

W. 15-a.

AGENDA COVER MEMORANDUM

Agenda Date: November 9, 2005

DATE: October 20, 2005

TO: Board of County Commissioners

DEPARTMENT: Lane Council of Governments (For the City of Coburg)

PRESENTED BY: Gary Darnielle, LCOG

SUBJECT: ORDER/IN THE MATTER OF AUTHORIZING THE REMOVAL OF "PUBLIC USE" DEED RESTRICTION FROM PROPERTY CONVEYED TO THE CITY OF COBURG BY THE COUNTY IDENTIFIED AS MAP NO. 16-03-33-23-06800.

1. **PROPOSED MOTION:** THE BOARD OF COUNTY COMMISSIOENRS MOVES TO AUTHORIZE THE REMOVAL OF A "PUBLIC USE" DEED RESTRICTION FROM PROPERTY CONVEYED TO THE CITY OF COBURG BY THE COUNTY IDENTIFIED AS 16-03-33-23-06800.
2. **ISSUE/PROBLEM:** The property transferred to the city is a small remnant of railroad right-of-way that is too small to be utilized for park purposes (436 square feet) but could be combined with adjacent private property to create a buildable lot. The city wishes to sell the property to the adjacent landowner but cannot do so because of the "public use" deed restriction. Proceeds from the sale, expected to be around \$300, would be use for public park acquisition or maintenance.

3. **DISCUSSION:**

3.1 Background

The property was obtained by the county through foreclosure proceedings in 1981. The county subsequently conveyed the property in September of 1991 by quitclaim deed to the City of Coburg to be used as a "pocket" park. No consideration was involved in this transfer although the deed conveying the property included a condition that the property was to be used for public purposes by the City of Coburg. The property is a 436 square foot, triangle-shaped parcel located at the southeastern corner of the intersection of Delaney and Coleman streets in Coburg. While unbuildable itself, the property would have a contributory value to adjacent tax lot 3400 of about \$289.

The adjacent property is composed of railroad right-of-way remnants that were sold to a private party by the Southern Pacific Railroad in 1996. Currently, these remnants are too small to be developed under current zoning district setback standards and are subject to legal lot issues. They are also subject to a boundary dispute between adjacent property owners.

3.2 Analysis

In 2004, the Coburg Parks Committee began looking at the park and recreational needs of the city and, in specific, assessed existing public land for its potential as mini or “pocket” parks. It was determined that the property at the intersection of Coleman and Delaney Streets was too small to serve as a viable park and that the park needs of the residents in that area would be best served by the development of the Southside Neighborhood Park. The Coburg Parks and Open Space Master Plan, adopted on January 4, 2005, reflects this determination.

The ability of the city to transfer the property to the adjacent, private owner would allow the adjacent property to be built-upon and cure legal lot issues. It would also allow a resolution to the existing boundary line dispute, for which the city may share some liability. Proceeds from the transfer of the property to private ownership are intended to be utilized for park acquisition or improvement purposes.

If the “public use” deed restriction is removed from the property, it is the intent of the city to take the following steps:

- (1) Sell the property to the adjacent land owner for fair market value, which would be around \$300. The proceeds from that sale would be dedicated to park acquisition and improvement.
- (2) The city would vacate the lot lines of the adjacent remnant parcels and merge those properties into tax lot 6800, the property subject to the requested Board order.
- (3) Once the adjacent property becomes buildable a potential buyer has agreed to purchase the property. The adjacent property owners have agreed to jointly support a lot line adjustment if the sale of the property occurs. The lot line adjustment will end the boundary line dispute and cure potential liability issues for all parties.

The City has been counseled by the Cascade Title Company that the County’s entire real property interests passed to the City through the 1991 quitclaim deed. The “public use” clause is therefore a deed restriction but not a property right and can be removed through the passage of an appropriately worded Board order. The City is mindful, however, of 1991 statutes that regulated the local governments

ability to relinquish title of property not needed for public use. Consistent with the intent of those provisions, the City has requested that the Board conduct a public hearing prior to taking action on the proposed Board order and has caused notice of this hearing to appear in the Register Guard for two successive weeks prior the hearing.

3.3 Alternatives/Options

- A. Remove the deed restriction without any consideration.
- B. Remove the deed restriction for consideration equal to fair market value.
- C. Leave the deed restriction in effect.

3.4 Recommendation

Alternative “A” is recommended.

3.5 Timing

The city has adopted periodic-review related changes to its zoning ordinance that include new residential setback standards. The effective date of these changes is December 19, 2005. The implementation of these standards would render the property more difficult to build upon and it would be no longer desirable to the potential buyer. Therefore, the city has about five weeks in which to remove the “public use” restriction from the property and the replat adjacent properties to cure legal lot deficiencies.

- 4. **IMPLEMENTATION/FOLLOW-UP:** A Board order would be the document used to remove the deed restriction.
- 5. **ATTACHMENTS:**

Board Order

Attachment A – Board Order 91-9-11-10

Attachment B – Quitclaim deed conveying the property to the City of Coburg

Attachment C – Tax Map

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO. IN THE MATTER OF AUTHORIZING THE REMOVAL
OF A PUBLIC USE RESTRICTION FROM PROPERTY
O5-- CONVEYED TO THE CITY OF COBURG BY THE
COUNTY IDENTIFIED AS MAP NO. 16-03-33-23-
06800

WHEREAS, Lane County transferred tax foreclosed property to the City of Coburg on September 11, 1991, pursuant to Board Order 91-9-11-10, by Quitclaim Deed recorded on Reel R1744, Reception No. 9208473, with said property more particularly described as

Being in Section 33, Township 16 South, Range 3 West of the Willamette Meridian, more particularly described as follows: The part of Lot 6 South and West of the railroad in DELANDY ADDITION as platted and recorded in Volume 25, Page 298, Lane County Oregon Plat Records, all in Lane County, Oregon. Known as Map/Tax Lot #16-03-33-24-1101, Account 44154.

