



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**

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**Date:** June 24, 2010  
**To:** Interested Person  
**From:** Sean Williams, Land Use Services  
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## **NOTICE OF A TYPE I 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 to the Oregon Land Use Board of Appeals (LUBA) at 550 Capitol St. NE, Suite 235, Salem, OR 97301. The phone number for LUBA is 1-503-373-1265. Information on how to appeal this decision is listed at the end of this notice.

### **CASE FILE NUMBER: LU 10-122006 AP**

#### **GENERAL INFORMATION**

**Applicant:** Larry Cowlshaw  
Method Construction  
Po Box 23052  
Tigard, OR 97281

**Owner:** Helen Hoyt  
12735 SW Watkins Avenue  
Tigard, OR 97223

**Site Address:** 6505 SE 88<sup>th</sup> Avenue

**Legal Description:** LOT 1 BLOCK 5, MT SCOTT VIEW; LOT 1, PARTITION PLAT 2007-74  
**Tax Account No.:** R587700870, R649872930  
**State ID No.:** 1S2E21BA 03900, 1S2E21BA 03901  
**Quarter Section:** 3739  
**Neighborhood:** Lents, contact David Hyde at 503-772-1376.  
**Business District:** Eighty-Second Avenue, contact Ken Turner at 503-484-6225.  
**District Coalition:** East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.  
**Plan District:** None  
**Zoning:** Residential 2,500 (R2.5) w/ Alternative Design Density Overlay (a)  
**Case Type:** Partition Amendment (AP)  
**Procedure:** Type I, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

#### **Proposal:**

The applicant is proposing to amend a condition of approval from the Land Division (Land Use Review 06-162424 LDP) that created Parcel 2, the vacant 2,600 sq. ft. lot located south of the existing house with an address of 6505 SE 88<sup>th</sup> ave (Parcel 1). LU 06-162424 LDP created a 10 ft. wide access/sewer easement across the rear of Parcel 1 in order to provide sewer and vehicle access to Parcel 2 from SE Duke St. LU 06-162424 LDP has a condition of approval (condition D.1) that requires all vehicle access to Parcel 2 to come from the 10 ft. access easement across Parcel 1 from SE Duke St. The applicant is proposing to remove

this condition of approval and eliminate the 10 ft. access easement across Parcel 1 in order to allow vehicle access to Parcel 2 from SE 88<sup>th</sup> Avenue.

This amendment is reviewed through a Type I land use review because the change is to a condition of approval and the procedure type for the original land division approval was a Type I (33.660.310).

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Section **33.660.320, Changes to an Approved Preliminary Plan.**

## ANALYSIS

**Site and Vicinity:** The site is relatively flat. There are no improvements within Parcel 2. An existing single family dwelling is located within Parcel 1. No trees are located within the site subject to preservation standards. The surrounding properties are developed with one and two story single dwelling residences with comparable zoning.

**Zoning:** The R2.5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-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.

**Land Use History:** City records indicate that prior land use reviews include the following:

- **LU 06-162424 LDP:** Approval of a Preliminary Plan for a 2-lot partition that will result in 1 standard lot (Parcel 1) and 1 narrow lot (Parcel 2). This land division has been platted as PP 2007-74. Parcel 2 is the subject of this partition amendment review.

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on April 28, 2010.

**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:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## APPROVAL CRITERIA

### APPROVAL CRITERIA FOR CHANGES TO AN APPROVED PRELIMINARY PLAN

**33.660.320.A Approval criteria for changes listed in subsection 33.6660.310.B. Changes to the preliminary plan that are listed in subsection 33.660.310.B must meet the approval criteria of section 33.660.120 Approval Criteria.**

**Findings:** Changes to conditions of approval are listed in 33.660.310.B.9.

### 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**. This review is to remove a condition of approval (D-1) at the time of development for Parcel 2 of LU 06-162424 LDP. Because this parcel has already been platted (PP 2007-74), only the approval criterion relating to removal of the condition required at the time of development will be addressed. The remaining land division approval criteria were found to be met or not applicable in the previous land division approval and are not changing as a result of this amendment.

