



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

1900 SW 4th Avenue, Suite 5000
Portland, Oregon 97201
503-823-7300
Fax 503-823-5630
TTY 503-823-6868
www.portlandonline.com/bds

Date: February 23, 2010
To: Interested Person
From: Kate Green, Land Use Services
503-823-5868 / kate.green@ci.portland.or.us

NOTICE OF A TYPE II 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 and request a public hearing. Information on how to appeal this decision is listed at the end of this notice.

CASE FILE NUMBER: LU 10-101234 TV

GENERAL INFORMATION

Applicant: Dwight Sims, Progress Home Development
14450 SE Main Street
Portland OR 97233

Property Owner: Progress Home Development LLC
Sims & Sims 1110 Yeon Bldg 522 SW Fifth Avenue
Portland OR 97204-2128

Representative: Jeffrey Kleinman, attorney
1207 SW Sixth Avenue
Portland OR 97204

Site Address: 14530 SE MAIN STREET

Legal Description: Partition Plat 2009-080, Parcel 1
Tax Account No.: R649893170
State ID No.: 1S2E01BC 11601
Quarter Section: 3145

Neighborhood: Centennial, Louise Cody at 503-252-4302
Business District: Gateway Area Business Association, Fred Sanchez at 503-256-3910
District Coalition: East Portland Neighborhood Office, Richard Bixby at 503-823-4550

Zoning: Single Dwelling Residential 7,000 (R7)

Case Type: Tree Violation Review (TV)
Procedure: Type II, an administrative decision with appeal to the Hearings Officer

Proposal: This review is required because a 29-inch diameter Douglas fir tree was removed from this site. The tree had been required to be preserved as part of a tree preservation plan (attached) for a 2-parcel land division (case number LU 07-146936 LDP).

In order to correct this tree violation, the applicant is required to replace, in some manner, the diameter inches of the tree that was removed. The applicant proposes to mitigate for the tree

violation by contributing to the city's Tree Fund, which provides for the installation of trees in a City of Portland park, or on a property within the same watershed as the subject site.

Relevant Approval Criteria: In order to be approved, this proposal must comply with the approval criteria of Title 33.853.040, Tree Review: (C) Corrections to Violations.

ANALYSIS

Site and Vicinity: The subject site is located in the south side of SE Main Street. SE Main Street is a paved roadway, but does not have curbs, sidewalks, or planters.

The property slopes down slightly from the street, but is otherwise relatively flat. The site is developed with a single story house and attached garage. A grove of Douglas fir trees is located in the southwest corner of the site.

Properties in the surrounding area vary in size, but most are in the 7,000 to 14,000 square foot range. Lots within 500 feet of the subject site are within the Single-Dwelling Residential 7,000 (R7) zone. *Parklane Park*, which is in the R7 and Open Space (OS) zones, is located several blocks to the east.

Zoning: The site has the following zoning designation:

- The Single Dwelling Residential 7,000 (R7) designation 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.

Land Use History: City records indicate that prior land use reviews include the following:

- LU 07-146936 LDP: The subject site was established through the approval of a 2-lot partition. The land use decision included a condition, which required compliance with a specific Tree Preservation Plan.
- MCF 3-61 (61-018865): Multnomah County File: No information available in file.

Agency and Neighborhood Review: A "Notice of Proposal in Your Neighborhood" was mailed **January 25, 2010**.

1. Agency Review: The following agencies have responded with no issues or concerns:

- | | |
|---------------------------|-------------------------|
| • <i>Site Development</i> | • <i>Transportation</i> |
| • <i>Life Safety</i> | • <i>Water</i> |
| • <i>Fire</i> | • <i>Urban Forestry</i> |

Environmental Services (BES) noted that mature trees provide many benefits, including wildlife habitat, rainwater interception, stormwater filtering, and shade. BES also notes it is difficult to mitigate for the removal of mature trees as it can take decades for new trees to provide equivalent benefits. BES supports the Zoning Code requirements for plantings to mitigate for the loss of the mature tree that was on this site and encourages native trees from the *Portland Plant List* be included in the mitigation plan. (Exhibit E.2)

