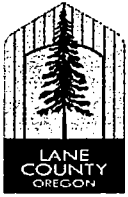


W. 16.b.



Lane County
LAND MANAGEMENT DIVISION
125 EAST 8TH AVENUE
EUGENE, OREGON 97401
PHONE: 541-682-3823
FAX: 541-682-3947

AGENDA COVER MEMO

MEMO DATE: May 9, 2006

AGENDA DATE: May 17, 2006

TO: BOARD OF COUNTY COMMISSIONERS

**FROM: BILL VANVACTOR, COUNTY ADMINISTRATOR
KENT HOWE, PLANNING DIRECTOR**

RE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA 05-6478, Stewart)

I. MOTION

Move to approve the Measure 37 Claim and adopt the order attached to this memo.

II. ISSUE OR PROBLEM

Shall the Board of County Commissioners compensate an applicant under Ballot Measure 37 and LC 2.700 through 2.770 for the reduction in fair market value of the affected property interest resulting from enactment or enforcement of restrictive land use regulations or modify, remove, or discontinue application of those land use regulations to the subject property to allow to use the property as allowed at the time he acquired the property?

III. DISCUSSION

A. Background

Applicant: Bruce Stewart, PO Box 1183, Cottage Grove, OR 97424

Current Owner: Bruce Stewart

Agent: None.

Legal Description of Property: Map 21-03-12-10, Tax lots 102 and 106

Acreage: approximately 13 acres

Current Zoning: RR5 (Rural Residential)

Date Property Acquired: April 10, 1969 (Warranty Deed 7963902)

Date claim submitted: October 7, 2005. On January 11, 2006, the applicant placed this claim on hold. The new deadline is May 26, 2006.

Land Use Regulations in Effect at Date of Acquisition: Unzoned.

County land use regulation which restricts the use and reduces the fair market value of claimant's property: LC 16.290 (Rural Residential District)

B. Specific Relief Sought:

On October 7, 2005, Bruce Stewart submitted a Measure 37 Claim. The applicant has requested compensation of \$445,000, or a waiver of the RR5 (Rural Residential) zone minimum parcel size.

C. Lane Code Submittal Requirements

The applicant has paid the processing fee and submitted evidence in support of this claim. This evidence includes a title report, warranty deed, and an opinion of value from a real estate broker.

D. Analysis

The property contains approximately 12 acres, and is zoned RR5 (Rural Residential). The current owner wants "to have the minimum lot size waived and to be able to use my property as I desire as long as I meet codes that pertain to that use." Based on this statement and the opinion of value, it appears the owner wishes to subdivide the property into one-acre lots and place a dwelling on each lot. The property was unzoned when the Stewart family acquired an interest on April 10, 1969 (Warranty Deed 7963902). Currently, the property is zoned RR5. The only identified restrictive regulation is the five-acre minimum parcel size.

The Board must determine if the opinion of value demonstrates a reduction in fair market value resulting from enforcement of a restrictive land use regulation. The analysis provides evidence of the amount of potential profit from the creation of one-acre parcels. If the Board determines this is a valid claim, the attached order waives the minimum parcel size of the RR5 zone and does not limit the number of lots that can be created.

To have a valid claim against Lane County under Measure 37 and LC 2.700 through 2.770, the applicant must prove:

1. Lane County has enacted or enforced a restrictive land use regulation since the owner acquired the property, and
2. The restrictive land use regulation has the effect of reducing the fair market value of the property, and
3. The restrictive land use regulation is not an exempt regulation as defined in LC 2.710.

Restrictive Regulations

The current owner acquired an interest in the property on April 10, 1969, when it was unzoned. The current RR5 zone requires a minimum of five acres for new parcels. Because of this, Bruce Stewart is prevented from developing the site as might have been allowed in 1969.

Reduction in Fair Market Value

The applicant has submitted an opinion of value from a real estate broker. Based on this opinion, the 12 acres is worth \$290,000. If the property was subdivided into one-acre

lots, the value of those lots would be \$735,000. The Board must determine if this demonstrates a reduction in fair market value.

Exempt Regulations

The RR5 minimum parcel size of 5 acres does not appear to be an exempt regulation described in Measure 37 or LC 2.710.

E. Conclusion/County Administrator Recommendation

The Board must determine if the opinion of value is reasonable and competent evidence that demonstrates a reduction in fair market value resulting from enforcement of a restrictive land use regulation. If so, it appears this is a valid claim.

IV. ALTERNATIVES/OPTIONS

The Board has these options:

1. Determine the application appears valid and adopt an order to that effect for final Board action.
2. Require more information regarding the proposed development.
3. Conclude the application is not a valid claim and direct the issuance of a final written decision by the County Administrator denying the Claim.

V. RECOMMENDATION

If the Board determines the evidence has demonstrated a reduction in fair market value resulting from enforcement of a restrictive land use regulation, then the County Administrator recommends the Board waive the minimum parcel size of the RR5 zone.

VI. ATTACHMENTS

Order to approve the Measure 37 claim of Bruce Stewart.

Written claim dated October 7, 2005.

Warranty Deed #7963902 dated April 10, 1969.

