

Before the Bonner County Board of County Commissioners

Appeal of Denial of Conditional Use Permit CUP0007-25

Date: April 1, 2026

To: Bonner County Board of County Commissioners

Applicant: City of Spirit Lake

The City of Spirit Lake ("Applicant"), pursuant to Bonner County Revised Code ("BCRC") 12-262, hereby appeals the written decision dated March 9, 2026, of the Bonner County Zoning Commission ("Commission") denying File No. CUP007-25, an application for a conditional use permit for a Public Utility Facility. The Commission's decision was in violation of constitutional or statutory provisions; made upon unlawful procedure; arbitrary, capricious, and abuse of discretion; and not supported by substantial evidence on the record as a whole.

I. Background and Commission Findings

The Applicant applied for a conditional use permit to the Bonner County Planning Department, requesting approval for a Public Utility Facility. The application was reviewed by Planning staff for compliance with the Bonner County Revised Code and applicable provisions of the Idaho Local Land Use Planning Act ("LLUPA"), Idaho Code § 67-6501 et seq.

Following staff review, the application was scheduled for a duly noticed public hearing before the Bonner County Commission. Notice of the hearing was provided in accordance with BCRC requirements, and relevant agencies were solicited for comment.

On February 26, 2026, the Commission conducted the public hearing, during which it received the staff report, agency correspondence, public testimony, and evidence submitted by the Applicant. The Commission deliberated on the application and evaluated it against the applicable standards set forth in BCRC Title 12, including § 12-223, governing conditional use permits.

During the February 26, 2026, public hearing, and later included in the March 9, 2026, written decision, the Commission made affirmative findings that the proposed use "will not create a hazard and will not be dangerous to persons on or adjacent to the property."

Notwithstanding the finding, the Commission denied the application, concluding that "The proposed conditional use permit is in conflict with the policies of the Comprehensive Plan." For justification of this conclusion of law, the Commission stated the application did not conform to the Property Rights, Economic Development,

and Land Use policies. Additionally, the Commission stated the following code sections were not met: BCRC 12-235 Table 3-5 note 6 and BCRC 12-241 Performance Standards.

II. Standard of Review: Relevant Regulations, Guidelines, and Code Sections

Pursuant to BCRC 12-262, the Bonner County Revised Code expressly authorizes an appeal from a final decision of the Commission, providing that:

- A. Presentation of Appeal: Any “affected person”, as defined by Idaho Code title 67, chapter 65, may appeal to the Board any final decision by the Zoning Commission/hearing examiner.
- B. Filing Time Limit; Fee: Any affected person may file an appeal of the final decision of the Zoning Commission/hearing examiner with the Planning Director within twenty eight (28) days after the final written decision of the Zoning Commission/hearing examiner has been issued. The appellant shall pay the fee required by this title upon filing the appeal. An appeal shall not be considered to be filed until such fee has been paid. Failure to file the appeal within the time limits shall cause automatic dismissal of the appeal.
- C. Notice Of Appeal Contents: The notice of appeal shall be detailed in writing and shall provide the grounds for the appeal. The grounds for appeal shall be that the decision of the commission or hearing examiner was at a minimum one of the following:
 - 1. In violation of constitutional or statutory provisions;
 - 2. In excess of the statutory authority of the commission or hearing examiner;
 - 3. Made upon unlawful procedure;
 - 4. Arbitrary, capricious or an abuse of discretion; or
 - 5. Not supported by substantial evidence on the record as a whole.

The Commission issued its initial written decision on File CUP0007-25 dated March 9, 2026, initiating the 28-day appeal period. This appeal has been timely filed within the required 28-day period and contains the necessary appeal contents. On appeal, the Board must determine whether the Commission properly applied the standards set forth in BCRC and whether its decision is supported by substantial evidence in the record. Where a decision is based on speculation, generalized concerns, or conditions not attributable to the proposed use, reversal is required under Idaho law.

Relevant Idaho Code Sections

Idaho Code § 67-6512 states: “As part of a zoning ordinance each governing board may provide by ordinance ... for the processing of applications for special or conditional use permits. A special use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance...”

