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**CITY OF PORTLAND**  
**Office of the City Auditor**  
**1221 SW Fourth Avenue, Room 140**  
**Portland, OR 97204-1900**

I hereby certify this Land Use Document No. LU 11-153362 LDS ENM – Order of Council to be a complete and exact copy of the original as the same appears on file and of record in my office and in my care and custody on November 8, 2012.

**LAVONNE GRIFFIN-VALADE**  
**Auditor of the City Of Portland**  
By Gayla Jennings  
**Deputy**

**RETURN TO CITY AUDITOR**  
**131/140/Auditor's Office**

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**ORDER OF COUNCIL ON APPEAL OF  
BRETT LAURILA, APPLICANT, AGAINST HEARINGS OFFICER'S DECISION TO DENY A  
FOUR-LOT SUBDIVISION AND ENVIRONMENTAL REVIEW WITH MODIFICATIONS FOR  
PROPERTY LOCATED ON THE SOUTHEAST CORNER OF SE BERKELEY WAY AND SE  
CESAR CHAVEZ BOULEVARD (HEARING; LU 11-153362 LDS ENM)**

**Appellant/** Brett Laurila  
**Applicant/Owner:** 5505 SE Oetkin Drive  
Milwaukie, OR 97267-4110

**Site Address:** Vacant site on the SE corner of SE Berkeley Way and SE Cesar Chavez Boulevard

**Legal Description:** BLOCK A, BERKELEY

**Neighborhoods:** Ardenwald-Johnson Creek and Woodstock

**Zoning:** R10c,p – Single-Dwelling Residential 10,000 with Environmental Conservation (c) and Environmental Protection (p) Overlay Zones

**Land Use Review:** Type III, Land Division with an Environmental Review and Modifications through Environmental Review (LDS ENM)

**Proposal:** The Applicant proposes to divide a 53,115-square foot property (the “Site”) into four lots and a large open space tract. Proposed lots range in size from 3,460 to 5,289 square feet. Tract A is an environmental resource tract that will contain undisturbed areas of the Environmental Conservation and Protection overlay zones. Tract A is proposed to be 36,894 square feet and will be owned in common by the owners of the lots or possibly transferred to a public agency.

Proposed Lots 1-3 will front on SE Berkeley Way, which is currently unimproved, and Lot 4 will front on SE Tenino Street. The Applicant proposes to improve the SE Berkeley Way right-of-way with a 20-foot wide street and a 10-foot wide swale for stormwater. A water line will be installed within SE Berkeley to serve the Site. There is an existing 8-inch concrete public combination sewer line in SE Berkeley Way. New service branches are proposed to serve the three SE Berkeley Way lots. Due to the limited access for fire apparatus maneuvering, all four lots are proposed to have residential fire suppression systems within the new developments. (Exhibit C.1)

The Applicant proposes to use flow-through planter boxes to manage stormwater from the improvements on the individual lots. The approximate location of the planter boxes are shown on plans. (Exhibit C.3) Stormwater from the private street is proposed to be treated by planter boxes and then piped to the combination sewer line in SE Berkeley Way for disposal. (Exhibit C.3)

The entire Site is within the Environmental Conservation and Protection overlay zones. Therefore, the proposal must meet the Portland City Code (“PCC”) development standards for environmental zones (PCC 33.430.160 Standards for Land Divisions and Planned Developments). The Applicant proposes lots, street improvements, and stormwater facilities in the Environmental Conservation zones; development is not proposed in the Environmental Protection zone. The total development exceeds the allowed disturbance area (Standard D) and a portion of the development is within 50 feet of an identified wetland (Standard G). Therefore, the development standards cannot be met and an Environmental Review is required.

The Applicant requested Modifications through Environmental Review for the following development standards:

- Reduce the minimum lot size from 6,000 square feet to 3,460 square feet for Lot 1; 3,926 square feet for Lot 2; 5,289 square feet for Lot 3; and 3,499 square feet for Lot 4.
- Reduce the minimum lot depth for Lot 1 from 60 feet to 38.5 feet.
- Reduce the minimum street frontage for Lot 4 from 30 feet to 21 feet.
- Reduce the minimum lot width from 50 feet to 45 feet for Lot 2 and to 21 feet for Lot 4.
- Reduce the minimum side and rear setbacks from 10 feet to 5 feet for all lots except where the geotechnical engineer has recommended a specific slope setback on Lots 3 and 4.
- Increase the maximum height limit from 30 feet to 35 feet for all lots.

The Applicant proposed over 8,400 square feet of native plantings within the 15-foot deep slope setback, per geotechnical recommendation, as part of a mitigation plan to compensate for significant impacts. The mitigation plantings are also designed to act as a buffer between proposed development on the “plateau” portion of the Site and the undisturbed resource tract, Johnson Creek, and Springwater Trail to the south and east.

