



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

Findings of Fact, Conclusions of Law, Conditions of Approval and Order

CU2022-0034-APL

1. The applicant, Borton-Lahey Law representing EW Real Estate, is requesting a conditional use permit to allow a Special events facility use within an "A" (Agricultural) Zoning District on parcel no. R33563010. The use includes an outdoor amphitheater with a seating capacity of up to 5,000 guests for concerts, events such as weddings, cidery, u-pick orchards, and other agritourism-supported activities.
2. Planning and Zoning Commission ("Commission") denied the application in Findings of Fact, Conclusions of Law and Order issued on December 15, 2022. Exhibit 4.
3. The applicant timely appealed the Commission's decision on December 29, 2022 pursuant to Canyon County Code §07-05-07. Exhibit 5.
4. Public hearing before the Canyon County Board of County Commissioners ("Board") was held July 25 and 26, 2023.
5. Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on June 12, 2023. Newspaper notice was published on June 14, 2023. Property owners within 600' were notified by mail on June 14, 2023 and updated on June 27, 2023. Full political notice was provided on June 12, 2023. The property was posted on July 6, 2023
6. The record is comprised of the following:
 - a. Findings of Fact, Conclusions of Law and Order signed by the Planning and Zoning Commission ("Commission") on December 15, 2022. Exhibit 4.
 - b. Written appeal filed by Borton-Lahey Law representing EW Real Estate, LLC, was submitted on December 29, 2022 pursuant to Canyon County Code §07-05-07. Exhibit 5.
 - c. Testimony and evidence offered at the July 25 and 26, 2023 hearings before Board including the staff report and exhibits nos. 1 – 11. Audio records of the hearings have been made and preserved.
 - d. On July 25 and 26, 2023, Exhibit 12-1 through 12-15 were submitted during the public hearing, but were not considered by the Board due to untimely submittal unless otherwise read directly into the record during the public hearing.
7. The following County ordinances are applicable to this decision: Canyon County Code §01-17 (Land Use/Land Division Hearing Procedures), Canyon County Code §07-05 (Notice, Hearing and Appeal Procedures), Canyon County Code §07-07 (Conditional use permits), Canyon County Code §07-02-03 (Definitions), Canyon County Code §07-10-27 (Land Use Regulations (Matrix)), Canyon County Code §07-14 (Use Standards).
8. 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.
9. 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).

10. 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. Idaho Code § 67-6512.

Review standards for conditional use permits per §07-07-05 of the County ordinance

Upon review of the testimony and evidence, the Board finds and concludes the following regarding the Standards of (§07-07-05):

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

The subject property is zoned “A” (Agricultural). The applicant is requesting a Special events facility. Canyon County Zoning Ordinance §07-10-27 allows a Special events facility in the in the “A” (Agriculture) zone. through the approval of a Conditional use permit. Therefore, the Board finds, in concurrence with the Commission, that the proposed uses are permitted in the zone by conditional use permit.

2. What is the nature of the request?

The applicant is requesting a conditional use permit to allow a special events facility to include an outdoor amphitheater with a seating capacity of up to 5,000 guests for concerts, events such as weddings, cidery, u-pick orchards, and other agritourism-supported activities. The subject property is not located within an area of city impact.

3. Is the proposed use consistent with the Comprehensive Plan?

This question is intended to assess the proposed use through the lens of the County’s long-term planning document. This is a separate analysis from the other specific zoning questions posed by the Board’s ordinance. The 2020 Canyon County Comprehensive Plan is the appropriate planning document for this review because of the timing of when the application was filed. The Commission cited the following portions of the Plan to support the conclusion that the use is consistent with the Plan: Chapter 1, Policy 12; Chapter 2, Goal 2; Chapter 4, Economic Development section; Chapter 4, Goals 1 to 4; Chapter 4, Policies 2 to 6; Chapter 5, Goal 5; Chapter 8, Policy 3; Chapter 9, Policy 13 and 19; Chapter 10, Goal 1 and 2; Chapter 10, Policy 1, 3 and 6; Chapter 12, Policy 4 and 5. The 2020 Canyon County Comprehensive Plan Future Land Use Map (one component of the Plan) designates the area as agricultural in conformance the existing and requested zoning. The Board concurs with the Commission’s evaluation of the Plan. The Plan as a whole supports the development of recreation, community design, utilization of agricultural lands for agriculture, and encourages broad economic development. The Board finds the proposed use generally consistent with the Plan for these reasons.

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

The applicant is requesting a conditional use permit to allow an “agritourism oriented special events facility” to include an outdoor amphitheater with a seating capacity of up to 5,000 guests for concerts, events such as weddings, a cidery, u-pick orchards, and permanent concessions serving farm-to-fork food during events.

