



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

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Date: May 17, 2010
To: Interested Person
From: Kate Green, 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 09-105385 LDP

GENERAL INFORMATION

Applicant: Tom Shaw, Stearns Construction LLC
17256 NE Sacramento Street
Portland OR 97230

Property Owners: David L and Nancy D Thompson
905 NE 81st Avenue
Portland OR 97213

Site Address: 16126 NE SANDY BOULEVARD

Legal Description: TL 600 0.53 ACRES, SECTION 24 1N 2E
Tax Account No.: R942240960
State ID No.: 1N2E24DD 00600
Quarter Section: 2646

Neighborhood: Wilkes Community Group, Alice Blatt at 503-253-6247
Business District: Parkrose Business Association, Wayne Stoll at 503-284-1921
District Coalition: East Portland Neighborhood Office, Richard Bixby at 503-823-4550

Zoning: Neighborhood Commercial 2 (CN2)
Plan District: None
Other Designations: Wellhead Protection Area

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

Proposal: The applicant proposes to divide this 23,443 square foot site into 2 parcels. The existing development will be retained on Parcel 2 and a new commercial structure is planned for the future Parcel 1.

This partition is reviewed through a Type I land use review because: (1) the site is in a commercial 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).

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33, the zoning code. The relevant approval criteria are found in Section 33.662.120, Approval criteria for Land Divisions in Commercial, Employment and Industrial Zones.

ANALYSIS

Site and Vicinity: The subject site is a relatively flat lot with frontage along NE Sandy Boulevard. NE Sandy Boulevard is a State Highway and subject to State regulations for creation of new access and frontage improvements.

The east portion of the site has been developed with a single story commercial building and parking areas. One tree is located near the southeast corner of the property. The balance of the property is undeveloped.

The site is located between a developed commercial site to the east and an apartment complex to the west. This site and lands to the east are zoned for commercial development, and the adjacent site is developed with a small convenience store and surface parking lot. To the north properties are zoned for and developed with industrial uses. Lands to the west and south are zoned and developed as residential properties, with R3 multi-dwelling zones closest, and R7 single dwelling zoned areas located beginning one block to the southeast of the site.

Zoning: The CN2, Neighborhood Commercial, designation allows for commercial and residential uses with development that is intended for small commercial sites and areas in or near less dense or developing residential neighborhoods. The emphasis of the zone is on uses that will provide services for nearby residential areas, and on other uses which are small scale and have little impact. Uses are limited in intensity to promote their local orientation and to limit impacts on nearby residential areas.

Land Use History: City records indicate that prior land use reviews include the following:

- LU 05-102895 LDP: A 2-lot partition request, similar to the pending proposal, was approved; however, the three year period to complete the final plat elapsed, so that decision became void.

Agency and Neighborhood Review: A Notice of Proposal in your Neighborhood was mailed on **August 6, 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 from Alice P. Blatt of the Wilkes Community Group. No concerns were noted.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR LAND DIVISIONS IN A COMMERCIAL, EMPLOYMENT, OR INDUSTRIAL ZONE

33.662.120 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 **33.662.120 [A-K], Approval Criteria for Land Divisions in Commercial, Employment and Industrial 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	33.613	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 the flood hazard area.
D	33.632	Potential Landslide Hazard Area	Not applicable - The site is not within the potential landslide hazard area.
E	33.633	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed.
F	33.635.100	Clearing and Grading	Not applicable - This approval criterion is not relevant because the site is primarily flat, is not located in the Potential Landslide Hazard Area, and the applicant has not proposed any grading on the site to occur prior to obtaining building permits for development on the individual lots.
F	33.635.200	Land Suitability	Not applicable - There is no record of any previous land uses or conditions that would create a hazard.
G	33.636	Tracts and Easements	Applicable - See findings below.
H	33.639	Solar Access	Not applicable - The proposed development is for something other than single dwelling homes.
I	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
J	33.641	Transportation Impacts	Applicable - See findings below
K	33.651 - 33.654	Services and Utilities	Applicable - See findings below

A. Lots. The standards and approval criteria of Chapters 33.613 through 33.615 must be met;

Findings: Chapter 33.613 contains the lot standards applicable in the commercial zones. Chapter 33.613 works in conjunction with other chapters of the Zoning Code to ensure that land divisions create lots that can support appropriate uses and development. The standards are as follows:

33.613.100 Minimum Front Lot Line Standard

Each lot must have a front lot line that is at least 10 feet long.

