

# CITY OF SALEM

## Written Testimony

### City Council

555 Liberty St SE  
Salem, OR 97301

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**Monday, December 4, 2017**

**6:00 PM**

**Council Chambers**

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**4. a.** [17-577](#)

AMENDED REPORT - SEE PAGE 3

City Council review of the Planning Administrator's decision for Phased Subdivision / Class 2 Adjustment Case No. SUB-ADJ17-09 for property located at the 3700 and 3800 Blocks of Dogwood Drive S.

Ward(s): Ward 7

Councilor(s): Cook

Neighborhood(s): SWAN

**Attachments:** [Vicinity Map](#)

[Site Plan](#)

[SUB-ADJ17-09 Planning Administrator's Decision](#)

[Written Testimony - Donovan](#)

[Memo and Additional Attachments](#)

[Written Testimony 1](#)

*Add- Written Testimony*

## Christopher Green

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**From:** Rick Bingham <bingham.r@comcast.net>  
**Sent:** Thursday, November 30, 2017 7:05 AM  
**To:** Christopher Green  
**Subject:** my comments to Council  
**Attachments:** Notice Comments FINAL.docx

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Hi Chris,

I can't find an email address in the notice where our comments could be sent. Would you please give me an email address or forward our comments?

Thanks!

Rick

To: Mr. Chris Green  
Case Manager, City of Salem Planning Division

From: Rick & Julie Bingham  
3733 Dogwood Drive South  
Salem, OR 97302

Re: Case Number SUB-ADJ17-09  
Application no. 17-111999-LD & 17-20000-LD  
3700-3800 Block of Dogwood Drive South (Dogwood Heights)

Date: August 28, 2017

Dear Mr. Green,

We are the owners of the house located on 3840 Dogwood Drive South, which is surrounded on all four sides by the proposed 46-lot subdivision. We strongly oppose the proposed subdivision because it does not comply with the criteria (certainly not ***"all"*** the criteria) and standards established by the city's regulations. We are strongly opposed to this development. There are many problems which must be addressed. The development, as proposed, will decrease safety and livability. We ask you specifically to reject the request for Class 2 Adjustments. We ask you to recommend rejection of the application on the grounds of the specifics given below.

We have reviewed the comments submitted by our Dogwood neighbors Symeon and Hariklia Symeonedis and Paul and Kathy Graham. We fully share their concerns and endorse their objections, which we incorporate by reference into our submission.

Our Comments come in two sections. The first section focuses on our central concern, namely, that the request for the Class 2 Adjustment must be rejected. The second section is organized by section of the notice and covers other concerns.

### **COMMENTS: Class 2 Adjustment Request**

Below I will discuss **FOUR** interconnected, interdependent factors which are problems in this development plan which must be addressed. I will try to make it clear how none of these can be taken independently, and how, in fact, *even phase one cannot be approved* without addressing these issues. These four issues are: 1) the requested Class 2 adjustment allowing a 15% instead of 12% road grade; 2) raising Dogwood 16-feet higher than if Dogwood were completed as currently platted; 3) vacating lower Dogwood; and 4) fill dirt onto the property of the home of a current neighborhood resident requiring a slope easement from that neighbor.

**Factor 1:** First, the requested Class 2 adjustment of allowing the street grade to be a **steep 15%** instead of the wise standard of a *maximum* 12%. Why does the developer request this? To maximize profits. The road could be built at a 12% grade, but the developer's costs would increase and there would be fewer lots. This needs to be weighed against the neighborhood's safety and livability. This road will get very icy. The road is to be built on a

wooded north facing slope that gets no direct sun all winter. Those of who currently live in the shadow of this hill know and expect that when there is snow and ice, it will last, on the stretch of Dogwood from the intersection with Elderberry to where it now terminates, at least three days longer than the rest of the neighborhood. This will be dangerous and will be costly. So, acceptance of the plan would put individual profits before neighborhood safety. Why do this? Livability is also negatively affected by the excessively steep grade. Neighbors do not walk the steep hills as much. People do not connect with each other as much. Kids can't safely ride their bicycles, and parents won't let their kids out to play without supervision. Why do this? Acceptance of this plan puts profits before neighborhood livability.

**Factor 2:** In this plan, Dogwood would be raised 16-feet higher than it would be if it were completed as currently platted. The only way the developer can achieve even a 15% grade is by **raising Dogwood by 16-feet**. Yes, that departs dramatically from the existing topography. Dogwood would be raised such that the intersection with the proposed new street, Hillside Court, would be 12-feet higher than the current land. This would be even higher if compared to the street elevation if Dogwood were put through as currently platted; this is because the uphill side of this intended street would need to be cut down on the uphill side by about four feet. The elevation difference is 16-feet! [Note: This critical issue is not addressed in the Notice or in the Applicant's Application.]

**Factor 3:** The proposed **vacation of lower Dogwood**. Why does the developer's proposal include vacating this section? It must be vacated for him to raise intersection of Dogwood and Hillside by 16-feet as we discussed above. He can't raise that section and have Dogwood continue down to Spring Street. With that elevation increase the grade on that lower section becomes too steep. That is why it needs to be vacated. So, the lower section of Dogwood is vacated, because the intersection with Hillside is elevated by 16-feet, and this elevation increase is done to keep the grade of Hillside to 15%, and why 15%...right, **to maximize profits**. You see how these are all interconnected? [Note: This critical issue is also not addressed in the Notice or in the Applicant's Application.]

**Factor 4:** Dirt fill, to raise Dogwood, will extend outside of the right-of-way onto the home property of a current neighbor, **requiring a slope easement** from that neighbor. To achieve that 12-foot elevation of Dogwood at the intersection with Hillside, the fill, at a 2:1 grade, supporting the road, will extend onto the property of the home at 3840 Dogwood (the northwest section of this property). This will require a slope easement of the homeowner. This will not be granted and the City will face the decision of whether to condemn this personal property so that this development, as planned, could be built. Why do this? I hope you can recite this by now: 4) condemning of the property, to allow the fill on a homeowner's property, 3) requiring vacating lower Dogwood, because, 2) Dogwood must be elevated by 16-feet, 1) to keep the grade of Hillside Court to 15%, to...**increase profits; right! Why do this?** [Note: This critical issue is once again not addressed in the Notice or in the Application.]



“Why can’t *phase one* be completed without addressing these issues?” The lower section of Hillside Court is also proposed to be at a 15% grade. And in any case, the grade that it would be built to in phase 1 is *dependent* on the elevation of Dogwood at the point of intersection with Hillside. That elevation is conditioned upon all the interdependent factors described above.

