

**From:** [Aaron Panko](#)  
**To:** [Amy Johnson](#)  
**Subject:** FW: Applicant's Final Written Argument re Meyer Farm Subdivision (City Case No. SUB21-09); 4540 Pringle Road SE  
**Date:** Tuesday, February 22, 2022 8:35:06 AM  
**Attachments:** [Ltr Salem City Council Applicant Final Written Argument.pdf](#)  
[Ltr. to City Council from M. Keho 2.21.22.pdf](#)

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Hi Amy,

Please include this testimony for the February 28<sup>th</sup> meeting.

Thanks!

-Aaron | 503-540-2356

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**From:** Stephenson, Garrett H. <GStephenson@SCHWABE.com>  
**Sent:** Monday, February 21, 2022 2:37 PM  
**To:** Aaron Panko <APanko@cityofsalem.net>; CityRecorder <CityRecorder@cityofsalem.net>  
**Cc:** 'Jennifer Arnold' <jarnold@emeriodesign.com>; 'Roy Hankins' <roy@emeriodesign.com>; 'Martin Kehoe' <mkehoe03@gmail.com>; Hicks, Jane M. <JHicks@SCHWABE.com>; Oswald, Bailey M. <BMOswald@schwabe.com>  
**Subject:** Applicant's Final Written Argument re Meyer Farm Subdivision (City Case No. SUB21-09); 4540 Pringle Road SE

Aaron,

On behalf of Kehoe NW Properties LLC, please find attached the Applicant's Final Written Argument regarding the Meyer Farm Subdivision (City Case No. SUB21-09). This is timely submitted prior to 5:00 PM on Monday, February 21, 2022. The letters contain argument only and no new evidence, although my letter does refer to evidence already in the record. Please confirm receipt, place this into the case record, and place it before the City Council.

Thanks,

Garrett

**Garrett H. Stephenson**

Shareholder

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**Schwabe Williamson & Wyatt**

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February 21, 2022

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**VIA EMAIL**

Salem City Council  
555 Liberty Street SE, Room 220  
Salem, Oregon 97301

RE: Applicant's Final Written Argument; Meyer Farm Subdivision (City Case No. SUB21-09)

Dear Mayor Bennett and Councilors:

This office represents Kehoe Northwest Properties LLC (the "Applicant"), in the above-referenced application (the "Application"). The following is the Applicant's final written argument on this matter. The letter is respectfully submitted prior to the end of the final written argument period at 5:00 p.m. on Monday, February 21, 2022. Please note that it addresses public comments made available to the Applicant by February 14, 2022.

**I. INTRODUCTION**

The proposed Meyer Farm Subdivision (the "Project") would divide the existing Meyer Farm property in 139 single family lots ranging in size from 4,000 square feet to 8,100 sq. ft., while preserving the existing farmhouse, accessory buildings, and 3.64 acres. The Project would provide an essential extension of Hilfiker Lane called for in the Transportation System Plan. The Project is consistent with the Property's single-family residential designation on the City's adopted and acknowledged Comprehensive Plan map and meets all standards of the RS-zoning designation, which automatically becomes effective upon completion of the final subdivision plat. Staff and the Applicant have explained in the Application and three staff reports how the Application satisfies all applicable criteria and there is no dispute in the record, nor any substantial evidence, that the Application does not satisfy all applicable criteria and standards. On this basis, the Council should approve the Application and is obligated to do so under ORS 197.307(4) (the "needed housing statute").

**II. EXECUTIVE SUMMARY**

For the reasons that follow, the Applicant respectfully asks the Council to approve the Application.

- This is a limited-land use housing development application. Therefore, the Council is required by law to approve the Application if it satisfies all clear and objective criteria set forth in the Salem Revised Code.

