



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

Chloe Eudaly, Commissioner  
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[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**Date:** April 18, 2017  
**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 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 17-120596 TV**

#### **GENERAL INFORMATION**

**Applicant:** Nathan Arnold  
Faster Permits  
14334 NW Eagleridge Lane  
Portland, OR 97229

**Owner:** Vlad Rudnitsky  
2834 SE 20th LLC  
PO Box 3026  
Clackamas, OR 97015

**Site Address:** 2838 SE 20<sup>th</sup> Avenue

**Legal Description:** LOT 1, PARTITION PLAT 2015-105  
**Tax Account No.:** R649664170  
**State ID No.:** 1S1E11AA 12201  
**Quarter Section:** 3332  
**Neighborhood:** Hosford-Abernethy, contact [chair@handpdx.org](mailto:chair@handpdx.org).  
**Business District:** None  
**District Coalition:** Southeast Uplift, contact Leah Fisher at 503-232-0010.  
**Plan District:** None  
**Zoning:** Residential 2,500 (R2.5)  
**Case Type:** Tree Violation (TV)  
**Procedure:** Type II, an administrative decision with appeal to the Hearings Officer.

#### **Proposal:**

The applicant has applied for a Tree Violation review to address a 29-inch English walnut that was damaged due to construction impacts associated with a new single family residence. This tree was required to be preserved as a part of a land division review (LU 15-166059 LDP) that created this lot. The applicant has proposed to mitigate for this tree via planting new trees,

making a payment into the City tree preservation and planting fund or some combination thereof.

**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 site (Lot 1, Partition Plat 2015-105) is located on the northeast corner of the intersection of SE 20<sup>th</sup> Avenue and SE Woodward Street. The lot is currently being developed with a new single family residence (16-129405 RS). Surrounding development primarily consists of single family dwellings with some multi-dwelling and smaller scale retail uses in the vicinity.

**Zoning:** The R2.5 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing.

**Land Use History:** City records indicate the following prior land use reviews for this site:

- **LU 15-166059 LDP:** Approval of a Preliminary Plan for a 2-parcel partition that will result two standard lots. The tree subject of this review is located on Lot 1.

**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 27, 2017**. Multiple responses (Exhibits F.1-14) have been received from the Neighborhood Association or notified property owners regarding the proposal. The responses generally expressed concern over the damage caused to the tree, which was identified as having great value and significance to the neighborhood, with consensus to retain the tree in hopes that it would survive the construction impacts. As identified in findings below, the applicant will be required to retain the tree until such time it is determined to be dead, dying, or dangerous as determined by an arborist in addition to making a payment into the City Tree Preservation and Planting Fund.

## ZONING CODE APPROVAL CRITERIA

### 33.853 Tree Review

#### 33.853.010 Purpose

The tree review process evaluates whether mitigation proposed for tree removal is both appropriate and adequate, considering the purpose of the regulations that encourage tree preservation or limit removal. Tree review also evaluates whether changes to tree preservation plans or tree-related conditions of approval are appropriate, and determines the appropriate mitigation for trees lost due to violations of tree regulations. The review allows flexibility for unusual situations and allows for the purpose of the tree regulations to be met using creative or innovative methods.

#### 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</b>	
<b>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. The tree subject of this review was required to be preserved as a part of a 2-lot partition (LU 15-166059 LDP). The 29-inch English walnut required to be preserved in the southwest corner of Lot 1 was the only tree required to be preserved within the land division site out of three trees that equated to a total of 55 diameter inches.

A permit for a new single family residence (16-129405 RS) was issued on November 8, 2016 allowing the applicant to commence with construction on this lot. Upon a tree preservation inspection performed by Urban Forestry, it was discovered that root protection fencing was not properly installed and foundation excavation had already been completed, which resulted in approximately 3-4 feet of soil being stockpiled within the root protection zone of the 29-inch English walnut. A subsequent inspection found the stockpiled soil to be graded, apparently by machine, which revealed a large root to be damaged on the north side of the tree that was previously buried. Given the extent of damage to the tree, Urban Forestry determined it was no longer viable for preservation. The applicant submitted an Arborist Report (Exhibit A.2) that assessed the situation and damage to the tree but did not provide any definitive conclusions regarding its health. Based on the preceding information a Tree Violation review was initiated to address mitigation for the 29-inch English walnut.