2. Neighborhood Review: No written responses have been received.

ZONING CODE APPROVAL CRITERIA

TREE REVIEW: 33.853.040 Approval Criteria

C. Corrections to violations. For corrections to violations of tree protection and tree preservation regulations of this Title, or violations of tree preservation plans or the approved method of tree preservation or mitigation, the applicant must show the review body that all of the following approval criteria are met:

1. Mitigation Plan;

- a. The applicant's mitigation plan meets the purpose of the regulation that was violated. Where the violation is of a tree preservation plan or the approved**

method of tree preservation or mitigation, the mitigation plan meets the purpose of the regulation that required the preservation plan; and

- b. The mitigation plan includes replacement of trees cut, or the preservation and protection of additional trees on the site not originally proposed for preservation. If replacement of trees is proposed, the plan must at a minimum meet the requirements of Table 853-2. If additional trees on the site are proposed for preservation and protection, the total diameter of additional trees preserved must exceed the total diameter of trees cut.**

Table 853-2 Tree Replacement for Violations	
Size of Tree Removed (inches in diameter)	Number of Trees to be Planted
6 to 12	3 trees
13 to 18	5 trees
19 to 24	7 trees
25 to 30	10 trees
over 30	15 trees

Findings: Generally, as part of a land division review, an applicant is allowed to elect one of five options to meet the Tree Preservation Standards (33.630.100). Each of the options requires the preservation of a percentage of the overall total (non-exempt) tree diameter. Some trees are exempt from the Tree Preservation Standards due to their size, location along a property line or near a building, or if a tree poses an immediate danger or is dead or diseased. All other trees are “non-exempt” and must be retained in accordance with the Tree Preservation Standards.

The Tree Preservation Plan, which was approved during the land division (LU 07-146936 LDP) that established the subject site, identified one exempt tree, on the property line, and noted that the 5 other (non-exempt) trees on the lot were to be preserved. The trees to be retained include a dogwood tree, in the northwest corner of the site, and a grove of 4 Douglas fir trees, in the southwest corner of the property. One of the trees in the grove, identified as Tree #2, a Douglas fir tree with a 29-inch diameter trunk, has now been removed.

According to the applicant’s narrative, after the land division and associated Tree Preservation Plan were approved, a wind storm blew down large limbs from nearby trees. The applicant hired an arborist (Dave’s Tree Service) to assess the condition of the limbs on the trees in the Douglas fir grove on the property. The arborist determined that several large limbs on Tree #2 were in an unhealthy state and should be removed. However, the arborist noted that the removal of those limbs would result in the loss of all greenery on the tree, and cause the tree to die. Given its poor condition, the arborist recommended the removal of Tree #2. The tree was then cut down; however, the Tree Preservation Plan was not updated through a Tree Review to reflect this change. As such, the tree removal is subject to the Tree Violation criteria.

In order to meet this criterion, the proposed mitigation must be consistent with the purpose of the Tree Preservation requirements for new land divisions (33.630), and the proposed mitigation must provide for the replacement of the trees cut, or the preservation and protection of additional trees on the site.

The purpose of the Tree Preservation regulations for new land divisions is as follows:

33.630.010 Purpose

The regulations of this chapter preserve trees and mitigate for the loss of trees to:

- *Protect public health through the absorption of air pollutants and contamination;*
- *Provide buffering from noise, wind, and storms;*
- *Provide visual screening and summer cooling;*
- *Reduce urban heat island impacts;*
- *Maintain property values;*
- *Maintain wildlife habitat; and*
- *Maintain the beauty of the City and its natural heritage.*

The preservation of trees on a land division site also will:

- *Preserve trees when it is feasible to preserve trees and still meet the other regulations of this Title;*
- *Reduce erosion, siltation, and flooding;*
- *Filter stormwater and reduce stormwater runoff;*
- *Stabilize slopes; and*
- *Retain options for property owners to preserve trees and vegetation at the time of development.*

In this case, the applicant's approved Tree Preservation Plan exceeded the percentage of tree diameter required to be preserved by the Tree Preservation Standards, and will continue to do so even with the removal of Tree #2. Requiring the installation of 10 new trees on the property, as set forth in Table 853-2: Tree Replacement for Violations, would potentially result in plantings that would be too dense once the trees matured, given the size of the lot and the size of the other trees to be retained. As such, the applicant's proposal to make a contribution to the Tree Fund is an acceptable alternative to installing additional trees on the site, or on another property in the same ownership.

