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Public notice was given by telephone  
to media on the District's mailing  
list on August 18, 1988.

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**LANE TRANSIT DISTRICT  
EMERGENCY BOARD MEETING**

August 19, 1988

7:30 a.m.

LTD Conference Room  
1938 West Eighth Avenue  
Eugene

**A G E N D A**

- I. CALL TO ORDER
  
- II. ROLL CALL  
Calvert\_\_\_\_\_ Eberly\_\_\_\_\_ Parks\_\_\_\_\_ Pusateri\_\_\_\_\_  
Runyan\_\_\_\_\_ Smith\_\_\_\_\_ Brandt\_\_\_\_\_
  
- III. INTRODUCTORY REMARKS BY BOARD PRESIDENT
  
- IV. AUDIENCE PARTICIPATION
  
- V. EXECUTIVE SESSION PURSUANT TO ORS 192.660(1)(e), to conduct deliberations with persons designated by the governing body to negotiate real property transactions; and pursuant to ORS 192.660(1)(h), to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.
  
- VI. BOARD DELIBERATION
  
- VII. ADJOURNMENT



## BRYSON &amp; BRYSON

ATTORNEYS AT LAW

1565 OAK STREET

EUGENE, OREGON 97401

TELEPHONE (503) 687-1333

August 10, 1988

James and Patricia Spicer  
c/o Thomas Hoyt  
Hoyt, Gaydos and Churnside  
975 Oak Street, Suite 700  
Eugene, OR 97401

Dear Mr. and Mrs. Spicer:

We have received your letter of August 2, 1988, and have forwarded copies to members of the Lane Transit District Board of Directors.

Your August 2 letter included a counter offer of \$1.725 per square foot for the land (approximately \$386,000 for the 5.1431 acres), plus reimbursement for your costs and fees. District staff, negotiator Clayton Walker and I have discussed and evaluated this counter offer and determined that it is unacceptable.

The District made a compromise offer of \$280,000 for your property on July 22, 1988. Assuming a nine percent interest rate, this offer is equivalent to approximately \$255,000 at the date of the taking. This offer is significantly higher than the District's appraisals, and was intended to result directly in a settlement. It was not intended as the next step in a series of steps toward a compromise settlement.

The District has had several experts evaluate your contention that the property is a viable commercial site, and the appraisers have evaluated the comparable sales you mentioned in your deposition. After this re-evaluation, the District remains convinced that the \$189,729 offer is a fair market value for the property. If you have any additional evidence to justify a higher value, the District would be more than willing to consider it.

Currently, the District's offer for the property is \$189,729 (The \$280,000 offer expired on August 1, 1988). Any settlement

in excess of the \$189,729 would require approval by the LTD Board of Directors. Since there is not a board meeting scheduled between now and the start of the trial, a special emergency board meeting would have to be held, if board approval of a settlement in excess of \$189,729 is desired. There are logistic problems in scheduling such a meeting and making sure that a quorum is present. Thus, it may not be possible to accommodate a settlement at the last moment.

Nonetheless, I would like to emphasize that it is the District's strong preference that a settlement on the purchase price of the property be reached and that further litigation be avoided.

This letter is prepared in furtherance of our effort to reach a compromise settlement and is not to be brought to the attention of the jury in any way.

I look forward to continued communication on this issue.

Sincerely,

Richard Bryson  
Bryson & Bryson

RB:ve

cc: Clayton Walker  
Stefano Viggiano

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August 2, 1988

Janet Calvert  
Janice Eberly  
Gus Pusateri  
Keith Parks  
Richard Smith  
Peter Brandt  
c/o Richard Bryson  
Bryson & Bryson  
1565 Oak Street  
Eugene, OR 97401

Dear LTD Board Members:

During depositions on July 25 and 26 we confirmed our previous belief that the appraisers you relied upon in attempting to determine the fair market value of our property ignored material facts and made false assumptions. We requested an opportunity to talk to you directly so you could evaluate our evidence before the valuation question is put in the hands of a jury. Mr. Bryson has advised our attorney that our request was rejected. Our disappointment continues.

You have destroyed our Glenwood heritage. The property you condemned has been in our family since 1934. Jim started living on the property when he was a week old. We have held the property in farm deferral in anticipation we could successfully develop it for a commercial-industrial use once annexation to Eugene occurred. Through developing the property and leasing the developed parcels to long term tenants, we would have successfully continued the Glenwood legacy for our two sons that was originated by Jim's parents. That is now no longer possible.

