



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

Findings of Fact

1. The appellant, Matt Wilke, representing the property owners, Richard and Lorna Penner, request an appeal regarding the denial of AD2024-0001 for non-viable land divisions of Parcel R37792, approximately 120 acres, per CCCO §07-18-09. The appellant requests the Board of County Commissioners approve the appeal (**Staff Report Exhibit A**).
2. The affected property is adjacent to 28495 Harvey Rd, Caldwell, ID 83607, also referenced as a portion of the NW ¼ of the SE ¼ and South ½ of the NE ¼ of Section 10 Township 5N Range 3W Canyon County, Idaho.
3. In July 2020, two (2) parcel inquiries were completed that stated Parcel R37792 contains one (1) original parcel (PI2020-0226 and PI2020-0234). In August 2020, PI2020-0226 was updated to reflect Parcel R37792 as containing two (2) original parcels (**Staff Report Exhibit C4**). In September 2024, two (2) of Canyon County's Contract Surveyors reviewed the letter dated October 17, 1957 from the United States Department of Interior that is referencing USBR Contract 14-06-1000-1304 dated September 30, 1957 (the letter includes the same legal description as Instrument No. 495989) (found in **Staff Report Addendum Dated January 10, 2025 Exhibits 1-4**) 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).
4. On January 12, 2024, the property owners, Richard and Lorna Penner, submitted an administrative land division application for non-viable parcels in the "A" Zone to divide the subject parcel into eight (8) buildable parcels with two (2) agricultural-only parcels per CCCO §07-18-07 and §07-18-09 (AD2024-0001 and RD2024-0001) with a private road application (**Staff Report Exhibit B**). An amended letter of intent was submitted on February 27, 2024 (**Staff Report Exhibit C1**) and an additional letter of intent was submitted on June 18, 2024 (**Staff Report Exhibit C2**).
5. On October 7, 2024, Case No. AD2024-0001 was denied finding the parcels to be viable for agricultural use (**Staff Report Exhibit C**).
6. On October 18, 2024, Richard and Lorna Penner submitted an appeal to overturn the decision regarding AD2024-0001 finding the request provides that the property is nonviable for agricultural use based on its poor soils, lack of irrigation water, difficult topography, and that the subject parcel is not economically viable (which they state should be considered when looking at the nonviability of a parcel). They also state they have taken significant steps to mitigate potential impacts to neighboring agricultural uses, which includes the design of their development plan to minimize disruptions to neighboring farms, maintaining internal traffic routes, working with Highway District No. 4 to reserve a public collector road away from their southern neighbor, protecting the irrigation lateral by working with Black Canyon Irrigation District and the Bureau of Reclamation, and implementing CC&Rs that include the Right to Farm Act. The Penners also disagree with Canyon County's Contract Surveyors' determination that Parcel R37792 contains one (1) original parcel, as they believe that the comma in the legal description denotes two (2) separate original parcels. Lastly, the Penners also state that the lot sizes they are proposing will allow some form of agricultural use to be established (such as a hobby farm), but the hobby farms will not generate profit due to their small-scale nature (meaning the hobby farms are not viable) and reiterate that the 120-acre parcel as it sits is not viable farm ground (**Staff Report Exhibit A2**).
7. Parcel R37792 is zoned "A" (Agricultural). The 2030 Canyon County Comprehensive Plan designates the future land use as "agriculture."
8. The request was noticed/published per Canyon County Code §07-05-01. Property owners within 600' of the external boundaries of the parcel and affected agencies were notified per CCCO §07-05-01 on December 10, 2024.

9. All records herein consist of Staff Report Exhibits provided in the public hearing staff report, testimony, and Staff Report Exhibits provided during the public hearings on January 8, 2025, February 6, 2025, and February 20, 2025 and all information in case file AD2024-0001-APL.

Conclusions of Law

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

- (1) *Appeal To Board: An affected person aggrieved by a final administrative decision or action of the director that was made pursuant to the provisions of this chapter may appeal to the board.*
- (2) *Appeal Procedures:*
 - A. *Appeals shall be filed with DSD within fifteen (15) calendar days after the date of the decision. A notice of appeal should include a statement of the reasons for the appeal and must be accompanied by all appropriate fees as established by the adopted fee schedule.*
 1. On January 12, 2024, the property owners, Richard and Lorna Penner, submitted an administrative land division application for non-viable parcels in the "A" Zone to divide the subject parcel into eight (8) buildable parcels with two (2) agricultural-only parcels per CCCO §07-18-09 (AD2024-0001 and RD2024-0001) with a private road application (**Staff Report Exhibit B**). An amended letter of intent was submitted on February 27, 2024 (**Staff Report Exhibit C1**) and an additional letter of intent was submitted on June 18, 2024 (**Staff Report Exhibit C2**).
 2. On October 18, 2024, Richard and Lorna Penner submitted an appeal to overturn the decision regarding AD2024-0001 finding the request provides that the property is nonviable for agricultural use based on its poor soils, lack of irrigation water, difficult topography, and that the subject parcel is not economically viable (which they state should be considered when looking at the nonviability of a parcel). They also state they have taken significant steps to mitigate potential impacts to neighboring agricultural uses, which includes the design of their development plan to minimize disruptions to neighboring farms, maintaining internal traffic routes, working with Highway District No. 4 to reserve a public collector road away from their southern neighbor, protecting the irrigation lateral by working with Black Canyon Irrigation District and the Bureau of Reclamation, and implementing CC&Rs that include the Right to Farm Act. The Penners also disagree with Canyon County's Contract Surveyors' determination that Parcel R37792 contains one (1) original parcel, as they believe that the comma in the legal description denotes two (2) separate original parcels. Lastly, the Penners also state that the lot sizes they are proposing will allow some form of agricultural use to be established (such as a hobby farm), but the hobby farms will not generate profit due to their small-scale nature (meaning the hobby farms are not viable) and reiterate that the 120-acre parcel as it sits is not viable farm ground (**Staff Report Exhibit A2**).
 3. *At the public hearing held in accordance with this article, the board shall consider the decision of the director and any additional evidence that may be offered by the public, applicant, or director.*
 1. All records herein consist of Staff Report Exhibits provided in the public hearing staff report, testimony, and Staff Report Exhibits provided during the public hearings on January 8, 2025, February 6, 2025, and February 20, 2025 and all information in case file AD2024-0001-APL.
 2. Property owners within 600' of the external boundaries of the parcel and affected agencies were notified per CCCO §07-05-01 on December 10, 2024 for the public hearing held on January 8, 2025. The following comments were received by the public comment deadline of December 30, 2024:
 - a. Heidi Miller – Comment Letter (**Staff Report Exhibit E1**)
 - b. Mike Goodell – Comment Letter (**Staff Report Exhibit E2**)
 - c. Todd Lakey – Comment Letter (**Staff Report Exhibit E3**)
 - d. Greg Skinner – Comment Letter (**Staff Report Exhibit E4**)
 - e. Matt Wilke – Comment Letter (**Staff Report Exhibit E5**)
 - f. Jeremy Fielding- Comment Letter (**Staff Report Exhibit E6**).