Each proposed lot has a front lot line that is at least 10 feet long. Parcel 1 has a front lot line of 115 feet and Parcel 2 has a front lot line of 105 feet. This standard is met.

33.613.200 Minimum Lot Area, Width and Depth Approval Criterion

There are no minimum lot area, width or depth standards. Lots must be of a size, shape, and orientation that is appropriate for the location of the land division and for the type of development and use that is contemplated.

A wide range of uses are allowed in the commercial zones, so the size and shape and amount of land needed for commercial developments varies. In this situation, the east half of the site is developed with a single story commercial building and paved parking lot, and the west half is vacant. The proposed partition plan shows the existing building will be located entirely within Parcel 2, which will be a rectangular lot approximately 12,023 square feet in area. Parcel 1 will be of comparable size, at approximately 11,420 square feet, which is sufficient area to

accommodate commercial development in a manner consistent with the CN2 standards (33.130). Both lots will have frontage on NE Sandy Boulevard.

The proposed parcels will be similar in size and shape to the abutting commercial lot to the east. Two other commercial properties are located to the east, across NE 162nd Avenue. Those properties are larger than the subject site, at 80,000 and 36,000 square feet; but as they are undeveloped at this time, it is likely they could be developed and/or divided in a manner similar to the scale and configuration of the subject site.

Properties on the north side of NE Sandy are in the industrial zones, and are further separated from the commercial zones by rail lines that border NE Sandy. Properties on the south side of NE Sandy are in single or multi dwelling zones, which developments in the CN2 zone are intended serve, which as noted in the description of the CN2 zone are...*intended for small commercial sites and areas in or near less dense or developing residential neighborhoods.*

Based on the foregoing, the proposal complies with the applicable lot standards. Therefore, this criterion is met.

B. Trees. The standards of Chapter 33.630, Tree Preservation, must be met;

Findings: The regulations of Chapter 33.630 outline the tree preservation and mitigation requirements that apply to sites with trees. Certain trees are exempt from the requirements of this chapter.

The applicant provided an Arborist Report (Exhibit A.3) that notes there is one 16-inch diameter, 20-foot tall black pine located near the southeast corner of the property. The arborist notes the tree is structurally stable, but recommends some pruning to reduce the crown weight and alleviate stress from improper pruning and storm damage. The arborist also notes the tree has been constricted with barbed wire, and recommends removal of the barbed wire.

A parking area for the existing commercial development on the site surrounds $\frac{3}{4}$ of the root zone of the tree. However, the arborist's Tree Preservation Plan shows a protection area of at least a 5 foot radius from the tree trunk. With a condition that future development or re-development of Proposed Parcel 2 (B) must comply with the provisions of the Tree Preservation Plan, this criterion can be met.

G. 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.**

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: No tracts are proposed or required for this land division, so criterion A does not apply. However, in the event a shared access easement is required by Oregon Department of Transportation (ODOT), as further described in Criterion J, below, the size and location and purpose of the easement must be shown on the final plat. Additionally, as stated in Section 33.636.100 of the Zoning Code, a maintenance agreement(s) 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(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.

J. 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 small lots may not require a formal transportation impact study, while it might be required for larger projects.

The site has approximately 221-feet of frontage along NE Sandy Boulevard, which has an 80-foot right-of-way width, at this location, and is improved with a paved road surface. A curb has been installed along the entire site frontage and sidewalk has been installed along the portion of the site that is currently developed. There is also a curb and sidewalk along the abutting property to the east. Otherwise, there are no curbs and sidewalks in the immediate vicinity. Bus service is available on NE Sandy via TriMet Line #12.

NE Sandy Boulevard is a State Highway on right-of-way owned in fee simple by the Oregon Department of Transportation (ODOT). Requirements for right-of-way dedication or frontage improvements are determined by ODOT. ODOT has responded that the developer may be required to provide half-street improvements in accordance with the City of Portland Transportation System Plan (TSP). In the TSP, NE Sandy is designated as a Major City Traffic Street, Transit Access Street, City Bikeway, City Walkway, Major Emergency Response Route,

and Regional Corridor. Portland Transportation recommends the following frontage improvements:

- 6-inch curb (existing), 4-foot planter strip, 6-foot sidewalk and 1.5-foot buffer. No right-of-way dedication is needed to accommodate these improvements.