Mr. Bryson has continuously asked about the expert witnesses we would produce at trial to substantiate our opinions. We were prepared to bring one of those witnesses with us when we told you our side of the story.

The \$280,000.00 you offered us barely covers the interest we have already earned on the deposited money and our professional fees, deposition costs and court costs. If you allocate the entire \$280,000.00 to the land, it equates to approximately \$1.25 per square foot. We believe that we can prove to the jury that the property was worth \$2.20 per square foot.




August 2, 1988

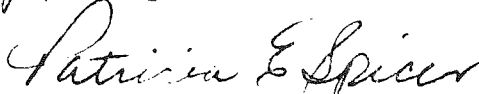
Page Two

We would very much like to tell you first hand our side of the story. If that is not possible, we request that at a minimum, you authorize your "negotiators" to split the difference between \$1.25 per square foot and \$2.20 per square foot with us and reimburse us for all of our fees and costs. The \$500,000.00 that you deposited in an interest bearing account a year ago when you took possession of our property can easily cover this compromise.

This offer to meet with you and to split the difference between \$2.20 per square foot and \$1.25 per square foot plus reimbursement of all fees and costs is made in the spirit of compromise and is not to be shared with the jury. These offers will expire on August 15, 1988.

Yours truly,

  
\_\_\_\_\_  
James I. Spicer

  
\_\_\_\_\_  
Patricia E. Spicer

cc: Thoms H. Hoyt





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Public notice was given by telephone  
to media on the District's mailing  
list on August 24, 1988.

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LANE TRANSIT DISTRICT  
EMERGENCY BOARD MEETING

August 24, 1988

7:00 p.m.

Municipal Courtroom #1  
Eugene City Hall

A G E N D A

- I. CALL TO ORDER
- II. ROLL CALL  
Brandt\_\_\_\_\_ Calvert\_\_\_\_\_ Eberly\_\_\_\_\_ Parks\_\_\_\_\_  
Pusateri\_\_\_\_\_ Runyan\_\_\_\_\_ Smith\_\_\_\_\_
- III. INTRODUCTORY REMARKS BY BOARD PRESIDENT
- IV. AUDIENCE PARTICIPATION
- V. EXECUTIVE SESSION PURSUANT TO ORS 192.660(1)(e), to conduct deliberations with persons designated by the governing body to negotiate real property transactions; and pursuant to ORS 192.660(1)(h), to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.
- VI. BOARD DELIBERATION
- VII. ADJOURNMENT



1 IN THE CIRCUIT COURT OF THE STATE OF OREGON

2 FOR THE COUNTY OF LANE

3 LANE TRANSIT DISTRICT, )  
4 Plaintiff, ) Case No. 16-87-05204  
5 vs. )  
6 JAMES I. SPICER and PATRICIA E. ) DEFENDANTS SPICERS'  
7 SPICER, husband and wife, ) TRIAL BRIEF  
8 et al, )  
9 Defendants. )

10 Defendants have elected to proceed first under ORS 35.305.  
11 Defendants' counsel intends to call five witnesses during  
12 defendant's case in chief. Additional witnesses may be called  
13 during defendant's rebuttal of the evidence offered by plaintiff.  
14 The four witnesses that will testify during defendants' case in  
15 chief are David J. Pedersen, Steve Romania, James Spicer, Eugene  
16 Schaudt and Patricia Spicer.

17 DAVID J. PEDERSEN

18 David J. Pedersen is a planning consultant. He will testify  
19 that as of the date of taking, June, 1987, there was a good  
20 chance of successfully pursuing a plan amendment and zone change  
21 for the Spicer property upgrading it to commercial from industrial.

22 STEVE ROMANIA

23 Steve Romania will testify that he has managed a two acre  
24 parcel of family owned property which fronts on Franklin  
25 Boulevard and abuts Spicer's property at the back. Mr. Romania  
26 is competent to testify because opinion evidence as to the value



1 of property taken in a condemnation case is not restricted to  
2 testimony from owners or expert witnesses. Testimony as to value  
3 of condemned land is usually admitted from witnesses who are not  
4 experts by skill, training or education, but who have either  
5 owned land nearby the subject property for a sufficient length of  
6 time or have bought or sold comparable properties in the same  
7 locale as the subject so as to be familiar with factors that make  
8 up the market value of land. See 5 Nichols, Law of Eminent  
9 Domain, §18.4[4] (3d ed 1985); ORE Rule 701.