Long-term Transportation Plan: I believe that in the City’s long-term Transportation Plan, Croisan Scenic would be completed as a minor arterial. Dogwood would intersect with that arterial by completing it as currently platted. While steep, that section could be completed at the required 12% or less grade.

**FURTHER COMMENTS responding to the Notice for each relevant section. Case No. SUB-ADJ17-09**

Introduction section of Notice

We are concerned that by making this a “consolidated” application that later phases of this development will not get the careful attention and consideration which is greatly needed.

Subdivisions

1)C) The standards of the City for the geotechnical analysis are very rigorous. Nothing like this is ever near 100%. Why risk having another slide in Salem? Why risk damage and disruption in our neighborhood?

5) In this proposal, there is no are no improvements to Spring Street or Balm Street or Madrona yet there will be a significant amount of added traffic. [Regarding the lack of improvements on Spring and Balm streets, I share the concerns of my neighbor, Neil Peterson, and endorse his objections.] There will be added traffic to Dogwood and Croisan Scenic as well. The intersection of Dogwood and Elderberry has no stop signs and limited visibility from Dogwood down the hill on Elderberry towards Madrona. This makes this a dangerous intersection. The intersection of Dogwood with Madrona (going north), is also already dangerous. It is extremely hard to see down Madrona when exiting Dogwood. Cars appear suddenly because they can’t be seen below the crest of the hill. Similarly, cars appear suddenly coming from the uphill direction, out from the ‘S-curve’ section of Madrona. There is an increased chance of accidents and traffic could back up. It does not make sense to add even more traffic.

6) This plan in no way meets this criterion. Bicyclers and pedestrians even now cannot safely travel on Spring, Roberta, and Madrona Streets because there are no sidewalks. Madrona, the steepest and most dangerous of these streets, has precious little shoulder which is unpaved and has sharp drop-off edges. These streets lead to the local Nelson Park and to Candalaria school. Kids commonly walk these streets to both locations and others bike them. Adding more traffic to this area is a recipe for disaster.

7) There MUST be a Traffic Impact Analysis because of the unique features of these streets. A simple count does not capture the impact and burden of adding 46 additional homes (see above).

9) The proposal is to put a street at 15% grade to the top of the hill; the proposed Hillside Court. This does not take into account the topography and vegetation on the site, and will cause substantially more disruption of the trees and other vegetation on the site. Also, the marking of trees on the hillside, which will affect the number allowed to be cut, must be carefully checked. Trees are marked which are on our property, and I believe some outside of the developer's property, thus inflating the number allowed to be cut. [See 'Alternative approach' below.]

#### Class 2 Adjustment

- A) Ii) These Adjustments do not equally meet the purpose of the City's wise development standards. We've made this plain in our comments above.
- B) This development will indeed detract from the livability of our neighborhood and even the surrounding area. I've explained this as it relates to multiple aspects of this development as proposed.

*An alternative approach to developing the 7-acre hill. We've seen the development plans of a previous potential buyer/developer of this property. They did not put a road on this hill. This proposal greatly stretches the norms, the boundaries of development in the City. It is outlandish. Most people who have looked at this steep hill over the past 20 years have said that it would make no sense. This plan in no way fits with and "accounts" for the topography of this part of our beloved neighborhood. We believe that this land would serve the "livability and appearance of our residential area" much better by being kept in its current forested condition. It provides green space that is needed throughout the City which enhances health and well-being of citizens in so many ways. This land already has an [unapproved] trail through it which connects to the successful Croisan Scenic trail. Many walkers, hikers, dog-walkers and mountain bikers use this every day. This forested area provides great recreation and relaxation for South Salem and beyond. Perhaps there are ways this could be developed as green space in a more formal way, and the owner/developer could collaborate on this (selling some portion; tax breaks; let's get creative).*

Dogwood Heights LLC Hearing at Salem City Council Dec 4, 2017

References: 1. Chapter 803 Streets and right of way improvements

2. (CASE NO. SUB-ADJ17-09) Findings and Order October 30, 2017

Question 1. Section 803.015 states: “An applicant shall provide a traffic impact analysis if one of following conditions exists: 1. The development will generate 200 or more daily vehicle trips onto a local street or alley”.

Tony Martin, Salem Traffic engineer emailed me that he uses

” Average Daily Traffic (24 hours):

Average Rate = 9.52 trips per dwelling unit

Directional Distribution = 50% enter, 50% exit”

Therefore for Dogwood Heights LLC:

44 new houses x 9.5 daily trips per house = 418 expected daily trips.

Therefore: this development plan is lacking a traffic study

Question 2. What is the City of Salem’s plan for improving Balm, Spring, and Roberta Ave to the City of Salem Local Street Standards to meet SRC 205.010(d)(6) which states that:

“The tentative subdivision plan provides safe and convenient bicycle and pedestrian access from within the subdivision to adjacent residential areas and transit stops, and to neighborhood activity centers within one-half mile of the development. For purposes of this criterion, neighborhood activity centers include, but are not limited to, existing or planned schools, parks, shopping areas, transit stops, or employment centers. “

Findings and Order October 30, 2017 p. 31 “Finding: As described in findings above, bicycle and pedestrian access in the vicinity of the subject property is somewhat limited by sloping topography, existing development patterns, street network gaps, and underdeveloped streets. The proposal would improve access between the subject property and adjacent residential areas through the extension of existing streets through the proposed subdivision, including sidewalks on all streets and bike lanes where designated in the TSP. “

To one who has lived for > 25 years in this neighborhood and walked these streets. Please explain how connecting additional 44 houses with families into 15’ and 17’ wide substandard streets without any sidewalks improves access to nearby Nelson Park. There is no mention of improving these substandard streets. This subdivision does not add any safe routes to Nelson Park.

Table 803-2 Pavement Width states that “Local streets” require a Min 30’”

I measured the widths of the streets that Dogwood Heights would empty into:

Roberta at Croisan Creek	18’
Balm at Large Fir tree	17’
Spring at Roberta	17’
Spring at storm sewer	15’







Roberta width at Croisan Creek







Mid Balm width at large Fir tree







Mid Spring at east end of storm sewer

Please remember that we want to encourage children walking to Nelson park.  
Both car and foot traffic do not stop at the end of this development.

There is no route to Nelson Park from Dogwood Heights LLC with continuous sidewalks.  
Madrona S. has 0.1-0.2 miles of 2 lane road that not only lacks a sidewalk, but has a 4' steep dropoff on its South side with a seasonal creek. Cars are driving > 35 mph on the downhill west bound segment of Madrona.

