



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: February 20, 2019

Department: Public Works Agenda Planning Date: February 14, 2019 Time required: None

Audio/Visual aids

Contact: Joe Fennimore Phone: 503-566-4177

Department Head Signature:

TITLE Schedule final consideration to adopt an administrative ordinance granting Zone Change (ZC) Case 18-005/J. Conser and Sons, LLC.

Issue, Description & Background The hearings officer held a duly noticed public hearing on this application on November 28, 2018, and on January 23, 2019, issued a recommendation that the board approve the request. The board received the recommendation and held the application for the mandatory appeal period, and no appeals were received. The ordinance and findings have been prepared and the matter now needs to be scheduled for final consideration and adoption.

Financial Impacts: None.

Impacts to Department & External Agencies None.

Options for Consideration: 1. Schedule adoption of the ordinance at the next board session, February 27, 2019. 2. Direct staff to prepare a modified ordinance. 3. Choose not to proceed with adopting an ordinance at this time.

Recommendation: Staff recommends the board schedule final consideration and adoption of the attached ordinance at the next regular session on February 27, 2019.

List of attachments: Ordinance

Presenter: Joe Fennimore

Copies of completed paperwork sent to the following: (Include names and e-mail addresses.)

Copies to: Joe Fennimore - gfennimore@co.marion.or.us

**BEFORE THE BOARD OF COMMISSIONERS
FOR MARION COUNTY, OREGON**

In the Matter of the)	Case No. ZC 18-005
Application of)	
J. Conser and Sons, LLC)	Clerk's File No. 5785

AN ADMINISTRATIVE ORDINANCE

ORDINANCE NO. _____

THE MARION COUNTY BOARD OF COMMISSIONERS HEREBY ORDAINS AS FOLLOWS:

SECTION I. Purpose

This matter comes before the Marion County Board of Commissioners ("Board") on the application of J. Conser and Sons, LLC to change the zone from UD (Urban Development) to RM (Multiple-Family Residential) on 4.56 acres located at 3552 Ward Drive NE, Salem, Marion County, Oregon (T7S; R3W; (Section 12AA; tax lot 2700) and (Section 12AD; tax lot 100).

SECTION II. Procedural History

The Hearings Officer held a public hearing on this application on November 28, 2018, and on January 23, 2019, issued a recommendation to grant the zone change. Official notice was taken of the Planning Division file and the Hearings Officer's recommendation. The Board considered evidence in the record, all arguments of the parties and is otherwise fully advised in the premises.

SECTION III. Adoption of Findings and Conclusion

After careful consideration of all facts and evidence in the record, the Board adopts as its own the Findings of Fact and Additional Findings of Fact and Conclusions of Law contained in Section IV and V of the Hearings Officer's recommendation dated January 23, 2019, contained in Exhibit A, attached hereto, and by this reference incorporated herein.

SECTION IV. Action

The requested zone change from UD (Urban Development) to RM (Multiple-Family Residential) is hereby **GRANTED** subject to conditions identified in Exhibit B, attached hereto, and by this reference incorporated herein.

The property rezoned by this Ordinance is identified on a map in Exhibit C, attached hereto and by this reference incorporated herein. The Official Marion County Zoning Map shall be changed pursuant to Marion County Code Section 16.010.40 to reflect the new zoning.

SECTION V. Effective Date

Pursuant to Marion County Code Section 1.10.030, this is an Administrative Ordinance and shall take effect 21 days after the adoption and final signatures of the Marion County Board of Commissioners.

SIGNED and FINALIZED this _____ day of _____ ,
2019, at Salem, Oregon.

MARION COUNTY BOARD OF COMMISSIONERS

Chair

Recording Secretary

JUDICIAL NOTICE

Oregon Revised Statutes, Chapter 197.830, provides that land use decisions may be reviewed by the Land Use Board of Appeals by filing a notice of intent to appeal within 21 days from the date this Ordinance becomes final.

