

Counsel file

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JAN 30 1986

BEFORE THE BOARD OF COUNTY COMMISSIONERS

FOR THE COUNTY OF LINCOLN
ORDINANCE #234

Lincoln County Legal Counsel

AN ORDINANCE AMENDING LINCOLN COUNTY COMPREHENSIVE PLAN MAP AND ZONING DESIGNATION AND DECLARING AN EMERGENCY

WHEREAS the city of Depoe Bay recently amended its urban growth boundary and requested that the county consider those amendments; and

WHEREAS land use goal #14 requires cities and counties to mutually adopt an urban growth boundary and a coordinated plan and implementing measure for unincorporated territories within the urban growth boundary; and

WHEREAS, by adoption of Ordinance #223 on November 28, 1984, the Lincoln County Board of Commissioners amended the Lincoln County Comprehensive Plan Map to extend the urban growth boundary of the city of Depoe Bay; and

WHEREAS said ordinance was appealed to the Land Use Board of Appeals, which, by order, remanded the matter for further consideration to this board on specific issues; and

WHEREAS, following public notice pursuant to Lincoln County Code and state law, the Lincoln County Board of Commissioners conducted a hearing on the remand;

Now, therefore, it is hereby ORDAINED as follows:

1. That the Depoe Bay Urban Growth Boundary as delineated on the Lincoln County Comprehensive Plan and Zoning Map, is amended, as set forth on Exhibit A, attached hereto and by this reference incorporated herein;

2. That the Lincoln County Comprehensive Plan and Zone Designation for the property included in the urban growth boundary are by this ordinance amended as set forth in Exhibit A;

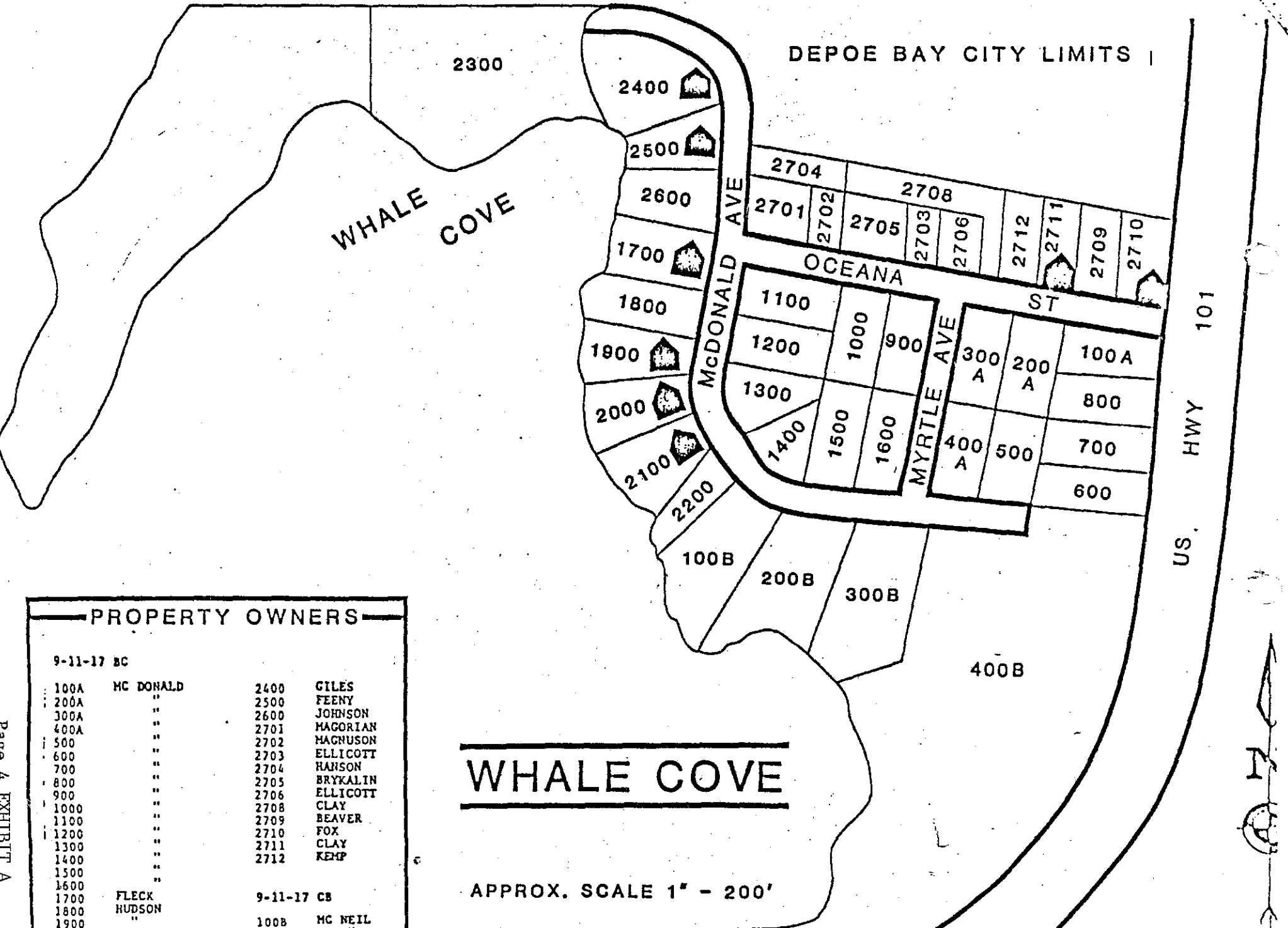
3. That the Lincoln County Planning Staff is hereby directed to amend and initial the zoning maps of the county on file with the Lincoln County Clerk, and date and number said changes;

