



MARION COUNTY BOARD OF COMMISSIONERS

Board Session Agenda Review Form

Meeting date: January 8, 2020

Department: Public Works Agenda Planning Date: Dec. 31, 2019 Time required: 30 min.

Audio/Visual aids

Contact: Joe Fennimore Phone: 503-566-4177

Department Head Signature: Brian Nicholas

TITLE Public hearing for Zone Change/Comprehensive Plan/Subdivision (ZC/CP/SUB) Case 18-002/Christ Good Shepherd Lutheran Church.

Issue, Description & Background The applicant originally requested to change the zone and comprehensive plan designation from Single Family Residential (RS) to Multiple Family Residential (RM) on a 3.4 acre portion of a 6 acre parcel to develop the property with apartments. The hearings officer conducted public hearings on April 11, 2018, and May 16, 2018, and issued a recommendation on October 19, 2018, that the board of commissioners deny the request. On December 14, 2018, the applicant submitted a letter requesting the board allow them to modify the application to address the issues raised by the hearings officer and neighboring property owners. On December 26, 2018, the board approved Order 18-144, which allowed the application to be modified and remanded the matter back to the hearings officer for a public hearing and recommendation. The modified application is to change the zone from RS to RM on approximately 1.76 acres, then subdivide the property into 12 lots, nine of which will remain zoned RS and developed with single family dwellings. The hearings officer conducted a hearing on the modified application on May 1, 2019, and on October 10, 2019, issued a recommendation that, based on the existing record, the board deny the request. The board received the recommendation and scheduled this public hearing. In the modified proposal the applicant proposed that the primary access to the multi-family development be on State Street to the north with a secondary access to Marht Avenue to the south. The single family residential lots would each have frontage on, and direct access to, Brink Court and Marht Avenue. Public Works Land Development Engineering and Permits (LDEP) reviewed the proposal and provided comments and conditions to be considered if the proposal is approved. In addition to requiring street frontage and other infrastructure improvements needed to serve the proposed development, they also recommend limiting access to State Street to only pedestrians and emergency vehicles. At the hearing the applicant objected to this limitation, but the matter was not resolved at the hearing. The hearings officer reviewed the applicable goals and policies in the Salem Area Comprehensive Plan (SACP) and determined that based on the current record the comprehensive plan amendment is not recommended. In the recommendation the hearings officer indicates that in order for the policies and criteria to be satisfied the State Street access issue must be resolved. After the recommendation was issued the applicant met with public works staff to discuss taking direct access off of State Street for the development. As a result of that meeting on November 15, 2019, LDEP issued revised conditions that would need to be met in order for the future multiple family development to have unrestricted access to State Street.



MARION COUNTY BOARD OF COMMISSIONERS

## Board Session Agenda Review Form

Financial Impacts:

None

Impacts to Department  
& External Agencies

None

Options for  
Consideration:

1. Continue the public hearing.
2. Close the public hearing and leave the record open.
3. Close the public hearing and approve, modify, or deny the request.
4. Remand the matter back to the hearings officer.

Recommendation:

The hearings officer recommends, based on the existing record, that the request be denied.

List of attachments:

- Applicant's memo dated December 30, 2019
- LDEP updated conditions/requirements
- Draft Conditions
- Hearings officer's recommendation dated October 10, 2019
- Order #18-144
- Hearings officer's recommendation dated October 19, 2018

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

December 30, 2019

**The Honorable Marion County Board of Commissioners  
c/o Joe Fennimore, Planning Director  
5155 Silverton Rd. NE  
Salem, OR 97305**



**Re: ZC/CP/SUB 18-002 – Comprehensive Plan Amendment/Zone Change/Subdivision  
Christ Good Shepherd Lutheran Church – 4440 State Street NE**

Dear Board of Commissioners:

Thank you for your consideration in the matter listed above on January 8, 2020. We would request that this memorandum and the additional information submitted with this memorandum be entered into the public record. By now, you will have received a recommendation from Ann Gasser, the Marion County Hearings Officer to deny an application that your board remanded back to her at your December 26, 2018 session. The matter was remanded to allow the applicant an opportunity to revise the plan before the Board was to rule on it.

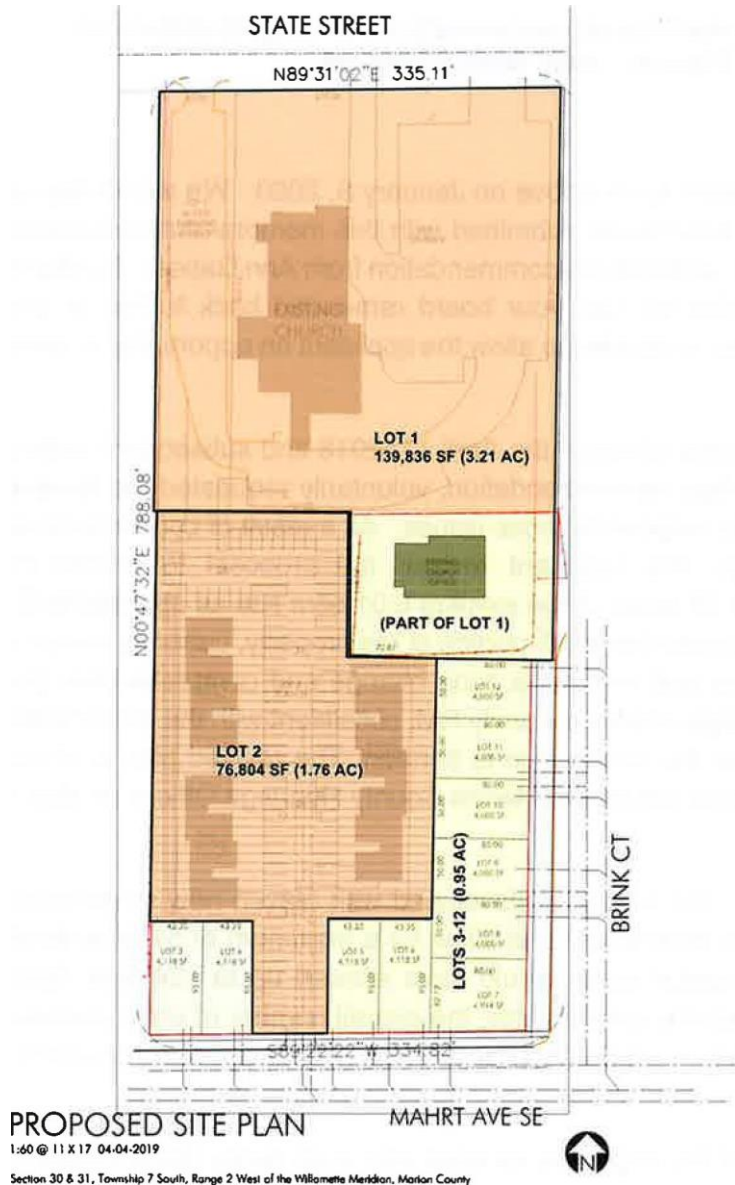
The owner/applicant heard the initial concerns raised in the April 11, 2018 and subsequent hearing on May 16, 2018, received the hearings officer recommendation, voluntarily requested the remand, and revised the plans for the site in order to respond to those issues. As a result of concerns raised by the neighbors at those two hearings, the applicant revised the proposal to amend the Comprehensive Plan and Zone maps for 1.76 acres of the existing 6.01 acre site as opposed to 3.4 acres. The revised application would now divide the south portion of the property, currently zoned as Single-Family Residential (RS), into 12 lots and request a zone change and comprehensive plan amendment for Lot 2 (1.76 acres) to be designated Multi-Family RM, consistent with the north portion of the property. The total lots configured in the subdivision is twelve. The revised plan is shown below and was considered in a public hearing before the Marion County Hearings Officer on May 1, 2019.

Under the revised proposal, the perimeter lots would be developed with ten new single-family homes, and the interior lot would be zoned multi-family and allow for a maximum of 51 multi-family dwelling units as opposed to the prior proposal which would have allowed up to 124 multi-family dwelling units. Combined with the proposed single-family lots, the overall number of units proposed represents half of the number of units under consideration at the time you decided to remand the application for further consideration.

As a seasoned planner, I am very aware of the stigma associated with multi-family development by homeowners in single-family developments, but it's very important for communities to think systemically when it comes to making sure that young and old people have a variety of housing choices that include different housing types. Multi-family homes provide entry level housing for young people that may want to move away from their parents' home, need a place to live when returning from college, or simply looking to relocate for work. Multi-family developments also provide homes for adults in various life circumstances and the

elderly who want to remain in their community when looking to downsize from a single-family home.

In this specific instance, the Hearings Officer finds that the proposal meets or can be conditioned to meet all of the criteria for the proposed land use actions, but has recommended denial based on an issue related to access. The revised plan showed primary access to the site from State Street NE as well as access to Mahrt Avenue. During their review, County engineering staff conditioned that the proposed access from State Street NE be gated and utilized for emergency access only. See the plan below.



## FINDINGS

In her Findings of Fact and Conclusions of Law (beginning on page 6 of the attached recommendation) Mrs. Gasser finds that, for the most part, the application meets the applicable criteria including the goals and policies of the Salem Area Comprehensive Plan (SACP).

Based on the majority of her findings, Mrs. Gasser recommends denial of the application solely because the multi-family portion of the site would have a single access onto Mahrt Avenue (a local street) as a result of the condition imposed upon the development by public works.

In her finding related to Growth Management Policy #9, she states, "...Applicant deeds [sic] a definite access plan for BOC review because ingress and egress to RM development was up in the air at close of record. I-DEP requested emergency access only through the northern church property. Applicant objects and proposes full access at State Street...Applicant's site plan shows a feasible development plan for the property, but the access issue is not resolved. **If access issues are resolved, it is likely growth management policy 9 can be met.**" (*Finding related to Growth Management Policy -9, pg. 11*)

In her finding related to Residential Development Policy 2, which states that residential uses and neighborhood facilities and services shall be located to, "a. Accommodate Pedestrian, bicycle, and vehicle access." Mrs. Gasser finds that, "Bicycle and Pedestrian access to State Street still appears available via PW's "man gate" to the northern portion of the subject property, but vehicular access needs to be resolved. **Applicant needs to address State Street access at the BOC hearing.**" (*Finding related to Residential Development Policy 2, pg. 14*)

Within that same policy, and specific to subsections 2(c) Facilities, Utilities, and services and 2(d) Nuisances and Hazards, Mrs. Gasser believes that, "**If access questions are adequately addressed, this policy could be met.**" (*Findings related to Residential Development Policy 2, pgs. 14-15*)

In her finding related to Residential Development Policy 10, which requires rezonings to higher density residential uses to meet identified housing needs to show that the site is designated on the comprehensive plan map, that adequate public services are available to the site, that the sites physical characteristics support higher density development, and that residential policy 7 is met, Mrs. Gasser finds, "...If approved, the proposed development will be appropriate for the site's designation. Public services are in place, but some improvements are necessary, such as roadway improvements at the site. The subject property is flat and has no obvious physical constraint for higher density. As shown above, Residential Development Policy is met. **This policy can be met with redesignation of the site, roadway improvements, and access issue resolution.**" (*Finding related to Residential Development Policy 10, pg. 18.*)

Related to whether MCC 16.43.020(C) is satisfied, Mrs. Gasser finds, "**Applicant must address access issue more fully at the BOC hearing to help the BOC determine whether MCC 16.43.020(C) is satisfied.**" (*Finding 9 found on pg. 20*)

Related to Public Facilities and Services and MCC 16.43.020(D), Mrs. Gasser finds, "**Given the need to resolve site access issues, MCC 16.43.020(D) is not met.**" (*Finding #10 on page 20*)

Related to MCC 16.39.050(B) which requires, "Adequate public facilities, services, and transportation networks are in place, or are planned to be provided concurrently with the development of the property." Mrs. Gasser finds, "**If access issues are resolved to BOC satisfaction, public facilities will be adequate and available. Currently MCC 16.39.050(B) is not satisfied.**" (*Finding under #14 on pg. 21*)

Related to the purpose statement in MCC 16.04.000, Mrs. Gasser finds, "**State Street is an arterial street. Mahrt Avenue is a local street and would not be an appropriate location for multiple-family housing with access onto Mahrt Avenue only. Given the unresolved access issue, the purpose and intent of MCC 16.04.000 is not met.**" (*Finding under #15 on page 21*)

Related to MCC 16.01.030 which lists the SACP designations and compatible MCC zones, Mrs. Gasser states that, "The RL, RM, UT, and UD zones are listed as appropriate for the multi-family designation..." And goes on to say that, "...Applicant provided proof that water and sewer capacity are available for the proposed use, and that on-site stormwater detention is feasible. Increased density increases traffic. At the time of the hearing, access to the RM parcel was still up in the air. State Street access issues need to be addressed at the BOC hearing." She goes on to find that, "**Access should be addressed more fully before the BOC to help determine whether MCC 16.39.050(D) is satisfied.**" (*Finding #16, on page 22*)

## **ACCESS**

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The applicant had heard these concerns in the first review and proposed a full access into the multifamily portion of the development, but that wasn't supported by Public Works staff because there was not an analysis performed for full access. Once we received Mrs. Gasser's recommendation, we immediately sat down with our traffic consultant and County staff to discuss our options. In speaking with County Staff, it was acknowledged that there would be no immediate impacts to State Street NE as a result of a Comprehensive Plan Map/Zone change amendment, but that there would be a need to provide a more comprehensive analysis of any future development on the RM zoned portion of the site.

In the interim, County staff indicated that there was an identified County Federal Aid project to widen State Street to a 3-lane section by the addition of a continuous turn lane and anticipated widening south of the existing centerline. They indicated that future development of the RM property would likely accelerate the need for those improvements, and that they would be comfortable supporting full access onto State Street with future development of the RM zoned property if assurances were provided through conditions of approval. Staff and a traffic engineer from DKS discussed the needed improvements and suggested the conditions of approval that staff has provided to you within the updated staff report and recommended conditions from John Rasmussen.

Conditions include:

(Condition C) A dedication of right-of-way with the subdivision plat along the State Street frontage in order to accommodate a turn lane that would be constructed along with any development on the RM zoned lot;

(Condition D) Construction of a State Street west-bound turn lane refuge south of the centerline including tapers, and the permanent closure of the middle access that is one of three accesses that the Church currently has onto State Street; or



(Alternative Condition D) Conduct a Traffic Impact Analysis with future development of the RM zoned site and construct any required mitigation measures prior to applying for building permits or to pay a proportional share contribution toward future improvements that would be constructed along the sites frontage as part of the larger project that the County has already identified and is discussed above.

An analysis is being developed by DKS and Associates to justify the added conditions and will be provided at your public hearing.

## CONCLUSIONS

Mrs. Gasser agreed that there was a need in the Urban Growth Area for additional land zoned for multi-family development consistent with the draft housing needs analysis prepared for the City of Salem. She agreed that if the access issues were resolved, rezoning the property would be appropriate and consistent with the applicable goals and policies of the Salem Area Comprehensive Plan. She agreed that compatibility issues could be resolved through implementation of the development code on any future development in the RM Zone. She stated that the proposed layout, while not binding as a result of these amendments would minimize impacts to the surrounding properties. Finally, she agreed that the evidence in the record supported the fact that public facilities and services were available to the site, and that they had adequate capacity to serve the future development of the site.

As indicated in her recommendation, access was the primary issue that led Mrs. Gasser to recommend denial of the proposed subdivision and map amendments. With this letter and the revised conditions of approval we believe that the issues related to access raised by Mrs. Gasser have been resolved, and are willing to accept the proposed conditions of approval that County staff has recommended.

As you already know, there is a statewide housing crisis, and this project would go towards furthering the options available to those folks looking for housing in the future. The area where the subject property is located is already developed with a mix of single-family and multi-family housing and is served by public facilities.

We respectfully request that the Board approve the proposed map amendments and subdivision. Thank you for your time and attention in this matter. Our team will be at your hearing and available to answer any outstanding questions you have.

If you have any questions or would like to discuss any information in this letter, please feel free to give me a call at (503) 221-1131 or e-mail me at [bradk@hhpr.com](mailto:bradk@hhpr.com).

Sincerely,

HARPER HOUF PETERSON RIGHELLIS INC.



Brad Kilby, AICP  
Senior Planner

## PW-LDEP BOC HEARING UPDATED CONDITIONS/REQUIREMENTS

November 15, 2019

### **ENGINEERING CONDITIONS**

**Condition A** – *On the plat dedicate an additional 15-foot half-width right-of-way (R/W) along the subject property's Brink Court frontage commensurate with Marion County residential cul-de-sac (<500') to achieve a 50-foot total R/W width, and also dedicate a 30-foot SE property corner radius.*

Nexus for the above Condition is in accordance with Marion County Code Sections 16.33.220 & 260, and due to the proposed development taking access from Brink Court and the need for space to accommodate urban improvements and utilities. There are currently 17.5' R/W half-widths on each side of centerline.

**Condition B** – *Prior to plat approval, Applicant shall design, permit and construct the following:*

- *¼-Street frontage improvements along Brink Court to meet the City of Salem Collector "A" standard of 34-foot curb-to-curb width, including curblin sidewalk, curb/gutter, landscape strip, utility extensions/services, asphalt widening, SDCB relocation, STOP sign and thermoplastic STOP bar.*
- *Mahrt Avenue curb and sidewalk replacement due to extreme degradation and non-ADA compliance.*
- *ADA compliant replacement corner ramps at NWC and NEC - Mahrt Avenue / Brink Court intersection.*
- *ADA receiving ramps opposite Evergreen Avenue pedestrian corner ramps.*

Nexus is to mitigate the anticipated added traffic to Brink Court and Mahrt Avenue and the need for public improvements in accordance with MCC 16.33.160 and 320. Need for Mahrt Avenue curb and sidewalk replacement is confirmed. Curb replacement will also necessitate evaluation of positive drainage flow to adjacent inlets.

