

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

MICHELLE JOHNSON; ROBERT)
JOHNSON; GRANT SAMS; KRISTI SAMS;)
ROB HOLMAN; JILL HOLMAN; BRUCE)
ABBOTT; YVONNE ABBOTT; DREW)
HOVERSON; STEPHANIE HOVERSON;)
DOUG NORDQUIST; ANNE NORTQUIST;)
LINDA GEARKE; RANDY GEARKE;)
JAIME IRONS; GREG BOLENDER;)
ROBERT IRONS; CATHERINE IRONS;)
SUSAN YUNKER; PETER SMITH; CHUCK)
BOSTON; LAWURA MILLER; TERESA)
CANNON STENDAHL; TIMOTHY)
CANNON; ALISIA CANNON; ANNETTE)
ALPERSTEDT; HERMAN LEISTER;)
MARLENE RINELLA; DENNIS)
ANDERSON; FRANK WRIGHT; PATTY)
WRIGHT; STEVEN COULTER; ALLISON)
COULTER; WARREN SMITH;)
Petitioners,)
vs.)
BONNER COUNTY, a political subdivision of)
the State of Idaho, acting through the)
BONNER COUNTY BOARD OF COUNTY)
COMMISSIONERS,)
Respondent,)
vs.)
FIREBRAND, LLC, an Idaho limited liability)
company,)
Intervenor.)

Case No. CV09-24-1038

MEMORANDUM DECISION
AND ORDER RE:
ADMINISTRATIVE APPEAL

I. INTRODUCTION

In this case, a group of neighboring landowners seeks to vacate and remand a decision (“the Decision”) of the Board of Bonner County Commissioners (“the Board”) approving Conditional Use Permit CUP0013-23 (“the CUP”) for a wedding venue. Petitioners primarily argue the Board failed to adequately explain the rationale for the Decision, so the Decision should be vacated and remanded.

II. FACTS

The Applicant/Intervenor applied for and gained approval for a wedding and event venue that it was already operating on the property. *R.*, p. 262.

After both the Private Community Facility use and the Retreat use were approved by the Board, the Applicant/Intervenor requested the approval be modified to remove the Retreat use and associated conditions from the conditional use permit. *R.*, p. 637. The request from the Applicant/Intervenor was submitted after the 14-day deadline to request reconsideration under Idaho Code § 67-6535(2)(b). *Id.* The Board considered and approved this request during reconsideration of its original decision. *R.*, pp. 128, 620-26; *June 13, 2024 Tr.*, p. 32-35. The CUP was approved for a Private Community Facility use under the Public Use table, BCRC § 12-335, Table 3-5. *R.*, pp. 622-23.

Affected parties provided evidence through written and oral comments, as well as photos and video and audio recordings, regarding the impacts of the use on their properties in the form of: increased traffic; threats to safety; increased road maintenance costs; fire hazards; loud, prolonged noise (i.e., music); dust; bright lights; odors; interference with use and enjoyment of private property; impacts on adjacent property owners’ residential wells; and decreased property values. *See, e.g. R.*, pp. 151, 153, 154, 156, 158, 168, 170, 172, 174, 176, 178, 180, 185, 186, 189-*Johnson, et. al. v. Bonner County* – Memorandum Decision and Order Re: Administrative Appeal

90, 192, 194, 196, 219, 223, 226, 229, 231, 235, 237, 241, 243, 245, 247, 249, 251, 253, 258, 260, 262, 264, 266, 279, 280; also see, e.g. April 24, 2024 Tr pp. 69-124.

Of note, the County initially filed its Adoption of Intervenor’s Brief by Reference on April 29, 2025. On July 18, 2025, the County reversed course and filed its Withdrawal of Objection to Petition and Waiver of Appearance stating, “[t]he County concedes that the administrative decision in the above-captioned matter did not comply with the reasoned statement requirement set forth at Idaho Code § 67-6535”.

III. STANDARD

The Local Land Use Planning Act (“LLUPA”), contained at Chapter 65 of Title 67, Idaho Code, 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 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). A Court sitting in review, “defer[s] to the Board’s findings of fact unless they are ‘clearly erroneous,’ but freely review questions of law as part of our independent review of the agency record.” *Sullivan, Tr. of Catherine Sullivan Fam. Tr. of 2000 v. Blaine Cnty.*, 174 Idaho 459, ___, 556 P.3d 1282, 1287 (Idaho 2024). Generally, the agency decision will be upheld unless the appellant establishes that (1) the Board erred under Idaho Code section 67-5279, and (2) the Board’s decision prejudiced the appellant’s substantial rights. *Id.*

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

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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 v. Brighton Corp.*, 130 Idaho 923, 926, 950 P.2d 1262, 1265 (1998). “[T]here is a strong presumption of favoring the validity of the actions of zoning boards, which includes the application and interpretation of their own zoning ordinances.” *Terrazas v. Blaine Cty.*, 147 Idaho 193, 197, 207 P.3d 169, 173 (2009).

