

**MULTNOMAH COUNTY, OREGON
HEARINGS OFFICER DECISION
EXPEDITED REDEMPTION FOR TAX FORECLOSED PROPERTY**

PROPERTY SUBJECT TO THE DECISION

The subject property is identified as Tax Account number R942170300 - Tax Lot 300 of the SW1/4 SE ¼ of section 17, W.M., Multnomah County, Oregon (Map No. 1N2E17 DC).

The recorded owner of the subject property is Riedel Waste Systems, Inc., an Oregon corporation, formerly known as KFD, Inc., an Oregon corporation.

PURPOSE OF DECISION

The purpose of the hearing and this decision is to decide if the subject property meets the Multnomah County's Ordinance provisions for a shortened redemption period for tax foreclosed real property.

Multnomah County foreclosed the subject property for delinquent taxes by judgment entered in the Circuit Court for Multnomah County dated September 23, 1999 (Case No. 9908-0832). Under ORS 312.120, the property is subject to a two-year redemption period. Within the redemption period the property owner or other interested parties may "redeem" the property from foreclosure by paying the back taxes and interest. The redemption period for this property under the statutory provision would expire on September 23, 2001.

ORS 312.122 authorizes the county to adopt an ordinance to shorten the period in which an owner or any interested party or entity can redeem the property, if the property is subject to waste or abandonment during the redemption period. After a hearing the county may declare that the rights of persons having an interest in the property to redeem the property are forfeited no less than 30 days after the Board has made the declaration. The property is deeded by the tax collector to the County, if it is not redeemed during the shortened 30-day redemption period. Multnomah County adopted such an ordinance in 1989, Ordinance No 630, the Tax Foreclosure Redemption Forfeiture Ordinance (Ordinance).

HEARINGS OFFICER'S AUTHORITY

After the Director of the Department of Environmental Services for Multnomah County (Director) determines that tax foreclosed property suffers waste or abandonment the Director may require a hearing to be conducted. The Director is authorized to appoint a hearing officer to conduct the hearing. Multnomah County contracted with me to conduct the hearing. The objective of the hearing is to determine if the Director has sufficient basis to recommend to the Board of County

Commissioners (Board) that forfeiture of the statutory redemption period is appropriate, based on findings that the property is subjected to **"waste" or "abandonment."**

If the hearings officer, finds that the property is subjected to waste or abandonment, the Director is required to provide those findings to the Board. The Board may not hear further evidence on waste or abandonment, but it may remand the issue to the Director if it requires further investigation. If the Board adopts the recommendation of the Director, the Board may direct the tax collector to deed the property to the County no earlier than 30 days after the board declares the statutory redemption period is forfeited. If any affected party fails to redeem the property within the shortened redemption period, the tax collector is required to issue a deed to the County, terminating all redemption rights and canceling all taxes and special assessments levied against the property.

The Ordinance requires the Director to give notice of the hearing to the owner, any person or entity that has a recorded lien or other interest in the property and the occupants of the property at least 30 days before the hearing. Certain contents of the notice are required by Ordinance section IV(c). The required notice of the hearing was given on May 18, 2000 (See Exhibit G).

BACKGROUND AND FINDINGS OF FACT

The subject property contains 24 acres. It is located at NE Killingsworth and NE 72nd Avenue on the south edge of Columbia Blvd., south of the Colwood National Golf Course, the Columbia Slough and the Portland International Airport. The subject property is surrounded by urban uses including residential, commercial and industrial development.

The site is within an area of Multnomah County and the City of Portland that is composed of deep deposits of sand and gravel. The site may be part of the groundwater system feeding the aquifer that serves the City of Portland wellfields. A former owner dug a pit extending to the property boundaries up to 100 to 120 feet deep for gravel mining purposes. This was known as the Nash Pit gravel quarry.

After the property was mined, Killingsworth Fast Disposal (KFD) filled the pit with various demolition waste materials. Such waste contains organic matter, which decomposes, creating gases including Methane. Landfill gas is a potential source of greenhouse gases, odors, volatile organic compounds (VOCs) and other pollutants. Methane gas is potentially explosive at concentrations of 5 to 15% by volume in air. State and Federal regulations use the lower explosive limit (LEL) of 5% as the compliance limit.

