



Wendie L. Kellington
P.O. Box 159
Lake Oswego Or
97034

Phone (503) 636-0069
Mobile (503) 804-0535
Facsimile (503) 636-0102
Email: wk@klgpc.com

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Via Email to:
bbeyeler@Cityofboardman.com

City of Boardman Planning Commission
c/o Barry Beyeler
Community Development Director
200 City Center Circle
P.O. Box 229
Boardman, OR 97818

RE: Appeal of ZP21-031: Umatilla Electric Cooperative Olson Road 230kV
Transmission Line Project

Dear Members of the Planning Commission:

As you know, this firm represents 1st John 2:17, LLC and Jonathan Tallman (“the Tallmans”). Please include this letter in the record of this appeal proceeding.

This letter requests that you deny ZP21-031: Umatilla Electric Cooperative (UEC) Olson Road 230kV Transmission Line Project (“the UEC Decision”) and provides you with the reasons that the application simply must be denied..

1. The UEC Decision must be denied because the proposed 100’ tall 230kV transmission lines and towers are prohibited in the Service Center Subdistrict.

The UEC Decision errs in approving UEC’s proposed 100’ tall 230kV transmission lines and towers as a “private utility”. The Service Center Subdistrict permits “Private utilities (e.g., natural gas, electricity, telephone, cable and similar facilities)”. BDC Table 2.2.200B. However, this does not authorize major transmission tower and line facilities. To interpret it as if it does, condemns your City to being criss-crossed with endless high voltage facilities contrary to the policy in the City’s “Underground Wiring Control District.” Make no mistake that “private utilities” are allowed all over the city, as we discuss in more detail below. Setting the precedent here that private utilities includes high voltage transmission facilities is not in the City’s interest and it is not consistent with the text, context, purpose or policy of the City’s code. The types of allowed “public utilities” only means smaller utilities that serve a specific customer and cannot be interpreted to include UEC’s 100’ tall, 230kV transmission lines and towers. Good reasons why that is, follow.

First, the City's Municipal Code establishes an "Underground Wiring Control District" which expressly prohibits overhead wires within the entire City of Boardman, except through a variance. BMC 13.12.030. The City Council expressly approved this program because it found that undergrounding such 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. By permitting UEC's 230kV transmission lines supported by 100' tall transmission towers flies in the face of the City Council's findings that such overhead transmission lines are a blight on the City.

UEC asserts that its proposed transmission lines are exempt from the City's undergrounding ordinance because they are "feeder lines". "Feeder lines" are defined as "[t]hat line that serves the system but not a specific customer." BMC 13.12.130(E). UEC's proposal is not for a "feeder line" because it is disconnected – it can't "serve" *any* system because as proposed, it consists of two disparate segments that don't have any transmitting capability.

Because UEC's proposal is not exempt from the City's undergrounding ordinance and because UEC has not applied for a variance from this program, its proposed overhead 230kV transmission lines are simply prohibited and the decision must be denied.

Second, as noted above, if you approve UEC's application as a "private utility" permitted outright in the Service Center District, the City would be dooming all of its other zones to the same blight, including its residential zone. The City's Residential District allows "private utilities" with a conditional use permit; the Commercial Districts, including the City Center Subdistrict and Tourist Commercial Subdistrict, and Industrial Districts allow "private utilities" outright. The City's purposeful ban on overhead wires in order to "beautify" the City and promote its citizens' "health, safety and welfare" is eviscerated if "private utilities" is interpreted to include 230kV transmission lines on 100' tall towers that are exempt from the overhead wires ban and are allowed in every one of the City's zoning districts.

2. The UEC Decision must be denied because it purports to approve a road, and approving a road is beyond the City's authority.

The UEC Decision, Finding 21, apparently purports to approve a road as part of the development, stating:

21) The city is currently working to complete the alternate access road meeting the Port of Morrow Interchange Access Management Plan.

However, there is no application for an "alternate access road" and there is no identified location or design of any road in the record. If the "alternate access road" means to refer to the road dedication in the Glenn Decision (PAR 5-2021), that doesn't cut it. There is no reference to the Glenn application or decision in UEC's application materials or in the UEC Decision. There is simply no way to tell what road the UEC Decision approves.

Moreover, no standards have been identified or complied with for any alternate access road. Land use decisions, at a minimum, must include findings explaining a proposal's compliance with applicable standards. *South of Sunnyside v. Clackamas County*, 280 Or 3 (1977). Because the UEC Decision does not make any findings whatsoever with regard to the road, it must be denied. Again, if the "alternate access road" means to refer to the road dedication in the Glenn Decision, then that road is inconsistent with the 2011 Port of Morrow Interchange Access Management Plan ("2011 IAMP") and likewise does not identify or comply with standards for such a road, and so must be denied.

