

**BOARD OF COUNTY COMMISSIONERS**  
**FINDINGS OF FACT, CONCLUSION OF LAW AND ORDER**

In the matter of the application of:

**AD2023-0115-APL**

The Canyon County Board of County Commissioners consider the following:

- 1) Appeal - The appellant, Gainelle Massoth, is appealing the Development Services Director's decision to deny a property boundary adjustment on the SE corner of Upper Pleasant Ridge Rd and Wagner Rd, also referenced as Parcels R35521010B and R35521010, a portion of the SE quarter of Section 30, T4N, R3W, Canyon County, Idaho.

**Summary of the Record**

1. The record is comprised of the following:
  - A. The record includes all testimony, the staff report, exhibits, and documents in AD2023-0115-APL and AD2023-0115.
  - B. Findings of Fact, Conclusions of Law and Order signed by the Development Services Director on December 20, 2023 (Exhibit 3).
  - C. An appeal filed by Gainelle Massoth was submitted on January 3, 2024 pursuant to Canyon County Code §07-05-07 (Exhibit 4). The appeal was submitted within 15 days after the date of the decision and included a statement of the reasons for the appeal and was accompanied with all the appropriate fees.

**Applicable Law**

1. The following laws and ordinances apply to this decision: Canyon County Code §01-17 (Land Use/Land Division Hearing Procedures), Canyon County Code §07-01 (General Regulations), Canyon County Code §07-05 (Notice, Hearing and Appeal Procedures), Canyon County Code §07-10-17 (Property Boundary Adjustment), Canyon County Code §07-12 (Certificates of Zoning Compliance), Canyon County Code §07-15 (Director Administrative Decisions), Canyon County Code §07-17 (Subdivisions), and Canyon County Code §07-18 (Administrative Land Divisions).
  - a. Notice of the public hearing was provided per CCZO §07-05-01.
  - b. 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. (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. (C) The board may affirm, reverse or modify, in whole or in part, the director's decision. *See* CCZO §07-05-07(2).
2. The Board has the authority to exercise powers granted to it by the Idaho Local Land Use and Planning Act ("LLUPA") and can establish its own ordinances regarding land use, including subdivision permits. *See* I.C. §67-6504
3. The Board has the authority to hear this case and make its own independent determination. *See* I.C. §67-6519, §67-6504.
4. The burden of persuasion is upon the applicant to prove that all criteria, including whether the proposed use is essential or desirable to the public welfare, are satisfied. CCZO §07-05-03.
5. Idaho Code §67-6535(2) requires the following: The approval or denial of any application required or authorized pursuant to this chapter shall be in writing and accompanied by a reasoned statement that explains

the criteria and standards considered relevant, states the relevant contested facts relied upon, and explains the rationale for the decision based on the applicable provisions of the comprehensive plan, relevant ordinance and statutory provisions, pertinent constitutional principles and factual information contained in the record. The County's hearing procedures adopted per Idaho Code §67-6534 require that final decisions be in the form of written findings, conclusions, and orders. CCZO 07-05-03(1)(I).

**The appeal (AD2023-0115-APL) was presented at a public hearing before the Canyon County Board of County Commissioners on May 21, 2024. Having considered all the written and documentary evidence, the record, the staff report, oral testimony, and other evidence provided, including the conditions of approval and project plans, the Board of County Commissioners decides as follows:**

#### **FINDINGS OF FACT & CONCLUSION OF LAW**

1. The appellant filed an appeal to AD2023-0115 on January 3, 2024 pursuant to Canyon County Code §07-05-07 asking the Board of County Commissioners ("Board") to overturn the findings signed by the Director of DSD (Development Services Department). See the following attachment as evidence: Exhibit 4.
2. The Board reviewed the written findings, comments (Exhibit 13, 14, and 15), testimony, and evidence presented at a public hearing on the application. The Board finds the decision by the Director of DSD (Exhibit 3) is adequately supported by evidence demonstrating consistency with the required criteria pursuant to, §07-01-05(1-2), §07-10-17, §07-12-01, §07-15-03(2-4), §07-17-03, and §07-18-13 as follows:
  1. **This chapter applies to the development and use of all land within the unincorporated area of Canyon County, Idaho. (1) No person shall construct, alter, move, or change the use of a structure or commence any development or use, unless otherwise preempted by federal, state, or local law, unless: A. The proposed use, structure, or division of property complies with this chapter. B. Any approval required by this chapter is first obtained and any applicable conditions of approval are met. (2) Nothing in this chapter shall eliminate the need for obtaining any other required permits, including, but not limited to, permits required by the Canyon County building code or any permit, approval, or entitlement required by other ordinances contained in this code, other political subdivisions of the state of Idaho, the state of Idaho, or the federal government. (CCZO §07-01-05(1-2); and**

**Conclusion:** Chapter 7 Zoning Regulations applies to all land within the unincorporated area of Canyon County, Idaho, including R35521010 and R35521010B. The property boundary adjustment between R35521010 and R35521010B is not allowed due to not being compliance with CCZO §07-10-17, §07-15-03(2-4), §07-17-03, and §07-18-13.

