



CITY OF
PORTLAND, OREGON

HEARINGS OFFICE

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DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File No.: LU 08-157986 LDS AD (HO 4080037)

Applicants: John and Roberta Williams
11241 SW Boones Ferry Road
Portland, OR 97219

**Applicants'
Representative:** Larry Porter
Porter Properties, LLC
5510 SW Dover Loop
Portland, OR 97225

Hearings Officer: Ian Simpson

Bureau of Development Services (BDS) Staff Representative: John Cole

Site Address: 11231 and 11241 SW Boones Ferry Road

Legal Description: TL 3700 1.00 ACRES, SECTION 33 1S 1E; TL 3600 0.53 ACRES,
SECTION 33 1 S 1 E

Tax Account No.: R991330430, R991331090

State ID No.: 1S1E33AB 03700, 1S1E33AB 03600

Quarter Section: 4128

Neighborhood: Arnold Creek

Business District: None

District Neighborhood Coalition: Southwest Neighborhoods Inc.

Plan District: None

Other Designation: Potential Landslide Hazard Area

Zoning: Residential 10,000 (R10)

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

BDS Staff Recommendation to Hearings Officer: Approval with conditions

Public Hearing: The hearing was opened at 9:02 a.m. on December 10, 2008, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, OR, and was closed at 9:57 a.m. The record was held open until 4:30 p.m. on December 17, 2008 for new written evidence, and until 4:30 p.m. on December 24, 2008 for applicants' final rebuttal. The applicants' representative submitted a request on December 18, 2008 to close the record early (Exhibit H-13). The Hearings Officer denied the request. The record was closed on December 24, 2008 at 4:31 p.m.

Testified at the Hearing:

John Cole, BDS Staff Representative

Larry Porter, 5510 SW Dover Loop, Portland, OR 97225

Keith Walters, Harris-McMonagle Engineering, 8740 SW Scoffins St., Tigard, OR 97223

Nancy Hand, Chair Arnold Creek NA, 3250 SW Maricara, Portland, OR 97219

Kurt Krueger, Office of Transportation

The Hearing for this case was scheduled for November 10, 2008. On the applicants' request (Exhibit H-3), the hearing date was moved to December 10, 2008. The applicants also extended the 120 period by 30 days (Exhibits H-3 and H-4). When the hearing was rescheduled, it was too late to mail new public notices. John Cole, lead planner in the case, stayed at the Hearing Room for about 20 minutes after 9:00 a.m. on November 10, 2008 to inform any people who might arrive that the hearing was rescheduled. The Hearings Officer finds that this was adequate notice. No person's right to adequate notice was violated because persons interested in the case had the opportunity to come to the Hearings Office on November 10, 2008, where Mr. Cole would have told them of the hearing being rescheduled to December 10, 2008 at 9:00 a.m.

Proposal: To subdivide a 1.53 acre property into five lots between 8,105 and 14,115 square feet, one private street tract and one stormwater management tract. An existing house will remain on proposed Lot 1. The new private street will provide access to all five lots. A concurrent adjustment is being requested with this subdivision application to reduce the side yard setback adjacent to the new private street on Lot 1 from ten feet to five feet. Street and stormwater improvements are proposed to the site's SW Boones Ferry frontage, including curb, sidewalk and planter area. Stormwater from the new development itself will be directed to an on-site flow-through pond/planter. The facility will detain the water on-site and treat it for water quality before directing the discharge to an existing public stormwater system located within SW Boones Ferry right-of-way. Tree preservation requirements will be met by preserving 16 trees on the site. A modification to a front building setback from 20 feet to 15 feet is considered on Lot 2 of this application as a means of better meeting the tree preservation criteria. Finally, this property is located within a potential landslide hazard area. The applicants' geotechnical report concluded the site can be safely developed without creating additional risk to neighboring properties.

This partition proposal is reviewed through a Type III procedure because: (1) the site is in a residential zone; (2) four or more lots are proposed; and (3) the site is located within a potential landslide hazard area (Section 33.660.110). Under state law this land division is considered a subdivision. To subdivide land is to divide an area or tract of land into four or more lots within a calendar year (ORS 92.010).

Relevant Approval Criteria: To be approved, this proposal must comply with the relevant approval criteria of Title 33, which include:

- 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.
- 33.805.040 A.-F., Approval Criteria for Adjustments.

II. ANALYSIS

Site and Vicinity: The proposed development site consists of two adjacent lots located on the west side of SW Boones Ferry Rd. approximately 0.2 miles south of SW Arnold St. The site has two single family residences (11231 and 11241 SW Boones Ferry). The residence at 11231 SW Boones Ferry Rd. (the residence to the north) is proposed to be demolished as a component of the development proposal. The residence to the south will be retained. The site itself slopes upwards to the west from its street frontage. It includes both forested areas and stands of individual mature trees interspersed among cleared areas.

The surrounding neighborhood is comprised of single family residences on large lots zoned R10 and R20 with Environmental overlays and Open Space Zones applied to stream corridors.

Zoning: The R10 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.

Land Use History: City records indicate no prior land use reviews for the site.

ZONING CODE APPROVAL CRITERIA

CHAPTER 33.660 REVIEW OF LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

33.660.120 Approval Criteria

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.

Findings: Due to the site's location and the nature of the proposal, staff determined that some of the criteria do not apply. The relevant approval criteria are below:

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

Findings: Chapter 33.610 Lots in RF through R5 Zones contains the density and lot standards applying to the R10 zone. The standards ensure that lots are consistent with each zone's desired character while allowing lots to vary in size and shape provided each zone's planned intensity is respected.

33.612.100 Density Standards

- A. Single-dwelling or duplex development. 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. Site area devoted to streets is subtracted from the total site area in order to calculate minimum and maximum density.**

Findings: 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 or geophysical constraints. In this case, a street is proposed or required and the site is within a potential landslide hazard area. Therefore, there is no minimum required density (Section 33.610.100.D.2). The formula to determine the site's maximum density (Section 33.610.100.C.1) is:

The site's square footage (66,646 square feet) ÷ Maximum density from Table 610-1 (10,000 square feet) = 5.66 Maximum number of lots allowed, which rounds down to a maximum of five lots (Section 33.930.020.B)

The applicants are proposing five lots. Eugene E. and Tamara L. Lewis raised a concern (Exhibit H-6) about privacy. They stated that one of the best features of the neighborhood is its peaceful serenity. With houses soon to be nearly in their back yards, the privacy they have enjoyed will be eliminated. The Lewis' ask what type of wall or fencing will be provided by the developer to ensure that the Lewis' will still maintain some amount of privacy?

Despite the Lewis' concerns, the proposal complies with the number of lots allowed in the R10 zone. The relevant approval criteria do not require that the applicants build a particular wall or fence on the site's boundary with neighboring properties. The Hearings Officer finds that the density standards criteria are met.

33.610.200 Lot Dimension Standards

Lots in the RF through R5 zones must meet the lot dimension standards of this section.

- A. Purpose. The lot dimension standards ensure that:**

- Each lot has enough room for a reasonably-sized house and garage;
- Lots are of a size and shape that development on each lot can meet the development standards of the zoning code;
- Lots are not so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future;
- Each lot has room for at least a small, private outdoor area;

- **Lots are compatible with existing lots;**
- **Lots are wide enough to allow development to orient toward the street;**
- **Lots don't narrow to an unbuildable width close to the street;**
- **Each lot has adequate access from the street;**
- **Each lot has access for utilities and services; and**
- **Lots are not landlocked.**

Findings: The dimensions of the proposed lots compared to the required lot dimension standards are shown in the table below (information is found in Table 610-2):

R10 Zone Requirements					
	Minimum Lot Area	Maximum Lot Area	Minimum Lot Width*	Minimum Front Lot Line	Minimum Lot Depth
Lot	6,000 sq ft.	17,000 sq. ft.	50 ft.	30 ft.	60 ft.
1	14,087 sq. ft.		78 ft.	74 ft.	163 ft.
2	8,812 sq. ft.		108 ft.	130 ft.	72 ft.
3	14,115 sq. ft.		45 ft.	30 ft.	153 ft.
4	9,198 sq. ft.		110 ft.	110 ft.	87 ft.
5	8,105 sq. ft.		94 ft.	98 ft.	82 ft.

