



Portland City Auditor

Hearings Office

1900 SW 4th Avenue, Room 3100, Portland, OR 97201

www.portlandoregon.gov/auditor/hearings

phone: (503) 823-7307

fax: (503) 823-4347



DECISION OF THE HEARINGS OFFICER ON APPEAL OF ADMINISTRATIVE DECISION

I. GENERAL INFORMATION

File No.: LU 14-196666 LDP AD
(Hearings Office 4150033)

Appellant/Applicant: Peter Nesterenko
4402 NE 112th Avenue
Portland, OR 97220

Consultant: Robert Price
Planning And Development Services
3935 NE 72nd Avenue
Portland, OR 97213

Surveyor: Joe H. Ferguson
Ferguson Land Surveying
646 SE 106th Avenue
Portland, OR 97216

Owner: Vladimir Pavlov
11439 NE Morris Street
Portland, OR 97220-1718

Hearings Officer: Gregory J. Frank

Bureau of Development Services ("BDS") Representative: Leah Dawkins

Site Address: 11439 NE Morris Street

Legal Description: BLOCK 16 W 35' OF LOT 19 LOT 20, PARKROSE HTS

Tax Account No.: R647905460

State ID No.: 1N2E27AC 03100

Quarter Section: 2742

Neighborhood: Parkrose Heights

Business District: Gateway Area Business Association

District Coalition: East Portland Neighborhood Office

Zoning: R7h- Single Dwelling Zone with "h" Aircraft Landing Zone Overlay

Land Use Review: Type Iix, LDP AD- Land Division Partition with concurrent Adjustment Review

BDS Administrative Decision: Approval with Conditions

Public Hearing: The hearing was opened at 9:02 a.m. on November 30, 2015, in the 3rd floor hearing room, 1900 S.W. 4th Avenue, Portland, Oregon, and was closed at 9:54 a.m. The record was held open for new evidence from all until 4:00 p.m. on December 3, 2015. The record was held open for responsive evidence from Appellant/Staff until 4:00 p.m. on December 8, 2015. The record was held open until 4:00 p.m. on December 15, 2015, for final argument from the Appellant only. The record was closed at that time.

Testified at the Hearing:

- Leah Dawkins
- Christopher Koback

Proposal:

A clear description of Applicant's proposal, in this case, is very important. As will be seen by the findings below, both Applicant and BDS staff engaged in a discussion about a "potential flag lot" and the potential impacts resulting from the creation of the "potential flag lot." The Hearings Officer wishes to make clear that the proposal in this case does not include a "flag lot." If and when a "flag lot" application is received by the City, a review of the relevant approval criteria for that application will be necessary and appropriate.

For the purpose of this decision, the Hearings Officer finds Applicant's proposal shall be described as follows:

Applicant proposes to divide real property commonly described as 11439 NE Morris Street, Portland, Oregon (the "Subject Property") into two parcels. Parcel 1 is proposed to be 7,215 square feet and Parcel 2 will be 17,830 square feet. On or about June 5, 2015, a document was submitted by Applicant or its survey company, a Site Plan (Exhibit H.11). A copy of this document was attached to the "Notice of a Type Iix Proposal in Your Neighborhood" (Exhibit D.2). A copy of Exhibit D.2 was mailed to the Applicant, Applicant's surveyor, the owner of the Subject Property, and nearby neighbors (Mailing List – Exhibit D.1). The Hearings Officer reviewed the BDS staff file and found no written evidence, from Applicant or any other person/entity, that the Site Plan (Exhibit H.11) was in error or otherwise incorrectly set for the Applicant's proposal.

On or about October 23, 2015, BDS staff mailed a copy of "Notice of a Type IIX Decision on a Proposal in Your Neighborhood" (Exhibit H.1) to Applicant, Applicant's land use consultant, Applicant's surveyor, and nearby neighbors (Mailing List – Exhibit H.12). The Site Plan attached to Exhibit H.12 (identified as Exhibit C.1 by BDS staff) is different than Exhibit H.11 in that it contains handwritten comments related to driveways/access. Mr. Christopher Koback ("Koback"), attorney for Applicant, stated at the November 30, 2015 public appeal hearing before the Hearings Officer, that the handwritten comments, related to driveway/access, on Exhibit H.12, were placed on the document by BDS staff. BDS staff, at the November 30, 2015 hearing, acknowledged the handwritten comments were placed by BDS staff and not Applicant or any Applicant representative. The Hearings Officer finds that the handwritten comments on the Exhibit H.1 and Exhibit H.12 Site Plan are not part of Applicant's proposal in this case.

The Hearings Officer finds that Exhibit H.11 is the most current and accurate reflection of Applicant's proposal in this case. Whenever the Hearings Officer refers to Applicant's proposal in this decision, the Hearings Officer is specifically referring to the Exhibit H.11 Site Plan and all other Applicant submissions that are consistent with Exhibit H.11.

The Hearings Officer, in this decision, makes no findings regarding a possible/potential "flag lot." The Hearings Officer, in this decision, makes no findings as to how a possible/potential "flag lot" might be accessed. If and when a "flag lot" application is filed, the City must review that application based upon the laws/rules in effect at that time and the existence of this application proposal as approved.

