

Speaker 1: I hereby open the public meeting of the Gallatin County Board of Commissioners for the purpose of hearing this joint subject of the Zoning Commission.

Speaker 2: Okay. We're opening the joint meeting.

Speaker 1: Mr. O'Callaghan.

Sean: Good Morning Commissioners. I'm going to start by passing out some material. The first item is the public comment that I've already circulated to y'all via email, but here's just the hard copies for you. And the second is a map. It's similar to the map that was included in the staff report for my analysis. I received some comments that some parcels that folks thought should've been shown on the map were not. They were in fact shown the width of the road line that was included with the staff report exhibit at the scale this map is produced. That road was wide enough to obscure those parcels.

Speaker 2: Thanks. And, and Sean, just for the record, there's no more additional here then what you had emailed us as of about 8:30 this morning?

Sean: The last email I sent was yesterday afternoon at around five, and there were two comments we received yesterday that were in addition to the comments I had submitted or sent you on Tuesday.

Speaker 1: Okay.

Sean: And so I did not receive any more this morning.

Speaker 1: Okay.

Sean: I'll enter the staff report into the record. And I guess just for the sake of clarity on that matter, the staff reports included comments from the Bridger Canyon Property Owners Association, Gallik, Bremer and Molloy, and Andrew Cecil. Those were not, those came in right as the staff packet or the PNZ packets were being distributed, so they did not have exhibit numbers associated with them.

That's addressed in the index I just sent out to you. And then I'll just read down the list of other emails and letters we received so that's all on the record. From those three, the property, or the submitters to commenter's name, Wendy Dixon, Steve Cole Meyer, Dorothy Ballantine, Lavonne and Christine Pentecost, Lisa Coleman, Jennifer Huckabow, Robert Sands, Charles and Marshall Rashes, Robert Sands, Georgia and Kathleen Myers, Peter and Leah Dykema, Susan and George Temple, George and Kathleen Myers, George Watson, Nancy Lane, Gary Land, Adrian Castelli, Lowell Carey, Jocelyn Fields, Brian and Sue Kelly, Ralph and Alona Smith, Bridger Canyon Property Owners Association, John Britas, Cindy Creighton, Bill and Jane Shields, Margaret Davis, and P. Baird Godwin. So that is the public comments that was submitted after publication of the staff report

and has been provided to the Planning and Zoning Commission. Starts just going through the staff reports and ...

Aaron, for your benefit, the map that is included, they just handed out, it's the same map that was included. I'm sorry. There's a very similar map to what was included with the staff report with the exception of the roads layer. The roads layer was taken off of that map because it was obscuring some of the parcels.

So the Bridger Canyon Planning and Zoning Commission back in December passed resolution 2018-010. That is included in the staff report as exhibit one. That resolution recommended approval of certain amendments to the text of the Bridger Canyon zoning regulation. The county commission considered those amendments in a meeting on January 8th, 2018, and the county commission's decision at that point was to remand the portion of the proposed text amendments that pertained to nonconforming lots back to the Bridger Canyon Planning and Zoning Commission. So that's why we're here. So the Planning and Zoning Commission is being asked to discuss the proposed text amendments related to nonconforming lots again, and they will be making a recommendation to the county commission.

Certain amendments to the Bridger Canyon Zoning Regulation were being considered as a result of a settlement agreement that the county commission entered into on a case with the Bridger Canyon Property Owners Association. That settlement agreement was entered into on June 5th, 2018, and it related to amendments to sections three, which is the definitions, and section 18, administration of the zoning regulation. Around the same time that staff was beginning to work on those amendments and facilitating that process, there was a complaint filed, and it came to our attention that the requirements of the Bridger Canyon zoning regulation pertaining to nonconforming lots, so that section 14.1 and 14.2, are significantly different than the nonconforming lot requirements that are included in most of the county's other zoning regulations. And exhibit two provides kind of a summary of, of what's included in our other zoning regulations with respect to the requirements for nonconforming lots and the planning department, in so much as possible, wants those provisions to be standardized.

