

CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

Hearings Office

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DECISION OF THE HEARINGS OFFICER ON APPEAL OF ADMINISTRATIVE DECISION

I. GENERAL INFORMATION

File No.:

LU 13-210098 LDS (HO 4140004)

Owner:

Bellevue Custom Homes, Inc.

8650 SW Miami Street

Wilsonville, OR 97070-9798

Consultant:

Bruce Vincent

Bedsaul/Vincent Consulting, LLC

416 Laurel Avenue, #3 Tillamook, OR 97141

Appellant:

Graham Wright

Glenfair Neighborhood Association

1017 NE 117th Avenue Portland, OR 97220

Hearings Officer:

Kenneth D. Helm

Bureau of Development Services (BDS) Staff Representative: Sean Williams

Site Address:

15525 W/ E Burnside

Legal Description:

TL 4000 0.70 ACRES, SECTION 36 1N 2E

Quarter Section:

3046

Tax Account No.:

R942360680

State ID No.:

1N2E36DB 04000

Neighborhood:

Glenfair

Business District:

Gateway Area Business Association

District Neighborhood Coalition: East Portland Neighborhood Office

Plan District: East Corridor

Zoning: Residential 2,500 (R2.5) w/ Alternative Design Density (a) and Aircraft

Landing Zone (h) Overlays

Land Use Review: Type IIx, Land Division Subdivision (LDS)

BDS Administrative Decision: Approval with conditions

Public Hearing: The hearing was opened at 9:03 a.m. on March 31, 2014, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 10:15 a.m. The record was held open until 4:30 p.m. on April 7, 2014 for new evidence by anyone, and until 4:30 p.m. on April 14, 2014 for applicant's rebuttal. The record was closed at that time.

Testified at the Hearing:

Sean Williams

Bruce Vincent

Dan Brenwald

Jim Stornweld

Debi Christensen

Kurt Christensen

Laurie Redman

David Hubbard

Brenda McSweenev

Graham Wright

Proposal:

The applicant is proposing to subdivide the subject property into 7 lots ranging in size from 3,407 to 4,578 square feet. Street improvements are required for NE Couch Court and a 15-foot wide right-of-way will be dedicated along the eastern property line for a future pedestrian connection. Proposed Lots 1-5 are narrower than the minimum width for the R2.5 zone (36-feet). The Zoning Code, however, allows narrower lots if the future development can meet the regulations of 33.611.200.C.

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, according to ORS 92.010. ORS 92.010 defines "lot" as a single unit of land created by a subdivision of land. The applicant's proposal is to create 7 units of land. Therefore this land division is considered a subdivision.

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

II. ANALYSIS

Site and Vicinity: The site is located on the north side of E Burnside Street approximately 90-feet east of the intersection with NE 154th Avenue. A barn that was associated with the adjacent property, addressed 15525 E Burnside Street, was demolished in 2011 (11-105584 RS). The site is currently void of any improvements. Site topography is relatively flat with a range in elevation from 291-297 feet. The only trees located within the site are considered nuisance species (Black Locust). Glenfair Elementary School and Park are located directly northwest of the site.

Infrastructure:

• Streets — The site has approximately 89-feet of frontage on E Burnside Street and 176-feet of frontage on NE Couch Court. At this location, E Burnside Street is classified as a Neighborhood Collector, Regional Transitway, City Bikeway, City Walkway, and a Community Corridor in the Transportation System Plan (TSP). NE Couch Court is classified as a Local Service Street for all modes. TriMet provides transit service along the site's E Burnside frontage via the MAX light-rail Blue Line.

At this location, E Burnside Street is improved with light-rail transit, one through lane in each direction, bike lanes, curbs, and a 5-foot wide sidewalk separated from the curb by a variable width planter. Northeast Couch Court is void of any improvements along the site's frontage.

- Water Service The site is located within the Rockwood Water PUD. There is an existing 12-inch DI water main in E Burnside Street. There is no water service in NE Couch Court along the frontage of the site.
- Sanitary Service There is an existing 8-inch CSP public sanitary sewer main located on the south side of E Burnside Street and an 8-inch PVC sanitary sewer main in NE Couch Court approximately 35-feet east of the land division site. There is no sanitary sewer in NE Couch Court along the frontage of the site.

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 <u>not</u> using any of the provisions of the "a" overlay.

