



## City of Boardman Land Use Application

Office Use Only:

File No. LU22-001

Date Received 1/5/22

Decision Type Appeal

Owner: Appellants 1st John 2:17 LLC and Jonathan Tallman

Phone: (208) 570-7589

Address: 706 Mount Hood Avenue City: Boardman State: OR Zip: 97818

Applicant or Agent: Wendie Kellington, Kellington Law Group LLC Phone: (503) 636-0069

Address: PO BOX 159 City: Lake Oswego State: OR Zip: 97034

Appeal pursuant to the notice of decision under BDC 4.1.400(G)(6) of a "Type II" decision made on December 22, 2021 by the Community Development Director approving ZP 21-066: Umatilla Electric Cooperative Olson Rd. Transmission Project on tax lots 3205 and 3302 of Morrow County tax map 4N 25E 10. Appellants have standing to appeal because they own the property that is subject to the land use application and they also participated in the proceedings leading to the Planning Director's decision herein challenged. The specific issues raised in the appeal are attached as Exhibit 1 to this appeal application. The issues raised in this appeal were raised by the Appellants in their written comments on the proposal that they submitted to the Planning Director.

Estimated Construction Cost Evaluation: \$ \_\_\_\_\_

Total Square Footage: \_\_\_\_\_

Requested Action: (Please circle one)

Zone Change

Variance

Conditional Use Permit

Property Line Adjustment

Partition

Subdivision

Preliminary Plat

Other: Land Use Appeal

The following material and supplemental information must be submitted with this application as a requirement for submittal to the Planning Commission:

- ☐ Plans and specifications, drawn to scale, showing the actual shape, setbacks and dimensions of the property to be used, together with a plot plan and vicinity map of the subject property.
- ☐ The size and location of the property, buildings, other structures; and use of buildings or structures, existing and proposed.
- ☐ Plot plan indicating all on/off-site improvements, including streets, fire hydrants, water and sewer facilities, etc.

I acknowledge that I am familiar with the standards and limitations set forth by the City of Boardman Zoning Ordinance, and that additional information and materials may be required. I fully intend to comply with plans and specifications submitted with this application. I do hereby certify that the above information is correct and understand that issuance of a permit based on this application will not excuse me from complying with the effective Ordinances and Resolutions of the City of Boardman and Statutes of Oregon, despite any errors on the party of the issuing authority in checking this application.

Signed: Jonathan Tallman  
(Applicant) (Appellant)

Signed: Jonathan Tallman  
(Legal Owner) (Appellant)

Printed: Jonathan Tallman, Managing Member 1st John 2:17, LLC  
(Applicant) (Appellant)

Printed: Jonathan Tallman, Individually  
(Legal Owner) (Appellant)

If this application is not signed by the property owner, a letter authorizing signature by the applicant must be attached.

Staff Comments:

Recommended Action:

Decision:

Approved

Not Approved

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

## CITY OF BOARDMAN FEE SCHEDULE

### PLANNING APPLICATION/REVIEW TYPE

### \*FEE AMOUNT

1.	Variance	\$150.00
2.	Property Line Adjustment	\$50.00
3.	Conditional Use Permits	\$300.00
4.	Zone Change	400.00
5.	Comprehensive Plan Amendment	\$400.00
6.	Land Partition	\$300.00
7.	Sign Permit	\$15.00 (per side)

### SITE PLAN REVIEW, UTILITY AND NATURAL RESOURCE IMPACTS, COST ASSESSMENT, LAND USE COMPATIBILITY STATEMENTS AND ZONING REVIEW

1.	Single family Residence	(1 Unit)	\$50.00
2.	Multi-family Residence	(# of Units)	\$50.00/unit
3.	Sub-Division	(# of lots = # of Units)	\$50.00/unit
4.	Commercial	(1 Unit = 9 employees or 3 fixtures)**	\$50.00/unit
	a. Restaurants, Lounges, Taverns, Clubs, etc	(1 Unit = 10 seat capacity)	\$50.00/unit
	b. Hospitals	(1 Unit = per 2 beds)	\$50.00/unit
	c. Hotels/Motels/RV Parks	(1 Unit = per 3 units)	\$50.00/unit
5.	Industrial	(1 Unit /\$100,000 value)	\$50.00/unit

