



City of Boardman Land Use Application

Office Use Only:

File No. LU21-002

Date Received 8-10-21

Decision Type _____

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

Phone: (208) 570-7589

Address: 706 Mount Hood Ave. City: Boardman State: OR Zip: 97818

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

Address: P.O. Box 159 City: Lake Oswego State: OR Zip: 97034

Appeal under BDC 4.1.400(G) of a Type II decision by the Community Development Director approving PAR 5-2021 Glenn Partition and Road Dedication on tax lot 3201 of Morrow County tax map 4N 25E 10, dated July 26, 2021.

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)

Printed: Jonathan Tallman
(Applicant) (Appellant)

Printed: Jonathan Tallman
(Legal Owner)

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: _____

Notice of Appeal Under BDC 4.1.400(G) of a Type II Decision by the Community Development
Director Approving PAR 5-2021: Glenn Partition and Road Dedication

Decision Being Filed: PAR 5-2021
Appealed: Applicant: F.E. Glenn and Frances Glenn
Project: Partition and Road Dedication
Location: Tax Lot 3201 of Morrow County Tax Map 4N 25E 10
Date of Decision: July 26, 2021

Appeal Date: August 9, 2021

Filing Fee: \$300

Appellants: 1st John 2:17, LLC
Jonathan Tallman
706 Mount Hood Ave.
Boardman, OR 97818
(208) 570-7589
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

Appellants 1st John 2:17, LLC and Jonathan Tallman (Tallman) appeal the Decision of the City of Boardman Community Development Director in File PAR 5-2021, dated July 26, 2021, approving an application by F.E. and Frances Glenn for a partition and road dedication for property described as tax lot 3201 of Morrow County tax map 4N 25E 10, under BDC 4.1.400(G). A copy of the Decision is attached as "Appeal Exhibit 1".

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.

We note that BDC 4.1.400(E)(1) requires the notice of a Type II decision to be sent by mail within five days after the Decision is signed by the City Manager to "[a]ny person who * * * provides comments during the application review period[.]" 1st John 2:17, LLC provided comments during the application review period. Mr. Tallman is the managing member of 1st

John 2:17, LLC. Neither 1st John 2:17, LLC nor Mr. Tallman received mailed Notice of the Decision as is required by BDC 4.1.400(E)(1). Rather, Notice of the Decision was posted on the City's website with a date of July 26, 2021. While the 21 days to file a Notice of Appeal does not start running until the Notice of Decision is mailed, to ensure that the filing deadline is met, Appellants file this appeal within 21 days of July 26, 2021, the date of the Notice of Decision posted on the City's website. This Notice of Appeal is timely filed.

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

Appellant 1st John 2:17, LLC participated in the proceeding by submitting written comments on the application and so has standing to appeal the Decision under BDC 4.1.400(G)(1)(c). 1st John 2:17, LLC also has standing to appeal the Decision under BDC 4.1.400(G)(1)(b). Under BDC 4.1.400(E)(1), 1st John 2:17, LLC should have been mailed written notice of the July 26, 2021 Type II administrative Decision by the City because it provided written comments on the application during the review period. However, 1st John 2:17, LLC never received such notice and it does not appear that the City gave the required notice. Despite the City failing to follow its own code, 1st John 2:17, LLC has standing to appeal under BDC 4.1.400(G)(1)(c).

Appellant Jonathan Tallman also has standing to appeal as he 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)

This Decision approves (1) a partition, and (2) apparently purports to also approve a right of way for a road.

- To the extent the Decision purports to approve a road, the Decision is beyond the City's authority. There is no application, no signature by property owners affected, no specifications for such a road, no standards are addressed for a road and no notice was ever given that the city intended to approve a road.
- The application failed to include an "impact study" as required by BDC 4.1.400(B)(2)(e) for "all land division applications". The required impact study "shall quantify and assess the effect of the development on public facilities and services. The study shall address, at a minimum, the transportation system, including pedestrian ways and bikeways, the drainage system, the parks system, the water system, the sewer system, and the noise impacts of the development. For each public facility system and type of impact, the study shall propose improvements necessary to meet City standards and to minimize the impact of the development on the public at large, public facilities systems, and affected private property users." The application failed to address any of these elements. The Decision errs in approving the application without the required impact study.
- Per BDC 4.2, the proposal is subject to "Site Design Review" because it is "new development" and is not within the exempted activities: "Regular maintenance, repair and replacement of materials (e.g., roof, siding, awnings, etc.), parking resurfacing, and

similar maintenance and repair shall be exempt.” BDC 4.2.200. Clearly, approval of a road approves “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).

- To the extent that the Decision approves a road that is at least partially in the BPA Transmission Easement Sub District, it can only be approved in a conditional use process, applying conditional use standards, under BDC 2.2.210(F) and BDC Chapter 4.4. The Decision does neither (*see* BDC 2.2.210(F)(12) which identifies “Utility infrastructure including * * * transportation routes * * *” as requiring a CUP). The Decision errs to the extent it approves a road.

It is unclear what road the Decision approves. The Decision states: “The purpose of this partition is to separate [tax lot #3201] into two parcels, Parcel 1 being 3.591 acres and Parcel 2 being 4.208 minus a 60-foot-wide roadway dedication.” Likewise, the Decision’s Finding 1, states that the application is one “to partition tax lot #3201 * * * into two parcels. Parcel 1 being 3.591 acres, Parcel 2 being 4.208 acres, with the dedication of a 60’ Rights-of-Way which is 1.05 acres in size.” Page 4 of the Decision is a tentative partition plan which shows a “proposed 60’ wide right of way dedication” that is 1.05 acres in size on proposed “Parcel 2” and is partially within the “BPA Easement”. Page 5 of the Decision shows an additional 60’ wide ROW dedication on tax lot #3202, which tax lot is not the subject of the application, nor is the ROW dedication 1.05 acres in size as stated in the Decision; rather, that dedication is “17,106 sq. ft.”, which is approximately 0.4 acres in size. Thus, the Decision appears to approve the 60’ wide, 1.05-acre road on Parcel 2, which is partially within the BPA Transmission Easement Sub District. Accordingly, the Decision errs because it is unclear what exactly it approves and where and what standards apply.

