

NOTICE OF DECISION

PLANNING DIVISION
555 LIBERTY ST. SE, RM 305
SALEM, OREGON 97301
PHONE: 503-588-6173
FAX: 503-588-6005



*Si necesita ayuda para comprender esta informacion, por favor llame
503-588-6173*

DECISION OF THE HEARINGS OFFICER

VALIDATION OF UNITS OF LAND CASE NO: VUL16-02

APPLICATION NO. : 16-107642-LD

NOTICE OF DECISION DATE: July 20, 2016

APPLICATION SUMMARY: A proposal to validate one of two parcels that were created as separate tax lots through a sale by deed in 1994.

REQUEST: To establish lawfully a tax lot created in 1994, when the previous owner sold 1.4 acres of the parent parcel to a third party. The sale effectively divided the parent parcel into two units of land, but neither of the new parcels was lawfully established through a land use approval. The applicant requests to validate 1.4 acre Tax Lot 1700, one parcel of the two parcels that resulted from the deed sale. Tax Lot 1800, which contains 1.86 acres after the 1994 sale, is not included in the validation request.

The subject property (lawfully established parent parcel) is approximately 3.26 acres in size, zoned RA (Residential Agriculture), and located in the 2200 Block of 27th Place NW (Polk County Assessor Map and Tax Lot Numbers: 073W17B001700 and 073W17B001800).

APPLICANT: Becky O'Brien and Bryce Gardinier

LOCATION: 2200 Block of 27th Place NW

CRITERIA: Salem Revised Code Chapter 205.060(d)

DECISION: The Hearings Officer **GRANTED** Validation of Units of Land Case No. VUL16-02 subject to the following condition of approval:

Condition 1: Increase the width of the access easement on the subject property if necessary to accommodate the width of the private roadway improvement.

The rights granted by the attached decision must be exercised, or an extension granted, by **August 5, 2018** or this approval shall be null and void. A copy of the decision is attached.

Application Deemed Complete:	<u>June 17, 2016</u>
Public Hearing Date:	<u>July 13, 2016</u>
Notice of Decision Mailing Date:	<u>July 20, 2016</u>
Decision Effective Date:	<u>August 5, 2016</u>
State Mandate Date:	<u>October 15, 2016</u>

