

BEFORE THE METRO COUNCIL

FOR THE PURPOSE OF ENTERING AN ORDER RELATING TO THE NICK STEARNS CLAIM FOR COMPENSATION UNDER ORS 197.352 (MEASURE 37)) Resolution No. 06-3703) Introduced by Chief Operating Officer Michael Jordan with the concurrence of Council President David Bragdon

WHEREAS, Nick Stearns filed a claim for compensation under ORS 197.352 (Measure 37) and Chapter 2.21 of the Metro Code contending that Metro regulations had reduced the fair market value of property he owns south of Oregon City; and

WHEREAS, the Chief Operating Officer reviewed the claim and submitted a report to the Metro Council, pursuant to section 2.21.040 of the Metro Code, recommending denial of the claim for the reason that the Metro regulation that is the basis for the claim has not reduced the fair market value of the claimant's property; and

WHEREAS, the Metro Council held a public hearing on the claim on June 8, 2006, and considered information presented at the hearing; now, therefore

BE IT RESOLVED that the Metro Council:

1. Enters Order 06-003, attached to this resolution as Exhibit A, which denies the claim for compensation.
2. Directs the Chief Operating Officer ("COO") to send a copy of Order No. 06-003, with Exhibit A attached, to the claimant, persons who participated in the public hearing on the claim, Clackamas County and the Oregon Department of Administrative Services. The COO shall also post the order and Exhibit A at the Metro website.

ADOPTED by the Metro Council this 8th day of June, 2006

No Action Taken
David Bragdon, Council President

Approved as to form:

Daniel B. Cooper, Metro Attorney

Exhibit A to Resolution No. 06-3703

Order No. 06-003

RELATING TO THE NICK STEARNS CLAIM
FOR COMPENSATION UNDER ORS 197.352 (MEASURE 37)

Claimant: Nick Stearns

Property: 19992 S. South End Road, Oregon City, Oregon;
T3S, R1E, Section 11, Tax Lots 1191 and 1101 (map attached).

Claim: Temporary 20-acre minimum size for creation of new lots and parcels in Title 11 of the Urban Growth Management Functional Plan has reduced the value of the claimant's land.

Claimant submitted the claim to Metro pursuant to Metro Code Chapter 2.21. This order is based upon materials submitted by the claimant and the report prepared by the Chief Operating Officer ("COO") prepared pursuant to section 2.21.040.

The Metro Council considered the claim at a public hearing on June 8, 2006.

IT IS ORDERED THAT:

The claim of Nick Stearns for compensation be denied because it does not qualify for Compensation for reasons set forth in the report of the COO.

ENTERED this 8th day of June, 2006.

David Bragdon, Council President

Approved as to form:

Daniel B. Cooper, Metro Attorney

**CLAIM FOR COMPENSATION
UNDER BALLOT MEASURE 37
AND METRO CODE CHAPTER 2.21**

REPORT OF THE METRO CHIEF OPERATING OFFICER

**In Consideration of Council Order No. 06-003
For the Purpose of Entering an Order
Relating to the Measure 37 Claim of Nick Stearns**

May 12, 2006

METRO CLAIM NUMBER: Claim No. 06-003

NAME OF CLAIMANT: Nick Stearns

MAILING ADDRESS: Stearns Marnella Communities
Attn: Nick Stearns
18318 SE Abernethy Lane
Milwaukie, OR 97267

PROPERTY LOCATION: 19992 S. South End Road
Oregon City, OR 97045

LEGAL DESCRIPTION: T3S R1E Section 11 Tax Lot 1191 & T3S
R1E Section 11 Tax Lot 1101

DATE OF CLAIM: July 12, 2005

180-DAY PROCESSING DEADLINE: January 9, 2006

I. CLAIM

Claimant Nick Stearns seeks compensation in the amount of \$500,000 for a claimed reduction in fair market value of property owned by the claimant as a result of enforcement of Metro Code Section 3.07.1110 C of Title 11. In lieu of compensation, claimant seeks a waiver of that regulation so claimant can apply to Clackamas County to divide the 21.4-acre subject property into a maximum of 4 lots and develop a single family dwelling on each lot that does not already contain a dwelling.

The Chief Operating Officer (COO) sent notice of date, time and location of the public hearing on this claim before the Metro Council on May 12, 2006. The notice indicated that a copy of this report is available upon request and that the report is posted on Metro's website at www.metro-region.org.

II. SUMMARY OF COO RECOMMENDATION

The COO recommends that Metro Council deny the claim for the reasons explained in section IV of this report. The facts and analysis indicate that Metro's action to bring claimant's land into the Urban Growth Boundary (UGB), designate it Outer Neighborhood (allowing high-density residential development), and applying a 20-acre minimum lot size temporarily while planning is completed did not reduce the fair market value of claimant's property.

III TIMELINESS OF CLAIM

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from a land use regulation enacted *prior* to the effective date of Measure 37 (December 2, 2004), within two years of that date, or of the date a public entity applies the regulation to the property as an approval criterion in response to an application submitted by the owner, whichever is later; or
2. For claims arising from a land use regulation enacted *after* the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the regulation, or of the date the owner of the property submits a land use application for the property in which the regulation is an approval criterion, whichever is later.

Findings of Fact

The claimant submitted this claim on July 12, 2005. The claim identifies Metro Code section 3.07.1110 C as the basis of the claim. The Metro Council added the regulation that gives rise to this claim on September 10th, 1998 by Ordinance 98-772B, prior to the effective date of Measure 37 (December 2, 2004).

Conclusions of Law

Metro adopted the regulation that gives rise to this claim prior to the effective date of Measure 37. The claim, therefore, is timely.

IV. ANALYSIS OF CLAIM

1. Ownership

Metro Code section 2.22.020(c) defines "owner" to mean the owner of the property or any interest therein. "Owner" includes all persons or entities who share ownership of a property.

Findings of Fact

The claimant acquired an ownership interest in the subject property on July 15, 1998, and has had a continuous ownership interest since that date. Attachment 1 is a site map of the subject property showing the location of the existing residence, topography and high voltage utility line easement and two sets of utility lines that run east-west through the upper 1/3 of the property (ATTACHMENT 1).

Conclusions of Law

The claimant, Nick Stearns, is an owner of the subject property as defined in the Metro Code.

2. Zoning History

The property was zoned Rural Residential/Farm-Forest-5 (RRFF-5), five-acre minimum lot size in 1979 by Clackamas County. The RRFF-5 zone was amended on January 30, 2003 to include a prohibition on lot divisions within the Metro Urban Growth Boundary (UGB) resulting in the creation of one or more lots of less than 20 acres in size (Zoning and Development Ordinance 309.07D).

3. Applicability of a Metro Functional Plan Requirement

Findings of Fact

In 2002, Metro Council expanded the UGB by adopting Ordinance No. 02-969B, including the claimant's property in the UGB expansion area.

Section 3.07.1110 C of Metro's Code prohibits any division of land into lots or parcels smaller than 20 acres, except for public schools or other urban services, pending adoption of urban comprehensive plan designations and zoning.

Clackamas County adopted Order No. 2005-220 on August 3rd, 2005, waiving certain of the County's land use regulations, allowing the claimant to apply to divide his property into 5-acre lots, consistent with RRFF-5 zoning. The County's Order No. 2005-220 does not waive or otherwise affect lot size or other regulations to the property adopted by Metro. The Order indicates that Metro will have to evaluate the claim due to Metro's interim 20-acre minimum lot size requirement in Metro Code Section 3.07.1110C.

Conclusions of Law

Section 3.07.1110 C of the Metro Code applies to the subject property and became applicable after the claimant acquired the property. Thus, the section did not apply to the subject property at the time claimant acquired it. The section does not allow the claimant to partition or subdivide his 21.4-acre property. The claimant would have been able to apply to Clackamas County to create up to four 5-acre parcels and develop a single family dwelling on each lot (that did not already contain a dwelling) when he acquired the property in 1998.

4. Effect of Functional Plan Requirements on Fair Market Value

Findings of Fact

Section 2.21.040(d)(5) requires the Chief Operating Officer (COO) to determine whether the temporary 20-acre minimum size for the creation of new lots or parcels applicable to territory newly added to the UGB has reduced the value of claimant's land. The COO's conclusion is based upon the analysis of the effect of Metro's action contained in the attached memorandum to Paul Ketcham and Richard Benner from Sonny Conder and Karen Hohndel dated May 11, 2006 (Conder Memo).

The claimant has submitted comparable sales data to support his assertion that the temporary 20-acre minimum size has reduced the value of his property by \$500,000. Claimant asserts that the property's current fair market value (FMV), with the temporary 20-acre minimum size in place,

is \$400,000-450,000. Claimant further asserts that a five-acre parcel for a homesite has a current FMV of \$250,000. Because county zoning at the time claimant purchased the land allowed creation of five-acre homesites, claimant then multiplies \$250,000 times the number of homesites he could have created (three homesites, with one lot remaining under the existing dwelling), giving a value of \$750,000. To this value claimant adds \$300,000 for the value of a five-acre property with the current house, yielding a total FMV of \$1,050,000. From this amount the claimant subtracts \$100,000 for development costs of the lot divisions. These adjustments yield a net FMV of \$950,000. Finally, claimant subtracts the \$400,000-450,000 FMV of the *regulated* property from the \$950,000 net FMV of the *unregulated* property to derive the asserted net reduction in FMV of at least \$500,000.

The Conder Memo analyzes the claimant's information and applies two different methods for determining the effect of Metro's action on the value of claimant's property.

A. “Comparable Sales” Method

This method compares the value of the property in its current regulatory setting with its value today as though Metro's action had not happened. The current regulatory setting is as follows: by Ordinance No: 02-969B, Metro (1) added the property to the UGB; (b) designated the property with the “Outer Neighborhood” 2040 Growth Concept design type designation; and (3) applied a temporary 20-acre minimum lot size to preserve the status quo while the city of Oregon City completes the comprehensive planning necessary to allow urbanization of the previously rural (outside the UGB) land. Had Metro's action not happened, the property – given the waiver by Clackamas County in Order No. 2005-220– would be outside the UGB under Clackamas County zoning of RRFF-5 (Rural Residential/Farm-Forest, five-acre minimum lot size) (zoning on date of claimant's purchase of property, 1998).

The estimates of FMV claimant provides, for reasons explained in the Conder Memo, do not accurately reflect values with or without Metro's regulatory action. Data generated by Metro's Data Resource Center and analyzed in the Conder Memo provide an accurate assessment of values.

Table 4 of the Conder Memo compares today's FMVs of the property with and without Metro's action, adjusting in all cases for costs of development and limitations on development of the site that a prudent investor would take into account. The comparison offers a range of lots and lot sizes to reflect the lack of precise information about site limitations. The table shows that the most conservative assumptions about value under the Outer Neighborhood designation inside the UGB exceed the highest value under RRFF-5 zoning outside the UGB. With less conservative assumptions, the value under the Outer Neighborhood designation greatly exceeds the value under RRFF-5 zoning.

B. The Plantinga/Jaeger Method

This method assumes that claimant's purchase price in 1998 accurately reflected the development opportunities allowed by the RRFF-5 zoning that then applied. The method “indexes” that value to the present and compares the indexed value with today's value with the regulation in question. If the indexed value of the purchase price exceeds the value of the

property in today's regulatory setting, the regulation has reduced the value of a claimant's property.

The Conder Memo applies this method using the claimant's purchase price of \$300,000 (data submitted with the claim indicate the property was conveyed as a Deed of Trust in 1998 for \$10.00. Value of the property at the time was estimated at \$300,000). The memo uses four different indices to measure the increase in the value of the property over time. Table 3 shows that, regardless of the index chosen, the value of claimant's property under today's regulations exceeds the indexed value.

Conclusion

The facts and analysis indicate that Metro's action to bring claimant's land into the UGB, designate it Outer Neighborhood (allowing high-density residential development), and applying a 20-acre minimum lot size temporarily while planning is completed did not reduce the FMV of claimant's property.

5. Exemptions under ORS 197.352(3)

Findings of Fact

Section 3.07.1110 C of the Metro Code does not restrict or prohibit a public nuisance, the selling of pornography or nude dancing, is not intended to protect public health or safety, and is not required to comply with federal law.

Conclusions of Law

Section 3.07.1110 C of the Metro Code is not exempt from Measure 37 under ORS 197.352(3).

6. Relief for Claimant

Findings of Fact

The Metro Council has appropriated no funds for compensation of claims under Measure 37. Waiver of Metro Code Section 3.07.1110 C to the subject property will allow the claimant to apply to Clackamas County to divide the subject property into four parcels and to develop a single family dwelling on each lot that does not already contain a dwelling. The effect of development as proposed by the claimant will be to reduce the residential capacity of the city of Oregon City and of the UGB. It will also make provision of urban services less efficient and more complicated.

Conclusions of Law

Based on the record, the claimant has not established that he is entitled to relief in the form of compensation or waiver of the interim 20-acre minimum lot size requirement under Metro Code Section 3.07.1110 C.

ATTACHMENTS TO THE REPORT OF THE CHIEF OPERATING OFFICER


Attachment 1: Site Map of Nick Stearns Property

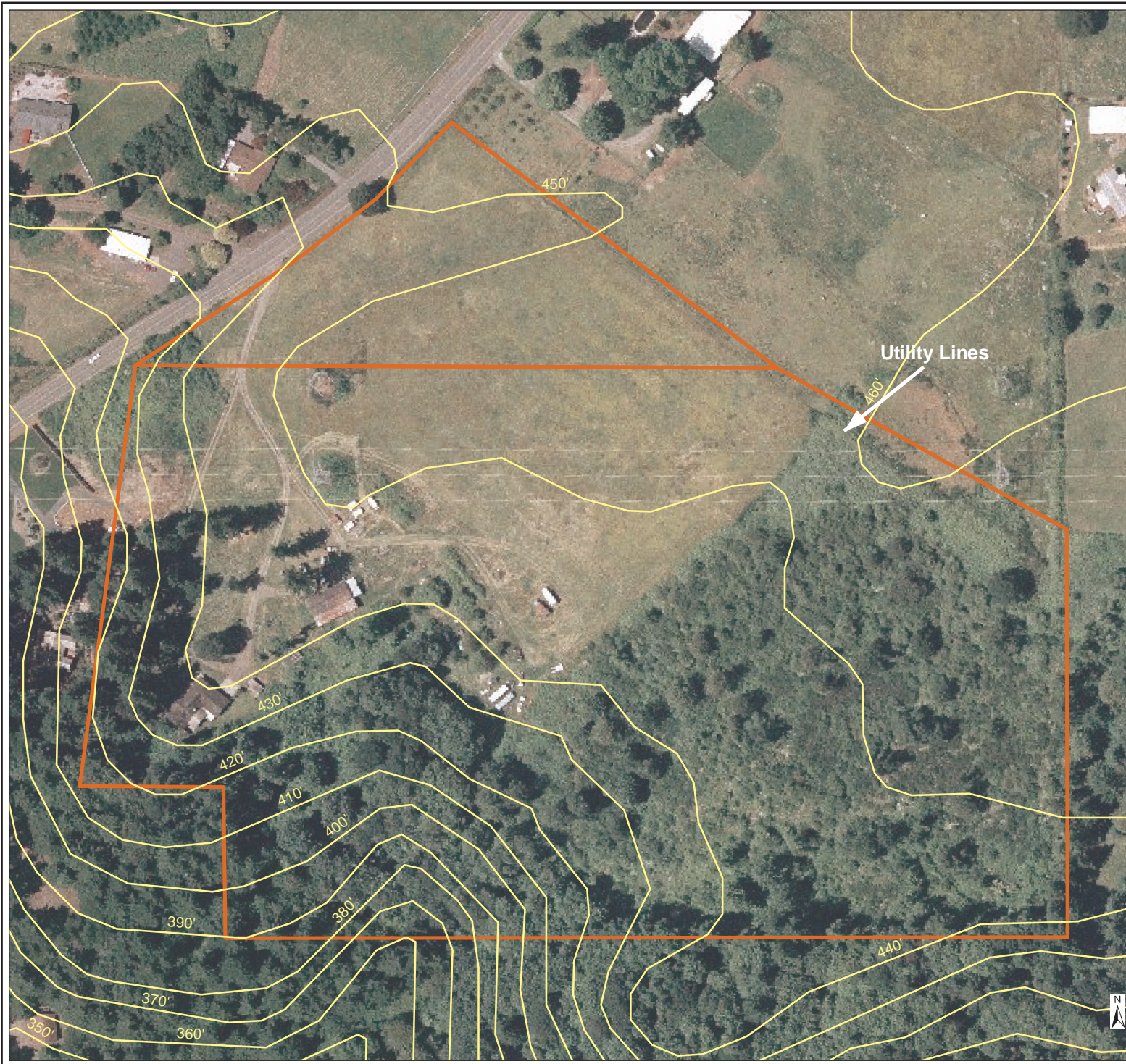
Attachment 2: Metro Memorandum to Paul Ketcham and Richard Benner from Sonny Conder and Karen Hohndel, "Valuation Report on the Nick Stearns Measure 37 Claim," dated May 11, 2006

Attachment 3: Sample Area of 2004-2005 Sales Data for Damascus UGB Expansion Area and One Mile Buffer, Clackamas County, OR

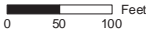
Council Order #06-003
Attachment 1

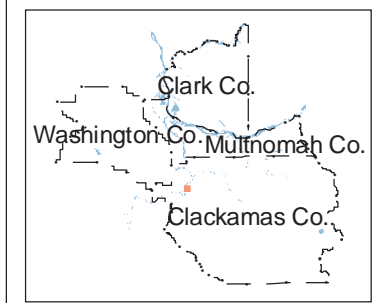
Site Map Stearns Measure 37 Claim

 Subject Property



The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

1 inch equals 0.04 miles
 Feet



Location Map



METRO DATA RESOURCE CENTER
600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232-2736
TEL (503) 797-1742 | FAX (503) 797-1909
drc@metro.dst.or.us | www.metro-region.org

M E M O R A N D U M

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1700 | FAX 503 797 1794



May 11, 2006

To: Paul Ketcham, Principal Regional Planner
Richard Benner, Senior Attorney

From: Sonny Conder, Principal Regional Planner
Karen Hohndel, Associate GIS Specialist

Subject: Valuation Report on the Nick Stearns Measure 37 Claim

Conclusion:

Per your request we have conducted a valuation analysis of the Nick Stearns Measure 37 Claim. We conclude that the Metro action of including the property inside the UGB, designating it “Outer Neighborhood” and imposing a temporary 20 acre minimum lot size for development has not produced a material loss of value for the subject property¹. On the contrary, compared to development in a rural residential setting on 5 acre lots, the action is more likely to have resulted in a material gain in property value.

