



CITY OF PORTLAND

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DECISION OF THE HEARINGS OFFICER ON APPEAL OF ADMINISTRATIVE DECISION

I. GENERAL INFORMATION

File No.: LU 14-215760 CU (Hearings Office 4140033)

Applicants/Owners: Frank and Anna Halpin
4449 SW Council Crest Drive
Portland, OR 97239

Appellants: Brian Wannamaker
4405 SW Council Crest Drive
Portland, OR 97239

Healy Heights Neighborhood Association
Attn: P. Mason Van Buren
4273 SW Council Crest Drive
Portland, OR 97239

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Staff Representative: Andrew Gulizia

Site Address: 4449 SW Council Crest Drive

Legal Description: TL 1900 0.27 ACRES, SECTION 09 1S 1E

Tax Account No.: R991090820

State ID No.: 1S1E09CD 01900

Quarter Section: 3427

Neighborhood: Healy Heights and Southwest Hills Residential League

District Neighborhood Coalition: Southwest Neighborhoods Inc.

Zoning: R10 – Single-Dwelling Residential 10,000

Land Use Review: Type II, CU – Conditional Use Review

BDS Administrative Decision: Approval with conditions

Public Hearing: A public hearing was opened on at 1:32 p.m. on January 28, 2015, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 4:59 p.m. (the “Hearing”). The record was held open until 4:30 p.m. on February 4, 2015 for new evidence (“Initial Open Record Period”). The Hearings Officer gave until 4:30 p.m. on February 5, 2015 for anyone to request the record be reopened. If no request for the record to be reopened was received, the record for the Applicants’ final rebuttal would close at 4:30 p.m. on February 11, 2015. On February 5, 2015, Jeffrey L. Kleinman, Appellant Brian Wannamaker’s representative, submitted a request to reopen the record (Exhibit H.45). The Hearings Officer granted the request to reopen the record for new evidence. An Interim Order was mailed on February 6, 2015 reopening the record for new evidence from February 6, 2015 through 4:30 p.m. on February 11, 2015. The Applicants’ were allowed to make a final argument from 4:31 p.m. on February 11, 2015 until 4:30 p.m. on February 18, 2015 (“2nd Open Record Period”). The record closed at that at 4:30 p.m. on February 18, 2015.

Testified at the Hearing:

Andrew Gulizia
Mason Van Buren
Jae Lee
Jeff Kleinman
Brian Wannamaker
Michael Dowd
Frank Halpin

Proposal: Frank and Anna Halpin (the “Applicants”) request Conditional Use approval to operate a Type B Accessory Short-Term Rental facility in the existing house at 4449 SW Council Crest Drive, Portland, Oregon (the “Subject Property”). No exterior alterations to the house are proposed. The Applicants will reside in the house at the Subject Property for more than 270 days per calendar year and offer up to five (5) bedrooms for short-term rental. After reviewing public comments received during the review, the Applicants submitted a revised proposal which will limit the scope of the operation (Exhibit A.3, attached).

Type B Accessory Short-Term Rentals are allowed in residential zones when the proposal meets the approval criteria and applicable standards.

Applicants submitted, at the Hearing, revisions to the Accessory Short-Term Rental Agreement (Exhibit H.25 – the “Revised Agreement”) and a document labeled “Requested Changes in Green” (Exhibit H.30). The Hearings Officer notes that Revised Agreement and the Requested Changes document, among other things, proposed to modify restrictions upon renters staying at the Subject Property. The Hearings Officer did not consider the suggested changes set forth in Exhibits H.25 and H.30 in making the decision in this case, as the Hearings Officer interpreted the

suggested changes as increasing impacts upon neighboring properties. The Hearings Officer utilized Exhibit A.3 and House Rules (as attached to Exhibit H.1) in making this decision.

Relevant Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33. The relevant criteria are in Section 33.815.105 (Conditional Use Approval Criteria for Institutional and Other Uses in a Residential Zone). The regulations in Chapter 33.207 (Accessory Short-Term Rentals) also must be addressed in this case.

II. ANALYSIS

Site and Vicinity: The Subject Property is an 11,620-square-foot lot located on the west side of SW Council Crest Drive, between SW Carl Drive and SW Fairmount Boulevard. This portion of SW Council Crest Drive has no sidewalks and some street parking is available on the shoulder of the road. The Subject Property is developed with a multi-story, single-dwelling house with two attached two-car garages. Neighboring lots to the north, east, and west of the Subject Property are also developed with single-dwelling homes. Properties south of the Subject Property are developed with Radio Frequency Transmission facilities and water towers.

Zoning: The R10 designation is one of the City's single-dwelling residential zones, which are intended to preserve land for housing and to promote housing opportunities for individual households. The development standards work together to promote desirable residential areas by addressing aesthetically pleasing environments, safety, privacy, energy conservation, and recreational opportunities.

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

- LUR 91-00350 AD: Adjustment approval to reduce the north and south side setback requirements (1991).
- LUR 99-00506 AD: Adjustment approval to reduce the south side setback requirement (1999).

Agency Review: A "Notice of Proposal" was mailed October 10, 2014. The following bureaus responded:

- The Bureau of Environmental Services ("BES") responded with no concerns (Exhibit E.1).
- The Bureau of Transportation Engineering and Development ("PBOT") responded with information concerning how the proposal meets transportation-related approval criteria. Details of this response are included below under Zoning Code Approval Criteria (Exhibit E.2).
- The Water Bureau responded with information on water service and raised no concerns about the proposal (Exhibit E.3).
- The Fire Bureau responded with no concerns (Exhibit E.4).
- The Police Bureau responded that the bureau is capable of serving the proposed use. The comments included recommendations to ensure the address marker is visible and to maintain landscaping to maximize visibility for officers (Exhibit E.5).

- The Site Development Section ("Site Development") responded with no concerns (Exhibit E.6).
- The Life Safety Section of BDS ("Life Safety") responded with no concerns (Exhibit E.7).
- The Urban Forestry Section of Portland Parks and Recreation ("Forestry") responded with no concerns (Exhibit E.8).

Neighborhood Review: This proposal generated extensive neighborhood interest. Many neighbors participated in the process by providing written comments to BDS. Following a BDS Notice of a Type II Decision on a Proposal in Your Neighborhood (Attachment to Exhibit H.1 – hereafter the "Administrative Decision"), two separate appeals were filed disputing the validity of the Administrative Decision (Exhibit H.1 – hereafter "The Appeals"). One appeal was filed by the Healy Heights Neighborhood Association and the other by Mr. Brian Wannamaker (collectively the entity/person filing the appeal are referred to as "Appellants"). The Hearing before the City Land Use Hearings Officer ("Hearings Officer") was held on January 28, 2015. Appellants and persons in opposition (hereafter collectively referred to as "Opponents") testified at the Hearing alleging the Administrative Decision was not correct.

The Hearings Officer shall address Opponents' arguments related to relevant approval criteria in the findings below.

General Findings:

Does PCC 33.207 require an owner/long-term renter (hereafter referenced as "Owner") to be present when rooms are rented?

The general findings apply to the entire decision in this case and shall be considered as additional findings to all relevant approval criteria.

Opponents argue that PCC 33.207 does not allow an Owner (includes a long-term renter) to be absent from a property during times the property is being rented. A corollary argument was also presented by Opponents is that rental of an "entire house" or "whole house" is not allowed under PCC 33.207.

Opponents start their argument by referencing PCC 33.207.020. PCC 33.207.020 A states:

"Description. An accessory short-term rental is where an individual or family resides in a dwelling unit and rents bedrooms to overnight guests for fewer than 30 days."

Opponents assert that the above-quoted PCC 33.207.020 A, if read literally, requires an individual or family to reside at the short-term rental property at the same time as the short-term renters are present.

PCC 33.207.020 B defines "resident" as "the individual or family who resides in the dwelling unit. The resident can be the owner or a long-term renter."

