### Si necesita ayuda para comprender esta informacion, por favor llame 503-588-6173

#### **DECISION OF THE HEARINGS OFFICER**

**QUASI-JUDICIAL ZONE CHANGE CASE NO.: ZC20-01** 

**APPLICATION NO.: 20-117355-ZO** 

NOTICE OF DECISION DATE: January 29, 2021

**SUMMARY:** A Quasi-Judicial Zone Change from PA (Public Amusement) to PE

(Public and Private Educational Services).

**REQUEST:** An application for a Quasi-Judicial Zone Change for portions of the property currently zoned PA (Public Amusement), to be changed to PE (Public and Private Educational Services). The property is approximately 2.38 acres in size and currently split-zoned PE (Public and Private Educational Services) and PA (Public Amusement), and located at 466 Richmond Avenue SE 97301 (Marion County Assessors Map and Tax Lot Number: 073W26DA / 7500).

APPLICANT: Mark Shipman on behalf of Joel Smallwood

LOCATION: 466 Richmond Ave SE, Salem OR 97301

CRITERIA: Salem Revised Code (SRC) Chapters 265.005(e) – Quasi-judicial Zone

Change

FINDINGS: The findings are in the attached Decision dated January 28, 2021

**DECISION:** The **Hearings Officer**, **APPROVED** Quasi-Judicial Zone Change ZC20-

01.

Application Deemed Complete:

Public Hearing Date:

Notice of Decision Mailing Date:

Decision Effective Date:

State Mandate Date:

December 9, 2020

January 13, 2021

January 29, 2021

February 16, 2021

April 8, 2021

Case Manager: Steven McAtee, smcatee@cityofsalem.net, 503-540-2363

This decision is final unless written appeal and associated fee (if applicable) from an aggrieved party is filed with the City of Salem Planning Division, Room 320, 555 Liberty Street SE, Salem OR 97301, or by email at <a href="mailto:planning@cityofsalem.net">planning@cityofsalem.net</a>, no later than <a href="mailto:5:00 p.m. Monday">5:00 p.m. Monday</a>, February 15, 2021. 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) 265. 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 Planning Commission will review the appeal at a public hearing. After the hearing, the Planning

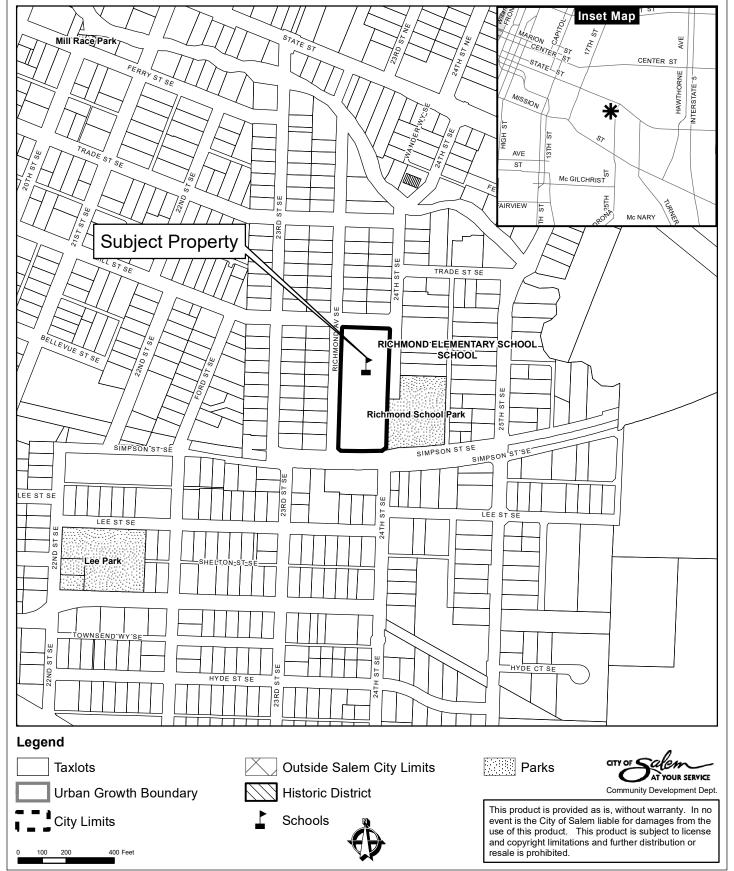
ZC20-01 Notice of Decision January 29, 2021 Page 2

