

W. 9. C. 3.

AGENDA COVER MEMORANDUM

Agenda Date: November 30, 2005

DATE: November 16, 2005

TO: Board of County Commissioners

DEPARTMENT: Management Services

PRESENTED BY: Jeff Turk, Property Management Officer 2

SUBJECT: ORDER/IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AN OPTION TO PURCHASE AGREEMENT WITH JIMMIE L. AND BRENDA C. SMITH FOR THE SALE OF COUNTY OWNED REAL PROPERTY IDENTIFIED AS MAP NO. 21-04-01-00-02100 (ADJACENT TO 30826 KENADY LANE, COTTAGE GROVE)

1. **PROPOSED MOTION:** THE BOARD OF COUNTY COMMISSIONERS MOVES TO AUTHORIZE THE COUNTY ADMINISTRATOR TO EXECUTE AN OPTION TO PURCHASE AGREEMENT WITH JIMMIE L. AND BRENDA C. SMITH FOR THE SALE OF COUNTY OWNED REAL PROPERTY IDENTIFIED AS MAP NO. 21-04-01-00-02100 (ADJACENT TO 30826 KENADY LANE, COTTAGE GROVE)
2. **ISSUE/PROBLEM:** Mr. & Mrs. Smith wish to acquire a purchase option for the subject property to allow them time to assess the feasibility of doing a lot line adjustment with adjoining property they own (tax lot 2104) and the possibility of creating a developable parcel. The proposed terms of the option agreement are a sale price of \$7,000 for the property, a 120 day option period with the ability to extend an additional 60 days with and a cost of \$200 for the option. The purchase would be for cash upon exercise of the purchase option.

3. **DISCUSSION:**

- 3.1 Background

The subject parcel was acquired through tax foreclosure in 1986. The parcel is approximately .07 acres (narrow strip), is zoned RR5 and does not have legal access. The property has a current assessed value of \$610. Under current land use regulations, the property cannot be developed with a dwelling.

The subject property is the remainder of what was once a 30 acre parcel that has had portions of it sold over many years. Given the initial size of the property, the number of times a portion of it has been sold (12 times) and the now small remainder (.07 acres, 3,000 sq. ft.) it is quite possible that errors in legal descriptions or mapping have occurred and the subject property may not truly exist. A survey would be required to determine this.

Property Management staff did contact the other adjoining owners to inform them of the Smiths' interest and to provide them an opportunity to purchase the property as well. None of the other adjoiners were interested in purchasing the property.

3.2 Analysis

With the assumption that the subject property does exist, it may provide an opportunity for an adjoining property owner to create an additional buildable parcel. Land use regulations do provide for moving lot lines between two legally created parcels. The Smith's property is 1.5 acres. By adjusting the lot lines between the Smith's parcel and the county's (.07 acres) both parcels could be reconfigured to each contain .8 acres which may provide sufficient area to build a dwelling on each (there is a manufactured dwelling on the Smith's property).

The lot line adjustment process is not simple, requires a significant outlay of financial resources (\$2,000 - \$10,000) and there is no guarantee that the reconfigured lots will be buildable.

The process for this instance would first require a legal lot determination by the Land Management Division (\$700 - \$1,200). A survey may also be required during this process to determine if the parcel actually exists on the ground. If it was determined that the subject parcel is a lot of record then a lot line adjustment would be applied for (\$500 excluding survey to monument the new lot lines). If the lot line adjustment were approved, then building permits could be applied for (septic approval and a potable water source would be required). These processes would be done at the time and expense of the Smiths.

The Option/Sale Agreement would occur pursuant to ORS 275.225. The statute provides for selling county property at private sale, without first being offered at a Sheriff's sale, provided the property is assessed under \$5,000 and is not suitable for the placement of a dwelling under current land use regulations. Additionally, the county may publish notice of the sale with any action by the Board to occur not less than 15 days after publication. A notice was published in the "Register-Guard" on October 21, 2005.

ORS 275.225 has been interpreted previously by the county to allow sales of property that technically meet the statute's requirements but sell for more than \$5,000 due to circumstances not addressed by the statute. Such circumstances include situations as the one addressed in this memo, parcels where the timber value exceeds \$5,000 or parcels that have been bid up by adjoining property owners who each want the parcel.