**Condition C** – *If the proposed subdivision plat depicts a State Street easement for unrestricted vehicular access to/from the RM lot, and if the MCBOC were to concur with same, then on the partition plat dedicate sufficient additional public right-of-way (R/W) width along the subject property's State Street frontage in order to accommodate a State Street turn lane refuge improvement to be situated south of roadway centerline in conjunction with development of the RM lot.*

Nexus for the above Condition is in accordance with Marion County Code Sections 16.33.220 & 260, and due to the proposed development desiring to take access from State Street where deference to City of Salem TSP Policy 3.1.1 recommends access be taken from the lesser functional class street, in this case being Mahrt Avenue. An identified County Federal Aid project to widen State Street to a 3-lane by addition of a



continuous turn lane section with the anticipated widening occurring to the south of roadway centerline will be conducted in the foreseeable future, and including commensurate urban improvements. An already identified road safety issue exists on State Street wherein documentation exists of numerous vehicular accidents through said corridor. The contributive effect of the proposed RM development accelerates the need for space to accommodate widening improvements on State Street concurrent with the proposed RM development.

**Condition D** – *In lieu of conducting a TIA, prior to issuance of a Certificate of Occupancy for any one of the future RM lot apartment buildings, or as otherwise agreed to at that time by MCPW Engineering, Applicant shall design, permit and construct a State Street west-bound turn lane refuge rural section to the south of centerline, including appropriate transition tapers and permanent closure of the State Street middle access.*

Nexus is to mitigate an already identified road safety issue wherein documentation exists of numerous vehicular accidents through said corridor that has triggered the aforementioned Federal Aid project to widen State Street to a 3-lane section. PW Engineering would ordinarily require corresponding urban improvements to include curb/gutter, sidewalk and concrete driveway approaches; however, sufficient nexus linking the addition of an RM access only with a condition for full urban improvements along the State Street property frontage may not be entirely clear. With that said, State Street full urban improvements are anticipated to be conducted along with the County's Federal Aid widening project. Closure of the Church's middle access is predicated on deference to City of Salem's TSP Section 3.1.1 aimed at reducing the number of accesses on an Arterial road as well as meeting access spacing standard.

**Alternate Condition D** – *Prior to application for building permits for the buildable RM lot, submit and acquire review approval from Marion County Traffic Engineering of a Transportation Impact Analysis (TIA) analyzing traffic generated by the RM lot. Prior to application for building permits, acquire design approval and construction permits for any identified mitigation measures that may warrant immediate construction, or in the alternative where a global project is being scoped that will be affected by this development, remit a proportional share contribution toward future improvements. Prior to final building inspection, acquire PW Engineering final inspection approval for any immediate improvements in the public R/W.*

Requirement for the TIA in this case is based on deferral to City of Salem criteria for property within the UGB, whereby the City uses a 200-trip threshold additive to a Local street. Please contact Marion County Transportation Planner, Janelle Shanahan, at [JShanahan@co.marion.or.us](mailto:JShanahan@co.marion.or.us) or (503) 566-4147 to determine the scope of the analysis.

**Condition E** – *Prior to plat approval, design, permit, and construct a stormwater attenuation facility for the RS lots and a Water Quality Treatment (WQT) facility for those lots if the WQT component is an aggregate system. If the WQT component for the*

*RS Lots is specified by the Developer as lot-specific raingardens, then each raingarden shall be completed prior to final building inspection for each respective lot.*

**Condition F**– *Prior to plat approval, record a stormwater O&M Agreement for the WQT component of the RS lots, unless that component were to meet MCPW Engineering criteria for ESSD maintenance takeover. Prior to issuance of a Building Dept. C/O for the RM lot, record a stormwater O&M Agreement for that as well.*

Stormwater management is an Engineering Requirement as authorized under MCC 16.33.160; however, it is being elevated to Condition status as a matter of timing for completion.

**Condition G** – *On the plat depict necessary drainage, access and utility easements.*

Nexus is to satisfy MCC 16.33.300.

**Condition H** – *Prior to issuance of a Building C/O for the RM Lot, design and construct an accessible pedestrian pathway from the RM Lot through Lot 1 (Church property) and connecting to State Street for access to public transportation.*

## **ENGINEERING REQUIREMENTS**

I. 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.

J. The County requires any development having 0.5-acre or more of impervious (hard) surface to provide storm water detention, and if 1.0-acre or more in aggregate, water quality treatment (WQT) since the subject property falls within Marion County's ODEQ-defined Stormwater Management Area (SMA) relative to our NPDES Phase II MS4 Permit. Where individual lot (WQT) systems are elected by design to satisfy the requirement, then an approvable system such as a raingarden must be identified on the building application site plan.

K. Permits are required for utility connections in the public right-of-way.

L. MCPW regulates soil erosion within the SMA as an ODEQ Qualified Local Program through administering of the 1200-CN Construction Stormwater General Permit. Applicability is for construction activities disturbing 1.0-acre or more to less than 5 acres as a single phase of part of a multi-phase project. Under the Program per MCC 15.10, MCPW Engineering may issue either a Large Development Erosion Prevention and Sediment Control (EPSC) Permit, with applicable fee schedule, or an individual (RA) lot EPSC Permit.

M. In accordance with MCC 11.10, driveways must meet sight distance, design, spacing, and safety standards. The following numbered sub-requirements pertain to public road access:

- 1) City of Salem Transportation System Plan Policy 3.1.1 recommends that in instances of properties with frontage along two streets, primary access should be from the street with the lower functional classification. MCPW Engineering supports this; however, with BOC concurrence, a primary State Street access is viability, while still establishing a second primary Mahrt Avenue access. In this case, argument could be made to minimize substantial additions to Marht Avenue traffic considering State Street has an established public transportation route and links to a traffic signal at Lancaster Drive.
- 2) Access to Lot 4 shall be near the west property line.
- 3) Access to Lot 5 shall be near the east property line.
- 4) Access to Lot 7 shall be off Brink Court near the north property line.
- 5) Access(es) to RM Lot 2 shall be driveway-style.
- 6) Access Permits will be required upon application for building permits.

### **ENGINEERING ADVISORIES**

N. Sanitary sewer service is provided by the City of Salem.

O. Potable water is provided by Suburban East Salem Water District.

JR

Conditions of Approval for the Board to Consider if request is approved.

1. The applicant shall submit documentation satisfactory to the Marion County Surveyor accomplishing the final subdivision plat. The applicant is advised that a current or updated title report from a title company must be submitted with the final mylar.
2. All easements (utility, drainage, etc.) required by reviewing agencies shall be shown on the final plat.
3. Prior to submission of the final plat, the applicant shall submit evidence of compliance with the development, water supply, and access standards of Marion County Fire District No. 1.
4. The applicant shall obtain all permits required by the Marion County Building Inspection Division.
5. All current and future development on the property zoned RM (Multiple Family Residential) shall meet the developments standards of the zone, (Chapter 16.04 MCC) and the general development standards found in Chapters 16.26 through 16.40 of the MCC.
6. Public Works Land Development Engineering and Permits Division (LDEP) will not approve the use until the following conditions has been satisfied:
  - A On the plat dedicate an additional 15-foot half-width right-of-way (R/W) along the subject property's Brink Court frontage commensurate with Marion County residential cul-de-sac (<500') to achieve a 50-foot total R/W width, and also dedicate a 30-foot SE property corner radius.
  - B Prior to plat approval, Applicant shall design, permit and construct the following:
    - ¼-Street frontage improvements along Brink Court to meet the City of Salem Collector "A" standard of 34-foot curb-to-curb width, including curblin sidewalk, curb/gutter, landscape strip, utility extensions/services, asphalt widening, SDCB relocation, STOP sign and thermoplastic STOP bar.
    - Mahrt Avenue curb and sidewalk replacement due to extreme degradation and non-ADA compliance.
    - ADA compliant replacement corner ramps at NWC and NEC - Mahrt Avenue / Brink Court intersection.
    - ADA receiving ramps opposite Evergreen Avenue pedestrian corner ramps.
  - C If the proposed subdivision plat depicts a State Street easement for unrestricted vehicular access to/from the RM lot, and if the MCBOC were to concur with same, then on the partition plat dedicate sufficient additional public right-of-way (R/W) width along the subject property's State Street frontage in order to accommodate a State Street turn lane refuge improvement to be situated south of roadway centerline in conjunction with development of the RM lot.
  - D-1 In lieu of conducting a TIA, prior to issuance of a Certificate of Occupancy for any one of the future RM lot apartment buildings, or as otherwise agreed to at that time by MCPW Engineering, Applicant shall design, permit and construct a State Street west-bound turn lane refuge rural section to the south of centerline, including appropriate transition tapers and permanent closure of the State Street middle access, **or**;
  - D-2 Prior to application for building permits for the buildable RM lot, submit and acquire review approval

from Marion County Traffic Engineering of a Transportation Impact Analysis (TIA) analyzing traffic generated by the RM lot. Prior to application for building permits, acquire design approval and construction permits for any identified mitigation measures that may warrant immediate construction, or in the alternative where a global project is being scoped that will be affected by this development, remit a proportional share contribution toward future improvements. Prior to final building inspection, acquire PW Engineering final inspection approval for any immediate improvements in the public R/W.

- E. Prior to plat approval, design, permit, and construct a stormwater attenuation facility for the RS lots and a Water Quality Treatment (WQT) facility for those lots if the WQT component is an aggregate system. If the WQT component for the RS Lots is specified by the Developer as lot-specific raingardens, then each raingarden shall be completed prior to final building inspection for each respective lot.
  - F. Prior to plat approval, record a stormwater O&M Agreement for the WQT component of the RS lots, unless that component were to meet MCPW Engineering criteria for ESSD maintenance takeover. Prior to issuance of a Building Dept. C/O for the RM lot, record a stormwater O&M Agreement for that as well.
  - G. On the plat depict necessary drainage, access and utility easements.
  - H. Prior to issuance of a Building C/O for the RM Lot, design and construct an accessible pedestrian pathway from the RM Lot through Lot 1 (Church property) and connecting to State Street for access to public transportation.
- 7. Exterior lighting shall be designed to provide illumination to the site and not cause glare into the public right-of-ways and adjacent properties.
  - 8. The applicants shall cluster the multi-family units generally as shown on the site plan considered with this application.
  - 9. In accordance with Marion County Ordinances and OAR 340-21-060, during the land clearing and road construction phase of this development dust suppression measures, such as water trucks, shall be employed as necessary to prevent off site deposition of dust generated by the construction activities or related vehicular traffic on adjacent properties.
  - 10. All permanent utility service to lots in a subdivision within an established urban growth boundary shall be provided from underground facilities and no overhead utility service to a subdivision shall be permitted. The subdivider shall be responsible for complying with the requirements of this section and shall:
    - A. Obtain a permit from Marion County Public Works for the placement of all underground utilities.
    - B. Make all necessary arrangements with utility companies and other persons or corporations affected by the installation of such underground lines and facilities in accordance with the rules and regulations of the public utility commissioner of the State of Oregon.
  - 11. Shall submit street lighting plans from the appropriate power company to the director of public works for approval.

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the ) Case No. ZC/CP/SUB 18-002  
Application of: ) Clerk's File No.  
CHRIST GOOD SHEPHERD ) Comprehensive Plan Amendment/  
LUTHERAN CHURCH ) Zone Change/Subdivision

**RECOMMENDATION**

**I. Nature of the Application**

This matter comes before the Marion County Hearings Officer on remand from the Marion County Board of Commissioners (BOC) to make a recommendation on the **modified** application of Christ Good Shepherd Lutheran Church to change the Comprehensive Plan designation from Single Family Residential to Multiple Family Residential, to change the zone from RS (Single Family Residential) to RM (Multiple Family Residential) on approximately 1.76 acres of a 6.01 acre parcel, and for conceptual and detailed approval to subdivide the 6.01 acre parcel into 12 lots, at 4440 State Street NE, Salem, Marion County, Oregon (T7S, R2W, 30DD, tax lot 4200).

**II. Relevant Criteria**

The 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 chapters 16.02, 16.04, 16.21, 16.30, 16.33, 16.39 and 16.43.

**III. Public Hearing**

Following remand by the BOC, a public hearing was held on this matter on May 1, 2019. At the hearing, the Planning Division file, including the pre-remand portion, was made part of the record. The following persons provided testimony on the application:

- |     |                  |  |
|-----|------------------|--|
| 1.  | Brandon Reich    | Marion County Planning Division        |
| 2.  | John Rasmussen   | Marion County Public Works Engineering |
| 3.  | Byron Farley     | Applicant attorney                     |
| 4.  | Brad Kilby       | For Applicant                          |
| 5.  | Chris Blackburn  | For Applicant                          |
| 6.  | Geary Simpkins   | Opponent                               |
| 7.  | Bruce Bjorkman   | Opponent                               |
| 8.  | Tom Carrigan     | Opponent                               |
| 9.  | Gail Weedman     | Opponent                               |
| 10. | Randy Timm       | Opponent                               |
| 11. | Jim Beukelman    | Opponent                               |
| 12. | Karl Sørensen    | Opponent                               |
| 13. | Daniel Finlayson | Opponent                               |
| 14. | Scott Jenkins    | Opponent                               |



The following documents were presented, marked and entered into the record as exhibits:

- Ex. 1 Letter from Janet Reese
- Ex. 2 Statement of Karl Sørensen with subdivision/property development illustration
- Ex. 3 Comments from Scott Jenkins
- Ex. 4 Brink/Mahrt intersection drawing/comments from Gail Weedman
- Ex. 5 Paper copy of power point presentation by Brad Kilby

No objections were raised to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at hearing. The record remained open until May 8, 2019 for opponents to submit additional information and until May 15, 2019 for applicant's rebuttal. The following documents were submitted to the record as exhibits during the open record period:

- Ex. 6 May 6, 2019 letter by Charles and Katherine Randall
- Ex. 7 May 7, 2019 letter by Kathy and James Beukelman
- Ex. 8 May 7, 2019 letter from Karl Sørensen
- Ex. 9 Comments from Sharon Jones
- Ex. 10 Comments from Clara Bricher
- Ex. 11 Comments from Brad Kilby

#### **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 6.01-acre property is within the City of Salem urban growth boundary (UGB). The SACP designates the northern portion of the property Multi-Family Residential and the southern portion Single-Family Residential. Under MCC title 16, the northern portion of the property is zoned RM and the southern portion is zoned RS. The property is within the Airport Overlay (AO) zone for Salem's McNary Field. Marion County has land use authority over the property.
2. The rectangular property has 335' of frontage on State Street to the north and Mahrt Avenue to the south. The parcel is about 780' deep, and has about 323' of frontage on Brink Court SE along the southeastern side of the property. The northern RM zoned portion contains a church. The southern RS portion of the property contains a church office building near the RM/RS dividing line; the remaining RS property is vacant.
3. RM zoned properties along State Street are developed with various types of residences, including single and multiple-family housing. RS zoned properties west along 44<sup>th</sup> Avenue, south along Mahrt Avenue and east along Brink Court are developed with single family dwellings.
4. Applicant proposes amending the SACP designation on a 1.76-acre portion of the property from Single-Family Residential to Multi-Family Residential, and changing the zoning on that

portion of the property from RS to RM. Applicant modified the original 2018 plan to include a 13-lot subdivision, but later modified that to a 12-lot subdivision. In the latest plan, lot 1 would be split zoned, and contain the existing church building on the RM portion and the church office on the RS portion. Lot 2 would be zoned RM and contain multiple family residential development. Lots 3 through 12 would retain RS zoning and contain single family residential development.

5. The Planning Division requested comments on the proposal from various governmental agencies.

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

#### ENGINEERING CONDITIONS

Public Works Land Development and Engineering Permits (LDEP) requests that the following Conditions be included in the land use case:

*Condition A – On the plat dedicate an additional 15-foot half-width right-of-way (R/W) along the subject property's Brink Court frontage commensurate with Marion County residential cul-de-sac (<500') to achieve a 50-foot total R/W width, and also dedicate a 30-foot SE property corner radius.*

Nexus for the above Condition is in accordance with Marion County Code Sections 16.33.220 & 260, and due to the proposed development taking access from Brink Court and the need for space to accommodate urban improvements and utilities. There are currently 17.5' R/W half-widths on each side of centerline.

*Condition B – Prior to plat approval, Applicant shall design, permit and construct the following:*

- *¼-Street frontage improvements along Brink Court to meet the City of Salem Collector "A" standard of 34-foot curb-to-curb width, including curblin sidewalk, curb/gutter, landscape strip, utility extensions/services and asphalt widening.*
- *ADA compliant corner ramp at Mahrt Avenue/Brink Court intersection.*
- *Mahrt Avenue sidewalk and potentially curb repair/replacement as well.*
- *The above shall be done under a Major Construction Permit.*

Nexus is to mitigate the anticipated added traffic to Brink Court and Mahrt Avenue and the need for public improvements in accordance with MCC 16.33.160 and 320.

*Condition C – Prior to plat approval, design, permit, and construct a stormwater attenuation facility for the RS lots and a Water Quality Treatment (WQT) facility for those lots if the WQT component is an aggregate system. If the WQT component for the RS Lots are lot-specific raingardens, then each raingarden shall be completed prior to final building inspection for each respective lot.*

*Condition D – Prior to plat approval, record a stormwater O&M Agreement for the WQT component of the RS lots, unless that component were to meet MCPW Engineering criteria for ESSD maintenance takeover. Prior to issuance of a Building Dept. C/O for the RM lot, record a stormwater O&M Agreement for that as well.*

For Conditions C & D, Stormwater management is an Engineering Requirement as authorized under MCC 16.33.160; however, it is being elevated to Condition status as a matter of timing for completion.

*Condition E – On the plat depict necessary drainage, access and utility easements.*

Nexus is to satisfy MCC 16.33.300.

*Condition F – Prior to issuance of a Building C/O for the RM Lot, a man-gate accessible pedestrian pathway from the RM Lot through Lot 1 (Church property) and connecting to State Street shall be designed and constructed for convenient access to the nearest public transportation route.*

*Condition G – Prior to application for building permits for the buildable RM lot, submit and acquire review approval from Marion County Traffic Engineering of a Transportation Impact Analysis (TIA) analyzing traffic generated by the RM lot. Prior to application for building permits, acquire design approval and construction permits for any identified mitigation measures that may warrant immediate construction, or in the alternative where a global project is being scoped that will be affected by this development, remit a proportional share contribution toward future improvements. Prior to final building inspection, acquire PW Engineering final inspection approval for any immediate improvements in the public R/W.*

Requirement for the TIA in this case is based on deferral to City of Salem criteria for property within the UGB, whereby the City uses a 200-trip threshold additive to a Local street. Please contact Marion County Transportation Planner, Janelle Shanahan, at JShanahan@co.marion.or.us or (503) 566-4147 to determine the scope of the analysis.

