

**MINUTES**  
**UMATILLA COUNTY PLANNING COMMISSION**  
**Meeting of Thursday, April 27, 2017**  
**6:30 p.m., Umatilla County Justice Center, Media Room**  
**Pendleton, Oregon**

\*\*\*\*\*

**COMMISSIONERS**

**PRESENT:** Randy Randall, Chair, Gary Rhinhart, Vice Chair, Don Marlatt, Don Wysocki,  
Clive Kaiser, Tami Green, Tammie Williams

**ABSENT:** Suni Danforth, Cecil Thorne

**STAFF:** Tamra Mabbott, Brandon Seitz, Tierney Dutcher

\*\*\*\*\*

**NOTE: THE FOLLOWING IS A SUMMARY OF THE MEETING. A RECORDING OF THE MEETING IS AVAILABLE AT THE PLANNING DEPARTMENT OFFICE.**

**CALL TO ORDER**

Chair Randall called the meeting to order at 6:30 p.m. and read the opening statement.

**MINUTES**

Chair Randall asked the Planning Commission to review the minutes from March 23, 2017. Commissioner Wysocki moved to adopt the minutes as written. The motion was seconded by Commissioner Green. Motion carried by consensus.

**NEW HEARING**

**COMPREHENSIVE PLAN TEXT AMENDMENT, #T-17-073, COLUMBIA DEVELOPMENT AUTHORITY (CDA), APPLICANT, AMSTAD FARMS LAND COMPANY, LLC., PROPERTY OWNER.** The applicant requests an amendment of the Comprehensive Plan Text and approval of an exception to Statewide Planning Goal 11 (Public Facilities and Services). The exception would allow for a sewer line extension from the City of Umatilla to the Umatilla Army Depot (Depot). The proposed sewer line would run south from the City of Umatilla within the public right of way of Powerline Road, then east across private lands owned by Amstad Farms, before reaching the Depot. The criteria of approval are found in Oregon Administrative Rules (OAR) Chapter 660, Divisions 4 and 11 and the Umatilla County Development Code Sections 152.750 through 152.755.

**STAFF REPORT**

Brandon Seitz, Administrative Planner, stated that the applicant is proposing to amend the County Comprehensive Plan to adopt a reasons exception to Statewide Planning Goal 11, Public Facilities and Service. The exception would allow for a sewer line extension from the City of Umatilla's Urban Growth Boundary (UGB) to the Umatilla Army Depot. An exception is necessary because Goal 11 generally does not allow the extension of a sewer line to serve lands outside of a UGB. The exception would be for a portion of the sewer line that would be outside of the City's UGB and outside the boundary of the Depot.

The Depot is currently under federal ownership, and as established in OAR 660-011-0060(9)(b), “The extension of an existing sewer system will serve land that, by operation of federal law, is not subject to statewide planning Goal 11 and, if necessary, Goal 14.” That is one reason the applicant is using in their request for an exception. The Depot is anticipated to be turned over to CDA by the end of the year. The applicant also referenced a Land Use Board of Appeals Decision, Debby Todd vs. City of Florence. The decision stated that a sewer connection from within an UGB to an area outside the UGB which has been approved for a Goal 11 Exception by a prior Goal Exception is a reason to justify a Goal 11 exception. The Army Depot worked with Umatilla and Morrow Counties to approve Goal 3, Goal 11 and Goal 14 exceptions. Mr. Seitz has included those documents, labeled Exhibit C and D, in the Commissioner’s packets. Only those uses permitted in the Umatilla County and Morrow County Comprehensive Plan Goal Exceptions, and those lands remaining under Federal ownership, will be allowed to connect to the City’s sewer services. Land that lies outside the UGB would not be allowed to connect to the City’s sewer services.

