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September 15, 2021

Via Email to:
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City of Boardman Planning Commission
c/o Barry Beyeler
Community Development Director
200 City Center Circle
P.O. Box 229
Boardman, OR 97818

RE: Appeal of PAR 5-2021: Glenn Partition and Road Dedication

Dear Members of the Planning Commission:

As you know, this firm represents 1st John 2:17, LLC and Jonathan Tallman (“the Tallmans”). Please include this letter in the record of this appeal proceeding.

The Tallmans do not oppose the Glens’ partition, per se, but do oppose the City’s approval of the road dedication that fails to identify or comply with any standards for the road it apparently also approves (and, in fact, that road to include its location is contrary to the City’s 2011 Interchange Access Management Plan (“2011 IAMP”)) and the apparent approval of UEC’s high voltage power lines and towers without establishing compliance with any of the applicable standards. It appears that the City is using the Glenn partition to achieve ends that the City is not permitted to achieve.

The challenged City decision identifies no standards and fails to comply with the standards that do apply to any such road. Land use decisions, at a minimum, must include findings explaining a proposal’s compliance with applicable standards. *South of Sunnyside v. Clackamas County*, 280 Or 3 (1977). Because the Glenn Decision makes no effort to comply with and does not comply with any relevant standards and because it fails to make any findings whatsoever with regard to the road, it must be denied.

For one, the road is partially in the Service Center Subdistrict and is not identified as a “designated improvement” in the City’s Transportation System Plan (TSP), so it requires a conditional use permit. BDC Table 2.2.200B(1)(e)(7) (allowing “Transportation projects that are not designated improvements in the Transportation System Plan” subject to a conditional use process). The road is also partially in the BPA Easement Subdistrict, which only allows roads if approved in a conditional use permit process and requires that they are approved by BPA with a signed Land Use Agreement. BDC 2.2.210(F) (allowing “Utility infrastructure” including

“transportation routes” subject to a conditional use permit and BPA approval). Because there is no conditional use permit, nor any approval from BPA or a signed Land Use Agreement, the decision must be denied.

Two, the road is inconsistent with the 2011 IAMP because it is partially within the BPA Easement and the 2011 IAMP is clear that the Yates Lane “loop road” will be located entirely outside of the BPA Easement:

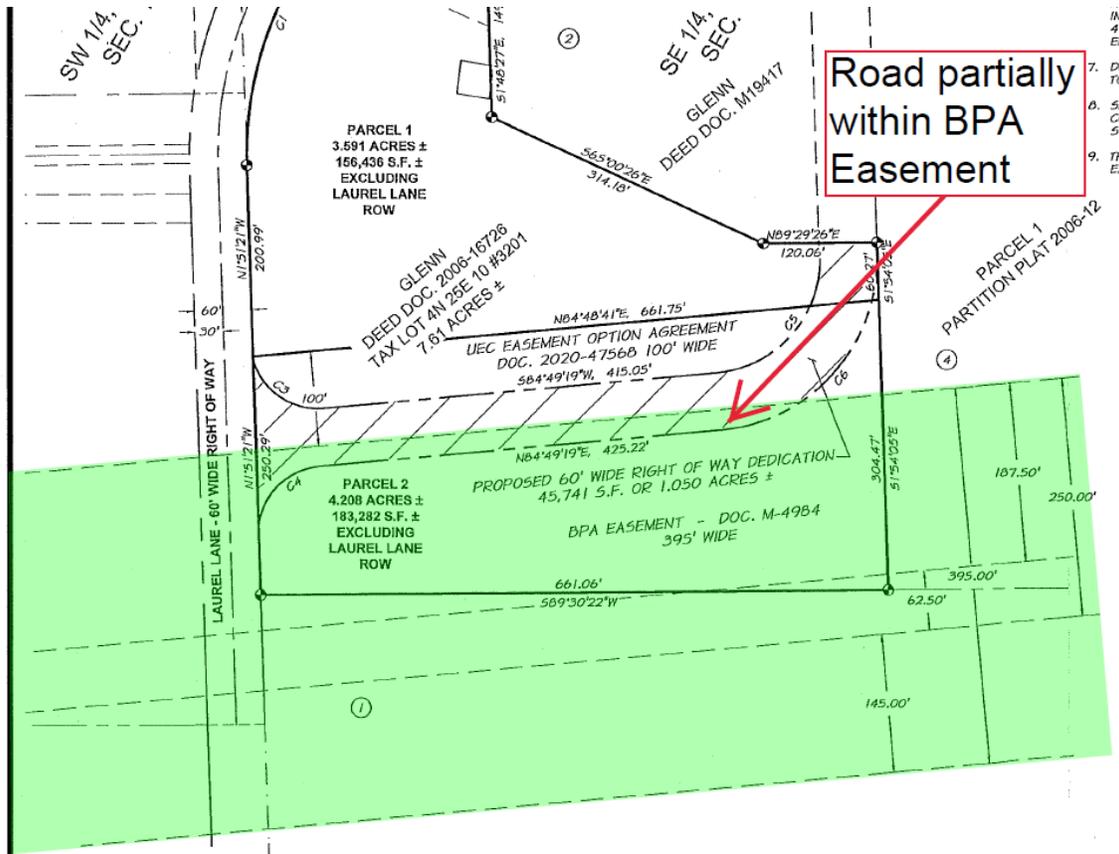
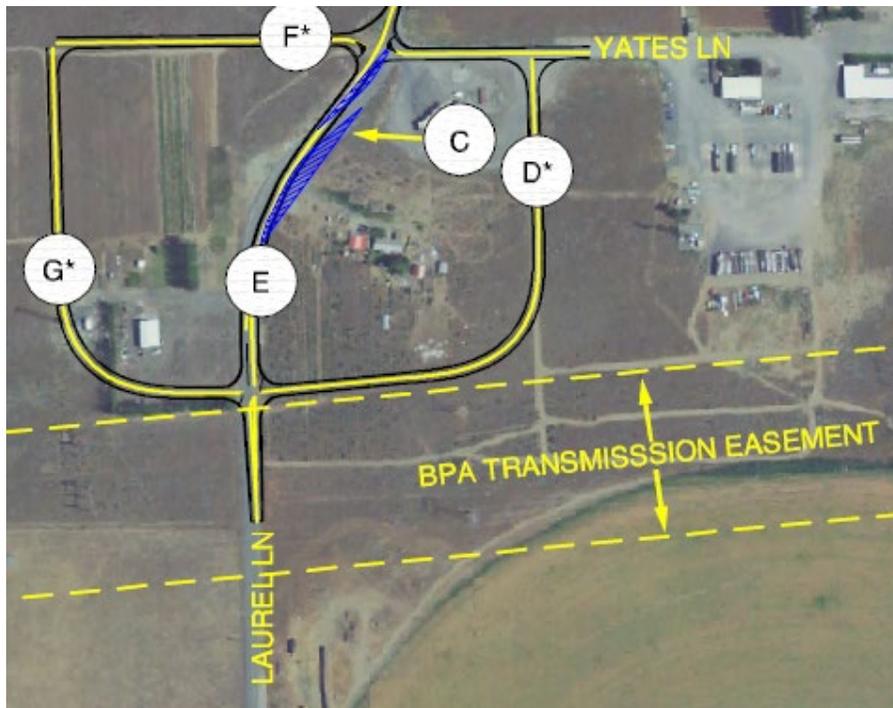


Image from Glenn Partition Decision (BPA Easement highlighted in green).

As you can see, the 2011 IAMP requires the road to be entirely outside of the BPA Easement:



2011 IAMP, Figure 7-1.

Long-Term Improvement Description	
D	<ul style="list-style-type: none"> Construct a new Collector street connection to Yates Lane that would access Laurel Lane just north of the existing BPA transmission easement. Restrict the Laurel Lane/Yates Lane intersection to right-in/right-out access only.

