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May 23, 2025

VIA: Email to [LUP-Hearings@multco.us](mailto:LUP-Hearings@multco.us)

Ms. Liz Fancher  
Hearings Officer for Multnomah County  
Land Use Planning  
1600 SE 190th Avenue  
Portland OR 97233-5910

RE: Multnomah County Case File T3-2022-1622  
Applicant's Objection to Suggestion of Non-Attorney Final Argument

Hearings Officer Fancher:

We represent the applicant, Portland Water Bureau ("**PWB**"), in the above referenced case file. On behalf of the applicant, we submit for your consideration the following objection to the suggestion in Exhibit V.3 that any member of the public may file final argument before the deadline of May 27, 2025, at noon.

Counsel for the applicant was extremely surprised to read that "legal argument" in Exhibit V.2 will be considered (recognizing that new evidence will be struck) because our understanding is and has been that only opposition attorneys may file final argument before the deadline of May 27, 2025, at noon.

In reviewing the hearing, our understanding that only opposition attorneys may file final argument is reflected in that discussion. Attached are pages of a transcript of the hearing,<sup>1</sup> reflecting the discussion that led to the "four stage" open record period approach. Key to that discussion is where Ms. Powers articulates her understanding of the "four stage" approach the applicant was being asked to comment on as including only "opposition attorneys" and the hearings officer confirms "That's I think, what we're going to do."

Public Hearing, Minute 5:25:15:

MS. POWERS: So there would be an open  
record period 1, any new evidence, new argument,  
open record period 2, anyone evidence new argument  
in response to the first open record period, open

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<sup>1</sup> We did not submit this transcript into the record because we were not confident it was prepared precisely enough to represent the video completely accurately. For example, at times, it identifies the incorrect speaker. However, for the portion attached to this letter, we have verified the contents.

Hearings Officer Fancher

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record period 3, for opposition attorneys to submit proposed findings, and open record period 4 for the applicant to submit final legal argument and proposed findings.

MS. FANCHER: That's what I was assuming to be asked by Mr. Schaefer.

MS. POWERS: Right.

MS. FANCHER: Yeah. That's what I understood. Okay. That's I think, what we're going to do.

Notably, at Public Hearing, Minute 5:25:43, Ms. Richter and Mr. Schaefer are seen nodding, indicating that they too agreed with the summary of "what we're going to do."

We recognize that the deadlines document in Exhibit S.1 is not explicitly limited to opposition attorneys. However, the introduction in Exhibit S.1 indicates that the deadlines are "as I set them yesterday at the close of the hearing," which implied, at least to us, that Exhibit S.1 is confirmatory of the discussion at the hearing of the "four stage" open record period approach – rather than setting forth any *change* from the "four stage" open record period approach that all legal representatives and the Hearings Officer agreed to at Public Hearing, Minute 5:25:43.

For the reasons set forth above, we request that the Hearing Officer only accept final legal argument or proposed findings from opposition attorneys before the deadline of May 27, 2025, at noon.

Respectfully Submitted,



RADLER WHITE PARKS & ALEXANDER

Enclosures

1       --

2                   MS. FANCHER:  No, I'm going to explain  
3       it.

4                   MR. SCHAEFER:  -- okay.

5                   MS. FANCHER:  After we get an amount of  
6       time talking amongst people, you know, legal  
7       professionals.

8                   MR. SCHAEFER:  Right.

9                   MS. FANCHER:  Then we'll explain it to  
10      the whole group about what's going to happen in each  
11      period.

12                  MR. SCHAEFER:  Okay.  So that said, I  
13      agree with Carrie Richter in terms of what the time  
14      periods really are necessary to be.  And I'll leave  
15      it to the, you know, hearings officer to make the  
16      judgment call.

17                  MS. FANCHER:  Okay.  Yeah.  I was, you  
18      know, especially concerned about providing enough  
19      time for opponents to respond because there's new  
20      evidence.  And so if 14 days is enough for you, then  
21      I'm inclined to go with 14, 14, and I think 14 would  
22      be okay.  Because I would like a draft decision that  
23      is similarly detailed to the one you filed before.  
24      I mean, maybe not that many pages, because you don't  
25      have many issues, but if I'm going to prove it, I

1 think it needs to be a robust well thought out  
2 document, and that will ultimately save me time. So  
3 I'm being very selfish and ultimately saving money  
4 as far as, you know, paying me to do the --

5 MS. RICHTER: With all due respect, I  
6 feel like you're telling them that they've won and  
7 that if they write it up, you'll sign it --

8 MS. FANCHER: -- no, absolutely not.

9 MS. RICHTER: -- and I'd like an  
10 opportunity present fine, written, you know.

11 MS. FANCHER: -- well, that's what I  
12 told you, I gave you an opportunity to do that.

13 MS. RICHTER: But not after the record  
14 closes.

15 MS. FANCHER: Well --

16 MS. RICHTER: Not after all the evidence  
17 is in.

18 MS. THOMAS: Well, you're not the  
19 applicant.

20 MS. RICHTER: No, I --

21 MS. THOMAS: Applicant is entitled under  
22 state law to have final legal argument.

23 MS. RICHTER: I appreciate that. Thank  
24 you.

25 MS. FANCHER: Yeah, no, I -- but yeah,

1 no, I really invite you to submit it. And it isn't  
2 -- I want -- if it's a denial, it's much easier to  
3 write a denial and to -- much harder to defend it.  
4 But on the same -- by the same token, if I deny the  
5 application, I want to give you the opportunity to  
6 tell me basically what you think it should be. And  
7 so I can take what you say and go, I disagree, I  
8 agree, I disagree, I agree. This is what she said,  
9 you know, this is how I feel about it. And I'll do  
10 the same with the applicant if I approve it. And  
11 actually I would probably take their final argument  
12 and say, no, I totally disagree with this argument  
13 here that you gave me. That's very detailed, but  
14 it's wrong in my mind. And therefore I'm ruling in  
15 favor of the opponents.

