



## SUPPLEMENTAL INFORMATION SUBMITTED

Submitted on: 5/9/07

Taken By: M

SUPPLEMENTAL INFORMATION HAS BEEN RECEIVED BY THIS OFFICE IN REGARDS TO THE FOLLOWING:

**BP#** \_\_\_\_\_

**PA#** 06-7296 Lemert

**SP#** \_\_\_\_\_

**SI#** \_\_\_\_\_

**OTHER:** May 22 KM

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\_\_\_\_\_  
\_\_\_\_\_

May 8, 2007

*Via Hand Delivery*

Mr. Keir Miller  
Lane County Land Management Division  
125 East 8<sup>th</sup> Ave.  
Eugene, OR 97401

**Re: Measure 37 Claim PA06-7296 (Lemert)**

Dear Mr. Miller:

Please include this submission in the file for the above-referenced Measure 37 claim.

This letter and enclosure are submitted in response to the County's request for additional information regarding the Measure 37 Claim filed by our clients, James and Dorothy Lemert. We received the County's letter requesting the additional information on February 13, 2007, and subsequently obtained an extension from Mr. Steve Hopkins to submit the information.

Specifically, the County represented that it needed additional information on the issue of how residential use restrictions had impacted the value of the Lemerts' land to determine the validity of the Lemerts' claim, commenting that "value based on tax data [is] not adequate" and that the "opinion report of value [is] not from a real estate appraiser."

To be clear, our position is that the information the Lemerts initially filed *was sufficient* to present a valid Measure 37 claim. The County's remark about "value based on tax data" is misguided, as the valuation information submitted with our clients' initial application actually *did include* information on actual sales of comparable properties that were and were not subject to similar residential use restrictions. Moreover, nothing in the text of Measure 37 itself requires that such comparable sales data be submitted by a certified appraiser. Thus, in light of Section (7) of ORS 197.352, we believe the County was incorrect to conclude that the Lemerts did not initially submit sufficient information to present a valid Measure 37 claim.

However, that said, in the interest of assisting the County to determine the validity of the Lemerts' claim, we now submit with this letter the additional valuation information the County concluded was lacking from their initial application. Enclosed with this letter please find: (1) a formal difference-in-value assessment from

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Jon V. Buerstatte  
Joshua A. Clark  
Daniel P. Ellison  
A. J. Giustina  
Thomas P. E. Hermann\*  
Dan Webb Howard  
Stephen O. Lane  
William H. Martin\*  
Walter W. Miller  
Laura T. Z. Montgomery\*  
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Douglas R. Schultz  
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in Washington

Mr. Keir Miller  
May 8, 2007  
Page 2

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a certified appraiser relating to the amount by which residential use restrictions have decreased the value of the Lemerts' land, based on comparable actual sales; and (2) the résumé of the appraiser. We trust that this supplemental appraisal information will give the County all of the information it needs to assess the validity of the Lemerts' claim.

Thank you for your consideration of this matter.

Sincerely,



Dan Webb Howard  
[howard@gleaveslaw.com](mailto:howard@gleaveslaw.com)

cc: Matt Laird  
Kent Howe  
✓ Stephen Vorhes

**RESTRICTED USE APPRAISAL REPORT**

Measure 37 Application  
James M. & Dorothy V. Lemert  
Lane County, Oregon  
May 7, 2007

**PREPARED FOR**

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

**PREPARED BY**

Capital Valuation Group, Ltd.  
Darr L. Goss, MAI  
302 State Street, Suite 200  
P.O. Box 2108  
Salem, Oregon 97308-2108  
(503) 375-6494  
May 7, 2007

File # 270503a.rmh

May 7, 2007

Lane County  
Land Management Division  
125 East 8<sup>th</sup> Avenue  
Eugene, OR 97401

Dear Sir/Madam,

For use we have prepared a restricted use appraisal of the four EFU properties defined as follows: The subject property includes four tax lots totaling roughly 213.4 acres. The subject is identified by the Lane County Assessor's Office as summarized in the following table:

Ownership	Map	Tax Lot	Acres	Zone
Lemert James M. & Dorothy V.	160423	1001	8	EFU
Lemert James M. & Dorothy V.	160423	1101	8.62	EFU
Lemert James M. & Dorothy V.	160426	300	84.92	EFU
Lemert James M. & Dorothy V.	160426	500	111.86	EFU
Total			213.4	

This appraisal considers the possible effects of Measure 37 on the estimate of value of the subject parcel. Measure 37 amends ORS Chapter 197. The measure provides for just compensation for property value depreciation caused by land use regulation. In order to file a measure 37 claim the applicant must provide evidence for just compensation. The purpose of this appraisal is to provide said evidence. Just compensation is found by comparing the subject "as-is" to the subject "as-proposed", or with land use regulations waived. The difference between these two values will reflect a loss in value, which establishes the just compensation provided for in the measure. The subject owners have submitted a Measure 37 application. This report is provided as an additional exhibit to the Lemert Measure 37 claim. The subject's "as-is" use is rural farm. In this case the property owner has informed us of our "as-proposed" use. The subject owner wishes to obtain waivers to allow use equivalent to rural residential zoning on the subject parcels. ***Therefore our "as-proposed" value makes the extraordinary assumption that County regulations denying rural residential use are waived. This assumption may have affected the assignment results.***

The intended use of this appraisal is to determine market value of the subject parcels "as-is" and "as-proposed". Our "as-proposed" value will consist of a market value as if all of the subject parcels could be developed as rural residential properties. This appraisal is concerned with an estimate of value only. We have

not researched any other factors which may affect the legitimacy of a Measure 37 claim.

We have prepared our appraisal in a Restricted Summary format, which limits its use to a single client in this case the Lane County Land Management Division for purposes of identifying a diminution in value for a Measure 37 claim. This appraisal is not to be used for any other purpose. Background information and market data are not presented in detail, but remain in our file. The market value conclusion is in **fee-simple**, as of **May 7, 2007** and predicated on a one-year exposure period.

Methodology: The analysis uses comparable sales data provided by the property owner. It relies on comparable sales of EFU, E40 and E30 zoned land in the Junction City and Creswell areas between 2004 and 2006. The sales are compared with RR2, RR5 and RR10 sales located in the Eugene/Springfield areas and sold between 2004 and 2006. Our analysis relies on mass appraisal techniques using an average price per acre. Because of time and cost restraints no attempt was made to adjust for factors such as location, soils, irrigation, access, drainage, market conditions or time of sale. However, we believe our methodology provides an adequate depth of research and analysis for the intended use of this report. That is, this report shows a significant diminution of value between the "as-is" and "as-proposed" values of the subject.

This report has been prepared in conformance with the Uniform Standards of Professional Appraisal Practice as formulated by The Appraisal Foundation. Further, this report is prepared in conformance to the Appraisal Standards for Federally Related Transactions adopted by the Office of the Comptroller.

Please refer to the Assumptions and Limiting Conditions section of the attached report for an explanation of the basis on which the value conclusion is predicated. The signatory of this report is qualified by experience and education to competently appraise the subject property. The values reported in this appraisal are not contingent on the approval of a specific loan amount.

***Purpose, Function and Scope of Appraisal***

This is a Restricted Summary Appraisal Report, which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(c) of the Uniform Standards of Professional Appraisal Practice for a Summary Appraisal Report. As such, it presents only summary discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated below. The appraiser is not responsible for unauthorized use of this report.

The scope of this appraisal involved no inspection of the subject parcels and limited research of current comparable sales provided to us by the subject owners.

<b>CLIENT:</b>	Lane County Land Management Division Eugene, OR 97401
<b>APPRAISER:</b>	Darr L. Goss, MAI Capital Valuation Group, Ltd. P.O. Box 2108 Salem, Oregon 97301
<b>SUBJECT:</b>	Measure 37 Application James M. & Dorothy V. Lemert Lane County, OR

**Purpose of the Appraisal:**

To estimate market value as defined by the Office of the Controller of the Currency under 12 CFR, Part 34, Subpart C.

**Intended Use of Report:**

The intended use of this report is for the sole purpose of assisting the client in roughly estimating a diminution in market value for a Measure 37 claim.

<b>Interest Valued:</b>	Fee simple
<b>Effective Date of Value:</b>	May 7, 2007
<b>Date of Report:</b>	May 7, 2007

**Appraisal Scope and Development Process:**

This is a Restricted Appraisal in that and the use is to assist the client in estimating a diminution of value. We believe this is an adequate scope for use by our client, and will deliver a credible and not misleading value.