Opinion of Value dated August 19, 2005.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF LANE COUNTY,
OREGON**

ORDER No.) IN THE MATTER OF CONSIDERING A BALLOT
) MEASURE 37 CLAIM AND DECIDING
) WHETHER TO MODIFY, REMOVE OR NOT
) APPLY RESTRICTIVE LAND USE
) REGULATIONS IN LIEU OF PROVIDING JUST
) COMPENSATION (Bruce Stewart/ PA05-6478)

WHEREAS, the voters of the State of Oregon passed Ballot Measure 37 on November 2, 2004, which added provisions to Oregon Revised Statutes (ORS) Chapter 197 to require, under certain circumstances, payment to landowners if a government land use regulation restricts the use of private real property and has the effect of reducing the property value; and

WHEREAS, the Board of County Commissioners of Lane County enacted Ordinance No. 18-04 on December 1, 2004, to establish a real property compensation claim application process in LC 2.700 through 2.770 for Ballot Measure 37 claims; and

WHEREAS, the County Administrator has reviewed an application for a Measure 37 claim submitted by Bruce Stewart (PA05-6478), the owner of real property located at 34332 Stewart Hills Lane, Cottage Grove, and more specifically described in the records of the Lane County Assessor as map 21-03-12-10, tax lots 102 and 016, consisting of approximately 12 acres in Lane County, Oregon; and

WHEREAS, the County Administrator has determined that the application appears to meet all of the criteria of LC 2.740(1)(a)-(d), appears to be eligible for just compensation and appears to require modification, removal or not applying the restrictive land use regulations in lieu of payment of just compensation and has referred the application to the Board for public hearing and confirmation that the application qualifies for further action under Measure 37 and LC 2.700 through 2.770; and

WHEREAS, the County Administrator has determined under LC 2.740(4) that modification, removal or not applying the restrictive land use regulation is necessary to avoid owner entitlement to just compensation under Ballot Measure 37 and made that recommendation to the Board; and

WHEREAS, the Board has reviewed the evidence and confirmed the application appears to qualify for compensation under Measure 37 but Lane County has not appropriated funds for compensation for Measure 37 claims and has no funds available for this purpose; and

WHEREAS, on May 17, 2006, the Board conducted a public hearing on the Measure 37 claim (PA05-6478) of Bruce Stewart and has now determined that the restrictive RR5 (Rural Residential) zone land division requirements of LC 16.290 were enforced and made applicable to prevent Bruce Stewart from developing the property as might have been allowed at the time he acquired an interest on April 10, 1969, and that the public benefit from application of the current RR5 (Rural Residential) zone minimum parcel size regulations to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, Bruce Stewart requests either \$445,000 as compensation for the reduction in value of his property, or waiver of all land use regulations that would restrict the division of land into one-acre lots and placement of a single family dwelling on each lot, uses that could have otherwise been allowed at the time he acquired an interest in the property; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the RR5 zone to the subject property in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference except as explicitly revised here to reflect Board deliberation and action to allow Bruce Stewart to make application for development of the subject property in a manner similar to what he might have been able to do under the regulations in effect when he acquired the property; and

WHEREAS, this matter having been fully considered by the Lane County Board of Commissioners.

NOW, THEREFORE IT IS HEREBY ORDERED that the applicant Bruce Stewart made a valid claim under Ballot Measure 37 by describing the use being sought, identifying the county land use regulations prohibiting that use, submitting evidence that those land use regulations have the effect of reducing the value of the property, showing evidence that he acquired the property before the restrictive county land use regulations were enacted or enforced and the Board hereby elects not to pay just compensation but in lieu of payment, the request of Bruce Stewart shall be granted and the restrictive provisions of LC 16.290 that prohibit the creation of one-acre lots in the RR5 (Rural Residential) Zone shall not apply to Bruce Stewart, so that he can make application for approval to develop the property described in the records of the Lane County Assessor as map 21-03-12-10, tax lots 102 and 106, in a manner consistent with the land use regulations in effect when he acquired an interest in the property on April 10, 1969.

IT IS HEREBY FURTHER ORDERED that Bruce Stewart still will need to make application and receive approval of any division of the property or placement of a dwelling under the other land use regulations applicable to dividing the property or placing a dwelling that were not specifically identified or established by Bruce Stewart as restricting the division of the property or placement of a dwelling, and it would be premature to not apply those regulations given the available evidence. To the extent necessary to effectuate the Board action to not apply the dwelling or division restrictions of the applicable zone described above, the claimant shall submit appropriate applications for review and approval of land divisions and any new dwellings to show the specific development proposals and in the event additional county land use regulations result in a restriction of those uses that have the effect of reducing the fair market value of the property, the County Administrator shall have the authority to determine those restrictive county land use regulations that will not apply to that development proposal to preclude entitlement to just compensation under Measure 37. All other Lane Code land use and development regulations shall remain applicable to the subject property until such time as they are shown to be restrictive and that those restrictions reduce the fair market value of the subject property.

IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by Bruce Stewart does not constitute a waiver or modification

of state land use regulations and does not authorize immediate division of the subject property or immediate construction of a dwelling. The requirements of state law may contain specific standards regulating development of the subject property and the applicants should contact the Department of Administrative Services (DAS - State Services Division, Risk Management - Measure 37 Unit, 1225 Ferry Street SE, U160, Salem, OR 97301-4292; Telephone: (503) 373-7475; website address: <http://www.oregon.gov/DAS/Risk/M37.shtml>) and have the State of Oregon evaluate a Measure 37 claim and provide evidence of final state action before seeking county land use approval.

