STATE OF WYOMING	)	IN THE DISTRICT COURT
	) ss.	
COUNTY OF SUBLETTE	)	NINTH JUDICIAL DISTRICT

DANIEL BAILEY,
DELORES KOMINSKY,
MARY KRALL,
RICHARD PEARSON,
STEVE ROBERTSON,
DENNIS SEIPP, and
MARTI SEIPP,

Petitioners,

vs.

SUBLETTE COUNTY BOARD OF COUNTY COMMISSIONERS

and

JACKSON FORK RANCH, LLC, a Wyoming limited liability company,

Respondents.

FILED

DEC 27 2022

JANET K. MONTGOMERY
CLERK OF DISTRICT COURT
PINEDALE, WYOMING
BY

Civil Action No. 8900

ORDER AFFIRMING THE DECISION OF THE SUBLETTE COUNTY BOARD OF COUNTY COMMISSIONERS

This matter is before the Court on the Petitioner's petition challenging the Sublette County Board of Commissioners' Resolution No. 21-100431B. This resolution approved respondent, Jackson Fork Ranch's, application for a change to the zoning classification for a portion of its property, from agricultural to recreational service zoning. Petitioner's Brief

was filed on May 16, 2022. Respondents, the Sublette County Board of County Commissioners (the Board) and Jackson Fork Ranch, LLC, (Jackson Fork) filed separate responses on June 30, 2022. The Court heard oral argument on November 10, 2022. Having reviewed the file and the parties' briefs, and heard oral argument, this Court finds, and orders as follows:

ISSUES

The parties raise several issues which this Court has reorganized into three issues.

I. Do Petitioners have standing to challenge the resolution?

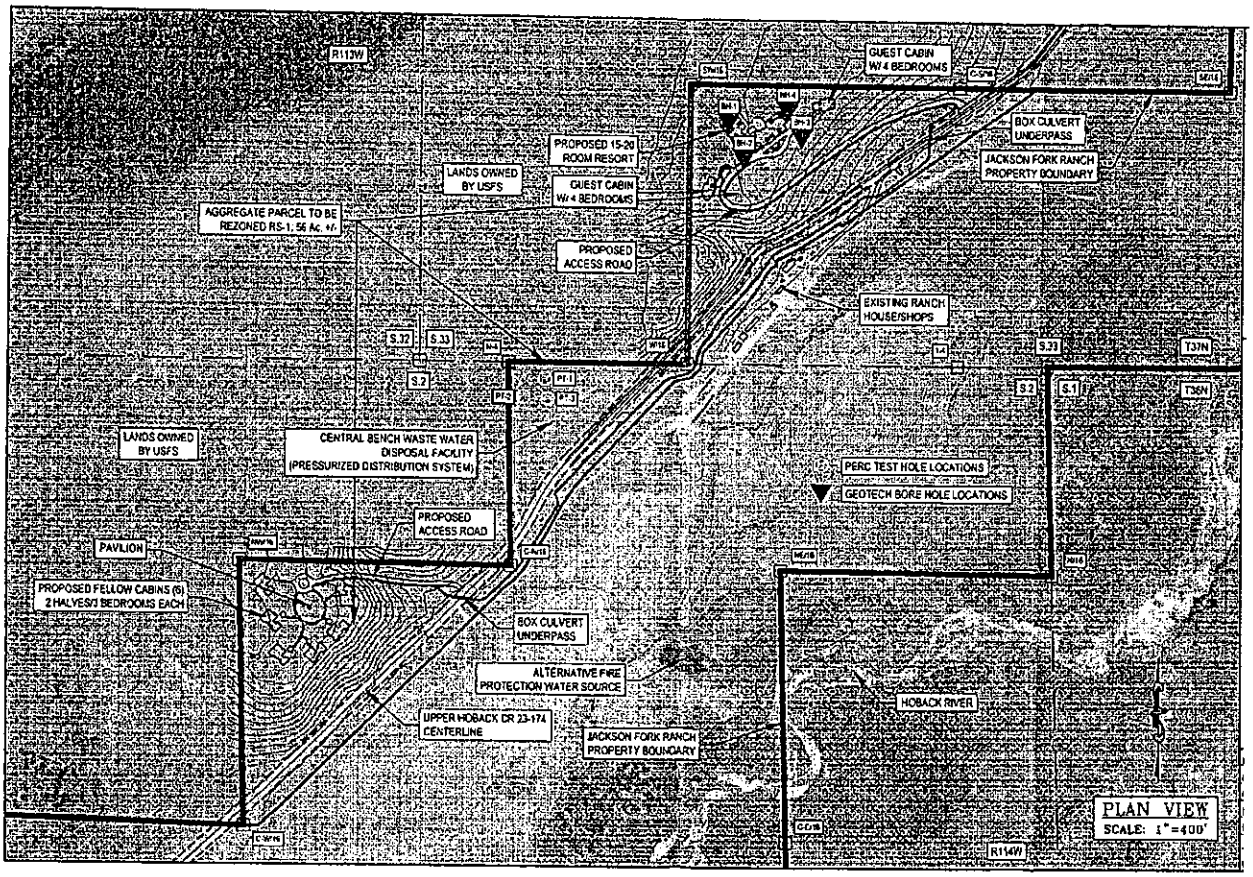
II. What is the scope of this Court's review?

