



City of Portland  
**Bureau of Development Services**  
Land Use Services Division

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**Date:** April 23, 2008  
**To:** Interested Person  
**From:** Shawn Burgett, Land Use Services  
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## **NOTICE OF A TYPE II<sub>x</sub> DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

### **CASE FILE NUMBER: LU 07-145731 LDS**

#### **GENERAL INFORMATION**

**Applicant:** Bogdan Popescu  
Bmp Design  
17701 NE 24th Street  
Vancouver, WA 98684

**Owner:** Liviu & Aurelia Ispas  
3135 SE 160th Ave  
Portland, OR 97236

**Site Address:** 2720 SE 84th Ave

**Legal Description:** W 100' OF LOT 2 BLOCK 3, ANNABERG  
**Tax Account No.:** R030200450  
**State ID No.:** 1S2E09BB 05700  
**Quarter Section:** 3339

**Neighborhood:** Powellhurst-Gilbert, contact James Chasse at 503-762-0863.  
**Business District:** Eighty-Second Avenue, contact Nancy Chapin at 503-774-2832.  
**District Coalition:** East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

**Zoning:** R2a (Multi-Dwelling Residential-2,000 with "a" Alternative Design Density Overlay)

**Case Type:** LDS (Land Division Subdivision)  
**Procedure:** Type II<sub>x</sub>, an administrative decision with appeal to the Hearings Officer.

#### **Proposal:**

The applicant is proposing a 4-lot land division for detached housing. Each lot will measure approximately 2,450-sq. ft. in site area. Transportation (PDOT) is requiring the applicant to make street improvements in front of this site along SE 84<sup>th</sup> Ave. These improvements will include curbs, a sidewalk and a stormwater swale.

This subdivision proposal is reviewed through a Type IIX procedure because: (1) the site is in a residential zone; (2) four to ten dwelling units are proposed, not including accessory dwelling units (see 33.660.110).

For purposes of State Law, this land division is considered a subdivision. To subdivide land is to divide an area or tract of land into four or more lots within a calendar year (See ORS 92.010).

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The approval relevant criteria are:

- 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.

## ANALYSIS

**Site and Vicinity:** The site is relatively flat and home to one existing detached home that is currently under going demolition. There are several large trees located on the site. The properties surrounding the site are made up primarily of single family detached homes of various types.

**Zoning:** The R2 designation is one of the City's multi-dwelling zones which is intended to create and maintain higher density residential neighborhoods. The zone implements the comprehensive plan policies and designations for multi-dwelling housing. The "a" overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. This land division proposal is not using any of the provisions of the "a" overlay.

Additionally, this site has a Comprehensive Plan designation of IRd. The IR zone is a multi-use zone that provides for the establishment and growth of large institutional campuses as well as higher density residential development. Intensity and density are regulated by the maximum number of dwelling units per acre and the maximum size of buildings permitted. Some commercial and light industrial uses are allowed, along with major event entertainment facilities and other uses associated with institutions. Mixed use projects including both residential development and institutions are allowed as well as single use projects that are entirely residential or institutional. The "d" overlay promotes the conservation and enhancement of areas of the City with special historic, architectural or cultural value. New development and exterior modifications to existing development must meet the Community Design Standards (Chapter 33.218) or are subject to design review.

**Land Use History:** City records indicate no previous land use history

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on September 11, 2007.

**1. Agency Review:** Several Bureaus and agencies have responded to this proposal. Please see Exhibits E for details. The comments are addressed under the appropriate criteria for review of the proposal.

**2. Neighborhood Review:** Three written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

- The neighbor to the south of the project site is disputing the survey provided by the applicant for this project. The applicant's survey shows approximately 1.95 ft. of the neighbors driveway located on the applicant's site. Additionally, the applicant's survey shows approximately 0.43 ft. of encroachments of this neighbor's garage onto the applicant's site. The neighbor indicates that based on a 1977 survey she owns the portion

of the property disputed. The neighborhood letter also indicated that the applicant is planning to remove the encroachment noted above (see exhibit F-1 for more details).

**BDS Response:** *The City of Portland does not get involved with private property matters regarding property boundary disputes. The City considers this a civil matter that will need to be worked out between the two concerned parties. Staff has passed this information onto both the neighbor and the applicant. The applicant indicated verbally to planning staff that he would not remove any portion of the neighbor's driveway, and would build the new fence for Lot 4 north of the existing curb, but this statement is not legally binding.*

- The neighbor expressed concern about the trees on the site that are begin removed as part of this development proposal. The neighbor feels like the applicant has not been very open about the possibility of preserving some of the large, old trees on the site that this neighbor feels are very important to the area. The neighbor expressed frustration with the lack of communication with the applicant, who the neighbor states, has refused mediation attempts by this neighbor. The letter also expresses concern over the loss of a large western red cedar located in the southwest corner of the site, which the neighbor feels should be preserved, and "no legitimate development imperative, private or public, justifies its loss." Overall, the neighbor wanted to express there desire to have more of an open dialogue with the applicant. The neighbor feels like this development proposal could be much more than just what the letter describes as "four skinny rowhouses." The neighbor feels like more dialogue with the developer would help all parties involved. In the end, this letter expressed hope that the developer will take advantage of the trees on the site and create a development proposal that would preserve some of these trees. (see exhibit F-3 for details)

**BDS Response:** *In regard to the large western red cedar located in the southwest corner of the applicants site, this tree could not be included in the tree protection requirements since it will be located partially on public property after the required dedication along SE 84<sup>th</sup> Avenue that transportation is requiring in order to install full frontage improvements along the front of the site on SE 84<sup>th</sup> Avenue. However, as mitigation, since the applicant cannot meet the 35% tree preservation standard of zoning code section 33.630.100, the applicant has agreed to protect Tree number 8 (a 48 inch western red cedar) during the construction of a new dwelling unit on lot 4. The preservation of this large existing tree will be practically equivalent to the 50 inches of existing tree diameter the applicant would have been required to protect on the site had they been able to meet the 35% tree preservation standard discussed above.*

*Due to the trees location (along the common property line separating lot 4 from the pubic right –of-way after the required dedication) and the large size of the tree (48 inches), preserving this tree will require the applicant to all take special care when any construction activities are done near this tree. Planning staff has had the City Forester visit the site,(exhibit G-4) examine the tree, and provide recommendations on what he feels it would take to save the tree during the construction of the required street frontage improvements along SE 84<sup>th</sup> Ave and the construction of the new dwelling unit on lot 4 and the associated driveway and foundation.*

*As a condition of approval, the applicant will be required to discuss the preservation of this tree with Transportation (PDOT) and BES (Bureau of Environmental Services) during the pre-design meeting required during final plat. The pre-design meeting will determine whether or not a curb tight sidewalk will be allowed in front of lot 4, which would provide tree number 8 with more space. Even if a curb tight sidewalk is not allowed at this location, Tree number 8 can still potentially remain viable if proper construction techniques are followed throughout the process. If it is determined by the City Forester during the pre-design meeting that Tree number 8 cannot survive the street frontage improvements required by PDOT and BES along SE 84<sup>th</sup> ave, the applicant will be required to pay into the Tree fund (\$150 per inch) for mitigation for the 50 inches of tree diameter required to be preserved under 33.630.100 above. The applicant will only be allowed to use this option for mitigation (instead of the preservation of tree 8) if its is determined by the City Forester, that it is unrealistic to preserve this tree due to the location of the swale and sidewalk which will be located just west of this tree.*

- The Neighborhood Association expressed concern over the applicants stated desire to remove a portion of the driveway serving the property to the south. This letter expressed concern about hardships that could be created for the property owners if this was allowed. Overall, the Neighborhood Association expressed a desire for the development to be done without removing any portion of the driveway serving the neighboring property to the south (exhibit F-2).

