

Commissioners Minutes

September 3, 2024 – 1:30 p.m. to 4:13 p.m.

**PUBLIC HEARING: APPEAL BY SAMUEL PARRY, REPRESENTING CLEON AND PATTI HOAGLAND,  
REGARDING THE DENIAL OF AD2023-0110 FOR A NON-VIABLE PARCEL LAND DIVISION**

Commissioners Brad Holton, Zach Brooks, and Leslie Van Beek

DSD Principal Planner Dan Lister and DSD Director Sabrina Minshall

In Favor: Samuel Parry, Allison Hoagland, Darren Hoagland, Patti Hoagland, Jeff Hoagland, Kenny Hoagland, Daniel Temple, Mark Hoagland, Brandon Hoagland, Cleon Hoagland, Delores Hoagland

In Opposition: Kathy Alder, Joshua Alder, Norm Alder, Randy Holloway, and Judy Holloway

Deputy Clerk Monica Reeves



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The Board met today at 1:30 p.m. to conduct a public hearing in the matter of an appeal by Samuel Parry, representing Cleon and Patti Hoagland regarding the denial of Case No. AD2023-0110, a non-viable parcel land division. Present were: Commissioners Brad Holton, Zach Brooks, and Leslie Van Beek, DSD Principal Planner Dan Lister, DSD Director Sabrina Minshall; In Favor: Samuel Parry, Allison Hoagland, Darren Hoagland, Patti Hoagland, Jeff Hoagland, Kenny Hoagland, Daniel Temple, Mark Hoagland, Brandon Hoagland, Cleon Hoagland, Delores Hoagland; In Opposition: Kathy Alder, Joshua Alder, Norm Alder, Randy Holloway, and Judy Holloway, and Deputy Clerk Monica Reeves.

DSD Principal Planner Dan Lister gave the oral staff report. Samuel Parry, representing Cleon and Patti Hoagland, requests an appeal regarding the denial of AD2023-0110 for a non-viable parcel land division of R28146010, R28146010D, and R28279010, approximately 70 acres. The appellant requests the Board approve the appeal. The affected properties are adjacent to 746 and 1055 Southside Boulevard in Melba. The parcels are zoned "A" (Agricultural). The 2030 Canyon County Comprehensive Plan designates the future land use as "agriculture". Parcel R28146010 was created via an Administrative Land Division creating Parcels R28146011 and R28146010 (AD2021-0016). The parcel was then adjusted to its current configuration in 2021. Parcel R28146010D was created as an agricultural-only parcel in 2021. According to PI2021-0220, Parcel R28279010 was created via the land division process in 1980. The parcel has a building permit available. On October 6, 2023, the property owners, Cleon and Patti Hoagland, submitted an administrative land division application for non-viable parcels in the "A" Zone to divide the subject parcels into eight buildable parcels. The application was updated on February 23, 2024, to adjust the proposed parcel boundaries and include a private road name. On May 6, 2024, after considering all evidence

provided by the applicant and letters received by neighbors, Case No. AD2023-0110 was denied by the Director of DSD for the following reasons: Per CCCO §07-02-03, viable farmland is defined as *"Land that is capable of producing marketable farm animals or crops"*. Information provided by the applicant, aerials, and letters of opposition demonstrate the subject properties consist of land capable of producing marketable farm animals and/or crops. The County Assessor's Office states the parcels have ag-exemptions. Upon conversation with the Assessor's Office, the applicant has benefited from the ag-exemptions for over 20 years. Irrigation water rights exist for the subject parcel. The parcels appear to be irrigated with sprinklers and a wheel-line. Slopes are predominantly between 0-3% except in certain areas of Parcel R28146010D where slopes can be 6-9%. Any lot size/configuration issues stated by the applicant were created by the applicant via land divisions. Parcel R28146010D is an agricultural-only parcel requested by the property owner (AD2021-0185). Per CCCO §07-17-03(3), an agriculture parcel is described as a parcel *used exclusively for agricultural purposes (on which there is no permanent dwelling)*. The letter of intent states the 5.93 to 11.81-acre lot sizes will allow forage production and grazing. The letter implies portions of the subject parcels are viable. Letters of opposition received demonstrate the parcels contain viable, profitable, agricultural uses and have been in active agricultural production since 1974. There is not enough evidence demonstrating the development will not be impactful to surrounding agricultural uses. The applicant does not propose any buffers, building envelopes, or other mitigating conditions to ensure residential development created by the request will not impact surrounding agricultural production. The following options were provided to the applicant:

- Reapply for an Administrative Division of a Nonviable Parcel in an Agricultural Zone (CCCO §07-18-05 & 09) and provide information demonstrating what portions of the subject parcels are non-viable, what portions are still viable and what measures will be taken to ensure viable ground will be protected.
- Conditional rezone to an "R-R" (Rural Residential) zone with development agreement conditions limiting lot sizes to five acres or larger. The 2030 Comprehensive Plan allows five-acre lot sizes within the agricultural designation.
- Comprehensive Plan Amendment to the rural residential designation and Conditional Rezone to an "R-R" (Rural Residential, two-acre lot sizes).

On May 21, 2024, Samuel Parry, representing Cleon and Patti Hoagland, submitted an appeal to overturn the decision regarding AD2023-0110 finding the request meets the required standards, adequate evidence regarding productive agricultural constraints and resource issues was submitted, and that the decision was based on irrelevant facts such as tax exemption status, aerials and neighborhood comments. Planner Lister reviewed the comments received from property owners and agencies. The subject parcels, over 70 acres, consist of land that produces marketable animals and crops and has done so for over 20 years. The issue regarding the owner/operator not being able to make a profit from the marketable production of animals and crops is not a factor that can be reviewed based on the applicable code. Staff recommends the Board deny the appeal upholding the Director of DSD's decision.

The following people testified in support of the appeal:

*Planner Lister stated that Samuel Parry submitted a PowerPoint presentation as a late exhibit and it was not part of the staff report. Mr. Parry said the presentation does not contain new information, it's strictly illustrative and outlines what is contained in his appeal letter. He also said he did not receive notice that he would not be able to submit a PowerPoint. It is the Board's policy not to accept late exhibits.*

Samuel Parry testified that he was raised in Canyon County and has a bachelor's degree in animal science and a master's degree in agricultural economics and he received his juris doctorate from the University of Idaho. Half of his practice is preserving farmland through private conservation practices. The subject property is not good farm ground. It is anyone's guess why the relevant language from the ordinance was not applied in the Director's decision. Section 07-18-09 (5)(c) states the parcel, in whole or in part, in order to be approved for this application shall consist of land with site constraints and/or resources issues such as lack of water, suitable soils, topography, land compatibility, lot size, or configuration that makes productive agriculture use extremely difficult. That sentence is not anywhere in the decision or the staff report. Section 07-18-09 gives the definition of viable farmland as land that is capable of producing marketable farm, animals, or crops; however, the nonviable ordinance does not reference that section of the code or use the term viable farmland. The Hoaglands only need to show that part of the land is nonviable in order to be approved for this request. Nevertheless, the whole property is not viable. They also have to show site constraints or resource issues or both. Productive agriculture describes commercial level, not hobby level agriculture. Productive is defined as exceeding or producing a significant amount or result, or producing or able to produce large amounts of goods, crops, or other commodities. Productivity is inherently an economic metric; it measures the changes in output based on changes on input, more specifically the measurement of productive agriculture is the quantity of outputs for a given quantity of inputs and this code targets productive agriculture. The Hoaglands do not have to show that productive agriculture is impossible. They have to show it's extremely difficult. Mr. Parry said Cleon Hoagland had testified about the rocky, shallow soil, rock piles, visible exposed rocks, damaged farm equipment, and low yields. He tried to make the land viable for 60 years; his parents worked off the farm to finance farming efforts to no avail. The parcels are not weird shaped because of the parcel division that took place in 2021. The parcels in the center have been divided for decades and Mr. Hoagland has been trying to farm and finagle the irrigation around those for decades. The parcel division made one line between the north and central parcels. Prior owners sold the ground because it was not productive. Mr. Parry referred to his letter which outlines the testimony and evidence about the character of the ground. He noted that Jerry Neufeld, who was the crop extension agent for Canyon County for 23 years and he prepared a full report on his findings for the property. There is a significant amount of evidence that this is nonviable, and that production agriculture is extremely difficult. The soils are not very deep and significantly eroded, shallow rocky soils, visible rocks, rock piles reflecting attempts to remove rock and make the land more suitable. The property contains significant acres of Class IV soils. Yields for forage crops are less than half the county average, 3.7 tons per acre compared to

