

Memo Date: April 10, 2007
Hearing Date: April 17, 2007



TO: Board of County Commissioners

DEPARTMENT: Public Works Dept./Land Management Division

PRESENTED BY: BILL VANVACTOR, COUNTY ADMINISTRATOR
KENT HOWE, PLANNING DIRECTOR

AGENDA ITEM TITLE: In the Matter of Considering a Ballot Measure 37 Claim and Deciding Whether to Modify, Remove or Not Apply Restrictive Land Use Regulations in Lieu of Providing Just Compensation (PA06-7184, Sly)

BACKGROUND

Applicant: James R. Sly and Barbara Jo Sly
Current Owner: James R. Sly and Barbara Jo Sly
Agent: Sheryl Balthrop

Map and Tax lot(s),	Acres	Current Zoning	Date Property Acquired (Bold text = claimant's initial date)
19-02-06, tax lot 600	15.37	E30	August 12, 1980 – DPR #8043916: Virginia H. Sly. October 3, 2001 – DPR 2001-065313; James Robert Sly (individual). April 29, 2002 – DCTIC 2002-037414: James R. Sly and <u>Barbara Jo Sly</u>
19-02-07, tax lot 300	6.08	E30	October 3, 2001 – DPR 2001-065312; Judith Sly Herrero.
19-03-01, tax lot 1500	1.10	E30	September 11, 1975 – WD 764R, #7544622: <u>James R.</u> & Virginia Sly. April 29, 2002 – DCTIC 2002-037414: James R. Sly and <u>Barbara Jo Sly</u>
19-03-01, tax lot 1600	9.35	E30	October 15, 1975 – Deed 764R, #44622: <u>James R.</u> & Virginia H Sly. April 29, 2002 – DCTIC 2002-037414: James R. Sly and <u>Barbara Jo Sly</u>

19-03-01, tax lot 1700	106.00	E30	August 12, 1980 – DPR 1092R, #8043914: Virginia & <u>James R. Sly</u> April 29, 2002 – DCTIC 2002-037414: James R. Sly and <u>Barbara Jo Sly</u>
19-03-01, tax lot 1701	20.00	E30	March 16, 1916 – PD Bk 108, Pg 505: Vernie R. Sly. December 19, 1976 – Deed 827R, #7668950: <u>James R. & Barbara Jo Sly.</u>
19-03-01, tax lot 1702	0.89	E30	August 12, 1980 – DPR 1092R, #8043915: Virginia A. Sly. October 3, 2001 – DPR 2001-065313; <u>James Robert Sly.</u> April 29, 2002 – DCTIC 2002-037414: James R. Sly and <u>Barbara Jo Sly</u>
19-03-01, tax lot 1900	50.45	E30	September 1, 1955 – WD 159D, #10815: Robert E. & Virginia H. Sly. September 12, 1980 – MLSC 1094R, #8046195: <u>James R. & Barbara Jo Sly.</u>
19-03-02, tax lot 1400	5.04	RR5	July 27, 2004 – WD 2004-060006: Beryl L. Sunderman Living Trust (Grantor) <u>James R. & Barbara Jo Sly (Grantees).</u>
19-03-02, tax lot 2700	10.38	E25	July 8, 1957 - WD 102D, #17784: Robert E. Sly & Virginia H. Sly. December 27, 1978 – WD 962R, #7884298: <u>James R & Barbara Jo Sly.</u>

Date claim submitted: November 30, 2006

180-day deadline: May 29, 2007

Land Use Regulations in Effect at Date of Acquisition:

TRS - tax lot	Original family		James R. Sly		Barbara Jo Sly	
	zoning	interest date	zoning	interest date	zoning	interest date
19-02-06, tax lot 600	FF20	(08-12-80)	E30	10-03-01	E30	04-29-02
19-02-07, tax lot 300	(No documentation)		No ownership		No ownership	
19-03-01, tax lot 1500	Unzoned	(09-11-75)	Unzoned	09-11-75	E30	04-29-02
19-03-01, tax lot 1600	Unzoned	(10-15-75)	Unzoned	10-15-75	E30	04-29-02
19-03-01, tax lot 1700	FF20	(08-12-80)	FF20	08-12-80	E30	04-29-02
19-03-01, tax lot 1701	Unzoned	(03-16-16)	FF20	12-19-76	FF20	12-19-76

19-03-01, tax lot 1702	FF20	(08-12-80)	E30	10-03-01	E30	04-29-02
19-03-01, tax lot 1900	Unzoned	(08-01-55)	FF20	08-12-80	FF20	08-12-80
19-03-02, tax lot 1400	-----		RR5	07-27-04	RR5	07-27-04
19-03-02, tax lot 2700	Unzoned	(07-08-57)	FF20	12-27-78	FF20	12-27-78

Restrictive County land use regulation: Minimum parcel size of twenty-five or thirty acres and limitations on new dwellings in the E25/E30 (Exclusive Farm Use) zone (LC 16.212).

ANALYSIS

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

1. Lane County has enacted or enforced a restrictive land use regulation since the owner acquired the property, and

The current owners of the properties are James R. and Barbara Jo Sly with the exception that neither own tax lot 300 of map 19-02-07.

Eight of the nine properties were acquired by family members during the period of 1916 – 1980 when unzoned or zoned FF20 and passed into ownership by the claimants.

One of the properties (map 19-03-02, tax lot 1400) is zoned RR5 and was purchased by the claimants on July 27, 2004, from a non-family member and is not a valid claim.

Currently, seven of the properties are zoned E30 (19-03-01, tax lots 600, 1500, 1600, 1700, 1701, 1702, 1900) and one is zoned E25 (19-03-02, tax lot 2700).

A tenth property, map 19-02-07, tax lot 300, appears on the claimant’s cover sheet in the submittal but no supporting documentation appears in the submittal to substantiate the claim. Staff research finds the property was acquired by Judith Sly Herrero on October 1, 2001, a descendent of Virginia H. Sly, as a result of a Circuit Court decree Case No. 50-00-16051. With additional documentation, Judith may be able to link her ownership with a valid claim stemming from Virginia, however, the restrictive regulations of the E30 zone (LC 16.212) could not be waived for Judith as they were applicable to the property when she acquired it.

2. The restrictive land use regulation has the effect of reducing the fair market value of the property, and

Two of the properties (19-03-01, tax lots 1500 and 1600) were unzoned when they were acquired by the current owner, James R. Sly.

Four of the properties (19-03-01, tax lots 1700 (James), 1701 (James & Barbara), 1900 (James & Barbara), and 19-03-02, tax lot 2700 (James & Barbara), were zoned FF20 (Farm-Forest) when they were acquired by the current owner(s).

Two of the properties (19-02-06, tax lot 600 and 19-03-01, tax lot 1702) were zoned E30 (Exclusive Farm Use) when they were acquired by the current owners (James and

Barbara)

The minimum lot size and limitations on new dwellings in the E30 and E25 zone prevent the current owners from developing the properties as could have been allowed when they or family members acquired them. The alleged reduction in fair market value for all of the nine properties is \$5,470,000, based on the submitted appraisal.

3. The restrictive land use regulation is not an exempt regulation as defined in LC 2.710.

The minimum lot size and restrictions on new dwellings do not appear to be exempt regulations for the claims on: map 19-02-06, tax lot 600; map 19-03-01, tax lots 1500, 1600, 1700, 1701, 1702, and 1900; and map 19-03-02, tax lot 2700.

The claimants do not own tax lot 300 of map 19-02-07.

The claimants acquired an interest in tax lot 1400 of map 19-03-02 in 2004 when it was zoned RR5 and those regulations appear to be exempt.

