



**Board of County Commissioners**  
**Goldberg/LGD Ventures, LLC. - Conditional Rezone — RZ2021-0030**

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**Findings of Fact, Conclusions of Law, and Order**

Conditional Rezone - RZ2021-0030

**Findings of Fact**

1. Darren Goldberg of LGD Ventures, LLC, is requesting a conditional rezone of parcel R30117 from an "A" (Agricultural) Zone to a "CR-R-R" (Conditional Rezone Rural Residential) Zone. The request also includes a proposed Development Agreement with conditions.
2. The 78.5-acre property (Parcel No. R30117) is located on the south side of Lewis Lane, approximately 1300 ft. east of the intersection of Sky Ranch Road and Lewis Ln., Nampa, Idaho. The property is located in a portion of the NE 1/4 of Section 13, T2N, R3W, B.M., Canyon County, Idaho.
3. The conditional rezone is being considered concurrently with the Preliminary Plat for Lewis Heights Subdivision (SD2021-0018).
4. The subject property is not located within an area of city impact.
5. A neighborhood meeting was held on March 16, 2021 pursuant to CCZO §07-01-15.
6. The subject property is located within Nampa Highway District No. 1, Upper Deer Flat Fire District, Nampa School District and Boise Project Board of Control.
7. The public hearing was held by the Planning & Zoning Commission on April 7, 2022, after which the Commission recommended denial of Case No. RZ2021-0030 and SD2021-0018.
8. On November 16, 2022, the Board of County Commissioners held a public hearing at which time they agreed with the applicants request to send the case with new evidence back to the Planning and Zoning Commission review and recommendation.
9. Additional materials from applicant including, but not limited to, updated Preliminary Plat, memo related to community water system, modified letter of intent, and fire district information has been submitted.
10. The public hearing was held by the Planning & Zoning Commission on December 21, 2023, after which the Commission recommended denial of Case No. RZ2021-0030 and SD2021-0018.
11. Notice of the Board of County Commissioners public hearing was provided in accordance with CCZO §07-05-01. Agency notice was provided on January 29, 2024. Full political notice was sent on January 29, 2024. Newspaper notice was published on February 3, 2024. Property owners within 600' were notified by mail on January 29, 2024 and re-noticed on February 9, 2024. The property was posted on February 15, 2024.
12. The record includes all testimony received at the public hearing held on March 14, 2024, as well as public testimony from other hearings, as noted in the minutes of those hearings, the staff report, exhibits, late exhibits entered into the record on March 14, 2024 at the Board of County Commissioner's hearing and documents in Case file No. SD2021-0018.
13. The Board of County Commissioners requested new FCO's to be drafted in the affirmative as well as an updated Development Agreement with conditions be drafted to be presented at a public hearing on May 1, 2024 at 1:30 pm.
14. The record includes all testimony received at the public hearing held May 1, 2024, as well as public testimony from other hearings, as noted in the minutes of those hearings, the staff report, exhibits, late exhibits entered into the record on March 14, 2024 at the Board of County Commissioner's hearing and documents in Case file No. RZ2021-0030.

## **Conclusions of Law**

For this request, the Board of County Commissioners must find and conclude the following regarding the Standards of Review for a Conditional Rezone (CCZO §07-06-07(6)):

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

The Board in evaluating this criterion considered the following policies, goals and maps from the Plan.

- 1) The subject property is designated as "residential" on the Future Land Use map within the 2020 Canyon County Comprehensive Plan. This is the map applicable to the request and is a portion of the Plan intended to provide guidance to the Board on where uses are predicted to change in the County. This designation is an indication that the Plan would support change of the subject property to a residential use. It's one factor demonstrating the proposed rezone is consistent with the Plan.

#### **2) Chapter 1. Property Rights**

**Goal 1.** Canyon County will ensure that land use policies, restrictions, conditions and fees do not violate private property rights or create unnecessary technical limitations on the use of property.

**Policy 8.** Promote orderly development that benefits the public good and protects the individual with a minimum of conflict.

**Policy 12.** Property owners acknowledge and expect that Canyon County will preserve private property rights and values by enforcing regulations that will ensure against incompatible and detrimental neighboring land uses.

The Property Rights section, as highlighted with the selections above, supports the designation change. The Plan favors minimizing incompatibility and use conflict, which the Board believes the proposal does because the use, as a whole, is similar to those surrounding it.

