

December 13, 2010

Special Agent Jason Legg  
Tennessee Bureau of Investigation  
1000 England Drive, Suite D  
Cookeville, Tennessee 38501

RE: Investigation of Tellico Properties, Rarity Communities, Assurance Title  
Co., and the Loudon County Property Assessor's Office  
TBI File No. CV-57A-000007

Dear Special Agent Legg:

For reasons hereinafter stated, and after a complete review and consideration of the above referenced investigative report, including all attendant documents, exhibits, and evidence, as well as applicable Tennessee law, I have made a decision not to proceed with any prosecution of the subjects of the investigation, Doyle Arp, Mike Ross, or Tracy Riedl, related to the downward tax valuation by Arp (then Loudon County Assessor) of certain Rarity Bay parcels owned by the above named companies associated with Ross in 2005, or the changes in affidavits of consideration/value made to certain deed transactions by Riedl. This was the limitation and scope of my review and consideration of the matter as the District Attorney General *Pro Tem*. I apologize for the delay in making a final charging decision and disposition in this matter, as I know that this investigation is of great interest to the citizens of Loudon County. However, as you know, the TBI investigative case file is voluminous, and contains numerous real estate and tax records which I had to thoroughly and painstakingly review in order to understand the entirety of the evidence collected in this case, and to make a decision on such complex and unusual criminal issues. A brief summary of the results of the investigation, as well as a chronology of my activity therein as special prosecutor is recited hereafter to document the basis for my decision.

This investigation covered and examined allegedly suspicious transactions in February, 2004 and thereafter, between Tellico Lake Properties, LP, and various alleged agents of Mike Ross, a property developer with principal ownership interests in Rarity Communities developments, for lots in one of the Rarity Communities known as Rarity Bay. Rarity Bay can fairly be described as a planned development of upscale and custom estate homes in a private setting, with waterfront, golf course, and luxury condominium lots located on Lake Tellico in Loudon County, Tennessee. Located on a 960-acre peninsula with picturesque views of the lake and the Smoky Mountains, Rarity Bay homesite building lots are generally priced from as low as \$100,000.00, to over \$1.5 million. As part of my due diligence in carrying out my duties as a special prosecutor in this matter, I made an onsite visit to view the Rarity Bay development property in question, and found it to be a stunningly beautiful and impressive community which is a

true asset to Loudon County, and which should also generate significant property tax revenue for the county.

It is alleged that during or immediately after these various real estate transactions in 2004, the affidavit of value on the warranty deeds was changed or corrected by Tracy Riedl, a sales associate with Assurance Title, which is a title company owned and/or controlled by Mike Ross/Rarity Communities. A review of the warranty deeds in question reveals that in each transaction, the original value amount recorded was “xxed out”, and a different, higher value was noted on the affidavit of value. T.C.A. §67-4-409(a)(1) and (a)(6) provide for a tax to be assessed and paid for the privilege of having a transfer of real property recorded in the county Register’s office. Commonly known and referred to as a “transfer tax”, “privilege tax”, or “recordation tax”, the state law requires that upon the transfer of any real estate, the tax shall be paid by the grantee or transferee, and the same shall be based upon the actual consideration for the transfer/sale, or the fair market value of the property, whichever is greater. For purposes of the above statute, “value of the property” is defined as the amount that the property transferred would command at a fair and voluntary sale. The statute further provides that the grantee or the grantee’s agent shall be required to state under oath upon the face of the instrument offered for recording the actual consideration or the fair market value of the property transferred, whichever is greater. Also, the making under oath of any false statement known to be false respecting the consideration or value of property transferred shall be classified and punishable as perjury, for criminal prosecution purposes. Upon questioning, Riedl admitted that she changed or corrected the amounts on the affidavits of value in the deeds in question, because the higher amount reflected the true market value of the property, despite the lower actual sales price. Riedl denied any knowledge of the reason the subject properties were sold at such a deep discount, and suggested that there could have been a “side agreement” between the parties. This practice led to the suspicion that market values or sales prices for the properties were being artificially inflated to establish a historical basis for future sales at higher prices, when in reality, the actual consideration paid for the transaction was well below true market value. It is notable that all of the warranty deeds with corrected affidavits of value reflected thereon were properly and timely recorded in the Loudon County Register’s Office, and were therefore matters of public record open to inspection. While it is unusual for these corrections to occur with such frequency as to related properties and developers, it is unclear whether the correction of the affidavit of value constituted a false statement regarding the greater of the consideration vs. value. To the contrary, it appears that Riedl’s corrected amounts more accurately reflected the higher market value than actual consideration paid for the property. The relevance of this practice will be seen in the following discussion of the other alleged suspicious activity regarding tax appraisals and downward valuation of Ross/Rarity properties by the former Loudon County Assessor and current Loudon County Mayor, Doyle Arp.