For one, the road is partially in the Service Center Subdistrict and is not identified as a "designated improvement" in the City's Transportation System Plan (TSP), so it requires a conditional use permit. BDC Table 2.2.200B. The road is also partially in the BPA Easement Subdistrict, which only allows roads if approved in a conditional use permit process and approved by BPA with a signed Land Use Agreement. BDC 2.2.210(F) (allowing "Utility infrastructure" including "transportation routes" subject to a conditional use permit and BPA approval). Because there is no conditional use permit, nor any approval from BPA or a signed Land Use Agreement, the decision must be denied.

Two, the road is inconsistent with the 2011 IAMP (which is a part of the City's comprehensive plan) because it is partially within the BPA Easement and the 2011 IAMP is clear that the Yates Lane "loop road" will be located entirely outside of the BPA Easement:

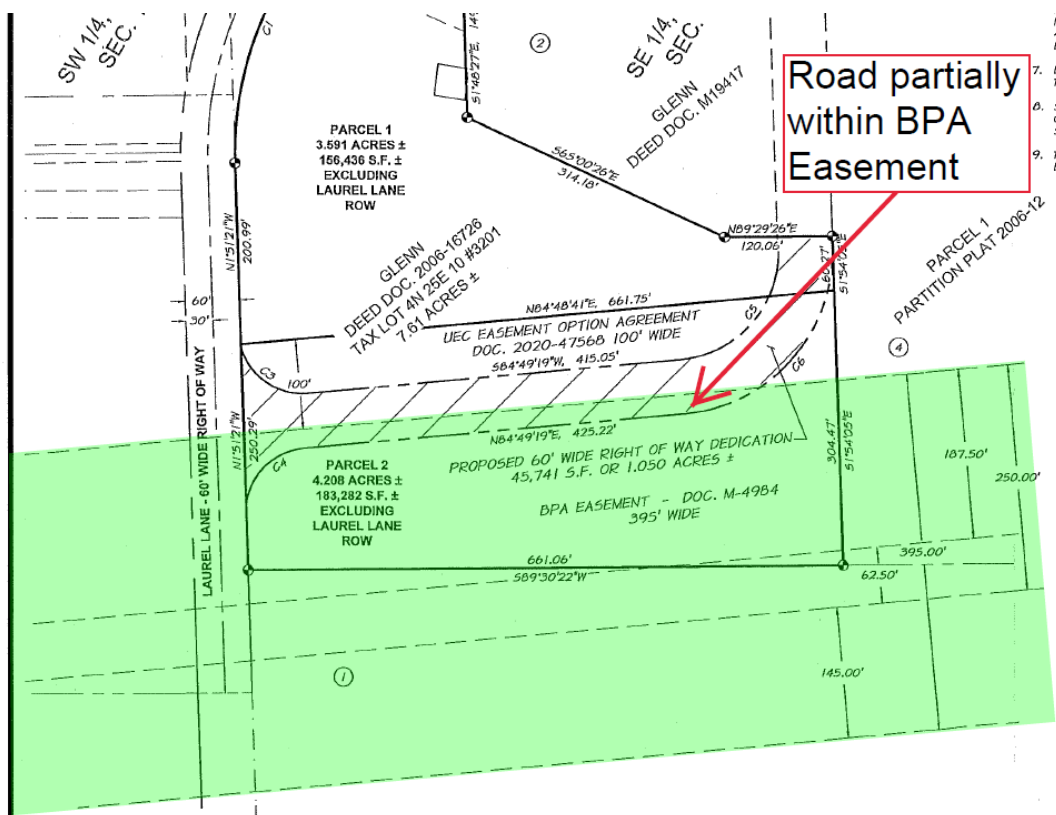
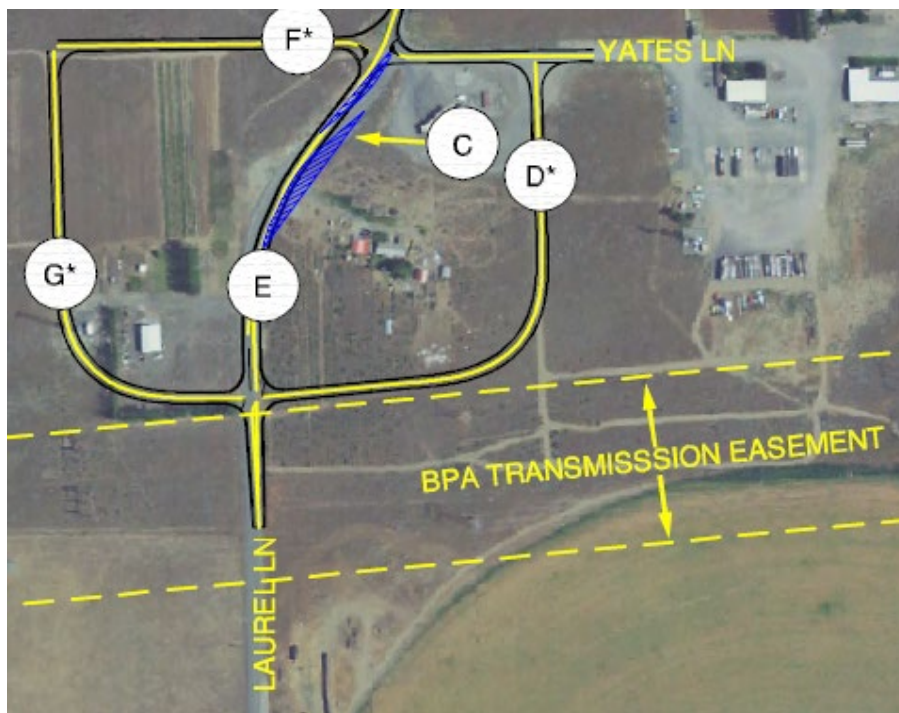