Case Manager: Pamela Cole,  pcole@cityofsalem.net, 503.540.2309

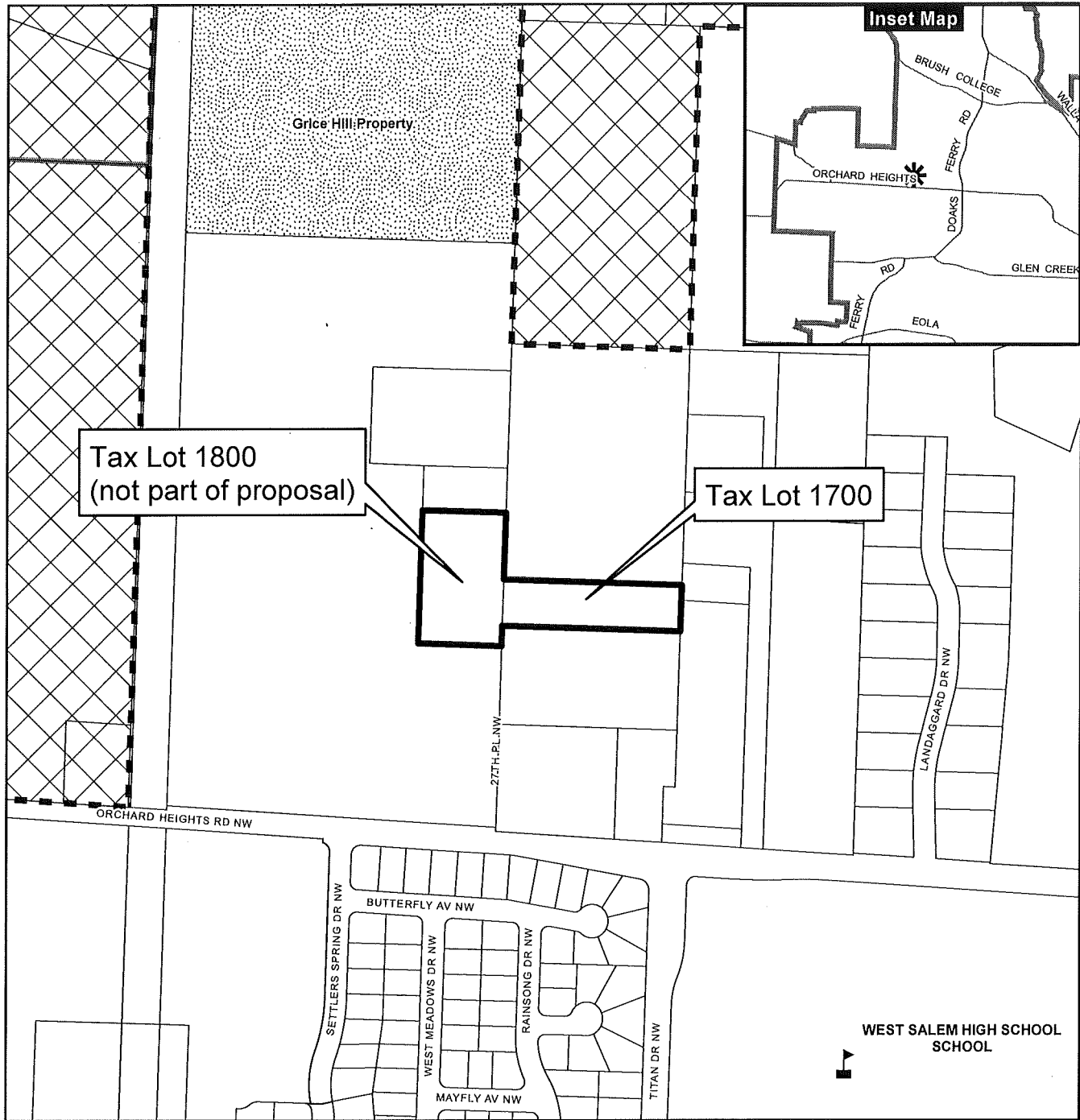
This decision is final unless written appeal from an aggrieved party is filed with the City of Salem Planning Division, Room 305, 555 Liberty Street SE, Salem OR 97301, no later than 5:00 p.m., August 4, 2016. Any person who presented evidence or testimony at the hearing may appeal the decision. The notice of appeal must contain the information required by SRC 300.1020 and must state where the decision failed to conform to the provisions of the applicable code section, SRC Chapter 205. The appeal must be filed in duplicate with the City of Salem Planning Division. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Planning Commission will review the appeal at a public hearing. After the hearing, the Planning Commission may amend, rescind, or affirm the action, or refer the matter to staff for additional information.

The complete case file, including findings, conclusions and conditions of approval, if any, is available for review at the Planning Division office, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

<http://www.cityofsalem.net/planning>

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Vicinity Map 2200 Block 27th Place NW



Legend

Taxlots

Urban Growth Boundary

City Limits

Outside Salem City Limits

Historic District

Schools

Parks

CITY OF *Salem*
AT YOUR SERVICE
Community Development Dept.

