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503-588-6173***

DECISION OF THE HEARINGS OFFICER

VALIDATION OF UNITS OF LAND CASE NO.: VUL19-01

APPLICATION NO. : 19-104345-LD

NOTICE OF DECISION DATE: APRIL 2, 2019

SUMMARY: A proposal to validate one land area that was created through a sale by deed in 2002.

REQUEST: The request is to establish lawfully a land area created in 2002 when tax lot 10400 was described separately by a deed creating the land area. The sale effectively divided the parent parcel creating several units of land without a land use approval. The applicant is requesting to validate property known as Marion County Tax Assessors number 083W04AA / 10400; also known as 575 Salem Heights Avenue S. The land area is approximately 2.88 acres in size, zoned RS (Single Family Residential), and located at the 575 Salem Heights Avenue S (Marion County Assessor Map and Tax Lot Numbers: 083W04AA / 10400).

APPLICANT: Mark Ferris of Project Delivery Group for Thomas B. Kay of Thomas B. Kay Co, LLC

LOCATION: 575 Salem Heights Ave S

CRITERIA: Salem Revised Code (SRC) Chapter 205.060(d)

FINDINGS: The findings are in the attached Decision dated April 2, 2019.

DECISION: The **Hearings Officer APPROVED** Validation of Units of Land VUL19-01 based upon the application materials deemed complete on February 27, 2019 and the findings as presented in this report.

Application Deemed Complete:	<u>February 27, 2019</u>
Public Hearing Date:	<u>March 27, 2019</u>
Notice of Decision Mailing Date:	<u>April 2, 2019</u>
Decision Effective Date:	<u>April 18, 2019</u>
State Mandate Date:	<u>June 27, 2019</u>

Case Manager: Olivia Glantz, OGlantz@cityofsalem.net, 503-540-2343

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., Wednesday, April 17, 2019. 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

NOTICE OF DECISION

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

CITY OF Salem
AT YOUR SERVICE

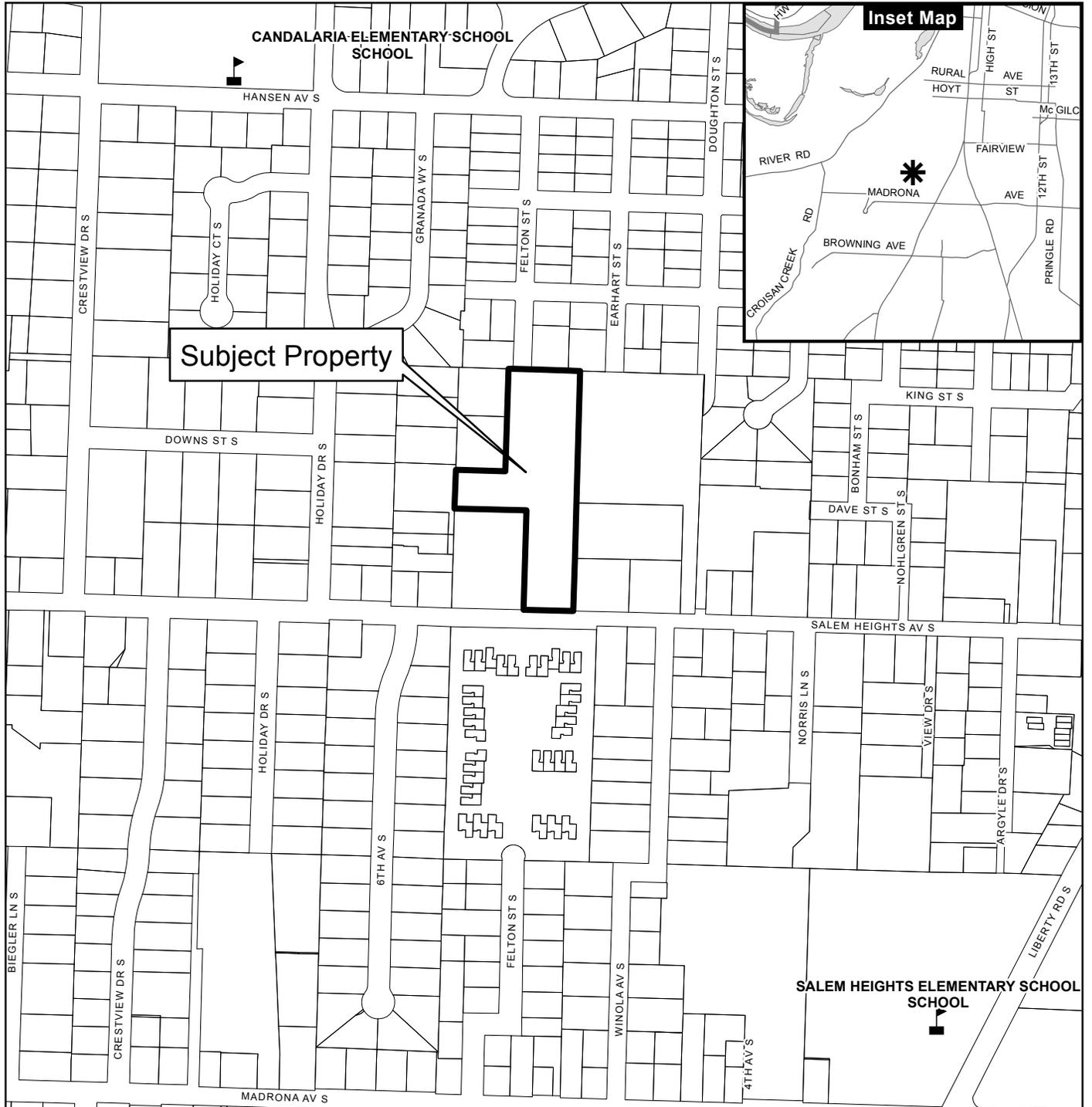
Division. The appeal fee must be paid at the time of filing. If the appeal is untimely and/or lacks the proper fee, the appeal will be rejected. The Planning Commission will review the appeal at a public hearing. After the hearing, the Planning Commission may amend, rescind, or affirm the action, or 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>

