

**From:** [Bryce Bishop](#)  
**To:** [Margaret Gander-Vo](#); [CityRecorder](#)  
**Cc:** [Brandie Dalton](#); [Brenda Garcia De Alba](#); [Hannah F. Stevenson](#)  
**Subject:** RE: Appeal of PUD-SUB-PAR-UGA-ADJ24-01  
**Date:** Monday, October 14, 2024 12:05:03 PM  
**Attachments:** [image001.png](#)

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Margaret,

A thumb drive will work fine.

Thanks,  
Bryce

**Bryce Bishop**

*Planner III*

City of Salem | Community Planning and Development Department | Planning  
555 Liberty St SE, Room 305  
Salem OR 97301  
[bbishop@cityofsalem.net](mailto:bbishop@cityofsalem.net) | 503-540-2399  
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**From:** Margaret Gander-Vo <Margaret@SGLAW.com>  
**Sent:** Monday, October 14, 2024 12:00 PM  
**To:** Bryce Bishop <BBishop@cityofsalem.net>; CityRecorder <CityRecorder@cityofsalem.net>  
**Cc:** Brandie Dalton <bdalton@mtengineering.net>; Brenda Garcia De Alba <Brenda@sglaw.com>; Hannah F. Stevenson <HStevenson@sglaw.com>  
**Subject:** RE: Appeal of PUD-SUB-PAR-UGA-ADJ24-01

Thank you, Bryce.

I'll make sure to sign up when I get there.

If we are hoping to show some pictures of the vicinity, would it be best to email those to you or to bring a thumb drive?

Best wishes,

**Margaret Y. Gander-Vo**

Lawyer – Real Estate and Land Use



Park Place, Suite 200 | 250 Church Street SE | Salem, Oregon 97301  
office: 503.399.1070 | direct: 503.485.4271 | fax: 503.371.2927  
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**From:** Bryce Bishop <[BBishop@cityofsalem.net](mailto:BBishop@cityofsalem.net)>  
**Sent:** Monday, October 14, 2024 11:54 AM  
**To:** Margaret Gander-Vo <[Margaret@SGLAW.com](mailto:Margaret@SGLAW.com)>; CityRecorder <[CityRecorder@cityofsalem.net](mailto:CityRecorder@cityofsalem.net)>  
**Cc:** Brandie Dalton <[bdalton@mtengineering.net](mailto:bdalton@mtengineering.net)>; Brenda Garcia De Alba <[Brenda@sglaw.com](mailto:Brenda@sglaw.com)>; Hannah F. Stevenson <[HStevenson@sglaw.com](mailto:HStevenson@sglaw.com)>  
**Subject:** RE: Appeal of PUD-SUB-PAR-UGA-ADJ24-01

Hello Margaret,

Thanks for the additional comments. For the hearing tonight, you'll need to sign up to testify when you arrive. If you have any other questions, please let me know.

Thanks,  
Bryce

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**From:** Margaret Gander-Vo <[Margaret@SGLAW.com](mailto:Margaret@SGLAW.com)>  
**Sent:** Monday, October 14, 2024 11:15 AM  
**To:** CityRecorder <[CityRecorder@cityofsalem.net](mailto:CityRecorder@cityofsalem.net)>; Bryce Bishop <[BBishop@cityofsalem.net](mailto:BBishop@cityofsalem.net)>  
**Cc:** Brandie Dalton <[bdalton@mtengineering.net](mailto:bdalton@mtengineering.net)>; Brenda Garcia De Alba <[Brenda@sglaw.com](mailto:Brenda@sglaw.com)>; Hannah F. Stevenson <[HStevenson@sglaw.com](mailto:HStevenson@sglaw.com)>  
**Subject:** Appeal of PUD-SUB-PAR-UGA-ADJ24-01

Hello:

Attached are the Applicant's written comments regarding the above file for hearing tonight. I will be presenting on behalf of the Applicant, although other representatives from the Applicant's development team will be available to respond to technical questions. Please let me know if you have any questions or if there is anything else you need from the Applicant prior to this evening.

