FOR MEETING OF: May 9, 2019

CASE NO.: <u>VUL19-05</u>

TO: HEARINGS OFFICER

FROM: LISA ANDERSON-OGILVIE, AICP

DEPUTY COMMUNITY DEVELOPMENT DIRECTOR AND PLANNING

ADMINISTRATOR

SUBJECT: VALIDATION OF UNIT OF LAND CASE NO. VUL19-05; FOR PROPERTY

LOCATED IN THE 3800 BLOCK OF DOGWOOD DRIVE S

AMANDA APPLICATION NO. 19-106390-LD

REQUEST

An application to validate and lawfully establish a unit of land that was unlawfully created by sale through the recording of a deed in 1983 without receiving required land use approval. The unit of land proposed to be lawfully established though the validation process is approximately 6,269 square feet (0.14 acres) in size, zoned RS (Single Family Residential), and located in the 3800 Block of Dogwood Drive S (Marion County Assessor's Map and Tax Lot Number: 083W04CB04900).

OWNER: Dogwood Heights, LLC

APPLICANT: Dogwood Heights, LLC

REPRESENATIVE: Multi/Tech Engineering, Brandie Dalton

RECOMMENDATION

Based upon the application and information presented in this staff report, and the facts and findings contained herein, staff recommends the Hearings Officer **APPROVE** the request to validate and lawfully establish a unit of land that was unlawfully created by sale through the recording of a deed in 1983 without receiving required land use approval; for property approximately 6,269 square feet (0.14 acres) in size, zoned RS (Single Family Residential), and located in the 3800 Block of Dogwood Drive S (Marion County Assessor's Map and Tax Lot Number: 083W04CB04900).

BACKGROUND/PROPOSAL

The proposal involves a unit of land located in the 3800 Block of Dogwood Drive S (Attachment A), Tax Lot No. 083W04CB04900, which was unlawfully created by sale through the recording of a deed in 1983 without receiving required land use approval.

The subject property represents the remnant western half of the original Lot 3 of Grettie's Subdivision which resulted when the eastern half of Lot 3 (Tax Lot No. 083W04CB04901) was sold off separately in September of 1983 (Warranty Deed - Reel 321, Page 571). In 1983 when the eastern half of Lot 3 was sold it resulted in two properties being created. However, because the property was located within the City and the City's land division ordinance at the that time (SRC Chapter 63) required review and approval of a partition in

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order to lawfully divide a unit of land into up to three separate parcels, the two properties resulting from 1983 sale did not receive the required land use approval and therefore were not created as legal unit of land.

The provisions for validating a unit of land under SRC 205.060 codify 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.

The eastern half of Lot 3 or Grettie's Subdivision should not have been sold as a separate unit of land. As a result, both units of land resulting from the 1983 sale (Tax Lot Nos. 083W04CB04900 & 083W04CB04901) are not lawfully established legal units of land. The validation of unit of land processes established under SRC 205.060 provides a process to correct this error.

On March 1, 2019, Brandie Dalton, of Multi/Tech Engineering, filed a request on behalf of the applicant and property owner, Dogwood Heights LLC, to validate the westernmost of the two properties that were created by sale in 1983 (Tax Lot No. 083W04CB04900). The requested validation only applies to the westernmost property; it does not apply to the easternmost property. In order to establish the easternmost property as a legal unit of land, the owner of that property would need to submit a separate validation request.

On March 29, 2019, the application was deemed complete for processing. Notice of the public hearing was subsequently provided pursuant to SRC requirements on April 19, 2019, and notice was also posted on the subject property by the applicant's representative on April 29, 2019.

The 120-day state-mandated final decision deadline for the application is July 27, 2019.

FACTS AND FINDINGS

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 the Urban Service Area.

2. Zoning

The subject property is zoned RS (Single Family Residential). Zoning of surrounding properties includes:

North: Across Dogwood Drive S, RS (Single Family Residential)

South: RS (Single Family Residential)

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East: RS (Single Family Residential)
West: RS (Single Family Residential)

3. Existing Conditions

The subject property is approximately 6,269 square feet in size with a lot width of approximately 50 feet and a lot depth of approximately 125 feet.

4. Neighborhood Association Comments

The subject property is located within the Southwest Association of Neighbors (SWAN) Neighborhood Association. As of the date of completion of this staff report, no comments have been received from the neighborhood association.

5. Public Comments

Notice of the proposal was mailed to property owners and tenants within 250 feet of the subject property. Notice of public hearing was also posted on the subject property. As of the date of completion of this staff report, no comments have been received from area property owners or tenants.

