

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

In the matter of the application of:

Costea Dembi – CR2021-0006

The Canyon County Board of County Commissioners considers the following:

- 1) Conditional Rezone of a portion of the subject parcel, approximately 10.82 acres of a 23.38-acre parcel, from "A" (Agricultural) to a "CR-R-R" (Conditional Rezone – Rural Residential) zone
- 2) Development Agreement consistent with conceptual site plan and retaining approximately 12.56 acres in the "A" (Agricultural) zone and limits the development to 4 residential lots with an average of 2 acres.

[CR2021-0006, 8027 Lake Shore Drive, Nampa (Parcel R29570011), a portion of the SE ¼ of Section 15, T2N, R2W, BM, 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 CR2021-0006.

Applicable Law

1. The following laws and ordinances apply to this decision: Canyon County Code §01-17 (Land Use/Land Division Hearing Procedures), Canyon County Code §07-05 (Notice, Hearing and Appeal Procedures), Canyon County Code §07-06-01 (Initiation of Proceedings), Canyon County Code §07-06-07 (Conditional Rezones), Canyon County Code §07-10-27 (Land Use Regulations (Matrix)), Idaho Code §67-6511 (Zoning Map Amendments and Procedures), and §67-6519 (Application Granting Process).
 - a. Notice of the public hearing was provided per CCZO §07-05-01 and Idaho Code §67-6509.
 - b. The presiding party may establish conditions, stipulations, restrictions, or limitations which restrict and limit the use of the rezoned property to less than the full use allowed under the requested zone, and which impose specific property improvement and maintenance requirements upon the requested land use. Such conditions, stipulations, restrictions, or limitations may be imposed to promote the public health, safety, and welfare, or to reduce any potential damage, hazard, nuisance, or other detriment to persons or property in the vicinity to make the land use more compatible with neighboring land uses. *See* CCZO §07-06-07(1).
 - c. 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, §67-6511.
2. The Board has the authority to hear this case and make its own independent determination. *See* I.C. §67-6519, §67-6504, 67-6509 & 67-6511.
3. The Board can sustain, modify or reject the Commission's recommendations. *See* CCZO §07-05-03.
4. The burden of persuasion is upon the applicant to prove that all criteria, including whether the proposed use is essential or desirable to the public welfare, are satisfied. CCZO §07-05-03.
5. Idaho Code §67-6535(2) requires the following: The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that explains

the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record. The County's hearing procedures adopted per Idaho Code §67-6534 require that final decisions be in the form of written findings, conclusions, and orders. CCZO 07-05-03(1)(I).

The application, CR2021-0006, was presented at a public hearing before the Canyon County Board of Commissioners on September 5, 2023. Having considered all the written and documentary evidence, the record, the staff report, oral testimony, and other evidence provided, including the conditions of approval and project plans, the Board of County Commissioners decides as follows:

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

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

Conclusion: The proposed conditional rezone is not generally consistent with the comprehensive plan.

Findings: (1) The subject parcel is designated as Agricultural in the 2020 Canyon County Comprehensive Plan Future Land Use Map (Exhibit G, Attachment 6c).

(2) The request does not align with the 2020 Canyon County Comprehensive Plan according to following goals and policies:

Chapter 2: Population	
Goal 3.	To guide future growth in order to enhance the quality and character of the county while providing and improving the amenities and services available to Canyon County residents.
Policy 2.	Encourage future high-density development to locate within incorporated cities and/or areas of city impact.
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.
Chapter 3: School Facilities	
Goal 2.	Strive for better connectivity, safer access, and pedestrian friendly transportation options to schools.
Policy 3.	The adequacy of school facilities may be considered by the hearing bodies in reviewing proposed residential subdivision and planned developments based on recommendations from the affected districts.
Policy 6.	New development adjacent to existing or planned schools should provide for adequate pedestrian and bicycle access for school children along both internal and connecting roads and pathways.
Chapter 4: Economic Development	
Goal 2.	To support the agriculture industries by encouraging the maintenance of continued agricultural land uses and related agricultural activities.
Policy 1.	Canyon County should encourage the continued use of agricultural lands, land uses and recognize the economic benefits they provide to the community.
Policy 5.	Canyon County should not overdevelop and should retain agricultural lands/uses and control environmental impacts through conditions placed on subdivision plats and conditional use permits.
Policy 6.	Encourage commercial and residential development in a controlled, planned, and constructive manner, which will enhance, not destroy, the existing lifestyle and environmental beauty of Canyon County.
Policy 7.	Canyon County should identify areas of the county suitable for commercial, industrial and residential development. New development should be located in close proximity to existing infrastructure and in areas where agricultural uses are not diminished.

