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ATTORNEYS FOR PLAINTIFF

MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, GALLATIN COUNTY

BRIDGER CANYON PROPERTY OWNERS, INC.,

Plaintiff & Appellant,

vs.

BRIDGER CANYON PLANNING AND ZONING
COMMISSION and THE GALLATIN COUNTY
COMMISSION,

Defendants & Appellees.

Cause No. _____
Hon. _____

**APPEAL &
COMPLAINT**

**I.
NATURE OF ACTION.**

1. This is an appeal filed by the Plaintiff, Bridger Canyon Property Owners' Association, Inc. ("BCPOA") concerning the validity of several decisions made by Defendants, Bridger Canyon Planning and Zoning Commission and/or the Gallatin County Commission with respect to land use applications made by John and Jennifer Petty.

**II.
PARTIES.**

2. The Plaintiff, BCPOA, is a Montana non-profit corporation duly authorized and existing under the laws of the State of Montana, with its principal place of business in Gallatin County, Montana. The purpose of the BCPOA is, among other things, to preserve the rural character and the natural beauty and resources of Bridger Canyon; to use its best efforts in

1 the date of the relevant decisions, this appeal is timely. MCA § 76-2-110; Zoning Regulation,
2 Section 17.5.d.

3 IV.

4 FACTS.¹

5 8. On July 12, 1971, the Gallatin County Commissioners created, by resolution, the
6 Bridger Canyon Zoning District and adopted Regulations for that District. In addition, pursuant
7 to MCA Section 76-2-101, et. seq., the County adopted a development pattern, consisting of the
8 Bridger Canyon General Plan and the Zoning Regulation.

9 9. The purposes of the Bridger Canyon District, and the regulations adopted
10 thereunder, are to promote health, safety and general welfare and to:

- 11 a. Prevent overcrowding;
- 12 b. Avoid undue population concentration;
- 13 c. Conserve property values commensurate with use;
- 14 d. To preserve fish and wildlife habitat;
- 15 e. To prevent soil erosion;
- 16 f. To preserve the scenic resources;
- 17 g. To ensure high water quality standards;
- 18 h. To protect agriculture lands from the effects of urban encroachment;
- 19 i. To promote business, residences, tourism and recreational uses but not to the
20 point that they destroy the character of the area . . . threaten water quality, traffic
or fire safety;
- 21 j. To encourage innovations in residential developments so that growing demands of
22 housing may be met by greater variety in type, design and layout of tracts and by
conservation and more efficient use of open space ancillary to said housing;
- 23 k. To provide adequate open space, light, and air;

25 ¹ BCPOA incorporates by reference, the entire administrative record in this case,
26 including the Planning Department file, staff reports, Resolutions, Findings of Fact and
27 Conclusions of Law and the audio tapes referenced in the printed documents, but not transcribed
by the County in its written decisions.

1 l. To carry out the master or comprehensive plan for the Bridger Canyon District;

2 m. To prevent the spread of noxious weeds.

3 Regulations, Section 2.1 at p. 4. To these ends, the Bridger Canyon Zoning Regulations apply to
4 all proposed uses of land within that district.

5 10. John and Jennifer Petty are the owners of certain real property located at 10600
6 Bridger Canyon Road, within the Bridger Canyon Zoning District. The property is located in the
7 SW1/4 of Section 17, Township 1 South, Range 7 East, P.M.M., Gallatin County, Montana. The
8 property is located within the "AE" ("Agricultural Exclusive") District. The intent of the AE
9 District is to preserve agriculture as one of the primary occupational pursuits and an economic
10 endeavor in Bridger Canyon. Regulation, Section 6.1.

11 11. At the time of the Petty's purchase of the property at issue in June, 2012, a single
12 family residence, built in 1928, and three additional structures, built in 1900, existed on the
13 property. The property also includes a pond and is bisected by Bridger Creek.

