

CITY of BOARDMAN

Community Development

STAFF REPORT

DATE: September 1, 2021

TO: Boardman Planning Commission and interested parties

FROM: Barry C. Beyeler, Community Development Director

SUBJECT: 1st John 2:17 L.L.C. Appeal of Decision of ZP21-031

File: ZP21 – 031

Applicant: Umatilla Electric Cooperation

Project: Olson Rd. 230kv Transmission Line

FINDINGS OF FACT

- 1) In 2018, Umatilla Electric Co-op approached the city about construction of a 230kv transmission line from a substation which was to be built at the I-84/US 730 junction to south Boardman. This transmission line is to provide increasing service pressure with existing and projected residential growth.
- 2) The city informed UEC where the line would go through many lots in the Service Center Sub-district, some evidence of property owner support would be needed.
- 3) No property in the Service Center Sub-District are located in the BPA Transmission Easement Sub-District as has been claimed.
- 4) UEC held numerous meetings with city and county staff members, and potentially affected property owners about the project.
- 5) UEC had obtained tentative agreements from most of the property owners for easements for the line. The Tallman family had not reached an agreement with UEC.
- 6) At this point UEC petitioned the Oregon Public Utilities Commission (PUC) for a Certificate of Public Convenience and Necessity (CPCN).
- 7) The PUC began their review of the petition as PCN4.
- 8) On March 5, 2021, The PUC, by Order 21-074, rendered their decision to Grant UEC a CPCN for this 230kv transmission line.
- 9) On April 15, 2021, Umatilla Electric Co-op submitted a Conditional Use Permit application for the Construction of 230kv electrical transmission line.

- 10) After review of the application, it was determined a conditional use permit was not necessary as the application for the transmission line was an outright allowable under the provisions of §Table 2.2.200B(2)(b) Boardman Development Code (BDC).
- 11) On May 19, 2021, the city received another application for Zoning approval, which is a Type II – Administrative decision process.
- 12) With the June 2021, Planning Commission Docket full, requiring staff time, UEC was informed the decision would be in July.
- 13) The proposed Transmission line will be required to meet the standards, specifications, and provisions of the National Electrical Safety Code (NESC), which is the applicable code for this type of project.
- 14) As staff reviewed the application, the language of §Table 2.2.200B(2)(b) brought the question is Electrical Co-op, which is user owned, a “private” utility. City attorney David Blanc received this and UEC is a corporation incorporated ORS Chapter 62 qualifying UEC as a private utility.
- 15) One comment repeatedly heard from 1st John 2:17 L.L.C., is this violates the city’s underground wiring control district, Boardman Municipal Code Chapter 13.12. There are 2 key provisions which negate this comment. Chapter 13.12 §13.12.130(E) Feeder Lines, state a line that serves the system but no specific customer, “...placed underground by council order shall be put underground at the expense of the city by crediting franchise fees in the amount of the actual cost differential between overhead and underground installation.” This cost differential for a 230kv transmission line are 10 to 15 times the cost and UEC’s total Franchise fees could not pay the difference in cost over the lifetime of the underground installation. The other key provision is in the variances allowed by code in §13.12.140(B)(2) “It is economically not feasible;”
- 16) On July 14, 2021, the city received a letter from Sarah Mitchell, of Kellington Law Group, representing, 1st John 2:17, L.L.C., Stating the city should not have accepted the application because the Tallman’s have full ownership of tax lots 3302 and 3305 of Morrow County tax map 4N 25E 10, and there is no signed agreement with UEC.
- 17) On July 20, 2021, an email was received from Tommy Brooks, of Cable Huston L.L.P., representing UEC, informing the city of UEC’s withdrawal of tax lots 3302 and 3305 of Morrow County tax map 4N 25E 10, from the application.
- 18) On July 21, 2021, a letter from Fred Wilson, of Kellington Law Group, representing 1st John 2:17, L.L.C., reiterating the Tallman’s ownership of the tax lots and the fact no agreement between the Tallman’s and UEC have been concluded.
- 19) On July 21, 2021, a letter from Fred Wilson, of Kellington Law Group, representing 1st John 2:17, L.L.C., stating UEC did not have the authority to initiate an application to the City of Boardman because they do not have an agreement with the Tallman’s.

- 20) On July 21, 2021, a letter from Kelly Doherty in opposition to ZP21-031 siting it was not in accordance with the underground wiring Municipal Code 13.12. Additionally, citizens have the right to a public hearing on this decision.
- 21) Upon the withdrawal of tax lot 3302 and 3305 owned by the Tallman's the city has five other property owners affected by this decision, of which, all five have signed agreements with UEC for this project. Those five are the Port of Morrow, Double T Farming, F.E. and Frances Glenn, Randal and Catherine Yates Living Trust, and Walo, L.L.C.
- 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.
- 23) On August 5, 2021, The City of Boardman obtained agreements From F.E. and Frances Glenn and Rich Devin for the Rights-of-Way for an alternate access on the East side of Laurel Ln. To meet the location agreed upon in the Port of Morrow IAMP.
- 24) On August 9, 2021, an email from Sarah Mitchell of Wellington Law Group, representing 1st John 2:17 L.L.C., was received with and paperwork to appeal to the decision on ZP21-031 to approve Umatilla Electric Co-op's 230 Kv transmission line.
- 25) On August 13, 2021, Public Notice of the appeal was mailed to property owners, posted on the property and on August 14, 2021, public notice was published in the East Oregonian for a Type III Decision hearing of the Boardman Planning Commission.
- 26) In addition to the roadway, sanitary sewer is being installed to service the properties to the East side of Laurel Ln. on the existing Yates Lane.
- 27) The plan to provide sewer and roadways on the West side of Laurel Ln. will not occur at this time as the negotiations with the Tallman family have not proven successful in numerous opportunities.
- 28) On September 1, 2021, received an email from Cheryl Tallman stating this application does not meet Chapter 3.4 of the BDC.
- 29) On September 1, 2021, testimony was received via email from Kelly Doherty claiming process errors among several reasons not to approve this application.
- 30) On September 1, 2021, Sarah Mitchell, of Kellington Law Group, representing 1st John 2:17 LLC, submitted a letter via email, and 9 exhibits to add to the record.