



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

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**Date:** July 27, 2009  
**To:** Interested Person  
**From:** Nizar Slim, Land Use Services  
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## **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 09-103160 LDP**

#### **GENERAL INFORMATION**

**Applicant:** Brian K Lockhart,  
8874 SE Casa Blanca Ct  
Clackamas, OR 97015-9581

**Representative:** John Middleton,  
Ztec Engineering Inc  
3737 SE 8th Avenue  
Portland, OR 97202

**Site Address:** 3441 SE 174TH AVE

**Legal Description:** TL 3700 0.46 ACRES, SECTION 07 1 S 3 E  
**Tax Account No.:** R993070370      **Qtr Sect:** 3448      **St ID No.:** 1S3E07AC  
03700

**Neighborhood:** Centennial, contact Louise Cody at 503-252-4302.  
**Business District:** None  
**District Coalition:** East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

**Zoning:** R7 - Residential 7000  
**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 a 2-lot partition resulting in one regular lot (Parcel 1) sized at 10,459 square feet (9,579 S.F. after R.O.W dedication) and one Flag-lot (Parcel 2) with an area of 9,539 square feet. The site is fairly flat in topography and has a few trees toward the back portion of the lot. The existing house located in the front half of the site (on proposed Parcel 1), will remain as part of the land division process. A single family house is being proposed for the new rear Flag-lot.

**Relevant Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant approval criteria are found in Section **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 has an existing single story house with attached garage and larger yard on relatively flat ground. There are several trees on and around the lot.

The surrounding neighborhood has been developed with similar 1-2 story houses built on larger lots with ample yard space. Portland Public Schools owns a larger parcel of land adjacent to the site and a cross the street. Currently, the PPS property is an open field. The outlying area has newer residential development on smaller lots resulting from larger land subdivisions.

**Zoning:** The R7 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

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

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on **March 30, 2009.**

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:** One written response in supportive of this proposal has been received from the Neighborhood Association in response to the proposal.

**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.

<b>Criterion</b>	<b>Code Chapter</b>	<b>Topic</b>	<b>Applicability Findings</b>
<b>A</b>	33.610	Lots	<b>Applicable</b> - See findings below
<b>B</b>	33.630	Trees	<b>Applicable</b> - See findings below.
<b>C</b>	33.631	Flood Hazard Area	Not applicable - The site is not within the flood hazard area.
<b>D</b>	33.632	Potential Landslide Hazard Area	Not applicable - The site is not within the potential landslide hazard area.
<b>E</b>	33.633	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed.
<b>F</b>	33.634	Recreation Area	Not applicable - This is not required where the proposed density is less than 40 units.
<b>G</b>	33.635 .100	Clearing and Grading	<b>Applicable</b> - See findings below.
<b>G</b>	33.635 .200	Land Suitability	<b>Applicable</b> - See findings below.
<b>H</b>	33.636	Tracts and Easements	<b>Applicable</b> - See findings below.
<b>I</b>	33.639	Solar Access	Not Applicable - Maintaining existing development on the site limits new parcel configuration (33.610.200 supercedes 33.639).
<b>J</b>	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
<b>K</b>	33.641	Transportation Impacts	<b>Applicable</b> - See findings below
<b>L</b>	33.651 - 33.654	Services and Utilities	<b>Applicable</b> - 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 33.610 contains the density and lot dimension requirements applicable in the RF through R5 zones. These density and lot dimension requirements 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 = (20,000 square feet \* .80) ÷ 7,000 square feet = 2.28 (which rounds down to a minimum of 2 lots, per 33.930.020.A)

Maximum = 20,000 square feet ÷ 7,000 square feet = 2.85 (which rounds down to a maximum of 2 lots, per 33.930.020.B)

If the minimum required density is equal to or larger than the maximum allowed density, then the minimum density is automatically reduced to one less than the maximum. Therefore in this case the minimum density is reduced to 1.

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

#### Lot Dimensions

The lot dimension requirements 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 so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future; (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.

