

TO: HEARINGS OFFICER

**FROM: LISA ANDERSON-OGILVIE, AICP
DEPUTY COMMUNITY DEVELOPMENT DIRECTOR AND PLANNING
ADMINISTRATOR**

**SUBJECT: VALIDATION OF UNIT OF LAND CASE 19-02
4700 BLOCK OF 32ND AVE SE
AMANDA NO. 19-105119-LD**

REQUEST

A proposal to validate one land area that was created through a sale by deed in 1994.

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).

OWNER/APPLICANT: Randy Barna (Barna, Randy W 50% & William E & Faye I Barna JRLT 50%)

REPRESENTATIVE: Greg Wilson, Barker Surveying

RECOMMENDATION

Based on the application and information presented in the staff report, staff recommends that the Hearings Officer adopt the Facts and Findings of the staff report and APPROVE 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 IC (Industrial Commercial) and located at 4700 Block of 32nd Avenue SE.

BACKGROUND/PROPOSAL

The proposal involves a unit of land, Tax Lot 2400, which was unlawfully created through a deed sale in 1994. In 1994, Tax Lot 2401 was sold separately from Tax Lot 2400. Prior to the sale of Tax Lot 2401, this unit of land and Tax Lot 2400 were part of a single parent parcel. The parent parcel included a portion of Interstate-5 (I-5), which was dedicated leaving together 2400 and 2401 as a unit of land. Because the division of the property into two units of land did not receive land use approval for a partition, the individual units of land were not lawfully established.

SRC 205.060 codifies the Oregon Legislative Assembly House Bill 2723 (2007), which

provided authority to Oregon cities and counties to ‘validate’ units of land that were previously created by sale, but where the resulting land division did not comply with applicable law regulating such divisions.

Tax Lot 2401 should not have been sold as a separate unit of land from Tax Lot 2400, the sale created two unauthorized units of land. The validation of unit of land process provided in SRC 205.060 provides a method to correct this error. The single sales transaction which conveyed Tax Lot 2401, which is not part of the subject request for validation,¹ also had the effect of creating the other unit of land, Tax Lot 2400.

On February 12, 2019 Randy Barna filed a request to validate an existing 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 4700 Block of 32nd Avenue SE (Marion County Assessor Map and Tax Lot Numbers: 083W12D /2400).

The application was deemed complete for processing on March 1, 2019. Notice of the public hearing was mailed March 7, 2019. The state-mandated 120-deadline to issue a final local decision in this case is June 29, 2019.

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 such statements and proof, which are included in their entirety as Attachment B to this staff report. Staff utilized the information from the applicant’s statements to evaluate the applicant’s proposal and to compose the facts and findings within the staff report.

FACTS AND FINDINGS

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:

¹ Pursuant to ORS 92.177, the City “shall consider and may approve” an application for validation of unit of land pursuant to ORS 92.176, “notwithstanding that less than all of the owners of the existing lawfully established unit of land have applied for the approval.”

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. As of the date of this staff report, no written comments have been received from nether neighborhood association.

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 have been received at the time of the writing of this staff report.

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.² 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 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 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. 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.

Applicant Statement: It appears that TL 2400 was a remnant when TL 2401 was first separately described in 1994.

Finding: Staff concurs with the applicant's written statement. 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 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

² Notwithstanding criterion SRC 205.060(d)(3), the Hearings Officer 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 Tax Lot 1200.

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. 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.

RECOMMENDATION

Based on the application and information presented in the staff report, staff recommends that the Hearings Officer adopt the Facts and Findings of the staff report and APPROVE 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 IC (Industrial Commercial) and located at the 4700 Block of 32nd Avenue SE (Marion County Assessor Map and Tax Lot Numbers: 083W12D /2400).