Best wishes,

**Margaret Y. Gander-Vo**

Lawyer – Real Estate and Land Use



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October 14, 2024

**VIA ELECTRONIC MAIL: [cityrecorder@cityofsalem.net](mailto:cityrecorder@cityofsalem.net), [BBishop@cityofsalem.net](mailto:BBishop@cityofsalem.net)**

Salem City Council  
City Recorder  
555 Liberty St. SE  
Room 225  
Salem, OR 97301

City of Salem Planning Division  
Bryce Bishop, Planner III  
555 Liberty Street SE  
Room 320  
Salem, OR 97301

RE: PUD-SUB-PAR-UGA-ADJ24-01  
Our File No: 13845-20617

Dear Honorable Mayor and City Councilors:

Our office represents Multi/Tech Engineering, an Oregon Business Corporation, who is the applicant of record on behalf of Creekside Golf Course LLC, an Oregon limited liability company (the "**Property Owner**") and Don Lulay Homes, Inc, an Oregon business corporation (the "**Developer**") (collectively the "**Applicant**") regarding the Planned Unit Development/Subdivision Tentative Plan/Partition Tentative Plan/Urban Growth Preliminary Declaration/Class 2 Adjustment Case No.: PUD-SUB-PAR-UGA-ADJ24-01, designated by the City of Salem (the "**City**") as Application No.: 24-109994-PLN (the "**Application**").

The Applicant is appealing the Planning Commission's approval of the Application mailed on August 27<sup>th</sup>, 2024 (the "**Decision**"), due to the Planning Commission's addition of the following Condition of Approval:

***Condition 14: Prior to final plat or delayed pursuant to improvement agreement per SRC 205.035(c)(7)(B), construct a 5-foot curblin sidewalk along the frontage of the subject property abutting Creekside Drive SE.***

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The Applicant's is appealing the application of the Condition of Approval ("**Condition 14**") to the development proposed by the Application (the "**Proposed Development**") on four (4) separate bases, each of which are addressed in detail below.

**I. There is sufficient evidence in the record to support the application of alternative street standards within the Planned Unit Development, consistent with previous approvals for the area.**

The purpose of the PUD process is to "provide a means to develop real property with greater latitude in site development standards, common areas, and open space than is allowed through the traditional zoning; to establish standards necessary to assure well planned, harmonious development within planned unit developments; and to provide for increased amenities in the development of residential uses within certain zones." SRC 210.001. In this instance, the Applicant is proposing a middle housing infill project focused on providing a single level, accessible floor plan, providing homes where members of the community are able to age in place. This is a housing product that is needed in the Salem Housing Market as the Baby Boomers continue to age, providing one of the housing products needed to diversify the existing housing stock, which was identified as one of the needed strategies in the Salem Housing Needs Analysis 2015 to 2035, prepared by ECONorthwest. See Page 31; Page B-22. The Applicant applied for a PUD to allow for the development of the Subject Property in a manner that retains the maximum amount of developable space on the proposed lots by requesting the adjustment of development standards by allowing the development to provide the needed pedestrian connectivity but which also varies the development standards to account for the steep topography of the property being developed and to allow for consistency in the aesthetics with the surrounding development.

In this instance, the Applicant is providing sidewalks along the frontage of the proposed duplexes that will tie into sidewalks that the Applicant will extend along the northern and southern sides of Creekside drive, filling in existing gaps in the sidewalk system and developing pedestrian crossings connecting the northern side of Creekside Drive to the southern side of Creekside Drive at both ends of Villa Loop. This will provide missing connections to the Creekside Club House and allow houses to the east of Villa Loop to access the remainder of the sidewalk system, improving pedestrian access throughout the community. Further, each of the new dwelling units will be connected to the sidewalk system as sidewalks will be developed along the frontage of each dwelling unit. By providing a pedestrian crossing at each end of Villa Loop, pedestrians will be able to access the southern side of Creekside Drive, which is the side of Creekside Drive that has existing sidewalks that continue past the Proposed Development. Along the northern side of Creekside Drive to the west of the Proposed Development, there are no sidewalks until pedestrians reach the intersection of Creekside Drive SE and Lone Oak Road SE, a distance of nearly a quarter (1/4) of a mile. By developing the Proposed Development in this manner, the Applicant is providing for a safe, well connected pedestrian experience while acknowledging the existing constraints of the topography of the Subject Property and the vicinity.

