



CITY OF
PORTLAND, OREGON
HEARINGS OFFICE

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DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File No.: LU 07-118673 LDS (HO 4070058)

Applicant: Hardy Li
Convergent Pacific
8975 SW Center St
Tigard OR 97223

Owner: De Liu
PO Box 1956
Lake Oswego, OR 97035

De Liu
6110 SW Burma
Lake Oswego, OR 97035

Hearings Officer: Ian Simpson

Bureau of Development Services (BDS) Staff Representative: Nizar Slim

Site Address: 16024 SE SHERMAN ST

Legal Description: EXC N 20' IN SE SHERMAN ST & EXC W 165' & EXC E 269' S 175' OF LOT 5 BLOCK E, RITLOW AC; W 95' OF E 269' OF S 155' OF LOT 5 BLOCK E, RITLOW AC

Tax Account No.: R707309010, R707309250

State ID No.: 1S2E01DD 11500, 1S2E01DD 11600

Quarter Section: 3246

Neighborhood: Centennial

Business District: Gateway Area Business Association and Midway

District Coalition: East Portland Neighborhood Office

Zoning: CG –General Commercial

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

BDS Staff Recommendation to Hearings Officer: Approval with conditions

Public Hearing: The hearing was opened at 9:00 a.m. on June 24, 2008, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, OR, and was closed at 10:03 a.m. The record was held open until 4:30 p.m. on July 1, 2008 for new written evidence, and until 4:30 p.m. until July 8, 2008 for the applicant's final response. The record was closed at that time.

Testified at the Hearing:

Nizar Slim, BDS Staff Representative

Hardy Li, 8975 SW Center St., Tigard, OR 97223

De Liu, PO Box 1956, Lake Oswego, OR 97035

Louise Cody, 1515 SE 151st Ave., Portland, OR 97233, Centennial Community Association Representative

Bob Haley, Office of Transportation Staff Representative

Proposal:

The applicant is proposing to divide two existing parcels totaling 45,260 sq. ft. into a 28-lot subdivision with lots ranging from 1,071 to 1,251 sq. ft., including two new shared courts. Currently, the site has two existing detached houses and several trees which will be removed as part of the proposal. The applicant is proposing mitigation for removing the trees. There is also an anticipated street dedication and improvement to SE Sherman St.

Approval Criteria:

To be approved, this proposal must comply with the approval criteria of the Portland Zoning Code, Title 33. The relevant approval criteria is found in Section 33.662.120 Review of Land Divisions in Commercial, Employment, and Industrial zones.

This subdivision proposal is reviewed through a Type III procedure for the following reason: Eleven or more lots (regardless of the zone), are being proposed (Section 33.662.110).

State law considers this land division to be a subdivision. To subdivide land is to divide an area or tract of land into four or more lots within a calendar year (ORS 92.010).

II. ANALYSIS

Site and Vicinity: The site is relatively flat and is occupied by two houses, several trees, and grasses. The surrounding houses are one to two stories with similar architectural design. The adjacent street connects to SE 159th Avenue, which provides access to the surrounding area. The general development along this street is a mix of commercial and apartment type structures.

Zoning: The CG zone is intended to allow auto-accommodating commercial development in areas already predominantly built in this manner and in most newer commercial areas. The zone allows a full range of retail and service businesses with a local or regional market.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency and Neighborhood Review

Agency Review: A “Request for Response” was mailed April 29, 2008. Agency responses (Exhibits E) are addressed below.

Neighborhood Review: A “Notice of Proposal in Your Neighborhood” was mailed on May 27, 2008. Two written responses were received from the Centennial Neighborhood Association (Exhibit F-1 and F-2), and Louise Cody, Land Use Chair of the Centennial Neighborhood Association, spoke at the June 24, 2008 hearing and provided a letter (Exhibit H-7). The neighborhood association opposes the proposal. Concerns raised include:

- The proposed improvements to SE Sherman, including the half paved street, are insufficient to manage the traffic generated by the proposed 28 lots. In addition, SE 159th Avenue is a gravel road. If parking is allowed on the south side of SE Sherman, there will not be enough room for vehicles to pass with only a 20’ wide paved road. A traffic impact study should be required.

BDS Response: Bob Haley from Portland Transportation reviewed the proposal. He found that “traffic impacts and conformance with adopted policies, street designations ... potential impacts upon transportations services” and responded in support of the proposal. This decision was based on the information the applicant provided and it was determined that no additional traffic impact study was needed (Exhibit E-1).

Hearings Officer: Vehicles are already traveling on the unpaved SE Sherman. Parking is currently allowed on both sides of SE Sherman, and having paving on only one side will not reduce the overall width of the street, so the proposal will not change the ability of vehicles to use the street.

- The width of the shared courts is too narrow.

BDS Response: Shared courts are designed to be safely used by both vehicles and people. To curtail vehicle speed, these “courts” use a differentiated paving material and narrower drive lane with obstructions such as planters to promote slower speeds and cautious maneuvering.

- Lack of trees provided. Instead of placing money into the tree fund solely as mitigation, more trees should be planted, especially in the shared courts.

