

## **BOARDMAN CITY COUNCIL SPECIAL MEETING – MARCH 24, 2022**

Council President Profitt called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance. Roll call for attendance was taken.

**Councilors Present:** Paul Beagle, Brenda Profitt, Isaac Williams, Leslie Pierson, and Roy Drago Jr. (in Person), and Paul Keefer, and Katy Norton (via Zoom)

**Councilors Absent:** None

**Staff:** Karen Pettigrew – City Manager, Rick Stokoe – Police Chief/Assistant City Manager, Carla McLane – Planning Official, and Jenn Rollins – City Recorder/HR (in person)

**Audience:** Tommy Brooks, Jonathan Tallman, Kelly Doherty (In Person), Ed Glenn, Rod Taylor, Jeff, Chris Crean, Joe Taylor, Citizen, Sarah Mitchell, and Lisa Mittelsdorf (via Zoom)

**Council President Profitt recessed the special meeting at 7:03 p.m.**

**Council President Profitt opened the public hearing at 7:03 p.m.**

### **HEARING**

Appeal to City Council regarding Planning Commission Decision on Zoning Permit ZP21-066

Council President Profitt read into the record the outline of how the hearing would be conducted.

Council President Profitt asked if anyone in the audience wished to challenge any City Councilor's impartiality.

Jonathan Tallman asked to speak and stated on September 28 during the workshop meeting Mayor Keefer stated "he could care less about the county side and the other side of the Loop Road construction" and so Mr. Tallman stated he believes Mayor Keefer doesn't care about property owners on that side of the road and has an obvious bias. Mr. Tallman continued by saying Councilor Pierson stated in the March 1 meeting that, "she needed to recuse herself regarding any discussions regarding real estate" and so he is asking her to recuse herself again from this hearing.

### **Staff Report**

Planning Official Carla McLane read the staff report into the record, and asked the councilors if there were any questions regarding the report. Council President Profitt asked if the council could wait to direct questions to the Planning Official once they were further along in the hearing; Planning Official Carla McLane stated that was acceptable.

### **Correspondence**

Nothing received outside of what was posted/included in the packet.

### **Public Testimony**

ZP21-031 Applicant – UEC – Tommy Brooks/Cable Huston

Mr. Brooks started off by explaining why he included the City Council's decision made on March 1, 2022; he did this because every issue raised in that proceeding has been raised again in this proceeding. Mr. Brooks explained that there is no difference in the facts or the law since the previous hearing in March. Mr. Brooks continued to explain the issue that has been raised since then is the question about who is allowed to apply for a zoning permit in the City of Boardman. He stated that UEC does not take this issue lightly, and the process that UEC took to remove the two lots that are in question tonight from the

zoning permit application that was brought before the Planning Commission and the City Council earlier in the year. Mr. Brooks explained that since then, UEC has gone to court to confirm the rights they had to the tax lots in question, and the court confirmed that UEC has the right to proceed. Mr. Brooks cited the Shrock Farms case that is similar to the process that the City of Boardman is going through and asked the council to apply the decision in this case to the case currently before them. Mr. Brooks also stated that decision made cannot repeal any state code or law, despite what the appellants argue.

### **Testimony in Support of the Application for ZP21-066**

No testimony of this type was given.

### **Testimony Opposing the Application for ZP21-066**

Sarah Mitchell – Kellington Law Group

Ms. Mitchell stated she is representing Jonathan Tallman and his 1<sup>st</sup> John 3.14 LLC in this issue. Ms. Mitchell asked to address comments made by Planning Official McLane regarding the condemnation proceeding in regard to it being completed; Ms. Mitchell stated that is not true, and the decision is still pending before the circuit court. Ms. Mitchell continued that the condemnation is an intermediate order, and no final judgement has been issued. Ms. Mitchell also stated that she does not agree with Mr. Brooks interpretation of an owner of record. Ms. Mitchell then shared her screen and addressed the City of Boardman's code 4.1.700 section D; and argued that the definition of the record owner of property does not include UEC and so they should not be allowed to apply for this zoning permit. Ms. Mitchell stated the Planning Commission wrongly decided that the term record owner is ambiguous and that the most reasonable interpretation of the code allows for the application to be submitted by the owner of a property as long as that is a matter of record. Ms. Mitchell continued with her second argument that the Planning Commission decided that even if the code was read to prevent UEC from filing an application, the City would be prohibited from interpreting it that way under the Shrock Farms case. Ms. Mitchell claimed that the Shrock Farms case did not apply because it contained a different statue and a different type of applicant, and that the county code provisions allowing owners to submit applications were much looser than the City of Boardman's code. Ms. Mitchell asked the council members to deny the application based on her arguments.

