



CITY OF  
**PORTLAND, OREGON**

HEARINGS OFFICE

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**DECISION OF THE HEARINGS OFFICER IN UNCONTESTED CASE**

**File No.:** LU 08-180982 LDS AD (HO 4090001)

**Applicant:** Destin Ferdun  
Portland Community Land Trust  
3109-B NE Broadway  
Portland, OR 97232

**Applicant's  
Representatives:** Ted Lundin  
Lundin Cole Architects  
208 SW Stark Suite 200  
Portland, OR 97204

Monty Hurley  
Aks Engineering & Forestry  
13910 SW Galbreath Dr. Ste. 100  
Sherwood, OR 97140

**Hearings Officer:** Gregory J. Frank

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

**Site Address:** 12105 SE PARDEE ST

**Legal Description:** TL 3000 0.44 ACRES, SECTION 15 1 S 2 E

**Tax Account No.:** R992151720

**State ID No.:** 1S2E15AA 03000

**Quarter Section:** 3542

**Neighborhood:** Powellhurst-Gilbert

**Business District:** Midway

**District Neighborhood Coalition:** East Portland Neighborhood Office

**Plan District:** Johnson Creek Basin

**Zoning:** R1a – Multi-Dwelling Residence 1,000 with an Alternative Design Density Overlay

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

**BDS Staff Recommendation to Hearings Officer:** Approval with conditions

**Public Hearing:** The hearing was opened at 9:01 a.m. on March 2, 2009, in the 3<sup>rd</sup> floor hearing room, 1900 SW 4<sup>th</sup> Avenue, Portland, OR, and was closed at 9:42 a.m. The applicant waived 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 March 2, 2009.

**Testified at the Hearing:**

John Cole, BDS Staff Representative  
Destin Ferdun, 3109 - B NE Broadway, Portland, OR 97232

**Hearings Officer Decision:** It is the decision of the Hearings Officer to adopt and incorporate into this decision the facts, findings, and conclusions of the Bureau of Development Services in their Staff Report and Recommendation to the Hearings Officer dated February 20, 2009, and to issue the following approval:

**Approval** of a Preliminary Plan for a 14-lot subdivision, that will result 12 attached and 2 detached single residence dwellings accessed by a private street tract (shared court) as illustrated with Exhibit C-3;

Approval of an Adjustment to increase the maximum length allowed for a shared court from 150 feet (33.654.120.G.1.b) to 194 feet; both subject to the following conditions:

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

- The proposed interior side setbacks for all of the lots if the reduced setback provisions of Section 33.120.270.D.1 are intended to be used.
- The proposed specific location of future building footprints, driveways and stormwater facilities for each of proposed lots. Structures on adjoining lots should be shown if required to demonstrate compliance with applicable plumbing standards.
- 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 Pardee Street. The required right-of-way dedication must be shown on the final plat.
2. Tract A shall be widened at the front of Lot 8 so that the required water service meters are located within the frontage of the Shared Court as required by the Water Bureau. Code section 33.663.200.A notwithstanding the size width and depth of Lot 8 may be revised to accommodate this change to the Street Tract.
3. Private stormwater management facility easements supporting the six shared drywell locations and the conveyance systems from lots 1 and 14 shall be shown and labeled over the relevant portions of each lot.
4. A sanitary sewer easement, granted to the City of Portland, shall be shown over the relevant portions of the Shared Court to the satisfaction of the Bureau of Environmental Services.
5. An Emergency Vehicle Access Easement, granted to the City of Portland, shall be shown over the entirety of the private street to the satisfaction of the Fire Bureau.
6. The private street tract shall be named, with approval from the City Engineer, and noted on the plat as "Tract A: Private Street *name of street*." The tract shall be owned in common by the owners of lots 1-14.
7. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Conditions C10,11 &12 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."

**C. The following must occur 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 Pardee St. 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 for required street frontage improvements.
2. The applicant shall submit an application for a Site Development Permit for construction of the shared court and related site development improvements. Street design plans must be prepared by, or under the direction of, an Oregon licensed civil engineer. Development of the Shared Court shall include the installation of two 1.5" minimum dbh Western Red Cedar trees at its northern terminus.

3. A construction management plan to protect the porosity of the pervious pavement subgrade of both the street tract and private parking pad(s) will be required as part of the site development permit and must be implemented at the time of construction of new homes on the individual lots.
4. The applicant shall furnish a financial guarantee of performance, as approved by the Bureau of Development Services, for 125 percent of the estimated construction cost for the shared court and all required site development improvements. The applicant shall provide an engineer's estimate of the costs of performance including the costs for temporary erosion control measures required during construction. The financial guarantee of performance shall be accompanied by a performance agreement with the Bureau of Development Services to complete the required improvements.
5. The applicant shall provide a clearing and grading plan with the Site Development permit required for the private street described in Condition C2. The clearing and grading plan must substantially conform to the Preliminary Clearing and Grading Plan approved with this decision (Exhibit C-4).

#### **Utilities**

6. The applicant shall meet the requirements of the Bureau of Environmental Services (BES) for extending a public sewer main in the private street tract. 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.
7. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of the existing on-site sewage disposal system and drywell.
8. Final on-site stormwater management plans shall be reviewed and approved by Site Development including any plumbing code appeals necessitated by the final design.
9. The applicant must meet the requirements of the Fire Bureau for providing an adequate fire accessway for Lot 1-14. Alternately, the applicant will be required to install residential sprinklers in the new house on Lots 1-14. An Acknowledgement of Special Land Use Conditions describing the sprinkler requirement must be referenced on and recorded with the final plat.