And for the sake of efficiency, since we were already working on amendments to the Bridger Canyon Zoning Regulation, we included amendments to section 14.2 of the zoning regulation. Contrary to some of the language used in some of the comments, this was not a run and gun approach. It was not done to cover up malfeasance by the planning department. It was not done with malice. It was done to address the situation that we became aware of where our regulations were significantly different than our other regulations, which presents a problem in administering 22 different sets of regulations for the county and to be efficient with staff time and resources to facilitate a process.

So, on October 23rd of 2018, the county commission passed a resolution of intention which included the amendments that were dictated by the settlement agreement as well as amendments related to nonconforming lots. It started the process. And just to address some of the public comments, I do want to note that the Bridger Canyon Property Owners Association as well as the Kenseys were given notice of that resolution of intention hearing before the county commission through their legal counsel, and they did not attend or object.

Planning and Zoning Commission and county commission then held a joint public hearing on December 13th, 2018, to consider the proposed text amendments, and they voted five to one to pass Resolution 2018-010, and that recommended approval of the proposed text amendments to the county commission. In a public hearing on January 8, 2019, after considering public comment, the county commission decided to remand the portion of the text amendments related to nonconforming lots back to the Planning and Zoning Commission. And then following up a couple of weeks later, January 22nd, the county commission went ahead and approved a resolution to adopt to the rest of the text amendments that had been considered. So exhibit four shows what the other amendments were and the language of the regulation that changed. So that provides the background and how we got to where we are.

Page two of the staff report, starting kind of midway through the page, it shows the existing language to section 14.1 in 14.2 with the strikeout proposed elimination of section 14.2. So just a kind of a description of what 14.2 requires. In most of the county's zoning regulations, each lot that's in existence at the time of adoption of the regulation can be developed so long as that development complies with a specific development standards of the zoning districts. So as long as a structure that's built on that property complies with the use requirements, complies with setbacks, height limitations, things of that nature.

The Bridger Canyon zoning regulations are different, and this is really the second paragraph of section 14.2, in that it requires when there are multiple existing nonconforming lots in effect at the time of adoption of the zoning regulation that are under common ownership with continuous frontage that they be treated as a single merged parcel. So there's some certain circumstances, and there's some ambiguity in the language, which I'll get into a little bit later.

This provision, I think is ... There's some issues with it. It's done without filing of deed restrictions or other legal instruments that would be on record in the clerk and recorder's office or show up on title reports to provide notice to landowners or prospective purchasers. Staff is recommending that the county revise the requirements of the zoning regulations so that nonconforming lots in the Bridger Canyon zoning district are treated substantially consistent with the requirements for nonconforming lots included in the majority of the county's others zoning regulations.

Exhibit five of the staff report goes through and provides the GIS analysis that staff conducted with respect to trying to identify parcels that would be impacted by striking section 14.2 of the zoning regulation. Based on that analysis, it looks like there's 24 tracts of record that arguably could not be developed now under the current language of the zoning regulation that potentially could be developed under if that provision was eliminated. The limitations of staff's analysis and the methodology are clearly laid out in that memo. I believe that there's, based on the language of section 14.2, it's not clear what continuous frontage is. Does that apply to driveways? Are we talking about ownership now? Are we talking about ownership at the time the zoning regulation was adopted? Are we talking about either staff did not go back and research ownership as in 1971, that's beyond staff capabilities in terms of time.

It's also unclear how lot width would be defined and measured. That wasn't part of the staff's analysis. So all those limitations are set forth in that memo to provide a very transparent process of, or explanation of how we conducted our analysis. And as I mentioned, there were some public comments in the record of folks saying that parcels that should have been included in the analysis were not. The specific parcels they were referencing were covered up by a road. So that map that I just handed out removes the road, so those parcels are shown.

