



SPECIAL MEETING OF THE BOISE COUNTY  
PLANNING & ZONING COMMISSION

August 31, 2017  
Planning and Zoning Office  
413 Main Street  
Idaho City, ID 83631

**Present:** Chair Dan Gasiorowski present in the office. Commissioner Charles Haupt, Commissioner Edith Williams, and legal counsel present by telephone. Commissioner Rosemary Ardinger, Commissioner John Jauregui were absent.

**Staff Present:** Planning and Zoning Administrator Rora A. Canody and Admin. Assistant Brenda Wood

**Roll call:** P&Z Administrator Canody called the roll. Chair Gasiorowski stated a quorum was present and called the Special Meeting to order at 5:05 p.m.

**Approval of Findings of Fact, Conclusions, Conditions of Approval and Order for Haven Hot Springs CUP #2017-006:**

Chair Gasiorowski asked for any discussion or corrections to the proposed FCO's, as presented for CUP #2017-006. Commissioner Williams expressed her rationale for removing Site Specific Condition of Approval #15 (see attached Exhibit A to these minutes). Legal counsel advised the Commission regarding noise monitoring. Commissioner Williams made a motion to amend the proposed FCOs for the Haven Hot Springs CUP #2017-006 by removing Site Specific Condition of Approval #15 for lack of a Boise County Noise Ordinance, as well as lack of clear and concise definitions in the ULO of what type and level of noise constitutes hazardous and/or excessive noise that could adversely affect surrounding property or is detrimental to person, and by reason that placing this condition may be found to be arbitrary in a court of law; seconded by Commissioner Haupt. Discussion ensued.

Roll call vote: Commissioner Gasiorowski: Nay Commissioner Haupt: Nay  
Commissioner Williams: Aye

Majority vote, motion failed.

Chair Gasiorowski made a motion to approve the Findings of Fact, Conclusions, Conditions of Approval and Order as presented for The Haven Hot Springs CUP #2017-006; seconded by Commissioner Haupt.

Roll call vote: Commissioner Gasiorowski: Aye Commissioner Haupt: Aye  
Commissioner Williams: Nay

Majority vote, motion carried.

**Approval of Findings of Fact, Conclusions, Conditions of Approval and Order for 3 Springs Hunting Ranch LLC CUP #2017-007:**

Chair Gasiorowski asked for any discussion or corrections to the proposed FCO's, as presented for CUP #2017-007. No discussion or corrections were made. Chair Gasiorowski made a motion to approve the Findings of Fact, Conclusions, Conditions of Approval and Order as presented for CUP #2017-007; seconded by Commissioner Haupt.

Roll call vote: Commissioner Gasiorowski: Aye Commissioner Haupt: Aye  
Commissioner Williams: Abstain

Majority ayes, motion carried.

**Approval of Findings of Fact, Conclusions, Conditions of Approval and Order for Horseshoe Bend Flight Park CUP #2017-008:**

Chair Gasiorowski asked for any discussion or corrections to the proposed FCO's, as presented for CUP #2017-008. No discussion or corrections were made. Chair Gasiorowski made a motion to approve the Findings of Fact, Conclusions, Conditions of Approval and Order as presented for CUP #2017-008; seconded by Commissioner Williams.

Roll call vote: Commissioner Gasiorowski: Aye Commissioner Haupt: Abstain  
Commissioner Williams: Aye

Majority ayes, motion carried.

**Adjourn:**

Having no further business on the agenda, Commissioner Williams moved to adjourn the special meeting; seconded by Commissioner Gasiorowski. All ayes, motion carried.

Chair Gasiorowski adjourned the Special Meeting at 5:17 p.m.

Approved by the Commission this 19 day of October, 2017.

  
\_\_\_\_\_  
Chair Dan Gasiorowski

Attest:

  
\_\_\_\_\_  
Brenda Wood, P&Z Administrative Assistant

## **Motion to amend:**

**“Mr. Chairman,**

**“I move that we amend the FCO for the Haven Hot Springs CUP #2017-006 by removing Site Specific Condition of Approval No. 15 for lack of a Boise County Noise Ordinance, as well as lack of clear and concise definitions in the ULO of what type and level of noise constitutes hazardous and/or excessive noise that could adversely affect surrounding property or is detrimental to persons, and by reason that placing this condition may be found to be arbitrary in a court of law.”**

**3.1.E.1 prohibits land use that creates hazardous conditions, and stipulates that noise, if found to be hazardous, must be mitigated by applying safeguards. The commission did not find, and no evidence or testimony was provided, that The Haven’s continuing and proposed new use would create hazardous noise conditions that would require mitigation, nor was evidence provided by the public or law enforcement that such hazardous noise conditions existed in the past and are likely to be continued.**

**4.3.E.7 requires us to find whether or not the applied for use involves uses/activities that will be “detrimental to any person” by “reason of excessive production of noise.” It does not require a finding of “hazardous” noise, which would require mitigation.**

**This required finding does not coincide with the requirements in 3.1.E. The definition of “excessive” is not synonymous with “hazardous.” Unlike hazardous noise in 3.1.E.1(d), excessive noise in 4.3.E.7 does not provide for a noise mitigation requirement.**

**There was a concern voiced by neighbors about potential noise and quiet time at night, however, The Haven Hot Springs has been in operation for many years and no evidence was presented that this land use in fact does, or did in the past produce “hazardous” or “excessive noise” detrimental to persons or adversely affecting surrounding property.**

**Had we found that a likelihood of excessive or hazardous noise conditions existed, then only in the case of a “hazardous noise” finding, per 3.1.E, could we potentially stipulate preemptive noise mitigation measures.**

However, as Boise County has not adopted a Noise Ordinance that defines or adopts definitions of “excessive” or “hazardous” noise levels, or what level and type of noise is “detrimental to persons” or “adversely affects surrounding property,” I cannot come to a positive finding that the proposed use would indeed cause “excessive” production of, let alone “hazardous noise,” warranting costly preemptive site specific mitigation.(see Decibel/Noise Comparison Chart)

Even if we were able to come to such a finding, 3.1.B.3 requires hazardous noise levels (only) to be measured by an authorized agent of Boise County. 3.1.B.3 offers no allowance or requirement for self-certification by the applicant/property owner or for Planning and Zoning to arbitrarily and on a case by case basis decide who at any given time can act as an authorized agent of Boise County.

I found no authorization in the ULO that would allow for preemptive restriction/conditions to be placed on an applicant without the Commission’s actual findings of excessive or hazardous noise levels, or that the applicant can be authorized to self-certify compliance to P & Z, as the ULO specifically requires that “Noise levels shall be measured by authorized agent of Boise County...: vs. as authorized by Planning & Zoning. To me, “authorized agent” implies a person authorized by the County Commissioners, who can certify and be held accountable for the reports provided, and who will take these readings when required or warranted.

I.C. 18-6409(1) already governs noise complaints by making “maliciously or willfully disturbing the peace by loud or unusual noise” a misdemeanor. Compliance with this Idaho Statute is already a standard condition under 4.3.D.18 with enforcement falling within the authority of the Boise County Sheriff, placing the burden of proof on the complainant.