IT IS HEREBY FURTHER ORDERED that the other county land use regulations and rules that still apply to the property require that land use, sanitation and building permits be approved by Lane County before any development can proceed. Notice of this decision shall be recorded in the county deed records. This order shall be effective and in effect as described in LC 2.770 and Ballot Measure 37 to the extent permitted by law. This order does not resolve several questions about the effect and application of Measure 37, including the question of whether the right of applicants to divide or build dwellings can be transferred to another owner. If the ruling of the Marion County Circuit Court in *MacPherson v. Dept. of Administrative Services*, (Marion County Circ. Ct. Case No. 00C15769, October 14, 2005) or any other court decision involving Ballot Measure 37 becomes final and that decision or any subsequent court decision has application to Lane County in a manner that affects the authority of this Board to grant relief under Ballot Measure 37 and LC 2.700 through 2.770 then the validity and effectiveness of this Order shall be governed by LC 2.770 and the ruling of the court.

DATED this _____ day of _____, 2006.

Bill Dwyer, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 5-9-2006 Lane County



OFFICE OF LEGAL COUNSEL

Application for Claims Under LC 2.700 through 2.770

Due to Regulatory Reduction of Property Value Under Provisions Added to ORS Chapter 197 by BM37

Note: This completed form together with the referenced supporting documentation and application fee must be submitted to the Lane County Land Management Division, 125 East 8th Avenue, Eugene, Or., 97401 for all claims subject to the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004), to be considered for compensation under LC 2.700 through 2.770. In all cases, the applicant has the burden of demonstrating, with competent evidence, that all applicable criteria are met and the applicant would be entitled to compensation if the land use regulation continues to apply. Use additional paper, if necessary.

1. Applicant/ Agent

<u>Bruce D. Stewart</u>	<u>P. O. Box 1183 Cottage Grove, OR 97424</u>	<u>541-942-8622</u>
Applicant Name (Please Print)	Mailing Address	Phone

_____	_____	_____
Agent Name (Please Print)	Mailing Address	Phone

2. Property Owner

Please provide the Name, Mailing Address and telephone number of all property owners of record holding interest in the property that is the subject of this application. Include a complete listing of all lien holders, trustees, renters, lessees or anyone with an interest in the property and describe the ownership interest.

<u>Same as applicant</u>	_____	_____
Property Owner Name (Please Print)	Mailing Address	Phone

_____	_____	_____
Property Owner Name (Please Print)	Mailing Address	Phone

3. Legal Description

Please provide an accurate legal description, tax account number(s), map, street address and location of all private real properties that are the subject of this application.

Assessor Map & Tax Lot 21 03 12 10 Tax Lots 102 and 106

Street Address 34332 Stewart Hills Lane, Cottage Grove, OR Legal Description Attached X

4. Identification of Imposed Land Use Regulation

Please identify the Lane Code section or other land use regulation imposed on the private real property that is alleged to restrict the use of the subject property in a manner that reduces the fair market value. Include the date the regulation was first adopted, enforced or applied to the subject property and a written statement addressing all the criteria in LC 2.740(1).

AGT-5 zone imposed in 1974 because of state wide land use goals. AGT-5 later
became RR-5.

5. Title Report

Please attach a Preliminary Title Report showing title history and continuous ownership traced to the earliest family member ownership, the date of current owner(s) acquisition and all current interests of record for the subject property, issued within 30 days of the application submittal. Provide copies of relevant deeds.

6. Appraisal/Regulatory Effect

Please provide one original, signed appraisal prepared by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon addressing the requirements of provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004) and indicating the amount of the alleged reduction in fair market value by showing the difference in the fair market value of the property before and after the application of the challenged regulations as of the date the owner makes written demand for compensation. Include all of the supporting methodology, assumptions and calculations affecting the appraisal.

Attached

7. Leases, Covenants, Conditions and Restrictions

Please provide copies of any leases or covenants, conditions and restrictions applicable to the subject property.

Attached

8. Identification of Relief Sought

Please specifically indicate what relief is being sought, either a monetary value of the claim describing the reduction in fair market value of the property or the specific use authorization sought in any waiver of the land use regulation.

My property was unzoned when I purchased in in 1969. I respectfully ask to have

the minimum lot size waived and to be able to use my property as I desire as long

as I meet codes that pertain to that use.

I (we) have completed all of the attached application requirements and certify that all statements are true and accurate to the best of my (our) knowledge and belief. I am (We are) authorized to submit this application on behalf of all those with an interest in the property and all the owner(s) agree to this claim as evidenced by the signature of those owner(s) below. Include additional signatures, as necessary.

Entry by County or its designee upon the subject property is authorized by the owner(s) and the owner(s) consent to the application for claims under provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004).

Owner(s) Signature

10-7-05

Date

Applicant/Agent Signature

10-7-05

Date

The following contacts are provided to assist you in finding the necessary information for this application.

For zoning and land use information, please contact the Land Management Division at 682-3577.

This phone contact is a message line. Please leave a message and a Planner will return your call.

For deeds and records information, please contact Lane County Deeds and Records at 682-3654.