III. Did the Sublette County Board of County Commissioners comply with the decision-making requirements of the Sublette County Zoning Regulations when it issued Resolution No. 21-100431B?

FACTS

On October 11, 2021, Jackson Fork applied to change the zoning classification of fifty-six acres of its 1,288-acre property from "Agricultural" to "Recreational Service." It had previously applied for this zoning change the year before, but the Board denied the application at that time. The new application was updated to address the Board's and community's

concerns. The map below shows Jackson Fork's property with the proposed changes relevant to the rezoning application.



R. at 67.

The Sublette County Planning and Zoning Commission reviewed the application on November 18, 2021. It issued a recommendation that the Board deny the rezoning request, finding that the application did not comply with the Sublette County Comprehensive and Master plans. The Board held a meeting on the application on December 7, 2021. The Zoning and Development Regulations require the Board,

> consider the following findings before making a decision regarding a zoning district boundary change:
>
> (1) The use and zoning of nearby property;
> (2) The effect of the zoning district boundary change on property values;
> (3) The extent to which the reduced value of affected property promotes the public welfare;
> (4) The public gain compared to the owner's hardship;
> (5) The suitability of the affected property for it's zoned use;
> (6) The time the property has been vacant as zoned;
> (7) The community need for the proposed use;
> (8) Whether the property is zoned in conformity with surrounding uses and if those uses are uniformed and established;
> (9) The availability of water for the proposed use;
> (10) General conformity of the zoning district boundary change with the goals and policies of the Comprehensive Plan.

Sublette County Zoning and Development Regulations, Ch. VIII, § 2(d).

At the outset of the meeting, Commissioner Joel Boesman said, "[O]ur job as a Board of County Commissioners is to make this decision based on [] 10-requirements and the zoning regulations that apply to an application for change in zoning [] boundary." R. at 14546. He asked that all public comment be directed towards those ten factors. *Id.* at 14547. A Jackson Fork representative then spoke and discussed the application in the context of each of the ten factors. *Id.* at 14557-62. The factors were mentioned repeatedly over the course of the meeting. *See id.* at 14593, 14610-11, 14632, 14641, 14654-55, 14658-59.

After public comment was closed, Commissioner Sam White moved to accept the zoning change with five conditions: that the landowner would make the onsite fire suppression water supply available to the Sublette County Fire Department for offsite use; that the permit for the second phase of the resort would be conditional on the Board approving his plan for resort employee housing; that the landowner would maintain a financial incentive program to encourage employees to become volunteer firefighters for Sublette County; and that if the landowner decided to close the resort for public use, and not use it for personal use, he would demolish the lodge but leave the cabins to be used as single-family residences; and that no construction would occur between November 15 and April 30. *Id.* at 14555-56, 14658-59. Commissioner Tom Noble seconded the motion. The motion passed as Resolution No. 21-100431B with three of the five Commissioners voting in favor.

On January 6, 2022, the Petitioners, comprising of Sublette County property owners, filed a petition for review in this Court for review of the Resolution under W.R.A.P. 12 and the Administrative Procedure Act. The Petitioners argued that the Board acted erroneously when it passed the Resolution because the rezoning application did not satisfy the Sublette County Zoning and Development regulations and the Board did not make explicit findings on the record regarding its decision. Jackson Fork and

the Board filed a response, arguing that the Petitioners lacked standing, and that this Court's review was limited to whether the Board had substantially complied with its own rules.

DISCUSSION

I. The Petitioners have failed to establish they have standing.

Respondents claim that the Petitioners lack standing to contest the decision of the Board. Wyoming Statute § 18-5-508 provides that "[a]ny party aggrieved by the final decision of the board of county commissioners may have the decision reviewed by the district court pursuant to Rule 12 of the Wyoming Rules of Appellate Procedure." Under W.R.A.P. 12.01, judicial review is available to "any person aggrieved or adversely affected in fact" by agency action. *See also,* Wyo. Stat. Ann. § 16–3–114(a).