#### **3) Chapter 2. Population**

**Goal 1.** Consider population growth trends when making land use decisions.

**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.

The Population section, as highlighted with the selections above, supports the designation change. The Plan favors "population to locate for residential living" and considering growth trends. There is a clear residential growth trend in this area, and in the County as a whole, the Plan would encourage continuing to develop in these existing residential areas.

#### **4) Chapter 5. Land Use**

**Goal 1.** To encourage growth and development in an orderly fashion, minimize adverse impacts on differing land uses, public health, safety, infrastructure and services.

**Goal 2.** To provide for the orderly growth and accompanying development of the resources within the county that is compatible with the surrounding area.

**Goal 3.** Use appropriate techniques to mitigate incompatible land uses.

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

**Goal 6.** Designate areas where rural type residential development will likely occur and recognize areas where agricultural development will likely occur.

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

**Policy 2.** Encourage orderly development of subdivisions and individual land parcels, and require development agreements when appropriate.

**Policy 6.** Review all development proposals in areas that are critical to groundwater recharge and sources to determine impacts, if any, to surface and groundwater quantity and quality.

The Land Use section, as highlighted with the selections above, supports the designation change. The Plan encourages ordered growth, minimizing impacts, using appropriate mitigation, designating where rural residential development will occur, and the review of development and groundwater impacts. Again, a consistent factor in considering this proposal is the equivalent surrounding uses because the Plan promotes the order of the continued development pattern. Moreover, this land use process resulted in extensive review of potential impacts, including to groundwater, resulting in increased mitigation in the proposal, which is the process the Plan promotes.

- 5) **Agricultural Policy 3.** Canyon County supports Idaho's Right to Farm laws (Idaho Code § 22-4501-22-4504), as amended.

The proposal will be required to comply with these laws as a condition of the Development Agreement, which the Plan supports.

6) **Chapter 8. Public Services, Facilities and Utilities Component**

**Policy 3.** Encourage the establishment of new development to be located within the boundaries of a rural fire protection district.

This proposal is within a rural fire protection district, which the Plan supports.

7) **Chapter 9. Transportation**

**Policy 13.** Ensure that all new development is accessible to regularly maintained roads for fire protection and emergency service purposes.

This proposal will have access to a regularly maintained road, which the Plan supports.

8) **Chapter 11. Housing**

**Goal 1.** Encourage opportunities for a diversity of housing choices in Canyon County.

The Plan encourages a diversity of housing choices, which includes encouraging large lot rural residential development like the proposal as an option among varied housing choices.

9) **Chapter 12. Community Design**

**Policy 9.** Encourage pressurized irrigation systems using non-potable water where reasonably possible (Idaho Code 67-6537).

This proposal includes a pressurized irrigation system using non-potable water, which the Plan supports.

In reviewing the Future Land Use Map designation, the sections of the Plan identified herein, and considering the proposed use as discussed above, the Board finds that the proposed conditional is in generally consistent with the comprehensive plan.

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

In evaluating this question, the Board must first identify the surrounding land uses. In reviewing the area maps, substantial residential zoning is present within a mile-radius of the subject property. Further, a substantial portion of the public testimony and written comment was provided by residential users within the vicinity. Looking closer, immediately adjacent to the subject property land uses on the east, north, west, and south are platted residential subdivisions. Another residential subdivision was approved immediately to the south of this parcel. Although some agricultural use is ongoing in the area, as noted on both the maps and in public testimony, for the purposes of identifying a primary surrounding use, the Board finds that surrounding land use is substantially residential because of the development of platted subdivisions surrounding the subject parcel.

In reviewing the “more appropriate than the current zoning designation” standard, the Board considers the current and future plan for the area. Considering the predominate, immediate uses are residential from this planning perspective it would make sense for the infill area to change to reflect these uses. The applicant also testified about the limitations of the current agricultural designation because of the immediate residential development. Given these limitations, and the available solution to match the immediate and surrounding zoning, the Board finds the proposed conditional rezone is more appropriate than the current zoning designation of agriculture when the surrounding land uses are considered.

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

The surrounding land uses are identified in the preceding section and adopted here by reference. The surrounding land use is residential. At the public hearing, opposition raised issues with compatibility primarily in terms of traffic and water impacts and general support for maintaining agricultural uses in the County. Traffic and water impacts will be addressed more specifically later in this decision and those findings are incorporate here by reference.

In this section, the Board is to consider compatibility in comparison to the surrounding land uses. Here, the proposed use is large lot rural residential, which is equivalent in size and scope to surrounding uses. Because the uses are the same, the Board does not find that there will be compatibility issues with the use from a zoning perspective like an industrial use might present to a residential area. For this reason, the Board finds the proposed use is compatible with the surrounding land uses.