First American

Western Pioneer Title Company of Lane County
a division of First American Title Insurance Co.
600 Country Club Road
Eugene, OR 97401
Phn - (541) 484-2900
Fax - (541) 484-7321

RONALD DENTON
TITLE OFFICER
radenton@firstam.com

Bruce Stewart
PO Box 1183
Cottage Grove, OR 97424

Order No.: 7199-629531
July 14, 2005

Attn:
Phone No.: (541) 942-8622 - Fax No.:
Email:

Re:

Preliminary Title Report

ALTA Owners Standard Coverage	Liability \$	Premium \$	
ALTA Owners Extended Coverage	Liability \$	Premium \$	
ALTA Lenders Standard Coverage	Liability \$	Premium \$	
ALTA Lenders Extended Coverage	Liability \$	Premium \$	
Endorsement		Premium \$	
Govt Service Charge		Cost \$	
Other Preliminary Title Report		Cost \$	175.00

We are prepared to issue Title Insurance Policy or Policies in the form and amount shown above, insuring title to the following described land:

The land referred to in this report is described in Exhibit A attached hereto.

and as of June 28, 2005 at 8:00 a.m., title vested in:

Bruce D. Stewart

Subject to the exceptions, exclusions, and stipulations which are ordinarily part of such Policy form and the following:

1. Taxes for the fiscal year 2005-2006 a lien due, but not yet payable.
2. The assessment roll and the tax roll disclose that the premises herein described were specially assessed as Forest Land pursuant to O.R.S. 321.358 to 321.372. If the land becomes disqualified for the special assessment under the statute, an addition tax may be levied for the last five (5) or lesser number of years in which the land was subject to the special land assessment.

This report is for the exclusive use of the parties herein shown and is preliminary to the issuance of a title insurance policy and shall become void unless a policy is issued, and the full premium paid.

3. The rights of the public in and to that portion of the premises herein described lying within the limits of streets, roads and highways.
4. Rights of the public and of governmental bodies in and to that portion of the premises herein described lying below the mean high water mark of Mosby Creek and the ownership of the State of Oregon in that portion lying below the high water mark of Mosby Creek .
5. Any adverse claim based upon the assertion that some portion of said land has been removed from or brought within the boundaries thereof by an avulsive movement of the Mosby Creek or has been formed by the process of accretion or reliction or has been created by artificial means or has accreted to such portion so created.
6. Easement, including terms and provisions contained therein:
Recording Information: May 30, 1980, Reception No. 80-27330
In Favor of: Lane Electric Cooperative, Inc.
For: electric distribution
(blanket easement)
7. Grant of Easement and Maintenance Agreement, including terms and provisions thereof.
Recorded: December 9, 1982, Reception No. 82-36873

Modification and/or amendment by instrument:
Recording Information: October 11, 1999, Reception No. 99-086165
8. Easements and Maintenance Agreements, including terms and provisions thereof.
Recorded: March 20, 1984, Reception Nos. 84-10511 through 84-10515
9. Easement and Maintenance Agreement, including terms and provisions thereof.
Recorded: October 14, 1991, Reception No. 91-49471
10. Easement and Maintenance Agreement, including terms and provisions thereof.
Recorded: December 18, 1992, Reception No. 92-71889
11. Easement and Maintenance Agreement, including terms and provisions thereof.
Recorded: December 18, 1992, Reception No. 92-71890
12. Easement and Maintenance Agreement, including terms and provisions thereof.
Recorded: December 18, 1992, Reception No. 92-71891
13. Deed of Trust and the terms and conditions thereof.
Grantor/Trustor: Bruce D. Stewart
Grantee/Beneficiary: Siuslaw Valley Bank Cottage Grove Branch
Trustee: Western Pioneer Title Company
Amount: \$96,000.00
Recorded: November 20, 2001
Recording Information: 2001-077528

14. Any improvement located upon the insured property, which is described or defined as a mobile home under the provisions of Chapter 820, Oregon Revised Statutes, is subject to registration as herein provided.

NOTE: The tax roll discloses a mobile home on the herein described premises which is not included in a title insurance search. Upon specific request and payment of appropriate fee, the Company may issue a Personal Property Report which discloses ownership, financing statements, judgments and taxes on said mobile home.

- END OF EXCEPTIONS -

NOTE: We find no judgments or United States Internal Revenue liens against Bruce D. Stewart

NOTE: Taxes for the year 2004-2005 PAID IN FULL

Tax Amount: \$370.62
Map No.: 2103121000102
Property ID: 0941292
Tax Code No.: 45-01

NOTE: Taxes for the year 2004-2005 PAID IN FULL

Tax Amount: \$201.92
Map No.: 2103121000102
Property ID: 4196463
Tax Code No.: 45-01

(Mobile Home)

NOTE: Taxes for the year 2004-2005 PAID IN FULL

Tax Amount: \$426.01
Map No.: 2103121000106
Property ID: 1719140
Tax Code No.: 45-01

NOTE: Taxes for the year 2004-2005 PAID IN FULL

Tax Amount: 73.17
Map No.: 2103121000106
Property ID: 1419157
Tax Code No.: 45-02

NOTE: Taxes for the year 2004-2005 PAID IN FULL

Tax Amount: 156.70
Map No.: 2103121000106
Property ID: 4177851
Tax Code No.: 45-01

(Mobile Home; account assessed to Faye H. Stewart II and Tamara L. Stewart)

Situs Address as disclosed on Lane County Tax Roll:

34326, 34332 and 34346, Stewart Hills Lane, Cottage Grove, OR 97424

**THANK YOU FOR CHOOSING FIRST AMERICAN TITLE!
WE KNOW YOU HAVE A CHOICE!**

cc: Bruce D. Stewart



First American Title Insurance Company of Oregon

SCHEDULE OF EXCLUSIONS FROM COVERAGE

ALTA LOAN POLICY (10/17/92)

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy;
 - (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or the extent insurance is afforded herein as to assessments for street improvements under construction or completed at date of policy); or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable "doing business" laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine of equitable subordination; or
 - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

ALTA OWNER'S POLICY (10/17/92)

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
 - (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims, or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

SCHEDULE OF STANDARD EXCEPTIONS

The ALTA standard policy form will contain in Schedule B the following standard exceptions to coverage:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records; proceeding by a public agency which may result in taxes or assessments, or notice of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easement or encumbrances which are not shown by the public records, unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
4. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.
5. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose.

