



# CITY OF PORTLAND

Office of City Auditor LaVonne Griffin-Valade

## Hearings Office

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## DECISION OF THE HEARINGS OFFICER

### I. GENERAL INFORMATION

**File No.:** LU 13-219755 ZC AD LDP (HO 4130027)

**Applicant:** Rob Humphrey  
Faster Permits  
14334 NW Eagleridge Lane  
Portland, OR 97229

**Applicant's Representative:** Vic Remmers  
Everett Custom Homes Inc.  
735 SW 158<sup>th</sup> Avenue, Suite 180  
Beaverton, OR 97008

**Hearings Officer:** Gregory J. Frank

**Bureau of Development Services (BDS) Staff Representative:** Sean Williams

**Site Address:** 3058 SE Woodstock Boulevard

**Legal Description:** BLOCK 39 LOT 6&7 TL 300, EASTMORELAND

**Tax Account No.:** R231508470

**State ID No.:** 1S1E13CD 00300

**Quarter Section:** 3633

**Neighborhood:** Eastmoreland

**Business District:** None

**District Neighborhood Coalition:** Southeast Uplift

**Plan District:** Eastmoreland

**Zoning:** Residential 7,000 (R7) w/ Residential 5,000 (R5) Comprehensive Plan

**Land Use Review:** Type III, Zoning Map Amendment (ZC), Adjustment (AD) and Land Division Partition (LDP)

**BDS Staff Recommendation to Hearings Officer:** Approval with conditions

**Public Hearing:** The hearing was opened at 9:00 a.m. on January 15, 2014, in Room 2500A, 1900 SW 4<sup>th</sup> Avenue, Portland, Oregon, and was closed at 12:01 p.m. The record was held open until 4:30 p.m. on January 22, 2014 for new evidence, and until 4:30 p.m. on January 29, 2014 for the Applicant's final rebuttal.

**Testified at the Hearing:**

Sean Williams  
Michael Robinson  
Peter Livingston  
Robert McCullough  
Rod Merrick  
Bud (Robert) Oringdolph  
Joanne Carlson  
Kathleen Taylor  
Kurt Krause  
Mary Rogers  
Phyllis Markee  
Rob Buys  
Kimberly Koehler  
Jeff Bowman  
Patricia Bowman  
Kyle Gernhart  
Catherine Mushel  
Maria Baker  
Marylu Gray  
Robert Schlesinger  
Sharon Webber  
Mike Ard

**Proposal:**

The applicant (the "Applicant") is proposing to partition the property commonly referred to as 3058 SE Woodstock Boulevard (the "Subject Property") into two parcels of approximately 7,068 (Parcel 1) and 6,113 (Parcel 2) square feet in size in conjunction with a Zone Map Amendment in conformance with the Comprehensive Plan from Residential 7,000 (R7) to Residential 5,000 (R5).

An adjustment review is additionally requested to allow the creation of through lots, as both street frontages are not designated as Local Service.

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. Applicant’s proposal is to create two 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, Portland Zoning Code. The applicable approval criteria are:

- **33.855.050, Approval Criteria for Base Zone Changes.**
- **33.805.040 A.-F., Approval Criteria for Adjustments.**
- **Section 33.660.120, Approval Criteria for Land Divisions in Open Space and Residential Zones.**

**BACKGROUND INFORMATION**

**Site and Vicinity:** The Subject Property is approximately a 1/3 of an acre in size and located on the south side of SE Woodstock Boulevard approximately 225-feet west of the intersection with SE 32<sup>nd</sup> Avenue. Existing development consists of a one story single family home and garage that will be removed. The topography is relatively flat and three mature trees are located on the southern portion of the Subject Property. Reed College campus is located directly north of the Subject Property across SE Woodstock Boulevard. Development in the vicinity is primarily composed of single-family homes.

**Infrastructure:**

- **Streets** – The Subject Property has approximately 111-feet of frontage on SE Woodstock Boulevard and 119-feet of frontage on SE Moreland Lane. There is one driveway entering the Subject Property from SE Woodstock Boulevard that serves the existing house. At this location, SE Woodstock Boulevard is classified as a Neighborhood Collector, Transit Access street, City Bikeway, City Walkway and a Community Corridor in the Transportation System Plan (TSP). Southeast Moreland Lane is classified as Local Service Street for all modes in the TSP. TriMet provides transit service along the Subject Property’s SE Woodstock Boulevard frontage via Bus #19.

At this location, SE Woodstock Boulevard is improved with a 36-foot paved roadway surface and pedestrian corridor that consists of a 14-foot planter strip, 6-foot sidewalk, and 2-foot setback to private property (14-6-2) within an 80-foot right-of-way. Southeast Moreland Lane is improved with a 16-foot paved roadway surface and curb only (no sidewalk) within a 20-foot wide right-of-way.

- **Water Service** – There is an existing 8-inch CI water main in SE Woodstock Boulevard. The existing house is served by a 1-inch metered service from this main. There is no water service available in SE Moreland Lane along the Subject Property's frontage.
- **Sanitary Service** - There is an existing 8-inch concrete public combination sewer main in SE Woodstock Boulevard. According to City permitting records, the existing residence was connected to this main when it was constructed in 1958. There is no sewer service in SE Moreland Lane along the Subject Property's frontage.

**Zoning:** The R7 designation is one of the City's single-dwelling zones which is intended to preserve land for housing and to promote housing opportunities for individual households. The zone implements the comprehensive plan policies and designations for single-dwelling housing. The Subject Property has a Comprehensive Plan designation of Residential 5,000 (R5). The applicant is requesting a Zoning Map Amendment in conformance with this Comprehensive Plan designation.

The Eastmoreland plan district (33.540) enforces the special setback requirements shown on maps available for review in the Development Services Center to maintain the established character of the Eastmoreland area, characterized by homes with larger than normal building setbacks from the street. Future development will be subject to the setback development standard of the plan district. There are no provisions of this plan district applicable to the land division review.

**Land Use History:** City records indicate there are no prior land use reviews for this Subject Property. The pre-application conference (EA 13-174462 PC) was held for this Subject Property on July 30, 2014.

**Agency Review:** Several Bureaus have responded to this proposal and relevant comments are addressed under the applicable approval criteria. The "E" Exhibits contain the complete responses.

**Neighborhood Review:** A Notice of Proposal in Your Neighborhood was mailed on December 19, 2013. Extensive testimony was offered by representatives of the Eastmoreland Neighborhood Association ("ENA") and area residents.

## **II. ANALYSIS**

### **PRELIMINARY MATTERS**

During the course of the public hearing testimony and in a number of written evidentiary submissions issues were raised that may, or may not have, been related to approval criteria relevant to this case. The Hearings Officer addresses, in this Preliminary Matters section of the decision, those issues.

**R5 zoning error**

Mr. Robert F. McCullough, Jr. ("McCullough"), a representative of the ENA, raised an issue that was repeated by other opposition testifiers at scheduled January 15, 2013 the hearing before the Hearings Officer (the "Hearing"). The issue relates to the City's adoption of its official zoning maps describing the vicinity of the Subject Property ("Map 3633"). McCullough, and others, claim that the R5 comprehensive plan designation on Map 3633 was the result of a City planning clerical error.

The claim by McCullough, and other opponents to the application in this case, of a clerical error on the official City zoning map (Map 3633) is one not previously experienced by the Hearings Officer. At the public Hearing the Hearings Officer noted this lack of experience with map error claims.

Map 3633 (Exhibit B.1) shows the zoning for the Subject Property and also nearby properties. The zoning shown on Map 3633 is R7(R5). Portland City Code 33.10.060 A. explains the mapping labels/designations as follows:

"The Official Zoning Maps also show the Comprehensive Plan designations. Where the zoning map symbol is a corresponding zone of the Comprehensive Plan designation, only the zoning map symbol is shown for an area. Where the zoning map symbol is a less intense zone than the Comprehensive Plan designation, the area of the differing Comprehensive Plan designation is outlined with a dotted line and the Comprehensive Plan designation is shown in parentheses."

Map 3633 (Exhibit B.1) does in fact display for the Subject Property and certain surrounding properties the R7(R5) symbols and a dotted line. Therefore, according to Map 3633 (Exhibit B.1), the area within the dotted line including the Subject Property, has a "current" zoning of R7 and a more intensive Comprehensive Plan designation of R5.

McCullough, during the open-record period, submitted a "notebook" including a memo and supporting documentation (Exhibit H.60). Exhibit H.60 is an incredibly well written and thorough research project. McCullough reviewed ENA historical archives, Southeast Uplift Neighborhood Coalition ("SEUL") archives, Portland State University ("PSU") archives, Oregonian and Sellwood Bee newspaper archives and interviewed surviving and locatable ENA board members who served between 1979 and 1981. McCullough stated, in the conclusion section of H.60,

"We have been unable to find a single reference to the possible rezoning of this block in our archives, the Portland archives of the press. Eastmoreland board members did not know of any steps being taken, through a comprehensive plan map designation, to facilitate and eventual rezone of the Moreland Lane Bloc to R-5 and would have vigorously opposed it had they known."

Legal counsel for ENA, ("Livingston") discussed the R5 zoning clerical issue briefly in Exhibit H.62 by stating, "Mr. McCullough makes a solid case in his materials that the R-5 designation was inadvertent and erroneous."

The BDS planner assigned to this case ("Williams") submitted a "Memo" to the Hearings Officer during the open-record period (Exhibit H.61). Williams stated, "The R7(R5) designation is the correct zoning for this area as identified by the official zoning map."

Exhibit H.56 provides the following comments from Applicant's legal counsel ("Robinson") regarding the R5 zoning clerical error issue:

"Opponents contend that the Hearings Officer should determine that the Property's comprehensive plan map designation is not R5. The Hearings Officer should deny this contention for two (2) reasons.

First, the official map designation for the Property is R5. The map designation for a property that is shown on the official zoning map is the valid designation for the property. *Housing Authority of Jackson County v. City of Medford*, 65 Or LUBA 295, 300 (2012). See also *Reed v. Clatsop County*, 22 Or LUBA 548 (1992) (local government can determine zoning by reference to its official zoning map). The City Official Zoning Maps show the official comprehensive plan map designations for properties. See Portland City Code ("PCC") 33.10.060.A. The applicable quarter-section of the City Official Zoning Map (Map No. 3633) indicates that the comprehensive plan map designation of the Property and surrounding properties is R5. See copy of map set forth in **Exhibit 2**. The City first assigned the R5 designation in 1908. See copy of adopting Ordinance No. 150582 in **Exhibit 3**, which reflected zone changes in September 1980 version of Map No. 3633 in **Exhibit 4**. The City has not amended the map to change the R5 designation since that time. See list of amendments affecting Map No. 3633 in **Exhibit 5**. Therefore, the valid comprehensive plan designation of the Property is R5 as shown on Map No. 3633.

Although opponents contend that the City may have erred in assigning the R5 comprehensive plan map designation to the Property, the Hearings Officer should deny this contention for three reasons. First, opponents have not submitted any evidence to support their contention. Second, although opponents contend that they do not recall that the City intended to apply the R5 comprehensive plan map designation to properties in the area, the Hearings Officer should find that after-the-fact testimony from persons involved in the legislative process about the City Council's intent does not constitute competent evidence. See *Kellogg Lake Friends v. Clackamas County*, 17 Or LUBA 277 (1988) (so holding). Third, vent to the extent the City's Official Zoning Map is in error, as a legal matter, it is irrelevant to this proceeding because the R5 designation was in effect on the date the applicant filed its land use applications with the City. Pursuant to ORS 227.178(3) and Portland City Code 33.700.080, the City is obligated to apply the regulations in effect on the date a land use application is filed with the City. As explained above, the City's Official Zoning Map has identified the comprehensive plan designation of the Property as R5 since 1908. Therefore, the R5

designation was in effect on the [date] applicant filed its applications, and the City is required to apply the R5 designation in this matter. Thus, even if opponents sought a correction to the Official Zoning Map pursuant to PCC Chapter 33.855 ("Zoning Map Amendments"), it would not affect the pending applications."

(Hearings Officer's note: references to Exhibits in the preceding quoted material relate to Exhibits attached to Exhibit H.56)

The Hearings Officer has presided over a number of cases involving the Reed College campus and the nearby surrounding area. The Hearings Officer fully acknowledges that the ENA and Reed College neighbors are active and passionate participants in the City's land use planning process. The Hearings Officer carefully reviewed McCullough's "notebook" and the testimony of a number of the opponents to the application in this case.

Robinson provided a copy of the ordinance adopting the R5 designation (Exhibit H.56c) and a copy of Map 3633 showing the R5 designation (Exhibit H.56d) for the Subject Property. Further, Robinson provided documents obtained from the City Planning and Sustainability website (Exhibit H.56e) which shows that there have been no changes to the R5 designation for the Subject Property.

The Hearings Officer finds what McCullough and other opponents are attempting to "prove" the R5 designation on the Official City of Portland Zoning Map 3633 is in error because there is an absence of proof to the contrary. The Hearings Officer finds the absence of proof that the R5 designation is in error is not persuasive or credible evidence in this case. The Hearings Officer finds no persuasive evidence in the record of this case that the R5 comprehensive plan designation is in error.

The Hearings Officer finds Map 3633 portrays the correct zoning for the Subject Property; including the more intensive R5 designation shown in parenthesis. The Hearings Officer finds the R7(R5) zoning, as shown on Map 3633 (Exhibit B1) is the zoning for the Subject Property on the date the Applicant filed its application in this case.

### **Current Planning Efforts by ENA**

Mr. Rod Merrick ("Merrick"), co-chair of the ENA, stated:

"The ENA Land Use Committee, with the participation and endorsement of the ENA Board, has been working for more than two years on Comprehensive Plan issues, developing neighborhood goals, participating at an advisory level on Policy Expert committees, and working with BPS neighborhood representative staff to develop and refine our Plan District Proposal. **The proposed zone change jumps the track on this process and violates the spirit and direction of this effort.** The ENA Board has previously submitted to the Planning Commission and other City officials two documents (Exhibits A and B). The first request zone designation of the entire neighborhood to be R7 consistent with historic and existing development patterns analyzed in the document." (Exhibit H.12f) (Bold print not added by the Hearings Officer)

While the Hearings Officer applauds the ENA involvement in the current comprehensive plan process the Hearings Officer is unable, under Oregon land use law, to consider such activity in making a decision in this case. The Hearings Officer is required by State of Oregon use law and the PCC to consider only the law in effect as of the date an application is submitted. The PCC code provisions and map effective on October 22, 2013 (date of Applicant filing the application in this case) must control whether or not this application is approved.

### **Public Works Appeal**

Livingston, in his hearing testimony and Exhibit H.62, argues:

"The staff report (p.5) relies on a previous review by the Bureau of Transportation Engineering & Development, which resulted in a land use decision dated December 24, 2013 (LU 13-219755-000-00-LU). This land use decision, which waived street dedication and sidewalk requirements, was made without proper notice either of the application or the decision. At the January 15, 2014 hearing, the applicant's attorney contended that the earlier decision cannot be challenged in this proceeding because it is a separate decision from any decision on the present application. If he is correct, then as a land use decision made without notice,<sup>2</sup> it can be challenged (and apparently is being challenged) at LUBA. Until that challenge is resolved, there should be no findings made that are based on the earlier decision, including findings related to the width and sidewalk configuration of SE Moreland Lane. The present record is insufficient to justify the transportation-related conclusions on pp.5, 8 and 9 of the staff report."

Footnote 2, referenced above, states:

"The decision makes the findings on land use criteria, including PC 33.855.050 B.2.c. The applicant relied on PC 33.640.010 and PC 33.654.120. These are all discretionary land use regulations."

Robinson responded to the above-stated comments (Exhibits H.56 and H.67). Robinson states that opponents

"contend that the City erred in approving the Public Works Appeal for the project. The Hearings Officer should deny this contention for two reasons: First, the City previously approved the Public Works Appeal in a separate proceeding, that decision has become final, and no party has sought a stay of that decision. To the extent Mr. Livingston and Mr. Wyman are attempting to challenge that final decision in this proceeding, it constitutes an impermissible collateral attack. Second, the opponents' contention fails to recognize that the City waived the requirement to dedicate additional right-of-way and construct a sidewalk on SE Moreland Avenue because the waiver is consistent with the existing character of this street, which currently has a narrow right-of-way and no sidewalks."

The Hearings Officer finds that opponents' argument is that the 12/24/13 Public Works Appeal waiver is (1) a land use decision that was rendered without appropriate notice and/or (2) was improperly granted/approved. The general land use rule is that a challenge directed at a prior decision is considered a collateral attack and inappropriate. *Robson v. City of LaGrande*, 40 Or LUBA 250-254 (2001), *Bauer v. City of Portland*, 38 LUBA 715, 721 (2000) and *Louks v. Jackson County*, LUBA No. 2011-085, 2012 WL 691329 (2012). The Hearings Officer shall not, therefore, reconsider the merits (including claims of lack of notice) of the granting of the 12/24/13 Public Works Appeal waiver.

The Hearings Officer will, however, consider evidence and argument related to all relevant transportation related approval criteria in the findings below.

### **Comprehensive Plan Policies as approval criteria in this case**

Opponent Mr. Jack Bush ("Bush"), in Exhibit H.38, states that the Hearings Officer made it clear at the Hearing that land use decisions must be made "based on existing rules and laws, and that arguments in opposition should therefore speak to the relevant rules and laws." The Hearings Officer acknowledges that such a statement was made at the Hearing and that this decision must be made based upon the relevant approval criteria. Bush then addresses current City Comprehensive Plan Policies, including but not limited to, Goal 12. Mr. Robert Schlesinger ("Schlesinger"), an opponent of this application, suggests that, "Section 12 of the Comprehensive Plan gives us this mandate..." (Exhibit H.31). Mr. David Dowell ("Dowell"), in Exhibit H.53, reviewed a number of Comprehensive Plan goals/policies and suggested that the application be denied because BDS staff did not address these goals/policies.

