



KOOTENAI COUNTY

BOARD OF COMMISSIONERS

MINUTES

COMMUNITY DEVELOPMENT PUBLIC HEARING

JANUARY 12, 2023 6:00 P.M.

The Kootenai County Board of Commissioners: Chairman Leslie Duncan, Commissioner Bruce Mattare and Commissioner Bill Brooks met to discuss the following agenda items.

Also present were Community Development Director David Callahan, Civil Deputy Prosecuting Attorney Pat Braden, Planning Manager Ben Tarbutton, Planner III Vlad Finkel, Administrative Manager Reba Grytness, and Deputy Clerk Jennifer Conner.

CALL TO ORDER – Chairman Duncan called the meeting to order at 6:00 p.m.

CHANGES TO THE AGENDA (Action) – None

POLL FOR CONFLICTS OF INTEREST (Action) – None

PUBLIC HEARING – (Action)

1. *CUP22-0004 Reconsideration of Decision to Approve AT&T WCF*

Chair Duncan starts by stating the Code of Conduct that is expected for this hearing. Be respectful. If someone has already said what you plan to say, replay “already stated” when your name is called. No cheering, jeering or clapping, but you may raise your hand if you agree with the statements made. Address the Board, not the applicants or audience members. Deliberations will not take place tonight, it will be on January 26 at 10 am, in this room and also on YouTube.

Pat Braden, Civil Deputy Prosecuting Attorney for Kootenai County states on his advice the County will remain neutral in this matter. The procedures for the hearing were sent to the parties involved which state the amounts of time and order for whom will go when. This will also be at the discretion of the Board. The Kootenai County Code regarding requests for reconsideration, which is 8.8.502 states “a request for reconsideration shall be limited to the grounds set forth in section 67-6535 of Idaho Code”. Subsection 2a of this section states that “failure to identify the nature of compliance or noncompliance with express approval standards or failure to explain compliance or noncompliance with relevant decision criteria shall be grounds for invalidation of an approved permit or site specific authorization or the denial of the same upon appeal”. The Board has the authority to uphold the decision previously made, overturn the decision previously made, affirm the

decision with modifications, or remand the matter back to the Community Development staff, or the Hearing Examiner. The Federal Telecommunications Act, 47 USC § 253(a), applies. FCC regulations states the decision cannot be based on the actual or perceived acts of radiofrequency radiation on human health.

Vlad Finkel, Planner III, states the original request for CUP22-0004 was submitted last summer. The subject property is east of City of Coeur d'Alene, but is bounded to the city on two sides. The property is located atop Potlatch Hill on a little over seven acres and is heavily vegetated. The Comp Plan designation is Border, and zoning is Agriculture Suburban. This parcel is located within the Area of City Impact of Coeur d'Alene. Based on previous testimony by staff, the Board was advised that this application was submitted to the City of Coeur d'Alene for agency review, at which time the City did not state any issues. The proposed tower will be 150 foot lattice, with a five-foot lightning rod installed at the top. The lightning rod height will be included within the 150 feet total. The application was submitted on June 15, 2022 and was deemed to be complete and sufficient. The Federal "Shot Clock" does have limitations as to how long any jurisdiction has to review an application, otherwise it can be automatically approved. It was verified by the Prosecuting Attorney that the request for reconsideration, being beyond the original decision, would not be subject to the federal limitations. The Hearing Examiner recommended denial on September 19, 2022. On October 27, 2022 the Board approved the request. On November 8 and 10, 2022, Community Development received three requests for reconsideration. The Board cannot deny a request for hearing on a request for reconsideration. The hearing was originally scheduled for late December 2022, but was rescheduled to tonight due to the Appellant's inability to be present in December. There were 55 public comments received in support of the request for reconsideration, and five in opposition (i.e., supporting the original decision to approve the application). The latest concerns brought up were the tower setbacks, and decreases in property values.

