

## Written Testimony of Richard Lyon, 4794 Aspen Lane, Bozeman

### TO THE HONORABLE COMMISSIONERS OF THE GALLATIN COUNTY PLANNING & ZONING COMMISSION:

I submit this testimony in support of the County's proposed amendments to the Bridger Canyon Zoning Regulation. I shall supplement this written testimony with oral testimony and argument at the Commission's public hearing on this matter but believe that it is important that the record include the background that has led to the proposed amendment.

#### THE ZONING REGULATION

Zoning for the Bridger Canyon Zoning District was adopted in 1971. This was Montana's first citizen-initiated zoning, brought about upon petition under MSA Section 76-2-101. The current Regulation is available online at [tinyurl.com/vmezr4m3](http://tinyurl.com/vmezr4m3). The County's official zoning map that defines the District may be found at [tinyurl.com/v3ntvttc](http://tinyurl.com/v3ntvttc).

#### THE ADVISORY COMMITTEE

While the Regulation has been amended fourteen times since its creation,<sup>1</sup> in the half-century since adoption there has never been a comprehensive review of the Regulation. I believe that everyone – District residents, the County Department of Planning & Community Development ["Planning Department"], County Commissioners, Planning & Zoning Commissioners, and the public – would acknowledge that after decades of changes in population, business dynamics, and other demographics in the County, State, and nation, a fresh big-picture look was warranted.

The County recognized this in 2010, appointing the Bridger Canyon Zoning Advisory Committee ["Advisory Committee"]. The County Commission charged the Advisory Committee with "developing an update to the Bridger Canyon General Plan & Development Guide, Bridger Bowl Base Area Plan, and the Bridger Canyon Zoning Regulation."

The County appointed as members individuals representing many of the District's interested constituencies: Bridger Bowl, the Bridger Canyon Property Owners Association ["BCPOA"], large landowners, and residents of the Bridger Bowl Base Area ["Base Area"].<sup>2</sup> Two County Planners participated throughout, organizing and administering Advisory Committee meetings. All meetings were open to the public, and interested citizens regularly participated. The County Commission appointed me to the Advisory Committee in 2013. I have been a member of the board of directors and zoning committee of BCPOA continuously from 2012 to the present.

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<sup>1</sup> See current zoning regulation, section 21.

<sup>2</sup> Current members are County Planner Chris Scott, Janis Eckert, Tom Fiddaman; Bob Morton, Kelly Wiseman, and me.

The Advisory Committee initially determined to defer consideration of Base Area matters and not to revise the development pattern for the Zoning District of the Bridger Canyon General Plan [the "General Plan"], focusing instead on the substantive provisions that address agricultural and residential issues. The Advisory Committee met once or twice monthly from its inception through 2018, at which time a comprehensive draft of proposed amendments had been prepared. As discussed more fully below, the proposed amendment now before the Commission includes some but not all of this draft.

On June 8, 2017, upon application of the Advisory Committee and the Planning Department, this Commission unanimously approved a resolution of intent to amend the Zoning Regulation.

## PUBLIC PARTICIPATION

The zoning update has encouraged public participation from its inception. Advisory Committee meetings were public. Drafts of all or part of the proposed changes have been available through the Planning Department. BCPOA has maintained a separate page on its website, [bcpoa.org](http://bcpoa.org), dedicated to the zoning update. At this page BCPOA posted drafts, invited public comment to the County or Advisory Committee with directions on how to do so, advertised and promoted public meetings, included commentary on certain issues, and polled District residents on pertinent subjects.<sup>3</sup> Zoning matters including the update have received extensive discussion at BCPOA board and annual meetings, which are open to the public, over the years.

The Advisory Committee and Planning Department have made sure that the public has been fully informed. There have been five public meetings held in the District, all well attended. During these meetings, Committee members including County Planners answered questions from the public and explained the rationale for changes.

In my term of service on the Advisory Committee I have personally received numerous written comments and questions and many more telephone inquiries on the zoning update, as have several of my Advisory Committee colleagues.

In summary, at all times the amendment content and process have been transparent to the public and included active public participation.

## THE ADMINISTRATIVE REGULATION

The proposed amendment now before this Commission also includes an update to the administrative provisions of the current Regulation.