Vicinity Map

575 Salem Heights Avenue S



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 2019-

LOCATED IN THE NORTHEAST QUARTER OF SECTION 4,
TOWNSHIP 8 SOUTH, RANGE 3 WEST, WILLAMETTE MERIDIAN,
CITY OF SALEM, MARION COUNTY, OREGON
MAY 16, 2017

SHEET LIST TABLE	
Sheet Number	Sheet Title
1	BOUNDARY, NARRATIVE AND LEGEND
2	MONUMENT TABLE & DOUGHTON STREET DETAIL
3	SIGNATURES AND APPROVALS

LEGEND:

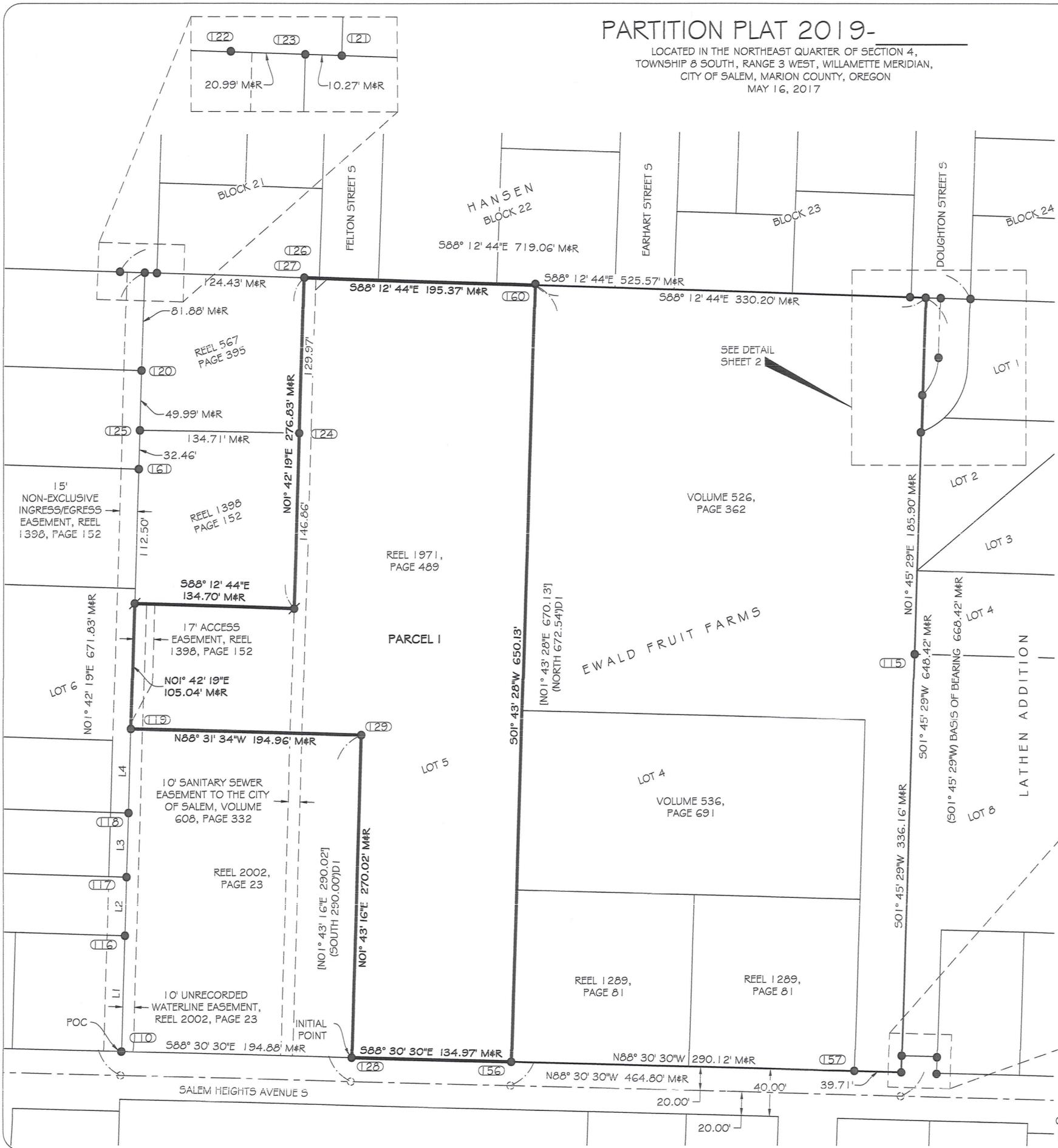
- DENOTES A FOUND MONUMENT AS NOTED IN MONUMENT TABLE
- DENOTES A FOUND MONUMENT, BEING A 5/8" IRON ROD WITH A YELLOW PLASTIC CAP MARKED "PD GROUP"
- DENOTES A CALCULATED POINT, NO CORNER FOUND OR SET
- M&R MEASURED AND RECORDED DATA PURSUANT TO MCSR 38736
- MCSR MARION COUNTY SURVEY RECORD
- D1 MARION COUNTY DEED RECORD REEL 1971, PAGE 489
- [] CALCULATED DATA
- POC POINT OF COMMENCEMENT

NARRATIVE:

THE PURPOSE OF THIS SURVEY IS TO LAWFULLY ESTABLISH A LAND AREA CREATED IN 2002 BY MARION COUNTY DEED RECORD REEL 1971, PAGE 489, CONSISTING OF TAX LOT 083W044AA/10400.

THE BOUNDARY OF THE SUBJECT PROPERTY WAS RESOLVED PURSUANT TO MARION COUNTY SURVEY RECORD 38736. MONUMENTS WERE HELD AS SHOWN.

