

Commissioner Minutes

July 23, 2025 – 1:34 p.m. to 4:58 p.m.

PUBLIC HEARING: APPEAL BY DAVE ERLEBACH OF ERLEBACH PROPERTIES, LP, REPRESENTED BY TODD LAKEY AND LANDON BROWN, FOR A C.U.P. TO ALLOW A CONTRACTOR SHOP AND A STAGING AREA WITHIN AN "A" (AGRICULTURAL) ZONING DISTRICT, CASE NO. CU2023-0024-APL

Commissioners Leslie Van Beek, Brad Holton and Zach Brooks

Principal Planner Emily Bunn

Principal Planner Debbie Root

DSD Director Jay Gibbons

Attorney Todd Lakey

Attorney Landon Brown

Pam Field

Terry Grau

Bill Geiger

Brad Simpson

Ben O'Brien

Karl Herger

Mary Kay Herger

Sid Freeman

Michael Howard

Adam Batteen

Jennie Batteen

Justin Lockwood

Dave Erlebach

Crystal Putman

Claudia Geiger

John Brandel

Doug Brandel

Casey Crow

Matt Atteberry

Deputy Clerk Jenen Ross _____

PUBLIC HEARING: APPEAL BY DAVE ERLEBACH OF ERLEBACH PROPERTIES, LP, REPRESENTED BY TODD LAKEY AND LANDON BROWN, FOR A C.U.P. TO ALLOW A

CONTRACTOR SHOP AND A STAGING AREA WITHIN AN "A" (AGRICULTURAL) ZONING DISTRICT, CASE NO. CU2023-0024-APL

The Board met today at 1:34 p.m. for a public hearing to consider an appeal by Dave Erlebach of Erlebach Properties, LP, for a CUP allowing a contractor shop and staging area within an "A" (agricultural) zoning district, case no. CU2023-0024-APL. Present were: Commissioners Leslie Van Beek, Brad Holton and Zach Brooks, Principal Planner Emily Bunn, Principal Planner Debbie Root, DSD Director Jay Gibbons, Attorney Todd Lakey, Attorney Landon Brown, Pam Field, Terry Grau, Bill Geiger, Brad Simpson, Ben O'Brien, Karl Herger, Mary Kay Herger, Sid Freeman, Michael Howard, Adam Batteen, Jennie Batteen, Justin Lockwood, Dave Erlebach, Crystal Putman, Claudia Geiger, John Brandel, Doug Brandel, Casey Crow, and Deputy Clerk Jenen Ross.

Todd Lakey provided testimony in favor of the request. He noted the following reasons they feel this request is appropriate:

- This is a rural location right next to the freeway with low-volume traffic use.
- The area has other uses with similar impacts; there are agriculture uses with noise, dust, odors, equipment and truck traffic with employees and workers coming and going.
- There are also other non-ag uses that have truck traffic and customers.
- The ag use is not just for ag uses, it is the ag zone which is the base zoning district for Canyon County and allows other uses by an allowed use or mostly by conditional use permit like a contractor's yard and staging area.
- They feel the planning and zoning decision was defective and well described in the appeal letter and that DSD staff analysis is correct. The P&Z commission improperly turned the request into an industrial use. Mr. Erlebach has applied for a contractor's shop and a staging area, and if approved, that is all he can do, he can't do any manufacturing or other uses other than the ag uses. P&Z also deemed that the use of the property was not ag, or not ag enough. The contractor's yard or staging area are allowed separately on their own in an ag zone. The 29-acres of Jerusalem artichokes are a benefit but they are not percentage criteria to be evaluated in the decision.
- The 11-acres with the shop are right against the freeway and is a natural extension of Goodson Rd. As noted by the highway district the location is a good location for a future interchange and possibly connecting Goodson over the freeway.
- Raw materials are brought in to be stored until they are needed and then they are transported to a fabricator. Once the components are completed they are brought back

to be stored until everything is ready to be moved to the jobsite. Some vehicles and equipment are stored at the location.

- There is no significant traffic impact on Farmway. The traffic capacity is determined by the highway district which has noted the very low-volume use, it meets the standards and they have no concerns or additional requirements.
- No impact on public services
- The conditions of approval are acceptable and they are open to other reasonable conditions of approval

Based on a question from Commissioner Van Beek, Todd Lakey gave a brief history of this request and clarification on the previous request for industrial zoning, outstanding fees owed to BCID, and whether or not the truck traffic includes harvesting of the artichokes.

