

# CITY OF SALEM

## Written Testimony

### City Council

555 Liberty St SE  
Salem, OR 97301

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**Monday, September 24, 2018 6:00 PM**

**Council Chambers**

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- 4.a.**     [18-435](#)     Continuation of the Appeal of the Planning Commission's decision on Comprehensive Plan Change / Zone Change / Urban Growth Preliminary Declaration Case No. CPC-ZC-UGA18-04 for property located at 4195 Aumsville Highway SE.

Ward(s): Ward 3  
Councilor(s): Nanke  
Neighborhood(s): SEMCA

**Recommendation:**     AFFIRM the decision of the Planning Commission.

**Attachments:**     [Vicinity Map](#)  
                              [July 19 2018 Decision of the Planning Commission](#)  
                              [Appeal Letter](#)  
                              [June 19 2018 P.C. Staff Report](#)  
                              [July 17 2018 Supplemental Staff Report](#)  
                              [Letter from Colette Peters - Director of the Oregon Department of Corrections](#)  
                              [August 27, 2018 Applicant's Request for Continuance](#)  
                              [Applicant's Appeal Response](#)  
                              [Written Testimony - Shipman](#)  
  
                              *Add - Written Testimony.*

## Amy Johnson

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**From:** Pamela Cole  
**Sent:** Monday, September 24, 2018 11:54 AM  
**To:** Angela Williamson; Amy Johnson; Ruth Stellmacher  
**Subject:** FW: Comprehensive Plan Change / Zone Change / Urban Growth Preliminary Declaration No. CPC-ZC-UGA18-04  
**Attachments:** Proposed Conditions of Approval, 4834-7197-5280, 9.pdf; Proposed Conditions of Approval, 4834-7197-5280, 11.docx

New information for tonight's hearing.

### Pamela Cole

*Planner II*

City of Salem | Community Development Department

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**From:** Mark D. Shipman [mailto:MShipman@SGLaw.com]  
**Sent:** Monday, September 24, 2018 11:14 AM  
**To:** Dan Atchison <DAtchison@cityofsalem.net>  
**Cc:** Natasha Zimmerman <NZimmerman@cityofsalem.net>; Lisa Anderson-Ogilvie <LMAnderson@cityofsalem.net>; Peter Fernandez <PFERNANDEZ@cityofsalem.net>; Pamela Cole <PCole@cityofsalem.net>; Glenn Davis <GDAVIS@cityofsalem.net>; 'Mark Hoyt' <mark@shermlaw.com>; Brandie Dalton <BDalton@mtengineering.net>; Rhiya M. Grimmett <rgrimmett@sglaw.com>  
**Subject:** Comprehensive Plan Change / Zone Change / Urban Growth Preliminary Declaration No. CPC-ZC-UGA18-04

Dan,

The attached relates to Council Agenda item 4.a.

Both the neighbors on Joseph Street (JSN) and the Applicant have met several times in order to try and come up with a list of conditions, and a memorandum of understanding, guiding the future development of the CLP property to be less intensive than what the Applicant, or future property may need to build in order to comply with the proposed conditions as written by the Planning Commission. We got there in part, but did not reach full consensus on all items on the proposed conditions of approval or the MOU.

Attached is JSN's proposed conditions of approval, which is redlined to the current proposed list of conditions of approval, and comprises a modified list of conditions of approval that I will be presenting to the councilors tonight.

The goal for the neighbors is to ensure that Joseph Street is not widened or changed to a degree that alters the rural nature of the street and area. The JSN also want traffic calming measures installed on Joseph Street as it has become a 'cut through' for delivery companies and employee's who work down in the Mill Creek Corporate Center. The other goal is to reduce future density of the property, east of the Power lines, in order to be more compatible with the surrounding neighborhood.

I realize this is cross purposes for what the staff is wanting to ensure, which is new development meet's to current city standards. The challenge we have is the CLP property is in the City, while parts of Joseph Street, and all of the neighbors are in the County. If the Applicant is required to develop everything they will be forced to go as dense (and high) as possible, which does not meet the requirement under the zoning ordinance (SRC 265.005(e)(1)(A), that the proposed change from PH to IC and the allowed uses therein are logical with the surrounding uses.

