

**PLANNING COMMISSION  
MINUTES**

May 13, 2024

Meeting held online via Zoom

Commissioners present: Kevin Moss, Carrie Pak, Gerald Murphy, Tom Peterson, Louise Lopes, Tammy Stevens, Tom Middaugh

Commissioners absent: Michael Wilson

Staff present: Joy Fields, Jennifer Hughes, Darcy Renhard

Commission Chair Murphy opened the meeting at 6:31 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. This hearing was continued from April 8<sup>th</sup> and is only for Planning Commission deliberations and recommendation.

Several follow-up items for further discussion from the April 8<sup>th</sup> meeting were:

- 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 Public Utility Commission (PUC)?
- Should stormwater facilities that are natural features be included?

Ms. Fields explained that public input for individual utility projects is only required by the PUC when a certificate of public convenience and necessity is requested by the Commission. These are situations where the utility company would need to condemn property for a specific project or to get public buy-in for a very specific utility project to ensure that environmental justice is met. Exhibit 15 is the information provided by staff at the PUC.

Stormwater infrastructure is similar to a sanitary sewer system in that the water is captured and conveyed from a house or impervious surface to a facility. In the case of stormwater, this is often run under the road, but not always. What is different is that storm water is typically conveyed to a detention pond where the pollutants and other materials are removed before it goes into the waterway. Detention ponds are often vegetated and do not include large structures outside of an outfall. This is different from a sanitary sewer system that has large treatment facilities to perform these functions. Easements are typically granted in the final plat for a development. The stormwater detention facilities are often reviewed through the land use process and granted to Clackamas County Water Environmental Services for stormwater detention. Occasionally water lines and sewer lines are above ground.

Staff reached out to PGE who provided an exhibit that was forwarded to the Planning Commission. In the exhibit, it explains that PGE follows guidance from multiple regulatory agencies, including the Public Utility Commission. They are also regulated by the National Electric Code, the National Building Code, OSHA, and Oregon Specialty Code. All of these are part of the Oregon Joint Use Association who provides guidance on expansive safety provisions that the utility companies must provide. Last month we discussed the Comprehensive Plan policies and how the Planning Commission would like to advocate for the placement of underground electrical lines. Ms. Fields shared a draft policy intended to address this concern.

Ms. Hughes discussed the memo outlining a couple of changes to what was given to the Planning Commission last month. Primarily, the change related to stormwater infrastructure adds something that is a little more expansive in terms of accessory uses. Some of these facilities are not utility lines. They are the detention ponds that may be sitting on a particular commercial property or lot within a housing development. In these cases, it would be an accessory use as simply part of that development. Staff is also suggesting a change to the definition of utility line to include drainage ways so it is clear when we are talking about something that is natural or somewhat natural in nature. Drainage ways would be a different type of utility line that is conveying stormwater.

We have also clarified language in the proposed Comp Plan policies to specify that we are talking about service utility lines being underground.

As a point of clarification, Planning staff did not intend to imply that these code amendments have nothing to do with the PGE transmission facility in the Stafford area. What we have said is that the decision that is being made is not limited to that facility, and it is not a specific decision about any one specific proposal. What it would do is to generally change our Code. To the extent that those code amendments affect a project of any utility provider, including PGE, they will be applicable to any of these projects in the future.

What the Planning Commission needs to decide is the scope of review that is necessary for all of these different types of facilities. Would mitigation work on existing lines to make them safer require the same level of review as a new installation?

Commissioner Stevens said that the written response from PGE was very helpful. It explained how the underground power lines do not last anywhere near as long as overhead lines and how dangerous the underground power lines can be if there is a severe storm and a tree next to the lines is uprooted, for example. It can take far longer to repair and can be much more difficult to fix. So underground lines may not always be the best alternative. It is logical to adopt a comprehensive definition of utility facilities. As far as determining which lines should be installed underground, we need to allow the experts to make those determinations. Allowing the utility facilities within the road right-of-ways makes sense, that is what they were created for. The biggest concern for her is when citizen involvement is not required for certain types of land use applications. Utility lines outside the right-of-way, both underground and overhead, should secure a conditional use permit.

Commissioner Middaugh agrees with Commissioner Stevens. We need to allow for public input on installations that take place outside the right-of-way or outside of property that is controlled by the utility company.