WHEREAS, the quitclaim deed transferring the property to the City of Coburg included the following clause:

Said premises to be used and continue to be used for public purposes by the City of Coburg, its agents, successors and assigns.

WHEREAS, the public use clause represents a contractual restriction on the sale of the property since the quitclaim deed transferred the County's real property interest in the property to the City of Coburg.

WHEREAS, the said property, in and by itself, is not developable as it is only 436 square feet in area. It was considered for park purposes during the development of the Coburg Parks and Open Space Master Plan, adopted January 4, 2005, but was found to be too small to serve as a viable pocket park.

WHEREAS, the merger of said property with adjacent private property would allow the latter property to be developed in conformance with subsurface disposal system and lot line setback requirements.

WHEREAS, if the "public use" restriction is removed from said property, it is the intent of the Coburg City Council to sell the property to the adjacent property owner and use the proceeds for City park purposes.

WHEREAS, after reviewing the matter the Board is agreeable to said release.

IT IS HEREBY ORDERED that the City of Coburg be released from the "public use" restriction contained in the deed of the property to the City of Coburg.

IN THE MATTER OF AUTHORIZING THE REMOVAL OF A PUBLIC USE DEED RESTRICTION FROM PROPERTY CONVEYED TO THE CITY OF COBURG BY THE COUNTY IDENTIFIED AS MAP NO. 16-03-33-23-06800 - Page 1 of 2

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

IT IS FURTHER ORDERED, that the recording of this Order by Coburg shall be evidence that the restrictive use clause in the quitclaim deed is dissolved and no longer effective.

DATED this _____ day of _____, 2005.

Anna Morrison, Chair, Board of Commissioners

APPROVED AS TO FORM

Date 10-28-05 Lane County


OFFICE OF LEGAL COUNSEL

ATTACHMENT A

FILED

BOOK 148 PAGE 1768

SEP 16 1991

COUNTY CLERK THE BOARD OF COMMISSIONERS OF LANE COUNTY OREGON
FOR THE COUNTY OF

ORDER NO

91-9-11-10

IN THE MATTER OF CONVEYING A PARCEL OF
OF COUNTY REAL PROPERTY TO THE CITY OF
COBURG FOR THE PURPOSE OF CREATING A
"POCKET" PARK. MAP/TAX LOT #16-03-33-24-
01101, LOCATED AT THE INTERSECTION OF
DELANEY STREET AND COLEMAN STREET,
COBURG, OREGON

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

Being in Section 33, Township 16 South, Range 3 West of the Willamette Meridian, more particularly described as follows: The part of Lot 6 South and West of the railroad in DELANEY ADDITION as platted and recorded in Volume 25, Page 298, Lane County Oregon Plat Records, all in Lane County, Oregon. Known as Map/Tax Lot #16-03-33-24-01101, Account 44154

WHEREAS, a request has been received through the Public Works Superintendent of the City of Coburg to convey the property to the City for the purpose of developing a "pocket" park, and

WHEREAS, the parcel is a minute piece of land which is isolated between the intersection of two streets and the railroad. Park development would enhance the neighborhood and would be landscaped and maintained by the City of Coburg, and

WHEREAS, said real property is owned by the County and not in use for County purposes, and the Board being fully advised in the premises, it is recommended by the Department of Finance and Management Services to approve the transfer of this parcel to the City of Coburg, now therefore under the authority of ORS 271.330,

IT IS HEREBY ORDERED that the property be transferred and the quitclaim deed executed to the City of Coburg.

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

DATED this 11th day of September, 1991.

RECORDED NOT PUBLIC
9/16/91
[Signature]

[Signature]
Clerk, Lane County Board of Commissioners

IN THE MATTER OF CONVEYING A PARCEL OF COUNTY REAL PROPERTY TO THE CITY OF COBURG FOR THE PURPOSE OF CREATING A "POCKET" PARK. MAP/TAX LOT #16-03-33-24-01101, LOCATED AT THE INTERSECTION OF DELANEY STREET AND COLEMAN STREET, COBURG, OREGON

ATTACHMENT B

BOOK 148 PAGE 1769

QUITCLAIM DEED

LANE COUNTY, a political subdivision of the State of Oregon, pursuant to Order No. 91-1-1140 of the Board of County Commissioners of Lane County, releases and quitsclaim to:

City of Corvallis
City Hall
100 North Wallamette
Corvallis, Oregon 97331

all its right, title and interest in that real property situated in Lane County, State of Oregon, described as:

Being in Section 31, Township 16 South, Range 3 West of the Willamette Meridian, more particularly described as follows: The part of Lot 6 South and West of the railroad in DELANEY ADDITION as platted and recorded in Volume 25, Page 208, Lane County Oregon Plat Records, all in Lane County, Oregon. Known as Map/Tax Lot #16-23-33-24-1101, Account 44154.

Public Use clause: Said premises to be used and continue to be used for public purposes by the City of Corvallis, its agents, successors and assigns.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

The true and actual consideration for this transfer is NONE.

LANE COUNTY BOARD OF COMMISSIONERS

[Signature]
[Signature]
[Signature]

7/3/91
[Signature]

STATE OF OREGON)
COUNTY OF LANE)

On September 14, 1991, personally appeared the above named County Commissioners for Lane County, and acknowledged the foregoing instrument to be their voluntary act. Before me:

[Signature]
Notary Public for Oregon
My Commission Expires 5-19-93

Recorded in Commissioner's Journal _____ Book _____ Page _____

[illegible]