- The Decision errs because it fails to explain how the proposal complies with any of the standards of the BPA Transmission Easement Sub District and it does not. For example, BDC 2.2.210(E) requires “all activities” be setback from transmission towers and requires that “[t]owers shall be protected from any traffic * * *” and fails to do so by approving the road. Moreover, the partition includes no requirements that subsequent development comply with setback requirements.
- The Decision errs in deciding that the right-of-way (ROW) dedication “is for the purpose of meeting the 2009 Port of Morrow Interchange Area Management Plan, which calls for alternate access to properties in the Service Center Subdistrict zoning.” The ROW dedication cannot be for that purpose because it improperly authorizes a road in an area that is in part at least situated outside of that district and partially within the BPA Transmission Easement Sub District.
- Relatedly, Finding 13 lacks any support in the record and is inconsistent with Finding 5 that the ROW is contemplated in the 2009 Port of Morrow IAMP in the Service Center Subdistrict, not the BPA Transmission Easement Sub District.

- The Decision errs in deciding that the subject property is in the Service Center Subdistrict. It is not. At least half of the subject property or more is in the BPA Transmission Easement Sub District.
- There are no findings that BPA's approval has or can be obtained for the road as required by BDC 2.2.210(A): "All uses within the easement shall be approved by agreement with BPA prior to approval for development by the City." The Decision is ultra vires because it fails to demonstrate that there is such approval.
- There is no evidence in the record to support the statement in Finding 10 of the Decision that "Parcel 1 would be outside the BPA and UEC easement and free of those restrictions" (which are not specified in the Decision but which presumably are those in the Decision's Finding 8), which BPA easement is not in the record and there is no evidence that UEC has any easement. An "option agreement", which the Decision says Parcel 2 contains in Finding 9, is not an easement.
- Procedural Issues: There were several procedural errors in the City's processing of the application and in the City's issuance of the Decision. One that is key is that there is no application for any road. No land development can be approved without being supported by an application, evidence and findings demonstrating approval criteria. This has not happened.

The City's notice of the application stated that it proposes a "Type II" decision. BDC 4.1.400(C)(3) requires that notices of pending Type II decisions "[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'", among other requirements. The City's public notice of the application did none of these things.

By failing to conform to the City's notice requirements, the application notice offended the purpose and standards for its procedure "to give nearby property owners and other interested people the opportunity to submit written comments about the application, before the Type II decision is made" and "to invite people to participate early in the decision-making process." BDC 4.1.400(C)(2). These failures have prejudiced Appellants' substantial rights by leaving them in the dark about what the City believed were the criteria applicable to the application and denying them a full and fair opportunity to present their case. Without knowing what criteria the City believed were applicable to the application, Appellants were prevented from meaningfully providing comment about how the application did or did not comply with the relevant criteria.

Likewise, the Decision errs in several procedural respects. BDC 4.1.400(D) requires the City Manager or his/her designee to make Type II written decisions addressing all of the

relevant approval criteria and standards and to base his/her decision upon those criteria and standards and the facts in the record. As explained above, the Decision fails to address all relevant approval criteria and standards and the Decision is not based upon the relevant criteria and standards. BDC 4.1.400(E)(1) requires that within five days after the City Manager signs the decision, the Notice of Decision be posted on the property and sent by mail to persons and entities listed in (a) through (e).¹ As far as Appellants know, no notice of the Decision was ever mailed to any of the persons and entities required to be mailed written notice under BDC 4.1.400(E)(1). There is no affidavit of mailing and posting of the notice of Decision showing the date the notice was mailed and posted and demonstrating that the notice was mailed to the people and within the time required by law, under BDC 4.1.400(E)(2). The Decision fails to contain all of the elements required by BDC 4.1.400(E)(3).² The Decision does not include a map of the subject property in

¹ BDC 4.1.400(E)(1) provides:

“1. Within five (5) days after the City Manager signs the decision, a Notice of Decision shall be posted on the property and sent by mail to:

- “a. Any person who submits a written request to receive notice, or provides comments during the application review period;
- “b. The applicant and all owners or contract purchasers of record of the site which is the subject of the application;
- “c. Any person who submits a written request to receive notice, or provides comments during the application review period;
- “d. Any City-recognized neighborhood group or association whose boundaries include the site;
- “e. Any governmental agency which is entitled to notice under an intergovernmental agreement entered into with the City, and other agencies which were notified or provided comments during the application review period.”

² BDC 4.1.400(E)(3) provides:

“The Type II Notice of Decision shall contain:

- “a. A description of the applicant’s proposal and the City’s decision on the proposal (i.e., may be a summary);
- “b. The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area, where applicable;
- “c. A statement of where the City’s decision can be obtained;
- “d. The date the decision shall become final, unless appealed;
- “e. A statement that all persons entitled to notice or who are otherwise adversely affected or aggrieved by the decision may appeal the decision;
- “f. A statement briefly explaining how an appeal can be filed, the deadline for filing an appeal, and where further information can be obtained concerning the appeal process; and
- “g. A statement that unless appellants (the person who files the appeal) is the applicant, the hearing on the appeal shall be limited to the specific issues identified in the written comments submitted during the comment period. Additional evidence related to the Notice of Appeal (See subsection G.2.a, below) may be submitted by any person during

relation to the surrounding area; there is no statement of where the City's Decision may be obtained; no date the Decision becomes final, unless appealed; no statement of who may appeal or how an appeal may be filed, the deadline for filing an appeal, or where further information can be obtained concerning the appeal process. There is also no statement that unless the appellant is the applicant, the hearing on appeal shall be limited to the specific issues identified in the written comments submitted during the comment period. Appellants point out that this limitation on the scope of the appeal is inconsistent with state law and is unenforceable. As explained in Section V of this notice, 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.

V. Appeal Issues Raised During the Comment Period – BDC 4.1.400(G)(2)(c)(4)

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), attached to this notice as part of "Appeal Exhibit 2", 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 and state law requires that hearing to be "de novo". ORS 227.175(10)(a)(E) requires the appeal hearing to be the initial de novo 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 evidentiary 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.

Nevertheless, Appellants raised the issues in written comments submitted during the written comment period that the City's notice of its intent to make a decision on the proposal were inadequate for failing to contain several of the required elements of such notices under BDC 4.1.400(C)(3), and that those failures prejudiced Appellants' substantial rights by providing inadequate information about what the proposal was, and about what the City believes are the criteria applicable to the proposal and by denying Appellants a full and fair opportunity to present their case. Appellants raised that without knowing what criteria the City believes are applicable to the proposal, Appellants were unable to meaningfully provide comment about how the proposal did or did not comply with the relevant criteria. Appellants also raised that whatever standards and criteria are applicable to the proposal, the proposal fails to meet them.

