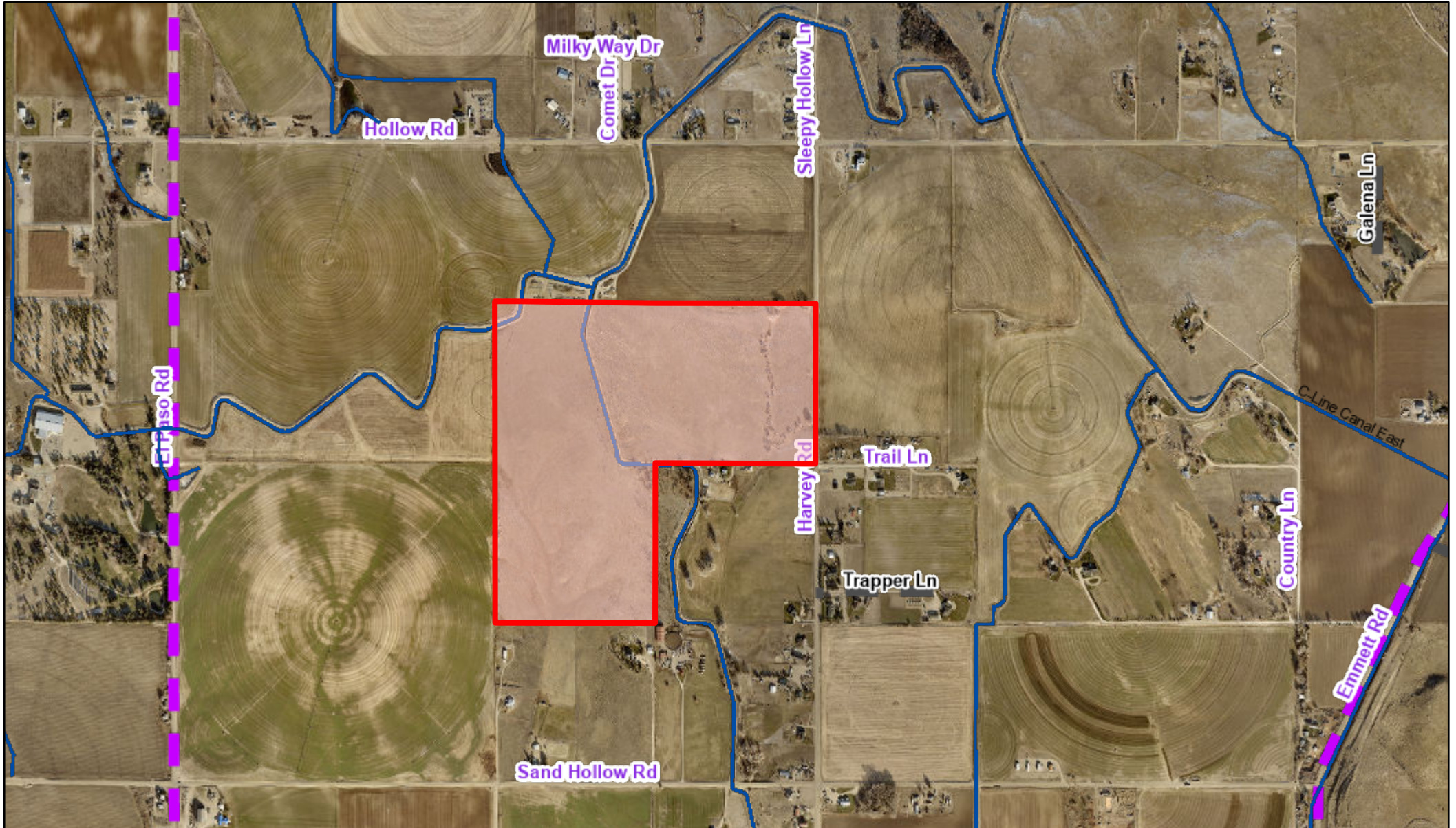
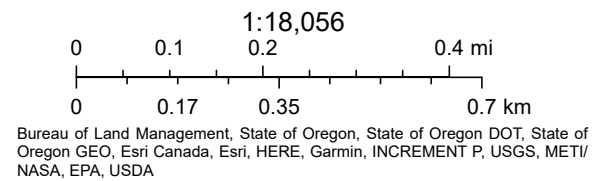