Speaker 2: Just for the record, Sean, same methodology for both maps, just the road layers-

Sean: The road layers turned off on the map I just handed out. Yep. And there's extra copies in the back of that, of the memo that describes the analysis as well as both maps. Again, to be transparent from the very get go, staff has made it clear to the Planning and Zoning Commission that we have received a complaint regarding the issuance of a land use permit. And yes, this is related to that complaint in terms of the provision applies to this situation. Staff's not proposing this to resolve the complaint. That complaint needs to be resolved separately from this. It sort of was the catalyst that brought it to our attention and caused us to really look at this requirement of the zoning regulation in relation to how other zoning districts treat nonconforming lots.

And again, related to this, and I guess just similar evidence of staff's intent to standardize these kinds of provisions. Later on today the Planning and Zoning Commission is conducting a work session to look at our proposed part one administrative regulations. Those would treat nonconforming ... Those are proposing to treat nonconforming lots similar to how staff is suggesting here.

So I'll go through the findings and specific requirements of the zoning regulation that the Planning and Zoning Commission needs to consider, but I think two other issues that are important for consideration is whether the county supports treating owners of nonconforming lots in the manner directed by section 14.2 of the regulation compared to the manner in which owners of nonconforming lots are treated in the majority of the county's other zoning

regulations and whether the county's prepared to use its limited staff and resources to defend provisions like 14.2. Um, I guess I would argue if we're not prepared to defend something, it probably shouldn't be in our zoning regulations.

Beginning on page four of the staff report, it provides a language from section 18.6 of the zoning regulation which sets forth the amendment procedures. 18.6a says the regulation may be amended whenever the public necessity and convenience and general welfare requires such amendment in according to the procedure prescribed by law and the regulation. The top of page five of the staff report provides some staff responses to 18.6. The language in 14.2 is ambiguous in several respects. It includes provisions that provide for different interpretation of the regulation by different people. Elimination of these provisions promotes the public necessity convenience in general welfare by providing better clarity and predictability in terms of the rights associated with nonconforming lots.

The amendments would also promote equal treatment of all owners of nonconforming lots regardless of the ownership of other lots with continuous frontage. Revising the requirements of the zoning regulations pertaining to nonconforming lots such that those requirements are substantially consistent with the requirements for nonconforming lots included in the majority of the county's other regulations is prudent. It would also reduce the potential for staff airs and litigation which would benefit both land owners and taxpayers.

18.6.1 talks about how an amendment to the zoning regulations can be considered. 18.6.1B specifically lists a resolution of intention that was approved by the Board of County Commissioners. That's what initiated the process in this instance. And then 18.6.2 talks about notice requirements for amendments. It talks about publication and the paper not less than 15 days prior to the date of the hearing. In this instance, we've complied with that requirement and also the requirements of state law, which require posting in at least three locations within the zoning district. In this instance, staff posted notice in 10 locations within the Bridger Canyon zoning district, trying to hit the major kind of population areas in the zoning district to provide additional notice of today's hearing beyond what's required by either statute or the zoning regulation.

Page five of the staff report at the bottom goes into the spot zoning requirements. You've heard about those previously today and other items. I'll just kind of go through staff's response. The proposed text amendments don't change the zoning classification on any properties or authorize any uses not already allowed within the zoning district. The proposed amendments apply equally to all nonconforming lots within the zoning district. The existing language, as I already described, includes several ambiguous provisions which result in different interpretations by different people. Elimination of these provisions will benefit the surrounding neighborhood, community, and general

public by providing better clarity and predictability and also provide for equal treatment of all owners of nonconforming lots.

And then staff didn't identify any specific conflicts with the proposed amendments, and the Bridger Canyon Plan and Development Guide have included objectives from a general plan and base area plan as exhibit six and seven of the staff report. I've already gone through how we provided notice of this hearing, and I've already distributed the public comment. Beginning on page six of the staff report, it goes through sample motions for the Planning and Zoning Commission as well as the required findings.

