



City of Portland, Oregon

Bureau of Development Services

Land Use Services

FROM CONCEPT TO CONSTRUCTION

Amanda Fritz, Commissioner Paul L. Scarlett, Director Phone: (503) 823-7300 Fax: (503) 823-5630 TTY: (503) 823-6868 www.portlandoregon.gov/bds

Date: July 11, 2013

To: Interested Person

From: Sean Williams, Land Use Services

503-823-7612 / Sean.Williams@portlandoregon.gov

NOTICE OF A TYPE I DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD

The Bureau of Development Services has **approved** a proposal in your neighborhood. 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 it to the Oregon Land Use Board of Appeals (LUBA) at 550 Capitol St. NE, Suite 235, Salem, OR 97301. The phone number for LUBA is 1-503-373-1265. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 12-199193 LDP

GENERAL INFORMATION

Applicant: Mike Coyle

Faster Permits, 14334 NW Eagleridge Lane, Portland, OR 97229

Owner: KLOH LLC, 19995 SW Stafford Road, #B, West Linn, OR 97068

Site Address: North side of SE Tenino Street approximately 100 feet west of the

intersection with SE 17th Avenue

Legal Description: BLOCK 76 LOT 5, SELLWOOD

Tax Account No.: R752712650 **State ID No.:** 1S1E23DC 08901

Quarter Section: 3832

Neighborhood: Sellwood-Moreland, contact Ellen Burr at 503-234-2233. Sellwood-Westmoreland, contact Tom Brown at 503-381-6543.

District Coalition: Southeast Uplift, contact Bob Kellett at 503-232-0010.

Plan District: None

Zoning: Residential 2,000 (R2) w/ Alternative Design Density (a) and Design

(d) Overlays

Case Type: Land Division Partition (LDP)

Procedure: Type I, an administrative decision with appeal to the Oregon Land Use

Board of Appeals (LUBA).

Proposal:

The applicant is proposing to partition the subject property into two equally sized parcels of 2,500 square feet that may accommodate attached or detached houses.

This partition is reviewed through a Type I land use review because: (1) the site is in a residential zone; (2) fewer than four lots are proposed; (3) none of the lots, utilities, or services are proposed within a Potential Landslide Hazard or Flood Hazard Area, and; (4) no other concurrent land use reviews (such as an Adjustment, Design Review, or Environmental Review) are requested or required (see 33.660.110).

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010). ORS 92.010 defines "parcel" as a single unit of land created by a partition of land. The applicant's proposal is to create 2 units of land. Therefore this land division is considered a partition.

Relevant Approval Criteria:

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

FACTS

Site and Vicinity: The site is located on the north side of SE Tenino Street approximately 100 feet west of the intersection with SE 17th Avenue. A lot confirmation (10-151244 PR) was approved to establish the site separately from property addressed 8123 SE 17th Avenue. The site is void of any improvements with the exception of paved vehicle area once associated with the aforementioned parent property. No trees are located within the land division site and the topography is relatively flat. The surrounding vicinity is primarily composed of single family development. Commercial zoning and development is located to the north and east of the site along SE 17th Avenue and SE Tacoma Street.

Infrastructure:

- **Streets** The site has approximately 50 feet of frontage on SE Tenino Street. At this location, SE Tenino Street is classified as a local service street for all modes in the Transportation System Plan (TSP). Tri-Met provides transit service approximately 100 feet east of the site ON SE 17th Avenue via Bus #70. Parking is currently allowed on both sides of SE Tenino Street. At this location, SE Tenino Street is improved with a 22 foot paved roadway surface and pedestrian corridor that consists of a 9 foot planter, 6 foot sidewalk and 3 foot setback to private property (9-6-3) within a 60 foot wide right-of-way.
- **Water Service** There is an existing 8-inch CI water main in SE Tenino Street.
- **Sanitary Service** There is an existing 10-inch clay public combination sewer main in SE Tenino Street.