It is the appraiser's opinion that a Restricted Format appraisal provides adequate scope to meet the needs of the client and will deliver a credible and not misleading estimate of value. The Cost and the Income Approach were not used as the subject parcels are not improved and are not typically purchased for their income producing capabilities. This Restricted Appraisal Report sets forth only the appraiser's conclusions. Supporting documentation is retained in the appraiser's file.

**Real Estate Appraised:**

Ownership	Map	Tax Lot	Acres	Zone
Lemert James M. & Dorothy V.	160423	1001	8	EFU
Lemert James M. & Dorothy V.	160423	1101	8.62	EFU
Lemert James M. & Dorothy V.	160426	300	84.92	EFU
Lemert James M. & Dorothy V.	160426	500	111.86	EFU
Total			213.4	

**Indicated Exposure Time:** 12 Months

**Estimated Marketing Time:** 10 to 14 Months

**Subject History:**

The subject parcels have not sold in the last three years.

**Sales Comparison Approach**

In valuing the subject by the Sales Comparison Approach, an analysis of comparable sales provided by the subject owners was made. The Sales Comparison Approach is most reliable when units of comparison can be made that consider an overall property type. Atypical or unusual properties require many adjustments, which decreases the reliability of the approach. The comparable properties analyzed are generally under the same use with similar sizes and zoning. The comparables provided by the owners and analyzed for this appraisal are contained in our work file.



**Real Property Value Calculation and Conclusion**

After analyzing the comparable EFU sales provided we have concluded an average price per acre "as-is" of \$3,500. After analyzing the comparable rural residential sales provided we have concluded a price per acre of \$34,000. This results in the following value conclusions:

Ownership	Map	Tax Lot	Acres	Zone	Value "As-Is"	Value "As-Proposed"
Lemert James M. & Dorothy V.	160423	1001	8	EFU	\$28,000	\$272,000
Lemert James M. & Dorothy V.	160423	1101	8.62	EFU	\$30,170	\$293,080
Lemert James M. & Dorothy V.	160426	300	84.92	EFU	\$297,220	\$2,887,280
Lemert James M. & Dorothy V.	160426	500	111.86	EFU	\$391,510	\$3,803,240
Total			213.4		\$746,900	\$7,255,600

This report is a restricted format, and as such, contains only our conclusions of market value both "as-is" and "as-proposed". We therefore conclude the subject property has a fee-simple rounded market value "as-is" as of May 7, 2007, of -

**SEVEN HUNDRED FORTY-SEVEN THOUSAND DOLLARS... \$747,000**

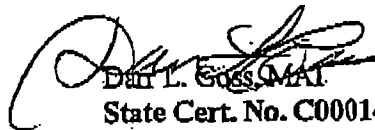
We also conclude that the subject property has a fee-simple rounded market value "as-proposed" as of May 7, 2007, of

**SEVEN MILLION TWO HUNDRED SIXTY THOUSAND DOLLARS... \$7,260,000**

**FINALLY WE ESTIMATE THE DIMINUTION IN VALUE AS \$6,513,000.**

Sincerely,

CAPITAL VALUATION GROUP

  
Dan L. Goss, MAI  
State Cert. No. C000149

***Assumptions and Limiting Conditions***

1. As agreed on with the client prior to the preparation of this appraisal, this is a limited appraisal because it invokes the Departure Provision of the Uniform Standards of Professional Appraisal Practice. As such, information pertinent to the valuation has not been considered and/or the full valuation process has not been applied. Depending on the type and degree of limitations, the reliability of the value conclusion provided herein may be reduced.
2. This is a limited restricted appraisal report which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(c) of the Uniform Standards of Professional Appraisal Practice for a summary appraisal report. As such, it might not include full discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning, and analysis is retained in the appraiser's file. The information contained in this report is specific to the needs of the client and for the intended use stated in this report. The appraiser is not responsible for unauthorized use of this report.
3. No responsibility is assumed for legal or title considerations. Title to the property is assumed good and marketable unless otherwise stated in this report.
4. The property is appraised free and clear of any or all liens and encumbrances unless otherwise stated in this report.
5. Responsible ownership and competent property management are assumed unless otherwise stated in this report.
6. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy.
7. All engineering is assumed to be correct. Any plot plans and illustrative material in this report are included only to assist the reader in visualizing the property.
8. It is assumed that there are no hidden or unknown conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.
9. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless otherwise stated in this report.
10. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless nonconformity has been stated, defined, and considered in this appraisal.
11. It is assumed that all required licenses, certificates of occupancy, or other legislative or administrative authority from any local, state, or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimates contained in this report are based.
12. Any sketch in this report may show approximate dimensions and is included to assist the reader in visualizing the property. Maps and exhibits found in

this report are provided for reader reference purposes only. No guarantees to accuracy is expressed or implied unless otherwise stated in this report. No survey has been made for the purpose of this report.

13. It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless otherwise stated in this report.
14. The appraiser is not qualified to detect hazardous waste and/or toxic materials. Any comment by the appraiser that might suggest the possibility of the presence of such substances should not be taken as confirmation of the presence of hazardous waste and/or toxic materials. Such determination would require investigation by a qualified expert in the field of environmental assessment. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. The appraiser's value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value unless otherwise stated in this report. No responsibility is assumed for any environmental conditions, or for any expertise or engineering knowledge required to discover them. The appraiser's descriptions and resulting comments are the result of the routine observations made during the appraisal process.
15. Unless otherwise stated in this report, the subject property is appraised without a specific compliance survey having been conducted to determine if the property is or is not in conformance with the requirements of the Americans with Disabilities Act. The presence of architectural and communications barriers that are structural in nature that would restrict access by disabled individuals may adversely affect the property's value, marketability, or utility.
16. Any proposed improvements are assumed to be completed in a good workman-like manner in accordance with the submitted plans and specifications.
17. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
18. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraiser, and in any event, only with proper written qualification and only in its entirety.
19. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser, or the firm with which the appraiser is connected) shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraisal.

## **Measure 37 Application Lane County, Oregon**

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**Capital Valuation Group, Ltd.** has been serving the northwest since 1974 under various business names. The firm concentrates on complex commercial, industrial, multi-family and rural valuation assignments. A partial list of clients includes:

### **Governmental**

Bonneville Power Administration  
City of Albany  
City of Coos Bay  
City of Corvallis  
City of Eugene  
City of Lincoln City  
City of Salem  
City of Silverton  
City of Woodburn  
Douglas County  
FDIC  
Federal Home Loan Bank - 12th Dist.  
FSLIC  
GSA - State of Oregon  
Klamath County  
Lane County  
Marion County  
Military Department - State of Oregon  
Oregon Dept. of Transportation  
Port of Portland  
Salem/Keizer School District  
U.S. Army Corps of Engineers  
U.S. Dept. of Interior  
Woodburn School District

### **Financial**

American Savings & Loan (FCA)  
American Federal Savings  
Bank of California  
Benj. Franklin  
Church Extension Plan  
Family Federal Savings  
First Federal, Coeur d'Alene  
First Federal, Longview  
First Federal, McMinnville  
First Interstate Bank  
Freedom Federal Savings  
Harvest Capital Company  
Key Bank of Oregon  
Old National Financial  
Pioneer Trust Bank, N.A.

Rainier Bank  
Seafirst R.E. Group  
The Oregon Bank  
U.S. National Bank of Oregon  
United Savings Bank  
Vancouver Federal  
Washington Mutual S.B.  
Western Bank  
Western Security Bank  
Willamette Savings

### **Insurance**

Mutual of Enumclaw  
Oregon Mutual  
Pacific Mutual  
St. Paul Fire & Marine

### **Medical**

Killen Enterprises  
Medical Properties  
Oak St. Medical Center  
Physicians Building  
Salem Hospital

### **General**

Capital Consultants  
Capitol Auto World  
Chevron, USA  
First American Title  
Keller Enterprises  
Microflect, Inc.  
Moyer Theaters  
Nalley's of Canada  
Nippon Kokan K.K.  
Owens-Corning Fiberglas  
Pacific Petroleum  
PGE  
Schnitzer Investment  
Valley Rolling Mills  
Walter West Construction

## **Measure 37 Application Lane County, Oregon**

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**Darr L. Goss** is President of the commercial real estate firm, Capital Valuation Group, Ltd. Following graduation from the University of Oregon he served with the U.S. Air Force retiring as a Colonel in 1979. Mr. Goss is a FAA certified Airline Transport Pilot and Instrument Flight Instructor. He worked for the Coldwell Banker organization as a sales consultant licensed in Virginia and Washington, DC. He then returned to Oregon as the real estate manager for Beri, Inc. of Salem managing a portfolio of shopping centers and office buildings in Oregon and Washington. Next he became a broker for the Commercial Division of Grabenhorst Bros. Realtors of Salem handling tracts of urban, farm and timber lands. He currently appraises for government agencies, lending institutions and private individuals specializing in complex valuation analysis.