EXHIBIT A

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the)	Case No.	ZC 18-005
)		
Application of:)	Clerk's File No.	
)		
J. CONSER AND SONS, LLC)	Zone change	

RECOMMENDATION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of J. Conser and Sons, LLC to change the zone from UD (URBAN DEVELOPMENT) to RM (MULTIPLE FAMILY RESIDENTIAL) on 4.56 acres at 3552 Ward Drive NE, Salem, Marion County, Oregon (T7S, R2W, S12AA, tax lot 2700, and S12AD, tax lot 100).

II. Relevant Criteria

Standards and criteria relevant to this application are found in the Salem Area Comprehensive Plan (SACP) and the Marion County Code (MCC) Title 16, especially Chapter 16.39.

III. Public Hearing

A public hearing was held on this matter on November 28, 2018. The Planning Division file was made part of the record. The following persons appeared and provided testimony on the application:

- | | | |
|----|-------------------|---------------------------------|
| 1. | Lisa Milliman | Marion County Planning Division |
| 2. | John Rasmussen | Marion County Public Works |
| 3. | Matthew Conser | Applicant |
| 4. | Joyce Potter | General |
| 5. | Laura Gregory | General |
| 6. | Geoffrey Dallmann | General |

No documents were presented, marked or entered into the record as exhibits. No objections were raised as to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing.

IV. Findings of Fact

The hearings officer, after careful consideration of the testimony and evidence in the record, issues the following findings of fact:

1. The subject property consists of two parcels, totaling 4.91 acres within the Salem Urban Growth Boundary (UGB). The 4.33-acre parcel (tax lot 2700) is designated Multiple Family Residential under the SACP, and zoned UD under the MCC. The southerly 0.58 acre parcel is also designated Multiple Family Residential under the SACP. Its western portion is zoned RM, while the subject eastern portion, consisting of about 0.35 acre, is zoned UD. The zone change request applies to all UD zoned portions of the subject property. Some RM zoned property west of the larger parcel is in the applicant's ownership and intended to be developed with the subject property.
2. The properties are on the southwest corner of the intersection of Ward Drive NE and Fisher Road NE. The property is basically rectangular in shape with about 240' of frontage along Ward Drive and about 800' of frontage along Fisher Road. The property is predominantly flat and currently undeveloped. The southernmost portion of the property is within the FEMA 100 year floodplain of Clagget Creek.
3. Clagget Creek runs through vacant wooded properties to the south inside the Salem city limits. Property east, across Fisher Road is vacant, inside city limits, and is to be developed as a park. Other lands to the east are zoned UD. Properties to the west are zoned RM and developed with condominiums. Property across Ward Drive contains a church on RM zoned land and single family dwellings on individual lots zoned RS (Single Family Residential).
4. Applicant asks to change the UD zoned portion of the subject property to RM to allow development of an apartment complex on the site.
5. The Marion County Planning Division requested comments on the application from various governmental agencies.

City of Salem Planning Department reviewed the proposal and commented that the property is designated Multiple Family in the SACP, the proposed zoning is consistent with the comprehensive plan designation, that it has no concerns and supports the proposal.

City of Salem Public Works commented:

Purpose

Identify availability of public works infrastructure (streets, sanitary sewer, storm drainage, and water) for a proposed zone change of approximately 4.33 acres located southwest of the Fisher Road NE and Ward Drive NE intersection.

Public Works Infrastructure

Urban Growth Area Development

The subject property is located inside of the Urban Service Area.

Streets

1. Ward Drive NE has an approximate 66-foot improvement within an approximate 80-footwide right-of-way abutting the subject property. This street is designated as a Minor Arterial street in the Salem TSP. The standard for this street is a 46-foot-wide improvement within a 72-foot-wide right-of-way.

2. Fisher Road NE has an approximate 34-foot improvement within an approximate 60-foot-wide right-of-way abutting the subject property. This street is designated as a Collector street in the Salem TSP. The standard for this street classification is a 34-foot-wide improvement within a 60-foot-wide right-of-way.

