

To: Barry Beyeler
Community Development Director
City of Boardman
200 City Center Circle
P.O. Box 229
Boardman, OR 97818

beyelerb@cityofboardman.com

Please enter this into the record for the appeal of land use decision, ZP 21-066 that comes before the Boardman Planning Department. Please add to the record the testimony and 1- 4 Exhibits

Please distribute to the planning commission members.

I am here with standing to participate in this land use hearing Appeal of ZP21-066. I would like to make it very clear that my testimony is as a citizen of Morrow County and nothing more. I do not wish to be part of any threatened litigation.

The City's Development Code ("BDC") 4.1.700(D)(1)(a) provides that land use applications, applications for a Zoning Permit may only be initiated by

- (1) Order of the City Council;
- (2) Resolution of the Planning Commission;
- (3) the City Manager; or
- (4) "A record owner of property (person(s) whose name is on the most recently recorded deed), or contract purchaser with written permission from the record owner."

UEC is not the owner of record on the subject properties for tax lots 3205 and 3302. And the Application was not submitted or signed by the property owners. See Application Exhibit 1 and Warrantee deeds Exhibit2 (Attached)

Therefore, UEC is not authorized to initiate the subject application according to the above code.

UEC is not a contract purchaser either. Exhibit 3 is a list of the contract purchases that was furnished to the PUC by UEC

BDC 4.1.700(D)(3)(a)

"When an application is received by the City, the City Manager shall immediately determine whether the following essential items are present. If the following items are not present, the application shall not be accepted and shall be immediately returned to the applicant:

"(1) The required form;

“(2) The required fee;

“(3) The signature of the applicant on the required form and signed written authorization of the property owner of record if the applicant is not the owner.

Exhibit 1 (the Application) states that UEC is not the owner.

Exhibit 2 (Warranty Deed) as received is the latest recorded titled property owner shown in the records from Morrow County.

The applicant itself lists the owner of the property as 1st John 2:17 LLC on page 14 of the Application

"

The Transmission Line will cross nine tax lot parcels within the City’s jurisdiction. For five of those parcels (lots 402, 403, 3201, 3206, and 3300, UEC applied for (and received preliminary approval of) a Zoning Permit as part of Docket 21-031. The purpose of this Application is solely to seek a Zoning Permit for tax lot parcels 3205 and 3302, currently owned by 1st John 2:17 LLC (the “Tallman Parcels”). This Application includes no other requests.

I would like to additionally point out that the Decision on ZP 21-031 has been withdrawn for reconsideration by the City..

Case # CV28343 Filed in the County of Morrow and referenced in the Application pg 14

18 | **FIRST CLAIM FOR RELIEF**
19 | **(Eminent Domain/Condemnation)**
20 | 6.
21 | Plaintiff references and incorporates paragraphs 1-5 above as if fully stated herein.
22 | 7.
23 | Plaintiff seeks to condemn and acquire for the Transmission Line, the following easement
24 | on the Property (“Easement”):
25 | (a) a perpetual and non-exclusive electric utility easement on, across, over, and
26 | under a strip of land described in Exhibits A-1 and A-2 and depicted in Exhibits B-1 and

Page 2 –COMPLAINT (Eminent Domain)

CABLE HUSTON LLP
1455 SW BROADWAY, SUITE 1500
PORTLAND, OREGON 97201-3412
TELEPHONE (503) 224-3092, FACSIMILE (503) 224-3176

Exhibit 1

The court has made it very clear that the eminent domain proceeding was for a perpetual non exclusive easement, no more no less (Easement) .

Next I would encourage you to look at a easement agreement that actually conveys authority from Grantor to Grantee. It speaks to the issue at hand, and why a simple non exclusive easement does not give any authority to the grantee to progress on any land use requests. This easement agreement is between UEC and the City of Boardman and was also included in the material that was presented to the PUC on the transmission lines. The City knows the difference between an easement, and the recorded owner and its authority. The City is in err on its decision.

Grantor is City - Grantee is EUC

"Because governmental approvals may be necessary from the land owning Grantor for Grantee to use the easement, Grantor appoints Grantee as Grantor's attorney in fact, agent, and authorized representative, to make and progress on Grantor's behalf, any and all land use and regulatory requests, and to make applications and requests to governmental entities and agencies, so Grantee may make use of this easement and its rights, including but not limited to the following:

(1) applying for conditional use permits and progressing those applications through to completion and any modifications thereof, including defending the applications and appealing adverse decisions; and

(2) applying for any other necessary governmental and administrative approvals and progressing them through to completion and any modifications thereof, including defending the applications and appealing adverse decisions. Grantor agrees not to make any objections to the above applications, or to oppose them in any way at any time. Grantor may not revoke these appointments during the effective period of this easement."

Section (2) raises some serious conflict of interest challenges. The City entered into an agreement with UEC on tax lot 400 (exhibit 4). How can we have a fair and impartial tribunal knowing that the city has such a conflict. Not only bias and prejudice, a legal contract. Having city staff make this decision violates the US Constitution Article 14 Due Process clause, it also violates Oregon's Due process protections. An Administrative Land Use Decision by the City cannot make a unbiased, impartial decision therefore errs in its decision.

Notice failed to comply with the standards set out in

3 (b) *List the applicable criteria from the ordinance and the plan that apply to the application at issue;* Failed to define the criteria.

By not listing Chpt 1.1 Section 1.1.300 of the Development Code and Comprehensive Plan Chapter 11 Public Utilities, and the transportation plan which is part of the "Plan"

These procedural errors prejudice my substantial rights and the rights of all citizens.

City fails and errors by not complying with Chapter 1.1 General Administration Section 1.1.300 Consistency with "Plan" and Laws of the development code.

1.1.300 "Each development and use application and other procedure initiated under this Code shall be consistent with the adopted comprehensive plan of the City of Boardman as implemented by this Code, and with applicable state and federal laws and regulations. All provisions of this Code shall be construed in conformity with the adopted comprehensive plan".

Chapter 11 of the Comprehensive Plan; Public Utilities: Energy and Communication (Other) expressly says:

"The City is served by a variety of local utility companies, including electricity, gas, telephone, and TV cable. The City requires underground installation of all utilities within new developments, as well as many main utility feeder lines."

City fails to be consistent with its adopted comprehensive plan.

The City has a city wide wiring district, adopted into its Comprehensive Plan, Development Code and Municipal Code, BMC 13.12.010

"highly desirable to beautify the city and to promote its orderly development" and that it was "necessary" "in order to protect and promote the public health, safety and welfare."

This was planning at its best, our community leaders could see the draw backs to the BPA line and see the challenges it has produced. We have the opportunity to uphold the vision, free from the disruption and destruction overhead wires present. Please enforce our City wide Underwire District. This line crosses our public roads in the city limits, therefore it should be held to the standards of our wiring district.

The Boardman Transportation Plan (TSP) is an element of the comprehensive plan incorporated as a Technical Appendix, as such the City shall protect the function of existing and planned transportation facilities in all land use decisions.(Page 2, Chapter XII - Transportation)This application fails to address the TSP or the IAMP. At this time it does not have permanent permits to cross Laurel Lane or Olson or the proposed Loop roads. The applicant has simply ignored the fact that the transmission lines will cross several existing and planned road ways.

Thanks for your time, I invite your questions at the hearing. Kelly Doherty