



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

Dan Saltzman, Commissioner
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Date: October 5, 2012
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 the version located on the BDS website <http://www.portlandonline.com/bds/index.cfm?c=46429>. Click on the District Coalition then scroll to the relevant Neighborhood, and case number. If you disagree with the decision, you can appeal. Information on how to do so is included at the end of this decision.

CASE FILE NUMBER: LU 12-177374 TV

GENERAL INFORMATION

Applicant: Mark Desbrow / Waverly Commons, LLC
1015 NW 11th Avenue, Suite 243 / Portland, OR 97209

Site Address: 3550 SE Woodward Street

Legal Description: BLOCK 65&70 TL 22400, WAVERLY
Tax Account No.: R885803840
State ID No.: 1S1E12AB 22400
Quarter Section: 3334
Neighborhood: Richmond, contact Douglas Klotz at 503-233-9161.
Business District: Division-Clinton Business Association, Darice Robinson at 503-233-1888.
District Coalition: Southeast Uplift, contact Bob Kellett at 503-232-0010.
Plan District: None
Zoning: Residential 5,000 (R5)
Case Type: Tree Violation (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 LU 11-185612 LDS was irreparably damaged as a result of construction activities. A 9-inch Blue spruce tree (#4), located in the area of Lot 2, was required to be preserved through tree preservation standards (33.630.100) implemented in the land division review which created this lot. The applicant proposes to mitigate for the loss of this tree via planting additional trees within the land division site or payment into the City tree fund.

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 property is identified as Lot 2 of Waverly Commons and is located on the south side of SE Woodward Street approximately 142 feet east of the intersection with SE 35th Avenue. The site is currently unimproved as all existing development was removed prior to Final Plat approval (11-185612). The tree subject of this review was located in the northeast corner of Lot 2.

Development within the surrounding vicinity is primarily comprised of detached single family homes with comparable zoning. The nearest commercial corridors are located approximately 1,000 feet to the north on SE Division Street and 1,500 feet to the south on SE Powell Boulevard.

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.

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

- **LU 11-185612 LDS:** Approval of a preliminary plan for a 16-lot subdivision, resulting in 16 standard lots. This subdivision was subsequently platted as Waverly Commons (Book 1303, Page 70/71).

Agency Review: A "Notice of Proposal in Your Neighborhood" was mailed **September 7, 2012**. The Site Development Section of BDS has responded with no issues or concerns (Exhibit E.1).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on September 7, 2012. No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

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;

- 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;**
- 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 16 lot land division (LU 11-185612 LDS) was approved with a tree preservation plan that met the standards of Option 1 (33.630.100.A.1). This plan required a 9-inch Blue spruce tree to be preserved on Lot 2 (Lot 3 in preliminary approval) and a 35-inch Port Orford cedar to be preserved on Lot 3 (Lot 5 in preliminary approval). The 9-inch Blue spruce tree was irreparably damaged as a result of construction activities associated with demolition of the institutional development located within the land division site. Therefore, the applicant is in violation of the tree preservation plan approved through the aforementioned land division.

The total non-exempt tree diameter on the site prior to the land division was 123 inches. Option 1 of the tree preservation standards requires at least 35 percent of the total tree diameter on the site to be preserved. Preservation of the 9-inch Blue spruce and 35-inch Port

Orford cedar met the minimum requirements as it equated to approximately 35 percent of the total tree diameter on site. Therefore, in order for the proposed 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 9 diameter inches of trees.

The applicant proposes to mitigate for the loss of this tree via planting additional trees within the land division site or payment into the City tree fund. While evaluating the applicant's mitigation proposal, it is important to consider tree planting requirements applicable at the time of development to avoid the occurrence of over planting. Section 33.248.020.H, known as the T1 tree planting standard, requires trees to be planted on new lots as part of the approval of future building permits. The T1 tree standard requires the planting of at least 2 inches of tree caliper per 1,000 square feet of site area, which would result in approximately 9 inches of new trees to be planted on Parcel 2. Due to the size of Lot 2, it is not practical for additional trees beyond the T1 standard to be planted without jeopardizing the overall health of all of the trees on the site. Therefore, the applicant will be required to pay into the City Tree Fund the amount equivalent to 9 inches of trees.

The required mitigation is consistent with the purpose of Chapter 33.630, Tree Preservation as payment into the Tree Fund will contribute to the general beauty of the City, if not directly on the site. Therefore, 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 16-lot land division (LU 11-185612 LDS) that established the subject property, a 9-inch Blue spruce and 35-inch Port Orford cedar tree were required to be preserved. As a result of construction activities, the 9-inch Blue spruce tree was irreparably damaged. In order to address the violation resulting from the loss of this tree, the applicant will be required to pay into the City Tree Fund the amount equivalent to 9 inches of trees. As addressed in the findings above, the required 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 loss of a 9-inch blue spruce tree that was required to be preserved as a part of LU 11-185612 LDS, subject to the following conditions:

1. Prior to issuance of a building permit on Lot 2 of Waverly Commons (Book 1303, Page 70/71), the applicant must pay into the City Tree Fund the amount equivalent to 9 inches of trees. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.