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

This area south of Lake Lowell was once used for agricultural production, that is not contested. The question before the Board now is whether the character of the area has shifted. Some opposition to the conditional rezone believes that the subject property should remain in agricultural use because the use adds to the character of the area. The opposition also asserts the traffic and water use of the rezone would affect the character of the area.

The property is identified as "residential" on the Canyon County Future Land Use Map and, as noted above, has moved towards that designation to the extent that the subject property is surrounded by residential use on all sides. Because the use has changed along the lines of the Map designation the Board would characterize the immediate area around the subject property as rural residential.

The proposal includes a limited number of large lot residential uses. These uses are equivalent to the surrounding uses. Because the proposed use is equivalent to surrounding uses the Board cannot find that the character of the area would be changed by the use. A dense, small lot subdivision, like those developed within cities, would call for a different determination.

The Board cannot consider the proposition that keeping the subject parcel as agricultural is necessary to preserve other rural residential users' perception of the area. This would violate the property right tenants of the County's Plan discussed above. Traffic and water impacts are discussed and resolved in later sections and adopted here by reference. The Board because they are equivalent traffic and water impacts to those of other users cannot find that this proposed rezone would alter the character of the area.

The proposed conditional rezone will not negatively impact 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?**

In this application, the adequacy of sewer, drainage, irrigation and public utilities facilities and services were largely not contested while the adequacy of water facilities and services was a central contested issue. For this reason, each facilities and services category will be addressed separately here.

*Septic.* The applicant proposes individual septic systems for each residential lot. Southwest District Health Department has jurisdiction over these systems. The record includes information from the applicants planning meeting with the Department indicating what requirements the Department will have. The Department will require a Subdivision Engineering Report (SER) before the Department will approve the final plat. Based on this information, the applicant's proposed sewer plan is adequate to accommodate the proposed rezone.

*Water.* The applicant initially proposed utilization of individual wells for domestic water. During the hearing process, neighboring residential property owners expressed concerns with the impact of the additional residential water use on their own wells and the availability of ground water in the area in general. Some testimony attributed the area water issues to high agricultural use periods, well construction or maintenance, or well depth—regardless of cause, it is clear that for some residential users a significant issue exists. To assuage concerns about the impact of this proposal, the applicant developed a community water system. The system would be permitted through the Idaho Department of Water Resources, require continual monitoring, limit the number of individual wells and require substantially greater well depth, with the aim of mitigating the concerns with the proposals overall impact on area ground water. Neighboring residential uses maintained their objection to the proposal after the applicant developed the community water system proposal. The applicant's response to the ongoing objection is multifaceted. The applicant's engineer testified that water data for the area indicates that the water table is stable. With the community system proposed the applicant asserts that the total groundwater drawn will be less than the current available agricultural groundwater draw—increasing the water available for all users.

The Board's objective in this section is to determine the adequacy of the proposed water facilities and services for the proposed rezone. Here, because the availability of water to the area in general was contested, the evidence presented has drifted from the question. The applicant provided detailed plans for the community water system supported by professional engineers which demonstrate facilities and services proposed will support the proposed use. To the question of overall availability of ground water for all users, although a resolution is not required for a positive finding here, the applicant has made a compelling case that the proposed community system will lessen the overall water usage of the subject parcel and, thus, leave more water available in total. The Board finds the applicant has met his burden to show that the water facilities and services are adequate for the proposed use.

It's clear that there are legitimate concerns and issues in the area. That said, this zoning hearing, or any zoning hearing for that matter, is not the venue to resolve individual water issues or general concern with water availability in this area.

*Drainage.* Boise Project Board of Control indicate that storm water runoff must be retained on site. The applicant has proposed retaining runoff on site in retention ponds. County engineers indicate this plan is adequate for the use. Based on this information, the applicant's proposed drainage plan is adequate to accommodate the proposed rezone.

*Irrigation.* The area irrigation districts state that the subject property is without surface irrigation rights. The applicant doesn't dispute this. Instead, the applicant proposes utilizing ground water for pressurized irrigation for each residential lot. The applicant's letter of intent states the existing irrigation well on the property will be used to supply the water. The applicant proposes a pump station to be located within a common lot for this purpose. There is significant debate in the record regarding the availability of ground water, that is addressed herein; however, the adequacy of the irrigation plan itself is not contested. Based on this information, the applicant's proposed irrigation plan is adequate to accommodate the proposed rezone.

