



**City of Portland, Oregon**  
**Bureau of Development Services**  
**Land Use Services**

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**Date:** March 22, 2010  
**To:** Interested Person  
**From:** Sean Williams, Land Use Services  
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## **NOTICE OF A TYPE I DECISION ON A PROPOSAL IN YOUR NEIGHBORHOOD**

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

### **CASE FILE NUMBER: LU 09-170647 LDP**

#### **GENERAL INFORMATION**

**Applicant:** Gabe Genauer  
Carrington Barrs  
Barge Development, LLC  
4245 NE Alberta Court  
Portland, OR 97218

**Site Address:** 6026 NE 57<sup>th</sup> Avenue

**Legal Description:** EXC S 73' OF E 5'-W 100' OF LOT 2 BLOCK 7, KILLINGSWORTH GARDENS

**Tax Account No.:** R450002900

**State ID No.:** 1N2E18DA 03800

**Quarter Section:** 2436

**Neighborhood:** Cully, contact Steve Yett at 503-282-3251.

**Business District:** None

**District Coalition:** Central Northeast Neighbors, contact Alison Stoll at 503-823-3156.

**Plan District:** None

**Zoning:** Residential 5,000 (R5) w/ Aircraft Landing Zone Overlay (h)

**Case Type:** Land Division Partition (LDP)

**Procedure:** Type I, an administrative decision with appeal to the Oregon Land Use Board of Appeals (LUBA).

#### **Proposal:**

The applicants are requesting to partition the subject property into two parcels of approximately 6,649 (Parcel 1) and 7,408 (Parcel 2) square feet. A row of Port-Orford Cedars in the northeast corner of the lot will be retained for compliance with tree preservation requirements.

This partition is reviewed through a Type I land use review because: (1) the site is in a residential zone; (2) fewer than four lots are proposed; (3) none of the lots, utilities, or services are proposed within a Potential Landslide Hazard or Flood Hazard Area, and; (4) no

other concurrent land use reviews (such as an Adjustment, Design Review, or Environmental Review) are requested or required (see 33.660.110).

For purposes of State Law, this land division is considered a partition. To partition land is to divide an area or tract of land into two or three parcels within a calendar year (See ORS 92.010).

**Relevant Approval Criteria:**

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

## ANALYSIS

**Site and Vicinity:** The subject property is located on the northeast corner of the intersection of NE 57<sup>th</sup> Avenue and NE Ainsworth Street. Existing improvements consist of a single family dwelling located on the northern half of the property that will remain within proposed Parcel 2. The site is primarily flat with landscaping concentrated around the property lines. The applicant has acquired a residential building permit (09-161658 RS) to move a single family residence from another site onto this property to add to the existing residence for conversion to a duplex. However, the intention of this action is for the new single family residence to be located on Parcel 1 of this land division. Development south of this site is predominantly comprised of single family dwellings with associated zoning designations. Zoning and development north of this site is primarily industrial with the exception of a pocket of commercial zoning (CN2) directly north.

**Zoning:** The R5 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 Aircraft Landing ("h") overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures and vegetation. The allowed height limit for buildings and vegetation on the site per the "h" overlay is 180 feet above the lowest base point at Portland International Airport. The airport low base point is at an elevation of 18.3 feet. Therefore, the topographical elevation of the site PLUS the proposed building cannot exceed 198.3 feet. The highest ground elevation on the site is approximately 98 feet. Therefore, buildings and vegetation on the site cannot exceed 100 feet in height. On this site, however, the base zone (R5) height limit of 30 feet is more restrictive than the 'h' overlay allows and cannot be exceeded without a future adjustment review.

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

**Agency and Neighborhood Review:** A Notice of Proposal in your Neighborhood was mailed on January 13, 2010.

**1. Agency Review:** Several Bureaus and agencies have responded to this proposal. Please see Exhibits E for details. The comments are addressed under the appropriate criteria for review of the proposal.

**2. Neighborhood Review:** No written responses have been received from either the Neighborhood Association or notified property owners in response to the proposal.

## APPROVAL CRITERIA

### APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES

**33.660.120 The Preliminary Plan for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met.**

The relevant criteria are found in Section **33.660.120 [A-L], Approval Criteria for Land Divisions in Open Space and Residential Zones**. Due to the specific location of this site, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

Criterion	Code Chapter	Topic	Applicability Findings
A	33.610	Lots	<b>Applicable - See findings below.</b>
B	33.630	Trees	<b>Applicable - See findings below.</b>
C	33.631	Flood Hazard Area	Not applicable - The site is not within the flood hazard area.
D	33.632	Potential Landslide Hazard Area	Not applicable - The site is not within the potential landslide hazard area.
E	33.633	Phased Land Division or Staged Final Plat	Not applicable - A phased land division or staged final plat has not been proposed.
F	33.634	Recreation Area	Not applicable - This is not required where the proposed density is less than 40 units.
G	33.635 .100	Clearing and Grading	<b>Applicable - See findings below.</b>
G	33.635 .200	Land Suitability	<b>Applicable - See findings below.</b>
H	33.636	Tracts and Easements	Not applicable - No tracts or easements have been proposed or will be required.
I	33.639	Solar Access	Not Applicable - Maintaining existing development on the site limits new parcel configuration (33.610.200 supercedes 33.639).
J	33.640	Streams, Springs, and Seeps	Not applicable - No streams, springs, or seeps are evident on the site.
K	33.641	Transportation Impacts	<b>Applicable - See findings below.</b>
L	33.651 - 33.654	Services and Utilities	<b>Applicable - See findings below.</b>

**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 standards applicable in the RF through R5 zones. These density and lot dimension standards ensure that lots are consistent with the desired character of each zone while allowing lots to vary in size and shape provided the planned intensity of each zone is respected.