10 Mr. Romania will tell the jury that in June of 1987 he  
11 conducted a comprehensive search for five to six acres of  
12 property with commercial potential and freeway access onto which  
13 he could move the Romania RV Motor Home dealership. Through  
14 involvement with family ownership of the two acres abutting the  
15 Spicer property and negotiating to purchase a larger parcel in  
16 Glenwood on which the RV dealership could be moved, Mr. Romania  
17 developed a comprehensive knowledge and opinion as to the value  
18 of property in Glenwood, including the Spicer condemned property.  
19 He will testify that such property had a cash fair market value  
20 in June of 1987 of \$100,000.00 per acre or approximately \$2.29  
21 per square foot.

22 Mr. Romania will also testify that he recently agreed to  
23 purchase 6.2 acres between Goodpasture Island Road and Delta  
24 Highway for \$4.44 per square foot (\$5.00 per usable square foot).

25 JAMES SPICER

26 James Spicer will testify that no one knows more about the



1 property condemned than him. It was owned by his parents when he  
2 was born and he spent his entire life living on and/or working  
3 the property until LTD condemned it.

4 Plaintiff will attempt to discredit the Spicers' opinion as  
5 to value because they have elected not to call an MAI appraiser  
6 as they present their case in chief. An owner is competent to  
7 testify as to the value of the condemned property. Such owners'  
8 testimony may include an opinion as to the land's value at its  
9 highest and best use where the owner has knowledge of the  
10 property and its potential uses; has familiarity with adjacent  
11 properties; and has knowledge regarding the sales price of  
12 comparable properties. Junc. City Water Control v. Patterson,  
13 8 Or App 107, 112, 493 P2d 76, 78 (1976); (ORE Rule 701).

14 Mr. Spicer will testify that he has researched the market for  
15 comparable industrial and commercial sales. Although no two  
16 parcels of property are identical, he will present his analysis  
17 of relevant sales that range in value from \$1.70 per square foot  
18 to \$5.93 per square foot. It will be up to the jury to weigh the  
19 testimony of all the witnesses in determining the value of the  
20 property taken and the damage to the two remnants left by the  
21 taking.

22 The plaintiff's appraisers, Mr. Lau and Mr. Knox, did not  
23 assume the Spicer property had commercial potential on the date  
24 it was taken and they deny remnant damage, notwithstanding the  
25 .79 acre remnant now has no sewer and the tool of farm deferral  
26 is no longer practical for the three acre remnant south of 17th





1 Avenue. Appraisals based upon erroneous assumptions make the  
2 appraisals unreliable.

3 James Spicer will testify that prior to the LTD taking, sewer  
4 abutted his property on the west subject only to an old sewer  
5 assessment of \$8,587.32 allocated over all of his property. The  
6 .79 acre remnant to the north has been de-valued after the taking  
7 because of the additional cost of bringing sewer to it. This  
8 depreciation in cash fair market value is recoverable as a  
9 severance damage. State Highway Comm. v. Hooper, 259 Or 555  
10 (560), 488 P2d 7421 (1971).

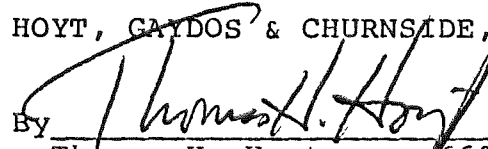
11 EUGENE SCHAUDT

12 Eugene Schaudt is a licensed engineer and he will testify as  
13 to the precise damages to the .79 acre remnant because it no  
14 longer is served by sewer.

15 PATRICIA SPICER

16 Patricia Spicer will testify about the loss of the farm  
17 deferral tool on the property south of 17th Avenue. She will  
18 provide evidence that \$9,296.00 of deferred taxes are due as a  
19 result of not farming the property. She will also state that  
20 such sum would be exonerated as a lien against the property five  
21 years hence under ORS 308.395(1).

