



Lane County

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

W. H. e.

AGENDA COVER MEMO

MEMO DATE: November 28, 2005

AGENDA DATE: December 14, 2005

TO: BOARD OF COUNTY COMMISSIONERS

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

RE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA 05-5987, Bill Powell)

I. MOTION

Move to approve the Measure 37 Claim and adopt the order attached as Exhibit "A".

II. ISSUE OR PROBLEM

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

III. DISCUSSION

A. Background

Applicant: Bill Powell

Current Owner: Bill Powell, 367 W 12th Ave, Eugene

Agent: none

Legal Description of Property: 17-01-00 #700

Acreage: 4.4 acres

Current Zoning: F1 (Nonimpacted Forest)

Date Property Acquired: June 14, 1982

Date claim submitted: July 14, 2005 (180th day is January 14, 2005)

Land Use Regulations in Effect at Date of Acquisition: LC 10.104 F2 (Impacted Forest) zone.

County land use regulation which restricts the use and reduces the fair market value of claimant's property: LC 16.210 F1 (Nonimpacted Forest) zone.

B. Specific Relief Sought:

On July 14, 2005, Bill Powell submitted a Measure 37 Claim. He has requested compensation, or:

“rescind the F-1 rezoning to the F-2 designation it had when I purchased it in order for me to move forward with that request for [sic] Special Use permit.”

C. Lane Code Submittal Requirements

The applicant has paid the processing fee and submitted evidence in support of his claim. This cover memo prepared for the Board hearing does not contain the entire submittal. The relevant portions of the submittal included with this memo are identified in the “Attachments” section. The entire submittal is contained in a notebook labeled “Powel Measure 37 Claim”, available in the County Commissioners Office.

Evidence in support of this claim includes an appraisal and a warranty deed dated June 14, 1982.

D. Analysis

The property is undeveloped and contains approximately 4.4 acres. The current owner wishes to place a dwelling on the property under the F2 Template Test provisions contained in LC 16.211(5). Currently, the property is zoned F1 (Nonimpacted Forest).

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

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

Regarding #1, the property was zoned F2 when the current owner acquired the property in 1982. At that time, a special use permit was required for a dwelling. In 1984, the property was rezoned to F1, which prohibits new dwellings, although existing dwellings can be maintained. The claim appears to meet this criterion.

The applicant wants the Board to waive the prohibition on new dwellings in the F1 zone, and apply the current F2 Template Test standards. In his reasoning, this will allow him to submit a special use permit for a dwelling. Unfortunately for the applicant, his request is not allowed by Measure 37. As described above, Measure 37 allows the Board to waive the existing land use regulations so the current owner can develop the property as allowed when he acquired it. Measure 37 does not allow the owner to choose which regulations to

apply to the property. In 1982, the F2 zone required a special use permit for a dwelling. Therefore, if the Board determines this is a valid claim, a special use permit for a dwelling will be required, and the Director will review the special use application for conformance with the standards from 1982, not the standards for a "Template Test" dwelling in 2005.

Regarding #2, the applicant has submitted an appraisal by a certified real estate appraiser. Based on the appraisal, the existing 4.4 acres is worth \$4,400. If the property was developed with a single family dwelling, the value would be \$85,000. This results in a reduction of approximately \$80,600. However, this appraisal assumes a dwelling is guaranteed, which is not accurate. Approval of this Measure 37 claim will allow the current owner to submit a special use permit for a dwelling, it does not guarantee approval of that special use permit. That permit will be denied if it does not comply with the standards from 1982. If it is denied, there is no reduction in value because the owner couldn't place a dwelling in 1982 and still can't in 2005. Since the applicant has not shown compliance with the 1982 special use standards, the reduction in value is difficult to establish. The special use standards from 1982 are included in this packet as Attachment "B". Those standards are found in LC 10.104-15 and LC 10.104-25. The Board must decide if the appraisal is adequate, or if the applicant must also address the special use standards from 1982 to support his claim of a reduction in fair market value.

Regarding #3, the F1 (Nonimpacted Forest) zone prohibition on new dwellings does not appear to be an exempt regulation described in Measure 37 or LC 2.710.

E. Conclusion/County Administrator Recommendation

It appears this is a valid claim and the County Administrator recommends the Board waive the restrictive land use regulations of the F1 (Nonimpacted Forest) zone that prohibit Bill Powell from placing a dwelling on his property.

IV. ALTERNATIVES/OPTIONS

The Board has three options:

1. Determine the application appears valid and direct staff to draft an order to that effect for final Board action.
2. Require the applicant to address the special use criteria from 1982.
3. Conclude the application is not a valid claim and direct the issuance of a final written decision by the County Administrator denying the Claim.

V. RECOMMENDATION

The County Administrator recommends the Board waive the restrictive land use regulations of the F1 (Nonimpacted Forest) Zone that prohibit Bill Powell from developing the property as allowed at the time he acquired the property.

VI. ATTACHMENTS

Order to approve the Measure 37 claim submitted by Bill Powell.

