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CITY OF  
**PORTLAND, OREGON**  
HEARINGS OFFICE

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**DECISION OF THE HEARINGS OFFICER  
ON APPEAL OF ADMINISTRATIVE DECISION**

**I. GENERAL INFORMATION**

**File No.:** LU 07-172215 LDP (HO 4080024)

**Applicants:** Magdalena and Ionut Pisica  
6248 SW Hamilton Ave.  
Portland, OR 97221

Joe Bec  
12545 SE Clinton Court  
Portland, OR 97236

**Appellant:** Karen Tabata, Land Use Chair  
Bridlemile Neighborhood Association  
c/o SWNI  
7688 SW Capitol Hwy.  
Portland, OR 97219

**Hearings Officer:** Gregory J. Frank

**Bureau of Development Services (BDS) Staff Representative:** Rachael Hoy

**Site Address:** 6248 SW Hamilton St.

**Legal Description:** TL 2100 LOT 4&13 BLOCK 1, RALEIGH HILLS

**Tax Account No.:** R685300080

**State ID No.:** 1S1E18BB 02100

**Quarter Section:** 3423

**Neighborhood:** Bridlemile

**Business District:** None

**District Neighborhood Coalition:** Southwest Neighborhoods Inc.

**Zoning:** R10 – Residential 10,000

**Land Use Review:** Type IIX, LDP – Land Division Partition

**BDS Administrative Decision:** Approval with conditions

**Public Hearing:** The hearing was opened at 9:00 a.m. on June 30, 2008, in the 3<sup>rd</sup> floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, OR, and was closed at 10:17 a.m. The record was held open until 4:30 p.m. on July 14, 2008 for new written evidence, until 4:30 p.m. on July 21, 2008 for Appellant's rebuttal, and until 4:30 p.m. on July 28, 2008 for Applicant's final rebuttal. The record was closed at that time.

**Testified at the Hearing:**

Rachel Hoy, BDS Staff Representative  
Karen Tabata, Bridlemile Neighborhood Association Representative, 4404 SW 55th Pl.,  
Portland, OR 97221  
Greg Schifsky, 4131 SW Lee St., Portland, OR 97221  
Claire Evans, 6260 SW Hamilton Way, Portland, OR 97221  
Robert Gray, 4526 SW 53rd, Portland, OR 97221  
Joe Bec, 12545 SE Clinton Ct., Portland, OR 97236  
Magdalena Pisica, 6248 SW Hamilton St., Portland, OR 97221

**Proposal:**

The Applicant is proposing to divide the existing 21,180 square foot property into two parcels. Parcel 1 is proposed to be 11,674 square feet and will retain the existing residence. Parcel 2 is proposed to be 9,350 square feet and will be available for construction of a detached house.

This partition proposal is reviewed through a Type IIX procedure because: (1) the site is in a residential zone; (2) two or three lots are proposed; and (3) the site is located within a Potential Landslide Hazard or Flood Hazard Area (see 33.660.110). For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010).

**Relevant Approval Criteria:**

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 south side of SW Hamilton Street, a two lane neighborhood collector street that is improved with center strip paving and gravel shoulders. Development in the surrounding area consists of single-dwelling homes. The site generally slopes gently to the southeast, though portions have the site have steeper grades.

The site was originally developed with a single family home built in 1924. The house was converted to an adult foster home in 2005 (permit 05-123834 ET). The Applicant then applied for and received a permit to add a two-story addition to the existing house (permit 06-170153 RS). In the course of construction of the addition, the remainder of the existing house was demolished, therefore requiring a permit for new single family construction. The Applicant has

since obtained a permit for new single family home construction on the site (permit 08-105522 RS), which is currently under inspection.

**Zoning:** The R10 designation is one of the City's single-dwelling zones which are 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.

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

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on January 23, 2008.

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

**2. Neighborhood Review:** A total of four written responses were received by BDS, prior to the issuance of the BDS staff decision, from either the Neighborhood Association or notified property owners in response to the proposal. Issues raised in the letters to BDS included:

- Concerns that the Applicant intends to develop Parcel 2 with an additional adult foster home.
- The use of adult foster homes in single-dwelling zones and the affect on property values and neighborhood character.
- Increased on-street parking and traffic, associated with adult foster homes, along SW Hamilton Street.
- Concerns that stormwater from the new lots will affect adjacent lots.
- Setback requirements for new development being met.
- The demolition of the existing house without the proper permits.

BDS staff responded to the letters as follows:

“The neighborhood concerns about the number of residents living in the adult foster homes in addition to visitors and caretakers are understood, however, this use is allowed in residential zones if it meets the requirements for household living under the Portland Zoning Code. Section 33.910 defines household living as “one or more persons related by blood, marriage, legal adoption or guardianship, plus not more than 5 additional persons, who live together in one dwelling unit.”

The Portland Department of Transportation has indicated that adding one additional lot should not have a significant impact on transportation in the area. If adjacent neighbors are concerned about increased parking in the area PDOT has suggested contacting the City's Permit Parking Program at 503-823-5412, or Transportation's Parking Control office at 503-823-5226 to discuss permit parking possibilities or parking enforcement issues along SW Hamilton Street.

The Applicant has proposed to manage stormwater on the site with flow-through planters that outfall to the public storm sewer in SW Hamilton Street. The planters have been

approved by Site Development and BES. Further discussion of stormwater management is found below under criterion L.

The site plans submitted show that the existing and proposed development will be able to meet the setback requirements of the R10 zone. Setback requirements must be met at the time of building permit.

Though the demolition of the existing house was not carried out through the proper permitting process, the applicant was issued a stop work order and has since obtained the proper permits for new single-dwelling development on the site. Inspections will be carried out throughout the project for the new home.”

The neighborhood association filed an appeal of the BDS staff decision approving the application. This decision is a result of the neighborhood’s appeal, the public hearing and comments received during the open-record period.

**Hearings Officer Note:** The neighborhood appeal of the BDS staff decision was focused only on transportation issues; primarily the approval criteria set forth in 33.641.020 and .030. The Hearings Officer, for the purposes of this decision, adopts the BDS staff decision findings for all approval criteria other than 33.641.020 and 030.