The Hearings Officer finds that PCC 33.207.020, if considered in isolation, can be interpreted as suggested by Opponents; the Owner is required to reside in the short-term rental property during times when it is being rented.

BDS staff and the Applicants argue that the language of PCC 33.207.020 does not clearly state the Owner must be present during times a property is being rented. BDS staff references other relevant sections of PCC 33.207 in support of its argument. The Hearings Officer agrees with BDS and the Applicants that PCC 33.207.020 does not clearly and unequivocally state the Owner must be present during times a property is being used as a short-term rental. The Hearings Officer finds, at this point in the analysis, that PCC 33.207.020 is capable of being interpreted as suggested by both Opponents and BDS/Applicants.

When a section of code/law is subject to more than one interpretation Oregon Courts have set forth an analytical template to resolve the competing interpretations. *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 859 P.2d 1143 (1993), *State v. Gaines*, 346 Or. 160, 206 P.3d 1042 (2009), *State v. J.C.N.-V* ---P.3d ---, 2015 (WL 292763) *Sarathy v. Washington County*, LUBA No. 2011-065 The Hearings Officer shall, for the remainder of the findings in this case, refer to the template set forth in these cases as the *PGE/Gaines* template. The *PGE/Gaines* template is equally applicable to City ordinances. *State v. Tschantre*, 182 Or. App. 313, 50 P.3d 1174 (2002), *City of Hillsboro v. Housing Devel. Corp.*, 61 Or.App 484, 657 P.2d 726 (1983)

The first step, in the *PGE/Gaines* template, is to review the text and context of PCC 33.207.020 A. PCC 33.207.020 is titled "Description and Definition." PCC 33.207.020 A and B.1 are quoted above. The Hearings Officer finds, based solely upon a review of the "text" of PCC 33.207.020 A, the language is ambiguous when trying to determine if an Owner must be present at the time a property is being operated as a short-term rental.

The Hearings Officer next moves to reviewing the "context" of the language included in PCC 33.207.020 A. The Hearings Officer notes that PCC 33.207.020 B.2 defines "Operator" as a "resident or a person or entity that is designated by the resident to manage the accessory short-term rental." The Hearings Officer interprets the "Operator" definition, contemplates the possibility that a person/entity other than the Owners at a property can manage the short-term rentals at the property. The Hearings Officer finds the manager (person/entity) could be on-site management or possibly off-site management.

The Hearings Officer takes note of PCC 33.207.040 C, which states the following:

"The resident of a Type A accessory short-term rental must obtain a permit from the Bureau of Development Services. It is the responsibility of the resident to obtain the permit every two years. The permit requires the resident, and the operator if the operator is not the resident, to agree to abide by the requirements of this section..." (See also PCC 33.207.040 C.2.a.)

While the above-quoted language is directly applicable to a Type A short-term rental permit (rental of 1 or 2 bedrooms), the Hearings Officer finds it relevant to the PCC 33.207.020 A "context" analysis. The Hearings Officer finds the PCC 33.207.040 C language, as quoted above,

can be reasonably interpreted to mean that an off-site operator may be responsible for short-term rentals at a property.

Also, in reviewing the "context" of the language included in PCC 33.207.020 A, the Hearings Officer takes note of PCC 33.207.050 A.1. This section states the following:

"Accessory Use. A Type B accessory short-term rental must be accessory to a Household Living use on a site. This means that a resident must occupy the dwelling for at least 270 days during each calendar year, and unless allowed by Paragraph .050.B.2 or .050.B.3, the bedrooms rented to guests must be within the dwelling the resident occupies."

The Hearings Officer finds that the application, in this case, is for a Type B accessory short-term rental approval. The Hearings Officer finds the above-quoted definition of accessory use further refines the PCC 33.207.020 descriptions/definitions. The Hearings Officer finds that a "resident" (per PCC 33.207.020 B.1) means an individual or family who resides in a property for at least 270 days during a calendar year. The Hearings Officer finds that if the Owner occupies a property for at least 270 days a year the property qualifies as a "Type B accessory short-term rental" unit. The Hearings Officer finds that PCC 33.207.050 does not require an individual or family to reside in the property for all days of a year to qualify as an accessory short-term rental.

The Hearings Officer reviewed the PCC general definition section (PCC 910) and could find no defined words relevant to this analysis. The Hearings Officer does take note of PCC 33.700.070. PCC 33.700.070 (General Rules for Application of Code Language). PCC 33.700.070 A states, in part, the following:

"Reading and applying the code. Literal readings of the code language will be used. Regulations are no more or less strict than as stated."

PCC 33.700.070 states, in part, the following:

"Proposals for uses, development, or land divisions where the Code is silent or where the rules of this section do not provide a basis for concluding that the proposal is allowed or prohibited."

The Hearings Officer finds a review of the "text" and "context" of PCC 33.207.020 A is inconclusive. Based upon the interpretive tenets set forth in PCC 33.700.070, quoted above, the Hearings Officer finds no definitive language in PCC 33.207.020 A prohibiting an Owner from renting out bedrooms (per limits of Type A or Type B) when the owner is away from the property on vacation or for some other purpose. Likewise, the Hearings Officer finds no clear language specifically authorizing the short-term rental of a property when the Owner is absent from the property. Based upon PCC 33.700.070, the Hearings Officer is not permitted to insert a restriction into PCC 33.207 that is not clearly and definitively set forth in the code language.

If, under the PGE/Gaines template, a review of the "text" and "context" is inconclusive, the next step is to consider legislative history. In this case both Opponents and BDS staff provided written commentary related to the legislative history of PC 33.207.

Opponents, through attorney Jeffrey Kleinman ("Kleinman"), submitted an open-record response, related to the legislative history of PCC 33.207, to the Hearings Officer (Exhibit H.42). Kleinman, in Exhibit H.42, included the following statements:

"We have been able to locate legislative history on the specific issue we raised at the hearing - that the Code does not allow the applicant to take off for three months of the year and rent out his home as a VRBO (Vacation Rental by Owner) - type rental while he and his family travel. In his testimony, the applicant was clear in stating that he enjoys the benefits using VRBO to rent houses in distant locales for his family of five, and would like to offer similar lodging to others at the same time. However, when the City Council adopted the final version of the current ordinance, it was equally clear in stating that this would not be allowed.

The final, as-adopted version of the ordinance came before the City Council on July 23, 2014. The auditor has made transcripts of this hearing and the subsequent one held on July 30 available from the closed captioning of the televised proceedings, as understaffing has delayed the production of minutes. Complete transcripts of the discussion in question are attached for reference as Exhibits A and B, respectively.

On July 23, the Council queried Sandra Wood on the final form of the ordinance:

'Hales: Any questions for the bureau?

Saltzman: I have one question. I want to make sure that ---I know that we were allowing homeowners to rent up to one or two bedrooms in their house.

Wood: Correct, through a type A. And then three to five bedrooms through a type B accessory short-term rental through the conditional use process.

Saltzman: OK. That's like a B&B, bed and breakfast.

Wood: Yes

Saltzman: So, can somebody rent their entire house for a period of time as well under the new ordinance?

Wood: So, the new ordinance requires that the primary resident live at the house for at least nine months, and that's the amendment that you passed last time. So if they're there for nine months and they're going to be gone for three months, they could pull a type A permit and rent out one or two bedrooms. The idea is that they're not renting out the full house. If they have a five-bedroom house, they're not renting out all five bedrooms.

Saltzman: Rent out one or two of their bedrooms, and not actually be there for three months maximum?

Wood: That's a possibility, yes. That would be the maximum.

Saltzman: OK, thanks.'
(Emphasis added)

Quod erat demonstrandum. The determinative question was asked and answered.

The ordinance language was approved in final form on July 32, and the ordinance was adopted following its second reading on July 30. On that occasion, the following Council discussion took place:

Saltzman: ***It's allowing people in many cases to have socialization opportunities to show off Portland to people visiting, but also as important to make money to pay their property tax bills.***

Fritz: ***Thank you to the mayor for indicating a more robust process on that, looking at the pros and cons of extending this to the multi-family, and I hope we look at whole house vacation rentals as well, because it's likely those are happening to, or will happen. We want to have a comprehensive set of policies.