- Based on the concerns of the Morningside Neighborhood Association, the Applicant voluntarily updated its proposed tree conservation plan and tree inventory. The Applicant and City staff made a subsequent site visit and, as explained in the February 18, 2022 staff report, staff and the Applicant agree on the final inventory and conservation plan. Staff has found that all tree conservation plan standards are met.
- The Applicant and staff have both analyzed arguments that Hilfiker Road could be realigned to preserve more trees, and both have concluded that this is not feasible.
- As explained by the Applicant's transportation engineer and the City's Assistant City Traffic Engineer, the proposed street layout and street improvements are not only allowable under the City's adopted transportation standards, they are in fact required by it. The Applicant has voluntarily proposed to install four speed bumps along Albert Drive SE in response to concerns regarding vehicles speeds on that street and cut-through traffic.
- As the City Attorney explained at the January 10, 2022 hearing, the Application was properly made by the court-recognized trustee of the Property. Arguments regarding the ongoing legal dispute between the Meyer Family's trust beneficiaries are irrelevant to the approval criteria and may not factor into the Council's decision.

### **III. THE APPLICATION SATISFIES ALL APPLICABLE CRITERIA**

For the following reasons, as well as those in the Staff Report(s) and the Applicant's prior testimony, the Council should find that the Application satisfies all applicable criteria.

- a. In a limited land use decision, the Council may apply only standards and criteria within its land use regulations, and the Application meets all applicable standards and criteria.**

In this instance, the City Council is acting in a quasi-judicial role and must adhere to certain procedural requirements and standards of decision making. *See* ORS 197.195(5); *see also* ORS 197.763. SUB 21-09 is a phased tentative subdivision plan, which is a limited land use decision under ORS 197.015(12)(a)(A). The limited land use decision-making process is intended to provide property owners with predictability as to how land can be used and, as such, affords limited discretion to local governments. Thus, the role of a decision maker acting in a quasi-judicial capacity on a limited land-use application is to apply the approval criteria and reject arguments concerning issues that are outside of the approval criteria. This is especially true of housing development applications, which are subject to only "clear and objective" criteria and standards. ORS 197.307(4).

Under SRC 300.940(b), a limited land use decision "shall be based on the applicable standards and criteria set forth in the UDC, the Salem Area Comprehensive Plan, and, if applicable, any other land use standards imposed by state law or administrative rule." Additionally, the standards to be applied are those that were applicable at the time the Application was first submitted. ORS

227.178(3)(a). The applicable standards and criteria for a phased subdivision tentative plan are set forth in SRC 205.010(d) and SRC 205.015(d). In this case, staff has repeatedly found that the Application complies with all standards of SRC 205, SRC 800, and with all applicable provisions of the UDC. Staff Report at 12–14.

**b. The Application does not ask the Council to legislate or weigh policy, only to implement the City’s existing regulations.**

As explained below, many concerns raised by opponents do not establish (and in many cases do not even allege) that the criteria are not satisfied. While their concerns are understandable, what is before the Council is not a policy or legislative decision—it is the implementation of the City’s existing land use regulations. The Property has long been designated for single-family residential (“SFR”) uses on the City’s Comprehensive Plan. With their 4,000 sq. ft. lot sizes, the Property’s current RA zone and automatic post-division RS zoning call for maximum residential density of approximately 10.8 dwelling units per acre. The Application is consistent with these designations.

Relatedly, the Council should reject objections to the proposed improvements on 12<sup>th</sup> St. and extension of Hilfiker Lane for the simple reason that such improvements are required by the City’s adopted Transportation System Plan (“TSP”) and street standards. Specifically, an extension of Hilfiker Lane between Commercial Street and Pringle Road is identified in Capital Project 105 of the TSP (Sec. 3-51). All under-improved boundary streets (such as 12<sup>th</sup> Street) are required to meet applicable street design standards as a condition of approval. SRC 803.040(a). The Application is consistent with both requirements.

**c. Needed housing applications are subject to only clear and objective standards under ORS 197.307(4).**

SUB 21-09 is a needed housing application. Local governments may only apply “clear and objective standards, conditions and procedures” to such applications. ORS 197.307(4); *see, e.g., Warren v. Washington Cty.*, 296 Or App 595, 602 (2019). Thus, subjective standards may not be applied to the Application.

