

## **BOARDMAN PLANNING COMMISSION MINUTES - VIDEO CONFERENCING MEETING**

**February 2, 2022**

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

**Commissioners**

**in Attendance:**

Jacob Cain, Sam Irons, and Ragna TenEyck (In Person) Jennifer Leighton, Zach Barresse, Karla Jimenez, and Ethan Salata (Via Zoom)

**Commissioners Absent:** None

**Staff:**

Barry Beyeler - Community Development Director, Karen Pettigrew - City Manager, Jenn Rollins – City Recorder / HR, and Rick Stokoe – Chief of Police/Assistant City Manager

**Audience:**

Jonathan Tallman (In Person) Kelly Doherty, Missy, Joe Taylor, Tommy Brooks – Counsel for UEC, Citizen, Sara Mitchell – Counsel for Jonathan Tallman, Paul Keefer, Spencer Parsons, Elaine Albrich, C. Bode – Counsel for UEC, Toni, Ed Glenn, Joe Coleman, Commissioner Doherty

### **FLAG SALUTE**

### **OLD BUSINESS**

None

### **NEW BUSINESS**

#### Type III – Quasi-Judicial Public Hearing of LU22-001 Appeal of ZP21-066

Commissioner Chair Cain announced the purpose of the hearing was to hear the appeal regarding the ZP21-066 UEC Transmission Line. Commissioner Chair Cain also declared a potential conflict of interest, but he would continue to run the hearing. No other abstentions from other commissioners were noted. Commissioner Chair Cain read aloud the rules regarding the hearing proceeding so that all attendees were aware of who could testify and how long they would have to testify.

#### Jurisdiction

No objections noted.

#### Staff Report

Community Development Director Beyeler read the Staff Report from February 2, 2022 – Subject: LU 22-001 Land Use Appeal of ZP 21-066.

Jonathan Tallman asked Community Directory Barry Beyeler why the city hadn't approved the zoning permit; Commissioner Chair Cain asked if the city had a recommendation to approve or deny the appeal to the Planning Commission. At this point Jonathan Tallman asked why the city hadn't already made a decision on this subject; Community Director Beyeler explained that ZP21-066 had in fact had been approved and that this was a hearing regarding the appeal of the decision.

At this point Community Directory Beyeler advised the Planning Commission that because of the amount of materials received regarding this appeal had been received at the last minute, he recommended an extension of the hearing to the next available date of February 24, 2022.

#### Proponent's Case

Commissioner Chair Cain reminded everyone that they would be limited to 10 minutes to speak on the subject. Jonathan Tallman stated he would let his legal counsel speak on his behalf.

Sarah Mitchell – Legal Counsel for 1<sup>st</sup> John 2:17 LLC

Sarah Mitchell, legal counsel representing Jonathan Tallman; 1<sup>st</sup> John 2:17, LLC stated she didn't have a chance to review the materials submitted by UEC on the first but weren't posted to the city's website until the evening of February 2, 2022. Ms. Mitchell continued on to say the property in question is regarding tax lots 302 and 3205 the properties that UEC is asking approve installation of its transmission line on. Ms. Mitchell stated that the staff decision that she is appealing stated the approved the installation of the UEC transmission lines as a use permitted outright in the Commercial Service Center Subdistrict. The decision found that the transmission lines are a private utility and electrical facility and she stated this is troubling because the city's code allows private utilities in nearly every one of its zoning districts. Ms. Mitchell continued, stating that the city is setting a precedent that all public utilities regardless of size and impact will be allowed all over the city, and is inconsistent with the purpose of the commercial districts and the policies and context of the code. The primary purpose of the commercial district, as stated in code, is to allow for a variety of commercial uses in the commercial areas of the city and specifically, the purpose of the service center subdistrict is to accommodate heavy commercial uses and light industrial uses along portions of the I-84 corridor. Ms. Mitchell stated it is clear that the city intended this zoning district to deliver commercial services to the city, but she doesn't believe that this includes high voltage transmission lines that will not directly serve those commercial and industrial uses. Ms. Mitchell also stated that Boardman is the only city in Oregon that she knows of that has a designated the entire city as an underground wiring control district to protect and promote the health and safety of it's public. Ms. Mitchell stated that installing the high voltage transmission lines would contradict the city's underground wiring district and the comprehensive plan; Ms. Mitchell also stated that the City of Boardman already had a designated subdistrict for the BPA transmission lines that UEC could utilize for the high voltage transmission lines.