**BDS Response:** *As mentioned above, the City of Portland does not get involved with private property matters regarding property boundary disputes. The City considers this a civil matter that will need to be worked out between the two concerned parties. Staff has passed this information onto both the neighbor and the applicant.*

## APPROVAL CRITERIA-

### APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

**33.660.120 The Preliminary Plan for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met.**

The relevant criteria are found in Section **33.660.120 [A-L], Approval Criteria for Land Divisions in Open Space and Residential Zones**. Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

| Criterion | Code Chapter | Topic                                     | Applicability Findings   |
|-----------|--------------|---|--|
| A         | 33.612       | Lots                                      | Applicable - See findings below  |
| B         | 33.630       | Trees                                     | Applicable - See findings below.   |
| C         | 33.631       | Flood Hazard Area                         | Not applicable - The site is not within the flood hazard area.   |
| D         | 33.632       | Potential Landslide Hazard Area           | Not applicable - The site is not within the potential landslide hazard area.   |
| E         | 33.633       | Phased Land Division or Staged Final Plat | Not applicable - A phased land division or staged final plat has not been proposed.  |
| F         | 33.634       | Recreation Area                           | Not applicable - This is not required where the proposed density is less than 40 units.  |
| G         | 33.635 .100  | Clearing and Grading                      | Applicable - See findings below.   |
| G         | 33.635 .200  | Land Suitability                          | Applicable - See findings below.   |
| H         | 33.636       | Tracts and Easements                      | Not applicable - No tracts or easements have been proposed or will be required.  |
| I         | 33.639       | Solar Access                              | Not Applicable - All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference. |

| Criterion | Code Chapter    | Topic                       | Applicability Findings  |
|-----------|-----------------|-----------------------------|---|
| J         | 33.640          | Streams, Springs, and Seeps | Not applicable - No streams, springs, or seeps are evident on the site. |
| K         | 33.641          | Transportation Impacts      | Applicable - See findings below   |
| L         | 33.651 - 33.654 | Services and Utilities      | Applicable - See findings below   |

**Applicable Approval Criteria are:**

**A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.**

**Findings:** Chapter 33.612 contains the lot standards applicable in the Multi-dwelling zones. These density and lot dimension standards ensure that lots are consistent with the desired character of each zone while allowing lots to vary in size and shape provided the planned intensity of each zone is respected.

Density Standards

Density standards match housing density with the availability of services and with the carrying capacity of the land in order to promote efficient use of land, and maximize the benefits to the public from investment in infrastructure and services. These standards promote development opportunities for housing and promote urban densities in less developed areas. Maximum densities ensure that the number of lots created does not exceed the intensity planned for the area, given the base zone, overlay zone, and plan district regulations. Minimum densities ensure that enough dwelling units can be developed to accommodate the projected need for housing.

When single-dwelling or duplex development is proposed for some or all of the site, the applicant must show how the proposed lots can meet minimum density and not exceed the maximum density stated in Table 120-3. When development other than single-dwelling or duplex development is proposed, minimum and maximum density must be met at the time of development

The total site area shown on the applicant's survey is 9,997 square feet. Site area devoted to streets is subtracted from the total site area in order to calculate the minimum and maximum density. Public street dedications are proposed with this land division. The applicant will be required to dedicate approximately 3 square feet of site area along the frontage of Se 84<sup>th</sup> Ave street for right-of-way purposes (as described later in this report). Therefore the resulting lot size for calculating density is 9,697 square feet.

In this case, Lots 1 through 4 are proposed for single dwelling development. Therefore, the density requirements for this site are calculated as follows:

Minimum = 9,697 (site area) ÷ 2,500 (minimum density from Table 120-3) = 3.87 (which rounds up to a minimum of 4 units, per 33.930.020.A).

Maximum = 9,697(site area) ÷ 2,000(maximum density from Table 120-3) = 4.85 (which rounds up to a maximum of 5 units, per 33.930.020.B).

The applicant is proposing 4 lots. The density standards are therefore met.

Lot Dimensions

The lot dimensional standards ensure that: (1) Each lot has enough room for development that meets all the requirements of the zoning code; (2) Lots are an appropriate size and shape so that development on each lot can be oriented toward the street as much as possible; (3) The

multi-dwelling zones can be developed to full potential; and (4) Housing goals for the City are met.

The dimensions of the proposed lots as compared to the required lot dimension standards is shown in the following table (this information is found in Chapter 33.612 of the Zoning Code):

| <b>R2 Zone Requirements</b> |                         |                         |                           |                               |                          |
|-----------------------------|-------------------------|-------------------------|---------------------------|-------------------------------|--------------------------|
| <b>Lot</b>                  | <b>Minimum Lot Area</b> | <b>Maximum Lot Area</b> | <b>Minimum Lot Width*</b> | <b>Minimum Front Lot Line</b> | <b>Minimum Lot Depth</b> |
|                             | 1,600 sq. ft.           | <b>none</b>             | <b>none</b>               | <b>10 ft.</b>                 | <b>none</b>              |
| 1                           | 2,425 sq. ft.           |                         | 25 ft.                    | 25 ft.                        | 100 ft.                  |
| 2                           | 2,422 sq. ft.           |                         | 25 ft.                    | 25 ft.                        | 100 ft.                  |
| 3                           | 2,425 sq. ft.           |                         | 25 ft.                    | 25 ft.                        | 100 ft.                  |
| 4                           | 2,525 sq. ft.           |                         | 25 ft.                    | 25 ft.                        | 100 ft.                  |

\* Width is measured at the minimum front building setback line

The findings above describe how the applicable lot standards are met. This criterion is therefore met.

**B. Trees. The standards and approval criteria of Chapter 33.630, Tree Preservation, must be met.**

**Findings:** The regulations of Chapter 33.630 preserve trees and mitigate for the loss of trees. Certain trees are exempt from the requirements of this chapter.

The applicant has submitted an arborist report that inventories the trees within the land division site, evaluates their condition and specifies root protection zones (Exhibit A-2). Some trees have been exempted by the arborist because they are either too small, unhealthy, a nuisance species, located partially off the property or located within 10 feet of an existing structure to remain on the property. The inventory identifies the following trees on the site:

| Tree # | Species           | Diameter (inches) | Significant? (On Table 630-1) | Exempt? (per 33.630.030) | To be retained? | RPZ (Root Protection Zone) |
|--------|-------------------|-------------------|-------------------------------|--------------------------|-----------------|----------------------------|
| 1      | Noble Fir         | 36"               | Yes                           | Yes-off property         | No              |                            |
| 2      | Western Hemlock   | 24"               |                               |                          | Up to applicant |                            |
| 3      | Douglas Fir       | 16"               |                               | Yes-on property line     | Up to applicant |                            |
| 4      | Sitka Spruce      | 26"               | Yes                           | Yes- on property line    | Up to applicant |                            |
| 5      | English Walnut    | 36"               | Yes                           |                          |                 |                            |
| 6      | Monkey Puzzle     | 24"               | Yes                           |                          | No              |                            |
| 7      | Sweet Cherry      | 12"               |                               |                          | No              |                            |
| 8      | Western Red Cedar | 48"               | Yes                           |                          | Yes             |                            |
| 9      | Austrian Pine     | 12"               |                               | Yes-off property         | No              |                            |

The total non-exempt tree diameter on the site is 144 inches. Due to the small size of each lot, and the fact that the Zoning code requires a protected tree to have a root protection zone of one foot for every one inch of tree diameter, it is not practical to protect any of the non exempt trees on the site due to the location of each tree.

The proposal does not meet any of the tree preservation options in 66.630.100. The applicant proposes instead to use the mitigation options of 33.630.300:

**33.630.300 Mitigation Option**

**As an alternative to meeting Section 33.630.100, approval of a mitigation plan may be requested. The review body will approve the mitigation plan where the applicant has shown that the applicant has met criteria A. and B. and one of the criteria in C., below:**

- A. As many trees as possible are preserved; and**
- B. The applicant has submitted a mitigation plan that adequately mitigates for the loss of trees, and shows how the mitigation plan equally or better meets the purpose of this chapter. Mitigation can include tree planting, preservation of groups of smaller trees, eco-roof, porous paving, or pervious surface permanently preserved in a tract.**
- C. It is not possible under any reasonable scenario to meet Section 33.630.100 and meet one of the following:**
  - 1. Minimum density;**
  - 2. All service requirements of Chapters 33.651 through 33.654, including connectivity;**
  - 3. Implementation of an adopted street plan;**
  - 4. On sites 15,000 square feet or less in area, a practicable arrangement of lots, tracts, and streets within the site that would allow for the division of the site with enough room for a reasonable building site on each lot;**
  - 5. In E and I zones, provide a practicable arrangement of lots, tracts, and streets within the site that would allow for the division of the site with enough room for a reasonable building site on each lot, considering the uses and development allowed in the zone; or**
  - 6. Preserve the trees within the environmental zones on site while providing a practicable arrangement of building sites and disturbance area.**

The Office of Transportation has required improvements to the frontage of the site.