Storm Drainage

1. Existing Conditions
 - a. A City-owned storm main is located in Fisher Road NE.

Water

1. Existing Conditions
 - a. The subject property is located in the Jan Ree Water District.
 - b. The subject property is located in the G-0 water service level.
 - c. An 8-inch City-owned water main is located in Ward Drive NE.
 - d. An 8-inch City-owned water main is located along Stillwater Drive NE.

Sanitary Sewer

1. Existing Conditions
 - a. The subject property is located in the East Salem Service District (sewer).
 - b. An 8-inch City-owned sewer main is located in Ward Drive NE.
 - c. An 8-inch City-owned sewer main runs west to east on Marion County Assessor's Map and Tax Lot 073W12 AD 00100.

Natural Resources

1. A FEMA-regulated floodplain and floodway are located on the southern portion of the property.
2. The subject property has a small area of hydric soils according to the Local Wetland Inventory (LWI) map.
3. According to City records, 2-point and 3-point landslide hazards areas exist on the southern portion of the property.

Marion County Public Works (MCPW) Land Development Engineering and Permits (LDEP) commented:

ENGINEERING CONDITIONS

Public Works Engineering requests that the following conditions are included in the approval of the land use case:

Condition A – Prior to application for building permits, dedicate sufficient right-of-way along the Fisher Road NE subject property frontage to provide the public dedicated right-of-way halfwidth of 30-foot in accordance with City of Salem Collector A standard.

Condition B – Prior to Certificate of Occupancy issuance, obtain necessary permits from MCPW Engineering to construct urban frontage improvements along Fisher Road NE in

accordance with appropriate standards to include such elements as access approach, sidewalk, landscape strip, and closure of the Ward Drive existing access.

Nexus and timing for the above Conditions is the proposed addition of vehicular and pedestrian traffic to a road in need of pedestrian improvements to provide for connectivity and safety, and sufficient space for utilities [MCC 16.39.060(B)(10) & 16.39.70(D)].

ENGINEERING REQUIREMENTS

C. A driveway "Access Permit" for access to the public right-of-way will be required for any new access to the County controlled portion of the Fisher Road frontage and closure of the Ward Drive NE parent access, as conditioned above. Driveways must meet sight distance, design, spacing, and safety standards [Marion County Driveway Ordinance #651 & MCC 11.10].

D. Prior to application for building permits, submission of a civil site development plan is required for 0.5 acres of development or more, and shall address grading and drainage issues.

E. Prior to issuance of building permits, design and permit onsite stormwater detention and WQT facilities. Prior to issuance of a Certificate of Occupancy (C/O), construct and acquire final inspection approval for the aforementioned facilities. An Operation & Maintenance (O&M) Plan is required once the stormwater design is approved. A recorded O&M Agreement is also required prior to issuance of a C/O. Note that a Building Department Rain Drain Plumbing Permit is a corequisite to issuance of a Stormwater Permit. The County requires any development 0.5-acre or larger to provide storm water detention. The subject property is located in the upper reaches of the Claggett Creek drainage basin, which drains through the City of Keizer. Due to the flooding experienced by the city during the winter storms of 1996 and 1997, Keizer initiated an October 2000 Stormwater Management Agreement between Marion County, the City of Salem and the City of Keizer. The Claggett Creek basin is one 'area of concern' listed in the Agreement wherein cooperation between the agencies is cited. As requested by Keizer, and agreed to by the County, storm drainage improvements shall be built to contain a 50-year design storm, as specified in the City of Salem's Stormwater Management Design Standards.

F. The subject property is within the City of Salem Urban Growth Boundary and will be assessed Transportation & Parks System Development Charges (SDCs) upon application for building permits, per Marion County Ordinances #97-39R and 98-40R, respectively.

G. Prior to building permit issuance, Applicant shall obtain an Erosion Prevention and Sediment Control (EPSC) Permit from MCPW. MCPW has recently been contracted with DEQ under our MS4 Permit to administrate from 1 to just under 5-acre sites within the DEQ-defined Stormwater Management Area.

