

From: [Margaret Gander-Vo](#)
To: [Paul Kowalczyk](#); [Kyle Kearns](#)
Cc: [Mark D. Shipman](#); [Hannah F. Stevenson](#); [Grant Eldridge](#); [John Shirley](#)
Subject: RE: Salem Heights 21-118379-RP (Class 3 Site Plan Review) & 21-118380-ZO (Class 2 Adjustments)
Date: Thursday, November 18, 2021 4:25:26 PM
Attachments: [image001.png](#)

Thank you, Paul.

It's always helpful to have the City's procedures clarified. We appreciate your time on this file.

Margaret Y. Gander-Vo

Lawyer – Real Estate and Land Use



Park Place, Suite 200 | 250 Church Street SE | Salem, Oregon 97301
tel: 503.485.4271 | fax: 503.371.2927

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From: Paul Kowalczyk <pkowalczyk@cityofsalem.net>
Sent: Monday, November 15, 2021 5:24 PM
To: Margaret Gander-Vo <Margaret@SGLAW.com>; Kyle Kearns <KKearns@cityofsalem.net>
Cc: Mark D. Shipman <MShipman@SGLaw.com>; Hannah F. Stevenson <HStevenson@sglaw.com>; Grant Eldridge <Grant.Eldridge@otak.com>; John Shirley <john@andersonshirley.com>
Subject: RE: Salem Heights 21-118379-RP (Class 3 Site Plan Review) & 21-118380-ZO (Class 2 Adjustments)

Margaret,

I reviewed the deed history provided for Tax Lot 5500 & 5600. I agree, the quitclaim, Volume 708, Page 371, executed December of 1959 is a lawful conveyance of land.

The City recognizes any unit of land created by sale or deed before January 1, 1968, as lawfully created. Subsequently through to October 22, 1979, we view the conveyances to determine if a major/minor partition would have been required to divide the land per the City Ordinance that was in effect at that time. Any unit of land that was created by sale or deed after the 79' date that the City did not approve is not lawfully created.

I agree with the schedule you have you provided. I have altered the order of [ABCF](#) per the exhibit you were referencing so the adjusted properties have common lines.

- 1st 6 Months
 - Serial PLA to consolidate Parcels B & C; BC & F; BCF & A
 - Serial PLA to consolidate Parcels D & E; DE & G; DEG & H
- 2nd 6 Months a single PLA to consolidate ABCF & DEGH

I don't know what properties are directly impacted by the proposed improvements. Please work with Kyle Kearns to see if there is a different order in which these properties might be consolidated to better facilitate the needed construction.

Please feel free to contact me if you have further questions.

Regards,

Paul

Paul M. Kowalczyk, PLS

City Surveyor

City of Salem | Public Works Department

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From: Margaret Gander-Vo <Margaret@SGLAW.com>

Sent: Thursday, November 11, 2021 9:17 AM

To: Kyle Kearns <KKearns@cityofsalem.net>

Cc: Mark D. Shipman <MShipman@SGLaw.com>; Hannah F. Stevenson <HStevenson@sglaw.com>; Grant Eldridge <Grant.Eldridge@otak.com>; John Shirley <john@andersonshirley.com>; Paul Kowalczyk <pkowalczyk@cityofsalem.net>

Subject: Salem Heights 21-118379-RP (Class 3 Site Plan Review) & 21-118380-ZO (Class 2 Adjustments)

Hello Kyle:

I wanted to make sure we are including you on the ongoing conversation we are having with Paul Kowalczyk regarding the analysis of the lots at Salem Heights. Attached is the Legal Lot Review Depiction that Paul created along with the chain of title documents that I reference in my email below. I believe John has already provided you with the remaining deeds that you requested.

Once you have a chance to review these items, please let me know if you have any additional

questions regarding these item as it pertains to your completeness review.

