



CITY OF PORTLAND

Office of City Auditor Mary Hull Caballero

Hearings Office

1900 SW 4th Avenue, Room 3100

Portland, OR 97201

phone: (503) 823-7307 - fax: (503) 823-4347

web: www.portlandoregon.gov/auditor/hearings



DECISION OF THE HEARINGS OFFICER ON APPEAL OF ADMINISTRATIVE DECISION

I. GENERAL INFORMATION

File No.: LU 14-100893 LDS (Hearings Office 4150010)

Appellant: Dave Messenheimer and Jacob Sherman
Brentwood-Darlington Neighborhood Association
4326 SE Woodstock, PMB 494
Portland, OR 97206

Applicant: Mark Dane
Mark Dane Planning Inc.
13630 SW Butner Road
Beaverton, OR 97005

Owner: Lane Lowry
10117 SE Sunnyside Road #F707
Clackamas, OR 97015

Hearings Officer: Gregory J. Frank

Bureau of Development Services (BDS) Staff Representative: Diane Hale

Site Address: 5831 SE Tenino Street

Legal Description: BLOCK 19 LOT 9, DARLINGTON

Tax Account No.: R197904840

State ID No.: 1S2E19DD 09300

Quarter Section: 3836

Neighborhood: Brentwood-Darlington

Business District: None

District Coalition: Southeast Uplift

Zoning: R5a (Single Family Residential 5,000 with “a” alternative design density overlay)

Land Use Review: Type IIx, LDS (Land Division Subdivision)

BDS Administrative Decision: Approval with conditions

Public Hearing: The hearing was opened at 1:31 p.m. on June 8, 2015, in the 3rd floor hearing room, 1900 SW 4th Avenue, Portland, Oregon, and was closed at 3:18 p.m. The record was held open until 4:30 p.m. on June 15, 2015, for new evidence from anyone, and until 4:30 p.m. on June 22, 2015, for applicant's and appellant's rebuttal only. The record was closed at that time.

Testified at the Hearing:

Diane Hale
Jacob Sherman
David Messenheimer
Eileen Ross
Annette Heiner
Mark Dane

Proposal:

Applicant is proposing to subdivide a 22,500 square foot lot, as described above (the “Subject Property”), into 4 new narrow lots approximately 25 feet wide by 224 feet deep each. The existing house will be removed. There are 22 trees on the Subject Property. Applicant is proposing to remove nine trees to accommodate the new homes. Detached garages located behind each house will provide off-street parking.

This subdivision proposal is reviewed through a Type IIx procedure because: (1) the Subject Property is in a residential zone; (2) four to ten dwelling units are proposed, not including accessory dwelling units (see 33.660.110).

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**.

II. ANALYSIS

Site and Vicinity: This 22,500 square foot Subject Property is an interior lot developed with one house built in 1922. The Subject Property is generally surrounded by single family residential development, and the City of Portland Boundary is located approximately ¼ mile to the south. There are 23 trees on the Subject Property – nine of these trees are exempt from review because they are nuisance species or not in good health.

Infrastructure:

- **Streets** – The subject Property has approximately 100 feet of frontage on SE Tenino Street. There is one driveway entering the Subject Property that serves the existing house. At this location SE Tenino Street is classified as a Local Service Street for all modes. It is a 50-foot

wide right-of-way (ROW) improved with a 28-foot roadway lacking curbs and sidewalks. TriMet provides transit service approximately 1,500 feet from the site at the corner of SE Flavel Drive and 58th Avenue via Bus 71.

- **Water Service** – There is an existing 4-inch CI water main in SE Tenino Street. The existing house is served by a 5/8-inch metered service from this main.
- **Sanitary Service** - There is an existing 8-inch PVC public combination sewer line in SE Tenino Street.
- **Stormwater Disposal** – There is no public storm-only sewer currently available to the Subject Property.

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 "a" overlay is intended to allow increased density that meets design compatibility requirements. It focuses development on vacant sites, preserves existing housing stock, and encourages new development that is compatible with the surrounding residential neighborhood. This land division proposal is not using any of the provisions of the "a" overlay.

Land Use History: City records indicate there are two prior land use reviews for this site.

- **LUR 96-00983 AD:** Approval to reduce the lot depth of Lot 1 from 80 to 66 feet, in conjunction with the Minor Partition below.
- **LUR 96-00984 MP:** Approval of a Minor Partition creating three lots. The plat was never recorded and was subsequently voided. This partition was not finalized.

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

Appeal: On or about April 20, 2015, a Notice of a Type IIx Decision on a Proposal in Your Neighborhood ("BDS Decision" – See Exhibit H.2) was issued approving the above-described proposal. On or about May 6, 2015, Mr. Dave Messenheimer ("Messenheimer") and Mr. Jacob Sherman ("Sherman"), on behalf of the Brentwood-Darlington Neighborhood Association ("BDNA") filed a Type II and IIx Appeal Form (the "BDNA Appeal"). References to testimony and/or comments by Messenheimer and Sherman will be attributed, in this decision, to the BDNA.

A hearing was held before the City of Portland Land Use Hearings Officer ("Hearings Officer") on June 8, 2015 (the "Hearing"). A number of persons appeared at the Hearing and testified in support of the BDNA Appeal. The BDNA Appeal is focused on four issues: (1) What "lots" should be included in the compatibility and on balance discussion; (2) what boundaries should be placed upon the area where lots are considered for the purposes of compatibility; (3) how should the term compatible be defined; and (3) how the phrase "on balance" should be interpreted in the context of the Portland City Code ("PCC")?

ZONING CODE APPROVAL CRITERIA

HEARINGS OFFICER'S "OPENING FINDINGS"

The Hearings Officer shall address below, from a legal interpretation perspective, the four primary issues raised by the BDNA Appeal. The Hearings Officer will apply these legal interpretations to the evidence in this case in the findings for the relevant approval criteria.

Lots: The BDNA, in testimony and documents submitted into the record, distinguished lots on the basis of how/when the lots were created. BDNA argued (i.e. Exhibit H.33, page 1) that some of the lots used by the BDS planner, in the "consistent with the purpose of lot dimension regulations" findings of the BDS Decision, were lots created by a "lot segregation process" and not a "land division process." The BDNA concluded that lots created by the lot segregation process should not be considered (counted) when determining whether the proposed lots in this case are compatible with existing lots.

BDS staff, in a post-Hearing submission (Exhibit H.15, page 2), provided a response to the BDNA "lots" assertion. The Hearings Officer incorporates the BDS staff comments (Exhibit H.15, page 2) as the findings for this case. The Hearings Officer finds the term "lots" in PCC 33.610.200 A refers to all legally created lots as of the date the application in this case was submitted to BDS.

Area of Comparison: The BDNA suggested, through testimony and written submissions (i.e. Exhibits H.4 and H.33), that BDS did not use the appropriate geographical area in its PCC 33.610.200 A.2 analysis. The BDNA suggested that an area larger than that used by BDS staff was appropriate.

BDS staff provided the Hearings Officer, in a post Hearing written submission (Exhibit H.15), with a discussion as to why the BDS area of comparison was appropriate. BDS staff, in Exhibit H.15, provided justification for using the Subject Property zoning map and only those lots zoned R5 (the zoning for the Subject Property). BDS staff, in Exhibit H.15, stated that the comparison area "typically encompasses a few blocks surrounding the site, which staff believes is an appropriate area given that impacts from new development" are felt. BDS staff did note that areas, while still on a relevant zoning map, may be excluded if the areas are separated from the Subject Property by major roads, schools, parks or natural features.

BDNA suggested (i.e. Exhibits H.18, H.18a and H.33) that lots within one-quarter (1/4) mile radius of the Subject Property should be included in the PCC 33.610.200 A compatibility comparison area.