* Width is measured at the minimum front building setback line

Lot 3 is approximately 45 feet wide, narrower than the standard minimum width for the R10 zone, as shown in the table above. However, narrower lots are allowed if the lot meets the following:

33.610.200.D.2 There is no minimum lot width for lots that meet all of the following:

- a. **If the lot abuts a public alley, then vehicle access must be from the alley;**
- b. **There must be at least 15 contiguous feet of uninterrupted curb space for each lot being created under these provisions ...;**
- c. **Lots must be configured so that development on the site will be able to meet the 50 percent garage limitation standard of Subsection 33.110.253.E at the time of development;**
- d. **Lots that will be developed with attached houses must be configured so that 60 percent of the area between the front lot line and the front building line can be landscaped at the time of development; and**
- e. **When a driveway is proposed to provide vehicle access to more than two lots, it must be an alley.**

The site does not have public alley access, and so “a” does not apply.

Concerning “b”, Lot 3 is located at the end of the private street proposed to serve the development. As a result, the frontage of the site is essentially composed of vehicle area and the termination of

the sidewalk within. Significant amounts of uninterrupted curb space will be preserved along the private street tract, with numerous stretches greater than 15 feet in length between driveways possible.

Concerning “c”, due to the definition of how width is measured, Lot 3 is less than the required 50 feet for the zone. However, Lot 3 is 14,115 square feet and may accommodate a house of significant size. Therefore, it is not anticipated that the lot’s configuration will limit new development from complying with the 50% garage wall limitation standard.

Concerning “d” and “e”, neither applies since attached houses are not proposed, and a driveway is not proposed that will access more than two lots.

The applicants have demonstrated that Lot 3 can meet the narrow lot standards.

Staff determined that the applicants have complied with the required lot dimension standards. The Hearings Officer concurs with staff and finds that these criteria are met.

B. Trees. The standards and approval criteria of Chapter 33.630 Tree Preservation, must be met.

Findings: The regulations of Chapter 33.630 preserve trees and mitigate for the loss of trees. Certain trees are exempt from the chapter’s requirements. The arborist report (Exhibit A-2) determined that some trees are exempt because they are unhealthy, a nuisance species or located partially off the property. The arborist report identifies 97 trees, of which 52 have been determined to be viable.

The site’s total non-exempt tree diameter is 1,168 inches. The applicants propose preserving 16 trees, which comprise 415 inches of diameter, or 35.5 percent of the non-exempt tree diameter. This proposal complies with Option 1 of the tree preservation standards, which requires preserving at least 35 percent of the site’s total tree diameter. The applicants provided a Tree Preservation Plan showing the preserved trees and the required root protection zones (Exhibit C-3).

The Site Development Section of the Bureau of Development Services (Site Development) raised a concern regarding the location of conceptual building footprints, driveways and stormwater management facilities in relation to trees proposed for preservation and their associated root protection zones. It should be noted that approval of this land division request does not guarantee that the specific location, shape or size of conceptual building footprints delineated on a proposed lot will meet applicable standards. It does not appear that trees proposed for preservation on any of the lots will pose any significant site development issues. However, to ensure there are no points of conflict when building permits are applied for, a revised utility plan that delineates trees to be protected and root protection zones is required as a condition of approval. There should be no conflicts between root protection zones, utilities, building footprints or paved areas on this plan.

33.630.300 Mitigation Option

As an alternative to meeting Section 33.630.100, approval of a mitigation plan may be requested. The review body will approve the mitigation plan where the applicant has shown that the applicant has met criteria A. and B. and one of the criteria in C., below:

- A. As many trees as possible are preserved; and**
- B. The applicant has submitted a mitigation plan that adequately mitigates for the loss of trees, and shows how the mitigation plan equally or better meets the purpose of this chapter. Mitigation can include tree planting, preservation of groups of smaller trees, eco-roof, porous paving, or pervious surface permanently preserved in a tract.**
- C. It is not possible under any reasonable scenario to meet Section 33.630.100 and meet one of the following:**
 - 1. Minimum density;**
 - 2. All service requirements of Chapters 33.651 through 33.654, including connectivity;**
 - 3. Implementation of an adopted street plan;**
 - 4. On sites 15,000 square feet or less in area, a practicable arrangement of lots, tracts, and streets within the site that would allow for the division of the site with enough room for a reasonable building site on each lot;**
 - 5. In E and I zones, provide a practicable arrangement of lots, tracts, and streets within the site that would allow for the division of the site with enough room for a reasonable building site on each lot, considering the uses and development allowed in the zone; or**
 - 6. Preserve the trees within the environmental zones on site while providing a practicable arrangement of building sites and disturbance area.**

Due to the configuration of proposed Lot 2 and the location of trees to be preserved within it, the applicants are requesting a modification to reduce the required front building setback in the R10 zone from 20-feet to 15-feet. The optimal location of the private street and turnaround serving the site results in Lot 2 containing approximately 72-feet of depth, the least amount of depth of the proposed lots. Five significant trees are located in the southeast corner of Lot 2 that will be preserved through this land division request. The root protection zones of the trees to be preserved within Lot 2, combined with the required front building setback, significantly limits the area available for a reasonable building site. Reducing five feet in the front building setback will allow for greater options in building footprint and building placement on-site that will enhance preservation efforts for the trees on Lot 2's southwestern corner. Therefore, staff finds that a modification to reduce the required front building setback from 20 feet to 15 feet will better meet tree preservation standards. In exchange for this reduction, no encroachment into the designated root protection zones will be permitted on Lot 2.

Mr. and Ms. Lewis stated (Exhibit H-6) that many trees have been removed on the site over the last year or so. If 35% of the total tree diameter is required to be spared, the Lewis' ask if that percentage is from the original forested area or from just the trees that remain. Trees tagged for removal include all of the large 2nd or old growth fir trees, one of which is actually on the Lewis'

property. The applicants have not requested permission to remove this tree. Assuming that this tree was tagged in error and that the applicants do not cross the property line and the tree remains, its roots and those of other trees near the property line would appear to be covered by a driveway. The Lewis' suggest that if there is supposed to be a ten foot buffer along the property line, the driveway should not be inside this buffer, and not right up against the property line. The Lewis' ask what specifically is being done to protect the root protection zones.

The Hearings Officer finds no evidence in the record to support the contention that any trees on the site were removed in a manner violating the City Code. If one of the trees designated for removal is indeed on the Lewis' property, this decision cannot authorize its removal. The setback requirements in Section 33.110.220 restrict buildings and garage entrances within the ten foot side-yard setback in the R10 zone. The section does not restrict a driveway from being within ten feet of a neighboring property. Although placing a driveway next to a tree on a neighboring property might impact the tree's health, the Hearings Officer has not been made aware of any City Code section that would restrict such a driveway.

Mr. and Ms. Lewis also stated (Exhibit H-6) that the area is full of birds, squirrels, deer, raccoons and rabbits. They state that deforestation of the subject site has already taken place and has impacted wildlife habitat, and the proposed development will further destroy this habitat (Exhibit H-6). However, the Hearings Officer finds that the City Code allows this site to be developed, which includes removing wildlife habitat.

