

August 3, 2018

VIA ELECTRONIC MAIL: PCole@cityofsalem.net

Original to follow via hand delivery



Mayor Chuck Bennett
Salem City Council
City of Salem
555 Liberty Street SE | 220
Salem, Oregon 97301

RE: Appeal Submittal (4195 Aumsville Highway SE)
Your File No: CP-ZC-UGA18-04
Our File No: 29100

Dear Mayor Bennett & Honorable City Councilors:

On behalf of the Joseph Street Neighbors (collectively the "**Appellant**"), please find and accept Appellant's appeal of the Planning Commission's Decision dated July 19, 2018, regarding the above referenced case.

Enclosed are the following documents:

1. Appeal Application Form;
2. Appeal Letter; and,
3. Check in the amount of \$250.00.

From a scheduling standpoint, we would appreciate follow up from City Staff prior to setting the hearing date. In the meantime, please don't hesitate to follow up with Mark Shipman or myself with any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read "Hannah F. Stevenson".

HANNAH F. STEVENSON
LEGAL ASSISTANT
hstevenson@sglaw.com
Voice Message #325
MDS:hst
Enclosures
cc: Client

Park Place, Suite 200
250 Church Street SE
Salem, Oregon 97301

Post Office Box 470
Salem, Oregon 97308

tel 503.399.1070
fax 503.371.2927

www.sglaw.com



LAND USE APPEAL APPLICATION

1. **GENERAL DATA REQUIRED** *[to be completed by the appellant]*

CPC-ZC-UGA18-04

July 19, 2018

Case # Being Appealed

Decision Date

4195 Aumsville Highway SE

Address of Subject Property

c/o Mark E. Krautmann, 4199 75th Ave SE Salem, OR 97317

Appellants Mailing Address with zip code

Contact Appellant's Attorney

Contact Appellant's Attorney

Appellant's E-mail Address

Day-time Phone / Cell Phone

Appellant's Representative or Professional to be contacted regarding matters on this application, if other than appellant listed above:

Mark D. Shipman, Attorney

PO Box 470, Salem, OR 97308

Name

Mailing Address with ZIP Code

mshipman@sglaw.com

503-399-1070

E-Mail Address

Day-time Phone / Cell Phone

2. **SIGNATURES OF ALL APPELLANTS**

Signature: Mark Krautmann

Date: Aug 2, 2018

Printed Name: Mark E. Krautmann, on behalf of Joseph Street Neighbors

Signature: _____ Date: _____

Printed Name: _____

3. **REASON FOR APPEAL** Attach a letter, briefly summarizing the reason for the Appeal. Describe how the proposal does not meet the applicable criteria as well as verification establishing the appellants standing to appeal the decision as provided under SRC 300.1010

FOR STAFF USE ONLY

Received By: _____

Date: _____

Receipt No: _____

Appeal Deadline: _____

Case Manager: _____



Adobe Sign Document History

08/02/2018

GENERAL DATA (to be completed by the applicant)

CN: ZC-16AHS-04
 Cas. File No.: _____
 4195 Avenue Montclair #6
 Montreal, Quebec H3T 1M4
 (Mr) Mark E. Koudimkin 416 770 48 51 S. Salem, ON K7 3T7
 Apartment 504, building with 70 units
 Contact Applicant's Attorney
 Applicant's e-mail Address: _____
 (Contact Phone) (Cell Phone)

APPLICANT'S ADDRESS (to be completed by the applicant) (to be completed by the applicant)

Mark E. Koudimkin, Attorney
 Name: _____ PO Box 42, Salem, ON K7 3T8
 Name: _____ Mailing Address with ZIP Code
 E-mail Address: _____ koudimkin@gmail.com 416 770 48 51
 (Cell Address) (Cell Phone)

2. SIGNATURE OF A. J. SPELLEN

Signature: _____
 Printed Name: Mark E. Koudimkin, (on behalf of Joseph Street Residents)
 Title: _____

