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BEFORE THE IDAHO DEPARTMENT OF LANDS

IN THE MATTER OF APPLICATION FOR
ENCROACHMENT L96S1673E,

Juniper Financial Services, LLC,

Applicant.

Agency Case No. PH-2025-20-001

OAH CASE NO. 25-320-03

APPLICANT'S PRE-HEARING STATEMENT

This Pre-Hearing Statement is provided by Christopher J. Simons, General Counsel for
Applicant Juniper Financial Services, LLC ("Juniper"),

I. Background

Juniper is an equipment and property leasing company owned and managed by Marvin
May. Mr. May was born and raised in Payette, Idaho. Payette is also where Mr. May's business,
May Trucking Company, was founded in 1945. Mr. May grew May Trucking Company into a
nationally recognized leader in the transportation industry, with over 1,000 trucks operating daily
throughout the United States. For years, Mr. May has been looking to return to his roots in
Idaho, which led him to looking at homes on Lake Pend Oreille. His research led him to
purchase 90 Kullyspell Drive, Hope, ID in January 2025. This is truly a one-of-a-kind property
(see exhibit J-1).

1 Given the unique qualities of this property, the due diligence involved during the escrow
2 process was very extensive, going far beyond what is typically involved with the purchase of a
3 residence. Part of that due diligence process involved reviewing the Encroachment Permit for
4 the property's boat garage and dock. The boat garage and dock are in a very bad state of
5 disrepair and need to be replaced. Well prior to closing on the purchase of the property, Mr.
6 May began working with CE Kramer Crane and Contracting, Inc. to design a replacement boat
7 garage and dock based upon the specifications explicitly set forth on the previously issued
8 Encroachment Permit. Mr. May owns a 34' Coeur Custom handcrafted wooden boat, and having
9 the ability to protect that boat in a garage was very important to him in deciding to purchase the
10 property.

11 On January 7, 2025, Juniper purchased the property, relying on the validity of the
12 recorded Encroachment Permit. On the day following the closing, Mr. May and I personally met
13 with IDL employee Tyler Warner at the Sandpoint IDL office. The reason for the meeting was
14 to ensure that we were taking all the steps necessary to fully comply with Idaho law prior to
15 replacing the existing boat garage.

16 **The Encroachment Permit**

17 The Encroachment Permit at issue here (see exhibit J-2) was originally issued on
18 December 29, 2004. In addition to granting the owners the right to install and maintain riprap
19 125 lineal feet of shoreline for erosion control, it also approved the "Existing 3' x 16' ramp, 8' x
20 40' dock and 30' x 35' boatgarage."

21 The permit was transferred with approval of IDL without revision on December 3, 2014.
22 It was then transferred again with approval of IDL without revision on February 2, 2024. The
23

1 permit was officially transferred to Juniper, again with approval of IDL and without revision, on
2 January 14, 2025. All transfers are included as part of exhibit J-2.

3 **The Application**

4 On February 21, 2025, Bob Presta of CE Kramer submitted Juniper's application
5 (L96S1673E) for approval of the removal and rebuilding of the boat garage and dock. The stated
6 purpose of the project was:

7 Existing boat garage and existing float dock are in need of replacement to provide moorage for
8 watercraft - to provide access to the property from Lake Pend Oreille. The existing boat garage
and float dock are in disrepair, both structures need to be replaced with current materials.

9 The application submitted was thorough and professionally prepared by Mr. Presta. The
10 proposed replacement boat garage will be 22' wide x 47' long (1,034 SF), which is less than the
11 size of the existing permitted garage 30' wide x 35' long (1,050 SF).

12 Notice of the application was properly provided to neighbors and the public, and no
13 objections have been raised to the application.

14 On February 25, 2025, Mr. Presta received an email from Mr. Warner (see exhibit J-3)
15 stating:

16 Hi Bob,

17 Just wanted to let you know I received the application and payment for the reconfigured dock and
18 boat garage at 90 Kullyspell. As I think you are already aware, as part of the application process
19 for a boat garage I need to go perform an inspection and get the measurements so we can confirm
the current dimensions as they exist on the water. I just need to confirm the float width/length, the
wall width/length, and peak of the roof height.