BDS Response: The trees that were eligible for preservation could not be saved due to the limited space available for building locations. Also, the stormwater facilities on each of the lots further

impact the feasibility of mitigation planting. In addition, the T1 tree planting standard (Section 33.248.020.H) requires that trees be planted on new lots as part of the approval of future building permits. This standard alone will be challenging to meet. Any additional planting would not be reasonable.

Hearings Officer: Ms. Cody suggested that more trees should be planted on the site rather than putting money into the tree fund. Staff explained that there is no space to plant additional trees on-site.

- Are bicycles and pedestrians safe on the shared courts given that there will be no bicycle lanes or sidewalks for separation? Are bicycles safe on SE Sherman? Bicycle lanes should be provided.

BDS Response: The staff found that it would not be appropriate to have designated bicycle lanes or sidewalks in the shared courts. The shared courts are short and designed for slow vehicle traffic to accommodate pedestrians and bicycles. SE Sherman is a small residential street with moderate traffic. There is no need to have a bicycle lane on SE Sherman.

- Small lot sizes. Neighbors complained that the small lot sizes are incompatible with the neighborhood, which has an almost rural quality due to large lots.

Hearings Officer: The zoning allows the proposed lot sizes. The area's zoning is urban and not rural, despite some large lots being present. The approval criteria do not include determining whether the lots are "compatible" with the neighborhood.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR LAND DIVISIONS IN A COMMERCIAL, EMPLOYMENT, OR INDUSTRIAL ZONE

33.662.120 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 33.662.120 [A-K], Approval Criteria for Land Divisions in Commercial, Employment and Industrial Zones. Due to the site's location 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	33.613	Lots	Applicable - See findings below.

Criterion	Code Chapter	Topic	Applicability Findings
B	33.630	Trees	Applicable - See findings below.
C	33.631	Flood Hazard Area	Not applicable - The site is not within a flood hazard area.
D	33.632	Potential Landslide Hazard Area	Not applicable - The site is not within a 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	33.635 .100 and .200	Clearing, Grading and Land Suitability	Applicable - See findings below.
G	33.636	Tracts and Easements	Applicable - See findings below.
H	33.639	Solar Access	Not applicable – Single dwelling detached development is not proposed for the site.
I	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
J	33.641	Transportation Impacts	Applicable - See findings below.
K	33.651 - 33.654	Services and Utilities	Applicable - See findings below.

Applicable Approval Criteria are:

A. Lots. The standards and approval criteria of Chapters 33.613 through 33.615 must be met;

Findings: Chapter 33.613 contains the lot standards applicable in the commercial zones. Chapter 33.613 works in conjunction with other chapters of the Zoning Code to ensure that land divisions create lots that can support appropriate uses and development. The standards are:

33.613.100 Minimum Front Lot Line Standard

Each lot must have a front lot line that is at least 10 feet long.

Findings: Each proposed lot has a front lot line that is at least 10 feet long. Lots 8, 9, 10, 15, 16, and 17 have a front lot line of 18.32 feet; Lots 1-6, 11-13, 18-20 and 22-17 have a lot line of 19.50 feet; and lastly, Lots 7, 14, 21, and 28 have a front lot line of 22.38 feet. This standard is met.

33.613.200 Minimum Lot Area, Width and Depth Approval Criterion

There are no minimum lot area, width or depth standards. Lots must be of a size, shape, and orientation that is appropriate for the location of the land division and for the type of development and use that is contemplated.

Findings: The CG zone allows for a variety of uses and development types, one of which is residential use. In this case, single-family rowhouses are being proposed. Each structure is on its own lot. The configuration of the proposed lots can conceptually accommodate a reasonably sized attached house that meets the building coverage, parking, landscaping and setback standards of the CG zone. The size and shape of these lots would therefore be appropriate for the anticipated attached housing development.

The findings above describe how the applicable lot standards and criteria are 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 chapter's requirements. The applicant's arborist report inventoried the trees within the land division site and evaluated their condition (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 ten feet of an existing structure to remain on the property.

The total non-exempt tree diameter on the site is 158 inches. The applicant proposes to remove all non-exempt trees. Since this proposal does not meet any of the tree preservation options in Section 33.630.100 the applicant proposes instead to use the mitigation options of Section 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.**

Findings: The applicant has proposed two shared courts (a form of private streets) to serve the interior of the site. The location of the shared courts are dictated by the need to provide lots that meet the dimensional requirements of the CG zone as well as providing an adequate building area for the proposed development within the site's boundaries.

Several of the trees on the site are located in those areas that will be impacted by the required shared courts and the utilities needed to provide service to those lots. Without these trees available for preservation, the applicant cannot meet any of the tree preservation options in Section 33.630.100. Therefore, the applicant cannot meet the service requirements of Chapters 33.651 through 33.654, and still preserve the required number of tree inches. Criterion C.2 above is met.

