



Community Development Department / Planning Division
12725 SW Millikan Way / PO Box 4755
Beaverton, OR 97076
General Information: 503-526-2222 V/TDD
www.BeavertonOregon.gov

MEMORANDUM

TO: Planning Commission
FROM: Steve Regner, Senior Planner
DATE: October 9, 2024
SUBJECT: LU2023-00557 Ashcreek Playschool Supplemental Memorandum Two

This memo is to provide the Planning Commission with additional public testimony received the day of the hearing. Given that the testimony was received after 3:00pm on the day of the hearing staff has not had sufficient time to analyze and respond to the provided testimony.

Exhibits

Exhibit 2.26 Letter from Golder, dated October 9, 2024
Exhibit 2.27 E-mail from McCafferey, Dated October 9, 2024

Douglas Gordon
10050 SW 151st Place
Beaverton, Oregon 97007

October 9, 2024

ATTEN: Steven Regner, Senior Planner
Jana Fox, Planning Director

VIA EMAIL TRANSMISSION

Planning Commission
City of Beaverton
12725 SW Millikan Way
Beaverton, Oregon

In the Matter of: Application/Project Name: LU32023-00557 Ashcreek
Application Numbers: CU32023—00555 /
DR12024-00090
SUPPLEMENTAL SUBMISSION

This Submission supplements my first Submission to the Beaverton Planning Commission on October 3, 2024.

1. The Beaverton Code places the burden of proof on the Applicant. The Applicant has failed to carry that burden in a number of respects discussed below.
2. Applicant has failed to present any factual evidence about whether or to what degree the loud playground noise projected from the playground into my house and property, or surrounding residences. Without such factual evidence, there is no basis for the Planning Commission to determine to what degree and to what effect the playground noise projected into neighboring

properties complies with or violates the Beaverton Noise Ordinance, BC 5.15 et seq., or the applicable of State Department of Environmental Quality noise standards for commercial activities.

3. Ashcreek in its Written Statement 9-27-24 concedes that there is "Yelling and shouting" which occur during playtime on the playground. Page 7 of Statement. Ashcreek admits that "Noise (is) always a potential concern when children are playing" Ashcreek baldly asserts without any actual evidence that this type of noise is "allowable in residential areas" ALL DAY EVERY DAY except from 10:00 p.m. to 7:00 a.m. This contention misinterprets the Beaverton Noise Ordinance and should be rejected. See discussion in paragraph (4) below.

Ashcreek's Application contains no factual information whatsoever which addresses worsening the projection and loudness of playground noise resulting from increasing enrollment to 60 students, and/or increasing from 20 to 30 students on the playground at one time. Lacking this central information is a failure of the Applicant to discharge its burden of proof.

4. I have submitted credible and substantial factual evidence to establish Ashcreek's violation of the Beaverton Noise Ordinance. This includes six audio recordings I took with my i-Phone from my house and yard. These demonstrate that the playground noise projected when Ashcreek playschool is present is sufficiently loud and raucous to be unreasonably loud to a person of ordinary sensitivity to have a serious negative impact on the liveability and enjoyment of my property.

Also see my Exhibit 2 in my first Submission. These are my vacant decks which I stopped using three years ago because of the pervasive, intrusive and unreasonable noise being projected into my property by the Ashcreek playschool activities.

4. The Staff Report's interpretation and application of applicable the Beaverton Code, Beaverton Development Code and the Noise Ordinance violate the required standards of "Interpretation and Application of Code Language". BC 10.20 (1) through (7).

A. The Staff Report interpretation of the Noise Ordinance violates BC 10.20(3) which requires the Code to be read not more or less strictly than as stated. The Staff Report, incorrectly relies upon BC 5.15.030 (A). This section is expressly defined as a "per se" violation which does not apply to this situation.

Specifically, the Staff Report incorrectly concludes that playground noise is exempted from being a violation because the noise from the church playground is typical noise which is no different from any typical playground. That conclusion violates BC 10.20 in two ways.

First, it violates BC 10.20(3) by interpreting BC 5.15.030 (A) render it strict than as stated. This is because the language of that section requires an element of intent ("knowingly") to cause unreasonable levels of noise. That section applies to a different situation than presented by the church playground activity as discussed below.

Second, the Staff Report fails to read BC 5.15.030 (A) "in relation to other sections" so as to fail to fully effectuate the purpose and intent of the regulation as required by BC 10.20(6)(C).