PCC 33.800.050 addresses the function of approval criteria in the land use planning decision-making process. PCC 33.800.050 A. states, in relevant part, "the criteria set the bounds for the issues that must be addressed by the applicant and which may be raised by the City or affected parties." PCC 33.800.050 B. states:

"The approval criteria have been derived from and are based on the Comprehensive Plan. Reviews against the goals and policies of the Comprehensive Plan are not required unless specifically stated. Fulfillment of all requirements and approval criteria means the proposal is in conformance with the Comprehensive Plan."

The Hearings Officer finds that while discussion of comprehensive plan goals/policies may be helpful and interesting in providing background to a particular approval criterion the specific goals and policies are not to be considered as additional approval criteria. In this case the Hearings Officer finds Williams, in the Staff Report (Exhibit H.2), properly set forth all of the relevant approval criteria; not including any specifically stated goals and/or policies from the Comprehensive Plan.

### **City Demolition Policies**

A large number of opponents who testified at the Hearing expressed frustration with the current City of Portland demolition regulations (Testimony of Mr. Robert Oringdulph ["Oringdulph"], Ms. Kathleen Taylor ["Taylor"], Ms. Joanne Carlson ["Carlson"], Ms. Kimberly Koehler ["Koehler"] and others and submitted Exhibits such as H.12a, H.12f, H.14, H.28, H.29a, H.30 and H.54). The Hearings Officer finds the City's demolition process is beyond the scope of the Hearings Officer's jurisdiction in this case. The Hearings Officer finds a discussion of the City demolition process is not required as part of any relevant approval criteria.

### **Adequacy of Notice**

A number of opponents to the application suggested that notice of the Hearing was inadequate (i.e., testimony of Koehler and submitted Exhibits such as H.15, H.43 and H.56). Specific concerns about the notice of the Hearing are set forth in Exhibit H.15 as follows:

"The Notice of a Public Hearing which was mailed to the Eastmoreland Neighborhood Association, and which was made available to other interested parties had the wrong date on it, implying that the Public Hearing had already taken place..And the legally-required sign posted on the affected property was not only NOT waterproof, it was impossible to read without trespassing. Why was the Notice not posted on the Public Right-of-Way. The sign fell apart shortly after it went up, and it was only after a neighborhood representative contacted BDS staff Sean Williams that it was put into place again."

The Hearings Officer reviewed Exhibit H.1 (NOTICE OF A PUBLIC HEARING ON A PROPOSAL IN YOUR NEIGHBORHOOD) (hereafter the "Hearing Notice"). The Hearing Notice is the public notice of the Hearing.

Exhibit H.1 is dated December 19, 2013 and identifies the scheduled hearing date to be "Wednesday, January 15, 2013 @ 9:00am." The Hearings Officer acknowledges the listed hearing date on Exhibit H.1 is not correct. Exhibit H.1 also references the City assigned planner to the case (Williams) and gives his telephone number and email address. Exhibit H.1 includes information about the proposal including the date that the application was submitted (October 22, 2013) and deemed complete by the City (November 25, 2013). The Hearing Notice also includes an Internet address to access the BDS staff report. The BDS staff report indicates the correct January 15, 2014 @ 9:15 a.m. hearing date.

The Hearings Officer does not excuse the mistake made by BDS in listing the scheduled hearing date as January 15, 2013. However, the Hearings Officer finds that even a cursory reading of the Hearing Notice suggests that the January 15, 2013 hearing date was a mistake. The Hearings Officer finds that a number of representatives of the ENA and a number of residents were at the January 15, 2014 hearing. The Hearings Officer takes notice of comments in Exhibit H.17, stating that

"Every single family living on Moreland Lane is opposed to the rezoning. We have hired our own attorney (Ty Wyman) to represent us in our cause. We also have supporters from all over

Eastmoreland and the Eastmoreland Neighborhood Association also opposes the change of zoning from R7 to R5. We have been working in concert with the ENA."

The Hearings Officer finds that opponents' claim that the Hearing Notice was not adequate is an allegation of a procedural error. Challenges to the adequacy of the Hearing Notice are upheld only if such errors are determined to prejudice substantial rights of the persons entitled to notice. *Ramsey v. Multnomah County*, 44 Or LUBA 722 (2003)

The Hearings Officer finds a large number of persons attended the Hearing and a large number of persons submitted written evidence into the record of this case. The Hearings Officer is particularly influenced by the comments quoted above from Exhibit H.17. The Hearings Officer finds the Hearing Notice (Exhibit H.1), while containing a date error, did not substantially prejudice persons entitled to notice of the January 15, 2014 hearing.

The Hearings Officer conducted a cursory review of Exhibit D.5 ("Mailing List"). The Hearings Officer finds that the Mailing List appears to include the names and addresses of persons/properties required under the PCC to receive Exhibit H.1. The Hearings Officer finds, based upon a review of Exhibit D.6, the Hearing Notice was mailed on December 19, 2013. PCC 33.730.030 D.1 requires the Hearing Notice to be mailed to be mailed "at least 20 days before the scheduled hearing." The Hearings Officer the Hearing Notice was mailed in a timely manner.

PCC 33.730.030 D.2 requires a posting of the Hearing Notice on the Subject Property (see also PCC 33.730.080). Exhibit D.4 is a copy of the "Applicant's Statement Certifying Posting." The Hearings Officer finds Exhibit D.4 is credible evidence in this case. The Hearings Officer finds the comments in Exhibit H.15 did not allege the posted signs did not comply with PCC 33.730.030 D.2. The Hearings Officer finds, to the contrary, that the author of Exhibit H.15 did in fact see one or more of the posted notices and informed the BDS staff planner when one of the posted notices "fell apart" and thereafter was "put into place again."

The Hearings Officer finds opponents' allegation that of improper or inadequate public notice of the Hearing is not supported by evidence in the record of this case.

### **Request to Extend Open-Record Period**

At the Hearing the Hearings Officer granted a request to keep the written record open for the submission of written comments/evidence/argument (See also written request in Exhibit H.8). The Hearings Officer, at the Hearing, set the following schedule for the submission of written comments/evidence/argument:

- 4:30 p.m. on January 22, 2014 for the submission of written comments/evidence/argument from any person/entity
- 4:30 p.m. on January 29, 2014 for the submission of final argument by the Applicant

Livingston submitted a written request for a “one-day extension” for the submission of comments/evidence/argument from any person/entity (Exhibit H.48). Livingston stated that his “clients have worked diligently to assemble and review the relevant documents surrounding the redesignation on the comprehensive plan map of the subject property from R-7 to R-5. However, a combination of the Martin Luther King holiday yesterday, during which all public offices, including archives and libraries, were closed and the malfunction of the microfilm reading machine at the Sellwood-Moreland Library, which required the delivery (by inter-library messenger) of a microfilm to the Central Library, has made it difficult to complete all of the necessary work in time to meet tomorrow’s deadline.”

Livingston’s request for the “one-day extension” was received by the Hearings Office at 2:43 p.m. on January 21, 2014 (per fax notation at the top of Exhibit H.48). Robinson submitted a response to Livingston’s request for a “one-day extension.” Robinson stated that Applicant “does not consent to or support” Livingston’s “one-day extension” request. Robinson stated, “All parties agreed to be bound by the original open record schedule, and ENA has not alleged or demonstrated that adhering to this original schedule will prejudice its substantial rights.”

The Hearings Officer considered the following in arriving at a decision not to extend the 4:30 p.m. January 22, 2014 comment/evidence/argument deadline:

- The Hearings Officer inquired, at the end of the Hearing whether or not anyone (including Livingston) had any concerns with the January 22, 2014 and January 29, 2014 deadlines; no concerns were expressed about the deadlines.
- The mailing list for this case is extensive; approximately 68 persons/addresses required to be notified of *any* decision or order of the Hearings Officer.
- Livingston’s fax request (Exhibit H.48) for a “one-day extension” was received at approximately 2:43 p.m. on January 21, 2014; roughly 26 hours prior to the 4:30 p.m. January 22, 2014 deadline.
- Livingston’s request (Exhibit H.48) was for an extension of the open-record period for the submission of comments/evidence/argument until January 23, 2014 at 4:30 p.m.
- The earliest the Hearings Officer could mail an Order notifying all persons entitled to notice was on January 22, 2014; the probable receipt date of such Order would have been January 23, 2014 or later.
- The “120 day clock,” according to the BDS staff report, is March 25, 2014 (Exhibit H.2, page 15); the deadline for mailing the Hearings Officer decision was February 14, 2014, the last day to appeal the Hearings Officer’s decision to City Council was February 28, 2014, City Council hearing will be held at least 21 days after the filing of the appeal leaving City Council 4 days to make/mail a decision by the March 25, 2014 120-day deadline.

The Hearings Officer finds that most participants in the public hearing process would not have received an Order extending the open-record period until after the extended record period closed. The Hearings Officer finds that extending the open-record period, even one day, would have placed City Council at even greater risk of violating the 120-day clock deadline. The Hearings Officer

denied Livingston's request for a "one-day extension" as set forth in his Exhibit H.48 fax transmission.

## **ZONING CODE APPROVAL CRITERIA**

### ***APPROVAL CRITERIA FOR ZONING MAP AMENDMENTS***

#### **33.855.050 Approval Criteria for Base Zone Changes**

An amendment to the base zone designation on the Official Zoning Maps will be approved (either quasi-judicial or legislative) if the review body finds that the applicant has shown that all of the following approval criteria are met:

**A. Compliance with the Comprehensive Plan Map.** The zone change is to a corresponding zone of the Comprehensive Plan Map.

1. When the Comprehensive Plan Map designation has more than one corresponding zone, it must be shown that the proposed zone is the most appropriate, taking into consideration the purposes of each zone and the zoning pattern of surrounding land.

**Findings:** Opponents to this application (McCullough, Livingston and others) argued that the R5 comprehensive plan designation was placed on the official map in error. The Hearings Officer addressed this argument in the Preliminary Matters above. The Hearings Officer finds the R5 comprehensive plan map designation for the Subject Property is correct on the Official Zoning Maps for the City of Portland (Map 3633). The Hearings Officer finds this designation has only one corresponding zone - R5. Opponents also argued that the Hearings Officer must address specific comprehensive plan goals and policies. The Hearings Officer addressed the comprehensive plan goals/policies issue in the Preliminary Matters above.

The Hearings Officer finds this approval criterion does not apply.

2. Where R zoned lands have a C, E, or I designation with a Buffer overlay, the zone change will only be approved if it is for the expansion of a use from abutting nonresidential land. Zone changes for new uses that are not expansions are prohibited.

**Findings:** This Subject Property does not have a C, E, or I designation or a Buffer overlay. The Hearings Officer finds this approval criterion does not apply.

3. When the zone change request is from a higher-density residential zone to a lower-density residential zone, or from the CM zone to the CS zone, then the approval criterion in 33.810.050 A.2 must be met.

**Findings:** The requested zone change is not from a higher density residential zone to a lower density residential zone or from the CM zone to the CS zone. Therefore, the Hearings Officer finds this approval criterion does not apply.

**B. Adequate public services.**

1. Adequacy of services applies only to the specific zone change site.
2. Adequacy of services is determined based on performance standards established by the service bureaus. The burden of proof is on the applicant to provide the necessary analysis. Factors to consider include the projected service demands of the site, the ability of the existing and proposed public services to accommodate those demand numbers, and the characteristics of the site and development proposal, if any.
  - a. Public services for water supply, and capacity, and police and fire protection are capable of supporting the uses allowed by the zone or will be capable by the time development is complete.
  - b. Proposed sanitary waste disposal and stormwater disposal systems are or will be made acceptable to the Bureau of Environmental Services. Performance standards must be applied to the specific site design. Limitations on development level, mitigation measures or discharge restrictions may be necessary in order to assure these services are adequate.
  - c. Public services for transportation system facilities are capable of supporting the uses allowed by the zone or will be capable by the time development is complete. Transportation capacity must be capable of supporting the uses allowed by the zone by the time development is complete, and in the planning period defined by the Oregon Transportation Rule, which is 20 years from the date the Transportation System Plan was adopted. Limitations on development level or mitigation measures may be necessary in order to assure transportation services are adequate.

**Findings:** A number of opponents argued that the Hearings Officer should analyze this approval criterion based upon the possibility that “17-18” houses could be constructed in close proximity to the Subject Property (see, for example, Exhibit H.12f, page 2). Section B.1, as set forth above, states that the adequacy of services “applies only to the specific zone change site.” The Hearings Officer finds B.1 is clear and unambiguous. The Hearings Officer finds B.1 means exactly what it says. The Hearings Officer finds with the language of B.1 being clear and unambiguous it would be inappropriate to consider the “intent” of City Council in adopting B.1 and it would also be inappropriate to engage in any additional interpretative exercises. The Hearings Officer finds that this approval criterion considers the adequacy of public services only with respect to the proposed development on the Subject Property.

Bureau responses for the Water Bureau, Police Bureau, Fire Bureau, Bureau of Environmental Services and Portland Bureau of Transportation are summarized below by the Hearings Officer. The Hearings Officer notes that these service bureaus concluded that public services are adequate/available for the anticipated level of use(s) that would be allowed to occur on the Subject

Property. These service bureaus recommended no conditions or additional requirements for approval of the requested Zoning Map Amendment.

Water Bureau (Exhibit E.3)

The Water Bureau indicated that service is available to the Subject Property from the 8-inch CI water main in SE Woodstock Boulevard. The estimated static water pressure range for this location is 59 psi to 73 psi at the existing service elevation of 132-feet.

Police Bureau (Exhibit E.8)

The Police Bureau did not anticipate any impact in services as a result of the proposed zone change and therefore expressed no concerns.

Fire Bureau (Exhibit E.4)

The Fire Bureau reviewed the Zoning Map Amendment request and had no issues with the ability of its bureau to serve the uses and development allowed under the proposed R5 zone.

Bureau of Environmental Services (Exhibit E.1)

The Bureau of Environmental Services (“BES”) indicated that sanitary service is available to the Subject Property from the 8-inch concrete public combination sewer main in SE Woodstock Boulevard. BES also granted conceptual approval of Applicant’s proposed method of stormwater management, consisting of individual infiltration facilities, based on submittal of a Simplified Approach stormwater report (Exhibit A.3) that demonstrates infiltration rates that exceed the City’s minimum requirements.

Bureau of Transportation Engineering and Development Review (Exhibit E.2)

The Development Review Section of the Portland Bureau of Transportation (“PBOT”) 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. Applicant submitted a Transportation Impact Analysis (Exhibit A.4 – hereafter the “TIA”) and analysis of the Transportation Planning Rule (Exhibit A.5 – hereafter the “TPR”) to address this approval criterion. PBOT’s Analysis is quoted, in part, as follows:

***“Zone Change***

*As demonstrated in the TIA, the net increase in trips associated with the potential worst case development allowed as a result of the change in zoning of the subject property, will not significantly impact the operation of study intersections. The City’s performance standards are satisfied and no mitigation is necessary or recommended.*

***TPR 660-012-0060***

*The subject site is proposed to be zone R5, which is consistent with the designation of the City’s Comprehensive Plan. The proposed zone change does not require a revision to the Comprehensive Plan. The City has an acknowledged Transportation System Plan that considers development under that Comprehensive Plan designation. The subject site has been within the urban growth boundary for years and was not exempted from the rule as*

*described in subsection (c) above. Accordingly, Section 9 of the TPR quoted above is satisfied and the City may find there is no "significant impact" and the TPR is satisfied."*

A more detailed analysis of street systems is addressed in the findings for PCC 33.660.120 K.

The Hearings Officer finds, based upon the discussion above, that public services are adequate to accommodate the proposed change of zone from its current R7 designation to the Comprehensive Plan approved R5 designation. The Hearings Officer finds this approval criterion is met.

3. Services to a site that is requesting rezoning to IR Institutional Residential, will be considered adequate if the development proposed is mitigated through an approved impact mitigation plan or conditional use master plan for the institution.

**Findings:** The request does not include rezoning the Subject Property to the IR zone. The Hearings Officer finds this approval criterion does not apply.

**C. When the requested zone is IR, Institutional Residential.** In addition to the criteria listed in subsections A. and B. of this Section, a site being rezoned to IR, Institutional Residential must be under the control of an institution that is a participant in an approved impact mitigation plan or conditional use master plan that includes the site. A site will be considered under an institution's control when it is owned by the institution or when the institution holds a lease for use of the site that covers the next 20 years or more.

**Findings:** The request does not include rezoning the Subject Property to the IR zone. The Hearings Officer finds this approval criterion does not apply.

**D. Location.** The site must be within the City's boundary of incorporation. See Section 33.855.080.

**Findings:** The Subject Property is within the incorporated boundaries of the City of Portland. The Hearings Officer finds this approval criterion is met.

#### ***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 the Subject Property, and the nature of the proposal, some of the approval criteria are not applicable. The following table summarizes the criteria that the Hearings Officer finds not applicable to this case. The Hearings Officer finds the approval criteria that are not relevant are addressed in the findings below this table.

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
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C	33.631 - Flood Hazard Area	The Subject Property is not within the flood hazard area.
D	33.632 - Potential Landslide Hazard Area	The Subject Property is not within the potential landslide hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
H	33.636 - Tracts and Easements	No tracts or easements have been proposed or will be required.
I	33.639 - Solar Access	All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
J	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the Subject Property and it is 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 Subject Property 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.B - Existing public dead-end streets and pedestrian connections	No public dead-end streets or pedestrian connections exist that must be extended onto the site.
	33.654.130.C - Future extension of dead-end streets and pedestrian connections	No dead-end street or pedestrian connections 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 33.610 contains the density and lot dimension requirements applicable in the RF through R5 zones. Applicant proposes to create two through lots for detached houses. The minimum and maximum density for the site is as follows:

Minimum =  $(13,199 \text{ square feet} * .80) \div 5,000 \text{ square feet} = 2.11$  (which rounds down to a minimum of 2 parcels, per 33.930.020.A)

Maximum =  $13,199 \div 5,000 \text{ square feet} = 2.63$  (which rounds down to a maximum of 2 parcels, per 33.930.020.B)

If the minimum required density is equal to or larger than the maximum allowed density, then the minimum density is automatically reduced to one less than the maximum. Therefore, in this case the minimum density is reduced to one parcel.

