IN THE ADMINISTRATIVE HEARINGS OFFICE FOR JACKSON COUNTY

JACKSON COUNTY, Plaintiff, v. PAUL MEYER and KRISTEN MEYER, Defendants.	)	Case No. 439-16-00029 COD **ORDER WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW**

THIS MATTER was heard on March 15, 2016. Jackson County was represented by Devin Huseby, Assistant County Counsel, and Tod Miller, Jackson County Code Enforcement Officer. Defendants Paul Meyer and Kristen Meyer appeared through their legal counsel, Daniel O'Connor of Huycke O'Connor Jarvis, LLP. Following rulings on various preliminary matters, Defendants entered pleas of Not Guilty and requested a hearing. The Hearings Officer reviewed evidence and heard testimony of witnesses and arguments of the Parties, and now makes the following Rulings on Preliminary Matters, Findings of Fact, Conclusions of Law, and Order.

RULINGS ON PRELIMINARY MATTERS

Prior to entry of plea on the allegations in the Complaint of County Violation in this matter, attorney Daniel O'Connor raised various preliminary matters regarding the allegations set forth in the Complaint. Specifically, Defendants raised the following issues:

- **THE COUNTY CANNOT CHARGE CONTINUING VIOLATIONS:** Defendants argued in general terms that the County cannot charge these matters as "continuing violations" under Jackson County Code ("JCC") §202.99(b), because a) Defendants have fully complied with the Order issued in enforcement case 439-14-00280-COD, which is the County's first citation "for the same violation" under §202.99(b); and b) the violations alleged in this case as occurring on September 24, 2015 and following cannot be considered a second citation "for the same violation" under §202.99(b), given that Defendants' current position is significantly different

than what existed in 2014. Defendants ultimately acknowledged during the hearing that this challenge only affects the maximum penalties that *could* be imposed in the event the Hearings Officer determined Defendants were guilty, and did not prevent the County from pursuing the charges.

Analysis and Ruling: JCC §202.99(b) states in relevant part that "[i]ssuance of a citation for the same violation shall constitute a continuing violation from the date of the first citation[.]" The section also provides for a fine of "not more than two hundred dollars ($200) per day for a continuing violation, not to exceed ten thousand dollars ($10,000)." Based on the plain language of this section, the Hearings Officer concludes that §202.99(b) is not focused on a defendant's compliance with any orders that may be issued in connection with the initial citation. The only issue under this "continuing violation" section is whether a second citation has been issued for the "same violation." In other words, the issue is whether the violations alleged in the first citation have been fully corrected and eliminated. In comparing the current citation with the citation issued in enforcement case 439-14-00280-COD (Plaintiff's Exhibit 8), and considering the entire record in this matter, it is clear the allegations in the current Complaint constitute "issuance of a second citation for the same violation" as contemplated by JCC §202.99(b). The assertion that Defendants' compliance with the Order in the previous violation matter, or their changed circumstances, would prevent the County from proceeding with a continuing violation is inconsistent with the plain language of that Code provision. Accordingly, Defendants' motion to disregard the penalty provisions of JCC §202.99(b) is denied, and the "continuing violation" provisions of that section apply to this matter.

- **COUNTS 1 AND 2 OF THE COMPLAINT MUST BE DISMISSED BECAUSE THE CITATION DOES NOT COMPLY WITH OAR 918-098-1900 OR JCC §203(B)(5):** Defendants moved to dismiss Counts 1 and 2 of the Complaint because the allegations a) do not comply with the requirements of OAR 918-089-1900; and b) do not comply with the requirements for the form and content of a complaint set forth in JCC §203(b)(5).