#### ENGINEERING REQUIREMENTS

H. 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.

I. An On-site Stormwater Drainage Permit will be required. The County requires any development having 0.5-acre or more of impervious (hard) surface to provide stormwater detention. For the RM lot, acceptable drainage and detention systems must be designed and approved prior to issuance of a building permit. Any such system as required must be constructed and approved by Public Works prior to final building inspection.

J. Where individual lot Water Quality Treatment (WQT) systems are elected by design to satisfy the requirement, then an approvable system such as a raingarden must be identified on the building application site plan.

K. A Storm Drain Connection Permit will be required if drainage from the subject property is to drain to the public stormwater system along State Street, Mahrt Avenue, or Brink Court. This permit also requires a Storm Drain Plumbing Permit be obtained from Marion County Building Inspection. Downstream system capacity may need to be evaluated for sufficiency.

L. The Oregon Department of Environmental Quality (DEQ) has designated a "Stormwater Management Area" (SMA) in Marion County, within which the subject property is located. Marion County is currently accountable to the DEQ under a National Pollutant Discharge Elimination System (NPDES) Phase II MS4 Permit, and as a delegated Qualified Local Program to regulate stormwater water quality treatment within the SMA. Applicability is for construction activities disturbing 1-acre or more to less than 5 acres, or less than 1 acre but part of a larger common plan that will ultimately disturb more than 1 acre. Under the Program, MCPW Engineering may issue the following two Permits within the SMA:

1) Large Development Erosion Prevention and Sediment Control (EPSC) Permit, per Marion County Code 15.10, applicable fee.

2) DEQ 1200-CN Construction Stormwater General Permit, blanket coverage, no fee. Coverage under the 1200-CN is required for all building permits associated with the resulting subdivision and ground disturbing activities. Applicable design standards are referenced in the Marion County Draft Interim Stormwater Quality Treatment Engineering Standards for the Stormwater Management Area. Water quality design elements may be standalone or incorporated into a common system, such as a pond. The system(s) must be designed, approved and constructed as a stipulation of final plat approval and/or final building inspection, as determined by PW.

M. The following numbered sub-requirements pertain to public access:

1) If the easement through the Church parking lot is to serve RM Lot 2, it shall be used for Fire Access only, and gated accordingly. Public vehicular access to the multi-family lot shall only be taken directly off Mahrt Avenue in accordance with City of Salem Transportation System Plan Policy 3.1.1 whereby properties with frontage along two streets shall take primary access from the street with the lower functional classification.

2) Access to Lot 4 shall be near the west property line.

3) Access to Lot 5 shall be near the east property line.

4) Access to Lot 7 shall be off Brink Court near the north property line.

5) Ideally, access to RM Lot 2, the multi-family Lot, would align directly across from Eastland Place as described in the Application materials. The site plan provided does not indicate the location of Eastland Place relative to the new proposed access; however, it is roughly estimated to be offset by 50 feet, which could amplify undesired turning movement conflicts. If there is flexibility in the site plan layout, then effort should be made to align the

street connections, although this is not viewed by PW Engineering as mandatory in this case considering the lower background traffic volumes on Mahrt Avenue.

6) Access to RM Lot 2 shall be driveway-style.

7) In accordance with MCC 11.10, upon application for building permits, Access Permits will be required for each lot. Driveways must meet sight distance, design, spacing, and safety standards.

#### ENGINEERING ADVISORIES

Applicant should also be aware of the following:

N. Sanitary sewer service is provided by the City of Salem.

O. Potable water is provided by Suburban East Salem Water District.

Oregon Department of Aviation commented that the proposed development is a compatible use due to its distance from the airport and height restrictions in the zone.

Marion County Tax Assessor provided tax printouts and commented that real property taxes for the subject property are paid, a potential tax liability may exist which might need to be paid before partition or adjustment, and that under ORS 92.095, all delinquent taxes, interest, and taxes that have become a lien during the tax year would need to be paid before recording a partition.

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

The Oregon Department of Land Conservation and Development (DLCD) acknowledged receipt of the county's comprehensive plan amendment notice.

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. Applicant has the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met. 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 evidence for any criterion is equally likely or less likely, applicant has not met its burden and the application must be denied. If evidence for every criterion is in applicant's favor, then the burden of proof is met and the application is approved.

## COMPREHENSIVE PLAN AMENDMENT

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. Comments from the City of Salem were requested but none were received by the county.
3. DLCD must be notified of proposed comprehensive plan amendments. DLCD was notified as required and acknowledged receipt of the notice but provided no comments.
4. Under MCC 16.43.000(A), a non-legislative plan amendment involves a change to the land use designation of five or fewer different ownerships. This application involves one parcel in one ownership and is a non-legislative plan amendment.
5. Under MCC 16.36.070, applications shall include the following signatures:
  - A. Signatures of all owners of the subject property; or
  - B. The signatures of the purchasers of the property under a duly executed, recorded, written contract of sale; or
  - C. The signatures of lessee in possession of the property with the written consent of all the owners; or
  - D. The signatures of the agent of those identified in subsection (A), (B) or (C) of this section when authorized in writing by those with the interests described in subsection (B) or (C) of this section, and all the owners of the property; or
  - E. The signature of an authorized agent of a public agency or utility holding an easement or other right that entitles the applicant to conduct the proposed use on the subject property without the approval of the property owners; and
  - F. The signature of the applicant and the applicant's address and phone number.

A deed recorded at volume 482, page 340 of the Marion County deed record shows the subject property was conveyed to Christ Lutheran Church in 1955. The original comprehensive plan amendment/zone change application and the new subdivision application are signed by Ronald Mohr, applicant's council president. Testimony in May 2018 acknowledged Mr. Mohr's signing authority for applicant. MCC 16.36.070 is met.

6. MCC 16.43.020 contains the following criteria for non-legislative plan amendments:



- A. Conformance with the Comprehensive Plan goals, policies and intent, and any plan map amendment criteria in the plan, or intergovernmental planning coordination agreement, pertaining to unincorporated lands.
  - B. The addition of the subject property to the inventory of lands in the proposed map designation and the corresponding inventory reduction in the current designation are consistent with projected needs for such lands in the Comprehensive Plan.
  - C. Uses allowed in the proposed designation will not significantly adversely affect planned uses on adjacent lands.
  - D. Public facilities and services necessary to support uses allowed in the proposed designation are available or are likely to be available in the near future.
7. *SACP goals, policies and intent.* The subject property is within the Salem UGB and is subject to the SACP. SACP III(B)(4), reflects an agreement between the city and the county which grants Marion County exclusive jurisdiction over land use actions outside the city limits but within the Salem UGB. Under SACP II(A)(1), the SACP is intended to project the most desirable pattern of land use in the Salem area as represented on the comprehensive plan map. One way Salem meets its urban land needs is through annexation and rezoning in response to demands for specific land uses over time. The city's intent is to retain the flexibility to be responsive to changing conditions, yet recognize the legitimacy of existing zoning. If a land use proposal is inconsistent with the comprehensive plan map or policies, an applicant may, as done here, file for a comprehensive plan map amendment.

Under SACP II(A)(3)(a), the three categories of residential uses are Single-Family Residential, Multi-Family Residential and Developing Residential. The 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 area where the subject property is currently located is developed with single-family and multiple-family housing and is served by public facilities. Whether the subject property is suitable for residential development at multiple-family density will be determined by the BOC in this land use process.

Single-Family and Multi-Family Residential categories encompass all types of housing. Changes in use designation to permit higher residential densities are governed by the goals and policies of the SACP and the local rezoning process. The intent of SACP residential designations is:

- (a) To retain and conserve the existing sound housing stock;
- (b) To provide for the systematic conversion of sites to more intensive residential uses in accord with development policies and standards;
- (c) To provide and maintain an overall land use pattern in the urban area that is consistent with the service capabilities of the jurisdictions;
- (d) To ensure a compatible transition between various types of housing;

- (e) To provide and maintain a supply of serviced, developable land throughout the urban area for residential and other urban uses, as demand warrants and service capabilities permit;
- (f) To stabilize and protect the essential characteristics of residential environments, including natural features;
- (g) To encourage locating residential development where full urban services, public facilities, and routes of public transportation are available;
- (h) To permit multi-family housing developments which are consistent with development standards and growth policies to blend into the overall fabric of the Salem urban area.

The criteria used to develop an acceptable residential land use pattern will include:

- (a) The changing social, physical, and economic factors which take place within an area and its potential long-range effect on land use.
- (b) The desirability for redevelopment and infill within existing neighborhoods to higher densities.
- (c) The necessity of managing urban growth over time in accordance with the ability to provide urban support services such as sewer, water, streets, and recreation, which would occur after annexation.
- (d) The provision of a transitional land use pattern from the urbanized core to the rural area outside the Urban Growth Boundary.
- (e) The need to ensure opportunities for a variety of housing alternatives throughout the urban area.
- (f) The need to provide land for support services to the residents of an area, such as neighborhood shopping facilities, schools, parks, and churches.

These residential designation intentions and "criteria" are the planning lenses through which a decision maker views SACP policies. SACP IV, Salem Urban Area Goals and Policies, contains the following applicable policies:

*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.

Policy 7's 6.5 units per acre number is an aspirational, overall density average and not a minimum or maximum density requirement. Under MCC 16.27.050(C), the RM zone allows one dwelling unit per 1,500 square feet (sf) of lot area. At 76,804 sf, the proposed new RM zoned area of the property would allow a maximum of 51 dwelling units. Under MCC 16.02.120(A), 4,000 sf is the RS zone minimum lot area per single family dwelling in the Salem-Keizer UGB. The 41,416 sf RS zoned remainder area would allow ten single family dwelling units on the site. The proposed 61 RM and RS dwelling units on 2.7 acres would yield about 22 units per acre. MCC density standards optimize residential use of this land.

The property to be developed is flat, vacant and contains no watercourse. Grading will be required for development, indicating erosion potential, and neighbors point out seasonal flooding occurs on and near the site. On-site erosion control best management practices will be required during construction. PW LDEP comments note several stormwater detention and water quality treatment requirements. Applicant acknowledges the county's detention and water quality requirements and provided an engineer's statement that county standards can feasibly be met. The BOC should condition any approval on meeting these standards. As conditioned, general development policy 7 will be met.

*General development policy 15* - Exterior lighting shall be designed to provide illumination to the site and not cause glare into the public right-of-ways and adjacent properties.

Requiring a lighting plan that demonstrates how the property can be lighted to illuminate the property and not cause glare or spillage on public streets and adjacent properties as a condition of approval will satisfy general development policy 15.

*C. Urban growth policy 4* – Development of land with existing urban services shall be encouraged before the conversion of urbanizable lands to urban uses.

The proposed development area has urban services such as water and sewer. Developing this property with single-family and multi-family uses is consistent with this policy.

*D. 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 services, schools, parks and transportation facilities.

This policy is sub-headed, infill development. The subject property is already developed with a church. This proposal would develop a large vacant portion of the property that is in an otherwise developed neighborhood. The proposal is for infill development. As noted above, MCC residential development standards maximize land use. The development site is flat, vacant and contains no watercourse. There will be no interference with, or complications from, development on slopes of hills or ravines or within riparian areas. Water and sewer services, roads, schools and parks already serve the area; no new extensions of service are needed. 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 the 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 within water and sewer service areas. This policy is met.

*Growth management policy 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.

Facilities are in place, but people in the area question their adequacy for multiple-family housing. Even with the modified proposal, residents still point to seasonal flooding on the subject and surrounding property and on Mahrt Avenue, and speak of inadequate water pressure, roadway safety problems, including lack of sidewalks, overcrowded schools, and too few parks.

Applicant reduced the number of dwelling units from the originally proposed 72 to 124 units to 52 to 61 units, including ten single family units; an overall decrease in proposed density. School District 24J was asked for comments on the original and modified plans, but did not respond. The county recently established a public safety fee for additional Marion County Sheriff's Office (MCSO) services in the area. Santana Park and Auburn Park are about a half mile away in different directions. PW will require on-site erosion control best management practices during construction. PW LDEP noted several stormwater detention and water quality treatment requirements. Applicant acknowledges and accepts the county's detention and water quality requirements, and provided an engineer's opinion that county standards can feasibly be met at the site. Applicant's appendix B includes a statement from a City of Salem Public Works Department utilities engineer that the City of Salem sewer system has capacity to handle the proposed development. Applicant's appendix C includes a statement from a manager at Suburban East Salem Water District (SESWD) saying that existing water mains are sufficient to supply the proposed site and should not have a negative impact to the water supply for the surrounding area. PW LDEP requested right-of-way dedication on Brinks Court, and frontage improvements on Brinks and Mahrt, and also requested a full traffic impact analysis (TIA) for the RM portion of the development. Applicant accepted PW-requested right-of-way dedications and improvements. Applicant deeds a definite access plan for BOC review because ingress and egress to RM development was up in the air at close of record. LDEP requested emergency access only through the northern church property. Applicant objects and proposes full access at State Street. Applicant is not asking for approval of a specific development plan in this application, but must still show that the property can feasibly meet RM development standards or meet them through conditions of approval. Applicant's site plan shows a feasible development plan for the property, but the access issue is not resolved. **If access issues are resolved, it is likely growth management policy 9 can be met.**

*Growth management policy 11* – Where development creates a demand for new or expanded facilities and services, a share of the costs of new or expanded facilities and services should be borne by the new development itself.

Current water, sewer and drainage facilities, with PW's requested conditions and engineering requirements are or will be adequate to serve development on the proposed re-designation area. Applicant will bear the cost of and provide sidewalk and curb improvements along Mahrt, and sidewalk, planting strip and asphalt improvements along

Brink, and corner improvements where the two streets meet. Growth management policy 11 is met.

*Residential development policy 1* - The location and density of residential uses shall be determined after consideration of the following factors;

- a. The type and distribution of housing units required to meet expected population growth within the Salem urban growth boundary.
- b. The capacity of land resources given slope, elevation, wetlands, flood plains, geologic hazards and soil characteristics.
- c. The capacity of public facilities, utilities and services. Public facilities, utilities and services include, but are not limited to municipal services such as water, sanitary and storm sewer, fire, police protection and transportation facilities.
- d. Proximity to services. Such services include, but are not limited to, shopping, employment and entertainment opportunities, parks, religious institutions, schools and municipal services. Relative proximity shall be determined by distance, access, and ability to provide services to the site.
- e. The character of existing neighborhoods based on height, bulk and scale of existing and proposed development in the neighborhood.
- f. Policies contained in facility plans, urban renewal plans, residential infill studies and neighborhood and specific development plans.
- g. The density goal of General Development Policy 7.

*Factor 1(a) - Type/distribution of housing.* Exhibit 6 from the initial application file shows multiple-family residential development is spread throughout most areas of Salem. The City of Salem identified a need for additional multiple-family housing and development land as shown in applicant's appendix D. Multiple-family development already exists on State Street near the proposed development site, but not on Mahrt Avenue.

*Factor 1(b) - Capacity of land resources.* The subject property contains no identified wetlands. The property is flat but some grading will be required for development. Erosion control measures will be required during construction. The property is not within a geologic slide hazard or floodplain overlay zone, though neighbors say it floods locally during the wet season. PW LDEP comments note several stormwater detention and water quality treatment requirements. Applicant acknowledges the county's detention and water quality requirements and provided an engineer's statement that county standards can feasibly be met. The BOC should condition any approval on meeting these standards.

*Factor 1(c) - Capacity of public facilities, utilities and services.* As discussed above, applicant provided information from City of Salem saying there is adequate sewer capacity to serve the proposed development. Neighborhood residents report low water pressure problems at times, but the record contains information from SESWD saying that existing water mains are sufficient to supply the proposed site and should not have a negative impact to the water supply for the surrounding area. The water pressure issue as expressed at hearing implicates occasional cyclical water use spikes, such as summer lawn watering, that may lead to lesser flows but not serious water shortages or impairment. According to neighbors,

drainage is an issue on and nearby the site. PW LDEP noted several on-site stormwater detention and water quality treatment requirements for the development. Applicant acknowledges and accepts the county's detention and water quality requirements. Applicant's engineer provided a written public utility assessment for the property, noting that on-site stormwater detention will control developed site runoff to less than pre-development conditions.

MCFD1 provided a list of fire and life safety requirements that applicant must meet. These standards will be handled at time of development.

Concern was expressed about the potential for increased crime in the area. Law enforcement protection services are provided by MCSO. The county recently established a public safety fee for additional MCSO services in the area.

Community members have safety concerns about increased traffic from the proposed development, pointing out that sidewalks are lacking in much of the area, including along Brink Court and portions of the streets leading from the site to Lancaster Drive. PW LDEP requested right-of-way dedication on Brinks Court, and frontage improvements on Brinks and Mahrt, and also requested a full TIA for the RM portion of the development. Applicant accepted PW-requested right-of-way dedications and improvements. Applicant still needs a definite access plan for BOC review because ingress and egress to State Street was up in the air at close of record. With access issues resolved, pedestrian and vehicle traffic capacity, while not optimal, will be available.

*Factor 1(d) - Proximity to services.* Applicant notes that public bus transit is available along State Street to the north, Lancaster Drive to the west and Cordon Road to the east and bus passengers can get to locations throughout the Salem urban area. Four Corners Elementary School is about 950' away, while Houck Middle School is a little more than a half mile away. Santana Park and Auburn Park are within a half a mile. Applicant noted seven religious institutions and a variety of goods and services providers within a mile of the site.

*Factor 1(e) - Character of existing neighborhoods.* Applicant proposes 42 to 51 multi-family dwelling units. The site plan submitted is illustrative and not a guaranteed plan. It shows 42 units in three, three-story buildings on 1.76 acres. Neighbors point out that multiple-family housing and two-story buildings are common on State Street but not on Mahrt Avenue.

