



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

Carmen Rubio, Commissioner
Rebecca Esau, Director
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Date: April 24, 2023
To: Interested Person
From: Timothy Novak, Land Use Services
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NOTICE OF A TYPE II_x DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has denied 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 20-128434 LDS

GENERAL INFORMATION

Applicant/Owner: Ninh Le for *HNT Development, LLC*
10850 SE Richmond Court | Happy Valley, OR. 97086

Project Engineer: Richard Georgescu | *RSG Engineering Co.*
16802 NE 152nd Ave | Brush Prairie, WA. 98606
(503) 380-6179 | rsgeng@comcast.net

Site Address: 3213 SE 129th Ave

Legal Description: LOT 50, LINN PK
Tax Account No.: R500306260
State ID No.: 1S2E11BD 07300
Quarter Section: 3343

Neighborhood: Powellhurst-Gilbert, contact at pgnaboard@gmail.com
Business District: Midway, contact info@midwaybusiness.org.
District Coalition: East Portland Community Office, contact at info@eastportland.org

Plan District: Johnson Creek Basin

Zoning: R5 – Single-Dwelling Residential 5,000

Case Type: LDS – Land Division, Subdivision
Procedure: Type II_x, an administrative decision with appeal to the Hearings Officer.

Proposal:

The applicant proposed a 7-lot land division and new east-west oriented public street connection on the 41,038 sq. ft vacant site which includes an additional 3,354 sq. ft. of site area currently associated with the adjacent property to the south under common ownership addressed 3245 SE 129th Ave. The applicant proposed to transfer the northern 11.5' feet of property from the adjacent property to the south via a Property Line Adjustment 20-140666

PR. That area was to become part of the new public street. The new public street extension was proposed along the southern boundary of the site and would connect SE 129th Ave to SE Kelly St. to the west. The seven new lots proposed will measure between 3,499-4,410 square feet in area. The applicant proposed to protect existing trees on Lots 1, 4 and 5 based on the site plan submittal.

This subdivision proposal is reviewed through a Type IIx procedure because: (1) the site is in a residential zone; (2) four to ten dwelling units are proposed (see 33.660.110).

For purposes of State Law, this land division is considered a subdivision. To subdivide land is to divide an area or tract of land into four or more lots within a calendar year, according to ORS 92.010. ORS 92.010 defines “lot” as a single unit of land created by a subdivision of land. The applicant’s proposal is to create 7 units of land (7 lots). Therefore, this land division is considered a subdivision.

Relevant Approval Criteria:

In order to be approved, this proposal must comply with the approval criteria of Title 33. The approval relevant criteria are listed in **Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.**

ANALYSIS

Site and Vicinity: The site is on SE 129th Ave, about 500 feet north of SE Powell Blvd. The larger taxlot that composes the majority of the site is undeveloped. Large mature trees are present on both the undeveloped lot and within the strip of land from the neighboring taxlot that was proposed as part of the site through a Property Line Adjustment. The site is generally flat, sloping only gently to the south/southeast. While in the Johnson Creek Basin Plan District, there are no natural water features in the near vicinity, with Johnson Creek being about 1.75 miles to the south at its nearest, where it cuts between Powell Butte and Clatsop Butte.

Development in the area is a mixture of single-dwelling development and multi-dwelling development, with limited commercial development on Powell, particularly as one approaches its intersection with SE 122nd Ave, a little more than 2,000 feet away from the subject property on foot. Development is generally higher density closer to these major roads with more lower density development between. That said, within the lower density single-dwelling areas, the development pattern, based on lot sizes and configurations, is dynamic, with a broad mix of historic, larger lots and smaller lots created through subdivisions over the last few decades.

Infrastructure:

- **Streets** – At this location, according to City GIS data, SE 129th Ave is improved with an approximate 18-ft wide paved asphalt roadway within a 40-ft wide ROW which lacks a curb and pedestrian corridor. SE Kelly St is unimproved with a variable width gravel roadway within a 50-ft ROW, in which the subject site is located at the terminus of a half-platted cul-de-sac.