Analysis and Ruling:

Compliance with OAR: OAR 918-089-1900 states in relevant part that "all building officials, inspectors and plans examiners certified under Division 098 . . . must include an exact reference to the applicable specialty code section, Oregon administrative rule, or statute, when issuing corrective notices . . . or enforcing a building inspection program . . ." and "must include a plain statement of facts upon which the citation for correction is based." In Exhibit E to Defense Exhibit A on page 3 of 3, the State Building Codes Division provides its interpretation of the OAR provisions (referred to as the "Cite it, Write It Rules") as follows:

> Effective January 1, 2006, Oregon Administrative Rules *require inspectors* to cite the code *when issuing correction notices*.
>
> The new requirements to provide or "cite" the applicable code reference on citations will improve customer service and provide predictability by taking the guesswork out of *construction corrections*[.]
>
> *Requirements for corrective notices* can be found in OAR 918-098-1900. [Emphasis added.]

Based on the interpretation provided by the State Building Codes Division, it is apparent that the provisions of OAR 918-098-1900 apply only to corrective notices and similar curative actions related to the correction of construction or design plans that do not comply with the various building codes. Further, the language of the OAR is clear that it applies only to "building officials, inspectors and plans examiners certified under Division 098," and the record is also clear that Jackson County Code Enforcement Officers are not certified under OAR 918 Division 098. Therefore, this Hearings Officer concludes that the allegations in Counts 1 and 2 of the Citation need not comply with the requirements of OAR 918-098-1900.

Compliance with JCC §203(b)(5): JCC §203(b)(5) requires that a citation "shall contain . . . [a] brief description of the alleged violation in such a manner as can be readily understood by a person making a reasonable effort to do so[.]"

Defendants assert that the reference in Counts 1 and 2 to JCC §1420.04, and the written references to "commercial office" and "electrical in commercial office" do not comply with the

requirements of JCC §203(b)(5), because "[t]here is no explanation as to the nature of the violation and what specific code sections are violated." Defense Exhibit A, Hearing Memorandum ("Memo"), page 3, lines 21-22. Defendants support this assertion with feedback from other building officials in the area that they were unaware of a building code provision requiring an electrical permit "for the use of an on-site generator." Memo, page 4, lines 3-4. The County responds that it has alleged a violation of JCC §1420.04, which states that "[n]o person shall inhabit or occupy . . . any premises . . . unless all permits required for such premises . . . have been obtained are in force." The County asserts it is not necessary to identify the specific statute or rule requiring a particular permit, and that the County is only required to allege that certain, identified permits have not been obtained, which the County has done. The County further argues that because this violation is identical to the one alleged in November of 2014 in enforcement case 439-14-00280-COD, and Defendants were found guilty in that case and were ordered to apply for the same electrical and structural permits, there can be no confusion in this case regarding what permits are required.

The standard set forth in JCC §203(b)(5) requires the citation to include "a brief description of the alleged violation in such a manner as can be readily understood by a person making a reasonable effort to do so[.]" The Defense argument that other local building officials could not identify any electrical permit requirement for the use of an on-site generator misses the point. In this case, the Complaint is clear that the County is alleging two separate violations of JCC §1420.04, one for occupying the Premises without obtaining a structural permit, and the second for occupying the Premises without obtaining an electrical permit. There is no language in JCC §203(b)(5) requiring the pleading of specific permit requirement code sections, and a common-sense reading of the section does not suggest any need to do so. This Hearings Officer finds that in this case, and particularly where a continuing violation has been alleged, it is unreasonable for Defendants to argue they could not readily understand the allegations in Counts 1 and 2, because a) they were charged with the same offenses in the previous enforcement case (439-14-00280-

COD); b) they were previously ordered to "apply for all necessary permits" in the prior enforcement case; and c) they assert in this case that they have fully complied with the previous Order. *See* Page 8 of Exhibit K to Defense Exhibit A (the Order) and Page 2 of Exhibit K (O'Connor letter to County Counsel Benton). Furthermore, if Defendants assert that additional information is needed to understand the allegations of Counts 1 and 2, the specific building code sections requiring these permits could be readily obtained by conferring with County staff. Therefore, based on the record established in this case, the Hearings Officer concludes that the Citation and Complaint complies with the requirements of JCC §203(b)(5).