The fourteen trees eligible for preservation are roughly clustered in two areas over the proposed private shared courts. These courts provide vehicular and pedestrian access to the lots and a means for sewer and water services to reach the anticipated development. Factoring in modest sizing and location for the proposed attached houses, there are no other opportunities to preserve trees. Therefore, the applicant has met Criteria A, because as many trees as possible will be preserved.

The applicant has submitted a tree mitigation plan that proposes to contribute \$8,400, which is roughly equivalent to 56 inches multiplied by \$150 (the fees Urban Forestry charges for planting one caliper inch of tree). The mitigation plan provides for approximately the same caliper inches as Option 1 of the Tree Preservation Chapter. Option 1 would require that 35% or 55.30 inches of the site's existing tree diameter be preserved. The 56 inches paid into the tree fund is equivalent to the 56 inches that would be required to be preserved.

The above criteria have been met, provided that a fee of \$8,400 is paid to the City's Tree Fund before final plat approval.

F. 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 and tree preservation requirements. The regulations 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 a potential landslide hazard area. Therefore, no significant clearing or grading will be required to make the new lots developable. In addition, there are no trees required to be preserved in the areas where new development on the site is anticipated. These criteria are 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.

Findings: 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, an old septic system is present that once served 16024 SE Sherman St. The city has no record that this facility was ever decommissioned. Before final plat approval, the applicant must meet the requirements of the Site Development Section of the Bureau of Development Services (Site Development) to decommission this facility.

The applicant has proposed to remove the existing houses and garage. To ensure that the new lots are suitable for development, a permit must be obtained and finalized to demolish all structures on the site and cap the sewer before final plat approval. With this condition, the new lots can be considered suitable for development, and this criterion is met.

G. 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: Two private streets are proposed as shared courts, which will provide pedestrian and vehicular use and access to the subdivision. A condition of approval will require that the proposed tracts be owned in common by the owners of the lots which access the tracts. Lots 1-7 and 11-14 will own in common the western shared court and Lots 18-28 will own in common the eastern shared court. This criterion is met.

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: Private storm sewer easements are required across the relevant portions of Lots 1-28 for shared soakage trenches that will provide stormwater disposal for those lots. Section 33.636.100 requires a maintenance agreement describing maintenance responsibilities for these easements and facilities within those areas, as well as for the private street tracts. This criterion can be met with the condition that a maintenance agreement is prepared and recorded with the final plat. In addition, the

plat must reference the recorded maintenance agreement with a recording block for each agreement, substantially similar to the following example:

“A Declaration of Maintenance agreement for a Private Storm Sewer Easement has been recorded as document no. _____, Multnomah County Deed Records.”

“A Declaration of Maintenance agreement for a Private Street has been recorded as document no. _____, Multnomah County Deed Records.”

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

J. 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.

The site has approximately 292 feet of frontage on SE Sherman St. SE Sherman is classified as a local service street for all modes in the Transportation System Plan. TriMet provides transit service approximately 370 feet from the site on SE Division St. via Bus 4. Parking is currently allowed on SE Sherman St. on both sides. There are two driveways entering the site that provides access to off-street parking for the existing houses.

Southeast Sherman St. is unimproved with a gravel roadway and shoulder on both sides. 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 roadway, curb and sidewalk improvements must be made in order to ensure that safe pedestrian and vehicular travel is possible within the proposed development. To accommodate these improvements, as well as an associated stormwater facility discussed below, additional right-of-way must be dedicated along the frontage of the site. With those improvements, the 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 street, curb and sidewalk improvements are made, and the required right-of-way dedication is shown on the final plat.

K. 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 and rights-of-way.

- The water standards of Chapter 33.651 have been verified. An existing four-inch water main is available in SE Sherman St. Water is available to serve the proposed development from the water main in SE Sherman St. provided that the existing main will have at least two feet of clearance to the proposed curb face and will meet the Fire Bureau's required flow pressure. The existing houses have water service from that main. If conditions are met, the applicant must make arrangements to upsize and relocate a new water main in SE Sherman St. to ensure service is available to Lots 1 through 28. To meet the chapter's standards and the technical requirements of Title 21, appropriate plans and assurances must be provided to the Water Bureau before final plat approval (Exhibit E-3).
- The sanitary sewer standards of Chapter 33.652 have been verified. There is an existing eight-inch PVC public sanitary sewer located in SE Sherman St. At the applicant's expense, two new extensions of that main are required to be placed in the shared courts to serve the development's needs (Exhibit E-1).
- The technical standards of Chapter 33.653 related to stormwater management have been verified.

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 requires that stormwater from development be cleaned and disposed of in a manner that meets the requirements of the city's *Stormwater Management Manual*. The applicant has proposed the following stormwater management methods (Exhibit C-1) and agencies responded as follows (Exhibits E-1 and E-5):

- **Public Street Improvements:** As a condition of approval, Portland Transportation requires the applicant to improve the site's frontage to city standards, with roadway, curbs and sidewalks. Stormwater from these new impervious areas will be directed into a minimally sized infiltration swale located between the curb and the new sidewalk. The Bureau of Environmental Services (BES) has indicated that surface infiltration is the preferred method of public stormwater disposal for the 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 the stormwater facility within the public right-of-way, a dedication along the site's frontage must be provided on the final plat.