The planning map for the Salem urban area shows RM and RS properties border each other in several areas, including this neighborhood, where single-family dwellings back up to multiple-family developments along a fairly straight east-west dividing line between the RM and RS zoning. To the west across 44<sup>th</sup> Avenue, RM and RL (Limited Multiple-Family) property (same color as RM on map), allows single, duplex, multi-family and other uses and already protrudes across the general single family dividing line. But, that development does not reach Mahrt Avenue and routes all RM generated traffic onto State Street. The new proposal for the subject property would, similarly, allow a protrusion of multi-family development into the single family development area, but would allow some or all traffic onto Mahrt Avenue. Maximum height limits in the RS, RL and RM zones are all 35',



potentially allowing three-story structures, whether multi-family or not. Still, three, three-story buildings with 12 to 18 dwelling units each are different in height, bulk and scale from existing development in the existing neighborhood along Mahrt Avenue.

*Factor 1(f) - Plan policies.* No urban renewal plans, residential infill studies and neighborhood and specific development plans are known for this area. Applicant mentions the City of Salem Stormwater Master Plan as applicable and Salem Wastewater Management Plan as applying within the UGB. As applicant notes, MCPW requires on-site water quality and stormwater detention facilities for the proposed development.

*Factor 1(g) - Density goal in General Development Policy 7.* As found above and incorporated here, General Development Policy 7's residential density goal is met.

Summary. Applicant added substantial new evidence to the record regarding public service capacity, and many factors favor applicant, but access and neighborhood character factors do not. **The BOC will weigh each factor and determine whether residential policy 1 is met.**

*Residential development policy 2* - Residential uses and neighborhood facilities and services shall be located to:

- a. Accommodate pedestrian, bicycle and vehicle access;
- b. Accommodate population growth;
- c. Avoid unnecessary duplication of utilities, facilities and services; and
- d. Avoid existing nuisances and hazards to residents.

*2(a) - Access.* The issue of access onto State Street had yet to be resolved at time of hearing. PW LDEP deferred to City of Salem regulations that favor access by secondary street when a property abuts differently classified streets. Here, State Street is a major arterial street while Mahrt Avenue is a local street, so in LDEP's engineering requirement M, access to State Street would be fire access only. Applicant disagrees. In its first iteration, this plan proposed access onto Mahrt Avenue only, but applicant later revised the plan to allow access onto State Street. PW appeared to welcome applicant's revised plan for State Street. It appeared the plan could improve vehicle access and provide improved access to dedicated bicycle lanes and transit stops on State Street. Bicycle and pedestrian access to State Street still appears available via PW's requested "man gate" to the northern portion of the subject property, but vehicular access needs to be resolved. **Applicant needs to address State Street access at the BOC hearing.**

*2(b) - Population growth.* There is an acknowledged shortage of RM zoned land in the Salem urban area and this proposal will help accommodate predicted population growth.

*2(c) - Facilities, utilities and services.* Facilities, utilities and services are already in place and will not be duplicated. Some roadway dedication and improvements are requested by PW and were accepted by applicant. **Access questions are yet to be resolved.**

*2(d) - Nuisances and hazards.* Sidewalk facilities are not available throughout the area, even along routes to Lancaster Drive, a commercial area with transit connections, and a likely destination for pedestrians. Some roadway dedication and improvements for sidewalks at the site are requested by PW and accepted by applicant.

**If access questions are adequately addressed, this policy could be met.**

*Residential development policy 3* - City codes and ordinances shall encourage the development of passed-over or underutilized land to promote the efficient use of residential land and encourage the stability of neighborhoods.

This is a directive for code and ordinance drafters rather than a criterion for applicants, but this infill development proposal is consistent with this policy.

*Residential development policy 4* - Rehabilitation and maintenance of housing in existing neighborhoods shall be encouraged to preserve the housing stock and increase the availability of safe and sanitary living units.

This site is undeveloped. This policy is not applicable.

*Residential development policy 5* - Subsidized housing shall be provided at a variety of locations within the urban area.

This policy is aimed at governing bodies and is outside of applicant's control. This policy is not applicable.

*Residential development policy 6* - Multi-family housing shall be located in areas proximate to existing or planned transportation corridors, public facilities and services:

- a. To encourage the efficient use of residential land and public facilities, development regulations shall require minimum densities for multiple family development zones;
- b. Development regulations shall promote a range of densities that encourage a variety of housing types;
- c. Multiple family developments should be located in areas that provide walking, auto or transit connections to:
  - (1) Employment centers;
  - (2) Shopping areas;
  - (3) Transit service;
  - (4) Parks;
  - (5) Public buildings.

*(a)* The subject site is in an area with existing public facilities and services. The MCC provides no minimum density, but applicant notes the Salem Revised Code (SRC) provides minimum density standards for city RM zoned properties. Salem Revised Code, Title X, chapter 513, RM-I zoning, requires an eight unit per acre minimum density and chapter

514, RM-II zoning, requires a 12 unit per acre minimum density. At 42 to 51 units on 1.76 acres, the proposed development would well-exceed minimum density requirements if annexed into the City of Salem.

(b) Section b is directed to regulation developers rather than housing developers, and is not applicable.

(c) Applicant provided information on walking, auto or transit connections to (1) through (5) above.

*Employment centers.* SRC, Title X, chapter 550 is the Employment Center (EC) zone, which generally allows a range of industrial and employment uses, together with areas of supportive retail and service uses, providing a variety of long-term and short-term employment opportunities and furthering economic development within the city.

The only EC zoned area on the Salem zoning map is 1.75 miles south of the site in the Southeast Mill Creek area, at the intersection of Kuebler Boulevard SE and Lancaster Drive/Aumsville Highway SE. Development in the EC zoned area is growing, and it can be reached by Bus Line 11, accessed from Lancaster Drive, about ½ mile walk or bike ride from the subject property. The estimated automobile drive time to the Southeast Mill Creek area is about seven minutes.

Marion County industrial, commercial and commercial general zone areas allow for a range of industrial and employment uses with supportive retail. These areas are concentrated along the Lancaster Drive corridor between Center Street and Munkers Street. The intersection of State Street and Lancaster Drive, about ½ mile from the subject site, is within this area.

*Shopping Areas.* Shopping areas are provided along Lancaster Drive. Cherriots #11 bus line operates service up and down the Lancaster Drive corridor. Shopping areas include Willamette Town Center and other commercial developments with restaurants, retail stores and professional services, such as Target, Fred Meyer, WinCo Foods, Regal Cinemas, Walgreens, and AutoZone Auto Parts.

*Transit Service.* Two bus lines are established within ½ mile of the site. Cherriots bus line #4 operates along State Street and provides service to the Salem transit center downtown. Cherriots bus line #11 operates along Lancaster Drive and provides frequent service between Keizer Transit Center and South Lancaster Drive.

*Parks.* Applicant provided the following list of parks within a one-mile radius of the site.

Cascades Gateway Park at 2100 Turner Rd SE - A 100 acre City of Salem public park with trail system, lake fishing, a disc golf course, playground, fenced dog park and picnic areas.

Santana Village Park, 850 Shawnee Dr. SE - A 4.1-acre neighborhood park owned by a private non-profit group. The site contains basketball and tennis court facilities, a practice field for baseball/softball, horseshoe pits, and picnic tables.

Geer Park, 3071 State St. - A 26-acre City of Salem public park. The site contains open spaces, ball fields and play equipment.

Auburn Park, adjacent to Auburn Elementary School, and, like Santana Park, is about ½ mile from the subject site.

*Public Buildings.* Section IV, Salem Urban Area Goals and Policies, Subsection M, Public and Semi-Public Buildings and Lands, of the Salem Area Comprehensive Plan, refers to public buildings as "principal local government, state and federal offices." This subsection also discusses Capitol Mall, J building at the Oregon State Hospital, and a convention and conference center in this context of public and semi-public buildings that meet needs of area residents. Chemists bus line #4 operates along State Street and provides service to downtown Salem within a few blocks of the Capital Mall and convention center. Travel by automobile would be approximately 10 minutes. The Oregon State Hospital is approximately 2.5 miles (6 minute drive or 30 minute bus ride) from the subject property. Other examples of local, state, or federal facilities within a 2 mile radius of the site include:

- Four Corners Elementary School, 500 Elma Avenue SE
- Houck Middle School, 1155 Connecticut Street SE
- Roberts High School, 3620 State Street
- Miller Elementary School, 1650 45th Place SE
- Marion County Soil & Water Conservation, 338 Hawthorne Avenue NE
- Marion County Public Health, 3180 Center Street NE
- US Consolidated Farm Services Agency, 650 Hawthorne Avenue SE
- Oregon Department of Transportation, 885 Airport Road SE
- The Suburban East Salem Water District, 3805 La Branch Street

The subject site is reasonably within walking, transit or auto travel distance of needed facilities and services.

*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 transportation system is in place. Applicant's provision of additional right-of-way and street and sidewalk improvements will provide another piece of the transit system. This policy is met.

*Residential development policy 8* - Residential areas shall be protected from more intensive land use activity in abutting zones.

The subject property is already within a residential area and a residential use is proposed. Residential development policy 8 is met.

*Residential development policy 9* - Subdivision and zoning regulations shall provide opportunities for increased housing densities, alternative housing patterns, and reduced development costs. Development regulations shall promote residential development patterns that encourage:

- a. The use of all modes of transportation;
- b. Reduction in vehicle miles traveled and length of auto trips; and
- c. Efficiency in providing public services.

The subject proposal will provide for increased housing density in the area and is adjacent to existing RM zoning. Access to State Street through a proposed gate would allow access to bicycle lanes and bus stops which could reduce motor vehicle trips. Public service efficiency would be achieved because public service facilities are already in place. This policy can be 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 hearings officer previously interpreted this policy to apply to sites already designated for Multiple-Family Residential but not yet zoned RM, such as UD (Urban Development) zoned properties, and found it not applicable. Should the BOC disagree with this interpretation, an alternative finding is provided for BOC consideration. Applicant asks to re-designate a 1.76-acre portion of the property to Multiple-Family Residential. If approved, the proposed development will be appropriate for the site's designation. Public services are in place, but some improvements are necessary, such as roadway improvements at the site. The subject property is flat and has no obvious physical constraint for higher density. As shown above Residential Development Policy 7 is met. **This policy can be met with re-designation of the site, roadway improvements and access issue resolution.**

*Residential development policy 11* - Design Standards shall be implemented to improve the quality of life of Salem's residents and promote neighborhood stability and compatibility.

City of Salem design standards are not implemented by MCC title 16, but the MCC has several development standards designed to improve livability within the UGB area.

**Based on the current record in this case, it is not clear that the proposal conforms to all applicable SACP goals, intent and policies. MCC 16.43.020(A) is not proven met.**

8. *Lands inventory.* In December 2014, ECONorthwest provided a Draft Housing Needs Analysis evaluating the inventory of buildable land within the Salem UGB against the projected demand for housing needs from 2015 to 2035. On page 34 of this report, Table 4 summarizes needed unit distribution from 2015-2035 as 60% detached single-family, 5% attached single-family, and 35% multi-family, or a need for 8,174 multi-family, 14,013 single-family detached, and 1,168 single-family attached units.

On page 46, table 12 compares existing residential land capacity with new dwelling unit demand. Data shows a 1,975-gross-acre surplus for single-family residential development, and a 207-gross-acre deficit for multi-family residential development. The analysis finds a need to allocate 59 acres of surplus single-family and developing residential land to zoning designations that accommodate retail and services in neighborhood centers, decreasing the surplus of single-family and developing residential land to 1,916 acres. The Housing Needs Analysis remains un-adopted by the City of Salem until action is taken to address the deficiency in buildable lands for multi-family housing. One of the recommendations put forth in the Housing Needs Analysis report is to increase capacity by re-designating existing single-family or developing residential land to multi-family land.

The proposal to re-designate a portion of the subject property from Single-Family Residential to Multiple-Family Residential is consistent with identified needs for additional multifamily housing within the buildable lands inventory without creating a deficiency in the single-family lands inventory. MCC 16.43.020(B) is satisfied.

9. *Significant adverse affect.* If designated Multiple Family Residential, the 1.76-acre portion of the subject property will be zoned RM and will abut RS and RM zoned property. The proposed RM zoning would allow the same uses as the other RM zoned portion of the church property. Properties east, south and west of the subject property are designated, zoned for and developed with single-family dwellings. Many neighbors living in the RS zoned area believe the proposed multi-family use is incompatible with single-family residential use.

The size and location of the 1.76-acre proposed multi-family area make some RM zone uses, like a golf course, impracticable. Many RM and RS zone uses are allowed or conditionally permitted in both zones. Applicant provided proof that water and sewer capacity are available for the proposed use, and that on-site stormwater detention is feasible. Increased density increases traffic. At the time of the hearing, access to the RM parcel was still up in the air. State Street access issues need to be addressed.



Neighbors state that increased height and size of proposed RM building will be dissimilar to existing development along Mahrt Avenue. RM and RS zone height standards are both 35', allowing three-story residential development in both zones. Purchasers of the new single-family lots bordering the south and east of the development would be on notice of neighboring RM zoning. Four existing single-family lots to the west will share a rear property line with proposed RM zoned lot 2. One lot already abuts RM zoning to the north. Dwellings on the four single-family lots are set back about 70 feet from the shared proposed lot 2 property line. Applicant's plan, while conceptual, shows resident and visitor access and traffic concentrated within lot 2's interior rather than along shared RM/RS property lines.

**Applicant must address access more fully at the BOC hearing to help the BOC determine whether MCC 16.43.020(C) is satisfied.**

10. *Public facilities and services.* Telephone and electric services are available to the subject property. City of Salem Public Works staff confirmed that sewer service can be provided and the Suburban East Salem Water District confirmed adequate water supply is available to serve a project of this density. An engineer verified the feasibility of constructing drainage improvements to prevent off-site stormwater impacts by capturing and treating all stormwater on-site. Applicant plans to align RM access with Eastland Place to the extent possible to minimize traffic conflict points. No direct RM zone access is planned for Brink Court, and parking will be provided on-site. Ingress and egress to the site was not resolved as of the hearing date. **Given the need to resolve site access issues, MCC 16.43.020(D) is not met.**
11. **Based on the current record, the comprehensive plan amendment approval is not recommended.**

#### ZONE CHANGE

12. 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.

13. An SACP analysis is provided above. The hearings officer finds additional information is needed to allow proper evaluation of the comprehensive plan amendment. **If the BOC find the comprehensive plan amendment proper, and necessary conditions are imposed, the proposal would conform to the SACP, and MCC 16.39.050(A) would be satisfied.**
14. Site access still needs to be addressed. **If access issues are resolved to BOC satisfaction, public facilities will be adequate and available. Currently, MCC 16.39.050(B) is not satisfied.**
15. Under MCC 16.04.000, 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.

If the comprehensive plan amendment is approved, the proposed property will be designated Multi-Family Residential and the RM zone will be appropriate. Commercial zones are fairly nearby on Lancaster Drive. **State Street is an arterial street. Mahrt Avenue is a local street and would not be an appropriate location for multiple-family housing with access onto Mahrt Avenue only. Given the unresolved access issue, the purpose and intent of MCC 16.04.000 is not met. MCC 16.39.050(C) is not met.**

16. MCC 16.01.030 lists SACP designations and compatible MCC zones. Applicant proposes the Multi-Family Residential designation for the subject site. The RL, RM, UT and UD zones are listed as appropriate for the Multi-Family designation. The RM zone is the least restrictive zone, and allows the most intensive densities and uses. The proposed Multiple Family Residential designated portion of the subject property would be zoned RM and abut RS and RM zoned property. Proposed RM zoning would allow the same uses as the current RM zoned portion of the church property. Properties east, south and west of the subject property are designated and zoned for and developed with single-family dwellings. Many neighbors living in the RS zoned area believe the proposed multi-family use is incompatible with single-family residential use.

The size and location of the proposed multi-family area make some RM zone uses impracticable at the site (golf course), and many RM and RS zone allowed and conditionally permitted uses overlap. Applicant provided proof that water and sewer capacity are available for the proposed use, and that on-site stormwater detention is feasible. Increased density increases traffic. At the time of the hearing, access to the RM parcel was still up in the air. State Street access issues need to be addressed at the BOC hearing.

The height standard in the RM and RS zones is 35' and could allow three-story residential development in both. Proposed new single family lots would border the south and east. Four lots to the west are developed with single family dwellings. One lot abuts RM zoning on its northern property line. All lots share a rear property line proposed RM lot 2. The dwellings are set back about 70' from the shared line. Applicant also points out that traffic in

and out of lot 2 will be concentrated in the lot 2 interior not along the shared lot line. Applicant's plan, while conceptual, appears to provide a good blue print for addressing compatibility issues.

**Access should be addressed more fully before the BOC to help determine whether MCC 16.39.050(D) is satisfied.**

17. **The proposed zone change is not recommended.**

#### SUBDIVISION

18. Under MCC 16.02.120, within an RS zone:
- A. Lot Area. The minimum lot area for a single-family dwelling in a subdivision approved after the effective date of the ordinance codified in this title, is 4,000 square feet when located within the Salem/Keizer area urban growth boundary. In all other cases lots shall be a minimum of 6,000 square feet. (See Chapter 16.27 MCC for density limitations.)
  - B. Lot Dimensions. Except as provided in MCC 16.26.800 for planned developments, the width of a lot shall be at least 60 feet; provided, that within the Salem/Keizer urban growth boundary the width of a lot shall be at least 40 feet, and the depth of a lot shall be at least 70 feet.

Under MCC 16.27.050(A), density in the RS zone is one dwelling unit per 4,000 sf lot. All RS zoned parcels on the proposed site plan are 4,000' sf or more. All RS zoned parcels on the proposed site plan have widths greater than 40' and depths greater than 70'. MCC 16.02.120(A) and (B) are met.

19. Under MCC 16.04.120, within an RM zone:
- A. Lot Area, Multi-family Dwellings and Other Uses. At least 6,000 square feet. (See Chapter 16.27 MCC for density limitations.)
  - B. Lot Dimensions. The width of a lot shall be at least 40 feet, and the depth of a lot shall be at least 70 feet except as provided in MCC 16.26.800 for planned developments.

The proposed multi-family lot is shown on applicant's site plan as 76,804 sf, well over the 6,000 sf minimum lot size. Under MCC 16.27.050(C), the RM zone allows one dwelling unit per 1,500 sf. At 76,804 sf, the proposed RM zoned area of the property would allow a maximum of 51 dwelling units. The RM development lot is well over the 40' width and 70' depth requirements. MCC 16.04.120(A) and (B) are met.

