

ELMORE COUNTY PLANNING AND ZONING COMMISSION
War Memorial (American Legion Hall), 515 East 2nd South Street, Mountain Home, ID
83647

Wednesday, September 16, 2015 at 7:00pm

Agenda

PLEASE SILENCE CELL PHONES

CALL TO ORDER

ESTABLISH QUORUM

- | | |
|---|--|
| <input type="checkbox"/> Chairperson Patti Osborn | <input type="checkbox"/> Vice-Chairman K.C. Duerig |
| <input type="checkbox"/> Ed Oppedyk | <input type="checkbox"/> Sue Fish |
| <input type="checkbox"/> Jeff Blanksma | <input type="checkbox"/> Shane Zenner |
|
 | |
| <input type="checkbox"/> Attorney of Record Phil Miller | |

PLEDGE OF ALLEGIANCE

PUBLIC MEETING

- Ordinance Work Session

ITEMS FROM THE PUBLIC

FCO's and MINUTES

- Minutes from 08-05-2015
- FCO for Case Number: CUP-2015-11 Simco Solar, LLC
- FCO for Case Number: CUP-2015-12 Mike and Patricia Canale

INFORMATION ITEMS

- Upcoming P&Z Schedule

MEETING ADJOURNED



Elmore County Land Use and Building Department

520 East 2nd South Street
Mountain Home, Id. 83647
Phone: (208) 587-2142 ext. 254
Fax: (208) 587-2120
www.elmorecounty.org

Alan Christy
Director

Tell Riley
Building Official

Beth Bresnahan
Planner I

Kacey Ramsauer
Administrative
Assistant

Memorandum

Date: September 9, 2015

To: Planning and Zoning Commission

From: Alan Christy, Director

Re: Ordinance Chapter 9

Background

The purpose of this memorandum is to give the planning and zoning commission a summary of changes to Chapters 9 of the zoning and development ordinance for the September 16, 2015 work session. Chapter 12, 13 & 14 are being reviewed by consultants and outside agencies. It is anticipated they can be reviewed at a later work session.

Summary of changes Chapter 9

- Consistency in terms.
- Corrected Dates.
- Moved terms "expanded or extended" to Chapter 2.
- Changed damaged percentage to 50%. 50% is used by other governmental agencies like FEMA.
- Violations were removed from the Chapter as it is covered in Chapter 3.
- Removed restricted dates for decision. (This was done in a previous Ordinance revision, However, Chapter 9 was missed).
- Moved term "designed purpose" to Chapter 2.

Attachments:

1. Chapter 9
2. Chapter 9 Redline
3. Idaho Code 67-6538

**TITLE 6
ELMORE COUNTY
ZONING AND DEVELOPMENT ORDINANCE**

CHAPTER 9 – NON CONFORMING PROPERTY, USE OR STRUCTURE, AND GRANDFATHER RIGHTS

Sections:

- 6-9-1: Purpose**
- 6-9-2: Applicability**
- 6-9-3: Nonconforming Property**
- 6-9-4: Nonconforming Use**
- 6-9-5: Nonconforming Structure**
- 6-9-6: Grandfather Rights/Legal Nonconforming**
- 6-9-7: Establishing Grandfather Rights/Legal Nonconforming**
- 6-9-8: Expansion or Extension of a Grandfather Right/Nonconforming Use or Structure**

Section 6-9-1: Purpose:

The purpose of this Chapter is to allow any nonconforming property, use, or structure that lawfully existed prior to the effective date of this Ordinance to continue until they are removed, but not to encourage their continuation. It is further the intent of this Chapter that nonconforming uses shall not expand or extend the nonconforming aspect of the property, use, or structure, unless approved subject to the regulations of this Ordinance.

Section 6-9-2: Applicability:

- A. These regulations shall apply to any lawfully existing nonconforming property, use, or structure in the County, except: in the event that a property, use, or structure that was deemed nonconforming under past zoning ordinances now complies with the standards of this Ordinance, such property, use, or structure shall be deemed conforming.
- B. These regulations shall apply to properties that were not created in accordance with the regulations of this Ordinance (an illegal division of property) and that were of record in the Clerk's office prior to July 7, 1999. The boundaries of which shall not have changed except by governmental action as specified in this Ordinance.
 - 1. A property shall be deemed conforming and shall be eligible for building permits if it meets the dimensional standards for the base zone in which it is now located.

2. A property shall be deemed lawfully nonconforming and shall be eligible for building permits if it meets one of the following standards:
 - a. The property establishes grandfather rights as defined by this Ordinance and the property meets the dimensional standards for the applicable base zone at the time it was created.
 - b. A dwelling, as herein defined, was constructed or placed on a foundation prior to May 12, 2009, and still remains on the property.

Section 6-9-3: Nonconforming Property:

- A. A nonconforming property for the purpose of this Ordinance shall be a property that has not established legal grandfather rights or a legal nonconforming use as defined by this Ordinance.
- B. A lawful nonconforming property for the purpose of this Ordinance shall be a property that has established legal grandfather rights or a legal nonconforming use as defined by this Ordinance.
- C. A lawfully nonconforming use may continue as long as the use remains lawful and is not expanded or extended unless otherwise approved subject to the regulations of this Ordinance.
- D. To remain lawful a legal nonconforming property shall not be further diminished in size.
- E. Any property reduced by governmental action that reduces an existing conforming parcel below the required property size shall be deemed as a legal nonconforming property for the purpose of development. To be deemed a conforming property, the owner or applicant shall submit documents to the Director proving the following:
 1. The property was in compliance with the minimum property size requirement of the applicable zoning district prior to the decrease in property size; and
 2. The decrease in property size was caused by acquisition through prescription, purchase, or other means by the applicable highway district, Idaho Transportation Department, or other local, state, or federal agency.

Section 6-9-4: Nonconforming Use:

- A. A nonconforming property for the purpose of this Ordinance shall be a property that has not established legal grandfather rights or a legal nonconforming use as defined by this Ordinance.
- B. A lawfully nonconforming use for the purpose of this Ordinance shall be a property that has established legal grandfather rights or a legal nonconforming use as defined by this Ordinance.
- C. A lawfully nonconforming use may continue as long as the use remains lawful and is not expanded or extended unless otherwise approved subject to the regulations of this Ordinance.
- D. If a nonconforming use has ceased for twelve (12) consecutive months or has been replaced with a conforming use, the nonconforming use shall be deemed abandoned and shall not be reestablished.
- E. A nonconforming use or a structure housing a nonconforming use that is damaged more than fifty (50%) percent of its current assessed taxable value by fire, flood, explosion, wind, earthquake, war, riot, calamity, or other catastrophic event, shall comply with this Ordinance upon reconstruction. If the damage to the nonconforming use or structure housing the nonconforming use is fifty (50%) percent or less of the current assessed taxable value, the nonconforming use may continue, provided that the nonconforming use commences within twelve (12) months of the event.
- F. A nonconforming use housed within a structure(s) listed on the National Register of Historic Places shall be exempt from the regulations of this section.

Section 6-9-5: Nonconforming Structure:

- A. A nonconforming structure may continue as long as the use remains lawful and is not expanded or extended, unless otherwise approved subject to the regulations of this Ordinance.
- B. A nonconforming structure may be enlarged or modified, provided that the additions or modifications to the structure conform to the requirements of this Ordinance.
- C. A nonconforming structure that is damaged more than fifty (50%) percent of its current assessed taxable value by fire, flood, explosion, wind, earthquake, war, riot, calamity, or other catastrophic event, shall comply with this Ordinance upon restoration or reconstruction. If the damage to the nonconforming structure is fifty (50%) percent or less of the current assessed taxable value, the structure may be restored or reconstructed, provided that restoration or reconstruction commences within twelve (12) months of the event.

