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503-588-6173*

DECISION OF THE HEARINGS OFFICER

CONDITIONAL USE CASE NO.: CU21-04

APPLICATION NO.: 21-113057-ZO

NOTICE OF DECISION DATE: October 21, 2021

SUMMARY: A proposal to allow car sales at an existing parking lot.

REQUEST: A conditional use permit application to allow motor vehicle sales on an existing parking lot. The subject property is approximately 0.23 acres in size, zoned CR (Retail Commercial), and located at 3323 Market Street NE (Marion County Assessor map and tax lot number(s): 073W24AD / 803)."

APPLICANT: Ronald Ped on behalf of KSD Properties LLC (Jeff Koehnke)

LOCATION: 3323 Market St NE, Salem OR 97301

CRITERIA: Salem Revised Code (SRC) Chapters 240.005(d) – Conditional Use

FINDINGS: The findings are in the attached Decision dated October 21, 2021.

DECISION: The **Hearings Officer APPROVED** Conditional Use Case No. CU21-04 subject to the following conditions of approval:

- Condition 1:** At the time of site plan review application, provide a landscape plan showing perimeter setbacks landscaped to the Type A standard.
- Condition 2:** At the time of site plan review application, provide a site plan showing the proposal will maintain the parking lot and vehicle use area configuration approved under application no. 17-122596-RP, or obtain the necessary approval to reconfigure the area.

The rights granted by the attached decision must be exercised, or an extension granted, by November 9, 2023, or this approval shall be null and void.

Application Deemed Complete:	<u>September 8, 2021</u>
Public Hearing Date:	<u>October 13, 2021</u>
Notice of Decision Mailing Date:	<u>October 21, 2021</u>
Decision Effective Date:	<u>November 9, 2021</u>
State Mandate Date:	<u>January 6, 2022</u>

Case Manager: Brandon Pike, bpike@cityofsalem.net, 503-540-2326

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 planning@cityofsalem.net, no

NOTICE OF DECISION

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



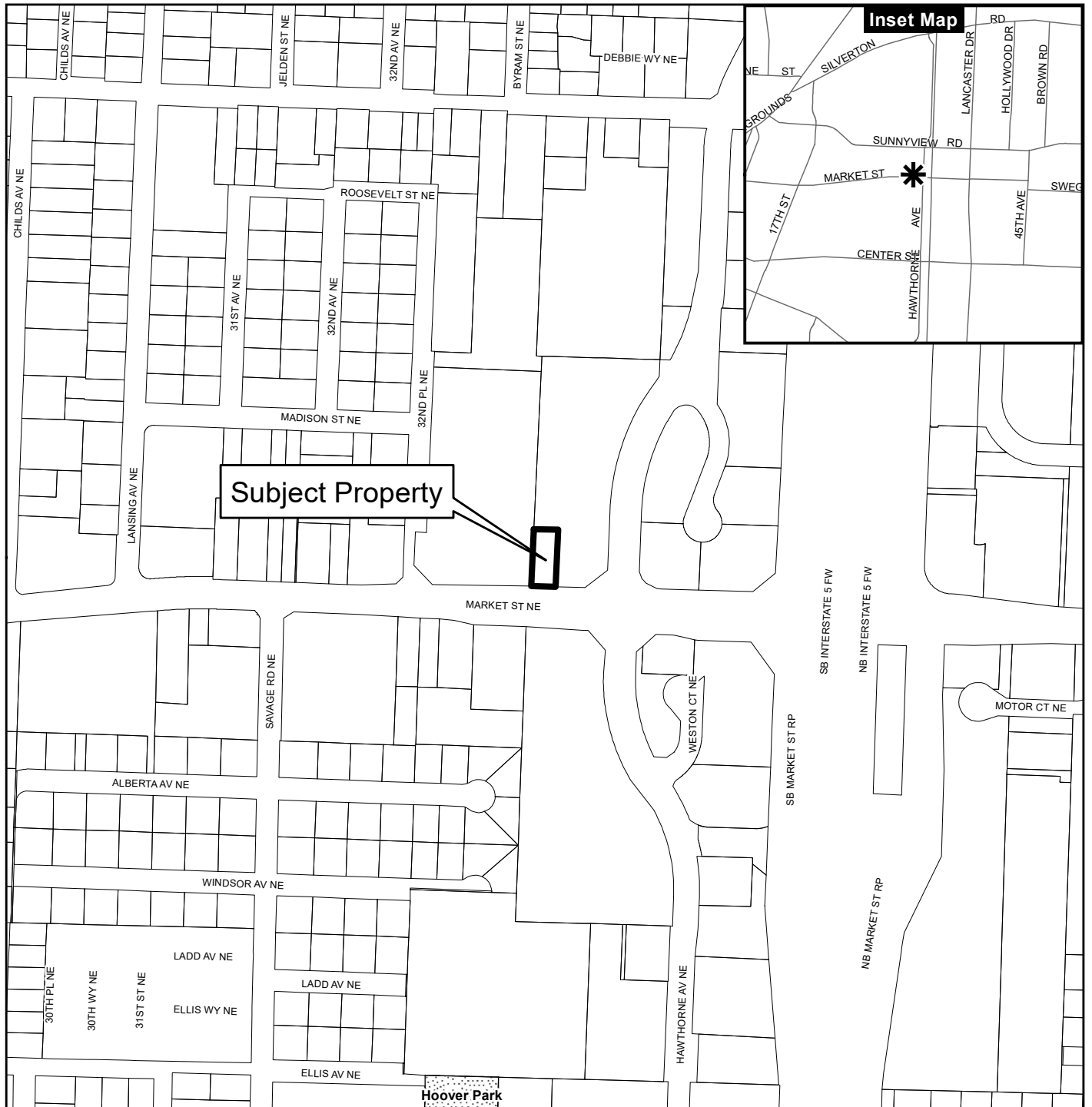
later than 5:00 p.m. Friday, November 5, 2021. Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter(s) 240. 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 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

