



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

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner  
Paul L. Scarlett, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** March 26, 2015  
**To:** Interested Person  
**From:** Sean Williams, Land Use Services  
503-823-7612 / [Sean.Williams@portlandoregon.gov](mailto:Sean.Williams@portlandoregon.gov)

## **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 mailed copy of this document is only a summary of the decision. The reasons for the decision, including the written response to the approval criteria and to public comments received on this application, 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 15-115706 TR**

#### **GENERAL INFORMATION**

**Applicant/Owner:** Jeff Edmondson  
2051 Willamette Falls Drive / West Linn, OR 97068-4608

**Site Address:** 7035 & 7047 SE 64<sup>th</sup> Avenue

**Legal Description:** LOT 1, PARTITION PLAT 2014-53; LOT 2, PARTITION PLAT 2014-53  
**Tax Account No.:** R649652090, R649652100  
**State ID No.:** 1S2E20BC 03701, 1S2E20BC 03702  
**Quarter Section:** 3737  
**Neighborhood:** Brentwood-Darlington, contact David Messenheimer at [trimess@hotmail.com](mailto:trimess@hotmail.com)  
**Business District:** Eighty-Second Ave of Roses Business Association, contact Frank Harris at 503-774-2832.  
**District Coalition:** Southeast Uplift, contact Bob Kellett at 503-232-0010.  
**Plan District:** None  
**Zoning:** Residential 5,000 (R5) 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 has requested a Tree Review to mitigate for a 12-inch and 24-inch Western Red Cedar that were required to be preserved through the Land Division review (LU 11-138555 LDP) that created the subject parcels.

#### **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**.

## FACTS

**Site and Vicinity:** The subject properties are located on the west side of SE 64<sup>th</sup> Avenue approximately 150 feet north of the intersection with SE Ogden Street. Each parcel is currently being developed with a new single family residence. Other trees that were located within the site but not preserved at the time of the land division have been removed. Development within the surrounding vicinity is primarily composed of single family homes with comparable zoning. Lane Middle School and Brentwood Park are located approximately 500 feet west of the subject property.

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

The "a" overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood.

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

- **LU 11-138555 LDP:** Approval of a preliminary plan to create two standard lots for detached houses. The plat was subsequently recorded in 2014 (PP 2014-53).

**Agency Review:** Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Exhibits "E" contain the complete responses.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on **February 19, 2015**. No written responses have been received from 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 requirements of a land use review, 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 requirement of a land use review, the mitigation plan meets the purpose of the regulation that required the preservation plan; and
  - 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 853-1. If additional trees on the site are proposed for preservation and protection, the applicant must submit an arborist's assessment indicating the suitability of the trees for preservation, recommendations for protection methods, and any remedial treatment that may be necessary to ensure the long term viability of the trees. The total diameter of additional trees preserved must exceed the total diameter of trees cut.

<b>Table 853-1 Tree Replacement for Violation</b>	
<b>Size of tree removed (inches in diameter)</b>	<b>Number of Trees to be Planted</b>
Up to 12	3 trees
More than 12 to up to 20	5 trees
More than 20 to up to 25	7 trees
More than 25 to up to 30	10 trees
More than 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 may 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 as described in 2.a or b, then a payment in lieu of planting may be made to the Tree Planting and Preservation Fund
3. Replacement trees must meet the requirements of Section 33.248.030, Plant Materials, unless the mitigation plan calls for different planting specifications to address concerns about plant survival or impacts on the site.

**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 land division process provides the flexibility and opportunity to promote creative site design that considers multiple objectives, including integration of trees. The regulations of this chapter require that trees be considered early in the design process with the goal of preserving high value trees and mitigating for the loss of trees. Desired benefits of trees include:

- Protecting public health through the absorption of air pollutants, contamination, and capturing carbon dioxide;
- Buffering from noise, wind, and storms;
- Providing visual screening and summer cooling;
- Reducing energy demand and urban heat island impacts;
- Filtering stormwater and reducing stormwater runoff;
- Reducing erosion, siltation, and flooding;
- Stabilizing slopes;
- Enhancing property values;
- Providing fish and wildlife habitat, including support for native species biodiversity through the preservation and planting of native trees;
- Providing food for people and wildlife; and
- Contributing to the beauty of the City, its natural heritage, and the character of its neighborhoods.