Zoning: The R2 designation is one of the City's multi-dwelling zones which is intended to create and maintain higher density residential neighborhoods. The zone implements the comprehensive plan policies and designations for multi-dwelling housing.

The "a" overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. This land division proposal is <u>not</u> using any of the provisions of the "a" overlay.

The "d" overlay promotes the conservation and enhancement of areas of the City with special historic, architectural or cultural value. New development and exterior modifications to existing development must meet the Community Design Standards (Chapter 33.218) or are subject to design review.

Land Use History: City records indicate there are no prior land use reviews for this site.

Agency Review: Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. Please see Exhibits "E" for details.

Neighborhood Review: A Notice of Proposal in Your Neighborhood was mailed on **December 21, 2012**. No written responses have been received from the Neighborhood Association or notified property owners in response to the proposal.

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:
В	33.630 – Tree Preservation	No significant trees or trees in excess of 6 inches in diameter are located fully on the site or outside of the environmental zone on the site.
С	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	Not applicable. These standards only apply to land divisions in the RF through R2.5 zones.
F	33.634 - Recreation Area	Not applicable. The minimum required density is less than 40 units.
Н	33.636 - Tracts and Easements	No tracts or easements have been proposed or will be required.
I	33.639 - Solar Access	The proposed development is for something other than single-dwelling detached homes.
J	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the site outside of environmental zones.
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.
	33.654.110.B.3 - Pedestrian connections in the I zones	The 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.E - Pedestrian Connections	There are no pedestrian connections proposed or required
	33.654.120.F - Alleys	No alleys are proposed or required
	33.654.120.G - Shared Courts	No shared courts are proposed or required
	33.654.130.D - Partial rights-of-way	No partial public streets are proposed or required

Applicable Approval Criteria are:

A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.

Findings: Chapter 33.612 contains the density and lot dimension requirements applicable in the R3 through IR zones. The applicant is proposing two parcels that may accommodate attached or detached houses.

Single-dwelling or duplex development is proposed for some or the entire site, therefore the applicant must show how the proposed lots can meet minimum density and not exceed the maximum density stated in Table 120-3. Minimum density in the R2 zone is one unit per 2,500 square feet and the maximum density is one unit per 2,000 square feet. The total site area shown on the applicant's survey is 5,000 square feet. Therefore, the site has a minimum required density of 2 units and a maximum density of 2 units.

The required and proposed lot dimensions are shown in the following table:

R2	Minimum	Minimum	Minimum	Minimum
	lot area	lot width	lot depth	front lot line
	(square feet)	(square feet)	(square feet)	(square feet)
Attached Houses	1,600	15	none	15
Detached Houses	1,600	25	none	25
Parcel 1	2,500	25	100	25
Parcel 2	2,500	25	100	25

^{*} Width is measured from the midpoints of opposite lot lines.

The findings above show that the applicable density and lot dimension standards are met. Therefore this criterion is met.

G. Clearing, Grading and Land Suitability. The approval criteria of Chapter 33.635, Clearing, Grading and Land Suitability must be met.

Findings:

Clearing and Grading

The regulations of Chapter 33.635 ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements, and limit the impacts of erosion and sedimentation to help protect water quality and aquatic habitat. In this case the site is primarily flat, and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the site to make the new lots developable. This criterion is met.

Land Suitability

The site is currently in residential use, and there is no record of any other use in the past. As indicated above, the site is relatively flat and contains no known geological hazards. Therefore, there are no anticipated land suitability issues and the new lots can be considered suitable for new development. This criterion is met.

- K. Transportation impacts. The approval criteria of Chapter 33.641, Transportation Impacts, must be met; and,
- L. Services and utilities. The regulations and criteria of Chapters 33.651 through 33.654, which address services and utilities, must be met.

Findings: The regulations of Chapter 33.641 allow the traffic impacts caused by dividing and then developing land to be identified, evaluated, and mitigated for if necessary. Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way. The criteria and standards are met as shown in the following table:

33.651 Water Service standard - See Exhibit E.3

The water standards of 33.651 have been verified and noted earlier in this decision. Water is available to serve the proposed development from the water main SE Tenino Street. This criterion is met.