3. At the public hearing on January 8, 2025, the Board of Canyon County Commissioners directed staff to post correspondence and information provided by Canyon County's Contract Surveyor's that was used in the determination of Parcel R37792's original parcel status to the website and continued the case to February 6, 2025 to allow the appellant and the public to submit information related to the original parcel discussion that took place at the hearing. The Canyon County's Contract Surveyors responses were posted to the website after the hearing (**Staff Report Addendum Dated January 10, 2025 Exhibits 1-4**) and staff also reached out to the Contract Surveyors to provide more information on their responses on the original parcel determination of Parcel R37792 in the fall of 2024. The following comments (including responses from Canyon County's Contract Surveyors) were received by the public comment deadline of January 30, 2025:
 - a. Keller and Associates – Response to DSD Staff with Visual of Response (**Staff Report Addendum Exhibits A and A1**)
 - b. Centurion Engineering – Response to DSD Staff (**Staff Report Addendum Exhibit B**)
 - c. Matt Wilke Response Letter with Attachments (**Staff Report Addendum Exhibits C and C1**)
 - d. Thomas J. Wellard Response Letter (**Staff Report Addendum Exhibit D**).
 4. At the public hearing on February 6, 2025, public testimony was taken by the Board of Canyon County Commissioners regarding the original parcel discussion. After public testimony was closed, the Board of Canyon County Commissioners continued the case to February 20, 2025 so legal staff could prepare a legal opinion regarding the original parcel discussion.
 5. At the public hearing on February 20, 2025, legal staff gave a summary of the opinion, the Board of Canyon County Commissioners deliberated, and then made their decision which is outlined below.
4. *The board may affirm, reverse, or modify, in whole or in part, the director's decision.*

After reviewing all applicable codes (CCCO §07-05-07, 07-18-05, and 07-18-09) and considering all information a duly noticed hearing, the Board of County Commissioners reverses the decision made by the Director of DSD on October 7, 2024 (**Staff Report Exhibit C**) as it is the opinion of the Board of Canyon County Commissioners that Parcel R37792 is nonviable for agriculture as the property does not have irrigation water rights which makes the land dry and difficult to farm and contains uneven ground due to the slopes on the property.

Per the appellant's amended letter of intent dated February 27, 2024, "There are no surface water rights available from Black Canyon Irrigation District as shown on the Mylar map provided by Cheyanne Andrade in her email dated 8/17/2020 (**Staff Report Exhibit B2**). The maps show that portions of the property have 'no water rights classified as irrigable' (blue horizontal stripes), with the remaining land classified as 'High and Dry Land', which is above the canal water level for the gravity flow (**Staff Report Exhibit B2**)." This was also supported by the appellant's testimony at the January 8, 2025 hearing wherein he stated there is no water right or irrigation water (surface or ground) available to the property at the time.

Per the appellant's amended letter of intent dated February 27, 2024, there is rolling topography located on the parcel which makes it difficult to farm (**Staff Report Exhibit B2**). Per USGS Slope Maps, slopes on the property are predominately between 0-9%, demonstrating there is unevenness to the subject property that could create hardship (**Staff Report Exhibit C15**). This was also further supported by the appellant's testimony at the January 8, 2025 hearing wherein he outlined the property has rolling topography and high areas that make irrigating and agricultural uses difficult to carry out.

The Board of Canyon County Commissioners, after considering the opinions from local and contracted surveyors offered and the opinion of legal counsel, has determined to honor PI2020-0226 and recognize that Parcel R37792 (as identified on the County Assessor's maps) contains two (2) original parcels for the purpose of review under the County's zoning ordinance.



Order

Based upon the Findings of Fact and Conclusions of Law enumerated above, the Board of County Commissioners hereby **approves** the appeal **reversing** the decision by the Director of DSD for Case No. AD2024-0001-APL. Parcel R37792 contains two (2) original parcels and is deemed non-viable under the County's zoning ordinance.

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

APPEAL APPROVED this 19 day of MAR, 2025.

**BOARD OF COUNTY COMMISSIONERS
CANYON COUNTY,**

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

Attest: Rick Hogaboam, Clerk

By: 