Mr. Seitz stated that Steve Williams, Farm Manger, Cleaver Farming LLC, provided comment. Cleaver Farming owns property in the vicinity of the proposed line and is concerned about the location of the sewer line. They have an existing irrigation line that runs down the east side of Powerline Road and the proposed sewer extension would use the right of way on Powerline Road. They are hoping the sewer line will be located on the west side of the right of way, as the steel and concrete irrigation line could be damaged by heavy construction activities. The proposed sewer line ends at the Depot property and the northwest corner incorporates a piece of an irrigated circle. The land has historically been farmed by Cleaver Farming and they have an option to purchase it from CDA after it has been moved over to local jurisdiction. Mr. Williams requested that they extend the line an additional 664 feet (ft.) to reach the Depot fence. Mr. Seitz stated that Russ Pelleberg, Umatilla City Manager, stated that those requests are within the realm of possibility. The City of Umatilla is committed to ensure that impacts to the farming operations of lands owned by Amstad Farms would be minimized to the greatest extent possible. The land owner would be permitted to continue existing farming operations across the easement area. The line would be underground at least 4 ft., so farming activities are able to occur over the top of it. The construction will be scheduled during the off-season and therefore, should not affect harvesting, planted crops or seeding operations that take place on the property.

### **APPLICANT TESTIMONY**

Greg Smith, CDA, Executive Director, PO Box 200, Boardman, Oregon. Mr. Smith stated that the CDA is trying to figure out their options. After 20+ years working with the US Army, they are very close to completing a land transfer between the US Army Base Realignment and Closure (BRAC) office and the CDA. CDA is comprised of the Port of Umatilla, Umatilla County, Port of Morrow, Morrow County and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). Mr. Smith stated that east portion of the property is referred to by them as the Interstate Industrial Park. They anticipate that portion of land will receive over \$6.5 million for the ability to develop transportation infrastructure coming off of Interstate (I) 82, creating a new off ramp and industrial road. Mr. Smith feels that industrial land is the best land in the Pacific Northwest for industrial development as I-82, I-84 and Union Pacific all come

together at that point. Additionally, it is located in the center of the Pacific Northwest power grid and has industrial ready utilities.

### **PROPONENT TESTIMONY**

Frank Angelo, Angelo Planning Group, 921 SW Washington, Suite 468, Portland, Oregon. Mr. Angelo stated that he has been working with the CDA on the project and is pleased with the staff report and information provided by Mr. Smith. Mr. Angelo stated that the action tonight is authorizing under the Statewide Planning Goals, extension of sewer service from one urban area, the City of Umatilla, to an area that has already received Goal 14, Goal 3 and Goal 11 Exceptions. Those exceptions were authorized back in 2014 when the Depot Masterplan was prepared. He pointed out that the City of Umatilla looked at alternative alignments but this option has shown to be least impactful. Over 70% will be in a public right of way and 4 ft. underground. There will be a requirement that no additional hook ups between the City of Umatilla and the Depot would be allowed to the sewer system without going through another goal exception process to approve that action.

Commissioner Rhinhart asked if the applicant is looking into hooking up to the City of Umatilla or the City of Hermiston's sewer line and also siting a wastewater system. Mr. Smith stated that they have had conversations with the State of Oregon about what the best options are. The State of Oregon has expressed that creating their own wastewater system is the least favorable option. They have encouraged the CDA to reach out the local communities to create a sewer hookup. This is why the CDA has reached out to the City of Umatilla, as it appears to be their best option. The negotiations with the City of Hermiston are their back up plan, in case the City of Umatilla was unable to accommodate their request. Commissioner Rhinhart asked if the wastewater will be treated to become clean water. He stated that, usually in order to be cleaned, the water needs to go to Umatilla or Hermiston before it can be pumped back out to be used on farm ground. He asked if the wastewater will be treated onsite for farm uses. Mr. Smith stated that there are some limitations to that process. Above the Interstate Industrial area lies approximately 700 acres (ac.) of habitat land. Mr. Smith stated that the CDA has an agreement with CTUIR and the US Army that they will not use that land for industrial purposes. They feel their best option is to work with the City of Umatilla to clean the water then find an alternative use.

Commissioner Wysocki asked if this is intended to supplement or supplant the existing wastewater treatment that is onsite. Mr. Smith stated that there is no waste treatment option on the property at this time. He anticipated that within the next 6 months a transportation package will be approved in Salem which will include a large investment in a road project. They will have the opportunity to leverage those dollars and create a freshwater option to handle the wastewater that comes with it. He stated that that is why they are here today, with efforts to figure out how best to manage that. He is very excited about this opportunity. He feels Umatilla County is about to have the best industrial land in the Northwest. He stated that they just need to put the pieces together to complete the infrastructure.

