

**PLANNING COMMISSION  
MINUTES**

April 8, 2024

Meeting held online via Zoom

Commissioners present: Kevin Moss, Carrie Pak, Gerald Murphy, Tom Peterson, Louise Lopes, Michael Wilson, Tammy Stevens, Tom Middaugh (left due to unstable internet connection).

Commissioners absent:

Staff present: Joy Fields, Dylan Blaylock, Jennifer Hughes, Darcy Renhard

Commission Chair Murphy opened the meeting at 6:34 pm.

Chair Murphy asked if there was anyone in the audience who wished to provide public comment on items other than what is on the agenda. There were none.

Chair Murphy opened the public hearing for ZDO-288.

Ms. Hughes and Ms. Fields presented the staff report for file ZDO-288. File ZDO-288 is a set of proposed text amendments to the Clackamas County Zoning and Development Ordinance (ZDO) that would adopt a comprehensive definition of 'utility facility', clarify the types of utility lines that must be underground, and outright allow utility facilities inside the right of way and utility lines outside the right of way. We have heard public comment regarding a specific utility project within the Stafford area that many residents are unhappy about. The Planning Commission is looking at amending the zoning code, not any specific utility project. There could, however, be implications for the PGE/Stafford Road project depending on what the Planning Commission recommends, and the Board of County Commissioners decides.

Historically, utility facilities inside county road rights-of-way have proceeded through a utility permit required by the county. When a utility provider is going to locate infrastructure within the county right of way, it is not something that gets reviewed or analyzed through land use. There are certain utility facilities that the county has reviewed through a conditional use permit or nonconforming use alterations. These are things like water reservoirs, sewer pump stations, and filtration facilities. Most of what is done routinely outside of land use review is utility lines as they have been considered accessory uses. State law does have some requirements related to utility lines outside the right of way where land use is required, but there is no similar requirement for those that are installed within the right of way.

After conferring with County Counsel's office and doing some analysis of the zoning code, we have concluded that our code does in fact say that utility facilities, including utility lines, both in and out of the right of way require a conditional use permit in many zones. The definition of utility facility in the code covers more than just water reservoirs and pump stations, and also includes utility lines.

The proposal does not include any changes to the EFU, TBR, or AG/F zones as those are already heavily regulated by state law. What we are proposing is to adopt a more complete definition of utility facility. Currently our definition of utility facility is very narrow. The requirement for underground utilities is unclear, but staff feels that the best argument is that we require only utility service lines to be underground except when it is prohibited by the utility service provider. This leaves a grey area in our code which we need to clarify. Does this mean that transmission lines and distribution lines have to be underground? Or that larger scale utilities must be underground? The Board proposed the most expansive set of amendments that they

would consider adopting, with the understanding that the scope of what is actually adopted could change through the public review process.

It is important to do this now as an administrative necessity. In 2022 there were nearly 2,000 utility permits filed with Clackamas County. Some were very minor, some were not as minor. But the reality is that it is a very large number of permits for Planning staff to even look at, much less try to process. It is also potentially burdensome for the utility providers. The Engineering department is bringing certain ones to our attention now based on some of the thresholds that we have set. There are a lot of permits for things like replacing wooden power poles with metal ones, or taller ones. There is also discussion about PGE pursuing some wildfire mitigation projects. So there are a lot of things that are happening that most people would agree do not merit a conditional use permit. That is what needs to be clarified in our code.

Ms. Fields explained that there are things that we rely upon on a daily basis that are not currently covered in our definition of a public utility facility. We are trying to clarify what a public utility is, what a utility line is, as well as a utility service line. Utility service lines are those that run from the main line to a home or homes. Clearly those need to be underground unless prohibited for some reason by the utility provider, but the code is not actually written that way. We want to make sure that the utility service line is defined as well as utility line. We would also be clarifying that the definition of utility facility includes sewer, stormwater, fiber optics, and telephone. We are not recommending that we apply the underground requirement to major utility lines, just the service lines, due to the significant cost increase. We have also added an amendment to our Comprehensive Plan policies on underground utilities so that they are aligned with the zoning code. We have modified the use tables in the zoning code sections to allow outright all utility facilities in the road rights of way and all utility lines outside the road rights of way. Utility facilities along the rights of way are those water, sewer, stormwater, broadband and other facilities that can be contained within the road right of way. If you consider a large pump station or a large transmission facility, they are not going to fit within the road right away. So by allowing outright all utility facilities in the road right of way, we are going to be allowing those that are smaller and linear in nature. The proposed amendments do keep the larger and nonlinear utility facilities that are out of the right of way, such as sewer pump stations, electrical substations, and water reservoirs, as conditional uses. It also adds nonlinear facilities in some of the smaller lot sized residential zones as a conditional use.

