

Exhibit A

Findings

1. This matter came before the Planning Commission as an appeal of File ZP21-066. In that file, the Applicant, Umatilla Electric Cooperative, sought and received a Zoning Permit related to the development of an electric utility line (“transmission line”) that will be constructed, in part, on multiple parcels within the City of Boardman (“City” or “Boardman”).
2. As described in the Application, the proposed project is needed to reliably accommodate electrical growth in the Boardman area. This line will be rated 230kV and integrated into the area grid. UEC’s electrical load in the Boardman area has grown from 62 MW in 2009 to 260 MW in 2019 with forecasted growth to be above 535 MW by the end of 2029. This growth is driving the need for transmission system additions. UEC has obtained a Certificate of Public Convenience and Necessity for the transmission line from the Oregon Public Utility Commission.
3. The Boardman Development Code (“BDC” or “Code”) does not contain any criteria specific to a Zoning Permit and the sole analysis required is to determine the appropriate zoning classification for the particular use by applying criteria or performance standards defining the uses permitted within the applicable zone.
4. The transmission line is proposed to eventually cross nine tax lots in the City. The Applicant previously obtained a Zoning Permit for seven of those tax lots. The Application was processed for the remaining two tax lots: Lots 3205 and 3302 (4N25E10) (the “Subject Properties”).
5. The Applicant submitted the Application on November 2, 2021.
6. The City’s Community Development Director (“Staff”) deemed the Application complete on November 3, 2021.
7. On December 22, 2021, Staff issued a Notice of Decision approving the requested Zoning Permit (“Decision”).
8. On January 5, 2022, 1st John 2:17 LLC and Jonathan Tallman (“Appellants”) appealed the Decision to the Planning Commission.
9. On February 2, 2022, the Planning Commission held a *de novo* hearing to consider the appeal. The Planning Commission left the written record open: (1) until February 9th for all participants (“Open Record Period”); (2) until February 16th to receive evidence and argument only for rebuttal purposes in response to evidence submitted during the Open Record Period; and (3) until February 23rd for the Applicant to provide a final legal argument. The Planning Commission received no objections to the hearing process or the manner in which the record was left open.
10. As described in these Findings, and based on the record in this matter, the Planning Commission approves the Application for the requested Zoning Permits and, therefore, denies the appeal.
11. The Subject Properties are commercially zoned and are in the Service Center Subdistrict (“SC Zone”), a subdistrict of the Commercial District.
12. An electrical line like the transmission line is an outright permitted use in the SC Zone. BDC 2.2.200(B) states that “the land uses listed in Table 2.2.200B are permitted in the Service Center Sub District, subject to the provisions of this Chapter.” Section 2.b of that table, in turn, lists the following as an outright permitted use: “Private utilities (e.g. natural gas, electricity, telephone, cable and similar facilities).” Where a use listed in Table 2.2.200B is subject to any additional

standards beyond those in BDC Chapter 2.2.200, the table notes which additional standards apply. For private utilities, no additional standards are listed.

13. UEC is a private utility providing electricity. The record demonstrates UEC is a private cooperative organized under ORS Chapter 62. UEC is registered as such with the Oregon Secretary of State.
14. The Planning Commission received testimony making various arguments that UEC is not a private utility for purposes of BDC 2.2.200, because it is not the type of “private utility” contemplated by the Code. The Planning Commission finds that the Code does not distinguish between “types” of private utilities and that all “Private utilities (e.g. natural gas, electricity, telephone, cable and similar facilities)” are allowed by right in the SC Zone.
15. Based on the figures and other information provided by the Applicant, the transmission line satisfies applicable development standards for an electric utility in the SC Zone. BDC 2.2.200(B) allows the transmission line subject only “to the provisions of this Chapter.” BDC 2.2.200(A), in turn, states that “[t]he base standards of the Commercial District apply, except as modified by the standards of this Sub District.” BDC Chapter 2.2 and the base standards of the Commercial District contain very few development standards that apply to transmission lines. Those standards are met and only the specific development standards in dispute in this proceeding are addressed further below.
16. Appellants identified BDC 2.2.150(B)(1) as not being satisfied. However, BDC 2.2.150(A) lists the types of developments to which BDC 2.2.150(B)(1) applies. Those developments include only “commercial buildings”, “public and institutional buildings”, and “mixed use buildings.” No portion of the transmission line in the City includes a building. Although the Code does not distinctly define “building”, as described in other portions of BDC 2.2.150(B) buildings are measured with respect to “enclosed floor area.” The only structures that are part of the transmission line are the utility poles. Utility poles do not include an enclosed floor area and, therefore, are not a building for purposes of this Code provision. BDC 2.2.150(B)(1) is therefore not applicable.
17. Appellants identified BDC 2.2.140(A) as not being satisfied. That Code provision regulates building height. As noted in the previous finding, no portion of the transmission line in the City includes a building. Although the Code does not distinctly define “building”, BDC 2.2.140 states “Building height is measured as the vertical distance above a reference datum measured to the highest point of the coping of a flat roof or to the deck line of a mansard roof or to the average height of the highest gable of a pitched or hipped roof.” Utility line poles do not contain a flat roof, mansard roof, or hipped roof. There is therefore no “building height” that can be measured in this context and BDC 2.2.140(A) is therefore not applicable.
18. BDC Chapter 3.4 contains additional development standards, some of which apply to utilities. Based on the figures and other information provided by the Applicant, the transmission line satisfies applicable development standards in BDC Chapter 3.4. Only the specific development standards in dispute in this proceeding are addressed further below.
19. Appellants identified BDC 3.4.100(A) as not being satisfied. That Code provision imposes certain transportation standards. The only standard in that Code provision potentially applicable to the transmission line is that all development must have frontage or approved access to a public street. Applicant’s development is a utility use that does not involve a transportation component. Without addressing whether this Code provision even applies, the Planning