City of Salem Document "Findings and Order October 30, 2017" stated:

"The portion of Spring Street that stubs to the south boundary of Tax Lot 3200 has a turnpike improvement within a 65-footwide right-of-way."

BUT: fails to mention that Spring Street is 15' wide presently. There is no published plan to bring this up to City of Salem standard of 30' width, sidewalks.

"Balm Street S currently terminates at a dead-end at the southwest corner of Tax Lot 3200 and is designated as a Local Street in the TSP. The standard for this street classification is a 30-foot-wide improvement within a 60-foot-wide right-of-way. The street that stubs into the southwest corner of the subject property is not constructed to Local Street standards, but has a 60-foot-wide right-of-way."

THIS states that Balm Street is "no constructed to Local Street Standards" and fails to forward a plan to bring it up to Local Street Standards.

p. 15 has

- Issue #11 – Use of SDCs to Address Local Street Deficiencies: Several comments requested that System Development Charges (SDCs) collected from eventual development of residences in the proposed subdivision be allocated to address upgrades to substandard streets in the vicinity of the subject property. Staff Response: The City will budget and expend SDCs received from the development in accordance with state law and SRC Chapter 41. The specific allocation of SDC funds does not relate to approval criteria for any of the approvals sought in the application and will not be stipulated in this land use decision.

I understand that the planning of improvement of Balm, Spring, and Roberta Streets may not Dogwood Heights LLC's responsibility, but if these one lane streets are not brought up to the City of Salem's Local Street Standards now, when will they be addressed?

Do we want to wait until children walking to Nelson Park are hit by cars? A parent cannot tell their children to "walk to Nelson Park and stay on the sidewalk." THERE ARE NO SIDEWALKS on the way to Nelson Park.

How is this good city planning?



How can the City of Salem expedite the prompt improvement of these 3 local streets?

It is incomprehensible that the City of Salem would not create a plan to improve these 3 local one lane streets before 44 families move into this neighborhood.

In summary: the current development plan for Dogwood Heights does not meet the City of Salem's own rules:

- a. Chapter 803 Streets and right of way improvements: no traffic study was done
- b. SRC 205.010(d)(6): Safe streets and sidewalks are not included.

Please tell us how these two regulations will be met.

Please add the official record and send to Salem City Council

cc: [cgreen@cityofsalem.net](mailto:cgreen@cityofsalem.net)



Project No. 1004.023.G

Page No. 1

December 1, 2017

Mr. Mark D. Grenz  
Multi/Tech Engineering Services, Inc.  
1155 13th Street SE  
Salem, Oregon 97302

Dear Mr. Grenz:

**Re: Supplemental Geotechnical Consultation and Review of Proposed Site Development and Grading Plans, Proposed Dogwood Heights Residential Development Project, Dogwood Drive South and Hillside Court South, Salem (Marion County), Oregon**

In accordance with your request, we have completed our review of the proposed site development and grading plans for the above subject proposed Dogwood Heights residential development project. As you are aware, we previously performed a Geotechnical Investigation and Geologic Hazard Assessment for the project the results of which were presented in our formal report dated April 29, 2016.

**Background**

The subject proposed Dogwood Heights residential development site reportedly consists of ten (10) separate tax lots totaling approximately 14 acres. Topographically, the lower (northerly) portion of the subject property which generally located to the north of Dogwood Drive South is characterized as gently sloping terrain (i.e., 10 to 15 percent) descending downward towards the northwest. However, the upper (southerly) portion of the subject property which is generally located to the south of Dogwood Drive South is characterized as moderately sloping terrain (i.e., 30 to 40 percent) ascending upward towards the southeast. Overall topographic relief across the entire site is approximately 260 feet and ranges from a high of about Elevation 465 feet to a low of about Elevation 205 feet.

Geologic mapping by Bella (1981) shows the site area to be underlain by highly weathered Basalt bedrock deposits and/or residual soils of the Columbia River Basalt formation generally within the upper elevations (i.e., above Elevation 300) and marine sedimentary deposits generally across the lower elevations (i.e., below Elevation 300).

### **Project Description**

Specifically, we understand that development for the subject project is presently planned to include construction of new public street improvements which will provide vehicle access to approximately forty-six (46) newly created lots. In general, development of the lower northerly gently sloping portion of the site (i.e., north of Dogwood Drive South) is not anticipated to result in significant site grading and/or earthwork (i.e., cuts and/or fills generally less than 10 feet). However, we understand that development of the upper southerly moderately sloping portion of the site (i.e., south of Dogwood Drive South) is presently planned to include the construction of a new public right-of-way (Hillside Court South) which will require significant site grading and earthwork (cuts and fills). Specifically, we understand that construction of Hillside Court South will result in cuts of approximately 20 to 25 feet and fills of approximately 10 to 15 feet which will be excavated and/or filled to a finish slope gradient of approximately 2H:1V (i.e., 50 percent). Additionally, we understand that construction of a private access drive (Hillside Lane South) located to the east of Hillside Court South will result in near vertical cuts of up to about 40 feet along the south side of the private access drive which is presently proposed to be supported by a retaining wall. However, specifics regarding the type of retaining wall are not known at this time.

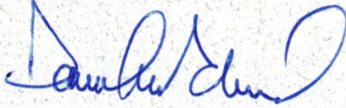
### **Conclusions and Recommendations**

Based on our review of the proposed site development and grading plans as well as the results of our recent Geotechnical Investigation and Geologic Hazard Assessment, we are generally of the opinion that the proposed site development and grading plans are feasible for the site and/or project. However, we point out that the field exploration work performed during our previous Geotechnical Investigation work did not extend much beyond and/or to the south of Dogwood Drive South. Additionally, development and site grading across the upper moderately steep southerly portion of the subject property is presently planned to result in 2H:1V fill and/or cut slopes of between 10 to 15 feet and 20 to 25 feet, respectively. Further, site grading associated with the planned construction of Hillside Lane South will result in near vertical cuts and the construction of a possible 40 feet high retaining wall.

In this regard, we recommend that additional (supplemental) Geotechnical Investigation services be performed across the upper moderately steep southerly portion of the site to further assess and/or evaluate the subsurface soil and/or groundwater conditions with regard to the proposed site grading and earthwork. Additionally, the supplemental Geotechnical Investigation services should also include appropriate slope stability analyses to evaluate the global stability of the proposed cut and/or fill slopes and their associated post-construction factors of safety under both static and seismic conditions. Further, the supplemental Geotechnical Investigation work should also develop appropriate design and construction recommendations for the proposed near vertical and/or 40 feet high retaining wall which will be located along the south side of Hillside Lane South.