Commissioner Pak asked if the green infrastructure stormwater treatment facilities would require a conditional use permit. Ms. Fields responded that these facilities come in a variety of forms. They can be a wetland, or a pond, or a bioswale. A lot of that development is going to be reviewed during the development of the subdivision that is served by the facility. Sometimes they are in an easement, but sometimes they are not and sometimes they are underground. Ms. Hughes said that we may want to look at adding some clarity on the natural drainage types of stormwater facilities. The definition of utility facility says a constructed portion. If someone is doing some sort of onsite stormwater detention facility we would probably treat that as an accessory use.

Commissioner Wilson asked what a conditional use is and what purpose it serves. He also asked about the utility provider's ability to simply say that an underground installation is prohibited because they want to save money. Ms. Hughes explained that a conditional use is a permit that is used to determine if a particular use might be appropriate in a particular location. Just because a use is allowed in a certain zone doesn't mean that the use is appropriate for the particular property. It allows conditions to be placed on a certain use if those conditions make the use appropriate for that certain location or property. Secondly, a conditional use provides a public hearing so that surrounding neighbors have an opportunity to participate in the decision-making process. As far as the utility company saying that underground installations are prohibited, we would

probably take their word for it and that would be the end of it. We really don't know what the standards are that they would use to make that determination. The county would recommend that all service lines should be underground, but a utility provider may give a compelling argument why it is not appropriate for that particular installation. Commissioner Wilson would advocate that all utility lines be underground wherever possible and that the utility company be required to provide exact criteria for when and why underground installations are prohibited. Commissioner Murphy said that he had done some research on this issue, and that when lines get over a certain voltage they need to be cooled. Putting them underground when they are high voltage requires a wet bath or similar method of keeping them cool.

Commissioner Peterson raised a concern that anything that is in the right of way, regardless of its scale, would be allowed outright without any input from the public. Ms. Hughes said that is correct. There are still standards in terms of the county's authority and what it allows in the right of way, and as Ms. Fields indicated there is a limit to what is going to fit within the right of way.

Commissioner Stevens asked at what point should citizens be involved in permits. She asked if this was not a resource issue, what should we really be doing? Ms. Hughes answered that our definition of a public utility facility is from around 1962, so they probably did not think at that time that a power line was a facility. We don't have any background that explains what they were thinking at that time, so we can only do our best with what we do know. Secondly, right now it is true that we do not have the staff to review 2,000 utility permits. The other thing to consider is that even if we were able to bring in enough staff to do the work, it would still require us to hire additional hearings officers. This would increase the costs to review and process the permits. We need to think about what the impacts are that the public would really be concerned about. Not all utility lines are the same, but there is a public utility commission that rules on the safety standards. So maybe what we should look at is the appropriate role of county land use in whatever the impacts might be.

Commissioner Lopes asked for clarification on what the criteria would be between requiring or advocating in terms of underground utility lines. Ms. Hughes explained that when we add it to the Comp Plan we are saying that we think it is something that we feel the utility provider should be moving toward, but whereas if we put it as a requirement in the zoning code then it would be something that we would hold a developer to as part of their conditions. Of course it doesn't have the same teeth as when you add it to the code as a requirement, but it does give an idea of the direction we would like to move toward.

Commissioner Pak asked if removing the "public" from utility facilities would put all utilities under the same umbrella. Public utilities will do the outreach and public involvement with the neighborhoods whether it is required by land use or not because that is who their customers are. She is not sure that you could compel private utilities to follow the same practices. There are some things that probably don't need to have public outreach, but there are others that definitely do. The difficulty is to decide where to differentiate.

