



Jayson Jacoby/Baker City Herald

The new playground at Geiser-Pollman Park features toys that are accessible to all children, including those in wheelchairs. The \$300,000 playground is just south of the playground installed in May 2014.

PLAY

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“All of the pieces that came together for this was really unifying for our community,” Bornstedt said. “Seeing everyone pulling together and having a common cause was a feel good story.”

The project hasn’t been without glitches — and not only the coronavirus pandemic.

The original shipment of equipment was missing a few pieces, and there were design issues that required changes and delayed construction.

But with playgrounds

closed due to the pandemic, those issues didn’t actually delay opening of the new playground.

After the surfacing is installed, the responsibility of the installation lies in the hands of private contractors. Bornstedt said the city’s contractor worked with two installation firms.

“It’s kind of been a little bit of a logistical problem because we are dealing with two different contract installers and of course they work independently and they all have other projects,” Bornstedt said.

Although the city’s original

schedule called for completion by Memorial Day weekend, additional concrete work is needed due to the configuration of the playground’s footprint.

Bornstedt said she hopes to finish the project by June 30, the end of the city’s fiscal year.

“We are still looking at our numbers coming in to see if that is something that is possible to be completed within our current fiscal year or it will be something to happen after July 1 due to fiscal constraints,” she said.

The existing playground, installed in May 2014 just

north of where the all-abilities section is being built, remains closed due to the pandemic.

Bornstedt said she hopes to reopen that playground as soon as possible, now that Baker County has started phase 2 of the state reopening plan.

Despite all the setbacks and challenges this project came across, Bornstedt is convinced that this project will be a complete success for the city.

“It’s an absolute necessity for our community, and it’s going to be a wonderful addition and a great asset,” she said.

OVERRIDE

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Shirtcliff agreed with the plaintiffs’ contention that because Brown, in issuing several executive orders since March, invoked the state’s public health emergency law, chapter 433 of the Oregon Revised Statutes, those orders were constrained by the 28-day limit prescribed in that law.

The governor’s lawyers, meanwhile, argued that the governor’s executive orders were not subject to the 28-day limit because Brown, in her initial March 8 declaration of an emergency related to the coronavirus, cited a different, more general, emergency law, chapter 401, which has no time limit.

Six justices participated in the Supreme Court decision. Chief Justice Martha Walters did not.

Justice Christopher Garrett, joined by Justice Thomas Balmer, wrote a separate opinion concurring with the governor’s lawyers’ argument that Brown’s executive orders are not limited to the 28 days mentioned in chapter 433.

In the main opinion, which was issued by the six judges and not signed by any individual judge, the court found that Shirtcliff’s analysis of the two laws — chapter 401 and chapter 433 — “cannot be reconciled with the statutory text and context, and is directly at odds with how the legislature intended the statute to apply.” Ultimately, the opinion reads, the governor’s executive orders related to the pandemic “are not subject to the statutory time limit on which plaintiffs relied, which is set out in ORS chapter 433.”

The justices cited sections in chapter 401, which state that the governor’s authority under that general emergency law includes taking any actions authorized under chapter 433.

“Ordering those actions did not convert the Governor’s chapter 401 declaration into a chapter 433 declaration, and it did not make the executive orders subject to the 28-day limit,” the opinion reads. “Chapter 433 does not limit the Governor’s authority

under chapter 401.”

Kevin Mannix, a Salem attorney who represents a group of intervenors who joined the lawsuit on the side of the plaintiffs, issued a statement Friday about the Supreme Court’s ruling.

“I am disappointed, of course, in the decision by the Oregon Supreme Court,” Mannix said. “I am not completely surprised, since we realized this case would be affected by the surrounding environment concerning the coronavirus pandemic.”

“The key legal component to the Oregon Supreme Court decision is that they have infused a specific power from the public health emergency law into the general emergency law,” Mannix said.

“The general emergency law, adopted in 1949, allows the Governor to declare an emergency to deal with disasters such as fires, floods, and storms. It was not designed for epidemics, although it can address outbreaks of disease following a disaster. The general emergency law does not include a provision which allows the Governor to close down churches and businesses throughout the state.”

Mannix said he will seek to have the Oregon Legislature amend state law to expressly limit the governor’s power to close business and restrict gatherings to 28 days, even when, as Brown did, the governor declares a general emergency under chapter 401, which has no time limit.

In their 46-page opinion, the justices wrote that although there have been and continue to be debates about how to respond to the pandemic, “to the extent that those debates concern policy choices, they are properly for policymakers. That is, those difficult choices must be made by the people’s representatives in the legislative and executive branches of the government.”

The Court cited a U.S. decision from 1905, *Jacobson v. Massachusetts*, in which the high court ruled that “It is no part of the function of a court ... to determine which of two modes is likely to be the most effective for the protection of the public against disease.”