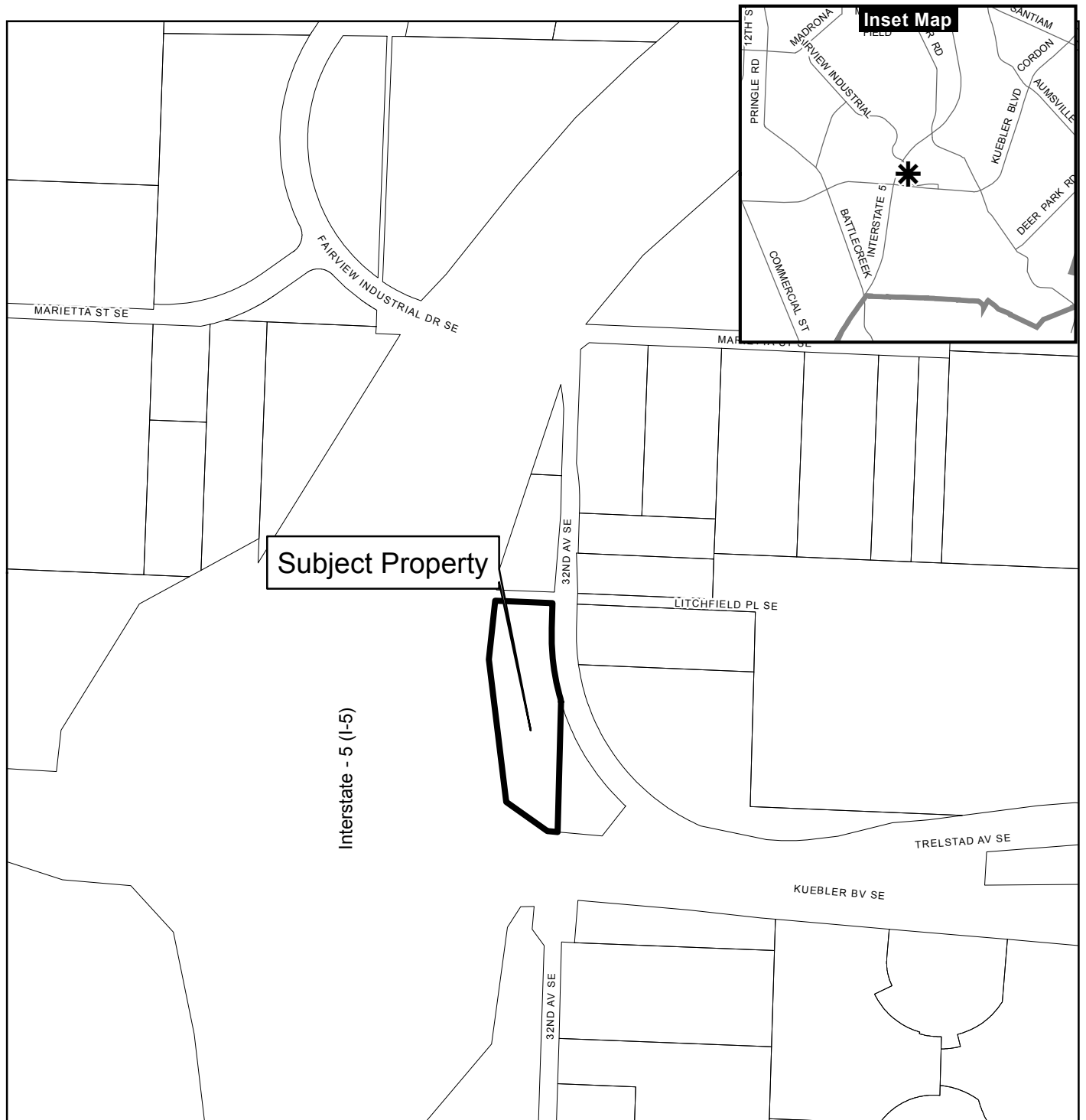
Prepared by Olivia Glantz, Planner III

Application Deemed Complete Date: March 1, 2019
State Mandated Decision Date: June 29, 2019

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

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.

This product is provided as is, without warranty. In no event is the City of Salem liable for damages from the use of this product. This product is subject to license and copyright limitations and further distribution or resale is prohibited.

