

W8E3

AGENDA COVER MEMO

DATE: April 28, 2005
TO: Lane County Board of Commissioners
DEPT.: Public Works
PRESENTED BY: Frank Simas
Right of Way Manager

AGENDA ITEM TITLE: In The Matter of Authorizing an Extension of Time to Exercise an Option Concerning Tax Lot 17-03-25-13 00500.

I. MOTION

THAT THE ORDER BE APPROVED FOR AN EXTENSION OF TIME TO EXERCISE AN OPTION UNDER A LEASE AND OPTION AGREEMENT WITH JOHN R. SOOY AND MARY P. SOOY, AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE EXTENSION AGREEMENT CONCERNING TAX LOT 17-03-25-13 00500.

II. ISSUE OR PROBLEM

The Sooy's wish a modification of the terms of the Lease and Option Agreement with Lane County dated January 7, 2004, and approved pursuant to Order No. 03-12-17-9. This agreement covers a parcel of excess County-owned land located on the southeast side of the intersection of North 19th Street and Marcola Road in Springfield.

III. DISCUSSION

A. Background

The original Lease and Option Agreement for this property expired on December 31, 2003. Because the litigation involving an adjoining owner, Lane County and the Sooy's concerning the validity of some deed restrictions had not been resolved to the point that the Sooy's could determine whether it would be feasible to exercise the option at the agreed price of \$220,000, a renewal of the agreement was authorized pursuant to the above referenced Board Order.

All legal issues have since been resolved, and pursuant to Paragraph 11, Section I and Paragraph 13, Section II, Notice was given to the Sooy's on March 17, 2005, that the lease of the property will terminate 60 days from the date of the notice and that their rights under the Option will also expire within 60 days, if not exercised.

They are currently in the process of obtaining a zone change and resolving site development issues with the City of Springfield to allow the commercial use of the property. They have experienced some delays in getting these actions completed, and have asked for an extension of 130 days in which to exercise the option to purchase the property. The City of Springfield has 120 days in which to consider their application for a zone change and site review, at which time they will know whether or not to exercise the option. In return for the granting of the extension, the Sooy's are offering to pay interest at prime plus three percent, currently equivalent to 8.75 percent per annum.

B. Analysis

The zoning and development issues that need to be resolved with the City of Springfield in order to use the land for commercial purposes are issues that most potential buyers of the property would consider to be desirable to have resolved prior to purchasing the property. If the extension of time is not granted and the Sooy's decide not to exercise their option rights due to the uncertainty associated with these issues, and the property is ultimately resold to another purchaser, it is likely that the new buyer would likewise make the sale contingent upon resolution of these issues.

Because this property has previously been offered for sale through the Sheriff's sale process, it may be offered by direct sale to another purchaser pursuant of ORS 275.200 should the Sooy's decide not to exercise their option rights. If the extension is granted and the Sooy's do not exercise the option based on the outcome of the land use and development applications, any new potential buyers would have less uncertainty, as they would be aware of any restrictions as to potential uses. An extension of 130 days duration until September 23, 2005, should give adequate time to resolve all remaining land use and development issues.

C. Alternatives/Options

1. Approve the attached order authorizing the extension of time to exercise the Option Agreement and authorize the County Administrator to execute an extension of 130 days, with interest on the \$220,000 purchase price to be paid at the rate of 8.75% per annum until paid or terminated by the optionees. The interest to be paid to the Road Fund will be \$1,604.17 per month.
2. Do not approve the Order and direct staff to hold the optionees to the original terms of the option, and should the optionees not exercise the option to purchase by the expiration date, direct staff to solicit other offers to purchase the property.

D. Recommendations

Option 1.

IV. IMPLEMENTATION/FOLLOW-UP

If authorized, an Extension Agreement will be processed for signature by the County Administrator.

V. ATTACHMENT:

None.

**IN THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY
STATE OF OREGON**

ORDER NO.

(**IN THE MATTER OF AUTHORIZING**
(**AN EXTENSION OF TIME TO**
(**EXERCISE AN OPTION CONCERNING**
(**TAX LOT 17-03-25-13-00500**

WHEREAS, Tax Lot 17-03-25 13-00500 is owned by Lane County and is no longer needed for public use; and

WHEREAS, John and Mary Sooy entered into a Lease and Option Agreement with Lane County pursuant to Order No. 03-12-17-9 covering said property; and

WHEREAS, the terms of said Lease and Option Agreement require that the Option be exercised upon 60 days notice from County to the Lessee that pending litigation affecting the title to the property has been adjudicated resolved and/or settled; and

WHEREAS, said notice to Lessee from County was given to Lessee on March 17, 2005; and

WHEREAS, John and Mary Sooy have requested an extension of the time to exercise the Option Agreement in order that pending zoning and development issues involving the City of Springfield can be resolved in order to establish the permitted uses for the property; and

WHEREAS, a 130 day extension to September 23, 2005, should be sufficient to resolve all pending zoning and development issues: and

WHEREAS, an equitable rate of interest to be paid by the Sooy's during the extension period is 8.75% per annum, based on the rate at which assessment liens for County road improvement projects would accrue interest at the present time; THEREFORE

IT IS HEREBY ORDERED that the County Administrator is authorized to sign an Extension Agreement to extend the time allowed for exercising the option to purchase the above-referenced property to September 23, 2005, with interest to be paid by the Lessees at the rate of 8.75% interest based on the option price of \$220,000, from March 17, 2005, until paid or otherwise terminated by Lessee.

DATED this _____ day of _____, _____.

Anna Morrison, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 5-3-05 Lane County

Tom Kull
OFFICE OF LEGAL COUNSEL