14 12. Buildings are permitted within the AE District after securing approval of a
15 conditional use permit (CUP). Regulation, Section 6.3. The minimum setbacks for residential
16 buildings within the AE District are: twenty-five (25) feet from any property line, road right-of-
17 way or road easement; one hundred (100) feet from any creek; one hundred and twenty-five (125)
18 feet from the right-of-way of the Bridger Canyon Road, Kelly Canyon Road, and Jackson Creek
19 Road. Regulation, Section 6.5b.

20 13. No structures within the Bridger Canyon District, including the AE district, shall
21 be built, moved or structurally altered until a building permit has been issued by the Planning and
22 Zoning Commission or their agent. Regulation, Section 17.2. Building permits may be issued
23 only for uses in conformance to the Bridger Canyon Zoning Regulations, upon approved
24 conditional use permits or variances, and where authorized by the Planning and Zoning
25 Commission. Regulation Section 17.2.1. In the event a prospective building does not comply
26 with the provisions of the Regulations, the prospective permittee must apply to the Planning and
27

1 Zoning Commission for a variance. Regulations Section 17.2.4. Pre-existing non-conforming
2 uses and structures are subject to the requirements of Section 14 of the Regulations.

3 14. On or about September 7, 2012, the Gallatin County Planning Staff approved a
4 land use permit for the construction of a 2100 square-foot-addition to an existing residence on
5 the Petty property. However, the Planning Department advised the Pettys that their proposed
6 remodeling of two (2) barns from agricultural buildings to residential buildings, including the
7 addition of a porch and 128 sq.-ft deck, required application for and approval of a CUP and later
8 it was determined that a variance was required because the buildings (barns) being converted to
9 residential uses are within one hundred (100) feet from Bridger Creek. Nevertheless, the Pettys
10 commenced construction activities without all required approvals and permits.

11 15. On or about September 25, 2012, the owner of Lost River Builders, the contractor
12 for improvements to the Petty property advised the County Planning and Zoning Staff that his
13 company was "no longer associated with the project at 10600 Bridger Canyon Rd [and]
14 requested[ed] that [his] name and information be removed from all land use permits pertaining to
15 [the] project."

16 16. By letter dated October 11, 2012, the Planning Department asked the Pettys to
17 clarify their intended uses of the barns, as remodeled.

18 17. On or about November 1, 2012, a member of the BCPOA filed a complaint with
19 respect to the Petty's construction activities asserting they were not permitted or beyond the
20 scope of uses authorized by the County.

21 18. By letter dated November 9, 2012, Christopher Scott, Planner for Gallatin County,
22 advised the Pettys that his site inspection on November 7, 2012 revealed the commencement of
23 construction on the property of a greenhouse without approval of the required land use permit.
24 Accordingly, he assessed an additional fee upon the Pettys and specifically advised them that
25 "[t]he other building additions as proposed with the LUP are not approved at this time until you
26 clarify in writing your intended use(s) of both remodeled barns as requested in my October 11,
27

1 2012 letter.” During that same inspection, Nicole Olmstead, Code Compliance Specialist for
2 Gallatin County, documented that construction was under way on not only the main residence,
3 but also on three historic structures located east of the main residence. She did not, however,
4 affirm the BCPOA’s complaint, admonishing the Pettys by letter dated November 29 to obtain
5 permits before undertaking additional work.

6 19. By letter dated November 14, 2012, the Pettys advised Mr. Scott that they
7 intended to convert one of the barns into a guest house and a portion of the other barn into a “rec
8 room” for use by people, including their teenage children as well as construct additions to the
9 barns, in the form of a deck and porch.

10 20. The next day, November 15, 2012, The Pettys applied for a CUP for the barn
11 remodeling (converting a portion of a pre-existing structure to residential use), and also requested
12 a variance from the 100' setback requirement for Bridger Creek, stating: “This barn is located less
13 than 100' from Bridger Creek and ‘Residential use’ is generally not permitted.”