NOTE: A SPECIMEN COPY OF THE POLICY FORM (OR FORMS) WILL BE FURNISHED UPON REQUEST

TI 149 Rev. 5-99

Exhibit "A"

Real property in the County of Lane, State of Oregon, described as follows:

PARCEL I:

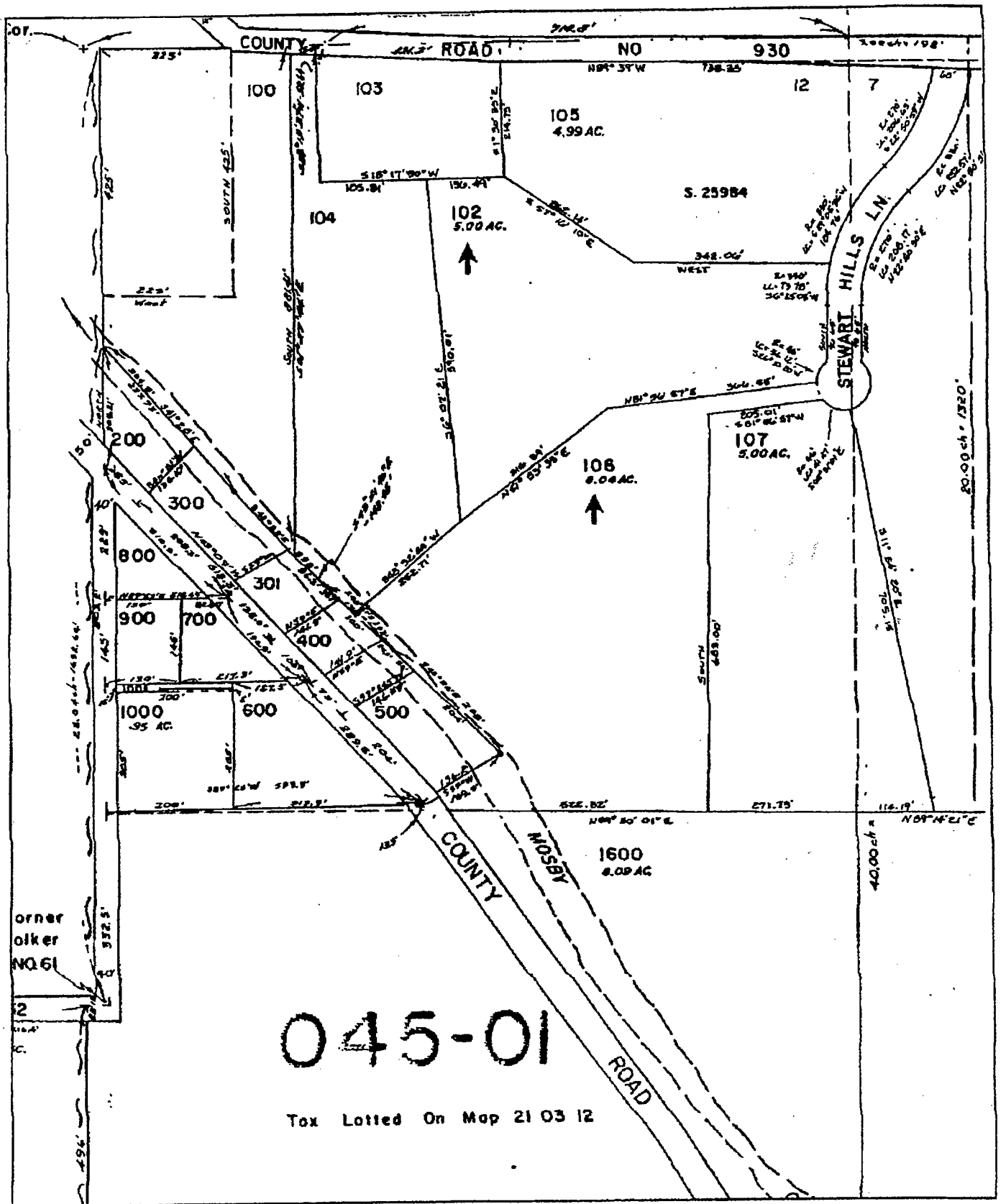
Beginning at a 5/8 inch iron rod that is North 1° 33' 33" West 4004.90 feet and South 89° 30' 01" West 271.73 feet from the Brass Cap marking the Southwest corner of Section 7, Township 21 South, Range 2 West of the Willamette Meridian; run thence South 89° 30' 01" West 522.32 feet to a 5/8 inch iron rod; thence North 59° 17' 48" East 169.50 feet to a point in the center of Mosby Creek; thence along the center of said creek, North 43° 00' 31" West 258.01 feet; thence North 43° 45' 29" West 79.96 feet; thence leaving said creek, North 48° 32' 44" East 252.71 feet to a 3/4 inch iron pipe; thence North 51° 53' 33" East 316.39 feet to a 5/8 inch iron rod; thence North 81° 56' 57" East 366.55 feet to a 5/8 inch iron rod; thence along the arc of a 46.00 foot radius curve to the left, the long chord of which bears South 17° 20' 10" East 32.05 feet to a 5/8 inch iron rod; thence South 81° 56' 57" West 205.01 feet to a 5/8 inch iron rod; thence South 683.00 feet to the Place of Beginning, in Lane County, Oregon.