At issue here is SRC 808.035(d)(3) which requires that “[n]o significant trees are designated for removal, unless there [sic] no reasonable design alternatives that would enable preservation of such trees. . .”. The term “reasonable design alternatives,” is not clear and objective because it does not provide any guidance as to what sort of design alternatives should be considered or what sorts of alternatives would be “reasonable.” This is similar to standards which the Oregon Land Use Board of Appeals and Court of Appeals have found not to be clear and objective. *See, e.g., Warren*, 296 Or App at 602 (a requirement that habitat be “measurably improved” is not clear and objective and is therefore inapplicable). Therefore, while the Applicant and Staff have concluded that the Application meets SRC 808.035(d)(3), that standard cannot be used as a basis for denial of SUB 21-09. ORS 197.307(4).

Even if SRC 808.035(d)(3) were a clear and objective standard, the Council could not use it as a basis for denial because it is a standard for a Tree Conservation Plan (TCP), not a tentative subdivision. SRC 808.035. The Applicant's Type 1 TCP has not yet been approved; therefore, the TCP standards and criteria (including SRC 808.035(d)(3) ) are not properly before the Council.

**d. The Application is consistent with uses allowed in the Residential Agriculture and Single Family Residential zones and satisfies the criteria in SRC 205, SRC 800, and all applicable provisions of the UDC.**

**i. The Application mitigates impacts to the transportation system consistent with the approved traffic impact analysis, where applicable.**

In July 2021, the Applicant submitted a Traffic Impact Analysis addressing improvements that needed to be made in order to mitigate the traffic impact of the proposed subdivision. Relying on the Traffic Impact Analysis, the Staff Report found that the Application satisfied applicable transportation criteria. Staff Report at 8.

Numerous public comments address traffic impacts as a concern related to the Application. Such concerns include:

- Stopping sight distance on Battle Creek Road SE;
- Surrounding development impact on traffic;
- Grade concerns on 12<sup>th</sup> Street;
- Increased traffic on the new collector between Commercial Street SE and Pringle Road/Battle Creek Road SE, and safety concerns related to this increase in traffic;
- Increased traffic with the extension of Hilfiker Lane SE;
- Shifting alignment of Hilfiker Lane SE;
- Lack of bike lanes and pedestrian safety;
- General safety concerns at intersections of Hillrose and Battle Creek, Hilfiker and Commercial, and Hilfiker and Sunnyside;
- Increased traffic on Mandy and Albert Drive;
- Safety concerns at the left turn from Battle Creek Road SE/Pringle Road onto Hillrose; and
- Incompleteness of the Traffic Impact Analysis.

These concerns have been thoroughly addressed in the Applicant's Traffic Impact Analysis, the February 14, 2022 Traffic Memo prepared by Kittleson & Associates, the February 14, 2022 Memo prepared by Emerio, and the February 10, 2022 email memo prepared by the City Assistant Traffic Engineer. Those materials establish the following:

- Assuming a design speed of 45 MPH, improvements to Battle Creek Road SE/Pringle Road will not create sight distance issues;
- Other developments have been approved by City Council and improvements constructed in conjunction with those developments adequately mitigate their traffic impact;
- The extension of Hilfiker will likely reduce cut through traffic on Suntree Drive, Mandy Avenue, and Albert Drive;
- There is no reasonable design alternative to the Hilfiker Lane extension; and
- Battle Creek Road SE onto Hillrose will be reconfigured to allow a left-turn, and the Traffic Impact Analysis satisfies City intersection performance criteria.

At the January 10, 2022 City Council hearing there were additional traffic concerns. The Applicant responded to specific traffic concerns in a February 14, 2022 Traffic Memo prepared by Kittleson & Associates, attached to its February 14, 2022 letter to City Council. The Memo identifies and responds to key transportation comments raised at the January 10, 2022 City Council meeting. A separate February 14, 2022 Memo prepared by Emerio addresses why Hilfiker Lane cannot be shifted to avoid removal of significant trees.

