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503-588-6173*

## DECISION OF THE HEARINGS OFFICER

**CONDITIONAL USE / QUASI-JUDICIAL ZONE CHANGE CASE NO. CU-ZC17-14**

**APPLICATION NO. : 17-122248-ZO & 17-122249-ZO**

**NOTICE OF DECISION DATE: FEBRUARY 9, 2018**

**SUMMARY:** A consolidated application for a Conditional Use Permit and Zone Change for the proposed relocation of the Union Gospel Mission (UGM) of Salem's men's shelter.

**REQUEST:** A consolidated application for a Conditional Use Permit and Zone Change for the proposed relocation of the Union Gospel Mission (UGM) of Salem's men's shelter from its current downtown location at 345 Commercial Street NE to a proposed new location on property located in the 700 to 800 blocks of Commercial Street NE.

The application includes the following:

- 1) A Conditional Use Permit to allow the relocation the UGM's existing Non-Profit Shelter with an expanded capacity to serve approximately 300 persons; and
- 2) A Zone Change to change the zoning of the property from CO (Commercial Office) with Riverfront Overlay to CB (Central Business District) with Riverfront Overlay in order to establish the existing UGM retail store located at the northern end of the property as a permitted conforming use rather than an existing non-conforming use.

The subject property totals approximately 2.3 acres in size, is currently zoned CO (Commercial Office) with Riverfront Overlay, and is located in the 700 to 800 blocks of Commercial Street NE (Marion County Assessor Map and Tax Lot Numbers: 073W22AC03300 and 073W22DB01600, 1700, 1800, & 1900).

**APPLICANT:** Dan Clem for Union Gospel Mission of Salem

**LOCATION:** 700-800 Blocks of Commercial Street NE / 97301

**CRITERIA:** Conditional Use: SRC Chapter 240.005(d)  
Quasi-Judicial Zone Change: SRC Chapter 265.005(e)(1)

**FINDINGS:** The findings are in the attached Order dated February 9, 2018.

**DECISION:** The Hearings Officer **APPROVED** Conditional Use / Quasi-Judicial Zone Change Case No. CU-ZC17-14 subject to the following conditions of approval:

**Condition 1:** As a condition of the future development of the property, the applicant shall either reorient the development so that the primary customer entrance and outside storage and waiting areas are accessed from and oriented towards Commercial Street NE, rather than the alley, or shall install video surveillance

**NOTICE OF DECISION**

PLANNING DIVISION  
555 LIBERTY ST. SE, RM 305  
SALEM, OREGON 97301  
PHONE: 503-588-6173  
FAX: 503-588-6005

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cameras and appropriate signage that capture video of the entire surface of the alleyway from Division to D Street NE. Video files shall be continuously stored on site for no less than 14 days. Camera and sign locations shall be determined at the time of site plan review and design review.

**Condition 2:** As a condition of the future development of the property, appropriate signage directing patrons to the outside waiting areas on the property and discouraging loitering or obstructing the public sidewalk shall be installed on the property. Signage shall be at locations and in a form determined at the time of site plan review and design review.

**Condition 3:** As a condition of the future development of the property, a State Highway Approach/access permit shall be obtained for each proposed driveway connection onto Commercial Street NE.

**Condition 4:** A pedestrian connection shall be provided within the development to connect the main guest entrance into the proposed shelter to a public sidewalk within an abutting street. If the only means of connecting to a public sidewalk within an abutting street is via the existing alley, the pedestrian connection shall be visually contrasted from the alley either by a change in material or a grade separation above the alley in a manner that will not impede vehicular access to the alley.

**Condition 5:** Any outside storage areas, including outside storage areas for personal belongings, shall be screened by a minimum 6-foot-tall sight-obscuring fence, wall, or hedge.

The rights granted by the attached decision for Conditional Use Case No. CU-ZC17-14 must be exercised, or an extension granted, by **February 27, 2020** or this approval shall be null and void.

Application Deemed Complete:	<u>November 21, 2017</u>
Public Hearing Date:	<u>December 20, 2017</u>
Notice of Decision Mailing Date:	<u>February 9, 2018</u>
Decision Effective Date:	<u>February 27, 2018</u>
State Mandate Date:	<u>April 20, 2018</u>

**Case Manager:** Bryce Bishop, [bbishop@cityofsalem.net](mailto:bbishop@cityofsalem.net); 503.540.2399

This decision is final unless written appeal from an aggrieved party is filed with the City of Salem Planning Division, Room 305, 555 Liberty Street SE, Salem OR 97301, no later than **5:00 p.m., February 26, 2018**. Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 240 and 265. The appeal must be filed in duplicate with the City of Salem Planning Division. The appeal fee must be paid at the time of filing.

If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Salem City Council will review the appeal at a public hearing. After the hearing, the City Council may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

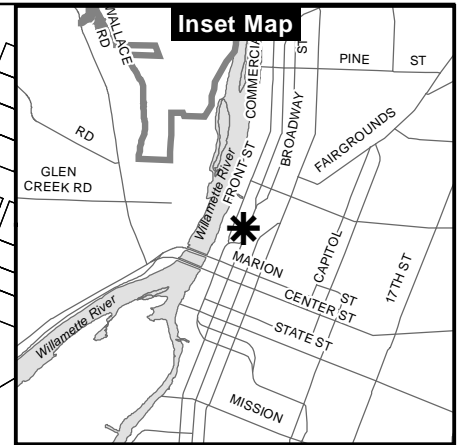
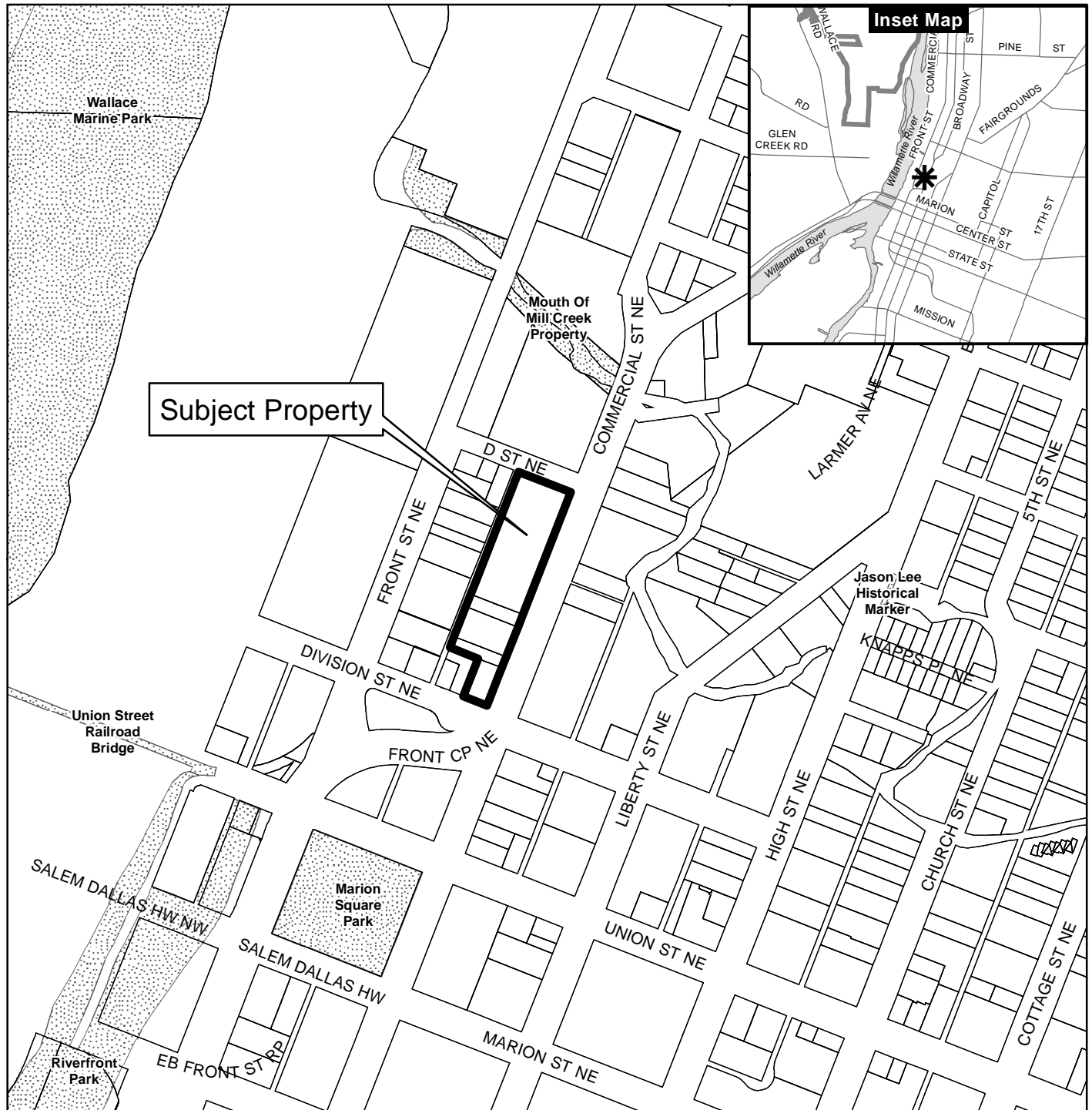
The complete case file, including findings, conclusions and conditions of approval, if any, is available for review at the Planning Division office, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

