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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 AND ANGELA
PARKER, dba HAWK HAVEN
EQUINE, MULTNOMAH COUNTY
RURAL FIRE PROTECTION
DISTRICT NO. 10, OREGON
ASSOCIATION OF NURSERIES,
MULTNOMAH COUNTY FARM
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

GRESHAM-BARLOW SCHOOL DISTRICT 10J's INTERVENOR-
PETITIONER REPLY BRIEF

SEPTEMBER 2024

Exhibit M.24

1
2 Carrie A. Richter, OSB#003703
3 William Kabeiseman, OSB#944920
4 Bateman Seidel Miner Blomgren
5 Chellis & Gram, P.C.
6 1000 SW Broadway, Suite 1910,
7 Portland, Oregon 97205
8 Telephone: 503 972-9920
9 *Attorneys for Petitioners*

Jeffrey L. Kleinman, OSB#743726
1207 SW 6th Ave
Portland OR 97204
Ph: (503) 248-0808
*Attorneys for Intervenor-Petitioner
Pleasant Home Community
Association and Angela Parker, dba
Hawk Haven Equine*

7 Ezra L. Hammer, OSB#203791
8 James D. Howsley, OSB#012969
9 Jordan Ramis PC
10 1211 SW Fifth Ave Fl 27
11 Portland OR 97204
12 Ph: (503) 598-7070
13 *Attorneys for Intervenor-Petitioner
Oregon Association of Nurseries*

Zoe Lynn Powers, OSB#144510
Renee M France, OSB#004472
Radler White Parks & Alexander LLP
111 SW Columbia St Ste 700
Portland OR 97201
Ph: (971) 634-0200
*Attorneys for Intervenor-Respondent
Portland Water Bureau*

12 Jenny M. Madkour, OSB#982980
13 David N. Blankfeld, OSB#980373
14 Multnomah County Attorney's
15 Office
16 501 SE Hawthorne Blvd Ste 500
17 Portland OR 97214
18 Ph: (503) 988-3138
19 *Attorneys for Respondent*

Andrew Mulkey, OSB#171237
PO Box 40367
Portland OR 97240
Ph: (971) 420-0916
*Attorneys for Intervenor-Petitioner
1000 Friends of Oregon*

17 Larry Bailey
18 Multnomah County Farm Bureau
19 8325 SE Altman Road
20 Gresham, OR 97080
21 Ph: (206) 592-5138
22 *Intervenor-Petitioner Multnomah
23 County Farm Bureau*

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TABLE OF AUTHORITIES

Cases

Tonquin Holdings v. Clackamas County
64 Or LUBA 68, 102 (2011) 1

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ORS 197.829 1

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MCC 39.7515 1
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1 Many of Intervenor-Petitioner Gresham Barlow School District 10J's
2 challenges regarding consistency with the character of the area and creation of
3 hazardous conditions rely on a finding that the impacts resulting from
4 construction of the same community service use must satisfy the MCC 39.7515
5 criteria. Primarily for this reason, the District offers this reply to Intervenor-
6 Respondent Portland Water Bureau's Response Brief.

7 **I. SCOPE OF REVIEW**

8 The appropriate scope of review by LUBA is to directly assess whether the
9 hearings officer's decision is correct in light of the text, context, and legislative
10 history, including comprehensive plan policies that can provide helpful context.
11 *See Tonquin Holdings v. Clackamas County*, 64 Or LUBA 68, 102 (2011).

12 **II. PRESERVATION**

13 The only time that PWB (or the County) offered any explanation why
14 construction impacts need not be considered under *PGE/Gaines*, including under
15 MCC 39.4305, was in the PWB final argument, and therefore no preservation
16 was required.

17 **III. REPLY TO RESPONSE TO FIRST ASSIGNMENT OF ERROR**

18 Gresham Barlow School District 10J ("District") adopts and incorporates
19 by reference to Section D. of Intervenor-Petitioner Multnomah County Rural Fire
20 Protection District No. 10's Reply brief regarding construction as an inseparable
21 element of a community service use, including their statement of preservation
22 and scope of review. Construction impacts must be considered. This requires
23 remand under ORS 197.829.

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1 **IV. REPLY TO RESPONSE TO SECOND ASSIGNMENT OF ERROR**

2 The County failed to make adequate findings supported by substantial
3 evidence that the proposed use and construction impacts are consistent with the
4 character of the area.

5 PWB states that the District’s emphasis on traffic and in-road work as
6 externalities that are not consistent with the character of the area is
7 “understandable [,] given the distance of any GBSD school from the project.”
8 PWB Response Brief, 8. PWB also asserts that there is no evidence that schools
9 “outside the study area” should be included in the study area. PWB Response
10 Brief, 13. These remarks illustrate the insufficiency of the findings. PWB
11 conflates “impacts upon schoolchildren” with “operations of local traffic.”

