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CITY OF PORTLAND
Office of the City Auditor
1221 SW Fourth Avenue, Room 130
Portland, OR 97204-1900

I hereby certify this Land Use Document No. LU 18-119056 LDP EN PD – Order of Council to be a complete and exact copy of the original as the same appears on file and of record in my office and in my care and custody on February 10, 2020.

MARY HULL CABALLERO
Auditor of the City Of Portland

By

A handwritten signature in blue ink, appearing to read "Meghan Davis", written over a horizontal line.

Deputy

RETURN TO CITY AUDITOR
131/130/Auditor's Office

CONSIDER THE APPEAL OF THE SOUTHWEST HILLS RESIDENTIAL LEAGUE AGAINST THE HEARINGS OFFICER'S DECISION TO APPROVE, WITH CONDITIONS, A 1-LOT PARTITION WITH CONCURRENT ENVIRONMENTAL AND PLANNED DEVELOPMENT REVIEW ADJACENT TO 1315 SW BROADWAY DRIVE (LU 18-119056 LDP EN PD)

- Applicant/Owner:** Guenther LLC
3707 SW 52nd Place #1
Portland, OR 97221
- Applicant's Representative:** Mark R. Bello Consulting, Inc.
Attn: Mark Bellow
2146 NE 9th Ave
Portland, OR 97212
- 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
- Zoning:** R10c (Single Family Residential 10,000 sq. ft. with "c" Environmental Conservation overlay zone)
- 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: Applicant proposed a Land Division in order to divide the 4.76-acre site (the "Subject Property") into one parcel measuring 58,092 square feet in area (the "Parcel"), an Environmental Resource Tract ("Environmental 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 – hereafter the "Path"). Applicant proposed 20 townhouse-style residences on the Parcel. The Environmental Resource Tract is proposed to protect environmental resources.

An **Environmental Review** is requested which, if approved, would allow 69,419 square feet of total disturbance area within the Environmental Conservation zone. Applicant 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 the Parcel.

Applicant requested a **Planned Development** review to allow multi-dwelling development on one large lot (the "Parcel") in the R10 (single dwelling) zone per the City of Portland Zoning Code ("PCC") 33.638.100.E. The development will consist of 10 buildings, two units each, for a total of 20 units with a shared access driveway connecting to SW Tangent Street with 25 surface parking spaces, garage parking in every unit, and shared outdoor common space. Applicant also proposed a public pedestrian connection (the "Path") through the Subject Property connecting SW Tangent Street to SW Broadway Drive. Per PCC 33.665.320, Applicant requested several modifications to site-related development standards including: maximum building coverage standards (PCC 33.110.225), reduction in parking space width (PCC 33.266.130, table 266-4), reduction in dimension of tree wells within shared driveway for interior landscaping (PCC 33.266.130, table 266-7), outdoor area for each unit (PCC 33.110.235), and parking area setback from the edge of the proposed turnaround (PCC 33.266.130.G) for development proposed on the Parcel.

The Subject Property is located within the City's Environmental Conservation overlay zone ("c"); a small portion is within the transition area. Environmental standards for Land Divisions and Planned Developments in PCC 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 the Parcel and the pedestrian right-of-way, and 4,452 square feet of temporary construction disturbance) in the resource area. The area of proposed disturbance exceeds the limits identified in Table 430-4. Therefore, the PCC 33.430.160.D standard is not met and the Land Division/Planned Development must be approved through an Environmental Review.

Applicant's land division proposal is reviewed through the Type III land use review procedure because it requires a concurrent environmental review (See PCC 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 Oregon Revised Statutes ["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 two units of land (one lot and one tract). Therefore, this land division is considered a partition.

The City Council appeal hearing was opened in the Council Chambers, 1221 SW 4th Avenue on October 16, 2019 at approximately 2:00 p.m. City Council continued the matter until December 4, 2019 for deliberations and left the record open until December 4, 2019 for additional written testimony. On December 4, 2019, City Council reconvened the appeal hearing for deliberations and voted 4-0 to tentatively deny the appeal and affirm the Hearings Officer decision with one modification to a condition of approval, and ordered findings be

prepared for January 15, 2020 at 10:45 a.m. On January 15, 2020 at approximately 10:45 a.m., Council voted 3-0 to deny the appeal, uphold the decision of the Hearings Officers with the amendment to condition B.1 as reflected in the decision and adopt the findings.