BDS noted, in Exhibit H.1, that Parcel 1 will be 7,215 square feet and Parcel 2 will be 17,830 square feet. BDS indicated that Applicant requested an adjustment to the maximum lot size for Parcel 2 from 12,000 square feet to 17,830 square feet for the purpose of a possible/future flag lot land division. BDS also indicated that Applicant is proposing to retain the existing residence on the Subject Property and preserve at least 35 percent of the existing non-exempt tree diameter on the Subject Property. The Hearings Officer agrees with these BDS comments and considers them consistent with Applicant's proposal in this case.

This partition proposal is reviewed through a Type IIX procedure because: (1) the Subject Property is in a residential zone; (2) 10 or fewer lots are proposed; and (3) a concurrent review (Adjustment) is required (see 33.660.110).

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. Applicant's proposal is to create 2 units of land. 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.**

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. of **Section 33.805.040, Adjustment Approval Criteria**, have been met.

II. GENERAL FINDINGS

Site and Vicinity: The Subject Property is relatively flat. The Subject Property has several large trees and landscaping shrubs. A number of trees will be retained to meet tree preservation requirements. There is an existing residence with a large detached garage which will be retained. Surrounding development is primarily ranch-style, single family dwellings on larger lots. The street grid consists of long blocks along east-west streets and limited connectivity from north to south.

Infrastructure:

- **Streets** –The Subject Property has approximately 132.5 feet of frontage on NE Morris Street. There is one driveway entering the Subject Property that serves the existing house on the site. At this location, NE Morris Street is classified as a Local Service Street for all modes in the Transportation System Plan (“TSP”). TriMet provides transit service approximately 630 feet from the site at NE 111th Drive via Bus #23.

NE Morris Street has a 28-foot curb-to-curb paved surface within a 50-foot right-of-way with parking on both sides. Along the 132.5-foot wide site frontage there is no curb or sidewalk. There is approximately 11 feet of right-of-way between the edge of pavement and property line.

- **Water Service** – There is an existing 8-inch CI water main in NE Morris Street. The existing house is served by a 5/8-inch metered service from this main.

- **Sanitary Service** - There is an existing 8-inch VSP public combination sewer line in NE Morris Street.

- **Stormwater Disposal** – There is no public storm-only sewer currently available to this property.

Zoning: 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.

The Aircraft Landing (“h”) overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. On this site the base zone (R5) height limit of 30 feet applies and cannot be exceeded without a future adjustment review.

Land Use History: City records indicate there are no prior land use reviews for the Subject Property.

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. In addition, the Portland Bureau of Transportation (“PBOT”) submitted comments during the open-record period (Exhibit H.8).

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on June 10, 2015 (Exhibit D.2). One written response has been received from a notified property owner in response to the proposal. (See Exhibit F.) The identified issues/concern was summarized and responded (*italics*) to by BDS staff below.

“Concern was expressed that the existing and proposed dwellings will become duplexes after the land division is processed.

Duplex development is not allowed in the R7 zone on single dwelling parcels which are not corner lots. Based on a site visit, staff has determined that the existing dwelling, while it does have 2 front doors, is not a duplex. Any new development on Parcel 2 will be required to be a single dwelling development based on the development standards of the R7 zone.” (See Exhibit H.1, page 3.)

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 the Subject Property, 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 Subject Property is not within the flood hazard area.
D	33.632 - Potential Landslide Hazard Area	The Subject Property is not within the potential landslide hazard area.

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
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.
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 Subject Property 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.B - Existing public dead-end streets and pedestrian connections	No public dead-end streets or pedestrian connections exist that must be extended onto the site.
	33.654.130.C - Future extension of dead-end streets and pedestrian connections	No dead-end street or pedestrian connections 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. The maximum density is one unit per 7000 square feet. Minimum

density is one unit per 7000 square feet based on 80 percent of the site area. The Subject Property has a minimum required density of 2 units and a maximum density of 3 units. Applicant is proposing 2 single dwelling parcels. The Hearings Officer finds the density standards are met.

Applicant is proposing an adjustment to maximum lot size for Parcel 2. This will allow for a new parcel that is larger than typical R7 lots for the purpose of re-dividing Parcel 2 into a flag lot configuration in the future. This will allow for a future parcel that is consistent with the prevailing development pattern of the surrounding area, more consistent with neighboring lots and it will allow for a deeper lot and increased future home footprint. The approval criteria for this adjustment are addressed later in this document.

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)
R7 Zone	4,200	12,000	40	55	30
Parcel 1	7,215		59.30	121.86	121.66
Parcel 2	17,830		85.20	188.87	85.20

* 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 Hearings Officer finds these approval criteria are met for Parcel 1. Minimum lot width, depth, and front lot line criteria have been met for Parcel 2. Approval criteria for an adjustment to the maximum lot area for Parcel 2 are addressed later in this decision.

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.

Applicant provided an arborist report that inventories the trees on the Subject Property, evaluated their condition and specified root protection zones (Exhibit A.6). Eleven trees have been exempted because they are too small, unhealthy, a nuisance species, or located within 10 feet of an existing structure to remain on the property. Nine trees are subject to the preservation requirements of this chapter.

The total non-exempt tree diameter on the Subject Property is 133 inches. Applicant proposed to preserve trees #3, #17, #18, and #20, which comprise 48 inches of diameter, or 36 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 non-exempt tree diameter on the Subject Property to be preserved. The trees to be preserved and the required root protection zones are shown on the Applicant's Preliminary Land Division Plan (Exhibit H.11).

