



CITY OF
PORTLAND, OREGON

HEARINGS OFFICE

1900 S.W. 4th Avenue, Room 3100
Portland, Oregon 97201
Telephone: (503) 823-7307
FAX: (503) 823-4347
TDD (503) 823-6868
www.portlandonline.com/auditor/hearings

DECISION OF THE HEARINGS OFFICER

I. GENERAL INFORMATION

File No.: LU 08-178184 LDS (HO 4080048)

Applicant: Cody Johncheck
Consolidated Land/Ken Randall Homes, LLC
2 Centerpointe Drive, Suite 210
Lake Oswego, OR 97035

**Applicant's
Representative:** Ken Sandblast
Planning Resources, Inc.
7160 SW Fir Loop #201
Portland, OR 97223

Hearings Officer: Gregory J. Frank

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

Site Address: 1834-1838 SW EVANS ST

Legal Description: W 1/2 OF LOT 8 BLOCK 26 LOT 9 BLOCK 26, CAPITOL HILL

Tax Account No.: R133904060

State ID No.: 1S1E21CA 08000

Quarter Section: 3827

Neighborhood: Hillsdale

Business District: None

District Coalition: Southwest Neighborhoods Inc.

Plan District: None

Other Designations: Potential Landslide Hazard Area

Zoning: R2 Multi-dwelling residential 2,000

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

BDS Staff Recommendation to Hearings Officer: Approval with conditions

Public Hearing: The hearing was opened at 9:00 a.m. on February 18, 2009, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, OR, and was closed at 9:59 a.m. The Applicant's representative, Ken Sandblast, waived the Applicant's rights granted by ORS 197.763 (6)(e), if any, to an additional 7 day time period to submit written rebuttal into the record. The record was closed to all testimony and/or written submissions, on February 18, 2009.

Testified at the Hearing:

John Cole, BDS Staff Representative
Ken Sandblast, Planning Resources, Inc., 17690 SW Boones Ferry Rd., Lake Oswego, OR 97035
Geo Kendall, 1843 SW Evans, Portland OR 97219

Proposal: Applicant proposes to divide a 7,500 square-foot lot into four lots for attached dwelling units. Applicant's proposal includes a request to utilize the Amenity Bonus provisions of Portland City Code Section 33.120.365. Without utilizing the Amenity Bonus provisions of the Code the applicant would only be permitted to create three lots. BDS, in its staff report to the Hearings Officer, conditioned its recommended approval of the application upon applicant providing street frontage improvements to SW Evans Street. Applicant provided a geotechnical report, which was reviewed by the City, indicating that the 7,500 square-foot lot can be safely developed. Applicant proposes to collect stormwater on individual lots and within the street frontage improvements in flow-through planters, then discharged to a public stormwater main extension to be installed in SW Evans Street. This extension will connect to an existing facility located in SW 19th Avenue.

This application is reviewed through a Type III procedure because: (1) the site is in a Residential zone and (2) four lots are proposed within a Potential Landslide Hazard Area (see 33.660.110). For purposes of 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 (See ORS 92.010).

Relevant Approval Criteria:

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

- 33.660.120 Approval Criteria for Land Divisions in Open Space and Residential Zones

II. ANALYSIS

Site and Vicinity: The property subject to this application (commonly referred to as 1834-1838 SW Evans Street, Portland, Oregon – hereafter the “Subject Property”) is a vacant rectangular site located on the south side of SW Evans Street. The Subject Property slopes downhill to the south from its street frontage. There are no “non-exempt” trees located on the Subject Property at this time. Mr. Kendall, a person who testified at the hearing, suggested that a single tree was located on the Subject Property at some time in the past, but was cut down by the current owner of the Subject Property. Mr. Cole, the BDS staff planner who prepared the staff recommendation (Exhibit H.2) testified at the hearing that no tree was present during his site investigation and further, he reviewed aerial photos for a “couple of years” in the immediate past and observed no trees on the Subject Property. The properties adjacent to this site are developed with a single family residence to the east and a single family/duplex to the west. The properties across SW Evans Street to the north are developed with single family residences. The property immediately to the south of the site is developed with a multi-dwelling residential development. The larger neighborhood is characterized by a mix of single family and multi-dwelling residential developments, with commercial activity fronting on SW Barbur Boulevard.

Zoning: The R2 designation is a multi-dwelling zone that is intended to create and maintain higher density residential neighborhoods. The zone implements the Comprehensive Plan policies and designations for multi-dwelling housing.

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

Agency and Neighborhood Review: A Notice of Proposal in your Neighborhood was mailed on January 28, 2009.

1. Agency Review: Several service Bureaus and agencies responded to this proposal. (Exhibits E). The service bureau/agency comments are addressed under the appropriate criteria for review of the proposal.

