

# Board of County Commissioners

## Anderson – CR2022-0024

Development Services Department



### FINDINGS OF FACT, CONCLUSIONS OF LAW, & ORDER

In the matter of the application of:

#### **Anderson – CR2022-0024**

The Canyon County Board of County Commissioners consider the following:

- 1) Conditional Rezone of Parcels R36368 & R36368011 from an “A” (Agricultural) zone to a “CR-M-1” (Conditional Rezone – Light Industrial) Zone; and
- 2) Development Agreement with conditions that restrict allowed uses.

[CR2022-0024, 19372 Lower Pleasant Ridge Rd, Caldwell (R36368 & R36368011); a portion of the SE¼ of Section 23, Township 4N, Range 4W; BM; Canyon County, Idaho.]

#### **Summary of the Record**

1. The record is comprised of the following:

A. The record includes all testimony, staff reports, exhibits, and documents in Case File CR2022-0024.

- a. The Hearing Examiner heard the case on March 15, 2023, and recommended the Board approve the request subject to development agreement conditions (Exhibit 2 of the staff report).
- b. On May 30, 2023, after considering the staff’s analysis, recommendation by the Hearing Examiner, and all testimony at the public hearing, the Board found the request could not be supported and directed staff to schedule a noticed public hearing to consider the denial of the request (Exhibit 3 of the staff report). The case was scheduled to be heard on August 16, 2023, but was postponed to September 20, 2023, upon request by the applicant.
- c. A public hearing notice was completed per CCZO Section 07-05-01. Affected agencies were noticed on July 5, 2023. Newspaper notice was published on July 6, 2023, and August 10, 2023. Property owners within 600 feet of the subject property were noticed on July 5, 2023, and August 16, 2023. A notice was posted on the subject property on August 14, 2023.
- d. The following are exhibits in the staff report provided for the September 20, 2023 hearing:
  - Hearing Examiner Signed FCOs & Minutes – March 15, 2023 (Exhibit 2 of the Staff Report)
  - BOCC Minutes – May 30, 2023 (Exhibit 3 of the Staff Report)
  - Staff Report provided to the Hearing Examiner (Exhibit 4)
    - Attachment A: Draft FCO’s & Development Agreement Draft
    - Attachment B: Letter of Intent/Site Plan
    - Attachment C: Neighborhood Meeting
    - Attachment D: Land Use Worksheet
    - Attachment E. Maps
      - a. Small Air Photo
      - b. Vicinity
      - c. Zoning and Classification
      - d. Subdivision w/ Report
      - e. Cases w/ Report
      - f. Soils and Farmland w/ Report
      - g. Feedlots and Gravel Pits

- h. TAZ
- i. Future Land Use
- j. Future Land Use- Greenleaf
- k. Nitrates and Wells
- Attachment F. Agency Comments
  - a. Compass
  - b. Canyon Highway District No. 4
  - c. Caldwell Rural Fire
  - d. City of Greenleaf
- Attachment G: Neighbor Comments – Hearing Examiner
  - a. Bobbi and Daniel Kirk Letter of Opposition
  - b. Vivian Ferkin Petition of Opposition
- Attachment H: Late Exhibits – Hearing Examiner
  - a. Brad Benke Letter of Opposition
  - b. Mark and Vivian Ferkin Letter of Opposition
  - c. Max and Cindy Roberts Letter of Opposition
  - d. Tyler Slate Letter of Opposition
  - e. Dave House Letter of Opposition
  - f. Kassi Chadwick Letter of Opposition
- Comments received before the May 30<sup>th</sup> BOCC Hearing (Exhibit 5 of the staff report)
  - a. Mike and Anita Johnston Letter of Opposition
  - b. Brad Benke Letter of Opposition
  - c. Bob Weir Letter of Opposition
  - d. Eric Ludo Letter of Opposition
  - e. John and Patricia Warren Letter of Opposition
  - f. Mark and Vivian Ferkin Letter of Opposition
  - g. Max and Cindy Roberts Letter of Opposition
  - h. Vivian Ferkin Petition of Opposition
- Comments received before the September 20<sup>th</sup> hearing (Exhibit 6 of the staff report)
  - a. Opposition letter and e-mail from Brad Benke with video attachment (Semi-truck around the corner)
  - b. Support letter from Gayle Manufacturing
  - c. Support letter from Gwen Boehlke
  - d. Support Jesse Prather of Interwest Supply
  - e. Support letter and e-mail from Suzan Boyer
  - f. Opposition e-mail from Eric Ludovic
  - g. Opposition letter from Mike & Anita Johnston
  - h. Support e-mail from Bob Lamm
  - i. Support e-mail from Charles Schmidt
  - j. Support e-mail from Cheryl Schmidt
  - k. Update comment letter from the City of Greenleaf in support of the requested rezone incorrect, updated to Exhibit 9
  - l. Opposition e-mail from Dan & Kassi Chadwick
  - m. Opposition e-mail from Donna Robinson
  - n. Support letter from Drey Campbell
  - o. Support e-mail from Gene & Barbara Weaver
  - p. Support e-mail from Hannah Mamer
  - q. Opposition e-mail from Jacob Trask
  - r. Support e-mail from James Boehlke
  - s. Support letter/e-mail from Jessica Quier
  - t. Opposition letter from John & Patricia Warren
  - u. Neutral e-mail from Keri Smith on behalf of SW208 which includes drone video and two pictures
  - v. Support letter from Lynn & Denise Bittick

