



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

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Date: January 12, 2010
To: Interested Person
From: Kate Green, Land Use Services
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NOTICE OF A TYPE IIx DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a proposal in your neighborhood. The reasons for the decision are included in this notice. If you disagree with the decision, you can appeal it and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 09-161812 LDS

GENERAL INFORMATION

Applicant: Kevin Partain, Urban Visions
223 NE 56th Avenue
Portland OR 97213

**Recent Purchaser/
Property Owner:** Ground Breakers Construction and Development Inc
11124 NE Halsey Street #612
Portland OR 97220

Former Owner: Martha Cook
327 NW 56th Street
Newport OR 97365-1245

Site Address: 5303 SE 88th Avenue
Legal Description: LOT 1 BLOCK 1 N 18.82' OF LOT 2 BLOCK 1, SHADYWOOD PK
Tax Account No.: R759700010
State ID No.: 1S2E16BD 05700
Quarter Section: 3539

Neighborhood: Lents, David Hyde at 503-772-1376
Business District: Eighty-Second Avenue, Ken Turner at 503-484-6225
District Coalition: East Portland Neighborhood Office, Richard Bixby at 503-823-4550

Zoning: Multi-dwelling Residential 2000 (R2)
Alternative Design Density Overlay (a)

Case Type: Land Division Review-Subdivision (LDS)
Procedure: Type IIx, administrative decision with appeal to the Hearings Officer

Proposal: The applicant proposes to divide an 11,525 square foot property into 5 lots ranging in size from 1,863 square feet to 2,308 square feet. The established house and garage and all the trees on the property are proposed to be removed. Right-of-way dedications are proposed along SE Steele Street (6-foot), and SE 88th Avenue (6-foot). A private sewer easement is proposed across Lots 4 and 5 for a public sewer connection for Lot 3. The 5 lots are to be subsequently developed with detached residences.

This subdivision proposal is reviewed through a Type IIX procedure because: (1) the site is in a residential zone; (2) four to ten dwelling units are proposed, not including accessory dwelling units (see 33.660.110).

For purposes of State Law, this land division is considered a subdivision. To subdivide land is to divide an area or tract of land into four or more lots within a calendar year (See ORS 92.010).

Relevant Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are found in **Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.**

ANALYSIS

Site and Vicinity: The subject site is an 11,525 square foot rectangular lot, on the corner of SE 88th Avenue and SE Steele Street. Both street frontages have 30-foot wide paved roadways, and 4.5-foot wide curb-tight sidewalks on each side. An unnamed alley also abuts the west lot line. The site is relatively flat, and is currently developed with a single story residence and detached garage.

The site is situated in an established residential area. Within 2 blocks of the site, nearly all of the lots are 5,000 square feet in area or larger. *Lents Park* is located diagonally across the street to the northeast, and is in the Open Space zone. Other lots to the north are in the Single Dwelling zone, and nearly all are developed with single-dwelling residences. Lots to the west, south, and east are in the Multi-Dwelling (R2) zone, and most are developed with single dwelling homes. More recent development in the area includes multi-dwelling development in the R2 zoned properties to the south and east of the subject site.

Zoning: The zoning for the property is **Multi-Dwelling Residential 2,000 (R2)** with an **Alternative Design Density (a)** overlay.

The R2 zone is a low density multi-dwelling zone. The major types of new development will be duplexes, townhouses, rowhouses and garden apartments. These housing types are intended to be compatible with adjacent houses. Generally, R2 zoning will be applied near Major City Traffic Streets, Neighborhood Collector and District Collector streets, and local streets adjacent to commercial areas and transit streets.

The purpose of the Alternative Design Density Overlay Zone is to focus development on vacant sites, preserve existing housing and encourage new development that is compatible with and supportive of the positive qualities of residential neighborhoods. The concept for the zone is to allow increased density for development that meets additional design compatibility requirements.

The proposal is within the density standards allowed by right in the R2 zone, and does not include increased density, which could be allowed through the a-overlay provisions.

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 17, 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 was received, which noted the need to ensure the trees on abutting properties are not damaged by any development on the project site. The letter also noted concerns about construction activities occurring in the alleyway.