Pursuant to T.C.A. §67-5-504, the county Assessor of Property is required to make assessments of all property in the county no later than May 20 of each year. Pursuant to T.C.A. §67-5-508, prior to May 20, the assessor is required to note upon his records the current classification and assessed valuation of all taxable property within his jurisdiction, and such records of the same shall be make available for public inspection.

Additionally, pursuant to the above statute, any notation of a change of classification or assessed valuation shall be preserved and maintained in the records of the assessor for not less than two (2) years. After May 20, the assessor's authority to change assessments is limited to obvious clerical mistakes, pursuant to T.C.A. §67-5-509. See also Attorney General Opinion No. 07-37 (March 26, 2007), a copy of which is enclosed herein.

The allegations regarding Doyle Arp involve his activity in his official capacity as the Loudon County Tax Assessor during the latter part of 2004, and the first six months of 2005, during which the 2005 reappraisal process was ongoing in Loudon County. During late 2004 and early 2005, it is alleged that Mr. Arp authorized and caused the downward property valuation for reassessment purposes of over 200 parcels of property owned or controlled by Ross/Rarity Communities in the Rarity Bay development, to the exclusion of other privately owned parcels in the same development. Allegedly, Arp and/or one of his employees physically pulled and manually marked out the reappraised value and entered a lower value on each card, with no notation or entry providing for a reason or justification for the reduction in assessed value. The new lower valuation for tax assessment purposes was then entered into a county tax computer database, and the marked-up original cards were then ordered by Arp to be destroyed, which is contrary to office procedure and state law. The vast majority of downward valuations were entered into the computer database on May 4 and May 5, 2005, just prior to the May 20 deadline for making changes to assessments pursuant to state law. According to later review and calculation by current Loudon County Assessor Chuck Jenkins, the devaluation of these Rarity Bay parcels owned or controlled by Ross represented more than \$11 million in total appraised value, and more than \$150,000.00 in lost tax revenue for the county. Likewise, Ross and the companies controlled by him avoided tax consequences on those parcels to that same extent. Since other private property owners in the same development did not receive the same or similar downward valuations by Arp, there was suspicion that Ross had received an unfair tax benefit. When coupled with the above allegations regarding Riedl's corrected affidavits of value, this created an alleged scheme whereby Ross was suspected to have illegally benefitted from the artificial inflation of property values to generate future sales at higher prices, while at the same time benefitting from lowered property valuations of the same lots for tax assessment purposes.

It is unclear from the investigation the exact reason or justification for Arp's downward valuation of Ross' Rarity Bay parcels during that time. However, upon conferring with the Tennessee Comptroller of the Treasury Division of Property Assessments, this practice is known as "developer discounting", and refers to a once accepted practice of property assessors recognizing the unique position of developers who hold multiple lots in inventory with the expectation of selling them for the listed prices over time, and the realities of the marketplace which would discount their value as a group until actual sale. Although I cannot determine that such deliberate under-appraisal to recognize developers as a unique class to be favored with lower tax appraisals on multiple lots is violative of any criminal law, the practice is now strongly discouraged by state officials as discriminatory. It is also unclear what personal or other benefit attenuating to Arp would have motivated his preferential or bad faith devaluation of the subject parcels as Loudon County Assessor. There is no evidence to suggest that Arp in any way benefitted

financially from such alleged favoritism in the exercise of his duties and discretion to set appraised values as assessor. However, and perhaps coincidentally, the investigation did reveal that sometime in early 2005, Rick Arp, son of subject Doyle Arp, was hired as a sales associate/realtor for Rarity Communities. But, as indicated in your investigative findings, there is no evidence that Rick Arp was hired based upon any actions taken by this father in his official capacity as Loudon County Property Assessor.