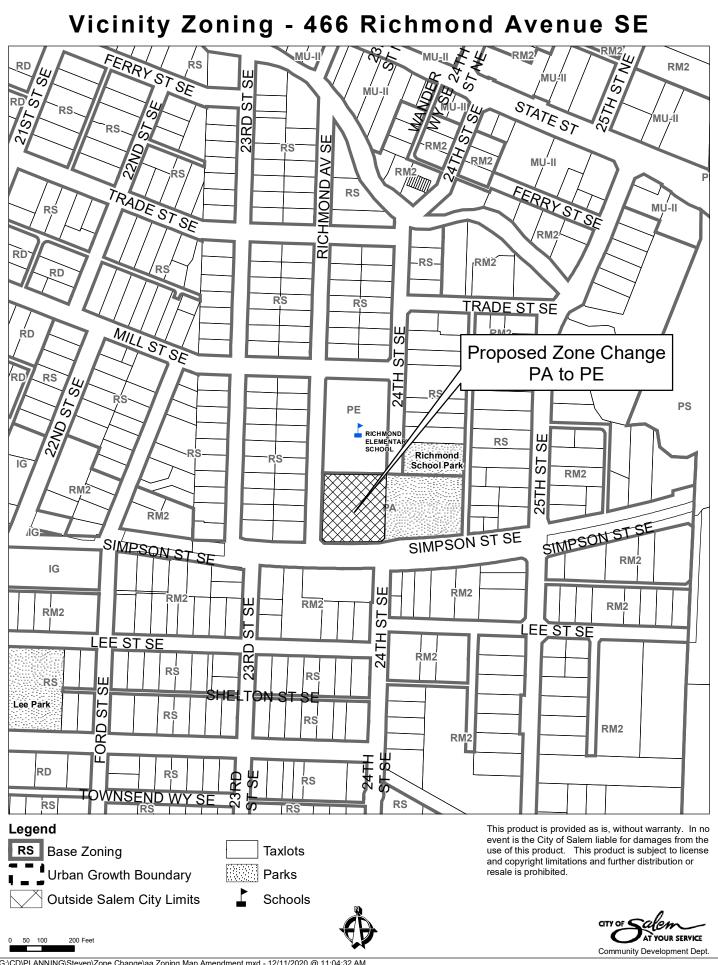
Commission may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review by contacting the case manager, or at the Planning Desk in the Permit Application Center, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