The dimensions of the proposed lots as compared to the required lot dimension standards is shown in the following table (this information is found in Table 610-2 of the Zoning Code):

	<b>R7 Zone Requirement</b>	<b>Proposed Lot 1</b>	<b>Proposed Flag-Lot 2</b>
Minimum Lot Area	4,200 sq. ft.	10,560 sq. ft.	9,539 sq. ft.
Maximum Lot Area	12,000 sq. ft.		(8,000 sq.ft.**)
Minimum Lot Width*	40 ft.	88	-----
Minimum Lot Depth	55 ft.	105	-----
Minimum Front Lot Line	30 ft.	88	-----
Minimum Flag Lot Width**	40 ft.	-----	100
Minimum Flag Lot Depth**	40 ft.	-----	80

\* Width is measured by placing a rectangle along the minimum front building setback line specified for the zone. The rectangle must have a minimum depth of 40 feet, or extend to the rear of the property line, whichever is less.

\*\* For flag lots: (1)width and depth are measured at the midpoint of the opposite lot lines in the "flag" portion of the lot; and (2) lot area calculations do not include the pole portion of the lot.

#### Flag Lots

When allowed:

Parcel 2 is a flag lot. Zoning Code standards allow the creation of flag lots in very limited circumstances. The limitations minimize the negative impacts of flag lots and additional driveways on an area while allowing land to be divided when other options are not achievable. A flag lot is allowed only when one of the following are met:

- [1](a) An existing dwelling unit or attached garage on the site is located so that it precludes a land division that meets the minimum lot width standards. The dwelling unit and attached garage must have been on the site for at least five years; or
- (b) the site has dimensions that preclude a land division that meets the minimum lot width standard of Paragraph 33.610.200.D.1;
- [2] Up to three lots are proposed, only one of which is a flag lot; and
- [3] Minimum density requirements for the site will be met.

In this case there is an existing house, and attached garage on the site that were constructed at least five years ago that would preclude the creation of standard lots. The house and attached garage is located 15.7 feet from the northern property line and 33 feet from the southern property line, which would preclude the creation of a lot that would meet the minimum width standard of the R7 zone of 40 feet.

Two lots are proposed, only one of which is a flag lot. As discussed above, minimum density has been met.

**Dimensions:**

The proposed flag lot meets applicable Zoning Code standards found in 33.610.400 because it has a "pole" at least 12 feet wide that connects to a street, and as shown above, meets the minimum width and depth standard of 40 feet.

**Vehicle Access:**

Where it is practical, vehicle access must be shared between the flag lot and the lots between the flag portion of the lot and the street. Factors that may be considered include the location of existing garages, driveways, and curb cuts, stormwater management needs, and tree preservation. Access easements may be used.

In addition, where it is practical, vehicle access must be shared between the flag lot and the lots between the flag portion of the lot and the street. Factors that may be considered include the location of existing garages, driveways, and curb-cuts, stormwater management needs, and tree preservations. Access easements may be used.

In this case, the flag portion of Parcel 2 will be located to south of the existing driveway. Due to the location of the exiting attached garage and adjacent underground oil tank that would not support the weight of vehicles passing overhead, a shared access is not feasible (see Exhibit A-5). No other alternatives beyond the proposed location were suitable for the additional vehicle access. It should be noted that proposed access pole would be adjacent a vacant field, which would not affect any other residences. Therefore, Parcel 2 is allowed.

**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-3). 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 trees on the site:

<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>	English Walnut	34	Y	Yes, due to poor health and structure.	No	N/A

<b>2</b>	Apple	10	N	N	YES	10 radial feet
<b>3</b>	Flowering Cherry	26		Yes, due to poor health and structure.		
<b>4</b>	Flowering Cherry	7	N	No		N/A
<b>5</b>	Douglas-fir	24	Y	Yes, on P/L		N/A
<b>6</b>	Douglas-fir	14	N	Yes, on P/L		N/A
<b>7</b>	Sumac	6	N	Yes, w/n 10 ' of house		N/A

The total non-exempt tree diameter on the site is 17 inches. The applicant proposes to preserve tree #2 (Apple) which comprises 10 inches of diameter, or 58 percent of the total non-exempt tree diameter. This proposal complies with Option 1 of the tree preservation standards, which requires at least 35 percent of the total tree diameter on the site to be preserved. The applicant has provided a Tree Preservation Plan showing the preserved trees and the required root protection zones (Exhibit A-3).

This criterion is met, subject to the condition that development on Parcel 2 be carried out in conformance with the Tree Preservation Plan (Exhibit C-1) and the applicant's arborist report (Exhibit A-3).