Additionally, in an email memo from the Assistant City Traffic Engineer for the City of Salem, the engineer explained why sight distance is not an issue at the intersection of Battle Creek Road SE/Pringle Road SE. The memo also explains why Costco and other developments do not factor into the Applicant's mitigation of traffic impact. The Applicant "cannot be responsible to mitigate background growth and to account for every potential development that may be contemplated in the vicinity. The background growth and the COVID adjustments used in the Traffic Impact Analysis more than accommodate general traffic growth in the area." City Assistant Traffic Engineer February 10, 2022 email memo. Further, the Applicant "is not responsible to mitigate existing traffic issues; they are required to mitigate the impacts from their development." Staff Memo dated January 10, 2022 at 5. City Staff found the Applicant has adequately mitigated impacts from the Project. Staff Report at 25.

The email memo also states that the Hilfiker Lane SE extension will likely reduce cut-through traffic on Suntree Drive SE, Mandy Avenue SE, and Albert Drive SE. City Assistant Traffic Engineer February 10, 2022 email memo. The Applicant also addressed public comments concerning increased traffic and speed on Albert Drive SE in its February 14, 2022 letter to City Council. There, the Applicant proposed a condition requiring it to construct four speed bumps on Albert Drive, as follows:

"The Applicant shall construct four speed bumps on Albert SE, between Mandy Avenue SE and Commercial Street SE, as shown in the City's concept plan(s). The City shall provide any necessary engineering drawings and waive any permitting/traffic control fees for the same."

Although not required, the Applicant hopes the construction of these speed bumps will alleviate some of the traffic and speed concerns on Albert Drive.

The Applicant has adequately responded to all traffic concerns. There is no basis to conclude that the Project will adversely impact the neighborhood due to traffic because the Traffic Impact Analysis together with the additional post-hearing traffic analysis shows that the Applications satisfies all street improvement requirements and sufficiently mitigates the Project's impacts on existing streets.

**ii. The Application is consistent with the criteria for approval of a Tree Conservation Plan in SRC 808.035(d).**

Numerous public comments also address tree removal as a concern related to this Application. Such concerns include:

- Removal of significant trees;
- Design alternatives to avoid removal of trees;
- Incompleteness and inaccuracy of the tree survey; and
- Environmental impacts of tree removal.

As required by SRC 808, the Applicant submitted a tree assessment and TCP. The plan was updated twice, most recently after the Applicant met with the City Arborist following the January 10, 2022 City Council meeting. Relying on the updated plan, the City Arborist identified 6 significant trees proposed for removal that were not the Applicant's original TCP and 10 trees identified as significant by the Applicant but are, in fact, not significant. In total, staff identified 64 significant trees on the subject property and abutting right of way. Staff Memo dated February 3, 2022, at 1. Of those 64 significant trees, 47 are proposed to be preserved and 17 removed, for a preservation rate of 73.4%. Removal of these trees is necessary to accommodate the Hilfiker Lane SE extension and provides a useable building envelope for homes.

Identifying and measuring trees is neither easy nor precise. Particularly with white oaks, the circumference of a tree depends on how a person on the ground actually measures it, which involves individual judgment and experiences. There is no evidence to suggest that the Applicant's tree survey is significantly inaccurate. The purpose of the January 26, 2022 site visit with the City Arborist was to verify the accuracy of the provided data. Staff Memo dated February 3, 2022, at 1. Staff and the Applicant agree on the accuracy of the current tree inventory and removal plan. The fact that the tree conservation plan has been updated twice does not suggest a lack of diligence by the Applicant, it suggests the opposite. That is, the Applicant has on two occasions heard concerns of the neighborhood regarding trees and was in both instances willing to take additional time to make sure that the tree inventory and removal plan was as accurate as possible.



