



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

FROM CONCEPT TO CONSTRUCTION

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Date: October 25, 2012
To: Interested Person
From: Rachel Whiteside, Land Use Services
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NOTICE OF A TYPE I DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a proposal in your neighborhood. The reasons for the decision are included in 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 it to the Oregon Land Use Board of Appeals (LUBA) at 550 Capitol St. NE, Suite 235, Salem, OR 97301. The phone number for LUBA is 1-503-373-1265. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 12-165318 LDP

GENERAL INFORMATION

Applicant: Bruce Howard / Renaissance Custom Homes LLC
16771 Boones Ferry Rd / Lake Oswego, OR 97035-4213

Representative: Kevin Partain / Urban Visions
223 NE 56th Ave / Portland, OR 97213

Site Address: 3825 NE 36TH AVENUE

Legal Description: BLOCK 5 LOT 4 EXC N 3', WILSHIRE
Tax Account No.: R919001380
State ID No.: 1N1E24DC 03800
Quarter Section: 2634
Neighborhood: Beaumont-Wilshire, contact Michael Rounds at 503-936-0740.
Business District: None
District Coalition: Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.
Plan District: None
Zoning: R5h – Single Family Residential with an Airport Height Overlay
Case Type: LDP – Land Division (Partition)
Procedure: Type I, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

Proposal:

The applicant proposes to divide the 10,185-square foot site into two parcels. Proposed parcel sizes are 4,724 and 5,460 square feet. The site is currently under development with a single-family residence that will be located on proposed Parcel 1. Stormwater from individual lots will be treated and disposed of on-site through drywells. Water and sanitary sewer service are both available in NE 36th Avenue. There are several trees across the rear property line, some of which are exempt from preservation due to size or poor health. The applicant proposes to preserve three of the viable trees to meet tree preservation option 1.

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS

92.010). ORS 92.010 defines “parcel” as a single unit of land created by a partition of land. The applicant’s proposal is to create 2 parcels. Therefore this land division is considered a partition.

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 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones**.

FACTS

Site and Vicinity: At 10,185 square feet, this relatively flat site is one of the largest properties in the vicinity. A single-story house built in 1926 was demolished from the site in July of this year. Currently, a new two-story single-family residence is under construction on the north side of the property. Several large trees on the site were removed at the time the foundation was excavated for this new home.

The surrounding area is an established residential neighborhood, with a mix of architectural styles. Most homes were built in the mid to late 1920’s. Lot sizes within the neighborhood range from 5,000-6,000 square feet in area. The R5 zone extends for many blocks in all directions. Wilshire Park is two blocks north of the site and Beaumont Middle School is four blocks to the east.

Infrastructure:

- **Streets** – The site has approximately 97 feet of frontage on NE 36th Avenue. There is one driveway entering the site that will serve the future house on proposed Parcel 1, currently under construction under permit #12-141885 RS. At this location, NE 36th Avenue is classified as a Local Service Street for all modes in the Transportation System Plan. Tri-Met provides transit service approximately 900 feet west of the site at NE 33rd Avenue via Bus # 70 and approximately 840 feet south of the site at NE Fremont Street via Bus # 24.

Northeast 36th Avenue has a 26-foot curb to curb paved surface within a 50-foot right-of-way, with parking on both sides. Along the 97-foot wide site frontage the pedestrian corridor includes a 5-foot wide planter area, curb, 6-foot sidewalk and a 1-foot wide buffer at the back of the sidewalk (5-6-1 configuration).

- **Water Service** – There is an existing 8-inch CI water main in NE 36th Avenue. The house under construction on Parcel 1 is served by a 3/4-inch metered service from the main.

- **Sanitary Service** - There is an existing 8-inch public combined gravity sewer line in NE 36th Avenue.