BES requires a public works permit to construct the swale. The applicant must provide engineered designs and financial guarantees of performance before final plat approval.

- **Lots 1 – 28:** Stormwater from the lots will be directed to a series of collective soakage trenches that will treat the water and slowly infiltrate it into the ground. Each of the 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 has indicated conceptual approval of the soakage trenches.

To ensure that the *Stormwater Management Manual's* size and setback requirements are met, specific information regarding the existing building locations, future building footprints and the location for stormwater facilities shall be provided on the supplemental site plan before final plat approval.

- **Shared Court:** Stormwater will absorb through the sand between the individual paving blocks into the ground. The applicant has provided Site Development with soil infiltration test results and product specifications for the pavers that demonstrate adequate rates of stormwater disposal for the tract area.

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

- The standards of Chapter 33.654 related to rights-of-way have been verified.

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 between SE 159th Ave. and SE 162nd Ave, which are approximately 570 feet apart. There are no other north/south through streets between these two streets. Given that through streets are recommended to be between 200 and 530 feet apart, a north/south through street should be located in the site's vicinity. However, property south of the site is zoned CG which means that the likely development would be commercial. This scale of construction would typically preclude the ability to build an additional north/south street. Therefore, no additional public street or pedestrian connection is required. Further, the proposal is consistent with the master street plan.

For the reasons described above, this criterion is met.

33.654.110.B.2 Approval criterion for dead-end streets in OS, R, C, and E zones. In OS, R, C, and E zones, dead-end streets may be provided where through streets are not required. Dead-end streets should generally not exceed 200 feet in length, and should generally not serve more than 18 dwelling units. Public dead-end streets should generally be at least 200 feet apart.

Findings: The proposal includes two private dead-end streets and pedestrian connections, which will be located in the new shared court tracts. Each private dead-end street will serve 11 dwelling units (six lots are accessed from SE Sherman St.) and are approximately 156 feet long from the frontage along SE Sherman St. This criterion is met.

33.654.120.G. Approval criterion for the width of shared courts. The size of the shared court right-of-way must be sufficient to accommodate the expected users and uses. The size must take into consideration the characteristics of the site and vicinity, such as the pedestrian systems, structures, traffic safety, natural features, and the community activities that may occur within the shared court.

Findings: The area for each shared court tract will be 36 feet wide by 156 feet long and constructed of sand set pavers. The width is in part determined by the number of utilities and associated easements that are to be located within the tract. Therefore, the 36-foot width is a result of one sanitary sewer main and eleven water meters required to be in the shared court, in addition to providing parking spaces on one side of the court.

Although the shared courts are configured to allow access to the main entrances to development on Lots 1-7, 11-14, and 18-28, their widths and surface material are not typical for private streets. The applicant is required to demonstrate that the materials and design support a safe and usable access. This alternative requires an approved appeal to the standards governing the design of private streets. Site Development approved building code appeal #5099 granted on April 30, 2008. Based on this approval, the shared courts' construction and design must include the following:

- Pavement must support 75,000 lbs. gross vehicle weight.
- Curb or edge restraint must be provided, pursuant to Table 1 of the Administrative Rules for Private Rights-of-Way.
- Since utilities are going to be located under pavers, a maintenance agreement must be in place ensuring that the pavers and permeability of the subgrade will be restored at the homeowner's expense in the event of repair.
- When the building permit is review for the shared court, the porous pavement design prepared by a professional engineer must include a construction management plan showing how paver surfaces can be protected during building construction.

An application for a building permit must be submitted for shared court construction and related site development improvements before final plat approval.

The proposed shared court tracts provide pedestrian access from the adjacent sidewalk on SE Sherman St. to the main entrances of the buildings proposed for Lots 1-7, 11-14, and 18-28. To promote compatible uses between people and cars, the design of each shared court will include at least two landscape features such as trees in permanently installed planters. The planters will have the following dimensions: a minimum of 3' x 3' in area and between 12" – 24" high. Material used for planters needs to be of sufficient strength to withstand low impact "bumps" from vehicles. However, the planter may be bottomless to allow for roots to grow and sustain a small tree. In addition, at least three parking spaces on the opposite side are required (Exhibit C-1). These parking spaces should be differentiated from the rest of the court by means of signage or pattern change in pavers.

These planters along with the parking spaces on the other side would create obstacles requiring low speed and careful maneuvering for vehicles, thus encouraging safety for pedestrians. Further, because each shared court will provide access to fewer than 16 lots (11 per tract) in this manner, the opportunities for conflict between residential vehicles and pedestrians will be limited. For the reasons described above, the size, configuration and landscape features of the shared courts are sufficient to accommodate the expected users. This criterion is met.

Utility Location, Extension of Streets, Partial Rights of Way

33.654.130 Additional Approval Criteria for Rights-of-Way

- A. Utilities. Utilities must be located within rights-of-way or utility easements that are adjacent to rights-of-way to the maximum extent practicable. Utility easements up to 15 feet in width may be required adjacent to rights-of-way.**

Findings: Any easements that may be needed for private utilities that cannot be accommodated within the proposed 36-foot width of the private street tract can be provided on the final plat. This criterion is met.

