



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

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Date: June 24, 2011
To: Interested Person
From: Sean Williams, Land Use Services
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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 11-125651 TR

GENERAL INFORMATION

Applicant: Vic Remmers
Tolman Woods LLC
735 SW 158th Avenue, Suite 180
Beaverton, OR 97006

Representative: Ryan O'Brien
Planning & Land Design
1862 NE Estate Drive
Portland, OR 97124

Site Address: 7601 SE Tolman Street

Legal Description: Lot 1 of PP 2011-14
Tax Account No.: R926603840, R649620530
State ID No.: 1S2E17DC 06000, 1S2E17DC
Quarter Section: 3638
Neighborhood: Mt. Scott-Arleta, contact Marla Turner at 503-887-9075.
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 2,500 (R2.5) w/ Alternative Design Density Overlay (a)
Case Type: Tree Review (TR)
Procedure: Type II, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant is proposing to change the tree preservation plan that was approved through land division case LU 10-138381 LDP. This previously approved and recorded partition created 3 parcels through which the preservation of 2 trees, a 12" and 24" Douglas fir, was required on Parcel 1. Preservation of these trees is conflicting with planned construction of this lot (10-185779 RS). Therefore, in lieu of preserving these trees, the applicant is proposing to plant trees throughout the lots created as a part of the land division. This proposal may be approved

if the revised method of tree preservation will continue to meet Chapter 33.630, Tree Preservation.

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, Approval Criteria for Tree Review**.

ANALYSIS

Site and Vicinity: The site is located on the north side of SE Tolman Street approximately 170 feet west of the intersection with SE 77th Avenue. An existing house was retained on Parcel 2. A single family home is currently under construction on Parcel 3. Parcel 1 is vacant with the exception of a parking pad adjacent to the eastern property line. Development within the vicinity is primarily composed of single family dwellings with comparable zoning.

Zoning: The R2.5 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 10-138381 LDP AD:** Approval of a preliminary plan for a 3 parcel partition, resulting in the creation of one standard lot (Parcel 2) and two narrow lots (Parcels 1 and 3), in conjunction with an adjustment to reduce the west side setback for Parcel 2 from 5 to 4 feet. This partition has been recorded and platted (PP 2011-14).

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **April 21, 2011**. The Water Bureau, Fire Bureau, Life Safety Plans Examiner, Urban Forestry, Site Development section of BDS and Bureau of Transportation all have no concerns regarding the tree violation review (Exhibit E-2/E-3). The Bureau of Environmental Services does not recommend approval because *1) mature canopies maintain existing habitat, reduce urban heat island effects, and reduce stormwater runoff, 2) the applicant has already demonstrated that the development can proceed without removal of the significant tree, and 3) the applicant's arborist recommends retention of the 24-inch Doug Fir on property* (Exhibit E-1).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on April 21, 2011. One written response has been received from multiple notified property owners in objection to the proposal (Exhibit F-1). The letter expresses concern that the proposal is not consistent with adopted goals and policies of the City and objects to the proposed method of mitigation.

Staff Response: City regulations attempt to balance goals of providing additional housing opportunities with tree preservation. This neighborhood contains the highest density Single-Dwelling zoning of the City as it was deemed suitable upon implementation. The site prior to division was large enough to achieve a maximum density of four lots although only three lots were created in order to retain the existing house. A number of large mature trees (Black Locusts) were located on the site but are deemed nuisance trees by the City and are exempt from preservation standards. Although these trees are considered exempt, two large mature trees were retained on Parcel 2 with the existing house. As described below, retention of the two non exempt trees presented significant development limitations for Parcel 1. However, with required mitigation the City's goals regarding density and trees can be adequately balanced, which will allow a new housing opportunity and a contribution towards planting trees within the City.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR TREE REVIEW

33.853.010 Purpose

The tree review process evaluates whether mitigation proposed for tree removal is both appropriate and adequate, considering the purpose of the regulations that limit removal. Tree review also evaluates whether changes to tree preservation plans are appropriate, and determines the appropriate mitigation for trees lost due to violations of tree regulations. The review allows flexibility for unusual situations and allows for the purpose of the tree regulations to be met using creative or innovative methods.