- D. Nonconforming structures listed on the National Register of Historic Places shall be exempt from the regulations of this section.

Section 6-9-6: Grandfather Rights/Legal Nonconforming:

- A. Grandfather Rights/Legal Nonconforming: Grandfather Rights and/or lawful nonconforming structures and uses shall be established by providing legal and factual documentation to establish such uses or as otherwise defined or required by this Ordinance.

Section 6-9-7: Establishing Grandfather Rights/Legal Nonconforming:

- A. Grandfather Rights: A legal nonconforming use may be established upon application through the Department subject to review and verification of legal and factual documentation submitted by the applicant.
 - 1. Grandfather rights and legal nonconforming structures and uses shall be established through two different forms of legal and factual documentation.
- B. Legal and factual documentation accepted for establishment of grandfather rights:
 - 1. Licenses such as beer, liquor, retail, or professional occupation showing dates of use; or
 - 2. Rental property receipts showing dates of use, directories, utility bills, etc.; or
 - 3. Business receipts showing types of service or goods provided, dated phone directories, Polk's Directory, etc.; or
 - 4. Statements from utilities, which indicate date and type of use, i.e. commercial, multi-family residential, etc.; or
 - 5. Notarized affidavits from neighbors or persons of fact who have observed the nonconforming use over the required time period.
- C. Procedures: The individual requesting approval of a grandfather rights/legal nonconforming structure and use shall submit the appropriate application and fee to the Director for review with the required legal and factual documentation.
 - 1. The Director shall review and verify the legal and factual documentation submitted.

2. Upon deeming the application complete, the Director shall notify the applicant that their application has been deemed complete and a written decision shall be made.
 3. The Director, upon rendering a decision, shall notify the applicant of such decision and shall submit the findings and conclusions in writing to the applicant. The written approval findings and decision shall include:
 - a. The specific structure(s) and use(s) that received approval.
 - b. All approved structure(s) and use(s) shall be precisely documented to include, but not be limited, to the current dimensions of all nonconforming structures, specific approved use, hours of operation, and any other specific detail required to document the established grandfather right as this right shall not be expanded upon without specific approval as defined in this ordinance.
 - c. When appropriate, the Director shall take photographs to further document the grandfather/legal nonconforming structure(s) and use(s). These photographs shall be maintained with the record and/or shall be inserted into the body of the approval letter.
 4. The applicant or any affected person may appeal the decision of the Director in accordance with this Ordinance.
- D. If nonuse of a nonconforming use continues for a period of one (1) year or longer, the Department may, by written request, require that the owner declare his intention with respect to the continued nonuse of the nonconforming use in writing within twenty-eight (28) days of receipt of the request. If the owner elects to continue the nonuse, the owner shall notify the Department in writing of their intention and shall post the property with notice of his intent to continue the nonuse of the nonconforming use. The owner shall also publish notice of their intent to continue the nonuse in a newspaper of general circulation in the County. If the property owner complies with the requirements of this section, their right to use the nonconforming use in the future shall continue, notwithstanding any change in the zoning of the property.
- E. The property owner may voluntarily elect to withdraw the nonconforming use by filing with the Clerk, as the case may be, an affidavit of withdrawn use. If the property is proposed for a different use, the property owner shall be deemed to have abandoned any grandfather right to the prior use of the property.
- F. The provisions of this section shall not be construed to prohibit the County from passing or enforcing any other law or ordinance for the protection of the public health, safety and welfare.

Section 6-9-8: Expansion or Extension of a Grandfather Rights/Nonconforming Use or Structure:

A. Process:

1. An application and fees shall be submitted to the Director on forms provided by the Department.
2. The Director shall apply the standard listed in subsection B of this section and the findings listed in subsection C of this section to review the expansion or extension of a nonconforming use or structure.

B. Standard Nonconforming Property:

1. The nonconforming property shall not be further diminished in size.
2. Any property reduced by governmental action that reduces an existing conforming parcel below the required property size shall be deemed as a lawful nonconforming property for the purpose of development provided the owner or applicant applies for Grandfather Rights and is approved, and submits documents to the Director proving the following:
 - a. The property was in compliance with the minimum property size requirement of the applicable zoning district prior to the decrease in property size; and
 - b. The decrease in property size was caused by acquisition through prescription, purchase, or other means by a Highway District, Idaho Transportation Department, or other local, state, or federal agency.

C. Required Findings: In order to grant an expansion or extension of a nonconforming use or structure, the Director shall make the following findings:

1. Allowing the expansion or extension of the nonconforming use or structure shall not conflict with the applicable Comprehensive Plan; and
2. The expansion or extension of the nonconforming use or structure shall not be detrimental to the public health, safety, and welfare; and
3. The approval of an expansion or extension for a nonconforming property does not exceed more than thirty (30%) percent of the original nonconforming footprint.
4. The approval of an expansion or extension for a nonconforming property does not further diminish the property in size.

TITLE 6
ELMORE COUNTY
ZONING ~~and~~ AND DEVELOPMENT ORDINANCE

CHAPTER 9 – NON CONFORMING PROPERTY, USE OR STRUCTURE, AND GRANDFATHER RIGHTS

Sections:

- 6-9-1: Purpose
- 6-9-2: Applicability
- 6-9-3: Nonconforming Property
- 6-9-4: Nonconforming Use
- 6-9-5: Nonconforming Structure
- 6-9-6: **Violations**
- 6-9-7: Grandfather Rights/Legal Nonconforming
- 6-9-8: Establishing Grandfather Rights/Legal Nonconforming
- 6-9-9: Expansion or Extension of a Grandfather Right/Nonconforming Use or Structure

Section 6-9-1: Purpose:

The purpose of this ~~ordinance~~ Chapter is to allow any nonconforming property, use, or structure that lawfully existed prior to the effective date of this ~~ordinance~~ Ordinance to continue until they are removed, but not to encourage their continuation. It is further the intent of this ~~ordinance~~ Chapter that nonconforming uses shall not expand or extend the nonconforming aspect of the property, use, or structure, unless approved subject to the regulations of this ~~ordinance~~ Ordinance.

Section 6-9-2: Applicability:

- A. These regulations shall apply to any lawfully existing nonconforming property, use, or structure in ~~Elmore~~ the County, except: ~~in~~ in the event that a property, use, or structure that was deemed nonconforming under past zoning ~~regulations~~ ordinances now complies with the standards of this ~~ordinance~~ Ordinance, such property, use, or structure shall be deemed conforming.
- B. These regulations shall apply to properties that were not created in accordance with the regulations of this ~~ordinance~~ Ordinance (an illegal division of property) and that were of record in the ~~Elmore County recorder's Clerk's~~ Elmore County recorder's Clerk's office prior to ~~December 31, 2003, the~~ July 7, 1999. The boundaries of which shall not have changed except by governmental action as specified in this ~~ordinance~~ Ordinance.

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1. A property shall be deemed conforming and shall be eligible for building permits if it meets the dimensional standards for the base zone in which it is now located.
2. A property shall be deemed lawfully nonconforming and shall be eligible for building permits if it meets one of the following standards:
 - a. The property establishes grandfather rights as defined by this ~~ordinance~~Ordinance and the property ~~met~~meets the dimensional standards for the applicable base zone at the time it was created.
 - b. A dwelling, as herein defined, was constructed or placed on a foundation prior to ~~January 1, 1994~~May 12, 2009, and still remains on the property.