\*Non-refundable fee to be paid at the time of application

\*\*Whichever is greater

AMENDED Notice of Appeal Under BDC 4.1.400(G) of a Type II Decision by the  
Community Development Director Approving ZP 21-066: Umatilla Electric Cooperative  
Olson Rd. Transmission Line

Decision File: ZP21-066  
Appealed: Applicant: Umatilla Electric Cooperation  
Project: Olson Rd. 230kV Transmission Line  
Location: Tax Lots 3205 and 3302 (map 4N 25E S10).  
Date of Decision: December 22, 2021

Appeal Date: January 5, 2022

Filing Fee: \$250

Appellants: 1st John 2:17, LLC Jonathan Tallman  
706 Mount Hood Ave. 706 Mount Hood Ave.  
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(208) 570-7589 (208) 570-7589  
jonathan@tallman.cx jonathan@tallman.cx

Appellants' Representative: Wendie Kellington  
Kellington Law Group, PC  
P.O. Box 159  
Lake Oswego, OR 97034  
(503) 636-0069  
wk@klgpc.com

I. Introduction

Appeal pursuant to the notice of decision under BDC 4.1.400(G) of a "Type II" decision made on December 22, 2021 by the Community Development Director approving ZP 21-066: Umatilla Electric Cooperative Olson Rd. Transmission Project on tax lots 3205 and 3302 of Morrow County tax map 4N 25E 10. Appellants have standing to appeal because they own the property that is subject to the land use application and they also participated in the proceedings leading to the Planning Director's decision herein challenged. The specific issues raised in the appeal are attached as Exhibit 1 to this appeal application. The issues raised in this appeal were raised by the Appellants in their written comments on the proposal that they submitted to the Planning Director.

II. Timely Filing of Appeal

Under BDC 4.1.400(G)(2), a Notice of Appeal of a Type II decision must be filed with the City Manager within 21 days of the date the Notice of Decision was mailed. This Notice of Appeal is filed within that period.

III. Statement of Standing to Appeal – BDC 4.1.400(G)(2)(c)(2)

Appellant 1st John 2:17, LLC is the property owner and has standing on that basis alone. Appellant 1st John 2:17, LLC also participated in the proceeding by submitting written comments on the application and has standing to appeal the Decision under BDC 4.1.400(G)(1)(c). 1st John 2:17, LLC further has standing to appeal the Decision under BDC 4.1.400(G)(1)(b).

Appellant Jonathan Tallman also has standing to appeal as he also participated in the local proceedings and is the managing member of 1st John 2:17, LLC; 1st John 2:17, LLC is a closely held family company and he cares deeply about land use actions in the vicinity that may adversely affect the family property.

IV. Specific Issues Raised on Appeal – BDC 4.1.400(G)(2)(c)(3)

- The Decision errs in finding that UEC has the right to file and pursue the application notwithstanding the clear terms of the city code that they do not have that right because they are not the owner. No circuit court order did or can supersede the City's land use requirements that apply to all land use applications, including this one. The fact is that UEC does not own the Tallman's property and does not propose to do so either. In fact, all the UEC plans to do is establish an easement on the Subject Property. In no case will UEC be an owner, or contract purchaser, by its own admission and as such it simply may not apply for land use permission when the city code unequivocally requires that land use applications be pursued only by the owner or contract purchaser of the property. In this regard, the City's Development Code ("BDC,") 4.1.700(D)(1)(a) provides that land use applications, including applications like UEC's, may only be initiated by (1) Order of the City Council; (2) Resolution of the Planning Commission; (3) the City Manager; or (4) **"A record owner of property (person(s) whose name is on the most recently recorded deed), or contract purchaser with written permission from the record owner."** UEC is not a "record owner,, of the properties that are the subject of it's application – UEC's name is not on the most recently recorded deed, 1st John 2:17, LLC's is – nor is UEC a "contract purchaser,, with written permission from the record owner, 1st John 2:17, LLC. Therefore, UEC is simply not authorized to initiate the subject application and in fact UEC does not claim otherwise.

The Tallmans are the record owners of the subject properties (see Exhibit 1 to comments submitted for the record, deed for tax lots 3205 and 3302). The City's code is clear that if the applicant is not the property owner, then the application shall not be accepted:

**"When an application is received by the City, the City Manager shall immediately determine whether the following essential items are present. If the following items are not present, the application shall not be accepted and shall be immediately returned to the applicant:**

**"(1) The required form;**

- “(2) The required fee;
- “(3) The signature of the applicant on the required form and **signed written authorization of the property owner of record if the applicant is not the owner.**” BDC 4.1.700(D)(3)(a) (Boldface added).