22 HOYT, GAYDOS & CHURNSIDE, P.C.

23 By   
24 Thomas H. Hoyt 66066  
25 Of Attorney for Defendants Spicer  
26



1 IN THE CIRCUIT COURT OF THE STATE OF OREGON

2 FOR THE COUNTY OF LANE

3 LANE TRANSIT DISTRICT, )  
4 Plaintiff, ) Case No. 16-87-05204  
5 vs. )  
6 JAMES I. SPICER and PATRICIA E. ) SETTLEMENT DISCUSSIONS  
7 SPICER, husband and wife, )  
8 et al, )  
9 Defendants. )

10 On February 23, 1987 plaintiff offered \$215,446.00 (96¢ per  
11 square foot) to the Spicers for the property condemned and  
12 contended that there was no damage to the remnants left by the  
13 condemnation.

14 On July 27, 1987 the court pursuant to stipulation of counsel  
15 entered an order directing that \$215,500.00 be placed by the  
16 clerk in a special interest bearing escrow account maintained by  
17 the State Treasurer and held for the benefit of defendants  
18 Spicers and that an additional \$284,500.00 be deposited with the  
19 state and local government investment pool. A copy of that Order  
20 is attached hereto as Exhibit "A" and by this reference expressly  
21 incorporated herein.

22 On August 3, 1987 defendants Spicers filed an Answer,  
23 Affirmative Defense and Counterclaims contending that the true  
24 value of the property taken was \$492,500.00 (\$2.20 per square  
25 foot) and that they were entitled to interest on such amount plus  
26 damages to the two remaining remnant parcels and professional fees.

THE CITIZENS BUILDING  
875 OAK STREET, SUITE 700  
EUGENE, OREGON 97401  
(503) 485-5151



1           On June 22, 1988 plaintiff reduced its February 23, 1987  
2 offer to \$189,729.00.

3           On July 20, 1988 plaintiff offered \$280,000.00 which included  
4 interest from the date of taking for a Deed to the real property  
5 described in plaintiff's Complaint and a dismissal of defendants'  
6 counterclaims. No mention was made of remnant damage or  
7 defendants' professional fees and it was not possible to  
8 accurately allocate a price per square foot to the offer. If the  
9 entire \$280,000.00 was to be allocated to the property taken,  
10 excluding interest, remnant damage and professional fees, the  
11 offer would equate to \$1.25 per square foot.

12           On August 2, 1988, following two days of depositions, the  
13 Spicers rejected the \$280,000.00 offer because it barely covered  
14 the interest already earned on the deposited money and  
15 professional fees, deposition costs and court costs incurred. In  
16 the spirit of compromise Spicers offered \$1.72½ per square foot  
17 plus interest, remnant damage and professional fees.

18           On August 10, 1988 plaintiff rejected defendants' offer and  
19 returned to its \$189,729.00 position.

20           Defendants' counsel insisted upon an opportunity for Spicers  
21 to address the LTD board and they did so on Friday, August 19,  
22 1988. At that time Spicers reduced their offer to \$1.58 per  
23 square foot plus interest, remnant damage and professional fees.  
24 Assuming 14 months' interest at 9%, \$45,000.00 remnant damage and  
25 \$40,000.00 in professional fees, Mr. Bryson calculated such offer  
26 to total \$476,140.00.



1 On August 19 plaintiff reinstated its \$280,000.00 offer and  
2 offered an easement to connect to plaintiff's interior sewer  
3 line. The sewer hookup was valued by plaintiff at \$25,000.00  
4 bringing its offer up to \$305,000.00.

5 The parties are now \$171,140.00 apart. These figures ignore  
6 \$8,106.00 estimated moving expenses and \$22,000.00 in construc-  
7 tion costs incurred to avoid interim storage charges when Spicers  
8 were forced to vacate their property.