This statute provides that such uses may be approved when they satisfy ordinance criteria, and it expressly anticipates the use of conditions to address potential impacts. In this case, the record does not identify any specific standard that cannot be met or any impact that could not be reasonably mitigated through conditions. Instead of applying conditions as suggested by statute, the Commission denied an otherwise compliant application without identifying a clear basis in the ordinance. This is inconsistent with the statutory framework governing conditional use permits.

Idaho Code § 67-6519(5) requires that:

“The decision-making body shall specify the ordinance and standards used in evaluating the application and shall provide the reasons for approval or denial.”

While the Commission cited BCRC 12-223, its conclusions are not supported by substantial evidence in the record. Under Idaho law, such unsupported conclusions do not satisfy the requirements of § 67-6519, see *Lane Ranch Partnership v. City of Sun Valley*.

Relevant Case Law

This appeal is governed by Idaho Code § 67-6501 et seq. Under Idaho Code § 67-6519(5), a governing body must base its decision on standards set forth in the applicable ordinance and provide reasons supported by the record.

Judicial review of land use decisions requires reversal where the decision is:

- Arbitrary, capricious, or an abuse of discretion; or
- Not supported by substantial evidence on the record as a whole. See *Lane Ranch Partnership v. City of Sun Valley*; *Neighbors for Responsible Growth v. Kootenai County*.

“Substantial evidence” is defined as relevant evidence that a reasonable mind might accept to support a conclusion, see *Lane Ranch*, 145 Idaho 87 (2006). Moreover, a denial may not be based on speculation, generalized concerns, or unsubstantiated public opinion, see *Neighbors for Responsible Growth*, 147 Idaho 173 (2009). A denial cannot be sustained where the record lacks evidence demonstrating that the proposed use itself causes the alleged impact.

In *Northwest Neighborhood Association v. City of Boise*, 172 Idaho 607 (2022), the Idaho Supreme Court reaffirmed that land use decisions must be grounded in clearly articulated standards and supported by a reasoned explanation tied to the record.

Idaho Code section 67-6535 expressly provides that the approval or denial of a land use application must be based upon standards and criteria set forth in the governing authority’s adopted regulations:

"The approval or denial of any application... shall be based upon standards and criteria which shall be set forth in the comprehensive plan, zoning ordinance or other appropriate ordinance or regulation of the city or county." (I.C. § 67-6535(1))

The Court emphasized that this requirement ensures that "permit applicants, interested residents, and decision makers alike may know the express standards that must be met in order to obtain a requested permit or approval." Id. (internal citation omitted).

Idaho Code section 67-6535 further requires that a governing body issue a written "reasoned statement" explaining its decision:

"The approval or denial... 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)).

The statute provides that: "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..." (I.C. § 67-6535(2)(a)).

The Idaho Supreme Court has consistently enforced these requirements. In *Lane Ranch Partnership v. City of Sun Valley*, 145 Idaho 87, 175 P.3d 776 (2007), the Court held that a local governing body must apply the plain language of its own ordinances and may not impose requirements or reach conclusions that are inconsistent with those standards. The Court affirmed that decisions lacking a reasonable basis in fact or law cannot stand.

Similarly, in *Neighbors for Responsible Growth v. Kootenai County*, 147 Idaho 173 (2009), the Court held that generalized public concern and speculative impacts do not constitute substantial evidence sufficient to support denial of a land use application.

The Court has further explained that the "reasoned statement" requirement serves essential functions, including facilitating judicial review and ensuring careful administrative decision-making. See *Jasso v. Camas County*.

III. Argument

The Decision is in Violation of Constitutional or Statutory Provisions (BCRC 12-262(C)(1)) & The Decision Was Made Upon Unlawful Procedure (BCRC 12-262(C)(3))

The Commission's decision was made upon an unlawful procedure and the Commission violated due process. During its deliberation, a Commission member

used his county laptop to search for the financial impacts of property values near a sewer treatment plant. The Commission then used this new information when evaluating the application against the standards.

The new information, or 'study,' as it is called in the decision letter:

- Was not presented until after the close of the public testimony,
- Was not included in the staff report or agency review, and
- Was not subject to rebuttal by the Applicant.

The record demonstrates that this "study" was introduced after the close of public testimony and after the evidentiary record had been established. As reflected in the hearing, the Commission deliberated extensively on property value impacts without identifying supporting evidence in the record. Staff explicitly advised the Commission that such evidence was required. Only after that point did a Commissioner independently locate and introduce a study during deliberations. This sequence confirms that the decision was not based on the record, but on information obtained outside the hearing process. This deprived the Applicant of notice and an opportunity to be heard on a material issue, which are fundamental components of due process in quasi-judicial proceedings.

