



PLANNING AND ZONING COMMISSION  
FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER

In the matter of the application of:

**Surber – Case # CU2023-0025**

The Canyon County Planning and Zoning Commission considers the following:

- 1) Conditional Use Permit for a dog kennel on parcel R38010, approximately 4.72 acres, in an “A” (Agricultural) zone. The proposed kennel will allow a maximum of 10 dogs on the property.
- 2) The subject property is located at 25366 Emmett Rd. Caldwell, Idaho (Parcel Number R38010) also referenced as a portion of the SW quarter of Section 25, T5N R3W BM, Canyon County, Idaho.

**Summary of the Record**

1. The record is comprised of the following: Staff Report, exhibits, and documents in Case File CU2023-0025.
  - A. The record includes all testimony, the staff report, exhibits, and documents in Case File CU2023-0025.

**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)), Idaho Code §67-6512 (Special Use Permits, Conditions, and Procedures), and Canyon County Code §03-05-09 (Kennel Licensing).
  - 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.

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 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 CU2023-0025 was presented at a public hearing before the Canyon County Planning and Zoning Commission on November 7, 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 Canyon County Planning and Zoning Commission decide 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 use is permitted in the “A” (Agricultural) zone by Conditional Use Permit (CUP).

- Findings:**
- (1) The subject property, parcel R38010, containing approximately 4.72 acres is zoned “A” (Agricultural). **See Exhibit B.1 of the staff report.**
  - (2) Kennels are defined as “Any portion of land, or any building, structure, enclosure or premises on the same or adjacent parcel, in which canines are housed, groomed, bred, boarded, trained or sold, in which a total of six (6) or more dogs, three (30 months of age or over are kept or maintained in conformance with section 03-05-09 of this code.” (CCCO §07-02-03)
  - (3) CCCO §07-10-27 Land Use Regulation (Matrix) provides for kennels by a conditional use permit in the agricultural zone.
  - (4) Applicant submitted the conditional use permit application on December 13, 2023. An amended application was submitted on August 1, 2024. **See Exhibit A.1 of the staff report.**
  - (5) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0025.

#### **2. What is the nature of the request?**

**Conclusion:** The applicants, Sheree and Michael Surber, are requesting a conditional use permit for a kennel on parcel R38010 zoned “A” (Agricultural). The request is for a kennel for a maximum of 10 dogs. The purpose of the request is for breed preservation and the development and improvement of the dog line.

- Findings:**
- (1) A conditional use permit was submitted on December 13, 2023. The amended application was submitted on August 1, 2024. Additional information was received on October 22, 2024. **See Exhibit A of the staff report.**
  - (2) The applicant is requesting to use parcel R38010 for a kennel to breed, preserve, develop and improve the dog line of 10 dogs. **See Exhibit A.2 of the staff report.**
  - (3) The applicant has scheduled appointments for pick-up Monday-Sunday 9 a.m. to 5 p.m., it's anticipated that the number of people visiting the site by appointment per year will be minimal. **See Exhibit A.6 of the staff report.**

- (4) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0025.

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

**Conclusion:** The proposed use is consistent with the 2030 Comprehensive Plan.

- Findings:** (1) The 2030 Comprehensive Plan designates the future land use of the parcel as “RR” (Rural Residential) **Exhibit B.1 of the staff report.**
- (2) a conditional use permit is required to operate a kennel in the “A” (Agricultural) and “RR” (Rural Residential) zone.
- (3) The proposed use aligns with the following goals, action plans, and policies of the comprehensive plan:

#### Property Rights Policies and Goals

- G1.01.00: *Protect the integrity of individual property rights while safeguarding public health, safety, and welfare.*
- A1.01.00a: *Require properties to conform to the zoning code before receiving additional zoning approvals.*
- A1.01.00b: *Canyon County will take appropriate measures to enforce all nuisance ordinances to protect the quality of life and private property rights.*

#### Land Use and Community Design

- G4.02.00: *Ensure that growth maintains and enhances the unique character throughout the county.*
  - P4.02.01: *Consider site capability and characteristics when determining the appropriate location and intensities of various land uses.*
  - P4.03.03: *Recognize that each land use application is unique and that agricultural and non-agricultural uses may be compatible and co-exist in the same area and in some instances may require conditions of approval to promote compatibility.*
- (4) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0025.

### 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 use will not be injurious to other properties in the immediate vicinity and/or will not negatively change the essential characteristics of the surrounding area.