0 100 200 400 Feet





BARKER SURVEYING

3657 KASHMIR WAY SE SALEM OR 97317-9315

Written Statement

Randy Barna
619 Rockwood Street SE
Salem, OR 97306

It is our intention to validate that property known as Tax Lot 2400 and 2502, Marion County Assessor's Map 08 3W 12DC, located at the 4700 Block of 32nd Avenue SE, Salem, Oregon 97317, by creating a legal unit of land by a single Parcel Partition Plat. The Subject Property is described as Parcel II in that instrument recorded in Reel 2859, Page 390, Marion County Deed Records. 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, on October 13, 1994. Thus causing the north portion of said parent property to be unlawfully created without City of Salem Planning approval.

The unit of land could have complied with applicable criteria for the creation of the unit of land when the unit of land was sold per SRC Chapter 145.

The plat complies with SRC 205.035 as well as ORS 92. The Subject Property is located outside the City's Urban Service area and is not served by City infrastructure. There are two Waterlines running within Trelstad Avenue SE adjacent the subject property, a 36" and 18" size pipes. There is a Sewer Manhole approximately 800' SE of the subject property at the end of an 8" size pipe.

Respectfully submitted,

Gregory L. Wilson
on behalf of
Randy Barna

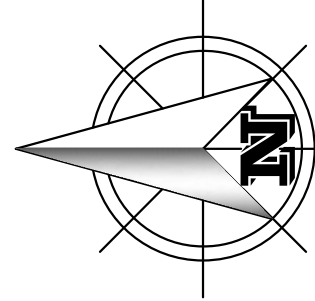
WWW.BARKERWILSON.COM

OFFICE 503-588-8800 FAX 503-363-2469 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

