

## BEFORE THE ELMORE COUNTY PLANNING AND ZONING COMMISSION

**In Re:** CUP-2018-05: This matter having come before the Planning and Zoning Commission of the Elmore County, Idaho (the “**Commission**”), the 1<sup>st</sup> day of August of 2018, for a public hearing, held pursuant to public notice as required by law, on a request for a Conditional Use Permit (the “**CUP**”) to conduct a Towing Business, a temporary Vehicle Impound Lot, and light mechanical repair shop (the “**Application**”). Property is located in the SE ¼ SE ¼, Section 12, Township 3 South, Range 6 East, B.M. and is zoned Agriculture (the “**Site**”). The Commission heard testimony from the Applicant. The Commission heard public testimony from individuals in favor of the application. And those opposed to 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 the Application is comprised of**
  - A. Application form prepared and submitted by Mike Mobley (the “**Applicant**”) for the CUP.
- II. **The Commission finds that the Applicant is:**

Mike Mobley  
2316 NE Beamon St.  
Mountain Home, ID 83647
- III. **The Commission finds the following as to the procedural matters pertaining to the Application.**
  - A. The Applicant conducted a neighborhood meeting on June 18, 2018 as required by Elmore Zoning and Development Ordinance 2018-03 (the “**Zoning Ordinance**”) section 7-3-3.
  - B. The Applicant submitted the Application and paid the required fee of \$400.00 to the Department on June 21, 2018.
  - C. The Department deemed the Application complete on June 21, 2018.

- D. The Department mailed Public Hearing notices to landowners within a 300' radius of the Applicant's property on June 26, 2018 pursuant to 7-3-5 of the Elmore Zoning and Development Ordinance 2018-03.
- E. The Public Hearing notice was mailed to agencies on June 26, 2018 pursuant to 7-3-4 of the Elmore Zoning and Development Ordinance 2018-03.
- F. The Public Hearing was published in the Mountain Home News on June 27, 2018 pursuant to 7-3-5 of the Elmore Zoning and Development Ordinance 2018-03.
- G. The Public Hearing was posted on the Applicant's property on July 9, 2018 pursuant to 7-3-5 of the Elmore Zoning and Development Ordinance 2018-03.
- H. The Public Hearing was rescheduled to August 1, 2018, due to lack of quorum of the Planning and Zoning Commission.
- I. The Department mailed Public Hearing notices to landowners within a 300' radius of the Applicant's property on July 20, 2018 pursuant to 7-3-5 of the Elmore Zoning and Development Ordinance 2018-03.
- J. The Public Hearing notice was mailed to agencies on July 20, 2018 pursuant to 7-3-4 of the Elmore Zoning and Development Ordinance 2018-03.
- K. The Public Hearing was published in the Mountain Home News on July 25, 2018 pursuant to 7-3-5 of the Elmore Zoning and Development Ordinance 2018-03.
- L. The Public Hearing Notice was posted on the property again on July 23, 2018.
- M. The Commission opened the Public Hearing on August 1, 2018 and received written and verbal information regarding the Application.
- N. At the conclusion of testimony, the Chairman closed the public hearing. The Commission proceeded to conduct deliberations on the Application.
- O. The Commission moved to approve the Application. The motion to approve the application was **DENIED** on a 5-0 vote.

**IV. The proposed use of the Application as follows:**

- A. **The Commission finds** the proposed use is to conduct a tow yard business, a light mechanical repair shop, and a temporary impound lot on a 5-acre residential lot located in the Agricultural zone.

**B. The Commission finds** that the Applicant’s request to for a tow yard business, a light mechanical repair shop, and a temporary impound lot is consistent with information submitted by the Applicant.

**C. The Commission finds** that the submitted master site plan proposed a tow yard business, a light mechanical repair shop, and a temporary impound lot.