- Findings:** (1) The property is located in an “A” (Agricultural) zone. The character of the area is primarily agricultural parcels used for residential purposes. The adjacent primary zone and use is Agricultural. **See Exhibit B.3-5 of the staff report.**
- (2) A conditional rezone was approved in 2008 to the northwest of the subject property to rezone from “A” (Agricultural) to “CR-R-R” (conditional rezone rural residential). To the southwest of the property there was a conditional rezone application submitted in 2019, to conditionally rezone approximately a 10-acre parcel (R38017010) from “A” (Agricultural) to “CR-R-1” (Conditional Rezone-Single Family Residential). The request was approved in 2021, with a development agreement restricting the property to 6 residential lots (RZ2019-0042). A conditional rezone application was submitted in 2021, to conditionally rezone parcels R20800, R20801 and R20803 from “A” (Agricultural) to “CR-R-1” (Conditional Rezone-Single Family

Residential). The request was approved in 2021, with a development agreement restricting the property to 12 residential lots (RZ2021-0019). **See Exhibit B.8 and B.9 of the staff report.**

- (3) The subject parcel is located more than 150 feet away from the nearest residential property. There is fifteen (15) parcels of which, eight (8) have residences in a 600-foot radius of the subject property.
- (4) The property will be fenced in with poly split rail. The applicant will keep the dogs from running at large by fencing the perimeter of the property.
- (5) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on August 7, 2024. Newspaper notice was published on October 8, 2024. Property owners within 600' were notified by mail on October 4, 2024. Full political notice was provided on October 4, 2024. The property was posted on October 8, 2024.
  - a. Agency comments can be found in **Exhibit D** of the Staff Report.
  - b. No public comments were received by the comment period deadline of October 28, 2024.
- (6) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0025.

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

**Conclusion:** Adequate facilities and systems exist and can accommodate to the proposed use.

- Findings:**
- (1) The application for the kennel proposes an individual septic that will service the home and the kennel use. **See Exhibit A.3 of the staff report.**
  - (2) There is an existing well on site used for domestic water. Irrigation water is provided via surface water. **See Exhibit A.3 of the staff report.**
  - (3) The parcel is not in a drain district, and accommodations or improvements are not required. **See Exhibit B.1 of the staff report.**
  - (4) It's not anticipated that stormwater drainage facilities will need to be accommodated or improved for the proposed use. Stormwater will be drained via the ditch on the outside of the east property line, if needed.
  - (5) There are adequate utility systems to service the home and the proposed dog kennel. An agency notice was sent out to Century Link and Intermountain Gas, on August 7, 2024. No comments were received. Correspondence
  - (6) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on August 7, 2024. Newspaper notice was published on October 8, 2024. Property owners within 600' were notified by mail on October 4, 2024. Full political notice was provided on October 4, 2024. The property was posted on October 8, 2024. **See Exhibit D of the staff report.**
    - a. Southwest District Health (SWDH) states that the applicant had a pre-development meeting with SWDH on August 14, 2023, based on the proposal at the time a second septic tank was required to be installed. Agency notice was sent out on August 7, 2024, and on August 30, 2024, Southwest District Health commented that the kennel would not require a Nutrient Pathogen Study. A follow up email was sent on October 22, 2024, to gain clarification for the septic tank as the amended application no longer included the kennel facility. SWDH states that due to the kennel facility being removed from the plan, one septic tank will be adequate for the home and the kennel use. **See Exhibit A.5 and D.6 of the staff report.**

- (7) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0025.

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

**Conclusion:** The subject property does have legal access to the property and will exist at the time of approval.

- Findings:**
- (1) The property has frontage along Emmett Road a public road with an approach as a half circular driveway.
  - (2) In a Pre-Development meeting Highway District No. 4 (HD4) commented the half circular driveway needs to be improved to meet SD-106 commercial approach standards and an approach permit is required.
  - (3) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on August 7, 2024. Newspaper notice was published on October 8, 2024. Property owners within 600' were notified by mail on October 4, 2024. Full political notice was provided on October 4, 2024. The property was posted on October 8, 2024.
    - a. Highway District No. 4 commented on August 7, 2024, that HD4 does not have comments or concerns regarding the request. **See Exhibit D.3 of the staff report.**
    - b. Idaho Transportation Department (ITD) reviewed the application proposal and had no comments or concern. **See Exhibit D.4 of the staff report.**
  - (4) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0025.