Staff determined that the applicants have complied with the tree preservation standards, subject to the condition that development on Lots 1 through 5 conforms to the Tree Preservation Plan (Exhibit C-3) and the applicants' arborist report (Exhibit A-2). The Hearings Officer concurs with staff and finds that these criteria are met.

D. Potential Landslide Hazard Area. If any portion of the site is in a Potential Landslide Hazard Area, the approval criteria of Chapter 33.632, Sites in Potential Landslide Hazard Areas, must be 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: The entire site is located within a potential landslide hazard area. Site Development evaluated the applicants' geotechnical report (Exhibits A-4) and determined that the risk of potential landslide hazard at the site is relatively low, given the soil composition, topography, and other risk factors.

The geotechnical report and a preliminary stormwater report indicate that the soil types found on the site do not allow for infiltration. As a result, stormwater for individual lots and the private street will be treated and discharged into an existing drainage ditch. The proposed method of stormwater disposal will not have a significant detrimental impact on the slope stability on or around the site as stormwater will not be disposed on the site itself.

Site Development concurred with the findings of the applicants' geotechnical report, noting that further geotechnical evaluation may be required for specific building plans during construction plan review. The Hearings Officer concurs with staff and finds that 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.

33.635.100 Clearing and Grading Approval Criteria

The Preliminary Clearing and Grading Plan must meet the following approval criteria:

- 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 infrastructure needs, site conditions, and tree preservation requirements. The regulations also limit erosion and sedimentation impacts to help protect water quality and aquatic habitat. In this case, the site is located in a potential landslide hazard area. Therefore, the clearing and grading associated with preparing the lots must occur in a manner that will limit erosion concerns and assure that the site's preserved trees will not be disturbed.

A Preliminary Clearing and Grading Plan (Exhibit C-3) and Landslide Hazard Report (Exhibit A-4) describe how clearing and grading can occur on the site to minimize erosion risks. The Tree

Protection Plan (Exhibit C-3) designates areas on the site where grading must not occur in order to protect the roots of the site's preserved trees, and an arborist report (Exhibit A-2) that further discusses site grading.

Implementing the Landslide Hazard Study's recommendations will help to limit erosion and sedimentation concerns by avoiding site disturbance during wet periods, storing excavated material appropriately during construction, and placing erosion control fencing around the disturbed areas. Stormwater runoff from the lots will be appropriately managed by directing stormwater to flow through planters to an off-site drainage ditch in SW Boones Ferry Rd. The Preliminary Clearing and Grading Plan shows some grading in the root protection zone of some trees proposed for preservation. No clearing and grading will be permitted within the root protection zones without a written arborist report evaluating the potential impacts of such encroachment and prescribing adequate mitigation. Preserving these trees will help limit erosion by assuring that the tree roots will help to hold the soil in place. Topsoil storage and general stockpiling on the site must only occur if it will not create any additional erosion concerns as recommended by the geotechnical engineer.

During building permit submittal for individual lots, a clearing, grading and erosion control plan shall be submitted to Site Development. Site Development will review the grading plan against the applicants' Landslide Hazard Study as well as any additional geotechnical information required during permit submittal to assure that the grading will not create any erosion risks. In addition, the plans will be reviewed for compliance with the applicants' tree preservation plan and arborist report. Staff determined that the applicants have satisfied the clearing and grading standards. The Hearings Officer concurs with staff and finds that these criteria are met.

33.635.200 – Land Suitability

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

The site is currently in residential use, and there is no record of any other previous use. The applicants propose removing the existing house located at 11231 SW Boones Ferry Rd. To ensure that the new lots are suitable for development, a permit must be obtained and finalized to demolish this residence and decommission the supporting septic system before final plat approval. Staff determined that with this condition, the new lots can be considered suitable for development. The Hearings Officer concurs with staff and finds that 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.**

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 tracts are proposed:

- Tract A (10,035 square feet): Private Street Tract
- Tract B (2,292 square feet): Private Stormwater Management Tract

The following easements are proposed and/or required:

- A Public Sanitary Sewer Easement is required within Tract A to support a public sewer main extension that will serve the site.
- A Private Storm Sewer Easement is required across the relevant portions of Lot 5, for a private stormwater sewer line that will serve Lot 4.
- Standard public easements located adjacent to the Private Street Tract that will serve private utility providers such as cable TV and electricity, as well as private water service lines.
- An Emergency Vehicle Access Easement is proposed over the Private Street Tract to support access by Emergency Service Vehicles.

Section 33.636.100 requires maintenance agreements describing maintenance responsibilities for the tracts and private easements described above and facilities within those areas. This criterion can be met with the condition that maintenance agreements be prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreements with a recording block for each agreement, substantially similar to the following example:

“A Declaration of Maintenance agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records.”

Staff determined that the applicants have satisfied the tracts and easements standards approval criteria, with the conditions of approval discussed above. The Hearings Officer concurs with staff and finds that these criteria are met.

K. Transportation impacts. The approval criteria of Chapter 33.641, Transportation Impacts, must be met; and,

33.641.010 Purpose

The regulations of this chapter allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. Small land divisions involving only a few dwelling units may not require a formal transportation impact study, while it might be required for larger projects. The purpose of a transportation impact study is to assess the effects of routing or volume of traffic in the vicinity of the site on traffic conditions, transit, pedestrian and bicycle movement, and neighborhood livability.

33.641.020 Approval Criterion

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: Site Development provided supplemental material and a revised staff recommendation addressing information the applicants provided after the original staff report and recommendation was issued (Exhibit H-10). The following analysis incorporates the new information. The site has approximately 200 feet of frontage on SW Boones Ferry Rd. Southwest Boones Ferry Rd. is classified as a District Collector Street, Transit Access Street, City Bikeway, City Walkway, Truck Access Street, Major Emergency Response Street and Greenscape Street in the Transportation Element of the Comprehensive Plan. TriMet provides transit service adjacent to the site on SW Boones Ferry Rd. via Bus 38. Parking is prohibited on SW Boones Ferry Rd. in the area of the site due to the narrow shoulders and limited visibility near the site. There are two driveways entering the site that provide access to off-street parking for the existing houses.

The proposed development includes five dwellings and is expected to generate 40 additional daily trips and four additional peak hour trips over the current condition. Portland Transportation has compared this traffic volume against data that was prepared by Lancaster Engineering for a 2005 land division case in this area. Portland Transportation concluded that this project's additional trip

generation will not cause SW Boones Ferry Rd. or nearby street intersections to fall below acceptable levels of service (Exhibit E-2).

Southwest Boones Ferry Rd. is improved with a paved roadway and a gravel shoulder on both sides. There are no curbs, planter strips or sidewalks. Portland Transportation has determined (Exhibit H-10) that one of the following two street improvement packages will be required to mitigate for this development's impact on transportation systems under Section 33.641.030.

Alternative 1 – Curb and sidewalk improvements must be made to ensure that safe pedestrian travel is possible within the proposed development. To accommodate these improvements, as well as an associated stormwater facility, additional right-of-way may be required along the site's frontage.

Alternative 2 – As an alternative to full half street improvements the applicants must install an alternative pedestrian pathway across the site's SW Boones Ferry frontage. The applicants must also contribute towards the completion of intersection improvements at SW Boones Ferry and Stephenson St. The applicants have agreed to contribute \$25,000 towards completing these improvements. Coupled with installing the pedestrian path, Portland Transportation considers this to be a reasonable and fair mitigation proposal.

Portland Transportation also indicates that the existing driveway serving the house to remain should be abandoned, and access to this house be moved to the private street tract. This relocation will limit curb cuts onto SW Boones Ferry Rd. and potential points of conflict. This relocation is reflected in the applicants' proposed site plan. Under either option, the existing public street can serve the new development without having any significant impact on the level of service provided.

