



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

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[www.portlandonline.com/bds](http://www.portlandonline.com/bds)

**Date:** August 16, 2010  
**To:** Interested Person  
**From:** Sean Williams, Land Use Services  
503-823-7612 / [sean.williams@ci.portland.or.us](mailto:sean.williams@ci.portland.or.us)

## **NOTICE OF A TYPE II 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 10-127061 TV**

#### **GENERAL INFORMATION**

**Applicant(s):** Xuan Bin Ma  
7412 SE 64<sup>th</sup> Avenue  
Portland, OR 97206

Hai Duy Vo  
7420 SE 64<sup>th</sup> Avenue  
Portland, OR 97206-9663

**Site Address:** 7412 & 7420 SE 64<sup>th</sup> Avenue

**Legal Description:** LOT 1 POTENTIAL ADDITIONAL TAX, PARTITION PLAT 2004-61; LOT 2 POTENTIAL ADDITIONAL TAX, PARTITION PLAT 2004-61

**Tax Account No.:** R649842410, R649842420

**State ID No.:** 1S2E20BC 12301, 1S2E20BC 12302

**Quarter Section:** 3737

**Neighborhood:** Brentwood-Darlington, contact Denise Shook at 971-533-4741.

**Business District:** Eighty-Second Avenue, contact Ken Turner at 503-484-6225.

**District Coalition:** Southeast Uplift, contact Leah Hyman at 503-232-0010.

**Plan District:** None

**Zoning:** Residential 5,000 (R5) w/ Alternative Design Density Overlay (a)

**Case Type:** Tree Violation (TV)

**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

#### **Proposal:**

The applicants have applied for a tree violation review as two trees required to be preserved through LU 04-000400 LDP were removed without an appropriate review. A 26-inch Douglas fir tree (#4) located on 7420 SE 64<sup>th</sup> Avenue and a 20-inch House Chestnut (#9) located on 7412 SE 64<sup>th</sup> Avenue were required to be preserved through tree preservation standards (33.630) implemented in the land division review which created these lots. The applicant has proposed to mitigate for the removal of these trees through a combination of preservation and protection of a tree not originally proposed for preservation and planting new trees.

**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 **33.853.040.C, Approval Criteria for Corrections to Violations.**

**ANALYSIS**

**Site and Vicinity:** The subject properties are located on the east side of SE 64<sup>th</sup> Avenue approximately 180 feet north of the intersection with SE Flavel Street. Both 7420 SE 64<sup>th</sup> Avenue (04-031413-RS) and 7412 SE 64<sup>th</sup> Avenue (04-031410-RS) are developed with single family dwellings and associated improvements. Both properties are relatively flat. 7420 SE 64<sup>th</sup> Avenue contains a 16-inch Cherry tree and minimal landscaping. 7412 SE 64<sup>th</sup> Avenue is void of any trees or landscaping. Property in the immediate vicinity is primarily developed with single family homes with associated zoning designations.

**Zoning:** The R5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

The "a" overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. This proposal is not using any of the provisions of the "a" overlay.

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

- **LU 04-000400 LDP:** Approval of a Preliminary Plan for a 2-lot Partition that was subsequently platted as PP 2004-61. This tree violation review is required as the Douglas fir tree preserved on Lot 1 and the Horse chestnut preserved on Lot 2 were removed without appropriate approval.

**Agency Review:** A "Notice of Proposal in Your Neighborhood" was mailed **May 3, 2010**. The Water Bureau, Fire Bureau, Life Safety Plans Examiner and Bureau of Transportation all have no concerns regarding the adjustment proposal (Exhibit E-4/5). The following Bureaus have responded with comments:

Bureau of Environmental Services: Comments were provided regarding the environmental benefits of the trees that were removed and recommendation that native species should be used when mitigating for removal of mature trees. BES also notes that tree planting should not interfere with existing stormwater management facilities on each lot. See Exhibit E-1.