14 21. On January 10, 2013 the Defendants held public hearings with respect to (1) the
15 Pettys’ Application for Conditional Use Permits for a Guest House and Accessory Building used
16 for a recreation roof (Planning and Zoning Commission); and (2) two variances from the
17 Regulation’s residential building creek setback requirement of 100 feet within the AE Zoning
18 District (County Commission and Planning and Zoning Commission. Prior to the public
19 hearings staff prepared and submitted to the Commissions Staff Reports for each request.

20 **A. THE JANUARY 2013 CUP REQUEST.**

21 22. Staff’s Report to the Planning and Zoning Commission made certain findings with
22 respect to the Background of the Petty property, the Petty’s Proposal, Adjacent Land Uses and
23 Zoning, Topography, Access, Sanitation and Notice Requirements. Staff Report, dated January
24 10, 2010 at 3-4. The Report then discussed the applicable Zoning Regulations and the
25 Conditional Use Permit Criteria of Section 17.3.2. *Id.* at pp. 4-6. Staff suggested that, after
26 considering the public testimony that the Planning and Zoning Commission make two (2)

1 determinations as to whether or not to approved the requested CUPS for a Guest House and
2 accessory building for the use of a recreational room. To that end, Staff advised the Commission
3 that it was required to find that the establishment, maintenance, or operation of the uses or
4 buildings applied for would not, under the circumstances of the particular case, be detrimental to
5 the health, safety, peace, morals comfort and general welfare of the Bridger Canyon Zoning
6 District. *Id.* at 6. Finally, Staff suggested a number of specific conditions for each building, in
7 the event the Commission approved one or both CUP applications, including the acquisition of
8 variances from the required 100-foot setback from Bridger Creek. *Id.* at 6-7.

9 23. Attached to the Staff Report was, among other things, a memorandum from Alan
10 English, of the Gallatin Local Water Quality District, expressing concern that the locations of the
11 proposed structures and proposed improvements may be withing the floodplain of Bridger Creek.
12 *Id.*, Exhibit A. These improvements included not only the conversion of agricultural buildings
13 to residential use, but also installation of a septic/dose tank, sewer lines, propane lines, a propane
14 tank, water lines, power lines, fencing, a zip line tower and a new asphalt driveway within or
15 very close to 100-feet from the creek and potentially within the floodplain. He recommended a
16 floodplain delineation study before granting the requested CUP. *Id.*, Exhibit A.

17 24. The Appellant, BCPOA, submitted written comments with respect to the CUP
18 application. The BCPOA noted, initially, that the Pettys knowingly violated the Zoning
19 Ordinance by proceeding with significant alterations to existing structures without applying for
20 or receiving the requirement authorizations and permits. BCPOA Comments, dated January 9,
21 2013 at 1-2.

22 25. With respect to the CUP application, the BCPOA observed that not only was a
23 variance required before it could be approved, but also evidence and finding the absence of harm
24 or risk under Section 17.3.2 of the Regulations. *Id.* at 3. To this end, the BCPOA asserted that
25 the application failed to meet this standard, for several reasons, including those noted by the
26 Water Quality District. *Id.* at 4.

1 26. Following public testimony, the Zoning Commission approved the CUP
2 application, conditioned upon the Pettys receiving variance approval to allow the proposed
3 residential buildings to be located within the 100-foot residential building setback.

4 **B. THE JANUARY 2013 VARIANCE REQUESTS.**

5 27. Following the hearing on the Petty CUP request, the Defendant County
6 Commission and Planning and Zoning Commission considered the Pettys' requests for two (2)
7 variances from the stream-side set back requirements. Again, Staff prepared a Report with
8 certain findings including the fact that Pettys sought to convert existing agricultural buildings to
9 residential uses, one of which is 53 feet from Bridger Creek and the other 57 feet from the creek.
10 Staff also observed that the Pettys proposed expanding the buildings' foot prints with the
11 addition of a new 80-square foot porch and a 128 square foot deck on one building and a 250
12 square foot covered deck on the other. *Id.* at p. 3.