20 I know you guys are probably anxious to get going so I can come out as early as tomorrow
21 (2/26/25) or any day this week except for Friday. I'll be back in the office Tuesday-Friday next
22 week as well. Let me know what/when works best.

1 In order to accommodate the above request, on February 27, 2025, with Juniper's
2 consent, Mr. Presta met Mr. Warner and IDL employee Mike Ahmer at the property to allow
3 them to access the property.

4 **Preliminary Findings**

5 On March 18, 2025, Mr. Warner sent an email to Mr. Presta (see exhibit J-4) stating the
6 following:

7 Hi Bob,

8 Here is what I got back from Mike:

9 "Marde and I agree that we cannot let them build a 30'x35' boat garage. They will have to stick
to the master float and wall-to-wall dimensions that we measured during the inspection.

10 The master footprint was relatively close to the original permit dimensions. The original permit
11 clearly showed a master footprint, as there was a square within a square on their drawing. Even if
we had measured a master footprint of 30'x35', we would not allow them to build a wall-to-wall
12 boat garage with 30'x35' dimensions. The original permit did not have a height or detailed
drawings. It is our SOP that we measure boat garages before they get torn down and rebuilt.
13 Lastly, the structure was obviously very old and dilapidated. It has been existing in those
dimensions that we measured for some time."

14 I recall from our conversation at the site inspection that your client would likely want to use the
30'x35' wall dimensions, but we will be unable to allow this based on IDAPA code specifying
15 existing footprint of boat garages cannot be expanded. The dimensions we measured for the walls
was 21x28.75'x10 and the master float was 24'x34'. The wall dimensions simply are not 30'x35'.
16 The permit may say 30'x35', but that is clearly not what exists on the property. I've attached our
inspection report from the measurements we took on 2/27.

17 The wording in IDAPA 20.03.04.015.05.b. is: Applications for permits to construct new boat
garages, expand the total square footage of the existing footprint, or raise the height will not be
18 accepted unless the application is to support local emergency services. The next section
20.03.04.015.05.c also states: Existing permitted boat garages may be maintained or replaced
19 with the current square footage of their existing footprint and height.

20 Let me (or Mike) know if you want to discuss further or if you have any questions.

21 Upon receipt of the above information, we were shocked and disappointed with the
22 position taken by IDL and wanted to get further insight into the reasoning behind the decision.

23 To that end, on March 19, 2025, Mr. Presta and I spoke via phone with Mr. Warner. While

confirming that Juniper was not required to build a structure in the exact same dimensions as the permitted structure, Mr. Warner explained that it was the position of IDL, pursuant to IDAPA 20.03.04.015.05.c, that existing permitted boat garages may be maintained or replaced with the current square footage of their existing footprint and height. During the conversation, Mr. Warner expressed his sympathy for our position and acknowledged that IDL should have measured the “existing structure” dimensions when the permit was first approved in 2004 or when it was subsequently transferred on three occasions.

On March 20, 2025, Mr. Presta and I had a follow-up phone conference with both Mr. Warner and Mr. Ahmer. In this conversation, Mr. Ahmer echoed the explanation provided by Mr. Warner and further explained that the size of the replacement structure could only be the dimensions of the “wall to wall footprint” as opposed to the “master float footprint.” As was the case during our call on the prior day with Mr. Warner, Mr. Ahmer acknowledged that the structural dimensions should have been measured at the time that the permit was first issued or upon the subsequent transfers.

