current) dead end of John Street.

We are surprised by the cost estimates contained in the most recent staff report (December 14, 2020). We believe simple connection can be made without great expense.

SCAN wishes to reiterate its support for a simple pedestrian connection between the two neighborhoods and to the businesses in Candalaria from Fairmount Hill.

Lorrie Walker, President
South Central Association of Neighbors (SCAN)

From: [lorrie walker](#)
To: [CityRecorder](#); [lorrie walker](#)
Subject: Hoyt Rural Connection
Date: Monday, January 11, 2021 3:29:36 PM

All,

I am submitting this as a SCAN, ward 2 resident in support of a Hoyt – Rural connection. I believe this is a very important pathway for children as well as adults. Children of elementary age often have friends they can walk or bicycle to see within a block of few blocks area. In the case of this area that isn't possible, as parents do not want children going by themselves, blocks away, down and around, back and forth to Commercial street as it is too busy, too fast and heavy traffic. It reminds me of when I lived in Seattle as a child and I-5 was put in. Friends who played together every day lost that connection. Children in this area have never been afforded that connection. We adults owe it to the Candalaria and Fairmount neighborhood children to correct this. It is past time. Pedestrian or bicycle access for residents in Fairmount who would like to walk to Lifesource, Roths, or other stores to shop isn't happening due to again, walking to Commercial street, and going around and out of the way. Going by vehicle is the safest way but it doesn't have to be. Of course the historical character of Pioneer Cemetery and City View needs to be protected. I have a deceased child buried at City View. I could walk there via Rural but don't as I cant get through the fence. I don't want to walk on Commercial, so I drive as well. I have absolutely no concerns of any issues or problems with a path.

The cost the city has come up with is ridiculous to me. Volunteers could put in gravel at a cost of approx. 12-16 dollars a ton, approx. three dump truck loads. Maybe a few hundred dollars at the most? The biggest cost would be for a dump truck. I know a few people who have dump trucks, concrete, etc. A foot path doesn't need to be costly.

Rumors, innuendos and scare tactics by some are just that. Facts are important in this matter.

I wonder if people signing petitions against this pathway live in the SCAN neighborhood?

This is truly a neighborhood issue that need to be corrected and connected. I appreciate Councilor Nordyke's interest and assistance in this issue. I am hopeful that this issue can finally be addressed.

Respectfully,
Lorrie Walker
SCAN Ward 2

Sent from [Mail](#) for Windows 10