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**Minutes of the Special Public Meeting of the
Morrow County Planning Commission
Friday, September 4, 2020, 9:00 a.m.
Bartholomew Building, Heppner Oregon
(Also video conferenced via Zoom)**

Morrow County Planning Commissioners Present: Chair Jeff Wenholz, Vice Chair Mifflin Devin, Stanley Anderson, Wayne Seitz, Karl Smith, and Greg Sweek.

Morrow County Planning Commissioners Excused: Stacie Ekstrom, Rod Taylor, and Brian Thompson.

Morrow County Staff Present: Stephanie Case, Planner II/Interim Planning Director; Justin Nelson, County Counsel; Gregg Zody, Community Development Director, and Dianna Strong, Office Assistant.

The Pledge of Allegiance was recited.

Planning Commission Chair Wenholz read the Planning Commission Hearing Procedures.

Land Use Decision LUD-N-26-20: Umatilla Electric Cooperative, applicant, and Umatilla Electric Cooperative, Sage Hollow Ranch, LLC, and Stiffler, LLC, owners. The properties are described as tax lots Tax Lot 3400 of Assessor's Map 4N 25 10; Tax Lots 500 and 600 of Assessor's Map 4N 25 11; Tax Lot 101 of Assessor's Map 4N 25 13; Tax Lot 201 of Assessor's Map 4N 26 07. The properties are zoned Exclusive Farm Use (EFU) and the project alignment runs generally from the northeast of the intersection of Highway 730 and Interstate 84 from a planned electrical switch station, westerly to a planned electrical substation located just west of Olson Road and south of Interstate 84. Criteria for approval includes the Morrow County Zoning Ordinance Article 3 Section 3.010 EFU Zone.

Chair Wenholz declared that he sits on the board of UEC, but will not personally benefit financially from any decision. There were no further declarations by Commission members.

Interim Planning Director Stephanie Case presented the request and supporting documents. She did not make any recommendations to the Commission, as the appeal is regarding her decision as Interim Planning Director.

Chair Wenholz asked County Counsel Justin Nelson to speak to the Notice of Appeal, which is incorrectly marked as an appeal to the Planning Commission. Planning Commission never heard this action, as it was solely a Planning Director's decision. Mr. Nelson responded that we should proceed as if the appeal were accurately marked as an appeal of the Planning Director's decision.

Comments were received from Tamra Mabbott and Hilary Foote, both of the State Department of Land Conservation and Development (DLCD). Mrs. Case went through these comments, which were provided to Commissioners and audience members.

Commissioner Sweek expressed concern about proceeding with what appears to be a flawed appeal form, and the potential precedent for those who file appeals in the future without meeting all the criteria. Chairman Wenholz agreed with this concern. Counsel Nelson replied that the time for rejection according to form would have been at the time the notice was received by the Planning Department. Instead the meeting was set, according to the understanding of the intent of the Notice of Appeal, and the time to reject it for correction has passed.

Opened the public testimony portion of the hearing.

In Favor:

Tommy Brooks, Cable Huston law firm; and Robert Echenrode, CEO and General Manager of Umatilla Electric Cooperative (UEC). Mr. Brooks provided context for the proposed transmission line. To be clear, the entire route is not before you, as that is overseen by the Public Utility Commission. Knowledge of the overall route would help explain why this portion of the route was chosen for this necessary line. Mr. Echenrode will explain further.

Before Mr. Echenrode started speaking, Terry Tallman questioned why the applicant is allowed to speak first, and perhaps we should postpone this hearing. Mr. Tallman stated he thinks this is incorrect procedure. Nick Blanc, representative of appellant, agreed with Mr. Tallman. Chair Wenholz stated that they will have the opportunity to speak in opposition. Mr. Blanc asked for Mr. Nelson's input, as to whether or not this is appropriate procedure. Mr. Nelson agreed that this is correct.

Mr. Echenrode explained this transmission line will meet current needs, as well as future growth needs, of Boardman. A map was displayed with overlays of the portion of the transmission line in question, explaining why UEC believes the chosen route has the least impact, and is the most reasonable route for all considerations. Staff requested a copy of the maps that were shown in the hearing for the record.

Mr. Brooks spoke of EFU lands that allow a "utility facility necessary for public service," according to ORS 215-283. This particular type of transmission line is categorized as Sub-1 Use, which is allowed by right. Case law says these types of transmission lines must be allowed, as long as they meet the statutory standards found in ORS 215.275.

Mr. Brooks addressed the claim that the County does not have enough information to allow decision. This is a necessary transmission line, as opposed to an associated transmission line, and is to upgrade the entire system.