Regardless, there is no prohibition on amending an application after submittal, or even during the public hearing period. LUBA has firmly established that submittal requirements, such as tree inventories, are not criteria and any technical deficiency in the measurement of the trees, if not otherwise resolved by the two follow-up visits by the Applicant and City Staff, are not bases for denial. *See Knapp v. City of Jacksonville*, 70 Or LUBA 259 (2014); *see also Broken Top Community Assoc. v. Deschutes County*, 54 Or LUBA 84 (2007). All that is required is evidence in the record sufficient to support a finding of compliance with the approval criteria. *See Broderon v. City of Ashland*, 55 Or LUBA 350 (2007); *see also McNern v. City of Corvallis*, 39 Or LUBA 591 (2001).

Under the Salem Revised Code, an Application for a tree conservation plan must be approved if the applicant proves, among other criteria, “[n]o significant trees are designated for removal, unless there [sic] no reasonable design alternatives that would enable preservation of such trees... .” SRC 808.035(d)(2). Relying on the Applicant’s original tree conservation plan, the Staff Report found that there were no reasonable alternatives to removal of significant Oregon White Oaks. Staff Report at 7. Removal is necessary to provide building envelopes for future lots, street improvements, and sidewalk improvements. Staff Report at 20. There are no reasonable design alternatives because, as stated in the February 14, 2022 Traffic Memo prepared by Emerio:

- The connection to Hilfiker at 12<sup>th</sup> Street does not meet the intersection angle;
- Existing driveways would need to be extended to connect to the new alignment;
- Proposed realignments would create double frontage lots;
- The grades of Hilfiker due to realignment could adversely impact significant trees;
- Realignment would create more dangerous driving conditions due to tighter radii;
- Realignment would impact the proposed water quality facility; and
- Surrounding streets would need to shift significantly to meet street spacing requirements.

Even if the City Council determines that there is a reasonable design alternative that does not provide a basis for denying the Application. As explained above, SRC 808.035(d)(2) is not a clear and objective standard, and therefore cannot be used as a basis for denial of the Application. *Id.* Even so, the Staff Report specifically notes that the removal of significant trees “is necessary because of no reasonable design alternatives that would enable their preservation.” Staff Report at 7.

#### **IV. APPLICANT’S RESPONSES TO SPECIFIC PUBLIC COMMENTS**

Specific public comments are identified in headings, and the Applicant’s responses are given below.

**a. Concerns regarding the Application being incomplete and inaccurate.**

Again, there is no prohibition on amending an application after submittal, or even during the public hearing period. LUBA has firmly established that submittal requirements are not criteria and any technical deficiencies are not bases for denial. *See Knapp v. City of Jacksonville*, 70 Or LUBA 259 (2014); *see also Broken Top Community Assoc. v. Deschutes County*, 54 Or LUBA 84 (2007). All that is required is evidence in the record sufficient to support a finding of compliance with the approval criteria. *See Broderon v. City of Ashland*, 55 Or LUBA 350 (2007); *see also McNern v. City of Corvallis*, 39 Or LUBA 591 (2001).

That being said, the Application is complete and accurate for the reasons stated above.

**b. Traffic concerns**

Traffic concerns are addressed above, as well as in the February 14, 2022 Traffic Memo prepared by Kittleson & Associates, the February 14, 2022 Memo prepared by Emerio, the February 10, 2022 email memo prepared by the City Assistant Traffic Engineer, and the Applicant's February 14, 2022 letter to City Council.

Additionally, included in several public comments but not addressed above, the Application meets the criterion to provide safe and convenient bicycle and pedestrian access. Staff Report at 24—25. This is accomplished by the extension of Hilfiker Lane, and the provision of a public access easement along the south line of the property. *Id.*

**c. Environmental concerns**

**i. Concerns about the tree survey being outdated, containing inaccurate information, and discrepancies between the surveys.**

The tree survey is accurate and contains all necessary information. The Applicant updated its tree conservation plan twice, most recently after meeting with the City Arborist on February 2, 2022. Staff Memo dated February 3, 2022.