Ms. Bunn gave the staff report which reviewed the following:

- General request and background
- This case was heard by P&Z on February 20, 2025 and denied the CUP based on the request not meeting points 4 and 7 of the criteria
- Review of the P&Z decision and analysis which can be found in their FCOs
 - *Question no. 1: Is the proposed use permitted in the zone by conditional use permit?* A contractor shop may include, but not limited to, a building where a contractor conducts his business, including offices and parking of equipment and employee parking; A staging area is an area where equipment and/or materials are stored for use conducted entirely off site.
 - *Question no. 2: What is the nature of the request?* The proposed uses include an office to deploy equipment to construction locations and storage of multi-use equipment (tractors, dump trucks, trailers, and pilers) and supplies on the property that are used in support of the property owners' construction business on approximately 11-acres of the approximate 39-acres. The proposed hours of operation are from 7:00 a.m. to 5:30 p.m. Monday through Friday with occasional work on Saturday. They anticipate 10-15 employees with a large surface area for parking. A chain link fence with site-obscuring slats will be installed. There is currently a 110' x 208' unpermitted building on the site which is proposed to be used to store/park equipment (an ag-exempt permit was applied for but has since expired). There is also a proposed 115' x 100' structure for use as an office and to deploy equipment.
 - *Question no. 3: Is the proposed use consistent with the comprehensive plan?* The request is consistent with 9 goals and 4 policies of the 2030 comprehensive plan;

the 2030 plan designates the area as agricultural; it is not in an area of city impact.

- *Question no. 4: Will the proposed use be injurious to other property in the immediate vicinity and/or negatively change the essential character of the area?* The P&Z commission found that the proposed use would be injurious to other properties in the immediate vicinity and negatively change the character of the area due to safety issues, heavy truck traffic, the use not being agricultural in nature, manufacturing associated with the use occurring on-site; sound, dust, and lighting levels would not be substantially affected.
- *Question no. 5: Will adequate water, sewer, irrigation, drainage and stormwater drainage and stormwater drainage facilities, and utility system be provided to accommodate the use?* There is an individual domestic well proposed. Stormwater drainage is proposed to be retained by 2 swales. A septic tank and drain field are proposed for the building that will house the bathroom and breakrooms. SWDH states that a nutrient pathogen study was completed but the results were not received and an updated letter of intended use was also not submitted (exhibits 3.D1 and 3.D1.1). BCID stated there are irrigation water rights but no district infrastructure on site and have requested private easements showing pathway for water. No utility agency comments were received.
- *Question no. 6: does legal access to the subject property for the development exist or will it exist at the time of development?* The P&Z Commission found that the subject property will have legal access according to the representative's testimony at the public hearing. Access easements were not record for the currently utilized access and the property owner has received an approach permit from Highway District no. 4 for the southern boundary. Per the comment letter received from the highway district in 2023, the northern boundary access appeared to be suitable for the proposed uses subject to meeting the improvements described in their comment letter. Although the letter doesn't address the southern access, it does suggest that this access would be suitable subject to meeting the highway district standards. Also noted, the southern access appears to have irrigation facilities that may be affected and staff has a recommended condition of approval to address if needed.
- *Question no. 7: Will there be undue interference with existing or future traffic patterns?* The P&Z commission did find that there would be undue interference with the existing and future traffic patterns due to heavy traffic for the applicant's construction business which is industrial in nature. The main travel path when leaving the property will likely be Goodson and Farmway to Old Hwy 30 to 1-84.

Per Highway District No. 4, there will not be undue interference due to the collection of impact fees to mitigate any effect on traffic patterns. ITD had no concerns.

- *Question no. 8: Will essential services be provided to accommodate the use including, but not limited to, school facilities, police and fire protection, emergency medical services, irrigation facilities, and will the services be negatively impacted by such use or required additional public funding in order to meet the needs created by the requested use?* Middleton School District, Canyon County Paramedics/EMT, and Middleton Rural Fire District were notified of the request and did not provide responses to indicate that the proposed use would have a negative impact. Canyon County's addressing/GIS department made comments suggesting the applicant request an address since the use involves employees.

The following people offered testimony:

Pam Field originally understood that this was to be a horse facility. She has concerns about the estimated number of vehicle trips and feels it will be greater than the 10 daily trips as indicated. Additionally, she is concerned about the time of day the trips are taking place and preservation of the community.