In this case, an aggrieved or adversely affected person who possesses standing is a person who has a legally recognizable interest that is or will be affected by the action of the zoning authority in question. *Tayback v. Teton Cnty. Bd. of Cnty. Comm'rs*, 2017 WY 114, ¶ 17, 402 P.3d 984, 989 (Wyo. 2017) (citations omitted). "An individual having standing must have a definite interest exceeding the general interest in community good shared in common with all citizens." *Id.* "The interest which will sustain a right to appeal must generally be substantial, immediate, and pecuniary. A future, contingent, or merely speculative interest is ordinarily not

sufficient." *Id.* ¶ 16, 402 P.3d at 988 (citations and quotation marks omitted).

Respondents assert that Petitioners do not have standing because Petitioners have a tenuous connection to the rezoned land that is insufficient to distinguish their interest from that of the general public. Petitioners insist that the Board's alleged failure to adhere to Sublette County Zoning and Development regulations undermines their "investment-backed expectation" as property owners. Petitioners also point to Jackson Fork's admission that some of the Petitioners have land that borders the Jackson Fork property (though not the area that would be affected by the rezoning) as evidence of their standing.

The Court is without sufficient evidence to find that Petitioners have standing. Petitioners collectively allege that they would suffer from noise and traffic pollution, citing Planning and Zoning Commissioner Chris Lacinak's analysis of the project that predicted the rezoning would negatively impact traffic, the environment, and affordable housing. But Commissioner Lacinak's analysis is a general list of possible outcomes, based on his review of the project application. It is speculative and there is no clear connection made between Commissioner Lacinak's concerns and the Petitioners themselves. *See, e.g., Tayback*, ¶ 16, 402 P.3d at 988 ("The interest which will sustain a right to appeal must generally be

substantial, immediate, and pecuniary. A future, contingent, or merely speculative interest is ordinarily not sufficient."); *HB Fam. Ltd. P'ship v. Teton Cnty. Bd. of Cnty Comm'rs*, 2020 WY 98, ¶¶ 28-29, 468 P.3d 1081, 1090-91 (2020) (concerns about increased density from greater use of the neighboring property and the effect of that greater use on adjoining property exceed the interest of the general public and create standing, while general concerns about wildlife migration do not).

While they claim that some of their land borders the property, the Petitioners do not identify where their property is in relation to public or private roads or otherwise specify how individual pieces of property would be affected by the rezoning. In their reply brief, they point to Petitioner Robertson's property as being illustrative of their standing, but merely say that he is a member of the Hoback Cattle Association, and his property is a "'base property' for a public lands grazing permit." They provide no description of where his property lies in relation to the rezoned area or the effects the rezoning may have on agriculture specific to Petitioner Robertson or any other petitioner. Petitioners' attorney discussed the individual standing of other clients at oral argument, but oral argument is not evidence. *See* W.R.A.P. 12.09(a). Even if this Court did consider those statements, the fact remains that none of the Petitioners border the

rezoned area of the property or have alleged a specific, non-speculative harm apart from the general public.[1]

The Petitioners' assertion that the Board's violation of Sublette County guidelines is also insufficient to establish standing. Instructive to this analysis is the Wyoming Supreme Court's decision in *Roe v. Bd. of Cnty. Comm'rs of Campbell Cnty.*, 997 P.2d 1021, 1023 (Wyo. 2000). In *Roe*, the Court found a lack of standing where the appellants alleged injury from the Campbell County Commissioners' deviation from the proper administrative process. *Id.* Like the Petitioners, the *Roe* appellants discussed whether the administrative process was correctly followed, but never specifically asserted how they have been aggrieved by any alleged deviation from this process or by the final approval. *Id.*

In contrast, the Court held that the *Tayback* appellants had standing because they provided photographic proof that their view was affected by the actions of the Teton County Board of County Commissioners. *Tayback*, ¶ 19, 402 P.3d at 989. The *Tayback* appellants also raised specific complaints of dust and noise emanating from the work site that affected

[1] Aside from Petitioners attempting to address the standing issue in their reply brief and at oral argument, Petitioners have not sought to introduce any evidence relevant to standing. *See* W.R.A.P. 12.08 (regarding a party's ability to present additional evidence before a hearing in an administrative procedure case). The issue of standing was first raised in the Respondents' June 30, 2022 response briefs. Oral argument was heard on November 10, 2022. Petitioners had ample opportunity to avail themselves of Rule 12.08 once the issue of standing was raised.

their enjoyment of their own property, which was near the property at issue. *Id.* Such specificity has not been attempted by the Petitioners here.