Again, there is no prohibition on amending an application after submittal, or even during the public hearing period. The Staff Report found that the Application is consistent with the criteria for approval of a tree conservation plan. Staff Report at 20.

**ii. Concerns about removal of significant trees.**

The removal of significant trees is necessary to make room for the Hilfiker Lane SE extension, and provides a building envelope for the homes. Again, the “reasonable design alternative” standard in SRC 808.035(d)(2) is not a basis to deny this Application as it is a needed housing Application. ORS 197.307(4).

**iii. Concerns about the impact of tree removal on climate change and the interaction with City climate change goals and the Salem Comprehensive Policies Plan.**

The Salem Area Climate Action Plan is not a criterion for granting or denying a phased subdivision tentative plan. Staff Report at 10.

**iv. Concerns regarding impact tree removal and development will have on wildlife in the area.**

Loss of wildlife habitat is not a criterion for granting or denying a phased subdivision tentative plan. Staff Report at 9.

**v. Concerns about run off, flooding, and water drainage issues.**

There is no applicable criterion or standard that requires final engineering of a storm water conveyance system at the tentative plat stage. All storm water infrastructure will be constructed pursuant to Public Works Design Standards. Staff Report at 11. Regardless, there is no substantial evidence in the record that the Project will lead to flooding or water drainage issues.

**vi. The Application is not in compliance with Goal 5.**

There are no Goal 5 resources sited on the property, thus the Oregon Administrative Rules implementing Goal 5 are inapplicable. Further, LUBA will reject arguments concerning impacts to a Goal 5 resource when evidence in the record demonstrates that no such resource has been mapped on the subject property. *Landwatch Lane County v. Lane County*, 258 Or LUBA 273—74 (2017). Therefore, this is not a criterion for granting or denying a phased subdivision tentative plan.

**vii. City regulations are out of compliance with Administrative Rules requiring the City to implement the requirements of Goal 5, and the City should adopt emergency protection orders to prevent harm to these resources.**

Regardless of whether this is true, the standards to be applied to the Application are those that were applicable at the time the Application was first submitted. ORS 227.178(3)(a). Therefore this is not a criterion for granting or denying a phased subdivision tentative plan, and no Goal 5 resources are mapped on the property.

**viii. There are reasonable design alternatives to removal of significant trees.**

Again, the “reasonable design alternative” standard in SRC 808.035(d)(2) is not a criterion to deny the Application as it is a needed housing application. ORS 197.307(4). Regardless, the

Application explains why there are no reasonable design alternatives and Staff agree with the Applicant's analysis. Staff Report at 7.

**ix. This property should be preserved as a park.**

This argument does not relate to any criterion for approving a tentative subdivision plan.

**d. Cultural Resource Concerns**

**i. The Kalapuya, Siletz, Grand Ronde, and Santiam Nations should be consulted on the use of this land, as it originally belonged to them.**

This is not a criterion for granting or denying a phased subdivision tentative plan. All appropriate Native American tribes will be contacted if there is an inadvertent discovery of human remains or an archaeological artifact during construction pursuant to ORS 97.754(4). Inadvertent discovery law in Oregon is further summarized below.

**ii. Concerns about the Oregon White Oak being culturally significant to the Kalapuya, and therefore indicating a potential burial site or an archaeological site of Native artifacts. Additionally, a grove of trees is shaped like an arrowhead, which could indicate a site made by the mound builders.**

Under Oregon law, if human remains or archaeological artifacts are inadvertently discovered during construction, then:

- All work at the site should be secured within 100 feet;
- The remains or artifact should not be disturbed until the following parties are contacted and a plan is developed:
  - State Police;
  - State Historic Preservation Office;
  - Commission on Indian Services; and
  - All appropriate Native American Tribes.

