



Development Services Department

Canyon County, 111 North 11th Ave. Suite 310, Caldwell, ID 83605

(208) 402-4164 ▪ (208) 454 6633 Fax ▪ zoninginfo@canyoncounty.id.gov ▪ www.canyoncounty.id.gov

Memorandum

To: Canyon County Board of Commissioners
From: Emily Bunn, Associate Planner
Date: January 13, 2025 (Updated from 1.8.25)
Re: Case No. AD2024-0001-APL

Case No. AD2024-0001-APL (Penner) was noticed for a public hearing before the Canyon County Board of Commissioners on January 8, 2025. The public hearing occurred on January 8, 2025 and it was continued until February 6, 2025 for exhibits to be included from Canyon County's Contract Surveyors on their determination on how many original Parcels R37792 contains. Staff was directed to post the responses from the surveyors to the website. The emails, deed, contract letter that referenced Parcel R37792 and that the surveyors refer to are also included in this memo.

In the Director's Decision for AD2024-0001 and the Staff Report for AD2024-0001-APL, under "Property History" it states "In September 2024, two (2) of Canyon County's Contract Surveyors reviewed the deed with Instrument #495989/Patent #1215621 (found in **Exhibit C4**) and stated it was one (1) original 120-acre parcel, meaning under CCCO §07-18-07, the parcel would have three (3) administrative divisions available (four (4) parcels with a residential building permit available)." It was determined after the public hearing that the Contract Surveyor's did not review Instrument No. 495989 (**Exhibit 3**), but the attached letter dated October 17, 1957 from the United States Department of Interior referencing the contract that sold the land to the property owners (**Exhibit 4**). The legal description on the 1957 letter is the same description on Instrument No. 495989. Both are attached for the public's reference.

Attachment:

- Email chain in September of 2024 between DSD staff and Joseph Canning at Centurion Engineering regarding survey/deed interpretation for Parcel R37792 and others (**Exhibit 1**).
 - The determination on Parcel R37792 was made with the letter attached dated October 17, 1957 from United States Department of Interior that is referencing original contract No. 14-06-100-1304 dated September 30, 1957 (**Exhibit 4**). It includes the same legal description as listed in the deed with Instrument No. 495989.
- Email chain in September of 2024 between DSD staff and Mike Hickman at Keller Associates, Inc. regarding survey/deed interpretation for Parcel R37792 and others (**Exhibit 2**).
 - The determination on Parcel R37792 is discussed under "USBR Contract (14-06-100-1304)". The letter discussing the contract is attached and is the same legal description as listed in the deed with Instrument No. 495989 (**Exhibit 4**).

Planning • Zoning • Building • Code Enforcement

Dedicated to providing quality, efficient and equitable service to the citizens of Canyon County by planning for orderly growth and development through consistent administration and enforcement of County Ordinances.

Emily Bunn

From: Carl Anderson
Sent: Thursday, September 19, 2024 10:13 AM
To: Emily Kiester
Subject: FW: [External] RE: Survey/deed interpretation

From: Joseph Canning <jdcanning@centengr.com>
Sent: Wednesday, September 18, 2024 12:13 PM
To: Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>
Cc: Carl Anderson <Carl.Anderson@canyoncounty.id.gov>; Sabrina Minshall <Sabrina.Minshall@canyoncounty.id.gov>
Subject: [External] RE: Survey/deed interpretation

Jay,

You asked for input on how to interpret the property descriptions within a deed—specifically whether a deed always defines a single parcel or can it describe multiple parcels. A property description is a precise and legally accepted definition of a parcel of land. It's a unique identifier that includes enough information to identify the property's location, boundaries, and area. Sometimes, depending on how the property was initially purchased and how it is being sold, the deed may include several property descriptions.

Your questions as to whether a deed always defines a single parcel or can it describe multiple parcels, depends more on your zoning ordinance rather than in surveying practice. From a land surveyor's perspective, we would/could survey any parcel of ground that is properly described in a land/legal description. Sometimes our clients would want the "separate" parcels to be surveyed as separate pieces. The inclusion of words like "and" or other ways to add land in the descriptions, does not make any difference to a land surveyor other than to figure out if the overall ground to survey is being added to or perhaps subtracted from with a call as "except" or "exception". This being said, I had Anna Canning, AICP, look at your zoning code. We offer the following input.

TERMS

For the purposes of this discussion, we are going to need to use very precise terms—a couple of which are not in your zoning code.

1. I will use the term "PROPERTY" to mean the land under one ownership that is described in a deed.
2. I will use the term "AREA" to mean a portion of the property that is described separately within the deed. Sometimes within the deed these are called parcels, sometimes areas, sometimes lots, and sometimes tracts.
3. The Canyon County Code definition of "LOT" cross references the definition of parcel. The more common definition is that a lot is a defined area within a subdivision intended to be sold to a separate owner. I will use the term "SUBDIVISION LOT" to distinguish between the more common definition and that of the Canyon County Code.
4. The Canyon County Code definition of "PARCEL" is "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."
5. Of particular interest to this discussion is the definition of "ORIGINAL PARCEL" in the Canyon County Code, which is "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.

6. An area that is described by metes and bounds, chains, rods or aliquot parts is commonly referred to as "SECTION GROUND".

CODE ANALYSIS

Let's look at the definitions of ORIGINAL PARCEL and PARCEL first. The attachments you sent over are all descriptions of property that I assume you have vetted as having existed before September 6, 1979? We do not have the necessary information to determine when deeds were created.

The remaining question is, "Are those property descriptions of one or more PARCELS?" As noted previously a PARCEL is defined as land that is either described as section ground or a subdivision lot. The definition of PARCEL goes on to say that if the property description includes SECTION GROUND that is not separately described as an area within the property, then it will all be considered one parcel. The flip side of that is if the property description does separately describe SECTION GROUND as one or more areas within the property, those will not be considered one parcel. Logically, each would be considered its own parcel. This is a different approach from some other jurisdictions that require that any property held in contiguous ownership will be considered one parcel for the purposes of the zoning code.

Because this is a different approach to others I've known, I looked for consistency in other parts of the code. I found support for this concept in the property boundary adjustment section (Canyon County Code Section 7-10-17). Subsection 9 states that, "If the adjustment involves contiguous parcels with different owners, both property owners shall submit their written consent to the adjustment with the application." By using the word "if" at the beginning, one can infer from this subsection that the property boundary adjustment could involve just one owner. This supports the interpretation that in Canyon County a property owner can own contiguous land that would be considered separate parcels for the purposes of the zoning code.

Now let's look at the attachments you sent over and whether they qualify as separate parcels. Again, I assume that you have vetted that these land areas existed prior to September 6, 1979.

Parcel R23045 and P12023-0007. There are four separate areas listed within the most recent warranty deed from 2004. However, the earlier deed from 1993 does not list the AREAS separately. The legal descriptions are based on LOTS within the Idaho Investment Company's Subdivision filed in 1915. In applying the County's definition of PARCEL, each SUBDIVISION LOT is a separate PARCEL. Any partial SUBDIVISION LOT must be combined with other contiguous property. If we look at the newer deed from 2004, Parcel I references two SUBDIVISION LOTS but then has a metes and bounds exception. I would interpret the code to say that Parcel I is one PARCEL. Parcel II references two SUBDIVISION LOTS with no exceptions. These should be considered two PARCELS. Parcel III lists parts of two SUBDIVISION LOTS. This should be considered one PARCEL. Parcel IV is a SECTION GROUND description and should be considered one PARCEL.

Parcel R37635. The SECTION GROUND description is of one PARCEL.

Parcel R37792. The SECTION GROUND description is of one PARCEL.

Instrument #28298010 – Cearley. This deed lists many SUBDIVISION LOTS within the Idaho Investment Company's Subdivision. Each SUBDIVISION LOT should be considered its own PARCEL.

Parcel 23079010. This deed also lists many SUBDIVISION LOTS within the Idaho Investment Company's Subdivision. Each SUBDIVISION LOT should be considered its own PARCEL.

Hopefully this addresses your question.

Joe Canning, PE/PLS
Senior Engineer

Centurion Engineers, Inc.
208.343.3381



From: Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>
Sent: Tuesday, September 17, 2024 1:07 PM
To: Joseph Canning <jdcanning@centengr.com>
Cc: Carl Anderson <Carl.Anderson@canyoncounty.id.gov>; Sabrina Minshall <Sabrina.Minshall@canyoncounty.id.gov>
Subject: RE: Survey/deed interpretation

Joe,
Have you had a chance to review the deeds I forwarded to you last week? We are interested in your response as we have a couple of pending applications that could be affected. I am going out of state on Thursday and Friday this week, so copied Carl and Sabrina on this so they also receive your response while I am out. Thank you.



Jay A. Gibbons, PLA ASLA

Assistant Director
Canyon County Development Services Department
111 N. 11th Ave., #310, Caldwell, ID 83605
Direct Line: 208-455-5958
Mobile: 208-599-6738
Email: Jay.Gibbons@canyoncounty.id.gov
Website: www.canyoncounty.id.gov
Development Services Department (DSD)

From: Jay Gibbons
Sent: Tuesday, September 10, 2024 12:07 PM
To: 'jdcanning@centengr.com' <jdcanning@centengr.com>
Subject: Survey/deed interpretation

Joe,
I have a task for you to provide input for the benefit of my staff as they review administrative applications and interpret deed language. From a professional surveyor standpoint, can you look at the attached deeds and tell me whether they define a parcel or are they describing multiple parcels? At times the language of the deed lends to our confusion. Sometimes there is an 'and' or a semicolon, etc. when either is used, what does that really mean? My staff's job is to decipher whether what is described is an original parcel.

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.

Another clarification you might provide is when a deed describes a parcel of land that are part of 2 or more separate sections, does the section line mean it is actually two parcels for development purposes or does it go back to the deed description of a single parcel within 2 sections?

Also, platted lots from really old subdivisions provide confusion. Over the years, we've allowed them to be administratively split because the original parcel description says platted or unplatted land.

If you could give this some thought and get back to me, it would be really helpful for training purposes. If you have questions, please give me a call or email. Thanks.



Jay A. Gibbons, PLA ASLA

Assistant Director

Canyon County Development Services Department

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Mobile: 208-599-6738

Email: Jay.Gibbons@canyoncounty.id.gov

Website: www.canyoncounty.id.gov

Development Services Department (DSD)

Emily Bunn

From: Carl Anderson
Sent: Thursday, September 19, 2024 10:13 AM
To: Emily Kiester
Subject: FW: [External] RE: Survey/deed interpretation

From: Mike Hickman <mhickman@Kellerassociates.com>
Sent: Thursday, September 19, 2024 9:44 AM
To: Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>
Cc: Carl Anderson <Carl.Anderson@canyoncounty.id.gov>; Sabrina Minshall <Sabrina.Minshall@canyoncounty.id.gov>
Subject: RE: [External] RE: Survey/deed interpretation

Jay – Please see response below.

Paragraph 1 - The wording used in deeds is for land transfer purposes; so many of them have descriptions that include numerous “and”, “in addition to”, “also including” or semicolons (a semicolon usually means “and”) to include all the land being transferred in the deed. When multiple aliquot parts or metes and bounds are used, they are describing one parcel unless the deed refers to them being multiple parcels or if they are non-contiguous. When multiple lots are described in a deed, the lots are multiple parcels unless the lots are described by metes and bounds around the area encompassing the lots. In Canyon County, when metes and bounds are used to describe all or parts of preexisting parcels or lots, they become one parcel; however, this rarely occurs.

Referring to Instrument 433976 – the deed describes a number of aliquot parts of Sections 1, 11 and 12; this is describing one parcel.

Referring to Instrument 200466777 -the deed describes four parcels each individually making four parcels.

Referring to Instrument 9218088 – the deed describes six parcels being conveyed by the deed; they are individual parcels.

Referring to Instrument 604526 – the deed describes a number of lots and blocks in a subdivision; these are individual parcels since they are described at lots and not metes and bounds.

Referring to the USBR contract 14-06-100-1304 - the document describes two aliquot parts of Sections 10; this is describing one parcel.

When it comes to the question of an Original Parcel, some research is required into the history of the parcel before 9/6/79. If previous deeds related to the subject parcel describe land by metes and bounds or by aliquot parts that are contiguous and under one ownership, it is likely an Original Parcel. If deeds describe parcels by lots and blocks, the lots are usually original parcels.

Paragraph 2 – When a deed describes a parcel of land (usually contiguous), it is one parcel even if it includes land in multiple sections; however, sometimes a description will include multiples parcels by using word like “Parcel 1” followed by a description and then “Parcel 2” followed by another description.

Paragraph 3- Somewhere about the mid 1970’s most counties instated “Original Parcel” definitions for development purposes. Some county definitions refer to “unplatted land” and some refer to “platted or unplatted land”. Since Canyon County uses “platted or unplatted land” in their definition, lots platted before 9/6/79 are original parcels.

I hope that makes sense. Let me know if you have any questions.

Thanks,



MIKE HICKMAN
ENGINEERING TECHNICIAN
DIRECT 208-244-5065 | OFFICE 208-288-1992
100 E Bower St, Suite 110, Meridian, ID 83642
kellerassociates.com

From: Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>
Sent: Tuesday, September 17, 2024 1:04 PM
To: Mike Hickman <mhickman@Kellerassociates.com>; David Kinzer <dkinzer@Kellerassociates.com>
Cc: Carl Anderson <Carl.Anderson@canyoncounty.id.gov>; Sabrina Minshall <Sabrina.Minshall@canyoncounty.id.gov>
Subject: RE: [External] RE: Survey/deed interpretation

Mike/David,
Have you had a chance to review the deeds I sent last week? We anticipate a couple of them impacting pending applications, so would like to hear from you as quickly as possible. I am copying Carl and Sabrina on this as I will be out of the office Thursday & Friday and want to make sure they see your input while I am out of state. Thank you.



Jay A. Gibbons, PLA ASLA
Assistant Director
Canyon County Development Services Department
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Website: www.canyoncounty.id.gov
Development Services Department (DSD)

From: Jay Gibbons
Sent: Tuesday, September 10, 2024 11:37 AM
To: 'Mike Hickman' <mhickman@Kellerassociates.com>
Subject: RE: [External] RE: Survey/deed interpretation

Perfect. Please track Keller's time on this as you can invoice it. The invoice entry should reference our deed interpretation request. Thanks, Mike.



Jay A. Gibbons, PLA ASLA
Assistant Director
Canyon County Development Services Department
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Direct Line: 208-455-5958
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Website: www.canyoncounty.id.gov
Development Services Department (DSD)

From: Mike Hickman <mhickman@Kellerassociates.com>
Sent: Tuesday, September 10, 2024 10:52 AM
To: Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>
Subject: [External] RE: Survey/deed interpretation

Jay,

I will have to tag in David Kinzer on this. I will have some answers for you in the next day or so.

Thanks,

KELLER
ASSOCIATES

MIKE HICKMAN
ENGINEERING TECHNICIAN
DIRECT 208-244-5065 | OFFICE 208-288-1992
100 E Bower St, Suite 110, Meridian, ID 83642
kellerassociates.com

From: Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>
Sent: Monday, September 9, 2024 6:17 PM
To: Mike Hickman <mhickman@Kellerassociates.com>
Subject: Survey/deed interpretation

Mike,

I have a task for you to provide input for the benefit of my staff as they review administrative applications and interpret deed language. From a professional surveyor standpoint, can you look at the attached deeds and tell me whether they define a parcel or are they describing multiple parcels? At times the language of the deed lends to our confusion. Sometimes there is an 'and' or a semicolon, etc. when either is used, what does that really mean? My staff's job is to decipher whether what is described is an original parcel.

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Another clarification you might provide is when a deed describes a parcel of land that are part of 2 or more separate sections, does the section line mean it is actually two parcels for development purposes or does it go back to the deed description of a single parcel within 2 sections?

Also, platted lots from really old subdivisions provide confusion. Over the years, we've allowed them to be administratively split because the original parcel description says platted or unplatted land.

If you could give this some thought and get back to me, it would be really helpful for training purposes. If you have questions, please give me a call or email. Thanks.



Jay A. Gibbons, PLA ASLA

Assistant Director

Canyon County Development Services Department

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Email: Jay.Gibbons@canyoncounty.id.gov
Website: www.canyoncounty.id.gov
Development Services Department (DSD)

495989 4-1948

379

INSTRUMENT NO.

The United States of America,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Land Office at Boise, Idaho, is now deposited in the Bureau of Land Management, whereby it appears that full payment has been made by Fred W. Anderson and Clara P. Anderson, according to the provisions of the Act of Congress of June 17, 1902 (32 Stat. 388) as amended and supplemented, and the Act of March 31, 1930 (64 Stat. 39) for the following described land:

Boise Meridian, Idaho.