Mrs. Mabbott stated that this hearing is to provide an option for the CDA. Until Mr. Smith knows what kind of industrial development will be there, we do not know what the wastewater will look like. One of the benefits of working with the City of Umatilla is that Russ Pelleberg, City Manager, is also a licensed

Civil Engineer. She stated that Mr. Pelleberg has put together a clever and innovative design at the Port of Umatilla. Rather than running all industrial wastewater through their sewer treatment plant, depending on the type of wastewater and nutrient content, contaminants, etc., they use the water in different ways. For example, the wastewater produced by the large data centers is being put through to the West Extension Irrigation District (WEID) canal and farmers are using it for irrigation purposes. That is a benefit to the design feature Umatilla has. She also pointed out that the State of Oregon supports this application because it is in the Lower Umatilla Basin Groundwater Management Area (LUBGWMA) which has very high nitrate content. Developing onsite septic systems would perpetuate the nitrate issue and is less than ideal from an environmental standpoint. Mrs. Mabbott asked Mr. Angelo how he has addressed pumping stations in past Goal 11 Exception applications. Mr. Angelo stated that the action on the exception is authorizing the sewer connection and most of the design work does not occur until the action has been approved. In the current phase, the City of Umatilla has conducted an analysis based on some assumptions, but the specifics on where the pump station will be located will occur at a later phase. Commissioner Kaiser asked what the slope is between the Depot and the UGB. Mr. Angelo and Mr. Smith replied that they are not sure. Mrs. Mabbott stated that the findings are written in such a way that the exception would include a reasonable location for a pump station, but the exact location is not identified at this time.

Mr. Smith stated that he would like to leverage the transportation dollars that they anticipate coming with Business Oregon's Special Public Work Fund (SPWF) to develop wastewater opportunities. In negotiations with the US Army, the National Guard will retain about 24% of the water. The CDA will receive about 76%, with a right to gain back 10% if it is unused by the National Guard. He believes this will be great for the County. Commissioner Kaiser asked about how they plan to receive the power necessary to run the pump station. Mr. Smith stated that they have regular communications with Umatilla Electric Cooperative (UEC) regarding the needed infrastructure development.

Commissioner Williams stated that she appreciates the fact that they are making alternative plans to onsite septic systems because of the serious nitrate problem. She is curious about the plant and likes the idea of the wastewater going back into irrigation, and not the river. Commissioner Wysocki stated that he would like to refine the focus of the hearing. He reminded the Planning Commission (PC) that the purpose of this hearing to allow for the sewer extension and the questions about design are out of scope. The decision made by the PC carries no liability on the design of the project. Mr. Seitz confirmed that, if the application were to be approved, sometime down the road, the City of Umatilla will be required to apply for a Conditional Use Permit (CUP) for a Utility Facility. At that point, the PC will review the design aspects and identify exactly where pumping stations will be located and how to mitigate impacts. Mr. Smith stated that the CDA plans to do whatever they can to work closely with Umatilla County to be sure they do everything correctly along the way.

### **PROPONENT TESTIMONY**

Russ Pelleberg, City Manager, City of Umatilla, P.O. Box 130 Umatilla, Oregon. Mr. Pelleberg stated that the City of Umatilla has recently completed a Goal 11 exception to provide sewer services out to another piece of property outside of the Port of Umatilla area for property that the CTUIR wants to develop. He

stated that his plan at the City of Umatilla is to separate domestic flows from industrial flows. They are in that phase at this time with a data center that is currently operating in Umatilla. They use clean water to cool their data centers and it doesn't make sense to treat the already clean water so they use it for irrigation canals and beneficial agricultural purposes. If data centers appear at this site, he would like to continue to use the water in that way. They have obtained a permit from DEQ authorizing that non-contact cooling water can be used for agricultural purposes. The City of Umatilla's wastewater treatment plant was built brand new in 2001 and has plenty of capacity to serve the area, and much more. That information was passed on to Mr. Angelo and is found in the Goal 11 Exception information. The design phase will dictate exactly where the line goes, more than likely on the west side. He stated that the topography of the Depot area lends itself perfectly to a set up like this. The southeast corner at the intersection of the 2 highways is the low spot, and therefore the smartest place to locate the pumping station. He anticipates a single lift station from there, uphill until it reaches a point just north of Potato Lane, where the natural topography would allow for the pressure main to turn into a gravity sewer that would tie into the existing system. Commissioner Wysocki asked how the cost in putting in a new sewer line will eventually be passed on to the user. Mr. Smith responded that they anticipate they will apply for Business Oregon's Special Public Works Fund which is an 80/20 grant loan program. If they are successful in their application they could receive a 30% loan and 70% grant. They anticipate several tenants that have expressed interest and have tentatively signed leases with CDA will start paying. The City of Umatilla will not be responsible for any costs; the responsibility will lie with the CDA and will be financed by revenue they develop through industrial development activities.