7.5 tons per acre. Productive agriculture on the Hoagland property is extremely difficult and nonviable to agriculture due to site constraints and resource issues that make productive agriculture extremely difficult. Mr. Parry said the Director's decision failed to apply the relative standard and it ignored all the evidence in support of the application. The decision did not summarize Mr. Neufeld's letter like it did all the opposition letters, nor did it summarize the letter from Lamar Harris. The Director's decision substituted the knowledge of people on the ground and the 23-year ag extension educator for their own apparent knowledge of agriculture.

Darren Hoagland testified about his agricultural educational degrees and experience including being hired as a general manager of a 30,000-head feedlot and as the beef on dairy specialist. He sees a lot of production agriculture as well as large agriculture and small agriculture and has tried to bring a lot of those ideas back to help his father and grandfather with their properties but it's just not viable. The ground is rocky and does not hold the water, it's not productive or viable ground. He believes people should be able to do what they want to with their property as long as it's legal and lawful.

Commissioner Van Beek asked staff to address the administrative divisions and boundary adjustments that have occurred on the property. It was stated that a division was done in 2021 to allow an amendment to two of the buildable lots and moving a buildable lot to a certain section while keeping one legal through the agricultural only process. It made it a legal parcel.

Kenny Hoagland testified that he started farming 1985 and sold out due to his own rocky property because he couldn't make a living and he went into fulltime law enforcement. He serves as an EMT and firefighter and said despite all the growth in Melba there hasn't been an increase in farming implement accidents or regular vehicles accidents. Mr. Hoagland testified that a subdivision was approved on land near South Powerline Road that was farmed a year before it was sold and that ground didn't have rocks. He also spoke about driveway inspections he conducts which are on properties that used to be farmland.

Daniel Temple testified that he struggles with his rocky, lava debris soil and after realizing it would take a tremendous amount of work and money to make it a pasture, he put it off until he has more money. In this case he sees the Hoaglands trying to make a living off of their marginal land with old equipment and if they were to sell it, it would be a hobby farm at most because of the rock outcroppings and poor drainage. This is not an income property, it is marginal ground and the farmer should have the ability to access his assets so she does not lose his property.

Mark Hoagland testified that he bought the farm in 1959 from his cousin who was working at a lumberyard to make a living. Mr. Hoagland did custom farming with his father and eventually began teaching school. They tried row cropping sugar beets, potatoes, and sweet corn, but none were successful in the yields because the ground is rocky. He does not believe the Hoaglands proposal will impact the neighbors because there are already residences in the area.

Brandon Hoagland testified that he has a bachelor's degree in animal science with a minor in agronomy and ag systems. He grew up on this farm and spent time picking rocks and he wants to operate a farm and ranch, but said this property is nonviable farmland that has extremely difficult resource constraints against it with shallow soils and hot temperatures that do not allow crops to yield to their full production with the increase in the production costs. He has managed large expanses of land in Nevada from millions of acres in rangelands to thousands of acres in farmland and he knows this is not a piece of land he could raise a family on without a supplemental income.