ORS 97.745(4); OR. LEGISLATURE, *Treatment of Native American Human Remains Discovered Inadvertently or Through Criminal Investigations on Private and Public, State-Owned Lands in Oregon*, [https://www.oregonlegislature.gov/cis/Documents/treatment\\_remains111412.pdf](https://www.oregonlegislature.gov/cis/Documents/treatment_remains111412.pdf) (last visited Feb. 18, 2022); OR. STANDARD SPECIFICATIONS FOR CONSTRUCTION 290.50 (2021); OR. STANDARD SPECIFICATIONS FOR CONSTRUCTION 290.51 (2021). There is nothing in the applicable criteria and code that require more.

The subject property does not contain any known archaeological sites, but as it is within a high probability archaeological zone an Inadvertent Discovery Plan is required prior to breaking

ground. Staff Report at 10. The Inadvertent Discovery Plan will list steps to take and people to contact, consistent with the steps above, if human remains or archaeological objects are inadvertently discovered during construction. This includes immediate notification to State Police, State Historic Preservation Office, Commission on Indian Services, and all appropriate Native American Tribes. ORS 97.745(4).

Regardless, this argument does not relate to the applicable approval criteria or standards.

**e. Density concerns**

**i. Concerns about a large increase in the power grid, water usage, trash collection, and sewage systems.**

SRC 205 does not require submission of utility construction plans prior to tentative subdivision approval. Staff Report at 15. The Staff Report states that “[t]he subject property is located inside the Urban Service Area and is served by adequate City utilities.” Staff Report at 15. Additionally, the Public Works Department reviewed the Application proposal and found that development within the tentative subdivision plan can be adequately served by City infrastructure per SRC 205.010(d)(3). Staff Memo dated November 2, 2021 at 6; *see also* Staff Report at 15. Further, there are no identified standards or criteria related to utilities which are not met.

**ii. General concerns regarding the need for mid-level housing, as well as density needing to be increased as directed by HB 2001 and 2003 in order to reduce housing cost.**

The land is currently zoned Residential Agriculture and will be zoned Single Family Residential upon the recordation of the final subdivision plat. Staff Report at 11. Both zones allow multi-family residential uses, but neither compel such uses. *Id.*

While the City of Salem is expected to adopt regulations complying with HB 2001 by the end of the year, it will only allow, and not require, middle housing in the Single Family Residential Zone. *Id.* Additionally, the standards to be applied to the Application are those that were applicable at the time the Application was first submitted. ORS 227.178(3)(a).

Regardless, the argument does not relate to the approval criteria or standards.

**iii. Concerns about the increased number of children who will attend school in the area.**

The Salem-Keizer Public Schools memo dated September 29, 2021 addresses anticipated impact of the proposed development on the school district. However, school capacity is not an approval criterion for a tentative subdivision application. Staff Report at 11.

**f. Aesthetic concerns**

**i. Concerns about whether the project will fit in with the existing character of the neighborhood.**

There is no approval criterion or development standard which requires single family residential lots to resemble adjacent existing developments. Staff Report at 10.

**ii. Concerns about loss of views.**

This is not a criterion for granting or denying a phased subdivision tentative plan.

**g. Increased open space areas will attract crime.**

This is not a criterion for granting or denying a phased subdivision tentative plan.

**h. Concerns about ongoing Meyer family litigation, and ownership of the property.**

This is not a criterion for granting or denying a phased subdivision tentative plan. Regardless, “[t]he land use application for this subdivision request was signed by Michael M. Morrow. Documentation provided by the Applicant indicates that title to the fee simple estate is vested in Michael M. Morrow, Successor Trustee of the Henry A. Meyer Revocable Living Trust. The Applicant has satisfactorily demonstrated they have authority to act on this request.” Staff Memo dated January 10, 2022 at 8.

**i. The shadow plat violates development standards of the UDC.**

Nothing requires a shadow plat meet the standards of the UDC. All that is required is the tentative plat meet such requirements. A shadow plat is only a conceptual plan, and is not binding. This is therefore not a criterion for granting or denying a phased subdivision tentative plan.

