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C.
03-10-15-8

AGENDA COVER MEMORANDUM

Agenda Date: October 15, 2003

DATE: October 1, 2003

TO: Board of County Commissioners

DEPARTMENT: Management Services

PRESENTED BY: Jeff Turk, Property Management Officer 2

SUBJECT: ORDER/IN THE MATTER OF AUTHORIZING THE SALE OF SURPLUS COUNTY OWNED REAL PROPERTY TO LARRY A. BROWN AND JANET D. BROWN, FORMER OWNERS OF RECORD, FOR \$12,200 (MAP #17-04-24-34-07200, 104 BAUER LANE, EUGENE)

1. **PROPOSED MOTION:** THE BOARD OF COUNTY COMMISSIONERS MOVES TO AUTHORIZE THE SALE OF SURPLUS COUNTY OWNED REAL PROPERTY TO LARRY A. BROWN AND JANET D. BROWN, FORMER OWNERS OF RECORD, FOR \$12,200 (MAP #17-04-24-34-07200, 104 BAUER LANE, EUGENE)
2. **ISSUE/PROBLEM:** Mr. and Mrs. Brown are the former owners of record of the subject property which was acquired through tax foreclosure. The Brown's wish to repurchase the property pursuant to ORS 275.180. The proposed purchase price is \$12,200 which includes all taxes, including those which would have been due for the current year, interest and penalties that were owed on the property at the time the County acquired title plus an additional 10% thereon.

The sale would be an exception to LM 21.425(4).

3. **DISCUSSION:**

3.1 Background

The County just acquired title to the subject property on September 23, 2003. The subject is a 900 square foot house residing on an 8,300 sq. foot lot in the River Road area of Eugene. The house is in fair condition and has an assessed value of \$100,250. The house was used as a rental property by the former owners and was occupied with a tenant at the time the county foreclosed.

Property Management staff, after talking with the tenants, learned that the property was being managed for Mr. and Mrs. Brown by Bell Real Estate. Staff contacted Bell Real Estate about the matter. Bell Real Estate relayed the information to the Brown's (they live in Arizona) who then contacted the Property Management Officer.

The Brown's appeared completely ignorant that the property was delinquent, was in the foreclosure process and had indeed been foreclosed upon by the county. The Brown's own the property next door at 106 Bauer and another property in Santa Clara (also rental properties). Taxes for these properties are current.

The issue for the non-payment of property taxes on the subject property involves the address to which tax statements and foreclosure notices were sent. Statements and notices for the subject property were being sent to an address in Chandler, Arizona. The Brown's had moved from Chandler to Mesa, Arizona and say the tax statements and notices had not been forwarded to them. A&T sent the statements and notices to the address as it was listed on the tax account.

The address on record with A&T for the Brown's other two properties was the correct address in Mesa. There is no indication that A&T was remiss in not changing the address for the subject or that the Brown's failed to include the subject property when requesting an address change.

The matter was discussed with assistant county counsels Dave Williams and Marc Kardell with respect to proper notice of the foreclosure being given to the Brown's as required by law. Both agreed that the county followed correct procedure by mailing notices to the address on record. Both also agreed that the former owners could raise a legitimate issue concerning proper notice if they could show that they sent notice of their address change as to all 3 parcels, and not just the 2 parcels where the county recorded the address change.

The Brown's have accepted responsibility for any errors that may have occurred and acknowledge that they were remiss in not paying taxes whether they received tax statements or not. They have sent a cashier's check for the required amount to repurchase and have also added the county as an additional insured on their property insurance to reduce the county's liability until the matter is settled. The tenant's rent for October will be held in an escrow account of Bell Real Estate and paid to the county if the county retains the property.

3.2 Analysis

After talking with Mr. and Mrs. Brown, Property Management staff is of the opinion that their failure to pay property taxes was truly an over site and not caused by an unwillingness or inability to pay. When becoming aware of the situation, the Brown's wanted to immediately correct the situation and offered to pay all that was due.

State and Federal law requires that all legally interested parties in a tax foreclosure receive actual notice of the proceedings so they may have an opportunity to cure the delinquency. The owner of a property does have an obligation to inform the county of a valid address to send tax statements and other notices. As the Brown's were receiving tax statements for other properties they owned in Lane County, it is unclear whether the incorrect mailing address listed on the subject property's account was due to an omission by the former owner or the county. County counsel is of the opinion that the former owners could have a legitimate argument if the matter were taken to court and it was shown that they had requested tax notification on this parcel be sent to their new address, in addition to the other 2 properties where an address change was recorded.

ORS 275.180 provides for selling foreclosed property back to the owner of record at any time but for not less than the amount of taxes, interest and penalties owing on the property at the time the County acquired title plus 6% interest thereon until the time the property is sold. Lane Manual 21.425(4) qualifies ORS 275.180 by requiring one of three conditions to exist for a sale to the former owner of record. Those conditions are that: (a) the property was the residence of the former owner at the time of the foreclosure; (b) an error was made by the Assessor in placing the property on the foreclosure list; (c) the former owner was physically or mentally incapacitated during the foreclosure period. The subject property does not meet any of the provisions of Lane Manual and a sale back to the former owners would be an exception to those provisions.

Up until 1989, the provisions of Lane Manual mirrored state statutes for a sale back to the former owner. Lane Manual was amended to its current provisions in response to property developers who were not paying property taxes as the interest rate on delinquent taxes was less than general market rates. Those who lost property would then petition the county to sell it back to them. The intent of the change to Lane Manual was to discourage commercial developers from using the tax system to finance their endeavors by not making a sale back to the former owner relatively automatic.

The issue of whether the former owners received proper notice of the foreclosure could be used as sufficient grounds for taking an exception to Lane Manual in this instance.