The Law

On January 14, 2025, IDL formally assigned the Encroachment Permit to Juniper (exhibit J-2), which states:

Permission is hereby transferred to Juniper Financial Services, LLC of PO Box 9039, Salem, OR, 97305, United States (USA) to install and maintain the following encroachment(s) subject to the terms and conditions of this Permit and the approved application, plans and drawings incorporated herein:

Encroachment	Description
Encroachment: Boat Garage	existing: 30'x35'

1 Please pay particular attention to the above description: **existing 30'x35'**. The permit specifically
2 uses the term “**existing**”, which is the exact term used in IDAPA 20.03.04.015.05.c:

3 **existing** permitted boat garages may be maintained or replaced with the current square footage of
4 their existing footprint and height.

5 The rule uses the term “**existing**.” Juniper’s permit says “**existing**.” Juniper should be given
6 authority to rebuild what the IDL granted to it when the permit was issued: **30’ x 35’**.

7 Effectively, IDL is unilaterally amending the permit that was issued to Juniper. IDL
8 procedures do not give IDL the ability to amend Juniper’s permit. The only references made in
9 the IDL procedures for amending a permit are found in Section 35 - Assignments, Amendments
10 & Extensions. ***The only way to amend a permit is for the permit holder to apply for an***
11 ***amendment.*** IDL has no right to amend a permit that it has already issued.

12 In this case, IDL is going beyond the scope of the applicable statutes, administrative
13 rules, and its own procedures, none of which speak directly to our scenario where the permitted
14 structural dimensions of a boat garage are greater than the actual structural dimensions of a
15 previously constructed boat garage.

16 The IDL Encroachment Procedures, Section 25 V. Encroachment Standards, K. Boat
17 Garage Standards and Requirements, state:

18 1. Applications

19 Except to support local emergency services, applications to construct new boat garages, expand
20 the square footage of the existing footprint, or increase the height of a boat garage will not be
21 accepted (IDAPA 20.03.04.015.05.b). **Encroachment permit applications to relocate and/or**
22 **reconstruct existing permitted boat garages** or to construct new boat garages for local
23 emergency services **are processed pursuant to I.C. § 58-1306 and Rule 030**. A permit is not
required to clean, maintain, or repair an existing permitted boat garage (Rule 020.04).

As stated in the above procedure, encroachment permit applications to reconstruct existing
permitted boat garages, which is exactly what Juniper is applying to do here, are processed

pursuant to I.C. § 58-1306 and Rule 030. Neither I.C. § 58-1306 nor Rule 030 references taking measurements of existing permitted boat garages. If, as is the case here, the application is **not seeking to expand the previously *permitted* footprint**, there is no authority for IDL to measure and reduce the size of what was previously permitted. The goal of the law is clearly to ensure compliance with what was previously permitted.

The procedures also state:

2. Footprint

Except to support local emergency services, the footprint of a boat garage may not be **expanded** (Rule 015.05.b). The footprint is the area the encroachment covers, measured in square feet. In order to ensure the footprint of a boat garage is not expanded, the following must be identified in the application and permit:

- i. Boat garage footprint: Area enclosed by the walls and roof.
- ii. Float footprint: Area covered by the float(s) supporting the boat garage.

Again, this procedure is only relevant to a situation where an applicant is seeking to **expand** what was previously permitted. Here, Juniper is not seeking to **expand** the boat garage footprint that was granted in the permit; it is seeking approval to build a structure that has a **smaller** footprint than what was approved in the permit.

The IDL procedures also state:

8. Inspection

An on-site inspection is required as part of processing an application to rebuild or relocate an existing permitted boat garage prior to relocation, demolition, and/or construction. The inspector compares the size and footprint of the existing boat garage with the figures identified in the permit and provided in the application.

The purpose of the above procedure is to identify when an existing boat garage is **GREATER** in size than the dimensions granted in the permit. If a boat garage is greater in size than what was allowed in the permit, it makes perfect sense that the replacement boat garage must comply with

1 the size “figures identified in the permit.” The converse, however, makes no sense at all. ***If IDL***
2 ***previously approved a boat garage of a certain size, and the actual built size is slightly smaller,***
3 ***where is the harm in allowing the owner to rebuild a structure of the size that was previously***
4 ***approved?***

5 To reiterate, where someone has violated the terms of their permit by building a
6 **LARGER** than approved structure, it makes sense to require that the new structure complies
7 with the terms of the permit. However, Juniper is simply requesting permission to rebuild a
8 structure of the same size (actually smaller) than what is explicitly set forth on the permit. **In**
9 **our scenario, IDL isn’t seeking to enforce the permit, it is seeking to amend our previously**
10 **approved permit.** To do so is an unconstitutional taking of property rights.