The Hearings Officer finds this approval criterion is met, subject to the condition that development on Parcels 1 and 2 be carried out in conformance with the Preliminary Land Division Plan (Exhibit H.11) and Applicant's arborist report (Exhibit A.6) and an Acknowledgement of Tree Preservation Land Use Conditions is recorded with the final plat.

H. Tracts and easements. The standards of Chapter 33.636, Tracts and Easements must be met;

Findings: No tracts are proposed or required for this land division, so criterion A does not apply.

Applicant proposed, on Exhibit H.11, a "12' x 82' Access Easement to Benefit Parcel 1."

As stated in Section 33.636.100 of the Zoning Code, a maintenance agreement(s) will be required describing maintenance responsibilities for the easement described above and facilities within those areas. This criterion can be met with the condition that a maintenance agreement is prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreement with a recording block, substantially similar to the following example:

"A Declaration of Maintenance agreement for Private Access Easement has been recorded as document no. _____, Multnomah County Deed Records."

The Hearings Officer finds, based upon Applicant's proposed Access Easement on Exhibit H.11, that with the conditions of approval discussed above, this approval criterion is met.

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 Subject Property is primarily flat and is not located within the Potential Landslide Hazard Area. The Hearings Officer finds no significant clearing or grading will be required on the Subject Property to make the new lots developable. During construction, preserved trees will be protected with 6-foot high chain link fence, secured by 8-foot metal poles driven 20-feet into the ground at a diameter around the tree as indicated in Applicant's arborist report (Exhibit A.6). The Hearings Officer finds this approval criterion is met.

Land Suitability

The Subject Property is currently in residential use, and there is no record of any other use in the past. Although the existing residence is currently connected to the public sanitary sewer, there is an old septic system on the Subject Property. The City has no record that this facility was ever decommissioned. The Hearings Officer finds that prior to final plat, Applicant must meet the requirements of the Site Development Section of BDS for the decommissioning of this facility. The Hearings Officer finds that with a condition requiring final inspection for a decommissioning permit, the new lots can be considered suitable for new development, and this approval criterion is met.

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

Findings: The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. PBOT staff reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, and for potential impacts upon transportation services.

PBOT has provided the following findings (see Exhibit E.2):

"The minimal expected added vehicle trips (1 AM peak hour trip/1 PM peak hour trip/10 total new daily trips) will not adversely impact the operations of area intersections. On-street parking will not be adversely impacted given the on-site parking opportunities that will be provided on the new lot. The proposed lot split will not have any effect to transit service or any other mode of travel. The transportation system is capable of safely supporting the proposed development in addition to existing uses in the area."

Based upon PBOT's comments, the Hearings Officer finds these approval criteria are met.

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

Findings: 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 Bureau indicated that service is available to the Subject Property. The water service standards of 33.651 have been verified.
33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1 for detailed comments.
The Bureau of Environmental Services indicated that service is available to the Subject Property. The sanitary sewer service standards of 33.652 have been verified.
33.653.020 & .030 Stormwater Management criteria and standards – See Exhibit E.1
No stormwater tract is proposed or required. Therefore, criterion A is not applicable.
Applicant has proposed the following stormwater management methods:
<ul style="list-style-type: none">● Parcel 2: The stormwater management report provided by BMP Design indicates stormwater runoff from a proposed structure on Parcel 2 would be directed to a flow-through planter with overflow to a drainageway/surface water body. There is no offsite disposal location available (including a drainageway/surface water body) available to this site and per Chapter 2 (Facility Design, page 2-64) for the Simplified Approach, if the tested infiltration rate is greater than or equal to 2 inches per hour, the stormwater planter must overflow to a subsurface infiltration facility, which has not been shown. Therefore based on infiltration testing results, stormwater runoff from new impervious area must be infiltrated onsite by means of a subsurface stormwater facility (e.g., a drywell or soakage trench) that can meet minimum setbacks as established in the facility design standards and Exhibit 2-1 of the SWMM. Roof water can be directly discharged to a subsurface facility without a pollution reduction facility. Also note that stormwater runoff from non-roof impervious area (e.g., driveways and patios) can be directed towards vegetated areas. If a proposed onsite infiltration facility temporarily fails or rainfall exceeds the facility design capacity, stormwater can overflow to the landscaped area, which is an acceptable escape route.
Infiltration rates are sufficient and area is available on Parcel 2 to locate a subsurface stormwater facility that meets setback requirements; therefore BES does not object to approval of the preliminary plan. Prior to final plat approval, however, a revised stormwater report that clearly identifies a conceptual stormwater management plan for Parcel 2 that meets the requirements of the SWMM must be provided.
Parcel 1 (the lot with the existing house): The existing house and garage have downspouts that drain onto the ground. Prior to final plat approval, the applicant must document the location of the stormwater disposal for the existing house and garage, to the satisfaction of BES. The applicant must modify the stormwater system for the existing house and garage as necessary to comply with Stormwater Management Manual prior to final plat approval. Any

required plumbing permits must have final inspection approval.

With the recommended conditions of approval, the Hearings Officer finds Applicant's proposed stormwater management plan acceptable for the purpose of reviewing the preliminary land division application against the stormwater management approval criterion.