## 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.**

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

<b>Criterion</b>	<b>Code Chapter</b>	<b>Topic</b>	<b>Applicability Findings</b>
A	33.610	Lots	<b>Applicable - See findings below</b>
B	33.630	Trees	Not applicable - No significant trees or trees in excess of 6 inches in diameter located fully on the site.
C	33.631	Flood Hazard Area	Not applicable - The site is not within the flood hazard area.
D	33.632	Potential Landslide Hazard Area	<b>Applicable - See findings below.</b>

<b>Criterion</b>	<b>Code Chapter</b>	<b>Topic</b>	<b>Applicability Findings</b>
E	33.633	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed.
F	33.634	Recreation Area	Not applicable - This is not required where the proposed density is less than 40 units.
G	33.635 .100	Clearing and Grading	<b>Applicable - See findings below.</b>
G	33.635 .200	Land Suitability	<b>Applicable - See findings below.</b>
H	33.636	Tracts and Easements	<b>Applicable – See findings below.</b>
I	33.639	Solar Access	Not Applicable - All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
J	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
K	33.641	Transportation Impacts	<b>Applicable - See findings below</b>
L	33.651 - 33.654	Services and Utilities	<b>Applicable - See findings below</b>

**Applicable Approval Criteria are:**

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

**Findings:** Chapter 33.610 contains the density and lot standards applicable in the RF through R5 zones. These density and lot dimension standards ensure that lots are consistent with the desired character of each zone while allowing lots to vary in size and shape provided the planned intensity of each zone is respected.

Density Standards

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

The method used to calculate density depends on whether a street is created as part of the land division, and whether the site is subject to certain environmental constraints.

In this case, a street is not proposed or required, but the site is within the potential landslide hazard area. Therefore, the maximum and minimum density for this site is as follows:

Minimum = (21,180 square feet minus entire site area if in landslide hazard area \* .80) ÷ 10,000 square feet = 0

Maximum = 21,180 square feet ÷ 10,000 square feet = 2.11 (which rounds down to a maximum of 2 lots, per 33.930.020.B)

The Applicant is proposing 2 lots. The density standards are therefore met.

Lot Dimensions

The lot dimension standards ensure that: (1) each lot has enough room for a reasonably-sized house and garage; (2) lots are of a size and shape that development on each lot can meet the development standards of the Zoning Code; (3) lots are not too large relative to the planned density; (4) each lot has room for at least a small, private outdoor area; (5) lots are compatible with existing lots; (6) lots are wide enough to allow development to orient toward the street; (7) lots don't narrow to an unbuildable width close to the street; (8) each lot has adequate access from the street; (9) each lot has access for utilities and services; and (10) lots are not landlocked.

The dimensions of the proposed lots as compared to the required lot dimension standards are shown in the following table (this information is found in Table 610-2 of the Zoning Code):

	<b>R10 Zone Requirement</b>	<b>Proposed Lot 1</b>	<b>Proposed Lot 2</b>
Minimum Lot Area	6,000 sq. ft.	11,674 sq.	9350 sq.
Maximum Lot Area	17,000 sq. ft.	ft.	ft.
Minimum Lot Width*	50 ft.	90 ft.	74 ft.
Minimum Lot Depth	60 ft.	130 ft.	125 ft.
Minimum Front Lot Line	30 ft.	90 ft.	74 ft.

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

The findings above describe how the applicable lot standards are met. With the conditions of approval described above, this criterion is therefore met.

**33.632.100 Landslide Hazard Area Approval Criterion**

**The following approval criterion must be met: Locate the lots, buildings, services and utilities on the safest part of the site so that the risk of a landslide affecting the site, adjacent sites, and sites directly across a street or alley from the site, is reasonably limited.**

**Determination of whether the proposed layout and design reasonably limits the risk of a landslide will include evaluation of the Landslide Hazard Study and will take into consideration accepted industry standards for factor of safety. Alternative**

**development options including alternative housing types and reduced density may be required in order to limit the risk to a reasonable level.**

**Findings:** A portion of this site is located within the Potential Landslide Hazard Area. The approval criteria state that the lots, buildings, services, and utilities must be located on the safest part of the site so that the risk of a landslide affecting the site, adjacent sites, and sites directly across a street or alley from the site is reasonably limited. In order to evaluate the proposal against this criteria, the Applicant has submitted a geotechnical evaluation of the site and proposed land division, prepared by a Certified Engineering Geologist and a Geotechnical Engineer (Exhibit A-2). That report was evaluated by the Site Development Division of the Bureau of Development Services, the City agency that makes determinations regarding soil stability.

The applicant's geotechnical evaluation indicates that the risk of potential landslide hazard at the site is relatively low, given the soil composition, topography, and other risk factors. The proposed land division will result in one new lot and an existing single family home on the other lot. This two lot partition will not significantly increase the risk of landslide potential on the site or other properties in the vicinity of the site. The applicant's proposed method of stormwater disposal is flow-through planters with overflow to the public storm sewer as discussed later in this decision under the findings for "Stormwater Management Approval Criteria."

Site Development and BES have concurred with the findings of the Applicant's geotechnical report, but notes that further geotechnical evaluation may be required for specific building plans at the time of construction plan review. This criterion is met.

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

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

**33.635.100 – Clearing and Grading**

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

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

In this case, the site has gradual sloping throughout the site, and is located in the Potential Landslide Hazard area. Therefore, the clearing and grading associated with preparation of the lots must occur in a way that will limit erosion concerns.

A Preliminary Clearing and Grading Plan was not submitted with the land division application however, the Applicant did submit a Landslide Hazard Report (Exhibit A-2) that describes that the site has very low slope stability hazard due to the gently sloping grades across the site. This report generally recommends that the site is suitable for development and exhibits a low stability hazard.

It is anticipated that the grading will primarily involve excavating for the foundations of the new houses and trenching for the utilities, but will not include mass grading of the site to alter the existing contours. Stormwater runoff from the lots will be appropriately managed by flow-through planters with outfall to the public storm sewer in SW Hamilton Street to assure that the runoff will not adversely impact adjacent properties (see detailed discussion of stormwater management later in this report). Site Development and BES find this acceptable. They have reviewed and approved a detailed grade analysis produced by the Applicant that shows that the proper connections to the storm sewer in SW Hamilton can be made and still maintain sufficient cover for utility lines (Exhibit C-2). BES recommends that all disturbed areas be planted with native shrubs to help stabilize soils to minimize erosion and to protect slope stability.

As shown above the clearing and grading anticipated to occur on the site can meet the approval criteria. At the time of building permit submittal on the individual lots a clearing, grading and erosion control plan will be submitted to the Site Development Section of the Bureau of Development Services. Site Development will review the grading plan against the Applicant's Landslide Hazard Study as well as any additional geotechnical information required at the time of permit submittal to assure that the grading will not create any erosion risks. This criteria is met.

### **33.635.200 – Land Suitability**

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

The site is currently in residential use, and there is no record of any other use in the past. As indicated above, the site generally slopes gently 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;**

**33.636.100 Requirements for Tracts and Easements**

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

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

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

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

**Findings:** The following easements are proposed and/or required for this land division:

- A Private Storm Sewer Easement is required across the relevant portions of Parcel 2 for the benefit of Parcel 1, for flow-through planter located on Parcel 1 to connect to the public storm sewer in SW Hamilton Street.

