

Minutes of Meeting
Intermax
July 2, 2020
11:00 a.m.

The Kootenai County Board of Commissioners: Chairman Chris Fillios, Commissioner Leslie Duncan, and Commissioner Bill Brooks met to discuss the following agenda item. Also present were Community Development Director David Callahan, Civil Deputy Prosecutor Pat Braden, BOCC Communications Manager Nancy Jones, Senior Business Analyst Nanci Plouffe, Auditor Staff Accountant – Grants Julina Hildreth, Staff Accountant – Budget Michelle Chiaramonte, and Deputy Clerk Ronnie Davisson. Also present was Intermax CEO Mike Kennedy, Lake City Law Attorney Caitlin Kling and citizens Summer Bushnell, Brett Surplus, Dan Ralls, Rob Barrans, Brent Regan, Benita Pattee, Sandra White, Rhonda Sand and Linda Rider.

- A. Call to Order:** Chairman Chris Fillios called the meeting to order at 11:00 a.m.
- B. Changes to the Agenda:** There were no changes to the agenda.
- C. Business (Action):**

BOCC to Ratify the Decision to Waive the Conditional Use Permit Requirements for Intermax to Begin Construction of Broadband Locations Under the imminent Peril Exception; Thereby Allowing the County to Temporarily Suspend the Conditional Use Permit Process for Broadband Towers (IC 67-6523)

Commissioner Bill Brooks moved to adopt the amended agenda with the changes that were presented before them. Commissioner Leslie Duncan seconded the motion. There being no further discussion, Deputy Clerk Davisson called the roll:

Commissioner Brooks: Aye
Commissioner Duncan: Aye
Chairman Fillios: Aye

Chairman Fillios pointed out there had been meetings with Intermax before and explained that one of the reasons they were discussing an emergency ordinance was because the grant terms stated that the implementation must be completed by the end of the calendar year. Further, he said that they were considering “impending peril” because one of the offerings of broadband internet services that were being made available were telehealth services, so if there were people in rural areas where broadband could be made available, that could mitigate potential risks. Chairman Fillios then invited Intermax CEO Mike Kennedy to speak.

Mr. Kennedy said they were asking the Board to suspend the Conditional Use Permit (CUP) process in order to complete the project in a timely fashion, explaining that it would take four to five months to obtain the CUPs needed for the project, but there would no time left to complete the project.

Chairman Fillios asked Mr. Kennedy if he would speak to 5G capabilities. Mr. Kennedy said that they would not be doing anything 5G related and that 5G was a very high speed internet that required ample equipment to be placed every 500 to a 1000 meters. He said Intermax's proposal was for a fixed wireless system, pointing out that it was not in any way related to 5G.

Chairman Fillios asked Mr. Kennedy to explain the timeline of the project. Mr. Kennedy explained that the grant application for the State opened June 30 and would close July 13; the application would then be posted to the Idaho Department of Commerce's website for public review and with a challenge period; finally, the applicant would be notified of the award no later than July 31. He noted that a project of this capacity could take anywhere from 3-5 months to complete construction, so waiting 4-6 months for a CUP was unattainable. Finally, he said the project must be completed, paid for and funded by December 15, 2020.

Chairman Fillios asked him to explain the difference in roles between Kootenai County and Intermax for this project. Mr. Kennedy said that the County was the applicant, explaining that the State wrote the grant to emphasize that any private sector entity must go through a municipality, with the County serving as the grant administrator. He commended the County staff for holding their feet to the fire, making sure the process was done correctly. He clarified that the County would not be responsible to pay for any part of the project.

Commissioner Leslie Duncan said that she was concerned about using the terminology "imminent peril" and that there was another process they could take that would be much more transparent – issuing notices in the paper for CUPs, which would take approximately five weeks. She said that she could not find "imminent peril" in the situation at hand and was not supportive of using that term, but clarified that did not mean she was unsupportive of the project. She said another concern of hers was the threat of creating a monopoly.

Chairman Fillios stated that in his three years as a Commissioner, the Board had not once used "imminent peril" and did not have an issue with using that terminology since there was such a time crunch on the project and that it may not be used again unless an actual emergency occurs. Further, he said Mr. Kennedy had already addressed the monopoly concerns by explaining how other companies could also apply for the same grant.