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Section 6-9-3: Nonconforming Property:

- A. A nonconforming property for the purpose of this ~~ordinance~~Ordinance shall be a property that has not established legal grandfather rights or a legal nonconforming use as defined by this ~~ordinance~~Ordinance.
- B. A lawful nonconforming property for the purpose of this ~~ordinance~~Ordinance shall be a property that has established legal grandfather rights or a legal nonconforming use as defined by this ~~Chapter~~Ordinance.
- C. A lawfully nonconforming use may continue as long as the use remains lawful and is not expanded or extended unless otherwise approved subject to the regulations of this ~~ordinance~~Ordinance.
- D. To remain lawful a legal nonconforming property shall not be further diminished in size.
- E. Any property reduced by governmental action that reduces an existing conforming parcel below the required property size shall be deemed as a legal nonconforming property for the purpose of development. To be deemed a conforming property, the owner or applicant shall submit documents to the ~~Administrator~~Director proving the following:
 1. The property was in compliance with the minimum property size requirement of the applicable zoning district prior to the decrease in property size; and
 2. The decrease in property size was caused by acquisition through prescription, purchase, or other means by the applicable highway district, Idaho Transportation Department, or other local, state, or federal agency.

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Section 6-9-4: Nonconforming Use:

- A. A nonconforming property for the purpose of this ~~ordinance~~Ordinance shall be a property that has not established legal grandfather rights or a legal nonconforming use as defined by this ~~ordinance~~Ordinance.
- B. A lawfully nonconforming use for the purpose of this ~~ordinance~~Ordinance shall be a property that has established legal grandfather rights or a legal nonconforming use as defined by this ~~ordinance~~Ordinance.
- C. A lawfully nonconforming use may continue as long as the use remains lawful and is not expanded or extended unless otherwise approved subject to the regulations of this ~~ordinance~~Ordinance.
- ~~D. For the purposes of this ordinance, the term "expanded or extended" shall include, but not be limited to: increased hours; increased services or programs; increased number of residential dwellings; interior renovations or structural additions that increase the occupant load of the structure dedicated to the nonconforming use (see Elmore County building code as set forth in this ordinance); any new structures accessory to the nonconforming use; expansion or replacement of the structure (or portions thereof) dedicated to the nonconforming use; anything beyond regular maintenance and minor repairs; (as required by the Elmore County building code as set forth in this ordinance) and any action that extends the duration of the nonconforming use.~~
- ~~E~~
D. If a nonconforming use has ceased for twelve (12) consecutive months or has been replaced with a conforming use, the nonconforming use shall be deemed abandoned and shall not be reestablished.
- ~~F~~
E. A nonconforming use or a structure housing a nonconforming use that is damaged more than ~~sixty (60)~~fifty (50%) percent of its current assessed taxable value by fire, flood, explosion, wind, earthquake, war, riot, calamity, or other catastrophic event, shall comply with this ~~ordinance~~Ordinance upon reconstruction. If the damage to the nonconforming use or structure housing the nonconforming use is ~~sixty (60)~~fifty (50%) percent or less of the current assessed taxable value, the nonconforming use may continue, provided that the nonconforming use commences within twelve (12) months of the event.
- ~~G~~
F. A nonconforming use housed within a structure(s) listed on the National Register of Historic Places shall be exempt from the regulations of this section.

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Section 6-9-5: Nonconforming Structure:

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- A. A nonconforming structure may continue as long as the use remains lawful and is not expanded or extended, unless otherwise approved subject to the regulations of this ordinance ~~Ordinance~~.
- B. A nonconforming structure may be enlarged or modified, provided that the additions or modifications to the structure conform to the requirements of this ordinance ~~Ordinance~~.
- C. A nonconforming structure that is damaged more than ~~sixty (60%)~~ ~~fifty (50%)~~ percent of its current assessed taxable value by fire, flood, explosion, wind, earthquake, war, riot, calamity, or other catastrophic event, shall comply with this ordinance ~~Ordinance~~ upon restoration or reconstruction. If the damage to the nonconforming structure is ~~sixty (60%)~~ ~~fifty (50%)~~ percent or less of the current assessed taxable value, the structure may be restored or reconstructed, provided that restoration or reconstruction commences within twelve (12) months of the event.
- D. Nonconforming structures listed on the ~~national register~~ ~~National Register~~ of ~~historic places~~ ~~Historic Places~~ shall be exempt from the regulations of this section.

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~~Section 6-9-6: Violations:~~

~~Properties, uses, or structures that were in violation of previous land use regulations and that remain a violation under this ordinance shall be considered continuing violations.~~

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Section 6-9-7: Grandfather Rights/Legal Nonconforming:

- A. Grandfather Rights/Legal Nonconforming: Grandfather Rights and/or lawful nonconforming structures and ~~use~~ ~~uses~~ shall be established by providing legal and factual documentation to establish such uses or as otherwise defined or required by this ordinance ~~Ordinance~~.

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Section 6-9-8: Establishing Grandfather Rights/Legal Nonconforming:

- A. Grandfather Rights: A legal nonconforming use may be established upon application through ~~Growth and Development~~ ~~the Department~~ subject to review and verification of legal and factual documentation submitted by the applicant.
 - 1. Grandfather rights and legal nonconforming ~~uses or~~ structures and ~~uses~~ shall be established through two different forms of legal and factual documentation.
- B. Legal and factual documentation accepted for establishment of grandfather rights:

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1. Licenses such as beer, liquor, retail, or professional occupation showing dates of use; or
2. Rental property receipts showing dates of use, directories, utility bills, etc.; or
3. Business receipts showing types of service or goods provided, dated phone directories, Polk's Directory, etc.; or
4. Statements from utilities, ~~such as power, water, or gas,~~ which indicate date and type of use, i.e. commercial, multi-family residential, etc.; or
5. Notarized affidavits from neighbors or persons of fact who have observed the nonconforming use over the required time period.

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C. Procedures: The individual requesting approval of a grandfather rights/legal nonconforming ~~use or~~ structure ~~and use~~ shall submit the appropriate application and fee to the Director for review with the required legal and factual documentation.

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1. The Director shall review and ~~verifying~~ verify the legal and factual documentation submitted.

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~~2. The Director shall approve or deny the application within thirty (30) calendar days of deeming the application complete.~~

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~~3.2~~ Upon deeming the application complete, the Director shall notify the applicant that their application has been deemed complete and a written decision shall be made ~~within thirty (30) calendar days.~~

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~~4.3~~ The Director, upon rendering a decision, shall notify the applicant of such decision and shall submit the findings and conclusions in writing to the applicant. The written approval findings and decision shall include:

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a. The specific ~~use(s) or~~ structure(s) and use(s) that received approval.

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b. All approved ~~use(s) or~~ structure(s) and use(s) shall be precisely documented to include, but not be limited, to the current dimensions of all nonconforming structures, specific approved use, hours of operation, and any other specific detail required to document the established grandfather right as this right shall not be expanded upon without specific approval as defined in this ordinance.

c. When appropriate, the Director shall take photographs to further document the grandfather/legal nonconforming ~~use(s) or~~ structure(s) and use(s). These photographs ~~(digital photographs are acceptable)~~ shall be

maintained with the record and/or shall be inserted into the body of the approval letter.

~~5.4~~ The applicant or any affected person may appeal the decision of the Director ~~within ten (10) calendar days of the date of the approval or denial~~ in accordance with this ~~ordinance~~ Ordinance.

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D. If nonuse of a nonconforming use continues for a period of one (1) year or longer, the County Department may, by written request, require that the owner declare his intention with respect to the continued nonuse of the nonconforming use in writing within twenty-eight (28) ~~calendar~~ days of receipt of the request. If the owner elects to continue the nonuse, the owner shall notify the County Department in writing of their intention and shall post the property with notice of his intent to continue the nonuse of the nonconforming use. The owner shall also publish notice of their intent to continue the nonuse in a newspaper of general circulation in the County. If the property owner complies with the requirements of this section, their right to use the nonconforming use in the future shall continue, notwithstanding any change in the zoning of the property.

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E. The property owner may voluntarily elect to withdraw the nonconforming use by filing with the Clerk ~~of the County~~, as the case may be, an affidavit of withdrawn use. If the property is proposed for a different use, the property owner shall be deemed to have abandoned any grandfather right to the prior use of the property.