The Aircraft Landing ("h") overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. In

the Residential and Commercial zones, structures are regulated by the base zone height limits rather than the height limits of this chapter.

The East Corridor plan district encourages new housing and mixed use development and expansions of existing development to promote the corridor's growth and light rail transit ridership and to implement the objectives of the City's Pedestrian Districts to enhance the pedestrian experience and access to and from light rail service.

Land Use History: City records indicate the following prior land use reviews for this site:

- LU 07-143264 LDS AD: Approval of a Preliminary Plan for a 14-lot subdivision, that will result in 2 standard lots and 12 narrow lots with two public streets. This proposal also included adjacent property addressed 15525 E Burnside. The applicant for this proposal did not proceed with platting.
- LU 08-145871 AD: Proposed adjustment to side setbacks for future development on lots approved through LU 07-143624 LDS AD. This application was withdrawn by the applicant.
- PR 10-199233 PLA: Approval of a property line adjustment that resulted in the current configuration of the site subject to this land division review. NE Couch Court right-of-way was dedicated along the site's frontage as a part of this property line adjustment review.

Agency Review: Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Exhibits "E" contain the complete responses.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on November 20, 2013. Three written responses were received from the Neighborhood Association or notified property owners in response to the proposal (Exhibit F.1-3). The concerns expressed pertain to trees, transportation impacts, neighborhood notification and compatibility. BDS Staff had the following response:

Per the applicants arborist report (Exhibit A.2), all of the trees located within the land division site are exempt from preservation standards as they are considered nuisance species. Some concerns have been expressed regarding trees on property adjacent to the land division site and within the undeveloped NE Couch Court right-of-way. Trees off site are not regulated by the tree preservation standards for land divisions. These trees are instead regulated by Urban Forestry under Title 20 and may require a permit for removal. Urban Forestry recommended that a protection plan be produced so that trees on adjacent property and right-of-way are not harmed during construction on the land division site (Exhibit E.6). The purpose of this recommendation is to express liability for tree removal; this issue may not be addressed through a condition of the land use approval as these trees are not regulated by the tree preservation standards for land divisions.

The Portland Bureau of Transportation (PBOT) has required street and sidewalk improvements for NE Couch Court in order to safely serve the proposed

development. PBOT has not identified any other transportation issues related to the proposal that would require mitigation.

The notice of request for Type IIx applications is mailed to all property owners within 150 feet of the site. The applicant has provided documentation (Exhibit A.4) that the neighborhood notification requirements have been satisfied. The Glenfair Neighborhood Association requested a meeting with the applicant on October 24, 2013, which is summarized in the aforementioned exhibit.

The applicant is proposing to create 7 lots, which is less than the maximum of 10 lots allowed by the Residential 2,500 (R2.5) zone. The only approval criteria that pertains to compatibility is addressed as a part of creating lots that are narrower than the minimum width required by the zone. As addressed in the findings associated with Lots, the narrow lots proposed as a part of this application are compatible with existing lots in the vicinity.

HEARINGS OFFICER OVERVIEW

On March 31, 2014, the Hearings Officer held a public hearing on the application. The Hearings Officer notified all present of their rights under ORS 197.763, and did not have any *exparte* contacts to report.

BDS Staff provided a PowerPoint overview of the application. BDS Staff explained that the proposal met all applicable transportation and parking requirements as well as lot size and density requirements. As to the appellants' concerns about tree protection, BDS Staff explained that the City Forester's comments were purely advisory and no applicable code criteria address tree preservation for off-site trees.

The applicant's representative, Bruce Vincent, provided a written response to the appeal and testified. Exhibit H.3. He testified that the applicant agreed with the BDS Staff findings and recommended conditions of approval. He stated that the proposed lot widths were slightly larger than the minimum allowed for the zone and that the configuration is similar to other developments nearby. Each unit will have a garage and driveway, which will accommodate two vehicles. For that reason, no additional on-street parking is necessary. He explained that the potential infringement of the neighbor's fence and garage into the right-of-way ("ROW") of NE Couch Court is likely a private matter between the City and the neighbors. As for the City Forester's comments, he stated that PCC 20.400 made clear that those comments are advisory only.

Dan Greenwald, owner of Bellevue Custom Homes, testified that he would install a "foundation beam" for the one lot adjacent to the trees in question which is a technique that has been successful at preserving the root systems of trees on adjacent properties.

