



BOARD OF COUNTY COMMISSIONERS
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In the matter of the application of:

Kelley – CR2022-0033

The Canyon County Planning and Zoning Commission considers the following:

1. Conditional rezone of parcel R38194010A from an “A” (Agricultural) zone to a “CR-R-1” (Conditional Rezone – Single Family Residential).
 - a. The request includes a development agreement limiting development to three (3) buildable lots.
[Case CR2022-0033, 24720 Harvey Road, Caldwell, portion of the NW¼ of Section 35, T5N, R3W, B-M 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 CR2022-0033.

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 (Area of City Impact Agreement).
 - a. Notice of the public hearing was provided per CCZO §07-05-01 and Idaho Code §67-6509.
 - 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).
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 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)(I).

The application, CR2022-0033, was presented at a public hearing before the Canyon County Board of County Commissioners on April 23, 2024. 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:

CONDITIONAL REZONE CRITERIA – CCZO §07-06-07(6)

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

Conclusion: As conditioned by the development agreement, the conditional rezone is generally consistent with the 2020 Comprehensive Plan.

- Findings:**
- (1) The application was submitted at the time the 2020 Canyon County Comprehensive Plan was in effect. The future land use plan designation is residential (Exhibit 3c, Staff Report). The 2030 Comprehensive Plan also designates the parcel as ‘residential’ (Exhibit 3d, Staff Report).
 - (2) The request generally aligns with the following goals and policies of the 2020 Canyon County Comprehensive Plan.
 - Private Property Rights Policy 1: *“No person shall be deprived of private property without due process of law.”*
 - o The conditional rezoning application was submitted on November 29, 2022. The application requires all public hearings to comply with Idaho Code Section 69-6511 & 69-6511A and CCZO Chapter 7, Articles 5 and 6.
 - Population Policy 2: *“Encourage future high-density development to locate within incorporated cities and/or areas of city impact.”*
 - o The request is located within the Middleton Area of City Impact (Exhibit 3d, Staff Report).
 - Population Policy 3: *“Encourage future population to locate in areas that are conducive for residential living and that do not pose an incompatible land use to other land uses.”*
 - o See the findings for Criteria 2, 3 & 4 for evidence.
 - Land Use Policy 2: *“Encourage orderly development of subdivisions and individual land parcels, and require development agreements when appropriate.”*
 - o The request will allow the development of a three-lot subdivision conditioned by a development agreement (Attachment A). See Criteria 2, 3 & 4 for evidence.
 - Land Use – Residential Policy 2: *“Encourage residential development in areas where agricultural uses are not viable.”*
 - o See the findings for Criteria 2 for evidence.
 - Natural Resources – Agricultural Land Policy 2: *“Development should not be allowed to disrupt or destroy irrigation canals, ditches, laterals and associated rights-of-way. This does not apply to privately owned, self-contained systems.”*
 - o See Attachment A for conditions of the development agreement and the findings for Criteria 4 & 5 for evidence.
 - Natural Resources – Agricultural Land Policy 3: *“Protect agricultural activities from land use conflicts or undue interference created by existing or proposed residential, commercial or industrial development.”*
 - o See the findings for Criteria 2, 3 & 4 for evidence.
 - Hazardous Areas – Goal 1: *“To ensure the safety of residents and the protection of property.”*
 - o The request is not located in a floodplain, hillside, or unstable or hazardous location (Exhibit 3, Staff Report).