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement will be required describing maintenance responsibilities for the easement 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, substantially similar to the following example:

*"A Declaration of Maintenance agreement for a storm sewer easement has been 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,**

*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 Hearings Officer notes that Portland Transportation staff did not require the Applicant to provide a transportation impact study (TIS). Therefore, evidence in the record related to 33.641.020 is limited to the oral testimony at the hearing, and written comments by Portland Transportation staff (Exhibits E.2 and H.3a), BDS staff (Exhibits H.2 and H.11), the Applicant (Exhibits A.1 and H.14), and numerous opponents to the application (see for example, Exhibits H.9, H.13, H.15, H.16 and H.17).

“Transportation System” is defined, by the Hearings Officer for the purpose of reviewing 33.641.020, as including streets and intersections most immediately affected by the anticipated vehicle trips generated by the proposed partition. *Bauer v. City of Portland*, 47 Or LUBA 459 (2004). The Hearings Officer finds the streets and intersections most immediately affected to include SW Hamilton between SW Shattuck (to the west) and SW Scholls Ferry Road (to the east), and the intersections of SW Hamilton/SW Scholls Ferry Road and SW Hamilton and SW Shattuck Road.

Appellant identified this approval criterion (33.641.020) as the basis of its appeal (see Exhibit H.2, “Appellant’s Statement”). The Appellant, in the appeal statement, expressed particular concern regarding the potential impacts of a foster care facility located on the proposed partitioned parcel and also the reduction of off-street parking space(s) in front of the partitioned parcel if an LID were approved. The Hearings Officer finds that a comprehensive and thorough review of the BDS staff findings for 33.641.020 is required in this case, and not simply a response to the two issues (foster care and off-street parking) raised by the Appellant.

The Hearings Officer reviewed the purpose statement as set forth in 33.641.010 to place 33.641.020 into context. 33.641.010 states that traffic impacts of a proposed

development/partition are to be identified, evaluated and mitigated (if necessary). 33.641.010 states that impacts by the development/partition on traffic conditions, transit, pedestrian, bicycle movement and neighborhood livability need to be assessed. 33.641.010 does not require a formal transportation development study for all land division applications, but it does require that sufficient evidence be in the record to allow for an adequate assessment of the listed traffic impacts. The Hearings Officer notes that 33.641.010 is not a formal approval criteria, but does find that it does establish the context for determining if BDS staff findings are adequate for 33.641.020.

To satisfy the approval criterion set forth in 33.641.020 there must be substantial evidence in the record for the Hearings Officer to find that all of the evaluation factors were considered. The Hearings Officer must address each of the evaluation factors. *Bauer v. City of Portland*, 47 Or LUBA 459 (2004). The remainder of the findings for 33.641.020 shall review each of the evaluation factors.

Street Capacity. Applicant, in its application package (Exhibit A.1, page 10) responded to a request for information related to 33.641.020 as follows: "Transportation system is adequate for one additional lot." Applicant, in a supplemental submission during the open-record period, stated:

"SW Hamilton Street is classified as a Neighborhood Collector. The subject site lies between SW Schools Ferry Rd, (classified as a Major City Traffic Street) to the west and SW Shattuck (A Neighborhood Collector) to the east. The distance between these two streets is approximately  $\frac{3}{4}$ 's of a mile. In this distance, at least 130 homes have access to and use SW Hamilton Street. Please refer to enclosed exhibit A for a map of this area and properties counted. Adding one more dwelling to this area would amount to at most an increase of less than one percent. The impact to the transportation system as a whole therefore cannot be deemed as significant."

Portland Transportation, in its initial response to the BDS stated:

"Using the evaluation factors listed in this code section, the applicant must provide a narrative and all necessary plans and documentation in addition to the existing uses in the area. A copy of a narrative prepared by the applicant to demonstrate how these criteria are met was not forwarded to Portland Transportation. However, based on the evidence available, Portland Transportation can conclude that any transportation impacts from one additional dwelling would be insignificant."(Exhibit E.2)

In a supplemental response to the BDS (Exhibit A.3) Portland Transportation stated:

"With regard to SW Hamilton Street, comments such as 'on a residential street that is already burdened by the traffic of some forty homes', (the street) was designed for light residential traffic and not for the heavy traffic it now handles' and 'Hamilton is a busy street', were made. In response, SW Hamilton Street is classified as a Neighborhood Collector street in the City's Transportation System Plan (TSP). As defined in the TSP, 'Neighborhood Collectors are intended to serve as distributors of traffic from Major City Traffic Streets or District Collectors to Local Service Streets and to serve trips that both start and end within area bounded by Major City Traffic Streets and District Collectors. Neighborhood Collectors should connect neighborhoods to nearby centers, corridors, station communities, main streets, and other nearby destinations.' With due respect given to the authors of the

submitted correspondence, SW Hamilton is functioning as it was classified in the TSP. The street is intended to carry a larger volume of vehicular trips than Local Service streets that are internal to neighborhoods and subdivisions. During Portland Transportation's review of the proposed land division partition, staff analyzed the impacts of one additional single-dwelling residential lot along the transportation system. Given the estimated ten additional vehicular trips associated with building one new house (on the new lot), Portland Transportation determined that the impacts on the transportation system would be minimal."

BDS staff, in its staff decision (see Exhibit H.2, page 8) and again in its supplemental submission (Exhibit H.11), summarized Portland Transportation's comments. BDS staff stated, in Exhibit H.11, that "SW Hamilton has adequate capacity to service the additional vehicle trips, associated with one new lot, without exceeding the level-of-service of this street set by the City."

One opponent (in support of the appeal) stated that "we do not think that the street capacity of SW Hamilton will be adequate...and ...maintain a satisfactory level-of-service." (Exhibit H.9).

The Hearings Officer finds that there is insufficient evidence in the record to adequately consider the street capacity evaluation factor. The Hearings Officer finds that Portland Transportation estimated that one additional single family dwelling would generate 10 additional daily trips on SW Hamilton. The Hearings Officer finds that the street capacity evaluation factor is intended to address the street capacity of SW Hamilton prior to the addition of one more single family residence, and then address the street capacity impacts of adding the single family residence.

The Hearings Officer finds that there is no evidence in the record as to (1) the street capacity of SW Hamilton, and (2) current vehicular trips on the street, and (3) the impact upon the current street capacity of the addition of 10 more daily vehicular trips generated by the parcel proposed in this case. As noted in the initial paragraphs of these findings the approval criteria set forth in 33.641.020 are to be considered in the context of the purpose section; what are the impacts caused by the development/partition, as proposed, upon the traffic system. The Hearings Officer finds that unless there is street capacity evidence in the record, as noted above, the Hearings Officer cannot make a finding that the transportation system can safely support the proposed development (and existing uses).

