

2005  
3/9/05

**AGENDA COVER MEMORANDUM**

**Agenda Date: March 9, 2005**

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**DATE:** March 8, 2005

**TO:** Board of County Commissioners

**DEPARTMENT:** Management Services

**PRESENTED BY:** Jeff Turk, Property Management Officer

**SUBJECT:** EMERGENCY BUSINESS: ORDER/IN THE MATTER OF AUTHORIZING THE REMOVAL OF AN AFFORDABLE HOUSING DEED RESTRICTION FROM PROPERTY CONVEYED TO ST. VINCENT DE PAUL BY THE COUNTY IDENTIFIED AS MAP NO. 18-02-02-21-04500 (816 S. 72<sup>ND</sup> STREET, SPRINGFIELD)

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1. **PROPOSED MOTION:** THE BOARD OF COUNTY COMMISSIONERS MOVES TO AUTHORIZE THE REMOVAL OF AN AFFORDABLE HOUSING DEED RESTRICTION FROM PROPERTY CONVEYED TO ST. VINCENT DE PAUL BY THE COUNTY IDENTIFIED AS MAP NO. 18-02-02-21-04500 (816 S. 72<sup>ND</sup> STREET, SPRINGFIELD)
  
2. **ISSUE/PROBLEM:** Nanette Garrett purchased a home from St. Vincent de Paul (SVDP) as a qualified, low income buyer. The home was built on tax foreclosed property transferred to SVDP in 1997. The transfer to SVDP was conditioned on the property being used for affordable housing purposes for ten years. Ms. Garrett, due to marriage, is selling the home to a non-qualified party and is asking the county to remove the deed condition so the sale can be completed.

3. **DISCUSSION:**

3.1 Background

The county transferred the property to SVDP, without consideration, in June, 1997. The deed conveying the property included a condition that the property was to be used for affordable housing purposes for a period of ten years from the date of transfer. At the time the county transferred the property it had an assessed value of \$25,380.

SVDP constructed a 1200 square foot dwelling on the parcel and sold it to Ms. Garrett (her last name was Dorris at the time) as a qualified buyer in August, 2002. Ms. Garrett has since married and is moving into a different (larger) home with her husband and their children.

Ms. Garret did contact SVDP in an attempt to locate another qualified buyer but was not successful. Ms. Garrett then agreed to a sale to a non-qualified buyer with closing of the transaction to have occurred March 4<sup>th</sup>. The closing could not occur do to the presence of the county's deed condition. County staff does not know why this was overlooked by the involved parties prior to closing as the use restriction was listed on the title report. A similar restriction by the City of Springfield was released by the City which may have been confused with the county's restriction.

Details of Ms. Garrett's purchase from SVDP:

SVDP sold the house to Ms. Garrett for \$112,000. SVDP also financed a \$21,000 second mortgage to reduce the financed amount to Ms. Garrett. No payments were required on the second provided Ms. Garrett occupied the property. Sale of the property within the first 6 years would require full repayment of the \$21,000 to SVDP. Required repayment to SVDP declines 20% each year thereafter with no repayment required after occupying the property for ten years.

Ms. Garrett financed the balance with a bank loan. She contributed \$3,500 of her own equity and received additional down payment assistance from loan and grant programs sponsored by the City of Springfield. The City required that conditions similar to the county's be recorded in the deed records (which the City has now released).

Details of Ms. Garrett's sale:

Sale Price	\$142,500
First Mortgage	78,616
Grant Repayment	1,847
City of Springfield (down payment assistance)	4,000
SVDP Second Mortgage	21,000
Oregon Housing	1,500
City of Springfield (to remove CC&Rs)	2,500
State of Oregon	<u>5,470</u>
Total Costs	114,933
Net Proceeds	\$ 27,567

### Analysis

The reason for the county including a ten year deed restriction for affordable housing purposes when transferring a property is to insure that the property is used for such purpose and to prevent a windfall either by the acquiring agency or the qualified buyer.