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

	<b>Min. Lot Area (square feet)</b>	<b>Max. Lot Area (square feet)</b>	<b>Min. Lot Width* (feet)</b>	<b>Min. Depth (feet)</b>	<b>Min. Front Lot Line (feet)</b>
<b>R5 Zone</b>	3,000	8,500	36	50	30
Parcel 1	7,086		56.12	126	56.12
Parcel 2	6,113		55.45	109	54.45

\* Width is measured by placing a rectangle along the minimum front building setback line specified for the zone. The rectangle must have a minimum depth of 40 feet, or extend to the rear of the property line, whichever is less.

**Through Lots**

Proposed Parcels 1 and 2 are considered through lots as they both have frontage on two streets that do not intersect. Through lots are allowed only where both front lot lines are on Local Service Streets. In this circumstance, SE Moreland Lane is classified as a Local Service Street and SE Woodstock Boulevard is classified as a Neighborhood Collector, Transit Access Street, City Bikeway, City Walkway and a Community Corridor. As addressed later in this decision, an Adjustment Review has been requested to allow both Parcels 1 and 2 to be created as through lots. The minimum front lot line and minimum width standards apply to one frontage of the through lot.

The findings above show that the applicable density and lot dimension standards are met. Subject to approval of the Adjustment to allow through lots, the Hearings Officer finds this approval criterion is met.

**B. Trees. The standards and approval criteria of Chapter 33.630, Tree Preservation, must be met.**

**Findings:** The regulations of Chapter 33.630 preserve trees and mitigate for the loss of trees. Certain trees are exempt from the requirements of this chapter.

Applicant submitted an arborist report that inventories the trees on the Subject Property (Exhibit A.2). The arborist report evaluates the condition and specifies root protection zones for trees on the Subject Property. The arborist report identified 3 trees, of which 2 trees are exempt because one is located partially in the right-of-way (38-inch Douglas fir) and one is considered a nuisance species (26-inch bird cherry). Thus, one non-exempt tree, a 28-inch Douglas fir, is subject to the preservation requirements of this chapter. Applicant proposes to preserve this tree, which complies with Option 1 of the tree preservation standards, as at least 35 percent of the total non-exempt tree diameter on the Subject Property will be preserved. The tree to be preserved and the required root protection zone is shown on Applicant's Preliminary Grading Plan (Exhibit C.5).

In order to ensure that future owners of the lots are aware of the tree preservation requirements, BDS staff recommended a condition of approval requiring Applicant record an Acknowledgement of Tree Preservation Requirements at the time of final plat. The Hearings Officer concurs with this BDS recommendation.

The Hearings Officer finds this approval criterion is met, subject to the condition that development on Parcel 1 be carried out in conformance with the Preliminary Grading Plan (Exhibit C.5), Applicant's arborist report (Exhibit A.2) and an Acknowledgement of Tree Preservation Requirements is recorded with the final plat.

**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 Subject Property is mostly flat and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the Subject Property to make the lots/parcels developable. In addition, the tree required to be preserved, as identified under criterion B of this decision, is located in the southwest corner of Parcel 1 where new development is not anticipated. The Hearings Officer finds that this approval criterion is met.

### ***Land Suitability***

The Subject Property is currently in residential use, and there is no record of any other use in the past. Applicant proposed to remove the existing house and garage and redevelop the Subject Property. In order to ensure that the new lots are suitable for development, a permit must be obtained and finalized for demolition of all structures on the site and sewer capping prior to final plat approval.

The Hearings Officer addressed opponents' issues related to demolition of structures in the Preliminary Comments above.

The Hearings Officer finds that with a demolition permit condition the new lots/parcels can be considered suitable for development. The Hearings Officer finds this approval criterion, with the demolition permit condition, is met.

### **K. Transportation impacts. The approval criteria of Chapter 33.641, Transportation Impacts, must be met; and,**

**Findings:** The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. PBOT 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. The applicant submitted the TIA to address the evaluation factors of this approval criterion (Exhibit A.4).

This approval criterion was the subject of significant Hearing testimony and written comments. Opponents assert that a PBOT issued the Public Works Appeal Waiver (LU 13-219755-000-00-LU) in error (see, for example, Exhibits H.57 and H.62). The Hearings Officer addressed, in the Preliminary Matters discussion above. However, as noted in the Preliminary Matters discussion, the Hearings Officer must address the transportation impacts, as described in PCC 33.641.020, of the proposed partition.

The Hearings Officer notes that PCC 33.641.020 states the following:

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

PCC 33.641.020 requires the Hearings Officer to determine if the transportation system is capable of supporting (1) the ***proposed use*** [division of one parcel into two parcels], and (2) the ***existing uses*** in the area. The Hearings Officer, under PCC 33.641.020, may not consider ***future uses*** that may occur in the area. The Hearings Officer finds that consideration of the traffic impacts resulting

from the potential of "full development" of the properties in the vicinity of the Subject Property is inappropriate under PCC 33.641.020.

The Hearings Officer, below, addresses each of the above-listed evaluation factors.

### **Street Capacity and Level-of-Service.**

PBOT, in Exhibit E.2, provided the following comments related to the street capacity and level-of-service evaluation factor:

"The applicant has submitted a traffic impact analysis (TIA) prepared by an Oregon licensed traffic engineer, Lancaster Engineering. The TIA documents that all study intersections will continue to operate within City standards with the addition of the vehicle trips generated by a net increase in one single-family residence created through this land division application. The new residence can be expected to generate 10 daily vehicle trips with 1 trip occurring in the AM and PM Peak Hours. This negligible increase in Peak Hour trips will have no significant impact on nearby intersections. No mitigation is recommended."

There was little concern expressed by opponents regarding this evaluation factor. The argument was presented that traffic impacts from "full development" of all or part of the surrounding R5 zoned lands should be considered. As stated above, the Hearings Officer found that PCC 33.641.020 does require an applicant to demonstrate impacts upon the transportation system of potential *future uses*. The Hearings Officer finds this evaluation factor is met.

### **Vehicle Access and Loading**

PBOT, in Exhibit E.2, provided the following comments related to the vehicle access and loading evaluation factor:

"Vehicle access to the site will be via SE Moreland Lane (west or east). On-street parking is available on the south side of SE Moreland Lane where it travels east/west, on the west side of SE Moreland Lane (west) where it travels north/south, and on the site side of SE Woodstock Blvd in the vicinity of the site; however most trips are expected to use the two site access points for access and loading."

ENA stated, in Exhibit H.62, the following:

"In connection with 'vehicle access and loading' the staff report (p.9) states, incorrectly, that on-street parking is available on the south side of SE Moreland Lane where it travels east/west. There is no such parking on the part of SE Moreland Lane where it travels east/west. There is no such parking on the part of Moreland Lane within reasonable distance of the subject property. Similarly, the reliance on parking located on the west side of Moreland Lane (west) where it goes north-south is misplaced, when that parking is over 100 yards from the houses on the east end of Moreland Lane."

PBOT responded (Exhibit H.61b) to the parking comments made by the ENA in Exhibit H.62. PBOT, in Exhibit H.61b, stated:

"Another question was raised that stated the traffic study was unclear about where on-street parking is currently allowed. Moreland Lane can be described as having three sections. There is a wider western section, the narrower eastern section, and the alley section. The western section intersects SE Woodstock just east of SE 28<sup>th</sup> and travels south then east. This is the wider section adjacent and has a sidewalk on the west side and south side. The only place where on-street parking is allowed is on the western section adjacent to the existing sidewalk. On-street parking is not allowed on the alley section or the eastern section that begins at the alley intersection and continues east to terminate in a cul-de-sac."

The Hearings Officer finds no significant dispute between the Applicant and opponents that primary access to at least one lot/parcel be located on SE Moreland Lane. The Applicant and opponents did disagree as to the safety of having both (two) accesses on SE Moreland. The Hearings Officer finds secondary access, for guests and visitors under Applicant's proposal will be via SE Woodstock. The Hearings Officer finds evidence in the record that on-street parking is available in the vicinity (on a portion of SE Moreland Lane and across from the SE Woodstock; the parties only dispute appears to be the practicality of such on-street parking because of its distance to the Subject Property).

The Hearings Officer incorporates, into the findings for this evaluation factor the findings for the Impacts on the Immediate and Adjacent Neighborhoods and Safety for All Modes evaluation factors. The Hearings Officer finds the transportation system is capable of safely providing access and loading to the proposed development of the Subject Property and to existing uses. The Hearings Officer finds this evaluation factor is met.

### **On-street Parking Impacts**

Ty Wyman ("Wyman"), an attorney representing various opponents of the application, argued that Williams failed to adequately demonstrate that the on-street parking is adequate (Exhibit H.57). In support of this argument Wyman referenced a January 22, 2014 memorandum from Mr. Peter Finley Fry ("Fry") (Exhibit H.57d) and a letter from Mr. Christopher M. Clemow ("Clemow") (Exhibit H.57f). Fry, in Exhibit H.57d, stated the following relating to on-street parking:

"The on-street parking survey was done at 1:30 am and 10:00 am. These are the two lowest period[s] of on-street parking demand. The highest use would be at 6:30 or 7:00 pm or noon when guest who typically park on street would be present for dinner or visiting. The applicant acknowledges that there is no parking on the north side of Woodstock or the end of Moreland Lane, yet uses very low usage times to justify presence of available on-street parking spaces. The applicant asserts that each house has adequate parking with garage and driveway, yet these areas are often used for

storage. The applicant simply provides a definitive statement that there is no impact on adjacent neighbors with no explanation why."

Clemow, in Exhibit H.57f, stated the following relating to on-street parking:

"The Applicant-submitted traffic impact analysis evaluates on-street parking supply and demand. It should be noted that the analysis does evaluate Woodstock parking demand during the evening period (5:00 - 8:00 PM), when residential parking demand is anticipated to be the highest. As noted in the TIA, there is no on-street parking along the property frontage on Moreland Lane. While this roadway type is generally not wide enough (16 feet) to comfortably accommodate simultaneous two-way traffic or on-street parking, additional development is anticipated to increase on-street parking need. As such, it is anticipated these vehicle will park on Woodstock, and it needs to be determined if these vehicles can be accommodated during a typical weekday evening." [Hearings Officer observation: The Hearings Officer believes the above-quoted material omits, in the second sentence, the word "not." The sentence, without the word "not" would be in conflict the statements made in Exhibit H.57 and H.57d and the Parking Supply & Demand Data appendix to Exhibit H.56g.]

Robinson, in his final argument for Applicant, responded to comments made in Exhibits H.57, H.57d and H.57f, as follows:

"Mr. Wyman contends that the partition cannot be approved because Applicant has not demonstrated that the transportation system is capable of safely supporting the proposed development in addition to existing uses in the area in terms of on-street parking impacts, as required by PCC 33.641.020. Specifically, Mr. Wyman contends that Applicant's parking survey is not reliable and thus does not provide an adequate factual base to support the conclusion that this standard is met. The Hearings Officer should deny this contention because Applicant is proposing only one additional lot. Further, Applicant is proposing to eliminate an existing curb cut on SE Woodstock Boulevard, thus opening up more on-street parking in this location. Additionally, because there is no on-street parking on SE Moreland Lane, installing two curb cuts onto this street will not eliminate any permitted on-street parking. Finally, the proposed development will provide adequate off-street parking, which should reduce demand from this development for on-street parking. Mr. Wyman has not disputed any of these facts. Therefore, the Hearings Officer should find that the transportation system is capable of supporting the projected on-street parking impacts of the development."

The Hearings Officer finds that PBOT is the City's transportation bureau and that the PBOT representative, Mr. Robert Haley ("Haley"), is a qualified transportation planning expert. Haley, in Exhibit E.2, makes the following comments related to the on-street parking impacts of the proposal:

"The TIA included an on-street parking supply and demand analyses. The TIA documents that adequate on-street parking will continue to exist to serve the local residences and their guests. On-site

parking for each of the new lots will be provided. Removal of the existing driveway on SE Woodstock will create one additional on-street parking spaces. Since there is no on-street parking along the site frontage on SE Moreland Lane, creating two new driveways here will not result in the loss of any on-street parking. The study documents that there is ample available on-street parking to serve the new residence in addition to existing residences in the area."

The Hearings Officer finds that Wyman, Fry and Clemow express reservations about the times of day Applicant's transportation engineering consultant conducted inventories of on-street parking spaces. Applicant's traffic engineering consultant explained its selection of 10:00 a.m. as appropriate because it is a time when "on-street parking demands from residential uses, construction activities in the site vicinity and school-related uses overlap resulting in the highest observed parking demands" (Exhibit H.56g, page 4).

The Hearings Officer notes that Fry, while having impressive "planning" credentials, does not purport to be a licensed/registered traffic engineer. The Hearings Officer notes that Wyman is a highly competent land use lawyer but there is no evidence in the record of this case suggesting he is also a traffic expert or engineer. The Hearings Officer acknowledges that Clemow is a licensed/registered traffic engineer with extensive expertise in traffic (and parking) matters. Clemow's, in Exhibit H.56g, concluded that 5:00 p.m. to 8:00 p.m. represented the highest on-street parking demand. However, Clemow provided the Hearings Officer with no supporting explanation or evidence.

The Hearings Officer finds Applicant's traffic engineers TIA (Exhibit A.4) and updated comments (Exhibit H.56g) do constitute substantial evidence that the supply of on-street parking is adequate to safely satisfy any additional on-street parking demands created by an approval of this application. The Hearings Officer finds transportation system, with respect to on-street parking, is capable of safely supporting the proposed development as well as existing development. The Hearings Officer finds this evaluation factor is met.

#### **Availability of Transit Service and Facilities and Connections to Transit**

PBOT, in Exhibit E.2, provided the following comments related to the availability of transit service and facilities and connections to transit evaluation factor:

"TriMet has bus stops in place along SE Woodstock and SE 32<sup>nd</sup> Ave. But Route 19 Woodstock/Glisan is within one block of the site. It has 10-15 minute headways during the peak commute hours."

The Hearings Officer finds the PBOT comment, as quoted above, to be credible evidence. The Hearings Officer finds the availability of transit was not contested in this case. The Hearings Officer finds the transportation system, with respect to transit service, is capable of safely supporting the proposed development. The Hearings Officer finds this evaluation factor is met.

#### **Impacts on the Immediate and Adjacent Neighborhoods**

Several opponents, during testimony at the public hearing and in written comments in the record, expressed concerns relating to this evaluation factor. Much of the public hearing testimony related to potential traffic impacts was focused upon the possibility of future lot/parcel divisions in addition to the parcels proposed in this application (hearing testimony of Mr. Robert Oringdulph ("Oringdulph") and Mr. Rod Merrick ("Merrick")). As discussed above, a PCC 33.641.020 review of transportation evaluation factors considers only the *proposed use* (partition one lot into two parcels) and the *existing uses*; **not** uses which may, sometime in the *future*, occur. The Hearings Officer, therefore, only considered the impacts on the immediate and adjacent neighborhoods created by the proposed use and existing uses.

The Hearings Officer believes that it is important to reiterate that the proposed use is the division of the Subject Property into two parcels; a net addition of one parcel to the immediate and adjacent neighborhoods. The Hearings Officer also believes that it is relevant to recognize that the current access point for the Subject Property is to SE Woodstock and the proposed access points for the resulting two parcels will be on SE Moreland Lane; a net decrease of one access point on SE Woodstock and a net increase of two access points on SE Moreland Lane.

Haley, in Exhibit H.61b, stated, "Moreland Lane can be described as having three sections" including an "alley section" directly adjacent to the Subject Property. Applicant's traffic engineer concurred with Haley's "alley" section characterization (Exhibit H.59a, page 5).

Applicant's traffic engineer, Mr. Michael Ard ("Ard") provided additional comments about Moreland Lane, in the immediate vicinity of the Subject Property (Exhibit H.59g, pages 5 and 6), as follows:

"Speeds are very low due to the visually narrow road width, the residential character of the neighborhood and the short travel length. The road easily accommodates one direction of travel, and although it may be possible to accommodate vehicles travelling in opposite directions simultaneously, it is unnecessary to do so. The road dead-end segment extends 200 feet to where a wider cul-de-sac is provided at the end of the roadway. Similarly, the alley-like connection to SE Woodstock Boulevard has a length of approximately 200 feet. The short lengths of these road segments in conjunction with the very low traffic volume of traffic travelling on SE Moreland Lane allow the roadways to operate both safely and efficiently. With the addition of two driveways taking access on the easternmost portion of SE Moreland Lane, the segment would be expected to accommodate up to 20 additional daily trips. The total daily traffic volume on this segment of SE Moreland Lane would be projected as 60 or fewer vehicles per day, based on the number homes taking access. Traffic volumes on the alley-like connection to SE Woodstock Boulevard would be projected to have similar traffic volumes.

Assuming an average travel speed of 10-15 mph, traveling 200 feet would take just 9 to 14 seconds. In conjunction with the projected traffic volume, this indicates that these roadway segments will be

occupied by a vehicle during less than one percent of the day. Even during the peak hour, there will be a vehicle on these road segments only about two percent of the time. Given the very low traffic volumes and the low travel speeds on these road segments, bicycles and pedestrians can safely share the road with motorized vehicular traffic. Notably, since all homes fronting these road segments are located on through lots, pedestrians and bicyclists also have the ability to enter and exit the lots without utilizing SE Moreland Lane.

For the western portion of SE Moreland Lane, the roadway widens but also accommodates on-street parking. Since the on-street parking is lightly used, the majority of the roadway easily accommodates simultaneous two-way traffic. Motorized vehicle travel speeds and volumes are sufficiently low that bicycles and pedestrians could share the roadway; however sidewalks are in place on the south side of the roadway."

Ard, in Exhibit 59g also addressed the removal of the driveway from the Subject Property that currently accesses SE Woodstock. Ard stated, in Exhibit 59g, page 4, that:

"Removal of the driveway will have some projected impacts on safety in the site vicinity. Vehicles entering and exiting the existing driveway on SE Woodstock Boulevard must cross the sidewalk and bike lanes as well as entering the through travel lanes on Woodstock Boulevard. Drivers exiting from the driveway typically travel in reverse into the roadway, resulting in greater difficulty identifying conflicts, particularly for pedestrians and bicycles...removal of the existing driveway on SE Woodstock boulevard will improve safety along the Woodstock Boulevard corridor."

