



City of Portland, Oregon
Bureau of Development Services
Land Use Services
FROM CONCEPT TO CONSTRUCTION

Chloe Eudaly, Commissioner
Rebecca Esau, Director
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www.portlandoregon.gov/bds

**NOTICE OF A PUBLIC HEARING BEFORE
THE CITY COUNCIL ON AN APPEAL OF THE
PORTLAND LAND USE HEARINGS OFFICER DECISION**

CASE FILE: LU 16-213734 LDS EN M EV (Macadam Ridge Subdivision)
WHEN: February 7, 2018 at 2:00 PM
WHERE: COUNCIL CHAMBERS, 1221 SW FOURTH AVENUE

Date: January 17, 2018
To: Interested Person
From: Kate Green, Land Use Services, 503-823-5868
Sean Williams, Land Use Services, 503-823-7612

The Review Body decision of **approval** has been appealed by **South Burlingame Neighborhood Association**.

A public hearing will be held to consider an appeal of the Hearings Officer's decision to approve a 21-lot subdivision with concurrent environmental review adjacent to 0319 SW Taylors Ferry Road/Riverview Abbey Mausoleum. The Hearings Officer decision of approval with conditions has been appealed by the South Burlingame Neighborhood Association. At the hearing, City Council will consider the appeal. You are invited to testify at the hearing.

This will be an On-the-Record hearing, one in which new evidence cannot be submitted to the City Council. For a general explanation of the City Council hearing process please refer to the last page of this notice.

GENERAL INFORMATION

Appellant: South Burlingame Neighborhood Association
7688 SW Capitol Highway
Portland OR 97219
503-209-0558; sbna-president@swni.org

Applicant/Owner: Riverview Abbey Mausoleum Company / contact: Steve Griffith
0319 SW Taylors Ferry Road
Portland OR 97219-4668
503-360-2598; swgrif@hotmail.com

Representative: Christopher Koback / Hathway Larson LLP
1331 NW Lovejoy Street, Suite 950
Portland OR 97209
503-303-3107; chris@hathawaylarson.com

Emerio Design / contact: AnneMarie Skinner
8285 SW Nimbus Avenue, Suite 180
Beaverton OR 97008
971-330-1129; annemarie@emeriodesign.com

Site Address: multiple undeveloped properties adjacent to SW Taylors Ferry Road, SW Canby Street, SW Hume Street (*subject property is adjacent to 0319 SW Taylors Ferry Road/Riverview Abbey Mausoleum*)

Legal Description: W 100' OF BLOCK 39 EXC PT IN ST, CARSON HTS; BLOCK 39 EXC W 100' & EXC PT IN ST, CARSON HTS; TL 1300 12.04 ACRES, SECTION 22 1S 1E

Tax Account No.: R139705750, R139705790, R991220220,
State ID No.: 1S1E22CB 04300, 1S1E22CB 04200, 1S1E22CB 01300
Quarter Section: 3829

Neighborhood: South Burlingame / Robert Lennox at 503-823-4592
Neighborhoods within 1,000 feet: South Portland / contact@southportlandna.org
Collins View / contact@collinsview.org

Business District: None
District Coalition: Southwest Neighborhoods Inc. / Sylvia Bogert at 503-823-4592

Zoning: Single Dwelling Residential 10,000 (R10)
Environmental Protection (p) overlay
Environmental Conservation (c) overlay

Plan District: None
Other Designations: Streams/Stephens Creek/Ruby Creek, City of Portland Wetlands, Potential Landslide Hazard, Southwest Hills Resource Protection Plan/Resource Site 117, Wildfire Hazard

Case Type: Land Division Subdivision (LDS)
Environmental Review (EN) with Modifications (M)
Environmental Violation Review (EV)

Procedure: Type III, with a public hearing before the Hearings Officer. The decision of the Hearings Officer can be appealed to City Council.

Proposal: The applicant proposes a Land Division-Subdivision in order to divide a 14.17-acre site into 23 lots for detached single-dwelling residential homes. The lot sizes are proposed to range from 5,000 to 7,924 square feet in area. The proposal includes a new public dead-end street (Street A) and a new public pedestrian connection to serve the proposed lots, as well as the extension of and the widening of existing rights-of-way (SW Hume Street and SW Taylor's Ferry Road) abutting the site. Public water and sanitary sewer services will be extended to serve the proposed lots. Stormwater facilities are proposed throughout the site with final disposal to the onsite streams (Ruby Creek and Stephens Creek).