2011 IAMP, p. 80.

D). Yates Lane Access Connection

A new connection to Yates Lane from Laurel Lane will be constructed (at City Collector standards) just north of the existing BPA transmission easement. The existing Yates Lane intersection will remain as a

2011 IAMP, p. 81.

Three, as highlighted in green in the above 2011 IAMP excerpts, the 2011 IAMP says that the Yates Lane loop road will be built to “City Collector standards”. The challenged Glenn Decision does not so much as identify the “City Collector standards” or demonstrate that those

standards are met. Those City Collector standards require the construction of bike lanes, planter strips, street lights and sidewalks, among other things. BDC 3.4.100(J), (X). If Laurel Lane is considered an arterial, then there are additional standards. BDC 3.4.100(Q). But the evidence in the record shows that the City has no intention of even trying to meet those standards:

1. Road Construction. The City intends to pave a road. There will be no bike lanes, sidewalks, or multi-use paths.

Letter from City Attorney to the Tallmans' attorney re Loop Road, dated May 27, 2021 (Exhibit 2 to the Tallmans' September 1, 2021 submittal).

Because the Glenn Decision complies with none of these standards, the decision must be denied.

It was shocking to discover that the City is planning on starting construction of the road on the Glenn property ("alternate access road"/"loop road") without any of the required approvals, as stated in the Staff Report of the UEC Decision appeal, dated September 1, 2021:

22) The city is currently working to complete the alternate access road meeting the Port of Morrow Interchange Access Management Plan. Premier Excavating is the contractor which, will be starting the work in early October, 2021. This roadway is part of the Port of Morrow Interchange Area Management Plan (IAMP), which was approved the City of Boardman, Port of Morrow, Morrow County and Oregon Department of Transportation in 2011.

We caution the City to not move forward with construction of the road without first obtaining land use approval. Yamhill County recently made the mistake of forging ahead with the construction of a road without first obtaining land use approval and that action was challenged at LUBA who held that the County could not do so and awarded the petitioners attorney fees of nearly \$50,000. *See Van Dyke v. Yamhill County*, __ Or LUBA __ (Order, LUBA Nos. 2020-032/033, April 1, 2021). If there is any doubt about the lawfulness of the City's decision here, the Planning Commission would be wise to deny the Glens' application, at least as it pertains to the approval of the road, and ask the Planning Department to start over.

Second, the Glenn Decision appears to approve UEC's 230kV transmission line on the Glenn property without establishing compliance with any of the applicable standards:

9) Parcel 2 also contains a 100-foot-wide strip of land which has a Umatilla Electric (UEC) Option Agreement for 230kv transmission line.

To the extent that this finding approves UEC's high voltage transmission line on the Glenn property, the decision must be denied because it contains no findings establishing the proposed high voltage transmission line's compliance with any applicable standards. *South of*

Sunnyside, supra. For one, the 230kV transmission line that appears to be approved in the challenged decision is prohibited in the Service Center Subdistrict. To the extent that the City or the applicant believes such transmission lines and towers are permitted outright in the subdistrict, they are wrong. Although the Service Center Subdistrict permits “Private utilities (e.g. natural gas, electricity, telephone, cable and similar facilities)”, this does not authorize major transmission tower and line facilities. To interpret it as if it does, condemns your City to being criss-crossed with endless high voltage facilities contrary to the policy in the City’s “Underground Wiring Control District.” Make no mistake that “private utilities” are allowed all over the city, as we discuss in more detail below. Setting the precedent here that private utilities includes high voltage transmission facilities is not in the City’s interest and it is not consistent with the text, context, purpose or policy of the City’s code. The types of allowed “public utilities” only means smaller utilities that serve a specific customer and cannot be interpreted to include UEC’s 100’ tall, 230kV transmission lines and towers. Good reasons why that is, follow.