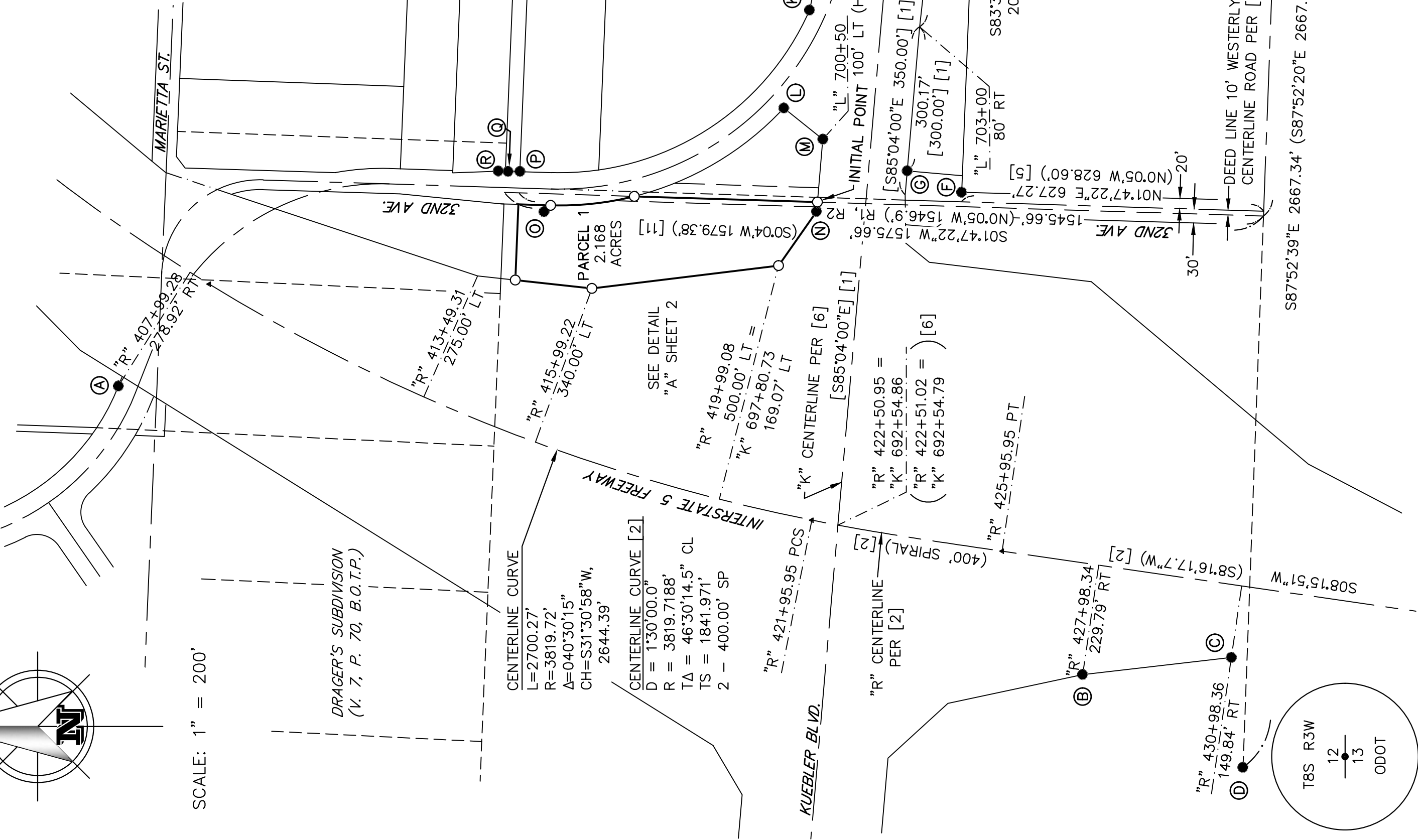
SHEET 1 OF 3



SCALE: 1" = 200'

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



FOUND MONUMENT LIST

- Ⓐ 5/8" iron rod (no cap), set in MCSR 35723.
- Ⓑ 5/8" iron rod with yellow plastic cap stamped "LANDMARKERS", set in MCSR 34624.
- Ⓒ 5/8" iron rod with yellow plastic cap stamped "ODOT RW", set in MCSR 38730.
- Ⓓ 5/8" iron rod with 1-1/2" brass cap, set in MCSR 38942. Held for South 1/4 corner Sec. 12.
- Ⓔ 3" brass disk, "MARION COUNTY", down 1.0' in monument box, set in MCSR 4409C073. Held for Southeast corner Sec. 12.
- Ⓕ 1" iron pipe, down 0.4', set in MCSR 19723.
- Ⓖ 5/8" iron rod with aluminum cap stamped "CITY OF SALEM", set in MCSR 32459.
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- Ⓜ PK nail in concrete of fence post, set in MCSR 32459.
- Ⓝ 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.
- Ⓞ 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.
- Ⓟ 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.
- Ⓠ 5/8" iron rod with aluminum cap stamped "CITY OF SALEM", set in MCSR 32459.
- Ⓡ 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.
- Ⓢ 1/2" iron pipe, set in MCSR 16011.

