



Janna Brown <janna.brown@bonnercountyid.gov>

Appeal Letter - CUP0030-21

1 message

'Dave Bowman' via Mail-Planning <planning@bonnercountyid.gov>

Mon, May 5, 2025 at 8:03 AM

Reply-To: Dave Bowman <dcbow@yahoo.com>

To: Brian Domke <brian.domke@bonnercountyid.gov>, Commissioner Asia Williams <asia.williams@bonnercountyid.gov>, Ron Korn <ron.korn@bonnercountyid.gov>

Cc: Bonner County Planning <planning@bonnercountyid.gov>, Jake Gabell <jake.gabell@bonnercountyid.gov>

Commissioners:

Attached, please find the Appeal letter for CUP0030-21. Due to e-mail size limits, attachments will be sent in 2 separate e-mail messages.

A hard copy of the appeal, along with the attachments on a thumb-drive, will be hand-delivered to Planning along with the \$300 fee per Code.

Dave Bowman
KBCR
(208) 255-0698

**Letter of Appeal CUP0030-21 5-05-2025.pdf**

870K

May 5, 2025

To: Bonner County Board of Commissioners

From: Keep Bonner County Rural (KBCR) on behalf of affected parties Joshua and Priscilla Emmet, Dennis and Jeanette Walker, and Penny Lamb.

Subject and File number: Appeal of Zoning Commission decision CUP0030-21 – A Conditional Use Permit for an RV Park, submitted by Idaho Land, LLC.

Per Bonner County Revised Code (BCRC) 12-225, the final decision of the Zoning Commission on a Conditional Use Permit (CUP) may be appealed to the board as set forth in BCRC 12-262.

The Affected Parties hereby appeal the April 9, 2025 decision of the Zoning Commission to approve file number CUP0030-21 for an RV Park. The grounds for appeal and issues herein are as follows:

- 1) The Zoning Commission erred in their decision to approve CUP0030-21. Staff erred in the scope and analysis of information and guidance provided to the Zoning Commission regarding CUP0030-21.
- 2) The Zoning Commission erred in their decision because they failed to address many of the requirements set forth in BCRC 12 for Conditional Use Permits and failed to show that the proposed use would not create a hazard or be dangerous to persons on or adjacent to the property.
- 3) The Zoning Commission erred in their decision because both Staff and the Commission failed to show how the proposed project met the requirements set forth in BCRC Title 12 for Conditional Use Permits.
- 4) The Zoning Commission erred in their finding that the CUP is not in conflict with the policies of the Bonner County Comprehensive Plan.
- 5) Commissioners exhibited extreme bias on behalf of the Applicant and unwarranted disdain and contempt for the public commenters and for agency comments.
- 6) Staff exhibited extreme bias in favor the Applicant throughout the Staff Report and at the hearing.

- 7) The Commission's decision letter states that their decision is based up the evidence submitted, but at the hearing said that they did not receive any evidence.
- 8) The Zoning Commission's Decision Letter Conclusions of Law 1, 2 and 3 are conclusory.
- 9) Decision Letter Finding of Fact 4 is conclusory.
- 10) Decision Letter Finding of Fact 13 is conclusory.
- 11) Decision Letter Finding of Fact 17 is conclusory.
- 12) Decision Letter Finding of Fact 19 is false.
- 13) Decision Letter Finding of Fact 20 is conclusory.
- 14) Decision Letter Condition A-8 cannot be fulfilled and also be in compliance with Code.
- 15) Decision Letter Conditions A-10 and A-11 are unenforceable.

This CUP has been challenged twice in Court. Both judges concluded that the County failed to support their Conclusions of Law with Findings of Fact.

NOTE: In references to the video of the hearing, "ZC" indicates Zoning Commissioner, as the speakers were not always identifiable. The video is the YouTube video from the Bonner County Planning YouTube channel, linked here.

<https://www.youtube.com/live/4QGN1-nx03E?feature=shared>

A separate document is attached that includes time stamps of various speakers and statements throughout the hearing. Note that the Applicant spent 1 hour and 20 minutes presenting his case, which is allowed by Code; however, he was allowed to stray far off topic for most of that time, entering into areas like the Pledge of Allegiance, Lady Liberty and Lady Justice, Biblical references as to how he is being treated unfairly.

Appeal Item 1

The Conditional Use Permit was approved in error because the requirements as found in Title 12 Subchapter 2.2 were not followed.

Per 12-222 APPLICATION, CONTENTS:

An application for a conditional use permit must be submitted to the Planning Department. At a minimum, the application shall contain the following information:

H. A narrative statement that addresses:

1. The effects of elements such as noise, glare, odors, fumes and vibrations on adjoining property.
 2. The compatibility of the proposal with the adjoining land uses.
 3. The relationship of the proposed use to the comprehensive plan.
- I. A plan of the site, drawn to scale, showing location of all existing and proposed buildings, parking and loading areas, traffic access and circulation, undisturbed areas, open spaces, landscaping, refuse and service areas, utilities, signs and yards.

H. 1.

<p>residents home to be distanced from the park and blocked by trees. The park poses no significant hazards or dangers to surrounding properties.</p> <p>Explain the effects of elements such as noise, light glare, odor, fumes and vibrations on adjoining property: Tree line surrounding property to remain intact to provide privacy to neighboring properties. Noise restriction to be in place in the park. Lighting to be provided only at the entrance to the park reducing effects on neighboring properties. Glares, odors, fumes, vibrations, etc. are virtually non-existent and will likely not ever effect surrounding properties or residents of the park.</p>
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The tree line does not completely surround the property, and is so thin as to allow a line of sight all the way across the property from Al's Welding Road to Clagstone in several places. Photos showing this were submitted to staff and the Commissioners by multiple members of the public with their comments prior to the staff report, and also to the Zoning Commission members and Staff at the hearing. This was never discussed at the hearing, nor was it mentioned in the Staff Report.

There is no evidence from the Applicant and no analysis by Staff that noise, light, glare, vibrations would be "virtually non-existent," as the Applicant claims. The farthest that the Commission went was to say that since there would be electrical power that generators would not be running, and that the only lighting proposed was at the entrance. There was no further discussion, no mention by the commissioners of any other type of light, noise, odors, fumes or vibrations. Additionally, it is a specious argument to say that RV park users would not use generators just because there is electricity to the site. Electric service is often interrupted during weather events, and electrical hookups for the RVs are not a condition of this CUP.

H. 2.

<p>How is the proposed use compatible with the adjoining land uses: The property chosen is strategically located at the intersections of two main roads and has only 1 property directly bordering it. The plan to maintain the perimeter tree line and the low impact of RV camping is compatible with the surrounding rural properties.</p>

“Strategic location” does not address compatibility with surrounding land uses. The location is strategic only for the Applicant. The Applicant gives no evidence in any form that RVs will be low impact – because the evidence does not exist. Simply stating it does not make it fact. The current adjoining land uses are low impact, single family and rural in nature. This project would be a commercial high-density (500% of the underlying density) development with no relation in any way, shape or form to single family or agricultural uses. The Commission did not discuss or deliberate on compatibility.

H.3

How is the use/plan in accordance with the general and specific objectives of the Comprehensive Plan? (Copy of goals and objectives attached)

Property Rights: The park will not have any notable increase in noise, lighting, fumes, odor, etc. that could negatively effect the surrounding property owners rights in a residential area. All setbacks will be honored and the tree line barrier maintained to sepearate the park from surrounding properties.

This answer in no way addresses how the proposal is in accordance with the general and specific objectives of the Comprehensive Plan. Further, it is a false statement, because the current level of noise, lighting, fumes, odor, etc. from this sight is exactly zero. It is not possible to avoid a notable increase of these impacts. Honoring setbacks required by law does not demonstrate accordance with the Comprehensive Plan, nor does maintaining trees.

I - A site plan was submitted; however, it contains inaccuracies and conflicts with information shown on the submitted landscaping plan. Code (12-497 A 1.) calls for a minimum of 1,800 sq. ft. per RV space, 24 ft. minimum width, and 10 ft. minimum buffer between RVs.

The Applicant claims 2,700 sq. ft. per RV. In order to attain 2,700 sq. ft., 13 of the 20 spaces must include area that is within the required 25 ft. setback (12.497 B.1.), as well as area that includes what he also claims is tree buffer.

12-819 defines “structure” as: Any object constructed or erected which requires location on ground or is attached to something having a location on the ground, including towers, smokestacks, overhead transmission lines, but not including fences or walls used as fences, less than eight feet (8') in height.

RVs are constructed and require location on the ground. Even associated vehicles would be considered structures in this context.

In all 20 spaces, the applicant included the 10 ft. buffer between RVs that is required by 12-497 B.2., as part of what he claimed is 2,700 sq. ft. per RV space. That 10 feet cannot both be part of the RV space and also be part of the buffer between RVs. Additionally, all the RV pads are 20 ft. wide where 24 ft. is required.

If the RV spaces were to extend all the way from the internal roadway to the setback, with the 20 ft. width, the contained area would be 1,093 sq. ft., which does not meet the 1,800 sq. ft. minimum, nor would it satisfy the 24 ft. minimum width requirement. If the spaces were increased to 24 ft. width, then the buffer would not meet the 10 ft. minimum because only 6 ft. would remain to the next RV, and the included area would be 1,311 sq. ft., still nearly 500 sq. ft. shy of the 1,800 sq. ft. minimum.

The submitted Landscaping Plan notes that RV spaces are 30 ft. X 90 ft., with each space containing a 20 Ft. X 50 ft. gravel pad.

From the Staff Report:

A. Density:

1. Each RV space shall be an area to accommodate the size of the RV, not less than 1800 square feet and a width of not less than twenty-four feet (24').

Staff: The proposed site plan indicates each RV site will be ± 2700 sq. ft. and each site will have a width of 30'. **See Conditions of Approval**

3. RV parking is limited to five (5) units per acre.

Staff: The parcel is ± 4.17 acres which is enough land to accommodate 20 recreational vehicles. **See Conditions of Approval**

B. Yards and Spacing:

1. All structures must be setback a minimum of twenty-five (25) feet from all exterior property lines.

Staff: As shown on the site plan no structures are proposed to be closer than the 25' required by code. A site inspection will be required in conjunction with the Building Location Permit to confirm all setbacks.

2. An RV may not be located closer than ten (10) feet from any other RV or permanent building within the RV Park.

Staff: As shown on the site plan all RV sites will have 20' between each space and none of the proposed structures are closer than 25' from any RV space on the parcel.

In their analysis of the Code's requirement for off-street parking, Staff states that the Applicant has provided 1,000 sq. feet for off-street parking per RV space. Setting aside (for this discussion only) that the 2,700 sq. ft. the applicant claims is designated per RV space extends into the setback and invades the required 10 ft. buffer between RVs, 2,700 minus 1,000 leaves only 1,700, less than the required minimum.

Staff incorrectly states that there will be 20 ft. between each space (hopefully between each two spaces). That is simply not possible. Either Staff did no analysis of the RV park layout with respect to Code requirements, or grossly misstated the results of their analysis with bias in favor of the Applicant.

At 1:44:05 Public Commenter Marsha Stevens puts up scaled graphic of her own 34 ft. RV, car and tow vehicle and relates them to Applicant's allotted spaces, showing how the RV spaces are not big enough to accommodate the use.

At 3:21:28 Marble asks Gabell: "If a 30 ft. wide space, 10 ft. portion of that is not drivable, does that satisfy the requirement for a 24 ft wide space and a 10 ft buffer between 2 RVs? To me it's not clear enough to say that it's not, so I'm left with probably what's on the site plan is sufficient. "

At 3:22:09 – Gabell responds: "In a plain reading of the code, it gives you some very specific standards for review. So you know, 24 ft wide, not less than 1,800 sq ft., in a clear reading, those are the standard (widths, or things – unintelligible)."

Marble: "I understand it the same way you just expressed it."

Gabell did not answer the question, he simply recited the code section back to Marble. Yet Marble responded in agreeance as though his question had been answered and the matter had been resolved. That was the entirety of the discussion around whether or not the site plan met the code requirements, which they clearly did not and do not.

The preceding exchanges demonstrate:

- Incomplete and inaccurate information provided to Staff and the Commission by the Applicant.
- Failure of Staff to analyze Applicant's submitted information for Code compliance.
- Bias by the Commission.
- Lack of guidance to the Commissioners by Staff during the hearing, showing either bias or lack of comprehension of the Code.
- Condition A-8 of the Decision Letter requires 2,700 sq. ft. per RV space, which is not possible.

Appeal Item 2

The decision was made in error because Staff and the Zoning Commission did not evaluate the proposal according to 12-223 as required, and exhibited obvious bias in favor of the Applicant and against the Public and Public Agencies.

12-223: CONDITIONAL USE PERMITS, STANDARDS FOR REVIEW OF APPLICATIONS, PROCEDURES:

... To grant a conditional use permit, the Zoning Commission or Hearing Examiner must find that the proposal is not in conflict with the policies of the comprehensive plan, as found in the adopted Implementation Component, and that the proposed use will neither create a hazard nor be dangerous to persons on or adjacent to the property.

During the hearing, the Zoning Commissioners repeatedly expressed their position that nothing was going to dissuade them from approval. Commissioners at no time discussed whether or not the proposal satisfied the requirements of 12-223. Their exchanges demonstrated either a gross lack of understanding of the Zoning Code, or a blatant unwillingness to apply the code to this proposal. At no time did Director Gabell step in during these exchanges to bring the Commissioners back to the Code, thereby clearly demonstrating his own bias in favor of approval.

The Applicant was allowed to stray far off topic for most of his presentation, entering into areas like the Pledge of Allegiance, Lady Liberty and Lady Justice, Biblical references to how he is being treated unfairly. Chair Marble says: "I get that you've been treated unfairly because 6 other applications were treated differently, that's not okay..." The Commission repeatedly entered into deliberation during the Applicant's presentation. At **1:14:55**, Gabell reminds the Commissioners that they are deliberating. Marble replies: "That technicality is going to get pounced on by the same people that brought up the civil court." The Applicant goes on to claim he is "completely signed off on the project," that he is "the only one in the room that can recite the Declaration of Independence, etc."

County Assistant Prosecuting Attorney Bill Wilson was in attendance on Zoom for the purpose of giving legal guidance and answering legal inquiries from Staff or the Commissioners. At no point did Staff, or any Commissioner, ask a question of Wilson, and at no point did Wilson intervene with guidance. As the Commissioners repeatedly veered far off track, misinterpreted Code, and failed to follow Code or address obvious deficiencies in the Application and Staff Report, Wilson's failure to offer guidance shows a clear bias in favor of the Applicant.

At 3:47:42 ZC: "I hear everybody in the room is unhappy about having an RV park as a neighbor. And as a quasi-judicial body, we have to follow what already written in the comprehensive plan. And the Findings of Fact says the rural zoning district allows for RV parks and it's within the rural district and it's currently zoned R5. Even though people are unhappy with it, this really needs to go back to the use. The way the property use is written – I don't think – I would say – based on this – you can't deny it. Marble: "You're right. Conditional use permits cannot be denied."

ZC: "They can't be denied outright simply because it's written right here that you can do it. As a personal note I think that's kinda wrong. I think that maybe ought to be changed at some level but that's not our purview to do."

ZC: "it's not in our tool set."

ZC: "My dad says the best way to ensure what happens on the lot next door is to purchase the lot next door." (ZC then proceeds to tell a story about when he was a kid.)

The preceding quotes show that even though 12-223 very clearly states the minimum criteria that must be met in order to approve a CUP, the Commission went into this hearing having already decided that denial was not an option, regardless of overwhelming evidence to the contrary. The quotes also demonstrate extreme bias on the part of the Commissioners.

Staff Report Deficiencies

Regarding analysis conflict with the policies of the Comprehensive Plan, Staff repeatedly avoided taking a position and instead used the phrase “does not appear to be in conflict.” The proposal either is, or is not – in conflict with the policies. Use of “does not appear to be in conflict” shows a clear bias toward the applicant when an impartial analysis would very clearly show conflict with several of the Comprehensive Plan Policies.

Regarding the Natural Resources Component, this is what Staff said about the proposal (page 21 – emphasis added):

Staff: “Impacts to natural resources were not identified by any agency. **Agricultural uses exist on the land and anticipated to be maintained. The Rural Residential land use designation encourages small-scale agricultural uses and residential development. Both are protected and maintained with this proposal.”**

There is not now, nor will there be if this proposal is approved, any agricultural use on this parcel. Staff’s statement is a blatant falsehood, which was pointed out in Dave Bowman’s public comment at the hearing (Time Stamp 1:39:00). At **2:45:25** Marble asked Gabell if he would like to rebut anything stated in public comment. Gabell declined.

A number of written comments were submitted prior to the staff report from members of the public and from agencies, expressing concern over hazards and dangers posed by the project. Spirit Lake Fire and Bonner County Sheriff both expressed a high level of concern for public safety if this project is approved. Panhandle Health commented that this site is not approved for 20 RVs that the soils will not support the septic requirements for this use.

Written Public Comments Expressing Safety Concerns

Janette Bendinelli: “There is a wide range of what people believe are acceptable behaviors while recreating. Therefore, conflict at the park will be inevitable - either within the RV Park between its guests or between RV Park guests and neighboring parcels. Being a rural area of Bonner County, we are already in need of more frequent patrols and faster response times.”

Josh and Priscilla Emmet: "This is a rural area and the impact of this RV Park would create both dangerous and hazardous conditions for my property and adjacent properties that is stated in Bonner County Code 12-223. This would create catastrophic harm to our properties should a fire occur. This particular area is a high at-risk fire area with limited district resources that are already strained and require constant support from other Fire Districts as well as law enforcement and EMS services."

Dave Bowman: "It is well understood that development in the wildland-urban interface (WUI), which this is, presents an ever-increasing risk of wildfires and structure fires, either of which can lead to the other. RVs present an exceptionally high risk, as they are constructed of, and contain, highly flammable materials, including a variety of plastics and resins, plus propane and gasoline. They will be spaced close together so fire can very easily spread from one to another, and very close to the "tree barrier," eliminating defensible space on the ends toward the roads. All of this presents an unacceptable risk not only to the RV residents, but to neighboring properties as well. Spirit Lake Fire staff and Board, as well as Fire authorities in districts providing mutual aid to Spirit Lake, have expressed deep concerns about increased risks presented with this type of development in the WUI (wildland-urban interface)."

Marsha Stevens: "Roads are the minimum 20 feet wide so any street parking would impede traffic, pedestrians, Fire, and EMS. This is all contrary to the guidelines and safety for all concerned. This presents an extreme risk for Fire and EMS adequately respond in the event of a fire or emergency. 2024 International Fire Codes (IFC) 503.2.1 requires that "Fire apparatus access roads shall have an unobstructed width of not less than 20 feet, exclusive of shoulders...". 503.4 requires that "Fire apparatus access roads shall not be obstructed in any manner, including the parking of vehicles....". Taking into account these requirements, the severe shortage of adequate parking and the ability to maintain unobstructed roads, this severely hinders the ability to respond to a fire. Should a fire occur, the lack of space between units and vehicles significantly increases the likelihood that the response will be severely hindered and the fire will spread rapidly. This would be catastrophic."

Mary Rawlsky: "I am a full time resident within 1/2 mi. of the proposed CUP/RV Park and am avidly against it in a designated RURAL area for the following reasons. ...Increased fire danger in a surrounding area that is heavily forested."

Philip Toews: "...Furthermore I feel there will be much consequence to the public's way of life without substantial upgrades to the current roadways ie. potholes, proper painted lines, and plowing during the winter months. To add to this I've seen many fatalities and

accidents with substantial injuries that I feel this would add to. With this said I appreciate your support in not allowing this to proceed further.”

Paul and Nancy Anderson: “Fire safety is a critical concern in our rural, heavily forested area, where fire suppression resources are already **limited**. The **Spirit Lake Fire District must sign off** on this project, and we understand that they have concerns about the increased fire risk. Unlike urban areas, **there are no fire hydrants available**, meaning emergency response teams must rely on **tender trucks and other limited water sources** to combat fires.

The introduction of an RV park significantly increases the potential for fire hazards due to **campfires, outdoor cooking, generator use, and improperly stored propane tanks**. With the park operating during **the driest months of the year (March–November)**, when wildfires are a known risk, any fire incident could quickly escalate and threaten nearby homes and forested areas.

Additionally, the applicant has cited **forested barriers between the RV park and adjoining parcels** as a means of minimizing the park’s impact. However, mismanagement of these trees —such as **lack of thinning, failure to remove dead or dying timber, or poor firebreak planning**—could create **an even greater fire hazard**. If not properly maintained, these forested areas could serve as fuel for wildfires, increasing the risk to both the RV park and surrounding properties.

Given the current **strain on local fire resources** and the **ongoing funding challenges for the Spirit Lake Fire Department**, adding high-density housing to this area without a **dedicated fire suppression plan, additional water storage, and enforceable fire mitigation measures** presents [SIC] an **unacceptable risk to the community**”

Becky Honnold: “First and by far **THE** most important issue is fire safety! We are not in a position to be able to handle any issues that may come with something of this nature!! **FIRE** is a **HUGE** situation out here and is our fire department equipped to handle something of this magnitude?? Fire is a very **REAL** threat to those of us that live out here and adding this to it is **NOT** in the best interest of the people that already live here.”

Roger and Sandy Sparling: “Aging RV;s [SIC] are not only unsightly, but can pose a fire hazard through propane tank misuse or leaks. Propane tanks are known to explode and inadequate fire suppression, lack of hydrants and long response times could certainly cause devastating results to the residents, natural resources and wildlife of the area. Think California fires! Every caution should be taken to prevent the possibility of fire in the future. Please deny this app”

Skip Bendenelli: “2. We here are very concerned already with annual wild fire issues and have on a number of occasions been on evacuations alert. When you allow 20 RV's side by side all with large quantities of propane will increase this exposure considerably. Also the potential of fire pits.

3. We already have a limited fire department support less than capable in handling the current housing in our area. And why should we have to potentially pay more for that service due to the additional load.”

Written Agency Comments Expressing Safety Concerns

Spirit Lake Fire Protection District: “”

The Spirit Lake Fire Protection District will follow and enforce the International Fire Code to the full extent regarding file CUP0030-21. Notably, RV parks pose a unique risk, especially in the Wildland Urban Interface. Spirit Lake Fire Protection District opposes any approval(s) that allows the applicant to proceed without the appropriate and required amount of fire flow, spacing, setbacks, and fire access. In addition to the risk to other RVs, and the surrounding homes and businesses, a fire in this park could spread to the wildland, become a significant wildfire incident, and impact all of Bonner County, even potentially threatening homes in neighboring fire districts. RV parks are unregulated in Idaho and the transient nature of the park makes prevention and enforcement nearly impossible. RVs burn more rapidly than structures and spread to other neighboring RVs rapidly. A full RV park poses a high risk for civilian rescue, or even life loss. LPG tanks and other hazards associated with RVs can pose unique operational challenges for short-staffed fire districts. With limited resources in our county, this RV park poses a tactical challenge and requires us to be more attentive to fire prevention features, conditions, and designs.

Bonner County Sheriff: “”

The density of 20 RVs on less than 5 acres in a rural area exacerbates the intensity of danger or hazards both to the occupants of those RVs and to the residents on adjacent parcels. One safety issue to note is that there are no sidewalks along the gravel roadways, which will experience increased pedestrian (including children), bicycle, RV, vehicle and animal traffic. If there is an emergency requiring a response from law enforcement, fire, and/or medical services, the fallout may be intensified because of the response time and the lack of and/or poor or damaged infrastructure. There is also a question as to the adequacy of the rural dirt ingress and egress for all emergency services (potentially more than one of each at one time), along with water resources readily and adequately available.

The health, welfare, and safety of visitors and our residents staying or living in or around RV parks is far better served by placing those facilities in zones with close proximity to emergency infrastructure (e.g., fire hydrants, paved roads) and emergency services.

During the hearing, there was much discussion of safety and hazards, however during deliberation the discussion devolved into whether the dangers brought forth by the Sheriff, Spirit Lake Fire District, and numerous members of the public, including adjacent property owners, were real, or perceived (see Finding of Fact 19).

At 3:52:45 Marble: “Just for the public’s understanding, 5 years ago I found a section of the code that was problematic – for me – my business partner and I learned that you can submit an application for a code amendment. We did – and it cost 400 bucks. Which is a lot less money than hiring a lawyer and taking it to court twice. And the code change, it makes more sense now, it’s more consistent, I did myself a favor and I guess I did the community a favor. Sheriff can do that. Fire District can do

that. Private citizens can do that. 501 C (3)s can do that. And the code is not that hard to read and understand. It's easier than reading the King James Bible. And it's all like crossed referenced. People need to, like, come up with solutions."

At 4:04:03 Marble makes fun of people complaining that people drive too fast – talk to the Sheriff. "Oh the fire protection's no good. Okay – move to LA..."

At 4:04:58 - Gabell: "There are 3 conclusions of law they must meet to approve the project.

First – the CUP is or is not in conflict with the policies of the comprehensive plan. You have -A- analysis by staff. So given the public testimony and the review of agency comments, if you find that this proposal is in conflict with the policies, that's a rationale for denial."

At 4:05:24 – Gabell continues: "You have conclusion 2, which says that you're reviewing it against the code. That's where you look at parking, you look at lighting. So you find that any of those are inadequate that's a reason to deny. Or add additional conditions of approval. The third one is the harder one right now the way I see it. The proposed use will or will not create a hazard, or will or will not be dangerous to persons on or adjacent to the property. In reviewing these comments from agencies, you have DEQ and PHD providing you with a whole bunch of detail about how subsurface sewage may not be viable. You have a specific comment from PHD saying the soils don't really perk for this type of proposed..."

Note that Mr. Gabell asks the Commission to look at parking and lighting to find if they are adequate. This is something that Staff should have looked at before it ever got to a Zoning Commission hearing. Code requires that the application must meet the standards set forth in 12-222 to be accepted. The Commission's job is to discover, through evidence and testimony submitted, if the impacts from that use can be mitigated with conditions. Note that Mr. Gabell admits that the application does not meet requirements for PHD and puts that on to the commissioners to evaluate. There is no way to evaluate this in a hearing. This should have been done by Staff prior to the hearing and then reported to the Commission how it did or did not meet the standards, so that Commissioners could make an informed decision.

At 4:06:24 Gabell: Then you have SLFD near the 2nd paragraph says a full RV park poses a high risk for civilian rescue or even loss of life. You have a comment from the Sheriff we talked about earlier talking about how this creates additional concerns for emergency services and law enforcement response, given the density and all the other potential issues.

So you have some very specific concerns by agencies about how this creates a public harm. So you need to – just given it's a conditional use that's allowed in this zone, it's not sufficient to meet the conclusions of law that you have to meet to approve the project. So there is some rationale, within the staff report and within the comments from the agencies, that give you, like, room for pause if you will. I know we kind of brushed

aside some of those but they're very relevant when it comes to how to craft your conclusions.

4:07:30 Gabell continues: How do you take what they have and still make a condition that says you're not creating a hazard – that's what I want you to deliberate on.

ZC talks about fire – then brings up Marsha Stevens's experience that she had camped in hundreds of RV parks and never seen an RV catch fire. ZC talks about cooking, heating, sources of fires. Heating in winter but that would not apply here, etc. "It's highly unlikely based on what I've seen and heard. It's a perceived risk but not actual risk. More from campfires. So as a finding of fact, is it actually more dangerous or are we perceiving it more dangerous?"

Note that Mr. Gabell tells the commission that agencies have expressed concerns that the application would "create public harm". Why then did he not address this in his staff report? This is important to CUPs, as the approval is conditioned on the proposed use not creating a hazard or being dangerous to persons on or adjacent to the property, per 12-223. Instead, the Staff Report basically says that everything is just fine with this application.

ZC: "I like fire, I like to camp, we have a mitigation plan." (More talk about perceived risk v. actual risk). "We do have the comment from SLFD saying it's high risk, so it's not just the public. Is that actual risk or is it perceived risk? Risk to property? Risk to life? You've got 20 paths of egress. This isn't like a courtyard. You're only going to lose a bunch of stuff. And once the firetrucks get there, you have 3 sides. Firetrucks can pull up to 2 sides of that and get through on the roads. And there is some water on site, 2 wells it sounds like, so there's potential for 60 GPM, I would assume the 2nd well is good producing as the first well."

Marble: "We don't have standards to go on. And that's the problem – and that's because it's not our job."

ZC: "We also don't have a clear definition of the risk. We have this great perceived risk and we all acknowledge that, but we don't have that data or any way to support or quantify what exactly is that risk? Is it greater than or less than what I'm used to? I would defer to the Fire Chief; they're going to have that knowledge."

Marble: "The commission has chosen to delegate to that body. The best resource we have."

ZC: "That's who we rely on when we call 9-1-1. They're the experts."

"What about other hazards? Traffic? No sidewalks. Road and Bridge didn't have much to say. Traffic is a risk. I wouldn't be walking much..."

At 4:13:30 – ZC: How do you quantify any of this? If our conditions were structured to handle any of these, would that be an undue burden on this applicant that wouldn't be applied across the board to the neighbor that's got a building permit?

Marble: “I wish we had some kind of standard where I could say because of the safety standards this is 12 spots instead of 20 but there’s no standard, no quantification, no metric.”

ZC: “It just says ‘will it create an additional hazard or will it not?’ I don’t think it’s our job. It seems like if it will create an additional hazard than that’s a reason to deny it – but...”

ZC: “I don’t think we’ve had any testimony from anybody that says it will create a hazard – like an outright yes it will. There’s a lot of ‘we don’t like this.’ Or ‘it could.’ None of us like change. There’s gonna be more people. But an outright hazard – that’s fishing in a pond with alligators in FL.”

The preceding exchanges demonstrate unmistakable bias toward approving the proposal, with outright disdain toward, and dismissal of, the concerns articulated in comments by members of the public as well as by Spirit Lake Fire and the Sheriff. Clearly, the Commissioners do not understand how CUP’s work because they state that placing conditions on the applicant would be an undue burden on him. This is exactly why the permit is called a “CONDITIONAL” use permit. It allows a use conditionally, meaning that IF the impacts of the use can be mitigated by conditioning the permit, then it can be approved, however if the impacts cannot be mitigated, then it must be denied. The Commissioners did not even discuss impacts other than to say that they are only “perceived” (in the case of dangers and hazards), and something that “just comes with change” (regarding impacts such as noise, traffic, etc.). They also stated they have no data upon which to make their decision, so one must ask; how did they come to their decision? In watching the entire meeting, it is clear that they had already made up their minds before the hearing. Only one commissioner voted “no” and he based his decision solely on the letter submitted by Sheriff Wheeler.

Appeal Item 3

The decision was made in error because Staff and the Zoning Commission failed to address the inability to mitigate or prevent impacts on neighboring parcels, only by allowing the Applicant to remove references to “housing” in his revised application.

History of this Application:

The most recent application CUP0030-21, filed by the Applicant on 12/18/2024, is a revised version of CUP0030-21, which was filed on 2/02/2022.