### **PROFESSIONAL AFFILIATIONS**

American Institute of Real Estate Appraisers - Designated MAI (No. 8355), 1989  
State of Oregon, Certified Appraiser #C000149  
State of Nevada, Certified Appraiser #03187  
State of Washington, Certified Appraiser #1100327  
State of California, Certified Appraiser #AG028546  
Oregon Chapter, American Planning Association  
Oregon Society of Farm Managers and Rural Appraisers  
Licensed Oregon Real Estate Broker  
Salem Economic Development Corporation  
Agri-Business Council  
Salem Area Chamber of Commerce  
Oregon Better Business Bureau

### **COMMUNITY**

Commissioner - Salem Planning Commission, 1986-1995;  
Commissioner - Capitol Planning Commission, 1990 – 1995;  
Board Member - American Pacific Bank, 1981-1987.

### **EDUCATION**

**University of Oregon:** Baccalaureate in Philosophy, Liberal Arts; **Bureau of Governmental Research and Service,** Planning Commissioner Training Program; **George Washington University,** Master of Science, Public Administration; **Duke University,** School of Forestry: Forest Appraisal; **American Institute of Real Estate Appraisers:** Appraisal of Income Property; Rural Valuation; Industrial Valuation; **University of Virginia:** Construction Cost Estimating; **Arlington (Virginia)** **Distributive Education:** Real Estate Counseling; Architecture and Construction; Land Usage and Development; **Chatham Educational Corporation:** The Art of Real Estate Counseling **Society of Industrial Realtors:** Industrial Real Estate; Industrial Valuation; **American Business Consultants, Inc.:** Business Opportunity Appraising; **Coldwell Banker Corporation,** Washington, DC: Sales Development Course; **Chemeketa Community College:** Zoning, Subdivision, and Community Planning; Agriculture Economics; Silviculture; Forest Mensuration; Oregon Soils; Soil Mechanics; Irrigation and Drainage.

### **EXPERIENCE**

Oregon State licensed real property Broker/Appraiser since 1980 specializing in commercial/industrial and rural properties. Currently serving clients as President of Capital Valuation Group, Ltd.

*Qualifications*



# SUPPLEMENTAL INFORMATION SUBMITTED

Submitted on: 5/9/07

Taken By: M

SUPPLEMENTAL INFORMATION HAS BEEN RECEIVED BY THIS OFFICE IN REGARDS TO THE FOLLOWING:

**BP#** \_\_\_\_\_

**PA#** 06-7296 Lemert

**SP#** \_\_\_\_\_

**SI#** \_\_\_\_\_

**OTHER:** May 22 KM

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May 8, 2007

*Via Hand Delivery*

Mr. Keir Miller  
Lane County Land Management Division  
125 East 8<sup>th</sup> Ave.  
Eugene, OR 97401

**Re: Measure 37 Claim PA06-7296 (Lemert)**

Dear Mr. Miller:

Please include this submission in the file for the above-referenced Measure 37 claim.

As James and Dorothy Lemerts' Measure 37 application relates, the Lemerts in 1998 placed title to the properties that are the subject of this claim in the Lemert Family Limited Partnership, of which Mr. Lemert is the general partner. In the Lemerts' initial application materials, we addressed why placing title to the properties in the partnership did not disturb their continuity of ownership for purposes of determining the date from which any County land use regulations must be waived pursuant to Measure 37 (the "waiver date"). We now submit this letter to supplement that argument in light of claims that the County has decided since we submitted the Lemerts' initial application materials.

Since we submitted the Lemerts' application, the County has decided a number of Measure 37 claims where an individual asserted an ownership interest in property the title to which he or she had placed in an entity such as a trust, partnership, corporation, or limited liability company. We have conducted an extensive review of the County's past decisions on such claims. In making those decisions, the County has repeatedly professed a concern for consistency in its decision making process. This letter explains why, in light of the County's decisions to date, the only consistent result is to find that Mr. Lemert, for purposes of determining the appropriate Measure 37 waiver date, has maintained a continuous ownership interest in the properties in the Lemert Family Limited Partnership since he first acquired an interest in those properties.

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Kate A. Thompson  
Jane M. Yates

\*Also admitted  
in Washington

**1. There Is No Principled Reason for Treating Mr. Lemert's Interest Any Differently from the Interest Retained by a Grantor/Trustee to a Revocable Family Trust.**

The County has adopted a consistent approach to the issue of whether an individual's transfer of title to a revocable family trust breaks the individual's continuity of ownership for purposes of determining the proper waiver date under Measure 37. The County has answered this question in the negative where the grantor is also the trustee of the trust in question, finding with regard to a number of claims that, "The trust is the new owner, but [because] it is revocable and [the applicants] are the Trustees... the ownership interest of [the applicants] is continued." See PA06-7201 (Ritter); PA06-7212 (Brewer); PA 06-6722 (Baxter); PA06-6679 (Wymer).

This analysis appears to focus on: (1) the practical control that the individual retains over the land despite the transfer of title and the fact that the applicant also retains most if not all of the de facto prerogatives of ownership, such as the right to manage, possess, and dispose of the property (trustee status); and (2) the fact that the applicant in such circumstances holds what essentially amounts to a vested reversionary interest in title to the property that he or she can convert into a present possessory interest merely by exercising his discretion (revocability).

Regarding these points, County Commissioner Bill Dwyer remarked at a Board hearing on April 3, 2007 that a revocable trust compared to:

"The old analogy, you know, of my twenty dollar bill: I take it out of my one pocket and I put it into this other pocket—but it's still my twenty dollars and if I want to put it back in my other pocket, I can do it. So... it's kind of a no brainer."

See BCC Work Session, 4/3/2007, 9:00 a.m., at 2:06:01 – 2:06:19 (Discussing the Svingen claim, PA06-7109).

Much the same could be said of Mr. Lemert's continued interest in, and control of, the property that is the subject of the Lemerts' claim. As a general partner of the Lemert Family Limited Partnership, Mr. Lemert has retained control over the property in the partnership equivalent to the control that a trustee retains over property placed in a trust. Indeed, as the governing partnership agreement provides, "The General Partner shall have full and exclusive responsibility and control over the management of the business," including managing the properties placed in the partnership entity. See Limited Partnership Agreement, p. 5 (Exhibit B to the Lemert application).



Mr. Lemert also retains essentially unfettered power to dissolve the partnership at any time – just like the trustees in the claims cited above could revoke the trusts in question at any time. Specifically, subsection 18.1(d) of the governing partnership agreement provides that “The withdrawal of a General Partner from the Partnership, whether in accordance with or in violation of this agreement,” will lead to the automatic dissolution of the entity. *See id.* at p. 16.

Finally, just like the situation of a grantor/trustee to a revocable trust, Mr. Lemert has maintained what amounts to a vested reversionary interest in title to the property. The governing partnership agreement provides that a general partner, in liquidating the assets of the partnership upon dissolution, “may determine not to sell all or any portion of the assets of the Partnership, including, without limitation, the interest of the Partnership in the Property, in which event such assets shall be distributed in kind.” *See id.* at p. 20. In other words, not only can Mr. Lemert essentially dissolve the partnership at will, he can re-take title to the properties in the partnership essentially at will. *Like the trustees in the claims above, he is limited only by his own discretion.*

Therefore, in sum, there is no principled reason to treat Mr. Lemert differently than the County has treated grantors/trustees to revocable family trusts.

**2. There Are Principled Reasons for Treating Mr. Lemert’s Interests Differently from those of a Shareholder in a Corporate or Quasi-Corporate Entity.**

We are aware of very few claims that have compelled the County to consider whether an individual applicant’s transfer of title to property to a family partnership breaks his continuity of ownership for Measure 37 purposes. In those few claims to date where the County has decided the issue, it has determined that, unlike a transfer to a revocable family trust, the transfer in those cases *did* break continuity of ownership. *See* PA05-6833 (Don Wilbur Ltd. Partnership), PA06-7325 (Donald L. Lamb). However, we believe that *these limited decisions do not establish a blanket rule that transfers of property to a family partnership necessarily break the individual transferor’s continuity of ownership.* Moreover, as explained below, the facts of the Wilbur and Lamb claims were sufficiently different from the facts presented here that a different outcome is justified – if not compelled – with regard to the Lemerts’ claim.

We recognize that the County appears to have created a de facto blanket rule that a transfer of title to a corporate or quasi-corporate entity breaks an individual’s continuity of ownership for purposes of determining the appropriate Measure 37 waiver date – even if the individual retains a significant interest in the corporate entity. *See* PA05-6234 (CBM Family LLC), PA06-6148 (Peterson Brothers LLC). However, while such treatment might be justified in the context of LLCs and

corporations, a similar blanket rule is not appropriate in the case of family partnerships.