The Tree Fund is part of the Urban Forestry Division of the Bureau of Parks and Recreation, and contributions to the Tree Fund are used to plant trees on public or private property in the same watershed as the site. The cost to purchase and plant trees is determined each year by the Urban Forester based on current market prices per inch for materials, labor, and maintenance. At this time, \$300 per inch of tree to be installed is required.

The applicant's proposal to contribute \$1,500 to the Tree Fund will provide for the planting of 5 inches of tree diameter in the Johnson Creek watershed. The new trees will filter air and water pollutants, provide buffering and shade, and contribute to the beauty and habitat values of the surrounding area. This will help to meet the purpose of the Tree Preservation regulations outlined above.

Based on these factors, the applicant's proposal to mitigate for the unauthorized tree removal by providing for the installation of trees in the surrounding area will meet the purpose of the applicable regulations, since the remaining trees on the site will continue to be subject to the approved Tree Preservation Plan, which meets and exceeds the Tree Preservation Standards, even with the removal of Tree #2. Therefore, with a condition calling for the noted contribution to the Tree Fund, this criterion will be met.

2. Replacement trees must be planted as follows:

- a. On the site where the violation occurred;**
- b. If it is not possible to plant the trees on the site where the violation occurred, then the trees must be planted on other property owned by the applicant within the City of Portland, this includes property owned by a Homeowners' Association to which the applicant belongs;**
- c. If it is not possible to plant the trees on the site where the violation occurred, or on other property owned by the applicant within the City of Portland, then the trees must be planted in a City of Portland park, as approved by the Bureau of Parks and Recreation, or on a site approved by the Bureau of Environmental Services.**

Findings: As noted above, even with the removal of Tree #2, the approved Tree Preservation Plan for the site will continue to meet and exceed the Tree Preservation Standards. As such, it is acceptable to provide for the installation of replacement plantings off site, at a location approved by the Bureau of Parks and Recreation. In this case, the applicant's contribution to the Tree Fund will pay for the installation of replacement trees within the Johnson Creek watershed. Therefore, this criterion will be met.

3. Replacement trees must meet the requirements of Section 33.248.030, Plant Materials.

Findings: Section 33.248.030 requires the selection of plants that are suitable to the site conditions, designates minimum sizes for broadleaf and conifer trees, and disallows the use of nuisance or prohibited species.

Trees purchased with the Tree Fund will be selected by the Urban Forester to suit the conditions of the location(s) where the trees will be installed, and will not include nuisance or prohibited species. Therefore, this criterion is met.

DEVELOPMENT STANDARDS

Unless specifically required in the approval criteria listed above, this proposal does not have to meet the development standards in order to be approved during this review process. The plans submitted for a building or zoning permit must demonstrate that all development standards of Title 33 can be met, or have received an Adjustment or Modification via a land use review prior to the approval of a building or zoning permit.

CONCLUSIONS

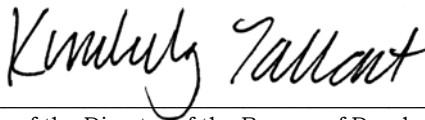
As part of a 2-lot land division (case number LU 07-146936 LDP) that established the subject site, several mature trees on the property were required to be preserved. One of those trees, Tree #2, a Douglas fir tree with a 29-inch diameter trunk, has now been removed. In order to address the Tree Violation resulting from the removal of that tree, the applicant proposes to contribute to the city's Tree Fund. The contribution will provide for the installation of trees within the watershed in which the site is located. This will help to meet the purpose of the Tree Preservation requirements, and mitigate for the removal of the noted tree. Based on the findings throughout this report, the proposal will meet the applicable approval criteria and should be approved.

ADMINISTRATIVE DECISION

Approval of a Tree Review to correct a tree violation resulting from the removal of Tree #2, a Douglas fir tree with a 29-inch diameter trunk, which was required to be preserved as part of the Tree Preservation Plan for a 2-parcel land division (LU 07-146936 LDP), subject to the following condition:

- A. A one-time \$1,500 contribution must be made to the City of Portland Tree Fund, within 30 days of the date of this decision, and prior to closure of Code Compliance Case #09-129441 CC.