#### Density Standards

Density standards match housing density with the availability of services and with the carrying capacity of the land in order to promote efficient use of land, and maximize the benefits to the public from investment in infrastructure and services. These standards promote development opportunities for housing and promote urban densities in less developed areas. Maximum densities ensure that the number of lots created does not exceed the intensity planned for the area, given the base zone, overlay zone, and plan district regulations. Minimum densities ensure that enough dwelling units can be developed to accommodate the projected need for housing.

The method used to calculate density depends on whether a street is created as part of the land division, and whether the site is subject to certain environmental constraints.

In this case, a street is not proposed or required, and the site is not within the environmental zone, potential landslide hazard area, or flood hazard area. Therefore, the maximum and minimum density for this site is as follows:

Minimum = (14,658 square feet \* .80) ÷ 5,000 square feet = 2.34 (which rounds down to a minimum of 2 lots, per 33.930.020.A)

Maximum = 14,658 square feet ÷ 5,000 square feet = 2.93 (which rounds up to a maximum of 3 lots, per 33.930.020.B)

The applicant is proposing 2 lots. The density standards are therefore met.

#### Lot Dimensions

The lot dimension standards ensure that: (1) each lot has enough room for a reasonably-sized house and garage; (2) lots are of a size and shape that development on each lot can meet the development standards of the Zoning Code; (3) lots are not too large relative to the planned density; (4) each lot has room for at least a small, private outdoor area; (5) lots are compatible with existing lots; (6) lots are wide enough to allow development to orient toward the street; (7) lots don't narrow to an unbuildable width close to the street; (8) each lot has adequate access from the street; (9) each lot has access for utilities and services; and (10) lots are not landlocked.

The dimensions of the proposed lots as compared to the required lot dimension standards is shown in the following table (this information is found in Table 610-2 of the Zoning Code):

	<b>R5 Zone Requirement</b>	<b>Proposed Lot 1</b>	<b>Proposed Lot 2</b>
Minimum Lot Area	3,000 sq. ft.	7,409 sq. ft.	6,649 sq. ft.
Maximum Lot Area	8,500 sq. ft.		
Minimum Lot Width*	36 ft.	73 ft.	77.01 ft.
Minimum Lot Depth	50 ft.	90.92 ft.	96.13 ft.
Minimum Front Lot Line	30 ft.	73 ft.	77.01 ft.

\* Width is measured at the minimum front building setback line

\*\* For flag lots, width is measured at the midpoint of the opposite lot lines in the "flag" portion of the lot.

The findings above describe how the applicable lot standards are met. This criterion is therefore 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.

The applicant has submitted an arborist report that inventories the trees within the land division site, evaluates their condition and specifies root protection zones (Exhibit A-2). Some trees have been exempted by the arborist because they are either located partially off the property or located within 10 feet of an existing structure to remain. A majority of the species within proposed Parcel 1 are comprised of fruit trees of moderate value that the applicant desires to save but will not be preserved through preservation requirements. A cluster of significant coniferous trees located in the northwest corner of the property will be located in the NE 57<sup>th</sup> Avenue right-of-way after street dedication requirements and are therefore exempt from tree preservation standards. However, as described later in this report, the City Urban Forester has stressed that these trees must be preserved unless otherwise approved through a written permit from the City Forester. A row of 9 Port-Orford cedars are located on the eastern property line, directly behind the existing house to remain, of which 7 are proposed for compliance with preservation standards.

The total non-exempt tree diameter on the site is 152 inches. The applicant proposes to preserve trees 13 through 19, which comprise of 56 inches of diameter, or 36.8 percent of the total non-exempt tree diameter. This proposal complies with Option 1 of the tree preservation standards, which requires at least 35 percent of the total tree diameter on the site to be preserved. The applicant has provided a Tree Preservation Plan showing the preserved trees and the required root protection zones (Exhibit C-2).

This criterion is met, subject to the condition that development on Parcel 2 is carried out in conformance with the Tree Preservation Plan (Exhibit C-2) and the applicant's arborist report (Exhibit A-2).

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

*The approval criteria of Chapter 33.635 are found in two groups – clearing and grading, and land suitability.*

**33.635.100 – Clearing and Grading**

- A. Existing contours and drainage patterns of the site must be left intact wherever practicable. Where alteration to existing drainage patterns is proposed, it must not adversely impact adjacent properties by significantly increasing volume of runoff or erosion;**
- B. Clearing and grading should be sufficient for construction of development shown on the Preliminary Clearing and Grading Plan;**
- C. Clearing and grading should be limited to areas of the site that are reasonably necessary for construction of development shown on the Preliminary Clearing and Grading Plan;**
- D. Topsoil must be preserved on site to the extent practicable for use on the site after grading is complete; and**
- E. Soil stockpiles must be kept on the site and located in areas designated for clearing and grading as much as is practicable.**

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

### **33.635.200 – Land Suitability**

**Where geologic conditions or historic uses of the site indicate a hazard may exist, the applicant must show that the proposed land division will result in lots that are suitable for development. The applicant may be required to make specific improvements in order to make the lots suitable for their intended uses and the provision of services and utilities.**

**Findings:** The site is currently in residential use, and there is no record of any other use in the past. Although the site is currently connected to the public sanitary sewer, there is an old septic system on the site. The City has no record that this facility was ever decommissioned. Prior to final plat, the applicant must meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of this facility. With this condition, the new lots can be considered suitable for new development, and this criterion is met.