Commissioner Moss made the point that the state legislature may be where the underground requirement comes from. Our role may be more advocacy than regulation.

Commissioner Murphy asked if there was any correspondence on this matter other than those that are included in the meeting packet. Ms. Fields responded that there are two new items of written testimony. One is testimony in support of the clarification and the proposed amendments that was received from PGE. The other is from a resident who provided testimony regarding how the ZDOs protection of property rights should not be altered. They were both sent to the Planning Commission via email before tonight's hearing.

Mr. Blaylock asked if there were any representatives from CPOs or hamlets who wished to testify.

**Randall Yamada, Stafford Valley CPO-** Mr. Yamada said that depending on who you talk to in his area, the primary concerns are visual and safety. Some people are really concerned about safety, and there's quite a discussion to be had about both. There is a lot of concern about transmission lines on private property without public notification, review, and appeal rights. This goes against the basis of the land use comprehensive plan and development ordinance whose purpose is to protect the residents and the communities of Clackamas County. The structures, towers, cables with ground anchors for lateral support and other ancillary equipment really should be identified in the category review table as opposed to the definitions. You could say that about a lot of the other types of transmission types, like pipes, water systems, and communication systems. He feels that it needs to be separated in order for the public to understand what is going on. The proposed changes need time for in-depth consideration and modification by the citizens and the community planning organizations before being approved. He asks that the Planning Commission delay their recommendation to allow time for the CPOs to develop their own proposals and recommendations.

Mr. Blaylock asked if there were any other representatives of CPOs or hamlets who wished to provide testimony. There were none.

Mr. Blaylock asked if any member of the public wished to provide testimony.

**Meredith Armstrong, PGE** – PGE is definitely in support of the proposed amendments. Other jurisdictions handle these uses as Clackamas County staff have outlined in the proposed amendments. It provides them a continual efficiency that allows them to keep the network moving and to get what is needed to the communities that need it. It is a really crucial item for them. She would encourage the staff and the county to really consider those needs and to know that they take safety standards very seriously and want to make sure that whatever they are doing is being done in the safest way possible.

**Will Rasmussen, Miller Nash (representing PGE)** – Mr. Rasmussen commended the county for modernizing its land use code regarding utilities. It is an odd fraction of history that seems to have popped up in Clackamas County. He agrees that it was probably not the county's intent to require a conditional use approval for all utilities. It causes a number of problems for provision of services to end customers. The staff report is right in determining that the proposed code changes are consistent with the planning goals and would even argue that the ZDO not currently in compliance with the Comprehensive Plan and Statewide Planning Goals if it did, in fact, require CUP review of the thousands of utility permits that come through the county each year. A couple of the Commissioners raised the prospect of undergrounding electrical lines. That generally works for a number of electrical lines, but because of the amount of electricity created by larger transmission lines, once you get above a certain voltage it adds an exponential cost to the project. There are several problems associated with undergrounding large transmission lines. He will see if they can develop some quality information for the county to consider that documents what they are talking about. When they say that it increases a project's cost, they don't mean by just 10 or 20 percent. They mean if you have a \$10 million project, some of them could become \$50 million or \$100 million. That type of cost doesn't just impact the company's profit line; it impacts the ability to provide needed infrastructure to citizens and businesses in Clackamas County. He noted that several of the comments that came in were directed towards the Tonquin project. PGE is developing a separate application under the current code for the Tonquin project, and the public should watch for notification on that. They are welcome to participate in the process, which should hopefully get going before too long. The proposed amendments solve a significant problem for the county, and they respectfully ask the Commissioners to recommend approval of the staff proposal.

**Len Schaber, Stafford area** – Mr. Schaber agrees with Mr. Yamada. Any resolution or voting should be delayed until they have a better option to see what’s at hand and just how it will affect the residents of the area. He can understand the comments as far as the cost of the project when it comes to above ground or underground, but you also have to take into consideration the rights of the landowners and the people in the area.