Appellants Kurt and Debi Christensen, and other neighbors raised the following concerns:

 The large Douglas firs on their property will be compromised by the proposed development. The root systems may be damaged and the trees deprived of water due to the planned dwellings. They expressed fear that if the trees died they might fall directly on to their home.

- Their fence is their property line and they alleged that the City allowed them to build a shop or garage in its present location. The information that the fence and garage might be located in the ROW for Couch Ct. was frustrating and disappointing. They suggested that the survey markers may have moved with nearby tree roots.
- They expressed that they had not received notice of the proposal originally or that it had been illegible.
- They requested that the applicant pay for the removal of the Douglas fir trees and provide a new fence. They also requested prior notice if any work occurred on the fence so that they could keep their dog from escaping their property.
- Other neighbors asserted that visitors and park users would cause negative parking impacts on NE Couch Ct.
- Another neighbor argued that seven lots was simply too dense. The narrow lot design is completely new to the neighborhood and will not fit in.

At least one participant requested that the written record be left open. Based on that request, the Hearings Officer left the record open until April 7, 2014 for argument and evidence to be submitted on any issue. The applicant's final argument was due April 14, 2014.

The Hearings Officer will address the opponents' arguments, to the extent they touch on applicable approval standards, in the findings below. Before making those findings, the Hearings Officer must identify issues that are not relevant to this appeal.

The applicant submitted credible evidence from a licensed surveyor that unfortunately shows that part of the Christensen's' fence and garage are located in the ROW of NE Couch Court. Exhibit H.19 and H.19a. This is indeed an unfortunate condition, and the Hearings Officer is sympathetic to the dilemma this places the Christensen's in. However, the Hearings Officer lacks authority under any provision of the PCC to remedy this problem, and the situation does not allow for or warrant a denial of the application. The record is not sufficient to determine the root cause or causes of the inaccurate boundary for the Christensen's' property. It would not be prudent or even helpful for the Hearings Officer to opine on how the Christensen's might go about solving the current problem. In any case, the application complies with the applicable provisions of the PCC with regard to access to NE Couch Ct. and can be approved.

The appellants' concerns about proper notice, to the extent there was any procedural error, was cured by the timely appeal and appeal hearing at which all interested parties were allowed to testify.

As to the fate of the Douglas fir trees, whether or not the Hearings Officer were to agree that the written opinions of the City Forester and Drendel's Tree Service (Exhibit H.5d) constitute substantial evidence, BDS Staff is correct to note that none of the applicable criteria address off-

site tree preservation. Therefore, the Hearings Officer lacks authority to either deny the application or condition the application based on alleged impacts to off-site trees.

ZONING CODE 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.

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 criteria that are not applicable. Applicable criteria are addressed below the table.

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:	
В	33.630 – Tree Preservation	All trees within the land division site are considered nuisance species and are therefore exempt from these regulations (Exhibit A.2).	
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.	
D	33.632 - Potential Landslide Hazard Area	The site is not within the potential landslide hazard area.	
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.	
F	33.634 - Recreation Area	The proposed density is less than 40 units.	
Ī	33.639 - Solar Access	All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.	
J	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the site outside o environmental zones.	
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.	
	33.654.110.B.3 - Pedestrian connections in the I zones	The site is not located within an I zone.	
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required.	
	33.654.120.C.3.c - Turnarounds	No turnarounds are proposed or required.	
	33.654.120.D - Common Greens	No common greens are proposed or required.	
	33.654.120.E - Pedestrian Connections	There are no pedestrian connections proposed or required.	
	33.654.120.F - Alleys	No alleys are proposed or required.	
<u>,</u>	33.654.120.G - Shared Courts	No shared courts are proposed or required.	
	33.654.130.D - Partial rights-of- way	No partial public streets are proposed or required.	