APPELLANT:

Norm Semanko, Appellant 1: Attorney, representing 47 appellants. The concern regarding Chairman Fillios' employment with AT&T, or a relationship with the applicant or someone representing the applicant should have been disclosed. Was the right procedures followed? The proper way would be to recuse yourself, but that did not happen. The Telecommunications Act is why we are here tonight. Is there a significant gap in coverage? The applicant has failed to show prohibited evidence there is a significant gap in coverage exists in the targeted service area. Three cases to consider are: *Metro PCS v. San Francisco*, 400 F.3d 715, *Sprint PCS v. County of San Diego*, 543 F.3d 571, and *T-Mobile USA Inc. v. Anacortes*, 572 F.3d 987. The definition of "significant gap" does not include in building coverage, or in vehicle coverage, only Wireless Services. The applicant failed to supply evidence of dropped calls. The projections have no data backing them. Drive test data shows actual signal strength, and this was not supplied.

Alissa Desancic submits a packet. The evidence provided are from two parts. The first is a map and screen shots from her personal phone, which is AT&T, of the coverage being offered. The majority of the areas have four bars. Attempted to play videos at those areas with no issues. The photos submitted show the difference in coverage between the current coverage, the proposed tower and an alternative tower location. The coverage is "exactly" the same. There is no gap in coverage at all. There are alternative tower locations that AT&T has submitted.

Norm Semanko states not only is there no significant gap, this needs to prove to be the least intrusive, which is not the case. If this was in court, it would be denied.

Stephen Petroskie, Appellant 2. Kootenai County Code 8.5.132 regarding WCFs shows that this proposed tower does not meet the criteria for setbacks. AT&T's site plans show the measurements from the center of the tower, not the siting area per the Code. Also, Kootenai County requires a landscape design, and that was not included in the application. A fence must be supplied around the sighting area. Landscaping shall be completely around the site. AT&T's site plan shows a 70x70 foot siting area, with a fence surrounding it, and the setbacks should have been measured from the fence. The City of Coeur d'Alene did not allow the citizens to comment on the tower; the engineer replied "no comment" and sent it back. The fire district stated that the road is not up to fire code and that they cannot apply the code until the building permit process. The highway district director cannot ask for improvements up front, but acknowledges neglect on the road.

Virginia Tate, Appellant 3: The sheriff himself has said he is opposed to this tower because he cannot defend it since it is on private property. The law enforcement agency does not use the emergency program proposed by AT&T. The failure of the County Commissioners to protect the citizens is appalling. She herself has to fill potholes, plow the road, sand the road, and pull people from the ditch when it snows because the road is not up to code and maintained as promised in 1955. This tower would be drilling into solid basalt, and they will have to blast to get through the basalt for the tower. An RF Engineer said you cannot ground lightning into basalt. The lightning rod will deflect the lightning to the next tallest structure, which will be a tree, which will start a fire. The cistern for the two properties is located within the 150 foot setback. Northwest Groundwater Consultants has stated this tower is going directly over the water vein that feeds her house, her neighbor's house, and six other homes that rely on this well. The blasting could make the veins spread. The applicant has never maintained his property. The tower will take away the water, and there will not be any water to fight the fires.

PUBLIC COMMENT:

In Favor of Reconsideration:

IN PERSON:

Marie Kamprath: Disturbing the FCC has not updated since 1996. None of the residence want the tower. 95%

Ed DeYoung: 5G affects the biology if above 10 microwaves, and near a cell tower is above 1000 microwaves.

Joel Bowlby: Lightning storm in August near Beauty Bay. East Side Highway District states that there was smoke at the base of the tower, and they believe lightning hit the tower and spread to a nearby tree.

Melissa Burd: Insurance Agent. This will cause residents to have trouble getting insurance, or will increase rates.

Sue Kuhne: Passed

Wayne Longo: Kootenai Fire has stated this area is dangerous. Firefighters need water, and there is not enough for them to fight a fire.

RECESS until 7:10pm.

Carlene Carron: Towers are not allowed on EPA land. FCC was asked to update in 2021. Key stake holders notified?