Several of the proposed conditions of approval are identical to what the PC required (e.g. 1, 2, 3, 12, 13, 15a., 16 and 17).

Several of the proposed conditions of approval are what the JSN and CLP have agreed to in concept (e.g. 4, 5, 7, 9, 10, 14, 15b and c., 18 and 19).

A couple of the proposed conditions of approval are new and are what the JSN needs in order to support this request (e.g. 6, 8, and 11). These new conditions of approval have not been accepted by CLP.

My hope is that staff can support those additional conditions of approval that JSN and CLP have conceptually agreed to, and that Staff and the Council will agree to modify the proposed conditions of approval to add in the new (6, 8, and 11) as well.

The JSN will only have 4-5 people testify. There could be others, but for right now we are trying to limit testimony.

Please call or email me with any questions or concerns.

Thank you,

**Mark Shipman | Lawyer**  
Real Estate & Land Use Practice Group



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[Email](#) | [Web](#) | [Bio](#) | [LinkedIn](#)

**Paralegal** | Hannah Stevenson | [hstevenson@sglaw.com](mailto:hstevenson@sglaw.com)

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## PROPOSED CONDITIONS ~~OF~~ APPROVAL

### COMPREHENSIVE PLAN MAP CHANGE AND ZONE CHANGE

**Condition 1:** Prior to development, the applicant shall submit a map and inventory of all trees 10 inches or greater in diameter.

**Condition 2:** Removal of significant trees from the subject property shall require either a tree removal permit documenting that the trees are hazardous or a tree variance.

**Condition 3:** The landscaped setbacks from the Joseph Street SE right-of-way and property line abutting the Acreage Residential zone shall be designed to maximize retention of existing trees and non-nuisance vegetation.

**Condition 4:** ~~No driveways~~Two accesses shall be allowed from the subject property onto ~~the~~Joseph Street SE. Improvements to the access intersection with Joseph Street shall follow Public Works Standards. There shall be no further widening or improvements to Joseph Street SE. The City of Salem agrees to work with the Applicant, Neighbors, and Marion County to limit the speed on Joseph Street including, but not limited to signage and speed bumps.  
~~section of Joseph Street SE that is inside the Urban Growth Boundary unless a variance is obtained from this condition.~~

**Condition 5:** No driveways or accesses shall be allowed from the subject property onto ~~the section of Joseph Street SE that is outside the Urban Growth Boundary~~Aumsville Hwy SE.

**Condition 6:** Transportation impacts from the 15-acre site shall be limited to a maximum total of 5,948 vehicle trips per day. When a future development proposal that is subject to a Site Plan Review (SPR) process, exceeds either Salem's or Marion County's thresholds to require a Traffic Impact Analysis (TIA), then the City shall require a TIA be conducted which shall be scoped, reviewed, and approved by both agencies. Intersections to be included in the study, shall include, but not be limited to the easterly intersection of Aumsville Hwy. S. and Joseph Street S. ("Upper Joseph Street").

**Condition 7:** ~~The minimum setback from the Joseph Street SE right-of-way shall be 30 feet, landscaped with a minimum of one plant unit per 20 square feet.~~There shall be no parking on Joseph Street SE for any future use on the subject property. All parking shall be contained on site.

**Condition 8:** Until the abutting properties, north of Joseph Street SE are brought into the Urban Growth Boundary, and City of Salem, the Applicant, current and future property owners shall be restricted to residential density east of the power lines, with no more than Eight (8) single family residences along Joseph Street, and Thirty (30) duplex or multifamily units, no higher than two stories in height.

**Condition 9:** In lieu of sidewalks, the applicant shall provide for pedestrian walking paths to connect multi-family residential/dorm facilities in the western portion of the subject property to the Deer Park Drive, Aumsville Hwy intersection.

**Condition 11:** Prior to any development activities on the Property, the property owner shall sign and record on the real property, the following declaratory statement recognizing the provisions of ORS 30.936

and 30.937. In addition, the property owner shall provide a copy of this declaratory statement to any tenants who buy/lease any residential unit on the Property.

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

#### URBAN GROWTH PRELIMINARY DECLARATION

**Condition 812:** Convey land for dedication to equal a half-width right-of-way of 36 feet along the entire frontage of Aumsville Highway SE.