Cleon Hoagland testified that his great grandfather homesteaded in Melba. He has farmed for 62 years and watched his family members struggle with the land and he said those who oppose his request have never been on/worked his farm ground nor do they have any idea of the hardships his family has gone through to keep the ground green. The neighbors who adjoin his property do not oppose his request, only those who are almost 600 feet away oppose what he is trying to do. He reached out to Jerry Neufeld, the former extension agent for Canyon County, who created a report about his property, but said DSD staff only looked at Google Earth and the comments from neighbors who have not been on his property. Mr. Hoagland believes he is being punished and said neighbors around him have stopped farming and have been allowed to develop their ground but he is not allowed to develop his. Regarding the 2021 decision, Mr. Hoagland said he has never heard of it and was never asked to appeal it. He made a boundary line adjustment because there was a north and south section; he did not ask for a farm-only parcel. When that piece was sub-irrigated it was three small fields, not one. He spoke about the struggles to irrigate the property.

DSD Planner Lister said the outcome of the 2021 property boundary adjustment was adjusting the lines between the properties. It was split, not per code at the time, and it had separate lots and Mr. Hoagland fixed those lines and it was decided that if they call it agriculture only and keep it as agriculture then it would be a legal lot but there were no building permits associated with it. Commissioner Brooks said the decision was not to create another parcel; it unmerged two parcels. Planner Lister does not recall what the configuration was that required the action to be taken. Mr. Hoagland said it was never his decision it was staff's decision. It was always two separate sections; there was a north section and a south section and both were owned by his father.

The following people testified in opposition to the request:

Kathy Alder testified that her family has farmed in the area for many years and said the area has moderately suited soils and viable farm ground. If you are able to produce marketable farm, animals or crops it is considered viable farmland. This land has been farmed since 1915. She said the Hoaglands rented 33 acres from the LDS Church for 20-25 years and nobody forced them to rent it and when the church decided to sell the land, it was a private sale and the Hoaglands bought the land for under \$300,000 and they immediately put it on the market at a high price. They later pulled it and then put it on the market for \$1.5M and in their sales documents from 2022 they called it prime crop land with water rights. Mrs. Alder said probably isn't prime farm ground, but it is moderately suited but it can be worked made into successful farm ground. She said there are a number of people who have farmed it prior to the Hoaglands and it has been productive ground.

She said most people have to have two incomes to function in today's society. When Mr. Neufeld and Mr. Parry have said the land is not viable, but they have not farmed in the area. The Alders have spent a lot of time picking rock and building up their farm to make it better and this land is no different. She said the land is correctly zoned as agriculture.

Joshua Alder testified that he is a fourth generation farmer who farms in the Melba area and he has a bachelor's degree in agronomy and a minor in soils. The ground is rocky, but with topsoil covering the rocks it can be productive. He said there are a lot of things that can be done with less tillage that makes the land more viable and the organic matter in the soil that makes it productive.

Norm Alder testified that he was born in the late 1940's across from the subject property and he watched it when it was in gravity irrigation and raised productive crops. He's been on the ground with his farm equipment and said it has a rock outcropping which is common in Melba with the lava flows. He has put dirt over the top of rocks so he can farm; he dug potatoes for the Hoaglands several years ago and said what is being produced there has nothing to do with the ground itself. He believes the land is productive.