VI. Appeal Hearing Procedures

Because the Decision was made without a hearing, the appeal hearing shall be the first evidentiary hearing on this matter and the requirements under ORS 197.763 for such hearings apply. ORS 227.175(10)(a). In addition, the applicable parts of ORS 227.173 and 227.175 also apply to the process.³

the appeal hearing, subject to any rules of procedure adopted by the Planning Commission."

³ ORS 197.763, 227.173 and 227.175 are attached to this notice as "Appeal Exhibit 2".

CITY of BOARDMAN

Community Development

NOTICE OF DECISION

DATE: July 26, 2021

TO: Boardman Planning Commission and Interested Parties

FROM: Barry C. Beyeler, Community Development Director

SUBJECT: PAR 5-2021 Glenn Partition

On May 19, 2021, the city received a zoning permit request and preliminary plat from F. E. and Frances Glenn for tax lot #3201 of Morrow County Tax Map 4N 25 10, which is owned by the Glenn's. This tax lot is 7.61 acres in size. The purpose of this partition is to separate the lot into two parcels, Parcel 1 being 3.591 acres and Parcel 2 being 4.208 minus a 60-foot-wide roadway dedication. Both lots would be in the Service Center Subdistrict, which is a Commercial zone.

Approval of a Preliminary Plat is processed using a Type II - Administrative decision in accordance with Boardman Development Code (BDC) Chapter 4.1- Types of Applications and Review, and Chapter 4.3 – Land Divisions and Lot line Adjustments. The Type II decision process requires public notice to be sent to all properties within 250' of the parent property and posting notice on local reader boards and on the property. Public notice was mailed and the proper posting was accomplished on October 1, 2020, meeting the 20-day notification requirements.

File: PAR 5-2021

Applicant: F.E. Glenn and Frances Glenn

Project: Partition and Road dedication

PRELIMINARY FINDINGS OF FACT:

- 1) On June 3, 2021, Frances Glenn delivered, on behalf of herself and her Husband FE Glenn, an application to partition tax lot #3201 of Morrow County Tax Map 4N 25E 10 into two parcels. Parcel 1 being 3.591 acres, Parcel 2 being 4.208 acres, with the dedication of a 60' Rights-of-Way which is 1.05 acres in size.
- 2) The partition is subject to a Type II – Administrative decision process by the Boardman Development Code.
- 3) Public Notice was posted on the property, posted on line at the City of Boardman website, and was mailed to all adjoining properties and interested parties on July 1, 2021.
- 4) Public Notice was published in the East Oregonian newspaper on July 3, 2021.

- 5) The R-O-W dedication is for the purpose of meeting the 2009 Port of Morrow Interchange Area Management Plan, which calls for alternate access to the properties in the Service Center Subdistrict zoning.
- 6) Upon completion of this alternate access the existing Yates Lane will become right-in right-out only.
- 7) The property is zoned Service Center Subdistrict, which is part of the Commercial district.
- 8) A significant portion of Parcel 2 is under three Bonneville Power Administration (BPA) Transmission lines. One 500kv, and two 230kv lines. The BPA easement has significant restrictions as to allowance of activities and structures
- 9) Parcel 2 also contains a 100-foot-wide strip of land which has a Umatilla Electric (UEC) Option Agreement for 230kv transmission line.
- 10) Parcel 1 would be outside of the BPA and UEC easements and free of those restrictions.
- 11) On July 14, 2021, the city received a letter from Sarah Mitchell of Kellington Law Group, on behalf of 1st John 2:17, L.L.C., concerning Umatilla Electric's application for the Olson Rd. 230kv Transmission Line Project. In this letter the Glenn's property is also mentioned as prejudice to the Tallman's substantial rights. (see attached)
- 12) On Wednesday, July 21, 2021, the city received a letter from Morrow County Planning Director Tamra Mabbot, in support of the Glenn partition and roadway dedication. (see attached).
- 13) The roadway dedication is identified in, and consistent with, the 2009 Port of Morrow Interchange Area Management Plan, agreed upon by the City, County, Port of Morrow, and the Oregon Department of Transportation.

In staff review of the preliminary plat all required items appear to be met and the Preliminary Plat is **APPROVED** as submitted. The city will review the final plat prior to recording the partition with the Morrow County Clerk's Office.



City of Boardman Land Use Application

Date: 05/18/2021 6/3/21 *gwr*

Owner: F.E. Glenn and Frances T. Glenn Phone: (541) 481-3151
 Address: 105 Laurel Lane City: Boardman State: OR Zip: 97818
 Applicant or Agent: _____ Phone: () _____
 Address: _____ City: _____ State: _____ Zip: _____
 Property Address: 105 Laurel Lane Designed Zone: Service Area
 Map Number: 04N 25E 10 Lot: 3201 Block: _____
 Subdivision: _____ Tax Lot(s): _____
 Proposed Usage: _____

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: _____

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 part of the issuing authority in checking this application.

Signature: *F.E. Glenn* *Frances Glenn* Date: 6/1/2021
 (Owner, Applicant, or Agent)

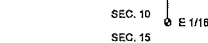
Staff Comments:

Recommended Action: _____

Planning Commission: Approved Not Approved

Date: _____ Signature: _____

LOCATED WITHIN THE SOUTHEAST ONE-QUARTER SECTION 10, TOWNSHIP 4 NORTH, RANGE 25 EAST, WILLAMETTE MERIDIAN, CITY OF BOARDMAN, MORRIS COUNTY, OREGON



- ① SAGE HOLLOW RANCH, LLC - 4N 25E 10 R3200
- ② F.E. GLENN AND FRANCES T. GLENN - 4N 25E 10 R3202
- ③ DEVIN EQUIPMENT, LLC - 4N 25E 10 R3204
- ④ WALD, LLC - 4N 25E 10 R3206