6. City Department and Public Agency Comments

The Salem Fire Department, Building and Safety Division, and Public Works Department reviewed the proposal and indicated no objections.

7. Public Agency and Private Service Provider Comments

Notice of the proposal was provided to public agencies and to public & private service providers for the subject property. As of the date of completion of this staff report no comments from public agencies or public and private service providers have been received.

8. Criteria for Granting a Validation of Unit of Land

SRC 205.060(d) sets forth the approval criteria which must be met in order for a unit of land to be validated.¹ 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 of the applicable approval criteria are met.

The following subsections are organized with approval criteria shown in **bold italic**, followed by findings evaluating the proposal's conformance with the criteria. Lack of compliance with the following criteria is grounds for denial of the validation, or for the issuance of certain conditions to ensure the criteria are met.

¹ 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

(1) The unit of land is not a lawfully established unit of land.

Finding: The subject property was annexed into the City of Salem in December of 1967, along with other properties in the surrounding area. Based on review of Marion County survey records, the subject property was originally part of Lot 3 of the Grettie's Subdivision plat **(Attachment B)**.

According to deed records provided by the applicant, the subject property was created as a remnant property in September of 1983 as a result of the sale of the eastern half of the original Lot 3 of Grettie's Subdivision (Warranty Deed – Reel 321, Page 571) (Attachment C).

In 1983, when the property was created, the City had a land division ordinance (SRC Chapter 63) that required approval of a partition or subdivision in order divide a property into two or parcels or lots. The subject property, however, never received the requisite partition approval and instead was created through sale by recording of a deed.

Because the subject property was not created through an approved partition, the property is not a lawfully established unit of land. This approval criterion is met.

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

Finding: The written statement provided by the applicant **(Attachment D)** indicates that the subject property was created through a Warranty Deed in 1983.

Staff concurs with the written statement provided by the applicant. Based on deed records provided by the applicant, the subject property was created as a remnant property in September of 1983 as a result of the sale of the eastern half of the original Lot 3 of Grettie's Subdivision (Warranty Deed – Reel 321, Page 571).

Because the warranty deed which created the subject property, and the abutting property to the east, was recorded in 1983, the sale and recording of the deed occurred prior to January 1, 2007. This approval criterion is met.

(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 is currently zoned RS (Single Family Residential). In review of past zoning maps for the property, it was also zoned RS in 1983 at the time the property was created.

When the property was created in September of 1983, the following lot area and dimension standards from the Subdivision Code (SRC Chapter 63) and the RS Zone (SRC Chapter 146) would have applied:

Requirement	Subdivision Code (SRC 63)	RS Zone (SRC 146)
Lot Area	Min. 6,000 ft. ² (but deferred to zone district if different standard established in specific zone)	Min. 4,000 ft. ²
Lot Width	Min. 60 ft. (but deferred to zone district if different standard established in specific zone)	Min. 40 ft.
	Min. 80 ft.	Min. 70 ft.
Lot Depth	Max. 250% of average lot width	Max. 300% of average lot width

Based on the above identified lot standards that would have applied to a partitioning of the property in 1983, the subject property with its approximate 6,269 square-foot lot size, 49.9-foot lot width, and 125-foot lot depth would have complied with the applicable criteria for the creation of the unit of land in effect when the property was created. This approval criterion is met.

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

Finding: The applicant submitted a copy of the proposed plat required to validate the unit of land **(Attachment E)**. The Public Works Department reviewed the proposal and submitted comments indicating that the validation plat appears to meet the minimum platting requirements of SRC 205 and ORS 92.

RECOMMENDATION

Based upon the application and information presented in this staff report, and the facts and findings contained herein, staff recommends the Hearings Officer **APPROVE** the request to validate and lawfully establish a unit of land that was unlawfully created by sale through the recording of a deed in 1983 without receiving required land use approval; for property approximately 6,269 square feet (0.14 acres) in size, zoned RS (Single Family Residential), and located in the 3800 Block of Dogwood Drive S (Marion County Assessor's Map and Tax Lot Number: 083W04CB04900).