Hales: ***So we will be called on again in other issues - not just multi-family portion of this questions, not just the vacation rental of the whole house issue, but in other areas like taxicabs to figure this out. How to we accommodate the new economy within the structure of regulations we have?'
(Emphasis added.)

Here, the Council made clear that the VRBO type of short-term whole-house rental enjoyed by the applicant elsewhere is not yet permitted in Portland. Instead, the city will revisit that topic, along with that of short-term apartment rentals, at a later date. In any event, under the law as it now exists, this application must be denied."

BDS staff (Exhibit H.41) referenced a document prepared by the Bureau of Planning and Sustainability ("BPS") and the City of Portland Planning Commission ("Planning Commission"). The document, titled Regulatory Improvement Code Amendment Package 6 ("RICA #6"), was provided to City Council members as part of their deliberation related to the enactment of PCC 33.207 (and other sections of the PCC). Wood, the Supervising Planner for the BPS, participated in the process of developing the RICA #6.

In a letter from André Baugh ("Baugh"), Chair of the City Planning Commission (RICA #6, page 4/75) is the following statement:

"We discussed, as some testifiers suggested, adding a requirement that the host be required to remain at the property while there are overnight guests staying there. However, we found that the types of short-term rental arrangements vary widely and that dictating the amount of time the host would need to be on-site adds an unreasonable amount of regulatory complexity."

RICA #6 included commentaries by BPS staff. The intent of the commentaries was to assist City Council members during their deliberation of the proposed changes to the PCC; specifically the addition of section PCC 33.207. The following language can be found on pages 26 and 32 of the RICA #6:

"Accessory use. This regulation ensures that the short-term rental is accessory to the Household Living Use by requiring the resident to occupy the dwelling unit used for a short-term rental at least 270 days (roughly 9 months) during each calendar year. It also sets a limit to the number of nights a resident can have paying overnight guests and not be present in the unit to a little over 3 months."

With the RICA #6 document providing background the City Council considered various changes to the PCC. Wood offered testimony (as quoted above) on behalf of BPS and answered questions from City Council members. The relevant interchanges between Wood and Commissioner Saltzman are quoted above.

The Hearings Officer finds the language quoted from RICA #6 and Wood's answers to Commissioner Saltzman's questions clearly address whether an Owner was required to be present at times a property was operated as a PCC 33.207 short-term rental. The Hearings Officer finds that Kleinman's latin reference "*quod erat demonstrandum*" does apply in this case. However, the Hearings Officer disagrees with Kleinman's conclusion/interpretation.

The Hearings Officer finds Commissioner Saltzman clearly asked Wood if an individual/family (Owner) could rent out rooms in an accessory short-term rental "and not actually be there for three months" and Wood responded, "that's a possibility" under the proposed PCC 33.207.

Dowd, in support of the Appellants' argument that the Owner must be present to rent a property as a short-term rental, cited BDS's public online short-term rental information (<https://www.portlandoregon.gov/bds/65603>). Dowd included the following quote from the online information:

"The word 'accessory' in the title emphasizes that the primary use of the residential dwelling is long term occupancy, and only a part of the dwelling unit is used for short-term rental purposes."

Dowd did not include the following statement contained in the City's online information (<http://www.portlandoregon.gov/bds/66835>):

"Can I rent my house when I am away? Yes, with an accessory short-term rental permit both Type A & Type B, you must

reside in the dwelling unit with the accessory short-term rental at least 270 days per calendar year - roughly 9 months. There are no limits to the number of nights you may have a short-term rental. Therefore, the maximum number of days you may be away from home and renting to overnight guests is 95 - roughly 3 months."

As stated in the findings above, the Hearings Officer found that the language of PCC 33.207.020 A is ambiguous and capable of more than one plausible interpretation. The Hearings Officer finds a review of the text and context of PCC 3.207.020 A did not provide a definitive answer to the question of whether or not an Owner could rent out rooms in an accessory short-term property if the owner was not present during the rental periods. The Hearings Officer found the legislative history provided significant assistance in answering the question of whether an Owner need be present during all times that an accessory short-term rental may be rented. The Hearings Officer finds the Owner need not be present, so long as other requirements of PCC 33.207 are met, at all times the accessory short-term rooms are rented.

Does PCC 33.207 allow "entire house" or "whole house" rentals?

As noted in the preceding findings, the Opponents raised an argument that the Hearing Officer found to be corollary to the, "Must the owner or long-term renter be present at times a property is operated as a short-term rental" under PCC 33.207? This argument relates to the legality of renting an "entire house" or a "whole house" under PCC 33.207. "Entire house" or "whole house" as those phrases are used in this decision, relate to the rental of the entirety of a residential property; the bedrooms, baths, kitchen, and other rooms in the house. It is assumed that if the "entire house" or "whole house" is rented, the Owner will not be present in the "house."

The Hearings Officer incorporates the findings above (**Does PCC 33.207 require an Owner to be present when rooms are rented?**) as additional findings for this section.

The Hearings Officer finds the Appellants' reference (Exhibits H.42 and H.48) to July 30, 2014 testimony at City Council (adoption at second reading) by Mayor Hales and Commissioners Saltzman and Fritz do mention future consideration of the "vacation rental of the whole house issue." However, the Appellants did not direct the Hearings Officer to any comments by the Mayor or Commissioners indicating the future review was to consider either allowing "whole house" rentals or the prohibition of "whole house" rentals. The hearing comments by the Mayor and Commissioner Fritz were simply that the "whole house" rental issue would be considered in the future.

The Hearings Officer finds that Woods PCC 33.207 "not renting out the full house" testimony before Council was given in the context of a five-bedroom house with a Type A accessory short-term rental permit. Wood did not testify, based upon the evidence in the record of this case, that an owner of a two bedroom house with a Type A accessory short-term rental permit could not rent out both bedrooms when the owner or long-term tenant was away from the property. Wood did not say that short-term renters could not use the kitchen, bathrooms, and other rooms beyond the specific rented bedroom(s).

The Hearings Officer finds that an accessory short-term rental is limited by the number of bedrooms that can be rented and not limited by the concept of the “entire house” or “whole house.” This finding requires the Hearings Officer to address an additional argument made by Opponents. That argument is that only bedrooms may be rented (Exhibit H.39, page 3). On its face this argument is theoretically supportable by a literal reading of PCC 33.207; the Code does reference the renting of bedrooms. The Hearings Officer finds that while a renter may rent a “bedroom,” the renter may have access to one or more bathroom(s) located outside of the specifically rented bedroom(s), hallways, sitting rooms, kitchen and other “common rooms” without violation of PCC 33.207. The Hearings Officer rejects the argument that PCC 33.207 restricts short-term rental guests’ access solely to bedrooms.

The Hearings Officer finds, based upon the findings above (**Does PCC 33.207 require an Owner to be present when rooms are rented?**) and the lack of a clear prohibitive statement in PCC 33.207, that there is no PCC 33.207 restriction on rental of an “entire house” or “whole house.”

Accessory Use v. Second Primary Use.

Dowd argued, during his Hearing testimony and in written submissions (Exhibits H.21 and H.39), that the use of the Subject Property, as proposed in this application, would add a second primary use and not an accessory use. The Hearings Officer finds that the PCC is clear that renting rooms in a house, if the requirements of PCC 33.207 are met, is an accessory use. The Hearings Officer finds 2014 revisions to PCC 33.110.100, PCC 33.110.110 and PCC 33.920.110 are supportive of this position. The Hearings Officer finds Dowd’s argument, while creative, is not supported by the clear language of PCC 33.207.