We trust that the above information is suitable to your present needs at this time.

Sincerely,



Daniel M. Redmond, P.E., G.E.  
President/Principal Engineer



## Ruth Stellmacher

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**From:** Elizabeth Orwick <mat.oz@comcast.net>  
**Sent:** Thursday, November 30, 2017 10:17 PM  
**To:** citycouncil  
**Subject:** Dogwood Heights subdivision and hearing regarding it

Dear Salem City Council

We are writing due to concerns regarding the proposed Dogwood Heights Subdivision. We have a number of areas of concern.

The subdivision is affected by poor pedestrian access to the neighborhood park, Nelson Park. Neither Madrona Avenue nor Roberta Avenue have sidewalks to get to the park. The crossing over Croisan Creek on Roberta Avenue also does not adequately reduce the risk of a child falling into Croisan Creek. Please see the photo attachments below. We believe the city should make improvements before or during this development. Is the city planning on doing this?

All four phases of the subdivision are also affected by stormwater and potential flooding problems. We hope the plan adequately addresses neighborhood stormwater concerns as well as protecting the existing properties on Croisan Creek.

We have concerns that involve primarily phase four of the project. This area has been classified as a moderate to high risk landslide area. We suspect this is due to the steepness of the terrain. Development of this area requires variances from standard development regulations regarding the grade of Hillside Court South (15 degrees instead of the maximum 12 degrees) and the length of the flag lot accessway. Development will include the removal of trees and other vegetation, movement of soil and the addition of pavement and concrete. Common sense dictates this would further increase the risk of landslide and excessive water runoff. We are concerned about the safety of Hillside Court with its 15 percent grade. This would be a special concern during icy conditions. If a car lost control that could be a threat to children playing in the snow. In addition icy roads could impede access for emergency vehicles.

We have been in our home since 1989. During the flood in February 1996 there was so much water coming onto our lot from the hillside that it was flowing into the crawlspace under our house at an alarming volume and rate and was eroding soil from part of our foundation. Fortunately this stopped before serious damage occurred. We also have stone bulkheads on 2 sides of our property. We are concerned this development could increase the risk of damage from a future severe storm/flood event.

Considering the higher risks and required variances for phase four we do not believe it should be approved.

We checked with our local State Farm insurance agent who confirmed that our homeowner's insurance does not cover stormwater or earth movement damage and furthermore it is not available. We also note the applicant for this subdivision is Dogwood Drive LLC rather than Timbercraft Homes, Inc. After completion of the proposed development will Dogwood Drive LLC still be in existence to remedy problems that might occur due to this project? This includes needed repairs and/or financial loss.

Thank you for your interest. I will be at the hearing December 4th, Betty will be out of town due to a family emergency.

Sincerely yours,

Don and Betty Orwick  
3667 Elderberry Drive South

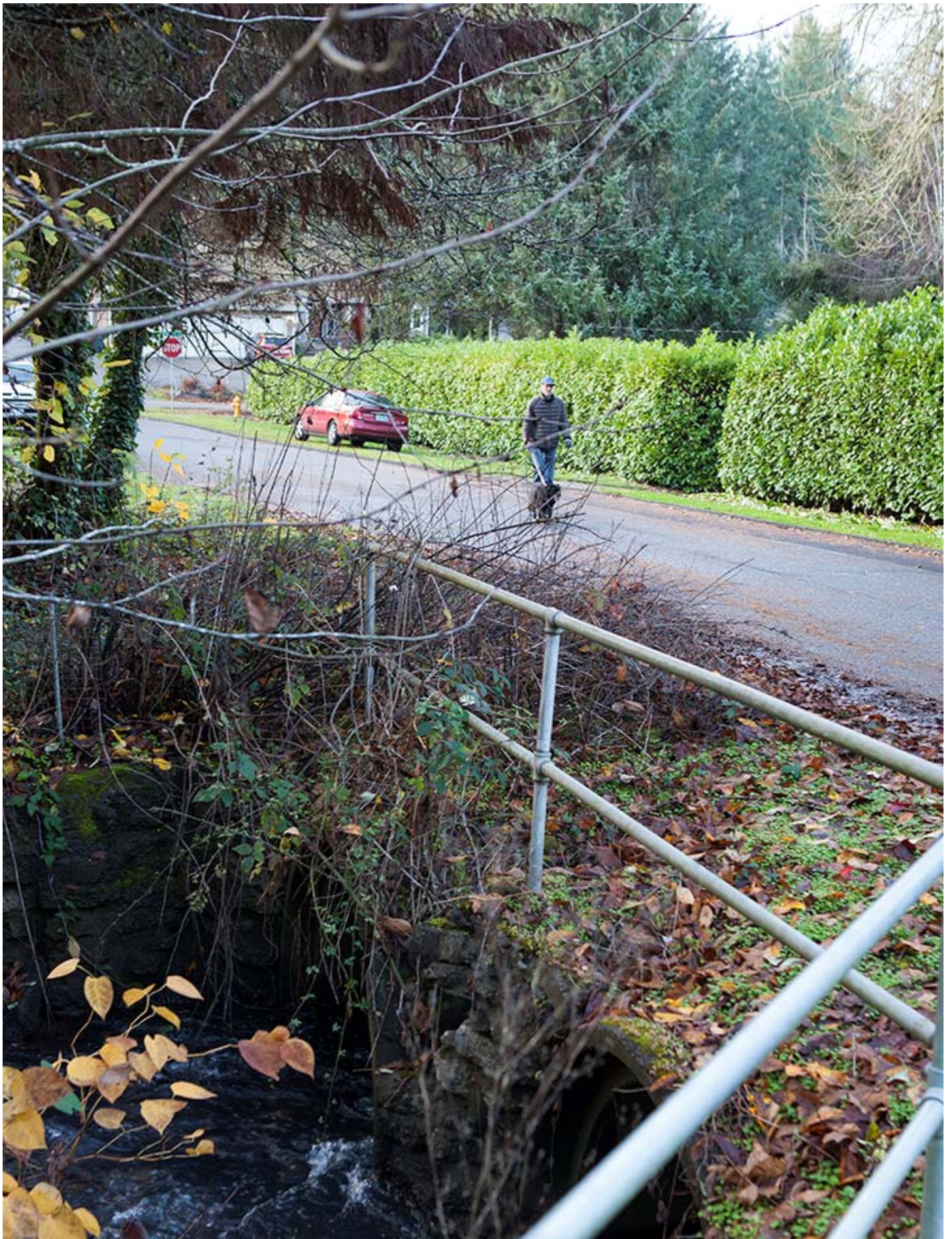
















## Ruth Stellmacher

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**From:** Sandra Hilton <skh5352@yahoo.com>  
**Sent:** Sunday, December 03, 2017 11:44 PM  
**To:** citycouncil  
**Cc:** CityRecorder  
**Subject:** DECEMBER 4, 2017 CITY COUNCIL MEETING -- WRITTEN TESTIMONY  
**Attachments:** August 28 Final Comment Letter.docx; December 4 City Council Memo.docx

We are adjoining property owners to the proposed 46-lot phased subdivision, Subdivision/Class 2 Adjustment Case No. SUB-ADJ17-09, Application No. 17-111999-LD & 17-2000000-LD, which a public hearing will occur on December 4, 2017.