4. That the Lincoln County Board of Commissioners adopt the findings attached as Exhibit B, attached hereto and by this reference made a part hereof, including findings adopted by the city of Depoe Bay by Ordinance #116;

5. That Ordinance #223 is hereby repealed.

.....

Lincoln County Legal Counsel
Lincoln County Courthouse
225 W. Olive Street
Newport, OR 97155
Phone: 253-8611 ext 308



PROPERTY OWNERS			
9-11-17 BC			
100A	MC DONALD	2400	GILES
200A	"	2500	FEENY
300A	"	2600	JOHNSON
400A	"	2701	MAGORIAN
500	"	2702	MAGNUSON
600	"	2703	ELLICOTT
700	"	2704	HANSON
800	"	2705	BRYKALIN
900	"	2706	ELLICOTT
1000	"	2708	CLAY
1100	"	2709	BEAVER
1200	"	2710	FOX
1300	"	2711	CLAY
1400	"	2712	KEMP
1500	"		
1600	"		
1700	FLECK	9-11-17 CS	
1800	HUDSON	100B	MC NEIL
1900	"	200B	"
2000	HOYSER	300B	MC DONALD
2100	"	400B	"

WHALE COVE

APPROX. SCALE 1" - 200'

EXHIBIT B

In the Matter of)
)
AMENDMENT OF THE DEPOE BAY) FINDINGS OF FACT
URBAN GROWTH BOUNDARY) AND CONCLUSIONS

FINDINGS OF FACT

1. The area to be included within the Depoe Bay Urban Growth Boundary (the "subject property") consists of approximately 25 acres, bounded by U.S. Highway 101 on the east, Highway 101 and Whale Cove Inn on the south, Little Whale Cove subdivision on the north and the Pacific Ocean on the west.

2. The subject property consists of 41 tax lots in 17 ownerships. The largest single tax lot is 4.98 acres and the largest single ownership is approximately 20 acres. Twenty-four lots are within a platted subdivision, with dedicated roads. Eight lots are presently developed with single family residences.

3. The density of housing on the subject property is characteristic of and consistent with density of housing west of Highway 101 in the City of Depoe Bay.