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~~F. For purposes of this section "designed purpose" means the use for which the improvements were originally intended, designed and approved pursuant to any applicable Elmore County Ordinances.~~

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~~G.F.~~ The provisions of this section shall not be construed to prohibit Elmore ~~the~~ County from passing or enforcing any other law or ordinance for the protection of the public health, safety and welfare.

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Section 6-9-98: Expansion or Extension of a Grandfather ~~Right~~ Rights/Nonconforming Use or Structure:

A. — Process:

1. An application and fees shall be submitted to the Director on forms provided by the ~~Growth and Development~~ Department.
2. The Director shall apply the standard listed in subsection B ~~and C~~ of this section and the findings listed in subsection ~~D~~ C of this section to review the expansion or extension of a nonconforming use or structure.

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B. Standard Nonconforming Property:

1. The nonconforming property shall not be further diminished in size.
2. Any property reduced by governmental action that reduces an existing conforming parcel below the required property size shall be deemed as a lawful nonconforming property for the purpose of development provided the owner or applicant applies for Grandfather Rights and is approved, and submits documents to the ~~director~~Director proving the following:
 - a. The property was in compliance with the minimum property size requirement of the applicable zoning district prior to the decrease in property size; and
 - b. The decrease in property size was caused by acquisition through prescription, purchase, or other means by a Highway District, Idaho Transportation Department, or other local, state, or federal agency.

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C. Required Findings: In order to grant an expansion or extension of a nonconforming use or structure, the Director shall make the following findings:

1. Allowing the expansion or extension of the nonconforming use or structure shall not conflict with the applicable Comprehensive Plan; and
4. 2. The expansion or extension of the nonconforming use or structure shall not be detrimental to the public health, safety, and welfare; and
3. The approval of an expansion or extension for a nonconforming property does not exceed more than thirty (30%) percent of the original nonconforming footprint.
4. The approval of an expansion or extension for a nonconforming property does not further diminish the property in size.

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Idaho Statutes

TITLE 67 STATE GOVERNMENT AND STATE AFFAIRS

CHAPTER 65 LOCAL LAND USE PLANNING

67-6538. USE FOR DESIGNED PURPOSE PROTECTED -- WHEN VACANCY OCCURS. (1) No rights or authority granted pursuant to this chapter shall be construed to empower a city or county to enact any ordinance or resolution which deprives an owner of the right to use improvements on private property for their designed purpose based solely on the nonuse of the improvements for their designed purpose for a period of ten (10) years or less. Where an owner or his authorized agent permits or allows an approved or unlawful intervening use of the owner's property, the provisions of this section are not applicable.

(2) If the nonuse continues for a period of one (1) year or longer, the city or county may, by written request, require that the owner declare his intention with respect to the continued nonuse of the improvements in writing within twenty-eight (28) days of receipt of the request. If the owner elects to continue the nonuse, he shall notify the city or county in writing of his intention and shall post the property with notice of his intent to continue the nonuse of the improvements. He shall also publish notice of his intent to continue the nonuse in a newspaper of general circulation in the county where the property is located. If the property owner complies with the requirements of this subsection, his right to use such improvements in the future for their designed purpose shall continue, notwithstanding any change in the zoning of the property.

(3) The property owner may voluntarily elect to withdraw the use by filing with the clerk of the city or the county, as the case may be, an affidavit of withdrawn use. If the property is redesigned for a different use, the property owner shall be deemed to have abandoned any grandfather right to the prior use of the property.

(4) For purposes of this section "designed purpose" means the use for which the improvements were originally intended, designed and approved pursuant to any applicable planning and zoning ordinances.

(5) The provisions of this section shall not be construed to prohibit a city or a county from passing or enforcing any other law or ordinance for the protection of the public health, safety and welfare.

History:

[67-6538, added 1999, ch. 292, sec. 1, p. 731.]

**ELMORE COUNTY
PLANNING AND ZONING COMMISSION**

MINUTES

Wednesday, August 19, 2015 at 7:00 pm

Chairperson Osborn called the meeting to order. Members of the Elmore County Planning and Zoning Commission present were Vice Chairman K.C. Duerig, Jeff Blanksma, Shane Zenner and Ed Oppedyk. Also present were Attorney of Record Phillip Miller, Director Alan Christy and staff member Beth Bresnahan.

PLEDGE OF ALLEGIANCE

PUBLIC HEARING

Simco Solar, LLC for a Conditional Use Permit for a 20 MW solar facility in the Heavy Industrial Zone. Case Number: CUP-2015-11. The site is located in portions of Sections 23 and 24, Township 1 South, Range 4 East, B.M. A common way of locating the property is from I-84, take exit 74, head south on Simco Road 1.3 miles, the site is on the east side of the road. Bresnahan gave staff report and background.

Ben Fairbanks is the director of development for Sun Edisun. He stated Sun Edisun is one the largest renewable energy companies in the world. He stated that they have prepared a slide show of their proposal. He gave a brief explanation of the different parts of the company and what they do. He presented a map with a layout of current and future proposed projects. He stated that this is one of 5 projects being proposed in various counties in Idaho. He stated that he wants to make it clear that they are not proposing a solar tower, solar thermal, mirrors or some other form of solar to generate electricity. He stated that they are proposing PV solar panels which absorbs energy rather than reflect it and it's the simplest form of solar energy. He stated that 7 to 10 panels can produce enough energy for the average Idaho home. He stated that maintenance is very minimal with solar energy. He stated that these panels track the orientation of the sun which increases production by about 40 percent. He went through the building and installation process for the solar panels. He stated that the proposed location is pretty ideal for solar energy production. He stated that they are purchasing 180 acres of heavy industrial land for this project. He stated that they have executed a power purchase agreement with Idaho Power and it was approved in December 2014. He stated that a security fence will be erected that is taller than the solar panels within the project with a gate at the road. He stated that there will be a gravel apron to serve as a firebreak and for access that will be just inside the fence that will be maintained. He stated they will acquire all required permits prior to construction and they estimate project completion by the end of 2016.

Paul Hudson signed up in support. He stated that he is an adjacent land owner. He stated that he was at the neighborhood meeting and was impressed by the professionalism of the applicants and a project like this will be good for the county.

There was no one signed up in neutral or in opposition to this application.

Christy entered the presentation into the record as applicant exhibit #1.

There was no further testimony.

Osborn closed this public hearing.

Commission action:

Osborn stated that she does not believe there should be a landscaping requirement because it would be difficult to keep alive. She stated that aside from the security fence they shouldn't be bound to something they cannot do.

Duerig stated they can just require them to meet the ITD requirements and leave it at that.

Duerig moved to approve with conditions proposed by staff with the clarification regarding landscaping not being necessary but would need to mitigate with ITD regarding any glare concerns.

Blanksma seconded.

Motion carried unanimously.

Michael & Patricia Canale for a Conditional Use Permit for a Pet Cemetery in the Agriculture Zone. Case Number: CUP-2015-12. The site is located in a portion of the W1/2 NW1/4, Section 26, Township 1 South, Range 5 East, B.M. A common way of locating the property is head north on Sunset Strip, turn left onto Ditto Creek Road, continue for approximately 12 miles. Turn right onto W Canale Lane, site is on the northeast corner of property.

Bresnahan gave staff report and background.

Roseanne Sabol is speaking on behalf of the applicants. She stated that she is the owner and primary veterinarian and the Small Animal Medical Clinic here in Mountain Home. She stated that she had approached the applicants knowing that they have rural property suitable for the endeavor. She stated that currently the only option she can offer to her clients is cremation located in Boise. She stated that this would give local people the opportunity to have an option for the deceased pet's remains close to home and is also more economical.