A private street and sidewalk are proposed as a means of providing each lot street frontage and access to the City's larger street network. The width and geometry of this street tract have been reviewed and approved by the Bureau of Development Services. This street tract meets the recommended tract width and street grade standards described in the City's *Private Street Standards*.

During the December 10, 2008 hearing in this case, Nancy Hand, representing the Arnold Creek Neighborhood Association, stated that the neighborhood association's first choice is frontage improvements along the site, and does not want a waiver of improvements (Exhibit H-9). Otherwise, the neighborhood association wants a separated pedestrian path along with payment of \$25,000 into a fund that is already slated for improvements to the intersection at SW Boones Ferry and SW Stephenson.

Portland Transportation determined that the applicants have satisfied the transportation impacts criteria, with conditions of approval. These conditions include making street, curb and sidewalk improvements, or alternatively installing a pedestrian path and paying towards the SW Boones Ferry Rd./SW Stephenson St. intersection improvements. Additionally, the driveway for the existing residence must be relocated to access the private street tract and any required right-of-way dedication is shown on the final plat. Finally, the private street tract must be constructed to city

standards. The Hearings Officer concurs with Portland Transportation staff and finds that the transportation impacts criteria are met.

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

33.651.020 Water Service Standard

Water service must meet the standard of this section. Adjustments are prohibited. The Water Bureau or District and the Fire Bureau have verified that water facilities with adequate capacity and pressure are available to serve the proposed development.

Findings: An existing 4" inch water main is available in SW Boones Ferry Rd. to serve this development. There are two existing water services that can continue to serve proposed Lots 1 and 5. Additional separate metered water services will be required to serve new development on proposed Lots 2, 3 and 4. The applicants have proposed these service lines within a ten foot wide public utility easement adjacent to Tract A. The proposed lines could also be located within Private Street Tract A itself if the Water Bureau requires it.

Staff determined that the water service standards are satisfied and the new lots can be considered suitable for development. The Hearings Officer concurs with staff and finds that these criteria are met.

33.652.020 Sanitary Sewer Disposal Service Standards

Sanitary sewer disposal service must meet the standards of this section. Adjustments are prohibited.

A. Availability of sanitary sewer.

1. The Bureau of Environmental Services has verified that sewer facilities are available to serve the proposed development; or

2. BDS has approved the use of a private on-site sanitary sewage disposal system.

B. Public sanitary sewage disposal. Where public sewer facilities are available to serve the proposed development, the Bureau of Environmental Services has preliminarily approved the location, design, and capacity of the proposed sanitary sewage disposal system. The approval is based on the Sewer Design Manual; and

C. Private sanitary sewage disposal. Where private on-site sanitary sewage disposal is proposed, BDS and Environmental Services have preliminarily approved the location, design, and capacity of the proposed sanitary sewage disposal system.

Findings: There is an existing 8" concrete public sanitary sewer located in SW Boones Ferry Rd. that can serve the proposed development. Lot 1 has an existing sewer service from that main that

can continue to be used. The lateral serving Lot 5 is proposed to be abandoned. Service to Lots 2-5 will be provided by a newly constructed public sanitary sewer main located within the proposed private street tract. The Bureau of Environmental Services (BES) reviewed and accepted using a sewer extension at this location (Exhibit E-1).

The applicants must obtain a public works permit to extend the public sewer into this site before final plat approval. Staff determined that with this condition, the new lots can be considered suitable for development. The Hearings Officer concurs with staff and finds that this criterion is met.

33.653.020 Stormwater Management Approval Criteria
Stormwater management must meet the following 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: Site Development provided supplemental material and a revised staff recommendation addressing information the applicants provided after the original staff report and recommendation was issued (Exhibit H-10). The following analysis incorporates the new information. A stormwater tract (Tract B) is proposed. The method used to determine the size and location of this tract is discussed below. 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*. The applicants proposed the following stormwater management methods (Exhibit C-4) and agencies responded as follows (Exhibits E-1 and E-5):

- **Private Street:** Stormwater will be directed to a flow-through planter located in Tract B. After treating the run-off for water quality and slowing the release, this water will then be directed to the existing public drainage ditch located within the SW Boones Ferry right-of-way. The applicants submitted stormwater calculations and soil test results that indicate the size of the proposed swale can accommodate the volume of stormwater runoff from the impervious areas of the street. Site Development has indicated conceptual approval of the proposed flow through planter to manage stormwater from the private street tract. BES also reviewed the proposed Tract B sizing and has indicated that it is of sufficient size to handle run-off from the private street tract.
- **Public Street Improvements:** As a condition of this land use approval, Portland Transportation requires the applicants to either improve the site's frontage to City standards, with curbs and sidewalks, or install a pedestrian path and make a financial contribution to an off-site intersection improvement. Stormwater management requirements will depend on which of these options is chosen.

If half-street improvements are made (curb, gutter, sidewalk asphalt paving), then stormwater from these new impervious areas will be directed into a 7-foot wide (minimum) infiltration strip located between the curb and the new sidewalk. BES has indicated that surface infiltration is the preferred method of public stormwater disposal at this site. The agency has confirmed that the proposed strip is of a size and proposed design that is adequate to provide infiltration for the quantity of water generated from the new impervious areas.

In order to maintain existing water flow from the south across the site's frontage, the applicants must install a new public storm-only sewer line in SW Boones Ferry Rd. to run from the south property line to the north property line. This will eliminate any need to improve an existing outfall located on the east side of SW Boones Ferry Rd., as was contemplated under previous stormwater designs that directed additional flow to this facility.

BES requires a Public Works Permit to construct public infiltration facilities and for the stormwater sewer line. The applicants must provide engineered designs and financial guarantees of performance before final plat approval as applicable.

Alternatively, if the applicants install an asphalt path (only) and contribute to off-site intersection improvements, then BES will require that the existing ditch be maintained across the site's entire frontage except where the private street and public path cross over. In these locations BES will require installing 12" culverts.

- **Lot 1 (the lot with the existing house to remain):** The existing house has downspouts that drain to splashblocks and may drain to a "footing drain system" that is connected to the on-site sanitary sewer lateral. This configuration is not acceptable to Site Development. The applicants have proposed to retrofit the existing residence by directing stormwater to an on-site flow through planter that will treat the run-off for quality and flow rate before it is discharged into the public system. Site Development has reviewed this preliminary plan and found it acceptable with final planter location and sizing to be determined during building permit. BES also indicated that discharge to the public system will be acceptable.
- **Lots 2 and 3:** Stormwater from these lots will be directed into flow-through planters that remove pollutants and suspended solids. The water will drain from the planters to the public stormwater facilities in SW Boones Ferry Rd. Each lot has sufficient size for individual planter boxes. This approach is acceptable to Site Development.
- **Lot 4:** Stormwater from development on Lot 4 will be directed to an on-site flow through planter, then conveyed in a lateral across an easement on Lot 5 and discharged into the public facility in SW Boones Ferry Rd. Site Development has approved this concept.
- **Lot 5:** Stormwater from development on this lot will be directed to an on-site flow through planter, then into the public facility located in SW Boones Ferry Rd. This is acceptable to Site Development.

- **Existing outfall:** BES has indicated that the ditch and culvert system in SW Boones Ferry Rd. splits along the site's frontage, with a portion of the flow being directed under SW Boones Ferry Rd. to an outfall on the east side of the road. The applicants are proposing to alter the current flow within this facility and direct a greater amount of stormwater towards this eastside outfall. This outfall is being eroded. Additional flow will create additional degradation to this facility. If the current proposal adds flow to this facility, then improvements will be required, as will notification to Oregon State Parks that additional water flow will be in the Tryon Creek State Natural area downstream from this outfall.