ZONING CODE APPROVAL CRITERIA

Conditional Uses

33.815.010 Purpose

Certain uses are conditional uses instead of being allowed outright, although they may have beneficial effects and serve important public interests. They are subject to the conditional use regulations because they may, but do not necessarily, have significant adverse effects on the environment, overburden public services, change the desired character of an area, or create major nuisances. A review of these uses is necessary due to the potential individual or cumulative impacts they may have on the surrounding area or neighborhood. The conditional use review provides an opportunity to allow the use when there are minimal impacts, to allow the use but impose mitigation measures to address identified concerns, or to deny the use if the concerns cannot be resolved.

33.815.105 Institutional and Other Uses in R Zones

These approval criteria apply to all conditional uses in R zones except those specifically listed in sections below. The approval criteria allow institutions and other non-Household Living uses in a residential zone that maintain or do not significantly conflict with the appearance and function of residential areas. The approval criteria are:

- A. Proportion of Household Living uses.** The overall residential appearance and function of the area will not be significantly lessened due to the increased proportion of uses not in

the Household Living category in the residential area. Consideration includes the proposal by itself and in combination with other uses in the area not in the Household Living category and is specifically based on:

1. The number, size, and location of other uses not in the Household Living category in the residential area; and
2. The intensity and scale of the proposed use and of existing Household Living uses and other uses.

Findings: PCC 33.207.050 A.2 states that an application for a Type B accessory short-term rental permit must be processed through a conditional use review. Specifically, PCC 33.207.050 A.2 states, "The approval criteria are stated in 33.815.105, Institutional and other uses in R zones."

The Hearings Officer notes that PCC 33.815.105 generally applies to "institutions and other non-Household Living uses in a residential zone." The proposed use in this case is technically, under the PCC, an accessory to Household Living use. The proposed use is clearly not an institution and only arguably a non-Household Living use. Accessory use is defined, in PCC 33.910, as a "use or activity which is a subordinate part of the primary use and which is clearly incidental to a primary use on a site." The Hearings Officer finds that an accessory short-term rental use, therefore, is a subordinate part of the primary use. In this case the primary use is Household Living.

The finding in the preceding paragraph creates a potential problem in the application of approval criteria in PCC 33.815.105 A. PCC 33.815.105 A requires the Hearings Officer to consider the impacts created by allowing institutions or other non-Household Living uses upon the appearance and function of the nearby residential area. That comparison is obviously difficult if the accessory short-term rental use is considered a Household Living use. The Hearings Officer finds it should be presumed that City Council intended all of the provisions of PCC 33.815.105, unless expressly stated otherwise, to be given effect. To that end the Hearings Officer treats, where appropriate in review of PCC 33.815.105 only, the proposed accessory short-term rental use as if it were an institutional or non-Household Living use. The Hearings Officer does not, for the purposes of analysis under PCC 33.207, find that an accessory short-term rental use is an accessory use (subordinate to) a non-Household Living use.

The Hearings Officer describes "the area," as that phrase is used in this approval criterion, as being bordered on the west, south and east by SW Fairmount Boulevard and on the northwest by Healy Heights Park. The Hearings Officer does note, however, that the "area" most impacted by the proposal are the properties within 200 feet of the Subject Property.

Adjacent to the Subject Property to the south and southwest is an "antenna farm" characterized by open space, tall transmission towers and buildings associated with transmission towers. The "antenna farm" area is a non-Household Living use. Also located in close proximity to the Subject Property are two water towers (above-ground water storage facilities). The water towers are not Household Living uses.

Healy Heights Park is located to the north of the Subject Property. Healy Heights Park is not a Household Living use.

The Hearings Officer finds three existing non-Household Living uses (all of the tall antennas were lumped into one use – the “antenna farm” irrespective of underlying ownership/possessory right issues) in the residential area. The proposed accessory short-term rental use of the Subject Property would introduce a fourth non-Household Living use into the residential area.

The Hearings Officer now addresses whether or not the overall residential appearance and function of the area will be significantly lessened due to the addition of a fourth non-Household Living use. The Hearings Officer must consider the existing non-Household Living uses in combination with the proposed non-Household Living use.

The Hearings Officer finds the “antenna farm” has significant impacts upon the residential area. Based upon a review of photographs found in Exhibits H.7 and H.37, there is a rather large building associated with the “antenna farm” located immediately south and adjacent to the Subject Property (identified as an OPB building in Exhibit A.1). Also, Exhibits H.7 and H.37 show an institutionally appearing 6-foot high chain link fence and transmission towers. Exhibits H.23b and H.37 include photographs showing extremely tall transmission towers in close proximity to the Subject Property.

The Hearings Officer finds the “antenna farm” use is large in size and scale. The “antenna farm” is in very close proximity to the Subject Property; the OPB property/building is located adjacent to the Subject Property (Exhibit A.1). The Hearings Officer finds the most significant impact arising from the “antenna farm” is visual. The OPB fencing and building are industrial in appearance and the towers are very tall and, in some instances, loom over the residential area. The Hearings Officer finds the two water towers are located on SW Council Crest Drive, a dead end street, just south of the OPB building.

Based upon photographs in the record, the water towers are not visible from most parts of the residential area.

The Hearings Officer finds that Healy Heights Park, while a non-Household Living use, has minimal negative impacts and is generally considered a benefit to the residential area.

The Hearings Officer finds the residential area, in this case, is currently heavily impacted by non-Household Living uses. The Hearings Officer finds the intensity and scale of those non-Household Living uses (excepting for Healy Heights Park) significantly impacts, in generally a negative manner, the residential area.

The Hearings Officer finds that approval of the proposed accessory short-term rental at the Subject Property will increase the proportion of non-Household Living uses in the residential area.

The proposed accessory short-term rental proposal in this case does not include any physical changes to the Subject Property. From that perspective the Hearings Officer finds that what appeared to be a single family residence in the past will continue to appear as a single family residence if the proposal is approved. The Subject Property will, for a period of time (up to 90 days – Exhibit A.3), function differently than a typical Household Living use. The differences include the coming and going of rental guests instead of the coming and going of more typical

permanent residential occupants. The Hearings Officer finds that rental occupancy, for up to 90 days, is a more intense use than that created by more typical residential occupants.

The Hearings Officer also, as part of this approval criterion, must consider how the residential structure would be used as a rental and as a more typical permanent residence. Testimony and written evidence in the record clearly demonstrates that the residential structure at the Subject Property includes a large deck. Dowd, in written submissions, indicated that the deck is approximately 850 square feet in size and is set back approximately 20 feet from the street and approximately 6 feet from the adjacent neighbor's yard. The deck is located higher than the adjacent neighbor's yard and residence. Dowd's testimony, regarding the deck, was not contested by the Applicants.

The Hearings Officer finds that the location of the deck at the Subject Property and the likelihood that it will be used regularly by short-term renters creates a highly probable increase in the intensity of use at the Subject Property. The Hearings Officer finds that the increased intensity of use of the deck will have negative impacts upon the adjacent neighboring property. The Applicants proposed to restrict deck use, at the Subject Property, by (1) prohibiting guests of renters on the deck after 8:00 p.m. and (2) imposing quiet hours from 8:00 p.m. to 8:00 a.m.¹

The Hearings Officer finds that even with the Applicants' proposed deck restrictions, the deck will be used more by renters than by typical permanent residents. House Rule number 7 states that, "Quiet Hours means that no noise (music, talking, laughing, playing, yelling, etc.) can be heard from the street or from any neighbor's property between the hours of 8pm and 8am." The Hearings Officer finds House Rule number 7 to be illusory. The Hearings Officer finds that the deck is the most significant amenity at the Subject Property and attempting to limit noise emanating from the deck to noise that cannot be heard from "any neighbor's property between the hours of 8pm and 8am" is not realistic. The Hearings Officer finds that without the Owner being onsite, enforcement of House Rule number 7 is impossible.