DECISION

Based on evidence in the record and adoption of the Council's Findings and Decision in Case File LU 18-119056 LDP EN PD and by this reference made a part of this Order, **it is the decision of the City Council** to DENY the Appeal in its entirety and approve the Application for Land Division, Environmental Review with Conditions and Planned Development Review with Modifications with conditions.

Therefore, the City Council:

Approves 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.

Approves 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 (PCC 33.110.225);
- A reduction in parking space dimension requirements (PCC 33.266.130, Table 266-4) as shown on the site plan (Exhibit C11.2) 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 C11.1);
- A reduction in outdoor area requirements for each unit (PCC 33.110.235) 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.

Approves 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), subject to the following conditions:

A. The final plat must show the following:

1. Applicant shall meet the street dedication requirements of the City Engineer for SW Broadway Drive and the public pedestrian path between SW Tangent Street and SW Broadway Drive. The required right-of-way dedication must be shown on the final plat survey.
2. An Emergency Vehicle Access Easement, granted to the City of Portland, shall be shown over the relevant portions of the private driveway to the satisfaction of the Fire Bureau.
3. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Conditions A.9-A.12 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. _____, Multnomah County Deed Records."
4. The Environmental Resource Tract shall be noted on the plat as "Tract 1: Open Space (Environmental Resource)." A note must also be provided on the plat indicating that the tract will be commonly owned and maintained by the owners of residential units 1 through 20 or be consistent with the ownership requirements of 33.430.160.E.

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

Streets

1. Applicant shall meet the requirements of the City Engineer for right-of-way improvements along the Subject Property's SW Broadway Drive street frontage and associated pedestrian connection between SW Tangent Street and SW Broadway Drive consistent with Exhibits G.9, G.10, and G.11. Specifically, the applicant shall be required to make pedestrian path and SW Broadway Drive improvements per Concept Public Works approval under 19-219169 WT.
2. 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.
3. Applicant shall submit an application for a Site Development Permit for construction of the mass grading and utility construction for the new development and related site development improvements. Design plans must be prepared by, or under the direction of, an Oregon licensed civil engineer. The permit plans must substantially conform to the tree protection and erosion control plan (Exhibit C.5.1), construction management plan (Exhibit C.6), overall utility plan (Exhibit C.7), overall finish grading plan (Exhibit C.8), overall temporary cut grading plan (Exhibit C.8.B), and overall storm drainage plan (Exhibit C.9) with the following additions:
 - Plans shall show construction fencing at the edge of the temporary disturbance boundary and the boundary of the proposed pedestrian right-of-way;
 - Plans shall note that construction of the pedestrian pathway shall be conducted using hand held equipment only;
 - Plans shall include the root protection zone for Tree #1, the 30-inch grand fir at the site's northwest corner, consistent with Exhibit H.42f;

- Applicant shall provide a copy of the contract confirming that the project arborist will be present on the Subject Property overseeing excavation, fill, and all construction activities that may occur within the prescriptive root protection zones for trees numbered 1, 6, 35, 36, 37, 38, 130, 131, 134, 135, 180, 191, 192, 201, 207, 266, and 308, to ensure their preservation;
- A Mitigation Plan must be provided in substantial conformance with Exhibits C.4.1, C.4.2, and C.4.3, and as required in Condition D.2;
- It must show stockpile area;
- It must note that topsoil must be stockpiled on site and re-used to the extent practicable;
- It must show required improvements in shared driveway (paving pattern) and landscaping; and
- It must demonstrate how all applicable Fire Bureau requirements are met.