0 100 200 400 Feet

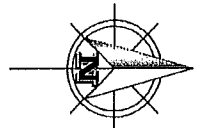


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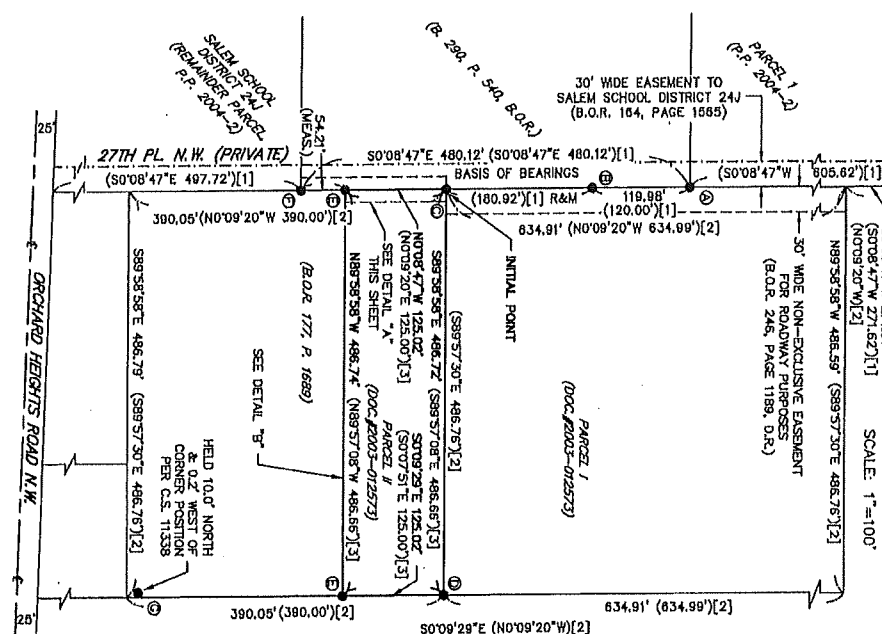
PARTITION PLAT NO. _____

LOCATED IN THE SW 1/4 OF SECTION 17 T. 7 S., R. 3 W., W.M.,
CITY OF SALEM, POLK COUNTY, OREGON
MAY 6, 2016

SHEET 1 OF 2

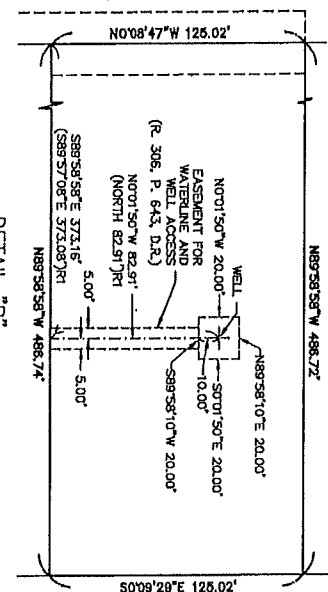
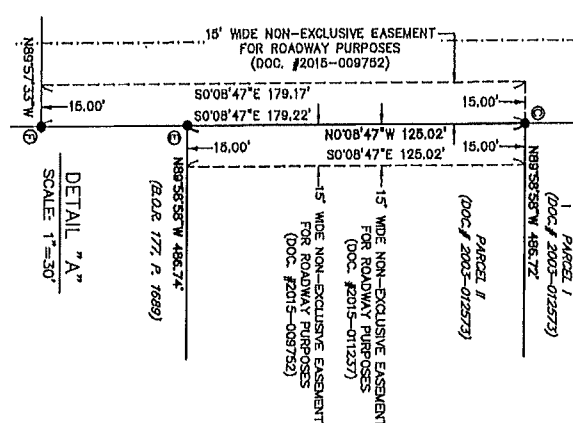


SCALE: 1"=100'



NARRATIVE

The purpose of this survey is to create one legal parcel of land through the City of Salem property validation process for that property described in Document No. 2015-009750, Polk County Deed Records. Said tract is a portion of a larger legal tract that is not considered original to the 1950's due to it not being created under the City's planning approval and was created by the City of Salem in 2003-012573. The basis of bearings used in this survey is the boundary determined in Partition Plat 2004-2 (C.S. 14584) between monuments (1) and (2). The boundary of the subject tract was determined holding monuments found in C.S. 12417.



MONUMENTS LIST

- ① - 5/8" iron rod with yellow plastic cap stamped BARKER PLS 6357. Set in [1].
- ② - 5/8" iron rod, no cap. Set in [4].
- ③ - 1/2" iron pipe near tree stump, origin unknown.
- ④ - 5/8" iron rod with aluminum cap, illegible. Set in [2].
- ⑤ - 5/8" iron rod with yellow plastic cap stamped PARTNER LS 1917. Set in [3].
- ⑥ - 5/8" iron rod, no cap. Set in [4].
- ⑦ - 1/2" rubber, no cap. Set in [5]. Held position per [2] (10.0' N & 0.2' W of true position).