Situations such as Ms. Garrett's can arise – a legitimate need to sell the property. The county does have the ability to remove the restriction after reviewing the merits of the situation. Ms. Garrett is in a difficult situation as she would need to remain in the property if the deed restriction was not removed.

Prorating the value of the property (land only) over the ten year use restriction (similar to SVDP) would be a way for the county to be compensated for removing the deed restriction early. As it has been almost 8 years since the property was transferred, receiving 20% of the original \$25,000 value would be appropriate.

### 3.3 Alternatives/Options

- A. Remove the deed restriction for consideration of \$5,000 – the prorated value of the land.
- B. Remove the deed restriction without any consideration.
- C. Leave the deed restriction in effect.

### 3.4 Recommendation

Alternative "A" is recommended.

### 3.5 Timing

The sale of Ms. Garrett's home would close upon removal of the deed restriction.

- 4. **IMPLEMENTATION/FOLLOW-UP:** A Quitclaim deed releasing the county's interest in the property and deed restriction would be the document used. Upon approval, the Board would execute the deed and it would be recorded in the deed records.

- 5. **ATTACHMENTS:**
  - Board Order
  - Quitclaim Deed Releasing Restriction
  - Original Deed Conveying Property to SVDP
  - Letter from Ms. Garrett
  - Tax Map

IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY, OREGON

ORDER NO.

IN THE MATTER OF AUTHORIZING THE REMOVAL OF AN AFFORDABLE HOUSING DEED RESTRICTION FROM PROPERTY CONVEYED TO ST. VINCENT DE PAUL BY THE COUNTY IDENTIFIED AS MAP NO. 18-02-02-21-04500 (816 S. 72<sup>ND</sup> STREET, SPRINGFIELD)

WHEREAS Lane County transferred tax foreclosed property to the St. Vincent de Paul Society of Lane County, Inc. in June 1997, pursuant to Ordinance No. 6-97 and a deed recorded on Reel 2304, Reception No. 9739418, with said property more particularly described as

*Beginning at a point being North 89° 44' West, 20.00 and South 0° 10' West, 20.00 feet from a 3/4 inch iron pipe which is by record South 0° 10' West, 2,344.24 feet from the Northeast corner of the Thomas J. Maynard Donation Land Claim No. 44, in Township 17 South, Range 2 West of the Willamette Meridian, said point being on the Westerly margin of 72nd Street; thence along said margin South 0° 10' West, 90.06 feet; thence leaving said margin North 89° 51' West, 87 feet; thence North 0° 10' East, 90.24 feet; thence South 89° 44' East, 87.00 feet to the point of beginning, in Lane County, Oregon.*

WHEREAS the deed transferring said property included a condition that it was to be used to provide housing to low income residents of Lane County for a period of ten years and

WHEREAS the current owner of said property, Nannette Garrett, who was a qualified low income buyer, wishes to sell said property to a non-qualified low income purchaser prior to expiration of said ten year period and has asked the county to release said deed condition and

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

IT IS HEREBY ORDERED that for consideration of \$5,000 a Quitclaim Deed shall be executed by the Board to Nanette Garrett with said deed to include language releasing the low income housing use condition contained in the deed to the St. Vincent de Paul Society and that the proceeds be disbursed as follows:

Foreclosure Fund	(228-5570270-446120)	\$5,000.00
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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\_\_\_\_.

\_\_\_\_\_  
Anna Morrison, Chair, Board of County Commissioners

IN THE MATTER OF AUTHORIZING THE REMOVAL OF AN AFFORDABLE HOUSING DEED RESTRICTION FROM PROPERTY CONVEYED TO ST. VINCENT DE PAUL BY THE COUNTY IDENTIFIED AS MAP NO. 18-02-02-21-04500 (816 S. 72<sup>ND</sup> STREET, SPRINGFIELD)

**QUITCLAIM DEED**

**LANE COUNTY**, a political subdivision of the State of Oregon, pursuant to Order No. \_\_\_\_\_ of the Board of County Commissioners of Lane County, releases and quitclaims to:

**Nanette D. Garrett** (formerly Nanette D. Dorris)

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

See Attached Exhibit "A"

Said release and quitclaim includes the release of those conditions contained in that certain deed from Lane County to St. Vincent de Paul Society of Lane County, Inc., recorded on Reel 2304R, Reception No. 9739418, Lane County Oregon Deed Records.