Conceptual Understanding for Basis of Property Value Analysis:

We understand the present Measure 37 valuation problem to consist of making two property value estimates. These are:

1. Estimate the current market value of the property subject to the regulation which the claimant contends has reduced the value of his property.
2. Estimate the current market value of the property in the absence of that regulation, and with the zoning that applies following the waiver granted by Clackamas County.

Metro Ordinance No. 02-969B applied a set of new regulations to the claimant’s property. First the ordinance brought claimant’s property into the region’s urban growth boundary, making the

¹ We use the term “material” in the accounting/auditing sense that given the statistical variability inherent in the data there is no difference between two measurements of land value.

property eligible for urban high-density development rather than rural low-density development. Second, the ordinance designated the property “Outer Neighborhood”, the lower density residential designation in Metro’s 2040 Growth Concept. Third the ordinance applied a temporary 20-acre minimum lot size to protect the status quo while local governments complete amendments to comprehensive plans to allow urban development. Within this overall framework any particular property may have a substantial range of housing types and lot sizes. Implicit in this design designation is the availability of urban level capital facilities including sanitary sewers, storm water retention and management, water distribution, streets, roads, parks and other infrastructure and services associated with urban living. All development is assumed to occur in compliance with all health and safety regulations.

The default land use is the Clackamas County designation of RRFF-5. This land use designation is a rural designation allowing one dwelling unit per 5 acres. All development under RRFF-5 must conform to applicable health and safety regulations. Most significant is that the reference default land use must be outside the present UGB in a rural setting. While seeming to be a subtle distinction, the requirement of a rural setting outside the UGB is conceptually pivotal to the valuation. To use RRFF-5 or equivalent land inside the UGB as a basis for valuation includes the property value increasing amenity effects of urban services and infrastructure. It is logically contradictory to argue that inclusion inside the UGB and designation of the land for urban purposes has reduced a property’s value but to include those very effects in the estimate of the property value without the subject action.

Alternative Method of Computing Property Value Loss Resulting From Regulation

Estimating loss of property value using the usual appraisal method of “comparative sales” has been the subject of substantial criticism. Andrew Plantinga and William Jaeger², economists at OSU, have written papers pointing out that using the method of comparative sales does not compute the loss due to regulation. Rather the estimated “value loss” is actually the gain resulting from obtaining an exemption to the general rule. To better understand their arguments, we may think of the comparative sales method of determining an economic loss as equivalent to determining the value of issuing someone a special license or franchise to carry out an economically valuable function that others may not do. For instance, licenses to operate taxi cabs in New York are seldom issued and in great demand. As a result the license itself has acquired substantial economic value. An example closer to home is the value of an Oregon Liquor License prior to more liberal issuing standards in the 80’s. In the 1950’s through roughly the

² Andrew Plantinga, *Measuring Compensation Under Measure 37: An Economist’s Perspective*, Dec. 2004, 15 pages. (Available at OSU Department of Agricultural and Resource Economics, URL: plantinga@oregonstate.edu). William K. Jaeger, *The Effects of Land Use Regulations on Land Prices*, Oct. 2005, 38 pages. (Available at OSU Department of Agricultural and Resource Economics, URL: wjaeger@oregonstate.edu). Also: William K Jaeger, *The Effects of Land-Use Regulations on Property Values*, **Environmental Law**, Vol. 36:105, pp. 105 – 127, Andrew J. Plantinga, et. al., *The effects of potential land development on agricultural land prices*, **Journal of Urban Economics**, 52, (2002), pp. 561 – 581. and Sonny Conder and Karen Hohndel, *Measure 37: Compensating wipeouts or insuring windfalls?*, **Oregon Planners’ Journal**, Vol. 23, No 1. Dec. – Jan 2005. pp. 6 – 9.

70's, an Oregon Liquor License for a restaurant or bar vastly increased the property value of the establishment that had one. Plantinga and Jaeger argue that the value of the property hinges on scarcity resulting from regulation. If everyone had a taxi cab or liquor license, they would have no value. From an economic perspective, using a method that really measures value gained from regulation is not the same as determining economic loss resulting from regulation.

Plantinga and Jaeger go on to suggest an economically appropriate measure of loss resulting from subsequent land use regulation. Their method is grounded in the well established and tested Theory of Land Rent. Simplified a bit the Theory of Land Rent holds that the value of land at any particular time is the future net profit from the land used in its most efficient allowable use. The market also adjusts (discount factor) this value to account for time and uncertainty as to future uses. What this means is that the original sales price incorporates future expectations about how the land might be used. If we take the original sales price and bring it up to the current date by using an appropriate price index, we are able to measure in today's prices what the land was worth when it was purchased under the original regulatory requirements.

The above procedure yields an estimate of the original value of the property in today's dollars. We can then compare that estimate to the market worth of the property with the new regulation. If the adjusted original estimate exceeds the present market value, then the owner has experienced a loss. If the adjusted original estimate is equal to or lower than the property value under the new regulation, then the owner has experienced no loss.

This method allows a consistent computation of property loss due to subsequent regulatory changes. At the same time it avoids awarding particular property owners a bonus that was not anticipated in the original purchase price. Owners are compensated for what they lost; but they are not awarded an extra benefit owing to unanticipated growth, infrastructure investment or regulatory changes.

Since the Plantinga-Jaeger approach represents a consistent and fair method of evaluating economic loss to property resulting from regulation, we are also valuing property claims according to their suggested method.

Property Valuation Analysis Procedure:

Our property valuation analysis procedure consists of the following steps.

- Briefly describe the property and make a prudent assessment of development limitations to establish a likely range of residential capacity under both "Outer Neighborhood" and RRF-5 designations assuming health and safety regulations are enforced.
- Based on recent sales (2005) of lots and existing properties inside the Oregon City expansion area determine the current (2006) value of the property with a reasonable range of "Outer Neighborhood" development configurations including a 5 year discount factor for lag time in service provision.

- Based on recent sales (2005) of property in a buffer zone extending 1 mile outside the present UGB within Clackamas County determine the value of residential property on lots of 2.5 to 7.5 acres in size. This procedure establishes a reasonable range of values for residential properties of RRFF-5 configuration in a rural setting. Include a 2 year discount factor for lag time in development.
- Provide an alternative valuation of the Nick Stearns property based on an adjustment to original sales value that has been advocated by OSU Economists Andrew Plantinga and William Jaeger.
- Evaluate the lot value and home value comparables submitted as evidence with the Nick Stearns Measure – 37 claim.
- Provide and compare estimates of the value of the subject property as of 2006 with Metro’s “Outer Neighborhood” designation versus Clackamas County’s RRFF-5 designation.

Nick Stearns Property Description:

The subject property consists of 21.4 acres immediately east of S. South End Road at approximately the 199th block south of Oregon City. Clackamas County Assessor data show the property as two tax lots; one of 18.6 acres and a second of 2.8 acres for a total of 21.4 acres in all. A residential structure and outbuildings are located on the western portion of the property. Assessor appraised value as of 2005 for both lots amounts to \$422,988 with the improvement accounting for \$133,290 and the land - \$289,698. Assessor data show the home being constructed in 1965. Data submitted with the claim indicate the property was conveyed as a Deed of Trust in 1998 for \$10. Value of the property at the time was estimated at \$300,000.

Visual inspection from S. South End Road and air photo inspection as well as relevant GIS data indicate that portions of the property pose substantial limitations to development; the full extent of which would require sanitation, geotechnical and civil engineering professionals to fully delimit and elucidate. The salient limiting feature for development on the property is the 263 foot wide high voltage utility line easement and 2 sets of utility lines that run east-west through the upper 1/3 of the property. These are high voltage lines that allow no building underneath. Snapping, crackling and humming of the lines was audible from the road. Besides limiting the land available for development, the lines constitute substantial disamenities to high value residential development.

The south-western ¼ of the property also has a fairly steep slope that will also limit development to some extent. The remainder of the property is fairly flat farm and forestry land. Surrounding development, particularly that in Oregon City within ½ mile does not appear limited by drainage or topographic features.

Again, it is not in our professional capacity to assert with authority any definitive estimate of what the site limitations are; but rather to reflect what any prudent property investor must consider when pricing raw land. This holds true for both Metro’s “Outer Neighborhood” and the default use of RRFF-5.

Dwelling Unit Capacity Estimates:

To simplify our capacity estimates we assume that the existing residential structure is retained on the property. Accordingly, we reduce the property available for development by 1.4 acres to 20³. Should the property be developed in a configuration consistent with Metro's Outer Neighborhood designation we estimate that anywhere from 10 acres (47%) to 12.5 acres (58%) of the 21.4 acres would be useable. Under RRFF-5 zoning it may be conceivable (septic tank and road restrictions not withstanding) to use 20 acres for development by including the easement as part of the 5 acre lot and siting the dwelling unit outside the easement. In this case we expect the property to yield 3 – 4 buildable 5 acre lots. Since all land within the easement is highly restricted in use, 5 acre lots in this configuration are necessarily worth much less than lots that are subject to owner discretion.

Based on similar terrain and developments in the UGB within Oregon City we calculate that with Outer Neighborhood given a range of lot sizes of 4,000 – 10,000 sq. ft., 5 to 6.5 lots per acre could be constructed on the buildable acreage. This assumes urban level infrastructure and design flexibility in lot shape and structure placement on the lot.

For the RRFF-5 designation we assume by definition 1 unit per 5 acres.

In sum we expect the property with Metro's Outer Neighborhood designation to yield 50 (5 times 10 acres) to 81 (6.5 times 12.5 acres) residential lots ranging from 4,000 to 10,000 sq. ft. in size. The RRFF-5 designation yields 3 – 4 buildable rural lots of 5 acres in size.

Current Value Estimate of “Outer Neighborhood” Buildable Lots in Oregon City Expansion Area:

In order to establish a reasonable range of lot values for developing urban areas with infrastructure and nearby urban services, we evaluated all recent sales (year 2005) of land and lots within the Oregon City UGB expansion area. We examined 154 SFR properties within the entire expansion area. Many of these are properties that remain substantially rural in character without full urban services. Relevant summary results are in Table 1 below.

³ We point out that for RRFF-5 this is not presently feasible since it would require establishing a 1.6 acre tax lot for the existing residential structure. Most realistically, the RRFF-5 designation would yield a 6.6 acre lot with the existing house and 3 5 acre lots.

Table 1: Summary Property Value Data – Oregon City Area Residential Sales

Average Lot Size:	.73 acres
Median Lot Size:	0.46 acres
Average Lot Value:	\$99,000
Median Lot Value:	\$92,300
Average Total Prop.	\$237,000
Median Total Prop.	\$220,000
Average House Size:	1,745 Sq. Ft.
Median House Size:	1,536 Sq. Ft.

When we adjust for lot size, availability of full urban services, and the presence of the utility lines on the property, the data support a lot value range of \$75,000 to \$90,000 per buildable lot in 2005 dollars for “Outer Neighborhood” type development on the subject property. This value range encompasses a range of housing types and neighborhood conditions.

Current Value Estimate of “RRFF-5 Buildable Lots” in the 1 Mile Buffer Area Outside the UGB:

To establish the value range for “RRFF-5” size lots within the Clackamas rural area we selected all residential properties that sold in 2004 and 2005 within the 1 mile buffer zone with a lot size of 2.5 to 7.5 acres. These comprised 177 properties and their summary statistics are included below in Table 2.

Table 2: Summary Property Value Data – Clackamas Rural Residential (“RRFF-5”)

Average Lot Size:	4.45 acres
Median Lot Size:	4.56 acres
Average Lot Value:	\$233,200
Median Lot Value:	\$204,000
Average Total Prop.	\$510,200
Median Total Prop.	\$421,800
Average House Size:	3,500 Sq. Ft.
Median House Size:	3,350 Sq. Ft.

For purposes of valuation we also need adjust for the presence of the utility lines. According we are assuming a range of \$175,000 to \$225,000 per buildable 5 acre lot for RRFF-5 on the subject property.

Alternative Valuation of Nick Stearns Property Using Method Suggested by Plantinga and Jaeger.

OSU economists Andrew Plantinga and William Jaeger have challenged the “comparable sales” approach of traditional appraisal methods. They have pointed out that it really measures the value obtained by an exception to the current rule; rather than a measure of economic loss suffered as a result of government land use regulation. As an alternative test they propose indexing the price that the property was purchased for to the present time using an appropriate index of property value, investment or consumer price change. Explicit to this suggestion is the Theory of Land Rent which holds that the price paid for land capitalizes reasonable expectations about its future use. If the initial purchase price anticipated a more intense future use, the indexed price should exceed the current market price under the revised land use regulations. If the revised land use regulations are consistent with or exceed the expectations contained in the original purchase price, then the current market price will equal or exceed the indexed price.

Accordingly, we have computed from published sources four value change indices for the period 1998 through 2005. We have also converted the 1998 Stearns’ property transfer of \$300,000 to value per acre. Since we are retaining the residential structure we have reduced the value by 36.0% (improvement plus 1.4 acre land share in 2005) and divided the result by 20 acres (The amount of available to the market). This allows us to look at the value of the raw land alone and not add in the complication of the existing residential structure. In 1998 the value of the 20.0 acres of raw land amounted to \$9,600 per acre. Table 3 below converts that value per acre to current 2005 dollars using 4 different value change indices.

Table 3: Nick Stearns’ Property Value per Acre Given Market Expectations of Purchase Price (Plantinga-Jaeger Method)

Index ⁴	98 Value	2005 Value	Ratio	Value Per Acre 2005 \$
Port/Van CPI	167.1	197.7	1.18	\$11,320
House Value Index	156.9	241.5	1.54	\$14,784
Lot Value Index	40.0	95.0	2.38	\$22,848
S&P500 Stock Idx	1035	1181.4	1.14	\$10,944

All indices except the S & P 500 stock price index are for the Portland Vancouver area. The lot price index uses East Portland values for 1998 and Oregon City values for year 2005. The S & P index is the raw price index; not the real price index which is adjusted for inflation.

⁴ The Portland – Vancouver Consumer Price Index is for all urban consumers from the Metro Regional Data Book, p. 73. The House Value Index is from the Metro Regional Data Book, p. 95. The Lot Value Index is taken from The Real Estate Report of Metropolitan Portland, Vol. 69, (Autumn 1989) and from Metro RLIS data on taxlots. The S&P 500 Stock Index is from Microsoft Internet Explorer, Wikipedia, the free encyclopedia, S&P500 URL: <http://en.wikipedia.org>

Depending on one's philosophy of an appropriate rate of investment return the Stearns property raw land value per acre should vary between \$11,000 and \$23,000.