33.652 Sanitary Sewer Disposal Service standards - See Exhibit E.1

The sanitary sewer standards of 33.652 have been verified and noted earlier in this decision. There is an existing public combination sewer main located in SE Tenino Street can serve the sanitary needs of the proposed parcels. This criterion is met.

33.653.020 & .030 Stormwater Management criteria and standards - See Exhibit E.1

BES has verified that the stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater. No stormwater tract is proposed or required. Therefore, criterion A is not applicable. The applicant has proposed the following stormwater management methods:

• **Parcels 1 & 2:** Stormwater from these lots will be directed to individual drywells that will treat the water and slowly infiltrate it into the ground. Each of these lots has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized home. The Bureau of Environmental Services has indicated conceptual approval of the drywells. This criterion is met.

33.654.110.B.1 -Through streets and pedestrian connections

33.654.130.B - Extension of existing public dead-end streets & pedestrian connections 33.654.130.C - Future extension of proposed dead-end streets & pedestrian connections

Generally, through streets should be provided no more than 530 feet apart and at least 200 feet apart. The Portland Bureau of Transportation has provided the following evaluation of connectivity for this proposal (Exhibit E.2):

No street connections have been identified in the vicinity of this property in the Portland Master Street Plan document. The above referenced street spacing goals are satisfied along the subject block and beyond. The 330-ft spacing goal for pedestrian connections is satisfied only in the east-west direction, but not the north-south direction. The subject block is representative of the block pattern in the general area in terms of orientation and length. As with other blocks in the area, the subject block is primarily built out with the type and density of the expected housing for the area's zoning. No further street or pedestrian connections are physically possible without impacting existing development on the subject block and beyond. PBOT has no concerns relative to connectivity or locations of rights-of-way associates with the proposed land division partition.

For the reasons described above, this criterion is met.

33.641 - Transportation Impacts - 33.641.020 and 33.641.030

33.654.120.C Width and Design of the street right-of-way

33.654.130.D Partial Rights of way

The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. The Development Review Section of the Portland Bureau of Transportation has reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, and for potential impacts upon transportation services. PBOT's Analysis (Exhibit E.2) is quoted, in part, as follows:

The proposed land division will create one new parcel (from the existing lot) in order to accommodate two new attached homes. Referring to the ITE Trip Generation Manual, 9^{th} Edition, there will be 2 new AM peak hour trip and 2 additional PM peak hour trip (20 additional total daily trips) that may result from the development proposal on the site.

Although the new peak hour trips are insignificant, PBOT staff is aware of potential capacity issues with the intersection of SE Tenino/SE 17th Ave. Accordingly, the applicant provided an abbreviated Traffic Impact Study (TIS) prepared by a professional traffic consultant to address this evaluation factor.

The intersection of SE Tenino/SE 17th Ave is stop-controlled; through traffic along SE 17th Ave does not stop. During the peak hours, because of the extended queues from the intersection of SE Tacoma/SE 17th (described below) the intersection at SE Tenino/SE 17th Ave operated with additional delays and queuing. Based on observations of the intersection during peak hours by the applicant's traffic consultant, it is currently operating at LOS C during the AM peak hour and LOS D during the PM peak hour. PBOT's concerns related to potential capacity issues stem from the nearby signalized intersection to the north at SE Tacoma/SE 17th Ave. Traffic count data was collected by the applicant's traffic consultant for the intersection of SE Tacoma/SE 17th to prepare an operational analysis of existing conditions. Based on acceptable industry methodologies, the intersection was calculated to operate at LOS C during the AM and PM peak hours. Significant queues were observed to occur at the intersection during these time frames, resulting in longer average delays than reported using said methodologies. Northbound queues were observed to extend beyond the intersection of SE Tenino/SE 17th during the peak hours, affecting its operations.