ALSO: Beginning at a 2 inch iron pipe that is North 89° 48' 09" East and South 0° 11' 51" East 40.55 feet from the Brass Cap marking the Northeast corner of Section 12, Township 21 South, Range 3 West of the Willamette Meridian; run thence along the arc of a 270.00 foot radius curve to the right, the long chord of which bears South 22° 50' 59" West 206.65 feet; thence along the arc of a 300.00 foot radius curve to the right, the long chord of which bears South 29° 05' 35" West 184.76 feet; thence along the arc of the same curve to a point, the long chord of which bears South 6° 25' 05" West 73.78 feet; thence South 96.65 feet; thence along the arc of a 46.00 foot curve to the left the following chord bearings and distances South 26° 10' 27" West 36.12 feet, South 17° 20' 06" East 32.05 feet, South 64° 30' 59" East 41.47 feet, North 66° 53' 38" East 34.16 feet, North 28° 38' 44" East 26.05 feet and North 18° 33' West 47.03 feet; thence leaving said curve North 96.65 feet; thence along the arc of a 240.00 foot radius curve to the right, the long chord of which bears North 22° 40' 30" East 208.17 feet; thence along the arc of a 330.00 foot radius curve to the left, the long chord of which bears North 22° 50' 59" East 252.57 feet; thence South 89° 39' East 60.00 feet to the Place of Beginning, in Lane County, Oregon.

PARCEL II:

Beginning at the Brass Cap marking the Northwest corner of Section 7, Township 21 South, Range 2 West of the Willamette Meridian; run thence North 89° 48' 09" East 152.43 feet; thence South 0° 11' 51" East 40.55 feet; thence North 89° 39' West 738.33 feet; thence South 1° 30' 35" East 314.73 feet to the True Point of Beginning, being marked by a 5/8 inch iron rod; run thence South 88° 17' 30" West 136.49 feet to a 1/2 inch iron pipe; thence South 6° 07' 21" East 590.01 feet to a 3/4 inch iron pipe; thence North 51° 53' 33" East 316.39 feet to a 5/8 inch iron rod; thence North 81° 56' 57" East 366.55 feet to a 5/8 inch iron rod; thence along the arc of a 46.00 foot radius curve to the right, the long chord of which bears North 26° 10' 30" East 86.12 feet to a 5/8 inch iron rod; thence North 96.65 feet to a 5/8 inch iron rod; thence along the arc of a 330.00 foot radius curve to the right, the long chord of which bears North 6° 25' 05" East 73.78 feet to a 5/8 inch iron rod; thence West 342.06 feet to a 5/8 inch iron rod; thence North 67° 15' 10" West 262.14 feet to the True Point of Beginning, in Lane County, Oregon.

Tax Parcel Number: 0941292 and 4196463 and 1719140 and 1419157 and 4177851



THIS MAP IS PROVIDED AS A COURTESY OF WESTERN PIONEER TITLE COMPANY

THIS COPY OF ASSESSOR'S MAP IS PROVIDED SOLELY TO ASSIST IN LOCATING SUBJECT PROPERTY. NO LIABILITY IS ASSUMED FOR DISCREPANCIES IN THIS MAP AS OUTLINED AND THE ACCOMPANYING LEGAL DESCRIPTION.

MAP # 21 03 12 10 00102 000

R1031/163902 1969

WP 56007

WARRANTY DEED

350

FOR VALUE RECEIVED

7963902

21-03-12-1-102
Crb 105

DARRELL L. LEDFORD and PAULAGENE V. LEDFORD, husband and wife

herein referred to as grantors, hereby grant, bargain, sell, and convey unto

BRUCE DAVID STEWART and TAHNI SUE STEWART, husband and wife

herein referred to as grantees, the following described real property, with tenements, hereditaments, and appurtenances, to wit: Beginning 330 feet East of the Northwest corner of the Northeast quarter of the Northeast quarter of Section 12, Township 21 South, Range 3 West of the Willamette Meridian; thence South 881.47 feet, more or less, to the Northeasterly line of that tract conveyed to Lawrence Sather and Leone Sather, husband and wife, by instrument recorded October 9, 1947, in Book 358, Page 179, Lane County Oregon Deed Records; thence Southeasterly 485.07 feet along said line to the most Easterly corner thereof; thence South 59° 00' West 169.5 feet to the South line of the Northeast quarter of the Northeast quarter of said Section 12; thence North 89° 25' East 1717.92 feet along the South line of the Northeast quarter of the Northeast quarter of Section 12 and the South line of the Northwest quarter of the Northwest quarter of Section 7, Township 21 South, Range 2 West, Willamette Meridian, to a point on the South line of the Northwest quarter of the Northwest quarter of said Section 7, a distance of 409.2 feet South 89° 25' West of the Southeast corner thereof; thence North parallel with the East line of the Northwest quarter of the Northwest quarter of said Section 7, a distance of 20 chains, more or less, to the North line of said Section 7; thence along said North line North 88° 33' West 943.8 feet to the Northwest corner of said Section 7; thence West 978 feet to the point of beginning, in Lane County, Oregon. EXCEPTING THEREFROM: Beginning 390 feet East of the Northwest corner of the Northeast quarter of the Northeast quarter of Section 12, Township 21 South, Range 3 West, Willamette Meridian; thence East 321.2 feet, thence South 242.8 feet to a 5/8 inch steel rod; thence West 321.2 feet to a 5/8 inch steel rod, thence North 242.8 feet to the point of beginning, in Lane County, Oregon. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

TO HAVE AND TO HOLD the said premises unto said Grantees, their heirs and assigns forever. And the said Grantors hereby covenant that they are lawfully seized in fee simple of said premises; that they are free from all incumbrances, including real property taxes for the period ending June 30, 1969

(STEWART'S PARENT TRACT)

A B * 0-72311 0000250

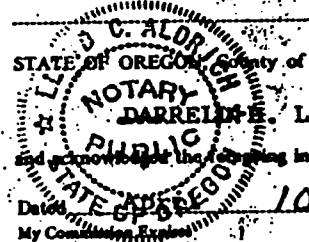
and that they will warrant and defend the above granted premises against all lawful claims whatsoever, except as above stated.