Ruling: Based on the foregoing analysis, the Defendants' motion to dismiss Counts 1 and 2 of the Citation because it does not comply with the requirements of OAR 918-098-1900 or JCC §203(b)(5) is denied.

FINDINGS OF FACT

1. Defendants Paul Meyer and Kristen Meyer appeared through their legal counsel, Daniel O'Connor of Huycke O'Connor Jarvis, LLP, and entered pleas of Not Guilty. All Exhibits offered by the parties were received into evidence and considered by the Hearings Officer.
2. Jackson County has adopted and is subject to the Jackson County Land Development Ordinance ("LDO") and is subject to the provisions of the Oregon Revised Statutes ("ORS") necessary for its implementation. Jackson County has also adopted and is subject to the Oregon State Structural, Mechanical, Electrical, Plumbing and the One and Two Family Dwelling Specialty Codes, plus regulations promulgated pursuant thereto, together with all other sections of the ORS necessary for their implementation (the "State Building Code").
3. Defendants Paul Meyer and Kristen Meyer own the property located in Jackson County at 530 West Valley View Road, Talent, OR, with the map and tax lot description of T38-R1W-S24-TaxLot600 (the "Premises").
4. This proceeding is another in a series of enforcement proceedings, land use decisions and appeals relating to Defendants' ownership and operation of an asphalt batch plant operation (the

"Asphalt Plant") on the Premises. The history of these proceedings is reflected in various decisions and orders, including, most recently, the January 11, 2016 decision of the Land Use Board of Appeals ("LUBA") regarding the September 24, 2015 Order issued by Jackson County Hearings Officer Donald Rubenstein (the "2015 Order"). The Defendants have submitted an extensive chronological summary of the proceedings in this matter in Exhibit B of Defense Exhibit A. This Hearings Officer adopts the "Detailed Chronology" of this matter set forth in Exhibit B as a fair summary of the enforcement proceedings, land use decisions and appeals relating to Defendants' ownership and operation of the Asphalt Plant on the Premises. In the January 11, 2016 decision (the "Final LUBA Decision"), "LUBA found no basis for reversing the hearings officer's decision [in the 2015 Order] that: (1) the asphalt plant had more employees than the concrete plant; (2) it operated more frequently; and (3) there was an increased risk of explosion with the asphalt plant." Page 6 of Exhibit B to Defense Exhibit A. The ultimate thrust of the Final LUBA Decision is that the Asphalt Plant may not lawfully operate on the Premises. On January 11, 2016, LUBA also withdrew its October 21, 2015 order staying enforcement of the 2015 Order issued by Jackson County Hearings Officer Donald Rubenstein.

5. This series of enforcement and administrative proceedings was initiated by Jackson County on March 9, 2011, when Officer Tod Miller went to the Premises in response to a complaint and observed the Asphalt Plant in operation, apparently without any County approval. At that time, he also observed a small commercial office building which was occupied and wired for electrical uses. Based on his review of Planning Division maps, Officer Miller determined that the entire Premises are located within a mapped flood hazard area, and, specifically, that the Asphalt Plant and commercial office were located in the mapped flood hazard area. These flood hazard mapping conclusions were verified during the hearing by Planner Frank Hernandez.
6. Jackson County has not issued the required permits or approvals for an Asphalt Plant or an office in the flood hazard area. LDO Section 6.2 and table 6.2.1 of the LDO do not list an asphalt plant as an approved use in the RR-5 zone, which is the designated zoning for the Premises. Jackson

County Building Official Ted Zuk testified that a structural permit is required for the commercial office building on the Premises and that an electrical permit is required for the electrical wiring in that structure. Mr. Zuk further testified that the State Building Code requires an electrical inspection and electrical permit for the structure regardless of whether the source of electricity is from a public utility grid or an on-site generator, as in this case.