*Public utilities.* The applicant proposes using public power utility systems for each residential lot. This plan was not contested. Based on this information, the applicant's proposed utility plan is adequate to accommodate the proposed rezone.

**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 road improvements or traffic impacts?**

The Board's record contains input from the Idaho Transportation Department and Nampa Highway District No. 1 on the potential need for public road improvement and the potential for interference with existing or future traffic patterns. ITD said the development would create minimal impact. The highway district indicated that the traffic generated by the proposed development would not require a traffic impact study. The highway district accepted the applicant's access request. The record also contains public comment on concerns with residential use interfering with agricultural users and generalized concerns about additional residential users increasing traffic congestion and general concern that the roads are insufficient for current or additional traffic.

In this case, where there is a discrepancy between the public's perception of roadway capacity and the roadway jurisdiction's view, the Board will rely on the roadway jurisdiction's guidance on these questions as the agencies have the authority and expertise for roadway planning and capacity. Public perception of roadway needs is often different from the technical or engineering requirements—and the Board does not discount the public perspective. However, the Board's view of this questions is that it calls for review of the technical need for public road improvement and for this reason the agencies view on these issues carries a substantial weight.

The comments from the roadway agencies indicate that proposed conditional rezone will not require public street improvements, in reliance on this evidence, the Board finds the proposed conditional does not 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. Any mitigation measures to mitigate road improvements or traffic impacts requested by the roadway agencies will be incorporated into the development agreement as a condition of approval and listed therein.

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

The applicant has proposed public road access via parcel frontage on Lewis Lane, a public road. Nampa Highway District No.1 has jurisdiction over Lewis Lane. In NHD's communication on this case it specified what its requirements for public road access from the subject property. The highway district is a signatory on the final plat and can determine, at the time of the final plat, if its requirements are satisfied. There is no evidence in the record contesting the subject properties ability to gain access via Lewis Lane at the time of development. Because NHD has accepted the applicant's public road access plan the Board finds that legal access to the subject property will exist at the time of development.

**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?**

Notice of the proposal was provided to the required public service entities. Deer Flat Fire District indicated it could

provide fire services under certain conditions. Nampa School District indicated a general concern with overcrowding of school but did not specifically assert that services would be impacted. NSD did request that the applicant install a lighted bus stop area. No other essential service provider provided comment or indicated that the proposed use would require additional public funding to meet the needs created by the requested use to school, police, fire, and emergency medical services. Based on the responses received from the agencies, and lack of responses from other noticed agencies, the Board does not find evidence from an essential service provider that the proposal will have a significant impact on essential public services and facilities. The Development Agreement will include the fire suppression measures required by the Fire District and the bus stop requested by the School District as mitigation to potential impacts.


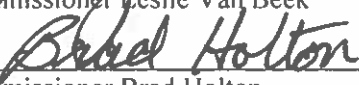

**Order**

Based upon the Findings of Fact, Conclusions of Law and Order contained herein, the Board of County Commissioners **approves** Case #RZ2021-0030, a conditional rezone from an "A" zone (Agricultural) to an "CR-R-R" zone (Conditional Rezone Rural Residential) for Parcel No. R30117 subject to conditions of the development agreement (Attachment A of this document).

DATED this 2 day of July, 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 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: Rick Hogaboam, Clerk

By:   
\_\_\_\_\_  
Deputy

Date: 7-2-24

ATTACHMENT A  
CONDITIONS OF THE DEVELOPMENT AGREEMENT

1. The development shall comply with all applicable federal, state, and county laws, ordinances, rules and regulations that pertain to the property.
2. The subject parcel shall be in subjection to the Canyon County Zoning Ordinance Chapter 7, Article 17 for platting with a maximum of 31 buildable lots with an average lot size of 2.00 acres, in substantial conformance of the concept plan (Lewis Heights Preliminary Plat).
3. The applicant 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."
  - a. Commencement shall be the submission of a Preliminary Plat application, submittals and fees to Development Services Department.
4. All storm water drainage shall be retained on site via retention ponds.
5. Internal roadways shall be public roads and built to Nampa Highway District No. 1 standards. The requirements of Nampa Highway District No. 1 shall be met.
6. Pressurized irrigation shall provide irrigation water to each residential lot within the subdivision.
7. A lighted bus stop area shall be placed near the entrance of the subdivision, with coordination with Nampa School District, prior to the Board's signature on the final plat.
8. The development will supply water via a Community Water System.