The applicant has proposed to mitigate for this tree via planting new trees, making a payment into the City tree preservation and planting fund or some combination thereof. The applicant provided a site plan (Exhibit C.1) that illustrates the English walnut to be removed and four 2-inch caliper trees to be planted in its place. The Title 11 tree density standards require that trees be planted on lots at the time of building permit. Based on the size of the lot, 1-4 trees would be required to be planted, depending on the type of trees chosen by the applicant. Credit is also given to existing trees that are retained and protected. In this instance, the 29-inch English walnut provided enough credits to meet the Title 11 tree density standards. Given required tree planting, there is not sufficient room on this lot for additional tree planting beyond the title 11 density standards to mitigate for tree removal without jeopardizing the overall health of the trees as they mature. Therefore, offsite mitigation in the form of payment into the City Tree Preservation and Planting Fund is more appropriate for this proposal.

Given the significant nature of this mature, well established tree the applicant will be required to make a payment equivalent to 29-inches to the City Tree Planting and Preservation Fund. In addition, the applicant shall plant new trees to meet the Title 11 tree density standards. These conditions must be satisfied via a revision to the permit for the new single family residence (16-129405 RS) on this lot, prior to final inspection approval.

Because it is unclear whether or not the English walnut will survive, the applicant shall retain this tree until such time that it is determined to be dead, dying, or dangerous as determined by an arborist. Ideally, the tree will recover from the construction impacts noted above but if it does not, payment into the City Tree Preservation and Planting Fund will meet the purpose of 33.630, Tree Preservation, as it will contribute to the beauty and natural heritage of the City through the planting of new trees.

This criterion is met with a condition of approval requiring a payment into the City Tree Preservation and Planting Fund the amount equivalent to 29-inches, planting new trees to meet Title 11 density standards prior to final inspection approval of the new single family residence (16-129405 RS), and the 29-inch English walnut is retained until such time that it is determined to be dead, dying, or dangerous as determined by an arborist.

## 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

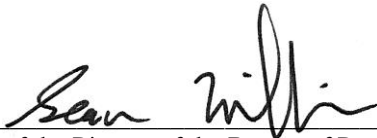
As a part of a 2-lot partition (LU 15-166059 LDP) a 29-inch English walnut tree was required to be preserved on Lot 1. During construction of a new single family residence this tree was significantly damaged in violation of this requirement. To address this violation, the applicant will be required to mitigate via making a payment into the City Tree Preservation and Planting Fund and retain the 29-inch English walnut until such time that it is determined to be dead, dying, or dangerous. As addressed in the findings above, the required method of mitigation is able to meet the purpose of Chapter 33.630, Tree Preservation and should be approved.

## ADMINISTRATIVE DECISION

**Approval** of a Tree Violation Review to correct a violation resulting from the damage of a 29-inch English walnut required to be preserved as a part of LU 15-166059 LDP, subject to the following conditions:

- A. Prior to final inspection, the applicant must submit a revision to 16-129405 RS to show updated plans meeting Title 11 Tree Density standards (Not counting the 29-inch Walnut tree) and pay into the City Tree Fund the amount equivalent to 29-inches of trees. Payment must be made to the Bureau of Development Services, who administers the fund for the Parks Bureau.
- B. The applicant shall retain the 29-inch English walnut tree until such time that it is determined to be dead, dying, or dangerous as determined by an arborist.

**Staff Planner: Sean Williams**

**Decision rendered by:**  **on April 14, 2017**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: April 18, 2017**

**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 13, 2017, and was determined to be complete on February 23, 2017.

*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 13, 2017.

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 13, 2017.**

**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 May 2, 2017** at 1900 SW Fourth Ave. Appeals can be filed at the 5<sup>th</sup> floor reception desk of 1900 SW 4<sup>th</sup> Avenue Monday through Friday between 8:00 am and 4:30 pm. **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 **May 3, 2017 – (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. Arborist Report
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice

E. Agency Responses:

1. Bureau of Environmental Services
2. Life Safety Plans Examiner
3. Bureau of Transportation Engineering and Development Review
4. Water Bureau; Fire Bureau; Site Development Review Section of BDS; Bureau of Parks, Forestry Division