<http://www.cityofsalem.net/planning>

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# Vicinity Map

## 700 to 800 Blocks of Commercial Street NE



### Legend

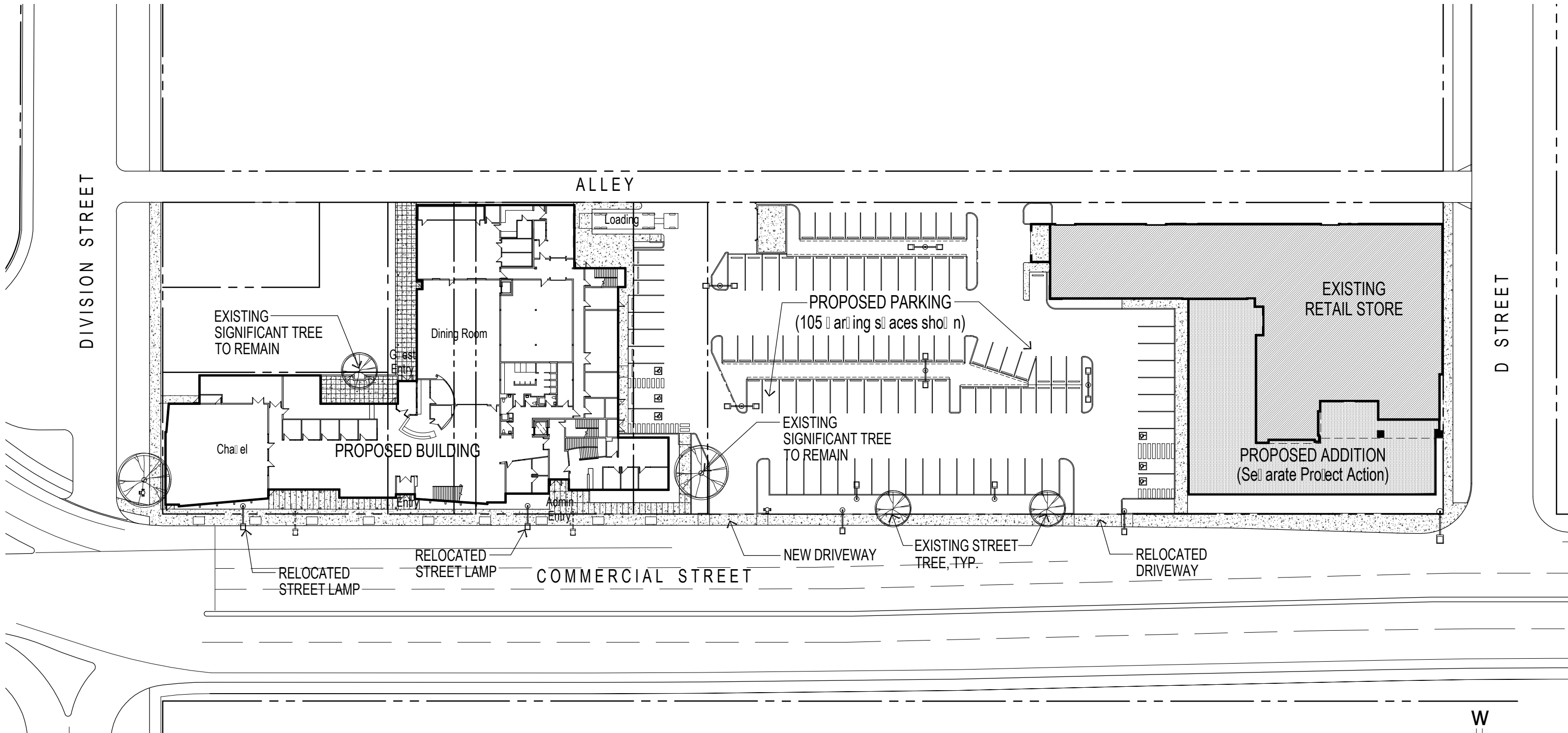
- Taxlots
- Urban Growth Boundary
- City Limits
- Outside Salem City Limits
- Historic District
- Schools
- Parks

0 100 200 400 Feet



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**CITY OF SALEM  
BEFORE THE HEARING OFFICER**

A CONSOLIDATED APPLICATION FOR A  
CONDITIONAL USE PERMIT AND ZONE  
CHANGE FOR THE PROPOSED RELOCATION  
OF THE UNION GOSPEL MISSION (UGM) OF  
SALEM'S MEN'S SHELTER FROM ITS  
CURRENT DOWNTOWN LOCATION AT 345  
COMMERCIAL STREET NE TO A PROPOSED  
NEW LOCATION ON PROPERTY LOCATED  
IN THE 700 TO 800 BLOCKS OF  
COMMERCIAL STREET NE.

CU-ZC17-14

FINDINGS OF FACT, CONCLUSIONS, AND  
DECISION

**DATE AND PLACE OF HEARINGS:**

Wednesday December 20, 2017, Salem City Council Chambers, Room 240,  
Civic Center, 555 Liberty Street SE, Salem, Oregon.

**APPEARANCES:**

Staff: Bryce Bishop, Planner II

Neighborhood Association: None

Proponents: Dan Clem, Union Gospel Mission of Salem,  
Applicant; Jeff Tross, Tross Consulting Inc.,  
Agent for Applicant, and Alan Mela

Opponents: David Glennie and Rick Yurk

Written Testimony:

*Proponents:*

- 12/18/17 – Email, Alan Mela
- 12/19/17- Letter, Jeff Harmon
- 12/27/17 – Email re: relationship of the  
proposal to the Riverfront Downtown Urban  
Plan and North Downtown Housing Study,  
Kristin Retherford

- 1/4/18 – Letter in support, Mid-Willamette Valley Community Action Agency, Inc.
- 1/4/18 – Letter, Diane Jones-Musial
- 1/4/18- Letter, Nancy DeSouza
- 1/5/18 – Letter, Rosanne O'Connor
- 1/5/18 – Letter, Susann Kaltwasser
- 1/5/18 - Letter, Laura M. Adams
- 1/5/18 – Letter, Larry Nasset
- 1/5/18- Letter, Delana Beaton, HomeBase Shelters of Salem
- 1/5/18- Revised Applicant's Statement, Union Gospel Mission of Salem
- 1/22/18 – Response Letter (Final Argument), Mark Shipman, attorney for Union Gospel Mission

*Opposition:*

- 12/20/17- letter, David Glennie
- 12/20/17- Letter, Rick Yurk, business owner, BAM Agency
- 1/3/18- Letter- John Gall, property owner, 110 & 170 Division St.
- 1/4/18 – Letter- James Schaff, business owner, McNary Square Partners
- 1/4/18- Letter, Don Kerzel, Cascade Computer Maintenance, Inc.
- 1/4/18- letter with photos & DVD, William Glennie
- 1/5/18 – Letter, Terence Blackburn, NW Remarketing, Inc.
- 1/5/18-- Binder: Rebuttal Argument and Evidence of David Glennie, 31 exhibits, Phil Grillo, attorney for David Glennie (Binder CD/Audio)

