

## **BOARDMAN CITY COUNCIL SPECIAL MEETING – FEBRUARY 15, 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, and Isaac Williams (in Person) and Roy Drago Jr., Katy Norton, and Leslie Pierson (via Zoom)

**Councilors Absent:** Paul Keefer

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

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

**Council President Profitt recessed the special meeting at 7:00 p.m.**

### **HEARING**

#### Hearing Regarding Zoning Approval of ZP 21-031 – to Correct Tax Lot Information

Council President Profitt called the Hearing to order at 7:04 p.m. and announced the purpose of the hearing was to correct tax lot numbers on Zoning Approval ZP21-031 made by staff on 07/26/2021. Council President Profitt summarized the order and rules of the hearing.

Council President Profitt asked if anyone in the audience wished to challenge any City Councilor's impartiality. Kelly Doherty asked to speak and if any councilors actually signed the lease with UEC on tax lot 400 that put them in a precarious situation and said the city would not do anything to stop UEC's proceedings. Counsel for the City of Boardman, Chris Crean, interjected to clarify this is a challenge which must be based on ex-parte contact, bias, or conflict of interest and any questions about other matters can be addressed during the testimony. Ms. Doherty replied her question is about ex-parte contact and conflict of interest; Mr. Crean replied it could be addressed during testimony.

### **Staff Report**

Community Development Director Beyeler read the Staff Report into the record.

The city's attorney Chris Crean asked to correct two errors in the staff report. First, in the background section of the Staff Report, item number four lists the tax lot 3000 and should be removed. Secondly, finding number twenty-five on the Staff Report lists tax lot 3000 and should be corrected to 3300. Mr. Crean summarized the tax lots which are the subject of the hearing are 3201, 3206, 3300, 402, and 403.

### **Correspondence**

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

### **Public Testimony**

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

Mr. Brooks thanked the city council for taking the time to correct the tax lots listed in the zoning approval. Mr. Brooks summarized the process so far and the reasons the tax lots had been previously listed incorrectly. When UEC submitted its application, it provided information to the city regarding the entire project as it was a linear project and it included information about other parcels which didn't need

to be included on the zoning permit application. Inclusion of all the tax lots included in the total project indirectly caused some confusion which was cleared up during the appeal to the Planning Commission; all information regarding the other tax lots was only presented for information purposes. In the December 3, 2021 decision, Finding number 3, listed the tax lots correctly but Finding number 25 listed the incorrect numbered tax lot 3000 instead of 3300. Mr. Brooks stated the findings and decision were correct, this purpose of this hearing is to correct a typo not to change the intent or content of the zoning application. Mr. Brooks was very clear in stating this application did not include the tax lots which belong to the Tallman's.

### **Testimony in Support of the Application for ZP21-031**

No testimony of this type was given.

### **Testimony Opposing the Application for ZP21-031**

#### **Jonathan Tallman**

Mr. Tallman stated process is very important and voices need to be heard, and the details seem to be missing and it is important for the process to be correct. Mr. Tallman also asked why Mr. Brooks seems to think this process has already been approved, so why are we here today in front of the City Council? Mr. Tallman stated he believes there are a lot of mixed signals throughout the process and the process and procedures are not being followed. Mr. Tallman stated the tax lots were botched by UEC and then taken out, and then the Tallman lots were pulled and so he asked the City Council to deny the appeal. Mr. Tallman stated he has spent money on the appeal and doesn't understand why it was pulled back in front of the City Council.

#### **Kelly Doherty**

Ms. Doherty stated she is glad Mr. Brooks agrees the legal description of the tax lots needs to be corrected. Ms. Doherty stated she received two notices in the mail and she doesn't know which one to address during tonight's meeting. Ms. Doherty cited ORS 197.835.98(b) gives her the right to an opportunity to prepare and submit for the case and it also provides for a full and fair hearing which is being denied to her restricting testimony to a legal description. Ms. Doherty stated she felt she hadn't had a chance to write anything up for the tax lots and the during the application 14 tax lots were applied for and 4 were approved. Ms. Doherty also stated the Finding of Fact #3 was completely wrong, and stated the incorrect tax lots again.