3. SIGNATURE OF THE APPLICANT

APPLICANT'S ADDRESS (to be completed by the applicant) (to be completed by the applicant) (to be completed by the applicant)

Signature: _____
 Printed Name: _____
 Title: _____





Created: 08/01/2018

By: Hannah Stevenson (hstevenson@sglaw.com)

Status: Signed

Transaction ID: CBJCHBCAABAAYWt5MxwuJOfgBBirAwWCtmKME6B71X7b

"City of Salem- Land Use Appeal Application Form (Joseph Street Neighbors) 4845-2998-0782 v.1" History

-  Document uploaded by Hannah Stevenson (hstevenson@sglaw.com) from Acrobat
08/01/2018 - 3:35:29 PM PDT- IP address: 173.12.177.93
-  Document emailed to Mark Krautmann (mark@heritageseedlings.com) for signature
08/01/2018 - 3:35:50 PM PDT
-  Document viewed by Mark Krautmann (mark@heritageseedlings.com)
08/01/2018 - 7:55:30 PM PDT- IP address: 66.87.113.223
-  Document e-signed by Mark Krautmann (mark@heritageseedlings.com)
Signature Date: 08/02/2018 - 10:15:06 AM PDT - Time Source: server- IP address: 69.1.111.60



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August 3, 2018



VIA ELECTRONIC MAIL: PCole@cityofsalem.net
Original to follow via first class mail

Mayor Chuck Bennett
Salem City Council
City of Salem
555 Liberty Street SE | 220
Salem, Oregon 97301

RE: Comprehensive Plan Change/Zone Change/UGA for 4195 Aumsville Highway SE
18-106238 ZO and 18-106836 ZO
Our File No: 00000-29100

Dear Mayor Bennett and Honorable City Councilors:

Our office represents more than 70 neighbors (the "**Joseph Street Neighbors**") that live in the immediate vicinity of the property designated by the Marion County Tax Assessor's Map No. 08-2W-08 as Tax Lot 110 and commonly known as 4195 Aumsville Highway SE (the "**Subject Property**"). The Joseph Street Neighbors write to appeal the approval of the Comprehensive Plan Change/Zone Change/UGA Application designated by the City of Salem (the "**City**") as Case No. CPC-ZC-UGA18-04 (the "**Application**") submitted on behalf of Cascade Legacy Properties, LLC, an Oregon limited liability company (the "**Applicant**"). The Joseph Street Neighbors oppose the approved Application because it fails to meet the mandatory approval criteria, as outlined below.

1. The Commission erred by applying a lower standard of review than is required by the Salem Revised Code (the "Code**").**

When a proposed comprehensive plan amendment would cause a substantial change in the character of the surrounding area such that it would have a significant impact on the properties in the vicinity, the application is subject to a heightened burden of proof. SRC 64.025(e)(2). In this instance, the proposed amendment will allow for a significant change in the types of use permitted on the property, including but not limited to night clubs, cleaning plants, and general manufacturing. All of these uses would represent a significant change in an area best categorized as rural residential and agricultural outside of the City limits, and public service lands inside the City limits. As the Applicant failed to provide a proposed use for the Subject Property, the possibility of these uses must be considered in the context of the Application. The Applicant is not able to avoid its heightened burden of proof by failing to provide a proposed use.

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City of Salem Staff (herein "**Staff**") points to the potential development of the Subject Property for multi-family housing. In the IC designation and zone multifamily housing requires a conditional use permit, and again, the Applicant has not provided a proposed use for the Subject Property. If multi-family housing is the proposed use for the Subject Property, the increase in persons and traffic in the vicinity would represent a significant change to the surrounding area and uses, which will subject the Application to a heightened burden of proof. There is no indication in the record that Applicant satisfied its heightened burden, nor that the Planning Commission evaluated and approved the Application under this heightened level of scrutiny.