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 “h” overlay limits the height of structures and vegetation in the vicinity of the Portland International Airport

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Please see Exhibits “E” for details.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **September 10, 2012**. Two written responses have been received from notified property

owners in response to the proposal. Both letters raise concerns about the large tree removed from the property that are not accounted for on the proposed development plan.

The two cedars, three douglas fir, two dogwoods, and silk tree already removed from the property were allowed to be removed under the permit (12-141885 RS) for the house currently under construction on proposed Parcel 1. Exhibit C.1 and A.2 (arborist report) reflect the conditions on the property at the time the land use application was made. As noted by both letters, this is an unfortunate loophole that exists in the current tree preservation regulations.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

33.660.120 The Preliminary Plan for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met.

Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the criteria that are not applicable. Applicable criteria are addressed below the table.

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
D	33.632 - Potential Landslide Hazard Area	The site is not within the potential landslide hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
H	33.636 - Tracts and Easements	No tracts or easements have been proposed or will be required.
I	33.639 - Solar Access	All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
J	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the site outside of environmental zones.
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.
	33.654.110.B.3 - Pedestrian connections in the I zones	The site is not located within an I zone.
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required
	33.654.120.C.3.c - Turnarounds	No turnarounds are proposed or required
	33.654.120.D - Common Greens	No common greens are proposed or required
	33.654.120.E - Pedestrian Connections	There are no pedestrian connections proposed or required
	33.654.120.F - Alleys	No alleys are proposed or required
	33.654.120.G - Shared Courts	No shared courts are proposed or required
	33.654.130.D - Partial rights-of-way	No partial public streets are proposed or required

Applicable Approval Criteria are:

A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.

Findings: Chapter 33.610 contains the density and lot dimension requirements applicable in the RF through R5 zones. Maximum density in the R5 zone is one unit per 5,000 square feet, with minimum density 80% of that requirement. The site has a minimum required density of 1 unit and a maximum density of 2 units.

The applicant is proposing two single-family parcels. The density standards are therefore met.

The lot dimensions required and proposed are shown in the following table:

	Min. Lot Area (square feet)	Max. Lot Area (square feet)	Min. Lot Width* (feet)	Min. Depth (feet)	Min. Front Lot Line (feet)
R5 Zone	3,000	8,500	36	50	30
Parcel 1	4,725		45	105	45
Parcel 2	5,460		52	105	52

* Width is measured by placing a rectangle along the minimum front building setback line specified for the zone. The rectangle must have a minimum depth of 40 feet, or extend to the rear of the property line, whichever is less.

The findings above show that the applicable density and lot dimension standards are met. Therefore this criterion is met.

B. Trees. The standards and approval criteria of Chapter 33.630, Tree Preservation, must be met.

Findings: The regulations of Chapter 33.630 preserve trees and mitigate for the loss of trees. Certain trees are exempt from the requirements of this chapter.

The arborist report that inventories the trees within the land division site, evaluates their condition and specifies root protection zones (Exhibit A.2). Trees 234 & 235 have been exempted because they are on the nuisance species list. Three Pacific Dogwood trees (Trees #236, 237 and 238) are proposed to be retained.

The inventory identifies the following trees on the site:

Tree #	Species	Diameter (inches)	Exempt? (per 33.630.030)	To be retained?	RPZ (Root Protection Zone)
234	Norway Maple	8-inch	Yes	No	N/A
235	Cherry	10-inch	No	No	N/A
236	Pacific Dogwood	9-inch	No	Yes	15 feet
237	Pacific Dogwood	7-inch	No	Yes	15 feet
238	Pacific Dogwood	9-inch	No	Yes	15 feet
239	Flowering Cherry	8-inch	No	No	N/A
240	Japanese Maple	9-inch	No	No	N/A
241	Pacific Yew	9-inch	No	No	N/A
242	Golden Chain Tree	8-inch	Yes	No	N/A

The total non-exempt tree diameter on the site is 61 inches. The applicant proposes to preserve trees #236, 237, and 238, which comprise 25 inches of diameter, or 40.9 percent of the total non-exempt tree diameter. This proposal complies with 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 has provided a Tree Preservation Plan showing the preserved trees and the required root protection zone (Exhibit C.1).

