



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

Ted Wheeler, Mayor  
Rebecca Esau, Director  
Phone: (503) 823-7300  
Fax: (503) 823-5630  
TTY: (503) 823-6868  
[www.portlandoregon.gov/bds](http://www.portlandoregon.gov/bds)

**NOTICE OF A PUBLIC HEARING BEFORE  
THE CITY COUNCIL ON AN APPEAL OF THE  
PORTLAND LAND USE HEARINGS OFFICER DECISION**

**CASE FILE:** LU 18-119056 LDP EN PD (Tangent Village)  
**WHEN:** October 16, 2019 at 2:00 PM  
**WHERE:** COUNCIL CHAMBERS, 1221 SW FOURTH AVENUE

**Date:** July 16, 2019  
**To:** Interested Person  
**From:** Shawn Burgett (primary contact), Land Use Services, 503-823-7618  
Stacey Castleberry, Land Use Services, 503-823-7586

The Review Body decision of **approval** has been appealed by **Southwest Hills Residential League**

A public hearing will be held to consider an appeal of the Hearings Officer's decision to approve a 1-lot partition with concurrent environmental and planned development review adjacent to 1315 SW Broadway Dr. The Hearings Officer decision of approval with conditions has been appealed by the Southwest Hills Residential League. At the hearing, City Council will consider the appeal. You are invited to testify at the hearing.

This will be an evidentiary hearing, new evidence can be submitted to the City Council. For a general explanation of the City Council hearing process please refer to the last page of this notice.

**GENERAL INFORMATION**

**Appellant:** Southwest Hills Residential League  
7688 SW Capitol Highway  
Portland, OR 97219  
[contact@swhrl.org](mailto:contact@swhrl.org)

**Applicant/Owner:** Guenther LLC  
3707 SW 52<sup>nd</sup> Place #1 | Portland, OR 97221  
01603 SW Greenwood Road | Portland, OR 97219

**Site Address:** ADJACENT TO 1315 SW BROADWAY

**Legal Description:** LOT 38, ROBINSON & PLAT 2; TL 10500 1.22 ACRES, SECTION 04 1S 1E; TL 1500 0.74 ACRES, SECTION 09 1S 1E; TL 1400 2.40 ACRES, SECTION 09 1S 1E

**Tax Account No.:** R714301410, R991040430, R991090070, R991090080

**State ID No.:** 1S1E09AB 01600, 1S1E04DC 10500, 1S1E09AB 01500, 1S1E09AB 01400

**Quarter Section:** 3327,3328

**Neighborhood:** Southwest Hills Residential League, contact at [contact@swhrl.org](mailto:contact@swhrl.org).

**Neighborhoods within 1,000 feet:** Homestead / [contact@homesteadna.org](mailto:contact@homesteadna.org)

**Business District:** None

**District Coalition:** Southwest Neighborhoods Inc. / Sylvia Bogert at 503-823-4592

**Zoning:** R10c (Single Family Residential 10,000 sq. ft. with “c” Environmental Conservation overlay zone)

**Plan District:** None

**Other Designations:** City of Portland Wetlands, Potential Landslide Hazard

**Case Type:** LDP (Land Division Partition) EN (Environmental Review) PD (Planned Development Review)

**Procedure:** Type III, with a public hearing before the Hearings Officer. The decision of the Hearings Officer can be appealed to City Council.

**Proposal:** The applicant proposes a **Land Division** in order to divide the 4.76-acre site into one parcel measuring 58,092 square feet in area, an Environmental Resource Tract measuring 142,500 square feet, and a pedestrian right of way connecting SW Tangent Street to SW Broadway Drive (6,875 square feet as noted on Exhibit C.5.1). Twenty townhouse-style residences are proposed on Parcel 1. The Environmental Resource Tract is proposed to protect environmental resources.

An **Environmental Review** is requested to allow 69,419 square feet of total disturbance area within the Environmental Conservation zone. The applicant has also requested an Environmental Modification to the maximum lot size standard in the R10 base zone (17,000 square feet), to allow an increase to 58,092 square feet for Parcel 1.

The applicant has requested a **Planned Development** review to allow multi-dwelling development on one large lot (Parcel 1) in the R10 (single dwelling) zone per Zoning Code section 33.638.100.E. The development will consist of ten buildings with two units each, for a total of 20 units with a shared access driveway connecting to SW Tangent St. with 25 surface parking spaces, garage parking in every unit and shared outdoor common space. The applicant is also proposing a public pedestrian connection through the site connecting SW Tangent St. to SW Broadway Dr. Per Zoning Code section 33.665.320, the applicant has requested several modifications to site related development standards including: maximum building coverage standards (33.110.225), reduction in parking space width (33.266.130, table 266-4), reduction in dimension of tree wells within shared driveway for interior landscaping (33.266.130, table 266-7), outdoor area for each unit (33.110.235) and parking area setback from the edge of the proposed turnaround (33.266.130.G) for development proposed on Parcel 1.

The entire site lies within the City’s Environmental Conservation overlay zone, although a small portion is within the transition area. Environmental standards for Land Divisions and Planned Developments in Zoning Code Section 33.430.160 must be met to allow the Land Division/Planned Development to occur without discretionary Environmental Review. If the standards are not met, an Environmental Review is required. In this case, the proposal would result in 69,419 square feet of total disturbance (64,967 square feet of permanent disturbance in Parcel 1 and the pedestrian right of way, and 4,452 square feet of temporary construction disturbance) in the resource area, and it exceeds the disturbance limits identified in Table 430-4. Therefore, standard 33.430.160 D is not met and the Land Division/Planned Development must be approved through an Environmental Review.

This land division proposal is reviewed through the Type III land use review procedure because it requires a concurrent environmental review (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. The

applicant's proposal is to create 2 units of land (1 lot and 1 tract). Therefore, this land division is considered a partition.