The Hearings Officer finds that the Applicant failed to meet its burden of adequately considering the street capacity evaluation factor.

Level-of-service. The Hearings Officer incorporates the findings for the street capacity evaluation factor into the findings for the level-of-service evaluation factor. Level-of-service, in the experience of the Hearings Officer, generally refers to a designation of streets and/or intersections (most often intersections) by letters from "A" through "F" ("F" being an intersection that is "failing"). Level-of-service describes operational conditions of a traffic stream in terms of such factors as speed, travel time, freedom to maneuver, traffic interruptions, convenience and safety.

With the exception of comments by Portland Transportation that SW Hamilton "is functioning as it was classified in the TSP", the Hearings Officer finds no evidence in the record even remotely addressing the level-of-service evaluation factor. Further, the Hearings Officer does not find that

a street “functioning as it was classified in the TSP” addresses the level-of-service evaluation factor.

Once again, the Hearings Officer’s overriding obligation in assessing evidence related to level-of-service is to determine if the transportation system is capable of safely supporting the proposed and existing uses. Appellant, in testimony at the hearing, expressed safety concerns related to the SW Hamilton/SW Scholls Ferry Road intersection. Had the Applicant or Portland Transportation provided evidence related to level-of-service, it may have shed light on Ms. Tabata’s safety concerns with the SW Hamilton/SW Scholls Ferry road intersection.

The Hearings Officer finds that the Applicant failed to meet its burden of adequately considering the level-of-service evaluation factor.

Vehicular Access and Loading. This evaluation factor generated testimony and comment from the City, Applicant and opponents. In this case, the vehicular access and loading evaluation factor is closely related to the on-street parking impacts.

Appellant and opponents of the application expressed concerns about vehicle access. For example, an opponent stated that “we do not think the provisions for vehicle access and loading in the proposed development will allow vehicles to come and go without backing out on to SW Hamilton. Vehicles in the driveways could not back out on to SW Hamilton without increasing hazards to pedestrians, bicyclists, and traffic.” (Exhibit H.9; also see Exhibit H.17 for expression of similar concerns).

Portland Transportation indicated (Exhibit H.3a) that “backing out” from single family residences:

“is not an isolated issue along SW Hamilton, wherein it appears that numerous houses along the street are oriented and well developed in a manner that only allows other nearby residents to back out into the street.”

BDS staff, in Exhibit H.11, stated that backing out onto SW Hamilton, at least when considering “site distances”, would not create a dangerous situation. BDS commented that:

“PDOT evaluates site access and loading by looking at certain site and street characteristics such as line of sight for visibility, street classifications, distance to corners, speed and traffic volume. From PDOT’s perspective, line of sight issues generally relate to conditions of the road (turns, curves, grade, etc.) SW Hamilton Street, at this location, has an approximate grade of 5% (and less) along this segment and is primarily straight (geometrically). PDOT does not feel that there is a line of sight issue in this situation. The site is located between SW Scholls Ferry Road (709 feet to the west) and SW 60<sup>th</sup> Place (396 feet to the east). With this distance to nearby intersections and the fact that the subject property may benefit from an on-site turnaround, but it is not warranted given the site and street characteristics evaluated.”

The Hearings Officer finds that there is evidence in the record addressing vehicle access and loading. In particular, there is evidence of sight distances and topography which indicates backing out onto SW Hamilton can be accomplished in a safe manner. Further, the Hearings Officer finds that the BDS comments related to access and loading (in particular sight distances

on SW Hamilton) constitute substantial evidence that BDS staff did adequately consider the vehicle access and loading evaluation factor in the context of safety of the transportation system. The Hearings Officer finds that the transportation system, with respect to access and vehicle loading, is capable of supporting a new single family dwelling at the subject location.

On-street Parking Impacts. On-street parking impacts generated significant testimony and written comment in this case. It is important to describe the on-street parking situation on SW Hamilton in the vicinity of the subject property. BDS staff summarized the situation by stating: “SW Hamilton Street is not currently constructed to accommodate parking. There are segments of the street with gravel shoulders wide enough to allow for a handful of vehicles to be parked, including in front of the subject site, but in general, there are limited on-street parking opportunities along SW Hamilton.” (Exhibit H.11).

The applicant agreed with BDS comments above by stating that “the subject site has a gravel shoulder along its frontage that affords it on street-parking.” (Exhibit H.14).

Appellant disagreed with the BDS decision (Exhibit H.2) findings. Appellant quoted the BDS staff decision which stated, “There is a pull off area in front of the subject site which is wide enough for 2-3 cars to park.” Appellant then expressed concern with the BDS decision language by stating the following:

“PDOT has based their findings and granted approval for the development of this lot based upon its use as a single family residence. PDOT has failed to evaluate this site as an adult foster care facility directly next door to another facility located on what is currently the same parcel of land. Furthermore, the city is presently conducting a study for the addition of walkways or sidewalks on Hamilton Street through a Halo LID. Should this be approved, the pull off area in front of the site would be eliminated. The city should take these facts into consideration when assessing the transportation impact to the neighborhood brought about by this development.”

The Hearings Officer, in addressing the on-street parking impacts, will respond to Appellant’s comments above and also to the proper method of approaching this approval criteria evaluation factor.

Appellant argues that special consideration must be given to the traffic impacts created by the potential of the subject site being utilized for a foster care home. The Hearings Officer disagrees. The Hearings Officer takes note of comments made by Portland Transportation in its supplemental written response (Exhibit H.3a):

“Much of the concern voiced in the submitted correspondence, as well at the appeal request, focused on the adult foster care use on Parcel 1 and the speculation that the applicant will be developing Parcel 2 as an additional adult foster care facility. During the course of Portland Transportation’s review of the project, we looked at it in the only way possible...that this was a request to partition the subject site into two smaller lots. The underlying zoning and applicable approval criteria address the fundamental single-dwelling residential use of the site. Our review was based on the impacts of the creation of an additional single-dwelling residential lot on the neighborhood. Based on the transportation-related approval criteria relative to the partition request, Portland Transportation was able to support the request. We

did not, nor could we, consider any associated impacts that could be attributed to the adult foster care facility on the site.”

BDS stated (Exhibit H.11) that BDS Staff and PDOT :

“cannot evaluate the transportation impacts of the 2 lot partition based in the size or type of single-dwelling home that may be placed on the new proposed parcel. The existing home is a licensed Adult Foster Care home. Adult Foster Care homes are a residential use and allowed in single-dwelling zones.”

