



BOARD OF CANYON COUNTY COMMISSIONERS
FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

In the matter of the application of:
[LARSEN/RICHARDS DA#22-031 TERMINATION]
– [Case No. DA2023-0002]

The Board of Canyon County Commissioners considers the following:

Case No. DA2023-0002: A development agreement modification to terminate Development Agreement #22-031 recorded as instrument #2022-026392 and revert the zoning from a “CR-R-1” (Conditional Rezone Single Family Residential) zone to an “A” (Agricultural) zone. The request affects Parcels R37619010 (8.23ac), R37619010A (15.95 ac), and R37619010B (7.70 ac) totaling approximately 31.89 acres. The property is located at 8771 Purple Sage Road, Middleton, also referenced as a portion of the NW¼ quarter of Section 34, T5W, R2W, BM, Canyon County, Idaho.

Summary of the Record

1. The record is comprised of the following:
 - A. The record includes all testimony, the staff report, exhibits, and documents in Case File DA2023-0002
 - B. DA#22-031 was approved May 17, 2022 in conjunction with rezone applications RZ2021-0036 and CR2022-0009. (Exhibit 3 Staff Report DA2023-0002)
 - C. Ordinance #22-010 recorded as instrument #2022-026395 Directing Amendments to the Canyon County Zoning Map changing the zoning from Agricultural to Conditional Rezone Single Family Residential. (Exhibit 6 Staff Report DA2023-0002)
 - D. The Planning and Zoning Commission heard this case on October 19, 2023 and forwarded it to the Board of County Commissioners with a recommendation of approval to terminate the DA#22-031 and revert the zoning to Agricultural.

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), and Canyon County Code §09-09-15 & 17 (Area of City Impact Agreement).
 - a. Notice of the public hearing was provided per CCZO §07-05-01 and Idaho Code §67-6509. Agencies were notified on September 5, 2023, October 31, 2023. JEPA notification to the City of Middleton was provided on September 5, 2023, a full political notification was sent September 7, 2023, property owners within 600 feet were notified on September 8, 2023, November 13, 2023, and the property was posted on or before October 12, 2023 and October 31, 2023. Newspaper publication occurred September 8, 2023, October 8, 2023, and on or before November 3, 2023.
 - b. 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).

- c. All conditional rezones for land use shall commence within two (2) years of the approval of the board. If the conditional rezone has not commenced within the stated time requirement, the application for a conditional rezone shall lapse and become void. *See* CCZO §07-05-01
 - d. **CCZO 07-06-07 (5): Notice that Conditional Rezone Conditions Not Being Met:** If any person, including staff or member of the commission, files a written notice presenting sufficient evidence, as determined by the director, to establish that the rezone conditions have not been met, **or that a use approved by conditional rezoning has been abandoned or has ended**, the commission shall notice a public hearing pursuant to article 5 of this chapter, said hearing to be conducted pursuant to article 5 of this chapter. The burden of proof at such hearing shall be on the person who filed the notice. If the commission finds that the rezone conditions are not being followed or that the use approved by conditional rezoning has ended, it may recommend to the board a time schedule for compliance or **may recommend that the board order the zone to revert back to the zone from which the property was conditionally rezoned, as provided by subsection (7)l of this section.**
 - e. **A development agreement may be terminated and the zoning designation upon which the use is based reversed, upon the failure of the developer to comply with the provisions in the development agreement. The developer shall comply with the requirements set forth in the development agreement. A development agreement may be terminated only after complying with the notice and hearing provisions of Idaho Code section 67-6509. *See* CCZO §07-06-07 (7) I. 1.**
2. The commission 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, including subdivision permits. *See* I.C. §67-6504, §67-6511.
 3. The commission shall have those powers and perform those duties assigned by the board that are provided for in the local land use planning act, Idaho Code, title 67, chapter 65, and county ordinances. CCZO §07-03-01, 07-06-05.
 4. 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.
 5. 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)(1).

The application, DA2023-0002, was presented at a public hearing before the Canyon County Board of Commissioners on December 13, 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 decides as follows:

CONCLUSION: CCZO §07-06-07 (5) Provides for the applicant the opportunity to provide written notice presenting sufficient evidence that the use approved by conditional rezoning has been abandoned or ended and the commission may recommend and subsequently the board may order the zone to be reverted to the zone from which the property was conditionally rezoned.