Site Development: "If a combination of planting of new trees and payment into the City tree fund will be pursued for correction of this violation, then the applicant/owners would need to ensure that the new trees are planted in locations that will not adversely affect the existing stormwater soakage trenches. The approved plans for building permits for both houses (04-031410-RS for 7412 SE 64<sup>th</sup> Ave, and 04-031413-RS for 7420 SE 64<sup>th</sup> Ave) show soakage trenches in the backyards. Site Development recommends that a Zoning Permit be required for inspection of any required tree/mitigation plantings." See Exhibit E-2.

Urban Forestry: Myles Black of Urban Forestry provided comments in response to a site visit for inspection of an existing Cherry tree proposed for preservation located on property identified as 7420 SE 64<sup>th</sup> Avenue. The following comments were provided: "The cherry tree appears to be in good condition. The tree has been pruned to ISA standards. The diameter is 16 inches and about 35 ft tall." See Exhibit E-3.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on May 3, 2010.

A total of two written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal. The Brentwood-Darlington Neighborhood Association requested that replacement trees be planted in Flavel City Park (Exhibit F-1). A neighboring property owner expressed the negative effects resulting from removal of the trees required to be preserved and requested planting on 7412 SE 64<sup>th</sup> Avenue (Exhibit F-2).

**Staff Response:** In response to the neighborhood Associations request, City staff has determined that replacement planting on 7412 SE 64<sup>th</sup> Avenue is a better form of mitigation for the tree violation as opposed to payment into the City Tree Fund, which is the vehicle for tree planting in public spaces. In addition, planting resulting from the City Tree Fund occurs in the watershed from which the property under review is located. There is no process to ensure a specific park is the recipient of tree planting as funded by the City Tree Fund.

The applicants will be required to plant 6.5 inches of trees in the rear yard of 7412 SE 64<sup>th</sup> Avenue to mitigate for the loss of the existing tree. The trees must be chosen from the Portland Native Tree List and at one is required to be at least 3 diameter inches. See findings below for further details.

## ZONING CODE APPROVAL CRITERIA

### APPROVAL CRITERIA FOR TREE REVIEW

#### 33.853.040 Approval Criteria

**C. Corrections to violations. For corrections to violations of tree protection and tree preservation regulations of this Title, or violations of tree preservation plans or the approved method of tree preservation or mitigation, the applicant must show the review body that all of the following approval criteria are met:**

**1. Mitigation Plan;**

- a. **The applicant's mitigation plan meets the purpose of the regulation that was violated. Where the violation is of a tree preservation plan or the approved method of tree preservation or mitigation, the mitigation plan meets the purpose of the regulation that required the preservation plan;**
- b. **The mitigation plan includes replacement of trees cut, or the preservation and protection of additional trees on the site not originally proposed for preservation. If replacement of trees is proposed, the plan must at a minimum meet the requirements of Table 853-2. If additional trees on the site are proposed for preservation and protection, the total diameter of additional trees preserved must exceed the total diameter of trees cut.**

<b>Table 853-2 Tree Replacement for Violation</b>	
<b>Size of tree removed (inches in diameter)</b>	<b>Number of Trees to be Planted</b>
6 to 12	3 trees
13 to 18	5 trees
19 to 24	7 trees
25 to 30	10 trees
Over 30	15 trees

**Findings:** This review is for violation of a tree preservation plan in accordance with Chapter 33.630, Tree Preservation. The purpose of the regulation that required the preservation plan is as follows:

### **33.630.010 Purpose**

**The regulations of this chapter preserve trees and mitigate for the loss of trees to:**

- **Protect public health through the absorption of air pollutants and contamination;**
- **Provide buffering from noise, wind, and storms;**
- **Provide visual screening and summer cooling;**
- **Reduce urban heat island impacts;**
- **Maintain property values;**
- **Maintain wildlife habitat; and**
- **Maintain the beauty of the City and its natural heritage.**

**The preservation of trees on a land division site also will:**

- **Preserve trees when it is feasible to preserve trees and still meet the other regulations of this Title;**
- **Reduce erosion, siltation, and flooding;**
- **Filter stormwater and reduce stormwater runoff;**
- **Stabilize slopes; and**
- **Retain options for property owners to preserve trees and vegetation at the time of development.**

The Tree Preservation standards require a certain percentage of existing viable tree diameter to be preserved on the new lots within a land division site. A two parcel land division (04-000400 LDP) was preliminarily approved with a tree preservation plan (Exhibit A-1) that met the standards of Option 1 (33.630.100.A.1). This plan required a 26-inch Douglas fir to be preserved on Parcel 1 (7420 SE 64<sup>th</sup> Avenue) and a 20-inch House chestnut to be preserved on Parcel 2 (7412 SE 64<sup>th</sup> Avenue).

