

Attachment C

Minutes of Ferndale City Council and Whatcom County Council

Note: Paragraphs including discussion of KRPI are highlighted by a shaded box.

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**WHATCOM COUNTY COUNCIL
Public Works and Capital Projects Committee**

October 7, 2003

The meeting was called to order at 1:30 p.m. by Committee Chair Barbara Brenner in the Council Chambers, 311 Grand Avenue, Bellingham, Washington.

Present:

L. Ward Nelson
Sam Crawford

Absent:

None

Also Present:

None

COMMITTEE DISCUSSION

1. DISCUSSION REGARDING THE CITY OF FERNDAL'S CONCERN THAT RADIO STATION LOCATED IN UNINCORPORATED WHATCOM COUNTY IS INTERFERING WITH FERNDAL'S ESSENTIAL PUBLIC SERVICES AND RESIDENCES (AB2003-330)

Dave Grant, Senior Civil Deputy Prosecutor, stated Whatcom County is unfortunately not in a position to assist the City of Ferndale directly in terms of an enforcement or regulatory action. The Federal Communication Commission (FCC) Act of 1934 and the Second Circuit U.S. Court of Appeals made it clear that the statute gives the exclusive authority to the FCC to regulate radio stations such as this one in regard to their interference with other electronic devices and radios. The courts have consistently held that the Act preempts State and local governments from regulating commercial broadcast stations such as this. He does not know if any vehicle the Council could use to directly assist the City of Ferndale. The FCC has a complaint process. The City of Ferndale has communicated with the FCC. The FCC has regional offices with specific people appointed to oversee FCC operations within Whatcom County's region. Follow the FCC protocols. The City of Ferndale should make certain it is contacting the correct people at the FCC. If they want to obtain relief, the City needs to build a factual case to present to the FCC. The FCC website suggests the information it looks for to initiate an enforcement action. The FCC has the authority to modify this station's license as need be. In order to do that, it must offer the station an opportunity to be heard on the matter. There may be a hearing prior to any license modification.

Brenner stated she sent a letter to the radio station, but it was returned. Apparently there's not even anyone there who is able to receive mail. She asked what would happen if the County wanted to assist the City of Ferndale. There are complaints from people outside the City of Ferndale, also. Grant stated one of the allegations by the City of Ferndale is interference with their police communications.

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1 Whatcom County should take a look at that issue with the Sheriff's Office and the
2 Division of Emergency Management to see if that's an issue for Whatcom County
3 also. That would give the County more reason to join the City of Ferndale. There
4 are no impediments to doing that type of activity, if the County's own system is
5 adversely impacted.

6
7 Brenner stated she contacted the Division of Emergency Management. Staff
8 there said there is no interference with County emergency management services
9 that they know of. That doesn't mean there's not interference with Ferndale's
10 services. Staff was going to talk to Ferndale's Police Department.

11
12 Grant stated it's also evident from the federal statutory scheme that the
13 federal government has placed considerable responsibility on the consumer to have
14 consumer devices that are shielded against radio interference. There's some
15 obligation put on the person operating a television or radio in the home to have
16 devices that are not susceptible to radio interference.

17
18 Brenner asked if those products are common. Grant stated the FCC has
19 different standards of protection that are denoted by different levels of protection.
20 In response to the City of Ferndale, the FCC might say that they are not buying the
21 correct equipment.

22
23 Brenner stated she understood that this hasn't always been the case. People
24 are using the same equipment as they used before, but the interference has been
25 only in the last few years.

26
27 Susan Cole, Ferndale City Council Member and Planning and Judicial
28 Committee Chair, stated that is correct. Private equipment functions in one
29 location, but not in another location. When the City Hall was moved to its new
30 building in 1997, phones and computers were also moved, and the interference was
31 terrible. The City had to spend \$10,000 to \$20,000 of taxpayer money shielding
32 that equipment, which it shouldn't have had to spend.

33
34 Grant asked if there were instances in the past when the equipment was not
35 moved.

36
37 Cole stated there are instances now where one computer that works fine will
38 be interfered with one day. The computer was sitting in the same location and was
39 working fine, and then didn't.

40
41 Grant stated there might be some facts indicating that the station increased
42 the output of its transmission during that time. That might be a significant fact.
43 The FCC has some suggestions on how to build a case and the facts it needs.

44
45 Crawford stated he's sympathetic that there's a problem. When he drives on
46 Axton Road going west into Ferndale, the radio station he listens to, KGMI, turns
47 into this radio station, which he doesn't want to listen to. He thought the FCC

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1 provides safeguards to prevent that from happening, aside from the issue of the
2 public sector having to safeguard its equipment. He didn't think this is in the
3 County's jurisdiction to do anything. Writing a letter is a good idea. This affects
4 him personally when he drives into Ferndale.