H. Any vegetation placed in the public R/W must meet specifications for vision clearance and intersection sight distance.

I. Prior to the public land use hearing with the Marion County Hearings Officer, update the TIA to address the following paraphrased comments from Janelle Shanahan, Marion County Transportation Planner.

- Add summary of analysis for existing conditions PM Peak Hour Operations of volumes shown in Fig. 5.
- Horizon year to be analyzed should be 20 years after buildout, not 20 from existing condition year. Therefore if buildout year is 2020, the horizon year should be 2040.
- Added generated trips for TIA shall be total new trips due to actual proposed development, and not the incremental change based on the zone change. If 142 total dwelling units are proposed for the project, that results in 62 new trips, whereas it appears only 53 new trips have been assigned per Fig 10 and Fig 11.
- Submit new findings with the revised number of generated trips, and the revised buildout year.
- It is noted that crash data was requested by Marion County, but not available at the time the report submitted; include with next submittal.

ENGINEERING ADVISORIES

Applicant should also be aware of the following:

J. Utility work within the public R/W will require permits from MCPW Engineering.

K. A drainage easement to Marion County over the subject property is recorded at Reel 3445/Pg 117. The easement comprises a detention and water quality municipal pond for public street runoff, and sits in the southeast corner. Note that MCPW Engineering will not support the concept of comingling development-generated stormwater into the municipal pond.

L. A portion of the subject property lies within the FEMA 100-year flood plain for Claggett Creek. Applicant shall be responsible to furnish proof of compliance with outside agency (DSL, etc.) requirements as it relates to the floodplain, or waiver thereof.

M. Water and sewer permits are obtained from the City of Salem for this area.

N. Annexation of the subject property and adjoining public R/W prior to development will transfer permitting authority to the City.

Marion County Department of Public Works Environmental Services commented that the site will need to meet storm water detention and storm water treatment standards.

Marion County Code Enforcement commented that there are no code enforcement issues on the subject property.

All other contacted agencies either failed to respond, or stated no objection to the proposal.

V. Additional Findings of Fact and Conclusions of Law

1. Applicants have the burden of proving all applicable standards and criteria are met by a preponderance of the evidence. As explained in *Riley Hill General Contractor, Inc. v. Tandy Corporation*, 303 Or 390 at 394-95 (1987):

'Preponderance of the evidence' means the greater weight of evidence. It is such evidence that, when weighed with that opposed to it, has more convincing force and is more probably true and accurate. If, upon any question in the case, the evidence appears to be equally balanced, or if you cannot say upon which side it weighs heavier, you must resolve that question against the party upon whom the burden of proof rests. (Citation omitted.)

Applicant must prove, by substantial evidence in the whole record, it is more likely than not that each criterion is met. If the evidence for any criterion is equally likely or less likely, applicant has not met its burden and the application must be denied. If the evidence for every criterion is in applicant's favor, then the burden of proof is met and the application must be approved.

2. The subject property is outside the Salem city limits but within the Salem UGB. Marion County has jurisdiction in this area but must coordinate land use applications with the City of Salem. The Marion County Planning Division requested comments from the City of Salem. The City's comments are set out above.
3. Under MCC 16.39.000(A), any amendment of the official zoning map involving five or less different ownerships, and which does not include any amendment to the text of the ordinance, is a zone change application. This request involves one ownership, does not involve an MCC text change and may be initiated by MCC chapter 16.36 application
4. Under MCC 16.36.070(A), applications shall include the signatures of all owners of the subject property. Deeds submitted with the application, recorded in the Marion County deed record at reel 4110, pages 496 and 498, convey the subject parcels to J. Conser & Sons, L.L.C. Applicant is J. Conser & Sons, LLC. Matthew J. Conser, LLC member, signed the subject application. MCC 16.36.070 is satisfied.
5. MCC 16.39.010, the hearings officer is authorized to make the initial decision on zone change applications. The hearings officer may hear and decide this matter.
6. Under MCC 16.39.040, a hearings officer's decision to approve a zone change does not become final until the board adopts an ordinance implementing the decision. A hearings officer's decision to deny a zone change is final when the appeal period has expired unless the board calls up the application as provided in MCC 16.39.020 or a board hearing is required by state law. Because the board may call up this application and because board ordinance is required for a final approval, this determination is titled as a recommendation.