Two tracts were initially proposed: Tract A, an approximately 9.65-acre open space/environmental resource tract, and an approximately 4,018 square foot Tract B, an open space/landscape buffer tract. Public and private easements are also proposed for utilities and a drainage reserve. In a modified proposal, preferred Alternative 4A, the number of tracts has been increased to three, adding Tract C, an approximately .27-acre scenic resource tract by removing what was originally designated as Lots 1 and 2.

At the October 16, 2017 evidentiary hearing, Applicant announced changes to its proposal and, based on comments from staff and neighbors, it was seeking approval of its new preferred Alternative 4A. The hearing was continued to October 30th to allow BDS Staff an opportunity to review the revised proposal and preferred Alternative 4A. The key changes in preferred Alternative 4A are best summarized by Applicant's counsel. They write:

“Alternative 4A removes Lots 1 and 2, and in their place adds a scenic resource tract. It reduces the size of Lot 23, resulting in the preservation of additional resource area and at least one significant tree. Alternative 4A responds to staff concerns that 40% of the lots remained over the minimum size, reducing the [sic] number of lots to 28.5%. It reduces the disturbance area to 29.5%, and increases open space tracts to 70.5%. It increases the resource area to 10.01 acres out of the 14.17-acre site.”

Exhibit H-51, page 3.

In addition, Applicant has essentially withdrawn its request for modification of the paving requirements. See Exhibit H-51, page 7 (“The Applicant is not going to argue against staffs position on its request for a modification to the paving requirements on Lots 22 and 23.”). In conjunction with consideration of Alternative 4A, is the issue of a new modification request to reduce the size of lot 23.

An Environmental Review is requested to allow the proposed lots, streets, utilities, and related development within the resource area of the Environmental Conservation zone; and to allow storm sewer and sanitary sewer construction within the Environmental Conservation and Environmental Protections zones.

Environmental Modifications are also requested to allow for reductions to the minimum lot area in the R10 zone from 6,000 square feet to 5,000 square feet; and to reduce the minimum side building setback for each lot from 10 feet to 5 feet.

Additionally, the application includes an Environmental Violation Review to address several compliance issues related to the following:

Violation 1: Trees and shrubs topped, cut, and pruned within the environmental conservation and protection overlays planted as mitigation for LU 06-107286 EN.

Violation 2: Ground disturbance (survey work with track machine off SW Hume Street) within the resource area of the Environmental Conservation Zone without the required review.

This subdivision proposal is reviewed through a Type III procedure because: (1) more than ten dwelling units are proposed, (2) the site is located within a Potential Landslide Hazard; and (3) the proposal includes an Environmental Review (see 33.660.110).

For purposes of state law, this land division is considered a subdivision. Under ORS 92.010, to subdivide land is to divide an area or tract of land into four or more lots within a calendar year. ORS 92.010 defines “lot” as a single unit of land created by a subdivision of land. The Applicant’s initial proposal was to create 25 units of land (23 lots and 2 tracts). This has been modified at the October 16th hearing to 21 lots and 3 tracts: Tract A, B, and C. Therefore, this land division is considered a subdivision.

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:

- **33.660.120 / Land Divisions in Open Space and Residential Zones**
- **33.430.250.A / Environmental Review**
- **33.430.280 / Environmental Modifications**
- **33.430. 250.G / Corrections to Violations**

REVIEW BODY DECISION

HEARINGS OFFICER DECISION (December 29, 2017)

Approval of Environmental Violation Review, subject to the following conditions:

- A. A BDS Zoning Permit is required to be finalized by March 31, 2018 for inspection and approval of remediation plantings. Copies of Exhibit C.13 from LU 16-213734 and conditions limits below shall be included within all plan sets submitted for permits (Zoning Permits). These exhibits shall include the following statement, "Any field changes must be in substantial conformance with approved Exhibit C.13 from LU 16-213734". To obtain the permit, the applicant must submit a Remediation Planting Plan which provides the following:
- removal of all non-native nuisance vegetation from the "upland and riparian remediation areas" shown on Exhibit C.13.
 - installation of native species within the 12,727 square foot "upland remediation area" at the following rate: 1 tree, 1 shrub, and 5 groundcover plants for every 50 square feet of planting area.
 - installation of native species within the 10,000 square foot "riparian remediation area" at the following rate: 1 tree, 1 shrub, and 5 groundcover plants for every 50 square feet of planting area.
 - Plants must be native and selected from the *Portland Plant List*. A minimum of 3 different tree species, 5 different shrub species; and 5 different groundcover species must be provided in each remediation area.
 - All nuisance plant removal and plant installation work must be conducted with hand-held equipment.
 - All remediation trees and shrubs shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector. All tape shall be a contrasting color that is easily seen and identified.
- B. The land owner shall maintain the required planting for two years to ensure survival and replacement. The land owner is responsible for the ongoing survival of the required plantings during and beyond the designated 2-year monitoring period. At the end of the 2-year maintenance and monitoring period, the land owner shall obtain a second (final) Zoning Permit for a final inspection of the remediation plantings for the purpose of ensuring the required plantings remain. The permit must be finalized no later than 2 years from the final inspection of the initial installation of the remediation plantings. Any required plantings that have not survived must be replaced.

Approval of Environmental Review subject to final PBOT approval of the right-of-way, final BES approval of stormwater and sewer, and City Forester approval (in consultation with the City Engineer) of removal of the 54-in tree, all in substantial conformance with the disturbance area proposed by Applicant and reflected in the Construction Management Plan in Exhibit H-107o(3).

A. BDS

1. With recording of the final plat, the Applicant shall record a restrictive covenant against Lots 4 through 8 obligating the lot owners to maintain the native trees on Lots 3 through 8 between the disturbance line depicted on the plans and the western boundary line of each lot. The HOA shall have the responsibility of enforcing said restriction.
2. Environmental Resource Tracts A and C shall be noted on the plat as "Resource Tract A" and "Resource Tract C." A note must also be provided on the plat indicating that the tract will be commonly owned and maintained by the owners of Lots 3 through 23 or a Homeowner's Association or the City or a Non-profit Organization.

A recording block for each of the legal documents such as Maintenance Agreement(s), acknowledgement of special land use conditions, or Declarations of Covenants, Conditions, and Restrictions (CC&Rs) as required by Conditions E _below. The recording block(s) shall, at a minimum, include language substantially similar to the following example: "A Declaration of Maintenance Agreement for (name of feature) has been recorded as document no.____ Multnomah County Deed Records."

B. BES

1. Secure approval of BES pursuant to PZC 33.652.020 by responding to PWP redline corrections dated 10/26/17 regarding required neighborhood stormwater facility in Tract A and the related all in substantial conformance with the disturbance area proposed by Applicant and reflected in the Construction Management Plan in Exhibit H-107o(3).
2. The final plat must include easements over new City of Portland sanitary and stormwater infrastructure that is located on private property. The easements will need to be granted to the City of Portland over the relevant improvements with appropriate width and to the satisfaction of BES;
3. The final plat must include existing City of Portland easements;
4. Prior to final plat approval, the applicant must complete the following related to the construction of public sewers and stormwater facilities to the satisfaction of BES: Approved engineering plans through the Public Works Permit process, provide a financial guarantee, provide a signed permit document and pay all outstanding fees.
5. Prior to final plat approval, the applicant must confirm the impact that the proposed improvements will have on the sanitary sewer connections for existing development addressed as 11 and 17 SW Taylors Ferry Rd. Depending on the impacts, the applicant may be required to make improvements to the connections to maintain sufficient sewer service to those residences to the satisfaction of BES, up to and including constructing new public sewers and sewer connections , prior to final plat approval.

C. PBOT

1. As a condition of final plat approval, the applicant shall dedicate the necessary rights - of- way within its ownership and construct street improvements to the current City standards per the requirements of the City Engineer.
2. As a condition of final plat approval, a bond and contract ensuring the street improvements will be completed.
3. Prior to final plat approval the applicant shall trim down the understory and branches over the ROW at the west side of the intersection of SW 2nd Avenue and SW Taylors Ferry Road for improved sight distance.
4. Prior to final plat approval, the applicant shall construct a flat concrete pad per TriMet standards at the bus stop at SW 2nd Avenue and SW Taylors Ferry Road, or relocate the bus stop to a new intersection of SW Hume and SW Taylors Ferry Road with approval from TriMet. If the new bus stop is located at the intersection of SW Hume and SW Taylors Ferry, it may be constructed at the same time as the applicant's required sidewalk improvements.

D. Site Development

1. Prior to obtaining a construction permit for development in the floodway, the applicant shall submit a "no rise" analysis for the stormwater outfall depicted on Sheet 2.0 if it is within the 15 foot floodway. The analysis must be stamped by a professional engineer licensed in the State of Oregon demonstrating that the development will not increase the 100 year floodplain elevations. The analysis must be reviewed and approved by the Engineering/Modeling group of BES Asset Systems Management.
2. At the time of Site Development Permitting the applicant shall address the comments on page 3 of the Site Development Section Revised Land Use Review Response dated November 3, 2017.
2. Applicant shall submit preliminary retaining wall design calculations and typical cross sections to Site Development to verify the proposed limits of disturbance are adequate in substantial conformance with the disturbance area proposed by Applicant and reflected in the Construction Management Plan in Exhibit H-107o(3).

E. Required Legal Documents

1. The Applicants shall execute a Maintenance Agreement for the tracts described in Condition A.3 above. The agreement shall assign common, undivided ownership of Resource Tract A and Resource Tract C to the owners of Lots 3 through 23 or a Homeowner's Association or the City or a Non-profit Organization and include provisions assigning maintenance responsibilities for the tracts and any shared facilities within that area. The Maintenance Agreement must be reviewed by the City Attorney and the Bureau of Development Services, and approved as to form, prior to final plat approval.
2. The Applicants shall execute an Acknowledgement of Special Land Use conditions, requiring residential development on Lots 3 through 8 to comply with Condition A.2. The acknowledgement shall be recorded with Multnomah County, and referenced on the final plat.
3. The Applicants shall submit a Performance Guarantee, meeting the requirements of PCC 33.700.050, for (1) installation of mitigation plantings at the site and (2) two years of monitoring and maintenance (as specified in Condition) to the Bureau of Development Services. The Performance Guarantee must be accompanied by a contract approved by the City Attorney.
 - a. Performance Guarantee for the estimated cost of installation of plantings. If the Applicants or subsequent owners of the site do not install any required plantings as required by a condition of approval, the City shall use the performance guarantee to install required plantings. The bureau of Development Services will return/release unused portions of the required performance guarantee allocated to installation of plantings to the Applicants, only after Bureau of Development Services Inspectors determine that all required plantings have been completed and invasive species have been removed within 10 feet of all required native plantings.
 - b. Performance Guarantee for estimated costs of monitoring and maintenance. If the Applicants or subsequent owners of the site do not monitor and maintain the plantings, as required by Condition D below, the City shall use the performance guarantee to monitor and maintain the required plantings. The Bureau of Development Services will return/release portions of the required performance guarantee allocated for each year of the two-year monitoring period to the

Applicants only after the Bureau of Development Services has approved the annual monitoring report (including replacement of dead plants).

F. Other Requirements

1. Applicants shall satisfy the requirements of the Mitigation Plan (Exhibit H-100b) and, in addition:
 - a. Prior to installing required mitigation plantings, non-native invasive plants shall be removed from all areas within 10 feet of mitigation plantings, using handheld equipment.
 - b. All mitigation and remediation shrubs and trees shall be marked in the field by a tag attached to the top of the plant for easy identification by the City Inspector. All tape shall be a contrasting color that is easily seen and identified.
 - c. Plantings shall be installed between October 1 and March 31 (the planting season). Any changes or substitutions to approved planting plans shall first receive written approval from Bureau of Development Services Land Use Review staff.

Applicants shall have a registered landscape architect, a registered landscape contractor, or the designer of record certify that all the required mitigation plantings were installed as required. After installation, the Applicants shall submit a Landscape Certification Form to this effect, signed by the registered landscape professional. The signed Landscape Certification Form shall be submitted to the Site Development Section of the Bureau of Development Services, confirming that all required mitigation plantings have been installed in accordance with these conditions of approval.