Staff Planner: Kate Green



Decision rendered by: _____ **on February 19, 2010**

By authority of the Director of the Bureau of Development Services

Decision mailed: February 23, 2010

About this Decision. This land use decision is **not a permit** for development. 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 January 7, 2010, and was determined to be complete on January 21, 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 January 7, 2010.

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 22, 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.

Appealing this decision. This decision may be appealed to the Hearings Officer, which will hold a public hearing. Appeals must be filed **by 4:30 PM on March 9, 2010** at 1900 SW Fourth Avenue. Appeals can be filed Tuesday through Friday on the first floor of the Development Services Center until 3 p.m. After 3 p.m. and Mondays, appeals must be submitted to the receptionist at the front desk on the fifth floor. **An appeal fee of \$250 will be charged.** The appeal fee will be refunded if the appellant prevails. There is no fee for ONI recognized organizations appealing a land use decision for property within the organization's boundaries. The vote to appeal must be in accordance with the organization's bylaws. Low-income individuals appealing a decision for their personal residence that they own in whole or in part may qualify for an appeal fee waiver. In addition, an appeal fee may be waived for a low income individual if the individual resides within the required notification area for the review, and the individual has resided at that address for at least 60 days. Assistance in filing the appeal and information on fee waivers is available from BDS in the Development Services Center. Fee waivers for low-income individuals must be approved prior to filing the appeal; please allow 3 working days for fee waiver approval. Please see the appeal form for additional information.

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.

Attending the hearing. If this decision is appealed, a hearing will be scheduled, and you will be notified of the date and time of the hearing. The decision of the Hearings Officer is final; any further appeal must be made to the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date of mailing the decision, pursuant to ORS 197.620 and 197.830. Contact LUBA at 550 Capitol St. NE, Suite 235, Salem, Oregon 97301, or phone 1-503-373-1265 for further information.

Failure to raise an issue by the close of the record at or following the final hearing on this case, in person or by letter, may preclude an appeal to the Land Use Board of Appeals (LUBA) on that issue. Also, if you do not raise an issue with enough specificity to give the Hearings Officer an opportunity to respond to it, that also may preclude an appeal to LUBA on that issue.

Recording the final decision. If this Land Use Review is approved the final decision must be recorded with the Multnomah County Recorder. A few days prior to the last day to appeal, the City will mail instructions to the applicant for recording the documents associated with their final land use decision.

- *Unless appealed,* The final decision may be recorded on or after **March 10, 2010.**
- A building or zoning permit will be issued only after the final decision is recorded.

The applicant, builder, or a representative may record the final decision 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. For further information on your recording documents please call the Bureau of Development Services Land Use Services Division at 503-823-0625.

Expiration of this approval. An approval expires three years from the date the final decision is rendered unless a building permit has been issued, or the approved activity has begun.

Where a site has received approval for multiple developments, and a building permit is not issued for all of the approved development within three years of the date of the final decision, a new land use review will be required before a permit will be issued for the remaining development, subject to the Zoning Code in effect at that time.