**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. Although the site is currently connected to the public sanitary sewer, there is an old septic system on the site. The City has no record that this facility was ever decommissioned. Prior to final plat, the applicant must meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of this facility. With this condition, the new lots can be considered suitable for new development, and 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 easements are proposed and/or required for this land division:

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

In the course of review, BES has determined that the existing sewer service to the house on site runs through Portland Public School property via a main sewer line that runs parallel to the southern boundary of the LD site. This main is the most feasible for access to service the existing house and proposed lot. There are two existing easements (newly recorded) over areas adjacent to the site that allow the existing service and a potential lateral allowing the new service to the proposed lateral serving proposed Parcel 2 (see Exhibit A-6). An additional easement is needed to allow the existing service to cross over the pole belonging to proposed Parcel 2.

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 with a recording block substantially similar to the following example:

*“A Declaration of Maintenance agreement for 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 site has approximately 100 feet of frontage on SE 174<sup>th</sup> Ave. SE 174<sup>th</sup> Ave. is classified as a local service street for all modes in the Transportation Element of the Comprehensive Plan. Tri-Met provides transit service approximately 2 miles from the site on SE 172<sup>nd</sup> via the Max line. Parking is currently allowed on SE 174<sup>th</sup> Ave., on both sides. There is one driveway entering the site that provides access to off-street parking for the existing house.

SE 174<sup>th</sup> Avenue is improved with a paved roadway, and a gravel shoulder on both sides. There are no curbs, planter strips, or 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 curb and sidewalk improvements must be made in order to ensure that safe pedestrian travel is possible within the proposed development. To accommodate these improvements, as well as an associated stormwater facility discussed later in this report, additional right-of-way must be dedicated along the frontage of the site. With those improvements, 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 curb and 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 8-inch water main is available in SE 174<sup>th</sup> Avenue. Water is available to serve the proposed development on



Parcel 2 from the water main in SE 174<sup>th</sup> Ave. 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 concrete public sanitary sewer located in SE 174<sup>th</sup> Ave. and in a public easement within Portland Public School property (to the south) that can serve the sanitary needs of the proposed lots. Parcel 1 has an existing sewer service from the main located on PPS property. Both mains are 30 feet deep, however, there is riser at a 15-foot depth that serves as a connection to the existing lateral. BES has approved another connection to that riser in order to allow service to proposed Parcel 2. See Exhibit E-1 for more details.

As a result of the proposed land division, the existing sewer connection that serves the house on Parcel 1 will cross over Parcel 2 to reach the sewer main in the southern PPS property. The applicant must provide an easement for the sewer line on the Final Plat. 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. Further, the proposed and existing service lines have additional easements over the PPS property that contains the servicing main. Since these easements are off site they will not be on the Final Plat; however, the one allowing access over Parcel 2 must be shown on the Final Plat.

- 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 frontage of the site to City standards, with curbs and sidewalks (discussed earlier in this report). Stormwater from these new impervious areas may be directed into an 8-foot wide infiltration swale (the size and type of facility will be determined at time of street improvements) located between the curb and the new sidewalk. BES has indicated that surface infiltration is the preferred method of public stormwater disposal at this site. The agency has confirmed that the proposed swale is of a size and proposed design that is adequate to provide infiltration for the quantity of water generated from the new impervious areas. To accommodate this stormwater facility within the public right-of-way, a dedication along the frontage of the site must be provided on the final plat.

BES requires a Public Works Permit for the construction of such a swale. The applicant must provide engineered designs and financial guarantees of performance prior to final plat approval.

- Parcel 2:** Stormwater from this lot will be directed to an individual 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.
- Parcel 1 (the lot with the existing house):** The existing house has downspouts that drain onto the ground. Site Development determined that continued use of the existing rain drain system for the existing house will be acceptable. The gutters and downspouts need to be repaired so that they are in good working order, and are connected to the rain drain system. If installation of downspout extensions and splash blocks as shown on the Preliminary Plat is proposed instead, then prior to final plat approval the applicant must contact Site Development for an inspection to confirm that splash blocks that drain to vegetated areas at least 5 feet from property lines, 10 feet from structures on adjacent property, and 6 feet from the basement have been installed. The applicant is required to finalize plumbing or Site Development permits prior to final plat approval for modifications to the stormwater disposal system on the existing house that will result in properly functioning gutters, downspouts, and disposal points, located outside of required setbacks.