Accordingly, the challenged decision errs as a matter of law and UEC’s application should have been rejected by the City and the City may not make a decision on the merits of the application.

The City exceeds its jurisdiction by allowing UEC’s zoning permit application to proceed without the Tallmans’ signatures as the property owners of record, in violation of the City’s own code. Contrary to the Decision, that case is not distinguishable or its legal principle inapplicable from the *Baker* LUBA case.

- The City’s public notice of the Decision stated that the City intends to make a “Type II,, decision. As with the public notices sent out by the City on UEC’s prior transmission line application (ZP21-031), the notice here fails to “[l]ist the relevant approval criteria by name and number of code sections,,; “[s]tate the place, date and time the comments are due, and the person to whom the comments should be addressed,,; “[s]tate that if any person fails to address the relevant approval criteria with enough detail, they may not be able to appeal to the Land Use Board of Appeals or Circuit Court on that issue,,; “[s]tate that all evidence relied upon by the City Manager or his/her designee to make this decision is in the public record, available for public review,,; “[s]tate that after the comment period closes, the City Manager or designee shall issue a Type II Administrative Decision,,; and “[c]ontain the following notice: ‘Notice to mortgagee, lienholder, vendor, or seller: The City of Boardman Development Code requires that if you receive this notice it shall be promptly forwarded to the purchaser’,,, as is required under BDC 4.1.400(C)(3) for notices of pending Type II decisions. The City’s public notice of UEC’s application achieved none of these things. These failures prejudiced the Tallmans’ substantial rights by denying them a full and fair opportunity to present their issues now revealed in the challenged decision. At a minimum this means that issues in this appeal are not limited to those raised to the planning director since the planning director’s decision is the first time that any of the relevant approval standards have been articulated.<sup>1</sup> Without knowing what criteria the City believes are applicable to the

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<sup>1</sup> To the extent BDC 4.1.400(G)(4) limits the scope of an appeal of a Type II decision made without a hearing to specific issues raised during the written comment period, that is inconsistent with state law and is unenforceable. ORS 227.175(10)(a) requires the City to provide, on appeal from a decision made without a hearing, as here, at least one hearing at which any issue may be raised. ORS 227.175(10)(a)(E) requires the appeal hearing to be the initial evidentiary hearing required under ORS 197.763 as the basis for an appeal to LUBA, and that presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal. Accordingly, the City must hold at least one de novo appeal hearing, the scope of which may not be limited to specific issues raised during the written comment period or even the issues raised in this notice of appeal, as a matter of state law.

application, the Tallmans were not provided a meaningful opportunity to provide comment about the application's compliance with relevant criteria.

- **UEC's proposed 230kV high-voltage transmission lines and 100-foot towers are not the kind of modest "private utilities" allowed in the Service Center Commercial Zone.**

The proposal is not allowed in the zoning district and the City errs in deciding otherwise. BDC Table 2.2.200B allows as a use permitted outright "Private utilities (e.g. natural gas, electricity, telephone, cable and similar facilities),, in the City's Service Center Commercial Zone. However, this is an allowance for small, individual distribution lines to homes and businesses; it does not authorize major, high-voltage transmission line and tower facilities like the ones that the challenged decision approves. The City errs in interpreting "private utilities,, to include ALL types of utilities, regardless of type or size. In the first place, the UEC is not a "private utility" within the meaning of this phrase. It is a public utility in the sense that it charges the public a fee for utility service and must obtain UEC permission to establish service. The Decision's determination that it is a "private utility" is form over substance, inconsistent with the express words, purpose policy and context of the standard. The interpretation evidenced in the challenged decision allows unsightly high-voltage transmission lines like UEC's to criss-cross all areas of the City or allow the establishment of a huge natural gas facility or pipeline like the highly controversial Jordan Cove facility proposed on the Oregon Coast. Relevant context is the fact that the City Council has designed the entire City as an Underground Wiring District (an undisputed fact). The City Council expressly did so, making underground wiring a requirement because it found that undergrounding utility 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. Permitting UEC's 230kV transmission lines supported by 100' tall transmission towers as "private utilities" permitted outright, is contrary to that policy that overhead transmission lines are undesirable in the City.