3323 Market St NE



Legend

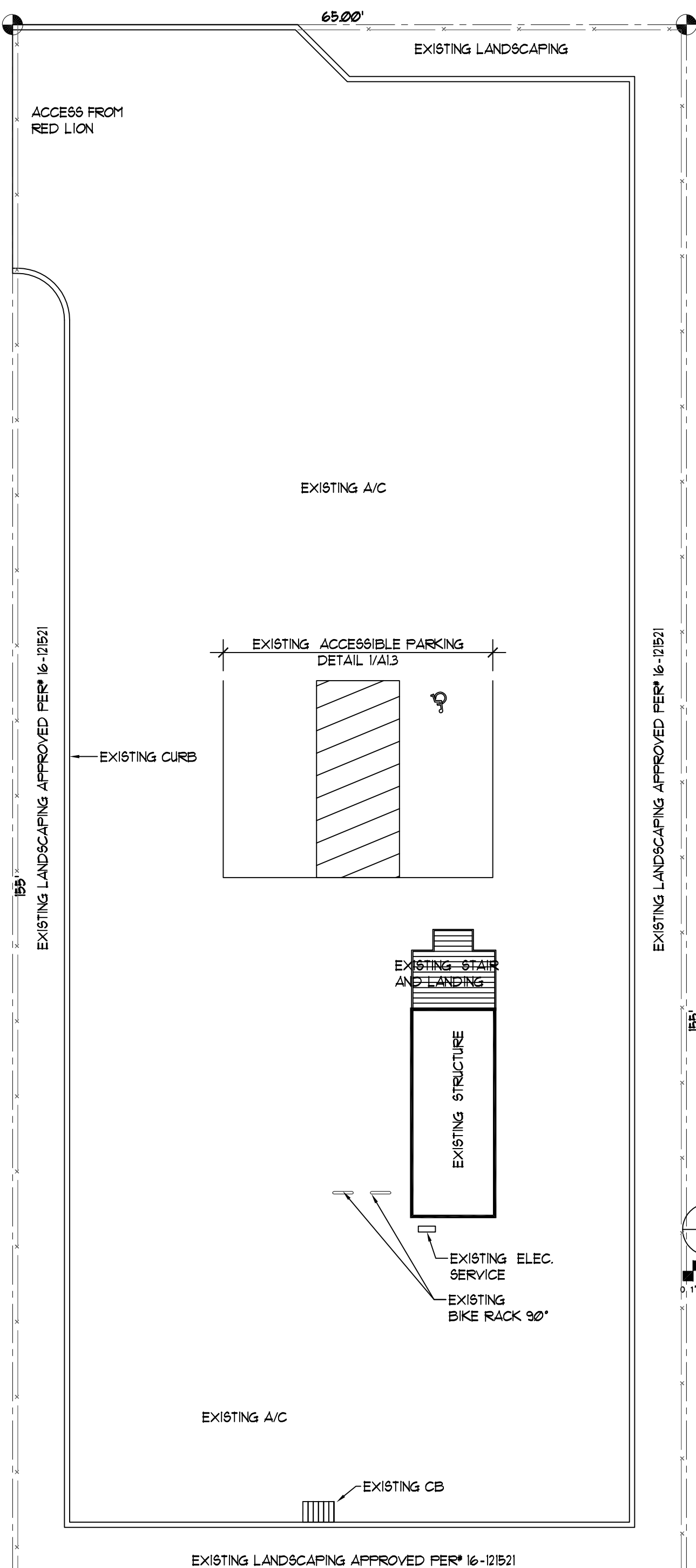
- Taxlots
- Urban Growth Boundary
- City Limits
- Outside Salem City Limits
- Historic District
- Schools
- Parks