13 28. Staff then discussed the applicable zoning regulations and the requirements
14 applicable to the variance requests. It summarized the Applicants' position with respect to the
15 variance requests and made various recommendations for additional conditions should the
16 Planing and Zoning Commission recommend approval to the County Commission of the
17 requested variances.

18 29. The BCPOA submitted additional written testimony and objections to the Pettys'
19 variance requests noting that the Pettys did not meet the requirements applicable to the granting
20 of the requested variances including the absence of a flood plain study, the fact that subdivision
21 and best practices identified by the Montana Fish, Wildlife and Parks recommends setbacks of
22 300 feet from rivers, with vegetated buffers of 150 feet, based on actual scientific studies.
23 BPCOA also observed that the proposal included a fenced yard within 15-25 feet from the bank
24 of the Creek which would restrict wildlife movement and encourage disturbance of the land very
25 close to the bank.

26 30. BCPOA further noted that the proposed design for the "rec room" remodel
27

1 included a new porch and deck and that enlargement of existing non-conforming structures was
2 expressly forbidden by the Regulations and there was no basis for entertaining or granting a
3 variance for these features.

4 31. On January 10, 2013, the Planning and Zoning Commission, following a joint
5 public hearing with the County Commission, rejected the variance requests on its merits. The
6 Commissions' actions were later reduced to writing in the form of Findings of Fact, Conclusions
7 of Law and Recommendation, dated February 26, 2013.

8 C. **THE PETTYS PURPORT TO "WITHDRAW" THEIR REQUEST FOR**
9 **VARIANCES FOLLOWING DENIAL BY THE PLANNING AND ZONING**
10 **COMMISSION AND THE SUBSEQUENT APPLICATIONS BY THE**
11 **PETTYS AND APPROVALS BY DEFENDANTS.**

12 32. The Pettys did not pursue the denial of the requested variances through the
13 administrative process, electing instead to "withdraw" their requests and then reapplied a short
14 time later.

15 33. The Pettys requested permission of the Planning and Zoning Commission to allow
16 further application of their variance requests within one (1) year of the Planning and Zoning
17 Commission's rejection of their variance request pursuant to 17.3.5 of the Zoning Regulations.
18 The Pettys claimed that "substantial change of conditions existed from those existing at the time
19 of the previous Commission denial of their requests."

20 34. Sections 17.3.5.b and c. of the Bridger Canyon Zoning Regulations provide in
21 relevant part:

- 22 b. If an application for conditional use permit or variance is rejected on its
23 merits by the Planning and Zoning Commission, no further application for
24 a permit for the same use on the same property may be filed for a period of
25 one (1) year from the effective date of such denial except as provided in
26 subsection (c) below.
- 27 c. A further application may be filed by such applicant for such use on such
28 property within such one (1) year period with the permission of the
Bridger Canyon Zoning Commission. Such permission shall be granted
only if the applicant can show a substantial change of conditions from
those existing at the time of such previous denial.

Id. (emphasis added).

1 35. On April 11, 2013, the Defendants held a public hearing on the Pettys' request to
2 rehear its variance application that was rejected on its merits only three (3) months before.
3 Between the January 2013 rejection and the Petty's subsequent request for rehearing, there had
4 been no change (let alone "substantial change") of conditions applicable to the Petty property.
5 Nor did the Pettys provide any evidence different from that provided in the January hearing that
6 supported a change in the decision.

7 36. Between the January, 2013 rejection and the April 2013 public hearing there had
8 been no change in the proposed location of the structures; no change in the proposed use of the
9 structures; no change in the topography, size, or other circumstances of the property; and no
10 additional similar privileges that might establish deprivation was present or had been granted to
11 properties in the vicinity.

