

1 BEFORE THE LAND USE BOARD OF APPEALS
2 OF THE STATE OF OREGON
3

4 THE FRIENDS OF CLEAN LIVING, an)
5 Oregon non-profit organization,)
6)
7 Petitioner,)
8)
9 vs.)
10)
11 POLK COUNTY,)
12)
13 Respondent,)
14)
15 and)
16)
17 CITY OF DALLAS,)
18)
19 Intervenor-Respondent.)
20

LUBA Nos. 98-150, 98-162 and 98-177

ORDER

21 **INTERVENTION**

22 In accordance with the parties' stipulation, the City of Dallas shall be allowed to
23 participate in this appeal as an intervenor-respondent.

24 **REPLY BRIEF**

25 On December 29, 1998, petitioner filed a reply brief. Under OAR 661-010-0039 "[a]
26 reply brief shall be confined solely to new matters raised in the respondent's brief." In a
27 letter dated January 6, 1999, intervenor-respondent (intervenor) advised the Board that it did
28 not object to the reply brief, but intervenor purported to reserve the right to object to any
29 portions of the reply brief that were not confined to new matters raised in the respondent's
30 briefs. Intervenor requested that it be given an extra ten minutes at oral argument in this
31 appeal to raise such objections.

32 If intervenor agrees the positions taken in the reply brief are properly included in a
33 reply brief under OAR 661-010-0039, but disagrees with those positions on the merits, it may
34 indicate that disagreement during the 30 minutes of oral argument allotted to respondents

1 under OAR 661-010-0040(3). Intervenor's request for additional time for oral argument for
2 this purpose is denied.

3 However, if the reply brief includes positions that go beyond those positions that are
4 properly included in a reply brief under OAR 661-010-0039, those positions should not be
5 considered on their merits and are subject to a motion to strike. If intervenor believes the
6 reply brief includes positions that are not properly included in a reply brief under OAR 661-
7 010-0039, intervenor may object to our consideration of such positions by filing a motion to
8 strike. Where there is time to raise such objections in a motion to strike before oral
9 argument, it is not appropriate to delay raising such objections until oral argument.
10 Intervenor shall have 10 days from the date of this order to file a motion to strike any
11 portions of the reply brief that intervenor believes are not properly included in a reply brief
12 under OAR 661-010-0039.

13 Dated this 21st day of January, 1999.
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Michael A. Holstun
Board Member