7. There is no evidence that the office structure on the Premises falls within any legal exceptions to the permitting requirements under the Oregon Housing and Building Code as adopted in JCC Chapter 1420. There is no evidence that the Asphalt Plant use or the office structure fall within any legal exception to avoid County permitting requirements for development within a flood hazard area.

8. On November 3, 2014, Officer Miller issued citation #439-14-00280-COD for the following violations on the Premises (as set forth in Plaintiff's Exhibit 8; material in *italics* is handwritten on form):

Count 1: Alleging violation of [box checked] **JCC 1420.04 – Violation of Building and Housing Code** By having building construction without the following permit(s): [box checked] Structural; *COMMERCIAL OFFICE WITHOUT A BUILDING PERMIT*;

Count 2: Alleging violation of [box checked] **JCC 1420.04 – Violation of Building and Housing Code** By having building construction without the following permit(s): [box checked] Electrical; *WIRED OFFICE WITHOUT AN ELECTRICAL PERMIT*;

Count 3: Alleging violation of [box checked] **JCC 1864.06 – Accumulation of Solid Waste** By allowing on premises, the existence of solid waste as defined by JCC 1864.02 and/or 1864.06;

Count 4: Alleging violation of [box checked] **Land Development Ordinance LDO** *3.1.1A ESTABLISHED LAND USE WITHOUT A REQUIRED & APPROVED LAND USE PERMIT*; Description of violation count(s): *CONVERSION OF A CONCRETE BATCH PLANT TO AN ASPHALT BATCH PLANT*; and

Count 5: Alleging violation of [box checked] **OTHER; Violation of** [box checked] **LDO**

7.2.2.C DEVELOPMENT IN MAPPED FLOODPLAIN WITHOUT REQUIRED APPROVAL.

9. Following a hearing on the merits, on December 30, 2014, Defendants were found guilty of all offenses by Jackson County Hearings Officer Donald Rubenstein. In relevant part, Mr. Rubenstein's Order contains the following findings and observations:

    - "Even though it would appear that defendants might be able to get the nonconforming use approvals they need [to lawfully operate the batch plant, get permits required by the building code and obtain a floodplain development permit], until they do, they are operating the asphalt plant and related facilities without the required permits and approvals and Jackson County is within its authority to issue citations therefor. Jackson County has met its burden of proving that defendants are presently in violation of JCC 1420.04, JCC 1864.06, LDO 3-1-1A and LDO 7.2.2C." Discussion/Conclusion of Law paragraph number 5, page 7 of Exhibit K to Defense Exhibit A.
    - "Defendants shall apply for all necessary permits within thirty (30) days of the date of this order and shall diligently pursue approvals thereof. Money Judgment shall enter in favor of Plaintiff in the amount of $600.00 for each count, with $500.00 suspended for each count, leaving a total fine due at the time of this Order of $400.00 [plus interest]." Order paragraph number 1, page 8 of Exhibit K to Defense Exhibit A.

10. Although there are five counts alleged in the Citation/Complaint, and Mr. Rubenstein's Order clearly finds Defendants guilty of all five Counts (because he lists all of the Jackson County Code and LDO sections referenced in the Complaint as being violated), the Order only accounts for fines on four of the five counts. Nonetheless, the Order is clear that the County met its burden of proving violations on all five counts, and paragraph 1 of the Order clearly requires Defendants to apply for "all necessary permits" in connection with Counts 1, 2, 4 and 5, which are the same violations as alleged in the current matter.

11. Defendants' failure to obtain a structural permit for the office building as alleged in Count 1 has been ongoing since a citation for this same violation was issued on November 3, 2014, which

constitutes a "continuing violation" of JCC §1420.04 as described in JCC §202.99(b). Defendants' failure to obtain an electrical permit for the office building as alleged in Count 2 has been ongoing since a citation for this same violation was issued on November 3, 2014, which constitutes a "continuing violation" of JCC §1420.04 as described in JCC §202.99(b). Defendants correctly state it was impossible for them to secure these permits until they obtained the necessary land use approvals for placement of the office structure. Defendants argue that this obstacle should somehow excuse their violation of these permitting requirements. The Hearings Officer finds that Defendants chose to continue using the office structure in violation of the permitting requirements, even though they could have opted to remove the structure from the Premises and discontinue its use as an office until the required permits could be obtained. Consistent with this determination, this Hearings Officer finds that the continuing violation was ongoing from September 25, 2015 until the citation in this matter was issued on January 21, 2016, which represents a continuing violation period of 119 days.