The true and actual consideration for this transfer is \$ 29,500.00

Dated April 10 19 69

Darrell L. Ledford (Seal)

Paulagene V. Ledford (Seal)



Personally appeared the above named

DARRELL L. LEDFORD and PAULAGENE V. LEDFORD, husband and wife

and acknowledged the foregoing instrument to be their voluntary act and deed. Before me:

Dated 10 A.D. 19 69 *Lloyd C. Aldrich*
Notary Public for Oregon

March 5, 1973
796392 Surety Co. Casper Ave. 97124

7963902

Compliments of
CASCADE TITLE COMPANY
Eugene, Oregon
WARRANTY DEED

State of Oregon,
County of Lane-- ss.
I, D.M. Penfold, Director of the Department of General Services, in and for the said County, do hereby certify that the within instrument was received for record at

23 OCT 79 168 23

1031K

Lane County OFFICIAL Records.
D.M. Penfold, Director of the Department of General Services.

By *Penfold*

Return To:



TERRITORIAL LAND COMPANY, REALTORS 

Real Estate Offices:
1785 East Main St.
Mailing Address:
P.O. Box 865
Cottage Grove, OR 97424
541/942-9141
FAX 541/942-1653
www.territorialland.com

Bruce D. Stewart
P.O. Box 1183
Cottage Grove, OR 97424

August 19, 2005

Re: Tax Map 21-03-12-10, Tax Lots 102 and 106

Dear Mr. Stewart:

You have requested an opinion of value regarding the above referenced property. Specifically, your inquiry is addressed to the applicability of a Measure 37 claim with regards to the estimated market value of the subject property in light of currently imposed land use regulations and what the estimated market value would be if such land use regulations had not been imposed subsequent to the acquisition by the current owner. In other words, what would be the value of the property if the owner was still subject to the regulations that were in effect at the time he acquired the property and how does this differ from the value now with the imposition of the current land use regulations?

The date of your acquisition was April 10, 1969, as reflected in your land sale contract of purchase. As you have noted, at the time of your acquisition no zoning laws were applicable to the property and any development was subject only to your limitations of capital and your estimate of what a market demand might be for the finished product.

With the adoption of the initial comprehensive plan by Lane County, the property was zoned Agriculture, Grazing and Timber with a five acre minimum parcel size, subsequently the property was zoned Rural-Residential, also with a five acre minimum parcel size.

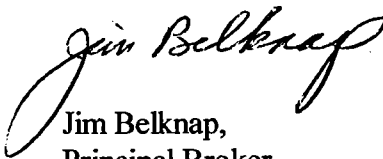
In evaluating the subject property for compensation under Measure 37 we considered the market value of the property as it currently is zoned, RR-5, with no allowance for dwellings or further division, arriving at an estimated value of \$290,000. Following that analysis, we evaluated the property as if it could be approved for development into one acre lots with provisions for the placement of a single dwelling on each lot, which is our opinion of the highest and best use for the property. Our opinion of value for such a development with allowances for the cost of development arrived at a figure of \$735,000. The difference between those two values is the potential for a claim of compensation under Measure 37.

Bruce Stewart
August 19, 2005
Page 2

Enclosed is a summary of the evaluations that have been completed. It is my opinion that the potential claim for compensation under Measure 37 is the amount of Four Hundred Forty-five Thousand Dollars (\$445,000.00).

If you have any questions please do not hesitate to give me a call.

Sincerely,



Jim Belknap,
Principal Broker

encl.

Stewart Evaluation

Measure 37 Claim

Tax Lots 21-03-12-10-00102 and 106

August 19, 2005

**Prepared
by**

**James E. Belknap
Principal Broker
Territorial Land Company, Inc.**

Subject Property.

Tax Map 21-03-12-10, Tax Lot 102 and 106

The Subject Property is comprised of two lots, Tax Lot 102 being 5.0 acres in size and Tax Lot 106 being 8.04 acres in size. The combined acreage is 13.04 acres. The property is zoned Rural Residential, five acre minimum parcel size (RR-5). The two lots are each improved as single family dwelling sites with each having a dwelling. For purposes of this report, the evaluation will be made on a land basis only and no consideration will be given to the improvements. The Subject Property is a mix of open grass land and mixed brush with a scattering of young timber through the area. The property is located approximately six miles southeast of Cottage Grove. Adjoining the Subject Property to the north are generally five to ten acre parcels improved with what would be best described as above average homes. To the south and west are parcels of one-quarter to one acre in size, mostly improved with more modest housing, best noted as average in size, features and condition. Most of these homes were constructed in the 1940 to 1970 time period.

The property is well suited for residential development and clearly enjoys a strong demand for such use in its close proximity to Cottage Grove and relatively easy commuting distance to the Eugene-Springfield area.