**RJ Cook** – Mr. Cook is just across from the Stafford/Rosemont PGE substation. He is opposed to the proposed amendments and would like the Commissioners to consider what the future of the area should look like. Should it retain its natural beauty and character, or should it be power lines and utilities? To Commissioner Stevens’ point, if we had the money and the power, would we do it? The bottom line is fix it. Don’t eliminate the procedural aspect.

**Randall Yamada (speaking as an individual, not as the CPO chair)** – Mr. Yamada said that his understanding was that the ZDO amendments and the Tonquin project were not connected, but it sounds to him like they are.

Ms. Hughes explained that PGE has filed and has already had a pre-application conference with the county staff. They are considering filing a land use application for the facility that Mr. Yamada is talking about, but that doesn’t mean that the code amendments, if adopted, wouldn’t apply to them. Essentially it is probably all a matter of timing. Mr. Yamada asked Ms. Hughes to check the recording from the BCC meeting where this was discussed. It is his understanding that there was a specific commitment that they would be separate. Ms. Hughes agreed to follow up on it.

There was no additional testimony, so Chair Murphy closed the public testimony portion of the hearing.

Commissioner Peterson asked Mr. Rasmussen about the opportunity for public outreach and input on the Tonquin project if the proposed code amendments were already in place. Mr. Rasmussen answered that there would not be a public hearing from a land use perspective. It would be treated like any other allowed use in the zone. Most jurisdictions treat utilities that way because they are necessary. Commissioner Peterson’s concern is how the property owners and others who are impacted by this have an opportunity to comment. Is there any requirement from the Public Utilities Commission that requires notification to property owners? Mr. Rasmussen is not sure what the requirements are from the PUC. Ms. Armstrong said that there is, in fact, a property owner notice requirement from the PUC, so those impacted owners would get a notice and they would have an opportunity to be heard through that process. Commissioner Stevens is also concerned that the property owners don’t have a voice on these projects. Ms. Armstrong said that they have been able to address the concerns of those property owners that they have been able to talk to and work with. If there was a concern about a tree coming down because a new pole was going in, they looked to see if there was a way to shift the pole a little bit to save the tree. They have saved quite a few trees this way. They have been able to work with neighboring property owners to plant the kinds of plants the neighborhood wanted. They are willing to take steps to lessen the impact as much as possible. They have held two public house meetings on those projects, not because it was a requirement, but because they wanted to give an opportunity for the public to ask questions and for PGE to address their concerns. There are also a lot of benefits to upgrading our infrastructure to current safety standards. As a company they try really hard to work with the property owners and with neighbors. Commissioner Wilson asked Ms. Armstrong if she had any criteria regarding when an underground transmission line would be prohibited. Ms. Armstrong said that she will find that information and provide it to the commissioners. It should be noted that the underground power lines wouldn’t necessarily fit in the right of way and there would be an impact to a much larger swath of private property where nothing could occur on top of it. Commissioner Pak asked Ms. Armstrong about the

cooperation with property owners who were impacted by other utility installations. Ms. Armstrong described various ways in which PGE has mitigated the concerns and addressed the impacts that were of concern. Commissioner Murphy asked what the life expectancy is on the system that they are putting in. He is concerned about what our communities will look like a hundred years from now and what we should be doing now to make them more sustainable in the future.

Commissioner Murphy closed the public hearing at 8:22 pm.

The Planning Commission discussed whether to continue the hearing to another date, whether to move forward with a motion tonight, or other options. Several follow-up items were listed that the commissioners would like noted:

- Criteria by which PGE would determine when undergrounding would be prohibited.
- Suggestions from the CPOs on what the proposed language should be.
- What are the public input requirements from the PUC?
- Should stormwater facilities that are natural features be included?

Commissioner Lopes moved to leave the record open for written testimony until 4 pm on Monday, May 6<sup>th</sup>, 2024, and to continue ZDO-288 to 6:30 pm on Monday, May 13<sup>th</sup>, 2024 for deliberation and decision only. Commissioner Wilson seconded the motion. (*Ayes=6 Peterson, Pak, Stevens, Murphy, Wilson, Lopes; Nays=1 Moss; Abstain=0. Motion passes*)

Ms. Hughes provided a recruitment and schedule update.

There being no further business, the meeting was adjourned at 9:07 pm.