However, the proposed development is located within a well-connected grid system of streets. During the peak hours, when queues from the SE Tacoma/SE 17th intersection may extend beyond nearby intersections, site trips are likely to utilize streets and intersections throughout the grid to avoid congestion and delays. Given the variety of opportunities for trip distribution throughout the surrounding area's robust grid system, that will enable site trips generated by the proposed development to disburse beyond the congested intersection at SE Tacoma/SE 17th Ave, as well as the affected SE Tenino/SE 17th intersection, the expected minimal trip generation will result in a de minimus impact (too insignificant to warrant any concerns) on the operation of these intersections.

No significant negative impacts are expected to occur in relation to any of the other evaluation factors. The site is served by nearby transit service along SE 17^{th} Ave, east of the site (via Tri-Met route #70 [12^{th} Ave/NE 33^{rd} Ave]). There are existing sidewalk corridors throughout the vicinity that facilitate pedestrian travel. There are identified bike facilities (Portland Bike/Walk Map) in the area including a Shared Roadway along SE 15^{th} Ave, west of the site, and a Neighborhood Greenway/signed & marked route, along SE Umatilla, one block south of the site.

With regard to impacts to on-street parking, the new residences that will be developed on the site will include on-site parking opportunities for at least one vehicle on each parcel. Although the applicant has shown separate driveways and curb cuts for each unit, PBOT staff has advised the applicant that access to the units will need to be via a shared driveway/curb cut. The applicant filed a Design Exception request (12-205047 TR) to retain the proposed split driveway design: this request was denied. The single, shared curb cut/driveway will allow for uninterrupted curb length along the subject site frontage to accommodate some on-street parking. The shared curb cut/driveway will also minimize impacts to pedestrians. Based on review of Google-Street view, the homes west of the subject site and along both sides of SE Tenino appear to be served by driveways and garages that can accommodate at least 2 vehicles on each respective lot along the street. With at least an on-site parking space being provided on both proposed parcels, the impacts to on-street parking should be negligible.

SE Tenino is a straight, generally flat street with no sight obstructions. Parking is allowed on both sides of the street and typical of any street that allows parking, sight distance can be partially obstructed by parked vehicles.

Given the area in which the site is located, the minimal increase in vehicle trips that will be generated by the proposed partition, and the classification of the street within the

transportation system, PBOT expects that the transportation system will be able to support the existing development in the area as well as the proposed development.

For the reasons described above, this criterion is met.

33.654.130.A - Utilities (defined as telephone, cable, natural gas, electric, etc.)

Any easements that may be needed for private utilities that cannot be accommodated within the adjacent right-of-ways can be provided on the final plat. At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. Therefore, this criterion is met.

DEVELOPMENT STANDARDS

Development standards that are not relevant to the land division review, have not been addressed in the review, but will have to be met at the time that each of the proposed lots is developed.

Future Development

Among the various development standards that will be applicable to this lot, the applicant should take note of:

• <u>Design Overlay (d)</u>: New development and exterior modifications to existing development must meet the Community Design Standards (Chapter 33.218) or are subject to design review.

Existing development that will remain after the land division. The site is currently vacant, so the division of the property will not cause the structures to move out of conformance or further out of conformance with any development standard applicable in the R2 zone. Therefore, this land division proposal can meet the requirements of 33.700.015.

OTHER TECHNICAL REQUIREMENTS

Technical decisions have been made as part of this review process. These decisions have been made based on other City Titles, adopted technical manuals, and the technical expertise of appropriate service agencies. These related technical decisions are not considered land use actions. If future technical decisions result in changes that bring the project out of conformance with this land use decision, a new land use review may be required. The following is a summary of technical service standards applicable to this preliminary partition proposal.

