Date: 9/12/2016

To: BC Planning & Zoning Commission

From: BCPOA Board of Directors

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Re: Ivey Caretaker's Residence CUP decision

BCPOA respects the Commission's efforts to promote the general welfare of our zoning district at the Ivey Caretaker's Residence CUP hearing on May 12th. We agree that guesthouse, caretaker and mother-in-law amenities have value, and we support the draft zoning update, which provides a better framework for approving and regulating them. However, there is another thing we value greatly: rule of law, which was not served in this case. The Commission's decision conflicts with precedent and the plain language of our zoning documents and ignores the wishes of a majority of residents.

The Commission must interpret the current zoning as it is written for the benefit of the public, not as it will be, or ought to be to suit the situation of a single applicant. Were it not for the fact that the Regulation misinterpreted by the Commission will soon be replaced in the update, BCPOA would have appealed this decision and been virtually certain of having it overturned.

A caretaker's residence is, by definition[1], a Dwelling Unit. In any case, no one could reasonably suggest that a separate, rentable structure the size of a house, with sleeping and cooking facilities, is not a "dwelling" in ordinary English. Our General Plan explicitly provides for one Dwelling Unit per 40 acres[2]. Together with the existing residence, the decision permits two Dwelling Units on one small parcel.

The Commission advanced two arguments to justify this seeming contradiction:

1. Equal treatment: that because "all regulations as categorized shall apply uniformly to each class or kind of structure or land"[3] a small parcel is entitled to an extra dwelling as much as a large parcel.

[1] Zoning Regulation, §3.12
[2] General Plan, Pg. 21
[3] Zoning Regulation, Section 5

2. Commission precedent: that Caretaker Residences have been granted in the past, without consideration of density.

Both arguments are invalid, again as a matter of law.

1. If all parcels are entitled to "equal" density, owners of small parcels could claim development rights on a one for one basis to large parcel owners. This completely unravels the regulation of density, contrary to basic legal principles[4] and contradicts the letter of the zoning[5].
2. Past Commission decisions that contradict the explicit letter of the law are of no force or effect. Errors do not generally improve with mere repetition.

Further, if precedent were truly relevant, we encourage the Commission to consider the recent record, in which every approval has been subject to an express condition prohibiting rental of the Caretaker's Residence separate from the primary residence[6]. We are dismayed that this historical restriction was not applied in this case. Looking further back, other owners have faced significant challenges acquiring Caretaker's Residences on large parcels[7], and been required to transfer density in a PUD to create very modest rentable dwellings[8]. This history certainly belies the earlier stated principle of equal treatment.

During discussion, it was suggested that rentals are better regulated through the complaint process. This strikes us as a painfully expensive and contentious approach for taxpayers, neighbors, enforcement staff, and the Commission itself. It is far better to set expectations and permit structures and uses that are consistent with the zoning regulation up front. A dollar of prevention is worth ten dollars of cure.

If this decision seems to ignore the desires of Bridger Canyon residents, that may be because the Commission discussion focused on the experience of caretakers and rental units in Big Sky. The goals and plans of the Big Sky and Bridger Canyon zoning districts are very different. Big Sky was created as a resort community. In contrast, our residents petitioned to create the district over forty years ago to provide for "limited, controlled growth compatible with the natural environment"[9] of the canyon. Every time a decision bypasses the zoning regulation in favor of an individual applicant by chipping away at the density or other foundations of our plans and regulations, it takes something away from the residents of Bridger Canyon. Property values are diminished and we experience greater impacts on traffic, water, wildlife, and visual qualities of the area – the very qualities the zoning regulation was enacted to preserve. It upsets District residents' reasonable expectations that the zoning regulation means what it says.

There continues to be broad public support for low density in Bridger Canyon, and there is little appetite for caretakers or rentals everywhere. We recently surveyed 380 residents (out of about 400 households

[4] One may not interpret a statute to its defeat.
[5] Zoning regulation, §4.5.d
[6] See Kendrick, Hager and Carnine CUPs for recent examples, and the revocation of the Drinking Horse Ranch CUP for rental use
[7] Sager, 2005
[8] Stonington, 2001
[9] General Plan, Pg. 2

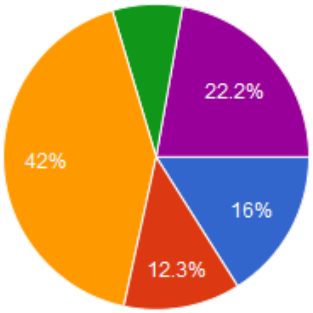
in the Canyon). 77% of respondents felt that rentals separate from the primary residence should be prohibited. The Ivey decision is not only out of step with the letter of the zoning, it is contrary to the wishes of a strong majority of residents.

We appeal to you the Commissioners in hope that you will, in the future, interpret our zoning as it is written, and judge it in the light of our long-standing General Plan goals when ambiguities arise. When there is a need for change, let it happen through a legislative process that considers the public good exclusively, not individual decisions that establish erroneous precedents. Thank you for your attention.

For the BCPOA board, respectfully,

Tom Fiddaman

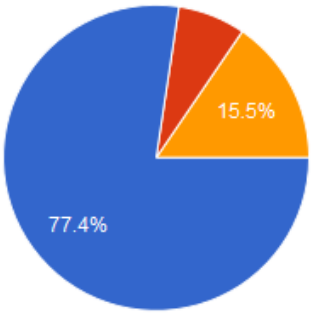
Where should Accessory Dwellings be permitted? (81 responses)



- On every parcel
- On parcels with 2 or more density units (i.e. 80+ acres, or with a density transfer)
- On large parcels, and on small parcels only after obtaining a Cond...
- Under limited conditions (please explain in Comments)
- Nowhere (require explicit subdivision for additional dwellings)

Should Accessory Dwellings be rentable, separately from the primary residence?

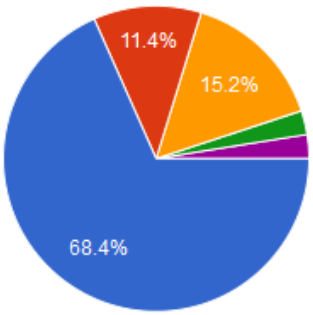
(84 responses)



- No
- Under limited conditions (please explain in Comments)
- Yes

If rentable Accessory Dwellings are provided for most parcels, how should we reconcile this with the General Plan?

(79 responses)



- We shouldn't do this
- Amend the plan to increase the basic density to 2 dwellings per 40 acres
- Redefine density
- Decrease density in other ways (larger minimum lot size, or no PUD bouns)
- Other