F. Correspondence:

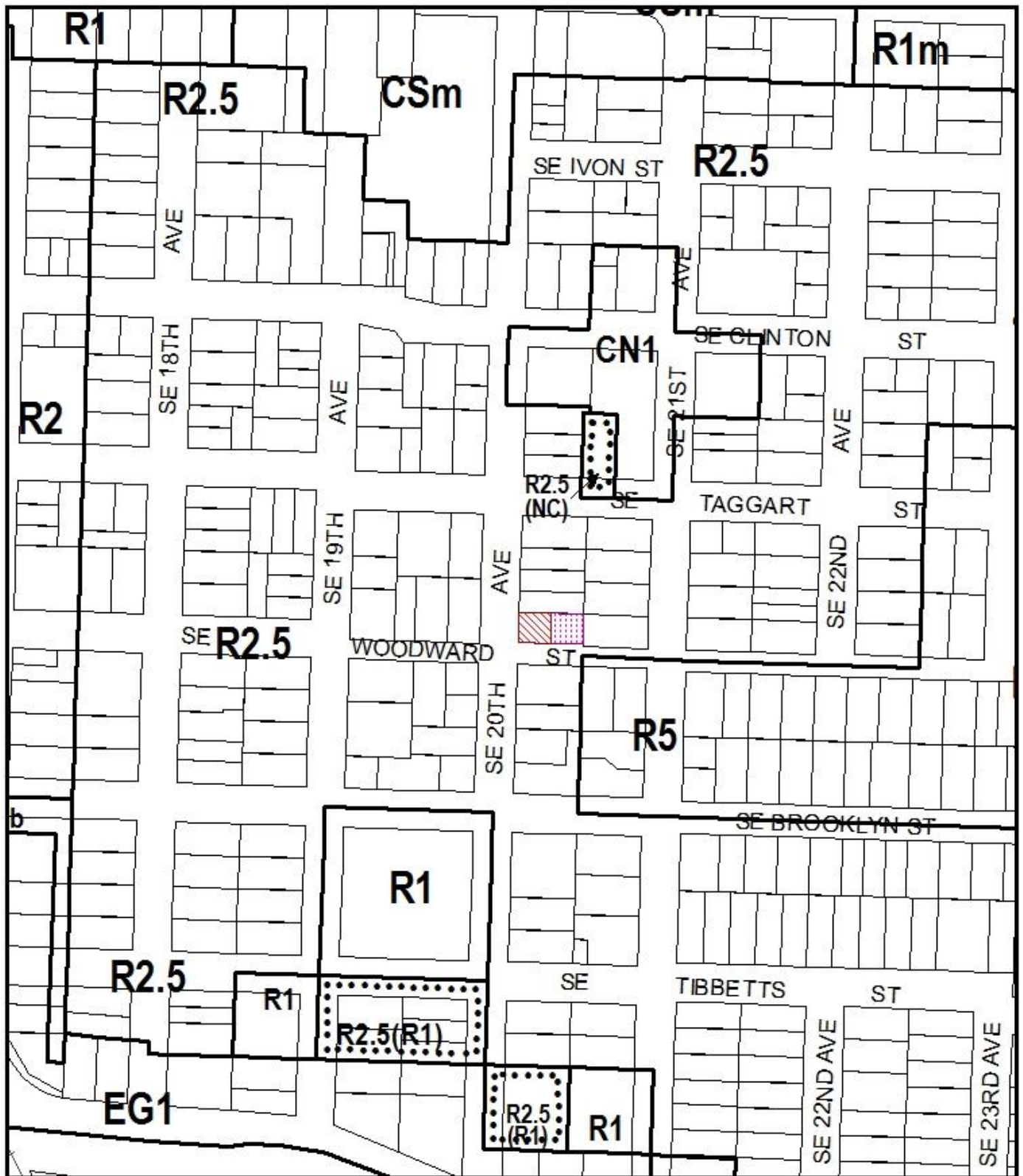
1. Scott A Tice (3/6/17)
2. Courtney Brod (3/6/17)
3. Pamela Burkland (3/3/17)
4. Pamela Burkland (3/3/17)
5. Erin Flasher (3/3/17)
6. Robert Head (3/6/17)
7. John Jennings (3/10/17)
8. Alan Storm (3/15/17)
9. Melecio Estrella (3/15/17)
10. McKenzie Dale (3/15/17)
11. Emily Platt (3/19/17)
12. Erin Flasher (3/19/17)
13. Pam Burkland (3/20/17)
14. Hosford-Abernathy Neighborhood Association (3/17/17)

