



City of Portland, Oregon
Bureau of Development Services
Land Use Services

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www.portlandonline.com/bds

Date: January 13, 2009
To: Interested Person
From: Sean Williams, Land Use Services
503-823-7612 / sean.williams@ci.portland.or.us

NOTICE OF A TYPE II 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 and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 08-130593 AD

GENERAL INFORMATION

**Applicant/
Representative:**

Yevgeniy Petrusha
14109 SE Ellis Street
Portland, OR 97236

Site Address: 14109 SE Ellis Street

Legal Description: EXC S 30' IN RD EXC E 200'-S 289' OF LOT 9, LAMARGENT HTS
Tax Account No.: R465803840
State ID No.: 1S2E14AD 04400
Quarter Section: 3644
Neighborhood: Powellhurst-Gilbert, contact John McDonald at 503-753-4226.
Business District: None
District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.
Plan District: Johnson Creek Basin
Zoning: Residential 5,000 (R5)
Case Type: Adjustment (AD)
Procedure: Type II, an administrative decision with appeal to the Adjustment Committee.

Proposal:

The applicant is requesting an adjustment to the maximum lot area standard (33.610.200) for the R5 zone to facilitate a lot confirmation & property line adjustment (08-113650 PR).

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 **33.805.040 A.-F., Approval Criteria for Adjustments.**

ANALYSIS

Site and Vicinity: The subject property contains frontage on SE Ellis Street approximately 90 feet east of SE 140th. Existing development consists of a single family dwelling located on the southern half of the lot. A subdivision, Scott's Bluff (LU 05-178424 LDS AD), was recently platted and improved north of the subject property. A partial public right-of-way dedication for the continuation of SE Harold Street to a cul-de-sac termination was platted as a part of the abovementioned subdivision with an access control strip along the northern property line of the subject property. Therefore, in order for the applicant to achieve the desired property line adjustment a dedication for SE Harold Street was executed. In addition, a 7.5 foot wide public pedestrian access easement along the eastern property line was recorded.

The surrounding vicinity is predominantly zoned for single-dwelling use (R5) with development consisting of detached residential homes. Powell Butte Nature Park is located approximately 775 feet east of the subject property.

Zoning: The R5 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 there are no prior land use reviews for this site.

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **December 3, 2008**. Urban Forestry, Bureau of Transportation & Life Safety Plans Examiner all have no concerns regarding the adjustment proposal (Exhibit E-1). The following Bureaus have responded with comments:

Site Development Section of BDS: Comments were provided regarding the presence of a septic system and stormwater management facilities serving the existing dwelling. The existing on-site septic system will need to be decommissioned and further information is required demonstrating existing stormwater services that may lead to improvements for the existing dwelling. Since the above mentioned issues are not relevant to this adjustment proposal these requirements will be enforced prior to approval of the subsequent property line adjustment (Exhibit E-2).

Bureau of Environmental Services: Comments were provided regarding potential issues with the sanitary sewer connection serving the existing dwelling that will be assessed prior to approval of the subsequent property line adjustment (Exhibit E-3).

Fire Bureau: "Applicant cannot meet access requirements to the new proposed lot. Fire has no comment on lot size but will not be able to approve PR at this time. Applicant will be required to meet access requirements before lot can be approved." (Exhibit E-4)

Water Bureau: Comments were provided regarding the availability of water service and connection requirements at the time of building permit for Tract 2 (Exhibit E-5).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on December 3, 2008. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

ZONING CODE APPROVAL CRITERIA

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.