## **SUMMARY OF THE APPLICATION AND HEARINGS INTRODUCTION AND GENERAL COMMENTS**

Because this case involves a proposal for a large homeless shelter, the testimony and documents provided by the parties includes a considerable amount of information reflecting different perspectives and philosophies about how to address homelessness. The common theme for testimony in support and in opposition to this application is that homelessness is a problem that includes a number of related economic, behavioral, social, medical, and psychological causes and effects that defy easy solutions. There really is no dispute that the property and livability of third parties are impacted by improper, sometimes criminal behavior that accompanies people who do not have adequate housing. This is well documented in the record for this case. People who do not have adequate housing may suffer not just from the lack of housing but also from the same improper, and sometimes criminal behavior. This introduction is intended to serve as a reminder and explanation that the proposed zone change and conditional use approval is not a policy decision. Some factors brought up in testimony, such as the motivations for the parties taking the positions that they do, or the finances of the applicant are not relevant to this land use decision. Similarly, testimony about the amount of investment or the value of assets a party holds is not relevant and doesn't add credibility or persuasiveness to testimony. Instead, land use decisions like these are made by considering an application against the relevant criteria set out in the governing land use documents. The scope of that decision and the authority of the Hearing Officer is limited to those considerations. Where specific arguments or concerns about the application complying with the review criteria for the application are raised in the testimony, comments and documents provided in this case, they are addressed in the decision below. The Hearing Officer takes the evidence and arguments about the need for the services, the relative desirability of one method of providing services over another, and the concerns about improper behavior and its impact on neighboring properties only in the context of the approval criteria.

### **BACKGROUND**

The City of Salem held a duly authorized and noticed public Hearing on December 20, 2017, for a Conditional Use Permit and Zone Change for the proposed relocation of the Union Gospel Mission (UGM) of Salem's men's shelter from its current downtown location at 345 Commercial Street NE to a proposed new location on property located in the 700 to 800 blocks of Commercial Street NE.

The Hearing Officer notes that Mr. Glennie raised concerns about the notice for the hearing, specifically that it did not appear on a particular page on the City's website. The Hearing Officer notes the additional information

provided by staff regarding the SRC requirements for notice and agrees that it does not require posting notice on the website page referenced by Mr. Glennie. In any event, leaving the record open for an extended period of time provided the parties with ample time to respond to the application and staff report and to rebut those responses.

## **FINDINGS OF FACT AND CONCLUSIONS**

### **1. Salem Area Comprehensive Plan (SACP) designation**

The Salem Area Comprehensive Plan map designates the subject property as “River-Oriented Mixed Use.” The Salem Area Comprehensive Plan (SACP) describes the intent of the River-Oriented Mixed Use designation as providing for, “a combination of urban uses which take advantage of the scenic, natural, and recreational qualities of the riverfront and to provide opportunities for the residents in the community to have both visual and physical access to the riverfront while allowing for the continuation of existing industries.”

The River-Oriented Mixed Use designation may be implemented by several base zones, including CB (Central Business District), CO (Commercial Office), RH (Multiple Family High-Rise Residential), and SWMU (South Waterfront Mixed-Use). The River-Oriented Mixed Use designation may also be implemented by the Riverfront Overlay Zone which applies to specific identified properties in proximity to the Willamette River and generally located north of Division Street NE, south of Hood Street, and west of Commercial Street NE.

Because the subject property is designated River-Oriented Mixed Use on the Comprehensive Plan map and located within the Riverfront Overlay Zone, the proposed zone change from CO to CB does not require a concurrent comprehensive plan change, as the River-Oriented Mixed Use Plan designation can be implemented by the CB zone.

The Comprehensive Plan designations of surrounding properties include:

<b>Surrounding SACP Plan Map Designations</b>	
North	Across D Street NE - “River-Oriented Mixed Use”
South	Across Division Street NE - “River-Oriented Mixed Use”

East	Across Commercial Street NE - "Central Business District"
West	"River-Oriented Mixed Use"

## 2. Zoning

The subject property is currently zoned CO (Commercial Office) and is located within the Riverfront Overlay Zone. The zoning of surrounding properties is as follows:

Zoning of Surrounding Properties	
North	Across D Street NE - CB (Central Business District) with Riverfront Overlay Zone
South	CO (Commercial Office) with Riverfront Overlay Zone
	Across Division Street NE - CO (Commercial Office) with Riverfront Overlay Zone
East	Across Commercial Street NE - CB (Central Business District) with General Retail/Office Overlay Zone
West	CO (Commercial Office) with Riverfront Overlay Zone

## 3. Existing Site Conditions

The site consists of five different properties (Marion County Assessor Map & Tax Lot Numbers (073W22AC03300 and 073W22DB01600, 1700, 1800, & 1900) totaling approximately 2.3 acres in size. Existing improvements on the site include five buildings and paved off-street parking areas to serve them.

### A. Circulation & Access:

The subject property has frontage on Division Street NE at its southern boundary, D Street NE at its northern boundary, and Commercial Street NE at its eastern boundary. An existing alley also runs the entire length of the property along its western boundary.

The section of Commercial Street abutting the subject property is designated as a parkway in the City's Transportation System Plan (TSP) and is under the jurisdiction of the Oregon Department of Transportation (ODOT). The current right-of-way width of Commercial Street adjacent to the subject property is approximately 99 feet, which is less than the minimum required width of 120 feet. At the time of site plan review approval for the future development of the subject property, right-of-way dedication and improvement of the street frontage

of the subject property, including provision of the required bike lane, planting strip, and property line sidewalks, will be required.

The sections of D Street and Division Street which abut the subject property are designated as local streets in the City's TSP. The right-of-way widths of these streets currently conform to the minimum required right-of-way width. Any additional required street improvements for these streets will be addressed at the time of Site Plan Review approval for the future development of the property.

Primary vehicular access to the subject property is provided via five existing driveways onto Commercial Street NE. Vehicular access is also available from the alley along the property's western boundary. The applicant's proposed preliminary site plan for the future development of the property shows a proposed reduction in the number of driveways onto Commercial Street NE from five to two. No driveway access is proposed onto Division Street or D Street and alley access will be maintained.

As previously discussed, because Commercial Street NE is under the jurisdiction of the Oregon Department of Transportation, proposed vehicular access onto Commercial Street will require approval by ODOT.

#### **B. Natural Features:**

**Trees:** The City's tree preservation ordinance (SRC Chapter 808) protects Heritage Trees, Significant Trees (including Oregon White Oaks with diameter-at-breast-height of 24 inches or greater), trees and native vegetation in riparian corridors, and trees on lots and parcels greater than 20,000 square feet. The tree preservation ordinance defines "tree" as, "any living woody plant that grows to 15 feet or more in height, typically with one main stem called a trunk, which is 10 inches or more dbh, and possesses an upright arrangement of branches and leaves."

As shown on the applicant's existing conditions plan, which was included as attachment D in the staff report, there are trees existing on the subject property. Any removal of trees from the property to accommodate the future development of the site must comply with the requirements of the City's tree preservation ordinance (SRC Chapter 808).

**Wetlands:** Grading and construction activities within jurisdictional waters of the state are regulated by the Oregon Department of State Lands (DSL) and U.S. Army Corps of Engineers. State and federal wetlands laws are also administered by DSL and the Army Corps of Engineers, and potential impacts to jurisdictional wetlands are addressed through application and enforcement of appropriate mitigation measures.

According to the Salem-Keizer Local Wetlands Inventory (LWI), the subject property does not contain any mapped wetlands or waterways. The subject property also does not contain any hydric or wetlands-type soils. As such, no impacts to wetlands or required mitigation measures are required in conjunction with the future development of the subject property.