Best Wishes,

Margaret Y. Gander-Vo

Lawyer – Real Estate and Land Use



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From: Margaret Gander-Vo

Sent: Wednesday, November 10, 2021 9:51 AM

To: Paul Kowalczyk <pkowalczyk@cityofsalem.net>

Cc: Mark D. Shipman <MShipman@SGLaw.com>; Hannah F. Stevenson <hstevenson@sglaw.com>

Subject: Salem Heights

Hello Paul:

I have copied you initial analysis regarding Salem Heights Elementary School, below for ease of reference. In response to your analysis we ordered a chain of title for the properties located at 365 Madrona Avenue S (Tax Lots 5500) and 3495 Liberty Road S (Tax Lot 5600). I have attached that chains of title here for your review, but to summarize, the School District initially deeded the larger parcel, TL 5600, to the Branes via WD 515-201 (attached) in August on 1958, as this pre-dates January 1, 1968, this parcel is a valid unit of land.

The 3 foot parcel (TL 5500) is a bit more convoluted. It looks like the attached deed was executed in December of 1959, however, it wasn't recorded until July 29, 1971 at v. 708, p. 371. Based on the language in the deed, it looks like the parties intended this portion of the property to be included in the transaction in WD 515-201 and corrected the error via Quitclaim, as was typical during that time period. As the parcel was conveyed prior to January 1, 1968, this parcel is also a valid unit of land as the conveyance, and not the recordation, is the operable date.

It looks like you have identified October 22, 1979 (rather than the generalized January 1, 1968) as the relevant date for determining whether the lot is valid. I'm not following where that date came from, but if it is the operable date (possibly the date that the Salem Zoning Ordinance was first adopted?), the above should be sufficient to demonstrate that the lots are legal units of land. The subsequent deeds convey the two parcels (TL 5500 and TL 5600) as individual parcels, indicating

there was not a subsequent unauthorized reconfiguration.

Please let me know whether you agree and we will move forward with consolidating these as follows (I'm referring to TL 5500 as "G" and TL 5600 as "H"):

- 1st 6 Months
 - Serial PLA to consolidate Parcels A & B; AB & C; ABC & F
 - Serial PLA to consolidate Parcels D & E; DE & G; DEG & H
- 2nd 6 Months a single PLA to consolidate ABCF & DEGH

Thank you,

Margaret Y. Gander-Vo

Lawyer – Real Estate and Land Use



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Joe,

I reviewed the information that you provided, and my opinion is as follows.

I contacted the Assessor, and Tax Lots 5400, 5500 & 5600 are for tax purposes only and do not represent the current property boundaries. The exhibit that is titled "Deed Lots" on the attached PDF you provided, is an accurate depiction of the properties owned by SKSD. Regarding the consolidation of the properties, a replat is not an option because a replat is the act of platting lots in a recorded subdivision to increase or decrease the number of lots, ORS 92.010(13). At best all the deed properties make up a single Lot, No. 27 of the Ewald Fruit Farm. You would need at least two, to consolidate via replat. Since the property was further divided by deed, over what appears to be 70 years give or take, I believe it would be difficult to ignore that chain of title to go back to a configuration of the property as early as 1904.

Moving forward, I believe the best course to consolidate SKSD properties is via multiple Property Line Adjustments. By my county, that appears to be as many as 7. This process will take approximately 1 year to complete once an approved notice of decision is received by Planning. Salem Revised Code (SRC 205.055(e)) will only allow a property to be affected by a property line adjustment 3 times in a 6 month period. An example of the PLA process is;

- 1st 6 Months

- Serial PLA to consolidate Parcels A, B, C & F
- Serial PLA to consolidate Parcels D, E & that property described in R. 492, P. 10
- 2nd 6 Months a single PLA to consolidate the two resultant properties from the first 6 month session.

The caveat to the suggested approach is that you need to complete the chain of title research for the properties E and those described in R. 492, P. 10 along the west line of the property. The 3 foot wide strip that is described in said reel and page (Tax Lot 5500) is part of the property described in V. 501, P. 747. What needs to be determined is if the 3 foot strip was conveyed before October 22, 1979. If it was, then you may have three distinct pieces of property that are lawfully created. If it was conveyed after said date, then validations of these three pieces of property may be necessary prior to consolidating.

I hope the information provided helps with your path moving forward. When you and your client reach a decision regarding your path moving forward, my recommendation is to schedule a pre-application meeting with Planning to make sure they are on board with your proposed consolidation. Ultimately, they have to approve the land use decision. The advice I have provided is my professional opinion given the information that has been made available to me.

If there is anything else regarding this case that I can be of assistance with, please feel free to contact me.

Regards,

Paul

Paul M. Kowalczyk, PLS

City Surveyor

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