Approval of this alternative street standard is consistent with the historic approvals for the development of the surrounding area. The portion of Creekside Estates surrounding the Proposed Development were approved as part of phased Planned Unit Development (PUD) that established the existing conditions of the surrounding area. The two relevant decisions of approval regarding the previous development in the area were designated by the City as PUD 93-1, issued on December 14, 1993 for Creekside Phase II which allowed for the development of fifteen (15) residential lots as and PUD 94-1,

issued on May 25, 1994 for Creekside Phase III which allowed for the development of 85 residential lots. Both approvals allowed for the development of those lots without a sidewalk along the southern side of Creekside Drive for several reasons that are equally applicable in this instance, namely: (1) the topography of the area that was being developed which was similarly steep; (2) a desire to reduce the level of excavation needed in association with the proposed development; (3) the location of the proposed development along the frontage of the golf course; and (4) the desire for consistent aesthetics throughout the community. The same rationale was set out by the Applicant in its request for the application of alternative street standards to the Proposed Development.

Further, the Applicant is requesting the application of alternative street standards along Creekside Drive NE because both it and the proposed Villa Loop are private streets. Creekside Drive NE and the sidewalks adjacent to it are owned and maintained by the Creekside Homeowners Association Inc (the "**HOA**"), which will be responsible for the maintenance, and the cost associated with said maintenance, of any additional sidewalks developed as part of this Application. The Applicant has discussed the Proposed Development with the HOA and through a series of conversations confirmed that sidewalks along the north side of Creekside Drive do not add value to the community, but will add an additional cost to the HOA. This is confirmed by an email from the HOA that has been submitted into the record by the HOA.

The PUD process is designed to allow for the developments of communities that look at the development of a project as part of a larger picture that considers the particularities of an area being developed and allows for sensible, big picture planning, with the flexibility to account for the unique physical and development constraints of a given area while also accounting for the needs of the individuals that will be living in that community. The Applicant has demonstrated with sufficient evidence in the record that the application of alternative street standards in this instance is consistent with the needs and desires of the community.

**II. The addition of Condition 14 is inconsistent with the City of Salem's Climate Action Plan, requiring the Applicant to construct additional, unnecessary, sidewalks along Creekside Drive while creating additional climate impacts associated with the Proposed Development.**

In the record below both Staff and the Applicant noted that the sidewalks required by Condition 14 are not necessary to provide pedestrian connectivity throughout the vicinity. As part of the Proposed Development the Applicant is constructing sidewalks along the northern side of Creekside Drive to the east of Villa Loop, along the southern frontage of the proposed Villa Loop and along the northern side of Creekside Drive. Condition 14 will result in the addition of approximately 4,000 square feet of impermeable surface which the Applicant has proposed to detain via a cartridge storm water detention system. This impermeable surface will require additional storm water detention, and acts to reduce the amount of greenspace associated with each of the lots. By requiring the addition of a sidewalk where the sidewalk is not necessary, and therefore, not providing an additional public benefit, the City's condition is inconsistent with the strategies set out in the Natural Resource Section, which establishes twenty-four (24) strategies focused on making "green spaces and benefits of natural resources accessible to all Salem residents. Prioritize underserved areas and historically neglected neighborhoods when implementing strategies. Intentionally include residents of these areas and neighborhoods throughout planning and decision-making processes." Climate Action Plan Strategy List, Pages 21-24. In particular, requiring unnecessary sidewalks when the individuals residing in the community, represented here by the HOA, is

inconsistent with the following of the Salem Climate Action Plan's objectives and the associated tasks focused on implementing them.

**Objective 2:** Support native biodiversity in Salem's public and private areas

**NR03:** Continue to conserve, preserve, and expand Salem's green spaces and parks. Adopt management policies that reduce chemicals, increase biodiversity and build climate resilience.

