

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

<p>MICHAEL BUDIG, TODD BRINKMEYER, JOHN STOCKTON, and PRIEST LAKE CABIN OWNERS' ASSOCIATION, INC., an Idaho non-profit corporation, <i>Petitioners,</i> v. BONNER COUNTY BOARD OF COUNTY COMMISSIONERS, <i>Respondent,</i> _____ TRICORE INVESTMENT, LLC <i>Intervenor.</i></p>	<p>Case Nos. CV09-22-1232 CV09-22-1717</p> <p>MEMORANDUM DECISION AND ORDER ON PETITIONS FOR JUDICIAL REVIEW</p>
--	--

Petition for Judicial Review of a resolution of the Bonner County Board of Commissioners.

Preston Neal Carter and Morgan Diana Goodin for Petitioners
William Wilson for Respondent Bonner County Board of Commissioners.

Kevin William Roberts and Brent C. Featherston for Intervenor, Tricore Investment, LLC.

I. FACTS

This is a petition for the judicial review of a decision of the Bonner County Board of County Commissioners ("the Board") issued on June 21, 2022 ("Decision") approving an application for Minor Land Division 0143-21, ("MLD-1") filed by Tricore Investments LLC ("Tricore") as the landowner on August 9, 2021. *Record* at p.4. Tricore simultaneously filed an application for Minor Land Division 0144-21 ("MLD-2") on adjoining property. *Petition for*

Judicial Review (“Pet. Judicial Rev.”), Ex. 2. The MLD-1 application appeared on the Board’s Consent Agenda during its June 21, 2022. Notice for the June 21, 2022 meeting was posted after hours on Friday, June 17. Monday, June 20, was a holiday. The meeting occurred at 9am on Tuesday, June 21, 2022, when the Board approved MLD-1 on its Consent Agenda. *6/21/22 Transcript* at p. 6, ll. 1-19. The transcript of the June 21, 2022 meeting indicates that a motion was made, seconded and passed to approve the Consent Agenda as presented. *6/21/22 Transcript* at p. 4, ll. 6-12. There is no indication in the transcript that any discussion with regards to MLD-1 took place; however the audio recording stopped working prior to the close of the meeting. *Id.*, p. 11 at 1. 20. It is unknown if there was an opportunity for the public to provide comment. On the same day, the Chairman of the Board accepted and signed a recommendation of the Bonner County Planning Department to approve the final plat of MLD-1. The signed recommendation stated:

South Shore Estates is a minor land division dividing a 20.3 acre parcel into four (4) 5+ acre lots. The property is zoned R-5 and meets the requirements of that zone. The property is served by individual septic, individual well and Northern Lights Inc. The property is accessed by Warren Beach Road, a graveled 60' wide private easement. The plat was approved by Bonner County on January 24, 2022. The parcel is located in a portion of Section 9, Township 59 North, Range 4 West situated on the south end of Priest Lake. The conditions of approval for South Shore Estates have been completed. Notes and easements required by plat approval are shown on the final plat.

Staff recommends the Board approve the final plat of File # MDL0143-21 – South Shore Estates.

Bates Stamp 91.

On June 22, 2022 an email from Amy Anderson, the Executive Director of the Selkirk Conservation Alliance (“SCA”), was sent to the Bonner County Planning Department, stating that the SCA attempted to submit comments via zoom during the meeting but the Board approved all items on the Consent Agenda without hearing the comments. *Amended Record*, pp. 59-64.

On June 29, 2022, a Motion for Reconsideration of the June 21, 2022 approval of MLD-1 was filed in the Bonner County Planning Department. This motion was signed by Timothy Mahoney and signature pages of Petitioner Stockton and other affected persons. *Amended Record*, p. 101. On July 1, 2022, a letter was sent via email to the Bonner County Commissioner's Office and the Bonner County Planning Department from attorney Preston Carter ("Carter"). The letter stated that it was a Petition for Reconsideration of the June 21, 2022 approval of MLD-1. The Petition states that his clients are affected persons. *Amended Record*, p. 136.