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

*The relevant approval criteria of Chapter 33.641 are found in the two paragraphs below.*

**33.641.020. 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.**

**33.641.030. The applicant may meet the criterion in Section 33.641.020, above, by including mitigation measures as part of the land division proposal. Mitigation measures must be acceptable to the City Engineer and may include providing transportation demand management measures, an access management plan, constructing streets or bicycle, pedestrian, or transit facilities on or off the site or other capital improvement projects such as traffic calming devices.**

**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. Small land divisions involving only a few dwelling units may not require a formal transportation impact study, while it might be required for larger projects (Title 17 includes technical standards describing when a more formal study is required).

The site has approximately 150 feet of frontage on NE 57<sup>th</sup> Avenue and 94 feet of frontage on NE Ainsworth Street. At this location, NE 57<sup>th</sup> Avenue and NE Ainsworth Street are classified as a local service street for all modes in the Transportation Element of the Comprehensive Plan. Tri-Met provides transit service approximately 1,344 feet from the site on NE Killingsworth Street via bus #72. Parking is currently allowed on both sides of

NE 57<sup>th</sup> Avenue and NE Ainsworth Street. There is one driveway entering the site from NE 57<sup>th</sup> Avenue that provides access to off-street parking for the existing house on proposed Parcel 2.

At this location, both NE 57<sup>th</sup> Avenue and NE Ainsworth Street are improved with 16-ft of center-strip gravel-base paving. There are no curbs, planter strips, or sidewalks. In reviewing this land division, Portland Transportation relies on accepted civil and traffic engineering standards and specifications to determine if existing street improvements for motor vehicles, pedestrians and bicyclists can safely and efficiently serve the proposed new development. At the time of completeness review, the Portland Bureau of Transportation (PBOT) determined that right-of-way improvements along both frontages of the site would be required in order to ensure that safe pedestrian travel is possible within the proposed development. The applicant subsequently filed for an appeal (Exhibit G-3) to these requirements. Upon further review, the City Engineer determined that an isolated improvement at this location would not be practical at this time as there is little opportunity for development of surrounding properties that would yield right-of-way improvements. If the street is to be improved, it would be more appropriate to complete the improvements as one LID (Local Improvement District) project. Therefore, the applicant was required to sign street and storm sewer waivers of remonstrance (for participation in future street and storm sewer improvements). In addition, in order to accommodate future improvements of NE 57<sup>th</sup> Avenue, a 4-foot dedication of property will be required along this frontage of the site.

This criterion is met, with the condition that the required right-of-way dedication is shown on the Final Plat.

**L. Services and utilities. The regulations and criteria of Chapters 33.651 through 33.654, which address services and utilities, must be met.**

**Findings:** Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way.

- The water standards of 33.651 have been verified. There is an existing 8-inch water main in NE Ainsworth Street and a 6-inch water main in NE 57<sup>th</sup> Avenue. The Water Bureau has indicated that the existing house on Parcel 2 is served by a ¾-inch metered service from the main in NE 57<sup>th</sup> Avenue. However, site plans submitted by the applicant indicate that the existing house is served by a lateral from the main in NE Ainsworth Street. If this is the case, the existing water line would cross the new property line. Title 21 requires that the water service connection be located along the frontage of the lot to be served. Water service connections are not allowed by means of an easement. Therefore, prior to final plat, the applicant shall provide sufficient documentation to verify the location of the water line serving the existing house. If the existing lateral is from the main in NE Ainsworth Street, the applicant shall meet the requirements of the Water Bureau concerning relocation of the water service connection to the existing home. See Exhibit E-3 for more details.
- The sanitary sewer standards of 33.652 have been verified. There is an existing 8-inch PVC sanitary-only sewer line in both NE Ainsworth Street and NE 57<sup>th</sup> Avenue. The existing house on Parcel 2 has an existing sewer service from the main in NE 57<sup>th</sup> Avenue. Sanitary sewer service is available to serve future development on Parcel 1 from the main in NE Ainsworth Street. See Exhibit E-1 for more details.
- The technical standards of Chapter 33.653 related to stormwater management have been verified. The findings below for the Stormwater Management Approval Criteria of

33.653.020 incorporate a discussion of how the technical standards have been satisfied by the applicant's stormwater proposal.

**33.653.020 Stormwater Management Approval Criteria**

- A. If a stormwater tract is proposed or required, an adequate amount of land and an appropriate location must be designated on the Preliminary Plan; and**
- B. The application must show that a stormwater management system can be designed that will provide adequate capacity for the expected amount of stormwater.**

**Findings:** No stormwater tract is proposed or required. Therefore, criterion A is not applicable.

The City of Portland requires that stormwater from development be cleaned and disposed of in a manner that meets the requirements of the City's Stormwater Management Manual. In order to meet this approval criterion, land division proposals must demonstrate an approved method of cleaning (water quality treatment), detention (delayed release), and an approved disposal point.

The Stormwater Management Manual contains a hierarchy of acceptable methods of stormwater treatment and disposal. The hierarchy requires that applicants first explore the use of methods that have a lower potential impact on groundwater, such as on-site surface infiltration swales and infiltration planters. If these methods are not feasible on a site, applicants may move lower on the hierarchy, to methods that inject water deeper into the ground through mechanical devices such as drywells or sumps, or carry it off of the site into storm sewers, drainageways, or other approved disposal points.

In addition to determining appropriate treatment and disposal methods by working through the hierarchy in the Stormwater Management Manual, stormwater facilities must be sized, through engineering calculations, to accommodate the expected amounts of stormwater. In some cases, sizing a stormwater facility necessitates testing the infiltration rate of the soil at the site.