16 And I just don't -- I don't think that's  
17 sufficient. But I want to be able to fairly state  
18 what everyone views as their position, and I want to  
19 make sure I understand it. And I think you've all  
20 done an incredible job of presenting evidence.  
21 Really high quality, detailed evidence. And I don't  
22 want, you know, as a lay person who doesn't -- you  
23 know, I mean, I don't have an expertise in a lot of  
24 these areas, I don't want to get it wrong. I want  
25 to understand what you said and respond to what you

1     said. And so it'd be super helpful to me if you do  
2     that. And I haven't made -- like I said at the  
3     beginning, I haven't decided the case.

4                 I don't know how I'm going to decide on  
5     it. I think that the applicant has an extremely  
6     heavy burden in this case. I think this is -- I  
7     personally didn't -- I don't think LUBA's decision  
8     makes a whole lot of sense to me because of the  
9     structure of Goal 5, but I know what their decisions  
10    have said before, which is that, you can regulate  
11    more stringently than Goal 5. Doesn't make sense to  
12    me when I read the rules with the intention that if  
13    you make a decision, you're not -- you're --  
14    something's not significant, you're not supposed to  
15    regulate it.

16                So why are we regulating it this way?  
17    But that's just my own personal interpretation and  
18    sense of how the law works. But LUBA has said it  
19    works a different way, and I need to figure out what  
20    that means and how these resource protection issues  
21    work between if it's a Goal 5 resource or something  
22    else. And I think the applicant hasn't looked at it  
23    in that -- through that lens at all. But in my  
24    brain, that's just something I have to think about.  
25    Probably won't be a part of the decision based on

1 what I've heard so far. Okay.

2 MR. SCHAEFER: If I could interject for  
3 a moment, Joseph Schaeffer again. I think we're  
4 talking about two different things. The usual 777  
5 is --

6 MS. FANCHER: Uh-huh.

7 MR. SCHAEFER: -- you know, the first  
8 week is submit whatever you want. Second week,  
9 submit whatever you want in response to what other  
10 people submitted the first week.

11 MS. FANCHER: Right.

12 MR. SCHAEFER: Then the third period is  
13 the applicant gets last bats.

14 MS. FANCHER: Right.

15 MR. SCHAEFER: And they can write their  
16 final decision.

17 MS. FANCHER: Yes.

18 MR. SCHAEFER: But you've invited today  
19 both parties, not just to submit a final argument,  
20 but to submit a draft decision. And I think what  
21 Carrie's trying to say is it's unreasonable for  
22 opponents to write a draft denial decision when they  
23 have not seen this applicant's final submittal yet.  
24 So perhaps, just thinking out loud here, what we  
25 need is a four stage.

1 MS. FANCHER: Okay.

2 MR. SCHAEFER: So the opponents, meaning

3 Carrie, yeah. Are not compelled --

4 MS. FANCHER: Okay.

5 MR. SCHAEFER: -- to write a decision

6 until they --

7 MS. FANCHER: I think that's a great

8 idea.

9 MR. SCHAEFER: -- receive the --

10 MS. FANCHER: I think that's a great

11 idea. Yeah.

12 MR. SCHAEFER: -- the evidence.

13 MS. FANCHER: Okay. The applicants, Ms.

14 Powers or Ms. France.

15 MS. POWERS: So my response to that

16 would be the applicant is entitled to under state

17 law to the -- to the final word. So I --

18 MS. FANCHER: No, I don't agree with

19 that. It applies to the initial hearing, this isn't

20 the initial hearing.

21 MS. POWERS: Yeah. However, the staff

22 report did say that we're going to follow the

23 procedures of the initial hearing.

24 MS. FANCHER: Yeah. But I'm ultimately

25 going to decide what the procedures are.



1 MS. POWERS: But I --

2 MS. FANCHER: And I did indicate at the  
3 beginning of the hearing that I was going to not --  
4 where what I say conflicts with the staff, that it's  
5 going to be what I say.

6 MS. POWERS: Yeah.

7 MS. FANCHER: Okay.

8 MS. POWERS: What I would ask is that we  
9 do those four time periods in sequence, so I --

10 MS. FANCHER: Right. That's definitely  
11 correct. Yeah.

12 MS. POWERS: So there would be an open  
13 record period 1, any new evidence, new argument,  
14 open record period 2, anyone evidence new argument  
15 in response to the first open record period, open  
16 record period 3, for opposition attorneys to submit  
17 proposed findings, and open record period 4 for the  
18 applicant to submit final legal argument and  
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LUP Hearings &lt;lup-hearings@multco.us&gt;

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## T3-2022-1622: Applicant's Objection to Suggestion of Non-Attorney Final Argument

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**Zoe Powers** <zpowers@radlerwhite.com>

Fri, May 23, 2025 at 12:46 PM

To: LUP Hearings &lt;lup-hearings@multco.us&gt;

Cc: Lisa Estrin &lt;lisa.m.estrin@multco.us&gt;, Renee France &lt;rfrance@radlerwhite.com&gt;, "Peters, David"

&lt;David.Peters@portlandoregon.gov&gt;

**External Sender** - Be Suspicious of Attachments, Links, and Requests for Payment or Login Information.

Please provide the attached letter to the Hearings Officer in T3-2022-1622 as soon as possible. This matter is time sensitive.

Thank you,

**Zoe Lynn Powers**

Partner



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Pronouns: She/her

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**Applicant's Objection to Suggestion of Non-Attorney Final Argument (01556815xC624A).PDF**

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