The applicant meets criterion A above because as many trees as possible are preserved. After the required right-of-way dedication required by PDOT and BES for street frontage improvements, Tree 8 will be located on the common property line separating the site from the public right-of-way. Since this tree will be located partially in the public right-of-way it is not eligible to be protected under zoning code section 33.630.100 (discussed above).

Trees numbered 2, 3 and 4 are all located along the northern property line. Tree 3 and 4 are exempt because they are shown in exhibit C-1 as located on the property line. Tree 2, a 24-inch Western Hemlock is a fairly large tree, the arborist had proposed (exhibit A-2) to reduce the root protection zone of this tree from the Zoning Code standard of 1 ft. for every 1 inch of tree diameter to a 10 ft. root protection zone around each of these trees. Since the lot is only 25 ft. wide, the root protection zone recommended by the arborist is still too large to allow a reasonably size detached structure on Lot 1 that can meet the northern side setbacks standards of 5 ft. Planning staff contacted the Arborist who wrote the report to ask if the arborist felt a 5 ft. root protection zone would be appropriate for tree number 2, the arborist explained that this would compromise the tree's health and could potentially cause it to become hazardous, especially since there is a dwelling unit located 5 ft. north of this tree on the adjacent property.

Overall, the Arborist felt that having a 24-inch tree (tree 2) sandwiched between two structures with 5-ft. setbacks on each side could lead to issues with the tree becoming hazardous.

Additionally, trees numbered 5, 6, and 7 are located in areas of the site where future development is proposed, making the preservation of Tree 5 (a 36 inch English Walnut located on lot 2); Tree 6 (a 24 inch Monkey puzzle tree located in the front of lot 3); and tree 7 (a 12 inch cherry tree located on lot 4) impractical based on the lot configuration and the type of development proposed.

Therefore, the applicant has met Criterion A, because as many trees as possible will be preserved based on the size of the lots and development proposed.

The site is less than 15,000 square feet in area. The applicant wishes to divide the site for detached housing, which is an allowed housing type in the R2 zone. The location of the existing trees on the site would prevent a land division that would result in a practicable arrangement of lots that could each contain a reasonable building area and still be able to meet the development standards of the R2 zone. Therefore Criterion C.4 is met.

The applicant did not submit a mitigation plan, so planning staff has made the following recommendations:

The Tree Preservation standards of 33.630.100 above require the applicant to protect 35% of all non-exempt trees on the site. Based on the Arborsit report, that would equal approximately 50 inches of tree diameter that would need to be preserved in order to meet this standard. As mentioned above, Tree number 8 counts towards the applicants total number of non-exempt trees for the purpose of the tree preservation plan, since it is located on the site, but cannot be protected under zoning code section 33.630.100 since it will be located partially in the public right-of-way after the dedication to Transportation for the required street frontage improvements.

So for the purpose of this mitigation plan, the applicant will be required to mitigate for 35% of the tree diameter of non-exempt trees located on this site. This includes trees numbered 2, 5, 6, 7 and 8 which equal 144 inches of tree diameter, 35% of 144 inches of tree diameter equals approximately 50 inches. Based on the analysis above, the applicant will be required to mitigate for 50 inches of tree diameter on the site.

As mitigation, since the applicant cannot meet the 35% tree preservation standard of zoning code section 33.630.100 on each individual lot, the applicant has agreed to protect Tree number 8 (a 48 inch western red cedar) during the construction of a new dwelling unit on lot 4 and public street improvements. The preservation of this large existing tree will be practically equivalent to the 50 inches of existing tree diameter the applicant would have been required to protect on the site had they been able to meet the 35% tree preservation standard discussed above.

Due to the trees location (along the common property line separating lot 4 from the public right-of-way after the required dedication) and the large size of the tree (48 inches), preserving this tree will require the applicant to take special care when any construction activities are done near this tree. Planning staff has had the City Forester visit the site and examine the tree, and provide recommendations (exhibit G-4) on what he feels it would take to save the tree during the construction of the required street frontage improvements along SE 84<sup>th</sup> Ave and the construction of the new dwelling unit on lot 4 and the associated driveway and foundation.

The activities that have the potential to harm the tree will require numerous conditions of approval to make sure with the installation of the sidewalks, swales and any future driveways and house foundations on lot 4 do not damage this tree. Additionally, the preservation of this tree should be discussed in the pre-design meeting for street permitting that will be held to finalize the details of the frontage improvements that are required along SE 84<sup>th</sup> ave. The pre-design meeting is between Transportation's (PDOT), BES and the applicants engineer. In that meeting the preservation of this tree should be discussed and examined. If requested by the City Forester during pre-design, the applicant will be required to have a certified arborist perform air spading around tree number 8 in order to determine the root structure of tree 8

below grade. The current proposal shows a sidewalk within 2 ft. of Tree #8, and a stormwater swale located approximately 7 feet to the west of the tree. Based on optimal conditions, the Urban Forester recommended a curb-tight sidewalk, with no swale in front of tree number 8 on lot 4. Even if PDOT and BES are not able to allow a curb tight sidewalk in front of lot 8 at this location, the tree could still remain viable if proper care techniques are done during the construction of the frontage improvements.

As a condition of approval, the applicant will be required to discuss the preservation of this tree with PDOT and BES during the pre-design meeting required during final plat. The pre-design meeting will determine whether or not a curb tight sidewalk will be allowed west in front of lot 4, which would provide tree number 8 with more space, and as the forester points out in his comments "A 5 ft. curb tight sidewalk is recommended" (exhibit G-4) Even if a curb tight sidewalk is not allowed at this location, Tree number 8 can still potentially remain viable if proper construction techniques are followed throughout the process. As the City Forester points out in his comments, "Western Red cedar trees are sensitive to construction trauma and compaction so I am trying to have a plan that will cause minimal disturbance to the root zone. Because of street improvements on the west side, driveway disturbance to the north side and foundation disturbance to the east side of the tree, careful excavation and tree protection is critical."

If it is determined by the City Forester during the pre-design meeting that Tree number 8 cannot survive the street frontage improvements required by PDOT and BES along SE 84<sup>th</sup> ave, the applicant will be required to pay into the Tree fund (\$150 per inch) for mitigation for the 50 inches of tree diameter required to be preserved under 33.630.100 above. The applicant will only be allowed to use this option for mitigation (instead of the preservation of tree 8) if it is determined by the City Forester, that it is unrealistic to preserve this tree due to the location of the swale and sidewalk which will be located just west of this tree. As mentioned above, as a condition of approval, if requested by the City Forester, the applicant will be required to have a certified arborist perform air spading around tree number 8 in order to determine the root structure of tree 8 below grade.

The applicant will also be required to get documentation from Transportation (PDOT) and BES representatives involved in the applicants pre-design meeting documenting that BES and PDOT were aware of Tree number 8 and that any design modifications recommended by the City Forester (such as a curb tight sidewalk) were discussed in this meeting.

Criteria B is met with a condition of approval requiring the applicant to protect Tree number 8, a 48-inch western red cedar. Additionally, as a condition of approval the applicant is required to discuss the preservation of Tree number 8 during the pre-design meeting required for street improvements. However, if it is determined during the pre-design process that tree 8 absolutely cannot survive the street frontage improvements required, written documentation must be received from the City Forester stating that tree number 8 cannot be saved as discussed above, and payment into the Tree fund for 50 inches of tree diameter (at \$150 an inch) will be required prior to final plat approval.

If preservation of Tree number 8 is determined feasible, several condition of approval will be required in order to protect this tree.