B. The Staff Report fails to recognize that section BC 5.15.030 (E) of the Noise Ordinance not only directly applies here, but is the controlling ordinance:

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"Noise – Sensitive Areas. **The creation of unreasonably loud and raucous noise adjacent to any noise-sensitive area while it is in use, and which unreasonably interferes with the workings of the noise-sensitive area or which disturbs the individuals in the noise-sensitive areas.**" (Emphasis added)

The Staff Report fails to mention this section or even to attempt to distinguish it. This failure is a direct violation of BC 5.15.030 (6)(C) by failing to "read questioned regulations in relation to other sections such that an interpretation most fully effectuates the intent and purpose of the regulations."

C. The Staff Report violates BC 10.20(3) and (6)(A) (B) and (C) by misinterpreting BC 5.15.0035 (F) so as to grant Ashcreek preschool a noise exemption by treating it as equivalent to a "school" playground. By definition, a "preschool" is not a "school" as those terms are ordinarily defined. The church property exists as a place of worship, as allowed by its 1988 Conditional Use Permit. It is a church and the church is the property owner. The operation of a preschool on the church property does not render the place of worship into a "school".

The Staff report fails to give the plain dictionary meaning to these key words of place of worship, preschool and school. BC 10.20 (6)(A) and (B). It violates BC 10.20 (6) (C) by failing to read BC 5.15.030(E) and .035(F) together to effectuate the proper intent and purpose of the regulations. The Noise Ordinance is not intended to equate a "school" with a "place of worship", and granting a noise exception to the church on the basis that it actually a school is improper.

5. The Applicant fails to present any evidence to establish that Ashcreek playground noise projected into my home and yard, and neighboring homes, does not violate BC 5.15.030 (E) quoted in paragraph 4(B) above.
6. The Applicant makes misleading statements in its Written Statement 9-27-24 in support of its Type 3 Application about the subject of specific act allegedly taken in "mitigation" of playground noise.

The Applicant states:

"Noise, always a potential concern when children are playing, is mitigated at the Church property through a newly installed fence and additional pending signage to designate the playground area is only available during limited hours." Page 1.

"The property owners have taken steps to mitigate noise at the property through a newly installed fence and efforts to limit use of the playground during unauthorized hours." Page 7

A. The cyclone fence was installed in March/April 2023 along the sidewalk separating the parking lot from the playground by the church for the express purpose of the safety of the children. The installation had nothing to do with mitigation of noise. It is ingenuous at best not to inform the Planning Commission that the fence was a cyclone fence, incapable of mitigating sound.

B. The "pending signage" referred to are the signs welcoming the public to use the "Murray Hill Christian Church Playground" from "10:00 a.m. to dusk." See Ex. 3 B with my first Submission. The pending signage has nothing to do with Ashcreek's using the playground or mitigating noise.

The Applicant fails to inform the Planning Commission that these same signs were taken down by the Church when the cyclone fence was installed. On two occasions since then the Church trustees have stated that they were going to reinstall the signs. They have not done so.

Why? It's obvious that by posting the signs the church would be acknowledging to the Planning Commission that in fact the playground is a public playground, and not an incidental use to the church itself.

The Applicant does not inform the Planning Commission that the expected effect of installing the "pending signage" would be to increase the number and intensity of use of the playground EVERY DAY UNTIL DUSK!

The signs have no relation whatsoever to Ashcreek or mitigating the noise projected by Ashcreek playschool.

7. The Applicant fails to inform the Planning Commission about other playground noise caused during its two "Summer Camps" held during July and August each year. Most of the time from 9:00 a.m. to 1:00 p.m. and even until 2:00 p.m., and they have approximately 15 to 20 students on the playground at a time. The level and duration of the playground noise equals or increases beyond that of the regular "school" year.

The Beaverton Code Compliance Manager told me that the "summer camps" were part of the pre-school and did not require any additional approval from the City. See discussion in Ex. 26, p.6 in my first Submission.

This is a material omission which results in concealing important relevant information from the Planning Commission in its determination as to whether this Application satisfies all Approval Criteria.

8. Similar to paragraph 7, the Applicant fails to inform the Planning Commission that it began enrollment for a new kindergarten program in the summer of 2023. The enrollment is not known,

Ashcreek as well as the church acted in violation of both the 1994 and 2000 Conditional Use Permits in expanding its operation beyond preschool. This action also violated the Voluntary Compliance Agreement which was legally binding and limited Ashcreek to preschool enrollment only.

9. Ashcreek asserts that the Murray Hills Church is a "Community Hub", not just a place of worship, and as such, Ashcreek's preschool operation should be approved.

The idea that the church should be deemed a "Community Hub" in total conflict with both the State and Beaverton Land Use planning goals and Code provisions intended to preserve and protect the liveability of our residential neighborhood.

We live in a dense residential neighborhood. Zoning allows a church as a nonconforming use, as a place of worship. Nothing in the city's Land Use Development Code authorizes a "Community Hub" in our neighborhood.