2. Neighborhood Review: No written responses were received from either the Neighborhood Association or notified property owners in response to the proposal prior to the issuance of the BDS staff recommendation (Exhibit H.2). Mr. Kendall, a property owner nearby the Subject Property, testified at the public hearing in opposition to the application. Mr. Kendall expressed concern, at the hearing, regarding the cutting down of a tree on the site, the validity of granting an additional unit through the application of the Amenity Bonus (33.120.265), a possible spring on the Subject Property, and that the approval of the application will impact the single family character of the neighborhood. Mr. Kendall also stated that Evans Street was not paved by the City, but rather by the surrounding neighbors. The Hearings Officer will address, if relevant to applicable approval criteria, Mr. Kendall’s concerns later in this decision.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

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

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

Criterion	Code Chapter	Topic	Applicability Findings
A	33.612	Lots	Applicable - See findings below
B	33.630	Trees	Not applicable - No significant trees or trees in excess of 6 inches in diameter located fully on the site.
C	33.631	Flood Hazard Area	Not applicable - The site is not within the flood hazard area.
D	33.632	Potential Landslide Hazard Area	Applicable - See findings below.
E	33.633	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed.
F	33.634	Recreation Area	Not applicable - This is not required where the proposed density is less than 40 units.
G	33.635 .100	Clearing and Grading	Applicable - See findings below.
G	33.635 .200	Land Suitability	Applicable - See findings below.
H	33.636	Tracts and Easements	Applicable - See findings below.
I	33.639	Solar Access	Not applicable - The proposed development is for something other than single-dwelling detached homes.
J	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
K	33.641	Transportation Impacts	Applicable - See findings below

Criterion	Code Chapter	Topic	Applicability Findings
L	33.651 - 33.654	Services and Utilities	Applicable - See findings below

Applicable Approval Criteria are:

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

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

Density Standards

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

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

The total site area shown for the Subject Property on the applicant’s survey is 7,480 square feet. Site area devoted to streets is subtracted from the total site area in order to calculate the minimum and maximum density. While no new streets or public street dedications are proposed with this land division, there has been some indication from the Bureau of Transportation that an additional one-foot dedication *may* be required along the frontage of this project, to adequately size the driveway curb cuts and the public stormwater facilities. Therefore, a density calculation has been done both with and without a one-foot, right-of-way dedication.

In this case, Lots 1 through 4 on the Subject Property are proposed for single-dwelling attached development. Therefore, the density requirements for this site are calculated as follows:

Minimum = N/A: There is no minimum density applied to properties that fall within a Potential Landslide Hazard Area.

Maximum = 7,480 site area ÷ 2,000 (maximum density from Table 120-3) = 3.74 (which rounds down to a maximum of 3 units, per 33.930.020.B).

or with one-foot street dedication

Maximum = (7,480 site area- 75 square feet street dedication) ÷ 2,000 (maximum density from Table 120-3) = 3.70 (which rounds down to a maximum of 3 units, per 33.930.020.B).

The applicant is proposing four lots on the Subject Property. In order to achieve this fourth unit of density the applicant is proposing to comply with the provisions of Code Section 33.120.265, *Amenity Bonuses*. Opponent Kendall suggested that this application did not satisfy the requirements of 33.120.265. This Code Section permits additional density in exchange for enhanced levels of amenities that improve the livability of multi-dwelling developments for their residents and promote family-oriented, multi-dwelling developments. The Subject Property is zoned R2 – a multi-dwelling zone. The Hearings Officer finds that 33.120.265 may be applied, if the requirements are met, to a development application on the Subject Property.

The applicant initially committed to the following enhancements with the corresponding percentage increase in density as allowed by Code Section 33.120.265.

1. Three Bedroom Units: At least 20% of the units (1 dwelling unit) will be a three-bedroom unit. This allows for a **10%** density increase per Code Section 33.120.265 C.3.
2. Sound Insulation: Interior noise reduction standards required by Code Section 33.120.265.C.5 will be met. This allows for a **10%** density increase.
3. Crime Prevention: All units will have security features that comply with items 1-6 of the Residential Security Recommendations of the Portland Police Bureau. This allows for a **10%** increase in density by Code Section 33.120.265.C.6. This application has been reviewed and approved by the Police Bureau. (See attachment E-7)
4. Larger Required Outdoor Area: To achieve the additional **5%** density allowed by Code Section 33.120.265.C.8, the development is providing an additional 96 square-feet of outdoor area per dwelling unit over and above the requirements of 33.120.240 Required Outdoor Area. Including the Amenity Bonus, a minimum of 144 square-feet of outdoor area per dwelling unit must be provided.

Once the four bonus density options are combined above, the development would be eligible for a 35% increase in density. Three dwelling units allowed by zone multiplied by the 1.35 bonus density adjustment equal 4.05 dwelling units. 4.05 is rounded down and results in four dwelling units allowed.

Prior to the public hearing the BDS staff representative, Mr. Cole, submitted a memo (Exhibit H.3) into the record. This memo conveyed a request by the applicant not to be “locked in” to the above specific amenities, but suggested a condition of approval requiring that the applicant be given flexibility to select from all of the Amenity Bonus options, so long as the chosen Amenity Bonus options added up to at least 35%. Such approval, according to Mr. Cole and his memo (Exhibit

H.3), would require applicant to demonstrate, consistent with 33.120.265, Amenity Bonuses of at least 35% to permit four lots. The Hearings Officer reviewed Exhibit H.3 and also 33.120.265. The Hearings Officer concluded that Amenity Bonuses, per 33.120.265 B.1, may be applied in this case. The Hearings Officer finds that documentation of the specific bonuses is required “prior to the issuance of building permits for the bonus units.” (33.120.265 B.4) The Hearings Officer could find no prohibition in 33.120.265 to granting the flexibility to an applicant as described in Exhibit H.3. The Hearings Officer finds that so long as documentation to satisfy 33.120.265 is submitted and approved by the Bureau of Development Services prior to the issuance of building permits, 33.120.265 may be satisfied.