The Planning Department, independently of the Advisory Committee, prepared a draft of an updated administrative regulation intended to be implemented in all Section 101 districts. The Planning Department presented a proposed draft to the public on January 8, 2019. Following

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<sup>3</sup> Results from one poll, conducted in 2016, are attached as Exhibit A.

written public comment and two working sessions with this Commission, this Commission adopted the new template [the "Administrative Regulation"] on May 9, 2019; the County Commission followed on May 21, 2019. BCPOA participated actively in the revisions leading to the Administrative Regulation and endorsed its adoption.

The Administrative Regulation by its terms requires separate adoption by each Section 101 zoning district. The proposed amendment now pending before this Commission includes this District's adoption of it.<sup>4</sup>

## THE PROPOSED AMENDMENT

As well as adopting the Administrative Regulation, the proposed amendment amends Sections 1, 3 [Definitions], 6 [Agricultural Exclusive (AE) subdistrict], 7 [Recreation/Forestry (RF) subdistrict], and 15 [General Development Standards] of the existing Regulation, renumbered 1, 3, 4, 5, and 12 respectively in the proposed amendment.

Probably the most consequential substantive revision in the proposed amendment addresses accessory dwelling units. The present regulation allows a Caretaker's Residence or Guest House as a Conditional Use in the AE subdistrict. Both these Uses have been the subject of numerous hearings, often contentious, over criteria for allowance or applicants' requests for variances, and the occasional citizen complaints over unauthorized dwelling units. In the proposed regulation,<sup>5</sup> one Accessory Dwelling Unit,<sup>6</sup> subject to certain restrictions,<sup>7</sup> will become a Permitted Use in AE. A property owner in the AE subdistrict may construct an Accessory Dwelling Unit with only a Land Use Permit, with no hearing required.<sup>8</sup> The Advisory Committee believed that this change will reduce hearings and controversy significantly.

Other substantive changes are discussed in the Planning Department's staff report.

## REMAINING ISSUES

Much work remains for the Advisory Committee.

The proposed amendment does not include two subjects that the Advisory Committee considered at length and prepared draft language to propose: Planned Unit Developments

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<sup>4</sup> See proposed amendment, section 1.6. Text of the Administrative Regulation may be found at [tinyurl.com/3fzd98sv](http://tinyurl.com/3fzd98sv)

<sup>5</sup> Proposed amendment, sections 4.2.c and 12.2.

<sup>6</sup> Defined as "A separate Dwelling Unit located within the principal Dwelling Unit or in an Accessory Building." Proposed amendment, section 3.22.a. A Dwelling Unit is defined as "A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation." Section 3.22.

<sup>7</sup> See proposed amendment, section 12.2.

<sup>8</sup> A pre-amendment Guest House or Caretaker's Residence will remain, subject to the conditions in the Conditional Use Permit that authorized it. An owner with such a Dwelling Unit will not be entitled to a separate Accessory Dwelling Unit. Proposed amendment, section 12.2.j and k.

["PUD"] and Short-Term Rentals ["STR"].<sup>9</sup> PUDs and STRs are subjects that have drawn considerable public comment during the Advisory Committee's tenure. Both are important and urgent, not only to the District but also to the County, particularly in light of its recent dramatic population growth. Both underlie the General Plan's fundamental principles of density, preservation of rural character, and limiting commercial activity to the Base Area. BCPOA considers these matters important enough to proceed by filing text amendments but would prefer a collaborative public effort with the Planning Department through the Advisory Committee.

As noted, the Advisory Committee intentionally deferred consideration of Base Area zoning issues. Understating greatly, things have changed in the Base Area. Bridger Bowl has expanded its skiing terrain and support facilities. Crosscut Mountain Sports LLC has acquired Bohart Ranch and the adjacent Crosscut property and has commenced plans to convert the property to a world-class Nordic ski and year-round recreation venue. The Bridger Pines PUD has at last begun fully to promote building and sales. A single buyer has acquired substantial acreage in the Bangtails. Population growth in the County affects each of the above issues.