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

**A. Site Description:** Section 12, Township 3 South, Range 6 East. A common way of locating the property is to head North on American Legion Blvd, turn left onto N. 18<sup>th</sup> East for approximately 2.5 miles, turn left onto NE Beamon St., the property is located on the right.

**B. Parcel Number:** RP 03S06E129610 A

**C. The “Owner” of the site is:**

Mike Mobley  
2316 NE Beamon St  
Mountain Home, ID 83647

**D. Applicant’s Property Right in the Site is:** Applicant is the owner of the Site.

**E. Site Characteristics:**

*Property Size:* The Site contains approximately 5 acres.

*Existing Structures:* Applicant’s Residence, a 900 sq ft shop, a 2,736 sq ft 10-vehicle impound yard with a 6’ fence, and a small storage shed.

*Existing vegetation:* The Vegetation consists of large established trees, established lawn, and other shrubbery.

*Slope:* Relatively flat with less than 10% slope.

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

*Irrigation:* The property is not utilizing 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 2017-01.

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

Land uses to the South are Agriculture/Residential. Land uses to the North are Agricultural/Residential. Land uses to the East are Agriculture. Land Uses to the West are Agriculture/Residential.

**VIII. The Commission finds the existing services as follows:**

*Access Roads:* Public Road NE Beamon St runs East to West in front of the Site. Public Road N. 18<sup>th</sup> East runs North and South and is to the East of the Site.

*Fire Protection District:* Mountain Home Rural Fire District.

*Sewage Disposal:* The site has an existing septic system.

*Water Service:* The site has an individual well.

**IX. The Commission finds the following as the applicable law for the 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, July 24, 2014, September 28, 2016 and May 18, 2018, as Ordinance 2018-03 (“**Existing Zoning Ordinance**”); and
- C. The Local Land Use Planning Act, Idaho Code § 67-6501: 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 Title 7, Chapter 9.
- B. **The Commission finds** that in order to approve the CUP application, the following findings as set forth in Section 7-9-7 of the Elmore County Zoning Ordinance 2018-03 shall be made.

1. The Proposed use shall in fact constitute a Conditional Use as determined in Chapter 2, Table 7-2-26 (B), 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-2014 and this Ordinance (Title 7);
  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 not result in the destruction, loss or damage of a natural or scenic feature of major importance.
- C. The required findings of Section 7-9-7 of the Zoning Ordinance, stated 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 Ordinance Table 7-2-26 (B), Elmore county Land Use Table, as contained in this Ordinance?**

**The Commission finds** that a tow yard, a light mechanical repair shop, and a temporary impound yard requires a conditional use permit in Table 7-2-26 (B).

**The Commission finds** that in addition to a Conditional Use Permit, additional requirements for the proposed use under the Application are found in the Zoning Ordinance, Section 7-2-214, 7-2-215, and 7-2-223.

**The Commission voted 5-0** that the Application meets this standard.

**2. Is the proposed use in harmony with and in accordance with the Elmore County Comprehensive Plan (“Plan”) and this Ordinance (Title 7)?**

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

*“Economic Goal- #1- Diversity and improve the economy of Elmore County in ways that are compatible with community values.”*

*“Land Use Goal- #1- Provide for the orderly growth of accompanying development of the resources within the County.”*

*“Land Use Objective-#2- Continue to coordinate planning and development with applicable highway district(s), fire district(s) and health officials.”*

**The Commission finds** the Application does comply with the Zoning Ordinance as the Application does meet all the required findings of Ordinance Section 7-9-7.

**The Commission voted as follows:** three (3) voted the Application meets this standard and two (2) voted neutral: asserting inconclusiveness as to whether the Application meets this standard or not.