A. Written claim dated July 14, 2005.

B. Application form dated July 14, 2005.

C. Warranty Deed dated June 14, 1982.

D. Appraisal Report dated January 14, 2005.

E. Lane Code 10.104-15 "Special Uses" and Lane Code 10.104-25 "Special Use Criteria" from June 14, 1982.

F. Receipt dated July 14, 2005.

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

ORDER No.) IN THE MATTER OF CONSIDERING A BALLOT
) MEASURE 37 CLAIM AND DECIDING
) WHETHER TO MODIFY, REMOVE OR NOT
) APPLY RESTRICTIVE LAND USE
) REGULATIONS IN LIEU OF PROVIDING JUST
) COMPENSATION (Bill Powell/ PA05-5987)

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

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

WHEREAS, the County Administrator has reviewed an application for a Measure 37 claim submitted by Bill Powell (PA05-5987), the owner of real property located at the end of Upper Camp Creek Road, and more specifically described in the records of the Lane County Assessor as map 17-01-00, tax lot 700, consisting of approximately 4.4 acres in Lane County, Oregon; and

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

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

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

WHEREAS, on December 14, 2005, the Board conducted a public hearing on Bill Powell's Measure 37 claim (PA05-5987) and has now determined that the restrictive Nonimpacted Forest Zone (F1/RCP) dwelling requirements of LC 16.210 were enforced and made applicable to prevent Bill Powell from developing the property as he might have been allowed at the time he acquired the property on June 14, 1982, and that the public benefit from application of the current F1 dwelling land use regulations to the applicants' property is outweighed by the public burden of paying just compensation; and

WHEREAS, Bill Powell requests either \$80,600 as compensation for the reduction in value of her property, or waiver of all land use regulations that would restrict the placement of a dwelling the property, a use that could have otherwise been allowed at the time he acquired the property; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the F1 zone to the subject property in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference except as explicitly revised here to reflect Board deliberation and action to allow Bill Powell to make application for development of the subject property in a manner similar to what he could have been able to do under the regulations in effect when he acquired the property; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicant Bill Powell made a valid claim under Ballot Measure 37 by describing the use being sought, identifying the county land use regulations prohibiting that use, submitting evidence that those land use regulations have the effect of reducing the value of the property, showing evidence that he acquired the property before the restrictive county land use regulations were enacted or enforced and the Board hereby elects not to pay just compensation but in lieu of payment, the request of Bill Powell shall be granted and the restrictive provisions of LC 16.210 that prohibit the development of a dwelling the Nonimpacted Forest Zone (F1/RCP) shall not apply to Bill Powell, so that he can make application for approval to develop the property at the end of Upper Camp Creek Road, commonly known as Lane County Assessor map 17-01-00, tax lot 700, in a manner consistent with the land use regulations in effect when he acquired the property on June 14, 1982.

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

IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to Bill Powell's use of his property does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction of a dwelling. The requirements of state law, including but not limited to ORS 215.705, 215.720 through 215.780, Goal 4 and OAR chapter 660, division 4, may

contain specific standards regulating development of the subject property and the applicants should contact the Department of Administrative Services (DAS - State Services Division, Risk Management - Measure 37 Unit, 1225 Ferry Street SE, U160, Salem, OR 97301-4292; Telephone: (503) 373-7475; website address: <http://www.oregon.gov/DAS/Risk/M37.shtml>) and have the State of Oregon evaluate a Measure 37 claim and provide evidence of final state action before seeking county land use approval.

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

DATED this _____ day of _____, 2005.

Anna Morrison, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 12-7-2005 Lane County

Stephen J. Vorker
OFFICE OF LEGAL COUNSEL

Lane County
Land Management Division
125E. 8th Avenue
Eugene, OR 97401

July 14, 2005

The attached claim and documentation references 4.43 acres located along the eastern end of Upper Camp Creek Road, (Tax Lot 17-01-00-00-00700) purchased by me in June of 1982. At the time of purchase the property was zoned F-2. In February 1984, it was rezoned to F-1, effectively eliminating my opportunity to apply for a Special Use Permit to create a non-farm/forest parcel.


Since large portions of the property are riparian zones and consequently not suitable for commercial forestry, F-1 designation renders the property virtually worthless. A recent appraisal conducted for the purpose of this claim indicates values of approximately \$1,000 per acre as forest land versus \$85,000. as a homesite.

Additionally, homes are currently located on either side of the property along Upper Camp Creek Road, The site in question was previously a home site (prior to subdivision) and there is an approved Site Septic Plan (SI 82-59) issued for the property. As there are a number of other homes along that section of Upper Camp Creek Road, I believe the property will qualify for Special Use Permit under a "Template Test".

I am asking you to rescind the F-1 rezoning to the F-2 designation it had when I purchased it in order for me to move forward with that request for Special Use Permit.

Thank you in advance for your attention to this matter.

Sincerely,



Bill Powell
367 West 12th Ave.
Eugene, OR 97401

541-683-5730

Application for Claims Under LC 2.700 through 2.770

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

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

1. Applicant/ Agent

Bill Powell
Applicant Name (Please Print) 367 West 12th Avenue
Mailing Address 541 683 5730
Phone

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

2. Property Owner

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

WILLIAM B. POWELL
Property Owner Name (Please Print) 367 West 12th Avenue
Mailing Address 541 683 5730
Phone

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

3. Legal Description

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

Assessor Map & Tax Lot 17-01-00-00-00700

Street Address Number not assigned, Upper Camp Creek Road Legal Description Attached _____

4. Identification of Imposed Land Use Regulation

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

On February 29th 1984 this property was rezoned from F2, to F1 No Impacted Forest by ordinance 884, eliminating my opportunity to apply for approval of a new dwelling under lot of record or template designations.