Rebuttal testimony was offered by Samuel Parry who addressed the ag-only issue and said it does not preclude approval of this request. This is a subsequent approval, there is no deed restriction. He said Mr. Hoagland did not negotiate ag-only and has no idea how that became a condition of approval. Perhaps there could have been an appeal, but it was certainly not requested by Mr. Hoagland. There was a development at Southside and Butte that relied on an ag exemption and their ground is much better than the subject property. The Hoaglands are watching people develop their ground all over Melba; there have been 50 new houses to the south in the last 5 years. They provided a lot of evidence but staff did not look at what the irrigation was. The Hoaglands have been trying things for 50 years (dairy, cattle, row crop) and they lost a corn contract and sugar beet contract due to yields and lack of water. Mr. Parry said the analysis was not done on the code language regarding the lack of water, suitable soils, topography, land compatibility, lot size, or configuration that makes productive agriculture use extremely difficult. The irrigation water is not determinative of this application. The fact there might be 20 psi coming to the northeast corner doesn't mean it's viable for productive agriculture. You cannot say economics is not an important part of this question. The Hoaglands have provided a lot of evidence of agronomic factors that make production agriculture extremely difficult. This is not a referendum on development of ag land, this is strict application of the plain language of the code so that residents can plan and not get caught up in the technicalities. When asked if the division will create a negative impact to surrounding ag uses, Mr. Parry said an EMT and firefighter in the Melba Rural Fire District, Kenny Hoagland testified that he has not noticed any increases in agricultural accidents or other traffic incidences in the last 10 years from any of the growth and he doesn't anticipate seeing that. They also consulted with the highway district to design the private road placement in the north section and they did not note any issues or concerns. If the Board is worried about building envelopes or setbacks you can impose setbacks.

Director Minshall clarified the administrative splits discussion of what the previous applications were and were not. There were two administrative land divisions done in 2021; the properties were split in 1989 and were configured in a way that did not go through the county process. The first application in 2021 was to address that configuration and get it back into compliance. The third parcel at the time was only a railroad right-of-way and wasn't any sort of buildable parcel. It was amended the same year in a second administrative land division that kept three parcels. The ability to take the building permit and put it on the parcel that could be usable created the new configuration so and the way to do that was to keep one as an ag-only parcel to still stay in compliance with the code. The applicant had to be aware of that because the survey after an administrative land division is done they get the survey done to match that. The survey was done after the fact to show that as a non-buildable agriculture-only parcel, but it still was three parcels. She thinks what the applicant is explaining in terms of the configuration to try to adjust around building permits is an accurate representation and that's what we ended up with at the end was the configuration that Planner Dan Lister showed. In response to questions from Commissioner Van Beek, Planner Lister reviewed the property history. Regarding the subdivision that was referenced, that was an administrative land division for a nonviable, but there were some distinctions to that property: the parcel had not been farmed for many years and so through viewer visuals and aerials on site and pictures provided by the applicant in that case showed it had not been farmed for many years. They proposed clustering of structures and conditions on permitting and building process to keep the parts they might be able to make viable. We do not have a definition of economically viable in our code so we are basing it on just the language of the definitions in the code.

The Board took a recess from 3:06 p.m. to 3:12 p.m.

Commissioner Van Beek said she is in awe of the amount of educated and informed farmers on both sides of this issue. When looking at the inclusion or exclusion of economically viable ground we cannot include it in one and exclude it from another. There is a convoluted history on this property and she wants more time to look at the reasoning of the 2021 decision to merge the parcels and she wants more time to evaluate this. The applicant has said he has no knowledge of that 2021 decision and that is concerning. There is no application for a building process out there, and it feels like there is more information to the story. She doesn't want repetitive testimony but she wants to leave testimony open on either side due to history of the parcels. Commissioner Brooks is uncomfortable with that because that information is not necessary to issue a decision. Commissioner Holton said whether the lot was buildable or transferred its building rights to another parcel is interesting but it is outside of what their appeal is for. Upon the motion of Commissioner Brooks and the second by Commissioner Van Beek, the Board voted unanimously to close public testimony.

Commissioner Brooks said the appeal underscores last week's discussion on agriculture. All agriculture is not the same. Viable ag definition is land that is capable of producing marketable farm animals or crops, but he is frustrated by the broad definition. There was testimony that in

order to make much of the land in this area viable, topsoil needs to be brought in, but said nobody would determine Craters of the Moon to be viable and nobody would determine that we should bring in truckloads of dirt so we can farm it. If you have to bring dirt in to make it farmable that doesn't make it viable.