Miller asked if this would only be for household pets or all animals.

Sabol stated that it would be for household pets only.

Christy stated that Sabol signed up in support of this application. He stated that the applicants signed up in support of the application but did not wish to testify

No one signed up in neutral or in opposition to the application.

There was no further testimony.

Osborn closed this public hearing.

Commission action:

Oppedyk moved to approve with conditions proposed by staff.

Blanksma seconded.

Motion carried unanimously.

NEW BUSINESS

Minutes

Minutes from 08-05-15.

Duerig moved to approve.

Oppedyk seconded.

Motion carried unanimously.

INFORMATION ITEMS

Upcoming P&Z Schedule.

Christy stated the next scheduled meeting is on September 16, 2015. He stated that there would be an introduction of the new commission member Dave Holland.

MEETING ADJOURNED at 8:04 pm.

Patti Osborn, Chairperson

Date:

Attest: _____
Alan Christy, Director

Date:

BEFORE THE ELMORE COUNTY PLANNING AND ZONING COMMISSION

In Re: CUP-2015-11: This matter having come before the Planning and Zoning Commission of Elmore County, Idaho (the “**Commission**”), the 19th day of August, 2015, for a public hearing, held pursuant to public notice as required by law, on a request for a Conditional Use Permit (the “**CUP**”) for a 20 MW solar facility (the “**Application**”). Property is located in Sections 23 and 24, Township 1 South, Range 4 East, B.M. and is zoned Heavy Industrial (the “**Site**”). The Commission heard from the applicant in support of the Application. The Commission received additional written testimony and information for the Application. Upon conclusion of the public hearing, the Commission duly considered all that was presented to them.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

FINDINGS OF FACT

If any of these Findings of Fact are deemed to be conclusions of law, they are incorporated into the Conclusions of Law section. The following findings shall be based upon the record for the Application and those facts which are in common knowledge or of which there is general public awareness.

I. The Commission finds that Application is comprised of:

A. Application form prepared and submitted by Simco Solar, LLC (the “**Applicant**”) for the CUP; and

B. Those supplemental letters, email messages, documentation and memos submitted by the Applicant or its representatives, whether submitted in response to questions from employees (the “**Staff**”) from the Elmore County Land Use and Building Department (the “**Department**”) or the Commission in connection with the Application to the Commission.

II. The Commission finds that the Applicant is:

Simco Solar, LLC
179 Lincoln St, Suite 500
Boston, MA 02111

III. The Commission finds the following as to the procedural matters pertaining to the Application:

A. The Applicant participated in a pre-application meeting with the Department on January 15, 2015.

B. The Applicant conducted a neighborhood meeting on April 15, 2015 as required by Elmore County Zoning and Development Ordinance (the “**Zoning Ordinance**”) Section 6-4-3.

C. The Applicant submitted the Application to the Department on June 26, 2015.

D. The Department deemed the Application complete on July 7, 2015.

E. The Department mailed notice of the public hearing to neighboring property owners within one (1) mile of the Site on July 23, 2015 pursuant to Zoning Ordinance Section 6-4-5.

F. The Department mailed notice of the public hearing to agencies on July 23, 2015 pursuant to Zoning Ordinance Section 6-4-4.

G. Notice of the public hearing was published in the Mountain Home News on July 29, 2015 pursuant to Zoning Ordinance Section 6-4-5 A.

H. Notice of the public hearing was posted on the Site on August 10, 2015 pursuant to Zoning Ordinance Section 6-4-5 B.

I. The Commission opened the public hearing on August 19, 2015 and received verbal and written information regarding the Application.

J. The Commission received verbal testimony in support regarding the Application.

K. The Commission moved to **approve** the Application with twelve (12) conditions of approval. The motion to **approve** the Application passed on a 5 -0 vote.

IV. The proposed use of the Application as follows:

A. The Commission finds the proposed use for a 20 MW solar electrical generating facility.

B. The Commission finds the Application's request for a 20 MW solar facility is consistent with information submitted by the Applicant.

C. The Commission finds that the submitted master site plan proposes a 20 MW solar facility and is in conformance with Elmore County Zoning and Development Ordinance Chapter 18.

V. The Commission finds the following pertaining to the Site:

A. Site Description: Sections 23 and 24, Township 1 South, Range 4 East, B.M. A common way of locating the property is from I-84, take exit 74, head south on Simco Road 1.3 miles, the site is on the east side of the road.

B. Parcel Number: RP 01S04E230050 A and RP 01S04E245410 A

C. The "Owner" of the Site is:

Simco Solar, LLC
179 Lincoln St, Suite 500
Boston, MA 02111

D. Applicant's Property Right in the Site is: Owner,

E. Site Characteristics:

Property Size: The site contains approximately 540 acres of which approximately 180 acres will be used for the solar energy facility.

Existing Structures: None.

Existing Vegetation: The vegetation consists mainly of a sage brush.

Slope: Relatively flat and less than 10% slope.

Flood Zone Status: FEMA defined Zone X located outside of all known flood zones.

Irrigation: None of the property is being irrigated utilizing surface or subsurface irrigation water rights.

VI. The Commission finds the current zoning of the Site as follows:

The current zoning for the Site is Heavy Industrial pursuant to the adopted zoning map, Ordinance 2013-02.

VII. The Commission finds the surrounding land use and zoning as follows:

Land uses to the south are grazing. Land uses to the north are grazing/interstate. Land uses to the east are grazing/interstate. Land uses to the west are grazing.

VIII. The Commission finds the existing services as follows:

Access Roads: Nearest public road is Simco Road. New road(s) will need to be constructed.

Fire Protection District: None.

Sewage Disposal: None.

Water Service: None.

Highway District: Mountain Home Highway District (the "**Highway District**") and the Idaho Transportation Department (the "ITD").

IX. The Commission finds the following as the applicable law for consideration of the Application:

A. Comprehensive Plan. Elmore County 2014 Comprehensive Plan, adopted as Resolution 562-15 on January 20, 2014 (the "**Comprehensive Plan**"); and

B. Zoning Ordinance, adopted March 21, 2012 as Ordinance 2012-01; which was subsequently amended on September 19, 2012, as Ordinance 2012-03 and on July 14, 2014, as Ordinance 2014-01; and

C. The Local Land Use Planning Act, Idaho Code § 67-6501 *et seq.*; and

X. Comprehensive Plan.

A. **The Commission finds** that the Comprehensive Plan Future Land Use Map has the site classified as Heavy Industrial.

B. **The Commission finds** the Application is in conformance with the Comprehensive Plan as stated in the findings.

XI. Zoning Ordinance.

A. The Commission finds that the Elmore County Planning and Zoning Ordinance is the document governing the Site pursuant to Zoning Ordinance Chapter 27.

B. The Commission finds that in order to approve the CUP application, the following findings as set forth in Section 6-27-7 of the Zoning Ordinance shall be made.

1. The proposed use shall, in fact constitute a Conditional Use as determined in Chapter 8, Table 6-8-11 (C), Elmore County Land Use Table, as contained in this Ordinance;
2. The proposed use shall be in harmony with and in accordance with the Elmore County Comprehensive Plan and this Ordinance (Title 6);
3. The proposed use complies with the purpose statement of the applicable base zone and with the specific use standards as set forth in this Chapter;
4. The proposed use shall comply with all applicable County Ordinances;
5. The proposed use shall comply with all applicable State and Federal regulations;
6. The proposed use shall be designed, constructed, operated, and maintained in such a way as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; and that such use shall not change the essential character of said area;
7. The proposed use shall not be hazardous or disturbing to existing neighboring uses or impede their normal development;
8. The proposed use shall be served adequately by available public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewer, or that the person responsible for the establishment of the proposed conditional use shall be able to provide adequately any such services;
9. The proposed use shall not create excessive additional requirements at public cost for public facilities and services and the proposed use shall not be detrimental to the economic welfare of the County;
10. The proposed use shall not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;
11. The proposed use shall have vehicular approaches which shall be so designed as not to create an interference with traffic on surrounding public or private roadways;
12. The proposed use shall not result in the destruction, loss or damage of a natural or scenic feature of major importance.