12 First Student Transportation Manager Tammy Rickman expresses “serious
13 safety concerns” related to construction of the water treatment facility. Rec-2925.
14 Rickman is precise that the safety impacts on schoolchildren relate to the critical
15 and discrete process of picking up and dropping off of schoolchildren directly in
16 front of their homes, and how “the streets that will be closed due to the proposed
17 construction by PWB will make it impossible for students to access their bus stop
18 locations safely.” Rec-2925. This amounts to a significant change to the character
19 of the area for the District school community. Asserting that these impacts were
20 addressed, PWB cites to a Multnomah County Department of Community
21 Services Transportation Division memo that “suggested conditions of approval .
22 . . will enable sufficient notification of detour routes and ensure operations of
23 local traffic are adequately addressed.” Rec-733. Operations of local traffic and
24 sufficient notification of detour routes do nothing to mitigate the undisputed
impacts experienced by District students, staff, and families as a direct result of

1 the proposed use and construction impacts, which are not consistent with the
2 character of the area. Remand is appropriate.

3 **V. REPLY TO RESPONSE TO THIRD ASSIGNMENT OF ERROR**

4 PWB misconstrues the District's position when it states that the District
5 "points to concerns in the record about **potential** impacts on student pick-up and
6 drop-off as a result of construction activities." PWB Response Brief, 31.
7 (Emphasis added). District students will experience actual impacts, not *potential*
8 ones, as a result of the planned construction activities. The record is clear that
9 construction-related activities will create years-long unmitigated hazardous
10 conditions for District students and families. The record unambiguously
11 describes road closures within the District boundary from September 2024
12 through May 2028. Rec-4515. Neither the Hearing Officer's decision, nor PWB's
13 Response Brief provides any place where mitigation efforts are described to do
14 something about how "PWB will make it impossible for students to access their
bus stop locations safely." Rec-2925.

15 The use, including construction-related activities, creates hazardous
16 conditions for many of the District's thousands of students. The Hearings Officer
17 arrived at inadequate findings that lacked substantial evidence. The decision must
18 be remanded.

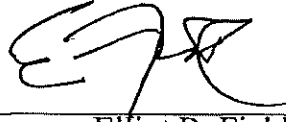
19 **VI. CONCLUSION**

20 The District has consistently prioritized the success and safety of its
21 students. Its efforts here are no different. The County failed to make adequate
22 findings supported by substantial evidence to show that the proposed use and its
23 construction-related impacts will not change the consistency of the character of
24 the area, nor that it will not create hazardous conditions for the community in
general, and for District students and families in particular.

1 For these reasons, this decision must be reversed and remanded.

2 Dated this 6th day of September, 2024

3 GARRETT HEMANN ROBERTSON P.C.

4 

5 _____
6 Elliot R. Field
7 (OSB No. 175993)
8 efield@ghrlawyers.com
9 Of Attorneys for Intervenor
10
11
12
13
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CERTIFICATE OF COMPLIANCE

I certify that (1) this brief complies with the word count limitation in OAR 661-010-0039 for reply briefs and (2) the word-count of this brief as described in OAR 661-010-0030(2)(k) is 771 words. I certify that the size of the type in this brief is not smaller than 14 point for both the text of the brief and the footnotes as required by OAR 661-010-0030(2).

Dated this 6th day of September, 2024

GARRETT HEMANN ROBERTSON P.C.



Elliot R. Field
(OSB No. 175993)
efield@ghrlawyers.com
Of Attorneys for Intervenor

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CERTIFICATE OF FILING AND SERVICE

I certify that on September 6, 2024, I caused to be delivered by first class mail an original and four copies of the enclosed **INTERVENOR-PETITIONER'S REPLY BRIEF** with the:

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

and, on the same date, I caused to be delivered by first class U.S. mail, a true and correct copy of the foregoing document on

Carrie A. Richter, OSB#003703
William Kabeiseman,
OSB#944920
Bateman Seidel Miner Blomgren
Chellis & Gram, P.C.
1000 SW Broadway, Suite 1910,
Portland, Oregon 97205
Telephone: 503 972-9920
Of Attorneys for Petitioners

Jeffrey L. Kleinman
1207 SW 6th Ave
Portland OR 97204

*Attorneys for Intervenor-
Petitioner Pleasant Home
Community Association
and Angela Parker, dba
Hawk Haven Equine*

Ezra L. Hammer
James D. Howsley
Jordan Ramis PC
1211 SW Fifth Ave Fl 27
Portland OR 97204
*Attorneys for Intervenor-
Petitioner Oregon
Association
of Nurseries*

Larry Bailey
Multnomah County Farm Bureau
8325 SE Altman Road
Gresham, OR 97080
*Intervenor-Petitioner
Multnomah County Farm
Bureau*

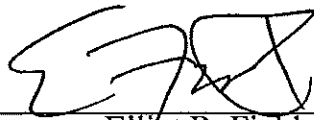
Andrew Mulkey
PO Box 40367
Portland OR 97240
*Attorneys for Intervenor-
Petitioner 1000 Friends of
Oregon*

1
2 Jenny M. Madkour
3 Multnomah County Attorney's
4 Office
5 501 SE Hawthorne Blvd Ste 500
6 Portland OR 97214
7 *Attorneys for Respondent*

Zoe Lynn Powers
Renee M France
Radler White Parks & Alexander
LLP
111 SW Columbia St Ste 700
Portland OR 97201
*Attorneys for Intervenor-
Respondent Portland
Water Bureau*

8
9 Dated this 6th day of September, 2024

10 GARRETT HEMANN ROBERTSON P.C.

11 

12 _____
13 Elliot R. Field
14 (OSB No. 175993)
15 efield@ghrlawyers.com
16 Of Attorneys for Intervenor
17
18
19
20
21
22
23
24