0 100 200 400 Feet



CITY OF Salem
AT YOUR SERVICE
Community Development Dept.

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**EXISTING
SITE PLAN**

A
A1.2

SCALE : 1" = 10'-0"

0'1'

5'

10'

20'

REGISTERED ARCHITECT

RONALD JAMES PED

Ronald James Ped

SALEM, OREGON

STATE OF OREGON

RONALD
JAMES
PED
ARCHITECT P.C.

DATE: 6 JULY 2021
DRAWN: glm
JOB NO.: 2151

A1.2

SPR

NIXON MOTORS

3323 Market St. NE

TEMPORARY FENCE

**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

A CONDITIONAL USE PERMIT) APPLICATION TO ALLOW MOTOR VEHICLE) SALES ON AN EXISTING PARKING LOT. THE) SUBJECT PROPERTY IS APPROXIMATELY) 0.23 ACRES IN SIZE, ZONED CR (RETAIL) COMMERCIAL), AND LOCATED AT 3323) MARKET STREET NE (MARION COUNTY) ASSESOR MAP AND TAX LOT NUMBER(S):) 073W24AD / 803)) _____)	<u>CASE NO. CU21-04</u> FINDINGS OF FACT, CONCLUSIONS, AND DECISION
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DATE AND PLACE OF HEARING:

The public hearing before the City of Salem Hearings Officer was scheduled for October 13, 2021 and was held remotely due to social distancing measures put in place to slow the spread of the COVID-19 virus.

APPEARANCES:

Staff: Brandon Pike, Planner I

Neighborhood Association: North East Salem Community Association (NESCA) written comments in opposition submitted prior to staff report.

Proponents: Ronald Ped, Architect, representing Applicant

Opponents: Written comment prior to staff report.

SUMMARY OF THE APPLICATION AND HEARING

BACKGROUND

On July 15, 2021, the applicant submitted a Conditional Use Permit application to allow motor vehicle sales on the subject property. City Staff deemed the application complete for processing on September 8, 2021.

PROPOSAL

The applicant requests Conditional Use approval to allow motor vehicle sales on an existing parking lot, on property previously used as a coffee kiosk. Except for a change of occupancy and associated permits, no changes to the site are proposed.

FINDINGS OF FACT AND CONCLUSIONS

1. Salem Area Comprehensive Plan (SACP) Designation

The Salem Area Comprehensive Plan (SACP) map designation for the subject property is Commercial. The subject property is within the Urban Growth Boundary and within the Urban Service Area.

2. Zoning and Surrounding Land Uses

The subject property is zoned CR (Retail Commercial). The proposal would allow a motor vehicle sales lot on a property which previously contained a drive-through coffee kiosk and associated site improvements. Motor vehicle and manufactured dwelling and trailer sales require a Conditional Use permit within the CR zone, pursuant to SRC 522.005(a).

The zoning of surrounding properties is as follows:

North: CR (Retail Commercial)

South: Across Market Street NE - CR (Retail Commercial)

East: CR (Retail Commercial)

West: CR (Retail Commercial)

3. Site Analysis

The subject property consists of one tax lot with an area of 0.23 acres and with street frontage of 65 feet along Market Street NE. In the Salem Transportation System Plan (TSP), Market Street NE is designated as a Major Arterial street.

4. Neighborhood Association, Citizen, and Homeowners Association Information

The subject property is located within the boundaries of the Lansing Neighborhood Association, and adjacent to North East Salem Community Association (NESCA).

