



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

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Date: August 26, 2011
To: Interested Person
From: Kathy Harnden, 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 11-150681 TV

GENERAL INFORMATION

Applicant: Doug Moore Homes Inc.
493 NW Bryn Mawr Pl
Gresham, OR 97030-5264

Site Address: Cross St. SE Woodward Ct & 174th (3 blocks S of Division) Brooklyn Estates Lot #3

Legal Description: LOT 2 INC UND INT TRACTS A&B, BROOKLYN ESTATES; LOT 3 INC UND INT TRACTS A&B, BROOKLYN ESTATES; LOT 4 INC UND INT TRACTS A&B, BROOKLYN ESTATES

Tax Account No.: R108600100, R108600150, R108600200

State ID No.: 1S3E07AB 09702, 1S3E07AB 09703, 1S3E07AB 09704

Quarter Section: 3348

Neighborhood: Centennial, contact Louise Cody at 503-252-4302.

Business District: None

District Coalition: East Portland Neighborhood Office, contact Richard Bixby at 503-823-4550.

Plan District: None

Other Designations: None

Zoning: Residential 7,000 (R7)

Case Type: Tree Violation Review (TV)

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

Proposal:

The applicant has applied for a tree violation review as a tree required to be preserved through land use case LU 06-115563 LDS was instead removed from the site without an appropriate review. A 12-inch native cherry tree was required to be preserved on proposed Lot 4 through tree preservation standards (33.630) implemented during the land division review which created this lot. (The numbering of the proposed lots changed between approval of the land

division and approval of the final plat. Proposed Lot 4 became Lot 3, and will be referred to as Lot 3 for the remainder of this review.) The applicant has proposed to mitigate the removal of this tree by planting three 1.5 inch diameter saplings on Lot 3, the same lot where the cherry tree was removed.

Relevant Approval Criteria:

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.**

FACTS

Site and Vicinity: The land division site is located mid-block on the west side of SE 174th Avenue. It is currently occupied by a single family residence with attached garage and a new single family residence that has just been constructed on new Lot 3. The surrounding neighborhood is characterized by single family detached residences on larger lots that have been recently divided and developed with five to six new lots and hammerhead-style private streets with development meeting the standards of the R7 zone.

Zoning: R7 Single dwelling Residential 7,000. The R7 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

Land Use History: City records indicate that the only previous land use case on the site was for the subdivision allowed in LU_06-115563_LDS, which created five lots.

LU 06-115563 LDP & FP: Approval of a Preliminary Plan and Final Plat for a 6-lot Subdivision, that resulted in six standard lots. The 12-inch native cherry tree that is subject to this tree review was preserved through this land division on Lot 3 of Final Plat LU 06-115563.

Neighborhood and Agency Review: A Notice of Proposal in your Neighborhood was mailed on April 3, 2006.

1. **Neighborhood Review:** No responses were received from the neighborhood.
2. **Agency Review:** No responses were received from the service bureaus.

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.

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

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

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.**

Tree Preservation standards require a certain percentage of existing viable tree diameter to be preserved on new lots within a land division site. A five-lot land division (LU 06-115563 LDP)

was preliminarily approved with a tree preservation plan that met the standards of Option 1 (33.630.100.A.1), preservation of existing trees on the site. This plan included a 12-inch native cherry tree to be preserved, that was located along the southern property line of proposed Lot 4, which became Lot 3 in the Final Plat Review.

In the course of site preparation associated with the development of the new lots, the 12-inch native cherry tree was mistakenly removed during grading of the site according to the applicant's statement.

The total non-exempt tree diameter on the site at the time of the land division was 927 inches. Option 1 of the tree preservation standards requires at least 35 percent of the existing tree diameter on the site to be preserved. The applicant chose to preserve 337.5 inches of trees, or 36.4 percent of the total non-exempt tree diameter on the site, including the 12-inch native cherry tree.

Because this preserved tree was cut down, the proposed method of mitigation by preserving existing trees, as shown on the applicant's approved tree preservation plan, has not been achieved. Therefore, the applicant is required to plant new trees on Lot 3 equivalent to the 12 diameter inches of trees that were improperly removed at the time of the land development. This will be accomplished by requiring the applicant to comply with the tree replacement guidelines in the Tree Replacement for Violations Table 853-2, shown above, which requires planting 3 trees for the removal of one 6" to 12" tree. Since the removed tree was a native species, the replacement trees must also be native and be selected from the *Portland Plant List*. Replacement trees must be a minimum of 1.5-inches in diameter if broadleaved, or 5 feet in height if conifers. A Zoning Permit will be required to ensure compliance with this requirement.

The required mitigation is consistent with the purpose of Chapter 33.630, Tree Preservation, as requiring replacement trees to be native species selected from the Portland Plant List will help to foster and maintain the City's natural heritage and will also provide identified environmental benefits of filtering stormwater and reducing runoff. Planting the replacement trees on the lot from which the required tree was removed will also allow this lot to reap the benefits of trees that are described in the purpose statement of the Tree Preservation Chapter.