9 Respectfully submitted,

10 HOYT, GAYDOS & CHURNSIDE, P.C.

11 By 

12 Thomas H. Hoyt 66066

13 Of Attorney for Defendants Spicers  
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IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR LANE COUNTY

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LANE TRANSIT DISTRICT, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
JAMES I. SPICER and )  
PATRICIA E. SPICER, husband )  
and wife; J. I. CASE COMPANY, )  
and CHRIS SCHOAP, )  
 )  
Defendants. )

Case No. 16-87-05240

ORDER ALLOWING PLAINTIFF  
TO TAKE POSSESSION OF  
REAL PROPERTY

11 Pursuant to the stipulation of the undersigned Lane Transit  
12 District, plaintiff, and James I. and Patricia E. Spicer,  
13 defendants, resulting from the June 17, 1987, Order to Show Cause  
14 on file herein, it is hereby ordered that:

15 1

16 The \$215,500.00 deposit made by plaintiff shall be placed by  
17 the Clerk in a special interest bearing escrow account maintained  
18 by the State Treasurer and held for the benefit of defendants  
19 Spicer, such sum together with interest thereon to be disbursed  
20 only in accordance with further orders of this Court.

21 2

22 On or before July 31, 1987, the additional sum of \$284,500.00  
23 shall be deposited with the State and Local Government Investment  
24 Pool in accordance with the agreement attached hereto as Exhibit  
25 "A" and by this reference incorporated herein, such sum together  
26 with interest thereon to be disbursed only in accordance with



1 further orders of this Court.

2 3

3 On August 3, 1987, plaintiff shall be and it is hereby  
4 allowed to take possession of the real property described on  
5 Exhibit "B" attached hereto.

6 4

7 The existence and amount of the deposit referred to in  
8 paragraph 2 above shall not be brought to the notice of the jury  
9 in the trial of this case.

10 DATED this 27<sup>th</sup> day of July, 1987.

11 (S) George H. Woodcock  
12 Gregory G. Foote - George H. Woodcock  
13 Circuit Court Judge

14 Plaintiff Lane Transit District stipulates to the above Order.

15 BRYSON & BRYSON

16 Dated: July 22, 1987

17 By Richard Bryson  
18 Richard Bryson OSB # 41005  
Of Attorneys for Plaintiff

19 Defendants James I. and Patricia E. Spicer stipulate to the above  
20 Order.

21 HOYT, CLYDQS & CHURNSIDE, P.C.

22 Dated: July 27, 1987

23 By Thomas H. Hoyt  
24 Thomas H. Hoyt OSB # 66066  
25 Of Attorney for Defendants  
26 James I. and Patricia E. Spicer

Pa 2 - ORDER ALLOWING PLAINTIFF TO TAKE  
POSSESSION OF REAL PROPERTY.

EXHIBIT A  
Page 2 of 3



AGREEMENT

Lane Transit District and James I. and Patricia E. Spicer agree that on or before July 31, 1987, Lane Transit District will deposit with State and Local Government Investment Pool the sum of \$284,500.00 to provide a source of funds for compensating Spicers to the extent any sums ultimately awarded to them in Lane County Circuit Court condemnation Case No. 16-87-05204 exceeds the \$215,500.00 paid into Court by Lane Transit District when it filed its condemnation complaint. The parties agree that such \$284,500.00, together with all interest thereon, may only be withdrawn from such account upon further order of the Lane County Circuit Court in Case No. 16-87-05204.

LANE TRANSIT DISTRICT

Date: \_\_\_\_\_

By Richard Bryson  
Richard Bryson 41005  
Of its Attorneys

JAMES I. AND PATRICIA E. SPICER

Date: 7-27-87

By Thomas H. Hoyt  
Thomas H. Hoyt 60026

ACCEPTED:

Date: \_\_\_\_\_

STATE AND LOCAL GOVERNMENT INVESTMENT POOL

By \_\_\_\_\_  
Its \_\_\_\_\_

EXHIBIT A.