The justices concluded that

although the judicial branch also has the authority to intervene when the executive or legislative branch act in “an arbitrary, unreasonable manner,” courts should give officials considerable latitude.

The opinion quoted John Roberts, Chief Justice of the U.S., in a recent case regarding the government’s authority during the pandemic, that “in areas fraught with medical and scientific uncertainties, their latitude must be especially broad.”

Although the main opinion cited Shirtcliff’s analysis of the relationship between chapters 401 and 433 as the reason his decision to grant the preliminary injunction was flawed, Justice Garrett, in his separate, supporting opinion, joined by Justice Balmer, cited other reasons for ordering Shirtcliff to vacate his May 18 decision.

Garrett disagrees with Shirtcliff’s contention that the plaintiffs have a strong likelihood in prevailing should their lawsuit go to trial. That’s one of the criteria — likelihood of ultimate success in the lawsuit — that judges consider in deciding whether to grant a preliminary injunction.

But it was another criterion — considering the “public interest” of granting an injunction — that Garrett found to be the predominant legal issue.

Garrett concluded that Shirtcliff exceeded his range of discretion by failing to properly consider the governor’s authority during emergencies to determine what is in the public’s interest.

Shirtcliff, Garrett wrote, “did not give sufficient attention to the Governor’s role, in emergency situations such as the COVID-19 pandemic, in determining what is in the public interest,” and further the judge “did not give the necessary weight to the harm to that public interest ... that would result if her orders were enjoined (meaning blocked by the judge’s order).”

Moreover, Garrett wrote, because he believes the plaintiffs are not likely to prevail in their lawsuit, Shirtcliff, by granting a preliminary, which is to say temporary, injunction, would harm the public

interest “needlessly” given Garrett’s belief that in the end the plaintiffs would lose.

“For all those reasons, the issuance of the preliminary injunction was outside the permissible range of the circuit court’s discretion,” Garrett wrote.

HEART TO HEART

Thanks to all who have helped with the Mounted Posse Kids Trail Ride

The Baker County Mounted Posse has been active since 1964. In that time the Posse has conducted projects in Baker County, which included the most popular, the annual kids trail ride. Unfortunately, this year we will not be able to have our trail ride because of the coronavirus restrictions.

We would like to take this opportunity to thank all of the kind and caring people who have helped us, year after year, with their generous donations and support of our chuck wagon at community events, so we can keep the trail ride going.

In February 2019 someone stole our utility trailer, which held a lot of our tools and games for the trail ride. They chose to burn the trailer after removing the items they wanted, including a new Honda generator, camping gear, coolers, etc. It was a devastating loss for the Posse. Fortunately, the generous friends of the Posse, businesses, former members and trail riders, donated enough emergency funds so we were able to have our kids trail ride last year. Most people not familiar with our kids trail ride do not understand that some of our youth in Baker County have never had the opportunity to share a weekend of riding horses, games, wilderness education, camaraderie and good food with new and old friends. Many friendships made last a lifetime. Many kids look forward to attending the trail ride for years. We do have an age bracket for attendance, 12 to 15 years old. We have had many people who attended the trail ride as a youth come back as adults to either join the Posse or sign up to be a chaperone for the trail ride and help with fundraising.

Below is a list of our generous donors to the Baker County Mounted Posse who helped us through donations to replace those items we needed to conduct our kids trail ride in 2019. We can’t say enough in words for their overwhelming efforts and help to continue our yearly tradition. Thank you all again!

- 2019 donations: Janet Midkiff, Jim and Diana Corrigan, Blatchford Farms Inc., Elkhorn Auxiliary, Jeffery and Colleen Collier, Cheryl Webb, Marian Radabaugh, Todd Weakly, Black Distributing Inc., Robbins Farm Equipment, S&S Auto Center, Baker City Electric, Eagles Aerie, O’Neal’s Auto Repair, 5 Star Towing, Maxine Cole, Baker Botanicals, Burger Bob’s Drive-In, Cheri Smith, Oregon Trail Restaurant, Cody’s General Store, Premier Auto Body, El Erradero restaurant, Nichols and Mitchell Accounting

- 2020 donations: Cook’s Radiator Shop, Martin Financial, Betty’s Books, The Main Event, Peterson’s Chocolates, J. Tabor Jewelers, Elkhorn Embroidery, Off the Rack, Oregon Trail Restaurant, Bearded Dog, Cody’s General Store, Premier Auto Body, Haines Steak House, El Erradero restaurant, Precision Import Auto Repair, Gaslin Accounting CPAs, Trader Ray’s, Baker Vision Clinic, Thatcher’s Ace Hardware, Dan Van Thiel, The Hen House, Silven, Schmeits and Vaughan, Marvin Wood Products

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