Image from Glenn Partition Decision (BPA Easement highlighted in green).

As you can see, the 2011 IAMP requires the road to be entirely outside of the BPA Easement:



2011 IAMP, Figure 7-1.

	Long-Term Improvement Description
D	<ul style="list-style-type: none"> Construct a new Collector street connection to Yates Lane that would access Laurel Lane just north of the existing BPA transmission easement. Restrict the Laurel Lane/Yates Lane intersection to right-in/right-out access only.

2011 IAMP, p. 80.

D). Yates Lane Access Connection

A new connection to Yates Lane from Laurel Lane will be constructed (at City Collector standards) just north of the existing BPA transmission easement. The existing Yates Lane intersection will remain as a

2011 IAMP, p. 81.

Three, as highlighted in green in the above 2011 IAMP excerpts, the 2011 IAMP says that the Yates Lane loop road will be built to “City Collector standards”. Neither the UEC Decision nor the Glenn Decision identify the “City Collector standards” or demonstrate that

those standards are met. Those City Collector standards require the construction of bike lanes, planter strips, street lights and sidewalks, among other things. BDC 3.4.100(J), (X). If Laurel Lane is considered an arterial, then there are additional standards. BDC 3.4.100(Q). But the evidence in the record shows that the City has no intention of even trying to meet those standards:

1. Road Construction. The City intends to pave a road. There will be no bike lanes, sidewalks, or multi-use paths.

Letter from City Attorney to the Tallmans' attorney re Loop Road, dated May 27, 2021 (Exhibit 2 to the Tallmans' September 1, 2021 submittal).

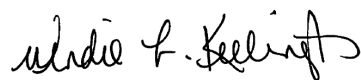
Because none of these things are explained in the UEC Decision, none of the applicable standards are even attempted to be met and in fact cannot be met, the decision must be denied.

It was shocking to discover that the City is planning on starting construction of the alternate access road without any of the required approvals, as stated in the Staff Report of this appeal, dated September 1, 2021:

22) The city is currently working to complete the alternate access road meeting the Port of Morrow Interchange Access Management Plan. Premier Excavating is the contractor which, will be starting the work in early October, 2021. This roadway is part of the Port of Morrow Interchange Area Management Plan (IAMP), which was approved the City of Boardman, Port of Morrow, Morrow County and Oregon Department of Transportation in 2011.

We caution the City to not move forward with construction of the road without first obtaining land use approval. Yamhill County recently made the mistake of forging ahead with the construction of a road without first obtaining land use approval and that action was challenged at LUBA who held that the County could not do so and awarded the petitioners attorney fees of nearly \$50,000. *See Van Dyke v. Yamhill County*, __ Or LUBA __ (Order, LUBA Nos. 2020-032/033, April 1, 2021). If there is any doubt about the lawfulness of the City's decision here, the Planning Commission would be wise to deny UEC's application and ask the Planning Department to start over.

Very truly yours,



Wendie L. Kellington

WLK:wlk
CC: Client