**V. CONCLUSION**

The Application satisfies all applicable criteria and City Staff recommends approving the Application. No person has raised an argument or offered evidence that the Application fails to satisfy the applicable approval criteria. The Council must reject arguments regarding issues outside of the approval criteria. The Applicant respectfully asks that the Council approve the Application with the conditions proposed by City Staff.

Best regards,



Garrett H. Stephenson



Kehoe NW Properties, LLC  
11627 S. Summerville Avenue  
Portland, Oregon 97219  
(503) 244-3838

February 21, 2022

City of Salem Town Hall  
555 Liberty Street SE  
Salem OR 97301

Dear Mayor Bennett & Salem City Council Members,

My name is Martin Kehoe, and I am the applicant proposing to develop the property known as the Meyer Farm. I would like to thank you for your time and consideration of my proposal.

The City's comprehensive plan designation of Meyer Farm is "SFR" (Single-Family Residential). Consistent with this designation, our proposal for the Meyer Farm property is for a medium-density neighborhood with single family detached residences, intended to be sold individually as owner occupied homes. We are not proposing a high density development of any kind. Our proposal is similar, if not identical to the surrounding neighborhood.

My team of engineers and I have been working to bring this project to fruition for nearly two years now. I am sure you all know it takes a considerable amount of time and energy to meet the State, County and City guidelines established for a land use proposal such as this. All the necessary criteria and guidelines are lengthy and exacting. While the process can be time consuming, costly, and at times, frustrating, we followed each and every one of these guidelines as required.

Each step of the way, we were able to meet or exceed the requirements and guidelines as established by the City of Salem. Some of these guidelines involve Wetlands studies, tree studies, traffic studies, zoning studies, Geotech studies, slope, vegetation, pedestrian access, wildlife, water availability, storm sewer, sanitary sewer, gas availability, electrical availability, existing easements, lot line requirements, maximum density limits, minimum density requirements, and on and on. After working closely with city staff for over a year, our proposal received a staff recommendation for City Council approval.

I know that some neighbors do not want to see this property developed. I understand these feelings, as I too have had land developed near my family home. Change such as this can be uncomfortable and create frustration. While I understand that, I also feel strongly that once a land use applicant has met all the criteria as established by the city, and gained staff recommendation for approval, the city council has an obligation to put politics and personal feelings aside.

It might not be the most comfortable thing to do, and it may frustrate some constituents. But an unbiased review by the Council to determine whether or not we met all the criteria, as established by the City, is absolutely necessary. And an unbiased review clearly shows that we did everything



the right way, and we followed all the rules, as indicated by City staff's recommendation for approval.

**Trees:**

I am a 5<sup>th</sup> generation Oregonian, and as an Oregonian, I think it's safe to say that we all love trees. They are not only good for our environment, but in my profession, they also make a new subdivision look great. I always try to take down as few trees as possible, and then, replant as many as possible.

We are planting a minimum of two street trees in front of each house, as well as two additional trees in each yard. That's a total of approximately **550** new trees to be planted on this property.

Our current tree plan is preserving 363 existing trees, whereas the City code allows us to remove an additional 161 of these trees if we choose to do so. We are not removing these 161 trees. We are saving them.

There have been a number of questionable representations made by others regarding the trees on this property. In order to eliminate ambiguity and make this issue completely accurate and transparent, I had our arborists go back out to the property and carefully measure every single tree in question. We did this in conjunction with the City of Salem arborist. We walked the property together as a group, and carefully measured every single tree in question. I wanted there to be no discrepancies or inaccurate statements made by anyone related to the tree issue. The results are 100% accurate, incontrovertible, and devoid of any ambiguity.

In conclusion: I respectfully ask the City Council to consider the hard work and dedication that has gone into this proposal over the past two years by myself and the City staff, whom you have hired to implement these very guidelines and procedures.

I ask that you vote to unanimously approve our proposal.

Sincerely,

//s//

Martin Kehoe