3.3 Alternatives/Options

1. Approve entering into the option agreement as described.
2. Reject the Smith's offer and direct staff to continue negotiations for terms which would be acceptable to the Board.
3. Sell the property with a deed restriction preventing it from being used for a lot line adjustment as noted above (this would reduce the sale value to approximately \$500).
4. Offer the property at a future Sheriff's sale.

3.4 Recommendation

It is recommended that alternative 1 be pursued with authority to execute the agreement delegated to the County Administrator. It is also recommended that the Board Order include provisions for execution of the Quitclaim Deed by the Board should the purchase option be exercised, thus expediting the sale, and that the Property Management Officer be authorized to execute closing documents should an escrow agent be used to close the transaction.

3.5 Timing None.

4. **IMPLEMENTATION/FOLLOW-UP:** Upon approval by the Board of County Commissioners, the County Administrator will execute the option agreement.
5. **ATTACHMENTS:**
Board Order
Option Agreement
Plat Map

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

IN THE MATTER OF AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE AN OPTION TO PURCHASE AGREEMENT WITH JIMMIE L. AND BRENDA C. SMITH FOR THE SALE OF COUNTY OWNED REAL PROPERTY IDENTIFIED AS MAP NO. 21-04-01-00-02100 (ADJACENT TO 30826 KENADY LANE, COTTAGE GROVE)

WHEREAS this matter now coming before the Lane County Board of Commissioners and said Board deeming it in the best interest of Lane County to sell the following real property which was acquired through tax foreclosure, to wit:

See Attached Exhibit "A"

WHEREAS said real property is owned by Lane County and not in use for County purposes, and sale of said property would benefit Lane County by its return to the tax roll, and

WHEREAS said real property is assessed under \$5,000 on the most recent tax roll and is unsuited for the placement of a dwelling under current land use regulations and

WHEREAS notice of the County's intent to sell said real property was published on October 21, 2005 in the Eugene Register-Guard and sale of said real property shall occur 15 days after publication of said notice and

WHEREAS, Jimmie L. and Brenda C. Smith have offered to enter into a purchase option agreement to provide them an opportunity to investigate said real property

IT IS HEREBY ORDERED that pursuant to ORS 275.225 and ORS 275.275, the County Administrator is authorized to execute an Option to Purchase agreement with Jimmie L. and Brenda C. Smith substantially similar to attached exhibit "B", that the Board shall execute the Quitclaim Deed should the purchase option be exercised and that the Property Management Officer is authorized to execute closing documents.

IT IS FURTHER ORDERED that the proceeds from the sale of the purchase option be disbursed through Foreclosure Fund account, 228-5570270-44411 and that the proceeds from the sale of the property should the purchase option be exercised be disbursed as follows:

Foreclosure Fund	(228-5570270-44441)	\$ 6,800.00
General Fund	(124-5570260-43370)	200.00

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 _____, 2005.

Anna Morrison, Chair, Board of County Commissioners

APPROVED AS TO FORM

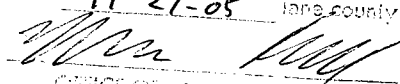
Date 11-21-05 lane county

OFFICE OF CLERK, JOURNAL

EXHIBIT "A"

