

**BOARDMAN PLANNING COMMISSION MINUTES - SPECIAL MEETING/PUBLIC HEARING –
SEPTEMBER 8, 2021
VIDEO CONFERENCING MEETING**

Commission Chair Jacob Cain called the meeting to order at 7:02 p.m.

Commissioners in Attendance: Jacob Cain, Ragna TenEyck, Sam Irons, Jennifer Leighton, Zach Barresse, Karla Jimenez(arrived late) (via Zoom)

Commissioners Absent: None

Staff: Barry Beyeler-Community Development Director, Karen Pettigrew-City Manager, Jackie McCauley-Secretary, and Jenn Rollins – City Recorder / HR

Audience: Ed Glenn, Wendie Kellington – attorney for Johnathan Tallman, Tommy Brooks – attorney for UEC, Sarah Mitchel, Kelly Doherty, David Blanc – City Attorney, Johnathan Tallman, Derrin Tallman, Cole Bodie, Guest, Commissioner Doherty, and Tamra Mabbott – Morrow County Planning

FLAG SALUTE

OLD BUSINESS

None

NEW BUSINESS

Appeal Hearing – ZP21-031 UEC TRANSMISSION LINE

Commission Chair Cain announced the purpose of the appeal hearing was to hear the appeal regarding ZP21-031 UEC Transmission Line. Commission Chair Cain noted that there is not currently a vice chair for the planning commission and asked to place the vote for the vice chair on the agenda. Commission Chair Cain asked if anyone would nominate for the vice chair position – asked for Roll Call – all commissioners present except for Karla Jimenez. Ragna TenEyck nominated herself as Vice Chair. Commissioner Zach Barresse seconded the motion. The motion passed 4 yay, 1 abstain, and 1 absent. Ragna TenEyck was voted in as Vice Chair.

Moved back into new business of public appeal hearing on ZP21-031 UEC Transmission Line.

**Commission Chair Cain recessed the special meeting at 7:09pm
Commission Chair Cain opened the public appeal hearing at 7:09pm.**

Call for Abstentions

Commission Chair Cain asked for any abstentions and noted a quorum is in attendance for the meeting. Commission Chair Cain then asked to abstain himself from this part of the hearing due to a potential conflict of interest. Commission Vice Chair TenEyck agreed to continue to lead the appeal hearing.

Commission Vice Chair noted the purpose of the hearing is to review the appeal on ZP21-031 UEC Transmission Line. Confirmed that Jacob Cain is abstaining from the meeting and no other abstentions were noted.

Call for Objections

No objections were noted.

Staff Report

Community Development Director Barry Beyeler read the Staff Report from September 1, 2021 – Subject: 1st John 2:17 L.L.C. Appeal of Decision ZP21-031 into record.

Staff Recommendations

Community Development Director Barry Beyeler advised the Planning Commission may choose to pursue two different options. One, the planning commission may deny the appeal which will most likely cause the issue to be further appealed to the City Council. Two, the issue may be remanded back to staff to start the process over.

Proponent's Case

Wendie Kellington of Kellington Law Group

Wendie Kellington of Kellington Law Group representing 1st John 2:17 L.L.C. and Jonathan Tallman questioned the reading of the agenda and asked if both appeals were being heard together or separately. The Planning Commission noted that they would be heard separately. Ms. Kellington asked to speak as to why the Planning Commission should deny the application and not remand it back to staff.

Ms. Kellington stated the last time Morrow County tried to play nice and do things like that UEC promptly turned around and filed a writ of mandamus against them and forced approval because the application had not been decided within a requisite time period of 150 days she believed and does not think the City should put itself in that situation, but that the Planning Commission should simply deny. Ms. Kellington asked to clarify that this is the initial evidentiary hearing under a particular set of statutes to include 227.175 subsection 10a d-e a denovo hearing not limited in any way and must be conducted pursuant to ORS 197763.