We are submitting two documents, which we would like **included in the written testimony, as part of the public record.**

The first document, "December 4 City Council Memo", is one we respectfully ask you to read before the meeting, if at all possible. It is a quick read and summarizes some of our concerns with the City's subdivision approval process.

The second document, "August 28 Final Comment Letter", is the letter we sent to the Planning Department in response to their initial request for comments. We request this document be made part of the public record, as well. If you do look at this document, you will see we did a careful review and analysis of the related ordinances. Virtually none of our comments appear to have been considered. Some, we feel have serious safety and negative property implications, which could place the City at risk to future lawsuits if our concerns come to pass. We have also highlighted some of these in our first document.

Last, we brought up in our August 28 comments, our concern about construction noise going on 7 days a week. In the paragraph in the approval document which dealt with noise, it appears Planning staff were looking for us to provide some type of evidence, although their expectations were unclear. We took about 5 minutes on the internet, and easily found an example, linked below, where not every jurisdiction finds 7 days a week construction noise appropriate. This one happens to be from Australia, where they recommend no construction on Sundays, and half of a day on Saturday. If we wanted to research this, I'm sure we could find more examples. It's not a difficult stretch to see how construction noise 7 days a week impacts your livability when you live next door. The construction period is also expected to stretch between 1 and 2 years, just in the phases next to us.

<http://www.environment.nsw.gov.au/questions/regulations-for-noisy-construction>

We also request the City Recorder forward this e-mail and the attached documents to the City Planning Commission Members.

Thank you,

Jason and Sandra Hilton  
Adjoining Property Owners  
3610 Croisan Scenic Way S  
Salem, OR 97302



August 28, 2017

Case Green, Case Manager  
City of Salem Planning Division  
555 Liberty Street SE, Room 305  
Salem, OR. 97301

RE: Case No: Subdivision/Class 2 Adjustment Case No. SUB-ADJ17-09

Written Comments from Jason and Sandra Hilton, adjacent property owners, address is 3610 Croisan Scenic Way, S., Salem, OR 97301

**OVERALL STATEMENT:** Thank you for the opportunity to comment on the above case. We are concerned the above case does not meet the SRCC's as provided in the Notice of Filing. Attached are our comments. We included suggestions on possible steps which seem reasonable to us for the City's consideration.

**CONCERNS** -- Using City of Salem Criteria:

***(1) SRC 205-010(d) (3) -- Development within the tentative subdivision plan can be adequately served by City infrastructure.***

- a. There is some question if, when completed, the project will address the water issues from the planned subdivision and whether the designed system will be adequate to handle the large amount of water received during the rainy months. Even with the prior lush tree cover at the development site, the water runoff would create a small stream down the south end of Croisan Scenic Way S. Some neighbors have also experienced flooding in their basements and crawlspaces, and springs popping up in their yards.
- b. In addition, we are concerned the water runoff, caused by the clearing of trees and destruction of vegetation at the site, will be an issue during the long construction period, which is estimated to be more than a year for Phase 1. Trees and vegetation are an important control to flooding and erosion.

**Chapter 71.075 (Stormwater standards)**, requires any person conducting a project to prevent erosion and sediment transport from the site ***throughout all phases of construction*** and including landscaping (**Chapter 71.075 (2)** ); Where vegetation exists in the ***predevelopment condition, preserve the vegetation to the maximum extent feasible.*** (**Chapter 71.075 (5) ).**

There were a very large number of trees removed from the property, purported to be below the 10" measurement which allowed them to be cut. The development site for

Phase 1 almost looks like a clear-cut. Although the trees may have been less than 10" across, they had been there for many years and helped hold the soil in place and were an important control against flooding and erosion. We are concerned with the vegetation control removed, our property will be at an increased risk of flooding and having sediment from the site flow into our yard, right next to the proposed development.

**Suggestions:**

- Ensure a (non-developer hired) **licensed** geotechnical or Civil Engineer assesses the adequacy of the developer's proposed drainage system.
- Require the developer to take measures to address the additional runoff issues onto neighboring properties during the construction period. Also, consider the livability and safety of the adjoining property owners. For example, stacking bales of hay on the property/against adjoining property lines is unsightly, and could pose other risks such as fire or offering homes to rats (already a problem in the area), which could pose health risks.
- We would also like to understand, how the developer's removal of the trees, purported to be under 10 inches, and devastating the vegetation, including native ferns, complied with the "**....preserve the vegetation to the maximum extent feasible**", as required by the code, and what actions the City of Salem took, prior to the clearing, to ensure compliance.

**(2) SRC 205.010(d) (5) -- The street system in and adjacent to the tentative subdivision plan is designed so as to provide for the safe, orderly, and efficient circulation of traffic into, through, and out of the subdivision.**

**SRC 205.010(d) (7) -- The tentative subdivision plan mitigates impacts to the transportation system consistent with the approved Traffic Impact Analysis where applicable.**

Several issues exist:

- (a) The flow of traffic in and out of the planned development will be directed towards Croisan Scenic Way S., or Dogwood. Both streets exit to Madrona Avenue. Dogwood exits right after the Madrona curves, where visibility is poor, both for cars going through the curves and for cars on Dogwood. Croisan Scenic Way S exits one block east of Croisan Creek, where there is currently a stop sign at the intersection. This could easily become a congestion point, as Madrona Avenue already has significant traffic. In addition, not only will cars from the residents in the new development be exiting through Croisan Scenic Way S or Dogwood, but cars driven by residents on the other side of the proposed development may exit there as well.
- (b) There are also two improved streets within the proposed development which will exit onto two *unimproved* streets (Spring and Balm) on the South side of the proposed development.