The Subject Property has been purposely maintained in its current state by the State of Oregon for more than 100 years with the intention that it remain as open space, suitable for recreational purposes and the maintenance of endangered Oak Savanna located on the Subject Property. In harmony with the primarily rural residential nature of the surrounding area.

The potential impact of the zone change is demonstrated to be significant and so a heightened burden of proof is appropriate. The Planning Commission erred in failing to hold the Applicant to a higher standard as required under the Code.

2. The Code requires the Applicant to demonstrate that each individual criterion is satisfied, and the Commission approved the application where not all criteria were met.

The Plan Map Amendment review process is outlined in Section 64.025 of the Code which requires the Applicant to show that the proposed zone change complies with all applicable criteria of the Code and Statewide Goals. Therefore, in accordance with the Code, the Application must fail if any one criterion is not met. As demonstrated below, the Applicant has not met several criteria. Accordingly, the Planning Commission erred in not applying the appropriate standard of review by approving the Application without reasonably satisfying all of the applicable criteria.

The Code requires the Applicant, not Staff, to demonstrate that each criterion is met. Staff acknowledges in the Staff Report that the Applicant has not provided relevant evidence with respect to several factors of consideration. Where this acknowledgement occurs, Staff supplants this lack of findings with its own. The Code imposes the burden of proof on the Applicant, not on City Staff. Where the Applicant has not provided relevant evidence per criterion, the Applicant cannot satisfy that criterion.

Particularly, the Applicant did not provide evidence with respect to whether the proposed designation was equally or better suited for the property, the capabilities of the land, and the logical urbanization of the land as shown below:

- a. Applicant failed to provide evidence demonstrating that the proposed designation is equally or better suited for the Subject Property.**

The Applicant failed to provide relevant evidence showing that the proposed zone change is equally or better suited for the property. The Applicant relied on the Regional Economic Opportunities Analysis report of 2011 to support that the zone change would provide for broader opportunities for development. Staff acknowledges that this study was irrelevant because it was never adopted by the City of Salem. City Staff supplanted this lack of findings with their own by providing a different study to justify the Application. Staff then also provided their own analysis of that study. The Applicant did not provide any relevant evidence with respect to this criterion and has not met its burden of proof. Based on this, the Planning Commission was required to deny this application. Their failure to do so is an error that needs to be corrected by the Council.

b. The Planning Commission Erred in determining all of the applicable approval criteria were met.

Policy G.5. of the Salem Area Comprehensive Plan states as follows:

Unless the existing development pattern along arterials and collectors commits an area to strip development, new commercial development shall be clustered and located to provide convenience goods and services for neighborhood residents or a wide variety of goods and services for a market area of several neighborhoods. New commercial development will generally be within a range of sizes of commercial centers, such as convenience shopping centers, neighborhood shopping centers, and community shopping centers. ***The size of the commercial center should be scaled and consistent with the character of surrounding and nearby residential development. (Emphasis added).***

The Planning Commission erred in finding that the Applicant satisfied this comprehensive plan criterion. The substantial evidence in the record shows that the surrounding area is dedicated to farm use, rural residential homes on acreage parcels, and Institutional use (Corban University, and State of Oregon Department of Corrections) on substantially large acreages.

The Applicant's failure to identify the future use of the property means they cannot meet this criteria. If the Applicant is NOT going to put in any commercial uses in the IC zoned land then there needs to be a corresponding finding and condition of approval prohibiting commercial uses in the future. If they intend to put in commercial uses, they need to identify the nature of the use and scale of the commercial uses in order to determine if it is consistent with the rural nature of this area. The Planning Commission's reliance on Staff's simple characterization of what the Applicant could do does not satisfy this approval criterion and as drafted the Applicant does not meet this requirement.

c. The Applicant failed to provide evidence demonstrating that the proposed plan map designation provides for the logical urbanization of land because the Applicant did not propose any use for the property and so Applicant failed to satisfy this criterion.