33.654.110 Connectivity and Location of Rights-Of-Way

33.654.120.B & C Width & elements of the right-of-way – See Exhibit E.2 for bureau comment

PBOT provided the following comments:

“No street connections have been identified in the immediate vicinity of Subject Property in the Portland Master Street Plan. Although the location of the Subject Property within its block is a desirable location to provide a new public street or pedestrian connection through the block, said potential connections are not feasible due to existence of multiple flag lots on the north side of the block (along NE Siskiyou). These flag lots are developed with detached single-family residences which preclude any public street or pedestrian connection opportunities, unless several of these existing houses were demolished. These impacts do not make further connectivity through the subject site or block feasible.”

NE Morris is improved with a paved roadway. There are no curbs, planter strips, or sidewalks. In reviewing this land division, PBOT relied on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. Because none of the other frontages have been improved on this street, PBOT determined that an isolated improvement at this location would not be meaningful. PBOT indicated that if the street is to be improved, it would be more appropriate to complete the improvements as one LID project. PBOT indicated that Applicant should be required to sign street and storm sewer waivers of remonstrance (for participation in future street and storm sewer improvements) and to provide 4 feet of property dedication to the public right-of-way prior to final plat approval.

The Hearings Officer finds this approval criterion is met, with the condition that the required waivers are signed prior to final plat approval and the required right-of-way dedication is shown on the Final Plat.

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. The Hearings Officer finds this approval criterion is met.

33.805.040 Approval Criteria

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. below, have been met.

A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Maximum Lot Size

Findings: Chapter 33.610 contains the lot dimension standards for approval of a Preliminary Plan for a Land Division in the RF through R5 zones. These standards ensure that lots are consistent with the desired character of each zone while allowing lots to *vary in size and shape* provided the planned intensity of each zone is respected.

The purpose of the lot dimension standards of Code Section 33.610.200 is to ensure that:

- Each lot has enough room for a reasonably-sized house and garage;
- Lots are of a size and shape that development on each lot can meet the development standards of the zoning code;
- Lots are not so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future;
- Each lot has room for at least a small, private outdoor area;
- Lots are compatible with existing lots;
- Lots are wide enough to allow development to orient toward the street;
- Lots don't narrow to an unbuildable width close to the street;
- Each lot has adequate access from the street;
- Each lot has access for utilities and services; and,
- Lots are not landlocked.

The Subject Property has a maximum density of 3 units. Applicant proposed a 2 lot land division consistent with Exhibit H.11. Future division or splitting of Parcel 2 would not exceed maximum allowed density of the Subject Property. Proposed Parcel 2 would measure approximately 17,830 square feet, and it could still only be divided into 2 lots in the R7 zone to match the allowed density for the Subject Property as a whole.

Applicant proposed to keep the existing house on Parcel 1 (meets R7 lot size standards) and construct one single family home on Parcel 2 - Parcel 2 exceeds the maximum lot size standards. There are similar large lots in the area as indicated on Exhibit B zone map. The existing house on the Subject Property is oriented toward NE Morris and that orientation will not change as a result of this Adjustment. The new home will be oriented toward NE Morris Street, which will provide adequate street access, as well as access for utilities and services as previously noted in this report. The Hearings Officer finds this approval criterion is met.

B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and

Findings: The requested Adjustment is for an existing 25,045 square foot Subject Property in a residential zone that allows a variety of lot sizes, lot configurations, and housing types. The Zoning Map (Exhibit B) provides some evidence of the lot configurations in the area. Based on the findings discussed above in Section A, the request to adjust the lot size standards to allow Parcel 2 to be divided from the 25,045 square foot site into a new Parcel (17,830 square feet) that exceeds 12,000 square feet in area can meet the purposes of these regulations.

Allowing an increase in maximum lot size for the purpose of re-dividing Parcel 2 into a future flag lot configuration will remain consistent with the prevailing development pattern in the surrounding area. A flag lot will be more consistent with neighboring properties and allow for a deeper lot with a more flexible building footprint in the future. The Hearings Officer finds the granting of the Adjustment will have no impact on the livability or appearance of the residential area. The Hearings Officer finds this approval criterion can be met.

C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and

Findings: Only one adjustment is being requested. The Hearings Officer finds this approval criterion is not applicable.

D. City-designated scenic resources and historic resources are preserved; and

Findings: There are no such resources on the site. The Hearings Officer finds this approval criterion is not applicable.

E. Any impacts resulting from the adjustment are mitigated to the extent practical; and

Findings: This approval criterion is, in the opinion of the Hearings Officer, the primary source of Applicant's appeal of Exhibit H.1. BDS and PBOT staff opined that granting Applicant's requested adjustment could potentially result in three driveways serving the Subject Property. (BDS memorandum [Exhibit H.2], BDS memorandum [Exhibit H.7] and PBOT memorandum [Exhibit H.8]). Applicant, through his attorney, argued that Exhibit H.1 findings for this approval criterion (33.805.040 E.) were not supported by substantial evidence and therefore BDS' imposed conditions B.2, C.5, and C.6 cannot be lawfully imposed.

While the arguments/positions of both BDS/PBOT and Applicant are intellectually stimulating, they are not directly relevant to this approval criterion. At this point, it is important to recall just what Applicant is proposing. Applicant is currently proposing to divide a property into two

parcels; nothing more. Applicant is not proposing, in this application, a 2 parcel land division concurrently with the creation of a "flag lot." Applicant is not currently proposing City approval for three driveways. The Hearings Officer finds Applicant is proposing exactly, no more and no less, what Applicant shows on Exhibit H.11.