During the July 12, 2022 Board meeting, the transcript of the meeting reflects that the Board heard from Jennifer Ekstrom ("Ekstrom"), a member of the Idaho Conservation League, who requested that they rescind their June 21, 2022 approval of MLD-1. Ekstrom addressed concerns that the approval of MLD-1 occurred under the Board's Consent Agenda rather than after a public hearing. Further, Ekstrom addressed concerns that the posting for the June 21, 2022 meeting after business hours on the Friday prior to a holiday Monday only provided 24 hours notice to the public of the impending vote. The Board made no further inquiries of Ekstrom, received no further questions from the audience and moved to approve their Consent Agenda. No written findings of fact or conclusion of law by the Board are evidenced in the record. *7/12/2022 Transcript*, pp. 3 – 6.

On August 16, 2022, the Board held a hearing related to the Petitioners' Petition for Reconsideration. Budig and Stockton provided oral comments during the hearing on the Petition for Reconsideration, as well as Amy Anderson ("Anderson") of the SCA. Anderson stated the SCA's concerns that MLD-1 and MLD-2 properties were seeking to create a subdivision in the wetland system of Bonner County. Anderson urged the Board to rehear the Petitioner's arguments as to Reconsideration. *08/16/2022 Transcript*, pp. 3-4. Budig only addressed the Board for a few

minutes, stating that he was a property owner at Priest Lake, and that the approval for MLD-1 should be reconsidered in an open forum. *Id.*, p. 5 at ll. 8-22. Stockton addressed the Board and echoed the points raised by Anderson and Budig. Stockton further added that he tries to attend the Board meetings, but the meeting on June 21, 2022, which was announced after business hours on Friday and the following Monday was a holiday, did not allow him sufficient notice of the Tuesday morning meeting and scheduled vote. Stockton stated that he did attempt to attend the meeting via zoom, but that the committee did not take any comments regarding the vote. *Id.*, p. 6 at ll. 22. Immediately afterwards and without further discussion, the Board voted to approve the MLD-1 application. *Id.*, p. 7, ll. 1-11. The Board issued no written findings of fact or conclusions of law addressing any issues raised during the August 16, 2022 hearing on reconsideration.

MLD-2 (CV09-22-1717)

As stated previously, Tricore made application for MLD-2 on August 9, 2021, simultaneously with its application of MLD-1. *Agency Record in CV09-22-1717* (“Record in 1717”), p. 4. The issue of MLD-2 was placed on the Board’s Consent Agenda and approved at its October 11, 2022 meeting. Carter attended the meeting via zoom to address concerns regarding the MLD-2 application and requested that the Board address those issues as they address the MLD-2 application. *10/11/22 Transcript*, p. 4 at ll. 17-20. One of Carter’s stated concerns was that MLD-2 appeared to be a continuation of a process to subdivide property within the Coolin Wetlands while evading substantive review under the county’s subdivision ordinances, citing the fact that MLD-1 and MLD-2 were immediately adjacent to one another. Carter argued that instead of two 4 lot MLDs, what was actually occurring was a single 8 lot parcel that needed to be reviewed under the subdivision ordinances. Concerns were also raised by Carter that the property was located within the floodplain, and incorrect ownership issues. *Id.*, p. 5 at ll.1-25; p.6 at ll.1-8. In response

to Counsel's concerns, Tyson Lewis, Bonner County Planner, stated that MLD-1 and MLD-2 were submitted and reviewed in 2021 prior to the update to Bonner County Revised Code 12-600 that now prohibits contiguous and in concert minor land divisions. As such, Mr. Lewis said the updated code did not apply. *Id.*, p. 6 at ll. 19-25.

Anderson also spoke before the Board, stating concerns with the MLD development in the Coolin Wetlands and referencing letters emailed to the Board regarding the property's lack of sewer connections or wastewater treatment, false information on the application, and new ownership issues. Anderson also addressed the fact that there was currently a pending petition for judicial review on MLD-1 and urged the Board not to approve the matter until that litigation was settled. *Id.*, p. 8 at ll. 1-22.