5. Title Report

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

Deed of Reconveyance } Attached
Verification of Legal Lot }
Title Report }
Page 1 of 2

6. Appraisal/Regulatory Effect

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

Recent appraisal (attached) suggest value as primary forestry land to be less than \$5,000
whereas as a buildable lot the value is appraised at \$85,000⁰⁰

7. Leases, Covenants, Conditions and Restrictions

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

← Reversion of current zone classification (F1) to previous (F2) status

8. Identification of Relief Sought

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

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

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

William B Powell
Owner(s) Signature

7-14-05
Date

Applicant/Agent Signature

Date

The following contacts are provided to assist you in finding the necessary information for this application.
For zoning and land use information, please contact the Land Management Division at 682-3577.
This phone contact is a message line. Please leave a message and a Planner will return your call.
For deeds and records information, please contact Lane County Deeds and Records at 682-3654.

8217156

8-17 978

After recording return to:

SPRINGFIELD ESCROW, INC. # 3348
1800 Centennial Blvd.
Springfield, OR 97477
NAME, ADDRESS, ZIP

On a change is requested, mail all tax statements to:

William B. Powell
~~XXXXXXXXXX~~ 1974 Villard
~~XXXXXXXXXX~~ Eugene, OR 97401
NAME, ADDRESS, ZIP

WARRANTY DEED-STATUTORY FORM

CLARA B. GIBSON and ALBERT R. GIBSON, Grantor
conveys and warrants to WILLIAM B. POWELL and TWILO SCOFIELD

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

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE INCORPORATED
HEREIN AS THOUGH HERE FULLY SET FORTH.

2224A001 06/14/82 ELT 8.00
0001

(IF INSUFFICIENT SPACE, CONTINUE DESCRIPTION ON ADDITIONAL PAGE)

The said property is free from all encumbrances except Road easement granted to United States of America
recorded August 30, 1960, Reel 158, Reception No. 8727, Lane County Oregon Deed Records.

true consideration for this conveyance is \$ 44,300.00
Dated 11 19 82
Clara Bella Gibson Clara B. Gibson
Albert R. Gibson ALBERT R. GIBSON

STATE OF OREGON, County of Lane, ss. Personally appeared the above named
----- CLARA B. GIBSON & ALBERT R. GIBSON -----
and acknowledged the foregoing instrument to be their voluntary act and deed. Before me:
Dated 11 A.D. 19 82
My Commission Expires: 5-9-83 Spence M. Clouse
Notary Public for Oregon

SPRINGFIELD ESCROW, INC.



ELT 978

8217156

EXHIBIT "A"

Beginning at the West one-quarter corner of Section 3, Township 17 South, Range 1 West of the Willamette Meridian, Lane County, Oregon; thence along the West line of said Section 3, North 2° 55' 51" West 346.61 feet to the center of a 60.00 foot B.L.M. easement; thence South 76° 34' 50" East 82.41 feet to the center of the B.L.M. access road; thence along said center line North 85° 09' 10" East 115.16 feet; thence North 76° 58' 10" East 253.88 feet; thence leaving said center line South 8° 36' 40" West 58.18 feet; thence South 73° 58' 20" East 120.90 feet; thence South 8° 10' 20" East 70.50 feet; thence South 21° 40' 40" West 414.46 feet; thence North 80° 45' 36" West 395.65 feet to a point on the West line of said Section 3; thence along said West line North 1° 47' 10" East 98.25 feet to the point of beginning, in Lane County, Oregon. TOGETHER with the right to the use of a roadway easement in favor of United States of America, recorded August 30, 1960, Reel 158, Reception No. 8727, Lane County Oregon Deed Records, EXCEPT that portion conveyed to Raymond Dale Harris by Deed recorded April 7, 1975, Reel 737, Reception No. 7512474, Lane County Oregon Deed Records.

GIBSON TO POWELL

8217156

State of Oregon,
County of Lane—ss.
I, D.M. Penfold, Director of Records and Elections Division, in and for the said County, do hereby certify that the within instrument was received for record at

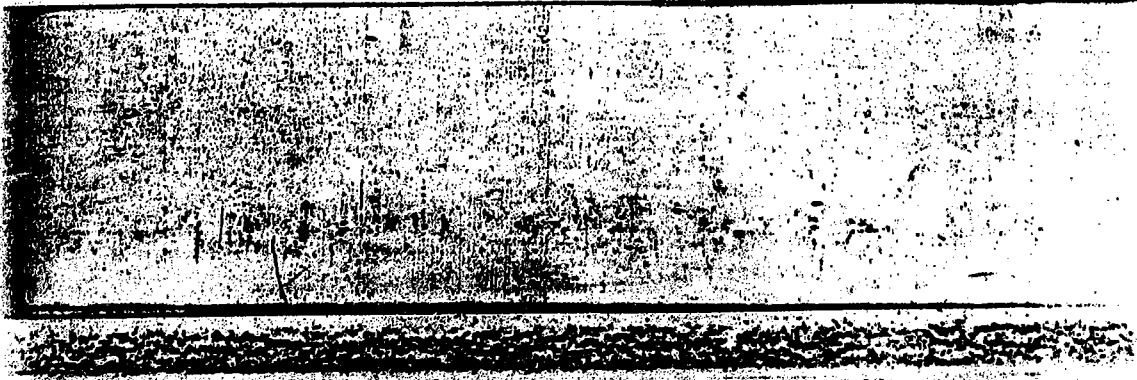
14 JUN 82 10: 59

Reel 1197R

Lane County OFFICIAL RECORDS.