Mr. Cole, in Exhibit H.3, suggested that the “chosen amenity option will still need to be identified prior to recording final plat and included in the recorded covenant.” Applicant, through its representative, did not object to Mr. Cole’s suggestion that the requirements of 33.120.265 be documented prior to the recording of the final plat. Therefore, the Hearings Officer finds in this case, finds that the density requirements, permitting the fourth dwelling unit, be required of applicant prior to the recording of the final plat. The Hearings Officer finds that if such documentation is not provided prior to the final plat, then only three lots would be permitted to satisfy the maximum density requirements of these approval criteria.

According to Code Section 33.120.265. B.6. a covenant must be recorded with this land division requiring that the above described bonus options are implemented at time of building permit issuance, and continue for the duration of the project.

In this zone, there are no minimum lot area requirements for lots designated for attached houses, detached houses, or duplexes. For this reason, it is necessary to condition the minimum and maximum density allowance on each lot in the land division, to avoid further division of lots in the future that could result in non-compliance with the overall density requirements of the site as it exists in this proposal. Each lot has a minimum and maximum density of One (1) unit.

The Hearings Officer finds that subject to compliance with the provisions of the Amenity Bonus standards described above, this project meets density requirements.

Lot Dimensions

The lot dimensional standards ensure that: (1) Each lot has enough room for development that meets all the requirements of the zoning code; (2) Lots are an appropriate size and shape so that development on each lot can be oriented toward the street as much as possible; (3) The multi-dwelling zones can be developed to full potential; and (4) Housing goals for the City are met.

The dimensions of the proposed lots as compared to the required lot dimension standards are shown in the following table (this information is found in Chapter 33.612 of the Zoning Code):

	R2 Zone Requirement	Proposed Lot 1	Proposed Lot 2	Proposed Lot 3	Proposed Lot 4
Lots for Attached or Detached Houses					
Minimum Lot Area	1,600 sf	2,141	1,601 sf	1,601 sf	2,137 sf
Minimum Lot Width*	None	21.5 ft	16 ft	16 ft	21.5 ft
Minimum Lot Depth	None	99.78 ft	99.78 ft	99.74 ft	99.62 ft
Minimum Front Lot Line	10 ft	21.5 ft	16 ft	16 ft	21.5 ft

*Width is measured from the midpoints of the side lot lines.

The findings above describe how the applicable lot standards are met. The Hearings Officer finds that this approval criteria is 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 site is located within the Potential Landslide Hazard Area. The approval criteria state that the lots, buildings, services, and utilities must be located on the safest part of the Subject Property so that the risk of a landslide affecting the site, adjacent sites, and sites directly across a street or alley from the site is reasonably limited. In order to evaluate the proposal against this criteria, the applicant has submitted a geotechnical evaluation of the Subject Property and proposed land division, and an addendum dated December 15, 2008 both prepared by a Certified Engineering Geologist and a Geotechnical Engineer (Exhibit A-3). These documents were evaluated by the Site Development Division of the Bureau of Development Services, the City agency that makes determinations regarding soil stability.

The applicant's geotechnical evaluation indicates that the Subject Property "is considered to have a low susceptibility to potential landslide hazards and site specific geotechnical constraints for the

proposed layout of the development are not anticipated”.(Exhibit A.3) The proposed land division will result in lots, buildings, services, and utilities that will not significantly increase the risk of landslide potential on the site or other properties in the vicinity of the site. In addition, the geotechnical evaluation endorsed the applicant's proposed method of stormwater disposal at the Subject Property, indicating it will not have a significant detrimental impact on the slope stability on or around the Subject Property. This conclusion was reached because the majority of stormwater will not be disposed on the site itself, but will be treated and discharged into public storm sewer as discussed later in this decision under the findings for "Stormwater Management Approval Criteria." The remaining stormwater runoff will be minimized through the use of pervious pavers.

Site Development concurred with the findings of the applicant's geotechnical report and addendum. Specifically, Site development approves of flow-through planters discharging to the new public storm sewer and the use pervious pavers as a stormwater management strategy for the Subject Property. The Hearings Officer finds this criterion is met.

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

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

33.635.100 – Clearing and Grading

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

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

In this case, the Subject Property is located in the Potential Landslide Hazard Area therefore, the clearing and grading associated with preparation of the lots must occur in a way that will limit erosion concerns. Grading associated with the development of the Subject Property will primarily involve excavating for the installation of street improvements, installation of foundations of the new houses and trenching for the utilities. No mass grading of the Subject Property is proposed to alter

the existing contours to complete the land division itself. Therefore, no specific grading plan has been submitted as a component of this land division in the application materials. Separate grading plans will be required in conjunction with both the street improvements and any future building permits.

Stormwater runoff from the lots will be appropriately managed by directing stormwater to flow-through planters, which will treat stormwater for quality and flow. This stormwater will subsequently be discharged to a new stormwater main segment that the applicants will construct in the SW Evans Street right-of-way. This will assure that the runoff will not adversely impact adjacent properties (see detailed discussion of stormwater management later in this decision). Topsoil storage and general stockpiling on the Subject Property should only occur if it would not create any additional erosion concerns as recommended by the geotechnical engineer.

At the time of building permit submittal on the individual lots a clearing, grading and erosion control plan will be submitted to the Site Development Section of the Bureau of Development Services. Site Development will review the grading plan against the applicant's Landslide Hazard Study, as well as any additional geotechnical information required at the time of permit submittal to assure that the grading will not create any erosion risks. The Hearings Officer finds this criterion is met.