The applicant has proposed the following stormwater management methods (Exhibit C-1), and the Bureaus have responded as follows (Exhibits E-1 and E-5):

- **Parcel 1:** Stormwater from this lot will be directed to an individual drywell that will treat the water and slowly infiltrate it into the ground. This lot 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. Site Development has indicated conceptual approval of the drywell.
- **Parcel 2 (the parcel with the existing house):** The stormwater system for the existing house on Parcel 2 meets minimum setback requirements to the proposed new property line and Site Development will not require any changes to the existing system as a condition of approval for the proposed land division.

With the conditions of approval described above, the stormwater management criteria are met. As shown by the findings above, the Services and Utilities criteria are met.

**Right of Way Approval Criteria**

Chapter 33.654 contains standards and approval criteria for rights of way. Due to the location of this site, and the type of street that is proposed, some of the criteria are not applicable. The following table summarizes the applicability of each criterion.

<b>Code Section</b>	<b>Topic</b>	<b>Applicability Findings</b>
33.654.110.B.1	Through streets and pedestrian connections	<b>Applicable - See findings below.</b>
33.654.110.B.2	Dead end streets	Not applicable - No dead end streets are proposed.
33.654.110.B.3	Pedestrian connections in the I zones	Not applicable - The site is not located within an I zone.
33.654.110.B.4	Alleys in all zones	Not applicable – No alleys are proposed or required.
33.654.120.C.1	Width of the street right-of-way	Not applicable – No streets are proposed or required.
33.654.120.C.3.c	Turnarounds	Not applicable – No turnarounds are proposed or required.
33.654.120.D	Common Greens	Not applicable – No common greens are proposed or required.
33.654.120.E	Pedestrian Connections	Not applicable – There are no pedestrian connections proposed or required.
33.654.120.F	Alleys	Not applicable – No alleys are proposed or required.
33.654.120.G	Shared Courts	Not applicable – No shared courts are proposed or required.
33.654.130.A	Utilities	<b>Applicable - See findings below.</b>
33.654.130.B	Extension of existing public dead-end streets and pedestrian connections	Not applicable – There are no existing public dead-end street or pedestrian connections adjacent to the site.
33.654.130.C	Future extension of proposed dead-end streets and pedestrian connections	Not applicable – No street extensions are required to serve abutting sites that are further dividable.
33.654.130.D	Partial rights-of-way	Not applicable – No partial public streets are proposed or required.

**Applicable Approval Criteria are:**

**33.654.110.B.1 Approval criterion for through streets and pedestrian connections in OS, R, C, and E Zones. In OS, R, C, and E zones, through streets and pedestrian connections are required where appropriate and practicable, taking the following into consideration:**

- a. Through streets should generally be provided no more than 530 feet apart, and pedestrian connections should generally be provided no more than 330 feet apart. Through street and pedestrian connections should generally be at least 200 feet apart;**

- b. Where the street pattern in the area immediately surrounding the site meets the spacing of subparagraph a., above, the existing street pattern should be extended onto the site;**
- c. Characteristics of the site, adjacent sites, and vicinity, such as: (1) Terrain; (2) Whether adjacent sites may be further divided; (3) The location of existing streets and pedestrian connections; (4) Whether narrow frontages will constrain creation of a through street or pedestrian connection; (5) Whether environmental overlay zones interrupt the expected path of a through street or pedestrian connection; and (6) Whether existing dwelling units on- or off-site obstruct the expected path of a through street or pedestrian connection. Alternative locations or designs of rights-of-way should be considered that avoid existing dwelling units. However, provision of through streets or pedestrian connections should take precedence over protection of existing dwelling units where the surrounding transportation system will be significantly affected if a new through street or pedestrian connection is not created;**
- d. Master street plans for the area identified in Goal 11B of the Comprehensive Plan;**
- e. Pedestrian connections should take the most direct route practicable. Users should be able to see the ending of the connection from the entrance point, if possible.**

**Findings:** The site is located on the northeast corner of NE 57<sup>th</sup> Avenue and NE Ainsworth Street and contains dimensions of approximately 150 feet by 94 feet. Generally, through streets should be provided no more than 530 feet apart and at least 200 feet apart. The block this subject property is located within does not meet the noted spacing requirements. However, PBOT has indicated that based on the presence of existing development on this block and that of blocks to the north and south of this site, a public through street or pedestrian connection is not feasible nor is it warranted as it would not connect to a broader street system. In addition, the site is not within an area that has an adopted Master Street Plan, so criterion d. does not apply. For the reasons described above, this criterion is met.

### **Utility Location, Extension of Streets, Partial Rights of Way**

#### **33.654.130 Additional Approval Criteria for Rights-of-Way**

- A. Utilities. Utilities must be located within rights-of-way or utility easements that are adjacent to rights-of-way to the maximum extent practicable. Utility easements up to 15 feet in width may be required adjacent to rights-of-way.**

**Findings:** Utilities are defined in the Zoning Code as telephone, cable, natural gas, electric, and telecommunication facilities. Any easements that may be needed for private utilities that cannot be accommodated within the adjacent right-of-ways can be provided on the final plat. At this time no specific utility easements adjacent to the right-of-way have been identified as being necessary. Therefore, this criterion is met.

## **DEVELOPMENT STANDARDS**

**General Information about Development Standards and Approval Criteria.** The Zoning Code contains two types of regulations: Development standards and Approval criteria.

**Approval criteria,** such as those listed earlier in this report, are administered through a land use review process. Approval criteria are regulations where the decision-maker must

exercise discretion to determine if the regulation is met. Public notice is provided and public comments received that address the approval criteria are addressed in the decision.

**Development Standards:** Development standards are clear and objective regulations (for example: building setbacks; number of required parking spaces; and maximum floor area). Compliance with development standards is reviewed as part of the administrative permitting process and are not considered to be discretionary reviews. 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.