12 37. The Pettys did submit a "Design Report" using a study prepared for land more
13 than two (2) miles down the road as a basis for the report's contents. Alan English, Manager of
14 the Gallatin Local Water Quality District, who submitted an earlier memo to the Defendants,
15 expressing serious concerns about the proposed variances and recommended a floodplain
16 delineation prior to granting a CUP, reviewed the Petty's "Design Report" and concluded that his
17 original concerns and questions had not been addressed, stating:

- 18 1. It is not a flood study, as is stated in the first paragraph under
19 Methodology in page 2;
- 20 2. While the report says that detailed cross sections were completed, the ones
21 in the report are clearly not detailed.
- 22 3. The photo of bedrock on page 5 does not indicate how high the bedrock is,
23 and the bedrock, along with the water table are not shown in the cross
24 sections. You are correct that the study does not show the channel at the
25 bed.
- 26 4. Given the pond location, and everything else, this report does not provide
27 me with much for answers to my earlier questions, and I am not convinced
28 that there is no flood hazard.

Email from English to Stratford, dated April 10, 2013 (emphasis added), copy attached as
Exhibit B.

1 38. BCPOA submitted additional comment and testimony to the Defendants,
2 including submission of the English email discussed in paragraph 37. BCPOA asserted that not
3 only had the Pettys failed to demonstrate the required "substantial change" from their prior
4 application that had been rejected on the merits only months before, and therefore should not be
5 considered, but that the Pettys application failed on its merits and did not meet the standards
6 applicable to variance requests under Montana law and the Bridger Canyon zoning regulations.
7 It asked that the Defendants DENY the requests.

8 39. The Defendants voted to hear the variance application, even though one year had
9 not passed and then, on a 4-3 vote, voted to approve the requested variances. As a result, the
10 Defendants approved, on April 11, the CUP that had been previously considered but could not be
11 approved pending resolution of the variance issues. On April 23, 2013, the Defendant County
12 Commission executed resolution 2013-042, approved the Pettys' variance request as submitted
13 by the Pettys, subject to conditions.

14 40. The BCPOA, an aggrieved party, files this appeal challenging the Defendants'
15 decisions with respect to (1) granting the CUP; (2) granting the Pettys' request to hear their
16 variance request a second time within one (1) year when they failed to demonstrate the requisite
17 "substantial change" in conditions to authorize the rehearing of the request; and (3) the variance
18 requests, on their merits, failed to satisfy the standards applicable to such request, was not
19 supported by the evidence, and therefore the Defendants' decision was in error and requires
20 reversal.

21 **COUNT/APPEAL ISSUE I.**

22 **VIOLATION OF SECTION 17.3.5.**

23 41. BCPOA incorporates by reference paragraphs 1-40 of this Appeal.

24 42. The Pettys' application for a variance was rejected in January, 2013, on the merits
25 of the application.

26 43. Under Section 17.3.5 of the Bridger Canyon Regulations, no further application
27

1 for a permit for the same use on the same property could be filed by the Pettys for a period of one
2 (1) year from the effective date of such denial unless they could demonstrate a "substantial
3 change" of conditions from those existing at the time of such previous denial.

4 44. The Pettys failed to demonstrate a substantial change of conditions from those
5 existing at the time the Commission rejected their variance application on the merits.

6 45. Accordingly, the decision by the Planning and Zoning Commission to authorize
7 the filing of a further application for a variance within one (1) year after it rejected the same
8 requests on the merits was an abuse of discretion, arbitrary and capricious, not supported by the
9 evidence, and unlawful and is properly reversed by this Court.

10 **COUNT/APPEAL ISSUE II.**

11 **VARIANCE REQUESTS & APPROVAL.**

12 46. BCPOA incorporates by reference paragraphs 1-45 of this Appeal.