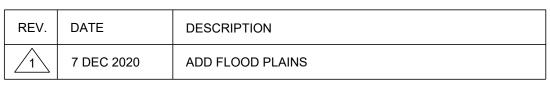
http://www.cityofsalem.net/planning

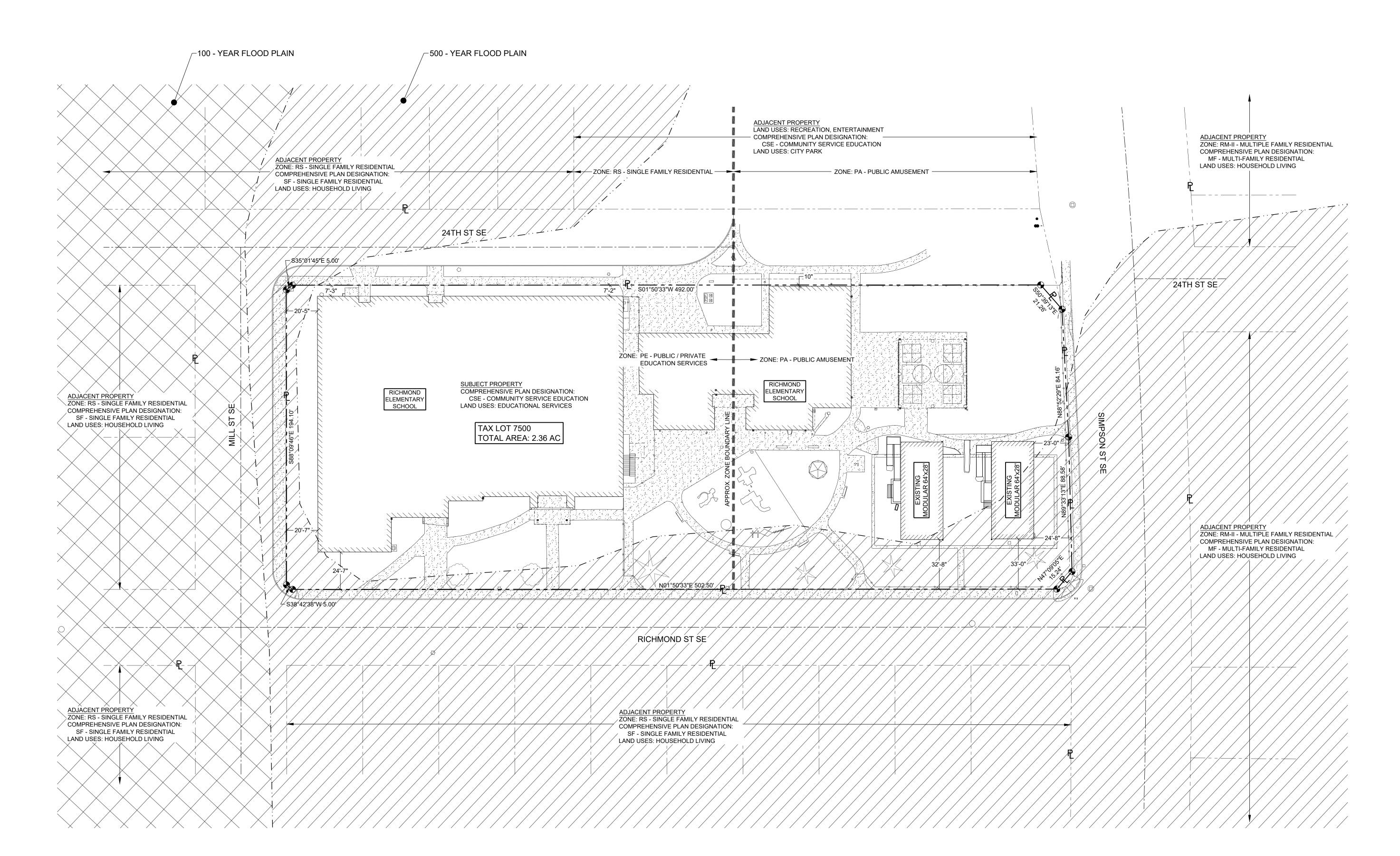
# Vicinity Map 466 Richmond Avenue SE



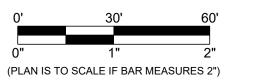


REV. DATE DESCRIPTION 1 7 DEC 2020 ADD FLOOD PLAINS





**EXISTING CONDITIONS PLAN** 





RICH ENTA

INFORMATION PURPOSE ONLY

DRAWN BY: CHECKED BY: DATE: 10/26/20 TITLE: EXISTING CONDITIONS PLAN SCALE: SEE SHEET

> SHEET NO: 1 OF 1

#### CITY OF SALEM BEFORE THE HEARINGS OFFICER

An application for a Quasi-Judicial Zone
Change for portion of the subject property
from PA (Public Amusement) to PE (Public
and Private Educational Services), for the
Richmond Elementary School property
approximately 2.38 acres in size, and
located at 466 Richmond Avenue SE -
97301

ZC20-01

FINDINGS OF FACT, CONCLUSIONS, AND DECISION

#### DATE AND PLACE OF HEARING:

January 13, 2021; due to social distancing measures in place to help stop the spread of the Covid-19 virus, the hearing was held virtually.