This subdivision proposal is reviewed through the Type III land use review procedure because it is a land division that also requires Environmental Review (See PCC 33.660.110). For purposes of State Law, this land division is considered a Subdivision. To subdivide land is to divide land into four or more lots (or tracts of land) within a calendar year (See Oregon Revised Statutes 92.010). Following a public hearing, on August 22, 2012 the Hearings Officer issued his decision denying subdivision and environmental review approval of the Applicant’s proposal, concluding the Applicant failed to carry his burden of proof to demonstrate that all land division and environmental review approval criteria were satisfied. The Applicant appealed the Hearings Officer’s decision to the City Council.

The appeal hearing before the City Council was opened in the Council Chambers, 1221 SW 4<sup>th</sup> Avenue on October 10, 2012 at approximately 2:00 p.m. At the conclusion of the public hearing and after hearing public testimony, Council voted 3-1 to tentatively uphold the appeal of Brett Laurila and overturn the Hearings Officer’s decision contingent upon the following conditions of approval: address the issue of open space tract, maintenance agreements, public street improvements, public water main extension, Fire Bureau requirements, performance guaranteed for mitigation plans and monitoring construction management development standards and monitoring requirements in corresponding maintenance and these conditions be roughly similar to staff memo dated July 30, 2012, staff prepare findings and conclusions for October 31, 2012 at 2:00 p.m. On October 31, 2012 at approximately 2:00 p.m., Council voted 3-1 to adopt findings and grant the appeal of Brett Laurila overturning the Hearings Officer’s decision and approve the land division and other reviews applied for.

## DECISION

Based on evidence in the record and adoption of the Council’s Findings and Conclusions in **Case File LU 11-153362 LDS ENM** and by this reference made a part of this Order, **it is the decision of Council** to Grant the appeal of Brett Laurila. With this decision, the City Council overturns the Hearings Officer’s Decision to deny a four-lot subdivision and environmental review with modifications. The effect of the Council’s decision is:

**Approval** of a Preliminary Plan for 4 standard lots and an open space (environmental resource) tract;

**Approval** of an Environmental Review for the creation of 4 lots for single-family development and street improvements within SE Berkley Way;

**Approval** of Environmental Modifications to:

- Reduce the minimum lot size from 6,000 square feet to 3,460 square feet for Lot 1; 3,926 square feet for Lot 2; 5,289 square feet for Lot 3; and 3,499 square feet for Lot 4.
- Reduce the minimum lot depth for Lot 1 from 60 feet to 38.5 feet.
- Reduce the minimum street frontage for Lot 4 from 30 feet to 21 feet.
- Reduce the minimum lot width from 50 feet to 45 feet for Lot 2 and to 21 feet for Lot 4;
- Reduce the minimum side and rear setbacks from 10 feet to 5 feet for all lots except where the geotechnical engineer has recommended a specific slope setback on Lots 3 and 4; and
- Increase the maximum height limit from 30 feet to 35 feet for Lot 4.

As illustrated with Exhibits C.1 and C.3-C.7, subject to the following conditions:

**A. Supplemental Plan.** Three copies of an additional supplemental plan shall be submitted with the final plat survey for Land Use Review, BES, and Fire review and approval. That plan must portray how the conditions of approval listed below are met. In addition, the supplemental plan must show the surveyed location of the following:

- The proposed general location of future building footprints, individual sanitary connections, and stormwater facilities for each of the vacant lots.
- The fire access lane with a turning radius of 28 feet inside, 48 feet outside.
- Top of slope and minimum slope setback lines as recommended in the Geotechnical Engineering Report and Landslide Hazard Study.
- Trees to be preserved and associated tree protection fencing.
- Clearing and grading limits consistent with the 60% design submittal for the right-of-way improvements, all erosion control measures, and stockpile locations.
- Any other information specifically noted in the conditions listed below.

**B. The final plat must show the following:**

1. A no build easement or tract for the purpose of a structure-to-slope setback as recommended in the Geotechnical Engineering Report and Landslide Hazard Study (Exhibits A.2 and A.8). The easement shall restrict use of this area consistent with the recommendations of the geotechnical engineer and as approved by the Site Development Section of BDS.
2. The open space tract shall be noted on the plat as "Tract A: Open Space (Environmental Resource Area). A note must also be provided on the plat indicating that the tract will commonly owned and maintained by the owners of Lots 1 through 4.
3. A recording block for each of the legal documents such as maintenance agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Condition \* below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."