C. The required findings of Section 6-27-7 of the Zoning Ordinance, stated as questions, follow in bold text, followed by the Commission's findings:

1. Does the proposed use in fact constitute a Conditional Use as determined in Chapter 8, Table 6-8-11 (C), Elmore County Land Use Table, as contained in this Ordinance?

The Commission finds that a 20 MW solar electrical generating facility requires a conditional use permit in Table 6-8-11 (C).

The Commission finds in addition to a conditional use permit, additional requirements for the proposed use under the Application are found in the Zoning Ordinance, Section 6-8-97.

The Commission finds that the Zoning Ordinance defines electrical generating facilities as “any facility generating electrical power through the use of natural gas, solar cells, water or wind power. The use of diesel fuel is allowed only for emergency generation of electricity for fire suppression or the winding down of turbines.”

2. Is the proposed use in harmony with and in accordance with the Elmore County Comprehensive Plan (“Plan”) and this Ordinance (Title 6)?

The Commission finds that the application is in harmony and accordance with the following objectives and goals of the 2014 Elmore County Comprehensive Plan:

Land Use Objective 5: *Encourage and support commercial and industrial development if it complies with County Ordinances and guidelines to create jobs and expand the tax base. Maintain two industrial zones: heavy and light.*

Land Use Objective 8: *Review all commercial and industrial development proposals to determine the land use compatibility and impact to surrounding areas.*

Simco Road District - 4. Economic Development: *Continue to support and solicit new business industries to locate in Simco Road District to provide economic development opportunities for the County.*

The Commission finds the Application does comply with the Zoning Ordinance as the Application does meet all the required findings of Ordinance Section 6-27-7.

3. Does the proposed use comply with the purpose statement of the applicable base zone and with the specific use standards as set forth in this Chapter?

The Commission finds that the Application complies with the purpose statement of the Heavy Industrial zone in Zoning Ordinance Section 6-8-5 G in that “the purpose of the M2 district is to manage the development and location of heavy industry. All industrial development will be subject to conditional use permits, design review requirements, and detailed engineering and technical studies conducted by independent technical authorities.”

The Commission finds neighboring agriculture and industrial uses are limited on site and the immediate vicinity and therefore negative impacts on existing agriculture and industrial operations is limited.

The Commission finds the Site has existing neighboring residential (1) land uses that are located in the heavy industrial zone.

4. Does the proposed use comply with all applicable County Ordinances?

The Commission finds the Application does comply with the Zoning Ordinance as the Application does meet all the required findings of Zoning Ordinance Section 6-27-7.

5. Does the proposed use comply with all applicable State and Federal regulations?

The Commission finds that conditions of approval were proposed to ensure the Application met all State and Federal regulations, namely meeting all requests by ITD.

6. Is the proposed use designed, constructed, operated, and maintained in such a way as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; and will such use not change the essential character of said area?

The Commission finds that the majority of the vicinity is heavy industrial/grazing. Therefore, the **Commission further finds** that the Application as proposed is harmonious and appropriate with the general vicinity as electrical generating facility/solar farm are appropriate in heavy industrial areas and the location of this use is a benefit because of there are very few private landowners and limited residential homes (1) in the vicinity.

7. Will the proposed use be hazardous or disturbing to existing neighboring uses or impede their normal development?

The Commission finds that the addition of an electrical generating facility/solar farm will not be hazardous to existing neighboring uses and is unaware of potential hazards to existing private land owners (3) neighboring this project.

8. Is the proposed use served adequately by available public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewer, or that the person responsible for the establishment of the proposed conditional use shall be able to provide adequately any such services?

The Commission finds the following public services shall be provided as follows:

Highways: Mountain Home Highway District requires an approach permit, project borders I-84.

Streets: Private roads will be constructed onsite at applicant's expense.

Police and Fire Protection: No fire district, State Fire Marshall may have comments.

Drainage Structures: Condition of approval is provided for drainage.

Refuse Disposal: not applicable.

Potable, Non-Potable Water, Fire Suppression Water Supplies: State Fire Marshal will approve at time of building permit.

Sewer: not applicable.

9. Will the proposed use create excessive additional requirements at public cost for public facilities and services and the proposed use shall not be detrimental to the economic welfare of the County?

The Commission finds that the Application proposed all improvements, required to be built be funded by the Applicant and therefore not be detrimental to the economic welfare of the County. No additional public funding is anticipated.

10. Will the proposed use involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors?

The Commission finds that the Application will not create any excessive production of noise, smoke, fumes, glare or odors. The glare from sunlight is not expected to be a concern. Testimony stated PV modules that will be installed absorb over 90 percent of the light received.

The Commission finds that the Highway District did not require a traffic impact study and therefore no excessive production of traffic is anticipated by the Highway District.

11. Will the proposed use have vehicular approaches which shall be so designed as not to create an interference with traffic on surrounding public or private roadways?

The Commission finds that the Application proposed a new vehicular approach off of Simco Road and will apply for an approach permit through Mountain Home Highway District.

The Commission finds that the Highway District did not required a traffic impact study and therefore no interference with traffic on public roads is anticipated by the Highway District for the Application.

12. Does the proposed use result in the destruction, loss or damage of a natural or scenic feature of major importance?

The Commission finds that the Site is not identified as a natural or scenic feature of major importance.

CONCLUSIONS OF LAW

If any of the conclusions of law are deemed to be findings of fact, they are incorporated in the Findings of Fact section.

1. The Commission concludes that the public hearing notice requirements of Zoning Ordinance Chapter 4 have been met.

2. The Commission concludes that the notice requirements of Idaho Code Section § 67-6512 have been met.

3. The Commission concludes that the Application complies with the required findings set forth in Section 6-27-7 of the Zoning Ordinance.

ORDER

Based upon the foregoing findings of fact and conclusion of law, the information contained in the Staff reports and the record for the Application, the Commission voted and hereby **approves** the Application with the following conditions:

1. The proposed use will comply with all the requirements of section 6-8-97 of the Elmore County Zoning and Development Ordinance.
2. All outstanding fees, if any, must be paid prior to the issuance of an Elmore County building permit.
3. Failure to comply with any of the conditions will result in revocation of the Conditional Use Permit.
4. The proposed use will be constructed in substantial conformance with the master site plan.
5. Prior to issuance of building permit, an overall site plan, stamped and signed by Applicant's engineer, must be approved by the County Engineer to ensure drainage and storm water management is adequate.
6. All roads shall meet Zoning and Development Ordinance Chapter 17 requirements.
7. The proposed use shall comply with all recommendations of the State Fire Marshal.
8. Landscaping to be mitigated with Idaho Transportation Department along the Interstate 84 property boundary and a security fence around the entire project area.

Dated this _____ day of _____, 2015.

COMMISSION VOTE:

CHAIRPERSON PATTI OSBORN	VOTED AYE
VICE CHAIRMAN K.C. DUERIG	VOTED AYE
SUSAN FISH	VOTED AYE
ED OPPEDEYK	VOTED AYE
JEFF BLANKSMA	VOTED AYE
SHANE ZENNER	VOTED AYE

Patti Osborn, Chairperson

ATTEST:

Alan Christy, Director

NOTICE PURSUANT TO ZONING ORDINANCE SECTION 6-3-2 B

A decision made by the Elmore County Planning and Zoning Commission (the "Commission") may be reconsidered by the Commission provided the reconsideration application is complete and reconsideration fee is submitted to the Land Use and Building Department within ten (10) calendar days of Commission action. The reconsideration shall include new or additional relevant information that was not previously presented or available at the public hearing. Questions concerning reconsideration or deadlines should be asked of the Elmore County Land Use and Building Department.