20. Under MCC 16.33.040, when considering a subdivision or partitioning plan, the commission, director, hearings officer or board, when it exercises its authority pursuant to

Chapter 16.37 MCC, shall consider whether or not it is in accordance with the adopted ordinances, comprehensive plans, and land development policies of Marion County. In reviewing an application, the commission, director, hearings officer or board may prescribe conditions or make changes or modifications to the subdivision or partitioning plan to bring them into compliance with any applicable ordinances or regulations.

The subject property is within the City of Salem UGB. Under the Marion County Comprehensive Plan (MCCP) urbanization section, the county retains legal authority to control land uses within UGB areas and carry out city comprehensive plans with implementing policies in areas immediately outside city limits. SACP chapter III, part B(4) acknowledges Marion County's exclusive jurisdiction over all land use actions within the portion of the Salem UGB in Marion County. SACP policies were considered above and not all were met. **MCC 16.33.040 is not met.**

21. Under MCC 16.33.060, no person shall create a street or road for the purpose of partitioning an area or tract of land without the approval of the commission, director, hearings officer, or board.

No new streets or roads will be created. MCPW's requested half width dedication along the subject property's Brink Court frontage, and corner radius dedication at the southeast corner of the Mahrt Avenue/Brink Court intersection would require BOC approval. MCC 16.33.060 can be met.

22. Under MCC 16.33.160, engineering standards and requirements, including but not limited to streets, drainage, access, easements, and thoroughfare improvements, shall be those currently approved by the Marion County department of public works.

MCPW requested street frontage improvements on Mahrt and Brink, and drainage/detention work which applicant acknowledges and agrees to. Site access issues remain. **Applicant should address access issues at the BOC hearing.**

23. Under MCC 16.33.180, no person shall dedicate for public use, or deed to Marion County, a parcel of land which is used or proposed to be used as access without first obtaining the approval of the board or its designee and delivering the deed to the board for its endorsement. No dedication is effective unless the property is accepted by the board or its designee and recorded with the Marion County clerk's office.

MCPW requested and applicants agreed to provide half width dedication along the subject property's Brink Court frontage, and corner radius dedication at the southeast corner of the Mahrt Avenue/Brink Court intersection. Dedications would require BOC approval and recordation. MCC 16.33.180 can be met.

24. Under MCC 16.33.190, applicants submitting preliminary development plans shall provide for local streets oriented to or connecting with existing or planned streets, existing or planned schools, parks, shopping areas, transit stops, and employment centers located within one-half mile of the development. Applicants shall also provide for extension of local

streets to adjoining major undeveloped properties and eventual connection with the existing street system. Connections to existing or planned streets and undeveloped properties along the border of the parcel shall be provided at no greater than 600-foot intervals, unless the planning director, or designee, determines that one or more of the following conditions exist:

- A. Physical or topographic conditions make a street or accessway connection impractical. Such conditions include, but are not limited to, freeways, railroads, steep slopes, wetlands or other bodies of water where a connection could not reasonably be provided; or
- B. Buildings or other existing development on adjacent lands physically preclude a connection now or in the future considering the potential for redevelopment.

This proposal involves street widening and corner radius dedications but no new streets or street extensions. MCC 16.33.190 is not applicable.

- 25. Under MCC 16.33.200, when it appears necessary to continue streets to an adjacent acreage, the streets shall be platted to the boundary or property line of the proposed subdivision without a turnaround. In all other cases, dead-end streets shall have a turnaround with a configuration approved by the Marion County department of public works.

No streets will be platted through the subject property. MCC 16.33.200 is not applicable.

- 26. Under 16.33.220, the property line radius at street intersections shall be to Marion County department of public works' standards.

MCPW asked applicants to provide and applicants agreed to provide corner radius dedication at the southeast corner of the Mahrt Avenue/Brink Court intersection and corner improvements. Improvements will be to MCPW standards. MCC 16.33.220 is satisfied.

- 27. Under MCC 16.33.240, no street grade shall be in excess of 12 percent unless the commission or hearings officer finds that, because of topographic conditions, a steeper grade is necessary. The commission or hearings officer shall require a written statement from the director of public works indicating approval of any street grade that exceeds 12 percent.

The subject property is flat. No grades will be steeper than 12%. MCC 16.33.240 is met.

- 28. Under MCC 16.33.260, if land to be subdivided or partitioned will cause the termination of a right-of-way of less than standard width, the applicant shall dedicate sufficient land to provide for a cul-de-sac or to increase the half (or halves) of right-of-way bordering the subject parcel to one-half of the standard width. Unless otherwise specified for an individual street in this title, standard right-of-way widths are subject to the standards of the Marion County department of public works.

Applicant agreed to provide street half-width dedication on Brink Court, corner radius dedication at the Brink Court-Mahrt Avenue intersection, and improvements. This proposal will not cause street termination with less than standard width. MCC 16.33.260 is met.

29. Under MCC 16.33.280, where topographical requirements necessitate either cuts or fills for the proper grading of the streets, additional right-of-way or slope easement may be required to accommodate the cut and fill.

The subject property is flat. No additional right-of-way dedication is requested or required to address topographical conditions. MCC 16.33.280 is not applicable.

30. Under MCC 16.33.290, whenever adequate assurances of performance are required as a condition of approval of any subdivision under this title, the applicant shall provide one of the following:

- A. A surety bond executed by a surety company authorized to transact business in the state of Oregon, in an amount equal to 100 percent of the construction cost of the required improvements, as verified by the county.
- B. A verified deposit with a responsible escrow agent or trust company of cash or negotiable bonds in an amount equal to 100 percent of the construction costs of the required improvements, together with an agreement that the deposit may be disbursed only upon county approval. The agreement shall include a provision that the county shall allow release of the deposit in such amounts and at such times as a corresponding proportion of the required improvements are completed to the satisfaction of the county engineer following an inspection by the county engineer or the engineer's authorized representative.
- C. An irrevocable letter of credit from one or more financial or lending institutions pledging that funds equal to 100 percent of the construction cost of all required improvements are available to the applicant and are guaranteed for payment for the improvements.

Regardless of the option chosen above, no building permits for any structures within the subdivision will be issued until all improvements have been completed by the applicant. Or, in the event the applicant fails to complete all improvements, the county may estimate the cost of completing any required improvement, call on the bond or deposit for the funds necessary to complete the improvement, and complete the improvement to the extent of the funds obtained upon call of the bond or deposit. If the amount obtained from the bond or deposit is insufficient to complete the improvement, the county may either hold the collected funds until additional funds are authorized for the improvement or expend the collected funds on a revised improvement or on a portion of the improvement as determined reasonable by the director of public works. Following final inspection, if the

improvement is complete and the amount of the bond or deposit exceeds the actual cost to the county of completing the improvement, the remainder shall be released.

- D. Maintenance Bonds. The applicant shall provide a maintenance bond in a form approved by the office of county legal counsel equal to 40 percent of the construction cost of all required improvements. The applicant shall provide the bond within 30 days after final review of the required improvements. The bond shall remain in effect for one year after the completion of construction of all required improvements. The purpose of the bond is to guarantee applicant's obligation to maintain all required improvements for a period of one year after completion of construction of all required improvements. After the expiration of the one-year period, any remaining balance on the bond shall be released. The bond shall include a provision stating that, in the event the county must take legal action to recover on this bond, and it prevails at trial or on appeal, the county shall be entitled to recover its reasonable attorneys' fees and its costs and disbursements. Nonpayment of the bond will not invalidate applicant's obligations under the bond.

PW requests a major construction permit for roadway improvements in its proposed condition B as set out above in section IV(5). Insurance is required through the permitting process. With this condition, MCC 16.33.290 will be met.

31. Under MCC 16.33.300, utility easements meeting the approval to the standards of the affected utilities shall be provided to all newly created lots.

Applicant acknowledged this requirement and will provide utility easements in compliance with this standard. MCC 16.33.300 is met.

32. Under MCC 16.33.320, all street or road improvements including pavement, curbs, sidewalks, signage, and surface drainage shall be in accordance with the specifications and standards prescribed by the director of public works. Subdivision plats shall not have final approval until such time as the director of public works, or his/her designee, is satisfied that the street improvements will be completed in accordance with the specifications and standards set forth by the Marion County department of public works.

No building permits within a subdivision or partition shall be issued until the director of public works, or his/her designee, approves that the improvements have been completed or sufficient improvement agreements and financial guarantees have been recorded.

Applicant acknowledged this regulation and agreed to comply with the specifications and standards of the County for required street or road improvements. MCC 16.33.320 is met.

33. Under MCC 16.33.340, in the event the subdivider or developer elects to provide private streets or thoroughfares, they shall be maintained by the homeowners' association and a maintenance agreement shall be submitted to Marion County for review and approval prior to recording the final plat.

No private roads are requested or required. MCC 16.33.340 is not applicable.

34. Under MCC 16.33.360, block lengths and widths shall be determined after considering the following factors:
- A. The distance and alignment of existing blocks and streets adjacent to or in the general vicinity of a proposed subdivision;
  - B. Topography;
  - C. Lot size; and
  - D. Need for and direction of the flow of through and local traffic. Blocks shall not exceed 600 feet between street or road right-of-way lines unless the adjacent layout or special conditions justify greater length. Except where topographical or other physical features require otherwise, block widths shall not be less than 120 feet or greater than 400 feet.

No new blocks will be created. MCC 16.33.360 is not applicable.

35. Under MCC 16.33.380, where topographic or other conditions make necessary a block of unusual length, the commission may require midblock pedestrian walks with a right-of-way at least 10 feet in width which shall be hard surfaced through the block, and extending from street curb to street curb.

No new blocks will be created. MCC 16.33.380 is not applicable.

36. Under MCC 16.33.400, all lots approved under this chapter shall have sufficient area to be consistent with the intent of the Comprehensive Plan and to provide adequate area for the intended structures and uses, all setbacks, access and spacing required for water supply and waste water disposal. Lots to be served by public or privately owned sewage collection and disposal system must meet the requirements and have approval of the Oregon State Department of Environmental Quality before being recorded or sold. State regulations, soil types, drainage, terrain, and location may be included as part of the criteria used by the state or county in determining appropriate lot sizes for lots using subsurface disposal of sewage. Lot size and dimensions shall be as prescribed in the corresponding zone.

All proposed lots meet MCC size standards. All lots will be served by a public sewer system. MCC 16.33.400 is met.

37. Under MCC 16.33.420, when front lot lines are on a curve or arc, the front line distance shall be indicated on the final plat by bearing and chord distance.

Proposed lot 7 will be at the corner of the Brink Court-Mahrt Avenue intersection, but the site plan shows no curved lot line is needed. If the lot line is arced, the plat would have to show bearing and chord distances. MCC 16.33.420 is satisfied.



38. Under MCC 16.33.440, side lot lines shall be as close to right angles to the front street line as practicable. Unless otherwise approved, rear lot lines shall be not less than one-half the width of the front lot lines.

All side lot lines are perpendicular or nearly perpendicular to front lot lines. Front and rear lot lines for the ten new RS lots are equal or nearly equal in length. The two larger lots are somewhat oddly shaped, but appear to create no difficulties. If the subdivision is approved, the hearings officer recommends approving the lot lines as shown.

39. Under MCC 16.33.460, all lots or parcels shall be served by an authorized sewage disposal system. Subsurface sewage disposal for individual parcels shall meet the requirements of the Department of Environmental Quality (DEQ) and the Marion County building inspection division. Those subsurface sewage systems that are used by a community, sanitary district, industry, or incorporated area must be authorized by the Department of Environmental Quality (DEQ) via the Marion County building inspection division. Installation and maintenance shall be in accordance with the Department of Environmental Quality's regulations and requirements. The commission, director, or hearings officer may require connection to an existing sewage collection and treatment system regardless of lot suitability for subsurface disposal if the commission, director or hearings officer deems it necessary and provided the connection is available.

Subsurface sewage disposal is not requested or approved under this application. MCC 16.33.460 is not applicable.

40. Under MCC 16.33.480, all lots or parcels shall be served by an authorized public or private water supply system.

A. Public or Private Systems. Public or private systems shall meet the requirements of the Oregon State Health Division with reference to chemical and bacteriological quality. In addition, such systems must meet the quantity, storage, and distribution system requirements of the State Health Division and the operator of the water system.

SESWD provides water to the site according to state and local laws. MCC 16.33.480 is met.

41. Under MCC 16.33.500, all proposed subdivisions within established or proposed urbanizing areas of municipalities, service districts and other incorporated communities, where, upon concurrence from the municipality, district, or incorporated community that public sewer and water services are imminent, shall be developed with water and sewer lines that meet the specifications of the director of the Marion County department of public works.

Public sewer service is already provided at the site. MCC 16.33.500 is met.

42. Under MCC 16.33.520, all permanent utility service to lots in a subdivision within an established urban growth boundary shall be provided from underground facilities and no

overhead utility service to a subdivision shall be permitted. The subdivider shall be responsible for complying with the requirements of this section and shall:

- A. Obtain a permit from the director of public works for the placement of all underground utilities.
- B. Make all necessary arrangements with utility companies and other persons or corporations affected by the installation of such underground lines and facilities in accordance with the rules and regulations of the public utility commissioner of the state of Oregon.

The City of Salem is sewer provider, and the SESWD is water provider, but the subject property is within Marion County's jurisdiction. Future building permits will contain utility plans, prepared by a professional, registered engineer, in compliance with regulations of the Marion County Public Works and the City of Salem Department of Public Works. Applicant shall coordinate with both agencies to ensure regulations of both are met.

- 43. Under MCC 16.33.540, underground easements for utilities and overhead utility facilities shall be provided by the subdivider and set forth on the final plat. Each easement shall be a minimum of 10 feet in width except on the perimeter of the subdivision where the minimum width shall be five feet and, when possible, such easement shall be centered on or bordering a lot line. The subdivider shall provide five-foot utility easements on both sides of all road or street rights-of-way of 60 feet or less.

Applicant acknowledged and accepted this requirement. Underground utility easements will be shown on the final plat. MCC 16.33.540 will be met.

- 44. Under MCC 16.33.560, proposed subdivisions located within established street lighting district boundaries shall submit street lighting plans from the appropriate power company to the director of public works for approval. All provisions for wiring for underground installation shall be completed before the final street improvement is made.

It is unclear from the record whether the subject property is within a street lighting district, but applicant acknowledged and agreed to this requirement. MCC 16.33.560 will be met.

- 45. MCC 16.33.800 deals with pre-application conferences. Because the subdivision application was filed in conjunction with remanded application ZC/CP 18-002, staff did not require a pre-application conference. MCC 16.33.800 is not applicable.
- 46. Under MCC 16.33.820, when an area or tract of land is to be subdivided an application shall be filed with the planning division. The applicant shall specify on the application whether the request is for conceptual or detailed approval or both. Conceptual approval indicates that the subdivision or PUD, in the general manner and density proposed, is deemed consistent with the Comprehensive Plan but conceptual approval shall not be binding on the planning commission or hearings officer with regard to specific design or engineering. In granting

conceptual approval the commission or hearings officer shall identify any elements of the proposal that need further evaluation or refinement.

This subdivision application was filed in conjunction with an SACP designation amendment and a zone change application. As such, the BOC will have original jurisdiction on the subdivision application. As found in the comprehensive plan amendment section above, the hearings officer finds applicant has not proven all SACP provisions have been met. **The hearings officer does not recommend conceptual or detailed design approval under MCC 16.33.820 on this record.**

47. MCC 16.33.840 deals with required application information and contains no substantive criteria.
48. Under MCC 16.33.860, upon receipt, a copy of the application shall be distributed to the Marion County building inspection division, department of public works, county assessor, county surveyor, and other affected agencies with a request for comments or suggestions regarding those features that come within the scope of their activities.

MCC 16.33.860 deals with distribution of application documents and contains no substantive criteria.

49. Under MCC 16.33.880, unless an adjustment is granted as provided herein, the subdivision shall conform to applicable regulations contained in MCC 16.33.180 through 16.33.660 and planned developments shall, in addition, conform to the regulations in MCC 16.26.800.

MCC 16.33.180 through MCC 16.33.560 are reviewed above and are met. MCC 16.33.580 through MCC 16.33.660 apply to partitions and are not applicable. This is not an application for a planned unit development. MCC 16.26.800 does not apply. MCC 16.33.880 is satisfied.

50. MCC 16.33.900 through MCC 16.33.940 are administrative provisions and contain no substantive criteria.
51. Applicant is advised that under MCC 16.33.960, within two years of approval of a conceptual or detailed subdivision design, the subdivider shall submit a final plat to the Marion County surveyor. The final plat must be in conformance with any conditions imposed at the time of approval and shall comply with survey standards.

Applicant is advised that MCC 16.33.1000 contains final plat requirements that must be met.

Applicant is also advised that under MCC 16.33.1020, the completed final plat must be filed with the director by the first day of the twenty-fourth month following the date of detailed approval or the said detailed approval shall be deemed null and void. The final plat shall be approved by public officials as required by law and recorded within 180 days following the date the plat is submitted to the director. Extensions to either time deadline may be

approved by the director upon submittal of written justification prior to the expiration of the time limit.

## OFF-STREET PARKING AND LOADING

52. Applicant also looked at off-street parking and loading standards. Under MCC 16.30.010, off-street parking and loading areas which existed on May 30, 1990, or which are provided as required by this chapter shall be maintained, or equivalent parking and loading areas provided; except that:
- A. If this title reduces the number of required off-street parking or loading spaces, an affected use may diminish its parking and loading area to the new requirements.
  - B. When adjacent to transit service, the number of minimum required parking spaces may be reduced by up to 10 percent to redevelop the existing parking area for transit related uses including transit stops, pullouts and shelters, park and ride lots, transit oriented developments and similar facilities where appropriate.

The proposed subdivision is configured to retain existing parking for the church buildings. No existing parking spaces are proposed for removal. MCC 16.30.010 is met.

53. Under MCC 16.30.020:
- A. Off-street parking and loading areas required by this title shall be provided on the same lot with the use except that:
    - 1. In any residential zone, automobile parking spaces for dwellings and other uses permitted in a residential zone may be located on another lot if the lot is within 200 feet of the lot with the primary use.
    - 2. In nonresidential zones the required parking area may be located off the site of the primary use or structure if it is within 500 feet of such site.
  - B. Off-street parking is incidental to the use which it serves. As such, it shall be located in a zone appropriate to that use, or where a public parking area is a specific permitted use.

