



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

In the matter of the application of:

Olsen – CU2022-0035

The Canyon County Board of County Commissioners consider the following:

- 1) Conditional Use Permit modification to an approved conditional use permit for a seven-unit mobile home park (CU2002-42) on Parcel R38154. The request will modify or remove conditions 5, 6, 7, and 8 of CU2002-42.

24938 Farmway Road, Caldwell; also referenced as Parcel R38154, a portion of the NW¼ of Section 33, Township 5N, Range 3W; 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 CU2022-0035.

1. During the applicant's testimony on July 17, 2024, a whiteboard sketch of the property was requested to be submitted as a late exhibit. The request was denied by the Board of County Commissioners.

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), and 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.
 - e. If any person, including staff or a member of the commission, files a written notice presenting sufficient evidence, as determined by the director, that the conditions of the conditional use permit have

been violated, the presiding party that made the final decision, shall set the matter for a public hearing notice in accordance with article 5 of this chapter. See CCZO §07-07-21.

2. The Board has the authority to exercise powers granted to it by the Idaho Local Land Use and Planning Act (“LLUPA”) and can establish its own ordinances regarding land use. See I.C. §67-6504, §67-6512.
3. The Board has the authority to hear this case and make its own independent determination. See I.C. §67-6519, §67-6504.
4. The Board can sustain, modify, or reject the Commission’s recommendations. See CCZO §07-05-03.
5. The burden of persuasion is upon the applicant to prove that all criteria are satisfied. CCZO §07-05-03.
6. 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).

The application, Case No. CU2022-0035, was presented at a public hearing before the Canyon County Board of County Commissioners on July 17, 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 decided 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 requested modification to CU2002-42 must be heard by the presiding party that made the final decision. The Board of County Commissioners was the presiding party for Case No. CU2002-42.

- Findings:**
- (1) The requested modification is due to the mobile home park use not meeting conditions approved as part of Case No. CU2002-42 (Exhibit 2 and 5 of the staff report).
 - (2) CCZO Section 07-07-21 states: *If any person, including staff or a member of the commission, files a written notice presenting sufficient evidence, as determined by the director, that the conditions of the conditional use permit have been violated, the presiding party that made the final decision, shall set the matter for a public hearing noticed in accordance with article 5 of this chapter.*
 - (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0035.

2. What is the nature of the request?

Conclusion: The applicant requests the following conditions of approval be amended or removed from the approval of CU2002-42 (Conditions 5-8; Exhibit 5 of the staff report):

5. *Developer shall construct a 40' X 40' foot playground in the southwest portion of the development which, at minimum, shall include two (2) Swings and a sand box and said playground shall be fenced with a 4' foot chain link fence which shall have a minimum of two (2) gates for access. (Exhibit 5 of the staff report)*
 - The applicant states a playground was constructed per the conditions. Due to safety issues and little use, the playground was removed. The applicant requests the condition be modified to require a common area with a walking path, picnic tables, and BBQ grates which is currently in place and beneficial to all occupants (Exhibit 2 of the staff report).
6. *Developer shall tile and maintain the drainage ditch that is on the east and south edge of the property. The north and south running drainage ditch in the middle of property shall remain open but developer shall maintain this ditch and shall provide grating to ensure that water from this ditch runs to the tiled ditch. (Exhibit 5 of the staff report)*

- The applicant requests the condition be removed. The applicant finds it unnecessary and is concerned about the potential lawsuit for trespassing due to the drainage ditch to be tiled being located on the adjacent property (Exhibit 2 of the staff report).
7. *Developer shall fence the entire perimeter of the property with a 4'-6' foot chain link fence as soon as financially feasible.* (Exhibit 5 of the staff report)
 - The applicant states fencing was being installed, but during a code compliance review by DSD, line of sight issues required fencing to be removed (Exhibit 2 of the staff report). The applicant is requesting the requirement be removed. If the condition is not completely removed, fencing along the Farmway and Purple Sage roads should not be included because the topography provides a natural barrier.
 8. *Developer shall install sprinklers throughout the property and shall maintain all landscaping, trees, and lawns in the development a living condition.* (Exhibit 5 of the staff report)
 - The applicant states irrigation lines were installed to maintain grass yards for each home. Due to the poor soils, the grass was hard to maintain (Exhibit 2 of the staff report). The applicant requests the conditions be amended to allow for xeriscape.