33.853.040 Approval Criteria

- B. Changes to tree preservation or mitigation methods. The approval criteria for changes to tree preservation or mitigation methods, including a tree preservation plan, tree preservation, tree preservation tract, or mitigation plan are:**
- 1. If the tree preservation or mitigation method was approved under the provisions of Chapter 33.630, the requested change will be approved if the review body finds that the applicant has shown that the revised method will continue to meet Chapter 33.630, Tree Preservation.**
 - 2. If the tree preservation or mitigation method was not approved under the provisions of Chapter 33.630, the requested change will be approved if the review body finds that the applicant has shown that the revised method better meets the purpose of Chapter 33.630, Tree Preservation, stated in Section 33.630.010.**

Findings: The tree preservation plan subject to this review was approved under the provisions of Chapter 33.630 in land division case file LU 10-138381 LDP AD. This land division approval resulted in one standard lot (Parcel 2) and two narrow lots (Parcels 1 and 3) which have since been platted. An existing single family dwelling was retained on Parcel 2. Parcels 1 (10-185779 RS) and 3 (10-185792 RS) are in various stages of the permit process. At the time of the land division review, eight trees were located within the land division site subject to preservation standards. Of the eight trees, a certified arborist determined that six were exempt from the regulations of Chapter 33.630 as they were listed as a nuisance species on the Portland Plant List. The two non-exempt trees, a 12" and 24" Douglas fir, located on Parcel 1 were preserved in order to meet Option 1 of the tree preservation standards, which requires at least 35 percent of the total tree diameter on the site to be preserved.

The applicant is proposing to remove the 12" and 24" Douglas fir located on Lot 1. 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.**

Findings: The proximity of the 12" and 24" Douglas fir trees to the rear property line is approximately 15 and 25 feet respectively. Both trees are within 3 feet of the western property line. The approved tree preservation plan (Exhibit C-2) designated alternative root protection zones for both trees in order to accommodate proposed development for this parcel. However, upon reviewing the proposed house design for Parcel 1 a certified arborist expressed significant concerns regarding the long term viability of these trees considering their close proximity to the house (Exhibit A-3). Specific construction methods were recommended that may protect the trees at the time of development although it is the opinion of the project arborist that the trees will become increasingly hazardous as they continue to grow. Therefore, the location of the preserved trees, in conjunction with a practical root protection zone to ensure continued viability, would result in significant development limitations due to the narrow width of this parcel. Criterion A and C.4 is met.

The applicants proposed method of mitigation for removal of the two Douglas firs is to plant new trees on all three lots created through the land division. In regards to this proposal, new trees will be required to be planted on each lot as a part of approval of building permits in accordance with T1 standards (33.248.020.H). The T1 standard requires at least 3 inches of tree diameter to be planted on lots that are 3,000 square feet or smaller. This would equate to two trees per lot based on the minimum planting size of 1.5 inches. Because of the small size of the vacant parcels it is not practical for additional trees beyond the T1 standard to be planted without jeopardizing the overall health of all the trees on the site. In addition, limited room is available on Parcel 2 with the existing house as two Black locust trees of significant size were retained. Therefore, the proposed method of mitigation to plant new trees on all three lots created through the land division will not be acceptable in this situation. However, Parcel 1 would benefit from the addition of a native tree species, to replace the Douglas firs that will be removed. Planting native trees will help to foster and maintain the City's natural heritage. Therefore, the species of tree(s) required to fulfill the T1 standard associated with the building permit for Parcel 1 shall be selected from the Portland Plant List: Native Plant list.

The total non-exempt tree diameter on the site at the time of the land division was 36 inches between the two Douglas firs. Option 1 of the tree preservation standards requires at least 35 percent of the total tree diameter on the site to be preserved. This would equate to approximately 13 inches of trees. Therefore, in order for the method of mitigation to meet the purpose of the regulation that required the preservation plan, the applicant will be required to mitigate for the equivalent of 13 diameter inches of trees. Due to the lack of availability to plant additional trees on the site as noted above, the applicant will be required to pay into the City Tree Fund the amount equivalent to 13 inches of trees. Payment into the Tree Fund will contribute to the general beauty and natural heritage of the City, if not directly on the site. Criterion B is met.