Ekstrom addressed the Board in opposition to MLD-2 on behalf of the Idaho Conservation League. Ekstrom raised concerns regarding the development of MLD-2 in addition and adjacent to the other 30 parcels created administratively by the County as part of a large development. Ekstrom voiced concerns that the 30 parcels were created by decisions that subverted Bonner County codes and without a meaningful public process. *Id.*, p. 9 at ll. 1-13. Ekstrom also stated that pursuant to Bonner County Code 12-551, the applications of MLDs needed to be approved within 30 days and that it had been more than a year since either MLD had been submitted. *Id.*, p. 10 at ll. 1-5. Ekstrom raised concerns that the subdivisions were being created in violation of Bonner County Ordinance 12-600, which makes it unlawful for a person or group of persons to attempt to avoid the subdivision regulations. *Id.* at ll. 15-21.

Chairman McDonald addressed Ekstrom's concerns, stating that MLDs were just "invisible lines on the ground" which didn't create a development or allow any construction.

Chairman McDonald stated that the MLD applications are conditionally based on the landowner's ability to obtain sewer access and address floodplain mitigation. *Id.* at ll. 14-25.

Robert Bond, a landowner of property that abuts MLD-2, addressed the Board and raised issues relating to the amount of backfill that would be needed to develop any construction on the property and that the fill would likely have an adverse effect on the water quality and flooding issues at the end of Priest Lake. *Id.*, p. 13 at ll. 18-15. Mr. Bond stated that he had concerns regarding the fact that it appeared as if the Board was attempting to avoid public comments on the approval of the MLDs. *Id.*, p. 14 at ll. 1-10. Mr. Bond also raised concerns regarding the effect of development on the wildlife in the area. *See generally, Id.* at p. 14 -15.

Janice Houton addressed the Board and raised general concerns regarding the destruction of the natural beauty of the Priest Lake area by development and the destruction of the Coolin Wetlands area. *Id.*, p. 16-18. Budig addressed the Board and raised concerns with the development of a subdivision in the area, specifically relating to the construction of roads, sewer lines and issues with storm control. *Id.*, p. 19-20. Pam Duquette addressed the Board and raised general issues regarding the destruction of the Coolin Wetlands. *Id.*, p. 20-21

Stockton addressed the Board in opposition to MLD-2, stating concerns regarding the transparency of the application process and the public's inability to address concerns prior to approval of the MLDs. Stockton also raised concerns regarding the detrimental effect of development on the wetland area and the water quality. *Id.*, p. 24 at ll. 7-19.

Jerry Favor addressed the Board and asked if there were legal implications for the County if they denied the application. *Id.*, p. 26 at ll. 20-24. Commissioner Bradshaw stated that there would be litigation if the Board denied the application due to the fact that it met the County's

ordinance criteria. County attorney Bill Wilson stated that the County did not have the right to delay the application of MLD-2 pending the outcome of litigation on MLD-1. *Id.*, p. 27 at ll. 1-25.

The Board voted unanimously to approve the MLD-2 application. *Id.* On that same day, the Chairman of the Board accepted and signed a recommendation of the Bonner County Planning Department to approve the final plat of MLD-2. The signed recommendation stated:

South Shore Estates is a minor land division dividing a 20.3 acre parcel into four (4) 5+ acre lots. The property is zoned R-5 and meets the requirements of that zone. The property is served by individual septic, individual well and Northern Lights Inc. The property is accessed by Warren Beach Road, a graveled 60' wide private easement. The plat was approved by Bonner County on January 24, 2022. The parcel is located in a portion of Section 9, Township 59 North, Range 4 West situated on the south end of Priest Lake. The conditions of approval for South Shore Estates have been completed. Notes and easements required by plat approval are shown on the final plat.

Staff recommends the Board approve the final plat of File # MDL0144-21 – South Shore Estates.

Bates Stamp 66.