4. THIS PROPERTY IS TO BE PARTITIONED IN 8 BORDOMAN CITY LIMITS, MEDISON COUNSEL AND IS IDENTIFIED AS A RURAL PROTECTION DISTRICT. THE PROPERTY IS NOT TO BE USED SERVICE CENTER CITY ZONING, SUB DISTRICT. THE PROPERTY IS NOT APPROPRIATELY TAX AGENTS.
5. THIS PROPERTY IS CURRENTLY UTILIZED FOR AGRICULTURAL USES.
6. NO DEED RESTRICTIONS ARE PROPOSED.
7. THIS PROPERTY IS LOCATED WITHIN THE BOUNDARIES OF THE BORDOMAN RURAL FIRE PROTECTION DISTRICT.
8. THIS PROPERTY IS LOCATED WITHIN THE BOUNDARIES OF THE MEDISON COUNSEL.
9. THIS PROPERTY IS DESIGNATED AS A FLOOD HAZARDED ZONE - AREA OF MINOR FLOOD HAZARD. REFER TO FLOOD INSURANCE RATE MAP, PIRM PLAIN, NUMBER COMMERCE DISTRICT, JUNE 14, 2007, FEDERAL EMERGENCY MANAGEMENT AGENCY.
10. DOMESTIC WATER SUPPLY IS PROVIDED BY CONNECTION TO RURAL WATERSHIP DISTRICT.
11. SANITARY SEWAGE DISPOSAL IS PROVIDED BY CONNECTION TO THE EXISTING COMMUNITY SEWER SYSTEM.
12. THIS PROPERTY IS LOCATED WITHIN THE WEST CENTRAL SUBDIVISION DISTRICT.

PRELIMINARY

DREDON
 JUN 22 1918
 MICHAEL B. POSADA
 02849 LS
 EXPIRES 12-31-2022



FOUND MONUMENT - MORROW CO SURVEY
2021-1927G

- PROPOSED PARCEL LINES
- EXISTING EASEMENT LINES
- EXISTING RIGHT OF WAY CENTERLINE
- EXISTING RIGHT OF WAY
- EXISTING SECTION LINE

PROPOSED RIGHT OF WAY DEDICATION

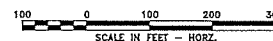
- EXISTING UNDERGROUND POWER
- EXISTING FIBER OPTIC COMMUNICATION
- EXISTING WATER LINE

Curve #	Length	Radius	Delta	Chord Direction	Chord Length
C1	292.01	370.00	45.22	S20° 45' 13"W	284.49
C2	87.65	430.00	11.59	N34° 36' 13"E	87.50
C3	97.98	71.00	93.55	S55° 39' 08"E	90.37
C4	97.92	71.00	79.02	S45° 18' 47"W	90.34
C5	181.65	120.00	86.73	N41° 27' 25"E	164.80
C6	272.47	180.00	86.73	N41° 27' 24"E	247.19

CITY OF BOARDMAN
P.O. BOX 229
200 CITY CENTER CIRCLE
BOARDMAN, OREGON 97810
541-481-9252

F.E. GLENN AND FRANCES T. GLENN
105 LAUREL LANE
BOARDMAN, OREGON 97810
541-461-3151

SURVEYOR:
ANDERSON PERRY & ASSOCIATES, INC
1901 N FOR STREET
PO BOX 1107
LA GRANDE, OR 97050
PN # 541-963-8309



LOCATED IN THE SE 1/4 OF SECTION 10
T4N. R25E. W.M. MORROW COUNTY, OREGON

OF BOARDMAN 225 CITY CENTER CIRCLE/H.O. BOX 225
BOARDMAN, OREGON 97815

CITY OF BOARDMAN	
SCALE: 1" = 100'	
DATE: 05-13-21	
JOB NO. 439-56 (211)	

ap anderson
perry
& associates, inc.