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.

## 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 is not considered to be a discretionary review. 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.

Among the various development standards that will be applicable to this lot, the applicant should take note of:

- Flag Lots-- special setback standards apply to flag lots in the RF-R2.5 zone, and special landscape standards apply to flag lots that are 10,000 square feet or less in area in the R7-R2.5 zones (33.110.240.F)

**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 R7 zone (Please see section on Other Technical Standards for Building Code standards.)

In this case, there is one Zoning Code standard 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 19 feet from the new southern property line. 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.

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 addressing requirements for flag lots, minimum flag-pole width of 12 feet and general accessibility for fire department apparatus. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.
- 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 the creation of a Flag-lot, Tree Preservation and Public Street Improvements.

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 one Flag lot (Parcel 1) and one standard lot (Parcel 2) the will retain the existing house and attached garage as illustrated with Exhibit C-1, subject to the following conditions:

**A. Supplemental Plan.** Three copies of an additional supplemental plan shall be submitted with the final plat survey for Land Use Review and BES. 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;
- The proposed side setback for Parcel 1 as it relates to the new property line common to Parcel 2.
- The proposed and as-built sewer service and storm-water disposal for new and existing development.
- 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 174<sup>th</sup> Avenue. The required right-of-way dedication must be shown on the final plat.
2. A private sanitary sewer easement, for the benefit of Parcel 1, shall be shown and labeled over the relevant portions of Parcel 2.
3. A recording block for the legal documents such as the maintenance agreement, as required by Condition C-2 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for Private Sanitary Sewer 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 174<sup>th</sup> Avenue. 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. The required improvements must be designed by an Oregon licensed engineer and constructed under a street permit which is issued through the Office of Transportation.

**Existing Development**

2. The applicant must meet the requirements of Site Development for the stormwater systems on the existing house to remain on Parcel 1. Specifically, the gutters and downspouts must function properly, and they must direct water to an approved disposal point that meets setback requirements from the new lot lines. If modifications to the system are required by Site Development, the applicant must obtain finalized plumbing permits for this work prior to final plat approval.
3. The applicant must plant street tree(s) in the planter strip on SE 174<sup>th</sup> Avenue adjacent to Parcel 1, once developed. The required street trees will be shown on the public works permit for street improvements. 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.

**Utilities**

4. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of the existing sanitary sewer system on the site.

**Required Legal Documents**

5. A Maintenance Agreement shall be executed for the Private Sewer Management Easement area described in Condition B-2 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.

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

1. Development on Parcel 2 shall be in conformance with the Tree Preservation Plan (Exhibit C-1) and the applicant's arborist report (Exhibit A-3). Specifically, tree number 2 is required to be preserved, with the root protection zones indicated on Exhibit C-1. Tree protection fencing is required along the root protection zone of each tree to be preserved. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground. Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision.

2. Vehicle access to and from SE 174<sup>th</sup> Ave must be in a forward motion from Parcel 2.
3. The applicant must meet the addressing requirements of the Fire Bureau for Parcel 2, the flag lot.
4. The applicant must provide a fire accessway to the satisfaction of the Fire Bureau. This includes a driving surface capable of supporting 75,000 lbs. of fire fighting apparatus. IF this standard can not be met an approved Fire Code Appeal may be required to install residential sprinklers in the new house on Parcel 2 to the satisfaction of the Fire Bureau.

**Staff Planner: Nizar Slim**

**Decision rendered by:**  **on July 23, 2009**

By authority of the Director of the Bureau of Development Services

**Decision mailed (within 5 days of dec.) July 27, 2009**

**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 January 20, 2009, and was determined to be complete on March 23, 2009.

*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 January 20, 2009.

*ORS 227.178* states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant waived the 120-day review period, as stated with Exhibit A-4.