The latest conceptual site plan shows about 87 on-site parking spots on lot 2. The number and location of stalls are not certain, but the site plan shows on-site parking is feasible. The number of dwelling units can be decreased if the site is not capable of accommodating all required on-site parking. Off-street parking will be accommodated on-site for each single-family lot.

54. Under MCC 16.30.030, when calculations for determining the number of required off-street parking or loading spaces result in a requirement of fractional space, any fraction of a space

less than one-half shall be disregarded, and a fraction of one-half or greater shall be counted as one full space.

This calculating methodology will be applied in developing the final parking plan.

55. The MCC 16.30.170 minimum parking space requirement table shows multi-family dwelling units with four or more dwelling units require two spaces per dwelling unit. Applicant proposes 42 to 51 apartment units, or 84 to 102 required parking spaces. The site plan shows about 87 parking spaces. If applicant proposes more than 43 dwelling units, the appropriate number of parking spaces would need to be provided. Based on 0.1 bike parking space per dwelling unit, about four or five bike parking spaces would be required. Bikes are smaller than cars and should be easily accommodated on this site.
56. Under the MCC 16.30.180 minimum loading space requirement table, no loading space is required for up to 49 dwelling units. Beyond 49 units, applicant would need to provide one loading space which would need to be shown on a development plan. Applicant stated under this section that fewer than 50 units are proposed in the multi-family development portion of the site, but in other sections of the application, and at hearing, applicant did not rule out up to 51 units. Whatever the final total of dwelling units, no more than 51 are allowed on the site, and applicant must meet on-site loading requirements.

#### AIRPORT OVERLAY ZONE

57. Under MCC 16.21.030, to carry out the provisions of the airport overlay zone, three airport development districts are provided within the airport overlay zone. The outside boundary of these districts is shown on the official zoning map. The airport master plan is used to identify height limits applicable in each district and boundaries between the districts. The Federal Aviation Administration (FAA) approved airspace surfaces from the 2012 City of Salem draft Salem Airport master plan, page 291. The illustration shows the subject property is within the horizontal surface of the Salem Airport.
58. Under 16.21.030(B), the Horizontal Surface District consists of the land, water and airspace above or below the horizontal surface as described in MCC 16.21.020. Under MCC 16.21.020(D)(3), horizontal surface means a horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. Under 16.21.030(B)(1), any use, accessory use, building and structure allowed in the underlying zone shall be permitted provided the following requirements are satisfied:
  - a. Except as provided in subsection (D) of this section, no obstruction or object shall penetrate the horizontal surface as defined in MCC 16.21.020.
  - b. Sanitary landfills, sewage lagoons or sewage sludge disposal shall not be permitted closer than 10,000 feet to the airport runway.

Under MCC 16.04.110, the height limit for structures in the RM zone, with some exceptions not applicable here, is 35'. Any structure resulting from this application will not extend within the 150' horizontal surface. No sanitary landfills, sewage lagoons or sewage sludge disposal areas are requested or allowed by this application. MCC 16.21.030(B) is satisfied.

## VI. Recommendation

It is hereby found applicant provided significant additional and substantial information on this proposal, but on this record has not yet met the burden of proving all applicable standards and criteria for approval of a comprehensive plan amendment, zone change and subdivision have been met. Based on this record, the hearings officer **recommends** the Marion County Board of Commissioners **DENY** the applications.

## VII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this application after holding a public hearing. The Planning Division will notify all parties of the hearing date.

DATED at Salem, Oregon, this \_\_\_\_\_ day of October 2019.

---

Ann M. Gasser  
Marion County Hearings Officer

## CERTIFICATE OF MAILING

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

Ronald Mohr, Executive  
Committee Members and  
Church Council Members  
Christ Good Shepherd  
Lutheran Church  
4440 State St. SE  
Salem, OR 97301

Byron T. Farley  
Martinis & Hill  
P.O. Box 3938  
Salem, OR 97302

Brad Kilby  
Harper Houf Peterson Righellis  
204 Spokane Street, Suite 200  
Portland, OR 97202

James and Paula Lawrence  
377 Eastland Place SE  
Salem, OR 97317

Jim and Kathy Beukelman  
378 Eastland Place SE  
Salem, OR 97317

Karl N. Sørensen  
445 44<sup>th</sup> Avenue SE  
Salem, OR 97317

Vince Mazon  
398 Eastland Place SE  
Salem, OR 97317

Raymond Royle  
425 44<sup>th</sup> Avenue SE  
Salem, OR 97317

Daniel Finlayson  
236 44<sup>th</sup> Avenue SE  
Salem, OR 97317

### Agencies Notified

Planning Division  
(via email: gfennimore@co.marion.or.us)  
(via email: lmilliman@co.marion.or.us)  
(via email: breich@co.marion.or.us)  
Code Enforcement  
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Building Inspection  
(via email: twheeler@co.marion.or.us)  
Assessor  
(via email: assessor@co.marion.or.us)  
(via email: adhillon@co.marion.or.us)  
PW Engineering  
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(via email: mhепburn@co.marion.or.us)  
DLCD  
(via email: angela.camahan@state.or.us)  
MCFD#1  
(via email: paulas@mcfcd1.com)  
City of Salem Public Works  
(via email: KGARLINGHOUSE@cityofsalem.net)  
Suburban East Salem Water District  
(via email: bcamine@qwestoffice.net)  
Oregon Department of Aviation  
(via email: Jeff.CAINES@aviation.state.or.us)

Marissa Ackerman  
256 44<sup>th</sup> Avenue SE  
Salem, OR 97317

Anthony Hodgson  
327 Eastland Place SE  
Salem, OR 97317

Debra Hanson  
4451 Beck Avenue SE  
Salem, OR 97317

Bryan Wilson  
4426 Mahrt Avenue SE  
Salem, OR 97317

Dean Hatzenbihler  
Crystal Hatzenbihler  
1982 C J Way S.  
Salem, OR 97306

Lee Wayne Cox  
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Salem, OR 97317

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Scott Jenkins  
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Karl Anderson  
4210 Glenwood Drive SE  
Salem, OR 97317

Tom Carrigan  
466 44<sup>th</sup> Avenue SE  
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Nancy Ostrem  
7255 Aumsville Hwy SE  
Salem, OR 97317-9123

Sharon Jones  
4461 Beck Avenue SE  
Salem, OR 97317

Doug Harvey  
173 45<sup>th</sup> Avenue SE  
Salem, OR 97317

Mike and Donna Kohn  
4712 Babcock Way SE  
Salem, OR 97317

Janet Reese  
290 Brink Court SE  
Salem, OR 97317

Jack Johnson  
3796 Weber Street SE  
Salem, OR 97302

Virgil Anderson  
6361 Fairway SE  
Salem, OR 97306

Gail Weedman  
290 Brink Court SE  
Salem, OR 97317

Charles, Katherine and Casey Randall  
357 Eastland Place SE  
Salem, OR 97317

Michael Johnson  
ESSNA  
P.O. Box 13571  
Salem, OR 97309

Rachael Keith  
4456 Mahrt Avenue SE  
Salem, OR 97317

Chris D. Anderson  
360 Belmont Street NE  
Salem, OR 97301

Leonard Sparks  
373 Connecticut Avenue SE  
Salem, OR 97317

Wes Hill  
110 Madrona Avenue SE  
Salem, OR 97302

Robin Peterson  
4456 Mahrt Avenue SE  
Salem, OR 97317

Chris Blackburn  
360 Belmont Street NE  
Salem, OR 97301



Jacob Angelo  
4524 Milky Way NE  
Salem, OR 97305

Bruce Bjorkman  
336 44<sup>th</sup> Avenue SE  
Salem, OR 97317

Mindy Hilgers  
359 Brink Avenue SE  
Salem, OR 97317

Clara L. Bricher  
417 Eastland Place SE  
Salem, OR 97317

Markus Cook  
327 Eastland Place SE  
Salem, OR 97317

Jose Martinez  
210 Brink Court SE  
Salem, OR 97317

Randy Timm  
358 Eastland Place SE  
Salem, OR 97317

Kevin Peterson and Lisa Swing  
418 Eastland Place SE  
Salem, OR 97317

Geary Simpkins  
4415 Mahrt Avenue SE  
Salem, OR 97317

AJ Nash  
925 Commercial Street SE  
Suite 220  
Salem, OR 97302

Larry Jones  
4461 Beck Avenue SE  
Salem, OR 97317

by mailing to them copies thereof, except as specified above for agencies/parties notified by email. I further certify that said mailed copies were placed in sealed envelopes, addressed as noted above, and deposited with the United States Postal Service at Salem, Oregon, on the \_\_\_\_ day of October 2019, and that the postage thereon was prepaid.

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Susan Hogg  
Secretary to Hearings Officer

BEFORE THE BOARD OF COMMISSIONERS  
FOR MARION COUNTY, OREGON

In the Matter of the )  
Application of Christ )  
Good Shepherd )  
Lutheran Church )

Case No. ZC/CP 18-002  
Clerk's File No: 5783  
Zone Change/Comprehensive  
Plan

ORDER 18-144

This matter came before the Marion County Board of Commissioners at its regularly scheduled public meeting on December 26, 2018, to consider the application of Christ Good Shepherd Lutheran Church to change the comprehensive plan designation from Single Family Residential to Multi-Family Residential and the zone from RS (Single-Family Residential) to RM (Multiple-Family Residential) on a 3.4-acre portion of a 6.01-acre parcel at 4440 State Street NE, Salem, Marion County, Oregon (T7S, R2W, 30DD, tax lot 4200).


The hearings officer conducted hearings on this application on April 11, 2018, and May 16, 2018. On October 19, 2018, the hearings officer issued a recommendation to the Board to deny the request.


On December 14, 2018, the applicant submitted a written request to the Board to remand the matter back to the hearings officer for consideration of a modified application. The modified application will reduce the amount of land to be rezoned and will include a subdivision.


IT IS HEREBY ORDERED that the application is remanded to the hearings officer for future proceedings on a modified application.

DATED at Salem, Oregon this 26<sup>th</sup> day of December 2018.

MARION COUNTY BOARD OF COMMISSIONERS

  
Chair

  
Commissioner

  
Commissioner

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 Order becomes final.

BEFORE THE MARION COUNTY HEARINGS OFFICER

In the Matter of the ) Case No. ZC/CP 18-002  
Application of: ) Clerk's File No.  
CHRIST GOOD SHEPHERD LUTHERAN ) Comprehensive Plan Amendment/  
CHURCH ) Zone Change

RECOMMENDATION

I. Nature of the Application

This matter comes before the Marion County Hearings Officer on the application of Christ Good Shepherd Lutheran Church to change the comprehensive plan designation from Single Family Residential to Multi-Family Residential and the zone from RS (Single-Family Residential) to RM (Multiple-Family Residential) on a 3.4-acre portion of a 6.01-acre parcel at 4440 State Street NE, Salem, Marion County, Oregon (T7S, R2W, 30DD, tax lot 4200).

II. Relevant Criteria

The 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 chapters 16.39 and 16.43.

III. Public Hearing

A public hearing was held on this matter on April 11, 2018. Prior to hearing, applicant requested a continuance to a date after May 8, 2018. The hearings officer agreed and set the continued hearing for May 16, 2018 at 4:00 p.m. in the Senator Hearing room at 555 Court Street NE, Salem, Oregon. Notice for the April 11, 2018 had already been mailed so the hearing convened and testimony taken. At the hearing, the Planning Division file was made part of the record. The following persons provided testimony on the application:

1. Joe Fennimore Marion County Planning Division
2. Chris Anderson For Applicant
3. Karl Hester For applicant
4. A.J. Nash Proponent
5. Kevin Peterson Opponent
6. Gail Weedman Opponent
7. Joy Efseaff Opponent
8. Tom Carrigan Opponent
9. Karl Anderson Opponent
10. Michael Johnson East Salem Suburban Neighborhood Association (ESSNA), General

The following documents were presented, marked and entered into the record as exhibits:

- Ex. 1 April 10, 2018 letter from Christ Good Shepherd Lutheran Church executive committee and church council
- Ex. 2 Fifty-five petition pages
- Ex. 3 April 11, 2018 statement from Morrie and Joy Efseaff, with attached real estate comparison documents
- Ex. 4 Zoning map annotated to show potential single family residential development layout

No objections were raised to jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing. Michael Johnson, who spoke on behalf of ESSNA, stated that ESSNA was not notified of the April 11, 2018 hearing. The list attached to the mailing certification for the April 11, 2018 hearing does not show ESSNA or Mr. Johnson was notified. Because Mr. Johnson attended the hearing for ESSNA, Mr. Johnson and ESSNA had actual notice. The hearings officer announced the time, place and location for the continued hearing, giving Mr. Johnson and ESSNA opportunity to prepare for and appear at the May 16, 2018 hearing. The hearings officer also announced that the Marion County Board of Commissioners (BOC) would conduct its own hearing, and notice for the BOC hearing would be sent to all hearing attendees who provided names and addresses on the hearing signup sheets. The substantial rights of neither Mr. Johnson nor ESSNA were prejudiced.

At hearing and in written documents, people questioned why everyone in the neighborhood was not notified of the hearing. The hearings officer read a portion of ORS 197.763(2)(a) that states the notification area within an urban growth boundary (UGB) is 100' from the subject property's boundary. In an April 9, 2018 letter, opponents Karl and Janice Sloan stated that the notice mailing list included 13 of 28 addresses of people who do not physically live at the properties shown in the notification area, so the people who actually live on the properties were not notified. Under ORS 197.763(2)(a), notice of a hearing shall be sent to the applicant and to owners of record of property on the most recent property tax assessment roll. Hearing notice goes, by state law, to owners of property at the addresses where tax correspondence is mailed. Notice to the property address is not required under state law or under MCC 16.44.030(A).

The Sloans also stated that the notice did not detail the physical site of the property as 4400 block of Mahrt Avenue SE. Under ORS 197.763(3)(c), notice shall set forth the street address or other easily understood geographical reference to the subject property. Notice for the April 11, 2018 hearing states:

**PURPOSE OF HEARING:** to receive testimony on a request to change the Comprehensive Plan designation from Single Family Residential to Multiple Family Residential and to change the zone from RS (Single Family Residential) to RM (Multiple Family Residential) on an approximately 3.4 acre portion of a 6.01 acre parcel located at 4440 State Street SE, Salem. (T7S; R2W; Section 30DD; tax lot 04200).

**APPLICANTS:** Christ Good Shepherd Lutheran Church

The subject 6.01-acre parcel has frontage on Mahrt Avenue and State Street. The application is specifically for the portion of the property with Mahrt Avenue frontage. According to the Amerititle property profile in the record, the 6.01-acre parcel has a site address of 4440-4444 State Street in Salem, and mailing address of 4440 State Street. The hearing notice identified the parcel by the 4440 State Street address and the township, range, section and tax lot number. It identified the applicant as Christ Good Shepherd Lutheran Church, a name and land mark reference, because the church sits on the property. The hearings officer could find no case law interpreting ORS 197.763(3)(c) requirements, but from the information provided in the notice, the hearings officer believes that, with reasonable diligence, the property would likely be located. Still, a Mahrt Avenue reference could be included in the notice of the BOC hearing to clear up any real or perceived ambiguity.

The continued hearing was resumed on May, 16, 2018. Documents received for the record between hearings were inventoried as a 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 Engineering Section |
| 3.  | Wes Hill         | Applicant's attorney                           |
| 4   | Frank Walker     | For applicant                                  |
| 5.  | Chris Blackburn  | Proponent                                      |
| 6.  | A.J. Nash        | Proponent                                      |
| 7.  | Karl Anderson    | Opponent                                       |
| 8.  | Tom Carrigan     | Opponent                                       |
| 9.  | Bruce Bjorkman   | Opponent                                       |
| 10. | Scott Jenkins    | Opponent                                       |
| 11. | Karl Sörensen    | Opponent                                       |
| 12. | Gail Weedman     | Opponent                                       |
| 13. | Daniel Finlayson | Opponent                                       |

The following documents were presented, marked and entered into the record as exhibits:

- |        |  |
|--------|--|
| Ex. 5  | Oregon.gov, statewide planning goal 10, and SACP printouts                       |
| Ex. 6  | City of Salem zoning map   |
| Ex. 7  | April 30, 2018 response to Planning findings and analysis                        |
| Ex. 8  | Packet of documents (zone map, etc) from Karl Anderson                           |
| Ex. 9  | Statement of Karl Anderson   |
| Ex. 10 | Statement of Scott Jenkins   |
| Ex. 11 | Statement of Daniel Finlayson, with attached annotated site plan and photographs |

No objections were raised to notice, jurisdiction, conflicts of interest, or to evidence or testimony presented at the hearing. The record remained open until May 30, 2018 for applicant and June 13, 2018 for opponents to submit additional information and until June 27, 2018 for applicant's rebuttal. No rebuttal documents were received. The following documents were submitted to the record as exhibits during the open record period:

- Ex. 12 Comments from Bruce Bjorkman
- Ex. 13 May 29, 2018 findings of fact statement from Frank Walker with attached exhibits 1 through 3
- Ex. 14 June 8, 2018 comments from Karl Anderson with two attached site plans
- Ex. 15 April 27, 2018 flyer for a May 8, 2018 development meeting (received between hearings but not marked earlier, so marked and added here)

#### 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 6.01-acre property is within the City of Salem UGB. The SACP designates the northern portion of the property Multi-Family Residential and the southern portion Single-Family Residential. Under MCC title 17, the northern portion of the property is zoned RM and the southern portion is zoned RS. Marion County has land use authority over the property. The property is within the Airport Overlay (OA) zone for Salem's McNary Field.
2. The rectangular property has 335' of frontage on State Street to the north and Mahrt Avenue to the south. The parcel is about 780' deep, and has about 323' of frontage on Brink Court SE along the southeast portion of the property line. The northern RM zoned portion contains a church. The approximately 3.4-acre RS zoned portion of the property, the subject of the comprehensive plan amendment and zone change request, is mostly vacant but contains a church-related dwelling.
3. Properties to the north, along State Street, are zoned RM and developed with various types of residences, including multiple-family housing. Properties west along 44<sup>th</sup> Avenue, south along Mahrt Avenue and east along Brink Court are zoned RS and developed with single family dwellings.
4. Applicant proposes amending the SACP designation on the southern portion of the property from Single-Family Residential to Multi-Family Residential, and changing the RS zoning to RM and The change would allow the church to sell a portion of the property for RM development.
5. The Planning Division requested comments on the proposal from various governmental agencies.