33.635.200 – Land Suitability

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

The Subject Property is currently in residential use and there is no record of any other use in the past. As indicated above, a geotechnical report has been submitted indicating that there are no geological hazards present that would prevent the successful development of the Subject Property. Therefore, there are no anticipated land suitability issues and the new lots can be considered suitable for new development. The Hearings Officer 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.**

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

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

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

- A 10' wide Private Sanitary Sewer Easement is required across the front (northern) portions of Lots 1-4, for a private sanitary sewer manhole and private sanitary sewer lines that will connect each lot to the public sanitary sewer main located in SW Evans Street.
- The proposed development of the Subject Property includes two pairs of shared driveways. These shared driveways are shown to be 20-feet wide on-site. (Exhibit C-2). If subsequent designs indicate a shared drive less than 18' in width, then reciprocal access easements may be required. Such easements should be shown on the final plat accompanied by a plat note and supported by a Maintenance Agreement.
- The proposed development is showing one shared stormwater flow-through planter shared by Lots 2 and 3 (Exhibit C-2). If final designs continue to incorporate such a shared facility, then it shall be placed within a shared stormwater facility easement accompanied by a plat note and supported by a Maintenance Agreement.

As stated in Section 33.636.100 of the Zoning Code, Maintenance Agreements will be required describing maintenance responsibilities for the easement described above and facilities within that area. This criterion can be met with the condition that a Maintenance Agreement be prepared and recorded with the final plat. In addition, the plat must reference the recorded Maintenance Agreement with a recording block, substantially similar to the following example:

"A Declaration of Maintenance Agreement for a (name of facility) has been recorded as document no. _____, Multnomah County Deed Records."

With the conditions of approval discussed above, the Hearings Officer finds that this criterion is met.

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

The relevant approval criteria of Chapter 33.641 are found in the two paragraphs below.

33.641.020. The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Evaluation factors include: street capacity and level-of-service; vehicle access and loading; on-street parking impacts; the availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes.

33.641.030. The applicant may meet the criterion in Section 33.641.020, above, by including mitigation measures as part of the land division proposal. Mitigation measures must be acceptable to the City Engineer and may include providing transportation demand management measures, an access management plan, constructing streets or bicycle, pedestrian, or transit facilities on or off the site or other capital improvement projects such as traffic calming devices.

Findings: The regulations of Chapter 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary.

The Subject Property has approximately 75 feet of frontage on SW Evans Street, which is classified as a local service street for all modes in the Transportation Element of the Comprehensive Plan. Tri-Met provides transit service approximately 56 feet from the Subject Property on SW Barbur Boulevard via buses 12 and 94X. Parking is currently allowed on both Sides of SW Evans Street as permitted by the graveled shoulder. The Subject Property is currently vacant and there are no existing off-street parking spaces on the site. SW Evans Street is improved with a paved roadway and a gravel shoulder on both sides. There are no curbs, planter strips, or sidewalks. The applicants submitted a Transportation Impact Study by Kelly Engineering. (Exhibit A-5). This document analyzed impacts the estimated 42 vehicular trips/day will have on the surrounding street network, and concluded that this development will have a “negligible impact on the surrounding street network.” Applicant’s traffic report was reviewed and accepted by the Portland Bureau of Transportation (PDOT) in terms of the methodology and conclusions. Specifically, PDOT accepted the assumed directional split in peak-hour traffic to and from the Subject Property, the trip generation factors, and the conclusion that the additional traffic from this development will not cause the surrounding street network to fall below adopted levels-of-service. (See Exhibit E- 2 for detail). Based upon PDOT review and approval of the traffic impacts created by this application, the Hearings Officer finds that this approval criterion is met.

Portland Transportation also uses accepted civil and traffic engineering standards to determine if specific street improvements are needed adjacent to new developments to safely and efficiently serve motor vehicles, pedestrians and bicyclists. In this case, PDOT has determined that curb and sidewalk improvements must be made in order to ensure that safe vehicular and pedestrian travel is possible within and adjacent to the proposed development. PDOT concluded that sufficient right-of-way width is available to accommodate improvements to City standards, including a seven-foot wide stormwater planter without the need for additional right-of-way dedication. With those improvements, four dwelling units can be safely, according to PDOT, be served by this existing street without having any significant impact on the level-of-service provided. If subsequent engineering documents show a need for a flow-through planter wider than seven feet, then additional right-of-way dedication may be required.

The Hearings Officer finds that this criterion is met with the condition that curb and sidewalk improvements are made. An optional allowance for a one-foot dedication of right-of-way is included to provide flexibility at time of final plat if final engineering indicates that additional flow-through planter width is necessary.

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

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

- The water standards of 33.651 were verified through BDS staff. An existing 4” inch water main is available to serve the proposed development in SW Evans Street. (Exhibit E-3).
- The sanitary sewer standards of 33.652 were verified through BDS staff. There is an existing 8” CSP public sanitary sewer located in SW Evans Street available to serve the proposed development. (Exhibit E-1).

The applicant proposes to construct a private sanitary sewer manhole at the front of lot 2 and use this to connect all four lots to the public sewer. Such a configuration is allowed by the Plumbing Code, but this facility, together with the private sanitary sewer lines must be placed within a private sanitary sewer easement and supported by both a plat note and recorded Maintenance Agreement. Such agreement must be submitted for approval by BDS and the City Attorney, and must be recorded with the Final Plat.

- The technical standards of Chapter 33.653 related to stormwater management were verified through BDS staff. The findings below for the Stormwater Management Approval Criteria of 33.653.020 incorporate a discussion of how the technical standards have been satisfied by the applicant's stormwater proposal.