Since a building permit was issued and construction of a house began prior to this land use application, to verify the health of the trees required to be preserved and ensure tree protection measures were successful, a revised arborist report is required to be submitted with the final plat.

In order to ensure that future owners of the lots are aware of the tree preservation requirements, the applicant must record an Acknowledgement of Tree Preservation Requirements at the time of final plat.

This criterion is met, subject to a revised arborist report being submitted and the condition that development on Parcels 1 & 2 be carried out in conformance with the Tree Preservation Plan (Exhibit C.1) and the applicant's arborist report (Exhibit A.2) and an acknowledgement of tree preservation requirements is recorded with the final plat.

G. Clearing, Grading and Land Suitability. The approval criteria of Chapter 33.635, Clearing, Grading and Land Suitability must be met.

Findings:

Clearing and Grading

The regulations of Chapter 33.635 ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements, and limit the impacts of erosion and sedimentation to help protect water quality and aquatic habitat.

In this case, the site is primarily flat, and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the site to make the new lots developable. In addition, at the time of development the plans will be reviewed for compliance with the applicant's tree preservation plan and arborist report. This criterion is met.

Land Suitability

The site is currently in residential use, and there is no record of any other use in the past. As indicated above, the site is relatively flat and contains no known geological hazards. Therefore, there are no anticipated land suitability issues and the new lots can be considered suitable for new development. This criterion is met.

K. Transportation impacts. The approval criteria of Chapter 33.641, Transportation Impacts, must be met; and,

L. Services and utilities. The regulations and criteria of Chapters 33.651 through 33.654, which address services and utilities, must be met.

Findings: The regulations of Chapter 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way. The criteria and standards are met as shown in the following table:

33.651 Water Service standard – See Exhibit E.3 for detailed bureau comments.
The water standards of 33.651 have been verified. Water is available to serve the proposed development from the water main in NE 36 th Avenue. Parcel 1 has an existing water service from that main
33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1 for detailed comments.
The sanitary sewer standards of 33.652 have been verified. There is an existing 8-inch public combined gravity sanitary sewer located in NE. 36 th Avenue that can serve the sanitary needs of the proposed lots. Currently there is a house under construction on Parcel

1, which receives service from that main.

To ensure that the new sanitary line for the new house on Parcel 1 does not encroach on to Parcel 2, the Bureau of Environmental Services has requested a complete as-built location of new sanitary line on a supplemental site utility plan be submitted prior to final plat approval. With this condition, this criteria can be met.

33.653.020 & .030 Stormwater Management criteria and standards – See Exhibit E.1

BES has verified that the stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.

No stormwater tract is proposed or required. Therefore, criterion A is not applicable.

Stormwater from proposed Parcels 1 and 2 will be directed to individual drywells that will treat the water and slowly infiltrate it into the ground. Each of these lots has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized home. BES has approved the new stormwater system for the new house under permit 12-141885 RS. BES has indicated conceptual approval of the drywell for Parcel 2.

Since, the stormwater management system for this new house on Parcel 1 is still under construction at this time, BES has requested for their records a complete as-built location of the drywell on a supplemental site utility plan be submitted prior to final plat approval. With this condition, these criteria can be met.

33.654.110.B.1 -Through streets and pedestrian connections

No street connections have been identified in the vicinity of this property in the Portland Master Street Plan document. Both the 530-foot spacing goal for public through streets and the 330-foot spacing goal for pedestrian connections is satisfied in the north-south direction (only) within the subject or surrounding area/blocks. However, the subject block is representative of the block pattern in the general area in terms of orientation and length. Further, as with other blocks in the area, the subject block is primarily built out with the type and density of the expected housing for the R5 zoning. No further street or pedestrian connections are physically possible without impacting existing development on the subject block and beyond. Providing any further connectivity elsewhere on the subject block would lead to no other connection points, again, given the existing, long-established development pattern throughout this area. Portland Transportation has no concerns relative to connectivity or locations of rights-of-way associated with the proposed land division partition.