The Hearings Officer agrees with the comments above made by Portland Transportation and BDS staff. The Hearings Officer, by way of analogy, does not and will not, in reviewing 33.641.020 traffic impact evaluation factors, consider the maximum number of bedrooms of a house that could be placed on a property. The Hearings Officer will also not deny a partition application for failure to satisfy 33.641.020 because of the possibility that a family moves into a house and has an unusually large number of licensed drivers. Conversely, the Hearings Officer will not approve, on the basis that there are no traffic impacts, a land division application because the Applicant suggests the occupants of the residences are bus riders and will not increase the number of vehicles on the adjacent street. A landowner may construct what is allowed by right under the Portland Zoning Code, and the Hearings Officer finds an Adult Foster Care home is an approved residential use under the Portland Zoning Code. The Hearings Officer will not speculate as to the final end-user in making 33.641.020 traffic impact findings.

The Hearings Officer next considers the Appellant’s LID argument. There is evidence in the record that, at this time, there is a gravel area in front of the subject site that can be used for on-street parking. BDS staff (Exhibit H.11, page 3) states, in part:

“on-street parking availability could be increased and enhanced if right-of-way improvements occur in the area either through a future Local Improvement District (LID) or other neighborhood effort to improve pedestrian and vehicle amenities. The City has been involved with the area’s Neighborhood Association in an attempt to create a new concept known as a “halo LID”, which would include right-of-way improvements along SW Hamilton that could provide for actual parking lanes along the street. At this point in time, it does not appear that this proposal has garnered sufficient support to move the project closer to construction.”

Appellant suggested, at the public hearing, that if sidewalks were part of the LID improvements the existing on-street parking spaces would be eliminated. Appellant did agree with staff that there has been some resistance to the halo LID proposal. One opponent submitted, during the open-record period, a diagram showing vehicles parked off-street (on-site) and on-street. (Exhibit H.10). The Hearings Officer will not speculate as to whether or not an LID will be approved. Therefore, the Hearings Officer did not consider potential on-street parking impacts resulting from the possibility of the approval of an LID.

Keeping in mind that the permitted use is residential (10 trips per day), the same use as all other residential uses along SW Hamilton, the Hearings Officer finds that there evidence in the record to suggest that the partition, as proposed, will not create significant on-street parking demands. The Hearings Officer finds evidence is in the record that the subject partition, if approved, would be required to have one on-site parking space; the same as all other residential uses in the area.

The Hearings Officer finds no credible evidence in the record (ie. accident rates) to support Appellant's and opponent's safety risks argument. The Hearings Officer finds that BDS staff properly considered the on-street parking impacts evaluation factor, and that on-street parking demands created by approval of the partition would not create an unsafe situation.

Transit Service. SW Hamilton Street is classified as a Community Transit street in the Transportation Element of the Comprehensive Plan. TriMet provides transit service adjacent to the subject site along SW Hamilton Street via Bus No. 55. Bus No. 55 has a stop in front of the subject site. The Hearings Officer finds that the existing transit service will adequately service the existing and proposed development and is capable of doing so safely. The Hearings Officer finds there is substantial evidence in the record to support the BDS conclusion that the transit service at the subject site is adequate and safe.

Impacts on Immediate/Adjacent Neighborhood. As with all other evaluation factors discussed in this section the overriding policy consideration is whether the transportation system can safely support the proposed partition and existing uses.

Appellant and neighbors in opposition to the application appear, to the Hearings Officer, to suggest that the primary impact upon the immediate and adjacent neighborhood (related to traffic and this approval criteria) is safety. Opponents suggested that traffic safety is impacted by the approval of this application, because of the likelihood that vehicles will be backing out of the residences onto SW Hamilton Street. Opponents suggested that an additional residential structure, as proposed, will create additional safety problems for pedestrians; in particular children walking to school and persons waiting for buses. (See, for example, Exhibits H.9, H.13, H.15, H.16 and H.17).

Portland Transportation, in its supplemental comments (Exhibit H.3a), stated that "our review was based on the impacts of the creation of an additional single-dwelling residential lot on the neighborhood. Based on the transportation-related approval criteria relative to the partition request, Portland Transportation staff was able to support the request."

Applicant, in its supplemental evidentiary submission stated that "Adding one more dwelling to this area would amount to at most an increase of less than one percent. The impact to the transportation system as a whole therefore cannot be deemed as significant."

Many of expressed impacts upon the neighborhood, by Appellant and opponents, involved speculation that the newly partitioned parcel would be used as an Adult Foster Care home rather than a traditional single family residence. As noted above, in the findings for 33.641.020, the Hearings Officer finds it improper to consider a specific allowed residential use (such as an Adult Foster Care home) in assessing the transportation impacts of an application. The Hearings Officer, therefore, does not consider the specific 33.641.020 neighborhood impacts of the speculative foster care use. The Hearings Officer only considers the neighborhood transportation impacts resulting from the addition of one single family parcel.

The Hearings Officer finds, based upon the Portland Transportation comment (Exhibit H.3a), that approval of the application will add 10 daily vehicle trips.



The Hearings Officer agrees with the comments by the Applicant and Portland Transportation staff that backing vehicles out from residences along SW Shattuck does not constitute an unreasonable safety risk to pedestrians, bicycles and vehicular traffic. Portland Transportation and BDS staff provided comments regarding sight distances in the context of the safety of access to the subject property. In conclusion, BDS staff concluded that sight distances east and west from the subject property were sufficient to allow vehicles safe access. The Hearings Officer concurs with the Portland Transportation comment that backing vehicles from residential lots is not unusual along SW Hamilton, and backing vehicles does not constitute a significant safety issue to the neighborhood.

Despite the findings above, the Hearings Officer finds that without street capacity information and level-of-service evidence in the record, the Hearings Officer is unable to make a fully informed decision with respect to neighborhood impacts. The Hearings Officer finds that, based upon the evidence in the record, BDS did not adequately address the impacts on the immediate and adjacent neighborhood evaluation factor.

Safety for All Modes. This evaluation factor overrides all of the other evaluation factors discussed above. As stated in the findings for neighborhood impacts above, without street capacity and level-of-service evidence in the record, the Hearing Officer is unable make a fully informed decision with respect to safety for all modes. The Hearings Officer finds, based upon the evidence in the record, BDS did not adequately address the safety for all modes evaluation factor.

**Summary of 33.641.020 findings:** The Hearings Officer finds that the Applicant and City failed to provide sufficient evidence to find that the street capacity and level-of-service evaluation factors are satisfied. The Hearings Officer is unable, based on the lack of street capacity and level-of-service evidence, to make an informed decision with respect to neighborhood impacts and safety for all modes. The Hearings Officer finds that the Applicant and City did provide adequate evidence and plausible arguments to satisfy the remaining evaluation factors; vehicle access, on-street parking, and transit service evaluation. The Hearings Officer, therefore, finds that 33.641.020 is not met.