#### APPEARANCES:

Staff: Steven McAtee, Planner II

Neighborhood Association: Southeast Salem Neighborhood Association,

(letter of support referenced in staff report)

<u>Proponents</u>: Joel Smallwood, Salem Keizer School District;

Mark Shipman, Saalfeld Griggs Lawyers Applicant

<u>Opponents</u>: None

## SUMMARY OF THE APPLICATION AND HEARING BACKGROUND

On November 4, 2020, a zone change application was filed for the subject property by Mark Shipman, Saalfeld Griggs Lawyers, on behalf of the applicant and property owner, the Salem Keizer School District, represented by Joel Smallwood. The City deemed the application complete for processing on December 9, 2020.

The City of Salem Hearings Officer held a public hearing January 13, 2021, at 5:30 p.m. Notice of public hearing was sent by mail to surrounding property owners and

tenants, pursuant to Salem Revised Code (SRC) requirements, on December 24, 2020. Public hearing notice was also posted on the property on December 30, 2020, pursuant to SRC requirements.

The Hearings Officer notes the following uncontested information from the staff report and application:

#### **FINDINGS OF FACT AND CONCLUSIONS**

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

The Salem Area Comprehensive Plan (SACP) map designates the subject property as "Community Service Education." The Salem Comprehensive Policies Plan describes the predominant use in the Community Service Education designation as "educational". This designation includes public and private educational facilities (schools), outpatient medical offices, recreational and community services, and social services.

Because the proposed PE (Public and Private Educational Services) zoning is consistent with the "Community Service Education" Comprehensive Plan designation, a concurrent Comprehensive Plan Map Amendment is not required.

The Comprehensive Plan designations of surrounding properties include:

North: Across Mill Street SE, "Single Family Residential"

South: Across Simpson Street SE, "Multiple Family Residential"

East: "Community Service Education." Across 24th Street SE, "Single Family

Residential"

West: Across Richmond Avenue SE, "Single Family Residential"

The property is within the Urban Service Area.

#### 2. Zoning of Surrounding Properties

The subject site is split zoned PA (Public Amusement) and PE (Public and Private Educational Services).

The zoning of surrounding properties is described as follows:

North: Across Mill Street SE, RS (Single Family Residential)

South: Across Simpson Street SE, RM-II (Multiple Family Residential)

East: PA (Public Amusement); Across 24th Street SE, RS (Single Family

Residential)

West: Across Richmond Avenue SE, RS (Single Family Residential)

#### 3. Neighborhood and Citizen Comments

The subject property is located within the boundaries of the Southeast Salem Neighborhood Association (SESNA). Notification was sent on December 24, 2020 to the neighborhood association and surrounding property owners within 250 feet of the property. The staff report references that a letter demonstrating support of the zone change was received from SESNA, but the letter itself is not in the record before the Hearings Officer. No comments were received from adjacent property owners, and the property is not within a Homeowner's Association.

#### 4. City Department and Public Agency Comments

The Public Works Department has reviewed the proposal and indicated they have no concerns with the zone change request.

The Building and Safety Division reviewed the proposal and indicated no concerns with the zone change request.

The Fire Department reviewed the proposal and indicated no concerns with the zone change but will have comments on items such as Fire Department access and water supply at the time of site plan review and building permit plan review.

#### 5. Public Agency and Private Service Provider Comments

An October 9 email indicates that Cherriots had no concerns about the proposal. No other comments were received from any public agencies or private service providers.

#### 6. Criteria for Granting a Quasi-Judicial Zone Change

The following analysis addresses the proposed zone change for the portion of the subject property currently zoned PA (Public Amusement) and proposed to be changed to PE (Public and Private Educational Services).