### **PROPONENT TESTIMONY**

Steve Williams, Representing Cleaver Land, LLC, 205 SE Crestline Drive, Hermiston, Oregon. Mr. Williams stated that he works for Alan Cleaver at Cleaver Land, LLC. He has met with the City of Umatilla and the staff earlier this week to address concerns about the pipeline and is comfortable with their plans. He feels there are two risks when you concrete the steel pipeline. The pipeline becomes very rigid and any blasting activity would crack the concrete inside the pipe, or heavy construction driving over the top. These are the reasons they requested the CDA consider construction away from their existing pipeline. Chair Randall asked if the pipeline will go under the freeway. Mr. Williams replied no, the property is located north of the freeway.

### **PROPONENT TESTIMONY**

Carla McLane, Resident of the City of Umatilla, 170 Van Buren Drive, Umatilla, Oregon. Mrs. McLane said the statement was made that the sewer line is proposed to serve only the Umatilla Army Depot. She asked the applicant to refine that statement because there is a fair amount of City of Umatilla property along that line and the City may want to pull off the line to serve future development in that area. She feels there are several properties in the City and UGB that could take access off the line and its extension before it leaves the City. She wants to avoid confusion and be sure the City will have full access to the line for City purposes, should that need arise. She is concerned that that statement could place limiting factors on how the line will be used in the future.

### **PROPONENT TESTIMONY**

Carla McLane, Morrow County Planning Director, PO Box 40, Irrigon, Oregon. Mrs. McLane stated that she sat on the Local Reuse Authority Board prior to it becoming the CDA, for almost a dozen years. She has waited a long time to see this land transfer happen and is very excited. Morrow County granted Goal 3, Goal 11 and Goal 14 exceptions back in 2014 to authorize industrial uses on the Depot land. They have about 18,000 ac. in Morrow County that is zoned for industrial use and 900 ac. have a habitat overlay, so development is somewhat limited. She supports this application and whatever other process the CDA may look to meet the needs for infrastructure, as it will be one of the most expensive components of the project. She believes that, anytime we can work with other partners in the region to achieve those objectives in a cost effective way it will be beneficial to all those involved.

### **APPLICANT REBUTTAL**

Mr. Angelo confirmed what Mrs. McLane stated. The hook ups outside the UGB would not be allowed. The line does go adjacent to the City's UGB and development inside the City would be permitted to hook up to the sewer when it is extended. The restriction is on the properties that lie between the UGB and the Army Depot. Mr. Smith stated that they want to be good neighbors. If there is an opportunity for the CDA to assist the City in hooking up, they plan to work closely with them.

Chair Randall closed the hearing for deliberation.

Commissioner Wysocki made a motion to recommend approval of the CDA exception to Statewide Planning Goal 11, Text Amendment #T-17-073, to the Board of County Commissioners, based on the foregoing Findings of Fact and Conclusions of Law. The motion was seconded by Commissioner Williams. Motion passed with a vote of 7:0.

### **NEW HEARING**

**CONDITIONAL USE PERMIT REQUEST, #C-1264-16 & #C-1282-16 AND VARIANCE REQUEST, #V-347-16, GRANITE CONSTRUCTION COMPANY, APPLICANT, BETTY HIATT, KEN BONNEY AND JANET BONNEY, PROPERTY OWNERS.** The applicant is requesting a public hearing for a Conditional Use Permit to conduct mining operations and to operate a concrete batch plant. In addition, the applicant is requesting a variance from the setback requirements from a utility easement. The property is located between Interstate 82 and Lind Road within the Urban Growth Boundary of the City of Umatilla described as Township 5N, Range 28E, Section 16; Tax Lot #2300. The criteria of approval are found in the Umatilla County Development Code Sections 152.615, 152.616(C), 152.616(Q), and 152.625 through 152.630.