Findings:

- (1) The applicant submitted a letter of intent and photos regarding the requested modification (Exhibit 2 of the staff report).
- (2) The requested modification substantially alters conditions 5-8 of CU2002-42 (Exhibit 5 of the staff report).
- (3) See conclusions, findings, and evidence within criteria 3 through 8 for analysis and consistency per CCZO Section 07-07-05.
- (4) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0035.

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

Conclusion: As modified, the request does not substantially alter the analysis, conclusions, and decisions regarding comprehensive plan consistency.

Findings:

- (1) Case No. CU2002-42 was approved subject to the goals and policies of the 1995 Canyon County Comprehensive Plan which designated the parcel as "agriculture" on the future land use map (Exhibit 3c of the staff report). The 2020 Canyon County Comprehensive Plan also designates the parcels as "agriculture" on the future land use map (Exhibit 3d of the staff report).
 - a. *The residential structures on the subject property will be mobile homes. The request will further the intent of the Comprehensive Plan by providing a diversity of affordable choices including mobile homes.* (Exhibit 5 of the staff report)
 - b. The modification does not alter the decision regarding alignment with the 1995 Canyon County Comprehensive Plan alignment (Exhibit 5 of the staff report):

PROPERTY RIGHTS

In the 1994 Legislative Session, Idaho Code "67-8001, 8002, and 8003 were adopted to establish a process to better ensure that land use policies, restrictions, conditions, and fees do not violate private property rights, adversely impact property values or create unnecessary technical limitations on the use of private property. It is the policy of the County to comply with the requirements of the Idaho Code provisions. [p. 4].

POPULATION POLICIES

- *Policy No.3. To encourage the future population to locate within incorporated cities and/or "Areas of City Impact". This policy recognizes that population growth and the resulting development activity should occur where public*

infrastructure, services, and facilities are available or where they are planned and will be provided in the near future. [p. 5].

- Policy No. 4. To locate future populations in areas outside of best-suited and moderately suited agricultural areas. This policy recognizes that productive agricultural areas are considered developed and to change the existing land use pattern to another land use or mixtures of potentially conflicting land uses may cause irreparable damage to both the area and the agricultural industry of the county. This policy underscores other policies of the plan which seek to encourage the protection of prime "best-suited" agricultural lands for the production of food and fiber. The county also recognizes that certain "moderately suited" and "least suited" agricultural areas may be considered for residential development through the Conditional Use Permit or Conditional Rezone process. These processes however, require careful consideration of the impact(s) that development may have on existing and surrounding land uses while taking into account both citizen and pertinent agency inputs. Urban and urban-type residential development is encouraged within incorporated cities and their corresponding areas of impact. [p. 5].

OVERALL LAND USE POLICIES

- Policy No. 1. To encourage orderly growth throughout Canyon County while avoiding scattered development of land that may result in either or both of the following:
 - (A) An adverse impact upon water quality, water supply, irrigation ditches, canals and systems, sewage disposal, public safety and emergency services, educational facilities and surroundings, transportation and transportation facilities, and other desired and essential services; and
 - (B) The unnecessary imposition of an excessive expenditure of public funds for the delivery of desired and essential services. [p. 7].
- Policy No. 2. To protect agricultural, residential, commercial, industrial, and public areas from the unreasonable intrusion of incompatible land uses. [p. 7].
- Policy No. 3. To provide for appropriately located residential areas with an adequate variety of dwelling types and density ranges as needed to meet demands. [p. 7]
- Policy No. 7. To encourage development in those areas of the county that provide the most favorable conditions for future community services. [p. 8].
- Policy No. 9. To use buffer areas and/or screening devices between certain land uses in order to properly address the need to protect all land uses insofar as possible. This policy is intended to forestall land use conflicts that may occur when a variety of land uses are located in relatively close proximity, especially residential uses adjacent to non-residential uses such as agriculture and industry. [p. 8].