- Public Services, Facilities, and Utilities Policy 2: “Encourage the establishment of expanded sewer infrastructure and wastewater treatment in areas of city impact.”
 - o See findings and evidence in the section titled Canyon County Code §09-09-15 - MIDDLETON AREA OF CITY IMPACT AGREEMENT ORDINANCE.
- Public Services, Facilities, and Utilities Policy 3: “Encourage the establishment of new development to be located within the boundaries of a rural fire protection district.”
 - o The request is located within the jurisdiction of Middleton Rural Fire District.
- Transportation Policy 20: “Work with highway districts, ITD, cities, and others to reserve rights-of-way for planned transportation facilities.”
 - o See the findings in Criteria 6 for evidence.
- Special Areas, Sites, and Recreation Goal 1: “To encourage the preservation of recreational, historical, archeological, and architectural landmark areas of the county for the beneficial use of future generations.”
 - o The request is not located near a special area, historic site, or recreational area.
- Housing Policy 1: “Encourage a variety of housing choices that meet the needs of families, various age groups, and incomes.”
 - o The request will allow the 4.12-acre parcel to be divided into a total of three lots for residential development (Attachment A).
- Housing Policy 2: “Limit housing in areas that are hazardous whenever possible. Such constraints or hazards include but are not limited to, the following: - Flood Hazards, - Unstable soil and/or geologic, - Contaminated groundwater.”
 - o The request is not located in a floodplain, hillside, or unstable or hazardous location (Exhibit 3, Staff Report).
- Agriculture Policy 3: “Protect agricultural operations and facilities from land use conflicts or undue interference created by existing or proposed residential, commercial or industrial development.”
 - o See the findings in Criteria 2, 3 & 4 for evidence.
- Agriculture Policy 4: “Development shall not be allowed to disrupt or destroy irrigation canals, ditches, laterals, drains, and associated irrigation works and rights-of-way.”
 - o See Attachment A for conditions of the development agreement.

(3) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CR2022-0033.

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

Conclusion: Based on the location of the parcel near other similar subdivisions and zones, the request to “CR-R-1” is more appropriate.

Findings:

- (1) The parcel is zoned “A” (Agricultural; Exhibit 3f, Staff Report). The future land use plan designation within the Canyon County Comprehensive Plan is residential (Exhibit 3c & 3d, Staff Report). The property is located in the Middleton Area of City Impact where they designated the future land use as residential (Exhibit 3e, Staff Report).
- (2) The parcel consists of Class III, moderately-suited soils, and is considered prime farmland (Exhibit 3i, Staff Report). The parcel is surrounded immediately by residential parcels to the north, Drake Subdivision to the south, Eagles Nest Estates Subdivision and rural sized parcels to the west, and a future subdivision, Green Hills Landing Subdivision, to the east. The parcel is less than five acres and does not have a bona fide agricultural operation; and therefore, it does not qualify for an agricultural tax exemption (Idaho Code 63-604). Canyon Soils

Conservation District has no comment or concern regarding the request (Exhibit 4d, Staff Report).

- (3) There are no productive agricultural uses near the parcel. Productive agricultural uses are predominant north of Purple Sage Road (Exhibit 3a, Staff Report). The property is not located near any gravel pits but is within one mile of three feedlots and over one mile from two dairies (Exhibit 3j, Staff Report). The nearest feedlot, Rising Star Cattle, is located north of Purple Sage Road approximately 1,400 feet northeast of the subject parcel
- (4) *See additional evidence in the findings for Criteria 3 & 4.*
- (5) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CR2022-0033.

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

Conclusion: The request is compatible with existing uses found in the area.

- Findings:**
- (1) The north boundary of the parcel abuts three parcels, R38194010, R38194010B, and R38194010C, that were created via conditional rezone in 2022 (CR2022-0026) and divided into three parcels in 2023 (AD2023-0034). The south boundary line abuts parcels created by Drake Subdivision in 1973 with 41 lots with a 0.98-acre average lot size (Exhibit 3h, Staff Report). The east boundary abuts a large 57.4-acre agricultural parcel conditionally rezoned to “CR-R-1” in 2018 (RZ2018-0021). The preliminary plat for Green Hills Landing Subdivision was approved in 2020 with 40 lots and a 1.44-acre average lot size (SD2018-0019). The west boundary abuts Harvey Road, a public road. East of Harvey Road are residential parcels and subdivisions, Eagles Nest Estates, approved in 1998 with 11 lots and a 3.24-acre average lot size.
 - (2) Per Exhibit 3g of the Staff Report, approximately 1,300 feet west of the subject parcel is a large parcel rezoned “CR-R-1” (CR2019-0008), and subsequently Spring Hills Ranch Subdivision was approved in 2022 with 28 lots with a 1.36-acre average lot size (SD2021-0044). Approximately 2,000 feet east and 750 feet southeast are two large parcels rezoned to “R-R” (Rural Residential) in 2007 (RZ2006-10). A 40-acre portion approximately 2,000 feet east received preliminary plat approval for 18 lots with a 2.15-acre average lot size (Ridgeland Estates Subdivision, SD2020-0036).
 - (3) Within a one-mile radius, there are 36 subdivisions with an average lot size of 1.62 acres and four approved preliminary plats with a 1.68-acre average lot size (Exhibit 3h, Staff Report).
 - (4) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CR2022-0033.