**Findings:** The appellant states in her letter of appeal that R35521010C "...was farm ground and is still farm ground. The usage did not require a hearing or your approval. It was and is his [her son's] right to sell farm ground without your approval. There was no zoning changes, no request for a building permit. Since when does a private citizen have to have permission to sell their farm ground..." As stated in CCZO §07-01-05(1), no person can alter, move, or change the use of a structure or commence any development or use unless preempted by federal, state, or local law. This property boundary adjustment between R35521010 and R35521010B does not comply with Canyon County Zoning Code due to the unrecognized 10-acre division off of R35521010 (specifically CCZO §07-10-17, §07-15-03(2-4), §07-17-03, and §07-18-13), therefore it was denied. Since the original 40-acre parcel has been divided into six (6) parcels, the subject properties would be required to amend the comprehensive plan, rezone/conditional rezone, and plat to bring the properties into compliance with Canyon County's Zoning Ordinance. If the subdivision plat is approved, this could potentially recognize R35521010C as a legal parcel and provide for the adjustment of the property boundaries of R35521010 and R35521010B.

**2. The adjustment does not create any additional parcels (CCZO §07-10-17(2); and**

**Conclusion:** If the property boundary adjustment was approved between R35521010B and R35521010, this would have recognized the 10-acre division off of R35521010 in 2021 taken not in accordance with Canyon County's Zoning Ordinance, thereby recognizing an additional parcel (R35521010C), the sixth parcel on the original 40-acre parcel. Hence, R35521010 was not eligible for a property boundary adjustment.

**Findings:** In 2021, the owners of R35521010 (19.16 acres) divided off approximately 10-acres by deed not in accordance with Canyon County's Zoning Ordinance requirements, which created two (2) parcels without Canyon County's approval (R35521010C) (Exhibit 11). To recognize R35521010 as a legal parcel, the property owners would have to go through the rezone/conditional rezone and comprehensive plan amendment application process to change the zone to a residential zoning district and then go through the subdivision platting process because the original parcel has already been divided more than four (4) times. (CCZO §07-17-03 and §07-18-13).

**3. (3) Division Of Land: No certificate of zoning compliance for a new dwelling shall be issued until the subject property, if divided, has been divided according to county ordinances and has access as required in section 07-10-03: of this chapter. However, an existing dwelling located on a parcel of land that was not divided in accordance with county ordinance provisions for the division of land may be rebuilt or replaced (CCZO §07-12-01)**

**Conclusion:** R35521010 has not been divided according to Canyon County Ordinances (specifically CCZO §07-10-17, §07-15-03(2-4), §07-17-03, and §07-18-13), therefore no certificate of zoning compliance for a new dwelling can be issued on R35521010 or R35521010C (unless a residence is being replaced or rebuilt).

**Findings:** Since the original 40-acre parcel has been divided into six (6) parcels, the subject properties would be required to amend the comprehensive plan, rezone/conditional rezone, and plat to bring the properties into compliance with Canyon County's Zoning Ordinance. If the subdivision plat is approved, this could potentially recognize R35521010C as a legal parcel and provide for the adjustment of the property boundaries of R35521010 and R35521010B.

**4. (2) Compliance With This Code: Prior to issuance of a director's administrative decision, the subject property shall be in compliance with the public nuisance ordinance (chapter 2, article 1 of this code), the building code (chapter 6 of this code), and with all other articles of this chapter. (3) Compliance With All Applicable Regulations: The property shall comply with all applicable federal, state, and county laws, ordinances, rules and regulations that pertain to the property and/or business. (4) Compliance With County Ordinances: The property shall be in compliance with the Canyon County zoning ordinance, public nuisance ordinance and building ordinance. (CCZO §07-15-03(2-4))**

**Conclusion:** R35521010 is not in compliance with applicable county laws, ordinances (such as the Canyon County zoning ordinance), rules, and regulations that pertain to this property and/or business due to the 10-acre unrecognized division that occurred in 2021 without following Canyon County's Zoning Code (CCZO) (specifically §07-10-17, §07-15-03(2-4), §07-17-03, and §07-18-13)

**Findings:** Since the original 40-acre parcel has been divided into six (6) parcels, the subject properties would be required to amend the comprehensive plan, rezone/conditional rezone, and plat to bring the properties into compliance with Canyon County's Zoning Ordinance. If the subdivision plat is approved, this could potentially recognize R35521010C as a legal parcel and provide for the adjustment of the property boundaries of R35521010 and R35521010B.