***Landslide Hazards:*** The topography of the subject property is flat. According to the City's adopted landslide hazard susceptibility maps, the subject property does not contain any areas of mapped landslide hazard susceptibility points. Pursuant to the City's landslide hazard ordinance (SRC Chapter 810), a geologic assessment is therefore not required in conjunction with the future development of the subject property.

#### **4. Neighborhood Association Comments**

The subject property is located within the boundaries of the Central Area Neighborhood Development Organization (CANDO) neighborhood association. As of the close of the record, no written comments were received from the neighborhood association.

#### **5. Public Comments**

All property owners within 250 feet of the subject property were mailed notice of the proposal. Notice of public hearing was also posted on the subject property. As of the date of completion of the staff report, no written comments were received from surrounding property owners or members of the public. At the hearing, Alan Mela spoke in support, David Glennie and Rick Yurk spoke in opposition. Mr. Glennie presented a letter from his attorney, Phil Grillo, asking for additional time to review and respond to the application. While the record was open, additional written comments were provided by staff, by the applicant and parties in support of the application and by parties opposing the application, as set out above.

#### **6. City Department Comments**

- A. The Building and Safety Division reviewed the proposal and indicated no comments.
- B. The Fire Department reviewed the proposal and provided comments indicating they have no objections to the conditional use permit or zone change requests and that Fire Department related issues including, but not limited to, fire department access and water supply will be required to be addressed at the time of building permit review.

- C. The Public Works Department reviewed the proposal and provided comments regarding improvements required to serve the site in conformance with the applicable requirements of the SRC. Comments from the Public Works Department are included as Attachment G in the staff report.

As indicated above, the right-of-way of Commercial Street NE abutting the property is currently less than the minimum required 120-foot width. At the time of site plan review approval for the future development of the subject property, right-of-way dedication and improvement of the street frontage of the subject property, including provision of the required bike lane, planting strip, and property line sidewalks, will be required.

## **7. Public Agency & Private Service Provider Comments**

Notice of the proposal was provided to public agencies and to public & private service providers. As of the date of completing the decision, the following comments were received:

- A. Portland General Electric (PGE) reviewed the proposal and provided comments indicating that development cost will be per current tariff and service requirements and that a 10-foot-wide public utility easement (PUE) is required on all front street lots.
- B. The Oregon Department of Transportation (ODOT) reviewed the proposal and provided comments that are included as attachment H in the staff report. In summary, ODOT indicates that the site contains five private driveway connections to Salem Highway No. 72, State Route OR-22/Commercial Street NE. ODOT indicates that as a land use matter they do not object to the applicant's proposal and that they concur with the proposed reduction of number of driveways from five to two. ODOT indicates they currently have no access permit records on file for any of the existing driveway connections onto OR-22/Commercial Street and therefore the two proposed driveways to serve the future development of the property will require an access permit. In order to ensure that access to the site meets State requirements, ODOT recommends that a condition of approval be placed on the decision requiring the applicant to submit an *Application for State Highway Approach* (access permit application) for each of the proposed driveway connections. ODOT indicates that approval of the application will require highway frontage improvements.

ODOT also indicates that if the applicant or their contractor is required to occupy state highway right-of-way to relocate or reconstruct facilities, a *Permit to Occupy or Perform Operations Upon a State Highway* will also be necessary.

## 8. Applicant Submittal Information

Land use applications must include a written statement addressing the applicable approval criteria and be supported by proof they conform to all applicable standards and criteria of the Salem Revised Code. The written statement provided by the applicant addressing the applicable application approval criteria is included as Attachment E to the staff report. The Hearing Officer notes that the staff utilized the information from the applicant's written statement to help evaluate the proposal and formulate the facts and findings within the staff report.

### FINDINGS ADDRESSING APPLICABLE SALEM REVISED CODE APPROVAL CRITERIA FOR QUASI-JUDICIAL ZONE CHANGE

## 9. QUASI-JUDICIAL ZONE CHANGE APPROVAL CRITERIA

The Hearing Officer notes that testimony, evidence and arguments in opposition and support of the application are largely focused on the component of the application seeking approval of the proposed conditional use, rather than component applying for the underlying CB zone, which arguably is only required to permit the current retail operation to continue as a permitted use, rather than as a pre-existing non-confirming use, which cannot be expanded. In the end, the Hearing Officer concludes that the proposed zone change meets the applicable criteria, and approves the proposed zone change. This part of the approval does not resolve the questions regarding the proposed conditional use.

Salem Revised Code (SRC) 265.005(e)(1) sets forth the following criteria that must be met before approval can be granted to an application for a quasi-judicial zone change. The following subsections are organized with approval criteria shown in ***bold italic***, followed by findings evaluating the proposed development's conformance with the criteria. Lack of compliance with the following criteria is grounds for denial of the Quasi-Judicial Zone Change application, or for the issuance of certain conditions to ensure the criteria are met.

***(A) The zone change is justified based on the existence of one or more of the following:***

- (i) A mistake in the application of a land use designation to the property;***
- (ii) A demonstration that there has been a change in the economic, demographic, or physical character of the vicinity such that the zone would be compatible with the vicinity's development pattern;***  
***or***
- (iii) A demonstration that the proposed zone is equally or better suited for the property than the existing zone. A proposed zone is equally***

***or better suited for the property than an existing zone if the physical characteristics of the property are appropriate for the proposed zone and the uses allowed by the proposed zone are logical with the surrounding land uses.***

The Hearing Officer notes that there is no evidence in the record to indicate a mistake was made in the application of the existing CO zone, so SRC 265.005 (e)(1)(A)(i) is not applicable to this proposal. The Hearing Officer notes that while some of the discussion in the staff report and the applicant's narrative could provide an argument demonstrating that there has been a change in the economic or demographic character of the vicinity, that argument was not developed, so the Hearing Officer assumes SRC 265.005(e)(1)(A)(ii) is not applicable to this proposal, either. The Hearing Officer notes that the staff report and written statement provided by the applicant indicate that the proposed zone change from CO to CB is appropriate because the proposed CB zone is equally or better suited for the property than is the existing CO zone.

The Hearing Officer notes that the UGM property has included a mix of retail and offices uses since before the Riverfront Overlay Zone and CO zone were initially applied to the property. Applying the CO zone made the existing UGM retail outlet a pre-existing non-conforming use and that non-conforming status limits the opportunities for improvement, expansion, or change of the existing operation. The physical characteristics of the property are appropriate for the proposed CB zone, as the property is located along Commercial Street, just north of the downtown core, and no physical obstacles or obstructions on the property or nearby prevent its use by activities that are allowed in the CB zone.

Reviewing factors that weighing in favor of determining that the proposed zone is logical with the surrounding uses, the Hearing Officer notes that the CB zone is consistent with intent of the River-Oriented Mixed Use Comprehensive Plan designation and provides for activities that are appropriate for the central area of the city. The Hearing Officer notes that the CB zoning already exists to the south, north and east, and that changing the zone on the property from CO to CB will not create an island of CB surrounded by property with zones that are not compatible with the uses permitted in the CB and CO zones. The location of the subject property-- directly adjacent to the north of the downtown, but also south of Mill Creek-- is a logical extension of the City's CB zoning and is consistent with the CB zoning of property located to the north of the subject property across D Street and to the east of the subject property across Commercial Street. The Hearing Officer notes that the property immediately abutting the subject site to the south, also on the east side of the alley, owned by Mr. Yurk, could weigh against finding that the proposed zone change is logical with the surrounding uses, if the uses allowed outright in the CB zone were not as compatible and consistent with those allowed outright in the CO zone as they are. As both zones implement the

Riverfront Oriented Mixed Use Comp Plan designation, and as there is considerable overlap in the allowed uses, the Hearing Officer finds that it is "logical" for the CO and CB zones to adjoin each other for purposes of the requirements of the criterion. The Hearing Officer agrees that the variety of uses allowed in the CB zone, together with the additional development standards and design review requirements of the Riverfront Overlay zone, will promote a land use and development pattern that is in keeping with the intent of the River-Oriented Mixed Use comprehensive plan designation and will also allow for the existing UGM retail store to become a permitted conforming use rather than an existing non-conforming use with limits on its ability to be expanded, altered, or rebuilt if destroyed.

