



HEARING EXAMINER
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In the matter of the application of:

[Mowry] – [Case CU2022-0042]

The Canyon County Hearing Examiner considers the following:

- 1) Conditional Use Permit request for a commercial equestrian arena-facility for training, boarding, and facility related events.

[Case CU2022-0042, 12671 Lizard Butte Ln Marsing, ID (Parcel Number R33590012D), a portion of the NE¼ of Section 34, T3N, R4W, 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 CU2022-0042.

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 §07-07 (Conditional Use Permits), Canyon County Code §07-02-03 (Definitions), Canyon County Code §07-10-27 (Land Use Regulations (Matrix)), Canyon County Code §07-14 (Use Standards), Idaho Code §67-6512 (Special Use Permits, Conditions, and Procedures).
 - a. Notice of the public hearing was provided pursuant to CCZO §07-05-01, Idaho Code §67-6509 and 67-6512.
 - b. A special use permit may be granted to an applicant if the proposed use is conditionally permitted by the terms of the ordinance, subject to conditions pursuant to specific provisions of the ordinance, subject to the ability of political subdivisions, including school districts, to provide services for the proposed use, and when it is not in conflict with the plan. Idaho Code §67-6512.
 - c. Every use which requires the granting of a conditional use permit is declared to possess characteristics which require review and appraisal by the commission to determine whether or not the use would cause any damage, hazard, nuisance or other detriment to persons or property in the vicinity. *See* CCZO §07-07-01.
 - d. Upon the granting of a special use permit, conditions may be attached to a special use permit including, but not limited to, those: (1) Minimizing adverse impact on other development; (2) Controlling the sequence and timing of development; (3) Controlling the duration of development; (4) Assuring that development is maintained properly; (5) Designating the exact location and nature of development;(6) Requiring the provision for on-site or off-site public facilities or services; (7) Requiring more restrictive standards than those generally required in an ordinance; (8) Requiring mitigation of effects of the proposed development upon service delivery by any political subdivision, including school districts, providing services within the planning jurisdiction. *See* Idaho Code §67-6512, CCZO §07-07-17, and 07-07-19.
2. 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, 07-07-01. **Or** Any hearing examiner appointed by the board shall perform such duties as assigned by the board pursuant to Idaho Code section 67-6520. *See* CCZO §07-03-07.

3. There are no mandates in the Local Planning Act as to when conditional permits may or may not be granted, aside from non-compliance with the community master plan. I.C. § 67-6512. Chambers v. Kootenai Cnty. Bd. of Comm'rs, 125 Idaho 115, 117, 867 P.2d 989, 991 (1994).
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.
6. 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).

The application (CU2022-0042) was presented at a public hearing before the Canyon County Hearing Examiner on 4/19/23. 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 Hearing Examiner decides as follows:

CONDITIONAL USE PERMIT HEARING CRITERIA – CCZO §07-07-05

1. Is the proposed use permitted in the zone by conditional use permit?

Conclusion: The proposed commercial arena is permitted in the zone by conditional use permit.

- Findings:**
- (1) Canyon County Zoning Ordinance (CCZO) §07-10-27 allows arena (Commercial) in “A” Zoning district subject to an approved Conditional Use Permit.
 - (2) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0042.
 - (3) Evidence includes associated findings and evidence supported within this document.

2. What is the nature of the request?

Conclusion: The applicant Alan Mowry, is requesting a commercial arena facility (equestrian) within an “A” (Agricultural) zone. The proposed facility will be located on approximately eight (8) acres of the 15 acre parcel (R33590012D) owned by the applicant. The property is served by a private road, Lizard Butte Lane, and takes access to Sunny Slope Road (public) approximately 350 feet east of the Marsing Bridge. The letter of intent and site plan (Attachment 5) indicates that facility uses include boarding, training, Clinics, and facility-related events. The applicant is proposing 24 indoor stalls, outdoor stalls (12-16), pastures, and horse trailer/passenger vehicle parking. The primary use of the facility will be boarding and training of personal and client horses. Public events such as 4-H clinics, riding activities, small charity events, and other customary facility events are requested and will be secondary to the primary use. The facility will be open for typical client and scheduled public events from 6:00 a.m. to 10:00 p.m. daily. Riding, training, and care of the animals and facility may exceed those typical hours as is reasonably customary for an animal facility.

- Findings:**
- (1) This use meets the requirements for the allowed use of small animal facility on 5 acres or more.
 - (2) As proposed there will not be more than 120 head of livestock on the property at any one time.
 - (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0042.
 - (4) Evidence includes associated findings and evidence supported within this document.