The area is predominantly zoned agricultural. Exhibit 6c. Limited commercial and residential zoning exists within a 1-mile radius of the subject property. The following chart from the staff report provides details on the uses within one (1) mile of the subject parcel:

Existing Conditions within one (1) mile		Zoning
NW	Kindred Vineyards, Sunny Slope Subdivision 1, Newby Subdivision, The Orchard House, Sunny Slope Market, Sinclair, Williamson Orchard & Vineyards, single-family residences, active farmland and sporadic homesites.	A, CR-R, C1
N	Symms Fruit Ranch, Mountainland Apples Packing and Distribution Center, active farmland and sporadic homesites.	A
NE	Sawtooth Winery, Ste. Chapelle Winery, Williamson U-Pick Cherries, active farmland and sporadic homesites.	A
W	Hwy 55, Symms Fruit Ranch, active farmland.	A
SW	Active farmland and sporadic homesites.	A
S	Lizard Butte, active farmland and sporadic homesites.	A
SE	Active farmland and sporadic homesites	A, CR-R-R
E	Active farmland and sporadic homesites	A

The topography in the area makes it uniquely suited for vineyards and orchards and its development as a destination wine region has brought the area worldwide acclaim, as noted extensively in the record. The area is also promoted as such by the Idaho Wine Commission and Sunnyslope Wine Trail organizations. The special agricultural character area is what drew the applicant to make this application. Exhibit 2, Attachment 2 and Exhibit 6 (narrative portions). The applicant acknowledges the agricultural character of the area in its proposal and application and we find no dispute in the record or evidence that the character of this area and immediate vicinity surrounding the subject parcel is agricultural as defined by the County's Comprehensive Plan and ordinances.

Our chief concern is not with the agricultural portions of the proposal which are common in the vicinity—but with the scale of the amphitheater portion of the proposal. Special use events facilities have been permitted in the area as noted in the record; however, these facilities only accommodate comparatively minor gatherings. The 5,000-seat capacity amphitheater that is the focus of this proposal is intended to host major concerts and events. We are aware of no venue in the County that would accommodate this capacity that is not within city limits and with immediate Interstate access.

The applicant presents this use as complementary to the area's agritourism businesses and provides many letters and testimony to support the idea that such events could be economically positive to these businesses. In reviewing the applicant's materials, we don't believe that the applicant is denying that this amphitheater proposal would impact other properties in the immediate vicinity or character of the area. The applicants' position rather is that benefits brought by the amphitheater will outweigh mitigated injury and change. Exhibit 6 (narrative portion). A different question is then posed here to this Board: can sufficient mitigation be put in place to not make the use injurious to other property owners in the immediate vicinity or to negatively change the essential character of the area.

In reflecting on the substantial evidence submitted in this case, the Board believes that this question comes down to two specific impacts of the amphitheater proposal: 1) traffic and 2) sound.

Traffic. The applicant anticipated that amphitheater use would raise this issue and had a Traffic Impact Study (TIS) conducted. Exhibit 8. The Study tells the Board what we would expect: drawing 5,000 concert attendees to this rural agricultural area is going to create temporary, localized traffic delays. The record also contains comment from the agencies with roadway jurisdictions. The most recent comments from the Idaho Transportation Department were submitted on May 11, 2023, and June 1, 2023. Exhibit 9, Attachment 1. Canyon Highway District No. 4 submitted most recent comments were submitted on June 1, 2023, and June 7, 2023. Exhibit 9, Attachment 2. Both agencies provide proposed mitigation measures. Mitigation measures proposed by ITD would include advanced notice to the area residents through signage and direct mail. It was also suggested that temporary road closures and traffic diversions be utilized in order to keep traffic to the major arterials.

Emergency service agencies submitted letters concerning traffic impacts Canyon County Sheriff Department (Exhibit 9, Attachment 3), Marsing Ambulance (Exhibit 9, Attachment 5), and Canyon County Ambulance (Exhibit 9, Attachment 6). Caldwell Rural Fire District offered testimony from a representative at the hearing that supported the concerns expressed by the other agencies. Emergency service providers indicate that they do not have the staffing to manage this traffic surge and that the agencies are concerned that the traffic delays caused would interfere with their abilities to provide essential services to the area.

The Board also heard testimony and reviewed written comment from residential property owners and several local agricultural operators who expressed concerns with the disruption to their ability to travel, personal or for their agricultural operations, or to receive emergency services that could result from the traffic surges. At the hearing, several agricultural operators testified that their ability to move labor and equipment between parcels would be inhibited during these traffic surges. The agricultural operators indicated that their work, particularly in the growing season, often would continue into the evenings when the TIS indicated the traffic surges are likely to occur.

