

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.: VUL19-02

APPLICATION NO. : 19-105119-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 1994.

REQUEST: The request is to establish lawfully a land area created in 1994, consisting of tax lot 2400, which by deed sold land south of Kuebler Blvd leaving the land area as a remainder. The sale effectively divided the parent parcel, without a land use approval. The applicant is requesting to validate property known as Marion County Tax Assessor's number 083W12D /2400, located on the 4700 Block of 32nd Avenue SE. The land area is approximately 2.23 acres in size, zoned IC (Industrial Commercial), and located at the 4700 Block of 32nd Avenue SE (Marion County Assessor Map and Tax Lot Numbers: 083W12D /2400).

APPLICANT: Greg Wilson of Barker Surveying for Randy Barna

LOCATION: 4700 Block of 32nd Ave SE

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 VUL19-02 based upon the application materials deemed complete on March 1, 2019 and the findings as presented in this report.

Application Deemed Complete:	<u>March 1, 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 29, 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 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.

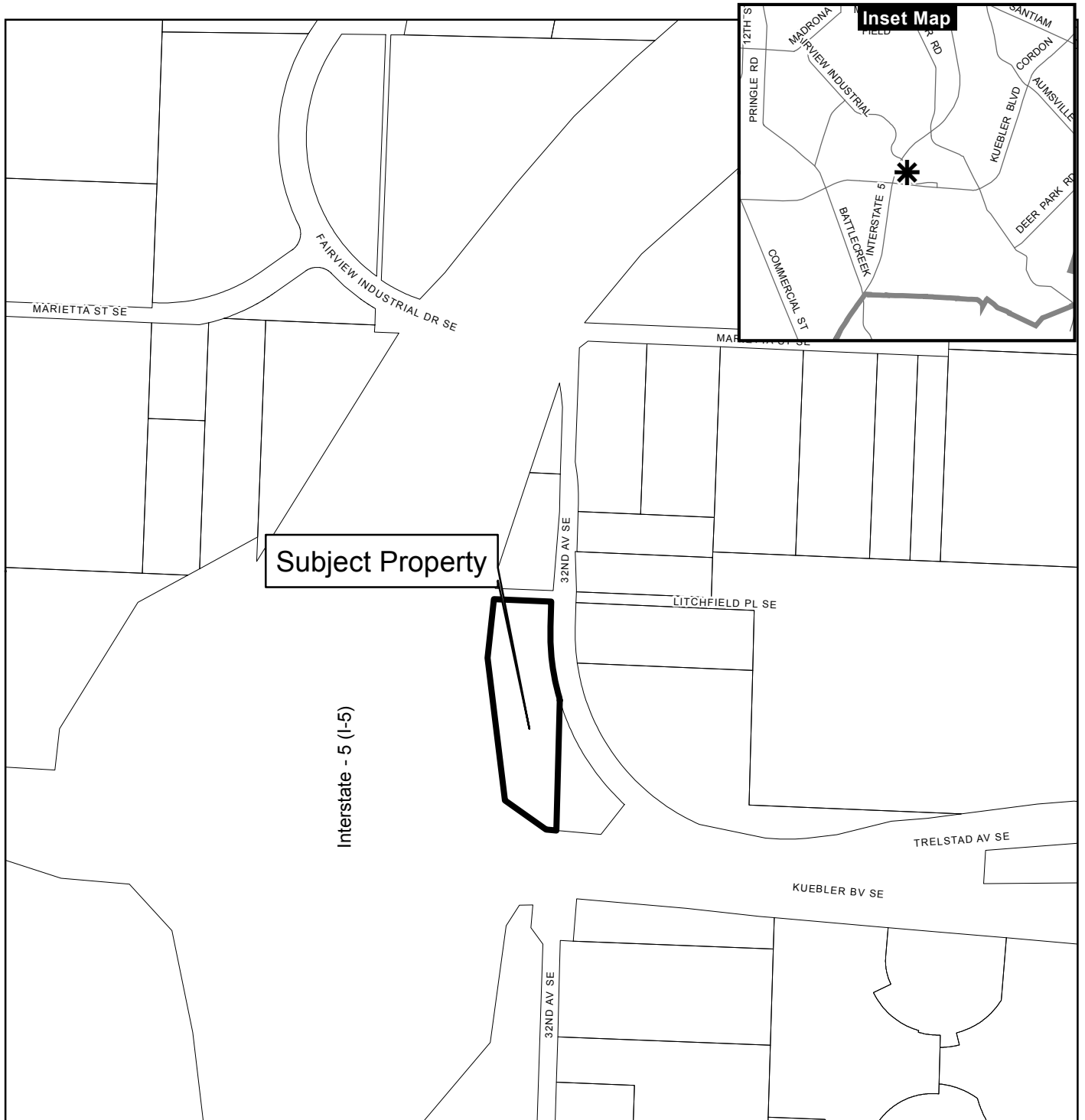
The complete case file, including findings, conclusions and conditions of approval, if any, is available for review at the Planning Division office, Room 305, City Hall, 555 Liberty Street SE, during regular business hours.