At this location, the City’s Transportation System Plan (TSP) classifies SE 129th Ave as City Bikeway, Neighborhood Walkway, Local Service for all remaining modes, whereas SE Kelly is classified as Local Service for all modes.

- **Water Service** – There is an existing 8-inch pressurized water main in SE 129 Ave. There is also a pressurized 6-inch pressurized water main in SE Kelly St that connects to the main in SE 129th Ave via an easement that runs parallel to and just north of the subject property.
- **Fire Hydrants** The nearest fire hydrant is located at the corner of SE 129th Ave and SE Powell Blvd, about 470 feet south of the subject site. A second fire hydrant is located in SE Kelly St, about 540 feet west of the subject site.

- **Sanitary Service** - There is an existing 8-inch PVC sanitary-only sewer line in SE 129th Ave and a second 8-inch PVC sanitary-only sewer line that stubs into the property from SE Kelly St.
- **Stormwater Disposal** – There is no public storm-only sewer currently available to this property. Public underground injection control (UIC) systems (“sumps”) infiltrate stormwater runoff from the public right-of-way in the vicinity of the site. Stormwater from private development cannot be discharged to public UICs.

Zoning: Residential 5,000 (R5). The single-dwelling zones are intended to preserve land for housing and to provide housing opportunities for individual households. The zones implement the comprehensive plan policies and designations for single-dwelling housing and provide options for infill housing that is compatible with the scale of the single-dwelling neighborhood.

The **Johnson Creek Basin plan district** provides for the safe, orderly, and efficient development of lands which are subject to a number of physical constraints, including significant natural resources, steep and hazardous slopes, flood plains, wetlands, and the lack of streets, sewers, and water services.

Land Use History: City records indicate there are two prior land use reviews for this site:

- LUR 96-00433 MP. This Minor Partition for a three-lot land division was voided because a final plat was not submitted within the required one-year time period.
- LU 06-132151 LDS. Approval of a 7-lot subdivision with public street. The proposal had a similar configuration to the current one. This approval too was voided because a final plat was not submitted within the required timeframe.

Agency Review: Several Bureaus have responded to this proposal. Exhibits “E” contain the complete responses.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on May 25, 2021. A total of three written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal. Exhibits “F” contain the complete responses.

ZONING CODE APPROVAL CRITERIA

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

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

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

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
C	33.631 - Flood Hazard Area	The site is not within the flood hazard area.
D	33.632 - Potential Landslide Hazard Area	The site is not within the potential landslide hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
H	33.636 - Tracts and Easements	No tracts or easements have been proposed or will be required.

J	33.640 - Streams, Springs, Seeps and Wetlands	No streams, springs, seeps or wetlands are evident on the site.
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.
	33.654.110.B.3 - Pedestrian connections in the I zones	The site is not located within an I zone.
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required.
	33.654.120.C.3.c - Turnarounds	No turnarounds are proposed or required.
	33.654.120.D - Common Greens	No common greens are proposed or required.
	33.654.120.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.
	33.655 - School District Enrollment Capacity	The proposal is for less than 11 lots or is not in the David Douglas School District.

Applicable Approval Criteria are:

- A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.**
- B. Trees. The standards and approval criteria of Chapter 33.630, Tree Preservation, must be met.**
- G. Clearing, Grading and Land Suitability. The approval criteria of Chapter 33.635, Clearing, Grading and Land Suitability must be met.**
- I. Solar access. If single-dwelling detached development is proposed for the site, the approval criteria of Chapter 33.639, Solar Access, must be met.**
- K. Transportation impacts. The approval criteria of Chapter 33.641, Transportation Impacts, must be 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: Staff requested and the applicant failed to provide a tree protection plan that demonstrated how proposed development could conceptually occur while preserving trees in accordance with 33.630 (see Exhibit G.3). Furthermore, the applicant has failed to complete the Property Line Adjustment proposed to establish the land division site. The applicant failed to initiate work to demolish a detached garage on the neighboring lot to the south (see Exhibit G.4). Demolition of the detached garage is required prior to approval of the property line adjustment (PLA) that would finalize the incorporation of the northern 11.5 feet of the neighboring lot into the subject site (see Exhibit G.5). Without approval and recording of the PLA, the whole of the site layout proposed for this subdivision is inaccurate, including the

location and size of the lots and the proposed public street and how services will be provided (see Exhibit G.6).