By *[Signature]*
D.M. Penfold, Director of Records and Elections Division.

CS-33



8217157 TRUST DEED

THIS TRUST DEED, made this 10 day of June, 1982, between WILLIAM R. POWELL, as Grantor, SPRINGFIELD ESCROW, INC., ALBERT R. GIBSON and CLARA B. GIBSON, husband and wife, as Beneficiary,

WITNESSETH:

Grantor irrevocably grants, bargains, sells and conveys to trustee in trust, with power of sale, the property in Lane County, Oregon, described as:

SEE EXHIBIT "A" ATTACHED HERETO AND BY THIS REFERENCE INCORPORATED HEREIN AS THOUGH HERE FULLY SET FORTH.

2224A001 86/14/82 REC 12.00 #N0001#

together with all and singular the tenements, hereditaments and appurtenances and all other rights thereunto belonging or in anywise now or hereafter appertaining, and the rents, issues and profits thereof and all fixtures now or hereafter attached to or used in connection with said real estate.

FOR THE PURPOSE OF SECURING PERFORMANCE of each agreement of grantor herein contained and payment of the sum of THIRTY-NINE THOUSAND THREE HUNDRED AND NO/100 (\$39,300.00) Dollars, with interest thereon according to the terms of a promissory note of even date herewith, payable to beneficiary or order and made by grantor, the final payment of principal and interest hereof, if not sooner paid, to be due and payable AS PER NOTE TERMS, 19

The date of maturity of the debt secured by this instrument is the date, stated above, on which the final installment of said note becomes due and payable. In the event the within described property, or any part thereof, or any interest therein is sold, agreed to be sold, conveyed, assigned or alienated by the grantor without first having obtained the written consent or approval of the beneficiary, then, at the beneficiary's option, all obligations secured by this instrument, irrespective of the maturity dates expressed therein, or herein, shall become immediately due and payable.

The above described real property is not currently used for agricultural, timber or grazing purposes.

To protect the security of this trust deed, grantor agrees:

- 1. To protect, preserve and maintain said property in good condition and repair; not to remove or demolish any building or improvement thereon; not to encumber or permit any waste of said property.
2. To complete or restore promptly and in good and workmanlike manner any building or improvement which may be constructed, damaged or destroyed thereon, and pay when due all costs incurred therefor.
3. To comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting said property; if the beneficiary so requests, to furnish and maintain such financial statements pursuant to the Uniform Commercial Code as the beneficiary may require and to pay for filing same in the proper public office or offices, as well as the cost of all lien searches made by filed officers or searching agencies as may be deemed desirable by the beneficiary.
4. To provide and continuously maintain insurance on the buildings now or hereafter erected on the said premises against loss or damage by fire and such other risks as the beneficiary may desire to insure against, to an amount not less than \$100,000.00.
5. To keep said premises free from construction liens and to pay all taxes, assessments and other charges that may be levied or assessed upon or against said property before any part of such taxes, assessments and other charges become past due or delinquent and promptly deliver receipts therefor to beneficiary; should the grantor fail to make payment of any taxes, assessments, liens or other charges payable by grantor, either by direct payment or by providing beneficiary with funds with which to make such payment, beneficiary may, at its option, make payment thereof, and the amount so paid, with interest at the rate of four (4) per cent per annum, together with the obligations described in paragraphs 6 and 7 of this trust deed, shall be added to and become a part of the debt secured by this trust deed, without waiver of any right arising from breach of any of the covenants herein and in such event, as well as the grantor, shall be bound to the same extent that they are bound for the payment of the obligations herein described, and all such payments shall be immediately due and payable without notice, and the mortgagee thereof shall, at the option of the beneficiary, render all sums received by this trust deed immediately due and payable and constitute a breach of this trust deed.
6. To pay all costs, fees and expenses of this trust including the cost of this deed as well as the other costs and expenses of the trustee incurred in connection with or in enforcing this obligation and trustee's and attorney's fees actually incurred.
7. To execute and defend any action or proceeding brought to enforce the security rights or powers of beneficiary or trustee; and in any suit, action or proceeding in which the beneficiary or trustee may appear, including any suit for the foreclosure of this deed, to pay all costs and expenses, including attorney's fees and the beneficiary's or trustee's attorney's fees, the amount of attorney's fees mentioned in this paragraph 7 in all cases shall be fixed by the trial court and in the event of any dispute as to the amount of such costs, fees and expenses, the beneficiary or trustee's attorney shall have the right to file a petition with the court to determine the amount of such costs, fees and expenses.
8. In the event that any portion or all of said property shall be taken under the right of eminent domain or condemnation, beneficiary shall have the right, if it so elects, to require that all or any portion of the summe payable as compensation for such taking, which are in excess of the amount required to pay all reasonable costs, expenses and attorney's fees necessarily paid or incurred by grantor in such proceedings, shall be paid to beneficiary and applied by it first upon any reasonable costs and expenses and attorney's fees, both in the trial and appellate courts, necessarily paid or incurred by beneficiary in such proceedings, and the balance applied upon the individual interests hereby; and grantor agrees, in its own expense, to take such actions and execute such instruments as shall be necessary in obtaining such compensation, promptly upon beneficiary's request.
9. At any time and from time to time upon written request of beneficiary, payment of its fees and prosecution of this deed and the note for enforcement (in case of full repayment, by reconveyance), without releasing the liability of any person for the payment of the indebtedness, trustee may