33.805.40 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F., below, have been met. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

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

Findings: The applicant is requesting an adjustment to allow a piece of land identified as Tract 2 (Exhibit C-1) to exceed the maximum lot area standard of 8,500 square feet in the R5 zone as a result of an associated property line adjustment. The purpose of the lot dimension standards for lots in the RF through R5 zones (33.610.200) 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.**

Through a lot confirmation & property line adjustment (PLA), the applicant is proposing to reestablishing a historically platted lot within the subject property and then reconfiguring the lot via a PLA. Both tracts of land, after the PLA, will exceed the maximum lot area standard for the zone. However, since the subject property is already out of conformance with the maximum lot area standard it is exempt from compliance with this standard (33.667.300.A.1.c). Therefore, one adjustment to maximum lot area is required for proposed Tract 2 of the lot confirmation & PLA request.

The subject property is currently 26,852 square feet in size. The proposed property line adjustment would result in one tract of land that is 9,852 square feet (Tract 1) and one tract of land that is 16,980 square feet (Tract 2). The existing dwelling will be retained within Tract 1 and Tract 2 will be vacant and available for development consistent with the R5 zone standards. Each Tract of land exceeds the dimensional requirements of the zone and is of a size and shape that may accommodate a reasonably sized house and garage. The existing dwelling located within Tract 1 is in compliance with all applicable development standards for the R5 zone.

In accordance with density standards for lots in RF through R5 zones, the subject property contains a maximum density of 5 lots. After the proposed property line adjustment Tract 1 will contain a maximum density of 2 lots and Tract 2 will contain a maximum density of 3 lots.

Therefore no gross change in density will result from the proposed adjustment. The current configuration of the existing dwelling within Tract 1 would prevent any further division unless the structure is removed. However, if the dwelling were to be removed the property could be split into two parcels that would allow for a reasonably sized house and garage and be of a configuration that would allow development to meet applicable standards of the zoning code. Proposed Tract 2 is of a size and configuration that may accommodate a division into 3 lots. The outdoor area available to the existing dwelling within Tract 1 is approximately 6,715 square feet which is well in excess of the minimum requirement of 250 square feet in the R5 zone. The existing dwelling within Tract 1 is oriented toward the street and that orientation will not change as a result of this Adjustment; nor will it change with the subsequent Property Line Adjustment. Proposed Tract 2 is of a width that may accommodate the maximum density and provide for lots that can be wide enough to contain development oriented towards SE Harold Street.

A number of lots within the vicinity of the subject property are of a size well in excess of the maximum lot area standard for the R5 zone and eventually will be redeveloped to achieve the planned density for the area. Therefore, Tract 2 will be compatible with existing lots. Each Tract of land contains adequate access from a public right-of-way that contains services and utilities that may accommodate existing and future development. SE Harold Street is not fully improved at this time. However, any future development within Tract 2 would likely necessitate right-of-way improvements.

Based on the discussion above, the purpose of the maximum lot area standard can continue to be met and, therefore, this Adjustment criterion can be satisfied.

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: The requested Adjustment is for a site in a residential zone that allows a variety of lot sizes, lot configurations, and housing types. The Zoning Map (Exhibit B) provides some evidence of the lot configurations in the area. Based on the findings associated with criterion A, the request to adjust the lot size standards to allow Tract 2 to exceed 8,500 square feet in area can meet the purposes of this regulation. The property line adjustment, facilitated by this adjustment request, will not physically alter the appearance of the neighborhood as viewed from SE Ellis Street as the existing dwelling will remain. Therefore, granting the Adjustment will have no impact on the livability or appearance of the residential area. This criterion can be met.

C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Only one adjustment is requested. This criterion is not applicable.

D. City-designated scenic resources and historic resources are preserved; and

Findings: The site does not contain any scenic or historic resource designations. This criterion is not applicable.

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

Findings: As addressed in the preceding findings, there are no discernable impacts that will result from the proposed adjustment. Since the existing dwelling will likely remain and be largely unchanged when viewed from the street, the requested Adjustment will have little impact on the appearance or livability of this residential area. Tract 2 exceeds the maximum lot area for the zone but will be available for future division consistent with the zone. For the

purpose of the requested lot size adjustment there will be little resulting impact. Therefore, no mitigation is required and this criterion can be met.

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: The site is not within an environmental overlay zone. This criterion is not applicable.