Given that NE Sandy Boulevard is ODOT right-of-way, the applicant will need to contact ODOT at the building permit stage to determine frontage improvements and/or right-of-way requirements. ODOT also notes that easements may be required to facilitate a shared access approach from NE Sandy Boulevard. In the event ODOT requires a shared accessway, an easement and maintenance agreement must be provided for the shared driveway, prior to final plat.

With a condition that the applicant must obtain all necessary ODOT permits for subsequent development on the properties and access to NE Sandy Boulevard, this should ensure safety for all modes. As such, with the noted conditions, this criterion will be 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.

Water Service: The water standards of 33.651 have been verified. There is an existing ¾-inch metered water service which provides water to the proposed Parcel 2 from the 12-inch water main in NE Sandy Blvd. This may continue to be used by the existing structure in Parcel 2.

There is water available, for any future structure constructed on Parcel 1, from the 12-inch water main in NE Sandy Blvd. The applicant will be required to purchase the service from the Water Bureau. Fees for this will be calculated at the time of Building Permit application, with those fees added directly to the Permit fees.

This site is within the Columbia South Shore Well Field Wellhead Protection Area. If the applicant proposes using Underground Injection Controls (UICs), those facilities will be regulated by the Oregon State Department of Environmental Quality. The Oregon Administrative Rules (OAR 340-044) will apply.

See Exhibit E-3 for more details.

Sanitary Sewer Disposal: The sanitary sewer standards of 33.652 have been verified. There is an existing public 12-inch CSP sanitary-only line in NE Sandy (as built #MC1665).

The existing sanitary connection for the lot is 269 feet from the manhole east of the property.

A new service branch to the main line in NE Sandy will be required to be constructed to serve Parcel 2 at the applicant's or owner's expense at the time of development.

See Exhibit E-1 for more details.

Stormwater Management: 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 proposes the use of pervious pavement and Underground Injections Controls (UICs) to manage stormwater for Parcel 1. Site Development and Environmental Services have responded as follows (Exhibits E-1 and E-5):

Site Development notes that the Portland Water Bureau's review response dated August 27, 2009 states that stormwater disposal at this site, particularly if the applicant proposes using Underground Injection Controls (UICs), will be regulated by the *Oregon Department of Environmental Quality* (DEQ). An email from DEQ to Tom Shaw (Exhibit A.4) states that the pervious paver profile does not qualify as a UIC, but that the roof drains shown on the storm drainage plan will need to be registered. (Please note that the site plan attached to the DEQ email shows a drywell near the northwest corner of the proposed retail building on Parcel 1, *not* under or in the area of proposed pervious pavement.)

BES notes that total onsite infiltration without the necessity of offsite overflow is feasible for the conceptual development. Further testing will likely be required at time of building permit. According to the SWMM, pervious pavement parking lots are required to be engineered; therefore, presumptive approach testing may be required to establish a *design* infiltration rate. Site Development also notes that special inspections may be required for the pervious pavement at the time of construction.

In the event public right-of-way improvements are required by ODOT, those improvements must include stormwater management facilities in accordance with the SWMM. Based on the foregoing, the stormwater management 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.
33.654.130.E	Ownership of Alleys	Not applicable- No alleys 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.**

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, frontage for the proposed parcels will be via NE Sandy Boulevard, which is a state highway, and access is regulated by ODOT. Portland Transportation has noted no other concerns or requirements for transportation facilities at this location. As such, these criteria are 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.

Existing development that will remain after the land division. The existing development on the site will remain and be located on Parcel 2 (B). 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 CN2 zone. Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code, and if the regulation may be adjusted, the land division request must include a request for an adjustment (Please see section on Other Technical Standards for Building Code standards.)

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.

CONCLUSIONS

The applicant has proposed a 2 parcel partition, to divide an existing lot with frontage on NE Sandy Boulevard, a State Highway, into two lots of nearly equal size 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: stormwater management, access and frontage improvements, and tree protection. With conditions of approval that address these requirements this proposal can be approved.

ADMINISTRATIVE DECISION

Approval of a preliminary plan for a 2-parcel partition; Parcel 1 is approximately 12,023 square feet and Parcel 2 is approximately 11,420 square feet; per the approved plan, 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 Services 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;
- Tree 1 on Parcel 2, with required root protection zone;
- Any other information specifically noted in the conditions listed below.