**Existing development that will remain after the land division.** The existing development on the site will remain and be located on Parcel 2. The division of the property may not cause the structures to move out of conformance or further out of conformance to any development standard applicable in the R5 zone. Per 33.700.015, if a proposed land division will cause conforming development to move out of conformance with any regulation of the zoning code, and if the regulation may be adjusted, the land division request must include a request for an adjustment (Please see section on Other Technical Standards for Building Code standards.)

In this case, there is one Zoning Code standard that relates to existing development on the site:

- **Minimum Setbacks** – The existing house identified to remain on the site must meet the required Zoning Code setbacks from the proposed new lot lines. Alternatively, existing buildings must be set back from the new lot lines in conformance with an approved Adjustment or other Land Use Review decision that specifically approves alternative setbacks. The existing house will be 14 feet from the new property line. Therefore, the required setbacks are being met. To ensure this standard continues to be met at the final plat stage, the final plat must be accompanied by a supplemental survey showing the location of the existing building relative to the adjacent new lot lines.

With the conditions noted above, this land division proposal can meet the requirements of 33.700.015.

## OTHER TECHNICAL REQUIREMENTS

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

Bureau	Code Authority	Topic	Contact Information
Water Works	Title 21	Water availability	503-823-7404 <a href="http://www.water.ci.portland.or.us/">http://www.water.ci.portland.or.us/</a>
Environmental Services	Title 17; 2008 Stormwater Manual	Sewer availability Stormwater Management	503-823-7740 <a href="http://www.bes.ci.portland.or.us/">http://www.bes.ci.portland.or.us/</a>

<b>Bureau</b>	<b>Code Authority</b>	<b>Topic</b>	<b>Contact Information</b>
Fire Bureau	Title 31 Policy B-1	Emergency Access	503-823-3700 <a href="http://www.fire.ci.portland.or.us/">http://www.fire.ci.portland.or.us/</a>
Transportation	Title 17, Transportation System Plan	Design of public street	503-823-5185 <a href="http://www.trans.ci.portland.or.us/">http://www.trans.ci.portland.or.us/</a>
Development Services	Titles 24 –27, Admin Rules for Private Rights of Way	Building Code, Erosion Control, Flood plain, Site Development & Private Streets	503-823-7300 <a href="http://www.bds.ci.portland.or.us.">http://www.bds.ci.portland.or.us.</a>

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.

- Urban Forestry has no objection to the proposed land division. However, a number of trees have been identified that are or will be located within the public right-of-way that must be protected unless otherwise approved through a written permit from the City Forester. This requirement is based on the standards of Title 20.
- As previously mentioned, the applicant has acquired a residential building permit (09-161658 RS) to move a single family residence from another site onto this property to add to the existing residence for conversion to a duplex with the intent of the single family house standing alone on Parcel 1. To comply with building code requirements, the structure(s) currently under construction /existing on the site will need to be converted to single family dwelling(s) located on individual lots. Conversion will require the submittal of building permits showing compliance with applicable building code requirements.

Because single family development is specifically intended for individual lots, no permits can be accepted by BDS until after the new lots are created by recording the Final Plat. However, because the structure is already under construction/exists on the site, and must be converted to a single family dwelling to be in compliance with City codes, the applicant will not be permitted to sell the individual lots until the conversion is complete. Prior to Final Plat approval the applicant must execute a covenant with the City that states that the lots and homes cannot be sold separately until building permits to convert the structure to a single family dwelling has received final inspection approval. The covenant must be recorded with Multnomah County.

## **CONCLUSIONS**

The applicant has proposed a 2 parcel partition, as shown on the attached preliminary plan (Exhibit C-1). As discussed in this report, the relevant standards and approval criteria have been met, or can be met with conditions. The primary issues identified with this proposal are: transportation impacts and services and utilities.

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

## **ADMINISTRATIVE DECISION**

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

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

1. The applicant shall meet the street dedication requirements of the City Engineer for NE 57<sup>th</sup> Avenue. The required right-of-way dedication must be shown on the final plat.

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

**Utilities**

1. The applicant shall meet the requirements of the Site Development Section of the Bureau of Development Services for the decommissioning of the existing sanitary sewer system on the site.
2. The applicant shall provide the Water Bureau with sufficient documentation to verify the location of the water line serving the existing house. If the existing lateral is from the main in NE Ainsworth Street, the applicant shall meet the requirements of the Water Bureau concerning relocation of the water service connection to the existing home.

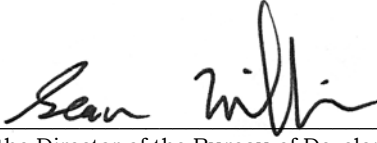
**Required Legal Documents**

3. The applicant shall execute a covenant with the City that states that the lots and homes cannot be sold separately until all building code requirements to convert the structure to a single family dwelling is complete. After the final plat is recorded, permits to convert the existing structure to a single family dwelling must be obtained and receive final inspection approval. The covenant shall be recorded with Multnomah County. When the permits have final approval, the covenant will be released by City.

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

1. Development on Parcel 2 shall be in conformance with the Tree Preservation Plan (Exhibit C-2) and the applicant's arborist report (Exhibit A-2). Specifically, trees numbered 13 through 19 are required to be preserved, with the root protection zones indicated on Exhibit C-2. 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. The report from an arborist and any revisions to permit plans reflecting new root protection zones must be submitted and approved by Planning and Zoning prior to any working occurring in the root protection zone. If work is conducted in the RPZ and Planning & Zoning approval is not obtained before the work begins and the tree subsequently falls, it may result in a violation.
2. The applicant must receive final inspection approval of permits to convert the existing structure to a single family dwelling to assure that the structure complies with the building code requirements for single family dwellings on individual lots.