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 dimension requirements applicable in the Residential 2,500 (R2.5) zone. The applicant is proposing two standard lots (Lots 6 and 7), five

narrow lots (Lots 1-5) and a public pedestrian right-of-way. The minimum and maximum density for the site is as follows:

Minimum = $(30,492 \text{ square feet * } .68) \div 5,000 \text{ square feet = } 4.14 \text{ (which rounds down to a minimum of 4 lots, per 33.930.020.A)}$

Maximum = $(30,492 \text{ square feet * .85}) \div 2,500 \text{ square feet = } 10.36 \text{ (which rounds down to a maximum of } 10 \text{ lots, per } 33.930.020.\text{B})$

The required and proposed lot dimensions are shown in the following table:

	Min. Lot Area (square feet)	Max. Lot Area (square feet)	Min. Lot Width* (feet)	Min. Depth (feet)	Min. Front Lot Line (feet)
R2.5	1,600	NA	36	40	30
Zone					
Lot 1	3,510		33	106.5	33
Lot 2	3,407		32	106.5	32
Lot 3	3,407		32	106.5	32
Lot 4	3,407		32	106.5	32
Lot 5	3,407		32	106.5	32
Lot 6	5,262		44.27	118.69	44.27
Lot 7	5,276		44.27	119.33	44.27

^{*} 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.

Narrow Lots

Lots 1-5 are between 32 and 33-feet wide, which is narrower than the minimum width of 36-feet for the R2.5 zone, as shown in the table above. The Zoning Code, however, allows the minimum lot width to be reduced below the minimum dimension stated above, if all of the following are met (33.611.200.C.2):

a. On balance, the proposed lots will have dimensions that are consistent with the purpose of the Lot Dimension Regulations;

Findings: BDS Staff found, and the Hearings Officer agrees, that the applicant has provided site plans (Exhibits C.1-C.4) that depict building footprints which meet all applicable setback requirements and are oriented towards the street. Therefore, they have demonstrated that Lots 1-5 can accommodate a reasonably sized house and garage while meeting the development standards of the Residential 2,500 (R2.5) zone. These plans also show existing and proposed water and sanitary sewer services that demonstrate Lots 1-5 will have access for utilities and services. The proposed lots are not landlocked nor do they narrow to an unbuildable width close to the street.

Even though opponents disagreed that the proposed narrow lot dwellings are incompatible with the neighborhood, the Hearings Officer aggress with BDS Staff that Lots 1-5 are compatible with

existing lots in the vicinity as demonstrated by developments at NE 147th Avenue and NE Couch Street and at NE 148th Avenue and NE Flanders Street. On balance, proposed Lots 1-5 have dimensions that are consistent with the purpose of lot dimension regulations as demonstrated by the preceding findings. This standard is met.

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

Findings: The lots will be developed with detached houses. The proposed lots are at least 25-feet wide. This criterion is met.

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, so this regulation 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: The applicant has demonstrated, with Exhibit C.1, that each lot will be built with a house that is at least 22-feet in width and will be able to accommodate a garage that will occupy no more than 50% of the length of the street facing façade. The garage limitation standards of Subsection 33.110.253.E can be met.

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 indicated that the lots will be developed with detached houses, so this criterion 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 subparagraphs 2.c and d. As a condition of approval of the land division, the property owner must execute a covenant with the city. The covenant must:
 - (1) State that the owner will develop the property without parking, and that a driveway for access to on-site parking may not be created in the future, unless it is in conformance with regulations in effect at the time;
 - (2) Meet the requirements of Section 33.700.060, Covenants with the City; and
 - (3) Be attached to, and recorded with the deed for the new lot.

Findings: Parking is required. Therefore, alley access and the garage limitation requirements described above must be met.

The findings above show that the applicable density and lot dimension standards are met.

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

Findings:

Clearing and Grading

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 clearing or grading will be required on the site to make the new lots developable. In addition, there are no trees required to be preserved on the site that would conflict with new development. This criterion is met.

Land Suitability

The site is currently in residential use, and there is no record of any other use in the past. As indicated above, the site is relatively flat and contains no known geological hazards. Therefore, there are no anticipated land suitability issues and the new lots can be considered suitable for new development. This criterion is met.

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

Findings: No tracts are proposed or required for this land division, so criterion A does not apply. The following easements are proposed and/or required for this land division:

- A Private Sanitary Sewer Easement is required across the relevant portions of Lots 3 and 4, for a sanitary sewer lateral connection that will serve Lot 7.
- A Private Sanitary Sewer Easement is required across the relevant portions of Lots 4 and 5, for a sanitary sewer lateral connection that will serve Lot 8.

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 the final plat. In addition, the plat must reference the recorded maintenance agreement(s) with a recording block for each agreement, substantially similar to the following example:

"A Declaration of Maintenance	agreement for Private Sanitary Sewer Easement has bee	'n
recorded as document no	, Multnomah County Deed Records."	