**Condition 913:** Convey land for dedication to equal a half-width right-of-way of 30 feet along the portion of frontage where Joseph Street SE is located within the Urban Growth Boundary.

~~**Condition 10:** Along the entire frontage of Aumsville Highway SE, construct a three-quarter street improvement to Minor Arterial standards of 23 feet from centerline on the development side and 12 feet wide on the opposite side. Additional pavement width shall be required as set forth in the Public Works Design Standards (PWDS) to provide a left turn lane at each driveway approach proposed along~~**14:**  
Applicant shall pay a temporary access fee in the amount of \$218,200.00, pursuant to SRC 200.080, for the proportional impacts to the intersection of Deer Park Drive SE, Aumsville Hwy, and Joseph Street.  
~~Aumsville Highway SE.~~

**Condition 1115:** If a driveway approach is constructed along Joseph Street to provide vehicular access to the proposed development:

~~da.~~ **da.** Convey land for dedication to equal a half-width right-of-way of 30 feet along the portion of frontage where Joseph Street SE is located outside the Urban Growth Boundary.

~~eb.~~ **eb.** Along the portion of frontage where ~~Joseph Street SE is located inside the Urban Growth Boundary,~~ the westerly driveway approach will be constructed, to construct ~~a three-quarter street improvement to Local street standards of 15 feet from centerline on the development side and 12-foot wide on the opposite side;~~ an appropriate street improvement taking into consideration the preservation of trees, and rural nature of abutting properties.

~~f.~~ **f.** Along the portion of frontage where ~~Joseph Street SE is located outside the Urban Growth Boundary,~~ construct a 30-foot wide linking street improvement.

~~Condition 12: If no driveway approach is constructed along Joseph Street SE to provide vehicular access to the proposed development and access is provided exclusively from Aumsville Highway, either:~~

~~c. Along the portion of frontage where the easterly driveway approach will be, construct an appropriate local intersection at Joseph Street and Sky Lane SE is located inside the Urban Growth Boundary, construct a three-quarter street improvement to Local street standards of 15 feet from centerline on the development side and 12-foot wide on the opposite side; or d. Pay a temporary access fee of \$85,000 pursuant to SRC 200.080, taking into consideration the rural nature of the abutting area.~~

**Condition 1316:** Construct a minimum 8-inch sewer main from the nearest adequate sewer to the subject property. The nearest adequate linking facility is currently an existing 15-inch sewer line in Aumsville Highway SE, approximately 0.64 miles northwest of the subject property.

**Condition 1417:** Construct the following water facilities consistent with the *Water System Master Plan* and as approved by the Public Works Director:~~a.~~

- ~~a.~~ Construct an S-2 pump station to serve the S-2 water service area in the vicinity of the subject property; and
- ~~b.~~ ~~b.~~ Construct S-1 main(s) from the existing S-1 water system to the new S-2 pump station; and~~c.~~
- ~~c.~~ Construct S-2 main(s) from the pump station to the subject property; and~~d.~~
- ~~d.~~ Construct S-2 main(s) along the boundary of the subject property to serve adjacent properties pursuant to Public Works Design Standard.

~~Condition 15: As a condition of residential use, the applicant has two options for providing park facilities to serve~~  
**18:** Prior to any development on the subject property:~~a. Convey or acquire 2 acres of property, convey 2 acres of the subject property, specifically around the large oaks and fir trees in the westerly portion of the subject property, along Joseph Street SE, for dedication of neighborhood park facility NP-41, NP-44, or equivalent; or~~

~~b. Pay a temporary access fee of \$72,450~~

**Condition 19:** Improvements to Aumsville Hwy shall be deferred pursuant to SRC 200.080(a) a deferral and non-remonstrance agreement.

Document comparison by Workshare 9.5 on Monday, September 24, 2018  
8:56:37 AM

Input:	
Document 1 ID	netdocuments://4834-7197-5280/8
Description	Proposed Conditions of Approval
Document 2 ID	netdocuments://4834-7197-5280/4
Description	Proposed Conditions of Approval
Rendering set	Standard

Legend:	
<u>Insertion</u>	
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Moved from	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Insertions	36
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Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	68

## PROPOSED CONDITIONS OF APPROVAL

### COMPREHENSIVE PLAN MAP CHANGE AND ZONE CHANGE

**Condition 1:** Prior to development, the applicant shall submit a map and inventory of all trees 10 inches or greater in diameter.