**Staff Planner: Sean Williams**

**Decision rendered by:**  **on March 18, 2010**  
By authority of the Director of the Bureau of Development Services

**Decision mailed: March 22, 2010**

**About this Decision.** This land use decision is **not a permit** for development. A Final Plat must be completed and recorded before the proposed lots can be sold or developed. Permits may be required prior to any work. Contact the Development Services Center at 503-823-7310 for information about permits.

**Procedural Information.** The application for this land use review was submitted on November 10, 2009, and was determined to be complete on January 8, 2010.

*Zoning Code Section 33.700.080* states that Land Use Review applications are reviewed under the regulations in effect at the time the application was submitted, provided that the application is complete at the time of submittal, or complete within 180 days. Therefore this application was reviewed against the Zoning Code in effect on November 10, 2009.

ORS 227.178 states the City must issue a final decision on Land Use Review applications within 120-days of the application being deemed complete. The 120-day review period may be waived or extended at the request of the applicant. In this case, the applicant did not waive or extend the 120-day review period. Unless further extended by the applicant, **the 120 days will expire on: May 8, 2010.**

**Some of the information contained in this report was provided by the applicant.**

As required by Section 33.800.060 of the Portland Zoning Code, the burden of proof is on the applicant to show that the approval criteria are met. The Bureau of Development Services has independently reviewed the information submitted by the applicant and has included this information only where the Bureau of Development Services has determined the information satisfactorily demonstrates compliance with the applicable approval criteria. This report is the decision of the Bureau of Development Services with input from other City and public agencies.

**Conditions of Approval.** If approved, this project may be subject to a number of specific conditions, listed above. Compliance with the applicable conditions of approval must be documented in all related permit applications. Plans and drawings submitted during the permitting process must illustrate how applicable conditions of approval are met. Any project elements that are specifically required by conditions of approval must be shown on the plans, and labeled as such.

These conditions of approval run with the land, unless modified by future land use reviews. As used in the conditions, the term "applicant" includes the applicant for this land use review, any person undertaking development pursuant to this land use review, the proprietor of the use or development approved by this land use review, and the current owner and future owners of the property subject to this land use review.

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

The file and all evidence on this case are available for your review by appointment only. Please call the Request Line at our office, 1900 SW Fourth Avenue, Suite 5000, phone 503-

823-7617, to schedule an appointment. I can provide some information over the phone. Copies of all information in the file can be obtained for a fee equal to the cost of services. Additional information about the City of Portland, city bureaus, and a digital copy of the Portland Zoning Code is available on the internet at [www.portlandonline.com](http://www.portlandonline.com).

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

#### EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
  - 1. Land division approval criteria
  - 2. Arborist report
- B. Zoning Map (attached)
- C. Plans/Drawings:
  - 1. Site Plan (attached)
  - 2. Tree preservation plan (Attached)
  - 3. Existing development plan
  - 4. Proposed development & utility plan
- D. Notification information:
  - 1. Mailing list
  - 2. Mailed notice
- E. Agency Responses:
  - 1. Bureau of Environmental Services
  - 2. Bureau of Transportation Engineering and Development Review
  - 3. Water Bureau
  - 4. Fire Bureau
  - 5. Site Development Review Section of BDS
  - 6. Bureau of Parks, Forestry Division
  - 7. Life Safety Plans Examiner
- F. Correspondence: NONE
- G. Other:
  - 1. Site History Research
  - 2. Original LU Application
  - 3. PBOT appeal of land use conditions
  - 4. Incomplete letter

**The Bureau of Development Services is committed to providing equal access to information and hearings. Please notify us no less than five business days prior to the event if you need special accommodations. Call 503-823-7300 (TTY 503-823-6868).**



# ZONING



File No. LU 09-170647 LDP  
 1/4 Section 2436  
 Scale 1 inch = 200 feet  
 State\_Id 1N2E18DA 3800  
 Exhibit B (Nov 12, 2009)

**PROPOSED  
PARTITION PLAT No. \_\_\_\_\_  
IN LOT 2, BLOCK 7, KILLINGSWORTH  
GARDENS IN THE SE 1/4 OF  
SECTION 18, T1N, R2E, W.M.  
CITY OF PORTLAND,  
MULTNOMAH COUNTY, OREGON  
SCALE 1" = 20' DEC 21, 2009  
MONUMENT NOTES:**

**NARRATIVE:**

--THE PURPOSE OF THIS SURVEY WAS TO PARTITION THAT TRACT OF LAND DESCRIBED IN DOCUMENT NO. 99-185597, MULTNOMAH COUNTY DEED RECORDS INTO PARCELS 1 & 2 AT THE REQUEST OF BARGE DEVELOPMENT LLC.

--THE BASES OF READINGS IS THE EAST RIGHT OF WAY LINE OF NE 57TH AVENUE PER SN 54746.

--FOR CONTROL, I HEED THE MONUMENTATION AS NOTED IN THE MONUMENT NOTES.

N.E. 57TH AVENUE  
-- I HEED MONUMENT NO. 3 AND THE LOCATION OF MONUMENT NO. 10 PER SN 54746 FOR THE EAST RIGHT OF WAY LINE.

LOT 2, BLOCK 7:  
--I COMPUTED THE NW CORNER OF LOT 2 AT THE PLATTED DISTANCE (150.00') ALONG THE WEST LINE FROM THE SW CORNER OF LOT 2 TO THE POINT OF BEGINNING OF THE EAST RIGHT OF WAY LINE. THE SOUTH LINE I HEED THE SW CORNER OF BLOCK 2 AND MONUMENT NO. 5 PER SN 54357.