**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 AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS. 30.930.**

The true and actual consideration for this transfer is \$5,000.00

**LANE COUNTY BOARD OF COMMISSIONERS**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**STATE OF OREGON    )**  
                                  **) ss**  
**COUNTY OF LANE    )**

On \_\_\_\_\_, 2005 personally appeared \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_

\_\_\_\_\_, County Commissioners for Lane County, and acknowledged the foregoing instrument to be their voluntary act. Before me:

\_\_\_\_\_  
Notary Public for Oregon

My Commission Expires \_\_\_\_\_

After recording, return to/taxes to:  
Nanette Garrett  
816 S. 72<sup>nd</sup> St.  
Springfield, OR 97478

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**  
**18-02-02-21-04500**

Beginning at a point being North 89° 44' West, 20.00 and South 0° 10' West, 20.00 feet from a 3/4 inch iron pipe which is by record South 0° 10' West, 2,344.24 feet from the Northeast corner of the Thomas J. Maynard Donation Land Claim No. 44, in Township 17 South, Range 2 West of the Willamette Meridian, said point being on the Westerly margin of 72nd Street; thence along said margin South 0° 10' West, 90.06 feet; thence leaving said margin North 89° 51' West, 87 feet; thence North 0° 10' East, 90.24 feet; thence South 89° 44' East, 87.00 feet to the point of beginning, in Lane County, Oregon.

9738240

9739418

RE-RECORD TO CORRECT GRANTEE'S NAME

2622JUN.11'97#08\*REC 10.00

QUITCLAIM DEED

2622JUN.11'97#08\*FFUND 10.00

10-  
10-  
20  
  
10-  
10-

LANE COUNTY, a political subdivision of the State of Oregon, pursuant to Ordinance No. 6 - 97 of the Board of County Commissioners of Lane County, releases and quitclaims to:

St. Vincent de Paul Society of Lane County, Inc.

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

See Attached Exhibit "A"

This grant is conditioned upon use of the herein conveyed property by grantee, its heirs, assigns and successors in interest, for the provision of low income housing to qualified families for a period of ten (10) years from the date of this transfer. A "low income family" shall be defined as a family whose annual gross income does not exceed 80% of the median income for the area as determined by the U. S. Department of Housing and Urban Development.

This grant is further conditioned upon development of the herein conveyed property for the intended use within three (3) years from the date of its transfer to grantee or said property shall be subject to reversion to grantor

**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: Provision of affordable housing for low income families.

LANE COUNTY BOARD OF COMMISSIONERS

APPROVED AS TRUSTEE

Date

5/6/97

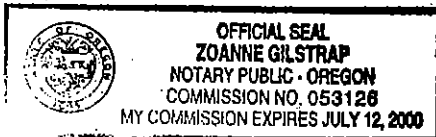
Jerry J. Webb  
CLERK

*[Handwritten signatures of Board of Commissioners]*

STATE OF OREGON )  
) ss  
COUNTY OF LANE )

2143JUN.06'97#04REC 10.00  
2143JUN.06'97#04PFUND 10.00  
2143JUN.06'97#04A&T FUND 20.00

On 5-30, 1997 personally appeared the above-named County Commissioners for Lane County, and acknowledged the foregoing instrument to be their voluntary act. Before me:



*Zoanne Gilstrap*  
Notary Public for Oregon

My Commission Expires 7-12-00

After recording, return to/taxes to:

*Anne M. Williams*  
SVDP P.O. Box 24605  
Eugene, OR 97402

March 4, 2005

Lane County Board of Commissioners  
125 East 8<sup>th</sup> Avenue  
Eugene, Oregon 97401

Re: Removal of Restriction (CCR) Against Real Property

To The Honorable Board:

**Purchase of the Property:**

I purchased property located at 816 South 72<sup>nd</sup> Street in Springfield from St. Vincent De Paul Society of Lane County, Inc. in February 2002. I had leased the property beginning in October of 2001 until the purchase date. As a single parent meeting the low to moderate income guidelines established for Lane County residents, I was able to participate in the home ownership program devised by St. Vincent De Paul. Through this program, a mortgage payment is made affordable because St. Vincent De Paul agrees to carry a promissory note (a second mortgage/subsidy) interest free and payment free, behind the first mortgage for a period of 10 years. After the 10<sup>th</sup> year of occupancy, the debt is forgiven, completely erased. If the property is sold within 6 years of occupancy, the debt must be fully repaid, according to the terms of the promissory note and trust deed. I bought the property understanding I had the freedom to sell it in the future, with the provision that I comply with the terms and conditions required by St. Vincent De Paul, contained within the promissory note and trust deed.

**Sale of the Property Due to Marriage:**

I was married on May 1, 2004. My husband and I have 6 children and a 7<sup>th</sup> through temporary guardianship. My home being smaller, became the necessary one to sell, but because of my agreement with St. Vincent De Paul, I could *not move out* until the home was sold.

Upon my engagement, I made my first contact with St. Vincent De Paul to review the options. I was informed that, as per our agreement, St. Vincent De Paul could exercise their right to re-purchase the property and subsequently sell it to another qualifying family - their promissory note being assumable by the new purchaser, so long as the purchaser was a participant in the home ownership program. The promissory note and trust deed contain the language..."If the prospective purchaser is **not a low-income family** as determined by the Note Holder (St. Vincent De Paul) consistent with the definition in 24 CFR 572.5., the Grantor (me) will give notice of the proposed sale and a copy of the contract to the Beneficiary (St. Vincent De Paul) as required by Paragraph 3.A. of the Note. This language, along with many re-assurances by St. Vincent De Paul, led me to believe, I would not be trapped, unable to move in with my husband after marriage, since I would have the option to freely sell the property if St. Vincent De Paul had no qualifying families available.

I have been in regular contact with Vikki Hileman the former Housing Counselor for St. Vincent



De Paul and most recently with her successor, Andy, attempting all the while to find a qualifying, low to moderate income family. In good faith, I was determined to make the home available to another family, through this program since a government agency would have more direct community contact and involvement with such families....and would have a far better chance than I would have, to find such a family. After nearly a year, no such family was produced and wanting to move on with my life, live full time with my husband and manage one household, I placed an ad in the paper for the sale of my home. I was thankful for the sale. As instructed, I promptly sent a certified letter to St. Vincent De Paul notifying them of the proposed sale and including a copy of the sales contract.

**CC&R: Recorded 06/11/1997 (Good through 06/11/2007)**

Upon setting up the escrow, a preliminary title search was done and a copy delivered to me, to the buyer, and to the lender. None of these parties ascertained anything unusual. I was not alarmed by the CCR shown as #6 because I knew that St. Vincent De Paul, the grantee, (and as I understood it, any succeeding governmental agency...ie, heirs, assigns and successors in interest taking over for St. Vincent De Paul) could exercise its right to re-purchase the property in which case, it must be sold by them to a qualifying family - just as shown in our contract. This appeared to be an agreement between the County (I was told the City of Springfield acting for the county per the escrow officer) and St. Vincent De Paul. A week ago, I was first notified of this problem - the day before moving. It was the City of Springfield, not the escrow officer or lender, who caught this. The buyers have already given their 30 day notice, are packed and ready to move. It took a week to straighten out, but I was told the City of Springfield agreed to remove the CC&R. The escrow officer contacted the City for the final paperwork and discovered that the CC&R they *thought* was addressed and cleared (#6) was a completely separate matter involving Lane County and that the City of Springfield had its own separate CC&R which they have agreed to remove. This occurred today, Friday March 4th, the day we are supposed to sign papers in escrow and hand over the keys. I had been told by the escrow officer that the coast was clear and papers were ready to sign. Now, the bad news was delivered, striking fear in my heart. I have moved and the buyers are out in the street, having given notice, if this is not resolved.