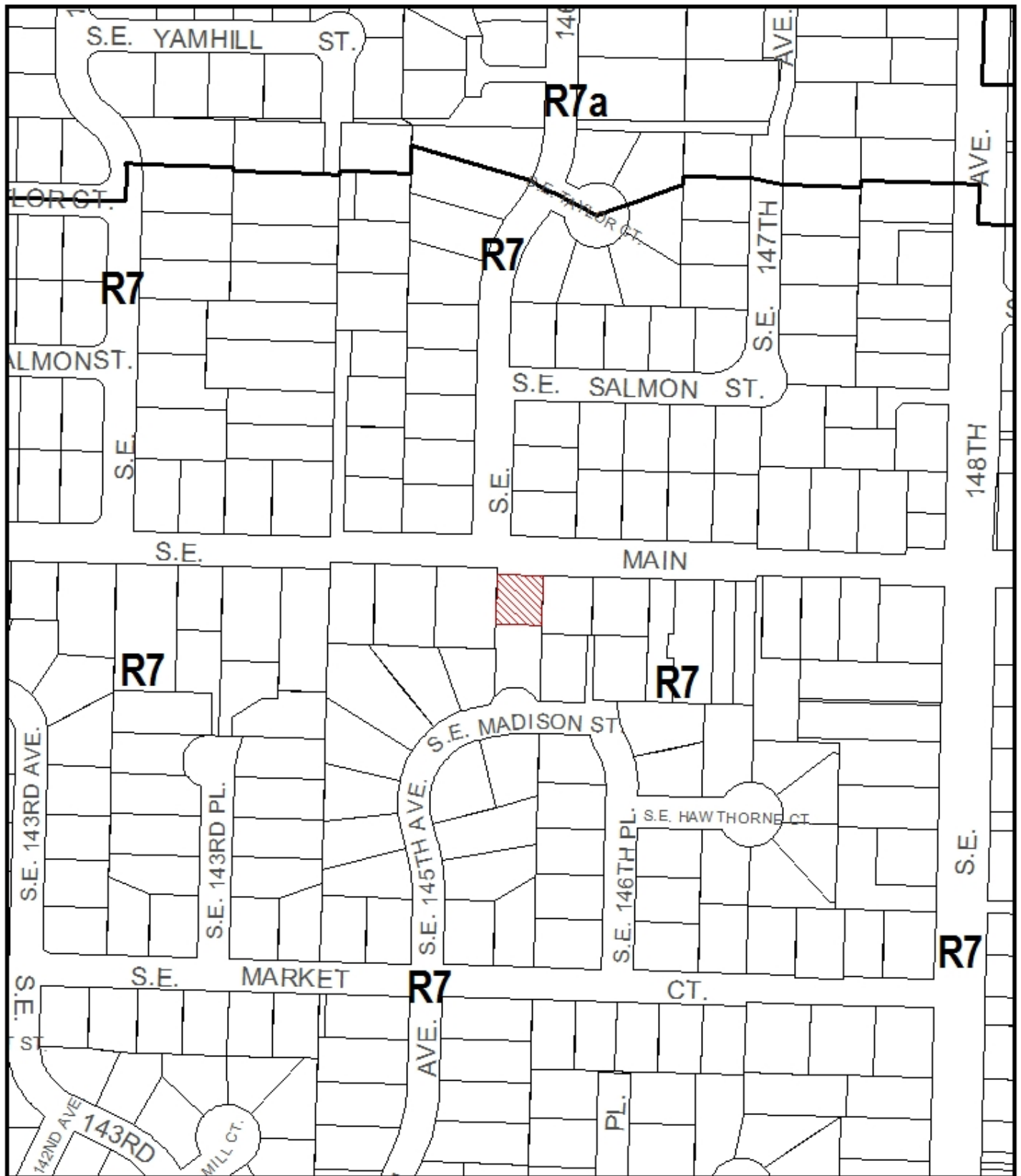
Applying for your permits. A building permit, occupancy permit, or development permit may be required before carrying out an approved project. At the time they apply for a permit, permittees must demonstrate compliance with:

- All conditions imposed herein;
- All applicable development standards, unless specifically exempted as part of this land use review;
- All requirements of the building code; and
- All provisions of the Municipal Code of the City of Portland, and all other applicable ordinances, provisions and regulations of the City.

EXHIBITS

NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
- B. Zoning Map (attached)
- C. Plans/Drawings:
 - 1. Site Plan-from LU 07-146936 LDP (attached)
 - 2. Tree Preservation Plan-from LU 07-146936 LDP (attached)
- D. Notification information:
 - 1. Mailing list
 - 2. Mailed notice
- E. Agency Responses:
 - 1. Site Development, Life Safety, Fire, Transportation, Water, Urban Forestry
 - 2. Bureau of Environmental Services
- F. Correspondence: none received
- G. Other:
 - 1. Original LU Application
 - 2. Site History Research
 - 3. Site Photos



ZONING



Site



NORTH

File No. LU 10-101234 TV

1/4 Section 3145

Scale 1 inch = 200 feet

State_Id 1S2E01BC 11601

Exhibit B (Feb 17, 2010)

SUPPLEMENTAL PLAN
PROPOSED IMPROVEMENT PLAN

from
07-146936 LDP

LV10.101234TV
Exhibit C.1

PROPOSED PARTITION PLAT
A PORTION OF LOT 21, "NEWHURST PARK" AND LOT 9, "BEAUJACRES"
SITUATED IN THE N.W. ONE-QUARTER OF
SECTION 1, TOWNSHIP 1 SOUTH, RANGE 2 EAST,
WILLAMETTE MERIDIAN, CITY OF PORTLAND,
MULTNOMAH COUNTY, OREGON.