SUBJECT TRACT:  
--I HEED THE LOCATION OF UNRECORDED MONUMENTS 5, 11, 13, & 14 FOR THE EAST LINE AND COMPUTED THE NORTHEAST CORNER AT THE INTERSECTION WITH THE NORTH LINE.

**SURVEYOR'S CERTIFICATE:**

I, DONALD D. WALLACE JR. DO HEREBY CERTIFY THAT I HAVE CORRECTLY SURVEYED AND MARKED WITH PROPER MONUMENTS, THE LAND DESCRIBED IN THE ATTACHED PARTITION PLAT, THE BOUNDARY BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE INITIAL POINT A 1" IRON PIPE AT THE SOUTHWEST CORNER OF LOT 2, BLOCK 7, KILLINGSWORTH GARDENS, THENCE S 89°04'24" W 4.89' TO THE POINT OF BEGINNING OF SAID LOT 2, 100.13 FEET; THENCE S 0°01'00" E 77.06 FEET; THENCE S 89°04'24" W 4.89 FEET; THENCE S 0°01'00" E 73.00 FEET TO THE SOUTH LINE OF SAID LOT 2; THENCE S 89°52'29" W 94.92 FEET TO THE INITIAL POINT.

CONTAINING 1,658 SQUARE FEET MORE OR LESS.

**ACKNOWLEDGMENT:**

STATE OF OREGON  
COUNTY OF MULTNOMAH

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON \_\_\_\_\_ 2009 BY BAHRAM BOSTANJAN

NOTARY SIGNATURE \_\_\_\_\_

NOTARY PUBLIC - OREGON \_\_\_\_\_

COMMISSION NO. \_\_\_\_\_

MY COMMISSION EXPIRES, \_\_\_\_\_

**NOTES:**

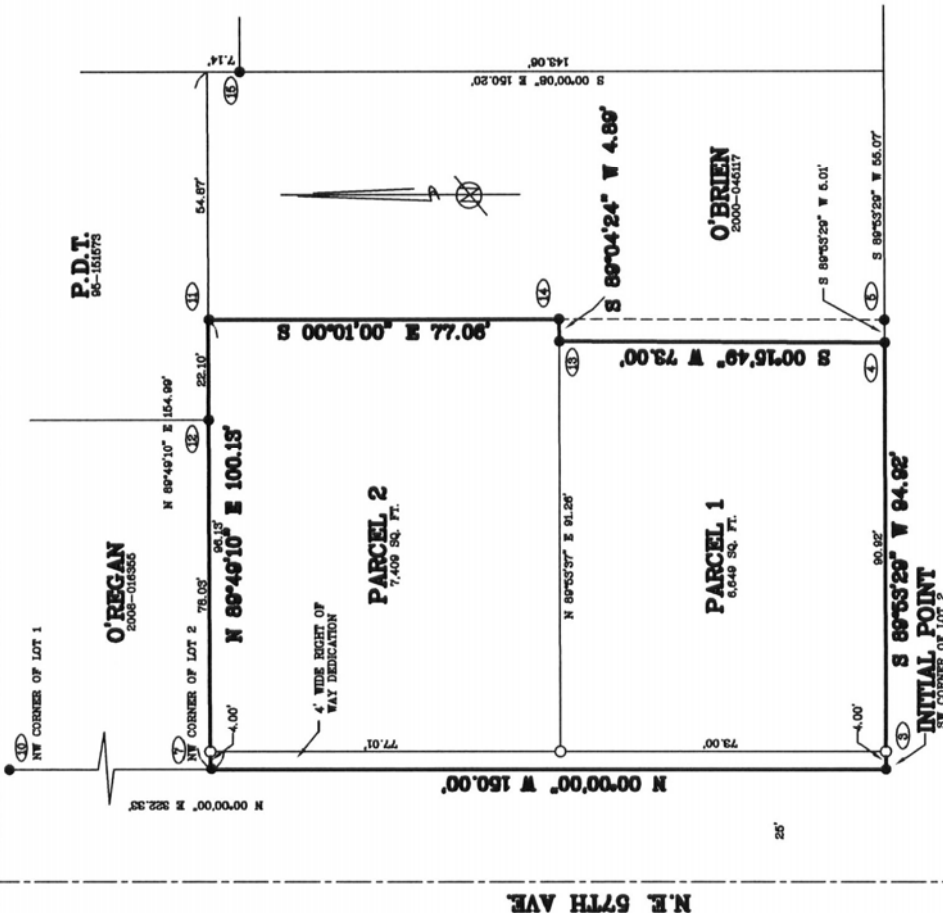
THIS PLAT IS SUBJECT TO:  
1. CONDITIONS PER CITY OF PORTLAND CASE FILE \_\_\_\_\_

**LEGEND:**

- - MONUMENT FOUND AS NOTED
- - SET 5/8" X 50" IRON ROD WITH A Y.P.C. MARKED "K.L.S. SURVEYING INC"
- ( ) - RECORD SURVEY DATA
- [ ] - RECORD DEED DATA
- CS NO. - RECORD SURVEY NUMBER
- Y.P.C. - YELLOW PLASTIC CAP
- - MONUMENT POINT NUMBER (SEE MONUMENT NOTES)

**REFERENCE SURVEYS:**

- 1 - KILLINGSWORTH GARDENS
- 2 - SN 31657
- 3 - SN 31656
- 4 - SN 41244
- 5 - SN 54746
- 6 - SN 55555



N.E. AINSWORTH ST.

CASE NO. 09-170647  
EXHIBIT C-1



REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

PRELIMINARY

OREGON 1993  
JANUARY 15  
DONALD D. WALLACE JR.  
2601  
RENEWAL DATE 6/30/10

THIS IS A TRUE AND  
EXACT DUPLICATE OF THE  
ORIGINAL PARTITION PLAT.

JOB NO. 09-126  
PROJECT NO. 09-126  
DRAWN BY DW  
FIELD: DUY/DND  
EQUIPMENT: GTS300/TRANSIT  
REVISED: 12-21-09

ALL TAXES, FEES, ASSESSMENTS OR OTHER CHARGES AS PROVIDED BY ORS 92.006 HAVE BEEN PAID AS OF \_\_\_\_\_ 2009.

DIRECTOR, DIVISION OF ASSESSMENT AND TAXATION MULTNOMAH COUNTY, OREGON

BY \_\_\_\_\_

STATE OF OREGON  
COUNTY OF MULTNOMAH

I DO HEREBY CERTIFY THAT THE ATTACHED PARTITION PLAT WAS RECEIVED FOR RECORD AND RECORDED \_\_\_\_\_ 2009, AT \_\_\_\_\_ M.

AS PARTITION PLAT NO. \_\_\_\_\_

COUNTY RECORDING OFFICE

BY \_\_\_\_\_

DOCUMENT NO. \_\_\_\_\_

**APPROVALS:**

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2009.

BY \_\_\_\_\_

CITY OF PORTLAND, PLANNING DIRECTOR'S DELEGATE

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2009.

BY \_\_\_\_\_

CITY OF PORTLAND, CITY ENGINEER'S DELEGATE

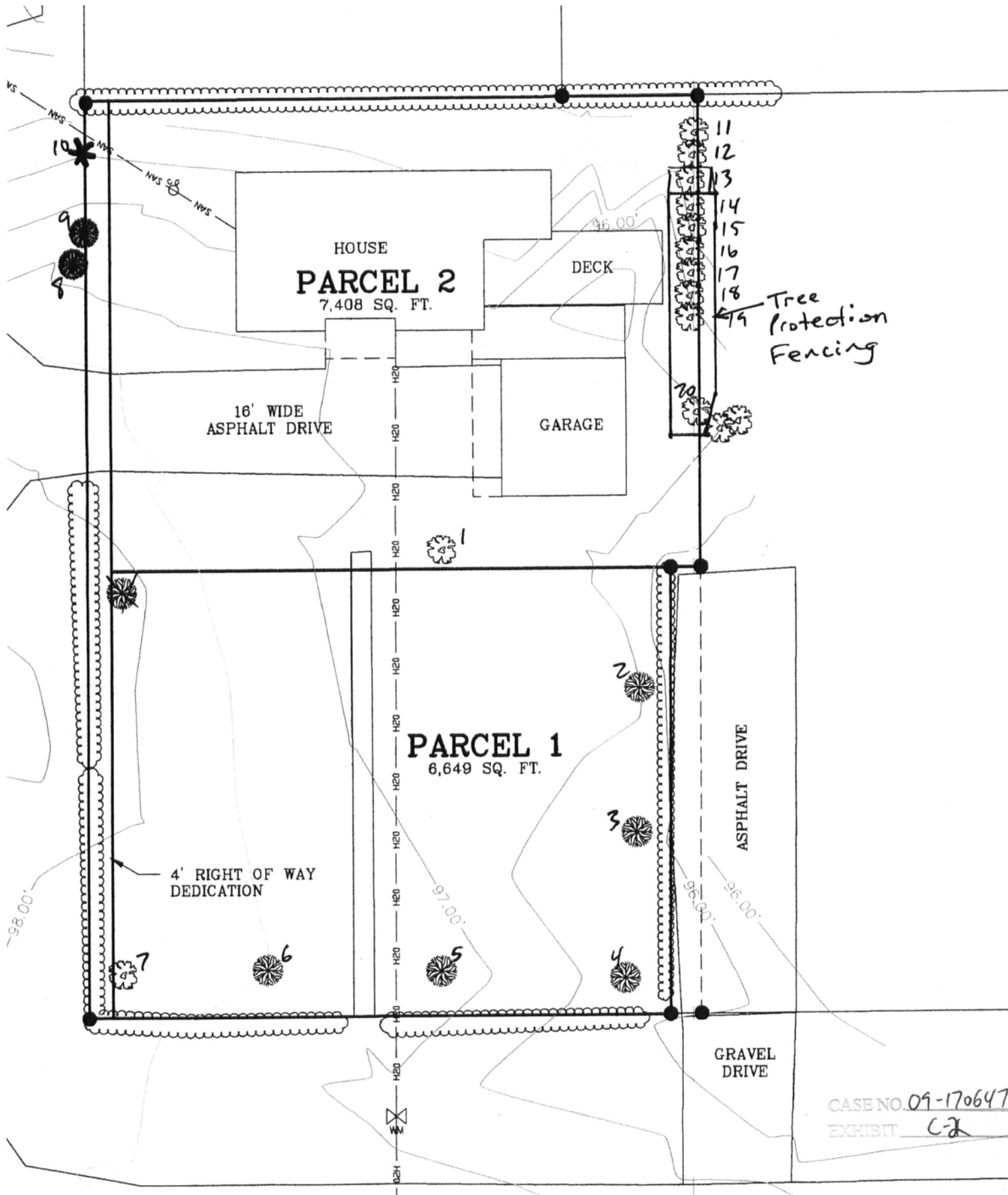
APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2009.

BY \_\_\_\_\_

COUNTY SURVEYOR

MULTNOMAH COUNTY, OREGON

BY \_\_\_\_\_



CASE NO. 09-170647  
EXHIBIT C-2