Haley, in the PBOT bureau response (Exhibit E.2), stated:

"The impact of site traffic on adjacent neighborhoods, area intersections and the streets in the site vicinity is projected to be minimal and acceptable. Additionally, since ample on-street parking exists in the immediate site vicinity, the proposed zone change, land division, and subsequent development will not significantly affect the immediate and adjacent neighborhoods."

Ms. Helen C. Dillon ("Dillon"), an opponent of the proposed partition, expressed a common sentiment of persons living in the vicinity of the Subject Property. Dillon agreed with Applicant's traffic engineer when she stated that

"Moreland Lane ...only vaguely resembles a street. It is narrow with a small cul-de-sac at its eastern end...though it is designated as a Local Service Street, in reality functions as a dead end street, alley and turnaround, all of which currently exists; it poorly provides for pedestrians and bicyclists." (Exhibit H.54)

Ms. Virginia Montag ("Montag") an another opponent, stated

"the houses' garages will be on Moreland Lane and that will put much more traffic on this small street which already has too much traffic. It is a safety problem for vehicles, residents and children playing in the area." (Exhibit H.34)

The above concerns were also expressed, during testimony at the public hearing, by Ms. Mary Rogers ("Rogers"), Mr. Robert Buys ("Buys"), Mr. Jeff Bowman ("J. Bowman"), Ms. Patricia Bowman ("P. Bowman"), Schlesinger and others.

Clemow, the traffic engineer engaged by Wyman to review the BDS staff report, PBOT comments and Applicants TIA, addressed access from the two proposed lots/parcels on the Subject Property (Exhibit H.57a). Clemow's comments suggested that if the proposed land division is approved that it should be conditioned to require a "sidewalk." The Hearings Officer notes that Clemow's recommendation for a "sidewalk" was

"Due to the size of the residential properties in this area, if the proposed land use action is approved, it can be anticipated there will be similar land use actions - also proposing direct access to Moreland."

The Hearings Officer finds the "immediate neighborhood," as that phrase is used in PCC 33.641.020, is comprised homes fronting the eastern "alley-like" segment of Moreland Lane (lots located east of the north-south segment of SE Moreland). The Hearings Officer, using Map 3633 (Exhibit B.1), counted seven lots currently exist in the immediate area and eight lots will exist if this application is approved. If this application is approved it would amount to an 18% increase in the number of lots in the immediate area. The Hearings Officer finds "adjacent neighborhoods," as that phrase is used in PCC 33.641.020, to be the residential lots and the portion of the Reed College campus shown on Map 3633 (Exhibit B.1).

Based upon the above evidence, and the record as a whole, the Hearings Officer finds three matters are the most important in determining if the impacts on the "immediate neighborhood" and "adjacent neighborhood" evaluation factor is met. First, as discussed on more than one occasion in the findings for PCC 33.641.020, the Hearings Officer may only consider the traffic impacts arising from the proposal in this application and the existing uses; not future or anticipated land use actions. Second, the Hearings Officer finds that this proposal is for the division of one lot, the Subject Property, into two lots/parcels. Third, the Hearings Officer finds SE Moreland Lane has been fairly characterized, by all persons proving evidence in this case, as operating in a manner similar to an alley; a narrow paved area serving a relatively few residences.

The Hearings Officer finds that the net addition of one lot/parcel and one driveway will have no meaningful transportation impact on the "adjacent neighborhood." The Hearings Officer finds the elimination of one driveway on SE Woodstock will have no meaningful transportation impact on the "adjacent neighborhood." Safety aspects related to the "adjacent neighborhood" will be addressed below in the findings for the "safety for all modes" evaluation factor. Those findings are incorporated into the findings for the impacts on the immediate and adjacent neighborhood evaluation factor.

The Hearings Officer finds the traffic impacts related to the "immediate neighborhood" resulting from an approval of this application are somewhat less clear than the impacts related to the "adjacent neighborhood." The Hearings Officer agrees with opponents who claim that adding any

additional residences and driveways along alley-like portion of Moreland Lane will be noticed. The Hearings Officer agrees that adding any vehicles in the alley-like portion of Moreland Lane will increase the risk of transportation conflicts.

The Hearings Officer also agrees with the comments from Ard's submissions as quoted above. The Hearings Officer finds with such a low number of residences and driveways in the "immediate neighborhood," the rather narrow width of Moreland Lane in this area and the existence of the cul-de-sac, the addition of two driveways will not create a significant negative safety impact. The Hearings Officer finds the addition of 20 daily vehicle trips and two peak hour trips to the very low existing levels of traffic will not create safety impacts on the "immediate neighborhood." The Hearings Officer finds the transportation system, with respect to impacts on the immediate and adjacent neighborhoods, is capable of safely supporting the proposed development. The Hearings Officer finds this evaluation factor is met.

### **Safety for All Modes**

This evaluation factor requires consideration of "all modes of transportation." The Hearings Officer, for the purposes of this decision, defines "all modes of transportation" in the context of PCC 33.641.010 (the Purpose statement for PCC 33.641). The Hearings Officer will consider vehicular traffic (cars, trucks, etc.), transit, pedestrian and bicycles in making the findings for this evaluation factor.

The Hearings Officer finds little, if any, controversy between the Applicant and opponents related to transit safety. The Hearings Officer finds the most significant safety issue relates raised by opponents relate to bicycle and pedestrian safety risks that could be created if the application is approved.

Wyman, in Exhibit H.57, sets forth the opponents' arguments related to bicycle safety. Wyman stated, in Exhibit H.57, that:

"Mr. Fry explains the attributes of pedestrian/bicycle safety and enjoyment in the context of a collector street. Beyond the elements such as sidewalks and bike lanes, no factor is greater than vehicle speed. Vehicle speed is particularly material for a collector street, which carries traffic moving through a neighborhood. In this case, such traffic is generally moving from the Woodstock neighborhood ad points east to either Sellwood/Moreland or Hwy 99E. The enclosed letter from Mr. Clemow attests to the fact that retaining the subject driveway onto SE Woodstock Blvd 'will help prevent vehicle speeding' on that boulevard.

I well recognize that the extent of this impact might be *de minimis*; the removal of any one driveway will presumably cause a negligible increase in vehicle speeds."

Fry, in Exhibit H.57d stated:

"Development as proposed (with a new north-south lot line) will result in a pedestrian/bicyclist environment that is comparably less

safe and enjoyable. The primary factor in pedestrian/bicyclist safety and enjoyment is infrastructure, i.e., sidewalks and bike lanes. Each of those attributes exists at this location along SE Woodstock Blvd.

The secondary factor in pedestrian/bicyclist safety and enjoyment is vehicle speed. That is, the higher the speed of vehicles on a roadway, the less safe and enjoyable that roadway is for pedestrians and bicyclists. The applicant shows replacement of the existing driveway onto SE Woodstock Blvd with two driveways onto SE Moreland Lane.

We can reasonable assume that removing driveways onto a road tends to increase vehicle speeds there (I believe that opponents are obtaining a traffic report to such effect.) As such, by decommissioning the existing driveway, the application will necessarily decrease safety and enjoyment of pedestrians and bicyclists."

Clemow, in Exhibit H.57f, stated:

"It is anticipated that residential properties will directly access this roadway [SE Woodstock Blvd], and these accesses will help to reduce overall corridor speeds - i.e., it will help prevent vehicle speeding."

Ard provided the following response to the Wyman, Fry and Clemow comments (the second paragraph below was also quoted in the findings for the impacts on immediate and adjacent neighborhoods evaluation factor):

"Removal of the existing driveway on SE Woodstock Boulevard was claimed to have a potential negative safety impact on the operation of SE Woodstock Boulevard due to the fact that travel speeds along SE Woodstock Boulevard may increase. Generally, the removal or addition of a very low volume driveway (such as one serving a single-family home) will not materially affect the free-flow speed of traffic along the roadway. In this specific instance, the addition of a single street-tree in the vicinity of the existing driveway would serve to visually narrow the traveled way and would be projected to result in a net reduction in travel speed. In reality, any of these treatments would be expected to result in a change of through travel speeds of less than one mile per hour. Removal of the driveway will not encourage a meaningful increase in travel speeds and will not compromise public safety for motorists, pedestrians or bicycles.

Removal of the driveway will have some projected impacts on safety in the site vicinity. Vehicles entering and exiting the existing driveway on SE Woodstock Boulevard must cross the sidewalk and bike lanes as well as entering the through travel lanes on Woodstock Boulevard. Drivers exiting from the driveway typically travel in reverse into the roadway, resulting in greater difficulty identifying conflicts, particularly for pedestrians and

bicycles...removal of the existing driveway on SE Woodstock boulevard will improve safety along the Woodstock Boulevard corridor."

The Hearings Officer repeats his earlier observation that Fry did not provide any evidence that he is a licensed/registered traffic engineer. Further, Fry's quote above indicates that opponents were going to supply, into the record, a "traffic report" to support Fry's claim that "the higher the speed of vehicles on a roadway, the less safe and enjoyable is for pedestrians and bicyclists." (Exhibit H.57d) Clemow reached his conclusion because, as he stated in Exhibit H.57f, because SE Woodstock is a "fully-improved" roadway including "sidewalks, bike lanes, and parking." While the opponents did obtain a letter from Clemow the Hearings Officer does not consider it (Exhibit H.57f) to be a "traffic report." The Hearings Officer finds Clemow's comments to be overly general and unsupported by substantial evidence.

The Hearings Officer finds that Applicant provided credible evidence that bicycle safety would not be negatively impacted because of the elimination of the current Subject Property driveway accessing SE Woodstock Boulevard.

A number of opponents expressed concern that adding two driveways to SE Moreland Lane would negatively impact pedestrian and bicycle safety. The Hearings Officer addressed the expected traffic impacts of adding two driveways to SE Moreland Lane in the findings for the impacts on immediate and adjacent neighborhoods evaluation factor. The Hearings Officer incorporates those findings into the findings for the safety for all modes evaluation factor.

The Hearings Officer finds the addition of two driveways in the alley-like section of SE Moreland Lane (accessing the two lots/parcels at the Subject Property) will not cause significant negative safety impacts. The Hearings Officer finds the transportation system, with respect safety for all modes, is capable of safely supporting the proposed development and existing development. The Hearings Officer finds this evaluation factor is met.

**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 Bureau indicated that service is available to the Subject Property from the 8-inch CI water main in SE Woodstock Boulevard. The lateral serving the existing house may potentially be used to provide water for the new structure on Parcel 1 at the time of development. The water service standards of 33.651 have been verified. Therefore, the Hearings Officer finds this approval criterion is met.

**33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1**

BES indicated that service is available to the Subject Property from the 8-inch concrete public combination sewer main in SE Woodstock Boulevard. The lateral serving the existing house will be available for the new structure on Parcel 2 at the time of development. The sanitary sewer disposal service standards of 33.652 have been verified. Therefore, Hearings Officer finds this approval criterion is met.

**33.653.020 and .030 Stormwater Management criteria and standards – See Exhibit E.1**

No stormwater tract is proposed or required. Therefore, criterion A is not applicable. Applicant submitted a Simplified Approach stormwater report to address this approval criterion (Exhibit A.3) and has proposed the following stormwater management methods:

- **Parcels 1 and 2:** Stormwater from these lots/parcels 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. Applicant's stormwater report demonstrates infiltration rates that exceed the City's minimum requirements. BES indicated conceptual approval of the proposed method of stormwater management. The Hearings Officer finds the stormwater management criteria and standards are capable of being satisfied. Therefore, the Hearings Officer finds this approval criterion can be met.

**33.654.110.B.1 Through streets and pedestrian connections**

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

*"The north/south segment of SE Moreland Lane alleyway provides vehicle and pedestrian connections to SE Woodstock Blvd approximately 235-ft west of the Moreland Lane cul-de-sac. The two properties abutting the subject site on the east and west have direct frontage on SE Woodstock as well as on SE Moreland Lane. The connectivity standards are satisfied."*

For the reasons described above, the Hearings Officer finds this approval 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.

***APPROVAL CRITERIA FOR ADJUSTMENTS***

**33.805.010 Purpose**

The regulations of the zoning code are designed to implement the goals and policies of the Comprehensive Plan. These regulations apply city-wide, but because of the city's diversity, some sites are difficult to develop in compliance with the regulations. The adjustment review process provides a mechanism by which the regulations in the zoning code may be modified if the proposed development continues to meet the intended purpose of those regulations. Adjustments may also be used when strict application of the zoning code's regulations would preclude all use of a site. Adjustment reviews provide flexibility for unusual situations and allow for alternative ways to meet the purposes of the code, while allowing the zoning code to continue to provide certainty and rapid processing for land use applications.

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**33.805.040 Adjustment Approval Criteria**

Adjustment requests will be approved if the review body finds that the applicant has shown that approval criteria A. through F. stated below, have been met.

- A. Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and**

**Findings:** Williams, in the staff report (Exhibit H.2), stated the following:

"The applicant is requesting an adjustment to allow Parcels 1 and 2 to be created as through lots. The purpose of the Through Lots standard (33.610.300) is to ensure that lots are configured in a way that development can be oriented toward streets to increase the safety and enjoyment of pedestrians and bicyclists. The standard also ensures that development does not "turn its back" on a collector or major city traffic street.

A through lot is a lot that has frontage on two streets that do not intersect. Through lots are allowed only where both front lot lines are on local service streets. In this instance, Parcels 1 and 2

will have frontage on non intersecting streets of SE Moreland Lane, which is classified as a local service street, and SE Woodstock Boulevard, which is classified as a neighborhood collector in the Transportation System Plan. The intent of this standard is to ensure that development is oriented towards the street to achieve a desired relationship with the public realm that might otherwise be lacking should a rear façade be facing a street of a higher classification.

At this location, SE Moreland Lane functions more like an alley than a street as it provides secondary vehicle access to numerous lots that otherwise have frontage on either SE Woodstock Boulevard or SE Martins Street. These adjacent through lots, consisting of 3024 SE Woodstock Blvd., 3108 SE Woodstock Blvd., 3131 SE Martins St., and 3117 SE Martins St. all have development that is oriented towards the more prominent street and vehicle/garage access from SE Moreland Lane. Therefore, in order for this proposal to equally or better meet the purpose of the Through Lots standard, development on Parcels 1 and 2 shall be oriented towards SE Woodstock Boulevard and vehicle access shall be from SE Moreland Lane. This will ensure that development doesn't turn its back on the collector street, SE Woodstock Boulevard, and will result in a more enjoyable presence for pedestrians and bicyclists from this street as vehicle access will be from the subordinate street, SE Moreland Lane. Subject to the aforementioned condition, this criterion is met."

Wyman, attorney for certain identified opponents, disputed the BDS statement/conclusion and offered the following:

"PCC 33.805.040.A requires demonstration that the proposal 'equally or better meets the purpose of the regulation to be modified.' Development with the applicant's proposed north-south lot line would decommission the existing driveway onto SE Woodstock Blvd and add two new driveways onto SE Moreland Lane. The application so directly contravenes to the purpose of the regulation to be modified that compliance with PCC 33.805.040.A is simply impossible.

Under PCC 33.610.300, '[t]hrough lots are allowed only where both front lot lines are on local service streets.' Staff accurately cites the purpose of this standard, viz., 'that lots are configured in a way that development can be oriented toward streets to increase the safety and enjoyment of pedestrians and bicyclists.'

PCC 33.805.040.A requires the applicant to provide evidence comparing the proposed north-south orientation of the new lot line to the code-required east-west orientation. In order to reach compliance, the applicant must demonstrate that development resulting from a north-south line is at least as safe and enjoyable for pedestrians and bicyclists as would result from an east-west line.

Mr. Fry explains the attributes of pedestrian/bicycle safety and enjoyment in the context of a collector street. Beyond elements

such as sidewalks and bike lanes, no factor is greater than vehicle speed. Vehicle speed is particularly material for a collector street, which carries traffic moving through a neighborhood. In this case, such traffic is generally moving from the Woodstock neighborhood and points east to either Sellwood/Moreland or Hwy 99E.

The enclosed letter from Mr. Clemow attests to the fact that retaining the subject driveway onto SE Woodstock Blvd 'will help prevent speeding' on that boulevard.

I well recognize that the extent of this impact might be *de minimis*; the removal of any one driveway will presumably cause a negligible increase in vehicle speeds. Unlike many criteria, however, the text of PCC 33.805.040.A sets no threshold of materiality. I.e., it does not apply only where there is a 'significant' deviation from the purpose statement, nor does it allow for 'substantial' compliance therewith. Rather, it prohibits any net decrease in pedestrian/bicycle safety and enjoyment, no matter how negligible.

The following evidence is not only clear, it appears irrefutable. With bike lanes and sidewalks going in each direction of travel, the safety and enjoyment of pedestrians and bicyclists on SE Woodstock is presumably quite high. Decommissioning a driveway onto that boulevard will necessarily decrease that safety and enjoyment. As such, creating a new through lot and orienting the resulting driveways onto SE Moreland Lane cannot equally or better meet the purpose of PCC 33.610.300."

Testimony, generally consistent with the above-quoted Wyman comments, was received from opponents at the public hearing (I.e., Mr. Kurt Krause ["Krause"] and Buys).

Robinson responded to opposition comments/argument, regarding his view of the proper interpretation of PCC 33.805.040.A, as follows:

"PCC 33.610.300.A. granting the adjustment to allow through lots with both front lot lines on SE Woodstock Boulevard will equally or better meet the purpose of the through lot standard because it will: (1) orient development toward the higher classification street (SE Woodstock Boulevard), thus not 'turning its back' on the collector street; and (2) orient the garage/vehicle access toward the lower classification street (SE Moreland Lane), thus increasing safety and enjoyment of pedestrians and bicyclists by reducing curb cuts and related conflicts with vehicles on SE Woodstock Boulevard. As noted by city staff, SE Moreland Lane already functions like an alley because it is not a through street. Further, there are at least four existing adjacent through lots oriented to the more prominent street and taking vehicle access to and from SE Moreland Lane.

