

BOARDMAN PLANNING COMMISSION MINUTES- REGULAR MEETING-SEPTEMBER 28, 2022

Commissioner Salata called the meeting to order at 7:07 p.m. He led the flag salute and asked for roll call:

Commissioners
in Attendance: Ethan Salata, Ragna TenEyck, (in person) Karla Jimenez and Sam Irons (via Zoom)

Commissioners Absent: Jake Cain, Jennifer Leighton, and Zack Barresse (all unexcused)

Staff: Carla McLane-Planning Official and Jackie McCauley-Acting Secretary (in person) Karen Pettigrew-City Manager, Rolf Prag-Special Projects Coordinator (via Zoom)

Audience: Jonathan Tallman, Kelly Doherty, Randy Baker, Joel Edwards (in person) Elaine's phone, Jenn Rollins, Derrin Tallman, Sarah Mitchell-Kellington Law Group (via Zoom)

APPROVAL OF MINUTES

August 17, 2022

Commissioner Jimenez made a motion to approve the August 17, 2022 minutes as presented. Commissioner TenEyck seconded the motion. Commissioner Salata asked for a roll call vote. It was at that time Commissioner TenEyck withdrew her second to the motion as she was not present at the August 17, 2022 meeting and would be abstaining from the vote. It was determined without her vote, there would not be a quorum to approve the minutes. The motion died due to a lack of a second. The August 17, 2022 minutes will be put on the next planning commission agenda for consideration.

Commissioner Salata recessed the regular meeting and opened the public hearing at 7:10pm.

PUBLIC HEARINGS

Amendment to the Boardman Development Code – Chapter 4.1

Planning Official McLane was allowed by the commission to proceed with the more formal portion of the public hearing, which is usually stated by the commission chair.

Purpose – Planning Official McLane explained the hearing is on A-TSP-22-001, a proposed amendment to the Boardman Development Code (BDC) Chapter 4.1 – Types of Applications and Review procedures. This will change the appeal timelines, add a category of owner, and accomplish other minor house keeping changes. The applicable criteria for changes to the BDC are found in Chapter 4.1 Section 4.1.600 – Type IV Procedure.

Conduct of Hearing – Planning Official McLane explained the conduct of the hearing. She asked the planning commissioners to disclose any ex parte contact, bias, or conflicts of interest; there were none. She asked if anyone in the audience wished to challenge the planning commissioner's impartiality; there were none.

Staff Report – Planning Official McLane gave the staff report. The request is to amend Chapter 4.1 Types of Applications and Review Procedures to initiate an update to the Boardman Development Code (BDC) that would address inconsistencies with practice, conform to Oregon Revised Statute (ORS) and Oregon Administrative Rule (OAR), and implement recent interpretation of the BDC concerning the definition of owner. She wanted to be clear, the party to initiate this code change is the City of Boardman. She asks the planning commissioners to make suggestions regarding the proposed changes, even if this means continuing this topic to the October meeting.

The BDC has not seen a comprehensive review for a number of years with recent updates or changes having a narrow scope. While the impetus for this action is partially based upon the recent City Council interpretation of the term owner for an approved Zoning Permit for the development of a transmission line

there are other factors that are driving the beginning of a broader review and update of the BDC. Chapter 4.1 Types of Applications and Review Procedures has a number of provisions that are out of date with some provisions needing updated and others removed in their entirety. Planning staff are also recommending that the reference to City Manager throughout the BDC be updated to place responsibility on the Planning Official (or individual serving in that capacity).

The recommendation by the Planning Commission and the decision by the City Council shall be based on consideration of the following factors:

1. Approval of the request is consistent with the Statewide Planning Goals; The Statewide Planning Goals applicable to this request would be Goal 1: Citizen Involvement and Goal 2: Land Use Planning as these two goals deal with how communities engage with their citizens (Goal 1) and how they implement the planning program (Goal 2).
2. Approval of the request is consistent with the Comprehensive Plan; and The Boardman Comprehensive Plan (BCP) has five Citizen Involvement Policies which support citizen engagement. The proposed changes can be found to be consistent with these policies.
3. The property and affected area is presently provided with adequate public facilities, services and transportation networks to support the use, or such facilities, services and transportation networks are planned to be provided concurrently with the development of the property.