33.653.020 Stormwater Management Approval Criteria

A. If a stormwater tract is proposed or required, an adequate amount of land and an appropriate location must be designated on the Preliminary Plan; and

B. The application must show that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.

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

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

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

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

The applicant proposed stormwater management methods (Exhibits A-1, A-4 & C-2) and the Bureaus have responded as follows (Exhibits E-1 and E-5):

- **Public Street Improvements:** As a condition of this land use approval, the Office of Transportation requires the applicant to improve the frontage of the site to City standards, with curbs and sidewalks (discussed earlier in this report). Stormwater from these new impervious areas will be directed to flow-through planters located between the curb and sidewalk, before being discharged into a proposed inlet connecting to a new segment of public stormwater main. The applicants will construct this public storm sewer. This storm sewer segment, in turn will connect with an existing public facility located in SW 19th Avenue. BES has indicated that flow-through planters with incidental infiltration is an acceptable method of public stormwater disposal at this site. The agency has confirmed that proposed flow-through planters can be adequately sized, and that the proposed preliminary design is adequate to provide infiltration for the quantity of water generated from the new impervious areas. Note: Conditions of approval provide for additional right-of-way dedication if final engineering reveals that additional public planter width is required.

The Bureau of Environmental Services (BES) requires a Public Works Permit for the construction of such planter facilities and the storm sewer main. The applicant must provide engineered designs and financial performance guarantees for these improvements prior to final plat approval.

- **Lots 1-4** The volume of stormwater run-off from the site will be minimized through the use of pervious pavers for the driveways serving the four lots. The remaining stormwater from these lots (primarily from the roofs) will be directed to flow-through planters that remove pollutants and suspended solids. The water will discharge from the planters to the proposed storm sewer in SW Evans Street. Each lot has sufficient size to accommodate planter boxes, and BES has indicated that the treated water can be directed to the proposed storm sewer. The applicants have shown individual planter boxes to serve Lots 1 and 4, and a shared facility to serve Lots 2 and 3. If final engineering retains such a shared facility, then a shared stormwater facility easement will be required to be shown on the final plat accompanied by a plat note and supporting Maintenance Agreement.

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

Right-of-Way Approval Criteria

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

Code Section	Topic	Applicability Findings
33.654.110.B.1	Through streets and pedestrian connections	Applicable - See findings below
33.654.110.B.2	Dead end streets	Not applicable - No dead end streets are proposed.
33.654.110.B.3	Pedestrian connections in the I zones	Not applicable - The site is not located within an I zone.
33.654.110.B.4	Alleys in all zones	Not applicable – No alleys are proposed or required.
33.654.120.C.1	Width of the street right-of-way	Applicable - See findings below.
33.654.120.C.3.c	Turnarounds	Not applicable – No turnarounds are proposed or required.

Code Section	Topic	Applicability Findings
33.654.120.D	Common Greens	Not applicable – No common greens are proposed or required.
33.654.120.E	Pedestrian Connections	Not applicable – There are no pedestrian connections proposed or required.
33.654.120.F	Alleys	Not applicable – No alleys are proposed or required.
33.654.120.G	Shared Courts	Not applicable – No shared courts are proposed or required.
33.654.130.A	Utilities	Applicable - See findings below.
33.654.130.B	Extension of existing public dead-end streets and pedestrian connections	Not applicable – There are no existing public dead-end street or pedestrian connections adjacent to the site.
33.654.130.C	Future extension of proposed dead-end streets and pedestrian connections	Not applicable – No street extensions are required to serve abutting sites that are further dividable.
33.654.130.D	Partial rights-of-way	Not applicable – No partial public streets are proposed or required.

Applicable Approval Criteria are:

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

- a. Through streets should generally be provided no more than 530 feet apart, and pedestrian connections should generally be provided no more than 330 feet apart. Through street and pedestrian connections should generally be at least 200 feet apart;**
- b. Where the street pattern in the area immediately surrounding the site meets the spacing of subparagraph a., above, the existing street pattern should be extended onto the site;**
- c. Characteristics of the site, adjacent sites, and vicinity, such as: (1) Terrain; (2) Whether adjacent sites may be further divided; (3) The location of existing streets and pedestrian connections; (4) Whether narrow frontages will constrain creation of a through street or pedestrian connection; (5) Whether environmental overlay zones interrupt the expected path of a through street or pedestrian connection; and (6) Whether existing dwelling units on- or off-site obstruct the expected path of a through street or pedestrian connection. Alternative locations or designs of rights-of-way should be considered that avoid existing dwelling units. However, provision of through**

streets or pedestrian connections should take precedence over protection of existing dwelling units where the surrounding transportation system will be significantly affected if a new through street or pedestrian connection is not created;

- d. Master street plans for the area identified in Goal 11B of the Comprehensive Plan;**
- e. Pedestrian connections should take the most direct route practicable. Users should be able to see the ending of the connection from the entrance point, if possible.**

Findings: The Subject Property is located within a triangular block segment bounded on the north by SW Evans Street, to the west by SW 19th Avenue, and on the diagonal to the south and east by SW Barbur Boulevard. The distance between through street rights-of-way along SW Evans Street is approximately 320 feet east to west. A through street could be required in this location according to criteria a. above. However, the Subject Property is only located approximately 50 feet east of SW 19th Avenue and provision of an additional right-of-way in this location would conflict with criteria a above, that states through street connections should generally be at least 200 feet apart. In addition, the Subject Property is located within the Portland Master Street Plan for the Southwest District and is not identified as an area requiring additional right-of-way connections. Therefore, the proposal is consistent with the Master Street Plan. Finally, a north/south through street at this location would terminate at SW Barbur Boulevard, an arterial street where additional street intersections would increase conflicts with traffic capacity and safety.