13 47. In the alternative, or in addition thereto, the Pettys failed to satisfy the standards
14 applicable to granting variance requests under Montana law. The Pettys failed to show either
15 deprivation or hardship that would be imposed upon them by application of the zoning; the new
16 evidence submitted in April, 2013, with respect to a Design Study, demonstrated no hardship, let
17 alone unnecessary hardship; they failed to show that any alleged unnecessary hardship was
18 caused by exceptional, non-self imposed circumstances that are unique to their property; they
19 failed to demonstrate that the variance was necessary for the preservation of property rights that
20 are substantially the same as those possessed by owners of other property in the same zone; they
21 failed to demonstrate that granting the variance would not confer on them any special privileges
22 that the zoning regulation denies to other property owners in the same zone; and they failed to
23 demonstrate that the variance would not harm the public interest. Instead, the alleged hardship
24 was self-imposed, primarily financial in nature, and the restrictions on their property were in
25 existence and a matter of public record years before they purchased their property and thus they
26 were on constructive notice of the requirements and restrictions applicable to their property. The
27

1 requested variance also did not mitigate effect on views and was inconsistent with the General
2 Plan.

3 48. The Defendants' decision to approve the variance was therefore arbitrary and
4 capricious, clear error, not supported by the evidence and unlawful. Moreover, there was limited
5 or no evidence upon which the Defendants' decision could be supported. In particular, the
6 Commission's evidence of "privileges enjoyed by others" was an aerial photograph, for which no
7 attempt was made to identify the nature or legality of the structures shown. In sum, because there
8 are no factual or legal grounds supporting the requested variances, the decisions to approve both
9 variance requests are properly reversed by the Court.

10 **COUNT/APPEAL ISSUE III.**

11 **CUP REQUEST AND APPROVAL and NON-CONFORMING USES OF LAND AND**
12 **STRUCTURES.**

13 49. BCPOA incorporates by reference paragraphs 1-48 of this Appeal.

14 50. The barns at issue are residential accessory structures and are not exempt from the
15 AE district residential setbacks or subject to an agricultural zoning exemption and, as such, they
16 are non-conforming and subject to the applicable regulations for non-conforming uses of land
17 and structures, sections 14.3 and 14.4 of the Regulations.

18 50. The Defendants' decision to approve the conditional use permit requested by the
19 Pettys, which became effective on April 11, 2013, with the erroneous approval of the requested
20 variances, did not comply with the existing standards applicable to such requests, was not
21 supported by the evidence, was an abuse of discretion and unlawful. In addition, the decisions
22 have the effect of unlawfully expanding a non-conforming structure. Accordingly, the decisions
23 to approve the CUP is properly reversed by this Court.

1 **COUNT/APPEAL ISSUE IV.**

2 **REQUIREMENT OF WRITTEN FINDINGS AND VIOLATION OF PUBLIC**
3 **PARTICIPATION IN GOVERNMENT OPERATIONS.**

4 51. In all of the decisions rendered by the Defendants, the Defendants' written
5 Findings of Fact, purporting to justify its decision(s) generally refer to audio tape testimony at
6 certain time intervals, which runs afoul of and is inconsistent with the requirement that the
7 Commission "shall make its decision in writing, which decision shall include findings of fact as
8 to whether the criteria established for the issue of a permit are satisfied." Regulation, Section
9 17.3.7. Moreover, MCA Section 2-30212 requires that if an audio recording of a meeting is
10 made and designated as official, a written record of the meeting must also be made and include
11 certain information set forth in MCA Section 2-3-212(2). The purpose of these statutes and
12 regulations is to provide assistance to the public and decision makers in understanding the basis
13 upon which decisions are made and to implement the public's rights under Article II, section 9 of
14 the Montana constitution and implementing laws.

15 52. The actions of the Defendants fails to comply with its own Regulations and
16 violates the Public Participation in Government Operations Act, by adopting as specific findings
17 of fact, to support substantive decisions, only general references to the time when certain
18 comments are made during a tape recorded meeting -- without more -- infringes the public's
19 rights of participation and, under MCA Section 2-3-213, the decisions of the Defendants in this
20 matter are void and BCPOA is entitled to recover its costs and reasonable attorneys fees under
21 MCA Section 2-3-221.

