

W.7.D.2

AGENDA COVER MEMORANDUM

Agenda Date: December 15, 2004

DATE: December 2, 2004

TO: Board of County Commissioners

DEPARTMENT: Management Services

PRESENTED BY: Jeff Turk, Property Management Officer 2

SUBJECT: ORDER/IN THE MATTER OF CANCELLATION AND FORFEITURE OF A LAND SALE CONTRACT PURSUANT TO ORS 275.220 AND ORS CHAPTER 93 WITH BILLY JOE AND DOROTHY A. KING FOR THE PURCHASE OF COUNTY OWNED REAL PROPERTY (MAP # 16-04-15-00-00600, 92909 RIVER ROAD, JUNCTION CITY)

1. **PROPOSED MOTION:** THE BOARD OF COUNTY COMMISSIONERS MOVES TO PROCEED WITH CANCELLATION AND FORFEITURE OF A LAND SALE CONTRACT PURSUANT TO ORS 275.220 AND ORS CHAPTER 93 WITH BILLY JOE AND DOROTHY A. KING FOR THE PURCHASE OF COUNTY OWNED REAL PROPERTY (MAP # 16-04-15-00-00600, 92909 RIVER ROAD, JUNCTION CITY)
2. **ISSUE/PROBLEM:** Billy Joe and Dorothy King purchased county owned property pursuant to a land sale contract in October, 1989 (Billy Joe King later quitclaimed his interest in the property to Dorothy King in 1997). The buyers are in default of the terms of the contract as monthly payments are delinquent. Staff is recommending that the contract be canceled so the county can retake possession of the property.
3. **DISCUSSION:**

3.1 Background

The subject parcel was acquired through tax foreclosure in May, 1988. The parcel is 1 acre and zoned E-30, (Exclusive Farm Use). The subject had been used as a private school prior to the foreclosure. It is improved with a 3,000 sq. ft. building that was used as the

schoolhouse which is in fair condition. There are also two out buildings on the property. The assessed value of the property is \$76,000.

The King's purchased the property on a land sale contract for \$45,000 in October, 1989. The file indicates that several sealed bids were submitted with the King's being the highest. The King's were using the property as their residence and as the site of their home based business – King's sewing shop.

The current contract balance is \$34,776. Ms. King has not made monthly payments (\$550) since filing for bankruptcy in November, 2003 (the bankruptcy prevents creditors from taking action until the case is settled). Property taxes, which are the responsibility of Ms. King, have not been paid which are also grounds for default per the contract.

The bankruptcy proceeding was finalized the following February. Ms. King's debt to the county was discharged at that time.

This was the second bankruptcy filed by Ms. King while purchasing the property from the county. A bankruptcy was filed by Ms. King and her husband in 1992. Payments were being made at that time although some payments were missed or late. Ms. King did remit additional sums from time to time in an effort to catch up.

Ms. King has made attempts to sell the property during the contract period. Her attempts were unsuccessful due to the property's EFU zoning. The zoning does not allow outright use of the property for residential purposes. Some permitted uses other than farming activities would be use as a school or use by a religious organization for services and related activities. Ms. King was unable to find a buyer that would be able to use the property and pay a price that would pay off her contract with the county.

Property Management staff did work with Ms. King and the Land Management Division to see if residential use of the property was possible. Replacement rights for an old mobile home that had been on the property was not an option due to the passage of time. A statute which allows residences on EFU parcels less than 3 acres that were created after 1947 did not apply as the parcel was created prior to that time (the parcel was originally created for and donated to the local school district). High value soils prevented rezoning to Marginal Lands. Ms. King also contacted her State representatives to seek a remedy but was not successful.

Discussions with Ms. King resulted in mutual agreement to formally cancel the contract, have the county retake possession of the property and Ms. King to vacate. Initially, it was agreed that Ms. King would execute a "deed in lieu of foreclosure" to the county thereby avoiding a judicial foreclosure or forfeiture process which takes additional time and expense.

Upon review of the deed in lieu of foreclosure by Ms. King and her attorney, Ms. King was advised not to execute the deed as doing so may cause a taxable event. Ms. King agreed not to contest foreclosure proceedings and to vacate the premises when the county completed the proceedings .

3.2 Analysis

Contract forfeiture pursuant to ORS chapter 93 requires first mailing a notice of default to the purchaser and recording an affidavit of such mailing in the deed records. A default notice was mailed to Ms. King and an affidavit of the mailing was recorded on September 3, 2004. If the default is not cured within 60 days the county can then record an affidavit stating that the default has not been cured and the contract has been forfeited.

Cancellation of the contract pursuant to ORS 275.220 requires an Order declaring a breach of the contract has occurred and that the contract is canceled. A certified copy of the Order then needs to be served to the purchaser in the same manner as a summons is served by the Sheriff. The purchaser then has 20 days to appeal the Order with the Circuit Court. If the appeal is not made within the 20 day period the Order canceling the contract becomes final.