Therefore, with the conditions noted above for mitigation, the criterion can be 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


The applicant has proposed to amend the tree preservation plan approved through land division case file LU 10-138381 LDP AD by removing a 12" and 24" inch Douglas fir located on Parcel 1. The requested amendment to the tree preservation plan may be approved if the review body finds that the applicant has shown that the revised method will continue to meet Chapter 33.630, Tree Preservation. As discussed in this report, the revised method of tree preservation will continue to meet Chapter 33.630 with conditions of approval.

ADMINISTRATIVE DECISION

Approval of a Tree Review to modify a Tree Preservation Plan, approved as a part of LU 10-138381 LDP AD, to allow for the removal of a 12" and 24" Douglas fir located on Parcel 1, subject to the following conditions:

1. The applicant must pay into the City Tree Fund the amount equivalent to 13 inches of trees prior to Planning and Zoning approval of the building permit (10-185779 RS) on Parcel 1. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.
2. The species of tree(s) required to fulfill the T1 standard (33.248.010.H) associated with building permit 10-185779 RS shall be selected from the Portland Plant List: Native Plant list.

Staff Planner: Sean Williams

Decision rendered by:  **on June 22, 2011**

By authority of the Director of the Bureau of Development Services

Decision mailed: June 24, 2011

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 1, 2011, and was determined to be complete on **April 18, 2011**.

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 1, 2011.

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.

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 July 8, 2011** 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. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. 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.

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 **July 11, 2011 – (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. Project proposal
 - 2. Arborist Report (LU 10-138381 LDP AD)
 - 3. Email: Walter Knapp & Morgan Holen
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Tree Preservation Plan (LU 10-138381 LDP AD)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice

E. Agency Responses:

1. Bureau of Environmental Services
2. Water Bureau
3. Bureau of Transportation Engineering and Development Review; Fire Bureau; Site Development Review Section of BDS; Bureau of Parks, Forestry Division; Life Safety Plans Examiner