SRC Chapter 265.005 provides the criteria for approval for Quasi-Judicial Zone Changes. In order to approve a quasi-judicial Zone Map amendment request, the review authority shall make findings based on evidence provided by the applicant demonstrating that all the following criteria and factors are satisfied. The extent of the consideration given to the various factors set forth below will depend on the degree of impact of the proposed change, and the greater the impact of a proposal on the area, the greater the burden on the applicant to demonstrate that, in weighing all the factors, the zone change is appropriate.

The applicable criteria and factors are stated below in bold print. Following each criterion is a response and/or finding relative to the amendment requested.

SRC 265.005(e)(1)(A). The zone change is justified based on one or more of the following:

(i) A mistake in the application of a land use designation to the property;

The Hearings Officer notes that the applicant does not identify a mistake in the application of a land use designation to the property. The Hearings Officer finds this criterion is satisfied.

(ii) A demonstration that there has been a change in the economic, demographic, or physical character of the vicinity such that the proposed zone would be compatible with the vicinity's development pattern; or

The Hearings Officer notes that the applicant does not identify a change in the economic, demographic, or physical character of the vicinity. The Hearings Officer finds this criterion is satisfied.

(iii) A demonstration that the proposed zone change is equally or better suited for the property than the existing zone. A proposed zone is equally or better suited 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 Hearings Officer notes that the Applicant demonstrated the suitability of the proposed zone for the property by making the following statement:

The PE zoning is equally or better suited for the subject property. The PE zone is the implementing zone for the "Community Service Education" designation of the SACP, which is designed to provide sites and facilities that provide services to the general population including health, education, and government services. The PA zone is the implementing zone for the "Parks, Open Space, and Outdoor Recreation" designation of the SACP which is designed to provide a variety of types of "outdoor open space," including open space designed to serve schools. The existing school (Basic Education) was constructed on the subject property but is not a permitted use in the PA zone. However, Basic Education uses are a permitted use in the PE zone. The proposed zone change will allow for the Basic Education use, while providing unified zoning for the subject property that properly reflects the school and the proposed development on the subject property. Since the zone change will bring the zoning and the comprehensive plan into consistency, the proposed zone change is equally or better suited for the subject property.

The Hearings Officer concurs that the proposed change from PA (Public Amusement) to PE (Public and Private Educational Services), is equally or better suited for the subject property. The portion of the subject property that is zoned PA is in conflict with the Salem Area Comprehensive Plan (SACP) designation of "Community Service Education." The remainder of the subject property is zoned PE and is consistent with the SACP. Basic education is not a permitted use in the PA zone, which is a zone intended for parks, open space and outdoor or indoor recreation uses. The subject property is developed with an elementary school, and, while elementary schools provide a public service to the community, and the school allows limited public access to playground facilities, the overarching and primary use of the property is not intended to be for open space and outdoor or indoor recreation uses by the general public. The Hearings Officer notes that adjacent to the subject property is Richmond School Park, which is open to the public and is a permitted use of the PA zone. Additionally, because the basic education use is not permitted in the PA zone, future development of the subject property is limited. The Hearings Officer finds that the proposal satisfies this criterion.

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

The Hearings Officer notes that the proposal is not a City-initiated zone change. Therefore, the Hearings Officer finds that this criterion does not apply.

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

The Hearings Officer notes that the applicable Goals and Policies of the Comprehensive Plan are addressed as follows:

<u>Salem Urban Area Goals and Policies, Transportation Goal (Page 40, Salem Comprehensive Policies Plan):</u>

To ensure that future decisions concerning the use of land within the Salem urban area are consistent with State Land Use Goals.

#### **I. TRANSPORTATION**

GOAL: To provide a balanced, multimodal transportation system for the Salem Urban Area that supports the safe and efficient movement of goods and people.

