



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 31, 2025 (Updated February 3, 2025)
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 (this was posted to the website and sent to the applicant and property owner), to allow the public to submit written materials related to the original parcel discussion until January 30, 2025, and to reopen public testimony to discuss the original parcel determination for Parcel R37792.

On January 10, 2025, DSD staff sent Instrument No. 495989 (which was the basis for PI2020-0226's answer on how many original parcel R37792 contains) for Canyon County's two (2) Contract Surveyors to review to determine how many original parcels Parcel R37992 contains based on Canyon County's Zoning Code and specifically the definitions of Aliquot, Original Parcel, and Parcel as found in CCCO §07-02-03 to provide further clarity. DSD staff also requested that the surveyors discuss further what aliquot means when discussed in a deed. David Kinzer (Keller and Associates) sent over his response on January 13, 2025 and Joseph Canning (Centurion Engineering) sent over his response to DSD's staff questions on January 14, 2025.

The applicant sent over additional information on the original parcel discussion and his responses to Canyon County's Contract Surveyor's Determinations on January 30, 2025. Referenced in the aforementioned letter are Exhibits A, A1, and B. The hyperlinks for the documents the applicant references in Exhibit C1 can be found in this addendum as staff was unable to link them in a pdf version of the applicant's email.

Thomas J. Wellard also sent over additional information on the original parcel discussion and his responses to Canyon County's Contract Surveyor's Determinations on January 30, 2025 (see Exhibit D).

Attachments:

- **Exhibit A: Keller and Associates Email Response to DSD's Staff Questions on Parcel R37792's Original Parcel Determination and Aliquot – Dated January 13, 2025**
 - Exhibit A1 – Instrument No. 495989 as Drawn Out by Keller and Associates
- **Exhibit B: Centurion Engineering Email Response to DSD's Staff Questions on Parcel R37792's Original Parcel Determination and Aliquot – Dated January 14, 2025**

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.

- **Exhibit C: Matt Wilke Response Letter to Canyon County’s Contract Surveyor’s Interpretation – Dated January 30, 2025**
 - **Exhibit C1: Matt Wilke Email with Response Letter (Exhibit C) and Links to Referenced Documents in Letter – Dated January 30, 2025.**
 - **DSD staff was unable to link the documents referenced in OneDrive Links as found in the pdf version of the email found in Exhibit C1. See below for the link to the BLM website for each of the documents the applicant references in Exhibit C1 (the applicant confirmed to staff these links went to the documents he was referencing):**
 - **“cadastralglossary1.pdf”:**
<https://www.blm.gov/sites/default/files/cadastralglossary.pdf>
 - **“Manual of Surveying Instructions 2009 1.pdf”:**
https://www.blm.gov/sites/default/files/Manual_Of_Surveying_Instructions_2009.pdf
 - **“SpecificationsForDescriptionsOfLand 1.pdf”:**
<https://www.blm.gov/sites/default/files/SpecificationsForDescriptionsOfLand.pdf>
- **Exhibit D: Thomas J. Wellard Response Letter to Canyon County’s Contract Surveyor’s Interpretation – Received January 30, 2025 at 6:02 p.m.**

Exhibit A

Emily Bunn

From: David Kinzer <dkinzer@Kellerassociates.com>
Sent: Monday, January 13, 2025 11:40 AM
To: Emily Bunn
Subject: [External] RE: Deed Review Request
Attachments: Inst495989Exhibit.pdf

Review my reply below and the attached. If this doesn't satisfy your needs, send me another email and will provide further help.

The attached exhibit shows the parcel as described in the subject deed as a cross hatched area in Section 10. The description is in aliquot parts meaning it is described in halves and quarters of the whole. Aliquot parts is a method of describing land by dividing it into smaller parts typically halves and quarters. The shaded area on the exhibit is a single parcel since the deed doesn't refer to it as being multiple parcels. The deed conveys the land as described to one owner, so the land is under one ownership and is contiguous. Contiguous means the boundaries of the aliquot parts have common boundaries. The deed also refers to easements, but easements are short of ownership, so they don't effect the ownership. The deed is dated 1960 so if there have been no additional land transactions (land divisions or deeded right of way) on the parcel, this parcel is one original parcel since it is a contiguous parcel held in one ownership as of September 1979.

DAVID KINZER, PE, SE, PLS

Keller Associates, Inc.

DIRECT 208-813-7578 | CELL 208-870-1247 | OFFICE 208-288-1992

From: Emily Bunn <Emily.Bunn@canyoncounty.id.gov>
Sent: Friday, January 10, 2025 3:28 PM
To: Mike Hickman <mhickman@Kellerassociates.com>; David Kinzer <dkinzer@Kellerassociates.com>
Cc: Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>; Carl Anderson <Carl.Anderson@canyoncounty.id.gov>
Subject: Deed Review Request

Hello,

I have a request for a deed review for Parcel R37792.

There was an appeal hearing held on the property this week and there was a lot of discussion and disagreement on how many original parcels this property contains due the deed that is attached (Instrument No. 495989, Patent No. 1215621) describing Parcel R37792 in aliquot sections. Previously, your office had done a review of this property and it had stated it was one (1) original parcel, which is why this is coming up again.

Could you please review the attached deed and tell me how many original parcels it contains in detail? The definition for aliquot, original parcel, and parcel as defined in Canyon County Zoning Code are listed below.

Also, could you also explain to me more what aliquot means in a deed? Again, the aliquot definition is listed below for your review.

We request your response by end of business day on January 17th. Your response will be an exhibit for the upcoming continuance hearing to shed light on how you come to your conclusion on how many original parcels Parcel R37792 contains.

ALIUOT: The length of one side of a quarter-quarter section ($\frac{1}{16}$). The one-sixteenth ($\frac{1}{16}$) 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.

If you have any follow-up questions, please feel free to respond back to this email or give me a call.

Thank you for your time,



Emily Bunn,
Associate Planner
Canyon County Development Services Department
111 N. 11th Ave., #310, Caldwell, ID 83605
Direct Line: (208) 454-6632
Email: emily.bunn@canyoncounty.id.gov
Website: www.canyoncounty.id.gov

Development Services Department (DSD)

NEW public office hours

Effective Jan. 3, 2023

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8am – 5pm

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**We will not be closed during lunch hour **

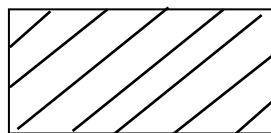
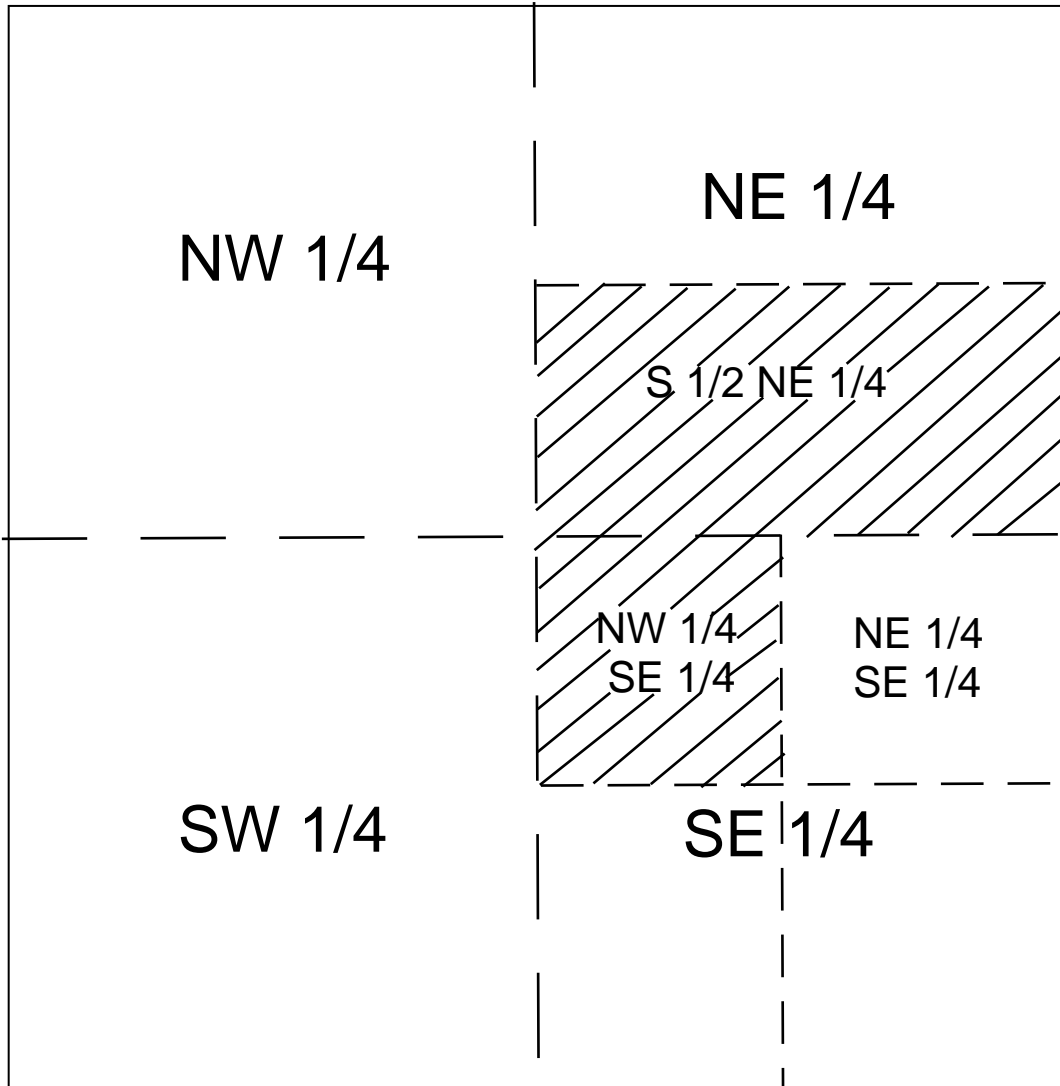
PUBLIC RECORD NOTICE: All communications transmitted within the Canyon County email system may be a public record and may be subject to disclosure under the Idaho Public Records Act and as such may be copied and reproduced by members of the public.

Exhibit for Instrument No 495989

January 2025



Section 10 T5 N, R3 W



Described Parcel

Emily Bunn

From: Anna B. Canning <abcanning@centengr.com>
Sent: Tuesday, January 14, 2025 4:28 PM
To: Emily Bunn; Joseph Canning
Cc: Jay Gibbons; Carl Anderson
Subject: [External] RE: Deed Review Request

Esteemed Canyon County Commissioners,

Joseph Canning, PLS, and I, Anna Canning, AICP, reviewed the deed you sent over for Parcel R37792. The property described in the deed is for one original parcel. The deed states:

Boise Meridian, Idaho
T. 5 N., R. 3 W.
Sec. 10 S½NE¼, NW¼SE¼

Translation: the property is in Township 5 North, Range 3 West of the Boise Meridian, Idaho, and it is the south half of the northeast quarter and the northwest quarter of the southeast quarter of Section 10.

