

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

DECISION OF THE PLANNING ADMINISTRATOR

VALIDATION OF UNITS OF LAND CASE NO.: VUL19-08

APPLICATION NO.: 19-118184-LD

NOTICE OF DECISION DATE: JANUARY 21, 2020

SUMMARY: A proposal to validate a unit of land that was created through the recording of a deed in 1994.

REQUEST: An application to validate and lawfully establish a unit of land which was unlawfully created though the recording of a deed in 1994 without receiving the required land use approval. The unit of land is approximately 0.88 acres in size, zoned RA (Residential Agriculture), and located at 4393 Kurth Street S (Marion County Assessor map and tax lot number: 083W09BC / 00700).

APPLICANT: Lee Litvin

LOCATION: 4393 Kurth St S

CRITERIA: Salem Revised Code (SRC) Chapters 205.060(d) – Validation of Unit of Land

FINDINGS: The findings are in the attached Decision dated January 21, 2020.

DECISION: The **Planning Administrator APPROVED** Validation of Units of Land VUL19-08 based upon the application materials deemed complete on November 14, 2019 and the findings as presented in this report.

The rights granted by the attached decision must be exercised, or an extension granted, by February 6, 2022 or this approval shall be null and void.

Application Deemed Complete:	<u>November 14, 2019</u>
Notice of Decision Mailing Date:	<u>January 21, 2020</u>
Decision Effective Date:	<u>February 6, 2020</u>
State Mandate Date:	<u>March 13, 2020</u>

Case Manager: Brandon Pike, bpike@cityofsalem.net, 503-504-2326

This decision is final unless written appeal from an aggrieved party is filed with the City of Salem Planning Division, Room 320, 555 Liberty Street SE, Salem OR 97301, no later than 5:00 p.m., Wednesday, February 5, 2020. 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(s) 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 Hearings

NOTICE OF DECISION

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



Officer will review the appeal at a public hearing. After the hearing, the Hearings Officer 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 320, City Hall, 555 Liberty Street SE, during regular business hours.

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

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**BEFORE THE PLANNING ADMINISTRATOR
OF THE CITY OF SALEM
(VALIDATION OF UNIT OF LAND NO. 19-08)**

*Si necesita ayuda para comprender esta información, por favor llame 503-588-6173.
<http://www.cityofsalem.net/planning>*

**IN THE MATTER OF THE
VALIDATION OF UNIT OF LAND
NO. 19-08;
4393 KURTH STREET SE**

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FINDINGS AND ORDER

JANUARY 21, 2020

REQUEST

A proposal to validate a unit of land that was created through the recording of a deed in 1994.

The request is to validate and lawfully establish a unit of land which was unlawfully created though the recording of a deed in 1994 without receiving the required land use approval. The unit of land is approximately 0.88 acres in size, zoned RA (Residential Agriculture), and located at 4393 Kurth Street S (Marion County Assessor map and tax lot number: 083W09BC / 00700).

DECISION

The tentative plat for a validation of unit of land is APPROVED subject to the applicable standards of the Salem Revised Code and the findings contained herein.

PROCEDURAL FINDINGS

1. On September 3, 2019, Lee Litvin filed a request to validate an existing unit of land that was created through sale rather than through an approved land division process, for property zoned RA (Residential Agriculture), and located at 4393 Kurth Street S (Marion County Assessor map and tax lot number: 083W09BC / 00700) (see **Attachment A**).
2. The application was deemed complete for processing on November 14, 2019. Notice of filing was sent pursuant to Salem Revised Code requirements on November 15, 2019. The state-mandated local decision deadline is March 13, 2020.

APPLICANT'S STATEMENT

A request for a validation of unit of land must be supported by proof that it conforms to all applicable criteria imposed by the Salem Revised Code. The applicant submitted a written statement addressing the applicable approval criteria, which is included as **Attachment B**. Staff utilized the information from the applicant's statement, as well as the pertinent zoning code which was in effect at the time the unit of land was created, to evaluate the applicant's proposal and to compose the facts and findings within the decision.