In section 4.1.700 (1)(D)-Initiation of Application, Planning Official McLane suggests adding language for someone other than the property owner to initiate the application if they had the power of eminent domain. This arose from a recent land use application for Umatilla Electric Cooperative's (UEC) transmission lines through the Tallman's property. The zoning application was not signed by the Tallmans, however UEC went to the PUC and obtained a Certificate of Need, which under Oregon law gives them the right of condemnation. UEC pursued condemnation on the property and out of the circuit court came a determination. UEC then made application which was accepted by the city council as their evidence of right to the property and moved forward with the approval process for the transmission lines. The city council made this interpretation of the development code and the proposed language changes reflect that interpretation.

Planning Official McLane then asked the commissioners if they had any comments or proposed changes.

Commissioner TenEyck pointed out typos and formatting issues, and asked to have the document reviewed for consistency such as numbering by letters or numbers, dates and timelines. She pointed out inconsistencies in the Final Decision Dates and Notice of Decision Dates; she feels they are confusing. She asked for the wording on who can appeal to be reviewed as she feels its too broad to say "adversely affected or aggrieved". She suggested the term "business days" to be changed to "days". She suggested on Chapter 4.1.700 (D)(1)(4) "contract purchaser with written permission from the record owner" should say "purchaser with Memorandum of Contract". Planning Official McLane will incorporate these changes into the proposed code change.

Commissioner Jimenez thanked Commissioner TenEyck for a thorough review.

Commissioner Salata asked how UEC was able to sign the land use application spoken about earlier in the meeting. Planning Official McLane explained the city council made a code interpretation and now it needs to be codified in the code; perhaps the proposed changes could say an entity who has a court order could sign the application.

Correspondence – Planning Official McLane said the commission received an email from Sarah Mitchell of Kellington Law Group regarding the proposed amendments. Copies were at each of the commissioner's seats at the meeting for review.

Public Testimony

Jonathan Tallman said he was frustrated and asked if he and the city could work together. He said the city is changing the rules. He has made public records requests and has not received the public records. He said the planning department is not controlled by the city council and has no chain of command. He believes changing the notification times from 14 days to 12 days is not a good idea because mail goes to Portland and returns to Boardman, which takes nine days. He would like it if notification could also include email. He said if the Types of Decisions change in the code, his whole appeal would have to start over. He wondered if he would get his money back if he wins the appeal. He does not want to change the notification of surrounding property owners from 250' to 100'. He said he is confused by the new loop road off of Laurel Lane and what a "collector" is. He would like to go over the TSP in detail for the loop road. He feels he was bulldozed by the city and can not get an offer on his property unless he does an appraisal. He said he wants to work with the city. He takes issue with owner fee title. He doesn't want to change the easement or eminent domain. He said the planning official interpreted the code and not the city council. He said there should be transparency and wants to work with the city. He said they should not be able to apply using eminent domain, the applicant should get owner fee property.

Kelly Doherty – 68812 Kunze Lane. She said she has no problem with changing the code to say "Planning Official" wherever it says "City Manager" however she does have a problem with Planning Official McLane doing the proposed BDC amendments because she also contracts with UEC. She questions the timing of the proposed amendments. She asks the commission to wait until LUBA has made a determination for the land use appeals against the city. She said if good planning is occurring, there should never be condemnation; UEC has condemnation powers. She also said shortening the time line for appeals is problematic because of the slow mail. She feels the proposed amendments do not help people. She said other cities and counties do not have any condemnation language in their code.

Sarah Mitchell – Kellington Law Group, Inc.- P.O. Box 2209 Lake Oswego, OR – She represents Jonathan Tallman and his entity 1st John 2:17, LLC and wanted to clarify the facts of the court order given to UEC in regards to Tallman's property. The order is an interim order issued by the Morrow County Circuit Court giving UEC advance occupancy of easement, nothing else. It did not convey the easement, but it did order UEC to pay an estimated amount of just compensation however final just compensation has to be assessed by a jury. That has not been paid and she believes the jury trial is scheduled next year. There has not been a final judgement in that proceeding that results in the court ordering the property to be conveyed. That proceeding is still ongoing.

She talked about two issues in the provisions of the BDC; the record owner issue and the authorization issue. The existing code says only record owners of property, among others, can file land use applications; and record owners is the person whose name is on the most recently recorded deed. The dispute with the Tallman's case is whether UEC qualified as the record owner of the Tallman's property. The Tallmans and their attorneys have argued UEC did not because their name was not on any deed, or any recorded one. The second issue is in the existing code, where it says if the applicant is not the record owner, then they have to provide the signed written authorization of the record owner. The dispute then was whether the circuit court order provided that authorization despite the Tallmans not giving express written consent. The city approved UEC's application anyway, which was appealed to LUBA. They have done a briefing, an oral argument, and now are waiting on LUBA's final decision.