In August, 2006, Doyle Arp was elected to serve as the Loudon County Mayor. Thereafter, in September, 2006, the Loudon County Commission appointed former county commissioner Chuck Jenkins to fill the vacancy in the Tax Assessor position created by Arp's election to mayor. According to Jenkins, he discovered the alleged developer discounting by Arp in February, 2008, and after consulting with state officials, began to reverse the downward valuations of the affected Rarity Bay parcels and reinstate the original 2005 reappraisal values for the 2008 tax year. However, the suspicions and allegations of possible wrongdoing by Arp, Ross, and Riedl were not publicly revealed until the same was released on a local political website and blog just before the August, 2008 midterm election cycle, in which Jenkins was a candidate for the Assessor's position which he had held for two years by appointment. Thereafter, on October 9, 2008, upon request from Russell Johnson, District Attorney General for the 9<sup>th</sup> Judicial District, the Tennessee Bureau of Investigation (TBI) began an investigation into all of these allegations to determine whether there had been any violation of criminal law with regard to the developer discounting as well as the corrected values on deeds leading to the above-described real estate sales scheme. I want to thank and commend you and your agency for such a diligent and thorough investigation of this complex matter, in which you questioned multiple witnesses and subpoenaed multiple volumes of tax, deed, and real estate transaction documents for my review and consideration.

The final TBI investigative report was completed in December, 2009, and turned over to General Johnson for consideration. Due to a conflict of interest, the Tennessee District Attorneys General Conference appointed me on February 3, 2010, as District Attorney General *Pro Tem* to act as a special prosecutor to review the investigation for the purpose of making a charging decision. For the record, prior to my appointment as special prosecutor in this matter, I had never been to Loudon County, and was not in any way acquainted or familiar with any of the people or entities involved as subjects or witnesses. I received the entire investigative file in this matter, which occupies a large banker's box, and contains multiple volumes of documents, and I have spent a significant amount of time and effort reviewing and digesting the same. On May 26, 2010, I traveled to Roane and Loudon counties to meet with you to conduct further investigation and interviews of persons material to the understanding of this case. On May 27, I spent the day meeting with you as the case agent, District Attorney Russell Johnson, and Assessor Chuck Jenkins, to further gather information for my understanding. On the same date, I attempted to meet with County Mayor Doyle Arp regarding the investigation, but he was unavailable. Also, as previously mentioned, I made a site visit to the subject property at Rarity Bay, and also examined various maps of affected parcels. On May 28, 2010, I met with Mr. Lynn Tenpenny, Regional Appraisal Supervisor with the State Comptroller Division of Property Assessments to review and discuss state and county property

assessment laws, regulations, and protocol. Thereafter, I had telephone discussions with Mr. Joe Costner, attorney for Mike Ross, and also with Mr. Phillip Hilliard, Assistant State Attorney General, regarding the legal issues involved in this case.

There are only a few state law criminal offenses which are possibly supported by the above factual basis. First, it should be made clear that there is absolutely no evidence to show any bribery of a public servant by any person involved in this investigation. Next, with regard to Ms. Riedl, T.C.A. §67-4-409(a)(6)(B) provides that the making under oath of any false statement known to be false respecting the consideration or value of property transferred shall be classified and punishable as perjury, a Class E felony offense. However, the face of the deed documents modified show that Ms. Riedl changed the affidavit of value from the actual consideration amount to a higher fair market value amount, which is required by the statute, in order to reflect the truth of the matter. Since the valuation of real property is subjective, and any appraisal of the property might involve issues upon which reasonable minds could disagree, it is not clear that her behavior in changing the amounts on the documents rises to the making of a false statement, for the purposes of proving the essential elements of perjury. Therefore, I find that there is not a reasonable likelihood of conviction upon any prosecution for perjury in this matter. In any event, pursuant to T.C.A. §40-2-101(b)(4), the applicable statute of limitations for the initiation of a prosecution for a Class E felony offense is two (2) years from the event date of the crime. Also, the applicable statute of limitations may be tolled due to the active concealment of the crime by the defendant, until its discovery. However, in this case, it would be impossible to prove active concealment of any such perjury related to the deeds, since they were filed and recorded in the Loudon County Register's Office upon execution, thereby making them public record documents open for inspection and copying by anyone. Since the alleged event date of any perjury with regard to the documents in question occurred in February, 2004, and there was no concealment, I am now time-barred by the applicable statute of limitations from initiating a prosecution for that Class E felony.