12. The establishment and operation of the Asphalt Plant in violation of LDO §3.1.1A as alleged in Count 3 has been ongoing since a citation for this same violation was issued on November 3, 2014, which constitutes a "continuing violation" of LDO §3.1.1A as described in JCC §202.99(b). Defendants allowed operation of the Asphalt Plant in violation of the 2015 Order (dated September 24, 2015) from September 25, 2015 until LUBA granted a stay on October 21, 2015, which the Hearings Officer calculates as a period of 26 days [six days in September (9/25 through 9/30) and 20 days in October (10/1 through 10/20) for a total of 26 days]. The Hearings Officer finds there is no violation of the September 24, 2015 Order on September 24, because it is unrealistic to expect the Defendants to comply with the Order before they could reasonably have received notice of the prohibitions set forth in the Order. There is no evidence that Defendants operated the Asphalt Plant after the Final LUBA Decision on January 11, 2016. This Hearings Officer finds that Defendants chose to continue operating the Asphalt Plant in violation of the September 24, 2015 Order for the 26-day period, because they stood to personally benefit

from profits made on asphalt paving product produced and sold during that period of time.

13. The Defendants' allowing development to remain within the mapped "flood plain" or flood hazard area, in violation of LDO §7.2.2C as alleged in Count 4, has been ongoing since a citation for this same violation was issued on November 3, 2014, which constitutes a "continuing violation" of JCC §1420.04 as described in JCC §202.99(b). This Hearings Officer finds that Defendants should not have been required to remove the Asphalt Plant from the Premises pending the appeal to LUBA of the 2015 Order (which determined the conversion of the concrete batch plant to the Asphalt Plant operation was not permissible under the LDO and state law). However, as indicated in paragraph 11 of these Findings of Fact, the Hearings Officer finds that Defendants chose to continue using the office structure in violation of the flood hazard area permitting requirements, even though they could have opted to remove the structure from the Premises and discontinue its use as an office until the required flood plain development permit could be obtained. Consistent with this determination, this Hearings Officer finds that the continuing violation was ongoing from September 25, 2015 until the citation in this matter was issued on January 21, 2016, which represents a continuing violation period of 119 days.

CONCLUSIONS OF LAW

1. Based on Defendants' appearances through their legal counsel and their pleas of Not Guilty, Jackson County has both personal and subject matter jurisdiction over the Defendants in this case.
2. Defendants Paul Meyer and Kristen Meyer are legally responsible for the Premises located in Jackson County at 530 West Valley View Road, Talent, OR, with the map and tax lot description of T38-R1W-S24-TaxLot600.
3. Defendants' activities and structures on the Premises are subject to the provisions of the LDO and the State Building Code as adopted in Chapter 1420 of the Jackson County Code.
4. Defendants argued that no electrical permits are required for the office structure, because the

office is not connected to an outside power utility provider, but is connected to an on-site generator. The County established through its Building Official, Ted Zuk, that an inspection and permit for the electrical wiring inside the office is required, regardless of whether electrical power is provided by an on-site generator or connection to a public utility. Defendants also argued that the County had not established a requirement for obtaining structural permits for the office structure. The County proved through Mr. Zuk that an inspection and permit for the office is required prior to its occupancy or use as an office.