Evaluation of Nick Stearns' Claim of Comparable Properties

The basis for the Stearns' property value loss claim rests on a market value estimate of \$250,000 per developed, ready to build lot assuming 3 buildable lots plus the existing residence are available on the property. To support the estimate of \$250,000 per buildable lot no comparables are submitted.

Nick Stearns' Property Values Compared

Given the data developed in the previous Tables we may now summarize our estimates of the value per acre in 2006 for the Stearns' property in its present location. To do so we have followed the procedure below.

1. Simplify the calculation by subtracting out the existing dwelling unit and 1.4 acres it occupies so we have 20 acres of raw land without services.
2. Assume a cost of providing water, sanitary sewer, drainage, streets and other on site utilities plus SDC's of \$50,000 per buildable lot for both Outer Neighborhood and RRFF-5.
3. Account for the value of time until the property could actually be developed. In the case of Outer Neighborhood we assume 5 years before development; so we discounted the value at 6.5% per year for 5 years. For RRFF-5 we assume development within 2 years; so we discounted the value at 6.5% per year for 2 years.
4. Convert the resultant values into the estimate of what a prudent investor would pay in 2006 per acre for the raw land.

Table 4 below depicts the results for low and high range assumptions for both Outer Neighborhood and RRFF-5.

Table 4: Comparison of Estimated Market Value of Raw Land for Outer Neighborhood and RRFF-5 Land Uses

Outer Neighborhood

Low Yield:	50 DU
Low Range Lot Value:	\$75,000
Development Cost per Lot:	\$50,000
Net Raw Land per Lot:	\$25,000
Total Raw Land Value (50x25,000):	\$1,250,000
Current Market Value per acre for 20 acres	
Discounted 5 years:	\$45,600

High Yield:	81 DU
High Range Lot Value:	\$90,000
Development Cost per Lot:	\$50,000
Net Raw Land per Lot:	\$40,000
Total Raw Land Value (81x40,000):	\$3,240,000
Current Market Value per acre for 20 acres	
Discounted 5 years:	\$118,200

RRFF-5

Low Yield:	3 DU
Low Range Lot Value:	\$175,000
Development Cost per Lot:	\$50,000
Net Raw Land per Lot:	\$125,000
Total Raw Land Value (3x125,000):	\$375,000
Current Market Value per acre for 20 acres	
Discounted 2 years:	\$16,500

High Yield:	4 DU
High Range Lot Value:	\$225,000
Development Cost per Lot:	\$50,000
Net Raw Land per Lot:	\$175,000
Total Raw Land Value (4x175,000):	\$700,000
Current Market Value per acre for 20 acres	
Discounted 2 years:	\$30,900

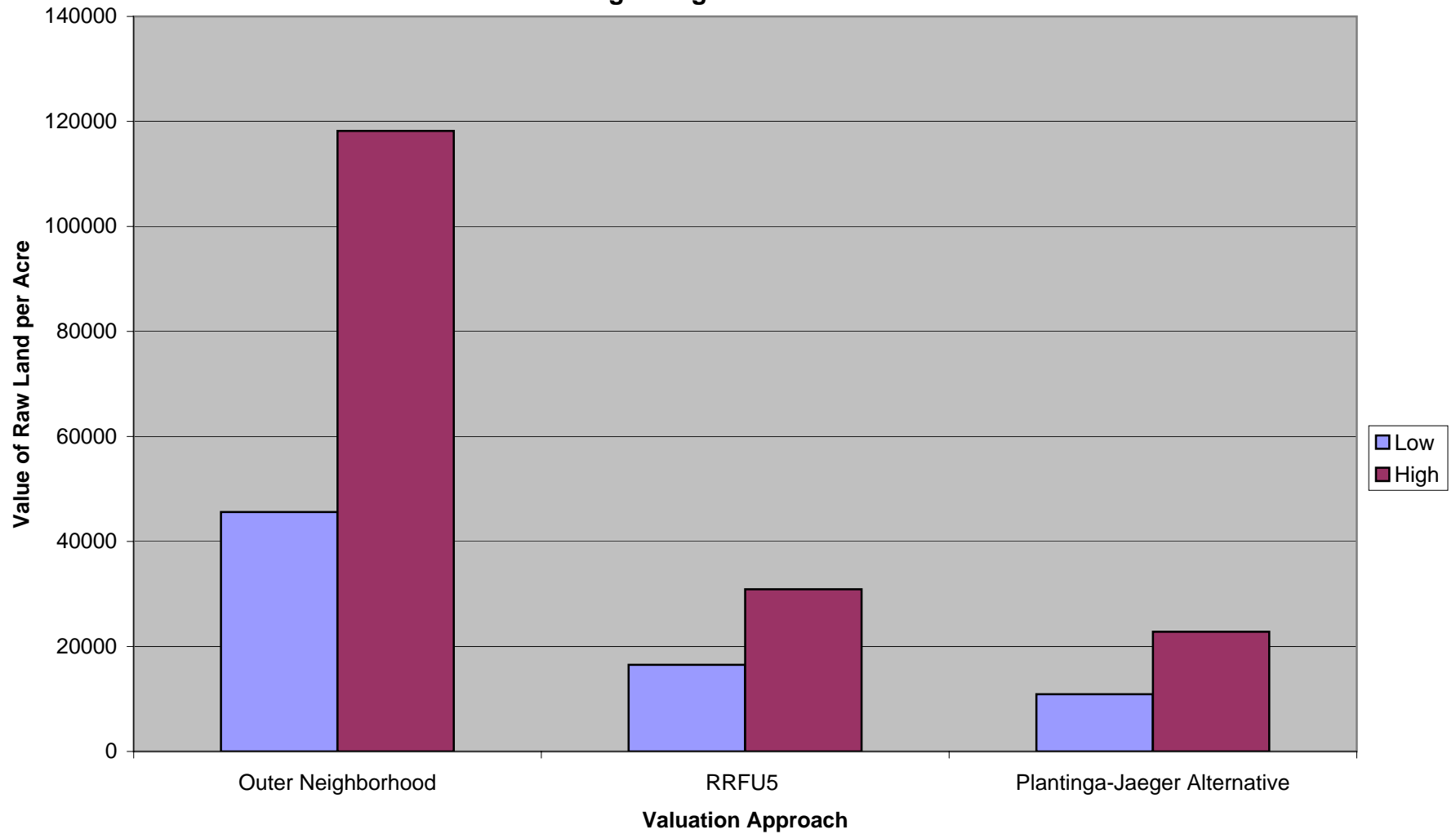
Figure A attached depicts the calculations in Table 4. We estimate the current raw land value of the Stearns' property with Outer Neighborhood designation to range from \$45,600 per acre to \$118,200 per acre. The same property used as RRFF-5 in a rural setting would yield \$16,500 to \$30,900 per acre. In other words the most optimistic RRFF-5 valuation does not equal the most pessimistic Outer Neighborhood valuation. Given these results we would conclude that the

Council Order 06-003
Attachment 2

Outer Neighborhood designation has not reduced the value of the property; quite the contrary it has most likely increased the value.

Moreover, in terms of establishing economic loss the land values per acre established using the Plantinga-Jaeger method range from \$11,000 to \$23,000 per acre. The highest Plantinga – Jaeger estimate falls midway between the lowest and highest “comparative sales” estimate of RRFF-5 per acre. Clearly, under no circumstances has any regulatory change to the Stearns’ property reduced its value. Again, the contrary is the case. Growth, infrastructure investment and regulation necessary to orderly growth have produced increases in property values well in excess of any alternative investment for the Stearns’ property.

Figure A: Current Market Value per Acre: Low and High with Outer Neighborhood, RRF5 and Plantinga-Jaeger Value Method



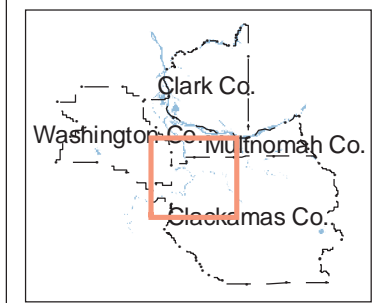
Council Order #06-003
Attachment 3

Sample Area of 2004-2005 Sales Data for Damascus UGB Expansion Area and One Mile Buffer, Clackamas County, OR

- Damascus UGB Expansion Area
- One Mile Buffer
- County Line
- Inside Metro UGB

The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

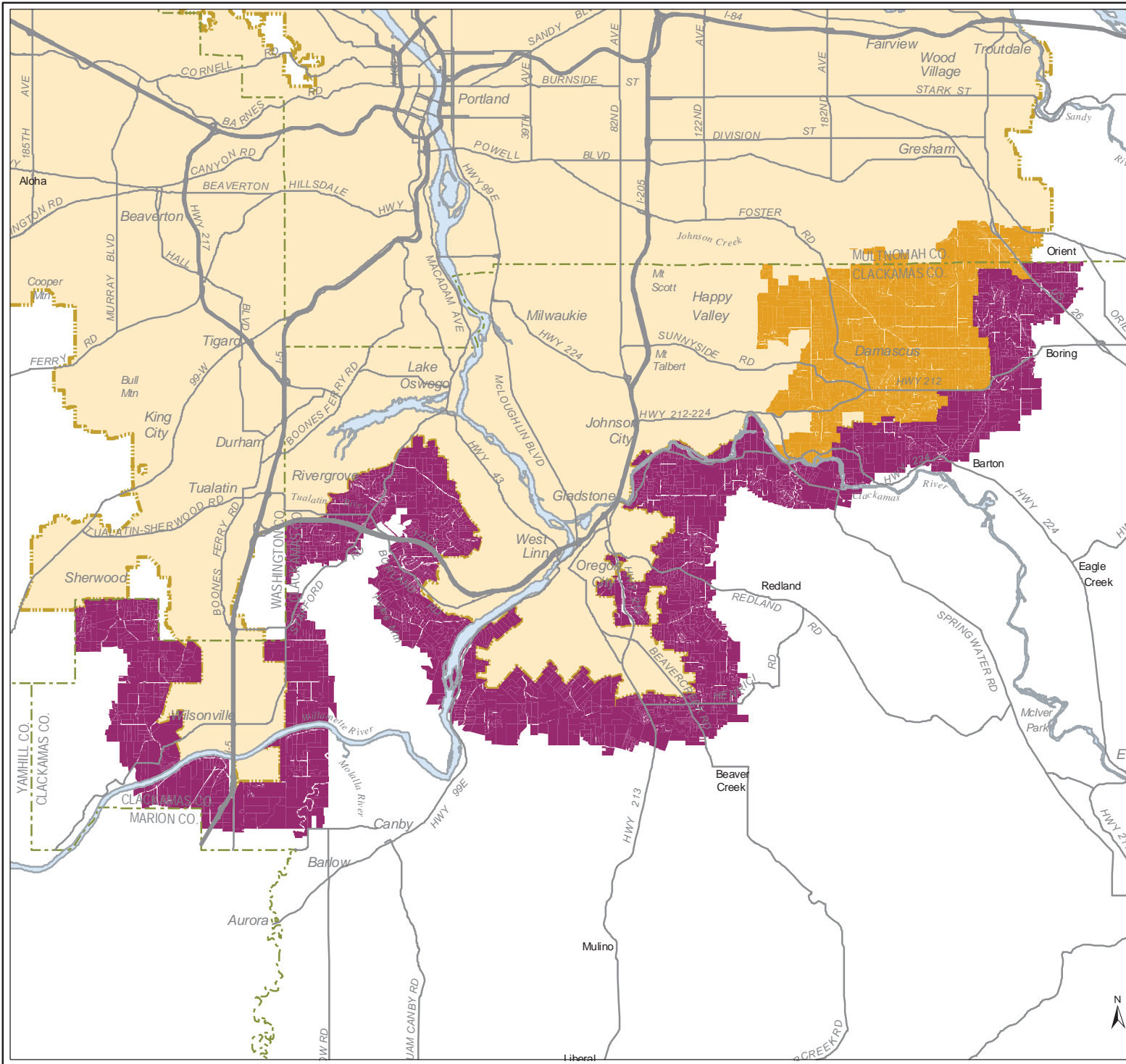
1 inch equals 3.31 miles
0 1 2 Miles



Location Map



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**CLAIM FOR COMPENSATION
UNDER BALLOT MEASURE 37
AND METRO CODE CHAPTER 2.21**

REPORT OF THE METRO CHIEF OPERATING OFFICER

**In Consideration of Council Order No. 06-003
For the Purpose of Entering an Order
Relating to the Measure 37 Claim of Nick Stearns**

May 12, 2006

METRO CLAIM NUMBER:	Claim No. 06-003
NAME OF CLAIMANT:	Nick Stearns
MAILING ADDRESS:	Stearns Marnella Communities Attn: Nick Stearns 18318 SE Abernethy Lane Milwaukie, OR 97267
PROPERTY LOCATION:	19992 S. South End Road Oregon City, OR 97045
LEGAL DESCRIPTION:	T3S R1E Section 11 Tax Lot 1191 & T3S R1E Section 11 Tax Lot 1101
DATE OF CLAIM:	July 12, 2005
180-DAY PROCESSING DEADLINE:	January 9, 2006

I. CLAIM

Claimant Nick Stearns seeks compensation in the amount of \$500,000 for a claimed reduction in fair market value of property owned by the claimant as a result of enforcement of Metro Code Section 3.07.1110 C of Title 11. In lieu of compensation, claimant seeks a waiver of that regulation so claimant can apply to Clackamas County to divide the 21.4-acre subject property into a maximum of 4 lots and develop a single family dwelling on each lot that does not already contain a dwelling.

The Chief Operating Officer (COO) sent notice of date, time and location of the public hearing on this claim before the Metro Council on May 12, 2006. The notice indicated that a copy of this report is available upon request and that the report is posted on Metro's website at www.metro-region.org.

II. SUMMARY OF COO RECOMMENDATION

The COO recommends that Metro Council deny the claim for the reasons explained in section IV of this report. The facts and analysis indicate that Metro's action to bring claimant's land into the Urban Growth Boundary (UGB), designate it Outer Neighborhood (allowing high-density residential development), and applying a 20-acre minimum lot size temporarily while planning is completed did not reduce the fair market value of claimant's property.

III. TIMELINESS OF CLAIM

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from a land use regulation enacted *prior* to the effective date of Measure 37 (December 2, 2004), within two years of that date, or of the date a public entity applies the regulation to the property as an approval criterion in response to an application submitted by the owner, whichever is later; or
2. For claims arising from a land use regulation enacted *after* the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the regulation, or of the date the owner of the property submits a land use application for the property in which the regulation is an approval criterion, whichever is later.

Findings of Fact

The claimant submitted this claim on July 12, 2005. The claim identifies Metro Code section 3.07.1110 C as the basis of the claim. The Metro Council added the regulation that gives rise to this claim on September 10th, 1998 by Ordinance 98-772B, prior to the effective date of Measure 37 (December 2, 2004).

Conclusions of Law

Metro adopted the regulation that gives rise to this claim prior to the effective date of Measure 37. The claim, therefore, is timely.

IV. ANALYSIS OF CLAIM

1. Ownership

Metro Code section 2.22.020(c) defines "owner" to mean the owner of the property or any interest therein. "Owner" includes all persons or entities who share ownership of a property.

Findings of Fact

The claimant acquired an ownership interest in the subject property on July 15, 1998, and has had a continuous ownership interest since that date. Attachment 1 is a site map of the subject property showing the location of the existing residence, topography and high voltage utility line easement and two sets of utility lines that run east-west through the upper 1/3 of the property (ATTACHMENT 1).

Conclusions of Law

The claimant, Nick Stearns, is an owner of the subject property as defined in the Metro Code.

2. Zoning History

The property was zoned Rural Residential/Farm-Forest-5 (RRFF-5), five-acre minimum lot size in 1979 by Clackamas County. The RRFF-5 zone was amended on January 30, 2003 to include a prohibition on lot divisions within the Metro Urban Growth Boundary (UGB) resulting in the creation of one or more lots of less than 20 acres in size (Zoning and Development Ordinance 309.07D).

3. Applicability of a Metro Functional Plan Requirement

Findings of Fact

In 2002, Metro Council expanded the UGB by adopting Ordinance No. 02-969B, including the claimant's property in the UGB expansion area.

Section 3.07.1110 C of Metro's Code prohibits any division of land into lots or parcels smaller than 20 acres, except for public schools or other urban services, pending adoption of urban comprehensive plan designations and zoning.