The Hearings Officer takes note that BDS staff stated, in Exhibit H.15, "The Portland Zoning Code does not provide guidance as to how [to] define the area used to evaluate compatibility when comparing proposed lots with existing lots. PCC 33.610.200 A simply states 'lots are compatible with existing lots.'" The Hearings Officer finds there is no "right" or "wrong" delineation of an area to be used for PCC 33.610.200 A compatibility comparison purposes. As such, the Hearings Officer finds that neither BDS staff nor BDNA suggested compatibility area is

correct. For the purposes of this decision, the Hearings Officer may consider the BDS zoning map and BDNA ¼ mile compatibility comparison areas.

Definition of Compatibility: BDS staff and the BDNA agreed that the PCC does not define compatibility. BDS staff and Applicant believe that past Hearings Officer interpretations of compatibility are correct and appropriately applied in this case (i.e. LU 13-211621 LDS AD – Exhibit H.30). The BDNA suggested that the appropriate definition of compatibility is somewhat different than the Hearings Officer's prior definition (Exhibit H.33, page 2).

The Hearings Officer believes that his prior analysis/discussion related to the definition of compatibility (Exhibit 30, pages 5 and 6), BDS staff's analysis (Exhibit H.15, page 2) and the analysis by the BDNA each have merit. The Hearings Officer also notes that Hearings Officer Helm, in his decision for case LU 13-237078 ZC LDP (Exhibit H.16b), provided a relevant discussion related to the definition of compatibility.

The Hearings Officer finds it necessary, once again, to comprehensively address the definition of compatibility in the context of determining whether proposed lots in a land division application are consistent with lot dimension regulations. What follows is the Hearings Officer's review of the definition of compatibility.

The issue of the definition of compatibility arises from the language used in PCC 33.610.200 A. This section contains a number of aspirational items including the following:

"Lots are compatible with existing lots."

The Hearings Officer takes note of PCC 33.700.070 A which states, "Literal readings of the code language will be used. Regulations are no more or less strict than as stated." PCC 33.700.070 D.1 states, "Words used in the zoning code have their dictionary meaning unless they are listed in Chapter 33.910, Definitions." PCC 33.910.010 states, "Words used in the zoning code have their normal dictionary meaning unless they are listed in 33.910.030."

The word compatible is not defined in PCC 33.910.030. Therefore, the next step is to consider the dictionary meaning of compatible. This case is replete with dictionary definitions of compatible. The Hearings Officer sets forth below the discussion of the definition of compatible provided by BDS staff, Applicant and the BDNA.

Applicant (Exhibit H.16):

"Webster's Third New International Dictionary defines 'compatible' in numerous ways. The most relevant here is '*capable of existing together without discord or disharmony.*' This definition is itself very flexible adding to the subjective nature of the purpose statement. However in this usage the definition does not require the lots to be 'identical' or 'similar', or 'consistent with' surrounding lots. If it did the code would make such a statement."

BDNA (Exhibit H.33):

"BDNA agrees that the Oxford English Dictionary will serve as an authoritative text to provide a definition of compatibility, which states the following:

'compatible /kem'padebl(e)1/adjective

1. (of two things) able to co-exist or occur together without problems or conflict
2. (of one thing) consistent with another
3. (of a computer, piece of software, etc.) able to be used with a specified piece of equipment or software without special adaptation or modification'

BDNA believe the second definition of 'compatible' is most applicable in determining whether or not a single proposed development is consistent with existing development. In order to understand whether or not something is 'consistent,' the Oxford English Dictionary provides the following definition:

'consistent/ken'sistent/ adjective

1. Acting or done in the same way over time, especially so as to be fair or accurate
 - Unchanging in nature, standard, or effect over time
2. (of an argument or set of ideas) not containing any logical contradictions
3. [predict.] compatible or in agreement with something

BDNA believes the first definition of 'consistent' offer the most precise understanding of what 'compatibility' actually means in PCC 33.610.200 A."

BDS staff (Exhibit H.15):

"Case History

LU 13-23095 LDS – In the opening findings of the decision for LU 13-230950 LDS (H0-4140019), the Hearings Officer discusses the meaning and application of 'compatible as contained in the purpose statement for Lot Dimensions for the R 2.5 zone (PZC 33.611.200.A):

'The Hearings Officer agrees with Hearings Officer Helm's statement that the dictionary definition most relevant to his case states that a proposal is compatible if it is 'capable of existing together without discord or disharmony.' The Hearings Officer also agrees with Hearings Officer Helm when he states that the definition of compatibility 'does not require that lots be 'identical' or 'similar' or 'consistent with' surrounding lots.

The Hearings Office also takes note that Hansen, in Exhibit H.29, suggested alternative definitions of compatible. Hansen's dictionary definitions included 'capable of coexisting in harmony; congruous; accordant, consistent not

repugnant' and 'able to exist together without trouble or conflict.' The Hearings Officer finds these dictionary definitions to be generally relevant to the interpretation of PCC 611.200.A.'

Definitions (Definitions related to computers and botany omitted)

Staff reviewed available dictionary definitions of the term compatible, and agrees with the Hearings Officer that the definitions generally reference items that are harmonious or able to get along, but the definitions do not require equality or exact sameness of features between items to be compared for compatibility. Various definitions are below for reference.

Webster's Dictionary – <http://www.merriam-webster.com>

1. Capable of existing together in harmony (compatible theories; compatible people)

Oxford Dictionary – <http://www.oxforddictionaries.com>

[Hearings Officer Note: BDS staff included the definition provided by BDNA quoted above]

Collins Dictionary – <http://www.collinsdictionary.com>

1. Capable of living together harmoniously or getting along well together (with); in agreement; congruent (with)
2. That can work well together, get along well together, combine well, etc. (a compatible couple, compatible colors; that can function or be used together without change or alteration."

The Hearings Officer, after considering the quoted materials above, continues to believe that his interpretation, as set forth in the decision for LU 13-230950 LDS (Exhibit H.30), is reasonable and appropriate. The Hearings Officer finds the BDNA suggestion that the word "consistent" should be controlling in defining compatible in the context of PCC 33.610.200 A is not entirely correct. The Hearings Officer finds that the definition of consistent, as proffered by the BDNA, includes the concept of "sameness." The Hearings Officer does not find that compatibility, in the context of PCC 33.610.200 A, requires "sameness." While the concept of "sameness" is not a requirement in the compatibility analysis the Hearings Officer finds that it may be considered in the compatibility analysis. The Hearings Officer finds that the Portland City Council ("Council") has in the past (see "on balance" discussion below) included the "similarity" or "sameness" concepts in their compatibility analysis.

On Balance: The BDNA referenced a recent Portland City Council ("Council") decision which addressed the "on balance" language in the context of an applicant's request to reduce the minimum lot width requirements (LU 13-237078 ZC LDP). In LU 13-237078 ZC LDP, Council found the request to reduce lot width of proposed parcels was:

"so incompatible with existing lots in the surrounding blocks and vicinity that it requires Council to give purpose statement No. 9 [compatibility] significantly

greater weight than the other purpose statements. Therefore, the City Council finds that the proposed narrow lots are not, on balance, consistent with the purposes of the lot dimension regulations.”

“On balance” language, in the PCC and the City of Portland Comprehensive Plan, has vexed this Hearings Officer and Council for a very long time. Often the concept of “on balance” arises in the context of an application for a change to the Comprehensive Plan where various policies are “balanced” against one another. One such case is LU 13-109305 CP ZC. The following are comments of the Hearings Officer related to “on balance:”

“The ‘on balance’ language of PCC 33.810.050.A.1 is perhaps the most challenging portion of the approval criterion to apply on a case-by-case basis. The Oregon Court of Appeals, in *Waker Associates v. Clackamas County*, 111 Or App 189, 194 (1992), stated that land use decision makers:

‘will often be confronted with situations, like this one, where a use is compatible with some of the goals and incompatible with others. It is not possible to approve or disapprove a use in those situations without engaging in a balancing exercise.’ (See also *Columbia Riverkeepers v. Clatsop County*, 238 Or App 439 (2010))

Three City of Portland cases directly address City Council’s responsibility with respect to balancing goals and policies. The Oregon Land Use Board of Appeals (“LUBA”) stated, in *Welch v. City of Portland*, 28 LUBA 439 (1994), ‘under *Waker*, so long as the record reflects that plan policies were considered and balanced, this is all that is required.’ LUBA held, in a separate land use case, that ‘the choice between conflicting evidence belongs to the City.’ *McGinnis v. City of Portland*, 25 Or LUBA 376 (1993) Finally, in *St. Johns Neighborhood Assn. v. City of Portland*, 34 Or LUBA 46 (1998), LUBA confirmed that the City Council was permitted to balance competing plan policies.

