

Date: 10/12/2016

To: BC Planning & Zoning Commission

From: BCPOA Board of Directors (unanimous), Tom Fiddaman, 1070 Bridger Woods Road, Chairman

Re: Simmons PUD

BCPOA opposes the Simmons PUD application as submitted and amended, and as reviewed in the Staff Report. However, we recently met with the applicant and are hopeful that the project could be made acceptable. We would prefer to see this hearing continued to provide time for revisions, rather than denied, but if we must proceed on the current documents then denial is the appropriate course.

This project would entail the densest PUD and the biggest proportional density bonus in the history of Bridger Canyon. "The planned unit development designation is intended to provide for alternative forms of development which may include a density bonus *in exchange for development quality that is of significant community benefit.*"¹ If extraordinary density is to be granted here, then the community should receive extraordinary quality in return. This is a difficult requirement, which has not been fulfilled, as we detail below.

Density far exceeds other PUDs, but visual screening falls short

The last two approved PUDs in Bridger Canyon, Greenridge and Jackson Creek Hills, have similar challenges with topography and vegetation that provide little of the required visual screening of some home sites. The General Plan requires 500ft setbacks and landscaping where topography and vegetation are insufficient.²

Greenridge and Jackson Creek Hills acquired density bonuses of 50% and 84%, respectively. In exchange, the nearest home sites to arterial roads provided setbacks of at least 1400ft and 900ft, respectively. Each provides significant *contiguous* open space. In Jackson Creek Hills, the Commission actually eliminated 5 requested sites, presumably to improve the visual and open space outcome.

This proposal seeks a 200% density bonus (or 300%, including the contested density of the occasional sale, see below). But building lot 2c provides a road setback barely over 200ft, with no existing screening vegetation and little topography. Sites 2b and 2c are centrally located and therefore fragment the open space, increasing the visual impact of structures and reducing the functionality of protected lands. The front edge of lot 2b impinges on a highly visible knoll (setting it back ~100ft would substantially improve topographic screening).

¹ BC Zoning Regulation 13.1, Purpose

² BC Development Pattern, page 27, 2.f.

There is no clustering

The General Plan provides two pathways for residential development: (1) Non-clustered development of 1-in-40 single family homes in tertiary and wetland locations, and (2) cluster development at (potentially) PUD densities on primary and secondary sites.³ There is no provision for high density development without clustering or in visible locations, for the obvious reason that such development maximizes visual impacts and fragmentation of open space, contrary to various goals of the Plan and PUD.

It would appear that the proposed site is “tertiary” and therefore unsuitable for a PUD:

CONCEPT C: TERTIARY BUILDING SITES

These sites are considered to be best for low density development due to:

1. Lack of vegetative (tree) cover and lack of sufficient local topographic relief to visually screen or soften development.
2. And/or unstable slope and soil conditions.

These sites are considered to be the most suitable for single family residential development.⁴

The application does not serve the PUD purposes

The purpose of the PUD is to provide added quality, not merely to increase density. Its stated purposes of include,

- 13.1.a. Enhance and preserve open space and unique natural features.
- 13.1.b. Preserve to the maximum extent possible the natural characteristics of the land, including topography, vegetation, streams, and tree cover.
- 13.1.g. Lessen the visual impact of development and preserve the scenic vistas and rural atmosphere.
- 13.1.h. Preserve agricultural lands.

It is difficult to preserve open space and viewsheds by building houses in central, visible locations. In this proposal, a single family home with a quarter-mile setback and sloping backdrop will be supplemented by two building lots located on a knoll and in the center of a hay field. This can only reduce the existing open space and agricultural potential and increase the visual impact over what now exists.

In fact, this was not what the General Plan sought to achieve at all. The PUD or cluster development vision was to achieve PUD density through *transfers*. (See Morton & Shouse explanation from the Base Area Conceptual Plan, attached.) Density transfers do preserve land, because for each density unit

³ BC Development Pattern, pgs. 4-7, 26-27

⁴ BC Development Pattern, pg. 26

transferred into a PUD, 40 acres of open space or agricultural land is preserved at the sending parcel. With density from transfers, this project would offset the impacts on the 40 acre subject property by preserving 80 acres elsewhere, but that is not what will occur.