There was Board discussion about how decisions have to be based on the code that is in place, and how the definition of nonviable is vague. Director Minshall said in both the 2020 comp plan and the 2030 comp plan, this area is agriculture. That's a follow-up policy conversation that needs to be had on why we haven't proposed to update this section of code yet because it depends on what we are trying to achieve. If we are saying these areas are better suited for other types of development the right place for that resides in the comp plan maps. Those are other processes outside of the nonviable process - the nonviable code itself is vague but part of its vagueness is because it's a one-off from the comp plan and rezone process. In the 2020 and 2030 comp plans there were many terms that were defined but didn't get followed up with a zoning ordinance.

Commissioner Van Beek had questions for staff regarding a subdivision in the area that was approved in 2022. Director Minshall said there were substantial differences between the applications and it was a different type of location which is part of the challenge of why nonviable at all is a challenging part of the code. There has been consistent comp plan designations and what we've seen in similar areas is a comp plan amendment and a true subdivision application; the difference here is it's through the administrative land division part in the code only under nonviable. Commissioner Van Beek said the Hoaglands have an outlined process by the Director that they could go through that's not an administrative land division process. Commissioner Holton said they could do what they are trying to do and pull out portions that are still viable. The issue he sees is they have declared the whole thing un-valuable farming-wise, and although he understands their argument he doesn't have ordinances that he can defend. They could reapply as an administrative division on nonviable parcels if they included some viable parcels for farming and in his opinion, we would have leeway to move forward. Commissioner Van Beek said we need to look at updates to ordinances and the comp plan because it's not right to include a definition in one and exclude it from another so you cannot use the argument that prime farm ground is economically viable and exclude that statement from an argument that it's not. Commissioner Brooks said he will use Exhibit J of Exhibit No. 5-107 for his criteria. He has enough evidence to consider upholding the appeal. It can be used as justification for the quality of productivity of ground. He said evidence was presented that someone in the emergency medical community has not seen an increase in farm equipment accidents or various forms of negative interactions with the public. Commissioner Holton said traffic congestion is only one component of farming and there are other impacts to consider such as what if a new owner plants crops that interfere with seed crops? He has not heard the applicant demonstrate that there will not be impact on agriculture. Commissioner Van Beek said she wants to deliberate the road users maintenance agreement that was included. If a county subdivision is approved and variances are put in that later become incorporated into a city, she doesn't know if we have enough information on the variance that says it can't be any less than 28 feet. It doesn't mean people cannot ask for further



divisions. She understands what the Hoaglands are trying to do but it represents a big change. Commissioner Holton said the original parcel has been divided multiple times and had a nonconforming division that had to get rectified and so they have divided it multiple times and the County has been very responsive for continual divisions on the land but the applicants may have failed to produce an application that can be defended. There was discussion about possibly continuing the hearing, and further discussion about what Director Minshall said the applicants could do such as show the parts that are nonviable and how the rest is protected. Staff has said they are not getting enough information to show as a whole this is nonviable and that is why they suggested showing the pieces that are nonviable. Staff has tried to get the applicant to submit additional information but they did not want to. Director Minshall said the applicants are discussing the economic viability of it and whether it's farmable or not so that may not be a connection for the applicant as an option. Commissioner Van Beek said the applicant should continue to work with DSD and provide the information that would have a potential path forward such as demonstrating where there are areas they could mitigate or minimize the impact, and they have to know how to manage weeds. This is an unexplored avenue that could be a win for the Hoaglands and the surrounding farmers. Commissioner Holton agrees and said he feels totally unqualified to arbitrarily place building envelopes. Commissioner Van Beek made a motion to uphold the staff recommendation and deny the appeal on Case No. AD2023-0110-APL as recommended by staff. The motion was seconded by Commissioner Brooks. Commissioners Holton and Van Beek voted in support of the motion to deny the appeal. Commissioner Brooks was opposed to the motion to deny. The motion carried by a two-to-one split vote. Commissioner Holton said there was discussion about what the applicant could do to come back with an application that would closely meet the criteria to make it passable. Upon the motion of Commissioner Holton and the second by Commissioner Brooks, the Board voted unanimously to sign the FCO's. The hearing concluded at 4:13 p.m. An audio recording is on file in the Commissioners' Office.