For the reasons described above, the Hearings Officer finds that this criterion is met.

33.654.120.C.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: SW Evans Street is a 60-foot right-of-way in front of this development. This allows for 16 feet (from centerline) paving width, a 0.5-foot curb, a 7-foot wide stormwater management planter and a 6-foot wide sidewalk. These dimensions meet City standards for street and pedestrian improvements for a local service street, and the planter widths have been tentatively approved by the Bureau of Environmental Services. This criterion is met.

Utility Location, Extension of Streets, Partial Rights-of-Way

33.654.130 Additional Approval Criteria for Rights-of-Way

- A. Utilities. Utilities must be located within rights-of-way or utility easements that are adjacent to rights-of-way to the maximum extent practicable. Utility easements up to 15 feet in width may be required adjacent to rights-of-way.**

Findings: Utilities are defined in the Zoning Code as telephone, cable, natural gas, electric, and telecommunication facilities. Any easements that may be needed for private utilities that cannot be

accommodated within the SW Evans Street right-of-way can be provided on the final plat. At this time, no specific utility easements adjacent to the street right-of-way have been identified as being necessary. Therefore, this criterion is met.

DEVELOPMENT STANDARDS

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

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

Development Standards: Development standards are clear and objective regulations (for example: building setbacks; number of required parking spaces; and maximum floor area). Compliance with development standards is reviewed as part of the administrative permitting process and are not considered to be discretionary reviews. Development standards that are not relevant to the land division review, have not been addressed in the decision, but will have to be met at the time that each of the proposed lots are developed. This is particularly relevant to this land division because **proposals that include Amenity Bonuses to achieve additional density such as this project are not eligible for adjustments from base zone development standards (33.120.265.B.4.)**

Development standards that will be applicable to these lots include, but are not limited to:

33.120.200-315 Development Standards in Multi-Dwelling Zones including limitations to the width of garage walls; maximum building coverage & street lot-line setbacks.

33.266.120 Parking Development Standards for Houses and Duplexes including parking locations, front yard vehicular area limitations and parking space size.

OTHER TECHNICAL REQUIREMENTS

Technical decisions have been made as part of this review process. These decisions have been made based on other City Titles, adopted technical manuals, and the technical expertise of appropriate service agencies. These related technical decisions are not considered land use actions.

If future technical decisions result in changes that bring the project out of conformance with this land use decision, a new land use review may be required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

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

As authorized in Section 33.800.070 of the Zoning Code conditions of approval related to these technical standards have been included in the Administrative Decision on this proposal. Others will be enforced at subsequent development permitting.

- The Fire Bureau indicates that they are supportive of the proposed land division. Subsequent construction on the proposed lots must document that they are served by an approved fire accessway, or the height of the buildings will be limited to 30’ as measured to the gutter.

III. CONCLUSIONS

The applicant has proposed a four lot land division, as shown on the attached preliminary plan. (Exhibit C-1). As discussed in this decision, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are: compliance with development in Landslide Hazard Area criteria; street and utility improvements and compliance with Amenity Bonus provisions.

One person spoke, at the hearing, in opposition (Kendall). Mr. Kendall’s primary concern related to the permitting of an additional lot under the provisions of the Amenity Bonus. The Hearings Officer reviewed section 33.120.265 and found that the Subject Property is eligible for increased density under the Amenity Bonus. Further, the Hearings Officer found that so long as, prior to final plat approval, the applicant satisfies 33.120.265 to the extent of 35% or more bonus, and records a

covenant (to be reviewed and approved by the City Attorney and the Bureau of Development Services) the density requirements are satisfied. A condition (condition 4 of the approval below) is included to assure satisfaction of the Amenity Bonus provisions.

With conditions of approval that address these requirements the Hearings Officer found this proposal can be approved.

IV. DECISION

Approval of a Preliminary Plan for a four lot land division (subdivision) that will result four attached dwelling units as illustrated with Exhibit C-1& C-2 subject to the following conditions:

A. The final plat must show the following:

1. A private sanitary sewer easement, for the benefit of Lots 1-4, shall be shown and labeled over the relevant portions of Lots 1-4.
2. A recording block for each of the legal documents such as Maintenance Agreement(s) and Declarations of Covenants, as required by Conditions C-3 and C-4 below. The recording block(s) shall, at a minimum, include language substantially similar to the following examples:

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

“A Covenant requiring the construction and maintenance of certain building improvements has been recorded as document no. _____, Multnomah County Deed Records.”

B. The Final Plat may show the following:

1. An additional one-foot of right-of-way dedication may be shown on the final plat if such dedication is necessary to support the design and construction of the public stormwater management system. If such dedication is required, then property lines may be adjusted to ensure that lot size will not fall below the 1600 square-feet required by the R2 zone.
2. Reciprocal Access Easements shall be shown and labeled on the final plat, centered on the common property line between Lots 1 and 2, and Lots 3 and 4 if driveway widths are to be less than 18-feet wide. The easement shall allow shared use of this area for all of the purposes that a driveway would be typically used for.

3. A shared stormwater facility easement shall be shown and labeled on the final plat if a shared soakage trench will provide stormwater management for development on Lots 2 and 3. Such an easement shall be accompanied by a plat note and supported by a Maintenance Agreement.

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

Streets

1. The applicant shall meet the requirements of the City Engineer for right-of-way improvements along the frontage of SW Evans Street. Driveway locations and widths shall be located. The applicant shall provide plans and financial assurances to the satisfaction of the Bureau of Transportation Engineering and Development Review, and the Bureau of Environmental Services (BES) for required street frontage improvements.