The Hearings Officer finds that approval of this application will, in combination with other non-Household Living uses, significantly lessen residential function of the area. The Hearings Officer respectfully disagrees with the Applicants' characterization that, "The intensity and scale of the proposed use and existing Household Living uses and other uses is minimal. There are no known vacation rentals or other types of non-residential uses in the immediate area, other than those shown." The Hearings Officer finds the "other than those shown" uses, the American Tower Corporation, the OPB building and the Water Tanks are non-Household Living uses that currently have significant negative impacts on the residential area. The Hearings Officer also respectfully disagrees with the BDS' findings (Exhibit H.1) that, "The proposal will not alter the proportion of Household Living uses in the area because Accessory Short-Term Rentals in residential zones are classified as Household Living use."

The Hearings Officer finds this approval criterion is not met.

¹ The Hearings Officer did not consider, for the analysis of this approval criterion, Exhibits H.25 and H.30.

B. Physical compatibility.

1. The proposal will preserve any City-designated scenic resources; and

Findings: The Hearings Officer finds that No City-designated scenic resources are present at the Subject Property. Therefore, the Hearings Officer finds this approval criterion is not applicable.

2. The proposal will be compatible with adjacent residential developments based on characteristics such as the site size, building scale and style, setbacks, and landscaping; or

Findings: The Hearings Officer agrees with BDS staff that there will be no physical changes planned under the proposal in this case. The Subject Property is comparable to neighboring residential properties in lot size and landscaping. The residential structure on the Subject Property appears larger than some neighboring homes and similar in size to others. Most houses in the vicinity are more traditional in style than the modern house on the Subject Property, but there are a few other modern houses in the vicinity.

Setbacks, for houses/structures in the residential area (based upon the map on page 1 of Exhibit A.1), appear to be consistent with many properties.

Dowd questioned whether the existing house/structure was (1) built in accordance with City approvals (Exhibit H.21, page 19) and (2) if approved, the house/structure would not be in conformance with City and/or State of Oregon building codes. The Hearings Officer found no persuasive evidence in the record to support either of Dowd's contentions. The Hearings Officer finds Dowd's arguments are not supportive of a finding that this approval criterion is not met.

The Hearings Officer finds this approval criterion is met.

3. The proposal will mitigate differences in appearance or scale through such means as setbacks, screening, landscaping, and other design features.

Findings: The Applicants did not propose any physical changes to the house/structure on the Subject Property. Therefore, the Hearings Officer finds the proposal will have no effect on the appearance or scale between the Subject Property as compared to neighboring properties. The Hearings Officer finds this approval criterion is not applicable.

C. Livability. The proposal will not have significant adverse impacts on the livability of nearby residential zoned lands due to:

1. Noise, glare from lights, late-night operations, odors, and litter; and

Findings: The Hearings Officer incorporates findings from approval criterion PCC 33.815.105 A above as additional findings for this approval criterion.

The Applicants proposed (Exhibit A.3) to use the Subject Property as an accessory short-term rental facility for no more than 90 days per year. The house/structure contains six bedrooms but the application was to limit the number of rented bedrooms to five. The Applicants' proposal (Exhibit A.3) described, in detail, who would be allowed to rent the house/structure and for how long. The Applicants' proposal (Exhibit A.3) indicated that an "on-call service manager shall be available to respond to complaints and/or issues at the property." The Applicants' proposal (Exhibit A.3) referenced House Rules and indicated violation of the rules would be strictly enforced by the Applicants (consequences of violation of House Rules could result in the forfeiture of a renter's deposit or termination of the rental agreement).

Opponents expressed concerns that enforcement of the terms of the proposal and House Rules, with an off-site, on-call service manager, would be problematic. Opponents were particularly concerned with possible noise and late-night operation impacts arising from the use of the deck.

Though up to five bedrooms in the house may be rented, only one "family group" at a time will occupy the property during rental periods. During rental periods, the Applicants will require quiet hours between 8:00 p.m. and 8:00 a.m. daily. Additionally, the Applicants will prohibit parties of any kind, at any hour. No more than three guests not staying in the facility may visit the property at once, and only between the hours of 8:00 a.m. and 8:00 p.m.

The Hearings Officer commends the Applicants for preparing a thoughtful proposal overall and specifically a set of House Rules. However, the Hearings Officer finds this application is flawed in the absence of an on-site manager to assure conformance with the proposal and House Rules. For this proposal, this house and this Subject Property, an on-site manager could possibly provide adequate assurances that noise, glare, late-night operations, odors and litter concerns would be effectively addressed.

One of the Applicants read into the record, at the Hearing, a testimonial from a prior guest at the Subject Property. This guest stated, in part, the following:

"We sat out every night on the deck overlooking Portland! The location was at the top of the mountain/hill and was so peaceful. It was perfect for out extended family (14-16 people) and big enough that we had our own space..." (Exhibit H.13 – also includes pictures taken of the deck and from the deck – See also Exhibit H.29 for additional prior guest comments about the Subject Property house and view.)

The Hearings Officer finds that between the hours of 8:00 a.m. and 8:00 p.m., the only limits on noise generated from persons on the deck are imposed by the City noise ordinance. The proposal allows for up to 12 adults and 4 additional children plus 3

additional guests (guests only allowed between 8:00 a.m. and 8:00 p.m.); a total of 19 persons allowed on the deck during daytime hours. The Hearings Officer finds that the deck is a probable congregation point while the renters and their guests are at the Subject Property. The Hearings Officer finds the proximity of the deck to the immediately adjacent property to the north (6-foot setback from deck to property line per Dowd – Exhibit H.21), and the probable use of the deck by up to 19 persons, will create significant noise impacts for the neighbors.

The House Rules prohibit noise emanating from the Subject Property, during the 8:00 p.m. to 8:00 a.m. quiet hours, that can be “heard from the street or from any neighbor’s property.” The Hearings Officer finds that the House Rules quiet hours, as related to the deck, are simply unrealistic. The Hearings Officer finds that sound originating from the deck will travel down to the adjacent neighboring property to the north. The Hearings Officer finds that even whispers, movement of furniture, non-amplified music and similar sounds can be heard from the deck to the neighboring property. It is realistic to expect, on a warm summer evening in Portland, that renters and their guests will congregate on the deck and, in the best of situations, have normal volume conversations that can be heard from the adjacent property and perhaps even from the public street. Enforcement of noise violations, whether of City noise regulations or the House Rules quiet hours rule, will be discussed below.

The Applicants attempted, through the House Rules quiet hours provision, to minimize late-night operations.

Consideration of the enforcement of the City noise regulations and the House Rules quiet hours rule is relevant under this approval criterion. The Applicants’ proposal is based upon the concept that they and/or a long-term renter will not be present at the Subject Property during the time it is being rented. As indicated in prior findings, the Hearings Officer believes that the PCC does not require the Applicants or a long-term renter to be present at the time a property is being rented. However, that finding does not preclude the Hearings Officer from considering the effect of utilizing an off-site manager (“on-call service manager”) under this approval criterion.

The Hearings Officer finds that the presence of the Applicants or an on-site manager at the Subject Property when it is being rented would minimize noise and late-night operation issues. If, for example, a neighbor could hear a conversation emanating from the deck between 8:00 p.m. and 8:00 a.m., the neighbor could contact the Applicants or long-term renter who would simply walk up to the deck and address the noise problem with the guests. The time to address the noise or late-night operations problem would be short.

In the alternative, if the Subject Property is managed by a person or entity that is not physically located at the Subject Property, it will take an undetermined time for that person/entity to ascertain if a violation of the House Rules is occurring and even more time (if a violation of the House Rules is occurring) to enforce the House Rules. The Hearings Officer finds potential noise impacts from an accessory short-term rental of

the Subject Property will be significantly greater if there is no person on-site to address noise issues in a timely manner.

The Applicants, in Exhibit A.3, stated that if a renter did not comply with a City accessory short-term rental permit or violated the House Rules, then the guest may lose some or all of the renter's security deposit and/or have their rental agreement terminated. The Hearings Officer finds that while both remedies (security deposit and/or termination) are available, one or both will not be imposed lightly by the Applicants. The first step would be for the Applicants to confirm that a violation of the House Rules was occurring. Then, before such remedy would even be threatened, the renter would need to be given an opportunity to correct the violation. If the Applicants or an on-site manager personally experienced a noise violation, the Applicants or an on-site manager could move directly to a resolution; i.e. issue a warning, or impose a financial/termination remedy immediately.