Subject to final inspection approval of a Zoning Permit to plant the equivalent of 12 diameter inches of native trees, selected from the *Portland Plant List*, 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 5-lot land division (LU 06-115563 LDS) that established the subject property, a 12-inch native cherry tree was required to be preserved. This tree was removed without an appropriate review. To address the Violation resulting from the inappropriate removal of this tree, the applicant will be required to plant the equivalent of 12 diameter inches of native trees, selected from the *Portland Plant List*. As addressed in the findings above, the required method of mitigation will 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 12-inch native cherry tree that was required to be preserved as a part of LU 06-115563 LDS. **The following conditions shall be satisfied within 30 days of this land use approval:**

- A. The applicant shall obtain and receive final inspection approval of a Zoning Permit to plant the designated number of trees on Lot 3. Per Table 853-2, the applicant shall plant 3 new trees on Lot 3. The replacement trees shall be native, selected from the *Portland Plant List* and must meet the requirements of Section 33.248.030, Plant Materials.
- B. The applicant shall submit a site plan with the Zoning Permit Application that shows the planting locations of the three new trees on Lot 3.

Staff Planner: Kathy Harnden

Decision rendered by: Kathy Harnden **on August 23, 2011.**

By authority of the Director of the Bureau of Development Services

Decision mailed: August 26, 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 June 21, 2011, and was determined to be complete on **July 27, 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 June 21, 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. Unless further extended by the applicant, **the 120 days will expire on: October 19, 2011.**

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 September 9, 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 **September 12, 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:

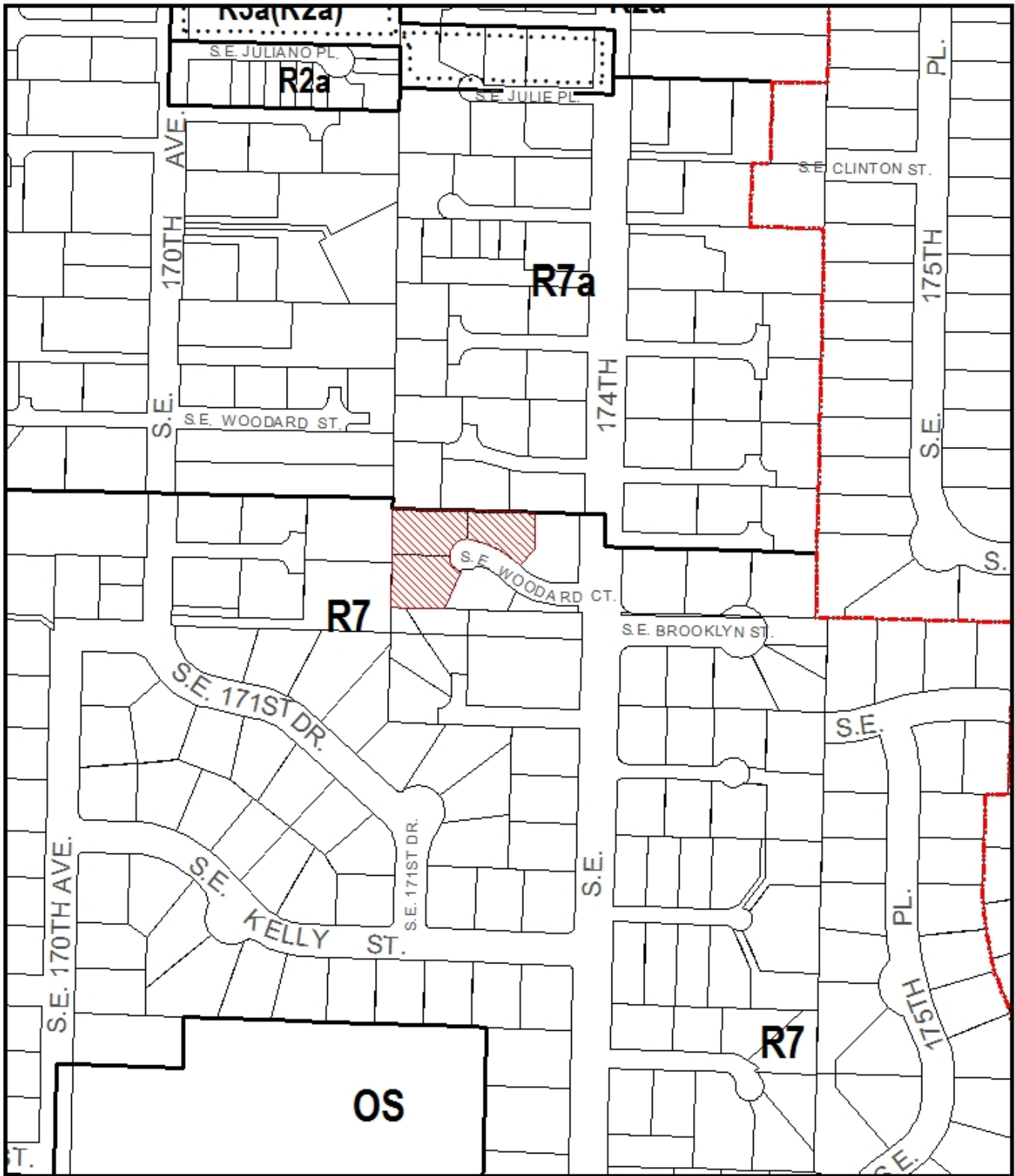
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Applicant's Narrative
 - 2. Applicant's Modified Narrative No. 1
 - 3. Applicant's Modified Narrative No. 2
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Water Bureau
- F. Correspondence: No written comments were received.
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Incomplete Letter

The Bureau of Development Services is committed to providing equal access to information and hearings. 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).