**Options:**

I can only throw myself upon your mercy and ask that you consider removal/clearance of the CC&R based on the following:

**1) Clear the CC&R:**

**Why: There are little more than 2 years remaining for the CC&R to be in effect. I have in good faith attempted to find an eligible family through St. Vincent De Paul without success. It is time for me to live with my husband on a full time basis. I moved last weekend. The buyers have given their notice and they were supposed to move out on the weekend of the 5th/6th. I'm not allowed to rent or lease the property (without refinancing to rental/investment property) per my contract with St. Vincent De Paul**

**Result: The sale may proceed allowing the buyers to take possession of the home.**

**2) Clear the CC&R with a monetary penalty:**

**Why: The County may find it necessary to replenish its housing programs for low to moderate income families, thus imposing a reasonable penalty based upon the small amount of time remaining for this CC&R.**

**Result: The sale may proceed allowing the buyers to take possession of the home.**

**3) Rent The Property:**

**Why: I am not allowed to leave the house vacant for more than 30 days and it is unlikely I will find a low to moderate income family to sell the home to during this time. It would make no sense to pay \$5000 or so in closing costs to refinance the home (which is required by law) into an investment property, only to sell it in 2 years. Also, once the home is refinanced, the assumable promissory note (Subsidy) will be paid off and in effect, having fully satisfied all obligation to St. Vincent De Paul, there is no avenue of affordable sale to a low to moderate income family.**

**Result: The property is rented for 2 years removing the potential sale to a low to moderate income family - the same result as that of removing the CC&R.**

**4) Move back in to the property, living apart from my husband:**

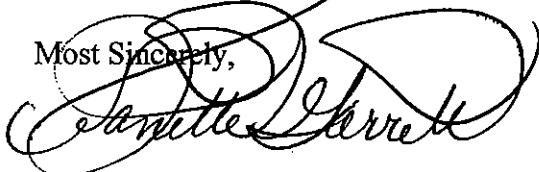
**Why: To continue occupying my home, as required by contract, until it is sold to a qualifying family.**

**Result: This would be a hardship on our marriage and our new combined families - as it has already been difficult. This could stretch into another year or more. There is no guarantee that a qualifying family will be produced in the next 2 years.**

With the sale of the house, I will be paying all of the obligations due: the first mortgage, the promissory note to St. Vincent De Paul, the City of Springfield SHOP loan, the State of Oregon and the Home Start loan. These funds will go back out into the community, doing some good I'm sure. St. Vincent De Paul will certainly have its money back and will hopefully find a qualifying family in the next 2 years who can use the very same subsidy to afford a mortgage. I will also have to pay a re-capture penalty to the State of Oregon because I did not sell my home as a single income tax-payer and the loan was financed through the State Bond program, offering a slightly below market interest rate (the savings/difference I must make up for now). I am willing to pay all liens and penalties so that I can live with my husband.

Please, consider my request to remove the CC&R in view of the extenuating circumstances. Many lives hang in the balance and we are depending upon you to help us. Thank you honorable board, for hearing me.