Tree Preservation standards of 33.630 require a certain percentage of existing viable tree diameter to be preserved on new lots within a land division site. A 2 parcel land division (LU 11-138555 LDP) was approved with a tree preservation plan that met the standards of Option 1 (33.630.100.A.1). This plan required a 12" (#287) and 24" (#288) Western red cedar tree to be preserved on Parcel 1. Evidence was provided documenting that the 12-inch cedar blew down in a wind storm (Exhibit A.2). Because this tree was damaged as a result of natural causes it may be replaced in kind. However, the 24-inch cedar was removed during construction

associated with the new single family homes. Therefore, the applicant is in violation of the tree preservation plan approved through the aforementioned land division review.

According to Table 853-1, 7 trees are required to replace removal of the 24-inch Western red cedar. The applicant has proposed to mitigate for the loss of these trees by planting Western red cedar trees, or comparable species, in the backyard of the lots where the other trees were damaged and removed.

The two Western red cedar trees that were required to be preserved accounted for the tree planting standard for new building permits at the time of application for the new single family homes on Parcels 1 and 2. As a result of these trees being removed there are now no trees within either parcel associated with the homes that are currently under construction. Today's current code requires compliance with the on-site tree density standards of Title 11, Trees (11.50.050.C). Single family residential development generally requires a tree area of 40 percent of the site and the number of required trees and minimum planting area depends on the size of trees being planted. Based on lot area and associated development it appears appropriate to plant 1 large tree and 3 medium trees per parcel for compliance with the on-site tree density requirements. By planting a total of 8 trees between both parcels the applicant can satisfy the tree replacement requirements of Table 853-1 including replacement of the tree that blew down in a wind storm.

In order to satisfy the mitigation requirements, the applicant shall receive final inspection approval of a Zoning Permit to plant 1 large tree and 3 medium trees per parcel prior to final inspection approval of building permit 14-105844 RS (Parcel 1) and 14-208580 RS (Parcel 2). The required large tree shall be a Western red cedar (*Thuja plicata*) and must be planted at the rear of each parcel. The 3 medium trees may be dispersed throughout each parcel subject to the minimum required planting area per tree (Table 50-2). Additionally, the medium trees must be Native Species selected from the following list identified in the Tree and Landscape Manual:

- Grand fir (*Abies grandis*)
- Big leaf maple (*Acer macrophyllum*)
- Red alder (*Alnus rubra*)
- Oregon Ash (*Fraxinus latifolia*)
- Ponderosa pine (*Pinus ponderosa ssp.*)

The required mitigation is consistent with the purpose of Chapter 33.630, Tree Preservation as requiring the replacement trees to be native species, chosen from the Portland Plant List, will help to foster and maintain the City's natural heritage as well as providing the identified environmental benefits of filtering stormwater and reducing runoff. Dispersion of the replacement trees will also allow more areas of the site to reap the benefits of trees that are described in the purpose statement for the Tree Preservation Chapter. Therefore, subject to the condition noted above, this criterion is met.

## **DEVELOPMENT STANDARDS**

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

## **CONCLUSIONS**

As part of a 2-parcel land division (LU 11-138555 LDP) that established the subject parcels, a 12" (#287) and 24" (#288) Western red cedar tree were required to be preserved. The 12" cedar was damaged as a result of natural causes but the 24" cedar was removed without appropriate review. In order to address the Violation resulting from removal of this tree, the applicant will be required to plant a total of 8 native trees between both parcels. 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 Review to correct a violation resulting from the removal of a 24-inch Western red cedar required to be preserved as a part of LU 11-138555 LDP, subject to the following condition:

- A. The applicant shall receive final inspection approval of a Zoning Permit to plant 1 large tree and 3 medium trees per parcel prior to final inspection approval of building permit 14-105844 RS (Parcel 1) and 14-208580 RS (Parcel 2). The required large tree shall be a Western red cedar (*Thuja plicata*) and must be planted at the rear of each parcel. The medium trees must be Native Species selected from the following list identified in the Tree and Landscape Manual:

- Grand fir (*Abies grandis*)
- Big leaf maple (*Acer macrophyllum*)
- Red alder (*Alnus rubra*)
- Oregon Ash (*Fraxinus latifolia*)
- Ponderosa pine (*Pinus ponderosa* ssp.)