DEVELOPMENT STANDARDS

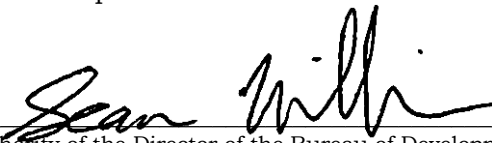
Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

The applicant proposes one adjustment to maximum lot size for a tract of land associated with a property line adjustment. As noted in this report, the proposal to allow Tract 2 to exceed the maximum lot size for the R5 zone is able to meet the adjustment approval criterion based on substantial conformance with applicable standards and established situations on the site and in the surrounding neighborhood.

ADMINISTRATIVE DECISION

Approval of an adjustment to maximum lot size (33.610.200) to allow Tract 2 to be reconfigured to a size of 16,980 square feet as a result of a subsequent property line adjustment per the approved site plan.

Decision rendered by:  **on January 9, 2009**
By authority of the Director of the Bureau of Development Services

Decision mailed: January 13, 2009

Staff Planner: Sean Williams

About this Decision. This land use decision is **not a permit** for development. 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 May 20, 2008, and was determined to be complete on November 17, 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 May 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 waived the 120-day review period, as stated with Exhibit G-3.

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.

Appealing this decision. This decision may be appealed to the Adjustment Committee, which will hold a public hearing. Appeals must be filed **by 4:30 PM on January 27, 2009** at 1900 SW Fourth Ave. Appeals can be filed on the first floor in the Development Services Center until 3 p.m. After 3 p.m., appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. 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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7967 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Adjustment Committee is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Adjustment Committee an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision.

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed*, The final decision may be recorded on or after **January 28, 2009 – (the day following the last day to appeal)**.
 - A building or zoning permit will be issued only after the final decision is recorded.
- The applicant, builder, or a representative may record the final decision 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
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 1. Site Plan (attached)
- D. Notification information:
 1. Mailing list
 2. Mailed notice
- E. Agency Responses:
 1. Urban Forestry, Bureau of Transportation & Life Safety Plans Examiner
 2. Site Development Review Section of BDS
 3. Bureau of Environmental Services