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

REGISTERED
PROFESSIONAL
LAND SURVEYOR

PRELIMINARY

O R E G O N
JULY 19, 1994
GREGORY L. WILSON
2687

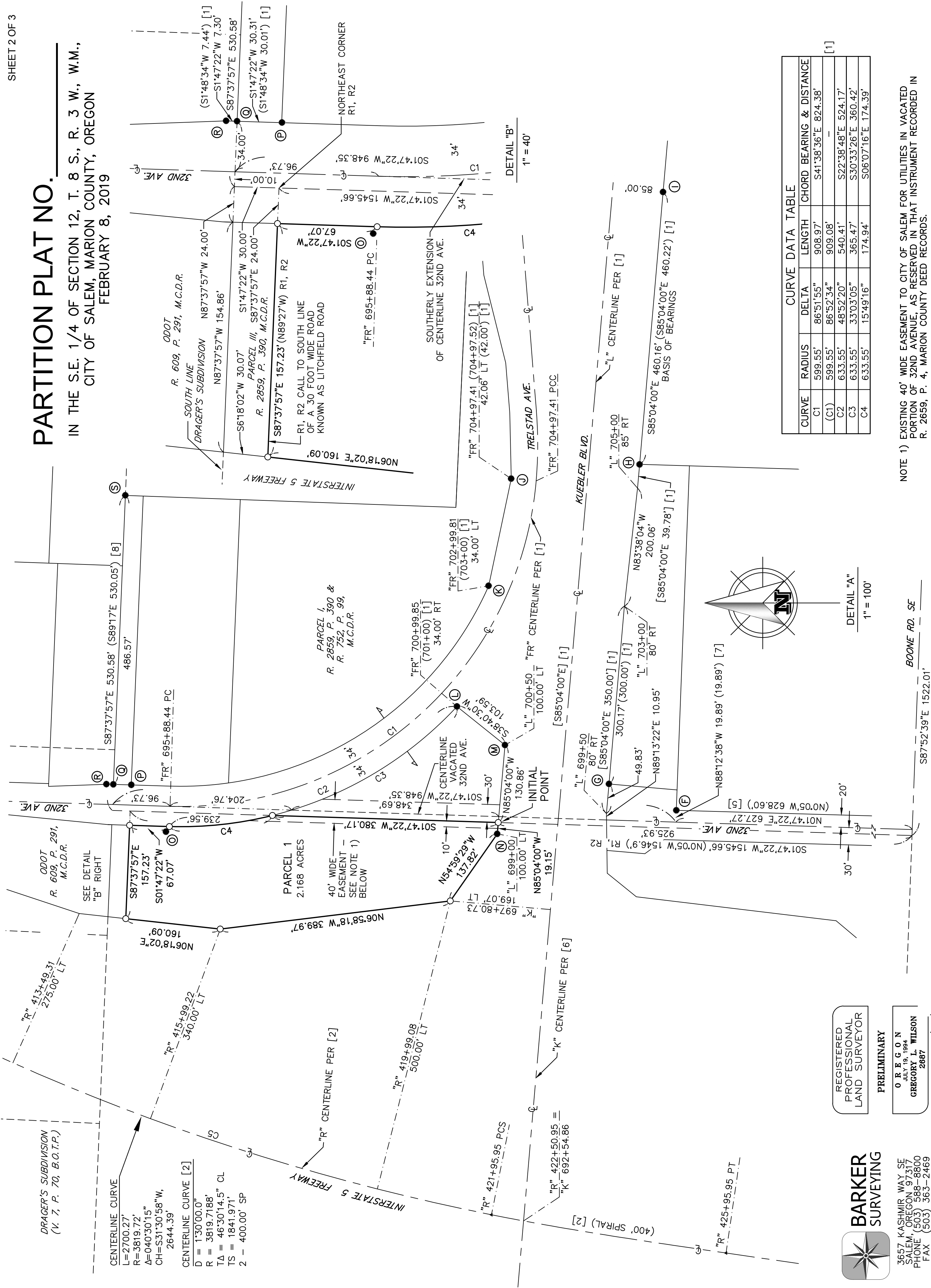


3657 KASHMIR WAY SE
SALEM, OREGON 97317
PHONE (503) 588-8800
FAX (503) 363-2469
EMAIL: INFO@BARKERWILSON.COM

EXPIRATION DATE: 6/30/2020

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



CURVE DATA TABLE			
CURVE	RADIUS	DELTA	CHORD BEARING & DISTANCE
C1	599.55'	86°51'55"	908.97' S41°38'36"E 824.38'
C2	599.55'	86°52'34"	909.08' S22°38'48"E 524.17'
C3	633.55'	48°52'20"	540.41' S30°33'26"E 360.42'
C4	633.55'	33°03'05"	365.47' S06°07'16"E 174.39'

REGISTERED
PROFESSIONAL
LAND SURVEYOR

PRELIMINARY

O R E G O N
JULY 19, 1994
GREGORY L. WILSON
2687



3657 KASHMIR WAY, SE
SALEM, OREGON 97317
PHONE (503) 588-8600
FAX (503) 363-2469
EMAIL: INFO@BARKERWILSON.COM

EXPIRATION DATE: 6/30/2020

BOONE RD. SE

S87°52'39"E 1522.01'

NOTE 1) EXISTING 40' WIDE EASEMENT TO CITY OF SALEM FOR UTILITIES IN VACATED PORTION OF 32ND AVENUE, AS RESERVED IN THAT INSTRUMENT RECORDED IN R. 2659, P. 4, MARION COUNTY DEED RECORDS.

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

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 Treilstad 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

REGISTERED
PROFESSIONAL
LAND SURVEYOR

PRELIMINARY

O R E G O N
JULY 19, 1994
GREGORY L. WILSON
2687

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
SS.

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.

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 _____ SS.

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 _____

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 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 Treilstad 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.