Bureau	Code Authority and Topic	Contact Information
Water Bureau	Title 21 - Water availability	503-823-7404 www.portlandonline.com/water
Environmental Services	Title 17; 2008 Stormwater Manual Sewer availability & Stormwater Management	503-823-7740 www.portlandonline.com/bes
Fire Bureau	Title 31 Policy B-1 - Emergency Access	503-823-3700 www.portlandonline.com/fire
Transportation	Title 17, Transportation System Plan Design of public street	503-823-5185 www.portlandonline.com/transportation
Development Services	Titles 24 –27, Admin Rules for Private Rights of Way Building Code, Erosion Control, Flood plain, Site Development & Private Streets	503-823-7300 www.portlandonline.com/bds

As authorized in Section 33.800.070 of the Zoning Code conditions of approval related to these technical standards have been included in the Administrative Decision on this proposal.

• The applicant must meet the requirements of the Fire Bureau in regards to fire flow/water supply, fire hydrant spacing, and aerial Fire Department access roads. These requirements are based on the technical standards of Title 31 and Oregon Fire Code (Exhibit E.4).

CONCLUSIONS

The applicant has proposed a 2 parcel partition, as shown on the attached preliminary plans (Exhibits C.1-C.5). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are: Fire Bureau requirements.

With conditions of approval that address these requirements this proposal can be approved.

ADMINISTRATIVE DECISION

Approval of a Preliminary Plan for a 2-parcel partition, that will result in two lots for attached houses, as illustrated with Exhibits C.1-C.5, subject to the following conditions:

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

- 1. The applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant. The applicant must provide verification to the Fire Bureau that Appendix B of the Fire Code is met, the exception is used, or provide an approved Fire Code Appeal prior final plat approval.
- B. The following conditions are applicable to site preparation and the development of individual lots:
- 1. The applicant must provide a fire access way that meets the Fire Bureau requirements related to aerial fire department access. Aerial access applies to buildings that exceed 30 feet in height as measure to the bottom of the eave of the structure or the top of the parapet for a flat roof.

Staff Planner: Sean Williams

Decision rendered by:

By authority of the Director of the Bureau of Development Services

on July 9, 2013

Decision mailed: July 11, 2013

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 October 26, 2012, and was determined to be complete on December 19, 2012.

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 October 26, 2012.

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.5.

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.

This decision, and any conditions associated with it, is final. It may be appealed to the Oregon Land Use Board of Appeals (LUBA), within 21 days of the date the decision is mailed, as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that a petitioner at LUBA must have submitted written testimony during the comment period for this land use review. You may call LUBA at 1-503-373-1265 for further information on filing an appeal.

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.

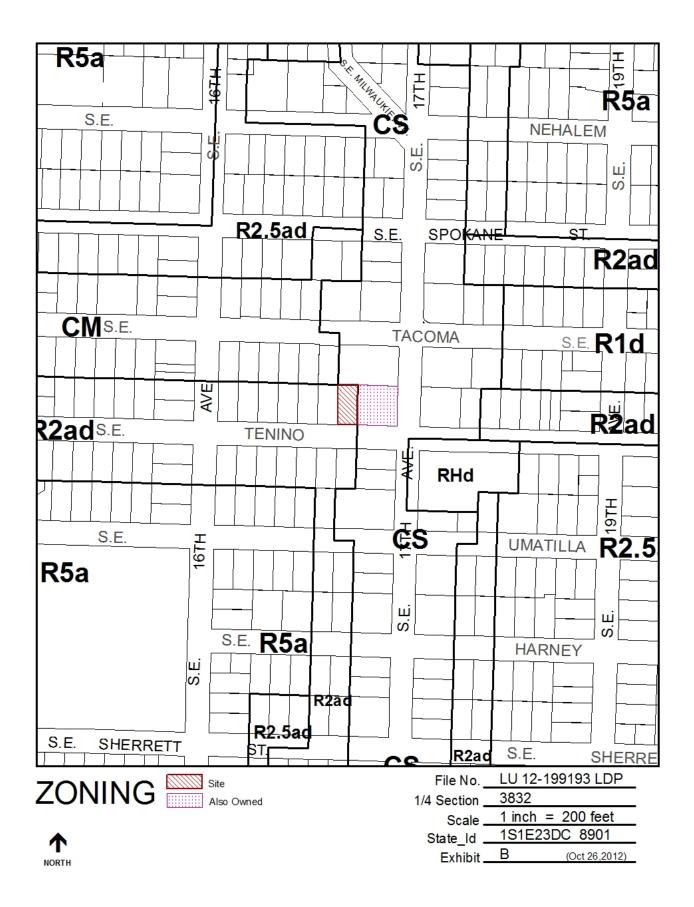
Recording the land division. The final land division plat must be submitted to the City within three years of the date of the City's final approval of the preliminary plan. This final plat must be recorded with the County Recorder and Assessors Office after it is signed by the Planning Director or delegate, the City Engineer, and the City Land Use Hearings Officer, and approved by the County Surveyor. The approved preliminary plan will expire unless a final plat is submitted within three years of the date of the City's approval of the preliminary plan.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