Via poor drafting during the various Base Area development attempts, the letter of the regulations has drifted from the intent of the General Plan. However, there must still be some justification for the resulting “density bonus”. Traditionally, the rationale has been that formal open space protections and good siting provide the required “community benefit” by avoiding the visual impacts of unfettered 1-in-40 development. However, in this case, we lack that benefit due to the visible sites and short setbacks.

General Plan goals are enforceable standards

The Commission will from time to time be required to interpret ambiguous language or circumstances. In so doing, the Commission must consider the district’s General Plan. The MT Supreme Court ruled specifically on this point:

*We hold that once a General Plan (master or comprehensive plan), which is part of a development pattern, is adopted, the Commission must substantially comply with that planning document.*⁵

This is a crucial point. It means that, when interpreting the Zoning Regulation, the Commission *must* choose an interpretation that is compatible with the General Plan, rather than one that creates contradictions or inconsistencies among the documents that comprise the District.

We applaud the Staff Report for citing the General Plan, as this has often been disregarded in the past. We have cited additional provisions here.

The application is incomplete

13.6.a(7)b requires key dimensions, but the site maps do not provide them. In particular, we have no dimensions by which to locate the building lots or determine the required setbacks from Bridger Canyon Road’s right of way.

13.6.a(7)c requires topographic information. This is crucial, because without it, there is no practical way for the commission or the public to assess the effectiveness of topographic screening, particularly the location of Lot 2b with respect to the pasture knoll. There is no topographic information with sufficient resolution to make such judgments.

13.6.a(8)c requires covenants, but none are provided. Again, this is a crucial omission, because the effectiveness of open space protection, and other benefits mentioned in the application, like dog restrictions, is entirely contingent on specific language. Again, the public is denied the opportunity to review. In addition, the Staff Report documents suggest that there may be existing covenants on the property, which should be disclosed⁶.

⁵ BCPOA vs. Bridger Canyon P&Z Commission and 360 Ranch, 1995

⁶ Staff Report, pg. 3

The terms of the trail easement are not provided. If the trail easement is already agreed upon, and not contingent on the PUD, is not a benefit of this application and might justifiably be omitted.

Existing agricultural buildings are left in the open space, contrary to the regulation.⁷ The Staff Report suggests enclosing these with building lots, but the current maps do not clearly designate what will really happen. The open space calculation does not include these areas.⁸

Maps designate alternative access routes, but do not clearly distinguish which will be used. Similarly, the open space calculation for hard surface deductions (roads and driveways) is not transparent. Additionally the road configuration adds to the open space fragmentation, as noted in the Staff Report.

There is no proposal for landscaping for visual screening, where topography and native vegetation fall short.

13.5.j seeks information on proposed water and sanitary facilities, but information is provided only for existing facilities.

The density stated in the Addendum Summary, page 2 (10.69ac) differs from that in the Application, page 2 (13.3 ac.).

Page 1 of the CUP Application cites the Gallatin County Growth Policy, but the relevant document in Bridger Canyon is the *Development Pattern*.

Staff correctly note inconsistencies in provisions for fencing.⁹

The density of the “occasional sale” is unaccounted for

The “occasional sale,” circa 1990, of the 2.8 acre parcel now owned by the Craytons was exempt from subdivision review at the time, but not from zoning. To reconcile the transaction with the zoning, a density transfer was made from the remainder of the original ~240 acre parcel. There are two problems.

First, the recorded transfer document claims 12 development rights on the 240 acres, with 11 remaining after the transfer. This is wrong. 240 acres at 1 in 40 density = 6 density rights. To get 12, one would have to claim 1-in-20 as the basis for density rights, but that has never been true anywhere in the district, and in particular is certainly not true absent an existing PUD.

The problem is, there are now eight houses on the original 240 acres. The north ~160 was divided into five (two are twenty acres, minor sub 141 & 141A, which must be some other kind of exempt transaction). The south ~80 acres has three homes and parcels (including the 2.8ac. occasional sale and the subject of the current application). If there is a density shortfall due to poor accounting, it should be held against the beneficiary of the prior divisions, which leaves the subject 40 acre parcel with one density unit in excess of its rights.