# Canyon County, ID Web Map





10/21/2024, 4:47:15 PM

- Multiple Parcel Search \_Query result
- Hydro\_NHDFlowline
- Major Collector
- CC\_PrivateRoads
- ITDFunctionalClassification Green: Band\_2
- Blue: Band\_3
- Red: Band\_1





# APPEAL OF DECISION APPLICATION

<b>APPELLANT</b>	NAME: Richard and Lorna Penner	
	MAILING ADDRESS: 386 Birch Avenue, Middleton, ID 83644	
	PHONE: [REDACTED]	EMAIL: [REDACTED]
Property owner: <input checked="" type="checkbox"/>		Other Appellant: <input type="checkbox"/>
Signature: 		Date: Oct. 17, 2024
Signature: 		Date: Oct. 17, 2024

<b>REPRESENTATIVE: IF DIFFERENT FROM THE APPELLANT</b>	NAME:	
	COMPANY NAME:	
	MAILING ADDRESS:	
	PHONE:	EMAIL:

<b>SITE INFO</b>	STREET ADDRESS: TBD Harvey Road, Caldwell, ID 83607
	PARCEL NUMBER: R3779200000
	PARCEL SIZE: 120 Acres

<b>CASE NUMBER OF REQUESTED APPEAL:</b>	AD2024-0001
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**FOR DSD STAFF COMPLETION ONLY:**

CASE NUMBER	AD2024-0001-APL	DATE RECEIVED:	10/18/24
RECEIVED BY:	LISTER	APPLICATION FEE:	\$600 CK CC CASH





# APPEAL OF DECISION

## CHECKLIST

**GENERAL APPEAL PROCEDURE CCZO - Section 07-05-05 or 07-05-07**

THE FOLLOWING ITEMS MUST BE SUBMITTED WITH THIS APPLICATION TO BE DEEMED COMPLETE (PLEASE CHECK OFF THE ITEMS REQUIRED):

Description	Applicant	Staff
Master Application completed and signed	X	✓
Letter of Intent/Statement of Reason	X	✓
Fee: \$600.00	X	✓
**Fees are non-refundable**		

\*DISCLAIMER: The subject property shall be in compliance with the public nuisance ordinance, the building code and the zoning code before the Director can accept the application.

**Richard & Lorna Penner**

386 Birch Avenue  
Middleton, ID 83644

**10/17/2024**

Board of County Commissioners (BOCC)  
1115 Albany St., Room 101  
Caldwell, ID 83605

Re: Statement of Reasons for Appeal of Director's Decision for Case AD2024-0001

Dear Canyon County Commissioners,

We respectfully request that you reverse the Director's decision dated 10/7/2024 and approve our application for 8 residential parcels and 2 agricultural parcels for parcel #R3779200000, which is approximately 120 acres.

We have carefully pursued this application based on information provided by Canyon County officials, and we believe the email from Dan Lister to our real estate agent, Ben Amante, dated March 30, 2023, accurately reflects the property's status. Dan indicated that 5 residential parcels were available, with the possibility of 3 additional parcels if the non-viable agriculture ordinance was approved. This confirms that the property consists of **two original parcels**, not just one, as suggested in the Director's decision letter. Consequently, we believe that it is possible to create 8 residential parcels rather than just 4.

The decision references contract surveyors who, we believe, incorrectly assessed the property as a single original parcel. They did not consider that the aliquot parts descriptions define separate parcels located in different quarter sections, which, under county code, should be treated as distinct parcels. Kate Dahl herself confirmed this interpretation in her parcel inquiry dated August 4, 2020, where she stated that "each aliquot section is an original parcel." This key piece of evidence supports our view that the property consists of **two original parcels**, each of which is eligible for multiple residential building permits.

## **1. Two Parcels vs. One Parcel**

We disagree with the Director's conclusion that the property consists of only one original parcel. The aliquot parts, as confirmed by multiple county officials, define the property as **two distinct parcels** in separate quarter sections. Both Dan Lister and Kate Dahl provided information that supports this understanding, and we relied on this when making our purchase and planning for 8 residential parcels. The conclusion in the decision letter is based on a misunderstanding of the property's configuration.

**1960 Patent Deed Description reviewed by Contract Surveyors.**

**"T.5N., R.3W.,**

**Sec.10, S1/2 NE1/4, NW1/4 SE1/4."**

The newer deeds have an "and the" instead of a comma between the quarter section descriptions that show as:

" The South 1/2 of the Northeast ¼ and the Northwest 1/4 of the Southeast 1/4 of Section 10, Township 5 North, Range 3 West, Boise Meridian, Canyon County, Idaho"

The comma representing "and the" in the original patent deed makes the case that these are **separately** defined aliquot parts descriptions, and thus separate original parcels consisting of 80 acres and 40 acres respectively.