- (a) consent to the making of any map or plat of said property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subdivision or other agreement affecting this deed or the fee or charge thereon; (d) reconvey, without warranty, all or any part of the property. The trustee in any reconveyance may be described as the "person or persons legally entitled thereto," and the recitals therein of any matters or facts shall be conclusive proof of the truthfulness thereof. Trustee's fees for any of the services mentioned in this paragraph shall be not less than \$5.
10. Upon any default by grantor hereunder, beneficiary may at any time without notice, either in person, by agent or by a receiver to be appointed by a court, and without regard to the adequacy of any security for trustee or the trustee's security, cause to be sold, leased, mortgaged or otherwise disposed of any part thereof, in its own name and otherwise subject the rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees upon its indebtedness secured hereby, and in such order as beneficiary may determine.
11. The entering upon and taking possession of said property, the collection of such rents, issues and profits, or the proceeds of any sale and other insurance policies or compensation or awards for any taking or damage of the property, and the application or release thereof as aforesaid, shall not constitute a breach of this deed or constitute a discharge of the debt secured hereby, and in such event any default or notice of default hereunder or invalidation of any act done pursuant to such notice.
12. Upon default by grantor in payment of any indebtedness secured hereby or in his performance of any agreement hereunder, the beneficiary may declare all sums secured hereby immediately due and payable. In such an event the beneficiary at his election may proceed to foreclose this trust deed in equity as a mortgage or direct the trustee to foreclose this trust deed by deed in the event the beneficiary or the trustee elects to foreclose this trust deed and cause to be recorded his written notice of default and his election to sell the said described real property to satisfy the obligations secured hereby, whereupon the trustee shall file the time and place of sale, give notice as required by law and proceed to foreclose this trust deed in the manner provided in ORS 86.740 to 86.795.
13. Should the beneficiary elect to foreclose by advertisement and sale then after default at any time prior to five days before the date set by the trustee for the trustee's sale, the trustee or his successors in interest, respectively, the entire amount then due under the terms of the trust deed and the obligations secured thereby (including costs and expenses actually incurred in enforcing the terms of the obligation and trustee's and attorney's fees not exceeding the amounts provided by law) other than such portion of the principal as would not then be due had no default occurred, and thereby cause the default, in which event all foreclosure proceedings shall be dismissed by the trustee.
14. Otherwise, the sale shall be held on the date and at the time and place designated in the notice of sale or the time to which said sale may be postponed as provided by law. The trustee may sell said property either in one parcel or in several parcels and shall sell the parcel or parcels at auction to the highest bidder for cash, payable at the time of sale. Trustee shall deliver to the purchaser in deed in form as required by law conveying the property so sold, but without any warranty or warranty, express or implied. The recitals in the deed of any matters of fact shall be conclusive proof of the truthfulness thereof. Any person, including the trustee, but including the grantor and beneficiary, may purchase at the sale.
15. When trustee shall consent to the terms provided herein, trustee shall execute the proceeds of sale to payment of (1) the expenses of sale, including the compensation of the trustee and a reasonable charge by trustee's attorney, (2) to the obligation secured by this deed, (3) to all persons claiming an interest in the property in the trust deed in the order of their priority and (4) the surplus, if any, to the grantor or to his successors-in-interest entitled to such surplus.
16. For any reason permitted by law beneficiary may from time to time appoint a successor or successors to any trustee named herein or to any successor trustee appointed hereunder. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all the powers and duties conferred upon any trustee herein named or appointed hereunder. Each such appointment and substitution shall be made by written instrument executed by beneficiary, containing reference to the trust deed in which the trustee is named, which, when recorded in the office of the County Clerk or Recorder of the county or counties in which the property is situated, shall be conclusive proof of proper appointment of the successor trustee.
17. Trustee accepts this trust when this deed, duly executed and acknowledged is made a public record as provided by law. Trustee is not obligated to satisfy any party hereto of payment hereunder or any other deed of trust or of any action or proceeding in which grantor, beneficiary or trustee shall be a party unless such action or proceeding is brought by trustee.

NOTE: The Trust Deed Act provides that the trustee hereunder must be either an attorney, who is an active member of the Oregon State Bar, a bank, trust company or savings and loan association authorized to do business under the laws of Oregon or the United States, a title insurance company authorized to issue title to real property of this state, its subsidiaries, affiliates, agents or branches, the United States or any agency thereof, or an escrow agent licensed under ORS 89B.500 to 89B.585.

The grantor covenants and agrees to and with the beneficiary and those claiming under him, that he is lawfully seized in fee simple of said described real property and has a valid, unencumbered title thereto

and that he will warrant and forever defend the same against all persons whomsoever.

The grantor warrants that the proceeds of the loan represented by the above described note and this trust deed are: (a) primarily for grantor's personal, family, household or agricultural purposes (see Important Notice below), (b) for an organization, or (even if grantor is a natural person) are for business or commercial purposes other than agricultural purposes.

This deed applies to, inures to the benefit of and binds all parties hereto, their heirs, legatees, devisees, administrators, executors, personal representatives, successors and assigns. The term beneficiary shall mean the holder and owner, including pledgee, of the contract secured hereby, whether or not named as a beneficiary herein. In construing this deed and whenever the context so requires, the masculine gender includes the feminine and the neuter, and the singular number includes the plural.