Our determination that it is one original parcel is based on the following:

1. The legal description is of one property.
 - a. The two callouts are contiguous.
 - b. The use of the comma in the last line of the legal description does not indicate it is a separate parcel. The property is a combination of area within two different quarters of the section. Therefore, the author of the legal description had to use two callouts to describe the property.
2. There is nothing in the deed to suggest that the author intended to describe two properties.
 - a. The letter from the Department of the Interior dated October 17, 1957 supports this intention. The letter notes “a tract of land”.
 - b. It is also evident from the letter that the property was purchased at one time as one parcel from one seller.
3. I considered the definitions of “parcel”, “original parcel” and “aliquot”.
 - a. The definition of “aliquot” is informative to the definition of “parcel” but is otherwise not impacting the decision on the number of original parcels.

ALIQUOT: The length of one side of a quarter-quarter section ($\frac{1}{16}$). The one-sixteenth ($\frac{1}{16}$) section contains forty (40) acres, more or less.
 - b. The definition of “parcel” details the types of ways in which a property can be described. Please note that the second sentence (beginning with “Land that is described by metes and bounds...”) is not applicable. This property is described as aliquot parts.

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.

- c. The definition of “original parcel” provides the criteria necessary to be considered an original parcel. In this case, the parcel was created in 1957. Parcel R37792 is a parcel of unplatted land as it existed on September 6, 1979, therefore it 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.

I hope this information helps in your deliberations.

Sincerely,

Anna B. Canning, AICP
Office and Planning Manager
2323 S Vista Avenue, Suite 206
208.343.3381 x 222
abcanning@centengr.com



From: Emily Bunn <Emily.Bunn@canyoncounty.id.gov>
Sent: Friday, January 10, 2025 3:25 PM
To: Anna B. Canning <abcanning@centengr.com>; Joseph Canning <jdcanning@centengr.com>
Cc: Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>; Carl Anderson <Carl.Anderson@canyoncounty.id.gov>
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Could you please review the attached deed and tell me how many original parcels it contains in detail? The definition for aliquot, original parcel, and parcel as defined in Canyon County Zoning Code are listed below.

Also, could you also explain to me more what aliquot means in a deed? Again, the aliquot definition is listed below for your review.

We request your response by end of business day on January 17th. Your response will be an exhibit for the upcoming continuance hearing to shed light on how you come to your conclusion on how many original parcels Parcel R37792 contains.

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If you have any follow-up questions, please feel free to respond back to this email or give me a call.

Thank you for your time,



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Associate Planner
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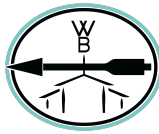
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White Barn Ventures, Inc.

Matt Wilke
White Barn Ventures, Inc.
PO Box 7
Middleton, ID 83644

1/29/2025

Canyon County Commissioners
1115 Albany St.,
Caldwell, ID 83605

**Re: Rebuttal to County Surveyors Emails / Penner Appeal of Directors
Administrative Decision AD2024-0001-APL Case Continuation**

Dear Commissioners,

I am writing on behalf of my clients Rick & Lorna Penner. As you know, we have been asked to continue the appeal hearing from January 8th, 2025 so that staff could provide the emails from the county surveyors that were withheld from evidence at the last hearing.

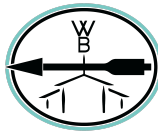
We are requesting that you please overturn the Directors decision and approve the 8 residential parcels, and 2 Ag only parcels that are available for parcel #R3779200000, which is approximately 120 acres.

This letter is a rebuttal to Anna Canning, Joseph Canning, and David Kinze's responses to Emily Bunn's email dated 1/10/2025.

Our letter also contains valuable information pertaining to the legal subdivision of Section 10, within the Public Land Survey System (PLSS).

This was done in 1961 by the United States Department of the Interior, Bureau of Reclamation for legal sale to the Andersons. This tract of land is legally described the same as it was in 1961, by aliquot parts.

The next page below shows the email from Emily Bunn to Dave Kinzer on January 10, 2025. Her email was the same to the Canning's, and you can see their response on page 6.



White Barn Ventures, Inc.

From: Emily Bunn <Emily.Bunn@canyoncounty.id.gov>
Sent: Friday, January 10, 2025 3:28 PM
To: Mike Hickman <mhickman@Kellerassociates.com>; David Kinzer <dkinzer@Kellerassociates.com>
Cc: Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>; Carl Anderson <Carl.Anderson@canyoncounty.id.gov>
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Could you please review the attached deed and tell me how many original parcels it contains in detail? The definition for aliquot, original parcel, and parcel as defined in Canyon County Zoning Code are listed below.

Also, could you also explain to me more what aliquot means in a deed? Again, the aliquot definition is listed below for your review.

We request your response by end of business day on January 17th. Your response will be an exhibit for the upcoming continuance hearing to shed light on how you come to your conclusion on how many original parcels Parcel R37792 contains.

ALQUOT: 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.

From: David Kinzer <dkinzer@Kellerassociates.com>
Sent: Monday, January 13, 2025 11:40 AM
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Subject: [External] RE: Deed Review Request
Attachments: Inst495989Exhibit.pdf

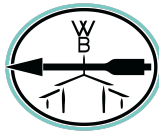
Review my reply below and the attached. If this doesn't satisfy your needs, send me another email and will provide further help.

The attached exhibit shows the parcel as described in the subject deed as a cross hatched area in Section 10. The description is in aliquot parts meaning it is described in halves and quarters of the whole. Aliquot parts is a method of describing land by dividing it into smaller parts typically halves and quarters. The shaded area on the exhibit is a single parcel since the deed doesn't refer to it as being multiple parcels. The deed conveys the land as described to one owner, so the land is under one ownership and is contiguous. Contiguous means the boundaries of the aliquot parts have common boundaries. The deed also refers to easements, but easements are short of ownership, so they don't effect the ownership. The deed is dated 1960 so if there have been no additional land transactions (land divisions or deeded right of way) on the parcel, this parcel is one original parcel since it is a contiguous parcel held in one ownership as of September 1979.

DAVID KINZER, PE, SE, PLS

Keller Associates, Inc.

DIRECT 208-813-7578 | CELL 208-870-1247 | OFFICE 208-288-1992



White Barn Ventures, Inc.

"The description is in aliquot parts meaning it is described in halves and quarters of the whole. Aliquot parts is a method of describing land by dividing it into smaller parts typically halves and quarters."

David Kinzer's Interpretation

- David's email did not bring attention to the fact that an Aliquot Part is clearly defined as a legal subdivision in **United States code 43 CFR § 3830.5**. *"Aliquot part means a **legal subdivision** of a section of a township and range, except fractional lots, by division into halves or quarters."*
- This parcel was originally public land that was created by Aliquot Parts for a legally recognized division within a **section** of land under the Public Land Survey System (PLSS) and sold to the Andersons in 1961. The deed language today is exactly the same as it was in 1961.

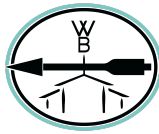
Aliquot and Aliquot Parts have been defined in the **Glossary of BLM Surveying and Mapping** Terms as follows:

ALIQUOT – *Contained an exact number of times in another; a part of a measurement that divides the measurement without a remainder. See ALIQUOT PARTS.*

ALIQUOT PARTS – *Legal subdivisions, except fractional lots, or further subdivision of any smaller legal subdivision, except fractional lots by division into halves or fourths ad infinitum. See LEGAL SUBDIVISION; SUBDIVISION, SMALLEST LEGAL and MINOR SUBDIVISION.*

In the United States Code, an "aliquot part" refers to a legal subdivision of a section of land, typically divided into halves or quarters, within the Public Land Survey System (PLSS), essentially meaning a precise fractional portion of a larger section of land that can be legally described and conveyed as a separate parcel.

Origin of the term: "Aliquot" comes from Latin and means "divisible without a remainder".



White Barn Ventures, Inc.

- Furthermore, a **quarter-quarter** section, consisting of 40 acres is considered a legal subdivision, and is actually the smallest legal subdivision allowed to be created by Aliquot Parts for a legally recognized division within a **section** of land under the Public Land Survey System (PLSS).

LEGAL SUBDIVISION – *The subdivision of a township, such as a section, half-section, quarter-section, quarter quarter or sixteenth-section, or lotting, including the lot, section, township and range numbers and the description of the principal meridian to which referred, all according to the approved township plat. See SUBDIVISION, SMALLEST LEGAL, ALIQUOT PARTS and MINOR SUBDIVISIONS.*

**The Act of April 5, 1832 (4 Stat. 503; 43 U.S.C. 753), determined that the 40-acre aliquot part and the Government lot are the smallest legal subdivision under the public land laws. It directs the subdivision of the lands into quarter-quarters (40-acre units), and that fractional sections will be subdivided under rules and regulations prescribed by the Secretary of the Treasury.*

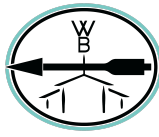
SMALLEST LEGAL SUBDIVISION – *A quarter-quarter section or one lot. See SUBDIVISION, SMALLEST LEGAL and MINOR SUBDIVISIONS.*

SUBDIVISION – *(verb) 1) Subdivision of a township into sections. 2) Subdivision of a section into half-sections, quarter-sections, sixteenth-sections or sixty-fourth-sections, or into lots, according to the Manual of Surveying Instructions. 3) The process of surveying such subdivisions. 4) In the private practice of land survey, subdivision is the division of an area into lots, streets, rights-of-way, easements and accessories, usually according to State law and local regulations – (noun) A particular aliquot part, lot, or parcel of land described according to the official plat of its cadastral survey. See SUBDIVISION, SMALLEST LEGAL, URBAN SUBDIVISION and MINOR SUBDIVISION.*

MINOR SUBDIVISIONS – A quarter-quarter section subdivided into quarter-quarter-quarter sections (1/64 or 10 acre units), or aliquot parts as small as 1/256 (2.5 acres).

- This legal subdivision is also referenced on page 39, section 3.2 in the **Manual of Surveying instructions**, which specifically states the following:

3-2. Under the rectangular system, the unit of survey is the township of 36 sections. The unit of subdivision is the section of 640 acres. Under the general land laws, the unit of administration is the quarter-quarter section of 40 acres or the lot, either of which is often referred to as the smallest legal subdivision.



White Barn Ventures, Inc.

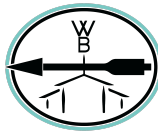
"The shaded area on the exhibit is a single parcel since the deed doesn't refer to it as being multiple parcels. The deed conveys the land as described to one owner, so the land is under one ownership and is contiguous. Contiguous means the boundaries of the aliquot parts have common boundaries...this parcel is one original parcel since it is a contiguous parcel held in one ownership as of September 1979."

- David stated the boundaries of the aliquot parts are contiguous, and under one ownership, thus insinuating this is one original parcel. "Contiguous land" has a specific definition that generally means two parcels that have a common boundary line. That means that the aliquot parts cannot be one parcel, as they are contiguous, and for a parcel to be contiguous, they have to have their own distinct boundary, which they do.
- Being under one ownership does not change the fact that the current owner has two parcels. **Canyon County** code also states that a "parcel" is a tract of land described by aliquot parts, which coincides with the United States code, and BLM surveying manuals.