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 4.	To encourage development in those areas of the county which provide the most favorable conditions for future community services.
Policy 2.	Encourage orderly development of subdivisions and individual land parcels, and require development agreements when appropriate.
Policy 9.	Encourage and support land use proposals that are consistent with the community design goals and policies within the county.
Agriculture Policy 1.	Encourage the protection of agricultural land for the production of food.
Residential Policy 1.	Encourage high density development in areas of city impact.
Residential Policy 2.	Encourage residential development in areas where agricultural uses are not viable.
Residential Policy 3.	Encourage compatible residential areas or zones within the county so that public services and facilities may be extended and provided in the most economical and efficient manner.
Chapter 6: Natural Resources/Agricultural Land & Water	
Ag Land Goal 1.	To support the agricultural industry and preservation of agricultural land.
Ag Land Policy 1.	Protect agricultural activities from land use conflicts or undue interference created by nonagricultural development
Ag Land Policy 3.	Protect agricultural activities from land use conflicts or undue interference created by existing or proposed residential, commercial or industrial development.
Water Policy 4.	Encourage new development to incorporate design elements that limit water use requirements.
Water Policy 5.	Require that new development has adequate water supply to ensure fire protection for the development.
Chapter 8: Public Services, Facilities and Utilities Component	
Policy 4.	Encourage activities to promote the protection of groundwater and surface water.
Chapter 9: Transportation	
Goal 3.	Support development of local transportation systems that are well-connected, both internally and to the regional transportation system.
Policy 9.	Promote the design of continuous collector streets that minimize impacts of traffic on local streets but aids internal circulation for new developments.
Policy 10.	Require new developments to provide stub streets that will connect to future developments on adjacent lands wherever possible in accordance with highway district standards and require appropriate signage.
Policy 11.	Promote connectivity through design of well-connected local street systems and pathways.
Implementation Action: Use the planning process to plan for and design well-connected street and bike/pedestrian pathway systems, to preserve transportation	

corridors, future transit routes, road extensions, and to facilitate access management plan.

Chapter 12: Community Design

- Policy 6. Encourage new or expanding subdivisions to consider stub roads pathways connecting to adjacent subdivisions, and pathways connecting to schools.

Chapter 13: Agriculture

Goal 1. Acknowledge, support and preserve the essential role of agriculture in Canyon County.

Goal 2. Support and encourage the agriculture use of agriculture lands.

Goal 3. Protect agricultural lands and land uses from incompatible development.

Policy 1. Preserve agricultural lands and zoning classifications.

- (3) During the Planning and Zoning Commission hearing on May 18, 2023, the Commission noted that the Area of City Impact for Nampa is not going to expand out in this direction and a line has to be drawn somewhere (Exhibit E & F). The Board agrees with the note stated.
- (4) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CR2021-0006.

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

Conclusion: The proposed conditional rezone is not more appropriate than the current zoning designation.

Findings: (1) The subject parcel is currently zoned "A" (Agricultural). Other than properties north of Lake Shore Drive located in the Nampa Area of City Impact, the parcels are zoned "A" (Exhibit G, Attachment 6b).

- (2) A residential designation will impact prime farmland. The parcel is designated best-suited soils (Exhibit G, Attachments 6a and 6f)
- (3) A residential designation will allow higher density within an agricultural designation that could interfere with existing agricultural operations. The parcel is surrounded on three (3) sides by agricultural uses. Agricultural uses include smells, sounds and slow-moving equipment.
- (4) The parcel is located outside of Nampa's Area of City Impact. Nampa recommends denial of the request (Exhibit G, Attachment 7c).
- (5) Evidence includes findings and conclusions supported within this document.

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

Conclusion: The proposed conditional rezone is not compatible with land uses on three (3) sides.

Findings: (1) The area this parcel is in is predominantly agriculture with sporadic home sites (Exhibit G, Attachments 6a and 6b). Lying just south of City of Nampa's Area of City Impact, the parcel is surrounded to the south, east and west by croplands and a few scattered homesites (Exhibit G, Attachment 6a). To the North, within the Area of City Impact, there are several land uses with

Rural Residential ("R-R") being the predominant zone with some "R-1" (Single Family Residential).

- a. The adjacent "R-1" Zone was approved via a conditional rezone (RZ2021-0039) and required connection to city water. CCZO Section 07-06-07(3) regarding conditional rezone designations states: "Designation of a parcel as CR shall not constitute "spot" zoning and shall not be presumptive proof that the zoning of other property adjacent to or in the vicinity of the conditionally rezoned property should be rezoned the same."

- (2) Based on comment letters and testimony on the record, the Board concurs with Planning and Zoning recommendation (Exhibit E & F) and finds that there would be a potential interference with the surrounding agricultural uses if the Conditional Rezone is approved. There is some concern that the remainder of the land would be developed in the near future based on the initial application submitted requesting 16 residential lots.
- (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CR2021-0006.

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

Conclusion: The request will negatively affect the character of the area.

