

W.7.a.

AGENDA COVER MEMORANDUM

Memorandum Date: February 10, 2010

Agenda Date: February 17, 2010

TO: Board of County Commissioners

DEPARTMENT: Management Services

PRESENTED BY: Jeff Turk, Property Management Officer 2

SUBJECT: DISCUSSION/ POLICY DISCUSSION CONCERNING SALE BACK TO FORMER OWNER OF RECORD OF TAX FORECLOSED PROPERTY PER LANE MANUAL 21.425(4)

1. **PROPOSED MOTION:** No motion is being proposed.

2. **AGENDA ITEM SUMMARY:**

Pursuant to a request by a former owner of record to re-purchase a tax foreclosed property for a second time – the property had been foreclosed upon and sold back 7 years prior and then foreclosed upon again – the Board wished to discuss the policy of a sale back to the former owner per Lane Manual 21.425(4) – particularly as it may apply when the property is foreclosed upon for a second time.

3. **BACKGROUND/IMPLICATIONS OF ACTION:**

A. Board Action and Other History

ORS 275.180 provides for selling a tax foreclosed property back to the owner of record, or contract purchaser, at any time (property is not required to be offered at an auction). The statute does not mandate a sale and a sale to the former owner is at the discretion of the Board. The statute requires the minimum sale amount to be all taxes owing, interest, penalties plus 6% interest thereon from the time the property was deeded to the County until it is sold to the former owner. The Board can sell a property to the former owner for more than the minimum required by statute. Historically, the Board has sold property to former owners for the minimum required by statute, plus taxes due for the current tax year, plus a 10% administrative fee on that amount.

Lane Manual 21.425(4) qualifies the statute by requiring one of three conditions to exist before the Board will consider a sale to the former owner. Those conditions are:

1. The property was the residence of the former owner.

2. The former owner was mentally or physically incapacitated during the foreclosure process (proof required).
3. The Assessor erred in listing the property for foreclosure.

Note that the conditions do not provide for a sale back to the former owner if the property was used for commercial or industrial uses, was a rental property, being developed or unimproved unless conditions 2 or 3 above are applicable.

Typically, Lane County sells 1-3 properties back to their former owners each year. The Board has not denied a sale back to a former owner when the property was their residence.

Neither the State statute nor Lane Manual addresses a sale to the former owner if their property has been foreclosed upon, sold back, and then foreclosed a second time.

The current request by Mr. Pfaff to re-purchase for a second time is the second request received from a former owner that has been foreclosed upon twice since my tenure as Property Management Officer began in 1992. The first occurrence was in 2007 where the Board approved a sale back to Joanne Dooley whose property was initially foreclosed upon and sold back to her in 1998 and then foreclosed upon again in 2006.

Other Counties: I contacted associates in other Counties for information on their policies for sales to the former owner. I heard back from 14 Counties. All would sell a foreclosed property back to the former owner. None had an instance of a request by a former owner who had been foreclosed upon for a second time.

Criteria for a sale to the former owner varied among the Counties. All would consider a sale to the former owner regardless if a property was their residence or not. Only two, Washington and Multnomah, had written policies. Most Counties reviewed requests on a case by case basis with their respective Boards making the final determination. Washington, Clackamas and Deschutes Counties will sell back to the former owner only if the former owner was mentally or physically incapacitated or other "extreme" hardship existed (as determined by the Board). Multnomah County requires that a former owner request a sale back within 30 days of the foreclosure, Washington County requires a request within one year of the foreclosure date.

All but two of the Counties sell the property for the minimum required by statute plus an administrative fee (similar to Lane County's policy). Clackamas and Klamath Counties will sell to the former owner for the amount of delinquent taxes plus 25% of the property's market value as listed by the Assessor.

Foreclosure Process: When taxes on a property are delinquent for 3 consecutive years a judgment is filed with the court and the property is technically sold to the County at that time for the delinquent taxes. Oregon law provides for a 2 year redemption period from the date of the judgment in which the property owner or other legally interested party can pay off the judgment amount. During the 2 year redemption period the County does not have

title or possession to the property. If the judgment is not paid in full by the end of the 2 year redemption period the County completes the foreclosure by filing a tax deed and it is at this time that the County acquires title and possession.

B. Policy Issues

To determine whether to modify Lane Manual procedures as they pertain to a sale of tax foreclosed property back to the former owner with such modifications to include denying a sale to the former owner if the property has been sold back to them once and then foreclosed upon again.

C. Board Goals

D. Financial and/or Resource Considerations

Revenue from the sale of tax foreclosed properties is disbursed to all the taxing districts in the same manner as property taxes. Before sale proceeds are disbursed the County can retain the costs of managing tax foreclosed properties. These costs include the salary of the Property Management Officer, legal fees, maintenance, environmental cleanups, etc.

Typically, the value of a foreclosed property being sold back to the former owner far exceeds the amount of delinquent taxes, interest and penalties that were owed. In the instance of Mr. Pfaff the minimum sale price per statute is \$11,500. The market value of the property per the Assessor is \$150,000.

E. Analysis

Current policy for a sale back to the former owner of record recognizes that circumstances can occur that can cause a property owner to become delinquent on their taxes and eventually have their property foreclosed upon.

When a property is sold back to a former owner a first time and then foreclosed upon a second time, it does raise an issue of an individual's responsibility for meeting obligations of property ownership and whether the individual should be afforded the opportunity to again re-purchase the property.

Instituting a policy to not sell a property back a second time does simplify the decision process both for staff and the Board. A blanket policy not to sell back for a second time would, however, remove the Board's opportunity to consider any extenuating circumstances that may have existed.

The Board could consider a policy that requires a sale to the former owner for a second time be for some amount that is above the minimum required by statute. This could serve as a disincentive to the property owner to allow a property to be foreclosed upon a second time.

F. Alternatives/Options

1. Continue the existing policy where the Board will consider a sale to the former owner if the property was their residence regardless if it is the first or second time the property has been foreclosed upon.
2. Institute a policy where the Board will not consider a sale to the former owner if it is the second time a property has been foreclosed upon.
3. Institute a policy where the Board will consider a sale to the former owner a second time but the sale price is greater than the minimum required by statute.

V. TIMING/IMPLEMENTATION

No timing issues are present.

VI. RECOMMENDATION

It is recommended that the Board continue the existing policy (option 1). The occurrence of multiple foreclosures on a property is not common and retaining current policy would provide the Board with the flexibility to determine each instance on a case by case basis.

VII. FOLLOW-UP

Staff will proceed with the direction given by the Board

VII. ATTACHMENTS

LM 21.425(4)

(4) Real property acquired by tax foreclosure may be sold to the record owner or a contract purchaser of record as provided in ORS 275.180, when any of the following conditions exist:

(a) The property was placed on the foreclosure list as a result of an error or omission in the records of the Department of Assessment and Taxation.

(b) The property was the residence of the record owner or contract purchaser of record at the time of the foreclosure.

(c) The record owner or contract purchaser of record suffered from a mental or physical incapacity or inability during the foreclosure and redemption period, satisfactory evidence of which is presented to the Board of Commissioners. *(Revised by Order No. 98-4-1-11, Effective 4.1.98)*