As shown by the findings above, the Services and Utilities criteria are met.

DEVELOPMENT STANDARDS AND OTHER TECHNICAL REQUIREMENTS

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

As authorized in Section 33.800.070 conditions of approval related to technical standards have been included in this decision.

- The applicant must meet Fire Bureau requirements to post "No Parking" signs along one side of each shared court.

The applicant must also ensure adequate hydrant flow from the nearest fire hydrant or obtain an approved Fire Bureau appeal to this requirement. Such an approved appeal would require recording an Acknowledgement of Special Land Use Conditions that requires providing internal fire suppression sprinklers on Lots 1-7, 11-14, and 18-28.

The entire length of both shared courts must be capable of supporting fire apparatus weighing at least 75,000 lbs. gross weight, and provide a turning radius in each shared court acceptable to the Fire Bureau. Alternatively, the applicant must obtain an approved Fire Bureau appeal to this requirement. Such an approved appeal would require recording an Acknowledgement of Special Land Use Conditions that requires providing internal fire suppression sprinklers on Lots 1-7, 11-14, and 18-28. However, if the structures to be built are over 30 feet tall, additional sprinkling requirements that are greater than the basic standard would apply.

The applicant must provide an emergency vehicle access easement over the private street tracts. The Fire Bureau will not be held liable for repairs to the shared courts that may be necessary if they are not built to support at least 75,000 lbs. gross weight.

These requirements are based on the technical standards of Title 31 and the Fire Code.

- The applicant must meet Urban Forestry requirements for street tree planting in the required improvements to SE Sherman St. This requirement is based on the standards of Title 20.

III. CONCLUSIONS

The applicant has proposed a 28-lot subdivision, as shown on the attached preliminary plan (ExhibitC-1). The primary issues are the shared courts' design and construction, street improvements, tree-planting fee and shared stormwater disposal facilities.

With conditions of approval addressing these requirements this proposal is approved.

IV. DECISION

Approval of a Preliminary Plan for a 28-lot subdivision and two private street tracts (shared courts) 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. The 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 when the final plat is applied for.
- The proposed general location of future building footprints, sanitary sewer lines and stormwater facilities for each lot for BES review.
- Any other information specifically noted in the conditions listed below.

B. The final plat must show the following:

1. The applicant shall meet City Engineer street dedication requirements for SE Sherman St. The required right-of-way dedication must be shown on the final plat.
2. A private storm sewer easement, for the benefit of Lots 1-28, shall be shown and labeled over the relevant portions of Lots 1-28.
3. A sanitary sewer easement, granted to the City of Portland, shall be shown over the relevant portions of the private street (shared court) to BES' satisfaction.
4. The street tracts shall be noted on the plat as "Tract *: Private Street". A note must also be provided on the plat indicating that the tracts will be commonly owned and maintained by the owners of the lots served by the streets.
5. An emergency vehicle access easement, granted to the City of Portland, shall be shown over the entirety of both private streets to the Fire Bureau's satisfaction.
6. 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 C-11 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.*"

C. The following must occur before final plat approval:

Streets

1. The applicant shall meet City Engineer requirements for right-of-way improvements along the frontage of SE Sherman St. The applicant shall provide plans and financial assurances to the satisfaction of the Bureau of Transportation Engineering and Development Review and the BES for required street frontage improvements.
2. The applicant shall submit an application for a Site Development permit to construct the shared courts and related site development improvements. Street design plans must be prepared by, or under the direction of, an Oregon licensed civil engineer and must substantially conform to the site plan (Exhibit C-1).

3. The applicant shall furnish a financial guarantee of performance, as approved by the Bureau of Development Services, for 125 percent of the estimated construction cost for the private street shared courts and all required site development improvements. The applicant shall provide an engineer's estimate of the costs of performance including the costs for temporary erosion control measures required during construction. The financial guarantee of performance shall be accompanied by a performance agreement with the Bureau of Development Services to complete the required improvements.
4. The applicant shall provide a clearing and grading plan with the Site Development permit required for the private street described in Condition C-2. The clearing and grading plan must substantially conform in design to the Preliminary Site Plan approved with this decision (Exhibit C-1) with the following additions:
 - It must show stockpile areas.
 - It must note that topsoil must be stockpiled on site and re-used to the extent practicable.

Utilities

5. The applicant shall meet BES requirements to extend a public sewer main in SE Sherman St. The public sewer extension requires a Public Works permit, which must be initiated before final plat approval. In addition, the applicant must provide engineered designs and performance guarantees for the sewer extension to BES before final plat approval.
6. The applicant shall meet Site Development requirements to decommission the site's existing septic system.
7. The applicant shall meet Water Bureau requirements to provide plans and financial assurances for the water main relocation in SE Sherman St.
8. The applicant must meet Fire Bureau requirements to ensure adequate hydrant flow from the nearest hydrant or obtain an approved Fire Bureau appeal to this requirement.
9. The applicant must meet Fire Bureau requirements to provide an adequate fire accessway for Lots 1-28. Alternately, the applicant will be required to install residential sprinklers in the new houses on Lots 1-28. An "Acknowledgement of Special Land Use Conditions" describing the sprinkler requirement must be referenced on and recorded with the final plat.