The owners of each property removed the tree required to be preserved on their lot and are therefore in violation of the tree preservation plan approved through the aforementioned land division review. Code compliance cases are currently under review for 7412 SE 64<sup>th</sup> Avenue (09-147951 CC) and 7420 SE 64<sup>th</sup> Avenue (09-149028 CC) due to violation of this land use condition of approval. The applicants have proposed to mitigate for the removal of these trees through the preservation of a tree not originally required to be preserved and planting of additional trees. The existing tree proposed for preservation is a 16-inch Cherry tree located on Parcel 1. An additional 6.5-inches of trees is required to be planted on Parcel 2.

Over 30 inches of existing tree diameter was removed between the Douglas fir and House chestnut trees, which would require the replacement of 15 trees in accordance with Table 853-2. Based on the minimum planting size of 1.5-inches, the number of required replacement trees would equate to 22.5 diameter inches. Preservation of the existing 16-inch Cherry tree and planting of 6.5 inches of trees will therefore serve as an adequate replacement. The 6.5 inches of trees is required to be planted on Parcel 2 (7412 SE 64<sup>th</sup> Avenue) and shall be selected from the Portland Native Tree List. The trees are required to be located in the rear yard of Parcel 2 of which one shall be at least 3 diameter inches.

Preservation of the existing mature Cherry tree on Parcel 1 and the planting of native tree species on Parcel 2 is consistent with the purpose of Chapter 33.630, Tree Preservation as they will provide beneficial qualities of air and water pollutant filtration, buffering and shade, and contribute to the natural beauty and habitat values of the surrounding area.

With conditions of approval requiring the existing 16-inch Cherry tree be preserved on Parcel 1 and planting of 6.5 inches of trees on Parcel 2, this criterion is met.

## **2. Replacement trees must be planted as follows:**

- a. **On the site where the violation occurred;**
- b. **If it is not possible to plant the trees on the site where the violation occurred, then the trees must be planted on other property owned by the applicant within the City of Portland, this includes property owned by a Homeowners' Association to which the applicant belongs;**
- c. **If it is not possible to plant the trees on the site where the violation occurred, or on other property owned by the applicant within the City of Portland, then the trees must be planted in a City of Portland park, as approved by the Bureau of Parks and Recreation, or on a site approved by the Bureau of Environmental Services.**

**Findings:** As noted above, replacement trees are required to be planted in the rear yard of Parcel 2 (7412 SE 64<sup>th</sup> Avenue). The Bureau of Environmental Services and Site Development have noted that tree planting shall not conflict with the existing soakage trench approved through building permit 04-031410-RS. The existing soakage trench on Parcel 2 is located directly behind the house, likely at the minimum required setback of 10-feet from a structure. This location should not conflict with planting new trees in the rear yard of this lot. However, this may be verified through the Zoning Permit review that will be required for planting of these trees. Therefore, this criterion is met.

**3. Replacement trees must meet the requirements of Section 33.248.030, Plant Materials.**

**Findings:** Section 33.248.030 requires the selection of plants that are suitable to the site conditions, designates minimum sizes for broadleaf and conifer trees, and disallows the use of nuisance or prohibited species. As noted above, the applicant will be required to plant 6.5-inches of trees selected from the Portland Native Tree List. All trees planted will be required to meet the size and specifications outlined in 33.248.030. This criterion is met.