SHEET
1/1

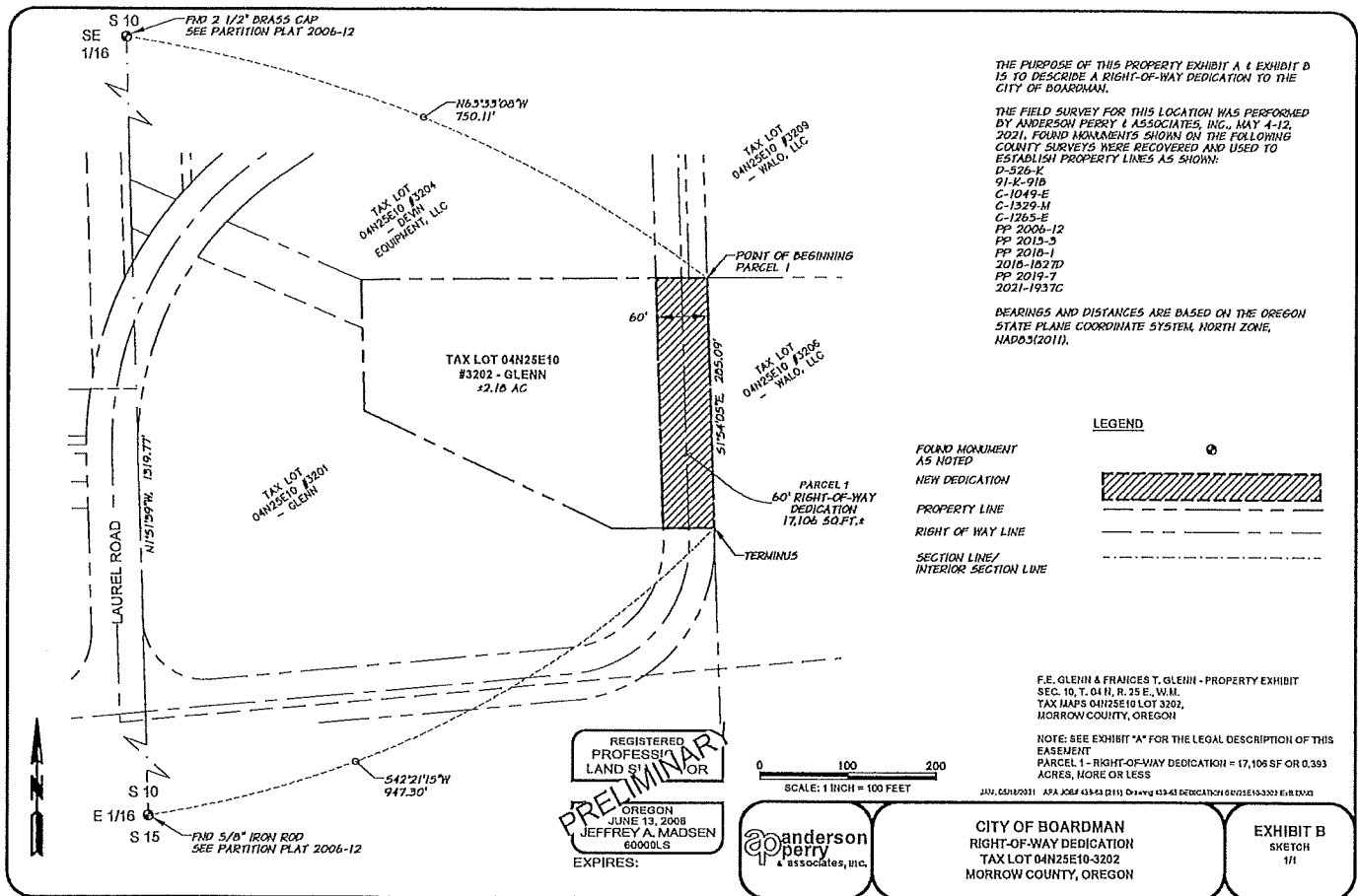


Exhibit A - Page 1 of 1

FILE: 439-65 DEDICATION 04N25E10-3202 ExA
TAX LOT 4N25E10-3202– 2.18 acres +/-
GLENN – AP (JAM) 05-19-2021

Parcel 1 – RIGHT-OF-WAY DEDICATION

A parcel of land located in the Southeast One-quarter of Section 10, Township 4 North, Range 25 East, Willamette Meridian and being a portion of that property described in that Warranty Deed to F.E. Glenn and Frances T. Glenn, husband and wife, Recorded August 28, 1981 as Instrument No. M-19417 of Morrow County Deed Records. Said Parcel 1 being that portion of said Property contained in a strip of land 60.00 feet in width. Said 60.00-foot wide strip of land being 60.00 feet on the Westerly side of the following described line:

Beginning at the Northeast corner of said property, from which the Southeast One-sixteenth corner of said Section 10, marked by a 2 1/2" brass cap as shown on Partition Plat No. 2006-12 of Morrow County Records, bears N63°33'08"W, 750.11 feet; thence along the Easterly line of said property, S01°54'05"E, 285.09 feet to the Southeast corner of said property and the terminus of this description, from which the East One-sixteenth corner common to Sections 10 and 15 of said Township and Range, marked by a 5/8" iron rod, bears S42°21'15"W, 947.30 feet.

Parcel 1 contains 17,106 square feet, more or less.

Subject to all easement and encumbrances of record or in view

All easement lines being shortened or lengthened to intersect with the line calls of said centerline as described at the beginning, angles, and terminus points of this description.

Bearings are based on the Oregon Coordinate System 1983(2011 adjustment) North zone.

For purposes of this description, said Southeast One-sixteenth corner, bears N01°51'39"W, 1319.77 feet from said East One-sixteenth corner; All as shown on Exhibit B, the easement sketch attached to this description.



Barry Beyeler

From: Tamra Mabbott <tmabbott@co.morrow.or.us>
Sent: Wednesday, July 21, 2021 11:24 AM
To: Barry Beyeler; Jackie McCauley
Cc: Matt Scrivner; Matt Scrivner; JARVIS-SMITH Cheryl; 'PENNINGER Teresa B'; Darrell Green
Subject: Land Partition PAR 5-2021 Glenn

Hello Barry and Jackie – Thank you for providing notice to Morrow County for the above referenced Land Use Partition application PAR 5-2021.

We note that the proposed roadway is in a location that is recommended in the Interchange Area Management Plan (IAMP). County is a party, along with City and Oregon Department of Transportation (ODOT) to the IAMP and we support the dedication of the roadway as proposed in the land partition application.

Morrow County requests that you add a condition of approval to your Preliminary Findings, requiring both an access and right of way permit from Morrow County Public Works prior to construction of the roadway. Please contact Matt Scrivner if you have any questions about the right of way permit.

Thank you.
Matt Scrivner and Tamra Mabbott

Tamra Mabbott
Planning Director
Morrow County
PO Box 40
205 Third Street NE
Irrigon, OR 97844
(541) 922-4624 X5505





Sarah C. Mitchell
P.O. Box 159
Lake Oswego, OR 97034

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

July 14, 2021

Via Email

Barry Beyeler
Community Development Director
City of Boardman
200 City Center Circle
P.O. Box 229
Boardman, OR 97818
bbeyeler@cityofboardman.com

RE: Request for Zoning Approval for Umatilla Electric Cooperative to Construct Long Walk 230 kV Transmission Project (Local File No. ZP21-031) and Glenn Application for Partition (Local File No. unknown)

Dear Mr. Beyeler:

This firm represents 1st John 2:17, LLC ("the Tallmans"), the owner of tax lots 3302 and 3205, tax map 04N25E10, upon which lots Umatilla Electric Cooperative ("UEC") proposes to construct its Long Walk 230 kV Transmission Project ("Project"). Please include this letter in the records of the above-captioned matters.

1. UEC's application is fatally flawed, should not have been accepted by the City and the City may not render a decision on the application.

The City's Development Code ("BDC") 4.1.700(D)(1)(a) provides that land use 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. An agent who represents a property owner is only allowed to submit an application if the agent is authorized *in writing* to make the application on the property owner's behalf. BDC 4.1.700(D)(1)(b). UEC is not authorized to initiate the subject application. The Tallmans, who are the record owners of property that is the subject of UEC's application (*see* Exhibit 1, deed for tax lots 3302 and 3205), did not initiate the application, nor have they authorized UEC to make the application on their behalf. Rather, the Tallmans have objected to UEC's Project on their property since its inception and will object to any initiation of eminent domain proceedings by UEC to take their property for the Project in the future. Unless and until such proceedings are finalized and UEC has acquired the Tallmans' property for its Project, UEC has no authority to initiate the subject application on the Tallmans' land.

added). BDC Chapter 3.4 explains that its purpose is to provide planning and design standards for public *and private* utilities and that those standards are applicable to the construction of utilities. *See* BDC 3.4.000(A) and (B). Accordingly, it is of no consequence whether UEC is considered a “public” or “private” utility for purposes of the City’s code requirements. All utilities, whether public or private, are required to demonstrate compliance with the public facility requirements established in BDC Chapter 3.4. UEC in its application makes no attempt whatsoever to demonstrate such compliance.

The City should reject UEC’s application and should not render any decision on the application. If the City does render a decision, it should deny the application for failure to meet the BDC Chapter 3.4 requirements. Thank you for your consideration.

