

CITY of BOARDMAN

Community Development

NOTICE OF DECISION

DATE: December 22, 2021

TO: Applicant and interested parties

FROM: Barry C. Beyeler, Community Development Director

SUBJECT: UEC Application for ZP 21-066

ZP21-066 - Decision

File: ZP21 – 066

Applicant: Umatilla Electric Cooperation

Project: Olson Rd. 230kv Transmission Line

Based on the application, the evidence in the record and the criteria and findings described below, the application in ZP21-066 is **APPROVED**.

ZP21-066 - Findings

Background

1. Applicant: Umatilla Electric Cooperative.
2. Application Date: The application in File ZP21-066 was submitted on November 2, 2021.
3. Completeness: The application was deemed complete on November 3, 2021.
4. Subject Property: The subject property includes Tax Lots 3205 and 3302 (map 4N 25E S10).
5. Zoning: Commercial/Service Center Subdistrict ("C-SC").
6. Proposed use: The application proposes to install two segments of a 230kV electrical transmission line.
7. Applicable Approval Criteria: Boardman Development Code ("BDC") 2.2, 3.4 and 4.1.400.

Findings

1. The application was submitted on November 2, 2021, and deemed complete the following day, November 3, 2021. The application seeks approval to construct a portion of a 230 kV electrical

transmission line. The transmission line will be constructed within an easement owned by the applicant over Tax Lots 3205 and 3302 (map 4N 25E S10).

2. The site is zone Commercial/Service Center subject to BDC 2.2.200. Electrical facilities are listed as a permitted use in BDC Table 2.2.200.B.2. An application for a permitted use in the C-SC zone subject to the city's Type II review procedures.
3. Public Notice was posted on the tax lots #3205 and #3302 of tax map 4N 25E 10, and on-line at the city's webpage on December 2, 2021, and Published in the East Oregonian newspaper on December 3, 2021, for a Type II – Administrative Decision process. Additionally, public notice was mailed to all properties within 250 feet of the subject lots and to interested parties.
4. As described in the application, the proposed project is needed to reliably provide for electrical growth in the Boardman area. The line will be rated 230kV and integrated into UEC's area grid. As further described in the application, 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 additional transmission facilities. UEC obtained a Certificate of Public Convenience and Necessity for the transmission line from the Oregon Public Utility Commission.
5. The proposed electrical transmission line is a permitted use in the C-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." Table 2.2.200(B)2.b 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.
6. The Community Development Director finds that the proposed transmission line is a private utility that provides electrical service. The UEC is a private cooperative organized under ORS Chapter 62 and is registered as such with the Oregon Secretary of State, therefore the transmission line is a "private" utility line.
7. BDC 2.2.200(A) states that "[t]he base standards of the Commercial District apply, except as modified by the standards of this Sub District." Based on the figures and other information in the record provided by the Applicant, the transmission line satisfies applicable base standards of the Commercial District.
8. BDC 2.2.120. Setbacks.

- C. Front yard setbacks. There is not a minimum or maximum front yard setback in the C-SC zone.
 - D. Rear yard setbacks. The rear yard setback is zero (0) for street access lots. Tax lots 3302 and 3305 have street access. Therefore, the required setback is zero.
 - E. Side yard setbacks. There is no minimum side yard setback
9. BDC 2.2.130 Lot Coverage. There is no minimum or maximum lot coverage requirement.
 10. BDC 2.2.140. Building height. This section establishes a maximum “building” height. The proposed structures are not “buildings,” therefore this criterion does not apply.
 11. BDC 2.2.150 Design Standards. This section establishes design standards for “buildings.” The proposed structures are not “buildings,” therefore this criterion does not apply.
 12. BDC 2.2.160 Pedestrian amenities. This section applies to an application for a public or institutional building, three or more townhomes, duplex or triplex development, multi-family housing, or a commercial or mixed use building. Because the proposed transmission line and towers are not one of the listed development types, this section does not apply.
 13. The Community Development Director finds that there are no other standards in the base zone (BDC Chapter 2.2) that apply to the proposed transmission line. Accordingly, the proposed use complies with the base zone standards.
 14. BDC Chapter 3.4 establishes standards for specific public facilities. Section 3.4.500 applies to “utilities” and requires utility lines in a subdivision to be placed underground. The application does not propose a subdivision, therefore this section does not apply. Moreover, the section exempts “high capacity electric lines operating at 50,000 volts or above.” The proposed transmission line operates above 50,000 volts. Accordingly, this section does not apply.

Public Comments

1. The City received written comments from Kelly Doherty (email dated 12.22.21) and Sarah Mitchell on behalf of 1st John 2:17, LLC (letter dated 12.15.21). These comments raise the following issues:
 - A. BDC Sections 4.1.770.D requires the application to be submitted by “a record owner” of the property or, alternatively, the property owner of record. The comments assert that 1st John 2:17, LLC, is the record owner and did not consent to the application. Therefore, they argue that the application must be denied. To support this claim, they rely on the LUBA decision in *Baker v. Washington County*, 46 Or LUBA 591 (2004).