Utilities

4. Applicant shall meet the requirements of the Water Bureau concerning the existing water main located in SW Tangent Street which is required to be upsized at the expense of Applicant. Prior to final plat approval, Applicant shall provide plans and financial assurances for the water main extension to the satisfaction of the Water Bureau.
5. Applicant shall meet the requirements of the Fire Bureau for installing new fire hydrants. Applicant must contact the Water Bureau, Development Services Department at 503-823-7368, for fee installation information related to the purchase and installation of fire hydrants. Applicant must purchase the hydrant and provide verification to the Fire Bureau that the Water Bureau will be installing the required fire hydrant, with the required fire flow and pressure.

Required Legal Documents

6. A Maintenance Agreement shall be executed for the Private Driveway to the satisfaction of the Fire Bureau. The agreement shall include provisions assigning maintenance responsibilities for the easement area described in condition A.2 above 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 Fire Bureau, City Attorney, and the Bureau of Development Services, and approved as to form, prior to final plat approval.
7. A Maintenance Agreement shall be executed for Tract 1, the Environmental Resource Tract, described in Condition A.4 above. 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. The agreement must also include:
 - a. assign common, undivided ownership of the tract to the owners of all residential units, a homeowner's association or meet the requirements of PCC 33.430.160.E;
 - b. include provisions for assigning maintenance responsibilities for the Environmental Resource Tract;

- c. provisions assigning maintenance responsibilities for mitigation plantings located within the Environmental Resource Tract;
 - d. include a description of allowed/prohibited activities consistent with PCC 33.430;
 - e. acknowledge any easements within the Environmental Resource Tract and related facilities; and
 - f. include conditions of this land use approval that apply to the Environmental Resource Tract.
8. Applicant shall execute an Acknowledgement of Special Land Use conditions requiring residential development on the Parcel to contain internal fire suppression sprinklers and class A roofing and non-combustible siding, per Fire Bureau Appeal 18378. The acknowledgement shall be referenced on and recorded with the final plat.
 9. Applicant shall execute an Acknowledgement of Tree Preservation Land Use Conditions that notes tree preservation requirements that apply to the Parcel. A copy of the approved Tree Preservation Plan must be included as an exhibit to the Acknowledgement. The Acknowledgment shall be referenced on, and recorded with, the final plat.

C. The following is required as part of the Site Development permit:

1. Prior to any construction activity on the Subject Property, tree protection fencing shall be installed according to Title 11 Tree Code, Chapter 11.60, Tree Protection Measures, except as otherwise specified below. Four-foot high temporary orange construction fencing shall be installed at the edge of the construction disturbance limits or at the edge of the prescriptive or performance root protection zones of trees to be protected, as shown on the tree protection and erosion control plan (Exhibit C.5.1), and as recommended by the project arborist required to oversee construction activity near trees to be protected as described in Condition B.2 above; or as required by inspection staff during the plan review and/or inspection stages.
 - a. No mechanized construction vehicles are permitted beyond the approved "Construction Disturbance Limits" delineated by the temporary construction fence. All planting work, invasive vegetation removal, and other work to be done beyond the Construction Disturbance Limits shall be conducted using hand held equipment.
2. Mitigation Plantings shall be planted in Tract 1 (Environmental Resource Tract), in substantial conformance with Exhibits C.4.1 Mitigation Plan as follows:
 - a. At the time of permit review for grading at the Subject Property, the Mitigation Plan shall be submitted to the Bureau of Development Services in substantial conformance with Exhibits C.4.1, C.4.2, and C.4.3.
 - b. Applicant shall indicate on the plans selection of either tagging plants for identification or accompanying the Bureau of Development Services inspector for an on-site inspection.
 - c. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within 15 feet of mitigation plantings, using handheld equipment.
 - d. A total of 365 native trees, 2,620 native shrubs, 12,615 native ground covers and ferns, and seeding of native grasses, sedges, and forbs, are required to be planted in Tract 1 in the Environmental zone.

- e. Any disturbance areas in the Environmental zones not planted as required above must be seeded with a native seed mix with species contained in the *Portland Plant List*.
- f. All portions of trees to be removed, that are 12 inches or greater in diameter, shall be placed within the Environmental zone in Tract 1.
- g. All mitigation shrubs and trees shall be shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector; or Applicant shall arrange to accompany the Bureau of Development Services inspector to the Subject Property to locate mitigation plantings for inspection. If tape is used, it shall be a contrasting color that is easily seen and identified.
- h. Plantings shall be installed between October 1 and March 31 (the planting season). Any changes or substitutions to approved planting plans shall first receive written approval from Bureau of Development Services Land Use Review staff.
- i. After installing the required mitigation plantings, Applicant shall request inspection of mitigation plantings and finalize the Site Development Permit.