In the original file, the Applicant stated the RV park would provide affordable housing, 12-496 addresses RVs used as dwelling units and limits them to 2 per parcel for parcels greater than 1 acre. The Commercial Use Table 12-333, allows RV parks in rural zones but does not allow them as a residential use, and that would conflict with 12-496 and 12-818. During the hearing of the first appeal of the Zoning Commission’s decision, the BOCC, referencing Note 8 of 12-333, incorrectly redefined “adequate water for fire

protection” as adequate fire protection, to circumvent the requirement for RV parks (a commercial use), and treat the proposal as a residential use which, would have no requirement for adequate water for fire protection.

In the first Judicial Review decision (quoted below, full decision letter attached), the Court ruled that the Board failed to support the Conclusions of Law with Findings of Fact, with respect to the issue of adequate water for fire protection. The Board’s decision was vacated and the file remanded to the BOCC.

The court finds that the Board’s written Findings of Fact and Conclusions of Law contain no analysis of its contention that the CUP was properly analyzed under BCRC 12-333, nor does the written statement address, in any meaningful way, the Petitioners’ stated concerns as to fire suppression. The statements of the Board contained within its written decision are merely conclusory recitations of information contained within the application and do not contained a “reasoned statement” as to the relevant and important facts upon which their decision was based. As the court stated in the hearing on July 19, 2023, the Board issued a “bare bones” finding. At a minimum, the Board’s written decision should have addressed its reasoning in determining that the CUP was analyzed under the appropriate code section and its reasoning as to why the property’s location within a fire protection district satisfied the requirement under BCRC 12-333 regarding “adequate” water supply for fire suppression. The court was informed in the July 19, 2023 hearing that the written Findings of Fact and Conclusions of Law are generated by the Board’s staff and are “pretty uniform.” However, this court finds that the findings issued by the Board failed to provide the requisite reasoned statement that plainly states the resolution of factual disputes, identifies the evidence supporting that factual determination, and “explains the basis for legal conclusions, including identification of the pertinent laws and/or regulations upon which the legal conclusions rest.” Jasso, 151 Idaho at 794, 264 P.3d at 901. “Conclusions are not sufficient.” Id, 151 Idaho at 796, 264 P.3d at 903 (internal quotation omitted). Under Jasso, the Board’s written findings of fact and conclusions of law are insufficient to meet the requirements of I.C. § 67—6535. The approval or denial of any application authorized under LLUPA “shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision. .” I.C. § 67—6535(2). Failure to identify the nature of compliance with relevant decision criteria shall be MEMORANDUM DECISION AND ORDER ON PETITION FOR REVIEW—11 grounds for invalidation of an approved permit on appeal. I.C. § 67—6535(2)(a). Therefore, pursuant to Idaho law, this court vacates the Board’s approval of the CUP and remands the matter for further agency proceedings.

III. The Board’s failure to issue sufficient Findings of Fact and Conclusions of Law prejudiced the Petitioners’ due process rights.

“A finding of fact is a determination of a fact by the court [or agency], which fact is averred by one party and denied by the other and this determination must be founded on the evidence in the case.” Crown Point Dev., Inc. 144 Idaho at 77, 156 P.3d at 578. In this matter, the written findings of the Board are not determinative of any facts or issues, but as stated earlier, are merely conclusory statements which lack any affirmative statement as to how the Board reached those conclusions. Without Findings of Fact and Conclusions of Law sufficient to meet the requirements

of I.C. § 67—6535, this court does not possess the necessary information for a meaningful review of the Board's approval of the CUP. *Jasso*, 151 Idaho at 797, 264 P.3d at 904. It is not the responsibility of the reviewing court to "scour the record" for evidence which supports the Board's position. This court finds that the lack of sufficient Findings of Fact and Conclusions of Law prejudices the Petitioners' due process rights to judicial review. Therefore, this court vacates the Board's approval of the CUP and remands the matter back for further agency proceedings.

The Board chose to limit the remand hearing to the topic that was at issue in the Court's ruling – that the board had failed to provide Findings of Fact to support their Conclusion of Law that the proposal complied with the requirement for adequate water for fire protection. In the October 30, 2023 remand hearing, the Board again approved the application.

That decision was appealed to the First District Court (Petitioners' Opening Brief Attached for Reference).

In the second Judicial Review Decision (excerpted below, full decision letter attached), the Court ruled that the Board failed to make a determination whether the proposal fell under 12-332 Residential use, or 12-333 Commercial use, and due to that failure, refused to decide whether the Board's analysis of fire suppression under BCRC 12-333 was sufficient.

The Board has again failed to find facts supporting its decision whether BCRC 12-332(9) or BCRC 12-333 apply. Instead, the Board includes conclusory statements indicating that "the requested use befits in the category of an RV Park. . ." and that "BCRC 12-332 and 12-496 apply to a residential use and thus these standards are not applicable to this proposal." R. 222. The only relevant facts were a statement of the utilities, location, size, and project proposal (installing 20 RV units). The Board also invoked the legislative history of its commercial RV park code. The Board did not explain how these, or any other facts, determine whether the proposed use is commercial (CRC 12-333) or residential CRC 12-332(9)). The Board argues it did not need to make that distinction: "the Planning Director was not obligated to make some kind of affirmative finding on that point [(whether BCRC 12-333 or BCRC 12-332(9) apply)] before concluding that the application seeks permission to operate an RV Park." Resp't's Br. 13. The underlying fact presented in conjunction with this argument is that "the application is for an RV park. . ." R. 222.

The Applicant does not have the authority to determine which ordinance applies. Which ordinance applies depends on the circumstances being presented by the application. Although it is true that the Board delegates responsibilities to the planning director (BCRC 12-331), this delegation does not relieve the Board of its statutory duty. What circumstances did the planning director find existed by which he or she determined BCRC 12-333, and not BCRC 12-332(9), applied? The Board did not recite or adopt any facts upon which the planning director relied. It only recognized and affirmed the planning director's determination.

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R. at 222. The planning director's determination is, by definition, conclusory. The Board's

adoption of that determination is also conclusory.

Under Jasso, the Board is required to "plainly state the resolution of factual disputes, identify the evidence supporting that factual determination, and explain the basis for legal conclusions, including identification of the pertinent laws and/or regulations upon which the legal conclusions rest." 151 Idaho at 794. Petitioners raised issues of fact, to wit: the project is to provide "affordable housing;" and "low income housing." R. at 5-6. Why do these uses fit under a commercial statute rather than the residential statute? The Board failed to resolve these issues of fact with its own findings of fact. It is not the responsibility of the reviewing court to "scour the record" for evidence which supports the Board's position.

The Board also neglected to provide a reasoned statement. This case is similar to North West Neighborhood Association which held: "To put it simply, we cannot evaluate the process by which the Council reached its decision or the soundness of its legal reasoning because the reason for decision failed to satisfy the requirements of section 67-6535(2)." 172 Idaho at 616.

This court finds that the lack of sufficient findings prejudices the Petitioners' due process rights to judicial review. Among the "important functions" of meaningful administrative findings is facilitating judicial review and helping parties plan their cases. The Board has not given this Court sufficient findings or reasoning to review. Therefore, this court vacates the Board's approval of the CUP and remands the matter back for further agency proceedings.

Because the Board failed to establish through findings of fact or a reasoned statement which ordinance is applicable, this Court will not decide whether the Board's analysis of fire suppression under BCRC 12-333(8) was sufficient.

As a result of the Court's second ruling, Staff allowed the Applicant to file a revised application that removed references of the RVs being used as housing. Staff went to great lengths in its Staff Report and at the Zoning Commission Hearing, to demonstrate that the RV park would not be used as housing, and therefore would qualify as a commercial use, thereby allowing 20 RVs on the parcel rather than being limited to 2.

In an attempt to ensure conformity to 12-497, commercial use (which allows more than 2 RVs per parcel), rather than 12-496 (which limits each parcel to 2), Staff conditioned the proposal to limit operations to the months of March through November, and required that the Applicant must maintain a log book recording the names and other information of users, and dates of occupancy, to ensure no one stayed for more than 30 days in a year's time.

Quoting from the Zoning Commission's April 9, 2025 Decision Letter:

Finding of Fact 13. *"In the most recent round of litigation addressing this file, Bonner County attempted to distinguish between RV Dwelling Units used for residential purposes (BCRC 12- 332) and permanent RVs contained within an RV Park (BCRC 12-497). However, the Court rejected that argument. As such, we must conclude that the*

code as currently drafted does not allow for that distinction. As a consequence, the only way to harmonize the two sections is to impose a limitation-of-stay requirement on new RV Parks such that they cannot be utilized for long-term residential use.”

Staff’s statement that Code does not allow for distinction between residential and commercial uses makes no sense. There is no provision in the Code for “permanent RVs contained within an RV Park.” (emphasis added.)

From Finding of Fact 16: *“Idaho Code 63-1803(4) and 67-6539 define short-term occupancy as 30 days or less and affirm the authority of local governments to regulate short-term lodging. This supports the imposition of a 30-day maximum occupancy per calendar year per guest or RV unit to preserve the commercial nature of the use.” IC 63-1803(4), not 67-6539, defines a short-term rental as 30 days or less.*

Note that IC 67-6539 says, in part: **“A short-term rental or vacation rental shall be classified as a residential land use for zoning purposes subject to all zoning requirements applicable thereto.”** (emphasis added.)

Referencing 1667-6539 in Staff’s Finding of Fact leads straight back to the second Court ruling that the Board must choose an applicable use per Code – either residential, or commercial. Incorporating this Idaho Statute creates a circular reference and once again muddies the waters.

Finding of Fact 17. *“A guest logbook is required to be maintained by the applicant. This log must include guest names, RV license plate numbers, assigned spaces, and dates of occupancy, and must be made available to the Planning Department upon request. This record provides an effective enforcement mechanism for verifying compliance with the 30-day limitation and supports the County’s responsibility to ensure proper zoning administration.”*

To anyone unfamiliar with the history of this case and the Code amendment that allowed RV parks to be placed in rural zones, these requirements might seem like reasonable methods to prevent residential use. But Staff have acknowledged in public meetings and hearings, that they do not have the ability to enforce limitations on length of stay; and at the first Zoning Commission hearing, it was premised by Staff and the Applicant that RV Parks are a good way to provide affordable housing. This admission of RV Park limitation on length of stays not being enforceable is in the minutes of the 12/18/2019 hearing, in which the code was amended to allow RV Parks in rural zones, as demonstrated from these excerpts. While the below excerpts reference the residential use of RVs for up to 120 days before requiring a BLP, the same caveat would logically apply to the 30-day limitation on stays in a commercial RV park.

The other difficulty with the existing code is the allowance of an RV for 120 days in any consecutive 12 month period. This ordinance appears to require the County to prove the RV was in place and in use for 120 days. This would likely require a daily visit to the property to determine. Additionally, this limits the property owner to use the property the way he or she may intend.

12-332: RESIDENTIAL USE TABLE:

Zone	F	A/F	R	S	C	I	RSC	REC	AV
Recreational vehicles (11)	P	P	P	P	P		P	P	P

(11) Occupancy of a recreational vehicle on a lot or parcel shall not exceed 120 days in any consecutive 12 month period, not including recreational vehicle parks. Recreational vehicle use occupancy is limited to 24 permanent Accessory RV parking spaces such vehicle per lot or parcel. Standards in B.C.R.C. 12-496 shall apply.

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Enforcing the log book requirement would require weekly or even daily visits to the RV park. At the Zoning Commission hearing, one Commissioner asked Staff what the consequences would be should the log book be found not to be in compliance – to which the Director replied that the Permit would be revoked. No reasonable person believes that to actually be the case, and that proviso was not included in the Decision Letter.

Gabell's remark that the permit "would be revoked" is false. According to 12-226 D: "The planning director may present to the Zoning Commission a recommendation to revoke a conditional use permit on a finding of substantial evidence that the permit is not in compliance with the terms, conditions or restrictions of the conditional use permit. Prior to revoking a permit, the Zoning Commission shall conduct a public hearing, in accord with the noticing and procedures set forth in this chapter, to consider the permit revocation, and may revoke the permit or impose additional conditions or restrictions to bring the permit into compliance, on a finding that there is substantial evidence that the terms of the permit approval have been violated."

There is simply no way to enforce the 30-day limit on cumulative length of stay; it is a feel-good measure at best. How would this even be tracked? After the first 30 days, a planner would have to regularly visit the site and inspect the log book. What if staff finds that the log book is blank, or illegible, or that there are pages missing? Or the caretaker is not present so the book is inaccessible? Does the Director then institute proceedings to request the Zoning Commission revoke the CUP? And if it is revoked, do all of the RVs have to immediately leave? Is the county now planning to apply this policy to all RV Parks? The whole premise is preposterous.

Even IF – the 30-day limit could be enforced, it would still not mitigate the impact on surrounding properties. If the park is occupied by 20 RVs, the same level of impact will exist in the form of lights, noise, odors, fumes, traffic, and risk of structure and wildland

fire, whether said RVs occupies the same spot for 2 days or 10 days or 55 days. The impacts, which are considerable, CANNOT be mitigated by limiting length of stay. In fact, they cannot be mitigated with any conditions, which is why this application should not have been approved.

Appeal Item 4

Staff performed no analysis of the information provided by the Applicant, a significant portion of which was shown to be false, misleading or inaccurate, by members of the public in their submitted written comments and at the Zoning Commission hearing. Further, Staff indicated that 22 comments were received but failed to indicate anything as to how many were in opposition to the file, or anything regarding the information contained in those comments. In fact, all comments were opposed, and there was a copious amount of very detailed information that clearly showed why this file should have been denied.

Staff Report: *“Several public comments were received for the scheduled hearing. Several public comments were received through the various previous hearings in 2022 and 2023 on this file and are included in the record.”*

From the Staff Report regarding sewage disposal:

Staff, Analysis of Adequate Sewage Disposal:

“Regarding wastewater, the application indicates sewage disposal will be provided via a drainfield. A speculative site evaluation was conducted and submitted to the Panhandle Health District (PHD) for the proposed RV Park. (See PHD Site Evaluation.) Additionally, the applicant submitted an upgrade application and payment for review of the wastewater system. (See PHD Upgrade Application and PHD Receipt.) These materials confirm the applicant is actively coordinating with PHD to ensure compliance.

Per PHD’s comment, the applicant’s applications for septic facilities have expired; the applicant has not contacted PHD to provide additional information or submit new applications regarding this project. PHD addressed concerns of the feasibility of a Large Soils Absorption System (LSAS) on the property, and the full scope of the project, as presented to PHD by the applicant.

In the event that the total projected flow exceeds 2,500 gallons per day, the wastewater system may be subject to review by DEQ as a public wastewater system, depending on PHD’s determination. In that case, DEQ will require a PER, demonstration of technical, financial, and managerial capacity, engineered plans, and a nutrient-pathogen evaluation. A condition of approval has been included to address potential review and approval by DEQ and/or PHD as required by BCRC 12-333(8).

See Conditions of Approval”

Staff's "analysis" falsely paints a picture that PHD and the Applicant are working closely together in furtherance of a solution to sewage disposal for this project.

"These materials confirm the applicant is actively coordinating with PHD to ensure compliance."

"In the event that the total projected flow exceeds 2,500 gallons per day, the wastewater system may be subject to review by DEQ..."

In contrast, below is the comment submitted by PHD, which clearly indicates there are significant unresolved issues with this proposal, and that the Applicant is not working with the agency to resolve. This comment is included in the same Staff Report as Staff's comment above. Staff's statements are absolute falsehoods.

Refer to the underlined (underlines added) text below as relates to the excerpted sections from Staff's comments (above and underlined)

Comment from Panhandle Health:

Panhandle Health District

"This letter is intended as Panhandle Health District (PHD) comments pertaining to the proposed CUP file listed above. PHD reviewed the proposed application, which indicates an intention to create an RV Park with 20 spots and a laundry facility for use by the residents.

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- *PHD has not granted any septic permits for a proposed RV Park on this property. PHD does not have any current septic applications for the parcel.*
- *PHD previously conveyed to the landowner that this parcel is not suitable for an RV park with 20 spots because that would generate at least 2,500gpd in wastewater, which would require a Large Soil Absorption System (LSAS). The site does not have adequate space to meet LSAS standards. Any proposal must remain below 2,500gpd in wastewater discharges.*
- *PHD received two (2) septic permit applications (21-09-151024 & 22-09-04079) for 9 RV spots each (total of 18 spots). However, PHD never issued any septic permits because we did not receive a clear Letter of Intended Use describing the details of the project, nor did we receive an adequate Plot Plan and all items necessary for PHD to determine the proposed nature & quantity of wastewater discharges proposed – as is required per IDAPA 58.01.03.005.04. PHD emailed the landowner on July 6, 2023, but never heard back, nor received necessary items. The applications are now expired.*
- *PHD will need current applications and all requisite information to determine the scope of the project, whether the RV's will be intended as dwellings or short-term recreational use and the proposed layouts and setbacks between all water & sewage system components proposed.*

- *The landowner will need to consult the Idaho Dept of Environmental Quality (DEQ) regarding the proposed water system – as it may need to meet Public Water System requirements.*

In summary, PHD does not have adequate information to verify what type of project may be suitable for this property. Per IDAPA 58.01.03.001.04, every owner of real property is jointly and individually responsible for storing, treating, and disposing of blackwaste and wastewater generated on that property; connecting all plumbing fixtures on that property that discharge wastewaters to an approved wastewater system or facility; and obtaining necessary permits and approvals for installation of individual or subsurface blackwaste and wastewater disposal systems.

Therefore, PHD recommends that any proposals for this property be required to obtain all necessary permits and approvals first, to ensure the sanitary services will be adequate to serve the proposed uses on the land.

If there are any questions about this information, please feel free to contact our office 208.265.6384 or email me at kkolberg@phd1.idaho.gov.

Regards, Kathryn Kolberg, REHS / Environmental Health Program Manager”

Staff Analysis of BCRC 12-335 and 12-818 Public Utility Facility:

*“...The applicant has not provided information on the size of the septic system that would be installed. However, the applicant has not requested this use in this application. Prior to the issuance of this Conditional Use Permit, the applicant shall receive another Conditional Use Permit approval for a Public Community Facility for a water system, and if found to meet the requirements for a public wastewater system by DEQ or Panhandle Health District, a sewage disposal system. **See Conditions of Approval**”*

See the remarks above. PHD clearly stated that this project is not suitable for 20 RVs because it would require a LSAS and the site **does not have space for a LSAS**.

During the hearing, at **22:46**, Staff discusses Analysis of sewage disposal. Opens by saying the Applicant has submitted an upgrade application and payment for review of the wastewater system. These are entered in the file as well.” While the Applicant may have submitted the referenced documents, Staff was well aware that they carried no weight whatsoever according to PHD, making Staff’s statement blatantly misleading at best. Staff goes on to say that “these materials indicate that the Applicant is actively working with PHD to ensure compliance.”

This statement goes beyond misleading to an outright falsehood, unless we are not to believe comments from PHD. Staff then goes on to quote from PHD’s comment, which expressly contradicts what Staff had stated as fact just seconds before. It is hard to comprehend whether Staff was confused as to what was factual, or attempting to confuse the Commissioners with conflicting statements. (emphasis added)

The confusion and contradictions continue as quoted below.

At **23:40**, Marble asks Gabell if he has communicated directly with PHD. Gabell answers “No, not regarding this file.”

Marble: “They seem a little bit confused. On the one hand their public comment which is dated March 27th is a little dismissive and doesn’t go into a lot of detail, it just says this needs an LSAS and there’s not enough space for it. On the other hand I see where they’re working very closely with the landowner, and the math for me works out for how much space is needed and all that, for an LSAS on B2 soil. Is it your understanding there is a working relationship between the Applicant and PHD?”

Note that Marble offers no explanation or evidence to show what calculations he claims to have performed to arrive at his conclusion that “the math for me works out.”

Gabell answers: “I have what’s in the file that you guys have reviewed. It seems to me that the Applicant made some progress, then through the District Court, my assumption - this is a good question for the Applicant – is that rather than move forward and construct and continue permitting, wanted to what the District Court would do. Why dump money into a septic system that would later become invalidated by a District Court decision or by the County.”

This is another indication that this Application should not have been accepted by Staff, and that Staff did not perform analysis, but instead ignored PHD’s advisory and proceeded to put the proposal in front of the Zoning Commission.

Staff, Analysis of Adequate Water Supplies Fire Suppression:

Quoting from the **Staff Report**:

“...In a letter received on March 25, 2025, Spirit Lake Fire District stated, ‘*Spirit Lake Fire Protection District opposes any approval(s) that allows the applicant to proceed without the appropriate and required amount of fire flow, spacing, setbacks, and fire access.*’”

Staff goes on to say: “The Spirit Lake Fire District was sent notice of this public hearing and did not submit a comment. Additionally, staff called and left a voicemail with the fire chief but have not received a response as of the date of this staff report.”

The Staff Report is dated April 3rd and the Fire District letter was received March 25th. While Staff did correct this misstatement during the hearing, it should have been amended before the Staff Report went out.

Staff discusses Spirit Lake Fire's calculations for water for fire suppression from 2023: *"In a letter received on October 6, 2023, the fire district calculated the necessary fire flow using three recognized resources: the Insurance Services Office (ISO), International Fire Code Appendix B, and the National Fire Protection Association (NFPA). The district determined that 250 gpm for one hour is sufficient and recommended an on-site water supply of 15,000 gallons, with a 250 gpm fire pump and hydrant connection."*

Continuing: *"This standard was challenged during the prior judicial review. The BOCC's decision letter dated November 6, 2023, included a specific finding addressing this standard (Finding of Fact #5), which the District Court did not reverse in its ruling dated November 15, 2024, in Case No. CV09-24-0240. That finding is copied below and remains part of the record."*

"5. The proposal meets the required standards of BCRC 12-333, notes (8). The proposal is within the Spirit Lake Fire District. The International Fire Code and State Fire Code do not have statutes that address fires in RV Parks. The Insurance Service Office and National Fire Protection Association only contain recommendations for RV Parks fires.

Adequate fire protection is the availability of resources at the time of a fire. The ability to call other fire districts for back up fire suppression. The fire district maintains water tenders which are capable of delivering water to sites to achieve the recommended 250 gpm. All residents in the area of service of the fire district are provided fire protection equally"

"...Fire protection is adequate based on the absence of state statutes for RV Parks, the capabilities of the local fire districts, and the limitations imposed by non-maintained on site water storage."

The above quotes from the Staff Report demonstrate an extreme misrepresentation of the Court's decision. Staff quoted directly from the 2023 Board decision (Finding of Fact 5) but chose to paraphrase the Court's decision, completely out of context, making it appear as though the appellants were denied on the basis of their claims. In reality, the Court chose not to rule on the matter of fire suppression because the Board erred as shown in the following quote from the Court's Decision:

"This court finds that the lack of sufficient findings prejudices the Petitioners' due process rights to judicial review. Among the 'important functions' of meaningful administrative findings is facilitating judicial review and helping parties plan their cases. The Board has not given this Court sufficient findings or reasoning to review. Therefore, this court vacates the Board's approval of the CUP and remands the matter back for further agency proceedings.

Because the Board failed to establish through findings of fact or a reasoned statement which ordinance is applicable, this Court will not decide whether the Board's analysis of fire suppression under BCRC 12-333(8) was sufficient.” (emphasis added)

Anyone reading the Staff Report without also reading the Court's Decision would be led to believe, falsely, that the court upheld the Board's erred decision. This shows blatant bias from Staff toward the Applicant.

This was pointed out in detail during public comment at the hearing by Dave Bowman at 1:35:10. When offered the opportunity to rebut by Marble, Gabell declined.

Staff Report

BCRC 12-4.2, Performance Standards for All Uses

Staff: The application was reviewed against these standards and no special requests were made.

BCRC 12-4.3, Parking Standards: Table 4-3 minimum off street parking requirements: 1.25 spaces/unit.

Staff: “To comply with the ordinance, the applicant must provide off-street parking spaces. The proposed site plan allocates 1,000 square feet of off-street parking per RV space. According to the standard, 1.25 parking spaces per unit are required, with each parking space measuring 250 square feet. Based on this calculation, the applicant has designated 80 parking spaces, equating to four spaces per unit. **See Conditions of Approval**”

Note that Condition A-8 requires 2,700 sq. ft. per RV space.

Code actually reads that each parking space must be 200 sq. ft. minimum, and each RV space requires 1.25 off-street parking spaces, or 250 sq. ft. per RV space.

However; Staff goes on to say that the Applicant has provided 1,000 sq. ft. for off-street parking, or 4 spaces per RV space. If that is the case, where will the RVs be parked? The Site Plan shows them to be located on the same 1,000 sq. ft.

This is yet another example of Staff misinterpreting Code and misrepresenting the Applicant's information, in a manner that makes the Applicant appear to have met or exceeded the minimum, when in reality the Applicant has failed to meet the minimum. Excerpts from Code are below.

From Code:

12-431: PARKING STANDARDS:

A. *Requirements: Parking spaces required shall be exclusive of drives and access lanes and each space will be provided with adequate ingress and egress.*

B. *Size Of Parking Spaces: Parking spaces shall be no less than two hundred (200) square feet in area.*

Also, note that Condition A-8 requires 2,700 sq. ft. per RV space, apparently attempting to match the Applicant's Site Plan.

Appeal Item 5

The Conditional Use Permit was approved in error because Staff's analysis of the Project against the Comprehensive Plan was deficient.

Property Rights

Comp Plan Policies:

3. *The property rights of the applicant, adjoining and nearby landowners and future generations should be considered, as well as the short-term and long-term consequences of decisions.*

Staff: "The application was routed to neighbors 300' from the property line, informing neighbors of the proposed conditional use permit. As of the date of this staff report, Bonner County has received public comments and they are included in the record. This proposal has been reviewed for compliance with Bonner County Revised Code and findings of fact will be adopted with the decision of this project. **This proposal does not appear to be in conflict with the policies of this component.**" (emphasis added)

Staff provided no evidence of consideration of the rights of nearby landowners as called for in the Code. Several community members expressed concerns that THEIR rights would be violated if this proposal is approved, most notably the significant risk of fire and decreased property value. Staff's entire analysis consists of saying the "public comments were received and are included in the record." The amorphous phrase "does not appear to be" is an end run around the Code requirement to show how the proposal is not in conflict with Comprehensive Plan Policies.

Economic Development

Comp Plan Policies:

1. Small scale cottage businesses and home occupations should be allowed in all areas of the county. Reasonable conditions on such uses should be set to minimize adverse impacts to the neighborhood based on factors including, but not limited to, hours of operation and traffic volume generated by the business.

3. Develop standards for commercial and industrial development that are appropriate for the surrounding community, including: appropriate site sizes, use types, buffering and design standards that encourage both attractive and efficient function, while protecting the environment.

Staff: “The project supports rural economic development by providing seasonal lodging that aligns with tourism and recreation activities in the county. The proposed Conditional Use Permit **does not appear to conflict with policies of this component.**” (emphasis added)

The nearest recreational activities are a considerable distance from this site and no evidence was provided by Staff or the Applicant that the RV park will be used in connection with recreational activities. Staff did no analysis but simply made a statement to indicate the proposal is not in conflict with the **Economic Development Component**. Comments from the public, the Sheriff and Spirit Lake Fire Protection District all contained considerable evidence that impacts resulting from approval of this project cannot be minimized with conditions. None of this evidence was given consideration by Staff or by the Zoning Commission, in fact the Commissioners made jokes about it.

Further, the RV park is not a cottage business or home occupation. It is a use that will create overwhelming adverse impacts to surrounding neighbors.

The amorphous phrase “does not appear to be” is an end run around the Code requirement to show how the proposal is not in conflict with Comprehensive Plan Policies.

Land Use

Comp Plan Policies:

2. Commercial and industrial uses may be conditionally permitted in areas not identified for such uses in the Comprehensive Plan if a critical review of the proposed use determines that with appropriate conditions the use will not adversely impact the surrounding area.

Staff: “**The proposed Conditional Use Permit does not appear to conflict with the policies of this component.** The Rural zone does allow for some commercial and industrial uses, either unconditionally or conditionally permitted, per BCRC 12-3.3. The proposed use is considered a “commercial use” and is conditionally permitted in the Rural zone.” (emphasis added)

The amorphous phrase “does not appear to be” again, is an end run around the Code requirement to show how the proposal is not in conflict with Comprehensive Plan Policies. Staff did not perform a critical review of whether the proposed use would adversely affect the surrounding area. Considerable evidence of adverse impacts was

presented by the Sheriff, the Fire District, and several members of the public. None of this evidence was taken into account by Staff. There was no analysis.

Hazardous Areas

Comp Plan Policies:

4. The county's wildland fire, urban/wildland interface policies and plans should be integrated into development standards.

Staff: "... Furthermore, the property is provided with emergency services. The Spirit Lake Fire District, in their comment, addressed concerns with the RV Park and the urban/wildland interface. The Fire District has indicated concerns with wildfires and potential damage to neighboring properties, without the proper precautions. Bonner County Emergency has adopted a plan to mitigate wildfires, with collaboration from fire districts, government entities, and public input. Condition B-3 has been proposed to address the concerns brought forth by the Spirit Lake Fire District. **See Spirit Lake Fire District's Comment for Full Details and Conditions of Approval.**"

Stating that the site is provided with emergency services is not analysis. Stating that Bonner County has adopted a plan to mitigate wildfires does not show that any precautions have been taken or even suggested with respect to this project, or that any analysis was by done of fire risks by Staff.

During the hearing, at **1:57:42** Gary Fowler – Spirit Lake Fire District Commissioner, brings up the recent "sizable structure fire" on Al's Welding Road. Discusses the reality of tenders as called out by the previous board as water supply, and how the Timberlake Fire tender took 1 hour to arrive on scene at the referenced structure fire. Spirit Lake's tender was not there because their crew was first on scene, so no staff was available to bring a tender. Tenders from Athol or Rathdrum would be at least 40 minutes or more to arrive.

At **2:01:53** Fowler talks about staffing of 3 firefighters, and if 1 is on vacation, then the response will be 2. If they are on another call, the response would come from Rathdrum with extended response time.

None of Fowler's comments were taken into consideration during deliberations, nor had Staff reached out to the District while preparing the Staff Report, beyond the standard request for agency comment, even though throughout the history of this proposal, risk of fire has been a central issue.

Public Services, Facilities & Utilities

Comp Plan Policies:

1. Encourage high-density development to take place within the boundaries of existing sewer and water areas.

Staff: "Any future development on this parcel should not impact existing services, which currently include a well and septic system. Per DEQ's comment, the water system will be require [SIC] to be a public water system, regulated by DEQ and/or Panhandle Health District; it is still to be determined whether the sewage disposal will be required to have similar oversight. The applicant shall coordinate with DEQ, PHD, and IDWR to ensure compliance with public water and wastewater regulations.

See Conditions of Approval.

... These services, along with existing utilities and emergency response access, contribute to the continued functionality of public infrastructure. Comments on this application were provided by the Spirit Lake Fire District and the Bonner County Sheriff. **See Comments for Full Details."**

The statement by Staff that future development should not impact the existing well and septic system grossly conflict with comments submitted by PHD, which said that septic is inadequate, that the development would require a LSAS, and that there is not room on the sight for LSAS (see excerpts in Appeal Item 4).