NOTICE PURSUANT ZONING ORDINANCE SECTION 6-3-2 E-F

A decision made by the Elmore County Planning and Zoning Commission may be appealed to the Board of Elmore County Commissioners provided the appeal application is complete and appeal fee is submitted to the Land Use and Building Department within ten (10) calendar days of Commission action. Questions concerning appeals or deadlines should be asked of the Elmore County Land Use and Building Department.

BEFORE THE ELMORE COUNTY PLANNING AND ZONING COMMISSION

In Re: CUP-2015-12: This matter having come before the Planning and Zoning Commission of Elmore County, Idaho (the “**Commission**”), the 19th day of August, 2015, for a public hearing, held pursuant to public notice as required by law, on a request for a Conditional Use Permit (the “**CUP**”) for a pet cemetery (the “**Application**”). Property is located in a portion of the W1/2 NW1/4, Section 26, Township 1 South, Range 5 East, B.M. and is zoned Agriculture (the “**Site**”). The Commission heard from the applicant’s representative in support of the Application. The Commission received additional written testimony and information for the Application. Upon conclusion of the public hearing, the Commission duly considered all that was presented to them.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

FINDINGS OF FACT

If any of these Findings of Fact are deemed to be conclusions of law, they are incorporated into the Conclusions of Law section. The following findings shall be based upon the record for the Application and those facts which are in common knowledge or of which there is general public awareness.

I. The Commission finds that Application is comprised of:

A. Application form prepared and submitted by Michael and Patricia Canale (the “**Applicant**”) for the CUP; and

B. Those supplemental letters, email messages, documentation and memos submitted by the Applicant or its representatives, whether submitted in response to questions from employees (the “**Staff**”) from the Elmore County Land Use and Building Department (the “**Department**”) or the Commission in connection with the Application to the Commission.

II. The Commission finds that the Applicant is:

Michael and Patricia Canale
10312 W Canale Lane
Mountain Home, ID 83647

III. The Commission finds the following as to the procedural matters pertaining to the Application:

A. The Applicant participated in a pre-application meeting with the Department on April 30, 2015.

B. The Applicant conducted a neighborhood meeting on June 25, 2015 as required by Elmore County Zoning and Development Ordinance (the “**Zoning Ordinance**”) Section 6-4-3.

C. The Applicant submitted the Application to the Department on July 6, 2015.

D. The Department deemed the Application complete on July 7, 2015.

E. The Department mailed notice of the public hearing to neighboring property owners within one-thousand (1,000) feet of the Site on July 23, 2015 pursuant to Zoning

Ordinance Section 6-4-5.

F. The Department mailed notice of the public hearing to agencies on July 23, 2015 pursuant to Zoning Ordinance Section 6-4-4.

G. Notice of the public hearing was published in the Mountain Home News on July 29, 2015 pursuant to Zoning Ordinance Section 6-4-5 A.

H. Notice of the public hearing was posted on the Site on August 10, 2015 pursuant to Zoning Ordinance Section 6-4-5 B.

I. The Commission opened the public hearing on August 19, 2015 and received verbal and written information regarding the Application.

J. The Commission moved to **approve** the Application with twelve (12) conditions of approval. The motion to **approve** the Application passed on a 5-0 vote.

IV. The proposed use of the Application as follows:

A. The Commission finds the proposed use for a pet cemetery.

B. The Commission finds the Application's request for a Pet cemetery is consistent with information submitted by the Applicant.

C. The Commission finds that the submitted master site plan proposes a pet cemetery and is in conformance with Elmore County Zoning and Development Ordinance Chapter 18.

V. The Commission finds the following pertaining to the Site:

A. Site Description: Section 26, Township 1 South, Range 5 East, B.M. A common way of locating the property is head north on Sunset Strip, turn left onto Ditto Creek Road, continue for approximately 12 miles. Turn right onto W Canale Lane, site is on the northeast corner of property.

B. Parcel Number: RP 01S05E260640 A and RP 01S05E261000 A

C. The "Owner" of the Site is:

Michael and Patricia Canale
10312 W Canale Lane
Mountain Home, ID 83647

D. Applicant's Property Right in the Site is: Owner

E. Site Characteristics:

Property Size: The site contains approximately 79.97 acres with the proposed use to utilize approximately 1.37 acres.

Existing Structures: Home, barn, site of proposed use: none

Existing Vegetation: The vegetation consists mainly of a sage brush.

Slope: Relatively flat and less than 10% slope.

Flood Zone Status: FEMA defined Zone X located outside of all know flood zones.

Irrigation: None of the property is being irrigated utilizing surface or subsurface irrigation water rights.

VI. The Commission finds the current zoning of the Site as follows:

The current zoning for the Site is Agriculture pursuant to the adopted zoning map, Ordinance 2013-02.

VII. The Commission finds the surrounding land use and zoning as follows:

Land uses to the south are grazing. Land uses to the north are grazing. Land uses to the east are BLM/grazing. Land uses to the west are residential/grazing.

VIII. The Commission finds the existing services as follows:

Access Roads: Public road Ditto Creek Road on the west, the site accessed by private road W Canale Lane.

Fire Protection District: Oasis Volunteer Fire Department.

Sewage Disposal: Individual septic.

Water Service: Individual well.

Highway District: Mountain Home Highway District (the “**Highway District**”).

IX. The Commission finds the following as the applicable law for consideration of the Application:

A. Comprehensive Plan. Elmore County 2014 Comprehensive Plan, adopted as Resolution 562-15 on January 20, 2014 (the “**Comprehensive Plan**”); and

B. Zoning Ordinance, adopted March 21, 2012 as Ordinance 2012-01; which was subsequently amended on September 19, 2012, as Ordinance 2012-03 and on July 14, 2014, as Ordinance 2014-01; and

C. The Local Land Use Planning Act, Idaho Code § 67-6501 *et seq.*; and

X. Comprehensive Plan.

A. **The Commission finds** that the Comprehensive Plan Future Land Use Map has the site classified as Agriculture.

B. **The Commission finds** the Application is in conformance with the Comprehensive Plan as stated in the findings.

XI. Zoning Ordinance.

A. The Commission finds that the Elmore County Planning and Zoning Ordinance is the document governing the Site pursuant to Zoning Ordinance Chapter 27.

B. The Commission finds that in order to approve the CUP application, the following findings as set forth in Section 6-27-7 of the Zoning Ordinance shall be made.

1. The proposed use shall, in fact constitute a Conditional Use as determined in Chapter 8, Table 6-8-11 (C), Elmore County Land Use Table, as contained in this Ordinance;

2. The proposed use shall be in harmony with and in accordance with the Elmore County Comprehensive Plan and this Ordinance (Title 6);

3. The proposed use complies with the purpose statement of the applicable base zone and with the specific use standards as set forth in this Chapter;

4. The proposed use shall comply with all applicable County Ordinances;

5. The proposed use shall comply with all applicable State and Federal regulations;

6. The proposed use shall be designed, constructed, operated, and maintained in such a way as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; and that such use shall not change the essential character of said area;

7. The proposed use shall not be hazardous or disturbing to existing neighboring uses or impede their normal development;

8. The proposed use shall be served adequately by available public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewer, or that the person responsible for the establishment of the proposed conditional use shall be able to provide adequately any such services;

9. The proposed use shall not create excessive additional requirements at public cost for public facilities and services and the proposed use shall not be detrimental to the economic welfare of the County;

10. The proposed use shall not involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons, property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors;

11. The proposed use shall have vehicular approaches which shall be so designed as not to create an interference with traffic on surrounding public or private roadways;

12. The proposed use shall not result in the destruction, loss or damage of a natural or scenic feature of major importance.