PBOT's argument that approval of Applicant's proposal (Exhibit H.11) would, in and of itself, create negative transportation impacts is not supported by any plausible evidence in the record. It is clear, based upon BDS' comments and Applicant's arguments, that the Subject Property could be developed into three separate lots and each lot would have the right to access NE Morris. The Hearings Officer finds Applicant's proposal is to create two lots and therefore two driveway access points. The Hearings Officer finds nothing in the record to suggest the creation of two driveway access points will have any negative impacts upon the transportation system. The Hearings Officer finds no mitigation can lawfully be required and no conditions, beyond limiting access to that proposed by Applicant in Exhibit H.11, can be imposed.

The Hearings Officer finds that Exhibit H.11 proposes a 12' x 82' access easement to benefit Parcel 1. The Hearings Officer notes that Applicant's Exhibit H.11 proposal includes the following:

"CLOSE DVWY ACCESS" and "REMOVE ASPHALT" on Parcel 1.

The Hearings Officer considers the proposed access easement, in combination with the "CLOSE DVWY ACCESS" and "REMOVE ASPHALT" notations, to be integral to Applicant's proposal. The Hearings Officer finds Applicant's Exhibit H.11 proposal contemplates the sole driveway access to Parcel 1 to be via the 12' x 82' access easement. The Hearings Officer finds that to disregard the proposed access agreement and "CLOSE DVWY ACCESS" and "REMOVE ASPHALT" would be inconsistent with Applicant's Exhibit H.11 proposal.

The Hearings Officer finds this approval criterion is met.

F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;

Findings: The Subject Property is not in an environmental zone. The Hearings Officer finds this approval criterion is not applicable.

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.

Existing development that will remain after the land division. The existing development on the Subject Property 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 R7 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.) As a requirement of final plat review, a supplemental plan will be required showing that the existing development on Parcel 1 remains in conformance or does not move further out of conformance with all development standards of the R7 zone.

In this case, there is one Zoning Code standard that relates to existing development on the site:

- **Minimum Setbacks** – The existing house and garage identified to remain on the site 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 existing house will be 23.2 feet from the new property line and the existing garage will 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 existing building relative to the adjacent new lot lines.
- **Required Off-Street Parking** – In this zone, one parking space per dwelling unit is required. A paved parking pad/garage provides this required parking for the existing house on Parcel 1. As a result of this land division, the required parking space for the existing house will be required to be relocated to access off of the future pole portion of a future flag lot crossing Parcel 2. In order to ensure that parking requirements continue to be met, a new parking space for the existing house must be constructed on Parcel 1, and the existing parking for Parcel 1 must be removed prior to final plat approval. Permits must be obtained to construct a new parking space. Documentation of final inspection of this new parking space will be required prior to final plat approval.

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
Development Services/503-823-7300 www.portlandonline.com/bds	Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 www.portlandonline.com/bes	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 www.portlandonline.com/fire	Title 31 Policy B-1 – Emergency Access
Transportation/503-823-5185 www.portlandonline.com/transportation	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 www.portlandonline.com/parks	Title 20 – Street Trees and other Public Trees
Water Bureau/503-823-7404 www.portlandonline.com/water	Title 21 – Water availability

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 and in the Hearings Officer’s decision on this proposal.

- Applicant must meet the requirements of the Fire Bureau in regards to addressing requirements; installing a new hydrant if required; ensuring adequate hydrant flow from the nearest fire hydrant or obtaining an approved Fire Bureau appeal to this requirement; fire apparatus access, including aerial access. These requirements are based on the technical standards of Title 31 and Fire Bureau Policy B-1.

Development proposed as a result of this partition will not be more than 150 feet back from the street and will not require any special fire apparatus access or for the new development to have sprinklers. At such a time when a future land division partition is proposed for Parcel 2, Applicant will have to meet Fire Bureau apparatus access and sprinkler requirements for new development on a future flag lot.

III. CONCLUSIONS

Applicant proposed a land division of the Subject Property into two lots as set forth on Exhibit H.11. The Hearings Officer found that Applicant’s proposal, so long as consistent with Exhibit H.11, met all relevant land division and adjustment approval criteria.

The Hearings Officer found that BDS' proposed conditions B.2, C.5, and C.6 were not supported by substantial evidence in the record.

IV. DECISION

Appellant prevailed; Exhibit H.1 conditions B.2, C.5, and C.6 were not supported by the BDS' findings.

Approval of one adjustment to allow Parcel 2 (shown on Exhibit H.11) to exceed the maximum lot size in the R7 zone from 12,000 square feet to 17,830 square feet.

Approval of a Preliminary Plan for a 2-parcel partition, that will result in 1 standard lot and 1 over-sized lot in the R7 zone, as set forth in Exhibit H.11, subject to the following conditions:

A. Supplemental Plan. Three copies of an additional supplemental plan shall be submitted with the final plat survey for Land Use and BES 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:

- Any buildings or accessory structures on the Subject Property at the time of the final plat application;
- Driveways (including closed driveway access and removal of asphalt on Parcel 1) and off-street vehicle parking areas on the Subject Property, consistent with Exhibit H.11, at the time of the final plat application;
- The proposed stormwater facilities for each of the lots;
- Any other information specifically noted in the conditions listed below.

B. The final plat must show the following:

1. Applicant shall meet the street dedication requirements of the City Engineer for NE Morris Street. The required right-of-way dedication must be shown on the final plat.
2. A recording block for each of the legal documents such as access easement per Exhibit H.11, maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition D.1 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "An Acknowledgement of Special Land Use Conditions has been recorded as document no. _____, Multnomah County Deed Records."

