



City of Portland
Bureau of Development Services
Land Use Services Division

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Date: September 22, 2008
To: Interested Person
From: Shawn Burgett, Land Use Services
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NOTICE OF A TYPE I DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has approved a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it to the Oregon Land Use Board of Appeals (LUBA) at 550 Capitol St. NE, Suite 235, Salem, OR 97301. The phone number for LUBA is 1-503-373-1265. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-146911 AP

GENERAL INFORMATION

Applicant: Nho & Jennifer Chau
11540 SE 129th Ave
Happy Valley, OR 97086

Site Address: 2405 SE 76th Ave

Legal Description: LOT 1, PARTITION PLAT 2007-107; LOT 2, PARTITION PLAT 2007-107; LOT 3, PARTITION PLAT 2007-107

Tax Account No.: R649874250, R649874260, R649874270

State ID No.: 1S2E05DC 14101, 1S2E05DC 14102, 1S2E05DC 14103

Quarter Section: 3238

Neighborhood: South Tabor, contact Bob Progulske at 503-774-1005.

Business District: Eighty-Second Avenue, contact Nancy Chapin at 503-774-2832.

District Coalition: Southeast Uplift, contact Cece Hughley Noel at 503-232-0010.

Plan District: None

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

Case Type: AP (Land Divison Amendment Review)

Procedure: Type I, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

Proposal:

The applicant received final approval for a 3-lot land division at this site on June 21, 2007 when Final Plat 06-131797 was approved. Final Plat 06-131797 created 3 parcels on the site (see exhibit C-1). Parcel 1 is 4,470-sq. ft. and has the existing house located on it, while Parcels 2 and 3 (measuring approximately 2,116-sq. ft. each) were created for two units of attached housing (1 unit per lot). The maximum density for the site as a whole is 4 units, while the minimum density is 3 units. The applicant has now indicated that they would like to have the option of building one single family home on Parcels 2 and 3, assuming both lots are under common ownership. In order to allow one single family home to built on parcels 2 and 3, and to ensure that the minimum density is maintained on the site in the future, an

amendment to the conditions of approval associated with LU_06-131797_LDP must be made in this review. A condition of approval will be added to the original preliminary decision that will require Parcel 1 (the lot with the existing house) to be developed with a minimum density of two units if its ever re-developed in the future. This will ensure that if a single family home is built over parcels 2 and 3, that minimum density is still met on the site as a whole.

This partition is reviewed through a Type I land use review because Zoning code criteria **33.660.310.B** states that proposals are processed through the same procedure type as was used for the preliminary plan approval if the change meets the criterion listed under zoning code section 33.660.310.B., this proposal meets 33.660.310.B.9.

Relevant Approval Criteria:

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

- 33.660.310, Review of Changes to an Approved Preliminary Plan
- 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.

ANALYSIS

Site and Vicinity: The subject site is fairly flat and is currently developed with one single family home that is located on Parcel 1. There are no significant topographic features on the site. The composition of structures in the general vicinity are primarily single-family homes and multi-family dwellings of varying styles and scale.

Zoning: The site is currently zoned R2 (Multi-Dwelling Residential 2,000). The R2 designation is one of the City's multi-dwelling zones which is intended to create and maintain higher density residential neighborhoods. The zone implements the comprehensive plan policies and designations for multi-dwelling housing. The maximum density is one dwelling unit per 2,000 square feet and the minimum density is one dwelling unit per 2,500 square feet.

The "a" Alternative Design Density overlay allows greater density for development that meets additional design compatibility requirements. The applicant's proposal is not dependent on the provisions of the "a" overlay.

Land Use History: City records indicate that FP_06_131797 was approved on June 21, 2007 and created 3 lots on this site. The applicant also applied for an adjustment request under LU_07_101784_AD which requested modifications to Zoning Code standards to build attached units over Parcels 2 and 3 on the site. LU_07_101784_AD will not apply to the current development proposal for one dwelling unit on Parcels 2 and 3.

