



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

1900 SW 4th Avenue, Suite 5000  
Portland, Oregon 97201  
503-823-7300  
Fax 503-823-5630  
TTY 503-823-6868  
[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** March 10, 2009  
**To:** Interested Person  
**From:** Rachael Hoy, Land Use Services  
503-823-0646 / [RachaelH@ci.portland.or.us](mailto:RachaelH@ci.portland.or.us)

## **NOTICE OF A TYPE I DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

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

### **CASE FILE NUMBER: LU 08-155579 LDP**

#### **GENERAL INFORMATION**

**Applicant:** Charles Stone, RP & Associates LLC  
211 NE Weidler St  
Portland, OR 97232-1155

**Representative:** Joe Ferguson,  
Ferguson Land Surveying  
646 SE 106th Ave  
Portland, OR 97216

**Site Address:** 6445 SE 87TH AVE  
**Legal Description:** LOT 1&2 BLOCK 4, ARLETA PK 2  
**Tax Account No.:** R036800770; **State ID No.:** 1S2E16CC 24100  
**Quarter Section:** 3639  
**Neighborhood:** Lents, contact Judy Welch at 503-771-4667.  
**Business District:** Eighty-Second Avenue, contact Ken Turner at 503-484-6225.  
**District Coalition:** East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

**Zoning:** R2.5a- Residential 2,500 with an 'a' overlay for Alternative Design Density

**Case Type:** LDP – Land Division Partition  
**Procedure:** Type I, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

**Proposal:**  
The applicant is proposing to divide a 5,385 square foot lot into two parcels. Parcel 1 will be 3,229 square feet with an existing house to remain. Parcel 2 will be 1,856 square feet. The applicant is showing a 3-foot dedication along SE Duke Street.

#### **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.**

This partition is reviewed through a Type I land use review because: (1) the site is in a residential zone; (2) fewer than four lots are proposed; (3) none of the lots, utilities, or services are proposed within a Potential Landslide Hazard or Flood Hazard Area, and; (4) no other concurrent land use reviews (such as an Adjustment, Design Review, or Environmental Review) are requested or required (see 33.660.110).

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010).

**ANALYSIS**

**Site and Vicinity:** The site is a corner lot located at the intersection of SE 87<sup>th</sup> Avenue and SE Duke Street. The site is relatively flat, and the surrounding neighborhood is characterized by single family residences on originally platted lots or on more recently subdivided properties.

**Zoning:** The zone R2.5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. The "a" overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood.

**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 November 24, 2008.

**1. Agency Review:** Several Bureaus and agencies have responded to this proposal. Please see Exhibits E for details. The comments are addressed under the appropriate criteria for review of the proposal.

**2. Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

**APPROVAL CRITERIA-****APPROVAL CRITERIA FOR 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
<b>A</b>	<b>33.611</b>	<b>Lots</b>	<b>Applicable - See findings below</b>
<b>B</b>	<b>33.630</b>	<b>Trees</b>	<b>Applicable - See findings below.</b>
C	33.631	Flood Hazard Area	Not applicable - The site is not within the flood hazard area.

<b>Criterion</b>	<b>Code Chapter</b>	<b>Topic</b>	<b>Applicability Findings</b>
D	33.632	Potential Landslide Hazard Area	Not applicable - The site is not within the potential landslide hazard area.
E	33.633	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed.
F	33.634	Recreation Area	Not applicable - This is not required where the proposed density is less than 40 units.
<b>G</b>	<b>33.635 .100</b>	<b>Clearing and Grading</b>	<b>Applicable - See findings below.</b>
<b>G</b>	<b>33.635 .200</b>	<b>Land Suitability</b>	<b>Applicable - See findings below.</b>
<b>H</b>	<b>33.636</b>	<b>Tracts and Easements</b>	<b>Applicable - See findings below.</b>
I	33.639	Solar Access	Not Applicable - Maintaining existing development on the site limits new parcel configuration (33.610.200 supercedes 33.639).
J	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
<b>K</b>	<b>33.641</b>	<b>Transportation Impacts</b>	<b>Applicable - See findings below</b>
<b>L</b>	<b>33.651 - 33.654</b>	<b>Services and Utilities</b>	<b>Applicable - See findings below</b>

**Applicable Approval Criteria are:**

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

**Findings:** Chapter 33.611 contains the density and lot standards applicable in the R2.5 zone. These density and lot dimension standards ensure that lots are consistent with the desired character of each zone while allowing lots to vary in size and shape provided the planned intensity of each zone is respected.