Clackamas County adopted Order No. 2005-220 on August 3rd, 2005, waiving certain of the County's land use regulations, allowing the claimant to apply to divide his property into 5-acre lots, consistent with RRFF-5 zoning. The County's Order No. 2005-220 does not waive or otherwise affect lot size or other regulations to the property adopted by Metro. The Order indicates that Metro will have to evaluate the claim due to Metro's interim 20-acre minimum lot size requirement in Metro Code Section 3.07.1110C.

Conclusions of Law

Section 3.07.1110 C of the Metro Code applies to the subject property and became applicable after the claimant acquired the property. Thus, the section did not apply to the subject property at the time claimant acquired it. The section does not allow the claimant to partition or subdivide his 21.4-acre property. The claimant would have been able to apply to Clackamas County to create up to four 5-acre parcels and develop a single family dwelling on each lot (that did not already contain a dwelling) when he acquired the property in 1998.

4. Effect of Functional Plan Requirements on Fair Market Value

Findings of Fact

Section 2.21.040(d)(5) requires the Chief Operating Officer (COO) to determine whether the temporary 20-acre minimum size for the creation of new lots or parcels applicable to territory newly added to the UGB has reduced the value of claimant's land. The COO's conclusion is based upon the analysis of the effect of Metro's action contained in the attached memorandum to Paul Ketcham and Richard Benner from Sonny Conder and Karen Hohndel dated May 11, 2006 (Conder Memo).

The claimant has submitted comparable sales data to support his assertion that the temporary 20-acre minimum size has reduced the value of his property by \$500,000. Claimant asserts that the property's current fair market value (FMV), with the temporary 20-acre minimum size in place,

is \$400,000-450,000. Claimant further asserts that a five-acre parcel for a homesite has a current FMV of \$250,000. Because county zoning at the time claimant purchased the land allowed creation of five-acre homesites, claimant then multiplies \$250,000 times the number of homesites he could have created (three homesites, with one lot remaining under the existing dwelling), giving a value of \$750,000. To this value claimant adds \$300,000 for the value of a five-acre property with the current house, yielding a total FMV of \$1,050,000. From this amount the claimant subtracts \$100,000 for development costs of the lot divisions. These adjustments yield a net FMV of \$950,000. Finally, claimant subtracts the \$400,000-450,000 FMV of the *regulated* property from the \$950,000 net FMV of the *unregulated* property to derive the asserted net reduction in FMV of at least \$500,000.

The Conder Memo analyzes the claimant's information and applies two different methods for determining the effect of Metro's action on the value of claimant's property.

A. “Comparable Sales” Method

This method compares the value of the property in its current regulatory setting with its value today as though Metro's action had not happened. The current regulatory setting is as follows: by Ordinance No: 02-969B, Metro (1) added the property to the UGB; (b) designated the property with the “Outer Neighborhood” 2040 Growth Concept design type designation; and (3) applied a temporary 20-acre minimum lot size to preserve the status quo while the city of Oregon City completes the comprehensive planning necessary to allow urbanization of the previously rural (outside the UGB) land. Had Metro's action not happened, the property – given the waiver by Clackamas County in Order No. 2005-220– would be outside the UGB under Clackamas County zoning of RRFF-5 (Rural Residential/Farm-Forest, five-acre minimum lot size) (zoning on date of claimant's purchase of property, 1998).

The estimates of FMV claimant provides, for reasons explained in the Conder Memo, do not accurately reflect values with or without Metro's regulatory action. Data generated by Metro's Data Resource Center and analyzed in the Conder Memo provide an accurate assessment of values.

Table 4 of the Conder Memo compares today's FMVs of the property with and without Metro's action, adjusting in all cases for costs of development and limitations on development of the site that a prudent investor would take into account. The comparison offers a range of lots and lot sizes to reflect the lack of precise information about site limitations. The table shows that the most conservative assumptions about value under the Outer Neighborhood designation inside the UGB exceed the highest value under RRFF-5 zoning outside the UGB. With less conservative assumptions, the value under the Outer Neighborhood designation greatly exceeds the value under RRFF-5 zoning.

B. The Plantinga/Jaeger Method

This method assumes that claimant's purchase price in 1998 accurately reflected the development opportunities allowed by the RRFF-5 zoning that then applied. The method “indexes” that value to the present and compares the indexed value with today's value with the regulation in question. If the indexed value of the purchase price exceeds the value of the

property in today's regulatory setting, the regulation has reduced the value of a claimant's property.

The Conder Memo applies this method using the claimant's purchase price of \$300,000 (data submitted with the claim indicate the property was conveyed as a Deed of Trust in 1998 for \$10.00. Value of the property at the time was estimated at \$300,000). The memo uses four different indices to measure the increase in the value of the property over time. Table 3 shows that, regardless of the index chosen, the value of claimant's property under today's regulations exceeds the indexed value.

Conclusion

The facts and analysis indicate that Metro's action to bring claimant's land into the UGB, designate it Outer Neighborhood (allowing high-density residential development), and applying a 20-acre minimum lot size temporarily while planning is completed did not reduce the FMV of claimant's property.

5. Exemptions under ORS 197.352(3)

Findings of Fact

Section 3.07.1110 C of the Metro Code does not restrict or prohibit a public nuisance, the selling of pornography or nude dancing, is not intended to protect public health or safety, and is not required to comply with federal law.

Conclusions of Law

Section 3.07.1110 C of the Metro Code is not exempt from Measure 37 under ORS 197.352(3).

6. Relief for Claimant

Findings of Fact

The Metro Council has appropriated no funds for compensation of claims under Measure 37. Waiver of Metro Code Section 3.07.1110 C to the subject property will allow the claimant to apply to Clackamas County to divide the subject property into four parcels and to develop a single family dwelling on each lot that does not already contain a dwelling. The effect of development as proposed by the claimant will be to reduce the residential capacity of the city of Oregon City and of the UGB. It will also make provision of urban services less efficient and more complicated.

Conclusions of Law

Based on the record, the claimant has not established that he is entitled to relief in the form of compensation or waiver of the interim 20-acre minimum lot size requirement under Metro Code Section 3.07.1110 C.

ATTACHMENTS TO THE REPORT OF THE CHIEF OPERATING OFFICER


Attachment 1: Site Map of Nick Stearns Property

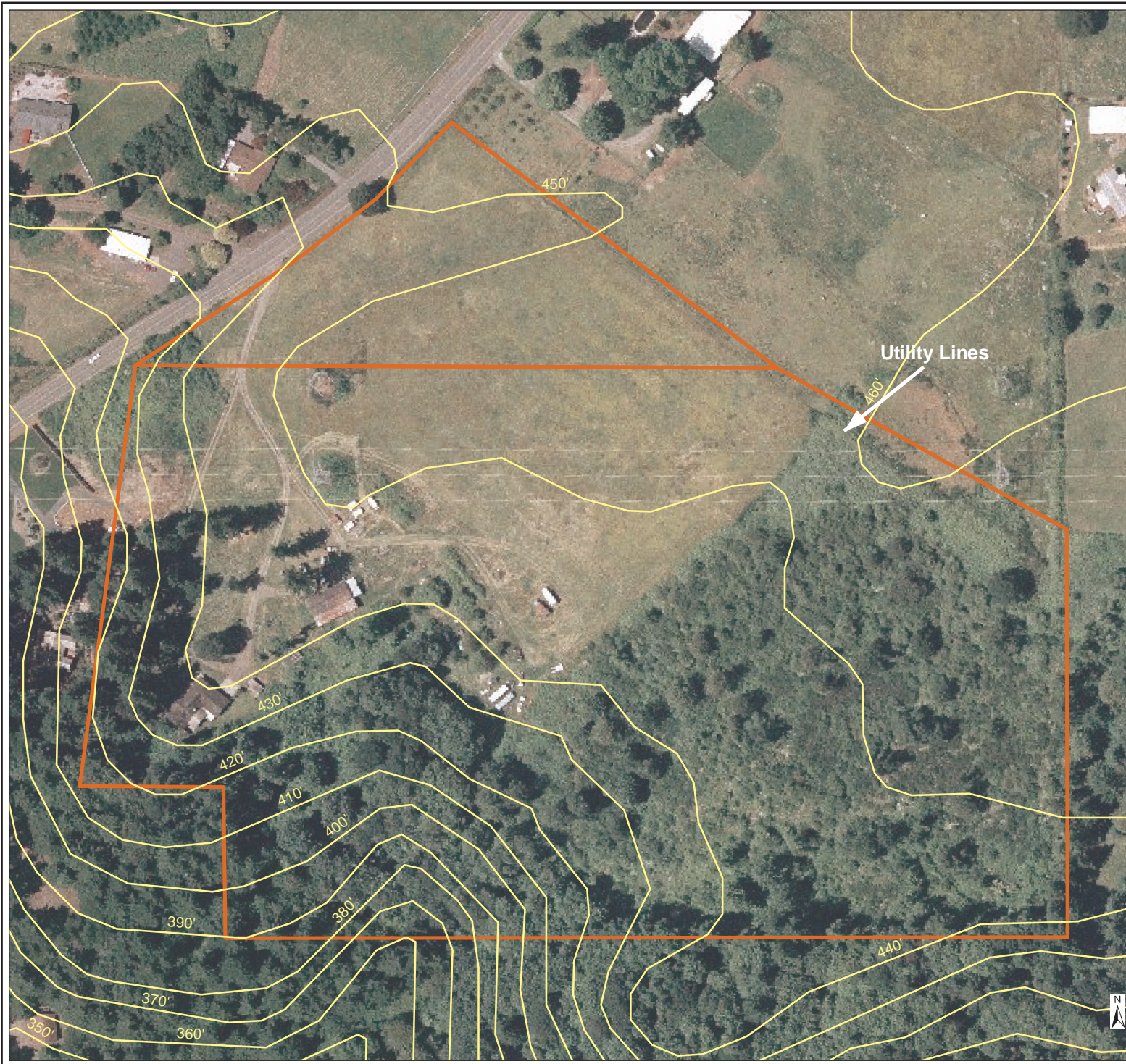
Attachment 2: Metro Memorandum to Paul Ketcham and Richard Benner from Sonny Conder and Karen Hohndel, "Valuation Report on the Nick Stearns Measure 37 Claim," dated May 11, 2006

Attachment 3: Sample Area of 2004-2005 Sales Data for Damascus UGB Expansion Area and One Mile Buffer, Clackamas County, OR

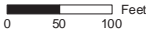
Council Order #06-003
Attachment 1

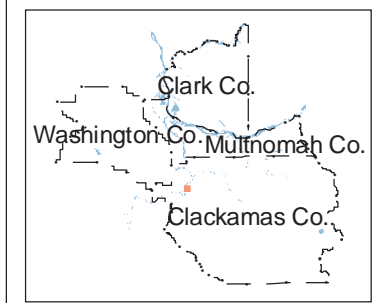
Site Map Stearns Measure 37 Claim

 Subject Property



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1 inch equals 0.04 miles
 Feet



Location Map



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M E M O R A N D U M

600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232 2736
TEL 503 797 1700 | FAX 503 797 1794



May 11, 2006

To: Paul Ketcham, Principal Regional Planner
Richard Benner, Senior Attorney

From: Sonny Conder, Principal Regional Planner
Karen Hohndel, Associate GIS Specialist

Subject: Valuation Report on the Nick Stearns Measure 37 Claim

Conclusion:

Per your request we have conducted a valuation analysis of the Nick Stearns Measure 37 Claim. We conclude that the Metro action of including the property inside the UGB, designating it “Outer Neighborhood” and imposing a temporary 20 acre minimum lot size for development has not produced a material loss of value for the subject property¹. On the contrary, compared to development in a rural residential setting on 5 acre lots, the action is more likely to have resulted in a material gain in property value.

Conceptual Understanding for Basis of Property Value Analysis:

We understand the present Measure 37 valuation problem to consist of making two property value estimates. These are:

1. Estimate the current market value of the property subject to the regulation which the claimant contends has reduced the value of his property.
2. Estimate the current market value of the property in the absence of that regulation, and with the zoning that applies following the waiver granted by Clackamas County.

Metro Ordinance No. 02-969B applied a set of new regulations to the claimant’s property. First the ordinance brought claimant’s property into the region’s urban growth boundary, making the

¹ We use the term “material” in the accounting/auditing sense that given the statistical variability inherent in the data there is no difference between two measurements of land value.

property eligible for urban high-density development rather than rural low-density development. Second, the ordinance designated the property “Outer Neighborhood”, the lower density residential designation in Metro’s 2040 Growth Concept. Third the ordinance applied a temporary 20-acre minimum lot size to protect the status quo while local governments complete amendments to comprehensive plans to allow urban development. Within this overall framework any particular property may have a substantial range of housing types and lot sizes. Implicit in this design designation is the availability of urban level capital facilities including sanitary sewers, storm water retention and management, water distribution, streets, roads, parks and other infrastructure and services associated with urban living. All development is assumed to occur in compliance with all health and safety regulations.

The default land use is the Clackamas County designation of RRFF-5. This land use designation is a rural designation allowing one dwelling unit per 5 acres. All development under RRFF-5 must conform to applicable health and safety regulations. Most significant is that the reference default land use must be outside the present UGB in a rural setting. While seeming to be a subtle distinction, the requirement of a rural setting outside the UGB is conceptually pivotal to the valuation. To use RRFF-5 or equivalent land inside the UGB as a basis for valuation includes the property value increasing amenity effects of urban services and infrastructure. It is logically contradictory to argue that inclusion inside the UGB and designation of the land for urban purposes has reduced a property’s value but to include those very effects in the estimate of the property value without the subject action.

Alternative Method of Computing Property Value Loss Resulting From Regulation

Estimating loss of property value using the usual appraisal method of “comparative sales” has been the subject of substantial criticism. Andrew Plantinga and William Jaeger², economists at OSU, have written papers pointing out that using the method of comparative sales does not compute the loss due to regulation. Rather the estimated “value loss” is actually the gain resulting from obtaining an exemption to the general rule. To better understand their arguments, we may think of the comparative sales method of determining an economic loss as equivalent to determining the value of issuing someone a special license or franchise to carry out an economically valuable function that others may not do. For instance, licenses to operate taxi cabs in New York are seldom issued and in great demand. As a result the license itself has acquired substantial economic value. An example closer to home is the value of an Oregon Liquor License prior to more liberal issuing standards in the 80’s. In the 1950’s through roughly the

² Andrew Plantinga, *Measuring Compensation Under Measure 37: An Economist’s Perspective*, Dec. 2004, 15 pages. (Available at OSU Department of Agricultural and Resource Economics, URL: plantinga@oregonstate.edu). William K. Jaeger, *The Effects of Land Use Regulations on Land Prices*, Oct. 2005, 38 pages. (Available at OSU Department of Agricultural and Resource Economics, URL: wjaeger@oregonstate.edu). Also: William K Jaeger, *The Effects of Land-Use Regulations on Property Values*, **Environmental Law**, Vol. 36:105, pp. 105 – 127, Andrew J. Plantinga, et. al., *The effects of potential land development on agricultural land prices*, **Journal of Urban Economics**, 52, (2002), pp. 561 – 581. and Sonny Conder and Karen Hohndel, *Measure 37: Compensating wipeouts or insuring windfalls?*, **Oregon Planners’ Journal**, Vol. 23, No 1. Dec. – Jan 2005. pp. 6 – 9.

70's, an Oregon Liquor License for a restaurant or bar vastly increased the property value of the establishment that had one. Plantinga and Jaeger argue that the value of the property hinges on scarcity resulting from regulation. If everyone had a taxi cab or liquor license, they would have no value. From an economic perspective, using a method that really measures value gained from regulation is not the same as determining economic loss resulting from regulation.

Plantinga and Jaeger go on to suggest an economically appropriate measure of loss resulting from subsequent land use regulation. Their method is grounded in the well established and tested Theory of Land Rent. Simplified a bit the Theory of Land Rent holds that the value of land at any particular time is the future net profit from the land used in its most efficient allowable use. The market also adjusts (discount factor) this value to account for time and uncertainty as to future uses. What this means is that the original sales price incorporates future expectations about how the land might be used. If we take the original sales price and bring it up to the current date by using an appropriate price index, we are able to measure in today's prices what the land was worth when it was purchased under the original regulatory requirements.

The above procedure yields an estimate of the original value of the property in today's dollars. We can then compare that estimate to the market worth of the property with the new regulation. If the adjusted original estimate exceeds the present market value, then the owner has experienced a loss. If the adjusted original estimate is equal to or lower than the property value under the new regulation, then the owner has experienced no loss.