Ms. Mitchell stated that her second point of discussion was that the decision errs in approving UEC's application without undertaking site design review or applying any of the site design review standards. The code requires that all developments in the city undergo a site design review unless another specific type of development that requires development review. She stated that UEC's proposal is one that should go through site design review and they haven't done any of that and should be denied for that reason.

Ms. Mitchell also argued that there is another issue of access; site design review requires a finding that the application complies with all standards in Chapter 3.1 of the code regarding access. Chapter 3.1 requires an access permit for access to a public street and the land that the UEC is proposing installing the transmission lines abuts Laurel Lane which is a public street and there is no existing access from Laurel Lane to the property in question. Ms. Mitchell stated that the decision doesn't address how UEC will access the property from Laurel Lane.

Finally, Ms. Mitchell stated that the city requires the land use application to be filed by the record owner of property, and UEC is not the owner of record for these tax lots. Because the Tallman's are the record owner of property not UEC, Ms. Mitchell argued that UEC doesn't have the authority to file any action on the Tallman's property.

Kelly Doherty – Morrow County Resident

Ms. Doherty stated that she is testifying as a resident of Morrow County only, and that she does not want to be included on any litigation sheets.

Ms. Doherty stated that she is a recorded easement holder on a piece of property owned by the city, which is no different than the one that UEC holds. Ms. Doherty stated that it would not be a correct procedure for her to go file a Land Use Application on the basis that she is an easement holder. (Temporarily lost connection) Ms. Doherty continued to state that she is not relying on a LUBA case, she is relying on the fact that a warranty deed was submitted and a ruling from the circuit court stating that the Tallman's are the owner of record. Ms. Doherty also cited an agreement between the city and UEC stating that they will not make any objections regarding land use applications that she stumbled across and claimed it was a gotcha moment for the city. Ms. Doherty continued that this document also states that this document states that this document addresses grantor grantee issues and what they can do in an easement, and that if the city knew that they were going to have additional land use applications (Temporarily Lost Connection).

Ms. Doherty stated she had also submitted Exhibit 3 which is part of the PUC comments that shows all of the contract purchasers in the land that was going to be put under the tower, and the contract purchaser in the document is not the Tallmans.

### Jonathan Tallman

Mr. Tallman began by telling a story sent to him by his high school teacher.

Mr. Tallman continued by stating we live in the best country on the planet and that this is what is wrong with the Planning Commission appeal; standing up and doing the right thing. Mr. Tallman stated he owns the corporation and is the sole owner of the property in question; the land use application that was approved by the city is asking for an application to use the property. Mr. Tallman asked the commissioners to look and read the technical merits of this decision; only the record owner can do this. Mr. Tallman strongly urged the commissioners to ask questions and have deliberation because there are so many technicalities and injustices that cannot be articulated in the amount of time he was given. Mr. Tallman stated he wants to work with all parties involved and suggested an alternate route on his property so that he could create a win-win-win for all involved.

### Opponent's Case

#### Tommy Brooks – Cable Huston - Legal Counsel for UEC

Mr. Brooks stated his primary presentation would be short because this is the fifth time that his application is being reviewed by the city. The previous applications have been approved by staff, the Planning Commission, and then City Council and the application now is identical to the previous applications other than the tax lots on the application. Mr. Brooks said that he is frustrated because all of the issues raised tonight, save one, are the same issues raised in previous proceedings and he provided information in the packet demonstrating how these issues have already been resolved previously and there is no reason for the Planning Commission to come to a different decision based on the same sets of facts and the same laws and asked them to deny the appeal. One new issue raised tonight is the argument who can submit a zoning permit application and the appellants believe as the underlying property owner they have to provide additional consent before the application can be submitted. Mr. Brooks stated that there are two reasons this is wrong; first, UEC has a court order that grants UEC the right to use these properties, for the transmission line specifically, and the court order has a clear statement that the appellants cannot interfere with that use. Because of this UEC doesn't even need to argue code and interpretations because consent has already been provided by the court. Mr. Brooks stated that the appellants have not attempted to explain how they can be ordered by the court to allow UEC to use the easement and ordered by the court to not interfere with that use but nevertheless tried to retract their consent just for this application. Mr. Brooks continued with his second point citing a case in the court of appeals, cited in his letter, that states the city's code cannot be interpreted in a manner that repeals a state law (ORS Chapter 35). Mr. Brooks explained that the transmission line is an outright permitted use, the statutes and the court order granted UEC rights to proceed with the use, and UEC has documented that the use is consistent with the code and that is all that is needed for a zoning permit.