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,

Findings: BDS Staff found that the Development Review Section of the Portland Bureau of Transportation reviewed the application for its potential impacts regarding the public right-of-

way, traffic impacts and conformance with adopted policies, street designations, and for potential impacts upon transportation services. The Hearings Officer has reviewed PBOT's Analysis (Exhibit E.2) and agrees with those conclusions as follows:

E Burnside Street is designated in the City's Transportation System Plan as a Neighborhood Collector Street, Regional Transitway, City Bikeway, City Walkway, and a Community Corridor. E Burnside Street in the vicinity of the site is improved with light-rail transit, one through lane in each direction, bike lanes, curbs, and 5-foot wide sidewalks separated from the curb by a variable width planter. The site's E Burnside Street frontage will be required to be reconstructed to accommodate a minimum sidewalk width of 6 feet. With the subject sidewalk widening the site's Burnside Street frontage will meet City standards. These standards have been developed and adopted with the intent of providing safe infrastructure for all modes, including vehicles, pedestrians, bicycles and transit.

NE Couch Street in the vicinity of the site is classified as a Local Service street in the City's Transportation System Plan. NE Couch Street needs to be extended along the site frontage with half-street improvements. In addition, an 18 to 20-ft roadway extension will be required to be constructed within the existing unimproved NE Couch Street right-of-way located to the west of the subject site to connect NE Couch Street to existing NE 154th Avenue/NE Couch Court.

E Burnside Street in the vicinity of the subject site does not accommodate on-street parking; on-street parking will be accommodated on the local access streets connecting to E Burnside Street.

Transit service is provided by Trimet less than 1/4 mile from the subject site on SE Stark Street (bus line 20) with bus stops located at SE Stark Street/SE 155th Avenue. Light rail transit service is available along E Burnside Street with the nearest light-rail transit stops located approximately 1/3 mile from the subject site at E Burnside Street/148th Avenue and E Burnside Street/162nd Avenue.

The proposed land division will have only minor impacts on area street capacity and level of service. A traffic impact study is not be required for this land division.

In this case, PBOT determined that street improvements must be made to NE Couch Court and E Burnside Street 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, additional right-of-way must be dedicated along the site's NE Couch Court frontage. With those improvements, the proposed development can be safely served by this existing and proposed streets without having any significant impact on the level of service provided. The applicant provided evidence that the existing ROW will be adequate to serve the proposed development – even though the neighbors' fence and garage are located partially within the ROW. Exhibits H.19 and H.19a. This criterion is met.

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

Findings: BDS Staff found, and the Hearings Officer agrees that the criteria and standards for PCC 33651-33.654 are met as shown in the following table:

33.651 Water Service standard – See Exhibit E.3

The Rockwood Water PUD has indicated that service is available to Lots 6 and 7 from the 12-inch DI water main in E Burnside Street. There is no existing water service in NE Couch Court along the frontage of the site. The nearest water service is located in NE Couch Court just east of the site. The applicant must make arrangements to extend a new water main in NE Couch Court to ensure service is available to Lots 1-5. In order to meet the standards of 33.651 and the technical requirements of Title 21, appropriate plans and assurances must be provided to Rockwood Water PUD prior to final plat approval.

33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1

The Bureau of Environmental Services has indicated that service may be available to Lot 6 from the 8-inch CSP public sanitary sewer main located on the south side of E Burnside Street. There is no public sanitary sewer available in NE Couch Court along the site's frontage to serve Lots 1-5 or in NE Burnside Street to serve Lot 7. The nearest available sewer is located in NE Couch Court approximately 35-feet east of the site. The applicant must obtain a public works permit to extend the public sewer to this site prior to final plat approval. Due to the difficulty of accessing the public sewer main in E Burnside Street to serve Lots 6 and 7, the Bureau of Environmental Services has granted approval to access the new sewer main in NE Couch Court via easements through Lots 3-5. Subject to the conditions noted above, the sanitary sewer service standards of 33.652 are met.