The Hearings Officer finds that if the House Rules are violated and the renter's security deposit is forfeited, the Applicants may receive a limited financial benefit. The financial benefit will likely not be as large as allowing the violation to continue and the rental to continue for the planned term. However, the Hearings Officer finds nearby neighbors who experienced noise impacts from the Subject Property do not see a corresponding financial benefit.

There was discussion, during the Hearing (see also Exhibit H.21, page 18), about the City's ability to enforce noise issues. Included in the City options were calling the police, calling the City noise enforcement officer, or calling BDS zoning enforcement officials. The Hearings Officer finds that calling the police may provide a relatively timely option, although the police have been historically reluctant to get involved in civil noise violation allegations excepting to talk with the complainant and others involved with the complaint. The City noise enforcement and City zoning enforcement processes do not generally address the complaint in a timely manner; they look to modify future behavior through the assessment of civil penalties.

Dowd, in Exhibit H.21 (page 18) inferred that continued noise violations could result in the revocation of an accessory short-term rental permit. The Hearings Officer notes that while revocation is an available remedy for those issued Type A accessory short-term rental permits, there is no comparable remedy set forth in PCC 33.207 for Type B accessory short-term conditional use approvals.

The Hearings Officer finds that the proposed accessory short-term rental at the Subject Property will have significant adverse noise impacts on the livability of the immediately adjacent property to the north of the Subject Property.

The Hearings Officer finds that this approval criterion is not met.

2. Privacy and safety issues.

Findings: The Hearings Officer incorporates findings from approval criterion PCC 33.815.105 A and PCC 33.815.105 C.1, as set forth above, as additional findings for this approval criterion.

The Hearings Officer considered, as persuasive evidence, Exhibit H.7; an aerial photograph showing the Subject Property and the improvements located on lots immediately north and south of the Subject Property. The Hearings Officer finds the house on the Subject Property and the house on the property located immediately north of the Subject Property are relatively close to one another. The Hearings Officer finds that landscaping is sparse between these two residences. The Hearings Officer finds there is no sight obscuring fence of sufficient height to provide privacy for the adjacent residence from persons looking to the north from the Subject Property.

The Hearings Officer finds that the main deck at the Subject Property is located at a higher elevation than locations on the adjacent property where people may walk, rest or conduct other typical life activities. The Hearings Officer finds persons standing on the main deck have an unobstructed view down into living areas of the adjacent property. The Hearings Officer finds that approval of the application for accessory short-term rental of the Subject Property will increase the number of persons viewing the adjacent property from the main deck. The Hearings Officer finds that approval of the application for accessory short-term rental of the Subject Property will increase the frequency persons view the adjacent property from the main deck.

The Hearings Officer finds the Applicants proposal does not provide any mitigation to the privacy impacts noted in the preceding two paragraphs. The Hearings Officer finds that the proposal will have significant adverse impacts on the livability of the property located immediately north of the Subject Property.

The Hearings Officer finds this approval criterion is not met.

D. Public services.

1. The proposal is supportive of the street designations of the Transportation Element of the Comprehensive Plan;

Findings: SW Council Crest Drive is classified as a Local Service Street for all modes. The proposal will not attract vehicle trips that would be inappropriate for a Local Service Street that is intended to serve local businesses, residents, and their guests. The Hearings Officer finds this approval criterion is met.

2. The transportation system is capable of supporting the proposal in addition to the existing uses in the area. Evaluation factors include street capacity, level of service, and other performance measures; access to arterials; connectivity; transit availability; on-street parking impacts; access restrictions; neighborhood impacts; impacts on pedestrian, bicycle, and transit circulation; safety for all modes; and adequate transportation demand management strategies;

Findings: PBOT submitted the following response (Exhibit E.2):

"Street Capacity and Levels of Service

Based on a very conservative approach of assuming each of the 5 rooms would create the same amount of vehicle trips as 5 motel rooms (ITE 320), up to 28 daily trips with 2 trips in the AM and PM Peak Hours could occur. This is still a relatively small amount of trips to add to the local street system and is not anticipated to have any significant impact to nearby intersections levels of service or street capacity. In addition, the applicant has proposed a list of restrictions that PBOT will recommend become conditions of approval. Those limitations will have the effect of creating transportation impacts very similar to that of a larger single-family residence.

Access to Arterials

The site has access via the local street system to SW Marquam Hill Road which is an arterial street with a Neighborhood Collector classification.

Connectivity

Existing development and lot patterns prevent the creation of new public streets at this location.

Transit Availability

The closest Tri-Met service is the #51 ~0.2 miles to the northwest at SW Patrick and SW Council Crest.

On-Street Parking Impacts

The existing property has two two-car garages attached to the house and a driveway that can accommodate up to three vehicles without stacking. As identified in the proposed limitations, the maximum number of vehicles allowed during a rental period is four vehicles. There may be occasional times when a guest vehicle may have to park in the roadway. With the limitations and rules as conditions of approval, the impact to the on-street parking supply should be minimal.

Access Restrictions

There are no access restrictions on SW Council Crest Drive.

Neighborhood Impacts

With the house operating under the proposed rules, impacts to the neighborhood should be similar to those of a single-family home.

Impacts on pedestrian, bicycle, and transit circulation

With the house operating under the proposed rules, impacts should be similar to those of a single-family home.

Safety for All Modes

Given the low vehicle volumes and speeds, pedestrians and cyclists can safely share the roadway in SW Council Crest Drive.

Adequate Transportation Demand Management Strategies

The applicant proposes to provide bus and walking maps and have bicycles available for guest use at no charge. They will also include this information on their web site. Given the site's location, these measures are adequate.

Transportation System Development Charges (Chapter 17.15)

System Development Charges (SDCs) may be assessed for this development. The applicant can receive an estimate of the SDC amount prior to submission of building permits by contacting Rich Eisenhauer at 503-823-6108.

Driveways and Curb Cuts (Section 17.28)

Curb cuts and driveway construction must meet the requirements in Title 17. The Title 17 driveway requirements will be enforced during the review of building permits."

While there were many comments, from Opponents, contesting the correctness of the PBOT response, the Hearings Officer finds that the transportation system is capable of safely supporting the proposal and existing uses in the area. The Hearings Officer finds the Applicants provided a Trip Generation Study from a reputable traffic engineer (Exhibit A.2) and all transportation impacts were reviewed by PBOT. The Hearings Officer finds the Trip Generation Study and PBOT's review provide credible and substantial evidence that this approval criterion is met.

3. Public services for water supply, police and fire protection are capable of serving the proposed use, and proposed sanitary waste disposal and stormwater disposal systems are acceptable to the Bureau of Environmental Services.

Findings: BES and the Water Bureau reviewed the proposal and responded with no concerns. Police and fire protection services are available and capable of serving the proposed use. The Portland Police Bureau provided recommendations regarding landscaping maintenance and the visibility of the street address marker, but had no objection to the proposal. For these reasons, this criterion is met.

- E. **Area plans.** The proposal is consistent with any area plans adopted by the City Council as part of the Comprehensive Plan, such as neighborhood or community plans.

Findings: The site is within the boundaries of the adopted Southwest Community Plan. However, none of the Plan's policies are specifically relevant to this type of proposal. Therefore, this criterion is not applicable.

III. CONCLUSION

The Applicants proposed to operate a Type B Accessory Short-Term Rental facility, at the Subject Property, with a maximum of five guest rooms available at a time. The Applicants proposed to reside in the house at the Subject Property for at least 270 days and then rent the house for the balance of the year; the Applicants proposed to be away from the house at the Subject Property during all times the house was operated as an accessory short-term rental. The Applicants proposed the accessory short-term rental use of the house at the Subject Property would be managed by an off-site "service."

