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MICHAEL M. REEDER

August 7, 2007

*Via Email and First Class Mail*

Board of County Commissioners  
c/o Stephen L. Vorhes, Assistant County Counsel  
125 East 8<sup>th</sup> Avenue  
Eugene, Oregon 97401

Re: Zip-O-Log Mills, Inc. Measure 37 Claim, PA06-7191  
Please Refer to Our File No. 15060-31

Dear Commissioners:

This office represents Zip-O-Log Mills, Inc. (the "Claimant"), the applicant for Measure 37 claim, PA06-7191 (the "Claim"). I write to respectfully request that the Board take final action and adopt an order approving the Claim.

Public Hearings on the Claim

The Claim was filed with Lane County on November 30, 2006. Under Measure 37, the County had until May 29, 2007, or 180 days, to make a decision whether to grant or deny the Claim. See ORS 197.352(6) and Lane Code ("LC") 2.760(1). Lane County held a public hearing on this particular claim on May 1, 2007. The staff memorandum for the May 1, 2007 hearing recommended that the Board approve the Claim. At the May 1, 2007 hearing, multiple individuals testified in opposition to the Claim, citing various legal theories.<sup>1</sup> The record was held open and a second hearing was held on June 5, 2007, wherein additional testimony was given. Again, the supplemental staff memorandum for the hearing recommended approval of the Claim. The enclosed staff memorandum for the June 5, 2007 hearing states: "Staff has reviewed all additional information submitted and no substantive information has been provided concerning the acquisition, valuation or exempt regulations which would enable the County Administrator to revise his initial recommendation [to approve the Claim]." In other words, there is no factual evidence in the record that would justify the Board in denying the claim.

<sup>1</sup> At both hearings on the Claim, I explained why the opponent's legal theories were without merit. These responses are part of the record for this Claim.

### House Bill 3546 – Timeframe Extension

At the second hearing, June 5<sup>th</sup>, opponents of the Claim requested that the Board delay final action on the Claim based on the fact that House Bill ("HB") 3546 generally extends the time that claimants have before a claimant can take action under ORS 197.352(6). Although the practical effect of HB 3546 is that under state law local governments have at total of 540 days to process claims before a claimant may take action pursuant to Measure 37, HB 3546 does not relieve the local government from acting pursuant to its local code. (See discussion of LC 2.700 *et seq.* below.)

Marilyn Cohen, in her June 5, 2007 oral testimony, stated that there will be no "harm" to the Claimant. This sentiment was echoed in the deliberation of the Claim by Commissioner Fleenor. However, Ms. Cohen is not qualified to determine what possible legal effects of such an act might have on the Claimant and the County. She represents neither the Claimant nor Lane County. In deciding whether to grant or deny a claim, it is not the duty of the Board to determine whether there is harm to the Claimant or the opponents. The duty of the Board is to follow the statutes and ordinances that govern the Claim. Will the Board take responsibility in the event there is harm to the Claimant by delaying final action in violation of the Lane Code?

Governor Kulongoski, in his May 10, 2007 letter accompanying his signature of HB 3546, stated the purpose of HB 3546. He stated that the extension of time, from 180 days to 540 days, was "made necessary because of the backlog of late claims has been insurmountable under Measure 37's timelines." See the attached letter dated May 10, 2007. Furthermore, the Governor directed state agencies to "move forward immediately with the expeditious review and disposition of the Measure 37 claims in the state's possession. I am specifically directing that the state *not* withhold action on claims pending any future legislation or possible changes in the law." (Emphasis by the Governor.) Note that the Governor did not sign HB 3546 in order to delay the resolution of claims, but to allow the state and local governments more time in order to process all claims. He states: "I applaud the legislature for showing leadership to both accommodate the reasonable expectations of claimants that their claims will be processed fairly, and to protect the state from potentially ruinous cost and liability [by missing the 180-day deadline]." (Emphasis added.)

### Consistency and Fairness

At the July 24, 2007 Board of County Commissioners work session, Planning Director Howe stated that of the 380 total claims submitted to Lane County since the enactment of Measure 37 in 2004, 326 claims have been approved by Lane County, 38 have been denied, and 16 have been placed on hold. Of the 16 placed on hold, only one, the Claimant's application, has been placed on hold at the request of the opposition rather than at the request of the claimant. This means that of the 380 claims filed with Lane County, only one claim has been put on hold without the applicant's consent. Lane County has purposely delayed taking action on the Claim without any justification. This is arbitrary and capricious action and violates the Lane Code. We ask that Lane County correct this and act in a fair and consistent manner.

During the June 5<sup>th</sup> hearing, Commissioner Green voiced his concern regarding the inherent unfairness of delaying action on the Claim when he stated: "To me it falls into the issue of fairness. Because Zip-O-Logs is the one that has a vested interest under the law." BCC Webcast play at approximately 2:40, June 5, 2007.

#### Lane Code

Lane Code 2.700(1), "Findings," states that "...it is in the best interests of Lane County to establish such a process in order to be able to assess such claims in a timely manner." (Emphasis added.)

The "Purpose" of LC 2.700 is to "...establish a prompt, open, thorough and consistent process that enables property owners to present their legitimate claims...[and to] enable persons with claims to have an adequate and fair opportunity to present them to the County..." LC 2.700(2).

Lane Code 2.760, "Board Consideration and Decision," requires the Board, within 180 days from the date a claim was filed, to either declare: "(a) [t]he claim is a valid claim and the amount of compensation, if any, due to the owner(s) of the subject property; or (b) [t]he claim is a valid claim and the County will, as of the date of the final Board decision, modify, remove, or choose not to apply [i.e. grant a waiver]..." LC 2.760(1).

Therefore, it is clear that regardless of HB 3546, the Lane Code requires the Board to take final action on the Claim within 180 days of submission of the application. One of the major purposes of LC 2.700 *et seq.* is to provide a fair and consistent process for the implementation of Measure 37. By not taking action on the Claim, the Board's June 5, 2007 motion to delay taking action is unfair to the Claimant and inconsistent with the Lane Code, Governor Kulongoski's instructions pursuant to HB 3546, and the Board's practice of delaying final action on a claim only upon the request of the claimant.

#### Conclusion

Except for the Claim in question, Lane County has consistently taken timely action on Measure 37 claims. Specifically, the County has taken timely final action, or delayed at the request of the applicant, 379 out of 380 claims. This is a 99.74% record of making a timely decision. Why ruin a perfect record by delaying a valid claim? It is difficult to envision a more arbitrary act than to purposely delay action on a valid claim solely because a law may change the substantive rights of the Claimant. State law does not prohibit the County from taking final action now. In fact, HB 3546 is not an excuse to delay making a final decision. The Lane Code required that the County take final action in May. Fairness and consistency require the County take final action now. In short, I cannot state strongly enough that there is no justifiable reason to delay, and I therefore respectfully request that the Board take immediate action and approve the Claim.

Board of County Commissioners  
August 7, 2007  
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Very truly yours,

A handwritten signature in dark ink, appearing to read "Micheal M. Reeder", with a long horizontal flourish extending to the right.

Micheal M. Reeder

MMR:jgh

Enclosures

cc: Client (w/enclosures)

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