Ms. Kellington stated the reasons to deny are many and varied; the use that has been applied for is a high voltage transmission line and towers, and that is not a use that is allowed in the zoning district. She stated it is impossible for the proposal to be a transmission line because it fundamentally is missing any ability to convey electricity because applicant UEC withdrew its application because it lacked the consent of the owners (the Tallman's) and created a large gap in the ability of the transmission line to do anything other than to look really ugly in the city. Moreover, approval of the high voltage transmission line and towers isn't allowed in the commercial service zone if you look at the way the City's code is structured 2.2.200b refers to private utilities are allowed, but a separate zoning district, the BPA subdistrict allows high voltage transmission lines to be cited strictly within that area. Ms. Kellington questioned the point of the BPA corridor if high voltage transmission lines and towers are allowed everywhere – she also cited Boardman City Code 13.12.030 which she stated expressly prohibits overhead wires and provided many examples of why she believed the City Council created this code to address the aesthetics of overhead power lines. Ms. Kellington also state that UEC is likely a private utility, but not the type of private utility allowed by the City in the commercial service zone. Ms. Kellington also stated that the City has gone to the trouble of creating an underground wiring control district that forbids overhead wires without a variance and she doesn't see a variance application or that a variance would be granted by the City of Boardman. Ms. Kellington stated it is ultra virus to grant a variance without having an application, finding, evidence of meeting approval standards; and that if a variance were submitted that it could not be met.

Ms. Kellington also asked to address the committee about decision is purporting to approve an alternate access road – states it is beyond the City's authority; no application for a road, no application signed by property owners. Ms. Kellington states the road is inconsistent with the 2011 Port of Morrow IAMP which is a part of the City of Boardman's comprehensive plan. Ms. Kellington states the road under the IAMP must be built to collectors standards, which are in the City's TSP and zoning code, that roads must be nice and functional for the city; they must have sidewalks, street lights, landscaping, bike lanes, and all of that stuff. The City only plans to pave the road and the City is only providing sewer lines for the property owners on the East side of the road, but won't install sewer and the road on the Tallman's property on the West and this is called unlawful retaliation for the Tallman's exercising their 1st amendment rights. Ms. Tallman also state that the City code says that if you put in a road you must put in water and sewer and they are not adding that on the Tallman's side of the road.

Ms. Kellington went on to address the perceived procedural errors with this application which has made it difficult for her to help the Tallman family. Initial notice was missing information and didn't have any ORS 197763 requirements and the decision doesn't comply with code or State Law. Ms. Kellington states this matters so that people don't have to hire lawyers and can talk to the City by themselves. Ms. Kellington asked the Planning Commission to deny, and asks the City to simply talk to the Tallman's so they can find a solution that is good for everyone.

Questions

No questions from commissioners at this time.

Jonathan Tallman

Mr. Tallman thanked the commission for their time and everything his lawyer said he believes 100 percent. Two years ago Mr. Tallman approached the City and asked if there was a way for them to work together and still wants to find a way to work together, he has proposals out there and wants to talk to the lawyer at UEC to find a way to make this work. Mr. Tallman has gone over the numbers and what needs to happen with the value they need to get for their property. Mr. Tallman stated that about a year ago the City said it was between UEC and the Tallman's and so he asks for the Planning Commission to deny the application so that he can work directly with the UEC before the zoning is approved. He welcomed the chance and opportunity to work with everyone to get value out of this so that it is a win-win opportunity.

Questions

No questions from commissioners at this time.

Kelly Doherty

Ms. Doherty stated that she lives in the county but has a business proposition for the city and is in fear of overhead lines going over the property she had designs to build businesses on. For these reasons, Ms. Doherty would like to list 20 or 30 procedural errors that may cause a civil lawsuit. The application had 13 tax lots, on July 1st the published notice had lots 405, 3211, 3100 noticed but not on application, later two were removed in the application. The decision notice lists 4 tax lots in the decision, but the notice of appeal lists 8 tax lots after the Tallman's have been removed. Violates 197763, violate development code, violate everything basically and you can't find a notice that was done correctly. The tax lots in the application there are lots in the general industrial zone which haven't been noted as any criteria for them on 227173 you have to note the criteria for the GI zone as well, which hasn't been done. The definition of a Public Utility 757.005 will provide you with reasoning that this is not a private utility and fails to comply with standards and development code 2.3110a and 2.22100b in the service district. Would like to have the affidavit of notice for the administration land use decision, the notice of the decision, and the notice of the appeal added to the record and time to go over it. Ms. Doherty believes citizens have been left out of the process.