Precedent from the Oregon Supreme Court suggests that where the law of takings is concerned (and, by analogy, the law of Measure 37), there are principled reasons for treating corporate entities and partnerships differently. In *City of Salem v. H.S.B.*, 302 Or 648 (1987), the court held that there was no “unity of ownership” between two parcels of land for the purposes of determining the proper amount of just compensation even though a married couple owned a 50% interest in the partnership that held one parcel and a majority shareholder interest in the closely held corporation that held the other. *Id.* at 650-51. However, the court’s justification for that holding is illuminating. It stated:

[I]ncorporation is a status which should not be assumed and discarded at the whim of the incorporators.... [¶] Incorporation may hold many attractions—*limited tax and other forms of liability* not least among them—but it is, at bottom, the creation of a legal entity different from other entities. *A corporation is not ... a partnership or joint venture*; it is, rather, another and particular kind of creature....

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In other words, the court intimated that its decision might have been different had *two partnerships* been in issue, rather than one partnership and one corporation. Moreover, the court flatly stated that there are important reasons that corporations and partnerships should be treated differently where the law of takings is concerned – chief among them the fact that corporate status confers the critical benefit of limiting various forms of personal liability. The court reasonably concluded that it would be unfair to let individuals avail themselves of this advantage in one context and then discard the corporate status for other purposes: “To do so would merely provide a benefit to the shareholders by relieving them – for some limited purpose – of the consequences of the corporate form they have voluntarily assumed.” *Id.* at 655.

*Such considerations do not come into play where general partners to a limited partnership are concerned.* As the general partner to the Lemert Family Limited Partnership, Mr. Lemert receives none of the same advantages that made the *HSB* court “extremely reluctant” (*id.*) to look behind the corporate form. A partnership does not receive the same tax benefits as a corporation, and *a general partner retains unlimited personal liability* for the acts of the partnership. See ORS 70.185, 67.105(1). Thus, in the context of takings claims and claims under Measure 37, there should be no more concern about a general partner “assuming and discarding” the entity form at a whim than there would be about a trustee disregarding the form of a revocable family trust.

In sum, precedent from the Oregon Supreme Court suggests that it would be inappropriate to adopt with regard to family partnerships a blanket rule – similar to the kind the County appears to have adopted with regard to LLCs and corporations – that a transfer of title to the entity necessarily breaks the individual transferor's continuity of ownership for purposes of determining his Measure 37 waiver date. Rather, at the very least, the County should determine the effect of a transfer of title to a family partnership on a case-by-case basis. As demonstrated below, employing that approach, there are excellent reasons to reach a different result with regard to the Lemerts' claim than the County reached in the Wilbur and Lamb claims. In cases such as this one, where the general partner applicant retains essentially unfettered discretion to manage the property and dissolve the partnership – and retains what amounts to a vested reversionary interest in title to the property – the only consistent result is to reach the same decision that the County has reached in cases involving revocable trusts. That result is consistent with the language of Measure 37, which defines an "owner" as anyone who has maintained "any interest" in the property in question. ORS 197.352(11)(C).

**3. The County Can Reconcile Its Decisions on Partnerships and Revocable Trusts By Focusing on the Nature of the Future Interest Retained by the Individual Applicant and His or Her Power to Revoke the Entity's Title.**

Approving the Lemerts' claim would not be inconsistent with the Lamb and Wilbur decisions, each of which is distinguishable in multiple respects.

The claim of the Don Wilbur Limited Partnership (PA05-6833) is highly distinct from the Lemerts' claim. First, *Don Wilbur was not a general partner of that partnership.* Rather, the general partner of the partnership was a corporation (Don Wilbur, Inc.), and that corporation controlled all of the rights to manage, possess, and dispose of the land held by the partnership. Although Mr. Wilbur controlled the corporation, he did not manage the land held by the partnership as an individual partner subject to personal liability, but only as an officer of the partner corporation. In this capacity, *Mr. Wilbur benefited from the corporate form and the limited tax and personal liability it conferred just like the individuals in HSB.* As a general partner to the Lemert family partnership, Mr. Lemert does not receive these benefits.

Of equal importance, Mr. Wilbur did not retain anything approaching a true vested reversionary interest in title to the properties, as Mr. Lemert has. Rather, the Don Wilbur Limited Partnership Agreement provides that the properties held by the partnership must be liquidated in cash upon dissolution of the partnership, unless the general and limited partners can reach a mutual agreement in writing to distribute the property in kind. See Limited Partnership Agreement, p. 10 (attached to materials submitted with claim PA05-6833, Wilbur33). That is a significant limitation on Mr. Wilbur's ability to re-take title to the properties, as the partnership agreement reveals five partners to the partnership aside from Mr. Wilbur's corporation and

Mr. Wilbur himself. Here, in contrast, Mr. Lemert has essentially unfettered discretion to re-take title to the properties in the partnership, just like the grantors/trustees in the revocable trust claims cited above.

Turning to the claim of Donald Lamb (PA06-7325), it is entirely inapposite to the Lemerts' claim because Mr. Lamb apparently did not even present the governing partnership agreement with his claim. There was therefore no way for the County to determine whether the applicant, as an individual, retained a vested reversionary interest in title to the property placed in the partnership, as Mr. Lemert has. Mr. Lamb's claim, in other words, was akin to an individual trying to show a "springing executory interest" in land (i.e., a right to a fee simple following another individual's life estate) *without presenting any evidence of any document (e.g., a deed or will) that created that interest*. Given that, the County essentially had no choice but to reject Mr. Lamb's assertion of a right to a waiver extending back to the date that he first acquired an interest in the subject properties.

In contrast, where proper documentation is presented, the County in its decisions on "springing executory interests" has found that the correct waiver date for individuals possessing such interests is *not* the date the individual actually takes present possession of a fee simple in the land, but, rather, the date that the individual first acquires a vested future interest in the property. For example, with regard to the Neely claim (PA06-5132), applicant Mayme Neely currently holds a life estate in the property in question. However, the County there found that co-applicants Daniel and Sandra Teal, who in 1990 acquired a vested interest in a fee simple following Mayme Neely's life estate, are entitled to a Measure 37 waiver *back to the 1990 date*. A similar result was reached by the County with regard to the Wagner claim. *See* PA06-7214 (it was uncertain whether the three individuals with springing executory interests had joined the application of the current holder of the life estate, but, if they did join, they would be considered current "owners" of the land for Measure 37 purposes).

Unlike Messrs. Wilbur and Lamb, Mr. Lemert has shown that he has a vested future interest to title at least equivalent to that retained by claimants Ritter, Brewer, Baxter, and Wymer, the trustees of revocable trusts. Indeed, if anything, Mr. Lemert's future interest is *stronger*, because the Lemert family partnership is set to expire on a date certain without the need for any action from Mr. Lemert, whereas the trusts in question were apparently of indefinite duration. *See* Lemert Limited Partnership Agreement, p. 2 (providing that term of partnership will expire on December 31, 2027). Mr. Lemert also holds an interest which, if anything, *exceeds* the "springing executory interest" of claimants Daniel and Sandra Teal. Unlike the Teals, Mr. Lemert has *current rights* to manage the properties in the Lemert partnership (whereas the Teals have no current right to manage the property currently possessed by life estate holder Mayme Neely) – rights that he has possessed and not relinquished since he first acquired an interest in the properties. Also, again, his reversionary interest in title can become possessory either on a date certain (when the

partnership naturally expires) or on *whatever date he wants it to* (if he chooses to leave the partnership and thereby dissolve it), whereas the Teals' interest cannot become possessory until the termination of Ms. Neely's life estate.

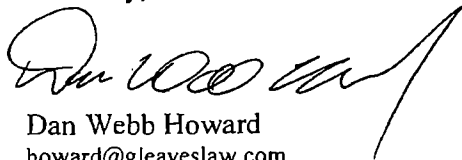
## CONCLUSION

In light of the aforementioned decisions, the only consistent result is for the County to find that Mr. Lemert has continuously "owned" the properties in the Lemert family partnership, for Measure 37 purposes, from the date he first acquired an interest in those properties to the present, and that his continuity of ownership was not disturbed when title to the properties was placed with the partnership entity.

The above decisions represent all of the relevant decisions of the County of which we are aware. If there are other relevant decisions that we have failed to take into account, we would appreciate the County informing us of those decisions so that we have the opportunity to discuss them at the hearing on the Lemerts' claim

Thank you very much for your consideration of this matter.