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

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Vicinity Map

4700 Block 32nd Avenue SE



Legend

- Taxlots
- Urban Growth Boundary
- City Limits
- Outside Salem City Limits
- Historic District
- Schools

- Parks

CITY OF Salem
AT YOUR SERVICE
Community Development Dept.

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0 100 200 400 Feet



PARTITION PLAT NO. _____

SHEET 1 OF 3

IN THE S.E. 1/4 OF SECTION 12, T. 8 S., R. 3 W., W.M.,
CITY OF SALEM, MARION COUNTY, OREGON
FEBRUARY 8, 2019

SHEET INDEX

SHEET 1	-	OVERALL SURVEY MAP, SURVEY AND DEED REFERENCES, FOUND MONUMENT LIST, LEGEND
SHEET 2	-	DETAILS "A" AND "B", CURVE TABLE
SHEET 3	-	SURVEYOR'S CERTIFICATE, APPROVALS, DECLARATION, ACKNOWLEDGEMENTS, NARRATIVE

LEGEND:

- Found monument within 0.2' of ground surface unless otherwise noted.
- Set 5/8"x30" iron rod with yellow plastic cap flush with ground surface, stamped "WILSON PLS 2687"
- () Record per reference survey noted
- [] Record and Measured per Reference Survey Noted
- MCSR Marion County Survey Records
- MCDR Marion County Deed Records
- R. Reel
- P. Page
- V. Volume
- B.O.T.P. Book of Town Plats
- COS City of Salem