22 **PRAYER FOR RELIEF.**

23 WHEREFORE, the BCPOA prays for judgment against the Defendants as follows:

- 24 1. For an Order reversing the Defendants' decision to allow consideration of the
25 application for two (2) variances within one (1) year of their rejection of the same
26 requests the merits;

2. For an Order reversing the Defendants' decisions to grant the requested variances;
3. For an Order reversing the Defendants' decisions to grant the CUP;
4. For an Order denying the issuance of any land use permit for the requested improvements (including expansion thereof) subject to this application;
5. For an Order declaring the barns as being subject to Sections 14.2 and 14.3 of the Regulations and rejecting the Pettys' request to unlawfully expand existing non-conforming uses;
6. For an Order declaring the Defendants' written findings of fact, based upon a tape recording that is not transcribed, void and of no effect as a violation of the Public Participation in Government Operations Act, the Bridger Canyon Zoning Regulations and the Montana Constitution.
7. For BCPOA's costs and attorneys' fees as allowed by law, including MCA Section 2-3-221; and
8. For such other and further relief as the Court deems just and equitable.

DATED this 10th day of April, 2013.

GALLIK LAW FIRM, P.C.

By: 

Brian K. Gallik

ATTORNEYS FOR PLAINTIFF/APPELLANT
BRIDGER CANYON PROPERTY OWNERS'
ASSOCIATION.

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CAUSE NO. _____
APPEAL



Gallatin Local Water Quality District


1709 W. College Street, Suite 104 Judge Guenther Memorial Center – Bozeman, MT 59715
(406) 582-3148 www.gallatin.mt.gov/GLWQD



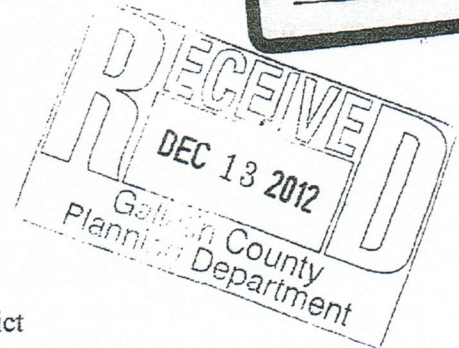
MEMORANDUM

DATE: December 12, 2012

TO: Christopher Scott, Planner

FROM: Alan English, Manager 

SUBJECT: Petty CUP/Variance, Bridger Canyon Zoning District



I reviewed the above referenced CUP application for John and Jennifer Petty. My main concern is that the locations of the structures and proposed improvements may be within the floodplain of Bridger Creek.

The 2011 FEMA maps don't extend up Bridger Creek to this property, and it is my understanding that a 1972 floodplain study along Bridger Creek also stops short of this property. The proximity of the two barn structures to the creek (less than 60-feet) and the presence of the pond just north of the structures, suggests groundwater is very shallow. The barns may be susceptible to either direct flooding from overbank flow, or ponding associated with high groundwater in the area during high flow periods in the creek. The alignment of the channel of Bridger Creek directly north of barn #2 is directly towards the area of the barns, with a sharp meander back towards the southwest. During a large flooding event the creek could either overtop the bank, or the channel could migrate even closer to the barns.

I understand that the two barns are existing structures associated with agriculture, but the application indicates that the barns will be almost completely rebuilt, or already have been. This could result in a significant increase in the potential for property damage during flooding events, and if all of the proposed changes are made, potential for new sources of contamination in the creek during flooding events.