### **STAFF REPORT**

Brandon Seitz, Administrative Planner, stated that the application was received by the Umatilla County Planning Department on December 21<sup>st</sup>, 2017. The County originally had planning jurisdiction and

managed the land inside the City of Umatilla's UGB. There was an update to the Joint Management Agreement (JMA) in December 2016 which transferred the planning jurisdiction back to the City. At this time the City manages all the lands within their UGB. This was the last application we received before the JMA update so pending completion of this application it would be turned over to the City to manage any amendments and annual renewal would be conducted according to City standards. The applicant is requesting a Conditional Use Permit (CUP) #C-1264-16 for a mining operation and CUP #C-1282-16 to operate a concrete batch plant on the subject property. The applicant is also requesting a Variance, #V-347-16 in regards to the setbacks to a utility easement. Currently the UCDC requires that any extraction holes and sedimentation ponds would not be allowed within 25 ft. of a public road, county road or utility right of way. There is a Bonneville Power Administration (BPA) easement across the property which is 395 ft., as well as a UEC easement which is another 100 ft. Both of those easements comprise approximately half of the subject parcel so they are requesting a Variance. The application was originally processed administratively and was approved by the Planning Director on March 2<sup>nd</sup>, 2017. A request for public hearing was received which sent the application to the Planning Commission (PC). The issue that prompted a request for a public hearing is over condition of approval #12 and the rights to mine within the utility easement. Planning staff received comments from BPA stating that they had only allowed approval of a sedimentation pond within that easement. The findings were updated to require the applicant to comply with any limitations and restrictions enforced by the easement holder. Mr. Seitz stated that he spoke with County Council and it was his strong recommendation that condition of approval #12 be removed from the findings. The condition will continue to apply because legally, they already have an easement document stating those terms. Repeating those terms again in the findings is redundant. Additionally, a civil judgement was made in 1954 which states that they can legally exercise existing mineral rights over and across the subject land. The dispute becomes a civil matter, as the County does not have the legal authority to determine which document should prevail.

Commissioner Kaiser asked if the sedimentation pond is currently in existence. Mr. Seitz said the applicant, property owner and a representative from BPA are in attendance and can help answer those more specific details.

### **APPLICANT TESTIMONY**

James Essig, Resource Manager, Granite Construction Company, 1525 E. Marine View Drive. Everett, Washington. Mr. Essig stated that he is the Resource Manager for Granite and works with land use permits, gravel mines and asphalt plants for the company. This application was previously approved through the process with Umatilla County in 2010. The County later received letters from BPA and UEC. The site was an existing gravel mine at that time. It has been permitted by Oregon Department of Geology and Mineral Industries (DOGAMI) as a gravel mine since 1977 and had been mining prior to that time. The property has been in the Bonney family for about 50 years.

Mr. Essig stated that we are talking about an existing permitted gravel mine site. The CUP requests the permit to mine but the purpose of the permit was to install a wash plant, ready-mix facility to process mineral aggregates and make concrete. The idea is to bring the wash plant in and the sedimentation pond is needed for the washout from the wash plant. The Variance is so they are able to be located within the

right of way. There have been conversations between BPA, Granite Construction and the land owner to try to work through this issue. One of the solutions they have come up with is to provide a 100 ft. buffer surrounding the existing steel lattice towers. They hope to come to an agreement with BPA, provide them access to those sites, and move away from the issue in a way that is least impactful.

In 1954 there was an Order in District Court that sided in favor of the land owner. It established that there was a taking by BPA and the land owner did have established mineral rights. That ruling has been going on for many years and today there is a letter from BPA that precludes them from making any modifications to grade elevations within the 350 ft. right of way. The way the permit is written right now, and with the existing mining operations, the applicant will automatically be considered out of compliance with the current BPA agreement. Therefore, Granite Construction felt a need to appeal the permit to bring it to public hearing and resolve the issue as they cannot accept having a permit they will knowing be in noncompliance of.

Chair Randall asked if the 25 ft. Variance will put them in compliance. Mr. Essig said it would help for the variance part, but if the condition remains in the permit that reflects back to the current BPA land use agreement, that puts them out of compliance. Mr. Essig stated that they do have a permit from DOGAMI and the use is established. Just because things slow down or become stagnant over time, it doesn't mean it is no longer a viable mine.