Staff does indicate that comments were provided by the Sheriff and by Spirit Lake Fire, but neglects to point out that both agencies expressed grave concerns about their ability to provide adequate service.

The Policy calls for encouraging high density development to take place within the boundaries of existing sewer and water areas. This proposed use is a legal-nonconforming lot of 4.17 acres in the R-5 Zone, which allows residential use up to one home, one ADU, and 2 RVs as dwelling units. The proposed RV park is 500% of the underlying zone density, which most certainly puts it in conflict with this Comp Plan Component.

Transportation

Comp Plan Policies:

2. Development in areas that are not served by county standard roads or where transportation is inadequate should be discouraged.

While this proposed use is served by county roads, a very serious impact to roads was identified in a public comment from Paul and Nancy Anderson who live near the project site. Excerpt is below.

"Impact to Roads & Infrastructure

The proposed location is accessed by **county-maintained dirt roads** that already

suffer from potholes and washboarding. These roads are subject to **seasonal weight restrictions** in the spring on average 12 - 13 weeks due to freeze-thaw cycles that weaken their integrity. The increase in large, heavy RVs will significantly accelerate road deterioration, requiring more frequent county maintenance at taxpayer expense. To illustrate the **potential issue with road weight restrictions**, our RV—a 38-foot Class A with a gross vehicle weight rating of 32,400 lbs —**would not meet** the weight restrictions set for the area during the seasonal weight restriction. According to the Bonner County Weight Limit Reference Chart, a vehicle with 6, 275/80R 22.5 tires (10.83 inches wide) **would exceed the allowable weight limit by nearly double**. This makes the point clear and highlights the specific concern with road restrictions for larger RVs. Furthermore, RV travelers unfamiliar with these weight restrictions may **ignore signs and proceed with existing reservations**, unknowingly causing damage. There is also a **sharp, off-camber turn from Highway 41 onto Clagstone Road**, which presents a high potential for rigs bottoming out, which may result in damage to RVs and **further contributing to road damage** that will require costly repairs.”

The Andersons spent a great deal of time and effort to perform this thorough analysis, which was not mentioned in the Staff Report or in the hearing, and even though it is valuable information critical to this proposal, it was not given any consideration by Staff or the Zoning Commission.

Staff’s entire analysis of this Component was, again, to say: “The proposal does not appear to be in conflict with the policies of this component.” The same amorphous end-run around Code repeated in remarks for other Components.

Recreation

Comp Plan Policies:

1. Bonner County is encouraged to develop a waterways and park access program to preserve and develop access to public recreational lands and waterways. The program should include retaining access parcels that may be acquired from tax sales or private donations.
2. A plan for a system of green belts and pathways (bike and pedestrian) should be considered as areas develop, so that a connected system can be developed and preserved.
3. Under no circumstances, will Bonner County require access easements on private property as a condition of development. This policy does not preclude providing voluntary incentives to developers in return for access easements.

Staff: “Current recreational opportunities for the general public that are available in Bonner County are anticipated remain the same with this conditional use permit. The availability of more lodging or camping options could potentially expand recreational activities.”

The policies in this Component do not directly apply to the proposed use, as it has no relation or affiliation with, nor is it located near, any recreational use facility or activity. Nevertheless, Staff was compelled for some reason to say that this RV park could potentially increase recreational opportunities. There is absolutely no evidence to support this conclusory statement.

Housing

Comp Plan Policies:

1. Encourage development of a variety of housing options including mobile home parks, tiny home communities and recreational vehicle parks located in areas that are compatible with their density.

Staff: “While recreational vehicle parks are referenced as a housing option under BCRC 12-496, this proposal is not intended to serve as long-term or workforce housing and has removed all references to such use. As a seasonal commercial use, it does not conflict with the goals of this component.”

Policy 1 Calls for RV parks to be located in areas that are compatible with their density. As stated elsewhere, if approved, this proposal will result in a density of 500% of the underlying R-5 density, and on a legal nonconforming 4.17-acre lot. Staff also references Component Goals when Code calls for analysis of Policies. “Seasonal commercial use” is not addressed anywhere in the Policies of the Housing Component, which makes the statement of “no conflict” conclusory.

Community Design

Comp Plan Policies:

1. To promote and preserve the natural features and rural atmosphere of the community, the county should enact development standards that address development within scenic byways and design standards that account for waterfront setbacks, wildlife corridors, commercial and industrial landscaping, requirements for reduced lighting, cluster development, rural rather than urban setback standards and other design objectives aimed at preserving the rural, natural character of the community.

Staff: “This proposal does not appear to conflict with the policies of this component. Furthermore, lighting plans and landscaping plans have been submitted to the Planning Department in the Building Location Permit; these standards were reviewed and approved. However, the approval of the Building Location Permit has been suspended by the Planning Department, pending the decision made on this proposal.”

Policy 1 calls for design objectives that preserve the rural, natural character of the community. 500% of the underlying density in a rural area does not in any way preserve the rural character. Again, Staff uses the meaningless phrase, “does not appear to conflict with the policies of this component.” Again, staff makes a statement, provides exactly zero analysis of that statement and then concludes that this component is satisfied.

How does a 500% increase in density preserve the rural character?

Agriculture

Comp Plan Policies:

3. Land use regulations should support home occupations, cottage industries and farm-based family businesses on agricultural parcels. Examples include farm stands and other agri-business pursuits.

Staff: “This proposal does not appear to conflict with the policies of this component, as farming and agricultural pursuits remain viable and are encouraged in the Rural zoning districts.”

Staff’s statement makes no sense in regards to this proposal and seems only to serve the purpose of favoring the Applicant. The proposed use is not a cottage industry or a farm-based or home-based business, and has absolutely no relation to agriculture, yet Staff again declares “this proposal does not appear to conflict with the policies of this component,” as with the other components where this phrase was repeated, avoiding the unequivocal statement required by Code for approval.

SUMMARY

The preceding pages demonstrate that the Appellants conducted exhaustive review and analysis of the Application, the Staff Report, the hearing and the Decision Letter, to arrive at the following Findings of Fact and Conclusions of Law.

Findings of Fact

- 1) The Zoning Commission hearing, which lasted well over 4 hours, failed to show any analysis of the CUP as required by 12-223, even though considerable evidence of impacts was put forth by public commenters and public agencies.
- 2) Staff accepted the Application without requiring the Applicant to address 12-222 H 1, H 2, and H 3.
- 3) The Application is incomplete.

- 4) The Application contains inaccurate, misleading and false information.
- 5) The Staff Report exhibited extreme bias toward the Applicant.
- 6) The Staff Report contains inaccurate, misleading, and false statements.
- 7) In the Staff Report and at the hearing, Staff gave no indication of the nature of public comments received, when 100% were opposed to the CUP.
- 8) The Zoning Commission exhibited extreme bias toward the Applicant and against the public and agency commenters.
- 9) The impacts of an RV park in a Rural Residential Zone, which evidence has shown to be considerable, cannot be mitigated by conditioning the use (see list following Conclusions of Law).
- 10) Regardless of CUP conditions as set forth in the staff report, the proposed use as applied for cannot comply with 12-497.

Conclusions of Law

Conclusion 1: The proposed conditional use permit conflicts with the Policies of the Bonner County Comprehensive Plan.

Conclusion 2: This proposal was not properly reviewed or analyzed by Staff or the Zoning Commission for compliance with the criteria and standards set forth at BCRC Title 12, Chapter 2, Subchapter 2.2 Conditional Use Permits; Chapter 3, Subchapter 3.3.; Chapter 4 Development Standards; and Subchapter 4.9 Standards for Specific Uses. The proposal was reviewed and analyzed by the Appellants, and found not to be in compliance with those same criteria and standards as evidence shows in this appeal letter and the attachments.

Conclusion 3: The proposed use will create hazards and will be dangerous to persons on or adjacent to the property as is evidenced in this appeal letter.

The following items comprise a list of impacts that RV parks present in Rural areas, although it does not contain all possible impacts. The application in question for this appeal checks every item on this list.

- There is no way to stop RV parks from being permanent housing developments and the underlying density can therefore easily be quadrupled or more.
- RVs are usually packed close together and present a fire hazard in rural areas where wildfire is a substantial risk.
- The fumes, noise and lights associated with RVs are not a good match with rural living.
- Water usage cannot be controlled and RV parks are likely to use more water than the underlying allowed density would. Since we have no idea how much ground water is available within any given rural area, there is no way to ensure "adequate water" for drinking, fire suppression and sewage as is required by footnote (8) in BCRC 12-333. There is also no way to know if the RV water usage or septic systems would affect nearby wells adversely.
- Many rural county and private roads are not appropriate for RV traffic and this is especially so in the winter months.
- RVs used for housing can be impactful to our schools due to the increased density allowed in RV parks.
- RV Parks that have no recreation near them are more likely to be used as housing developments, which will ruin the character of the rural areas.
- RV dump sites are highly toxic and it is unknown if they would leach in to the water systems within areas.
- RV Parks may have laundry facilities, which again can be highly impactful to nearby the groundwater.
- RV parks that are used as residential will eventually have the same things as multifamily housing complexes or trailer parks do such as gardens (more water usage), dog areas, playgrounds, additional vehicles, lighting affecting our dark skies and also generator noise (imagine several RV generators next to your home).
- RVs that are used as housing in the winter (including early spring and late fall) may not be safe for the residents since it may be difficult to keep them warm and residents may be tempted to use unsafe heaters.
- The extra density allowed in RVs parks would certainly impact our public services such as fire, EMS, law enforcement and solid waste.
- Snow is a major issue within the RV parks since they are so close together and there is likely to be an issue with snow removal.

In Conclusion, the Affected Parties request that this Appeal of the Zoning Commission's decision be upheld and that CUP0030-21 be denied.

Respectfully,



Dave Bowman
Chairman
Keep Bonner County Rural

Attachments:

1st Memorandum Decision and Order on Petition for Review	
2nd Memorandum Decision and Order on Petition for Review	
06/20/2024 Judicial Review Petitioners' Opening Brief	
Allen Public Comment	Planning Department Public Hearing
Anderson Public Comment	Minutes RV Park Code Amendment
Banks-Williams Public Comment	Zoning Commission Hearing Video Time
Bendenelli J Public Comment	Stamps
Bendenelli S Public Comment	Site Plan (revised)
Bowlin Public Comment	Marsha Stephens Scaled Drawing
Bowman Public Comment	
Emmett Public Comment	
Honnold Public Comment	
Lamb Public Comment	
LaPierre Public Comment	
Miller Public Comment	
Plante Public Comment	
Powers Public Comment	
Rawlsky Public Comment	
Sparling Public Comment	
Stevens Public Comment	
Taber Public Comment	
Toews Public Comment	
Wheeler Public Comment	
Agency Comment - Bonner County	
Sheriff 3.26.25	
Agency Comment - Spirit Lake FD	
3.26.25	
Agency Comment – PHD	
Agency Comment - Idaho DEQ 3.6.25	



Janna Brown <janna.brown@bonnercountyid.gov>

Appeal - CUP0030-21 Attachments -Group 1

1 message

'Dave Bowman' via Mail-Planning <planning@bonnercountyid.gov>

Mon, May 5, 2025 at 8:04 AM

Reply-To: Dave Bowman <dcbow@yahoo.com>




To: Brian Domke <brian.domke@bonnercountyid.gov>, Commissioner Asia Williams <asia.williams@bonnercountyid.gov>, Ron Korn <ron.korn@bonnercountyid.gov>

Cc: Bonner County Planning <planning@bonnercountyid.gov>, Jake Gabell <jake.gabell@bonnercountyid.gov>

Please see Group 1 of attachments to accompany the Appeal Letter.

Thank you.

Dave Bowman
KBCR
(208) 255-0698

23 attachments **2nd Memorandum Decision and Order on Petition for Review.pdf**
1489K **2024-06-20 Petitioners' Opening Brief.pdf**
233K **Agency Comment - Bonner County Sheriff 3.26.25.pdf**
522K **Agency Comment - Idaho DEQ 3.6.25.pdf**
393K **Agency Comment - PHD 3.27.25.pdf**
1856K **Agency Comment - Spirit Lake FD 3.26.25.pdf**
320K **Agency Comment - Spirit Lake Fire District 3.26.25.pdf**
327K **1st Memorandum Decision and Order on Petition for Review.pdf**
3838K **Marsha Stephens Scaled Drawing Apr 3, 2025.pdf**
914K **Allen Public Comment.pdf**
101K **Anderson Public Comment.pdf**
388K **Banks-Williams Public Comment.pdf**
85K **Bendenelli J Public Comment.pdf**
159K **Bendenelli S Public Comment.pdf**
85K



Bowlin Public Comment.pdf
261K



Bowman Public Comment.pdf
310K



Emmett Public Comment.pdf
83K



Miller Public Comment.pdf
84K



Honnold Public Comment.pdf
271K



Lamb Public Comment.pdf
87K



LaPierre Public Comment.pdf
291K



Marsha Stephens Scaled Drawing Apr 3, 2025.pdf
914K



Planning Department Public Hearing Minutes RV Park Code Amendment.pdf
5018K

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF BONNER

KEEP BONNER COUNTY RURAL;
PENNY KAY LAMB; JOSHUA KEITH
EMMETT; PRISCILLA EILEEN
EMMETT; DENNIS ARTHUR WALKER;
and JEANETTE WALKER,

Petitioners,

v.

BONNER COUNTY,

Respondent.

Case No. **CV09-24-0240**

**MEMORANDUM DECISION
AND ORDER ON PETITION
FOR REVIEW**

I. INTRODUCTION

Keep Bonner County Rural, Penny Kay Lamb, Joshua Keith Emmett, Priscilla Eileen Emmett, Dennis Arthur Walker, and Jeanette Walker (the Petitioners) filed a Petition for Judicial Review of the Bonner County Board of Commissioners' (the Board) decision granting a conditional use permit (CUP) to Idaho Land LLC (the Applicant) on November 6, 2023. The Board's decision followed this Court's order in case number CV09-22-1674 vacating and remanding the Board's decision granting a CUP to the Applicant on December 9, 2022.

Petitioners allege the Board's decision violated their procedural and substantive rights. The Board counters that the Board's decision was proper because the Board correctly interpreted and applied the applicable zoning code to its decision to approve the CUP and substantial evidence existed in the Record and Transcripts supporting a finding that the proposed CUP provided "adequate" fire suppression. This Court heard argument on the motion on October 30, 2024.

II. BACKGROUND

On February 2, 2022, Idaho Land LLC submitted Application No. CUP0030-21 to the Bonner County Planning Department seeking a Conditional Use Permit for an RV Park containing 20 residential Recreational Vehicles with full utility hookups. R. 1. The proposed site for the park is a 4.17-acre parcel in the rural residential 5-acre zone of Bonner County. R. 2. The application states that the use for the subject property is “year round RV living” for “RV residents.” R. 2-3, 6. The Applicant states that the project “is to provide affordable housing” and “a low income housing option for current residents who are combating rising housing prices in the area.” R. 5-6. Water is to be supplied to RV residents by an individual well. R. 5. The Applicant proposed to have fire protection for the RV residents provided by the Spirit Lake Fire Protection District. R. 6. Numerous residences are located in close proximity to the proposed RV dwelling units, including single family homes on surrounding land. R. 2, 59.

The Board held two public hearings in 2022 considering whether to approve the CUP. Transcript of May 5, 2022, hearing, *Keep Bonner Cnty. Rural v. Bonner County*, No. CV09-22-1674 (Idaho Dist. Ct. Bonner County 2023); Transcript of August 24, 2022, hearing, *Keep Bonner Cnty. Rural*, No. CV09-22-1674. At the hearings, the Board considered individual comments and agency comments addressing which statute applied to the CUP and whether the water supply was adequate. Transcript of August 24, 2022, hearing at 26-28; Transcript of May 5, 2022, hearing at 8, ll. 21-23, 11, ll.10-19, 34-38.

After the Board approved the application in a written decision on September 1, 2022, The Petitioners filed a Petition for Judicial Review of the Board’s decision on December 9, 2022, and argued that the Board’s decision was not supported by substantial evidence as required under Idaho Code § 67-5279(3)(d), the Board’s written findings of fact and conclusions of law were insufficient under Idaho Code § 67-6535(2), and their substantial rights were prejudiced by the decision. R. 103-06. Petitioners requested attorney fees under Idaho Code § 12-117 on the basis that the Board’s decision was without a reasonable basis in fact or law. Petitioners’ Opening Brief at 5-10. On August 17, 2023, this Court issued a

Memorandum Decision and Order on Petition for Review, vacating Bonner County's decision and remanding the issue back to the county for further proceedings in Bonner County case number CV09-22-1674.

The Board held a public hearing to consider the CUP in light of this Court's decision on October 30, 2023.¹ It considered 28 written public comments at the hearing. Transcript of Oct. 30, 2023, hearing at 10-11; R. at 69-178. While at least one was allegedly neutral, most of the comments "expressed concerns about impact[s] to roads, wells, sewage disposal, noise, general safety, fire and garbage" the CUP would have. R. at 70. For example, one person who lived near the project said,

As one of the many nearby homeowners, I can't stress enough how this would change the complexion of this rural area. The application itself has many questionable sightings, and with a judge vacating and remanding various parts of it, it's indescribable to me how this project could possibly move forward. Fire and Water are big issues and this simply does not fit in this area.

R. at 128. Neighbors and other interested parties also commented at the hearing. The Petitioners' attorney, Mr. Semanko, presented extensive comment to the Board. Oct. 30, 2023, hearing at 13-18. He argued that the board was required to present facts and "explain on remand why [the use] fits in 12-333 instead of 24 12-332(9)." *Id.* at 14-15. He also argued that the Board was required to provide facts showing the existence of "Adequate water supplies for fire suppression." *Id.* at 16. Public comments largely echoed Mr. Semanko's comments. *Id.* at 35-90.

Spirit Lake District Fire Chief Debbie Carpenter also appeared at the hearing. She recommended a 15,000-gallon reservoir based on insurance and international fire suppression standards. *Id.* at 24-25. However, she indicated this was not a requirement under Idaho Code and was not required for similarly situated residences. *Id.*

¹ The Board initially attempted to hold the meeting on October 26, 2023, but rescheduled for the later date. Transcript of Oct. 26, 2023, hearing at 9.

In response, the Appellant argued that he did not intend to offer permanent residences. *Id.* at 92. He also claimed his well, which produces 30 gallons-per-minute, and firefighting experience reduced the risk of fire. *Id.* at 94.

The Board deliberated about the proper statute and fire suppression requirements, finding that the residential and commercial use statutes were “not even remotely the same.” *Id.* at 107. Additionally, one member claimed that the residential statute was not applicable because they were only discussing whether they should approve the CUP under the commercial statute. *Id.* The Board also considered the fire chief’s statements and the possibility that fire responders might not even use the reservoir to determine that requiring a reservoir was not warranted. *Id.* at 120. On November 6, 2023, the Board issued a written decision granting the CUP. R. at 221.

Petitioners petitioned for Judicial Review on February 16, 2024. Although the Board has provided a substantially more developed decision, the issues before the Court on this petition are largely the same as they were in the original case: whether the Board made adequate factual findings regarding the application of county ordinances and whether there are facts in the record showing that there is “adequate” water available for fire suppression.

III. STANDARD OF REVIEW

“The Local Land Use Planning Act (LLUPA) allows an affected person to seek judicial review of an approval or denial of a land use application, as provided for in the Idaho Administrative Procedure Act (IDAPA).” *917 Lusk, LLC v. City of Boise*, 158 Idaho 12, 14 (2015); I.C. § 67-6521(1)(d). “For the purposes of judicial review of LLUPA decisions, a local agency making a land use decision, such as the Board of Commissioners, is treated as a government agency under IDAPA.” *In re Variance ZV2011-2*, 156 Idaho 491, 494 (2014).

It is well established that “[t]he applicable statutory framework for reviewing agency action is found in I.C. § 67-5279.” *In re Variance*, 156 Idaho at 494. Under Idaho Code § 67-5279:

The reviewing court must vacate and remand for further agency action if the agency’s findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence on the record as a whole; or
- (e) arbitrary, capricious, or an abuse of discretion.

Jasso v. Camas Cnty., 151 Idaho 790, 793 (2011) (internal citations omitted). The “agency action shall be affirmed unless substantial rights of the appellant have been prejudiced.” I.C. § 67-5279(4).

Generally, “planning and zoning decisions are entitled to a strong presumption of validity; this includes the board’s application and interpretation of their own zoning ordinances.” *In re Variance ZV2011-2*, 156 Idaho at 494. When acting in an appellate capacity, the Court “will not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact and will defer to the agency’s findings unless they are clearly erroneous.” *Krempaskey v. Nez Perce County Planning and Zoning*, 150 Idaho 231, 235 (2010). “[t]here is a strong presumption that the actions of the Board of Commissioners, where it has interpreted and applied its own zoning ordinances, are valid.” *Dry Creek Partners, LLC, v. Ada Cnty. Comm’rs, ex rel. State*, 148 Idaho 11, 16 (2009) (quoting *Evans v. Teton Cnty.*, 139 Idaho 71, 74 (2003)).

This Court construes a local ordinance as it construes a statute. *Friends of Farm to Market v. Valley Cnty.*, 137 Idaho 192, 196 (2002). Statutory construction always begins with the literal language of the statute or ordinance. *Id.* at 197. If an ordinance is unambiguous, this Court need not consider rules of statutory construction and the statute will be given its plain meaning. *Hamilton ex rel. Hamilton v. Reeder Flying Serv.*, 135 Idaho 568, 572 (2001); *Canal/Norcrest/Columbus Action Comm. v. City of Boise*, 136 Idaho 666, 670 (2001). *Evans*, 139 Idaho at 77.

IV. DISCUSSION

A. Petitioners have shown prejudice to a substantial right.

As a threshold matter, the Board does not contest that the Petitioners claim prejudice to a substantial right. “The party challenging the decision of the Board must not only demonstrate that the Board erred in a manner specified by I.C. § 67-5279(3) but must also show that its substantial rights have been prejudiced.” *Hawkins v. Bonneville County Board of Commissioners*, 151 Idaho 228, 232 (2011); *Krempasky v. Nez Perce County Planning and Zoning*, 150 Idaho 231, 235 (2010). In order to show prejudice to a substantial right under *Hawkins*, a petitioner “must still show, not merely allege, real or potential prejudice to his or her substantial rights.” *Hawkins*, 155 Idaho at 233. In other words, “[t]he petitioner opposing a permit must be in jeopardy of suffering substantial harm if the project goes forward, such as a reduction in the opponent’s land value or interference with his or her use or ownership of the land.” *Id.* Thus, a showing that “the County substantively misapplied its own ordinance” is not enough to prejudice the substantial rights of a petitioner that opposes a variance. *Id.* In the present case, at the July 19, 2023, hearing, the Board conceded that the Petition in this matter sets forth sufficient grounds for a showing of prejudice to the Petitioners’ substantial rights. In light of the stipulations and the presentations made by the Petitioners, the Court finds that the Petitioners have shown prejudice to a substantial right.

B. Petitioners have shown that the Board’s written Findings of Fact and Conclusions of Law are insufficient under I.C. § 67-6535 as to the applicable County ordinance.

Petitioners argue the Board analyzed the CUP under the incorrect code section. The Bonner County Revised Code recognizes two different types of RV uses: Residential use and Recreational/Commercial use. BCRC 12-332(9) governs the residential use of RV units, and states:

Building Location Permit regulations do not apply to non-commercial temporary, intermittent or occasional use of recreational vehicle. When a recreational vehicle is used in the same manner as a single family dwelling or an

accessory dwelling unit, such use is limited to a maximum of 2 recreational vehicle dwelling units per parcel, and the conditions of BCRC 12-496 apply.

BCRC 12-496 states, in pertinent part:

A. Dwelling Unit, Recreational Vehicle.

1. Limited to one (1) per lot or parcel for lots or parcels less than one (1) acre in size, or limited to two (2) per lot or parcel for lots, or parcels greater than one (1) acre in size without respect to density.

The commercial use of RV units is permitted under Table 3-3 found in BCRC 12-333. BCRC 12-333(8) contains the following requirements for such uses: “[a]dequate water supplies for drinking and fire suppression, as well as approval of sewage disposal sites and methods by the Panhandle health district and/or the state of Idaho, must be demonstrated as appropriate.”

Petitioners argue the CUP should have been analyzed under BCRC 12-332(9), as the application states that the project is a full-time residential RV site designed to “provide transitional housing for those migrating to north Idaho and provide a low income housing option for current residents who are combating rising housing prices in the area.” If analyzed under BCRC 12-332(9), approval would not have been possible due to the number of units the applicant seeks to have on the 4.7-acre property.

The Board responds that its analysis of the application under BCRC 12-333(8) was appropriate and that the Court must defer to the County’s interpretation of its own zoning code so long as that interpretation is neither arbitrary nor capricious. The Board argues residential use of an RV under BCRC 12-332(9) is permitted as a matter of right in most all zones but is limited to two RVs per parcel. However, the Board argues an RV park, which is commercial in nature, is governed by BCRC 12-333. The Board argues the Petitioners are mistaken in their reliance on BCRC 12-332(9) as the controlling code in this matter.

Idaho Code § 67-6535(2) places the following requirements on the Board in approving or denying land use applications:

The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that

explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

In *Jasso v. Camas County* (151 Idaho 790 (2011)) the Idaho Supreme Court found “I.C. § 67-6535 requires more than conclusory statements from which a decision-maker’s resolution of disputed facts and legal reasoning may be inferred. It is not the role of the reviewing court to scour the record for evidence which may support the decision-maker’s implied findings and legal conclusions.” *Id.* at 795. “What is needed for adequate judicial review is a clear statement of what, specifically, the decisionmaking [sic] body believes, after hearing and considering all the evidence, to be the relevant and important facts upon which its decision is based. Conclusions are not sufficient.” *Id.* at 796 (quoting *South of Sunnyside Neighborhood League v. Board of Commissioners*, 280 Or. 3, 569 P.2d 1063, 1076-77 (1977)).

In *Jasso*, the county board of commissioners approved a preliminary subdivision plat over the objection of Jasso and other landowners. At a public hearing on the matter, the landowners raised concerns regarding the subdivision’s lack of access to a public roadway, possible violations of existing ordinances and the fact that the application did not address flood mitigation. *Id.* at 792. The board in *Jasso* issued findings of fact and conclusions of law approving the plat on conditions that addressed the landowner’s concerns relating to the public roadway and possible ordinance violations. The board’s findings and conclusions did not address the issues of the floodplain. On petition for judicial review, Jasso argued that the board’s findings and conclusions did not satisfy the requirements of I.C. § 67-535. *Id.* at 793. The district court found that “the [b]oard’s decision was arbitrary and capricious because its findings and conclusions were inadequate under I.C. § 67-535 and violated Jasso’s and Gorringes’ substantial right to due process.” *Id.* The district court vacated the board’s findings and conclusions and remanded the matter back to the board for further proceedings. On appeal, the Idaho Supreme Court affirmed the district court’s ruling, stating:

In order to satisfy I.C. § 67-535, a local decision-maker must articulate in writing both (1) the facts found and conclusions reached and (2) the rationale underlying those findings and conclusions.

The requirement of meaningful administrative findings serves important functions, including facilitating judicial review, avoiding judicial usurpation of administrative functions, assuring more careful administrative consideration, helping parties plan their cases for rehearing and judicial review and keeping within their jurisdiction.

Id. at 794 (internal citations and quotation marks omitted).

Jasso also cited other Idaho Supreme Court cases that held local decision-makers to the standards required in I.C. § 67-535. See *Crown Point Development, Inc. v. City of Sun Valley*, 144 Idaho 72, 77-78 (2007) (holding as inadequate the findings of the city council as merely recitations of portions of the record rather than determinations of the facts disputed by the parties); *Workman Family Partnership v. City of Twin Falls*, 104 Idaho 32, 38 (1982) (holding that the city council's findings of fact were basically conclusions and did not reveal the underlying facts or policies considered by the council or insight into the council's decision). The *Jasso* court stated that "[t]hese cases demonstrate that the reasoned statement must plainly state the resolution of factual disputes, identify the evidence supporting that factual determination, and explain the basis for legal conclusions, including identification of the pertinent laws and/or regulations upon which the legal conclusions rest." *Jasso*, 151 Idaho at 794. Since *Jasso*, the Idaho Supreme Court has reinforced the importance of a reasoned statement in *North West Neighborhood Association v. City of Boise*, 172 Idaho 607, 535 P.3d 583 (2023).

In its order in case number CV09-22-1674, this Court found that the Board's written Findings of Fact and Conclusions of Law contained no analysis of its contention that the CUP was properly analyzed under BCRC 12-333. This Court found,

[t]he statements of the Board contained within its written decision are merely conclusory recitations of information contained within the application and do not contain a 'reasoned statement' as to the relevant and important facts upon which their decision was based. As the court stated in the hearing on July 19, 2023, the Board issued a "bare bones" finding. At a minimum, the Board's

written decision should have addressed its reasoning in determining that the CUP was analyzed under the appropriate code section.

Mem. Decision and Order on Petition for Review at 11, *Keep Bonner Cnty. Rural*, No. CV09-22-1674. Later, it found,

that the findings issued by the Board failed to provide the requisite reasoned statement that plainly states the resolution of factual disputes, identifies the evidence supporting that factual determination, and “explains the basis for legal conclusions, including identification of the pertinent laws and/or regulations upon which the legal conclusions rest.”

Id. at 11 (quoting *Jasso*, 151 Idaho at 794). Finally, it found that “Conclusions are not sufficient.” *Id.* at 11 (quoting *Jasso*, 151 Idaho at 796).

After the Court vacated the Board’s decision on these grounds, the Board again approved the Applicant’s plan. Those Findings of Fact and Conclusions of Law read as follows:

1. The Rural Zoning District allows for conditional use permits for RV Parks. The property is within the Rural District and is currently zoned Rural-5.
2. The site is approximately 4.17 acres in area.
3. The project proposes to install 20 RV units on the parcel.
4. The applicant has applied for a Conditional Use Permit for an RV Park per BCRC 12-333 and BCRC 12-497 as a commercial use.

Per BCRC 12-331, in the case of a question as to the inclusion or exclusion of a particular proposed use in a particular use category, the Planning Director shall have the authority to make the final determination based on the characteristics of the operation of the proposed use. Per the proposed use, the Planning Director determined that the requested use befits in the category of an RV Park as described in BCRC 12-333, Commercial Use Table. BCRC 12-333 and BCRC 12- 497 place no limitation on the duration of stay in RV Parks.

The Board recognizes and affirms the planning director’s determination that the use requested in the application is for an RV park and was correctly reviewed against the standards of BCRC 12-333 and 12-497. BCRC 12-332 and 12-496

apply to a residential use and thus these standards are not applicable to this proposal.

The Board's legislative intent of adopting BCRC 12-497 in the year 2019 was to incorporate the use of RV Parks/ Campgrounds as a commercial use in Bonner County. The use of RV Parks was not intended to be considered a residential use and limited to two (2) Recreational Vehicle Dwelling Units on the property per BCRC 12-332(9).