Utilities

2. The applicant shall meet the requirements of the Bureau of Environmental Services (BES) for extending a public storm sewer main in the SW Evans Street right-of-way. The public sewer extension requires a Public Works Permit, which must be initiated prior to final plat approval. In addition, the applicant must provide engineered designs, and performance guarantees for the sewer extension to BES prior to final plat approval.

Required Legal Documents

3. Maintenance Agreement(s) shall be executed for the reciprocal access, private stormwater management and the Private Sanitary Sewer Easement areas described in Conditions A-1, B-1 and B-2 above. These agreement(s) 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(s) must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
4. A covenant complying with the standards of 33.700.060 must be recorded ensuring that the amenities proposed to receive an Amenity Bonus for this land division in conformance with Code Section 33.120.265 are enforced at time of building permit. Amenity Bonus options chosen from Code Section 33.120.265 C1 through C8 equaling or exceeding a 35% bonus as calculated according to 33.120.265B, must be included in the covenant as required components of construction on the development site. The covenant must be reviewed and approved by the City Attorney and the Bureau of Development Services, prior final plat approval..

Other requirements

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

1. The minimum and maximum density for the lots in this land division are as follows:

Lot	Minimum Density	Maximum Density
1	1	1
2	1	1
3	1	1
4	1	1

2. The applicant must document that the proposed construction is served by an approved fire accessway (Fire Bureau) or the height of the new structures shall be limited to 30 feet, measured to the gutter line.
3. Development of these four lots must comply with Amenity Bonus provisions 33.120.265 C: 3. and condition C.4 above.

Gregory J. Frank, Hearings Officer

Date

Application Determined Complete: December 30, 2008
Report to Hearings Officer: February 6, 2009
Decision Mailed: February 24, 2009
Last Date to Appeal: 4:30 p.m., March 10, 2009
Effective Date (if no appeal): March 11, 2009 (Decision may be recorded on this date)

Conditions of Approval. This project may is 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.

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, file the appeal at the Development Services Center on the first floor. Between 3:00 p.m. and 4:30 p.m., file the appeal at the Reception Desk on the 5th Floor. **An appeal fee of \$4,070.00 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: You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner or applicant. If you or anyone else appeals the decision of the Hearings Officer, 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.

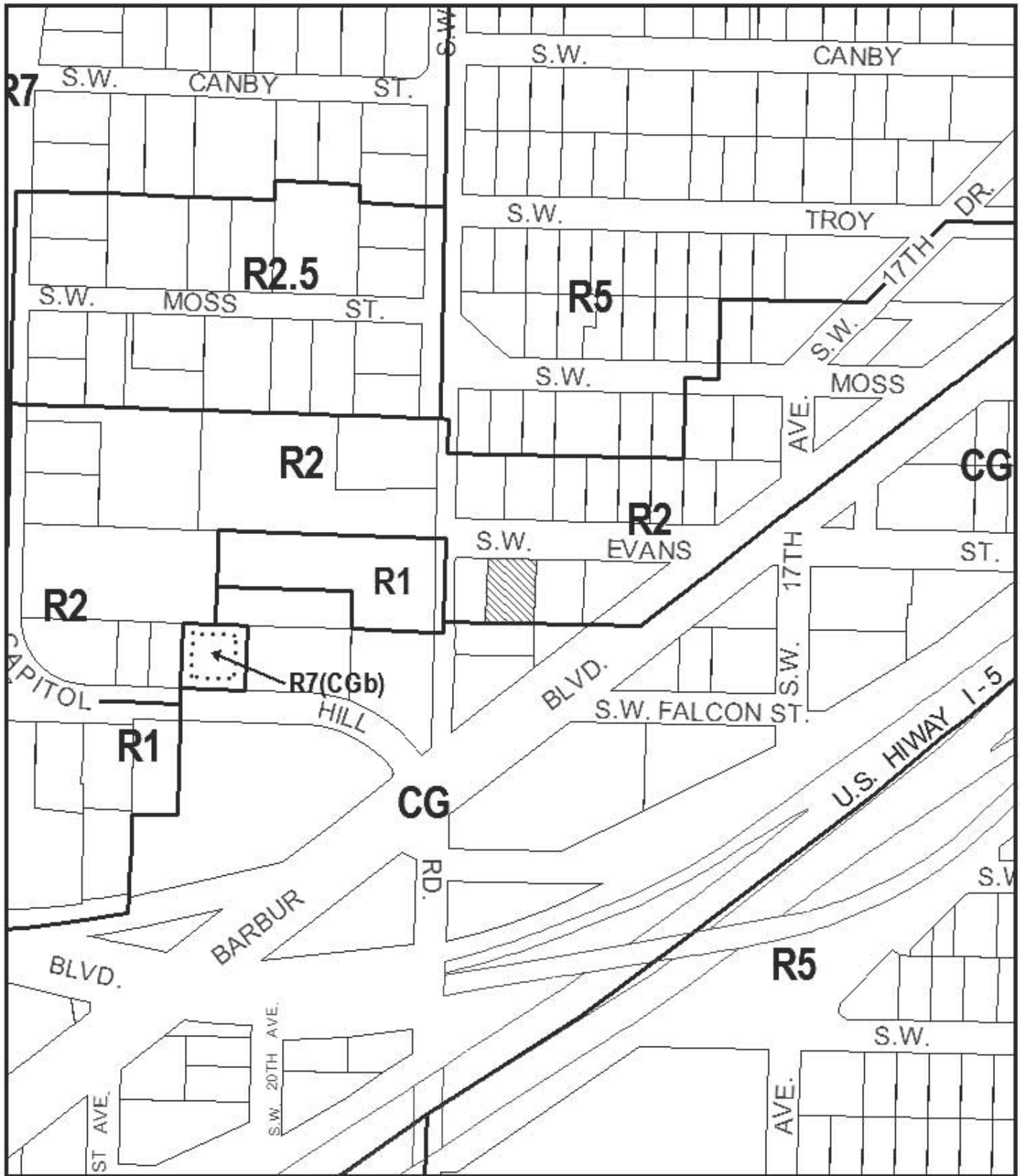
Neighborhood Associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver,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