LINE TABLE		
LINE #	LENGTH	DIRECTION
L1	96.92	N1° 42' 18.55"E
L2	49.02	N1° 42' 18.55"E
L3	53.74	N1° 42' 18.55"E
L4	70.27	N1° 42' 18.55"E
L5	13.98	S1° 45' 29.34"W
L6	29.92	N88° 30' 29.83"W
L7	13.98	N1° 45' 29.34"E



REGISTERED PROFESSIONAL LAND SURVEYOR
 Keith Whisenhunt
 OREGON
 MAY 15, 2012
 KEITH WHISENHUNT
 62679
 RENEWAL DATE: 6/30/20

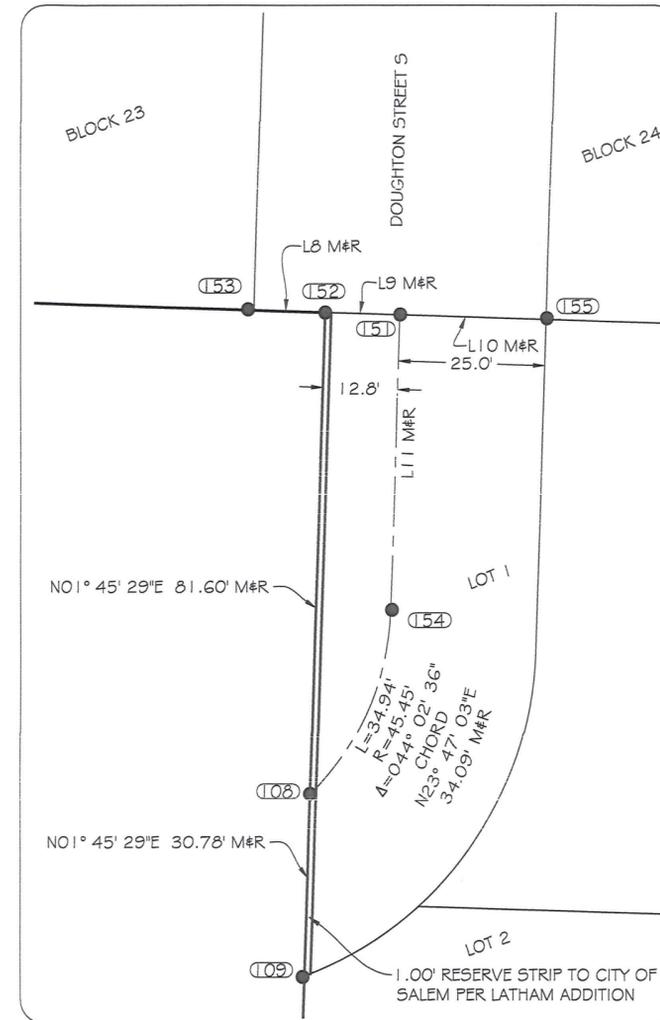
PROJECT DELIVERY GROUP
 PROJECT DELIVERY GROUP, LLC
 200 HAWTHORNE AVE
 SALEM, OR 97301
 503-364-4004
 PROJECT NO. 15128

PARTITION PLAT 2019-

LOCATED IN THE NORTHEAST QUARTER OF SECTION 4,
TOWNSHIP 8 SOUTH, RANGE 3 WEST, WILLAMETTE MERIDIAN,
CITY OF SALEM, MARION COUNTY, OREGON
MAY 16, 2017