APPEAL

The Hearings Officer decision of approval with conditions has been appealed by the South Burlingame Neighborhood Association (SBNA). According to the appellants' statement, the appeal of the Hearings Officer decision is based on arguments that the following criteria are not met:

1. Environmental Review, 33.430.250.A. SBNA appeals decision that the proposal has the least significant detrimental impacts (33.430.250.A.1.a) and that significant functional values have been compensated for (33.430.250.A.1.c).
2. Mitigation and Remediation Plan, 33.430.240.B.3. SBNA appeals the decision that the applicant met their burden of proof to show that their mitigation will compensate for unavoidable impacts.
3. Environmental Modifications, 33.430.280. SBNA appeals the decision to allow the setback modifications of Lot 3-8. The applicant failed to show how this reduction added greater protection.
4. Tree Preservation, 33.630.200. Failed to demonstrate tree preservation maximized to the extent practicable.
5. Landslide Hazard, 33.632.100. SBNA disagrees that site is suitable for development in a manner that reasonable limits risk of landslides affecting the site and adjacent sites.
6. Transportation Impact, 33.641.020/030. Appealing based on evaluation factors of: availability of transit service and facilities and connections to transit; impacts on the immediate and adjacent neighborhoods; and safety for all modes.
7. Procedural error – due process rights. Insufficient time to address new evidence in the record.

Review of the case file: The Hearings Officer's decision and all evidence on this case are now available for review at the Bureau of Development Services, 1900 SW 4th Avenue, Suite 5000, Portland, OR 97201. Copies of the information in the file can be obtained for a fee equal to the City's cost for providing those copies. We can provide some of the information over the phone or via email. To review the file, please call 503-823-7617 to schedule an appointment.

We are seeking your comments on this proposal. The hearing will be held before the City Council. To comment, you may write a letter in advance, or testify at the hearing. In your comments, you should address the approval criteria, as stated above. Please refer to the file number when seeking information or submitting testimony. Written comments **must be received by the end of the hearing** and should include the case file number and the name and address of the submitter. It must be given to the Council Clerk, in person, or mailed to 1221 SW Fourth Avenue, Room 140, Portland, OR 97204. A description of the City Council Hearing process is attached.

If you choose to provide testimony by electronic mail, please direct it to the Council Clerk at karla.Moore-Love@portlandoregon.gov. Due to legal and practical reasons, City Council members cannot accept electronic mail on cases under consideration by the Council. Any electronic mail on this matter must be received no less than one hour prior to the time and date of the scheduled public hearing. The Council Clerk will ensure that all City Council members receive copies of your communication.