LEGEND:

- - Found monument (See Monument List)
- () - Record Data
- [#] - Survey Reference
- C.S. - County survey
- R. - Reel
- B. - Book
- P. - Page
- SQ.FT. - Square Feet
- P.P. - Partition Plat
- D.C. - Decrement
- B.O.R. - Book of Records
- D.R. - Deed Records
- R&M - Record and Measured

REFERENCE SURVEYS

- [1] P.P. 2004-0002 (C.S. 14584)
- [2] C.S. 11338
- [3] C.S. 12417
- [4] C.S. 11189
- [5] C.S. 4337

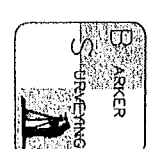
REFERENCE DEEDS

RI - REEL 306, PAGE 643, D.R.

REGISTERED PROFESSIONAL LAND SURVEYOR

BARKER

EXPIRATION DATE 6/30/2016



BARKER SURVEYING

3657 KASHMIR WAY SE SALEM,
OREGON 97317 PHONE (503)
588-8800 FAX (503) 363-2469
EMAIL: INFO@BARKERSURVEYING.COM

PARTITION PLAT NO. _____

LOCATED IN THE SW 1/4 OF SECTION 17 T. 7 S., R. 3 W., W.M.,
CITY OF SALEM, POLK COUNTY, OREGON
MAY 6, 2016

SHEET 2 OF 2

SURVEYOR'S CERTIFICATE

I, Gregory L. Wilson, a Registered Professional Land Surveyor in Oregon, do hereby depose and say that I did accurately survey and mark with proper monuments the lands represented on the attached map, being described as follows:

Beginning at the initial point of this Partition Plat, said point being on iron rod with an illegible aluminum cap, set in Polk County Survey Record 11538, and recorded as being South 89°57'29" East 987.28 feet and South 0°09'00" East 1507.20 feet from the Northwest Corner of the John Martin Davidson Land Claim No. 58, Township 7 South, Range 3 West of the Willamette Meridian, City of Salem, Polk County, Oregon and running thence:

South 89°58'58" East 486.72 feet along the North line of that property described in Book 177, Page 1689, Book of Records, Polk County, Oregon, to an iron rod with an aluminum cap at the Northwest corner thereof;

thence South 0°09'29" East 125.02 feet along the east line of said Book and Page to an iron rod at the Southwest corner of that property described in Document No. 2015-009750, Records of Polk County, Oregon;

thence North 89°58'58" West 486.74 feet parallel with the aforementioned North line to an iron rod at the Southwest corner of said property;

thence North 0°08'47" West 125.02 feet along the West line of said property to the Point of Beginning, containing 1.387 acres, more or less.

Gregory L. Wilson
Registered Professional Land Surveyor No. 2657
License expires June 30, 2016

REGISTERED
PROFESSIONAL
LAND SURVEYOR

O R E G O N
GREGORY L. WILSON
2657
EXPIRATION DATE 6/30/2016

THE WITHIN PLAT IS HEREBY APPROVED:

Planning Administrator, City of Salem Planning File (Case No. _____)	Date _____
City of Salem Surveyor	Date _____
Polk County Assessor	Date _____
Taxes and assessments on the above described property have been paid in full to:	
Polk County Tax Collector	Date _____
Conditions of approval of this plat are recorded in Document No. _____, Polk County Deed Records	

DECLARATION:

Know all people by these presents that Bryce Gardiner and Rebecca O'Brien, not as tenants in common, but with rights of survivorship, being the owners of the property described in the Surveyor's Certificate hereon made and being the same as the same in parcels, has caused the same to be partitioned and surveyed as shown on the attached map.

In witness whereof we set our hands and seals this ____ day of _____, 2016.

Bryce Gardiner _____ Rebecca O'Brien _____

STATE OF OREGON
COUNTY OF _____ S.S.
This instrument was acknowledged before me this _____ day of _____, 2016, by Bryce Gardiner and Rebecca O'Brien.

NOTARY PUBLIC - STATE OF OREGON

(PRINT NAME) _____
COMMISSION NO. _____
MY COMMISSION EXPIRES _____, 2015.

STATE OF OREGON
COUNTY OF POLK S.S.

I, Victoria Liniger, County Clerk and Recorder, do hereby certify that the within partition plat was received and duly recorded by me in the Polk County Book of Town Plats, Volume _____ Page _____ on this _____ day of _____, 2016 at _____ o'clock _____ a.m.