IN WITNESS WHEREOF, said grantor has hereunto set his hand, the day and year first above written.

IMPORTANT NOTICE: Delete, by lining out, whichever warranty (a) or (b) is not applicable; if warranty (a) is applicable and the beneficiary is a creditor as such word is defined in the Truth-in-Lending Act and Regulation Z, the beneficiary MUST comply with the Act and Regulation by making required disclosures; for this purpose, if this instrument is to be a FIRST lien to finance the purchase of a dwelling, use Stevens-Ness Form No. 1305 or equivalent; if this instrument is NOT to be a first lien, or is not to finance the purchase of a dwelling use Stevens-Ness Form No. 1306, or equivalent. If compliance with the Act is not required, disregard this notice.

William B. Powell
William B. Powell

If the signer of the above is a corporation, use the form of acknowledgment opposite.

(ORS 93.490)

STATE OF OREGON,)
County of Lane) ss.
June 10, 1982
Personally appeared the above named WILLIAM B. POWELL

STATE OF OREGON, County of _____) ss.
_____, 19____
Personally appeared _____ and _____ who, each being first duly sworn, did say that the former is the _____ president and that the latter is the _____ secretary of _____

and acknowledged the foregoing instrument to be his voluntary act and deed.
Notary Public for Oregon
My commission expires: 5-9-83

a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that the instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and each of them acknowledged said instrument to be its voluntary act and deed.
Before me:
Notary Public for Oregon (OFFICIAL SEAL)
My commission expires:

REQUEST FOR FULL RECONVEYANCE

To be used only when obligations have been paid.

TO: _____, Trustee

The undersigned is the legal owner and holder of all indebtedness secured by the foregoing trust deed. All sums secured by said trust deed have been fully paid and satisfied. You hereby are directed, on payment to you of any sums owing to you under the terms of said trust deed or pursuant to statute, to cancel all evidences of indebtedness secured by said trust deed (which are delivered to you herewith together with said trust deed) and to reconvey, without warranty, to the parties designated by the terms of said trust deed the estate now held by you under the same. Mail reconveyance and documents to _____

DATED: _____, 19____

Beneficiary

Do not lose or destroy this Trust Deed OR THE NOTE which it secures. Both must be delivered to the trustee for cancellation before reconveyance will be made.

TRUST DEED (FORM No. 661) STEVENS-NESS LAW PUB. CO., PORTLAND, ORE.
Grantor
Beneficiary
AFTER RECORDING RETURN TO

STATE OF OREGON, County of _____) ss.
I certify that the within instrument was received for record on the _____ day of _____, 19____, at _____ o'clock _____ M., and recorded in book/reel/volume No. _____ page _____ or as document/fee/films/instrument/microfilm No. _____ Record of Mortgages of said County.
Witness my hand and seal of County affixed.
By _____ Deputy

ELT 978

8217157

8217157

Beginning at the West one-quarter corner of Section 3, Township 17 South, Range 1 West of the Willamette Meridian, Lane County, Oregon; thence along the West line of said Section 3, North 2° 55' 51" West 346.61 feet to the center of a 60.00 foot B.L.M. easement; thence South 76° 34' 50" East 82.41 feet to the center of the B.L.M. access road; thence along said center line North 85° 09' 10" East 115.16 feet; thence North 76° 58' 10" East 253.88 feet; thence leaving said center line South 8° 36' 40" West 68.18 feet; thence South 73° 58' 20" East 120.90 feet; thence South 8° 10' 20" East 70.50 feet; thence South 21° 40' 40" West 4:4.46 feet; thence North 80° 45' 36" West 395.65 feet to a point on the West line of said Section 3; thence along said West line North 1° 47' 10" East 98.25 feet to the point of beginning, in Lane County, Oregon. TOGETHER with the right to the use of a roadway easement in favor of United States of America, recorded August 30, 1960, Reel 158, Reception No. 8727, Lane County Oregon Deed Records, EXCEPT that portion conveyed to Raymond Dale Harris by Deed recorded April 7, 1975, Reel 737, Reception No. 7512474, Lane County Oregon Deed Records.

State of Oregon,
County of Lane—ss.

I, D.M. Penfold, Director of Records and Elections Division, in and for the said County, do hereby certify that the within instrument was received for record at

14 JUN 82 10:59

Reel 1192R

Lane County OFFICIAL Records.

D.M. Penfold, Director of Records and Elections Division.

By *[Signature]*
Deputy

CR-53

LAND APPRAISAL REPORT

Summary Appraisal Report
Borrower: No borrower
Property Address: Number Not Assigned, Upper Camp Creek Road // Tax Lot 17-01-00-00700
City: Springfield
County: Lane
State: OR
Zip Code: 97478
Sale Price: Not Sold
Date of Sale: N/A
Legal Description: Lengthy Metes and Bounds
Appraiser: Craig E. McKern

Comments including those factors, favorable or unfavorable, affecting marketability (e.g. public parks, schools, view, noise): Subject is located about 16 miles from Eugene city center in the Camp Creek district, a suburban to rural transition area.

Zoning classification: F-1 Nonimpacted Forest Land
Highest and best use: Present use
Other (specify) site for one single family home built in conformance with Lane County ordinance(s)
OFF SITE IMPROVEMENTS: Street Access, Surface, Maintenance, Storm Sewer, Sidewalk

The undersigned has noted these recent sales of properties most similar and proximate to subject and has considered them in the market analysis. The description includes a dollar adjustment reflecting market reaction to those items of significant variance between the subject and comparable properties.