The Hearing Officer finds that because the physical characteristics of the property are appropriate for the proposed zone and the uses allowed by the proposed zone are logical with the surrounding land uses, the proposed zone is equally or better suited for the property than the existing zone, and this criterion is satisfied.

***(B) If the zone change is City-initiated, and the change is for other than City-owned property, the zone change is in the public interest and would be of general benefit.***

The Hearing Officer notes that the written statement provided by the applicant, and the staff report, indicates that the proposal was initiated by the Union Gospel Mission, which owns the subject site. The Hearing Officer finds that the proposal is not a City-initiated zone change and therefore concludes that this criterion does not apply to this proposal.

***(C) The zone change complies with the applicable provisions of the Salem Area Comprehensive Plan.***

The Hearing Officer notes that the subject property is designated River-Oriented Mixed Use on the Salem Area Comprehensive Plan Map. Because of the property's mixed-use comprehensive plan designation, the Mixed-Use Development goals and policies contained in section IV.F of the Salem Area Comprehensive Plan (SACP) are applicable to the proposal.

For the reasons that follow, the Hearing Officer finds that the requested zone change from CO (Commercial Office) to CB (Central Business District) complies with the applicable provisions of the Salem Area Comprehensive Plan.

▪ **Mixed-Use Development Goal (SACP Section IV.F):**

*To provide a mixture of complimentary land uses that may include housing, retail, offices, services, industrial, and civic uses, to create economic and social vitality.*

The Hearing Officer notes that the applicant's written statement indicates that the City has determined this area is appropriate for a mix of uses, and the combination of the existing overlay zone, the comprehensive plan designation and the existing uses support that statement. The site is currently zoned CO, but it is also the location of a long-standing (non-conforming) retail store. The proposed CB zone implements the River-Oriented Mixed Use Comp Plan designation, and provides for retail uses. The CB zone will convert the existing store from a non-conforming use to a permitted use. In addition, the Riverfront Overlay Zone preserves the uses in the underlying base zone. The existing CO zone, and the proposed CB zone, both allow non-profit shelters as conditional uses. The zone change does not affect use of the site for a shelter of some size. The CB zone provides for a complimentary mix of land uses within the area, including service and civic uses, as anticipated by the Plan designation. For these reasons, the proposal is consistent with this Goal.

The Hearing Officer notes the findings included in the applicant's written statement. With a few exceptions, permitted uses in the Riverfront Overlay Zone are based on the permitted uses in the underlying base zone. While the CO zone currently allows for some limited non-office uses, the CB zone permits a much wider range of retail sales, eating and drinking establishments, and personal services.

The Hearing Officer notes that the CB zone permits the "combination of urban uses" referred to in the SACP description for the River-Oriented Mixed Uses designation. While the proposed zone change from CO to CB does not affect the allowance of UGM's proposed relocated men's shelter at this location, it does allow UGM's existing retail store to become a conforming permitted use in the CB zone rather than a non-conforming use otherwise permitted under the existing CO zone.

The land uses in the surrounding area currently include a mixture of commercial service businesses, retail, office, and industrial. The City will also be establishing a new police facility directly across Commercial Street from the subject property. The proposed zone change to CB expands the variety of uses that would be allowed on the subject property, which the Hearing Officer finds is consistent with providing a mixture of uses existing in the area and the mixed-use development goal. The Hearing Officer finds that the proposed zone change complies with this provision of the comprehensive plan.

▪ **Mixed-Use Development Policy No. 1 (Development)(SACP Section IV.F.1):**

*Encourage use of land by facilitating compact, high density development and minimizing the amount of land that is needed to accommodate automobile parking.*

The Hearing Officer notes that the applicant's written statement indicates that the proposal represents the efficient use of land for compact, high-density development by providing for the continued operation and future expansion of the existing retail store, and a shelter with greatly expanded capacity in a building that will include emergency housing, rehabilitation and training services, and administrative offices.

The Hearing Officer notes the applicant's written statement argues that the proposed zone change will facilitate more intense use of an already-developed property by allowing the expansion of the retail store consistent with the development standards and design review requirements of the Riverfront Overlay Zone, which would result in a more compact and urban form consistent with this comprehensive plan policy and that the proposed zone also facilitates the more efficient use of the UGM's property by allowing them to locate their proposed new shelter and retail store on the same development site, where parking between the two uses can be shared. The Hearing Office agrees that the proposed development would result in an overall more intensive use of the site than at present. The Hearing Officer notes that the proposed zone change permits, but does not itself require these features, and takes this discussion by the staff and applicant as illustrating the kind of compact, high-density development that is allowed under the proposed zone. Accordingly, the zone change facilitates this type of development. The Hearing Officer finds that the proposed zone change complies with this provision of the comprehensive plan.

▪ **Mixed-Use Development Policy No. 2 (Development)(SACP Section IV.F.2):**

*Encourage development that preserves open space.*

The Hearing Officer notes and appreciates the requirements for landscaping required by the development standards, and agrees that the proposed zone change facilitates a more intensive re-development of this property, which is located near the downtown core of the City. The Hearing Officer notes the argument that this allows the more efficient use of land, and in turn reduces the amount of open space that might otherwise be developed elsewhere to accommodate the proposed uses. The Hearing Officer could not readily find substantial evidence in the record establishing that there is open space or undeveloped land appropriately designated by the SACP or appropriately zoned for the proposed uses, and therefore finds that this

argument is too speculative to adopt. But the Hearing Officer finds that the criterion requires the zone change to be consistent with the applicable policies from the SACP, not every policy. The Hearing Officer finds that this policy is not particularly applicable to redevelopment of already developed property in the urban core, except to the extent that it prevents development in open space elsewhere.

▪ **Mixed-Use Development Policy No. 3 (Priorities for Mobility and Access)(SACP Section IV.F.3):**

*Facilitate development (land use mix, density, connectivity, design, and orientation) that reduces the need for, and frequency of, SOV trips and supports public transit, where appropriate.*

The Hearing Officer notes that the applicant indicates that the UGM shelter serves a predominantly non-driving population. The provision of on-site services, and location in proximity to the downtown core area, reduces the need for SOV trips. The Hearing Officer finds these factors are consistent with this policy. The Hearing Officer affirms the findings included in the applicant's written statement. The location of the subject property in proximity to the downtown core area ensures better access to transit and other needed services. The proposed zone change to CB also allows for the existing retail store to become a conforming permitted use in the zone. This in turn allows for the proposed relocated shelter and expanded retail store to be located on the same development site, which encourages less SOV trips by making it more likely that at least some staff who have responsibilities at the shelter and the store do not have to leave the property to travel to another location by car. The proposed zone change conforms to this provision of the comprehensive plan.

▪ **Mixed-Use Development Policy No. 4 (Priorities for Mobility and Access)(SACP Section IV.F.4):**

*Reinforce streets as public places that encourage pedestrian and bicycle travel.*

The Hearing Officer notes that the written statement provided by the applicant indicates that by creating and maintaining a support service destination in proximity to downtown and the public open spaces in the area, with access along the major streets including Commercial Street and Front Street, the proposal will encourage the use of the street for pedestrian and bicycle travel and thereby reinforce streets as a public place, as directed by this policy.

The Hearing Officer affirms the following from the applicant's written statement: The subject property is located in proximity to the downtown core of the City and is served by an existing street network where pedestrian and bicycle facilities are provided. As discussed in the staff report and earlier in this decision,

the right-of-way width of Commercial Street abutting the property does not currently conform to the 120 feet minimum required right-of-way width for a parkway street under the City's Transportation System Plan (TSP). As such, additional right-of-way dedication and street improvements will be required as provided in the TSP along the frontage of Commercial Street in conjunction with the future redevelopment of the property. Improvement of Commercial Street to the applicable TSP standards will ensure the public street right-of-way is developed in a manner so as to reinforce it as a public place for pedestrian and bicycle travel.