CONTIGUOUS LAND – *Generally speaking, two parcels of land having a common boundary line. See CORNER CONTIGUITY.*

Canyon County Definition

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.*



White Barn Ventures, Inc.

Emily's email to Anna and Joseph Canning:

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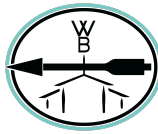
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T. 5 N., R. 3 W.
Sec. 10 S½NE¼, NW¼SE¼

Translation: the property is in Township 5 North, Range 3 West of the Boise Meridian, Idaho, and it is the south half of the northeast quarter and the northwest quarter of the southeast quarter of Section 10.

Our determination that it is one original parcel is based on the following:

1. The legal description is of one property.
 - a. The two callouts are contiguous.
 - b. The use of the comma in the last line of the legal description does not indicate it is a separate parcel. The property is a combination of area within two different quarters of the section. Therefore, the author of the legal description had to use two callouts to describe the property.
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 - a. The definition of "aliquot" is informative to the definition of "parcel" but is otherwise not impacting the decision on the number of original parcels.

ALIQUOT: The length of one side of a quarter-quarter section ($\frac{1}{16}$). The one-sixteenth ($\frac{1}{16}$) section contains forty (40) acres, more or less.

- b. The definition of "parcel" details the types of ways in which a property can be described. Please note that the second sentence (beginning with "Land that is described by metes and bounds...") is not applicable. This property is described as aliquot parts.

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.

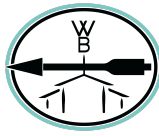
1

- c. The definition of "original parcel" provides the criteria necessary to be considered an original parcel. In this case, the parcel was created in 1957. Parcel R37792 is a parcel of unplatted land as it existed on September 6, 1979, therefore it 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.

I hope this information helps in your deliberations.
Sincerely,

Anna B. Canning, AICP
Office and Planning Manager
2323 S Vista Avenue, Suite 206
208.343.3381 x 222
abcanning@centengr.com



White Barn Ventures, Inc.

Anna and Joseph Canning's Interpretation item 1:

"Our determination that it is one original parcel is based on the following:

1. The legal description is of one property.

a. The two callouts are contiguous.

b. The use of the comma in the last line of the legal description does not indicate it is a separate parcel. The property is a combination of area within two different quarters of the section. Therefore, the author of the legal description had to use two callouts to describe the property."

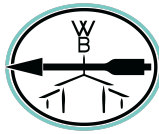
"Callouts"

- I will assume their use of the term "callouts" is referencing the "aliquot part" descriptions.
- Their interpretation states the two "callouts" are contiguous, and as mentioned above, "contiguous land" means that the aliquot parts cannot be describing one parcel, as they are described as being contiguous. For a parcel to be contiguous, they need to share a common boundary line with another parcel. They have their own distinct boundaries, described by a legal description.
- Generally, a "call out" refers to each individual instruction regarding direction and distance that defines a property boundary, essentially a single line or measurement within the overall description, typically including a bearing (direction) and a distance; it's a key component in the "metes and bounds" method of describing land boundaries.

The **Glossary of BLM surveying and Mapping terms** defines a call as:

CALL – A reference to, or statement of, an object, course, distance or other matter of description in a survey or grant requiring or calling for a corresponding object, or other matter of description, on the land. See **PASSING CALLS**.

PASSING CALLS – Found frequently in cadastral surveyor's field notes, they are calls for (references to) cultural or topographic features along a survey line. Passing calls are sometimes used to locate a line or to recover obliterated corners.



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Comma Meaning

Page 10 from the **Specifications for Descriptions of Land** states the following:

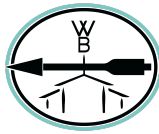
- *The use of a comma is significant in writing the descriptions of the subdivisions of a section. A comma means "AND THE" and the absence of a comma means "OF THE." The improper use or placement of a comma could drastically change an aliquot description and the intended acreage to be described.*
- The use of a comma separates the two individual aliquot parts descriptions because they are two separately defined legal parcels in separate quarter sections.
- Because these portions of land lie in separate quarter sections, **it is impossible to define this property with one aliquot parts description.**
- In the subject property's legal description, the use of a comma ends the aliquot part description of the first parcel described in the section and starts another. S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$.
- Because the use of a comma ends the legal description of the first aliquot part of the first parcel being described, in this case S $\frac{1}{2}$ NE $\frac{1}{4}$, it is describing 80 acres and would have 3 building permits, plus 1 more non-viable. The second legal description after the comma describes another parcel in the section as NW $\frac{1}{4}$ SE $\frac{1}{4}$, which is describing 40 acres, and would have 2 permits, plus 2 more non-viable.

Boise Meridian, Idaho.

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

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

- Both of these **Aliquot Parts** descriptions are a legal subdivision of a **Section** in US Code, and are also capable of being sold separately as described because they meet the minimum size requirements for a lot in an Ag zone in Canyon County.



White Barn Ventures, Inc.

	Minimum Lot Size	Minimum Lot Width
Agricultural Zone A	40 acres or in accordance with the administrative land division requirements of article 18 of this chapter	60'

Anna and Joseph Canning's Interpretation item 2:

2. *"There is nothing in the deed to suggest that the author intended to describe two properties.*
- a. The letter from the Department of the Interior dated October 17, 1957 supports this intention. The letter notes "a tract of land".*
 - b. It is also evident from the letter that the property was purchased at one time as one parcel from one seller."*

This is incorrect.

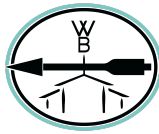
The author of the original deed was describing two separate parcels as evidenced by their aliquot parts descriptions, and because of this, he referred to the land being sold as a tract. This description does not describe one individual parcel, it obviously describes two separate parcels in different quarter sections, which can be considered a "tract" of land.

The term tract is described as follows on Page 3 from the [Specifications for Descriptions of Land](#) publication:

- The term "tract" by common usage is applied to [an expanse of land of no particular size](#). In modern Federal land surveys, the term is used specifically to mean
 - (a) in a rectangular survey, [an expanse of land that lies in more than one section or that cannot be identified in whole as part of a particular section](#) and is described by principal meridian, State, township, range, and tract number and
 - (b) in a metes-and-bounds survey, an expanse of land that for identification purposes is labeled tract and is often described by tract number or letter.

The [Glossary of BLM surveying and Mapping](#) publication also defines a tract as:

- **TRACT** – Generally, a metes and bounds survey of an area at large within a township. In modern public land surveys the term is used specifically to mean [a parcel of land that lies in more than one section or that cannot be identified completely as a part of a particular section](#). Tract numbers begin with the next higher number of the numerical designation within a township, for example: if there is an old numbers are sequential and no number is repeated within a township, for example; if there is an old Mineral Lot No.



White Barn Ventures, Inc.

37, the tract would be Tract No. 38. If a tract falls across a township line it is given a separate number in each township. See LOT.

- **LOT** – *A subdivision of a section which is not described as an aliquot part of the section, but which is designated by number, e.g., LOT 2. A lot may be regular or irregular in shape and its acreage varies from that of regular subdivisions. The term “Government Lot” is commonly used by persons outside the Bureau of Land Management in referring to such a subdivision of a section. “Lot” is also the name given individual parcels of recorded subdivisions of private tracts. See TOWN LOT, TRACT and URBAN SUBDIVISION.*

In the context of US Code and aliquot parts, a "parcel" refers to a specific, defined piece of land within a larger tract, often described using fractional parts (like a quarter section or half section) of a section, while a "tract" is a broader term for a larger area of land, which can encompass multiple parcels, and is usually identified by its section, township, and range within the public land survey system; essentially, a parcel is a smaller, individual piece of land within a larger tract, with the "aliquot part" specifying the exact fractional portion of that parcel within a section.

Key points to remember:

Parcel:

A single, distinct piece of property with precise boundaries, often described using aliquot parts (like "the NW 1/4 of the SE 1/4") to pinpoint its location within a section.

Tract:

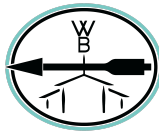
A larger area of land that can include multiple parcels, usually identified by its section, township, and range, without necessarily specifying the exact aliquot parts within each section.

Example: Imagine a large piece of land divided into four smaller plots; each of those smaller plots would be considered a "parcel," while the entire larger area would be referred to as a "tract."

Anna and Joseph Canning’s Interpretation item 3:

3. “I considered the definitions of “parcel”, “original parcel” and “aliquot”.

a. The definition of “aliquot” is informative to the definition of “parcel” but is otherwise not impacting the decision on the number of original parcels.



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ALQUOT: 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.

b. The definition of "parcel" details the types of ways in which a property can be described. Please note that the second sentence (beginning with "Land that is described by metes and bounds...") is not applicable. This property is described as aliquot parts."

- As was stated in page 3 above, in the United States Code, an "aliquot part" refers to a legal subdivision of a section of land, typically divided into halves or quarters, within the Public Land Survey System (PLSS), essentially meaning a precise fractional portion of a larger section of land that can be legally described and conveyed as a separate parcel.
- The use of a comma clearly separates the two individual aliquot parts descriptions because they are two separately defined legally created parcels in separate quarter sections.

It is impossible to define the entirety of this property with one aliquot parts description.

Therefore, the Cannings are wrong in their assumption that these aliquot parts descriptions are describing a single parcel.

- For these reasons stated above, we believe the subject property consists of two original parcels, and not one.

In Conclusion

We respectfully ask the Commission to please rule in favor of our appeal, and approve the 5 building permits plus 3 more non-viable as was intended. Not only is the ground not viable for farming or raising livestock without water, we have provided substantial evidence to show beyond a doubt that the property consists of two original parcels and not one.

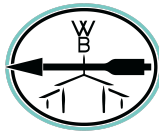
Thank you for your time and consideration in this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Matt Wilke', is written over a light blue horizontal line.

Matt Wilke

Applicant Representative for Rick and Lorna Penner
White Barn Ventures, Inc.



White Barn Ventures, Inc.

Surveying Glossary of Terms

(Abbreviated for County Surveyor Rebuttal)

U. S. DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT GLOSSARY OF BLM SURVEYING AND MAPPING TERMS

**PREPARED BY THE CADASTRAL SURVEY TRAINING STAFF DENVER SERVICE CENTER
1980 SEARCHABLE PDF 2003**

ALIQUOT – Contained an exact number of times in another; a part of a measurement that divides the measurement without a remainder. See **ALIQUOT PARTS**.

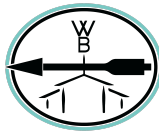
ALIQUOT PARTS – Legal subdivisions, except fractional lots, or further subdivision of any smaller legal subdivision, except fractional lots by division into halves or fourths ad infinitum. See **LEGAL SUBDIVISION**; **SUBDIVISION**, **SMALLEST LEGAL** and **MINOR SUBDIVISION**.