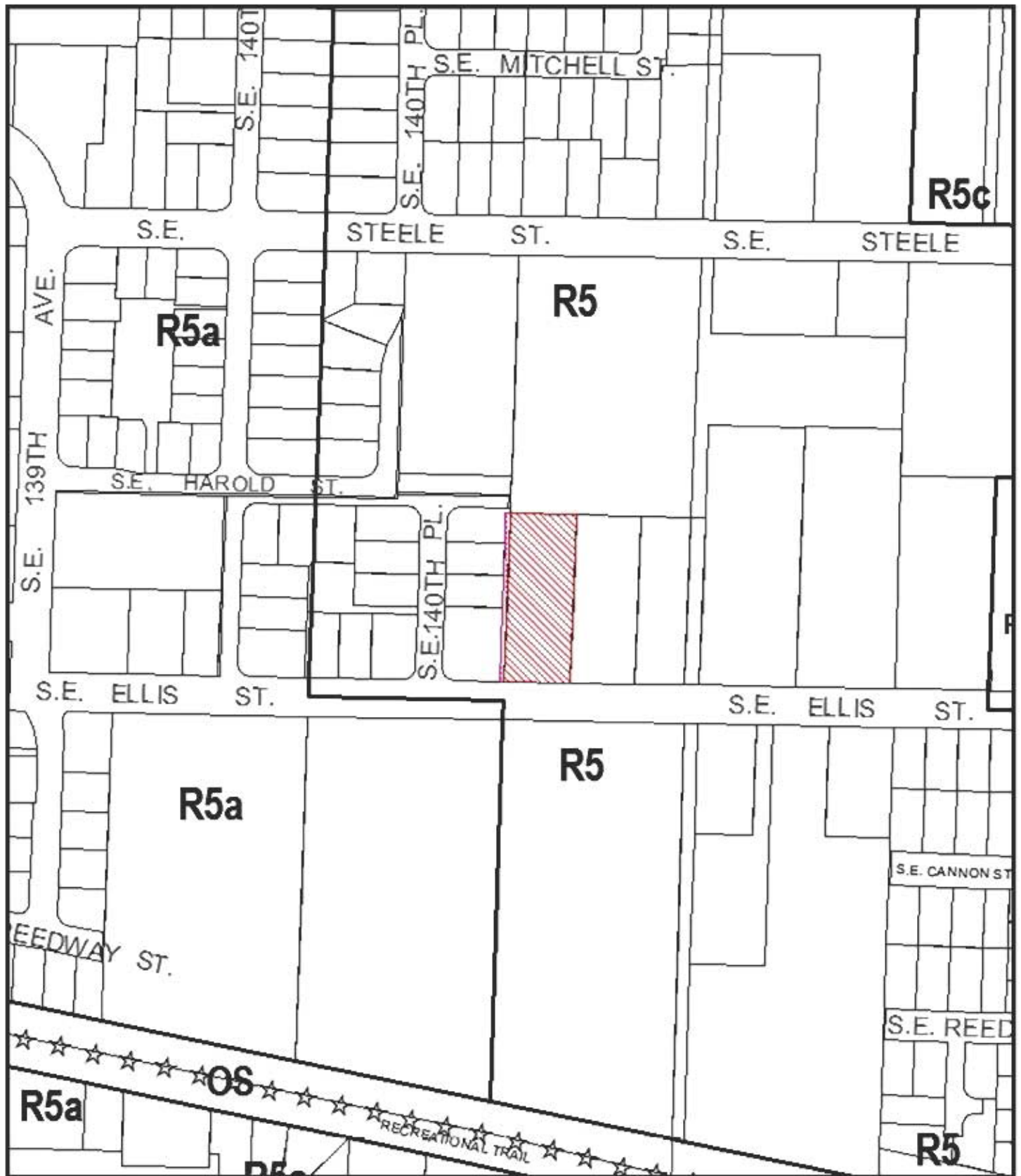
4. Fire Bureau
5. Water Bureau

F. Correspondence: N/A

G. Other:

1. Original LU Application
2. Site History Research
3. Extension of 120-day review period

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
-  Also Owned



This site lies within the:
JOHN SON CREEK BASIN PLAN DISTRICT

File No.	<u>LU 08-130593 AD</u>
1/4 Section	<u>3644</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S2E14AD 4400</u>
Exhibit	<u>B</u> (May 28,2008)

RECORD OF SURVEY

PART OF LOT 9 AND 10,
 "LAMARGENT HEIGHTS", LOCATED IN THE
 N.E. 1/4 OF SECTION 14, T.15S., R.2E., W.M.,
 CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON
 DATE: SEPTEMBER 2, 2008 SCALE: 1"=30'
 SURVEY PERFORMED FOR: EUGENE PETRUSHA

MULTNOMAH COUNTY
 SURVEY RECORDS

CURVE	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD
C1	11.78	14.00	483.29°	S 54.01°22' E	11.44
C2	47.52	38.00	21.36°59'	S 85.54°04' E	44.48