Clerk Recorder _____
By _____ Deputy _____



BARKER SURVEYING
3657 KASHMIR WAY SE SALEM,
OREGON 97317 PHONE (503)
588-8800 FAX (503) 563-2469
EMAIL: INFO@BARKERSURVEYING.COM

**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

A PROPOSAL TO VALIDATE ONE OF TWO PARCELS THAT WERE CREATED AS SEPARATE TAX LOTS THROUGH A SALE BY DEED IN 1994. THE REQUEST IS TO ESTABLISH LAWFULLY A TAX LOT CREATED IN 1994, WHEN A PREVIOUS OWNER SOLD 1.4 ACRES OF THE PARENT PARCEL TO A THIRD PARTY. THE SALE EFFECTIVELY DIVIDED THE PARENT PARCEL INTO TWO UNITS OF LAND, BUT NEITHER OF THE NEW PARCELS WAS LAWFULLY ESTABLISHED THROUGH A LAND USE APPROVAL. THE APPLICANT REQUESTS TO VALIDATE 1.4-ACRE TAX LOT 1700, ONE PARCEL OF THE TWO PARCELS THAT RESULTED FROM THE DEED SALE. TAX LOT 1800, WHICH CONTAINS 1.86 ACRES AFTER THE 1994 SALE, IS NOT INCLUDED IN THE VALIDATION REQUEST. THE SUBJECT PROPERTY (LAWFULLY ESTABLISHED PARENT PARCEL) IS APPROXIMATELY 3.26 ACRES IN SIZE, ZONED RA (RESIDENTIAL AGRICULTURE), AND LOCATED AT THE 2200 BLOCK OF 27TH PLACE NW (POLK COUNTY ASSESSOR MAP AND TAX LOT NUMBERS: 073W17B001700 AND 073W17B001800).

VALIDATION OF UNIT OF LAND CASE
VUL 16-02
2200 BLOCK OF 27TH PLACE NW
AMANDA NO. 16-107642-LD

FINDINGS OF FACT, CONCLUSIONS
AND DECISION

DATE AND PLACE OF HEARING:

July 13, 2016, Salem City Council Chambers Rm. 240, 555 Liberty Street SE,
Salem, Oregon.

APPEARANCES:

Staff: Pamela Cole, Planner

Neighborhood Association: West Salem Neighborhood Association,
No Appearance

Proponents: Steve Ward,
Representing the applicant

Opponents: None

Other: Neighboring property owners submitted
comments and questions which will be
addressed

SUMMARY OF THE APPLICATION AND HEARING

A PROPOSAL TO VALIDATE ONE OF TWO PARCELS THAT WERE CREATED AS SEPARATE TAX LOTS THROUGH A SALE BY DEED IN 1994. THE REQUEST IS TO ESTABLISH LAWFULLY A TAX LOT CREATED IN 1994, WHEN A PREVIOUS OWNER SOLD 1.4 ACRES OF THE PARENT PARCEL TO A THIRD PARTY. THE SALE EFFECTIVELY DIVIDED THE PARENT PARCEL INTO TWO UNITS OF LAND, BUT NEITHER OF THE NEW PARCELS WAS LAWFULLY ESTABLISHED THROUGH A LAND USE APPROVAL. THE APPLICANT REQUESTS TO VALIDATE 1.4-ACRE TAX LOT 1700, ONE PARCEL OF THE TWO PARCELS THAT RESULTED FROM THE DEED SALE. TAX LOT 1800, WHICH CONTAINS 1.86 ACRES AFTER THE 1994 SALE, IS NOT INCLUDED IN THE VALIDATION REQUEST. THE SUBJECT PROPERTY (LAWFULLY ESTABLISHED PARENT PARCEL) IS APPROXIMATELY 3.26 ACRES IN SIZE, ZONED RA (RESIDENTIAL AGRICULTURE), AND LOCATED AT THE 2200 BLOCK OF 27TH PLACE NW (POLK COUNTY ASSESSOR MAP AND TAX LOT NUMBERS: 073W17B001700 AND 073W17B001800).