LEGAL SUBDIVISION – The subdivision of a township, such as a section, half-section, quarter-section, quarter quarter or sixteenth-section, or lotting, including the lot, section, township and range numbers and the description of the principal meridian to which referred, all according to the approved township plat. See **SUBDIVISION**, **SMALLEST LEGAL**; **ALIQUOT PARTS** and **MINOR SUBDIVISIONS**.

SUBDIVISION – (verb) 1) Subdivision of a township into sections. 2) Subdivision of a section into half-sections, quarter-sections, sixteenth-sections or sixty-fourth-sections, or into lots, according to the Manual of Surveying Instructions. 3) The process of surveying such subdivisions. 4) In the private practice of land survey, subdivision is the division of an area into lots, streets, rights-of-way, easements and accessories, usually according to State law and local regulations – (noun) A particular aliquot part, lot, or parcel of land described according to the official plat of its cadastral survey. See **SUBDIVISION**, **SMALLEST LEGAL**, **URBAN SUBDIVISION** and **MINOR SUBDIVISION**.

SMALLEST LEGAL SUBDIVISION – A quarter-quarter section or one lot. See **SUBDIVISION**, **SMALLEST LEGAL** and **MINOR SUBDIVISIONS**.

MINOR SUBDIVISIONS – A quarter-quarter section subdivided into quarter-quarter-quarter sections (1/64 or 10 acre units), or aliquot parts as small as 1/256 (2.5 acres).



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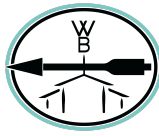
CONTIGUOUS LAND – Generally speaking, two parcels of land having a common boundary line. See **CORNER CONTIGUITY**.

CALL – A reference to, or statement of, an object, course, distance or other matter of description in a survey or grant requiring or calling for a corresponding object, or other matter of description, on the land. See **PASSING CALLS**.

PASSING CALLS – Found frequently in cadastral surveyor's field notes, they are calls for (references to) cultural or topographic features along a survey line. Passing calls are sometimes used to locate a line or to recover obliterated corners.

TRACT – Generally, a metes and bounds survey of an area at large within a township. In modern public land surveys the term is used specifically to mean a parcel of land that lies in more than one section or that cannot be identified completely as a part of a particular section. Tract numbers begin with the next higher number of the numerical designation within a township, for example: if there is an old numbers are sequential and no number is repeated within a township, for example; if there is an old Mineral Lot No. 37, the tract would be Tract No. 38. If a tract falls across a township line it is given a separate number in each township. See **LOT**.

LOT – A subdivision of a section which is not described as an aliquot part of the section, but which is designated by number, e.g., LOT 2. A lot may be regular or irregular in shape and its acreage varies from that of regular subdivisions. The term "Government Lot" is commonly used by persons outside the Bureau of Land Management in referring to such a subdivision of a section. "Lot" is also the name given individual parcels of recorded subdivisions of private tracts. See **TOWN LOT**, **TRACT** and **URBAN SUBDIVISION**.



White Barn Ventures, Inc.

Documents Referenced

1. **Specifications for Descriptions of Land: For Use in Land Orders, Executive Orders, Proclamations, Federal Register Documents, and Land Description Databases. 48 pages.**
Produced in coordination with the Office of Management and Budget, United States Federal Geographic Data Committee, Cadastral Subcommittee Washington, DC: 2015; Revised 2017 U.S. Department of the Interior
2. **Manual of Surveying Instructions For the Survey of the Public Lands of the United States. 515 pages.** Prepared by the United States Department of the Interior Bureau of Land Management Cadastral Survey. 2009 Edition.
3. **GLOSSARIES OF BLM SURVEYING AND MAPPING TERMS**
U. S. DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT.
135 pages. PREPARED BY THE CADASTRAL SURVEY TRAINING STAFF DENVER SERVICE CENTER 1980 SEARCHABLE PDF 2003.
4. **County Code of Canyon County, Idaho 1996**
Code current through: Ord. 2024-005, passed May 15, 2024

Emily Bunn

From: Matt Wilke <matt@mywhitebarn.com>
Sent: Thursday, January 30, 2025 4:06 PM
To: Emily Bunn; BOCC
Cc: 'Rick Penner'; 'Todd Lakey'; Carl Anderson; April Wilke; Jay Gibbons
Subject: Re: [External] Penner Appeal / AD2024-0001-APL / PowerPoint Presentation & Surveyor Letter
Attachments: Surveyor Rebuttal _ Penner Appeal (X).pdf

Good afternoon Emily and Honorable Commissioners,

Please see the surveyor rebuttal attached in the .pdf above, and coinciding documents I referenced in the 3 links below. Can you please confirm receipt?

I may also need to refer back to the same PowerPoint that I submitted at the first hearing and would like to have that available as well during the continuation hearing. Does that need to be resubmitted?

 [cadastralglossary 1.pdf](#)

 [Manual Of Surveying Instructions 2009 1.pdf](#)

 [SpecificationsForDescriptionsOfLand 1.pdf](#)

Thank you,



Matt Wilke
Owner | Broker
White Barn Real Estate
White Barn Ventures
208.412.9803
matt@mywhitebarn.com
www.mywhitebarn.com

From: Emily Bunn <Emily.Bunn@canyoncounty.id.gov>
Sent: Wednesday, January 29, 2025 10:35 AM
To: Matt Wilke <matt@mywhitebarn.com>; Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>
Cc: 'Rick Penner' <rodelhomes@gmail.com>; 'Todd Lakey' <Todd@LVLawIdaho.com>; Carl Anderson <Carl.Anderson@canyoncounty.id.gov>; April Wilke <april@mywhitebarn.com>
Subject: RE: [External] Penner Appeal / AD2024-0001-APL / PowerPoint Presentation & Surveyor Letter

Hello,

I haven't received any exhibits. And yes, the deadline for submission is January 30, 2025 at 5pm per the BOCC.

I will be including the two (2) additional emails I sent over to you on January 23, 2025 in the staff report addendum if that helps.

Sincerely,



Emily Bunn,
Associate Planner
Canyon County Development Services Department
111 N. 11th Ave., #310, Caldwell, ID 83605
Direct Line: (208) 454-6632
Email: emily.bunn@canyoncounty.id.gov
Website: www.canyoncounty.id.gov

Development Services Department (DSD)
NEW public office hours
Effective Jan. 3, 2023
Monday, Tuesday, Thursday and Friday
8am – 5pm
Wednesday
1pm – 5pm
**We will not be closed during lunch hour **

PUBLIC RECORD NOTICE: All communications transmitted within the Canyon County email system may be a public record and may be subject to disclosure under the Idaho Public Records Act and as such may be copied and reproduced by members of the public.

From: Matt Wilke <matt@mywhitebarn.com>
Sent: Wednesday, January 29, 2025 10:23 AM
To: Emily Bunn <Emily.Bunn@canyoncounty.id.gov>; Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>
Cc: 'Rick Penner' <rodellhomes@gmail.com>; 'Todd Lakey' <Todd@LVLawIdaho.com>; Carl Anderson <Carl.Anderson@canyoncounty.id.gov>; April Wilke <april@mywhitebarn.com>
Subject: Re: [External] Penner Appeal / AD2024-0001-APL / PowerPoint Presentation & Surveyor Letter

Good morning Emily,

I'm just checking in to see if there are any other late exhibits that have come in that aren't posted to the land hearing page. Is 1/30 @5pm still the deadline for submission?

Thank you,



Matt Wilke
Owner | Broker
White Barn Real Estate
White Barn Ventures
208.412.9803
matt@mywhitebarn.com
www.mywhitebarn.com

From: Emily Bunn <Emily.Bunn@canyoncounty.id.gov>
Sent: Thursday, January 23, 2025 9:19 AM

To: Matt Wilke <matt@mywhitebarn.com>; Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>
Cc: 'Rick Penner' <rodelhomes@gmail.com>; 'Todd Lakey' <Todd@LVLawIdaho.com>; Carl Anderson <Carl.Anderson@canyoncounty.id.gov>; April Wilke <april@mywhitebarn.com>
Subject: RE: [External] Penner Appeal / AD2024-0001-APL / PowerPoint Presentation & Surveyor Letter

Hello,

Our office reached out to our two (2) contract surveyors regarding Parcel R37792 so they could review Instrument No. 495989 and explain further how they came to their determination on Parcel R37792's original parcel status based on Canyon County's Zoning Code.

They both came to the conclusion that Parcel R37792 is original parcel, but they gave more information related to how they came to their conclusion. Their responses are attached, along with the attachment Keller sent over, Instrument No. 495989, and the 1957 letter from the United States Department of Interior (Centurion references this letter, as this was the document they originally reviewed in the fall).

Their responses will be a part of another addendum to the staff report that will be posted next week.

Sincerely,



Emily Bunn,
Associate Planner
Canyon County Development Services Department
111 N. 11th Ave., #310, Caldwell, ID 83605
Direct Line: (208) 454-6632
Email: emily.bunn@canyoncounty.id.gov
Website: www.canyoncounty.id.gov

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From: Emily Bunn
Sent: Monday, January 13, 2025 9:07 AM
To: 'Matt Wilke' <matt@mywhitebarn.com>; Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>
Cc: Rick Penner <rodelhomes@gmail.com>; Todd Lakey <Todd@LVLawIdaho.com>; Carl Anderson <Carl.Anderson@canyoncounty.id.gov>; April Wilke <april@mywhitebarn.com>
Subject: RE: [External] Penner Appeal / AD2024-0001-APL / PowerPoint Presentation & Surveyor Letter

Hello,

I updated the addendum to the staff report again to reflect some additional information.

This will be posted to the website today.

Sincerely,



Emily Bunn,
Associate Planner
Canyon County Development Services Department
111 N. 11th Ave., #310, Caldwell, ID 83605
Direct Line: (208) 454-6632
Email: emily.bunn@canyoncounty.id.gov
Website: www.canyoncounty.id.gov

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From: Matt Wilke <matt@mywhitebarn.com>
Sent: Friday, January 10, 2025 9:27 AM
To: Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>; Emily Bunn <Emily.Bunn@canyoncounty.id.gov>
Cc: Rick Penner <rodellhomes@gmail.com>; Todd Lakey <Todd@LVLawIdaho.com>; Carl Anderson <Carl.Anderson@canyoncounty.id.gov>; April Wilke <april@mywhitebarn.com>
Subject: Re: [External] Penner Appeal / AD2024-0001-APL / PowerPoint Presentation & Surveyor Letter

Hi Jay,

Thanks for sending these over. Much appreciated.