Staff note: The applicant has been given a copy of the neighbor's letter to foster communication between the parties during the construction activities. In addition, the neighbor and applicant have been informed that any construction activities or staging in the alleyway, or other rights-of-way requires a permit from *Portland Transportation*.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

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

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

Criterion	Code Chapter	Topic	Applicability Findings
A	33.612	Lots	Applicable - See findings below
B	33.630	Trees	Applicable - See findings below.
C	33.631	Flood Hazard Area	Not applicable - The site is not within a flood hazard area.
D	33.632	Potential Landslide Hazard Area	Not applicable - The site is not within a 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 when the minimum density for the site is less than 40 units.
G	33.635.100	Clearing and Grading	Applicable - See findings below.
G	33.635.200	Land Suitability	Applicable - See findings below.
H	33.636	Tracts and Easements	Applicable - See findings below.
I	33.639	Solar Access	Applicable - See findings below.
J	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
K	33.641	Transportation Impacts	Applicable - See findings below
L	33.651-33.654	Services and Utilities	Applicable - See findings below

Applicable Approval Criteria are:

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

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

Density Standards: Density standards match housing density with the availability of services and 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.

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

The total site area shown on the applicant’s existing conditions survey is 11,525 square feet. Site area devoted to streets is subtracted from the total site area in order to calculate the minimum and maximum density. The applicant will be required to dedicate approximately 6 feet of frontage along SE Steele Street, and 6 feet of frontage along SE 88th Avenue for right-of-way purposes (as described later in this report). The right-of-way dedications will equal approximately 1,320 square feet. Therefore the resulting lot size for calculating density is 10,205 square feet.

In this case, all the lots (1 through 5) are proposed for single dwelling development. Therefore, the density requirements for this site are calculated as follows:

Minimum = 10,205 square feet (site area) ÷ 1 unit per 2,500 square feet of site area (minimum density from Table 120-3) = 4.08 (which rounds down to a minimum of 4 units, per 33.930.020.A).

Maximum = 10,205 square feet (site area) ÷ 1 unit per 2,000 square feet of site area (maximum density from Table 120-3) = 5.10 (which rounds down to a maximum of 5 units, per 33.930.020.B).

The applicant is proposing 5 lots. Therefore each lot will be required to be developed with one unit. The density standards are therefore met.

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

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

	R2 Zone Requirement	Proposed Lots 1, 2, and 3	Proposed Lot 4	Proposed Lot 5 (corner lot)
Lots for Attached or Detached Houses				
Minimum Lot Area (square feet)	1,600	1,863	2,308	2,308
Minimum Lot Width* (feet)	25	26	35.82	35.82
Minimum Lot Depth (feet)	none	71.64	64.44	64.42
Minimum Front Lot Line (feet)	25	26	35.82	35.82 (narrowest frontage is along SE 88 th Avenue)

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

The findings above describe how the applicable lot standards are met. 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, and evaluates their condition. The inventory identifies the following trees on the site:

Tree # (as numbered in the arborist report)	Species	Diameter (inches)	Significant? (On Table 630-1)	Exempt? (per 33.630.030)	To be retained?	RPZ (Root Protection Zone)
(85)	European Holly	11	N	Y-Nuisance	N	NA
(86)	Flowering Dogwood	8	Y	N-Remove for construction	N	NA
(87)	Black Walnut	18	Y	N-Remove for construction	N	NA
(88)	Incense Cedar	19	Y	NA-On Property Line	Y-on property line	NA
(89)	Douglas Fir	38	Y	NA-In Alley	Y-off site	NA
(90)	Norway Maple	21	N	Y-Nuisance	N	NA
(91)	European Holly	6	N	Y-Nuisance	N	NA
(92)	English Hawthorn	18	N	Y-Nuisance	N	NA
(93)	Bird Cherry	11	N	Y-Nuisance	N	NA
(94)	Golden Chain	26 multi- trunked	N	Y-Prohibited	N	NA

Y-Yes, N-No, NA-Not Applicable

Most of the trees have been exempted by the arborist because they are either unhealthy, a nuisance species, or located partially off the property. The total non-exempt tree diameter on the site is 26 inches, and includes the 8-inch dogwood and the 18-inch black walnut. The applicant proposes to remove all the trees on the lot. The proposal does not meet any of the tree preservation options in 33.630.100. 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.**

The two non-exempt trees are located on Lot 5; the 18-inch walnut is near the west lot line, and the 8-inch dogwood is in the northeast corner of the lot. The standard root protection zone of the dogwood will extend into the area required for street dedication and frontage improvements; and the standard root protection zone of the walnut will extend into the area designated for the sanitary line and

easement for Lot 3, as well as a portion of Lot 3 and 4. These factors have a bearing on the amount of room that available for a building site.

The applicant has noted that the site is less than 15,000 square feet in area, and the location of the existing trees 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 zone.