Commission finds that the Applicant's development has approved access to a street. The Applicant submitted easement documents demonstrating its right to access each easement area from the underlying parcel, which have access to a street. Further, the transmission line will result in a continuous corridor that can be accessed from multiple streets. This Code provision has therefore been satisfied.

20. The Appellants raise certain procedural issues with respect to the initial approval of the Zoning Permits, for example the adequacy of the notice of the decision and the review of the Application using Site Design Review standards in BDC Chapter 4.2. The Applicant submitted materials showing the extent of the transmission line on the Subject Properties. The Planning Commission also held a *de novo* hearing, with an extended record period, allowing participants to review and comment on the proposal. Without determining whether Site Design Review is even required in this instance, the Planning Commission finds that the criteria for Site Design Review have been satisfied. The materials submitted by the Applicant were sufficient to conduct Site Design Review, and the applicable criteria in BDC 4.2.600 are satisfied because, as explained in other findings, the transmission line satisfies all applicable development standards in BDC Chapter 2 relating to the SC Zone and BDC Chapter 3 relating to utilities.
21. The Planning Commission further finds that the items required by BDC 4.2.500(B), by its terms, are required only when the City Manager, or the City Manager's delegate, determines such items are necessary to perform Site Design Review. Any omission of such items, on its own, is not sufficient to deny an application based on the Site Design Review criteria if other information in the record is sufficient to conduct Site Design Review.
22. Appellants assert that the transmission line as proposed is not allowed because it is not underground. Appellants' argument is not based on the Boardman Development Code and, instead, is based on Boardman Municipal Code ("BMC") chapter 13.12, which is referred to as the Underground Wiring Control District.
23. The Underground Wiring Control District governs only those wires that are in public rights of way. BMC 13.12.030, the provision that prohibits overhead wires, expressly states: "It is unlawful for any person to erect, construct or maintain on or over the surface of any of the streets in the underground wiring control district any wires . . . on, through, or by means of which electric current is transmitted or used. . . ." Because this language regulates only utility lines in streets, it does not apply to private property away from streets and, therefore, does not apply to the Subject Properties. In contrast, the BDC does contain a provision regulating utilities on private property and requires some utilities to be underground, but those provisions apply only to subdivisions and are not applicable here.
24. Even if the Underground Wiring Control District were relevant to the Application, there is an express exemption that allows UEC's transmission line to be constructed above ground. Specifically, BMC 13.12.130(E) states that the underground requirements do not apply to "feeder lines" which are defined as a line "that serves the system but not a specific customer." The record indicates that the transmission line is part of a system improvement and is not a line that serves only a specific customer. This exemption from the undergrounding requirement therefore applies to the transmission line and does not prevent approval of the Zoning Permits.
25. Appellants assert that the City cannot process the Application in this proceeding because the Applicant did not obtain separate "authorization" from the underlying property owner as required by BDC 4.1.700(D). The Planning Commission finds that, based on the record before it,

the Applicant had sufficient authorization to file the Application. The Applicant obtained a court order granting it full use of an easement to construct the transmission line. The Applicant obtained that order over the objection of the underlying property owner. After that court order was issued, however, the underlying property owner accepted the Applicant's use of the easement by requesting and receiving compensation for the easement. In these circumstances, the Planning Commission deems such actions to be the "authorization" required by the Code.

26. In the alternative, the Planning Commission finds that the Code is ambiguous and requires interpretation. The most reasonable interpretation of the Code is that an application can be submitted by the owner of a property interest that is subject to the land use application as long as that ownership interest is a matter of record. Such an interpretation is consistent with the language of the Code. Further, any contrary interpretation that prevents the Applicant from exercising its statutory right of condemnation is unreasonable, because such an interpretation would serve to repeal a state statute granting those condemnation rights.
27. Based on the foregoing and the information in the record, the Zoning Permits for the Subject Properties in the SC Zone are approved.