After discussions with a title company, proceeding with both forfeiture pursuant to ORS chapter 93 and cancellation per ORS 275.220 was deemed preferable to insure recognition of the cancellation by title companies in the future.

ORS 275.220 also provides for entering into a new agreement with the purchaser if desired.

3.3 Alternatives/Options

1. Approve proceeding with the forfeiture and cancellation as presented.
2. Proceed with cancellation of the contract and negotiate a new agreement with Ms. King.

3.4 Recommendation

It is recommended that the county proceed with forfeiture and cancellation of the contract with Ms. King.

3.5 Timing

None.

4. **IMPLEMENTATION/FOLLOW-UP:** Upon approval by the Board, a certified copy of the cancellation order will be served to Ms. King. If appeal of the order is not made to the circuit court within 20 days, the affidavit of forfeiture and the order canceling the contract will be recorded in the deed records and the county will retake possession of the property.
5. **ATTACHMENTS:**
 - Board Order
 - Affidavit of Mailed Notice of Default
 - Plat Map

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. IN THE MATTER OF CANCELLATION AND FORFEITURE OF A LAND
SALE CONTRACT PURSUANT TO ORS 275.220 AND ORS CHAPTER 93
WITH BILLY JOE AND DOROTHY A. KING FOR THE PURCHASE OF
COUNTY OWNED REAL PROPERTY (MAP # 16-04-15-00-00600, 92909
RIVER ROAD, JUNCTION CITY

WHEREAS Lane County entered into a land sale contract with Billy Joe and Dorothy A. King for the purchase of county owned real property acquired through tax foreclosure with said contract recorded on Reel 1600, Reception No. 8948695 in the Deed Records of Lane County and

WHEREAS Billy Joe and Dorothy A. King are in default of the terms of said contract due to their failure to make the required monthly payments and failure to pay property taxes when due and

WHEREAS the commissioners of Lane County have deemed it to be in the best interest of Lane County to cancel said contract and retake possession of said real property

IT IS HEREBY ORDERED that, pursuant to ORS 275.225, and ORS Chapter 93, that certain land sale contract as recorded on Reel 1600, Reception No. 8948695 in the Deed Records of Lane County between Lane County as seller and Billy Joe and Dorothy A. King as purchasers for the purchase of county owned real property identified as Assessor's map # 16-04-15-00-00600 has been breached and that said contract be canceled and the interest of the buyers otherwise forfeited

IT IS FURTHER ORDERED that the County Administrator, the County Counsel's office and Property Management Officer are authorized to effect said cancellation and

IT IS FURTHER ORDERED, that this Order shall be entered into the records of the Board of Commissioners of the County.

DATED this _____ day of _____, 2004.

Bobby Green, Chair, Board of County Commissioners

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After recording return to:

Marc Kardell
Lane County Office of Legal Counsel
125 E. 8th Avenue
Eugene OR 97401

Division of Chief Deputy Clerk
Lane County Deeds and Records

2004-069612



\$31.00

00521107200400596120030035

09/03/2004 10:17:14 AM

RPR-AFFDEF Cnt=1 Stn=1 CASHIER 05
\$11.00 \$20.00

AFFIDAVIT OF MAILING NOTICE OF DEFAULT

STATE OF OREGON)
) ss.:
County of Lane)

I, Marc Kardell, under oath, state as follows:

1. Attached as Exhibit A is a true and correct copy of the Notice of Default pertaining to the contract described therein (Contract).
2. The Contract contains a "forfeiture remedy" as defined in ORS 93.905(2).
3. The Notice of Default was mailed by both first-class and by certified mail with return receipt requested to the following person at the last known address indicated.

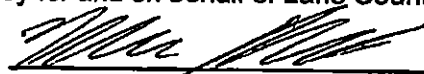
Dorothy A. King
92909 River Road
Junction City OR 97448

Area Director
c/o Technical Support Unit
915 Second Avenue, M/S W 245
Seattle WA 98174

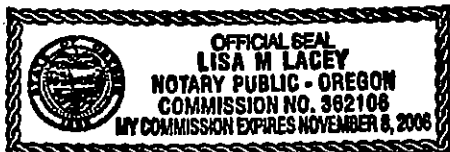
State of Oregon
Department of Revenue
955 Center Street NE
Salem OR 97301

4. Attached as Exhibit B is a copy of the Certified Mail Receipt for each of the addresses named in item 3 above.

5. I make this affidavit as attorney for and on behalf of Lane County, Oregon.


MARC KARDELL, OSB #82464
Attorney for Seller – Lane County, Oregon

SUBSCRIBED AND SWORN TO before me on 2 September, 2004 by Marc Kardell.




Notary Public for Oregon
My commission expires:

