

SUPREME COURT OF THE STATE OF IDAHO

S Bar Ranch v. Elmore County

S Bar Ranch v. Elmore County · No. 47652 · Decided June 14, 2022

SUMMARY

The Idaho Supreme Court's amended per curiam opinion reviews Elmore County's approval and amendment of conditional use permits for Cat Creek Energy's proposed alternative energy project. The court affirmed the district court's decision upholding the county's actions, concluding that S Bar Ranch's challenge to the original 2017 permit order was untimely and that the later proceedings did not violate applicable administrative, notice, due process, or conflict-of-interest requirements.

CASE DETAILS

COURT	Supreme Court of the State of Idaho
WRITING FOR THE COURT	Zahn, Justice; Bevan, Chief Justice; Brody, Justice; Stegner, Justice; Moeller, Justice
JURISDICTION	Idaho
DECIDED	June 14, 2022
DOCKET	47652
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Elmore County district court's affirmance of Elmore County's approval and amendment of five conditional use permits for an alternative energy project. Elmore County and Cat Creek Energy cross-appealed the denial of attorney fees.
STANDARD OF REVIEW	The Supreme Court reviews the district court's decision as a matter of procedure but independently reviews the agency record. A land-use decision is affirmed unless the petitioner shows that the agency acted in a manner specified by Idaho Code section 67-5279(3) and that the action prejudiced the petitioner's substantial rights. Constitutional due process questions and zoning-ordinance interpretation are reviewed freely; denial of attorney fees is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	published, precedential Idaho Supreme Court opinion
PARTIES	S Bar Ranch v. Elmore County, Idaho

TOPICS

judicial review of agency action

administrative law

exhaustion of remedies

zoning

procedural due process

PRACTICE AREAS

administrative law

land use and zoning

appellate procedure

constitutional law

municipal law

QUESTIONS PRESENTED

1. Whether the district court properly concluded that the 2017 CUP Order was a final agency action that S Bar failed to timely challenge.
2. Whether the district court properly concluded that S Bar failed to establish grounds for relief under Idaho Code section 67-5279(3) concerning the 2018 CUP Amendment and development agreement.
3. Whether the district court abused its discretion by denying Cat Creek Energy attorney fees.
4. Whether any party was entitled to attorney fees or costs on appeal.
5. Whether the Board's proceedings violated procedural due process through inadequate notice, conflicts of interest, ex parte communications, inadequate transcripts, or failure to make materials available.
6. Whether the Board retained jurisdiction to act on the project after S Bar filed petitions for judicial review.

HOLDINGS

1. The 2017 CUP Order was a final agency action. Because the applicable ordinance allowed Cat Creek to take immediate steps to permanently alter the land, S Bar was required to seek reconsideration and file for judicial review within the statutory time limits; its challenge filed more than a year later was untimely and jurisdictionally barred.
2. S Bar could not challenge the findings or alleged defects in the 2017 CUP Order because its petition for judicial review of that order was untimely. The 2018 CUP Amendment did not need to repeat the 2017 order's Comprehensive Plan findings because it did not purport to alter them.
3. The Board and its commissioners did not have disqualifying conflicts of interest based merely on their general interest in improving Elmore County's water supply. The disclosed ex parte contacts did not require reversal, and any participation by Commissioner Hofer was not outcome-determinative because the other two commissioners voted in favor of the development agreement.
4. The Court declined to consider S Bar's Open Meetings Law claim because S Bar had not brought the statutory civil action required to challenge an allegedly invalid decision and a petition for judicial review could not be combined with such a civil action.
5. The Board did not violate Idaho Code section 67-6536 or procedural due process merely because some speakers were identified in transcripts as a male or female voice. The record adequately showed the basis for the Board's decision, S Bar's notice, and S Bar's opportunity to participate, and S Bar failed to show prejudice from the transcription deficiencies.

6. The hearing notices for the 2018 CUP Amendment did not violate procedural due process even though they did not fully satisfy the statutory notice requirements concerning the wind turbines. S Bar had actual notice of the wind development area's location and maximum turbine height, reviewed draft materials, and had multiple opportunities to comment and be heard.
7. The development agreement was not governed by Idaho Code section 67-6511A or Elmore County Zoning Ordinance title 6, chapter 29 because it was imposed as a condition of the conditional use permits rather than as a condition of rezoning.
8. The filing of S Bar's petition for judicial review did not automatically stay the Board's proceedings or deprive the Board of jurisdiction to consider and decide subsequent requests for reconsideration.
9. The district court properly denied attorney fees to Cat Creek. No party was entitled to attorney fees on appeal, but Elmore County and Cat Creek were entitled to costs as prevailing parties.

KEY QUOTATIONS

"In order to provide certainty to affected persons, governing bodies and developers, we continue to follow our precedent that finality hinges on when a board states a decision is final, and whether the applicable ordinance permits the permit holder to take immediate steps to alter the land." (18)

"Due process is not a concept to be applied rigidly in every matter. Rather, it is a flexible concept calling for such procedural protections as are warranted by the particular situation." (28)

"The filing of the petition for review does not itself stay the effectiveness or enforcement of agency action." (35)

FACTUAL BACKGROUND

S Bar Ranch owned approximately 3,000 acres in rural Elmore County near a proposed alternative-energy project developed by Cat Creek Energy on approximately 23,000 leased acres. The project involved a reservoir and hydroelectric facilities, wind turbines, solar panels, transmission lines, and a substation, requiring five conditional use permits. S Bar did not receive mailed notice of the initial planning-and-zoning hearing because the county's ownership records still listed S Bar's predecessor, and later challenged the county's notices, development agreement, conflicts of interest, and procedural handling of the permit amendments. S Bar received actual notice of later proceedings, reviewed draft development agreements, submitted written comments, and participated in rehearing proceedings.

PROCEDURAL HISTORY

The Elmore County Board of County Commissioners approved five conditional use permits in 2017 and later approved a development agreement and amendments to the permits in 2018. S Bar Ranch sought reconsideration and judicial review, asserting untimeliness, notice, due process, conflict-of-interest, recordkeeping, land-use, and jurisdictional defects. The district court dismissed the challenge to the 2017 CUP Order as untimely, rejected the remaining challenges to the development agreement and 2018 CUP Amendment, and denied attorney fees. The Idaho Supreme Court affirmed and awarded costs on appeal to Elmore County and Cat Creek Energy, but denied attorney fees.

DISPOSITION

affirmed

CASES CITED

- In re Jerome County Board of Commissioners, 153 Idaho 298, 281 P.3d 1076 (2012)
- Cowan v. Board of Commissioners of Fremont County, 143 Idaho 501, 148 P.3d 1247 (2006)
- Citizens Against Linscott/Interstate Asphalt Plant v. Bonner County Board of Commissioners, 168 Idaho 705, 486 P.3d 515 (2021)
- Neighbors for Preservation of Big & Little Creek Community v. Board of County Commissioners of Payette County, 159 Idaho 182, 358 P.3d 67 (2015)
- 917 Lusk, LLC v. City of Boise, 158 Idaho 12, 343 P.3d 41 (2014)
- In re Quesnell Dairy, 143 Idaho 691, 152 P.3d 562 (2007)
- Johnson v. Blaine County, 146 Idaho 916, 204 P.3d 1127 (2009)
- Canal/Norcrest/Columbus Action Committee v. City of Boise, 136 Idaho 666, 39 P.3d 606 (2001)
- Manookian v. Blaine County, 112 Idaho 697, 735 P.2d 1008 (1987)
- Sprenger, Grubbs & Associates, Inc. v. City of Hailey, 127 Idaho 576, 903 P.3d 741 (1995)
- Idaho Historic Preservation Council, Inc. v. City Council of City of Boise, 134 Idaho 651, 8 P.3d 646 (2000)
- Floyd v. Board of Commissioners of Bonneville County, 137 Idaho 718, 52 P.3d 863 (2002)
- Euclid Avenue Trust v. City of Boise, 146 Idaho 306, 193 P.3d 853 (2008)
- Chambers v. Kootenai County Board of Commissioners, 125 Idaho 115, 867 P.2d 989 (1994)
- Cooper v. Board of County Commissioners of Ada County, 101 Idaho 407, 614 P.2d 947 (1980)
- Gay v. County Commissioners of Bonneville County, 103 Idaho 626, 651 P.2d 560 (Ct. App. 1982)
- Rural Kootenai Organization v. Board of Commissioners, 133 Idaho 833, 993 P.2d 596 (1999)
- Smith v. Washington County, Idaho, 150 Idaho 388, 247 P.3d 615 (2010)
- Neighbors for a Healthy Gold Fork v. Valley County, 145 Idaho 121, 176 P.3d 126 (2007)
- Floyd v. Board of Ada County Commissioners, 164 Idaho 659, 434 P.3d 1265 (2019)
- Aberdeen-Springfield Canal Co. v. Peiper, 133 Idaho 82, 982 P.2d 917 (1999)
- Stewart v. Sun Valley Co., 140 Idaho 381, 94 P.3d 696 (2004)
- Johnson v. City of Homedale, 118 Idaho 285, 796 P.2d 162 (Ct. App. 1990)
- Golay v. Loomis, 118 Idaho 387, 797 P.2d 95 (1990)
- Fischer v. City of Ketchum, 141 Idaho 349, 109 P.3d 1091 (2005)
- City of Osburn v. Randel, 152 Idaho 906, 277 P.3d 353 (2012)
- Lunneborg v. My Fun Life, 163 Idaho 856, 421 P.3d 187 (2018)
- Neighbors for Responsible Growth v. Kootenai County, 147 Idaho 173, 207 P.3d 149 (2009)
- In re Idaho Workers Compensation Board, 167 Idaho 13, 467 P.3d 377 (2020)
- Galvin v. [citation not fully provided in source]

- *Coeur d'Alene Tribe v. Denny*, 161 Idaho 508, 387 P.3d 778 (2015)
- *Citizens Against Linscott/Interstate Asphalt Plant v. Bonner County Board of Commissioners*, 168 Idaho 705, 486 P.3d 515 (2021)

Retrieved from lawtools.ai · [https://lawtools.ai/cases/state/idaho-supreme-court-of-the-state-of-idaho/2022/s-bar-ranch-v-elmore-county-](https://lawtools.ai/cases/state/idaho-supreme-court-of-the-state-of-idaho/2022/s-bar-ranch-v-elmore-county-17q8xne0)

17q8xne0