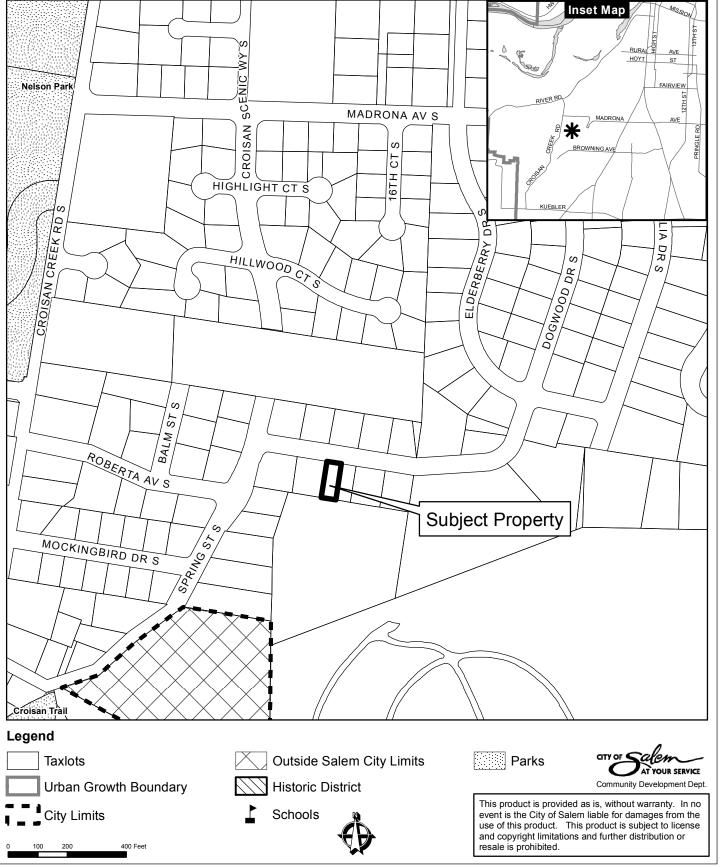
Attachments: A. Vicinity Map

- B. Grettie's Subdivision plat
- C. Warranty Deed Creating Property (Reel 321, Page 571)
- D. Applicant's Written Statement
- E. Proposed Validation Plat

Prepared by Bryce Bishop, Planner II

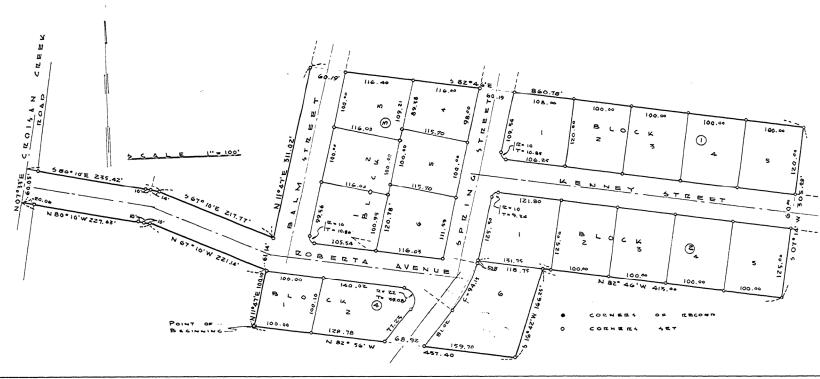
ATTACHMENT A

Vicinity Map 3800 Block of Dogwood Drive S



ATTACHMENT B

FGO O Γ T 8 5 Z MA ON



DEDICATION

KNOW ALL MEN BY THESE PRESENTS: THAY WE ROY S.

GRETTIE AND L. M. GRETTIE HIS WIFE BRING THE
OWNERS OF THE LAND DESCRIBED IN THE SAME IN LOTS
HAVE CAUSED THE SAME TO BE SURVEYED AND PLATTED THE
NAME TO BE KNOWN AS "AGRETTIES" SUBDIVISION"

WE WERERY DEDICATE TO THE PUBLIC USE FOREVER THE STREETS
AS SMOWN ON THE PLAT EBRENON AND WE HERERY CERTIFY
THAT ALL TAXES AND ASSESSMENTS LEVIED AGAINST SAID LAND
HAVE BEEN PAID IN BULL.