3. **An inspection of Permanent Erosion Control Measures shall be required** to document installation of the required mitigation plantings.

- a. The **Permanent Erosion Control Measures** inspection ("IVR 210") shall not be approved until the required mitigation plantings have been installed (as described in Condition C.2 above);

--OR--

b. If the **Permanent Erosion Control Measures** inspection ("IVR 210") occurs outside the planting season (as described in Condition C.2 above), then the Permanent Erosion Control Measures inspection may be approved prior to installation of the required mitigation plantings – if Applicant obtains a separate **Zoning Permit** for the purpose of ensuring an inspection of the required mitigation plantings by March 31 of the following year.

D. The following conditions are applicable to site preparation and the development of individual lots:

1. Development shall be in conformance with the following:
 - a. Prior to starting construction on the Parcel, Applicant shall install 4-foot high temporary construction fencing along any lot line that abuts Tract 1 Environmental Resource Tract. The fence must be shown on building permit plans. The fence shall remain in place until the final erosion control inspection is completed for all development on the Parcel.
 - b. All vegetation planted in a resource area of environmental zones is native and listed on the *Portland Plant List*. Plants listed on the Portland Nuisance Plant List or Prohibited Plant List are prohibited.
 - c. A minimum of 10 feet of L2 landscaping shall be provided between the guest parking spaces and the north property line of the Parcel.

- d. Exterior lights must be spaced at least 25 feet apart. Incandescent lights exceeding 200 watts (or other light types exceeding the brightness of a 200-watt incandescent light) must be placed so they do not shine directly into resource areas.
2. Development on the Parcel shall be in conformance with the Tree Preservation Plan (Exhibit C.2) and Applicant's Arborist Report (Exhibit A.8). Specifically, trees numbered 6 and 134 are required to be preserved, with the root protection zones indicated on Exhibit C.2 following the recommendations of the arborist as found under Exhibit A.8. 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.
3. Prior to Planning and Zoning approval of a Site Development permit for new development on the Parcel within the root protection zone of Tree 6 (which is required to be protected per condition C.1 above), the application must include an arborist contract conforming with Exhibit A.8 which clearly indicates that the arborist has been hired to monitor excavation work within the root protection zone of trees 1 and 6.
4. As part of the building permit application submittal for the Parcel, required site plans and any additional drawings must reflect the development design approved by this land use review as indicated in Exhibits C0.1-C12.5. The sheets on which this information appears must be labeled, "Proposal and design as approved in Case File #18-119056 LDP EN PD. No Field changes allowed."
5. Prior to final inspection approval of the last building permit for new development on the Parcel (20 units are allowed), a Site Development permit is required to be finalized for construction of the shared driveway, parking lot, and installation of the required onsite landscaping plan and mitigation plantings in conformance with Exhibits C0.1-C12.5.
6. Applicant will be required to install residential sprinklers in the new units (1-20) on the Parcel to the satisfaction of the Fire Bureau. In addition, Class A roofing material and non-combustible siding is required for all structures per Fire Code Appeal 18378.

E. The owner(s) of Tract 1 shall maintain and monitor the required plantings for two years to ensure survival and replacement. The owner(s) is/are responsible for ongoing survival of required plantings during and beyond the designated two-year monitoring period. The landowner shall:

1. Obtain a Zoning Permit for a final inspection at the end of the 2-year maintenance and monitoring period. The permit must be finalized no later than two years from the final inspection for the installation of mitigation planting, for the purpose of ensuring that the required plantings remain. Any required plantings that have not survived must be replaced.

F. Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code Section 33.700.040, and/or enforcement of these conditions in any manner authorized by law.

IT IS SO ORDERED:

1/22/2020

Date



Mayor Ted Wheeler
Presiding Officer at Hearing of
January 15, 2020
9:30 a.m. Session