**County Definitions 07-02-03**

- ALIQUOT: The length of one side of a quarter-quarter section (1/16). The one-sixteenth (1/16) section contains forty (40) acres, more or less.
- ORIGINAL PARCEL: A parcel of platted or unplatted land as it existed on September 6, 1979 (the effective date of the Zoning Ordinance 79-008), including any property boundary adjustments as defined in this chapter and any reduction in area due to creating a parcel for the exclusive use by Canyon County, a municipality within Canyon County, a local highway district, Idaho Transportation Department, utility company or corporation under the jurisdiction of the Idaho Public Utilities Commission, or other local, State, or Federal agency.
- **PARCEL:** A tract of land described by metes and bounds, chains, rods or **aliquot parts** or by lot and block. Land that is described by metes and bounds that includes all or parts of multiple, preexisting parcels or portions of platted lots, **all of which are not separately defined** or labeled as separate parcels or lots, **shall be considered one parcel**

**2. Non-Viability of the Ground for Agriculture**

The property is **not viable for agricultural use** based on its poor soils, lack of irrigation water, and difficult topography. While the decision letter suggests that economic viability cannot be used as evidence, **economic viability is a key part of determining whether land is truly viable for agricultural use.** We emphasize the following:

- Canyon County defines viable farmland as "land that is capable of producing marketable farm animals or crops."
- County Code 07-18-09(5)(C) states that the parcel must not have site constraints, such as lack of water or poor soils, that make productive agricultural use extremely difficult.

It's important to note that the definition of viability is not simply the ability to produce something; it must also be **economically sustainable**. According to Merriam-Webster, "viable" means "capable of living or operating successfully," which includes financial sustainability. Without the ability to produce marketable crops or livestock in a way that is economically feasible, this property cannot be considered viable farmland. The decision to classify it as such ignores the broader realities of what it takes for land to be productive and marketable.

### 3. Mitigation of Agricultural Impacts

We have taken significant steps to **mitigate any potential impacts on neighboring agricultural uses**, and we believe these efforts directly address the concerns outlined in Item D of the decision letter. We have designed our development plan to minimize disruptions to surrounding farming operations, while still enabling sustainable residential development:

- **Internal Traffic Design:** All traffic will remain internal to the property, ensuring that dust and disruptions from the private road will not affect neighboring agricultural fields or homes. This reduces the risk of impacting nearby farming operations.
- **Approval from Highway District 4:** We worked with **HD4** to reserve a public collector road away from our southern neighbor David and Connie Michaelis's property line (along the section line), further minimizing potential impacts on adjacent properties. Initially HD4 wanted to have a public collector with ROW on each side of the section line built, which would have been half on David's property. We placed it entirely on our property instead and successfully negotiated a variance to just reserve the location for long term growth planning, keeping the road unbuilt, and allowing our property to stay private. This design also put a **large buffer** between the Michaelis home, and the future proposed collector at no cost to the Michaelis's. Harvey Road is considered a Collector on the 2030 Functional Classification map.
- **Right to Farm Act in CC&Rs:** We have incorporated the **Right to Farm Act** into the future CC&Rs for the property, ensuring that future residents acknowledge and respect the agricultural nature of the surrounding area. This provision serves as a safeguard to protect ongoing agricultural operations from complaints or conflicts with residential owners.
- **Approvals from BCID and BOR:** We have worked with these agencies to protect the irrigation lateral easement with fencing, and crossed the lateral with a bridge that does not impact the lateral flume walls in any way—at a much higher cost than could have been done with just a culvert, and no fencing.

These steps, combined with the **large lot sizes** in our plan, ensure that our development aligns with the agricultural character of the area while minimizing any negative impacts on neighboring agricultural uses. We believe this approach balances residential growth with the need to protect existing farms, creating a sustainable, rural lifestyle for future residents.

#### 4. Future Agricultural and Residential Uses

The property, in its current and historical state, is **not viable for agricultural use**. Without irrigation water and with poor soils, it cannot support traditional farming operations or livestock grazing. However, by building residences on the proposed parcels, each with a ½ acre irrigation right and a domestic well providing up to 13,000 gallons of water per day, some form of **agricultural use** can be established.