In order to mitigate for the removal of the two noted trees, the applicant proposes to install six 1½-inch caliper mitigation trees on the site, in addition to any other landscaping requirements. The applicant notes this will provide 9 tree inches and will otherwise be equivalent to the Option 1 Tree Preservation Standard, which requires preservation of 35 percent of the total tree diameter on the site. The applicant's arborist report recommends the trees should be small in their mature state, due to the limited space available.

Because the lots will be relatively small, and the applicant will be required to meet the landscaping standard for new houses (known as the T1 tree planting standard, 33.248.020.H), which will require at least 4 inches of new trees to be planted for each of the proposed lots, it may be impractical to install additional trees on the lots. Instead, if the applicant made a contribution to the City's Tree Fund, this would allow for the installation of trees in the watershed in which the site is located, and those trees will help absorb air pollutants and contamination, and contribute to the City's general beauty.

To adequately mitigate for the removal of the two noted trees, all significant tree inches (8-inch dogwood), and at least 20 percent of the total tree inches (8-inch dogwood plus 18-inch walnut) should be replaced. This is comparable to the amount of tree diameter called for by Tree Preservation Standard, Option 4. Based on this, a contribution equal to 13 tree inches (8 inches plus 5 inches) should be provided to the City's Tree Fund.

The cost to purchase and plant trees is determined each year by the Urban Forester based on current market prices per inch for materials, labor, and maintenance. At this time, \$300 per inch of tree to be installed is required.

With a condition that the applicant must contribute funds for 13 inches of trees, prior to final plat, this will provide for the installation of trees in the watershed and serve to equally meet the purpose of the Tree Preservation regulations. With the implementation of this condition, this criterion will be met.

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

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

33.635.100 – Clearing and Grading

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

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

In this case the 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 criterion is met.

33.635.200 – Land Suitability

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

The site is currently in residential use, and there is no record of any other use in the past. As noted in the response from *Site Development*, the applicant has proposed to remove the existing house and garage and redevelop the site. In order to ensure that the new lots are suitable for development, a permit must be obtained and finalized for demolition of all structures on the site and sewer capping, prior to final plat approval.

In addition, City records indicate a cesspool and two drywells were located on the site. Records show the cesspool was filled at the time the house was connected to the public sewer system in 1997. The drywells must also be decommissioned, and a final approval of a drywell decommissioning permit will be required, prior to final plat approval.

With these conditions, the new lots can be considered suitable for 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 proposed across Lot 4 and Lot 5 for a sanitary sewer lateral connection that will serve Lot 3.

Each lot must provide a service connection to the public sanitary sewer system. The applicant proposes to place a sanitary sewer line within an easement across private property, instead of extending the public sewer line in the public street. The applicant obtained a Plumbing Code Appeal (#6677) to allow the minimum 10-foot wide private easement width to be reduced to two abutting 5-foot wide easements on Lots 4 and 5, to provide a complete easement width of 10 feet. Currently, the easement is shown extending into an area along SE 88th Avenue, which is required to be dedicated, and the easement must only be located on the private lots; therefore, it must be removed from the frontage to be dedicated for right-of-way improvements. *Site Development* and *Environmental Services* note the easement must be shown on the Final Plat.

In addition, *Site Development* has noted that the private sewer easement on Lots 4 and 5 must be shown on the plans for new construction on Lots 3, 4 and 5, in accordance with the Plumbing Code Appeal #6677.

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement(s) will be required describing maintenance responsibilities for the easements described above and facilities within that area. This criterion can be met with the condition that a maintenance agreement(s) is prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreement(s) with a recording block for each agreement, 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.”

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

I. Solar access. If single-dwelling detached development is proposed for the site, the approval criteria of Chapter 33.639, Solar Access, must be met.

33.639.100, Solar Access Approval Criteria

On streets that are within 30 degrees of a true east-west axis, the narrowest lots should be interior lots on the south side of the street and corner lots on the north side of the street.

On streets that are within 30 degrees of a true north-south axis, the widest lots should be interior lots on the east or west side of the street.

Findings: The solar access regulations encourage variation in the width of lots to maximize solar access for single-dwelling detached development and minimize shade on adjacent properties.