The Hearings Officer finds that the subject property has frontages along 24th Street SE to the east, Mill Street SE to the north, Richmond Avenue SE to the west, and Simpson Street SE to the south. All four streets are classified as local streets, including 24th Street SE which terminates at Richmond School Park in a cul-de-sac. The site is served by pedestrian sidewalks and bike lanes. The proposal does not include generating an increase in the number of daily trips to the site. The Hearings Officer finds that the proposed zone change is consistent with this goal of the Salem Area Comprehensive Plan.

Salem Urban Area Goals and Policies, Open Space, Parks and Recreation Goal (Page 44, Salem Comprehensive Policies Plan):

#### K. OPEN SPACE, PARKS AND RECREATION

GOAL: To provide for the recreation needs of the Salem urban area through the acquisition and development of adequate parks and recreation facilities.

K.3: The site selection criteria used to evaluate and select new park sites shall include the location of complementary public facilities such as school sites.

The Hearings Officer finds that the northern portion of the subject property is zoned PE and the southern portion is zoned PA. The entirety of the site is a Basic Education use, and Richmond Elementary School has existed since 1912. Basic Education is a permitted use in the PE zone, but is not a permitted use in the PA zone. The applicant is proposing to change the PA portion of the site to PE to have a consistent zoning designation throughout the site, and to have one that supports the SACP and the Basic Education use. Adjacent to and abutting the site is Richmond School Park, which serves the greater community by providing space for outdoor recreation. This zone change proposal has no impact on the adjacent public park, which is a separate property. Being adjacent to each other, the two uses complement each other, and meet the intent of this policy. Additionally, the school permits public use of playground facilities on the subject property outside of school hours. The Hearings Officer finds that the existence of the adjacent public park, and the availability of off-hour school playground use, satisfies the Open Space and Parks and Recreation goals of the Salem Comprehensive Policies Plan.

<u>Salem Urban Area Goals and Policies, School Location and Development Goal (Page 44, Salem Comprehensive Policies Plan):</u>

#### L. SCHOOL LOCATION AND DEVELOPMENT

GOAL: To ensure that the coordination of planning, siting, and development of schools is consistent with the Salem Area Comprehensive Plan.

The Hearings Officer finds that the proposal is not for a new school, but instead to provide the correct zoning designation for the existing school. The proposed development, which would be reviewed at the time of site plan review, is to replace two existing modular classroom buildings, upgrade a security vestibule, and to improve utility connections. The proposed zone change would remedy the split zoned designation of the Richmond Elementary School property and result in the entire property having a single appropriate zone: PE, which is consistent with the SACP designation of Community Service Education. The Hearings Officer finds that the proposed zone change is consistent with this goal.

## Salem Urban Area Goals and Policies, Urban Growth Goal (Page 26, Salem Comprehensive Policies Plan):

To ensure that the rate, amount, type, location and cost of development will preserve or enhance the City's quality of life and promote the City's efficient delivery of services.

#### **Development Compatibility C.4**

Development of land with existing urban services shall be encouraged before the conversion of urbanizable lands to urban uses.

The Hearings Officer notes that the subject property is located within the Urban Service Area. Development of the proposed site does not require the extension or development of new public services. City services, including water, sewer, streets and storm drainage are available to serve the subject property. The Hearings Officer finds that the proposal is consistent with this policy.

<u>Salem Urban Area Goals and Policies, Growth Management Goal (Page 27, Salem Comprehensive Policies Plan):</u>

To manage growth in the Salem urban area through cooperative efforts of the City of Salem and Marion and Polk Counties, to ensure the quality of life of present and future residents of the area, and to contain urban development and to preserve adjacent farmlands.

#### **Infill on Facilities D.9**

New development shall be encouraged to locate in areas where facilities are already available and in areas which require the least public costs to provide needed facilities and services.

The Hearings Officer notes that the subject property is located within the Urban Service Area. Development of the proposed site does not require the extension or development of new public services. City services, including water, sewer, streets and storm drainage are available to serve the subject property. The Hearings Officer finds that the proposal is consistent with this policy.