**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).

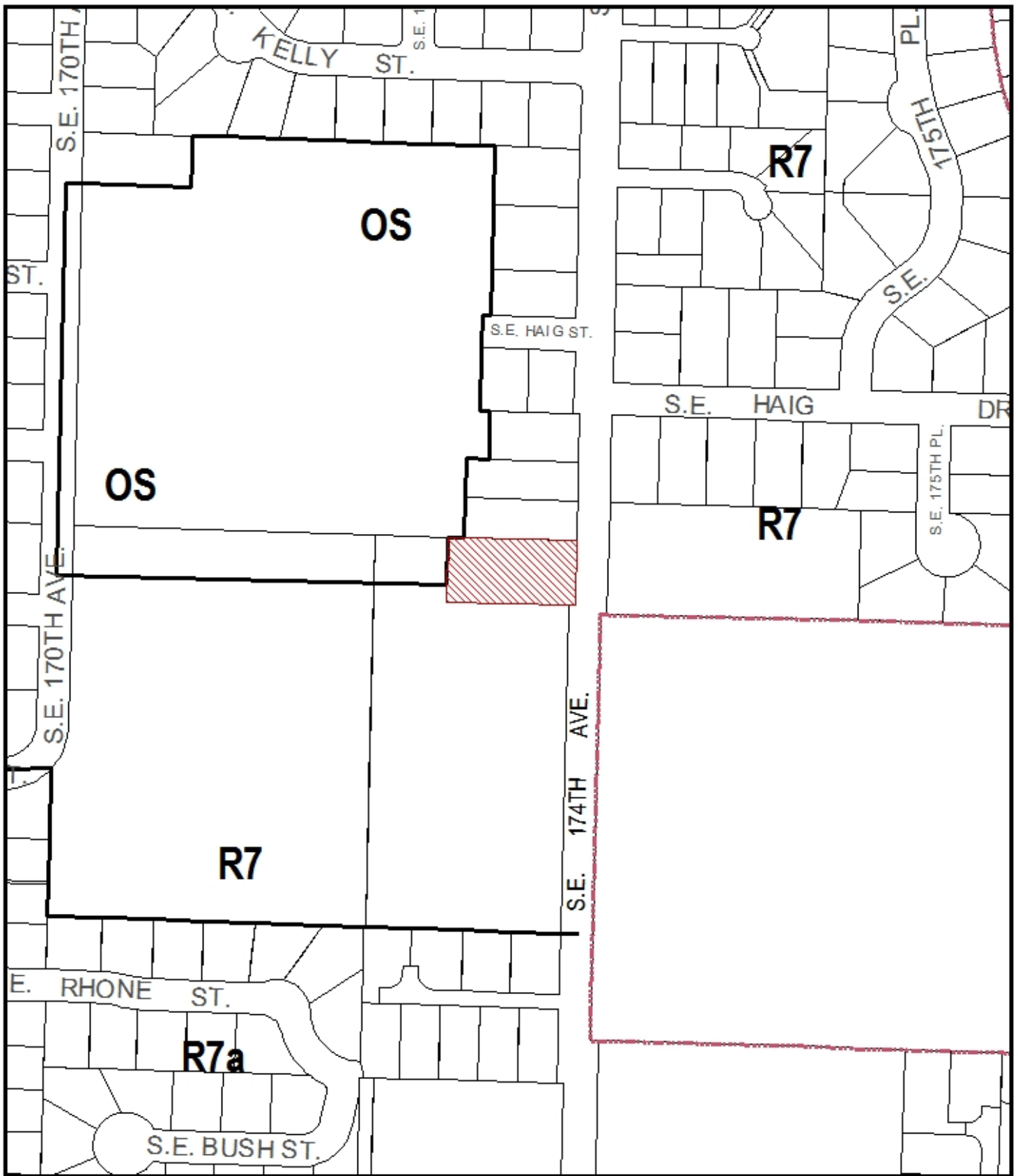
**Recording the land division.** The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director 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. Narrative
  - 2. Storm Drainage Report
  - 3. Tree Report
  - 4. 120-day Waiver
  - 5. Arguments against locating flag pole to the south
  - 6. Recorded Maintenance Agreements
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2.
- 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, BDS
- F. Correspondence:
  - 1. Centennial Community Association, 4-29-09, Supportive
- G. Other:
  - 1. Original LU Application
  - 2. Site History Research
  - 3. Incomplete Letter

**The Bureau of Development Services is committed to providing equal access to information and hearings. If you need special accommodations, please call 503-823-7300 (TTY 503-823-6868).**



# ZONING



Site



NORTH

File No.	<u>LU 09-103160 LDP</u>
1/4 Section	<u>3448</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S3E07AC 3700</u>
Exhibit	<u>B (Jan 22, 2009)</u>