REFERENCE SURVEYS

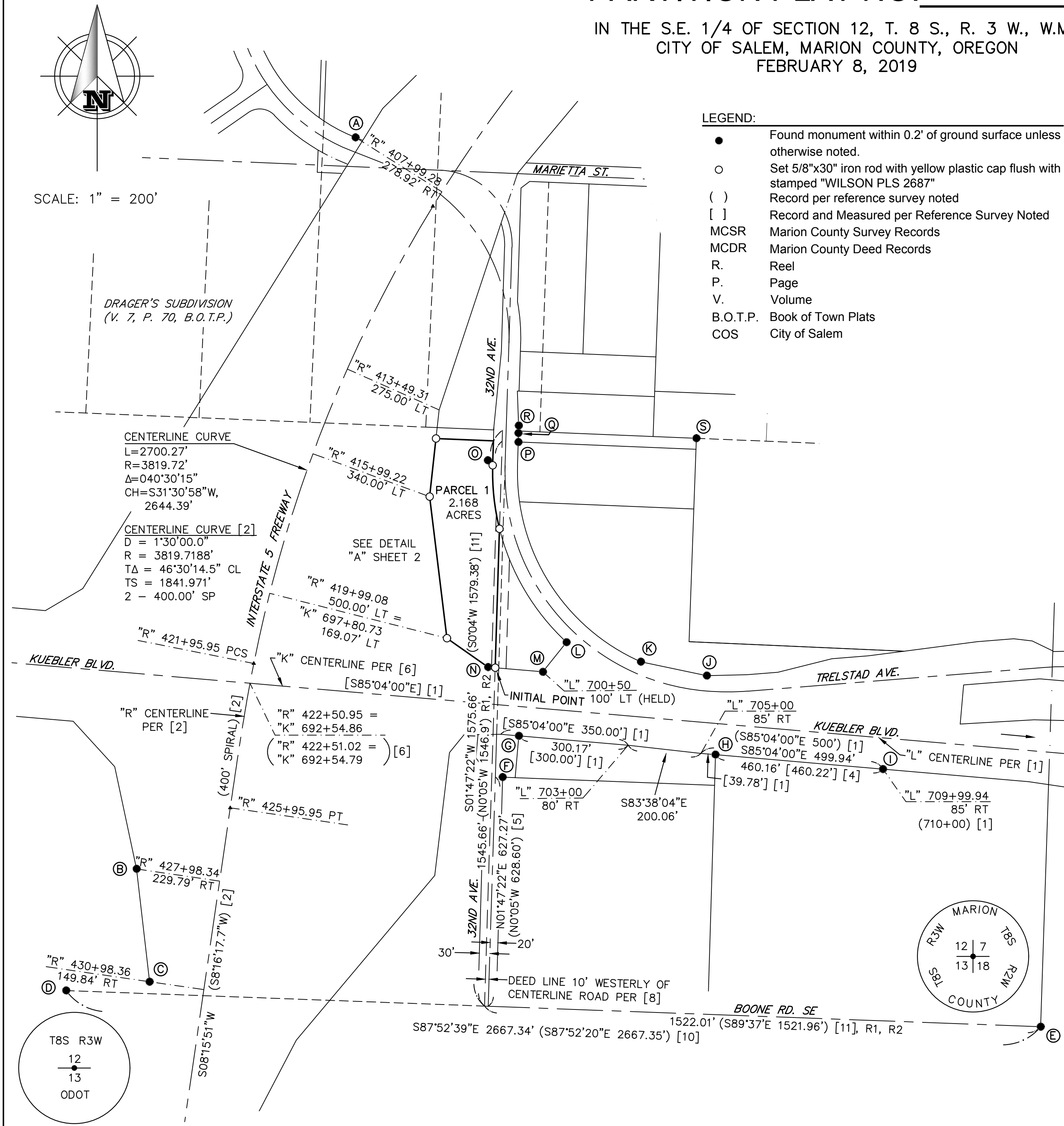
- [1] MCSR 32459
- [2] MCSR 38036
- [3] MCSR 4409C073
- [4] MCSR 37680
- [5] MCSR 19723
- [6] MCSR 38730
- [7] MCSR 36913
- [8] MCSR 16041
- [9] MCSR 34624
- [10] MCSR 38942
- [11] MCSR 5770
- [12] MCSR 16011
- [13] MCSR 35723
- [14] DRAGER'S SUBDIVISION (V. 7, P. 70, B.O.T.P.)
- [15] MCSR 37579

REFERENCE DEEDS

- R1 R. 2859, P. 390, MCDR
- R2 R. 752, P. 99, MCDR
- R3 R. 1198, P. 376, MCDR
- R4 R. 764, P. 180, MCDR
- R5 R. 2659, P. 4, MCDR

FOUND MONUMENT LIST

- (A) 5/8" iron rod (no cap), set in MCSR 35723.
- (B) 5/8" iron rod with yellow plastic cap stamped "LANDMARKERS", set in MCSR 34624.
- (C) 5/8" iron rod with yellow plastic cap stamped "ODOT R/W", set in MCSR 38730.
- (D) 5/8" iron rod with 1-1/2" brass cap, set in MCSR 38942. Held for South 1/4 corner Sec. 12.
- (E) 3" brass disk, "MARION COUNTY", down 1.0' in monument box, set in MCSR 4409C073. Held for Southeast corner Sec. 12.
- (F) 1" iron pipe, down 0.4', set in MCSR 19723.
- (G) 5/8" iron rod with aluminum cap stamped "CITY OF SALEM", set in MCSR 32459.
- (H) 5/8" iron rod with aluminum cap stamped "CITY OF SALEM", set in MCSR 32459.
- (I) 5/8" iron rod with aluminum cap stamped "CITY OF SALEM", set in MCSR 32459.
- (J) 5/8" iron rod with aluminum cap stamped "CITY OF SALEM", set in MCSR 32459.
- (K) 5/8" iron rod with aluminum cap stamped "CITY OF SALEM", set in MCSR 32459.
- (L) 5/8" iron rod with aluminum cap stamped "CITY OF SALEM", set in MCSR 32459.
- (M) PK nail in concrete of fence post, set in MCSR 32459.
- (N) PK nail in concrete of fence post, set in MCSR 32459. Found N05'E 0.04' from calculated position of angle point right of way.
- (O) 5/8" iron rod with yellow plastic cap stamped "OBEC", set in MCSR 37579. Found N12°53'W 0.34' from calculated P.C. right of way.
- (P) 5/8" iron rod with aluminum cap stamped "CITY OF SALEM", set in MCSR 32459. Found 0.06' East of east right of way 32nd Ave.
- (Q) 5/8" iron rod with aluminum cap stamped "CITY OF SALEM", set in MCSR 32459.
- (R) 5/8" iron rod with yellow plastic cap stamped "OBEC", set in MCSR 37579. Found 0.06' East of east right of way 32nd Ave.
- (S) 1/2" iron pipe, set in MCSR 16011.