The claimant has not identified any other restrictive land use regulations that allegedly reduce the fair market value of the property.

CONCLUSION

It appears this is a valid claim for tax lots 1500, 1600, 1700, 1701 and 1900 of map 19-03-01 and tax lot 2700 of map 19-03-02.

It appears this is a valid claim for tax lot 600 of map 19-02-06 and tax lot 1702 of map 19-03-01; however the minimum lot size and dwelling restrictions could only be waived for the current owners to the date of acquisition by each.

It appears this is not a valid claim for tax lot 1400 of map 19-03-02.

It appears this could be a valid claim for tax lot 300 of map 19-02-07 with more documentation by the property owner (Judith Sly Herrero); however the minimum lot size and dwelling restrictions could only be waived to the date of acquisition for the current owner who acquired it in 2001.

RECOMMENDATION

The County Administrator recommends the Board adopt the attached order to waive the restrictive land use regulations of the E30 and E25 zone for tax lot 600 of map 19-02-06, tax lots 1500, 1600, 1700, 1701, 1702 and 1900 of map 19-03-01 and tax lot 2700 of map 19-03-02 to the dates of acquisition of James R. Sly and Barbara Jo Sly.

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

ORDER No.) IN THE MATTER OF CONSIDERING A BALLOT
) MEASURE 37 CLAIM AND DECIDING
) WHETHER TO MODIFY, REMOVE OR NOT
) APPLY RESTRICTIVE LAND USE
) REGULATIONS IN LIEU OF PROVIDING JUST
) COMPENSATION (Sly, PA 06-7184)

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

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

WHEREAS, the County Administrator has reviewed an application for a Measure 37 claim submitted by James R. Sly and Barbara Jo Sly, the owners of real property located in the vicinity of Dale Kuni Road and Christmas Tree Lane northeast of Creswell Oregon, and more specifically described in the records of the Lane County Assessor as map 19-02-06, tax lot 600; map 19-03-01, tax lots 1500, 1600, 1700, 1701, 1702, 1900; and map 19-03-02, tax lot 2700, consisting of approximately 213.54 acres, in Lane County, Oregon; and

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

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

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

WHEREAS, on April 17, 2007, the Board conducted a public hearing on the Measure 37 claim (PA 06-7184) of James R. Sly and Barbara Jo Sly and has now determined that the restrictive E30 or E25 (Exclusive Farm Use) zone dwelling and land division requirements of LC 16.212 were enforced and made applicable to prevent James R. Sly and Barbara Jo Sly from developing the properties as might have been allowed at the time they or their family members acquired an interest in the properties and that the public benefit from application of the current E30 or E25

dwelling and division land use regulations to the applicant's properties is outweighed by the public burden of paying just compensation; and

WHEREAS, James R. Sly and Barbara Jo Sly requests either \$5,470,000 as compensation for the reduction in value of their property, or waiver of all land use regulations that would restrict the division of land into lots containing less than thirty and twenty-five acres and placement of a dwelling on each lot, uses that could have otherwise been allowed at the time they acquired an interest in the properties; and

WHEREAS, the Board finds that under LC 2.760(3) the public interest would be better served by modifying, removing or not applying the challenged land use regulations of the E30 and E25 (Exclusive Farm Use) zone to the subject properties in the manner and for the reasons stated in the report and recommendation of the County Administrator incorporated here by this reference except as explicitly revised here to reflect Board deliberation and action to allow James R. Sly and Barbara Jo Sly to make application for development of the subject properties in a manner similar to what they could have been able to do under the regulations in effect when they acquired an interest in the properties; and