7. MCC 16.39.050 contains the following zone change criteria:
- A. The proposed zone is appropriate for the Comprehensive Plan land use designation on the property and is consistent with the description and policies for the applicable Comprehensive Plan land use classification.
 - B. Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property.
 - C. The request shall be consistent with the purpose statement for the proposed zone.
 - D. If the proposed zone allows uses more intensive than uses in other zones appropriate for the land use designation, the proposed zone will not allow uses that would significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses.
8. The subject property is within the Salem UGB and subject to the SACP's Multi-Family Residential designation. Under 16.01.030, the SACP Multi-Family designation is appropriate for the county's RL (LIMITED MULTIPLE-FAMILY RESIDENTIAL), RM and UD zones. This proposal is to change the zoning from UD to RM.

Under SACP III(B)(4), Marion County has exclusive jurisdiction over land use actions within the Salem UGB. The SACP is intended to project the most desirable pattern of land use in the Salem area. SACP II.A.3.a provides the description of the residential plan map designation. According to this section, Single Family and Multi-Family Residential categories apply to the portion of the Salem urban area that is currently developed with housing or served by public facilities and suitable for residential development at urban densities. The Single Family Residential designation reflects the predominate use pattern in that category. Multi-Family Residential is characterized by a mixture of housing types.

The Single Family and Multi-Family Residential categories of use encompass all types of housing, for example, single family detached, single family attached, manufactured homes, garden apartments, and row houses. The location, density, and style of housing are governed by the zoning code of each local jurisdiction. SACP IV provides applicable urban area goals and policies. Many of the policies concern locating residential land within the Salem Urban Area. Those decisions were made for the subject property when it was designated for multiple family development. Other policies must still be evaluated, and are examined below.

General development policy 7- Structures and their siting in all residential, commercial, and industrial developments shall optimize the use of land. The cumulative effect of all new residential development in the Salem urban area should average 6.5 dwelling units per gross acre of residential development. Development should minimize adverse alteration of the natural terrain and watercourses, the potential for erosion and adverse effects upon the existing topography and soil conditions.

Applicant plans to optimize use of the subject property by building multi-family structures with off-street parking on the site. Development is planned for the area of the property subject to the zone change, and for portions of adjacent applicant-owned parcels already zoned RM. A conceptual site plan shows 120 units planned for the current UD zoned area (approximately 4.56 acres). Applicant's traffic impact analysis (TIA) attributes 121 units to this area. At about 26 dwelling units per acre, the project supports the 6.5 average dwelling units per gross acre target that balances all types of residential development. The subject property is relatively flat, except that the southern portion of the property contains a fenced municipal drainage detention depression/water quality pond and wooded area that slopes down toward Clagget Creek to the south. Much of the southern portion of the property is within a FEMA identified 100 year floodplain. MCPW LDEP will require stormwater detention permitting, storm drainage improvements built to contain a 50-year storm event, and Erosion Prevention and Sediment Control permitting for development of the property. Permitting will address erosion, the natural terrain, watercourses and other potential adverse effects of development. General development policy 7 will be met.

Growth management policy 6 – New developments shall make maximum use of available land areas with minimal environmental disturbance and be located and designed to minimize such public costs as extension of sewer and water service, schools, parks, and transportation facilities.