B. The final plat must show the following:

1. As required by Oregon Department of Transportation (ODOT), a Reciprocal Access Easement must be shown and labeled on the final plat, centered on the common property line between Parcel 1 and Parcel 2. The easement must allow shared use of this area for all of the purposes that a driveway would be typically used for.

2. 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 C.3 below. The recording block(s) must, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records."

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

Required Legal Documents

1. A Maintenance Agreement must be executed for the Reciprocal Access Easement area described in Condition B.1 above. The agreement must 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, the Bureau of Development Services, and Oregon Department of Transportation (ODOT), 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. Tree 1 (16-inch diameter black pine) must be preserved and protected with a minimum root protection zone of 5 feet, at time of future development or re-development on Parcel 2, in conformance with the arborist report (Exhibit A.3). Tree protection fencing is required along the root protection zone (RPZ). Encroachment into the RPZ may occur only under the supervision of a certified arborist. Planning and Zoning approval of development in the RPZ is subject to receipt of a report from an arborist explaining that the arborist has approved the specified method of construction, and that the activities will be performed under his supervision.
2. If required by Oregon Department of Transportation (ODOT), access and right of way improvements must be installed along the frontage of NE Sandy Boulevard.

Staff Planner: Kate Green



Decision rendered by: _____ on May 13 2010