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

Conclusion: The request will not negatively impact the character of the area.

- Findings:**
- (1) The request will be similar to the recent development immediately north of the subject parcel. The north boundary of the parcel abuts three parcels, R38194010, R38194010B, and R38194010C, that were created via conditional rezone in 2022 (CR2022-0026) and divided into three parcels in 2023. The subject parcel currently has a dwelling. The request allowed two more dwellings on a total of three residential lots. The division to create those lots requires platting. The development agreement (Attachment A) restricts the rezone to only three lots.
 - (2) The development agreement (Attachment A) includes conditions regarding no secondary dwellings, private road access, and irrigation to ensure the development reduces potential impacts to the area to a level less than significant. *See the findings for Criteria 5-8 and City Impact Agreement findings for evidence.*

- (3) Notice of the public hearing was provided per CCZO §07-05-01. Property owners within 600' of the subject parcel were notified on December 20, 2023 and March 12, 2024. A newspaper notice was published on December 22, 2023 and March 14, 2024. A notice was posted on the property on December 29, 2023 and March 19, 2024.
 - a. No comments from the public were received.
- (4) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CR2022-0033.

5. Will adequate facilities and services including sewer, water, drainage, irrigation and utilities be provided to accommodate proposed conditional rezone?

Conclusion: Subject to conditions of the development agreement (Attachment A), the proposal can ensure adequate facilities can be provided before signing of the final plat.

Findings:

- (1) The parcel is currently served by a septic and well (Exhibit 2a, Staff Report). Future lots will be served by individual wells and septic. The parcel is located within a nitrate priority area (Exhibit 3I). A Nitrogen Pathogen (NP) Study will be required by Southwest District Health at the time of platting. No comments were received from Southwest District Health.
- (2) Powerline bisects the property that can serve the request (Exhibit 5). The plat requires utility easements and easements where existing utilities exist and cannot be moved (CCZO Section 07-17-09(1)D&E). No comments were received from ID Power or Intermountain Gas.
- (3) The property is currently served by an irrigation well with rights to one inch per acre a year (Exhibit 2c, Staff Report). The well appears to be located on parcel R38194010A, outside of the subdivision, which crossed the CE10.2-5.1 Lateral to serve the request (Exhibit 2b, Staff Report).
- (4) Notice of the public hearing was provided per CCZO §07-05-01. Full political notice was sent on December 20, 2023. Affected agencies were noticed on October 2, 2023, December 20, 2023 (Planning and Zoning Commission), and March 12, 2024.
 - a. Black Canyon Irrigation District (BCID) identifies concerns regarding the irrigation serving the request (Exhibit 4e, Staff Report). BCID finds the property has surface water rights via Drake Subdivision. BCID requests the applicant to work with Drake Subdivision HOA to address the issue.
 - i. Per ID CODE 67-6537(1) *"The intent of this section is to encourage the use of surface water for irrigation. All applicants proposing to make land use changes shall be required to use surface water, where reasonably available, as the primary water source for irrigation. Surface water shall be deemed reasonably available if:*
 1. A surface water right is, or reasonably can be made, appurtenant to the land;
 2. The land is entitled to the distribution of surface water from an irrigation district, canal company, ditch users association, or other irrigation delivery entity, and the entity's distribution system is capable of delivering the water to the land; or
 3. An irrigation district, canal company, or other irrigation delivery entity has sufficient available surface water rights to apportion or allocate to the land and has a distribution system capable of delivering the water to the land."
 - b. The groundwater well to be used for irrigation crosses the lateral and is located within the district easements. The applicant requires a license/crossing agreement approval from BCID. BCID recommends their concerns be conditions of the development agreement so they are addressed during platting.

