



**Findings of Fact, Conclusions of Law, and Order**

**Findings of Fact**

1. The applicant, David Ferdinand, representing Santiago Gomez, is appealing Case #AD2023-0133 the denial of an Administrative Land Division to make Parcel R29035010A a buildable parcel. The subject property is located adjacent to 4754 Bennett Road, Kuna, also referenced as a portion of the SW¼ of Section 29, T2N, R1W, BM, Canyon County, Idaho.
2. On September 5, 2023, the applicant submitted a Parcel Inquiry Request, PI2023-0182, for research of the history of R29035 and if the subject parcel, R29035010A, has a building permit available (Exhibit 2 of the staff report). The subject parcel, R29035010A was created by deed in 2023 when the owner of Parcel R29035010, Mr. Relk, sold the 2.07-acre parcel to Mr. Santiago (Instrument No. 2023-035238, Exhibit 3 of the staff report). The subject parcel was not created per the Canyon County Zoning Ordinance (CCZO §07-17-03 and Chapter 7, Article 18 of the County Code (Administrative Land Division). To abate the unauthorized division, the applicant was given the option to apply for a non-viable land division subject to CCZO §07-18-09, building permit relocation subject to CCZO §07-18-11, or a comprehensive plan amendment and rezone.
3. On December 19, 2023, the applicant submitted an Administrative Land Division application to correct the creation of R29035010A subject to CCZO §07-18-07 (Exhibit 4 of the staff report). Per the applicant's letter of intent, the applicant believes there is a division available to create the 2.07-acre parcel. The original parcel was 80 acres. Per CCZO §07-18-07(2), an 80-acre parcel is allowed two divisions (three parcels).
4. On January 24, 2024, Case AD2023-0133 was denied by the Director of DSD due to the request not being able to meet CCZO §07-18-07 (Exhibit 5 of the staff report).
5. On February 2, 2024, the applicant submitted an appeal of the decision by the Director of DSD requesting the Board of County Commissioners approve AD2023-0133 (Exhibit 7 of the staff report). The applicant finds, per CCZO Section 07-18-07(2), that an 80-acre parcel is allowed two divisions (three parcels). The second division was created by conditional use permit (CU2002-386, Exhibit 6 of the staff report) which is not synonymous with the Administrative Land Division Chapter of the County Code.
6. The 2.07-acre parcel, R29035010A, is zoned "A" (Agricultural).
7. The Canyon County Future Land Use Plan within the 2030 Canyon County Comprehensive Plan designates the subject property as "agriculture".
8. The request was noticed/published per Canyon County Code §07-05-01. Property owners within 600' of the external boundaries of the parcel and affected agencies were notified per CCZO §07-05-01 on March 4, 2024.
9. All record herein consists of exhibits provided in the public hearing staff report, testimony, and exhibits provided during the public hearing on April 16, 2024, and all information in case file AD2023-133-APL.

**Conclusions of Law**

Upon review, the Board of County Commissioners finds and concludes the following regarding the Standards of Review for Appeal of Director Administrative Decision (CCZO §07-05-07):

- (1) *Appeal To Board: An affected person aggrieved by a final administrative decision or action of the director that was made pursuant to the provisions of this chapter may appeal to the board.*
- (2) *Appeal Procedures:*
  - A. *Appeals shall be filed with DSD within fifteen (15) calendar days after the date of the decision. A notice of appeal should include a statement of the reasons for the appeal and must be accompanied with all appropriate fees as established by the adopted fee schedule.*
    1. On December 19, 2023, the applicant submitted an Administrative Land Division application to correct the creation of R29035010A subject to CCZO §07-18-07 (Exhibit 4 of the staff report). Per the applicant's letter of intent, the applicant believes there is a division available to create the 2.07-acre

parcel. The original parcel was 80 acres. Per CCZO §07-18-07(2), an 80-acre parcel is allowed two divisions (three parcels).