**Condition 2:** Removal of significant trees from the subject property shall require either a tree removal permit documenting that the trees are hazardous or a tree variance.

**Condition 3:** The landscaped setbacks from the Joseph Street SE right-of-way and property line abutting the Acreage Residential zone shall be designed to maximize retention of existing trees and non-nuisance vegetation.

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**Condition 5:** No driveways or accesses shall be allowed from the subject property onto Aumsville Hwy SE.

**Condition 6:** Transportation impacts from the 15-acre site shall be limited to a maximum total of 5,948 vehicle trips per day. When a future development proposal that is subject to a Site Plan Review (SPR) process, exceeds either Salem's or Marion County's thresholds to require a Traffic Impact Analysis (TIA), then the City shall require a TIA be conducted which shall be scoped, reviewed, and approved by both agencies. Intersections to be included in the study, shall include, but not be limited to the easterly intersection of Aumsville Hwy. S. and Joseph Street S. ("Upper Joseph Street").

**Condition 7:** There shall be no parking on Joseph Street SE for any future use on the subject property. All parking shall be contained on site.

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**Condition 9:** In lieu of sidewalks, the applicant shall provide for pedestrian walking paths to connect multi-family residential/dorm facilities in the western portion of the subject property to the Deer Park Drive, Aumsville Hwy intersection.

**Condition 11:** Prior to any development activities on the Property, the property owner shall sign and record on the real property, the following declaratory statement recognizing the provisions of ORS 30.936 and 30.937. In addition, the property owner shall provide a copy of this declaratory statement to any tenants who buy/lease any residential unit on the Property.



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

#### URBAN GROWTH PRELIMINARY DECLARATION

**Condition 12:** Convey land for dedication to equal a half-width right-of-way of 36 feet along the entire frontage of Aumsville Highway SE.

**Condition 13:** Convey land for dedication to equal a half-width right-of-way of 30 feet along the portion of frontage where Joseph Street SE is located within the Urban Growth Boundary.

**Condition 14:** Applicant shall pay a temporary access fee in the amount of \$218,200.00, pursuant to SRC 200.080, for the proportional impacts to the intersection of Deer Park Drive SE, Aumsville Hwy, and Joseph Street.

**Condition 15:** If a driveway approach is constructed along Joseph Street to provide vehicular access to the proposed development:

**a.** Convey land for dedication to equal a half-width right-of-way of 30 feet along the portion of frontage where Joseph Street SE is located outside the Urban Growth Boundary.

**b.** Along the portion of frontage where the westerly driveway approach will be constructed, to construct an appropriate street improvement taking into consideration the preservation of trees, and rural nature of abutting properties.

**c.** Along the portion of frontage where the easterly driveway approach will be, construct an appropriate local intersection at Joseph Street and Sky Lane SE, taking into consideration the rural nature of the abutting area.

**Condition 16:** Construct a minimum 8-inch sewer main from the nearest adequate sewer to the subject property. The nearest adequate linking facility is currently an existing 15-inch sewer line in Aumsville Highway SE, approximately 0.64 miles northwest of the subject property.

**Condition 17:** Construct the following water facilities consistent with the *Water System Master Plan* and as approved by the Public Works Director:

- a. Construct an S-2 pump station to serve the S-2 water service area in the vicinity of the subject property; and
- b. Construct S-1 main(s) from the existing S-1 water system to the new S-2 pump station; and
- c. Construct S-2 main(s) from the pump station to the subject property; and
- d. Construct S-2 main(s) along the boundary of the subject property to serve adjacent properties pursuant to Public Works Design Standard.

**Condition 18:** Prior to any development on the subject property, convey 2 acres of the subject property, specifically around the large oaks and fir trees in the westerly portion of the subject property, along Joseph Street SE, for dedication of neighborhood park facility.

**Condition 19:** Improvements to Aumsville Hwy shall be deferred pursuant to a deferral and non-remonstrance agreement.