**Approval Criteria:**

In order to be approved, this proposal must comply with the approval criteria of Title 33, Portland Zoning Code. The applicable approval criteria are:

- **Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.**
- **Section 33.665.310, Approval Criteria for Planned Developments in All Zones**
- **Section 33.665.320, Approval Criteria for Modifications requested through a Planned Development**
- **Section 33.430.250.A, Approval Criteria for Environmental Review**
- **Section 33.430.280, Approval Criteria for Environmental Modifications**

**REVIEW BODY DECISION**

**HEARINGS OFFICER DECISION** (June 19, 2019)

**Approval of a Preliminary Plan** for a 1-lot partition that will result in one parcel for multi dwelling development, an Environmental Resource Tract, and new pedestrian right-of-way as illustrated with Exhibits C0.1 -C12.5.

**Approval of a Planned Development Review** for the Parcel with the following modifications:

- An increase in allowed building coverage from 7,539 square feet to 21,352 square feet (PCC33.110.225);
- A reduction in parking space dimension requirements (PCC 33.266.130, Table 266-4) as shown on the site plan (Exhibit C1 1.2) reducing spaces between Units 1-16 from 8'6" to 7'6";
- A reduction to rear building setbacks for decks on Units 2-16 from 10 feet to 5 feet on the south side of the Parcel (PCC 33.110.220);
- A reduction in the dimension of tree wells within the shared driveway for interior landscaping (PCC 33.266.130, Table 266-7) from 5-feet by 5-feet to 3-feet by 7-feet as shown on Exhibit C1 1.1);
- A reduction in outdoor area requirements for each unit (PCC33.110.235) from 12-feet by 12-feet and 250 square feet to allow the shared open space on the Parcel as shown on Exhibits C0.1 -C12.5;
- A reduction in parking area setback from the edge of the proposed turnaround (PCC 33.266.130.G) from 5-feet to zero where the northeast corner of the turnaround abuts the adjacent property as shown on Exhibits C0.1 -C12.5.

**Approval of an Environmental Review** for development of a 58,092 square-foot parcel with 20 residential units and associated utilities and infrastructure; and a 6,875 square-foot pedestrian right-of-way and associated pedestrian pathway, in the Environmental conservation overlay zone; all as illustrated with Exhibits C.2-C.12.5.

This approval is per the approved site plans, elevation plans, and Landscape Plan (as shown on Exhibits C0.1 -C12.5).

The full decision is available on the BDS website:

<https://www.portlandoregon.gov/bds/article/735489>

## **APPEAL**

The Hearings Officer decision of approval with conditions has been appealed by the Southwest Hills Residential League (SWHRL). According to the appellants' statement, the appeal of the Hearings Officer decision is based on arguments that the following criteria are not met:

1. Transportation Impact, Portland Zoning Code section 33.641.020/030 (code prior to 5/24/18)
2. Rights-of-Way, Portland Zoning Code section 33.654.110/120
3. Sidewalks, Curbs and Driveways, Portland City Code 17.28.020

**Review of the case file:** The Hearings Officer's decision and all evidence on this case are now available for review at the Bureau of Development Services, 1900 SW 4<sup>th</sup> Avenue, Suite 5000, Portland, OR 97201. Copies of the information in the file can be obtained for a fee equal to the City's cost for providing those copies. We can provide some of the information over the phone or via email. To review the file, please call 503-823-7617 to schedule an appointment.

**We are seeking your comments on this proposal.** The hearing will be held before the City Council. To comment, you may write a letter in advance, or testify at the hearing. In your comments, you should address the approval criteria, as stated above. Please refer to the file number when seeking information or submitting testimony. Written comments **must be received by the end of the hearing** and should include the case file number and the name and address of the submitter. It must be given to the Council Clerk, in person, or mailed to 1221 SW Fourth Avenue, Room 140, Portland, OR 97204. A description of the City Council Hearing process is attached.