2. On January 24, 2024, Case AD2023-0133 was denied by the Director of DSD due to the request not being able to meet CCZO §07-18-07 (Exhibit 5 of the staff report). Per CCZO Section 07-18-07(2), an 80-acre parcel is allowed two divisions (three parcels). Per PI2023-0182 (Exhibit 2 of the staff report), the first division was in 1982 when the division created a 5-acre parcel (R29035) and a 75-acre parcel (R29035010). In 1986, Parcel R29035 was granted another division via a conditional use permit (CU2002-386, Exhibit 6 of the staff report). The owners of R29035 have not used the division. However, the CU2002-386 and the County Code at that time did not have expiration dates or a condition expiring the division if not utilized within a certain timeframe. Therefore, the division is permanent unless terminated by that owner. Because of that, the original 80 acres have been approved for two divisions. Therefore, there are no divisions available per CCZO §07-18-07. The denial provided the following options to gain approval which were provided in PI2023-0182:
  - a. *Land Division – Nonviable (\$600 application fee). The parcel may be divided one more time subject to the requirements of CCZO Section 07-18-09.*
  - b. *Land Division – Relocation (\$600 application fee). The owner can purchase the division from the owner of R29035 and transfer it to parcel R29035010 subject to the requirements of CCZO Section 07-18-11.*
  - c. *Comprehensive Plan Amendment (\$2,800 application fee), Conditional Rezone (\$1,400 application fee), and depending on approval and number of splits, Land Division (\$330 application fee per CCZO Section 07-18-13) or platting (approx. \$2,000+ application fee).*
3. On February 2, 2024, the applicant submitted an appeal of the decision by the Director of DSD requesting the Board of County Commissioners approve AD2023-0133 (Exhibit 7 of the staff report). The applicant finds, per CCZO Section 07-18-07(2), that an 80-acre parcel is allowed two divisions (three parcels). The second division was created by conditional use permit (CU2002-386, Exhibit 6 of the staff report) which is not synonymous with the Administrative Land Division Chapter of the County Code.

B. *At the public hearing held in accordance with this article, the board shall consider the decision of the director and any additional evidence that may be offered by the public, applicant, or director.*

1. All record herein consists of exhibits provided in the public hearing staff report, testimony, and exhibits provided during the public hearing on April 16, 2024, and all information in case file AD2023-133-APL.
2. Property owners within 600' of the external boundaries of the parcel and affected agencies were notified per CCZO §07-05-01 on March 4, 2024. No comments were received.

C. *The board may affirm, reverse, or modify, in whole or in part, the director's decision.*

After reviewing all applicable codes (CCZO Sections 07-05-07, 07-17-03, 07-18-05, and 07-18-07) and considering all information a duly noticed hearing, the Board of County Commissioners affirms the decision made by the Director of DSD on January 24, 2024 (Exhibit 5 of the staff report).

### **Order**

Based upon the Findings of Fact and Conclusions of Law enumerated above, the Board of County Commissioners hereby denies the appeal affirming the decision by the Director of DSD for Case No. AD2023-0133-APL.

According to Idaho Code §67-6519, the following actions may be taken to obtain approval:

- 1) *Terminate CU2002-386. The applicant can work with the property owner for Parcel R29035 to see if they would terminate their approved land division (CU2002-386). The termination can be completed through an Administrative Land Division (\$330 application fee).*
- 2) *Land Division – Nonviable (\$600 application fee). The parcel may be divided one more time subject to the requirements of CCZO Section 07-18-09.*
- 3) *Land Division – Relocation (\$600 application fee). The owner can purchase the division from the owner of R29035 and transfer it to parcel R29035010 subject to the requirements of CCZO Section 07-18-11.*

4) Comprehensive Plan Amendment (\$2,800 application fee), Conditional Rezone (\$1,400 application fee), and depending on approval and number of splits, Land Division (\$330 application fee per CCZO Section 07-18-13) or platting (approx. \$2,000+ application fee).

According to §67-6535 of the Idaho Code, the applicant has 14 days from the final decision to seek reconsideration before seeking judicial review.

APPEAL DENIED this 16 day of May, 2024.

**BOARD OF COUNTY COMMISSIONERS  
CANYON COUNTY,**

Yes                      No                      Did Not Vote

Brad Holton  
Commissioner Brad Holton

X

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Zack Brooks  
Commissioner Zack Brooks

X

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Leslie Van Beek  
Commissioner Leslie Van Beek

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Attest: Rick Hogaboam, Clerk

By: Manica Reyes, Dep.