Questions

Commissioner Sam Irons asked Ms. Doherty if she is a current property owner in the area. Ms. Doherty answered that no, not currently – she is a potential business owner, in the beginnings of a process but wants to see where the transmission lines are going to go before she purchases property.

Opponent's Case

Tommy Brooks, Attorney at Cable Houston, representing UEC is speaking next. Mr. Brooks would like to address issues raised by Ms. Kellington and Ms. Doherty beginning with the access road. Mr. Brooks states it is not a part of the application, UEC does not build roads and it is not in any part of their proposal and objects to any mention of this in the proceedings and asks to disregard that information. Mr. Brooks wants to address private utility vs. public utility – UEC is a private utility and reference Ms. Doherty gave to ORS 757 005 speaks to public utilities and is the PUC statute and UEC is not regulated by PUC Statute and ORS 757 006 says public utilities does not include electric cooperatives. The undergrounding district 1312030 doesn't prohibit all overhead lines, just most lines have to be underground, but there is an express exception for feeder lines that don't serve just one customer; this line goes from substation to substation. UEC has demonstrated the purpose this line serves in the system and is a feeder line serving a growing load in the

Boardman area and is not subject to the undergrounding district code 1312030. 3.4.500 land use section development standards address utilities specifically that requires utility lines to be underground except for high-capacity electric lines operating at 50,000 volts or above and this is a 230 kv line and there is no requirement to put a line underground because above ground lines are safer in an urban setting. The safety of this line has been looked at by the PUC for the certificate of need and the PUC has determined that there are safety reasons to build this line overhead.

This is not a normal permitting process; the City Council has already determined this is the kind of use that is allowed and trying to influence the Planning Commission to change the course of the future is a wrinkling of how the law should be applied and Mr. Brooks is asking the code to applied that already exists. Because this is allowed use, UEC applied for the zoning permit at the request of the City, but there is no zoning permit criteria in the city's code; it is intended to be an acknowledgement of what's already allowed so that other permits can be applied – the city wants to know that UEC is doing this allowed 'by right' use. This is important because the procedural errors that have been raised are about not following the right statutory process, but these processes are about permits and under the statutory definition this qualifies as a zoning validation because the commission isn't being asked to approve the use the commission is being asked to acknowledge that the use that UEC has already been approved for through the code is what UEC says it is. Mr. Brooks stated this is an important distinction because all of the arguments regarding the statutes are not relevant to this proceeding. Mr. Brooks also stated the city's code does have a type II process and UEC is following that process.

The last point Mr. Brooks asked to make is this line has been in planning for a long time and has received a lot of scrutiny by the state and county, and the Tallman's were the only people opposing it; although UED did have to go to the court to get a final decision, it was after the staff and Planning Commission had approved it and time was running low, and that was the right of UEC to do. Mr. Brooks stated this is not a threat, it is simply a project that needs to be completed in a timely manner and it is a project that is needed by all the customers.

Mr. Brooks stated that the city's code allows for an extension of the record and UEC is asking for an extension of the record through the 7/7/7 method. This means the record is open for 7 days for new evidence (written), another 7 days to allow rebuttal for new evidence that is submitted, and the final 7 days is for the applicant to submit a final legal argument. UEC would like the Planning Commission to be able to look at all of that before they make their decision; and UEC is willing to extend the 120 day deadline through the end of this extension process.

Questions

No

**At this point Jonathan Tallman was asking to make a comment and was reminded by the Commission that he must wait for the rebuttal period to make comments.

Rebuttal

Wendie Kellington of Kellington Law Group

Ms. Kellington agrees with the record extension with the 7\7\7 thing and the Tallman's would like to participate in that. Ms. Kellington claimed inconsistencies by the UEC claiming both being a private and public utility, and Ms. Kellington believes that UEC is a public utility. Ms. Kellington claimed that nobody thinks that UEC is a private utility, and that if the Planning Commission agrees that UEC is a private utility the city will make itself open to all manner of overhead utility lines. Ms. Kellington does not believe that the city's code is being read correctly that it is being read out of context. Ms. Kellington also claimed that Boardman is the only city in Oregon with a underground wiring control district because it affects the city's livability, and that a variance is the only way to get around the interpretation of the code.