Matt Wilke
Owner | Broker
White Barn Real Estate
White Barn Ventures
208.412.9803
matt@mywhitebarn.com
www.mywhitebarn.com

From: Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>
Sent: Thursday, January 9, 2025 5:25 PM
To: Matt Wilke <matt@mywhitebarn.com>; Emily Bunn <Emily.Bunn@canyoncounty.id.gov>
Cc: Rick Penner <rodellhomes@gmail.com>; Todd Lakey <Todd@LVLawIdaho.com>; Carl Anderson <Carl.Anderson@canyoncounty.id.gov>; April Wilke <april@mywhitebarn.com>
Subject: RE: [External] Penner Appeal / AD2024-0001-APL / PowerPoint Presentation & Surveyor Letter

Matt,

In order to cut out forwarding of forwarded emails between staff & myself, I am attaching the original emails I sent to Centurion and Keller asking for an opinion on several deeds. These emails went out September 9, 2024. Six (6) deeds are attached including the deed for Parcel R37792. Both emails were exactly the same, they were addressed to Joe Canning and Mike Hickman. The attachments were too large for Centurion to accept, so I reduced 2 of them and resent the original email to Centurion the next day. This one is attached including the deeds. I printed the email to mike hickman so you can see that the same deeds were attached to that one. My outlook won't allow me to attach the original email to mike hickman due to size constraints. Let me know if this works. If not, I will get with our IT folks to iron out an alternative solution. Thanks.



Jay A. Gibbons, PLA ASLA

Interim 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: Matt Wilke <matt@mywhitebarn.com>

Sent: Thursday, January 9, 2025 3:32 PM

To: Emily Bunn <Emily.Bunn@canyoncounty.id.gov>

Cc: Rick Penner <rodellhomes@gmail.com>; Todd Lakey <Todd@LVLawIdaho.com>; Carl Anderson <Carl.Anderson@canyoncounty.id.gov>; April Wilke <april@mywhitebarn.com>; Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>

Subject: Re: [External] Penner Appeal / AD2024-0001-APL / PowerPoint Presentation & Surveyor Letter

Hi Emily,

Thanks for the update. Can you please send over the attachments that were also sent to the surveyors, or any we haven't received that were sent back from the surveyors?

Jay makes reference to the deeds he sent over. I just want to make sure we have a full picture of what was asked of the surveyors.

Thank you,



Matt Wilke

Owner | Broker

White Barn Real Estate

White Barn Ventures

208.412.9803

matt@mywhitebarn.com

www.mywhitebarn.com

From: Emily Bunn <Emily.Bunn@canyoncounty.id.gov>
Sent: Thursday, January 9, 2025 9:52 AM
To: Matt Wilke <matt@mywhitebarn.com>
Cc: Rick Penner <rodellhomes@gmail.com>; Todd Lakey <Todd@LVLawIdaho.com>; Carl Anderson <Carl.Anderson@canyoncounty.id.gov>; April Wilke <april@mywhitebarn.com>; Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>
Subject: RE: [External] Penner Appeal / AD2024-0001-APL / PowerPoint Presentation & Surveyor Letter

Hello,

Sorry about that, yes here is the full email chains attached.

I will also update this for the website as well.

Sincerely,



Emily Bunn,
Associate Planner
Canyon County Development Services Department
111 N. 11th Ave., #310, Caldwell, ID 83605
Direct Line: (208) 454-6632
Email: emily.bunn@canyoncounty.id.gov
Website: www.canyoncounty.id.gov

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From: Matt Wilke <matt@mywhitebarn.com>
Sent: Thursday, January 9, 2025 9:41 AM
To: Emily Bunn <Emily.Bunn@canyoncounty.id.gov>
Cc: Rick Penner <rodellhomes@gmail.com>; Todd Lakey <Todd@LVLawIdaho.com>; Carl Anderson <Carl.Anderson@canyoncounty.id.gov>; April Wilke <april@mywhitebarn.com>; Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>
Subject: Re: [External] Penner Appeal / AD2024-0001-APL / PowerPoint Presentation & Surveyor Letter

Good morning Emily,

Could we please get the entire email chain? We are missing the questions that were asked of the surveyors by Jay Gibbons, or any other staff members.

Thank you,



Matt Wilke
Owner | Broker
White Barn Real Estate
White Barn Ventures
208.412.9803
matt@mywhitebarn.com
www.mywhitebarn.com

From: Emily Bunn <Emily.Bunn@canyoncounty.id.gov>
Sent: Wednesday, January 8, 2025 5:08 PM
To: Matt Wilke <matt@mywhitebarn.com>
Cc: Rick Penner <rodellhomes@gmail.com>; Todd Lakey <Todd@LVLawIdaho.com>; Carl Anderson <Carl.Anderson@canyoncounty.id.gov>; April Wilke <april@mywhitebarn.com>; Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>
Subject: RE: [External] Penner Appeal / AD2024-0001-APL / PowerPoint Presentation & Surveyor Letter

Hello,

Attached is the addendum to the staff report for AD2024-0001-APL that includes the information the BOCC wanted to be reflected in the staff report today regarding Canyon County's Contract Surveyor's interpretations on Parcel R37792.

This will also be posted on the website.

Please let me, Carl, or Jay know if you have any questions,



Emily Bunn,
Associate Planner
Canyon County Development Services Department
111 N. 11th Ave., #310, Caldwell, ID 83605
Direct Line: (208) 454-6632
Email: emily.bunn@canyoncounty.id.gov
Website: www.canyoncounty.id.gov

Development Services Department (DSD)
NEW public office hours
Effective Jan. 3, 2023
Monday, Tuesday, Thursday and Friday
8am – 5pm
Wednesday
1pm – 5pm
**We will not be closed during lunch hour **

PUBLIC RECORD NOTICE: All communications transmitted within the Canyon County email system may be a public record and may be subject to disclosure under the Idaho Public Records Act and as such may be copied and reproduced by members of the public.

From: Matt Wilke <matt@mywhitebarn.com>
Sent: Tuesday, January 7, 2025 3:14 PM
To: Emily Bunn <Emily.Bunn@canyoncounty.id.gov>
Cc: Rick Penner <rodellhomes@gmail.com>; Todd Lakey <Todd@LVLawIdaho.com>; Carl Anderson

<Carl.Anderson@canyoncounty.id.gov>; April Wilke <april@mywhitebarn.com>

Subject: Re: [External] Penner Appeal / AD2024-0001-APL / PowerPoint Presentation & Surveyor Letter

Ok, thank you Emily. See you tomorrow afternoon.



Matt Wilke
Owner | Broker
White Barn Real Estate
White Barn Ventures
208.412.9803
matt@mywhitebarn.com
www.mywhitebarn.com

From: Emily Bunn <Emily.Bunn@canyoncounty.id.gov>

Sent: Tuesday, January 7, 2025 9:44 AM

To: Matt Wilke <matt@mywhitebarn.com>

Cc: Rick Penner <rodelhomes@gmail.com>; Todd Lakey <Todd@LVLawIdaho.com>; Carl Anderson

<Carl.Anderson@canyoncounty.id.gov>; April Wilke <april@mywhitebarn.com>

Subject: RE: [External] Penner Appeal / AD2024-0001-APL / PowerPoint Presentation & Surveyor Letter

Hello,

All of the materials I received by the deadline (December 30th) made it into the staff report.

There were no late materials received, but if there were any that were sent in, they would have to be read into the record by the commenter at the hearing.

Sincerely,



Emily Bunn,
Associate Planner
Canyon County Development Services Department
111 N. 11th Ave., #310, Caldwell, ID 83605
Direct Line: (208) 454-6632
Email: emily.bunn@canyoncounty.id.gov
Website: www.canyoncounty.id.gov

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From: Matt Wilke <matt@mywhitebarn.com>
Sent: Tuesday, January 7, 2025 9:38 AM
To: Emily Bunn <Emily.Bunn@canyoncounty.id.gov>
Cc: Rick Penner <rodellhomes@gmail.com>; Todd Lakey <Todd@LVLawIdaho.com>; Carl Anderson <Carl.Anderson@canyoncounty.id.gov>; April Wilke <april@mywhitebarn.com>
Subject: Re: [External] Penner Appeal / AD2024-0001-APL / PowerPoint Presentation & Surveyor Letter

Good morning Emily,

Can you please let me know if all the late exhibits and materials made it into the BOCC Staff Report? I downloaded the staff report and want to make sure that I didn't miss anything.

Thank you,



Matt Wilke
Owner | Broker
White Barn Real Estate
White Barn Ventures
208.412.9803
matt@mywhitebarn.com
www.mywhitebarn.com

From: Matt Wilke <matt@mywhitebarn.com>
Sent: Monday, December 30, 2024 3:00 PM
To: Emily Bunn <Emily.Bunn@canyoncounty.id.gov>
Cc: Rick Penner <rodellhomes@gmail.com>; Todd Lakey <Todd@LVLawIdaho.com>; Carl Anderson <Carl.Anderson@canyoncounty.id.gov>; Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>; April Wilke <april@mywhitebarn.com>
Subject: Re: [External] Penner Appeal / AD2024-0001-APL / PowerPoint Presentation & Surveyor Letter

Hi Emily, you are correct. Both versions are the same. I wasn't sure which worked best for hearing.

Thank you,



Matt Wilke
Owner | Broker
White Barn Real Estate
White Barn Ventures
208.412.9803
matt@mywhitebarn.com
www.mywhitebarn.com

From: Emily Bunn <Emily.Bunn@canyoncounty.id.gov>
Sent: Monday, December 30, 2024 2:49 PM
To: Matt Wilke <matt@mywhitebarn.com>

Cc: Rick Penner <rodellhomes@gmail.com>; Todd Lakey <Todd@LVLawIdaho.com>; Carl Anderson <Carl.Anderson@canyoncounty.id.gov>; Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>; April Wilke <april@mywhitebarn.com>

Subject: RE: [External] Penner Appeal / AD2024-0001-APL / PowerPoint Presentation & Surveyor Letter

Hello,

I have received the letter from Greg Skinner and also the PowerPoint presentation and will include them in the staff report packet.

To verify, both versions of the PowerPoint are the same, correct? If so, I will just include one copy of the PowerPoint in the staff report packet.

Sincerely,



Emily Bunn,
Associate Planner
Canyon County Development Services Department
111 N. 11th Ave., #310, Caldwell, ID 83605
Direct Line: (208) 454-6632
Email: emily.bunn@canyoncounty.id.gov
Website: www.canyoncounty.id.gov

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From: Matt Wilke <matt@mywhitebarn.com>
Sent: Monday, December 30, 2024 2:08 PM
To: Emily Bunn <Emily.Bunn@canyoncounty.id.gov>
Cc: Rick Penner <rodellhomes@gmail.com>; Todd Lakey <Todd@LVLawIdaho.com>; Carl Anderson <Carl.Anderson@canyoncounty.id.gov>; Jay Gibbons <Jay.Gibbons@canyoncounty.id.gov>; April Wilke <april@mywhitebarn.com>
Subject: [External] Penner Appeal / AD2024-0001-APL / PowerPoint Presentation & Surveyor Letter

Hi Emily,

Please see the attached link to the PowerPoint Presentation in .pdf & .pptx (PowerPoint) formats, and the attached letter from Greg Skinner for submission.

Can you please download the presentation to confirm you are able to view it? The presentation is too large to send as an attachment.