5. Although Defendants *may* be able to obtain land use approvals they are currently seeking for the "stockpiling and processing of aggregate materials" on the Premises, until those approvals are granted, Defendants are violating various sections of the Jackson County Code and the County is within its authority to issue citations for such violations. Jackson County has met its burden in this matter of proving that Defendants violated:

   - JCC §1420.04 by not obtaining the required structural and electrical permits for the office structure;
   - LDO §3.1.1A by operating the Asphalt Plant without the required land use approvals; and
   - LDO §7.2.2C by continuing placement of the Asphalt Plant and the office structure within a flood plain or flood hazard area without obtaining the required land use approval(s).

6. Defendants also raised two matters they characterized as "equitable arguments," which this Hearings Officer interprets as matters that should be considered out of fairness and equity to the Defendants, but which would not, as a matter of law, bar the County from pursuing the violations or prevent this Hearings Officer from finding Defendants guilty of the offenses.

   - Other, Nearby Flood Plain Violations: Defendants argue the County should have pursued enforcement actions against other, nearby property owners for flood plain violations.

Defendants reason that these County enforcement actions would have impelled the other property owners in the area to pursue revisions to the area flood plain and flood hazard maps and these map revisions could result in allowing Defendants' current improvements and activities without the need for submission of a flood plain development application for County approval.

This Hearings Officer concludes this argument is far too speculative to consider in mitigation of the alleged violations, particularly given the limited factual record related to this issue. The Defendants are asking the Hearings Officer to make a significant number of assumptions and conclusions regarding what outcome(s) might result from the proposed flood plain revision process. The Hearings Officer finds there is insufficient information in the record to determine with any certainty what map revisions are likely to occur and what impacts, if any, these revisions might have on Defendants' ability to develop and use the Premises. Based on these findings, the Hearings Officer is unable to consider this equitable argument in determining the guilt or innocence of Defendants or in the imposition of sanctions.

- Complaint Violates County Enforcement Policies: Defendants generally argue that this matter should not have been pursued, because the County enforcement policy is that offenders will not be prosecuted if they are in the process of obtaining the permits or approvals necessary to achieve compliance.

In an email from County Counsel Joel Benson dated October 30, 2015, the policy, and its application in this case, is explained as follows:

> Per the LDO and policy, if a person or entity is in the process of attempting to come into compliance with the County code, the County does not pursue code enforcement actions. As applied to this case, the Hearings Officer issued a final decision denying the Meyer's application. That final decision ended the Meyers being in the process of attempting to come into compliance, and the result of the decision was that they did not have land use approval for the batch plant. Therefore, code enforcement began. . . . With the [2015 Order] decision now stayed, there is not a final decision either way on the application, and the Meyers are still in the process of attempting to come into compliance. Thus,

per the LDO and policy, the County does not pursue enforcement action while an applicant is still in process. [Page 1 of Exhibit F to Defense Exhibit A.]

Defendants acknowledged during the hearing the LDO does not contain any provision prohibiting the County from pursuing the enforcement action in this case and they further acknowledged that the internal enforcement policy also does not legally bar the County from proceeding with the enforcement action in this case, but they urge the Hearings Officer, in rendering a decision in this matter, to consider the County staff's disregard of the enforcement policy.

The County responds that staff has made every effort to work with Defendants to come into compliance, but the Final LUBA Decision on January 11, 2016 ended Defendants' compliance attempts. The County further argues that Defendants continued to operate the Asphalt Plant in violation of the September 24, 2015 Order, at least until the stay was in effect, and that Defendants have also left the building permit and flood plain violations "in place." The County further argues that the policy does not prevent the County from pursuing violations during time periods when the Defendants were not attempting compliance and that the current enforcement actions do just that.

This Hearings Officer concludes that even assuming Defendants have correctly described these enforcement actions as a violation of an internal County enforcement policy, it does not prevent the County from pursuing the alleged violations in this matter and this Hearings Officer does not have the authority to disregard the actions and inactions of Defendants in connection with the alleged violations.