Jonathan Tallman – 1<sup>st</sup> John 3.14 LLC

Mr. Tallman stated this was the first time he has been asked to fill out a request to speak form and asked if it was a new requirement. Council President Profitt explained that the procedure was outlined when she read the outline of how the meeting would proceed at the beginning of tonight's meeting. After some discussion, Mr. Tallman completed the request to speak form. Mr. Tallman proceeded to ask for deliberation, and stated that by the council not speaking it shows that they have already made up their minds about this proceeding. Mr. Tallman continued to explain that the offer from UEC is \$5,600/per acre and he feels that amount is a joke. Mr. Tallman also stated he felt the staff has not reported the truth and Mr. Tallman asked for this meeting to be recorded at the Chamber as it was for the fire district, but he was informed that the City and BCDA pays the Chamber money it becomes a conflict of interest and so Mr. Tallman believes that this meeting is nothing more than propaganda. Mr. Tallman stated he has tried to establish a dialogue and has been denied several times. Mr. Tallman continued to state that if the City allowed this use to continue that he would consider it a decision to not work together on this issue.

### **Neutral Testimony**

No neutral testimony was given.

### **Rebuttal Evidence**

Tommy Brooks – Counsel for Umatilla Electric Co-Op

Mr. Brooks began by replying to Mr. Tallman; he acknowledged that it is difficult in situations like this to try to have a bigger discussion about what ought to be or should be, but that is not for the City Council

to decide. Mr. Brooks explained that the City Council is a body designated to look at the facts presented and apply it to the City's code. Mr. Brooks replied to Ms. Mitchell's comments by explaining that there is actually ambiguity in the City's code regarding a record owner; Mr. Brooks believes that by the code listing "a record owner" not "the" record owner and he believes that implies that there can be more than one record owner, and continued to give examples of ambiguity in the wording of the code. Mr. Brooks stated that it is the city council's job to determine the interpretation of their code with the understanding that it must be a reasonable interpretation. Mr. Brooks cited the statutory authority they have been given by the court order that states UEC has the right to occupy the parcels for the purpose of constructing the transmission line. Mr. Brooks also asked to clarify the fact that the Tallman's have already granted consent; part of the condemnation process required UEC to deposit funds to pay for the easement rights. Mr. Brooks explained that UEC wrote a check, gave it to the court to deposit, and the Tallman's have asked for and received the funds, thereby granting consent as the Tallman's have been compensated for the easement through the court system. Mr. Brooks explained that UEC does not take the condemnation process lightly, but the Tallman's have been compensated for the easement through the process in the courts thereby granting consent.

### **Discussion**

Council President Profitt attempted to move to the next phase of the hearing, and Mr. Tallman asked to speak. Council President Profitt explained that Mr. Tallman's time for testimony has been used; Mr. Tallman asked if that decision was based on the meeting rules, and Council President Profitt confirmed that was the reason and Mr. Tallman sat down.

Council President Profitt asked if staff wanted to respond to any issues raised in the testimony. Planning Official McLane responded she did not have anything to add or clarify, but she was happy to take any questions from councilors regarding tonight's testimony.

Council President Profitt asked if any city councilors had questions for staff; Councilor Drago asked if the city code circumvents the statute if the councilors grant the appeal. Planning Official McLane responded that she has had several discussions with the City of Boardman's land use attorney and she feels confident that the Shrock Farms case law is applicable. Planning Official McLane also reassured the council members that they have the right based on numerous LUBA decisions to interpret their own code, and the council has the authority under the law to interpret the city code as they see fit. Planning Official McLane continued to explain that the Planning Commission is not given the same deference as the City Council, as the council members do have the deference to interpret their own code.

The city's land use attorney Chris Crean asked to speak, and noted that he agreed entirely with the arguments made by Mr. Brooks and explained the details of the Shrock Farms case to the City Council. Mr. Crean further explained, decisions made by the city council that, in effect, nullify state condemnation statutes the interpretation will not be upheld by the state. Mr. Crean advised the council to interpret the code in a way that allows UEC to pursue this application.

Councilor Pierson asked if she could address comments made regarding her ability to vote this evening. Mr. Crean advised her to place her response regarding her ability to make an impartial decision in the record. Councilor Pierson then identified herself as a city councilor and replied that she asked those present to refer to ORS244.120 and stated at this time she is not aware of any potential or actual conflict regarding this issue and does not believe that she has any bias that would prevent her from making a fair decision this evening.

Mr. Crean asked Councilor Pierson to clarify her bias against or in favor of this decision in a manner that is not related to financial considerations; Councilor Pierson responded that she believes she can be fair and impartial in all areas related to this matter.

Mayor Keefer also asked to speak in regard to the earlier comments; he stated that he believes he can make a fair decision, and can listen to people, and he believes that comments he made regarding the county will not impact his decision in regard to the Tallman's appeal.


Councilor Williams made a motion to approve Resolution 6-2022 as a resolution to deny land use LU22-001, an appeal of zoning permit ZP21-066, and approve ZP21-066. Councilor Pierson seconded the motion.

Roll Call Vote: Councilor Pierson – Yes; Councilor Beagle – No; Councilor Drago – Yes; Councilor Williams – Yes; Councilor Norton – Yes; Council President Profitt – Yes; Mayor Keefer – Yes.  
The motion passed 6-1.

**Council President Profitt closed the public hearing at 7:49 p.m.**

**Council President Profitt resumed the special meeting at 7:49 p.m.**

**The special meeting was adjourned at 7:49 p.m.**

  
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Paul Keefer – Mayor  
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Jenn Rollins – City Recorder