.PDF

https://drive.google.com/file/d/1JbhC5Sw1lbeq5U_nPv2yZtoxAXt6tM6d/view?usp=sharing

.PPTX

<https://docs.google.com/presentation/d/1iNryfwqw-VEbnFu52WSNxozcF6uD4TYo/edit?usp=sharing&oid=103447314564743324315&rtpof=true&sd=true>

Please let me know if you have any issues viewing the documents.

Thank you,



Matt Wilke
Owner | Broker
White Barn Real Estate
White Barn Ventures
208.412.9803
matt@mywhitebarn.com
www.mywhitebarn.com



Skinner Land Survey

17842 Sand Hollow Road
Caldwell, Idaho 83607
(208)454-0933
WWW.SKINNERLANDSURVEY.COM
surveys@skinnerlandsurvey.com

Thomas J. Wellard, PLS
Rodney Clark, PE
Zane Laufenberg, PLS

Exhibit D

January 28, 2025

The Board of Canyon County Commissioners
115 Albany Street
Caldwell, Idaho 83605

RE: Contract County Surveyors emails and additional correspondence

Dear Commissioners,

I am writing on behalf of the landowners of Canyon County and specifically about the Rick and Lorna Penner appeal that has been continued from the hearing held on January 8th, 2025. As a professional land surveyor who performs the majority of my work in Canyon County, I can testify that the facts and opinions I will lay out in this letter are supported by a standard in Canyon County that has been applied to the vast majority of my clients' projects when dealing with original parcels over the past 20 years. During my years here, I have met with and had discussions with every development services director in Canyon County since 2005. The idea of what an "original parcel" has been clarified across numerous directors since an infamous 2004 memo tried to take private property rights without due process. The issues surrounding original parcels resurfaced around 2021 when a short term director and a one term commissioner tried to reinstitute the 2004 memo.

At the Penner hearing, development services failed to include documents in the packet that played a role in the director's decision to deny a land use application/request. The information was brought up during the hearing and you graciously allowed a rebuttal of this late information. I find it shameful such a crucial document was not provided for the Board's or the applicant's review. The hearing was continued to allow this information to be reviewed by the appellant, but since then, the DSD Staff has taken it upon themselves to gather additional testimony and information from the contracted county surveyors. This additional information has solidified how an erroneous conclusion was made by these contracted surveyors due to the fact that they gave guidance without the use of Canyon County's Code or definitions. Rather, they used codes and definitions from other agencies to support their previous conclusion on how to define an original parcel. I will address their reasoning and the flaws with it below.

On January 10, 2025, Canyon County DSD sent another request to Joseph Canning, the contracted county surveyor, and Anna Canning, a certified planner, to review the deed in this case and let them know how many original parcels it contained and to explain their reasoning. Anna B. Canning responded via email on January 14, 2025 that it was one parcel based on 3 reasons, which I will rebut:

In 1a, they state it is for one parcel because the "two callouts are contiguous." This reasoning is no reasoning at all because nothing in Canyon County Code says anything about contiguous parcels or callouts. What even is a callout? Did they use the term callout because they didn't want to use the word parcel or aliquot part description? Canning's "callouts" are two aliquot part descriptions for two separate and independent parcels. Whether a parcel is contiguous is completely irrelevant to this

deed and this decision because Canyon County Code does not address that issue. Canyon County Code does define how parcels are described though. It states:

“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.”

This specifically mentions aliquot parts as a way to describe parcels. Just like lot and block descriptions are separated by commas and each lot is considered an original parcel, so is it true of aliquot parts separated by commas. This leads to their next argument pertaining to commas.

They argue in 1b that a comma was only used because the property was in two different quarters of a section so they couldn't describe it all together and had to use two “call outs.” The same argument could be said for Lots in a subdivision. They have to be used in multiple “call outs,” (i.e. Lots 1, 2 and 4 of Block 3), but each lot is still an original parcel. They are not all combined as one original parcel just because they used commas to separate the lot “call outs.” This is not different than the Penner deed S/12NE1/4, NW1/4SE1/4 of Section 10.

In addition, the use of the comma in aliquot parts descriptions has great significance. Using the comma in the incorrect position or not using the comma where needed, describes completely different property. If you research aliquot parts descriptions, the lack of a comma means “of the” and a comma means “and the”. For example the Penner description (S1/2NE1/4, NW1/4SE1/4), would read as follows: South half of the Northeast quarter AND THE Northwest quarter of the Southeast quarter. The NW1/4SE1/4 is not a part of the S1/2NE1/4. It is a whole different parcel.

Their number two argument is all about intent. Nowhere in Canyon County Code does it talk about the intent of the deed writer, but even more important, intent should never be a question on this deed given land use restrictions based on original parcel status did not even exist at this time. How is a land seller or buyer able to decide what their intent was when they had no way to see the future and what kind of restrictions would be placed on their land based on how they “chose” to describe the land they were transferring? Landowners, sellers, title companies, land buyers, etc. could never had any “intent” because they did not know that County Code would be changed to take away rights they knew they already had. There were no building codes, building permits or administrative land divisions. The only code for dividing land was state code, which allowed up to 4 divisions before it was a subdivision.

As far as section three of their letter, I don't even know how to address it because they don't do a good job of supporting their decision with their listed definitions. In fact, their definition of aliquot part is a very good argument as to why this particular deed should be THREE original parcels because an aliquot part defines 40 acre pieces and is what land use subdivision code is based on. This entire section was broken into 40s in 1937 by the General Land Office, which further supports the 40 acre aliquot part parcel definition. If this were my project and property, that is the direction I would probably push this, but I am just trying to help these landowners obtain the rights they were told they had on numerous occasions by this very county back when they started the process for this application.

In 2b, they argue nothing—except to admit this property is described in aliquot parts...two aliquot parts, thus two parcels. When they tell you the second sentence of the parcel definition is not applicable to this property because it's described as aliquot parts, it feels like I'm on an impossible task because they so clearly do not understand what they're reading. The second sentence is what tells you this deed is not a single parcel because it was not described all together as a metes and bounds description, but rather separated into two aliquot part descriptions.

In 2c, they once again do not make an argument and so I'm not entirely sure how to respond to it. I can only infer that they are trying to say because it is one parcel number assigned by the assessor, that means it is one parcel. This is not a good argument because the assessor can assign one parcel number to thousands and thousands of acres if they are contiguous. Assessors don't have standards on how to assign parcel numbers based on definitions of original parcels. How assessors tax property or how many parcel numbers they assign to specific tracts of land has no bearing on what an original parcel is, so there is nothing here to support their conclusion.

I don't think Cannings used Canyon County Code to come to their conclusions. Based off the previous email read into the record, Mr. Canning leaned on the definition of parcel, contiguous, and common ownership from other county codes he is familiar with. Canyon County Code does not use the terms contiguous or under one ownership to define original parcel or parcel. Other jurisdictions have taken the steps to change their codes specifically to limit non-subdivision division of land similar to Canyon County's administrative land divisions. This seems to be exactly what Canyon County DSD staff is trying to do now without going through due process to change the code and gain public input.

In the email from David Kinzer dated January 13, 2025, it includes some of the same errors in his conclusions as the Cannings email. He seems to also lean on definitions and terms that are not found in Canyon County, but rather Ada County, which is no surprise since both parties have their businesses in Ada County and not Canyon. Canyon County Code does not specify parcels have to be described separately in order to be original parcels. Nor does it mention common ownership or contiguous as criteria used to determine original parcel status. Their expertise is none at all if they choose to use other jurisdictions' codes as their evidence to substantiate their opinions on the matter.

Below is the pertinent code and definitions we must adhere to in Canyon County:
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.

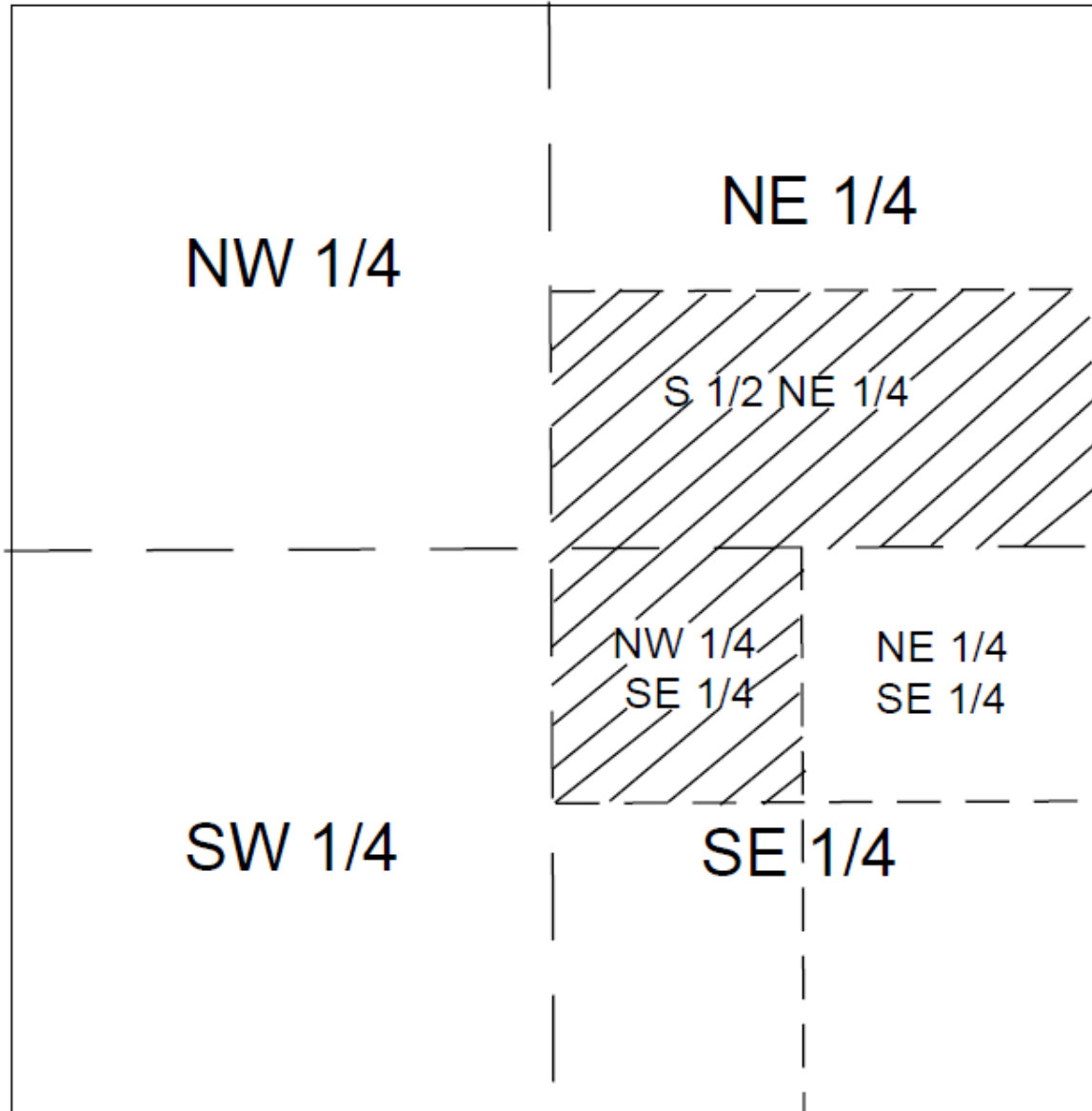
ORIGINAL PARCEL: A parcel of platted or unplatted land as it existed on September 6, 1979 (the effective date of the Zoning Ordinance 79-008), including any property boundary adjustments as defined in this chapter and any reduction in area due to creating a parcel for the exclusive use by Canyon County, 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.