As in *Roe*, the Petitioners have not cited any specific, non-speculative, adverse impacts the Board's decision would have on their property that separates them from the general public. Further, there is no evidence of specific impacts to Petitioners in the record. As a result, this Court concludes that Petitioners have not satisfied the requirement that the possess standing in this case.

II. The Court's review is limited to whether the Board substantially complied with its own rules.

Even if Petitioners have standing, Respondents argue that this Court's review is limited to whether the Board substantially complied with its own rules. This Court agrees with Respondents. The Wyoming Supreme Court's case law, including *McGann* and *Sheridan Planning Association*, expressly limit this Court's review to whether the Board substantially complied with its own rules. *See McGann v. City Council of City of Laramie*, 581 P.2d 1104, 1106 (Wyo. 1978), *Sheridan Planning Ass'n v. Bd. of Sheridan Cnty. Comm'rs*, 924 P.2d 988, 990 (Wyo. 1996).

Under the Administrative Procedure Act, courts have the authority to:

> Hold unlawful and set aside agency action, findings and conclusions found to be:

(A) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;

(B) Contrary to constitutional right, power, privilege or immunity;

(C) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;'

(D) Without observance of procedure required by law; or

(E) Unsupported by substantial evidence in a case reviewed on the record of an agency hearing provided by statute.

Wyo. Stat. Ann. § 16-3-114(c)(ii). Decisions from boards of county commissioners are generally reviewable under the APA, unless they fall within an exception. *Holding's Little America v. Bd. of Cnty. Comm'rs of Laramie Cnty.*, 670 P.2d 699 (Wyo. 1983). Legislative actions or hearings are one such exception. *Id.*

In *McGann*, the Wyoming Supreme Court classified zoning as a legislative act, shielded from review under the APA. *McGann*, 581 P.2d at 1106. The *McGann* Court relied on the majority position from other states that political subdivisions, including boards of county commissioners, are granted their zoning power from the state legislature, "which in turn derives its power of zoning from the constitution of the state itself." *Id.* at 1105. The Court also noted that the APA defined "Agency" in a way that

excluded "the governing body of a city or town when acting in a legislative capacity." *Id.* at 1107.

The APA was altered in 1977 and the definition of Agency was amended to remove the part that excluded the governing bodies of cities or towns when "acting in a legislative capacity." *See* Wyo. Stat. Ann. § 16-3-101(b)(i). Petitioners point to that amendment as an example of significant change to the APA that would invalidate the Court's analysis in *McGann*. But the definition of "agency" was only a small part of the Court's logic in *McGann*, and the remainder of its analysis, that zoning was inherently a legislative act, remains intact. *See McGann*, 581 P.2d at 1106. Further, *McGann* was reaffirmed even after the 1977 amendment in *Sheridan Planning Association. Sheridan Planning Assn.*, 924 P.2d at 990; *see also Barlow Ranch Ltd. P'ship. v. Greencore Pipeline Co. LLC*, 2013 WY 34, ¶ 37, 301 P.3d 75, 88 (Wyo. 2013) ("If [the Wyoming Supreme] Court had incorrectly interpreted the legislature's intent, legislative action to clarify the statutes and correct the [C]ourt's decision would seem a likely result."); *see also Arnott v. Arnott*, 2012 WY 167, ¶ 28, 293 P.3d 440, 453 (Wyo. 2012) (recognizing that a district court is bound by existing precedent).

Because the action at issue in this case is a rezoning resolution, the Court's review is limited. The Resolution in this case was legislative in

nature. Thus, it is not reviewable under the APA. *McGann*, 581 P.2d at 1106. The Court can, however, review the Board's action to determine whether it substantially complied with its own rules. *See Sheridan Planning Assn.*, 924 P.2d at 990; *Holding's Little America*, 670 P.2d at 702; *Hirschfield v. Bd. of Cnty. Comm'rs. of Cnty. of Teton*, 944 P.2d 1139, 1142 (Wyo. 1997).[2]

III. The Board adhered to the requirements of the Sublette County Zoning requirements when it issued Resolution No. 21-100431B.

Petitioners allege that the Board violated the requirements of the Sublette County Zoning and Development Regulations by not "openly considering" the ten findings that must be contemplated before a district boundary change. Respondents contend that there is no requirement that the Board make specific findings on the record for each of the ten considerations. They assert that, because there is evidence that the Board knew of and identified the ten considerations when making their final decision, the Board complied with the Zoning and Development Regulations.