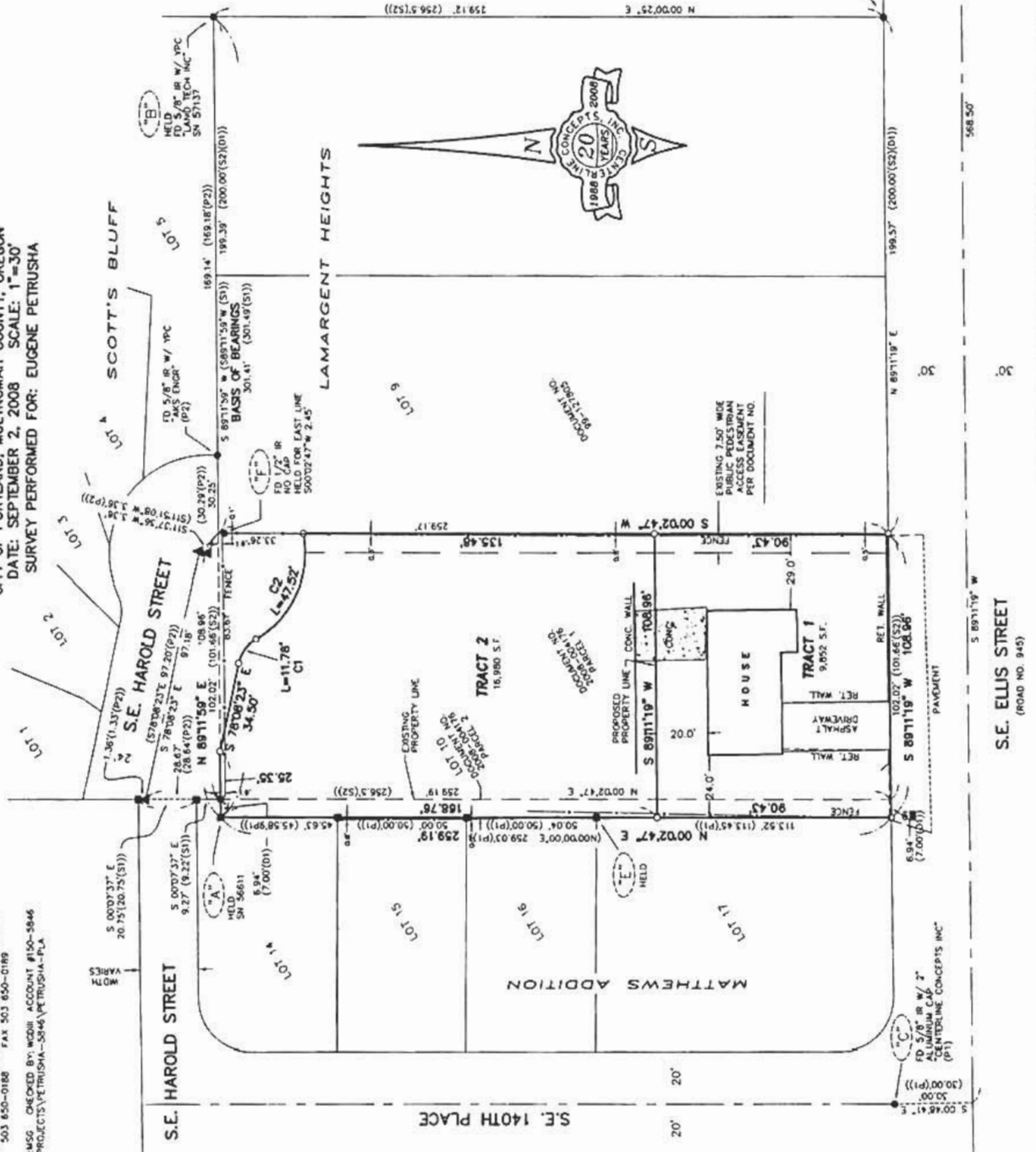
REGISTER NUMBER

REGISTER NUMBER	DATE FILED
1	08/02/08
2	08/02/08
3	08/02/08
4	08/02/08
5	08/02/08
6	08/02/08
7	08/02/08
8	08/02/08
9	08/02/08
10	08/02/08