4. The subject property is zoned suburban residential. Most of the 41 tax lots are substandard size, i.e., less than 15,000 square feet as designated by the Lincoln County Zoning Ordinance. The average lot size is approximately 11,000 square feet.

5. The subject property is effectively separated from adjacent lands to the south, east and west by Highway 101 and the Pacific Ocean. Lands to the north are currently developed with compatible residential uses.

6. The subject property has been identified as forest land in the Lincoln County Comprehensive Plan Inventory.

7. The subject property has been designated in the acknowledged Lincoln County Comprehensive Plan as either built upon or irrevocably committed to uses not permitted by Goal 4, pursuant to Goal 2 exception requirements. Inclusion of the subject property within the UGB will not result in the conversion of any resource lands to non-resource uses.

8. Urban services provided by the City of Depoe Bay are limited to sewer and water.

9. The City of Depoe Bay and the subject property are serviced by and receive the same police and fire protection, sanitary service, health services and electrical power as are provided on a county or area-wide basis. The same school district serves both the City of Depoe Bay and the subject property.

10. Power facilities, including PUD poles, street lights and underground power lines, are in place on the subject property. These facilities are characteristic of and compatible with existing structures and facilities in the City of Depoe Bay.

11. The subject property is served by the City of Depoe Bay water system, through the Miroco water district.

12. The water lines extending to and servicing the subject property are six inches in width; the same size that serves residential areas of the City of Depoe Bay.

13. In 1976, the Depoe Bay Sanitary District and Thomas McDonald requested of Carl Halvorson that the sewer lines in Little Whale Cove, the property immediately to the north of the subject property, be sized during construction to provide adequate capacity to accommodate future development on the subject property.

14. The sewer system in Little Whale Cove was constructed in the late 1970s prior to the adoption of Lincoln County's Comprehensive Plan.

15. The eight-inch sewer lines within Little Whale Cove are of sufficient size to serve present and anticipated future improvements on the subject property.

16. The main trunk line running from the sewer lines within Little Whale Cove to the City of Depoe Bay's sewage treatment facility was constructed to a twelve-inch diameter. One reason for this was to accommodate anticipated future development of the subject property.

17. Thomas McDonald reimbursed the City of Depoe Bay the sum of \$987.64 for oversizing the 591.4 feet of that trunk line.

18. The sewage treatment plant of the City of Depoe Bay is both adequate and available to serve all prospective development within the Depoe Bay Urban Growth Boundary, as well as the subject property.

19. Extension of City sewer services to the subject property will utilize excess system capacity. This will assist

the City in delivering these services in a more economically efficient manner by spreading the cost over a larger base of users.

20. The provision of sewer service to the subject property will eliminate potential negative environmental consequences resulting from the failure of existing subsurface sewage disposal systems and will permit construction of improvements on existing undeveloped lots.

21. The subject property is on the fringe of the Depoe Bay urban area. The property immediately adjacent to the subject property on the north is fully urbanized. The subject property has been designated by the City of Depoe Bay for urban density residential development.

22. No Goal 5 resources are present on the subject property, according to the Lincoln County Comprehensive Plan Inventory.

23. The Lincoln County Comprehensive Plan Inventory identifies a portion of the subject property as a significant shoreland habitat area, pursuant to Goal 17. As city and county designations for the area are similar, an equivalent level of protection will be provided to this area upon inclusion within the UGB.

24. Inclusion of the subject property within Depoe Bay's Urban Growth Boundary, in itself, makes no physical change on the land and is thus neutral regarding energy, economic or social consequences. Future development at urban density may or

may not have adverse energy, economic and/or social consequences depending upon the alternatives to that development.

25. There are no agricultural soils on the subject property.

26. There are no agricultural activities within several miles of the subject property.

27. The findings of fact adopted by the Depoe Bay City Council (Ordinance No. 116 Exhibit "B") are hereby incorporated into these findings as if fully set forth herein.