5
6 Grant stated that part of the FCC's obligation is to allocate the bandwidth of
7 the radio spectrum so the stations don't interfere with each other. KGMI may be
8 another body to enlist in this endeavor to seek assistance from the FCC.

9
10 Crawford asked the designated frequency of this radio station.

11
12 James Kaufmann, 5873 Madrona Drive, Ferndale stated it is radio station
13 1550.

14
15 Crawford stated that bandwidth is not even near KGMI's bandwidth of 790.

16
17 Nelson stated he'd heard in the past that this station's audience and direction
18 was north to Lynden and into Canada. He asked if that's correct. Cole stated that
19 is correct.

20
21 Nelson stated the station may need a pretty high power to reach to Canada.
22 That may be why Ferndale is getting interference. He asked if the FCC has
23 responded back to complaints. Cole stated Mr. Kaufman has been working on this
24 issue for several years as a citizen directly impacted by the interference. He has an
25 extensive file of information. He's written numerous letters to the FCC trying to
26 track down licenses.

27
28 Brenner asked if they've ever received a letter from the FCC.

29
30 Kaufman stated he has received a response. He lives one mile from the
31 radio site. He's worked on this issue since 1998. A neighbor has also worked on it
32 since 1992, when the power was increased. The station is up to 50,000 watts.
33 That is the maximum amount of power the station can go up to as a class B station.
34 The station used a tube transmitter from 1992 to 1998, when it was sold to Pearl
35 Broadcasting in Anaheim, California. A new, solid state transmitter went on the air
36 mid-summer 1998. From that point on, everything degraded. The transmitter is
37 putting out all kinds of trash.

38
39 Nelson asked the FCC response. Kaufman stated the response has been that
40 most of the problems that are happening in Ferndale are due to a lot of unshielded
41 phone lines and other equipment that are unshielded and that can be addressed
42 locally. The FCC doesn't feel it has any bearing on the problem. Every year, the
43 station has hired a consultant from Portland to check out the station and who
44 determines that the station is living up to the license structure. The location of the
45 station at Imhof Road fires the signal through town and up to Malloy Drive. When
46 the FCC issued the license to the station, the station was located on the Loomis
47 Trail Road near where the FCC used to have an operating FCC station. The FCC told

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1 the station that it would have to protect the FCC operating station, so the station
2 had to null the signal. The FCC was aware from the beginning that there was a
3 problem. The signal is just as strong as the main carrier. That should not be. It
4 should be filtered. The signal saturates the entire area. It interferes with local
5 cellular phone towers in the area.

6
7 He's been to the station several times. One person works there three or four
8 days a week during the day. The owners are three lawyers across the street,
9 Carpenter, Hardesty, and Britain, under the name BBC Corporation. He asked to
10 see the inspection file recently. There's nothing posted on the wall that shows the
11 call sign of the station. It diverts back to KNTR, which is what it used to be. It
12 went to KCCF, and is now KRPI. The City of Ferndale was never contacted when
13 the call signs were issues. They're supposed to let the City know and broadcast the
14 new license. They're supposed to allow the City to comment. They're not doing
15 that. Because the station is located in the county, he thought he'd get some help
16 from the County.

17
18 **Brenner moved** to recommend to the full Council that a letter be written to
19 the FCC and lay out a case for supporting the City of Ferndale and the
20 unincorporated residents who are being affected.

21
22 Nelson stated he'd like to have a response back from the FCC so he better
23 understands what's going on.

24
25 Brenner stated that's what the letter is for. The letter would get a response.

26
27 Nelson stated the letter should ask what the FCC intends to do.

28
29 Cole stated she did not bring everything from her file, just a few key pieces.
30 This is a concern to the City of Ferndale. It interferes with critical services. They
31 are contemplating the purchase of a couple of mobile terminals for their police cars,
32 but are concerned about whether they will even function. At-risk are court
33 recordings and council public meeting recordings. It's a major impact to the City
34 and taxpayers of the community. Taxpayers' dollars are being wasted to protect
35 themselves from something that should not be allowed to happen. They've
36 communicated many times with the FCC. Most of the time the City is told that the
37 station is operating within its license. That's the only type of response the City has
38 received. There must be a way to protect the citizens from this invasion of their
39 privacy, invasion of critical services for the community, and waste of taxpayers'
40 dollars. Ferndale's budget is zero. Spending \$40,000 to protect the electrical
41 equipment in the new police station, should they find the money to build it, is
42 ludicrous. If they have to meet with FCC representatives in person, she'd do that.

43
44 Crawford stated the letter should be copied to U.S. Senators Maria Cantwell
45 and Patty Murray and U.S. Representative Rick Larson. Cole stated they've done
46 that also.