Landfill gas can migrate through the porous subsurface materials and buildup to explosive levels in confined spaces like basements, crawl-spaces, culverts, utility vaults, utility conduits, manholes and other structures. Methane movement in soils is complex and difficult to predict. Monitoring probes may detect methane one day

but not the next. Environmental conditions including barometric pressure and site hydrogeology and geology exert a strong influence on how and where methane moves. Methane is lighter than air and may enter buildings and other confined spaces. It moves by convection (pressure gradient) and diffusion (concentration gradient) and follows the path of least resistance, which may or may not be where gas monitoring probes are located. Hazardous products also leach from the waste materials. As noted, the site is underlain by highly permeable sand and gravel, conditions conducive to methane migration and migration of other hazardous leachates. Methane can migrate a thousand feet or more in highly permeable soil.

KFD's waste disposal was franchised by Metro and permitted by the Department of Environmental Quality (DEQ) in the early 1980's. KFD lined the sides of the pit with plastic, but that lining is not impervious because the plastic liner tore and was punctured by the gravel on the pit's edges and from abrasion during dumping of fill materials. KFD also installed a leachate collection system, basically consisting of collection pits and sump pumps to collect the leachates and pump them into the City of Portland sanitary sewer system. A system was also installed to collect methane gas. This system is composed of plastic piping within the fill that collects the gases. The collected gases are incinerated on site. The leachates and gases increase as water and oxygen enter the fill materials. To reduce the entry of surface water into the fill materials and the entry of oxygen, KFD installed a thick plastic "cap" over the top of the fill and covered it by approximately 2 feet of earth. These health and environmental protection measures were installed pursuant to DEQ regulations which also require that the systems be operated, maintained and monitored until the leachates and gases are no longer a danger to public health and the environment.

In 1984 Killingsworth Fast Disposal became KFD, Inc., which in turn became Riedel Waste Disposal Systems, Inc. in 1986, which became Riedel Waste Systems, Inc. in 1990. Riedel Environmental Technologies, Inc. was the sole shareholder of these corporations. Riedel Environmental Technologies, Inc. was a parent of Riedel Environmental Services, Inc., a subsidiary of Smith Envir. Tech. The subject site was the only asset of RWS.

The RWS landfill site was permanently closed in 1990. At closure the site met applicable regulations. In 1990 Riedel Waste Systems appeared to DEQ to have abandoned the site after closure. Riedel Environmental Technologies, Inc. (Delaware) merged with Riedel Environmental Technologies (Oregon) and became Columbia Western Inc. in 1994. None of these entities has operated the site. In 1995 DEQ found that the waste monitoring system had failed. By 1996 DEQ found that the landfill gas collection system was unsafe and unreliable.

The landfill gas control system was largely defunct. The system's main operating controls were an extraction-well field and vacuum motor-blower complex. The motor-blower system needs to operate continuously, 24 hours a day. The system continued to operate, but extracted a small fraction of the total landfill gas. The system had many breakdowns and needed constant repair. The breakdowns were caused by electric power outages, excessive condensation building up in system components and overheating of the vacuum motor-blower. DEQ found safety

deficiencies in the vacuum-motor-blower complex. Because there were no flare or other air pollution controls on the complex, it discharged full-strength landfill gas directly to the atmosphere.

In early 1996 the owner of the site, Riedel Waste Systems, Inc. (RWS) notified DEQ that it was financially unable to continue to perform required post-closure maintenance and monitoring activities. On October 8, 1997, the parent corporation, Smith Envir. Tech. filed for bankruptcy. According to the Secretary of State records, RWS became inactive October 17, 1997.

Because the Owner Corporation was not performing its obligations, DEQ began performing monitoring activities and crisis management maintenance activities to prevent further degradation of the site to protect human health and the environment. DEQ monitored the landfill twice monthly with methane gas probes at 29 locations along the landfill site's property lines and in the crawl spaces of several houses and mobile homes on surrounding parcels.