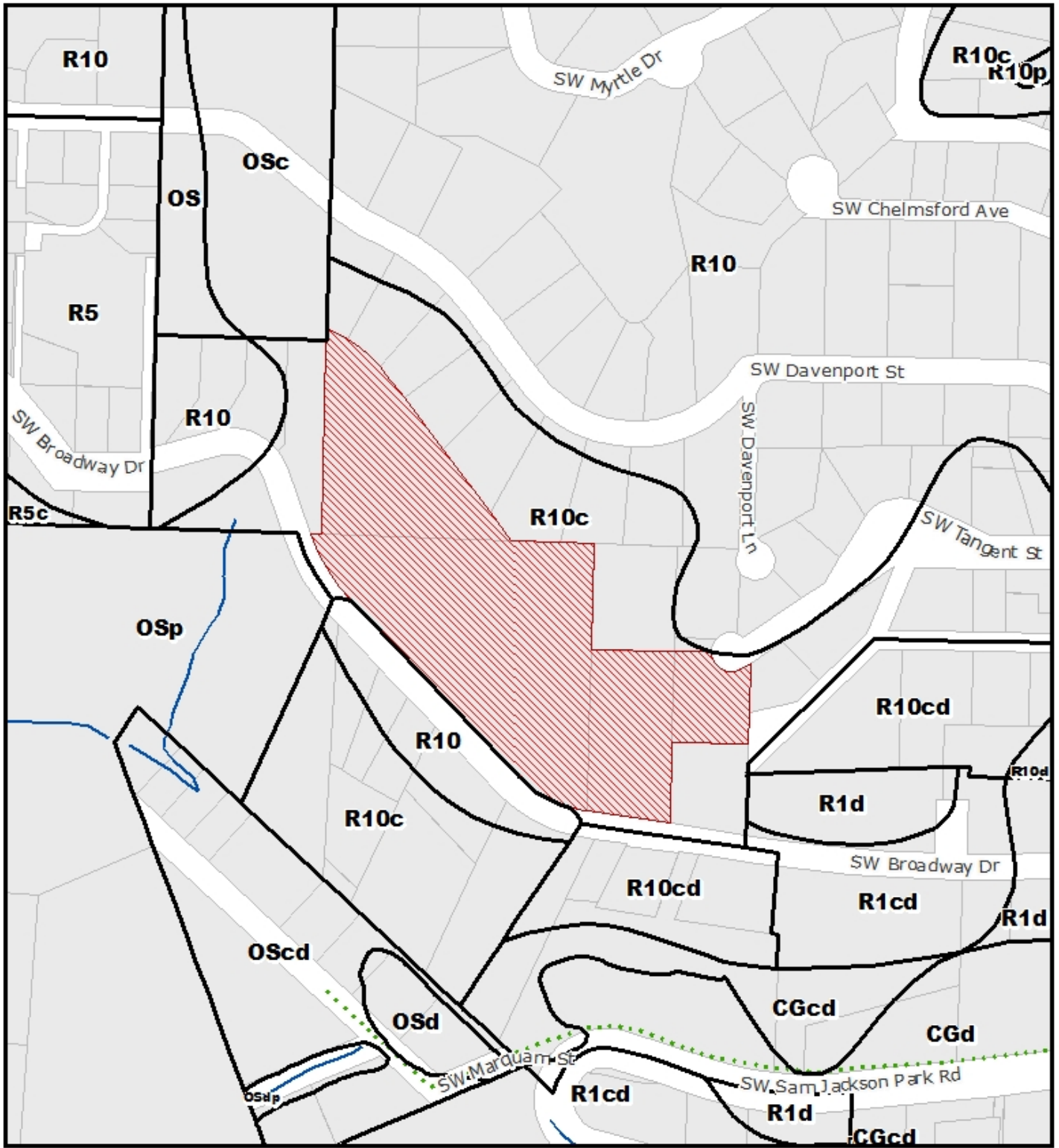
If you choose to provide testimony by electronic mail, please direct it to the Council Clerk at [karla.Moore-Love@portlandoregon.gov](mailto:karla.Moore-Love@portlandoregon.gov). Due to legal and practical reasons, City Council members cannot accept electronic mail on cases under consideration by the Council. Any electronic mail on this matter must be received no less than one hour prior to the time and date of the scheduled public hearing. The Council Clerk will ensure that all City Council members receive copies of your communication.

City Council's decision is final. Any further appeal must be filed with the Oregon Land Use Board of Appeals (LUBA). Failure to raise an issue in a hearing, in person or by letter, by the close of the record or at the final hearing on the case or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to LUBA on that issue. Also, if you do not provide enough detailed information to the City Council, they may not be able to respond to the issue you are trying to raise. For more information, call the Auditor's Office at (503) 823-4086.

**If you have a disability and need accommodations, please call 503-823-4085 (TDD: 503-823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.**