**3. Does the proposed use comply with the purpose statement of the applicable base zone of Ordinance Section 7-2-5 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 7-2-5 (B) in that “General Agriculture: The purpose of the AG district is to preserve and protect the supply

of agriculture and grazing land in Elmore County until development is appropriate. This district will also control the infiltration of urban development and other uses into agriculture areas, which will adversely affect agricultural operations. Uses that are compatible with farming, ranching, grazing, forest products, and limited mining may be considered in this district. Residential land use is allowed in the Ag zone subject to site development standards and compatibility with agricultural operations. 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** a tow yard, a light mechanical repair shop, and a temporary impound lot are allowed in the Agriculture Zone with a Conditional Use Permit.

**The Commission voted 5-0** that the Application meets this standard.

**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 7-9-7.

**The Commission voted 5-0** that the Application meets this standard with a condition that a 10 ft. fence be added to the Conditions of Approval per 7-2-214 of the Ordinance.

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

**The Commission finds** that the conditions of approval were proposed to ensure the Application meets all State and Federal Regulations.

**The Commission voted 5-0** that the Application meets this standard.

**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; or will such use change the essential character of said area?**

**The Commission finds** that the proposed use does not meet the standard of being appropriate in appearance of the intended character of the general vicinity.

**The Commission voted as follows:** Four (4) voted the Application does not meet this standard and one (1) voted neutral; asserting inconclusiveness as to whether the Application meets this standard or not. The Commission could not come reach a conclusion as to how the Application could comply with this standard.

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

**The Commission finds** that the proposed use will not be hazardous or disturbing to existing neighboring uses or impede their normal development.

**The Commission voted 5-0** that the Application meets this standard.

**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 the person responsible for the establishment of the proposed conditional be able to provide adequately any such services?**

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

*Highways/Roads:* N. 18<sup>th</sup> E. and Beaman Street are both maintained by the Mountain Home Highways District.

*Fire Protection:* The Applicant's property is located in the Mountain Home Rural Fire District and that conditions of approval were proposed to ensure that the Applicant has an adequate fire prevention plan.

*Drainage Structures:* No drainage structures for the proposed use are planned or required at this time.

*Refuse Disposal:* Applicant will be responsible for obtaining and maintaining appropriate refuse disposal and appropriate disposal of all hazardous and non-hazardous materials associated with vehicular repair and maintenance.

*Sewer:* There is an existing septic system on the property.

**The Commission voted 5-0** that the Application meets this standard.

**9. Will the proposed use create excessive additional requirements at public cost for public facilities and services and will the proposed use be detrimental to the economic welfare of the County?**



**The Commission finds** that the proposed use will not create excessive additional requirements at public cost and that any and all on-site improvements will be funded by the applicant.

**The Commission finds** that impacted Agencies, including Department of Environmental Quality, Mountain Home Highway District, and the Mountain Home Rural Fire District, have been notified and have not objected to the proposed use.

**The Commission voted 5-0** that the Application meets this standard.

**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;**

**The Commission finds** that the proposed use will not produce excessive noise and odors.

**The Commission finds** that implementing a condition that would require “dust abatement” would address concerns/issues of the production of dust on the property.

**The Commission finds** that conditions of approval were proposed to ensure that the planned use will not be detrimental to any persons or property or general welfare.

**The Commission voted as follows:** four (4) voted the Application meets this standard and one (1) voted neutral asserting inconclusiveness as to whether the Application meets this standard or not.

**11. The proposed use shall not 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.

**The Commission voted 5-0** that the Application meets this standard.

## **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 7-3-5 of the Zoning Ordinance 2018-03 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 7-9-7 of the Zoning Ordinance with the exception of Condition six (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"*.

**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 **denies** the Application.

Dated this 5<sup>th</sup> day of September, 2018.

**COMMISSION VOTE:**

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

  
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 Patti Osborn, Chairperson

**ATTEST:**



Beth Bresnahan, Director

**NOTICE PURSUANT ZONING ORDINANCE SECTION 7-3-10 E-F**

A decision made by the Elmore County Planning and Zoning Commission (the 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 fourteen (14) calendar days of Commission's final action. Questions concerning appeals or deadlines should be asked of the Elmore County Land Use and Building Department.