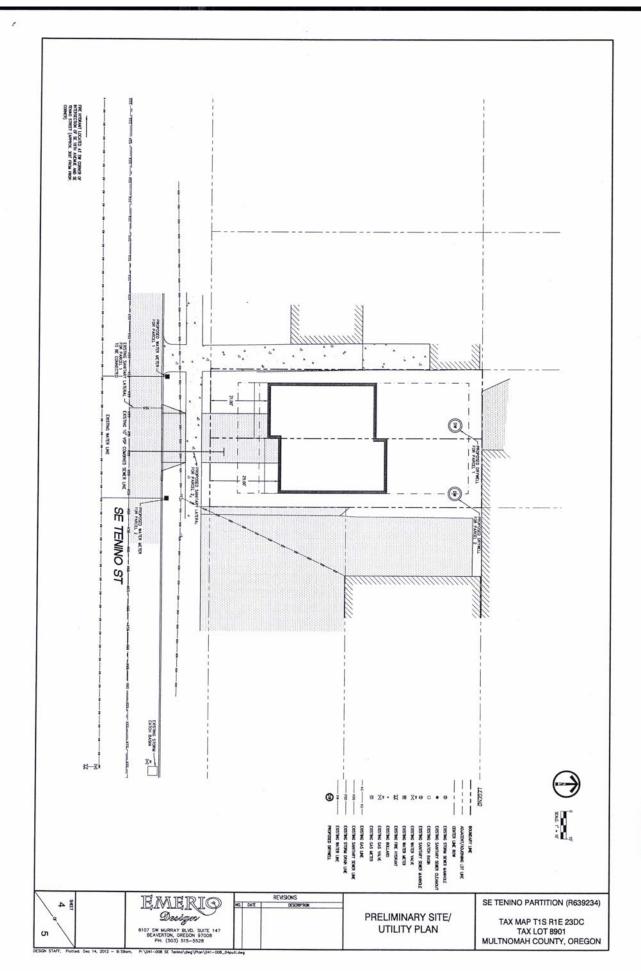
- A. Applicant's Statement
 - 1. Land Division Approval Criteria
 - 2. Arborist report
 - 3. Simplified Approach stormwater report
 - 4. Transportation Impact Study
 - 5. Request for extension of 120-day review period (3)
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Cover Sheet
 - 2. Existing Conditions Plan
 - 3. Preliminary Plat (attached)
 - 4. Preliminary Site/Utility Plan (attached)
 - 5. Preliminary Grading Plan
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Bureau of Environmental Services
 - 2. Bureau of Transportation Engineering and Development Review
 - 3. Water Bureau
 - 4. Fire Bureau
 - 5. Site Development Review Section of BDS
 - 6. Bureau of Parks, Forestry Division
 - 7. Life Safety Plans Examiner
- F. Correspondence: NONE
- G. Other:
 - 1. Original LU Application
 - 2. Incomplete letter w/ RFC responses

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).



PARCEL 1 SE TENINO ST SE TENINO PARTITION (R639234) PRELIMINARY PLAT TAX MAP T1S R1E 23DC TAX LOT 8901 MULTNOMAH COUNTY, OREGON

CASE NO 12-199193 EXHIBIT 6.2



CASE NO. 12-199193 EXHIBIT C.3