Attachments

1. Zoning Map
2. Site plan: C.2
3. Appeal Statement
4. City Council Appeal Process

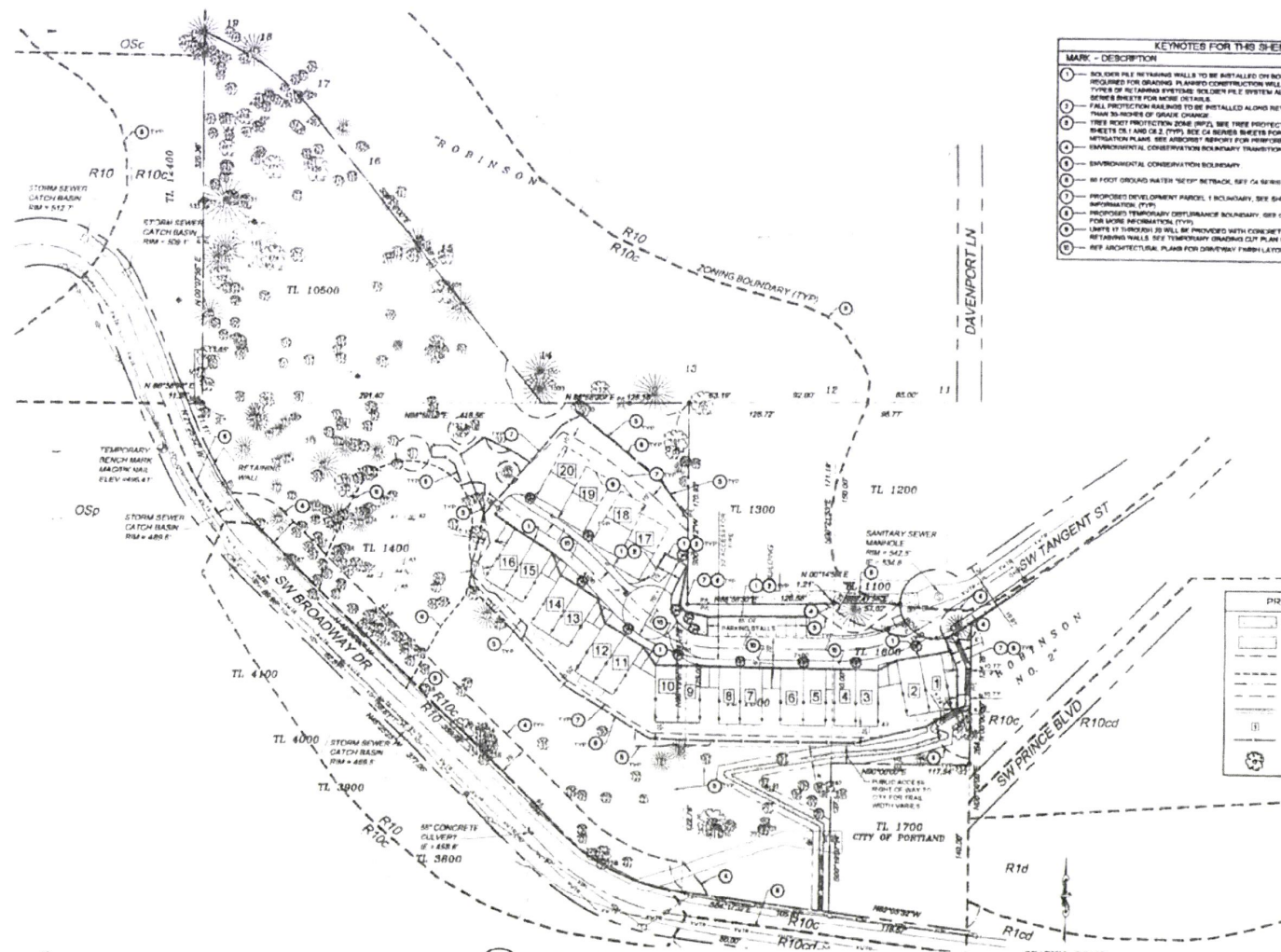


# ZONING



-  Site
-  Stream
-  Recreational Trails

File No.	LU 18-119056 LDP EN PD
1/4 Section	3227,3228,3327,3328
Scale	1 inch = 200 feet
State ID	1S1E09AB 1400
Exhibit	B Feb 12, 2018



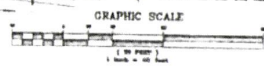
**KEYNOTES FOR THIS SHEET**

MARK	DESCRIPTION
1	SOLDER FILE RETAINING WALLS TO BE INSTALLED ON BOTH SIDES OF ROAD WHERE REQUIRED FOR GRADING. PLANNED CONSTRUCTION WILL INCLUDE THE FOLLOWING TYPES OF RETAINING SYSTEMS: SOLDER FILE SYSTEM ALONG THE ROAD. SEE CIVIL SERIES SHEETS FOR MORE DETAILS.
2	FALL PROTECTION SHALL BE TO BE INSTALLED ALONG RETAINING WALLS WITH GREATER THAN 10 INCHES OF GRADE CHANGE.
3	TREE ROOT PROTECTION ZONE (TRPZ) SEE TREE PROTECTION AND SEPARATION PLANS, SHEETS C1 AND C2. CIVIL SEE CIVIL SERIES SHEETS FOR TREE REPLACEMENT AND MITIGATION PLANS. SEE ARBORIST REPORT FOR PERFORMANCE PATH RPT'S.
4	ENVIRONMENTAL CONSERVATION BOUNDARY.
5	10 FOOT GROUND WATER "DEEP" SETBACK. SEE CIVIL SERIES SHEETS FOR MITIGATION INFORMATION. CIVIL.
6	PROPOSED DEVELOPMENT PARCEL 1 BOUNDARY. SEE SHEET C1 FOR MORE INFORMATION. CIVIL.
7	PROPOSED TEMPORARY DISTURBANCE BOUNDARY. SEE CIVIL, C2, AND C3 SERIES SHEETS FOR MORE INFORMATION. CIVIL.
8	LIMITS OF TRENCH TO BE PROVIDED WITH CONCRETE BUILDING FOUNDATION. RETAINING WALLS. SEE TEMPORARY GRADING CUT PLAN SHEET C3B.
9	SEE ARCHITECTURAL PLANS FOR DRIVEWAY PAVEMENT LAYOUT (CIVIL).

**PROPOSED LEGEND**

[Symbol]	CONCRETE
[Symbol]	PEDESTRIAN TRAIL
[Symbol]	TREE ROOT PROTECTION ZONE (TRPZ) FENCE
[Symbol]	EXISTING BEEP BUFFER
[Symbol]	PROPOSED BEEP BUFFER
[Symbol]	PROPOSED LOT LINE
[Symbol]	CLUB WITH RETAINING WALL
[Symbol]	BUILDING UNIT NUMBER
[Symbol]	TEMPORARY DISTURBANCE BOUNDARY
[Symbol]	NEW STREET LINE

**1 PROPOSED DEVELOPMENT IMPROVEMENT PLAN**  
 SCALE: 1"=40'-0"



**wright**  
 ARCHITECTS  
 1000 NE 10TH AVE  
 SUITE 200  
 PORTLAND, OR 97232

**QWDY**  
 QUALITY WATERSHED DESIGN YOUTH  
 1443 NE RAVENWOOD AVENUE, SUITE 210  
 PORTLAND, OREGON 97232  
 PHONE: 503.255.1711  
 FAX: 503.255.1712

Project Name:  
**TANBENT VILLAGE**

**PRELIMINARY NOT FOR CONSTRUCTION**

LAND USE ALTERNATE 7

MARCH 20TH, 2018

Name: JAM  
 Design: CLD

AS 2 1784D  
 ORIGINAL SHEET NO. 2754F  
 SHEET NO. 1784F

PROPOSED DEVELOPMENT IMPROVEMENT PLAN

Sheet Number:  
**C2**



# City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue · Portland, Oregon 97201 | 503-823-7300 | www.portlandoregon.gov/bds