Sincerely,



Dan Webb Howard  
howard@gleaveslaw.com

cc: Matt Laird  
Kent Howe  
✓ Steve Vorhes



## SUPPLEMENTAL INFORMATION SUBMITTED

Submitted on: 5/8/07

Taken By: KM

SUPPLEMENTAL INFORMATION HAS BEEN RECEIVED BY THIS OFFICE IN REGARDS TO THE FOLLOWING:

**BP#** \_\_\_\_\_

**PA#** 06-7296 Lement

**SP#** \_\_\_\_\_

**SI#** \_\_\_\_\_

**OTHER:** MAY 22 KM

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\_\_\_\_\_  
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May 8, 2007

*Via Hand Delivery*

Mr. Keir Miller  
Lane County Land Management Division  
125 East 8<sup>th</sup> Ave.  
Eugene, OR 97401

**Re: Measure 37 Claim PA06-7296 (Lemert)**

Dear Mr. Miller:

Please include this submission in the file for the above-referenced Measure 37 claim.

As James and Dorothy Lemerts' Measure 37 application relates, the Lemerts in 1998 placed title to the properties that are the subject of this claim in the Lemert Family Limited Partnership, of which Mr. Lemert is the general partner. In the Lemerts' initial application materials, we addressed why placing title to the properties in the partnership did not disturb their continuity of ownership for purposes of determining the date from which any County land use regulations must be waived pursuant to Measure 37 (the "waiver date"). We now submit this letter to supplement that argument in light of claims that the County has decided since we submitted the Lemerts' initial application materials.

Since we submitted the Lemerts' application, the County has decided a number of Measure 37 claims where an individual asserted an ownership interest in property the title to which he or she had placed in an entity such as a trust, partnership, corporation, or limited liability company. We have conducted an extensive review of the County's past decisions on such claims. In making those decisions, the County has repeatedly professed a concern for consistency in its decision making process. This letter explains why, in light of the County's decisions to date, the only consistent result is to find that Mr. Lemert, for purposes of determining the appropriate Measure 37 waiver date, has maintained a continuous ownership interest in the properties in the Lemert Family Limited Partnership since he first acquired an interest in those properties.

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Swearingen  
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Scott LLP



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\*Also admitted  
in Washington

**1. There Is No Principled Reason for Treating Mr. Lemert's Interest Any Differently from the Interest Retained by a Grantor/Trustee to a Revocable Family Trust.**

The County has adopted a consistent approach to the issue of whether an individual's transfer of title to a revocable family trust breaks the individual's continuity of ownership for purposes of determining the proper waiver date under Measure 37. The County has answered this question in the negative where the grantor is also the trustee of the trust in question, finding with regard to a number of claims that, "The trust is the new owner, but [because] it is revocable and [the applicants] are the Trustees... the ownership interest of [the applicants] is continued." *See* PA06-7201 (Ritter); PA06-7212 (Brewer); PA 06-6722 (Baxter); PA06-6679 (Wymer).

This analysis appears to focus on: (1) the practical control that the individual retains over the land despite the transfer of title and the fact that the applicant also retains most if not all of the de facto prerogatives of ownership, such as the right to manage, possess, and dispose of the property (trustee status); and (2) the fact that the applicant in such circumstances holds what essentially amounts to a vested reversionary interest in title to the property that he or she can convert into a present possessory interest merely by exercising his discretion (revocability).

Regarding these points, County Commissioner Bill Dwyer remarked at a Board hearing on April 3, 2007 that a revocable trust compared to:

"The old analogy, you know, of my twenty dollar bill: I take it out of my one pocket and I put it into this other pocket—but it's still my twenty dollars and if I want to put it back in my other pocket, I can do it. So... it's kind of a no brainer."

*See* BCC Work Session, 4/3/2007, 9:00 a.m., at 2:06:01 – 2:06:19 (Discussing the Svingen claim, PA06-7109).

Much the same could be said of Mr. Lemert's continued interest in, and control of, the property that is the subject of the Lemerts' claim. As a general partner of the Lemert Family Limited Partnership, Mr. Lemert has retained control over the property in the partnership equivalent to the control that a trustee retains over property placed in a trust. Indeed, as the governing partnership agreement provides, "The General Partner shall have full and exclusive responsibility and control over the management of the business," including managing the properties placed in the partnership entity. *See* Limited Partnership Agreement, p. 5 (Exhibit B to the Lemert application).



Mr. Lemert also retains essentially unfettered power to dissolve the partnership *at any time* – just like the trustees in the claims cited above could revoke the trusts in question at any time. Specifically, subsection 18.1(d) of the governing partnership agreement provides that “The withdrawal of a General Partner from the Partnership, whether in accordance with or in violation of this agreement,” will lead to the automatic dissolution of the entity. *See id.* at p. 16.

Finally, just like the situation of a grantor/trustee to a revocable trust, Mr. Lemert has maintained what amounts to a vested reversionary interest in title to the property. The governing partnership agreement provides that a general partner, in liquidating the assets of the partnership upon dissolution, “may determine not to sell all or any portion of the assets of the Partnership, including, without limitation, the interest of the Partnership in the Property, in which event such assets shall be distributed in kind.” *See id.* at p. 20. In other words, not only can Mr. Lemert essentially dissolve the partnership at will, he can re-take title to the properties in the partnership essentially at will. *Like the trustees in the claims above, he is limited only by his own discretion.*

Therefore, in sum, there is no principled reason to treat Mr. Lemert differently than the County has treated grantors/trustees to revocable family trusts.

**2. There Are Principled Reasons for Treating Mr. Lemert’s Interests Differently from those of a Shareholder in a Corporate or Quasi-Corporate Entity.**

We are aware of very few claims that have compelled the County to consider whether an individual applicant’s transfer of title to property to a family partnership breaks his continuity of ownership for Measure 37 purposes. In those few claims to date where the County has decided the issue, it has determined that, unlike a transfer to a revocable family trust, the transfer in those cases *did* break continuity of ownership. *See* PA05-6833 (Don Wilbur Ltd. Partnership), PA06-7325 (Donald L. Lamb). However, we believe that *these limited decisions do not establish a blanket rule that transfers of property to a family partnership necessarily break the individual transferor’s continuity of ownership.* Moreover, as explained below, the facts of the Wilbur and Lamb claims were sufficiently different from the facts presented here that a different outcome is justified – if not compelled – with regard to the Lemerts’ claim.

We recognize that the County appears to have created a de facto blanket rule that a transfer of title to a corporate or quasi-corporate entity breaks an individual’s continuity of ownership for purposes of determining the appropriate Measure 37 waiver date – even if the individual retains a significant interest in the corporate entity. *See* PA05-6234 (CBM Family LLC), PA06-6148 (Peterson Brothers LLC). However, while such treatment might be justified in the context of LLCs and

corporations, a similar blanket rule is not appropriate in the case of family partnerships.

Precedent from the Oregon Supreme Court suggests that where the law of takings is concerned (and, by analogy, the law of Measure 37), there are principled reasons for treating corporate entities and partnerships differently. In *City of Salem v. H.S.B.*, 302 Or 648 (1987), the court held that there was no “unity of ownership” between two parcels of land for the purposes of determining the proper amount of just compensation even though a married couple owned a 50% interest in the partnership that held one parcel and a majority shareholder interest in the closely held corporation that held the other. *Id.* at 650-51. However, the court’s justification for that holding is illuminating. It stated:

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Mr. Wilbur himself. Here, in contrast, Mr. Lemert has essentially unfettered discretion to re-take title to the properties in the partnership, just like the grantors/trustees in the revocable trust claims cited above.

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Unlike Messrs. Wilbur and Lamb, Mr. Lemert has shown that he has a vested future interest to title at least equivalent to that retained by claimants Ritter, Brewer, Baxter, and Wymer, the trustees of revocable trusts. Indeed, if anything, Mr. Lemert's future interest is *stronger*, because the Lemert family partnership is set to expire on a date certain without the need for any action from Mr. Lemert, whereas the trusts in question were apparently of indefinite duration. See Lemert Limited Partnership Agreement, p.2 (providing that term of partnership will expire on December 31, 2027). Mr. Lemert also holds an interest which, if anything, *exceeds* the "springing executory interest" of claimants Daniel and Sandra Teal. Unlike the Teals, Mr. Lemert has *current rights* to manage the properties in the Lemert partnership (whereas the Teals have no current right to manage the property currently possessed by life estate holder Mayme Neely) – rights that he has possessed and not relinquished since he first acquired an interest in the properties. Also, again, his reversionary interest in title can become possessory either on a date certain (when the

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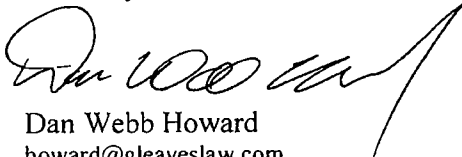
## CONCLUSION

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Thank you very much for your consideration of this matter.