**Applicable Approval Criteria are:**

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

**Findings:** Chapter 33.611 contains the density and lot standards applicable in the R2.5 zone. 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

The density standards are not changing as a result of this amendment request. Therefore, this will continue to be met.

Lot Dimensions

The dimensions of the proposed lots as compared to the required lot dimension requirements are shown in the following table (this information is found in Chapter 33.611 of the Zoning Code). As you will note Parcel 2 is considered a narrow lot and it was this criterion that resulted in condition D-1 which required access for parcel 2 to be via an access easement over Parcel 1 to SE Duke.

	<b>R2.5 Zone Requirement</b>	<b>Parcel 2</b>
Minimum Lot Area	1,600 sq. ft.	2,600 sq.
Maximum Lot Area	NA	ft.
Minimum Lot Width*	36 ft.	26.02 ft.**
Minimum Lot Depth	40 ft.	100 ft.
Minimum Front Lot Line	30 ft.	26.02 ft.**

\* Width is measured by placing a rectangle along the minimum front building setback line specified for the zone. The rectangle must have a minimum depth of 40 feet, or extend to the rear of the property line, whichever is less.

\*\* Lot 2 is considered a “narrow lot” and must meet additional standards because its front lot line is less than 30 feet in width, see findings below.

Narrow Lots

Parcel 2 is 26 feet wide — narrower than the minimum width of 36 feet for the R2.5 zone, as shown in the table above. Section 33.611.200.C of the Zoning Code, however, allows narrower lots if the future development can meet certain regulations:

- a. On balance the proposed lots will have dimensions that are consistent with the purpose of the section;**

**Findings:** The lot dimension regulations of the Residential 2,500 (R2.5) zone ensure that:

- **Each lot has enough room for a reasonably-sized attached or detached house;**
- **Lots are of a size and shape that development on each lot can meet the development standards of the R2.5 zone;**
- **Lots are not so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future;**
- **Each lot has room for at least a small, private outdoor area;**

- **Lots are wide enough to allow development to orient toward the street;**
- **Each lot has access for utilities and services;**
- **Lots are not landlocked;**
- **Lots don't narrow to an unworkable width close to the street; and**
- **Lots are compatible with existing lots while also considering the purpose of this chapter.**

The applicant has provided an example of a building footprint that meets all applicable setback requirements and is oriented towards the street. Therefore they have demonstrated that the proposed parcel can accommodate a reasonably sized house and garage while meeting the development standards of the zoning code. The applicant has provided a preliminary utility plan that demonstrates that each lot has access for utilities and services. The proposed lots are not landlocked nor do they narrow to an unbuildable width close to the street. Proposed Parcel 2 is compatible with numerous lots within the immediate vicinity as demonstrated by the presence of at least 9 lots within a 500 foot radius that are of the same size or smaller. Therefore, Parcel 2 contains dimensions that are consistent with the purpose of the R2.5 zone.

- b. The minimum width for lots that will be developed with detached houses may not be reduced below 25 feet;**

**Findings:** Proposed Parcel 2 is 26 feet wide. Therefore, this parcel may be developed with a detached house.

- c. If the lot abuts a public alley, then vehicle access must be from the alley. This requirement will be imposed as a condition of approval of the land division;**

**Findings:** The site does not have access from an alley. Therefore, this standard does not apply.

- d. Lots must be configured so that development on the site will be able to meet the garage limitation standard of Subsection 33.110.253.E, at the time of development;**

**Findings:** Zoning Code section 33.110.252.E.3.b does not allow attached garages in the front façade of a new dwelling unit on Parcel 2 if the façade is less than 22 ft. wide. In this case, the widest home that can be built on Parcel 2 is 16 ft. wide, since the lot is 26 ft. wide and two 5 ft. side setbacks are required. Based on the regulation above, no attached garages are allowed in the front façade of any new dwelling units located on Parcel 2.