Sound. The second area of potential injury and change to the area is noise that would be created by the amphitheater when used as proposed. The applicant proposes several conditions to mitigate this disruption including decibel monitoring and event curfew. The applicant has also provided a sound study from Audio Lab LLC that asserts that the sound disruption will be minimal.

The Board heard and read concerns from area residents that they believed the sound from the active amphitheater would disrupt their quiet evenings at home, their sleep or their animals. An agricultural operator (Dunlap Hatchery), an area poultry producer, also testified that sporadic sudden loud noises would interfere with their animals creating production and economic difficulties.

In reviewing the evidence regarding sound impact, the Board does not find the sound study provided by the applicants to be persuasive. The testing done does not appear to have followed any particular scientific or professional standard. And the testing does not appear from the Board's view to replicate the applicant's proposed use. The Board cannot rely on this study as a demonstration that mitigation methods proposed would be effective. Common sense and the common experience of anyone who's attended a concert at large open-air venue leads the Board to believe that sound would be carried away from the venue to local properties. Exactly how far and to what extent is unclear. However, sound disruption would obviously interfere with the use and enjoyment with some residential uses and enjoyment if the sound were to reach the property at a sufficient level and we believe the testimony of agricultural operator to be credible if the sound were to reach the property at a sufficient level.

At the hearings, the timing and extent of traffic delays and noise impacts were debated, but their existence is not disputed. The traffic surges evidenced by the TIS and highway and emergency agencies comments would injure the other property owners in the immediate vicinity. The delays would be excessive and impact daily travel and agricultural operations. The mitigation methods proposed would satisfy the roadway jurisdictions; however, they do not significantly alleviate the burden the use would cause on local travel—personal, business or emergency. The extent of the noise impacts is not clear because of an insufficient sound study; however, common sense and experience tells us that property owners in the immediate vicinity will have their lives and/or livelihoods disrupted by the use. This injury has not been demonstrated to be mitigated by the proposed conditions. For these reasons, we find that the proposed use will be injurious to the other property owners in the immediate vicinity.

The Commission found that the character of the area is primarily agricultural in nature. The zoning, application, and extensive testimony support this conclusion. On top of that, this region is unique to the state and county. A 5,000-seat amphitheater is unquestionably outside of the normal here. We believe the position of the applicant is not that the application will not change the character of the area—but that change will be positive. There are a number of local agritourism operators that believe in good faith that the change to the character of the area would be positive. Here, however, we have to disagree. The traffic disruption and noise impact would permanently disrupt the character of the area as it exists today. Traffic and noise are known to disrupt the area on the Fourth and this would overcome the region with similar disruptions multiple times a week from Spring to Fall. We do not see how the proposed mitigation would circumvent this. For these reasons, we find that the proposed use would negatively change the essential character of the area.

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

Department of Environmental Quality provided comment. Exhibit 9, attachment 9. The applicant has agreed to install a centralized water and sewer system, surface water, gravity and pressurized irrigation. Stormwater is proposed to be retained on-site by utilizing swales and ponds. The applicant is willing to meet the standards of other agencies with jurisdictional authority (IDWR, SWHD) to ensure adequate water, sewer, irrigation, drainage, stormwater drainage, and utility systems will be provided to accommodate the use. For these reasons the Board find that adequate facilities for sewer, irrigation, drainage, stormwater, and utility systems will be provided at the time of development to accommodate the use.

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

The subject property has frontage on Lowell Road and Highway 55/Sunny Slope Road. The existing access on Lowell Rd is consistent with historical agricultural practices. The applicant is proposing to utilize three (3) access points for the proposed use; one (1) will be located on Lowell Road and two (2) will be located on Highway 55.

Lowell Road is designated as a minor arterial and is maintained by Canyon Highway District No. 4. The access point on Lowell Rd is being proposed to be located at the western edge of the site frontage as requested by Canyon Highway District No. 4.

Highway 55 is designated as a principal arterial and is maintained by the Idaho Transportation Department (ITD). According to the traffic impact study, the two (2) new accesses being proposed on Highway 55 meet the driveway spacing requirements and have adequate sight distance.

Conditions could be included in the CUP to ensure access requirements are met. The Board finds that legal access for the subject property could exist at the time of development.

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

According to the TIS report, the proposed 5,000-capacity special events facility is estimated to generate 1,316 trips during the peak arrival hour which is set as 4:00 PM – 5:00 PM on the days of events and is estimated to generate 1,967 trips during the peak departure hour which is set as 9:00 PM – 10:00 PM on the days of events.