The county is not obligated to sell the property back to the former owner nor is it required to sell it for the minimum amount required by statute - the Board can sell it for any price it deems appropriate. The subject has an estimated market value of \$100,000.

3.3 Alternatives/Options

1. Sell the property back to the Browns for the minimum amount pursuant to ORS. 275.180 plus taxes which would have been owed for the current year plus 10% thereon for a total \$12,200
2. Sell the property for an amount greater than #1 above.

3. Reject selling the property back to the former owners and offer the property at a Sheriff's sale which would yield greater consideration. Retaining the property would also require the county to either continue renting the premises to the current tenants or evicting them. Retaining the property may also cause the former owner to pursue legal action to reclaim the property based on the proper notice issue mentioned.

3.4 Recommendation

It is recommended that alternative #1 be implemented.

3.5 Timing

The matter should be resolved as quick as possible as there are tenants occupying the property.

4. **IMPLEMENTATION/FOLLOW-UP:** Upon approval by the Board of County Commissioners, the Quitclaim Deed will be executed and the property sold to the former owners.

5. **ATTACHMENTS:**

Letter from the former owners
Board Order
Quitclaim Deed
Plat Map

To
Mr. Jeff Turk
125 East Eighth St
Eugene, OR 97401

September 25, 2003

Dear Mr. Turk,

We are writing concerning the back taxes due on property we own at 104 Bauer Lane in Eugene. We we're startled to learn today, from our property managers, Bell Real Estate, that the county has foreclosed on this property since we have not paid our real estate taxes since 1996. We acknowledge our mistake in not paying these taxes. However, we have not received the annual tax statements for this property.

We currently own two other pieces of property in Eugene and the statements for those parcels did reach us so it seems strange that this one was not updated also. The taxes on these properties are current. These properties are 106 & 106 1/2 Bauer Lane and 511 River Loop II, both in Eugene.

We want to pay the taxes and penalties due on this property as soon as possible and will express mail a cashier's check as soon as we know the exact amount due. We have owned this property since 1976 and paid property taxes in a timely manner for 20 years and there was no intent to be delinquent.

We believe the problem occurred when we moved in 1997 from 2631 W. Barrow Drive in Chandler, AZ to 7722 E. Willetta St. in Mesa, AZ. We currently get our mail at a postal service since we live part time in Mesa and part time in Payson, AZ. That address is #113-624

2824 N. Power Road
Mesa, 85215.

Our cell phone number is 480-695-0108. Our home phone is ⁴⁸⁰373-6537. Our current permanent street address is 6624 E. Sugarloaf St. Mesa, AZ 85215. (no mail service here)

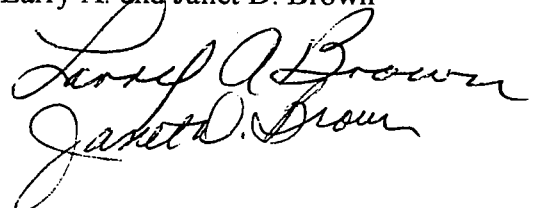
We have asked our property managers at Bell Real Estate to hold the current rent money in a trust account until this matter is settled. We will also add Lane county, its commissioners, agents, officers and employees, to our insurance policy until this matter is settled.

Also, since there was some confusion over the property deed, we are faxing a copy of the warranty deed executed August 11, 1976 and a copy of the payoff statement from U.S. Bank Corp dated September 16, 1992.

Thank you for your attention to this matter.

Sincerely,

Larry A. and Janet D. Brown



P.S. Enc.

Cashiers check 12,200 -
" " 31.00

for TAX due & Penalty

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

IN THE MATTER OF AUTHORIZING THE SALE OF SURPLUS
COUNTY OWNED REAL PROPERTY TO LARRY A. BROWN AND
JANET D. BROWN, FORMER OWNERS OF RECORD, FOR \$12,200
(MAP #17-04-24-34-07200, 104 BAUER LANE, EUGENE)

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 Larry A. Brown and Janet D. Brown are the former owners of record of said real property
and

WHEREAS it is deemed that a sale of said real property back to the former owners is in the best interests
of Lane County

IT IS HEREBY ORDERED that pursuant to ORS 275.180 and ORS 275.275 the real property identified
as map No. 17-04-24-34-07200 be sold to Larry A. Brown and Janet D. Brown for \$12,200, that the
Quitclaim Deed be executed by the Board and that the proceeds be disbursed as follows:

Foreclosure Fund	(228-5570270-446120)	\$11,884.00
General Fund	(124-5570260-436521)	316.00

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 _____, 20____.

APPROVED AS TO FORM

Peter Sorensen, Chair,
Lane County Board of Commissioners

Date 10-7-03 lane county

OFFICE OF LEGAL COUNSEL

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EXHIBIT "A"
LANE COUNTY/BROWN
17-04-24-34-07200

PROPERTY DESCRIPTION

Beginning at a point on the North line of County Survey No. 588, 1,700.1 feet North 89° 45' East from the Southeast corner of the Joseph Ogle Donation Land Claim No. 43, in Township 17 South, Range 4 West of the Willamette Meridian, in Lane County, Oregon, and run thence South 439.43 feet; thence North 89° 45' East 1121.55 feet for the Northwest corner of the tract; thence South 0° 41' East 184.27 feet; thence North 88° 59' East, 18.10 feet; thence North 0° 41' West, 92.0 feet; thence North 89° 45' East, 52.0 feet; thence North 0° 41' West, 92.13 feet; thence South 89° 45' West, 71.10 feet to the point of beginning of this tract, being part of L.E. Davis Donation Land Claim No. 42 in Lane County, Oregon.

EXCEPTING therefrom that part conveyed to Cora M. Pritchett by deed recorded July 14, 1975, Reception No. 28474, Lane County Official Records.

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