A condition of approval of LU 06-162424 LDP required that the applicant take access from SE Duke Street via an easement through Parcel 1 (6505 SE 88<sup>th</sup> Avenue). This condition was based on compliance with "narrow lot" standards at the time of application regarding preservation of on-street parking. This standard has since been eliminated from the zoning code (Title 33) and the applicant desires to take access from SE 88<sup>th</sup> Avenue. Therefore, this Partition Amendment review is necessary to eliminate the condition of approval regarding required access for Parcel 2 from SE Duke Street. The applicant has demonstrated that a parking pad may be located in the front of Parcel 2 to accommodate on-site parking from SE 88<sup>th</sup> Avenue. Therefore, condition D-1 of LU 06-162424 LDP may be removed.

- e. Lots that will be developed with attached houses must be configured so that 60 percent of the area between the front lot line and the front building line can be landscaped at the time of development; and**

**Findings:** The applicant has proposed to develop the new parcel with a detached house. Therefore, this standard does not apply.

- f. In areas where parking is not required by this Title, lots may be proposed that will not accommodate on-site vehicle access and parking. Such lots do not have**

**to meet the requirements of code section 33.611.200.C, subparagraph 2.c and 2.d. As a condition of approval of the land division, the property owner must execute a covenant with the city. The covenant must:**

**Findings:** The subject property is not located within 500 feet of frequent service transportation. Therefore, this standard does not apply.

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

**Findings:** No tracts are proposed or required for this review, 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:** As noted above, the condition of approval relating to required access from SE Duke Street is no longer required. Through the final plat approval process the applicant included an access easement on the plat and recorded an associated maintenance agreement. Because this easement is no longer needed the applicant will be required to execute a termination of maintenance agreement and access easement by general release document. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to development on Parcel 2.

With a condition of approval requiring execution of the agreement noted above, condition B-2 of LU 06-162424 LDP for the access easement is also no longer required and 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.

Among the various development standards that will be applicable to this lot, the applicant should take note of:

- **Narrow Lots**-- development on Parcel 2 will be subject to the following standards at the time of development permitting:
  - Height of the structures will be limited to 1.5 times the width of the structure, per 33.110.215.B.2; and
  - Attached garages are not permitted where the street facing façade of a unit will be less than 22 feet per 33.110.253.E.3.b. Detached dwelling units are not permitted on lots that are less than 25 feet in width.

## CONCLUSIONS

The applicant has proposed a partition amendment to remove a condition of approval of the land division which created this parcel (LU 06-162424 LDP) that relates to required vehicle access from SE Duke Street. As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions.

## ADMINISTRATIVE DECISION

**Approval** of a partition amendment to remove condition of approval B-2 and D-1 of LU 06-162424 LDP, per the approved site plan (Exhibit C-1), subject to the following conditions:

**A. The following condition is applicable to site preparation and development of Parcel 2 (Parcel 2 of PP 2007-74):**

1. The applicant shall execute a Termination of Maintenance Agreement and Access Easement by General Release document. The maintenance agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form prior to being recorded with Multnomah County.

**Staff Planner: Sean Williams**

**Decision rendered by:**  **on June 21, 2010**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: June 24, 2010**

**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 March 26, 2010, and was determined to be complete on April 26, 2010.

*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 March 26, 2010.

*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 did not

waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: August 24, 2010.**

**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.

**This decision, and any conditions associated with it, is final.** It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. You may call LUBA at 1-503-373-1265 for further information on filing an appeal.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, 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.portlandonline.com](http://www.portlandonline.com).

**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant’s Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Water Bureau
  - 3. Fire Bureau; Bureau of Transportation Engineering and Development Review; Site Development Review Section of BDS; Bureau of Parks, Forestry Division & Life Safety Plans Examiner.
- F. Correspondence: NONE
- G. Other:
  - 1. Site History Research
  - 2. Original LU Application