BES indicated that the stormwater management proposals described above are acceptable, including discharge to the public system. Additional engineering details regarding connecting the stormwater system to the public stormwater facility within SW Boones Ferry Rd. will be completed once it is determined if such public facility will be a ditch or storm sewer. BES has also described some engineering details that should be reviewed before construction.

Mr. and Ms. Lewis also commented (Exhibit H-6) that the area has several underground streams or springs. The Lewis' lot is downhill from the proposed development and one of the underground streams flows under a portion of their house. Diverting any other water, even unintentionally, into this stream could cause flooding to the Lewis' home. The Lewis' stated that there have also been flash floods during heavy rainstorms when these springs become over saturated and go above ground, through the subject site, and into their yard and adjacent properties. When digging in their garden, less than two feet in depth on a dry day, they have had the hole filled with water. The Lewis' recommend that the issue of underground streams and springs should be further investigated to prevent possible damage to the properties downhill of the subject site.

Ms. Hand, of the Arnold Creek Neighborhood Association, raised a concern about the cumulative impact on stormwater by the many new lots developed in the area. Ms. Hand provided a map (Exhibit H-8) illustrating the lots in the area that have been developed recently. Ms. Hand presented a written statement on behalf of the neighborhood association (Exhibit H-9), which states that the City needs to address the impact to stormwater from development on a case by case basis. Ms. Hand continued that the neighborhood association would like to be assured that the stormwater issues have been addressed.

The applicants' Geotechnical Report and Landslide Hazard Study did not observe any seeps or springs on the site (Exhibit A-4). The Hearings Officer finds that the record contains no evidence of seeps or springs on the site. BES indicated that the applicants' stormwater management plan is acceptable.

The Hearings Officer finds that subject to conditions described above, these criteria are met.

33.654.110 Connectivity and Location of Rights-of-Way

B. Approval criteria.

1. **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 approximately 900 feet south of SW Arnold St. and 350 feet north of SW Coronado St., the nearest east/west through streets. Southwest Palatine Rd. is located approximately 100 feet north of the site. However, SW Palatine Rd. terminates approximately 1,200 feet west of SW Boones Ferry Rd. and does not connect with any other streets in the vicinity. The spacing requirements for public through streets are not met in this location based on the optimum spacing requirement of 200-530 feet. However, Portland Transportation and the Bureau of

Development Services cannot foresee any opportunities for connectivity on or through the site because:

- The site is constrained by terrain (steep slopes in a potential landslide hazard area) that precludes a public through street or pedestrian connection from being established through, or in the vicinity of, the site.
- Retaining the existing dwelling would obstruct the expected path of a through street on the site.
- Additional density resulting from the land division would not affect the level of service provided by existing streets in the vicinity.
- 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 further extending a street from the site.

In addition, no street connections have been identified in the site's vicinity for the SW District of the Portland Master Street Plan document. Therefore, the proposal is consistent with the master street plan.

The only new through pedestrian connections included in the proposal are new sidewalks along the site's frontage (SW Boones Ferry Rd.) and the south side of the private street tract. It is expected that with both connections, users will be able to see the ending of the pedestrian route from the entrance.

Staff determined that with this condition, the new lots can be considered suitable for development. The Hearings Officer concurs with staff and finds that this criterion is met.

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

Findings: The proposal includes a private dead-end street and pedestrian connection, which will be located in the new street tract. As discussed under the findings for through streets above, a new public east-west through street is not required for this proposal. The total length of the private street is approximately 300 feet, longer than the recommended 200 feet. However, a turn-around is located approximately 200 feet from SW Boones Ferry Rd. and the total length of the street is necessary to serve Lot 3. Site Development reviewed and approved this preliminary street layout including length. The Hearings Officer concurs with staff and finds that this criterion is met.

33.654.120 Design of Rights-of-Way

C. Local street approval criteria and standards. The following approval criteria and standards apply to all local service streets except for common greens and shared courts:

- 1. Approval criterion for width of the right-of-way. The width of the local street right-of-way must be sufficient to accommodate expected users, taking into consideration the characteristics of the site and vicinity, such as the existing street and pedestrian system improvements, existing structures, and natural features.**

Findings: The private street will serve five lots. The applicants have proposed that a variable width tract approximately 34 feet wide at the entrance and 28 feet wide at the end. A hammerhead turnaround is also proposed. The applicants believe this is sufficient to accommodate the expected users. The *Administrative Rules for Private Rights of Way* recommend a width of 34 feet for dead-end streets less than 300 feet long, serving four or more lots. This width will provide room to construct a 20-26 foot wide paved roadway that allows two travel lanes, a parking bay with two vehicle spaces, two six-inch curbs, a five-foot wide sidewalk on one side of the street, and a one-foot setback between the street improvements and private property. In this proposal, the applicants will be disposing of stormwater from the private street within a flow through planter located within a separate tract (B) in the northeast corner of the site that will discharge into the public system. The elements described above can be accommodated in the 28-34 foot wide tract.

A sidewalk is required as part of the private street. To assure access to the sidewalk for visitors, delivery persons and the general public, a public walkway easement must be shown over the sidewalk portion of the street on the final plat.

Site Development noted that there are two retaining walls that contribute to a street grade that supports the private street. These retaining walls should either be located entirely within, or outside of, the proposed street tract. This will clarify responsibility for their future maintenance.

The proposed tract width is sufficient to accommodate the elements of a street that is presumed to be adequate for five lots by the *Administrative Rules* governing private streets. Staff determined that the applicants have satisfied this criterion, subject to a condition that the final location of the retaining walls be reviewed and approved by Site Development, i.e. either entirely within or outside of the street tract. The Hearings Officer concurs with staff and finds that this criterion is met.

3. Standards for turnarounds.

- c. The following approval criteria and standard applies to permanent and temporary turnarounds:**

- (1) Approval criteria. The turnaround must:**

- Be of a size to accommodate expected users, taking into consideration the characteristics of the site such as existing structures, natural**

features, the length of the street, and the number of housing units served by the street;

- **Minimize paved area;**
- **Provide adequate area for safe vehicular movement; and**
- **Provide adequate area for safe and convenient movement by bicyclists and pedestrians traveling on the street or traveling from the street to a pedestrian connection.**

Findings: A hammer-head turn-around is proposed approximately 200 feet into the private street tract. Site Development and the Fire Bureau have indicated that the size and configuration of the turn-around are adequate to provide safe vehicular and bicycle movement for the five new lots that will use the private street. A sidewalk is required along the south side of the street that extends across the entrance of the turn-around. Staff determined that this will provide safe and convenient pedestrian access along the private street and from the land division's interior to the new abutting sidewalk along the SW Boones Ferry Rd. frontage. The proposed street tract has been sized to provide adequate room for the turn-around.

The Hearings Officer finds that these criteria are met.

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: A public utility easement adjacent to the street tract has been proposed. Any easements that may be needed for private utilities that cannot be accommodated within the proposed 28-34 foot width of the private street tract can be provided on the final plat. The Hearings Officer finds that this criterion is met.

- C. Future extension of proposed dead-end streets and pedestrian connections. Where the land division site is adjacent to sites that may be divided under current zoning, dead-end streets and pedestrian connections must be extended to the boundary of the site as needed to provide future access to the adjacent sites. The following factors are considered when determining if there is a need to make provisions for future access to adjacent sites. A need may exist if:**

- 1. The site is within a block that does not comply with the spacing standards or adopted street plan of the Transportation Element of the Comprehensive Plan; or**
- 2. The full development potential of adjacent sites within the block will not be realized unless a more complete street system is provided to improve access to those sites.**

Findings: As discussed under the findings for 33.654.110.C, adjacent sites to the west of the site are already developed. There is no practicable opportunity to provide a through connection from the site, and so there is no need to extend the proposed street to the site's western boundary.