Applicant Neighborhood Association Contact

SRC 300.310 requires an applicant to contact the neighborhood association(s) whose boundaries include, and are adjacent to, property subject to specific land use application requests. Pursuant to SRC 300.310(b)(1), land use applications included in this request require neighborhood association contact. On July 13, 2021, the applicant's representative contacted both applicable neighborhood associations to provide details about the proposal in accordance with the requirements of the SRC.

Neighborhood Association Comment

Notice of the application was provided to applicable both neighborhood associations pursuant to SRC 300.620(b)(2)(B)(v), which requires notice to be sent to any City-recognized neighborhood association whose boundaries include, or are adjacent to, the subject property. As of the date of the staff report, one comment was received from NESCA, which indicated opposition against the application, citing concerns over creation of additional traffic and the effects traffic may have on the adjacent hotel (which grants vehicular access to the subject property through its site), and proximity to other motor vehicle sales lots.

Staff Response: The application was reviewed by Public Works Staff, including the City's traffic engineers, who indicated the existing street system is adequate to serve the proposed development and had no concerns over the amount of traffic produced by the proposed use.

The subject property maintains vehicular access through the use of an easement over the abutting hotel property to the North and West. The applicant has stated they have the necessary legal access through the hotel's property, and any potential conflicts which arise from shared access is a civil matter and separate from the land use process. The hotel did not provide a comment.

Public Comment

Notice was also provided, pursuant to SRC 300.620(b)(2)(B)(vi) and (vii), to all property owners and tenants within 250 feet of the subject property.

Prior to the end of the public comment period for inclusion in the staff report, one comment from an individual was received, who indicated opposition to the proposal due to the nearby location of other car sales lots. The commentor stated that another one is unnecessary for the neighborhood.

Homeowners' Association

The subject property is not located within a homeowners' association.

5. City Department and Public Agency Comments

The City of Salem Public Works Department reviewed the proposal and had no comments.

The City of Salem Building and Safety Division reviewed the proposal and indicated no concerns.

The City of Salem Fire Department reviewed the proposal and stated that approved Fire Department access and water supply will be required for any structures.

6. Analysis of Conditional Use Criteria

SRC Chapter 240.005(a)(1) provides that:

No building, structure, or land shall be used or developed for any use which is designated as a conditional use in the UDC unless a conditional use permit has been granted pursuant to this Chapter.

SRC Chapter 240.005(d) establishes the following approval criteria for a conditional use permit:

Criterion 1:

The proposed use is allowed as a conditional use in the zone.

Finding:

The Hearings Officer notes that the subject property is zoned CR (Retail Commercial). Pursuant to SRC 522.005(a), motor vehicle and manufactured dwelling and trailer sales is allowed as a conditional use in the CR zone.

The Hearings Officer finds that the proposal satisfies this criterion.

Criterion 2:

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

Finding:

The Hearings Officer notes the development in the surrounding area and on abutting property is largely oriented toward automobile uses and traffic, including a park-and-ride facility to the east and the hotel with a large parking lot to the north and west. To the South, the property has frontage on Market Street NE, a Major

Arterial street which carries high levels of traffic. The Hearings Officer agrees with the applicant that the proposed motor vehicle sales use would create little in the way of noise or odor impacts on the immediate neighborhood, except for incidental noise and odor from the vehicles which would visit or be stored on site. Display lighting will be “cut-off” type, meaning the lights will shine downward and not cast significant glare horizontally, and will be oriented toward the display vehicles.

The Hearings Officer notes that while the subject property is highly visible from Market Street and the abutting commercial areas, the property is screened from surrounding residential areas by the adjacent hotel building and other existing non-residential developments. The Hearings Officer notes that pursuant to SRC 220.005(b)(1), the proposed development will only require an additional Class 1 Site Plan Review application to change the use of the property to motor vehicle sales, as the proposal involves a change of use or change of occupancy where only construction or improvements to the interior of the building or structure are required. Consequently, absent a requirement as part of the Conditional Use approval, no landscape review would be required by a subsequent land use application associated with the proposed development. The applicant’s existing site plan (Attachment B to the Staff report) shows the existing landscaped setbacks which offer some buffering between the proposed use and the immediate vicinity. The Hearings Officer notes that although Conditional Use approval does not specifically require a landscaping plan to be provided to show adherence with the landscaping requirements of the SRC, ensuring that the applicant provides an appropriate landscape plan at some point in the development process is a reasonable way to reduce otherwise likely adverse impacts of the development.