Marcy Coulter: Fire travels uphill more quickly than level land. Highway district deemed the road inadequate for evacuation in case of a fire. Closest fire hydrant is $\frac{3}{4}$ mile away. During windstorm we were trapped for five days with no electricity or water.

Izzet Motola: Issues with how the County Planning department handled this case, they failed. Complete disaster how the government works, and they have failed the people. Phony data submitted by the applicants. No liability.

Diana Sheridan: Passed

John Whitehurst: Left

Bryan Wheeler: Passed

Virginia Longo: Seeing a face with the comments is important. Blasting may alter their only water source. Well took 4 attempts to find water. Tower acts as a lightning magnet. If approved, ask AT&T to be responsible for the water and to install fire hydrants.

Robin Schanep: Left

John Kamprath: Invite you to come up our road.

Heidi Boehm: We choose to live in this area, and support the community including voting and paying taxes. Are you representing the taxpayers that voted for you, or the large non-Idaho AT&T? Property footprint too small. Must be other locations, but AT&T picked this as the cheapest spot to build. The tower would be 14 stories tall. It is our job to work together to analyze what AT&T wants and see if it is what the community needs.

Katrina Motola: Passed

Van Hargraves: Presented 3 scientific papers which AT&T never commented on. Of the plots that had more than 100 lightning strikes per square kilometer, 98% next to a cell tower. Scientific public health issues that are being ignored. This is fraud. Require an Environmental Impact Statement.

Jeff Petroskie: Passed

Michelle Menier: Passed

William Ludka: Passed (Speaks Later)

Nick Thorpe: Passed

Boris Desancic: Passed

Todd Menier: Passed

Darlene DeYoung: Passed

Steve Boehm: Passed

Darwin Hall: Passed

Denise Kennedy: Passed

Marcia Hall: Passed

Glenna Morrell: Passed

Larry Morrell: Passed

Eric Heldt: Passed

Katy Ridenour: Giving you a face with a four week old baby. A family that will not survive if there is a fire.

Elizabeth Page: Passed

Iris Wood: Passed

Bill Brizee: Passed

Jen Noel: Passed

ON ZOOM:

Chuck Schmidt: Born again Capitalist, and classic Idahoan. For a rational area to put a tower, this is the worst place possible.

Chris Van Atta: Reiterate this is the worst location. Who approves the site plan? The site plan does not comply.

Shawna Lambert: Respectfully request the commissioners to review and do their due-diligence.

Jason Lambert: Risk of fire very frightening since we work from home and home school.

Steve Ridenour: Expanded perspective for AT&T's need, having the type of service is important, but is this a good real estate deal, yes. The portfolio looks better.

Shelley Hurtado: Not sure why we need another tower, especially on Potlatch Hill. If it will be approved, please make it aesthetically pleasing.

IN PERSON:

Amy McCamly: Lives in Hayden so does not directly affect, but does because we are a community. People are fighting this instead of enjoying vacations, new babies, being home with families. Please do your due diligence and research.

Thomas Page: Passed

Jeremy Fuller: Passed

Leilani Fuller: Passed

Kellie Fuller: Passed

Bryce Fuller: Passed

Carolyn Fuller: Passed

Will Fuller: Passed

Sandra Hall: Passed

ON ZOOM:

Heather Greenman: Via Zoom: 2020 took experimental vaccine, had reaction. 5G was introduced in 2019, and this is not a lot of time to test the effects of the radiation. Suggest to hold off this CUP until more research can be done.

IN PERSON:

Natalie Quijard: Passed

David Anderson: Passed

Ingri Cassel: Passed

Connie Krempels: Passed

Werner Krempels: Passed

Tanya Osterson: Passed

William Ludke: 2/3 of the oval of coverage is in wooded areas, where there are no people.

All the names of those at the meeting have been read into the record.

