



City of Portland  
**Bureau of Development Services**  
Land Use Services Division

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**Date:** November 28, 2008  
**To:** Interested Person  
**From:** Sean Williams, Land Use Services  
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## **NOTICE OF A TYPE I DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

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

### **CASE FILE NUMBER: LU 08-156536 LDP**

#### **GENERAL INFORMATION**

**Applicant:** Andrew J Smith & Jeaneth R Villegas  
Advantage Equities LLC 6760  
11034 SE 119<sup>th</sup> Court  
Happy Valley, OR 97086

**Representative:** Kim Mcghee  
Surround Architecture, Inc.  
422 NW 8<sup>th</sup> Avenue, Suite C  
Portland, OR 97209

**Site Address:** Southeast corner of NE 43<sup>rd</sup> Avenue & NE Thompson Street

**Legal Description:** BLOCK 20 N 37' OF LOT 16, ROSSMERE  
**Tax Account No.:** R729802590  
**State ID No.:** 1N2E30CB 18201  
**Quarter Section:** 2835  
**Neighborhood:** Hollywood, contact Trudi Rahija at 503-281-5504; Grant Park, contact Geoff Hyde at 503-281-4097.

**Business District:** Hollywood Boosters, contact Jeffrey Baird at 503-331-7650.  
**District Coalition:** Northeast Coalition of Neighborhoods, contact Lauren McCartney at 503-823-4135; Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.

**Plan District:** Hollywood - Subdistrict B  
**Zoning:** Residential 2,500 (R2.5)  
**Case Type:** Land Division Partition (LDP)  
**Procedure:** Type I, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

#### **Proposal:**

The applicant is proposing to partition a 3,700 square foot lot into two parcels of approximately 1,628 (Parcel 1) and 2,072 (Parcel 2) square feet in size via the attached houses on corners (33.110.240.E) Alternative Development Option.

This partition is reviewed through a Type I land use review because: (1) the site is in a residential zone; (2) fewer than four lots are proposed; (3) none of the lots, utilities, or services are proposed within a Potential Landslide Hazard or Flood Hazard Area, and; (4) no other concurrent land use reviews (such as an Adjustment, Design Review, or Environmental Review) are requested or required (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:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in Section **33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.**

## ANALYSIS

**Site and Vicinity:** The subject lot is located on the southeast corner of NE Thompson Street and NE 43<sup>rd</sup> Avenue. A lot confirmation and property line adjustment (06-121788 PR) reestablished the lot that was once a part of property adjacent to the south identified as 2224 NE 43<sup>rd</sup> Avenue. A majority of the site is covered by vehicle paving area that once served the dwelling to the south. Existing improvements consist of a detached garage that is currently under inspection for demolition (08-157367 RS). No trees are located within the land division site subject to preservation standards. The site is located two blocks north of NE Sandy Boulevard, a significant commercial corridor. As such, parking in the vicinity is at times strained due to the proximity to commercial uses to the south. Development to the north consists mostly of detached homes of a lower density Single Dwelling zone than the subject property.

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

The Hollywood plan district provides for an urban level of mixed-use development including commercial, office, housing, and recreation. The plan district strengthens Hollywood's role as a commercial and residential center, and promotes the use of light rail, bus transit, and walking. The site is within Subdistrict B of this plan district in which there are no regulations applicable to this land division case.

**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 August 29, 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:** Two written responses have been received from notified property owners in response to the proposal (Exhibit F-1 & F-2). The expressed comments and concerns of the letters from notified property owners and Staff's response are addressed below:

- Transportation Impacts: The proposed development's impact to off-street parking is of concern for the neighborhood.

**Staff Response:** Neighbors have indicated that the proximity to commercial development and lack of on-site parking for a number of homes in the area has created a problem with

on-street parking. Although the land division site is not subject to on-site parking for new development due to the proximity to frequent public transportation, the Bureau of Transportation is requiring on-site parking due to a number of existing conditions (see Criterion K. transportation Impacts).

