

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON**

RESOLUTION NO. 2017-093

Declaring Surplus, Approving Sale of Wapato Facility to Kehoe Northwest Properties, LLC, Authorizing County Chair to Execute Sale Documents, and Directing County Staff to Proceed to Closing.

The Multnomah County Board of Commissioners Finds:

- a. In May 1996, Multnomah County voters approved a Public Safety General Obligation Bond measure to finance construction of a new detention facility, in response to Senate Bill 1145, the legislature's 1995 mandate that counties take responsibility for supervising felons sentenced to less than one year. The County applied for an additional \$12 million in construction funding from the State of Oregon, authorized by SB 1145 to fund construction of local jail facilities to house these felons.
- b. County voters approved spending \$46 million to build Wapato by a margin of 55 to 45%. Less than six months later, Oregon voters approved Measure 47 (later clarified in May 1997 by Measure 50), capping property tax increases and implementing the double majority rule for non-general election year revenue measures, effectively eliminating operational funding for Wapato.
- c. The combined Ballot Measures 47/50 prohibited use of General Obligation Bond proceeds for deferred maintenance or equipment. Measure 50 also preserved 1990's Ballot Measure 5 restriction on how much property tax individual taxpayers can be assessed for operating levies, not more than \$10 per \$1,000 of the property's real market value.
- d. The County completed construction of Wapato in 2004 but never operated it as a detention facility. On April 28, 2005, the Board approved Resolution No. 05-065, authorizing the County to pursue alternative options for the public's beneficial use of Wapato, including, but not limited to, discussions with the State of Oregon and other Oregon Counties, private detention organizations, and others. None of these efforts resulted in the successful commission and operation of Wapato as a detention facility.
- e. A number of events transpired over the following years that resulted in Wapato not being viable as a County detention facility, including a reduction in the crime rate; constitutional revenue limits and recessions; the establishment of the Local Public Safety Coordinating Council and the Decision Support System-Justice (DSS-J), with a focus on crime prevention through multi-jurisdictional collaboration and data driven problem solving.
- f. Wapato is zoned (IHh) Heavy Industrial in the Aircraft Landing (h) overlay zone. The IH zone is one of three that implement Portland's Industrial Sanctuary map designation of the Comprehensive Plan. The zone provides areas where all kinds of industries may locate including those not desirable in other zones due to their objectionable impacts or appearance. The Aircraft Landing overlay zone provides safer operating conditions for aircraft in the vicinity of Portland International Airport by limiting the height of structures, vegetation and construction equipment.

- g. On May 1, 2014, FPM issued a Request for Information, to gauge market interest from the real estate, development and other interested stakeholders in the purchase and redevelopment of Wapato. No viable offers were submitted. The County's commercial property appraisers in the Department of Assessment, Recording & Taxation prepared a report, effective June 14, 2016, analyzing the highest and best use and valuation of Wapato to guide FPM in marketing the Property (the DART Report).
- h. The DART Report considered two valuation scenarios to arrive at an "as is" value of the Property: (1) as an operational detention facility, after deducting the estimated costs required to convert and update the building for such use; and (2) as a manufacturing or warehouse building, after deducting the estimated costs required to convert or alter the building for such use. The DART Report noted Oregon's legal restrictions on private, for-profit prisons, and that other Oregon and Washington counties and the Oregon Department of Corrections had evaluated and rejected a possible lease or purchase of Wapato as not feasible for both cost and operational reasons.
- i. The DART Report concluded that, "Given the legally permissible, physically possible, and maximally productive uses of the property, it is our conclusion the highest and best use of the property, as improved, would be for the conversion of the facility to some type of industrial manufacturing or warehouse use," and placed an "AS IS" value on Wapato of \$8,555,000.
- j. The Port of Portland's (Port) Special Warranty Deed conveying the Wapato Property to the County, recorded November 19, 2001, as Instrument No. 2001-184585 in the Official Records of Multnomah County, contains several restrictive covenants. Covenant #3 requires the County to notify the Port in writing if the County intends to sell the Property. By letter dated August 29, 2016, the County notified the Port of the County's intent to begin negotiations for sale of the Property.
- k. Covenant #3 also requires the County and the Port to negotiate in good faith for a period of one hundred twenty (120) days for the Port's purchase of the Property, unless the Port notifies the County that the Port is not interested in buying the Property. By letter dated September 2, 2016, from Bill Wyatt, the Port's Executive Director, the Port formally confirmed that it was not interested in buying Wapato but that it maintains an interest in ensuring the Property is used in a manner consistent with the industrial uses of the Rivergate Industrial Park.
- l. The County's General Obligation Public Safety Bonds issued to finance construction of Wapato were completely defeased effective October 1, 2016. The State of Oregon has advised the County, by letter dated August 25, 2016, that the remaining balance due on the Oregon bonds issued for construction of Wapato will not impede sale of the Property for a non-corrections use.
- m. In 2004, by Resolution 04-185 the Board adopted a policy for declaring real property owned by the County as surplus (Surplus Property Process). The Surplus Property Process allows the Board to exempt a property from the Surplus Property Process when it is in the best interest of the County to do so.
- n. The Directors of DCA and of the FPM Division of DCA (Directors) have determined that Wapato is no longer required for County use. Over more than ten years, the County has attempted to develop a practical, efficient, or appropriate use for Wapato, consistent with recorded use restrictions imposed by the Rivergate Industrial Park, the City of Portland's

Comprehensive Plan and its Heavy Industrial Zoning. The County does not foresee a viable public use for Wapato in the future. As such, the Directors have recommended that Wapato be declared surplus. In light of the foregoing and the proposed sale of Wapato pursuant to the Sale Agreement, and in considering the best interests of the County, the Directors have recommended that the Board exempt Wapato from the Surplus Property Process.

- o. Pursuant to the Purchase and Sale Agreement attached to this Resolution as Exhibit A (the Sale Agreement), Kehoe Northwest Properties, LLC has agreed to purchase Wapato. The negotiated purchase price will be payable in cash at Closing, scheduled for the 1st quarter of 2018. The County will also save about \$300,000 per year in maintenance costs for the Property. Wapato will be returned to the tax rolls and add industrial jobs to the local economy.

The Multnomah County Board of Commissioners Resolves:

1. The Property is declared surplus. It is in the best interest of the County to exempt the Property from the Surplus Property process.
2. It is in the best interests of the County to sell Wapato to Kehoe Northwest Properties, LLC, on the terms and conditions set forth in the Sale Agreement attached hereto as Exhibit A.
3. The Chair is authorized to execute all documents necessary to complete the sale of Wapato substantially consistent with the Sale Agreement.
4. The Directors, the County Attorney, and the Chief Financial Officer are directed to coordinate with the Chair's Office to satisfy all conditions of the Sale Agreement needed to ensure a timely closing.

ADOPTED this 9th day of November, 2017.



BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Deborah Kafoury, Chair

REVIEWED:
JENNY M. MADKOUR, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By 
Kenneth M. Elliott, Assistant County Attorney

SUBMITTED BY: Sherry Swackhamer, Director, Department of County Assets