

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.

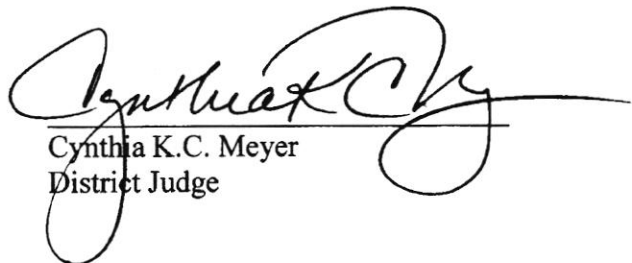
ORDER

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