IN WITHER WHEREOF WE SET OUR HANDS AND SEALS

ON THIS 8th DAY OF MAIR ION 1956 PRESONALLY CAME
BENDER ME A NOTARY DUBLIC IN AN FOR TAIN COUNTY AND
474TH THE WITHIN NAMED BOY 5. CIEFTE AND L. M CRETTE
HIS WIFE, TO ME PRESONALLY KNOWN TO BE IDENTICAL PERSON
DESCRIPTION IN THE ARROYS DEDICATION AND WID SERVITED
THE SAME FIRELY AND VOLUNTARILY FOR THE USES AND PURPOSES
WITNESS NAMED AND WITHOUT FEAT OF COMPULSION FROM ANYOUS.
WITNESS MY HAND AND SEAL THIS 8th DAY OF COUNTY

Marvin J. Wiser NOTARY MY COMMISSION EXPIRES 9-25-59

CE-RTIFICATE SUREYOR'S

S T A T E O F O R E G O N | ---

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AAID IZON PIPE BEING A34.92 FEET 40UTH 82"50" EAST AND 1,500.50 FERT NORTH

OT AT EAST FROM THE TOUTHWEST CORNER OF THE JOSEPH AMITH D.L.G. IN

TOWNSHIP 8 SOUTH, RANGE 3 WEST OF THE WILLAMETTEE MERIDIAN, MARION

COUNTY, OREGON, AND EUNNING THENCE;

N 11*AT EAST 100.10 PERT TO AN IZON PIPE;

THENCE NORTH 67*10' WEST 221.14 FEET TO AN IZON PIPE;

THENCE NORTH 60*10' WEST 221.14 FEET TO AN IZON PIPE;

THENCE NORTH 100.35' EAST 60.05 FERT ALONG TAID CENTERLINE OF

COITAN CREEK TO AND FROM WHICH POINT AN IZON PIPE BEARS TO A POINT FROM

WHICH AN IZON PIPE BEARS TOUTH 80*10' EAST 20.06 FERT;

THENCE SOUTH 60*10' EAST 275.72' FEET TO AN IZON PIPE;

THENCE SOUTH 60*10' EAST 277.77 FEET TO AN IZON PIPE;

THENCE SOUTH 60*10' EAST 277.77 FEET TO AN IZON PIPE;

THENCE SOUTH 60*10' EAST 277.77 FEET TO AN IZON PIPE ON THE NORTH

GOUNDARY OF THAT TRACT OF LAND COUNTY TO AN IZON PIPE ON THE NORTH

TO AN IZON PIPE;

THENCE NORTH 11*47' EAST 311.02 FEET TO AN IZON PIPE ON THE NORTH

TO AN IZON PIPE;

THENCE NORTH 12*49' EAST 800.76 FEET TO AN IZON PIPE;

THENCE NORTH 12*40' EAST 20.00 FEET TO AN IZON PIPE;

THENCE NORTH 12*40' EAST 800.76 FEET TO AN IZON PIPE;

THENCE NORTH 12*40' EAST 800.76 FEET TO AN IZON PIPE;

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THENCE NORTH 12*40' EAST 166.25 FEET TO AN IZON PIPE;

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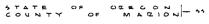
THENCE NORTH 12*50' AT THE FEET TO AN IZON

PAGE 206; THEMCE NORTH BITSS WEST AST.40 FEET ALONG SAID SOUTH OF REGINNING AND CONTAINING 8.35 ACRES OF LAND.

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COMMISSION EXPIRES 12/21/59



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AND R. L. ROGERTS COMMISSIONERS FOR SAID
COUNTY AND STATE DO HELEBY APPROVE THE
PLAT AND DEDICATION SHOWN HEREON WHICH RE
IN DUE AND LEGAL

H.F. Quagalla A 55 E 550 E COUN STIDGE COMMISSIONEZ COM M 155 10 NE 12

N. 6 matter A T T E 5 T COUNTY CLEIK



COUNTY OF AUGUST 1956 AT 12:10 P.M.

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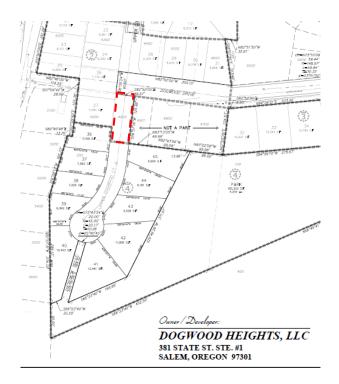
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4 4 L E M OF COMMISSION