SUBSTANTIVE FINDINGS

1. Salem Area Comprehensive Plan (SACP) Designation

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

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

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

2. Zoning and Surrounding Land Use

The subject property is zoned RA (Residential Agriculture). The land area subject to the validation request, tax lot 00700, is currently developed with a single-family dwelling and two accessory buildings. The surrounding properties are zoned and used as follows:

North: RS (Single Family Residential); single-family/two-family dwellings

South: Across Cunningham Lane S – RA (Residential Agriculture) and RS (Single Family Residential); single-family/two-family dwellings

East: Across Kurth Street S – RS (Single Family Residential); single-family/two-family dwellings

West: RA (Residential Agriculture); single-family dwellings

3. Existing Site Conditions

The subject land area (tax lot 00700) is rectangular in shape, approximately 168.69 feet in width and 228.12 feet in depth. Cunningham Lane S and Kurth Street S abut the subject land area to the south and east, respectively, which are both classified as Collector streets within the Salem Transportation System Plan (TSP). Access to the property is currently provided by Cunningham Lane S.

4. Neighborhood and Citizen Comments

The subject property is located within the boundaries of the Sunnyslope Neighborhood Association. Notification was sent to the neighborhood association and surrounding property owners and residents within 250 feet of the property on November 15, 2019. Evan White, the land use chair of the neighborhood association, provided a comment stating the Sunnyslope Neighborhood Association has no objections to the proposal. He indicated that the neighborhood association hoped that sidewalks would be required along Cunningham Lane S if the property is developed in the future.

Prior to the end of the comment period, two comments were received from surrounding residents who indicated no objections to the proposal, and one comment was received from a resident who indicated concern about the property being developed in the future and how the surrounding area might be impacted.

Staff Response: This proposal does not include redevelopment of the subject land area. Any future land division or development of the land area will be reviewed in a separate land use application. Depending on the nature of any future proposal, public improvements, such as sidewalks, may be required.

5. City Departments 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.
 - A title report was provided; however, it is not a current report so a new title report no older than 15 days old will be required at the time of the final plat review.
 - 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 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 with the validation of unit of land.

6. Private Agency and 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 during the comment period.

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.¹ In order to approve a validation of unit of land, the review authority shall

¹ Notwithstanding criterion SRC 205.060(d)(3), the Review Authority may approve an application to validate a unit of land that was unlawfully created prior to January 1, 2007, if approval was issued for a permit to allow the construction or placement of a dwelling or other building on the unit of land after the sale. No approval has been issued for such construction on the subject land area.

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 is a response and/or finding relative to the proposed tentative partition. The applicant provided justification for all applicable criteria (**Attachment B**).

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

Finding: The subject land area was annexed into the City of Salem in June of 1964. The unit of land subject to the validation request was created in 1994 by recording of a deed. The City of Salem would have required review and approval to create the subject land area at this time, which the owner(s) at that time did not obtain. Therefore, tax lot 04000 is not a lawfully-established unit of land. 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.

Finding: According to the applicant's written statement and Staff research, the unit of land was created prior to January 1, 2007, by a recorded deed (Reel 1168, Page 783) on May 27, 1994. 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 is 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.

Finding: The applicant provided City of Salem zoning code chapters 63 and 145 which were in effect in 1994 when the unit of land was created. For lots containing single-family dwellings, the development standards of the RA zone required a minimum 4,000-square-foot lot size, a minimum lot width of 40 feet, a minimum lot depth of 70 feet and not more than 300 percent of the average width between the side lot lines. The subject land area meets these standards, with a lot size of approximately 37,840 square feet, a lot width of approximately 168.69 feet, and a lot depth of approximately 228.12 feet.

In 1994, the minimum setback for the existing single-family dwelling to the street-abutting property lines would have been 20 feet to both the east and south property lines. The minimum setback for the single-family dwelling to the rear and interior side property lines would be 14 to the north property line and 3 feet to the west property line. As shown on the tentative validation plat (**Attachment C**), the existing single-story dwelling meets the setback and height requirements in effect at the time.