Mitigation (33.641.030). This section provides an opportunity for the Applicant to meet 33.641.020 by including mitigation measures. Applicant, in its supplement written submission (Exhibit H.14), stated:

“In regards to on-street parking, the subject site has a gravel shoulder along its frontage that affords it on street-parking. As part of the approval of this land use, the applicant is required to sign and submit street and storm sewer waivers of remonstrance. This requirement in essence meets the approval criteria of 33.641.030 Mitigation, by requiring the owner to participate in any future improvements done thru a Local Improvement District. The owner is agreeing in advance to pay for their fair share of improvement costs. The applicant would also like to note that the development charges which are payable upon the issuance of a building permit on the new proposed parcel. We believe that with an anticipated increase of less than one percent, the transportation system is capable of safely supporting the proposed development in addition to the existing uses in the area.”

The Hearings Officer finds that the Applicant's proposed mitigation (street and storm sewer waivers of remonstrance, payment of transportation system development fees) is not response to the deficiencies found by the Hearings Officer in meeting 33.641.020. The Hearings Officer found that 33.641.020 was not met because of a lack of evidence related to street capacity and level-of-service. Signature of waivers of remonstrances and payment of system development charges simply does not address the lack of information problem.

Further, the Hearings Officer is dubious of the validity of Applicant's argument that signature of waivers of remonstrance and payment of system development fees constitute mitigation as contemplated by 33.641.030; however, such consideration is not necessary, because until adequate evidence is in the record regarding street capacity and level-of-service, it is impossible to assess what mitigation measures might be appropriate.

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

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

- The water standards of 33.651 have been verified. An existing 12-inch water main is available in SW Hamilton Street. Water is available to serve the proposed development from the water main in SW Hamilton Street. Parcel 1 has an existing water service from that main.

As a result of the proposed land division, the water line that provides service to the existing home on Parcel 1 will no longer be located entirely on the same lot as the home. Title 21 requires that the water service connection be located along the frontage of the parcel to be served. Water service connections are not allowed by means of an easement. Therefore, prior to final plat, the water service for the existing home must be relocated, so that the service connection will be located along the frontage of the Parcel 1. See Exhibit E-3 for more details.

- The sanitary sewer standards of 33.652 have been verified. There is an existing 8-inch CSP public sanitary sewer located in SW Hamilton Street that can serve the sanitary needs of the proposed lots. Parcel 1 has an existing sewer service from that main that crosses Parcel 2. Plumbing permit 07-166795 PT to replace the existing sewer connection so that it is entirely on Parcel 1, is under inspection. Site Development has noted that the existing sewer line must be capped and that sewer cap inspection must be added to the plumbing permit. Prior to final plat approval, the permit for replacing and capping the existing sanitary sewer connection must be finalized. See Exhibits E-1 and E-3 for more details.
- The technical standards of Chapter 33.653 related to stormwater management have been verified. The findings below for the Stormwater Management Approval Criteria of 33.653.020 incorporate a discussion of how the technical standards have been satisfied by the Applicant's stormwater proposal.

**33.653.020 Stormwater Management Approval Criteria**

- A. If a stormwater tract is proposed or required, an adequate amount of land and an appropriate location must be designated on the Preliminary Plan; and**
- B. The application must show that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.**

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

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

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

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

The Applicant has proposed the following stormwater management methods (Exhibit C1-2), and the Bureaus have responded as follows (Exhibits E-1 and E-5):

- **Parcel 2:** Stormwater from this parcel will be directed into a flow-through planter that removes pollutants and suspended solids. The water will drain from the planters to the existing storm sewer in SW Hamilton Street. Site Development indicated that although Westside soakage trenches or stormwater chamber systems are potentially acceptable on this site, limited available area due to site modifications and existing development may make on-site infiltration infeasible. BES has confirmed that the proposed flow-through planter with overflow to the public storm system in SW Hamilton Street is acceptable.
- **Parcel 1 (the lot with the existing house):** The Applicant's site plan shows stormwater for this parcel will be directed into a flow-through planter that removes pollutants and suspended solids. The water will drain from the planter to the existing storm sewer in SW Hamilton Street. The parcel has sufficient size for an individual planter box, and the Bureau of Environmental Services has indicated that the treated water can be directed to the existing storm sewer in SW Hamilton Street at the frontage of the site. As mentioned above, this storm drain will cross Parcel 2 in an easement to connect to the public storm sewer in SW

Hamilton. This planter is to be installed with the construction of the new house (refer to permit #08-105522 RS and permit #06-170153 RS). Site Development and BES have approved of the stormwater system under the new permit.

The stormwater management criteria are met.

### **Right of Way Approval Criteria**

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

<b>Code Section</b>	<b>Topic</b>	<b>Applicability Findings</b>
33.654.110.B.1	Through streets and pedestrian connections	Applicable - See findings below
33.654.110.B.2	Dead end streets	Not applicable - No dead end streets are proposed.
33.654.110.B.3	Pedestrian connections in the I zones	Not applicable - The site is not located within an I zone.
33.654.110.B.4	Alleys in all zones	Not applicable – No alleys are proposed or required.
33.654.120.C.1	Width of the street right-of-way	Not applicable – The proposal does not include any new streets.
33.654.120.C.3.c	Turnarounds	Not applicable – No turnarounds are proposed or required.
33.654.120.D	Common Greens	Not applicable – No common greens are proposed or required.
33.654.120.E	Pedestrian Connections	Not applicable – There are no pedestrian connections proposed or required.
33.654.120.F	Alleys	Not applicable – No alleys are proposed or required.
33.654.120.G	Shared Courts	Not applicable – No shared courts are proposed or required.
33.654.130.A	Utilities	Applicable - See findings below.
33.654.130.B	Extension of existing public dead-end streets and pedestrian connections	Not applicable – There are no existing public dead-end street or pedestrian connections adjacent to the site.
33.654.130.C	Future extension of proposed dead-end streets and pedestrian connections	Not applicable – No street extensions are required to serve abutting sites that are further dividable.

<b>Code Section</b>	<b>Topic</b>	<b>Applicability Findings</b>
33.654.130.D	Partial rights-of-way	Not applicable – No partial public streets are proposed or required.

**Applicable Approval Criteria are:**

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

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

**Findings:** The site is located on the south side of SW Hamilton Street between SW Scholl's Ferry Road (709 feet to the west) and SW 60<sup>th</sup> Place (396 feet to the east). If the distance between these existing streets is evaluated against the optimum spacing requirement of 530 feet, one can conclude that there should be a north-south through street provided in the vicinity of the site. The site contains sufficient width to allow the creation of a public north-south through street. However, the properties adjacent to the portion of the site where the street would terminate are already developed, and not configured in a manner that would easily allow the further extension of a street from the site. So, although the optimum spacing criteria would indicate the need for a north-south through street or pedestrian connection at this site, there is no practicable opportunity to provide them in this land division.