In this case the site is on a corner, and fronts on both SE 88th Avenue and SE Steele Street. In this context there is no preference that any one lot be wider or narrower than the other lots. This criterion is therefore 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 148 feet of frontage on SE Steele Street and approximately 77 feet of frontage on SE 88th Avenue. Both of these streets are classified as local service streets for all modes in the Transportation Element of the Comprehensive Plan. Parking is currently allowed on both sides of these streets. Tri-Met provides transit service approximately 750 feet south of the site on SE Ellis Street via bus 10, and approximately 1,500 feet west of the site on SE 82nd Avenue via bus 72. There is one driveway entering the site that provides access to off-street parking for the house to be demolished.

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.

Portland Transportation has indicated that City Engineer required improvements will include:

SE 88th Avenue

SE 88th has a right-of-way width of 40 feet. It is a 30-foot wide paved street with 4.5-foot curb-tight sidewalks on both sides of the street. Current pedestrian corridor requirements include 6-inch curb, 4-foot wide planter strip, 6-foot sidewalk, 6-inch buffer zone, street trees and street lights. A 6-foot dedication of right-of-way along the SE 88th Avenue frontage is required in order to complete these improvements.

SE Steele Street

SE Steele has a right-of-way width of 40 feet. It is a 30-foot wide paved street with 4.5-foot curb-tight sidewalks on both sides of the street. Current pedestrian corridor requirements include 6-inch curb, 4-foot wide planter strip, 6-foot sidewalk, 6-inch buffer zone, street trees and street lights. A 6-foot dedication of right-of-way along the SE 88th Avenue frontage is required in order to complete these improvements.

No frontage improvements will be required for the adjacent alley to the west of the site.

Since the location of the existing curb line will not change, and the *Bureau of Environmental Services* will allow stormwater management for the street improvements to be managed by sloping the new sidewalks toward the new planter strip areas (as addressed in the next section on Utilities and Services), *Portland Transportation* and the *Bureau of Environmental Services* have determined that a 6-foot dedication along each frontage will be sufficient for the required sidewalks and planter areas on SE 88th and SE Steele.

The noted improvements will be required to be permitted through the City's public street permitting process and designed by an Oregon registered engineer. For the City Engineer to approve the final partition plat, a contract and financial guarantee must be provided to ensure that these improvements will be completed.

With these improvements, the proposed lots can be safely served by the existing streets without having any significant impact on the level of service provided. With the conditions of approval described above, this criterion is met.

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. The existing development has been served by a 5/8-inch service from an 8-inch water main in SE 88th Avenue. A 6-inch main is also available in SE Steele Street. Water indicates the existing service may need to be abandoned, since it will be located within the proposed sanitary sewer easement. Lots 1, 2, and 3 should be served from the main in SE Steele. Lot 4 should be served from the main in SE 88th. Lot 5 may be served from either SE Steele or SE 88th. At the time of building permits, appropriate plans and assurances for new services must be provided to the Portland Water Bureau. See Exhibit E-3 for more details.
- The sanitary sewer standards of 33.652 have been verified. There is an existing 8-inch PVC public sanitary-only sewer located in SE 88th Avenue, and an existing 8-inch PVC public sanitary-only sewer in SE Steele Street. The line in SE Steele terminates at a manhole approximately 10 feet east of the west property line, and is available for sanitary service to Lots 1 and 2. The main in SE 88th is available for sanitary service to Lot 3 and 4, and the recently capped service for the house that has now been removed is available for Lot 5. The sanitary easement for Lot 3 must be shown on the final plat. In addition, 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. At the time of development, new service branches will be required for Lots 1, 2, 3, and 4.
- 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:

- **Public Street Improvements:** As a condition of this land use approval, *Portland Transportation* requires the applicant to improve the frontage of the site to City standards (discussed earlier in this report). New sidewalks are required, but the curb already exists. BES has indicated that the new sidewalk must be constructed so that it will slope towards the planter strip, allowing the stormwater runoff from the sidewalk to be deposited in a vegetated area that meets the requirements of the Stormwater Management Manual. All right-of-way dedications must be shown on the final plat.
- **Lots 1-5:** Stormwater from these lots is proposed to be directed to individual drywells that will treat the water and slowly infiltrate it into the ground. Each of these lots 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 drywells. Drywells may not be located any closer than 10 feet to any structure and 5 feet to any property line.