At the time of building permit application for lot 4, the applicant will be required to place a metal fence, placed on the property line and maintained throughout the process. The tree protection fence shall be placed 15 feet from the trunk of tree number 8, on lot 4. All construction access to lot 4 must partially cross lot 3, since there will not be enough room on lot 4 to allow construction access from SE 84<sup>th</sup> ave due to the required metal protective fencing required around tree number 8 at the time of development.

Therefore, as a condition of approval, the applicant will be required to record a temporary Access Easement across the front 25 ft. of lot 3, extending 25 ft east from the public right of way. This area is to be used as a temporary construction entrance to serve lot 4 during

construction. This temporary easement will be extinguished following the final of the building permit for a new dwelling unit on lot 4, or if attached units are proposed on lots 3 and 4. If attached units are built on lots 3 and 4, then construction will occur at the same time, and the construction access to lot 4 can cross lot 3.

Additionally, the driveway leading to lot 4 should be placed as far north as possible. The installation of this driveway should occur at the end of the construction process under the supervision of a certified arborist and done with hand held or light equipment. The area close to the base of the tree should be hand dug and the driveway can be modified if any major roots are found. All underground utilities entering lot 4 should be placed on the north side of lot 4, as far away from tree 8 as possible.

The site plan (exhibit C-1) shows a stormwater infiltration system being placed in the front setback of lot 4. As a condition of approval, the applicant will be required to place its on site stormwater management system as far from tree number 8 as possible on the site. Lastly, as a condition of approval, prior to Planning and Zoning approval of any building permits on lot 4, the applicant will be required to have a letter from an arborist stating that they will be on-site throughout the construction process, including when any excavation work is preformed on lot 4. The arborist should also provide written documentation that specifically states that they will be on site and observe the installation of the driveway and any utilities, or heavy construction materials that need to cross within the 15 ft. radius metal fence the arborist has recommended around tree 8 during construction. Additionally, the arborist shall provide a follow up letter, following completion of all construction work on lot 4, but prior to the final of the building permit for the new unit on lot 4. The follow up letter the arborist provides should give status report on the health of tree number 8 following all construction activities on lot 4.

As noted above, these conditions will become void, if it is determined by the City Forester during the pre-design process that take place during the final plat process, that tree number 8 cannot survive the encroachment into its root protection zone due to the frontage improvements required by PDOT and BES along SE 84<sup>th</sup> ave. If the Forester makes this determination, prior to final plat, the applicant is required to pay into the tree fund for 50 inches of trees.

With the conditions of approval mentioned above, this criterion is met.

**G. Clearing, Grading and Land Suitability. The approval criteria of Chapter 33.635, Clearing, Grading and Land Suitability must be met.**

*The approval criteria of Chapter 33.635 are found in two groups – clearing and grading, and land suitability.*

**33.635.100 – Clearing and Grading**

- A. Existing contours and drainage patterns of the site must be left intact wherever practicable. Where alteration to existing drainage patterns is proposed, it must not adversely impact adjacent properties by significantly increasing volume of runoff or erosion;**
- B. Clearing and grading should be sufficient for construction of development shown on the Preliminary Clearing and Grading Plan;**
- C. Clearing and grading should be limited to areas of the site that are reasonably necessary for construction of development shown on the Preliminary Clearing and Grading Plan;**
- D. Topsoil must be preserved on site to the extent practicable for use on the site after grading is complete; and**
- E. Soil stockpiles must be kept on the site and located in areas designated for clearing and grading as much as is practicable.**

**Findings:** The regulations of Chapter 33.635 ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements, and limit the impacts of erosion and sedimentation to help protect water quality and aquatic

habitat. In this case the site is primarily flat, and is not located within the Potential Landslide Hazard Area. Therefore, no significant grading will be required on the site to make the new lots developable. The applicant submitted a preliminary clearing and grading plan shown in exhibit C-3 that shows the full site to be cleared and contour evened out, as well as stockpile areas. The applicants clearing and grading plan also shows trees that are being preserved. The only tree that is required to be protected is tree number 8, a 48-inch Western red cedar located along the southwest property line of lot 4, this tree is being protected under the applicants mitigation plan. All other trees on the site can be protected “voluntarily” by the applicant and are not required to be preserved. Given the development proposed, this clearing and grading plan is reasonable.

This criterion is met.

### **33.635.200 – Land Suitability**

**Where geologic conditions or historic uses of the site indicate a hazard may exist, the applicant must show that the proposed land division will result in lots that are suitable for development. The applicant may be required to make specific improvements in order to make the lots suitable for their intended uses and the provision of services and utilities.**

The site is currently in residential use, and there is no record of any other use in the past. Although the site is currently connected to the public sanitary sewer, there is an old cesspool on the site. The City has no record that this facility was ever decommissioned. Prior to final plat, the applicant must meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of this facility.

Additionally, the applicant has proposed to remove the existing house and garage and redevelop the site. In order to ensure that the new lots are suitable for development, a permit must be obtained and finalized for demolition of all structures on the site and sewer capping prior to final plat approval. The applicant has already pulled two demolition permits (07-137366 RS and 07-137370 RS) for the existing house and the existing detached garage. Prior to final plat approval, both of these permits must be finalized.

With the condition that the existing cesspool is decommissioned and the demolition permits for the existing house and detached garage are finalized prior to final plat approval, the new lots can be considered suitable for new development, and this criterion is met.

**H. Tracts and easements. The standards of Chapter 33.636, Tracts and Easements must be met;**

### **33.636.100 Requirements for Tracts and Easements**

**A. Ownership of tracts. Tracts must be owned as follows unless otherwise specified in this Title or the land use decision:**

- 1. The owners of property served by the tract, or by any other individual or group of people. When the tract is owned by more than one person it must be held in common with an undivided interest;**
- 2. The Homeowners’ Association for the area served by the tract;**
- 3. A public or private non-profit organization; or**
- 4. The City or other jurisdiction.**

**Findings:** No tracts are proposed or required for this land division, so criterion A does not apply.

**B. Maintenance agreement. The applicant must record with the County Recorder a maintenance agreement that commits the owners or owners' designee to maintain all elements of the tract or easement; however, facilities within the tract or easement that will be maintained by a specified City agency may be recorded in a separate maintenance agreement. The maintenance agreement must be approved by BDS and the City Attorney in advance of Final Plat approval and must be submitted to the County Recorder to be recorded with the Final Plat. For a Planned Development not done in conjunction with a land division, the maintenance agreement must be submitted to the County Recorder to be recorded prior to issuance of the first building permit related to the development.**

**Findings:** The following easements are required for this land division:

- A Temporary Access Easement across the front 25 ft. of lot 3, extending 25 ft east from the public right of way for temporary construction access to serve Lot 4 must be recorded. Use of this easement is limited exclusively to Lot 4 and will become void once a dwelling unit is constructed on lot 4 or if attached units are built on lots 3 and 4 at the same time.

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement(s) will be required describing maintenance responsibilities for the easements described above and facilities within those areas. This criterion can be met with the condition that a maintenance agreement(s) is prepared and recorded with Multnomah County.

With the conditions of approval discussed above, this criterion is met.

**K. Transportation impacts. The approval criteria of Chapter 33.641, Transportation Impacts, must be met; and,**

*The relevant approval criteria of Chapter 33.641 are found in the two paragraphs below.*

**33.641.020. The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Evaluation factors include: street capacity and level-of-service; vehicle access and loading; on-street parking impacts; the availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes.**

**33.641.030. The applicant may meet the criterion in Section 33.641.020, above, by including mitigation measures as part of the land division proposal. Mitigation measures must be acceptable to the City Engineer and may include providing transportation demand management measures, an access management plan, constructing streets or bicycle, pedestrian, or transit facilities on or off the site or other capital improvement projects such as traffic calming devices.**

**Findings:** The regulations of Chapter 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. Small land divisions involving only a few dwelling units may not require a formal transportation impact study, while it might be required for larger projects (Title 17 includes technical standards describing when a more formal study is required).

The site has approximately 100 feet of frontage on SE 84<sup>th</sup> Ave, which is classified as a local service street for all modes in the Transportation Element of the Comprehensive Plan. Tri-Met provides transit service approximately 480 feet from the site on SE 82<sup>nd</sup> Ave via bus 72. Parking is currently allowed on SE 84<sup>th</sup> Ave, on both sides. There is one driveway entering the site that provides access to off-street parking for the existing house.