G. Other:

1. Original LU Application
2. Miscellaneous correspondence

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





# ZONING



- Site
- Also Owned Parcels

File No.	<u>LU 17-120596 TV</u>
1/4 Section	<u>3332</u>
Scale	<u>1 inch = 200 feet</u>
State_Id	<u>1S1E11AA 12201</u>
Exhibit	<u>B (Feb 16, 2017)</u>

- EROSION CONTROL NOTES:**
- INSTALL SILT FENCE PRIOR TO ANY EXCAVATION OR CONSTRUCTION. ALL EXPOSED SOIL SHALL BE MULCHED WITH STRAW OR
  - MINIMIZE SITE DISTURBANCE BY TIGHT CONTROL OF EXCAVATION LIMITS. IT IS RECOMMENDED THAT THE CONTRACTOR MAINTAIN A STOCK PILE OF THIS MATERIAL ON SITE FOR QUICK APPLICATION.
  - HYDROSEED WITH A WOOD CELLULOSE FIBER MULCH APPLIED AT A RATE OF 2,000#/ACRE. USE AN ORGANIC TACKIFIER AT NO LESS THAN 1% AND FOR BEST RESULTS, RESEED IMMEDIATELY AFTER MULCH APPLICATION. MULCH SHOULD BE REINVENT EDGES.
  - DISPERSE TRENCHES SHALL OVERFLOW ONTO NATIVE UNDISTURBED GROUND. NO SITE DISTURBANCE BELOW TRENCHES.
  - TEMPORARY EXCAVATIONS FOR FOUNDATION WILL BE COMPLETED WITHIN THE PROPERTY WITH NO SLOPES STEEPER THAN 1:1V:1H UNLESS OTHERWISE SPECIFIED. RECOMMENDATIONS FOR EXCAVATION AND/OR GET A TEMPORARY CONSTRUCTION EASEMENT GRANTED BY THE ADJOINING PROPERTY OWNERS.

- GRADING NOTES:**
- VERIFY LOCATION OF ALL EXISTING UTILITIES
  - ALL FINISH GRADES SHALL BE SMOOTH AND UNIFORM
  - PROVIDE POSITIVE DRAINAGE AWAY FROM BUILDING
  - PROVIDE POSITIVE DRAINAGE AWAY FROM DRIVEWAYS AND DRIVEWAYS AND FRENCH DRAIN
  - AREAS TO BE FILLED SHALL BE CLEARED, GRUBBED TO REMOVE TREES, VEGETATION, ROOTS AND OTHER OBJECTIONABLE MATERIAL AND STRIPPED OF TOPSOIL.
- To the best of my knowledge these plans are drawn to comply with owner's and/or builder's specifications and any changes made on them after prints are made will be done at the owner's and/or builder's expense and responsibility. The contractor shall verify all conditions and dimensions of the site prior to construction and be responsible for any errors or omissions. While every effort has been made in the preparation of this plan to avoid mistakes, the maker can not guarantee against human error. The contractor of the job must check all dimensions and other details prior to construction and be solely responsible therefor.

*Planner Note: Applicants  
mitigation plan not approved.  
See conditions for required  
mitigation.*

**SITE STATISTICS**

SITE AREA: 2,500 sf.
NO. OF LOTS: 2
NO. OF LOTS COVERED: 230 sf.
PERCENT COVERED: 9.2%
IMPERVIOUS TOTAL: 1,197 sf. (47%)
1ST FLOOR: 4,016 - 735 sf.
2ND FLOOR: 927 sf.
3RD FLOOR: 925 sf.
BUILDING TOTAL: 4,568 sf.
GARAGE: 199 sf.