## Type III Decision Appeal Form

LU Number: LU 18-119056 LDP EM PD Ho 419006

### FOR INTAKE, STAFF USE ONLY

Date/Time Received 7/2/19 3:01pm

Action Attached Minutes of SWHRL, Copy of Decision

Received By Emily Wilson

Fee Amount \$5,000

Appeal Deadline Date 7/3/19 4:30 pm

[N] Fee Waived

Entered in Appeal Log

Bill # 4536579

Notice to Auditor

[M]  Unincorporated MC

Notice to Dev. Review

### APPELLANT: Complete all sections below. Please print legibly.

PROPOSAL SITE ADDRESS Adjacent to 1315 SW Broadway St DEADLINE OF APPEAL 3 July 2019

Name Nancy Seton for Southwest Hills Residential League (SWHRL)

Address 2020 SW Edgewood Rd City PORTLAND State/Zip Code 97201

Day Phone 503-224-3840 Email contact@swhrl.org Fax \_\_\_\_\_

Interest in proposal (applicant, neighbor, etc.) Recognized neighborhood association

### Identify the specific approval criteria at the source of the appeal:

Zoning Code Section 33. 654 . 110

Zoning Code Section ~~33~~ 641 . 020 PCC 17.28.020

Zoning Code Section 33. 654 . 120

Zoning Code Section ~~33~~ 641 . 030 (former code)

Describe how the proposal does or does not meet the specific approval criteria identified above or how the City erred procedurally: Please see attached Appeal.

Appellant's Signature Nancy Seton for SWHRL

### FILE THE APPEAL - Submit the following:

- This completed appeal form
- A copy of the Type III Decision being appealed
- An appeal fee as follows:
  - Appeal fee as stated in the Decision, payable to City of Portland
  - Fee waiver for ONI Recognized Organizations approved (see instructions under Appeals Fees A on back)
  - Fee waiver request letter for low income individual is signed and attached
  - Fee waiver request letter for Unincorporated Multnomah County recognized organizations is signed and attached

The City must receive the appeal by 4:30 pm on the deadline listed in the Decision in order for the appeal to be valid. To file the appeal, submit the completed appeal application and fee (or fee waiver request as applicable) at the Reception Desk on the 5th Floor of 1900 SW 4th Ave, Portland, Oregon, between 8:00 am and 4:30 pm Monday through Friday.

The Portland City Council will hold a hearing on this appeal. The land use review applicant, those who testified and everyone who received notice of the initial hearing will receive notice of the appeal hearing date.

Information about the appeal hearing procedure and fee waivers is on the back of this form.

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## **Type III Appeal Hearing Procedure**

A Type III Decision may be appealed only by the applicant, the owner, or those who have testified in writing or orally at the hearing, provided that the testimony was directed to a specific approval criterion, or procedural error made. It must be filed with the accompanying fee by the deadline listed in the decision. The appeal request must be submitted on the Type III Appeal Form provided by the City and it must include a statement indicating which of the applicable approval criteria the decision violated (33.730.030) or what procedural errors were made. If the decision was to deny the proposal, the appeal must use the same form and address how the proposal meets all the approval criteria. There is no local Type III Appeal for cases in unincorporated Multnomah County.

Appeal Hearings for Type III Decisions are scheduled by the City Auditor at least 21 days after the appeal is filed and the public notice of the appeal has been mailed.

Appellants should be prepared to make a presentation to the City Council at the hearing. In addition, all interested persons will be able to testify orally, or in writing. The City Council may choose to limit the length of the testimony. Prior to the appeal hearing, the City Council will receive the written case record, including the appeal statement. The City Council may adopt, modify, or overturn the decision of the review body based on the information presented at the hearing or in the case record.

### **Appeal Fees**

In order for an appeal to be valid, it must be submitted prior to the appeal deadline as stated in the decision and it must be accompanied by the required appeal fee or an approved fee waiver. The fee to appeal a decision is one-half of the original application fee. The fee amount is listed in the decision. The fee may be waived as follows:

#### **Fee Waivers (33.750.050)**

The director may waive required fees for Office of Neighborhood Involvement (ONI) Recognized Organizations and for low-income applicants when certain requirements are met. The decision of the director is final.

##### **A. ONI Recognized Organizations Fee Waiver**

Neighborhood or business organizations recognized by the City of Portland Office of Neighborhood Involvement (ONI) or Multnomah County are eligible to apply for an appeal fee waiver if they meet certain meeting and voting requirements.

These requirements are listed in the Type III Appeal Fee Waiver Request for Organizations form and instruction sheet available from the Bureau of Development Services Development Services Center, 1<sup>st</sup> floor, 1900 SW 4<sup>th</sup>, Portland, OR 97201. Recognized organizations must complete the Type III Appeal Fee Waiver Request for Organizations form and submit it prior to the appeal deadline to be considered for a fee waiver.

##### **B. Low Income Fee Waiver**

The appeal fee may be waived for an individual who is an applicant in a land use review for their personal residence, in which they have an ownership interest, and the individual is appealing the decision of their land use review application. In addition, the appeal fee may be waived for an individual residing in a dwelling unit, for at least 60 days, that is located within the required notification area. Low income individuals requesting a fee waiver will be required to certify their annual gross income and household size. The appeal fee will only be waived for households with a gross annual income of less than 50 percent of the area median income as established and adjusted for household size by the federal Department of Housing and Urban Development (HUD). All financial information submitted to request a fee waiver is confidential. Fee waiver requests must be approved prior to appeal deadline to be considered for a fee waiver.

*Information is subject to change*



**BEFORE THE PORTLAND CITY COUNCIL**

An appeal of a Type III Hearings Officer decision approving a Land Division, Environmental Review with Modification and Planned Development Review with Modifications for 20 attached single-family dwellings on a 4.76-acre site zoned R10c (Guenther LLC – Tangent Village).