Mr. Brooks stated that Ms. Mitchell argued what the code should be and is asking the Planning Commission to unilaterally change what the City Council has adopted as code.

Mr. Brooks continued to address the access issue; this is an easement corridor and there are plenty of ways to access the use and there is no requirement to obtain a permit before construction and this has been resolved in the previous case.

Mr. Brooks stated the rest of the arguments were about the record owner of property, and the code is open to interpretation and is not black and white. At the end this interpretation is irrelevant because UEC is not asking for approval of a use as that has already been approved in the letter from the city (submitted by Ms. Doherty into the record) and it shows that no further approval of the use is required. The zoning permit is a way for the city and UEC to memorialize the fact that what they are building is one of the permitted uses that has already been approved.

### Cross Examination of Opponents

#### Kelly Doherty

Ms. Doherty asked to address the fact that Mr. Brooks believes we have seen this in the record for five times, and what we have seen for five hearings is a total circus. Ms. Doherty stated tax lots were messed up and there was no reasonable reason to believe that it should pass. Ms. Doherty also asked to say that the decision made by the City Council has been withdrawn and she doesn't know why the decision has been withdrawn and so all of the claims that it has been litigated before and has been approved and substantially wrong. Ms. Doherty stated she doesn't know why the decision was withdrawn as it wasn't

made during a public meeting and so she has not idea and there are problems with the application. Ms. Doherty stated that the access issue was addressed previously and it stated that there was linear access, but Ms. Doherty doesn't see how that affects the two tax lots in question that are bound by Laurel Lane.

Mr. Brooks asked for permission to rebut the questions posed by Ms. Doherty about the old decision being withdrawn and the access. Mr. Brooks stated that we do know why the decision was withdrawn as it was stated in the Public Notice, because the City of Boardman wanted to correct the tax lots mentioned in the original decision. The linear access issue is addressed by the materials in the application submitted by UEC and shows access points from both sides and shows the entire project and UEC's access is not limited to just these two tax lots in dispute tonight.

Mr. Tallman asked to refer to the letter between the City of Boardman and Echenrode (UEC 202:Echenrode); Mr. Tallman stated that the letter stated that this is not regulated, and that the court has not given authorization. Mr. Tallman argued that the letter shows that the city does indeed regulate this use. Mr. Tallman asked for an extension of his 120 days so that he has time to appeal to the city council, and asked the Planning Commission to deny the application and he would sit down with everyone and talk things out.

Mr. Brooks asked to respond to the questions. Mr. Brooks stated that the letter that is being referred to is not part of the court case, but was part of the PUC case, and was part of due diligence that UEC performed at the beginning of the process to understand what additional approvals might be needed for the transmission line, and there is nothing wrong with the statement in the letter. The statement in the letter outlines that the land use approval has already been made through the code and no additional direct regulation of this use, so there is no problem with the approval. Mr. Brooks also stated that UEC (the applicant) is not willing to waive the 120-day deadline at this point.

Ms. Mitchell reiterated her request for a continuance to be able to respond to the materials submitted by UEC that she did not see until this evening while being mindful of the 120 days.

Commissioner Chair Cain asked for clarification of the requests from the attorneys in regard to a continuance. Spence Parsons (counsel for the city) stated it was at the Planning Commissions discretion to close the public testimony but leave the record open for additional written submissions, or if they want to continue the hearing for additional testimony for a date and time to be set in the future. The Planning Commission does have to grant one or the other, but they do have the choice.

Ms. Mitchell clarified that her request was to keep the record open.

#### Public Agencies

No comment.

#### Rebuttal Evidence

None given.

Planning Commission Sam Irons proposed to close the hearing and keep the record open.

Commissioner Irons made a motion to leave the record open for 7 days for supplemental written evidence, and in the event that anything comes in under the development code they will have an additional 7 days, and will reconvene to deliberate on the 24<sup>th</sup> of February. At that time the applicant will be entitled to a final 7 day period for final legal argument. The motion was seconded by Commissioner TenEyck seconded the motion. Roll Call Vote: Jacob Cain – Abstain; Sam Irons – Yes; Ethan Salata – Yes; Ragna TenEyck – Yes; Karla Jiminez – Yes; Jennifer Leighton – Yes; Zack Barresse – Yes. The motion passed 6-0 with 1 abstention.

**Commissioner Barresse closed the public hearing at 8:09 p.m.**