5. The proposal meets the required standards of BCRC 12-333, notes (8). The proposal is within the Spirit Lake Fire District. The International Fire Code and State Fire Code do not have statutes that address fires in RV Parks. The Insurance Service Office and National Fire Protection Association only contain recommendations for RV Parks fires.

Adequate fire protection is the availability of resources at the time of a fire. The ability to call other fire districts for back up fire suppression. The fire district maintains water tenders which are capable of delivering water to sites to achieve the recommended 250 gpm. All residents in the area of service of the fire district are provided fire protection equally.

In addition, the applicant's Building Location Permit for the RV Park, BLP2022-1243, was reviewed and approved for fire protection by the fire district on 12/16/2022 with a comment of "***no cisterns or fire suppression systems are required for this construction project***".

Generally, rural fire districts do not use on site water cisterns which have been dedicated for fire suppression because the cisterns are not well maintained. The cisterns may contain debris such as rocks and frogs which may damage firefighting equipment and therefore may not be used for fire suppression by the fire districts in case of a fire on-site.

The property has multiple ingress and egress onto multiple roads for multiple fire agencies to provide adequate fire trucks to provide supplies. Spirit Lake Fire districts has mutual aid agreements with the neighboring fire districts which may respond in case of fires on the subject property.

Fire protection is adequate based on the absence of state statutes for RV Parks, the capabilities of the local fire districts, and the limitations imposed by non-maintained on site water storage.

6. The proposal meets the required standards of BCRC 12-333 note (21) and BCRC 12-497.

7. The property is accessed off Clagstone Road and Al's Welding Road. Both roads are Bonner County owned and maintained gravel right of ways.

8. Electricity is provided by Inland Power.

9. The site has an individual well.

10. A speculative site evaluation has been done for the proposed septic system.

R. 222-23.

The Board has again failed to find facts supporting its decision whether BCRC 12-332(9) or BCRC 12-333 apply. Instead, the Board includes conclusory statements indicating that "the requested use befits in the category of an RV Park. . ." and that "BCRC 12-332 and 12-496 apply to a residential use and thus these standards are not applicable to this proposal."

R. 222. The only relevant facts were a statement of the utilities, location, size, and project proposal (installing 20 RV units). The Board also invoked the legislative history of its commercial RV park code. The Board did not explain how these, or any other facts, determine whether the proposed use is commercial (BCRC 12-333) or residential (BCRC 12-332(9)).

The Board argues it did not need to make that distinction: "the Planning Director was not obligated to make some kind of affirmative finding on that point [(whether BCRC 12-333 or BCRC 12-332(9) apply)] before concluding that the application seeks permission to operate an RV Park." Resp't's Br. 13. The underlying fact presented in conjunction with this argument is that "the application is for an RV park. . ." R. 222.

The Applicant does not have the authority to determine which ordinance applies. Which ordinance applies depends on the circumstances being presented by the application. Although it is true that the Board delegates responsibilities to the planning director (BCRC 12-331), this delegation does not relieve the Board of its statutory duty. What circumstances did the planning director find existed by which he or she determined BCRC 12-333, and not BCRC 12-332(9), applied? The Board did not recite or adopt any facts upon which the planning director relied. It only recognized and affirmed the planning director's determination.

R. at 222. The planning director's determination is, by definition, conclusory. The Board's adoption of that determination is also conclusory.

Under *Jasso*, the Board is required to "plainly state the resolution of factual disputes, identify the evidence supporting that factual determination, and explain the basis for legal conclusions, including identification of the pertinent laws and/or regulations upon which the legal conclusions rest." 151 Idaho at 794. Petitioners raised issues of fact, to wit: the project is to provide "affordable housing;" and "low income housing." R. at 5-6. Why do these uses fit under a commercial statute rather than the residential statute? The Board failed to resolve these issues of fact with its own findings of fact. It is not the responsibility of the reviewing court to "scour the record" for evidence which supports the Board's position.

The Board also neglected to provide a reasoned statement. This case is similar to *North West Neighborhood Association* which held: "To put it simply, we cannot evaluate the process by which the Council reached its decision or the soundness of its legal reasoning because the reason for decision failed to satisfy the requirements of section 67-6535(2)." 172 Idaho at 616.

This court finds that the lack of sufficient findings prejudices the Petitioners' due process rights to judicial review. Among the "important functions" of meaningful administrative findings is facilitating judicial review and helping parties plan their cases. The Board has not given this Court sufficient findings or reasoning to review. Therefore, this court vacates the Board's approval of the CUP and remands the matter back for further agency proceedings.

Because the Board failed to establish through findings of fact or a reasoned statement which ordinance is applicable, this Court will not decide whether the Board's analysis of fire suppression under BCRC 12-333(8) was sufficient.

C. Petitioners are not entitled to attorney fees against the Board under I.C. § 12-117.

Petitioners seek an award of attorney fees under Idaho Code § 12-117. This court "shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law." "The dual purpose of I.C. § 12-117 is to (1) deter groundless or arbitrary agency action;

and (2) to provide ‘a remedy for persons who have borne an unfair and unjustified financial burden attempting to correct mistakes agencies should never have made.’ *Fuchs v. Idaho State Police, Alcohol Beverage Control*, 153 Idaho 114, 117 (2012).


In this matter, while the court finds that the Board failed to issue sufficient written findings, the Court does not find that the Board acted without a reasonable basis in fact or law. The Board made a reasonable and substantial attempt to comply with this Court’s previous order. While the Board again failed to reach its burden, its failure was not without substantial improvement upon its prior decision. This Court cannot conclude the Board acted without a reasonable basis in fact or law. Therefore, the court declines to make an award of attorney’s fees to either party.

V. CONCLUSION

For the above stated reasons, the Board’s decision to grant CUP0030-21 is vacated and remanded back to the agency for further proceedings.

IT IS HERBY ORDERED, the Bonner County Board of Commissioner’s decision to grant conditional use permit CUP0030-21 is vacated and remanded for further agency proceedings.

DATED: November 15, 2024



Honorable Ross Pittman
District Court Judge #709

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent on 11/15/2024 4:25:25 PM via
the following:

William S. Wilson — email: prosefile@bonnercounty.id.gov
Attorney for Respondent

Norman M. Semanko — email: nsemanko@parsonbehle.com
Attorney for Petitioners

MICHAEL W. ROSEDALE
~~JENNIFER LOCKE~~
CLERK OF THE DISTRICT COURT

By: Heather Ross
Deputy Clerk

Norman M. Semanko, ISB #4761
PARSONS BEHLE & LATIMER
800 West Main Street, Suite 1300
Boise, Idaho 83702
Telephone: 208.562.4900
Facsimile: 208.562.4901
NSemanko@parsonsbehle.com
boisedocket@parsonsbehle.com

Attorneys for Petitioners

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

KEEP BONNER COUNTY RURAL; PENNY
KAY LAMB, JOSHUA KEITH EMMETT;
PRISCILLA EILEEN EMMETT; DENNIS
ARTHUR WALKER; and JEANETTE
WALKER,

Petitioners,

vs.

BONNER COUNTY, a political subdivision of
the State of Idaho, acting through the BONNER
COUNTY BOARD OF COUNTY
COMMISSIONERS,

Respondent.

Case No. CV09-24-0240

PETITIONERS' OPENING BRIEF

On appeal of final action by the Bonner County Board of County Commissioners

Before the Honorable Ross Pittman, District Judge

Norman M. Semanko, ISB #4761
PARSONS BEHLE & LATIMER
800 West Main Street, Suite 1300
Boise, ID 83702
Telephone: 208/562-4909
Email: NSemanko@parsonsbehle.com
Attorney for Petitioners

William Steven Wilson
BONNER COUNTY BOARD OF COMMISSIONERS
127 South First Avenue
Sandpoint, ID 83864
Telephone: 208/263-6714
Email: prosefile@bonnercountyid.gov
Attorney for Respondent

1. STATEMENT OF THE CASE

a. Nature of the Case.

This action has been brought by the above-captioned Petitioners (hereinafter referred to as “Petitioners”) pursuant to Idaho Code §§ 67-5270 through 67-5279, 67-6521 and 67-6535 and Rule 84 of the Idaho Rules of Civil Procedure, seeking judicial review of the Bonner County Board of Commissioners’ (“Board”) approval of Conditional Use Permit Application CUP0030-21 (“Application”) to Idaho Land LLC (“Applicant”) for a Recreational Vehicle (“RV”) Park. The Board’s decision is set forth in the Board’s remand decision letter dated November 6, 2023, which includes certain Findings of Fact and Conclusions of Law (“Remand Decision”). R pp. 221-24.

b. Course of Proceedings.

The Application was first approved by the Board on August 24, 2022 (“Original Decision”). The Petitioners filed a Petition for Judicial Review, which was granted by the Honorable Cynthia K.C. Meyer on August 17, 2023 in her *Memorandum Decision and Order on Petition for Review*, thereby vacating the Original Decision and remanding the matter to the Board for further proceedings. R pp. 8-20.

The Board subsequently held a remand hearing on October 30, 2023 and issued its Remand Decision on November 6, 2023. The Remand Decision was in the form of written findings of fact, conclusions of law, and conditions of approval, approved by a motion of the Board. R pp. 221-24. The Petitioners timely requested reconsideration on November 20, 2023, pursuant to Idaho Code § 67-6535 and the Bonner County Revised Code (“BCRC” or “County code”)¹. R pp. 226-37.

¹ The Bonner County Revised Code is available at <https://codelibrary.amlegal.com/codes/bonnercountyid/latest/overview> (last retrieved on June 20, 2024).

The Board failed to act on the request for reconsideration within 60 days, thereby denying the request by operation of law. I.C. § 67-6535(2)(b). The Petitioners subsequently filed the instant Petition for Judicial Review.

c. Statement of Facts.

The Applicant proposed the placement of 20 residential RVs on a 4.17 acre parcel in the Rural Residential 5-acre zone of Bonner County. R pp. 1-2. The Bonner County Planning Department Staff confirmed that the parcel is currently zoned Rural-5. R pp. 57, 206. The use for the subject property is “Year round RV living” for “RV residents.” R pp. 2-3, 6. The project “is to provide affordable housing” and “a low income housing option for current residents who are combating rising housing prices in the area.” R pp. 5-6. The proposed land use will provide “housing” in the form of “alternate low income house options for residents.” R p. 7. The use is cited by the Applicant as an example of “clustering development to reduce sprawl” and “providing affordable housing options.” R p. 6. The district court’s previous decision adopted this undisputed factual background regarding the residential character of the Application. R p. 9.

Water is to be supplied to RV residents by an individual well, which is limited to 30 gallons per minute. R p. 5. With this insufficient on-site water supply, the Applicant proposes to have fire protection for the RV residents provided by the Spirit Lake Fire Protection District. R p. 6. In response, the Fire District commented on May 2, 2022: “There is no water supply for firefighting in this remote area” and “IFC 1194 requirements for water supply to the RV park for firefighting would have to be analyzed and implemented.” R p. 245.

On remand, the Fire District further indicated on October 6, 2023 that the required research had been conducted and that 250 gallons per minute for one hour of fire flow is sufficient for fire protection. R p. 218. The Fire District’s comment stated: “Applying these three resources, we have a range of needed fire flow 250-1000 gallons per minute. Spirit Lake Fire is willing to concede to

the lowest estimated fire flow, 250gpm for 1 hour.” The Fire District’s comment further required: “The proposed RV Park must provide an on-site water supply (e.g., a cistern or storage tank) totaling 15,000 gallons, and supply a fire pump of minimum 250gpm with a connecting hydrant to satisfy fire protection standards. The on-site water would need to be maintained and available 365 days a year.” R pp. 31-32, 60, 217, 240-44.

The Fire District reiterated this requirement at the October 30, 2023 remand hearing through the oral comments of Fire Chief Carpenter. Oct. 30, 2023 Tr p. 24, l. 11-23 (the fire flow requirements “would essentially range from 250 gallons per minute. . .an hour minimum. So 250 gallons per minute for an hour would be 15,000 gallons. Actually, up to 1,000 gallons per minute which would then by 60,000 gallons. . .the small end of that is what I recommended would be required”). The Fire Chief also confirmed that the existing RV Park in the Spirit Lake Fire District has fire hydrants to provide the needed supply for firefighting. Oct. 30, 2023 Tr p. 25, l. 15-22.

In response, the Applicant refused to commit to the 15,000 gallon water storage tank required for minimum fire flows in the proposed RV Park. Oct. 30, 2023 Tr p. 96, l. 7-8 (“I would not like to install that”). As to whether the Fire District’s water tenders are large enough to provide the required volume of water, one of the Commissioners stated that “there is not one of those in existence in Bonner County and probably not in Kootenai County.” Oct. 30, 2023 Tr p. 110, l. 1-3. The Fire Chief provided no comments that available water tenders could provide the required volume of water, let alone reliably, stating that water tenders would only “supplement any water that may or may not be on site.” Oct. 30, 2023 Tr p. 12, l. 11-12.

Numerous residences are located in close proximity to the proposed RV dwelling units, including single family homes on surrounding land. R pp. 2, 59. This fact was recognized in the district court’s previous decision. R p. 9. Bonner County received numerous written and oral

comments on how this proposed use could impact their neighboring property rights and property values, as well as concerns about impacts related to roads, wells, sewage disposal, noise, general safety, fire danger, dust and garbage, among other things. R pp. 65, 70-89, 112-178; Oct. 30, 2023 Tr p. 35, l. 18-p. 90, l. 21. This included comments from Petitioners in this matter, specific to the injury that approval of the proposed land use would have on them individually. In the prior judicial review action, the Board waived any claim that the Petitioners failed to establish prejudice to a substantial right. R pp. 12-13.

d. Previous District Court Order Remanding the Matter to the Board.

In its previous order vacating the Original Decision of the Board and vacating the matter to the Board for additional proceedings, the court, through Judge Meyer, concluded that the Board's Findings of Fact and Conclusions of Law were insufficient under Idaho Code Section 67-6535. R pp. 13-19. In reaching that decision, the court made the following findings:

"The court finds that the Board's written Findings of Fact and Conclusions of Law contain no analysis of its contention that the CUP was properly analyzed under BCRC 12-333, nor does the written statement address, in any meaningful way, the Petitioners' stated concerns as to fire suppression." R p. 18.

"At a minimum, the Board's written decision should have addressed its reasoning in determining that the CUP was analyzed under the appropriate code section and its reasoning as to why the property's location within a fire protection district satisfied the requirement under BCRC 12-333 regarding 'adequate' water supply for fire suppression." *Id.*

"In this matter, the written findings of the Board are not determinative of any facts or issues, but as stated earlier, are merely conclusory statements which lack any affirmative statement as to how the Board reached these conclusions." R p. 19.

2. ISSUES PRESENTED IN JUDICIAL REVIEW ACTION

A. Whether the Board's decision is in violation of the relevant provisions of the Bonner County Revised Code and applicable statutory provisions.

B. Whether the Board's action is in excess of the statutory authority of the Board.

C. Whether the Board's decision was made upon unlawful procedure.

D. Whether the findings of fact contained in the Board's decision are supported by substantial evidence.

E. Whether the conclusions of law in the Board's decision are clearly erroneous.

F. Whether the Board's decision was an abuse of discretion.

G. Whether the Board's decision was arbitrary and capricious.

H. Whether the Petitioners have had substantial rights violated by the Board's action.

I. Whether the Petitioners should be awarded attorney fees on appeal.

3. STANDARD OF REVIEW

The Local Land Use Planning Act ("LLUPA") allows an affected person to seek judicial review of an approval of a land use application as provided for in the Administrative Procedure Act ("IDAPA"). I.C. § 67-6521(1)(d); *Dry Creek Partners, LLC v. Ada Cnty. Comm'rs, ex rel. State*, 148 Idaho 11, 16, 217 P.3d 1282, 1287 (2009).

Judicial review of the Decision of the Board is governed by Idaho Code §§ 67-5270 through 67-5279. The Court reviews the decision on the record created before the Board. I.C. § 67-5277; *Dovel v. Dobson*, 122 Idaho 59, 61, 831 P.2d 527, 529 (1992). The Court cannot substitute its judgment for that of the Board as to the weight of the evidence on questions of fact. I.C. § 67-5279(1); *Castaneda v. Brighton Corp.*, 130 Idaho 923, 926, 950 P.2d 1262, 1265 (1998).

The Court may set aside the Decision and remand the matter for further proceedings if it prejudiced a substantial right of the Petitioners and the "findings, inferences, conclusions, or

decisions are: (a) in violation of constitutional or statutory provisions; (b) in excess of the statutory authority of the [Board]; (c) made upon unlawful procedure; (d) not supported by substantial evidence on the record as a whole; or (e) arbitrary, capricious, or an abuse of discretion.” I.C. § 67-5279(3); *Castaneda*, 130 Idaho at 926, 950 P.2d at 1265.

Interpretation of a county’s zoning ordinance is a question of law over which the court exercises free review. *Dry Creek Partners*, 148 Idaho at 18, 217 P.3d at 1289.

4. ARGUMENT

a. Applicable Standards and Criteria for Recreational Vehicle (RV) Uses.

As previously recognized by the district court, two different types of recreational vehicle (RV) uses are recognized under the Bonner County Revised Code. R pp. 9-10. The first allows RVs as dwelling units on residential properties. BCRC § 12-332, Table 3-2. “When a recreational vehicle is used in the same manner as a single family dwelling or an accessory dwelling unit, such use is limited to a maximum of 2 recreational vehicle dwelling units per parcel, and the conditions of BCRC 12-496 apply.” BCRC § 12-332(9). Dwelling unit RVs are “limited to two (2) per lot or parcel for lots, or parcels greater than one (1) acre in size without respect to density.” BCRC § 12-496. A conditional use permit is not available to allow for more than two RV dwelling units to be placed on such a parcel. BCRC § 12-332, Table 3-2. As the court observed in its previous decision, under this code provision “the CUP could not have been approved.” R p. 10.

The second type of recognized RV use is “RV Parks/Campgrounds” found in BCRC § 12-497. This is allowed as a commercial use, with a conditional use permit. BCRC § 12-333, Table 3-3. For RV Parks/Campgrounds, adequate water supplies for drinking and fire suppression must be demonstrated as appropriate. BCRC § 12-333(8).

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b. The Board's Decision is Not Supported by Substantial Evidence, is Clearly Erroneous, and is Arbitrary and Capricious.

i. *The Proposed RV Use is for Residential Dwelling Units and the Board Failed to Apply the Correct Standard for Such Uses - Again.*

In remanding this matter, the district court found that the Board did not meaningfully determine whether the Application should be evaluated under the “RV Park/Campgrounds” code provisions found in BCRC §§ 12-333 and 12-497 or the “RVs Dwelling Units” portion of the code in BCRC §§ 12-332(9) and 12-496. The court instructed: “At a minimum, the Board’s written decision should have addressed its reasoning in determining that the CUP was analyzed under the appropriate code section.” R p. 18.

On remand, the Board adopted Finding of Fact No. 4 stating that BCRC §§ 12-332 and 12-496 do not apply because “the Planning Director determined that the requested use befits in the category of an RV Park as described in BCRC § 12-333, Commercial Use Table.” R p. 222. BCRC § 12-331 is cited as authority for the Planning Director to make this determination. That code section requires the Planning Director to make the use category determination “based on the characteristics of the operation of the proposed use and the Planning Director’s interpretation of the standard land use coding manuals, as provided in section 12-339.” BCRC § 12-331. However, no specific facts are cited in the finding of fact regarding the characteristics of the proposed use and no explanation is provided regarding how – or even whether - the Planning Director came to his determination using the standard coding manuals. These “are merely conclusory statements which lack any affirmative statement as to how the Board reached these conclusions.” R p. 19.

A finding of fact without any basis in the record is clearly erroneous. *Tappen v. IDHW*, 98 Idaho 576, 579-80 (1977). Indeed, any finding or conclusion must be supported by substantial evidence. I.C. § 67-5279(3)(d); *Castaneda*, 130 Idaho at 926, 950 P.2d at 1265. “[S]ubstantial

evidence” is “relevant evidence that a reasonable mind might accept to support a conclusion.” *In re IDWR Amended Final Order Creating Water District 170*, 148 Idaho 200, 212 (2009).

A decision is “arbitrary if it was done in disregard of the facts and circumstances presented or without adequate determining principles.” *American Lung Assoc. of Idaho/Nevada v. Dept. of Ag.*, 142 Idaho 544, 547 (2006). A decision is “capricious” if it “was done without a rational basis.” *Id.* Additionally, a decision is arbitrary and capricious if it lacks “a thorough and detailed discussion of why [the Board] came to the specified conclusions.” *Terrazas v. Blaine Cty. ex rel. Board of Commissioners*, 147 Idaho 193, 205 (2009); *see also*, I.C. § 67-6535(2) (requiring decision to contain a reasoned statement that explains the rationale for the decision).

The Application identifies the proposed RV use as residential housing. *See* R pp. 2-3, 6 (use for the subject property is “Year round RV living” for “RV residents”), pp. 5-6 (the project “is to provide affordable housing” and “a low income housing option for current residents who are combating rising housing prices in the area”), p. 6 (the use is cited by the Applicant as an example of “clustering development to reduce sprawl” and “providing affordable housing options”), and p. 7 (the proposed land use will provide “housing” in the form of “alternate low income house options for residents”). That is the record that was before the Board, indicating that the characteristics of the proposed use are residential housing, albeit in RVs.

Despite the fact that the proposed use is clearly for RVs as dwelling units, the Board did not review the proposed use against the required standards of BCRC § 12-332, Table 3-2 (Residential Use Table), BCRC § 12-332(9) (RVs used in the same manner as a single family dwelling) and BCRC § 12-496 (limiting RV dwelling units to two per parcel). Instead, the Board erroneously applied the RV Parks/Campground standards of BCRC § 12-333 and BCRC § 12-497, thereby allowing 20 RV units on the parcel, rather than the two RV dwelling units allowed under

the BCRC. This is the exact same mistake that the Board made previously, resulting in the vacating of the Original Decision.

As the district court previously ruled, the Board was required to set forth a written, reasoned statement to support its decision. I.C. § 67-6535(2). However, the Board's Remand Decision contains no meaningful analysis, explanation or conclusion about how the proposed use is for an RV Park/Campground, as opposed to RV dwelling units. The new finding of fact says only that the Planning Director made that determination. R p. 222.

"Failure to identify the nature of compliance . . . with express approval standards or failure to explain compliance . . . with relevant decision criteria shall be grounds for invalidation of an approved permit or site-specific authorization." I.C. § 67-6535(2)(a). Such is the case with the Board's Remand Decision. Simply citing a particular provision without the required written explanation of how it was applied, is not sufficient to comply with the law.

During deliberations, the Board's attorney advised the Board regarding "the debate between residential use and commercial use" and "whether or not the table, the residential use table, 332, applies." Oct. 30, 2023 Tr p. 104, l. 11-13. He specifically recommended to the Board that "we need to have – we need to have a, you know, a more of an in-depth look at, you know, the proposed use constitutes residential units." Oct. 30, 2023 Tr p. 104, l. 25-p. 105, l. 3. But that was not done. In fact, one of the Commissioners stated: "We're not here to determine that." Oct. 30, p. 107, l. 18. So there are no facts in the record and no detailed, reasoned explanation to support the finding that the proposed use is a commercial RV Park rather than a residential RV use.

As explained above, there is no factual basis for the Board's conclusions, thereby rendering those conclusions erroneous. I.C. § 67-5279(3)(d); *Tappen*, 98 Idaho at 579-80; *Castaneda*, 130 Idaho at 926. The proposed use is clearly for RV dwelling units, thereby requiring the application

of BCRC §§ 12-332(9) and 12-496 (limiting the use to two RV dwelling units). In addition, granting the Application in light of these shortcomings, without a rational basis or reasoned explanation, was arbitrary and capricious. *American Lung Assoc. of Idaho/Nevada*, 142 Idaho at 547; *Terrazas v. Blaine Cty. ex rel. Board of Commissioners*, 147 Idaho at 205; *see also*, I.C. § 67-6535(2) (decision must contain a reasoned written explanation).

Interpretation of a county's zoning ordinance is a question of law over which the Court exercises free review. *Dry Creek Partners, LLC v. Ada Cnty. Comm'rs, ex rel. State*, 148 Idaho 11, 18, 217 P.3d 1282, 1289 (2009). When asked to interpret a local ordinance, the Court employs the same standards used when interpreting a statute. *Id.* Statutory construction always begins with the literal language of the statute or ordinance. *Evans v. Teton County*, 139 Idaho 71, 77, 73 P.3d 84, 90 (2003).

In this case, the literal language of the County code states: "When a recreational vehicle is used in the same manner as a single family dwelling or an accessory dwelling unit, such use is limited to a maximum of 2 recreational vehicle dwelling units per parcel, and the conditions of BCRC 12-496 apply." BCRC § 12-332(9). Dwelling unit RVs are "limited to two (2) per lot or parcel for lots, or parcels greater than one (1) acre in size without respect to density." BCRC § 12-496. As a result, if recreational vehicles are to be used as single family dwellings, the number of RV units is limited to two on the subject parcel. That is the clear language of the County code.

A "single-family dwelling" is defined as "a detached residential building, designed exclusively for and occupied exclusively by one family." BCRC § 12-804. In turn, "residential" is defined as "the use of a structure by a family (or families) as a dwelling unit (or units)." BCRC § 12-818. This type of residential dwelling unit use is exactly what the Applicant has proposed. R pp. 2-3, 6 (use for the subject property is "Year round RV living" for "RV residents"), pp. 5-6 (the

project “is to provide affordable housing” and “a low income housing option for current residents who are combating rising housing prices in the area”), p. 6 (the use is cited by the Applicant as an example of “clustering development to reduce sprawl” and “providing affordable housing options”), and p. 7 (the proposed land use will provide “housing” in the form of “alternate low income house options for residents”).

The Board instead applied an entirely different standard – the one for RV Parks/Campgrounds. However, this is contrary to the plain language of the County code and the facts in this matter. An RV Park is defined as “any premises designed for rental of two (2) or more recreational parking stalls or spaces.” BCRC § 12-818. Unlike the definition of an RV used as a single-family dwelling, this definition includes no mention of residential use or dwelling units. It is purely commercial and recreational in nature. As a result, the code section relied upon by the County simply does not apply and it was clear error for the Board to do so in making its decision on the Application.

ii. There has still been no Demonstration of Adequate Water Supplies for Fire Suppression for the Proposed RV Park.

As explained above, the Board erred in failing to analyze the Application as a proposed use for RV dwelling units. However, even if the Board were able to explain (which it did not) why the proposed land use was in fact for an RV Park/Campground (which it is not), the Remand Decision of the Board would still need to be set aside by the Court.

For commercial RV Parks/Campgrounds, the plain language of the County code requires that: “Adequate water supplies for. . .fire suppression. . .must be demonstrated as appropriate.” BCRC § 12-333, note 8. Here, there has been no such demonstration. And the Remand Decision is clearly erroneous, without factual support in the record.

On this point, the district court’s previous decision directed: “At a minimum, the Board’s written decision should have addressed. . . its reasoning as to why the property’s location within a fire protection district satisfied the requirement under BCRC 12-333 regarding ‘adequate’ water supply for fire suppression.” R p. 18.

On remand, the Board adopted Finding of Fact No. 5 stating that the proposal meets the required standards of BCRC § 12-333, note 8 because it is within the Spirit Lake Fire District and the District “maintains water tenders which are capable of delivering water to sites to achieve the recommended 250 gpm.” R p. 222.

This finding is flawed and insufficient to show that adequate water supplies are available. First, there is nothing in the record demonstrating that the District’s water tenders provide 250 gpm. Second, this instantaneous flow rate – 250 gallons per minute – is not enough, by itself. The Fire Chief made clear that the flow rate must be capable of lasting for one hour, thereby requiring a total volume of 15,000 gallons of water, on a constant basis. R pp. 31-32, 60, 217, 240-44; Oct. 30, 2023 Tr p. 24, l. 11-23.

In addition, the Remand Decision contains no finding of fact that the District’s water tenders have this kind of capacity. And the facts in the record would not support a finding that the District has such water tenders. At the remand hearing, one of the Commissioners stated that “there is not one of those in existence in Bonner County and probably not in Kootenai County.” Oct. 30, 2023 Tr p. 110, l. 1-3. The Fire Chief provided no comments that available water tenders could provide the required volume of water, let alone reliably, stating that water tenders would only “supplement any water that may or may not be on site.” Oct. 30, 2023 Tr p. 12, l. 11-12.

As the court previously observed, the Fire District has definitively concluded: “There is no water supply for firefighting in this remote area.” R pp. 10, 245. Rather than demonstrating that

adequate water supplies will be provided, the Applicant has flatly refused to commit to the 15,000 gallon water storage tank required for minimum fire flows in the proposed RV Park. Oct. 30, 2023 Tr p. 96, l. 7-8 (“I would not like to install that”). Instead, the Applicant proposes to have fire protection for the RV residents provided by the Spirit Lake Fire Protection District, without a showing that the District can provide the required water quantities. R p. 6.

As a result, the new Finding of Fact No. 5 – and the facts themselves – do not support a conclusion that the Applicant has demonstrated adequate water supplies for fire protection, as those quantities – both in terms of flow-rate and volume – have been determined by the Fire District. Since there is no factual basis for the Board’s conclusions, those conclusions are erroneous. I.C. § 67-5279(3)(d); *Tappen*, 98 Idaho at 579-80; *Castaneda*, 130 Idaho at 926.

Moreover, it is arbitrary and capricious for the Board to essentially ignore the water quantity determinations of the Fire District – which are specifically required for RV Parks in BCRC § 12-333, note 8 - in favor of a finding that being in the Fire District is good enough. For this type of use, it is not good enough. This is the same flawed position that the Board took previously. *See* R p. 10 (the court noting that one Board member stated that “the proposed RV Park is within a fire district, which makes it adequate”).

The Board’s finding that “[a]ll residents in the area of service of the fire district are provided fire protection equally” (R p. 222) does not address the specific water supply requirements for commercial RV Parks in BCRC § 12-333, note 8. At the remand hearing, the Fire Chief confirmed that an existing RV Park in the Spirit Lake Fire District has fire hydrants to provide the needed supply for firefighting. Oct. 30, 2023 Tr p. 25, l. 15-22. There is no basis for the Board to act differently with regard to the proposed RV Park.

During deliberations, the Board's attorney specifically noted – several times – that the Fire Chief had provided excellent evidence and that the Board could condition the RV Park to install a 15,000 gallon tank to provide the necessary volume for adequate fire flows. Oct. 30, 2023, Tr p. 104, l. 1-8, p. 114, l. 3-8, p. 115, l. 6-9. But the Board chose not to.

Just as in the first judicial review action before the court, the Board is relying on the fact that fire engines carry water, without any determination that the amount of water available is sufficient for fire suppression for the proposed 20 RV unit development, a use that the Applicant characterizes as “clustering development.” R p. 6. The fact that a fire district exists and that the fire district may have a firetruck does not magically create adequate water supplies for fire suppression. The code requires that such water supplies be demonstrated. That simply has not been done here.

c. The Petitioners have been Injured and had their Fundamental Rights Violated.

