

I Kelly Doherty have standing to participate in land use hearing ZP 21-031 City of Boardman.

I fielded a strange question from Commissioner Irons at the last hearing. He wonder if I owned property affected by this decision, my answer was no, but what I should have replied is that all property owners, current and future will be affected by this decision. Investors in Portland and Seattle that want to expand, are looking at this decision. I'm looking at this decision. I want to know that, if I invest, that investment is protected from unsightly and unwanted power lines and that our city planning department stands behind the established standards. I would like to add, for the record, that the city has one seat that is open to a Morrow "County" resident that does not live inside the UGB. I felt like I was being called out for my involvement. Goal 1 of Oregon's Land Use regulations is "Citizen Involvement".

Land use decisions influence a wide array of citizens throughout Oregon and have lifelong impacts and repercussions. You have the Oregon Coast, because of land use laws. Unlike California that has private beaches and no access. Boardman's city wide wiring district is no different. In 2002 someone had a vision of what Boardman might look like if utilities had free rein. The Wiring District encompasses the entire city, there for needs to be applied to all zones, no different than any other criteria. Application therefore does not meet criteria and needs to be denied.

We can dispute the definition of "Public Utility " all day. You will find Chapter 21 Utility Regulation expressly uses 757.005, as do all the associated OAR's in that division.

The applicant would have you believe that the definition of ORS 757.006 is status quo. ORS 757.006 was enacted in 2016 expressly to govern that specific chapter. It was enacted in 2016 by Senate Bill 1547. It was an add-on, only to be used in that chapter, for that specific purpose. Don't be fooled.

APPLICATION OF TERM "PUBLIC UTILITY"

SECTION 18c. For purposes of ORS chapter 757, the term "public utility" does not include a people's utility district organized under ORS chapter 261 or an electric cooperative organized under ORS chapter 62.

OREGON LAWS 2016 Chap. 28 CHAPTER 28 AN ACT SB 1547

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2016orlaw0028.pdf

The application of the definition of 757.005 is specifically used in Chapter 21 which governs municipalities, and has allowed Boardman to have a wiring district, to set franchise fees and regulate placement of utilities within their boundaries, and only by that definition. It was the only definition in existence when the City set the criteria for the Service Center and General Industrial zones. UEC is not a "private utility" as defined in your own municipal code and governed by statute. (see below). Deny this application as it does not meet the criteria standards for either zone.

Chapter 13.12 - UNDERGROUND WIRING CONTROL DISTRICT

2.010 - Findings.

The council finds that a program for the establishment of an underground wiring control district is highly desirable to beautify the city and to promote its orderly development; that the underground wiring shall be required for installation of underground utility facilities in the city, except as hereinafter provided; that such a program is in the public interest and will allow property owners who must provide on-premises facilities to make such plans as are necessary to take the underground service; that such a program is in conformity with ORS Chapter 221, which provides that the city may prescribe by ordinance the character of service to be furnished by any public utility and the conditions upon which such utility may be permitted to occupy the streets and public property within the city; that such an underground wiring program is necessary in such area in order to protect and promote the public health, safety and welfare.

In fact it is unlawful.

13.12.030 - Overhead wires prohibited.

It is unlawful for any person to erect, construct or maintain on or over the surface of any of the streets in the underground wiring control district any wires, poles, cables, appliances, or apparatus of any kind, on, through, or by means of which electric current is transmitted or used for operating any telephone, telegraph, television, television cable, messenger, or electric light or power system or for any other purpose, excepting as hereinafter provided specifically and by variance procedures.

https://library.municode.com/or/boardman/codes/code_of_ordinances?nodeId=CD_ORD_TIT13PUSE_CH13.12UNWICODI_13.12.180VI

Applicant fails to meet the standards of Chapter 2.0 Development Code as pertaining to the Wiring District.