Additional context, is that the City has a special district for high-voltage transmission lines – the BPA subdistrict. That zone allows "utility infrastructure,, which describes UEC's proposal. The BPA subdistrict is where the proposed high voltage transmission lines must and should go.

- The Decision errs in finding that the proposed towers are not "buildings" subject to the maximum building height in the zone. The transmission towers are "buildings,, (a term undefined in the City's code) and exceed BDC 2.2.140(A)'s 35-foot height limit for buildings in the Service Center Sub District. Thus, the transmission towers cannot be approved without a variance. No variance has been approved and so the Decision errs in approving the towers which are 100 feet in height, exceeding the allowed maximum height for the zone.
- The challenged Decision errs in finding that the design standards that apply to all buildings in the zoning district do not apply. They apply here.

- To the extent that the challenged Decision purports to approve the "Loop Rd" or "Devin Loop Road" it errs in doing so. First, approving any road is not contemplated in the application and so cannot be approved here. Second, there is nothing to establish that the "Loop Road" complies with any relevant approval standards. The location and specifications for the Loop Road are provided in the IAMP for the Laurel Rd /I-84 interchange and in the TSP. The Loop Road is required to meet standards for a collector road reflected in BDC 3.4.100 (sidewalks, street lighting, planter strips etc.), and there are no plans in the record demonstrating compliance with those requirements in any respect.
- BDC 3.4.100(A) provides that "[n]o development shall occur unless the development has frontage or approved access to a public street, in conformance with the provisions of Chapter 3.1 – Access and Circulation, and the following standards are met: [standards follow].. The Decision errs by not applying these transportation standards for the approved "development,, whatever exactly that is.
- The transmission towers are "development,, (as is a road, if such is approved in the challenged Decision), which must demonstrate compliance with the "Design of Buildings and Developments,, under BDC 2.2.150(B)(1) ("The standards in the following section **shall apply to buildings and developments listed in Section 2.2.150**. Buildings shall be compatible with balance of the Commercial District and Sub Districts.,). The proposed transmission towers are either buildings or development. They cannot be neither. That means the decision errs in failing to require the proposal to demonstrate compliance with these standards.

The proposed transmission lines are incompatible with the "balance,, of the Commercial District and Sub Districts because they are far from aesthetically appealing (they are 100-foot tall 230kV transmission lines) and vastly out of scale with existing and allowed development in the zone. Instead of attracting economic development to this part of the city, the challenged decision will disincent it by making this part of the city undesirable as well as difficult to develop with uses that are allowed in the applicable zone. The Decision errs by approving the proposal that has not shown compliance with the "Design of Buildings and Developments,, under BDC 2.2.150(B)(1).

- The proposal is subject to Site Design Review under BDC 4.2.200(A), which applies to "all developments,, except those specifically listed under BDC 4.2.200(B). The transmission towers are "development,, which the City code defines as "[a]ll *improvements on a site*, including buildings, other structures, parking and loading areas, landscaping, paved or graveled areas, grading, and areas devoted to exterior display, storage, or activities. Development includes improved open areas such as plazas and walkways, but does not include natural geologic forms or landscapes., BDC Chapter 1.2 (Emphasis added). The proposal is not a type of development exempt from Site Design Review that is specifically listed under BDC 4.2.200(B). The Decision errs in approving the proposal without undertaking Site Design Review, and applying Site Design Review standards, with which the proposal does not comply in fact.
- The proposal is subject to design review under the Commercial District design standards under BDC 2.2.150(A) which applies to "[p]ublic and institutional buildings,,. At a minimum, the transmission towers are "public" because they provide a "public service."

And they are buildings. The Commercial District design standards are applicable to buildings in the Service Center Sub District by operation of BDC 2.2.200 ("The base standards of the Commercial District apply, except as modified by the standards of this Sub District.,). The Decision errs in approving the proposed transmission towers without requiring compliance with the Commercial District design standards.

- Appellants note that where there are interpretive questions, BDC 1.1.200(C) states: **"Most restrictive regulations apply."** Where this Code imposes greater restrictions than those imposed or required by other rules or regulations, the most restrictive or that imposing the higher standard shall govern., Accordingly, the City's code require its interpretations to err on the side of being more restrictive.



XBP Confirmation Number: 112642637

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City of Boardman

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SITE PLANNING FEES	Appeal ZP210	250.00
Total:		250.00
JONATHAN TALLMAN 87818		

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