The Board, therefore, makes the following

CONCLUSIONS

1. The subject property was, prior to the adoption of Lincoln County's Comprehensive Plan, and currently is, committed by existing urban development and existing public facilities to urban use.

2. Inclusion of the subject property within the Depoe Bay Urban Growth Boundary will facilitate the orderly and economic provision of public facilities and services.

3. Inclusion of the subject property within the Depoe Bay Urban Growth Boundary will maximize the efficiency of land uses within and on the fringe of the existing urban area.

4. No adverse environmental, energy, economic or social consequences will result from the inclusion of the subject property within the Depoe Bay Urban Growth Boundary.

5. The long term environmental, economic, social and energy consequences resulting from inclusion of the subject

property in the Depoe Bay Urban Growth Boundary will not be significantly more adverse than would result from inclusion of other areas within the boundary.

6. No agricultural lands or activities will be affected by the expansion of the Depoe Bay Urban Growth Boundary to include the subject property.

7. The proposed urban density residential uses on the subject property will be compatible with other adjacent uses.

CITY OF DEPOE BAY
ORDINANCE NO. 116

AN ORDINANCE AMENDING THE DEPOE BAY COMPREHENSIVE PLAN MAP AND
DECLARING AN EMERGENCY.

WHEREAS, the Depoe Bay Planning Commission and City Council have reviewed the proposed amendments and after a public hearing adopted appropriate findings; now therefore,

THE CITY OF DEPOE BAY ORDAINS AS FOLLOWS:

1. That the Depoe Bay Urban Growth Boundary, as delineated on the City Comprehensive Plan map, is amended as set forth in exhibit "A", attached hereto and by this reference incorporated herein;
2. That the Depoe Bay Comprehensive Plan map designation for property within this Urban Growth Boundary amendment area is "Residential" as set forth in exhibit "A" attached hereto and by this reference incorporated herein;
3. That the Depoe Bay City Council adopts the findings as attached hereto as exhibit "B" and by this reference incorporated herein;
4. That the Depoe Bay City Planner is hereby directed to amend the official Comprehensive Plan map on file with the Lincoln County Clerk, and date and number said changes.
5. That this Ordinance being necessary for the immediate preservation of the public health, safety, and welfare of the City of Depoe Bay, an emergency is hereby declared to exist and this Ordinance shall be in full force and effect upon its approval by the Mayor.

ADOPTED by the City Council of the City of Depoe Bay, Oregon, this 20th day of August, 1984, by the following vote:

YEAS: 5

NAYS: 0

ABSTAIN: 0

ABSENT: 3

APPROVED by the Mayor this 20th day of August, 1984.

ATTEST:

[Signature]
City Recorder

[Signature]
Mayor

"Exhibit B"

WHALE COVE UGB EXTENSION

I. Introduction:

This report provides the justification for the City of Depoe Bay's decision to expand its urban growth boundary southward to take in an additional 25 acres of land in an area known as Whale Cove. Statewide Planning Goal 14 - Urbanization - requires a change in an urban growth boundary be based upon consideration of seven factors:

1. Demonstrated need to accommodate long-range urban population growth requirements consistent with LCDC goals;
2. Need for housing, employment opportunities, and livability;
3. Orderly and economic provision for public facilities and services;
4. Maximum efficiency of land uses within and on the fringe of the existing urban area;
5. Environmental, energy, economic and social consequences;
6. Retention of agricultural land as defined, with Class II being the highest priority for retention and Class VI the lowest priority; and
7. Compatibility of the proposed urban uses with nearby agricultural activities.

Factors 1 and 2 are commonly referred to as "need" factors because they address an amendment to an urban growth boundary based on a need resulting from a projected increase in population. Factors 3-7 are commonly referred to as "location" factors because they require that the physical characteristics of an area be considered in justifying an urban growth boundary expansion. Since there have been no revisions of Depoe Bay's projected population growth, this amendment to its urban growth boundary is based solely on consideration of factors 3-7.