Beaverton does have areas that might be regarded as "community hubs": the Round for example; or the Saturday Market, public park fountain and the Saturday market land complex. The rationale advanced by Ashcreek that likens the church to a community hub is unsupported by the Comprehensive Goals, Beaverton Code, and any facts in the record.

10. This Traffic Impact analysis is incomplete because neither the church or Ashcreek have presented all of the information about the actual amount of traffic accessing the church property daily. Without complete information the Application is deficient and the Planning Commission does not sufficient information to approve the Traffic Study.

The Applicant openly concedes that its traffic analysis does not attempt to address "all the traffic issues or increases unrelated to this permit application". Page 1.

This quote refers to the fact that there is a tremendous amount of traffic every day going in and out of the one entrance to the church on a side street, SW 151st Place.

As Applicant admits, there are other activities conducted at the church which add to the traffic burden. These include the Girl Scouts, Cub Scouts, Boy Scouts, two AA groups, the food pantry and a Hispanic Church. And this list may grow longer in the future.

This is a major omission. The Planning Commission cannot make an informed and correct decision on the Application in isolation without having this additional information.

Until such information is provided, the Application should not be approved.

11. The Staff Report makes an erroneous statement of fact which is material and should be disregarded as factually incorrect. This appears in the "Summary of Public Comment", under "Legal Use of Play Area" on page 4, under "Staff Response." This violates BC 10.20 (3) and (6)(A), (B) and (C).

The Report states:

"An outdoor play area was included in the application, which was approved."

This statement is without factual accuracy. In fact, the Church Application to allow a Montessori School, does not make any mention of an outdoor play area. It only states:

Page 9

Submission to Planning Commission

10-9-24

"This application is for the amended use of the church for a Montessori School." Ex. 11 to my first Submission.

Because the Planning Commission Order and underlying legal authority is derived from the Beaverton Code and Ordinances, the Rules of Interpretation which govern "Interpretation and Application of Code Language", BC 10.20., should be applied equally to the interpretation and application of the Planning Commission's Orders.

The Planning Commission should disregard this erroneous assertion.

12. The Staff Report erroneously asserts, again contrary to the provisions of BC 10.20, that the play area was approved because it was discussed in the Staff Report.

This is not possible legally because there is nothing in the City's record to demonstrate that the Planning Commission ever voted upon such an issue. Such a vote is required by the By-Laws which govern the authority of the Planning Commission.

Second, the Planning Commission has no authority to approve an item which the Applicant did not request.

Third, the record demonstrates that the small play area was for use of parishioners and due to its limited size and location, it was considered to be an "incidental" use which did not require approval or disapproval. The Staff Report concluded only that the play area did not significantly impact the liveability of the surrounding neighborhood.

Respectfully Submitted,



Douglas Gordon

From: [Veronica McCaffrey](#)
To: [Steven Regner](#)
Subject: [EXTERNAL] Ashcreek Playschool Testimonial
Date: Wednesday, October 9, 2024 4:57:43 PM

CAUTION: This email originated from outside the City of Beaverton. Exercise caution when opening attachments or clicking links from unknown senders.

Good day,

I am writing to you as the mother of two boys and long time members of the Ashcreek Playschool family. My oldest, Anderson, started his enriching journey at Ashcreek back in 2018 at the age of 2 and my youngest, Ellis, started in 2020. The school was founded by one of my dear friends, whose whole heart was dedicated to providing a safe and nurturing place for children to play and learn and grow. I am devastated about the recent accusations and disdain that a couple of neighborhood people have regarding children playing on a playground. I feel like Ashcreek has been unfairly targeted, and is caught in the middle of this fight. From my understanding, these select few neighbors don't want a playground there in general. It is open to the general public during the day as well as of course, the church members on Sundays. We as a school are being targeted for this overall disapproval of the playground.

I am writing to you today to let you know just how important Ashcreek is to our family and to our community. There are a scarce amount of preschools around the Murray Hill area that children can attend and are at the cost that Ashcreek offers. We are a non-discriminatory school and provide financial aid to those in need. Our school does a service to not only our families but to our community through our volunteer efforts, events that bring community together and working closely with the wonderful church we are housed in. Please hear what we, the parents and families of the school, have to say. I am good at putting myself in other people's shoes, but can honestly not understand the viewpoint of the neighbors. Regardless, we have been willing to listen and take steps to accommodate these individuals. Ashcreek Playschool students are only out on the playground for slightly over an hour tops during the school day, all other playground noise is outside school hours and outside our control.

Thank you so much for your consideration and I am happy to answer any questions that you may have.

In partnership,

Veronica McCaffrey