33.653.020 & .030 Stormwater Management criteria and standards – See Exhibit E.1

No stormwater tract is proposed or required. Therefore, criterion A is not applicable. The applicant submitted a Simplified Approach stormwater report to address this approval criterion (Exhibit A.3) and has proposed the following stormwater management methods:

- Public Street Improvements (NE Couch Court): 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. The agency has confirmed that the proposed swale is of a size and proposed design that is adequate to provide infiltration for the quantity of water generated from the new impervious areas. To accommodate this stormwater facility within the public right-of-way, a dedication along the frontage of the site must be provided on the final plat. BES requires a Public Works Permit for the construction of such a swale. The applicant must provide engineered designs and financial guarantees of performance prior to final plat approval.
- Lots 1-7: Stormwater from these lots will be directed to individual 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. The applicant's stormwater report demonstrates infiltration rates of 2 inches per hour, which is adequate for on-site infiltration through drywells. Therefore, the Bureau of Environmental Services has indicated conceptual approval of the proposed method of stormwater management. This criterion is met.

33.654.110.B.1 Through streets and pedestrian connections

33.654.130.B Extension of existing public dead-end streets & pedestrian connections 33.654.130.C Future extension of proposed dead-end streets & pedestrian connections

Generally, through streets should be provided no more than 530 feet apart and at least 200 feet apart. The Portland Bureau of Transportation has provided the following evaluation of connectivity for this proposal (Exhibit E.2):

NE Couch Street must be extended along the northern site property line with half street improvements and extend a 20-ft wide roadway from the western boundary of the site to NE 154th. In addition, a 15-ft wide dedication for a future pedestrian connection is required along the eastern boundary of the site. The future extension of the pedestrian connection to E Burnside can be obtained once the abutting site on the south comes in for further development.

For the reasons described above, this criterion is met.

33.654.130.A - Utilities (defined as telephone, cable, natural gas, electric, etc.)

Any easements that may be needed for private utilities that cannot be accommodated within the adjacent right-of-ways can be provided on the final plat. At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. Therefore, this criterion is met.

Neighbors alleged that the proposed site plan did not show stormwater management areas or adequate management of stormwater. Exhibits H.16 and H.17. The Hearings Officer agrees with the applicant's view that these arguments are not accurate or well developed enough to allow for a response. The opponents do not seem to be aware of the applicant's stormwater report as identified in the findings above. The application is supported by substantial evidence that stormwater will be adequately treated and dispersed sufficient to comply with PCC 33.653.020-030.

DEVELOPMENT STANDARDS

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.

Future Development

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

- Narrow Lots-- development on Lots 1-5 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
 - Garages can be no wider than 50% of the width of the front façade of the house, per 33.110.253.E.3.a
 - 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.

Existing development that will remain after the land division. The site is currently vacant, so the division of the property will not cause the structures to move out of conformance or further out of conformance with any development standard applicable in the R2.5 zone. Therefore, 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 and Topic		
Development Services/503-823-7300	Title 24 – Building Code, Flood plain		
www.portlandonline.com/bds	Title 10 – Erosion Control, Site Development		
	Administrative Rules for Private Rights-of-Way		
Environmental Services/503-823-7740	Title 17 – Sewer Improvements		
www.portlandonline.com/bes	2008 Stormwater Management Manual		
Fire Bureau/503-823-3700	Title 31 Policy B-1 – Emergency Access		
www.portlandonline.com/fire			
Transportation/503-823-5185	Title 17 – Public Right-of-Way Improvements		
www.portlandonline.com/transportation	Transportation System Plan		
Urban Forestry (Parks)/503-823-4489	Title 20 – Street Trees and other Public Trees		
www.portlandonline.com/parks			
Water Bureau/503-823-7404	Title 21 – Water availability		
www.portlandonline.com/water			

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 regards to fire flow/water supply, fire hydrant spacing, parking allowances, access specifications, addressing requirements, turning radius and aerial fire department access roads. These requirements are based on the technical standards of Title 31 and Oregon Fire Code (Exhibit E.4).
- The applicant must meet the requirements of Urban Forestry for street tree planting in E Burnside Street and NE Couch Court. Additionally, Urban Forestry recommended that a protection plan be produced so that trees on adjacent property and right-of-way are not harmed during construction on the land division site. These requirements are based on the standards of Title 20 (Exhibit E.6).

III. CONCLUSIONS

The applicant has proposed a 7-lot subdivision, as shown on the attached preliminary plans (Exhibit C.1-4). As discussed in this decision, the relevant standards and approval criteria have

been met, or can be met with conditions. The primary issues identified with this proposal are: Lots, Transportation Impacts and Services/Utilities. With conditions of approval that address these requirements, this proposal can be approved.

IV. DECISION

The appellant did not prevail in this appeal.