- w. Opposition letter from Mark & Vivian Ferkin
  - x. Support e-mail from Mark Hammer
  - y. Support letter from Phillip Andrew Knowlen
  - z. Support letter from Tarah Knowlen
  - aa. Support letter from RJ Walker
  - bb. Support e-mail from Tanya Bass
  - cc. Support letter from Jim & Kristin Crowe, Valley Finish, Inc.
  - dd. Opposition e-mail from William & Kerri Wells
- Letter and analysis from John and Sherry Anderson received on September 1, 2023 (Exhibit 7 of the staff report).

### **Applicable Law**

1. The following laws and ordinances apply to this decision: Canyon County Code §01-17 (Land Use/Land Division Hearing Procedures), Canyon County Code §07-05 (Notice, Hearing and Appeal Procedures), Canyon County Code §07-06-01 (Initiation of Proceedings), Canyon County Code §07-06-07 (Conditional Rezones), Canyon County Code §07-10-27 (Land Use Regulations (Matrix), Idaho Code §67-6511 (Zoning Map Amendments and Procedures), Canyon County Code §09-11-25 (Area of City Impact Agreement), Idaho Code §67-6519 (Application Granting Process) and Idaho Code §67-6535 (Approval or Denial of any Application to be based Upon Express Standards and to be in Writing).
  - a. The presiding party may establish conditions, stipulations, restrictions, or limitations which restrict and limit the use of the rezoned property to less than the full use allowed under the requested zone, and which impose specific property improvement and maintenance requirements upon the requested land use. Such conditions, stipulations, restrictions, or limitations may be imposed to promote the public health, safety, and welfare, or to reduce any potential damage, hazard, nuisance, or other detriment to persons or property in the vicinity to make the land use more compatible with neighboring land uses. *See* CCZO §07-06-07(1).
2. The Board has the authority to exercise powers granted to it by the Idaho Local Land Use and Planning Act (“LLUPA”) and can establish its own ordinances regarding land use. *See* I.C. §67-6504, §67-6511.
3. The Board has the authority to hear this case and make its own independent determination. *See* I.C. §67-6519, §67-6504, 67-6509 & 67-6511.
4. The Board can sustain, modify or reject the Commission’s recommendations. *See* CCZO §07-05-03.
5. The burden of persuasion is upon the applicant to prove that all criteria, including whether the proposed use is essential or desirable to the public welfare, are satisfied. CCZO §07-05-03.
6. Idaho Code §67-6535(2) requires the following: The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that explains the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record. The County’s hearing procedures adopted per Idaho Code §67-6534 require that final decisions be in the form of written findings, conclusions, and orders. CCZO 07-05-03(1)(I).

### **Conclusions of Law**

**The application, CR2022-0024, was presented at a public hearing before the Canyon County Board of County Commissioners on September 20, 2023. Having considered all the written and documentary evidence, the record, the staff report, oral testimony, and other evidence provided, including the conditions of approval and project plans, the Board of County Commissioners decides as follows:**

**1. Is the proposed conditional rezone generally consistent with the comprehensive plan?**

Conclusion: The proposed zoning map amendment is consistent with the 2020 Canyon County Comprehensive Plan.