By August 11, 1998 DEQ staff determined that the landfill was an imminent threat to public health and safety. According to a DEQ memorandum of that date, "high levels" of methane gas were present in subsurface soils at the perimeter of the landfill. During monitoring on July 23, 1998 methane levels exceeded the LEL at ten out of the 29 on-site gas probe locations. This was a typical monitoring result. The high levels occurred on the north side of the site opposite the Colwood Golf Course, near a home at the north end of 72nd Avenue (at the northwest corner of the KFD site) and on the south side of the KFD site, opposite a commercial establishment. The gas control system was in very poor condition and beyond repair. The methane had caught fire on more than one occasion that damaged parts of the system, melting the plastic pipe. During periods that the gas control system was broken down the high methane levels spread to the southwest and south perimeter of the site near a mobile home park and several houses.

In June 1999 DEQ concluded that conditions at the site presented a substantial and imminent threat to human health and adopted a temporary administrative rule declaring methane a hazardous standard for purposes of Oregon environmental cleanup law. The rule allowed DEQ to use money in its Solid Waste Orphan Site Account to conduct remedial activities at the site.

Beginning in July 1999 DEQ contractors drilled landfill gas extraction wells at the site. In January 2000 DEQ contractors began construction to install a new landfill gas extraction system including piping, blowers and a flare tower and demolishing the old landfill gas extraction system, abandoning unusable wells, making grading and drainage improvements and doing extensive repair of the geomembrane cap. These construction activities will be completed by July 2000.

The total cost of the project was \$1,500,000, more than half of the funds DEQ has for landfills in the whole state. RWS failed to respond to DEQ demands that RWS reimburse DEQ for funds DEQ spent at the site. DEQ filed a lien against the property for costs of constructing the new system and the owner failed to

reimburse DEQ its costs on demand. The registered agent of RWS resigned on September 28, 1999.

After completion of the new environmental waste systems, the site will require ongoing monitoring, operation, and maintenance activities to assure proper performance of the landfill gas extraction and leachate collection systems and to prevent future releases of hazardous substances and other threats. Leachate monitoring is required to satisfy the site's Industrial Wastewater Discharge Permit for discharging leachate into the City or Portland sanitary sewer system. Groundwater monitoring is also required to evaluate performance of the landfill liner and assess water quality.

The 1999 temporary rule was valid for 180 days, expiring on January 2, 2000. After completion of the described contracted activities, DEQ may not use the Solid Waste Orphan Site Account funds for any future activities at the site. DEQ estimates that now that the environmental protection systems have been rebuilt, there is an on-going cost of between \$50,000 and \$100,000 per year for approximately the next 10 years, up to a total of \$1,000,000. The City of Portland is willing to become the owner and responsible for operating and maintaining the site under DEQ standards. In the end the City will have ownership of a clean site that it can develop for park purposes. The high estimate for annual operating expenses amounts to a purchase price of \$41,667 per acre for the City of Portland.

The County proposes to reduce the redemption period so that it may obtain possession of the property. The County upon obtaining possession would convey the property to the City of Portland. The City of Portland has the institutional and financial capacity to responsibly operate, maintain and monitor the site to prevent danger to the public health and safety. Under ORS 271.330, the County has the authority to transfer the property to the City. The City of Portland and DEQ are in the process of negotiating an intergovernmental agreement for the City to take over operation and maintenance of the leachate collection and landfill gas extraction systems on the property.

HEARING

A hearing was held on June 19, 2000. The owner, lien-holders or other entities having or appearing to have a lien or other interest in the property were notified of the hearing. There is no occupant of the property, which is vacant. The lien-holders include CIT Group/Equipment Financing, Inc, the City of Portland, the State Department of Environmental Quality (DEQ) and US Bank National Association. See Exhibits E, G and I). The City of Portland and DEQ appeared at the hearing. The staff of Multnomah County Department of Assessment and Taxation testified that CIT Group/Equipment Financing, Inc and US Bank National Association waived their redemption rights.

Laurie Craighead, representing the department of Assessment and Taxation summarized the Department's "Memorandum to Hearings Officer" dated June 15, 2000.

Charles Landman, testified, representing the State of Oregon Department of Environmental Quality (DEQ). He testified about the history and nature of the problems at the site, potential risks if there is no owner responsible and capable of operating, maintaining and monitoring the site, DEQ's construction projects to remediate the site, and about DEQ's financing limitations concerning ongoing operations, maintenance and monitoring of the site. He testified that Ridell abandoned the site in about 1990 and that the monitoring system failed in 1995.