Review of Bridger Bowl's General Plan and related portions of the Zoning Regulation are matters expressly enumerated in the County's charge to the Advisory Committee. The other issues that I have listed in the preceding two paragraphs are, I believe, equally important and equally urgent. All are matters upon which the citizens in this citizen-initiated zoning district should be heard.

The time has come for all interested parties to address the adequacy of the current zoning considering these radically changed circumstances. The Advisory Committee, with updated membership,<sup>10</sup> is the place to start this exercise. I have spoken with the General Manager of Bridger Bowl, the Executive Director of Crosscut, and a representative of Bridger Pines about this. All agree with my proposal and all wish to participate.

## CONCLUSION

I support adoption of the proposed amendment. BCPOA's board has authorized me to state that it unanimously supports the proposed amendment. All public members of the Advisory Committee have authorized me to state that they that they unanimously support the substantive provisions in proposed amendment.<sup>11</sup>

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<sup>9</sup> A draft of the proposed STR section is attached as Exhibit B.

<sup>10</sup> Crosscut, the Brask family, and Bridger Pines should be asked to nominate prospective members.

<sup>11</sup> I have not discussed the Administrative Regulation with other Advisory Committee members.

EXHIBIT A

PowerPoint Presentation that Includes Results of 2016 BCPOA Survey

[submitted separately]

## EXHIBIT B

### Draft of Section on Short Term Rentals

[Note that section numbers will have to be changed based upon changes in the current amendment]

3.xx Short Term Rental. A rental of a Single-Family Dwelling or Dwelling Unit on a Parcel for a fee or charge and a term of less than thirty days to persons who have another principal residence and is furnished with personal property so it can be used for immediate occupancy. A Short Term Rental is a Use of a Parcel and shall be deemed commercial Use and not residential Use in the Bridger Canyon Zoning District.

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6.3 Uses Permitted After Securing Approval of a Conditional Use Permit ...Short Term Rental...

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15.16 Short Term Rental. This Section 15.16 shall apply to the designated AE and RF Zoning Districts, but not to the Base Area Business or Base Area Recreational & Forestry Districts.

15.16.1 Purpose The intent of this Section 15.16 is to preserve the rural residential character and natural environment of the zoning districts to which it applies. It is further the intent to minimize impacts of tourist uses on property values, environment, wildlife, and overall public safety from fire hazards, traffic generation, and increased need for sanitation. It is further the intent to protect the health, safety and welfare of the zoning district and its residents.

#### 15.16.2 Short Term Rental Use and Conditions

a. Entire Property; Separate Dwelling Units. Short Term Rental is restricted to rental of an entire Parcel. Without limiting the generality of the preceding sentence, the following shall apply:

i. Accessory Buildings: An Accessory Building shall not be used as Short Term Rental. For example, an Accessory Building to a primary Dwelling Unit or other Dwelling Units on a Parcel shall not be rented such that they are concurrently occupied as Short Term Rental. [Note: This needs to be included in AE and RF sections, not just STR.]

ii. Individual Rooms. Short Term Rental of individual rooms in a primary Dwelling Unit or Accessory Building are prohibited except as part of the operation of a duly licensed Bed & Breakfast Inn or Guest Ranch.

Commented [GLO1]: More?

Commented [GLO2]: Can this STR definition work without redefining Single Family Residence or Dwelling?

Commented [GLO3]: Given the new case from MTSC, do you want to try to overcome individual property covenants with an umbrella declaration of commercial?

Commented [GLO4]: Make sure on both Base Area Districts?

Commented [GLO5]: This provision is disparate to most STR codes that I have seen.

Commented [GLO7]: Maybe not....

b. Conditional Use. Short Term Rental of an entire Parcel shall be a Conditional Use, subject to the conditions set forth in Section 18.3, the following conditions, and such other conditions as the Planning and Zoning Commission may prescribe. The Conditional Use of Short Term Rental shall include the following conditions:

i. Designation of the following:

1. The owner of the Parcel and a natural person who is responsible for that owner (“Controlling Person”) who is also the person who must apply for the Conditional Use;

2. the name, address, email address, and telephone number (“Contact Information”) of the person that is responsible for everyday management of the Short Term Rental (“Contact Person”) who must also apply for the Conditional Use. The Contact Person may be a property management company.