Finding: The request is consistent with, but not limited to, the following goals and policies, of the Comprehensive Plan:

The 2020 Canyon County Comprehensive Plan Future Land Use Map designates the property as “Industrial” (Exhibit 4, Attachment E) the map is a component of the Plan.

**Chapter 1. Property Rights**

Policy 1. *No person shall be deprived of private property without due process of law.*

- The applicant applied for a conditional rezone on July 29, 2022. The request was heard by the Hearing Examiner on March 15, 2023. The request was heard by the Board of County Commissioners on May 30, 2023, and September 20, 2023.

**Chapter 2. Population**

Goal 2. *To encourage economic expansion and population growth throughout the county plus increase economic diversity for continued enhancement of our quality of life to meet citizen needs.*

- The request allows for commercial and industrial uses that will create jobs on the subject parcel (Exhibit 4, Attachment B). COMPASS (Community Planning Association) projects the request could create approximately 300 jobs (Exhibit 4, Attachment F).

**Chapter 4. Economic Development**

Goal 3. *Create new jobs that are sustainable and lasting.*

- The request allows for commercial and industrial uses that will create jobs on the subject parcel (Exhibit 4, Attachment B). COMPASS (Community Planning Association) projects the request could create approximately 300 jobs (Exhibit 4, Attachment F).

**Chapter 5. Land Use**

Goal 5. *Achieve a land use balance, which recognizes that existing agricultural uses and non-agricultural development may occur in the same area.*

Policy 1. *Review all residential, commercial and industrial development proposals to determine the land use compatibility and impact to surrounding areas.*

Policy 3. *Encourage and support commercial and industrial development and guidelines to create jobs and expand the tax base. Create commercial, residential and industrial zoning districts to help attract development.*

- The request allows for commercial and industrial uses adjacent to other similar uses and zones (Exhibit 4, Attachment E & Exhibit 7).
- The requested rezoning will allow for commercial and industrial uses subject to conditions of a development agreement that include conditions reducing potential impacts (Attachment A). The request is consistent with the 2020 Canyon County Comprehensive Plan Future Land Use Map and the City of Greenleaf’s future land use designation (Exhibit 4, Attachment E).

**2. When considering the surrounding land uses, is the proposed conditional rezone more appropriate than the current zoning designation?**

Conclusion: Based on the surrounding uses still supporting rural and agricultural uses, the property being located within an area where agricultural and industrial future land uses transition, and the request not proposing a specific use, the proposed conditional rezone is not more appropriate than the current zoning designation at this time.

Finding: The subject parcel, approximately 48.17 acres, is zoned “A” (Agricultural). Pursuant to Canyon County Zoning Ordinance (CCZO) Section 07-10-25(1) the purpose of the zone is to: *A. Promote the public health, safety, and welfare of the people of the County by encouraging the protection of viable farmland and farming operations; B. Limit urban density development to Areas of City Impact in accordance with the comprehensive plan; C. Protect fish, wildlife, and*

*recreation resources, consistent with the purposes of the "Local Land Use Planning Act", Idaho Code title 67, chapter 65; D. Protect agricultural land uses, and rangeland uses, and wildlife management areas from unreasonable adverse impacts from development; and E. Provide for the development of schools, churches, and other public and quasi-public uses consistent with the comprehensive plan.*

Properties to the south and east of the subject parcels are zoned "A" (Exhibit 4, Attachment E). Properties to the east consist of a mix of residential and farm ground use with an average lot size of 18 acres. To the south, the area consists of agricultural properties with homesteads with an average lot size of 25.6 acres that connect to larger agricultural properties. The parcel contains over 26 acres of best to moderately-suited soils with over 50% of the parcel considered prime farmland (Exhibit 4, Attachment E). The parcel is bisected by Holcomb Drain which appears to serve agricultural parcels and uses to the south.

Four properties to the west having access to Lower Pleasant Ridge Road, 16-acre average lot size, are zoned "M-1" and have been since 2006 (RZ2005-8). Although zoned "M-1", the properties still appear to maintain an agricultural setting and character. Recent uses appear to be a landscaping business which is an allowed use in the "A" Zone. Recent permits for one of the four parcels in the "M-1" zone was approved for an agricultural building (BP2023-0377, feed storage structure).

