

March 23, 2018



VIA HAND DELIVERY

Salem Planning Commission
c/o Pamela Cole
City of Salem
Community Development Dept.
555 Liberty St SE / Room 305
Salem, OR 97301

RE: Appeal of Case No. UGA 17-06, Application No. 17-121850-LD
Our File No: 28572

Dear Commissioners:

Our office represents the Appellant HSF Development, LLC, an Oregon limited liability company (the "**Appellant**"). Appellant is appealing the Decision, as that term is defined below. Appellant submits this letter in response to the City of Salem's appeal form, which states an appellant in a land use case before the City of Salem ("**City**") should attach a letter to the appeal form. Specifically, the form states an Appellant should "[a]ttach a letter, briefly summarizing the reason for the Appeal. Describe how the proposal does not meet the applicable criteria as well as verification establishing the appellants standing to appeal the decision as provided under [UDC] 300.1010." Appellant submits this letter with the intent summarizing the reasons of the appeal; however, this letter should not be construed as limiting or waiving any basis for an appeal. All appeals in the City are heard de novo. *See UDC 300.1040(a)* "Appeals shall be de novo. In a de novo review, all issues of law and fact are heard anew, and no issue of law or fact decided by the lower level Review Authority is binding on the parties in the hearing. New parties may participate, and any party may present new evidence and legal argument by written or oral testimony."

Appellant is the owner of the real property located 6719 Devon Avenue SE, Salem Oregon (the "**Subject Property**"). The City issued a written land use decision concerning the Appellant's request on March 12, 2018, which the City identifies as Case No. UGA 17-06, 17-121850-LD (collectively the "**Decision**"). Staff has summarized the Decision as an "Urban Growth Preliminary Declaration request to determine the public facilities and infrastructure to develop 19.89 acres" located at the Subject Property. This appeal is timely filed, and Appellant has standing for the appeal.

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Reasons for Appeal

Below is a summary of the reasons for the appeal:

1. As stated in the Decision, the applicable approval criteria are governed by UDC 200.25(d) and (e), 200.055 (Standards for street improvements), 200.060 (Standards for sewer improvements), 200.070 (Standards for storm drainage improvements), and 200.075 (Standards for park sites) (collectively the "**Approval Criteria**"). However, the City's application of Approval Criteria is limited by ORS 197.307(4), which restricts City's application of approval criteria and development standards to only "only clear and objective standards, conditions and procedures regulating the development of needed housing on buildable land." The Subject Property is designated for residential development and the City's Urban Growth Management regulations require the requested UGA permit as a condition precedent to land division or the intended residential land division (Appellant submitted a draft plan for 86 residential lots concurrent with Appellant's UGA permit request and annexation request), and therefore, ORS 197.307(4) applies. ORS 197.307(4) states in relevant part:
 - (4) "**** a local government may adopt and apply only clear and objective standards, conditions and procedures regulating the development of housing, including needed housing. The standards, conditions and procedures:
 - (a) May include, but are not limited to, one or more provisions regulating the density or height of a development.
 - (b) May not have the effect, either in themselves or cumulatively, of discouraging needed housing through unreasonable cost or delay."

The burden of proving Approval Criteria satisfies the clear and objective standards is the City's burden. ORS 197.831.

2. Condition of Approval No. 10 is unconstitutional under the Takings Clause of the Fifth Amendment of the United States Constitution and Article I, Section 18 of the Oregon Constitution. The impacts of the proposed development are limited to increasing the expected visits to the City's Parks Facilities by occupants the proposed 86 residences. The cost of dedication of ten (10) acres of real property, or alternatively the payment of a \$200,000.00 fee, is grossly disproportionate to the impact from the Appellant's proposed development. Appellants are already obligated to pay Parks SDC fees in the amount of \$4,404.24 per residence (an anticipated total fee of \$378,764.64). These Parks SDC fees adequately address Appellant's impact on the Parks Facility system. No additional contribution is warranted. Appellant requests the Planning Commission to remove the Condition of Approval No. 10.

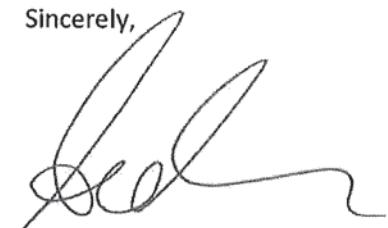
The City's condition of approval is subject judicial review for unconstitutional takings under *Dolan v. City of Tigard*, 512 US 734, 114 S Ct 2309, 120 L Ed 2d 304 (1994) and *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 US 595, 133 S Ct 2586, 186 L Ed 2d 697 (2013); *see also Carver v. City of Salem*, 42 Or LUBA 305 (Or Luba), 2002 WL 31925740 (applying exaction analysis to UGA permit). The City may not condition an approval based on an unconstitutional exaction and may not deny an application in lieu of such an approval. The City has failed to satisfy its burden of adopting findings of proportionality. If the City refuses to accept Appellant's request, the City will be

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subject to claims under ORS 197.796, including mandatory attorney fees to the prevailing party.

Appellant is willing to accept the Decision subject to proposed Conditions of Approval Nos. 1 through 9

Sincerely,



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Of Attorney for Appellant