Sincerely,



Dan Webb Howard  
howard@gleaveslaw.com

cc: Matt Laird  
Kent Howe  
Steve Vorhes

May 9, 2007

Mr. Keir Miller  
Lane County Land Management Division  
125 East 8<sup>th</sup> Ave.  
Eugene, OR 97401

**Re: Measure 37 Claim PA06-7296 (Lemert)**

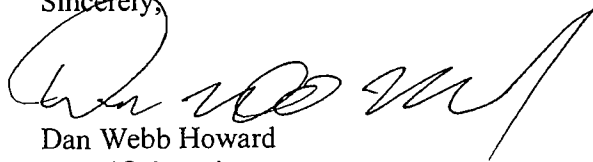
Dear Mr. Miller:

Please include this submission in the file for the above-referenced Measure 37 claim.

Enclosed is the resume of Jim Rasmussen, who prepared the valuation report for potential sand and gravel operations on the properties in issue in this Measure 37 claim. (Exhibit G to the application)

Thank you very much for your consideration of this matter.

Sincerely,



Dan Webb Howard  
howard@gleaveslaw.com

Enclosure

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Swearingen  
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Jane M. Yates

\*Also admitted  
in Washington

**James Allen Rasmussen**  
**1860 NE Noble**  
**Corvallis, OR 97330**  
**(541) 752-0583**

**EDUCATION:**

- **MBA, Oregon State University**, Concentration in Management, March 1990 GPA 3.50
- **BS, University of Southern California**, Finance & Investments, May 1987 GPA 3.20

**EXPERIENCE:**

**Financial Analyst/Consultant**  
**HCS Group LLC**

**Albany, OR**

**February 2002 - Present**

- Prepared budget forecasting, valuation and other financial models and reports for clients; including valuation of aggregate mining operations in western Oregon.
- Worked with business owners to prepare financial forecasts. Helping them identify key components influencing the profitability of their core business and additional potential revenue lines.
- Reviewed historic tax and financial statements to develop and assess periodic budgets and forecasts.

**Financial Analyst/Consultant**  
**Present Value Consulting**

**Corvallis, OR**

**July 2003 - Present**

- Prepared valuation and other financial models for clients; including valuation of manufacturing, aggregate mining, ready mix and pre-stress concrete operations in western Oregon.
- Research Aggregate mining companies in the Salem Metropolitan area for potential investor. This included research into county and state regulations and restrictions on current and proposed mining sites.
- Research historic activity and DOGAMI reports on mining sites for current owners and potential investors.
- Prepared analysis on royalties paid at sand & gravel and quarries (by region) in Oregon for OCAPA.

**Financial Analyst/Contract Administrator**  
**Morse Bros., Inc.**

**Tangent, OR**

**July 1991 to February 2000**

- Financial liaison between Construction and Accounting department.
- Managed contracts with subcontractors and public agencies.
- Developed process to evaluate equipment rates, resulting in a 15% improvement in their rate of return.
- Assisted manager develop a business plan and financial projections for an Asphalt Plant purchase, to be funded outside of the normal budget process. Plan accepted and funded by parent company's board of directors.
- Analyzed current vs. projected revenue and expenses of all on going projects, adjusting projections as needed, for three construction divisions with revenues exceeding \$34 million per year.
- Developed interactive business-planning model and databases to allow forecasting within defined market segments and monitor project backlog, allowing for adjustment of margins used in bidding future projects.
- Lead team, including senior management, supervisors and team members in updating hearing and noise level policies to meet changes in regulations and ensure employee safety.
- Facilitated inter-company work teams in policy and asset purchasing decisions.

May 8, 2007

*Via Hand Delivery*

Mr. Keir Miller  
Lane County Land Management Division  
125 East 8<sup>th</sup> Ave.  
Eugene, OR 97401

**Re: Measure 37 Claim PA06-7296 (Lemert)**

Dear Mr. Miller:

Please include this submission in the file for the above-referenced Measure 37 claim.

This letter and enclosure are submitted in response to the County's request for additional information regarding the Measure 37 Claim filed by our clients, James and Dorothy Lemert. We received the County's letter requesting the additional information on February 13, 2007, and subsequently obtained an extension from Mr. Steve Hopkins to submit the information.

Specifically, the County represented that it needed additional information on the issue of how residential use restrictions had impacted the value of the Lemerts' land to determine the validity of the Lemerts' claim, commenting that "value based on tax data [is] not adequate" and that the "opinion report of value [is] not from a real estate appraiser."

To be clear, our position is that the information the Lemerts initially filed *was sufficient* to present a valid Measure 37 claim. The County's remark about "value based on tax data" is misguided, as the valuation information submitted with our clients' initial application actually *did include* information on actual sales of comparable properties that were and were not subject to similar residential use restrictions. Moreover, nothing in the text of Measure 37 itself requires that such comparable sales data be submitted by a certified appraiser. Thus, in light of Section (7) of ORS 197.352, we believe the County was incorrect to conclude that the Lemerts did not initially submit sufficient information to present a valid Measure 37 claim.

However, that said, in the interest of assisting the County to determine the validity of the Lemerts' claim, we now submit with this letter the additional valuation information the County concluded was lacking from their initial application. Enclosed with this letter please find: (1) a formal difference-in-value assessment from

Gleaves  
Swearingen  
Potter &  
Scott LLP



ATTORNEYS  
AT LAW

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(541) 686-8833  
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975 Oak Street  
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97401-3156

Mailing Address:  
P.O. Box 1147  
Eugene, Oregon  
97440-1147

Email:  
info@gleaveslaw.com  
Web-Site:  
www.gleaveslaw.com

Frederick A. Batson  
Jon V. Buerstatte  
Joshua A. Clark  
Daniel P. Ellison  
A. J. Giustina  
Thomas P. E. Herrmann\*  
Dan Webb Howard  
Stephen O. Lane  
William H. Martin\*  
Walter W. Miller  
Laura T. Z. Montgomery\*  
Tanya C. O'Neil  
Standlee G. Potter  
Martha J. Rodman  
Robert S. Russell  
Douglas R. Schultz  
Malcolm H. Scott  
James W. Spickerman  
Kate A. Thompson  
Jane M. Yates


\*Also admitted  
in Washington



a certified appraiser relating to the amount by which residential use restrictions have decreased the value of the Lemerts' land, based on comparable actual sales; and (2) the résumé of the appraiser. We trust that this supplemental appraisal information will give the County all of the information it needs to assess the validity of the Lemerts' claim.

Thank you for your consideration of this matter.

Sincerely,



Dan Webb Howard  
[howard@gleaveslaw.com](mailto:howard@gleaveslaw.com)

cc: Matt Laird  
Kent Howe  
Stephen Vorhes

**RESTRICTED USE APPRAISAL REPORT**

Measure 37 Application  
James M. & Dorothy V. Lemert  
Lane County, Oregon  
May 7, 2007

**PREPARED FOR**

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

**PREPARED BY**

Capital Valuation Group, Ltd.  
Darr L. Goss, MAI  
302 State Street, Suite 200  
P.O. Box 2108  
Salem, Oregon 97308-2108  
(503) 375-6494  
May 7, 2007

File # 270503a.rmh

May 7, 2007

Lane County  
Land Management Division  
125 East 8<sup>th</sup> Avenue  
Eugene, OR 97401

Dear Sir/Madam,

For use we have prepared a restricted use appraisal of the four EFU properties defined as follows: The subject property includes four tax lots totaling roughly 213.4 acres. The subject is identified by the Lane County Assessor's Office as summarized in the following table:

Ownership	Map	Tax Lot	Acres	Zone
Lemert James M. & Dorothy V.	160423	1001	8	EFU
Lemert James M. & Dorothy V.	160423	1101	8.62	EFU
Lemert James M. & Dorothy V.	160426	300	84.92	EFU
Lemert James M. & Dorothy V.	160426	500	111.86	EFU
Total			213.4	

This appraisal considers the possible effects of Measure 37 on the estimate of value of the subject parcel. Measure 37 amends ORS Chapter 197. The measure provides for just compensation for property value depreciation caused by land use regulation. In order to file a measure 37 claim the applicant must provide evidence for just compensation. The purpose of this appraisal is to provide said evidence. Just compensation is found by comparing the subject "as-is" to the subject "as-proposed", or with land use regulations waived. The difference between these two values will reflect a loss in value, which establishes the just compensation provided for in the measure. The subject owners have submitted a Measure 37 application. This report is provided as an additional exhibit to the Lemert Measure 37 claim. The subject's "as-is" use is rural farm. In this case the property owner has informed us of our "as-proposed" use. The subject owner wishes to obtain waivers to allow use equivalent to rural residential zoning on the subject parcels. ***Therefore our "as-proposed" value makes the extraordinary assumption that County regulations denying rural residential use are waived. This assumption may have affected the assignment results.***

The intended use of this appraisal is to determine market value of the subject parcels "as-is" and "as-proposed". Our "as-proposed" value will consist of a market value as if all of the subject parcels could be developed as rural residential properties. This appraisal is concerned with an estimate of value only. We have

not researched any other factors which may affect the legitimacy of a Measure 37 claim.