Approval of a Preliminary Plan for a 7-lot subdivision that will result in two standard lots (Lots 6 and 7), 5 narrow lots (Lots 1-5) and a public pedestrian connection, as illustrated with Exhibits C.1-C.4, subject to the following conditions:

A. The Final Plat must show the following:

- 1. The applicant shall meet the street dedication requirements of the City Engineer for NE Couch Court and the 15-foot wide public pedestrian connection. The required right-of-way dedications must be shown on the final plat.
- 2. A private sanitary sewer easement, for the benefit of Lot 6, shall be shown and labeled over the relevant portions of Lots 4 and 5.
- 3. A private sanitary sewer easement, for the benefit of Lot 7, shall be shown and labeled over the relevant portions of Lots 3 and 4.
- 4. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition B.4 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. , Multnomah County Deed Records."

B. The following must occur prior to Final Plat approval:

- 1. The applicant shall meet the requirements of the City Engineer for right of way improvements along the site's NE Couch Court and E Burnside street frontage. The applicant shall submit an application for a Public Works Permit and provide plans and financial assurances to the satisfaction of the Portland Bureau of Transportation and the Bureau of Environmental Services for required street frontage improvements.
- 2. The applicant shall meet the requirements of the Bureau of Environmental Services (BES) for extending a public sewer main in NE Couch Court. The public sewer extension requires a Public Works Permit, which must be initiated and at a stage acceptable to BES prior to final plat approval. As part of the Public Works Permit, the applicant must provide engineered designs, and performance guarantees for the sewer extension to BES prior to final plat approval.

- 3. The applicant shall meet the requirements of the Rockwood Water PUD for providing plans and financial assurances for the water main extension in NE Couch Court.
- 4. A Maintenance Agreement shall be executed for the Private Sanitary Sewer easements described in Conditions 2 and 3 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
- 5. The applicant shall meet the requirements of the Fire Bureau for fire hydrant spacing. If the spacing requirements are not met, the applicant shall install a new fire hydrant by contacting the Rockwood Water PUD for fee installation information related to the purchase and installation of fire hydrants. The applicant must purchase the hydrant and provide verification to the Fire Bureau that the Rockwood Water PUD will be installing the required fire hydrant, with the required fire flow and pressure.
- 6. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant. The applicant must provide verification to the Fire Bureau that Appendix B of the Fire Code is met, the exception is used, or provide an approved Fire Code Appeal prior final plat approval.
- C. The following conditions are applicable to site preparation and the development of individual lots:
- 1. The applicant must meet the addressing requirements of the Fire Bureau for Lots 1-7. The location of the sign must be shown on the building permit.
- 2. The applicant must provide a fire access way that meets the Fire Bureau requirements related to aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height as measure to the bottom of the eave of the structure or the top of the parapet for a flat roof.

Kenneth D. Helm, Hearings Officer

Kenneth D. All

April 28, 2014
Date

Application Determined Complete:

Report to Hearings Officer:

Decision Mailed:

Last Date to Appeal:

November 13, 2013

March 21, 2014

April 28, 2014

May 19, 2014

About this Decision. This land use decision is **not a permit** for development. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Conditions of Approval. 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. The Hearings Officer's decision is final and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council, but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearing before the Hearing's Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer's decision becomes final.

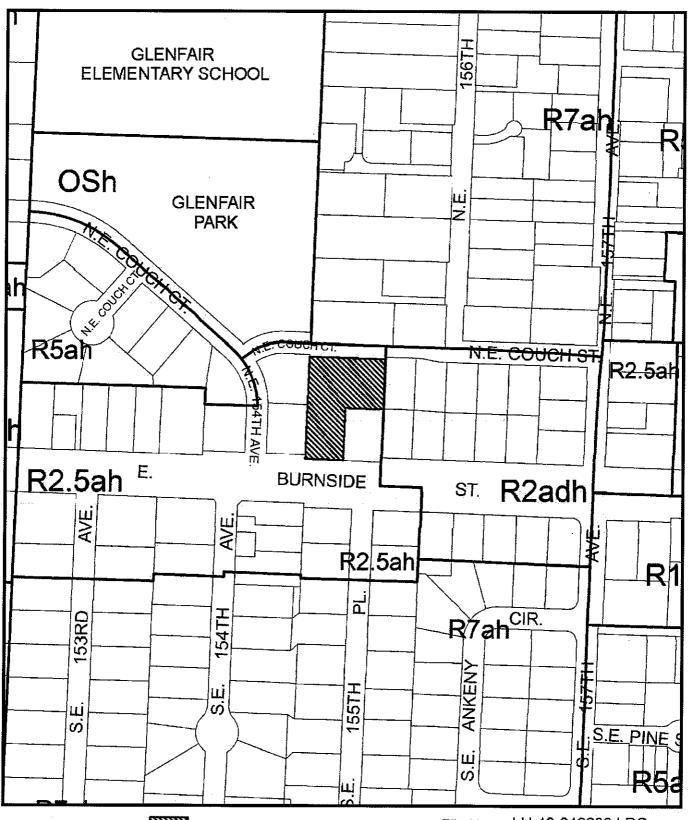
Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