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

**Conclusion:** The request will not interfere with existing or future traffic patterns.

- Findings:**
- (1) There will be minimal client contact on site as it's anticipated that the number of people visiting the site by appointment per year will be minimal. Appointments are scheduled between the hours of 9 a.m. and 5 p.m. daily. **See Exhibit A.6 of the staff report.**
  - (2) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on August 7, 2024. Newspaper notice was published on October 8, 2024. Property owners within 600' were notified by mail on October 4, 2024. Full political notice was provided on October 4, 2024. The property was posted on October 8, 2024.
    - a. Highway District No. 4 (HD4) reviewed the application proposal and on August 7, 2024 had no comments or concern. **See Exhibit D.3 of the staff report.**
    - b. Idaho Transportation Department (ITD) reviewed the application proposal and on August 13, 2024, had no comments or concern. **See Exhibit D.4 of the 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. CU2023-0025.

**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 be provided to accommodate the use including, but not limited to, school facilities, police and fire protection, emergency medical services, irrigation facilities, and the services will not

be negatively impacted by the proposed use or require additional public funding in order to meet the needs created by the requested use.

- Findings:**
- (1) The proposed kennel is not anticipated to impact schools, emergency medical services, irrigation facilities, or fire districts as there isn't anticipated to be an increased need for additional police, fire, or ambulance response.
  - (2) The parcel is under Middleton Rural Fire District. Middleton Rural Fire District will be required to provide services to the parcel. All development shall comply with the 2018 International Fire Code and codes set forth by Canyon County. According to Middleton Rural Fire District on October 26, 2023, fire response time is eight (8) minutes under ideal conditions. With the completion of a new fire district station the response time will be three (3) minutes under ideal driving conditions. Fire suppression will be supplied by a private well. Any additions or future building will require commercial plan review/permits for access and water supply by the fire district prior to building permit issuance. Accessibility of roadway access, traffic and radio coverage can be viewed in **Exhibit A.5**.
  - (3) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on August 7, 2024. Newspaper notice was published on October 8, 2024. Property owners within 600' were notified by mail on October 4, 2024. Full political notice was provided on October 4, 2024. The property was posted on October 8, 2024.
  - (4) Evidence includes the application, supporting materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CU2023-0025

## **Order**

Based upon the Findings of Fact, Conclusions of Law and Order contained herein, the Planning and Zoning Commission **approves** Case # CU2023-0025, a conditional use permit of a kennel subject to the following conditions as enumerated:

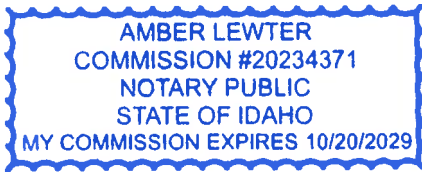
### **Conditions of Approval:**

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. Compliance with Canyon County Public Safety Ordinance; Article 5, Animal Control Regulations, other than obtaining a kennel license.
3. This conditional use permit shall adhere to the land use time limitation as stated in CCCO 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.
4. The conditional use permit shall be limited to parcel R38010. This permit is not transferable to any other property or individual and is not valid for any business or use other than that specifically approved by the Planning and Zoning Commission. The permit shall expire upon change of ownership to any other person.
5. The proposed development shall be in general conformance with the applicant's site plan and Letter of Intent (**Exhibit A.2 and A.4**).
6. The hours of pick-up shall be between 9 a.m. to 5 p.m. daily.
7. The number of canines on the premise shall not exceed ten (10) dogs, over the age of three (3) months.
8. The subject property shall have a minimum four-foot fencing on the perimeter of the backyard and pastures/runs outlined in the site plan (**Exhibit A.4**). A fencing plan shall be submitted providing fencing around the backyard area and around the pastures/runs as seen in the site plan prior to commencement of the use.

9. The area site and fencing shall be maintained and kept in good repair. The area and surrounding fence line shall be kept weed-free and/or maintained with weeds being 6" in height or less.
10. All structures shall comply with Canyon County Code of Ordinance setback requirements (§07-10-21) and shall be clear of all right of ways and easements pursuant to Black Canyon Irrigation District.
11. The dog kennel and property shall be maintained in a clean and sanitary condition.
12. The operator shall dispose of solid waste in a manner that does not contribute to potential environmental and water contamination in and around the subject property. Canine waste shall be disposed of at a regular frequency at the Landfill per disposal requirements.
13. Prior to expanding beyond the existing six (6) dogs, a certificate of occupancy shall be obtained for the residence.
14. No third party boarding of dogs shall be permitted on site.

DATED this 21 day of November, 2024.

**PLANNING AND ZONING COMMISSION  
CANYON COUNTY, IDAHO**



*Robert Sturgill*  
Robert Sturgill, Chairman

State of Idaho )

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County of Canyon County )

On this 21 day of November, in the year 2024, before me Amber Lewter, a notary public, personally appeared Robert Sturgill, 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: Amber Lewter

My Commission Expires: 10/20/2029