To receive relief, the Petitioners must show real or potential prejudice to their substantial rights. *Hawkins v. Bonneville Cnty. Bd. Of Comm'rs*, 151 Idaho 228, 233, 254 P.2d 1224, 1229 (2011).

The Petitioners include affected persons, as defined by Title 67, Chapter 65, Idaho Code. They have been injured and had their fundamental rights violated by the Board's Remand Decision. These residents live in close proximity to the proposed land use and stand to be directly affected by the placement of 20 RV dwelling units on the less than 5 acres owned the Applicant. There is substantial evidence in the record of the potential prejudice to these Petitioners' substantial rights resulting from the Board's Remand Decision. Such evidence is sufficient to support Petitioners' claims of potential impacts. *Hungate v. Bonner County*, 166 Idaho 388, 458 P.3d 966, 973-74 (2020).

Bonner County received numerous written and oral comments on the proposed RV Park, including those provided by the Petitioners in this matter, on how this proposed use would individually impact their property rights and property values, as well as their use of roads and wells, and the impacts to them relating to sewage disposal, noise, general safety, fire danger, dust and garbage, among other things. See generally, R pp. 65, 70-89, 112-178; Oct. 30, 2023 Tr p. 35, l. 18-p. 90, l. 21 (including comments from Petitioners). Ample evidence therefore exists in the record regarding the potential to impact the substantial rights of those parties, thereby satisfying the “something more” test of *Hungate*. *Id.* at 972. As detailed above, there is substantial evidence in the record of the potential prejudice to the Petitioners’ substantial rights resulting from the Board’s Decision, thereby satisfying *Hawkins* and the *Hungate* test.

In the prior judicial review action, the Board waived any claim that the Petitioners failed to establish prejudice to a substantial right. R pp. 12-13. The Petitioners of course still have the same prejudice to their substantial rights, as both the Original Decision and the Remand Decision approved the same proposed land use. As a result, the conclusion can be no different.

d. Petitioners are Entitled to Attorney Fees due to the Board’s Actions on Remand.

Petitioners request attorney fees in this action, pursuant to Idaho Code § 12-117. The statute allows for an award of attorney fees in any proceeding involving as adverse parties a political subdivision and a person, if the court finds that the non-prevailing party acted without a reasonable basis in fact or law.

In this matter, Petitioners are clearly adverse to the Board of County Commissioners of Bonner County, a political subdivision.

In its previous order, the court cited the Board’s “apparent misunderstanding of its responsibilities under Idaho law” in finding that the Board acted with a reasonable basis in fact or law and declining to award attorney fees to Petitioners pursuant to Idaho Code § 12-117. R p. 20.

The same can no longer be said in this judicial review action. The Board received clear direction from the court and still has no factual basis for critical findings and conclusions contained in its Remand Decision. And the Board continues to apply the incorrect standard to the proposed RV dwelling units, with no basis. The Board has therefore acted with no reasonable basis in fact or law in approving the Application on remand, thereby entitling the Petitioners to attorney fees under Idaho Code §12-117. The Petitioners “have borne an unfair and unjustified financial burden attempting to correct mistakes agencies should never have made” – again. R pp. 19-20 (*quoting Fuchs v. Idaho State Police, Alcohol Beverage Control*, 153 Idaho 114, 117, 279 P.3d 100, 103 (2012)).

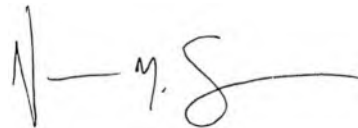
5. CONCLUSION

For the reasons set forth above, Petitioners respectfully request that the Board’s Remand Decision approving the Application be vacated and rendered null and void, and further that they be awarded reasonable attorney fees and costs.

Petitioners request oral argument on their Petition for Judicial Review.

DATED this 20th day of June, 2024.

PARSONS BEHLE & LATIMER

A handwritten signature in black ink, appearing to read "N-M. S.", is written over a horizontal line.

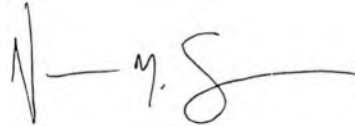
Norman M. Semanko

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of June, 2024, a true and correct copy of the foregoing document was filed with the Clerk of the Court using the iCourt Efile System which sent a Notice of Electronic Filing to the following persons, and I served a true and correct copy of the foregoing by delivering the same to each of the following individuals by the method indicated below, addressed as follows:

<div>William S. Wilson Deputy Prosecuting Attorney BONNER COUNTY PROSECUTOR'S OFFICE 127 S. First Avenue Sandpoint, ID 83864</div>	<div><input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile: 208/263-6726 <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Delivery <input checked="" type="checkbox"/> Email / iCourt: prosefile@bonnercounty.id.gov</div>
--	--



Norman M. Semanko



Janna Brown <janna.brown@bonnercountyid.gov>

CUP0030-21 - Opposition to RV Park - Hearing April 3, 2025

1 message

Sheryl Messer <sheryl.messer@bonnercountyid.gov>
To: Mail-Planning <planning@bonnercountyid.gov>
Cc: Daryl Wheeler <daryl.wheeler@bonnercountyid.gov>

Wed, Mar 26, 2025 at 1:25 PM

Planning Department,

Attached is a letter from Sheriff Daryl Wheeler, which is submitted in opposition for the CUP 0030-21 hearing scheduled for April 3, 2025.

Thank you.

Sheryl Messer
Executive Assistant
Bonner County Sheriff's Office
4001 N. Boyer Road
Sandpoint, Idaho 83864
(208) 263-8417 Ext. 3049
sheryl.messer@bonnercountyid.gov

 **2025_0326 Opposition to CUP0030-21_Sheriff.pdf**
391K



BONNER COUNTY SHERIFF'S OFFICE

Daryl Wheeler, Sheriff • Ror Lakewold, Undersheriff

March 26, 2025

Bonner County Planning Department
(via planning@bonnercountyid.gov)

IN RE: CUP 0030-21 – RV PARK HEARING APRIL 3, 2025

Bonner County Sheriff's Office would like to express concern and opposition to approving the proposed CUP Application on this **non-conforming** 4.17-acre parcel that is located in a Rural-5 zone, which zone only allows "one dwelling unit per five (5) acre density" per *Bonner County Revised Code* 12-323(B)(2). BCRC 12-340(D) states: ". . . It is the intent of this title to permit these nonconformities to continue as required by law. It is further the intent of this title that nonconformities shall not be enlarged upon, expanded or extended, nor be used as grounds for adding other structures or uses prohibited elsewhere in the same district or zone. (Ord. 501, 11-18-2008)."

The density of 20 RVs on less than 5 acres in a rural area exacerbates the intensity of danger or hazards both to the occupants of those RVs and to the residents on adjacent parcels. One safety issue to note is that there are no sidewalks along the gravel roadways, which will experience increased pedestrian (including children), bicycle, RV, vehicle and animal traffic. If there is an emergency requiring a response from law enforcement, fire, and/or medical services, the fallout may be intensified because of the response time and the lack of and/or poor or damaged infrastructure. There is also a question as to the adequacy of the rural dirt ingress and egress for all emergency services (potentially more than one of each at one time), along with water resources readily and adequately available.

The health, welfare, and safety of visitors and our residents staying or living in or around RV parks is far better served by placing those facilities in zones with close proximity to emergency infrastructure (e.g., fire hydrants, paved roads) and emergency services.

Sincerely,

Sheriff Daryl Wheeler



Jacob Gabell <jacob.gabell@bonnercountyid.gov>

Re: Notice of Public Hearing - File CUP0030-21 Remanded - Conditional Use Permit - RV Park

DEQ Comments <deqcomments@deq.idaho.gov>

Thu, Mar 6, 2025 at 3:41 PM

To: Bonner County Planning Department <planning@bonnercountyid.gov>

Per the application, the drinking water system serving this project would meet the definition of a public drinking water system (PWS) serving 25 people 60 days or more per year and must meet the requirements of a transient, non-community PWS under the Idaho Rules for Public Drinking Water Systems (Rules). If the CUP is approved the owner must meet the following requirements prior to developing and serving water to the public:

- The well location and construction must first be assessed and approved by DEQ. If it cannot be approved to meet Idaho Rules, another drinking water site and source must be approved.
- A facility plan and preliminary engineering report (PER) developed by an Idaho licensed professional engineer, which includes relevant requirements listed in IDAPA 58.01.18 Section 500, must be submitted to and approved by DEQ.
- Plans and specifications for the drinking water infrastructure to serve this project must be submitted to DEQ by an Idaho licensed professional engineer and approved by DEQ, and the well pump test must be performed and approved in
- accordance with DEQ requirements.
- Initial water quality monitoring must be performed.
- Contact DEQ, Coeur d'Alene for further information (208) 769-1422.

Wastewater

The application states wastewater will be disposed of through a drainfield. DEQ may be involved in the review of the wastewater system at the request of Panhandle Health District (PHD). If the cumulative design flow from all wastewater generating facilities on the property exceeds 2,500 gallons per day (gpd), the wastewater system will be considered a public wastewater system and must meet the applicable rules defined in IDAPA 58.01.16 and IDAPA 58.01.03. If DEQ is requested to review the project, and the project exceeds 2,500 gpd, DEQ will require the applicant to submit a preliminary engineering report (PER) prepared by an Idaho-licensed professional engineer, a demonstration of technical, financial, and managerial capacity, engineered plans and specifications, and results from a nutrient-pathogen evaluation, prior to DEQ recommending approval to PHD.

If you have any questions about the comments this project has received please contact:

- Katy Baker-Casile for engineering and wastewater.
- Anna Moody for drinking water.
- Shawn Sweetapple for air quality.
- Kevin Aardahl for remediation or RCRA.
- Robert Steed for surface water and setback requirements.

Thank you-

Idaho Department of Environmental Quality

2110 Ironwood Parkway, Coeur d'Alene, Idaho 83814
Office Line: 208.769.1422

www.deq.idaho.gov

Our mission: To protect human health and the quality of Idaho's air, land, and water.

From: Bonner County Planning Department <planning@bonnercountyid.gov>

Sent: Tuesday, March 4, 2025 9:04 AM

To: Army Corps of Engineers <CENWW-RD-CDA@usace.army.mil>; Assessors Office Group <assessorsgroup@bonnercountyid.gov>; Avista Copr - Jay West <jay.west@avistacorp.com>; Bay Drive Recreation District <kirbymc45@gmail.com>; Bayview Water & Sewer <bwsd637@gmail.com>; BC Airport Manager Dave Schuck <dave.schuck@bonnercountyid.gov>; BC EMS Jeff Lindsey <jeff.lindsey@bonnercountyid.gov>; Bonner Sheriff <bonnersheriff@bonnerso.org>; Brenna Garro <Brenna.Garro@oer.idaho.gov>; Bryan Quayle <quaylelanduseconsulting@gmail.com>; City of Clark Fork <city@clarkforkidaho.org>; City of Dover <cityclerk@cityofdoveridaho.org>; City of East Hope <easthope.city@gmail.com>; City of Hope <hopecityclerk@gmail.com>; City of Kootenai - Ronda Whittaker <cityclerk@cityofkootenai.org>; City of Oldtown <cityofoldtown@hotmail.com>; City of Ponderay KayLeigh Miller <klmiller@ponderay.org>; City of Priest River <layers@priestriver-id.gov>; City of Sandpoint <cityplanning@sandpointidaho.gov>; cityclerk@spirittlakeid.gov; Coolin Sewer <coolinsewer@gmail.com>; Coolin-Cavanaugh Bay Fire District <coolinfirechief@gmail.com>; DEQ Comments <deqcomments@deq.idaho.gov>; Drainage District #7 Kim Hoodenpyle <kjh5345@gmail.com>; East Bonner Library <vanessa@ebonnerlibrary.org>; East Priest Lake Fire Chief Tom Renzi <epbfdchief@gmail.com>; Ellisport Bay Sewer District <clerk@ebsewerdistrict.com>; Facilities Director LPOSD #84 <matt.diel@lposd.org>; Garfield Bay Water and Sewer District Clerk <garfieldbaywsd@hotmail.com>; Granite Reeder Sewer District <granitereeder@gmail.com>; Dan Everhart <Dan.Everhart@ishs.idaho.gov>; Horsmon, Merritt <merritt.horsmon@idfg.idaho.gov>; Mike Ahmer <mahmer@idl.idaho.gov>; IDL - Nav. Waters Ryan Zandhuisen <RZandhuisen@idl.idaho.gov>; IDL - Pend Oreille Lake Supervisory <esjoquist@idl.idaho.gov>; dbrown@idl.idaho.gov; IDWR Chase Bell <chase.bell@idwr.idaho.gov>; Independent Hwy Dist - Julie Bishop <ihdclerk@gmail.com>; ITD <D1Permits@itd.idaho.gov>; Jack Schenck Vyve/Northland Cable <Jack.schenck@vyvebb.com>; Jason Johnson <jason.johnson@bonnercountyid.gov>; Kenny Huston <kenny.huston@oer.idaho.gov>; Kootenai Ponderay Sewer District <CJohnson@kootenaiponderaysewerdistrict.org>; Laclede Water District <LWdistrict@frontier.com>; Lakeland Joint School District #272 <cpursley@lakeland272.org>; Lakeland Joint School District #272 Jessica Grantham <jessica.grantham@lakeland272.org>; Lisa Rosa <hr@ebonnerlibrary.org>; North of the Narrows Fire Dept <Huckbay2501@gmail.com>; Northern Lights - Kristin Mettke <kristin.mettke@nli.coop>; Northside Fire District - Karen Quenell <kquenell@northsidefire.org>; Outlet Bay Sewer District <outletbaysewer@gmail.com>; Pend Orielle Hospital District <kim.kichenmaster@bonnergeneral.org>; PHD <EApplications@phd1.idaho.gov>; Priest Lake Public Library District <plplibrary@hotmail.com>; Priest Lake Translator District - Frankie Dunn <Frankiejduhn@hotmail.com>; Road & Bridge - Matt Mulder <matt.mulder@bonnercountyid.gov>; Ruen Yeager <planning@ruenyeager.com>; Sagle Valley Water & Sewer District <saglewatersewer@gmail.com>; Sam Owen Fire Rescue Sam Owen Fire Rescue <sofd@wow-tel.net>; joekren@sd83.org; School District 84 Transportation - James Koehler <james.koehler@lposd.org>; Schweitzer Fire, Spencer Newton <firedistrict@msn.com>; Selkirk Association of Realtors Danielle <danielle@selkirkaor.com>; Selkirk Fire Gavin Gilcrease <ggilcrease@sandpointidaho.gov>; Selkirk Recreation District <selgar@mac.com>; Southside Water and Sewer <southsidewaterandsewer@swsdidaho.org>; Spirit Lake Fire Dept. (Debbie Carpenter) <chief@spirittlakefire.com>; Superintendent No. 84 Becky Meyer <becky.meyer@lposd.org>; Superintendent School Dist 84 <kelly.fisher@lposd.org>; Syringa Heights Water <allwater49@outlook.com>; Timberlake Fire <kwright@timberlakefire.com>; Trestle Creek Sewer District Janice Best <janicesb@televar.com>; US Fish & Wildlife Services - Christy Johnson Hughes <FW1idahoconsultationrequests@fws.gov>; West Bonner Library <meagan@westbonnerlibrary.org>; West Pend Oreille Fire District <wpofd1@gmail.com>; West Priest Lake Fire

Josh Gilbert <WPLFD.Chief@gmail.com>

Cc: Jacob Gabell <jake.gabell@bonnercountyid.gov>; Alexander Feyen <alexander.feyen@bonnercountyid.gov>

Subject: Notice of Public Hearing - File CUP0030-21 Remanded - Conditional Use Permit - RV Park

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments **BEFORE** you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

[Quoted text hidden]



Janna Brown <janna.brown@bonnercountyid.gov>

[EXT SENDER] CUP0030-21 - Agency Comments

1 message

Kathryn Kolberg <KKolberg@phd1.idaho.gov>

Thu, Mar 27, 2025 at 3:25 PM

To: "planning@bonnercountyid.gov" <planning@bonnercountyid.gov>


Cc: Aubrey Naylor <anaylor@phd1.idaho.gov>

Good Afternoon –

Please see attached for PHD Agency Comments.

Thank you,

Kathryn

 <p>Public Health Prevent. Promote. Protect. Panhandle Health District</p>	<p>Kathryn Kolberg Environmental Health Program Manager 2101 W. Pine St., Sandpoint, ID 83864 Office: 208-265-6384 Office Desk: 208-920-7902 Email: kkolberg@phd1.idaho.gov Web: Panhandlehealthdistrict.org</p>
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**CUP0030-21 CUP_ PHD Comments 3.27.25.pdf**

1660K



Panhandle Health District

Healthy People in Healthy Communities

Public Health
Prevent. Promote. Protect.

Panhandle Health District

Bonner County Zoning Commission

Bonner County Administrative Building

1500 Highway 2

Sandpoint, ID 83864

March 27, 2025

Re: File CUP0030-21 Conditional Use Permit – Idaho Land LLC – RV Park

Bonner County Zoning Commission –

This letter is intended as Panhandle Health District (PHD) comments pertaining to the proposed CUP file listed above. PHD reviewed the proposed application, which indicates an intention to create an RV Park with 20 spots and a laundry facility for use by the residents.

- PHD has not granted any septic permits for a proposed RV Park on this property. PHD does not have any current septic applications for the parcel.
- PHD previously conveyed to the landowner that this parcel is not suitable for an RV park with 20 spots because that would generate at least 2,500gpd of wastewater, which would require a Large Soil Absorption System (LSAS). The site does not have adequate space to meet LSAS standards. Any proposal must remain below 2,500gpd in wastewater discharges.
- PHD received two (2) septic permit applications (21-09-151024 & 22-09-04079) for 9 RV spots each (total of 18 spots). However, PHD never issued any septic permits because we did not receive a clear *Letter of Intended Use* describing the details of the project, nor did we receive an adequate *Plot Plan* and all items necessary for PHD to determine the proposed nature & quantity of wastewater discharges proposed – as is required per IDAPA 58.01.03.005.04. PHD emailed the landowner on July 6 2023, but never heard back, nor received the necessary items. The applications are now expired.
- PHD will need current applications and all requisite information to determine the scope of the project, whether the RV's will be intended as dwellings or short-term recreational use, and the proposed layouts and setbacks between all water & sewage system components proposed.
- The landowner will need to consult with Idaho Dept of Environmental Quality (DEQ) regarding the proposed water system – as it may need to meet Public Water System requirements.

Sandpoint – Bonner County
2101 W. Pine St.
Sandpoint, ID 83864
208.263.5159

In summary, PHD does not have adequate information to verify what type of project may be suitable for this property. Per IDAPA 58.01.03.001.04, every owner of real property is jointly and individually responsible for storing, treating, and disposing of blackwaste and wastewater generated on that property; connecting all plumbing fixtures on that property that discharge wastewaters to an approved wastewater system or facility; and obtaining necessary permits and approvals for installation of individual or subsurface blackwaste and wastewater disposal systems.

Therefore, PHD recommends that any proposals for this property be required to obtain all necessary permits and approvals first, to ensure the sanitary services will be adequate to serve the proposed uses on the land.

If there are any questions about this information, please feel free to contact our office 208. 265.6384 or email me at kkolberg@phd1.idaho.gov

Regards,



Kathryn Kolberg, REHS / Environmental Health Program Manager

Cc: Aubrey Naylor, REHS



NOTICE OF PUBLIC HEARING

I hereby certify that a true and correct copy of this "Notice of Public Hearing" was digitally transmitted or mailed (postage prepaid) on this **4th** day of **March 2025**.

Jessica Montgomery

Jessica Montgomery, Hearing Coordinator

This notice was mailed to political subdivisions, property owners within 300 feet of the subject property, and the media on **Tuesday, March 4, 2025**.

NOTICE IS HEREBY GIVEN that the Bonner County Zoning Commission will hold a public hearing at **5:30 pm** on **April 3, 2025** in the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho, by Zoom teleconference and YouTube Livestream to consider the following request:

File CUP0030-21 – Conditional Use Permit - Idaho Land LLC-RV Park

The applicant is requesting a conditional use permit for a 20-unit RV Park on 4.17 acres. The property is zoned Rural-5. The project is located off Clagstone Road and Al's Welding Road in Section 24, Township 54 North, Range 5 West, Boise-Meridian. On November 15, 2024, the District Court vacated the previous approval and remanded the file back to Bonner County for further proceedings. (See Reverse for Map)

For details regarding this application, Zoom teleconference, or YouTube livestream, visit the Planning Department web site at www.bonnercountyyid.gov/departments/Planning. Staff reports are available online or may be viewed at the planning department approximately a week before the scheduled hearing.

Written statements must be submitted to the planning department record no later than seven (7) days prior to the public hearing. Written statements not exceeding one standard letter sized, single spaced page may be submitted at the public hearing. Statements can be sent to the Bonner County Planning Department at 1500 Highway 2, Suite 208, Sandpoint, Idaho 83864; faxed to 866-537-4935 or e-mailed to planning@bonnercountyyid.gov. The referenced start time stated above reflects the beginning of the hearing. Specific file start time and hearing duration vary.

During the hearing for this application, the public will be given an opportunity to provide testimony and/or evidence regarding how the proposal does or does not comply with the applicable approval criteria of the Bonner County Revised Code. At the close of the public hearing, the governing body will make a decision on the application that may include, but is not limited to, approval, denial, remand, or continuance of the public hearing. Any person needing special accommodations to participate in the public hearing should contact the Bonner County Planning Department at (208) 265-1458 at least 48 hours prior to the scheduled hearing.

If you have no comment or response, you may indicate below and return this form to the Planning Department.

NO COMMENT _____

Name

Date

PHD Comments - See attached letter dated 3/27/25



Alexander Feyen <alexander.feyen@bonnercountyid.gov>

Notice of Public Hearing - File CUP0030-21 Remanded - Conditional Use Permit - RV Park

Anne Boisvert <admin@spiritleakefire.com>

Wed, Mar 26, 2025 at 2:22 PM

To: Bonner County Planning Department <planning@bonnercountyid.gov>

Cc: Jacob Gabell <jake.gabell@bonnercountyid.gov>, Alexander Feyen <alexander.feyen@bonnercountyid.gov>, Gary Pfahler <gpfahler@spiritleakefire.com>, Dan Meliza <dmeliza@spiritleakefire.com>, Mark Tapscott <mtapscott@spiritleakefire.com>

Good afternoon,

The Spirit Lake Fire Protection District will follow and enforce the International Fire Code to the full extent regarding file CUP0030-21. Notably, RV parks pose a unique risk, especially in the Wildland Urban Interface. Spirit Lake Fire Protection District opposes any approval(s) that allows the applicant to proceed without the appropriate and required amount of fire flow, spacing, setbacks, and fire access. In addition to the risk to other RVs, and the surrounding homes and businesses, a fire in this park could spread to the wildland, become a significant wildfire incident, and impact all of Bonner County, even potentially threatening homes in neighboring fire districts. RV parks are unregulated in Idaho and the transient nature of the park makes prevention and enforcement nearly impossible. RVs burn more rapidly than structures and spread to other neighboring RVs rapidly. A full RV park poses a high risk for civilian rescue, or even life loss. LPG tanks and other hazards associated with RVs can pose unique operational challenges for short-staffed fire districts. With limited resources in our county, this RV park poses a tactical challenge and requires us to be more attentive to fire prevention features, conditions, and designs.

[Quoted text hidden]



Jacob Gabell <jacob.gabell@bonnercountyid.gov>

Re: [EXT SENDER] RE: Notice of Public Hearing - File CUP0030-21 Remanded - Conditional Use Permit - RV Park

Anne Boisvert <admin@spiritlakefire.com>

Wed, Mar 26, 2025 at 12:50 PM

To: Bonner County Planning Department <planning@bonnercountyid.gov>

Cc: Jacob Gabell <jake.gabell@bonnercountyid.gov>, Alexander Feyen <alexander.feyen@bonnercountyid.gov>

Good afternoon,

The Spirit Lake Fire Protection District will follow and enforce the International Fire Code to the full extent regarding file CUP0030-21.

Thank you,

Anne

Anne Boisvert

District Administrator

Spirit Lake Fire Protection District

Physical Address: 32182 N 6th Ave.

Mailing Address: P.O. Box 116

Spirit Lake, ID 83869

(208) 623-5800 phone

www.spiritlakefire.com



From: Bonner County Planning Department <planning@bonnercountyid.gov>**Sent:** Tuesday, March 4, 2025 9:04 AM**To:** Army Corps of Engineers <CENWW-RD-CDA@usace.army.mil>; Assessors Office Group <assessorsgroup@bonnercountyid.gov>; Avista Copr - Jay West <jay.west@avistacorp.com>; Bay Drive Recreation District <kirbysmc45@gmail.com>; Bayview Water & Sewer <bwsd637@gmail.com>; BC Airport Manager Dave Schuck <dave.schuck@bonnercountyid.gov>; BC EMS Jeff Lindsey <jeff.lindsey@bonnercountyid.gov>; Bonner Sheriff <bonnersheriff@bonnerso.org>; Brenna Garro <Brenna.Garro@oer.idaho.gov>; Bryan Quayle <quaylelanduseconsulting@gmail.com>; City of Clark Fork <city@clarkforkidaho.org>; City of Dover

<cityclerk@cityofdoveryidaho.org>; City of East Hope <easthope.city@gmail.com>; City of Hope <hopecityclerk@gmail.com>; City of Kootenai - Ronda Whittaker <cityclerk@cityofkootenai.org>; City of Oldtown <cityofoldtown@hotmail.com>; City of Ponderay Kayleigh Miller <klmiller@ponderay.org>; City of Priest River <layers@priestriver-id.gov>; City of Sandpoint <cityplanning@sandpointidaho.gov>; City of Spirit Lake <cityclerk@spiritlakeid.gov>; Coolin Sewer <coolinsewer@gmail.com>; Coolin-Cavanaugh Bay Fire District <coolinfirechief@gmail.com>; DEQ <deqcomments@deq.idaho.gov>; Drainage District #7 Kim Hoodenpyle <kjh5345@gmail.com>; East Bonner Library <vanessa@ebonnerlibrary.org>; East Priest Lake Fire Chief Tom Renzi <epbfdchief@gmail.com>; Ellisport Bay Sewer District <clerk@ebsewerdistrict.com>; Facilities Director LPOSD #84 <matt.diel@lposd.org>; Garfield Bay Water and Sewer District Clerk <garfieldbaywsd@hotmail.com>; Granite Reeder Sewer District <granitereeder@gmail.com>; ID State Historical Society - Dave Everhart <dan.everhart@ishs.idaho.gov>; Idaho Department of Fish & Game <merritt.horsmon@idfg.idaho.gov>; IDL - Mike Ahmer <mahmer@idl.idaho.gov>; IDL - Nav. Waters Ryan Zandhuisen <RZandhuisen@idl.idaho.gov>; IDL - Pend Oreille Lake Supervisory <esjoquist@idl.idaho.gov>; IDL - Priest Lake Supervisory Area <dbrown@idl.idaho.gov>; IDWR Chase Bell <chase.bell@idwr.idaho.gov>; Independent Hwy Dist - Julie Bishop <ihdclerk@gmail.com>; ITD <D1Permits@itd.idaho.gov>; Jack Schenck Vyve/Northland Cable <Jack.schenck@vyvebb.com>; Jason Johnson <jason.johnson@bonnercountyid.gov>; Kenny Huston <kenny.huston@oer.idaho.gov>; Kootenai Ponderay Sewer District <CJohnson@kootenaiponderaysewerdistrict.org>; Laclede Water District <LWdistrict@frontier.com>; Lakeland Joint School District #272 <cpursley@lakeland272.org>; Lakeland Joint School District #272 Jessica Grantham <jessica.grantham@lakeland272.org>; Lisa Rosa <hr@ebonnerlibrary.org>; North of the Narrows Fire Dept <Huckbay2501@gmail.com>; Northern Lights - Kristin Mettke <kristin.mettke@nli.coop>; Northside Fire District - Karen Quenell <kquenell@northsidefire.org>; Outlet Bay Sewer District <outletbaysewer@gmail.com>; Pend Orielle Hospital District <kim.kichenmaster@bonnergeneral.org>; PHD <EHapplications@phd1.idaho.gov>; Priest Lake Public Library District <plplibrary@hotmail.com>; Priest Lake Translator District - Frankie Dunn <Frankiejduhn@hotmail.com>; Road & Bridge - Matt Mulder <matt.mulder@bonnercountyid.gov>; Ruen Yeager <planning@ruenyeager.com>; Sagle Valley Water & Sewer District <saglewatersewer@gmail.com>; Sam Owen Fire Rescue Sam Owen Fire Rescue <sofd@wow-tel.net>; School District #83 - Joseph Kren <joeKren@sd83.org>; School District 84 Transportation - James Koehler <james.koehler@lposd.org>; Schweitzer Fire, Spencer Newton <firedistrict@msn.com>; Selkirk Association of Realtors Danielle <danielle@selkirkaor.com>; Selkirk Fire Gavin Gilcrease <ggilcrease@sandpointidaho.gov>; Selkirk Recreation District <selgar@mac.com>; Southside Water and Sewer <southsidewaterandsewer@swsdidaho.org>; Chief Debbie Carpenter <chief@spiritlakefire.com>; Superintendent No. 84 Becky Meyer <becky.meyer@lposd.org>; Superintendent School Dist 84 <kelly.fisher@lposd.org>; Syringa Heights Water <allwater49@outlook.com>; Timberlake Fire <kwright@timberlakefire.com>; Trestle Creek Sewer District Janice Best <janicesb@televar.com>; US Fish & Wildlife Services - Christy Johnson Hughes <FW1idahoconsultationrequests@fws.gov>; West Bonner Library <meagan@westbonnerlibrary.org>; West Pend Oreille Fire District <wpofd1@gmail.com>; West Priest Lake Fire Josh Gilbert <WPLFD.Chief@gmail.com>

Cc: Jacob Gabell <jake.gabell@bonnercountyid.gov>; Alexander Feyen <alexander.feyen@bonnercountyid.gov>

Subject: Notice of Public Hearing - File CUP0030-21 Remanded - Conditional Use Permit - RV Park

Dear Agencies,

[Quoted text hidden]

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNER

<p>KEEP BONNER COUNTY RURAL; PENNY KAY LAMB; JOSHUA KEITH EMMETT; PRISCILLA EILEEN EMMETT; DENNIS ARTHUR WALKER; and JEANETTE WALKER</p> <p style="text-align: center;"><i>Petitioners,</i></p> <p>v.</p> <p>BONNER COUNTY, a political subdivision of the State of Idaho, acting through the BONNER COUNTY BOARD OF COMMISSIONERS,</p> <p style="text-align: center;"><i>Respondent,</i></p>	<p style="text-align: center;">CASE NO. CV09-22-1674</p> <p style="text-align: center;">MEMORANDUM DECISION AND ORDER ON PETITION FOR REVIEW</p>
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Petitioners Keep Bonner County Rural, Penny Kay Lamb, Joshua Keith Emmett, Priscilla Eileen Emmett, Dennis Arthur Walker and Jeanette Walker ("Petitioners") filed a Petition for Judicial Review of the Bonner County Board of Commissioners' ("Board") decision granting a conditional use permit ("CUP") to Idaho Land LLC on December 9, 2022. On March 24, 2023, Petitioners filed their Opening Brief that alleged the Board's decision to grant the CUP was in violation of the relevant provisions of the Bonner County Revised Code and applicable statutory provisions; that the findings of fact contained in the Board's decision were not supported by substantial evidence; that the Board's conclusion of law was erroneous; that the Board's decision was arbitrary, capricious and an abuse of discretion, and; that the Petitioners' fundamental rights had been violated by the Board's decision. On April 19, 2023, the Board filed Respondent's Brief that argued the Board's decision should be upheld because the Board correctly interpreted and applied the applicable zoning code to its decision to approve the CUP and that substantial evidence

existed in the Record and Transcripts to support the Findings of Fact and Conclusions of Law. On May 10, 2023, the Petitioners filed their Reply Brief. On July 19, 2023, this Petition for Judicial Review came on for hearing before the Honorable Judge Cynthia Meyer. Petitioners were represented by Norman Semanko of Parsons, Behle & Latimer. Respondent was represented by Deputy Prosecuting Attorney William Steven Wilson. For the reasons discussed below, the Board's decision to grant the variance is vacated and remanded for further proceedings before the Board.