The Hearings Officer believes that the above-cited cases give City Council broad discretion in establishing how to balance the relevant Comprehensive Plan policies. The Hearings Officer believes that Council may ascribe some Comprehensive Plan policies more weight than others. The Hearings Officer believes Council is not required to keep a ‘scorecard’ of how many Comprehensive Plan policies are “equal or more supportive” and how many are ‘less supportive.’ The Hearings Officer believes that City Council may place more weight, in the balancing process, upon one or more policies as compared to other relevant policies.”

The Hearings Officer addressed the “on balance” issue, once again, in a land division case with facts similar to this case. In LU 13-211621 LDS AD, the Hearings Officer was asked to “balance” purpose statements related to lot dimension standards in the R2.5 zone. The R2.5 lot dimension regulation purpose statement (PCC 33.611.200 A) is practically the same as the R5 lot dimension regulation purpose statement being considered in this case (PCC 33.610.200 A). The Hearings Officer, in LU 13-211621 LDS AD, stated the following:

"PCC 33.611.200 lists nine bullet points. These bullet points, in the aggregate, represent aspirational goals for lot dimensions within the R2.5 zone. PCC 33.611.200 does not distinguish any one of the bullet points as being more important than the other listed bullet points.

As stated in the Hearings Officer's "Opening Findings" the phrase:

'on balance does not mean that each and every one of the bullet points must be met/satisfied. Rather, the Hearings Officer finds the phrase 'on balance' means that PCC 33.611.200 C.2.a can be met even if one or more of the bullet points is/are not met/satisfied.'

Based upon the Hearings Officer findings for each PCC 33.611.200 A. bullet point, as set forth above, the Hearings Officer finds that all but one of the bullet points was satisfied; only the ninth bullet point was not satisfied and that was a very close call. The Hearings Officer finds that eight of nine of the Purpose statement bullet points were satisfied in this case where lot widths would range from 33 feet to 34 feet. The Hearings Officer finds that on balance, the proposed lots will have dimensions that are consistent with the purpose of PCC 33.611.200 A."

The BDNA, as set forth in Exhibit H.33, suggested an additional perspective to the "on balance" analysis. The BDNA stated, in Exhibit H.33, the following:

"Regarding 'on balance,' in their memo dated June 15, 2015, BDS argues that 'each and every bullet must not be met.' BDNA wonders if all nine criteria in PCC 33.610.200 A. are not essential, then how many are necessary? Are certain criteria more important than others? Perhaps this is true when staff are making subjective decisions in their office, but if this is true in principle, then can we have a subdivision that results in lots that are landlocked? What if a developer proposes a subdivision that is clearly compatible other development, but the project does not provide access for utilities or services? What if the proposed lot is so large that it could be further divided in the future? Given the logic presented by BDS, a developer could argue these proposals should be acceptable, yet BDNA feels these fundamental questions must be clearly answered by the City."

The Portland City Council ("Council") stated in LU 13-237078 ZC LDP that a proposed development was "so incompatible with existing lots in the surrounding blocks and vicinity that it requires Council to give purpose statement No. 9 [compatibility] significantly greater weight than the other purpose statements. Therefore, the City Council finds that the proposed narrow lots are not, on balance, consistent with the purposes of the lot dimension regulations."

BDS staff, in Exhibit H.15, stated the following related to the "on balance" issue:

"Staff reviewed available dictionary definitions of the term 'on balance.' Webster's Dictionary notes that on balance means 'with all things considered' and the Collins Dictionary provides a definition of 'considering everything; all in all'. Staff agrees the Hearings Officer that given the PZC [PCC] language, the previous applications of the term 'on balance' and the dictionary definitions, the purpose statement of PZC [PCC] 33.610.200.A requires an evaluation of the proposal with the bullet points of the purpose statement, but not each and every bullet must be met. In this case, staff found that the proposal met all of the bullets of the purpose statement. Even if you assumed that the proposal did not meet the compatibility bullet, the proposal would still meet 9 out of 10 bullets. There is nothing to suggest in this case that one bullet should be weighted so heavily as to outweigh all of the other nine bullets. Therefore, it is staff's opinion that the proposal satisfies the purpose statement on balance, or when all things are considered."

The Hearings Officer, considering all of the material quoted above, finds that the "on balance" wheel need not be reinvented but rather tweaked a small amount. The Hearings Officer confirms the findings of LU 13-109305 CP ZC and LU 13-211621 LDS AD as quoted above with one slight revision.

The Hearings Officer finds that the policies that must be balanced, in this case those found in PCC 33.610.200 A, must **all** be considered. The Hearings Officer finds that one or more of the policies may be given more weight than one or more of the remaining policies. This weighting process is within the discretion and judgment of the Hearings Officer.

As noted by the BDNA, in Exhibit H.33, there may be some policies that are so important that, without an approved adjustment or exception, singularly result in a finding that "on balance" PCC 33.610.200 A are not consistent with the purpose of the Lot Dimension Regulations (per PCC 33.610.200 D.2). For example, one such PCC 33.610.200 A policy may be that "lots are not landlocked." If the "landlocked" policy is not met, the Hearings Officer finds it is possible that "on balance" the proposed lots are not consistent with the purpose of the Lot Dimension Regulations (per PCC 33.610.200 D.2). In this case, one not met policy (landlocked lot) could trump all of the remaining policies. In other words, the "on balance" exercise is not determined by a majority of the policies being met. The Hearings Officer find some policies may be considered mandatory while others are discretionary.

The preceding paragraph is the small modification referred to by the Hearings Officer to prior "on balance" interpretations. In summary, the Hearings Officer finds that, while each policy must be considered, it is possible that one or more of the policies may be so important as to singularly result in a finding that "on balance" the proposal is not consistent with the Lot Dimension Regulations per PCC 33.610.200 D.2.

APPROVAL CRITERIA FOR LAND DIVISIONS IN OPEN SPACE AND RESIDENTIAL ZONES
33.660.120 The Preliminary Plan for a land division will be approved if the review body finds that the applicant has shown that all of the following approval criteria have been met.

Due to the specific location of the Subject Property, and the nature of the proposal, some of the criteria are not applicable. The following table summarizes the criteria that are not applicable. Applicable criteria are addressed below the table.

Criterion	Code Chapter/Section and Topic	Findings: Not applicable because:
C	33.631 - Flood Hazard Area	The Subject Property is not within the flood hazard area.
D	33.632 - Potential Landslide Hazard Area	The Subject Property is not within the potential landslide hazard area.
E	33.633 - Phased Land Division or Staged Final Plat	A phased land division or staged final plat has not been proposed.
F	33.634 - Recreation Area	The proposed density is less than 40 units.
I	33.639 - Solar Access	All of the proposed parcels are interior lots (not on a corner). In this context, solar access standards express no lot configuration preference.
J	33.640 - Streams, Springs, and Seeps	No streams, springs, or seeps are evident on the site outside of environmental zones.
L	33.654.110.B.2 - Dead end streets	No dead end streets are proposed.
	33.654.110.B.3 - Pedestrian connections in the I zones	The Subject Property is not located within an I zone.
	33.654.110.B.4 - Alleys in all zones	No alleys are proposed or required.
	33.654.120.B - Non-local street standard	SE Tenino is a Local Street.
	33.654.120.C.3.c - Turnarounds	No turnarounds are proposed or required.
	33.654.120.D - Common Greens	No common greens are proposed or required.
	33.654.120.E - Pedestrian Connections	There are no pedestrian connections proposed or required.
	33.654.120.F - Alleys	No alleys are proposed or required.
	33.654.120.G - Shared Courts	No shared courts are proposed or required.
	33.654.130.B - Existing public dead-end streets and pedestrian connections	No public dead-end streets or pedestrian connections exist that must be extended onto the site.
	33.654.130.C - Future extension of dead-end streets and pedestrian connections	No dead-end street or pedestrian connections are proposed or required.
	33.654.130.D - Partial rights-of-way	No partial public streets are proposed or required.