These streets in turn, connect to Roberta Avenue S, *also unimproved*. According to Chris Green, the City of Salem does not plan to improve Spring, Balm, or Roberta Avenue S because of the time and energy involved and the need to meet the State of Oregon requirements (the 120 day requirement to complete the application process). Thus, there will *not* be adequately improved access points on the south side of the proposed development, which could be critical to allow emergency vehicles easy access to the new residents and better serving the proposed development's residents who may want to access Kuebler Avenue and I-5, since Roberta Avenue exits to Croisan Creek which intersects with Kuebler Avenue. This could help reduce congestion on Croisan Scenic Way S, Dogwood, and Madrona Avenue. We would also like to understand how leaving streets bordering the proposed development unimproved complies with the City code, and would not disrupt a *"...safe, orderly, and efficient circulation of traffic into, through, and out of the subdivision."*

- (c) In addition, Chris Green told us the City is not going to perform a **Traffic Impact Analysis**. The basis of the decision, we were told, is the last time an analysis was performed, Madrona Avenue had less about 875 trips a day, which is less than the 1,000 trips per day mentioned in the code. First of all, as current residents we would challenge 875 trips is still accurate. Second, it is only one of the criteria for requiring a traffic analysis under **Chapter 803 of the City's code**. **803.15 (b) states: An applicant shall provide a traffic impact analysis if one of the following conditions exists.** The first condition is the number of trips, but the second condition, **803.015 (b) (2)** requires an analysis if **'The increased traffic resulting from the development will contribute to documented traffic problems, based on current accident rates, traffic volumes or speeds, and identified locations where pedestrian and/or bicyclist safety is a concern.'** It's difficult to see how pedestrian and/or bicyclist safety isn't a concern given there are **NO** sidewalks on Madrona Avenue, and Nelson Park, a popular local attraction, is just one block away at the corner of Madrona Avenue and Croisan Creek.
- (d) Further, safety on Croisan Scenic Way S is also a concern with the increase in traffic. Croisan Scenic Way S will need stop signs on the side streets to prevent accidents. Even without the additional traffic, on more than one occasion accidents have almost occurred when someone tried to turn on one of the side streets in front of a car going down Croisan Scenic Way S.
- (e) Another safety risks exists for residents, particularly on Croisan Scenic Way S, who may have difficulty backing out of their driveways because of the additional traffic. This is of particular concern to us, since one of us is disabled. We are further concerned it will become a speedway as there are small children, bicyclists, and pedestrians in the area which could be hurt or killed.

**Suggestions:**

- Improve roadways exiting the proposed subdivision to provide a safe, path in and out of the south side of the proposed development. Consider the impact on current residents when determining which path would create the least impact.
- Reconsider the decision to not perform a Traffic Analysis. It is our understanding past proposed developments were thwarted, at least in part, because of Traffic Analysis results on Madrona Avenue. We question why if Traffic Analyses were considered necessary in the past, they are not now, especially given the language in **803.015**.
- Install appropriate traffic controls, such as stop signs and speed bumps, to slow traffic on Croisan Scenic Way S and to provide safer access on and off of Croisan Scenic Way S from the side streets. We hope the City will remember Croisan Scenic Way S flows through a residential neighborhood that needs protection from the City to keep its residents safe. **Current residents are important.**

**(3) SRC 205.010(d) (6) -- The tentative subdivision plan provides safe and convenient bicycle and pedestrian access from within the subdivision to adjacent residential areas and transit stops, and to neighborhood activity centers within one-half mile of the development. For purposes of this criterion, neighborhood activity centers include, but are not limited to, existing or planned schools, parks, shopping areas, transit stops, or employment centers.**

- (a) Nelson Park is a key attraction to area residents. Reiterating, there are **NO** sidewalks on Madrona Avenue or on Croisan Creek, and very little shoulders on Madrona Avenue. It is very dangerous for residents to access the park. The park is frequented by children, bicyclists, and pedestrians. This risk is only going to increase along with the increase in local residents. It is our understanding the City considers it too expensive to add the sidewalks and drainage to Madrona Avenue, but without them, how can the proposed development comply with **SRC 205.010(d) (6)**? The Park also does not have handicap accessibility from the Croisan Creek entrance.

**Suggestions:** Add the sidewalks and appropriate drainage to Madrona Avenue. Without them the City is setting itself up for a lawsuit if someone is hurt or killed, and citizens could suffer a loss much larger than any monetary settlement could possibly cover. The City Attorney may also want to consider if the lack of sidewalks on Madrona Avenue and handicapped access to Nelson Park, from Croisan Creek, are in compliance with the Americans with Disabilities Act.

**(4) SRC 205.010(d) (9) -- The tentative subdivision plan takes into account the topography and vegetation of the site, such that the least disruption of the site, topography, and vegetation will result from the reasonable development of the lots.**

- (a) Compliance with this is perplexing, since most of the trees, purported to be under 10", and vegetation have been eliminated from the first phase development site, and we have heard the developer plans to remove trees and vegetation from other phases of the proposed development soon. How does the removal of virtually all trees and vegetation comply with the **"....least disruption of the site, topography, and vegetation..."**? Also, as already discussed above, how does the removal of virtually all trees and vegetation comply with **Chapter 71.075 (2)** ; Where vegetation exists in the **predevelopment condition, preserve the vegetation to the, maximum extent feasible. (Chapter 71.075 (5))**?

The removal of virtually all trees and vegetation is also in stark contrast to the existing adjoining neighborhoods, and brings into question whether the virtually complete clearing of the property complies with the **CLASS 2 ADJUSTMENT -- SRC 250.005(d) (2) (B)**, (our number 5 below).

- (b) The removal of trees, purported to be under 10", appears to have been done **without any oversight** by the City of Salem. Without any oversight, how can the City of Salem ensure residents the developer complied with **SRC 205.010(d) (9)**?

The tree removal started on a Friday afternoon, at a time where it was almost impossible to find a City employee able to assure us the activity complied with City code. We received three different responses to the removal. One response was this is what developers do, "mea Copa" the practice of taking action before the City has time to react. We were told by another City employee the trees had to be marked by the City first before cutting. We could see the trees were not marked, so we approached the workers cutting the trees to tell them they had to wait until the City could mark them. The workers told us we were wrong. We called the City again, and were told as long as the trees were less than 10" across, the developer could remove them, certain species exempted. First, we question how the 10" regulation aligns with **SRC 205.010(d) (9)**. We also question how the City of Salem protects the public interest and ensures the work is done in compliance with City of Salem ordinances if a City employee doesn't inspect the work in progress for compliance.