FACTUAL AND PROCEDURAL HISTORY

On February 2, 2022, Idaho Land LLC ("Applicant") submitted Application No. CUP0030-21 to the Bonner County Planning Department seeking a Conditional Use Permit ("CUP") for an RV Park containing 20 residential Recreational Vehicles with full utility hookups. *R.* at p. 1. The proposed site for the park is a 4.17-acre parcel in the rural residential 5-acre zone of Bonner County. *R.* at 2. The application states that the use for the subject property is "year round RV living" for "RV residents." *R.* at pp. 2-3, 6. The Applicant states that the project "is to provide affordable housing" and "a low income housing option for current residents who are combating rising housing prices in the area." *R.* at pp. 5-6. Water is to be supplied to RV residents by an individual well. *R.* at p. 5. Applicant proposed to have fire protection for the RV residents provided by the Spirit Lake Fire Protection District. *R.* at p. 6. Bonner County Planning Department Staff confirmed that fire protection services are provided in the area by the Spirit Lake Fire Protection District. *R.* at pp. 95, 103. Numerous residences are located in close proximity to the proposed RV dwelling units, including single family homes on surrounding land. *R.* at pp. 2 and 95.

At a public hearing on May 5, 2022, the Board stated that the CUP was analyzed under Bonner County Revised Code ("BCRC") 12-333, which governs the commercial use of RV units.

May 5, 2022 Tr. at p. 8, ll. 21-23. A member of the Bonner County Planning Staff read aloud comments from county agencies regarding the CUP, including a comment from the Spirit Lake Fire Protect District, which stated that “there is no adequate water supply for firefighting in this remote area.” *Id.* at p. 11, ll. 10-19. Members of the community raised concerns that the CUP should have been analyzed under BCRC 12-332, which governs the residential use of RV units in Bonner County, and under which the CUP could not have been approved.¹ *May 5, 2022 Tr.* at pp. 34-38. The Board received comments from surrounding property owners which “expressed concerns about impact[s] to roads, wells, sewage disposal, noise, general safety, fire and garbage.” *R.* at p. 106. Petitioners in this matter submitted comments specifically expressing concerns to the injury that approval of the CUP would have on them individually. *R.* at pp. 117, 130, 147, 182, 201, 207-208, 217; *May 5, 2022 Tr.* at pp. 58, 63-66; *August 24, 2022 Tr.* at p. 37.

At a public hearing held on August 24, 2022, counsel for the Petitioners again raised concerns that the CUP should have been analyzed under BCRC 12-332 instead of 12-333. *August 24, 2022 Tr.* at pp. 26-28. Further, counsel for the Petitioners argued that even if BCRC 12-333 did apply, the code required adequate water supply for drinking and fire suppression. Petitioners’ counsel argued that there was no written finding that addressed the adequacy of water for fire suppression. *Id.* at pp. 28-36. In addressing this concern, one Board member stated that “the proposed RV Park is within a fire district, which makes it adequate.” *Id.* at p. 46, ll. 10-11. The Board approved the application in a written decision August 24, 2022. The Petitioners timely

¹ BCRC 12-332(9) states that when a recreational vehicle is used in the same manner as a single family dwelling or an accessory dwelling unit, such use is limited to a maximum of 2 recreational vehicle dwelling units per parcel, and the conditions of BCRC 12-496 apply.

BCRC 12-496 limits recreational vehicles used as a dwelling unit to one (1) per lot or parcel for lots or parcels less than one (1) acre in size, or to two (2) per lot or parcel for lots, or parcels greater than one (1) acre in size without respect to density.

requested reconsideration of the approval, pursuant to Idaho Code § 67-6535 and the Bonner County Revised Code. The Board failed to act on the request for reconsideration within 60 days, thereby denying the request by operation of law. I.C. § 67-6535(2)(b).

The Petitioners filed a Petition for Judicial Review of the Board's decision on December 9, 2022, and an Opening Brief on March 24, 2023. Petitioners argued that the Board's decision was not supported by substantial evidence as required under Idaho Code § 67-5279(3)(d), the Board's written findings of fact and conclusions of law were insufficient under Idaho Code § 67-6535(2) and their substantial rights were prejudiced by the decision. Petitioners requested attorney fees under Idaho Code § 12-117 on the basis that the Board's decision was without a reasonable basis in fact or law. *Petitioners' Opening Brief* at 5-10.

STANDARD OF REVIEW

"The Local Land Use Planning Act (LLUPA) allows an affected person to seek judicial review of an approval or denial of a land use application, as provided for in the Idaho Administrative Procedure Act (IDAPA)." *917 Lusk, LLC v. City of Boise*, 158 Idaho 12, 14, 343 P.3d 41, 43 (2015); I.C. § 67-6521(1)(d). "For the purposes of judicial review of LLUPA decisions, a local agency making a land use decision, such as the Board of Commissioners, is treated as a government agency under IDAPA." *In re Variance ZV2011-2*, 156 Idaho 491, 494, 328 P.3d 471, 474 (2014).

It is well established that "[t]he applicable statutory framework for reviewing agency action is found in I.C. § 67-5279." *In re Variance*, 156 Idaho at 494, 328 P.3d at 474. Under Idaho Code § 67-5279:

The reviewing court must vacate and remand for further agency action if the agency's findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) not supported by substantial evidence on the record as a whole; or
- (e) arbitrary, capricious, or an abuse of discretion.

Jasso v. Camas Cnty., 151 Idaho 790, 793, 264 P.3d 897, 900 (2011) (internal citations omitted).

The “agency action shall be affirmed unless substantial rights of the appellant have been prejudiced.” Idaho Code § 67-5279(4).

Generally, “planning and zoning decisions are entitled to a strong presumption of validity; this includes the board’s application and interpretation of their own zoning ordinances.” *In re Variance ZV2011-2*, 156 Idaho at 494, 328 P.3d at 474. When acting in an appellate capacity, the district court “will not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact and will defer to the agency’s findings unless they are clearly erroneous.” *Krempasky v. Nez Perce County Planning and Zoning*, 150 Idaho 231, 235, 245 P.3d 983, 987 (2010).

DISCUSSION

I. The Board waived any claim that the Petitioners failed to establish prejudice to a substantial right.

As a threshold matter, the Board does not contest that the Petitioners’ claim evidences a prejudice to their substantial right. “The party challenging the decision of the Board must not only demonstrate that the Board erred in a manner specified by I.C. § 67-5279(3) but must also show that its substantial rights have been prejudiced.” *Hawkins v. Bonneville County Board of Commissioners*, 151 Idaho 228, 232, 254 P.3d 1224, 1228 (2011); *Krempasky v. Nez Perce County Planning and Zoning*, 150 Idaho 231, 235, 245 P.3d 983, 987 (2010). In order to show prejudice to a substantial right under *Hawkins*, a petitioner “must still show, not merely allege, real or

potential prejudice to his or her substantial rights.” *Id.* at 233, 254 P.3d at 1229. In other words, “[t]he petitioner opposing a permit must be in jeopardy of suffering substantial harm if the project goes forward, such as a reduction in the opponent’s land value or interference with his or her use or ownership of the land.” *Id.* Thus, a showing that “the County substantively misapplied its own ordinance” is not enough to prejudice the substantial rights of a petitioner that opposes a variance. *Id.* In the present case, at the July 19, 2023 hearing, the Board conceded that the Petition in this matter sets forth sufficient grounds for a showing of prejudice to the Petitioners’ substantial rights. As such, the court need not address this issue.

II. Petitioners have shown that the Board’s written Findings of Fact and Conclusions of Law are insufficient under I.C. § 67-6535.

Petitioners argue that the Board’s written decision contains no analysis, explanation or conclusion as to whether the proposed use for the RVs is residential or commercial and that the Board failed to address the individual concerns raised regarding the issue of fire suppression.

Petitioners further argue that the Board analyzed the CUP under the incorrect code section. The BCRC recognizes two different types of RV uses: Residential use and Recreational/Commercial use. BCRC 12-332(9) governs the residential use of RV units, and states:

Building Location Permit regulations do not apply to non-commercial temporary, intermittent or occasional use of recreational vehicle. When a recreational vehicle is used in the same manner as a single family dwelling or an accessory dwelling unit, such use is limited to a maximum of 2 recreational vehicle dwelling units per parcel, and the conditions of BCRC 12-496 apply.

BCRC 12-496 states, in pertinent part:

- A. Dwelling Unit, Recreational Vehicle.
 - 1. Limited to one (1) per lot or parcel for lots or parcels less than one (1) acre in size, or limited to two (2) per lot or parcel for lots, or parcels greater than one (1) acre in size without respect to density.

The commercial use of RV units is addressed in BCRC 12-333(8), and states that “[a]dequate water supplies for drinking and fire suppression, as well as approval of sewage disposal sites and methods by the Panhandle health district and/or the state of Idaho, must be demonstrated as appropriate.”

Petitioners argued that the CUP should have been analyzed under BCRC 12-332(9), as the application clearly states that the project is a full time residential RV site designed to “provide transitional housing for those migrating to north Idaho and provide a low income housing option for current residents who are combating rising housing prices in the area.” If analyzed under BCRC 12-332(9), approval would not have been possible due to the number of units the applicant seeks to have on the 4.7 acre property.

The Board responds that its analysis of the application under BCRC 12-333(8) was appropriate and that the court must defer to the County’s interpretation of its own zoning code so long as that interpretation is neither arbitrary nor capricious. The Board argues that residential use of an RV under BCRC 12-333(8) is permitted as a matter of right in most all zones but is limited to two RV’s per parcel and that the other use, an RV park which is commercial in nature, is governed under BCRC 12-333(8). The Board argues that the Petitioners are mistaken in their reliance on BCRC 12-333(8) as the controlling code in this matter.

Further, the Petitioners argue that the Board failed to address the individual concerns raised regarding the issue of fire suppression, as required in BCRC 12-333(8). Petitioners cite the court to Idaho Code § 67-6535(2)(a), which states:

(2) The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

(a) 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 denial of same, on appeal.

The Board responds that there is substantial evidence in the Record and transcripts to support the finding that the CUP provided adequate fire suppression as required under BCRC § 12-333(8). The Board argues that the issue of fire suppression received “rigorous scrutiny” at all levels of the review process and that the Board concluded that adequate measures existed. The Board cites to portions of the transcript in which the topic of fire suppression, the properties’ compliance with ingress and egress for fire equipment, thinning of trees as suggested by the Chief of the Fire District and the fact that the property subject to the CUP was serviced by the Spirit Lake Fire District.

Petitioners respond that the portions of the transcript relied upon by the Board do not address adequate water supplies for fire suppression as required under BCRC § 12-333(8).

Jasso v. Camas Cnty., 151 Idaho 790, 264 P.3d 897 (2011), is a seminal case addressing the requirement of Idaho Code § 67–6535 as it relates to the issuance of written findings of fact and conclusions of law. The *Jasso* court stated that “I.C. § 67–6535 requires more than conclusory statements from which a decision-maker’s resolution of disputed facts and legal reasoning may be inferred. It is not the role of the reviewing court to scour the record for evidence which may support the decision-maker’s implied findings and legal conclusions.” *Id.*, 151 Idaho at 795, 264 P.3d at 902 (emphasis added). “What is needed for adequate judicial review is a clear statement of what, specifically, the decisionmaking [sic] body believes, after hearing and considering all the evidence, to be the relevant and important facts upon which its decision is based. Conclusions are not sufficient.” *Id.*, 151 Idaho at 796, 264 P.3d at 903 (quoting *South of Sunnyside Neighborhood League v. Board of Commissioners*, 280 Or. 3, 569 P.2d 1063, 1076–77 (1977)). In *Jasso*, the

county board of commissioners approved a preliminary subdivision plat over the objection of Jasso and other land owners. At a public hearing on the matter, the landowners raised concerns regarding the subdivision's lack of access to a public roadway, possible violations of existing ordinances and the fact that the application did not address flood mitigation. *Id.*, 151 Idaho at 792, 264 P.3d at 899. The board in *Jasso* issued findings of fact and conclusion of law approving the plat on conditions that addressed the landowner's concerns relating to the public roadway and possible ordinance violations. The board's findings and conclusions did not address the issues of the floodplain. On petition for judicial review, Jasso argued that the board's findings and conclusions did not satisfy the requirements of I.C. § 67-6535. *Id.*, 151 Idaho at 793, 264 P.3d at 900. The district court found that "the [b]oard's decision was arbitrary and capricious because its findings and conclusions were inadequate under I.C. § 67-6535 and violated Jasso's and Gorringes' substantial right to due process." *Id.* The district court vacated the board's findings and conclusions and remanded the matter back to the board for further proceedings. On appeal, the Idaho Supreme Court affirmed the district court's ruling, stating:

In order to satisfy I.C. § 67-6535, a local decision-maker must articulate in writing both (1) the facts found and conclusions reached and (2) the rationale underlying those findings and conclusions.

The requirement of meaningful administrative findings serves important functions, including facilitating judicial review, avoiding judicial usurpation of administrative functions, assuring more careful administrative consideration, helping parties plan their cases for rehearing and judicial review and keeping within their jurisdiction."

Id., 151 Idaho at 794, 264 P.3d at 901 (internal citations and quotation marks omitted). The *Jasso* court cited to other Idaho Supreme Court cases that held local decision-makers to the standards required in I.C. § 67-6535. See *Crown Point Development, Inc. v. City of Sun Valley*, 144 Idaho 72, 77-78, 156 P.3d 573, 578-79 (2007) (holding as inadequate the findings of the city council as merely recitations of portions of the record rather than determinations of the facts

disputed by the parties); *Workman Family Partnership v. City of Twin Falls*, 104 Idaho 32, 38, 655 P.2d 926, 931 (1982) (holding that the city council's findings of fact were basically conclusions and did not reveal the underlying facts or policies considered by the council or insight into the council's decision). The *Jasso* court stated that "[t]hese cases demonstrate that the reasoned statement must plainly state the resolution of factual disputes, identify the evidence supporting that factual determination, and explain the basis for legal conclusions, including identification of the pertinent laws and/or regulations upon which the legal conclusions rest." *Jasso*, 151 Idaho at 794, 264 P.3d at 901.

In this matter, the Board's Findings of Fact and Conclusions of Law read as follows:

Findings of Fact:

1. The property is zoned Rural-5. Where RV parks are conditionally allowed in this zone upon having meant [sic] the required standards per BCRC 12-497.
2. The property is accessed off Clagstone Road and Al's Welding Road. Both roads are Bonner County owner [sic] and maintained gravel travel surfaces.
3. The property has been reviewed against the required standards of BCRC 12-497 with conditions added to ensure full compliance with Bonner County Revised Code.
4. Fire protection is provided Spirit Lake Fire District.
5. Electricity is provided by Inland Power.
6. The site has an individual well.
7. A speculative site evaluation has been done for the proposed septic system.
8. The proposal is for 20-unit RV Park.
9. The site is 4.17 acres.

Conclusions of Law:

Based upon the findings of fact, the following conclusions of law are adopted:

Conclusion 1

The proposed conditional use permit is in accord with the Bonner County comprehensive plan.

Conclusion 2

This proposal was reviewed for compliance with the criteria and standards set forth at BCRC Chapter 4, Title 12, Subchapter 2.2, environmental standards of Chapter 7, Title 12, and storm water management criteria and standards set forth in Chapter 7, Title 12, Bonner County Revised Code.

Conclusion 3

The proposed use will not create a hazard or will not be dangerous to persons on or adjacent to the property.

The court finds that the Board's written Findings of Fact and Conclusions of Law contain no analysis of its contention that the CUP was properly analyzed under BCRC 12-333, nor does the written statement address, in any meaningful way, the Petitioners' stated concerns as to fire suppression. The statements of the Board contained within its written decision are merely conclusory recitations of information contained within the application and do not contained a "reasoned statement" as to the relevant and important facts upon which their decision was based. As the court stated in the hearing on July 19, 2023, the Board issued a "bare bones" finding. At a minimum, the Board's written decision should have addressed its reasoning in determining that the CUP was analyzed under the appropriate code section and its reasoning as to why the property's location within a fire protection district satisfied the requirement under BCRC 12-333 regarding "adequate" water supply for fire suppression. The court was informed in the July 19, 2023 hearing that the written Findings of Fact and Conclusions of Law are generated by the Board's staff and are "pretty uniform." However, this court finds that the findings issued by the Board failed to provide the requisite reasoned statement that plainly states the resolution of factual disputes, identifies the evidence supporting that factual determination, and "explains the basis for legal conclusions, including identification of the pertinent laws and/or regulations upon which the legal conclusions rest." *Jasso*, 151 Idaho at 794, 264 P.3d at 901. "Conclusions are not sufficient." *Id.*, 151 Idaho at 796, 264 P.3d at 903 (internal quotation omitted). Under *Jasso*, the Board's written findings of fact and conclusions of law are insufficient to meet the requirements of I.C. § 67-6535. The approval or denial of any application authorized under LLUPA "shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision..." I.C. § 67-6535(2). Failure to identify the nature of compliance with relevant decision criteria shall be

grounds for invalidation of an approved permit on appeal. I.C. § 67-6535(2)(a). Therefore, pursuant to Idaho law, this court vacates the Board's approval of the CUP and remands the matter for further agency proceedings.

III. The Board's failure to issue sufficient Findings of Fact and Conclusions of Law prejudiced the Petitioners' due process rights.

"A finding of fact is a determination of a fact by the court [or agency], which fact is averred by one party and denied by the other and this determination must be founded on the evidence in the case." *Crown Point Dev., Inc.* 144 Idaho at 77, 156 P.3d at 578. In this matter, the written findings of the Board are not determinative of any facts or issues, but as stated earlier, are merely conclusory statements which lack any affirmative statement as to how the Board reached those conclusions. Without Findings of Fact and Conclusions of Law sufficient to meet the requirements of I.C. § 67-6535, this court does not possess the necessary information for a meaningful review of the Board's approval of the CUP. *Jasso*, 151 Idaho at 797, 264 P.3d at 904. It is not the responsibility of the reviewing court to "scour the record" for evidence which supports the Board's position. This court finds that the lack of sufficient Findings of Fact and Conclusions of Law prejudices the Petitioners' due process rights to judicial review. Therefore, this court vacates the Board's approval of the CUP and remands the matter back for further agency proceedings.

IV. Petitioners are not entitled to attorney fees against the Board under I.C. § 12-117.

Petitioners seek an award of attorney fees under Idaho Code § 12-117. Under the statute, this court "shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law." "The dual purpose of I.C. § 12-117 is to (1) deter groundless or arbitrary agency action; and (2) to provide 'a remedy for persons who have borne an unfair and unjustified financial burden

attempting to correct mistakes agencies should never have made.” *Fuchs v. Idaho State Police, Alcohol Beverage Control*, 153 Idaho 114, 117, 279 P.3d 100, 103 (2012).

In this matter, while the court finds that the Board failed to issue sufficient written findings due to an apparent misunderstanding of its responsibilities under Idaho law, the court does not find that the Board acted without a reasonable basis in fact or law. Therefore, the court declines to make an award of attorney’s fees to either party.

CONCLUSION

For the above stated reasons, the Board’s decision to grant CUP0030-21 is vacated and remanded back to the agency for further proceeding.

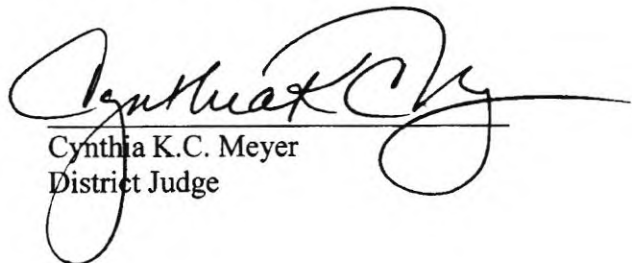
ORDER

Based on the foregoing and good cause appearing therefore,

IT IS HERBY ORDERED, the Bonner County Board of Commissioner’s decision to grant conditional use permit CUP0030-21 is vacated and remanded for further agency proceedings.

DATED: *August 17, 2023*

BY THE COURT:


Cynthia K.C. Meyer
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August 2023, I caused to be served a true and correct copy of the foregoing document as addressed to:

Norman M. Semanko
Parsons, Behle & Latimer
800 Main Street, Ste 1300
Boise, ID 83702
(208) 562-4900
nsemanko@parsonsbehle.com

✓ Email

William Steven Wilson
Bonner County Prosecutor's Office
127 S. First Avenue
Sandpoint, ID 83864
prosefile@bonnercoid.gov

✓ Email

Michael W. Rosedale
Clerk of the Court

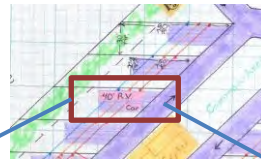
JG

Deputy Clerk

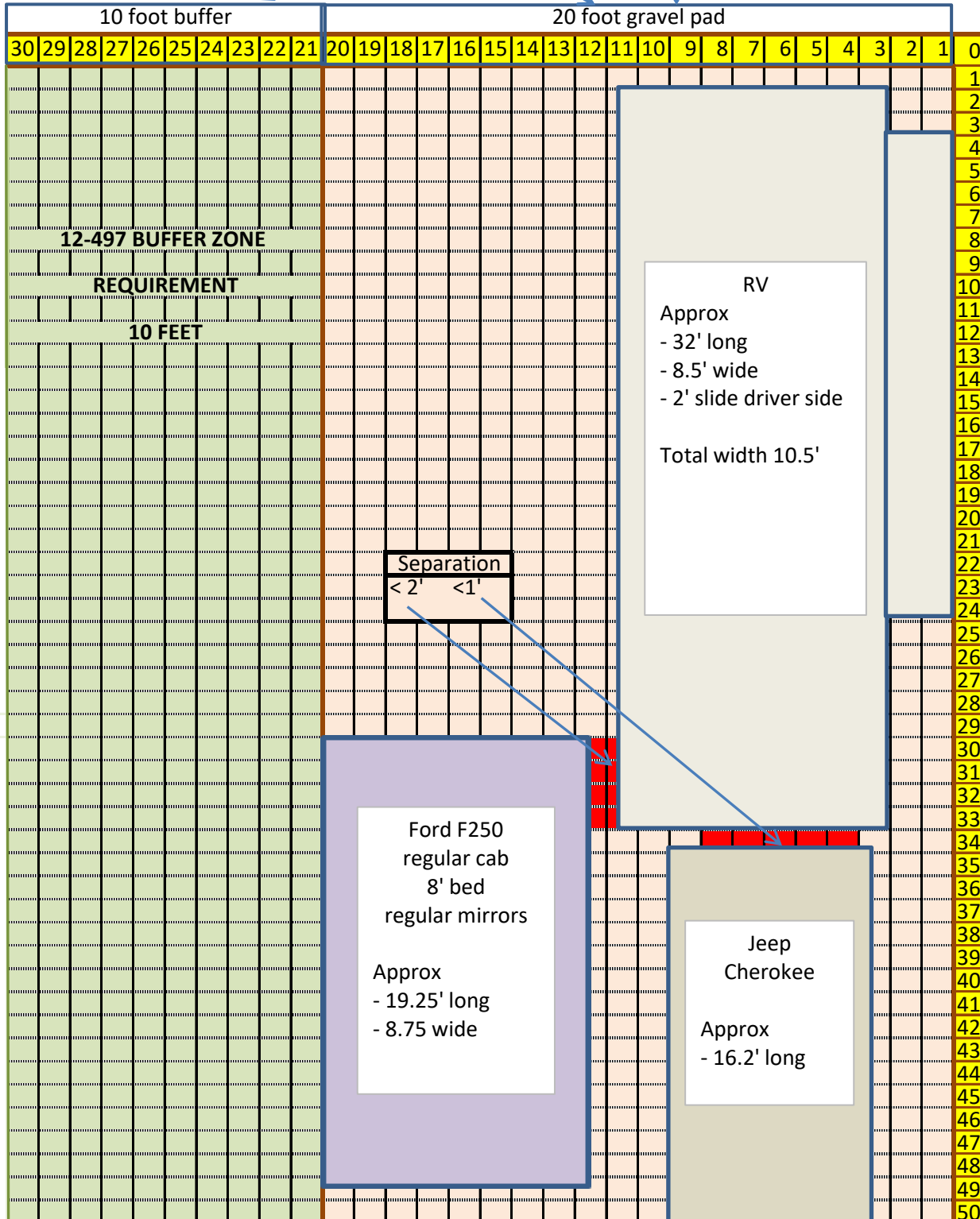
CUP0030-21 Campground Clagstone and Al's Welding Road

Attachment A

Applicant's
Diagrams



Each spot will have a gravel pad that is approximately 20'x50'. Equaling 1000 square feet of parking area for RV and vehicles.



This represents a scaled depiction of the Applicants proposed camp sites and the buffer between them.

12-497
Sites not less than 1800 ft' width not less than 24'. Sites are 1500 ft'

RV no closer than 10' to other RV's

1 visitor parking for every 10 sites

Unobstructed 20' travelway

Safe and convenient access for service emergency and and park amenities

12-431
Minimum 1.25 parking spaces per unit

IFC 503.2.1
Unobstructed road width \geq 20 feet

IFC 503.4
Access roads not obstructed in any manner including parking of vehicles

Legend
1 square = 1 ft'



Janna Brown <janna.brown@bonnercountyid.gov>

Re: [EXT SENDER] Trailer Park

1 message

Brian Domke <brian.domke@bonnercountyid.gov>

Mon, Mar 3, 2025 at 9:32 AM

To: Jack Allen <cactusj8@aol.com>

Cc: planning@bonnercountyid.gov

Hello Mr. Allen,

Thank you for your feedback on this matter. I have copied the Planning Department so they can include your comment as part of the public record for this land use file.

Best regards,
Brian

On Sun, Mar 2, 2025 at 12:57 PM Jack Allen <cactusj8@aol.com> wrote:

As a long term resident at Walker Rd north of Clagstone Cut Off road, I fear to be negatively impacted by the proposed commercial trailer park at Al's Welding Rd/ Clagstone Cutoff Rd. Reasons have been well covered by the many hearings and meetings. Please vote no on going forward. with this urbanizing of rural residential areas.

--

Brian Domke, RLA, LEED AP
Bonner County Commissioner District 1



Janna Brown <janna.brown@bonnercountyid.gov>

[EXT SENDER] Submission of Statement of Opposition for File CUP0030-21 – Conditional Use Permit - Idaho Land LLC-RV Park

1 message

Nancy Anderson <nancy.anderson.pnw@gmail.com>

Sat, Mar 22, 2025 at 9:10 AM

To: planning@bonnercountyid.gov

Cc: Paul Anderson <rdojeeper@gmail.com>

Dear Bonner County Planning Commission,

We are submitting the attached statement of opposition regarding File CUP0030-21 – Conditional Use Permit for Idaho Land LLC-RV Park, in advance of the public hearing scheduled for April 3, 2025.

Please confirm receipt of this submission, and let us know if any further information is required.

Thank you for your time and consideration.

Best regards,
Paul & Nancy Anderson

(208) 610-0475

**Statement of Opposition for File CUP0030-21.pages.pdf**

315K

Paul and Nancy Anderson
3174 Blanchard Cutoff Road
Blanchard, ID 83804

March 22, 2025

Bonner County Zoning Commission/
Bonner County Planning Department
1500 Highway 2, Suite 208
Sandpoint, ID 83864

Subject: Statement of Opposition to File CUP0030-21 – Conditional Use Permit - Idaho Land LLC-RV Park

Dear Members of the Bonner County Zoning Commission,

We are writing to formally express our strong opposition to the proposed conditional use permit for a 20-unit Recreational Vehicle (RV) Park located off Clagstone Road and Al's Welding Road in Section 24, Township 54 North, Range 5 West, Boise-Meridian. As residents of Blanchard, we have significant concerns about the negative impact this development would have on our rural residential area. Additionally, having spent 18 months as full-time RVers, staying in RV parks across the country, we understand firsthand the challenges that come with such developments. Our opposition is based not only on local concerns but also on the common issues associated with RV parks in general.

Impact to Roads & Infrastructure

The proposed location is accessed by **county-maintained dirt roads** that already suffer from potholes and washboarding. These roads are subject to **seasonal weight restrictions** in the spring on average 12 - 13 weeks due to freeze-thaw cycles that weaken their integrity. The increase in large, heavy RVs will significantly accelerate road deterioration, requiring more frequent county maintenance at taxpayer expense.

To illustrate the **potential issue with road weight restrictions**, our RV—a 38-foot Class A with a gross vehicle weight rating of 32,400 lbs —**would not meet** the weight restrictions set for the area during the seasonal weight restriction. According to the Bonner County Weight Limit Reference Chart, a vehicle with 6, 275/80R 22.5 tires (10.83 inches wide) **would exceed the allowable weight limit by nearly double**. This makes the point clear and highlights the specific concern with road restrictions for larger RVs.

Furthermore, RV travelers unfamiliar with these weight restrictions may **ignore signs and proceed with existing reservations**, unknowingly causing damage. There is also a **sharp, off-camber turn from Highway 41 onto Clagstone Road**, which presents a high potential for rigs bottoming out, which may result in damage to RVs and **further contributing to road damage** that will require costly repairs.

Enforcement Issues

Enforcement of RV park regulations is a major concern. **Bonner County Sheriff's Office (BCSO) has already demonstrated a lack of enforcement** in our neighborhood by refusing to remove an abandoned vehicle from private property. This raises serious questions about:

- Who will **enforce abandoned RVs** if left on-site?
- Who will **enforce compliance with the closure of the RV park** at the end of November and no campers prior to March?
- Who will **enforce the seasonal weight restrictions** on the county maintained access road?

Fire Danger

Fire safety is a critical concern in our rural, heavily forested area, where fire suppression resources are already **limited**. The **Spirit Lake Fire District must sign off** on this project, and we understand that they have concerns about the increased fire risk. Unlike urban areas, **there are no fire hydrants available**, meaning emergency response teams must rely on **tender trucks and other limited water sources** to combat fires.