FOUND MONUMENT TABLE		
NO.	DESCRIPTION	RECORD
101	5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "ROBERTS SURV INC", DOWN 0.8'	LATHEN ADDITION
102	1-1/2" IRON PIPE, 20' NORTH OF C/L, DOWN 0.9'	MCSR 9658
103	5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "ROBERTS SURV INC"	LATHEN ADDITION
104	5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "ROBERTS SURV INC", S01°45'29"W, 0.51' FROM TRUE POSITION, DOWN 0.4'	MCSR 2057
108	5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "ROBERTS SURV INC", DOWN 1.3'	LATHEN ADDITION
109	5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "ROBERTS SURV INC", S69°56'34"W, 0.35' FROM TRUE POSITION	LATHEN ADDITION
110	1-1/4" IRON PIPE WITH PINCHED TOP, 20.00' NORTH OF C/L	MCSR 9687
115	5/8" IRON ROD WITH UNREADABLE YELLOW PLASTIC CAP	LATHEN ADDITION
116	5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "ANDREWS RLS 1626", S88°12'44"E, 0.12' FROM TRUE POSITION	MCSR 37004
117	5/8" IRON ROD WITH DAMAGED YELLOW PLASTIC CAP MARKED "ANDREWS RLS 1626", DOWN 0.8'	MCSR 37004
118	3/4" IRON PIPE, DOWN 0.8'	MCSR 13587
119	5/8" IRON ROD IN DRIVEWAY MARKED "LAND MARKERS"	MCSR 36132
120	3/4" IRON PIPE, DOWN 0.4'	MCSR 22151
121	2" IRON PIPE	MCSR 13233
122	1/2" IRON PIPE	CANDALARIA HEIGHTS
123	IRON PIPE WITH CRIMPED TOP	MCSR 9687
124	1/2" IRON PIPE, DOWN 0.6'	NO RECORD
125	1/2" IRON PIPE, DOWN 0.6'	NO RECORD
126	1/2" IRON PIPE, DOWN 0.4', N64°49'52"E, 0.21' FROM TRUE POSITION	NO RECORD
127	3/4" IRON PIPE, DOWN 0.4', N47°32'15"E, 0.13' FROM TRUE POSITION	NO RECORD
128	5/8" IRON ROD MARKED "LAND MARKERS", 20.10' NORTH OF C/L	MCSR 36132
129	5/8" IRON ROD MARKED "LAND MARKERS"	MCSR 36132
151	5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "ROBERTS SURV INC",	LATHEN ADDITION
152	5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "ROBERTS SURV INC", DOWN 0.7'	LATHEN ADDITION
153	1/2" IRON PIPE, N81°55'48"W, 1.00' FROM TRUE POSITION, DOWN 0.8'	MCSR 18297
154	5/8" IRON ROD, DOWN 0.8'	LATHEN ADDITION
155	5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "ROBERTS SURV INC", N33°09'46"E, 0.22' FROM TRUE POSITION	LATHEN ADDITION
156	1-1/4" IRON PIPE, S01°29'30"W, 0.21' FROM TRUE POSITION	MCSR 9687
157	1-1/2" IRON PIPE, 20.14' NORTH OF C/L, DOWN 0.4'	NO RECORD
160	1" IRON PIPE, DOWN 0.4'	MCSR 9687
161	1" IRON PIPE	MCSR 22151

LINE TABLE		
LINE #	LENGTH	DIRECTION
L8	12.21	N88°12'43.67"W
L9	12.84	N88°12'43.67"W
L10	24.94	N88°12'43.67"W
L11	50.00	S1°45'44.84"W



**REGISTERED
PROFESSIONAL
LAND SURVEYOR**

Keith Whisenhunt 2/25/15
OREGON
MAY 15, 2012
KEITH WHISENHUNT
62679

RENEWAL DATE: 6/30/20

**PROJECT
DELIVERY
GROUP**

PROJECT DELIVERY GROUP, LLC
200 HAWTHORNE AVE
SALEM, OR 97301
503-364-4004
PROJECT NO. 15128

SHEET 2 OF 3

**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

A REQUEST TO VALIDATE PROPERTY	}	VUL19-01	
THAT IS APPROXIMATELY 2.88 ACRES IN			
SIZE, ZONED RS (SINGLE FAMILY	}	FINDINGS OF FACT, CONCLUSIONS, AND	
RESIDENTIAL), AND LOCATED AT THE 575			
SALEM HEIGHTS AVENUE S (MARION	}		DECISION
COUNTY ASSESSOR MAP AND TAX LOT			
NUMBERS: 083W04AA / 10400).			

DATE AND PLACE OF HEARING:

March 27, 2019, Salem City Council Chambers, Room 240, Civic Center, 555
Liberty Street SE, Salem, Oregon.