Existing Development

10. A finalized permit must be obtained to demolish the site's existing residences and cap the existing sanitary sewer connection.

Required Legal Documents

11. A maintenance agreement shall be executed for the private stormwater management easement area described in Condition B-6 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the easement's purpose and all applicable code standards. The agreement must be approved by the City Attorney and the Bureau of Development Services before final plat approval.
12. The applicant shall execute a maintenance agreement for the private streets (shared courts). The agreement shall assign common, undivided ownership of the western shared court tract to the owners of Lots 1-7 and 11-14. The agreement shall assign common, undivided ownership of the eastern shared court tract to the owners of Lots 18-28. The agreement shall include provisions assigning maintenance responsibilities for the tracts and any shared facilities within those areas. In addition, the applicant shall ensure that the pavers and permeability of the subgrade will be restored in the event of repair at the homeowner's expense. The agreement must also acknowledge all easements granted within the street tract, the beneficiaries of those easements, and the limitations on the easement areas to the satisfaction of the beneficiary service agencies. The maintenance agreement must be approved by the City Attorney and the Bureau of Development Services before final plat approval.
13. If required as an alternative to meeting other Fire Bureau requirements, the applicant shall execute an "Acknowledgement of Special Land Use" conditions, requiring residential development on designated lots to contain internal fire suppression sprinklers. The acknowledgement shall be recorded with Multnomah County and referenced on the final plat.

Other requirements

14. The applicant must pay into the city's Tree Fund the amount equivalent to 56 inches of trees. Payment must be made to the Bureau of Development Services.

D. The following conditions apply to site preparation and developing individual lots:

1. The construction and design of the shared courts must substantially conform to Exhibit C-1 and include the follow elements and specifications:
 - Pavement must support 75,000 lbs. gross vehicle weight.
 - Curb or edge restraint must be provided, pursuant to Table 1 of the Administrative Rules for Private Rights-of-Way.

- During building permit review for the shared court, the porous pavement design prepared by a Professional Engineer must include a construction management plan showing how paver surfaces can be protected during building construction.
 - At least two planters for each court will be installed and have the following dimensions: a minimum of 3' x 3' in area and between 12" – 24" high. Material used for planters needs to be of sufficient strength to withstand low impact "bumps" from vehicles.
 - For each court, at least three parking spaces on the opposite side of planters are required (Exhibit C-1). These parking spaces should be differentiated from the rest of the court by means of signage or pattern change in pavers.
2. Before finalizing the Site Development permit for the private street, a plumbing permit must be obtained and finalized for the new utility lines that will be constructed beneath the paved surface of the new street.
 3. The applicant must post the private street on one side with "No Parking" signs to the Fire Bureau's satisfaction.
 4. The applicant must provide a fire accessway to the Fire Bureau's satisfaction or the height of the new structures shall be limited to 30 feet, measured to the gutter line.

Ian Simpson, Hearings Officer

Date

Application Deemed Complete: September 25, 2007
Report to the Hearings Officer: June 13, 2008
Decision Mailed: July 25, 2008
Last Date to Appeal: 4:30 p.m., August 8, 2008
Effective Date (if no appeal): August 11, 2008 Decision may be recorded on this date.

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.

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER’S DECISION MUST BE FILED AT 1900 SW 4TH AVENUE, PORTLAND, OR 97201 (503-823-7526). Until 3:00 p.m., Monday through Friday, file the appeal at the Development Services Center on the first floor. Between 3:00 p.m. and 4:30 p.m., file the appeal at the Reception Desk on the 5th Floor. **An appeal fee of \$6,081.00 will be charged (one-half of the application fee for this case).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

Who can appeal: You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

Appeal Fee Waivers: Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the chairperson or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization’s bylaws.

Neighborhood associations that want to qualify for a fee waiver must complete the Type III Appeal Fee Waiver Request for Organizations form and submit it before the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