Commissioner Duncan pointed out that telephones still existed, so residents that did not have broadband could still telephone their doctors. She explained that if the CUPs were noticed in the paper today, it would be a proper 28 day notice, then the Planning Commission would hear it, with the Board hearing it the following week. Commissioner Duncan said the final approval would come days before the grant award was announced.

Commissioner Brooks moved to ratify the decision to waive the Conditional Use Permit requirements for Intermax to begin construction of broadband locations under the imminent peril exception, thereby allowing the County to temporarily suspend the CUP process for broadband towers according to IC 67-6523. Commissioner Duncan seconded the motion. There being no further discussion, Deputy Clerk Davisson called the roll:

Commissioner Brooks: Aye
Commissioner Duncan: Nay
Chairman Fillios: Aye
The motion carried.

D. Public Comment (Discussion): This section is reserved for citizens wishing to address the Board regarding a County related issue. Idaho Law prohibits Board action on items brought under this section except in an emergency circumstance. Comments related to future public hearings should be held for that public hearing.

Brent Regan, 6100 E. Borley Rd, said that the imminent peril seemed to be Intermax receiving their payment in six months. He said that it seemed to be the grant timeline that was creating the imminent peril, not the project itself. He said that he was happy there was a challenge period for the grant, because the more egregious the actions of the Board, the easier it would be to challenge it. Chairman Fillios explained that any business could come forward and apply, Intermax was the only company to have done so and that the County was just simply a pass through for the grant funds. Staff Accountant – Grants Julina Hildreth said there were at least two dozen grants the County acts as a pass through for; however, the difference in this specific grant was that Intermax was a private company, not a County department, which was required by the grant. She pointed out that there were many other grants the County administered that benefited outside agencies like Post Falls Police Department, Alpine Meadows Water, Bayview, etc. She also explained that the Board did not need to have a public hearing to discuss the acceptance of a grant.

Rochelle Emery, 141 N. Church Road, Rathdrum, said that she lived in one of the affected areas in which there was very little internet. She said that the internet service was desperately needed, but her concern was the use of a virus to declare imminent peril. Ms. Emery said she felt it was setting a dangerous precedence.

Summer Bushnell, Kootenai County resident, said that she had concerns on imminent peril and asked for clarification on the statute as she was unsure how the construction of broadband towers could be considered emergent. Commissioner Duncan read the statute into the record and Civil Deputy Prosecutor Pat Braden explained the statute in detail. Ms. Bushnell asked Mr. Braden whether it would open the County to legal issues if there were some people who disagreed with the imminent peril decision. Further, she said it appeared as though the Board was giving preferential treatment to Intermax because Mr. Kennedy was on one of the Governor’s governing boards.

Brett Surplus, Rathdrum, said that he was in agreement with broadband being brought to the rural communities, but it seemed as though the Board was abusing their power and the code that outlined imminent peril. He also said that he felt that the Board was giving a private entity more leniency with the permit process, rather than the taxpayers who elected them.

Mr. Kennedy addressed Ms. Bushnell’s statement on his appointment to a governing board. He explained that it was a volunteer effort in which 50 people were appointed and

met for four months; he said the task force had concluded and the results of their work could be found on the Commerce Department's Broadband website.

Michael Morris, 6562 W. Harbor Drive, Coeur d'Alene, asked where the two broadband towers would be located within the County, to which Chairman Fillios replied they would be on Lone Mountain and Best Hill.

Sandra White, 939 West D Court, Hayden, asked how much money the grant was for, to which Mr. Kennedy said it was approximately \$3 million. She stated that to her, elections meant something and mentioned that the Board had shaken her trust. Ms. White explained that she expected her elected officials to act with integrity and to not stretch the law, and if they could not treat the "imminent peril" statute with respect, she asked why she should trust them.

Rhonda Sand, Kootenai County resident, explained that she has owned a company for the past 25 years in Kootenai County and owned four properties, three of which were rural and were bought specifically because there was no intrusion of wireless internet facilities. She said that she did not consent to the invasion of property by the County, which would violate her constitutional rights.

Chairman Fillios adjourned the meeting at 12:07 p.m.

Respectfully submitted,

JIM BRANNON, CLERK

CHRIS FILLIOS, CHAIRMAN

BY: _____
Ronnie Davisson, Deputy Clerk