**NOTICE OF APPEAL**

**City File No.  
LU 18-119056 LDP EN PD**

- Owner ..... Guenther LLC  
3707 SW 52<sup>nd</sup> Place, #1  
Portland, OR 97219
- Applicant ..... Mark R. Bello Consulting, Inc.  
Attn. Mark Bellow  
2146 NE 9<sup>th</sup> Ave.  
Portland, OR 97212
- Property ..... Legal Description: Lot 38, Robinson & Plat 2, TL 10500 (1.22 ac) in Section 4, Twp 1 South, R 1 East; TL 1500 (0.74 ac) in Section 9, Twp 1 South, R 1 East; TL 1400 (2.40 ac) in Section 9, Twp 1 South, R 1 East of the Willamette Meridian,  
Tax Acct Nos. R714301410, R991040430, R991090070 & R991090080;  
State ID Nos. 1S1E09AB 01600, 1S1E04DC 10500, 1S1E09AB 01500 & 1S1E09AB 01400.
- Appellant ..... Southwest Hills Residential League (SWHRL)  
Attn. Nancy Seton, SWHRL Land Use Chair  
2020 SW Edgewood Rd  
Portland, OR 97201  
Phone: (503) 224-3840
- Appellant's Representative ..... Reeve Kearns PC  
Attn. Daniel Kearns, OSB No. 893952  
621 SW Morrison Street  
Suite 510  
Portland, OR 97205  
Phone: (503) 997-6032
- Decision dates ..... The Hearings Officer issued his Decision on June 19, 2019, and the last day to appeal is July 3, 2019.

**Grounds for Appeal.** In approving this development, the Hearings Officer misapplied and misinterpreted the following applicable code provisions related to traffic/

transportation and pedestrian connections and right-of-way (ROW) frontage improvements, and rendered a decision lacking adequate findings and the support of substantial evidence in the whole record when he approved this development without requiring any ROW improvements along the site's deficient and unsafe SW Broadway Drive frontage:

- PZC 33.654.110
- PZC 33.654.120
- PCC 17.28.020
- PZC 33.641.020 and 030 (former Code)

Background – the property and development proposal. The challenged decision approves a 20-unit residential development on a ~4.76-acre site in SW Portland zoned R10c. The proposal involves a 2-lot partition, a planned development, and an environmental review. The entire site has an Environmental Conservation overlay, is forested and bisected by two drainages. The 20 townhouse units (10 buildings) will be contained on 69,419 sf total disturbance area on a single lot, with the balance of the property as a second lot retained as an environmental resource tract. The townhouse units will sell for ~\$800,000 to \$900,000 each. The development will be accessed via an existing cul-de-sac at the end of SW Tangent Street, and the property has over 740 feet of frontage along SW Broadway Drive.

Background - transportation deficiencies, pedestrian and bicycle safety. This application was vested under a prior version of the City's development code, which included the following mandatory approval criteria related to the safety and adequacy of the immediate transportation system:

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

33.641.030 Mitigation. The applicant may meet the criterion in Section 33.641.020, above, by including mitigation measures as part of the land division proposal. Mitigation measures must be acceptable to the City Engineer and may include providing transportation demand management measures, an access management plan, constructing streets, alleys, or bicycle, pedestrian, or transit facilities on or off the site or other capital improvement projects such as traffic calming devices.

These provisions require every development to construct on-site and abutting frontage improvements necessary to provide a basic level of safety for all modes of travel, which in this case means basic improvements to the site's Broadway Drive frontage to allow safe passage for pedestrians and bicycles – not necessarily the full suite of ROW improvements (although that would be compliant with the code), just what is needed to provide safe passage for all modes and to safely serve the development property.

PZC 33.654.110 requires a street ROW connection between SW Tangent Street and SW Broadway Drive built to city standards, and PZC 33.654.120(B) & (C) require pedestrian and related ROW improvements within and along the development site's street frontages. PCC 17.28.020(A) makes it the property owner's responsibility to construct, reconstruct, repair and maintain curbs, sidewalks and related pedestrian infrastructure along the property's street frontages.

Collectively, these provisions require the developer to (1) improve its own street frontage along SW Broadway Drive by dedicating additional ROW to bring the street up to City planned standards and then constructing the normal set of ROW frontage improvements required of every development, *i.e.*, additional pavement width, curb, gutter, and sidewalk, and (2) to build a street connection between SW Tangent and SW Broadway, or to mitigate any deficiencies in meeting these requirements. Initially, PBOT provided the following comment on the project stating that the code required the developer to provide the following ROW improvements:

"The proposed subdivision will also trigger standard frontage improvement to SW Broadway. In order to provide adequate ROW width for those improvements a 12-ft dedication will be required. SW Broadway is classified as a Neighborhood Collector, City Walkway, City Bikeway, Major Emergency Response Street, and a Local Service Street for all other modes. It is a 40-ft wide ROW improved with an 18-ft roadway lacking curbs and sidewalks. The required improvements will include additional paving as needed; curb located 16-ft from the centerline of the double yellow lane striping. (10-ft travel lane and a 6-ft bike lane), 8-ft swale or 4-ft stormwater planter (4 less feet of dedication if planter is used), 6-ft sidewalk, and a 1.5-ft frontage zone."

PBOT 3/8/2018 response to the Early Assistance Request.

Currently, SW Broadway Drive adjacent to this site lacks sidewalks and any safe place for pedestrians or bicycles to travel. Broadway Drive is substandard in width and lacks any shoulder area or sidewalks that could accommodate pedestrians or bicycles, despite its City designation as a Neighborhood Collector, a Local Service Transit Street, a City Walkway, a Major Emergency Response route, a City Bikeway, and a Local Service Street for all other modes.