In addition, because the subject property is located within the Riverfront Overlay Zone, the future redevelopment of the property will be required to comply with the design review standards and guidelines of the overlay zone which generally require buildings to be constructed in close proximity to the public street right-of-way with canopies over the sidewalk for weather protection and transparent windows along the ground floor street facing facades to promote an active and inviting pedestrian environment. The Hearing Officer concludes that because requirements to comply with the TSP and design review standards apply to any development on the property, the proposed zone change conforms to this provision of the comprehensive plan.

- **Mixed-Use Development Policy No. 5 (Priorities for Mobility and Access)(SACP Section IV.F.5):**

*Provide roadway and pedestrian connections to residential areas.*

The Hearing Officer notes that the subject site is connected to Commercial Street, Division Street and D Street and that D Street and Division Street connect to Front Street. The street and sidewalk systems ultimately connect to residential areas. The Hearing Officer concludes that connections to residential areas are already provided, although these connections are not specifically provided by the proposed development. The Hearing Officer finds the proposed zoning change conforms to this provision of the comprehensive plan.

- **Mixed-Use Development Policy No. 6 (Design)(SACP Section IV.F.6):**

*Develop commercial and residential areas that are safe, comfortable, and attractive to pedestrians.*

The Hearing Officer notes the property is located within the Riverfront Overlay Zone, and that the design review standards and guidelines included in the overlay zone establish requirements to promote a safe, comfortable, and attractive urban environment that is inviting to pedestrians. As development is required to conform to these design review requirements, at the time of future redevelopment of the property the overlay will ensure that development is

consistent with this comprehensive plan policy. Accordingly, the Hearing Officer finds that the proposed zone change conforms to this provision of the comprehensive plan.

▪ **Mixed-Use Development Policy No. 7 (Design)(SACP Section IV.F.7):**

*Provide flexibility in the siting and design of new developments, facilities, and redevelopment to respond to changes in the marketplace and infrastructure systems.*

The Hearing Officer notes that by changing the zoning of the property from CO to CB the existing UGM retail store will become a conforming permitted use rather than a non-conforming use. As a conforming use, the proposed zone change will facilitate investments to improve and expand the existing store, as shown on the applicant's preliminary site plan. In addition, the wider range of potential uses for the subject property under the proposed CB zone affords the property owner greater flexibility in adapting to changing conditions over time. The Hearing Officer finds that the proposed zone change conforms to this provision of the comprehensive plan.

▪ **Mixed-Use Development Policy No. 8 (Design)(SACP Section IV.F.8):**

*Provide appropriate transitions between mixed-use areas and adjacent single-use neighborhoods.*

The Hearing Officer notes that the subject property is located within an area characterized by a wide variety of land uses including office, retail, commercial services, and industrial. Both the River-Oriented Mixed Use comprehensive plan designation and the Riverfront Overlay Zone that apply to the subject property and the surrounding area are intended to promote mixed-use rather than single use neighborhoods. The proposed zone change is consistent with the existing and planned mixed-use character of the neighborhood, and is not situated in an area of transition between mixed-use areas and single-use neighborhoods. The Hearing Officer finds that the proposed zone change conforms to this provision of the comprehensive plan, as no appropriate transitions need to be provided in this location.

***(D) The zone change complies with applicable Statewide Planning Goals and applicable administrative rules adopted by the Department of Land Conservation and Development.***

The Hearing Officer notes that the City's adopted Comprehensive Plan implements the Statewide Planning Goals and applicable administrative rules, and the Comprehensive Plan is acknowledged by the Department of Land Conservation and Development as complying with the Statewide Planning Goals.

The proposed zone change does not require a corresponding change to the Salem Area Comprehensive Plan Map designation for the property and the proposed zone change conforms to the applicable goals and policies of the Salem Area Comprehensive Plan, as identified in the findings included within this decision. Accordingly, the Hearing Officer finds the proposed zone change also complies with the Statewide Planning Goals and applicable administrative rules adopted by the Department; therefore the proposed zone change satisfies this approval criterion.

***(E) If the zone change requires a comprehensive plan change from an industrial designation to a non-industrial designation, or a comprehensive plan change from a commercial or employment designation to any other designation, a demonstration that the proposed zone change is consistent with the most recent economic opportunities analysis and the parts of the Comprehensive Plan which address the provision of land for economic development and employment growth; or be accompanied by an amendment to the Comprehensive Plan to address the proposed zone change; or include both the demonstration and an amendment to the Comprehensive Plan.***

The Hearing Officer finds that the proposed zone change is from CO to CB, both of which implement the River-Oriented Mixed Use designation on the Salem Area Comprehensive Plan map. The River-Oriented Mixed Use designation is not an industrial, commercial, or employment designation. The proposed zone change from CO to CB also does not require a comprehensive plan change from an industrial, commercial, or employment designation. This criterion is therefore not applicable to the proposed zone change.

***(F) The zone change does not significantly affect a transportation facility, or, if the zone change would significantly affect a transportation facility, the significant effects can be adequately addressed through the measures associated with, or conditions imposed on, the zone change.***

The Hearing Officer finds that Pursuant to Oregon Administrative Rule (OAR) 660-012-0060(9), the proposed zone change from CO to CB is exempt from the Transportation Planning Rule determination of significant affect because the current CO zone and the proposed CB zone both implement the River Oriented-Mixed Use comprehensive plan designation. As such, a change to the City's Comprehensive Plan map is not required. Because both the CO and CB zones implement the property's current River-Oriented Mixed Use Comprehensive Plan designation, the City's acknowledged Transportation System Plan (TSP) already anticipates the levels of traffic from development of the property under either the existing CO zone or the proposed CB zone. This criterion is satisfied.

***(G) The property is currently served, or is capable of being served, with public facilities and services necessary to support the uses allowed by the proposed zone.***

The Hearing Officer notes that, as indicated in the comments provided by the Public Works Department, water, sewer, and stormwater infrastructure are available within surrounding streets/areas and appear to be adequate to serve existing and future tenants and development in the proposed CB zone. Site specific infrastructure requirements will need to be addressed during the site plan review approval process for the future redevelopment of the property. The Hearing Officer finds this criterion is satisfied.

## **FINDINGS ADDRESSING APPLICABLE SALEM REVISED CODE APPROVAL CRITERIA FOR CONDITIONAL USE PERMIT**

### **10. CONDITIONAL USE PERMIT APPROVAL CRITERIA**

The Salem Revised Code (SRC) 240.005(d) sets forth the following criteria (shown in ***bold italic***) that must be met before approval can be granted to an application for a Conditional Use Permit. These criteria are followed by analysis and findings evaluating the proposal's conformance with the criteria. The Hearing Officer notes that the public testimony at the hearing and the written comments provided during the period the record remained open are almost entirely focused on the conditional use permit component of this application. For the reasons that follow, the Hearing Officer finds that with conditions, the proposal satisfies the criteria and therefore conditionally approves the application.

***(1) The proposed use is allowed as a conditional use in the zone.***

The Hearing Officer notes that much of the testimony, argument, additional testimony from staff and rebuttal is devoted to concerns about whether the proposed conditional use satisfies this criterion. The subject UGM property is within the Riverfront Overlay Zone. Defining an Additional Conditional Use, the Riverfront Overlay zone includes the following language found in SRC 617.015(c), Table 617-2:

***"Relocation of an existing Non-Profit Shelter from the CB zone serving more than 75 people, provided the shelter continually existed in the CB zone as of September 1, 1993."***

The applicant, staff, and testimony in support of the application state that the UGM shelter falls within this definition because it is an existing non-profit shelter that is currently in the CB zone, and the UGM shelter has been at its current location continuously since 1953. They propose to expand the shelter so that it

will serve more than 75 people. They reason that because the proposed use is allowed as a Conditional Use in the Overlay Zone, this criterion is satisfied.

The Hearing Officer notes that in opposition, Mr. Grillo raises several questions about whether the proposed use is allowed as a conditional use in the zone, arguing that there is insufficient evidence in the record that the UGM shelter has been continuously operating since 1993, that the language allowing the relocation of a shelter within the CB zone does not anticipate expansion, and that there must be some limit on the capacity of shelters allowed under this provision.