This method allows a consistent computation of property loss due to subsequent regulatory changes. At the same time it avoids awarding particular property owners a bonus that was not anticipated in the original purchase price. Owners are compensated for what they lost; but they are not awarded an extra benefit owing to unanticipated growth, infrastructure investment or regulatory changes.

Since the Plantinga-Jaeger approach represents a consistent and fair method of evaluating economic loss to property resulting from regulation, we are also valuing property claims according to their suggested method.

Property Valuation Analysis Procedure:

Our property valuation analysis procedure consists of the following steps.

- Briefly describe the property and make a prudent assessment of development limitations to establish a likely range of residential capacity under both "Outer Neighborhood" and RRF-5 designations assuming health and safety regulations are enforced.
- Based on recent sales (2005) of lots and existing properties inside the Oregon City expansion area determine the current (2006) value of the property with a reasonable range of "Outer Neighborhood" development configurations including a 5 year discount factor for lag time in service provision.

- Based on recent sales (2005) of property in a buffer zone extending 1 mile outside the present UGB within Clackamas County determine the value of residential property on lots of 2.5 to 7.5 acres in size. This procedure establishes a reasonable range of values for residential properties of RRFF-5 configuration in a rural setting. Include a 2 year discount factor for lag time in development.
- Provide an alternative valuation of the Nick Stearns property based on an adjustment to original sales value that has been advocated by OSU Economists Andrew Plantinga and William Jaeger.
- Evaluate the lot value and home value comparables submitted as evidence with the Nick Stearns Measure – 37 claim.
- Provide and compare estimates of the value of the subject property as of 2006 with Metro’s “Outer Neighborhood” designation versus Clackamas County’s RRFF-5 designation.

Nick Stearns Property Description:

The subject property consists of 21.4 acres immediately east of S. South End Road at approximately the 199th block south of Oregon City. Clackamas County Assessor data show the property as two tax lots; one of 18.6 acres and a second of 2.8 acres for a total of 21.4 acres in all. A residential structure and outbuildings are located on the western portion of the property. Assessor appraised value as of 2005 for both lots amounts to \$422,988 with the improvement accounting for \$133,290 and the land - \$289,698. Assessor data show the home being constructed in 1965. Data submitted with the claim indicate the property was conveyed as a Deed of Trust in 1998 for \$10. Value of the property at the time was estimated at \$300,000.

Visual inspection from S. South End Road and air photo inspection as well as relevant GIS data indicate that portions of the property pose substantial limitations to development; the full extent of which would require sanitation, geotechnical and civil engineering professionals to fully delimit and elucidate. The salient limiting feature for development on the property is the 263 foot wide high voltage utility line easement and 2 sets of utility lines that run east-west through the upper 1/3 of the property. These are high voltage lines that allow no building underneath. Snapping, crackling and humming of the lines was audible from the road. Besides limiting the land available for development, the lines constitute substantial disamenities to high value residential development.

The south-western ¼ of the property also has a fairly steep slope that will also limit development to some extent. The remainder of the property is fairly flat farm and forestry land. Surrounding development, particularly that in Oregon City within ½ mile does not appear limited by drainage or topographic features.

Again, it is not in our professional capacity to assert with authority any definitive estimate of what the site limitations are; but rather to reflect what any prudent property investor must consider when pricing raw land. This holds true for both Metro’s “Outer Neighborhood” and the default use of RRFF-5.

Dwelling Unit Capacity Estimates:

To simplify our capacity estimates we assume that the existing residential structure is retained on the property. Accordingly, we reduce the property available for development by 1.4 acres to 20³. Should the property be developed in a configuration consistent with Metro's Outer Neighborhood designation we estimate that anywhere from 10 acres (47%) to 12.5 acres (58%) of the 21.4 acres would be useable. Under RRFF-5 zoning it may be conceivable (septic tank and road restrictions not withstanding) to use 20 acres for development by including the easement as part of the 5 acre lot and siting the dwelling unit outside the easement. In this case we expect the property to yield 3 – 4 buildable 5 acre lots. Since all land within the easement is highly restricted in use, 5 acre lots in this configuration are necessarily worth much less than lots that are subject to owner discretion.

Based on similar terrain and developments in the UGB within Oregon City we calculate that with Outer Neighborhood given a range of lot sizes of 4,000 – 10,000 sq. ft., 5 to 6.5 lots per acre could be constructed on the buildable acreage. This assumes urban level infrastructure and design flexibility in lot shape and structure placement on the lot.

For the RRFF-5 designation we assume by definition 1 unit per 5 acres.

In sum we expect the property with Metro's Outer Neighborhood designation to yield 50 (5 times 10 acres) to 81 (6.5 times 12.5 acres) residential lots ranging from 4,000 to 10,000 sq. ft. in size. The RRFF-5 designation yields 3 – 4 buildable rural lots of 5 acres in size.

Current Value Estimate of “Outer Neighborhood” Buildable Lots in Oregon City Expansion Area:

In order to establish a reasonable range of lot values for developing urban areas with infrastructure and nearby urban services, we evaluated all recent sales (year 2005) of land and lots within the Oregon City UGB expansion area. We examined 154 SFR properties within the entire expansion area. Many of these are properties that remain substantially rural in character without full urban services. Relevant summary results are in Table 1 below.

³ We point out that for RRFF-5 this is not presently feasible since it would require establishing a 1.6 acre tax lot for the existing residential structure. Most realistically, the RRFF-5 designation would yield a 6.6 acre lot with the existing house and 3 5 acre lots.

Table 1: Summary Property Value Data – Oregon City Area Residential Sales

Average Lot Size:	.73 acres
Median Lot Size:	0.46 acres
Average Lot Value:	\$99,000
Median Lot Value:	\$92,300
Average Total Prop.	\$237,000
Median Total Prop.	\$220,000
Average House Size:	1,745 Sq. Ft.
Median House Size:	1,536 Sq. Ft.

When we adjust for lot size, availability of full urban services, and the presence of the utility lines on the property, the data support a lot value range of \$75,000 to \$90,000 per buildable lot in 2005 dollars for “Outer Neighborhood” type development on the subject property. This value range encompasses a range of housing types and neighborhood conditions.

Current Value Estimate of “RRFF-5 Buildable Lots” in the 1 Mile Buffer Area Outside the UGB:

To establish the value range for “RRFF-5” size lots within the Clackamas rural area we selected all residential properties that sold in 2004 and 2005 within the 1 mile buffer zone with a lot size of 2.5 to 7.5 acres. These comprised 177 properties and their summary statistics are included below in Table 2.

Table 2: Summary Property Value Data – Clackamas Rural Residential (“RRFF-5”)

Average Lot Size:	4.45 acres
Median Lot Size:	4.56 acres
Average Lot Value:	\$233,200
Median Lot Value:	\$204,000
Average Total Prop.	\$510,200
Median Total Prop.	\$421,800
Average House Size:	3,500 Sq. Ft.
Median House Size:	3,350 Sq. Ft.

For purposes of valuation we also need adjust for the presence of the utility lines. According we are assuming a range of \$175,000 to \$225,000 per buildable 5 acre lot for RRFF-5 on the subject property.

Alternative Valuation of Nick Stearns Property Using Method Suggested by Plantinga and Jaeger.

OSU economists Andrew Plantinga and William Jaeger have challenged the “comparable sales” approach of traditional appraisal methods. They have pointed out that it really measures the value obtained by an exception to the current rule; rather than a measure of economic loss suffered as a result of government land use regulation. As an alternative test they propose indexing the price that the property was purchased for to the present time using an appropriate index of property value, investment or consumer price change. Explicit to this suggestion is the Theory of Land Rent which holds that the price paid for land capitalizes reasonable expectations about its future use. If the initial purchase price anticipated a more intense future use, the indexed price should exceed the current market price under the revised land use regulations. If the revised land use regulations are consistent with or exceed the expectations contained in the original purchase price, then the current market price will equal or exceed the indexed price.

Accordingly, we have computed from published sources four value change indices for the period 1998 through 2005. We have also converted the 1998 Stearns’ property transfer of \$300,000 to value per acre. Since we are retaining the residential structure we have reduced the value by 36.0% (improvement plus 1.4 acre land share in 2005) and divided the result by 20 acres (The amount of available to the market). This allows us to look at the value of the raw land alone and not add in the complication of the existing residential structure. In 1998 the value of the 20.0 acres of raw land amounted to \$9,600 per acre. Table 3 below converts that value per acre to current 2005 dollars using 4 different value change indices.

Table 3: Nick Stearns’ Property Value per Acre Given Market Expectations of Purchase Price (Plantinga-Jaeger Method)

Index ⁴	98 Value	2005 Value	Ratio	Value Per Acre 2005 \$
Port/Van CPI	167.1	197.7	1.18	\$11,320
House Value Index	156.9	241.5	1.54	\$14,784
Lot Value Index	40.0	95.0	2.38	\$22,848
S&P500 Stock Idx	1035	1181.4	1.14	\$10,944

All indices except the S & P 500 stock price index are for the Portland Vancouver area. The lot price index uses East Portland values for 1998 and Oregon City values for year 2005. The S & P index is the raw price index; not the real price index which is adjusted for inflation.

⁴ The Portland – Vancouver Consumer Price Index is for all urban consumers from the Metro Regional Data Book, p. 73. The House Value Index is from the Metro Regional Data Book, p. 95. The Lot Value Index is taken from The Real Estate Report of Metropolitan Portland, Vol. 69, (Autumn 1989) and from Metro RLIS data on taxlots. The S&P 500 Stock Index is from Microsoft Internet Explorer, Wikipedia, the free encyclopedia, S&P500 URL: <http://en.wikipedia.org>

Depending on one's philosophy of an appropriate rate of investment return the Stearns property raw land value per acre should vary between \$11,000 and \$23,000.

Evaluation of Nick Stearns' Claim of Comparable Properties

The basis for the Stearns' property value loss claim rests on a market value estimate of \$250,000 per developed, ready to build lot assuming 3 buildable lots plus the existing residence are available on the property. To support the estimate of \$250,000 per buildable lot no comparables are submitted.

Nick Stearns' Property Values Compared

Given the data developed in the previous Tables we may now summarize our estimates of the value per acre in 2006 for the Stearns' property in its present location. To do so we have followed the procedure below.

1. Simplify the calculation by subtracting out the existing dwelling unit and 1.4 acres it occupies so we have 20 acres of raw land without services.
2. Assume a cost of providing water, sanitary sewer, drainage, streets and other on site utilities plus SDC's of \$50,000 per buildable lot for both Outer Neighborhood and RRFF-5.
3. Account for the value of time until the property could actually be developed. In the case of Outer Neighborhood we assume 5 years before development; so we discounted the value at 6.5% per year for 5 years. For RRFF-5 we assume development within 2 years; so we discounted the value at 6.5% per year for 2 years.
4. Convert the resultant values into the estimate of what a prudent investor would pay in 2006 per acre for the raw land.

Table 4 below depicts the results for low and high range assumptions for both Outer Neighborhood and RRFF-5.

Table 4: Comparison of Estimated Market Value of Raw Land for Outer Neighborhood and RRFF-5 Land Uses

Outer Neighborhood

Low Yield:	50 DU
Low Range Lot Value:	\$75,000
Development Cost per Lot:	\$50,000
Net Raw Land per Lot:	\$25,000
Total Raw Land Value (50x25,000):	\$1,250,000
Current Market Value per acre for 20 acres	
Discounted 5 years:	\$45,600

High Yield:	81 DU
High Range Lot Value:	\$90,000
Development Cost per Lot:	\$50,000
Net Raw Land per Lot:	\$40,000
Total Raw Land Value (81x40,000):	\$3,240,000
Current Market Value per acre for 20 acres	
Discounted 5 years:	\$118,200

RRFF-5

Low Yield:	3 DU
Low Range Lot Value:	\$175,000
Development Cost per Lot:	\$50,000
Net Raw Land per Lot:	\$125,000
Total Raw Land Value (3x125,000):	\$375,000
Current Market Value per acre for 20 acres	
Discounted 2 years:	\$16,500

High Yield:	4 DU
High Range Lot Value:	\$225,000
Development Cost per Lot:	\$50,000
Net Raw Land per Lot:	\$175,000
Total Raw Land Value (4x175,000):	\$700,000
Current Market Value per acre for 20 acres	
Discounted 2 years:	\$30,900

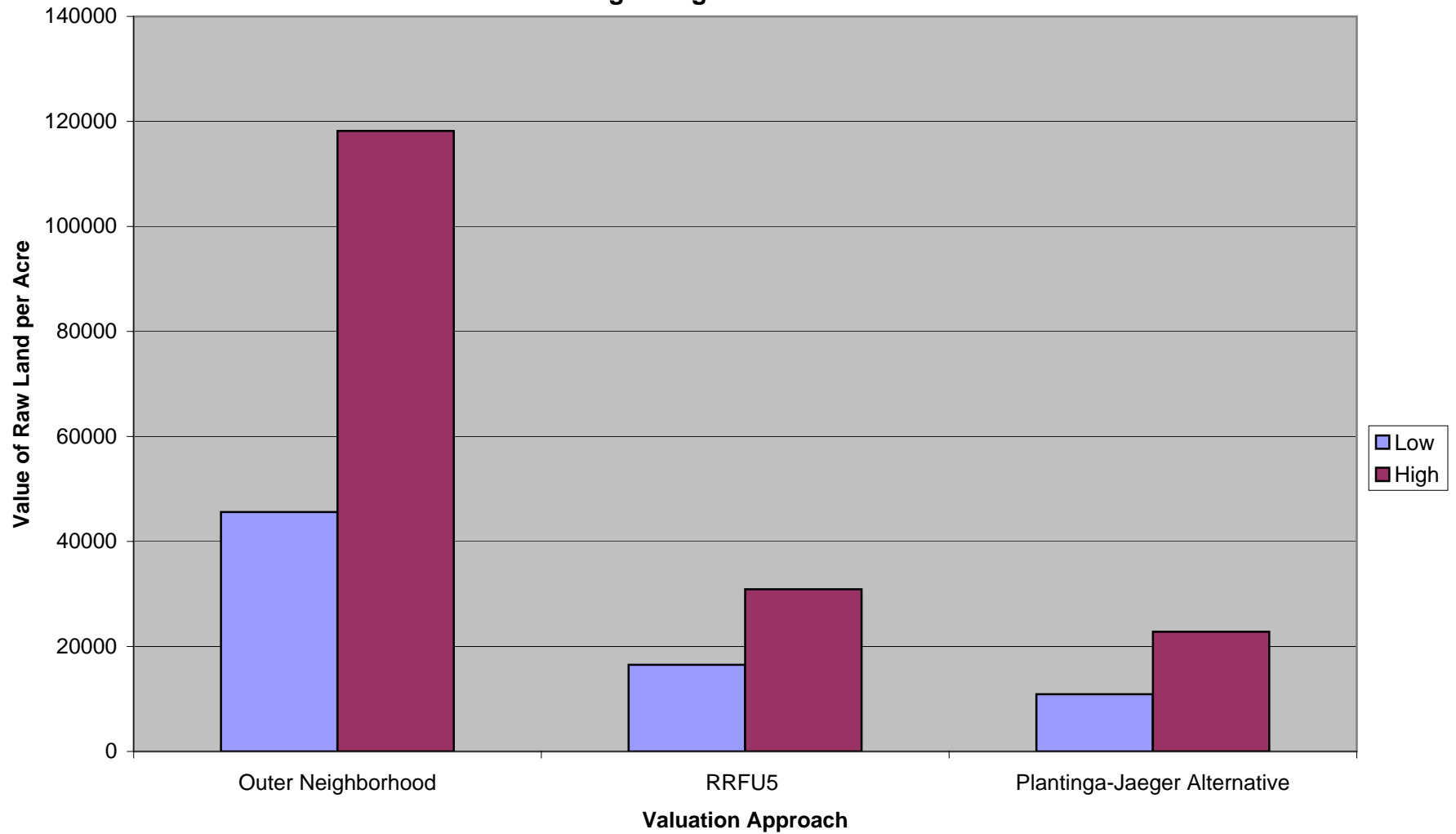
Figure A attached depicts the calculations in Table 4. We estimate the current raw land value of the Stearns' property with Outer Neighborhood designation to range from \$45,600 per acre to \$118,200 per acre. The same property used as RRFF-5 in a rural setting would yield \$16,500 to \$30,900 per acre. In other words the most optimistic RRFF-5 valuation does not equal the most pessimistic Outer Neighborhood valuation. Given these results we would conclude that the

Council Order 06-003
Attachment 2

Outer Neighborhood designation has not reduced the value of the property; quite the contrary it has most likely increased the value.