**Suggestions:** We would like the City to review the developer's plans to determine if the planned removal of trees and vegetation on the remaining proposed development site will comply with **SRC 205.010(d)(9)**. We also would like the City to ensure the developer followed the City's requirements in the removal of trees, purported to be under 10", and vegetation, including native ferns, which took place on Phase 1 of the proposed development. This would include any pre-notification requirements or marking of trees for removal. If the developer did not comply, we would like to see if some level of restoration measures are appropriate.



**(5) CLASS 2 ADJUSTMENT -- SRC 250.005(d) (2) (B) If located within a residential zone, the proposed development will not detract from the livability or appearance of the residential area.**

- (a) All of the lots within the Northwest section of phase one will be significantly smaller than the lots in the adjoining Laurel Springs subdivision. For example, the smallest lot in the neighborhood is ours, at roughly 8,800 sq feet. The smallest lot in the proposed development is roughly 4,600 sq feet. Because of how the proposed subdivision is oriented, current neighbors will in some cases have several neighbors, possibly with two story homes, looking into their backyards. How does that NOT impact the livability or appearance of the residential area?
- (b) From what the Developer told us, he plans to remove most, if not all, of the remaining mature trees (those greater than 10" across). We live in an older neighborhood with lots of mature trees. How does this stark contrast NOT impact the appearance of the residential neighborhood?
- (c) Current residents also need a break from the construction noise. Construction noise, 7 days a week, for a period that could go longer than a year, impacts residents' livability. As stated in **Chapter 93.001. Declaration of Purpose. (Noise Ordinance)** 'It is the intent of the City Council to minimize the exposure of citizens to the potential negative physiological and psychological effects of excessive noise and to protect, promote and preserve the public health, safety and welfare. It is the intent of the City Council to control the level of noise in a manner that **promotes the use, value and enjoyment of property**, the conduct of business, and sleep and repose and that reduces unnecessary and excessive sound in the environment.'

Although limiting construction to the hours of 10 p.m. and 7 a.m. of the following day complies with **93.020**, having to listen to the construction noise potentially 7 days a week for an extended duration, does **NOT** seem to comply with the **intent of the City Council**. Current residents need a time in which they can enjoy their property, including their yards, and their families and friends. It's not just about a time to sleep. Long duration of exposure could also have potential negative physiological and psychological effects.

**Suggestions:** We would like the City of Salem to consider the following in order to protect the livability and appearance of the existing neighborhood:

- Require a variance to minimum City of Salem lot size requirements and increase the minimum lot sizes in the proposed development to more closely match those in the adjoining neighborhoods.
- Consider the feasibility and appropriateness of a tree conservation plan to protect some mature existing trees on the proposed development site.
- Limit construction to the week days, from 8:00 a.m. to 6:00 p.m., so neighbors can have a break to enjoy their families and friends and reduce any negative effects from the long exposure to construction noise.

**(6) Chapter 75 – Erosion Prevention and Sediment Control**

- (a) **Chapter 75.130 Dust Suppression Required.** We would like to see any approval of the proposed development to specifically require the developer to take adequate dust suppression measures as required by this chapter. This poses a significant health risk to me, Jason. When the developer cleared most of the proposed Phase 1 site, the dust caused me to have severe asthma attacks, which almost required a trip to the hospital, even after using my personal nebulizer at home. Reiterating the importance of measures, such as ***'Sprinkling haul and access roads and other exposed dust producing areas with water...'*** (Chapter 75.103 (a)), would make the requirement clear.

**(7) Chapter 300 -- Procedures for Land Use Application and Legislative Land Use Proposals**

- (a) **300.001. Purpose.** The purpose of this Chapter is to establish uniform procedures for the review and processing of land use applications, and to establish procedures for legislative land use proposals. This Chapter is intended to make the land use application review process clear and understandable for applicants; to facilitate timely review of land use applications by the City; and to **enable the public to effectively participate in the local land use decision making process.** (Ord No. 1-10)
- (b) Administrative issues at the City of Salem's Planning Department negatively impacted neighbors' ability to work with the SWAN Neighborhood Association to coordinate a response to this application.

The Chair of the Swan Neighborhood Association did not receive the Notice of Filing. Jason Hilton finally was able to speak to the Swan Chair, Becky Miner, on Friday, August 25, 2017, (3 days before the comment due date). According to Becky, but for her neighbor, she wouldn't have known about the 'Notice'. We immediately called the City of Salem Planning Department and were told the City had e-mailed the 'Notice' to Ms. Miner. **Under Chapter 300.520 (b) Type II Procedures, Public Notice and Comment, 'Public Notice shall be by first class mail.'** Also under this section, the mailed notice is supposed to go to any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property.

To complicate matters, we also had trouble contacting the SWAN Land Use Co-Chairs, whose contact information was included in the Notice of Filing from the City. One of the Co-Chairs never returned our call, and when we finally reached a family member several days later, we learned they had been out of town. Unfortunately, the two week response time was almost up. The phone number for the second Co-Chair was no longer in service. When we asked Chris Green about a possible extension of time, we were met with reluctance since an extension could impact the 120 day requirements for the City of Salem to complete the

new development application process, and an extension would require developer approval. We were also told the City of Salem adds this information to the Filing Notice as a service to residents. However, unless we are missing something, **Chapter 300.520** seems clear the Filing should be mailed by ***first class mail***. It is reasonable, such mailing should go to the Chair of the neighborhood association.

This concludes our comments at this time. Thank you for considering our comments and suggestions as you move forward. **Please include our comments, in their entirety, in the record.**

Sincerely,

Jason and Sandra Hilton  
3610 Croisan Scenic Way S  
Salem, OR. 97302

December 2, 2017

WRITTEN TESTIMONY TO THE SALEM CITY COUNCIL for the December 4, 2017 City Council Meeting

RE: Approval of Dogwood Heights 46-lot phased subdivision  
Subdivision/Class 2 Adjustment Case No. SUB-ADJ17-09  
Application No. 17-111999-LD & 17-2000000-LD

Submitted by Jason and Sandra Hilton  
Property Owners at 3610 Croisan Scenic Way S, Salem

**PLEASE MAKE THIS DOCUMENT, IN ITS ENTIRETY, PART OF THE PUBLIC RECORD.**

This document is to provide concerns we have with the City of Salem's approval process experienced by us as adjoining property owners. As property owners adjacent to the proposed development, we are a significant stakeholder.

The purpose of this document is to provide a perspective, which we hope will be helpful to the City Council. Having gone through this long and often times stressful approval process, we believe we have some insights worthy of the City Council's consideration.