For the reasons described above, this criterion is met.

**33.641 – Transportation Impacts – 33.641.020 and 33.641.030
33.654.120.B & C Width and elements of the street right-of-way
33.654.130.D Partial Rights of way
Transportation Impacts (33.641.020)**

The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. Evaluation factors include: street capacity and level-of-service; vehicle access and loading; on-street parking impacts; the availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes.

Per Portland Policy Document TRN-10.27 - Traffic Capacity Analysis for Land Use Review Cases: For traffic impact studies required in the course of land use review or development, the following standards apply:

1. For signalized intersections, adequate level of service is LOS D, based on a weighted average of vehicle delay for the intersection.

2. For stop-controlled intersections, adequate level of service is LOS E, based on individual vehicle movement.

The industry standard is to measure street capacity and level-of-service (LOS) only at intersections during the critical time period, such as AM or PM peak hour. Although capacity is a part of the LOS, the City of Portland's performance standards are defined only by LOS, which is defined by average vehicle delay. The City does not have performance standards for any of the other evaluation factors.

Findings: The proposed land division will create one new parcel which will accommodate a new detached residential unit. It is PBOT's understanding that there is a new single-family residence (12-141885 RS) currently under construction on the southern-half of the site on what will be Parcel 1. This new home will replace the original home that was on the site. Accordingly, the estimated one new AM peak hour and one additional PM peak hour trips (10 total daily trips) that potentially may result from the development proposal on the site, are an insignificant number of trips that do not warrant any mitigation to nearby intersections. The impacts to the area's intersections most likely to be effected by the additional project-related trip generation will be negligible. The intersections at NE 36th Avenue/NE Shaver Street (north of the subject site), NE 36th Avenue/NE Bryce Street (south of the subject site) and at NE 36th Avenue/NE Alameda Street (further south of the site) are all uncontrolled (no stop signs/signals). Each of these intersections appear to be currently operating at acceptable levels related to the City's performance measures and will continue to operate at acceptable levels with the vehicle trips generated by the proposed project factored into the analysis. Given the opportunities in all direction from the site for trips that will be generated by the proposed partition to be disbursed throughout the broader transportation system, impacts to one intersection in particular will be minimized.

No significant negative impacts are expected to occur in relation to any of the other evaluation factors. The site is served by nearby transit service along NE 33rd Avenue west of the site (via Tri-Met route #70) and along NE Fremont Street south of the site (via Tri-Met route #24). There are existing sidewalk corridors throughout the vicinity, including along the site frontage that facilitate pedestrian travel. There are identified bike facilities (Portland Bike/Walk Map) in the area including a Neighborhood Greenway/signed & marked route along NE 37th Avenue to the east of the subject site.

With regard to impacts to on-street parking, according to the applicant's submitted narrative, the residences that will be developed on the site will include driveways and garages that will offer (at least) two on-site parking spaces on each parcel. Although an additional curb cut/driveway will be necessary to access the proposed parcel(s), there will remain ample curb length along the subject site frontage to accommodate some on-street parking. Based on review of Google-Street view, the homes north and south of the subject site and along both sides of NE 36th Avenue appear to be served by lengthy individual driveways and garages that can accommodate at least 2 vehicles on each respective lot along the street. Further, it does not appear that there is a high demand for on-street parking based on the lack of vehicles shown along the street (on either side). With on-site parking spaces being provided on both proposed parcels, the impacts to on-street parking should be negligible.

Given the area in which the site is located, the minimal increase in vehicle trips that will be generated by the proposed partition, and the classification of the streets within the transportation system, PBOT expects that the transportation system will be able to support the existing development in the area as well as the proposed development.