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

NOW, THEREFORE IT IS HEREBY ORDERED that the applicant James R. Sly and Barbara Jo Sly made a valid claim under Ballot Measure 37 by describing the use being sought, identifying the county land use regulations prohibiting that use, submitting evidence that those land use regulations have the effect of reducing the value of the property, showing evidence that they or family members acquired an interest in the properties before the restrictive county land use regulations were enacted or enforced and the Board hereby elects not to pay just compensation but in lieu of payment, the request of James R. Sly and Barbara Jo Sly shall be granted and the restrictive provisions of LC 16.212 that limit the development of dwellings and the division of land in the E30 or E25 (Exclusive Farm Use) Zone shall not apply to James R. Sly and Barbara Jo Sly, so they can make application for approval to develop the properties located in the vicinity of Dale Kuni Road and Christmas Tree Lane and northeast of Creswell, Oregon, and more specifically described in the records of the Lane County Assessor as map 19-02-06, tax lot 600; map 19-03-01, tax lots 1500, 1600, 1700, 1701, 1702, 1900; and map 19-03-02, tax lot 2700, consisting of approximately 213.54 acres in Lane County, Oregon, in a manner consistent with the land use regulations in effect when each acquired an interest in the properties: for James R. Sly map 19-02-06, tax lot 600 on October 3, 2001, map 19-03-01, tax lot 1500 on September 11, 1975, tax lot 1600 on October 15, 1975, tax lot 1700 on August 12, 1980, tax lot 1701 on December 19, 1976, tax lot 1702 on October 3, 2001, tax lot 1900 on August 12, 1980, and map 19-03-02, tax lot 2700 on December 27, 1978; and for Barbara Jo Sly map 19-02-06, tax lot 600, map 19-03-01, tax lots 1500, 1600, 1700 and 1702 all on April 29, 2002, tax lot 1701 on December 19, 1976, tax lot 1900 on August 12, 1980; and map 19-03-02, tax lot 2700 on December 27, 1978.

IT IS HEREBY FURTHER ORDERED that James R. Sly and Barbara Jo Sly still need to make application and receive approval of any division of the property or placement of a dwelling under the other land use regulations applicable to dividing the properties or placing a dwelling that were not specifically identified or established by them as restricting the division of the property or placement of a dwelling, and it would be premature to not apply those regulations

given the available evidence. To the extent necessary to effectuate the Board action to not apply the dwelling or division restrictions of the applicable zone described above, the claimant shall submit appropriate applications for review and approval of a new dwelling to show the specific development proposals and in the event additional county land use regulations result in a restriction of those uses that have the effect of reducing the fair market value of the property, the County Administrator shall have the authority to determine those restrictive county land use regulations that will not apply to that development proposal to preclude entitlement to just compensation under Measure 37, and return to the Board for action, if necessary. All other Lane Code land use and development regulations shall remain applicable to the subject property until such time as they are shown to be restrictive and that those restrictions reduce the fair market value of the subject property.

IT IS HEREBY FURTHER ORDERED that this action making certain Lane Code provisions inapplicable to use of the property by James R. Sly and Barbara Jo Sly does not constitute a waiver or modification of state land use regulations and does not authorize immediate division of the subject property or immediate construction of a dwelling. The requirements of state law may contain specific standards regulating development of the subject property and the applicant should contact the Department of Administrative Services (DAS - State Services Division, Risk Management - Measure 37 Unit, 1225 Ferry Street SE, U160, Salem, OR 97301-4292; Telephone: (503) 373-7475; website address: <http://www.oregon.gov/DAS/Risk/M37.shtml>) and have the State of Oregon evaluate a Measure 37 claim and provide evidence of final state action before seeking county land use approval.

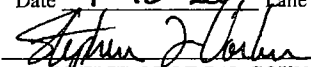
IT IS HEREBY FURTHER ORDERED that the other county land use regulations and rules that still apply to the property require that land use, sanitation and building permits be approved by Lane County before any development can proceed. Notice of this decision shall be recorded in the county deed records.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

DATED this _____ day of _____, 2007.

Faye Stewart, Chair
Lane County Board of County Commissioners

APPROVED AS TO FORM

Date 4-10-2007 Lane County



OFFICE OF LEGAL COUNSEL