We have prepared our appraisal in a Restricted Summary format, which limits its use to a single client in this case the Lane County Land Management Division for purposes of identifying a diminution in value for a Measure 37 claim. This appraisal is not to be used for any other purpose. Background information and market data are not presented in detail, but remain in our file. The market value conclusion is in **fee-simple**, as of **May 7, 2007** and predicated on a one-year exposure period.

Methodology: The analysis uses comparable sales data provided by the property owner. It relies on comparable sales of EFU, E40 and E30 zoned land in the Junction City and Creswell areas between 2004 and 2006. The sales are compared with RR2, RR5 and RR10 sales located in the Eugene/Springfield areas and sold between 2004 and 2006. Our analysis relies on mass appraisal techniques using an average price per acre. Because of time and cost restraints no attempt was made to adjust for factors such as location, soils, irrigation, access, drainage, market conditions or time of sale. However, we believe our methodology provides an adequate depth of research and analysis for the intended use of this report. That is, this report shows a significant diminution of value between the "as-is" and "as-proposed" values of the subject.

This report has been prepared in conformance with the Uniform Standards of Professional Appraisal Practice as formulated by The Appraisal Foundation. Further, this report is prepared in conformance to the Appraisal Standards for Federally Related Transactions adopted by the Office of the Comptroller.

Please refer to the Assumptions and Limiting Conditions section of the attached report for an explanation of the basis on which the value conclusion is predicated. The signatory of this report is qualified by experience and education to competently appraise the subject property. The values reported in this appraisal are not contingent on the approval of a specific loan amount.

***Purpose, Function and Scope of Appraisal***

This is a Restricted Summary Appraisal Report, which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(c) of the Uniform Standards of Professional Appraisal Practice for a Summary Appraisal Report. As such, it presents only summary discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning, and analyses is retained in the appraiser's file. The depth of discussion contained in this report is specific to the needs of the client and for the intended use stated below. The appraiser is not responsible for unauthorized use of this report.

The scope of this appraisal involved no inspection of the subject parcels and limited research of current comparable sales provided to us by the subject owners.

<b>CLIENT:</b>	Lane County Land Management Division Eugene, OR 97401
<b>APPRAISER:</b>	Darr L. Goss, MAI Capital Valuation Group, Ltd. P.O. Box 2108 Salem, Oregon 97301
<b>SUBJECT:</b>	Measure 37 Application James M. & Dorothy V. Lemert Lane County, OR

**Purpose of the Appraisal:**

To estimate market value as defined by the Office of the Controller of the Currency under 12 CFR, Part 34, Subpart C.

**Intended Use of Report:**

The intended use of this report is for the sole purpose of assisting the client in roughly estimating a diminution in market value for a Measure 37 claim.

<b>Interest Valued:</b>	Fee simple
<b>Effective Date of Value:</b>	May 7, 2007
<b>Date of Report:</b>	May 7, 2007

**Appraisal Scope and Development Process:**

This is a Restricted Appraisal in that and the use is to assist the client in estimating a diminution of value. We believe this is an adequate scope for use by our client, and will deliver a credible and not misleading value.

It is the appraiser's opinion that a Restricted Format appraisal provides adequate scope to meet the needs of the client and will deliver a credible and not misleading estimate of value. The Cost and the Income Approach were not used as the subject parcels are not improved and are not typically purchased for their income producing capabilities. This Restricted Appraisal Report sets forth only the appraiser's conclusions. Supporting documentation is retained in the appraiser's file.

**Real Estate Appraised:**

Ownership	Map	Tax Lot	Acres	Zone
Lemert James M. & Dorothy V.	160423	1001	8	EFU
Lemert James M. & Dorothy V.	160423	1101	8.62	EFU
Lemert James M. & Dorothy V.	160426	300	84.92	EFU
Lemert James M. & Dorothy V.	160426	500	111.86	EFU
Total			213.4	

**Indicated Exposure Time:** 12 Months

**Estimated Marketing Time:** 10 to 14 Months

**Subject History:**

The subject parcels have not sold in the last three years.

***Sales Comparison Approach***

In valuing the subject by the Sales Comparison Approach, an analysis of comparable sales provided by the subject owners was made. The Sales Comparison Approach is most reliable when units of comparison can be made that consider an overall property type. Atypical or unusual properties require many adjustments, which decreases the reliability of the approach. The comparable properties analyzed are generally under the same use with similar sizes and zoning. The comparables provided by the owners and analyzed for this appraisal are contained in our work file.

**Real Property Value Calculation and Conclusion**

After analyzing the comparable EFU sales provided we have concluded an average price per acre "as-is" of \$3,500. After analyzing the comparable rural residential sales provided we have concluded a price per acre of \$34,000. This results in the following value conclusions:

Ownership	Map	Tax Lot	Acres	Zone	Value "As-Is"	Value "As-Proposed"
Lemert James M. & Dorothy V.	160423	1001	8	EFU	\$28,000	\$272,000
Lemert James M. & Dorothy V.	160423	1101	8.62	EFU	\$30,170	\$293,080
Lemert James M. & Dorothy V.	160426	300	84.92	EFU	\$297,220	\$2,887,280
Lemert James M. & Dorothy V.	160426	500	111.86	EFU	\$391,510	\$3,803,240
Total			213.4		\$746,900	\$7,255,600

This report is a restricted format, and as such, contains only our conclusions of market value both "as-is" and "as-proposed". We therefore conclude the subject property has a fee-simple rounded market value "as-is" as of May 7, 2007, of -

**SEVEN HUNDRED FORTY-SEVEN THOUSAND DOLLARS... \$747,000**

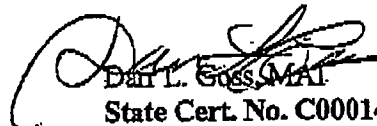
We also conclude that the subject property has a fee-simple rounded market value "as-proposed" as of May 7, 2007, of

**SEVEN MILLION TWO HUNDRED SIXTY THOUSAND DOLLARS... \$7,260,000**

**FINALLY WE ESTIMATE THE DIMINUTION IN VALUE AS \$6,513,000.**

Sincerely,

CAPITAL VALUATION GROUP

  
Dan L. Goss, MAI  
State Cert. No. C000149

***Assumptions and Limiting Conditions***

1. As agreed on with the client prior to the preparation of this appraisal, this is a limited appraisal because it invokes the Departure Provision of the Uniform Standards of Professional Appraisal Practice. As such, information pertinent to the valuation has not been considered and/or the full valuation process has not been applied. Depending on the type and degree of limitations, the reliability of the value conclusion provided herein may be reduced.
2. This is a limited restricted appraisal report which is intended to comply with the reporting requirements set forth under Standards Rule 2-2(c) of the Uniform Standards of Professional Appraisal Practice for a summary appraisal report. As such, it might not include full discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the appraiser's opinion of value. Supporting documentation concerning the data, reasoning, and analysis is retained in the appraiser's file. The information contained in this report is specific to the needs of the client and for the intended use stated in this report. The appraiser is not responsible for unauthorized use of this report.
3. No responsibility is assumed for legal or title considerations. Title to the property is assumed good and marketable unless otherwise stated in this report.
4. The property is appraised free and clear of any or all liens and encumbrances unless otherwise stated in this report.
5. Responsible ownership and competent property management are assumed unless otherwise stated in this report.
6. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy.
7. All engineering is assumed to be correct. Any plot plans and illustrative material in this report are included only to assist the reader in visualizing the property.
8. It is assumed that there are no hidden or unknown conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.
9. It is assumed that there is full compliance with all applicable federal, state, and local environmental regulations and laws unless otherwise stated in this report.
10. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless nonconformity has been stated, defined, and considered in this appraisal.
11. It is assumed that all required licenses, certificates of occupancy, or other legislative or administrative authority from any local, state, or national governmental or private entity or organization have been or can be obtained or renewed for any use on which the value estimates contained in this report are based.
12. Any sketch in this report may show approximate dimensions and is included to assist the reader in visualizing the property. Maps and exhibits found in



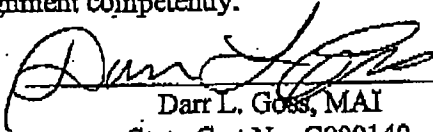
this report are provided for reader reference purposes only. No guarantees to accuracy is expressed or implied unless otherwise stated in this report. No survey has been made for the purpose of this report.