Design of Rights-of-Way (33.654.120)

This section requires approval by PBOT of the elements within the right-of-way.

Findings: Frontage improvements will not be required along of the site's frontage.

Additional Approval Criteria for Partial Rights-of-Way or Extensions (33.654.130.B-D)

This section requires approval by the Portland Bureau of Transportation for the extension of existing public streets and pedestrian connections, provision of future extensions and/or of

partial rights-of-way and improvements.

Findings: There are no partial rights-of-way nor are there any configurations that allow for future extensions of streets or pedestrians connections in the area. This approval criterion is not applicable.

For the reasons described above, these criteria are met.

33.654.130.A - Utilities (defined as telephone, cable, natural gas, electric, etc.)

Any easements that may be needed for private utilities that cannot be accommodated within the adjacent right-of-ways can be provided on the final plat. At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. Therefore, this criterion is met.

DEVELOPMENT STANDARDS

Development standards that are not relevant to the land division review, have not been addressed in the review, but will have to be met at the time that each of the proposed lots is developed.

Future Development

Among the various development standards that will be applicable to this lot, the applicant should take note of:

The new house under construction (permit #12-141885 RS) will remain after the land division. This new house on the site will remain and be located on Parcel 1. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R5 zone. Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code, and if the regulation may be adjusted, the land division request must include a request for an adjustment (Please see section on Other Technical Standards for Building Code standards.)

In this case, there is one Zoning Code standard that relates to the house under construction on the site:

- Minimum Setbacks – The house under construction on Parcel 1 must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The future house is required to be 5 feet from the new property line. Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the new house under construction relative to the adjacent new lot lines.

With the conditions noted above, this land division proposal can meet the requirements of 33.700.015.

OTHER TECHNICAL REQUIREMENTS

Technical decisions have been made as part of this review process. These decisions have been made based on other City Titles, adopted technical manuals, and the technical expertise of appropriate service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance with this land use decision, a new land use review may be required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

Bureau	Code Authority and Topic	Contact Information
Water Bureau	Title 21 - Water availability	503-823-7404 www.portlandonline.com/water
Environmental Services	Title 17; 2008 Stormwater Manual Sewer availability & Stormwater Management	503-823-7740 www.portlandonline.com/bes
Fire Bureau	Title 31 Policy B-1 - Emergency Access	503-823-3700 www.portlandonline.com/fire
Transportation	Title 17, Transportation System Plan Design of public street	503-823-5185 www.portlandonline.com/transportation
Development Services	Titles 24 -27, Admin Rules for Private Rights of Way Building Code, Erosion Control, Flood plain, Site Development & Private Streets	503-823-7300 www.portlandonline.com/bds

As authorized in Section 33.800.070 of the Zoning Code conditions of approval related to these technical standards have been included in the Administrative Decision on this proposal.

- The applicant must meet the requirements of the Fire Bureau in regards to ensuring adequate hydrant flow from the nearest fire hydrant and aerial fire department access, or obtaining an approved Fire Bureau appeal to this requirement. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.

CONCLUSIONS

The applicant has proposed a two-parcel partition, as shown on the attached preliminary plan (Exhibit C.1). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are: tree preservation and the location of development under construction as it relates to the proposed property line.

With conditions of approval that address these requirements this proposal can be approved.

ADMINISTRATIVE DECISION

Approval of a Preliminary Plan for a two parcel partition that will result in two standard single dwelling lots as illustrated with Exhibit C.1, subject to the following conditions:

A. The following information must be provided with the final plat application:

1. Three copies of a **Supplemental Plan** shall be submitted with the final plat survey for Land Use Services and Bureau of Environmental Services review and approval. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:
 - The house under construction and any accessory structures on the site at the time of the final plat application;
 - Any driveways and off-street vehicle parking areas on the site at the time of the final plat application;
 - The as-built location of the stormwater system and sanitary system for the house under construction on Parcel 1;
 - The proposed general location of future building footprint and sanitary and stormwater facilities for Parcel 2; and
 - Any other information specifically noted in the conditions listed below.