Terry Grau works for Mr. Erlebach and spoke about the visibility of the trucks. He said there isn't a lot being hauled from the facility recently. He does maintenance and restoration at the facility. In response to a question from Commissioner Holton, he indicated that the area is used for staging, storing, and maintenance of equipment.

Bill Geiger stated that Mr. Erlebach originally told him the plan was to build 3 houses and an arena. Since that conversation the storage building has been built, light plants have been installed and concrete trucks travel the area at all hours. Prior to the last hearing, Mr. Erlebach's attorney made multiple calls to Mr. Geiger trying to get the easement signed. Originally, Mr. Geiger signed the easement but has since revoked it as he felt he was under duress and was being harassed by Mr. Erlebach and his attorney to sign.

Brad Simpson said there is plenty of commercial/industrial space available on Simplot Rd. and wants to see agricultural land left alone. He is concerned about increased traffic and the potential for serious accidents.

Ben O'Brien is a representative of Pacific Steel and Recycling and has worked with Mr. Erlebach for several years. He has had a good business relationship with Mr. Erlebach and supports his efforts.

Casey Crow thinks this land needs to go back to agricultural. He has lived in the area for 30 years and seen the amount of growth.

Sid Freeman is opposed to this request and doesn't believe it is in compliance with the comprehensive plan. He said he fully concurs with the letter submitted by the Brauns which outlines the codes they feel have been violated. Mr. Erlebach is not cleaning his drain ditch nor letting anyone on the property to do it for him, because of this it has backed-up onto the property to the south of him. In regard to the hours of operation, Mr. Freeman has personally witnessed people coming and going well beyond the noted hours of operation. In his opinion, the character of the area has already been changed. Additionally, he is concerned about the number of trips coming in and out of the property and there being more employees than originally stated. He feels that manufacturing of steel products is happening within the building. Mr. Freeman has watched raw material go in and seen steel structures leave the facility – he feels that what Mr. Erlebach says he's doing and what he's actually doing are two different things.

Michael Howard is owner of Blazing Hope and is concerned about traffic safety. He feels that Mr. Erlebach cannot be trusted.

Adam Batteen said that this project started with a lie and continues with deceit. He believes that Mr. Erlebach thinks because he has the money and the land he can do anything he wants. He continues to say one thing but does another; he told all neighbors that it would be a horse property with 3 homes. The light towers on the property are blinding and Mr. Batteen feels they could be dangerous to drivers in the area. His feeling is that if the CUP is granted it will be turned into either light or heavy industrial.

Justin Lockwood said he operates a metal fabrication facility in Star which employs 6-12 people, two of his employees work consistently on Mr. Erlebach's items. He said that the raw steel the neighbors are seeing goes to his facility to manufacture and shipped back to Mr. Erlebach; he has never seen manufacturing at this site.

Landon Brown is an attorney with Hawley Troxel who is here in support of Mr. Erlebach's CUP application. He noted that the P&Z commission found this application satisfies 6 of the 8 criteria

questions for approval. The two unsatisfied criteria were addressed by Mr. Lakey. To supplement Mr. Lakey's testimony, Mr. Brown said that with the conditions of approval recommended by staff, this use will not be injurious to any neighboring property; these conditions are outlined within the planning and zoning's conditions of approval. Additionally, he addressed the finding that the P&Z commission found in support of this application. The Board found that a staging area and contractor shop would be appropriate in an agricultural zone as long as it meets the CUP requirements. He clarified that this location will not be used for any manufacturing and addressed the legal access. Mr. Brown is the attorney that spoke with Mr. Geiger, noting that they honored Mr. Geiger's request to revoke his approval for the easement which is why they are proposing access from the southern part of the property and they are willing to comply with all highway district requirements and any irrigation district requirements to ensure the access doesn't disturb any neighboring properties. Commissioner Holton asked about the absence of the SWDH report and the nuisance light on the property.

Jennie Batteen has concerns about the structure being constructed thru the middle of the night which seems questionable to her. She asked how the vehicle count is being determined as she hasn't seen anything indicating a vehicle count is being done. She is concerned about Mr. Erlebach's business affecting her property value and the way of life she's created over the past 18 years. Ms. Batteen has personally had a close encounter with a large semi-truck at the intersection of Goodson and Farmway.