By authority of the Director of the Bureau of Development Services

Decision mailed on May 17, 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 February 4, 2009, and was determined to be complete on July 31, 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 February 4, 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 G.4. As such, **the 120 days will expire on: July 31, 2010.**

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 are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 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.portlandonline.com.

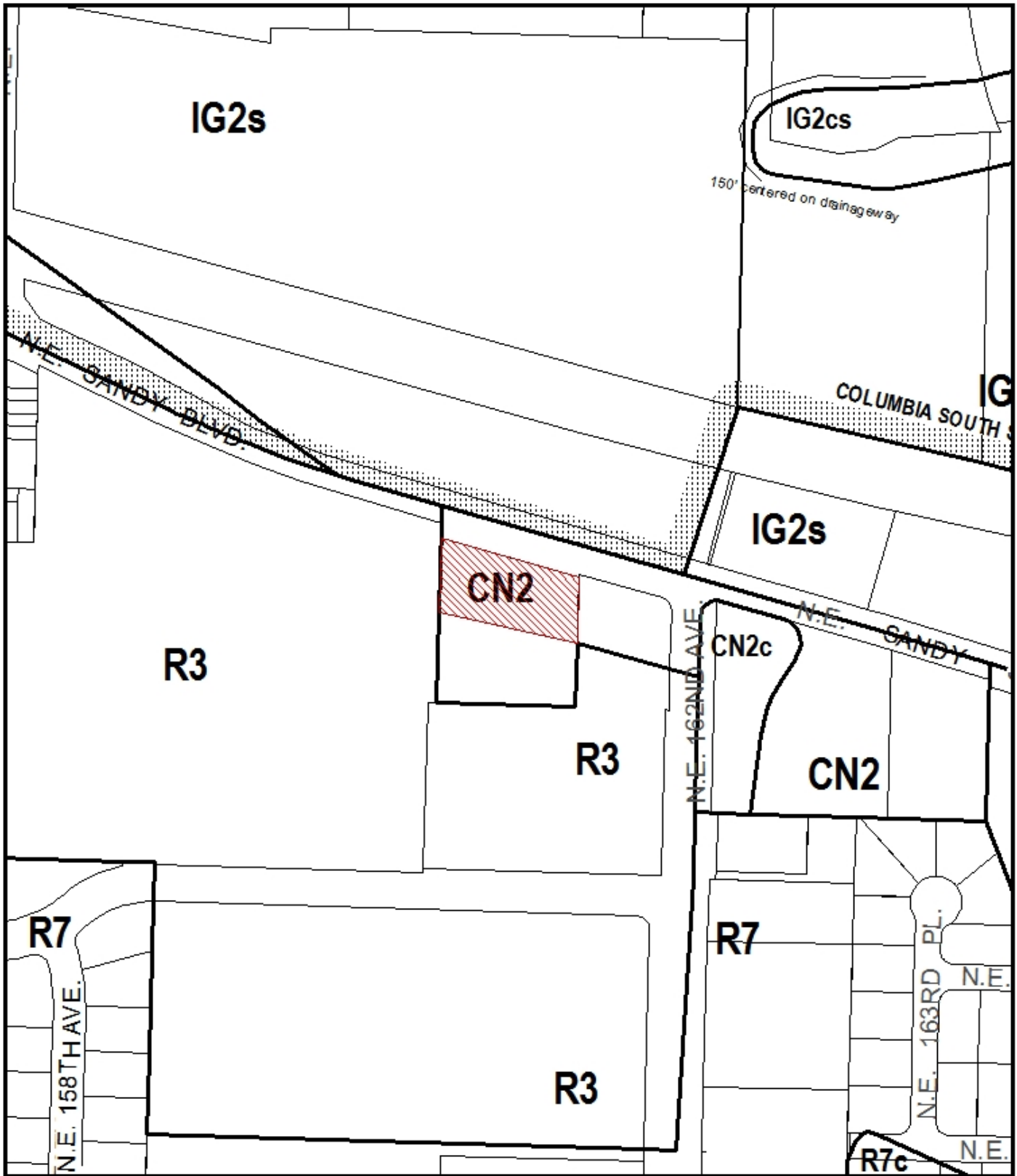
Recording the land division. The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director 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. Land Division Approval Criteria
 - 2. Geotechnical Report
 - 3. Arborist Report
 - 4. Email from applicant re: Department of Environmental Quality (DEQ) issues and infiltration test results
 - 5. Copy of ODOT Approach Permit
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Preliminary Partition Plan (reduced copy-attached)
 - 2. Storm Drainage Diagram (3/12/2010) (*This plan shows different lot dimensions and areas than the Preliminary Partition Plan; and during meet with applicant on May 12, 2010, applicant noted Partition Plan lot sizes are correct.*)
 - 3. Utility Plan and Tree Preservation Plan (7/31/2009)
 - 4. Initial Plan Set (full size plans)
- 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. BDS: Site Development
 - 5. BDS: Life Safety
 - 6. Oregon Department of Transportation
- F. Correspondence:
 - 1. Alice P Blatt, Wilkes Community Group, 9/4/2009, re: no neighborhood concerns
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Letters/emails to/from applicant
 - 4. 120-day timeline extension