#### **Existing Development**

10. A finalized permit must be obtained for demolition of the existing residence on the site and capping the existing sanitary sewer connection. (if the demo includes a primary residential structure, add:) Note that Title 24 requires a 35-day demolition delay period for most residential structures.

### **Required Legal Documents**

11. Maintenance Agreement shall be executed for the Private Stormwater Management Easement areas described in Condition B2 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.
12. The applicant shall execute a Maintenance Agreement for the private street tract. The agreement shall assign common, undivided ownership of the tract to the owners of Lots 1-14 and include provisions assigning maintenance responsibilities for the tract and any shared facilities within that area. The agreement must also acknowledge all easements granted within the street tract, the beneficiaries of those easements, and the limitations on the easement areas to the satisfaction of the beneficiary service agencies. The maintenance agreement must be reviewed by the City Attorney, the Bureau of Development Services, and the Bureau of Environmental Services and approved as to form, prior to final plat approval.
13. The applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Lots 1-14 to contain internal fire suppression sprinklers. The acknowledgement shall be recorded with Multnomah County, and referenced on the final plat.

### **Other requirements**

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

1. Private parking spaces for each lot shall be constructed of pervious pavers or similar pervious paving.
2. A construction management plan to protect the porosity of the pervious pavement subgrade of both the street tract and private parking pad(s) will be required as part of the site development permit and must be implemented at the time of construction of new homes on the individual lots.
3. The minimum and maximum density for each lot created through this land division is one dwelling unit.
4. Prior to finalizing the Site Development permit for the private street, a plumbing permit must be obtained and finalized for the new utility lines that will be constructed beneath the paved surface of the new street.

5. The applicant must post the private street with "No Parking" signs to the satisfaction of the Fire Bureau as part of the site development permit for street construction.
6. The applicant will be required to install residential sprinklers in the new dwelling unit on Lots 1-14 to the satisfaction of the Fire Bureau. Please refer to the final plat approval report for details on whether or not this requirement applies.
7. 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.

**Basis for the Decision:** BDS Staff Report in LU 08-180982 LDS AD, Exhibits A-1 through H-3, and the hearing testimony from those listed above.

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Gregory J. Frank, Hearings Officer

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Date

<b>Application Determined Complete:</b>	January 12, 2009
<b>Report to Hearings Officer:</b>	February 20, 2009
<b>Decision Mailed:</b>	March 10, 2009
<b>Last Date to Appeal:</b>	4:30 p.m., March 24, 2009
<b>Effective Date (if no appeal):</b>	March 25, 2009 Decision may be recorded on this date.

**Conditions of Approval.** 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.

**Appeal of the decision.** ANY APPEAL OF THE HEARINGS OFFICER'S DECISION MUST BE FILED AT 1900 SW 4<sup>TH</sup> 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 \$6,995.00 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.**

**Recording concurrent approvals.** The preliminary land division approval also includes a concurrent adjustment approval. This other concurrent adjustment approval must be recorded by the Multnomah County Recorder before any building or zoning permits can be issued.

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

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to:

Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.

- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

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

**Expiration of concurrent approvals.** The preliminary land division approval also includes concurrent approval of an adjustment to the maximum 150 foot length allowed for a shared court. For purposes of determining the expiration date, there are two kinds of concurrent approvals: 1) concurrent approvals that were necessary in order for the land division to be approved; and 2) other approvals that were voluntarily included with the land division application.

An adjustment was necessary for the land division to be approved. This approval expires if:

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

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



**EXHIBITS**  
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Submittal
  - 1. Applicant's Narrative including Adjustment proposal
  - 2. Geotechnical Investigation Report by Alder Geotechnical Services dated August 29, 2008
  - 3. Open Pit Infiltration Test and CBR Test Results by Alder Geotechnical Services dated October 10, 2008
  - 4. Dahlia Commons Stormwater Management Report (Public) by AKS Engineering dated January 08, 2009
  - 5. AKS Stormwater Report Addendum dated February 3, 2009
  - 6. Shared Court traffic analysis letter by Lancaster Engineering dated October 14, 2008
  - 7. Arborist's Report by Keith Jehnke (AKS) dated November 11, 2008
  - 8. Incomplete addendum response letter by AKS dated January 6, 2009
  - 9. Operations and Maintenance Form 2
- B. Zoning Map
- C. Plans & Drawings
  - 1. Cover Sheet with vicinity and Site Map
  - 2. Existing Conditions Plan
  - 3. Preliminary Subdivision Plat
  - 4. Preliminary Clearing and Grading Plan
  - 5. Preliminary Street Plan w/ profiles
  - 6. Preliminary Utility Plan
  - 7. Preliminary Tree Removal, Preservation and Mitigation plan
  - 8. Colored architectural perspective and turning movement supplement series (5)
- D. Notification information
  - 1. Neighborhood contact letters
  - 2. Request for response
  - 3. Posting letter sent to applicant
  - 4. Notice to be posted
  - 5. Applicant's statement certifying posting
  - 6. Mailing list
  - 7. Mailed notice
- E. Agency Responses
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of Bureau of Development Services
  - 6. Bureau of Parks, Forestry Division
- F. Letters: None submitted
- G. Other

1. Original LUR Application
  2. Pre-application Conference report
  3. Building Code Appeal forms
  4. Incomplete letter
- H. Received in the Hearings Office
1. Hearing Notice - Cole, John Andrew
  2. Staff Report - Cole, John Andrew (**attached**)
  3. PowerPoint presentation printout - Cole, John Andrew