## **DEVELOPMENT STANDARDS**

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

## **CONCLUSIONS**


As part of a 2-parcel land division (LU 04-000400 LDP) that established the subject properties, a 26-inch Douglas fir and 20-inch House chestnut tree were required to be preserved. The owners of each property removed these trees without an appropriate review. In order to address the Tree Violation resulting from the removal of these trees, the applicants propose to preserve an existing 16-inch Cherry tree located on Parcel 1 (7420 SE 64<sup>th</sup> Avenue) and plant 6.5 inches of trees on Parcel 2 (7412 SE 64<sup>th</sup> Avenue). As addressed in the findings above, the proposed method of mitigation is able to meet the purpose of Chapter 33.630, Tree Preservation and should be approved.

## **ADMINISTRATIVE DECISION**

**Approval** of a Tree Violation Review to correct a violation resulting from the removal of a 26-inch Douglas fir and 20-inch House chestnut tree, which were required to be preserved as a part of LU 04-000400 LDP, subject to the following conditions:

- A. The 16-inch Cherry tree located on Parcel 1 (7420 SE 64<sup>th</sup> Avenue) shall be preserved in perpetuity and shall be labeled as protected on any future building permit plans. This tree shall maintain a standard root protection zone, as required by 33.930.140, in the amount of 16-feet. Encroachment into the specified root protection zone may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zone is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision.
- B. The applicant shall receive final inspection approval of a Zoning Permit to plant 6.5 inches of trees in the rear yard of Parcel 2 (7412 SE 64<sup>th</sup> Avenue), within 45 days of this land use approval for satisfaction of code compliance cases 09-147951 CC and 09-149028 CC. The trees shall be selected from the Portland Native Tree List of which one shall be at least 3 inches in diameter. The trees shall be located so as to not conflict with the existing soakage trench on this lot.

**Staff Planner: Sean Williams**

**Decision rendered by:**  **on August 12, 2010.**

By authority of the Director of the Bureau of Development Services

**Decision mailed: August 16, 2010.**

**About this Decision.** This land use decision is **not a permit** for development. 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 April 14, 2010, and was determined to be complete on April 28, 2010.

*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 April 14, 2010.

*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-3.

**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 August 30, 2010** at 1900 SW Fourth Ave. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and 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 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](http://www.portlandonline.com).

**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 final decision.**

If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed,* The final decision may be recorded on or after **August 31, 2010 – (the day following the last day to appeal)**. A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.

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

For further information on recording, please call the County Recorder at 503-988-3034  
For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