Ms. Doherty claimed due process is not being followed and citizens are not able to be prepared based on the errors which have occurred prior to this appeal. Ms. Doherty asked to submit as an exhibit into the record, a letter indicating a conflict of interest between the City of Boardman and UEC. Ms. Doherty asked for the entire record be submitted to the next hearing.

#### **Sarah Mitchell – Kellington Law Group**

Ms. Mitchell from the Kellington Law Group is representing Jonathan Tallman, stated she submitted a letter earlier in the day. Ms. Kellington asked to reinforce the fact the Tallman lots are not to be included in this decision and are currently subject to a different application.

### **Neutral Testimony**

No neutral testimony was given.

### **Rebuttal Evidence**

#### **Tommy Brooks – Counsel for Umatilla Electric Co Op**

Mr. Brooks stated he was on the same page as Ms. Mitchell and Mr. Tallman in regard to the Tallman properties which are not included in this application or proceeding. In regard to Ms. Doherty's comments, Mr. Brooks stated he was confused in regard to Ms. Doherty's claim that she hasn't had the chance to weigh in on the right tax lots and this is the first hearing this has been possible and Mr. Brooks stated that Ms. Doherty's statement is completely ignoring the record. Mr. Brooks referenced his

opening comments where he made it very clear in previous hearings to the Planning Commission the tax lots which were intended for the application to apply to, and which lots the application didn't apply to at which Ms. Doherty was present. During the last hearing brought before the City Council was when any issue substantial issues needed to be addressed, there is no impact to the decision other than to correct the typo concerning the tax lots. Mr. Brooks feels the argument cannot be made that the tax lots were hidden or wrong, these tax lots have been part of the full and fair process so far. This appeal is not about changing the decision made previously, it is about readdressing substantive criteria, it is about making sure the decision was made is worded correctly throughout the decision.

**Council President Profitt closed the public hearing at 7:52 p.m.**

**Council President Profitt resumed the special meeting at 7:52 p.m.**

Mr. Crean asked to clarify a couple of points in order to provide understanding as to what the decision is based on. Ms. Doherty has asked to have the entire record of the application be included for consideration, and has happened as this meeting is a continuation of the previous hearings and the entire record is already part of the record presented to the City Council tonight as it is cumulative. Mr. Crean also addressed the issue of two notices as there are two different hearings on two different subjects being presented before the city in the near future. Conflict of interest does not apply as ORS 244.010 defines conflict of interest as financial benefit or harm and that is not the present situation for any of the council members in regard to this appeal hearing.

#### **Deliberation by Council**

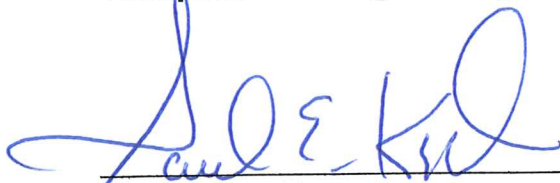
Council President Profitt opened the floor to deliberation by councilors. No discussion ensued and Council President Profitt asked for a motion to be made.

Councilor Pierson asked if the staff report and findings were adopted would it be appropriate to do so with corrections the city's land use attorney has presented? It was determined that action was appropriate.

Councilor Pierson made a motion to adopt the ZP21-031 staff report with corrections to findings made by city staff and the city land use attorney. Councilor Norton seconded the motion.

Roll Call Vote: Councilor Williams – Yes; Councilor Norton – Yes; Councilor Pierson – Yes; Councilor Beagle – Yes; Councilor Drago – Yes; Council President Profitt – Yes. The motion passed 6 – 0 with one absence.

**The special meeting was adjourned at 8:07 p.m.**

  
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Paul Keefer – Mayor  
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Jenn Rollins – City Recorder/HR