3. Is the proposed use consistent with the comprehensive plan?

Conclusion: The proposed commercial arena is consistent with the components, goals, and policies of the Comprehensive Plan. The primary use is consistent with agricultural uses for livestock and private use of land. The additional use for small events and facility related activities is supported by the goals and policies listed as well.

- Findings:**
1. Property Rights Policy No. 1: “No person shall be deprived of private property without due process of law.”
 2. Property Rights Policy No. 9: “Property owners shall be responsible for maintaining their property in the best possible condition as circumstances allow.”
 3. Property Rights Policy No. 11: “Property owners shall not use their property in a manner that negatively impacts upon the surrounding neighbors or neighborhoods.”
 4. Land Use Goal No. 5: “Achieve a land use balance, which recognizes that existing agricultural uses and non-agricultural development may occur in the same area.”
 5. Land Use Policy No. 1: “Review all residential, commercial and industrial development proposals to determine the land use compatibility and impact to surrounding areas.”
 6. Land Use Policy No. 2: “Consider the use of voluntary mechanisms for the protection of agricultural land.”
 7. Land Use Policy No. 11: “Coordinate planning and development with applicable highway district and health officials.”
 8. Agricultural Goal No. 2: “Support and encourage the agricultural use of agricultural lands.”
 9. Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0042.
 10. Evidence includes associated findings and evidence supported within this document.

4. Will the proposed use be injurious to other property in the immediate vicinity and/or negatively change the essential character of the area?

Conclusion: The proposed commercial arena as conditioned will not be injurious to other property in the immediate vicinity and will not negatively change the essential character of the area.

- Findings:**
- (1) No evidence has been provided that the proposed use would be injurious to other property in the vicinity nor will it negatively change the essential character of the area. To minimize potential impacts to existing and future uses in the area, conditions of approval are included.
 - (2) There are three homes owned by the property owner and one additional home located within approx. 500 ft from the new indoor arena. There are no other residential properties in the vicinity.
 - (3) The proposed uses are customary equine facility uses. Staff has not received opposing comments from any adjacent property owners.
 - (4) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on February 16, 2023. Newspaper notice was published on March 9, 2023. Property owners within 600’ were notified by mail on March 9, 2023. Full political notice was provided on February 16, 2023. The property was posted on March 16, 2023.
 - (5) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0042.
 - (6) Evidence includes associated findings and evidence supported within this document.

5. Will adequate water, sewer, irrigation, drainage and stormwater drainage facilities, and utility systems be provided to accommodate the use?

Conclusion: Adequate facilities for sewer, irrigation, drainage and storm water drainage facilities, and utility systems exist or will exist prior to the completion of the improvements on the property and will not be impacted by the use.

- Findings:**
- (1) Parcel R33590012D is currently serviced by well and septic for the existing dwelling. The applicant will be required to meet Southwest District Health & Idaho Division of Water Resources requirements prior to any related building permits for the proposed use on parcel R33590012D. Solid waste will be disposed in a manner consistent with local sanitation and landfill requirements.
 - (2) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on February 16, 2023.
 - (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0042.
 - (4) Evidence includes associated findings and evidence supported within this document.

6. Does legal access to the subject property for the development exist or will it exist at the time of development?

Conclusion: Access currently exists to the subject parcels from Lizard Butte Ln, a private road, with a 28' easement, serving 3 residences and 5 parcels according to the joint use access and maintenance agreement (instrument #2019-010004).

- Findings:**
- (1) ITD submitted comments stating they do not require a traffic impact study for the application but will require submittal of a new ITD Right-of Way Encroachment Application (Attachment B).
 - (2) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on February 16, 2023.
 - (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0042.
 - (4) Evidence includes associated findings and evidence supported within this document.

7. Will there be undue interference with existing or future traffic patterns?

Conclusion: There will not be undue interference with existing or future traffic patterns with required ITD approach mitigations.

- Findings:**
- (1) Idaho Transportation Department commented on the application and is not requiring a traffic impact study at this time. Traffic mitigation will be assessed at time of approach permit.
 - (2) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on February 16, 2023.
 - (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0042.
 - (4) Evidence includes associated findings and evidence supported within this document.

8. Will essential services be provided to accommodate the use including, but not limited to, school facilities, police and fire protection, emergency medical services, irrigation facilities, and will the services be negatively impacted by such use or require additional public funding in order to meet the needs created by the requested use?

Conclusion: Essential services will be provided and this application will not negatively impact existing services or require additional public funding.