RESPONDENT:

Josh Leonard, Attorney with Clark Wardell representing AT&T. Needs to object to the process because this is a do-over of what was exactly what was done before and violates the clients due process and protected property rights. Mr. Ingle owns this property and should be able to use the property how he likes, subject to certain regulations. Also want to object to the fact that of the 47 people represented by the attorney received an additional 3 minutes to speak in addition to the appellant's 15 minutes, which far exceeds what is being given to them today. The "shot clock" continues to the final decision, and since a reconsideration is a requirement in Idaho prior to going to court, the final decision would be after the reconsideration. The County is now at 206 days, and the "shot clock" is 150 days, so that time is exceeded. Mr. Leonard reviews the project design. No new arguments or evidence has been submitted by the appellant. There has been no proof of Commissioner Fillios' involvement with AT&T, and if that argument is going to be used as reason for decision, Mr. Leonard recommends leaving the record open so Mr. Fillios can defend himself. The Board is here to determine whether the Board made an error back in October, and if so, to identify the error. The propagation studies and coverage maps were created by experts to show the significant gap in coverage. This would be a coverage and capacity site. The existing site is overwhelmed and needs to be offloaded by the new proposed site. The proposed site would expand the coverage area by 20.83 miles. AT&T identified sixteen alternative candidate site, four are radio towers, six already have AT&T, and would not reach the targeted service area to alleviate the gap in coverage, which leaves five candidates. Of the alternate sites the best coverage would reach 52% of the targeted service area. The proposed tower would reach 100%. The models AT&T uses are detailed, finely tuned modeling software which uses ten different sources of data. The hearing examiner recommended denial using the outdated Comprehensive Plan. She exceeded her authority by imposing much higher standards than Kootenai County Code requires. Potlatch Road is substandard, but the issues can and will be addressed at the Building Permit process. There were no denials from agencies. Fire Code does not address lightning. There is an approved FireSmart Plan that has been submitted, as requested by the County. AT&T hired an independent contractor to create the visual impact studies using balloon testing. An Environmental Impact Study is done at the Federal level, and is required. The setback for a WCF is 150 feet from the property line. According to the Code, WCF is defined as siting areas, transmission towers and antennas. The siting area is the portion of a parcel that contains the transmission tower, and related buildings and equipment required for the operation of the WCF, not a fence. The setbacks will be 150.2 feet from the equipment which is within the required setbacks. AT&T does not make money to put towers where they are not needed.

REBUTTAL:

Norm Semanko stated that a reconsideration is a proceeding that starts from scratch. According to the engineer from AT&T, the maps are a projection of new coverage, but are not based on actual data. A fence is considered a structure, and is necessary according to the requirements. They are closer than 150 feet from the perimeter fence. No proven significant gap in coverage, and no data have been provided. It has not been proven that this is the least intrusive means of covering the alleged coverage gap. The propagation maps submitted have been found by the FCC to be inaccurate. In the written decision, Chairman Fillios had stated that the applicant had provided all the information necessary to support their request. Clearly, they have not; there is no data, just projections. Commissioner Duncan had stated that the request had not addressed site constraints or

hazards. The fire hazards have not been avoided or mitigated. The applicant has also not demonstrated that additional cell coverage is necessary. The applicable requirements have not been met. The proposal is not compatible with surrounding neighbors.

Alissa Desancic: Submitted hundreds of pages of research. We have been chastised, told to be respectful in the face of disrespect, we have been called crazy, hung up on and ignored. You do not put lives at risk to further your business goals. Ask you respectfully to follow the facts, County rules, proven science, and protect the citizens of Potlatch Hill.

Motion by Commissioner Mattare to end public testimony, and continue deliberations where a decision will be made to January 26, 2023 at 10:00 am. Seconded by Commissioner Brooks.

Commissioner Brooks	Aye
Commissioner Mattare	Aye
Chair Duncan	Aye

ADJOURNMENT – Chair Duncan adjourned the meeting at 8:54 p.m.



Bruce E. Mattare, Commissioner - Signed 3/10/2023



Jennifer Conner, Deputy Clerk