2.0.100 Classification of Land Use Districts

All areas within the urban growth boundary of the City of Boardman are divided into land use districts. The use of each lot, parcel and tract of land is limited to the uses permitted by the applicable land use district. The applicable land use district shall be determined based on the Land Use District Map, and the provisions of this Chapter.

2.0.200 Land Use District Map

A. Consistency with land use district map. The boundaries of each of the land use districts contained within this chapter shall coincide with the land use district boundaries identified on the City's official zoning map, retained by the City Recorder. Said map by this reference is made a part of this Land Development Code. A certified print of the adopted land use district map, and any map amendments, shall be maintained by the City.

B. Applicability of zoning requirements. Each lot, tract and parcel of land or portion thereof within the land use district boundaries as designated and marked on the zoning map, is classified, zoned and limited to the uses as hereinafter specified and defined for the applicable district classification.

https://www.cityofboardman.com/sites/default/files/fileattachments/community_development/page/217/chapter_2.0_land_use_districts.pdf

Boardman Municipal Code: STATUTORY REFERENCES FOR OREGON CITIES

The statutory references listed below refer the code user to state statutes applicable to Oregon cities. They are current through laws enacted in the 2020 Regular Session of the 80th Legislative Assembly, which adjourned sine die March 3, 2020, pending classification of undesignated material and text revision by the Oregon Reviser.

General Provisions

Regulation of public utilities:

ORS § 221.420 et seq.

Organization and Government of Cities

ORS 221.420

Municipal regulation of public utilities

As used in this section:

- (a)** “Public utility” has the meaning for that term provided in ORS 757.005 (Definition of public utility).
 - (b)** “Commission” means the Public Utility Commission of Oregon.
 - (c)** “Council” means the common council, city council, commission or any other governing body of any municipality wherein the property of the public utility is located.
 - (d)** “Municipality” means any town, city or other municipal government wherein property of the public utility is located.
 - (e)** “Service” is used in its broadest and most inclusive sense and includes equipment and facilities.
 - (f)** “Heating company” means any person furnishing heat but not electricity or natural gas to its customers.
- (2)** Subject to ORS 758.025 (Relocation of utilities in highway right of way), a city may:
- (a)** Determine by contract or prescribe by ordinance or otherwise, the terms and conditions, including payment of charges and fees, upon which any public utility, electric cooperative, people’s utility district or heating company, or Oregon Community Power, may be permitted to occupy the streets, highways or other public property within such city and exclude or eject any public utility or heating company therefrom.
 - (b)** Require any public utility, by ordinance or otherwise, to make such modifications, additions and extensions to its physical equipment, facilities or plant or service within such city as shall be reasonable or necessary in the interest of the public, and designate the location and nature of all additions and extensions, the time within which they must be completed, and all conditions under which they must be constructed.
 - (c)** Fix by contract, prescribe by ordinance, or in any other lawful manner, the rates, charges or tolls to be paid to, or that may be collected by, any public utility or the quality and character of each kind of product or service to be furnished or rendered by any public utility furnishing any product or service within such city. No schedule of rates, charges or tolls, fixed in the manner provided in this paragraph, shall be so fixed for a longer period than five years. Whenever it is proposed by any city to enter into any contract, or to enact any ordinance, or other municipal law or regulation concerning the matters specified in this paragraph, a copy of such proposed contract, ordinance or other municipal law or resolution shall be filed with the Public Utility Commission of Oregon before the same may be lawfully signed or enacted, as the case may be, and the commission shall thereafter have 90 days within which to examine into the terms thereof. If the commission is of the opinion that in any respect the provisions of the proposed contract, ordinance or other municipal law or resolution are not in the public interest, the