Dave Erlebach is the president and owner of Erlebach Properties and Industrial Builders. He employs 243 employees with 47 living in the Treasure Valley. He addressed some of the testimony given today including Mr. Geiger's septic system that is on the Erlebach property. Per Mr. Erlebach, the system was installed in 1994 but SWDH has no information on the installation. He doesn't feel that he threatened Mr. Geiger but suggested it could be a good trade-off for the easement. In regard to the drain ditch, he says that no one has ever contacted him and he has never not allowed someone on the property to clean it. He has cleaned the ditch but the water comes from the neighbor property, his compromise to the neighbor was that he would provide the labor to install a pipe if the neighbor would pay for the pipe, however, since that conversation Mr. Erlebach has not heard anything more. In response to a question from Commissioner Van Beek, Mr. Erlebach said he has not followed up on a building permit yet because currently the building is ag-exempt and there is no CUP. Ms. Bunn clarified that there was an ag-exempt permit applied for but the application expired so as of right now the building is not permitted. Originally, he was going for light industrial but after speaking with Dan Lister and Sabrina Minshall (previous DSD Director) he was informed that he would never get a rezone. Per Mr. Erlebach, after describing the nature of his business to Mr. Lister

and Ms. Minshall, they said it made much more sense to apply for a CUP and a contractor's yard. In response to a question from Commissioner Holton, Mr. Erlebach said the rendering he's had shows a house on 10-acres, 2 other houses for farm employees, and on the portion that backs to the freeway they've had the facility, it was never not in the plan. Ms. Bunn addressed county code noting that any kind of manufacturing assembling or similar is not permitted in the ag zone unless it is rezoned to light industrial or heavy industrial, etc. It has been represented today that there is no manufacturing happening on site but at the planning and zoning hearing there was discussion about some assembly happening on-site. In response to Commissioner Holton's question, Mr. Erlebach said the building is basically a storage building to house tools and equipment. He has a location on E. Chicago St. which will be a manufacturing facility, this location will not be a manufacturing facility, it is a contractor's yard. There is currently no water or septic, there is some temporary lighting for construction purposes. The field immediately adjacent is in active ag production which is owned and operated by Mr. Erlebach. There is steel brought in to the facility which is then sent out to be fabricated, coated and painted. Commissioner Brooks asked what is to be done with a building that already exists that isn't permitted. Ms. Bunn said that if the planning and zoning commission decision were to be reversed, Mr. Erlebach could potentially apply for a commercial building permit to store equipment as it's more connected to commercial use. If the decision is not upheld and denied, then he could potentially apply for an ag exempt building if it's going to be used of ag purposes but if it's not then it's just an unpermitted building and the suggestion may be to tear down the building as it will be a code enforcement violation that he could work with the building department on. Another option would be for Mr. Erlebach to apply for a personal use only to be used as an accessory structure. There currently is an active code enforcement issue on the use of the property, but part of the problem may be that the applicant isn't sure how to proceed with the building permit process. Mr. Erlebach said he had a conversation with the building department who said to make sure he had all the engineering done, which he does; he has all the information to convert it to a commercial building based on the information he received from the county building department.

The Board recessed from 3:19 p.m. to 3:26 p.m.

Commissioner Holton asked Mr. Erlebach if at any point he represented to his neighbors that there would be 3 homes and a horse arena built on the property. Mr. Erlebach confirmed he did represent that to his neighbors. He also indicated that he tried to notify his neighbors of the changed plan – he said the only thing that changed was that they didn't end up building the houses.

Crystal Putman expressed her concerns about traffic fatalities and the light tower on the property. She spoke about a well driller being at the property on March 14th, a drainage ditch that needs to be cleaned, and trucks coming and going outside of the designated hours.

Claudia Geiger provided documentation of permits for the septic installed 2/15/94, permit no. 8258. She also has concerns about traffic going by all day and night.

Doug Brandel is the executor of the family trust that owns the property south of the subject property. The property has been essentially the same for 65 years and been continuously farmed for that time. He was able to provide additional information on the drainage issue noting that it's very flat which is why the water doesn't move and eventually backs up. He feels the drainage problem is Mr. Erlebach's as it gets stopped up on his property; he said he has discussed the drainage problem with Mr. Erlebach who didn't feel it was his issue.

Matt Atteberry said there is now a for sale sign on the property for 3 lots at approximately 11-acres each plus the building and is concerned about why Mr. Erlebach would want to sell at this point.