- Compatibility/Design: Property owners in the vicinity feel that the proposal is not compatible with the design and aesthetics of the neighborhood.

**Staff Response:** The subject property is located within a buffer of higher density single dwelling zoning (R2.5) with commercial zoning (CO1 & CS) close to the south along NE Sandy Boulevard and a lower density single dwelling zone (R5) to the north. The density and lot size standards ensure that lots are consistent with the desired character of the zone. A majority of the immediate vicinity is developed with early to mid century single family homes. However, commercial development is only a block to the south of the subject property. Some duplex and multifamily development is also interspersed in the area. All corner lots with a single dwelling zoning designation have the possibility to be developed with duplexes or attached housing subject to compliance with lot size requirements. In addition, attached housing is also allowed by right in the R2.5 zone. In regards to compatibility, the subject property and immediate neighborhood does not contain a Design (d) overlay which would require compliance with design guidelines for a specific district or area. This review only pertains to the division of the site and is not subject to subsequent development with the exception of standards applicable to duplexes and attached houses on corners provisions (33.110.240.E). The land division approval criteria do not require an analysis of whether the proposal is compatible with the design and aesthetics of the neighborhood. Therefore, these comments do not pertain to the applicable approval criteria.

- Street Trees: Some neighbors have expressed concerns regarding the impact of future development on the street trees within NE 43<sup>rd</sup> Avenue & NE Thompson Street.

**Staff Response:** Five mature maple trees are located in the planting strips along the sites frontages; two of which are on NE 43<sup>rd</sup> Avenue and three along NE Thompson Street. The applicant has proposed to remove one of the maple trees on NE 43<sup>rd</sup> Avenue to allow for a driveway for Parcel 1. Submitted plans indicate that all other street trees will remain. The Urban Forester, who regulates trees within the right-of-way, has indicated that the trees are in poor condition and is not opposed to the removal of one tree. The Urban Forester will review tree removal at the time of building permit review. There are no applicable approval criteria related to street trees.

- Notification: Both correspondence expressed concerns that the notification was insufficient as only the immediate neighbors received the proposal.

**Staff Response:** This land division request is reviewed through a Type 1 procedure which requires a notice of a request (33.730.015.C) to be mailed to all property owners within 100 feet of the site and to recognized organizations in which the site is located. The mailing list (Exhibit D-1) confirms that the notice of proposal was sent to all neighbors within 100 feet as well as the Grant Park and Hollywood Neighborhood Associations. Corner lots may not always reach the same amount of neighbors as interior lots as a significant amount of the notification distance can be consumed by street right-of-way. However, since the proposal is always sent to the applicable neighborhood association, every property owner within the neighborhood in which a land use case occurs has representation and the ability to be involved.

## 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.

Criterion	Code Chapter	Topic	Applicability Findings
A	33.611	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	Not applicable - The site is not within the potential landslide hazard area.
E	33.633	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed.
F	33.634	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 - The proposed development is for something other than single-dwelling detached homes.
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 33.611 contains the density and lot standards applicable in the R2.5 zone. These density and lot dimension standards ensure that lots are consistent with the desired character of each zone while allowing lots to vary in size and shape provided the planned intensity of each zone is respected.

#### Density Standards

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, and the site is not within the environmental zone, potential landslide hazard area, or flood hazard area. Therefore, the maximum and minimum density for this site is as follows:

Minimum = (3,700 square feet \* .80) ÷ 5,000 square feet = 0.59 (which rounds up to a minimum of 1 parcel, per 33.930.020.A)

Maximum = 3,700 square feet ÷ 2,500 square feet = 1.48 (which rounds down to a maximum of 1 parcel, per 33.930.020.B)

The applicant is proposing 2 parcels, which exceeds the maximum density normally allowed for the site. However, Parcels 1 and 2 are proposed for attached houses under the provision in 33.110.240.E, which allows one extra unit in conjunction with attached houses on corner lots. Therefore, an additional parcel is allowed provided Parcels 1 and 2 are developed with attached houses. With a condition of approval limiting the development on Parcels 1 and 2 to attached houses, the density standards are 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 is shown in the following table (this information is found in Chapter 33.611 of the Zoning Code):

	<b>R2.5 Zone Requirement</b>	<b>Proposed Parcel 1</b>	<b>Proposed Parcel 2</b>
Minimum Lot Area	1,600 sq. ft.	1,628 sq.	2,072 sq.
Maximum Lot Area	NA	ft.	ft.
Minimum Lot Width*	36 ft.	37 ft.	56 ft.