In 1994, the minimum setback for the accessory buildings to the street-abutting property lines would have been 20 feet to both the east and south property lines. The minimum setback for the accessory buildings to the rear and interior side property lines would be

zero feet to the north property line and five feet to the west property line. As shown on the tentative validation plat (**Attachment C**), the accessory building labeled "BARN" would have met the setback requirements in effect at the time; however, the accessory building labeled "GARAGE" would not meet the minimum setback requirement to the south property line. At the time the subject land area was created, Staff would have likely required the detached garage to be demolished, altered, or would have instructed the owner to seek an adjustment to the setback standard, as the detached garage currently is constructed very near to or even on top of the south property line.

Staff finds that 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. This criterion is met.

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

Finding: The applicant submitted a copy of a proposed plat (Attachment C). The Public Works Department reviewed the proposal and submitted comments describing the procedure and submittal requirements for recording of a final plat.

8. Conclusion

Based upon review of SRC 205.060, the findings contained under Section 7 above, and the comments described, the validation of unit of land complies with the requirements for an affirmative decision. Approval will not adversely affect the safe and healthful development and access to any adjoining lands.

IT IS HEREBY ORDERED

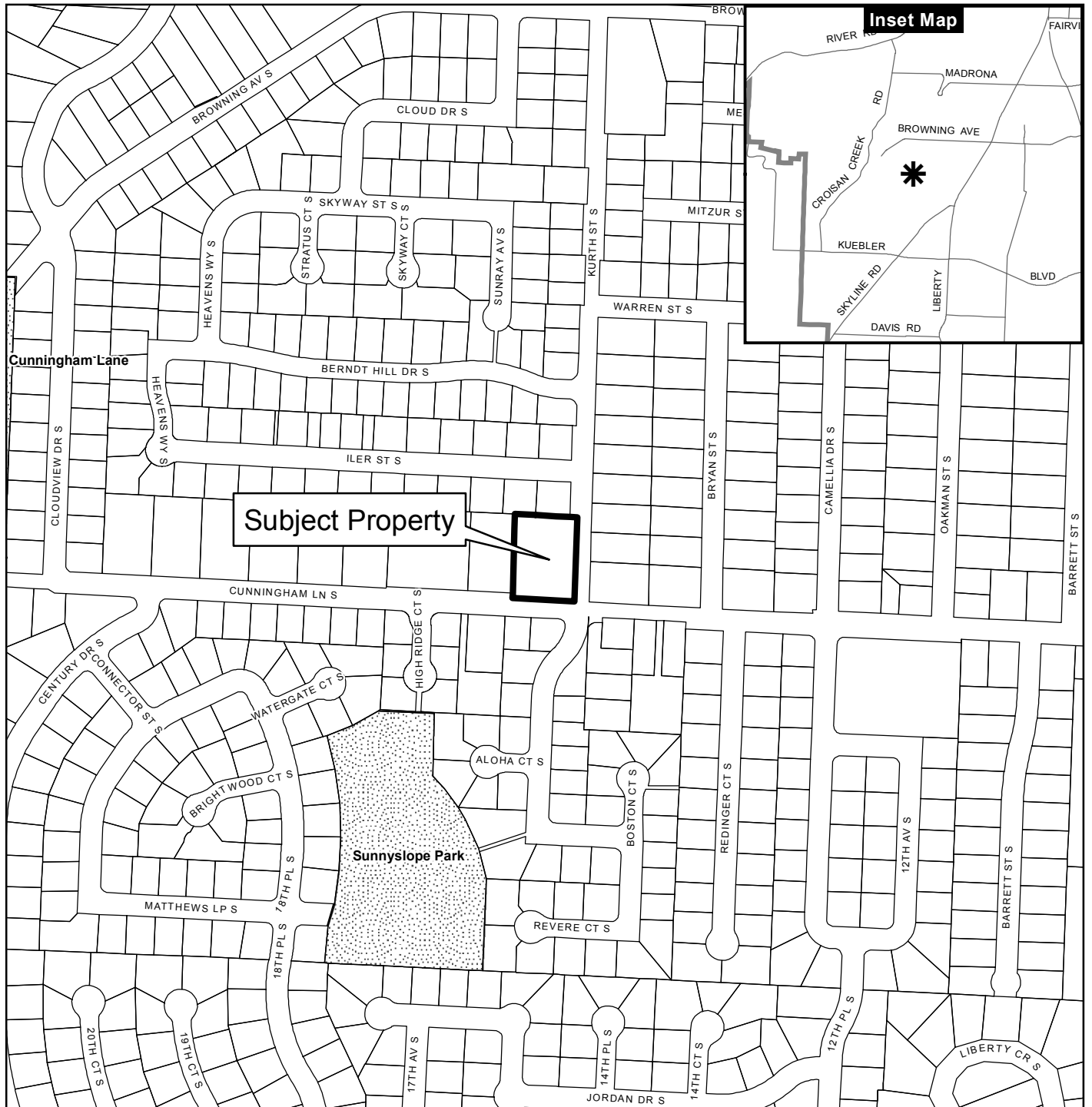
The tentative plat for the Validation of Unit of Land Case No. 19-08, on a unit of land approximately 0.88 acres in size, zoned RA (Residential Agriculture), and located at 4393 Kurth Street S (Marion County Assessor map and tax lot number: 083W09BC / 00700) is hereby **APPROVED** subject to the applicable standards of the Salem Revised Code and the findings contained herein.