Very truly yours,



Sarah C. Mitchell

SCM:scm

CC: Client

Exhibits

Exhibit 1 – Deed tax lots 3302 and 3205

[SIGNATURE PAGE FOLLOWS]

EXHIBIT A

Legal Description

PARCEL I:

Beginning at the Northeast corner of the Southwest Quarter of the Southeast Quarter of Section 10, Township 4 North, Range 25, East of the Willamette Meridian, Morrow County, Oregon; thence South along the East boundary of said Southwest Quarter of the Southeast Quarter 463.1 feet to the true point of beginning; thence South 89 degrees 31' West 470.3 feet; thence South 1 degree 43' East 81.4 feet; thence South 89 degrees 31' West 800 feet to a point 50 feet East of the West boundary of the South Half of the Southeast Quarter of said Section 10; thence South and parallel with said West boundary 566.8 feet to a point 200 feet North of the South boundary of said Section 10; thence East and parallel with said South boundary 1,272.4 feet to the East boundary of said Southwest Quarter of the Southeast Quarter of Section 10; thence North along said East boundary 649.6 feet to the true point of beginning.

EXCEPTING THEREFROM that portion conveyed to Morrow County by Roadway Dedication Deed Recorded April 20, 1984 as Microfilm No. M-23150, Morrow County Microfilm Records.

PARCEL II:

Beginning at the Northeast corner of the Southwest Quarter of the Southeast Quarter of Section 10, Township 4 North, Range 25 East of the Willamette Meridian, Morrow County, Oregon; thence West along the North boundary of said Southwest Quarter of the Southeast Quarter 470.3 feet to the true point of beginning; thence South 1 degree 43' East 544.5 feet; thence South 89 degrees 31' West 800 feet to the West line of Southwest Quarter of the Southeast Quarter; thence North 1 degree 43' West 544.5 feet to the Northwest corner of Southwest Quarter of the Southeast Quarter, thence North 89 degrees 31' East 800 feet along the North line of Southwest Quarter of Southeast Quarter to the Point of beginning.

EXCEPTING THEREFROM the West 50 feet.

PARCEL III:

A tract of land located in Section 10, Township 4 North, Range 25 East of the Willamette Meridian, in the County of Morrow and State of Oregon, described as follows:

All of the Southeast Quarter of the Southeast Quarter of said Section 10 lying North and West of Laurel Lane; and the North 463.10 feet of the East 470.30 feet of the Southwest Quarter of the Southeast Quarter.

EXCEPTING THEREFROM that portion conveyed to Morrow County by Roadway Dedication Deed recorded April 20, 1984 as M-23150 Morrow County Microfilm Records.

Comprehensive Land Use Planning

ORS 197.763

Conduct of local quasi-judicial land use hearings

- **notice requirements**
- **hearing procedures**

The following procedures shall govern the conduct of quasi-judicial land use hearings conducted before a local governing body, planning commission, hearings body or hearings officer on application for a land use decision and shall be incorporated into the comprehensive plan and land use regulations:

- (1) An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue.
- (2) (a) Notice of the hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:
 - (A) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;
 - (B) Within 250 feet of the property which is the subject of the notice where the subject property is outside an urban growth boundary and not within a farm or forest zone;
or
 - (C) Within 500 feet of the property which is the subject of the notice where the subject property is within a farm or forest zone.
- (b) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.
- (c) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.

- (3)** The notice provided by the jurisdiction shall:
- (a)** Explain the nature of the application and the proposed use or uses which could be authorized;
 - (b)** List the applicable criteria from the ordinance and the plan that apply to the application at issue;
 - (c)** Set forth the street address or other easily understood geographical reference to the subject property;
 - (d)** State the date, time and location of the hearing;
 - (e)** State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide statements or evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the board based on that issue;
 - (f)** Be mailed at least:
 - (A)** Twenty days before the evidentiary hearing; or
 - (B)** If two or more evidentiary hearings are allowed, 10 days before the first evidentiary hearing;
 - (g)** Include the name of a local government representative to contact and the telephone number where additional information may be obtained;
 - (h)** State that a copy of the application, all documents and evidence submitted by or on behalf of the applicant and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;
 - (i)** State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost; and
 - (j)** Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.
- (4)** (a) All documents or evidence relied upon by the applicant shall be submitted to the local government and be made available to the public.
- (b)** Any staff report used at the hearing shall be available at least seven days prior to the hearing. If additional documents or evidence are provided by any party, the local government may allow a continuance or leave the record open to allow the parties a reasonable opportunity to respond. Any continuance or extension of the record requested by an applicant shall result in a corresponding extension of the time limitations of ORS 215.427 (Final action on permit or zone change application) or 227.178 (Final action on certain applications required within 120 days) and ORS 215.429 (Mandamus proceeding when county fails to take final action on land use application within specified time) or 227.179 (Petition for writ of mandamus authorized when city fails to take final action on land use application within 120 days).

- (5) At the commencement of a hearing under a comprehensive plan or land use regulation, a statement shall be made to those in attendance that:
- (a) Lists the applicable substantive criteria;
 - (b) States that testimony, arguments and evidence must be directed toward the criteria described in paragraph (a) of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision; and
 - (c) States that failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the board based on that issue.
- (6) (a) Prior to the conclusion of the initial evidentiary hearing, any participant may request an opportunity to present additional evidence, arguments or testimony regarding the application. The local hearings authority shall grant such request by continuing the public hearing pursuant to paragraph (b) of this subsection or leaving the record open for additional written evidence, arguments or testimony pursuant to paragraph (c) of this subsection.
- (b) If the hearings authority grants a continuance, the hearing shall be continued to a date, time and place certain at least seven days from the date of the initial evidentiary hearing. An opportunity shall be provided at the continued hearing for persons to present and rebut new evidence, arguments or testimony. If new written evidence is submitted at the continued hearing, any person may request, prior to the conclusion of the continued hearing, that the record be left open for at least seven days to submit additional written evidence, arguments or testimony for the purpose of responding to the new written evidence.
- (c) If the hearings authority leaves the record open for additional written evidence, arguments or testimony, the record shall be left open for at least seven days. Any participant may file a written request with the local government for an opportunity to respond to new evidence submitted during the period the record was left open. If such a request is filed, the hearings authority shall reopen the record pursuant to subsection (7) of this section.
- (d) A continuance or extension granted pursuant to this section shall be subject to the limitations of ORS 215.427 (Final action on permit or zone change application) or 227.178 (Final action on certain applications required within 120 days) and ORS 215.429 (Mandamus proceeding when county fails to take final action on land use application within specified time) or 227.179 (Petition for writ of mandamus authorized when city fails to take final action on land use application within 120 days), unless the continuance or extension is requested or agreed to by the applicant.
- (e) Unless waived by the applicant, the local government shall allow the applicant at least seven days after the record is closed to all other parties to submit final written arguments in support of the application. The applicant's final submittal shall be considered part of the record, but shall not include any new evidence. This seven-day

period shall not be subject to the limitations of ORS 215.427 (Final action on permit or zone change application) or 227.178 (Final action on certain applications required within 120 days) and ORS 215.429 (Mandamus proceeding when county fails to take final action on land use application within specified time) or 227.179 (Petition for writ of mandamus authorized when city fails to take final action on land use application within 120 days).