**C. The following must occur prior to Final Plat approval:**

**Streets**

1. The applicant shall complete street and storm sewer waivers of remonstrance (for future street and storm sewer improvements) as required by the City Engineer for SE Tenino Street. Waiver forms and instructions will be provided to the applicant during the final plat review process.
2. The applicant shall meet the requirements of the City Engineer for right of way improvements within SE Berkley Way. The applicant shall submit an application for a Public Works Permit and provide plans and financial assurances to the satisfaction of the Portland Bureau of Transportation and the Bureau of Environmental Services for required street improvements.

#### **Utilities**

3. The applicant shall meet the requirements of the Water Bureau for providing plans and financial assurances for the water main extensions in SE Cesar E Chavez Boulevard and SE Berkley Way.
4. The applicant shall meet the requirements of the Fire Bureau for installing a new fire hydrant. The applicant must contact the Water Bureau, Development Services Department at 503-823-7368, for fee installation information related to the purchase and installation of fire hydrants. The applicant must purchase the hydrant and provide verification to the Fire Bureau that the Water Bureau will be installing the required fire hydrant, with the required fire flow and pressure.
5. The applicant must meet the requirements of the Fire Bureau for providing an adequate fire access way for Lots 1-4, as required in Chapter 5 of the Oregon Fire Code. Alternately, the applicant will be required to install residential sprinklers in the new house on Lots 1-4, if applying the exception. An Acknowledgement of Special Land Use Conditions describing the sprinkler requirement must be referenced on and recorded with the final plat.

#### **Required Legal Documents**

6. A Maintenance Agreement shall be executed for the No Build easement described in Condition B.1 above. The agreement shall include provisions assigning maintenance responsibilities for the easement area, consistent with the purpose of the easement, and all applicable City Code standards. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
7. A Maintenance Agreement shall be executed for the tracts described in Condition B.2 above. The agreement shall include provisions assigning maintenance responsibilities for the tracts and any shared facilities within the areas, consistent with the purpose of the tracts, and all applicable City Code standards. The tracts must be owned in common by the homeowner's association. The agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval. The agreement must also include:
  - a. assign common, undivided ownership of the tract to the owners of all lots;
  - b. include provisions for assigning maintenance responsibilities for the tract;
  - c. provisions assigning maintenance responsibilities for mitigation plantings located within the tract;
  - d. include a description of allowed/prohibited activities consistent with Chapter 33.430; and
  - e. include conditions of this land use approval that apply to the tract.
8. The applicant shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Lot 1-3 to contain internal fire suppression sprinklers, per Fire Bureau Appeal ID #8231. The acknowledgement shall be recorded with Multnomah County, and referenced on the final plat.
9. The applicant shall submit a Performance Guarantee, meeting the requirements of Section 33.700.050,

for (1) installation of plantings at the site and (2) 5 years of monitoring and maintenance (as specified in Condition D.2) to BDS. The Performance Guarantee must be accompanied by a contract approved by the City Attorney. If the plantings are installed prior to final plat approval, a Performance Guarantee is only required for the monitoring and maintenance requirement.

- Performance Guarantee for the estimated cost of installation of plantings  
If the applicant or subsequent owners of the site do not install plantings indicated on Exhibit C.7 as required by Condition D.2 below, the City shall use the performance guarantee to install required plantings. BDS will return/release unused portions of the required performance guarantee allocated to installation of plantings to the applicant only after BDS inspectors determine that all required plantings have been completed and invasive species have been removed with 10-feet of all required native plantings.
- Performance Guarantee for estimated costs of monitoring and maintenance.  
If the applicant or subsequent owners of the site do not monitor and maintain the plantings, as required by Condition D.2 below, the City shall use the performance guarantee to monitor and maintain the required plantings. BDS will return/release portions of the required performance guarantee allocated for each year of the 5-year monitoring period to the applicant only after BDS has approved the annual monitoring report (including replacement of dead plants).

#### **Other requirements**

**D. A Zoning Permit for the mitigation plantings must be submitted that includes the following:**

1. Mitigation Plantings shall be planted, in substantial conformance (location and species) with Exhibit C.7 Mitigation Plan as follows:
  - a. At the time of permit review for grading at the site, a Final Planting Plan shall be submitted to BDS showing the approximate location of the plantings required within easements (conditions c-e below). The planting plan should illustrate a naturalistic arrangement of plants and should include the location, species, quantity and size of plants to be planted.
  - b. A total of 37 trees, 45 shrubs, and 8,600 square feet of native seed mix shall be planted consistent with Exhibit C.7.
  - c. All plant species must be selected from the *Portland Plant List*.
  - d. Plantings shall be installed between October 1 and March 31 (the planting season). Any changes or substitutions to approved planting plans shall first receive written approval from Bureau of Development Services Land Use Review staff.
  - e. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within 10 feet of mitigation plantings (including areas to be seeded), using handheld equipment.
2. **A Final Inspection shall be required** to document installation of the required mitigation plantings.