Evaluation of the Subject Property Under Application of Existing RR-5 Zoning

Comparable Sales.

Eleven comparable sales of unimproved properties between three and ten acres in size located in the Cottage Grove area were evaluated that have occurred over the past five years. The relatively few sales in this time period is reflective not of lack of demand but lack of supply. The land use regulations make the creation of such parcels extremely difficult and as such, their availability is extremely limited. Emphasis was given to the most recent sales, which are noted below:

1. Sears Road. 5.86 acres. A level to rolling site of mixed pasture, conifer and oak. Views of the valley and mountains to the west. The property sold January 20, 2005 for \$138,900.
2. 78149 Mosby Creek Road. 3.00 acres. Level improved site with a mobile home of no value. Existing septic system, well and power in place. 600 feet of frontage on Row River. The property sold October 15, 2004 for \$169,500. This property had a potential for divisibility to create two building sites.
3. Cea Jac Road. 5.51 acres Rolling site with mixed grass and scattered trees. The property sold June 24, 2004 for \$110,000.
4. Glaisyer Hill Road. 5.04 acres. Rolling site, mostly logged forestland. Well and power in place. Sold February 1, 2004 for \$100,000.

Discussion.

The sales noted in Comparable No. 3 and No. 4 offer a good picture of the market value of a typical five acre parcel that sold in 2004, with that value falling in the area of \$100,000 to \$110,000. Comparable No. 1 is a very similar property that sold in 2005 and reflects a market value of nearly \$140,000. This 30 to 35% adjustment is reflective of the market increase in such properties that has occurred in the past 18 months. Comparable No. 2 is a difficult property to use in consideration of the Subject due to it's smaller size, river frontage and potential for divisibility.

Based on the data presented above, it is our opinion the market value of the five acre parcel in Tax Lot 102 is \$140,000. Tax Lot 106 at 8.04 acres is estimated to carry a market value of \$150,000. The cumulative value of the Subject Property under current zoning is estimated to be \$290,000.

Evaluation of the Subject Property as if no Zoning Regulations were Applicable.

At the time of the current owner's acquisition of the Subject Property, 1969, there were no zoning regulations applicable to the property. Accordingly, the owner could have pursued any course of development of the land from residential to commercial to industrial. As reflected in the development of the property adjoining the Subject to the south, the market in the 1940-1970 period directed the development towards a rural residential character, essentially creating a "highest and best use" for the area. This character remains today, thus an evaluation of the property for commercial or industrial uses is inappropriate in that such a development would be unlikely to attract potential users. Simply put, the market won't reward a shopping center or car dealership for moving to this location and a knowledgeable developer won't make that investment for a facility that will not be commercially viable.

A logical development of the area without the current zoning in place would support a rural residential development of higher density than that allowed under current zoning. While any density could be established, the reality is it is difficult to create lots smaller than approximately one acre in size and fit a well, septic system and house footprint onto the lot, maintaining the appropriate set backs between wells and septic. Accordingly, this evaluation will be made as if one acre lots could be established on the site.

Comparable Sales.

1. Turkey Run Road. 1.01 acre lot with well in place and standard septic approval. Secluded country building site. Sold April 22, 2005 for \$65,000.
2. Talamena Drive. .83 acre parcel with community water system and standard septic approval. Sold December 10, 2004 for \$69,900 after three days on the market.
3. 77669 South 6th. 1.15 acre parcel with well, power and septic system in place rented for mobile home currently on the site, but not part of the sale. Sold May 4, 2005 for \$80,000.

Discussion.

The sales noted in Comparable No. 1 and No. 2 reflect the value of a rural building site of approximately one acre in size but must be adjusted for the improvement of a well or availability of a water system, estimated at \$4,000. Accordingly the indicated value is between \$61,000 and \$66,000. Comparable No. 3 would appear to exceed this value range, but must be adjusted for the septic system actually being in place as well as electrical service and a well, pump and driveway. These improvements are estimated at approximately \$14,000. The indicated value reflected in Comparable No. 3 is then \$66,000. The development of the Subject Property into one acre building sites is also anticipated to produce lots that will be of higher quality and more desirable than that reflected in Comparable No. 1. Accordingly, the estimated value of a one acre lot within the Subject Property is considered to be approximately \$66,000.

At 13.04 acres it is believed that 13 lots could be developed within the Subject Property using a shared roadway. The construction of the roadway is estimated to be 1,200 feet in length at an estimated cost of \$60,000 with the installation of electrical service at an additional \$15,000. Engineering and surveying is estimated at approximately \$30,000 to arrive at a projected development expense of \$100,000 to \$110,000. The development of 13 lots at a value of \$65,000 each would generate gross revenue of approximately \$845,000, which would be offset by development costs of approximately \$110,000, to arrive at a net value of \$735,000.

When considered as rural building sites, which would be available to the Subject Property if current zoning restrictions were not in place, the estimated value of the property is approximately \$735,000.

Summary of Comparison of Value Based on Application of Zoning.

The purpose of this report was to consider the estimated compensation due the land owner for the imposition of zoning subsequent to his acquisition of the Subject Property. In this case, the property was unzoned at the time of the owner's acquisition, and if allowed to be developed today without restriction of zoning is estimated to carry a market value of \$735,000. Following the owner's acquisition, the Subject Property has had zoning applied to it that has restricted its development to two parcels, the effect of which has been to limit its market value to approximately \$290,000.

The difference between those two values is the compensation due the owner under Measure 37, \$445,000.