The code amendments are intended to avoid these kinds of disputes in the future; however, she doesn't think they will. She said the language change might cause more problems. The amendment does nothing to clarify who the record owner is. It opens it up to more dispute by adding "for example" before the phrase "whose name is on the most recently recorded deed". If the description is just an example, what does record owner mean? The amendment should clarify what a record owner really means; it is the person or entity whose name is on the most recently recorded deed in the deed records of Morrow County. This ensures the true deed owner property owner has control over what happens on their property.

She feels the amendments are unnecessary given there is a whole new category proposed. It is an entity who has the power of eminent domain relating to the property. She is troubled by an amendment that eliminates the requirement that the record owner's authorization be provided with the application. The amendment, as proposed, would give utilities or any other entity with the power of eminent domain way more latitude than they already have. They would not have to get permission to file a land use application on a land owners' property, even without initiating an eminent domain proceeding or getting an order doing anything else. All they would need to show is they have the power of eminent domain. She said it was discussed earlier about adding an entity having some sort of a court order to the language, but she suggests the language say a final judgment of the court appropriating the property in fee title to the condemner.

Ms. Mitchell says the staff report says the city wants to see land owners and utilities to be able to work collaboratively, but the amendments give utilities unilateral authority to file land use applications involving any property without the land owners consent. She said the amendments are inconsistent with policies in the city comprehensive plan. There are goals in chapter one of the comprehensive plan which includes that the city shall strive to provide for wide-spread citizen involvement, especially in the land use process, to assure affective two-way communication with its citizens, to provide opportunity for citizens to be involved in all phases of the planning process. The proposed amendments undermine land owners' involvement totally in the land use process. There is a policy in chapter two of the city plan that says the city will encourage that development of in-fill and re-development of existing land in order to balance the need to expand the UGB to meet the need for the city's commercial and housing needs. The city would not be encouraging that type of development if developers knew that at any time a utility, or any other entity, with the power of eminent domain files a land use application on their property without initiating condemnation proceedings or making a land owner aware somehow. The amendments run the risk of violating ORS 227.175(1) which states a land owner can file application for a permit. She knows several other jurisdictions assure compliance with this statute by requiring land owner's authorization when the applicant is not the owner. Boardman should do the same thing. She urges denial of the proposed amendments.

Commissioner Salata asked if anyone else wished to give public testimony; there was none.

Commissioner Salata asked if the applicant wished to provide rebuttal. Planning Official McLane said not at this point. She said she will offer follow up at the continued hearing on October 19th.

Commissioner Salata closed the public hearing and resumed the regular meeting at 8:42pm.

Staff Response to Testimony – Planning Official McLane encouraged the commissioners to take action to continue the hearing until the October 19, 2022 meeting. She said the staff would not be responding at this meeting. There were no questions of staff by the commissioners at this time.

Commission Deliberation – Commissioner TenEyck said if the planning commission were voting on these amendments tonight, she would not accept them.

Planning Official McLane said if the commission did not want to move forward with the owner component of the amendments, there are a lot of other changes that are worthy of consideration and a continued conversation. She feels it is important to continue the public testimony portion of the hearing to keep dialog open with the public.

Commissioner TenEyck made a motion to continue the discussion of the Boardman Development Code Amendments to the October 19, 2022 meeting. Commissioner Jimenez seconded the motion. The motion passed 4-0 with 3 absent.

DISCUSSION ITEMS

Planning Official Report

Planning Official McLane said she did not have much to report other than she recently returned from vacation where she spent time with family.

Training Topic – Statewide Planning Goals

Included at each commissioner's seats is a handout of training materials for the Statewide Planning Goals.

Commissioners Comments

Commissioner Jimenez asked if at the next meeting, if the draft document would include all of the changes proposed tonight. Planning Official McLane said they would.

PUBLIC COMMENT

Jonathan Tallman said he would like to have a ping pong discussion. He reiterated his comments from the public comment section of the hearing held earlier in the meeting.

Kelly Doherty said that the chair of a meeting can call upon the audience to speak at any time during a meeting.

Meeting was adjourned at 8:54pm