Mr. Livingston and Mr. Wyman contend that partitioning the lot in an east/west direction (such as that one development site faces SE Woodstock Boulevard and the other faces SE Moreland Lane) will

obviate the need for an adjustment altogether, and thus, since the adjustment is not necessary, there is no basis to grant it. The Hearings Officer should deny these contentions. First, partitioning the lot in an east/west direction will result in an additional curb cut on SE Woodstock Boulevard, which will increase dangerous conflicts between vehicles and pedestrians/bicyclists, particularly because vehicles typically exit driveways in reverse, resulting in greater difficulty identifying conflicts. See Traffic Study Addendum from Lancaster Engineering dated January 22, 2014 at 4. Thus Mr. Livingston's and Mr. Wyman's proposal is not a safer or more enjoyable alternative.

Although Mr. Fry and Mr. Clemow contend that locating the curb cut on SE Woodstock Boulevard will decrease vehicle speeds on this street and thus be safer than having no curb cuts on this frontage of the Property, the Hearings Officer should deny this contention for three reasons. First, Lancaster Engineering has rebutted this testimony by explaining that the expected increase in speed is less than one mile per hour and will not compromise public safety. See Traffic Study Addendum from Lancaster Engineering dated January 22, 2014 at 4. The precise nature of Lancaster's testimony makes it more credible than the generalized concern expressed by opponents. Second, not locating curb cuts on SE Woodstock Boulevard will allow for additional on-street parking in this location, which will provide a buffer between vehicles in the main right-of-way and pedestrians or bicyclists on the sidewalk. Third, even Mr. Fry concedes that speed is not the most significant factor in pedestrian/bicyclist safety and enjoyment. See Fry Letter dated January 22, 2014 at 1. Instead, the most significant factor is the presence of infrastructure, i.e., sidewalks and bicycle lanes. *Id.* Such facilities exist on SE Woodstock Boulevard but not on SE Moreland Lane. For these reasons, the Hearings Officer should find that partitioning the lots in an east/west direction is not safer alternative for pedestrians and bicyclists. Rather, the opposite is true."

The purpose statement relevant to this approval criterion is found in PCC 33.610.300.<sup>1</sup> The Hearings Officer finds that PCC 33.610.300.A has two primary focuses: (1) orient development towards "streets" to increase the enjoyment of pedestrians and bicyclists, and (2) ensure that development does not "turn its back" on a collector or major city traffic street.

The Hearings Officer finds that no effective argument was raised by opponents related to the "does not turn its back" purpose goal. The Hearings Officer finds the requested adjustment equally meets

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<sup>1</sup> 33.610.300 Through Lots

- A. **Purpose.** This standard ensures that lots are configured in a way that development can be oriented toward streets to increase the safety and enjoyment of pedestrians and bicyclists. The standard also ensures that development does not "turn its back" on a collector or major city traffic street.
- B. **Standard.** Through lots are allowed only where both front lot lines are on local service streets. The minimum front line and minimum width standards apply to one frontage of the through lot.

the purpose of PCC 33.610.300.A as related to the development not “turning its back” on a collector (SE Woodstock Boulevard).

The Hearings Officer finds that the PCC 33.610.300.A purpose statement encourages development that is “oriented toward streets to increase the safety and enjoyment of pedestrians and bicyclists.” The Hearings Officer, *for the purposes of these findings*, accepts Wyman’s statement that the proper interpretation of PCC 33.805.040.A “prohibits *any* net decrease in pedestrian/bicycle safety and enjoyment, no matter how negligible.” The Hearings Officer, however, is not convinced that Wyman’s absolute prohibition of any decrease in pedestrian/bicycle safety and enjoyment is the best or most plausible interpretation of PCC 33.805.040.A.

The Hearings Officer addressed the transportation impacts upon the immediate/adjacent neighborhoods and safety for all modes in the findings for PCC 33.641.020. The Hearings Officer incorporates those findings as additional findings for PCC 33.805.040.A.

The Hearings Officer finds that the comments made by Fry (Exhibit H.57c), while offered by a highly qualified planner, are not credible and/or substantial evidence that pedestrian/bicycle safety will decrease by the decommissioning of a single driveway on SE Woodstock. The Hearings Officer finds the comments made by Clemow, while offered by a licensed/registered traffic engineer, were conclusory and not based upon any substantial evidence in the record before the Hearings Officer. The Hearings Officer finds the comments made by Wyman to represent “argument” and not “evidence” as those terms are defined by ORS 197.763(9).

The Hearings Officer finds Applicant’s traffic engineer concurred that decommissioning a single driveway on SE Woodstock would increase vehicle through speed (Exhibit H.56g, page 4)<sup>2</sup> The Hearings Officer, for the purpose of these findings, assumes that any increase in speed may decrease safety to some extent on SE Woodstock. However, the Hearings Officer finds that an increase in speed of “less than one mile per hour” may not actually result in a discernable decrease in safety for pedestrians and bicyclists.

The Hearings Officer, at this point of the findings for PCC 33.805.040.A, returns to Wyman’s comment (Exhibit H.57, page 3) that PCC 33.805.040.A “prohibits *any* net decrease in pedestrian/bicycle safety and enjoyment, no matter how negligible.” The Hearings Officer finds this quote does not mean that PCC 33.805.040.A is not met if a single factor indicates a decrease in the safety of pedestrians and bicyclists. Rather, the Hearings Officer is obligated, under Wyman’s interpretation of PCC 33.805.040.A to determine if there is a *net* decrease in pedestrian and bicycle safety in the event the adjustment is approved. Therefore, the Hearings Officer must consider all pedestrian and bicycle safety impacts raised by the Applicant and opponents.

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<sup>2</sup> Exhibit H.56g, page 4: the change [decommissioning a single driveway on SE Woodstock] “would be expected to result in a change to through travel speeds of less than one mile per hours. Removal of the driveway will not encourage a meaningful increase in travel speeds and will not compromise public safety for motorists, pedestrians or bicycles.”

There is evidence in the record this adjustment request will eliminate one driveway along SE Woodstock and add one additional parking space along SE Woodstock. Ard stated that the addition of a parking space in the place of a driveway will add another layer of buffering between passing vehicles on SE Woodstock and the sidewalk. Ard also stated that eliminating the driveway currently serving the Subject Property will also eliminate potential conflicts between pedestrians/bicyclists and vehicles entering/exiting the Subject Property. Ard concluded that "removal of the existing driveway on SE Woodstock Boulevard will improve safety along the Woodstock Boulevard corridor" (Exhibit H.56g, page 4).

The Hearings Officer also addressed transportation impacts on safety, if the application is approved, along SE Moreland Lane (findings for PCC 33.610.020). The Hearings Officer, in those incorporated findings, determined that adding two driveways on SE Moreland (one of which would be considered a net addition) would not decrease pedestrian and bicycle safety.

The Hearings Officer finds that increasing speed on SE Woodstock (less than one mile per hour) and the addition of one more driveway (one driveway under this proposal would be allowed even without approval of an adjustment) could possibly cause a decrease in pedestrian and bicycle safety. On the other hand, the Hearings Officer finds the elimination of one driveway and addition of one on-street parking spot on SE Woodstock will likely improve pedestrian and bicycle safety on SE Woodstock. Overall, the Hearings Officer finds the impacts (possible decrease in safety from faster speeds of vehicles on SE Woodstock and improvement in safety from additional parking space on SE Woodstock) resulting from approval of the requested adjustment balance one another. The Hearings Officer finds that the requested adjustment will equally meet the purpose of the regulation to be modified (PCC 33.610.300).

The Hearings Officer finds this approval criterion is met.

**B. If in a residential zone, the proposal will not significantly detract from the livability or appearance of the residential area, or if in an OS, C, E, or I zone, the proposal will be consistent with the classifications of the adjacent streets and the desired character of the area; and**

**Findings:** This approval criterion generated extensive testimony by opponents of the application (i.e., hearing testimony of McCullough, Taylor, Livingston, Rogers, Markee, Buys, Koehler, J. Bowman, P. Bowman, Mr. Kyle Gernhart ("Gernhart"), Ms. Catherine Mushel ("Mushel"), Ms. Maria Baker ("Baker"), Schlesinger, Ms. Sharon Webber ("Webber")). In addition, a significant number of persons submitting written evidence in the record commented about this approval criterion (i.e., Exhibits H.12e, H.15, H.17, H.31, H.32, H.36, H.38, H.54, H.57 and H.62).

Wyman, in Exhibit H.57 (pages 3 and 4) summarized opponents arguments related to this approval criterion. Wyman states, in Exhibit H.57, the following:

"Under PCC 33.805.040.B, the applicant must demonstrate that creation of a new through lot 'will not significantly detract from the livability or appearance of the residential area...' This

criterion places a significant evidentiary burden on the applicant, which burden has not met.

To even address this criterion, the applicant must provide evidence of (1) the existing livability and appearance of the area, and (2) the livability and appearance that will exist after the new parcel is created. Based on the file documents that BDS sent to my office, the applicant proffered no such evidence, nor did staff adduce any.

Failing submission of evidence on the above-described points, the application warrants summary denial.

Furthermore, to meet the criterion, the applicant must compare the pre and post development livability and appearance and evaluate the extent to which the latter detracts from the former. The applicant provides no such comparison. For its part, staff rests on the observation that 'the area is defined by numerous through lots, of which, most contain development that is oriented towards the more prominent street.'

Staff's comment is not evidence of the exiting livability of the area, and is only a cursory, nonsubstantive observation about the appearance of the area. No reasonable person walks, bikes, or drives through this neighborhood and thinks 'wow, this place is dominated by through lots.'

Though the evidentiary burden on this issue falls entirely on the applicant, neighbors' testimony to the Hearings Officer is instructive. That testimony demonstrates that the existing livability and appearance of the residential area is extremely high. Eastmoreland enjoys very little crime and its appearance is nationally recognized - film and television producers commonly use it as a location - because homes are unique and built on spacious lots.

There are many reasons for this, two of which bear directly upon this criterion. Eastmoreland has a low crime rate because neighbors are particularly active outdoors. As described above, the applicant's proposal to decommission the driveway onto SE Woodstock Blvd would decrease safety and enjoyment of pedestrians and bicyclists, and thus detract from outdoor activity.

Eastmoreland's appearance, meanwhile, owes to homes of varied design on spacious lots. With reference to Ex. 1, the application calls for parcels that will be about twice as narrow as others in the area. As such, it would detract from this appearance."

The Hearings Officer finds that this approval criterion requires a determination of whether the "proposal" will not significantly detract from the livability or appearance of the residential area. The Hearings Officer, therefore must (1) determine the "residential area," (2) describe the "proposal," (3) define "livability," (4) define "appearance" and (5) define "significantly," and (6) determine if the proposal "significantly" detracts from the livability or appearance of the residential area.

Defining the phrase “residential area” is extremely subjective. Many opponents to the application referenced, in their testimony and comments, the “Eastmoreland neighborhood.” Other opponents appeared to suggest the “residential area” is the area bounded by the recognized City Eastmoreland Neighborhood Association boundary. The Hearings Officer defined “immediate neighborhood” and “adjacent neighborhoods” for the purposes of making findings for PCC 33.641.020. The Hearings Officer defined “immediate neighborhood” as including approximately seven lots fronting on SE Moreland Lane in the “alley-like” area. The Hearings Officer defined “adjacent neighborhood” as being that area shown on Map 3633 (Exhibit B.2).

The Hearings Officer, for the purposes of this approval criterion, adopts the “adjacent neighborhood” description; area shown on Map 3633 (Exhibit B.2).

The next step for the Hearings Officer is to describe the “proposal.” The Hearings Officer defines “proposal” to mean the “adjustment” proposal. The “proposal” would include the creation of two through lots in the configuration shown on Exhibit C.3. The proposal does not include any particular housing location or design on the lots/parcels. The Hearings Officer notes that while the “proposal” does include an identified configuration and lot sizes this approval criterion analysis only considers the lot configuration (through lots). The Hearings Officer finds that Applicant is not seeking, as part of the Adjustment “proposal,” to modify the size of any lot/parcel.

The Hearings Officer notes that the terms “livability” and “appearance” are not terms defined within Title 33 (See, PCC 33.910). The Merriam-Webster Online dictionary defines “livability” as “survival expectancy” and includes as a synonym the term “viability.” The Hearings Officer finds neither of these definitions of livability to be particularly appropriate for use in the context of this approval criterion. As such, the Hearings Officer finds the term “livability” shall be defined to include the concepts of public safety, access to jobs, access to public transit, access to pedestrian and bicycle facilities, access to parks/recreation, pride in one’s neighborhood, the cost of goods/services and actions/plans by a local government. The Hearings Officer does not suggest this is the precise definition of “livability” intended by City Council; however, it does incorporate commonly accepted concepts. (See HUD site - [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/sustainable\\_housing\\_communities/Six\\_Livability\\_Principles](http://portal.hud.gov/hudportal/HUD?src=/program_offices/sustainable_housing_communities/Six_Livability_Principles))

The Merriam-Webster Online dictionary defines “appearance” as “outward aspect or outward indication” and “sense of impression.” The Hearings Officer finds “appearance,” in the context of this approval criterion means the general “look” or “impression” of the lots/parcels created through the approval of the requested adjustment.

The term “significantly” is also not defined by Title 33 (See, PCC 33.910). The Merriam-Webster definition of “significantly” is something that is “large or important enough to be noticed or have an effect” and “something that has special or hidden meaning.” The Hearings Officer finds that “significantly” means, for the purposes of analysis of this approval criterion, that the impacts or effects are meaningful, noticeable and are not negligible.

Using the above described definitions/descriptions the Hearings Officer will address the issue of whether or not the proposed adjustment request (two through lots on the Subject Property) significantly detracts from the livability or appearance of the residential area.

Wyman argues that the Applicant did not describe the livability and appearance of the existing residential area and also describe the livability and appearance of the residential area if the proposal would be approved (Exhibit H.57, pages 3 and 4). The Hearings Officer finds abundant evidence in the record describing the existing livability and appearance of the residential area; the residential area is described as in the application (Exhibit A.1), the BDS staff report (Exhibit H.2) and in numerous comments made by opponents (I.e., public hearing testimony of McCullough, Carlson, Merrick, Buys, Koehler, P. Bowman, Gernhart, Mushel, Baker, Ms. Marylu Gray ("Gray") and Schlesinger and written documents such as Exhibits H.12a, H.15, H.17, H.31, H.32 and H.37).

The Hearings Officer finds the character of the existing residential area is that of a "gateway" to Eastmoreland. The Hearings Officer finds the residential area is characterized by large and gracious homes and the Reed College Campus. The Hearings Officer finds the character of the residential area is also evidenced by City planning/zoning decisions in the area; directly north (the Reed College Campus) is zoned R2, the immediate neighborhood (as defined in findings for the PCC 33.610.040 and PCC 33.641.020) is R7 with a R5 comprehensive plan designation. The Hearings Officer finds the remainder of the residential area surrounding the immediate neighborhood is zoned R5. The current livability and appearance are strongly influenced by these planning/zoning designations ascribed by the City.

The Hearings Officer finds the residential area is currently characterized by every resident who testified or submitted written comments as being a highly desirable location to live, work and recreate. The Hearings Officer finds a high level of pride by residents of this residential area.

Robinson, in his final argument (Exhibit H.67), addresses this approval criterion as follows:

"For the purposes of this provision, the Hearings Officer should find the 'proposal' is the creation of two through lots (one more than currently exists on the Property). The 'proposal' does not include the proposed improvements to the new lots or any other aspect of the development. With this clarification in mind, the proposal will not significantly detract from the livability or appearance of the residential area because the proposed through lots are consistent with and complement the prevailing development pattern in the area. For example, of the 14 lots that have access to SE Moreland Lane, 10 lots are through lots. Additionally, as explained above, each of the new lots significantly exceeds the minimum lot size of both the proposed R5 district and the existing R7 district. Further, approval of the lots will not result in the removal of any historic or scenic resources. Development of the additional lot will not significantly affect any existing or planned transportation facilities or require any traffic mitigation measures. Finally, Applicant is required to preserve trees in accordance with City staff recommendations. For these reasons, the

Hearings Officer can find that there is substantial evidence to support the conclusion that the Adjustment satisfies this standard.

The Hearings Officer can deny the opponents' contentions to the contrary. Although Mr. Wyman contends that the proposal will detract from livability by decreasing bicycle and pedestrian safety, thereby reducing outdoor activity and increasing crime, the Hearings Officer should deny this contention for three reasons. First, as explained above, the 'proposal' is the creation of the through lots, not the orientation of the curb cuts. Therefore, the impacts of the curb cuts is not relevant to this analysis. Second, and in the alternative, as also explained above, the proposal will not decrease bicycle and pedestrian safety. Third, Mr. Wyman's contention relies upon several hypothetical events to occur through a chain of causation. As such, it is based upon multiple layers of speculation.

Although other residents testified that approval of the Adjustment Application would detract from neighborhood livability and appearance, the Hearings Officer can find that this testimony misconstrues the scope of the 'proposal' under this criterion. For example, Mr. Merrick and Mr. McCullough both testified that the neighborhood has seen an overall increase in lot splits, demolitions, and construction of new homes that threatens to destabilize the area. However, this testimony misses the fact that approval of the Applications will result in one additional through lot. Opponents have not explained how that single additional through lot destabilizes the area. For that matter, opponents have already conceded that the lot could be partitioned in an east/west direction, which would result in the same number of lots without an adjustment. Therefore, the Hearings Officer should find that any impacts from the development do not rise to the level that they will 'significantly' detract from the livability and appearance of the residential area."

The Hearings Officer finds much of the testimony offered by opponents related to (1) the "look" of the existing residence on the Subject Property and (2) the "look" of residences that could be constructed on the two proposed through lots. The Hearings Officer finds that the Subject Property is not encumbered with a "d" (design overlay zone – see PCC 33.420) or a historic designation or overlay zone (see PCC 33.455). The Hearings Officer finds the "look" of the current residence on the Subject Property and the "look" or design of future residences on the two new through lots is not relevant to this approval criterion.

The Hearings Officer disagrees with Robinson's final argument comment that the "orientation of curb cuts" is not relevant; the Hearings Officer finds orientation of curb cuts is highly relevant to this approval criterion.