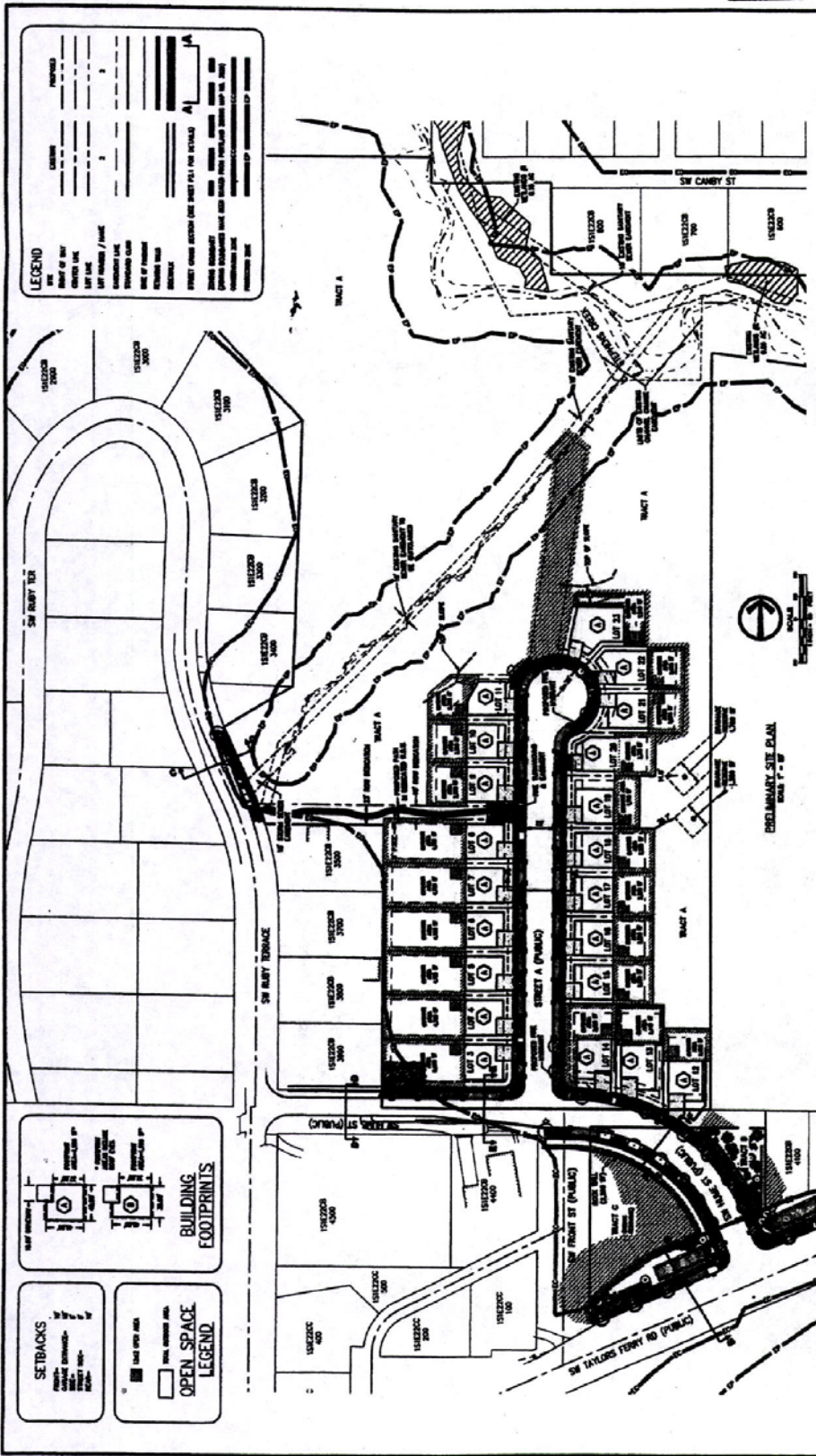
City Council's decision is final. Any further appeal must be filed with the Oregon Land Use Board of Appeals (LUBA). Failure to raise an issue in a hearing, in person or by letter, by the close of the record or at the final hearing on the case or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to LUBA on that issue. Also, if you do not provide enough detailed information to the City Council, they may not be able to respond to the issue you are trying to raise. For more information, call the Auditor's Office at (503) 823-4086.

If you have a disability and need accommodations, please call 503-823-4085 (TDD: 503-823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.

Attachments

1. Zoning Map
2. Site plans: H107o1
3. Appeal Statement
4. City Council Appeal Process

CITY OF PORTLAND
 HEARINGS OFFICE
 Exhibit # H-1070(1)
 Case # 4170027
 Bureau Case # 16-213734 LDS



PRELIMINARY LAND DIVISION SUBMITTAL PRELIMINARY SITE PLAN MAXIMUM SCALE: 1/8" = 1'-0" SHEET NO. 4 OF 25	
HAERIO Design 1000 NE 10TH AVENUE, SUITE 200 PORTLAND, OREGON 97232 TEL: 503.255.1111 WWW.HAERIODSIGN.COM	
BUREAU OF ENVIRONMENTAL SERVICES PROJECT NO. 16-213734 DATE: 10/20/16 PREPARED BY: J. SMITH CHECKED BY: J. SMITH APPROVED BY: J. SMITH	BUREAU OF TRANSPORTATION PROJECT NO. 16-213734 DATE: 10/20/16 PREPARED BY: J. SMITH CHECKED BY: J. SMITH APPROVED BY: J. SMITH
APPROVALS PREPARED BY: J. SMITH CHECKED BY: J. SMITH APPROVED BY: J. SMITH	

LU 16-213734 LDS



City of Portland, Oregon - Bureau of Development Services

1900 SW Fourth Avenue · Portland, Oregon 97201 | 503-823-7300 | www.portlandoregon.gov/bds



Type III Decision Appeal Form

LU Number: LU 16-213734 LDS EN MEV

FOR INTAKE, STAFF USE ONLY

Date/Time Received 1/12/18 @ 2:59 PM

Action Attached

Received By Mary Rutenschien

Fee Amount \$ 5100

Appeal Deadline Date 1/12/18 @ 4:30 PM

[N] Fee Waived

Entered in Appeal Log

Bill # 4248560

Notice to Auditor

[Y] Unincorporated MC

Notice to Dev. Review

APPELLANT: Complete all sections below. Please print legibly.