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
33.654.110.B.2	Dead end streets	Not applicable - No dead end streets are proposed.
33.654.110.B.3	Pedestrian connections in the I zones	Not applicable - The site is not located within an I zone.
33.654.110.B.4	Alleys in all zones	Not applicable - No alleys are proposed or required.
33.654.120.C.1	Width of the street right-of-way	Applicable - See findings below.
33.654.120.C.3.c	Turnarounds	Not applicable - No turnarounds are proposed or required.
33.654.120.D	Common Greens	Not applicable - No common greens are proposed or required.
33.654.120.E	Pedestrian Connections	Not applicable - There are no pedestrian connections proposed or required.
33.654.120.F	Alleys	Not applicable - No alleys are proposed or required.
33.654.120.G	Shared Courts	Not applicable - No shared courts are proposed or required.
33.654.130.A	Utilities	Applicable - See findings below.
33.654.130.B	Extension of existing public dead-end streets and pedestrian connections	Not applicable - There are no existing public dead-end street or pedestrian connections adjacent to the site.
33.654.130.C	Future extension of proposed dead-end streets and pedestrian connections	Not applicable - No street extensions are required to serve abutting sites that are further dividable.
33.654.130.D	Partial rights-of-way	Not applicable - No partial public streets are proposed or required.

Applicable Approval Criteria are:

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

- a. **Through streets should generally be provided no more than 530 feet apart, and pedestrian connections should generally be provided no more than 330 feet apart. Through street and pedestrian connections should generally be at least 200 feet apart;**
- b. **Where the street pattern in the area immediately surrounding the site meets the spacing of subparagraph a., above, the existing street pattern should be extended onto the site;**
- c. **Characteristics of the site, adjacent sites, and vicinity, such as: (1) Terrain; (2) Whether adjacent sites may be further divided; (3) The location of existing streets and pedestrian connections; (4) Whether narrow frontages will constrain creation of a through street or pedestrian connection; (5) Whether environmental overlay zones interrupt the expected path of a through street or pedestrian connection; and (6) Whether existing dwelling units on- or off-site obstruct the expected path of a through street or pedestrian connection. Alternative locations or designs of rights-of-way should be considered that avoid existing dwelling units. However, provision of through streets or pedestrian connections should take precedence over protection of existing dwelling units where the surrounding transportation system will be significantly affected if a new through street or pedestrian connection is not created;**
- d. **Master street plans for the area identified in Goal 11B of the Comprehensive Plan;**
- e. **Pedestrian connections should take the most direct route practicable. Users should be able to see the ending of the connection from the entrance point, if possible.**

Findings: The site is located on a corner lot between SE 88th and SE 87th Avenues, which have a distance of approximately 300 feet between them, and between SE Steele and SE Insley Streets, which have a distance between them of approximately 360 feet. There is also a north/south alley located midblock between SE 88th and SE 87th.

Given the pre-existing block and lot pattern and development in the vicinity, *Portland Transportation* has noted no concerns about connectivity. With the previously noted right-of-way dedications, sidewalk improvements will be provided along both frontages of the site. These pedestrian connections will provide straight-line connections and unobstructed views for users. For the reasons described above, this criterion is met.

33.654.120.C.1 Approval criterion for width of the right-of-way. The width of the local street right-of-way must be sufficient to accommodate expected users, taking into consideration the characteristics of the site and vicinity, such as the existing street and pedestrian system improvements, existing structures, and natural features.

Findings: As noted above, with the right-of-way dedications called for by *Portland Transportation*, sidewalks improvements will be provided along both frontages of the site. 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 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.

Section 33.120.270.D of the Zoning Code allows reduced side setbacks (3-feet from property lines) for detached houses in the multi-dwelling zones on lots that are at least 25 feet wide. This allowance only applies to the setbacks that are interior to the site. The setbacks around the perimeter of the land division site are that of the base zone. This proposal is eligible to use these provisions. **To take advantage of this allowance the reduced side setbacks must be shown on a supplemental survey for the land division at the time of final plat approval.**

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

- **Existing development.** The applicant is proposing to remove all of the existing structures on the site. Demolition permits have been issued [09-167692 RS (house) and 09-167697 (garage)], and prior to final plat approval, the applicant must provide documentation that all required demolition permits have received final inspection. To ensure that this standard is met, a condition of approval is necessary.

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 http://www.water.ci.portland.or.us/
Environmental Services	Title 17; 2008 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 http://www.bes.ci.portland.or.us/
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 http://www.fire.ci.portland.or.us/
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 http://www.trans.ci.portland.or.us/
Development Services	Titles 24 -27, Admin Rules for Private Rights of Way	Building Code, Erosion Control, Flood plain, Site Development & Private Streets	503-823-7300 http://www.bds.ci.portland.or.us.

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

- The applicant must meet the requirements of Urban Forestry for street tree planting, and street trees must be include in all street plans. This requirement is based on the standards of Title 20.
- The applicant must meet the requirements of the Fire Bureau for Aerial Fire Department Access, at the time of the building permit review. 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.