7. JCC §202.99(b) provides for a fine of "not more than two hundred dollars ($200) per day for a continuing violation, not to exceed ten thousand dollars ($10,000)." JCC §202.99(b) further provides that "[i]ssuance of a citation for the same violation shall constitute a continuing violation from the date of the first citation." The only issue under this "continuing violation" section is whether a second citation has been issued for the "same

violation," that is, whether the violations alleged in the first citation have been fully corrected and eliminated. In comparing the current citation with the citation issued on November 3, 2014 in enforcement case 439-14-00280-COD (Plaintiff's Exhibit 8), and considering the record in this matter, it is clear the allegations in the current Complaint constitute "issuance of a second citation for the same violation" as contemplated by JCC §202.99(b). This Hearings Officer calculates the dates of continuing violation for each count alleged in the Citation/Complaint as follows:

- **Count 1 (No Structural Permit)**: The violation was occurring from at least September 25, 2015 until January 21, 2016 when the current citation was issued. This amounts to a continuing violation period of 119 days. Defendants were in violation for this entire period, because Defendants chose to continue using the office structure in violation of the permitting requirements, even though they could have opted to remove the structure from the Premises and discontinue its use as an office until the required permits could be obtained.
- **Count 2 (No Electrical Permit)**: The violation was occurring from at least September 25, 2015 until January 21, 2016 when the current citation was issued. This amounts to a continuing violation period of 119 days. Defendants were in violation for this entire period, because Defendants chose to continue using the office structure in violation of the permitting requirements, even though they could have opted to remove the structure from the Premises and discontinue its use as an office until the required permits could be obtained.
- **Count 3 (Asphalt Plant Operation)**: As explained above (Finding of Fact paragraph 12), the violation was occurring from September 25, 2015 until LUBA granted a stay on October 21, 2015, which amounts to a continuing violation period of 26 days [six days in September (9/25 through 9/30) and 20 days in October (10/1 through 10/20) for a total of 26 days]. There is no evidence the Asphalt Plant operated after January 11, 2016.

- **Count 4 (No Flood Plain Development Approvals):** As explained above (Finding of Fact paragraph 13), the violation was occurring at least from September 24, 2015 until January 21, 2016 when the current citation was issued. This amounts to a continuing violation period of 119 days. Defendants were in violation for this entire period, because Defendants chose to continue using the office structure in violation of the flood hazard permitting requirements, even though they could have opted to remove the structure from the Premises and discontinue its use as an office until the required flood plain development permit could be obtained.

8. This Hearings Officer is sympathetic that Defendants for the most part appear to be diligently pursuing various land use approvals that will likely resolve most of these violations. Planner Frank Hernandez testified that Defendants have diligently pursued various land use applications over a number of years in an effort to bring their operations into compliance with County Code provisions. However, as noted elsewhere in this decision, it is also apparent that Defendants have not done all they could to come into compliance with County requirements, particularly regarding their continuing use of the office structure. It is also apparent that Defendants chose to continue operating the Asphalt Plant for a period of time in September and October of 2015, because they stood to personally benefit from profits made on asphalt paving product produced and sold during that time. The Hearings Officer's Order set forth below reflects these competing considerations in mitigation of the sanctions imposed.

Accordingly, Plaintiff's complaint is hereby affirmed in its entirety and the Hearings Officer makes the following:

ORDER

1. Judgment is made against Defendants and they are ordered to:
   a. If not already accomplished, apply for all necessary permits and land use approvals within 30 days of the date of this Order;

b. Cease all operations and activities on the Premises not currently authorized, permitted or allowed by the County on the Premises pending any approvals;

c. Permanently remove the asphalt batch plant from the Premises within 30 days from the date of this Order; and

d. Remove the office structure from the Premises within 30 days from the date of this Order and discontinue its use as an office structure in any location until all necessary permits are obtained.

e. Because there was no evidence presented regarding the difficulty or practicality of removing the Asphalt Plant and office structure from the Premises, County staff is hereby authorized, in cooperation and consultation with Defendants, to extend the deadlines, in the sole discretion of staff, if conditions or circumstances render removal of the Asphalt Plant or office structure impossible or impractical within the time frames allowed.