**Objective 4: Reduce runoff and impacts from flooding**

**NR15:** Offer incentives/rebates to homeowners, businesses, and developers to install pervious surfaces with the goal of decreasing runoff and flooding.

**NR16:** Identify areas (e.g., underutilized parking lots, empty malls/commercial space) that can be "depaved" and converted to green space to increase biodiversity, access to green spaces, and reduce the urban heat island effect.

**Objective 5:** Improve outreach to developers and property owners regarding benefits of protecting tree canopy for reducing stormwater runoff, protecting water quality, and reducing urban heat island effects

*Id.* Each of these objectives and tasks focus on retaining as much green space as possible, in balance with the other goals and objectives in order to offset a range of climate impacts and risks associated with climate change while allowing the City to meet its emissions reduction goals. Three of the most significant projected impacts associated with Salem's changing climate are projected to be: (1) an increase in the number of days with a heat index over 90 degrees Fahrenheit; (2) hotter and drier conditions are likely to cause more frequent droughts; and (3) more intense rainfall and rain-on-snow events. See Salem Climate Action Plan, Page 87; Pages 29-37.

The requirement of additional sidewalks which do not provide an increase in pedestrian connectivity make the area adjacent to the Proposed Development will act to exacerbate each of these risks by (1) increasing the amount of impermeable surface required in association with the Proposed Development; (2) increasing the degree of slope extending from the northern edge of Creekside Drive up to the proposed dwelling units, decreasing the surface area available for recapture of stormwater in intense rainfall events; and (3) moving the required street trees along Creekside Drive SE back five (5) additional feet, reducing the shading effect that those trees will have on Creekside Drive SE, which are intended, in part, to help mitigate the urban heat dome effect. Requiring the addition of a sidewalk along the northside of Creekside Drive SE where it does not provide a substantive benefit to pedestrian connectivity but acts to exacerbate the impact of the Proposed Development as it relates to the City's stated climate goals violates the intent of the City's Climate Action Plan.

**III. Upon the addition of Condition 14 the cumulative impact of the conditions of approval that apply to the Proposed Development violates ORS 197A.420 by adding unreasonable cost to the middle housing development proposed in the Application.**

The Applicant's cost of conforming with Condition 14 adds approximately \$215,858.75 to the Proposed Development due to the added cost of grading and the installation of the concrete sidewalks,

additional stormwater detention piping to account for the added impermeable surface, and an additional storm filter, as set forth in **Exhibit "A"** to this letter, which is attached hereto and incorporated herein by this reference. While this cost alone may be reasonable for this type of project, ORS 197A.420 (previously 197.758) prohibits the application of conditions of approval to middle housing that **cumulatively** add unreasonable cost to the development of middle housing, in this instance, duplexes. The Decision applies a total of twenty-two (22) conditions of approval, which include the dedication of public utility easements, negotiation with the HOA regarding maintenance and repair obligations and CC&Rs, the construction of on-site and offsite infrastructure improvements (including sidewalks to the east and west of the access points to Villa Loop), the addition of street trees, the addition of a landscape strip, completion of a geotechnical report, and paying a reimbursement fee into the Lone Oak Reimbursement District. Together, these conditions of approval (without the addition of Condition 14) are projected to cost \$1,582,129.02 to the Proposed Development, as set forth in **Exhibit "B"**, which is attached hereto and incorporated herein by this reference, with the additional cost added by Condition 14 representing a thirteen (13%) percent increase in the total development cost associated with the project.

When evaluating whether a Decision applies conditions of approval in violation of ORS 197A.420, the inquiry is not whether the application of a single condition of approval causes undue cost and delay, but rather, if the cumulative impact of all of the applied conditions of approval rise to the level of significantly hindering or discouraging the development of needed housing. The Applicant has provided an assessment of the costs associated with each condition of approval. As each individual cost impacts the feasibility of the Proposed Development, the evaluation should focus on the projected total associated with the applied conditions of approval. In this instance, the addition of Condition 14 elevates the cumulative costs of the conditions of approval to a level which significantly hinders the construction of the Proposed Development so that the cumulative cost of the Proposed Development will lead to an increase that may lead to the ultimate end product being unmarketable. The Applicant objects to the application of the cumulative conditions of approval as the add undue cost to a middle housing development, reserving the right to seek damages in the event that the elevated cost results in damages to the Applicant.