Applicants will maximize use of the subject property by developing multi-family structures with off-street parking. The subject property is mostly fairly flat. Applicant does not propose development in the floodplain, but a floodplain permit would be required for any development in the floodplain area. The subject site is already in an area with sewer and water services and schools. Property across Fisher Road is slated for park development. Transportation facilities are mostly well-developed, but Fisher Road is not developed with sidewalks adjacent to the subject property. MCPW requested conditions requiring applicant to dedicate approximately five feet of right-of-way along most of the property's Fisher Road frontage to accommodate improvements for sidewalks, access approaches and landscaping, and a condition requiring applicant to provide the improvements. Applicant stated support for these requirements at hearing, and agreed to these conditions. These conditions will be required to assure adequate transportation services to the development. As conditioned, growth management policy 6 is met.

Growth management policy 7 - Within the Salem urban area, residential subdivisions, mobile home parks, multi-family residential, commercial and industrial development shall be permitted only within County service districts or within the City of Salem where public sewer and water services are available and other urban facilities are scheduled pursuant to an adopted growth management program. Exceptions to this policy may only be permitted if mutually agreed to by the City and the appropriate County.

The subject property is in an area of Salem that already receives water, sewer and most other urban services. As noted above, Fisher Road is not developed with sidewalks along the subject property's frontage. MCPW requested conditions requiring applicant to dedicate approximately five feet of right-of-way along most of the property's Fisher Road frontage to

accommodate improvements for sidewalks, access approaches and landscaping, and a condition requiring applicant to provide the improvements. Applicant supported these requirements at hearing. The conditions will be required to assure adequate transportation services to the development. As conditioned, growth management policy 7 is met.

Residential development policy 7. Residential neighborhoods shall be served by a transportation system that provides access for pedestrian, bicycles, and vehicles while recognizing the neighborhoods' physical constraints and transportation service needs:

- a. The transportation system shall promote all modes of transportation and dispersal rather than concentration of through traffic;
- b. Through traffic shall be addressed by siting street improvements and road networks that serve new development so that short trips can be made without driving;
- c. The transportation system shall provide for a network of streets fitted to the terrain with due consideration for safety, drainage, views, and vegetation.

The City of Salem, Marion County and the Oregon Department of Transportation all contribute to well-developed transportation facilities in this area. Interstate Highway 5 and Oregon Highway 99E are nearby. Ward Drive NE, a county minor arterial road, is along the northern property boundary. Lancaster Drive NE, another county arterial road, is nearby. The site will be accessed from Fisher Road, a collector street. Fisher Road is not developed with sidewalks. MCPW requested conditions requiring applicant to dedicate approximately five feet of right-of-way along most of the property's Fisher Road frontage to accommodate improvements for sidewalks, access approaches and landscaping, and a condition requiring applicant to provide the improvements. Applicant stated support for these requirements at hearing, and the conditions will be required to assure adequate transportation services to the development. The current Ward Drive access to the property will be closed. Surrounding roads have paved shoulders with bicycle lanes, and bus service is available on Highway 99E and Lancaster Drive. Residential development policy 7 is met.

Residential development policy 10. Requests for rezonings to higher density residential uses to meet identified housing needs will be deemed appropriate provided:

- a. The site is so designated on the comprehensive plan map;
- b. Adequate public services are planned to serve the site;
- c. The site's physical characteristics support higher density development; and
- d. Residential Development Policy 7 is met.

The subject property is currently zoned UD but is designated Multi-Family Residential under the SACP. Residential development policy 10(a) is met.

The subject property is in an area that already has water, sewer, utility, policing, and other services. Most transportation services are in place, but Fisher Road is not developed with sidewalks. MCPW requested conditions requiring applicant to dedicate approximately five feet of right-of-way along most of the property's Fisher Road frontage to accommodate improvements for sidewalks, access approaches and landscaping, and a condition to require applicant to provide the improvements. Applicant stated support for these requirements at hearing, and the conditions will be required to assure adequate transportation services to the development. As conditioned, residential development policy 10(b) is met.

The UD zoned portions of the subject property are fairly flat. Some portions of both parcels are in the Clagget Creek floodplain. The UD zoned portion of the property outside the floodplain, about four regularly-shaped, contiguous acres, provides sufficient room to accommodate multi-family development. Residential development policy 10(c) is met.