PROPOSAL SITE ADDRESS Subject property is adjacent to 0319 SW DEADLINE OF APPEAL January 12, 2018

Name South Burlingame Neighborhood Association

Address 7688 SW Capitol Hwy.

City Portland

State/Zip Code OR, 97219

Day Phone (503) 209-0558

Email sbna-president@swni.org

Fax _____

Interest in proposal (applicant, neighbor, etc.) Neighborhood Association

Identify the specific approval criteria at the source of the appeal:

Zoning Code Section 33. SEE ATTACHED

Zoning Code Section 33. _____

Zoning Code Section 33. _____

Zoning Code Section 33. _____

Describe how the proposal does or does not meet the specific approval criteria identified above or how the City erred procedurally:

See Attached.

Appellant's Signature *Robert Coleman*

FILE THE APPEAL - Submit the following:

- This completed appeal form
- A copy of the Type III Decision being appealed
- An appeal fee as follows:
 - Appeal fee as stated in the Decision, payable to City of Portland
 - Fee waiver for ONI Recognized Organizations approved (see instructions under Appeals Fees A on back)
 - Fee waiver request letter for low income individual is signed and attached
 - Fee waiver request letter for Unincorporated Multnomah County recognized organizations is signed and attached

The City must receive the appeal by 4:30 pm on the deadline listed in the Decision in order for the appeal to be valid. To file the appeal, submit the completed appeal application and fee (or fee waiver request as applicable) at the Reception Desk on the 5th Floor of 1900 SW 4th Ave, Portland, Oregon, between 8:00 am and 4:30 pm Monday through Friday.

The Portland City Council will hold a hearing on this appeal. The land use review applicant, those who testified and everyone who received notice of the initial hearing will receive notice of the appeal hearing date.

Information about the appeal hearing procedure and fee waivers is on the back of this form.

The Zoning Code Section 33.430.250.A Environmental Review

South Burlingame Neighborhood Association (SBNA) appeals the decision that the applicant has demonstrated to the burden of proof that the proposed land division design and construction methods will "have the least significant detrimental impact on the identified resources" per PCC 33.430.250.A.1.a, nor that "significant functional values will be compensated for" per PCC 33.430.250.A.1.c. Furthermore, the establishment of easements to protect the tree in the easement on Lot 3-8 are inconsistent with PCC 33.430.250.A.4.a "Other resource areas of Environmental Protection zones must be in environmental resource tracts."

The applicant lacked "Significantly different but practicable development alternatives, including alternative housing types or a reduction in the number of proposed or required units or lots, may be required if the alternative will have less impact on the identified resources and functional values than the proposed development" as required under 33.430.250.A.4.c. The applicant failed to submit a final concept that could pass the burden of proof standard for the Environmental Review. As such, as stated over and over by the bureaus in their reports and subsequent communications during the hearing, the final disturbance area is unresolved. This includes the propose mitigation of outfall of Ruby Creek at Ruby Terrace, the proposed storm outfall to Ruby Creek.

Zoning Code Section 33.430.240.B.3 Mitigation and remediation plan.

SBNA appeals the decision that applicant met their burden of proof to show that their mitigation will compensate for the avoidable impacts as required under this section. The applicant waited to the end of their application time to request the hearing. The application did not receive a favorable review by Staff. To respond to this the applicant submitted vast amounts of information. Because of the compressed schedule, there was insufficient time to review all the materials submitted in haste by the applicant. The city staff, nor our association had sufficient time to review all of the documents, let alone make informed decisions on the impacts it would have to these protected properties. The documents submitted during the hearing process were substantial in volume and complexity. Since the impact area could not be verified with approval of the final plan, there is no way to evaluate if this section could be met.

Zoning Code Section 33.430.280 Modifications Which Will Better Meet Environmental Review Requirements

SBNA appeals the decision to allow the setback modification of Lot 3-8. The base zone for this property is R10. These lots meet all of the code requirements for R10 zoned lots. The reduction of the setback will not yield "greater protection of the resources and functional values identified" as required by this Code. The applicant failed to show how this reduction added greater protection.

Zoning Code Section 33.630.200 Tree Preservation Approval Criteria

Our association is appealing this decision due to the failed concept plan in the Environmental Review making it impossible to identify if they have maximized the Tree preservation to the extent practicable.