Findings:

1. The applicants provided a written notice requesting to terminate the agreement for residential development of the properties as proposed in Case No. RZ2021-0036 CR2022-0009 and reflected in DA#22-031. The developers indicate that they are not able to complete the development as prescribed in the conditions of approval as enumerated in DA#22-031 and are requesting termination of the agreement to unencumber the subject properties and revert the zoning to Agricultural. (Exhibit 4 Staff Report DA2023-0002)
2. The applicants withdrew preliminary plat SD2022-0055 for Hidden Sage Estates Subdivision on 7/17/2023.

Conclusion: CCZO §07-06-07 (7) I. 1. Provides for a development agreement to be terminated.

Findings:

1. A development agreement may be terminated and the zoning designation upon which the use is based reversed, upon the failure of the developer to comply with the provisions in the development agreement. The developer shall comply with the requirements set forth in the development agreement. A development agreement may be terminated only after complying with the notice and hearing provisions of Idaho Code section 67-6509. See CCZO §07-06-07 (7) I. 1.
2. DA#22-031 Section 13: Zoning Reversion Consent: The execution of this Agreement shall be deemed written consent by Applicants to change the zoning of the Subject Properties to its prior designation upon failure to comply with the terms and conditions imposed by the approved conditional rezone and this Agreement. No reversion shall take place until after a hearing on this matter pursuant to Idaho Code §67-6511A. Upon notice and hearing, as provided in this Agreement and in Idaho Code §67-6509, if the properties described in attached EXHIBIT "A" are not used as approved, or if the approved use ends or is abandoned, the Board of County Commissioners may order that the property will revert to the zoning designation (and land uses allowed by that zoning designation) existing immediately prior to the rezone action, i.e., the Subject Properties conditionally rezoned from "A" (Agricultural) Zone designation to "CR-R-1" (Conditional Rezone - Single Family Residential) Zone designation shall revert back to the "A" (Agricultural) Zone designation.
3. The developers indicate in writing that they cannot comply with the conditions of the development and will not complete the project as planned. They are requesting termination of the agreement and reversion of the properties to an Agricultural zoning designation. (Exhibit 4 Staff Report DA2023-0002)

Canyon County Code 09-09-15 & 17 (Area of City Impact Agreement) - AREA OF CITY IMPACT AGREEMENT ORDINANCE

Conclusion: The property is located within the Middleton Area of City Impact. A notice was sent to the City of Middleton per Canyon County Code Section 09-09-17.

- Findings:**
- (1) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. DA2023-0002.
 - (2) The city of Middleton responded with no comments or concerns on the DA termination and zoning reversion.

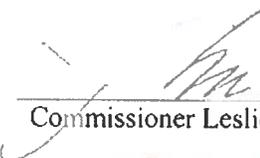
Order

Based upon the Findings of Fact, Conclusions of Law and Order contained herein, the Board **approves** Case # DA2023-0002, a request to terminate Development Agreement #22-031 between the parties (David and Cami Larsen and the Estate of Terry Richards) and Canyon County and orders that the zoning of the properties be reverted from "CR-R-1" to the original zone of "A" (Agricultural).

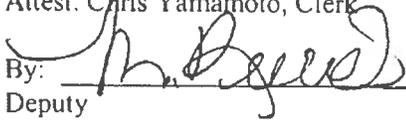
This decision is final. Pursuant to Idaho Code Section 67-6535(b), the applicant or affected person may first seek reconsideration within 14 days prior to seeking judicial review.

APPROVED this 13 day of December, 2023.

**BOARD OF COUNTY COMMISSIONERS
CANYON COUNTY, IDAHO**

	Yes	No	Did Not Vote
 Commissioner Leslie Van Beek			
 Commissioner Brad Holton	X		
 Commissioner Zach Brooks	X		

Attest: Chris Yamamoto, Clerk

By: 
Deputy

Date: 12-13-23

2023-039613

RECORDED

12/14/2023 03:00 PM



00789470202300396130060064

CHRIS YAMAMOTO

CANYON COUNTY RECORDER

Pgs=5 MBROWN

NO FEE

ORDINANCE

CANYON COUNTY



**Canyon County
Recorder's Office
Document
Cover Sheet**



ORDINANCE NO. 23011

ORDINANCE DIRECTING AMENDMENTS TO THE
CANYON COUNTY ZONING MAP
(Richards/Larsen DA#22031 Termination-DA2023-0002)

An ordinance of Canyon County, Idaho directing amendments to the Canyon County Zoning Map (Ordinance No. 12-021); providing for title, structure, purpose and authority clauses; rezone; severability; and an effective date.