I would like to now give you an example where the County Surveyor's and DSD Staffs conclusion cannot be fairly applied without changing the County Code.

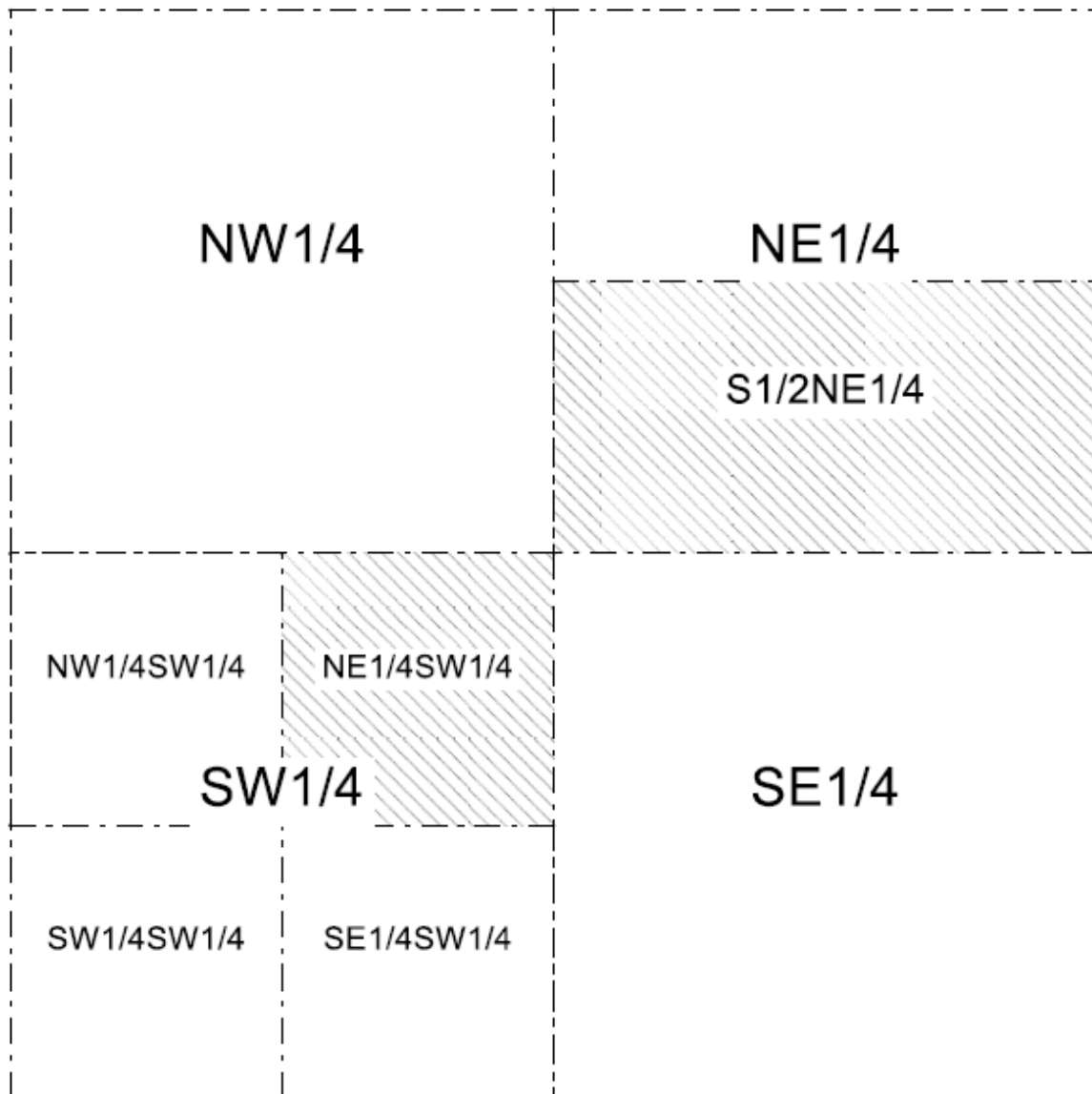
Lets take the Penner's description:

Township 5 North, Range 3 West, Boise Meridian Section 10, S1/2NE1/4, NW1/4SE1/4



Now lets slightly change the description:

Township 5 North, Range 3 West, Boise Meridian Section 10, S1/2NE1/4, NE1/4SE1/4



As you can see, the two descriptions look almost identical and are describing the exact same amount of acreage, but in the second description, if we applied the County Surveyor's opinion, it would be two original parcels. This is all based on the "contiguous" argument that does not exist in Canyon County because the code has not been written to include that as part of the original parcel discussion. Now if you apply Canyon County Code to these descriptions, they both would have the same number of original parcels because contiguous is not part of the equation. DSD is trying to change code without legally changing code.

[illegible]

Lots 1, 2 and 4, Block 12 of Apple Valley Land Company Subdivision according to the official plat on file and of record in Book 4 at Page 12 in the office of the County Recorder, Canyon County, Idaho.

Page 6 of 9

Another example is the following deed.

INSTRUMENT NO 779633

WARRANTY DEED

FOR VALUE RECEIVED, IMPERIAL-YUMA PRODUCTION CREDIT ASSOCIATION, a corporation duly organized and existing under and by virtue of the laws of the United States of America, as authorized by The Farm Credit Act of 1933, 12 U.S.C., sec. 1131, the grantor, does hereby grant, bargain, sell and convey unto JOHN A. VAN WYK, a married man dealing with his sole and separate property, the grantee, the following described premises situated in the County of Canyon, State of Idaho, and more particularly described, to wit:

TRACT 1:

Section 15: Southwest Quarter; the Southwest Quarter of the Northwest Quarter and that part of the Southwest Quarter of the Southeast Quarter lying West of the existing county road.

Section 21: That portion of the North one-half and the Southeast Quarter lying East of the Snake River. That portion of Lot 2, described as follows:

BEGINNING at the center of said Section 21, which point is also the Northeast corner of said Lot 2;
thence South along the East boundary line of said Lot 2 a distance of 1520 feet to the Southeast corner thereof;
thence West a distance of 400 feet to a point on the South boundary thereof;
thence North 27 degrees 36 minutes West a distance of 1894 feet to a point on the North boundary line of said Lot 2;
thence East a distance of 1100 feet, more or less, to the point of Beginning.

Section 22: The West Half; and that portion of the East Half of said Section 22 lying Easterly to the line hereinafter described.

Section 23: That portion of the West Half of the Southwest Quarter lying Easterly of line hereinafter described.

Section 26: That portion of the North Half of the Northwest Quarter and of the Southeast Quarter of the Northeast Quarter and of the Northeast Quarter of the Southeast Quarter lying Westerly of the line hereinafter described, and Lots 3 and 4 in said Section 26.

Section 27: The North Half of the Northwest Quarter; the Northwest Quarter of the Northeast Quarter; and Lots 1 and 2 in said Section 27.

Section 28: The Northeast Quarter of the Northeast Quarter.

TRACT 2:

All of Section 16.

WARRANTY DEED - P 1

TRACT 3:

Section 17: The Northeast Quarter of the Northeast Quarter.

Section 26: That portion of the Southwest Quarter of the Northeast Quarter and the South Half of the Northwest Quarter lying Westerly of the line hereinafter described.

Section 27: The East Half of the Northeast Quarter.

ALL TRACTS HEREIN DESCRIBED IN TOWNSHIP 1 SOUTH, RANGE 2 WEST OF THE BOISE MERIDIAN, CANYON COUNTY, IDAHO.

The Line hereinabove referred to is described as follows:

BEGINNING at the Quarter Section corner common to Sections 15 and 22, Township 1 South, Range 2 West Boise Meridian going, thence East a distance of 482 feet to the Westerly right of way line of the Billed County Road, the True Point of Beginning;

thence South 25 degrees 30 minutes East a distance of 417 feet along the Westerly right of way line of said road to a point;

thence South 54 degrees 40 minutes East a distance of 1,074 feet along the Southwesterly right of way line of said road to a point;

thence South 83 degrees 10 minutes East a distance of 86 feet along the Southwesterly right of way line of said road to a point;

thence North 74 degrees 10 minutes East a distance of 167.6 feet along the Southerly right of way line of said road to a point;

thence South 31 degrees 55 minutes East a distance of 700 feet to the top of the ridge East of Thomson Lake, also known as Jensen Lake;

thence South 17 degrees 30 minutes East a distance of 2,405.3 feet along the ridge top to a point on the Westerly line of the Nampa-Murphy Branch of the Oregon Shortline Railroad right of way, said point being on a curve;

thence along the curve on said railroad right of way, said curve being 5 degrees left having a central angle of 75 degrees 39 minutes and tangents of 830.9 feet length of curve 1513 feet to a point on a tangent;

thence South 85 degrees 32 minutes East a distance of 3868.8 feet to a point on a curve;

thence along the curve 2 degrees 40 minutes right, having a central angle of 16 degrees 37 minutes length 830.8 feet and tangent 410.4 feet;

thence South 36 degrees 34 minutes East a distance of 2251.4 feet to a point on a curve;

thence along 4 degrees 00 minutes curve right, having a central angle of 4 degrees 00 minutes a distance of 103 feet;

thence along 8 degrees 00 minutes curve right, having a central angle of 61 degrees 30 minutes a distance of 770.4 feet;

thence along 4 degrees 00 minutes curve right, having a central angle of 4 degrees 02 minutes a distance of 100 feet to a point;

thence South 30 degrees 00 minutes East a distance of 278.9 feet to the Banks of the Snake River.

WARRANTY DEED - P 2

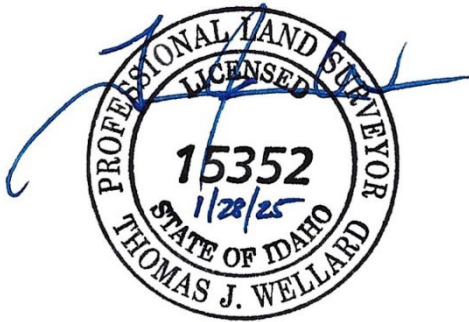
According to the contracted County Surveyors for Canyon County and DSD, I would assume this over a thousands of acres of land would be considered one big original parcel due to common ownership, it all being executed on one deed and the acreage is all contiguous, but the assessor has it assessed as numerous separate parcels. This isn't logical and it doesn't follow Canyon County Code or definitions. This is not how the code has been interpreted or applied in at least the last 20 years,

(that's the furthest back my experience goes), and to try and apply it now would be considered arbitrary and capricious because it would be randomly applying opinions that are not based on current code.