The Hearings Officer finds that this approval criterion is met.

APPROVAL CRITERIA FOR ADJUSTMENTS

33.805.010 Purpose

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

33.805.040 Approval Criteria

The approval criteria for signs are stated in Title 32. All other adjustment requests will be approved if the review body finds that the applicant has shown that either approval criteria A. through F. or approval criteria G. through I., below, have been met. Adjustments to the ground floor window requirements of this Title must also meet the additional requirements stated in the ground floor window sections in the base zones.

- A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and**

Findings: The applicants propose installing a private street to serve the new development. This private street creates a new side property line for Lot 1 where the existing house and garage are proposed to remain. The existing residence will be set back approximately five feet from this new property line. Section 33.110.220 (Table 110-3) requires a ten foot side building setback in the R10 zone. Accordingly, the applicants request an adjustment from this section to allow the existing residence on proposed Lot 1 to remain approximately five feet from the new side lot line created by Tract A. The setback regulations serve the following purposes:

33.110.220 Setbacks

- A. Purpose. The setback regulations for buildings and garage entrances serve several purposes:**

- **They maintain light, air, separation for fire protection, and access for fire fighting;**
- **They reflect the general building scale and placement of houses in the city's neighborhoods;**
- **They promote a reasonable physical relationship between residences;**
- **They promote options for privacy for neighboring properties;**
- **They require larger front setbacks than side and rear setbacks to promote open, visually pleasing front yards;**
- **They provide adequate flexibility to site a building so that it may be compatible with the neighborhood, fit the topography of the site, allow for required outdoor areas, and allow for architectural diversity; and**
- **They provide room for a car to park in front of a garage door without overhanging the street or sidewalk, and they enhance driver visibility when backing onto the street.**

Because the requested adjustment is from a street sideyard requirement, it will not impede light or air from adjoining properties, nor will it impede the Fire Bureau's ability to access any of the other lots in the subdivision. Because this is a large lot single family subdivision and this is a street sideyard setback, there will be minimal impact on other properties across the street tract regarding either "reasonable physical relationships" or privacy. Structures on Lots 4 and 5 across the street tract from the proposed adjustment will be required to meet the 20 foot front setback requirements of the R10 zone. Including this setback and the street tract width, no new structures will be built closer than approximately 52 feet from the remaining residence on Lot 1.

Finally, Lot 1 will continue to have a larger front yard than side yard and will continue to provide parking outside of any required setback area. The Hearings Officer finds that this approval criterion is met.

B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: Staff considers the neighborhood impacted by the proposed development to include both sides of SW Boones Ferry Rd. as well as SW Arnold St., SW Palantine Rd. and SW Coronado St. as shown on the attached zoning map (Exhibit B). The surrounding neighborhood is characterized by large lots with detached single dwelling development. Most homes contain larger front setbacks on heavily forested lots. Lot 1 will have over 170 feet of frontage on the proposed street tract. The encroachment into the required side setback occurs across approximately twenty-five lineal feet of this frontage, a portion of which will be located six feet above the street grade, separated by a retaining wall. Staff determined that this will not detract from the livability or appearance of the neighborhood, given the desire to preserve the existing residence and provide a location for a private street that meets engineering requirements and maximizes the development options for the

new lots across the street. The Hearings Officer concurs with staff and finds that this approval criterion is met.

E. Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: Staff has not identified any issues requiring mitigation in this adjustment request. The Hearings Officer finds that this approval criterion is met.

ADDITIONAL CONDITIONS

33.800.070 Conditions of Approval

The City may attach conditions to the approval of all discretionary reviews. However, conditions may be applied only to ensure that the proposal will conform to the applicable approval criteria for the review or to ensure the enforcement of other City regulations.

Findings: The following development and technical standards apply to this proposal. Conditions of approval based on these standards are included in this decision.

33.700.015 Review of Land Divisions

A. Adjustment review required for existing development

- 1. Conforming development. If a proposed land division will cause conforming development to move out of conformance with any regulation of the Zoning Code, and if the regulation may be adjusted, the land division request must include a request for an adjustment. If an adjustment to the regulation is prohibited, the land division is prohibited.**

Findings: One of the site's two existing residences will remain and be located on Lot 1. Subdividing the site must not cause the structure to move out of conformance to any development standard applicable in the R10 zone.

Chapter 33.110 Table 110-3 contains the setback standards for development in the R10 zone. The house to remain must meet the required setback standards from the proposed new lot lines. Alternatively, the house must be set back from the new lot lines to conform to an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The house is proposed to be approximately five feet from the new property line on the private street tract. This is less than the required ten foot side yard building setback required in the R10 Zone. A separate adjustment request is being processed to allow this reduction.

33.110.232 Street-Facing Facades in R10 through R2.5 Zones

- C. The standard. At least 15 percent of the area of each façade that faces a street lot line must be windows or main entrance doors. Windows used to meet this standard must allow views from the building to the street. Glass block does not meet this standard. Windows in garage doors do not count toward meeting this standard, but windows in garage walls do count toward meeting this standard. To count toward meeting this standard, a door must be at the main entrance and facing a street lot line.**

In the R10 zone, street-facing facades of residential structures must have windows that comprise at least 15 percent of the façade area. The existing house that will remain on Lot 1 currently meets this standard on the front of the house, as it is oriented toward SW Boones Ferry Rd. After the land division, a second street frontage for this house will be provided by the new private street. Before final plat approval, the applicants must finalize a building permit to modify the house to demonstrate continued compliance after the land division is recorded. Alternately, an Adjustment to this standard must be approved. Staff notes that the applicants have submitted an application for such an adjustment, which will be considered under a separate Type I adjustment process.

Portland Transportation Standards

The applicants are required to make improvements to the proposed private street. Several conditions are required, including providing plans and financial assurances, initiating a building permit, and providing a maintenance agreement. In addition to the approval criteria of Title 33, these requirements are also based on the technical standards of Titles 17 and 24.

Fire Bureau Standards

The applicants must meet Fire Bureau requirements for:

- posting "No Parking" signs in the private street
- installing a new hydrant
- documenting final street grade and access to individual lots

In those instances where the applicable standards cannot be met, the applicants may meet Fire Bureau requirements by recording an Acknowledgement of Special Land Use Conditions. This would require providing internal fire suppression sprinklers with the new residential construction. Any such agreement shall be noted on the final plat. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.

Urban Forestry Standards

The applicants must meet Urban Forestry requirements to plant street trees in the SW Boones Ferry Rd. right-of-way as part of any street improvement permit. This requirement is based on the standards of Title 20.

III. CONCLUSIONS

The applicants propose a five lot subdivision together with a private street tract and a stormwater management tract, as shown on the attached preliminary plan (Exhibit C-2). A concurrent adjustment request has been submitted for a setback reduction on Lot 1. In addition, a modification from setback standards on Lot 2 has been requested to better meet tree preservation efforts on this lot. The Hearings Officer finds that all of the relevant standards and approval criteria have been met or can be met subject to conditions of approval.

IV. DECISION

Approval of a proposed five lot land division, with four standard lots and one narrow lot (Lot 3), with a private street tract and a private stormwater management tract.

Approval of a tree preservation modification to allow reducing the required front building setback of Lot 2 from 20 feet to 15 feet.

Approval of an adjustment to reduce the side yard building setback from the required ten feet to five feet for the existing residence proposed to remain on Lot 1.

Subject to the following conditions of approval:

A. Supplemental Plan. Three copies of an additional supplemental plan shall be submitted with the final plat survey. 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:

- Any buildings or accessory structures on the site during the final plat application.
- Any driveways and off-street vehicle parking areas on the site during the final plat application.
- The proposed general location of future building footprints and stormwater facilities for each of the vacant lots.
- Any other information specifically noted in the conditions listed below.