Be It Ordained by the Board of County Commissioners of Canyon County, Idaho:

SECTION 1. TITLE.

This Ordinance shall be known as the "Ordinance Directing Amendments to Canyon County Zoning Map (for approximately 31.89 acres; Parcels R37619010, R37619010A, & R37619010B).

SECTION 2. STRUCTURE.

Titles and subtitles of this Ordinance are only used for organization and structure and the language in each paragraph of this Ordinance should control with regard to determining the legislative intent and meaning of the Board of County Commissioners.

SECTION 3. PURPOSE.

The purpose of this Ordinance is to authorize the rezone (reversion of zoning) of the property described in Section 5 of this Ordinance from "CR-R-1" (Conditional Rezone - Single Family Residential) to "A" (Agricultural). The purpose of this Ordinance also authorizes amendments to the Official Maps of Canyon County to reflect the rezone authorized by this Ordinance.

SECTION 4. AUTHORITY.

This Ordinance amending the Official Zoning Maps of Canyon County (is enacted pursuant to the authority conferred by Canyon County Zoning Ordinance 7, Chapter 7, Article 6; and Idaho Code § 67-6511, 67-6511A, 31-714, 31-801 and 31-828.

SECTION 5. REZONE.

The subject property shall be and is rezoned from "CR-R-1" (Conditional Rezone - Single Family Residential) to "A" (Agricultural), as specifically identified and described on the attached Exhibit "A", pursuant to the Findings of Fact, Conclusions of Law and Order issued on *December 13, 2023* by the Board of Canyon County Commissioners as authorized by Canyon County Zoning Ordinance, Chapter 7, Article 6; the Idaho Constitution; and Idaho Code § 67-6511, 67-6511A.

SECTION 6. SEVERABILITY CLAUSE.

Should any provision of this Ordinance be declared by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of this Ordinance in whole or in part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 7. EFFECTIVE DATE.

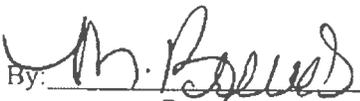
This Ordinance shall be in full force and effect on Dec 21, 2023.

ADOPTED AND APPROVED this 13 day of Dec, 2023.

BOARD OF COUNTY COMMISSIONERS
CANYON COUNTY, IDAHO

	Yes	No	Did Not Vote
 Commissioner Leslie Van Beek	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Commissioner Brad Holton	<input checked="" 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: 
Deputy

Date: 12-13-23



Publication Date: 12-21, 2023, Idaho Press-Tribune

EXHIBIT "A"

Parcel R37619010A

A parcel of land lying in the East Half of the Northwest Quarter of Section 34, Township 5 North, Range 2 West, Boise Meridian, Canyon County, Idaho, more particularly described as follows

COMMENCING at the section corner common to Sections 27, 28, 33 and 34, Township 5 North, Range 2 West, Boise Meridian; thence

North 89°34'39" East 1311.82 feet along the North line of the Northwest Quarter of the Northwest Quarter of Section 34 to the Northwest corner of the Northeast Quarter of the Northwest Quarter, the REAL POINT OF BEGINNING of this description, thence continuing

North 89°34'19" East 50.00 feet along the North line of the Northeast Quarter of the Northwest Quarter to a point; thence

South 00°13'33" East 1768.04 feet to a point; thence

South 87°49'18" East 359.65 feet to a point; thence

North 82°14'17" East 86.56 feet to a point; thence

North 64°40'47" East 90.58 feet to a point; thence

North 51°35'12" East 192.80 feet to a point; thence

South 00°22'12" East 1026.37 feet parallel with the East line of the Southeast Quarter of the Northwest Quarter to a point on the South line of the Southeast Quarter of the Northwest Quarter, thence

South 89°42'35" West 731.30 feet along the South line of the Southeast Quarter of the Northwest Quarter to the Southwest corner of the Southeast Quarter of the Northwest Quarter; thence

North 00°16'52" West 1320.93 feet along the West line of the Southeast Quarter of the Northwest Quarter to the Northwest corner of the Southeast Quarter of the Northwest Quarter; thence

North 00°10'15" West 1320.25 feet along the West line of the Northeast Quarter of the Northwest Quarter to the REAL POINT OF BEGINNING of this description.