Density Standards

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

The method used to calculate density depends on whether a street is created as part of the land division, and whether the site is subject to certain environmental constraints.

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

Minimum = (5,385 square feet \* .80) ÷ 5,000 square feet = 0.86 (which rounds up to a minimum of 1 lots, per 33.930.020.A)

Maximum = 5,835 square feet ÷ 2,500 square feet = 2.33 (which rounds down to a maximum of 2 lots, per 33.930.020.B)

The applicant is proposing 2 lots. The density standards are therefore met.

Lot Dimensions

The lot dimension standards ensure that: (1) each lot has enough room for a reasonably-sized house and garage; (2) lots are of a size and shape that development on each lot can meet the development standards of the Zoning Code; (3) lots are not too large relative to the planned density; (4) each lot has room for at least a small, private outdoor area; (5) lots are compatible with existing lots; (6) lots are wide enough to allow development to orient toward the street; (7) lots don't narrow to an unbuildable width close to the street; (8) each lot has adequate access from the street; (9) each lot has access for utilities and services; and (10) lots are not landlocked.

	<b>R2.5 Zone Requirement</b>	<b>Proposed Parcel 1</b>	<b>Proposed Parcel 2</b>
Minimum Lot Area	1,600 sq. ft.	3229 sq.ft.	1,856 sq.ft.
Maximum Lot Area	NA		
Minimum Lot Width*	36 ft.	41 ft.	36 ft.
Minimum Lot Depth	40 ft.	64 ft.	52 ft.
Minimum Front Lot Line	30 ft.	41 ft.	36 ft.

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

\*Measurements and lot sizes above take into account a 3 foot dedication required by PDOT

With the conditions of approval described above, this criterion is therefore 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 requirements of this chapter.

The applicant has submitted an arborist report that inventories the trees within the land division site, evaluates their condition and specifies root protection zones (Exhibit A-2). Some trees have been exempted by the arborist because they are either too small, unhealthy, a nuisance species, located partially off the property or located within 10 feet of an existing structure to remain on the property. The inventory identifies the following tree on the site; which is proposed to be removed.

<b>Tree #</b>	<b>Species</b>	<b>Diameter (inches)</b>	<b>Significant? (On Table 630-1)</b>	<b>Exempt? (per 33.630.030)</b>	<b>To be retained?</b>	<b>RPZ (Root Protection Zone)</b>
<b>1</b>	Pear (Pryus spp.)	10-inches	No	No	No	10-feet

The proposal does not meet any of the tree preservation options in 66.630.100. The applicant proposes instead to use the mitigation options of 33.630.300:

**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.**

This site is less than 15,000 square feet in area. The applicant wishes to divide the site for detached housing, which is an allowed housing type in the R2.5 zone, the applicant can mitigate as an alternative option for the 10-inch Pear tree that will be removed. Preservation of the existing tree (10-inch Pear tree) on the site would prevent a land division that would result in a practicable arrangement of lots that could each contain a reasonable building area and still be able to meet the development standards of the R2.5 zone. Criterion C.4 above is met.

There is one, 10" Pear tree located on proposed parcel 2. Given the location of the tree and a 10 foot root protection zone, it would be difficult to preserve the tree and maintain enough room for a reasonable building site. The arborist has also indicated that the pear tree has reached its genetic potential and has proposed mitigation for a replacement tree. Therefore, the applicant has met Criteria A, because as many trees as possible will be preserved.