2. The applicant shall provide a **revised Arborist Report** providing an update on the health of the trees required to be preserved and written verification that tree protection measures have been installed to the arborist's requirements.

B. The final plat must show the following:

1. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition C.2 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "An Acknowledgement of Tree Preservation Requirements has been recorded as document no. _____, Multnomah County Deed Records."

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

Utilities

1. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant. The applicant must provide verification to the Fire Bureau that Appendix B of the Fire Code is met, the exception is used, or provide an approved Fire Code Appeal prior final plat approval.

Required Legal Documents

2. The applicant shall execute an Acknowledgement of Tree Preservation Requirements that notes tree preservation requirements that apply to Parcels 1 and 2. A copy of the approved Tree Preservation Plan must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be recorded with Multnomah County and referenced on the final plat.

D. The following conditions are applicable to site preparation and the development of individual lots:

1. Development on Parcels 1 and 2 shall be in conformance with the Tree Preservation Plan (Exhibit C.1) and the applicant's arborist report (Exhibit A.2). Specifically, trees numbered 236, 237 and 238 are required to be preserved, with the root protection zones indicated on Exhibit A.2. Tree protection fencing is required along the root protection zone of each tree to be preserved. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground. Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones 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.
2. If required, the applicant will be required to meet any requirements identified through a Fire Code Appeal. This may include a requirement to install residential sprinklers in the new dwelling units on Parcel 1 and Parcel 2. Please refer to the final plat approval report for details on whether or not this requirement applies.
3. The applicant must provide a fire access way that meets the Fire Bureau requirements related to aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height as measure to the bottom of the eave of the structure or the top of the parapet for a flat roof.

Staff Planner: Rachel Whiteside

Decision rendered by: *Rachel Whiteside* **on October 22, 2012**
By authority of the Director of the Bureau of Development Services

Decision mailed October 25, 2012

About this Decision. This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

Procedural Information. The application for this land use review was submitted on July 24, 2012, and was determined to be complete on **September 6, 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 July 24, 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 4, 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.

This decision, and any conditions associated with it, is final. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. You may call LUBA at 1-503-373-1265 for further information on filing an appeal.

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at www.portlandonline.com.