EXHIBIT A  
Page 3 of 3

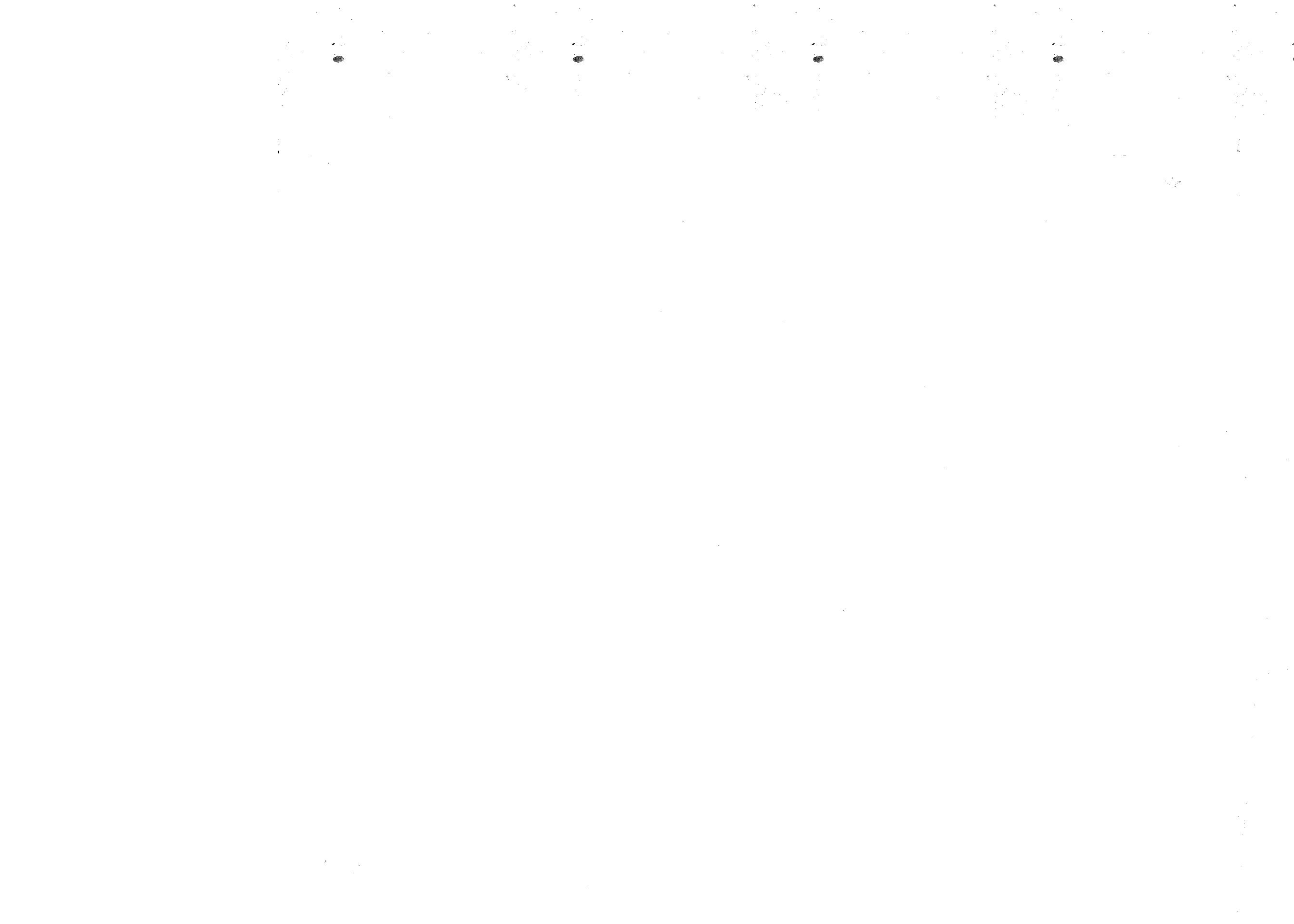


5.1431 acres X 43,560 = 224,033.24 - Sq. ft. taken

224,033.24 x \$ .96 per sq. ft. = \$ 215,071.91

224,033.24 x \$ 1.58 per sq. ft. = \$ 353,972.51

224,033.24 x \$ 2.20 per sq. ft. = \$ 492,873.12





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SETTLEMENT OFFER

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224,033.24 x \$1.58 \$ 353,972.51

9% annual interest on \$353,972.51  
from 6-17-87 to 8-24-88  
\$87.28 per day x 433 days 37,792.63

Remnant Damage - Sewer 22,712.18

Remnant Damage - Farm Deferral 9,296.10

Professional Fees and Expenses 44,367.19

8-24-88 Total Settlement Offer \$ 468,140.61



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Calculation for Remnant Damage - Sewer:

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Schaudt's per sq. ft. cost of bringing  
sewer to Remnant  
Divided by total sq. ft. in .79 acres  $\div \frac{\$ 23,790.00}{34,412.4} = \$ .69$

\$ .69 per sq. ft.

less .03 per sq. ft. attributable to  
\$8,587.32 sewer assessment

\$ .66 x 34,412.4 = \$ 22,712.18 sewer  
Remnant Damage