# ZONING



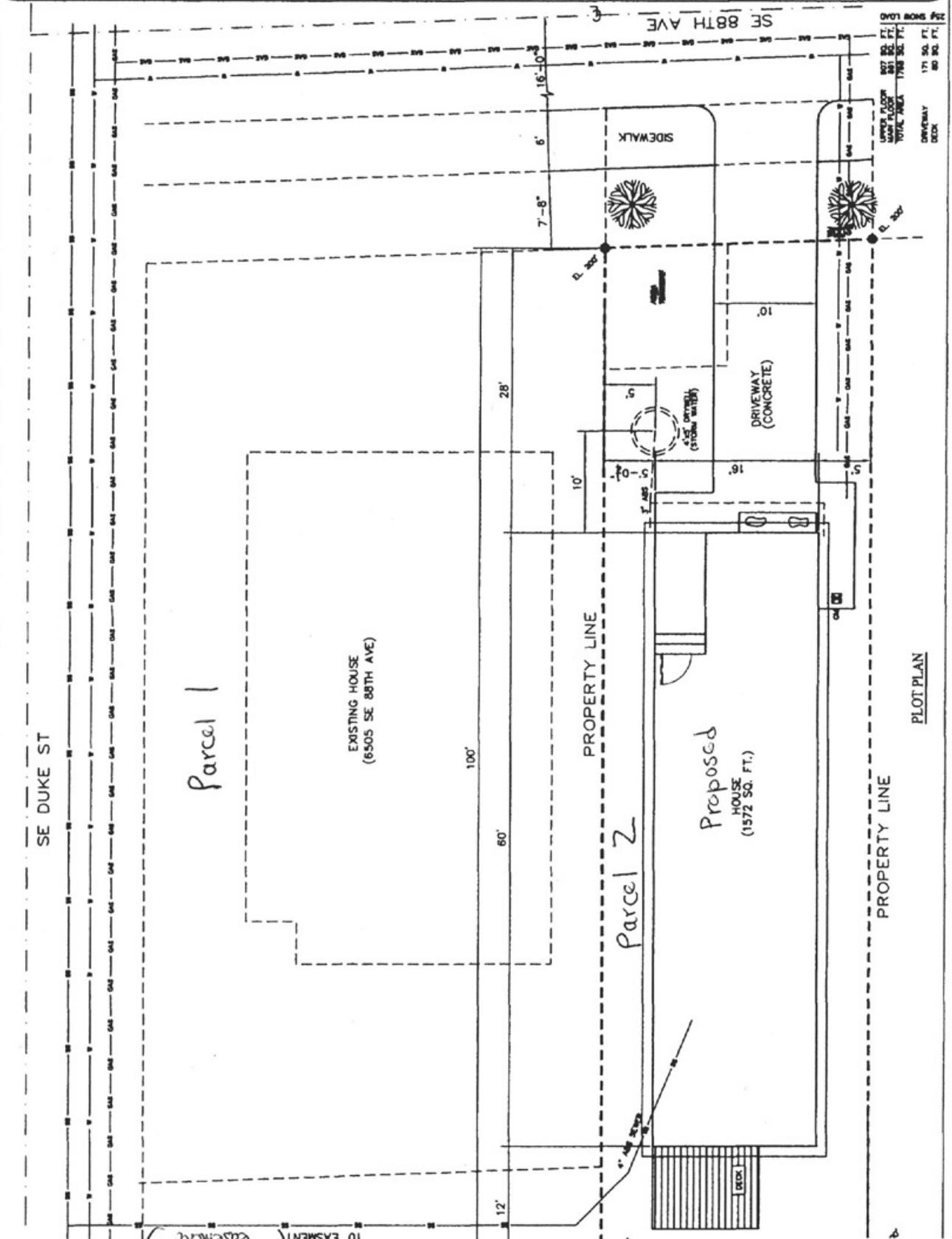
File No. LU 10-122006 AP  
 1/4 Section 3739  
 Scale 1 inch = 200 feet  
 State\_Id 1S2E21BA 3901  
 Exhibit B (Mar 30,2010)

METHOD CONSTRUCTION INCORPORATED  
 P.O. BOX 23052, TIGARD, OR 97281  
 Tel.: (503) 475-8221 Email: mck\_lrc@yahoo.com

PORTLAND, OR 97226  
 PROP. ID. R599883  
 PLOT PLAN

SCALE: 1/4"=1'-0"  
 DATE: 2/25/10  
 DRAWN BY: LBC

DWG. NO. H-1



LOWER FLOOR TOTAL AREA	171 SQ. FT.
DRIVEWAY DECK	171 SQ. FT.
UPPER FLOOR TOTAL AREA	171 SQ. FT.



CASE NO. 900221-01  
 EXHIBIT C-1