At this point I'm happy to answer any questions that the Planning and Zoning Commission may have. If it becomes helpful at any point in today's meeting, I also have these maps on a thumb drive that we can show on the projector.

Speaker 1: Any questions for staff? Standby. All right. Okay. We're going to take about a two minute break, then we'll be back. [Inaudible]

Speaker 1: Okay. We're back in session. We've had a staff report. I will ask for an applicant or a presentation, and I'm sure we've got one. We don't have one. Pardon? County's the applicant. Okay. I will ask for public comment. We do have a sign-up sheet, and we'll just go down the start, and it starts with Linda Kensey.

Linda Kensey: Hi, I'm Linda Kensey of 8891 Bridger Canyon Road. My husband and I bought our house in Bridger Canyon in October 2004 as a second home. We loved the open view. One of the reasons we bought the house was the zoning regulations, no subdivision below 40 acres. We were certain that our neighborhood was protected from overdevelopment, and we have enjoyed life in Bridger Canyon now for over 14 years in large part because of the zoning regulations.

This past Labor Day, September 3rd, we got a call from our caretaker saying that there was a big hole being dug within 25 feet of our property line and a new house was going up. As it turned out, it's a large two story house which will block our view in that direction. It's intrusive and invasive. Within days of hearing this, we were in touch with the BCPOA and also hired our attorney Brian Gallik, as we intended to protect our property.

It turns out the county planning office had issued our neighbors, the Browns, a building permit, when clearly section 14.2 of the zoning regulations should have prohibited it. Their property is about eight acres, same as ours, and by virtue of the zoning, it should only have one building right. We filed a complaint. The county is supposed to follow its own rules, after all. However, instead of making an effort to fix the situation properly, that is, by revoking a permit that should never have been issued in the first place, the county is taking another approach.

They have decided to just drop section 14.2 from the zoning laws in the hopes of making it all just go away. The zoning regulations have been in review for

many years. Did anyone ever want to get rid of 14.2 before? No. Suddenly within a very short time after our complaint was filed, getting rid of 14.2 was slapped on as an amendment.

If the planning office believes that getting rid of 14.2 will absolve them of ignoring it when giving the Browns their LUP, I have to assure you it will not. The damages the county should absorb before it's error are either the damages that the Browns would incur when the county pulls the LUP it should never have issued, or we are compensated by the county for the reduction in value to our property from the county's failing to enforce the zoning regulations that were enforced at the time they issued the LUP.

14.2 should not be deleted from the zoning regulations. It keeps a rural area rural. Also, again, deleting it will not absolve the county from the consequences of not enforcing it when it was and still is in force. I would like to point out here that shortly after the county attorney, Ms. Arnold, received our complaint, she informed the Browns of this development and told them that until it was resolved, they proceeded with construction at their own risk. They have proceeded.

I saw concrete trucks, and I saw a load of lumber arrive for the framing after they were informed that they proceeded at their own risk. While the house is not actually in our front yard, it feels like it's in our front yard. If you drive by, you cannot miss it. People who live in the area have said things to me like, "You must be kidding. How in the world-"

I end with this. Last year, my six year old granddaughter invented a game and the rules that went with it to play with her four year old sister. When it became obvious that her sister was going to win, she stopped the game and changed the rules, ensuring that her sister could not possibly win. Only she could win. I told her, you cannot do that. It's just plain wrong. She got it. She didn't like it. But she got it. The county should understand that as well. Getting rid of 14.2 will affect the whole canyon. There are plenty of other properties like this. Please do not abandon your responsibility towards the people you represent. This will affect the lives of people in Bridger Canyon for forever. Thank you.

Speaker 7: Thank you. Next on the list is Mitch Miller.

Mitch Miller: Good morning, commissioners. My name's Mitch Miller. I reside at 15870 Bridger Canyon Road. I'm also a member, a board member of the Bridger Canyon Property Owners Association. With respect to the proposed text amendment to section 14.2, I'm very concerned that this is being considered necessary for the sake of standardizing administrative procedures within multiple zoning districts.