The Board received comments from ITD and CCHD4 after the TIS report. ITD has indicated that improvements to Highway 55 that would help accommodate these traffic surges from the amphitheater are planned yet unfunded. The applicant has agreed to mitigation measures recommended by ITD and CHD4. For instance, the applicant has agreed to have a traffic control and management plan for each event to minimize traffic impacts of the traffic surge.

The County Sheriff's Office summarized the TIS well in their written comment: "The TIS ... shows the travel area between Farmway Rd and Lowell Rd is projected to operate with four to five times the number of vehicles to and from an event, unless it is widened to five lanes. This volume of traffic during an event could result in a thirty-two-minute travel time from Farmway Rd to the event site located on SH-55 or Sunnyslope Rd." The letter's conclusion is that the existing roadways cannot support these traffic surges.

In Board's review of the TIS and the agency and citizen comments discussed here and above, we concur with Commission and the Sheriff's Office. The proposed amphitheater would generate traffic surges that would cause substantial and excessive delays on the existing roadways for regular roadway users, agricultural operators and emergency service providers. The mitigation measures proposed would provide advanced notice to roadway users and elevate some congestion on non-arterials roads. The Board does not believe the mitigation measures demonstrate a significant relief from the interference with the existing traffic patterns. The mitigation measures only place a burden on existing roadway users to avoid the traffic pattern interference, they don't remedy the problem.

The Board also interprets the term “future traffic patterns” to mean those that would result from applicant improvements or are in active development. We believe that reliance on a planned but unfunded improvement is too speculative a commitment to rely on for mitigation purposes.

For the reasons stated, the Board finds that the proposed amphitheater use would cause undue interference with existing and future traffic patterns.

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?

The subject property is located within Canyon Highway District No. 4, Marsing Fire District, Vallivue School District, Marsing Ambulance Service, Canyon County Ambulance District, and Boise Project Board of Control. Canyon County Sheriff is the only law enforcement agency with jurisdiction in this area. Written comment from these agencies are located in Exhibit 9. The Board also received comment from the Caldwell Rural Fire District, which does not provide services to the property, but utilizes the roadways here.

The Board relies on these agencies to assess the impact of a use on the services they provide. No comment was received from the school district and the Board has no concern for impact on the school district. Based on the comments received, the Board believes that essential services are available for water, irrigation, and sanitation that the mitigation proposed would resolve any potential negative impacts.

The Board after reviewing the comments from law enforcement, fire and emergency providers does not find that the agencies made any straightforward assertions that they could provide essential services to accommodate the use. Most described the negative impact the amphitheater use would have on their ability to provide essential services during the traffic surges. Some of the agencies asked for mitigation measures including having the applicant provide emergency medical personnel and a helipad in order for medical service to be provided by a private provider. These agencies are, in our view, telling the Board that they cannot provide these essential services to accommodate the use and that their services would be negatively impacted by the proposed use. The Board also infers from their statements that additional public funding would be necessary to meet the needs created by the requested use including road improvement and labor associated with traffic mitigation personnel and emergency service personnel necessary because of the use.

Accordingly, the Board finds that the essential services are not provided to accommodate, that essential services will be negatively impacted by the use and that additional public funding would be required due to the use.

Order

Based upon the Findings of Fact, Conclusions of Law contained herein, the Board of County Commissioners deny the appeal of Case #: CU2022-0034-APL upholding the Commission’s denial of the conditional use permit Case # CU2022-0034.

Pursuant to Idaho Code § 67-6519, the following actions may be taken to obtain approval:

1. Consider reducing the capacity of the amphitheater to fit the character of the area and address injuries to other property owners in the immediate vicinity; and
2. Consider additional coordination with local agencies to ensure that roadways and essential services are available and adequate to meet the demands of the use without increased burden on the public; and
3. Consider developing a sound study and exterior lighting study that would demonstrate that the impacts on the character of the area and injury to other property owners in the immediate vicinity are mitigated.

DATED this 24 day of August, 2023.

CANYON COUNTY BOARD OF COMMISSIONERS

	Yes	No	Did Not Vote
<u>Did not participate in hearing</u> Commissioner Leslie Van Beek	<u> </u>	<u> </u>	<u>X</u>
<u>Brad Holton</u> Commissioner Brad Holton	<u>X</u>	<u> </u>	<u> </u>
<u>[Signature]</u> Commissioner Zach Brooks	<u>X</u>	<u> </u>	<u> </u>

Attest: Chris Yamamoto, Clerk

By: [Signature]
Deputy

Date: 8-24-23