Marion County Department of Public Works (DPW) Land Development Engineering and Permits (LDEP) commented:

#### ENGINEERING REQUIREMENTS

- A. Driveways must meet sight distance, design, spacing, and safety standards [MCC 11.10]. Access related commentary is given below:
  - 1) Access to Mahrt Avenue for the multi-family development shall be from a single (1) shared access. The centerline of that

access shall align with the centerline of Eastland Place to minimize traffic conflict points.

- 2) Brink Court is of limited paved width serving a small number (7) of single-family dwellings. It is not seen as desirable to load-up Brink Court with traffic, including inevitable street parking. Therefore, no direct access to Brink Court for daily apartment traffic will be allowed; however, a gated fire access could be allowed if secondary access is required by MCFD.
- B. During the future development process, Developer should anticipate being required to replace degraded curb and sidewalk along Mahrt Avenue frontage, install sidewalk on Brink Court, and construct a Mahrt/Brink corner ramp with development of the property.
  - C. The Developer should anticipate the possibility of being required to dedicate a sufficient amount of public R/W width on Brink Court to accommodate a curblin sidewalk.
  - D. All multi-family vehicle parking will need to be accommodated for on private property; street-side parking will not be allowed. The Developer should consider providing in excess of the minimum amount of parking as other developments in the general vicinity seem to be deficient in this regard.
  - E. 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 [Marion County SDC Ordinances #97-39R and 98-40R].

Marion County Fire District 1 (MCFD1) commented:

This project must meet the following requirements per Marion County Fire District No. 1:

1. Fire-flow requirements: The minimum fire flow and flow duration for buildings other than one and two family dwellings shall be determined according to 2014 Oregon Fire Code (OFC) Appendix B. The required fire flow for a building shall not exceed the available GPM in the water delivery system at 20 psi.

Note: before the application can be deemed complete a stamped engineered fire flow analysis will be required.

2. Fire Department Connection: The location of fire department connections shall be approved by the fire code official. 2014 Oregon Fire Code 903.3.7.

3. Fire Safety During Construction: Approved fire department access road, required water supply, fire hydrants, and safety precautions shall be



installed and serviceable prior to and during the time of construction. 2014 Oregon Fire Code Chapter 33.

4. Fire apparatus road distance from building and turnaround: Access roads shall be within 150' of all portions of the exterior wall of a building as measured by an approved route around the exterior of the building. An approved turnaround is required if the remaining distance to an approved intersection roadway, as measured along the fire apparatus access road, is greater than 150'. 2014 Oregon Fire Code 503.1.1.

5. Fire Apparatus Access Road Width and Vertical Clearance: Fire apparatus access roads shall have an unobstructed driving surface width of not less than 20 feet; 26 feet adjacent to fire hydrants 2014 Oregon Fire Code (OFC) Appendix D 103.1 and an unobstructed vertical clearance of not less than 13 feet 6 inches. 2014 Oregon Fire Code (OFC) Section 503.2.1 and Appendix D103.1

6. Turning radius: The inside turning radius and outside turning radius shall not be less than 28 feet and 48 feet respectively, measured from the same center point. (2014 OFC 503.2.4 & Appendix D)

7. No parking signs: Where fire apparatus roadways are not of sufficient width to accommodate parked vehicles and 20 feet of unobstructed driving surface, "No Parking" signs shall be installed on one or both sides of the roadway and in turnarounds as needed. Roads 26 feet wide or less shall be posted on both sides as a fire lane. Roads more than 26 feet wide to 32 feet wide shall be posted on one side as a fire lane. Signs shall read "NO PARKING - FIRE LANE" and shall be installed with a clear space above grade level of 7 feet. Signs shall be 12 inches wide by 18 inches high and shall have red letters on white reflective background. (2014 OFC D103.6) You may contact the Fire Marshal if you would like code requirement for painted curbs. (2014 OFC 503.3)

8. Premise identification: Buildings shall have address numbers or approved identification placed in a position that is plainly legible and visible from the access road fronting the property. Numbers shall contrast with the background and shall be a minimum of 4 inches height within a minimum stroke width of ½ inch. (2014 OFC 505.1)

9. Gates: Gates securing fire apparatus roads shall comply with the following: (2014 OFC D103.5)

- Minimum unobstructed width shall be 16 feet.
- Gates shall be set back a minimum of 30 feet from the intersecting roadway.
- Gates shall be of the swinging type or sliding type.
- Manual operation shall be capable by one person.
- Electric gates shall be equipped with a means for operation [by] fire department personnel.
- Locking devices shall be approved.



10. Fire Extinguishers: Provide 2-A:10-BC fire extinguishers inside the building maximum travel distance 75 feet. Fire extinguishers shall be mounted in an approved location with top of extinguisher no higher than 5 feet. 2014 Oregon Fire Code Section 906.2

11. Key boxes: A key box for building access may be required. Please contact the appropriate jurisdiction for location requirements or for an order form and instructions regarding installation and placement. 2014 Oregon Fire Code Section 506. Please contact Fire Marshals Division to order key box.

12. FDC Locking Caps: Locking caps on fire department connections may be required for water based protection systems where the responding fire department carries appropriate key wrenches for removal. 2014 Oregon Fire Code 912.3. Please contact Fire Marshals Division to order locking caps.

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. Applicant has the burden of proving by a preponderance of the evidence that all applicable standards and criteria are met. 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 a hair in applicant's favor, then the burden of proof is met and the application is approved.

#### COMPREHENSIVE PLAN AMENDMENT

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. Comments from the City of Salem were requested but none were received.

3. The Department of Land Conservation and Development (DLCD) must be notified of any proposed comprehensive plan amendment. DLCD was notified as required but provided no comment on the proposal.
4. Under MCC 16.43.000(A), a non-legislative plan amendment involves a change to the land use designation of five or fewer different ownerships. This application involves one ownership and is a non-legislative plan amendment.
5. MCC 16.43.020 contains the following criteria for non-legislative plan amendments:
  - A. Conformance with the Comprehensive Plan goals, policies and intent, and any plan map amendment criteria in the plan, or intergovernmental planning coordination agreement, pertaining to unincorporated lands.
  - B. The addition of the subject property to the inventory of lands in the proposed map designation and the corresponding inventory reduction in the current designation are consistent with projected needs for such lands in the Comprehensive Plan.
  - C. Uses allowed in the proposed designation will not significantly adversely affect planned uses on adjacent lands.
  - D. Public facilities and services necessary to support uses allowed in the proposed designation are available or are likely to be available in the near future.
6. The subject property is within the Salem UGB and subject to the SACP. SACP III(B)(4), reflects an agreement between the city and the county which grants Marion County exclusive jurisdiction over land use actions outside the city limits but within the Salem UGB. Under SACP II(A)(1), the SACP is intended to project the most desirable pattern of land use in the Salem area as represented on the comprehensive plan map. One way Salem meets its urban land needs is through annexation and rezoning in response to demands for specific land uses over time. The city's intent is to retain the flexibility to be responsive to changing conditions, yet recognize the legitimacy of existing zoning. If a land use proposal is inconsistent with the comprehensive plan map or policies, an applicant may, as done here, file for a comprehensive plan map amendment.

Under SACP II(A)(3)(a), the three categories of residential uses are Single-Family Residential, Multi-Family Residential and Developing Residential. The 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 area of the subject property is currently developed with single-family and multiple-family housing and is served by public facilities. Whether the subject property is suitable for residential development at multiple-family density will be determined by the BOC in this land use process.

The Single Family and Multi-Family Residential categories encompass all types of housing. Changes in use designation to permit higher residential densities are governed by the goals and policies of the SACP and the local rezoning process. The intent of SACP residential designations is:

- (a) To retain and conserve the existing sound housing stock;
- (b) To provide for the systematic conversion of sites to more intensive residential uses in accord with development policies and standards;
- (c) To provide and maintain an overall land use pattern in the urban area that is consistent with the service capabilities of the jurisdictions;
- (d) To ensure a compatible transition between various types of housing;
- (e) To provide and maintain a supply of serviced, developable land throughout the urban area for residential and other urban uses, as demand warrants and service capabilities permit;
- (f) To stabilize and protect the essential characteristics of residential environments, including natural features;
- (g) To encourage locating residential development where full urban services, public facilities, and routes of public transportation are available;
- (h) To permit multifamily housing developments which are consistent with development standards and growth policies to blend into the overall fabric of the Salem urban area.

The criteria that will be used to develop an acceptable residential land use pattern will include the following:

- (a) The changing social, physical, and economic factors which take place within an area and its potential long-range effect on land use.
- (b) The desirability for redevelopment and infill within existing neighborhoods to higher densities.
- (c) The necessity of managing urban growth over time in accordance with the ability to provide urban support services such as sewer, water, streets, and recreation, which would occur after annexation.
- (d) The provision of a transitional land use pattern from the urbanized core to the rural area outside the Urban Growth Boundary.
- (e) The need to ensure opportunities for a variety of housing alternatives throughout the urban area.
- (f) The need to provide land for support services to the residents of an area, such as neighborhood shopping facilities, schools, parks, and churches.

These residential designation intentions and "criteria" are the planning lenses a decision maker uses to view SACP policies. SACP IV, Salem Urban Area Goals and Policies, contains the following applicable policies:

*B. 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.

Residential development of 72, 80 and 124 dwelling units have been mentioned variously in the application, even in the same document (exhibit 7, 72 on pages 1 and 2, and 124 on page 8). Applicant acknowledged at hearing that the number of dwelling units was up in the air, depending on the amount of land purchased and the type of development proposed. Applicant clarified in exhibit 13 that the final amount of property it would purchase was set during the open record period as 3.28 acres, and stated elsewhere in the document that 72 units are proposed. Unless a 72 unit development is conditioned, the hearings officer believes all criteria must be evaluated on a worst-case scenario, using the maximum development potential of the site. Still, it is more likely than not, that the development will have a much higher density than 6.5 units per acre.

The portion of the property subject to this request is flat and undeveloped, except for an existing church-related dwelling that will apparently be retained by the church. If the house is not to be retained and the area will become part of the proposed development, applicant should provide the BOC with updated information. Grading will be required for development, indicating erosion potential. On-site erosion control best management practices will be required during construction. There are no on-site watercourses, but applicant acknowledges there are drainage problems on the site. Applicant describes an on-site depression that could be deepened as used for stormwater detention. There will be no apparent adverse terrain alteration and deepening the depression may help with current drainage issues. General development policy 7 is met.

*General development policy 15* - Exterior lighting shall be designed to provide illumination to the site and not cause glare into the public right-of-ways and adjacent properties.

Requiring a lighting plan that demonstrates how the property can be lighted to illuminate the property and not cause glare or spillage on public streets and adjacent properties will satisfy general development policy 15.

*C. Urban growth policy 4* - Development of land with existing urban services shall be encouraged before the conversion of urbanizable lands to urban uses.

The proposed development area has urban services such as water, sewer and so on. Developing this property, with single-family or multi-family uses is consistent with this policy, provided the existing services have capacity to handle the level of development.

*D. 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 services, schools, parks and transportation facilities.

The subject property is flat with no watercourses, so there will be no interference with or complications from development on slopes of hills or ravines or within riparian areas. Water and sewer services, roads, schools and parks already serve the area, so new "extension" of services is not needed, but there are questions about whether existing services are adequate to support multiple family housing. Several residents point out that the subject property and Mahrt Avenue adjacent to the site, flood during the rainy season, calling into question the adequacy of the current stormwater drainage system. Residents also complained of inadequate water pressure, roadway safety problems including lack of sidewalks, overcrowded schools, and too few parks. Basic infrastructure is already in place, and there are no topographic or other features that would cause environmental problems. Applicant believes it can reduce the pressure on schools by reducing the number of bedrooms per unit, but should provide more information on school capacity to allow the BOC to determine whether capacity already exists, or whether a bedrooms-per-unit restriction is necessary. (School District 24J was asked for comments but did not respond.) Applicant has yet to prove whether facilities are adequate to support the proposed comprehensive plan amendment, and whether cost-effective development is possible, as discussed further below. Growth management policy 6 is not 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 the 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 within a water and sewer service area. Growth management policy 7 is met.

*Growth management policy 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.

Facilities are in place, but people in the area question their adequacy. Applicant did not provide evidence of current capacity from the service district, or its ability to handle increased demand caused by multiple-family development. Without this information, it is difficult to evaluate water and sewer capacity and to determine cost effectiveness of any needed upgrades. Growth management policy 9 is not met.

*Growth management policy 11* - Where development creates a demand for new or expanded facilities and services, a share of the costs of new or expanded facilities and services should be borne by the new development itself.

Community members have safety concerns about the traffic increase from the proposed development, pointing out that sidewalks are lacking in much of the area, including areas leading from the site to Lancaster Drive. DPW LDEP explained that requirement for a transportation impact analysis (TIA) was not triggered, but also stated that does not mean there will be no transportation impact from the proposal. The TPR letter does not address neighborhood-specific transportation systems or explain how an 80-unit worst-case scenario was determined. LDEP noted certain on-site requirements it anticipates would be provided by developer, such as curb and sidewalk replacement along the Mahrt Avenue frontage and sidewalk development along Brink Court. LDEP would likely not request off-site transportation improvements or contributions because no transportation development or improvement projects planned for the area connect sufficiently to the proposal.

Neighbors noted flooding on the subject property and adjacent Mahrt Avenue, and low water pressure in the neighborhood that might be exacerbated by 72 or more new dwelling units. Applicant believes there is an on or off-site system blockage or break in the stormwater drainage system, and said that water flow issues might be attributed to systemic problems with the East Salem Sanitary District, restricted flows in aging domestic water pipes or other causes. Applicant believes it is not required to contribute to repair. Applicant still has the burden of proving facilities and services will be adequate to support the proposed use. With little evidence on possible expansion or repair of other facilities and solutions, it is difficult to determine sources or levels of contribution that may be needed.

*E. Residential development policy 1* - The location and density of residential uses shall be determined after consideration of the following factors;

- a. The type and distribution of housing units required to meet expected population growth within the Salem urban growth boundary.
- b. The capacity of land resources given slope, elevation, wetlands, flood plains, geologic hazards and soil characteristics.
- c. The capacity of public facilities, utilities and services. Public facilities, utilities and services include, but are not limited to municipal services such as water, sanitary and storm sewer, fire, police protection and transportation facilities.
- d. Proximity to services. Such services include, but are not limited to, shopping, employment and entertainment opportunities, parks, religious institutions, schools and municipal services. Relative proximity shall be determined by distance, access, and ability to provide services to the site.
- e. The character of existing neighborhoods based on height, bulk and scale of existing and proposed development in the neighborhood.

- f. Policies contained in facility plans, urban renewal plans, residential infill studies and neighborhood and specific development plans.
- g. The density goal of General Development Policy 7.

*Factor 1(a).* Exhibit 6 shows that multiple-family residential development is currently spread throughout most areas of Salem. There is a City of Salem identified need for additional multiple-family development, and multiple-family development already exists near the proposed development site, though on State Street and not on Mahrt Avenue.

*Factor 1(b).* The capacity of land resources given slope, elevation, wetlands, flood plains, geologic hazards and soil characteristics.

The subject property contains no identified wetlands. The property is flat and not within a geologic slide hazard or floodplain overlay zone, though it floods locally during the wet season. Applicant cites to the Soil Survey of Marion County Area, Oregon, stating that the property is comprised of the Concord-Dayton-Amity association soils, described as nearly level, poorly drained and somewhat poorly drained. The major limitation for the soil is drainage, which is consistent with the drainage problem reported at the site. Applicant must prove the land has drainage capacity to fully address this factor. Other items, such as erosion control measures, can be satisfactorily enforced during the building permit stage of development.

*Factor 1(c).* The capacity of public facilities, utilities and services. Public facilities, utilities and services include, but are not limited to municipal services such as water, sanitary and storm sewer, fire, police protection and transportation facilities.

Site drainage is an issue, and applicant, believing the problem to be an on or off-site break in or blockage of the system, put in a repair request to MCPW. It is not clear this is an adequate response. It is applicant's burden to prove drainage capacity exists, as well as water capacity, which was brought into question by neighborhood resident reports of existing low water pressure problems. Applicant states in exhibit 7 that its "project engineer has already determined that the existing public facilities are adequate to maintain current levels of services after the proposed project is completed." Applicant provided no comments directly from the project engineer or other supporting documents to evaluate. In exhibit 13, applicant states the water flow issues may be due to "systemic problems with the East Salem Sanitary District..." or other reasons, indicating applicant recognizes capacity may not be available. The hearings officer recommends applicant provide the BOC with evidence to substantiate its claims of sufficient public facility capacity for all services.

MCFD1 did not confirm or deny capacity to serve the proposed development, but provided a list of fire and life safety requirements that applicant must meet. Some standards could clearly be made conditions of approval or will be handled at development, but others, such as access issues (for

example, having all exterior building walls within 150' of fire roads), depend on land capacity and feasibility should be shown. Applicant states in exhibit 7 that it has a carefully designed layout prepared by an engineering firm, but the only site plan provided by applicant so far is a very preliminary, hand drawn site plan that is insufficient to determine whether fire district access requirements can be met. Community members provided a different site plan that was given out at a community outreach and information meeting, but applicant did not submit this or any other alternate site plan to the record. The site plan from the meeting has a more easily understood layout that might show it is feasible to meet fire access requirements but the plan shows no dimensions. It may or may not be applicant's intent to have the BOC consider this plan. The hearings officer believes that the BOC would benefit by a more illustrative preliminary site plan when evaluating this factor and other criteria.

Police protection services are provided by Marion County Sheriff's Office (MCSO). At least one community member testified that crime in the area has increased and said the MCSO sent out information on the possibility of assessing a \$10.00 per month charge for increased law enforcement coverage in the area. This indicates there may be an existing capacity issue that could be compounded by this 72 or more unit housing proposal.