Jun Betz, representing the City of Portland's City Attorney's Office, testified about the City of Portland's interest in acquiring the site. She testified that the City has an understanding with Multnomah County and DEQ that Multnomah County, after being deeded the site upon conclusion of the expedited redemption period, will transfer the property to the City of Portland. The City will then become responsible for ongoing monitoring, operating and maintaining all facilities on the site installed to protect the public health and environment. The City will eventually develop the site for a park.

Susan Hathaway-Marxer, representing the City of Portland Parks Bureau, testified that there is a major need for parks for young people, in the City of Portland in general and this neighborhood in particular. This tax-foreclosed property could be acquired by the City Parks Bureau at no cost (but with costs for monitoring, maintaining and operating environmental waste systems).

ABANDONMENT CONCLUSIONS

Abandonment is defined in the Multnomah County Ordinance, in Section III (A) as:

Property not occupied by the owner or others authorized by the owner, or any entity appearing in the records of the County to have a lien or other interest in the property, for a period of six consecutive months, when such property suffers a substantial depreciation in value or the likelihood thereof if it remains unoccupied; or property vacant for less than six months when conditions thereon constitute a public nuisance or public safety hazard and the record owner refuses to abate such condition within 30 days after written demand of the Director is mailed by certified mail to the last address recorded with the assessor's office.

There is no evidence that the subject site has been occupied since its closure as a landfill in 1990. DEQ believed in 1990 that RWS had abandoned the site. In 1996 DEQ was notified, apparently by an agent of RWS, that RWS was not capable of operating and maintaining the site. Coupled with the surrounding circumstances, I construe that notice as notice that RWS was abandoning or had abandoned the site. The corporate form of RWS evolved, but this sole asset of RWS was never transferred to a new owner according to the records of the Multnomah County

Department of Assessment and Taxation. RWS remains the recorded owner, despite the fact that RWS ceased to exist in 1994 when it became Columbia Western Inc. Whoever may be the legal owner of the property is not now occupying it, nor is there any evidence of occupation since 1990. The ultimate parent company, Smith Envir. Tech., filed for bankruptcy on October 8, 1997. There is no evidence in the record that any lien-holder or other person with an interest in the property has ever occupied the property since 1990.

As a result of the owner's failure to conduct the required operation, maintenance and monitoring activities, the environmental control systems deteriorated and substantially failed. DEQ was forced to go onto the property to address those problems to preserve public health and safety.

DEQ has a lien-holder interest in the property and has entered the property to monitor environmental protection systems and to install new environmental protection systems. DEQ's lien-holder interest did not arise until after it made improvements to the environmental protection systems and RWS refused to reimburse DEQ. DEQ's presence on the property was in the State's capacity as a protector of the public health, safety and welfare, not as an occupier of the land.

Because RWS abandoned the site and failed to operate and maintain the required environmental protection systems those systems failed to function properly. The failure of the systems resulted in depreciation of value of the property because the systems had to be replaced. Those systems have now been replaced at great expense to the State of Oregon. If an owner with financial capacity to continue to operate, maintain and monitor the environmental systems cannot be made responsible for the property those new systems are as likely to fail over time as they were in 1990. It is a virtual certainty that without a responsible owner the systems, installed at an expense of \$1,500,000 would again fail and become worthless. That constitutes a substantial depreciation in value.

If the record showed that the property had been vacant for less than six months making the second part of Section III (A) applicable, the circumstances here demonstrate that those criteria are also satisfied. The methane gas and other hazardous products produced at the site constitute a public safety hazard and the record owner refuses to abate that condition. As noted, the record owner (RWS) notified DEQ in 1996 that it was unable to perform required post-closure maintenance and monitoring activities and the Secretary of State later dissolved the corporation. On April 21, 1999, DEQ notified the owner's registered agent by certified mail that remedial actions were necessary at the site. DEQ received no response from the registered agent or the owner.

The Director of Assessment and Taxation did not mail the certified demand for abatement required under this section of the Ordinance because RWS already provided both the verbal intent to abandon the property and the conduct inconsistent with an intention to make further use of it. The property was vacant and has not been occupied by the owner or any other entity since it was closed in 1990. Additionally, RWS informed DEQ in 1996 that they no longer intended to perform the required post-closure maintenance and monitoring activities. RWS has

failed to pay the real property taxes for the subject property as well as failing to respond to DEQ demands that it take actions at the site necessary to protect human health and the environment. Finally, RWS has failed to respond to DEQ demands that RWS reimburse DEQ for funds DEQ has spent at the site.