APPEARANCES:

<u>Staff:</u>	Olivia Glantz, Planner III
<u>Neighborhood Association:</u>	Appeared by letter
<u>Proponents:</u>	Thomas B. Kay for The Thomas B. Kay Co., LLC Applicant and Mark B. Ferris for Project Delivery Group, LLC, Agent for Applicant
<u>Opponents:</u>	None

SUMMARY OF THE APPLICATION AND HEARING

BACKGROUND

The City of Salem held a duly authorized and noticed public hearing on March 25, 2019, regarding a request to establish lawfully a land area created in 2002 when tax lot 10400 was described separately by a deed creating the land area. The sale effectively divided the parent parcel creating several units of land without a land use approval.

The Southwest Association of Neighbors (SWAN) provided written testimony, but no member appeared to provide additional testimony, evidence or explanation. The failure to appear precluded the Hearings Officer's inquiry into SWAN's statement

asking for “a delay in implementation until 30 days after our next meeting on May 7, 2019.” The Hearings Officer does not discern the requested “delay in implementation” to constitute a request to keep the record open or a motion to continue the public hearing. Because SWAN provided no basis for a continuance and because holding the record open for the statutory minimum 7 days would not extend implementation of the decision to or beyond the requested June 8, 2019 date, such a request standing alone would not be procedurally proper. ORS 227.178(1). *State ex rel. Stewart v. City of Salem*, 251 P.3d 783, 787, 241 Or App 528, 535 (2011).

In sum, even if SWAN had clarified its request in a manner adequate for the Hearings Officer to find the request to constitute a request to hold the record open or a continuation to June 8, 2019, such request would not have been proper. Neither SWAN, nor any participant at the hearing, cites any authority authorizing the Hearings Officer to grant a request to delay implementation of the Hearings Officer’s decision. A delay is inconsistent with “the policy of the Legislative Assembly that time is of the essence in reaching final decisions in matters involving land use and that those decisions be made consistently with sound principles governing judicial review.” ORS 197.805. For any one of these reasons, the Hearings Officer denies SWAN’s requested delay.

During the hearing, Olivia Glantz requested the Staff Report be entered into the Record, and the Hearings Officer granted the request. Prior to the close of the public hearing, the applicant waived the additional 7-day period for additional testimony.

The Staff Report, and Staff presentation stated, observed, noted and alleged the following:

FINDINGS OF FACT AND CONCLUSIONS

1. Salem Area Comprehensive Plan (SACP) designation

Comprehensive Plan Map: The subject property is designated “Single Family Residential” on the Salem Area Comprehensive Plan (SACP) Map.

Urban Growth Policies: The subject property is located inside of the Salem Urban Growth Boundary and inside the corporate city limits.

Growth Management: The subject property is located inside of the Urban Service Area.

2. Zoning and Surrounding Land Use

The subject property is zoned RS (Single Family Residential). The property subject to the validation request, Tax Lot 10400, is vacant. The surrounding properties are zoned and used as follows:

North: RS (Single Family Residential); Dwellings

South: Across Salem Heights Avenue S; RS (Single Family Residential); Dwellings

East: RS (Single Family Residential); Vacant

West: RS (Single Family Residential); Dwellings

3. Existing Site Conditions

The subject property (Tax Lot 10400) is irregular shaped property. Salem Heights Avenue S, a Collector, provides access to the subject property to the south.

4. Neighborhood and Citizen Comments

The subject property is located within the boundaries of Southwest Association of Neighbors (SWAN). Notification was sent to the neighborhood association and surrounding property owners within 250 feet of the property on March 7, 2019. Notice of the proposed application was also posted on the subject property. Notice was removed prior to the hearing, but no participant objected or requested additional time to submit written testimony or a basis for continuing the hearing. SWAN's March 25, 2019, written comment was received into evidence and considered by the Hearings Officer. To the extent the Hearings Officer understands, SWAN's written comments are addressed under the most relevant criterion.

The Hearings Officer agrees with City Staff and adopts the findings in paragraphs 1-4, above.

5. City Department and Public Agency Comments

The Public Works Department, Development Services and City Surveyor staff reviewed the proposal and provided these comments and recommendations for plat approval.