Most Sincerely,



**Sale of Property:**

**816 So. 72<sup>nd</sup> St.  
Springfield, OR 97478**

**Sales Price: \$142,500**

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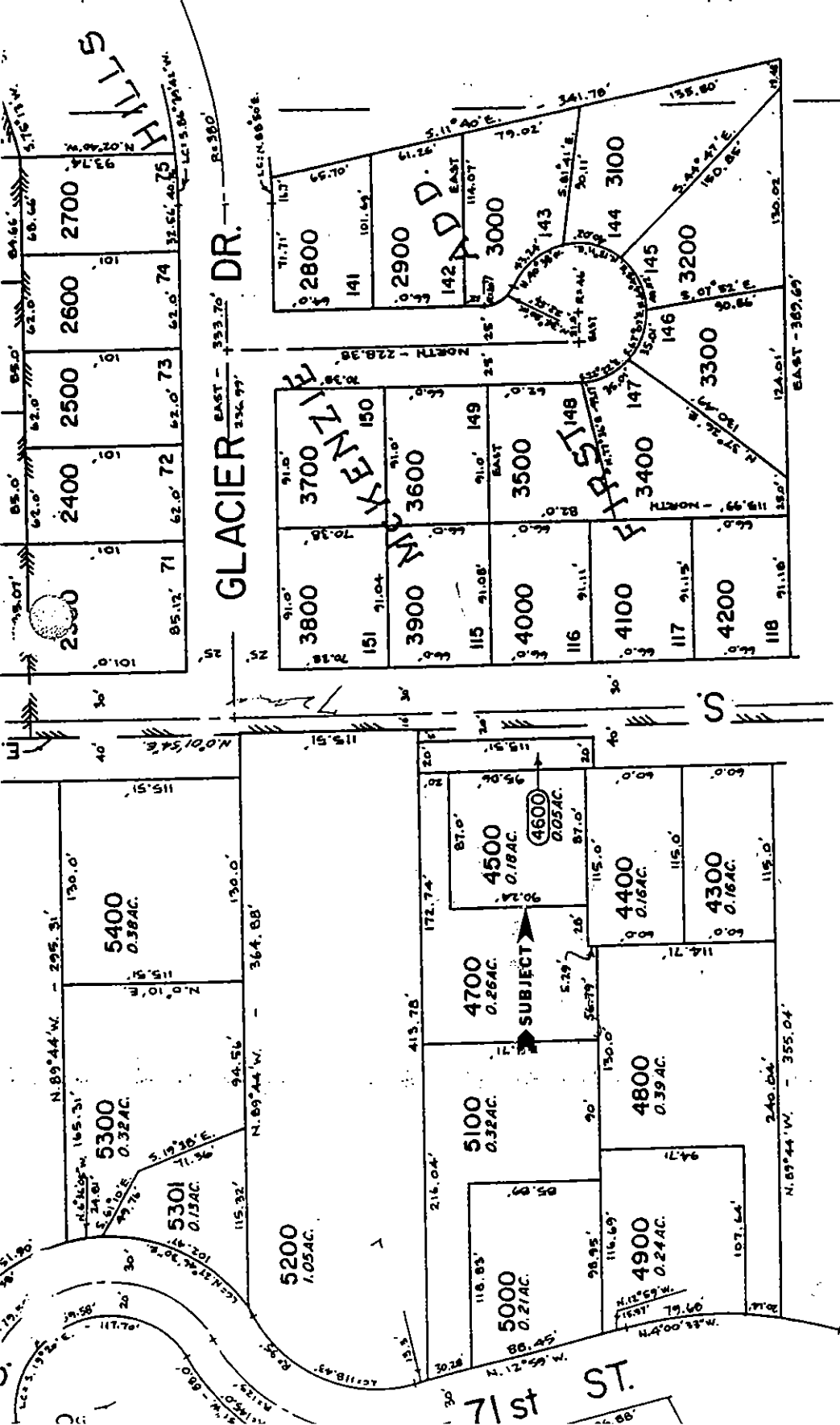
**Liens & Payments:**

- 1) First Mortgage Lender - Siuslaw Bank: \$78,104.49**
- 2) Interest Due to Siuslaw Bank: \$501.72**
- 3) Statement Fee to Siuslaw Bank: \$10.00**
- 4) Homestart Grant Repayment (Siuslaw Bank): \$1,846.58**
- 5) City of Springfield Down Payment Assistance (SHOP): \$4,000.00**
- 6) St. Vincent De Paul: \$21,000.00**
- 7) Oregon Housing: \$1,500**
- 8) City of Springfield Re-capture Payment: \$2,500 (removes CC&R recorded 07/2001-10 yrs)**

**In addition, there is a re-capture penalty due the State of Oregon, which is filed later with the income tax return which should amount to: \$5,470**

18020221-04500

18 02 02 21  
SPRINGFIELD



SEE MAP 18 02 02 24