SE 84<sup>th</sup> Ave is improved with a paved roadway, and a gravel shoulder on one side. There are no curbs, planter strips, or sidewalks. In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. In this case Portland Transportation has determined that curb, planter strip and sidewalk improvements must be made in order to ensure that safe pedestrian travel is possible within the proposed development. To accommodate these improvements, as well as an associated stormwater facility discussed later in this report, additional right-of-way must be dedicated along the frontage of the site. With those improvements, three additional dwellings can be safely served by this existing street without having any significant impact on the level of service provided.

This criterion is met, with the condition that frontage improvements consisting of 20' paved roadway are made, and the required right-of-way dedication is shown on the Final Plat.

**L. Services and utilities. The regulations and criteria of Chapters 33.651 through 33.654, which address services and utilities, must be met.**

**Findings:** Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way.

- The water standards of 33.651 have been verified. An existing 5/8" metered water main is available in SE 84<sup>th</sup> Avenue. The existing service may be used for future development of Parcel 3. Water is not available to serve Parcels 1, 2 and 4 from the water main in SE 84<sup>th</sup> Avenue. The existing 2" cast iron water main in SE 84<sup>th</sup> Avenue is already at the maximum allowable capacity and number of services prior to dropping below 80% of maximum static pressure during normal usage. There is a capital improvement project to replace the existing main in SE 84<sup>th</sup> Avenue. This project is scheduled to be constructed in the next five years. There also is another capital improvement project to replace the existing main in SE Clinton Street from SE 83<sup>rd</sup> Avenue to SE 85<sup>th</sup> Avenue. This project is scheduled to be constructed during the fiscal year of 2007 and 2008.

If the applicant would like to replace the existing main in SE 84<sup>th</sup> Avenue from SE Clinton Street to the applicant's south property line sooner than the capital improvement project planned schedule, then the applicant must participate in 35% of the total project for that portion. The construction schedule of this improvement must coordinate with the capital improvement project replacing the existing main in SE Clinton Street from SE 83<sup>rd</sup> Avenue to SE 85<sup>th</sup> Avenue. See Exhibit E-3 for more details.

- The Fire Bureau is requiring the applicant to install a new fire hydrant or ensure adequate hydrant flow from the nearest fire hydrant. A reduction in the require fire flow of 50 percent is allowed when the building is provided with an approved automatic sprinkler system. See exhibit E-4 for more details.
- The sanitary sewer standards of 33.652 have been verified. There is an existing 8" public sanitary sewer located in SE 84<sup>th</sup> Ave that can serve the sanitary needs of the proposed lots. See Exhibit E-1 for more details.
- The technical standards of Chapter 33.653 related to stormwater management have been verified. The findings below for the Stormwater Management Approval Criteria of 33.653.020 incorporate a discussion of how the technical standards have been satisfied by the applicant's stormwater proposal.

**33.653.020 Stormwater Management Approval Criteria**

**A. If a stormwater tract is proposed or required, an adequate amount of land and an appropriate location must be designated on the Preliminary Plan; and**

**B. The application must show that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.**

**Findings:** No stormwater tract is proposed or required. Therefore, criterion A is not applicable.

The City of Portland requires that stormwater from development be cleaned and disposed of in a manner that meets the requirements of the City's Stormwater Management Manual. In order to meet this approval criterion, land division proposals must demonstrate an approved method of cleaning (water quality treatment), detention (delayed release), and an approved disposal point.

The Stormwater Management Manual contains a hierarchy of acceptable methods of stormwater treatment and disposal. The hierarchy requires that applicants first explore the use of methods that have a lower potential impact on groundwater, such as on-site surface infiltration swales and infiltration planters. If these methods are not feasible on a site, applicants may move lower on the hierarchy, to methods that inject water deeper into the ground through mechanical devices such as drywells or sumps, or carry it off of the site into storm sewers, drainageways, or other approved disposal points.

In addition to determining appropriate treatment and disposal methods by working through the hierarchy in the Stormwater Management Manual, stormwater facilities must be sized, through engineering calculations, to accommodate the expected amounts of stormwater. In some cases, sizing a stormwater facility necessitates testing the infiltration rate of the soil at the site.

The applicant has provided stormwater calculations and infiltration testing (exhibits A-4 to A-6) to support the following stormwater management methods (shown on exhibit C-1), and the Bureaus have responded as follows (Exhibits E-1 and E-5):

- **Public Street Improvements:** As a condition of this land use approval, the Office of Transportation requires the applicant to improve the frontage of the site to City standards, with paving, curbs and sidewalks (discussed earlier in this report). Stormwater from these new impervious areas will be directed into an infiltration swale located between the curb and the new sidewalk. BES has indicated that surface infiltration is the preferred method of public stormwater disposal at this site based on the infiltration test submitted by the applicant. The agency has requested that the applicant include a revised site plan showing the proposed street stormwater management system and the driveways for each of the four parcels proposed prior to final plat approval. To accommodate this stormwater facility within the public right-of-way, dedication along the frontage of the site must be provided on the final plat.

The BES requirements must be met for the construction of such a swale during public street permitting. The applicant must provide engineered designs and financial guarantees of performance prior to final plat approval.

- **Lots 1-4:** Stormwater from these lots will be directed to individual stormtech infiltration systems or drywells that will treat the water and slowly infiltrate it into the ground. Each of these lots has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably sized home. Site development noted that the location of the stormtech chambers may need to be adjusted on the lots to meet setbacks. All on-site stormwater facilities must be located 10 ft. from buildings and 5 ft. from all property lines. Site Development has indicated conceptual approval of the stormtech infiltration systems, but points out that drywells would also be suitable for this site.

With the conditions of approval described above, the stormwater management criteria are met.

### Right of Way Approval Criteria

Chapter 33.654 contains standards and approval criteria for rights of way. Due to the location of this site, and the type of street that is proposed, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

| <b>Code Section</b> | <b>Topic</b>   | <b>Applicability Findings</b>  |
|---------------------|--|--|
| 33.654.110.B.1      | Through streets and pedestrian connections                               | Applicable - See findings below  |
| 33.654.110.B.2      | Dead end streets   | Not Applicable – No dead-end street are proposed or required   |
| 33.654.110.B.3      | Pedestrian connections in the I zones                                    | Not applicable - The site is not located within an I zone.   |
| 33.654.110.B.4      | Alleys in all zones  | Not applicable – No alleys are proposed or required.   |
| 33.654.120.C.1      | Width of the street right-of-way   | Not applicable – The proposal includes a common green/shared court/pedestrian connection instead of a traditional street.                              |
| 33.654.120.C.3.c    | Turnarounds  | Not applicable – No turnarounds are proposed or required.  |
| 33.654.120.D        | Common Greens  | Not applicable – No common greens are proposed or required.  |
| 33.654.120.E        | Pedestrian Connections   | Not applicable – There are no pedestrian connections proposed or required.   |
| 33.654.120.F        | Alleys   | Not applicable – No alleys are proposed or required.   |
| 33.654.120.G        | Shared Courts  | Not applicable – No shared courts are proposed or required.  |
| 33.654.130.A        | Utilities  | Not applicable – No specific utility easements adjacent to the right-of-way have been identified as being necessary. Therefore, this criterion is met. |
| 33.654.130.B        | Extension of existing public dead-end streets and pedestrian connections | Not applicable – There are no extension of existing public dead-end street or pedestrian connections adjacent to the site.                             |
| 33.654.130.C        | Future extension of proposed dead-end streets and pedestrian connections | Not applicable – No street extensions are required to serve abutting sites that are further dividable.   |
| 33.654.130.D        | Partial rights-of-way  | Not applicable – No partial public streets are proposed or required.   |

**Applicable Approval Criteria are:**

**33.654.110.B.1 Approval criterion for through streets and pedestrian connections in OS, R, C, and E Zones. In OS, R, C, and E zones, through streets and pedestrian connections are required where appropriate and practicable, taking the following into consideration:**