The applicant requests a conditional rezone to an "M-1" (Light Industrial) zone. Pursuant to CCZO Section 07-10-25(7), the purpose of the "M-1" zone is to *provide for and encourage the grouping together of light industrial uses capable of being operated under such standards as to location and appearance of buildings and the treatment of the land about them so that they will be unobtrusive and not detrimental to surrounding commercial or residential uses.*

Industrial zones and uses north of the subject parcel adjacent to or near Simplot Boulevard have been established for some time. This includes Gayle Manufacturing, AmeriGas Propane, Criterion Trailers, and Wilbur-Ellis Agricultural Services. However, industrial uses are not established along Lower Pleasant Ridge Road. Testimony received demonstrates the impacts due to existing industrial uses along Simplot Boulevard on property owners along Lower Pleasant Ridge Road and includes concerns about increased impacts if the request was approved potentially further impacting existing residential and agricultural uses (Exhibit 3 and Exhibits 4 - Attachment H, 5 and 6).

### **3. Is the proposed conditional rezone compatible with surrounding land uses?**

Conclusion: As conditioned by the development agreement (Attachment A), the proposed conditional rezoning is compatible with the surrounding land uses.

Finding: Industrial zones and uses north of the subject parcel adjacent to or near Simplot Boulevard have been established for some time. This includes Gayle Manufacturing, AmeriGas Propane, Criterion Trailers, and Wilbur-Ellis Agricultural Services. Within a one-mile radius, there are approximately 41 uses that are allowed in the "M-1" Zone (Exhibit 7). The majority of industrial uses are located adjacent to or near Simplot Boulevard.

### **4. Will the proposed conditional rezone negatively affect the character of the area? What measures will be implemented to mitigate impacts?**

Conclusion: As restricted by the development agreement, the proposed zoning map amendment will not negatively affect the character of the area.

Finding: The development agreement (Attachment A) limits the "M-1" zone by prohibiting the following uses: CAFO, church, theater, batch plant, bulk storage for any flammable liquid above and below ground, bulk storage for wholesale distribution of any flammable liquid above and below ground, ethanol plant, firewood sales, impound yard, mineral extraction (long term and short term), mobile or manufactured homes rehabilitation, mortuaries, cremation and funeral homes, rendering plant, sale of salvage goods, slaughterhouse, vehicle fueling station

with convenience store, and/or vehicle sales lot. The following uses will require conditional use permits: Mini-storage/RV storage and Schools (public or private).

The area along Pinto Road and Lower Pleasant Ridge Road includes active agriculture and sporadic rural residential homesites. To protect existing agricultural uses and reduce the impact on neighboring properties along the east property line along Pinto Rd, conditions of the development agreement require a 100-ft buffer measured from the road centerline. Exterior lighting shall be shielded downward and positioned to reduce off-site glare. As conditioned, the limited use and requirements within the “M-1” appear to minimize potential impacts on the character of the area.

**5. Will adequate facilities and services including sewer, water, drainage, irrigation, and utilities be provided to accommodate the proposed Conditional Rezone?**

**Conclusion:** At this time, it is unknown whether adequate facilities and services can accommodate the proposed Conditional Rezone. Although the development agreement limits the uses and requires compliance with other jurisdictions (Attachment A), adequate facilities such as connection to city water and sewer or community system, piping of existing irrigation drains, utilities, and other required facilities are unknown until a specific use is established.

**Finding:** Individual well and individual septic already exist on the subject property for the existing residence at the time of further development of the subject properties. The property is not within a nitrate priority area. The property is located within the Pioneer Irrigation District. As a condition, written permission shall be obtained from the local irrigation district and/or Bureau of Reclamation before any encroachment or modification to any existing ditch, canals, or laterals.

The City of Greenleaf does not oppose rezoning subject to a condition that the future developer/property owner work with applicable jurisdictions for sewer, water, drainage, irrigation, and other utilities. This letter does not refute the speculative nature of whether adequate facilities will suffice for any particular use when use remains unknown. Therefore, evidence demonstrating adequate facilities can be accommodated is insufficient and speculative.

**6. Does the proposed Conditional Rezone require public street improvements to provide adequate access to and from the subject property to minimize undue interference with existing or future traffic patterns? What measures have been taken to mitigate traffic impacts?**

**Conclusion:** Yes, the conditional rezone will require street improvements for access, and no mitigating measures have been implemented or proposed to address this interference with existing or future traffic patterns. Although the proposed development agreement limits the available uses and requires consistency with ITD and Highway District regulations and standards (Attachment A), without a specified use impact on local roads remains unknown.