Community members have safety concerns about the traffic increase from the proposed development, pointing out that sidewalks are lacking in much of the area, including along portions of the streets leading from the site to Lancaster Drive. Applicant responds, in part, that roadways in the area have capacity to handle the increase in traffic, surrounding streets that have patchwork facilities such as sidewalks, are typical in many parts of Salem because development takes place over time, and infrastructure standards change over time. DPW LDEP explained that the requirement for a transportation impact analysis (TIA) was not triggered by the proposal, but also stated that does not mean there will be no transportation impacts from the proposal. LDEP noted certain on-site requirements it anticipates will be provided by developer, such as curb and sidewalk replacement along the Mahrt Avenue frontage and sidewalk development along Brink Court. LDEP would likely not request off-site transportation improvements or contributions because no transportation development or improvements are projected that would connect sufficiently to the proposal. LDEP's comments at hearing indicate capacity for pedestrian and vehicle traffic, while not optimum, is available, especially with applicant's revision allowing traffic to exit onto State Street via church property, and not just onto Mahrt Avenue.

*Factor 1(d).* Proximity to services. Such services include, but are not limited to, shopping, employment and entertainment opportunities, parks, religious institutions, schools and municipal services. Relative proximity shall be determined by distance, access, and ability to provide services to the site.



Applicant notes that public bus transit is available along State Street to the north, Lancaster Drive to the west and Cordon Road to the east and can fairly directly get bus passengers pretty much anywhere in the Salem urban area. Community members argue that the bus stop on State Street, west of the church, has one limited route that takes riders farther away from most destinations rather than to them. Applicant notes that two new transit centers, one north and one south, will improve bus routes and access to more destinations without circuitous routing. Applicant provided no estimated implementation date for the additional transit centers.

*Factor 1(e).* The character of existing neighborhoods based on height, bulk and scale of existing and proposed development in the neighborhood.

Applicant proposes at least 72 dwelling units divided among four, three-story buildings (if the site plan provided in exhibit 14 is considered applicable) concentrated on three acres. Neighbors point out that multiple-family housing is common near the State Street portion of the subject property, there are no multiple-family housing units and no three-story buildings along Mahrt Avenue where this development is proposed. The planning map for the Salem urban area shows RM and RS properties border each other in several areas, including in this neighborhood, and single-family dwellings back up to multiple-family developments along the fairly straight east-west dividing line between the RM and RS zoning here. In one instance, RM property already protrudes across this RM/RS dividing line, but does not reach all the way to Mahrt Avenue like this proposal would. Applicant surveyed multiple-family housing developments within a one square mile area surrounding the subject property. Applicant found 19 apartment buildings north of State Street and south of Auburn Road, with nine multi-family units northwest of the subject property and 10 units north of Monroe Street, east of Lancaster Drive; each with multiple dwelling units. Thirty units are to the east and 33 to the west. Elevations of the buildings (one, two or three stories) were not noted. No multi-family housing was found south of Mahrt Avenue. Although RM and RS zoning coexist, viewing the map at exhibit 8, it is not common for multiple-family housing to be surrounded on three full sides by single-family housing, and it is not clear that the proposed RM development will be on the same height, bulk and scale as the existing multiple-family housing units.

*Factor 1(f).* Policies contained in facility plans, urban renewal plans, residential infill studies and neighborhood and specific development plans.

These plans and studies were not discussed by applicant.

*Factor 1(g).* The density goal of General Development Policy 7.

As discussed above and incorporated here by reference, General Development Policy 7 was found to be met.

Balancing all of the factors above, the hearings officer finds some factors favor applicant but more factors do not. With substantial evidence to

support applicant's claims, the balance may come out in applicant's favor, and residential policy 1 might be met.

*Residential development policy 2* - Residential uses and neighborhood facilities and services shall be located to:

- a. Accommodate pedestrian, bicycle and vehicle access;
- b. Accommodate population growth;
- c. Avoid unnecessary duplication of utilities, facilities and services; and
- d. Avoid existing nuisances and hazards to residents.

2(a). With applicant's revised plan allowing access onto State Street, rather than just Mahrt Avenue, will improve vehicle access and provide improved access to dedicated bicycle lanes on State Street. Pedestrian access is available but is less favorable due to lack of available sidewalks in portions of the neighborhood.

2(b). There is an acknowledged shortage of RM zoned land in the Salem urban area and this proposal will help accommodate predicted population growth.

2(c). Facilities, utilities and services are already in place and will not be duplicated, but there is still a question of whether there is adequate capacity to serve the site.

2(d). As noted above, sidewalk facilities are not available throughout the area, even along routes to Lancaster Drive, a commercial area with transit connections, and a likely destination for pedestrians. There is also an open question about adequacy of drainage and water services.

If service and safety questions are adequately addressed for the proposed level of development, this policy could be met.

*Residential development policy 3* - City codes and ordinances shall encourage the development of passed-over or underutilized land to promote the efficient use of residential land and encourage the stability of neighborhoods.

This is a directive for code and ordinance drafters rather than a criterion for applicants, but this infill development proposal is consistent with this policy.

*Residential development policy 4* - Rehabilitation and maintenance of housing in existing neighborhoods shall be encouraged to preserve the housing stock and increase the availability of safe and sanitary living units.

This site is undeveloped. This policy is not applicable.

Residential development policy 5 - Subsidized housing shall be provided at a variety of locations within the urban area.

This policy is aimed at governing bodies and is outside of applicant's control. This policy is not applicable.

Residential development policy 6 - Multi-family housing shall be located in areas proximate to existing or planned transportation corridors, public facilities and services:

- a. To encourage the efficient use of residential land and public facilities, development regulations shall require minimum densities for multiple family development zones;
- b. Development regulations shall promote a range of densities that encourage a variety of housing types;
- c. Multiple family developments should be located in areas that provide walking, auto or transit connections to:
  - (1) Employment centers;
  - (2) Shopping areas;
  - (3) Transit service;
  - (4) Parks;
  - (5) Public buildings.

State Street is an arterial street as is Lancaster Drive. The subject site is in an area of existing public facilities and services, though there are open questions of the adequacy of some facilities and services. Applicant addressed this policy and identified the Mill Creek industrial area as an employment center that is "relatively close to this area but probably is not within easy walking distance \* \* \* The current Cherriots Route map does not show transit access to the new Mill Creek Industrial Area.." Applicant states transit options are available for reaching the Fairview Industrial Area, downtown Salem and the Chemeketa Community College area, and that transit access will be enhanced when two new transit centers come on line. No timeline for the new transit hubs was mentioned. Lancaster Drive is a shopping and service area relatively nearby. Applicant pointed to the planned new transit hubs that are near shopping areas north and south, and would allow local residents to travel north without first going south. Again, no timeline for the new hubs was indicated. Applicant noted that the Santana Village neighborhood park is five blocks southeast of the site, Geer Park, with soccer fields and baseball diamonds is nine blocks west, and Cascade Gateway regional park is an eight minute automobile trip from the site. Applicant defined public building, but did not provide the origin of the definition. Applicant then identified a City of Salem Fire Station as a public building across Lancaster Drive, but the subject site is served by MCFD1 and not the City of Salem, and has no relationship to this proposal. Applicant also identified "the shopping complex at south Lancaster and Highway 22, the Lancaster Mall.." as public buildings, but SACP at IV(M), Public and Semi-Public Buildings and Lands, talks about principal local government, state and federal offices, the capitol mall,

the J building at the Oregon State Hospital, and a convention and conference center as public buildings. Lancaster Mall and the Lancaster Drive/Highway 22 shopping centers are not SACP public type buildings. The only relevant public building identified by applicant is the nearby MCFD1 fire station, not normally a destination type public building whether accessed by walking, auto or public transit.

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 transportation system is already in place. This policy is met.

Residential development policy 8 - Residential areas shall be protected from more intensive land use activity in abutting zones.

This is already a residential area and a residential use is proposed.

Residential development policy 9 - Alternative Residential Development Patterns. Subdivision and zoning regulations shall provide opportunities for increased housing densities, alternative housing patterns, and reduced development costs. Development regulations shall promote residential development patterns that encourage:

- a. The use of all modes of transportation;
- b. Reduction in vehicle miles traveled and length of auto trips; and
- c. Efficiency in providing public services.

The subject proposal will provide for increased housing density in the area and is adjacent to existing RM zoning. Access to State Street will allow access to bicycle lanes and bus stops. Theoretically, public service efficiency would be achieved because public service facilities are already in place, but until capacity issues are addressed, it is unclear whether cost efficiency is feasible under this policy.

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 hearings officer interprets this policy to relate to rezoning areas consistent with the *current comprehensive plan designation*, such as transitioning UD or UT zoned property already designated Multi-Family Residential to RM zoning and development, and not to comprehensive plan amendments. Under this interpretation, this policy is not applicable.

Residential development policy 11 - Design Standards shall be implemented to improve the quality of life of Salem's residents and promote neighborhood stability and compatibility.

City of Salem design standards are not implemented by MCC title 16, but the MCC has several development standards designed to improve livability within the UGB area.

Based on the current record in this case, it is not clear that the proposal conforms to SACP goals, intent and policies. MCC 16.43.020(A) is not proven met.

- 7. Applicant's consultant noted a 201-acre multifamily housing deficiency in the City of Salem Buildable Lands Inventory. Adding the subject property to the Multi-Family residential inventory would enhance the City of Salem's ability to meet its identified multi-family housing needs. No similar information about the single-family housing inventory was provided. Information on both housing categories is needed for proper analysis under this criterion. Without this information, comparison would be speculative. Applicant has not met the burden of proving removal of the property from the Single-Family Residential designation will have no significant affect on the need for Single-Family Residential designated property. More information is needed to determine whether MCC 16.43.020(B) is satisfied.
- 8. The requested designation and zoning on the subject site would allow uses compatible with the northern RM zoned portion of the church property, which currently borders multi-family housing. Properties east, south and west of the subject property are designated and zoned for and developed with single-family dwellings. Many neighbors living in the RS zoned area believe the use is incompatible with single-family residential use, or that applicant has not provided sufficient particularity about the project to know potential effects of the use. Applicant believes details will be worked out in "design review" which the hearings officer interprets to mean during building permitting. Both sides have valid points. This is a planning, not a development application, but if applicant has no reasonably particularized plan, the decision maker must assume a worst-case development scenario. The application has been confusing because applicant has used 124-unit and 2.88-acre property size numbers, while the transportation letter used an 80-unit worst-case scenario number, a

mismatch between a supposed worst-case scenario and proposed development. Differing unit and property size numbers can mean differing impacts on infrastructure. Applicant now proposes developing 72 units on 3.28 acres. The hearings officer recommends a 72-unit cap on the project since applicant proposed that number in its latest submissions and based arguments on that number of units. This provides the BOC a solid starting point for its evaluation of significant adverse affects.

A big initial concern was having all traffic exit onto Mahrt Avenue. At an assumed eight traffic trips per day per unit (under MCPW standards as explained by the PW representative at hearing) and the 72-unit figure now proposed by applicant, about 576 traffic trips per day would be added to a classified local street. Applicant's revised proposal to allow access from and to State Street through the church's traffic circulation system, relieves some stress on Mahrt Avenue. By limiting the number of units and opening up access onto State Street, applicant has lessened traffic problems, but with no updated evaluation of transportation affects attributable to the changes, it is difficult to tell whether the issues are resolved. Applicant should provide the BOC with a new analysis of transportation issues. There are also still questions related to drainage, water service, height, bulk and scale compatibility of the proposed use with the neighborhood, and other issues raised in the SACP goals/needs/policies evaluation in V(6) above. Applicant has done a good job of going from addressing hardly any applicable criteria to addressing more, but there are enough outstanding issues that, based on this record, the hearings officer cannot yet say that MCC 16.43.020(C) is satisfied.

9. Telephone, electric and some other utility services may be adequate, and with applicant's State Street access and 72-unit limitation, transportation services have been better addressed, but the overall adequacy of public facilities and services, as explained above, has not been proven. MCC 16.43.020(D) is not met.
10. **Based on the current record, the comprehensive plan amendment approval is not recommended.**

#### ZONE CHANGE

11. 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.
12. An SACP analysis is provided above. The hearings officer finds additional information is needed to allow proper evaluation of the comprehensive plan amendment. If the BOC find the comprehensive plan amendment is proper, and with conditions regarding State Street access and a 72-unit limitation, the proposal would conform to the SACP, and MCC 16.39.050(A) would be satisfied.
  13. As explained above, the hearings officer finds that some but not all public facilities will be adequate and available. MCC 16.39.050(B) is not satisfied.
  14. Under MCC 16.04.000, 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.

If the comprehensive plan amendment is approved, the proposed property will be designated Multi-Family Residential and the RM zone will be appropriate. Mahrt Avenue is neither an arterial nor a collector street; it is a local street and would not be an appropriate location for multiple-family housing with access onto Mahrt Avenue only. The BOC will need to interpret this portion of MCC 16.04.000 to determine whether applicant's modified proposal, allowing access to State Street and to Mahrt Avenue, is sufficient to meet the purpose and intent of MCC 16.04.000. The hearings officer finds there is still a question about whether existing services are adequate to serve this proposed development, and does not believe simple existence of public services is sufficient to meet the purpose and intent statement, but that is ultimately an interpretation for the BOC to make.

Based on the current record, the hearings officer does not find MCC 16.39.050(C) is satisfied.

15. MCC 16.01.030 lists the SACP designation and compatible MCC zones. Applicant proposes the Multi-Family Residential designation for the subject site. The RL, RM, UT and UD zones are listed as appropriate for the Multi-Family designation. The RM zone is the least restrictive zone, and allows the most intensive densities and uses. Only multiple-family housing is proposed in this application, and if questions about significant adverse

affects related to the use are adequately answered, a limited use overlay zone under MCC chapter 16.22 should be applied to the subject site allowing only the proposed use, and lesser intensity uses. On the record as it currently stands, the hearings officer finds MCC 16.39.050(D) is not met.

16. **The proposed zone change is not recommended.**

AIRPORT OVERLAY ZONE

17. The subject property is within the Airport Overlay (AO) zone of Salem's McNary Field. The hearings officer asked applicant to address AO zone requirements. Applicant verified that the subject property is within the AO zone but did not address MCC chapter 16.21 requirements.

Under MCC 16.21.030, to carry out the provisions of the airport overlay zone, three airport development districts are provided within the airport overlay zone. The outside boundary of these districts is shown on the official zoning map. The airport master plan is used to identify height limits applicable in each district and boundaries between the districts.

Under local rules, the hearings officer may take official notice of judicially noticeable facts and ordinances, resolutions, rules and regulations of the United States, the State of Oregon, Marion County, and the incorporated cities within Marion County. To determine which districts apply here, the hearings officer takes official notice of the Federal Aviation Administration (FAA) approved airspace surfaces from the 2012 City of Salem draft Salem Airport master plan, page 291. The illustration shows the subject property is within the conical and horizontal surfaces of the Salem Airport.

18. Under 16.21.030(B), the Horizontal Surface District consists of the land, water and airspace above or below the horizontal surface as described in MCC 16.21.020. Under MCC 16.21.020(D)(3), horizontal surface means a horizontal plane 150 feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of specified radii from the center of each end of the primary surface of each runway of each airport and connecting the adjacent arcs by lines tangent to those arcs. Under 16.21.030(B)(1), any use, accessory use, building and structure allowed in the underlying zone shall be permitted provided the following requirements are satisfied:

- a. Except as provided in subsection (D) of this section, no obstruction or object shall penetrate the horizontal surface as defined in MCC 16.21.020.
- b. Sanitary landfills, sewage lagoons or sewage sludge disposal shall not be permitted closer than 10,000 feet to the airport runway.

Under MCC 16.04.110, the height limit for structures in the RM zone, with some exceptions not applicable here, is 35'. Any structure resulting from



this application will not extend within the 150' horizontal surface. No sanitary landfills, sewage lagoons or sewage sludge disposal areas are requested or allowed by this application. MCC 16.21.030(B) is satisfied. Subsection (D) allows structures and trees up to 35' from ground level.

19. Under MCC 16.21.030(C), the Conical Surface District consists of the land, water and airspace above or below the conical surface as described in MCC 16.21.020. Under MCC 16.21.020(D) (5), conical surface means a surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to one for a horizontal distance of 4,000 feet.

Under MCC 16.21.030(C) (1), any use, accessory use, building or structure allowed in the underlying zone shall be permitted, provided the following requirements are satisfied:

- a. Except as provided in subsection (D) of this section no obstruction or object shall penetrate the conical surface as defined in MCC 16.21.020.

The illustration on page 291 of the 2012 City of Salem draft Salem Airport master plan shows the conical surface in the area of the subject property is at approximately 364' to 400'. Any structure developed as a result of this application will not extend within the conical surface. Subsection (D) allows structures and trees up to 35' from ground level.

MCC 16.21.030(B) and (C) are satisfied.


#### VI. Recommendation

It is hereby found applicant has not met the burden of proving applicable standards and criteria for approval of a comprehensive plan amendment and zone change have been met. The hearings officer **recommends** the Marion County Board of Commissioners **DENY** these applications if applicant does not provide sufficient additional information for the record to allow approval.

#### VII. Referral

This document is a recommendation to the Marion County Board of Commissioners. The Board will make the final determination on this application after holding a public hearing. The Planning Division will notify all parties of the hearing date.

DATED at Salem, Oregon, this 19<sup>th</sup> day of October 2018.

  
Ann M. Gasser  
Marion County Hearings Officer

CERTIFICATE OF MAILING

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

Ronald Mohr, Executive  
Committee Members and  
Church Council Members  
Christ Good Shepherd  
Lutheran Church  
4440 State St. SE  
Salem, OR 97301

Agencies Notified

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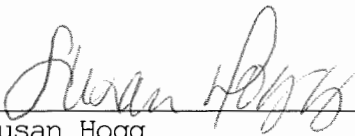
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by mailing to them copies thereof, except as specified above for agencies/parties notified by email. I further certify that said mailed copies were placed in sealed envelopes, addressed as noted above, and deposited with the United States Postal Service at Salem, Oregon, on the 19<sup>th</sup> day of October 2018, and that the postage thereon was prepaid.

  
\_\_\_\_\_  
Susan Hogg  
Secretary to Hearings Officer