- Findings:**
- (1) The character of the area is predominantly agricultural (Exhibit G, Attachment 6a and 6b). The property is considered best-suit soils and prime farmland (Exhibit G, Attachment 6f and Attachment 7b). Adding smaller homesites could have an affect on the character of the area by making it more urban in nature. By adding additional residential lots in the area and a private road, it would no longer give the character of an agriculture area.
 - (2) The proposed rezone is offering to mitigate the residential use by leaving 12.56 acres in agricultural production. However, the request promotes residential zoning and development that does not align with the 2020 Canyon County Comprehensive and is outside of Nampa's Area of City Impact (Exhibit G, Attachment 6c).
 - (3) Notice of the public hearing was provided per CCZO §07-05-01. Newspaper notice was published on July 26, 2023. Property owners within 600' were notified by mail on July 26, 2023 and sent a corrected notice on August 14, 2023. The property was posted on August 3, 2023.
 - a. Johanna Harness and Greg Harness, neighbors adjacent to the subject parcel, request the conditional rezone be denied due to the agricultural designation, loss of farmland, nitrate, groundwater, stormwater, and traffic issues (Exhibit D, Attachments 1 and 2 and Exhibit G, Attachments 8a and 8b).
 - (4) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CR2021-0006.
 - (5) Evidence includes associated findings and evidence supported within this document.

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

Conclusion: Adequate facilities and services will be provided to accommodate use.

- Findings:**
- (1) The property is located outside of the Nampa Area of City Impact; and therefore, cannot pull city services to the property. Therefore, individual domestic wells and individual septic systems are required for the development. Subsequent development would require adherence to requirements of Idaho Department of Environmental Quality and Southwest District Health (Exhibit G, Attachments 7c and 7h).

a. Southwest District Health indicated extended treatment systems are required. However, the requirement was based on the initial 16-lot concept plan.

- (2) Nampa Meridian Irrigation District responded that all private laterals and waste ways must be protected. The Burke Lateral runs along the southern boundary of the site and has an easement of twenty-five feet (25') on each side. The District requires a signed License Agreement for any encroachments within the easement (Exhibit G, Attachment 7d).
- (3) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on July 26, 2023. Full political notice was provided on July 26, 2023.
- (4) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CR2021-0006.
- (5) Evidence includes the area of city impact findings and evidence supported within this document.

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

Conclusion: Legal access to the subject property exists.

- Findings:**
- (1) The site has frontage on Powerline Road and Lake Shore Drive, both principal arterials. Based on comment from Nampa Highway District No. 1, access shall be permitted onto Lake Shore Drive via a private road approved through their variance process (Exhibit G, Attachment 5a).
 - (2) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on July 26, 2023. Full political notice was provided on July 26, 2023.
 - (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CR2021-0006.
 - (4) Evidence includes the associated findings and evidence supported within this document.

7. Does the proposed conditional rezone require public street improvements in order to provide adequate access to and from the subject property to minimize undue interference with existing or future traffic patterns? What measures have been taken to mitigate traffic impacts?

Conclusion: Impacts to existing and future traffic patterns are not anticipated. Public street improvements would not be required unless directed from Nampa Highway District. No measures have been taken to mitigate traffic impacts.

- Findings:**
- (1) The subject property has a current legal access that has an approved variance for the private road access (Exhibit G, Attachment 7a). The request, as conditioned, is not anticipated to require a traffic impact study. Nampa Highway District will require access approach and dedication at the time of plat to minimize potential traffic and access impacts (Exhibit G, Attachment 5a).
 - (2) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on July 26, 2023. Full political notice was provided on July 26, 2023. Idaho Transportation Department has no concerns at this time (Exhibit G, Attachment 5g).
 - (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CR2021-0006.

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

Conclusion: The proposed conditional rezone will not impact essential services. The Nampa School District reported that there is no overcrowding in the schools. No other entities responded.

- Findings:** (1) The Nampa School District provided a letter when the application was first noticed for the original 16 residential lot concept plans. The letter says that their schools are near capacity, therefore the proposed conditional rezone could impact that essential service. No measures are proposed to mitigate impacts. (Exhibit G, Attachment 7f). In a subsequent letter dated May 18, 2023, the School District reported there is plenty of space (Exhibit C, Attachment 2).
- (2) Notice of the public hearing was provided per CCZO §07-05-01. Affected agencies were noticed on July 26, 2023. Full political notice was provided on July 26, 2023. No other public services or facilities entities responded.
- (3) Evidence includes the application, support materials submitted by the applicant, public testimony, and the staff report with exhibits found in Case No. CR2021-0006.

Order

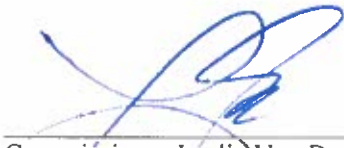


Based upon the Findings of Fact, Conclusions of Law and Order contained herein, the Board of County Commissioners **deny** Case # CR2021-0006, a conditional rezone of the parcel R29570011, from "A" (Agricultural) to "CR-R-R" (Conditional Rezone – Rural Residential).

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 5 day of sept, 2023.

CANYON COUNTY BOARD OF COMMISSIONERS

☒ Motion Carried Unanimously
☐ Motion Carried/Split Vote Below
☐ Motion Defeated/Split Vote Below

	Yes	No	Did Not Vote
 Commissioner Leslie Van Beek	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Commissioner Brad Holton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Commissioner Zach Brooks	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Attest: Chris Yamamoto, Clerk

By: 
Deputy

Date: 9-5-23