Applicable Approval Criteria are:

A. Lots. The standards and approval criteria of Chapters 33.605 through 33.612 must be met.

Findings: Chapter 33.610 contains the density and lot dimension requirements applicable in the RF through R5 zones. The maximum density is one unit per 5,000 square feet. Minimum density is one unit per 5,000 square feet based on 80 percent of the site area. The Subject Property has a minimum required density of 4 units and a maximum density of 4 units. If the minimum required density is equal to or larger than the maximum allowed density, then the minimum density is automatically reduced to one less than the maximum. Therefore in this case the minimum density is reduced to 3. Applicant is proposing 4 single dwelling lots. The Hearings Officer finds the density standards are therefore met.

Lot Dimensions:

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

	Min. Lot Area (square feet)	Max. Lot Area (square feet)	Min. Lot Width* (feet)	Min. Depth (feet)	Min. Front Lot Line (feet)
R5 Zone	3,000	8,500	36	50	30
Lot 1	5,549		25	221.97	25
Lot 2	5,549		25	221.97	25
Lot 3	5,549		25	221.97	25
Lot 4	5,549		25	221.97	25

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

Narrow Lots

PCC 33.610 provides that the “Minimum Lot Width” in the R5 zone is 36 feet (see Table 610-2). However, PCC 33.610.200 D.2 allows the minimum lot width to be reduced below the dimensions in Table 610-2 if certain requirements are met (25 is the absolute minimum lot width). Lots 1-4 are proposed to be 25 feet wide — narrower than the minimum width for the R5 zone but equal to the absolute minimum lot width allowed.

The application of this approval criterion, particularly PCC 33.610.200 D.2 a., was the source of most objections to the BDS Decision of the proposal. The Hearings Officer, in the findings for this approval criterion, incorporates the **HEARINGS OFFICER’S “OPENING FINDINGS”** as set forth earlier in this decision.

Consistent with the Purpose of Lot Dimension Regulations (PCC 33.610.200 D.2.a.)

PCC 33.610.200 D.2.a. states that the minimum lot width may be reduced (to a minimum of 25 feet) if:

“on balance, the proposed lots will have dimensions that are consistent with the purpose of the Lot Dimension Regulations.”

The purpose (policies) of Lot dimension regulations are found in PCC 33.610.200 A and are set forth below (the Hearings Officer inserted numbers for bullets):

“The lot dimension regulations 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 so large that they seem to be able to be further divided to exceed the maximum allowed density of the site in the future;
- (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."

Applicant demonstrated, based upon evidence in the record, that policies (1), (2), (3), (4), (6), (7), (8), (9) and (10) are met. Applicant and BDS staff assert that policy (5), that the proposed lots are compatible with existing lots, is also met. The BDNA disagrees with the BDS staff and Applicant interpretation and application of policy (5).

The first task for the Hearings Officer is to determine what geographical area of comparison should be used. BDS used a zoning map (Exhibit B) as the comparison area and the BDNA suggested a somewhat larger area (i.e. Exhibit H.18). As stated by the Hearings Officer, in the "Opening Findings," both the BDS staff and the BDNA's suggested areas of comparison seemed reasonable.

The Hearings Officer believes that while both the BDS staff and the BDNA's suggested areas of compatibility comparison are reasonable, one additional factor should be considered. That factor can be labeled "proximity." Hearings Officer believes properties immediately adjacent to the Subject Property are most affected by the widths of the proposed lots. The Hearings Officer also believes that other properties within the same block as the Subject Property are meaningfully affected by the lot width of the proposed lots. On the other hand, properties located, say, 10 blocks away from the Subject Property are likely to be only minimally affected by the lot widths of the proposed lots. The Hearings Officer finds that the greater the distance a property is located from the Subject Property, the less likely it will be affected by the lot width of the proposed lots. While it is easier to simply set a "boundary" of an area to be considered for compatibility comparisons practically, the importance of being compatible is felt much more seriously by properties in close proximity to the Subject Property.

The Hearings Officer finds the proposed lots in this application will introduce a lot width (less than the typical 50-foot lot and less than the 36-foot R5 minimum) to the block where the Subject Property is located. The Hearings Officer finds that approval of the application, in this case, will introduce a lot width, even within a block of the Subject Property, that generally does not currently exist. The Hearings Officer finds lots, with lot widths less than the typical 50-foot width, do exist in small numbers beyond one block of the Subject Property to the northwest, north and northeast. Using either the BDS or Appellant suggested area (Exhibits H.9 page 7 or H.18), some lots do currently exist, in the geographical areas promoted by BDS staff and the BDNA (Exhibits H.9 and H.18) that are less than the typical 50-foot lot width. The BDNA estimates that approximately 5.6 percent of all developed lots within ¼ mile of the Subject Property are lots with widths less than 50 feet.

The question for the Hearings Officer then becomes, based upon the evidence referenced above, are the proposed lots compatible with (1) lots in the immediate or "proximate area" (an area where all lots exceed 25 feet in width), and (2) a "larger area" (approximately ¼ mile from the Subject Property) where lots less than 50 feet in width comprise less than approximately 6

percent of all lots. Based upon the evidence in the record, the Hearings Officer characterizes the “proximate” or immediate area around the Subject Property as having no lots with widths of less than 50 feet (SE Tenino between SE 57th and SE 60th). These lots are the ones that can be expected to be most impacted if this application is approved. The Hearings Officer finds that lots with widths of less than 50 feet do exist further away from the location of the Subject Property and these lots are less affected than those located on the Subject Property block or even within one block of the Subject Property.

As stated in the Hearings Officer’s “Opening Findings,” compatibility does not mean that all lots in an area must be the same size or have the same lot width. The Hearings Officer notes that a 25-foot wide lot is not the same as a 50-foot wide lot. The Hearings Officer states the obvious in that 25-foot wide lots will appear noticeably “not the same” when compared to the existing 50-foot wide lots.

Are the noticeably different lot widths (25 feet versus approximately 50 feet) capable of existing together in harmony? Are the lots that have noticeably different lot widths able to exist together without trouble or conflict? The Hearings Officer finds that Council addressed those questions in its decision in LU 13-237078 ZC LDP. In that case, the Council looked at the evidence in the record and found very few lots in the vicinity of the proposed lots had widths less than the 36-foot minimum. Council found that differences in lot widths, between the proposed lots and existing lots, could singularly create incompatibility.¹ Council made such finding despite the fact that the zoning for the property subject to the application was zoned R2.5 and that the compatibility purpose section required Council to consider the R2.5 planned density. In this case, the R5 compatibility policy conspicuously omits a requirement to consider compatibility in the context of planned R5 density goals.

The Hearings Officer believes that when Council enacts a residential zoning classification, the overriding policy is to allow, and promote, development at the planned maximum density. The Hearings Officer also believes that Council’s compatibility interpretation, as described above, may frustrate the basic planned density policy for the R2.5 and R5 zones. If, for example, Council adopts an R5 designation for an area which is predominately made up of 10,000 square foot (50 foot frontage and 100 foot depth) lots, the current compatibility requirements can be expected to preclude all but flag lot development in that area. However, the Hearings Officer finds that Council, based upon its decision in LU 13-237078 ZC LDP, places greater weight on the compatibility of lots (PCC 33.610.200 A) than on the planned density of the R5 zone (Tables 610-1 and 610-2).