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

Streets

1. Applicant shall complete street and storm sewer waivers of remonstrance (for future street and storm sewer improvements) as required by the City Engineer. Waiver forms and instructions will be provided to Applicant during the final plat review process.

Utilities

2. Applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning the septic system on the Subject Property.
3. Applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant. 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 to final plat approval.

Existing Development

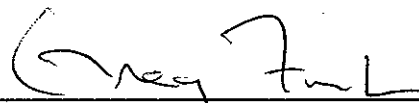
4. Applicant must meet the requirements of the Bureau of Environmental Services for the stormwater systems on the existing house and garage to remain on Parcel 1. Specifically, the gutters and downspouts must direct water to an approved disposal point that meets setback requirements from the new lot lines. If modifications to the system are required by the Bureau of Environmental Services, Applicant must obtain finalized plumbing permits for this work prior to final plat approval.

Required Legal Documents

5. Applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to Parcels 1 and 2. A copy of the approved Tree Preservation Plan (Exhibit C.1) must be included as an exhibit to the Acknowledgement. The acknowledgment shall be referenced on, and recorded with, the final plat.
6. A Maintenance Agreement shall be executed for the Access Easement shown on Exhibit H.11. The agreement shall include provisions assigning maintenance responsibilities for the easement area and any shared facilities within that area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.

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 H.11) and Applicant's arborist report (Exhibit A.6). Specifically, trees numbered 3, 17, 18, and 20 are required to be preserved, with the root protection zones indicated on Exhibit H.11. 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/her supervision.
2. Applicant must meet the Fire Bureau requirements for addressing and aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height from the fire access as measured to the bottom of the eave of the structure or the top of the parapet for a flat roof.
3. If required, Applicant will be required to meet any requirements identified through a Fire Code Appeal/install residential sprinklers in the new dwelling unit on Parcel 2. Please refer to the final plat approval report for details on whether or not this requirement applies.
4. If any proposed structure exceeds 4,800 square feet including the garage, an additional fire hydrant will be required or Applicant can apply the Fire Code exception to fire flow if residential fire sprinklers are installed.



Gregory J. Frank, Hearings Officer

12/22/15

Date

Application Determined Complete: December 16, 2014
Report to Hearings Officer: November 20, 2015
Decision Mailed: December 22, 2015
Last Date to Appeal: January 12, 2016

Conditions of Approval. 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. The Hearings Officer's decision is final and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council, but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearing before the Hearing's Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer's decision becomes final.

Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

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 Assessor's 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.**

Recording concurrent approvals. The preliminary land division approval also includes concurrent approval of an adjustment. This other concurrent approval must be recorded by the Multnomah County Recorder before any building or zoning permits can be issued.

A few days prior to the last day to appeal, the City will mail instructions to Applicant for recording the documents associated with this concurrent land use review. Applicant, builder, or their representative may record the final decisions on these concurrent land use decisions 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.

Expiration of concurrent approvals. The preliminary land division approval also includes concurrent approval of an Adjustment. For purposes of determining the expiration date, there are two kinds of concurrent approvals: 1) concurrent approvals that were necessary in order for the land division to be approved; and 2) other approvals that were voluntarily included with the land division application.

The following approvals were necessary for the land division to be approved: Adjustment. This approval expires if:

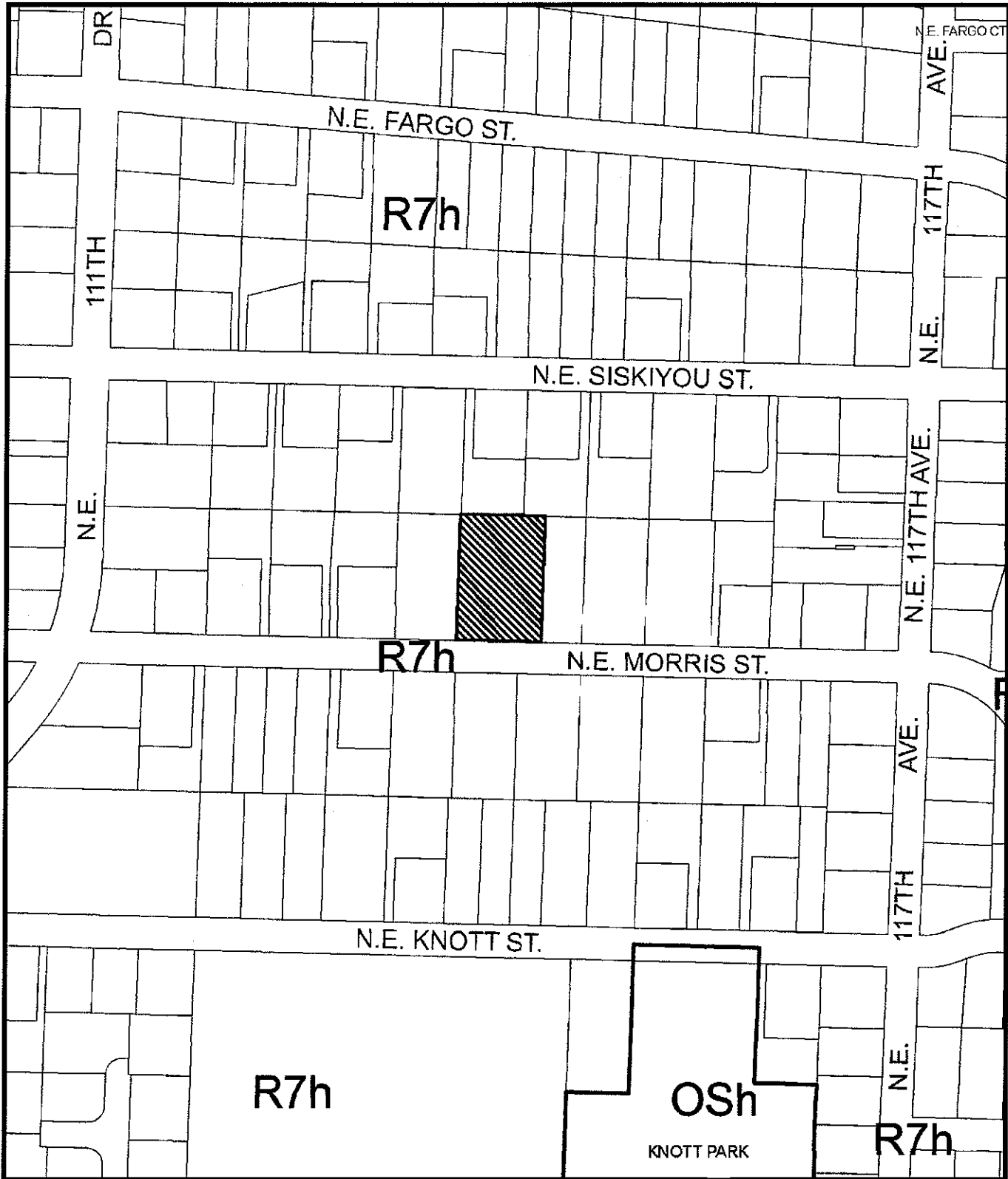
- The final plat is not approved and recorded within the time specified above, or
- Three years after the final plat is recorded, none of the approved development or other improvements (buildings, streets, utilities, grading, and mitigation enhancements) have been made to the site.

All other concurrent approvals expire three years from the date rendered, unless a building permit has been issued, or the approved activity has begun. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Applicant's Original Narrative
 - 2. Response to Incomplete Letter
 - 3. Neighborhood and Coalition Contact Letters
 - 4. Arborist Report, dated 9/18/11
 - 5. Revised Arborist Report, dated 10/8/14
 - 6. Revised Arborist Report, dated 4/14/15
 - 7. Simplified Approach Stormwater Report
 - 8. Public Works Stormwater Management Emails
 - 9. Original Site Plan Submittal
 - 10. Revised Site Plan, 3/18/15
 - 11. Planner Advised Site Plan Revisions
 - 12. 120-Day Extension Requests
- B. Zoning Map (**attached**)
- C. Plans/Drawings
 - 1. Site 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
- F. Correspondence
 - 1. Jerry Wilson, 6/18/15, concerns about development type
- G. Other
 - 1. Original LU Application
 - 2. Incomplete Letter
 - 3. Early Assistance Notes
- H. Received in the Hearings Office
 - 1. Notice of Appeal Hearing -- Dawkins, Leah
 - 2. Memo, Appeal, & Decision -- Dawkins, Leah
 - 3. 11/23/15 Memo & emails -- Dawkins, Leah
 - 4. 11/30/15 letter with attachments -- Koback, Christopher P.
 - a. Diagrams -- Koback, Christopher P.
 - b. Photos -- Koback, Christopher P.

- c. Diagrams -- Koback, Christopher P.
- d. Diagram -- Koback, Christopher P.
- 5. PowerPoint presentation printout -- Dawkins, Leah
- 6. Record Closing Information -- Hearings Office
- 7. 3/3/15 Memo -- Dawkins, Leah
- 8. 12/3/15 Memo -- de Freitas, Fabio
- 9. Rebuttal to Staff Memo -- Koback, Christopher P.
- 10. Final Argument -- Koback, Christopher P.
- 11. 6/5/15 Revised Site Plan (Reduced Size) -- Hearings Officer (**attached**)
- 12. Notice of Staff Decision Mailing -- Hearings Officer