Moreover, in terms of establishing economic loss the land values per acre established using the Plantinga-Jaeger method range from \$11,000 to \$23,000 per acre. The highest Plantinga – Jaeger estimate falls midway between the lowest and highest “comparative sales” estimate of RRFF-5 per acre. Clearly, under no circumstances has any regulatory change to the Stearns’ property reduced its value. Again, the contrary is the case. Growth, infrastructure investment and regulation necessary to orderly growth have produced increases in property values well in excess of any alternative investment for the Stearns’ property.

Figure A: Current Market Value per Acre: Low and High with Outer Neighborhood, RRF5 and Plantinga-Jaeger Value Method



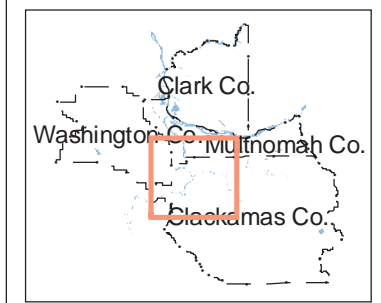
Council Order #06-003
Attachment 3

Sample Area of 2004-2005 Sales Data for Damascus UGB Expansion Area and One Mile Buffer, Clackamas County, OR

- Damascus UGB Expansion Area
- One Mile Buffer
- County Line
- Inside Metro UGB

The information on this map was derived from digital databases on Metro's GIS. Care was taken in the creation of this map. Metro cannot accept any responsibility for errors, omissions, or positional accuracy. There are no warranties, expressed or implied, including the warranty of merchantability or fitness for a particular purpose, accompanying this product. However, notification of any errors will be appreciated.

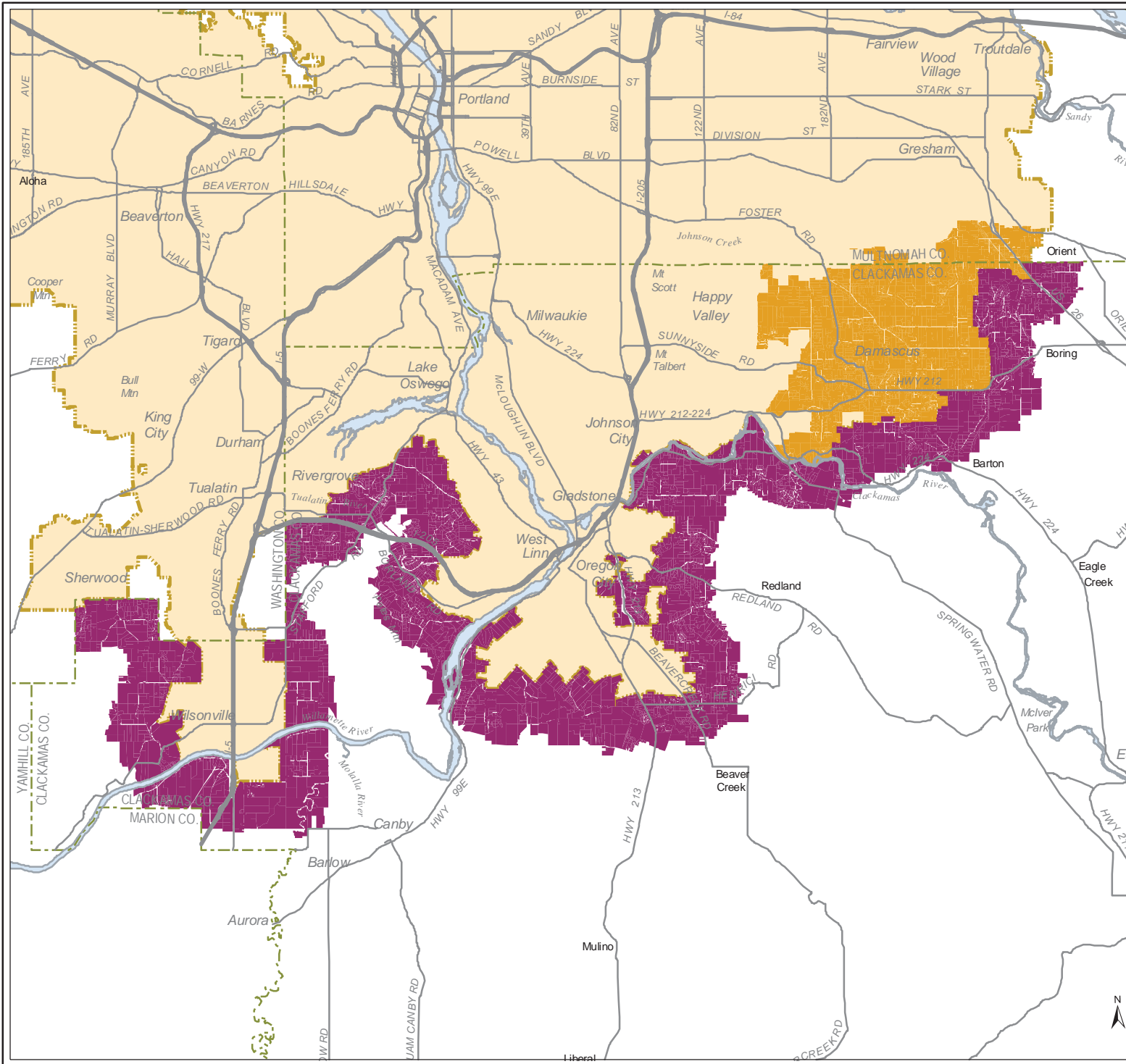
1 inch equals 3.31 miles
0 1 2 Miles



Location Map



METRO DATA RESOURCE CENTER
600 NORTHEAST GRAND AVENUE | PORTLAND, OREGON 97232-2736
TEL (503) 797-1742 | FAX (503) 797-1909
drc@metro.dst.or.us | www.metro-region.org





METRO

Daniel B. Cooper
Tele: (503) 797-1528
FAX: (503) 797-1792

January 4, 2006

Stearns Marnella Communities
Attn: Nick Stearns
18318 SE Abernethy Lane
Milwaukie, Oregon 97267

Re: Your Measure 37 Compensation Claim with Metro
Property Address: 19992 S South End Road, Oregon City, OR 92045
Legal Descriptions: T3 R1 Section 11 Tax Lot 1191 & T3 R1 Section 11 Tax Lot 1101

Dear Mr. Stearns:

In light of the recent judicial actions regarding Measure 37 and *MacPherson, et al. v. Department of Administrative Services, et al.*, I want to give you a response as to a current status of your claim pending at Metro.

Your property is located inside the Metro jurisdictional boundary, inside the Metro urban growth boundary and inside of Clackamas County. Any grant of a waiver by Metro for your property is subject to the validity of the waiver that you have previously obtained from Clackamas County. Therefore, Metro believes that your claim must now wait a decision by the Oregon Supreme Court since the waiver granted to you by Clackamas County is at least temporarily on hold. If and when the Oregon Supreme Court upholds the validity of the Measure 37 claim, Metro will be prepared to respond to your claim within 60 days of the date of the Court's decision.

In order to assist Metro in processing your claim in the event the Court does reinstate Measure 37, I believe the Metro Council would be seeking additional information regarding the effect on your property's value of the action taken by Metro to bring the property inside the Metro urban growth boundary at the same time it impose the temporary 20-acre minimum lot size pending actual adoption of comprehensive plan designations for the property. As you maybe aware, property in this category similarly situated to yours is being sold for substantial value to persons who are willing to wait until after the 20-acre minimum lot size no longer applies upon the adoption of urban comprehensive plan designations and zoning.

Very truly yours,

Daniel B. Cooper
Metro Attorney

DBC/sm

cc: David Bragdon, Metro Council President
Michael J. Jordan, Chief Operating Officer
Andy Cotugno, Metro Planning Director

Stearns Marnella Communities

Attn: Nick Stearns

January 4, 2006

Page 2

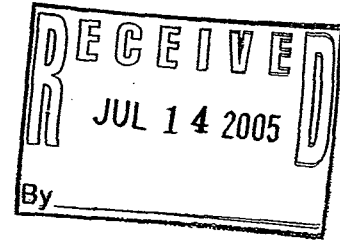
bcc: Dick Benner
Lydia Neill, Metro's Measure 37 Task Force

STEARNS
MARNELLA
COMMUNITIES

July 12, 2005

Mr. Michael Jordan
Chief Operating Officer
METRO
600 NE Grand Avenue
Portland, OR 97232

RE: Measure 37 claim
19992 S. South End Road, Oregon City, OR
T2S R1E Section 20BC Tax Lots 1101 & 1191



Measure 37 Claims Distro List:

Dan Cooper
 Dick Benner
 Dick Bolen
 Lydia Neill

Dear Mr. Jordan,

Enclosed please find copies of the information and application forms I submitted to Clackamas County for relief from Clackamas County's zoning ordinance that complies with the 20 acre minimum lot size provisions of Title 11 on the Urban Growth Management Functional Plan Sec. 3.07.1110. That claim was approved by the County Commissioners on July 6, 2005.

Clackamas County Planning officials have requested that I also get Metro to grant my request for Measure 37 relief on this parcel before they can approve a subdivision conforming to their RRFF-5 (Rural Residential Farm Forest 5) zoning ordinance. Please consider this as a formal demand pursuant to Section (4) of Ballot Measure 37 (2004) to waive 3.07.1110 on these two tax lots.

If you need any additional information, please feel free to call me at my office at 503-654-6642, my cell at 503-984-0849 or via e-mail at stearns.nick@gmail.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Nick Stearns".

Nick Stearns

enclosures

RECEIVED

JUL 14 2005

OFFICE OF METRO ATTORNEY



STEARNS

MARNELLA

COMMUNITIES

NICK STEARNS

18318 SE ABERNETHY LANE, MILWAUKIE, OREGON 97267

T: 503 654 6642 C: 503 984 0849

F: 503 652 3793 E: nick@stearnsarnella.com

W: www.stearnsarnella.com



Clackamas County

DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT

Sunnybrook Service Center

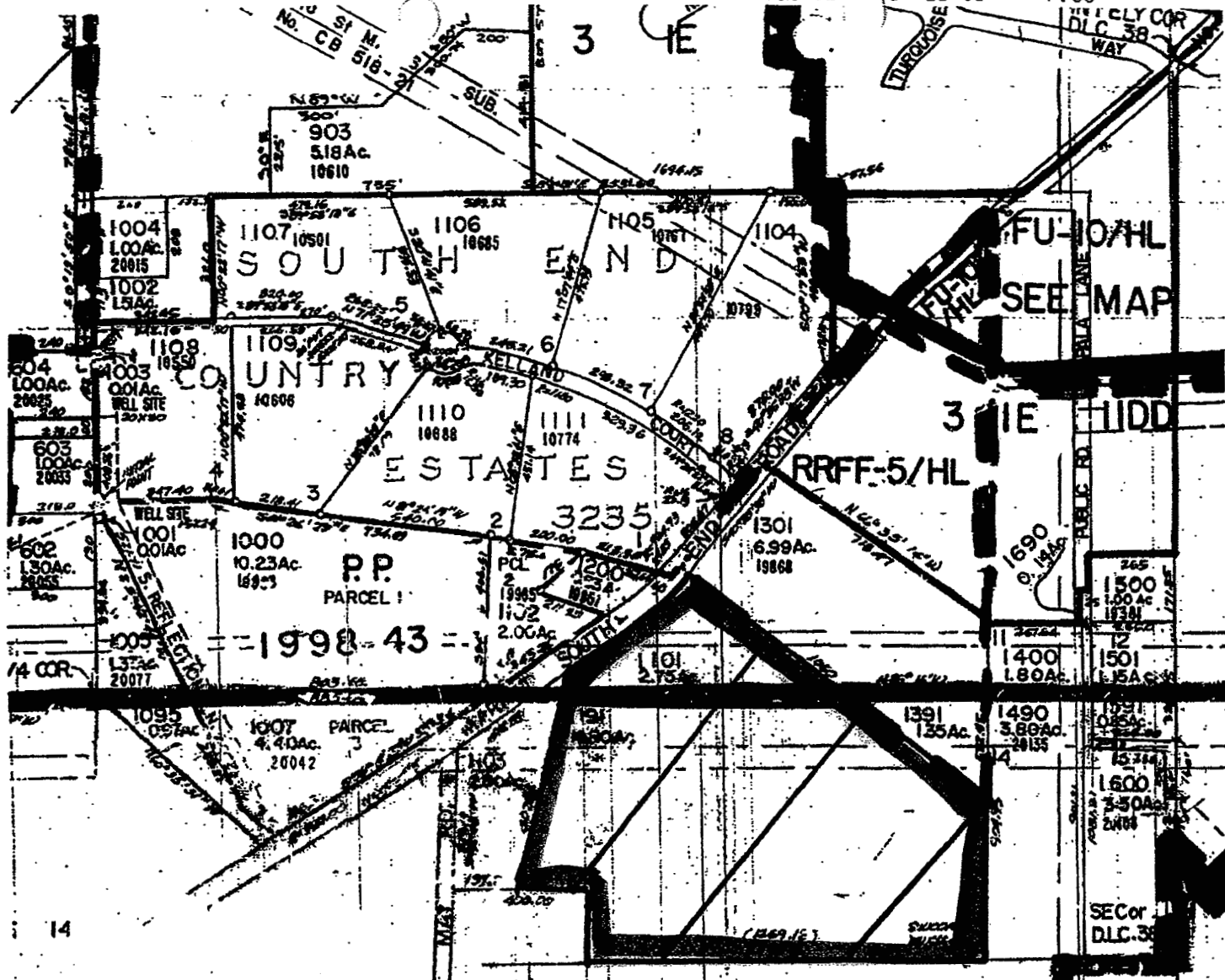
**FACSIMILE TRANSMISSION
COVER SHEET**

DATE: 7-12-05
FAX NO. 503-652-3793
TO/DEPARTMENT: Nick Stearns

FROM: Carol Dawson 503-353-4504
CLACKAMAS COUNTY - DTD
9101 SE SUNNYBROOK BLVD.
CLACKAMAS, OR 97015

FAX NUMBER: (503) 353-4550
PHONE NUMBER: (503) 353-4500 OR 353-4501

TOTAL PAGES, including cover sheet: 8
The Measure 37 information you
requested.



==1998-43==

GREENWAY
SEE MAP 4-4
F. H. D.

MEASURE 37 CLAIM
SUPPLEMENTAL INFORMATION

(Attach additional sheets as necessary to complete this supplemental portion of the claim)

1. Other persons with an interest in the property (such as lien holders): Please provide a list of the name, address and phone number of anyone with an interest in the property, and identify their interest.

N/A

2. Exact date the current owner acquired the property?

JULY 1, 1998

3. If the current owner acquired the property from a family member, what is the exact date the family member acquired the property?

N/A

If there is more than one event where the property was acquired from a family member, such as a series of inheritances, please provide a list of all such events and their dates.

N/A

4. What regulation (if more than one, please describe) do you believe lowered the value of your property? When did the regulation take effect?

20 ACRES MIN. OVERLAY, 2000

5. Please describe how this regulation(s) restricts the use of the property and reduces the property's fair market value.

THE PROPERTY IS MORE VALUABLE IF IT CAN BE DIVIDED INTO FOUR HOMESITES

6. How much has the fair market value of your property been reduced by enactment or enforcement of the regulation(s)? \$500,000

7. Are you requesting compensation, or removal of the regulation(s), modification of the regulation(s), or a decision not to apply the regulation(s)? If you are requesting monetary compensation, please indicate how much and how you calculated this sum. ANY OF THE ABOVE.

IF REGULATION IS REMOVED, PROPERTY IS DIVISIBLE INTO ~~FOR~~ FOUR LOTS. ONE LOT WITH HOUSE IS WORTH APPROX. \$300,000 THE LOTS WOULD BE WORTH APPROX \$250,000/ea. THE DIVISION WOULD COST APPROX \$100,000 TO COMPLETE.

AS IT SITS, PROPERTY IS WORTH APPROX \$400-450,000.