**Staff Planner: Sean Williams**

**Decision rendered by:**  **on March 24, 2015**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: March 26, 2015**

**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 February 6, 2015, and was determined to be complete on **February 17, 2015**.

*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 February 6, 2015.

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: June 17, 2015.**

**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 April 9, 2015** at 1900 SW Fourth Ave. Appeals can be filed at the Development Services Center Monday through Wednesday and Fridays between 8:00 am to 3:00 pm and on Thursdays between 8:00 am to 12:00 pm. After 3:00 pm Monday through Wednesday and Fridays, and after 12:00 pm on Thursdays, appeals must be submitted at the reception desk on the 5<sup>th</sup> 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](http://www.portlandonline.com).

**Attending the hearing.** If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 775 Summer St NE, Suite 330, Salem, Oregon 97301-1283, 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 **April 10, 2015 – (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.

**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:

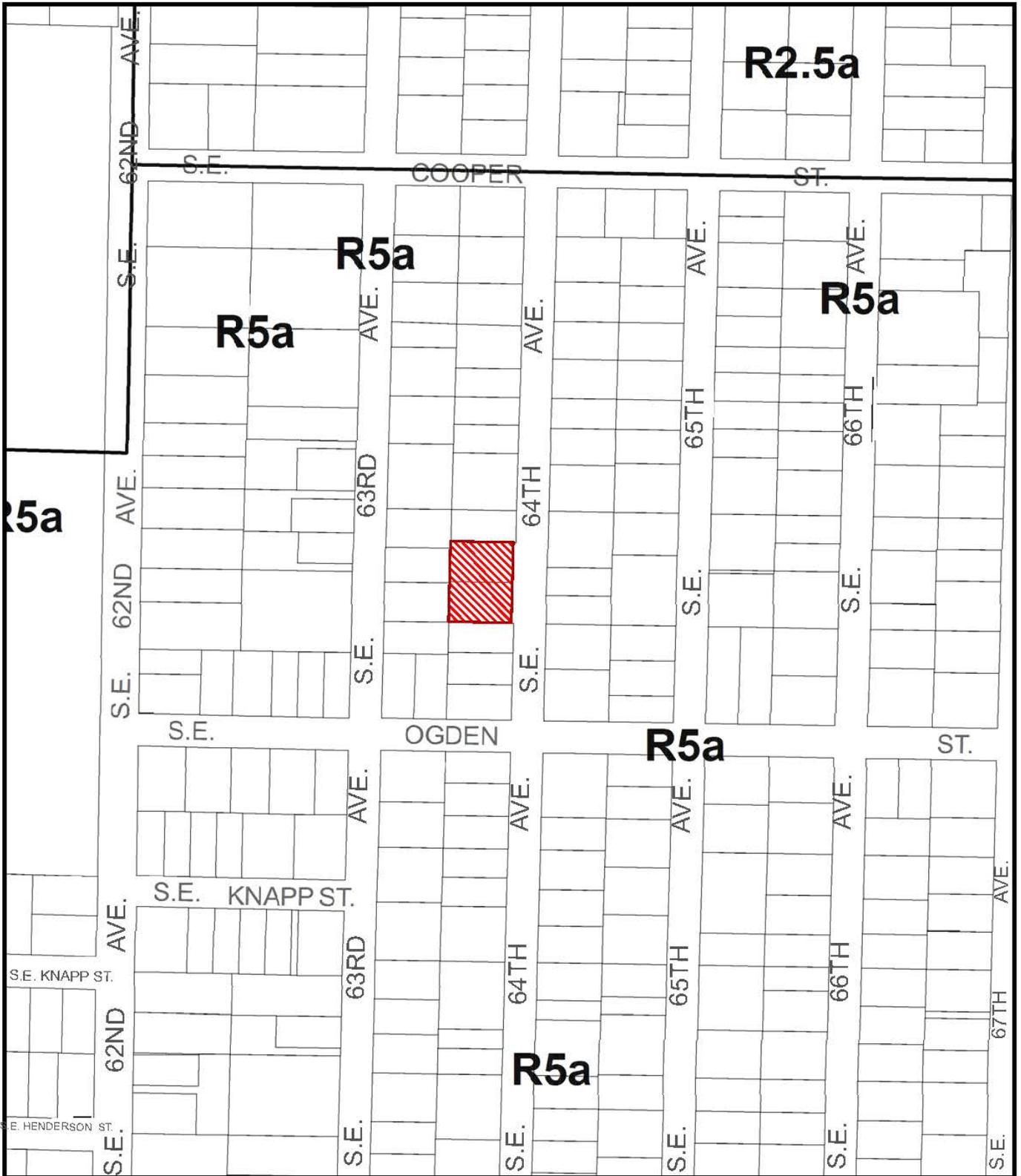
- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations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