Mr. Brooks addressed the claim of alternative routes, by sharing what LUBA has stated: "Once you need to be in the EFU zone, you have no obligation to look at further alternatives that are also in the EFU zone." Analysis shows the original route searched to avoid EFU zones altogether. Since that's not possible, LUBA's message above stands.

In Opposition:

Terry Tallman, Boardman, stated this is a highly confusing situation to which he is opposed. He thinks the County is "getting the cart before the horse," and requests that this hearing be held open. Mrs. Case and Chair Wenholz discussed how long the record can be held open, if

allowed by the Commission. Mr. Nelson agreed to research this, and return with an answer before the end of the hearing.

Nick Blanc, representative for Gary & Casey Frederickson, sent Mrs. Case his summary of comments via e-mail this morning. He summarized his letter and stated that he objects to any new information that might be presented today, as the point of today's hearing is to look at the information provided on the application, and decide in support or opposition that there was sufficient evidence for the decision to be made. If the Commission is going to accept further evidence for consideration, Mr. Blanc requests the record to remain open.

It is the appellant's argument that the record before the Planning Director was insufficient to find support that the proposed line was necessary, as there were alternatives that did not completely use EFU zoned land. At the scope of the appeal is the fact that the results of the argument before the Planning Director was not sufficient in determining whether or not a proposed line qualified as an associated transmission line, pursuant to definition in statute. He further stated that information provided by Mr. Echenrode brought new information of supposed alternative routes today, which proves there was insufficient evidence for the Planning Director to make a decision.

Mr. Blanc quoted from the Project Narrative, "Several alternate routes for this transmission line have been explored and the Proposed Line is considered the preferred alternative." He contended that the preferred route should not be allowed to determine this, unless they prove the alternative routes are not feasible for the transmission line.

A private message via Zoom Chat to Mr. Wrecsics (host) was received from Tryn Magallanes. Ms. Magallanes stated she has health concerns as an adjoining landowner, and requests the record remain open.

Neutral:

Tamra Mabbott, speaking on behalf of DLCD, stated for the record that the purpose of comment was to fortify the findings, and not in opposition.

Rebuttal:

Mr. Brooks, counsel for UEC, spoke about procedure to clear any misunderstanding as to what is allowed to be presented at this hearing. County Code section 9.030 states, "An appeal or review proceeding shall be based upon, but not limited to, the record of the decision being appealed." This is referred to as a *De Novo hearing*, which allows new evidence to support the application to be presented.

Mr. Brooks acknowledged Mr. Tallman's concerns, but pointed out his concerns are personal, rather than relating to the appeal. He suggested the Commission should therefore strike Mr. Tallman's testimony, as there was no mention of the criteria and no specificity which could be addressed.

Mr. Brooks addressed Mr. Blanc's suggestions regarding whether or not UEC's statements are acceptable as evidence. These statements are, in fact, evidence and can be proven. The fact that no counter-evidence was presented is additional proof, so the application stands as presented. The transmission line will not be connected to a generating station. There were no alternate routes that could avoid EFU land. While some information may not be explicit, it is

because common sense explains the information easily. The chosen preferred route is because it is the feasible option, taking many factors into consideration.

Mr. Nelson addressed procedure regarding leaving the record open, and requested a 5-minute break, which extended to 15 minutes. When the meeting reconvened, Mr. Nelson spoke to the Commission referencing ORS 215.427. Requests for the record to remain open no longer apply, due to the 150-day limit for a decision having already passed. The remedy to this limit is a writ to the Circuit Court, and jurisdiction ends with Planning Commission and the County. The applicant can request an extension for up to 215 days, or can request that the Commission make their decision today.

The applicant restated that they do prefer the Commission make a decision today. Chair Wenholz called for a poll of the Commissioners, as to whether or not they wish to vote on a decision today. This poll was taking by roll call, with the five Commissioners in attendance all voting yes.

Closed the public testimony portion of the hearing.

Commissioner Anderson made a motion to affirm the position of the Planning Director and to approve the application as presented; Commissioner Sweek seconded the motion. There was no discussion. Voting was taken by roll call as follows: Vice-Chair Devin, yes; Commissioner Anderson, yes; Commissioner Seitz, yes; Commissioner Smith, no; Commissioner Sweek, yes. Application LUD-N-26-20 has been approved, as to affirm the decision of Interim Director Case.

If anyone wants to request a copy of the decision, please e-mail scase@co.morrow.or.us

Public Comment:

No public comment.

The next meeting of the Morrow County Planning Commission to hear regular business is scheduled for Tuesday, September 29, 2020 at 7:00 p.m. at the Bartholomew Building in Heppner, Oregon.

Meeting was adjourned at 11:13 am.

Respectfully Submitted,
Dianna Strong