15123-6

OFFICIAL RECORD OF DESCRIPTIONS
OF REAL PROPERTY
CLACKAMAS COUNTY ASSESSOR

TWP & RGE	SEC	TAKE	TAX LOT	TYPE SPEC	CODE	FORMERLY PART OF T.L. NO.
3 NE 11			1101		62-77	1100
MAP NUMBER	NUMBER		REAL PROP.	AREA	NUMBER	
ACCOUNT NUMBER						

City of Entry on this Card	DEED RECORD		ACRES REMAINING
	VOL	PG.	
Kelland Thomas & Isabel	6-5-79	70 7206	2415
EXC 1191 - 2140	1-29-79		2.75
MERGER PARTITION 567-83-11			
MERGER CLACKAMAS CO. FIRE 54 & HAPPY VALLEY 65 INTO CLACKAMAS RFD #71 ORD 2575 1989-90 ROLL			
MERGER FIRE 55 TO FIRE 1			
ORD 3265 94-95 ROLL			
WTR 2 & 18 CONSOLIDATED TO CLACKAMAS WTR 2 98-99 ROLL			
WTR 2 & 18 CONSOLIDATED TO CLACKAMAS WTR 2 98-97 ROLL			
MER FIRE 51 TO FIRE 1			
ORD #3840 98-99 ROLL			
Kelland Isabel	07-22-99	98 64302	DC
Stearns Nick	07-22-99	98 64513	
Warwe Rural 20ac Min/			
inside OGB			
19992 South End			

until a change is requested. All statements shall be sent to the following address:

c/o 4035 SW Douglas Way

Lake Oswego, OR 97035

Escrow No: 4200-24573-sa

Order No: 182789

Jul 12 2005 15:40

July 1998

WARRANTY DEED - STATUTORY FORM
(INDIVIDUAL OR CORPORATION)

Isabel Kelland

Grantor, conveys and warrants to Nick Stearns

Grantee, the following described real property free of encumbrances except as specifically set forth herein:

(Continued)

This instrument will not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify approved uses and to determine any limits on lawsuits against farming or forest practices as defined in ORS 30.930.

ENCUMBRANCES:

easements, conditions, restrictions and rights of way of record if any.

WD

The true consideration for this conveyance is \$10,000.00 * Pursuant to the terms of a 1031 tax deferred exchange. PAID BY AN ACCOMMODATOR PURSUANT TO AN IRC 1031 EXCHANGE. *other goods & valuable consideration.

Dated _____, if a corporate grantor, it has caused its name to be signed by order of its board of directors.

Isabel Kelland
Isabel Kelland

XXXXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXXXX

98-064803

STATE OF OREGON, County of Washington, ss. July 15, 19 98
This instrument was acknowledged before me on _____
by Isabel Kelland
This instrument was acknowledged before me on _____, 19 _____
by _____ as _____
of _____

Conrad J. J.
Notary Public for Oregon
My commission expires 7-15-2001



CHICAGO TITLE INSURANCE COMPANY C183789

SPLIT code

OFFICIAL RECORD OF DESCRIPTIONS

105391-7

CLA

SSOR

TWR 3	RGE	SEC	1/4	1/16	TAX LOT NUMBER	TYPE	SPEC. INT. IN REAL PROP.	062-14	31E11 1101	FORMERLY PART OF T.L. NO.		ACRES REMAINING	
										MAP NUMBER	NUMBER		DATE OF ENTRY ON THIS CARD
ACCOUNT NUMBER									CODE AREA NUMBER				
Kelland Thomas Isabel									1-29-79	463-114	21.40		
MINOR PARTITION 567-88-M													
MERGER CLACKAMAS CO. FIRE 54 & HAPPY VALLEY 65 INTO CLACKAMAS REPD #71 ORD 2575 1989-90 ROLL													
Exc. T.L. 01103									-2.80	623-59	50	23741	18.60
MERGER FIRE 55 TO FIRE 1													
ORD 3265 94-95 ROLL													
WTR 2 & 18 CONSOLIDATED													
TO CLACK RIV WTR 2 96-97 ROLL													
MGR FIRE 51 TO FIRE 1													
ORD #3840 98-99 ROLL													
Kelland Isabel									07-22-98	95	64862	DC	
Stearns Nick									07-22-98	95	64503		

MEASURE 37 CLAIM

CLACKAMAS COUNTY PLANNING DIVISION
9101 SE SUNNYBROOK BLVD., CLACKAMAS, OREGON 97015
PHONE (503) 353-4500 FAX (503) 353-4550 www.co.clackamas.or.us

FILE NUMBER: ZC046-05 DATE RECEIVED: 3-3-05
STAFF MEMBER: _____ CPO: _____

APPLICANT INFORMATION (PLEASE TYPE OR PRINT IN BLACK INK ONLY)

WHAT IS PROPOSED DIVIDE PROPERTY INTO 4 PARCELS (RREF-5 reqs)

LEGAL DESCRIPTION: T 3 R 1 SECTION 11 TAX LOT(S) 1101 1191
T 3 R 1 SECTION 11 TAX LOT(S) 1101
(ADDITIONAL) ALCA 19992 S. SOUTH END Rd, Oregon City, OR 97045

NAME OF CONTACT PERSON Nick STEARNS
MAILING ADDRESS 18318 SE ABERNETHY LN
CITY MILWAUKIE STATE OR ZIP 97267
PHONE 503-654-6642; CELL PHONE 503-984-0849

PROPERTY OWNER(S) (The name, address and telephone number of all owners, including their signatures, must be provided. In the event there are more than 3 property owners, please attach additional sheets. Please print clearly)

OWNER 1 Nick STEARNS
SIGNATURE [Signature]
ADDRESS 18318 SE Abernethy Ln
CITY Milwaukie STATE OR ZIP 97267
PHONE 503-654-6642 CELL PHONE 503-984-0849

OWNER 2 _____
SIGNATURE _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE _____ CELL PHONE _____

OWNER 3 _____
SIGNATURE _____
ADDRESS _____
CITY _____ STATE _____ ZIP _____
PHONE _____ CELL PHONE _____



First American

First American Title Insurance Company of Oregon
1700 SW Fourth Ave, Ste 102
Portland, OR 97201
Phn - (503) 222-3651
Fax - (503) 790-7872

TRI-COUNTY TITLE UNIT

JIM WELCH
TITLE OFFICER
jwelch@firstam.com

First American Title Insurance Company
4650 Southwest Griffith Drive, Suite 100
Beaverton, OR 97005

Order No.: 7019-501263
December 20, 2004

Attn: Amanda Walsh
Phone No.: (503) 641-7000 - Fax No.: (503) 627-0921
Email: ajwalsh@firstam.com

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 \$	100,000.00	Premium \$ 592.00
Endorsement 100, 116 & 8.1			Premium \$ 50.00
Govt Service Charge		Cost \$	50.00
Other		Cost \$	

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 December 09, 2004 at 8:00 a.m., title vested in:

Nick Stearns

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

1. 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.

2. As disclosed by Tax Roll:
Farm or Forest Liability
Amount: \$5,978.31
3. These premises are within the boundaries of the Clackamas River Water District and are subject to the levies and assessments thereof.
4. Easement, including terms and provisions contained therein:
Recording Information: April 23, 1942 in Book 292, Page 705
In Favor of: United States of America and its assigns
For: Utilities
Affects: A 100 foot wide strip through said premises
And also by instrument;
Dated: April 23, 1942
Recorded: June 18, 1942
Book: 294
Page: 704
5. Easement, including terms and provisions contained therein:
Recording Information: April 29, 1955 in Book 495, Page 18
In Favor of: United States of America
For: Transmission line
Affects: A strip of land 262.5 feet in width through said premises
6. Deed of Trust and the terms and conditions thereof.
Grantor/Trustor: Nick Stearns
Grantee/Beneficiary: Isabel Kelland
Trustee: Chicago Title Insurance Company
Amount: \$300,000.00
Recorded: July 16, 1998
Recording Information: 98064804
7. The following pertain to Lender's Extended Coverage only:
 - a. Parties in possession, or claiming to be in possession, other than the vestees shown herein.
 - b. Statutory liens for labor and/or materials, including liens for contributions due to the State of Oregon for employment compensation and for workman's compensation, or any rights thereto, where no notice of such liens or rights appears of record.

- END OF EXCEPTIONS -

NOTE: This Preliminary Title Report does not include a search for Financing Statements filed in the Office of the Secretary of State, or in a county other than the county wherein the premises are situated, and no liability is assumed if a Financing Statement is filed in the Office of the County Clerk covering Timber on the premises wherein the lands are described other than by metes and bounds or under the rectangular survey system or by recorded lot and block.

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

Tax Amount: \$1,755.32
Map No.: 31E11-01191
Property ID: 00758790
Tax Code No.: 062.014

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

Tax Amount: \$18.69
Map No.: 31E11-01191
Property ID: 00758772
Tax Code No.: 062.033

Situs Address as disclosed on Clackamas County Tax Roll:

19992 S South End Road, Oregon City, OR 97045

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

RECORDING INFORMATION

Filing Address: **Clackamas County**
807 Main Street - Room 104
Oregon City, OR 97045

Recording Fees: \$ **5.00** per page
\$ **10.00** per document (Public Land Corner Preservation Fund)
\$ **11.00** per document (OLIS assessment & Taxation Fee)
\$ **5.00** for each additional document title
\$ **20.00** non-standard fee

cc: Nick Stearns



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 Clackamas, State of Oregon, described as follows:

A tract of land in the Milton Brown D.L.C. No. 38, Sections 11 and 14, in Township 3 South, Range 1 East, of the Willamette Meridian, in the County of Clackamas and State of Oregon, described as follows:

Beginning at a point on the South line of said D.L.C. which is South 11 chains and West 2.88 chains from the corner common to Sections 11, 12, 13 and 14; thence West along said claim line 1109.42 feet to the Southeast corner of a tract conveyed to Opal Jack Herrin and wife by Deed recorded December 15, 1961, in Deed Book 596, Page 424; thence North 2°43' East along the East line of said Herrin Tract, 200 feet to the Northeast corner thereof; thence West parallel with the South line of said Brown D.L.C. 400 feet to the East line of a tract conveyed to I. McArthur by Deed recorded June 5, 1905, in Book 93, Page 189; thence North 2°43' East along said East line 428.98 feet to the Northeast corner of said McArthur Tract; thence along the centerline of Market Road No. 23, North 55°27' East 360.00 feet; thence North 57°02' East 200.7 feet; thence Northeasterly along said centerline 255 feet, more or less, to the most Westerly corner of a tract described in Deed recorded December 2, 1952, in Deed Book 463, Page 226; thence South 52°15' East 1060 feet to the East line of tract in Deed Book 91, Page 509; thence South along said East line 420 feet to the point of beginning.

Excepting therefrom the portion lying within the boundaries of public roads.

And further excepting therefrom that portion conveyed to Thomas L. Kelland, Jr. et ux, by Deed recorded June 5, 1989, Recorder's Fee No. 89-23741 Clackamas County Records.

Tax Parcel Number: 00758790 and 00758772



First American Title Insurance Company of Oregon

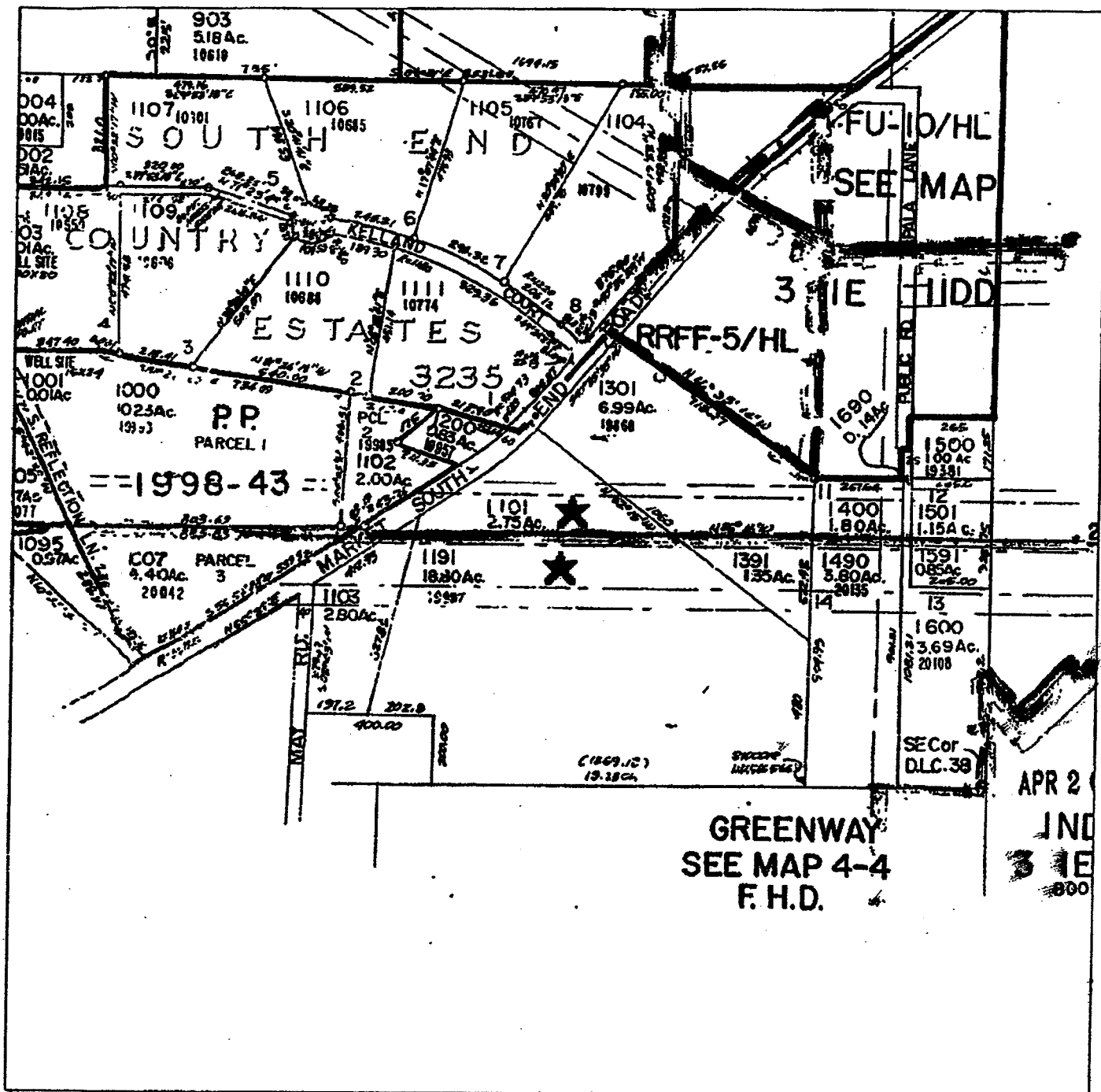
An assumed business name of TITLE INSURANCE COMPANY OF OREGON

1700 SW Fourth Avenue Portland, OR 97201-5512

Phone: (503) 222-3651

*This map is provided as a convenience in locating property
First American Title Insurance Company assumes no liability for any variations as may be disclosed by an actual survey*

Reference Parcel Number 22E20BC08201





First American

First American Title Insurance Company of Oregon
1700 SW Fourth Ave, Ste 102
Portland, OR 97201
Phn - (503) 222-3651
Fax - (503) 790-7872

TRI-COUNTY TITLE UNIT

JIM WELCH
TITLE OFFICER
jwelch@firstam.com

First American Title Insurance Company
4650 Southwest Griffith Drive, Suite 100
Beaverton, OR 97005

Order No.: 7019-501263
December 20, 2004

Attn: Amanda Walsh
Phone No.: - 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 \$	100,000.00	Premium \$ 592.00
Endorsement 100, 116 & 8.1			Premium \$ 50.00
Govt Service Charge			Cost \$ 50.00
Other			Cost \$

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 December 09, 2004 at 8:00 a.m., title vested in:

Nick Stearns

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

1. 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.

2. As disclosed by Tax Roll:
Farm or Forest Liability
Amount: \$5,978.31

3. These premises are within the boundaries of the Clackamas River Water District and are subject to the levies and assessments thereof.

4. Easement, including terms and provisions contained therein:
Recording Information: April 23, 1942 in Book 292, Page 705
In Favor of: United States of America and its assigns
For: Utilities
Affects: A 100 foot wide strip through said premises
And also by instrument;
Dated: April 23, 1942
Recorded: June 18, 1942
Book: 294
Page: 704

5. Easement, including terms and provisions contained therein:
Recording Information: April 29, 1955 in Book 495, Page 18
In Favor of: United States of America
For: Transmission line
Affects: A strip of land 262.5 feet in width through said premises

6. Deed of Trust and the terms and conditions thereof.
Grantor/Trustor: Nick Stearns
Grantee/Beneficiary: Isabel Kelland
Trustee: Chicago Title Insurance Company
Amount: \$300,000.00
Recorded: July 16, 1998
Recording Information: 98064804

7. The following pertain to Lender's Extended Coverage only:
 - a. Parties in possession, or claiming to be in possession, other than the vestees shown herein.
 - b. Statutory liens for labor and/or materials, including liens for contributions due to the State of Oregon for employment compensation and for workman's compensation, or any rights thereto, where no notice of such liens or rights appears of record.