Commissioner Kaiser asked to hear more about the sedimentation pond. Mr. Essig pointed out the brown dot on the map. It is the lowest point in the pit and lies within the BPA easement. BPA did grant permission to have a sedimentation pond on the site. Commissioner Kaiser asked about the water quality in the pit and what is happening to the lichen from it. Mr. Essig stated that they are using fresh water and washing sand and gravel aggregate. Commissioner Kaiser asked what the pH of the water in the sedimentation pond is. Mr. Essig said he has not tested it yet but imagines it is somewhere between 6.5 and 8.5. They have already obtained a DEQ permit for the sedimentation pond.

Commissioner Wysocki stated that, generally, the substrates used would have carbonates in them which would increase the pH in the water when washed. Mr. Essig said he does not believe that is true. People are washing aggregate sand and gravel all over the country and it is not impactful. The biggest issue is the increased sediment in the water, which will be captured and discharged back into the groundwater, so it is not impactful. Commissioner Wysocki asked if the application was for a portable concrete batch plant. Mr. Essig clarified that the primary purpose of the CUP is for the wash plant. The concrete batch plant exists up the road and is operated by American Rock next to Highway 395. It is included in the application because when you submit for a CUP you are required to include the potential aggregate operations you may do. The concrete plant that they will supply is set up outside the pit. The main purpose of the application is to wash the rock.

### **APPLICANT TESTIMONY**

Ken Bonney, PO Box 1287, Hermiston, Oregon. Mr. Bonney stated that he is trying to get everything in order, but since his father passed away he feels that people are trying to change things. The only reason he

changed his application was because he was told they need to identify Granite Construction as the tenant on the property. He feels like he has been tricked into signing the new application and he's upset that the BPA is taking advantage of his family. He said they have been an existing operation for years and they continually renew and pay for permits on time to the State of Oregon.

Chair Randall asked if Mr. Bonney has been involved with the negotiations with BPA. Mr. Bonney said he has a little bit but he feels like it went from a 3 or 4 page agreement to a 14 page document written up by attorneys. He was in a hurry to try to get what they needed for their permit but the BPA changed the whole thing without telling him. Originally he was told he needed to stay 75 ft. away from the towers and he agreed. Then, he met with BPA 3 years ago and they changed the setback to 100 ft. and he complied. Chair Randall asked if he has an idea how much aggregate is left on this site. Mr. Bonney stated that he would guess about 2 million tons. Mr. Bonney stated that he has always had a well on site with water rights for a wash plant and it is permitted. He stated that upcoming projects in the community will benefit from the plant being centrally located so they are able to perform the jobs in the region without more truck traffic coming through. He will be doing his part to keep excess traffic off the highway, as they will not need to be on the highway at all. He wants to work with BPA on the setbacks to the towers, but limiting them to a pond only is very restrictive in their processes. Commissioner Rhinhart stated that, even if the PC approves the application, he will still need to work with the BPA to resolve the other issues. Mr. Bonney said he is happy to work something out with them.

### **PUBLIC AGENCY TESTIMONY**

Joe Cottrel, Realty Specialist, Bonneville Power Administration, 2211 N. Commercial Avenue, Pasco, Washington. Mr. Cottrel stated that he would like to clarify the timeline of events as they occurred in this matter. The US Government acquired rights to the land in 1954 via condemnation. In that condemnation federal judge, James Alger Fee, signed the Declaration of Taking on February 12, 1954. The original rights granted the land owner to retain certain mining rights. However, the mining rights that were retained were not a totality of a right; it was subject to BPA's safe operation and maintenance of transmission line system. Mr. Cottrel is not arguing that the land owner at that time retained certain mineral rights and rights to mine. What they are disagreeing with is the position that those rights supersede the BPA's rights to operate and maintain their transmission line system in a safe manner. Mr. Cottrel stated that his predecessors signed a Land Use Agreement with the Bonney family. The document was signed by Shannon Hildreth, Field Realty Specialist, on September 27, 2010 and permitted a sediment pond.