AGRICULTURAL LANDS

- Policy No. 1. To support the fact that the present agricultural activities in "best suited" and "moderately suited" agricultural soil designated areas of Canyon County represent "development" by definition. Careful consideration must be given to any proposal that would permit changes in land use from agriculture to another type of development. Minimizing the potential for conflicting land uses is very important to the ongoing and long-term agricultural activities of the county. "Best suited" and "moderately suited" soil areas generally demonstrate that the corresponding farms have a consistent annual production history complete with water delivery system(s). [p. 8-9].
- Policy No. 2. To permit development on lands where soils are determined to be either "least suited" or "moderately suited" for agriculture only after careful study and review of surrounding land uses that consider the long-range impacts of mixed land uses in the area. This policy recognizes that land may be developed for other purposes only when such developments do not harm or conflict with the agricultural activities in the immediate area

and when adequate public services and facilities are either available or made available as part of the development. This policy also recognizes that non-agricultural costs of development should not create increased tax burdens for current property owners. [p. 9]

Mobile Home Housing

- Policy No. 1. To permit mobile homes in various zoning of the county in accordance with specific standards regulating installation and use. This policy recognizes that mobile homes are part of the affordable housing supply of Canyon County and that the predominant location for this housing is in mobile home parks and rural areas of the county. [p. 11]

HOUSING POLICIES

- Policy No. 1. To encourage opportunities for a diversity of housing choices and availability of affordable housing. This policy recognizes that housing is basic to every person living in the county and that affordable housing opportunities should be a goal which needs constant review. The plan encourages a variety of housing which also seeks to improve the lifestyle of the county's residents. [p. 14]

Therefore, the Board concluded that *the proposed use is harmonious with and in accordance with the Comprehensive Plan* (Exhibit 5 of the staff report).

- (2) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0035.
- (3) See conclusions, findings, and evidence within criteria 4 through 8 for analysis and consistency per CCZO Section 07-07-05.

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: With modified conditions, the request does not substantially alter the analysis and findings regarding the surrounding uses and neighborhood character.

Findings: (1) The applicant requests the following conditions of approval be amended or removed from the approval of CU2002-42:

5. *Developer shall construct a 40' X 40' foot playground in the southwest portion of the development which, at minimum, shall include two (2) Swings and a sand box and said playground shall be fenced with a 4' foot chain link fence which shall have a minimum of two (2) gates for access.*
 - The applicant states a playground was constructed per the conditions. Due to safety issues and little use, the playground was removed. The applicant requests the condition be modified to require a common area with a walking path, picnic tables, and BBQ grates which is currently in place and beneficial to all occupants (Exhibit 2 of the staff report).
 - **BOCC Approval:** The playground was proposed by the owner (Pages 6,7, 10, and 26 of Exhibit 5 of the staff report). The applicant agreed to the condition of installing a playground within a fenced common area. The Board found that the playground provided open areas for residents and occupants of the development.
 - **Site Visit:** The location of the playground contains RVs. Staff did not see a common area with picnic tables, BBQ grates, or a walking path during the visit (Exhibit 9 of the staff report).
 - The proposed amended condition complies with the conclusions of law regarding CU2002-42 that the common area provides open areas for residents and occupants of the development:

- **BOCC Approval:** Landscaping along the south boundary nearing the Sunlight Subdivision property was proposed due to neighbor concerns (Page 4, 5, 6, & 10, Exhibit 5). Landscaping throughout the property, such as irrigation, grass, and two trees per lot, was proposed by the applicant to create a desired appearance (Page 7, 8, & 10, Exhibit 5).
- **Site Visit:** Trees are located along the drainage (east and south boundary), small pines near space #3, and two trees near space #1. Four large bushes were installed near the south boundary near the Combs property (Parcel R26996). Some grass was identified near spaces 1, 6, and 7, but mostly consisted of mowed-down weeds (Exhibit 9).
- The proposed amended condition complies with the conclusions of law in the approval of Case No. CU2002-42:
 - *Within 90 days of approval, a landscaping plan shall be submitted to DSD for review. The subject plan shall show xeriscape areas, landscaping areas with irrigation, types of landscaping and xeriscape, irrigation location/removal, and a long-term maintenance plan to ensure landscaping is maintained and does not become a public nuisance. Within a reasonable timeframe determined by the Director of DSD, landscaping shall be installed per the plan and evidence provided demonstrating compliance.*

- (2) The request with modified conditions is not anticipated to impact the surrounding area. The area has not substantially changed since the 2002 decision (Exhibit 5 of the staff report). The subdivisions in the immediate vicinity are from the late 70s or early 2000s (Exhibit 3f of the staff report). The parcels to the south and east consist of mobile home parks (Exhibit 3a & 3b of the staff report).
- (3) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on April 1, 2024, and June 18, 2024. Newspaper notice was published on June 18, 2024. Property owners within 600' were notified by mail on June 18, 2024. The property was posted on June 18, 2024.
 - a. All comments received were not opposed to the requested modification (Exhibit 4 of the 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. CU2022-0035.

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

Conclusion: The modification does not impact past decisions regarding adequate facilities.

- Findings:**
- (1) The mobile home park is served by a shared well (Exhibits 2, 5, and 8 of the staff report).
 - (2) Southwest District Health reviewed and approved the septic system for each mobile home as required by CU2002-42 (Exhibit 5 & 8 of the staff report).
 - (3) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on April 1, 2024, and June 18, 2024. Newspaper notice was published on June 18, 2024. Property owners within 600' were notified by mail on June 18, 2024. The property was posted on June 18, 2024.
 - a. Black Canyon Irrigation District (BCID) finds the irrigation service is not in use (Exhibit 4b of the staff report). There are no irrigation district facilities located on the subject parcel or adjacent parcel. BCID requires no action.
 - (4) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0035.

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

Conclusion: The request does not impact analysis and decisions regarding adequate access.

- Findings:** (1) The manufactured homes on the parcels were approved via building permits which included access review and approval by the Notus-Parma Highway District consistent with CU2002-42 (Exhibit 5 & 8 of the staff report).
- (5) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on April 1, 2024, and June 18, 2024. Newspaper notice was published on June 18, 2024. Property owners within 600' were notified by mail on June 18, 2024. The property was posted on June 18, 2024.
- a. Notus-Parma Highway District does not oppose the modifications and states the access points and approach on Farmway Road and Purple Sage Road are approved (Exhibits 4d of the staff report).
- (2) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0035.

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

Conclusion: The requested modification does not impact the analysis and decisions regarding traffic.

- Findings:** (6) The manufactured homes on the parcels were approved via building permits which included review and approval by the Notus-Parma Highway District consistent with CU2002-42 (Exhibit 5 & 8 of the staff report).
- (7) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on April 1, 2024, and June 18, 2024. Newspaper notice was published on June 18, 2024. Property owners within 600' were notified by mail on June 18, 2024. The property was posted on June 18, 2024.
- a. Notus-Parma Highway District and Idaho Transportation Department do not oppose the modifications (Exhibits 4d & 4e of the staff report).
- (8) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0035.

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: The requested modification does not alter or impact the analysis and conclusions regarding essential services.

- Findings:** (1) The manufactured homes on the parcels were approved via building permits which included review and approval by the Middleton Fire District consistent with CU2002-42 (Exhibit 5 & 8 of the staff report).
- (2) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on April 1, 2024, and June 18, 2024. Newspaper notice was published on June 18, 2024. Property owners within 600' were notified by mail on June 18, 2024. The property was posted on June 18, 2024.
- a. Essential services such as Middleton School District, Middleton Fire District, Canyon County Sheriff's Department, and Canyon County Paramedics/EMT were provided an opportunity to comment.