B. The final plat must show the following:

1. The applicants shall meet City Engineer street dedication requirements for SW Boones Ferry Rd. if half street improvements are required. The required right-of-way dedication must be shown on the final plat.
2. A private storm sewer easement, for the benefit of Lot 4, shall be shown and labeled over the relevant portions of Lot 5.

3. A sanitary sewer easement, granted to the City of Portland, shall be shown over the relevant portions of the private street tract to BES's satisfaction.
4. The stormwater management tract shall be noted on the plat as "Tract B: (Stormwater Management).
5. The private street tract shall be named, with City Engineer approval, and noted on the plat as "Tract A: Private Street [name of street]".
6. A public walkway easement must be shown over the sidewalk portion(s) of the street tract.
7. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Conditions C-11 through C-14 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records."

C. The following must occur before final plat approval:

Streets

1. The applicants shall meet City Engineer requirements for right-of-way improvements along the frontage of SW Boone's Ferry Rd. The applicants shall provide plans and financial assurances to the satisfaction of the Bureau of Transportation Engineering and Development Review and BES for required street frontage improvements. These plans shall include installing a public storm sewer in SW Boones Ferry Rd. if half street improvements are proposed. Payment towards completing the SW Boones Ferry Rd. and SW Stephenson St. intersection shall be required if the alternative pedestrian path with off-site improvement option is chosen. Any payment towards the intersection improvement shall be credited towards any future local improvement district formed for street improvements that would otherwise be assessed against the individual lots within the proposed subdivision.

Street trees shall to be planted within the new vegetated areas as part of either half street improvements or pathway improvements to the City Forester's satisfaction. Street trees shall be chosen from the City's approved street tree list. Tree size requirements for residential sites are to be 2-inch caliper. Urban Forestry must inspect and approve the newly planted trees before final plat approval.

2. The applicants shall submit an application for a Site Development Permit to construct the private street and related site development improvements. Street design plans must be prepared by, or under the direction of, an Oregon licensed civil engineer. The retaining walls shown on the preliminary grading plan necessary for achieving street grade shall be located either entirely inside or outside the street tract but shall not cross tract boundaries.

3. The applicants shall furnish a financial guarantee of performance, as approved by the Bureau of Development Services, for 125 percent of the estimated construction cost for the private street and all required site development improvements. The applicants shall provide an engineer's estimate of the costs of performance, including the costs for temporary erosion control measures required during construction. The financial guarantee of performance shall be accompanied by a performance agreement with the Bureau of Development Services to complete the required improvements.
4. The applicants shall provide a clearing and grading plan with the Site Development permit required for the private street described above. The clearing and grading plan must substantially conform to the Preliminary Clearing and Grading Plan, Tree Preservation Plan and arborist report approved with this decision.

Utilities

5. The applicants shall meet BES requirements to extend a public sewer main in the private street tract. The public sewer extension requires a Public Works Permit, which must be initiated before final plat approval. In addition, the applicants must provide engineered designs and performance guarantees for the sewer extension to BES before final plat approval.
6. The applicants shall meet Fire Bureau requirements to install a new fire hydrant. The applicants shall contact the Water Bureau to purchase the hydrant, and shall provide the Fire Bureau with verification of the purchase before final plat approval.
7. The applicants must meet Fire Bureau requirements to provide adequate fire access to Lot 3. Alternately, the applicants will be required to install residential sprinklers in the new house on this lot. Any Acknowledgement of Special Land Use Conditions describing the sprinkler requirement must be referenced on and recorded with the final plat.

Existing Development

8. Finalized permits must be obtained to demolish the site's existing residence at 11231 SW Boones Ferry Rd., capping the existing sanitary service line and decommissioning the obsolete septic system.
9. The applicants must obtain a finalized building permit to modify the existing house that will remain on proposed Lot 1. The permit must demonstrate compliance with the standards in Section 33.110.232.C, Standards for Street facing Facades in the R10-R2.5 Zones, in relation to the proposed new lot lines. Alternately, the applicants must obtain an approved Adjustment to these standards before final plat approval.
10. The applicants must meet Site Development requirements for the stormwater system on the existing house to remain on Lot 1. Specifically, the gutters and downspouts must function

properly, and they must direct water to an approved disposal point including a flow through planter as required that meets setback requirements from the new lot lines. The applicants must obtain finalized plumbing permits for this work before final plat approval.

Required Legal Documents

11. A Maintenance Agreement shall be executed for the Private Stormsewer Easement area. 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 approved by the City Attorney and the Bureau of Development Services before final plat approval.
12. A Maintenance Agreement shall be executed for the Private Stormwater Management Tract B. The agreement shall include provisions assigning maintenance responsibilities for the tract area and any shared facilities within that area, consistent with the purpose of the tract, and all applicable City Code standards. The agreement must be approved by the City Attorney and the Bureau of Development Services before final plat approval.
13. A Maintenance Agreement shall be executed for the Private Street Tract A. The agreement shall include provisions assigning maintenance responsibilities for the tract and any shared facilities within that area. The agreement must also acknowledge all easements granted within the street tract, the beneficiaries of those easements, “no parking” sign requirements and the limitations on the easement areas to the satisfaction of the beneficiary service agencies. The maintenance agreement must be approved by the City Attorney and the Bureau of Development Services before final plat approval.
14. The applicants shall execute an Acknowledgement of Special Land Use Conditions, requiring residential development on Lot 3 to contain internal fire suppression sprinklers, unless the applicants can demonstrate compliance with applicable Fire Code standards. Any such acknowledgement shall be recorded with Multnomah County, and referenced on the final plat.

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

1. Development on Lots 1-5 shall conform to the Tree Preservation Plan (Exhibit C-3) and the applicants’ arborist report (Exhibit A-2). Specifically, trees numbered 1827, 1828, 1830, 1831, 1832, 1833, 1875, 1886, 1887, 1890, 1891, 1892, 1893, 1894, 1895 and 1896 must be preserved, with the root protection zones indicated on Exhibit C-3. 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 receiving an arborist report, explaining that the arborist has approved the specified construction methods, and that the activities will be performed under his or her supervision.
2. The first lift of paving for the private street shall be installed before any permits for residential construction are issued.

3. Before finalizing the Site Development permit for the private street, a plumbing permit must be obtained and finalized for the new utility lines that will be constructed beneath the paved surface of the new street.
4. Vehicle access to Lots 1 and 5 must be from Tract A, the private street.
5. The applicants must post the private street with "No Parking" signs to the Fire Bureau's satisfaction.
6. Fire Bureau access from the private street must be within 150 feet of a structure on Lot 3. If access from the private street to the farthest point of the structure exceeds 150 feet, the applicants must apply the fire code exception that allows the distance to be increased to 250 feet if residential sprinklers are installed, or be granted a Fire Code Appeal. Residential sprinkler systems must meet all Fire Bureau conditions related to meter size and installation requirements during development. The applicants may refer to the final plat approval report for details on whether or not this requirement applies.

Ian Simpson, Hearings Officer

Date

Application Determined Complete:	September 22, 2008
Report to Hearings Officer:	October 31, 2008
Second Report to Hearings Officer:	November 28, 2008
Decision Mailed:	January 9, 2009
Last Date to Appeal:	4:30 p.m., January 23, 2009
Effective Date (if no appeal):	January 26, 2009. Decision may be recorded on this date.

Conditions of Approval. This proposal is subject to conditions of approval, 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 "applicants" includes the applicants for this land use review, any persons undertaking development pursuant to this land use review, the proprietor of the use or development

approved by this land use review, and the current owners and future owners of the property subject to this land use review.