14.2 was designed to ensure limited density in our district. Is the backbone of our zoning and is one reason that so many of our members purchase land here.

They as I want to be assured that the forward thinking zoning that was put in place in 1971 is protected.

Standard ... Standardizing administrative procedures should be done with the best interests of the districts in mind. Thank you.

Speaker 7: Thank you Mr. Miller. Next on the list is Richard [Lyon. 00:02:12]. Morning, Richard.

Richard Lyon: Good Morning, commissioners. Richard Lyon, 4794 Aspen Lane. I am a director of the Bridger Canyon Property Owners Association. I'm speaking on their behalf. I'm also a member of the Bridger Canyon Zoning Advisory Commission, but not speaking on their behalf today.

I think we have said what ... why we oppose ... repeal outright section 14.2 adequately in the two memoranda we have submitted to the commission. I'm perfectly happy to answer any questions you may have about those, particularly about the alternative we suggested in the second memorandum, which I wrote. If you don't understand it, it's my fault. Please ask questions now. But I did want to make four brief points. One, it's clear from the testimony today and what has been submitted in writing that this amendment has serious substantive overtones. It is not an administrative or procedural amendment only. I don't really believe that the planning department's presentation today changes that.

The second issue is that while the Kensey's complaint is obviously impacted by what this commission may do or what the county commission may do, that matter is not before this commission today. It won't be before this commission until the enforcement division makes its decision and the dissatisfied party or parties appeals to this commission. It also doesn't matter whether this amendment, this proposed amendment was prompted by a desire to resolve the Kenseys complaint or not, or whether ... that was simply the catalyst. I do want to stress that I have never in the six plus years that I've been working with the planning department on the advisory committee and otherwise ever questioned the good faith and hard work that the planning department always does. I'll take [Sean 00:33:57] at his word that that wasn't the impetus for this but it doesn't matter. If it was, I think you'd have to deny the amendment out of hand as [inaudible 00:34:08] because it would be done to benefit one owner, not The canyon in particular, not the district in particular.

If not, I really fail to see what's the big hurry. That's the point of our two memoranda. We have spent years on issues related to others substantive provisions in our zoning with ample public input and an opportunity to work with the county to come up with what we think will be the best zoning for 2019 or 2020 and thereafter. What's the big hurry on this one? We think ... I will say I have had phone calls from at least two other owners who have said, what's this all about? My property is less than 20 acres. Do I have a building right? In that respect, I think simply repealing 14.2 is going to be a cure worse than any

disease that is ... that the county is now suffering as a result or that the extra administrative burden on the staff will cause.

I do acknowledge as we did in our memorandum that 14.2 probably ought to be changed. But let's make the change after due consideration and the kind of refinement that due consideration, should you. Even if you exclude from the impact of section 14.2 on qualifying properties that already have houses, which both Mr. [Fiddaman 00:36:20] and the planning department did and which I would do, it's a tough question. I challenge each of you to come up with a solution. I'd like to hear it.

I do want to respond to one thing Mr. [O'Callaghan 00:36:39] and said in his presentation about the county not being prepared to defend its ... Something like this. That's a decision for the Planning and Zoning Commission and ultimately the county commission. I don't think the planning department has a real voice in deciding which provisions of current zoning are going to be enforced and which are not. Now I will be happy to answer any questions you may have on what I've said today or what we've submitted this past week.

Speaker 7: Any questions for Mr. Lyon?

Speaker 6: I'd like you to verbally outline what it is that you are suggesting as an alternative. Is that fine?

Speaker 7: That's good.

Speaker 6: Please.