FINDINGS OF FACT AND CONCLUSIONS

1. The subject property is "comprehensively planned developing residential" on the Salem Area Comprehensive Plan Map.
2. The subject property is zoned: RA Residential Agricultural
3. The zoning of surrounding properties is as follows:

North: RA Residential Agricultural
South: RA Residential Agricultural
East: RA Residential Agricultural
West: Across 27th Place NW RA Residential Agricultural
4. There were no comments from the West Salem Neighborhood Association, however neighboring property owners submitted some concerns and questions regarding the following:
 - a) Property history and use as a home site. The question was whether or not the land use planning differed from the City vs. the County.
 - The Hearing Officer finds that Polk County would have made this a lawful parcel in 2001, but the property was annexed to the City in 2015, and therefore this process is necessary to make it a legal parcel. The property is legally able to obtain city services but not required to connect to the city sewer due to the distance from available sewer services, and therefore may use a septic system. The applicants are not required to connect to city water, though they could use Orchard Heights Water Association or a well.
 - b) Questions were raised regarding the utilities.
 - As stated above the applicant has the option of serving the parcel with a private well, which would be regulated by the Oregon Water Resources Department and/or the Orchard Heights Water Association. At the time that city services are available the property would be eligible to hook up to city services.
 - c) Easements
 - It is the finding of the Hearing Officer that the applicants' surveyor will be required to show all easements on the final plan, and verify that the subject property has rights to use the existing easements.

d) Roadway

- The roadway is a private facility, according to the testimony, and the owners of that roadway are responsible for its maintenance and improvements. No additional easements appear to be needed.

e) Future developments

- Based upon the testimony there are no plans for city construction of any public services in the vicinity of the subject property. Annexation gives property owners a legal right to connect to the city's water and sewer systems, but construction costs to bring services to the property are to be borne by the property owner.

**CRITERION FOR THE VALIDATION OF A UNIT OF LAND IS CONTAINED IN
SRC205.060D**

- 5) SRC205.060D1. The unit of land is not a lawfully established unit of land.
- It is the finding of the Hearings Officer that this unit of land was not lawfully created. The County has no records of the creation of this parcel through a legal process, the property was not annexed until 2015, and the unit of land subject to the request was created in 1994 through a deed recorded in Polk County. Based upon this testimony it is the finding of the Hearing Officer that it was not legally created.
- 6) SRC205.060D2. The unit of land was created through sale or deed or land sale contract executed and recorded before January 1, 2007.
- It is the finding of the Hearing Officer that this criterion has been satisfied. The testimony was that the subject unit of land was not created solely to establish a separate tax account, and was not created by gift, or any other method that is not considered a sale. The applicant has provided a copy of the recorded deed creating the subject unit of land through sale as evidence that this criterion has been satisfied.
- 7) SRC205.060D3 The unit of land could have complied with the applicable criterion for the creation of the unit of land in effect when the unit of land was sold.
- It is the finding of the Hearing Officer that this criterion has been satisfied. The Polk County ordinances in effect when the deed was recorded in 1994 could have allowed,

according to the testimony, the county to recognize the parcel as lawful.

- 8) SRC205.005D4 The plat complies with SRC205.035 and ORS92
- It is the finding of the Hearing Officer that this criterion has been satisfied. The applicant submitted a copy of a proposed plat, and it is noted as attachment C to the staff report, which is in the record. The Public Works Department reviewed the proposal and submitted comments describing the procedure and the submittal requirements for recording a final plat. The assistant City Surveyor noted that the roadway improvements may be wider than the 15 ft. wide easement on the subject property, therefore to ensure the easement accommodates the width of the improvement the Hearing Officer adopts the following condition.
Condition 1, Increase the width of the access easement on the subject property if necessary to accommodate the width of the private roadway improvement.

Based upon the foregoing the Hearing Officer adopts the following Order.

- The Hearing Officer grants the request to validate one unit of land that was created through sale rather than through an approved subdivision or partition plat process for properties zoned RA Residential Agricultural and located at the 2200 block of 27th place NW subject to the following condition of approval.
Condition 1, Increase the width of the access easement on the subject property if necessary to accommodate the width of the private roadway improvement.

DATED: July 20, 2016


Scott A. Fewel, Hearings Officer