A quasi-judicial decision must be based solely on the record developed during the public hearing. Reliance on extra-record information constitutes a procedural defect and renders the decision invalid.

The Decision Is Arbitrary, Capricious, and an Abuse of Discretion (BCRC 12-262(C)(4)) and The Decision Is Not Supported by Substantial Evidence (BCRC 12-262(C)(5))

The Commission's denial is arbitrary, capricious, and an abuse of discretion because it is inconsistent with the record and represents an unreasonable application of the governing standards.

The record demonstrates that the proposal satisfies applicable requirements of the zoning ordinance and does not present impacts that would justify denial. However, the Commission failed to connect its conclusions to specific standards or evidence in the record.

The Commission's decision violates statutory requirements by failing to provide a reasoned statement supported by the record.

Comprehensive Plan Policy Evaluation – Property Rights

The Commission's findings under the Property Rights component are not supported by any evidence in the record and are based on information introduced outside the hearing process.

"A submitted study shows that property values can decline 20-30% in this area when sewer treatment plants are built. Approval of this request will cause values to decline in Bonner County and help increase property values in Kootenai County in both the short and long term."

No study addressing property value impacts was submitted into the record prior to the close of public testimony. The only reference to declining property values arose from a generalized statement during public testimony, unsupported by data or analysis. The "study" cited in the decision was introduced during deliberations and was not subject to review or rebuttal, see the section below for the analysis on Unlawful Procedure.

"A long-term consequence is losing control jurisdiction of the property."

The property is remaining within unincorporated Bonner County and not being annexed into an incorporated city, the county will retain jurisdiction of the property as it pertains to land use.

"Quality of life will decrease because people will have to visit doctors more frequently as stated in public testimony."

There are no policies within this section that mention quality of life and thus a finding is inappropriate and unnecessary. No studies or evidence was included or submitted to the record that conclude that additional doctor visits would be necessary. Again, the Commission also concluded that the application *"will not create a hazard and will not be dangerous to persons on or adjacent to the property,"* which is in direct conflict with its evaluation of the property rights policies.

Comprehensive Plan Policy Evaluation – Land Use

In its evaluation of the Land Use policies, the Commission concluded that the project was in conflict with these policies, and for evidence in the record, it stated: *"#4 & #5. The proposal will impact land values, cause objectionable odor, and particular."* Again, there is no evidence in the record that indicates a decline in property values or objectionable odor and particular. When reviewing policies 4 and 5 of this section, they are policies directing the county government to evaluate the use tables and how to make changes. These policies are directed toward legislative policy development and do not establish approval criteria for quasi-judicial applications.

Comprehensive Plan Policy Evaluation – Economic Development

The written decision also states that the application is in conflict with the policies of the Economic Development section. The analysis states: *"This proposal is not supporting business, agricultural heritage or sustainable economic development."*

The policy related to "agricultural heritage" is directing the county to develop land

use regulations related to the topic and is not written as an evaluation criterion for a quasi-judicial application. Also, there are no policies that state a quasi-judicial application must support business.

The Commission's conclusion that the proposal does not support economic development is contradicted by the record. The proposed facility provides wastewater capacity, which is a foundational public service necessary to support commercial and residential growth. Without such infrastructure, economic development cannot occur. Additionally, the project includes the development of a 70-acre alfalfa field, directly contributing to agricultural production. These facts were presented during the hearing and were not disputed. The Commission's conclusion is therefore unsupported by the record.

Comprehensive Plan Policy Evaluation – Alignment

Contrary to the Commission's findings, the proposal is not only consistent with the Comprehensive Plan, but directly advances multiple adopted policies.

- Implementation Policy 3 calls for systematic coordination between the County and cities.
- Population Policy 3 directs coordination specifically within Areas of Impact.
- Land Use Policy 11 states plainly that urban development is better suited in urban areas, and that all cities depend on density to maintain viable water and sewer systems.
- Public Services, Facilities & Utilities Policies 1, 2, and 6 emphasize placing higher-density development within sewer and water districts.
- Housing Policy 2 directs the County to work with cities on meeting local housing needs.