Minimum Lot Depth	40 ft.	44 ft.	37 ft.
Minimum Front Lot Line	30 ft.	37 ft.	56 ft.

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

Parcels 1 and 2 do not meet all of the standard lot dimensions for the R2.5 zone, as shown in the table above. Section 33.110.240.E of the Zoning Code, however, allows one extra dwelling unit, up to a maximum of two units. For attached houses, the original lot, before division for the attached house proposal, must be at least 3,000 square feet. The subject property is approximately 3,700 square feet in area and therefore qualifies for a land division for attached housing.

The findings above describe how the applicable lot standards are met. With the conditions of approval described above, this criterion is therefore 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 is primarily flat, and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the site to make the new lots developable. This criterion 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. An existing detached garage that once served the adjacent dwelling to the south addressed 2224 NE 43<sup>rd</sup> Avenue is currently under inspection for demolition (08-157367 RS). In order to ensure that the new lots are suitable for development, the demolition permit must be

finalized prior to final plat approval. With this condition, the new lots can be considered suitable for development, and 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 easement is proposed and/or required for this land division:

- A Private Sanitary Sewer Easement is required across the relevant portions of Parcel 1, for a sanitary sewer lateral connection that will serve Parcel 2.

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 this area. This criterion can be met with the condition that a maintenance agreement is prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreement with a recording block, substantially similar to the following example:

*"A Declaration of Maintenance agreement for Private Sanitary Sewer Easement has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."*

With the condition 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 regulations of Chapter 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. Small land divisions involving only a few dwelling units may not require a formal transportation impact study, while it might be required for larger projects (Title 17 includes technical standards describing when a more formal study is required).

The site has approximately 37 feet of frontage on NE 43<sup>rd</sup> Avenue and 100 feet of frontage on NE Thompson Street. Both NE 43<sup>rd</sup> Avenue and NE Thompson Street are classified as a local service street for all modes in the Transportation System Plan. Tri-Met provides frequent transit service approximately 260 feet from the site on NE 42<sup>nd</sup> Avenue via bus number 75. Parking is currently allowed in both directions of NE 43<sup>rd</sup> Avenue and NE Thompson Street. There are two driveways entering the site from NE Thompson Avenue that provide access to the site.

#### **Transportation Impacts (Section 33.641)**

The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area based on a number of evaluation factors:

##### Street capacity and level-of-service:

Based on the available information, the estimated increase in daily trips is less than 10 total trips per day with the majority of trips occurring during non-peak hours, as provided by the Institute of Transportation Engineers – Trip Generation Manual (7<sup>th</sup> Edition). Additionally, consideration is given to the likely division of the anticipated increase of less than 10 total trips per day being factored by four possible route directions to and from this location. Other consideration in determining potential impacts include this location's proximity to public transit access (see findings below) which provides on-going availability to an alternative mode of transportation (Tri-met) located less than 500 feet from the subject property, as well as the overall area being substantially improved with sidewalks in all directions. In consideration of the availability of frequent service transit, the limited increase in traffic which is anticipated to result from this proposal, and the availability of alternative routes for vehicle access to and from the subject site, it is reasonably anticipated by PDOT staff (including registered traffic engineers), that the minimal increase to the existing transportation system facilities and capacity from this proposed minor partition will not create a significant impact.

##### Vehicle access and loading:

Because the site is located on a corner, Portland Transportation has noted that curb cuts and driveway construction must meet the requirements in Title 17. Curb cuts are required to be setback a minimum of 25 feet from corner property lines. Of the two existing curb cuts on NE Thompson Street one is located within approximately 14 feet of the corner. Therefore, at the time of development, this curb cut must be closed and improvements

must be made to reconstruct the pedestrian corridor to match the existing configuration along the sites frontage.