Ms. Kellington says it was called a feeder line and is exempt from city's "though shalt have no overhead lines except for in the BPA subdistrict" rule, and that is not correct because a feeder line conveys a system from

point A to point B and there is a piece missing in the middle that causes it not to be able to convey anything anywhere. If UEC takes over the property and takes the property away from the Tallman's who have had it for years, then the exception might apply but it doesn't apply now and they don't have the right to run over the Tallman's just yet. Ms. Kellington doesn't think this use is permitted outright – no standards have been met. In regard to the West Side Loop Road that is included in the decision, Ms. Kellington recommends the city not continue with development without a land use approval, and cited a LUBA case of VanDyke vs. Yamhill County where Yamhill County thought it was a good idea to start building a bridge before they got land use approval stating they didn't need land use permission and LUBA awarded Ms. Kellington \$50,000 for having to go to the trouble of arguing about it. This road is the same sort of problem.

Ms. Kellington asked the commission to reject the proposal and asked Jonathan Tallman if he had any comments.

Jonathan Tallman

Mr. Tallman commented that although UEC claims the Loop Road project doesn't apply to this situation, he believes that the road determines where the power poles go and so both situations are intertwined. Mr. Tallman claimed that he needs to have an 8 inch water line to his property he will have to make sure his well can sustain any future growth on his property and he will have to re dig his well if the lines go over the well. Mr. Tallman claims that \$5,600 per acre is a joke and is not a decent offer for property inside city limits.

Ed Glenn

Mr. Glenn wanted to make a comment as an opponent who has granted an easement to UEC and to the City of Boardman for Loop Road. Mr. Glenn stated that in both matters have nothing to do with rules, regulations, substance, or procedures, only with money. Mr. Tallman has made demands for outrageous expenditures of money.

Kelly Doherty

Ms. Doherty stated that LUBA does not take procedural errors lightly. Ms. Doherty believes the easement for Double J farming has expired in 2020.

Questions

Mr. Beyeler asked for clarification on the 7\7\7 procedure that was provided by both attorneys.

David Blanc

Under 4.1.500D3b based on the request of the applicant the 120 day rule is waived. Mr. Brooks agreed the 120 days is being extended and he can provide that to the city attorney in writing.

Public Agencies

None

Rebuttal Evidence

None

**Commissioner Vice Chair TenEyke closed the public hearing at 8:28 p.m.
Commissioner Vice Chair TenEyke resumed the regular hearing at 8:28 p.m.**

At this point the commissioners deliberated and agreed that the 7\7\7 method sounded reasonable.

Commissioner Barresse made a motion to keep the record open for 21 days to accommodate the 7\7\7 method. Commissioner Jimenez seconded the motion. The motion passed 5-0 with one abstention and one vacancy.

Commissioner Irons read a comment from Morrow County to be added to the first 7 days. Tamara from County Planning "Morrow County submitted written comments that in summary if the application is

approved, appeal denied, County requests City add conditions requiring an access permit and right of way permit where applicable."

Commissioner Cain resumed control of the special hearing and thanked Commissioner TenEyck for a job well done.

Appeal Hearing – PAR 5-2021 Glenn Property Partition

Commissioner Cain read the purpose of the appeal which is a request to partition a conforming tax lot.

Commission Chair Cain recessed the special meeting at 8:36 p.m.

Commission Chair Cain opened the public appeal hearing at 8:36 p.m.

Abstentions

None

Objections

None

**There was a brief drop in Internet Service of less than one minute and the meeting resumed.

Staff Report

Community Development Director Barry Beyeler read the Staff Report from September 1, 2021 – Subject: PAR 5-2021 Glenn Partition Appeal into record.

Mr. Beyeler noted that the Planning Commission has the same opportunities as in the first hearing; to deny the appeal would lead to an appeal with the City Council, and to remand the issue back to staff would mean city staff would start the process for approval over again.

Questions

Commissioner Cain asked Mr. Beyeler for clarification of the plan date from the 2014 IAMP document – Mr. Beyeler clarified the document was from 2011.