Evaluation of BCRC 12-335 Public Use Table 3-5

In review of the applicable use table, as evidence in the record, the Commission cited:

"Odor: If there are winds there is no way to control the odor, because there is no way of controlling the wind."

Particulate matter:

Particulate matter studies have not been submitted and there is no evidence in the record that demonstrates that adjacent property owner will not be affected by any trespassing matter."

There is no supporting evidence in the record to support these generalized statements. Additionally, BCRC does not contain a standard for a particulate matter study for this file type, nor was the applicant given an opportunity to provide such a study. The Commission could have used its right under BCRC 12-222(L) to request

such a study and continue the hearing until it could be produced.

The Commission's conclusions regarding odor and particulate matter are further undermined by the absence of any technical support in the record. To the extent concerns regarding "drift" were raised, available technical information demonstrates that irrigation droplet size is significantly larger than that associated with pesticide applications, resulting in rapid ground deposition and minimal off-site transport. Even under elevated wind conditions, droplet travel distances are limited and do not support the generalized conclusions reached by the Commission regarding off-site impacts.

Evaluation of BCRC 12-241 Performance Standards

The Commission made similar findings in its evaluation of the general performance standards for all uses, as it relates to order and particulate matter, "*Air Pollution-odor and particulate matter can leave the site.*" This is a generalized statement with no evidence in the record to support it.

The Commission did not identify any objective threshold, standard, or measurable criterion within BCRC 12-235 Table 3-5 Note 6 or BCRC 12-241 that was exceeded or violated. Without identifying a specific standard and corresponding evidence of noncompliance, the conclusion that these provisions are not met is legally insufficient. Without an identified standard or evidentiary threshold, the Commission's finding effectively imposes undefined criteria, contrary to Idaho Code § 67-6535.

Ultimately, the decision relies on generalized concerns and conclusory statements without evidentiary support. Failure to explain compliance or noncompliance with applicable standards is grounds for invalidation under Idaho law.

Under Idaho law, generalized public concern and speculation do not constitute substantial evidence sufficient to support denial of a land use application. A denial must be supported by specific facts demonstrating noncompliance with applicable standards, which are absent in this case.

Prior Approvals and Consistent Code Application Support Reversal

The subject property and proposed use have been the subject of prior approvals under the same regulatory framework, see Bonner County Land Use Files C990-15 and C1010-18. These files approved the expansion of the Spirit Lake sewer treatment. The applicable zoning standards and code provisions have not materially changed since those approvals were granted.

This is important because:

- It demonstrates a consistent interpretation of the code permitting similar uses;
- It establishes that comparable impacts have previously been deemed

- acceptable; and
- It undermines any conclusion that the current proposal uniquely fails to meet applicable standards.

The Commission did not identify any material distinction between the previously approved files and the current application that would justify a different outcome. Additionally, the Commission did not identify any change in conditions, regulatory standards, or site characteristics that would justify a different outcome from these prior approvals.

This departure from established precedent, without new evidence or changed conditions, further supports that the denial is arbitrary and not supported by the record.

IV. Conclusion

The record demonstrates that the proposed conditional use permit satisfies all applicable requirements of Idaho Code and the Bonner County Revised Code.

The denial was based on information introduced outside the evidentiary record, depriving the Applicant of a fair opportunity to respond and violating fundamental principles of due process. The decision is further not supported by substantial evidence, as the record contains no competent evidence demonstrating noncompliance with applicable standards. Instead, the findings rely on speculation, generalized concerns, and conclusory statements.

Additionally, the Commission failed to provide a reasoned statement connecting the applicable standards to the facts in the record, as required under Idaho Code. The decision also reflects internal inconsistencies, including findings that the proposal will not create a hazard while simultaneously concluding that it conflicts with the Comprehensive Plan and applicable performance standards without evidentiary support.

Per BCRC 12-225, if the Commission denies a conditional use permit, it must state the reasons for the decision and identify actions the applicant could take to obtain approval. The Commission did not provide such guidance, further underscoring the inadequacy of the decision.

Accordingly, the Applicant respectfully requests that the Board reverse the Commission's decision and approve the conditional use permit, as approval is the only lawful outcome supported by the record. Any other outcome would require the Board to uphold a decision that is not supported by the record and was reached through a procedurally flawed process.