Council, in LU 13-237078 ZC LDP, found that the lots proposed in that case were “so incompatible with existing lots in the surrounding blocks and vicinity that it requires Council to give purpose statement No. 9 [compatibility] significantly greater weight than the other purpose

¹ The R2.5 minimum lot width is 36 feet and the lots proposed in LU 13-237078 ZC LDP were 66.97, 33 and 31.75 feet. Under PCC 33.611.200 A, the minimum lot width may be reduced to 25 feet if, among other things, “lots are compatible with existing lots while also considering the purpose of this chapter.” Council, in its Order upon appeal of the Woodstock Neighborhood Association, reversed the Hearings Officer’s decision to approve the requested subdivision because “the proposed narrow lots are not, on balance, consistent with the purposes of the lot dimension regulations.” A review of the Council Order suggests the only incompatibility factor considered by Council was lot width.

statements.” Purpose statement No. 9, in LU 13-237078, is essentially the same as Purpose statement No. 5 in this case. Both No. 9, in LU 13-237078, and No. 5 in this case, relate to compatibility of the proposed lots to existing lots.

The Hearings Officer finds, while not obligated to follow Council’s decision in LU 13-237078 ZC LDP, the decision provided a plausible interpretation of the compatibility and “on balance” concepts. The Hearings Officer finds that where there are no similarly sized (lot width), or even relatively few similarly sized (lot width) lots in an area, the Hearings Officer should find that the proposed lots are not compatible with existing lots. Further, the Hearings Officer finds the compatibility policy (No. 5 in this case) may be given significantly greater weight than other policies listed in PCC 33.610.200 A. The Hearings Officer finds, based upon Council’s decision in LU 13-237078 ZC LDP, that failure to meet the compatibility policy (No. 5 in this case) can, on its own, result in a finding that on balance the proposed lots will not have dimensions consistent with the purpose of the Lot Dimension Regulations.

The Hearings Officer finds, in this case, that the proposed lots are not compatible with existing lots. The Hearings Officer finds that the compatibility policy (No. 5 in this case) should be given significantly greater weight than other policies listed in PCC 33.610.200 A. The Hearings Officer finds that, on balance, the proposed lots will not have dimensions consistent with the purpose of the Lot Dimension Regulations.

The minimum width for lots that will be developed with detached houses may not be reduced below 25 feet

- The proposed lots will be developed with detached houses and are at least 25 feet wide.

If the lot abuts an alley, then vehicle access is allowed only from the alley

- The Subject Property does not have access from an alley, so this standard does not apply.

Lots must be configured so that development on the site will be able to meet the garage limitation standard of Subsection 33.110.253.E at the time of development

- A private shared driveway will provide vehicle access to Lots 1 and 2 so the garages can be located at the rear of the lots behind the street-facing building façade. A separate private driveway will provide vehicle access to Lots 3 and 4 so the garages can be located at the rear of the lots behind the street-facing building façade. These shared access ways are considered private driveways and can be located in a reciprocal access easement. Compliance with this standard can be demonstrated if two reciprocal access easements are shown and labeled on the final plat, and with a condition that Lots 1 thru 4 must take vehicle access from these easements.

60 percent landscaping requirement for attached houses

- Applicant indicated that the lots will be developed with detached houses; therefore, this requirement does not apply.

If parking is not required, alley access and garage limitation requirements do not have to be met if a covenant is provided.

- Parking is required. Therefore, driveway access to parking at the rear of the lots and the garage limitation requirements described above must be met.

Conclusion: The Hearings Officer finds PCC 33.610.200 A.2.a. is not met. The Hearings Officer, therefore, finds that all of the requirements of PCC 33.610 A.2 are not met. The Hearings Officer finds Applicant's request for lot widths less than the minimum 36 feet must be denied.

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 arborist report inventoried the trees on the Subject Property, evaluated their condition and specified root protection zones (Exhibit A.10). There are 23 trees on the Subject Property. Nine trees have been exempted because they are unhealthy or a nuisance species. Fourteen trees are subject to the preservation requirements of this chapter.

The total non-exempt tree diameter on the Subject Property is 240 inches. Applicant proposed to preserve the following trees:

#107 - 29" Doug Fir	#116 - 15" Big Leaf Maple
#112 - 6" Big Leaf Maple	#117 - 19" Big Leaf Maple
#113 - 12.5" Big Leaf Maple	#119 - 10.5" Apple
#114 - 6" Big Leaf Maple	

The preservation proposal comprises 98 inches of diameter, or 40.8 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 non-exempt tree diameter on the Subject Property to be preserved. The trees to be preserved and the required root protection zones ("RPZ") are shown on Applicant's Improvements Plan (Exhibit C.1). The arborist has allowed a reduced RPZ for tree #107, a 29-inch Doug Fir, to accommodate development of the driveways. The arborist notes that the RPZ can be reduced to 20 feet provided the driveways are "completed with minimal excavation to achieve a permeable driveway with only minor hand tool grubbing permitted under the direction of the project arborist. No cutting of roots in the driveway area is allowed" (see Exhibit A.10).

In order to ensure that future owners of the lots are aware of the tree preservation requirements, Applicant must record an Acknowledgement of Tree Preservation Land Use Conditions at the time of final plat.

The Hearings Officer finds this approval criterion is met, subject to the condition that development on Lots 1, 2 and 3 be carried out in conformance with the Improvements Plan (Exhibit C.1) and Applicant's arborist report (Exhibit A.10) and an Acknowledgement of Tree Preservation Land Use Conditions are recorded with the final plat.

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

Findings:

Clearing and Grading

The regulations of Chapter 33.635 ensure that the proposed clearing and grading is reasonable given the infrastructure needs, site conditions, tree preservation requirements, and limit the impacts of erosion and sedimentation to help protect water quality and aquatic habitat.

In this case, the Subject Property is primarily flat and is not located within the Potential Landslide Hazard Area. Therefore, no significant clearing or grading will be required on the Subject Property to make the new lots developable. In addition, there is no clearing or grading proposed within the areas where trees are to be preserved. The Hearings Officer finds this approval criterion is met.

Land Suitability

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

H. Tracts and easements. The standards of Chapter 33.636, Tracts and Easements must be met;

Findings: No tracts are proposed or required for this land division, so the Hearings Officer finds criterion A does not apply.

The following easements are required for this land division:

- Two Reciprocal Access Easements are proposed to allow shared use of two driveways that will straddle proposed lot lines between Lots 1 and 2 and between Lots 3 and 4;

As stated in Section 33.636.100 of the Zoning Code, maintenance agreements will be required describing maintenance responsibilities for the easements described above and facilities within those areas. This criterion can be met with the condition that two maintenance agreements are prepared and recorded with the final plat. In addition, the plat must reference the recorded maintenance agreements with a recording block for each agreement, substantially similar to the following example:

"A Declaration of Maintenance agreement for a Reciprocal Access Easement has been recorded as document no. _____, Multnomah County Deed Records."

With the conditions of approval discussed above, the Hearings Officer finds this approval criterion is met.

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

Findings: The transportation system must be capable of safely supporting the proposed development in addition to the existing uses in the area. The Development Review Section of the Portland Bureau of Transportation ("PBOT") reviewed the application for its potential impacts regarding the public right-of-way, traffic impacts and conformance with adopted policies, street designations, and for potential impacts upon transportation services.

PBOT provided the following findings (see Exhibit E.2):

"The regulations of this Chapter allow the traffic impacts caused by dividing and developing land to be identified, evaluated, and mitigated if necessary. The following approval criterion applies to all land divisions in all zones: *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.* To address the approval criteria, the applicant submitted a professionally prepared transportation analysis.

The applicant is proposing to subdivide this 22,500 square foot lot into 4 new narrow lots (net increase of three units) each approximately 25 feet wide by 224 feet deep. The existing house will be removed. Detached garages located behind each house will provide off-street parking.