ATTACHMENT C

	Z0286 WARRANTY DEED REEL PAGE 321 6 571 (Sielutery Form)	
GRANTOR RICHARD'A REITZB	SERG CONVEYS AND WARRANTS TO	r ds t
		3 1983
	he East 1/2 of Lot 3 Grettle's Subdivision, Marion	
(SUBJECT TO:) Taxes (to be determined, by	for the fiscal year 1983-84, a lien in the amount	
\$3 \ 		
The true and actual consideration for this If granter is a corporation, this has been affixed. DATED: September 12 / 1983	signed by authority of the Board of Directors, with the seal of said corporation	
G	GRANTON TO THE PROPERTY OF THE	
FFATE OF OBLIGHT, COUNTY D. MARTON	400 Dogwood DriverSouth Selem, Oregon 197302	
AGENTALIA ACCUMENTATION OF THE STATE OF THE	STATE OF OREGON	
WARRANTY DEED KREITZBERG TO: GREEN AFTER SPECCOPOLINGERST UNIVERSITY	that the within was received and duly SEP 13 11 40 AM 103 recorded by me EDWIN P. HORNAN 7 HARION COUNTY, CLERK	UEANY UEAN E
Nr. & Mrs. Sidney I. Green 19840 Dogwood Drive South Salem Oregon 197302	BY 32 0EPUYY BE 188	100 March 100 Ma

Validation of Unit of Land March 1, 2019



Criteria SRC 205.060(d)

1. The unit of land is not a lawfully established unit of land;

Findings: The subject property is located in Phase 2 of Dogwood Estates on Dogwood Drive (083W04CB/Tax Lot 4900). It has been determined by staff that the subject property is not a unit of land that was lawfully established. Therefore, in order to lawfully establish the subject property as a legal unit of land, the applicant is requesting a Validation of Unit of Land review and approval.

2. The unit of land was created through sale by deed or land sales contract executed and recorded before January 1, 2007;

Findings: The subject property was created through a Warranty Deed in 1983. The deed is attached and identified as Reel 321 Page 571.

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; and

Findings: Tax Lot 4900 was originally part of Tax Lot 4901 (Lot 3/Block 2 of Grettie's Subdivision) but was created in 1983 per Reel 321 Page 571. This unit of land did comply with the applicable RA criteria of the 1983 zone requirements.

Zone Requirements

Lot Area:

Required: 4,000sq.ft. Existing: 6,269sq.f.t

Lot Width:

Required: 40 feet Existing: 49.90 feet

Lot Depth:

Required: 70 feet Existing: 125.48 feet

The plat complies with SRC 205.035 and ORS 92. Development with the tentative partition plan can be adequately served by City infrastructure.

Findings: The plat has been prepared by a certified Survey and is in compliance with the requirements of SRC 205.035 and ORS 92. See the attached plat. As determined through the subdivision approval process, the subject property as conditioned can be adequately served by City infrastructure.

PARTITION PLAT 2019-____

IN THE NE 1/4 SEC. 4, T. 8 S., R. 3 W., W.M. CITY OF SALEM, MARION COUNTY, OREGON

MULTI/TECH ENGINEERING SERVICES, INC.