- (1) **INADEQUACY OF CITIZEN REPRESENTATION** -- We and our neighbors had little representation on our behalf. The City relies heavily on neighborhood associations. In our case, the SWAN neighborhood association, which was formed by combining two former neighborhood associations, lacked significant involvement. When the initial approval process was taking place, in the summer, the SWAN neighborhood association was taking the summer off. To complicate matters, the City Planning Department did not notify the Chair of SWAN by first class mail, and she did not see her e-mail, which is how she was notified. It seems reasonable a Board Chair should always be notified of significant issues by first-class mail.

As a consequence, there was a last minute push to obtain SWAN's involvement. Also, the SWAN did not hold an emergency meeting prior to the December 4, 2017 City Council meeting to discuss the proposed project. We understand the board is comprised of volunteers whom do have other lives as well. While we appreciate the time SWAN board members did provide, the neighborhood association was not the most effective means of gathering citizen input in our particular case.

We also were not allowed access to our City Councilwoman, Sally Cook. There appears to be an accepted practice within the City of Salem, in which City Council members cannot meet with impacted constituents, if they are going to vote on a matter. This doesn't make sense. Sally Cook is our elected representative. We are her constituents. While it makes sense the City Planning Department cannot discuss the project ahead of time with the City Council, we would

argue the constituent and elected official relationship is different. What if Senator Ron Wyden refused to discuss the proposed tax bill with his constituents, because he would be voting on it?

Thus, there wasn't a lot of avenues available to assist citizen stakeholders on forming a response to the proposed project.

- (2) CITY ORDINANCES -- PROBLEMATIC & POTENTIALLY CONTRADICTIONARY** -- One of the ordinances as adjoining property owners we were supposed to use as evaluation criteria was ***SRC 250.005(d) (2) (B): If located within a residential zone, the proposed development will not detract from the livability or appearance of the residential area.***

This is very subjective. We live in an older neighborhood with large lot sizes and a large number of mature trees. The proposed project does have some large lots, but the large lots generally fall in areas of steep slope. Many of the lots abutting next to the existing Laurel Springs subdivision are quite small. To adjoining residents, having homes next door to them packed close together and more than one adjoining neighbor looking into their back yard, with existing trees cleared, negatively impacts the livability and appearance. This is a common concern we heard expressed by neighbors in our area.

While the residents may consider this a negative impact to livability however, the City Planning Department defaults to existing clear cut ordinances, regardless of their impact on livability or appearance for the neighbors in the abutting neighborhood. Lot size ordinances is a perfect example of this.

Additionally, we could not find any ordinance which addressed the issue of transitioning from older neighborhoods with very different characteristics, to new developments.

This leaves impacted residents frustrated and feeling unheard by City officials. Yet, the employees in the Planning Department apparently feel they have no other choice than to work from the clear criteria. We have heard one reason for this, is they can be subjected to lawsuits by developers if they attempt to impose something different than the clear criteria. We've also heard concern expressed that they are attempting to comply with the intent of state law. Thus, what's the point of even asking citizens for their feedback on the "livability" ordinance? To frustrate current residents and waste their time and the time of City staff whom have to deal with the fallout?

We have similar concerns regarding noise ordinances. Seven days a week, 7:00 am to 10:00 pm listening to construction noise definitely negatively impacts current residents' livability. It also impacts some current residents' practice of their Sabbath. Further, some residents may have health concerns which are negatively impacted by the continual noise. Still, the City will not make a variance from this requirement.

- (3) **DECISION AUTHORITY APPEARS TO LIMIT A WHOLISTIC VIEW OF THE PROJECT WITHIN THE SURROUNDING NEIGHBORHOOD** -- Adjoining property owners were also provided opportunity to comment on *SRC 205.010(d) (6): The tentative subdivision plan provides safe and convenient bicycle and pedestrian access from within the subdivision to adjacent residential areas and transit stops, and to neighborhood activity centers within one-half mile of the development.* The ordinance includes parks.

Nelson Park meets the above criterion. The City is just asking for a serious accident on Madronna Avenue. Although there are sidewalks part of the way down Madronna Avenue, there are no sidewalks extending from Croisan Scenic Way S, the main road out of the proposed subdivision, to Nelson Park. Madronna is becoming more congested and busy all of the time. Current residents have already been concerned about safe access to the Park, which has a wonderful playground for children. With an increase in residents there will be an increase in the potential of a serious accident, perhaps involving little children. The City needs to address this concern. Also, there is some question about meeting ADA accessibility requirements.

The Planning Department's response does not adequately address this deficiency. It appears the Planning Department's focus must be on what is required of the developer. Since this is outside of the developer's responsibility, it seems to get little serious consideration by the City Planning Department. We were told this particular decision rests with the City Council.

Similarly, we felt strongly the need for a Traffic Impact Analysis. However, although one official told us Croisan Scenic Way S realistically likely will never be a Minor Arterial, it's that way on the City's Master Plan, so the Planning Department must use that criteria and cannot require the developer to perform such a study. Again, it is outside of their jurisdiction to alter from the Master Plan. We were told they did recommend the developer perform the study, but the developer declined.

**DRAINAGE AND FLOODING ISSUES** -- The Planning Department acknowledged in its approval the receipt of several comments describing existing drainage issues to adjacent properties, including excessive stormwater runoff, groundwater seepage from numerous springs, and flooding along Croisan Creek.

In our initial comments, we suggested the city consider having a licensed Civil Engineer, not hired by the developer, review the developer's proposed drainage system. It does not appear this suggestion was considered. We hope it will not become an issue, however, in a quick search on the internet we did note a prior court case, in which the developer, Muti/Tech Engineering Services, Inc., and the City of Keizer were sued because of flooding issues occurring in the Country Glen Estates subdivision within the City of Keizer. (<http://caselaw.findlaw.com/or-court-of-appeals/1409397.html>) We just wanted to bring to the City Council's attention our continued concern, and hope the City will perform its' due diligence during the design review and construction process.

**NEED FOR A PERFORMANCE AUDIT OR CONSULTANT REVIEW:** After having gone through this process, and observing some of the concerns noted above, we are dismayed the City of Salem does not have an internal audit function which performs performance audits. It seems to us, a performance audit of the City Planning Department would greatly benefit the City and the Planning Department staff too. An audit or a consultant could look at the issues raised, look at internal staffing issues and distribution of workload, and look nationally at best practices, among other things. For example, during this process we were also surprised the City of Salem only has 2 traffic engineers, for a City as large as we are, and growing.