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

Sec. 10, S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 120.00 acres, according to the Official Plat of the Survey of the said Land, on file in the Bureau of Land Management:

NOW KNOW YE, That the UNITED STATES OF AMERICA, in consideration of the of the premises, and in conformity with the said Acts of Congress, in such case made and provided, HAS GIVEN AND GRANTED, and by these presents DOES GIVE AND GRANT unto the said Fred W. Anderson and Clara P. Anderson and to their heirs the tract above described; TO HAVE AND TO HOLD the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said Fred W. Anderson and Clara P. Anderson and to their heirs and assigns forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted a right-of-way thereon for ditches or canals constructed by the authority of the United States.

Excepting and reserving, also, to the United States all the oil and gas in the lands so patented and to it or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same upon compliance with the conditions and subject to the provisions and limitations of the Act of July 17, 1914 (38 Stat. 509). Subject to an easement to the United States, or its assigns, on that part of the land comprising the area included within 65 feet on each side measured at right angles from the centerline of the existing Conway Gulch Lateral, and on that part of the land comprising the area included within 50 feet on each side measured at right angles from the centerline of the existing C.G. 1.1 Lateral, and on that part of the land comprising the area included within 25 feet on each

Patent Number

1215621



side, measured at right angles from the centerline of the existing C. G. 1.2 Lateral, for the construction, reconstruction, operation, and maintenance of waterways, together with any appurtenant uses and exclusive of any occupancy or use of the said areas by the purchaser except those which may be expressly authorized by the United States or its assigns, as provided in that certain contract of sale, No. 14-06-100-1304 between the United States of America and Fred W. Anderson and Clara P. Anderson, dated September 30, 1957, pursuant to the Act of March 31, 1950 (64 Stat. 39).

To secure payment to the United States, or its successors in the ownership or control of the works constituting and appertaining to the said reclamation project in connection with said land and water rights, a lien prior and superior to all other liens, claims, or demands whatsoever upon the lands herein and hereby described and conveyed, upon all water rights thereto appurtenant and upon the right to receive and use water from the reservoirs and canals of said reclamation project, is expressly reserved.

IN TESTIMONY WHEREOF, the undersigned officer of the Bureau of Land Management, in accordance with section 1 of the act of June 17, 1948 (62 Stat., 476, 43 U. S. C. sec. 15), has, in the name of the United States, caused these letters to be made Patent, and the Seal of the Bureau to be hereunto affixed.



GIVEN under my hand, in the District of Columbia, the TWENTY-FIRST day of DECEMBER in the year of our Lord one thousand nine hundred and SIXTY and of the Independence of the United States the one hundred and EIGHTY-FIFTH.

For the Director, Bureau of Land Management.
By *Beth W. Tolley*
Chief, Patents Section.

RECORD OF PATENTS: Patent Number **1815621**

U. S. GOVERNMENT PRINTING OFFICE 16-58800-2

STATE OF IDAHO }
County of Canyon } ss.

I hereby certify that this instrument was filed for record at the request of *Fred W. Anderson* January 4, 1961 at 32 minutes past 8 o'clock P.M.

Fee \$ 2.40

S. S. PODIE, EA. Official Recorder
by *Genevieve Ann Car* Deputy

Exhibit 4



UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

IN REPLY
REFER TO:

Central Snake Projects Office
Box 944 - Boise, Idaho

October 17, 1957

Mr. Fred W. Anderson
Route 1
Caldwell, Idaho

Dear Mr. Anderson:

Enclosed for your records is a duplicate original of contract No. 14-06-100-1304, dated September 30, 1957, which provides for the sale to you of a tract of vacant Federal land described as follows:

South half of the northeast quarter ($S\frac{1}{2}NE\frac{1}{4}$) and the northwest quarter of the southeast quarter ($NW\frac{1}{4}SE\frac{1}{4}$) of section ten (10), township five (5) north, range three (3) west, Boise meridian, Idaho, containing 120 acres, more or less, subject to an easement to the United States or its assigns on that part of the land comprising the area included within 65 feet on each side measured at right angles from the centerline of the existing Conway Gulch Lateral, and on that part of the land comprising the area included within 50 feet on each side measured at right angles from the centerline of the existing C.G. 1.1 Lateral, and on that part of the land comprising the area included within 25 feet on each side, measured at right angles from the centerline of the existing C.G. 1.2 Lateral, for the construction, reconstruction, operation, and maintenance of waterways together with any appurtenant uses and exclusive of any occupancy or use of the said areas by the purchaser except those which may be expressly authorized by the United States or its assigns.

Very truly yours,

Henry L. Lumper

Acting Project Superintendent

dated 1987,

Enclosure

deed is from early 1960s