#### **EXHIBITS**

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Narrative
  - 2. Photos
- 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
  - 2. Bureau of Parks, Forestry Division
- 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

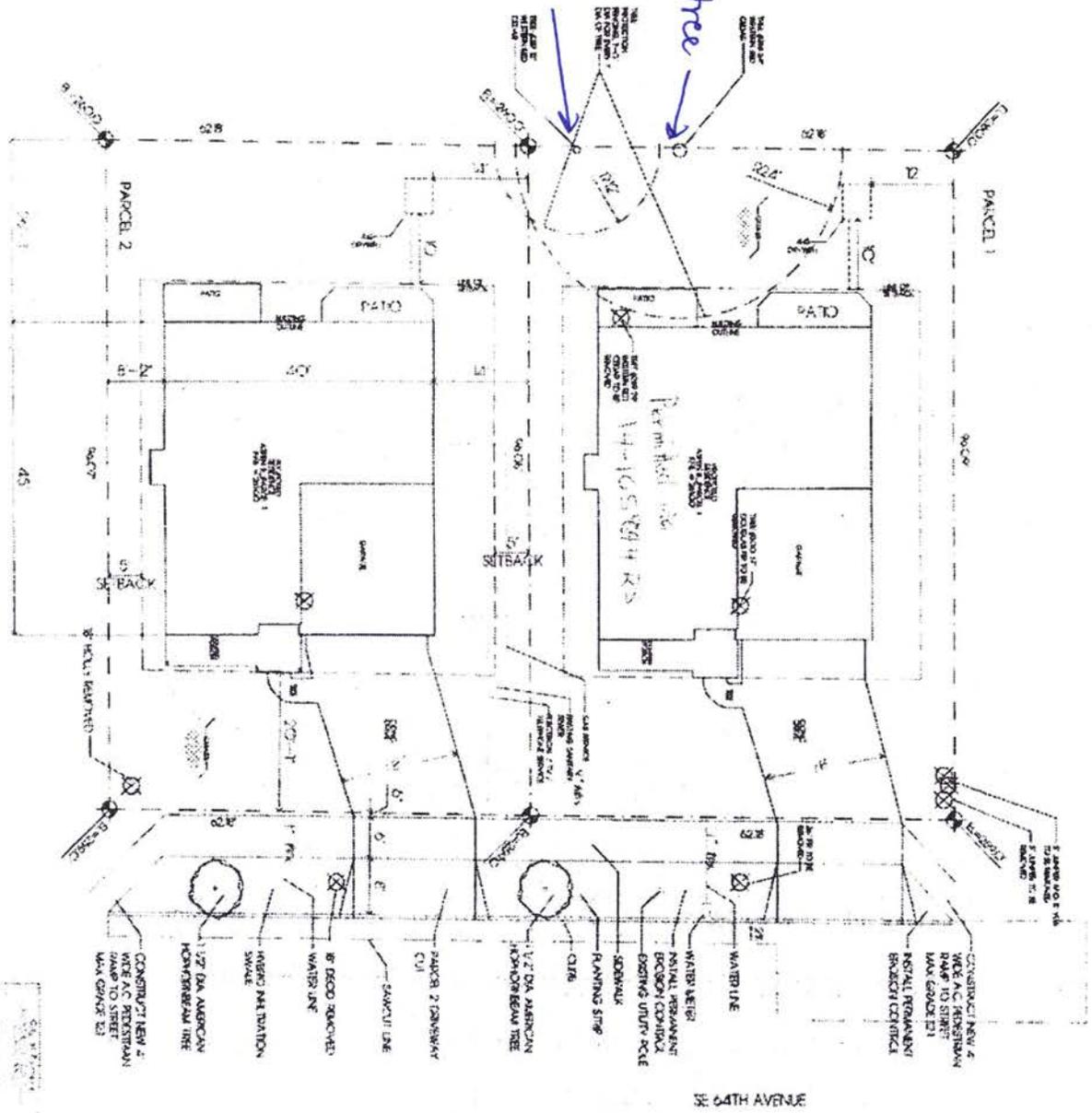


NORTH

File No. LU 15-115706 TR  
 1/4 Section 3737  
 Scale 1 inch = 200 feet  
 State\_Id 1S2E20BC 3702  
 Exhibit B (Feb 10, 2015)

STATE HOME DESIGN, INC. IS NOT  
 LIABLE FOR THE ACCURACY OF THE  
 INFORMATION CONTAINED HEREIN,  
 NOR THE SOLE RESPONSIBILITY OF THE  
 CLIENT. THE CLIENT SHALL BE  
 RESPONSIBLE FOR VERIFYING ALL  
 INFORMATION CONTAINED HEREIN  
 AND FOR OBTAINING ALL NECESSARY  
 PERMITS AND APPROVALS FROM  
 THE APPROPRIATE AGENCIES.

Removed tree  
 Tree damaged  
 in windstorm



LOCAL INSURANCE  
 POLICY NUMBER  
 2-001-1000  
 PORTLAND, OR

City of Portland  
 LU 15-115706 TR  
 Planning Department

SE 64th Street  
 10' Right of Way

SE 64th AVENUE



ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF PORTLAND PLANNING DEPARTMENT PERMITS AND REGULATIONS. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

USE OF THIS SITE PLAN FOR ANY PURPOSE OTHER THAN THAT FOR WHICH IT WAS PREPARED IS AT THE USER'S SOLE RISK. THE USER SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

NOTE: 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF PORTLAND PLANNING DEPARTMENT PERMITS AND REGULATIONS. 2. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. 3. THIS SITE PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF STATE HOME DESIGN, INC.

NOTE: 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF PORTLAND PLANNING DEPARTMENT PERMITS AND REGULATIONS. 2. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. 3. THIS SITE PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF STATE HOME DESIGN, INC.

NOTE: 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF PORTLAND PLANNING DEPARTMENT PERMITS AND REGULATIONS. 2. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. 3. THIS SITE PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF STATE HOME DESIGN, INC.

NOTE: 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF PORTLAND PLANNING DEPARTMENT PERMITS AND REGULATIONS. 2. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. 3. THIS SITE PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF STATE HOME DESIGN, INC.

NOTE: 1. ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE CITY OF PORTLAND PLANNING DEPARTMENT PERMITS AND REGULATIONS. 2. THE CLIENT SHALL BE RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES. 3. THIS SITE PLAN IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF STATE HOME DESIGN, INC.

PARCEL 2

LOT AREA	5974 SQ. FT.
ADDITIONAL AREA	
DRAWING	4500
PATIO	100
WALK	20
CONC.	2000
TOTAL	2700

SE 64th ST. PORTLAND, OR  
 THE ASPEN BO PLAN NUMBER 22100B 24/7 PROPERTIES

# SITE PLAN

SCALE: 1" = 10'-0"

LU 15-115706 TR

EXHIBIT 6.1