2. A Money Judgment (attached) is entered against Defendants and in favor of Plaintiff in the following amounts for each Count:

a. $10,000.00 for Count 1, with $4,500.00 suspended, which leaves a total fine due on Count 1 of $5,500.00 at the time of this Order;

b. $10,000.00 for Count 2, with $4,500.00 suspended, which leaves a total fine due on Count 2 of $5,500.00 at the time of this Order;

c. $5,200.00 for Count 3, with $0.00 suspended, which leaves a total fine due on Count 3 of $5,200.00 at the time of this Order; and

d. $10,000.00 for Count 4, with $4,500.00 suspended, which leaves a total fine due on Count 4 of $5,500.00 at the time of this Order;

e. The total fine due on all four counts at the time of this Order is $21,700.00, plus post judgment interest at the rate of 9% per annum beginning the 11th day after the signing of this Order. Moneys are delinquent if not paid within 60 days of the signing of this Order. Any and all fees and charges associated with the collection of delinquent fines shall be

added to the fine. Defendants are jointly and severally liable for payment of all fines, fees and charges.

3. Upon Defendants' failure to pay the fines before they become delinquent or to fully comply with any conditions set forth in the terms of this Order, the suspended portion of the judgment becomes operative without further proceedings by the Hearings Officer and the suspended portion of the fine becomes immediately due and payable.

DATED this 18th day of March, 2016

RICK WHITLOCK
Hearings Officer

APPEAL NOTICE

The Hearings Officer's Order is the final decision of Jackson County on this matter. This Order is subject to judicial review by the Circuit Court for Jackson County as provided in Jackson County Code section 294.21 and under ORS 34.010 to 34.100. However, to the extent that this decision applies or interprets provisions of the Jackson County Land Development Ordinance or Comprehensive Plan, the Statewide Planning Goals or any other land use regulation, an appeal must be filed with the Oregon Land Use Board of Appeals (LUBA) within 21 days of the date that it is mailed, as LUBA has exclusive jurisdiction to review land use decisions pursuant to ORS 197.825(1). This decision is being mailed on March 21, 2016. Please contact LUBA for specific information at 550 Capitol Street NE, Salem, OR 97301-2552 or by phone at (503) 373-1265.

cc: Paul Meyer and Kristen Meyer
Dan O'Connor

IN THE ADMINISTRATIVE HEARINGS OFFICE FOR JACKSON COUNTY

JACKSON COUNTY, Plaintiff, v. PAUL MEYER and KRISTEN MEYER, Defendants.	)	NO. 439-16-00029 COD
	)	**MONEY JUDGMENT**

Judgment Creditor

Name & Address: Jackson County
10 S. Oakdale Avenue
Medford, OR 97501

Counsel: County Counsel
10 S Oakdale, Rm. 214
Medford, Or 97501
(541) 774-6160

Judgment Debtor

Name & Address: Paul Meyer and Kristen Meyer
P.O. Box 508
Ashland, OR 97520

Dates of Birth: Unknown

Social Security Numbers: Unknown

Amount of Judgment: $35,200.00

Suspended Fine: $13,500.00

Interest: 9% per annum beginning the 11th day after signing of this Judgment.

TOTAL MONIES DUE: **$21,700.00**

MONIES ARE DUE AND PAYABLE IN FULL within ten (10) days of the date of entry of this judgment herein. Post judgment interest at the rate of 9% per annum accrues beginning the 10th day after the signing of this Order. Moneys are delinquent if not paid within 60 days of the signing of this Judgment. Upon Defendants' failure to make payment within 60 days, or to otherwise comply with the Order, the suspended portion of the judgment becomes operative without further proceedings by the hearings officer and the suspended portion of the fine becomes immediately due and payable. If not paid within 60 days, Jackson County may file and record the Order for payment in the County Clerk Lien Record. ORS 30.460.

DATED this 18th day of March, 2016

RICK WHITLOCK
Hearings Officer