- a. **Through streets should generally be provided no more than 530 feet apart, and pedestrian connections should generally be provided no more than 330 feet apart. Through street and pedestrian connections should generally be at least 200 feet apart;**
- b. **Where the street pattern in the area immediately surrounding the site meets the spacing of subparagraph a., above, the existing street pattern should be extended onto the site;**
- c. **Characteristics of the site, adjacent sites, and vicinity, such as: (1) Terrain; (2) Whether adjacent sites may be further divided; (3) The location of existing streets and pedestrian connections; (4) Whether narrow frontages will constrain creation of a through street or pedestrian connection; (5) Whether environmental overlay zones interrupt the expected path of a through street or pedestrian connection; and (6) Whether existing dwelling units on- or off-site obstruct the expected path of a through street or pedestrian connection. Alternative locations or designs of rights-of-way should be considered that avoid existing dwelling units. However, provision of through streets or pedestrian connections should take precedence over protection of existing dwelling units where the surrounding transportation system will be significantly affected if a new through street or pedestrian connection is not created;**
- d. **Master street plans for the area identified in Goal 11B of the Comprehensive Plan;**
- e. **Pedestrian connections should take the most direct route practicable. Users should be able to see the ending of the connection from the entrance point, if possible.**

**Findings:** The site is located on SE 84<sup>th</sup> Ave, a north-south street, which deadends approximately 215 feet south of the site. The site is also located approximately 290 feet from SE 84<sup>th</sup> Place, the nearest north-south street in the vicinity. The site is located between SE Clinton Street and SE Brooklyn Street, the nearest east-west streets which have a distance between them of approximately 1,000 feet. There are no other east/west through streets between these two streets. If the distance between these existing streets is evaluated against the optimum spacing requirement of 530 feet, one can conclude that there should be an east-west through street provided in the vicinity of the site.

The site contains sufficient width to allow the creation of a public east-west through street. However, the properties adjacent to the portion of the site where the street would terminate are already developed, and not configured in a manner that would easily allow the further extension of a street from the site. So, although the optimum spacing criteria would indicate the need for an east-west through street or pedestrian connection at this site, there is no practicable opportunity to provide them in this land division.

The site is within the Portland Master Street Plan for the Southeast District, which does not show an east-west through street at this location. Therefore, the proposal is consistent with the master street plan. PDOT has not requested a public street at this location.

The only new through pedestrian connections included in the proposal are new sidewalks required by PDOT along the frontage of the site along SE 84<sup>th</sup> Ave. This is a straight-line connection on which users will be able to see the ending of the pedestrian route from the entrance.

For the reasons described above, this criterion is met.

## **DEVELOPMENT STANDARDS**

**General Information about Development Standards and Approval Criteria.** The Zoning Code contains two types of regulations: Development standards and Approval criteria.

**Approval criteria**, such as those listed earlier in this report, are administered through a land use review process. Approval criteria are regulations where the decision-maker must exercise

discretion to determine if the regulation is met. Public notice is provided and public comments received that address the approval criteria are addressed in the decision.

**Development Standards:** Development standards are clear and objective regulations (for example: building setbacks; number of required parking spaces; and maximum floor area). Compliance with development standards is reviewed as part of the administrative permitting process and are not considered to be discretionary reviews. Development standards that are not relevant to the land division review, have not been addressed in the review, but will have to be met at the time that each of the proposed lots is developed.

Section 33.120.270.D of the Zoning Code allows reduced side setbacks (3-feet from property lines) for detached houses in the multi-dwelling zones on lots that are at least 25 feet wide. This allowance only applies to the setbacks that are interior to the site. The setbacks around the perimeter of the land division site are that of the base zone. This proposal is eligible to use these provisions. **To take advantage of this allowance the reduced side setbacks must be shown on a supplemental survey for the land division at the time of final plat approval.**

With the conditions noted above, this land division proposal can meet the requirements of 33.700.015.

## OTHER TECHNICAL REQUIREMENTS

Technical decisions have been made as part of this review process. These decisions have been made based on other City Titles, adopted technical manuals, and the technical expertise of appropriate service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance with this land use decision, a new land use review may be required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

| Bureau                 | Code Authority  | Topic   | Contact Information   |
|------------------------|---|---|---|
| Water Works            | Title 21  | Water availability  | 503-823-7404<br><a href="http://www.water.ci.portland.or.us/">http://www.water.ci.portland.or.us/</a> |
| Environmental Services | Title 17; 2002 Stormwater Manual                        | Sewer availability<br>Stormwater Management   | 503-823-7740<br><a href="http://www.bes.ci.portland.or.us/">http://www.bes.ci.portland.or.us/</a>     |
| Fire Bureau            | Title 31<br>Policy B-1                                  | Emergency Access  | 503-823-3700<br><a href="http://www.fire.ci.portland.or.us/">http://www.fire.ci.portland.or.us/</a>   |
| Transportation         | Title 17,<br>Transportation System Plan                 | Design of public street   | 503-823-5185<br><a href="http://www.trans.ci.portland.or.us/">http://www.trans.ci.portland.or.us/</a> |
| Development Services   | Titles 24 -27,<br>Admin Rules for Private Rights of Way | Building Code,<br>Erosion Control,<br>Flood plain, Site Development & Private Streets | 503-823-7300<br><a href="http://www.bds.ci.portland.or.us.">http://www.bds.ci.portland.or.us.</a>     |

As authorized in Section 33.800.070 of the Zoning Code conditions of approval related to these technical standards have been included in the Administrative Decision on this proposal.

- The applicant must meet the requirements of the Fire Bureau in regard to installing a new fire hydrant or ensuring adequate hydrant flow from the nearest fire hydrant. A reduction in the require fire flow of 50 percent is allowed when the building is provided with an approved automatic sprinkler system. If required, the applicant must record an Acknowledgement of Special Land Use Conditions that requires the provision of internal fire suppression sprinklers on Lots 1-4. This document shall also be recorded onto the final

plat. The applicant must also provide a fire accessway to the satisfaction of the Fire Bureau or the height of the new structures shall be limited to 30 feet, measured to the gutter line. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.

- The applicant must meet the requirements of Urban Forestry. Street trees will be required along all public street frontages and will be reviewed and approved by the City Forester during street plan review or building permit application. Street trees required for residential sites are to be 2-inch caliper in size. Mitigation for the loss of existing right-of-way trees will be required if construction designs require removal. A written permit from the City Forester is required to remove, destroy, cut, break, or injure, any tree of any size in or upon any street, park, or public area as detailed in Title 20.40.090 D. At this time, all existing trees on private property that are 12 inches in diameter and greater may not be removed unless specifically permitted through Title 33 or through a written permit issued from the City Forester as detailed in Title 20/Chapter 20.42. This requirement is based on the standards of Title 20.

## CONCLUSIONS

The applicant has proposed a 4-lot subdivision, as shown on the attached preliminary plan (Exhibit C-1). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are: 1) finalize demolitions permits for the existing house on the site; 2) decommission the existing septic system on the site; 3) meeting the requirements of PDOT and BES regarding frontage improvements along SE 84<sup>th</sup> Ave; 4) meeting the requirements of the Water Bureau and providing water service to the site and; 5) meeting the requirements of the Fire Bureau and; 6) Tree Mitigation requirements.

With conditions of approval that address these requirements this proposal can be approved.

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a 4-lot subdivision, that will result in 4 standard lots for detached or attached housing as illustrated with Exhibit C-1, subject to the following conditions:

**A. Supplemental Plan.** Three copies of an additional supplemental plan shall be submitted with the final plat survey. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:

- Any buildings or accessory structures on the site at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- The proposed interior side setbacks for all of the lots if the reduced setback provisions of Section 33.120.270.D.1 are intended to be used.
- Location of the proposed stormwater management system along SE 84<sup>th</sup> ave and the driveway location for each of the four parcels, on-site stormwater management and utilities for lot 4.
- Any other information specifically noted in the conditions listed below.

**B. The final plat must show the following:**

1. The applicant shall meet the street dedication requirements of the City Engineer for SE 84<sup>th</sup> Ave. The required right-of-way dedication must be shown on the final plat.
2. If required per condition C.8 below, a recording block for each of the legal documents such as acknowledgement of special land use conditions must be shown on the plat.