**IV. With the addition of Condition 14, the cumulative impact of the conditions of approval that apply to the Proposed Development violate the Fifth Amendment of the US Constitution and Article I, Section 18 of the Oregon Constitution by requiring public improvements that are disproportionate to the impact of the Proposed Development.**

While the City is entitled to apply conditions of approval to the Proposed Development, it cannot do so in a manner that (1) lacks a nexus to the proposed development; and (2) is roughly proportionate to the impact caused by the proposed development. In this instance, the Applicant is being required to provide extensions along both sides of Creekside Drive SE as well as along Villa Loop. The Applicant is proposing the addition of a total of twenty-two (22) dwelling units with an estimated 158 daily trips. SRC 803.040(a) requires "the dedication of right-of-way for, and construction or improvement of, boundary streets of up to one-half of the right-of-way and improvement width specified in SRC 803.025 shall be required as a condition of approval for the following . . . Planned unit developments." The width required for a local street in SRC 803.025 is a minimum of sixty (60) feet, meaning that the Applicant is responsible for a total dedication and improvement of a maximum of thirty (30) feet, measured curb-to-curb. SRC 803.025. The Applicant is proposing the development of Villa Loop at a width of 30 feet, which staff acknowledges is the width necessary to comply with the applicable approval criteria. With the addition of the off-site sidewalk extensions, Condition 14 acts to add the requirement to construct sidewalks along

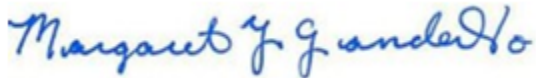


dual frontage of the Subject Property, which is in excess of the Applicant's proportionate share and, as the additional sidewalks have been acknowledged as not being necessary to provide for pedestrian connectivity, and therefore, pedestrian safety, there is no nexus for the requirement of the sidewalks required by Condition 14 in addition to the sidewalks already conditioned under the Decision. Without an appropriate nexus, the addition of Condition 14 without the modification of the remaining conditions results in a disproportionate exaction.

**Conclusion:**

The Applicant respectfully requests that the City Council modify the Planning Commission's Decision by approving the Application subject to the original twenty-one (21) conditions of approval proposed by staff below, removing Condition 14 as a condition of approval.

Sincerely,

A handwritten signature in blue ink that reads "Margaret Y. Gander-Vo". The signature is written in a cursive style.

MARGARET Y. GANDER-VO  
margaret@sglaw.com  
Voice Message #374

MYG: [\[Click Here and Type\]](#)  
Enclosures  
cc: Client

**Exhibit A**  
**Cost Associated with Condition 14**

# Villas at Creekside

September 10th, 2024

*Additional Walkway Along Creekside  
Improvement Costs*

Concrete Walkway	965 Lin. Ft.	\$ 35.00	\$ 33,775.00
Additional Grading	8255 Cu. Yds	\$ 19.25	\$158,908.75
Additional Detention Piping	45 Lin. Ft.	\$ 265.00	\$ 11,925.00
Additional Storm Filter	1 Each	\$11,250.00	\$ 11,250.00
Total Additional Cost			\$215,858.75



**Exhibit B**  
**Cost of Remaining Conditions of Approval**



ENGINEERING SERVICES, INC.

**Villa At Creekside**

September, 2024

Grading	\$ 295,000.00
Street Improvements	\$ 280,192.00
Sidewalks	\$ 49,500.00
Storm Facilities	
Piping	\$ 52,340.00
Water Quality/Quantity Facilities	\$ 117,450.00
Sanitary Facilities	\$ 252,000.00
Water Facilities	\$ 232,650.00
Franchise Facilities	\$ 68,000.00
Landscaping	\$ 18,750.00
Total Construction Costs	\$1,365,882.00
Lone Oak Reimbursement Dist	\$ 66,000.00
Engineering, etc	\$ 150,247.02
Total Development Costs (excluding Condition 14)	\$1,582,129.02



EXPIRES: 06-30-2025