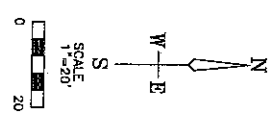


ZONING

 Site

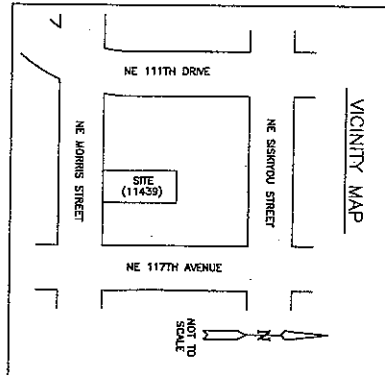
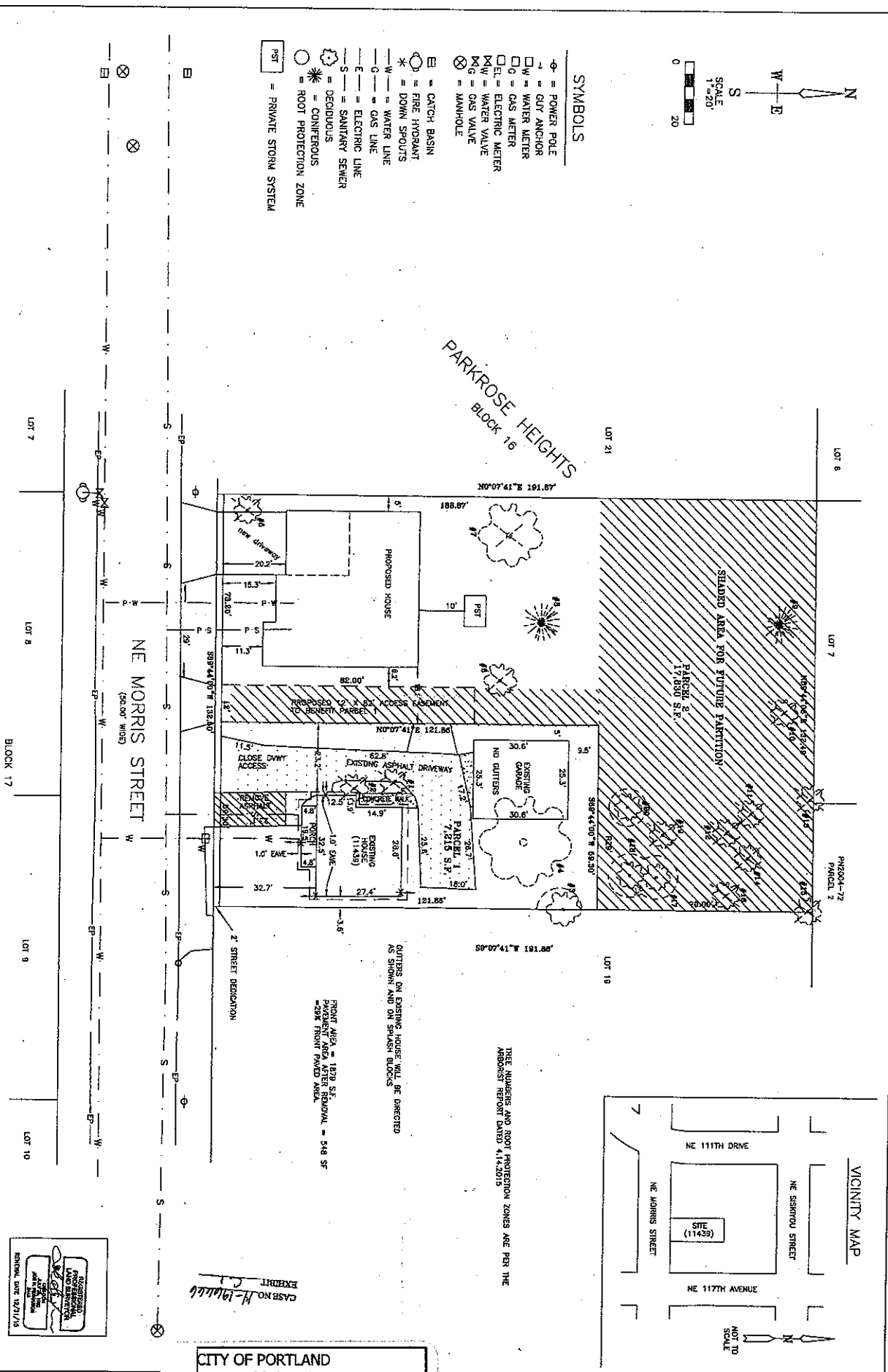


File No. LU 14-196666 LDP,AD
 1/4 Section 2742
 Scale 1 inch = 200 feet
 State_Id 1N2E27AC 3100
 Exhibit B (Aug 13,2014)



SYMBOLS

- ⊕ = POWER POLE
- ⊖ = GUY ANCHOR
- = WATER METER
- = GAS METER
- ⊕ = ELECTRIC METER
- ⊖ = WATER VALVE
- ⊗ = GAS VALVE
- ⊗ = MANHOLE
- ⊖ = CATCH BASIN
- ⊕ = FIRE HYDRANT
- * = DOWN SPOUTS
- = WATER LINE
- = GAS LINE
- = ELECTRIC LINE
- = SANITARY SEWER
- ⊕ = DECIDUOUS
- ⊖ = CONIFEROUS
- ⊗ = ROOT PROTECTION ZONE
- ⊖ = PRIVATE STORM SYSTEM



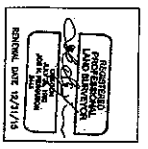
Ferguson Land Surveying, Inc.
 646 SE 106TH AVE. PORTLAND, OR 97216
 Phone (503) 408-0601 Fax (503) 408-0602

SITE PLAN

LOT 20 AND THE WEST 35.00 FEET OF LOT 19,
 IN THE BLOCK 16, PARKROSE HEIGHTS
 CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON

PETER NESTERENKO
 11439 NE MORRIS ST.
 PORTLAND, OREGON 97220

DATE: NOVEMBER 12, 2014	JOB NO. 14-013
REVISED 3/2/2015	DRAWN 11.12.14
REVISED 5/19/2015	SHEET 1 OF 1



CASE NO. *H-11411*
 EXHIBIT

CITY OF PORTLAND
 HEARINGS OFFICE
 Exhibit #H-11
 Case # 4150033
 Bureau Case # 14-196666 LDP

LD 14-196666 LDP, AD
 Revised 6/5/15