A Petition to Reconsider was filed with the Board on October 21, 2022. *Id.*, p. 495. Petitioners state that it is their belief that the Board did not hold a public hearing on the Petition to Reconsider and that the petition was deemed denied by operation of statute on December 15, 2022 pursuant to Idaho Code 67-6535(2)(b). *1717 Petition*, ¶ 4. There is nothing in the record to indicate that a hearing was held on the Petition to Reconsider.

A Petition for Judicial Review of the Board's decision approving the MLD-1 application was filed on September 9, 2022 in case number CV09-22-1232. The Board lodged its Agency Record on October 31, 2022. The Petitioners filed their Objection to the Record on November 14, 2022, requesting additional documentation regarding the MLD-2 application and boundary line adjustments filed by Tricore on July 29, 2021 on land adjacent to the MLD-1 and MLD-2 properties be included in the record. On November 22, 2022, the Board filed its Response to the

Petitioners' objection, including the Petitioners' Motion for Reconsideration on MLD-1 but declining to include the other requested documents. On December 13, 2022, Petitioners filed a Motion to Augment, or in the alternative, a Motion for Leave to Present Additional Evidence under I.C. § 67-5276 in case number CV09-22-1232.

A Petition for Judicial Review of the Board's decision approving the MLD-2 application was filed on December 19, 2022 in case number CV09-22-1717. Also on December 19, 2022, Petitioners filed a Motion to Consolidate in both cases.

II. STANDARD OF REVIEW

Under the Local Land Use Planning Act, I.C. §§ 67–6501 et seq., one who is adversely affected by “[t]he approval, denial, or failure to act upon an application for a subdivision ...” may seek judicial review by a district court. I.C. § 67–6521(1)(a)(i), (1)(d); I.R.C.P. 84.

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.” I.C. § 67–5279(3). Remand is only appropriate if an error prejudiced the appellant's substantial rights. I.C. § 67–5279(4).

An agency's findings of fact will stand if supported by substantial and competent, although conflicting, evidence in the record. Conclusions of law are subject to free review, but there is a strong presumption in favor of a zoning board's interpretation of its own zoning ordinances. *Id.* As this is an appeal from a district court's decision, we review the district court's decision as a matter of procedure.

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

III. DISCUSSION

Petitioners assert the following issues for judicial review:

- a) The Decision was made in violation of constitutional and statutory provisions.
- b) The Decision exceeded the statutory authority of the Board.
- c) The Decision violates applicable provisions of the ordinances of Bonner County.
- d) The Decision was made upon unlawful procedure.

- e) The Decision is arbitrary, capricious, and an abuse of discretion.
- f) The Decision is unlawful because, under Bonner County Code 12-661 C & D, the County planning director was required to make a decision upon the MLD Application 1 within 30 days from the date the completed application was stamped “received.” MLD Application 1 was stamped “received” in August 2021 but was not approved until June 2022, in violation of the Bonner County Code.
- g) The Decision is unlawful because it was not based upon the written standards set forth in the Bonner County Code, and because the Board has not issued an adequate decision that contains findings of fact, conclusions of law, that applies the written standards to the facts, or that otherwise complies with Idaho Code § 67-6535 and related constitutional provisions.
- h) The Decision is unlawful because the minor land division was not designed around floodplains, as is required by Bonner County Code 12-660.D.2.d.
- i) The Decision is unlawful because one or more of the lots in MLD Application 1 contained split zoning, which renders the lots ineligible for minor land division under Bonner County Code 12-660.D.2.g.
- j) The Decision is unlawful because the MLD Application 1 purported to accomplish a minor land division of a lot that was created by minor land division more than two years before MLD Application 1 in violation of Bonner County Code 12-660.C.
- k) The Decision is unlawful because the Board did not require a wetlands delineation, consider setbacks to, or otherwise protect wetlands located on the property subject to MLD Application 1.
- l) The Decision is unlawful because MLD Application 1 is part of a continued attempt to evade substantive review under the County subdivision ordinances, in violation of the subdivision ordinances and in violation of Bonner County Code 12-600.C, which prevents persons from “using a series or owners or conveyances or by any other method that ultimately results in the division of the lands into a subdivision . . .”
- m) The Decision is unlawful because MLD Application 1 and MLD Application 2 constitute two minor land division applications on adjoining property that, together, create a total of eight lots without undertaking the short plat procedure, in violation of Bonner County Code 12-650.
- n) The Decision is unlawful because the MLD Application 1 contains materially incorrect or outdated information, which was identified to the Board but which was not addressed by the Board, in violation of Idaho Code § 67-6535 and relevant constitutional protections.
- o) The Decision is not consistent with the comprehensive plan.
- p) The Decision is unlawful because public notice was not provided forty-eight hours before the Decision was made, in violation of the Idaho Open Meetings Law.