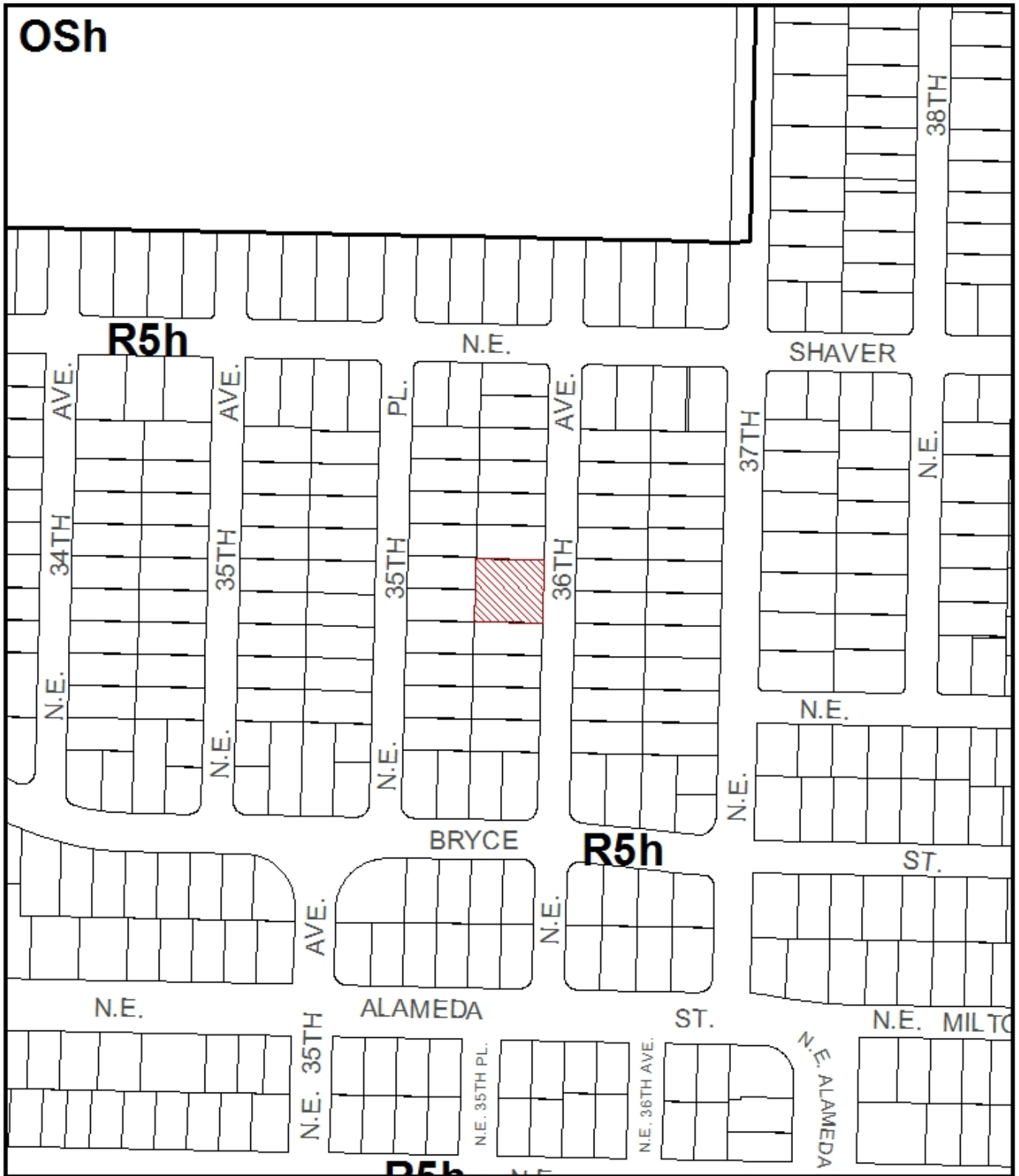
Recording the land division. The final land division plat **must** be submitted to the City **within three years** of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director or delegate, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. **The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City's approval of the preliminary plan.**

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Land Division Narrative
 - 2. Certified Arborist Report
 - 3. Stormwater Report Narrative
 - 4. Completed Simplified Approach for Stormwater Calculation
 - 5. September 5, 2012 Letter from applicant
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan (attached)
 - 2. Site Utility Plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. Life Safety Section of BDS
- F. Correspondence:
 - 1. Howard Cutler & Pamela Echeverio, Letter with tree concerns received October 7, 2012, also signed by Ryland & Amy Kelly, Lore Elizabeth Lee, Constantine R. Bricca, Peggie Bricca, Mildred Rigsbee, Eric and Sandra Wolf, Andrew Jaquiss, Shane Darden, Patrick Firth and Julia Kelly-Echeverio,
 - 2. Jeffery Comstock, Letter with tree concerns received October 9, 2012
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Letter, sent August 22, 2012

The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).