commission shall file, in writing, with the clerk or other officer who has the custody of the files and records of the city, the commission's reasons therefor. If the objections are filed within said period of 90 days, no proposed contract, ordinance or other municipal law or regulation shall be valid or go into effect until it has been submitted to or ratified by the vote of the electors of the city. Unless and until a city exercises its powers as provided in this paragraph, the commission is vested with all powers with respect to the matters specified in this paragraph. If the schedule of rates, charges and tolls or the quality and character of each kind of product or service is fixed by contract, ordinance or other municipal law or regulation and in the manner provided in this paragraph, the commission has no power or jurisdiction to interfere with, modify or change it during the period fixed thereby. Upon the expiration of said period such powers shall again be vested in the commission, to be exercised by the commission unless and until a new schedule of rates or the quality and character for such service or product is fixed or prescribed by contract, ordinance or other municipal law or regulation in the manner provided in this paragraph.

(d)

Provide for a penalty for noncompliance with the provisions of any charter provision, ordinance or resolution adopted by the city in furtherance of the powers specified in this subsection. [Amended by 1971 c.655 §245; 1987 c.245 §2; 1987 c.628 §1; 1989 c.5 §1; 1989 c.999 §6; 1999 c.1093 §6; 2007 c.807 §40; 2009 c.444 §3]

The statutory references direct the code user to those portions of the state statutes that are applicable to the laws of the municipality.

https://library.municode.com/or/boardman/codes/code_of_ordinances?nodeId=STRE

The Type II Administrative decision rendered July 26, 2021 is to allow 4 tax lots Zone Approval as noticed. Tax lots 402, 403, 405 - 4N25E11 and tax lot 3201.

The Application for Zone Approval dated 5-19-21 and referenced as ZP21-031 lists 13 tax lots; 402,403,411,422,500,600,3000,3201,3205,3206,3300,3302,3400.

The City just made a final decision on tax lot 405 as noticed July 26,2021. I suspect the owner of that tax lot will be very surprised to hear this good news, that he gets a 230 Kv transmission line across his property. This error was referred to by the applicant as "STATIC". If any one believes that, I could refer you to a few procedural cases from LUBA. Procedural errors are not "static", as I have previously stated. They are protected by the constitution and the laws of this state, known as due process.

How did we get from 13 Tax lots to 4. I don't know, Static?? Extra Terrestrial Noise? Fairy Dust ? OR maybe it was procedural errors. This application is overwhelmingly riddled with procedural error and needs to be denied.

No one addressed the record about tax lot 402, the easement expired on 8/18/2020. So now we have four properties without applicant ownership consent or an easement in the application. If you can't find any other reason for denial, this alone, should be reason enough for a denial.

My last thoughts, how is it that we have constructed a permanent substation on lot 422 without Zoning approval. That is a class d violation of 1.3.200. It does not qualify for a temporary permit under 4.9 4.9.100 Temporary Use Permits

Violation of Code Prohibited: No person shall erect, construct, alter, maintain or use any building or structure or shall use, divide or transfer any land in violation of this Code or any amendment thereto.

1.3.300 Penalty

A. Class D Violations. A violation of this Code shall constitute a Class D violation as defined in Chapter 153 of the Oregon Revised Statutes or as hereafter amended and the fine for such a violation shall be set forth in Chapter 153 of the Oregon Revised Statutes for a Class D violation as presently defined or as hereafter amended.

B. Each violation a separate infraction. Each violation of a separate provision of this Code shall constitute a separate infraction, and each day that a violation of this Code is committed or permitted to continue shall constitute a separate infraction.

C. Abatement of violation required. A finding of a violation of this Code shall not relieve the responsible party of the duty to abate the violation. The penalties imposed by this section are in addition to and not in lieu of any remedies available to the City.

D. Responsible party. If a provision of this Code is violated by a firm or corporation, the officer or officers, or person or persons responsible for the violation shall be subject to the penalties imposed by this section.

https://www.cityofboardman.com/sites/default/files/fileattachments/community_development/page/217/chapter_1.3_-_enforcement.pdf

As a public body and the voice of the citizenry, I urge you to deny this application and enforce the laws and codes of your city. Thank you for your time as planning commissioners.