Proponent's Case

Wendie Kellington of Kellington Law Group

Wendie Kellington of Kellington Law Group representing 1st John 2:17 L.L.C. and Jonathan Tallman stated she does not quarrel with the Greg's (name?) right to partition the property; they are only objecting because the county used this decision as a vehicle to purport to approve the Loop Road and as a vehicle to approve the UEC transmission line on this property. In the previous proceeding there was a significant issue that in this zoning district that a high voltage transmission line is not allowed in this district, and Ms. Kellington asked for her remarks from the previous hearing to be added in this section:

[Previous Remarks:

Ms. Kellington stated the last time Morrow County tried to play nice and do things like that UEC promptly turned around and filed a writ of mandamus against them and forced approval because the application had not been decided within a requisite time period of 150 days she believed and does not think the City should put itself in that situation, but that the Planning Commission should simply deny. Ms. Kellington asked to clarify that this is the initial evidentiary hearing under a particular set of statutes to include 227.175 subsection 10a d-e a denovo hearing not limited in any way and must be conducted pursuant to ORS 197763.

Ms. Kellington stated the reasons to deny are many and varied; the use that has been applied for is a high voltage transmission line and towers, and that is not a use that is allowed in the zoning district. She stated

it is impossible for the proposal to be a transmission line because it fundamentally is missing any ability to convey electricity because applicant UEC withdrew its application because it lacked the consent of the owners (the Tallman's) and created a large gap in the ability of the transmission line to do anything other than to look really ugly in the city. Moreover, approval of the high voltage transmission line and towers isn't allowed in the commercial service zone if you look at the way the City's code is structured 2.2.200b refers to private utilities are allowed, but a separate zoning district, the BPA subdistrict allows high voltage transmission lines to be cited strictly within that area. Ms. Kellington questioned the point of the BPA corridor if high voltage transmission lines and towers are allowed everywhere – she also cited Boardman City Code 13.12.030 which she stated expressly prohibits overhead wires and provided many examples of why she believed the City Council created this code to address the aesthetics of overhead power lines. Ms. Kellington also state that UEC is likely a private utility, but not the type of private utility allowed by the City in the commercial service zone. Ms. Kellington also stated that the City has gone to the trouble of creating an underground wiring control district that forbids overhead wires without a variance and she doesn't see a variance application or that a variance would be granted by the City of Boardman. Ms. Kellington stated it is ultra virus to grant a variance without having an application, finding, evidence of meeting approval standards; and that if a variance were submitted that it could not be met.

Ms. Kellington also asked to address the committee about decision is purporting to approve an alternate access road – states it is beyond the City's authority; no application for a road, no application signed by property owners. Ms. Kellington states the road is inconsistent with the 2011 Port of Morrow IAMP which is a part of the City of Boardman's comprehensive plan. Ms. Kellington states the road under the IAMP must be built to collectors standards, which are in the City's TSP and zoning code, that roads must be nice and functional for the city; they must have sidewalks, street lights, landscaping, bike lanes, and all of that stuff. The City only plans to pave the road and the City is only providing sewer lines for the property owners on the East side of the road, but won't install sewer and the road on the Tallman's property on the West and this is called unlawful retaliation for the Tallman's exercising their 1st amendment rights. Ms. Tallman also state that the City code says that if you put in a road you must put in water and sewer and they are not adding that on the Tallman's side of the road.

Ms. Kellington went on to address the perceived procedural errors with this application which has made it difficult for her to help the Tallman family. Initial notice was missing information and didn't have any ORS 197763 requirements and the decision doesn't comply with code or State Law. Ms. Kellington states this matters so that people don't have to hires lawyers and can talk to the City by themselves. Ms. Kellington asked the Planning Commission to deny, and asks the City to simply talk to the Tallman's so they can find a solution that is good for everyone.]