The applicant has submitted a tree mitigation plan that proposes the planting of one, new 2" tree along the frontage of parcel 1, the parcel with the existing house. The arborist has recommended that the replacement tree be planted along the frontage facing SE 87<sup>th</sup> Avenue so as not to interfere with the solar panel exposure on the south side of the house that faces SE Duke Street. The arborist has also provided a selection of trees that would be appropriate for this location. Parcel 2 will be required to meet T1 tree planting requirements (Section 33.248.020.H). The T1 tree standard requires at least 3 inches of tree diameter to be planted on lots that are 3,000 square feet or smaller. In this case, Parcel 2 is 1,856 square feet and will be required to plant 3" of new tree diameter on the new lot as part of the future building permit.

The mitigation plan provides for more caliper inches to be planted than Option 1 of the Tree Preservation Chapter would have required. Option 1 would require that 35% or 3.5 inches of the existing tree diameter on site be preserved. The applicant will be required to plant one, 2" tree on parcel 1 and a minimum of 3 inches (1.5 to 2" each tree) of new trees on Parcel 2 at the time of building permit to meet T1 requirements. A minimum of 5 inches will be required to be planted and preserved as part of this project.

Criteria B is met with conditions of approval including: 1) One, 2 inch tree will be planted on Parcel 1 prior to final plat approval. A Zoning Permit must be obtained, and receive final inspection approval verifying that this tree has been planted, and 2) Parcel 2 must meet T1 requirements at the time of building permit.

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

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

**33.635.100 – Clearing and Grading**

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

**Findings:** The regulations of Chapter 33.635 ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements, and limit the impacts of erosion and sedimentation to help protect water quality and aquatic habitat. In this case, the site is primarily flat, and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the site to make the new lots developable. In addition, there are no trees required to be preserved in the areas where new development on the site is anticipated. This criteria is met.

**33.635.200 – Land Suitability**

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

The site is currently in residential use, and there is no record of any other use in the past. As indicated above, the site is relatively flat and contains no known geological hazards. Therefore, there are no anticipated land suitability issues and the new lots can be considered suitable for new development. This criterion is met.

- H. Tracts and easements. The standards of Chapter 33.636, Tracts and Easements must be met;**

**33.636.100 Requirements for Tracts and Easements**

- A. Ownership of tracts. Tracts must be owned as follows unless otherwise specified in this Title or the land use decision:**
  - 1. The owners of property served by the tract, or by any other individual or group of people. When the tract is owned by more than one person it must be held in common with an undivided interest;**
  - 2. The Homeowners' Association for the area served by the tract;**
  - 3. A public or private non-profit organization; or**
  - 4. The City or other jurisdiction.**

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

- B. Maintenance agreement. The applicant must record with the County Recorder a maintenance agreement that commits the owners or owners' designee to maintain all elements of the tract or easement; however, facilities within the**

**tract or easement that will be maintained by a specified City agency may be recorded in a separate maintenance agreement. The maintenance agreement must be approved by BDS and the City Attorney in advance of Final Plat approval and must be submitted to the County Recorder to be recorded with the Final Plat. For a Planned Development not done in conjunction with a land division, the maintenance agreement must be submitted to the County Recorder to be recorded prior to issuance of the first building permit related to the development.**

**Findings:** The following easement is required for this land division:

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

The applicant applied for a plumbing code appeal (#5794) and was granted a 8.73 foot wide sewer easement area. (See Exhibit A6).

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

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

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

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

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

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

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

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

The project site has approximately 44 feet of frontage on SE 87<sup>th</sup> Avenue and 100 feet of frontage on SE Duke Street. SE 87<sup>th</sup> Avenue and SE Duke Street are classified as local service streets for all modes in the Transportation System Plan. SE Duke Street is also classified as a City Bikeway. Tri-Met provides transit service approximately 1,282-feet from the site on SE 82<sup>nd</sup> Avenue via bus 72. Parking is currently allowed on both sides on SE 87<sup>th</sup>

Avenue and on SE Duke Street. There is one driveway entering the site that provides access to off-street parking for the existing house.

SE 87<sup>th</sup> Avenue and SE Duke Street are fully improved with a paved roadway, curbs, and sidewalks. In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. In this case Portland Transportation has determined that additional sidewalk improvements must be made in order to ensure that safe pedestrian travel is possible within the proposed development. Portland Transportation will require a 3 foot dedication along SE Duke and an extension of the side walk so that there is a 6 foot sidewalk behind the existing power pole. With the improvements noted above, one additional dwelling can be safely served by this existing street without having any significant impact on the level of service provided.