**Finding:** The proposed development agreement (Attachment A) contains a list of non-permitted uses as well as two (2) proposed uses that could potentially be allowed through a conditional use permit. These include a mini-storage and/or RV storage facility and a school (public or private).

The Community in Motion 2050 Development checklist indicates transportation infrastructure may not be able to support new transportation demands. (Exhibit 4 Attachment F). Additional comments received from Canyon Highway District No. 4 indicate that a traffic impact study (TIS) may be required depending on the proposed use (Exhibit 4, Attachment F), however, potential impacts to the Lower Pleasant Ridge Road and Pinto Road intersection and road network remain unknown.

Testimony was presented regarding loss of farm ground, increased pollution, increased noise, and industrial traffic concerns over a negative impact to property values, and general impact on

agricultural and residential quality of life (Exhibit 3) along with comments received in opposition (Exhibits 4 - Attachment H, 5, and 6). No mitigation measures addressing this detrimental impact are contained within the proposed development agreement (Exhibit A) or within the testimony and comments received.

Without a proposed use that includes mitigation measures to address interference with existing or future traffic patterns this request for conditional rezone will increase industrial traffic on a local road and could create significant, detrimental impact to existing residential and agricultural uses in the area.

**7. Does legal access to the subject property for the Conditional Rezone exist or will it exist at the time of development?**

**Conclusion:** The property has frontage on Pinto Road and Lower Pleasant Ridge Road. The current residence on site has legal access from Lower Pleasant Ridge Road, a public road.

**Finding:** The subject property has frontage and legal access from Lower Pleasant Ridge Road, a declared collector. Future development will be required to meet all access, approach, and improvement requirements of Canyon Highway District #4.

**8. Will the proposed Conditional Rezone impact essential public services and facilities, such as schools, police, fire, and emergency medical services? What measures will be implemented to mitigate impacts?**

**Conclusion:** Yes, the proposed Conditional Rezone will impact essential public services and facilities, and no mitigating measures have been implemented or proposed to address this impact. Although the proposed development agreement limits the available uses and requires consistency with the local fire district (Attachment A), without a specified use, the impact on essential services remains unknown.

**Finding:** Pioneer Irrigation, Vallivue School District, Caldwell Rural Fire District, and Canyon County Sheriff serve the area. Caldwell Rural Fire responded with comments indicating there is currently a lack of utility access to water supply and emergency response times will be impacted due to the remote distance from nearby fire services (Exhibit 4, Attachment Fc). The Community in Motion 2050 Development checklist highlights potential negative impacts related to the lack of bus stops, public schools, and parks nearby (Exhibit 4, Attachment Fa).

Within the proposed development agreement (Attachment A) there is a list of non-permitted uses as well as two (2) proposed uses that may be allowed through a conditional use permit. These potential uses include a mini-storage and/or RV storage facility and a school (public or private), however, the proposed development agreement does not contain or suggest mitigation measures that could address the impact on essential services and facilities related to these potential uses. Although future construction, water supply, and emergency access on the site would be subject to the applicable International Fire Code at the time of construction, at this time it is unknown what these requirements will be.

Without a specific use or the inclusion of mitigating measures to address delayed emergency response time and the inability to provide access to adequate water supply, the scope of the impact to such essential public services remains unknown.

**Order**


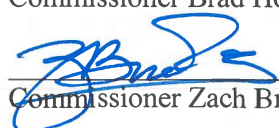
Based upon the Findings of Fact, Conclusions of Law contained herein, the Board of County Commissioners **deny** Case #CR2022-0024, a **Conditional Rezone** of parcels R36368 & R36368011, approximately 48.17 acres, from an "A" agricultural zone to a "CR-M-1" Conditional Rezone-Light Industrial.

Pursuant to Section 67-6536 of the Idaho Code, the applicant has 14 days from the date of the final decision to seek reconsideration before seeking judicial review.

DATED this 19<sup>th</sup> day of October, 2023.

CANYON COUNTY BOARD OF COMMISSIONERS

- Motion Carried Unanimously
- Motion Carried/Split Vote Below
- Motion Defeated/Split Vote Below

	Yes	No	Did Not Vote
 _____ Commissioner Leslie Van Beek	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<u>did not participate</u> _____ Commissioner Brad Holton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 _____ Commissioner Zach Brooks	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Attest: Chris Yamamoto, Clerk

By: Ross  
Deputy

Date: 10.19.23