The site is within the Portland Master Street Plan for the Southwest Portland District. In this case, the Master Plan does not indicate the need for further connections at this location. Therefore, the proposal is consistent with the Master Street Plan.

For the reasons described above, 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 right-of-way 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.

As shown by the findings above, the Services and Utilities can be met with conditions of approval noted above. These criteria are met.

### **III. CONCLUSIONS**

The Applicant has proposed a 2-lot partition, as shown on the attached preliminary plan (Exhibit C-1). Applicant and the City did not provide any evidence in the record regarding the street capacity of SW Hamilton or the level-of-service of relevant streets and/or intersections. As such the application did not satisfy approval criteria 33.641.020. Further, Applicant's proposed mitigation (signature of waivers of remonstrance and payment of system development charges) was found to be unresponsive to the evidentiary deficiencies found by the Hearings Officer in 33.641.020.

The Hearings Officer found all other relevant approval criteria (excepting for 33.641.020 and .030) were met by the proposal. However, based upon the Hearings Officer's findings that 33.641.020 was not satisfied, the Hearings Officer was required to find that the application could not be approved. The Hearings Officer could not craft conditions of approval to address the evidentiary deficiencies noted for 33.641.020.

### **IV. DECISION**

The Appellant prevailed in this appeal.

**Denial** of a Preliminary Plan for a 2-lot partition, that will result in two standard lots as illustrated with Exhibit C-1.

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Gregory J. Frank, Hearings Officer

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Date

**Application Determined Complete:** January 17, 2008  
**Report to Hearings Officer:** June 20, 2008  
**Decision Mailed:** August 5, 2008  
**Last Date to Appeal:** August 26, 2008

**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 Hearings Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer's decision becomes final.

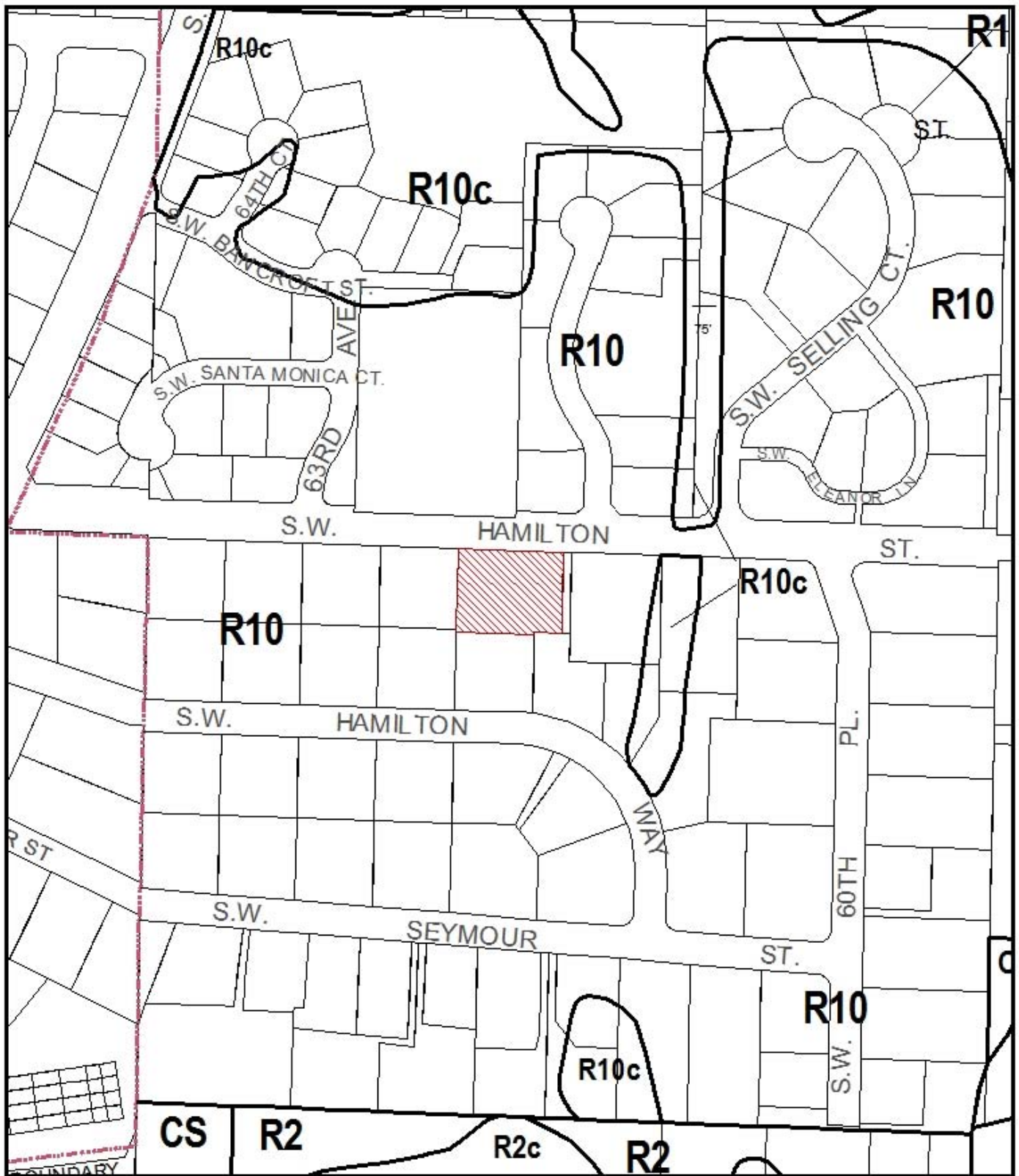
Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

**EXHIBITS**  
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittal
  - 1. Applicant's statements
  - 2. Geotechnical report
  - 3. 14 day Extension to 120 days – 3/26/08
  - 4. 14 day Extension to 120 days – 4/14/08
- B. Zoning Map (**attached**)
- C. Plans/Drawings
  - 1. Site Plan (**attached**)
  - 2. Site plan showing storm sewer lines and grade changes to street
- D. Notification information
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety
- F. Correspondence
  - 1. William and Joan Evans, February 18, 2008, concerned about increased traffic and parking and opposed to use of adult foster home(s) on site
  - 2. Karen Tabate, Bridlemile Neighborhood Association, February 22, 2008, concerned with increased traffic and, size of new structures and setbacks, stormwater management
  - 3. Claire Evans, February 22, 2008, concerned about the process demolition of existing house and construction of new house, traffic and parking, and opposed to the use of Adult Foster Care on site
  - 4. Evelyn, Andra, and Daniel Gorges, Emily Gottfried, Joan and Bill Evans, Stanley and Susan Marcus, Lionel and Zana Johnson, Claire and Scott Evans, Jane Campbell, Kuro and Nicki Kurisaki, Stuart and Marcia Weiss, the Bridlemile Neighborhood Association, February 22, 2008, concerned about the process demolition of existing house and construction of new house, traffic and parking, and opposed to the use of Adult Foster Care on site
- G. Other
  - 1. Original LU Application
  - 2. Site History Research
  - 3. Incomplete Letter
  - 4. Neighborhood Contact
- H. Received in the Hearings Office
  - 1. Hearing notice, Hoy, Rachael
  - 2. Appeal form and staff decision, Hoy, Rachael
  - 3. 6/20/08 Memo with attachment, Hoy, Rachael