- b. Middleton Fire District does not oppose the request subject to access remaining unobstructed, appropriately placed address identification, and building and fire code violations being addressed (Exhibit 4d of the staff report).
- (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2022-0035.

Order

Based upon the Findings of Fact, Conclusions of Law and Order contained herein, the Board of County Commissioners **approve** Case #CU2022-0035, a conditional use permit modification to conditions 5, 6, 7 & 8 of Case No. CU2002-42 as follows:

Conditions of Approval

1. The developer shall complete a subdivision engineering report and submit it to the Southwest District Health Department. (Unchanged; See Exhibit 5 of the staff report)
2. The development is subject to applicable regulations of all agencies with jurisdiction over the development. (Unchanged; See Exhibit 5 of the staff report)
3. Rental agreements must prohibit renters from interfering with agricultural properties and operations in the area. Each rental agreement shall include a right-of-farm acknowledgment in accordance with the language in Exhibit "B", which is attached thereto and by this reference, made a part thereof. (Unchanged; See Exhibit 5 of the staff report)
4. The developer shall plant trees every ten (10') feet along the common border with the Combs' property and said trees shall consist of both evergreen and deciduous varieties and shall be maintained in a living manner. (Unchanged; See Exhibit 5 of the staff report)
5. *Amended: Within 90 days of approval, a common area plan shall be submitted to DSD for review and approval by the Director of DSD. The plan shall show amenities such as a walking path, BBQ Pit, picnic tables, etc. with a long-term maintenance plan to ensure the common area is maintained and does not become a public nuisance. Once approved, the common area shall be installed per the approved plan within the timeframe specified in Condition No. 9. Evidence shall be provided to DSD demonstrating compliance.*
 - ~~Developer shall construct a 40' X 40' foot playground in the southwest portion of the development which, at minimum, shall include two (2) Swings and a sandbox, and said playground shall be fenced with a 4' foot chain link fence which shall have a minimum of two (2) gates for access.~~
6. *Amended: Remove Condition #6.*
 - ~~Developer shall tile and maintain the drainage ditch that is on the east and south edge of the property. The north and south running drainage ditch in the middle of property shall remain open but developer shall maintain this ditch and shall provide grating to ensure that water from this ditch runs to the tiled ditch.~~
7. *Amended: The developer shall fence the entire perimeter of the property with a 4'-6' foot chain link fence. Fencing is not required to be installed in areas where fencing already exists. Within 270 days from approval of CU2022-0035, fencing shall be installed and evidence provided to DSD demonstrating compliance.*
 - ~~Developer shall fence the entire perimeter of the property with a 4'-6' foot chain link fence as soon as financially feasible.~~
8. *Amended: Within 90 days of approval, a landscaping plan shall be submitted to DSD for review and approval by the Director of DSD. The subject plan shall show xeriscape areas, landscaping areas with irrigation, types of landscaping and xeriscape, irrigation location/removal, and a long-term maintenance plan to ensure landscaping is maintained and does not become a public nuisance. Once approved, landscaping shall be installed per the approved plan within the timeframe specified in Condition No. 9. Evidence shall be provided to DSD demonstrating compliance.*
 - ~~Developer shall install sprinklers throughout the property and shall maintain all landscaping, trees, and lawns in the development a living condition.~~
9. *The owner/applicant has 270 days from the date of Board approval of Case No. CU2022-0035 to comply with all amended conditions. If amended conditions are not met within the stated timeframe, DSD shall process the*

revocation of CU2002-42 and CU2022-0035 per the 1997 County Code revocation process (CCZO 97-001 §9.1(B)).

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 22 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
<u>UNAVAILABLE for Signature</u> Commissioner Leslie Van Beek	_____	_____	_____
<u>Brad Holton</u> Commissioner Brad Holton	X	_____	_____
<u>Zach Brooks</u> Commissioner Zach Brooks	X	_____	_____

Attest: Rick Hogaboam, Clerk

By: M. Byrnes
Deputy

Date: 7-22-24