The house on the Subject Property is located high in the Portland west hills and has dramatic views of the City of Portland and beyond. The house has a large deck located within six feet of a neighboring property line.

The Applicants' proposal (Exhibit A.3) included House Rules. The proposed House Rules addressed a number of issues related to the short-term rental of the house and Subject Property. While the Hearings Officer found the proposal and House Rules were relatively comprehensive, the Hearings Officer also found that not having the Applicants, or in the alternative a manager, at the Subject Property overseeing the rental activities, the livability of nearby residences would suffer significant adverse impacts related to noise, late-night operations and privacy. The Hearings Officer found the Applicants' proposal did not satisfy PCC 33.815.105 C.

The Hearings Officer also found that adding short-term rental activity at the Subject Property, without having the Applicants or a manager on-site, would not meet the "proportion of household living uses" approval criteria (PCC 33.815.105 A).

Opponents raised a number of code interpretation issues. The Hearings Officer reviewed these code interpretation issues and determined that PCC 33.207 did apply to this case and that the application was properly before BDS and the Hearings Officer. The Hearings Officer determined that PCC 33.207 did not require an Owner to be present during times that a property was used as an accessory short-term rental. The Hearings Officer determined there was no prohibition, in PCC 33.207, against renting out an entire house ("whole house").

Based upon the Applicants' failure to satisfy the approval criteria in PCC 33.815.105 A and C, the Hearings Officer found the BDS staff decision (Exhibit H.1) approving the Applicants' proposal must be reversed.

IV. DECISION

The Appellants prevailed in this appeal.

Denial of a Type B Accessory Short-Term Rental facility within the existing single-dwelling house on this site, with a maximum of five guest rooms available for rent at a time.



Gregory J. Frank, Hearings Officer

February 25, 2015

Date

Application Determined Complete:	October 7, 2014
BDS Decision to Hearings Officer:	January 16, 2015
Decision Mailed:	February 26, 2015
Last Date to Appeal:	March 19, 2015

Appealing this decision. The Hearings Officer's decision is the final decision by the City of Portland and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council, but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearing before the Hearing's Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer's decision becomes final.

Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicants' Statement
 - 1. Applicants' narrative
 - 2. Trip generation study
 - 3. Revised proposal and "house rules" list submitted December 9, 2014 (**attached**)
- B. Zoning Map (**attached**)
- C. Plans/Drawings
 - 1. Site plan (**attached**)
 - 2. First floor plan
 - 3. Third floor plan
 - 4. Fourth floor 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. Police Bureau
 - 6. Site Development Review Section of BDS
 - 7. Life Safety Review Section of BDS
 - 8. Bureau of Parks, Forestry Division
- F. Correspondence
 - 1. Letter from John McCreary and Cindy Liu, dated October 16, 2014
 - 2. E-mail from Jae and Soo Lee, dated October 18, 2014
 - 3. Letter from Casey Nakata, received October 21, 2014
 - 4. E-mail from Claire Lematta, dated October 23, 2014
 - 5. Letter from Thomas and Natalie Bell, received October 29, 2014
 - 6. E-mail from Kristen Brady, dated October 29, 2014
 - 7. E-mail from Deborah Mandell, dated October 29, 2014
 - 8. E-mail from Ian Ehrlich, dated October 29, 2014
 - 9. E-mail from Julia Harris, dated October 29, 2014
 - 10. E-mail from Winston and Peggy Chamberlain, dated October 29, 2014
 - 11. E-mail from Whitney Black, dated October 29, 2014
 - 12. E-mail from Janis Carpenter, dated October 29, 2014
 - 13. E-mail from Jill Habernigg, dated October 30, 2014
 - 14. E-mail from Brook Howard, dated October 30, 2014
 - 15. E-mail from Jim Braun, dated October 30, 2014
 - 16. E-mail from Julia Harris, dated October 30, 2014
 - 17. E-mail from Douglas Golden, dated October 31, 2014
 - 18. Letter from Healy Heights Neighborhood Association, dated October 30, 2014
 - 19. E-mail from Tamara and Henry Kamna, dated October 31, 2014
 - 20. E-mail from Gray Frierson Haertig, dated October 31, 2014
 - 21. Letter from Southwest Hills Residential League, received October 31, 2014