OLD NUMBER		TAX LOT NO. 2100		SECTION 1	TOWNSHIP 21 S.	RANGE 4 W. W.	
MAP NO. 21-04-01		ACCOUNT NUMBER		DEED RECORD			
INDENT EACH NEW COURSE TO THIS POINT		LEGAL DESCRIPTION		DATE OF ENTRY	DEED NUMBER	ACRES REMAINING	
		Page 4		1969	R418/48247		
				1987	R418/48246		
					R1432/8648674		
		Beginning at a point on the South line of Section 1, Township 21 South, Range 4 West 11.12 chains East of the Southwest corner of the Southeast 1/4 of the Southwest 1/4 of said Section 1, thence West along Section line 11.12 chains to the Southwest corner of the Southeast 1/4 of the Southwest 1/4 of Section 1, Township 21 South, Range 4 West of the Willamette Meridian; thence North a distance of 24.57 chains; thence North 86° 20' East a distance of 144.00 feet; thence North to the centerline of the County Road; thence South 37° 30' East along the County Road to a point North of the Point of Beginning; thence South to the Point of Beginning in Lane County, Oregon					
		EXCEPTING therefrom the following:					
		Beginning at a point which bears East a distance of 11.12 chains and North a distance of 9.26 chains of the Southwest corner of the Southeast 1/4 of the Southwest 1/4 of Section 1, Township 21 South, Range 4 West of the Willamette Meridian, being a stone 9" in diameter, scribed County Survey; thence run					
		N 86° 00' W 3.6 chains; thence turn					
		N 36° 00' W 4.92 chains; thence turn					
		N 59° 30' E 6.88 chains; thence turn					
		and run					
		S 37° 30" E 1.51 chains along the North side of an unsurveyed County Road; thence turn and run					
		South 6.64 chains to Point of Beginning, Lane County, Oregon					
		Containing more or less				20.33	
		EXCEPT: 4.35 acres to TL 2101 by R466.93716 for 1970					
		Containing more or less				15.98	
		Acreage correction for 1970					
		Containing more or less				16.10	
		LESS: 0.12 acres into County Road #818					
		Containing more or less				15.98	
		EXCEPT: 1.00 acres to TL 2102 for 1972 by R545/59345 and R554/69326					
		Containing more or less				14.98	
		EXCEPT: 13.32 acres to TL 2103 for 1973 by R649/35133					
		Containing more or less				1.66	
		(over)					

18196

16695

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

IN

EXHIBIT "A"

OLD NUMBER		TAX LOT		SECTION <u>1</u>	TOWNSHIP <u>21</u> S.	RANGE <u>4</u> W.	W.I.
MAP NO. <u>21-04-01</u>		PARCEL NO. <u>2100</u>					
INDENT EACH NEW COURSE TO THIS POINT		LEGAL DESCRIPTION <i>Page 5</i>		DEED RECORD		ACRES REMAINING	
				DATE OF ENTRY	DEED NUMBER		
		Acreage correction for 1974				2.19	
		Containing more or less					
		EXCEPT: 1.30 acres to TL 2104 for 1975 by					
		R724/1065				0.89	
		Containing more or less					
		EXCEPT: 0.56 acres out to TL 2103 for 1979 by					
		R877/80233				0.33	
		Containing more or less					
		Acreage correction for 1979				0.07	
		Containing more or less					

Exhibit "B"

OPTION TO PURCHASE/SALE AGREEMENT

LANE COUNTY, a political subdivision of the State of Oregon, hereinafter called **COUNTY**, and **JIMMIE L. AND BRENDA C. SMITH**, hereinafter called **PURCHASER**, do hereby agree to enter into an **OPTION TO PURCHASE/SALE AGREEMENT** for that certain real property identified as Assessor's map # 21-04-01-00-02100 and more particularly described as:

See Attached Exhibit "A"

RECITALS

- A.** COUNTY is the owner of said property due to foreclosure for non-payment of property taxes.
- B.** COUNTY wishes to sell said property and PURCHASER wishes to buy said property from COUNTY.
- C.** The ability to develop or otherwise use said property is unknown at this time with regards to applicable uses, ability to secure development permits, environmental condition, access, status of title and other related issues.
- D.** To facilitate the sale of said property, COUNTY is willing to grant a period of time for PURCHASER to investigate said property to determine its feasibility for purchase and to grant an option to purchase said property under the terms and conditions set forth in this agreement.

AGREEMENT

- 1. OPTION.** COUNTY does hereby grant to PURCHASER an option to purchase the subject property under the terms and conditions set forth in this agreement.
- 2. TERM.** The term of the option period shall commence upon full execution of this agreement and expire at midnight on the 120th day from said full execution.

2.1 – EXTENSION: PURCHASER may extend this agreement for an additional 60 day period by providing written notice to COUNTY, together with additional consideration noted in Section 3 below, before expiration of the initial term.

- 3. CONSIDERATION.** PURCHASER shall pay COUNTY the sum of **TWO HUNDRED DOLLARS (\$200.00)** for said option payable upon execution of this agreement. PURCHASER shall pay COUNTY an additional \$200 if this agreement is extended per Section 2.1 above. Said

sums are **not** refundable should PURCHASER choose not to exercise their purchase option for any reason.

4. **PURCHASE PRICE.** The purchase price shall be \$7,000 cash payable to Lane County. Funds paid to COUNTY as consideration for this option agreement and extensions thereof will be applied to the purchase price. Payment shall be by cash or cashier's check payable to Lane County. No personal or business checks will be accepted.