BDS 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 prior to filing your appeal; please allow three working days 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.**

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittal
 - 1. Applicants Narrative
 - 2. Supplemental Applicant Letter dated December 29, 2009
 - 3. Geotechnical Review of Potential Landslide Hazard by Geo Pacific dated September 22, 2008 w/ 12/15/08 Pervious Pavement supplement letter
 - 4. Preliminary Stormwater Report by Pinnacle Engineering dated December 22, 2008
 - 5. Transportation Impact Survey by Kelly Engineering dated December 4, 2008
- B. Zoning Map (**attached**)
- C. Plans & Drawings
 - 1. Site Plan (**attached**)
 - 2. Preliminary Utility Plan
 - 3. Topographic Survey
- D. Notification information
 - 1. Request for response
 - 2. Posting letter sent to applicant
 - 3. Notice to be posted
 - 4. Applicant's statement certifying posting
 - 5. Mailing list
 - 6. Mailed notice
 - 7. Early neighborhood 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
 - 7. Police Bureau
- F. Letters: None Submitted
- G. Other
 - 1. Original LUR Application
 - 2. Pre-application Conference Summary Report w/ attachments
 - 3. Incomplete letter
- H. Received in the Hearings Office
 - 1. Hearing Notice - Cole, John
 - 2. Staff Report - Cole, John
 - 3. Memo from Cole to Hearings Officer dated 2/18/09 - Cole, John
 - 4. PowerPoint Presentation - Cole, John



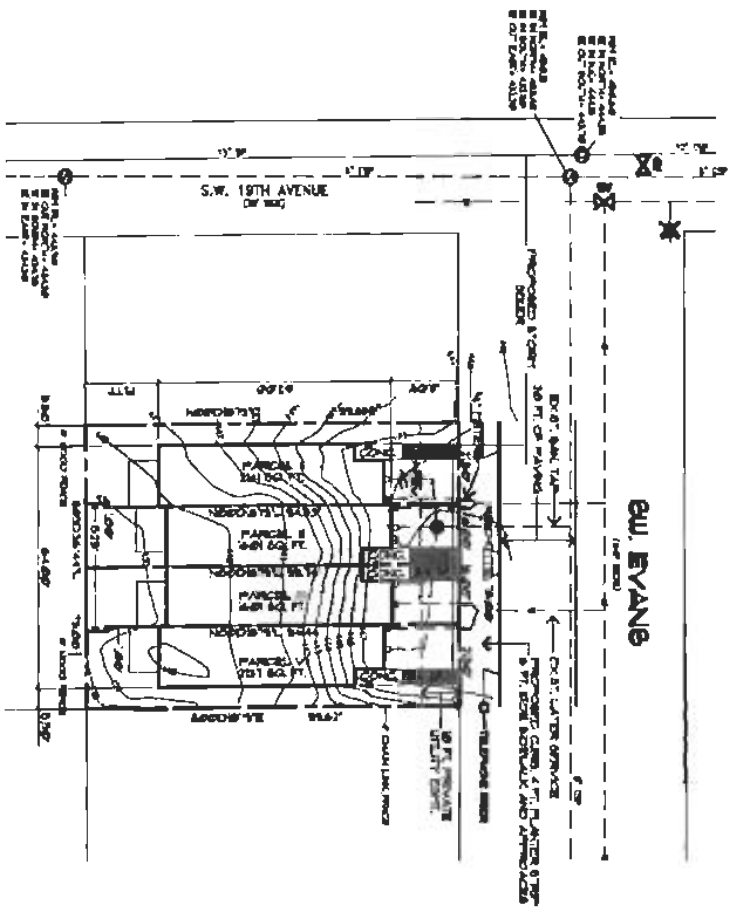
ZONING

 Site



File No.	LU 08-178184 LDS
1/4 Section	3827
Scale	1 inch = 200 feet
State_Id	1S1E21CA 8000
Exhibit	B (Nov 19,2008)

Preliminary
Plan
EVANS TOWNHOMES



LEGEND
 ■ K.O. - UNKNOWN PLANTING
 ■ UTM - UNKNOWN FOOTAGE SIGN

SITE DATA
 7425 S.W. 41ST AVE.
 7415 S.W. 39TH AVE.
 LANDSCAPE AREA

08-178184
 C-1

ROWELL
 Engineering and design, Inc.
 100 S.W. 10th Street, Suite 200
 Ft. Lauderdale, FL 33304
 Phone: 561-533-1111
 Fax: 561-533-1112

Narr Design
 Support Services, Inc.
 100 S.W. 10th Street
 Ft. Lauderdale, FL 33304
 Phone: 561-533-1111
 Fax: 561-533-1112

EVANS TOWNHOMES
 FOR
KEN RANDALL HOMES

EVANS

S1
 SHEET #