Under the LLUPA,

The approval or denial of any application required or authorized pursuant to [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 based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record.

I.C. § 67-6535(2).

“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.” *Jasso v. Camas County*, 151 Idaho 790, 794, 264 P.3d 897, 901 (2011). The Code requires more than conclusory statements from which a decision-maker’s resolution of disputed facts and legal reasoning may be inferred. *Id.* at 795, 264 P.3d at 902. The reviewing court is not required to scour the record for evidence which may support the decision-maker’s implied findings and legal conclusions. *Id.* What is required for judicial review is a “clear statement of what, specifically, the decisionmaking 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, 264 P.3d at 903.

IV. ANALYSIS

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A. Fundamental Rights

A party challenging a governing board's decision to grant a permit must show prejudice to their substantial rights:

When a party “opposes a governing board's decision to grant a permit... the petitioner must still show, not merely allege, real or potential prejudice to his or her substantial rights.” *Hawkins v. Bonneville County Bd. of Comm'rs*, 151 Idaho 228, 233, 254 P.3d 1224, 1229 (2011). Because a party opposing the issuance of a conditional use permit “has no substantial right in seeing someone else's application adjudicated correctly, he or she must therefore show something more.” *Id.* In recent cases, “we have held that [substantial] rights were harmed when: (1) property values are impacted; or (2) the [conditional use permit] will interfere with the use and enjoyment of property.” *Hungate*, 166 Idaho at 394, 458 P.3d at 972.

Sullivan, 174 Idaho 459, ___ 556 P.3d at 1290. In *Sullivan*,

Sullivan argues that the use and enjoyment of her property will be in jeopardy if the issuance of the 2021 CUP is affirmed. *Sullivan* points to “Gruver's for-profit commercial business operation” including “third-party food truck vendors and a mobile saddlery for participants' consumption of food and for retail shopping, the arrival, parking and departure of scores of trucks, horse trailers, and cars with no limitation on number and type of vehicle, and the participation of up to 75 people” as factors that would cause her the loss of the use and enjoyment of her property. *Sullivan* also contends her complaints about the “noise, odor, traffic and congestion” meet the “something more” required by *Hungate* and *Hawkins*. *Gruver* maintains that *Sullivan* failed to identify how the modified 2021 CUP prejudiced her substantial rights and contends that *Sullivan* relies on a “speculative parade of horrors” regarding “what future events might look like.” *Blaine County* argues that *Sullivan's* arguments related to prejudice fail to “account for the many conditions placed upon the Modified CUP.”

Id. at ___, 556 P.3d at 1290.

The Court contrasted two previous decisions regarding whether an appellant had demonstrated prejudice to their fundamental rights:

In *Hungate*, we held that the appellants had not established prejudice to their substantial rights when they argued that the approval of the variances would interfere with the use and enjoyment of their property. *Hungate*, 166 Idaho at 396, 458 P.3d at 974. The *Hungates* argued that “impact to the lakefront and rural location of the property, the excessive lot coverage, reduced privacy, and reduced enjoyment of wildlife and scenic views found on Priest Lake are the types of

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impacts that could potentially prejudice the use and enjoyment of their property.” *Id.* The Hungates also argued that granting the variances would reduce their property values and increase traffic volumes and use of the lane where their property was located. *Id.* at 395, 458 P.3d at 973. We held that because the property owner seeking the variances had agreed to convert the buildings to reduce the number of bedrooms per building and convert one of the buildings into a storage building, “it is unclear how the Hungates can show the Variances would result in increased intensity of use and increased traffic volumes.” *Id.* We also noted that Hungates failed to establish a reduction in their property values based on “letters written by two neighbors” and the Hungates’ bare allegations that the variances would reduce their property values. *Id.* We determined that the Hungates “provided no evidence in the record to explain how the Board’s action to grant the Variances has undermined the use or enjoyment of their property, given that the structures have been in place for twenty years.” *Id.* at 396, 458 P.3d at 974.

By contrast, in *Lusk* we held that Lusk had demonstrated prejudice to a substantial right based on a planned student housing project in Lusk’s neighborhood. *917 Lusk, LLC v. City of Boise*, 158 Idaho 12, 18, 343 P.3d 41, 47 (2015). Lusk highlighted “[t]he lack of deliberation by the City, and the failure of the City to attach appropriate conditions to this conditional use approval (assuming, solely for argument[']s sake, that the conditional use could even be appropriately conditioned so as to mitigate adverse impacts),” and argued the project “*will devalue Petitioner’s property, require time and expense for Petitioner to police parking on its own property, [and] inconvenience employees and visitors to Petitioner’s building,*” as well as Lusk’s neighborhood. *Id.* at 19, 343 P.3d at 48 (emphasis in original). We held that Lusk satisfied the requirement of showing “something more” because the proposed project “calls for 622 bedrooms to house students at Boise State University” with “only 280 parking spaces for the project. Without even attempting to evaluate the impact of guests who arrive by automobile, if only half of the River Edge tenants have an automobile, there will be significant numbers of residents looking for parking in the vicinity.” *Id.* at 19, 343 P.3d at 48.