The Hearing Officer notes that the text allowing the extends to a very limited number of uses—only those shelters that exist in the CB zone, that serve more than 75 people, and that continually existed in the CB zone as of September 1, 1993. The Hearing Officer is satisfied that the current UGM shelter exists and is in the CB zone. Although Mr. Grillo notes there are not substantiating documents in the record, the Hearings Office is satisfied that the applicant's statement that the shelter has been in the same location since 1953 is sufficient evidence that the proposed use satisfies this standard. If there were contrary evidence, the Hearing Officer might agree that documents substantiating that statement would be required, but the Hearing Officer will otherwise take the applicant's statement about the applicant's property and operations at face value.

Regarding the proposed expansion of the shelter operation, the Hearing Officer notes that the CB zone allows, as conditional uses, relocated non-profit shelters serving more than 75 people, but the text for the CB zone expressly prohibits any increase in bed capacity. SRC 524.005, Table 524-1. The Riverfront Overlay Zone language from SRC 617.015(c), Table 617-2 does not include the express prohibition on an increase in bed capacity. As the language in the CB zone demonstrates the City Council clearly knows how to prohibit an increase in bed capacity when it intends to do so, the Hearing Officer concludes that the City Council meant for relocated shelters that fall within the additional conditional use from the Riverfront Overlay Zone to be able to increase bed capacity. Similarly, the Hearing Officer notes that there is no particular upper limit on such an expansion, assuming that the proposal can comply with the land use criteria and design standards. Where the City Council wanted to impose limits on the number of people for a shelter, for 5 or fewer persons, 10 or fewer persons, or 6 to 75 persons, the Council has done so in the SRC. The Council clearly knows how to set maximum limits on the number of people served in shelters, and when the SRC text does not include an upper limit, the Hearing Officer concludes that the Council did not intend to set one. Mr. Grillo also raises concerns that the CANDO Neighborhood Plan, Riverfront Redevelopment project area of the RDURP<sup>1</sup> and

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<sup>1</sup> The Hearings Officer is not convinced that urban renewal plans are incorporated into the land use regulations in a manner that permits their consideration in interpreting land use decisions. If

the Comprehensive Plan all should inform the interpretation of the language in the CB and RO zones in a manner that expansion of a relocating shelter would not be allowed. The Hearing Officer is convinced that the City Council weighed the policies in the Comprehensive Plan in drafting the language at issue and concluded that in the balance, the language properly implements the Comprehensive Plan.

The Hearing Officer concludes that under the plain language of the SRC, given that the site of the UGM's existing shelter at 345 Commercial Street NE is zoned CB and that the shelter has operated at that location continuously since 1953, if the shelter relocates from the CB zone at its current location to its new proposed location on property within the Riverfront Overlay Zone, that zone allows the relocated shelter as a conditional use and allows the shelter to increase the number of persons served. Accordingly, the Hearing Officer finds that the proposed relocated shelter conforms to this approval criterion.

***(2) The reasonably likely adverse impacts of the use on the immediate neighborhood can be minimized through the imposition of conditions.***

The Hearing Officer notes that Mr. Grillo raises a concern that staff and the applicant erred by not considering the entire CANDO neighborhood to be the "immediate neighborhood" for purposes of this criterion. The Hearing Officer understands Mr. Grillo to argue that because the SRC contains definitions for "vicinity" "adjacent" and "neighborhood", statements by the staff and applicant that discuss or evaluate the "immediate vicinity" or "adjacent uses" should have properly considered all of the CANDO neighborhood. The Hearing Officer is not convinced by this argument. Accepting Mr. Grillo's approach would require the Hearing Officer to give no meaning to the word "immediate" in applying this criterion. Turning to the SRC for guidance, the Hearing Officer notes that according to SRC 111.001:

***"Unless the context otherwise specifically requires, terms used in the UDC shall have the meanings set forth in this chapter; provided, however:***

- (a) Where chapter specific definitions are included in another chapter of the UDC, those definitions are the controlling definitions; and***
- (b) Where a term is not defined within the UDC, the term shall have its ordinary accepted meaning within the context in which it is used. Webster's Third New Int'l Dictionary (unabridged ed. 2002) shall be the standard reference to ordinary accepted meanings."***

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consideration of the urban renewal plan is relevant, the Hearings Officer would refer to the December 27, 2017 email from Kristen Retherford to Dan Clem, which the Hearings Officer sees as incorporating shelters as a housing option encouraged by the plan.

Webster's, in turn, provides the following as the most relevant definition for "immediate."

"4 : characterized by contiguity: existing without intervening space or substance (bring the chemicals into [immediate] contact very cautiously); *broadly*: being near at hand; not too far or distant (hid the money in the [immediate] neighborhood)"

The Hearing Officer concludes that an "immediate neighborhood", read in the context in the SRC, does have the same meaning as "immediate vicinity" and would include adjacent uses. The Hearing Officer concludes that the "immediate neighborhood" in this case is much smaller than the CANDO neighborhood. The Hearing Officer agrees with the staff analysis and accordingly adopts it as reviewing the immediate neighborhood for this proposal.

Mr. Grillo also argues that the reasonably likely adverse impacts of the use on the immediate neighborhood cannot be minimized through the imposition of conditions. The Hearing Officer is not convinced. This argument seems to be based on the notion that minimizing adverse impacts requires eliminating or prevent those adverse impacts entirely. But "minimize" means "to reduce or keep to a minimum". The Hearing Officer finds that the reasonably likely adverse impacts on the immediate neighborhood can be minimized through conditions of approval.

This is not to say that the Hearing Officer discounts the reasonably likely adverse impacts of the proposed UGM shelter. Opponents provided a number of photographs and video, along with written testimony that documents the adverse impacts on property and businesses resulting from improper and sometimes illegal behavior. The Hearing Officer acknowledges that much of this behavior is simply intolerable. But the Hearing Officer notes that the adverse impacts at the current UGM shelter location may be due to the deficiencies of that location—the size, the lack of available space for the people waiting to be served—and perhaps also give some feel for the scope of the homeless problems and the need for treatment, training and other services, as well as the expansion of the shelter itself. The Hearing Officer concludes that adequate housing, treatment, and other services for the homeless would best minimize the adverse impacts that are possible to minimize.

The Hearing Officer finds that the written statement provided by the applicant indicates that the site for the UGM shelter was chosen due to the lack of potentially incompatible uses in the immediate vicinity, and the expectation of minimal adverse impacts. The immediate neighborhood currently includes commercial/service and industrial uses, and a grocery store. There are no adjacent residential uses. The property is along a major street corridor and multiple modes of transportation are available. In the near future, the new Police

facility will be located directly across Commercial Street. The Hearing Officer notes that the location of the new Police facility itself, in proximity to the proposed shelter will minimize some of the adverse impacts of the proposal, although, as discussed below, the Hearing Officer shares some concern that the benefits of the proximity of the shelter to the police facility is somewhat compromised by orienting the proposed development towards the alley. The applicant's rationale leaves the Hearing Officer balancing the benefits of avoiding some adverse impacts to the public street and sidewalk system on Commercial, by possibly adding to the adverse impacts to the other properties served by and along the alley. The Hearing Officer believes this adverse impact can be minimized by the imposition of the following condition:

**Condition 1:** As a condition of the future development of the property, the applicant shall either reorient the development so that the primary customer entrance and outside storage and waiting areas are accessed from and oriented towards Commercial Street NE, rather than the alley, or shall install video surveillance cameras and appropriate signage that capture video of the entire surface of the alleyway from Division to D Street NE. Video files shall be continuously stored on site for no less than 14 days. Camera and sign locations shall be determined at the time of site plan review and design review.

The Hearing Officer notes that the applicant has indicated that major noise impacts in the area are from vehicle traffic on Commercial and Front Streets, and the rail line along Front Street. Activities associated with the shelter will occur within the building. There will be no exterior noise impacts created by these activities. The potential for adverse impact from noise from activities at the shelter is minimal. Similarly, the types of activities and services provided at the shelter will not create odors to the surrounding area.