NOTES:

THIS PROPOSED PARTITION PLAT IS SUBJECT TO THE
CONDITIONS OF THE CITY OF PORTLAND CASE FILE NUMBER
LU 07-_____ PR: _____

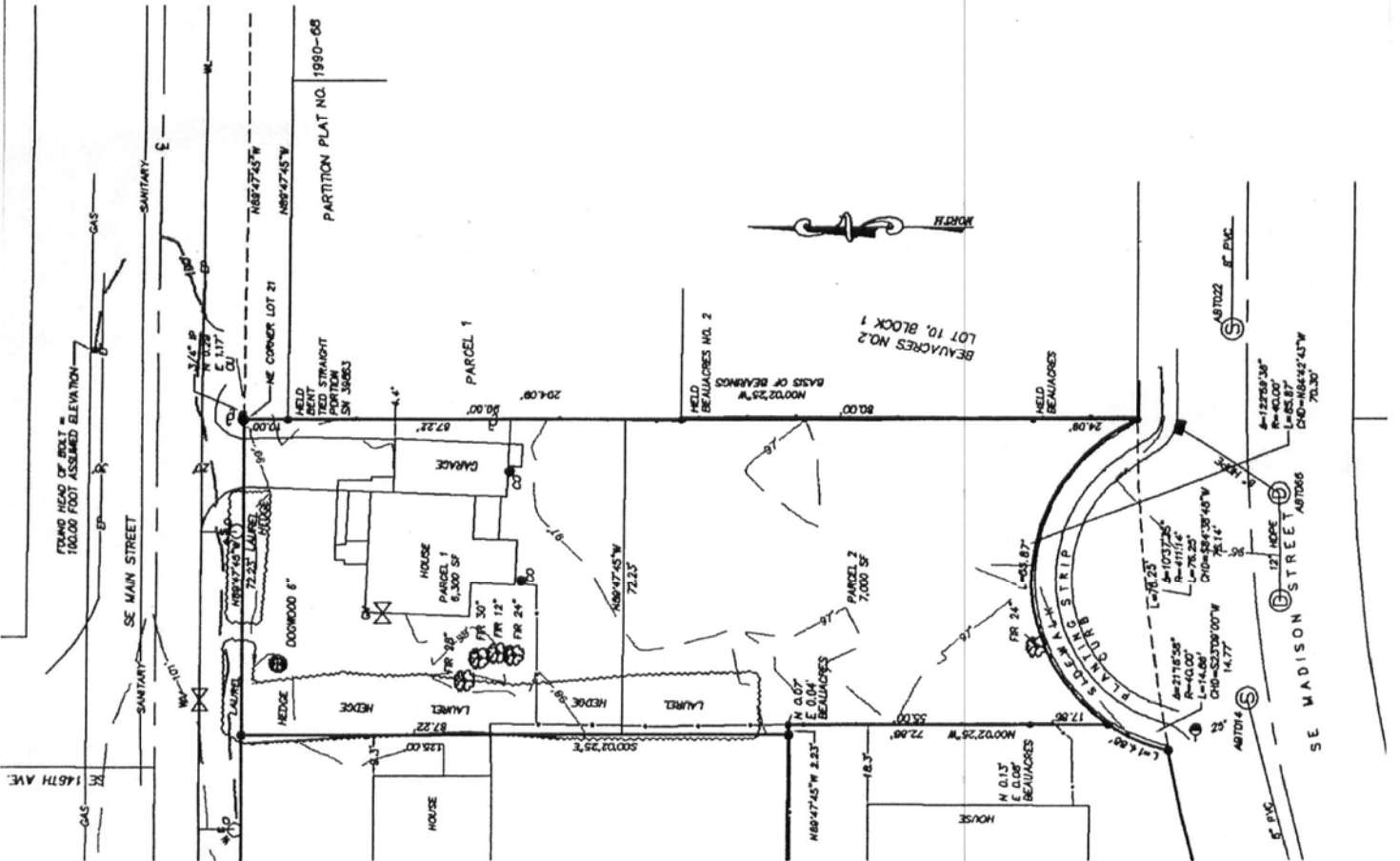
CONTOUR ELEVATIONS BASED ON AN ASSUMED ELEVATION
OF 100.00 FEET ON THE HEAD OF TOLDO BOLT AT GROUND
ON THE NORTH SIDE OF SE MAIN ST.