As a condition of the development agreement (Attachment A), the plat shall demonstrate compliance with Idaho Code 67-6537(1) and the comments letter from Black Canyon Irrigation District before approval of the preliminary plat.

(5) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CR2022-0033.

6. Does the proposed conditional rezone require public street improvements in order 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: The request, as conditioned, is not anticipated to impact existing or future traffic on Harvey Road.

Findings:

- (1) The parcel has access to Harvey Road, a public road. The request allowed three lots to be developed for residential use (including the existing dwelling on the parcel) which creates 28.56 average daily trips (ADT) per CCZO Section 07-10-03(3)A1.3. As conditioned, Secondary dwellings per CCZO Sections 07-10-27 and 07-14-25 are prohibited which reduces trips generated on the private road and Harvey Road and are similar conditions placed on the development north of the subject parcel (Attachment A).
- (2) Notice of the public hearing was provided per CCZO §07-05-01. Full political notice was sent on December 20, 2023. Affected agencies were noticed on October 2, 2023, December 20, 2023 (Planning and Zoning Commission), and March 12, 2024.
 - a. Highway District #4 (HD4) finds the request does not trigger a traffic impact study (Exhibit 4c, Staff Report). HD4 will require public right-of-way dedication and payment of impact fees as traffic impact mitigation measures.
 - b. Idaho Transportation Department (ITD) finds any impacts based on the request to be minimal (Exhibit 4b, Staff Report).
- (3) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CR2022-0033.

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

Conclusion: The property has legal access. Future development will require private road improvements.

Findings:

- (1) The property has legal access from Harvey Road via a 25' open public right-of-way. The request will be required to meet private road requirements and construction standards (CCZO Section 07-10-03 and 07-17-31).
- (2) Notice of the public hearing was provided per CCZO §07-05-01. Full political notice was sent on December 20, 2023. Affected agencies were noticed on October 2, 2023, December 20, 2023 (Planning and Zoning Commission), and March 12, 2024.
 - a. Highway District #4 (HD4) finds no access issues. The request does not trigger a traffic impact study (Exhibit 4c, Staff Report). HD4 will require public right-of-way dedication and payment of impact fees as traffic impact mitigation measures.
- (4) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CR2022-0033.

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

Conclusion: As conditioned by the development agreement, the request is not anticipated to impact essential services.

Findings:

- (1) As conditioned by the development agreement (Attachment A), the request is not anticipated to impact essential services. The property has an existing dwelling served by Middleton Fire District (Exhibit 2a, Staff Report), Middleton School District, Canyon County Sheriff's Department, and Canyon County Paramedics/EMT (Exhibit 6, Staff report) As conditioned, an

additional two lots are not anticipated to impact essential services. No comments were received from the above-stated agencies. The fire district approval provided by the applicant is for the existing dwelling on the property, not the request (Exhibits 2a and 6, Staff Report).

- (2) Notice of the public hearing was provided per CCZO §07-05-01. Full political notice was sent on December 20, 2023. Affected agencies were noticed on October 2, 2023, December 20, 2023 (Planning and Zoning Commission), and March 12, 2024.

Canyon County Code §09-09-15 - MIDDLETON 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 09-09-15. The development agreement (Attachment A) includes a condition requested by the City of Middleton for an easement to ensure future city services are not blocked.