NARRATIVE:
 1 - THE PURPOSE OF THIS SURVEY IS TO ESTABLISH THE BOUNDARY LINES FOR THE SUBJECT PROPERTY AS SHOWN ON THE PLAT AND PARCEL 2 OF DOCUMENT NO. 2008-004176. THE SURVEY WAS PERFORMED TO CORRECT THE PORTION OF LOTS 9 AND 10, LAMARGENT HEIGHTS, FOR A PROPOSED PROPERTY LINE ADJUSTMENT.
 2 - THE BASES OF BEARINGS IS FROM SN 81114, USING FOUND MONUMENTS "A" AND "B" 1 HOLD SAID MONUMENTS AS PER SN 81114, FOR THE NORTH LINE, SN 09593 SET MONUMENTS TO REPRESENT THE NORTH LINE, SN 12576 RECOVERED SAID MONUMENTS, BUT THEY DID NOT MATCH THE DEED DISTANCE, BY HOLDING MONUMENTS "A" AND "B" TO THE DISTANCE TO THE CENTERLINE OF S.E. ELLIS STREET, ADJUSTED THE DEED DISTANCE OF 289.00 FEET WITHIN ACCEPTABLE TOLERANCES.
 3 - I RECOVERED MONUMENT "A" AND "B" AND HELD FOR THE WEST LINE OF THE SUBJECT PROPERTY. MONUMENTS "C" AND "D" WERE SET AT THE EAST LINE OF THE PLAT OF MATTHEWS ADDITION AND THE WEST LINE OF THE EAST 750 FEET OF SAID LOT 10.
 4 - I RECOVERED MONUMENT "E" AND HELD TO CONTROL THE EAST LINE OF THE SUBJECT PROPERTY. MONUMENTS "F" AND "G" WERE SET AT THE EAST LINE OF THE PLAT OF MATTHEWS ADDITION AND THE WEST LINE OF THE EAST 750 FEET OF SAID LOT 10.
 5 - I RECOVERED MONUMENT "H" (FROM THE PLAT OF SCOTT'S BLUFF) AND HELD 500'± 484.47E 30.00 FEET FROM RECOVERED MONUMENT "C" (FROM THE PLAT OF MATTHEWS ADDITION) TO THE CENTERLINE OF S.E. ELLIS STREET. THE NORTH 30.00 FEET AND PARALLEL WITH SAID CENTERLINE FOR THE 300.00 LINE OF THE SUBJECT PROPERTY.

LEGEND:
 ○ SET 3/8" x 30" IRON ROD W/ RED PLASTIC CAP MARKED "CENTERLINE CONCEPTS INC. ON 2008"
 ● FOUND MONUMENT AS NOTED
 ■ CAP MARKED "CENTERLINE CONCEPTS, INC." FROM "MATTHEWS ADDITION" UNLESS OTHERWISE NOTED
 ▲ FOUND 5/8" IRON ROD W/ Z" ALUMINUM CAP MARKED "ACT FROM SCOTT'S BLUFF"
 ▼ FOUND 5/8" IRON ROD W/ 3/4" BRASS WASHER IN CONCRETE VAULT MARKED "LAND TECH" FROM SN 59258
 () - RECORD DISTANCES & BEARINGS
 IR - IRON ROD IP - IRON PIPE
 FD - FOUND W/ WITH
 YPC - YELLOW PLASTIC CAP
 S/W - SURVEY OF WATER
 SN - SN 81114
 S1 - SN 81114
 S2 - SN 09593
 S3 - SN 12576

REGISTERED PROFESSIONAL LAND SURVEYOR
 EUGENE PETRUSHA
 WADE G. DONOVAN II
 2276
 SIGNED ON 10-02-08
 VALID THROUGH DECEMBER 31, 2009
 I CERTIFY THAT THIS SURVEY WAS PREPARED USING THE PRODUCTION 251000A ON MAP FILM



Centerline Concepts Inc.
 700 MOJALLA AVENUE, OREGON CITY, OREGON 97045
 503 650-0188 FAX 503 650-0189
 DRAWN BY: MCG. CHECKED BY: MCGR. ACCOUNT #150-5846
 M:\PROJECTS\ETRUSHA-5846\ETRUSHA-PLA

CASE NO. 08-130593
 EXHIBIT C-1