11 Additionally, Juniper has a cause of action against IDL for promissory estoppel.
12 Promissory estoppel, as set forth in Idaho Supreme Court case *Silverwing at Sandpoint, LLC v.*
13 *Bonner County*, may be claimed where a party:

- 14 1. relied upon a specific promise;
- 15 2. substantial economic loss resulted due to such reliance;
- 16 3. the loss to the promisee was or should have been foreseeable by the promisor; and
- 17 4. the promisee’s reliance on the promise must have been reasonable.

18 Here, Juniper relied to its detriment on the permitted dimensions that were approved over
19 and over throughout the years by IDL. It was very important to Mr. May that the dimensions of
20 the permit were sufficient to accommodate his 34’ boat. Any reasonable person would have
21 looked at the Encroachment Permit and come to the same conclusion that we did: we were
22 granted the right to a boat garage that was an existing 30’ x 35’; no more, no less.

23 In summary, there are two legal issues for the Hearing Officer to decide:

1 **1) Does the IDL have unilateral authority to amend the dimensions of a previously**
2 **issued encroachment permit?**

3 Our position is that they do not have authority to do so, and that the application should be
4 approved.

5 **2) If the answer to the first question is yes, does the IDL have authority to limit a**
6 **rebuilt boat garage to the existing “wall-to-wall” dimensions, or can the rebuilt boat garage**
7 **be built to equal the dimensions of the existing “master float” dimensions?**

8 Our position is that there is no legal support of limiting a rebuilt boat garage to its “wall-
9 to-wall” dimensions. IDAPA 20.03.04.015.05.c clearly states: “existing permitted boat garages
10 may be maintained or replaced with the current square footage of their **existing footprint** and
11 height.” There is no distinction drawn between “wall-to-wall” dimensions and “master float”
12 dimensions. The footprint is the footprint. IDL’s procedures are not law and cannot change the
13 law as clearly set forth in IDAPA 20.03.04.015.05.c. Therefore, IDL should not be allowed to
14 limit rebuilt boat garages to the “wall-to-wall” dimensions.

15 **II. Witness List**

16 The anticipated witnesses are:

17 Marvin May
18 Managing Member
 Juniper Financial Services, LLC

19 Bob Presta
20 CE Kramer Crane and Contracting, Inc.
 Agent for Applicant

21 **III. Exhibit List**

22 The contemplated exhibits are:

1 J-1: Aerial Photo of 90 Kullyspell Drive, Hope, ID (1 page)

2 J-2: Letter from IDL dated January 14, 2025 re: Assignment of Encroachment Permit
3 L96S1673C (22 pages)

4 J-2: Email from Tyler Warner to Bob Presta dated February 25, 2025 (1 page)

5 J-3: Email from Tyler Warner to Bob Presta dated March 18, 2024 (1 page)

6 **CONCLUSION**

7 Applicant respectfully requests that the Hearing Officer recommend approval of
8 Applicant's application for an IDL encroachment permit.

9 Because the record for this matter remains open, Applicant respectfully reserves the right
10 to supplement, clarify, or modify its statements based on the availability of information.

11 DATED: May 13, 2025

12 APPLICANT
13 **Juniper Financial Services, LLC**

14 *Chris Simons*

15 _____
16 Christopher J. Simons, General Counsel
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21
22
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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of May, 2025, I caused to be served a true and correct copy of the foregoing by the following method to:

Bob Presta
CE Kramer Crane and Contracting
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Agent for Applicant

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