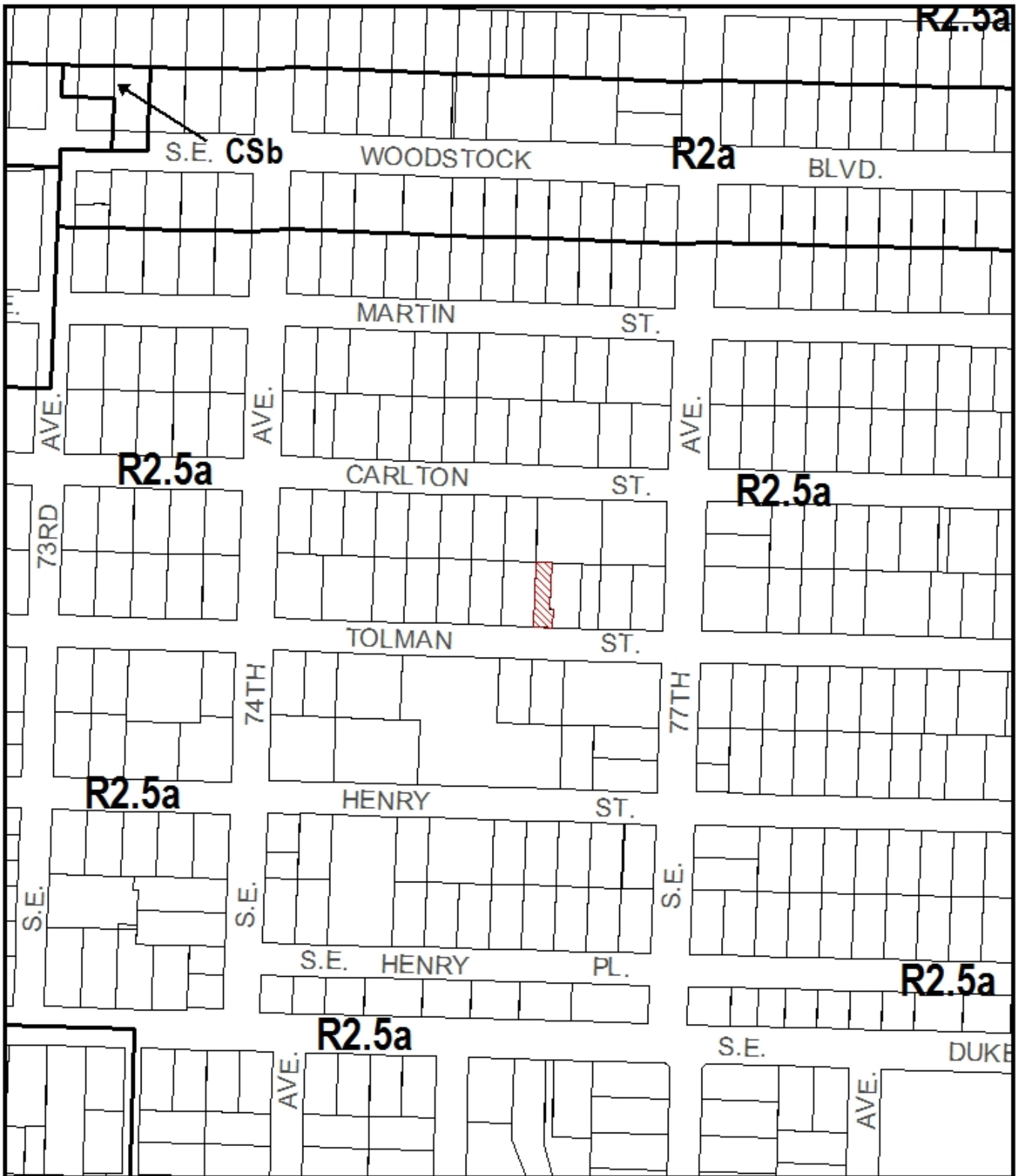
F. Correspondence:

1. Cynthia Veum & Richard Shearing, Terah Beth Varga, Lisa Ross, Kelly & Neal Sutton, Jonathan Brandt, Shawna Little, Megan Humphrey and Will Johnson (April 26, 2011)

G. Other:

1. Original LU Application
2. Site History Research

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).



R2.5a

S.E. CSb

WOODSTOCK

R2a

BLVD.

MARTIN ST.

AVE.

R2.5a

AVE.

CARLTON ST.

R2.5a

73RD

TOLMAN ST.

74TH

77TH

R2.5a

HENRY ST.

S.E.

S.E.

S.E.

S.E. HENRY PL.

R2.5a

R2.5a

S.E.

DUKE

AVE.