The property has not been occupied since 1990, much greater than the requisite 6 months to qualify as an abandoned property. The property has suffered substantial depreciation in value to its improvements. The state has replaced those improvements, but if a new owner is not made available to the property it is virtually certain that it will again suffer a substantial depreciation in value.

WASTE CONCLUSIONS

As noted already, ORS 312.122 authorizes the County to enact an ordinance to provide a means to require the tax collector to deed land to the county before the end of the statutory redemption period if "[t]he property is subjected to waste" or "is not occupied." The term waste is not defined in the statute.

"Waste" is defined in the Multnomah County Ordinance, Section III (d) as:

The destruction, material alteration or deterioration of land or improvements thereon, whether caused directly by the person rightfully in possession thereof or permitted to be done by others through failure to supervise such property resulting in substantial loss of value, or the threat thereof, to the property.

The Oregon Appeals Court has said that "[w]aste occurs when a person in possession of land, by act or omission, causes property's value to decrease as the result of abuse or destruction, thereby causing injury to property and holders of legal interests in it." *Whistler v. Hyder*, 129 Or.App. 344, 249, 879 P.2d 214, 216 (1994). The Court's definition includes injury to holders of legal interests in the property as well as injury to the property. The County's definition is limited to injury to the value of the property. The Hearings Officer finds that the Ordinance's definition is the definition applicable to these proceedings.

The Hearings Officer also notes that both the statute and the County Ordinance require that only one of the two definitions need to be satisfied. The redemption period can be expedited upon a finding of either abandonment or waste. The first prong of the abandonment definition includes two factors, first that the property is not occupied for the requisite period and second that the property suffers a substantial depreciation in value or the likelihood of such. The Hearings Officer has found in the abandonment discussion that the property is likely to suffer a substantial depreciation in value if a responsible owner does not take possession of the property. The Hearings Officer does not see any difference between the "substantial depreciation in value" standard in the abandonment definition and the "substantial loss of value" standard in the waste definition. Consequently, that element of waste is satisfied here.

The remaining questions relative to waste are whether there is "destruction, material alteration or deterioration of land or improvements" and if so, whether the destruction, alteration or deterioration were caused by the person rightfully in possession or permitted to be done by others."

The Ordinance does not specify when the destruction, material alteration or deterioration has to have occurred. In this case, some of the environmental system improvements previously on the property were destroyed by methane gas fires, and some of the improvements deteriorated because the landowner did not maintain them. That destruction and deterioration occurred because the owner abandoned the property and did not see that the improvements were operated, maintained and monitored as required by DEQ. DEQ stepped in and replaced those systems. The new systems will be subject to destruction and deterioration if not maintained, just as the former system was.

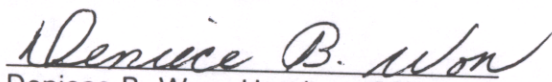
The Hearings Officer believes that the term person as used in Ordinance Section III (D) includes corporate entities. Here, the person who had the right of possession was RWS. By abandoning the property and failing to maintain the environmental protection systems, as required by DEQ, RWS failed to supervise the property and that failure resulted in substantial loss of value in the subject property. DEQ has now restored that value but RWS remains in abandonment of the property. RWS's abandonment results in the threat of future loss of the restored value to the property. As long as the property remains without a responsible owner there is a likelihood that DEQ will expend additional funds to operate, maintain and monitor the property resulting in additional liens against the property, which will greatly impact its marketability.

By abandoning the property and not seeing that it was operated, maintained and monitored as required by DEQ, RWS caused the property to lose substantial value. By remaining in abandonment RWS's continuing failure to operate, maintain and monitor the property threatens future substantial loss of value.

CONCLUSION

The Ordinance standards for waste and for abandonment are both met by this case.

THESE FINDINGS AND CONCLUSIONS ARE HEREBY ADOPTED by the Hearings Officer on June 29, 2000.


Deniece B. Won, Hearings Officer

LIST OF EXHIBITS

- A. History of Corporate Structure