22. Letter from Brian and Joan Chaney, dated October 31, 2014

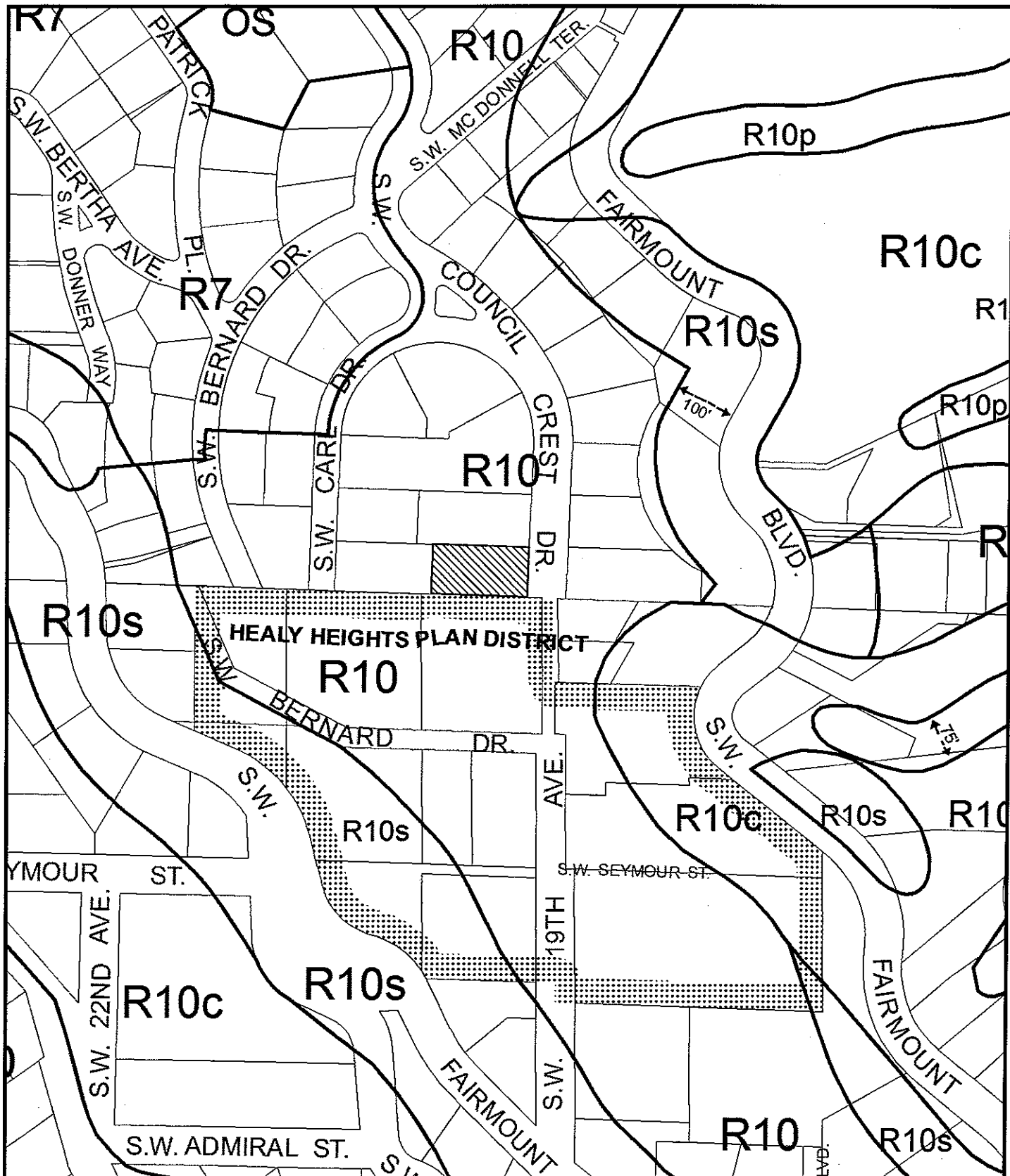
G. Other

1. Original LU application form and receipt
2. Incompleteness determination letter, dated October 6, 2014

H. Received in the Hearings Office

1. Notice of Type II Decision and Appeals (2) - Gulizia, Andrew
2. 1/24/15 Letter - Gulizia, Andrew
3. 1/28/15 letter - Howard, Brook
4. Photo - Healy Heights Neighborhood Association
5. Photo - Healy Heights Neighborhood Association
6. Photos - Healy Heights Neighborhood Association
7. Photo - Healy Heights Neighborhood Association
8. Zoning Map - Healy Heights Neighborhood Association
9. Listing with photos - Healy Heights Neighborhood Association
10. Photo - Healy Heights Neighborhood Association
11. E-mail string - Healy Heights Neighborhood Association
12. TriMet Bus #51 schedule - Healy Heights Neighborhood Association
13. Listing - Healy Heights Neighborhood Association
14. Oregonian Article - "Sharing-economy battles continue: Will a short-term rental house with a view change a quiet corner of Council Crest?" - Healy Heights Neighborhood Association
15. Letter from Doug Golden - Healy Heights Neighborhood Association
16. 1/27/15 letter from Liz Mason - Healy Heights Neighborhood Association
17. Letter from Thomas and Natalie Bell - Healy Heights Neighborhood Association
18. Letter from Casey Nakata - Healy Heights Neighborhood Association
19. Letter from Brook Howard - Healy Heights Neighborhood Association
20. Letter from Henry and Tamara Kamna - Healy Heights Neighborhood Association
21. 1/28/15 letter - Dowd, Michael
22. Listing - Dowd, Michael
23. Testimony with attachments - Wannamaker, Brian
 - a. Map - Wannamaker, Brian
 - b. Google street view - Wannamaker, Brian
24. VRBO online comments/reviews - Halpin, Frank
25. Accessory Short-Term Rental Agreement - Halpin, Frank
26. Guest Book Entry - Halpin, Frank
27. E-mail string - Halpin, Frank
28. Map - Halpin, Frank
29. Guest Book Comments - Halpin, Frank
30. House Rules Agreement - Halpin, Frank
31. Request to be added to mailing list - Seton, Nancy
32. Record Closing Information - Hearings Office
33. Email printout from Julia Harris - Gulizia, Andrew
34. Email printout from Peggy Chamberlain - Gulizia, Andrew
35. E-mail from Julia Harris - Gulizia, Andrew
36. 2/4/15 letter - Van Buren, Sharon
37. 2/4/15 letter with attachments - Van Buren, Mason
 - a. E-mail string - Van Buren, Mason

38. 2/4/15 letter with attachment - Van Buren, Mason
 - a. Maps - Van Buren, Mason
39. 2/3/15 letter - Dowd, Michael
40. 2/4/15 letter - Dowd, Michael
41. 2/4/15 Memo - Gulizia, Andrew
42. 2/4/15 letter with attachments - Kleinman, Jeffrey
 - a. Portland City Council Agenda - July 23, 2014 - Closed Caption File - Kleinman, Jeffrey
 - b. Portland City Council Agenda - July 30, 2014 - Closed Caption File - Kleinman, Jeffrey
43. 2/4/15 Fax - Kamna, Tamara and Henry
44. 2/4/15 Fax - Kamna, Tamara and Henry
45. 2/5/15 letter - Kleinman, Jeffrey
46. Applicant Rebuttal - Halpin, Frank and Anna
47. 2/11/15 Letter - Dowd, Michael
48. 2/11/15 - Kleinman, Jeffrey



ZONING



File No. LU 14-215760 CU
 1/4 Section 3427
 Scale 1 inch = 200 feet
 State Id 1S1E09CD 1900
 Exhibit B (Sep 23, 2014)

Site Plan
4449 SW Council Crest Dr.

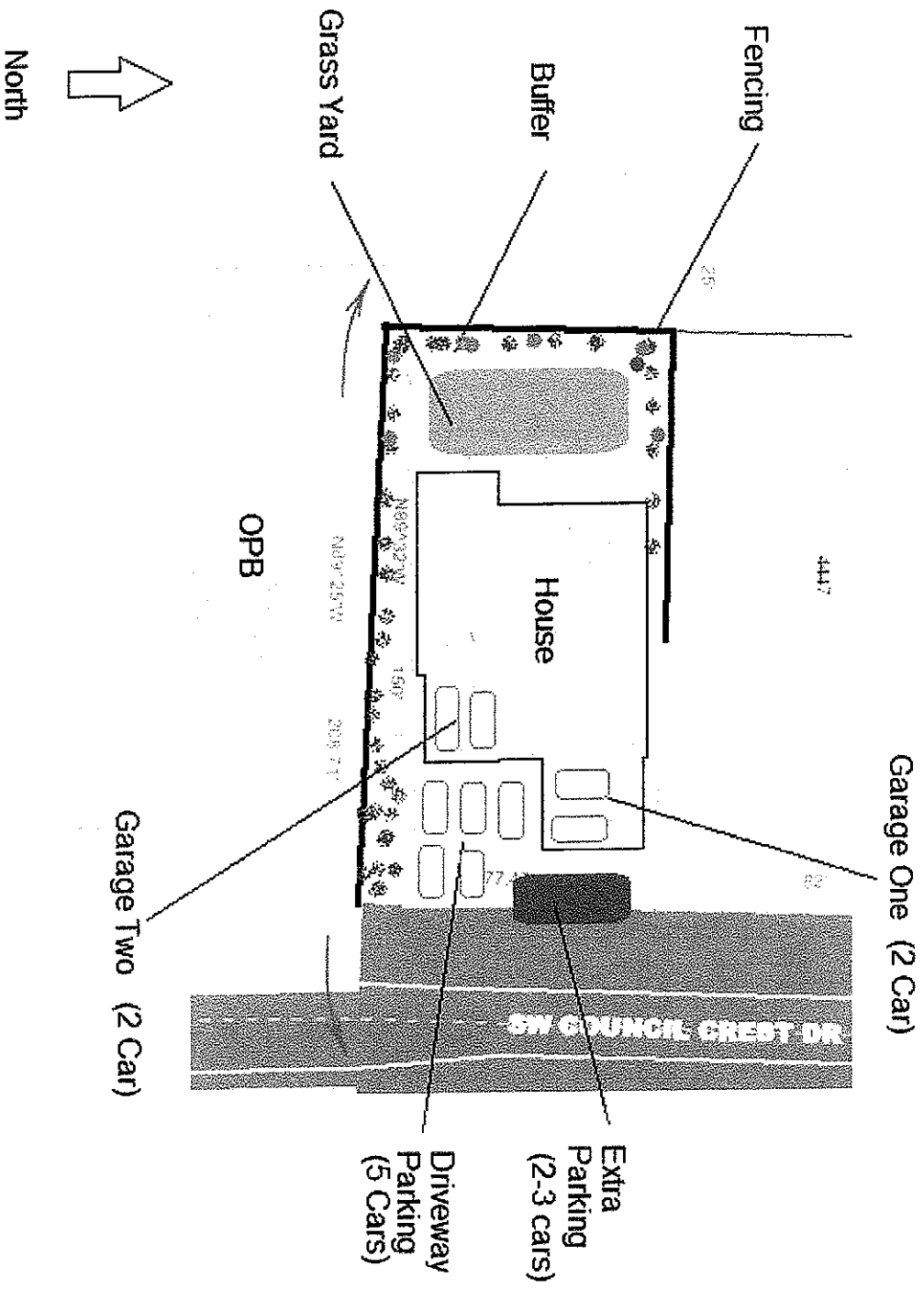


Exhibit C-1