The Code requires the Applicant to show that the proposed Comprehensive Plan Map amendment conforms to all applicable local and Statewide Planning Goals, including that the proposed designation

provides for a logical urbanization of land. However, the Applicant proposes no use justifying the amendment. The Commission erred in finding that the proposed designation would result in a logical urbanization because the it relied on only speculation of potential uses to find that this criterion is met.

As demonstrated by the lack of public services and the current uses in the vicinity, the proposed development of the Subject Property for any use beyond large acreage residential is out of sequence. The Subject Property is surrounded by large acreage residential properties as well as Corban University and the State of Oregon Department of Corrections (DOC). The current use is decidedly rural in nature as demonstrated by the photographs in the record. This is further emphasized by the fact that public facilities are not available for the Subject Property, as discussed in detail above. Developing the Subject Property out of sequence is not a logical urbanization of land.

3. The Commission Incorrectly Applied SRC 265.005.

The Code states that a quasi-judicial zone change is justified upon the demonstration that the proposed zone is equally or better suited for the Subject Property if: (1) the physical characteristics of the property are appropriate for the proposed zone *and* (2) the uses allowed by the proposed zone are logical with the surrounding land uses.

First, the Applicant did not demonstrate that the physical characteristics are appropriate for the proposed use and, in fact, provided evidence supporting the contrary. Both the Applicant and City Staff note that the Subject Property is steeply slopped, making development of the Subject Property subject to geological surveying. Staff also states that the slope, elevation, and landslide hazards present on the Subject Property make commercial and industrial uses less feasible. Staff also states that commercial and industrial uses typically require more extensive areas of flat terrain which is unavailable on the Subject Property due the physical characteristics of the property. Even with the proposed conditions, the existing unsafe conditions in the vicinity will intensify under the proposed development of the Subject Property due to its physical conditions. The Applicant fails to meet the ordinary burden of proof with respect to this criterion and so it also fails to meet its heightened burden of proof.

Second, the Applicant did not provide evidence demonstrating that the uses allowed by the proposed zone are logical. The proposed zone change would represent a drastic and illogical shift in the development of the vicinity. The majority of the vicinity is rural residential, agricultural, Corban University property, and property belonging to the DOC.

The Planning Commission determined that the zone change is equally or better suited for the Subject Property by finding that the proposed zone change will allow for greater marketability and development flexibility. However, the Code proscribes a particular test for what is to be considered when evaluating uses that are equally or better suited. That test is whether the physical characteristics of the Subject Property are appropriate for the proposed zone *and* whether the uses allowed by the proposed zone are logical with the surrounding land uses. The Planning Commission erred in determining that Applicant had satisfied these criteria.

4. The Applicant failed to provide evidence to demonstrate that the amendment would be of general benefit.

Nothing in the Applicant's narrative statement indicates that a change in the comprehensive plan designation or the zoning for the Subject Property would benefit anyone other than the Applicant. As the Applicant has provided no proposed use for the Subject Property it is impossible for the Applicant to argue that the change is necessary or that it provides a general benefit to the City of Salem at large.

In fact, there is evidence that this change would be detrimental to the public at large by impacting not only the health and safety of the Joseph Street Neighbors but creating potential hazards for the DOC by encroaching on the existing "soft perimeter" that the DOC has attempted to maintain surrounding its facility. As such, the Applicant has failed to provide evidence to show that this criterion has been satisfied.

The Code requires that the Applicant satisfy each and every criterion and so an application must not be approved if it fails to satisfy any of the applicable criterion. Where the Applicant provides no evidence, the applicable criteria cannot be met. The Applicant did not provide evidence for several criterion and therefore has not satisfied those criteria. The Joseph Street Neighbors respectfully request that the City Council reverse the Planning Commission's approval of the Application.

Sincerely,



MARK D. SHIPMAN
mshipman@sglaw.com
Voice Message #310

MDS/MYG:hst