CONCLUSIONS

The applicant has proposed a 5 lot subdivision, 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:

- Removing existing structures and drywells, and capping existing sanitary services.
- Supplying Easements across Lots 4 and 5, and Maintenance Agreements for a sanitary sewer connection to serve Lot 3.
- Providing frontage dedication and street improvements on SE 88th Avenue and SE Steele Street.
- Contributing to the Tree Fund for mitigation.

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

ADMINISTRATIVE DECISION

Approval of a Preliminary Plan for a 5-lot subdivision that will result in 5 lots for detached housing, with one unit on each lot. This approval is granted based on the Preliminary Plan, as illustrated with Exhibit C.1, and is 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 approval. 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 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.
- 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 88th Avenue and SE Steele Street. The required right-of-way dedication must be shown on the final plat.
2. A 10-foot wide easement centered on the lot line between Lots 4 and 5 for a sewer connection to benefit Lot 3.
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 D 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 sanitary 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 88th Avenue and SE Steele Street. 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.

Utilities

2. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of the existing drywells on the site.

Existing Development

3. A finalized permit must be obtained for demolition of the existing residence and garage on the site and capping the existing sanitary sewer connection.

Required Legal Documents

4. A Maintenance Agreement shall be executed for the area within the Private Sewer Easement 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.

Other requirements

5. The applicant must pay into the City Tree Fund the amount equivalent to 13 inches of trees. Payment must be made to the Bureau of Development Services, which administers the fund for the Parks Bureau.

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 private sewer easement on Lots 4 and 5 must be shown on the plans for new construction on Lots 3, 4 and 5, in accordance with the Plumbing Code Appeal #6677.

Staff Planner: Kate Green



Decision rendered by: _____ **on January 8, 2010.**

By authority of the Director of the Bureau of Development Services

Decision mailed January 12, 2010.

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 October 1, 2009, and was determined to be complete on November 12, 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 October 1, 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 did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on March 12, 2010.**

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

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

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

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on January 26, 2010** at 1900 SW Fourth Avenue. Appeals may be filed Tuesday through Friday on the first floor in the Development Services Center until 3 p.m. After 3 p.m. and on Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

The file and all evidence on this case are available for your review by appointment only. Please contact the receptionist at 503-823-7617 to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.ci.portland.or.us.

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

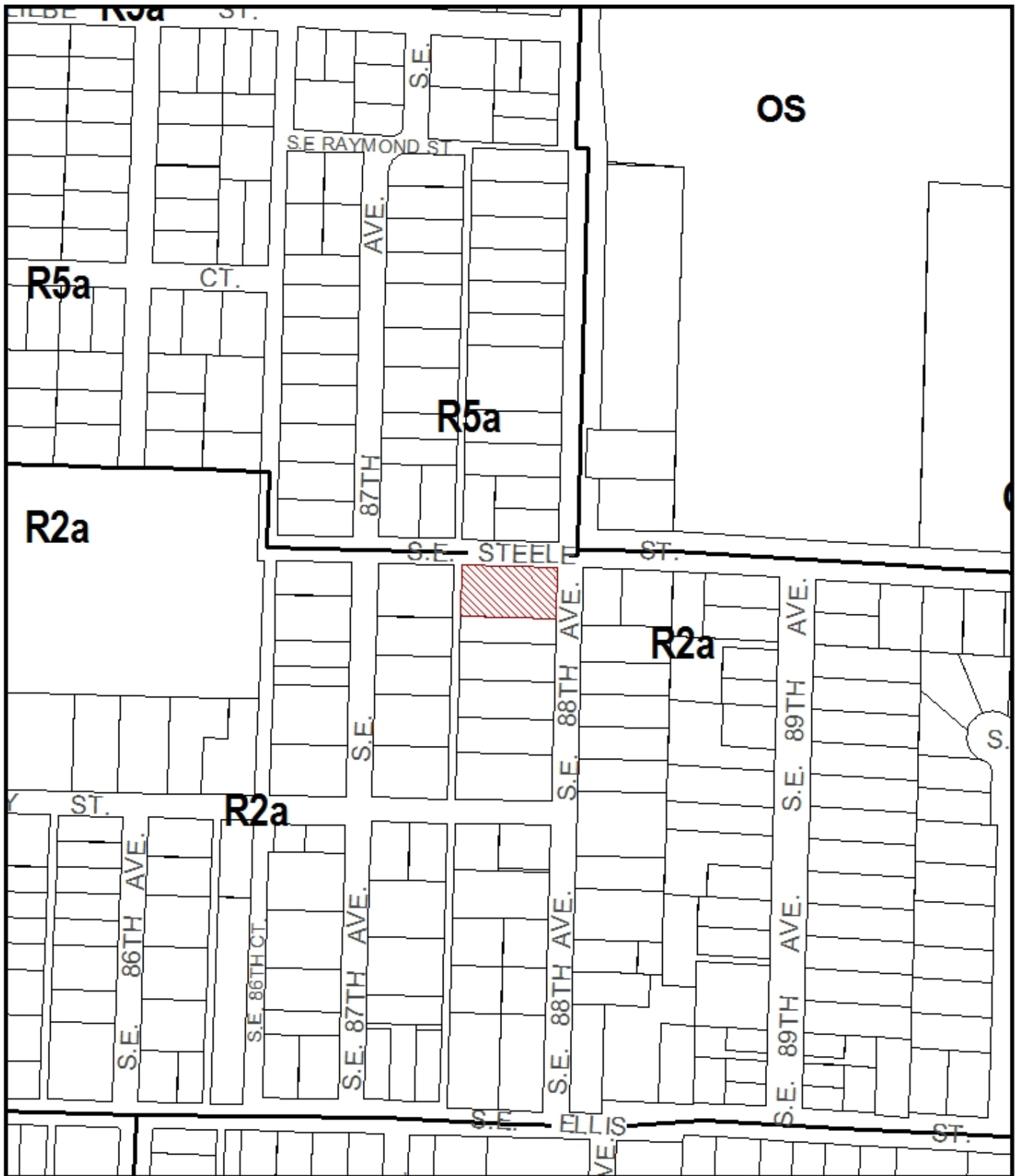
Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity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