This criterion is met, with the condition that sidewalk improvements are made, and the required right-of-way dedication is shown on the Final Plat.

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

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

- The water standards of 33.651 have been verified. An existing 12-inch water main is available in SE Duke Street. Water is available to serve the proposed development from the water main in SE Duke Street. Parcel 1 has an existing water service from that main. See Exhibit E-3 for more details.
- The sanitary sewer standards of 33.652 have been verified. There is an existing 12-inch public combination sewer located in SE 87<sup>th</sup> Avenue that can serve the sanitary needs of the proposed lots. Parcel 1 has an existing sewer service from that main. See Exhibit E-1 for more details. As a result of the proposed land division, the applicant must construct a new service branch for the proposed Parcel 2, and must provide an easement for the sewer line across a Parcel 1 on the Final Plat. The applicant was granted a reduced easement area of 8.73 feet wide through plumbing code appeal #5794 (Exhibit A3). A Maintenance Agreement for the easement must be submitted for approval by BDS and the City Attorney and must be recorded with the Final Plat. The new sewer connection that will be established for the house will require that all plumbing permits must receive final inspection approval prior to Final Plat approval.
- The technical standards of Chapter 33.653 related to stormwater management have been verified. The findings below for the Stormwater Management Approval Criteria of 33.653.020 incorporate a discussion of how the technical standards have been satisfied by the applicant's stormwater proposal.

**33.653.020 Stormwater Management Approval Criteria**

- A. If a stormwater tract is proposed or required, an adequate amount of land and an appropriate location must be designated on the Preliminary Plan; and**
- B. The application must show that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.**

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



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

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

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

The applicant has proposed the following stormwater management methods (Exhibit C-1), 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 SE Duke Street frontage of the site to City standards (discussed earlier in this report). An extension to the existing sidewalk is required, but the curb already exists. BES has indicated that the sidewalk must be constructed so that it will slope toward a vegetated area for stormwater runoff disposal, which meets the requirements of the Stormwater Management Manual.
- **Parcel 1:** The existing house has downspouts that are directed to the public combination sewer system in SE 87<sup>th</sup> Avenue as approved under plumbing permit #47736 dated 6/17/54. Site Development and BES have no objection to the existing stormwater disposal method for the existing house.
- **Parcel 2:** Stormwater from this lot will be directed to a drywell that will treat the water and slowly infiltrate it into the ground. This lot has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized home. Site Development has indicated conceptual approval of the drywell based on the review of additional infiltration testing provided by the applicant and the Groundwater Exploration report prepared by GeoPacific Engineering (Exhibit A4). Site Development indicated that the infiltration rate provided is extremely rapid and additional testing may be required at the time of building permit review.

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

### Right of Way Approval Criteria

Chapter 33.654 contains standards and approval criteria for rights of way. Due to the location of this site, 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

<b>Code Section</b>	<b>Topic</b>	<b>Applicability Findings</b>
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	Not applicable – No street, common green, shared court, or pedestrian connection is proposed.
33.654.120.C.3.c	Turnarounds	Not applicable – No turnarounds are proposed or required.
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.
<b>33.654.130.A</b>	<b>Utilities</b>	<b>Applicable - See findings below.</b>
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 site is located at the corner of SE Duke Street and SE 87<sup>th</sup> Avenue. Due to the site's corner location, no additional through street or pedestrian connection is necessary. In addition, a pedestrian connection is not identified in any master street or neighborhood plans through this site. It is important to point out that the applicant will be required to expand the existing sidewalk corridor along the frontage of SE Duke Street to meet pedestrian standards.

For the reasons described above, 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 existing right-of-way can be provided on the final plat. At this time no specific utility easements adjacent to the 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 report, are administered through a land use review process. Approval criteria are regulations where the decision-maker must exercise discretion to determine if the regulation is met. Public notice is provided and public comments received that address the approval criteria are addressed in the decision.