II. Description of the Area:

The 25 acres to be included in the urban growth boundary amendment is bounded by Little Whale Cove Subdivision on the north (inside the city limits), U.S. Highway 101 on the east, Whale Cove restaurant and inn on the south, and Whale Cove on the west. The properties included in the amendment are for the most part level except for the high, nearly vertical bluff areas along the beach and a steep ocean-facing hillside area

78.93

JOHN CHRISTOPHER MINOR
RICHARD D. BEESON*
EVAN P. BOONE
MICHAEL J. BANDONIS

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(503) 265-8888

*Oregon State and
Alaska State Bars

October 14, 1987

RECEIVED
OCT 14 1987

Wayne Belmont
Lincoln County Counsel
Lincoln County Courthouse
225 W. Olive Street
Newport, OR 97365

*WB file
City of Newport*

Lincoln County Legal Counsel

Re: Property Transfer to City of Newport

Gen. WB

Dear Wayne:

Thanks very much for your letter of October 9, 1987. I concur with your reasoning, and accept your position that the deed from the County to the City of Newport, rather than the deed from Mr. Dollar, carries title to the property. It has always been my understanding that the Quitclaim Deed from Mr. Dollar was simply to remove any possibility of an adverse claim.

Again, many thanks for your help on this.

Sincerely,

MINOR, BEESON & BOONE, P.C.

J. Christopher Minor

JCM:cjb
10-1387\Belmont.L01

Taxes journalled off.
WB

LINCOLN COUNTY LEGAL COUNSEL

Wayne Belmont
County Counsel

County Courthouse, Room 110
225 West Olive Street
Newport, Oregon 97365
(503) 265-6611 Ext. 308

October 19, 1987

J Christopher Minor
Attorney at Law
PO Box 510
Newport, Or 97365

Re: Property Transfer to city of Newport

Dear Mr. Minor:

In response to your letter of October 5, 1987, I again have reviewed the statutory scheme in ORS chapter 275 and the Attorney General's Opinion #6157 (July 30, 1987). I have come to the conclusion that the statute, although inartfully drawn, does empower the county to cancel the delinquent taxes on the property deeded to the city of Newport. I reached this conclusion, however, based on a position that the county's "cancellation" of the land sales contract with Mr. Dollar was effected and, therefore, the county, rather than Mr. Dollar, conveyed title to the city of Newport.

ORS 275.190 allows the county to sell real property, acquired in any manner, by an installment sales contract. Under such a contract, the county retains title to the property until all conditions precedent to conveyance of the title are met. Lands sold under such a contract are taxable, ORS 275.240, and a specific term to that effect is included in every contract, ORS 275.190(2).

Cancellation of taxes is strictly proscribed, ORS 312.785(1), except where specifically authorized by law. Generally, property taxes continue as a lien on property acquired by a public entity. *Chizek v Port of Newport*, 252 Or 570, 450 P2d 249 (1968). An exception is found in ORS 275.260, which allows the county to cancel all taxes on property acquired by the county under tax foreclosure or "otherwise under ORS 275.090 to 275.220".

The attorney general, in opinion 6157, construed ORS 275.260 to require the county to cancel taxes on property acquired by exchange, devise, gift, or in connection with foreclosure of delinquent taxes, but not to require cancellation of taxes for land purchased by the county.

Since the county acquired the subject property through foreclosure for delinquent taxes and later "reacquired" the property on cancellation of the land sale contract, an argument can be supported that the county has acquired the property "otherwise under ORS 275.090 to 275.220". This interpretation must stand on the general language in ORS 275.260, even though specific language in ORS 275.240 requires cancellation of property taxes only on contracts made between the county and a recorded owner or contract purchaser of property, or between the county and a party under a private sale. Neither of those specific circumstances applies to the transaction with Mr. Dollar. Again, I find the statute

October 9, 1987

to be inartfully drawn to apply only to these limited sales under the private sale or reconveyance to recorded owners or contract purchasers of property provisions. The bulk of county sales of tax foreclosed properties occurs in a public sale under ORS 275.110, yet no specific authorization for cancellation of taxes when those sales agreements are cancelled is found.