The developer requested an Alternative Review seeking relief from "constructing improvements along Broadway." (Public Works Alternative Review Request Form, 6/28/2018). In the same request, the developer also sought relief from the standard connectivity "cross section requirements" to construct a public street connecting SW Tangent Drive to SW Broadway Drive. PBOT supported reducing "the standard sidewalk improvement requirements along the property frontage" to a "minimum 6-foot wide paved shoulder for the length of the property." (PWAR Decision Form, 7/11/2018). In the face of push-back by the developer, PBOT subsequently further reduced its recommendation to:

*"gravel improvements to the south side of Broadway where feasible given the existing constraints of driveways, mechanical equipment, and guard rail locations."* (PWAR, 4/15/2019)

In its December 6, 2018 decision, Public Works also supported constructing a pedestrian connection to trail standards from SW Tangent to SW Broadway Drive in lieu of a street connection. In recommending the developer be released from the direct street connection and the Broadway Drive frontage improvements and recommending just a pedestrian path built to city trail standards and a minor amount of gravel on the south side of Broadway "where feasible," Public Works bestowed a significant cost savings on this developer. This recommendation, which the Hearings Officer accepted in full, also had the pernicious effect of exacerbating (or at least maintaining) the already deficient and unsafe pedestrian and bicycle facilities along Broadway Drive.

The Hearings Officer addressed the Broadway Drive frontage improvements and the Tangent Street-Broadway Drive connection in a consolidated fashion that tends to confuse these two requirements and the mitigation for each. The only mitigation required for release from the City's frontage improvement requirements for SW Broadway Drive is a length of gravel (3'-6' wide) on the south side of Broadway Drive. The mitigation allowed in lieu of a street connection between Tangent Street and Broadway Drive is the pedestrian path terminating at landing pads on SW Broadway Drive, and the construction of a 4'x125' paved strip on the south side of Broadway Drive, east of the landing pad. While SWHRL does not oppose the design alternative to the connectivity requirement, we believe that it places a pedestrian focus on SW Broadway Drive where pedestrian and bicycle facilities are not currently safe, and this development should be required to address its own property frontage and make it safe for all modes, especially in light of all the other transportation improvement concessions the Hearings Officer granted.

The Hearings Officer's Decision and its legal deficiencies. The Hearings Officer acknowledged the deficient condition of SW Broadway Drive for bikes and pedestrians, but acknowledged that the street was "capable" of being made safe:

"The Hearings Officer finds the term "capable" does not require that the transportation system is currently safe. The Hearings Officer finds that the term 'capable,' in the context of PCC 33.641.020, contemplates some level of 'anticipatory reality.' For example, PBOT staff (Exhibits E.2, G.9, G.10, and G.11), Applicant's traffic consultant (Exhibits A.2, A.4, A.6, A.8, and H.54), Southwest Hills Residential League (SWHRL) (Exhibits H.13, H.37, and H.44), and many opponents (i.e. Exhibits H.7, H.8, and H.12) suggest that Broadway Drive can and/or should be improved to make that road safe(r) for pedestrians and bicycles. The Hearings officer, using SW Broadway Drive as an example, finds that Broadway Drive is 'capable' of supporting the proposed development and existing uses in the area."

HO Decision at 23.

"The Hearings Officer finds that the transportation system, excepting for SW Broadway Drive, is capable, and does currently provide, safe pedestrian and bicycle access for the Subject Property and the existing uses in the area. ... The Hearings Officer agrees with the attorney for some of the opponents when he states the section of SE Broadway Drive, adjacent to the Subject Property, is 'nearly impassable – at least not safely – by pedestrians and bicycles due to the roadway's curve and total lack of safe shoulders or sidewalks on the north side' ... However,

the Hearings Officer finds that the attorney's 'virtually impassable' comments do not relate solely to the Subject Property frontage on SW Broadway but rather to much of the SW Broadway Drive segment between SW Vista and SW 9<sup>th</sup>."

HO Decision at 26.

Despite the documented transportation deficiencies that make the immediate transportation system (SW Broadway Dr.) unsafe for pedestrians and bicycles and despite acknowledging that the street is "capable" of being made safe, the Hearings Officer declined to apply any of the above-referenced code provisions to require this developer to improve the situation along its own frontage. The Hearings Officer accepted the developer's argument that it would be too expensive to construct any of the ROW improvements along any of the site's Broadway Drive frontage needed to make it safe, or in any way make SW Broadway Drive safer for bikes or pedestrians. Because the record did not show any significant bicycle or pedestrian use, the Hearings Officer allowed Broadway Drive's deficient and unsafe situation to remain, and leaves it for the City to use general fund money to construct the needed basic pedestrian and bicycle safety improvements sometime in the distant future:

"The Hearings Officer is persuaded by Applicant's arguments ... The Hearings Officer finds that requiring the standard street improvements along the entire Subject Property frontage with SW Broadway Drive would not, even closely, pass the Nollan/Dolan tests. Further, even if such improvements were required of Applicant (exacted from Applicant), such improvements would not make SW Broadway Drive 'safe' for pedestrians as the remainder of the street would remain 'unsafe'."

HO Decision at 29.

The Hearings Officer basically exempted this developer from the burden of constructing safe and compliant frontage improvements because they would be too expensive. The Tangent Village site is difficult and expensive to develop; the dwellings require retaining walls, pile driving into basalt, and expensive extensions to the City storm water system. The developer has found a way to construct this project economically despite the site's difficulties. But the Hearings Officer does not seem to recognize that the property's Broadway frontage exists in that same difficult terrain, and that the Code expects these basic pedestrian and bicycle safety improvements as a part of every new development with deficient and unsafe street frontages. The Hearings Officer's decision, however, gives a free pass to this development of 20 townhomes in the \$800,000 to \$900,000 price range for all such ROW improvements needed for basic pedestrian bicycle safety along its 740+ foot Broadway Drive frontage. The Hearings Officer effectively agreed with the developer that the cost of pedestrian facilities should be shifted to the pedestrians and bicycles who attempt SW Broadway Drive in its current condition or to the City as a whole if Council were to decide to construct these needed safety measures out of the General Fund.