**REVISION TABLE**

NUMBER	DATE	REVISION BY	DESCRIPTION

384 S. 20TH AVENUE  
PORTLAND, OR 97208

Site Plan

STRUCTURE REDEVELOPMENT, LLC

DRAWINGS PROVIDED BY

DATE: 8/4/2016

SCALE: 1/8"=1'

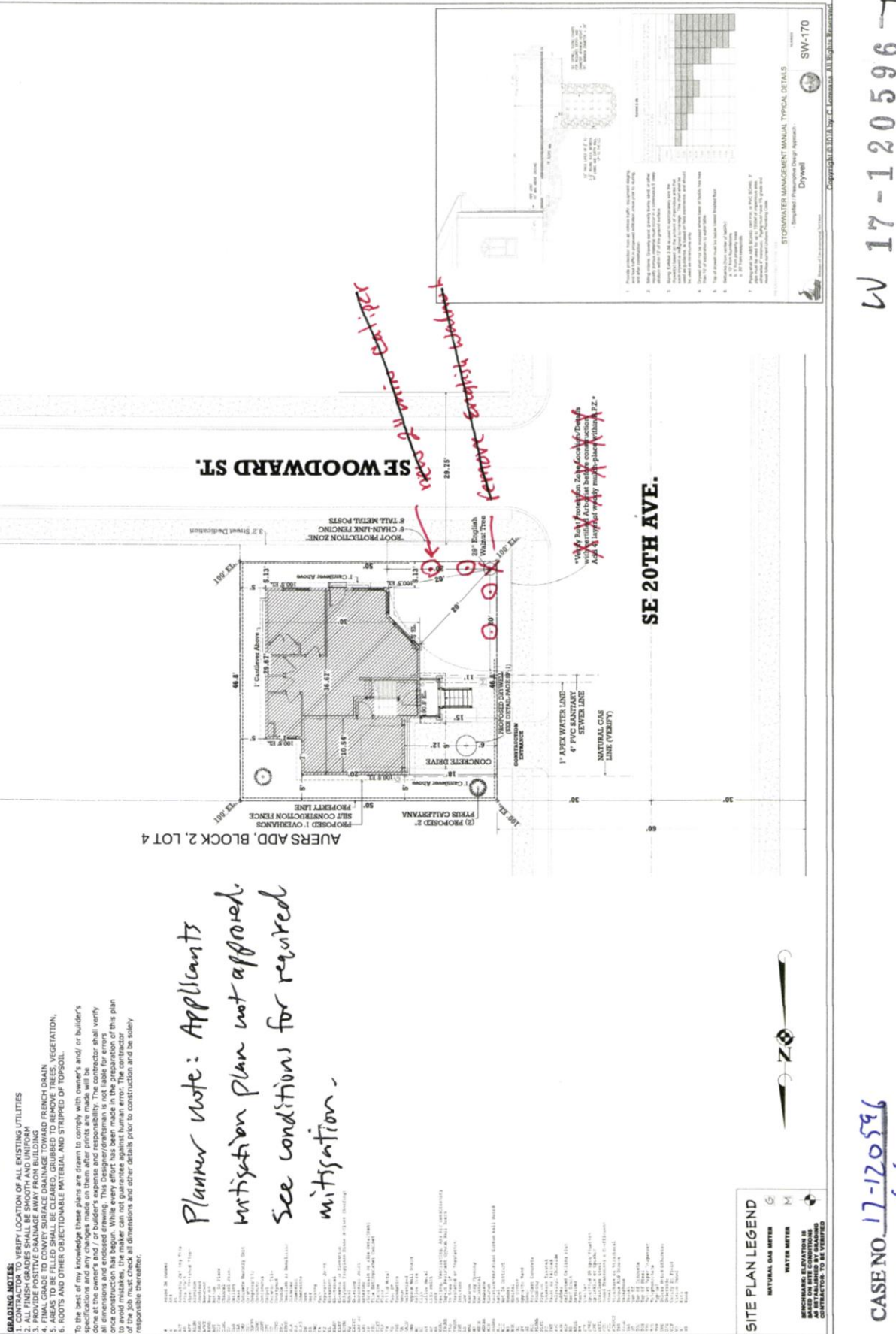
SHEET: SP-1

SW-170

STORMWATER MANAGEMENT MANUAL TYPICAL DETAILS

Drywell

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**SITE PLAN LEGEND**

NATURAL GAS METER	G
WATER METER	M
SEWER METER	S

RECOMMENDED BY THE CITY OF PORTLAND  
BASED ON SITE CONDITIONS  
AND APPLICABLE REGULATIONS  
CONTRACTOR TO BE VERIFIED

CASE NO. 17-120596  
EXHIBIT C.1

W 17-120596-TV