**Expiration of this approval.** An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

**Applying for your permits.** A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

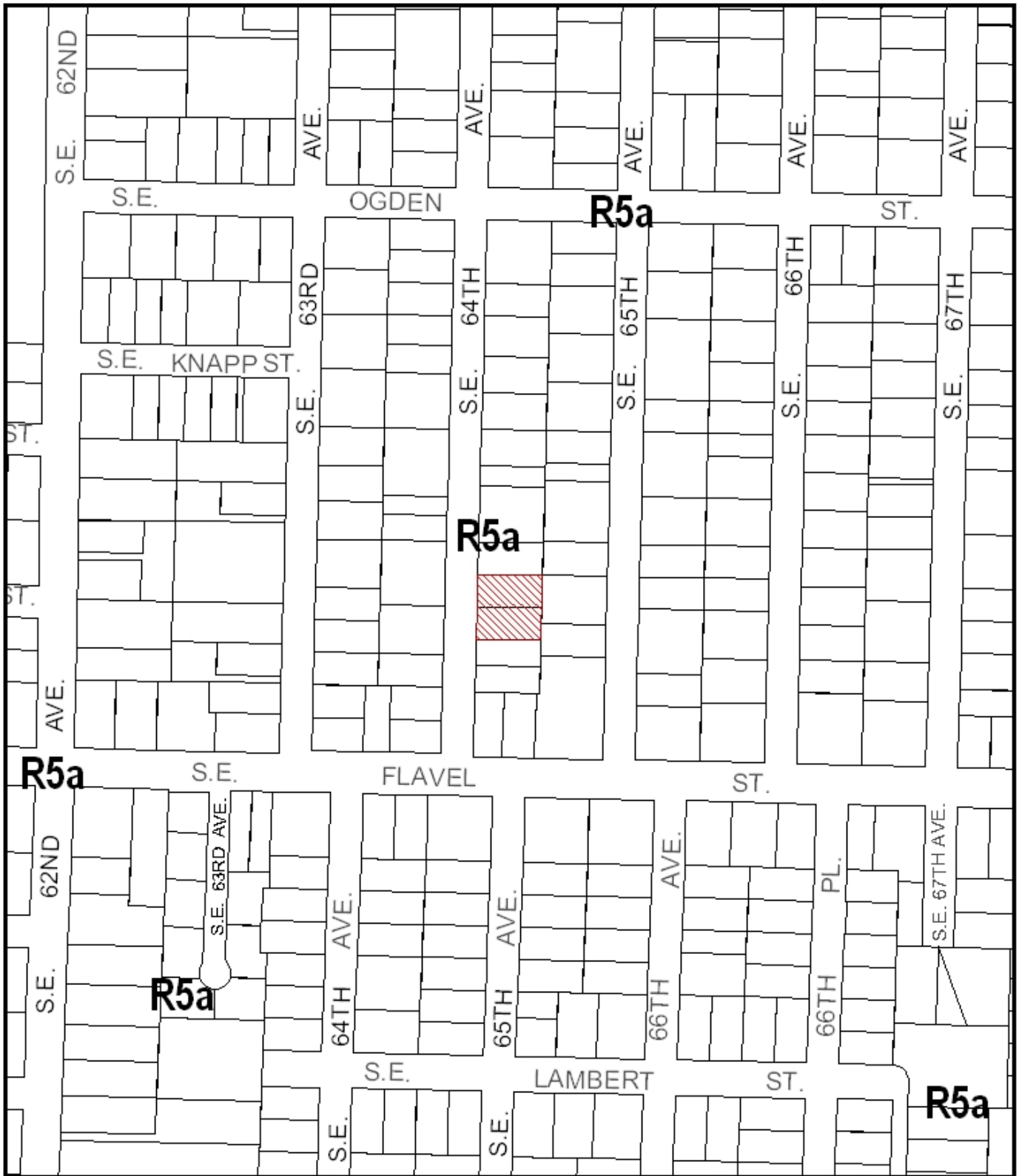
#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  1. Original arborist report/tree preservation plan
- B. Zoning Map (attached)
- C. Plans/Drawings:
  1. Tree Preservation Plan (attached)
- D. Notification information:
  1. Mailing list
  2. Mailed notice
- E. Agency Responses:
  1. Bureau of Environmental Services
  2. Site Development Review Section of BDS
  3. Bureau of Parks, Forestry Division
  4. Water Bureau
  5. Bureau of Transportation Engineering and Development Review; Fire Bureau; Life Safety Plans Examiner
- F. Correspondence:
  1. Eric Wikoff, LU Chair of Brentwood-Darlington Neighborhood Association (5/19/10)
  2. Fred Fleener & Brenda Strombo; 7403 SE 65<sup>th</sup> Avenue
- G. Other:
  1. Original LU Application
  2. Site History Research
  3. Request for extension of 120-day review period