Appeal of the decision. ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4TH AVENUE, PORTLAND, OR 97201 (823-7526). Until 3:00 p.m., Monday through Friday, the appeal must be filed at the Development Services Center on the first floor. Between 3:00 p.m. and 4:30 p.m., the appeal must be filed at the Reception Desk on the 5th Floor. **An appeal fee of \$ 5,045 will be charged (one-half of the application fee for this case).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

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

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

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

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

Recording the land division. The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director or delegate, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City's approval of the preliminary plan.**

Recording concurrent approvals. The preliminary land division approval also includes concurrent approval of an adjustment from a building setback requirement. This other concurrent approval

must be recorded by the Multnomah County Recorder before any building or zoning permits can be issued.

A few days before the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with these concurrent land use reviews. The applicant, builder, or their representative may record the final decisions on these concurrent land use decisions as follows:

- **By Mail:** Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- **In Person:** Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034.

Expiration of concurrent approvals. The preliminary land division approval also includes concurrent approval of a street sideyard building setback requirement. For purposes of determining the expiration date, there are two kinds of concurrent approvals: 1) concurrent approvals that were necessary in order for the land division to be approved; and 2) other approvals that were voluntarily included with the land division application.

The following approvals were necessary for the land division to be approved: an adjustment from an R10 sideyard setback standard for Lot 1. This approval expires if:

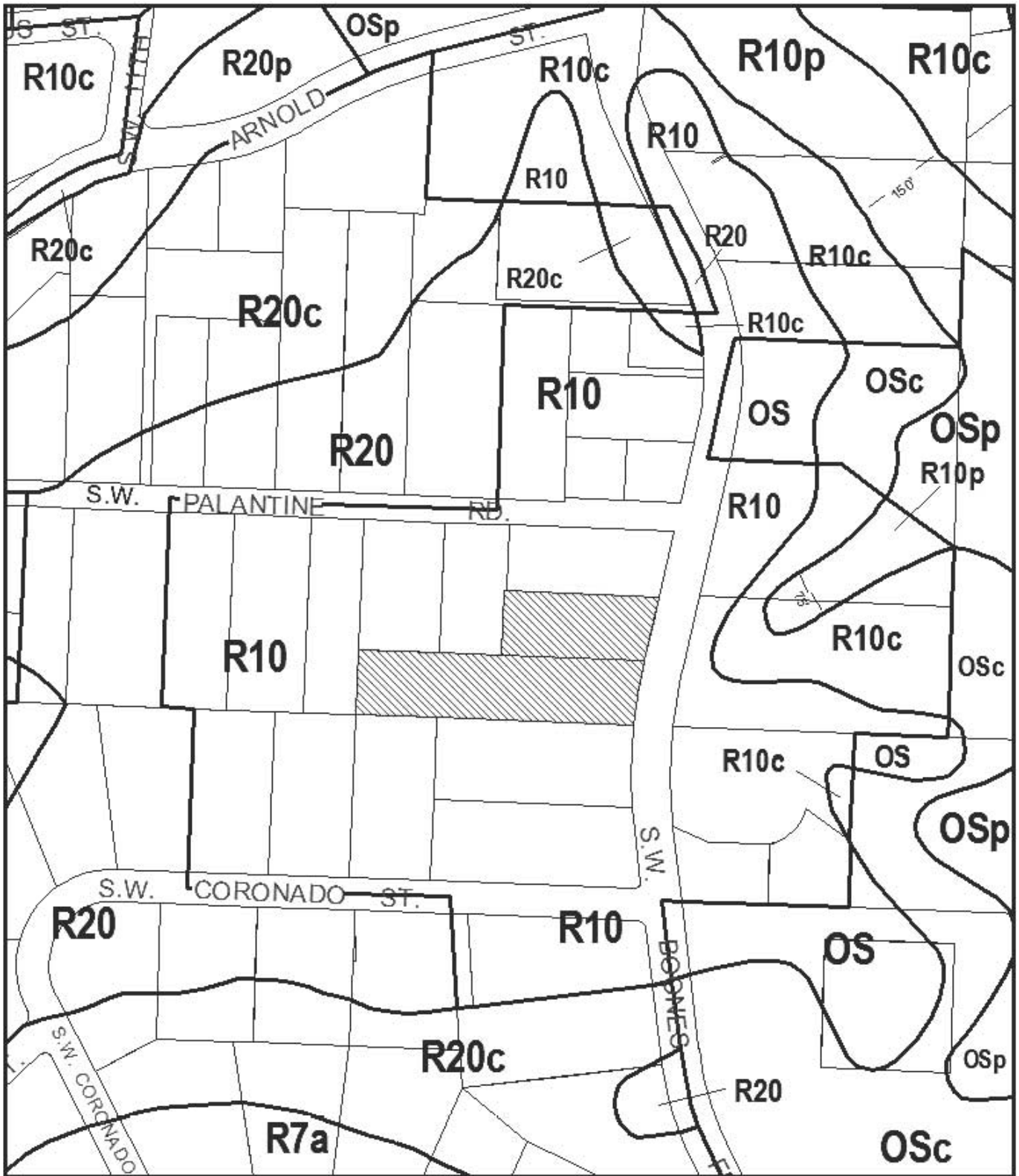
- The final plat is not approved and recorded within the time specified above, or
- Three years after the final plat is recorded, none of the approved development or other improvements (buildings, streets, utilities, grading, and mitigation enhancements) have been made to the site.

All other concurrent approvals expire three years from the date rendered, unless a building permit has been issued, or the approved activity has begun. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicants' Statement
 - 1. Land Division Narrative Submitted with Adjustment Approval Criterion Supplement (September 22, 2008)
 - 2. Arborist Report(s)
 - 3. Preliminary Stormwater Reports (August 7, 2008 and September 22, 2008)
 - 4. Geotechnical Report and Landslide Hazard Study (February 12, 2008)
 - 5. Early Neighborhood Notice (January 25, 2008)
- B. Zoning Map (**attached**)
- C. Plans and Drawings
 - 1. Existing Conditions Plan
 - 2. Preliminary Plat (**attached**)
 - 3. Preliminary Grading and Tree Preservation Plan
 - 4. Preliminary Utility Plan
- D. Notification information
 - 1. Request for response
 - 2. Posting letter sent to applicants
 - 3. Notice to be posted
 - 4. Applicants' statement certifying posting
 - 5. Mailing list
 - 6. 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 Bureau of Development Services
 - 6. Bureau of Parks, Forestry Division
- F. Letters: None Submitted
- G. Other
 - 1. Original LUR Application
 - 2. Incomplete letter
 - 3. Pre-application Conference EA 07-160318 Summary Report
- H. Received in the Hearings Office
 - 1. Hearing notice - Cole, John Andrew
 - 2. Staff report - Cole, John Andrew
 - 3. Faxed request to reschedule in letter form (with duplicate failed fax pages attached) - Porter, Larry
 - 4. Faxed request to reschedule using BDS form; includes BDS signatures - Porter, Larry
 - 5. Staff Report - Cole, John Andrew
 - 6. 11/30/08 Letter - Lewis, Eugene E. and Tamara L.

7. 11/30/08 Memo - Lewis, Eugene E. and Tamara L.
8. Map - Hand, Nancy
9. 12/9/08 Letter from Arnold Creek Neighborhood - Hand, Nancy
10. 12/10/08 Memo - Cole, John Andrew
11. 11/30/08 Memo from Eugene and Tamara Lewis - Cole, John Andrew
12. PowerPoint presentation printout - Cole, John Andrew
13. Request for record to close - Porter, Larry



ZONING

 Site



File No. LU 08-157986 LDS
 1/4 Section 4128
 Scale 1 inch = 200 feet
 State_Id 1S1E33AB 3600
 Exhibit B (Aug 27, 2008)