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

The Hearings Officer notes that the staff report and application address the applicable Statewide Planning Goals as follows:

**Statewide Planning Goal 1 – Citizen Involvement:** To develop a citizen involvement program that ensures the opportunity for citizens to be involved in all phases of the planning process.

The Hearings Officer notes that, prior to submitting the zone change application to the City of Salem, the applicant contacted the Southeast Salem Neighborhood Association, pursuant to SRC 300, to apprise them of the zone change request. A public hearing notice was mailed to the affected property owners, all property owners and tenants within 250 feet of the subject property, and to the Southeast Salem Neighborhood Association. The property is not located within a Homeowner's Association. The Hearings Officer finds that this satisfies the requirements for Citizen Involvement described in Goal 1.

**Statewide Planning Goal 2 – Land Use Planning:** To establish a land use planning process and policy framework as a basis for all decision and actions related to use of land and to assure an adequate factual base for such decisions and actions.

The Hearings Officer finds that the City has complied with the Goal requirements for establishing and maintaining a land use planning process. The Oregon Land Conservation and Development Commission have acknowledged the Salem Area Comprehensive Plan is in compliance with the Statewide Planning Goals.

**Statewide Planning Goal 5 – Open Spaces, Scenic and Historic Areas, and Natural Resources:** *To protect natural resources and conserve scenic and historic areas and open spaces.* 

The Hearings Officer finds that there are no known scenic, historic, natural, or cultural resources on the subject property. Through a future application for site plan review, the application will be reviewed for compliance with the City's tree preservation ordinance, historic preservation ordinance, and applicable wetland standards. The Hearings Officer finds that the proposal is consistent with Goal 5.

**Statewide Planning Goal 6 – Air, Water, and Land Resources Quality:** *To maintain and improve the quality of the air, water and land resources of the state.* 

The Hearings Officer finds that land located within the Urban Growth Boundary is considered urbanizable and is intended to be developed to meet the needs of the City, and the effects of urban development on air, water and land resources are anticipated. Future development of the property is subject to the tree preservation, stormwater and wastewater requirements of the UDC, which are intended to minimize the impact of development on the state's natural resources.

**Statewide Planning Goal 7 – Areas Subject to Natural Hazards:** To protect people and property from natural hazards.

The Hearings Officer finds that there are portions of the subject property that are within the FEMA 500-year flood zone. There are portions of the existing structures that are currently within the flood zone, including the area in which the proposed replacement of modular classroom buildings is located. The subject property has a small portion of mapped landslide hazard on the southern property boundary. There is no existing or proposed development within this mapped landslide hazard. All future development will be required to meet applicable standards for floodplain and landslide hazards. The Hearings Officer finds that this zone change proposal is consistent with Goal 7.

**Statewide Planning Goal 8 – Recreational Needs:** To satisfy the recreational needs of the citizens of the state and visitors and, where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.

The Hearings Officer finds that the subject property is abutting Richmond School Park, a public city park. The school district property includes a portion of the property zoned as PA (Public Amusement), which is not consistent with the "Community Services Education" SACP designation of the property. The proposed application would change this portion of the school district property to PE (Public and Private Educational Services) which is consistent with the existing use of the subject property. The Hearings Officer finds that the proposed zone change will have no impact on the Richmond School Park and is consistent with this goal.

**Statewide Planning Goal 9 – Economic Development:** To provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon's citizens.

The Hearings Officer finds that the applicant proposes to change the zoning designation of the PA (Public Amusement) zoned portion of the property to PE (Public and Private Educational Services). The property has been zoned for basic education use since 1912, and changing the use of the property is not proposed with this zone change application. The Hearings Officer finds that this Goal is not applicable to this proposal.

**Statewide Planning Goal 10 – Housing:** To provide for the housing needs of citizens of the state.

The Hearings Officer finds that the proposed zone change would change the current PA (Public Amusement) zoned portion of the property to PE (Public and Private Educational Services). Neither designation allows for residential development. The property contains an existing basic education use with no plans for residential housing. The Hearings Officer finds that this zone change proposal has no impact to the city's housing inventory and complies with this goal.