**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).**



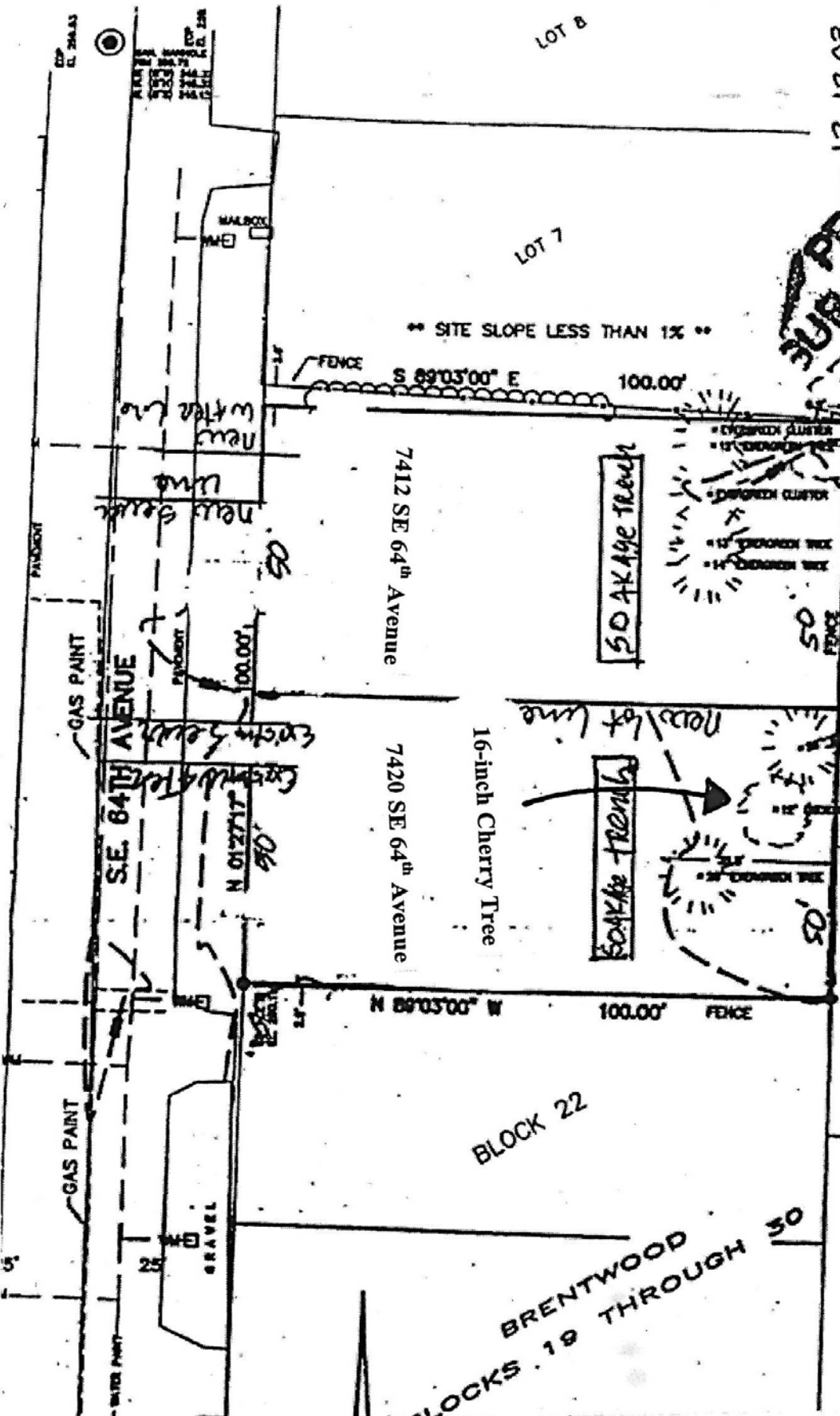
# ZONING



File No.	LU 10-127061 TV
1/4 Section	3737
Scale	1 inch = 200 feet
State_Id	1S2E20BC 12302
Exhibit	B (Apr 15, 2010)

WADE G. DONOVAN III  
CREATED JULY 15, 1990  
REGISTERED PROFESSIONAL LAND SURVEYOR

**SUBJECT**  
CO-21-2-12-03



LEGEND:  
--- = WATER LINE  
--- = SEWER LINE  
--- = POWER LINE  
--- = POWER POLE

THIS PLAN SHOWS THE LOCATION OF THE PROPOSED IMPROVEMENTS WITHIN THE BOUNDARIES OF THE LOTS AND THE ADJACENT LOTS.

**online Concepts Inc.**  
10000 100th Ave NE  
Bellevue, WA 98004  
PHONE 206-835-0000

LOT 12300, ST 2802 BC

BLOCK 22  
BLOCKS 19 THROUGH 30  
BRENTWOOD

**Note:** 16-inch Cherry tree located on 7420 SE 64th Avenue is required to be preserved with standard (33,930.140) root protection zone of 16-feet. 6.5-inches of trees required to be planted in rear yard of 7412 SE 64th Avenue. All trees must be chosen from Portland Native Tree List and one tree must be at least 3 inches in diameter.

CASE NO. 10-127061  
EXHIBIT C-1