These small-scale agricultural uses, often referred to as **hobby farms**, typically do not generate profit, but they bring a positive character to the community and can potentially benefit larger farm operations nearby by purchasing their crops, compost, animals, and even providing labor.

In **Section C** of the decision letter, stating that residential uses will allow each parcel to develop a viable agricultural use is not a contradiction in our application. A viable use for a **hobby farmer** can be subsidized by other income for personal enjoyment. However, a typical farm operator who relies on farming as their sole income would never succeed on this property. The property as it sits is **not viable farm ground**, as we have proven in our application.

Hobby farms create an opportunity for residents to engage in limited agricultural activities, such as growing gardens, raising a few animals, or maintaining pastures, without depending on these activities for their livelihood. While they are not commercially viable, hobby farms add to the rural lifestyle and help preserve the agricultural nature of the area. This balance between residential development and small-scale agricultural use supports the region's agricultural heritage without placing economic burdens on landowners who would otherwise struggle to make the property productive under current conditions.

#### Conclusion: Three Main Points of Disagreement

In conclusion, we respectfully request the reversal of the Director's decision based on three main factors:

1. **The property consists of two original parcels**, not one, as supported by multiple county officials, including Dan Lister and Kate Dahl.
2. **The land is not viable for agricultural use**, as the decision letter overlooks the critical factor of economic viability, which is essential for determining whether land is truly productive and creates marketable crops and or animals.
3. **We have taken significant steps to mitigate agricultural impacts**, designing our development plan to minimize disruptions to neighboring farms, maintaining internal traffic routes, protecting the irrigation lateral, and implementing CC&Rs that respect the Right to Farm.

Our proposed plan for 8 residential parcels and 2 agricultural parcels represents a balanced and sustainable approach, providing future residents with opportunities for small-scale agricultural activities while protecting the larger farming operations in the area. This development will generate additional tax revenue for the county and preserve the rural character of the region.

Thank you for your time and consideration.

Sincerely,  
Richard & Lorna Penner





Canyon County Development Services  
 111 North 11<sup>th</sup> Avenue, #310  
 Caldwell, Idaho 83605  
[www.canyoncounty.id.gov](http://www.canyoncounty.id.gov)  
 208-454-7458

## AFFIDAVIT OF LEGAL INTEREST

I, Richard and Lorna Penner, 386 Birch Avenue  
 (name) (address)  
Middleton, Idaho 83644  
 (city) (state) (zip code)

being first duly sworn upon oath, depose and say:

1. That I am the owner of record of the property described on the attached application and I grant my permission to

\_\_\_\_\_, \_\_\_\_\_  
 (name) (address)

to submit the accompanying application pertaining to the subject property.

2. I agree to indemnify, defend and hold Canyon County and its employees harmless from any claims to liability resulting from any dispute as to the statements contained herein or as to the ownership of the property, which is the subject of the application.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

\_\_\_\_\_  
 (signature)

STATE OF IDAHO )

ss

COUNTY OF CANYON )

On this \_\_\_ day of \_\_\_\_\_, in the year 20 \_\_\_\_, before me \_\_\_\_\_,  
 a notary public, personally appeared \_\_\_\_\_, personally known  
 to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that  
 he/she executed the same.

Notary: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**Canyon County Development Services**  
111 N. 11th Ave. Room 310, Caldwell, ID 83605  
(208) 454-7458

**Building Divsn Email:** buildinginfo@canyoncounty.id.gov **Planning Divsn Email:** zoninginfo@canyoncounty.id.gov

**Receipt Number:** 83898

**Date:** 10/18/2024

**Date Created:** 10/18/2024 **Receipt Type:** Normal Receipt **Status:** Active

**Customer's Name:** Richard and Lorna Penner

**Comments:** AD2024-0001-APL

**Site Address:** 0 HARVEY RD, Caldwell ID / Parcel Number: 37792000 0

**CHARGES**

<u>Item Being Paid For:</u>	<u>Application Number:</u>	<u>Amount Paid:</u>	<u>Prevs Pymnts:</u>	<u>Unpaid Amnt:</u>
Planning - Any Decision Appealed to the Board	AD2024-0001-APL	\$600.00	\$0.00	\$0.00

**Sub Total:** \$600.00

**Sales Tax:** \$0.00

**Total Charges:** \$600.00

**PAYMENTS**

<u>Type of Payment:</u>	<u>Check/Ref Number:</u>	<u>Amount:</u>
Check	3343	\$600.00

**Total Payments:** \$600.00

**ADJUSTMENTS**

**Receipt Balance:** \$0.00