Agency Review: A Notice of Proposal in your Neighborhood was mailed on **July 31, 2008**. The following Bureaus have responded with no issues or concerns about the proposal:

- Bureau of Environmental Services
- Water Bureau
- Fire Bureau
- Life Safety Plans examiner
- Bureau of Transportation Engineering
- The Bureau of Parks-Forestry Division

The Site development Section of BDS responded with the following comments: On-site infiltration of stormwater is feasible at this location, and Site Development would accept the installation of drywells to serve future development on Parcel 1. At the time of future building permit review, plans must conform to the requirements of the Stormwater Management Manual, including minimum drywell setback requirements of 5 feet to property

lines and 10 feet to structures (including structures on adjacent property) as measured from the middle of the drywell. The location of all existing and proposed utilities must be shown on a utility plan. All existing easements must be shown on the plans at the time of building permit review, and any development proposed within easement areas must be identified. Please see Exhibit E-5 for additional details.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **July 31, 2008**. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

APPROVAL CRITERIA-

APPROVAL CRITERIA FOR A REVIEW OF CHANGES TO AN APPROVED PRELIMINARY PLAN

33.660.310.B states that proposals are processed through the same procedure type as was used for the preliminary plan approval if the change meets the criterion listed under zoning code section 33.660.310.B.

In this case, the proposal meets criterion 33.660.310.B.9, because the change (reallocating density) requested involves changing a condition of preliminary plan approval, therefore this land use review was processed through the same land use review type as the original land division (LU_06_131797_LDP) that created the lots on this site, which was processed as a Type 1.

33.660.320.A states that all changes to the preliminary plan that are listed in subsection 33.660.310.B must meet the approval criteria of section 33.660.120. The original land use decision (LU_06_131797_LDP) met the approval criteria of 33.660.120 and was approved. The change requested under the review will only effect criterion A of zoning code section 33.660.120, all other approval criteria covered in land use decision LU_06-131707_LDP will still apply and be relevant in this case.

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

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

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

Criterion	Code Chapter	Topic	Applicability Findings
A	33.612	Lots	Applicable - See findings below
B	33.630	Trees	Not applicable to this review –covered in LU_06_131797_LDP
C	33.631	Flood Hazard Area	Not applicable to this review –covered in LU_06_131797_LDP
D	33.632	Potential Landslide Hazard Area	Not applicable to this review –covered in LU_06_131797_LDP
E	33.633	Phased Land Division or Staged Final Plat	Not applicable to this review –covered in LU_06_131797_LDP

Criterion	Code Chapter	Topic	Applicability Findings
F	33.634	Recreation Area	Not applicable to this review –covered in LU_06_131797_LDP
G	33.635 .100	Clearing and Grading	Not applicable to this review –covered in LU_06_131797_LDP
G	33.635 .200	Land Suitability	Not applicable to this review –covered in LU_06_131797_LDP
H	33.636	Tracts and Easements	Not applicable to this review –covered in LU_06_131797_LDP
I	33.639	Solar Access	Not applicable to this review –covered in LU_06_131797_LDP
J	33.640	Streams, Springs, and Seeps	Not applicable to this review –covered in LU_06_131797_LDP
K	33.641	Transportation Impacts	Not applicable to this review –covered in LU_06_131797_LDP
L	33.651 - 33.654	Services and Utilities	Not applicable to this review –covered in LU_06_131797_LDP

Applicable Approval Criteria are:

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

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

Density Standards

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

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

The total site area shown on the applicant's survey is 8,702 square feet, which in the R2 zone has a density calculation as follows:

Minimum = $8,702$ (site area) \div $2,500$ (minimum density from Table 120-3) = 3.48 (which rounds down to a minimum of 3 units, per 33.930.020.A).

Maximum = $8,702$ (site area) \div $2,000$ (maximum density from Table 120-3) = 4.35 (which rounds down to a maximum of 4 units, per 33.930.020.B).

Site area devoted to streets is subtracted from the total site area in order to calculate the minimum and maximum density. In this case, no public street dedications were proposed with this land division.

The applicant received final approval for a 3-lot land division at this site on June 21, 2007 when Final Plat 06-131797 was approved. Final Plat 06-131797 created 3 parcels on the site (see exhibit C-1). Parcel 1 is 4,470-sq. ft. and has the existing house located on it, while Parcels 2 and 3 (measuring approximately 2,116-sq. ft. each) were created for two units of attached housing (1 unit per lot). As stated above, the maximum density for the site as a whole is 4 units, while the minimum density is 3 units. The applicant has now indicated that they would like to have the option of building one single family home on Parcels 2 and 3, assuming both lots are under common ownership. In order to allow one single family home to be built on parcels 2 and 3, and to ensure that the minimum density of 3 units is maintained on the site in the future, an amendment to the conditions of approval associated with LU_06-131797_LDP must be made in this review.

A condition of approval will be added through this land use review to the original preliminary decision, this new condition of approval will require Parcel 1 (the lot with the existing house) to be developed with a minimum density of two units (Duplex) if its ever re-developed in the future. This will ensure that if a single family home is built over parcels 2 and 3, that minimum density is still met on the site as a whole.