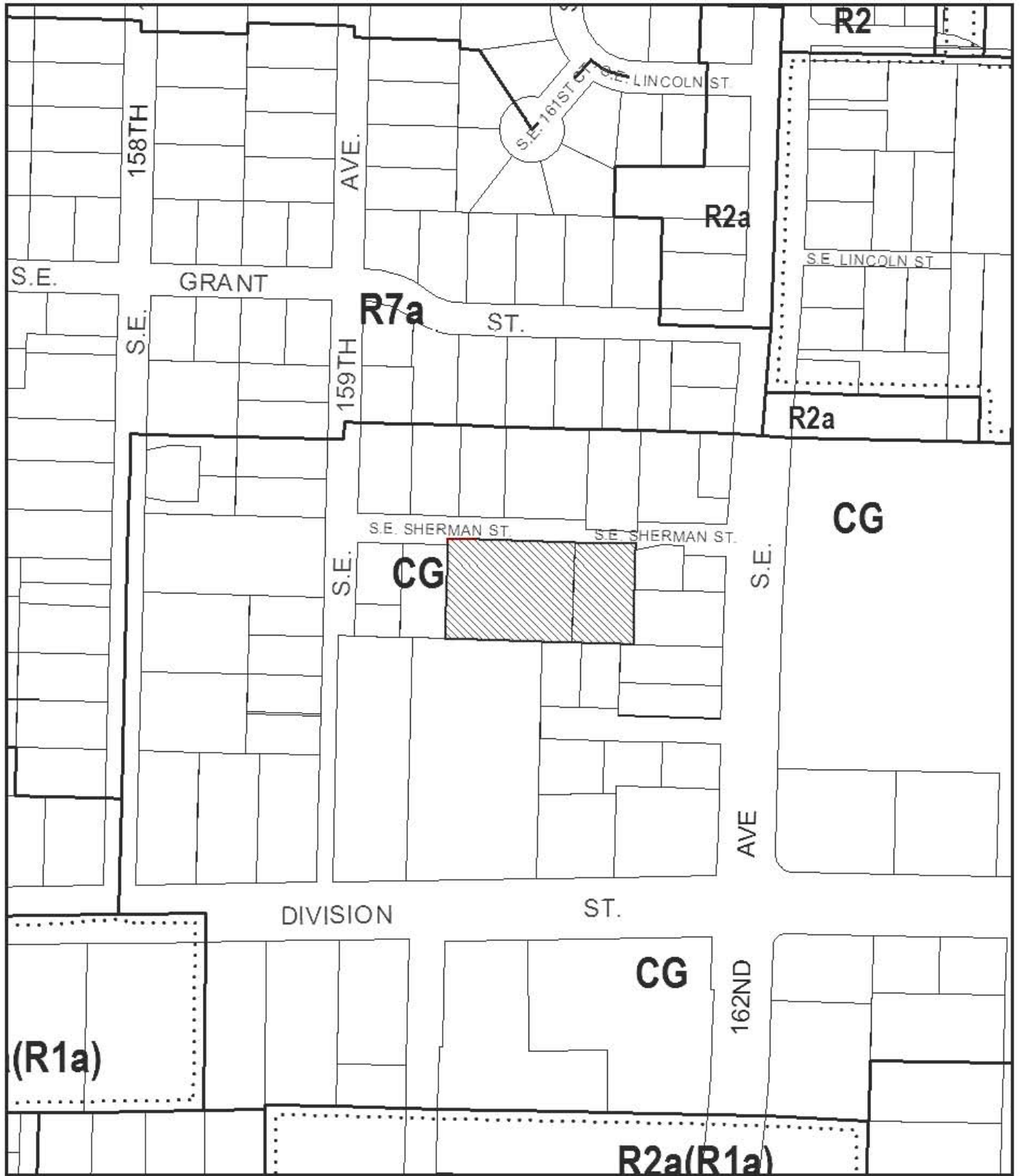
BDS may also grant fee waivers to low income applicants appealing a land use decision on their primary residence that they own in whole or in part. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Individuals requesting fee waivers must submit documentation certifying their annual gross income and household size (copies of tax returns or documentation of public assistance is acceptable). Fee waivers for low-income individuals must be approved before filing the appeal; please allow three working days for fee waiver approval.

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. Narrative
 - 2. Arborist Report
 - 3. 120-day waiver
 - 4. Neighborhood 14-day letter
- B. Existing Zoning Map (**attached**)
- C. Plans & Drawings
 - 1. Site Plan (**8 ½ x 11" attached**)
 - 2. Boundary Survey
- D. Notification information
 - 1. Request for response
 - 2. Posting letter sent to applicant
 - 3. Notice to be posted
 - 4. Applicant's statement certifying posting
- 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 Bureau of Development Services
 - 6. Bureau of Parks, Forestry Division
 - 7. Life Safety, BDS
- F. Letters
 - 1. Centennial Community Association, November 19, 2007, In opposition
 - 2. Centennial Community Association, May 29, 2008, In opposition
- G. Other
 - 1. Original LUR Application
 - 2. Site History Research
 - 3. Stormwater Calculations submitted by applicant
- H. Received in the Hearings Office
 - 1. Request to set over, Slim, Nizar
 - 2. Request to reschedule, Slim, Nizar
 - 3. Request to reschedule, Slim, Nizar
 - 4. Request to reschedule, Slim, Nizar
 - 5. Hearing notice, Slim, Nizar
 - 6. Staff Report, Slim, Nizar
 - 7. 6/24/08 Memo, Cody, Louise
 - 8. Memo dated 6/27/08, Slim, Nizar

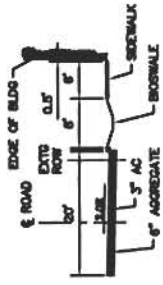


ZONING

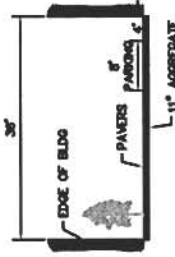
 Site



File No.	<u>LU 07-118673 LDS</u>
1/4 Section	<u>3246</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S2E01DD 11500</u>
Exhibit	<u>B</u> (Mar 30, 2007)