5. **EXERCISE OF OPTION.** PURCHASER shall notify COUNTY in writing on or before the expiration of the option period, or extension thereof, of its intention to execute said option.

6. **TITLE.** COUNTY makes no claim to, and does not warrant title to, the subject property as being free of liens, encumbrances, easements or any other defects to title. It shall be PURCHASER'S obligation to investigate the status of title to the subject property. The COUNTY shall cooperate with PURCHASER in removing any objectionable items from title. However, all expenses and any liability or claims incurred in removing items from title shall be borne by PURCHASER. The COUNTY shall convey its interest in the subject property with a QUITCLAIM DEED. Title insurance, if any, shall be at the option and expense of PURCHASER.

7. **CLOSING.** Closing shall occur within 30 days from the effective date of PURCHASER'S written notice exercising its purchase option. Upon payment of the purchase price, plus the required recording fees, COUNTY shall deliver to PURCHASER a recorded Quitclaim Deed conveying COUNTY'S interest in the subject property to PURCHASER or PURCHASER'S assignee. All moneys paid to COUNTY in consideration for this agreement shall be applied to the purchase price. Should PURCHASER wish to close the transaction through an escrow agent, PURCHASER shall inform COUNTY where to deliver the Quitclaim Deed. PURCHASER shall deposit with the escrow agent the funds required to close the transaction and execute any required documents to effect the closing. COUNTY shall deliver the Quitclaim Deed to the escrow agent with instructions to deliver it to PURCHASER upon receipt of the required payment to COUNTY. COUNTY shall execute any required documents to effect the closing. PURCHASER shall bear all costs associated with the closing of the transaction. PURCHASER shall lose all rights to the property and any monies paid in consideration for this agreement if it fails to close the transaction within 30 days of the written notice exercising the purchase option.

8. **ACCESS.** COUNTY does hereby grant to PURCHASER and/or its agents access to the subject property for the purpose of conducting necessary evaluations.

9. **TESTING PROCEDURES.** PURCHASER shall be responsible for, and pay for, conducting all testing procedures for evaluating the condition of the property. Such procedures shall be conducted by qualified personnel and done in conformance with applicable laws, rules and regulations. The PURCHASER shall return the property to the same condition as it was prior to any actions by the PURCHASER. The COUNTY shall have the right to review and approve all

activities and work being conducted on the property prior to any action by the PURCHASER. Reasonable approval will not be withheld and will be given in a timely manner. PURCHASER shall provide COUNTY with a copy of any test reports PURCHASER has secured.

10. INDEMNIFICATION. PURCHASER and its agents shall indemnify, defend and hold COUNTY, its commissioners, officers, employees and agents, harmless from any and all claims that may arise due to PURCHASER'S or its agents' conduct on, or investigation of, the property or failure to conform to the terms of this agreement.

11. WAIVER. Failure by the COUNTY or PURCHASER to enforce any right under this agreement shall not be deemed to be a waiver of that right or of any other right.

12. NOTICES. All notices required or permitted to be given shall be in writing and shall be deemed given and received upon personal service or deposit in the United States Mail, certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To PURCHASER: Jimmie & Brenda Smith
533 Manor Oak Place
Manteca, CA 95336

To COUNTY: Jeff Turk
Lane County/Property Management
125 East 8th Avenue
Eugene, OR 97401

13. APPROVALS. PURCHASER shall have the right to apply for and obtain any governmental approvals to use and develop the subject property as PURCHASER may desire. COUNTY, in its capacity as owner of the subject property, shall cooperate with PURCHASER in obtaining such approvals. Such cooperation shall include, but not be limited to, signing all applications and other documents requested by PURCHASER that may reasonably be related to such matters, provided that COUNTY approves the form and substance of all such documents. Such approvals shall not be unreasonably withheld. All costs and expenses incurred with respect to such approvals shall be paid by PURCHASER.

14. TAXES. PURCHASER shall not be responsible for any taxes during the option period and will not become responsible for any taxes prior to the date of closing.