REGISTERED
PROFESSIONAL
LAND SURVEYOR

PRELIMINARY

OREGON
JULY 19, 1994
GREGORY L. WILSON
2687

EXPIRATION DATE: 6/30/2020



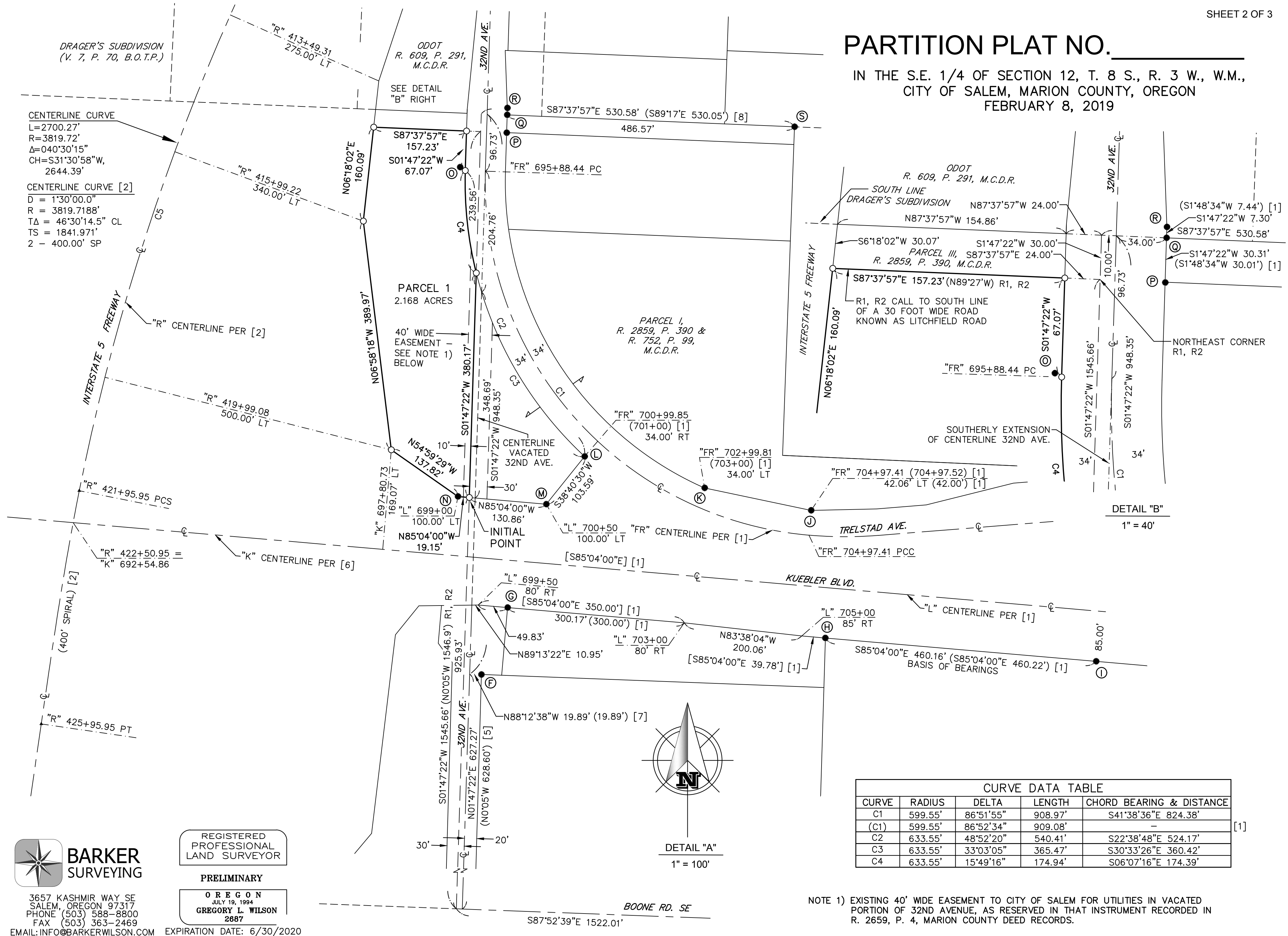
**BARKER
SURVEYING**

3657 KASHMIR WAY SE
SALEM, OREGON 97317
PHONE (503) 588-8800
FAX (503) 363-2469

EMAIL: INFO@BARKERWILSON.COM

PARTITION PLAT NO. _____

IN THE S.E. 1/4 OF SECTION 12, T. 8 S., R. 3 W., W.M.,
CITY OF SALEM, MARION COUNTY, OREGON
FEBRUARY 8, 2019



3657 KASHMIR WAY SE
SALEM, OREGON 97317
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IN THE S.E. 1/4 OF SECTION 12, T. 8 S., R. 3 W., W.M.,
CITY OF SALEM, MARION COUNTY, OREGON
FEBRUARY 8, 2019

SURVEYOR'S CERTIFICATE:

I, Gregory L. Wilson, being first duly sworn, depose and say that I have surveyed and will mark with proper monuments the land represented on the herewith partition map, which is described as follows:

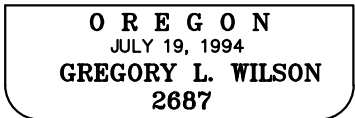
A tract of land situated in the southeast one-quarter of Section 12, Township 8 South, Range 3 West of the Willamette Meridian, in the City of Salem, Marion County, Oregon, more particularly described as follows:

Beginning at the Initial Point of this partition plat, said point being marked with a 5/8-inch iron rod with yellow plastic cap stamped "WILSON PLS 2687" set on the north right of way line of Kuebler Boulevard at a perpendicular distance of 100.00 feet Northerly of the centerline of said boulevard, said point being on the east line of that property described as Parcel II in that instrument recorded in Reel 2859, Page 390, Marion County Deed Records, said point being North 87°52'39" West 1522.01 feet and North 01°47'22" East 925.93 feet from the southeast corner of said Section 12; and running thence:
North 85°04'00" West 19.15 feet along said north right of way to a point 100.00 feet Northerly and opposite Engineer's Centerline Station "L" 699+00;
thence North 54°59'29" West 137.82 feet along said north right of way to a point on the east right of way of Interstate 5 Freeway at a point 500.00 feet Easterly and opposite Engineer's Centerline Station "R" 419+99.08;
thence North 06°58'18" West 389.97 feet along said east right of way to a point 340.00 feet Easterly and opposite Engineer's Centerline Station "R" 415+99.22;
thence North 06°18'02" East 160.09 feet along said east right of way to the north line of the aforementioned Parcel II;
thence South 87°37'57" East 157.23 feet along said north line to a point on the west right of way line of Trelstad Avenue, said point being at a perpendicular distance of 34.00 feet Westerly of the centerline of said avenue;
thence South 01°47'22" West 67.07 feet along said west right of way to a point of curvature;
thence Southeasterly along the arc of a 633.55-foot radius curve to the left (the chord of which bears South 06°07'16" East 174.39 feet) 174.94 feet along said west right of way to a point on the east line of the aforementioned Parcel II;
thence leaving said west right of way line, South 01°47'22" West 380.17 feet along said east line of Parcel II to the Point of Beginning, containing 2.168 acres of land, more or less.

Gregory L. Wilson
Registered Land Surveyor No. 2687
License expires June 30, 2020



PRELIMINARY



EXPIRATION DATE: 6-30-2020



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

THE WITHIN PLAT IS HERBY APPROVED:

Planning Administrator, City of Salem
Planning File VUL-_____
Date _____

City of Salem Surveyor
Date _____

Marion County Assessor
Date _____

Taxes and assessments on the above described property have been paid in full to

Marion County Tax Collector
Date _____

STATE OF OREGON
COUNTY OF MARION

I do hereby certify that the attached Partition Plat No. _____
was received for record on the ____ day of _____, 20____,
at __ o'clock __.m. and recorded in the Book of Partition Plats. Also referenced in Marion
County Deed Records Reel_____, Page_____.

Bill Burgess, Marion County Clerk

By: _____
Deputy County Clerk

Conditions of Approval pertaining to this partition plat have been recorded in
Reel _____, Page _____, Marion County Deed Records.

NARRATIVE

The purpose of this survey is to validate that unlawfully created unit of land described as Parcel II in that instrument recorded in Reel 2859, Page 390, Marion County Deed Records, per City of Salem Planning File No. VUL _____, by means of a partition plat. The owners of the original parent property, recorded in Reel 752, Page 99, Marion County Deed Records, conveyed the southerly portion of said property lying South of the Kuebler Boulevard right of way to Charles H. Grimshaw III, in Reel 1198, Page 376, Marion County Deed Records, thus causing the north portion of said parent property to be unlawfully created. The basis of bearings used for this survey was along the south right of way of Kuebler Boulevard, between monuments H and I per MCSR 32459.

To determine the west and south boundary of the subject property, I first held record offsets from the found monuments along Interstate 5 (per MCSR 38036) and Kuebler Boulevard (per MCSR 32459), with the exception of monument N, to locate the "R" and "L" centerlines, holding monument A for stationing on Interstate 5 and monument M for stationing on Kuebler Boulevard. I then used record station and offsets per said surveys to determine the angle points in the right of ways.

To determine the north line of the subject property, I held monuments Q and S as being on the south line of DRAGER'S SUBDIVISION and offset this line 30 feet Southerly to define the location of what is called out in the subject deed to be the south line of a 30 foot road. This 30 foot strip was acquired by William and Randy Barna in that Judgement, dated August 21st, 2007, entered as Circuit Court Case No. 07C12078 of Marion County, Oregon and recorded in Reel 2856, Page 29, Marion County Records.

To determine the east line of the subject property, I first located the centerline of 32nd Avenue by holding record distance Westerly from monument Q per MCSR 32459 and from monument F per MCSR 36913. I then calculated a tangent curve to match the found City of Salem monuments along Trelstad Avenue to define the "FR" centerline, and offset 34 feet Westerly. The east line of the subject deed was held 10 feet Westerly of the defined centerline of 32nd Avenue, as shown in various surveys along 32nd Avenue. Upon extending the east deed line Southerly to the south line of Section 12, I match record deed distance along the section line to the southeast corner of Section 12 very well.

DECLARATION:

Know all people by these presents that William E. Barna and Faye I. Barna, Trustees of the William E. Barna and Faye I. Barna Joint Revocable Living Trust dated June 16, 2005 and Randy W. Barna, as Tenants in Common, being the owners of the property described in the Surveyor's Certificate herein made and desiring to dispose of the same in a single parcel, have caused the same to be partitioned and surveyed in accordance with the provisions of Chapter 92 of the Oregon Revised Statutes, as shown on the attached map.

In witness whereof we set our hands and seals this ____ day of _____, 20____.

William E. Barna and Faye I. Barna Joint Revocable Living Trust
dated June 16, 2005

By: _____
William E. Barna, Trustee

By: _____
Faye I. Barna, Trustee

Randy W. Barna

STATE OF OREGON
COUNTY OF _____

On this _____ day of _____, 20____, personally appeared the above named
William E. Barna and Faye I. Barna, as Trustees of the William E. Barna and Faye I. Barna
Joint Revocable Living Trust, dated June 16, 2005, and Randy W. Barna, an individual, who
acknowledged the foregoing instrument to be their voluntarily act and deed.