Along with the proposed change in structure use to residential, there will be other infrastructure that could be damaged by a flooding event, or cause changes in the flow of floodwaters through the area. The proposed rebuilding of the two barns will include installation of a septic/dose tank, sewer lines, propane lines, a propane tank, water lines, power lines, fencing, a zip-line tower, and a new asphalt-gravel driveway, all within or very close to 100-feet from the creek and potentially in the floodplain. I recommend that a floodplain delineation be required prior to granting the CUP.

If you have any questions or need additional information please feel free to call me at 582-3148 or email me at alan.english@gallatin.mt.gov.

-A-

Exhibit 1

Page 1 of 2

Deb Stratford

From: English, Alan [Alan.English@gallatin.mt.gov]
Sent: Wednesday, April 10, 2013 11:14 AM
To: Deb Stratford
Subject: RE: Flood plain Study - Petty property

I will try and send comments, but I am getting ready to leave for two weeks, and am swamped. The email is public record, use as you like, Thanks, Alan

Alan English, Manager
Gallatin Local Water Quality District
215 West Mendenhall, Suite 300
Bozeman, MT 59715
(406) 582-3148 (Office)
(406) 539-2818 (Cell)

From: Deb Stratford [mailto:Debsplace@latmt.com]
Sent: Wednesday, April 10, 2013 11:13 AM
To: English, Alan
Subject: RE: Flood plain Study - Petty property

Thank you!

If you have not sent comments or do not intend to attend the hearing would you consider doing so. And my I include your email in my comments?
D

From: English, Alan [mailto:Alan.English@gallatin.mt.gov]
Sent: Wednesday, April 10, 2013 11:08 AM
To: Deb Stratford
Subject: RE: Flood plain Study - Petty property

Hi Deb: I did take a look at it earlier, seemed very basic to me.

1. It is not a flood study, as is stated in the first paragraph under Methodology in page 2.
2. While the report says that detailed cross sections were completed, the ones in the report are clearly not detailed.
3. The photo of bedrock on page 5 does not indicate how high the bedrock is, and the bedrock, along with the water table are not shown in the cross sections. You are correct that the study does not show the channel at the bed.
4. Given the pond location, and everything else, this report does not provide me with much for answers to my earlier questions, and I am not convinced that there is no flood hazard.

Alan

Alan English, Manager
Gallatin Local Water Quality District
215 West Mendenhall, Suite 300

4/10/2013

- B -

Bozeman, MT 59715
(406) 582-3148 (Office)
(406) 539-2818 (Cell)

From: Deb Stratford [<mailto:Debsplace@latmt.com>]
Sent: Wednesday, April 10, 2013 8:17 AM
To: English, Alan
Subject: Flood plain Study - Petty property

Hi Alan,

Would you have time to make a quick review of the attached report and respond to a few questions I have about it, the hearing is scheduled for tomorrow morning at 9am (sorry for the short notice). You may recall the Petty Conditional Use Permit application and public hearing you attended in January of this year. A "study" was done in late January or February, I believe, in response to your memo and testimony regarding their requests to encroach on the required stream setback.
(Please let me know if it is not appropriate for you to respond to any one of my questions.)

As I read through the study from a layman's point of view

- 1) It appears not to be a study at all, but rather conclusions based on another study done 2+ miles down the road. Am I correct in saying that a floodplain study has not been done on this parcel?
- 2) I expected some mention of the ground water level on that particular parcel and consideration of the existing pond; I didn't recognize any comments that appeared to take either into consideration. Are those pertinent components of a flood study? Did I miss them?
- 3) Is it typical not to include supporting data?
- 4) The study appears to have been concentrated on a short section of the stream that does not include the bend, is that a correct assumption? And is it pertinent?

Water quality, as you may know, has been and continues to be a primary concern of canyon residents. I believe that any encroachment into the current stream setback should not occur, especially since 100ft is considerably less than recent recommendations, except under extraordinary circumstances. Any assistance you can provide is appreciated.

Thank you for your comments, time and consideration of my request.

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Exhibit 2

Spring run-off in the 1980's



1980's aerial photo – indicating location of above flooding