Staff Planner: Sean Williams

Decision rendered by:  **on October 3, 2012**

By authority of the Director of the Bureau of Development Services

Decision mailed: October 5, 2012

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 August 29, 2012, and was determined to be complete on **September 5, 2012**.

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 August 29, 2012.

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: January 3, 2013**.

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 October 19, 2012** 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 **October 22, 2012**
- 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.

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:

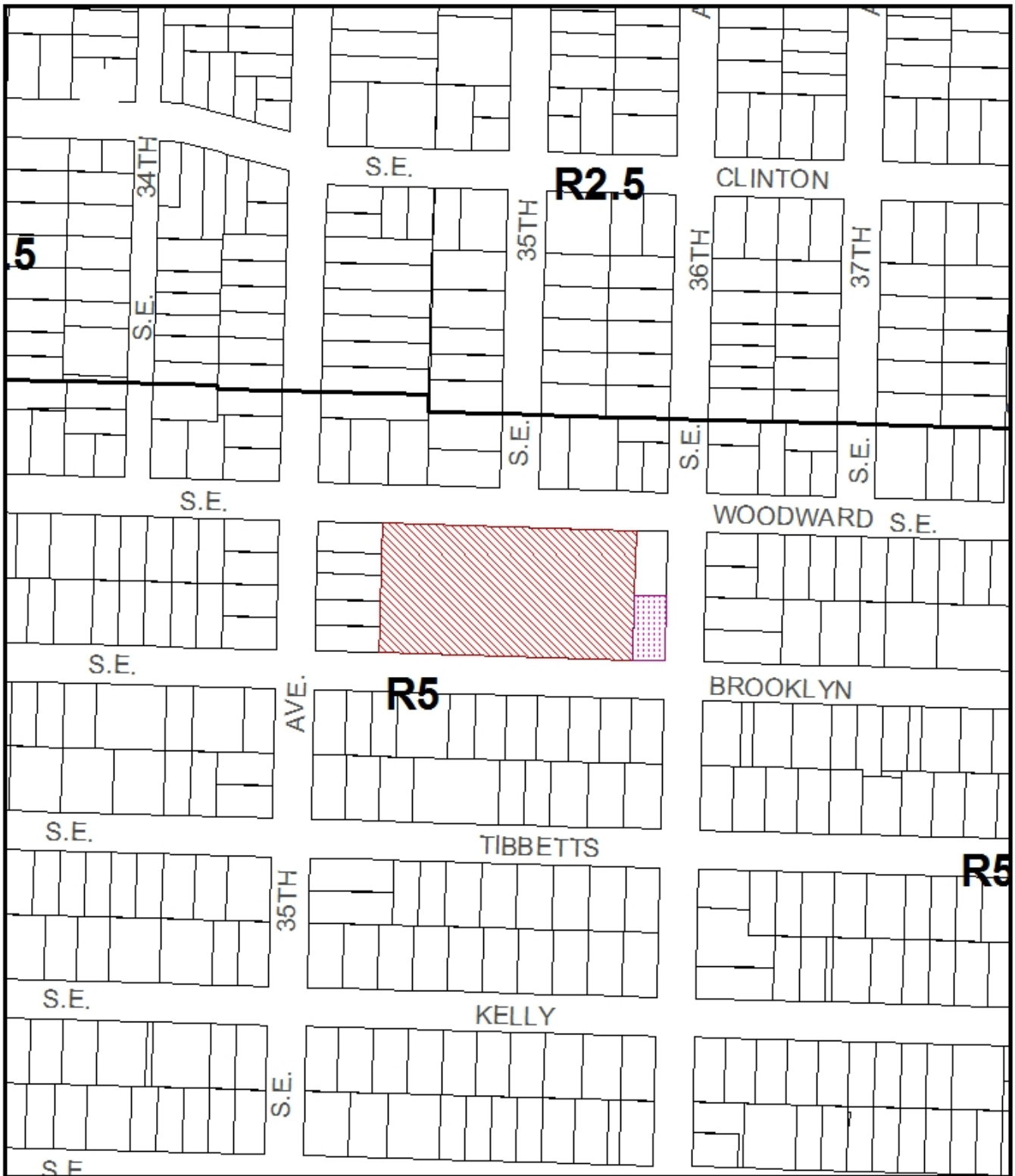
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Site Development Review Section of BDS
- F. Correspondence: NONE
- G. Other:
 - 1. Original LU Application