Mr. Cottrel stated that when the BPA receives an application it goes to the Line Foreman III, currently Greg Wilfong in the Tricities, to look at it from an operation/maintenance perspective. The application is also sent to the Electrical Effects Engineering Group in Vancouver to review the application for compliance to current codes they are obligated to adhere to. In this particular application they are concerned about the stability of the structures and lines. Their system is always evolving and changing to accommodate growth. On January 10, 2017, BPA received an application to permit a sediment pond and they approved it. They did not approve any mining operations close to their structures, besides the sediment pond. If there is a document that shows different, Mr. Cottrel would like to see that document.

In conversations with Mr. Bonney and Granite's applicant representative, Electrical Effects Engineering Group said they would review the plan and see if they can reach an agreement to allow for them to extract minerals and ores that will not impede the BPA transmission line system. The Line Foreman III denied the application because it is not conducive to the operations and maintenance activities. However, Mr. Cottrel said he has the right to override that decision but that action must be based on fact and substance, not what if's. Electrical Effects Engineering Group stated that their criterion for approval is based on the proper distance and slope to ensure that BPA structures are stable and will not have any problems. This was expressed to the applicant, land owner and Mr. Cottrel within the last week via email and the BPA hopes to hear back from the applicant soon.

Mr. Cottrel stated that the BPA understands and honors the fact that the State of Oregon has issued a permit. However, the State of Oregon's ability does not override the US Government's ability to safely operate and maintain the transmission line system. The BPA understand that the Planning Commission has the opportunity to approve a variance. The BPA's position is that the Planning Commission does not have the authority to issue a variance that changes what the US Government's criteria is for the safe operation and maintenance of their transmission line system. This position is based on legally determinable facts provided by subject matter experts and legal counsel. At this point the BPA has not approved any mining operations within that easement area, 395 ft.

Chair Randall asked Mr. Cottrel if the 25 ft. setback in the UCDC is detrimental to BPA. Mr. Cottrel stated that he would need for the Electrical Engineers to review and comment on anything within the 395 ft. easement area. Mr. Seitz stated that, from the 395 ft., there is an additional 25 ft. setback distance to roads, utility easements and things of that nature. Approval of the Variance would allow mining activity closer than the 25 ft. and within the actual easement itself. Umatilla County does not have legal authority to determine which document should prevail. The recommendation from County Counsel was to remove that condition of approval #12 and approve the Variance. At that point, it would be a matter between BPA and the applicant to resolve, outside of the land use process.

Mrs. Mabbott asked how these sites are monitored by the BPA. Mr. Cottrel stated that the BPA Transmission Line Maintenance Crew is tasked with traversing every mile of their line. They operate in 6 states throughout the Pacific Northwest and 15,000 miles of transmission line. In a perfect situation they would have enough personnel to do the job perfectly and never have a situation where activities occur in the right of way that are not permitted. He stated that there is no adverse possession on the US Government, so just because it's there, does not mean it is legal.

Mr. Seitz stated that, if the Planning Commission chooses to not approve the Variance request, the applicant would be forced to comply with the County's 25 ft. setback in addition to the existing easement right of way. Approval of the Variance would waive the requirement to the County's setback to a utility easement and the rest of the matter would be resolved between the two parties.

#### **APPLICANT REBUTTAL**

Ken Bonney stated that after his father's death he met with Sandra from BPA. They went over all the corners and changed the setback around the towers from 75 ft. to 100 ft., and he complied. He stated that the BPA has been aware of the mining activities on the property as they have been meeting with them on a regular basis at the pit. He is confused about why they are saying they did not know.

James Essig stated that Granite Construction Company is one of the largest heavy civil construction contractors in the country. They work in a high-risk environment and they appreciate the BPA's concerns regarding safety in working under the power lines and near the steel lattice structures. It is Granite's intent to work with the BPA to come to an agreement that will serve both parties interests.

Chair Randall closed the hearing for deliberation.

Commissioner Williams made a motion to uphold the decision of the Planning Director with removal of condition of approval #12 and make modifications in the findings to reflect the discussion regarding the County's 25 ft. setback. The motion was seconded by Commissioner Green. Motion passed with a vote of 7:0.

### **ADJOURNMENT**

Chair Randall adjourned the meeting at 8:42 p.m.

Respectfully submitted,

Tierney Dutcher  
Administrative Assistant

Minutes adopted by the Planning Commission on May 25, 2017