To estimate the trips generated by the addition of three single family dwellings, the applicant utilized trip rates from ITE's *Trip Generation Manual, 9th Edition*. The trip generation calculations show that the proposed land division and the addition of three new lots with a single-family home on each lot will generate two additional trips during the morning peak hour and three additional trips during the evening peak hour. The new lots are projected to generate 28 additional trips in total each weekday.

The applicant conducted on-site observations along roadways and at intersections in the vicinity of the project site during the morning and evening peak hours on Wednesday, December 11, 2013. Little or no delay was observed at the intersection of SE 57th Avenue at SE Tenino Street, and this intersection operates at level-of-service (LOS) A, with few if any conflicts even during peak periods. At the intersections of SE 60th Avenue & SE Tenino Street, SE Tenino Street & SE Flavel Drive, and SE 57th Avenue & SE Flavel Drive, only brief delays were observed at the stop controlled movements, and queues were not observed to exceed one vehicle. These intersections operate at LOS A or B. The small number of site trips added as a result of the proposed development will not significantly affect the performance of any intersection.

To evaluate on-street parking impacts associated with the proposed development, the applicant utilized rates from ITE's *Parking Generation Manual*,

4th Edition. Based upon this data, the 85th percentile peak parking demand for the three additional homes is six parking spaces. To determine the demand and availability of on-street parking in the vicinity of the site, observations were made during the overnight period (between 10:00pm and 5:00am) corresponding to the expected peak period for residential parking demand on Thursday, December 12, 2013. Parking was observed along SE Tenino Street between SE 57th and SE 60th Avenues. During this period, 13 vehicles were observed utilizing on-street parking along this segment. After accounting for restricted parking area due to driveway locations, the applicant estimated that this segment can accommodate at least 30 parked vehicles. Therefore, based upon the applicant's analysis approximately 57% of the existing parking supply is available during the overnight period. PBOT does not consider an area heavily parked and in need of active parking management until the availability rate for on-street parking reaches 20% or less. The proposed project includes a single-car garage on each lot and there is sufficient space to park an additional vehicle in front of each garage unit, for a total of 6 off-street parking spaces. Accordingly, the demand for off-street parking in association with this project is expected to be minimal. Additionally, as shown by the applicant's analysis there is ample on-street parking available in the site vicinity to accommodate the additional parking generated by the planned new residences even if all new residents choose to utilize on-street parking.

There are existing transit facilities in the vicinity. The nearest bus stop is located at the intersection of SE 57th Avenue at SE Flavel Street, approximately 1,500 feet from the site (TriMet Route #71). The frontage improvements required in conjunction with the proposed development will improve pedestrian connectivity to these transit facilities (see 33.654 below for more information on improvements). The proposed land division will not have any effect on transit service or any other mode of travel. The transportation system is capable of safely supporting the proposed development in addition to existing uses in the area.

PBOT has reviewed and concurs with the information supplied and available evidence. No mitigation is necessary for the transportation system to be capable of safely supporting the proposed development in addition to the existing uses in the area."

The Hearings Officer concurs with PBOT's comments and conclusions. The Hearings officer finds these approval criteria are met.

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

Findings: Chapters 33.651 through 33.654 address water service standards, sanitary sewer disposal standards, stormwater management, utilities and rights of way. The criteria and standards are met as shown in the following table:

33.651 Water Service standard – See Exhibit E.3 for detailed bureau comments.

The Water Bureau indicated that service is available to the Subject Property, as noted earlier in this decision. Because the existing home will span the proposal lot lines for lots 2 and 3, Applicant must demolish the house prior to Final Plat approval. The Hearings Officer finds that the water service standards of 33.651 have been verified.

33.652 Sanitary Sewer Disposal Service standards – See Exhibit E.1 for detailed comments.

The Bureau of Environmental Services (“BES”) has indicated that service is available to the site, as noted earlier in this decision. The Hearings Officer finds the sanitary sewer service standards of 33.652 have been verified.

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

No stormwater tract is proposed or required. Therefore, the Hearings Officer finds this approval criterion A is not applicable.

Applicant proposed the following stormwater management methods:

- **Public Street Improvements:** Drainage improvements in the ROW have been reviewed through Public Works Permit #EP133. BES has approved Applicant’s concept development plans, which meets BES requirements for supporting the preliminary land division proposal. Prior to final plat approval, BES will required approved plans, a financial guarantee, receipt of all outstanding fees and a signed permit document.
- **Lots 1 to 4:** Stormwater from these lots will be directed to individual drywells that will treat the water and slowly infiltrate it into the ground. Each of these lots has sufficient area for a stormwater facility that can be adequately sized and located to meet setback standards, and accommodate water from a reasonably-sized home. BES indicated conceptual approval of the drywells.

33.654.110.B.1 Through streets and pedestrian connections

Generally, through streets should be provided no more than 530 feet apart and at least 200 feet apart. Pedestrian connections should be no more than 330 feet apart. The Subject Property is located approximately 300 feet to the west and 200 feet to the east of the nearest connections. The Subject Property is located in an area where the grid system is reasonably intact. While the spacing goals may not be specifically met at this location, the existing development and lot pattern in the area precludes additional connectivity and PBOT had no connectivity concerns in association with this land division.

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

33.654.120.C1 and C.2 Local Service Streets width & elements of the right-of-way – See Exhibit E.2 for bureau comment.

At this location SE Tenino Street is classified as a Local Service Street for all modes. It is a 50-foot wide ROW improved with a 28-foot roadway lacking curbs and sidewalks.

In reviewing this land division, PBOT relied 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. In this case PBOT determined that curb and sidewalk improvements must be made in order to ensure that safe pedestrian travel is possible within the proposed development.

For a Local Service street abutting an R5 zoned site, the City's public ROW document requires a 56-foot wide ROW to accommodate a 28-foot roadway, curb located 13-feet from ROW centerline, and 15-foot wide pedestrian corridors consisting of 0.5- foot curb, 8-foot public stormwater facility, 6-foot sidewalk, and 0.5-foot frontage zone. A 3-foot dedication of property for ROW purposes is required along the site's frontage to accommodate the improvements.

With those improvements, three additional dwellings can be safely served by this existing street without having any significant impact on the level of service provided.

Applicant initiated the Public Works permitting process with the submittal of 15-119483 WT and 15-122691 WE. PBOT indicated that it is possible that Applicant received approval of at least the concept review (phase) of the Public Works permits.

The Hearings Officer finds this approval criterion is met, with the condition that curb and sidewalk improvements are made at the time of development, and the required ROW dedication is shown on the Final Plat.

33.654.130.A - Utilities (defined as telephone, cable, natural gas, electric, etc.)

Any easements that may be needed for private utilities that cannot be accommodated within the adjacent ROWs can be provided on the final plat. At this time, no specific utility easements adjacent to the ROW have been identified as being necessary. Therefore, the Hearings Officer finds this approval criterion is met.

III. CONCLUSIONS

Applicant proposed a 4 lot subdivision with front lot widths of 25 feet. PCC 33.610.200 D sets the minimum lot width of lots within the R5 zone to be 36 feet unless the requirements of PCC 33.610.200 D.2 are met. The Hearings Officer found all of the requirements of PCC 33.610.200 D.2 were met excepting for PCC 33.610.200 D.2.a. The Hearings Officer found the proposed lots were not compatible with existing lots and on balance the proposed lots were not consistent with the PCC 33.610.200 A Lot Dimension Regulations. The Hearings Officer concluded that the lots, as proposed, did not meet PCC 33.660.120 D.2.a.

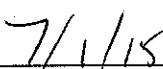
The Hearings Officer found the requested land division of the Subject Property must be denied.

IV. DECISION

The BDNA, the appellant, prevailed in this appeal.

Denial of a Preliminary Plan for a 4 lot subdivision, that will result in four new narrow lots as illustrated with Exhibit C.1.