As such, staff is unable to find that any of the above-listed approval criteria are met.

CONCLUSIONS

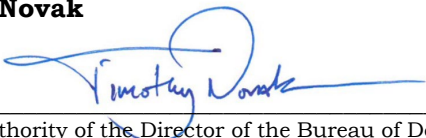
The applicant proposed a 7-lot subdivision with a new public street. As discussed in this report, the applicant has failed to take steps necessary to demonstrate that the relevant standards and approval criteria have been met, or can be met with conditions.

As such, this proposal must be denied.

ADMINISTRATIVE DECISION

Denial of a Preliminary Plan for a 7-lot subdivision and new public street.

Staff Planner: Timothy Novak

Decision rendered by:  **on April 20, 2023**
By authority of the Director of the Bureau of Development Services

Decision mailed: April 24, 2023

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

Procedural Information. The application for this land use review was submitted on March 10, 2020, and was determined to be complete on September 7, 2020.

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 March 10, 2020.

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 waived the 120-day review period, as stated with Exhibit A.4.

Note: 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, and if appealed a hearing will be held. The appeal application form can be accessed at <https://www.portlandoregon.gov/bds/45477>. Appeals must be received **by 4:30 PM on May 8, 2023. The completed appeal application form must be emailed to LandUseIntake@portlandoregon.gov and to the planner listed on the first page of this decision.** If you do not have access to e-mail, please telephone the planner listed on the front page of this notice about submitting the appeal application. **An appeal fee of \$250 will be charged.** Once the completed appeal application form is received, Bureau of Development Services staff will contact you regarding paying the appeal fee. The appeal fee will be refunded if the appellant prevails. There is no fee for Office of Community and Civic Life recognized organizations for the appeal of Type II and IIx decisions on property within the organization’s boundaries. The vote to appeal must be in accordance with the organization’s bylaws. Please contact the planner listed on the front page of this decision for assistance in filing the appeal and information on fee waivers. Please see the appeal form for additional information.

If you are interested in viewing information in this file, please contact the planner listed on the front of this notice. The planner can email you documents from the file. A fee would be required for all requests for paper copies of file documents. Additional information about the City of Portland, and city bureaus is available online at <https://www.portland.gov>. A digital copy of the Portland Zoning Code is available online at <https://www.portlandoregon.gov/zoningcode>.

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.

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Original Submittals
 - a. Application Checklist
 - b. Neighborhood Contact
 - c. Narrative
 - d. Plan Set
 - e. Arborist Report and Tree Inventory
 - f. Stormwater Calculations
 - g. Notes from EA 17-215424
 - 2. Revised Submittals
 - a. Narrative Addendum
 - b. Arborist Report rev1
 - 3. Arborist Report rev2
 - 4. 365 and 120-day waiver
- B. Zoning Map (attached)
- C. Plans/Drawings: None
- 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. Bureau of Parks, Forestry Division
 - 6. Life Safety Division of BDS
- F. Correspondence:
 - 1. Li Comments yongli503@gmail.com
 - 2. Sherman Comments oaxacaguera@yahoo.com
 - 3. Yates Comments Patricia.Yates@portlandoregon.gov
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete Letter
 - 3. Planner/Applicant Correspondence
 - 4. Expired Garage Demo Permit
 - 5. PLA Checksheet
 - 6. PLA Info from A7

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).