3. If any change of the Controlling Person or Contact Person is made during the term of the Conditional Use the owner of the Parcel shall notify the Planning Director.

ii. Description of access to the property, including any easements, shared driveways, or similar means of access;

iii. A limit on the number of guests; the number of parking spaces available to guests. Onsite parking on the Parcel shall be sufficient to accommodate the guests designated for a Short Term Rental and shall be limited to the number of vehicles for which there are parking spaces.

iv. Any advertisement for a Short Term Rental shall set forth the maximum number of guests allowed and the number of parking spaces available.

v. Written proof of compliance with health, tax, fire, and any other State and County law or regulations.

vi. The Contact Information of the Contact Person shall be posted on the property in a place available to renters. The Contact Information shall also be available to the public with the Planning Director. The Contact Person shall be available to address issues regarding the property, including but not limited to complaints and alleged violations of this Regulation or the Conditional Use.

vii. If the Contact Information changes the new Contact Person shall forthwith notify each adjacent property owner that received notice of the application for  
Commented [RL8]: To be added to list of Conditional  
Uses in AE and RF sections.  
Commented [RL9]: Revise reference per new admin  
regs.

the Conditional Use pursuant to Section 18.3.6 (the “Adjacent Property Owners”). Such notification shall be at the expense of the owner of the Parcel.

c. A Conditional Use for Short Term Rental is subject to revocation or restrictive amendment by the Planning and Zoning Commission upon violation of any of the conditions and in the manner provided in Section 18.3.9.

d. Advertising of any Short Term Rental shall be presumptive evidence of an owner of a Parcel’s intent to lease or operate Short Term Rental. Advertisement of a Short Term Rental without grant of a Conditional Use may subject owners or their agents to enforcement action under this Regulation.

e. The Conditional Use for a Short Term Rental shall be for a fixed term not to exceed [two] years, shall not run with the land and is personal to the owner of the Parcel and his heirs or devisees.

f. No application for a Conditional Use for Short Term Rental can be made unless a natural person who owns or is a principal in an entity that owns the Parcel shall have resided in the Single Family Residence or Dwelling Unit for twenty-four months prior to the application for the CUP.

g. A Conditional Use for Short Term Rental may be renewed. Any such application shall

be filed at least thirty days prior to expiration of the Conditional Use. The Planning Director may provide an administrative determination for renewals of a Conditional Use for Short Term Rental for Parcels where there has been no violation of law, this Regulation, or any conditions since the Conditional Use was granted. All notice provisions of this Regulation and rules of the Planning and Zoning Commission for Conditional Uses shall apply for any renewal.

h. If a Conditional Use for Short Term Rental has been revoked or terminated for a Parcel for any reason, a new Conditional Use must be authorized by the Planning and Zoning Commission who shall only consider any such new application on its own merits giving no weight to any prior Conditional Use granted. Any past violations on the Parcel shall be considered as a rebuttable presumption that the renewal should not be granted.

j. The Conditional Use for Short Term Rental for any Parcel shall terminate upon:

i. A sale or other transfer of the Parcel to anyone other than a heir or devisee of an owner who is a natural person.

ii. A sale of controlling interest in any entity that owns the Parcel. that is not a natural person.

iii. A change of Controlling Person for a Parcel as defined above.

Commented [RL12]: I recall the PD reps arguing for three years or longer.

Commented [GLO13]: Has this been upheld elsewhere?

Commented [GLO14]: I have bad experiences with the Commission and rebuttable presumptions.

Commented [GLO15]: I don't think we need to qualify to a natural person.

15.16.3 Grace Period for Pre-existing Short Term Rental Properties. Any owner of a Parcel who believes that is qualified for a nonconforming Conditional Use for Short Term Rental ("Nonconforming Applicant") shall have twelve months from the effective date of this Section 15.16 (the "Grace Period") to apply to the Planning Director to confirm the Conditional Use. Only application is made during the Grace Period, any Nonconforming Applicant shall be relieved of the requirements of Section 15.16.2(f) provided that the Property has been used as a Short Term Rental continuously for twelve months immediately prior to the effective date of this Section 15.16.

Commented [RL16]: Needs to be reviewed by counsel.

Commented [GLO17]: Could we call it registration of the nonconforming use under the grace period as a matter of right?