Notary Signature

Notary Public for Oregon (print)

Commission No. _____

My Commission expires _____

**CITY OF SALEM
BEFORE THE HEARINGS OFFICER**

A REQUEST TO VALIDATE PROPERTY	}	VUL19-02
THAT IS APPROXIMATELY 2.23 ACRES IN		
SIZE, ZONED IC (INDUSTRIAL	}	FINDINGS OF FACT, CONCLUSIONS, AND DECISION
COMMERCIAL), AND LOCATED AT THE		
4700 BLOCK OF 32ND AVENUE SE	}	
(MARION COUNTY ASSESSOR MAP AND		
TAX LOT NUMBERS: 083W12D /2400).	}	

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>	None
<u>Proponents:</u>	Randy Barna, Applicant and Greg Wilson, Barker Surveying, 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 1994, consisting of tax lot 2400, which by deed sold land south of Kuebler Blvd leaving the land area as a remainder. The sale effectively divided the parent parcel without a land use approval. The land area is approximately 2.23 acres in size, zoned IC (Industrial Commercial), and located at the 4700 Block of 32nd Avenue SE. Prior to the close of the public hearing, the applicant waived the additional 7-day period for additional testimony.

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, noted, observed and alleged the following:

FINDINGS OF FACT AND CONCLUSIONS

1. Salem Area Comprehensive Plan (SACP) designation

Comprehensive Plan Map: The subject property, is designated “Industrial Commercial” 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 outside of the Urban Service Area.

2. Zoning and Surrounding Land Use

The subject property is zoned IC (Industrial Commercial). The property subject to the validation request, Tax Lot 2400, is undeveloped. The surrounding properties are zoned and used as follows:

North: Across Litchfield Place SE; RA (Residential Agriculture); Vacant

South: Across Kuebler BLVD; Marion County - IG (General Industrial); Industrial development

East: Across 32nd Avenue; IC (Industrial Commercial); Single Family Dwelling

West: Interstate – 5 (I-5)

3. Existing Site Conditions

The subject property (Tax Lot 2400) is irregular shape. Thirty-Second Avenue, a minor arterial, provides access to the subject property from the east.

The overall subject property is sloping, varying in elevation from approximately 268 feet in elevation near the southwest corner to approximately 264 feet in elevation at the northwest corner.

4. Neighborhood and Citizen Comments

The subject property is located within the boundaries of Southeast Mill Creek Association (SEMCA) and adjacent to Morningside Neighborhood Association and South Gateway Neighborhood association. Notification was sent to the neighborhood associations 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. No written comments were received from nether neighborhood association.

The Hearings Officer 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.

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. No comments were received at the time of the staff report and at the public hearing.

The Hearings Officer notes that no participant challenged the statements in paragraphs 5-6, above. The Hearings Officer finds this information useful in considering whether the Application satisfies the applicable criteria.

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 are labeled as Attachment B of the staff report.

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

The Applicant asserts, and staff concurs that the property was annexed into the City of Salem in July 1990. The original parcel of land was bisected by Kuebler Boulevard in 1988, which did not legally divide the property. The unit of land subject to the validation request was created in 1994 through a deed recording, which sold Tax Lot 2401 separately. Therefore, Tax Lot 2400 was not a lawfully established unit of land.

No participant challenged this evidence. On the basis of the Record, as developed through testimony, the Hearings Officer finds this criterion 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.

The Applicant and City Staff 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.

No participant objected to this evidence or testimony, or 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.

The Applicant and City Staff assert that the subject property was entirely zoned RA (Residential Agriculture), when the land area was created by deed. The property was approved for a Comprehensive Plan Change/Zone Change to IC (Industrial Commercial) in 2010. The applicant provided Salem Revised Code Chapter 63, Subdivisions (repealed) and Chapter 145, RA Zone (repealed), which were in effect when the land area was created. The development standards of the RA zone required a minimum 4,000 square foot lot size, 40-foot average lot width 70-foot lot depth dimension, the depth is not more than 300% of the average width and a minimum lot frontage of 16-feet. Tax Lot 2400 has more than: 4,000 square feet of lot area, 40-feet of width, 70-feet of depth and 16-feet of frontage, but the lot depth exceeds the 300% of the lot width. The City was likely to approve a variance for the lot depth to exceed 300% of the lot width due to the dedication of Interstate 5 along the western property line preventing a larger lot width. The City of Salem Ordinance in effect when the deed was recorded in 1994 could have allowed the parcel as a lawful parcel through a land use determination decision.

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

DECISION

The Hearings Officer **GRANTS** the request validate one unit of land that was created through sale rather than through an approved subdivision or partition plat process, for property zoned IC (Industrial Commercial) and located at the 4700 Block of 32nd Avenue SE.

DATED: April 2, 2019.



David E. Coulombe, Hearings Officer