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IN THE SUPREME COURT OF THE STATE OF IDAHO

JOHN and DEBORAH
ROUWENHORST, husband and wife;
DESERT FOOTHILLS DRY, LLC, an
Idaho limited liability company; and
DESERT FOOTHILLS WET, LLC, an
Idaho limited liability company,

Petitioners-Respondents,

v.

GEM COUNTY, a political subdivision of
the State of Idaho; and GEM COUNTY
BOARD OF COMMISSIONERS,

Respondent-Appellants.

Supreme Court Docket No. 47668-2019

Gem County Case No. CV23-19-0398

REPLY BRIEF

Appeal from the District Court of the
Third Judicial District for Gem County

Honorable George A. Southworth, District Judge, Presiding

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I. INTRODUCTION

The Board of County Commissioners of Gem County (the “Board”) denied the Respondent/Rouwenhorst’s (“Rouwenhorsts”) application for a rezone of approximately 696 acres from an A1 zone (prime agricultural land requiring 40 acre minimum lot sizes) to an A2 zone (rural transitional agriculture requiring 5 acre minimum lot sizes) in accordance with Gem County Code Title 11, Chapter 15 “AMENDMENT OR REZONE.” Appellant’s brief outlines the errors of the district court, including that the district court erred in determining that the Board applied the wrong legal standard, that the Board’s finding was in violation of Idaho Code section 67-5279(2), and that the Board’s decision was not supported by substantial or competent evidence.

II. The District Court Erred in Determining the Board Applied the Wrong Legal Standard.

As outlined in Appellant’s Brief, the Board considered the Rouwenhorsts’ application under the Amendment or Rezone portion of the Gem County Code § 11-15. Appellant’s Brief p. 9. The rezone application was considered in light of the five required findings present in Gem County Code § 11-15-4:

- (1) The requested amendment complies with the comprehensive plan text and future land use map; **and**
- (2) The requested amendment is not materially detrimental to the public health, safety, or welfare; **and**
- (3) For zoning ordinance map amendments¹:
 - a. The subject property meets the minimum dimensional standards of the proposed zoning district; **and**

¹ Gem County Code § 11-15-4 is codified where (B) includes the distinct criteria for zoning ordinance map amendments as a., b., and c. Throughout the administrative proceedings in this matter, the standards are referred to as one (1) through five (5), assigning the three subsets of 3 as 3, 4 and 5.

b. The uses allowed under the proposed zoning district would be harmonious with and appropriate for the existing or intended character of the general vicinity and that such uses would not change the essential character of the same area; **and**

c. The effects of the proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within Gem County's planning jurisdiction have been considered and no unmitigated adverse impacts upon those services will impose additional costs upon current residents of Gem County's planning jurisdiction.

(Emphasis added.) The Board's reason for denial was that the facts in the record do not support that "the effects of the proposed zone change upon the delivery of services by any political subdivision providing public services . . . have been considered and no unmitigated adverse impacts upon those services will impose additional costs upon current residents of Gem County's planning jurisdiction. R. pp. 242-48. This is not only a requirement for rezone under County Code, but is codified in Idaho's Land Use Planning Act, Idaho Code section 67-6511(2)(a) reads, "Particular consideration shall be given to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public school districts."

III. The District Court Erred in finding that the Board's finding was arbitrary and capricious because the Board treated the rezone application as a subdivision application.

As outlined in section II. Above and Appellant's Brief, the Board treated the Rouwenhorts' application under the Amendment or Rezone portion of the Gem County Code § 11-15. Appellant's Brief p. 9.

The Board applied the standards found at Gem County Code § 11-5-4. R p. 246-8. The Board's final decision was unanimous, with three votes for denial. By the majority vote, the application was denied. The Board's decision and order on reconsideration, issued May 20,

2019, states the reasons for denial, most specifically that in order to approve a rezone, all five findings of Gem County Code § 11-15-4 must be met and the facts in the record do not support that “the effects of the proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within Gem County’s planning jurisdiction have been considered and no unmitigated adverse impacts upon those services will impose additional costs upon current residents of Gem County’s planning jurisdiction.” R pp. 242-48.

IV. The District Court Erred in Determining that the Board’s Decision was not supported by substantial or competent evidence.

The District Court erroneously uses documents in the Court’s augmented record to support that the Board’s decision was not supported by substantial or competent evidence. R. p. 417. “In light of the Board’s statement, Petitioners asked the Gem County planning director for examples of the development agreements with robust concept plans the Board supposedly relied on, and found that none existed in Priority Growth Area #3.” R. p. 418. The Board analogized the Rouwenhorst’s application with other large scale rezones in Gem County, within the priority growth areas where the requested rezone will increase density. The development agreements referenced in the augmented record accurately reflect development in Gem County as a whole where a rezone application has been submitted and it is to rezone to a greater density in a project or application that is likely to have impacts on delivery of services. R. p. 252-306. Most notably, the rezone for Sands Orchards, whereby the Board approved the application for rezone of approximately eighty (80) acres from A-2 (Rural Transitional Agriculture, 5 acre minimum lot sizes) to R-2 (Residential Transitional, 1 acre minimum lot sizes), the approval created the potential of many, upwards of 70, new home sites and necessarily included a concept plan. R. pp. 255, 268. The properties Rouwenhorsts reference that are near their properties and were rezoned

within the Priority Growth Area #3 were largely 40-acre parcels that were rezoned to A-2, resulting in fewer parcels. The size of the rezone, in terms of total acreage, was a concern for the Board in being able to determine the exact impact on services to Gem County. *See R. p. 70, 246.*