SECTION A-A

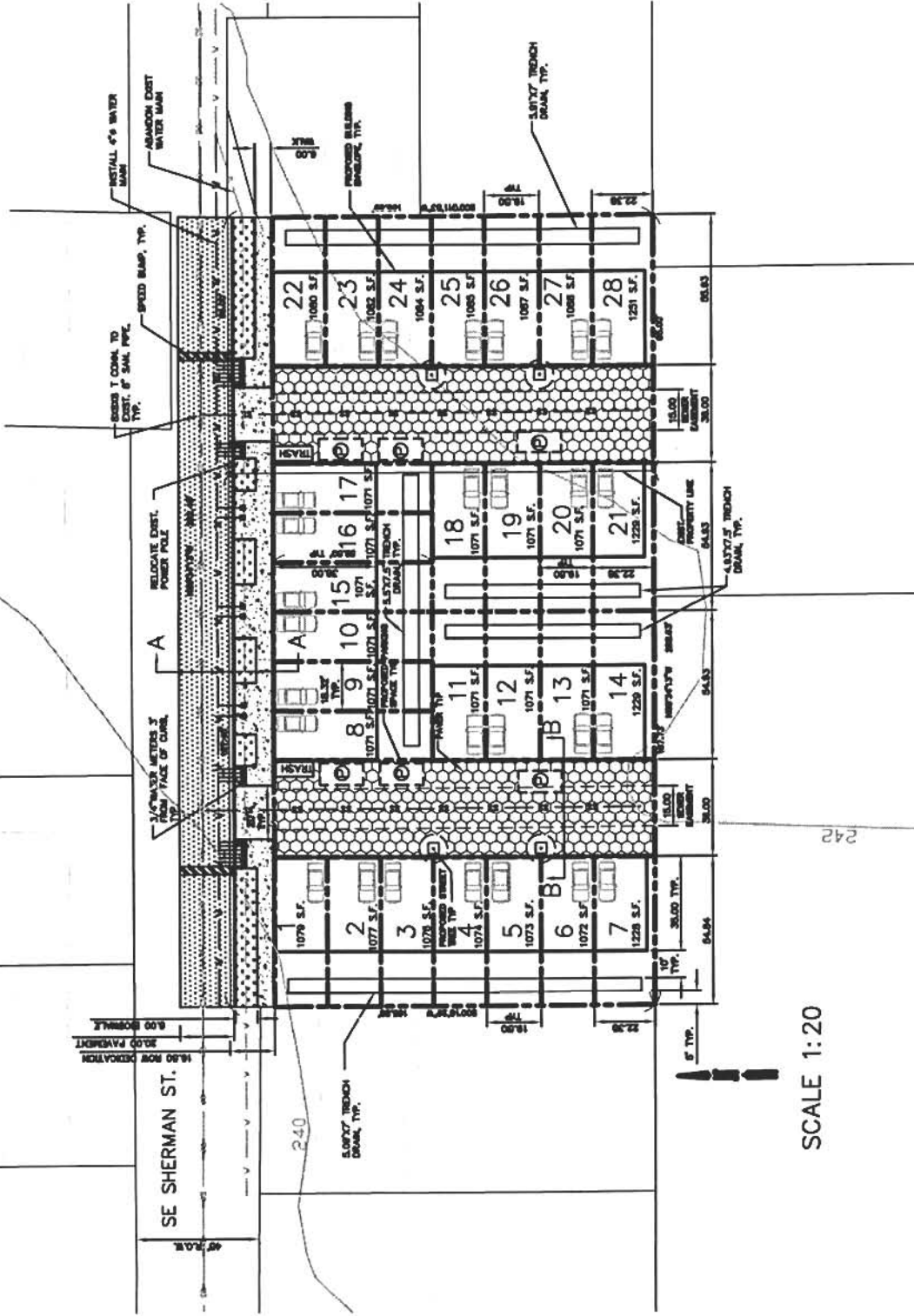


SECTION B-B

NOTES:
REMOVE ALL EXISTING BUILDINGS.

NO MAJOR REGRADING REQUIRED. BUILD AT CURRENT GRADE.

ROOF DRAIN WILL BE DISPOSED THROUGH TRENCH DRAIN IN THE BACK YARDS.



SCALE 1:20

NO. DATE	BY	CHK.	REVISIONS			SHERMAN COURT 16024 / 16040 SE SHERMAN ST. SITE PLAN
				CONVERGENT PACIFIC 8875 SW CENTER STREET TIGARD, OREGON 97223 T: 503-747-3569 F: 503-747-3579		REGISTERED PROFESSIONAL LAND SURVEYOR
			DESIGN DATE 11/27/08	DATE 4/20/08	COUNTY NO. 	SHEET NO.
CASE NO. 07-18673-01 EXHIBIT <u>C-1</u>						