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September 6, 2023

Via email to LUP-Comments@multco.us and LUP-Hearings@multco.us

Land Use Hearings Officer
Multnomah County
1600 SE 190th Av.
Portland, OR 97233

Re: Case File No. T3-2022-16220 (Portland Water Bureau)

Dear Hearings Officer Rappleyea:

Introduction

I am writing on behalf of the Pleasant Home Community Association (“PHCA”), in response to the materials filed by and for the applicant prior to the close of the initial open record period. Other participants have provided detailed factual and legal responses, which I will try not to duplicate here. Instead, I would like to add my own observations regarding the status of this casefile.

An Application Built on Shifting Sands

My file on this matter was opened more than four years ago. PWB has had more than enough time to come up with an application and a plan that would comply with the county’s difficult approval criteria for this site. It has failed to do so. Rather, the city and its multiple consultants have substantially revised the application on the fly during the county’s review process, attempting to address issues which they should have taken into account long ago. This reflects not merely a failure to meet the burden, but a lack of simple due diligence.

First, there is the matter of site access generally. The application was substantially founded on the basis of splitting construction access between Carpenter Lane and a southern entry off Bluff Rad in Clackamas County, an entry dependent upon an easement it appears PWB does not possess. The county has now approved that access only for emergency purposes and denied it for

construction traffic; permission for emergency access is itself under appeal. The upshot is that several years worth of heavy construction traffic moving in both directions— apparently six peak hour vehicles per minute, primarily trucks—is to be concentrated on Carpenter Lane east of Cottrell.¹ The record discloses this to be perhaps the most pastoral stretch of roadway in the impact area,² as well as being essential for commercial nursery traffic. The only year round access points for R & H Nursery are two located on that stretch of Carpenter Lane. PWB’s proposal foretells economic disaster for R & H.

PWB initially proposed to route all Carpenter Lane traffic to and from the site via Dodge Park Blvd., to its north. Are truck-turning movements to and from Dodge Park via Cottrell too difficult and unsafe? Will they cause major traffic back ups? We’ll consider routing trucks to and from the south on Bluff Road as well. Safety and sight distance issues on that alignment too? Forcing far more trucks to pass at least one local school when routed in this manner? Sorry, not enough time for analysis.

We would reiterate here that farm impacts are not subject to a mere intersection LOS analysis. The record is replete with detailed evidence regarding those impacts. The applicant may be heard to argue that those impacts are speculative at this point in time. To the limited extent that may be true, it is only because PWB has not specified the timing, location and extent of road and lane closures and detours; specific rerouting of equipment, truck and worker traffic to be imposed upon concerned farmers, or its duration; or the details of interference with farm traffic to be caused by construction of the facility and its pipelines. With that information, the affected farmers could lay out the expected impacts in even more detail. However, at this point in time, the burden of proof remains on the applicant, not the nurserymen and other farmers, and it has not been met.

¹Please note that Carpenter Lane lies within the PHCA’s jurisdiction and the related impacts are of particular concern to this community association.

²See *e.g.* letter from Hawk Haven Equine, Ex. I.34, and their follow up letter filed during this rebuttal period.

As pointed out in detail by RFPD 10 and others, the applicant proposes to address the inevitable problems *after* they arise and the impacts have become apparent. For example, the applicant's transportation consultant states that the TDM plan requires "the applicant to submit monitoring reports to the County describing traffic counts and mitigation measures [to be] used to lower trips below the threshold number." Exhibit I.84 at 17. Then there will apparently be a consultation/evaluation involving county staff, which will not include those suffering the adverse traffic impacts. Perhaps at some point in time, hypothetical solutions will be implemented. Of course, this will be after the fact and the solutions may or may not work.

As identified by RFPD 10, the flawed elements of the current proposal include the following:

- Future creation of a Traffic Control Plan by an unidentified contractor, including for the purpose of enabling timely emergency vehicle passage and access;
- Future drafting of "well-documented action plans [to] be established prior to site work and construction."
- Future development of a policy providing that "if road closures result in shorter response times from neighboring mutual aid fire stations," such other stations would automatically be called upon. (No specifics are provided as to those road closures and which stations would be called upon in any particular instance. In other words, there may ultimately be a policy, but there is no plan.)

Other speculative elements of the applicant's efforts to address traffic-related impacts are discussed in Mr. Ard's letter of this date. The applicant's approach, setting out untested alternatives and speculative future remediation, fails utterly to comport with the requirements of *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447-48 (1992). There is simply no basis for finding that PWB has presented "feasible solutions" resulting in compliance with the relevant approval criteria of MCC 39.7515. Rather, the county is asked to approve an application premised upon what is, in effect, the belated, future development of unproven

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conditions of approval, as the facts and real-life evidence may dictate, and without the required public process. No such application can be approved.

Conclusion

For the reasons set out here and all those identified in the submittals of farmers and other opponents, and their counsel and traffic engineer, the applicant has (still) failed to meet its burden of proof herein.

This application must be denied.

Respectfully submitted,

Jeffrey L. Kleinman

Jeffrey L. Kleinman
Attorney for Pleasant Home Community
Association

JLK:cme
cc: client



Case File No. T3-2022-16220 (Portland Water Bureau)

1 message

Jeffrey L. Kleinman <kleinmanjl@aol.com>

Wed, Sep 6, 2023 at 5:21 AM

To: LUP Comments <lup-comments@multco.us>, "lup-hearings@multco.us" <lup-hearings@multco.us>

Cc: Lisa Estrin <lisa.m.estrin@multco.us>



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Good morning,

Attached please find my letter submitted on behalf of Pleasant Home Community Association for filing in the above matter.

Thanks very much.

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