EXCEPTING THEREFROM the following parcel:

A parcel of land being a portion of a certain Parcel 1 as shown on Record of Survey, Instrument No. 200314337, records of Canyon County, Idaho, located in the East Half of the Northwest Quarter of Section 34, Township 5 North, Range 2 West, Boise Meridian, Canyon County, Idaho more particularly described as follows.

COMMENCING at an aluminum cap monumenting the Northwest corner of Section 34, Township 5 North, Range 2 West, Boise Meridian, Canyon County, Idaho; thence

North 89°34'39" East 1311.82 feet along the Northerly boundary line of said Section 34 to a 5/8" iron pin monumenting the Northwest corner of the Northeast Quarter of the Northwest Quarter (West 1/16th corner) of said Section 34; thence leaving said Northerly boundary line

South 00°10'15" East 1320.25 feet along the Westerly boundary line of the East Half of the Northwest Quarter of Section 34 to a brass cap monumenting the Southwest corner of the Northeast Quarter of the Northwest Quarter (Northwest 1/16th corner) of said Section 34; thence continuing along said Westerly boundary line

South 00°16'52" East 884.91 feet to a set 5/8" iron pin, the REAL POINT OF BEGINNING thence leaving said Westerly boundary line

North 89°42'35" East 150.00 feet to a set 5/8" iron pin; thence

South 00°16'52" East 291.00 feet to a set 5/8" iron pin, thence

South 89°42'35" West 150.00 feet to a set 5/8" iron pin on the Westerly boundary line of the East Half of the Northwest Quarter of Section 34; thence

North 00°16'52" West 291.00 feet along said Westerly boundary line to the REAL POINT OF BEGINNING.

Parcel R37619010

Parcel A, commencing at the Center Quarter corner of Section 34, Township 5 North, Range 2 West of the Boise Meridian, Canyon County, Idaho and running thence North 00° 19' 16" West 957.31 feet along the Center North-South line of said Section to the Point of Beginning; thence South 49° 01' 44" West 231.58 feet; thence South 13° 57' 42" West 377.93 feet; thence South 75° 23' 20" West 222.21 feet; South 38° 26' 35" West 162.95 feet; thence North 00° 19' 16" West 768.88 feet; thence North 51° 39' 08" East 7.32 feet; thence North 43° 35' 39" East 148.76 feet; thence North 57° 12' 13" East 101.16 feet; thence North 74° 38' 27" East 89.84 feet; thence North 89° 27' 25" East 305.24 feet to a point on the Center North-South line of said Section; thence South 00° 19' 16" East 260.35 feet to the point of beginning.

Parcel R37619010B

TRACT II:

PART OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 34, TOWNSHIP 5 NORTH, RANGE 2 WEST OF THE BOISE MERIDIAN, CANYON COUNTY, IDAHO DESCRIBED AS:

BEGINNING AT THE CENTRE QUARTER CORNER OF SECTION 34, TOWNSHIP 5 NORTH, RANGE 2 WEST OF THE BOISE MERIDIAN, CANYON COUNTY, IDAHO AND RUNNING THENCE

SOUTH 89°45'32" WEST 30.00 FEET ALONG THE CENTRE EAST-WEST LINE OF SAID SECTION TO A NON-TANGENT CURVE; THENCE

SOUTHEASTERLY 47.19 FEET ALONG SAID CURVE TO THE LEFT (CURVE DATA RADIUS = 30.00', DELTA = 90°07'40", CHORD BEARING AND DISTANCE = SOUTH 45°18'07" EAST 42.47 FEET) TO A POINT ON THE CENTRE NORTH-SOUTH LINE OF SAID SECTION; THENCE

NORTH 00°21'57" WEST 30.00 FEET ALONG SAID CENTRE NORTH-SOUTH LINE TO THE POINT OF BEGINNING.

Parcel ID: R37619010B0