The District Court erroneously characterizes the factual record before the Board in stating “in addition to relying on irrelevant objections from the public.” R. p. 418. The objections raised by the public with regard to access issues directly relate to the findings required by Gem County Code § 11-15-4 and Idaho Code § 67-6511(2)(a).

Idaho Code section 67-6511(2)(a) reads, “Particular consideration shall be given to the effects of any proposed zone change upon the delivery of services by any political subdivision providing public school districts.” Idaho Transportation Department clearly objected to the application, citing that there were unresolved access issues along State Highway 52. The Board, applying both Gem County Code and Idaho Code, appropriately considered this in light of the application and determined that ITD as a political subdivision was saying that there would be effects upon the delivery of services. This was reiterated by the public testimony at hearing regarding the access points along Highway 52.

As outlined in both the Board’s Decision and Order Denying Rezone (R. pp. 37-32) and the Board’s Findings of Fact, Conclusions of Law, Decision on Motion for Reconsideration and Order (R. pp. 242-48), the Board could not make a finding that the effects of the proposed zone change upon the delivery of services by any political subdivision providing public services, including school districts, within Gem County’s planning jurisdiction have been considered and that there would be no unmitigated adverse impacts upon those services. This was the basis for the Board’s denial.

The district court erred in finding that the findings were not supported by substantial and competent evidence. “Substantial and competent evidence is relevant evidence that a reasonable mind might accept to support a conclusion.” *Mazzone v. Texas Roadhouse, Inc.*, 154 Idaho 750, 755, 302 P.3d 718, 723 (2013). “Where there is conflicting evidence, but the findings of the Commission are supported by substantial, competent evidence, the findings must be sustained regardless of whether this Court may have reached a different conclusion.” *Huff v. Singleton*, 143 Idaho 498, 500, 148 P.3d 1244, 1246 (2006) (internal quotations and citations omitted).

V. CONCLUSION

The Board’s decision was not arbitrary or capricious and was not an abuse of discretion. The Board based its denial on its inability to make all five required findings as set forth in Gem County Code § 11-15-4. Specifically, the Board could not find that the rezone would not have an impact on delivery of services by any political subdivision as under the current factual circumstances related to the property that Idaho Transportation Department objected due to unresolved access issues.

The Board’s findings were supported by substantial and competent evidence. The factual record shows an objection by Idaho Transportation Department to the project based upon access issues. Testimony presented before the Board further illustrated the access issues. These factual findings were present in both the Board’s Decision and Order Denying Rezone issued February 25, 2019 (R. p. 27) and the Board’s Findings of Fact, Conclusions of Law, Decision on Motion for Reconsideration and Order issued May 20, 2019 (R. p. 242).

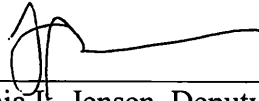
An award of attorney’s fees to Applicant is improper. The Board acted with a reasonable basis in both fact and law and applied the appropriate legal standard. The Board’s findings were supported by substantial and competent evidence. The Board’s actions were not arbitrary and

capricious or an abuse of discretion. The District Court's decision on attorney fees ignores the application of the law and the factual record. The Applicant is not entitled to attorney fees.

Appellant's brief outlines the errors of the district court, including that the district court erred in determining that the Board applied the wrong legal standard, that the Board's finding was in violation of Idaho Code section 67-5279(2), and that the Board's decision was not supported by substantial or competent evidence. Appellant, Gem County Board of Commissioners, respectfully asks that this Court affirm the Board's decision denying the rezone application and reverse the District Court's order for attorney fees.

DATED this 19th day of June, 2020.

Erick B. Thomson
Gem County Prosecuting Attorney



By: Tahja L. Jensen, Deputy Prosecuting Attorney
Attorneys for Gem County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this 19th day of June, 2020, I caused a true and correct copy of the foregoing to be served upon the following in the manner indicated:

Board of County Commissioners	<input type="checkbox"/>	U.S. Mail
Gem County Courthouse	<input type="checkbox"/>	Overnight Delivery
415 E. Main Street	<input type="checkbox"/>	Hand Delivery
Emmett, Idaho 83617	<input type="checkbox"/>	Efile
	<input checked="" type="checkbox"/>	Email

Matthew C. Parks	<input type="checkbox"/>	U.S. Mail
Stacey & Parks, PLLC	<input type="checkbox"/>	Overnight Delivery
PO Box 2265	<input type="checkbox"/>	Hand Delivery
Boise, Idaho 83701	<input checked="" type="checkbox"/>	Efile
mcp@splawidaho.com	<input checked="" type="checkbox"/>	Email



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