Finally, the Hearings Officer made the following conclusions about the efficacy of small measures to improve bicycle and pedestrian safety along SW Broadway:

"The Hearings Officer finds there is no evidence in the record to

demonstrate the physical feasibility of installing jersey barriers. The Hearings Officer finds there is no evidence in the record that marking the crosswalk will make crossing SW Broadway safer. Finally, Applicant did not include jersey barriers or marking the crosswalk in its application and there is no evidence in the record to allow the Hearings Officer to make a proportionality decision under the *Dolan* test.”

“The Hearings Officer, despite reservations about the logic of currently installing the Path, finds that with Applicant’s proposed dedications, waivers of remonstrances and construction of the physical improvements described by Applicant’s consultant ..., pedestrian safety is adequately addressed in Applicant’s proposal.”

HO Decision at 33.

The Hearings Officer misinterpreted and misapplied the above-cited code sections and failed to apply them as written. The Hearings Officer’s findings supporting his decision to exempt this developer from constructing both the normal ROW frontage improvements along SW Broadway Drive and the street connection between SW Tangent Street and SW Broadway Drive are inadequate. The Hearings Officer’s reliance on the applicant’s self-serving arguments about the cost of constructing these improvements is not legally sufficient. The Hearings Officer’s conclusions about nexus and proportionality under the *Nollan/Dolan* test are not supported by substantial evidence. Finally, the Hearings Officer improperly reversed the burden of proof by requiring that City staff or the opponents demonstrate that the cost of constructing ROW improvements that would make SW Broadway Drive safe for pedestrians and bikes was proportional to the impacts of this development.

Conclusion. The City Council should deny the project application for failing (1) to comply with the above-referenced code provisions and (2) to demonstrate that the “[t]he transportation system [is] capable of safely supporting the proposed development in addition to the existing uses in the area” and is safe “for all modes.” Alternatively, the Council can approve the development and fashion mitigating conditions under PZC 33.641.030 to require the developer to construct ROW improvements along the site’s entire SW Broadway Drive frontage (north side) to provide for basic bicycle and pedestrian safety, including, but not limited to:

- A safe landing pad for the developer’s pedestrian path connection from SW Tangent Street at Broadway Drive
- Six feet of improved shoulder (pervious/permeable, but bikeable surface is sufficient) along frontage on the north side of SW Broadway Drive
- A physical barrier between west-bound (up-hill) vehicle traffic and pedestrians and bikes traversing the site’s SW Broadway Drive frontage, e.g., plastic candlestick barrier, raised curbing, permanent pylons, etc.

The purpose of PCC 17.28.020, 33.641 and 33.654 is to protect people, save lives, and make the City’s transportation system safe for all modes. The City’s Alternative Design Review process, which is supposed to be a mechanism for obtaining practical solutions to terrain constraints, should not be manipulated by developers to shift the responsibility for code compliance and the provision of safe pedestrian and bicycle facilities onto pedestrians and bicyclists through increased personal safety risk or onto the

general public through General Fund expenditures. New development should not be released from these basic transportation safety standards. The Alternative Review process is not meant to be a loophole through which protecting Portlanders is reduced to a token gesture.

If the City Council fails to require this developer to construct basic pedestrian frontage safety improvements along the development site (safety for all modes) and enforce the code as written, it will set a standard of insufficient improvements and level of safety for bicycles and pedestrians that can be applied in any of the City's neighborhoods.

**Appeal Fee Waiver.** This appeal was authorized by a duly convened meeting of the SWHRL Board of Directors on June 24, 2019, documentation attached.

**GENERAL EXPLANATION OF CITY COUNCIL APPEAL HEARING PROCESS FOR  
EVIDENTIARY/DE NOVO HEARINGS**

**1. SUBMISSION OF TESTIMONY**

- a. Testimony may be submitted in writing to the Council Clerk, [CCTestimony@portlandoregon.gov](mailto:CCTestimony@portlandoregon.gov), or 1221 SW Fourth Avenue, Room 130, Portland, Oregon 97204. Written comments must be received by the time of the hearing and should include the case file number.
- b. Testimony may be submitted orally (see below).

**2. HEARINGS PROCESS**

- a. The order of appearance and time allotments is generally as follows:

Staff Report	10 minutes
Appellant(s)/or Applicant(s)	10 minutes
Supporters of Appellant(s)/or Applicant(s)	3 minutes each
Principal Opponent	15 minutes
Other Opponents	3 minutes each
Appellant Rebuttal	5 minutes
Council Discussion	

- b. The applicant has the burden of proof to show that each and every element of the approval criteria can be satisfied. If the applicant is opposing the Hearings Officer's recommendation, the applicant may also argue the criteria are being incorrectly interpreted, the wrong approval criteria are being applied or additional approval criteria should be applied.
- c. In order to prevail, the opponents of the application must persuade the City Council to find that the applicant has not carried the burden of proof to show that the evidence submitted in support of the application demonstrates that each and every element of the approval criteria is satisfied. The opponents may wish to argue the criteria are being incorrectly applied, the wrong criteria are being applied or additional approval criteria should be applied.
- d. The failure to address an issue with sufficient specificity to afford the decision maker and the parties an opportunity to respond to the issue precludes an appeal to the Land Use Board of Appeals (LUBA) on that issue.

**3. OTHER INFORMATION**

- a. Prior to the hearing, the case file and the Review Body decision are available for review by appointment, at the Bureau of Development Services, 1900 SW 4<sup>th</sup> Avenue, Portland, OR 97201. Call 503-823-7617 to make an appoint to review the file.

**If you have a disability and need accommodations, please call 503-823-4085 (TDD: 503-823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.**