- a. 6/18/08 Memo Fabio de Freitas (PDOT) to Hoy, Hoy, Rachael
4. Request for Ext. of 120-days dated 5/20/08, Hoy, Rachael
5. Color Photos (12) in envelope, Schifsky, Greg
6. 6/11/08 e-mail from Schifsky with Portland Maps attachments (3), Schifsky, Greg
7. 8 1/2 x 11 Color photos (2), Evans, Claire
8. PowerPoint presentation, Hoy, Rachael
9. Letter, Lee, Leslie
10. Letter with attached drawing and reports, Schifsky, Greg
  - a. 9 Photos, Schifsky, Greg
11. Memo, Hoy, Rachael
12. Original (duplicate) of Exh. 9, Lee, Leslie
13. Letter dated 7/14/08, Puterbaugh, Jim and Candy
14. Letter with attachment dated 7/14/08, Bec, Joe
15. Letter with photo, Evans, William and Joan
  - a. 8 1/2 x 11 photo, Evans, William and Joan
16. Letter dated 7/13/08, Gray, Robert and Nancy
17. Letter dated 7/13/08, Georges, Evelyn
18. 7/28/08 Letter, Bec, Joe



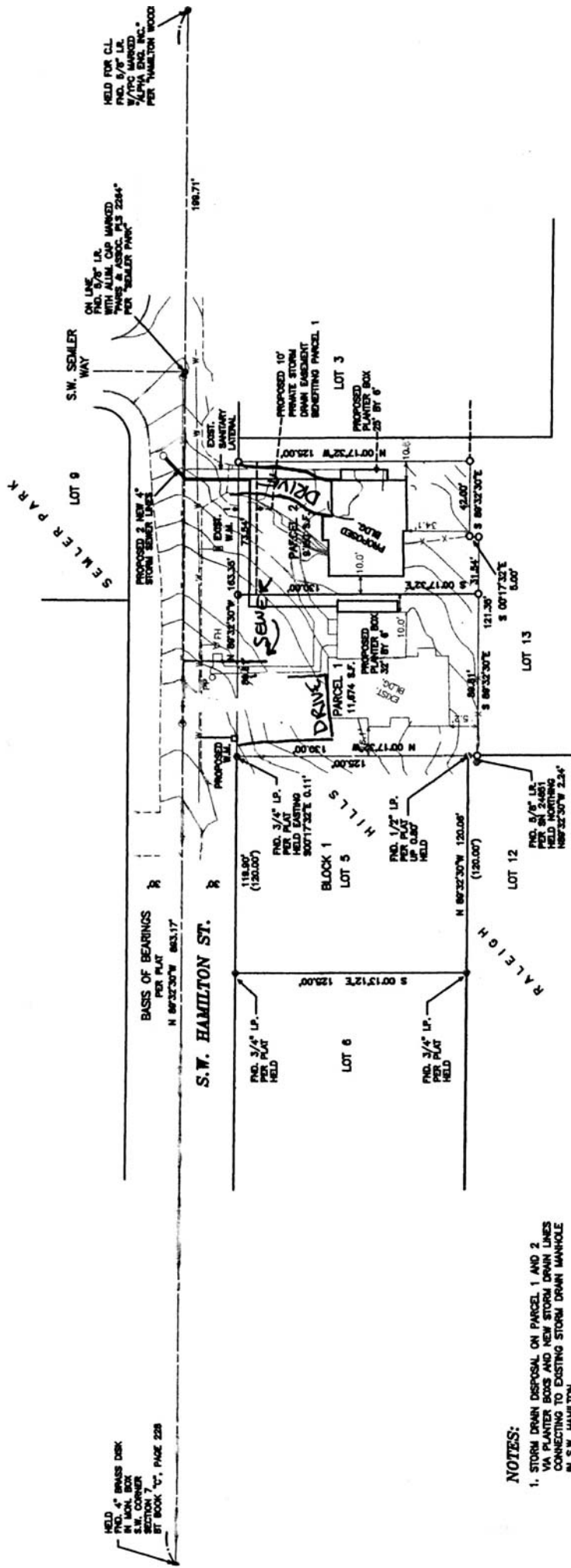
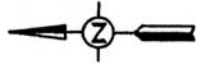
# ZONING

 Site



File No.	<u>LU 07-172215 LDP</u>
1/4 Section	<u>3423</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E18BB 2100</u>
Exhibit	<u>B (Oct 30, 2007)</u>

**TENTATIVE PARTITION PLAT**  
 PORTIONS OF LOTS 4 AND 13, BLOCK 1  
 "RALEIGH HILLS"  
 SITUATED IN THE NW 1/4 OF SECTION 18,  
 TOWNSHIP 1 SOUTH, RANGE 1 EAST, W.M.,  
 CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
 JULY 12, 2007 SCALE: 1" = 40'



**LEGEND**

- FND. MONUMENT AS NOTED
- TO BE SET 5/8" X 30" IRON ROD WITH ORANGE PLASTIC CAP INSCRIBED "MANWELL LS 87418"
- SN SURVEY NUMBER MULTNOMAH COUNTY SURVEY RECORDS
- FND. FOUND
- I.P. IRON PIPE
- I.R. IRON ROD
- PLAT DATA PER PLAT OF RALEIGH HILLS

**NOTES:**

1. STORM DRAIN DISPOSAL ON PARCEL 1 AND 2 VIA PLANTER BOXES AND NEW STORM DRAIN LINES CONNECTING TO EXISTING STORM DRAIN MANHOLE IN S.W. HAMILTON
2. THERE ARE ANY TREES ON THE SITE 6" DIA. OR ABOVE.



**CASE NO. 07-172215**  
**EXHIBIT C-1**

**MICHAEL LEE MANWELL**  
 Professional Land Surveyor  
 2847 SE 18TH CIRCLE  
 GRESHAM, OREGON 97080  
 (503) 661-8270  
 Email: mmanwpl@od.com