13. It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the property described and that there is no encroachment or trespass unless otherwise stated in this report.
14. The appraiser is not qualified to detect hazardous waste and/or toxic materials. Any comment by the appraiser that might suggest the possibility of the presence of such substances should not be taken as confirmation of the presence of hazardous waste and/or toxic materials. Such determination would require investigation by a qualified expert in the field of environmental assessment. The presence of substances such as asbestos, urea-formaldehyde foam insulation, or other potentially hazardous materials may affect the value of the property. The appraiser's value estimate is predicated on the assumption that there is no such material on or in the property that would cause a loss in value unless otherwise stated in this report. No responsibility is assumed for any environmental conditions, or for any expertise or engineering knowledge required to discover them. The appraiser's descriptions and resulting comments are the result of the routine observations made during the appraisal process.
15. Unless otherwise stated in this report, the subject property is appraised without a specific compliance survey having been conducted to determine if the property is or is not in conformance with the requirements of the Americans with Disabilities Act. The presence of architectural and communications barriers that are structural in nature that would restrict access by disabled individuals may adversely affect the property's value, marketability, or utility.
16. Any proposed improvements are assumed to be completed in a good workman-like manner in accordance with the submitted plans and specifications.
17. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
18. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraiser, and in any event, only with proper written qualification and only in its entirety.
19. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser, or the firm with which the appraiser is connected) shall be disseminated to the public through advertising, public relations, news, sales, or other media without the prior written consent and approval of the appraisal.

**Certification**

The undersigned does hereby certify that, except as otherwise noted in this appraisal report:

1. The statements of fact contained in this report are true and correct.
2. The reported analyses, opinions and conclusions are limited only by the reported assumptions and limiting conditions, and is my personal, unbiased professional analyses, opinions, and conclusions.
3. I have no present or prospective interest in the property that is the subject of this appraisal, and I have no personal interest or bias with respect to the parties involved.
4. My compensation is not contingent on an action or event resulting from the analyses, opinions, or conclusions in, or the use of this report.
5. My analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the requirements of the Code of Professional Ethics and the Standards of Professional Practice of the Appraisal Institute.
6. The use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives.
7. As of the date of this report, I, Darr L. Goss, have completed the requirements under the continuing education program of the Appraisal Institute.
8. I have not made a personal inspection of the property that is the subject of this report. I have not inspected the exterior of all comparables used in this report.
9. Randy Heater (AA01477) provided significant professional assistance to the person signing the report.
10. I do not authorize the out-of-context quoting from or partial reprinting of this appraisal report. Further, neither all nor any part of this appraisal report shall be disseminated to the general public by the use of media for public communication without my prior written consent.
11. This appraisal is prepared in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP") as promulgated by the Appraisal Standards Board of the Appraisal Foundation.
12. My engagement was not conditioned upon the appraisal producing a specific value or a value within a given range. Future employment is not dependent upon reporting a specified value. Neither employment nor compensation is dependent upon the approval of a loan application.
13. I have acquired through study and practice the necessary knowledge and experience to complete this assignment competently.

  
Darr L. Goss, MAI  
State Cert No. C000149

## **Measure 37 Application Lane County, Oregon**

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**Capital Valuation Group, Ltd.** has been serving the northwest since 1974 under various business names. The firm concentrates on complex commercial, industrial, multi-family and rural valuation assignments. A partial list of clients includes:

### **Governmental**

Bonneville Power Administration  
City of Albany  
City of Coos Bay  
City of Corvallis  
City of Eugene  
City of Lincoln City  
City of Salem  
City of Silverton  
City of Woodburn  
Douglas County  
FDIC  
Federal Home Loan Bank - 12th Dist.  
FSLIC  
GSA - State of Oregon  
Klamath County  
Lane County  
Marion County  
Military Department - State of Oregon  
Oregon Dept. of Transportation  
Port of Portland  
Salem/Keizer School District  
U.S. Army Corps of Engineers  
U.S. Dept. of Interior  
Woodburn School District

### **Financial**

American Savings & Loan (FCA)  
American Federal Savings  
Bank of California  
Benj. Franklin  
Church Extension Plan  
Family Federal Savings  
First Federal, Coeur d'Alene  
First Federal, Longview  
First Federal, McMinnville  
First Interstate Bank  
Freedom Federal Savings  
Harvest Capital Company  
Key Bank of Oregon  
Old National Financial  
Pioneer Trust Bank, N.A.

Rainier Bank  
Seafirst R.E. Group  
The Oregon Bank  
U.S. National Bank of Oregon  
United Savings Bank  
Vancouver Federal  
Washington Mutual S.B.  
Western Bank  
Western Security Bank  
Willamette Savings

### **Insurance**

Mutual of Enumclaw  
Oregon Mutual  
Pacific Mutual  
St. Paul Fire & Marine

### **Medical**

Killen Enterprises  
Medical Properties  
Oak St. Medical Center  
Physicians Building  
Salem Hospital

### **General**

Capital Consultants  
Capitol Auto World  
Chevron, USA  
First American Title  
Keller Enterprises  
Microfect, Inc.  
Moyer Theaters  
Nalley's of Canada  
Nippon Kokan K.K.  
Owens-Corning Fiberglas  
Pacific Petroleum  
PGE  
Schnitzer Investment  
Valley Rolling Mills  
Walter West Construction

### ***Qualifications***

## **Measure 37 Application Lane County, Oregon**

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**Darr L. Goss** is President of the commercial real estate firm, Capital Valuation Group, Ltd. Following graduation from the University of Oregon he served with the U.S. Air Force retiring as a Colonel in 1979. Mr. Goss is a FAA certified Airline Transport Pilot and Instrument Flight Instructor. He worked for the Coldwell Banker organization as a sales consultant licensed in Virginia and Washington, DC. He then returned to Oregon as the real estate manager for Beri, Inc. of Salem managing a portfolio of shopping centers and office buildings in Oregon and Washington. Next he became a broker for the Commercial Division of Grabenhorst Bros. Realtors of Salem handling tracts of urban, farm and timber lands. He currently appraises for government agencies, lending institutions and private individuals specializing in complex valuation analysis.

### **PROFESSIONAL AFFILIATIONS**

American Institute of Real Estate Appraisers - Designated MAI (No. 8355), 1989  
State of Oregon, Certified Appraiser #C000149  
State of Nevada, Certified Appraiser #03187  
State of Washington, Certified Appraiser #1100327  
State of California, Certified Appraiser #AG028546  
Oregon Chapter, American Planning Association  
Oregon Society of Farm Managers and Rural Appraisers  
Licensed Oregon Real Estate Broker  
Salem Economic Development Corporation  
Agri-Business Council  
Salem Area Chamber of Commerce  
Oregon Better Business Bureau

### **COMMUNITY**

Commissioner - Salem Planning Commission, 1986-1995;  
Commissioner - Capitol Planning Commission, 1990 – 1995;  
Board Member - American Pacific Bank, 1981-1987.

### **EDUCATION**

**University of Oregon:** Baccalaureate in Philosophy, Liberal Arts; **Bureau of Governmental Research and Service,** Planning Commissioner Training Program; **George Washington University,** Master of Science, Public Administration; **Duke University,** School of Forestry: Forest Appraisal; **American Institute of Real Estate Appraisers:** Appraisal of Income Property; Rural Valuation; Industrial Valuation; **University of Virginia:** Construction Cost Estimating; **Arlington (Virginia)** **Distributive Education:** Real Estate Counseling; Architecture and Construction; Land Usage and Development; **Chatham Educational Corporation:** The Art of Real Estate Counseling **Society of Industrial Realtors:** Industrial Real Estate; Industrial Valuation; **American Business Consultants, Inc.:** Business Opportunity Appraising; **Coldwell Banker Corporation,** Washington, DC: Sales Development Course; **Chemeketa Community College:** Zoning, Subdivision, and Community Planning; Agriculture Economics; Silviculture; Forest Mensuration; Oregon Soils; Soil Mechanics; Irrigation and Drainage.

### **EXPERIENCE**

Oregon State licensed real property Broker/Appraiser since 1980 specializing in commercial/industrial and rural properties. Currently serving clients as President of Capital Valuation Group, Ltd.

*Qualifications*