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

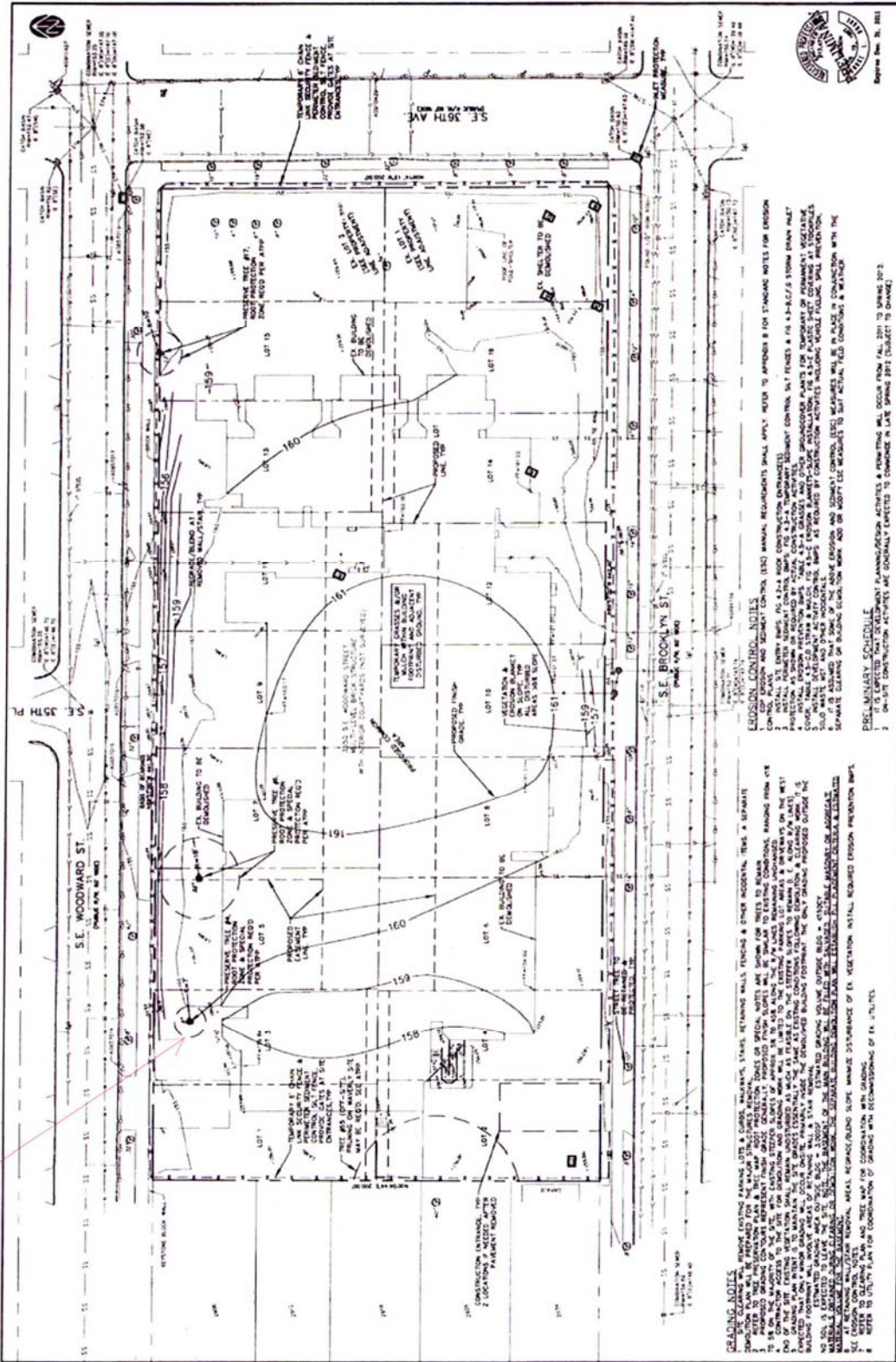
-  Site
-  Also Owned



NORTH

File No. LU 12-177374 TV
 1/4 Section 3334
 Scale 1 inch = 200 feet
 State_Id 1S1E12AB 22400
 Exhibit B (Sep 04,2012)

9" Blue Spruce tree (#4)



WAVERTY COMMONS PRELIMINARY GRADING PLAN	WAVERTY COMMONS, LLC LAKE OSWEGO, OR, 97034	PBS Engineering + Environmental 1315 Main Street Suite 100 Portland, OR 97201 Phone: 503.253.8888 Fax: 503.253.8889 Email: info@pbsenv.com	Drawing No: C3 Date: DECEMBER 12, 2011 Revision: 1 Project: WAVERTY COMMONS
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GRAZING NOTES

1. THE GRADING WILL REMOVE EXISTING PAVING LOTS 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

CASE NO. 12-177374
 EXHIBIT C-1