**Development Standards:** Development standards are clear and objective regulations (for example: building setbacks; number of required parking spaces; and maximum floor area). Compliance with development standards is reviewed as part of the administrative permitting process and are not considered to be discretionary reviews. Development standards that are not relevant to the land division review, have not been addressed in the review, but will have to be met at the time that each of the proposed lots is developed.

**Existing development that will remain after the land division.** The existing development on the site will remain and be located on Parcel 1. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R2.5 zone (Please see section on Other Technical Standards for Building Code standards.)

In this case, there are several Zoning Code standards that relate to existing development on the site:

- **Minimum Setbacks** – The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be 10.78 feet from the new property line (west side). Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the existing building relative to the adjacent new lot lines.
- **Required Off-Street Parking** – In this zone, one parking space per dwelling unit is required. A paved parking pad/garage provides this required parking for the existing house on Parcel 1. As a result of this land division, the required parking space for the existing house will be located on a different lot. In order to ensure that parking requirements continue to be met, a new parking space for the existing house must be constructed on Parcel 1 prior to final plat approval. A zoning permit must be obtained to construct a new parking space. Documentation of final inspection of this new parking space will be required prior to final plat approval.

With the conditions noted above, this land division proposal can meet the requirements of 33.700.015.

## OTHER TECHNICAL REQUIREMENTS

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

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

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

- The applicant must meet the requirements of the Fire Bureau in regards to limiting height of new construction to 30-feet to ensure aerial fire department access. These requirements are based on the technical standards of Title 31 and the Fire Code.

- The applicant must meet the requirements of Urban Forestry for street tree planting in the existing planter strip adjacent to Parcel 1 prior to final plat approval. This requirement is based on the standards of Title 20.

## CONCLUSIONS

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

- Sidewalk improvements
- Private Sewer Easement

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

## ADMINISTRATIVE DECISION

**Approval** of a Preliminary Plan for a 2-lot partition, that will result in two standard lots in the R2.5 zone as illustrated with the Exhibit C-1, subject to the following conditions:

**A. Supplemental Plan.** One copy of a supplemental plan shall be submitted with the final plat survey for Land Use Review. 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 at the time of the final plat application;
- Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
- Any other information specifically noted in the conditions listed below.

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

1. The applicant shall meet the street dedication requirements of the City Engineer for SE Duke Street. The required right-of-way dedication must be shown on the final plat.
2. A private sanitary sewer easement, for the benefit of Parcel 2, shall be shown and labeled over the relevant portions of Parcel 1.
3. 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 Condition C4 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example:
  - *“A Declaration of Maintenance Agreement for a Private Sewer Easement has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records.”*

**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 SE Duke Street. The applicant must obtain an approved Right Of Way permit from the Bureau of Transportation Engineering and Development Review to install the required sidewalk along the frontage of Parcel 1 prior

to final plat approval. The improvements along the frontage of Parcel 2, the remaining lot, may be constructed with new development on the lot.

### **Existing Development**

2. A parking space shall be installed on Parcel 1, in conformance with the applicable requirements of the Portland Zoning Code. A copy of the final inspection approval for a Zoning Permit shall be submitted, documenting that the parking space has been installed within the area to become Parcel 1. The new parking space must also be shown on the supplemental plan. An application for a Land Use Review to waive or modify parking requirements may be submitted at the Development Services Center. If granted, a copy of the approved Land Use Review decision must be submitted prior to final plat.
3. The applicant must plant 2 street tree(s) in the planter strip on SE 87<sup>th</sup> Avenue adjacent to Parcel 1. Street trees will be chosen from the City's approved street tree list for the 4-5 ½- foot planting strip. Tree size requirements for residential sites are to be 2-inch caliper. The applicant must contact Urban Forestry at 503-823-4018 prior to selecting trees to discuss the species of trees that are permitted and to obtain the planting permit. Urban Forestry must inspect and approve the newly planted trees prior to final plat approval.

### **Required Legal Documents**

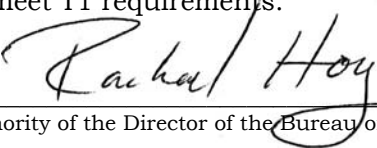
4. A Maintenance Agreement shall be executed for the Private Sewer Easement area described in Condition B3 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.