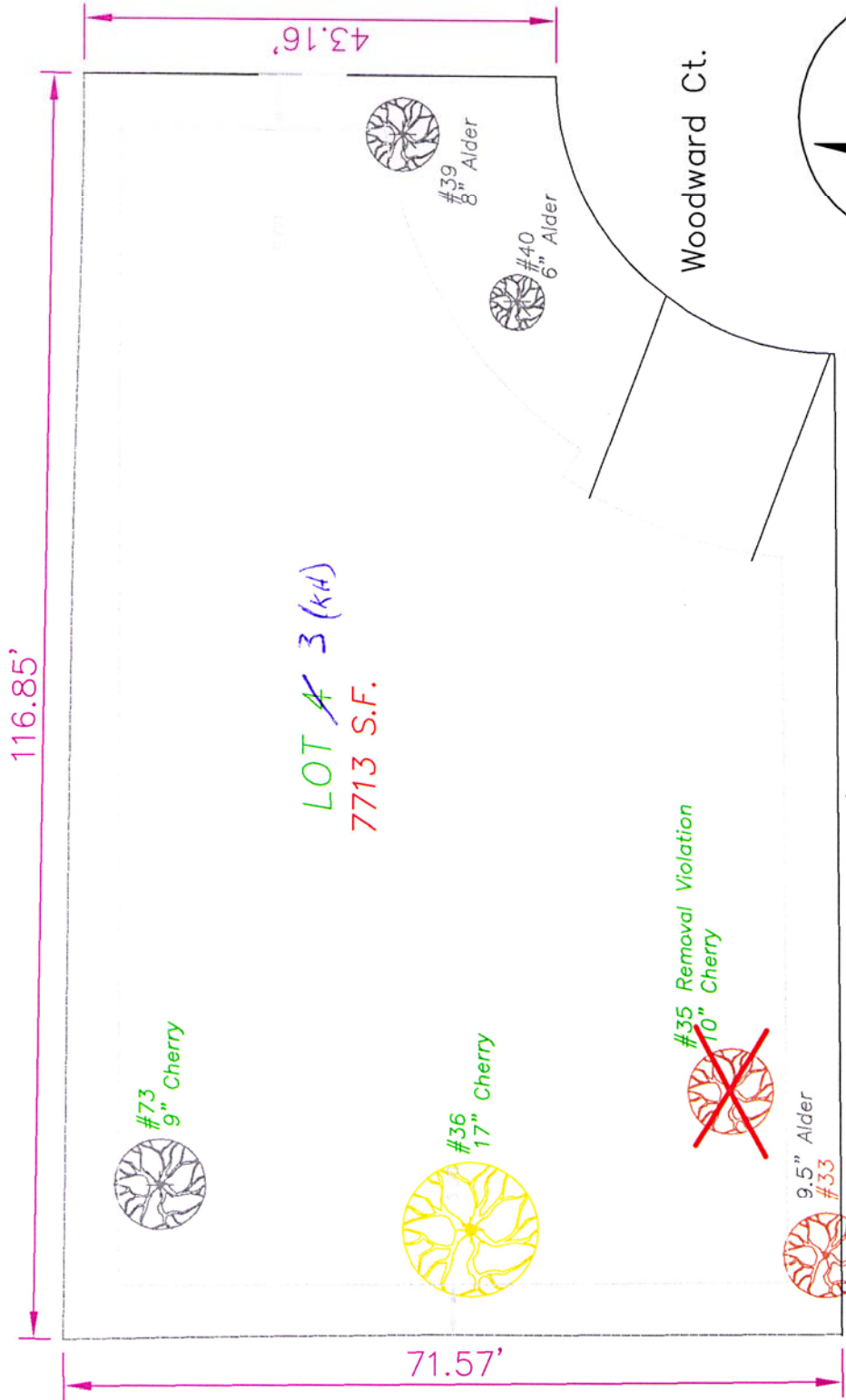


ZONING



NORTH

File No.	<u>LU 11-150681 TV</u>
1/4 Section	<u>3348</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S3E07AB 9703</u>
Exhibit	<u>B</u> (Jun 23,2011)



LOT ~~A~~ 3 (KH)
7713 S.F.

Doug Moore Homes, Inc. 493 NW Bryn Mawr Pt. Gresham, OR 97030
Bus: 503-661-2858
Cell: 503-504-6824

Brooklyn
Estates
Subdivision

Exhibit C.1
LU 11-150081 TV

SITE PLAN Scale: 1"=16'