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.

EXHIBITSNOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Narrative
 - 2. Arborist Report
 - 3. Stormwater Report
 - 4. Neighborhood Contact
 - 5. Request for Extension of 120-Day Review Period
- B. Zoning Map (attached)
- C. Plans/Drawings
 - 1. Preliminary Dimension Plan (attached)
 - 2. Preliminary Utility Plan
 - 3. Preliminary Grading & Erosion Control Plan
 - 4. Preliminary Street Profile
- 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. Rockwood Water PUD
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. Life Safety Plans Examiner
- F. Correspondence
 - 1. Kurt and Debi Christensen (12/24/13)
 - 2. David Hubbard (12/20/13)
 - 3. Laurie Redman
- G. Other
 - 1. Original LU Application
 - 2. Incomplete Letter w/ RFC Responses
- H. Received in the Hearings Office
 - 1. Hearing Notice Williams, Sean
 - 2. Appeal Form and Notice of Decision Williams, Sean
 - 3. 4/26/14 letter with attachments Vincent, Bruce
 - a. PortlandMaps printout Vincent, Bruce
 - b. 12/28/07 Memo, Paul Cathcart to Ian Simpson with Revised Staff Report Vincent, Bruce
 - c. Decision of the Hearings Officer, LU 07-143264 LDS Vincent, Bruce
 - 4. Excerpts of City Code Vincent, Bruce
 - 5. Written testimony with attachment Christensen, Kurt and Debi
 - a. 12/14/13 letter Christensen, Kurt and Debi
 - b. 12/24/13 Memo, Robert Haley to Sean Williams Christensen, Kurt and Debi
 - c. 1/2/14 Memo, Myles Black to Williams Christensen, Kurt and Debi

- d. Drendel's Tree Service Inc. Certified Arborist Report Christensen, Kurt and Debi
- e. Map Christensen, Kurt and Debi
- f. 2/20/14 Notice of Type IIx Decision, LU 13-210098 LDS Christensen, Kurt and Debi
- g. Residential 1 & 2 Family Permit info. Christensen, Kurt and Debi
- 6. Photos Redman, Laurie
- 7. PowerPoint presentation printout Williams, Sean
- 8. 4/26/14 letter Williams, Sean
- 9. Type II and IIx Decision Appeal Form Williams, Sean
- 10. Returned mail to Respondent Redman Laurie Williams, Sean
- 11. Mailing List and Notice of Hearing Williams, Sean
- 12. Mail to Case File Williams Williams, Sean
- 13. Returned mail to Owners Bellevue Custom Homes Inc. Williams, Sean
- 14. Record Closing Information Hearings Office
- 15. Document Bauer, Linda
- 16. Document Bauer, Linda
- 17. Document Bauer, Linda
- 18. 4/10/14 Letter Vincent, Bruce
- 19. Letter from Ferguson Land Surveying, Inc. Vincent, Bruce
 - a. Map of Hartley Addition Vincent, Bruce
 - b. PCC Code Sections Vincent, Bruce
 - c. Map NE 147th and NE Couch Vincent, Bruce
 - d. Map of NE 147th and NE Couch Vincent, Bruce
 - e. Map of NE 148th and Flanders Vincent, Bruce
 - f. Map of NE 148th and Flanders Vincent, Bruce
 - g. 1959 Hartley Add Vincent, Bruce
 - h. Survey Records Vincent, Bruce



ZONING Site

LU 13-210098 LDS File No._ 3046 1/4 Section_ 1 inch = 200 feet Scale_ 1N2E36DB 4000 State Id. В Exhibit_ (Sep 30,2013)



This site lies within the: **EAST CORRIDOR PLAN DISTRICT**