- Findings:**
- (1) Marsing School District, Canyon County Sheriff, Marsing Fire Protection Department and Canyon County Ambulance were notified of the request and did not provide responses to indicate that the proposed use would have a negative impact. Therefore, the proposed use will not impact essential public services and facilities. No measures are proposed to mitigate impacts.
 - (2) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on February 16, 2023.
 - (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0042.
 - (4) Evidence includes associated findings and evidence supported within this document.

Order

Based upon the Findings of Fact, Conclusions of Law and Order contained herein, the Hearing Examiner **approves** Case CU2022-0042, a conditional use permit for a commercial equine arena for training, boarding, and facility related events on R33590012D subject to conditions (Attachment 1).

DATED this 19 day of April, 2023.



**HEARING EXAMINER
CANYON COUNTY, IDAHO**

Bruce Eggleston
Bruce Eggleston, Hearing Examiner;

State of Idaho)

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County of Canyon County)

On this 19th day of April, in the year 2023, before me Bonnie Puleo, a notary public, personally appeared Bruce Eggleston, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he (she) executed the same.

Notary: Bonnie C. Puleo
My Commission Expires: 12/10/2027

Attachment 1

Conditions of Approval

1. The development shall comply with all applicable federal, state, and county laws, ordinances, rules, and regulations that pertain to the subject property and the proposed use.
2. The applicant shall comply with applicable Marsing Fire District requirements.
3. The applicant shall comply with applicable Golden Gate Highway District requirements.
4. The applicant shall comply with applicable Idaho Transportation Department access requirements.
5. Prior to commencement of use, evidence shall be provided demonstrating a permit was approved by Canyon County Building Department, Southwest District Health, Idaho Division of Water Resources, Idaho Transportation Department, and Marsing Fire District. Any improvements shall be installed prior to certificate of occupancy.
6. All exterior light fixtures will be downward facing and shielded to reduce off-site glare to ensure light pollution is minimized.
7. Before the commencement of use, all parking spaces shall meet all applicable off-street parking requirements (CCZO 07-13-01 and 07-13-03).
8. Properties are subject to IDAPA Section 02-04.30 subchapter C & D odor management and stockpiling of agriculture waste (Rules Governing odor management and the Stock Piling of Agricultural Waste).
9. Animal Waste Storage shall be located on the east of the property away from the drain and neighboring residence.
10. The development shall comply with the Odor, Waste, Dust and Pest best management practices in compliance with Idaho Department of Environmental Quality (DEQ) and Idaho State Department of Agriculture (IDA) requirements.
11. Signage shall comply with §07-10-13 of the Canyon County Zoning Ordinance.
12. The hours of event operation shall be 6 a.m. to 10 p.m. Monday through Sunday, as proposed in the applicant's letter of intent (Attachment 5).
 - a. Hours and days does not include 24/7 care for horses boarded at the facility.
13. The facility shall be used as proposed for boarding, training, clinics, small events proportionate to parking and facility availability not to exceed 40 visiting vehicles, consistent with an arena facility.
14. Any activity outside of boarding, training, clinics, or events consistent with an arena facility related activity shall apply for a quasi-public use (temporary) with Development Services Department.
15. Fencing on the property shall be maintained and regularly repaired. Weeds shall be maintained to not become a public nuisance per Chapter 2, Article 1 of the Canyon County Code.
16. Dust shall be controlled per applicable federal, state, and county laws, ordinances, rules, and regulations that pertain to operations including but not limited to nuisance regulations (CCCO Chapter 2 Article 1: Public Nuisances).
17. This conditional use permit must follow land use time limitation as stated in CCZO 07-07-23: "When a conditional use permit is granted, the land use or construction of its facility proposed in the application must have commenced within three (3) years of the date of the final decision by the presiding party or a court of appropriate jurisdiction. The improvements for the approved use must be completed within five (5) years of the same date.
18. Applicant must meet with Southwest District Health and Idaho Department of Environmental Quality to obtain all appropriate permits before the commencement of use.
19. Any development that takes place within the Floodplain will be required to meet Floodplain Development requirements per (CCCO Chapter 7 Article 10A: Flood Hazard Overlay Zone).
20. Approval of CU2022-0042, shall be for the property owner, Gyro Engineering Corp, and shall terminate upon sale/transfer of ownership of the property.
21. Living quarter horse trailer hook ups shall be located on the south of the property and shall not exceed five (5) hookups. Hookups are for water and electricity only. The use of the hookups shall be for temporary use and guests shall not stay longer than five (5) consecutive days/nights at a time.