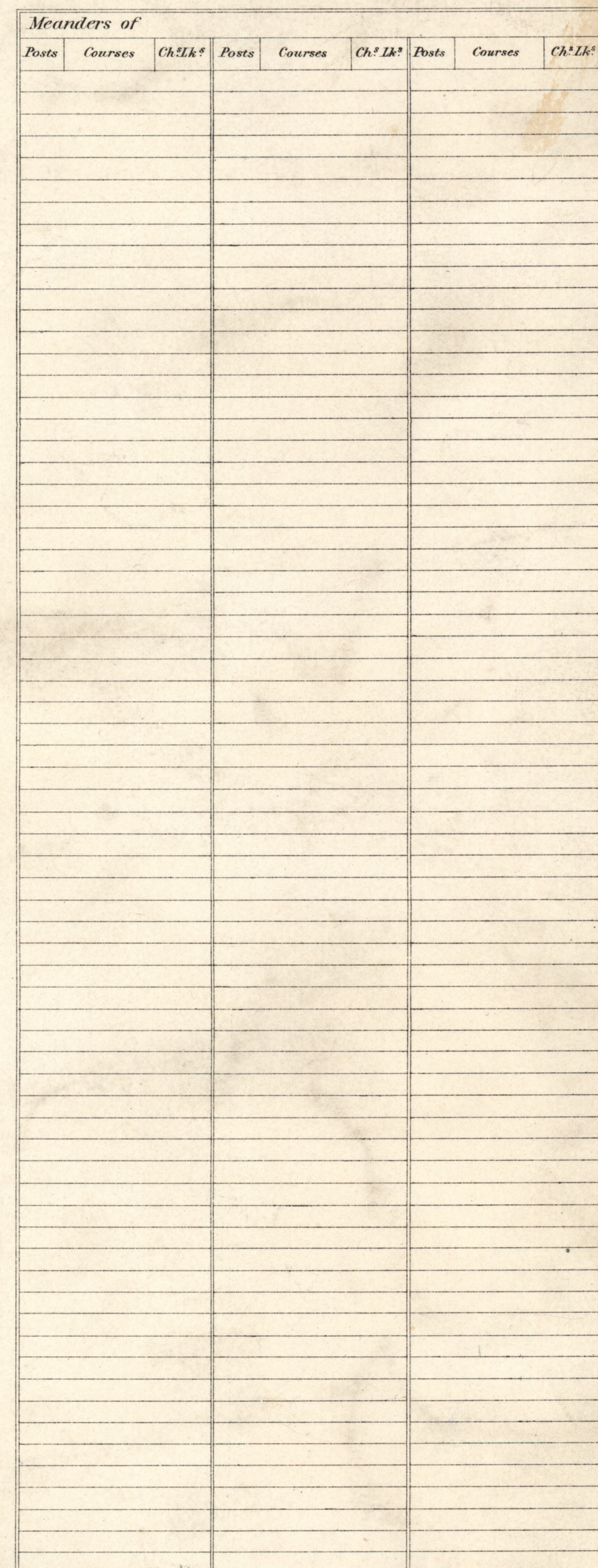
If Canyon County wants to apply greater restrictions on private property ownership as it pertains to the division of original parcels, then they need to go through the lawful means to properly revise the code. They cannot just take it upon themselves to alter the code with made up definitions pulled from other county codes and illegally deprive the Penner's of their property rights. Not only that, but the county has added insult to injury by dragging the Penner's through an expensive and laborious process AFTER the Penner's were told by this very county that they indeed had the entitlements they thought they had. What has changed? The code certainly has not and that is all that matters.

Respectfully Submitted,

Thomas J. Wellard, PLS



G *f* *F* *e* *E* *d* *D* *c* *C* *b* *B* *a* *A*



The above Map of Township N. 25 North of Range N. 3 West of the Boise Meridian, Idaho is strictly conformable to the field notes of the survey thereof on file in this Office, which have been examined and approved.

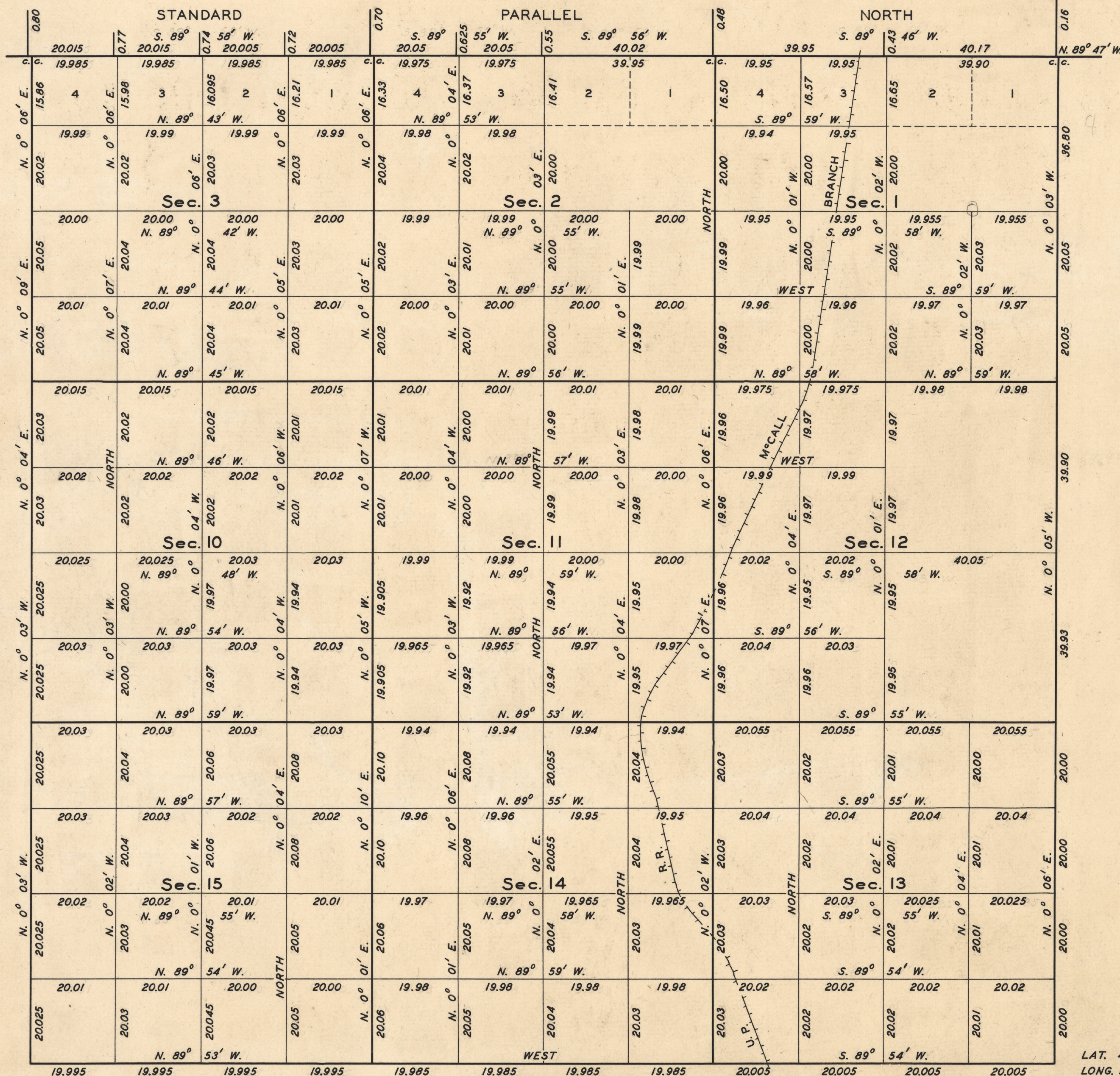
Surveyor General's Office,
Boise City, Idaho
January 21st, 1902

Joseph D. Perreault
Sur. Gen. for Idaho.

DEPENDENT RESURVEY AND SUBDIVISION OF SECTIONS 1, 2, 3, 10, 11, 12, 13, 14 AND 15

Sec. 36

R.3 W. | R.2 W.



This plat of the resurvey of T. 5 N., R. 3 W., delineates a retracement and reestablishment of the lines of the original survey as shown upon the plat approved January 21, 1902, in their true original position according to the best available evidence of the position of the original corners; all differences between the measurements shown on the original plat and those derived in the retracement have been distributed proportionally between accepted corners in accordance with surveying rules; reference will be made to the original plats for the showing of the areas and more detailed descriptions of the various smaller subdivisions.

LAT. $43^{\circ} 46' N.$
LONG. $116^{\circ} 38' 30'' W.$

OFFICE OF U. S. SUPERVISOR OF SURVEYS

Denver, Colorado, June 21, 1937

The above plat of Township No. 5 North, Range No. 3 West of the Boise Meridian, Idaho, is strictly conformable to the field notes of the survey thereof which have been examined and approved.

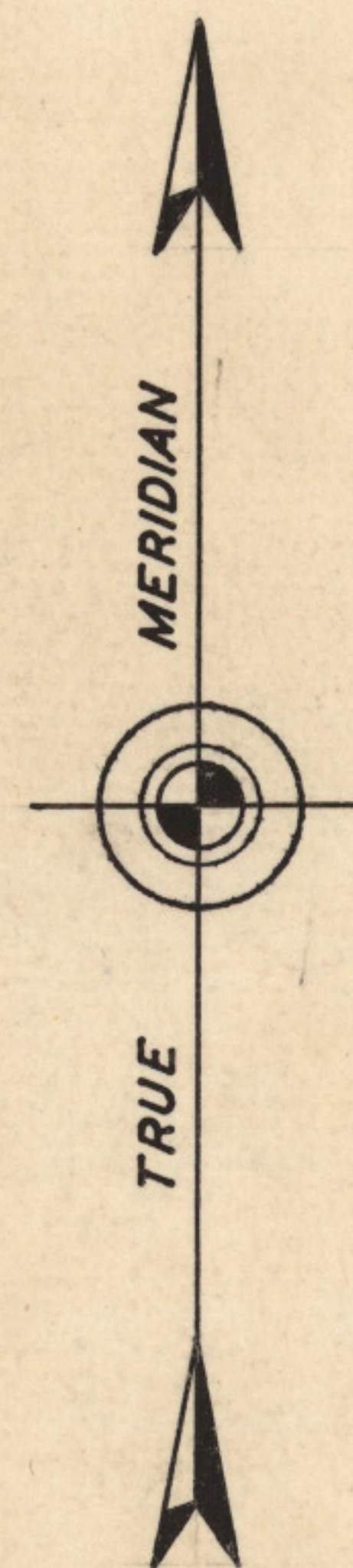
U. S. Supervisor of Surveys.

DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE

Washington, D. C., August 20, 1937.

The survey represented by this plat having been correctly executed in accordance with the requirements of law and the regulations of this office, is hereby accepted.

Assistant Commissioner



E.E.H. *[Signature]*