The cancellation of the county contract with Victor Dollar must be considered effective in order for the county to cancel the taxes on the subject property. Although there is some question whether or not the county's cancellation of the contract with Mr. Dollar worked a forfeiture of his contractual rights under law, or was ineffective as attempted, I will treat the cancellation as having occurred and the county as having reacquired all interest in the property upon cancellation. Since Mr. Dollar has quit claimed his interest in the property, this issue does not need to be broached by the county. By reacquiring its interest in tax foreclosed property, the county can cancel the taxes. If the county had not reacquired its interest in the property, and Mr. Dollar's quitclaim of his interest had vested the city of Newport with its title, the situation would, of course, be different, and, therefore, the taxes could not be cancelled.

I will notify appropriate county officials of my conclusions in this case and prepare an order for the board to sign cancelling these taxes. If you have any other comments or questions on this matter, please contact me. I am sure this resolves all issues in this matter.

Very truly,

Wayne Belmont

WB:SSS

JOHN CHRISTOPHER MINOR
RICHARD D. BEESON*
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*Oregon State and
Alaska State Bars

October 5, 1987

RECEIVED
OCT 6 1987

Wayne Belmont
Lincoln County Courthouse
225 W. Olive Street
Newport, OR 97365

Lincoln County Legal Counsel

Re: Lincoln County Property/Transfer to the City of Newport

Dear Wayne:

You may recall that we have been discussing the effect of the declaration of re-acquisition of property by Lincoln County from Vic Dollar. In particular, we were concerned about one lot which had been sold to Mr. Dollar and which the County had deeded to the City of Newport, and whether or not the property was still subject to certain delinquent taxes which had accrued against the property during Mr. Dollar's ownership.

It was my understanding that the Oregon Attorney General recently released an opinion to the effect that ORS 275.260, calling for cancellation of taxes, applies to a wide range of transactions by which a County may acquire property. In the opinion, the specific form of acquisition addressed was acquisition by gift, but I think that the cancellation statute must be read to cover a broad spectrum of acquisition circumstances. The Attorney General opinion in Informal Op.Or.A.G. Op-6157 (July 30, 1987).

If one reads ORS 275.260, it apparently applies to all the circumstances described in ORS 275.090 to 275.220. The provisions of ORS 275.260 may thus be broader than those of ORS 275.240, which you discussed in your letter of July 13, 1987, and with respect to which you had some doubts as to its applicability here.

I would appreciate your comments.

Thank you very much.

Sincerely,

MINOR, BEESON & BOONE, P.C.


J. Christopher Minor

JCM:cjb
10-0187\Belmont.L01

LINCOLN COUNTY LEGAL COUNSEL

Wayne Belmont
County Counsel

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225 West Olive Street
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(503) 265-6611 Ext. 308

July 13, 1987

J. Christopher Minor
Attorney at Law
PO Box 510
Newport, Or 97365

Re: County/City Property Conveyance, Lot 1, Block 2, Seacrest

Dear Mr. Minor:

In response to your letters of June 1987, I have reviewed the two questions you have posed.

The judgment against Lincoln County and former Sheriff Hockema was satisfied in 1982. A satisfaction of judgment was filed with the United States District Court on January 29, 1982. A certified copy of the satisfaction of judgment was forwarded to the Lincoln County Circuit Court Clerk, with appropriate fees, for filing in the Lincoln County records. For whatever reason, the document was not recorded (however, the check was cashed). I am taking steps to obtain another certified copy of the document for filing. The judgment, therefore, does not cloud title to the subject property.