- (7) When a local governing body, planning commission, hearings body or hearings officer reopens a record to admit new evidence, arguments or testimony, any person may raise new issues which relate to the new evidence, arguments, testimony or criteria for decision-making which apply to the matter at issue.
- (8) The failure of the property owner to receive notice as provided in this section shall not invalidate such proceedings if the local government can demonstrate by affidavit that such notice was given. The notice provisions of this section shall not restrict the giving of notice by other means, including posting, newspaper publication, radio and television.
- (9) For purposes of this section:
 - (a) "Argument" means assertions and analysis regarding the satisfaction or violation of legal standards or policy believed relevant by the proponent to a decision. "Argument" does not include facts.
 - (b) "Evidence" means facts, documents, data or other information offered to demonstrate compliance or noncompliance with the standards believed by the proponent to be relevant to the decision. [1989 c.761 §10a (enacted in lieu of 197.762); 1991 c.817 §31; 1995 c.595 §2; 1997 c.763 §6; 1997 c.844 §2; 1999 c.533 §12]

Location:https://oregon.public.law/statutes/ors_162.185.

Original Source: § 162.185 — *Supplying contraband*, https://www.oregonlegislature.gov/bills_laws/ors/ors162.html (last accessed Jun. 26, 2021).

City Planning and Zoning

ORS 227.173

Basis for decision on permit application or expedited land division

- **statement of reasons for approval or denial**

- (1) Approval or denial of a discretionary permit application shall be based on standards and criteria, which shall be set forth in the development ordinance and which shall relate approval or denial of a discretionary permit application to the development ordinance and to the comprehensive plan for the area in which the development would occur and to the development ordinance and comprehensive plan for the city as a whole.
- (2) When an ordinance establishing approval standards is required under ORS 197.307 (Effect of need for certain housing in urban growth areas) to provide only clear and objective standards, the standards must be clear and objective on the face of the ordinance.
- (3) Approval or denial of a permit application or expedited land division shall be based upon and accompanied by a brief statement that explains the criteria and standards considered relevant to the decision, states the facts relied upon in rendering the decision and explains the justification for the decision based on the criteria, standards and facts set forth.
- (4) Written notice of the approval or denial shall be given to all parties to the proceeding. [1977 c.654 §5; 1979 c.772 §10b; 1991 c.817 §16; 1995 c.595 §29; 1997 c.844 §6; 1999 c.357 §3]

Location: https://oregon.public.law/statutes/ors_305.094.

Original Source: § 305.094 — Rules, https://www.oregonlegislature.gov/bills_laws/ors/ors305.html (last accessed Jun. 26, 2021).

City Planning and Zoning

ORS 227.175

Application for permit or zone change

- **fees**
- **consolidated procedure**
- **hearing**
- **approval criteria**
- **decision without hearing**

- (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. The governing body shall establish fees charged for processing permits at an amount no more than the actual or average cost of providing that service.
- (2) The governing body of the city shall establish a consolidated procedure by which an applicant may apply at one time for all permits or zone changes needed for a development project. The consolidated procedure shall be subject to the time limitations set out in ORS 227.178 (Final action on certain applications required within 120 days). The consolidated procedure shall be available for use at the option of the applicant no later than the time of the first periodic review of the comprehensive plan and land use regulations.
- (3) Except as provided in subsection (10) of this section, the hearings officer shall hold at least one public hearing on the application.
- (4) (a) A city may not approve an application unless the proposed development of land would be in compliance with the comprehensive plan for the city and other applicable land use regulation or ordinance provisions. The approval may include such conditions as are authorized by ORS 227.215 (Regulation of development) or any city legislation.

(b) (A) A city may not deny an application for a housing development located within the urban growth boundary if the development complies with clear and objective standards, including clear and objective design standards contained in the city comprehensive plan or land use regulations.

(B) This paragraph does not apply to:

- (i) Applications or permits for residential development in areas described in ORS 197.307 (Effect of need for certain housing in urban growth areas) (5); or
- (ii) Applications or permits reviewed under an alternative approval process adopted under ORS 197.307 (Effect of need for certain housing in urban growth areas) (6).
- (c) A city may not condition an application for a housing development on a reduction in density if:
 - (A) The density applied for is at or below the authorized density level under the local land use regulations; and
 - (B) At least 75 percent of the floor area applied for is reserved for housing.
- (d) A city may not condition an application for a housing development on a reduction in height if:
 - (A) The height applied for is at or below the authorized height level under the local land use regulations;
 - (B) At least 75 percent of the floor area applied for is reserved for housing; and
 - (C) Reducing the height has the effect of reducing the authorized density level under local land use regulations.
- (e) Notwithstanding paragraphs (c) and (d) of this subsection, a city may condition an application for a housing development on a reduction in density or height only if the reduction is necessary to resolve a health, safety or habitability issue or to comply with a protective measure adopted pursuant to a statewide land use planning goal. Notwithstanding ORS 197.350 (Burden of persuasion or proof in appeal to board or commission), the city must adopt findings supported by substantial evidence demonstrating the necessity of the reduction.
- (f) As used in this subsection:
 - (A) "Authorized density level" means the maximum number of lots or dwelling units or the maximum floor area ratio that is permitted under local land use regulations.
 - (B) "Authorized height level" means the maximum height of a structure that is permitted under local land use regulations.
 - (C) "Habitability" means being in compliance with the applicable provisions of the state building code under ORS chapter 455 and the rules adopted thereunder.
- (5) Hearings under this section may be held only after notice to the applicant and other interested persons and shall otherwise be conducted in conformance with the provisions of ORS 197.763 (Conduct of local quasi-judicial land use hearings).
- (6) Notice of a public hearing on a zone use application shall be provided to the owner of an airport, defined by the Oregon Department of Aviation as a "public use airport" if:

- (a) The name and address of the airport owner has been provided by the Oregon Department of Aviation to the city planning authority; and
 - (b) The property subject to the zone use hearing is:
 - (A) Within 5,000 feet of the side or end of a runway of an airport determined by the Oregon Department of Aviation to be a “visual airport”; or
 - (B) Within 10,000 feet of the side or end of the runway of an airport determined by the Oregon Department of Aviation to be an “instrument airport.”
- (7) Notwithstanding the provisions of subsection (6) of this section, notice of a zone use hearing need only be provided as set forth in subsection (6) of this section if the permit or zone change would only allow a structure less than 35 feet in height and the property is located outside of the runway “approach surface” as defined by the Oregon Department of Aviation.
- (8) If an application would change the zone of property that includes all or part of a mobile home or manufactured dwelling park as defined in ORS 446.003 (Definitions for ORS 446.003 to 446.200 and 446.225 to 446.285 and ORS chapters 195, 196, 197, 215 and 227), the governing body shall give written notice by first class mail to each existing mailing address for tenants of the mobile home or manufactured dwelling park at least 20 days but not more than 40 days before the date of the first hearing on the application. The governing body may require an applicant for such a zone change to pay the costs of such notice.
- (9) The failure of a tenant or an airport owner to receive a notice which was mailed shall not invalidate any zone change.
- (10)(a)(A) The hearings officer or such other person as the governing body designates may approve or deny an application for a permit without a hearing if the hearings officer or other designated person gives notice of the decision and provides an opportunity for any person who is adversely affected or aggrieved, or who is entitled to notice under paragraph (c) of this subsection, to file an appeal.
 - (B) Written notice of the decision shall be mailed to those persons described in paragraph (c) of this subsection.
 - (C) Notice under this subsection shall comply with ORS 197.763 (Conduct of local quasi-judicial land use hearings) (3)(a), (c), (g) and (h) and shall describe the nature of the decision. In addition, the notice shall state that any person who is adversely affected or aggrieved or who is entitled to written notice under paragraph (c) of this subsection may appeal the decision by filing a written appeal in the manner and within the time period provided in the city’s land use regulations. A city may not establish an appeal period that is less than 12 days from the date the written notice of decision required by this subsection was mailed. The notice shall state that the decision will not become final until the period for filing a local appeal has expired. The notice also shall state that a person who is mailed written notice of the decision cannot appeal the decision directly to the Land Use Board of Appeals under ORS 197.830 (Review procedures).

- (D) An appeal from a hearings officer's decision made without hearing under this subsection shall be to the planning commission or governing body of the city. An appeal from such other person as the governing body designates shall be to a hearings officer, the planning commission or the governing body. In either case, the appeal shall be to a de novo hearing.
- (E) The de novo hearing required by subparagraph (D) of this paragraph shall be the initial evidentiary hearing required under ORS 197.763 (Conduct of local quasi-judicial land use hearings) as the basis for an appeal to the Land Use Board of Appeals. At the de novo hearing:
- (i) The applicant and other parties shall have the same opportunity to present testimony, arguments and evidence as they would have had in a hearing under subsection (3) of this section before the decision;
 - (ii) The presentation of testimony, arguments and evidence shall not be limited to issues raised in a notice of appeal; and
- (iii) The decision maker shall consider all relevant testimony, arguments and evidence that are accepted at the hearing.
- (b) If a local government provides only a notice of the opportunity to request a hearing, the local government may charge a fee for the initial hearing. The maximum fee for an initial hearing shall be the cost to the local government of preparing for and conducting the appeal, or \$250, whichever is less. If an appellant prevails at the hearing or upon subsequent appeal, the fee for the initial hearing shall be refunded. The fee allowed in this paragraph shall not apply to appeals made by neighborhood or community organizations recognized by the governing body and whose boundaries include the site.
- (c) (A) Notice of a decision under paragraph (a) of this subsection shall be provided to the applicant and to the owners of record of property on the most recent property tax assessment roll where such property is located:
- (i) Within 100 feet of the property that is the subject of the notice when the subject property is wholly or in part within an urban growth boundary;
 - (ii) Within 250 feet of the property that is the subject of the notice when the subject property is outside an urban growth boundary and not within a farm or forest zone; or
- (iii) Within 750 feet of the property that is the subject of the notice when the subject property is within a farm or forest zone.
- (B) Notice shall also be provided to any neighborhood or community organization recognized by the governing body and whose boundaries include the site.
- (C) At the discretion of the applicant, the local government also shall provide notice to the Department of Land Conservation and Development.
- (11) A decision described in ORS 227.160 (Definitions for ORS 227.160 to 227.186) (2)(b) shall:

- (a)** Be entered in a registry available to the public setting forth:
 - (A)** The street address or other easily understood geographic reference to the subject property;
 - (B)** The date of the decision; and
 - (C)** A description of the decision made.
 - (b)** Be subject to the jurisdiction of the Land Use Board of Appeals in the same manner as a limited land use decision.
 - (c)** Be subject to the appeal period described in ORS 197.830 (Review procedures) (5)(b).
- (12)** At the option of the applicant, the local government shall provide notice of the decision described in ORS 227.160 (Definitions for ORS 227.160 to 227.186) (2)(b) in the manner required by ORS 197.763 (Conduct of local quasi-judicial land use hearings) (2), in which case an appeal to the board shall be filed within 21 days of the decision. The notice shall include an explanation of appeal rights.
- (13)** Notwithstanding other requirements of this section, limited land use decisions shall be subject to the requirements set forth in ORS 197.195 (Limited land use decision) and 197.828 (Board review of limited land use decision). [1973 c.739 §§9,10; 1975 c.767 §8; 1983 c.827 §24; 1985 c.473 §15; 1987 c.106 §3; 1987 c.729 §18; 1989 c.648 §63; 1991 c.612 §21; 1991 c.817 §6; 1995 c.692 §2; 1997 c.844 §5; 1999 c.621 §2; 1999 c.935 §24; 2001 c.397 §2; 2017 c.745 §3; 2019 c.640 §18]

Location:https://oregon.public.law/statutes/ors_162.185.

Original Source: § 162.185 — *Supplying contraband*, https://www.oregonlegislature.gov/bills_laws/ors/ors162.html (last accessed Jun. 26, 2021).