Table with 4 columns: ITEM, SUBJECT PROPERTY, COMPARABLE NO. 1, COMPARABLE NO. 2, COMPARABLE NO. 3. Rows include Address, Proximity to Subject, Sales Price, Date of Sale, Location, Site/View, Utilities, Well/Septic, Improvements, Sales or Financing Concessions, Net Adj. (Total), and Indicated Value of Subject.

Comments on Market Data: Very little recent sale or listing data for similar 2 to 8 acre vacant and buildable parcels with creek frontage in the area for use of Sale 2, backing to Haagen Creek in the Deerhorn area among moderate to high value properties.
Comments and Conditions of Appraisal: ***** with a cleared home site, driveway, well and past septic approval (F-2 zoning).
Final Reconciliation: The market data (sale comparison) approach is the only reliable method of estimating vacant or non-residential site value.

Total of points assigned to all columns

IF THE POINT TOTAL IS:

5-6
7-11
12-20

THE IMPACT LEVEL IS:

No Impact
Minor Impact
Severe Adverse Impact

10.104

Lane Code

FOREST LAND DISTRICT (F-2)

-05 Purpose. The Forest Land District is intended to carry out the following purposes:
(1) To encourage forestry and agriculture as the dominant uses of such lands.

(2) To allow nonforest and nonfarm uses only upon a finding that such uses will assure the retention of forest lands for forest uses and are consistent with those uses permitted in LC 10.106 and 10.107.

(3) To preserve such lands for the production of forest and agricultural products and ensuring that conversion of such lands to nonforest and nonfarm uses when necessary and appropriate occurs in an orderly and compatible manner.

(4) To be used in remote areas of the County not appropriate for more intensive development than permitted by the regulation of this district.

It is County's policy to protect forestry and agricultural operations from conflicting land uses. Nothing in this Chapter is intended to interfere with normal forestry or agricultural management or practices that might result in conditions such as noise, dust or smoke, visual impacts or odors for temporary periods of time. Existing or proposed nonforest or nonfarm uses (i.e., dwellings) within the Forest Land District (F-2) must recognize that the intent of the District is to protect resource management activities and that in the event of conflict between residential uses and normal forestry or agricultural practices, this Chapter will be interpreted in favor of resource management practices.

-10 Permitted Buildings and Uses. The following types of non-residential buildings and uses are permitted as hereinafter specifically provided for by this section, subject to the general provisions and exceptions set forth in this Chapter:

(1) The management, growing and harvesting of forest products, including Christmas tree raising.

(2) Farm uses (see farm use definition, LC 10.020)

(3) Sale of agricultural products and livestock grown or raised on the premises.

(4) Accessory buildings and uses customarily provided in conjunction with a farm or forest use.

(5) Facilities for fixed or rotary-winged and lighter-than-air aircraft provided such facilities are accessory to the management, growing or harvesting of forest crops.

(6) Commercial activities in conjunction with a farm use.

(7) Minor Rural Home Occupations (see LC 10.342 for Rural Home Occupation provisions).

(8) Rock sand, gravel or loam excavation and extraction provided:

(a) Materials produced are for the sole use of the owner or operator and are not offered for sale or remuneration.

(b) Total excavation and extraction does not exceed 5,000 cubic yards annually.

(c) Materials produced are used solely in conjunction with forest or farm use activities.

-15 Special Uses - Planning Director Approval. The following uses subject to approval by the Planning Director as provided for in LC 10.316:

(1) One single-family dwelling or one mobile home per lot in conjunction with uses permitted under LC 10.104-10(1) and (2) above. Such use of the property shall be documented by:

(a) Designation of the property by the County Assessor as receiving either forest or farm tax deferral; or

(b) A satisfactory farm management plan that if implemented would qualify the property for forest or farm tax deferral; or

(c) A cooperative or lease agreement with another owner of forest or farmland for management of the subject property.

(2) One single-family dwelling or one mobile home per lot not in conjunction with uses permitted under LC 10.104-10(1) and (2) above or a lot or parcel created for such purpose provided that:

(a) The addition and location of new structures and improvements including dwellings, roads, utilities, fences, wells, etc. will not impose limitations upon existing farm or forestry practices in the area.

(b) The use will not detrimentally affect the farm or forestry operations of the area through increased use of roads, interference with farm or forestry uses or practices or demand for public facilities.

(3) Public and semi-public buildings and structures rendering a direct service to the public in local areas such as fire stations or utility substations.

-20 Special Uses - Hearings Official Approval. The following uses and no others subject to approval by the Hearings Official as provided for in LC 10.317:

(1) The following uses, when such uses are operated as a separate business or enterprise not in conjunction with a farm use in certain locations determined not to be detrimental to the forest or agricultural character of the area and to be of benefit to the community at large; for example, along railroads, major highways, or in small population centers:

(a) Hop, nut and fruit dryers.

(b) Feed mixing and storage facilities.

(c) Hullers.

(d) Mint distilleries.

(e) Seed processing, packing, shipping and storage.

(f) Plants for the storage, packing or wholesaling of agricultural products produced on the premises.

(g) Feed lots.

(h) Temporary and portable sawmills, barkers and chippers.

(i) Wine processing.

(j) Any other similar activities or other allied farm commercial activities.

(2) Animal hospitals; kennels.

(3) Churches.