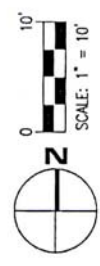
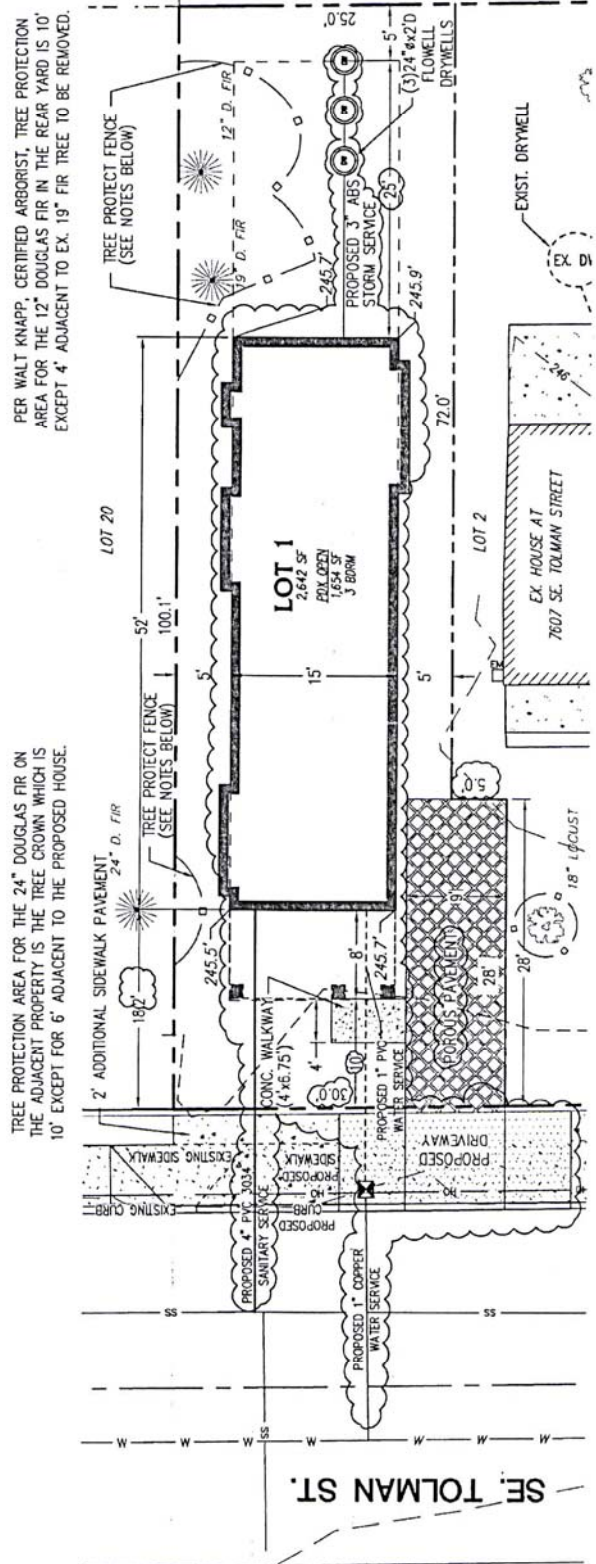
AVE.

ZONING



File No.	LU 11-125651 TR
1/4 Section	3638
Scale	1 inch = 200 feet
State_Id	1S2E17DC 6000
Exhibit	B (Apr 08,2011)

**SITE PLAN (LOT 1)
 TOLMAN PARTITION**



DRYWELLS SHALL BE LOCATED A MINIMUM OF 10' FROM BUILDINGS AND A MINIMUM OF 5' FROM PROPERTY LINES AS MEASURED FROM THE CENTER OF DRYWELL

NOTES:

- ZONE: R2.5
- BLDG COVERAGE: 35.8%
- IMPERVIOUS AREA: 1,365 SF
- ALL GRADE AND PROPERTY LINES ARE ESTIMATES OF CURRENT LOCATIONS.
- ALL DIMENSIONS AND SQUARE FOOTAGE ARE APPROXIMATE FIGURES.
- DRIVEWAY MAY DIFFER DUE TO LOCATION OF UTILITY BOXES, STREET LIGHTS AND OTHER SITE CONDITIONS
- SETBACKS: FRONT 10', SIDE 5', REAR 5'
- LEGEND:
 - TREE PROTECTION FENCE
- WORK OCCURRING BENEATH THE DRIPLINE OF THE TREE SHOULD BE PERFORMED UNDER THE DIRECTION OF THE PROJECT ARBORIST. THE PROJECT ARBORIST WILL BE AVAILABLE DURING CONSTRUCTION TO PROVIDE RECOMMENDATIONS, OVERSIGHT, AND DOCUMENTATION OF WORK AND TO PROVIDE TREE PROTECTION. IT IS NECESSARY FOR THE ARBORIST TO EVALUATE THE DRIPLINE OF THESE TREES SHOULD BE PERFORMED USING THE ARBORIST WILL EVALUATE THE NUMBER, SIZE, LOCATION, AND CONDITION OF ANY SEEALED ROOTS AND PROPOSE METHODS TO MINIMIZE IMPACTS TO THE TREES. THIS CAN INCLUDE ROOT PRUNING, TUNNELING, OR OTHER APPROACHES.

CASE NO. 1159521-11
 EXHIBIT C-1