On-street parking impacts:

As noted in the neighborhood review above, issues of on street parking were raised in formal comments from notified property owners in the vicinity. The paved roadway surface of both streets is deficient in 2 feet of width for the recommended standard supporting parking in both directions. Based on the subject properties proximity to frequent public transit service new development would typically be exempt from on-site parking requirements. However, due to the moderately narrower street width and lack of opportunity to expand the existing roadway, Portland Transportation has determined that on-site parking will be a requirement of new development to improve on-street parking limitations in the general area.

The availability of transit service and facilities and connections to transit:

Tri-Met provides frequent transit service approximately 260 feet east of the site on NE 42<sup>nd</sup> Avenue via bus number 75. Both NE 43<sup>rd</sup> Avenue and NE Thompson Street are improved with pedestrian corridors that meet City standards and are able to provide access to transit service mentioned above.

Impacts on the immediate and adjacent neighborhoods:

Portland Transportation/Development Review has identified no potential transportation related impacts from the proposed subdivision other than those that would normally be expected in any residential neighborhood.

Safety for all modes:

Both NE 43<sup>rd</sup> Avenue & NE Thompson Street, along the sites frontages, are improved with 24 feet of paved roadway surface with a pedestrian corridor consisting of a .5 foot curb, 9.5 foot planter, 6 foot sidewalk and 2 foot setback to private property (10-6-2) within a 60 foot wide right-of-way. In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. The paved roadway surface of both NE 43<sup>rd</sup> Avenue & NE Thompson Street does not meet the recommended City standard of 26 feet for streets of this classification. However, the existing pedestrian corridors exceed the recommended width. Based on the minimal opportunity for additional development in this neighborhood, as well as the existing conditions being consistent with development in the area, dedication & improvements are not required along NE 43<sup>rd</sup> Ave and NE Thompson Street at this location. Although, If any curbs or sidewalks along the sites frontage are found to be in poor condition at the time of development improvements meeting the City Engineer's requirements must be met as a condition of building permit approval.

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

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

**Findings:** 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 8 inch water main is available in both NE 43<sup>rd</sup> Avenue and NE Thompson Street. Water is available to serve the proposed development from these water mains. The site contains an existing 5/8 inch metered water service located in NE 43<sup>rd</sup> Avenue that may serve future development on proposed Parcel 1. See Exhibit E-3 for more details.

- The sanitary sewer standards of 33.652 have been verified. There is an existing 12 inch HDPE City-owned combination sewer located in NE 43<sup>rd</sup> Avenue that terminates in a manhole near the southern property line of the subject property. There is no public sanitary sewer available in NE Thompson Street. Because no service is available in NE Thompson Street, the applicant has proposed a Private Sanitary Sewer Easement across the relevant portions of Parcel 1, for a sanitary sewer lateral connection that will serve Parcel 2. A plumbing code appeal (#5683) was granted as the proposed easement is 5-foot in width as opposed to the required 10-feet. The easement shall be shown on the Final Plat and a Maintenance Agreement for the easement must be submitted for approval by BDS and the City Attorney and must be recorded with the Final Plat. See Exhibit E-1 for more details.

Based on available records and plans submitted from the applicant, it does not appear that the existing combination sewer main extends across enough of the sites NE 43<sup>rd</sup> Avenue frontage to accommodate the two sewer laterals needed to serve the land division site. Therefore, prior to final plat approval, the applicant must show that two individual laterals can reach the combination sewer main in NE 43<sup>rd</sup> Avenue or obtain a public works permit to extend the public sewer to serve the new parcels. A supplemental survey will be required to demonstrate whether this requirement is met. See Exhibit E-1 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.
- Chapter 33.654 includes technical standards related to proposed public and private rights of way, including improvements within streets, pedestrian connections, common greens, and alleys. However, no new streets, pedestrian connections, common greens, or alleys are proposed or required within the land division site. The site is located on a corner and is approximately 37 feet by 100 feet and therefore meets the through street and pedestrian connectivity requirements. As a result, the remaining standards and approval criteria related to street connectivity, location, and design are met or not applicable.

