

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

COTTRELL COMMUNITY PLANNING ORGANIZATION, PAT MEYER, MIKE COWAN, PAT HOLT, RON ROBERTS, KRISTY MCKENZIE, MIKE KOST, RYAN MARJAMA, MACY AND TANNER DAVIS, AND LAUREN AND IAN COURTER,
Petitioners,

and

PLEASANT HOME COMMUNITY ASSOCIATION, ANGELA PARKER, dba HAWK HAVEN EQUINE, MULTNOMAH COUNTY RURAL FIRE PROTECTION DISTRICT NO. 10, OREGON ASSOCIATION OF NURSERIES, MULTNOMAH COUNTY FAR BUREAU, GRESHAM-BARLOW SCHOOL DISTRICT 10J, and 1000 FRIENDS OF OREGON
Intervenor-Petitioners,

v.

MULTNOMAH COUNTY,
Respondent,

and

PORTLAND WATER BUREAU,
Intervenor-Respondent.

LUBA No. 2023-086

Intervenor-Petitioner 1000 Friends of Oregon's
Corrected Reply to Intervenor-Respondent PWB's Response¹

¹ Reply has been corrected to include grey cover sheet.

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1 Preservation, Friends' Third AOE

2 Intervenor-respondent ("PWB") is wrong that the issue of compliance
3 with a farm-specific impact test described in *Stop the Dump* was not
4 adequately preserved. PWB Resp 15:6-17:11. PWB's response
5 improperly conflates the requirement to raise "issues" with a
6 requirement—that does not exist—to raise specific "arguments." *DLCD*
7 *v. Tillamook*, 34 Or LUBA 586, 590 (1998); see *Boldt v. Clackamas*
8 *County*, 107 Or App 619, 623 (1991) (ORS 197.797 "requires no more
9 than fair notice to adjudicators and opponents, rather than the
10 particularity [such as that required by ORAP] that inheres in judicial
11 preservation concepts"). PWB relies on cases that did not apply ORS
12 197.797(1), 197.835(3), or *Boldt*. PWB cites *Willamette Oaks*, 295 Or
13 App 757, which quotes *dicta* from *Willamette Oaks*, 248 Or App 212, 225
14 (2012) and *VanSpeybroeck*, 221 Or App at 690-91, n5. PWB Resp. 16:1-
15 16:11. The two *Willamette* cases and *VanSpeybroeck* are irrelevant
16 because they involved ORAP 5.45, only, not ORS 197.797(1). See *The*
17 *Confederated Tribes v. Deschutes*, 332 Or App 361, 385 (2024) (quoting
18 and applying *Boldt*, not *Willamette Oaks*). For the benefit of the bar,

1 LUBA should recognize PWB's quoted language as dicta only. PWB
2 Resp. 16:1-16:11.

3 The HO and all parties had fair notice of the issue. *Reagan v. Oregon*
4 *City*, 39 Or LUBA 672, 690 (2001). PWB has no basis to claim
5 otherwise; its argument is simply trolling. Friends' Pet 25:13-25:15
6 (citing App-47, Rec-47) (Full quote: "As cited by the applicant and as I
7 have adopted, the farm impact test requires farm specific analysis").
8 The record is suffuse with references to *Stop the Dump* and
9 explanations of the farm-specific impacts test. *See e.g.* Friends Pet
10 12:18-13:4, Rec-3558-59 (quoting "granular" test in full). Opponents
11 presented arguments based on the operative requirements from *Stop*
12 *the Dump*, describing in detail the farm and practice specific impacts on
13 their operations; they also commented on Prenguber's analysis. *See*
14 Friends Pet 27:5-28:6, 29:10-30:18, 31:14-32:13, etc. The HO's findings
15 also identified the applicable standard. Friends Pet 25:13-25:15, 22:7-
16 23:2; *Nehmzow v. Deschutes County*, (LUBA 2019-110, Aug 10, 2020)
17 (Slip-op 14); *Riverview Abby v. Portland*, 79 Or LUBA 38, 42-43 (2019).
18 PWB even claims later in its brief that it *did* perform a farm specific
19 impacts test. PWB Resp 37:13-37:17.

1 The applicant has the burden of proof, and was fully aware of the
2 applicable legal standard. *Rochlin v. Multnomah County*, 35 Or LUBA
3 333, 348 (1998). The fact that PWB ignored opponent's farm-specific
4 comments or incorrectly applied *Stop the Dump* does not have any
5 bearing on whether the issue was adequately raised. *Lucier v. Medford*,
6 26 Or LUBA 213, 216 (1993) (specific evidence need not be anticipated
7 and specifically challenged). PWB had fair notice that the granular test
8 in *Stop the Dump* applied. App-47, Friends Pet 25:13-25:15, 12:18-13:4.
9 PWBs failure to provide evidence sufficient to meet its burden of proof
10 does not mean that the issue of farm-specific impacts was not
11 adequately raised. ORS 197.797(1); PWB Resp. 15:10-15:17. ORS
12 197.797(1) does not hold petitioners responsible for an opponent's
13 ignorance, foolishness, or missteps.

14 DATED: September 6, 2023.¹

15 Respectfully,



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¹ I certify that the foregoing Reply brief contains 504 words and is written in 14-point font.

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*On behalf of petitioner-intervenor
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1 **CERTIFICATE OF FILING AND SERVICE**

2 I certify that on the date indicated below, I filed the foregoing

3 Corrected Reply with one copy by first class mail with the Land Use

4 Board of Appeals:

5 Land Use Board of Appeals
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7 775 Summer Street NE, Suite 330
8 Salem, OR 97301-1283

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10 I also certify that I served a copy of the foregoing document on the

11 following counsel of record by first class mail:

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31 DATED: September 9, 2023

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