The applicant explains that traffic will be associated with employees, and customers of the retail store as at present. Few clients have motor vehicles. Delivery trucks will access the building. These traffic impacts will be typical of existing traffic in this industrial and commercial area, and along a major street route that serves as a link between the central city, the Willamette River bridges, and the Salem Parkway.

The applicant indicates that the shelter will occupy a newly designed and built structure that will replace the old buildings presently on the property. The new building will be characteristic of the downtown core in scale and appearance, and be in keeping with the extension of the core area to the north. The building design will be required to follow the development standards that

apply to the location. As a result, the visual impact of the location will improve from the present.

The applicant explains that the facility will be likely to attract a large amount of pedestrian traffic and that measures should be taken to discourage loitering on or obstructing the public sidewalk. No other adverse impacts that require conditions appear to be reasonably likely. To minimize loitering on or obstructing the public sidewalk, the following condition shall be imposed:

**Condition 2:** As a condition of the future development of the property, appropriate signage directing patrons to the outside waiting areas on the property and discouraging loitering or obstructing the public sidewalk shall be installed on the property. Signage shall be at locations and in a form determined at the time of site plan review and design review.

Concerning vehicle transportation impacts, the proposed shelter will not result in adverse traffic impacts on streets within the area because, as the applicant indicates in their written statement, few clients have motor vehicles and the amount of vehicle traffic generated from employees, customers of the retail store, and deliveries will be typical of the other existing uses in the area. As previously discussed in this decision, because Commercial Street is also a State highway, comments from ODOT were received regarding proposed driveway access to the property. In order to ensure safe driveway access to the site that meets ODOT requirements, the following condition shall be imposed:

**Condition 3:** As a condition of the future development of the property, a State Highway Approach/access permit shall be obtained for each proposed driveway connection onto Commercial Street NE.

Regarding pedestrian and bicycle traffic, the proposed shelter will generate increased amounts pedestrian and bicycle activity in the area. The increased pedestrian and bicycle activity will be accommodated by provision of required sidewalk and bike lane improvements along Commercial Street, as required under the City's Transportation System Plan for this classification of street, with the proposed redevelopment of the site. In order to minimize the potential of the public sidewalks being obstructed due to loitering, the proposed preliminary shelter design locates the main guest entry into the shelter, along with an adjacent plaza area, on the west side of the building facing the alley. The rear guest entry is reached via a pedestrian connection which leads to the alley, but does not connect to any other pedestrian route with a sidewalk. In order to ensure that safe and convenient pedestrian access is provided for the proposed guests of the facility, the following condition shall be imposed:

**Condition 4:** A pedestrian connection shall be provided within the development to connect the main guest entrance into the proposed shelter to a public sidewalk within an abutting street. If the only means of connecting to a public sidewalk within an abutting street is via the existing alley, the pedestrian connection shall be visually contrasted from the alley either by a change in material or a grade separation above the alley in a manner that will not impede vehicular access to the alley.

In regard to potential visual impacts, the subject property is located within the Riverfront Overlay Zone which includes design review requirements intended to promote a vibrant and pedestrian oriented mixed-use residential and commercial district. In order to achieve this, the design review requirements generally require buildings to be brought up to the street with minimized setbacks; transparent ground floor windows facing the street; weather protection in form of canopies over sidewalks; and off-street parking and loading areas that are setback from the street and located to the rear or side of buildings. At the time of future redevelopment of the property, Site Plan Review, per SRC Chapter 220, and Design Review, per SRC Chapter 225, will be required. At that time the proposed development will be reviewed for conformance with the applicable development standards and design review requirements.

While the Riverfront Overlay Zone establishes several design review requirements to promote the desired urban form in this area, it does not, however, establish screening requirements for outdoor storage areas. Due to the nature of the proposed use, it is likely that an area for storage of personal belongings will be needed. The storage area could be within a building or outside on the site. It is unclear from the proposed preliminary site plan whether such an area(s) is proposed, but in order to reduce the potential visual impact of any outside storages area(s), if any will be provided, to the immediate neighborhood, the following condition shall be imposed:

**Condition 5:** Any outside storage areas, including outside storage areas for personal belongings, shall be screened by a minimum 6-foot-tall sight-obscuring fence, wall, or hedge.

As identified in the applicant's written statement and discussed in the associated findings in response to this approval criterion, the reasonably likely adverse impacts of the proposed relocated shelter on the immediate neighborhood are minimized though its proposed location, the conditions of approval, and conformance with the applicable development standards and design review requirements of the Salem Revised Code at the time of future redevelopment of the property. The Hearing Officer finds the criterion is satisfied.

***(3) The proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property.***

The Hearing Officer finds that the written statement provided by the applicant indicates that the immediate neighborhood consists of commercial/service and industrial uses, and a grocery store. The site is along a major street corridor, and close to an active rail line. There are no residential uses in the immediate vicinity. In the near future the new Salem Police facility will be located directly across Commercial Street.

The proposed use is in keeping with the intent of the Riverfront Overlay and mixed use concepts, as it provides a civic service in the area close to the city center and along major transportation routes. The site is accessible for pedestrians and bicycle traffic. The vehicular traffic impact will be low, as few clients have motor vehicles. Based on the operation and characteristics of the use, it will be reasonably compatible with surrounding properties, and minimize impacts on the livability and development of the surrounding properties, consistent with this criterion.

The Hearing Officer notes that the proposed shelter will be located in an area within proximity to the downtown where access to other social service providers in the community can still be maintained. It will be located in an area with a mixture of office, commercial, and industrial uses rather than residential uses. It will also be located across Commercial Street from the City's future police facility which will have the potential effect of deterring undesired activity that would impact surrounding properties. The proposed facility will also be required to conform with the applicable development standards and design review requirements of the SRC that are intended to promote compatibility between adjacent uses and development. The Hearing Officer notes the concerns about impacts on the other properties along the alley. With the conditions above, the Hearing Officer finds that the proposal satisfies this criterion.

## **DECISION**

The Hearing Officer **APPROVES** the request for the proposed Conditional Use Permit and Quasi-Judicial Zone Change for the property located in the 700 to 800 Blocks of Commercial Street NE (Marion County Assessor Map and Tax Lot Number(s): 073W22AC03300 and 073W22DB01600, 1700, 1800, & 1900), subject to the following conditions:

**Condition 1:** As a condition of the future development of the property, the applicant shall either reorient the development so that the primary customer

entrance and outside storage and waiting areas are accessed from and oriented towards Commercial Street NE, rather than the alley, or shall install video surveillance cameras and appropriate signage that capture video of the entire surface of the alleyway from Division to D Street NE. Video files shall be continuously stored on site for no less than 14 days. Camera and sign locations shall be determined at the time of site plan review and design review.

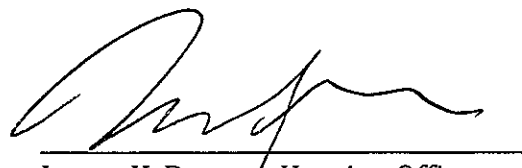
**Condition 2:** As a condition of the future development of the property, appropriate signage directing patrons to the outside waiting areas on the property and discouraging loitering or obstructing the public sidewalk shall be installed on the property. Signage shall be at locations and in a form determined at the time of site plan review and design review.

**Condition 3:** As a condition of the future development of the property, a State Highway Approach/access permit shall be obtained for each proposed driveway connection onto Commercial Street NE.

**Condition 4:** A pedestrian connection shall be provided within the development to connect the main guest entrance into the proposed shelter to a public sidewalk within an abutting street. If the only means of connecting to a public sidewalk within an abutting street is via the existing alley, the pedestrian connection shall be visually contrasted from the alley either by a change in material or a grade separation above the alley in a manner that will not impede vehicular access to the alley.

**Condition 5:** Any outside storage areas, including outside storage areas for personal belongings, shall be screened by a minimum 6-foot-tall sight-obscuring fence, wall, or hedge.

DATED: February 9, 2018

A handwritten signature in black ink, appearing to read 'James K. Brewer', written over a horizontal line.

James K. Brewer, Hearing Officer