The Hearings Officer finds the evidentiary assertion by Applicant that "of the 14 lots that have access to Moreland Lane, 10 lots are through lots" (Exhibit H.67, page 4) to be highly relevant to a review of this approval criterion. The Hearings Officer finds that creation of one additional through

lot will not, in and of itself, significantly impact the appearance of the residential area where there are already 10 other lots with similar through lot characteristics.

The Hearings Officer, in findings for PCC 33.660.120.K (transportation impacts) and PCC 33.805.040.A (purpose statement) discuss the transportation safety aspects of decommissioning the existing driveway access to SE Woodstock and the addition of two driveways to SE Moreland Lane. The Hearings Officer incorporates those findings into the findings for this approval criterion. The Hearings Officer finds that the decommissioning of the existing driveway on SE Woodstock and the addition of two driveways on SE Moreland will not have a net negative impact upon vehicular, pedestrian or bicycle safety. The Hearings Officer finds the decommissioning of the existing driveway and addition of two driveways on SE Moreland Lane will not significantly detract from the livability or appearance of the residential area.

Based upon the evidence in the record and the discussion above the Hearings Officer finds that approval of the “proposal” will not significantly detract from the livability or appearance of the residential area. The Hearings Officer finds this approval criterion is met.

**C. If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zone; and**

**Findings:** Only one adjustment is being requested. The Hearings Officer finds this approval criterion is not applicable.

**D. City-designated scenic resources and historic resources are preserved; and**

**Findings:** The Subject Property is not located within a scenic or historic overlay zone. The Hearings Officer finds this approval criterion is not applicable.

**E. Any impacts resulting from the adjustments are mitigated to the extent practical;**

**Findings:** As previously noted, Applicant will be required to mitigate for the creation of through lots via orienting development towards the higher classification street, SE Woodstock Boulevard, and providing vehicle/garage access from SE Moreland Lane. With the condition of approval, the Hearings Officer finds this approval criterion is met.

**F. If in an environmental zone, the proposal has as few significant detrimental environmental impacts on the resource and resource values as is practicable;**

**Findings:** The Subject Property is not located within an environmental overlay (“c” or “p”) zone. The Hearings Officer finds this approval criterion is not applicable.

**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:

- Eastmoreland Plan District: This plan district enforces the special setback requirements shown on maps available for review in the Development Services Center to maintain the established character of the Eastmoreland area, characterized by homes with larger than normal building setbacks from the street. The required street building setback, per the aforementioned maps, is 38-feet from SE Woodstock Boulevard.

**Existing development that will remain after the land division.** The applicant is proposing to remove all of the existing structures on the site, 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 R5 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.

<b>Bureau</b>	<b>Code Authority and Topic</b>
Development Services/503-823-7300 <a href="http://www.portlandonline.com/bds">www.portlandonline.com/bds</a>	Title 24 – Building Code, Flood plain Title 10 – Erosion Control, Site Development Administrative Rules for Private Rights-of-Way
Environmental Services/503-823-7740 <a href="http://www.portlandonline.com/bes">www.portlandonline.com/bes</a>	Title 17 – Sewer Improvements 2008 Stormwater Management Manual
Fire Bureau/503-823-3700 <a href="http://www.portlandonline.com/fire">www.portlandonline.com/fire</a>	Title 31 Policy B-1 – Emergency Access
Transportation/503-823-5185 <a href="http://www.portlandonline.com/transportation">www.portlandonline.com/transportation</a>	Title 17 – Public Right-of-Way Improvements Transportation System Plan
Urban Forestry (Parks)/503-823-4489 <a href="http://www.portlandonline.com/parks">www.portlandonline.com/parks</a>	Title 20 – Street Trees and other Public Trees
Water Bureau/503-823-7404 <a href="http://www.portlandonline.com/water">www.portlandonline.com/water</a>	Title 21 – Water availability

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 at the time of development in regards to addressing, aerial Fire Department access roads and hydrant flow. These requirements are based on the technical standards of Title 31 and Oregon Fire Code (Exhibit E.4).

### III. CONCLUSIONS

On its face the application in this case appears simple and straightforward; a request to divide one parcel of land into two side-by-side parcels. However, the case turned out to be more complicated.

Applicant is requesting a zone change from R7 to R5 (zone change in compliance with the comprehensive plan). Applicant is requesting a land division to divide the one parcel into two parcels (partition – land division). And, Applicant is requesting for city approval of two “through lots” (adjustment).

The Eastmoreland Neighborhood Association and a significant number of persons who live in the vicinity of the property subject to this application expressed opposition. Objections were raised related to the correctness of the zoning/comprehensive plan designations shown on the official City Zoning Map (Map 3633), transportation impacts and neighborhood appearance/livability.

The Hearings Officer, in the Preliminary Matters section of this decision, addressed issues raised by opponents that did not fit neatly into the findings for relevant approval criteria. The Hearings Officer, in the findings for the relevant approval criteria, addressed the transportation and appearance/livability issues.

The Hearings Officer concluded that the application in this case did meet all relevant approval criteria and, with conditions, should be approved.

### IV. DECISION

**Approval** of a Zoning Map Amendment, in compliance with the Comprehensive Plan Map designation, from R7 to R5;

**Approval** of an Adjustment to allow Parcels 1 and 2 to be created as through lots;

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

**A. The Final Plat must show the following:**

1. A recording block for the Acknowledgement of Tree Preservation Requirements as required by Condition B.2 below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "An Acknowledgement of Tree Preservation Requirements has been recorded as document no. \_\_\_\_\_, Multnomah County Deed Records."

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

1. A finalized permit must be obtained for demolition of the existing residence on the Subject Property and capping the existing sanitary sewer connection. (if the demo includes a primary residential structure, add:) Note that Title 24 requires a 35-day demolition delay period for most residential structures. The site plan for the demolition permit must show all trees to be preserved and root protection zones as shown on Exhibit C.5. All demolition work must be in conformance with the recommendations in the applicant's arborist report (Exhibit A.2).
2. Applicant shall execute an Acknowledgement of Tree Preservation Requirements that notes tree preservation requirements that apply to Parcel 1. A copy of the approved Tree Preservation Plan must be included as an Exhibit to the Acknowledgement. The acknowledgment shall be recorded with Multnomah County and referenced on the final plat.

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

1. Development on Parcel 1 shall be in conformance with the Preliminary Grading Plan (Exhibit C.5) and the applicant's arborist report (Exhibit A.2). Specifically, tree #2 (28-inch Douglas fir) is required to be preserved, with the root protection zone indicated on Exhibit C.5. Tree protection fencing is required along the root protection zone of each tree to be preserved. The fence must be 6-foot high chain link and be secured to the ground with 8-foot metal posts driven into the ground. Encroachment into the specified root protection zones may only occur under the supervision of a certified arborist. Planning and Zoning approval of development in the root protection zones is subject to receipt of a report from an arborist, explaining that the arborist has approved of the specified methods of construction, and that the activities will be performed under his supervision.
2. 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.
3. The address and main entrance of development on Parcels 1 and 2 must be oriented towards SE Woodstock Boulevard and vehicle/garage access must be from SE Moreland Lane.

4. Applicant shall meet the requirements of the Fire Bureau for ensuring adequate hydrant flow from the nearest hydrant. 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.



Gregory J. Frank, Hearings Officer

2/13/14

Date

<b>Application Determined Complete:</b>	November 25, 2013
<b>Report to Hearings Officer:</b>	January 20, 2014
<b>Decision Mailed:</b>	February 14, 2014
<b>Last Date to Appeal:</b>	4:30 p.m., February 28, 2014
<b>Effective Date (if no appeal):</b>	March 3, 2014    Decision may be recorded on this date.

**Conditions of Approval.** 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.

**Appeal of the decision.** ANY APPEAL OF THE HEARINGS OFFICER’S DECISION MUST BE FILED AT 1900 SW 4<sup>TH</sup> AVENUE, PORTLAND, OR 97201 (503-823-7526). Until 3:00 p.m., Tuesday through Friday, file the appeal at the Development Services Center on the first floor. Between 3:00 p.m. and 4:30 p.m., and on Mondays, the appeal must be submitted at the Reception Desk on the 5th Floor. **An appeal fee of \$5,000 will be charged (one-half of the application fee for this case, up to a maximum of \$5,000).** Information and assistance in filing an appeal can be obtained from the Bureau of Development Services at the Development Services Center.

**Who can appeal:** You may appeal the decision only if you wrote a letter which is received before the close of the record on hearing or if you testified at the hearing, or if you are the property owner

or applicant. If you or anyone else appeals the decision of the Hearings Officer, only evidence previously presented to the Hearings Officer will be considered by the City Council.

**Appeal Fee Waivers:** Neighborhood associations recognized by the Office of Neighborhood Involvement may qualify for a waiver of the appeal fee provided that the association has standing to appeal. The appeal must contain the signature of the Chairperson or other person authorized by the association, confirming the vote to appeal was done in accordance with the organization's bylaws.

Neighborhood associations, who wish to qualify for a fee waiver, must complete the Type III Appeal Fee Waiver Request for Organizations Form and submit it prior to the appeal deadline. The Type III Appeal Fee Waiver Request for Organizations Form contains instructions on how to apply for a fee waiver, including the required vote to appeal.

**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.**

**Recording concurrent approvals.** The preliminary land division approval also includes concurrent approval of an Adjustment and Zone Map Amendment. These other concurrent approvals must be recorded by the Multnomah County Recorder before any building or zoning permits can be issued.

A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with these concurrent land use reviews. The applicant, builder, or their representative may record the final decisions on these concurrent land use decisions as follows:

- By Mail: Send the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to: Multnomah County Recorder, P.O. Box 5007, Portland OR 97208. The recording fee is identified on the recording sheet. Please include a self-addressed, stamped envelope.
- In Person: Bring the two recording sheets (sent in separate mailing) and the final Land Use Review decision with a check made payable to the Multnomah County Recorder to the County Recorder's office located at 501 SE Hawthorne Boulevard, #158, Portland OR 97214. The recording fee is identified on the recording sheet.

For further information on recording, please call the County Recorder at 503-988-3034.

**Expiration of concurrent approvals.** The preliminary land division approval also includes concurrent approval of an Adjustment and Zone Map Amendment. For purposes of determining the expiration date, there are two kinds of concurrent approvals: 1) concurrent approvals that were necessary in order for the land division to be approved; and 2) other approvals that were voluntarily included with the land division application.

The following approvals were necessary for the land division to be approved: Adjustment and Zone Map Amendment. These approvals expires if:

- The final plat is not approved and recorded within the time specified above, or
- Three years after the final plat is recorded, none of the approved development or other improvements (buildings, streets, utilities, grading, and mitigation enhancements) have been made to the site.

All other concurrent approvals expire three years from the date rendered, unless a building permit has been issued, or the approved activity has begun. Zone Change and Comprehensive Plan Map Amendment approvals do not expire.

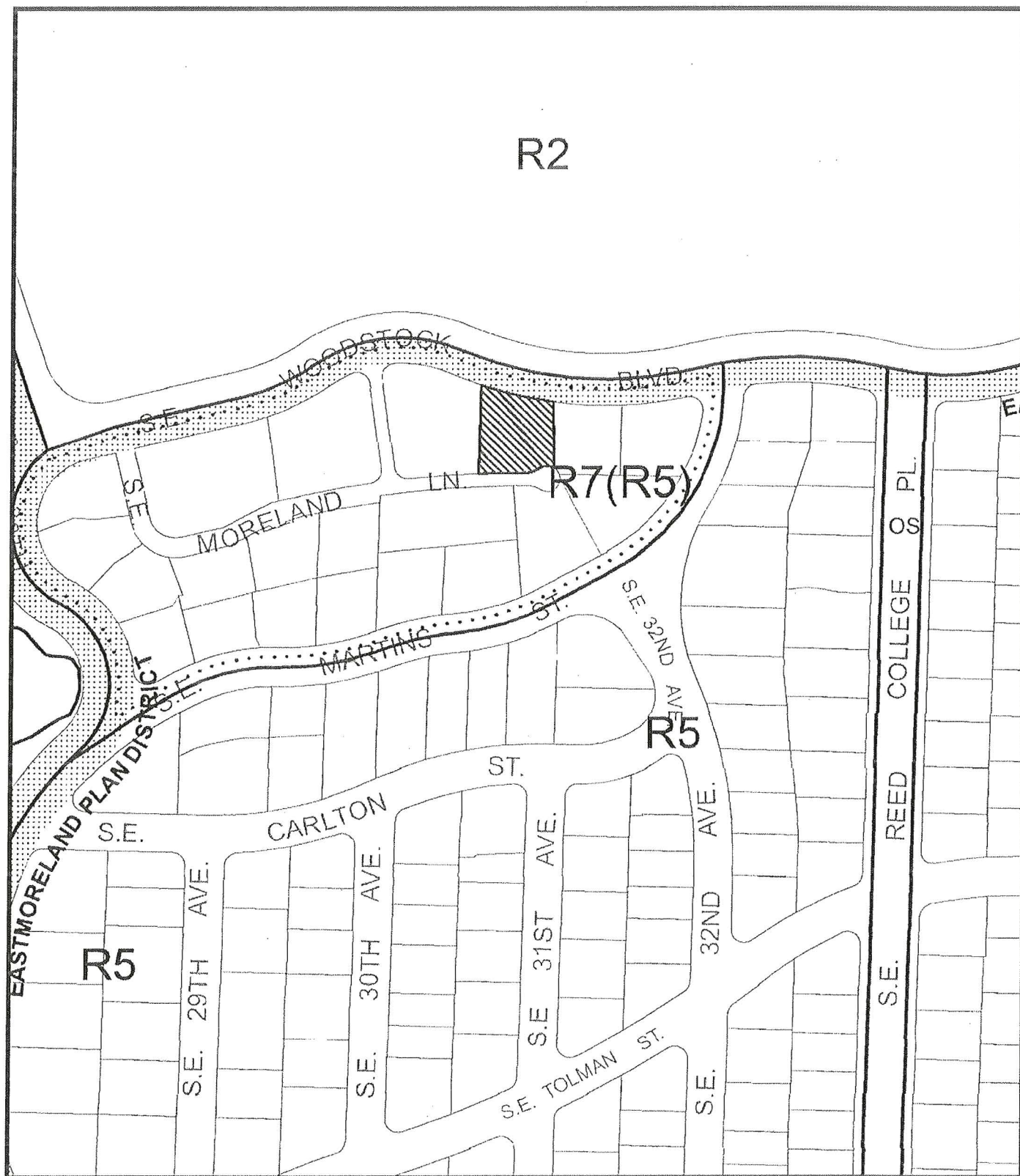
**EXHIBITS**  
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Land Division, Adjustment & Zone Map Amendment Approval Criteria Response
  - 2. Arborist Report
  - 3. Simplified Approach Stormwater Report
  - 4. Transportation Impact Analysis
  - 5. Transportation Planning Rule Analysis
- B. Zoning Map (**attached**)
  - 1. Existing Zoning
  - 2. Proposed Zoning
- C. Plans and Drawings
  - 1. Cover Sheet (**attached**)
  - 2. Existing Conditions (**attached**)
  - 3. Preliminary Plat (**attached**)
  - 4. Preliminary Site/Utility Plan (**attached**)
  - 5. Preliminary Grading Plan (**attached**)
- D. Notification information
  - 1. Request for response
  - 2. Posting letter sent to applicant
  - 3. Notice to be posted
  - 4. Applicant's statement certifying posting
  - 5. Mailing list
  - 6. 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 Bureau of Development Services
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety Plans Examiner
  - 8. Police Bureau
- F. Letters: None
- G. Other
  - 1. Original LUR Application
  - 2. Incomplete Letter
- H. Received in the Hearings Office
  - 1. Hearing Notice - Williams, Sean
  - 2. Staff Report - Williams, Sean
  - 3. 1/10/14 letter - Buys, Susan

4. Letter - Buys, Robert
5. 1/14/14 Letter - 2 copies - Perry, Judith A.
6. 1/13/14 Letter - Hamilton, Peter
7. 1/14/14 Letter - Dundon, Ed & Josette
8. 1/15/14 letter - Wyman, Ty
9. PowerPoint presentation printout - Williams, Sean
10. Address - Frisch, Page
11. BPOT Response to Land Use Review Request - Haley, Robert
  - a. Public Works Administrative Appeal Review & Decision Form - Haley, Robert
  - b. Public Works Administrative Appeal Request Form - Haley, Robert
12. 1/14/14 letter - McCullough, Robert
  - a. Testimony of Joanne Carlson - McCullough, Robert
  - b. 1/14/14 letter from Mat Millenbach - McCullough, Robert
  - c. 1/14/14 letter from Kurt Krause - McCullough, Robert
  - d. 1/14/14 memo from Robert Oringdulph, Eastmoreland NA - McCullough, Robert
  - e. 1/14/14 letter from Ed & Josette Dundon - McCullough, Robert
  - f. 1/14/14 Memo from Rod Merrick, Eastmoreland NA - McCullough, Robert
13. Address - Hoffa, Dan and Barbara
14. Testimony - Taylor, Kathleen
15. Letter - Koehler, Kimberly
16. Address - Dundon, Ed & Josette
17. Testimony - Bowman, Jeff
18. Testimony - Gray, Marylu
19. Testimony - Alkire, Dyann & Tom
20. In Favor Of Testimony Sign Up Sheets - Hearings Office
21. In Opposition To Testimony Sign Up Sheets - Hearings Office
22. Record Closing Information Sheet - Hearings Office
23. 1/15/14 Memo with Attachments - Williams, Sean
  - a. 1/13/14 Memo from Myles Black - Williams, Sean
  - b. 1/8/14 letter from "A Long-time Eastmoreland Resident" - Williams, Sean
  - c. 1/13/14 E-mail from Jeanne Fratto - Williams, Sean
  - d. 1/10/14 letter from Michelle Gringeri-Brown - Williams, Sean
  - e. 1/11/14 E-mail from Ann.Stenzel - Williams, Sean
  - f. 1/11/14 E-mail from Dennis Stenzel - Williams, Sean
  - g. 1/13/14 forwarded E-mail from Robert McCullough - Williams, Sean
  - h. 1/13/14 forwarded E-mail from Commissioner Fritz - Williams, Sean
24. Address - Dowell, David
25. Address - Bush, Jack
26. Testimony - Vickery, Kent
27. Address - Kane, Colleen
28. 1/14/14 letter - McNamara, Kevin
29. Email from Carol Klingensmith - Williams, Sean
  - a. Letter from Carol Klingensmith- Williams, Sean
30. Fax with attachment - McCullough, Robert