- Survey will review all submitted materials for a final comprehensive review of ORS 92 & SRC at the Final Plat Stage.
- Final Plat Submittal: The application shall provide the required field survey and partition plat as per the statute and code requirements outlined in the Oregon Revised Statutes (ORS) and the Salem Revised Code (SRC). If the said documents are not in compliance with the

requirements outlined in the ORS and the SRC, and as per SRC 205.035, the approval of the partition plat by the City Surveyor may be delayed or held indefinitely based on the non-compliant violation.

- The Building and Safety Division reviewed the proposal and identified no apparent issues.
- The Salem Fire Department reviewed the proposal and indicated that they have no concerns for this land division. Fire Department access shall be maintained to existing structures. Items including fire department access and water supply will be required to comply with the Oregon Fire Code adopted at the time of construction.

6. Public Agency and Private Service Provider Comments

Public agencies and public and private service providers for the subject property were mailed notification of the proposal. The following comment was received:

- PGE – PGE reviewed the proposal and commented that development cost would be per current tariff and service requirements and a 10-foot public utility easement is required on all front street lots.

The Hearings Officer notes the statements in paragraphs 5 and 6 are uncontested and finds the same useful in addressing the criteria below.

7. Criteria for Granting a Validation of Unit of Land

SRC 205.060(d) sets forth the criteria that must be met before a unit of land can be validated. In order to approve a validation of unit of land, the review authority shall make findings based on evidence provided by the applicant demonstrating that all the following criteria and factors are satisfied.

The applicable criteria are stated below in **bold** print. Following each criterion are the findings relative to the proposed tentative partition. The applicant provided justification for all applicable criteria which is included of the staff report as Attachment B.

SRC 205.060(d)(1): The unit of land is not a lawfully established unit of land.

City staff orally and in writing assert that the unit of land subject to the validation request was created in 2002 through a deed recording, which sold Tax Lot 10400 separately and is therefore not a lawfully established unit of land. SWAN also argues the unit of land was not “completed legally.” SWAN

also argues that decisions related to prior land divisions should be reviewed to ensure that partitions related to the original plat are lawful. SWAN does not provide any evidence of or explain how prior partitions apply to this criterion. Without evidence in support of this argument and its relationship to an applicable criterion, the Hearings Officer rejects this undeveloped argument.

This Hearings Officer finds this criterion is met.

SRC 205.060(d)(2): The unit of land was created through sale or deed or land sales contract executed and recorded before January 1, 2007.

City Staff orally and through the staff report assert 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; and that the applicant has provided a copy of the recorded deed creating the subject unit of land through sale as evidence that this criterion is met.

No participant objected to this testimony, challenged whether the Applicant submitted a copy of a recorded deed or challenged whether the deed satisfied this criterion.

On the basis of the Record, as developed through testimony, the Hearings Officer finds this criterion met.

SRC 205.060(d)(3): The unit of land could have complied with applicable criteria for the creation of the unit of land in effect when the unit of land was sold.

City Staff orally and in writing assert that the subject property was entirely zoned Marion County RA (Residential Agriculture) when the land area was created by deed; that the applicant provided Marion County Residential Agriculture Zone, Chapter 129, which was in effect when the land area was created; that the development standards of the Marion County RA zone required a 6,000 square foot lot size with a minimum width of 60-feet; that the subject land area meets those standards; as the Code in effect when the deed was recorded in 2002 could have allowed the parcel as a lawful parcel through a land use determination decision.

No participant objected to or challenged the written evidence or testimony.

Based on the Record, and as developed through testimony, the Hearings Officer finds this criterion is met.

SRC 205.005(d)(4): The plat complies with SRC 205.035 and ORS 92.

City Staff orally and in writing asserted that the applicant submitted a copy of a proposed plat; see Attachment C of the staff report; that the Public Works Department reviewed the proposal and submitted comments describing the procedure and submittal requirements for recording of a final plat and asserting this criterion is or will be satisfied.

No participant objected to or challenged the testimony or evidence. Based on the Record and testimony, the Hearings Officer finds this criterion met.

DECISION

The Hearings 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 property zoned RA (Residential Agriculture) and located at 575 Salem Heights Avenue S.

DATED: April 2, 2019



David E. Coulombe, Hearings Officer