**C. The following must occur prior to Final Plat approval:****Streets**

1. The applicant shall meet the requirements of the City Engineer for right of way improvements along the frontage of SE 84<sup>th</sup> Ave. The applicant shall provide plans and financial assurances to the satisfaction of the Bureau of Transportation Engineering and Development Review and the Bureau of Environmental Services for required street frontage improvements.
2. During the pre-design meeting required in correlation with street frontage improvements required in condition C.1 above. The applicant will be required to discuss the preservation of Tree number 8, a 48-inch western red cedar located on the property line separating lot 4 from the public right-of-way, in southwest corner of lot 4. The City Forester will make a determination once the design of the street is determined whether or not tree number 8 can be protected and survive this encroachment. If requested by the City Forester, the applicant will be required to have a certified arborist perform air spading around tree number 8 in order to determine the root structure of tree 8 below grade. If it is determined that this tree can survive, conditions C.9 and D.2 below will remain in effect. If it is determined to be unrealistic to save this tree, based on the results of the pre-design meeting, the applicant will be required to meet conditions C.10 below.

**Utilities**

3. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of the existing sanitary sewer system on the site.
4. The applicant shall meet the requirements of the Water Bureau for adequate water service to SE 84<sup>th</sup> Avenue. To obtain approval a new water main must be installed in this street which at this time requires participation by the applicant (see exhibit E.3 for details)
5. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant or obtain an approved Fire Bureau appeal to this requirement. If required, the applicant shall meet the requirements of the Fire Bureau for installing a new fire hydrant. The applicant must contact the Water Bureau to purchase the hydrant. Verification of the purchase must be provided to the Fire Bureau before Final Plat approval.

**Existing Development**

6. Finalized permits must be obtained for demolition of the existing residence and shed on the site and capping the existing sanitary sewer connection. (if the demo includes a primary residential structure, add:) Note that Title 24 requires a 35-day demolition delay period for most residential structures.
7. The applicant must provide documentation that the existing shed straddling the property line on Lots 3 and 4 has been removed. Photographs can be submitted to document this requirement.

**Required Legal Documents**

8. If required per condition C.5 above, the applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Lots 1-4 to contain internal fire suppression sprinklers. The acknowledgement shall be recorded with Multnomah County, and referenced on the final plat.

9. If Tree number 8 will be preserved, a temporary Access Easement across the front 25 ft. of lot 3, extending 25 ft east from the public right of way for temporary construction access to serve Lot 4 must be recorded. Use of this easement is limited exclusively to Lot 4 and will become void once a dwelling unit is constructed on lot 4 or if attached units are built on lots 3 and 4 at the same time.

**Other requirements**

10. If Tree number 8 will not be preserved, per condition C.2 above, the applicant must pay into the City Tree Fund the amount equivalent to 50 inches of trees (currently \$150 per inch). Payment must be made to the Bureau of Development Services, who administer the fund for the Parks Bureau.

**D. The following conditions are applicable to site preparation and the development of individual lots:**

1. If required per condition C.8 above (see final plat approval letter), the applicant will be required to install residential sprinklers in the new houses on Lots 1-4 to the satisfaction of the Fire Bureau.
2. If required per condition C.2 above (see final plat approval letter), the applicant will be required to protect Tree number 8, a 48-inch western red cedar located in the Southwest corner of lot 4 (exhibit C-1). The applicant is required to install a metal fence 15-ft. away from the trunk of tree 8, on lot 4. The applicant should obtain a letter prior to Planning and Zoning approval that documents that the arborist will be on site during any excavation work performed on lot 4, the installation of the driveway and the utilities. Additionally, the following must be shown on the site plan:
  - The driveway leading to parking on lot 4 shall be placed as far north as possible and shall not be installed until the end of the construction process under the supervision of a certified arborist.
  - All underground utilities entering lot 4 shall be placed on the north side of lot 4, as far away from tree number 8 as possible.
  - A drywell will be required on lot 4, it shall be placed as far away from Tree number 8 as feasible.
  - All construction access to lot 4 must partially cross lot 3 via a temporary construction easement described in condition C.9 above.

Lastly, the arborist shall provide a follow up letter, following completion of all construction work on lot 4, but prior to the final of the building permit for the new unit on lot 4. The follow up letter the arborist provides should give a status report on the health of tree number 8 following all construction activities on lot 4.

3. The applicant must provide a fire accessway to the satisfaction of the Fire Bureau or the height of the new structures shall be limited to 30 feet, measured to the gutter line.

Decision rendered by:  on April 18, 2008  
By authority of the Director of the Bureau of Development Services

**Decision mailed April 23, 2008**

**Staff Planner: Shawn Burgett**

**About this Decision.** This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on July 11, 2007, and was determined to be complete on September 6, 2007.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on July 11, 2007.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant waived the 120-day review period (Exhibit A-3).

**Note: some of the information contained in this report was provided by the applicant.** As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

**Conditions of Approval.** If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

**Appealing this decision.** This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on May 7, 2008** at 1900 SW Fourth Ave. Appeals may be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor.

**An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. Recognized neighborhood associations are not subject to the appeal fee. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-0625 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.ci.portland.or.us](http://www.ci.portland.or.us).

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301 or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

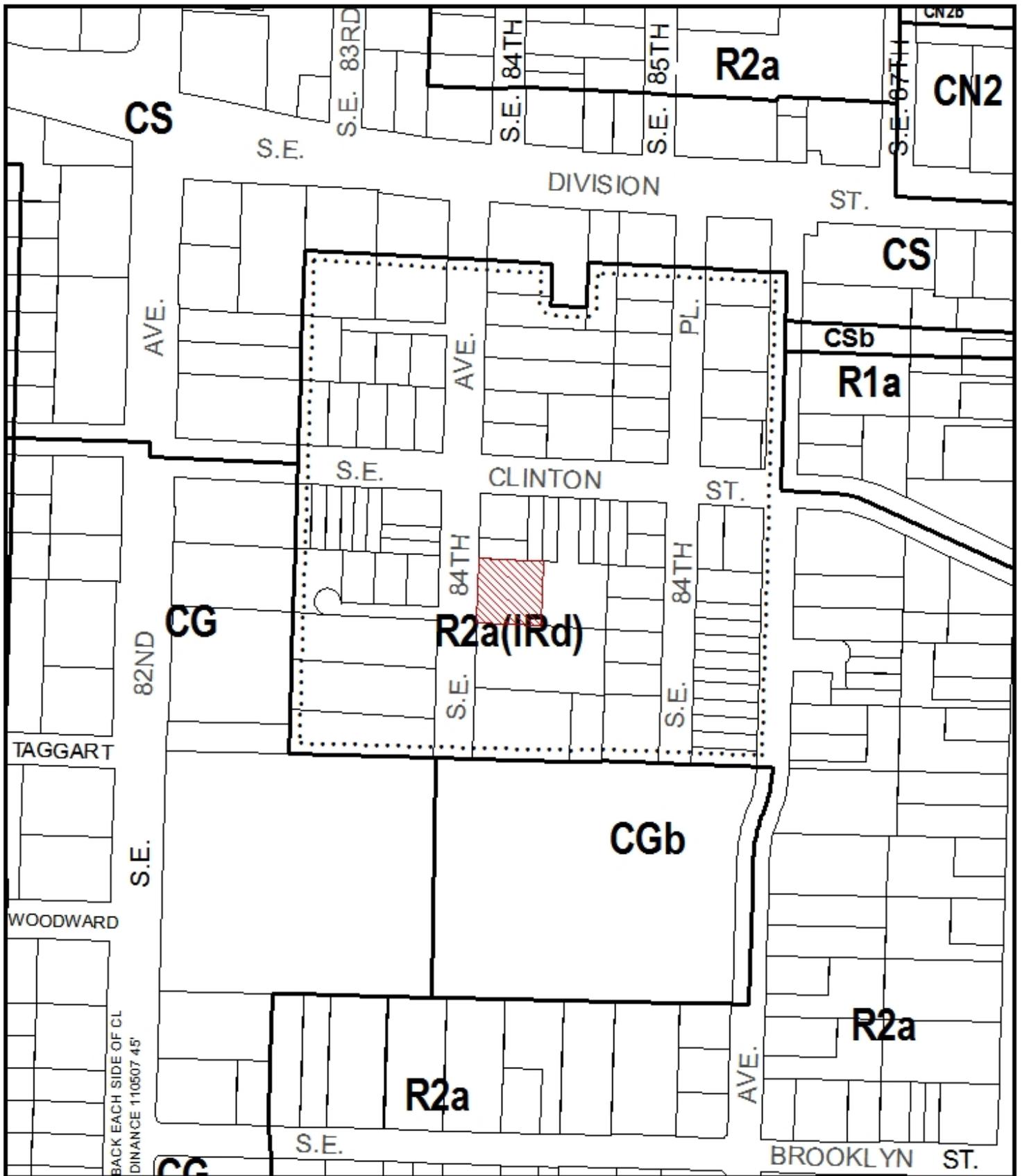
**Recording the land division.** The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director or delegate, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City's approval of the preliminary plan.**

#### EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Applicants narrative
  - 2. Arborist report
  - 3. 120 day waiver
  - 4. Soil infiltration tests dated March 8, 2007
  - 5. Storm Water Drainage calculations dated June 21, 2007
  - 6. Stormwater Drainage Calculations-addendum 1, dated August 20, 2007
  - 7. Applicants early neighborhood notification
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Existing Conditions Plan
  - 3. Clearing and Grading Plan
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
- F. Correspondence:
  - 1. Sylvia LaCourse, 2746 SE 84<sup>th</sup> Ave Portland, OR 97266 Dated September 14, 2007
  - 2. James Chasse, Land Use Chair, Powellhurst/Gilbert Neighborhood Association, No date
  - 3. Karen Wolfgang, 2746 SE 84<sup>th</sup> Ave, Portland, OR 97266 Dated October 11, 2007
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. Incomplete Letter
  - 4. City Forester correspondence regarding tree number 8

**The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-0625 (TTY 503-823-6868).**



# ZONING



Site



|             |                          |
|-------------|--------------------------|
| File No.    | <u>LU 07-145731 LDS</u>  |
| 1/4 Section | <u>3339</u>              |
| Scale       | <u>1 inch = 200 feet</u> |
| State_Id    | <u>1S2E09BB 5700</u>     |
| Exhibit     | <u>B (Jul 16,2007)</u>   |

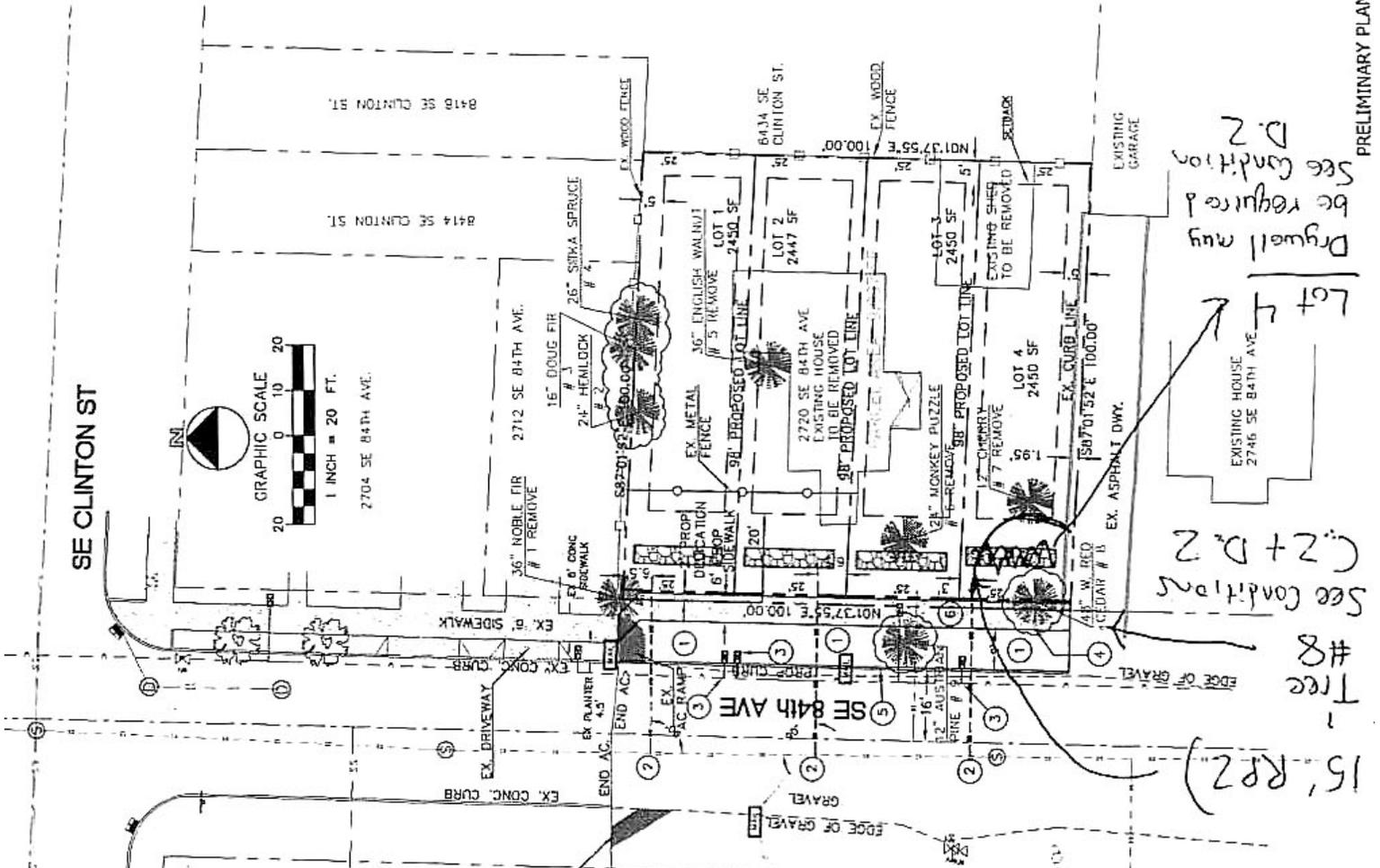
# ISPAS 4 LOTS SUBDIVISION PROPOSED 4 INDIVIDUAL DWELLINGS

## LEGEND

- PROPOSED LOT LINE
- EXISTING PROPERTY BOUNDARY
- EXISTING LOT LINE / RIGHT-OF-WAY
- EXISTING METAL FENCE
- EXISTING EDGE OF GRAVEL
- EXISTING CURB LINE
- EXISTING WATER LINE
- EXISTING SANITARY SEWER LINE
- EXISTING WOOD FENCE
- PROPOSED SANITARY LAT. SEWER
- MINOR CONTOUR LINE
- MAJOR CONTOUR LINE
- EXISTING / PROPOSED AC SIDEWALK
- EXISTING WATER METER
- EXISTING MAIL BOX
- EXISTING POLE SIGN
- EXISTING SANITARY SEWER MANHOLE
- EXISTING POWER POLE
- EXISTING TREES
- EXISTING TREE - DECIDUOUS
- EXISTING TREE - TO BE REMOVED
- PROPOSED TREE PROTECTION FENCE

- ① PROPOSED 9' WIDE STORMWATER W.C. / INFILTRATION FACILITY
- ② PROPOSED 4 INCH PVC SANITARY SEWER LATERAL
- ③ PROPOSED 1 INCH WATER SERVICE
- ④ PROPOSED INTERLOCKING BLOCKS SIDEWALK PANEL AROUND EXISTG TREE
- ⑤ PROPOSED CURB (100 FT FRONTAGE)
- ⑥ PROPOSED 6 FT WIDE SIDEWALK

PROPOSED STORMTECH C740 L=28 FT (2X14 FT) ROOF STORM INFILTRATION SYSTEM FOR EACH LOT. ALLOWED UNDER DRIVEWAYS.



CASE NO. 07-14573 1  
EXHIBIT C-1