[2] The Petitioners only argue that the Court should apply the substantial evidence or the arbitrary and capricious standard of review. However, the substantial evidence standard only applies to contested cases, which this case was not. Wyo. Stat. Ann. § 16-3-110. Further, whether an action was "arbitrary and capricious" is substantially similar in substance to the question of whether an agency substantially complied with its own rules. *See Wilson Advisory Comm. v. Bd. of Cnty. Comm'rs*, 2012 WY 163, ¶¶ 22, 40, 292 P.3d 855, 862, 866 (Wyo. 2012). Thus, as to the result reached in this case, the discussion about the limits of this Court's review may be more academic than anything.

The Court agrees with the Respondents. "An administrative agency must follow its own rules and regulations or face reversal of its action." *HB*, ¶ 40, 468 P.3d at 1094 (citations and quotation marks omitted). "[Courts] defer to an agency's interpretation of its own rules and regulations unless that interpretation is clearly erroneous or inconsistent with the plain language of the rules." *Wilson Advisory Com.*, ¶ 22, 292 P.3d at 862.

The rules of statutory construction apply to interpreting administrative rules and regulations. *Id.* ¶ 31, 292 P.3d at 863. Courts construe statutes as a whole "giving effect to every word, clause, and sentence, and we construe all parts of the statute in pari materia." *Id.* (citations omitted). The exact language of the Zoning and Development Regulations states that the Board, before making any changes to zoning district boundaries, "shall consider the following findings." Sublette County Zoning and Development Regulations, Ch. VIII, § 2(d).

The Wyoming Supreme Court has not yet decided "whether a requirement that an agency must only consider [certain factors] would obligate it to make a specific finding." *See Wilson Advisory Com.*, ¶ 42 n.5, 292 P.3d at 866 n.5. However, "when the legislature specifically uses a word in one place, we will not interpret that word into other places where it was not used." *Matter of U.S. Currency Totaling $14, 245.00*, 2022 WY

15, ¶ 7, 503 P.3d 51, 54 (Wyo. 2022). The definition of the word "consider" is to "take into account." Merriam-Webster Online Dictionary, "consider, (November 4, 2022), Merriam-Webster.com/dictionary/consider. The plain language of the rules at issue suggest that the Board is required to take into account the ten factors laid out in the Zoning and Development Regulations, not to make specific findings on each specific factor. This conclusion is supported by how the Zoning and Development Regulations differentiate between required findings and considerations. In section V, the Regulations expressly direct the Board to make findings before approving a conditional use permit. Sublette County Zoning and Development Regulations, Ch. V, § 2(c)(4). Chapter XII(II), § 7 lays out "required findings" the Board "shall make" before approving a preliminary plat. The regulations clearly require different actions from the Board for different decisions.

Petitioners contend that the APA requires express findings, citing Wyo. Stat. Ann. § 16-3-110. However, section 16-3-110 requires express findings only for contested cases. This was not a contested case. *See Wilson Advisory Com.*, ¶ 20, 292 P.3d at 861 ("The Board's public meetings were not formal trial-type or contested case hearings. No witnesses were sworn in or examined, comment times were limited, and the Board did not

receive evidence as it would in a contested case.").[3] "[A]n agency need not always make specific findings in an informal administrative proceeding, although they may be necessary to permit review. However, if a statute or regulation requires specific findings, they must be made." *Id.* ¶ 40, 292 P.3d at 866.

The record shows that the Board interpreted these rules to require they consider the ten findings, rather than make express findings. There were numerous references to the ten findings at the December 7, 2021 meeting. From Commissioner Boesman's repeated request that public comment be directed at "those ten things that we have to consider," to the analysis conducted by one of the members of the planning zoning commission, consideration of the ten findings was present throughout the proceedings. (R. at 14547, 14593, 14632). Because this Court cannot conclude that the Board's interpretation of its regulations was erroneous, it finds that the Board followed the Zoning and Development Regulations, despite not making explicit findings on the record. *See Wilson Advisory Com.*, ¶ 22, 292 P.3d at 862.

[3] Petitioners also suggest that the failure to make express findings on the record may qualify as a violation of the Public Meetings Act under Wyo. Stat. Ann. § 16-4-401. This argument fails to consider the fact that there was a public meeting, as evidenced by the lengthy transcript, which would satisfy Wyo. Stat. Ann. § 16-4-403. Further, notwithstanding the discussion in section II, this Court's review is controlled by W.R.A.P. 12 and is therefore not an appropriate forum to raise allegations of violations of the Public Meetings Act. *See* Wyo. Stat. Ann. § 16-4-406.

The decision of the Sublette County Board of County Commissioners is AFFIRMED.

DATED: December 27, 2022.

BY THE COURT:

Joshua C. Eames
District Court Judge

copies to: James K. Lubing/Kevin P. Gregory
Mathew E. Turner
Paula Fleck