LEGEND

- EP EDGE OF PAVEMENT
- CL CENTERLINE
- GAS GAS LINE
- SANITARY SANITARY LINE
- WV WATER VALVE
- WSD WATER SHUT-OFF/METER
- GV GAS VALVE/METER
- CO SANITARY CLEAN-OUT
- FOUND SURVEY MONUMENT



KENNETH S. HOFFMAN, PLS 2742 700 NW ELEVEN MILE CT, GRESHAM, OR 97030 PHONE: (503) 667-6064	
JOB: 14530 SE MAIN STREET; 15X60IBC-11600	
DRAFTED: KSH	Sht. 1 of 1
DATE: 06/21/2007 SCALE: 1" = 20'	





John E. O'Shea
Consulting Arborist
433 SE 70th Avenue
Portland, OR 97215

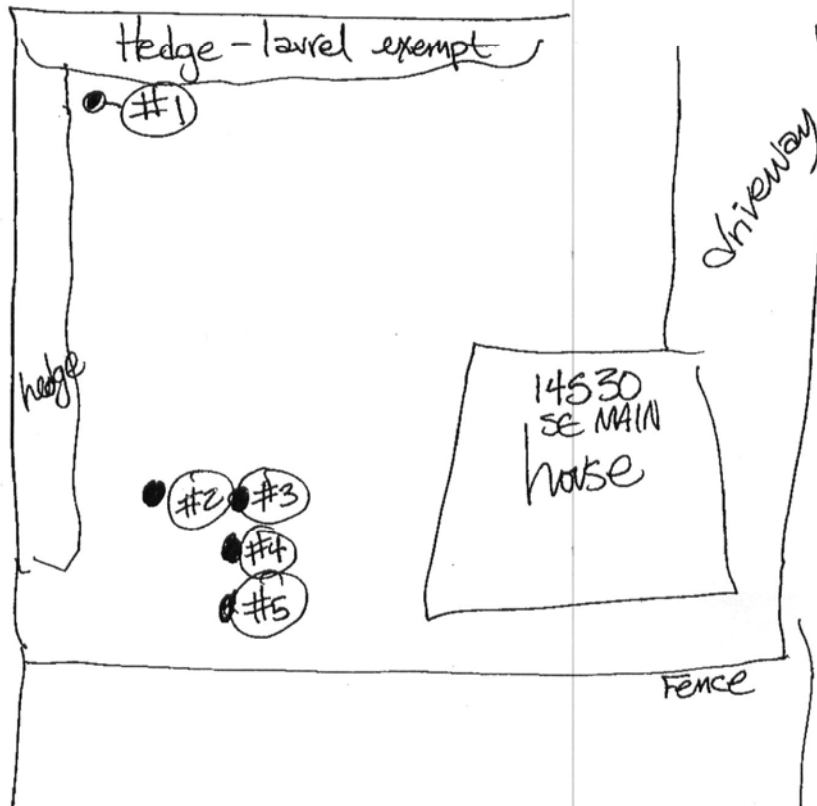
Arborist sketch to locate trees

8-27-08

Not to scale



SE MAIN



2 tree removed ->

TREE INVENTORY

ID#	Common names	DBH in inches	Significant ?	Exempt?	Retain?	Notes/Root protection Zone (RPZ) in feet
1	Dogwood <i>Cornus florida</i>	8	No	No	Preserve	8' fence to hedges.
2	Douglas-fir <i>Pseudotsuga menziesii</i>	29	Yes	No	Preserve	One fence can include this and trees 3,4,5. It should be no closer than twenty feet to the trees, and can attach to the house.
3	Douglas-fir <i>Pseudotsuga menziesii</i>	28	Yes	No	Preserve	As above
4	Douglas-fir <i>Pseudotsuga menziesii</i>	11.5	No	No	Preserve	As above
5	Douglas-fir <i>Pseudotsuga menziesii</i>	25	Yes	No	Preserve	As above
6	Douglas-fir <i>Pseudotsuga menziesii</i>	24	Yes	Yes	Preserve	R.O.W. tree/ N/A

#6

from 07-146936 LDP
tree preservation plan

LU 10-101234 TV

Exhibit C.2