The introduction of an RV park significantly increases the potential for fire hazards due to **campfires, outdoor cooking, generator use, and improperly stored propane tanks**. With the park operating during **the driest months of the year (March–November)**, when wildfires are a known risk, any fire incident could quickly escalate and threaten nearby homes and forested areas.

Additionally, the applicant has cited **forested barriers between the RV park and adjoining parcels** as a means of minimizing the park's impact. However, mismanagement of these trees —such as **lack of thinning, failure to remove dead or dying timber, or poor firebreak planning**—could create **an even greater fire hazard**. If not properly maintained, these forested areas could serve as fuel for wildfires, increasing the risk to both the RV park and surrounding properties.

Given the current **strain on local fire resources** and the **ongoing funding challenges for the Spirit Lake Fire Department**, adding high-density housing to this area without a **dedicated fire suppression plan, additional water storage, and enforceable fire mitigation measures** presents an **unacceptable risk to the community**.

Septic System & Well Water Concerns

The proposed RV park will generate **2,500 gallons of septic waste per day** (125 gallons per RV site per day) without accounting for additional wastewater from laundry facilities. However, multiple issues remain unresolved:

- The **Panhandle Health District (PHD) has not approved the septic permit** and has been waiting years for a response to their questions.

- A letter from PHD (April 15, 2022) recommended the inclusion of an **RV dump station** due to the incompatibility of common RV tank chemicals with traditional septic systems. These chemicals can **disrupt bacterial balance**, leading to early septic system failure.
- No study has been conducted on **how these septic systems will impact groundwater**, which all local residents rely on for their wells.
- There is **no backup power design** for the well or septic system during an outage.
- **Odor** from the pumping/venting of the septic system of this size.

Public Gatherings & Events

The application states, "**No functions to be provided for public use.**" However, in our experience as former full-time RVers, RV parks are **commonly used for rallies and gatherings**, where RV club members camp together in an event-style format. These types of gatherings often bring **increased noise levels**, as large groups congregate outdoors for **music, cooking, games, and socializing well into the evening**.

While the applicant may not be **hosting** public events, the nature of an RV park means it can still **become a gathering place for private groups**, leading to **large-scale activity** that impacts the surrounding rural community. Without **clear, enforceable restrictions** on group gatherings, the potential for **noise disturbances, increased traffic, and overall disruption** remains a serious concern.

Impact on the Rural Community

The proposed **20-site RV park** is planned for a **4.17-acre parcel** that directly **borders single-family dwellings and agricultural properties**. This significant increase in density is not in alignment with the surrounding rural character, where properties are typically **5+ acres** and primarily used for **residential and agricultural purposes**.

Key concerns include:

- **Light pollution** from RV exterior lighting
- **Odor** from the dumpster and the pumping/venting of the septic system
- **Noise disturbances** from generators, outdoor gatherings, and increased vehicle traffic at all hours
- **Lack of designated areas** for pet waste disposal, leading to potential sanitation issues
- **Traffic and congestion** from large RVs and heavy trucks frequently entering and exiting the park

Additionally, the **quadrupling of residential density** on a **single taxpaying parcel** raises concerns about **increased strain on public services**, including the **Spirit Lake Fire Department**, which is already struggling with funding. **Neighboring residents will ultimately bear the financial burden of increased emergency response costs, road maintenance, and other services**—without receiving any direct benefit.

This proposal does not represent a **low-impact** development, as it **fundamentally alters the character of the surrounding rural residential and agricultural community**.

Density & Public Service Burden

Current Bonner County regulations allow **one home, one Additional Dwelling Unit (ADU), and two RVs per parcel greater than one acre**. However, this proposal **quadruples the density** of the parcel, creating disproportionate strain on emergency services and infrastructure.

- The **Spirit Lake Fire Department is already underfunded**, with levies constantly on the ballot.
- Only **one taxpayer** would be responsible for funding public services for **a much higher density of residents**.
- **No guest parking is designated**, which will lead to overflow parking issues.
- Large RVs, including fifth wheels and Class A motorhomes, **may not fit entirely within designated pads**, leaving limited or no room for tow vehicles and reducing space and potentially blocking emergency access routes. RVs with slide-outs can expand their width from the standard 8.5 feet to 13 - 14 feet, further reducing available parking space directly adjacent to the RV as depicted in the proposed site map provided by the applicant. This means additional vehicles may be forced to park on **landscaped areas or encroach upon the circular access road**, potentially **blocking emergency access routes** for fire trucks, ambulances, and other emergency personnel.

Lack of Nearby Attractions & Amenities

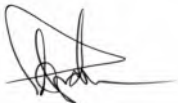
Lastly, this location is **not close to any major attractions or amenities** that would typically draw RV travelers. The remoteness raises questions about the **long-term viability of the business model** and increases the likelihood that the site could transition into **long-term rentals or an unmanaged campground**, further exacerbating enforcement issues.

Conclusion

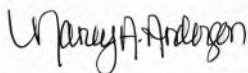
For all of the reasons outlined above—**road deterioration, lack of enforcement, fire risk, water and septic concerns, impact on rural character, and increased taxpayer burden**—we strongly urge the Bonner County Zoning Commission to deny this conditional use permit.

Thank you for your time and consideration. We appreciate your dedication to protecting the integrity of our community.

Sincerely,



Paul Anderson



Nancy Anderson



Janna Brown <janna.brown@bonnercountyid.gov>

[EXT SENDER] File CUP0030-21-Conditional Use Permit- Idaho Land LLC-RV Park

1 message

Sarah Banks <sbwalnuss@gmail.com>
To: planning@bonnercountyid.gov

Sat, Mar 22, 2025 at 10:44 PM

Good morning,

I am writing out of concern regarding the proposed conditional use permit, particularly the proposed "multiple septic systems" that have not even been approved by PHD. I have a difficult time imagining that "multiple septic systems" can be installed on 4.17 acres, with 20 RV lots, and parking for a projected 40 cars with any degree of responsibility.

Additionally, the impact to the surrounding area has to be considered. How are appropriate setbacks to neighboring property lines going to be ensured with "multiple septic systems" in such a small space? Given that this is NOT a commercially zoned area, this will also place a significant increase in traffic on residential roads. Has the increased wear and tear been considered as well as the additional responsibility placed on the county to maintain a road that was intended for Rural 5, but is being requested to support what is essentially, 20 new homes?

It is my thought that this permit should be denied on the basis of insufficient space, and incorrect zoning for the proposed project. Approving a permit of this nature will only have a negative impact on the surrounding area.

Thank you for your time,

-Sarah Williams



Janna Brown <janna.brown@bonnercountyid.gov>

[EXT SENDER] CUP0030-21 - opposed

1 message

Jannette Bendinelli <jannette.bendinelli@gmail.com>

Wed, Mar 26, 2025 at 12:17 PM

To: jacob.marble@bonnercountyid.gov, kevin.burkamp@bonnercountyid.gov, robert.clark@bonnercountyid.gov, brett.blaser@bonnercountyid.gov, jeff.poulson@bonnercountyid.gov
Cc: planning@bonnercountyid.gov

Commissioners:

Regarding CUP0030-21 – Application for a conditional use permit for an RV park with 20 RVs on a 4.17 acre parcel in the Blanchard area.

If this project is approved, it will set a precedent that RV parks can be operated anywhere in the county. And once approved for the corner of this rural road, the road of my home address, it will also increase likelihood that additional surrounding parcels will follow with CUP applications. This is because neighboring residents not wanting to be located next to an rv park will attempt to sell their properties (incidentally, now for a lower than current price) - but those who may be most interested in property next to an rv park in a rural area are probably either this applicant/developer looking to expand his operations or other developers wanting to capitalize on the precedence set on my road if this application were to be approved. Ultimately, leading to a significant parcel use or zoning change for this current rural road from residential to seemingly commercial. I don't disapprove of RV parks – they have a place. But they should not be located in rural areas with farms, timber operations, or single family residences.

Re: enforcement of RV Park use/capacity and operating hours.

As a resident of Al's Welding road, I am deeply concerned with the impact of this RV Park to my rural neighborhood should it be approved.

I am mostly concerned with the CUP being attached to the property. Although the applicant may discuss/express a desire to be low impact with his idea for its use (so to gain approval from the neighboring residents), should the application be approved and applicant build the park then decide to just sell it - there is no guarantee in enforcing the next rv park as low impact with new ownership. The RV Park code is not detailed enough to ensure low impact use of an RV park - the applicant could say he desires seasonal or monthly occupants but if sold the reality could be daily turn over - 40 RVs, 80 plus vehicles and numerous occupants. Daily turnover would impact the rural culture and natural inhabitants of the area significantly - I doubt I see a deer on my property again should this park be approved. According to the application, This park could service up to 40 RVs and 80 cars per day because a traditional RV Park use functions similar to a hotel where spaces are vacated each morning and then occupied again by afternoon. This is an incredible amount of activity on a rural road and in a rural community.

Re: rv park code - violations and complaints

There are no instructions as to how complaints are to be handled or consequences indicated in case of misuse or permit violation outlined in the current RV Park code. In my opinion, in this matter, The code favors the owners of the rv park and not the impacted neighboring residents. Also, though the application indicated seasonal use - will rvs and trailers be allowed to be stored on site through the winter. If so, This is not a "break" for the residents just looming reminders of what awaits come spring.

Re: loss of real estate income for current residents

If this application is approved, Neighboring residential properties will decrease in value, causing loss of income for owners should they now decide to sell because they dont want to live next to an RV Park.

Re: Noise Pollution & fumes

RVs and trucks pulling trailers can have loud motors, especially as they try to park into RV spots. The sound is very different than vehicles just moving upon a county road with multiple point turns to back-up and some larger RVs even have commercial back-up beeping indicators. With reversing, repositioning, etc. also come loud voice commands from those helping to direct the drivers parking the RV or trailer into the spaces. Additionally the closing of RV doors is also a unique sound - this will happen often at an active RV Park. Closing of between 40-80 car doors throughout the day is also a nuisance.

Re: environmental issue of dumping RV black septic tanks - please contact PHD!!

At full capacity and daily use/turnover in this park, You could have 20+ full black tanks of sewage along with processing chemicals being dumped into the rv park septic system daily. The nature of an RV black tank is different than a normal flushing toilet and therefore may be more concentrated when entering the parks septic tank/leech field for processing. This is a huge concern for the quality of neighboring properties water supply. Also, RV black tank sizes can vary depending on the type and size of the RV. here's a general breakdown of common size ranges:

Average Sizes by RV Type:

- **Class B (Camper Vans):** 5–15 gallons
- **Class C Motorhomes:** 25–35 gallons
- **Class A Motorhomes:** 35–50+ gallons
- **Travel Trailers:** 20–40 gallons
- **Fifth Wheels:** 30–50 gallons

This means with daily turnover at the park - it is possible for a range of 0-40 full RV septic black tanks entering into the RV Park septic system per day. This can range anywhere from 0 to 2000 gallons of sewage a day to be processed/managed. This is an insane level of sewage and must be regulated appropriately by Panhandle health. This level is also only sewage amounts - it does not include the amount of water useage "gray tank" or "hook-up" throughout the day also being added to the septic system/leech field. I am very concerned about septic system failure and contamination of the soil/water due to overload! Please work with PHD to help protect us.

Re: light pollution

According to the application, although it sounds appealing to have only lights illuminating the rv park entrance signs - this does not eliminate light pollution from the trailer/RV units themselves - interior lighting, exterior porch lighting, door lighting and then the lights from the towing and guest vehicles during after hours are all factors to consider. I do not wish these lights be drowned out by other lighting throughout the park, however, so it appears there is no way to May lighting low impact in this case.

Re: Sheriff

There is a wide range of what people believe are acceptable behaviors while recreating. Therefore, conflict at the park will be inevitable - either within the RV Park between its guests or between RV Park guests and neighboring parcels. Being a rural area of Bonner County, we are already in need of more frequent patrols and faster response times.

Re: public School bus stop on the corner of Al's Welding and Clagstone Roads.

I am deeply concerned that this park is in use during the school year. The increase in oversized traffic is a problem for parents already needing to park in wait for the bus to keep their children safe from weather/road hazards/vehicles and now additional traffic and transient culture. The park now adds concern of transient behavior for local parents. As a mother of a young child while traveling across country with a trailer and staying in RV Parks - I am very aware of the risks large moving vehicles have on adventurous children and unfortunately, the real risk of convenient kidnapping opportunities within the rv park scene. It just adds an additional stress for these already vigilant parents residing in the area.

Thank you for considering these concerns when making your decision.

Sincerely,
Jannette Bendinelli
653 Al's Welding Road
BC Resident

Sent from my iPhone



Janna Brown <janna.brown@bonnercountyid.gov>

[EXT SENDER] CUP0030-21 Proposed RV Park

1 message

Skip Bendinelli <fub2525@gmail.com>

Thu, Mar 13, 2025 at 10:33 AM

To: planning@bonnercountyid.gov

Good morning, I am writing to voice my concerns with the following issues for CUP0030-21 changing the current zoning to allow an rv park on land that currently and all other plots of land around the area are zoned residential 5. We land owners have invested our monies and resources to live and maintain an environment because it's environment and zoning, are now told that one person who desires to use a less than 5 acre parcel to fill it with 20 RV sites for the soul purpose of making money for himself at the expense of us is unacceptable. Here are our concerns:

1. Current zoning residential 5, what gives you the right to allow another person to come into the area and change the zoning for his financial benefit?
2. We here are very concerned already with annual wild fire issues and have on a number of occasions been on evacuations alert. When you allow 20 RV's side by side all with large quantities of propane will increase this exposure considerably. Also the potential of fire pits.
3. We already have a limited fire department support less than capable in handling the current housing in our area. And why should we have to potentially pay more for that service due to the additional load.
4. Road conditions both on Al's welding and Clagstone cutoff are less than adequate and poorly maintained with the current traffic load. Additional vehicle traffic from this proposal would greatly increase the number of vehicles each day and damage to further our roads.
5. Water, everyone in this area are currently on personal wells, many during the summer months having limited supply due to water levels dropping, having 20 more units with using water from the aquifer would impact many who are on the margin already. Also the chemicals that are used and required in Rv's are extremely and environmentally harmful to our water supply.
6. The amount of new lighting glare, noise, animal control and other issues with those many people in a very consolidated and inadequate space is a major concern.
7. There will be no one on site 24hrs a day to manage the park, uphold the regulations and manage any personal issues or concerns. Which means we will have more police/sheriff calls which resources are already inadequate.
8. Having this proposal instead of a single home will substantially reduce the resale of all properties in the area.

We all would gratefully appreciate it if you would please deny this proposal.
Thank You



Janna Brown <janna.brown@bonnercountyid.gov>

[EXT SENDER] CUP0030-21 Regarding

1 message

trishabowlin@1791.com <trishabowlin@1791.com>
 To: planning@bonnercountyid.gov

Thu, Mar 20, 2025 at 5:42 PM

Good Afternoon,

I am writing in reference to Regarding CUP0030-21 Rv park on Als's welding Rd. According to the County's development plan this is not legal. Please see below. Commercial does not fit in a rural neighborhood. This would be spot zoning. I oppose the 4.17 acres having 20 rvs as well as a laundry facility on it.

12-226: CONDITIONAL USE PERMITS, CONDITIONS, EXPIRATION, REVOCATION:

A. Conditional use permits may be approved that meet the standards set forth in this title for that specific use. Conditional use permits may, in addition to standards set forth, also stipulate conditions which may include:

1. Minimizing adverse impact on other development;
2. Controlling the sequence and timing of development;
3. Controlling the duration of development;
4. Assuring that development is maintained properly;
5. Designating the exact location and nature of development;
6. Requiring the provision for on site or off site public facilities or services;
7. Specifying time limits that the use will be permitted;
8. Requiring more restrictive standards than those generally required in this title;
9. Landscaping requirements;
10. Sight restrictions;
11. Safeguards to protect adjacent property; and
12. Measures to minimize environmental impacts.

13. To avoid undue concentration of population and overcrowding of land.

https://codelibrary.amlegal.com/codes/bonnercountyid/latest/bonnercounty_id/0-0-0-1612

G. To avoid undue concentration of population and overcrowding of land.

I. To protect life and property in areas subject to natural hazards and disasters.

J. To protect fish, wildlife and recreation resources.

K. To avoid undue water and air pollution

https://codelibrary.amlegal.com/codes/bonnercountyid/latest/bonnercounty_id/0-0-0-2593#JD_12-411

(8) Dwellings, not to exceed a total of 3 dwelling units, may be permitted on a single parcel of land; providing, that the parcel is large enough to comply with the density requirements of the zone. For example, 3 dwelling units may be permitted on a 15 acre parcel in the R-5 district.

Exceptions:

3/21/25, 8:43 AM

Bonner County Mail - [EXT SENDER] CUP0030-21 Regarding

Trisha & Nick Bowlin
367 Bearing Tree Lane
Spirit Lake, Idaho 83869

h



Janna Brown <janna.brown@bonnercountyid.gov>

CUP0030-21 - opposed

1 message

'Dave Bowman' via Mail-Planning <planning@bonnercountyid.gov>

Sun, Mar 23, 2025 at 10:01 AM

Reply-To: Dave Bowman <dcbow@yahoo.com>

To: Jacob Marble <jacob.marble@bonnercountyid.gov>, Kevin Burkamp <kevin.burkamp@bonnercountyid.gov>, Robert Clark <robert.clark@bonnercountyid.gov>, Brett Blaser <brett.blaser@bonnercountyid.gov>, Jeff Poulson <jeff.poulson@bonnercountyid.gov>

Cc: Bonner County Planning <planning@bonnercountyid.gov>

Commissioners:

Regarding CUP0030-21 – Application for a conditional use permit for an RV park with 20 RVs on a 4.17 acre parcel in the Blanchard area.

If this project is approved, it will set a precedent that RV parks can be operated anywhere in the county. I have nothing against RV parks – they have a legitimate place. But they should not be located in areas with farms, timber operations, or single family residences on rural parcels. RV parks are appropriate near urban areas where services are available, and where there are fire hydrants.

Reference Bonner County Zoning Code 12-223, standards for review of a conditional use permit application (emphasis mine):

To grant a conditional use permit, the Zoning Commission or Hearing Examiner **must find that the proposal is not in conflict with the policies of the comprehensive plan**, as found in the adopted Implementation Component, **and that the proposed use will neither create a hazard nor be dangerous to persons on or adjacent to the property.** (Ord. 501, 11-18-2008; amd. Ord. 661, 3-18-2022; Ord. 681, 10-12-2022; Ord. 682, 10-12-2022; Ord. 712, 6-12-2024)

Below is a selection of questions on the CUP0030-21 application, with the applicant's answers, each followed by a short response to his answer than can be used to help in forming your decision. The last several items deal directly with the policies of the comprehensive plan, as outlined above.

You will see that the applicant's responses in several instances do not actually answer the question asked, but rather deflect. Others give an answer that may sound good, but offer no substantiation. The application, therefore, is incomplete and should not have been accepted by the Planning Department.

From the application:

What Zoning Districts border the project site?

Applicant: Timber land, Agriculture. Single Family, Single Family, Vacant Residential

These are not zoning districts. The parcel is surrounded by Rural Residential 5 Zoning District on all sides.

Hours of operation

Applicant: March through November

These are not hours of operation. An RV park operates 24 hours a day, 7 days a week. Additionally – the County does not have the enforcement resources ability to prevent use during the winter months.

Traffic to be generated

Applicant: Estimated 40 cars per day - 2 cars per RV.

*If there are two cars per RV, and 20 RVs, and only 40 trips per day, that means mathematically that each car will leave but not return. How does that add up? The accepted standard is 9 trips per day per dwelling unit. **20 RVs X 9 = 180 trips per day.** That is a HUGE impact to neighbors.*

Associated functions (receptions, outdoor activities, additional process, etc.)

Applicant: No functions to be provided for public use

The application does not specify "public." The applicant makes no mention of functions for private use – whether they are permitted, prohibited, etc. It is not possible to regulate whether or not RV residents will host parties or other types of gatherings, which can generate noise, traffic, intoxicated guests, unruly behavior, etc., all in close proximity to the other RVs and neighboring properties. Even if the applicant states he will have rules preventing these types of functions, the county does not have the resources to enforce. It is common for groups of RV owners to rent out an entire RV park to hold a rally, where everyone is outside, having contests, games, celebrations, campfires, etc. All of which would have enormous impact on neighbors.

Parking, loading areas.

Applicant: Resident parking provided at individual RV pads.

What about visitors? Where will they park? There is no space allotted for visitors or additional vehicles owned by the RV owners and no street parking available. Visitors will likely park in the fire lane, creating a hazard in the event of an incident requiring fire response.

Lighting Plans

Applicant: Lights at park entrance only.

There are two entrances – he only mentions one. The applicant provides no detail on the type of lighting, means of shielding from neighbors, hours operated, etc. One entrance is directly across from a neighbor's residence (see GIS map), so there is no way to mitigate or eliminate that impact..

The applicant does not mention lighting from 20 RVs, some or all of which are bound to have various types and intensities of outdoor lighting.

Landscaping plans attached?

Applicant: Yes.

Yes, however it grossly exaggerates tree coverage, which is what he claims will prevent noise, light, glare, from impacting neighbors. Photos of the trees he claims will provide a barrier are attached for reference. Also, trees are right at the edge of the RV pads, which presents a significant fire hazard because they are fuel, in what should be a defensible space.

How will conditional use be designed to avoid creating hazards or dangers to persons on or adjacent to the property?

Applicant: The only property that directly borders the park is a 5.88 acre parcel, allowing the residents home to be distanced from the park and blocked by trees. The park poses no significant hazards or dangers to surrounding properties.

There are actually 7 parcels adjacent to this one. They are all within 300 feet, which is the distance within which the County is required to provide public notice – BECAUSE it is assumed there will be impacts. 4 of them currently are single family residences. Vehicular traffic and fire are the two most obvious hazards, and they are both significant. Noise, light, disturbances, etc. all present considerable negative impacts.

It is not possible to assign conditions that will mitigate or eliminate the substantial hazards and dangers that this RV park would create. Fire is the most obvious danger, but increased traffic is also substantial. There will be pedestrians and bicycles, including children, on roads with no sidewalks, especially since there is no area for recreation inside the proposed park.

Explain the effects of elements such as noise, light, glare, odor, fumes and vibrations on adjoining property.

Applicant: Tree line surrounding property to remain intact to provide privacy to neighboring properties. Noise restriction to be in place in the park. Lighting to be provided only at the entrance to the park reducing effects on neighboring properties. Glares, odors, fumes, vibrations, etc. are virtually non- existent and will likely not ever effect [sic] surrounding properties or residents of the park.

The claim that that "glare, odors, fumes, vibrations, etc. are virtually non- existent and will likely not ever affect surrounding properties or residents of the park" is utterly preposterous by any measure. Up to 180 car trips generated per day, no way to regulate noise, whether it be from generators, parties, loud music, cars and motorcycles, outdoor voices of residents, etc., ALL will have negative impact on neighboring properties.

While there are some trees on the perimeter of this property, coverage is quite sparse in most areas (see attached photos) and will not block light, glare or noise. The home directly to the south faces the Al's Welding entrance, where there will be no trees because it's a driveway, and where the applicant stated there will be lighting. Obviously this home will be additionally exposed to noise and lights from traffic entering and leaving, with no restrictions on frequency or time of day. Again – even if the county paces conditions in an attempt to mitigate some of these impacts, they cannot mitigate them all, and they have no ability to enforce restrictions.

Additionally, Road and Bridge is planning to put drainage ditches along this portion of Al's Welding Road, and will be removing trees as much as 15 feet into the existing tree line.

How is the proposed use compatible with the adjoining land uses?

Applicant: The property chosen is strategically located at the intersections of two main roads and has only 1 property directly bordering it. The plan to maintain the perimeter tree line and the low impact RV camping is compatible with the surrounding rural properties.

"Strategic location" has nothing to do with compatibility. It's strategic only for the applicant. Again – there are 7 adjacent properties, not just 1. The applicant gives no evidence in any form that RVs will be low impact – because there simply is no evidence to support the claim – it does not exist. Simply stating it does not make it fact. The current adjoining land uses are low impact, single family and agricultural in nature. This parcel, if this CUP is approved, will be commercial high-density housing with no relation in any way, shape or form to single family or agricultural uses.

Conformance with Comp Plan Policies

Following is an analysis of the project's conformance with the policies of the Comprehensive Plan, Implementation Component, **as required by BCRC 12-223.**

Property Rights.

Comp Plan Policy language: *The property rights of the applicant, adjoining and nearby landowners and future generations should be considered, as well as the short-term and long-term consequences of decisions.*

Applicant: The park will not have any notable increase in noise, lighting, fumes, odor, etc. that could negatively effect the surrounding property owners rights in a residential area. All setbacks will be honored and the tree line barrier maintained to separate the park from surrounding properties.

What is a "notable" increase? It is not possible to have 20 RVs on a 4.17 acre lot without a substantial level of noise, light, glare, fumes, etc.

Currently the project site produces no noise, light, glare, fumes, odor, etc., so any increase at all, must be from a baseline of zero. There certainly will be notable increases no matter how they may be measured. Again – please reference the photos of the "tree barrier." The applicant first states that there will be no notable increase e in noise, light, glare, etc., then turns right around in the same answer and states that there will be a tree barrier to prevent the impacts he says don't exist from affecting surrounding properties. Which is it?

A question for the Commissioners. Are there any enforceable conditions you can assign that would make you want to live next door to this RV park?

Economic Development.

Comp Plan Policy language: *"Small scale cottage businesses and home occupations should be allowed in all areas of the county. Reasonable conditions on such uses should be set to minimize adverse impacts to the neighborhood based on factors including, but not limited to, hours of operation and traffic volume generated by the business."*

Applicant: N/A

There is no way to effectively limit any of the above listed factors for an RV park in a rural setting. The whole idea of a Conditional Use Permit is to set conditions that will mitigate or eliminate impacts to neighbors. That is not an achievable goal in this case.

Land Use.

Comp Plan Policy language: *"2. Commercial and industrial uses may be conditionally permitted in areas not identified for such uses in the Comprehensive Plan if a critical review of the proposed use determines that with appropriate conditions the use will not adversely impact the surrounding area."*

Applicant: Bonner County has recognized the numerous public and private recreational opportunities that are a major asset to be protected and encouraged.

The applicant has not – and cannot - factually demonstrated how the RV park would not adversely impact the surrounding area. Simply stating that it will not does not make it so. The evidence clearly shows that there would be significant negative impact. Notice the use of the term “critical review.”

Natural Resources

Comp Plan Policy language:

“Development standards should be designed to encourage clustered development resulting in the preservation of open space and wildlife habitat.

Bonner County should recognize its critical wildlife habitat and create development standards to protect these areas and mitigate development impacts to these habitats.”

Applicant: The park is not located near any streams, waterways, wetlands, or fisheries and will have negligible impact.

True that the development is not located directly near streams, waterways, wetlands, or fisheries. However, no data has been gathered or given to show that the waste generated from 20 RVs, including the chemicals used in their sewage systems, will not find its way into neighboring wells and various watercourses in the area with potentially very harmful impact.

Hazardous Areas

Comp Plan Policy language:

“The county’s wildland fire, urban/wildland interface policies and plans should be integrated into development standards.”

Applicant: N/A

It is well understood that development in the wildland-urban interface (WUI), which this is, presents an ever-increasing risk of wildfires and structure fires, either of which can lead to the other. RVs present an exceptionally high risk, as they are constructed of, and contain, highly flammable materials, including a variety of plastics and resins, plus propane and gasoline. They will be spaced close together so fire can very easily spread from one to another, and very close to the “tree barrier,” eliminating defensible space on the ends toward the roads. All of this presents an unacceptable risk not only to the RV residents, but to neighboring properties as well. Spirit Lake Fire staff and Board, as well as Fire authorities in districts providing mutual aid to Spirit Lake, have expressed deep concerns about increased risks presented with this type of development in the WUI (wildland-urban interface).

Public Services:

Comp Plan Policy language:

“Encourage high-density development to take place within the boundaries of existing sewer and water areas.”

Applicant: The project will not have any negative impact on public infrastructure or utilities as they will be provided at the park.

Another deflection and a statement that claims to be fact simply because the applicant states it. We cannot know beforehand what impact the RV park will have on nearby water sources. We can however, estimate that there may be up to 180 vehicle trips generated per day, a grossly negative impact on transportation, law enforcement, fire/rescue, and EMS. Further – this is very high density of 5 times the underlying zone density, and is not in the boundary of existing sewer or water providers.

Transportation:

Comp Plan Policy language:

“Development in areas that are not served by county standard roads or where transportation is inadequate should be discouraged.”

Applicant: Road and Bridge has approved and signed off on two driveway permits.

Approval of two driveways has zero relevance to anything to do with road standards or transportation. Additionally, larger RVs will exceed the weight limits put on during the spring thaw. It is highly unlikely that RV owners coming here from

other regions will understand the restrictions and follow them, when they have a reservation to come to this park. It is reasonable to expect they will cause premature wear and damage to surrounding roads.

Recreation:

Comp Plan Policy language:

"1. Bonner County is encouraged to develop a waterways and park access program to preserve and develop access to public recreational lands and waterways. The program should include retaining access parcels that may be acquired from tax sales or private donations.

2. A plan for a system of green belts and pathways (bike and pedestrian) should be considered as areas develop, so that a connected system can be developed and preserved.

3. Under no circumstances, will Bonner County require access easements on private property as a condition of development. This policy does not preclude providing voluntary incentives to developers in return for access easements."

Applicant: This recreational RV park helps Bonner County fulfill its goal of encouraging and facilitating recreation.

The applicant has not demonstrated in any way shape or form how his RV park would be in accordance with any of the above or help "fulfill its goal." As with other claims, simply stating it does not make it factual. There are no recreational facilities as defined in BCRC Title 12, in close proximity to this proposed RV park.

Housing:

Comp Plan Policy language:

"Encourage development of a variety of housing options including mobile home parks, tiny home communities and recreational vehicle parks located in areas that are compatible with their density."

Applicant: N/A

This proposed RV park, with 20 homes placed on a non-conforming 4.17 acre parcel, is in no way compatible with 7 adjacent parcels zoned RR-5. If approved, it will result in density 5 X what is the maximum allowed in the RR-5 zone.

Community Design:

Comp Plan Policy language:

"To promote and preserve the natural features and rural atmosphere of the community, the county should enact development standards that address development within scenic byways and design standards that account for waterfront setbacks, wildlife corridors, commercial and industrial landscaping, requirements for reduced lighting, cluster development, rural rather than urban setback standards and other design objectives aimed at preserving the rural, natural character of the community."

Applicant: The park is strategically planned in a location with low impact on surrounding parcels, with ingress and egress points on two separate county maintained roads to mitigate impact.

Again – the applicant claims low impact with no substantiating evidence, when the facts clearly show precisely the opposite. There will be no promotion or preservation of natural features or rural atmosphere. How does having two entrances promote and preserve the natural resources and rural atmosphere? Seriously?

Agriculture

Comp Plan Policy language:

"Land use regulations should support home occupations, cottage industries and farm-based family businesses on agricultural parcels. Examples include farm stands and other agri-business pursuits.