Zoning Code Section 33.632.100 Landslide Hazard Area Approval Criterion

Our association is appealing this decision. This site is on a known landslide and do not agree with the decision "that the site is suitable for development in a manner that reasonably limits the risk of a landslide affecting the site, adjacent sites" as required.

Zoning Code Sections 33.641.020 Approval Criterion and 33.641.030 Mitigation

Our association is appealing this based on the lack of access to transit service and the resulting proposed mitigation. The proposed development connects to Taylors Ferry Road and is agreed by all to be a very dangerous road for bikes and pedestrians. The applicant proposes mitigation to the identified lack of transit access by developing a westbound stop on the north side of Taylors Ferry Road, but there is no consideration of how pedestrians will cross Taylors Ferry Road to board transit on the south side of the same road. The proposed mitigation should include safe access to stops on the southside of Taylors Ferry Road.

Procedural Error –Due Process Rights

In a letter dated November 5, 2017, SBNA and Jan E. Friedman submitted a letter to the record describing our objection to the violation of our due process rights. In response to this, the Land Use officer stated precedence of 20 days for notice. He than gave 17 days for review of the vast amounts of documents. The Hearings Officer justifies the shorted days by stating the new evidence has been in record of 21 days since the record was closed. While this may be true, there was no expectation on our part that the record would be re-opened, so we did not hire expert to review the entire record in order to comment in the event that the record may be re-opened.

The 17 days was not sufficient time to hire experts to review all late entry of documents. To illustrate, here are the timeline of the notice:

Notice was given by mail on Monday, November 20, 2017.

Members received the notice on Wednesday, November 22, 2017.

Businesses were closed on Thursday and Friday due to Thanksgiving Holiday weekend.

The Record was then closed again December 7, 2017.

To quote the letter objecting to this violation "SBNA and my Due Process rights should not be thwarted due to the Applicant's late entry of many documents." This is very similar to the City's Bureaus position. The amount of data and timeline presented to us because of the applicant's poorly developed plans was not sufficient to make a thorough review and develp responses.

GENERAL EXPLANATION OF CITY COUNCIL APPEAL HEARING PROCESS FOR ON-THE-RECORD APPEALS

1. SUBMISSION OF LEGAL ARGUMENT

- a. On-the record appeals are limited to legal argument only. The only evidence that will be considered by the City Council is the evidence that was submitted to the HEARINGS OFFICER prior to the date the HEARINGS OFFICER closed the evidentiary record. Parties may refer to and criticize or make arguments in support of the validity of evidence received by the HEARINGS OFFICER. However, parties may not submit new evidence to supplement or rebut the evidence received by the HEARINGS OFFICER.
- b. Written legal argument must be received by the time of the hearing and should include the case file number. Testimony may be submitted via email to CCTestimony@portlandoregon.gov or in writing to the Council Clerk, 1221 SW Fourth Avenue, Room 130, Portland, Oregon 97204.
- c. Legal argument may be submitted orally (see below).

2. COUNCIL REVIEW

- a. The order of appearance and time allotments are generally as follows:

Staff Report	10 minutes
Appellant	10 minutes
Supporters of Appellant	3 minutes each
Principal Opponent	15 minutes
Other Opponents	3 minutes each
Appellant Rebuttal	5 minutes
Council	

- b. The applicant has the burden of proof to show that the evidentiary record compiled by the HEARINGS OFFICER demonstrates that each and every element of the approval criteria is satisfied. If the applicant is the appellant, the applicant may also argue the criteria are being incorrectly interpreted, the wrong approval criteria are being applied or additional approval criteria should be applied.
- c. In order to prevail, the opponents of the applicant must persuade the City Council to find that the applicant has not carried the burden of proof to show that the evidentiary record compiled by the HEARINGS OFFICER demonstrates that each and every element of the approval criteria is satisfied. The opponents may wish to argue the criteria are being incorrectly applied, the wrong approval criteria are being applied or additional approval criteria should be applied.

3. OTHER INFORMATION

- a. Prior to the hearing, the case file and the HEARINGS OFFICER decision are available for review by appointment, at the Bureau of Development Services, 1900 SW 4th Avenue, #5000, Portland, OR 97201. Call 503-823-7617 to make an appoint to review the file.

If you have a disability and need accommodations, please call 503-823-4085 (TDD: 503-823-6868). Persons requiring a sign language interpreter must call at least 48 hours in advance.