First, the City’s Municipal Code establishes an “Underground Wiring Control District” which expressly prohibits overhead wires within the entire City of Boardman, except through a variance. BMC 13.12.030. The City Council expressly approved this program because it found that undergrounding such wires was “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.” BMC 13.12.010. By permitting UEC’s 230kV transmission lines supported by 100’ tall transmission towers flies in the face of the City Council’s findings that such overhead transmission lines are a blight on the City.

Because UEC has not applied for a variance from the City’s undergrounding ordinance, its proposed overhead 230kV transmission lines are simply prohibited and the decision must be denied.¹

Second, as noted above, if you approve UEC’s high voltage transmission line as a “private utility” permitted outright in the Service Center District, the City would be dooming all of its other zones to the same blight, including its residential zone. The City’s Residential District allows “private utilities” with a conditional use permit; the Commercial Districts, including the City Center Subdistrict and Tourist Commercial Subdistrict, and Industrial Districts allow “private utilities” outright. The City’s purposeful ban on overhead wires in order to “beautify” the City and promote its citizens’ “health, safety and welfare” is eviscerated if “private utilities” is interpreted to include 230kV transmission lines on 100’ tall towers that are exempt from the overhead wires ban and are allowed in every one of the City’s zoning districts.

¹ To the extent that the City considers UEC’s high voltage transmission line to be a “feeder line” that is exempt from the undergrounding ordinance, this is also wrong. “Feeder lines” are defined as “[t]hat line that serves the system but not a specific customer.” BMC 13.12.130(E). UEC’s proposal is not for a “feeder line” because it is disconnected – it can’t “serve” *any* system because as proposed, it consists of two disparate segments that don’t have any transmitting capability.

The final point of this letter is to respond to comments made by the applicant during the September 8, 2021 appeal hearing on this matter. To that end, we submit with the attached letter a letter from Terry Tallman that we request also be placed into the record. Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Wendie L. Kellington". The signature is fluid and cursive, with the first name being the most prominent.

Wendie L. Kellington

WLK:wlk

CC: Client

Attachments:

Letter from Terry Tallman, dated September 15, 2021

Terry Tallman

September 15, 2021

Via Email to:

bbeyeler@Cityofboardman.com

City of Boardman Planning Commission

c/o Barry Beyeler

Community Development Director

200 City Center Circle

P.O. Box 229

Boardman, OR 97818

RE: For Record of Appeal of PAR 5-2021: Glenn Partition and Road Dedication

Dear Barry:

Cheryl and I were saddened to hear the unkind comments about us from our long time neighbor, colleague and friend of many years, Ed Glenn. So far as we know, it is ok to ask the city to apply the same rules to everyone; to do so fairly and as those rules are written. If that warrants criticism, so be it.

Money often lies at the heart of many issues, and perhaps it is so for Ed. But for us, it is about protecting the hard work and family dream of our property that we have owned and cared for since 1987. We have worked very hard to do good things on our property and have always done so. We have consistently followed city and county's rules. So, when our land was zoned for crops, we grew food that we sold to our community. When the city zoned it for Commercial Service, we established the Farmers' Cup and look forward to putting it to other good Community Service work. New transmission lines outside of the BPA

corridor that ignore the city's underground transmission district and substandard roads that together devour and chop into unproductive pieces, give us no hope of fulfilling those dreams. Our property's viability to do anything we can be proud of, are a concern for our family and we would hope for the city as well. Together these proposals for a substandard road and new high voltage corridor to add to our city, take away what we have worked hard to build with an almost flippant disregard for our family and the rules. That is what this is about for us.

We would like to think that there is a resolution to this matter that can work for everyone. However, it seems unlikely that resorting to yelling and name calling are helpful to that happening.

In any case, we very much appreciate the planning commission's time and consideration.

Sincerely,

Terry Tallman