### **Other requirements**

5. The applicant must plant one, 2 inch tree on Parcel 1, the lot with the existing house, in the location proposed by the arborist, prior to final plat approval. In addition, the applicant must choose one of the trees recommended by the arborist, listed in the Arborist report. A Zoning Permit must be obtained, and receive final inspection approval verifying that this tree have been planted.

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

1. The applicant must provide a fire accessway to the satisfaction of the Fire Bureau or the height of the new structures shall be limited to 30 feet, measured to the gutter line.
2. The applicant must complete the required sidewalk improvements along the frontage of parcel 2.
3. Parcel 2 is required to meet T1 requirements.

Decision rendered by:  on March 6, 2009

By authority of the Director of the Bureau of Development Services

**Decision mailed March 10, 2009**

**Staff Planner: Rachael Hoy**

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

**Procedural Information.** The application for this land use review was submitted on August 15, 2008, and was determined to be complete on November 19, 2008.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on August 15, 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 requested that the 120-day review period be extended for 7 weeks or 49 days. The 120<sup>th</sup> day is May 7, 2009. (See Exhibit A-5 & 6).

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

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

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

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

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

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

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

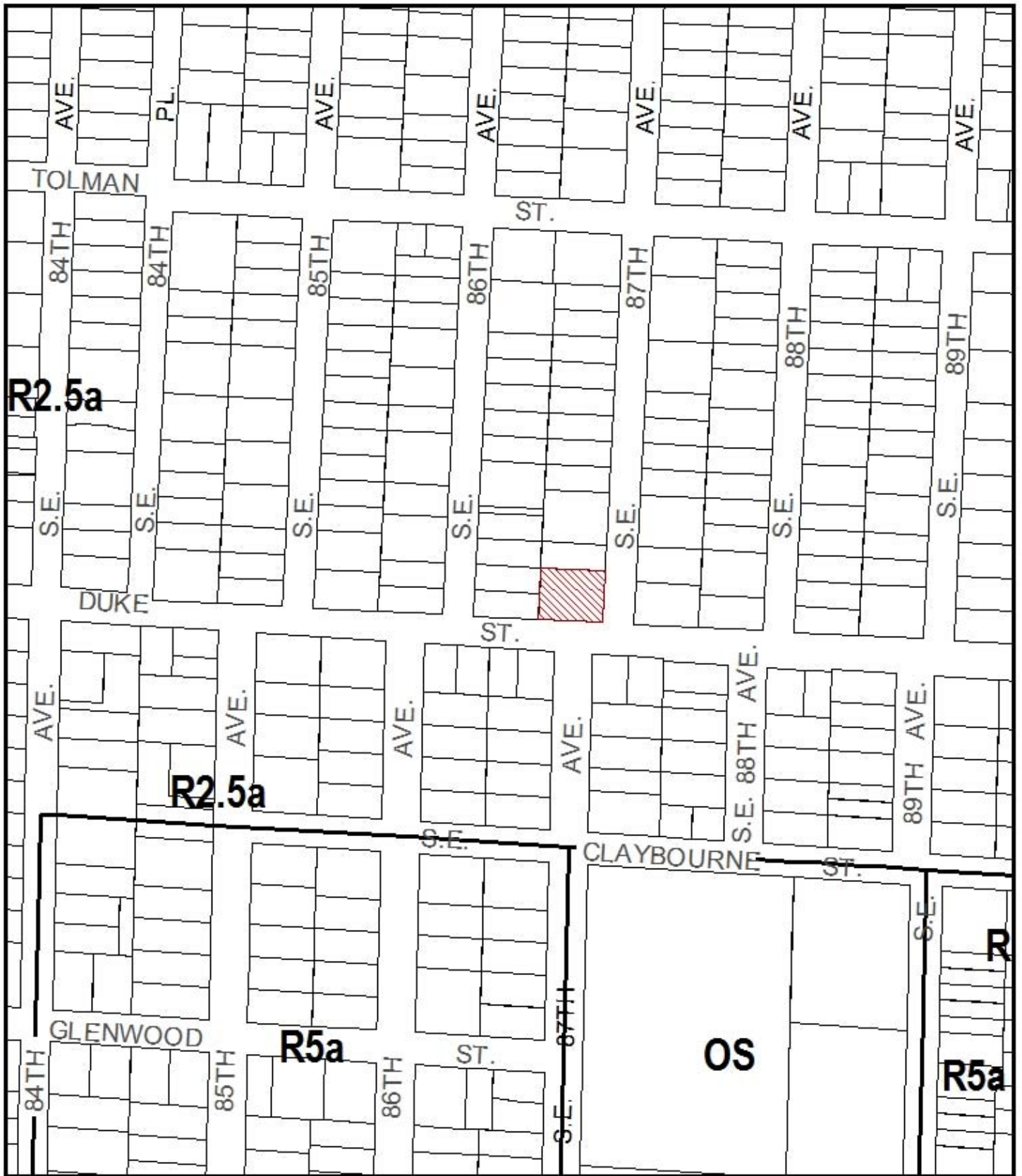
**EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Applicants Narrative
  - 2. Arborist Report
  - 3. Plumbing Code Appeal #5794
  - 4. Stormwater Infiltration Testing & Groundwater Report
  - 5. Extension to the 120days – January 9, 2009
  - 6. Extension to the 120 days – February 4, 2009
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety
- F. Correspondence:
  - None Submitted
- G. Other:
  - 1. Original LU Application
  - 2. Incomplete Letter
  - 3. Site History