Consequently, to ensure the proposed development includes landscaping which adheres to the standards of the CR zone and minimizes the reasonable likely adverse impacts of the proposal on the immediate neighborhood, the Hearings Officer imposes the following recommended condition of approval:

Condition 1: At the time of site plan review application, provide a landscape plan showing perimeter setbacks landscaped to the Type A standard.

The Hearings Officer notes that the existing conditions plan provided by the applicant (Attachment B) does not fully match the previously approved site plan for the property, as it was approved under application No. 17-122596-RP, with some of the parking lot striping omitted (see Attachment D to the staff report). Pursuant to SRC 220.005(a)(1)(B)(v), reconfiguring the layout of an off-street parking or vehicular use area requires site plan review approval. To ensure the proposal either maintains the previously approved off-street parking and vehicle use area, or obtains the necessary approval to reconfigure the area, the Hearings Officer imposes the following recommended condition of approval:

Condition 2: At the time of site plan review application, provide a site plan showing the proposal will maintain the parking lot and vehicle use area configuration approved under application no. 17-122596-RP, or obtain the necessary approval to reconfigure the area.

With these two conditions, the Hearings Officer finds the proposal satisfies this criterion.

Criterion 3:

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

Finding:

The Hearings Officer notes the subject property is close in proximity to parking lots, other car sales lots, autobody shops, and to the Market Street-Interstate 5 interchange. The Hearings Officer notes the applicant's statement that, since the development of the Interstate, the automobile has been a primary organizing element of the immediate neighborhood. The Hearings Officer also notes the comments from NESCA regarding the possible impact on traffic, and the impact traffic might have on the hotel, and the concern shared by NESCA and the other commentor regarding the possible negative impact of the proposed use being too close to the existing motor vehicle sales uses in the area.

The Hearings Officer notes that Public Works staff reviewed and had no concerns with the traffic impacts from the proposed use. The Hearings Officer's observation is that the existing drive-through use would likely have a greater traffic impact than a motor vehicle sales use occupying the same space, whether the concern is for traffic entering the transportation system or the impact of the traffic using the access across the neighboring hotel property. The Hearings Officer notes that the hotel itself did not make a comment or offer testimony at the hearing. The Hearings Officer finds that the traffic from the proposed use will have minimal impacts on the livability or appropriate development of surrounding property.

The Hearings Officer notes that while nearby uses and development should be considered when reviewing conditional use applications, the code does not state that proximity to other motor vehicle sales uses would prohibit approval. SRC 240.005(d)(3) states that a Conditional Use permit shall be granted if, among other criteria, the proposed use will be reasonably compatible with and have minimal impact on the livability or appropriate development of surrounding property. In this case, the Hearings Officer notes that the site is sufficiently removed from residential uses (and the proposed use is sufficiently low in impact) to have a minimal impact on the livability of surrounding property. In the absence of some standard that requires motor vehicle sales or similar uses to be separated by a set distance or limited in number within some set area, the close proximity to other car sales lots,

parking lots and similar uses focused on cars suggests the proposed use is more than reasonably compatible with the existing development on surrounding properties and will have minimal if any impact on the appropriate development of those surrounding properties.

The Hearings Officer finds that, with the conditions of approval, any impacts to the livability or appropriate development of the surrounding area will be minimal as adequate buffering will be provided between the proposed development and the surrounding area. The Hearings Officer finds that with the conditions, the proposal is reasonably compatible with and will minimize the reasonably likely adverse impacts of the use on the immediate neighborhood.

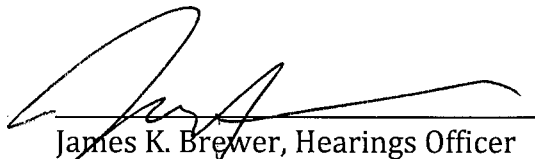
The Hearings Officer finds the proposal satisfied this approval criterion.

DECISION

Based upon the staff report, documents and evidence contained in the record, the Hearings Officer APPROVES the request for a conditional use permit to allow motor vehicle sales on a property approximately 0.23 acres in size and located at 3323 Market Street NE, subject to the following conditions of approval:

- Condition 1:** At the time of site plan review application, provide a landscape plan showing perimeter setbacks landscaped to the Type A standard.
- Condition 2:** At the time of site plan review application, provide a site plan showing the proposal will maintain the parking lot and vehicle use area configuration approved under application no. 17-122596-RP, or obtain the necessary approval to reconfigure the area.

DATED: October 21, 2021



James K. Brewer, Hearings Officer