Todd Lakey offered rebuttal testimony addressing a few points including the traffic which he said is a low-volume use as noted by the highway district in their earlier response letter. Although there is currently no stop sign at Farmway and Goodson Mr. Erlebach is willing to add one there with highway district approval. He reiterated that they are not asking for an industrial use, they are asking for a contractor's shop and a staging area; that may have some similarities to an industrial zone but the use itself is a conditional use permit and as defined in code, it may include but not limited to, a building where a contractor conducts his business including offices and parking of equipment and for employees. A staging area is defined as an area where equipment and/or materials are stored for use conducted entirely off-site. They are willing to have a condition which stipulates no manufacturing. The contractor's yard and the staging area are allowed as a CUP in an ag zone, that is what they are here for, not for a rezone to an industrial use. He readdressed the truck routes going east and west on Galloway, they are willing to have a truck route stipulation/condition. Based on a question from Commissioner Holton, Ms. Bunn confirmed there was grading and drainage plan submitted but she doesn't believe it covered the southern boundary, it was just the 11-acre portion of the property. Ms. Bunn said they are requesting 11-acres of the 39-acres for just the contractor shop and staging area. If approved, and if they wanted to expand further, they would have to come back for a modification to the application. Mr. Erlebach feels like he maintains the ditch on his property and will continue to do so as needed, the issues seem to be primarily off the property.

Commissioner Van Beek motioned to close testimony and continue to a date certain but died for lack of a second. Commissioner Van Beek withdrew the motion.

Emily Bunn addressed a question from Commissioner Van Beek regarding higher impact fees but she noted that was in regard to the previously requested industrial rezone. Exhibit D in the planning and zoning staff report has the correct impact fees for the use currently being requested which is the lower impact fees.

Commissioner Brooks made a motion to close testimony. The motion was seconded by Commissioner Van Beek and carried unanimously.

As part of the Board's deliberation there was an evaluation of the criteria (07-06-05), and a review of the Planning and Zoning Commission's FCO's. *(The audio portion of the discussion can be found starting at approximately 30 minutes into the second audio recording.)*

Question no. 1: Is the proposed use permitted in the zone by conditional use permit? Commissioners Brooks and Holton found the proposed use is permitted in the zone by conditional use permit. Commissioner Van Beek does not find the proposed use to be permitted in the zone by conditional use permit.

Question no. 2: What is the nature of the request? Commissioners Brooks and Holton are in agreement with the planning and zoning findings. Commissioner Van Beek does not concur with the planning and zoning findings.

Question no. 3: Is the proposed use consistent with the comprehensive plan? Commissioners Brooks, Holton and Van Beek agree with the planning and zoning finding that the proposed use is consistent with the comprehensive plan.

Question no. 4: Will the proposed use be injurious to other property in the immediate vicinity and/or negatively change the essential character of the area? Commissioners Brooks and Holton agree that the proposed use can be conditioned to not be injurious to other properties in the area. Commissioner Van Beek does not believe the applied conditions would be complied with.

Question no. 5: Will adequate water, sewer, irrigation, drainage and stormwater drainage and stormwater drainage facilities, and utility system be provided to accommodate the use? Commissioners Holton and Van Beek do not think there has been sufficient evidence showing adequate plans in place to accommodate the use. Commissioner Brooks feels a condition could be added.

Question no. 6: Does legal access to the subject property for the development exist or will it exist at the time of development? Commissioners Holton and Brooks feel there is legal access. Commissioner Van Beek does not feel there is legal access.

Question no. 7: Will there be undue interference with existing or future traffic patterns? Commissioner Van Beek agrees with planning and zoning that this will cause undue interference with traffic patterns. Commissioners Brooks and Holton agree with comments from the highway district that this will not cause undue interference with traffic patterns.

Question no. 8: Will essential services be provided to accommodate the use including, but not limited to, school facilities, police and fire protection, emergency medical services, irrigation facilities, and will the services be negatively impacted by such use or required additional public funding in order to meet the needs created by the requested use? Commissioners Holton and Brooks believe essential services can be provided; Commissioner Van Beek does not believe adequate essential services could be provided.

Commissioner Van Beek made a motion to deny based on the findings of fact, conditions of law, and order. The motion died for lack of a second.

Discussion ensued as to when the CUP is issued and how/when the conditions must be met.

Commissioner Holton said he has some specific legal questions he would like answered.

Commissioner Brooks made a motion to continue the hearing to July 28th at 3:00 p.m. The motion was seconded by Commissioner Holton and carried unanimously.

Upon the motion of Commissioner Holton and second by Commissioner Brooks the Board voted unanimously to adjourn.

The hearing concluded at 4:58 p.m. and an audio recording is on file in the Commissioners' Office.