### **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 C-2), and the Bureaus have responded as follows (Exhibits E-1 and E-5):

- **Parcels 1 & 2:** Stormwater from these lots will be directed to individual drywells that will treat the water and slowly infiltrate it into the ground. Each of these lots has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized home. Site Development has indicated conceptual approval of the drywells.

Site Development has noted that elements of the stormwater management system that serve the adjacent dwelling to the south at 2224 NE 43<sup>rd</sup> Avenue are present within the subject property. Records show that a downspout on the west side of the existing detached garage and a catch basin in the driveway area drain into the sewer main in NE 43<sup>rd</sup> Avenue. The rain drain on the north side of the house is plumbed to the catch basin. The downspout on the house has been disconnected from the rain drain and stormwater discharges across the driveway into the catch basin. Therefore, prior to final plat approval the applicant must receive final approval of a permit to cap the existing storm sewer and remove the catch basin on the subject property. Because the stormwater that is trespassing onto the land division site is from the adjacent property there is no means to require the situation to be remedied. However, the applicant has submitted plans and an agreement with the neighbor to the satisfaction of Site Development that demonstrates stormwater from the house at 2224 NE 43<sup>rd</sup> Avenue can be redirected back onto the property from which it originates.

With the conditions of approval described above, the stormwater management criteria are met. As shown by the findings above, the Services and Utilities criteria are met.

## **DEVELOPMENT STANDARDS**

**General Information about Development Standards and Approval Criteria.** The Zoning Code contains two types of regulations: Development standards and Approval criteria.

**Approval criteria**, such as those listed earlier in this report, are administered through a land use review process. Approval criteria are regulations where the decision-maker must exercise discretion to determine if the regulation is met. Public notice is provided and public comments received that address the approval criteria are addressed in the decision.

**Development Standards:** Development standards are clear and objective regulations (for example: building setbacks; number of required parking spaces; and maximum floor area). Compliance with development standards is reviewed as part of the administrative

permitting process and are not considered to be discretionary reviews. Development standards that are not relevant to the land division review, have not been addressed in the review, but will have to be met at the time that each of the proposed lots is developed.

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

- Attached Houses on Corner Lots-- special requirements apply to development on new lots created using the provisions of Section 33.110.240.E. The address and main entrance of each house must be oriented to a separate street frontage. Development on Parcel 1 must be oriented toward NE 43<sup>rd</sup> Avenue and development on Parcel 2 must be oriented toward NE Thompson Street.

**Existing development that will remain after the land division.** The applicant is proposing to remove all of the existing structures on the site, so the division of the property will not cause the structures to move out of conformance or further out of conformance with any development standard applicable in the R2.5 zone. Therefore, this land division proposal can meet the requirements of 33.700.015.

## OTHER TECHNICAL REQUIREMENTS

Technical decisions have been made as part of this review process. These decisions have been made based on other City Titles, adopted technical manuals, and the technical expertise of appropriate service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance with this land use decision, a new land use review may be required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

Bureau	Code Authority	Topic	Contact Information
Water Works	Title 21	Water availability	503-823-7404 <a href="http://www.water.ci.portland.or.us/">http://www.water.ci.portland.or.us/</a>
Environmental Services	Title 17; 2002 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 <a href="http://www.bes.ci.portland.or.us/">http://www.bes.ci.portland.or.us/</a>
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 <a href="http://www.fire.ci.portland.or.us/">http://www.fire.ci.portland.or.us/</a>
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 <a href="http://www.trans.ci.portland.or.us/">http://www.trans.ci.portland.or.us/</a>
Development Services	Titles 24 -27, Admin Rules for Private Rights of Way	Building Code, Erosion Control, Flood plain, Site Development & Private Streets	503-823-7300 <a href="http://www.bds.ci.portland.or.us.">http://www.bds.ci.portland.or.us.</a>

As authorized in Section 33.800.070 of the Zoning Code conditions of approval related to these technical standards have been included in the Administrative Decision on this proposal.

