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

REPRESENTATIVE: 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
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)
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. 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.

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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.
**Lot Depth** | Min. 80 ft. | Min. 70 ft.

|  | 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
WARRANTY DEED

GRANTOR: RICHARD A. HEITBERGER

CONVEY AND WARRANTS TO

GRANTEE: 2/12 GREEN and DEBORAH B. GREEN, as tenants by the entirety

The following described real property is conveyed and warranted except as specifically set forth herein:

Lots 5 & 6 and the East 1/2 of Lot 1, Green's Addition, Marine County, Oregon.

SUBJECT TO:

1. Taxes for the fiscal year 1993, at an amount to be determined, but not yet payable.

The true and lawful consideration for this transfer is $115,000.00.

This instrument has been signed by authority of the Board of Directors with the seal of said corporation affixed.

DATED: September 13, 1993

[Signature]

STATE OF OREGON

County of Multnomah

I hereby certify that the within was received and duly recorded by me, in Multnomah County

EDWIN P. HODGSON
Multnomah County Clerk

REEL 20286
PAGE 571

EDWIN P. HODGSON
Multnomah County Clerk

Recorded September 13, 1993

DEPUTY
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.ft

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.