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).



ZONING

 Site



File No. LU 09-105385 LDP
 1/4 Section 2646,2647
 Scale 1 inch = 200 feet
 State_Id 1N2E24DD 600
 Exhibit B (Feb 09,2009)

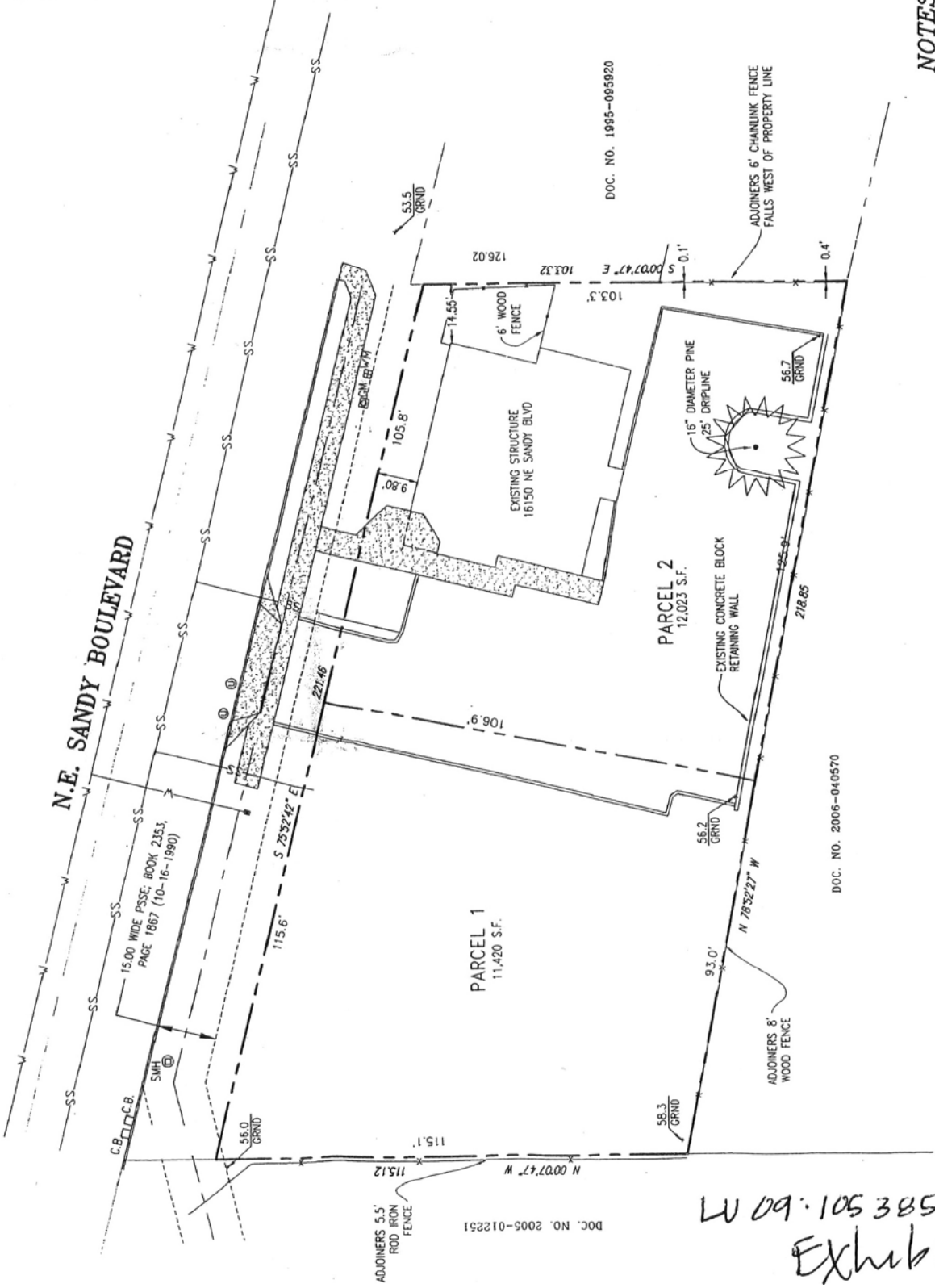
BENCHMARK

CITY OF PORTLAND BENCHMARK #2457
 20' WEST OF THE POINT OF CURVE AT THE SW
 CORNER OF NE SANDY BOULEVARD AND 162ND STREET.

ELEVATION: 53.712 FEET (C.O.P. DATUM)

LEGEND

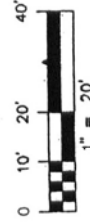
- ① UTILITY MANHOLE
- C.B.
- ⊕ SMH
- ⊕ BVM
- ⊕ GM
- GRND
- ASPHALT
- CONCRETE



NOTES

- THE UNDERGROUND UTILITY LINES SHOWN HEREON ARE FROM A COMBINATION OF FIELD VERIFICATIONS AND VARIOUS UTILITY, PRIVATE, AND GOVERNMENT SUPPLIED "AS-BUILT" MAPS AND ARE APPROXIMATE ONLY. THE SURVEYOR MAKES NO GUARANTEE THAT THE UNDERGROUND UTILITIES SHOWN COMPRISE ALL SUCH UTILITIES IN THE AREA, EITHER IN SERVICE OR ABANDONED. THE SURVEYOR FURTHER DOES NOT WARRANT THAT THE UNDERGROUND UTILITIES SHOWN ARE IN THE EXACT LOCATION INDICATED, ALTHOUGH HE DOES STATE THAT THEY ARE LOCATED AS ACCURATELY AS POSSIBLE FROM INFORMATION AVAILABLE. THE SURVEYOR HAS NOT PHYSICALLY LOCATED THE UNDERGROUND UTILITIES.

TREE LOCATIONS ARE TO THE CENTER OF TREES AND ARE APPROXIMATE ONLY. BEFORE CUTTING OR REMOVING ANY TREE NEAR THE PROPERTY LINE, CONTRACTOR AND/OR OWNER NEED TO VERIFY OWNERSHIP.



*reduced copy not to scale
 see Exhibit C. 4 for full size plan*

*Preliminary
 Partition
 Plan*

*LU 09:105385
 Exhibit C. 1*

DOC. NO. 2005-012251

DOC. NO. 2006-040570

DOC. NO. 1995-065920