C. The required findings of Section 6-27-7 of the Zoning Ordinance, stated as questions, follow in bold text, followed by the Commission's findings:

1. Does the proposed use in fact constitute a Conditional Use as determined in Chapter 8, Table 6-8-11 (C), Elmore County Land Use Table, as contained in this Ordinance?

The Commission finds that a cemetery requires a conditional use permit in Table 6-8-11 (C) of the Zoning Ordinance.

The Commission finds that the Zoning Ordinance defines cemetery as “land used or intended to be used for the burial of the human and animal remains, including crematories, mausoleums, and mortuaries if operated in connection with and within the boundaries of such cemetery.”

2. Is the proposed use in harmony with and in accordance with the Elmore County Comprehensive Plan (“Plan”) and this Ordinance (Title 6)?

The Commission finds that the application is in harmony and accordance with the following objectives and goals of the 2014 Elmore County Comprehensive Plan:

Oasis Community – 5. Land Use: *Encourage new development to comply with the County Comprehensive Plan.*

The Commission finds the Application does comply with the Zoning Ordinance as the Application does meet all the required findings of Ordinance Section 6-27-7.

3. Does the proposed use comply with the purpose statement of the applicable base zone and with the specific use standards as set forth in this Chapter?

The Commission finds that the Application complies with the purpose statement of the Agriculture zone in Zoning Ordinance Section 6-8-5 A in that “the “Ag” land use designation is the base zone throughout Elmore County. It contains areas of productive irrigated croplands, grazing lands, forestland, mining lands, public lands as well as rangeland and ground of lesser agricultural value.”

The Commission finds neighboring agriculture uses are limited on site and the immediate vicinity and therefore negative impacts on existing agriculture operations is limited and grazing can still be utilized after reseeding.

4. Does the proposed use comply with all applicable County Ordinances?

The Commission finds the Application does comply with the Zoning Ordinance as the Application does meet all the required findings of Zoning Ordinance Section 6-27-7.

5. Does the proposed use comply with all applicable State and Federal regulations?

The Commission finds that conditions of approval were proposed to ensure the Application met all State and Federal regulations. There are Regulations by the State of Idaho (IDAPA 0204.17 – Rules Governing Dead Animal Movement & Disposal) for animal burial.

6. Is the proposed use designed, constructed, operated, and maintained in such a way as to be harmonious and appropriate in appearance with the existing or intended character of the general vicinity; and will such use not change the essential character of said area?

The Commission finds that the majority of the vicinity is grazing with minimal residential. Therefore, the **Commission further finds** that the Application as proposed is harmonious and appropriate with the general vicinity as the visual impacts will be minimal or non-existent after animal burial and re-vegetation.

7. Will the proposed use be hazardous or disturbing to existing neighboring uses or impede their normal development?

The Commission finds that the site on the property will minimize or negate any effects to neighbors or neighboring uses. Visual impacts will be minimal or non-existent after burial and re-vegetation. There are very few residences within the area of this proposed use. The closest neighbor is approximately ¼ mile.

8. Is the proposed use served adequately by available public facilities and services such as highways, streets, police and fire protection, drainage structures, refuse disposal, water, sewer, or that the person responsible for the establishment of the proposed conditional use shall be able to provide adequately any such services?

The Commission finds the following public services shall be provided as follows:

Highways: none

Streets: Ditto Creek Road, a publically maintained road. The Highway District has not required a traffic impact study. W Canale Lane is a privately maintained road.

Police and Fire Protection: Police protection is provided by the Elmore County Sherriff's Department. The Site is within the Oasis Volunteer Fire District.

Drainage Structures: not applicable.

Refuse Disposal: not applicable.

Potable, Non-Potable Water, Fire Suppression Water Supplies: Individual well.

Sewer: Individual septic.

9. Will the proposed use create excessive additional requirements at public cost for public facilities and services and the proposed use shall not be detrimental to the economic welfare of the County?

The Commission finds that the Application proposed all improvements, required to be built be funded by the Applicant and therefore not be detrimental to the economic welfare of the County.

The Commission finds that the Application proposed relieves an economic hardship to citizens of the county.

10. Will the proposed use involve uses, activities, processes, materials, equipment, and conditions of operation that will be detrimental to any persons,

property or the general welfare by reason of excessive production of traffic, noise, smoke, fumes, glare or odors?

The Commission finds that the Application will not create any excessive production of noise, smoke, fumes, glare or odors. IDAPA 02 Title 04 Chapter 17 states animals shall be buried to such depths that no part of the dead animal shall be nearer than three (3) feet to the natural surface of the ground. Every part of the dead animal shall be covered with at least three (3) feet of earth.

The Commission finds that the Highway District did not require a traffic impact study and therefore no excessive production of traffic is anticipated by the Highway District.

11. Will the proposed use have vehicular approaches which shall be so designed as not to create an interference with traffic on surrounding public or private roadways?

The Commission finds that the Application proposed no new vehicular approaches onto Ditto Creek Road.

The Commission finds that the Highway District did not required a traffic impact study and therefore no interference with traffic on public roads is anticipated by the Highway District for the Application.

12. Does the proposed use result in the destruction, loss or damage of a natural or scenic feature of major importance?

The Commission finds that the Site is not identified as a natural or scenic feature of major importance. Visual impacts will be minimal or non-existent after burial and re-vegetation.

CONCLUSIONS OF LAW

If any of the conclusions of law are deemed to be findings of fact, they are incorporated in the Findings of Fact section.

1. The Commission concludes that the public hearing notice requirements of Zoning Ordinance Chapter 4 have been met.
2. The Commission concludes that the notice requirements of Idaho Code Section § 67-6512 have been met.
3. The Commission concludes that the Application complies with the required findings set forth in Section 6-27-7 of the Zoning Ordinance.

ORDER

Based upon the foregoing findings of fact and conclusion of law, the information contained in the Staff reports and the record for the Application, the Commission voted and hereby **approves** the Application with the following conditions:

1. Failure to comply with any of the conditions may result in revocation of the Conditional Use Permit.
2. The proposed use will be constructed in substantial conformance with the master site plan.
3. All outstanding fees, if any, must be paid.

4. The proposed use will comply with the applicable State of Idaho regulations found in IDAPA 02.04.17 – Rules Governing Dead Animal Movement & Disposal.
5. Applicant's will re-seed with perennial grass.

Dated this _____ day of _____, 2015.

COMMISSION VOTE:

CHAIRPERSON PATTI OSBORN	VOTED AYE
VICE CHAIRMAN K.C. DUERIG	VOTED AYE
SUSAN FISH	VOTED AYE
ED OPPEDEYK	VOTED AYE
JEFF BLANKSMA	VOTED AYE
SHANE ZENNER	VOTED AYE

Patti Osborn, Chairperson

ATTEST:

Alan Christy, Director

NOTICE PURSUANT TO ZONING ORDINANCE SECTION 6-3-2 B

A decision made by the Elmore County Planning and Zoning Commission (the "Commission") may be reconsidered by the Commission provided the reconsideration application is complete and reconsideration fee is submitted to the Land Use and Building Department within ten (10) calendar days of Commission action. The reconsideration shall include new or additional relevant information that was not previously presented or available at the public hearing. Questions concerning reconsideration or deadlines should be asked of the Elmore County Land Use and Building Department.

NOTICE PURSUANT ZONING ORDINANCE SECTION 6-3-2 E-F

A decision made by the Elmore County Planning and Zoning Commission may be appealed to the Board of Elmore County Commissioners provided the appeal application is complete and appeal fee is submitted to the Land Use and Building Department within ten (10) calendar days of Commission action. Questions concerning appeals or deadlines should be asked of the Elmore County Land Use and Building Department.