With regard to Mr. Arp, the only possible criminal offense indicated by his devaluation of the Rarity Bay parcels owned or controlled by Ross would be official misconduct, also a Class E felony offense, pursuant to T.C.A. §39-16-402. Under that statute, a public servant commits a criminal offense who, with the intent to obtain a benefit or harm another, intentionally or knowingly commits an act relating to the servant's office that: constitutes an unauthorized exercise of official power; exceeds the servant's official power; refrains from performing a duty imposed by law; violates a law relating to the office; or receives any personal benefit not otherwise authorized by law. It is an affirmative defense to any charge for official misconduct if the benefit involved was of a trivial nature, and incidental to personal, professional, or business contact, and involved no substantial risk of undermining official impartiality. The investigation of this matter does not reveal any direct evidence of any personal, non-trivial benefit received by Arp as a result of his devaluation of the Ross properties for tax appraisal purposes. The only possible circumstantial evidence of personal benefit to Mr. Arp revealed in your investigation is the employment of his son, Rick, by Ross in early 2005, as a sales associate/realtor for Rarity Communities. But, as previously indicated in your

investigative findings, there is no evidence that Rick Arp was hired based upon any actions taken by this father in his official capacity as Loudon County Property Assessor. Pursuant to T.C.A. §67-5-501, et seq., the county Assessor of Property is required to make assessments of all property in the county, and is presumably allowed to use his experience, professional judgment and sole discretion in arriving at such subjective valuation amounts in the course and scope of the duties of his office. Additionally, although now discouraged by State officials, it would appear that Arp engaged in a once common and accepted practice of “developer discounting” for the benefit of Ross. However, as previously stated, such conduct does not appear to violate any state law for which there is a specific criminal penalty. Therefore, I find that there is not a reasonable likelihood of conviction upon any prosecution of Arp or Ross for official misconduct in this matter. In any event, pursuant to T.C.A. §40-2-101(b)(4), the applicable statute of limitations for the initiation of a prosecution for a Class E felony offense is two (2) years from the event date of the crime. Also, the applicable statute of limitations may be tolled due to the active concealment of the crime by the defendant, until its discovery. However, in this case, it would be impossible to prove active concealment of any such official misconduct related to the downward property valuation, since the same was entered into a county tax computer database maintained in the Loudon County Assessor’s Office upon reappraisal and modification, thereby making them public records open for inspection and copying by anyone, despite the contemporaneous destruction of the marked-up original tax cards by Arp. Since the alleged event date of any official misconduct with regard to the devaluation of the Ross properties in question occurred in May, 2005, and there was no concealment, I am now time-barred by the applicable statute of limitations from initiating a prosecution for that Class E felony. Any possible criminal charge related to the destruction of the modified tax cards would also now be barred by the applicable one (1) year statute of limitations for such misdemeanor offense.

Although your investigation reveals that Mr. Arp, Mr. Ross, and Ms. Riedl engaged in conduct that seemed improper and suspicious to allow Ross to gain a windfall tax benefit, there is not sufficient evidence to show that they did so with criminal intent to violate any state law. As a result, I am unable to prove all of the essential statutory elements of the alleged criminal offenses of either perjury or official misconduct. Additionally, as noted, I am time-barred from initiating any prosecution in these matters due to the applicable statute of limitations for the possible offenses. Therefore, I will not be presenting this case to the Loudon County Grand Jury for possible indictment of any person for any offense.

Based upon the foregoing, I am closing my file in this matter, and I request that you do the same. I will return the entire original investigative case file to General Johnson’s office. Thank you for your diligent and thorough investigation in this difficult and complex case.

Yours very truly,

D. Michael Dunavant  
District Attorney General *Pro Tem*

DMD:md

Enclosure

xc: Honorable Russell Johnson, DAG, 9<sup>th</sup> Judicial District  
Mr. Chuck Jenkins, Loudon County Assessor