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.**

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Tree Mitigation Plan and Survey
 - 2. Neighborhood Meeting Request and Certified Mail Receipts
 - 3. Response to letter re: incomplete application
 - a. Infiltration Test Results
 - b. Plumbing Code Appeal Summary (#6677)
 - c. Deed Records
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Proposed Subdivision Plat-revised submittal (reduced copy attached, full size in LU folder)
 - 2. Utility Plan
 - 3. Existing Conditions Plan
 - 4. Proposed Subdivision Plan-initial submittal
- 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
 - a. Revised response
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. Life Safety
- F. Correspondence:
 - 1. Kelly Goss, 12/3/2009, noted the need to protect trees on adjacent lots and to keep the alley free of construction materials.
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Email and letter to applicant re: incomplete application
 - a. Completeness review response: Environmental Services
 - b. Completeness review response: Site Development
 - 4. Updated ownership information from applicant (Statutory Warranty Deed)



ZONING

 Site

File No. LU 09-161812 LDS

1/4 Section 3539

Scale 1 inch = 200 feet

State_Id 1S2E16BD 5700

Exhibit B (Oct 02, 2009)



NORTH

"RYAN'S PLACE" PROPOSED SUBDIVISION PLAN

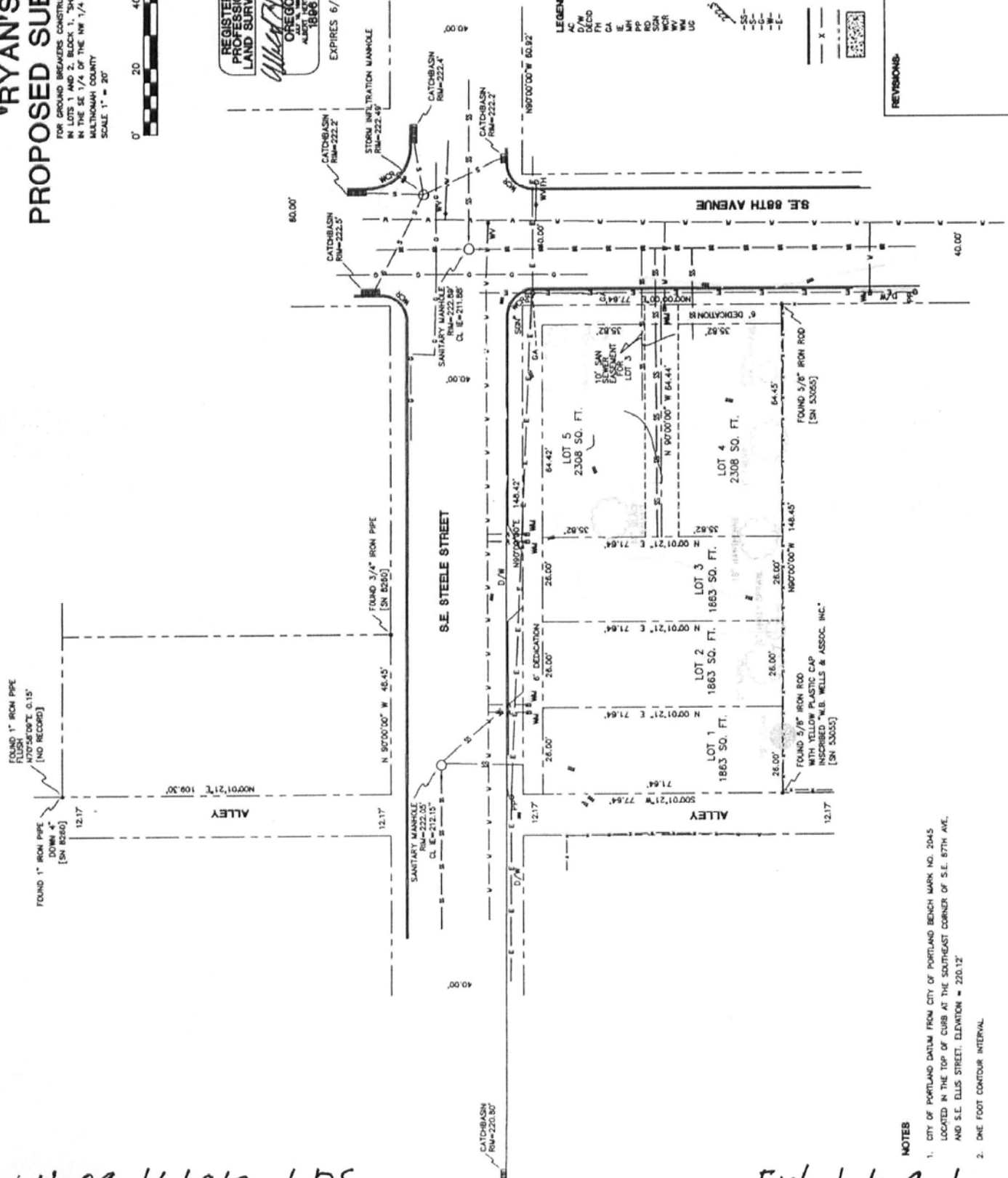
FOR GROUND BREAKERS CONSTRUCTION AND DEVELOPMENT INC.
IN LOTS 1 AND 2, BLOCK 1, "SHADYWOOD PARK"
IN THE SE 1/4 OF THE NW 1/4 OF SECTION 16, T. 1 S., R. 2 E., W.M.
MULTNOMAH COUNTY
OREGON
SEPTEMBER 15, 2009
SCALE 1" = 20'



REGISTERED
PROFESSIONAL
LAND SURVEYOR
Walter Hertzel
OREGON
ADJUSTED
1886

EXPIRES 6/30/11

**CASWELL/
HERTEL**
SURVEYORS INC.
6150 S.W. 124th AVE.
BEAVERTON, OREGON 97008
(503) 644-3179



LEGEND

AC	ASPHALTIC CONCRETE
D/W	DRIVEWAY
DECO	DECIDUOUS TREE
FT	FLUSH
CI	CONCRETE CURB
SE	SEWER ELEVATION
WH	WATER MANHOLE
PP	POWER POLE
RD	ROOF DRAIN
SN	SPOT ELEVATION
WCR	WHEEL CHAIR RAMP
WV	WATER VALVE
WM	WATER METER
UC	UNDERGROUND UTILITY DROP

SPOT ELEVATION	---
SANITARY SEWER	-SS-
STORM SEWER	-S-
WATER MAIN	-W-
OVERHEAD ELECTRICAL AND COMMUNICATION LINES	-E-

CONCRETE CURB	---X---
FENCE LINE	--- ---
PROPERTY LINE	--- ---
CONCRETE SURFACE	---[---

REVISIONS:

- NOTES**
- CITY OF PORTLAND DATUM FROM CITY OF PORTLAND BENCH MARK NO. 2045
LOCATED IN THE TOP OF CURB AT THE SOUTHEAST CORNER OF S.E. 87TH AVE.
AND S.E. ELLIS STREET. ELEVATION = 220.12'
 - ONE FOOT CONTOUR INTERVAL

LU 09-161812 LDS

Exhibit C.1
reduced copy