**Statewide Planning Goal 11 – Public Facilities and Services:** To plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.

The Hearings Officer finds that the subject property is within the Urban Service area. Water, sewer, and storm infrastructure is currently available within adjacent streets to the subject property and appears to be adequate to serve the property. Site specific infrastructure requirements will be addressed in the Site Plan Review process in SRC Chapter 220. The Hearings Officer finds that this zone change request allows for the efficient use and development of property requiring minimal extension of new public services.

**Statewide Planning Goal 12 – Transportation:** *To provide and encourage a safe, convenient and economic transportation system.* 

Goal 12 is implemented by the Transportation Planning Rule (TPR). In summary, the TPR requires local governments to adopt Transportation System Plans (TSPs) and requires local governments to consider transportation impacts resulting from land use decisions and development. The key provision of the TPR related to local land

use decisions is Oregon Administrative Rule (OAR) 660-012-0060. This provision is triggered by amendments to comprehensive plans and land use regulations that "significantly affect" a surrounding transportation facility (road, intersection, etc.).

The Hearings Officer finds that the proposed zone change will not significantly affect a surrounding transportation facility, as uses and development allowed by the new zone are no different than those already present on the site, accordingly, pursuant to OAR 660-012-0060(9), this request is exempt from the Transportation Planning Rule determination of significant affect. The proposed zone change will not trigger an analysis of or improvements to the surrounding transportation system.

**Statewide Planning Goal 14 – Urbanization:** To provide for an orderly and efficient transition from rural to urban land use, to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.

The Hearings Officer notes that the subject property is located within the Urban Service Area. The Public Works Department indicates that existing urban services, including water, sewer, and storm infrastructure are available within surrounding streets and are adequate to serve future development of the subject property. The Hearings Officer finds that the proposed zone change will ensure a more efficient use of land than the current split zone. The Hearings Officer notes that the property is already urban in its nature. The Hearings Officer notes that the staff report contains a reference that as a change to the comprehensive plan map designation for the property is not required for the proposed zone change, this criterion is not applicable. The Hearings Officer finds that to the extent this Goal is applicable, the proposed zone change satisfies the Goal.

(E) If the zone change requires a comprehensive plan change from an industrial designation to a non-industrial designation, or from a commercial or employment designation to any other use 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 Hearings Officer notes that the proposed Public and Private Education (PE) zone implements the Community Service – Education (CSE) comprehensive plan designation. The subject property is currently designated CSE, therefore a change to the comprehensive plan map designation for the property is not required for the proposed zone change. The Hearings Officer finds that as a result of the CSE designation, this criterion is not applicable.

(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 Hearings Officer finds that, pursuant to Oregon Administrative Rules 660-012-0060(9), the proposed zone change request is exempt from the Transportation Planning Rule analysis and determination of significant affect. The Hearings Officer finds that the proposed zone change will not require analysis or improvements to the surrounding transportation system. Adequate urban services and facilities for transportation are currently available at the boundaries of the subject property. These services and facilities will not be significantly affected by future development allowed under the proposed zone.

(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 Hearings Officer finds that water, sewer, and storm infrastructure are available within surrounding streets and are adequate to serve future development under the proposed zone. Site-specific infrastructure requirements will be addressed in the Site Plan Review process pursuant to SRC Chapter 220.

#### **CONCLUSION**

Based on the facts and findings presented herein, the Hearings Officer concludes that the proposed Quasi-Judicial Zone Change satisfies the applicable criteria.

#### **DECISION**

The Hearings Officer **APPROVES** the request for a quasi-judicial zone change from PA (Public Amusement) to PE (Public and Private Educational Services) for the Richmond Elementary School property, approximately 2.38 acres in size, and located at 466 Richmond Avenue SE 97301.

DATED: January 28, 2021

ames K. Brewer, Hearings Officer