After reviewing the documents submitted in these matters, including the agency record, and hearing oral argument , the Court makes the following findings:

A. The Board failed to issue written Findings of Fact and Conclusions of Law.

Idaho Code § 67-6535(2) sets forth the requirements of any approval or denial of applications regarding local land use and planning, and 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.

Jasso v. Camas Cnty., 151 Idaho 790, 264 P.3d 897 (2011) addresses 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 (emphasis added). “What is needed for adequate 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. 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.* at 792. 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.* 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. § 67–6535 and violated Jasso's and the Gorrings' 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. at 794 (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.

In this matter, after the June 21, 2022 hearing on MDL-1, the Board, by and through the signature of its chairman, accepted the recommendation of the Bonner County Planning Department to approve the final plat for MLD-1. The recommendation contained statements relating to the total size of MLD-1, the current zoning and the fact that MLD-1 currently meets the zoning requirements, information regarding the septic and utility services and the access road to the property. The statements were conclusory recitations of information contained within the application. As such, under the ruling in *Jasso*, the adopted recommendation signed by the Board chairman is insufficient to meet the requirements of I.C. § 67–6535. Additionally, the Court finds that there is no evidence in the agency record lodged in CV09-22-1232 that the Board issued *any* form of written finding of facts and conclusions of law beyond the Department recommendation following the hearing on reconsideration.

The Board approved MLD-2 in the same fashion as they approved MLD-1, by signing the recommendation of the Bonner County Planning Department to approve the final plat. Just as in MLD-1, the recommendation for approval of MLD-2 contained statements relating to the total size of MLD-2, the fact that MLD-2 met the zoning requirements, information regarding the septic and utility services and the access road to the property. The statements were conclusory recitations of information contained within the application and were also insufficient to meet the requirements of I.C. § 67–6535 pursuant to *Jasso*. In the case of MLD-2, the Court finds that there is no evidence in the agency record that indicates that Board held a hearing on the motion to reconsider, and therefore, no written findings of fact or conclusions of law were issued.

B. The Board's failure to issue written Findings of Fact and Conclusions of Law renders their final decision arbitrary and capricious.

Black's Law Dictionary (11th ed. 2019) defines "arbitrary" as "[d]epending on individual discretion; of, relating to, or involving a determination made without consideration of or regard for facts, circumstances, fixed rules, or procedures." The word "capricious" is defined "as contrary to the evidence or established rules of law." *Id.*

In this matter, the Court does not have sufficient written findings of fact and conclusions to determine the basis upon which the Board formed its decisions. The transcripts in the agency record shed little, if any light on the Board's evaluation of issues raised. While the transcripts show that the Petitioners presented many areas of concern in opposition to MLD-1 and MLD-2, the Board engaged in almost no discussion in which they addressed those concerns prior to approving the applications. Without a written, reasoned statement of the board required by I.C. § 67-6535 indicating that it weighed the interest of both the applicant and the Petitioners along with applicable law to reach its decision, the Court is left to conclude that the Board's decision was arbitrary and capricious.

C. The Board's failure to issue written Findings of Fact and Conclusions of Law prejudiced the Petitioners' substantive rights.