**E. The following conditions are applicable to the site and the development of individual lots:**

1. Temporary construction fencing shall be installed according to Section 33.248.068 (Tree Protection Requirements), except as noted below. Construction fencing shall be placed along the Limits of Construction Disturbance for the approved development, as depicted on Exhibit C.7 Mitigation Plan or as required by inspection staff during the plan review and/or inspection stages.
  - a. No mechanized construction vehicles are permitted outside of the approved "Limits of Construction Disturbance" delineated by the temporary construction fence. All planting work, invasive vegetation removal, and other work to be done outside the Limits of Construction Disturbance, shall be conducted using hand held equipment.

2. The applicant must meet the addressing requirements of the Fire Bureau for Lots 1-4. The location of the sign must be shown on the building permit.
3. The applicant will be required to install residential sprinklers in the new houses on Lots 1-3 to the satisfaction of the Fire Bureau.
4. If required, the applicant will be required to meet any requirements identified through a Fire Code Appeal which may require installation of residential sprinklers in the new dwelling unit on Lot 4. Please refer to the final plat approval report for details on whether or not this requirement applies.
5. 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.
6. All existing trees in the right-of-way will be protected and preserved unless permitted for removal by Portland Parks and Recreation.
7. Development on lots shall be in conformance with the following:
  - a. Prior to starting home construction on Lots 1-4, the applicant shall install 6-foot high metal construction fencing along any lot line that abuts an open space tract. The fence must be shown on building permit plans. The fence shall remain in place until the final erosion control inspection is completed.
  - b. Development on all lots shall meet the following:
    - The minimum front, street, or garage setbacks of the base zone may be reduced to any distance between the base zone minimum and zero.
    - The maximum front building setback is 20 feet.
    - The minimum side and rear building setback is 5 feet, except where a larger setback is required to comply with the recommended slope setback identified in Condition B.1 and shown on the Supplemental Plan.
    - The maximum building height shall not exceed 35 feet.
  - c. Fences are allowed only within lots (not within any of the tracts).
  - d. Exterior lights must be spaced at least 25 feet apart. Incandescent lights exceeding 200 watts (or other light types exceeding the brightness of a 200-watt incandescent light) must be placed so they do not shine directly into resource areas. This condition applies to lots that abut any environmental zoning on the site.
8. The following apply to the open space tract:
  - a. All vegetation planted in a resource area of environmental zones is native and listed on the Portland Plant List. Plants listed on the Portland Nuisance Plant List or Prohibited Plant List are prohibited.
  - b. Fences are not allowed within a resource area of environmental zones.

**F. Mitigation Monitoring Requirements.** The landscape professional or designer of record shall monitor the required plantings for five years to ensure survival and replacement as described below. The lot owners or Homeowners Association are responsible for ongoing survival of required plantings during and beyond the monitoring period. The lot owners shall:

1. Provide five letters (to serve as monitoring and maintenance reports) to the Woodstock and Ardenwald-Johnson Creek Neighborhood Associations, and to the Land Use Services Division of the

Bureau of Development Services (Attention: LU 11-153362 LDS ENM) containing the monitoring information described below. Submit the first letter to the Bureau of Development Services within 12 months following approval of the Permanent Erosion Control Inspection of the required mitigation plantings. Submit the subsequent letters every 12 months following the date of the first monitoring letter. All letters shall contain the following information:

- a. A count of the number of planted trees that have died. One replacement tree must be planted for each dead tree (replacement must occur within one planting season).
  - b. The percent coverage of native shrubs and ground covers. If less than 80 percent of the mitigation planting area is covered with native shrubs or groundcovers at the time of the annual count, additional shrubs and groundcovers shall be planted to reach 80 percent cover (replacement must occur within one planting season).
  - c. A list of replacement plants that were installed.
  - d. A description of invasive species removal (English ivy, Himalayan blackberry, reed canarygrass, teasel, clematis) within 10 feet of all plantings. Invasive species must be removed with 10 feet of all mitigation plants.
2. Obtain a Zoning Permit for a final inspection at the end of the 5-year maintenance and monitoring period. The permit must be finalized no later than 5 years from the final inspection for the installation of mitigation planting, for the purpose of ensuring that the required plantings remain. Any required plantings that have not survived must be replaced.
- G. Failure to comply with any of these conditions may result in the City's reconsideration of this land use approval pursuant to Portland Zoning Code Section 33.700.040 and /or enforcement of these conditions in any manner authorized by law.

**IT IS SO ORDERED:**

NOV 05 2012

Date



Commissioner Nick Fish  
Presiding Officer at Hearing of  
October 31, 2012  
2:00 p.m. Session