Finding: The Baker case involved an application to construct a driveway within an access easement owned by Black over property owned by Baker. There, the county code required the application to be initiated by “all the owners of the subject property.” No one in the case contested that Black was an owner, but LUBA concluded that because Baker did not sign the application, it was not initiated by all owners and reversed the county’s decision to approve the driveway. In this case, the evidence in the record demonstrates that UEC is “a record owner” (singular) of an interest in the property for purposes of BDC 4.1.700.D. Moreover, the application includes an order from the Morrow County circuit court that expressly grants UEC the right to immediately occupy the property for the purpose of constructing the electrical facilities that are the subject of this application. (“[UEC] shall be entitled to occupy and make use of the Easement . . . for all purposes and uses as described in the Easement.”) The order also expressly prohibits 1st John 2:17, LLC from interfering with UEC’s occupancy and use of the easement. (Neither Defendant nor its contractors, employees, invitees, licensees, guests, agents or representatives, shall interfere with [UEC’s] occupancy and use of the Easement.”) Finally, because the court order expressly authorizes UEC to use the property for the transmission towers, UEC is authorized to submit the application on behalf of the fee owners for purposes of BDC 4.1.700.D.1.b. For these reasons, the application complies with BDC 4.1.700.D.

- B. 1st John 2:17 asserts that then public notice of the application did not include certain information required by BDC 4.1.400.C. Doherty claims that the notice does not include certain information required by ORS 197.763.

Finding: As an initial matter, ORS 197.763 only applies to public notice of a “quasi-judicial land use hearing.” The county has not scheduled or conducted a hearing on this application, therefore ORS 197.763 does not apply.

With respect to BDC 4.1.400.C, 1st John 2:17, LLC does not claim that the missing information hindered their ability to identify the relevant approval criteria, gather responsive evidence, submit comments into the record, or otherwise meaningfully participate in the decision. As such, the fact that the notice is missing some information described in BDC 4.1.400.C is a technical violation that did not prejudice their substantive rights or ability to participate.

- C. 1st John 2:17, LLC claims that the use is not allowed in the C-SC zone. While acknowledging that “electricity facilities” are a permitted use in the zone under BDC Table 2.2.200.B, they

claim that “this modest allowance for small, individual distribution lines to homes and businesses, does not authorize major, high-voltage transmission lines and tower facilities.”

Finding: 1st John 2:17, LLC simply inserts words and limitations into the code language that do not exist. Nothing in the text of BDC Table 2.2.200.B limits electricity facilities to distribution lines, or “modest” facilities to homes and businesses. Imposing the limitations 1st John 2:17, LLC requests would violate the express terms of the relevant approval standards. The application proposed to construct “electricity facilities” in the C-SC zone, which is expressly allowed under BDC Table 2.2.200.B. As such, the application complies with this criterion.

2. The City also received email comments from F.E. Glenn on December 20, 2021. Mr. Glenn raises the following issues:

- A. The application materials incorrectly label Laurel Lane as Laurel Road or Laurel Lane Road.

Finding: While Mr. Glenn’s comment is technically correct, his comments do not suggest he was confused about which roadway was intended. Using the proper name in an application is not an approval criterion and does not provide a basis to deny the application.

- B. The application materials incorrectly refer to the subject property as the “Tallman properties,” when they are owned by 1st John 2:17, LLC.

Finding: Again, while technically correct, the comments demonstrate that Mr. Glenn knew which properties were the subject of the application and proposed development. As such, the fact that the application materials variously refer to the property as the “Tallman property” or the “1st John 2:17, LLC property” does not provide a basis to deny the application.

- C. Finally, Mr. Glenn notes that maps included with the application incorrectly show the location of Devin Loop road.

Finding: Here again, while technically correct, Mr. Glenn does not identify an approval criterion that requires the application to demonstrate the correct location of Devin Loop. Mr. Glenn’s comments demonstrate he has a clear understanding of what is proposed, where, and the correct nomenclature and location of surrounding public facilities. Accordingly, his ability to meaningfully review and respond to the application was not hindered by the error. As such, the errors he identifies in the map do not provide a basis to deny the application.

Conclusion

Based on the evidence in the record, the applicable criteria and the findings set forth above, the Director finds that all of the relevant and applicable criteria and standards in BDC Chapters 2.2 and 3.4 are met. Accordingly, the application in ZP-21-066 is APPROVED.

A copy of this decision can be obtained by contacting the Community Development Director, Barry Beyeler, at beyelerb@cityofboardman.com. The decision is final unless it is appealed. Anyone who is entitled to notice of the decision or is otherwise adversely affected or aggrieved may appeal the decision by filing an appeal under BDC 4.1.400.G.2.