Id. at ____, 556 P.3d at 1290–91.

In this case, Petitioners provided evidence through written and oral comments, as well as photos and video and audio recordings, regarding the impacts of the use on their properties in the form of: increased traffic; threats to safety; increased road maintenance costs; fire hazards; loud, prolonged noise (i.e., music); dust; bright lights; odors; interference with use and enjoyment of private property; impacts on adjacent property owners’ residential wells; and decreased property values. *See, e.g. R., pp. 151, 153, 154, 156, 158, 168, 170, 172, 174, 176, 178, 180, 185, 186, 189-190.*

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90, 192, 194, 196, 219, 223, 226, 229, 231, 235, 237, 241, 243, 245, 247, 249, 251, 253, 258, 260, 262, 264, 266, 279, 280; also see, e.g. April 24, 2024 Tr pp. 69-124. Because the venue operated prior to approval, such claimed effects are not merely speculative.

Petitioners have demonstrated through the record their substantial rights have been and will continue to be implicated because property values are impacted and/or the conditional use permit will interfere with the use and enjoyment of their property, amounting to the “something more” required by *Sullivan*.

B. Explanation of Use Table Decision

Petitioners first argue the board erred by failing to provide adequate explanation for its determination the application was for a “private community facility.” “Commercial Resort” use and “Outdoor Recreational Use” are not permitted in the existing Rural Zoning District, while “private community facility” use is allowed with a conditional use permit. BCRC § 12-333, Table 3-3 (Commercial Use Table); BCRC § 335, Table 3-5.

BCRC § 12-331 provides the rules for interpretation of the respective use table categories and gives the Planning Director the authority to determine whether a proposed use is included or excluded from particular use categories. The Code reads:

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 and the Planning Director's interpretation of the standard land use coding manuals, as provided in section 12-339 of this subchapter.

BCRC § 12-331(A).

Regarding the use determination, the Decision states,

The proposed use of a wedding venue was evaluated by the Planning Director, per BCRC 12-331 and BCRC 12-339, and determined that the characteristics of the operation of the proposed use falls within the same classification as "churches,

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grange halls, public or private community facilities" as found in the Public Use Table in BCRC 12-335.

R., pp. 622-23 (pt 4 of 10). Additionally,

The historical practice of the Bonner County Planning Department and its Directors has been to classify "wedding venues" under "Private Community Facilities" as found in the Public Use Table in BCRC 12-335.

Id. at 623.

Intervenors argue that BCRC § 12-331 gives the planning director "authority to make the final determination," so such decision is not a decision of the Board and I.C. § 67-6535(2) does not require the Board to explain the planning director's determination. However, this case is extremely similar to *Vivian, et. al. v. Bonner County*, Bonner County Case No. CV09-24-1283, wherein this Court already determined,

While it is true the Board delegates responsibilities to the Planning Director under BCRC § 12-331, such delegation does not relieve the Board of its statutory duties under I.C. § 67-6535. The Board noted the Planning Director made the final determination and in support made the conclusory statement that it recognized and affirmed the Planning Director's determination that the proposed use was equivalent to those in the non-exhaustive list noted in the definition of Recreational Facility. *Id.* However, the Board does not cite to any specific facts explaining in what way the proposed use here was equivalent to those in the non-exhaustive list.

The Court finds ... the Board's adoption of that determination is conclusory....

Vivian, et. al. v. Bonner County, Bonner County Case No. CV09-24-1283, *Memorandum Decision and Order re: Administrative Appeal*, p. 10. This case is not meaningfully distinguishable to mandate a different result.

Jasso requires the Board's reasoned statement 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 pertinent laws and/or regulations upon which the legal

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conclusions rest.” 151 Idaho at 794, 264 P.3d at 901. The Court finds the Board failed to provide such a reasoned statement here.

First, the Court notes *Jasso* requires the reasoned statement to plainly state the resolution of factual disputes. *Id.* Here, the record shows Petitioners throughout these proceedings have argued the issue of whether the proposed use falls under Commercial Resort, Outdoor Recreational Use or Private Community Facility. Despite this, the Board failed to note such a dispute, much less plainly state the resolution of such dispute.