Protect agricultural uses and activities from land use conflicts or interference created by residential, commercial or industrial development"

Applicant: N/A

RV parks provide no compatibility with agricultural uses, but instead are in direct conflict.

Conclusion.

All of the preceding very clearly demonstrate that this application, CUP0030-21, per BCRC 12-223, should be denied, and that doing so will honor the rights of impacted parties without denying those of the applicant. Conversely, approval will most certainly deny the rights of the affected parties.

Thank you and best regards.

Dave Bowman
Bonner County Resident

(208) 255-0698

12 attachments

Als Welding Driveway looking east.jpg
133K



Als Welding from driveway looking North towards Clagstone.jpg
141K



Interior from Als Welding 2 looking East.jpg
158K



Interior from Als Welding looking East.jpg
148K



Interior from Clagstone 2 looking south.jpg
252K



Interior from Clagstone looking south.jpg
232K



Looking North East at neighbors East of project 6964.JPG
152K



Tree line from Als Welding looking North East 6950.JPG
208K



Tree line on Als Welding looking North 6962.JPG
156K



Tree line on Clagstone CO looking East 6958.jpg
4085K



Tree line on Clagstone CO looking East 6959.JPG
266K



Tree line_entrances on Clagstone CO looking South East 6951.jpg
2202K



Janna Brown <janna.brown@bonnercountyid.gov>

CUP0030-21

1 message

'Priscilla Emmett' via Mail-Planning <planning@bonnercountyid.gov>

Wed, Mar 26, 2025 at 9:48 PM

Reply-To: Priscilla Emmett <misspriscilla1@icloud.com>

To: planning@bonnercountyid.gov

Bonner County Planning Department,

In regards to cup0030-21 an application for a conditional use permit for an RV Park that contains 20 RV's on a 4.17 acre parcel. Approval of this application if approved would cause significant detriment to both my property, adjacent properties and the rural area. I am asking for denial of this application due to the following:

- The location of the proposed RV Park is in conflict with Sub Area Plans that are in existence right now.
- This is a rural area and the impact of this RV Park would create both dangerous and hazardous conditions for my property and adjacent properties that is stated in Bonner County Code 12-223. This would create catastrophic harm to our properties should a fire occur. This particular area is a high at-risk fire area with limited district resources that are already strained and require constant support from other Fire Districts as well as law enforcement and EMS services. A single family dwelling fire in this district requires the assistance from at least 3 other Fire Districts on a daily basis.
- The applicant stated that traffic is estimated at 2 cars per RV and 40 cars per day. This is incorrect as the assumption is the vehicles would only come or go 1 time per day. The accepted vehicle standard is 9 trips per day per dwelling unit so the actual number would be much closer to 180 trips per day greatly impacting a rural neighborhood and a small rural unpaved county gravel road.
- The applicant states the only property that directly borders the park is a 5.88 acre parcel allowing the residence home to be distanced from the park and blocked by trees. This is False. There are 7 parcels adjacent to this one and the trees are extremely sparse and do not provide any treed barrier or sound dampening control.
- The applicant states the park will not have any notable increase in noise, lighting, fumes, odor ect.. that could negatively effect the surrounding property owners rights in the residential area and all setbacks will be honored and the tree line barrier maintained to separate the park from the surrounding properties. This is also false. 20 RV's 40 vehicles is factually going to increase noise, lights, recreational vehicle noise, garbage trucks (for garbage services to the Park), children playing, parties and gatherings ect....
- The applicant states the hours of operation are March through November. No hours of operation were provided. What was provided was an operating of what Months the park would be open. Furthermore, no county enforcement is available to ensure the park does not operate December – February.
- The applicant also talks about how the use fits the recreation component of the Comprehensive plan, however Bonner County's Definition of a recreational facility is:

- A place designed and equipped for the conduct of small scale and low intensity sports, leisure time activities and other customary and usual recreational activities. Activities may include, but are not limited to, recreational uses such as rafting, canoeing, tent camping, swimming, cross country skiing, hiking, and fishing, horseback riding and snowmobiling, together with accessory facilities operated as a business and open to the public or operated as a private club.
- This location is not in a close proximity to recreational areas supporting small scale and low intensity sports, leisure time activities and other customary and usual recreational activities. This area is Rural Residential area with farm animals and small scale agriculture.
- This proposed RV Park is not in line with the Comprehensive Plan. This does not align with health, safety, morals and general welfare of the residents in Bonner county. This does not lessen the congestion in the streets, this does not secure from fire, panic and other dangers, this does not prevent from overcrowding of land density, and this does not avoid undue concentration of population. All of these factors increase all of these negative affects on adjacent land owners. This application should be denied based on these facts alone.
- The applicant does not have the right to harm other property owners for his own commercial use gain in a Rural residential area. By denying this application, the applicants rights are not being denied, but if it is approved, my rights as a property owner would be denied.
- This application does not fit the character of the zoning district, suitability for the particular use, or with a view of conserving the value of land and structures. This application is in direct conflict with the revised code and comprehensive plan and should be denied approval. (Reference: Chapter 4 - Bonner County Revised code, Title 12, Land use Regulations / Section 4.1 -Authority, Purpose, and Intent / Bonner County's land use standard, codified at Bonner County Revised Code (BCRC), Title 12 Chapter 1 through 8, were adopted pursuant to authority granted by Title 67, Chapter 65 of the Idaho Code, and the Idaho Constitution, as amended or subsequently codified.)

Josh and Priscilla Emmett

Bonner County Residents



Janna Brown <janna.brown@bonnercountyid.gov>

CUP0030-21 – Application for a conditional use permit for an RV park with 20 RVs on a 4.17 acre parcel in the Blanchard area

1 message

'Trisha Miller' via Mail-Planning <planning@bonnercountyid.gov>
Reply-To: Trisha Miller <trishamiller@email.com>
To: Planning@bonnercountyid.gov

Mon, Mar 17, 2025 at 3:07 PM

Dear Planning Board members,

I'm writing to express my opposition to the Conditional Use Permit application noted in the subject line (CUP0030-21).

I'm deeply concerned about the many erroneous answers the Applicant has provided, most seem duplicitous given that they are so blatantly false.

I realize our county needs more affordable housing, but the area in which it would be located is not the right area for an RV park, it would have a dramatic negative impact on the residents around it, along with a dramatic negative impact from the increased vehicle traffic associated with placing a high-density housing in a rural area.

I urge you to deny this Application and respect the current zoning. This RV Park as planned is NOT a "conditional use" that is compatible with the current RR-5 zoning, in fact it's entirely incompatible.

Respectfully,

Trisha Miller



Janna Brown <janna.brown@bonnercountyid.gov>

Rv park on SLCO

1 message

'Becky Honnold' via Mail-Planning <planning@bonnercountyid.gov>

Thu, Mar 20, 2025 at 9:32 AM

Reply-To: Becky Honnold <lovethelord5@yahoo.com>

To: "planning@bonnercountyid.gov" <planning@bonnercountyid.gov>, David Honnold <drhonnold63@yahoo.com>

As a concerned resident on the SLCO, I would like to have my thoughts known on this issue.

First and by far THE most important issue is fire safety! We are not in a position to be able to handle any issues that may come with something of this nature!! FIRE is a HUGE situation out here and is our fire department equipped to handle something of this magnitude?? Fire is a very REAL threat to those of us that live out here and adding this to it is NOT in the best interest of the people that already live here.

Second, TRAFFIC!! Holy cow since we have been here (coming up on 3 years) the traffic has tripped! It is ridiculous. And they speed like crazy.....I myself have witnessed at least a dozen accidents and 1 fatality. I bet if you were to actually count, 1 of every 3 cars is out of town and that leads me to the next issue, GARBAGE. I see people throwing garbage out their windows constantly! I cannot imagine what the added traffic will do to an already NASTY issue. I live in Idaho (and i am so proud to be from here) for the beauty, wildlife, PEACE AND QUIET, and friendly neighbors.....this purposed rv park sure isn't conducive to that way of life. When do WE (current residents) get to say that ENOUGH IS ENOUGH?!?!?!?

PLEASE, PLEASE save our area, from the insanity of modernization. We are literally the last frontier of God's country because I am NOT moving to Canada after 56 years of life in Idaho!!!

Thank you.

Rebecca Honnold

[Yahoo Mail: Search, Organize, Conquer](#)



Janna Brown <janna.brown@bonnercountyid.gov>

[EXT SENDER] Dear Members of the Zoning Commission, I am writing to express my strong opposition to the application for a conditional use permit (CUP0030-21) for the development of an RV park with 20 RVs on a 4.17-acre parcel in the Blanchard area. I believe that approving this application would have several detrimental effects on our community and the surrounding environment. Firstly, the introduction of an RV park in this rural area would significantly affect property values. The presence of a high-density RV park is incompatible with the existing rural character, which consists primarily of farms and single-family homes. This development would not only disrupt the aesthetic and cultural landscape but also potentially decrease the value of surrounding properties. Moreover, the proposed RV park would lead to a major increase in traffic in an area that is not equipped to handle such volume. The rural infrastructure is not designed for the influx of vehicles that 20 RVs and potentiall

1 message

Penny <pk1.blessed@gmail.com>
To: planning@bonnercountyid.gov

Thu, Mar 27, 2025 at 4:25 PM



Janna Brown <janna.brown@bonnercountyid.gov>

Re: [EXT SENDER] Proposed RV park at Clagstone/Al's Welding/Blanchard Cutoff

1 message

Asia Williams <asia.williams@bonnercountyid.gov>

Mon, Mar 24, 2025 at 3:48 PM

To: Betty LaPierre <raccoon_100@hotmail.com>, Bonner County Planning <planning@bonnercountyid.gov>

Ms. LaPierre,

Thank you for taking the time to write in your comments about the proposed project. I have forwarded your comment to the planning department to be added to the file.

Have a wonderful day

Asia Williams SSBB, LPN, IA, MBA
Bonner County Commissioner District 2, Chair
Office: (208) 265-1438
Cell (208) 946-3738
Fax: (208) 265-1460
asia.williams@bonnercountyid.gov

On Mon, Mar 24, 2025 at 11:06 AM Betty LaPierre <raccoon_100@hotmail.com> wrote:

I would like to take a moment to address the issue of the proposed RV park as mentioned above.

Please do not allow this to happen at this location. I live within a few hundred yards of this site. Across the Clagstone from my property a developer purchased 35 acres and is in the process of building 6 new homes on 5 acre parcels. There is already an older existing home there. Just down the road from me and a stone's throw from this proposed RV mess, a 20 acre parcel was sold and there are 4 beautiful new homes that have been built there. We are talking about several million dollars these folks invested in order to live in a nice quiet rural atmosphere. The last thing we need here is a RV park!

First, our roads here are still dirt and the county can't even begin to maintain them with grading as the traffic has tripled in the past couple of years. Cannot even imagine how badly they would be affected with 40 more cars traveling in and out each day, plus the 4 wheelers etc. tearing up and down the road.

Please keep our area rural as it should be!

Thank you for your time.

Betty LaPierre
604 Clagstone Road
Spirit Lake, ID 83869

Virus-free. www.avast.com

**PLANNING DEPARTMENT
PUBLIC HEARING DECISION MINUTES
DECEMBER 18, 2019**

CALL TO ORDER: Chair Connolly called the Bonner County Commissioners' hearing to order at 2:33 p.m. in the 1st Floor Conference Room of the Bonner County Administration Building, 1500 Highway 2, Sandpoint, Idaho.

PRESENT: Commissioners Chair Jeff Connolly; Vice Chair Dan McDonald; and Steve Bradshaw

ABSENT: None

ALSO PRESENT: Planning Director Milton Ollerton; Administrative Manager Jeannie Welter; and Administrative Assistant Emily Aerni

PUBLIC HEARING:

AMENDMENT

CALL FOR VISUAL, HEARING OR OTHER IMPAIRMENT REQUIRING ASSISTANCE: The Chair asked whether anyone needed special assistance to hear, see or participate in these proceedings. Hearing no response, the Chair continued with the public hearing.

File AM0007-19 – Amendment to Text – Bonner County Revised Code - Title 12 – Bonner County is initiating a text amendment to Bonner County Revised Code – Title 12 to include the following proposed changes: **BCRC 12-332 RESIDENTIAL USE TABLE:** Amend note 11 deleting the limit of 120 days occupancy for any RV of private property and allowing two (2) permanent Accessory RV Parking Spaces. **BCRC 12-801: DEFINITIONS – A:** Adding Definition Accessory RV Parking Space. **BCRC 12-496 RECREATIONAL VEHICLES:** Adding Section 12-496 Recreational Vehicles creating standards for Accessory RV Parking Spaces. **BCRC 12-333 COMMERCIAL USE TABLE:** Adding RV Parks with a Conditional Use Permit to the Agricultural/Forest Zone, Rural Zone and Suburban Zone. Adding Campgrounds with a Conditional Use Permit to the Agricultural/Forest, Rural, Suburban, Commercial, Rural Service Center, Recreation and Alpine Village zones. **BCRC 12-497 RV PARKS/CAMPGROUNDS:** Adding standards for development of RV Parks and Campgrounds in the listed zones. The Planning & Zoning Commission heard this file on November 21, 2019, at which time they submitted their recommendations to the Board of County Commissioners for consideration.

CONFLICT OF INTEREST/DISCLOSURE DECLARATIONS: The Chair requested the Commissioners declare any conflicts of interest or disclosures. The Chair noted that there were no disclosures or conflicts.

STAFF/APPLICANT PRESENTATION: Planning Director Milton Ollerton presented a PowerPoint summary of the project and previously circulated staff report,

concluding this project is consistent with Bonner County Revised Code. He stated that as a result of the Planning & Zoning's request for further consideration by them in the form of a workshop being denied by the Board of County Commissioners, the following proposed language was submitted to the Board:

Planning Commission Public Comment:

BCRC 12-332 Note (11) Land use regulations do not apply to non-commercial temporary, intermittent or occasional use of recreational vehicle. When a recreational vehicle is used in the same manner as a single-family dwelling or an accessory dwelling unit, such use is limited to a maximum of two (2) recreational vehicle dwelling units per parcel, and the conditions of BCRC 12-496 apply.

12:801-D: Add: "Dwelling Unit, Recreational Vehicle: A recreational vehicle used in the same manner as a single family dwelling or an accessory dwelling unit."

BCRC 12-496

A. Dwelling Unit, Recreational Vehicle

- a. Limited to one (1) per lot or parcel for lots or parcels less than one (1) acre in size, or limited to two (2) per lot or parcel for lots, or parcels greater than one (1) acre in size without respect to density.**
- b. Each recreational vehicle dwelling unit requires a building location permit.**
- c. Shall meet all residential building setbacks.**
- d. Each recreational vehicle dwelling unit may be inside a garage or under a snow roof.**
- e. It may be used as a vacation rental subject to the standards and conditions in BCRC 12-484.**

PUBLIC/AGENCY TESTIMONY: The following individuals spoke on the record: Katheryn Kolberg, Steve Bouchet, Sue Bouchet, Jana Ostler

APPLICANT REBUTTAL: Director Ollerton answered questions asked by the public as they were asked during public testimony.

BOARD DELIBERATION: The Chair closed the hearing to public testimony. The Board discussed Findings and Conclusions.

Director Ollerton discussed with the Board and county legal counsel, the idea of adding the following additional language to BCRC 12-196 as follows:

f. RV's used in conjunction with an active building location permit shall not require an additional permit.

The Board agreed to the addition of the newly proposed language being heard at the January 22nd hearing.

Motion by the governing body:

MOTION: Commissioner McDonald moved to recommend the changes as discussed. Because the changes are material, regarding updating BCRC Sections 12-332 table and Note 11; adding 12-801 D. Dwelling Unit, Recreational Vehicle; and adding 12-496. Commissioner McDonald further moved to set an additional hearing date and time certain of January 22, 2020 at 1:30 p.m. in the 1st floor conference room of the Bonner County Administrative Building to discuss only the recommended changes. Commissioner McDonald further moved to APPROVE the remainder of this FILE AM0007-19, amending the sections of Title 12, Bonner County Revised Code, as presented or amended in this hearing, based upon the evidence submitted up to the time the Staff Report was prepared and testimony received at this hearing. This action does not result in a taking of private property. Commissioner Bradshaw seconded the motion.

VOTED upon and the Chair declared the motion carried, unanimously.

Text Amendment Ordinance Adoption:

MOTION TO ADOPT ORDINANCE: Commissioner McDonald moved to adopt an Ordinance of Bonner County, Idaho, the number to be assigned, citing its authority, and providing for the amendment of Title 12, Bonner County Revised Code, Sections 12-333, 12-333 note 21, and adding Section 12-497 RV Parks/Campgrounds, providing for publication and an effective date. Commissioner Bradshaw seconded the motion.

VOTED upon and the Chair declared the motion carried, unanimously.

ROLL CALL VOTE

Commissioner McDonald	AYE
Commissioner Connolly	AYE
Commissioner Bradshaw	AYE

Project Authority

Bonner County initiated an amendment to Title 12. The proposed amendment (File #AM0007-19), are to provide for clarifications regarding Recreational Vehicles (RV's) and RV parks and campgrounds.

The current comp plan basically lies down a land use designation attempting to address the entire County. For example, it assumes Agricultural/Forest land in the Selle Valley is the same as such land in Southwest Bonner County, while everything is different from soil types to tree types and sizes. The proposal here uses the conditional use permit to more accurately determine best locations and situations for RV Parks and Campgrounds. The below proposal establishes standards to guide the Planning Department in working with the public and also guide the Planning Commission in their

decision making. While the recommendation broadens where RV parks/Campgrounds may locate, the conditional use permit limits the use through application of standards.

Below are the proposed amendments to each specific section and the description of the changes. The language in **red and underlined** is recommended as additions to the existing code. Those words in **red** and strike through would be deleted from the ordinance.

RESIDENTIAL USE OF AN RV

Based on the comment provided by the Planning Commission, the three sections of code to be changed for the residential RV use should be as follows:

BCRC 12-332 Note (11) Land use regulations do not apply to non-commercial temporary, intermittent or occasional use of recreational vehicle. When a recreational vehicle is used in the same manner as a single family dwelling or an accessory dwelling unit, such use is limited to a maximum of two (2) recreational vehicle dwelling units per parcel, and the conditions of BCRC 12-496 apply.

12:801-D: Add: "Dwelling Unit, Recreational Vehicle: A recreational vehicle used in the same manner as a single family dwelling or an accessory dwelling unit."

BCRC 12-496**A. Dwelling Unit, Recreational Vehicle**

- a. Limited to one (1) per lot or parcel for lots or parcels less than one (1) acre in size, or limited to two (2) per lot or parcel for lots, or parcels greater than one (1) acre in size without respect to density.
- b. Each recreational vehicle dwelling unit requires a building location permit.
- c. Shall meet all residential building setbacks.
- d. Each recreational vehicle dwelling unit may be inside a garage or under a snow roof.
- e. It may be used as a vacation rental subject to the standards and conditions in BCRC 12-484.

The Planning Commission's justification for updating this language is to more clearly define the permanent use of an RV and bring it more in line with the definition of a dwelling unit. This clarifies the use to be in the same manner as a single family dwelling or an accessory dwelling unit.

STAFF: The proposed change for the residential use of an RV has been discussed at length with staff and workshops held with the Planning Commission. Occupancy of an RV for 120 days on a property is in conflict with many of processes in the Planning Department. For example, if one wants to live in an RV while building a home and this takes longer than 120 days.

Further review of the code indicates a temporary dwelling unit is permitted. However, a temporary dwelling unit is intended only for caring for a family member. The ordinance does not allow this unit to be an RV. (BCRC 12-332 (9))

BCRC 12-420 G. allows for temporary buildings but does not indicate these can be livable structures – only for material supplies. In continued conflict, BCRC 12-820 defines a temporary dwelling unit as a building on a nonresidential construction site for the purposes of security.

There appears to be no permission in the ordinance to live in an RV in any capacity on a person's property without taking up one of the permitted uses of a single family dwelling or an accessory dwelling unit.

The other difficulty with the existing code is the allowance of an RV for 120 days in any consecutive 12 month period. This ordinance appears to require the County to prove the RV was in place and in use for 120 days. This would likely require a daily visit to the property to determine. Additionally, this limits the property owner to use the property the way he or she may intend.

Currently the ordinance allows one home and one ADU (Accessory Dwelling Unit) on each property. The proposed change will now allow two (2) permanent RV spaces on each property. Currently if a property wanted to live, permanently in an RV, a BLP was required and the RV has to be declared as the home or the ADU. This change will allow two (2) additional living spaces on a property. The review of the comprehensive plan, below, shows that density is not limited by number of residential units on a property but only by lot size minimums. The ordinance limits density on a parcel. This proposal increases the number of residential structures on a property.

The proposed language above includes a definition for a Dwelling Unit, Recreational Vehicle. This definition clarifies the permanent use of an RV on a property. This is much clearer than the language below defining an accessory RV parking space.

This code addition addresses the standards for RV's on private property. Each property is limited to two parking spaces with the second space requiring a minimum of one acre. This means that in order to have two spaces on the property, the property must be at least one acre. Each space will require a BLP to ensure setbacks. This will be a reduced fee to cover the costs of inspection and paperwork. The permit will ensure setbacks and other standards are followed. There will not be double permits – a permanent RV space inside a garage or under a snow roof will be identified as dwelling unit.

The Planning Commission in their public comment, recommended not using this language:

12-332: RESIDENTIAL USE TABLE:

Zone	F	A/F	R	S	C	I	RSC	REC	AV
Recreational vehicles (11)	P	P	P	P	P		P	P	P

(11) Occupancy of a recreational vehicle on a lot or parcel shall not exceed 120 days in any consecutive 12 month period, not including recreational vehicle parks. Recreational vehicle use occupancy is limited to 21 permanent Accessory RV parking spaces such vehicle per lot or parcel. Standards in BCRC 12-496 shall apply.

12:801 DEFINITIONS-A:

Accessory RV Parking Space: A permanent RV parking space, which may be complete with electrical, water and sewer hookups. May or may not be on an established pad or inside a structure.

12-496: RECREATIONAL VEHICLES

A. Accessory Recreational Vehicle Parking Space

- Recreational Vehicle use is limited to two (2) permanent Accessory RV Parking Spaces per lot or parcel.
- A Second Accessory RV Parking Space requires a minimum of one (1) acre.
- Each permanent Accessory RV Parking Space hookups requires a Building Location Permit
- Shall meet all residential building setbacks – Setbacks against a forest service or State property line shall be five (5) feet.
- Each Accessory RV Parking Space may be inside a garage or under a snow roof.
- Shall not be used as a vacation rental. (See BCRC 12-484)

BCRC 12-333: COMMERCIAL USE TABLE

Amend the table to add the following:

Zone	F	A/F	R	S	C	I	RSC	REC	AV
Recreational Vehicle Parks/Campgrounds (8) (21)		C	C	C	C		C	C	C

(8) Adequate water supplies for drinking and fire suppression, as well as approval of sewage disposal sites and methods by the Panhandle health district and/or the state of Idaho, must be demonstrated as appropriate.

(21) Refer to Section 12-497 of this Title for RV Parks/Campground standards. Site requirements for RV parks include at least 25 percent tree canopy coverage and a maximum of 25 percent impervious surface.

12-497: RV PARKS/CAMPGROUNDS:

A. Density

- Each RV space shall be an area to accommodate the size of the RV, not less than 1800 square feet and a width of not less than 24 feet.
- Each camping area must be at least 350 square feet
- RV parking is limited to five (5) units per acre
- Campsites are limited to five (5) sites per acre.
- Each RV Park may allow up to 100% of campground to RV spaces provided the requirements of this section are met.

- f. Clustering of the RV Park is allowed as long as the original acreage stays intact and the clustering is done in a way to decrease potential impacts to neighbors and the natural resources.
- g. RV Parks greater than 25 units shall follow the standards of the PUD ordinance, BCRC 12-2.5.

B. Yards and Spacing:

- a. All structures must be setback a minimum of twenty-five (25) feet from all exterior property lines.
- b. An RV may not be located closer than ten (10) feet from any other RV or permanent building within the RV Park.
- c. An RV accessory building shall not be closer than five (5) feet from an RV or building on an adjacent RV space.

C. Access

- a. RV parks/Campgrounds shall access on maintained County roads, State highways or forest access roads whenever possible.
- b. Access on private roads shall be built to County standards in Appendix A.

D. Parking

- a. Parking design shall follow the standards in Section 12-4.3 Parking Standards.
- b. Campground Parking: one space for each 350 square feet of allotted space plus one guest parking space for each ten campground spaces.

E. Park Site Design

- a. Provisions for vehicular, bicycle and pedestrian access shall be integrated into the site.
- b. May be associated with other recreational uses such as rafting, canoeing, swimming, cross country skiing, hiking, hunting and fishing, horseback riding and snowmobiling, together with accessory facilities.
- c. Each space within an RV park shall have direct access to a travelway.
- d. The park travelway shall consist of an unobstructed area twenty feet (20') wide and shall be well marked to provide for continuous traffic flow.
- e. Parking spaces may be up to a 45 degree angle from the travelway.
- f. The travelway system shall have direct connection to a public or private road meeting applicable standards set forth in title 2 of this code or appendix A of this title.
- g. Any RV space that is to be occupied throughout the winter months may have an open-shell snow-roof. Snow roofs shall have a minimum of ten foot spacing from one another, measured from greatest architectural projection. Complete enclosure of snow roofs is prohibited.
- h. The RV park/campground may be built in phases as approved through a conditional use permit.
- i. Uses that are clearly incidental to the operation of the park, such as management headquarters, recreational facilities, toilets, dumping stations, laundry facilities, a convenience store, and other facilities established within the park, are permitted as accessory uses.

- j. Internal roads and parking service areas shall provide safe and convenient access for service and emergency vehicles and to amenities within the park. Internal roads shall not be designed to encourage use by outside traffic to traverse the park to adjoining developed areas.
- k. Setbacks to wetlands, floodplain, vegetative buffers, and shorelines shall be maintained for all uses onsite.

F. Landscaping

- a. Landscaping and screening shall follow the standards in BCRC 12 4.6 Landscaping and Screening Standards

G. Water and Sewer

- a. Each site may provide utility connections, including water and sub-surface sewage disposal system.
- b. An appropriate number, per industry standard, of restroom/port-a-johns for tent camping spaces.

H. Refuse Collection

- a. The park shall provide for regular refuse service whether self-supported or contracted out with a refuse service. Accumulation of trash is prohibited

I. Signs

- a. Signs advertising the business are allowed per BCRC 12-4.4 Sign Standards

J. Permits required

- a. A conditional use permit is required for each RV park/campground for 25 spaces or less.
- b. A PUD Permit is required for all sites allowing more than 25 RV spaces.
- c. A building location permit is required for construction of the entire project or each phase of the approved project.

K. Site plan

A site plan shall be submitted upon application for a conditional use permit for the development of a recreational vehicle park/campground. The site plan must include a north arrow and must clearly depict the following:

- a. Existing structures which will remain on the parcel, and their uses, and any existing structures proposed to be modified or removed;
- b. All proposed structures and their uses;
- c. Existing and proposed roads, easements, and points of access;
- d. Recreational vehicle space dimensions;
- e. Campground space dimensions;
- f. Size of the site in acres;
- g. Dimensions of property lines and property line setbacks;
- h. Reserved or dedicated open space;
- i. Major landscape features, both natural and manmade;
- j. Locations of existing and proposed utility lines;

- k. Accessory off street parking and loading facilities, and parking space areas;
- l. Wastewater drainfield areas;
- m. Traffic circulation patterns;
- n. Refuse and service areas;
- o. Signs;
- p. Outdoor storage; and
- q. Proposed screening and buffering, including fences, yards, walls or vegetation.

STAFF: This proposed addition provides the standards and guidelines for an RV park and campground. While the proposal allows RV's in the rural zones, it includes standards that should address potential impacts. The ordinance currently allows vacation rentals and mobile homes with impacts addressed. The ordinance also allows for clustering of homes in a conservation subdivision and allows for double density on properties if the house size is limited to 1500 square feet (900 feet first floor with a 600 foot second floor.) The ordinance will now address standards for RV Parks and Campgrounds, location, and most concerns. The conditional use permit process will allow for the neighborhood to be involved and address localized concerns.

As recreation in the County continues to increase, there are more demands for RV Parks and campgrounds. This proposal establishes a conditional use permit process which analyzes the project to the proposed standards, CUP/PUD standards, requires a public hearing with the Planning Commission and allows for comment from surrounding neighbors and potentially impacted agencies.

Public Comment:

There have been two comments received to date on this file. One each from the City of Kootenai and Panhandle Health. The Independent Highway District and City of Clarkfork provided a "no comment" response.

The City of Kootenai brought up the concern that two (2) RV's per property is against the densities established in the comprehensive plan. In the land use section of the comp plan, there are lot size minimums discussed and it appears there is not any discussion of density. The other concerns were relating to the RV Park/campground ordinance. These are addressed in the staff report and analysis provided herein.

Panhandle Health recommends the County require review and approval of permanent RV parking spaces by PHD prior to the County issuing permits. PHD also requested the opportunity to review the conditional use permits prior to going to the planning commission. When a CUP is applied for, PHD will be notified through agency review to provide comments on the application. The Planning Commission, as part of its review will determine if water and sewer are adequate for RV parks and campgrounds.

While this file has been discussed on social media quite extensively, at the time of the staff report, there have been no public comments received on this file.

Authority

The ordinance amendment is proposed under the authority granted at Idaho Code, Chapter 7, Title 31; Chapter 8, Title 31; and Chapter 65, Title 67; and Article XII, Section 2, of the Idaho Constitution.

Findings of Fact:

1. The Planning and Zoning Commission, per Idaho Code Chapter 65, Title 67, may recommend a zoning ordinance.
2. The Bonner County Planning Department has reviewed the proposed changes against Idaho Code and made amendments to better comply with the Idaho Code, specifically Title 67 Chapter 65.
3. The Board of County Commissioners is authorized by Idaho Code, Chapter 7, Title 31, to adopt ordinances, rules and regulations "...not repugnant to law, necessary for carrying into effect or discharging the powers and duties conferred by the laws of the state of Idaho, and such as are necessary or proper to provide for the safety, promote the health and prosperity, improve the morals, peace and good order, comfort and convenience of the county and the inhabitants thereof, and for the protection of property therein..."

The proposed ordinance making the above changes adds to the clarity intended in the interpretation of the Bonner County Revised Code and Bonner County Comprehensive Plan. These actions will further balance the provision of safety, health and prosperity while maintaining the protection of property, peace, good order, comfort and convenience of the county and its inhabitants.

4. This proposed change provides further clarifying standards enabling the public and the staff to achieve the best results leading to greater understanding and use of the zoning ordinance.

Conclusions of Law:

1. The proposed amendments to Title 12 IS in accord with Idaho Code, Chapter 7, Title 31.
2. The proposed amendments to Title 12 IS in accord with Idaho Code Chapter 67 Title 65.

The Chair declared the hearing adjourned at 3:31 p.m.

Respectfully submitted, this 19th day of December 2019.



Milton Ollerton, Planning Director