Gregory J. Frank, Hearings Officer


Date

Application Determined Complete: July 2, 2014
Report to Hearings Officer: May 29, 2015
Decision Mailed: July 2, 2015
Last Date to Appeal: July 23, 2015

Appealing this decision. The Hearings Officer's decision is final and takes effect on the day the notice of decision is mailed. The decision may not be appealed to City Council, but may be appealed to the Oregon Land Use Board of Appeals (LUBA), as specified in the Oregon Revised Statute (ORS) 197.830. Among other things, ORS 197.830 requires that:

- an appellant before LUBA must have presented testimony (orally or in writing) as part of the local hearing before the Hearing's Officer; and
- a notice of intent to appeal be filed with LUBA within 21 days after the Hearings Officer's decision becomes final.

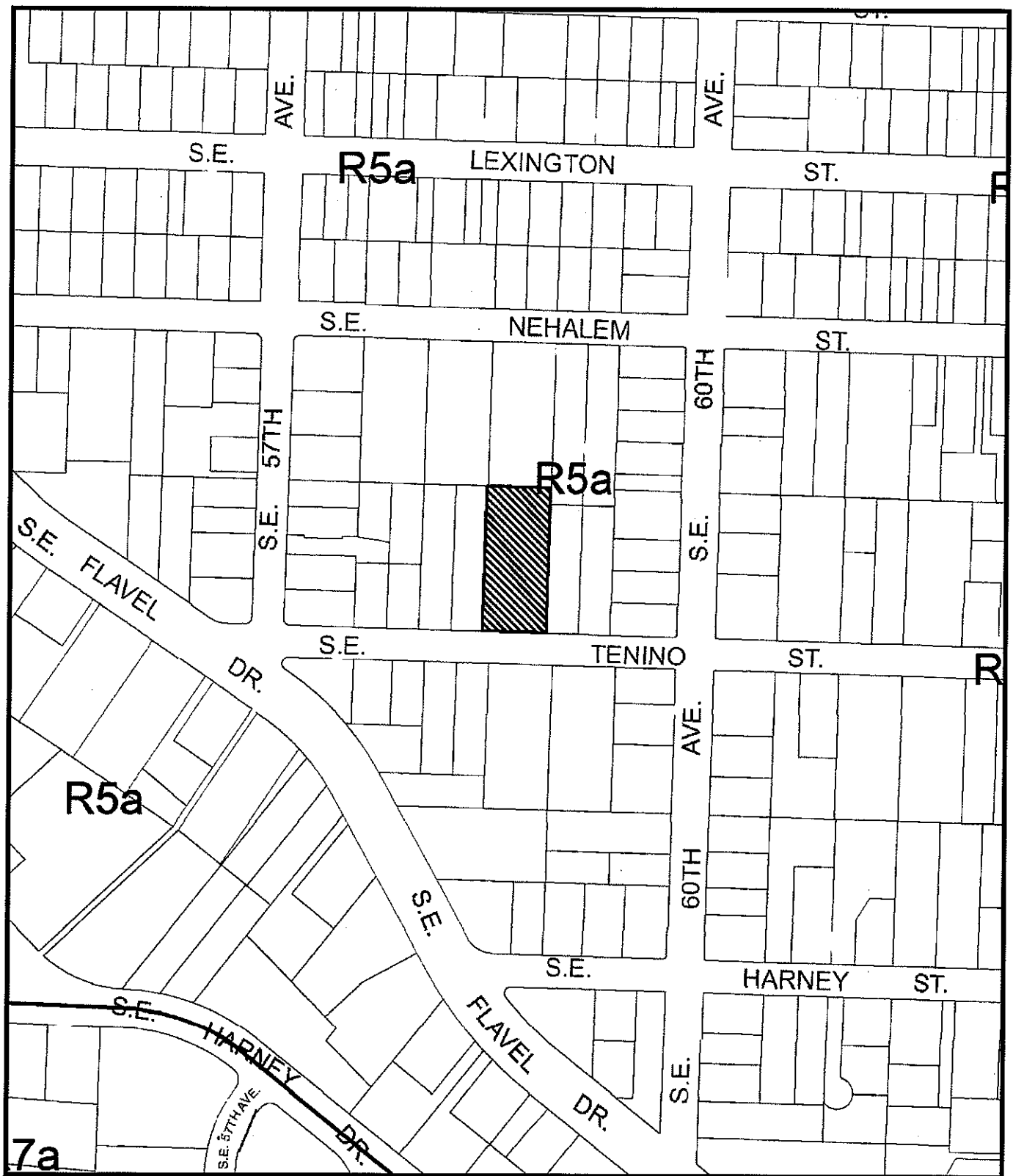
Please contact LUBA at 1-503-373-1265 for further information on filing an appeal.

EXHIBITS
NOT ATTACHED UNLESS INDICATED

- A. Applicant's Statement
 - 1. Applicant's original submittal and plans
 - 2. Applicant's response, December 8, 2014
 - 3. Applicant's response, Draft site plans received February 13 to April 14, 2015
 - 4. Applicant's response, February 26, 2015
 - 5. Applicant's response, March 20, 2015
 - 6. Applicant's response, March 24, 2015
 - 7. Applicant's response, March 25, 2015
 - 8. Applicant's response, March 30, 2015
 - 9. Neighborhood Contact Requirement Materials
 - 10. Arborist Report, February 26, 2015 (Includes addendum emails dated 3/20 and 4/16)
- B. Zoning Map (**attached**)
- C. Plans/Drawings
 - 1. Proposed Improvements Plan (**attached**)
 - 2. Survey (site plan)
 - 3. Preliminary Partition Plat
- 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. Life Safety Section of BDS
 - 7. Parks Urban Forestry
- F. Correspondence
 - 1. Letter and photos signed by the neighbors listed below, April 7, 2015
 - a. Bart and Annette Heiner, 5910 SE Tenino St
 - b. Brittany Smyton and Amber Gallagher, 5915 SE Tenino St
 - c. James Hibbard and Julie Russum, 8235 SE 60th Ave
 - d. Brandon Smyton, 5907 SE Tenino St
 - e. Christopher Cotilla, Marcu Madiman and Leslie Ireland, 5815 SE Tenino St
 - f. Margaret Gunther, 8109 SE 60th
 - g. Lione Talbot, 5700 SE Tenino St
 - h. Thomas D Gleason, 5830 SE Nehalem
 - i. Noah Jenkins and Lora Lyn Worder, 8025 SE 60th
 - j. EL Span, 8101 SE 57th
 - k. Katie Statman-Weil and P Mark Anderson, 5806 SE Nehalem St
 - l. Eileen and James Ross, 5834 SE Tenino St
 - m. Margaret A Perry, 8119 SE 60th
 - 2. Brentwood Darlington Neighborhood Association, April 7, 2015