Intervenors argue it would be impractical for the Board to try and guess as to what other uses may be argued and to address every possible use would be cumbersome and unattainable. However, the Court does not find *Jasso* or I.C. § 67-6535 requires the Board to go and independently find factual disputes and then resolve them. The Court finds *Jasso* and I.C. § 6535 require resolution of factual disputes brought before the Board, which in this case included the resolution of whether the proposed use was one of the three uses specifically identified by Petitioners.

Second, the Court finds the Board has failed to list facts supporting its determination that the category of “private community facility” was applicable here. The Decision contains a conclusory statement that “the characteristics of the operation of the proposed use falls within the same classification as ‘churches, grange halls, public or private community facilities’ as found in the Public Use Table in BCRC 12-335.” *R.*, p. 622-23. The Decision contains another conclusory statement that “[t]he historical practice of the Bonner County Planning Department and its Directors has been to classify ‘wedding venues’ under ‘Private Community Facilities’ as found in the Public Use Table in BCRC 12-335.” *R.*, p. 623.

The Board did not identify any facts it relied on in determining the application was for a “private community facility.” While it is true the Board delegates responsibilities to the Planning Director under BCRC § 12-331, again such delegation does not relieve the Board of its statutory duties under I.C. § 67-6535. The Board noted the Planning Director evaluated the proposed use categorization, and the Board made the conclusory statement that the proposed use falls within the same classification as “churches, grange halls, public or private community facilities’ as found in the Public Use Table in BCRC 12-335.” *R.*, p. 622-23. However, the Board does not cite to any specific facts explaining in what way the proposed use here falls within the same classification.

The Court finds the Board’s adoption of the Planning Director’s determination is conclusory. As such, this Court cannot evaluate the process by which the Board reached its decision or the soundness of its legal reasoning because the reason for the decision failed to satisfy the requirements of section 67-6535(2). *See North West Neighborhood Association*, 172 Idaho at 616, 535 P.3d at 592.

The Court finds the lack of sufficient findings prejudices the Petitioners’ due process rights to judicial review. The Board has failed to give this Court sufficient findings or reasoning to review. The Court is not substituting its judgment for that of the Board, but instead finds the Board’s Decision was made in violation of I.C. § 67-6535. Therefore, the Court vacates the Board’s approval of the CUP and remands the matter back for further agency proceedings.

C. Timeliness of “Reconsideration”

After the Board’s initial decision on the Application on April 25, 2024, the Petitioners timely filed a request for reconsideration under Idaho Code § 67-6535(2)(b). *R.*, pp. 635-36. The statute requires reconsideration requests be filed within fourteen (14) days of the Board’s decision.

I.C. § 67-6535(2)(b). On the day of the hearing, the Applicant/Intervenor filed its own request

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asking the Board to modify its decision by removing the Retreat use and certain associated conditions. *R.*, p. 637.

Applicant characterizes such action as simply a withdrawal of that portion of their application. Petitioners argue that Applicant's "motion for reconsideration" was untimely under Idaho Code § 67-6535(2)(b), so the Board erred by considering it.

Neither party cites any authority beyond Idaho Code § 67-6535(2)(b).

Petitioners suffered no prejudice by this decision and have not shown that allowing the partial withdrawal of a portion of the application prejudiced Petitioner's substantial rights in any way. Moreover, Petitioners have not shown that the Board's allowance of Applicant's partial withdrawal violates Idaho Code § 67-6535(2)(b).

Additionally, if taken to its logical conclusion, Petitioners' argument would result in forcing entities or individuals who have applied for a CUP to always complete the project, even if it becomes impractical to do so and never allow simple withdrawal of the CUP (or portions thereof) once the deadline for reconsideration has passed. The Court does not find this argument to be persuasive.

D. Attorney Fees

Appellants seek attorney fees pursuant to I.C. § 12-117(1), which provides:

Unless otherwise provided by statute, in any proceeding involving as adverse parties a state agency or a political subdivision and a person, the state agency, political subdivision or the court hearing the proceeding, including on appeal, 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.

I.C. § 12-117(1). The County initially sought an award of fees pursuant to I.C. § 12-117(1), however withdrew its objection to the petition for review and with it, the request for attorney fees.

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At oral argument, Petitioners conceded they were no longer seeking attorney fees against the County due to the County's withdrawal of its objection to the Petition. Additionally, are not seeking attorney fees under I.C. § 12-117(1) against Intervenor as it is not a state agency or political subdivision. As such, the Court declines to award attorney fees under I.C. § 12-117(1) in this case.

III. CONCLUSION

For the reasons and as set forth above, the Board's Decision approving Conditional Use Permit CUP0013-23 for a wedding venue is vacated and remanded.

SO ORDERED this 15th of September, 2025



Casey Simmons
DISTRICT JUDGE

Certificate of Service attached JG

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CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on 9/16/2025, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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Deputy Clerk