Residential development policy 7 is addressed above and is met. Residential development policy 10(d) is met.

As conditioned, residential development policy 10 is met.

Conclusion: The proposed RM zone is appropriate for the SACP Multi-Family designation. As conditioned, the proposed zone change conforms to applicable SACP policies. MCC 16.39.050(A) is satisfied.

9. Water; sewer, telephone, electric and other utility services are available at the site. Public transportation is available on nearby Lancaster Drive NE and Highway 99E. Fisher Road is not developed with sidewalks. MCPW requested conditions requiring applicant to dedicate approximately five feet of right-of-way along most of the property's Fisher Road frontage to accommodate improvements for sidewalks, access approaches and landscaping, and a condition requiring applicant to provide the improvements. Applicant stated support for these requirements at hearing, and the conditions will be required to assure adequate transportation services to the development. During development, DPW Engineering will require stormwater detention and erosion control permitting. By meeting permitting, development and DPW requirements, adequate public facilities and services are or will be available to support RM use of the property. MCC 16.39.050(B) is satisfied.
10. MCC 16.04.000 states the RM zone is primarily intended to provide for multiple-family dwellings on a lot, or attached dwellings on separate lots, at residential densities greater than permitted in the RL zone. Other uses compatible with residential development are also appropriate. RM zones are located in areas designated as multiple-family residential or an equivalent designation in the applicable urban area comprehensive plan and are provided with urban services. They are suited to locations near commercial office and retail zones and along collector and arterial streets.

The subject property is designated Multi-Family Residential in the SACP. Public transportation and commercial properties are on nearby Highway 99E and Lancaster Drive.

Highway 99E, Lancaster Drive and Ward Drive in this area are arterial roadways. Access will be from Fisher Road, a collector street. Most urban services are available to the property, but Fisher Road is not developed with sidewalks. MCPW requested conditions requiring applicant to dedicate approximately five feet of right-of-way along most of the property's Fisher Road frontage to accommodate improvements for sidewalks, access approaches and landscaping, and a condition requiring applicant to provide the improvements. Applicant stated support for these requirements at hearing, and the conditions will be required to assure adequate transportation services to the development. As conditioned, MCC 16.39.050(C) is satisfied.

11. The RL zone is the least intensive commercial zone appropriate for the Multi-Family designation. No RL zoning is nearby. RM zoned properties are north, west and southeast of the subject property. Other RM zoned land lies further to the east, on the same side of Ward Drive. Land south and a portion of property to the east across Fisher Road are within the City of Salem. UD parcels are east of the subject property, across Fisher Road at its Ward Drive intersection. RS zoned property north east across Ward Drive. The RM zone contains landscaping requirements to enhance compatibility, and open outdoor storage must be screened from street and neighboring property view. The proposed RM zone will not allow uses that significantly adversely affect allowed uses on adjacent properties zoned for less intensive uses. MCC 16.39.050(D) is satisfied.

VI. Recommendation

It is hereby found that applicant has met the burden of proving the applicable standards and criteria for approval of a zone change from UD to RM on approximately four and a half acres on Fisher Road have been met. Therefore, the hearings officer **recommends** the Marion County Board of Commissioners **GRANT** the zone change application, subject to the conditions set forth below. The conditions are necessary for the public health, safety and welfare.

1. Applicants shall obtain all permits required by the Marion County Building Inspection Division.
2. All future development on the property must satisfy the specific development standards in the RM zone and the general development standards found in MCC chapters 16.26 through 16.40.
3. Prior to application for building permits, sufficient right-of-way along the Fisher Road NE subject property frontage will be dedicated to provide a public dedicated right-of-way halfwidth of 30-foot in accordance with City of Salem Collector A standard.
4. Prior to Certificate of Occupancy issuance, necessary permits will be obtained from MCPW Engineering to construct urban frontage improvements along Fisher Road NE in accordance with appropriate standards to include such elements as access approach, sidewalk, landscape strip, and closure of the Ward Drive existing access.