Continuing the 2nd Part of the hearing – Ms. Kellington from Kellington Law Group

Ms. Kellington continued to say that if the city says the transmission facility does not require approval, then the proposal should be denied. The council should also make clear that the approval of the partition it doesn't also approve the high voltage power lines and transmission towers and that it requires a separate process. Secondly, the application for the Glenn family is being used by the city to approve Loop Road and the road is inconsistent with the 2011 IAMP, that says the road is not to be in the BPA transmission easement and Ms. Kellington believes that the road is in the easement and requires a conditional use permit. The city's IAMP standards are not being met regarding specifications for collector roads. Ms. Kellington believes that this application is doing more than simply approving a partition and it is ultra-virus and against the law and requires a variance for the prohibition of overhead lines as it is not a feeder line. Ms. Kellington asked the council to deny the application for these reasons, or to clarify these issues if it is approved. Ms. Kellington again cited the LUBA case of VanDyke vs. Yamhill county and warned the city not to proceed without caution, and again requests denial. Ms. Kellington asked Mr. Tallman if he had any further statements and he said no.

Questions

Rebuttal

Ed Glenn

Mr. Glenn commented that this matter is only a matter of money and Jonathan Tallman only wants the city and UEC to spend a lot of money.

Cross Examination

Wendie Kellington of Kellington Law Group

Ms. Kellington responded that this is simply about the city complying with their code and land use standards. The Tallman family has worked hard for 30 years to establish what they have to not want the city to take it away unfairly and cheaply because they don't view their life's work as cheap.

Ed Glenn

Mr. Glenn asked to respond and stated the Tallman's purchased the property from him years ago and they haven't worked any harder than he has to establish a place to live in Boardman. Mr. Glenn stated it was through his efforts that the area in question and a substantial part of the port's industrial area was annexed to the city of Boardman for a significant tax advantage.

Wendie Kellington of Kellington Law Group

Ms. Kellington stated that the previous remarks were slanderous and asked to invoke another 7\7\7 to have the opportunity to respond to the slanderous remarks on behalf of the Tallman's. Ms. Kellington asked for 7 days to respond to Mr. Glenn's slanderous remarks to clear the Tallman's name.

Questions

Jacob Cain stated that the application looked like an application to partition tax lot 3202 which is a 60 foot strip on the East side of 202, and Mr. Cain doesn't see how this partition application has anything to do with the BPA easement or the line work that is not associated with the partition.

Ms. Kellington replied that the Glenn family didn't ask for all of this trouble, but this decision isn't in compliance with the IAMP. The decision also addresses the UEC option as if it's relevant when it isn't.

Jacob Cain asked if there are dimensions in the IAMP that shows where the road goes, or it is a generic line to show if it is in compliance or not with the IAMP.

Ms. Kellington stated that the IAMP says the road will not be in the BPA easement as that would require a conditional use permit and the IAMP says the road will be a collector and the cities TSP and road standards and code specify needs for the collector that aren't being met.

Mr. Cain saw a letter from the County who is a participant in the IAMP from Tamara Mabbot that states the County is in support of the roadway as it is proposed in the land partition application, and asked if ODOT has made any comments regarding the road.

Mr. Beyeler stated that nothing has been received from ODOT regarding the road. An application is with the BPA regarding the easement.

Ed Glenn stated that if Ms. Kellington gets 7 days to respond to his comment, he would like 7 days to respond to her comments after 7 days.

Public Agencies

None have contacted the planning commission regarding the hearing besides the county.

Rebuttal Evidence

Commission Chair Cain closed the public hearing at 9:09 p.m.

Commission Chair Cain resumed the regular meeting at 9:09 p.m.

7 days have been given to both parties to respond to the rebuttal.

Deliberation by Council

Mr. Barresse doesn't see a problem with the proposal and believes it is prudent to keep the record open for the same length of time as the other hearing. Ms. TenEyck asked if the 120 days have been waived, and Mr. Blanc stated that it is simply being extended under the code. Mr. Cain asked if this will be an agenda item on our next planning commission meeting or will we need another special hearing? Mr. Beyeler responded that the city staff will look at the calendar and determine the date of the next special hearing.

Sam Irons made a motion to leave the record open for 14 days and will hear a decision to be made during a special hearing during the week of October 4th after the 21 and 14 day dates, Zack Barresse seconded the motion. The motion carried 6-0 with 1 absent.

No correspondence, and no further discussion items were noted.

Meeting was adjourned at 9:20 p.m.