- END OF EXCEPTIONS -

NOTE: This Preliminary Title Report does not include a search for Financing Statements filed in the Office of the Secretary of State, or in a county other than the county wherein the premises are situated, and no liability is assumed if a Financing Statement is filed in the Office of the County Clerk covering Timber on the premises wherein the lands are described other than by metes and bounds or under the rectangular survey system or by recorded lot and block.

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

Tax Amount: \$1,755.32
Map No.: 31E11-01191
Property ID: 00758790
Tax Code No.: 062.014

Situs Address as disclosed on Clackamas County Tax Roll:

19992 S South End Road, Oregon City, OR 97045

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

RECORDING INFORMATION

Filing Address: **Clackamas County**
807 Main Street - Room 104
Oregon City, OR 97045

Recording Fees: \$ **5.00** per page
\$ **10.00** per document (Public Land Corner Preservation Fund)
\$ **11.00** per document (OLIS assessment & Taxation Fee)
\$ **5.00** for each additional document title
\$ **20.00** non-standard fee

cc: Nick Stearns



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;
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 - (c) resulting in no loss or damage to the insured claimant;
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 - (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.
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 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
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The ALTA standard policy form will contain in Schedule B the following standard exceptions to coverage:

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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 Clackamas, State of Oregon, described as follows:

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Beginning at a point on the South line of said D.L.C. which is South 11 chains and West 2.88 chains from the corner common to Sections 11, 12, 13 and 14; thence West along said claim line 1109.42 feet to the Southeast corner of a tract conveyed to Opal Jack Herrin and wife by Deed recorded December 15, 1961, in Deed Book 596, Page 424; thence North 2°43' East along the East line of said Herrin Tract, 200 feet to the Northeast corner thereof; thence West parallel with the South line of said Brown D.L.C. 400 feet to the East line of a tract conveyed to I. McArthur by Deed recorded June 5, 1905, in Book 93, Page 189; thence North 2°43' East along said East line 428.98 feet to the Northeast corner of said McArthur Tract; thence along the centerline of Market Road No. 23, North 55°27' East 360.00 feet; thence North 57°02' East 200.7 feet; thence Northeasterly along said centerline 255 feet, more or less, to the most Westerly corner of a tract described in Deed recorded December 2, 1952, in Deed Book 463, Page 226; thence South 52°15' East 1060 feet to the East line of tract in Deed Book 91, Page 509; thence South along said East line 420 feet to the point of beginning.

Excepting therefrom the portion lying within the boundaries of public roads.

And further excepting therefrom that portion conveyed to Thomas L. Kelland, Jr. et ux, by Deed recorded June 5, 1989, Recorder's Fee No. 89-23741 Clackamas County Records.

Tax Parcel Number: 00758790

STEARNS
MARNELLA
COMMUNITIES

RECEIVED

AUG 17 2005

OFFICE OF METRO ATTORNEY

August 11, 2005

Mr. Michael Jordan
Chief Operating Officer
METRO
600 NE Grand Avenue
Portland, OR 97232

AUG 15 2005

RE: Supplemental Information
Measure 37 claim
19992 S. South End Road, Oregon City, OR
T2S R1E Section 20BC Tax Lots 1101 & 1191

Dear Mr. Jordan,

Clackamas County mailed to me a final order with regard to the above measure 37 claim. A copy is enclosed.

I have attempted to contact you regarding this matter to confirm your receipt of the original claim I made with Metro on July 12, 2005 but I have not heard back from you. Please contact me as soon as possible to advise me of the process and of your receipt of the claim documents.

Sincerely,



Nick Stearns

enclosures



**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

**In the Matter of a Ballot Measure
37 Claim for Stearns**

File No. ZC046-05

Order No. 2005-220
Page 1 of 3

Claimant(s): Nick Stearns

Date Filed: March 3, 2005

180-Day Processing Deadline: August 30, 2005

Legal Description: T3S-R1E-SECTION 11-TAX LOT 1101,1191

Location: Southeast side of S. South End Road, approximately 300 feet southwest of S. Kelland Court; Central Point area.

Proposal/ Relief Requested: The claimant is asking to be allowed to divide the property into 4 lots, or in the alternative, to be compensated \$500,000 for lost property value. The property currently is zoned RRFF-5, Rural Residential, 5 acre minimum lot size. The RRFF-5 zone prohibits lot divisions of less than 20 acres within the Metro Urban Growth Boundary.

Ownership History/Date Acquired by Claimant(s): The claimant purchased the property on July 1, 1998, and has had a continuous ownership interest since that date.

Zoning History: The property was zoned RRFF-5, 5 acre minimum in 1979. The RRFF-5 zone was amended on January 30, 2003, to include a prohibition on partitions within the Metro Urban Growth Boundary resulting in the creation of one or more lots of less than 20 acres in size (309.07D).

Reduction in Land Value: The claimant asserts that the inability to divide the property into 5 acre parcels has reduced the property's value by \$500,000. The claimant has provided no information to substantiate this claim. Staff has examined the assessor's market land value records for 5 acre parcels in the area. Land values for 5 acre parcels are approximately 3 times higher than the value of large parcels such as the claimant's. This substantiates a finding that the 20 acre minimum lot size has reduced the land value.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

**In the Matter of a Ballot Measure
37 Claim for Stearns**

File No. ZC046-05

**Order No. 2005-220
Page 2 of 3**

DECISION

- (1) The claimants have a valid claim.
- (2) Monetary compensation for any reduction in value is not available.
- (3) Remove from the subject property the following land use regulations:
 - Subsection 309.07D of the ZDO (establishing a prohibition on parcels or lots less than 20 acres within the UGB)
- (4) Development will be subject to all other current ZDO provisions.

Conditions/Comments

1. METRO also will have to evaluate a claim, because the Urban Growth Management Functional Plan also has standards establishing a minimum lot size in areas inside the UGB, which have not been planned and zoned for urban development.
2. A subdivision or partition must be approved subject to the development standards in the ZDO.
3. Approval of a domestic water source, on-site sewage disposal and construction permits (e.g. building, plumbing and electrical) for the new dwelling will be required. A driveway permit may also be required.
4. The recommended action does not resolve several questions about application of Measure 37, including the question of whether the rights granted by this claim can be transferred to an owner who subsequently acquires the property.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

**In the Matter of a Ballot Measure
37 Claim for Stearns**

**Order No. 2005-220
Page 3 of 3**

File No. ZC046-05

5. The Portland Metropolitan Service District will have to evaluate a claim for this property.

DATED this 3rd day of August, 2005.

BOARD OF COUNTY COMMISSIONERS



Chair



Recording Secretary

From: "Nick Stearns" <stearns.nick@gmail.com>
To: "Paul Ketcham" <Ketcham@metro.dst.or.us>
Date: 5/10/2006 1:37:09 PM
Subject: Re: Your M 37 Claim with Metro

I'm sorry Paul I was going off of memory when I responded last night. I am at my office now and reviewed the actual form I used to file the original claim and I had estimated the cost of the division to be \$100,000 (not \$60K or \$ 600K).

On 5/9/06, Paul Ketcham <Ketcham@metro.dst.or.us> wrote:

>
> Dear Mr. Stearns,
>
> I am reviewing your Measure 37 Claim with Metro which is scheduled for
> a public hearing before Metro Council on June 8, 2006. It would be
> helpful if you could verify your calculation of how much the fair market
> value of your 21.55 acre property has been reduced by Metro's 20-acre
> interim minimum lot size.
>
> From your Measure 37 claim information submitted to us, we have the
> following information:
>
> 1. Current FMV with Metro regulation in place:
> \$400,000-\$450,000
> 2. Current FMV of 5-acre lots (comparable data): \$250,000
> 3. Current FMV of lot with house:
> \$300,000
> 4. Costs of completing the division
> \$600,000
> 5. FMV reduction due to Metro regulation \$500,000
> 6. Four lots to be created; one with existing house
>
> Would you please indicate how you calculated your claim of \$500,000?
>
> Thank you.
>

From: "Nick Stearns" <stearns.nick@gmail.com>
To: "Paul Ketcham" <Ketcham@metro.dst.or.us>
Date: 5/9/2006 9:01:29 PM
Subject: Re: Your M 37 Claim with Metro

Stearns

It looks like you have an extra zero in there. Development costs would be around \$60,000.

1,050,000 less \$60,000 is \$990,000. \$990,000 less closing costs is about \$500,000 more than \$450,000.

Nick

On 5/9/06, Paul Ketcham <Ketcham@metro.dst.or.us> wrote:

>

> Dear Mr. Stearns,

>

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> 4. Costs of completing the division

> \$600,000

> 5. FMV reduction due to Metro regulation \$500,000

> 6. Four lots to be created; one with existing house

>

> Would you please indicate how you calculated your claim of \$500,000?

>

> Thank you.

>

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

**In the Matter of a Ballot Measure
37 Claim for Stearns**

**Order No. 2005-220
Page 1 of 3**

File No. ZC046-05

Claimant(s): Nick Stearns

Date Filed: March 3, 2005

180-Day Processing Deadline: August 30, 2005

Legal Description: T3S-R1E-SECTION 11-TAX LOT 1101,1191

Location: Southeast side of S. South End Road, approximately 300 feet southwest of S. Kelland Court; Central Point area.

Proposal/ Relief Requested: The claimant is asking to be allowed to divide the property into 4 lots, or in the alternative, to be compensated \$500,000 for lost property value. The property currently is zoned RRFF-5, Rural Residential, 5 acre minimum lot size. The RRFF-5 zone prohibits lot divisions of less than 20 acres within the Metro Urban Growth Boundary.

Ownership History/Date Acquired by Claimant(s): The claimant purchased the property on July 1, 1998, and has had a continuous ownership interest since that date.

Zoning History: The property was zoned RRFF-5, 5 acre minimum in 1979. The RRFF-5 zone was amended on January 30, 2003, to include a prohibition on partitions within the Metro Urban Growth Boundary resulting in the creation of one or more lots of less than 20 acres in size (309.07D).

Reduction in Land Value: The claimant asserts that the inability to divide the property into 5 acre parcels has reduced the property's value by \$500,000. The claimant has provided no information to substantiate this claim. Staff has examined the assessor's market land value records for 5 acre parcels in the area. Land values for 5 acre parcels are approximately 3 times higher than the value of large parcels such as the claimant's. This substantiates a finding that the 20 acre minimum lot size has reduced the land value.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

**In the Matter of a Ballot Measure
37 Claim for Stearns**

File No. ZC046-05

**Order No. 2005-220
Page 2 of 3**

DECISION

- (1) The claimants have a valid claim.
- (2) Monetary compensation for any reduction in value is not available.
- (3) Remove from the subject property the following land use regulations:
 - Subsection 309.07D of the ZDO (establishing a prohibition on parcels or lots less than 20 acres within the UGB)
- (4) Development will be subject to all other current ZDO provisions.

Conditions/Comments

1. METRO also will have to evaluate a claim, because the Urban Growth Management Functional Plan also has standards establishing a minimum lot size in areas inside the UGB, which have not been planned and zoned for urban development.
2. A subdivision or partition must be approved subject to the development standards in the ZDO.
3. Approval of a domestic water source, on-site sewage disposal and construction permits (e.g. building, plumbing and electrical) for the new dwelling will be required. A driveway permit may also be required.
4. The recommended action does not resolve several questions about application of Measure 37, including the question of whether the rights granted by this claim can be transferred to an owner who subsequently acquires the property.

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
OF CLACKAMAS COUNTY, STATE OF OREGON**

**In the Matter of a Ballot Measure
37 Claim for Stearns**

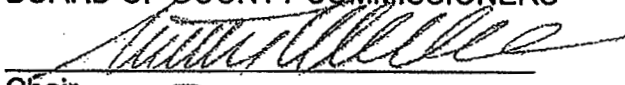
**Order No. 2005-220
Page 3 of 3**

File No. ZC046-05

5. The Portland Metropolitan Service District will have to evaluate a claim for this property.

DATED this 3rd day of August, 2005.

BOARD OF COUNTY COMMISSIONERS



Chair


Recording Secretary



*Clackamas
County*

DEPARTMENT OF
TRANSPORTATION AND DEVELOPMENT

Sunnybrook Service Center

Campbell Gilmour
Director

**PLANNING STAFF REPORT
TO THE BOARD OF COUNTY COMMISSIONERS
MEASURE 37 CLAIM**

File Number: ZC046-05
Report Author: Greg Fritts, Senior Planner
Hearing Date: July 6, 2005
Report Date: June 29, 2005

Claimant(s): Nick Stearns

Date Filed: March 3, 2005

180-Day Processing Deadline: August 30, 2005

Legal Description: T3S-R1E-SECTION 11-TAX LOT 1101,1191

Location: Southeast side of S. South End Road, approximately 300 feet southwest of S. Kelland Court; Central Point area.

Proposal/ Relief Requested: The claimant is asking to be allowed to divide the property into 4 lots, or in the alternative, to be compensated \$500,000 for lost property value. The property currently is zoned RRFF-5, Rural Residential, 5 acre minimum lot size. The RRFF-5 zone prohibits lot divisions of less than 20 acres within the Metro Urban Growth Boundary.

Ownership History/Date Acquired by Claimant(s): The claimant purchased the property on July 1, 1998, and has had a continuous ownership interest since that date.

Zoning History: The property was zoned RRFF-5, 5 acre minimum in 1979. The RRFF-5 zone was amended on January 30, 2003, to include a prohibition on partitions within the Metro Urban Growth Boundary resulting in the creation of one or more lots of less than 20 acres in size (309.07D).

Reduction in Land Value: The claimant asserts that the inability to divide the property into 5 acre parcels has reduced the property's value by \$500,000. The claimant has provided no information to substantiate this claim. Staff has examined the assessor's market land value records for 5 acre parcels in the area. Land values for 5 acre parcels are approximately 3 times higher than the

value of large parcels such as the claimant's. This substantiates a finding that the 20 acre minimum lot size has reduced the land value.

2003-10

Discussion: The subject property is approximately 20 acres, developed with one single family residence. The minimum lot size in the RRFF-5 zone is 5 acres for land divisions, except if the property is within the UGB. Section 309.07D prohibits lots smaller than 20 acres in the UGB. This provision was added to the ZDO in 1993 after the claimant acquired the property in 1998. Therefore, this prohibition prevents the claimant from dividing the property into 5 acre lots. These facts demonstrate a valid Measure 37 claim.

Remedy: The Board of County Commissioners must decide whether to compensate for the reduction in value, or modify, remove or not apply the land use regulations that have caused the reduction in value. If permission to remove the 20 acre minimum lot size requirement is not granted, the claim requests compensation of \$500,000, although this exact amount is unsubstantiated. The County has thus far received 189 claims requesting compensation of approximately \$345 million. The County has no funds allocated to provide compensation.

Recommendation: Based on the facts discussed above, staff recommends the Board of County Commissioners remove from the subject property the following land use regulations ~~to the extent necessary to allow partitioning or subdividing the property into 5 acre parcels:~~

- Subsection 309.07D of the ZDO (establishing a prohibition on parcels or lots than 20 acres within the UGB)

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Development ~~of the dwelling~~ will be subject to all other current ZDO provisions.

Additional Comments:

1. ~~The State of Oregon may have to evaluate a claim for this property. ORS Chapter 215 and OAR 600, Division 083 include specific standards regulating development in Rural zones. METRO also will have to evaluate a claim, because the Urban Growth Management Functional Plan also has standards establishing a minimum lot size in areas inside the UGB, which have not been planned and zoned for urban development.~~
2. A subdivision or partition must be approved subject to the development standards in the ZDO.
3. Approval of a domestic water source, on-site sewage disposal and construction permits (e.g. building, plumbing and electrical) for the new dwelling will be required. A driveway permit may also be required.

4. The recommended action does not resolve several questions about application of Measure 37, including the question of whether the rights granted by this claim can be transferred to an owner who subsequently acquires the property.

5. ~~The Portland Metropolitan Service District will have to evaluate a claim for this property.~~

MEMORANDUM

DATE: December 29, 2006

TO: Metro Council

FROM: Becky Shoemaker, Metro Records Officer

RE: Resolution No. 06-3703

TITLE: *For the Purpose of Entering an Order Relating to the Nick Stearns Claim For Compensation Under ORS 197.352 (Measure 37). [Order Number 06-003].*

This resolution was considered, but no action was taken because Metro was waiting for the claimant to come back. The claimant never asked to return.