**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

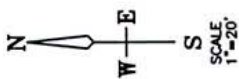


NORTH

File No.	LU 08-155579 LDP
1/4 Section	3639,3739
Scale	1 inch = 200 feet
State Id	1S2E16CC 24100
Exhibit	B (Aug 18,2008)

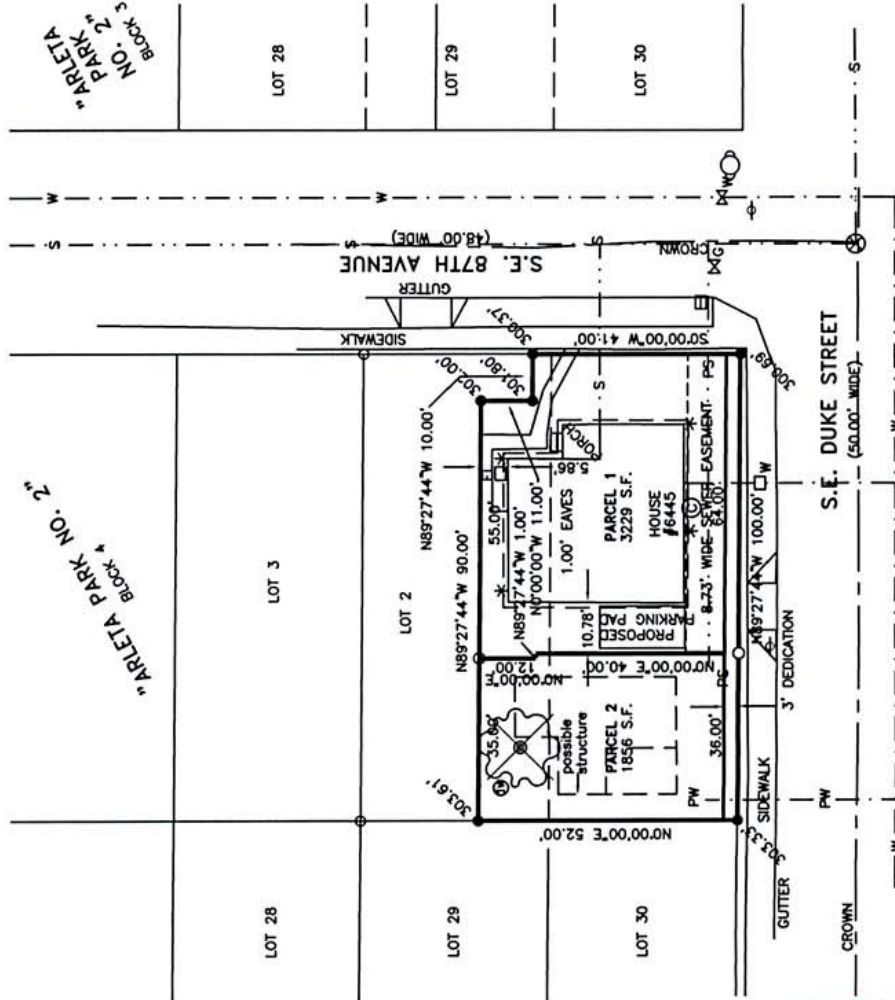
# SITE PLAN

REPLAT OF LOT 1 AND A PORTION OF LOT 2, BLOCK 4, "ARLETA PARK NO. 2",  
 LOCATED IN THE SOUTHWEST 1/4 OF SECTION 16, T.1S., R.2E., W.M.,  
 IN THE CITY OF PORTLAND, COUNTY OF MULTNOMAH, STATE OF OREGON  
 DATE: SEPTEMBER 4, 2008



## NOTES:

- ZONE IS R2.5g.
- FOR TREE INFORMATION SEE TREE REPORT BY LLOYD'S ARBORICULTURAL CONSULTING, LLC.
- SOAKAGE TRENCH AND OTHER UTILITIES TO BE LOCATED AT THE TIME OF BUILDING PERMITS.
- DOWNSPOUTS ON EXISTING HOUSE WILL GO TO SPLASH BLOCKS.
- UTILITIES ARE DRAWN FROM MAPPING PROVIDED BY CITY.
- DIMENSIONS AND AREAS MAY VARY SLIGHTLY UPON FINAL BOUNDARY RESOLUTION.