Based on the options discussed above, since Parcels 2 through 3 could be developed with either one or two dwelling units, the remainder of the minimum density for the site as a whole must be met on Parcel 1 at the time of re-development. Because the proposed area of Parcel 1 would only trigger a minimum density requirement of 1 according to Table 120-3, conditions are needed to ensure that the density requirements of the land division site will be met on Parcel 1 in the future.

Therefore, as a condition of approval, if Parcel 1 is ever re-developed, a minimum of 2 units will be required on Parcel 1 at the time of re-development.

Additionally, if Parcels 2 and 3 are developed with one single family home, instead of two units as proposed under LU_06_131797_LDP, the applicant will have to provide documentation that they are the owner of both parcels 2 and 3, and the applicant will be required to submit an approved covenant (prior to Planning and Zoning approval of a single family home over parcels 2 and 3) to the City of Portland that specifies that Parcels 2 and 3 cannot be sold separately if a single family home is built over these two parcels. The covenant will only be released by the City of Portland if the applicant has finalized a demolition permit for any single family home built over Parcels 2 and 3 on the site, or if the applicant has finalized the necessary building permits to convert any single family structure built over parcels 2 and 3 into rowhouses which meet all applicable City regulations associated with attached units located on separate legal parcels.

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

CONCLUSIONS

In order to allow the option of constructing one single family home to be built over parcels 2 and 3 of this land division site created under FP_06_131797, and in order to ensure that the minimum density is maintained on the site in the future, an amendment to the conditions of approval associated with LU_06-131797_LDP must be made in this review. A condition of approval will be added to the original preliminary decision that will require Parcel 1 (the lot with the existing house) to be developed with a minimum density of two units if its ever re-developed in the future. This will ensure that if a single family home is built over parcels 2 and 3, that minimum density is still met on the site as a whole.

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

ADMINISTRATIVE DECISION

Approval of changes to the allocation of density associated with LU_06_131797_LDP, an

approved Preliminary plan. The new condition of approval will allow a single family home to be built over Parcels 2 and 3 on this site, and require any new development on Parcel 1 to have a minimum density of 2 units. This approval is subject to conditions of approval at the time of development. It should be noted that conditions D.1 and D.2 below are not part of this amendment review, but are listed as conditions of approval under LU_06_131797_LDP, and are not effected by this review, and remain in effect. Condition D.1 and D.2 below were added to this list of conditions of approval for consistency and clarity purposes:

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

1. Development on Lot 1 shall be in conformance with the Tree Preservation Plan (Exhibit C-2 from LU_06_131797_LDP) and the applicant's arborist report (Exhibit A-2 from LU_06_131797_LDP). Specifically, tree number 11 is required to be preserved, with the root protection zones indicated on Exhibit C-2 (from LU_06_131797). Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision.
2. The applicant must meet PDOT's requirement to reconstruct the sidewalk on SE Division Street to City walkway standards at the time of development of Parcels 2 and 3.
3. The applicant is allowed to construct one single family home over Parcels 2 and 3 from LU_06_131797_LDP if the developer demonstrates both Parcels are under common ownership at the time of development. Prior to Planning and Zoning approval of a single family home over Parcels 2 and 3 the developer must record a covenant with Multnomah County that specifies that Parcels 2 and 3 will not be sold separately unless the single family home being built over parcels 2 and 3 is either demolished or converted to two units that meet all applicable City Standards related to locating attached dwelling units on separate, individual parcels. The covenant must be signed and notarized by the property owners, and recorded with Multnomah County prior to approval of a building permit for a single family home over Parcels 2 and 3.
4. The minimum density of Parcel 1 is 2 units. This is required in order to maintain the minimum density on the site as a whole of 3 units, in case Parcels 2 and 3 are developed with a single family home.

Decision rendered by:  **on September 17, 2008**

By authority of the Director of the Bureau of Development Services

Decision mailed September 22, 2008

Staff Planner: Shawn Burgett

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

Procedural Information. The application for this land use review was submitted on July 17, 2008, and was determined to be complete on July 25, 2008.

Zoning Code Section 33.700.080 states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on July 17, 2008.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period.

Some of the information contained in this report was provided by the applicant.

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

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

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

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

The file and all evidence on this case is available for your review by appointment. Please contact the receptionist at 503-823-7967 to schedule an appointment. Copies of all information in the file can be obtained for a fee equal to the cost for such services. You may also find additional information about the City of Portland and City Bureaus, as well as a digital copy of the Portland Zoning Code, by visiting the City's homepage on the Internet at www.portlandonline.com.