Commissioner Pak is in favor of including stormwater facilities as part of the utility definition that does not require a conditional use. Stormwater facilities are not the same as sewer lines. Most stormwater facility managers do not want any pump stations. She would include wastewater and drinking water as part of the utility lines that should be allowed outright both inside and outside of the right-of-way, and both above ground and underground.

Commissioner Lopes applauds the addition of the language to support and facilitate underground utilities, but she feels that the language should be even stronger.

Ms. Hughes cautioned about mandating what does or does not have to be underground. It was included because our Code lacks clarity, but the best interpretation is that it is only service lines. There are ramifications to rate payers if we start requiring underground utilities.

Commissioner Peterson said that Ms. Hughes is right, and going down the route of requiring underground utilities is beyond the scope of what is being proposed. He was comfortable with the original proposal from staff. In the case of the Stafford area project, PGE has bent over backwards trying to inform and accommodate the neighbors even though there was no requirement for public outreach.

Commissioner Stevens does not think it makes sense to require a conditional use for stormwater facilities.

Commissioner Peterson pointed out that all of the utilities associated with a development would already be going through the development review process. Why would we want to have a conditional use on top of that?

Commissioner Pak is perfectly fine with adopting the recommendation that staff presented on April 8<sup>th</sup> if the utility definition is expanded to include the stormwater detention facilities that Ms. Fields discussed.

What Commissioner Lopes feels strongly about is requiring a conditional use permit for power and natural gas outside the right-of-way. If there is a new subdivision that is already going through a heavily reviewed permitting process, they would be excluded. Citizen advocacy is very important, so where there are power and natural gas going in outside of the right-of-way there should be a conditional use permit to incorporate citizen input.

Commissioner Peterson asked how much of the Stafford area project will be outside of the right-of-way. Ms. Hughes explained that most of the project would be within the right-of-way, but in some cases, PGE needs to use easements outside the right-of-way. It is a mix of inside and outside. Historically the Planning Department has not been involved in these. There are lines, both natural gas and electric lines, that traverse acreage outside road rights-of-way. They are done through easements.

During his conversation with the PUC, Commissioner Middaugh learned that if there is a taking of land, or condemnation, the PUC hearings are very similar to ours where the public has an opportunity for input and objection. There is also a chance that the property owner can agree to sell the easement to the utility. While the neighboring property owners may not all agree with this, it does not keep one property owner from doing it. The utility company would have to prove need for condemnation on the properties who do not willingly agree, which requires the process through the PUC.

Commissioner Stevens wants to make sure that there are services that are excluded from the conditional use requirements, specifically stormwater and possibly sewer.

Commissioner Peterson feels that there needs to be consistency. If something is outside the right-of-way, it requires conditional use, if it is within the right-of-way it does not. It doesn't matter what it is. Once you start trying to differentiate between the various utilities you run the risk of requiring conditional uses for things that really don't need it.

Commissioner Pak is not in favor of having a conditional use requirement for utilities.

Commissioner Moss does not think that we are taking away anyone's right to public comment. Policy really lies at the feet of the County Board of Commissioners and at the state and federal legislation level.

Commissioner Stevens moved to recommend approval of ZDO-288 to the Board of County Commissioners as recommended by staff, but with the following recommendations: adopt the first 3 amendments as submitted by staff, but modify the fourth to allow utility lines **inside** road right of ways, both underground and overhead, as an outright permitted use and requiring utility lines **outside** the road right-of-way, both underground and overhead, to require a conditional use permit. Commissioner Lopes seconded the motion. *(Ayes=3 Lopes, Stevens, Murphy; Nays=4 Middaugh, Peterson, Pak, Moss; Abstain=0. Motion does not pass.)*

Commissioner Middaugh moved to recommend approval of ZDO-288 to the Board of County Commissioners as presented by staff for the first 3 amendments, but that the Planning Commission recommend that utility uses within right of ways be permitted as an outright use, but that conditional use permits be required for gas and electric lines outside of the right of ways or outside of property that is owned or controlled by the utility. Commissioner Stevens seconded. *(Ayes=5 Lopes, Pak, Moss, Middaugh, Stevens, Murphy; Nays=1 Peterson; Abstain=0. Motion passes)*

Ms. Hughes provided a recruitment and schedule update.

There being no further business, the meeting was adjourned at 8:20 pm.