VII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this application. Any aggrieved or affected person may file with the Marion County Clerk (555 Court Street NE, Salem), a written request for a public hearing before the Board within fifteen (15) days of the date of mailing of this recommendation. The request must be accompanied by, and will not be accepted, without payment of a \$500.00 fee. (If the Board denies the appeal, \$300 of the fee will be refunded.) The Board has discretion whether to hold a public hearing. After fifteen (15) days, the Board may take final action on this application without conducting another public hearing.

DATED at Salem, Oregon, this 23rd day of January 2019.

A handwritten signature in black ink, appearing to read 'Ann M. Gasser', with a long horizontal line extending to the right.

Ann M. Gasser
Marion County Hearings Officer

CERTIFICATE OF MAILING

I hereby certify that I served the foregoing order on the following persons:

Matthew Conser
1010 Airport Road SE
Albany, OR 97322

Joyce Potter
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Salem, OR 97305

Joel D Kalberer
Weatherford Thompson PC
PO Box 667
Albany OR 97321

Pamela Cole
Planner II/CDD
City of Salem
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Salem, OR 97301

Jennifer Scott
Program Manager
City of Salem/Public Works
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Geoff Dallmann
3682 Ward Drive NE
Salem, OR 97305

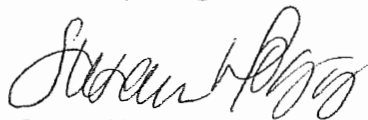
Agencies Notified

Planning Division *(via email: gfennimore@co.marion.or.us)*
(via email: breich@co.marion.or.us)
(via email: lmilliman@co.marion.or.us)
Building Inspection *(via email: twheeler@co.marion.or.us)*
Assessor *(via email: assessor@co.marion.or.us)*
PW Engineering *(via email: jrasmussen@co.marion.or.us)*
(via email: mhpburn@co.marion.or.us)
Environmental Services *(via email: mknutsen@co.marion.or.us)*
DLCD *(via email: angela.camahan@state.or.us)*
MCFD No. 1 *(via email: paulas@mcfcd1.com)*
AAC Member No. 3 (*no members*)

Meriel Darzen
1000 Friends of Oregon
133 SW 2nd Avenue, Suite 201
Portland, OR 97204

Roger Kaye
Friends of Marion County
P.O. Box 3274
Salem, OR 97302

by mailing to them copies thereof. I further certify that said copies were placed in sealed envelopes, addressed as noted above, and deposited in the United States Post Office at Salem, Oregon, on the 23rd day of January 2019, and that the postage thereon was prepaid.



Susan Hogg
Secretary to Hearings Officer

EXHIBIT B

The Marion County Board of Commissioners adopts the following conditions in ZC18-005/J. Conser and Sons, LLC.

CONDITIONS OF APPROVAL:

Pursuant to Marion County Zone Code 16.39.060, the following conditions apply to the RM (Multiple-Family Residential) zoning granted in this action. These conditions are reasonably related to the specific development proposed, will serve the public interest of reducing land use conflicts, and are based upon standards adopted by the County. The RM zoning intensifies the use of the land. The conditions are necessary for the public health, safety and welfare.

1. Applicants shall obtain all permits required by the Marion County Building Inspection Division.
2. All future development on the property must satisfy the specific development standards in the RM zone and the general development standards found in MCC chapters 16.26 through 16.40.
3. Prior to application for building permits, sufficient right-of-way along the Fisher Road NE subject property frontage will be dedicated to provide a public dedicated right-of-way halfwidth of 30-feet in accordance with City of Salem Collector A standard.
4. Prior to Certificate of Occupancy issuance, necessary permits will be obtained from MCPW Engineering to construct urban frontage improvements along Fisher Road NE in accordance with appropriate standards to include such elements as access approach, sidewalk, landscape strip, and closure of the Ward Drive existing access.

EXHIBIT C

The following described property is rezoned from from UD
(Urban Development) to RM (Multiple-Family Residential) .
ZC/CP 18-005/CONSER AND SONS, LLC