(4) Public and private schools.

(5) Parks, playgrounds and community centers owned and operated by a governmental agency or a nonprofit community organization.

(6) Lodges and grange halls.

(7) Electric transmission facilities transmitting electric current in excess of 150,000 volts in any single cable or line or group of cables or lines.

(8) Flood control facilities and irrigation projects.

(9) Radio and television transmission towers; broadcast studios or stations.

(10) Accessory dwellings for persons employed on the premises.

(11) Stables, riding academies and commercial riding.

(12) Airports, heliports or aircraft landing fields.

(13) Cemeteries.

(14) Golf courses.

(15) Rock, sand, gravel and loam excavations, extraction of mineral resources, with incidental processing which exceed the requirements for an allowable permitted use as provided in LC 10.104-10(9).

(16) Solid waste disposal facilities.

(17) Sewage treatment facilities.

(18) Major Rural Home Occupations (see LC 10.342 for Rural Home Occupation provisions).

(19) Communication facilities not accessory to a permitted use.

(20) Dams, water storage areas, electrical generation facilities, canals, flumes, pipelines and other similar facilities.

(21) Cluster developments may be permitted as a special use as follows:

(a) The development is in accord with all applicable portions of the Lane County Goals and Policies, functional plans and subarea plans.

(b) The development is in accord with the criteria of ORS 215.213(3) for each home site or assures the retention of forest lands for forest uses.

(c) The development is justified by an exception to the applicable natural resource goal, LCDC Goal 3 or 4, or both such goals, as applicable.

-25 Special Use Criteria. Special uses authorized under LC 10.104-15 or LC 10.104-20 above shall be approved only upon submission of evidence the following criteria are met.

(1) Any building, mobile home or structure used for residential purposes:

(a) Shall be sited close to existing access roads or other dwellings, or shall be naturally buffered from adjacent properties where farm and forest uses are practiced, or a natural buffer shall be established and utilized between adjacent forest lands and the proposed dwellings.

(b) Shall be located on the least productive portions of the parcel considering soil types, soil productivity, existing erosion, drainage, slides, flooding, soil constraints such as dwellings, structures, access, surrounding land use and existing rural services and facilities.

(c) Shall maintain a minimum fuel break of 100 feet cleared of flammable material between the dwelling and forest land. Such fuel break shall be continually maintained and may contain ornamental shrubbery, single specimen trees or similar plants used as ground cover; however, the plants should not be a means of rapidly spreading fire.

(d) Shall provide a fire suppression system that includes the following:

(i) A pond, stream, tank or sump with storage of not less than 1,000 gallons or well capable of delivering 20 gallons per minute provided such well is on an independent power system.

(ii) A water pump capable of pumping not less than 20 gallons per minute.

(iii) Sufficient water outlets together with serviceable hose not less than three-quarter inch inside diameter and a nozzle to reach the dwelling and nearby improvements.

(iv) The water supply, pump, hose and nozzle shall be maintained as a connected, operating unit ready for immediate use during periods of fire danger.

(e) Shall clearly demonstrate the necessity for siting the residential structure on the property as opposed to other areas not zoned for resource purposes.

(2) In addition to other applicable requirements set forth in LC Chapter 15 and LM Chapter 15, the following requirements for appropriate access and egress of emergency fire fighting equipment shall be observed:

(a) Maintenance of a shaded fuel break within dedicated road rights-of-way.

(b) Grades and turning radii are within the capabilities of emergency equipment serving that locale.

(c) Bridge construction must be adequate to support the gross vehicle weight of emergency equipment serving that locale.

(d) Dead-end roads and streets must provide adequate turnarounds.

(3) When a use is proposed in an area designated as an important or sensitive site or winter range on the Lane County Wildlife Inventory, the Oregon Department of Fish and Wildlife shall be notified and allowed opportunity to comment.

(4) The proposed use will not alter the stability of the overall land use pattern in the area nor interfere with farm and forest practices and will be compatible with the retention of existing and potential forest uses on the surrounding forest lands considering among other things the rating of wildfire potential as set forth in LC 10.104-50.

-30 Setback Requirements.

(1) Building setbacks from all property lines, public or private rights-of-way or planned rights-of-way shall be as provided for in LC 15.065 through LC 15.095.

(2) All buildings shall be setback 100 feet from ordinary high water of any Class I stream provided, however, a lesser setback may be authorized in conjunction with a special use after evaluation of impact on riparian vegetation.

-35 Vision Clearance. Vision clearance for corner lots shall be a minimum of 15 feet.

-40 Area. (Also see LC 10.300-20)

(1) Divisions of land shall be approved upon a finding that the

(a) Is compatible with forest and farm uses in the area and does not interfere with forest practices as defined and regulated under the Oregon Forest Practices Act or farm use as defined in ORS 215.203.

(b) Does not alter the stability of the overall land use pattern in the area.



LANE COUNTY RECEIPT

07-14-2005

RECEIPT NUMBER: **R05005728**

PLANNING ACTION #: **PA055987**

TYPE: Measure 37 Claim
SITE ADDRESS:
PARCEL: 17-01-00-00-00700
APPLICANT: POWELL WILLIAM BAXTER
367 W 12TH AVE
EUGENE OR

97401
541-683-5730

Type	Method	Description	Amount
Payment	Check	327825	850.00

Description	Current Pymt
3040 Planning Hrg Official	850.00

PAID BY: **BILL POWELL**