⁷ 13.5.b(2), “Open space shall not include areas devoted to public or private streets, parking, or areas covered by buildings.”

⁸ Application Addendum Summary, pg. 2

⁹ Staff Report, page 11, #3

The density transfer document differs from the Zoning Regulation and the Crayton's testimony regarding the transfer of density from the adjacent ~37 acres. Since an owner may record a document without *any* review, the applicant should be required to produce CUP approvals or other corroborating evidence concerning the disposition of density.

There is an existing PUD on the subject property

Upon further research, BCPOA notes that the transfer document states that the entire area – including the current subject 40 acres – is in a PUD. Since a PUD implies other land use restrictions, this application cannot possibly proceed without disclosure. Since the land use restrictions in a PUD are intended to permanently protect open space, another PUD cannot be layered on top of an existing one.

TRANSFER OF DEVELOPMENT RIGHT AND COVENANT

This TRANSFER OF DEVELOPMENT RIGHT AND COVENANT, made and entered into this 16 day of January, 1990, by Marjorie R. Huffine, James C. Simmons and Janet Simmons, of Bozeman, Montana, the owners of record of the hereinafter described real property, to wit:

WITNESSETH:

WHEREAS, the Bridger Canyon Planning and Zoning Commission has heretofore on 8/23/89 given and granted unto Marjorie R. Huffine, James C. Simmons and Janet Simmons, a Planned Unit Development on the hereinafter described real property subject to certain terms, covenants and conditions, and allows the transfer of one development right from Tract A described hereinafter to Tract A-1 described hereinafter.

The Staff Report

Again, we thank staff for citing the General Plan and Purposes of the PUD. The report correctly notes that lots 2b and 2c fragment agricultural land¹⁰ and lack screening topography and vegetation¹¹. Staff suggested conditions are appropriate.

We differ with staff regarding the completeness of the application (see above). Staff suggested condition 3 highlights the deficiency. It requires preparation of a site plan documenting building lots, etc. This is crucial information for the public and Commission to review, and cannot be deferred to a post-approval process.

¹⁰ Staff Report, page 10-11, #2 last bullet

¹¹ Staff Report, page 12, #4

Bottom Line

As we stated above, we would prefer to see this hearing continued to provide time for revisions, rather than denied. We have considered whether the application could be rendered consistent with our regulations through the imposition of conditions, but judge that to be too complex to implement on the fly. Therefore, if we must proceed on the current application, denial is the appropriate course.

For the BCPOA board, respectfully,



Tom Fiddaman

Transfer of Density Rights

The last aspect of this plan that must be discussed is a concept that has great potential for being used in the development of this area. This refers to the transfer of development rights which is allowed in the Bridger Canyon Zoning Ordinance. Simply stated, the transfer of density concept allows a landowner to take the development rights for this property and transfer them to another piece of property within the area or to another location within his property. This allows more intense development in one area with the other property left undeveloped. In doing so, the transfer must be approved by the Zoning Commission through a Planned Unit Development procedure and the proposed density that will be permitted also has to be determined. As is the case in the Bridger Bowl base area the basic density allows one unit per 40 acres as a matter of right, but if an acceptable P.U.D. plan is presented, a density of up to two units per acre can be obtained. This then, allows for the type of densities needed to develop overnight accommodations to serve the ski area. In transferring this density, the area the density is transferred from is left undeveloped as common open space or for agricultural land.

This concept then allows density from land unsuitable for development to be transferred to an area where it can be utilized. The option is also open for the sale or trade of density rights further promoting the concept of developing the land most suitable. This application leaves a considerable amount of discretion with the Zoning Commission but their action is guided by the basic intent of the ordinance and the development standards contained therein. It also allows undesirable land within the Bridger Bowl base area to bring a monetary return without being developed when the property owner sells his density rights or adds them into a developers plan to be utilized in a more suitable location.

It is, therefore, the conclusion that the development of the area must be considered carefully by the property owners and the Bridger Canyon Zoning Commission in order to accomplish the best for the most and the transfer of density rights can be used to affectively achieve that.