

## 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 19<sup>th</sup> 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 16<sup>th</sup> day of September, 2015.

**COMMISSION VOTE:**

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

  
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 Patti Osborn, Chairperson

**ATTEST:**

  
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 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.