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS, WHICH, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND WHICH LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930 IN ALL ZONES.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND EXISTENCE OF FIRE PROTECTION FOR STRUCTURES

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year indicated below:

DATED:

PURCHASER:

Jimmie L. Smith

Brenda C. Smith

COUNTY:

DATED: WILLIAM VAN VACTOR, ADMINISTRATOR, LANE COUNTY:

Pursuant to Order No. _____

EXHIBIT "A"

OLD NUMBER		TAX LOT NO. 2100		SECTION 1	TOWNSHIP 21 S.	RANGE 4 W.
MAP NO. 21-04-01		ACCOUNT NUMBER		DEED RECORD		ACRES REMAINING
INDENT EACH NEW COURSE TO THIS POINT		LEGAL DESCRIPTION <i>Page 4</i>		DATE OF ENTRY	DEED NUMBER	
<p>Beginning at a point on the South line of Section 1, Township 21 South, Range 4 West 11.12 chains East of the Southwest corner of the Southeast 1/4 of the Southwest 1/4 of said Section 1, thence West along Section line 11.12 chains to the Southwest corner of the Southeast 1/4 of the Southwest 1/4 of Section 1, Township 21 South, Range 4 West of the Willamette Meridian; thence North a distance of 24.57 chains; thence North 86° 20' East a distance of 144.00 feet; thence North to the centerline of the County Road; thence South 37° 30' East along the County Road to a point North of the Point of Beginning; thence South to the Point of Beginning in Lane County, Oregon</p> <p>EXCEPTING therefrom the following:</p> <p>Beginning at a point which bears East a distance of 11.12 chains and North a distance of 9.26 chains of the Southwest corner of the Southeast 1/4 of the Southwest 1/4 of Section 1, Township 21 South, Range 4 West of the Willamette Meridian, being a stone 9" in diameter, scribed County Survey; thence run</p> <p>N 86° 00' W 3.6 chains; thence turn</p> <p>N 36° 00' W 4.92 chains; thence turn</p> <p>N 59° 30' E 6.88 chains; thence turn</p> <p>and run</p> <p>S 37° 30' E 1.51 chains along the North side of an unsurveyed County Road; thence turn and run South 6.64 chains to Point of Beginning, Lane County, Oregon</p> <p>Containing more or less</p> <p>EXCEPT: 4.35 acres to TL 2101 by R466.93716 for 1970</p> <p>Containing more or less</p> <p>Acreage correction for 1970</p> <p>Containing more or less</p> <p>LESS: 0.12 acres into County Road #818</p> <p>Containing more or less</p> <p>EXCEPT: 1.00 acres to TL 2102 for 1972 by R545/59345 and R554/69326</p> <p>Containing more or less</p> <p>EXCEPT: 13.32 acres to TL 2103 for 1973 by R649/35133</p> <p>Containing more or less</p> <p>(over)</p>				1969	R418/48247	
				1987	R418/48246	R1432/8648674

18196
16695

OFFICIAL RECORD OF DESCRIPTIONS OF REAL PROPERTIES

IN

EXHIBIT "A"

OLD NUMBER		TAX LOT		SECTION <u>1</u>	TOWNSHIP <u>21</u> S.	RANGE <u>4</u> W.	W
MAP NO. <u>21-04-01</u>		PARCEL NO. <u>2100</u>					
INDENT EACH NEW COURSE TO THIS POINT		LEGAL DESCRIPTION <i>Page 5</i>			DEED RECORD		ACRES
					DATE OF ENTRY	DEED NUMBER	REMAINING
		Acreage correction for 1974					2.19
		Containing more or less					
		EXCEPT: 1.30 acres to TL 2104 for 1975 by					
		R724/1065					
		Containing more or less					0.89
		EXCEPT: 0.56 acres out to TL 2103 for 1979 by					
		R877/80233					
		Containing more or less					0.33
		Acreage correction for 1979					0.07
		Containing more or less					

E DETAIL
AP NO. I
-000271

T.L.S 400
700-701

BORO.

402

401

801

900

CREEK

600

TAPP ROAD

CO. RD.

NO 38

2400

2500

800

2101

2000

1500

1503

1502

1500

1600

2103

2104

170 SUBJECT

2100

2300

2302

301

302

W.H. McLAUGHLIN COUNTY ROAD

E DETAIL
AP NO. 1
)-000271

Tax Lotted on

Map 21 04 02

1500

301

2300

2302

1

900

BOI

402

401

600

400 56

2500

800

1900

2101

2000

861.
4. 92 1503

2103

600

1502

291.29
29.29

① 1500

5.89°51'W. - 81 ch.

See Map 21 04 12