- The applicant must meet the requirements of the Fire Bureau in regards to aerial fire department access roads. These requirements are based on the technical standards of Title 31 and Oregon Fire Code (Exhibit E-4).
- The applicant has indicated that they intend to apply for building permits to construct structures on the site during the review of the Final Plat. The applicant will be required to apply for these units as “townhouses” which is a multi-family development with common walls between units intended for one lot. However, when the plat is recorded and the new lot lines are created the development will be converted to “rowhouses” which is a development intended for units on individual lots with common property lines along common walls. Rowhouses require an Operations & Maintenance Agreement for all of the common building elements that will be shared between the units. This Agreement must be recorded with the Final Plat to facilitate the division of the units. The Operations and Maintenance Agreement must be submitted and approved by BDS prior to final plat. In addition the Final Plat must reference the agreement with a recording block substantially similar to the following example:

*“An Operations and Maintenance Agreement for common building elements has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records.”*

## CONCLUSIONS

The applicant has proposed a 2 parcel partition, as shown on the attached preliminary plan (Exhibit C-1). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are: stormwater management, utilities & transportation impacts.

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

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a 2 parcel partition, that will result in 2 lots for attached housing consistent with the provisions of 33.110.240.E, as illustrated with Exhibit C-1, subject to the following conditions:

**A. Supplemental Plan.** Three copies of an additional supplemental plan shall be submitted with the final plat survey for Land Use, BES & Site Development review and approval. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:

- The proposed general location of future building footprints and stormwater facilities for each of the vacant lots.
- Demonstration that two individual sanitary sewer laterals can reach the public manhole per BES “Rules of Connection” and City of Portland’s Sewer and Drainage Facilities Design Manual.
- Any other information specifically noted in the conditions listed below.

**B. The final plat must show the following:**

1. A private sanitary sewer easement, for the benefit of Parcel 2, shall be shown and labeled over the relevant portions of Parcel 1.

2. A recording block for the Private Sanitary Sewer Easement maintenance agreement as required by Condition C-4 below. The recording block shall, at a minimum, include language substantially similar to the following example: *“A Declaration of Maintenance Agreement for Private Sanitary Sewer Easement has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records.”*
3. If the applicant applies for and receives building permits for townhouses prior to final plat approval, a recording block must be included on the plat in substantial conformance with: *“An Operations and Maintenance Agreement for Common Building Elements has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records.”*

**C. The following must occur prior to Final Plat approval:**

**Utilities**

1. If the supplemental plan does not demonstrate that two individual sanitary sewer laterals can reach the public manhole per BES “Rules of Connection” and City of Portland’s Sewer and Drainage Facilities Design Manual, the applicant shall meet the requirements of the Bureau of Environmental Services (BES) for extending a public sewer main in NE 43<sup>rd</sup> Avenue. The public sewer extension requires a Public Works Permit, which must be initiated prior to final plat approval. In addition, the applicant must provide engineered designs, and performance guarantees for the sewer extension to BES prior to final plat approval.

**Existing Development**

2. The applicant must obtain final approval for the demolition permit (08-157367 RS) of the existing detached garage.
3. The applicant must receive final approval of a plumbing permit that includes a sewer cap inspection to cap the existing storm sewer and remove the existing catch basin.

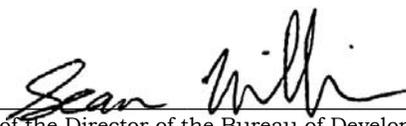
**Required Legal Documents**

4. A Maintenance Agreement shall be executed for the Private Sanitary Sewer Easement area described in Condition B-1 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
5. If the applicant applies for and receives building permits for townhouses prior to final plat approval, an Operations and Maintenance Agreement for common building elements shall be provided for review and approval by BDS prior to final plat. The agreement must be recorded with the final plat.

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

1. Parcels 1 and 2 may only be developed with attached houses meeting the development standards of Section 33.110.240.E.
2. The applicant must provide a fire accessway to the satisfaction of the Fire Bureau or the height of the new structures shall be limited to 30 feet, measured to the gutter line.

3. Parcels 1 and 2 are required to each have 1 on-site parking space.
4. The existing curb cut on NE Thompson Street closest to the intersection with NE 43<sup>rd</sup> Avenue must be closed and improvements must be made to reconstruct the pedestrian corridor to match the existing configuration along the sites frontage.
5. If the existing curbs or sidewalks along the sites frontages are found to be in poor condition at the time of development, improvements meeting the City Engineer's requirements must be met as a condition of building permit approval.

**Decision rendered by:**  **on November 26, 2008**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: November 28, 2008**

**Staff Planner: Sean Williams**

**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 August 20, 2008, and was determined to be complete on August 27, 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 August 20, 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 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](http://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. Preliminary Site Plan (attached)
  - 2. Conceptual Development 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 w/ addendum
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety Plans Examiner
- F. Correspondence:
  - 1. Wally Shriner & Katherine Muller; 2235 NE 43<sup>rd</sup> Avenue (September 28, 2008)
  - 2. Matthew & Meghan Ruona; 2216 NE 43<sup>rd</sup> Avenue / Michael & Willow Light; 2223 NE 43<sup>rd</sup> Avenue (September 29, 2008)
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research

**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

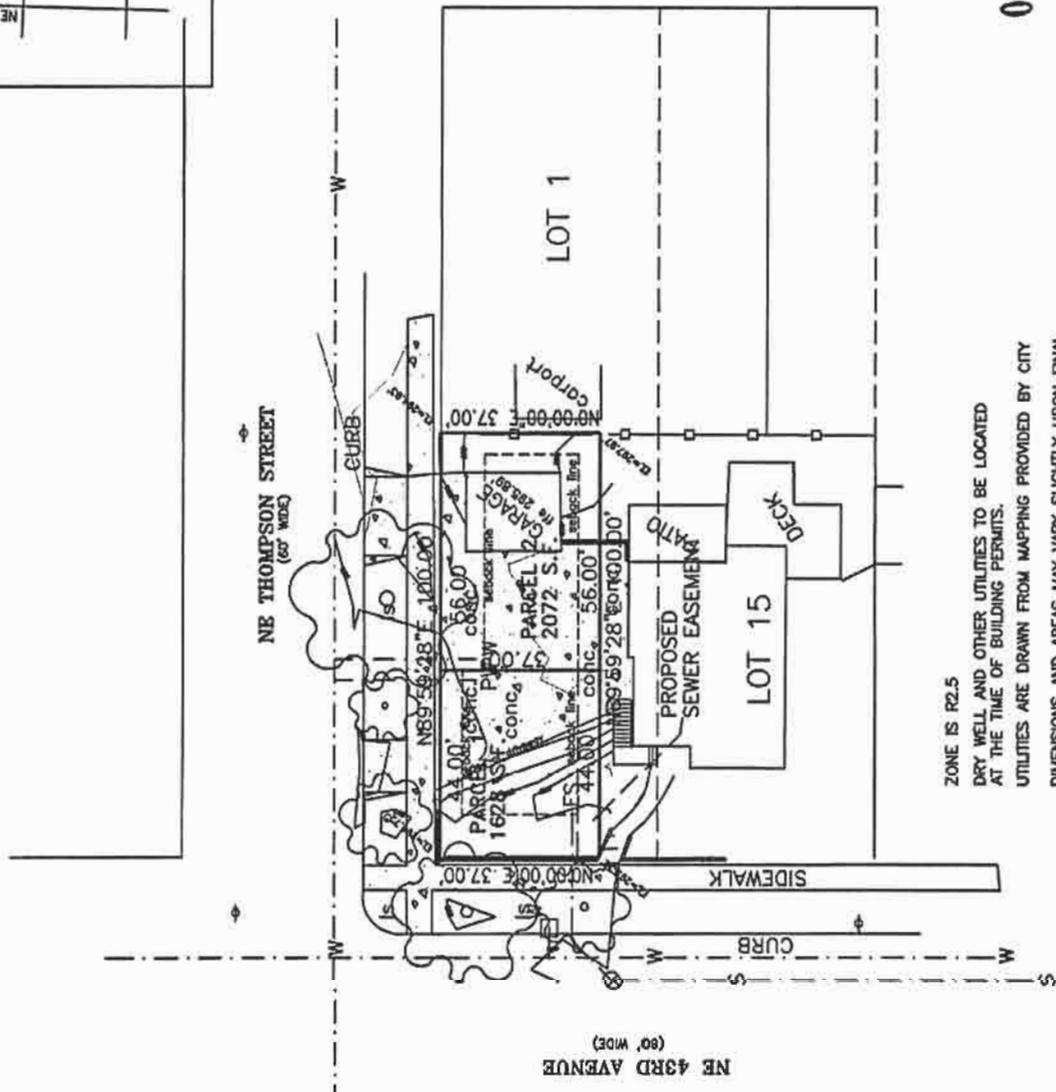
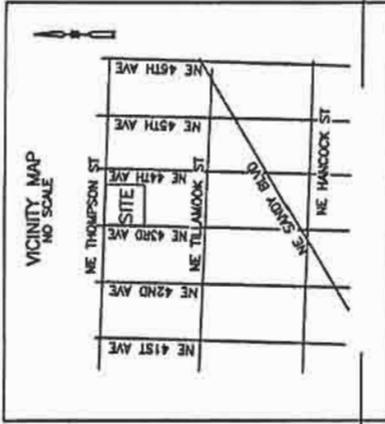
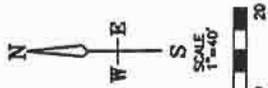


This site lies within the:  
HOLLYWOOD PLAN DISTRICT

File No. LU 08-156536 LDP  
 1/4 Section 2835  
 Scale 1 inch = 200 feet  
 State\_Id 1N2E30CB 18201  
 Exhibit B (Aug 21, 2008)

**PRELIMINARY SITE PLAN**

N 37' OF LOT 16, BLOCK 20, "ROSSMERE"  
 SITUATED IN THE SW 1/4 OF SECTION 30, T.1N., R.2E., W.M.,  
 CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON  
 DATE: MARCH 30, 2007



SYMBOLS	
⊕	POWER POLE
⊙	DRY WELL
⊖	WATER METER
⊕	GAS METER
⊖	ELECTRIC METER
⊕	WATER VALVE
⊖	GAS VALVE
⊕	MANHOLE
⊖	CATCH BASIN
⊕	FIRE HYDRANT
⊖	CLEAN OUT
⊕	DOWN SPOUTS
⊖	WATER LINE
⊕	GAS LINE
⊖	ELECTRIC LINE
⊕	SAN. SEWER
⊖	DRIVEWAY
⊕	SIDEWALK

REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR  
 ANDY SMITH  
 4380 NE THOMPSON ST  
 PORTLAND, OR 97218  
 RENEWAL DATE 12/31/09

ZONE IS R2.5  
 DRY WELL AND OTHER UTILITIES TO BE LOCATED  
 AT THE TIME OF BUILDING PERMITS.  
 UTILITIES ARE DRAWN FROM MAPPING PROVIDED BY CITY  
 DIMENSIONS AND AREAS MAY VARY SLIGHTLY UPON FINAL  
 BOUNDARY RESOLUTION  
 NO TREES ON SITE

SHEET NO. 1 OF 1  
 JOB NO. 07-080C  
 REVISED 7.11.2008

Ferguson Land Surveying, Inc.  
 846 SE 108TH AVE. PORTLAND, OREGON  
 Phone (503) 408-0601 Fax (503) 408-0602

CLIENT: ANDY SMITH  
 NE 43RD & THOMPSON  
 PORTLAND, OREGON

08-156536 LDF

PROJECT NO. 08-156536  
 EXHIBIT C-1