- a. Letter from Carol Klingensmith - McCullough, Robert
- 31. Letter - Schlesinger, Robert
- 32. Letter from Jan Dunbrack - Schlesinger, Robert
- 33. 1/17/14 letter - Montag, Nancy L.
- 34. 1/16/14 letter - Montag, Virginia L.
- 35. 1/16/14 Letter - Mushel, Catherine
- 36. Letter - Buys, Robert
- 37. Letter - Frewing, John
- 38. 1/21/14 Letter - Bush, Jack
- 39. Cover Sheet - Daniel E. Hoffa
  - a. Letter from Barbara Hoffa - Daniel E. Hoffa
  - b. Letter - Daniel E. Hoffa
- 40. 1/21/14 Letter - Webb, Thomas
- 41. Letter from Janet & Norman Locke - Webb, Thomas
- 42. Letter from Joline and Jim Stapp - Webb, Thomas
- 43. Letter from Alex Chernabaeff and Joanna Koch - Webb, Thomas
- 44. Letter from Thomas G. and Shannon Greene - Webb, Thomas
- 45. Letter from Irving J. and Della L. Horowitz - Webb, Thomas
- 46. Letter from Norman and Janet Locke - Webb, Thomas
- 47. Letter from Russell Teasdale - Webb, Thomas
- 48. 1/21/14 Fax - Livingston, Peter
- 49. Letter from Carol Klingensmith - Williams, Sean
- 50. Letter - Buys, Robert
- 51. 1/21/14 Letter - Robinson, Michael
- 52. Letter - Dillon, Helen C.
- 53. Letter - Dowell, David
- 54. Letter - Dillon, Helen C.
- 55. Letter - Webber, Sharon
- 56. 1/22/14 Letter - Robinson, Michael
  - a. Zoning Map - Robinson, Michael
  - b. Map - Robinson, Michael
  - c. Ordinance - Robinson, Michael
  - d. Map - Robinson, Michael
  - e. Zoning Map Database printout - Robinson, Michael
  - f. Map - Robinson, Michael
  - g. 1/22/14 Letter from Michael Ard - Robinson, Michael
- 57. Letter - Wyman, Ty
  - a. Map - Wyman, Ty
  - b. Response from PBOT - Wyman, Ty
  - c. CV for Peter Finley Fry - Wyman, Ty
  - d. Letter from Peter Finley Fry - Wyman, Ty
  - e. CV for Christopher M. Clemow - Wyman, Ty
  - f. Letter from Clemow - Wyman, Ty
- 58. Fax Copy of Exhibit 57 and parts - Wyman, Ty

- 59. Letter - Robinson, Michael
  - a. Letter from Michard Ard - Robinson, Michael
- 60. McCullough Research Binder - McCullough, Robert
- 61. 1/22/14 Memo with attachments - Williams, Sean
  - a. 1/22/14 E-mail from John Cole, BPS, with Map - Williams, Sean
  - b. 1/22/14 Memo from Robert Haley - Williams, Sean
- 62. 1/22/14 letter - Livingston, Peter
- 63. 1/22/14 letter - Merrick, Meg
- 64. Letter - Indigo Tiger Design
- 65. 1/22/14 letter - Livingston, Peter
- 66. Fax - Dennis E. Stenzel - **Submitted After Record Closed**
- 67. 1/29/14 Applicant's Final Written Argument - Robinson, Michael

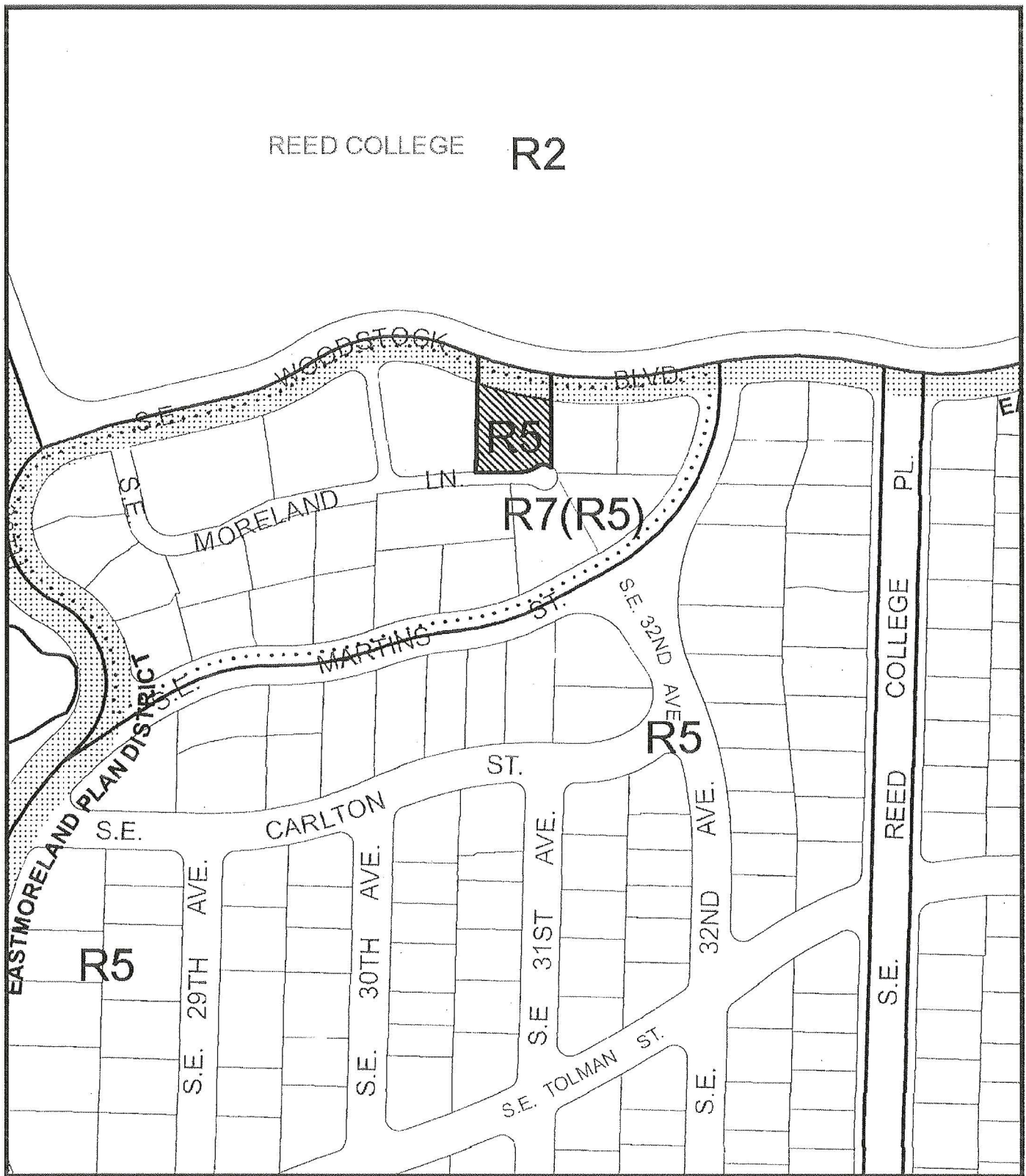


# **ZONING EXISTING**



This site lies within the:  
**EASTMORELAND PLAN DISTRICT**

File No. LU 13-219755 ZC,LDP,AD  
 1/4 Section 3633  
 Scale 1 inch = 200 feet  
 State\_Id 1S1E13CD 300  
 Exhibit B.1 (Dec 31,2013)



# ZONING PROPOSED

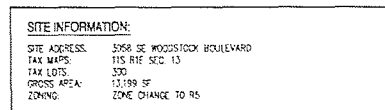
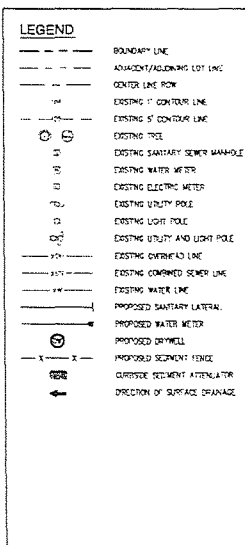
 Site



This site lies within the:  
EASTMORELAND PLAN DISTRICT

File No. LU 13-219755 ZC, LDP, AD  
1/4 Section 3633  
Scale 1 inch = 200 feet  
State\_Id 1S1E13CD 300  
Exhibit B.2 (Dec 31, 2013)

S.E. 1/4, S.W. 1/4, SECTION 13, T.1S., R.1E., W.M.,  
CITY OF PORTLAND, MULTNOMAH COUNTY, OREGON



EVERETT CUSTOM HOMES  
735 SW 156TH AVE, STE.180  
BEAVERTON, OREGON 97006  
CONTACT: VICTOR REMMERS  
503-726-7060 | TEL  
503-726-7106 | FAX

EMERD DESIGN, LLC  
5107 SW MURRAY BLVD. SUITE 147  
BEAVERTON, OR 97008  
CONTACT: ERIC EVANS, PE.  
503-853-1910 | TEL  
503-639-3592 | FAX

1	COVER SHEET
2	EXISTING CONDITIONS
3	PRELIMINARY PLAT
4	PRELIMINARY SITE/UTILITY PLAN
5	PRELIMINARY GRADING PLAN

COVER SHEET

NO.	DATE	REVISIONS
		AS SHOWN

**EMERIS**  
*Design*  
11017 SW MURRAY BLVD. SUITE 142  
BEASTON, OREGON 97008  
P.O. (503)-749-0812

SX096 Staff, printed Oct 07, 2013 .. @ 5:49pm. P:\24-133\SCH\2E WestBlock\log\plan\24-133\_Oliver.docx

CASE NO. 13-219755  
EXHIBIT C-1



S.E. WOODSTOCK BLVD.



LEGEND

PROPERTY USE  
ADJACENT/ADJOINING LOT (IN)  
0378 USE FOR

## SETBACKS

FRONT: 38 FT.  
GARAGE: 18 FT.  
REAR: 5 FT.  
SIDE: 5 FT.

72 400

PARCEL 1  
7.086 SF

**PARCEL 2**

7L 200

S.E. MORELAND LANE

π 2100

TL 1700

72 2000

3058 SE WOODSTOCK BOULEVARD  
TAX MAP T1S R1E 13CD  
TAX LOT 300  
PORTLAND, OREGON

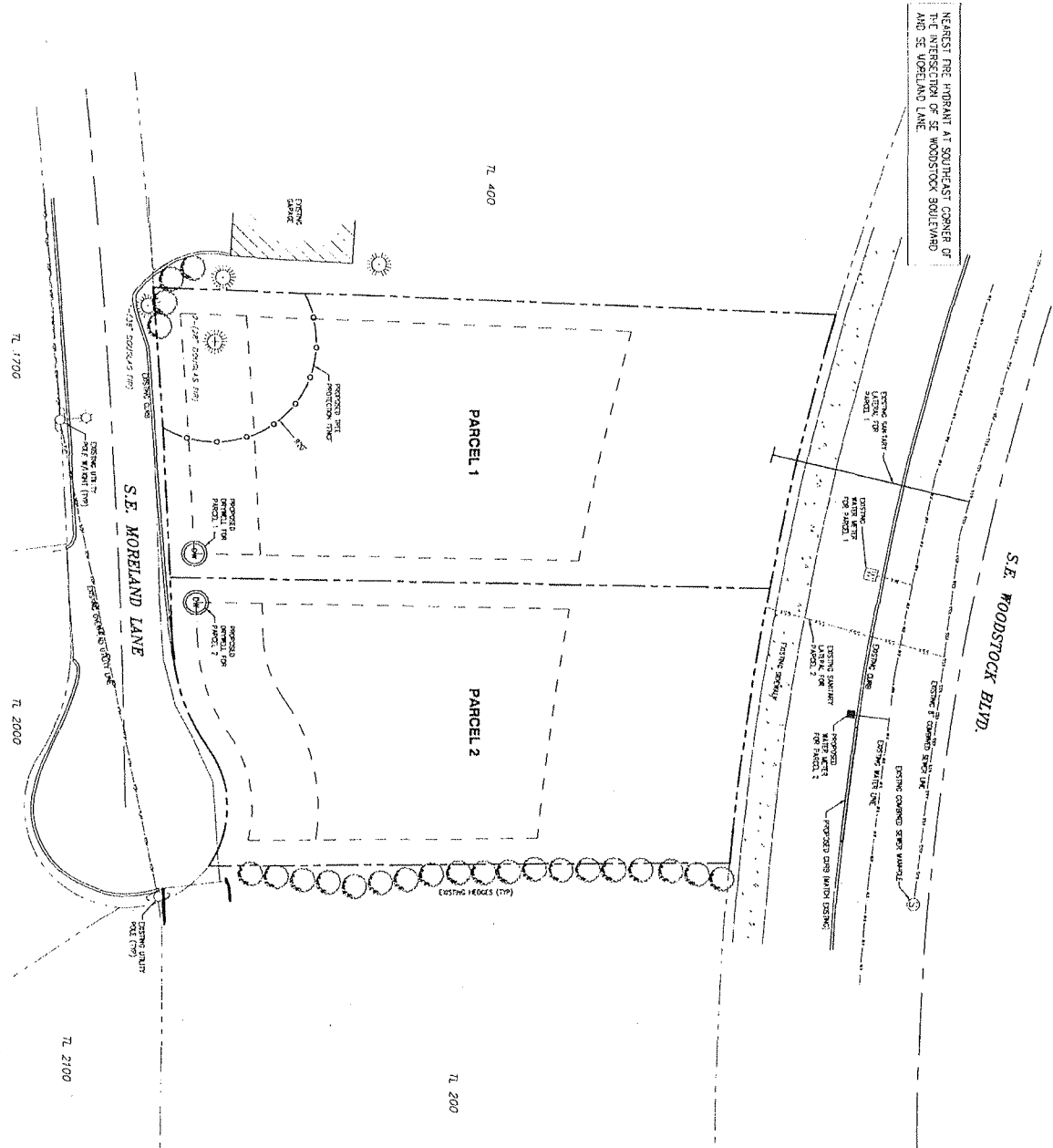
PRELIMINARY PLAT

EMERIO  
Design

5107 SW MURRAY BLVD. SUITE 14/  
BEAVERTON, OREGON 97008  
OWN (503) 745-4417

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100	101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150	151	152	153	154	155	156	157	158	159	160	161	162	163	164	165	166	167	168	169	170	171	172	173	174	175	176	177	178	179	180	181	182	183	184	185	186	187	188	189	190	191	192	193	194	195	196	197	198	199	200	201	202	203	204	205	206	207	208	209	210	211	212	213	214	215	216	217	218	219	220	221	222	223	224	225	226	227	228	229	230	231	232	233	234	235	236	237	238	239	240	241	242	243	244	245	246	247	248	249	250	251	252	253	254	255	256	257	258	259	260	261	262	263	264	265	266	267	268	269	270	271	272	273	274	275	276	277	278	279	280	281	282	283	284	285	286	287	288	289	290	291	292	293	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308	309	310	311	312	313	314	315	316	317	318	319	320	321	322	323	324	325	326	327	328	329	330	331	332	333	334	335	336	337	338	339	340	341	342	343	344	345	346	347	348	349	350	351	352	353	354	355	356	357	358	359	360	361	362	363	364	365	366	367	368	369	370	371	372	373	374	375	376	377	378	379	380	381	382	383	384	385	386	387	388	389	390	391	392	393	394	395	396	397	398	399	400	401	402	403	404	405	406	407	408	409	410	411	412	413	414	415	416	417	418	419	420	421	422	423	424	425	426	427	428	429	430	431	432	433	434	435	436	437	438	439	440	441	442	443	444	445	446	447	448	449	450	451	452	453	454	455	456	457	458	459	460	461	462	463	464	465	466
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CASE NO. 13-215233  
EXHIBIT C-4



NEAREST FIRE HYDRANT AT SOUTHEAST CORNER OF THE INTERSECTION OF SE WOODSTOCK BOULEVARD AND SE MORELAND LANE

S.E. WOODSTOCK BLVD.