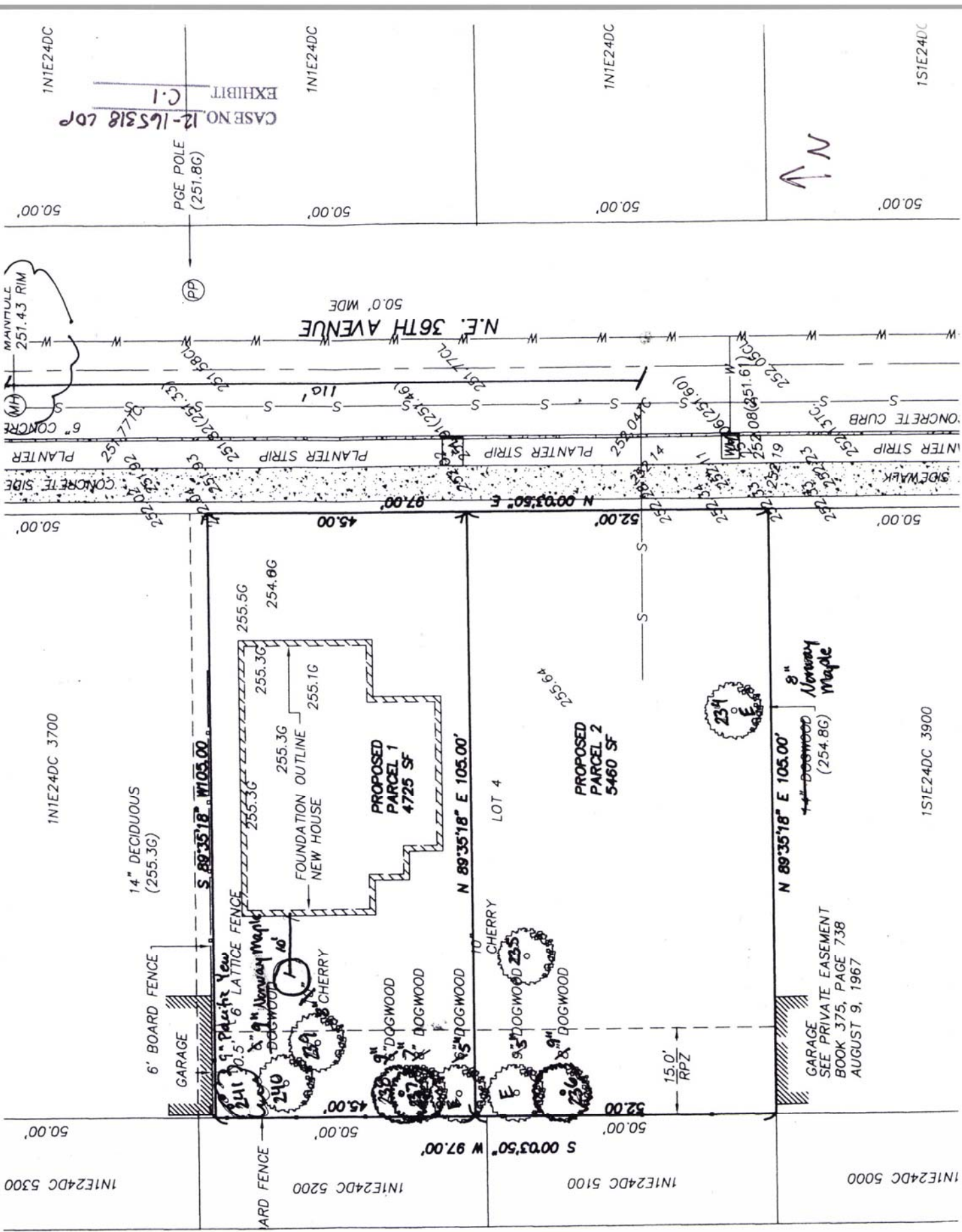


ZONING

 Site



File No.	LU 12-165318 LDP
1/4 Section	2634
Scale	1 inch = 200 feet
State_Id	1N1E24DC 3800
Exhibit	B (Jul 31,2012)



CASE NO. 12-165318 LDP
 EXHIBIT C-1



GARAGE
 SEE PRIVATE EASEMENT
 BOOK 375, PAGE 738
 AUGUST 9, 1967