3. James James, March 14, 2015
- G. Other
 1. Original LU Application
 2. Incomplete Letter
 3. Extension Request
- H. Received in the Hearings Office
 1. Notice of Appeal Hearing - Hale, Diane
 2. Decision Appeal Form and Notice of Decision - Hale, Diane
 3. 6/4/15 letter - Hammond, Debbie
 4. PowerPoint presentation printout - Sherman, Jacob
 5. Code sections - Dane, Mark
 6. Photos - Heiner, Annette
 7. Written testimony - Heiner, Annette
 8. E-mail String - Hale, Diane
 9. PowerPoint presentation printout - Hale, Diane
 10. Record Closing Information - Hearings Office
 11. 6/4/15 Letter - Hammond, Debbie
 12. Letter - Cleaver, Christopher P.
 13. Letter with attachment - Ross, Eileen
 - a. Map - Ross, Eileen
 14. 6/15/15 letter - Heiner, Annette
 15. 6/15/15 Memo - Hale, Diane
 16. Memo - Dane, Mark
 - a. Memo - Dane, Mark
 - b. Order of Council - Dane, Mark
 - c. Decision of the Hearings Officer in LU 13-237078 ZC LDP - Dane, Mark
 17. Chapter 33.610 - Lots in RF through R5 Zones - Sherman, Jacob (Brentwood-Darlington NA)
 18. Tax Lot Frontages 24.8' to 26' Wide - Sherman, Jacob (Brentwood-Darlington NA)
 - a. Tax Lot Frontages 24.8' to 35.8 Wide - Sherman, Jacob (Brentwood-Darlington NA)
 19. Partition Plat No. 1999-74 - Sherman, Jacob (Brentwood-Darlington NA)
 20. sail.multco.us printout - Sherman, Jacob (Brentwood-Darlington NA)
 21. Comprehensive Plan Goals and Policies - Sherman, Jacob (Brentwood-Darlington NA)
 - a. 4 Housing - Sherman, Jacob (Brentwood-Darlington NA)
 - b. 10 Plan Review and Administration - Sherman, Jacob (Brentwood-Darlington NA)
 - c. 12 Urban Design - Sherman, Jacob (Brentwood-Darlington NA)
 22. 2013 ORS 92.017 - When lawfully created lot or parcel remains discrete lot or parcel - Sherman, Jacob (Brentwood-Darlington NA)
 23. Adopted Comprehensive Plan Housing Policy - January 1999 - Sherman, Jacob (Brentwood-Darlington NA)
 24. Map - Sherman, Jacob (Brentwood-Darlington NA)
 25. Water Resources Dept. - Division 5 - Compliance with Statewide Planning Goals, Compatibility with Comprehensive Plans, & Coordination on Land Use Matters - Sherman, Jacob (Brentwood-Darlington NA)
 26. Chapter 33.611 - Lots in the R2.5 Zone - Sherman, Jacob (Brentwood-Darlington NA)
 27. 33.110 Single-Dwelling Zones - Sherman, Jacob (Brentwood-Darlington NA)
 28. Oxford dictionary definitions - Sherman, Jacob (Brentwood-Darlington NA)

29. Average Sq/Ft of House - Sherman, Jacob (Brentwood-Darlington NA)
30. Decision of the Hearings Officer on Appeal of Administrative Decision - LU 13-211621
LDS AD - Sherman, Jacob (Brentwood-Darlington NA)
31. Draft Recommended Plan Map (Changes) - Sherman, Jacob (Brentwood-Darlington NA)
 - a. Map - Sherman, Jacob (Brentwood-Darlington NA)
 - b. Map of Darlington - Sherman, Jacob (Brentwood-Darlington NA)
 - c. Darlington Plat 3 - Sherman, Jacob (Brentwood-Darlington NA)
 - d. Map of Blocks 14, 15, & 16; Blocks 11, 12, & 13 – Darlington - Sherman, Jacob (Brentwood-Darlington NA)
32. 6/12/15 letter - Nettekoven, Linda
 - a. Suggested Criteria for Measuring Compatibility - Nettekoven, Linda
33. 6/21/15 Letter - Sherman, Jacob

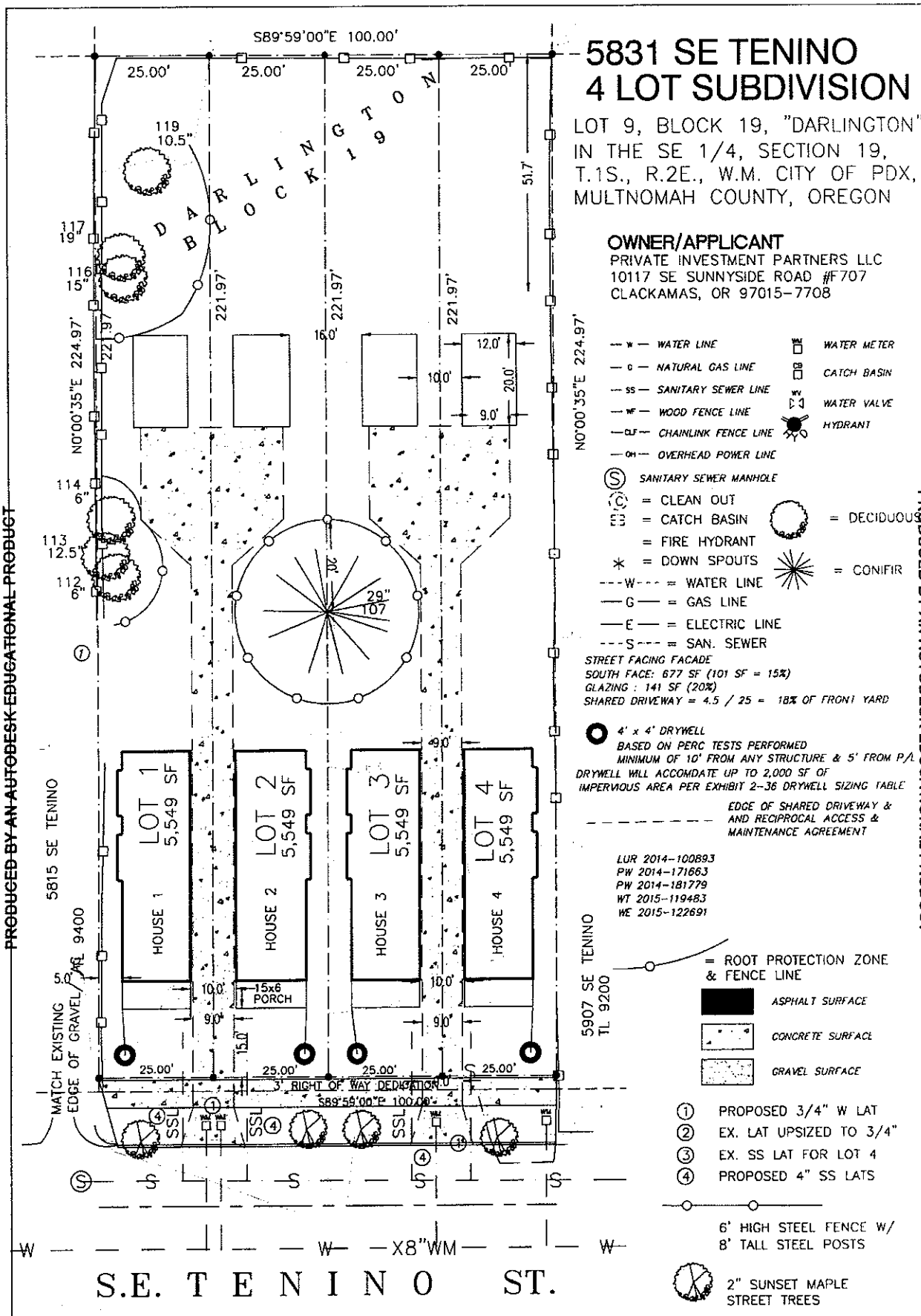


ZONING



File No. LU 14-100893 LDS
 1/4 Section 3836
 Scale 1 inch = 200 feet
 State Id 1S2E19DD 9300
 Exhibit B (Jan 07, 2014)

PRODUCED BY AN AUTODESK EDUCATIONAL PRODUCT



PRODUCED BY AN AUTODESK EDUCATIONAL PRODUCT

P3

PROJECT NO. 20P-104
FILE NO. 15-113
DATE: 10/1/15
DRAWN BY: J. B. B. / J. B. B.
CHECKED BY: J. B. B. / J. B. B.
DESIGNED BY: J. B. B. / J. B. B.
TOWN & RANGE: 15 2E 084
COUNTY: MULTNOMAH
CITY: PDX
SHEET NO. 10/100

IMPROVEMENTS PLAN

See Sheet 2 of the attached Civil Drawings for greater detail

LOT 9, BLOCK 19, "DARLINGTON"
5831 SE TENINO

MARK DANE PLANNING

1000 S. BURNING BUSH ROAD
CLACKAMAS, OR 97015
503.266.1111
www.mardaneplanning.com

PRODUCED BY AN AUTODESK EDUCATIONAL PRODUCT

CASE NO. 14-190893 US EXHIBIT C-1