S.E. MORELAND LANE

PARCEL 1

PARCEL 2

TL 400

TL 200

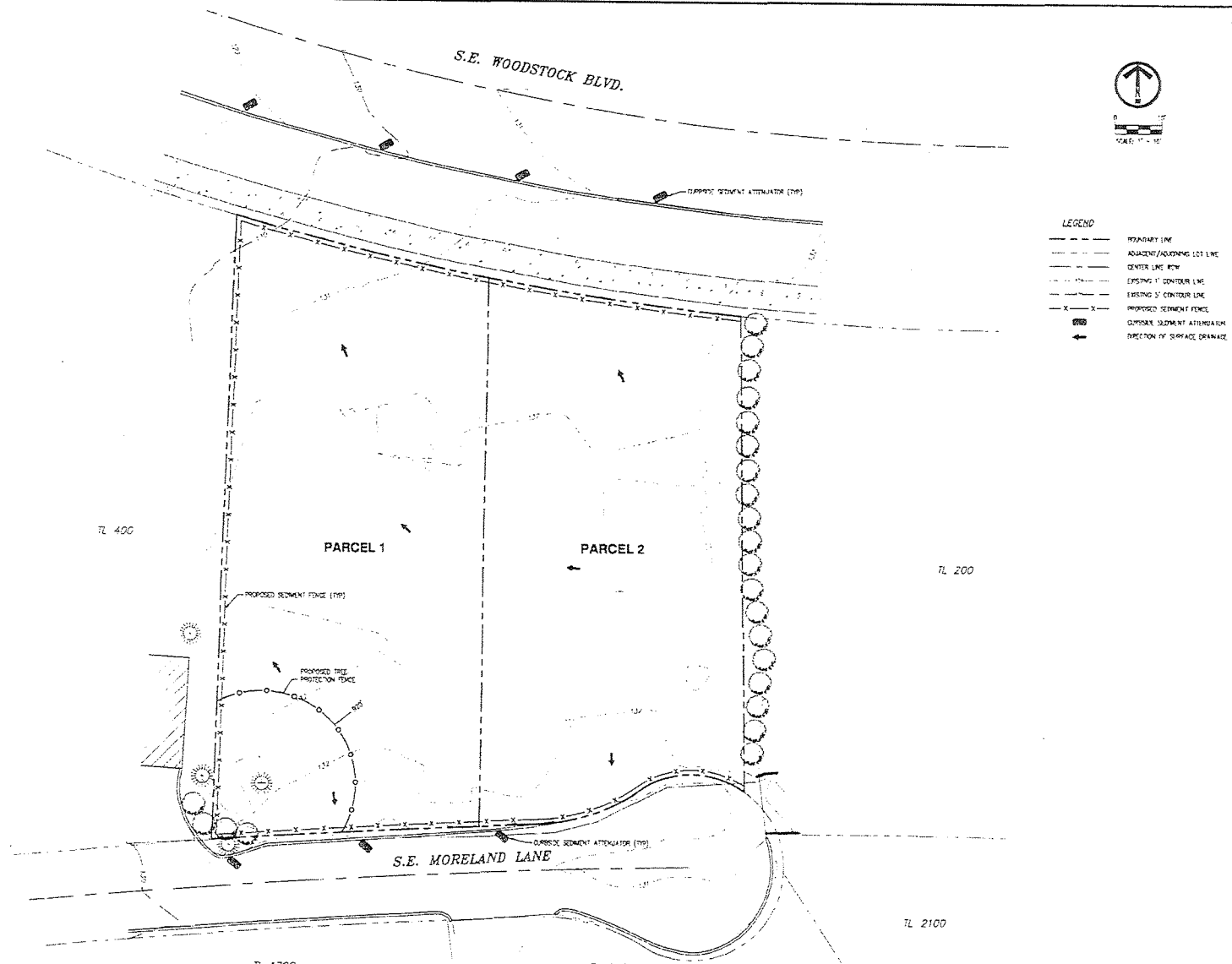
TL 1700

TL 2000

TL 2100

- LEGEND**
- PROPOSED 12" WATER LINE
  - EXISTING 12" WATER LINE
  - PROPOSED 8" WATER LINE
  - EXISTING 8" WATER LINE
  - PROPOSED 6" WATER LINE
  - EXISTING 6" WATER LINE
  - PROPOSED 4" WATER LINE
  - EXISTING 4" WATER LINE
  - PROPOSED 3" WATER LINE
  - EXISTING 3" WATER LINE
  - PROPOSED 2" WATER LINE
  - EXISTING 2" WATER LINE
  - PROPOSED 1.5" WATER LINE
  - EXISTING 1.5" WATER LINE
  - PROPOSED 1" WATER LINE
  - EXISTING 1" WATER LINE
  - PROPOSED 0.75" WATER LINE
  - EXISTING 0.75" WATER LINE
  - PROPOSED 0.5" WATER LINE
  - EXISTING 0.5" WATER LINE
  - PROPOSED 0.25" WATER LINE
  - EXISTING 0.25" WATER LINE
  - PROPOSED 0.125" WATER LINE
  - EXISTING 0.125" WATER LINE
  - PROPOSED 0.0625" WATER LINE
  - EXISTING 0.0625" WATER LINE
  - PROPOSED 0.03125" WATER LINE
  - EXISTING 0.03125" WATER LINE
  - PROPOSED 0.015625" WATER LINE
  - EXISTING 0.015625" WATER LINE
  - PROPOSED 0.0078125" WATER LINE
  - EXISTING 0.0078125" WATER LINE
  - PROPOSED 0.00390625" WATER LINE
  - EXISTING 0.00390625" WATER LINE
  - PROPOSED 0.001953125" WATER LINE
  - EXISTING 0.001953125" WATER LINE
  - PROPOSED 0.0009765625" WATER LINE
  - EXISTING 0.0009765625" WATER LINE
  - PROPOSED 0.00048828125" WATER LINE
  - EXISTING 0.00048828125" WATER LINE
  - PROPOSED 0.000244140625" WATER LINE
  - EXISTING 0.000244140625" WATER LINE
  - PROPOSED 0.0001220703125" WATER LINE
  - EXISTING 0.0001220703125" WATER LINE
  - PROPOSED 0.00006103515625" WATER LINE
  - EXISTING 0.00006103515625" WATER LINE
  - PROPOSED 0.000030517578125" WATER LINE
  - EXISTING 0.000030517578125" WATER LINE
  - PROPOSED 0.0000152587890625" WATER LINE
  - EXISTING 0.0000152587890625" WATER LINE
  - PROPOSED 0.00000762939453125" WATER LINE
  - EXISTING 0.00000762939453125" WATER LINE
  - PROPOSED 0.000003814697265625" WATER LINE
  - EXISTING 0.000003814697265625" WATER LINE
  - PROPOSED 0.0000019073486328125" WATER LINE
  - EXISTING 0.0000019073486328125" WATER LINE
  - PROPOSED 0.00000095367431640625" WATER LINE
  - EXISTING 0.00000095367431640625" WATER LINE
  - PROPOSED 0.000000476837158203125" WATER LINE
  - EXISTING 0.000000476837158203125" WATER LINE
  - PROPOSED 0.0000002384185791015625" WATER LINE
  - EXISTING 0.0000002384185791015625" WATER LINE
  - PROPOSED 0.00000011920928955078125" WATER LINE
  - EXISTING 0.00000011920928955078125" WATER LINE
  - PROPOSED 0.000000059604644775390625" WATER LINE
  - EXISTING 0.000000059604644775390625" WATER LINE
  - PROPOSED 0.0000000298023223876953125" WATER LINE
  - EXISTING 0.0000000298023223876953125" WATER LINE
  - PROPOSED 0.00000001490116119384765625" WATER LINE
  - EXISTING 0.00000001490116119384765625" WATER LINE
  - PROPOSED 0.000000007450580596923828125" WATER LINE
  - EXISTING 0.000000007450580596923828125" WATER LINE
  - PROPOSED 0.0000000037252902984619140625" WATER LINE
  - EXISTING 0.0000000037252902984619140625" WATER LINE
  - PROPOSED 0.00000000186264514923095703125" WATER LINE
  - EXISTING 0.00000000186264514923095703125" WATER LINE
  - PROPOSED 0.000000000931322574615478515625" WATER LINE
  - EXISTING 0.000000000931322574615478515625" WATER LINE
  - PROPOSED 0.0000000004656612873077392578125" WATER LINE
  - EXISTING 0.0000000004656612873077392578125" WATER LINE
  - PROPOSED 0.00000000023283064365386962890625" WATER LINE
  - EXISTING 0.00000000023283064365386962890625" WATER LINE
  - PROPOSED 0.000000000116415321826934814453125" WATER LINE
  - EXISTING 0.000000000116415321826934814453125" WATER LINE
  - PROPOSED 0.0000000000582076609134674072265625" WATER LINE
  - EXISTING 0.0000000000582076609134674072265625" WATER LINE
  - PROPOSED 0.00000000002910383045673370361328125" WATER LINE
  - EXISTING 0.00000000002910383045673370361328125" WATER LINE
  - PROPOSED 0.000000000014551915228366851806640625" WATER LINE
  - EXISTING 0.000000000014551915228366851806640625" WATER LINE
  - PROPOSED 0.0000000000072759576141834259033203125" WATER LINE
  - EXISTING 0.0000000000072759576141834259033203125" WATER LINE
  - PROPOSED 0.00000000000363797880709171295166015625" WATER LINE
  - EXISTING 0.00000000000363797880709171295166015625" WATER LINE
  - PROPOSED 0.000000000001818989403545856475830078125" WATER LINE
  - EXISTING 0.000000000001818989403545856475830078125" WATER LINE
  - PROPOSED 0.0000000000009094947017729282379150390625" WATER LINE
  - EXISTING 0.0000000000009094947017729282379150390625" WATER LINE
  - PROPOSED 0.00000000000045474735088641411895751953125" WATER LINE
  - EXISTING 0.00000000000045474735088641411895751953125" WATER LINE
  - PROPOSED 0.000000000000227373675443207059478759765625" WATER LINE
  - EXISTING 0.000000000000227373675443207059478759765625" WATER LINE
  - PROPOSED 0.0000000000001136868377216035297393798828125" WATER LINE
  - EXISTING 0.0000000000001136868377216035297393798828125" WATER LINE
  - PROPOSED 0.00000000000005684341886080176486968994140625" WATER LINE
  - EXISTING 0.00000000000005684341886080176486968994140625" WATER LINE
  - PROPOSED 0.00000000000002842170943040088243484497072265625" WATER LINE
  - EXISTING 0.00000000000002842170943040088243484497072265625" WATER LINE
  - PROPOSED 0.0000000000000142108547152004412174224885390625" WATER LINE
  - EXISTING 0.0000000000000142108547152004412174224885390625" WATER LINE
  - PROPOSED 0.00000000000000710542735760022060871124426953125" WATER LINE
  - EXISTING 0.00000000000000710542735760022060871124426953125" WATER LINE
  - PROPOSED 0.0000000000000035527136788001103043556221328125" WATER LINE
  - EXISTING 0.0000000000000035527136788001103043556221328125" WATER LINE
  - PROPOSED 0.00000000000000177635683940005515217781106640625" WATER LINE
  - EXISTING 0.00000000000000177635683940005515217781106640625" WATER LINE
  - PROPOSED 0.000000000000000888178419700027576088905533203125" WATER LINE
  - EXISTING 0.000000000000000888178419700027576088905533203125" WATER LINE
  - PROPOSED 0.0000000000000004440892098500137880444527666015625" WATER LINE
  - EXISTING 0.0000000000000004440892098500137880444527666015625" WATER LINE
  - PROPOSED 0.00000000000000022204460492500689402222638330078125" WATER LINE
  - EXISTING 0.00000000000000022204460492500689402222638330078125" WATER LINE
  - PROPOSED 0.000000000000000111022302462503447011113191650390625" WATER LINE
  - EXISTING 0.000000000000000111022302462503447011113191650390625" WATER LINE
  - PROPOSED 0.0000000000000000555111512312517235055595958251953125" WATER LINE
  - EXISTING 0.0000000000000000555111512312517235055595958251953125" WATER LINE
  - PROPOSED 0.00000000000000002775557561562586175277979791259765625" WATER LINE
  - EXISTING 0.00000000000000002775557561562586175277979791259765625" WATER LINE
  - PROPOSED 0.000000000000000013877787807812930876389898956298828125" WATER LINE
  - EXISTING 0.000000000000000013877787807812930876389898956298828125" WATER LINE
  - PROPOSED 0.0000000000000000069388939039064654381949494781494140625" WATER LINE
  - EXISTING 0.0000000000000000069388939039064654381949494781494140625" WATER LINE
  - PROPOSED 0.0000000000000000034694469519532327190974747390747072265625" WATER LINE
  - EXISTING 0.0000000000000000034694469519532327190974747390747072265625" WATER LINE
  - PROPOSED 0.00000000000000000173472347597661635954873736953735361328125" WATER LINE
  - EXISTING 0.00000000000000000173472347597661635954873736953735361328125" WATER LINE
  - PROPOSED 0.0000000000000000008673617379883081779774368697686768166015625" WATER LINE
  - EXISTING 0.0000000000000000008673617379883081779774368697686768166015625" WATER LINE
  - PROPOSED 0.0000000000000000004336808689941540889887184348843384080078125" WATER LINE
  - EXISTING 0.0000000000000000004336808689941540889887184348843384080078125" WATER LINE
  - PROPOSED 0.00000000000000000021684043449707704449435921744216920400390625" WATER LINE
  - EXISTING 0.00000000000000000021684043449707704449435921744216920400390625" WATER LINE
  - PROPOSED 0.000000000000000000108420217248538522247179608721084602001953125" WATER LINE
  - EXISTING 0.000000000000000000108420217248538522247179608721084602001953125" WATER LINE
  - PROPOSED 0.0000000000000000000542101086242692611235898043605423010009765625" WATER LINE
  - EXISTING 0.0000000000000000000542101086242692611235898043605423010009765625" WATER LINE
  - PROPOSED 0.0000000000000000000271050543121346305617949021802711500048828125" WATER LINE
  - EXISTING 0.0000000000000000000271050543121346305617949021802711500048828125" WATER LINE
  - PROPOSED 0.000000000000000000013552527156067315280897451090135575000244140625" WATER LINE
  - EXISTING 0.000000000000000000013552527156067315280897451090135575000244140625" WATER LINE
  - PROPOSED 0.0000000000000000000067762635780336576404487254500677875001220703125" WATER LINE
  - EXISTING 0.0000000000000000000067762635780336576404487254500677875001220703125" WATER LINE
  - PROPOSED 0.00000000000000000000338813178901682882022436272500338893750006103515625" WATER LINE
  - EXISTING 0.00000000000000000000338813178901682882022436272500338893750006103515625" WATER LINE
  - PROPOSED 0.0000000000000000000016940658945084144101121813625016944687500030517578125" WATER LINE
  - EXISTING 0.0000000000000000000016940658945084144101121813625016944687500030517578125" WATER LINE
  - PROPOSED 0.000000000000000000000847032947254207220505605681250084723437500152587890625" WATER LINE
  - EXISTING 0.000000000000000000000847032947254207220505605681250084723437500152587890625" WATER LINE
  - PROPOSED 0.000000000000000000000423516473627103610252802840625004236171875000762939453125" WATER LINE
  - EXISTING 0.000000000000000000000423516473627103610252802840625004236171875000762939453125" WATER LINE
  - PROPOSED 0.00000000000000000000021175823681355180512640142031250021180893750003814697265625" WATER LINE
  - EXISTING 0.00000000000000000000021175823681355180512640142031250021180893750003814697265625" WATER LINE
  - PROPOSED 0.00000000000000000000010587911840677759006320071015625001059044687500019073486328125" WATER LINE
  - EXISTING 0.00000000000000000000010587911840677759006320071015625001059044687500019073486328125" WATER LINE
  - PROPOSED 0.00000000000000000000005293955920338879503160035507812500052952234375000095367431640625" WATER LINE
  - EXISTING 0.00000000000000000000005293955920338879503160035507812500052952234375000095367431640625" WATER LINE
  - PROPOSED 0.00000000000000000000002646977960169439751580017753906250002647611718750000476837158203125" WATER LINE
  - EXISTING 0.00000000000000000000002646977960169439751580017753906250002647611718750000476837158203125" WATER LINE
  - PROPOSED 0.00000000000000000000001323488980084719875790008876953125000132380585937500002384185791015625" WATER LINE
  - EXISTING 0.00000000000000000000001323488980084719875790008876953125000132380585937500002384185791015625" WATER LINE
  - PROPOSED 0.00000000000000000000000661744490042359937895004438476562500006619029296875000011920928955078125" WATER LINE
  - EXISTING 0.00000000000000000000000661744490042359937895004438476562500006619029296875000011920928955078125" WATER LINE
  - PROPOSED 0.0000000000000000000000033087224502117996894750221923828125000033095117146875000059604644775390625" WATER LINE
  - EXISTING 0.0000000000000000000000033087224502117996894750221923828125000033095117146875000059604644775390625" WATER LINE
  - PROPOSED 0.0000000000000000000000016543612251058998447375110961914062500001654755857343750000298023223876953125" WATER LINE
  - EXISTING 0.0000000000000000000000016543612251058998447375110961914062500001654755857343750000298023223876953125" WATER LINE
  - PROPOSED 0.0000000000000000000000008271806125529499222368755480957031250000082737792867187500001490116119384765625" WATER LINE
  - EXISTING 0.0000000000000000000000008271806125529499222368755480957031250000082737792867187500001490116119384765625" WATER LINE
  - PROPOSED 0.0000000000000000000000004135903062764749611184377904788515625000004136889643359375000007450580596923828125" WATER LINE
  - EXISTING 0.0000000000000000000000004135903062764749611184377904788515625000004136889643359375000007450580596923828125" WATER LINE
  - PROPOSED 0.000000000000000000000000206795153138237480559218895239257812500000206844482167968750000037252902984619140625" WATER LINE
  - EXISTING 0.000000000000000000000000206795153138237480559218895239257812500000206844482167968750000037252902984619140625" WATER LINE
  - PROPOSED 0.000000000000000000000000103397576569118740279609447619628906250000010342224108398437500000186264514923095703125" WATER LINE
  - EXISTING 0.000000000000000000000000103397576569118740279609447619628906250000010342224108398437500000186264514923095703125" WATER LINE
  - PROPOSED 0.00000000000000000000000005169878828455937013980472380981445312500000051711120541971875000000931322574615478515625" WATER LINE
  - EXISTING 0.00000000000000000000000005169878828455937013980472380981445312500000051711120541971875000000931322574615478515625" WATER LINE
  - PROPOSED 0.000000000000000000000000025849394142279685069902361904907265625000000258555602709893750000004656612873077392578125" WATER LINE
  - EXISTING 0.000000000000000000000000025849394142279685069902361904907265625000000258555602709893750000004656612873077392578125" WATER LINE
  - PROPOSED 0.0000000000000000000000000129246970711398425349511809524536328125000001292778013549468750000023283064365386962890625" WATER LINE
  - EXISTING 0.0000000000000000000000000129246970711398425349511809524536328125000001292778013549468750000023283064365386962890625" WATER LINE
  - PROPOSED 0.000000000000000000000000006462348535569921267475590476226816406250000064638900677247343750000116415321826934814453125" WATER LINE
  - EXISTING 0.000000000000000000000000006462348535569921267475590476226816406250000064638900677247343750000116415321826934814453125" WATER LINE
  - PROPOSED 0.000000000000000000000000003231174267784960633737795238113280820312500000323194503386223687500000582076609134674072265625" WATER LINE
  - EXISTING 0.00000000000000000000000000323117426778496063373779523811328082031250000032319450338622368

CASE NO. 13-21975  
EXHIBIT C-5



3058 SE WOODSTOCK BOULEVARD  
TAX MAP T1S R1E 13CD  
TAX LOT 300  
PORTLAND, OREGON

PRELIMINARY  
GRADING PLAN

REVIEWS	Q	DAY
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**EMERIO**  
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