As you are aware, property taxes may only be cancelled under specific statutory authority. Generally, that authority is limited to very specific situations, such as land donated to a public entity for park purposes. Of course, when properties are foreclosed by the county for delinquent taxes, the properties are "sold" to the county for the amount of the taxes and the taxes are cancelled. When a sale of the foreclosed property occurs, the property is placed back on the tax rolls. That is what happened here. Subsequently, the county sought to cancel the contract between the county and Mr. Dollar for this property by board order under the provisions of ORS 275.190(2) or 275.220. The latter provision specifically allows cancellation of the contract in this manner, while the former provision arguably does so. In any case, ORS 275.240 requires that unpaid property taxes be cancelled upon cancellation of an installment contract under ORS 275.220. It is silent as to contracts cancelled otherwise. In retrospect, cancellation of the taxes in this particular instance may have been incorrect, if the contract was not subject to ORS 275.220 remedies.

J. Christopher Minor - Page 2

July 13, 1987

The practical effect of transferring this property to the city is no different whether or not taxes are still a lien against the property. The county cannot foreclose on property in exempt (public) ownership. Although delinquent taxes remain as a lien on the property, they cannot be collected unless the property is conveyed to a non-exempt party. In that situation, the property would no longer be used for public purposes and it is proper that delinquent taxes be collected for distribution to all taxing entities. After all, the conveyance is for a public purpose.

Please contact me if you are unable to obtain a quitclaim deed from Mr. Dollar. I will assist as necessary to complete this transaction.

Very truly,

Wayne Belmont

WB:SSS

immediately north of the restaurant/inn. Whale Cove is forested predominately with alder, spruce, cedar, hemlock, and coast pine, except on some lots which have landscaping.

The Whale Cove area is comprised of 41 tax lots in 17 ownerships. The largest single tax lot is 4.98 acres and the largest single ownership has approximately 20 acres. Twenty-four lots are in a platted subdivision. Eight lots are presently developed with single family residences while several others have R.V.'s parked on them.

III. Goal 14 - Urbanization Findings 3-7:

A. Orderly and Economic Provision for Public Facilities and Services:

Expanding the urban growth boundary to include the Whale Cove area will allow for the orderly and economic provision of public facilities and services. The area is presently served by the Mirocco Water District. Sewer lines were extended to the edge of the Whale Cove area in 1979 when Little Whale Subdivision, currently in the city limits, was being developed. The sewer lines were sized to accomodate the Whale Cove area.

B. Maximum Efficiency of Land Uses Within and on the Fringe of the Existing Urban Area:

The Whale Cove area presently consists of 41 tax lots, eight of which have residences. Because the lots are relatively small - median lot size is approximately 11,000 square feet - and there is a seasonal high groundwater table (caused by a shallow hardpan layer) few additional lots can be developed because they cannot get approvals for on-site sewage disposal systems. Including Whale Cove in the City of Depoe Bay's urban growth boundary will promote the maximum efficiency of land uses by allowing the presently unbuildable lots to be developed.

C. Environmental, Energy, Economic, and Social Consequences:

Including Whale Cove in Depoe Bay's urban growth boundary will have no foreseeable adverse impacts. Most of the area consists of urban-size lots with access onto platted public streets. Whale Cove is adjacent to the existing city limits and does not abut any inventoried resource lands or rural housing areas. It is an area the county has determined to be committed to non-resource uses through the statewide planning goal 2 exceptions process. Some urban level services are presently available, such as public water and fire protection (2 hydrants), while other urban services, such as sanitary sewer, can be provided.

D. Retention of Agricultural Land as Defined, with Class 1 Being the Highest Priority for Retention and Class VI the Lowest Priority:

No agricultural lands are involved in this urban growth boundary expansion. Whale Cove has Class VI soils (Depoe Bay clay loam) but has never been in agricultural production. The County took a goal 2 exception for this area based on its determination that Whale Cove was irrevocably committed to non-resource uses because of the existing land uses, parcel sizes, and ownership patterns present there.

E. Compatibility of the Proposed Urban Uses with Nearby Agricultural Activities:

There are no agricultural activities within several miles of Whale Cove.