



Sarah C. Mitchell
P.O. Box 2209
Lake Oswego, OR 97035

Phone: (503) 636-0069
Fax: (503) 636-0102
Email: sm@klgpc.com

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Via Email
mclanec@cityofboardman.com

City of Boardman Planning Commission
c/o Carla McLane, Planning Official
200 City Center Circle
P.O. Box 229
Boardman, OR 97818

RE: A-BDC22-002 – Proposed Boardman Development Code Amendments

Dear Members of the Planning Commission:

This firm represents 1st John 2:17, LLC and Jonathan Tallman (Tallmans). The purpose of this letter is to provide comments on the proposed text amendments to the Boardman Development Code (BDC) for which you are being asked to make a recommendation to the City Council to approve or deny. We urge you to recommend denial of the proposed amendments for the reasons explained in this letter. Please include it in the record of these proceedings.

These proposed amendments are a direct response to the Tallmans' appeal to the Land Use Board of Appeals (LUBA) of the City's approval of Umatilla Electric Cooperative's (UEC) transmission line on the Tallman property. As you know, the Tallmans are the owners of property within the City of Boardman on which Umatilla Electric Cooperative (UEC) seeks to establish a transmission line. After negotiations with the Tallmans to obtain an easement on which to site the transmission line failed, UEC filed a complaint in the Morrow County circuit court in eminent domain to acquire an easement on the Tallmans' property for the transmission line. In July 2021, UEC filed a motion for advance occupancy of the easement under a statute that allows a private condemner like UEC to ask the court for an interim order to occupy the property to be condemned *before* the action in eminent domain is decided and a final judgment is rendered, the amount of just compensation assessed by a jury is paid, and the property to be condemned is actually conveyed. In October 2021, the circuit court granted UEC's motion, but a jury trial to decide the final amount of just compensation to be paid has not occurred and the court has not rendered a final judgment in the matter conveying the easement to UEC.

Shortly after the court issued the interim order, UEC applied for and obtained, over the Tallmans' objections, City approval to establish the transmission line. During the local proceedings, the Tallmans objected that UEC did not have the authority to file a land use application for the transmission line because UEC was not the "record owner" of the Tallmans' property or any part of it and that the court's order did not constitute the Tallmans' authorization

required by the City's code. Nevertheless, the City approved UEC's application. The Tallmans appealed the City's decision to LUBA where they raised these same issues, completed briefing, and held oral argument. The parties are now awaiting LUBA's final opinion and order.

The amendments are intended to reduce or avoid these types of disputes in the future, but as proposed, they only muddy the waters even more. For one, the proposed amendment to the record owner provision (BDC 4.1.700.D.1.a) says:

“(4) A record owner of property (**for example, a** person(s) whose name is on the most recently recorded deed), or contract purchaser with written permission from the record owner.”

Instead of clarifying who a “record owner” is (although it was clear before that a record owner is the person(s) whose name is on the most recently recorded deed for the property), the amendment dilutes its meaning by adding “for example”. By refusing to express about who a record owner is, the added language is bound to result in more disputes and is wholly unnecessary given that the amendments also propose a new category of who may initiate land use applications:

“(5) An entity that has the power of eminent domain relating to the property.”

This amendment, when read in conjunction with the proposed amendment to the City acceptance of applications provision (BDC 4.1.700.D.3.a) is even more troubling. That amendment says that an application may only be accepted if it contains:

“(3) The signature of the applicant on the required form. **If the applicant is the agent of a person or entity authorized by Section 4.1.700.D.1 to initiate an application, the applicant must provide evidence of and signed-written authorization of by the property owner of record if the applicant is not the owner applicable person or entity.**”

The current language requires that applications include the signed, written authorization of the property owner of record, if the applicant is not the owner. This makes sense, because the landowner should have control over what is or isn't developed on their property. The proposed amendment completely eliminates the requirement for landowner consent/authorization if the applicant is not the owner.

Although the findings say that the city always wants to see landowners and utilities work collaboratively, the amendments unfairly tip the scales of power in favor of utilities (and other entities with the power of eminent domain) by granting unilateral authority to those entities to file land use applications involving any property. Under these amendments, a utility with the power of eminent domain would not have to seek or obtain permission from the property owner in order to file and get approval of a land use application; they could bypass collaboration or cooperative resolution entirely. The amendments eliminate a critical safeguard that is meant to ensure that a property owner has a say in what can or cannot happen on their land.

In this respect, the proposed amendments are inconsistent with Policy 2 of Chapter 2 of the City's Comprehensive Plan, which is to "encourage[] the development of infill and redevelopment of existing land in order to balance the need to expand the [UGB]" to meet the City's commercial and housing needs. The City would not "encourage" commercial and housing development by approving the proposed amendments. The amendments would have the exact opposite effect of giving commercial and housing developers cold feet by granting utilities carte blanche to establish their facilities all over town without the property owner's consent.

The proposed amendments are also inconsistent with the goals of Chapter 1 of the Comprehensive Plan, which include that the City "shall strive to provide for widespread citizen involvement, especially in its land use process", "to assure effective two-way communication with its citizens", and "to provide the opportunity for citizens to be involved in all phases of the planning process". By eliminating the landowner's consent/authorization requirement, the City would undermine landowner involvement in the land use process.

The proposed amendments also violate ORS 227.175(1), which provides that only an owner of land may apply for a permit:

"(1) When required or authorized by a city, an owner of land may apply in writing to the hearings officer, or such other person as the city council designates, for a permit or zone change, upon such forms and in such a manner as the city council prescribes. * * *"

This statute furthers a state policy not to allow persons or entities to apply for land use approvals on property they do not own without the landowner's consent. The existing code complies with ORS 227.175(1) by requiring non-owners who wish to file an application for a permit, to obtain authorization of the owner.

For these reasons, the Planning Commission should recommend denial of the proposed amendments.

Sincerely,



Sarah C. Mitchell

SCM:scm
CC: Client