



MEETING MINUTES
COMMUNITY DEVELOPMENT
DELIBERATIONS AND UPDATES

OCTOBER 6, 2022, 9:00 A.M.

- I. CALL TO ORDER** - Chairman Duncan Called the meeting to order at 9:00 a.m.
- II. PLEDGE OF ALLEGIANCE** – Sandy Young led the pledge of allegiance
- III. CHANGES TO THE AGENDA** (Action) - None
- IV. CHAIRMAN’S OPENING REMARKS** – The second item of deliberations has changed from participation to observation. No more public comment, just deliberating amongst the three Commissioners with potential questions for staff or legal.
- V. POLL FOR CONFLICTS OF INTEREST** (Action) - None
- VI. SIGNING** – (Action Item)

1. ZON21-0002 KELLNER ZONE CHANGE – DENIAL

Amy Hilland, Planner II states a motion is all that is needed. Ms. Hilland also reminds the Board the decision at deliberations was a tie vote. Commissioner Fillios was absent, Commissioner Duncan voted in favor, and Commissioner Brooks voted against.

Motion by Commissioner Brooks, seconded by Chairman Duncan, to execute the signing of Case No. ZON21-0002 Kellner Zone Change.

Commissioner Fillios	Aye
Commissioner Brooks:	Nay

Chairman Duncan asks Commissioner Brooks for clarity as to why he does not want to sign the order of decision. Commissioner Brooks, due to being in opposition of the proposal, confirms not wanting to sign the Order. Chairman Duncan asks Pat Braden Legal Counsel what happens if the Order of Decision is not signed. Mr. Braden states there would not be any written order. He recommends the commissioners sign the order reflecting the 1-1 tie because a tie vote is a denial, and legally it needs to be put in writing for due process. The applicants would then be able to apply for a reconsideration as they see fit. Chair Duncan continued with the motion.

Chair Duncan:	Aye
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Decision to execute the signing: Approved

Order of Decision signed.

- VII. DELIBERATIONS** – (Action Item)

1. CUP22-0004 INGLE, AT&T, SMARTLINK

Vlad Finkel, Planner III reminds the Board the hearing was held last Thursday, September 29, 2022 and a motion was made to postpone the deliberations until today.

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Commissioner Fillios starts deliberations. There are a few different views, the residents, the applicant, and the Hearing Examiners conclusion. The HE did recommend denial but did suggest a series of conditions that should be incorporated if we proceed. The different concerns raised at the hearing; health, lightning strikes, search for right location, possible visual intrusion. The comments by the residents were compelling, but how many of those were substantiated, I do not know. Idaho has one of the highest diminishment of landlines in the country. The HE states in her recommendation that the Telecommunications Act of 1996 prohibits state and local regulation such as facilities to deny an application on the basis of environmental effects of radiofrequency emissions to the extent such facilities comply with FCC regulations, and there is no reason to believe this does not. The other issue regarding the access road goes back to the HE who recommended denial that this situation in regards to the road has been around for years and had not been addressed especially by the relevant agency, East Side Highway District. The State of Idaho does not protect view sheds. If you want a view, you need a view easement. The HE concludes that it does not comply with the Comprehensive Plan. Also concerns there was not exhausted searches for other locations. I believe no matter what company, their search will bring them to find the area with the greatest efficiencies or greatest amount of coverage for the least amount of expense, and I believe they have done that. The rebuttal did respond to many of the HE's concerns. This area is highly reliant on cell service. None of the responding agencies have issues. I side with the applicant, but with the recommendations of the Hearing Examiner 8.01-8.15 in her conclusion.

Pat Braden states the last 2 conditions 8.14 and 8.15, are additional recommendations added by the Hearing Examiner that were not originally recommended by staff. The applicant did object to those conditions.

Vlad Finkel states staff believes these conditions are problematic and not enforceable. In regard to the Forest Management Plan, AT&T is leasing a portion of this property, they do not own this property, nor do they have the legal rights to utilize it outside of the leased area. If they are forced to provide a Forest Management Plan, it would be outside the leased area. Regarding the road during construction, if there is any physical impairment to the adjoining public road that would have to be restored in compliance with East Side Highway District because that road is a public road. Therefore, staff cannot enforce an annual commitment to maintain the road.

Pat Braden agrees with Mr. Finkel, but thinks AT&T would need to repair any damage to the road during the construction process.

Commissioner Brooks explained his thoughts on this topic. There are 3 important aspects. First is the likelihood of fire and lightning being attracted to the area. Mr. Brooks states he reached out to an Electrical Engineer/PhD and also a gentleman in the wired telephone business. Both gentleman stated the towers do not attract lightning. Lightning will hit the highest object, but if the tower is adequately grounded with the lightning rod there should not be damage to anyone. The fire danger is a great concern, and we need to get busy with East Side Highway District to make that a much safer area. I reject anecdotal evidence. Mr. Brooks states he has not seen any evidence that 5G causes health effects or birth defects. A big pole being up there will wreck the view, but you will get used to it if you want cell coverage. I will go against the Hearing Examiners recommendation, and approve this request.

Chairman Duncan explains how she looks at CUP's differently than applications by right or applications that just have to go through a process. This being a Conditional Use Permit meaning there are conditions, it is not just automatically allowed. This does not adequately address site constraints or hazards and does not adequately mitigate any negative environmental, social or economic impacts. Listening to the citizens, we cannot take health into consideration because the law does not allow that, and if we do not like that we need to change the law. There should have been more due diligence in regards to an exhaustive search. There was no testimony stating additional coverage was desperately needed, and although I understand AT&T wanting to better serve their customers, there are identified

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locations that could use additional service, but they were not here to testify. For approval, AT&T would need to better explain why this is the only location that can be used, so I cannot support this application as is.

Commissioner Brooks suggested the motion be to approve with the conditions by the Hearing Examiner excluding the last 2.

Pat Braden states this would be the final decision.

Vlad Finkel adds the public has the right to request a reconsideration within 14 days of the signing of the order of decision. They can submit the reconsideration request to Community Development.

Chair Duncan asks if 8.14 is being removed, can it be requiring that the applicant to do something like FireSmart? That wouldn't be removing trees, it would be more of a brush issue.

Mr. Finkel recommends having staff write a condition of approval that the applicant must initiate a FireSmart review with the Fire District and advise them on the necessary steps that need to be taken for preventative measures. Have that reviewed and approved prior to any issuance of any permit for the site.

Commissioner Fillios asks about the provisions regarding a reconsideration.

Pat Braden reads the Idaho State Law referenced in the Kootenai County Code regarding reconsiderations.

Motion by Commissioner Fillios to Approve CUP22-0004 to include the Hearing Examiner's terms for approval should we choose to do so indicated in her analysis which are specifically items 8.01 through 8.13, excluding 8.14 and 8.15 to be replaced by two other items. The first is for the applicant to repair any road damage during the construction of the WCF, and the second item which is to initiate a fire avoidance system for mitigation through FireSmart or some equivalent organization for the area specifically impacted by the construction of the WCF. Seconded by Commissioner Brooks.

Commissioner Fillios	Aye
Commissioner Brooks:	Aye
Chair Duncan:	Nay

Decision: Approved

VIII. ADJOURNMENT - Chairman Duncan adjourned the meeting at 9:38 a.m.

Jim Brannon, Clerk

By: 
Jennifer Conner, Deputy Clerk

BOCC Chairman: 
Julie Duncan, Commissioner - Signed 10/18/2022