1155 13TH ST. S.E. SALEM, OREGON 97302 503-363-9227 **APPROVALS:** NARRATIVE **DECLARATION:** STATE OF OREGON **CITY PLANNING ADMINISTRATOR** DATE THE PURPOSE OF THIS SURVEY IS TO VALIDATE A TRACT OF LAND ORIGINALLY DESCRIBED IN KNOW ALL MEN BY THESE PRESENTS THAT DOGWOOD **COUNTY OF MARION** PARTITION CASE NO. PAR_ ___, P. _____, MARION COUNTY DEED RECORDS. THE BASIS OF BEARING IS ALONG HEIGHTS, LLC., BEING THE OWNER OF THE LAND DESCRIBED THE SOUTH RIGHT OF WAY OF DOGWOOD DRIVE PER GRETTIE'S SUBDIVISION. IN THE SURVEYOR'S CERTIFICATE HEREON, AND DESIRING , 2019, THAT PERSONALLY APPEARED BEFORE DAY OF TO DISPOSE OF THE SAME INTO A PARCEL, HAS CAUSED ME, A NOTARY PUBLIC FOR OREGON, ERIC J. JENSEN, MANAGER OF DOGWOOD I HELD ALL FOUND MONUMENTS TO RETRACE A PORTION OF BLOCK 2 OF GRETTIE'S THE SAME TO BE SURVEYED AND PLATTED. HEIGHTS, LLC., WHO ACKNOWLEDGED THE FOREGOING INSTRUMENT TO BE HIS **CITY OF SALEM SURVEYOR** DATE SUBDIVISION AS SHOWN. THE SURVIVING FRONT LOT CORNERS FIT WELL TO A COMMON VOLUNTARY ACT AND DEED. LINE. THE REAR LOT CORNERS DID NOT FIT A COMMON LINE, SO I HELD EACH ONE AS AN BY: ANGLE POINT. WHERE FRONT LOT CORNERS WERE MISSING, I MADE SIDE LOT LINES PARALLEL TO ADJACENT LOTS WITH INTACT MONUMENTATION. I DIVIDED LOT 3 IN HALF PER MARION COUNTY ASSESSOR DATE NOTARY SIGNATURE ERIC J. JENSEN, MANAGER DOGWOOD HEIGHTS, LLC. SURVEYOR'S CERTIFICATE: TAXES AND ASSESSMENTS ON THE ABOVE DESCRIBED PROPERTY HAVE NOTARY PUBLIC FOR OREGON BEEN PAID IN FULL TO _____ I, ROBERT D. HAMMAN, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COMMISSION NO. OREGON DO HEREBY CERTIFY THAT I HAVE SURVEYED AND MARKED WITH PROPER MONUMENTS THE LAND REPRESENTED ON THE ATTACHED MAP, THE BOUNDARY OF WHICH IS DESCRIBED AS FOLLOWS: MY COMMISSION EXPIRES: REGISTERED MARION COUNTY TAX COLLECTOR DATE **PROFESSIONAL** THE WEST HALF OF LOT 3, BLOCK 2, GRETTIE'S SUBDIVISION AS RECORDED IN VOLUME 18, LAND SURVEYOR PAGE 49, MARION COUNTY BOOK OF TOWN PLATS IN THE NORTHEAST QUARTER OF SECTION 4, TOWNSHIP 8 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, CITY OF SALEM, STATE OF OREGON MARION COUNTY, OREGON AND CONTAINING 6,269 SQUARE FEET, MORE OR LESS. OREGON **COUNTY OF MARION** MULTI/TECH ENGINEERING SERVICES, INC. JULY 13, 2004 ROBERT D. HAMMAN I DO HEREBY CERTIFY THAT THE ATTACHED PARTITION PLAT No. 64202LS WAS RECEIVED FOR RECORDING ON THE DAY OF O'CLOCK M, AND RECORDED IN THE BOOK OF PARTITION PLATS. IT IS EXPIRES: 6-30-2019 ALSO RECORDED IN THE MARION COUNTY DEED RECORDS IN REEL ROBERT D. HAMMAN 1" = 30' **BILL BURGESS, MARION COUNTY CLERK** REGISTERED PROFESSIONAL LAND SURVEYOR NO. 64202LS 01/29/2018 #6427 **NOTES:** DEPUTY COUNTY CLERK ALL MONUMENTS FOUND IN GOOD CONDITION AND WITHIN 0.2' OF THE SURFACE OF THE GROUND UNLESS OTHERWISE NOTED. ■ = FOUND 1/2" IRON PIPE PER GRETTIE'S SUBDIVISION ■ = FOUND 3/4" IRON PIPE PER GRETTIE'S SUBDIVISION BASIS OF BEARING [N82°46'00"W] 511.67' (512.56') ● = FOUND 1" IRON PIPE PER GRETTIE'S SUBDIVISION 99.83' (100.00') O = SET 5/8" X 30" IRON ROD WITH YELLOW PLASTIC 49.90' CAP SCRIBED "MULTI/TECH ENG" 49.90° ★ = CALCULATED POINT 99.89' (100.00') REFERENCE SURVEYS: 1. GRETTIE'S SUBDIVISION, V. 18, P. 49, BOTP 99.88' (100.00') GRETTIE'S SUBDIVISION **REFERENCE DEEDS:** BLOCK 2, LOT 2 D1. R. 321, P. 571, MCDR GRETTIE'S SUBDIVISION BLOCK 2, FRACTION LOT 3 MCSR = MARION COUNTY SURVEY RECORD PARCEL 1 MCDR = MARION COUNTY DEED RECORD **GRETTIE'S SUBDIVISION** 6,269 S.F. BOTP = BOOK OF TOWN PLATS BLOCK 2, LOT 1 = REEL **GRETTIE'S SUBDIVISION** = BOOK BLOCK 2, LOT 4 = VOLUME = PAGE **GRETTIE'S SUBDIVISION** = RECORD AND MEASURED DATA PER GRETTIE'S SUBDIVISION BLOCK 2, LOT 5 = RECORD DATA PER GRETTIE'S SUBDIVISION N82°32'01"W 100.04' (N82°46'00"W 100.00') 49.90' 49.90' N83°07'05"W 99.80' (N82°46'00"W 100.00') **INITIAL POINT** N82°37'56"W 99.68' (N82°46'00"W 100.00') N83°16'08"W 99.88' (N82°46'00"W 100.00') SHEET 1 OF 1