- Findings:**
- (1) The subject property is located in the Middleton Area of City Impact (Exhibit 3e, Staff Report). The Middleton Area of City Impact Ordinance was adopted in 2001 (Ord No. 05-013). Section 09-09-03(2) of the Ordinance states: *“The purpose of these provisions is to promote the public health, safety, general welfare, peace, good order, comfort and convenience of the county and the inhabitants thereof by establishing regulations for the Middleton area of city impact.”*
 - a. Middleton’s Comprehensive Plan designated the parcel as “residential” on the future land use map (Exhibit 3e, Staff Report).
 - (2) Section 09-09-15 of the Ordinance states: *“All proposed county ordinance amendments to the text and/or map which may relate to the Middleton area of city impact shall be referred to the city in the same manner as provided for in subsection 09-09-11(3) of this article, except that recommendations received from the city by the county are nonbinding but any factually supported recommendations shall be seriously considered by the county.”* According to Section 09-09-11(3) of the Ordinance, notice shall be provided to the City of Middleton at least 30 days before the first public hearing. An official notice was provided on October 2, 2023. A hearing notice was provided on December 20, 2023. Full political notice was sent on December 20, 2023. Affected agencies were noticed on October 2, 2023, December 20, 2023 (Planning and Zoning Commission), and March 12, 2024.
 - a. The City of Middleton did not submit a comment to County staff. However, the applicant provided an e-mail between the city and the property owner (Exhibit 4a, Staff Report). The city requires a pre-annexation agreement and utility easement for future city services to be located within when services reach the area.
 - b. Per CCZO Section 09-09-11(3): *“If a recommendation is received it shall be given great weight by the county, provided it is factually supported, but such recommendation shall not be binding on the county. If no response is received the county may proceed without the recommendation of the city.”*
 - c. As a condition of the development agreement (Attachment A), a utility easement shall be provided for future city services along the frontage of the property. However, the condition does not include the requested pre-annexation agreement. The city is not providing services to the development. Therefore, there is no nexus to require a pre-annexation agreement.
 - (3) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CR2022-0033.

Order

Based upon the Findings of Fact, Conclusions of Law and Order contained herein, the Board of County Commissioners **approve** Case # CR2022-0033, a conditional rezone of parcel R38194010A from an “A” Zone to a “CR-R-1” zone, subject to conditions of the development agreement (Attachment A).

Pursuant to Section 67-6535 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 10 day of MAY, 2024.

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 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: Rick Hogaboam, Clerk

By: Monica Reeves
Deputy

Date: 5/10/24

ATTACHMENT A
DRAFT CONDITIONS OF APPROVAL

1. The development shall comply with all applicable federal, state, and county laws, ordinances, rules, and regulations that pertain to the property.
 - a. Prior to the Board of County Commissioners signing of the final plat, the private road shall comply with CCZO Section 07-17-29 & 31.
 - b. Prior to the Board of County Commissioners signing of the final plat, Highway District #4 and Southwest District Health signatures must be on the final plat.
2. The subject parcel, 4.15 acres, shall be divided in compliance with County Subdivision requirements (Chapter 7, Article 17, Canyon County Zoning Ordinance, in substantial compliance with the conceptual site plan (Attachment B) subject to the following restrictions:
 - a. Secondary dwellings (CCZO §07-10-27 & 07-14-25) are prohibited.
 - b. Further division of the parcels is prohibited unless the development agreement is modified or approval of a zoning map amendment.
 - c. A utility easement along Harvey Road shall be included to ensure the development does not impede the city's ability to extend city services to the area in the future. The applicant shall work with the City of Middleton to ensure the utility easement width is adequate.
 - d. Pressurized irrigation shall be provided. Use of water rights shall comply with Idaho Code Section 67-6537(1).
 - i. The applicant must comply with all standards and regulations outlined in the Black Canyon Irrigation District Letter (Exhibit 4e, Staff Report).
 - ii. Historic irrigation lateral, drain, and ditch flow patterns shall be maintained and protected. Modifications or improvements shall be approved in writing by the local Irrigation District.
3. The developer shall comply with CCZO §07-06-07 (4) Time Requirements: "All conditional rezones for a land use shall commence within two (2) years of the approval of the board."