5. **These regulations shall apply to the subdividing of all land within the unincorporated parts of the county and shall include the following: (1) The subdivision of land into more than four (4) lots, parcels or tracts since September 6, 1979, for transfer of ownership or development. (CCZO §07-17-03(1); and**

**Conclusion:** Parcel R35521010 is not eligible for a property boundary adjustment since the original parcel has been divided into more than four (4) lots, therefore Canyon County's subdivision regulations have jurisdiction over R35521010 and R35521010C.

**Findings:** (See Exhibit 5 for property history visual). R35521 contained two original parcels, one (1) 20-acre parcel and one (1) 40-acre parcel. On April 10, 2003, a conditional use permit, CU2003-46, was approved to divide the 40-acre parcel into three (3) residential parcels including one (1) 20-acre parcel and two (2) 10-acre parcels (see Exhibit 6). Around 2006, the owners of the 20-acre parcel (R35521010) divided off 1.15 acres without first obtaining the appropriate approval from Canyon County. In 2017, the division of 1.15 acres (R35521010B) and approximately 19 acres was recognized through AD2017-77 which transferred a building permit from R35539010 to R35521010 (at the time this parcel was approximately 19 acres). (Exhibit 7). On December 10, 2019, R35521011 (one of the ten acre parcels created through CU2003-46) was approved for a conditional rezone from "A" (Agricultural) to "CR-R1" (Conditional Rezone/Single Family Residential) with the condition that the property be developed in substantial compliance with the submitted site plan providing for an approximate one (1) acre parcel and the balance of 8.81 acres more or less containing the existing residence (CR2019-0010) (Exhibit 8). On March 26, 2021, a short plat was approved for R35521011 (Trails End Subdivision), which created R35521101 and R35521100 (SD2020-0034) (Exhibit 9). On August 6, 2021, a parcel inquiry was completed for Parcel R35521010 which stated that in order to divide the property per Canyon County Zoning Code, a comprehensive plan amendment, rezone/conditional rezone, and subdivision platting would need to be completed. The parcel inquiry also outlined that the 10-acres could be sold to the neighbor via a mortgage split, but this would result in the divided parcel being seen as an illegal parcel with no building permit available (Exhibit 10). In 2021, the property owners of R35521010 divided off 10-acres (R35521010C) via deed without Canyon County's approval (Warranty Deed with Instrument #2021-67537) (Exhibit 11). Since the original parcel has been divided into six (6) parcels, Article 17 (Subdivisions) applies to R35521010, meaning the subject properties would be required to amend the comprehensive plan, rezone/conditional rezone, and plat to bring the properties into compliance with Canyon County's Zoning Ordinance. If the subdivision plat is approved, this could potentially recognize R35521010C as a legal parcel and provide for the adjustment of the property boundaries of R35521010 and R35521010B.

6. **An administrative land division of an original parcel in a commercial, industrial, and residential zone is allowed in accordance with the following: Land may be divided into no more than four (4) parcels through the administrative land division process unless further restricted by provisions in Chapter 9 - Areas Of City Impact (CCZO §07-18-13(2)A); and**

**Conclusion:** If R35521010 and R35521010B were zoned residential, the parcels would still be required to complete the subdivision platting process because the original parcel has been divided into six (6) parcels. (CCZO §07-17-03).

**Findings:** Since the original 40-acre parcel has been divided into six (6) parcels, the subject properties would be required to amend the comprehensive plan, rezone/conditional rezone, and plat to bring the properties into compliance with Canyon County's Zoning Ordinance. If the subdivision plat is approved, this could potentially recognize R35521010C as a legal parcel and provide for the adjustment of the property boundaries of R35521010 and R35521010B.

**Order**

Based upon the Findings of Fact, Conclusions of Law and Order contained herein, the Board of County Commissioners **deny** the appeal of Case # AD2023-0115, **upholding** the Director's denial of a Property Boundary Adjustment for parcel R35521010B and R35521010.



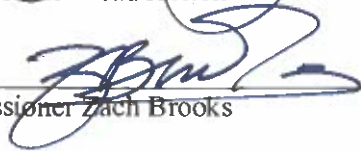
As found in the Director's Decision dated December 20, 2023, there are options outlined for the property owners to potentially recognize R35521010 and property boundary adjust R35521010B and R35521010 (Exhibit 3).

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


DATED this 21 day of May, 2024.

**CANYON COUNTY BOARD OF COMMISSIONERS**

- Motion Carried Unanimously
- Motion Carried/Split Vote Below
- Motion Defeated/Split Vote Below

	Yes	No	Did Not Vote
 _____ Commissioner Leslie Van Beek	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 _____ Commissioner Brad Holton	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 _____ Commissioner Zach Brooks	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Attest: Rick Hogaboam, Clerk

By:   
Deputy

Date: May 21, 2024