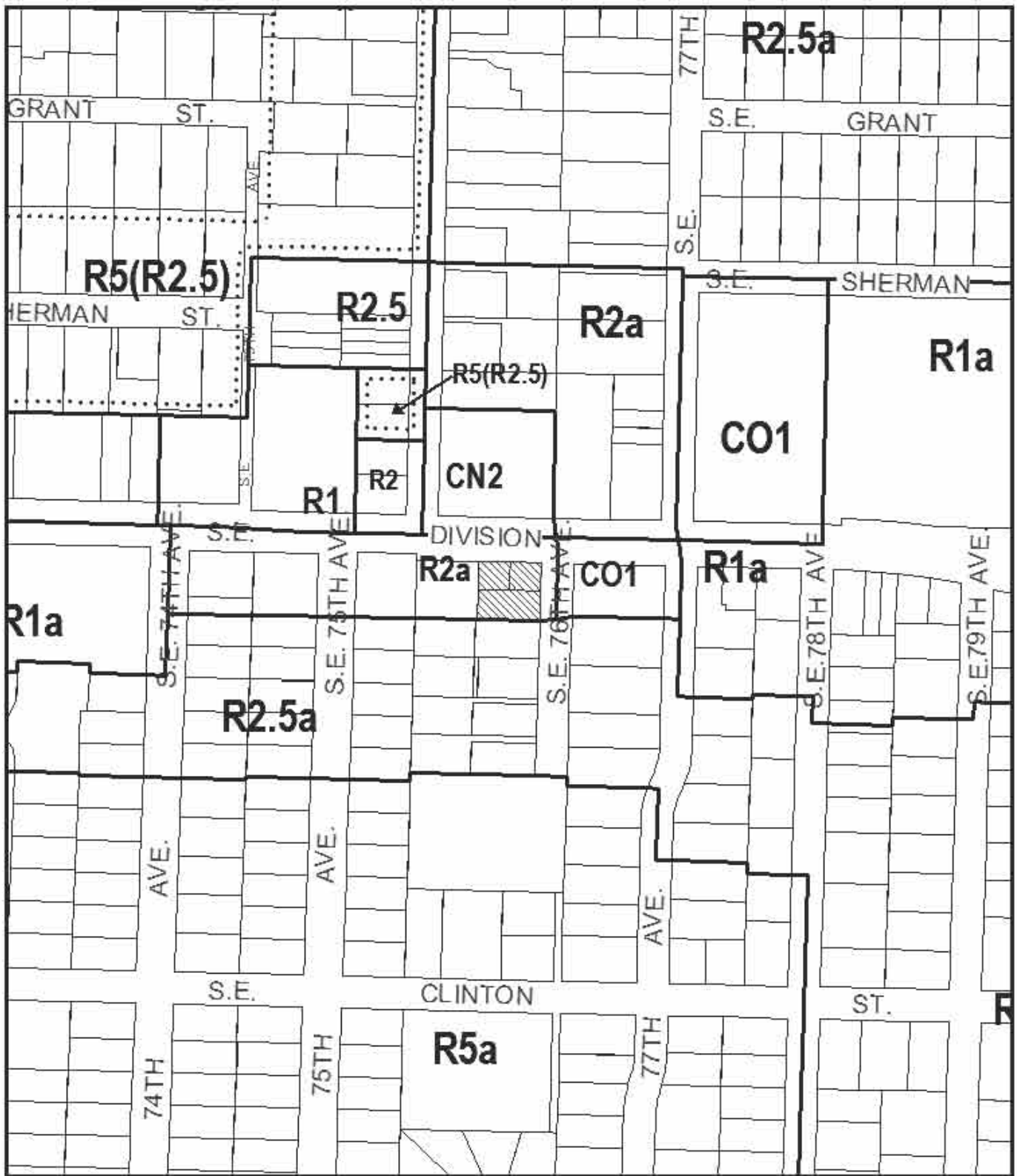
Recording the land division. The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director 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
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. 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 Plans examiner
- F. Correspondence:
 - 1. None received
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Land use decision 06_131797