The *Jasso* court held that the board's failure to provide written findings of fact and conclusions of law sufficient to meet the requirements of I.C. § 67-6535 rose to the level of prejudice to a substantial right, stating:

Due to the inadequacy of the Board's findings and conclusions, neither the district court nor this Court possesses the information necessary to meaningfully review the Board's approval of the preliminary plat application. We hold that the Board's failure to provide a reasoned statement for its decision prejudiced Jasso's and the Gorrings' substantial right to due process. We therefore affirm the district court's decision which vacated the Board's findings and conclusions and remanded the matter to the Board for further proceedings.

Id. at 790.

In this matter, while the Petitioners were given the right to be heard in front of the Board on their petition for reconsideration, the Board violated the Petitioners' due process rights by not issuing a written findings of fact and conclusions of law. The Petitioners raised concerns regarding the MLDs' location in the floodplain and effect on the Coolin Wetlands. By failing to address these concerns in written findings of fact and conclusions of law which detailed the reasons why the Board felt that the approval of the MLD outweighed the Petitioners' concerns or the measures taken to address those concerns, the Board denied the Petitioners a clear, concise basis for their appeal. "Clearly, notice and an opportunity to be heard are components of due process. They are not, however, the only requirements of due process. Due process also requires that parties be afforded a meaningful opportunity for judicial review." *Jasso*, 151 Idaho at 796. When I.C. § 67-6535's requirement of a "reasoned statement" is not satisfied, the Petitioners' due process rights are prejudiced as they do not have the Board's basis for their decision in order to frame arguments for judicial review and the Court is at a disadvantage as it is left to speculate as to the Board's decision making process.

D. Remand is appropriate under Idaho Code § 67-5279.

Idaho Code § 67-5279 states in pertinent part:

(3) When the agency was required by the provisions of this chapter or by other provisions of law to issue an order, the court shall affirm the agency action unless the court finds that 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.

If the agency action is not affirmed, it shall be set aside, in whole or in part, and remanded for further proceedings as necessary.

(4) Notwithstanding the provisions of subsections (2) and (3) of this section, agency action shall be affirmed unless substantial rights of the appellant have been prejudiced.

In this matter, the Court finds that the Board was required to issue a written findings of fact and conclusions of law in regards to its approval of the minor land division requests pursuant to Idaho Code § 67-6535(2). The Board failed to do so. Further, the Board's adoption of Bonner County Planning Department's recommendation for approval of the plat is insufficient under *Jasso, Crown Pointe and Workman*, as its statements are conclusory and do not provide insight to the Board's decision making. Further, this Court finds that the Board's failure to issue a written finding of facts and conclusions of law regarding the Petitioner's Motion for Reconsideration of MLD-1 prejudiced the Petitioner's substantive rights of due process by denying the Petitioners a clear basis for judicial review. Pursuant to Idaho Code § 67-5279, this Court vacates the approval of MLD-1 and MLD-2 and remands the matters back to the Board for further proceedings.

E. Petitioners' Motion to Augment

As the Court has determined that remand is appropriate in this matter, it will not address the Petitioner's Motion to Augment.

IV. CONCLUSION

Based on the foregoing reasons, it is HEREBY ORDERED that findings of the Board in CV09-22-1232 and CV09-22-1717 are vacated and the matter is remanded back to the Bonner County Board of Commissioners for further proceedings consistent with this Order.

Dated: 7/7/2023 7:49:37 AM



Barry McHugh
District Judge

CERTIFICATE OF SERVICE

7/7/2023 8:19:56 AM

On _____, a true and correct copy of the foregoing was sent to the following:

Preston Carter
prestoncarter@givenspursley.com

Morgan Goodin
morgangoodin@givenspursley.com

William Wilson
prosefile@bonnercountyid.gov

Kevin Roberts
kevin@robertsfreebourn.com

Brent Featherston
attorneys@featherstonlaw.com

Michael W. Rosedale
Clerk of the District Court

By: *Linda Oppelt*
Deputy Clerk