- DISTANCES SHOWN FOR EXISTING HOUSE ON PARCEL 1 ARE PERPENDICULAR TO THE PROPOSED PARCEL LINES FROM THE FOUNDATION CORNERS.
- CITY OF PORTLAND BENCHMARK NO. 2445.

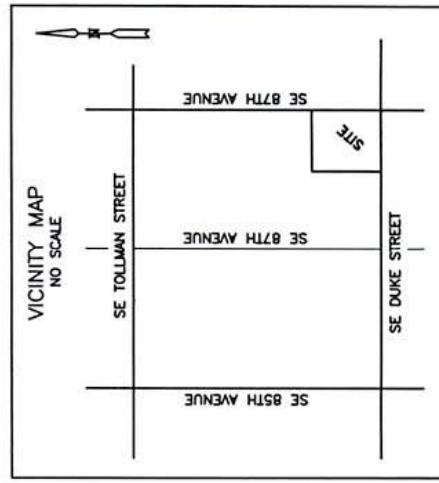


## SYMBOLS

- ☐ = POWER POLE
- ☐ = WATER METER
- ☐ = ELECTRIC METER
- ☐ = WATER VALVE
- ☐ = GAS VALVE
- ⊗ = MANHOLE
- ⊙ = CLEAN OUT
- ⊕ = CATCH BASIN
- ⊖ = FIRE HYDRANT
- ⊛ = DOWN SPOUTS
- = WATER LINE
- = SANITARY SEWER
- = DECIDUOUS

## LEGEND

- - INDICATES MONUMENT FOUND AS NOTED
- - INDICATES 5/8" X 30" IRON ROD W/ RED PLASTIC CAP STAMPED "FERGUSON LS 2445", SET OCTOBER XX, 2008



REGISTERED PROFESSIONAL LAND SURVEYOR  
 J. FERGUSON  
 1990  
 405 W. 7th Avenue  
 2445  
 RENEWAL DATE 12/31/08

CASE NO **LU08-155579**  
 EXHIBIT **C2**

CLIENT: RP & ASSOC.	SHEET NO. 1 OF 1
6445 S.E. 87TH AVE.	JOB NO. 08-037 SITE D
PORTLAND, OR 97266	Phone (503) 408-0601 Fax (503) 408-0602
	DRAFTED: 8/13/08 MW