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



ZONING

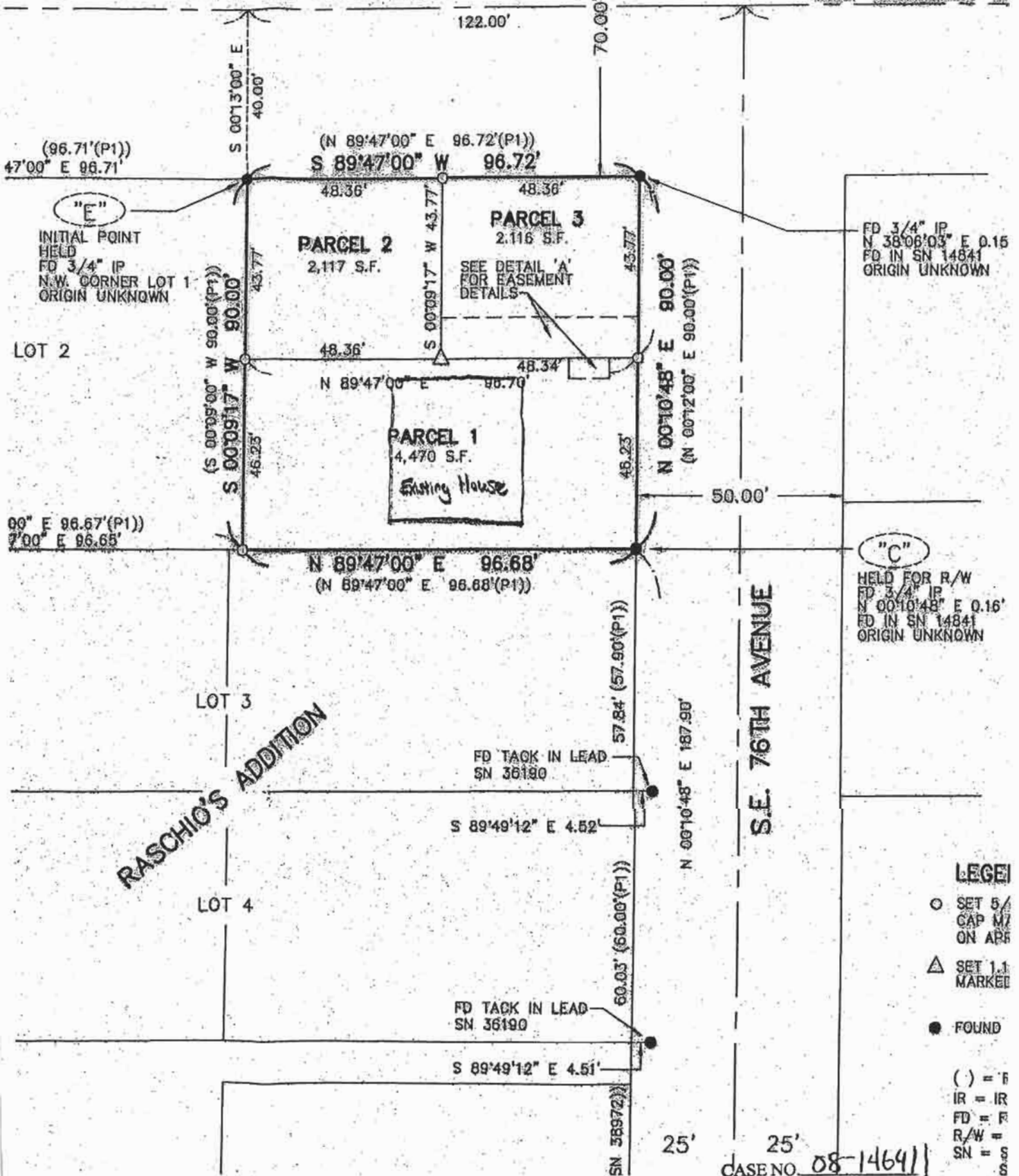
 Site



File No.	<u>LU 08-146911 AP</u>
1/4 Section	<u>3238</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S2E05DC 14101</u>
Exhibit	<u>B (Jul 28, 2008)</u>

BASIS OF BEARINGS
 N 89°47'00" E (N 89°47'00" E(S1))

S.E. DIVISION S



FD 3/4" IP
 N 38°06'03" E 0.15'
 FD IN SN 14841
 ORIGIN UNKNOWN

"C"
 HELD FOR R/W
 FD 3/4" IP
 N 00°10'48" E 0.16'
 FD IN SN 14841
 ORIGIN UNKNOWN

LEGEND

- SET 5/ CAP M7 ON APR
- △ SET 1.1 MARKED
- FOUND
- () = F
- IR = IR
- FD = F
- R/W = S
- SN = S

CASE NO. 08-14641
 EXHIBIT C-1