Brandon Pike, Planner I, on behalf of
Lisa Anderson-Ogilvie, AICP
Planning Administrator

Attachments: A. Vicinity Map
B. Applicant's Written Statement
C. Applicant's Proposed Validation Plat

Vicinity Map 4393 Kurth Street S



Legend

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

0 100 200 400 Feet



CITY OF Salem
AT YOUR SERVICE
Community Development Dept.

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Lee Litvin
4748 Liberty Road S, Apt 207
Salem, OR 97302

7/22/2019

Re: Written Statement for Validation of Unit of Land

The following information describes how the property at 4393 Kurth St S conforms to the criteria for a Validation of Unit of Land.

- The unit of land is not a lawfully established unit of land.
- The unit of land was created through sale by deed or land sales contract executed and recorded before January 1, 2007. The unit of land was created on May 27, 1994.
- 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. With an adjustment to the lot frontage standards of the time, it could have been created legally.
- The plat complies with SRC 205.035 and ORS 92. Development within the tentative partition plan can be adequately served by City infrastructure

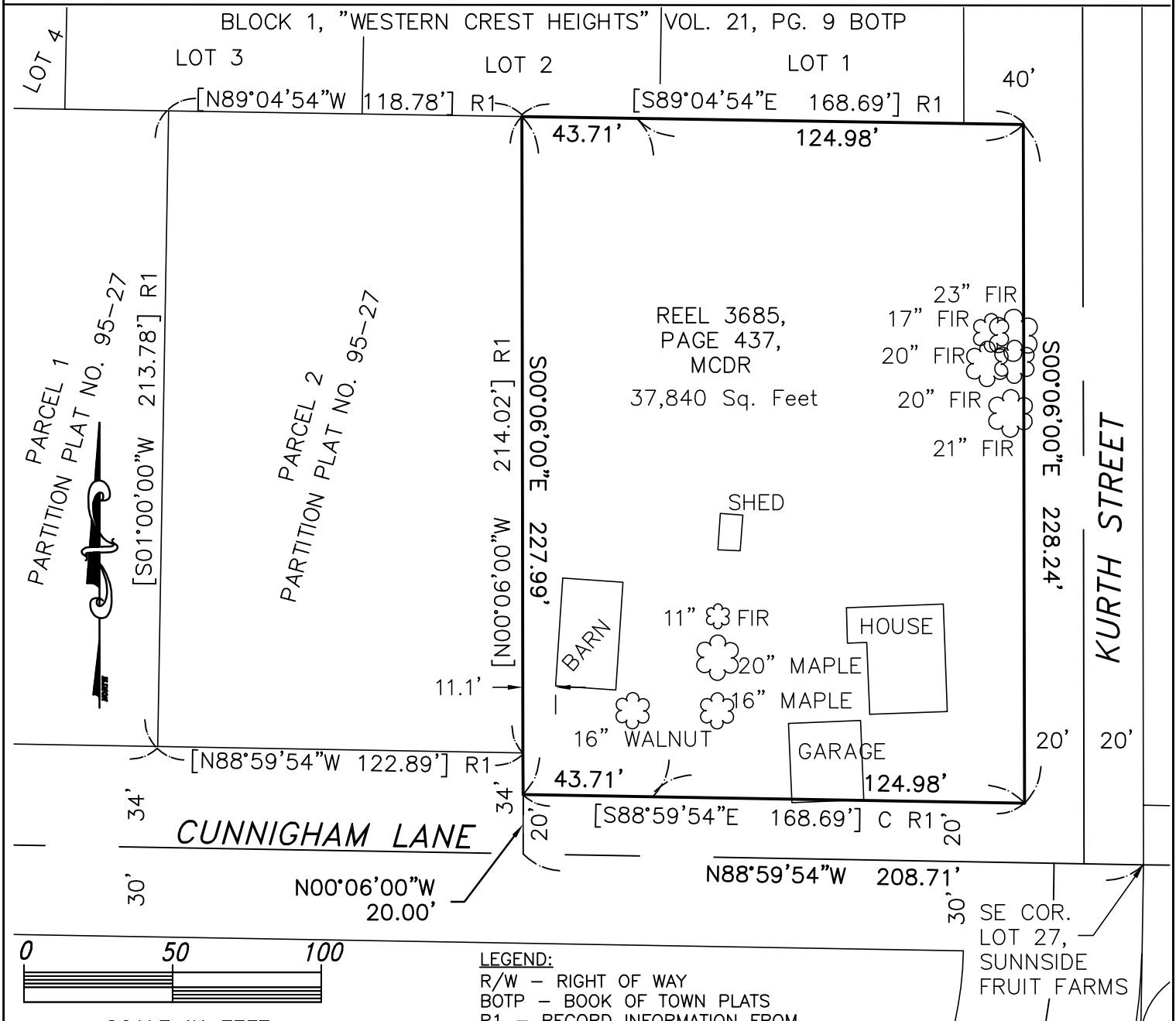
Thank you,

Lee Litvin

PROPOSED LOT VALIDATION

LOCATED IN

THE NORTHWEST QUARTER OF SECTION 9,
TOWNSHIP 8 SOUTH, RANGE 3 WEST, WILLAMETTE MERIDIAN,
CITY OF SALEM, MARION COUNTY, OREGON



SCALE IN FEET
1"=50'

The purpose of this map is to illustrate a lot validation on that tract of land described in Reel 3685, Page 437, Marion County Deed Records. No monuments were set for this map. Basis of Bearing for this project was from Partition Plat No. 95-27

R/W - RIGHT OF WAY
BOTP - BOOK OF TOWN PLATS
R1 - RECORD INFORMATION FROM
PARTITION PLAT NO. 95-27

APPLICANT: LEE AND KAREN LITVIN
PHONE NUMBER 603-714-0888
PROPERTY OWNER: LEE AND KAREN LITVIN
PROPERTY ADDRESS: 4393 KURTH STREET
SALEM, OR 97302

ALL BOUNDARY INFORMATION SHOWN
HEREON IS RECORD INFORMATION FROM
REEL 3685, PAGE 437, MARION COUNTY
DEED RECORDS AND PARTITION PLAT NO,
95-27.

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JANUARY 10, 2006
TROY E. PETERSEN
61408

EXPIRES: 12/31/20

SIGNED: 10/02/19