Richard Lyon: The alternative we suggest is that number one, any lot, any ... I'll call them 14.2 lots. Any qualifying lot that already has a dwelling unit on it is ... that dwelling unit is allowed. I think ... I don't know, commissioner if you're a lawyer or not. We lawyers have a notion called estoppel, that if somebody wanted to use 14.2 to stop a house being built on a qualifying land, that should have been done before the house was built at the first opportunity as the Kenseys have done. If there are such houses in the district and I believe that there are, they should not be required to be torn down or anything else or get a new permit or something ... Any other thing. That leaves properties like the Kenseys in the Browns which are adjacent to each other and either the 24 in the planning department study or a hundred plus in Mr. Fiddaman's study that don't have a building on it yet.

When I say don't have a building, they don't have a finished building. They don't have a building where an objection wasn't made at the first opportunity. There, I would take a provision that is in most but not all of the other zoning districts and make it clear that the requirement to prove nonconformity is a burden of the person seeking it. That is, if an adjacent neighbor objected on the grounds of section 14.2, that person would bear the burden of proof to demonstrate that when he or she bought the property, he had a reasonable belief, if he

wants to build a house, that he ... that was his belief or that if the adjacent property wants to build a house, it was his reasonable belief at the time that a house couldn't be built on the adjacent property. Again, as the Kenseys have ... The Kenseys have done. Well as the Kenseys will do, if they have to.

I acknowledge in the memorandum that that's not perfect. It will involve a great deal of discretion on the part of the planning department, the public, this commission and the county commission. These two commissions. I guess you're both in session today. Does that answer your question?

Speaker 6: I believe so. Thank you.

Speaker 7: All right. Thank you. Any other ... Any ... We're sort of loose in our-

Richard Lyon: Yep.

Speaker 7: Thing here. Procedure a bit. Okay. We may ask more questions later, Mr. Lyon.

Richard Lyon: Thank you.

Speaker 7: Thank you. Next on the list is Brian Gallik.

Brian Gallik: Mr. Chair, members of the commission, my name is Brian Gallik. My address is 777 East Main Street, Bozeman, Montana, 59715. The attorney here on behalf of the Kenseys. I know the county commissioners here have ... I've submitted a report, an analysis outlining the Kenseys position on this particular thing. It's similar to what was provided to the county commission about a month ago. I incorporate those comments by reference as well as the prior submissions that have been made. I echo what Richard has said. I've read his submissions and agree with what Richard has had to say. I would also like to point out initially that we're not here today to debate or determine the Brown, Kensey issue. That is a complaint that has been filed, is pending with the county and there is a process by which it will be determined.

We are here because of the process that was initiated after that complaint was filed by me on behalf of the Kenseys to delete ... repeal 14.2 without what I see is any replacement. That's of concern to the Kenseys. It's a concerned to the Bridger Canyon property owners. You'll have seen in the submissions that I made ... Mr Fiddaman, you'll hear from him, prepared his own first rough cut analysis. I'll let him describe it showing what he believes to be the number of lots impacted. The county to its credit, undertook its analysis and came up with 24 lots. Those are set forth in the ... on the screen above you. One of the things about zoning I'd like to emphasize again speaking from the Kenseys standpoint, is that zoning and land use laws are designed in part not only for public health, safety and welfare. But to provide predictability and stability in making land use decisions, investing your property, investing your money in property, building a

home, where you build your home. The Kenseys relied upon the Bridger Canyon zoning regulations in making their decisions.

I think you're going to hear from another property owner here who is a friend and I've worked with and on his behalf who has a property that's on Mr Fiddaman's map, but is not on the county's map. He has expectations, too. Those are reasonable. They're legitimate just like the Kenseys are. He's concerned and you'll probably hear from him.

All we're asking for at this point in time is not simply repeal without a replacement. I think Richard suggestions are very good and they start the discussion. That's what we're asking, is to start that discussion. Vet it. Figure out precisely how many lots are impacted by this. Ambiguities? I would say there are some ambiguities. Let's clarify those.

Let's not just throw out the baby with the bath water. In between ... When we took a break here, I was curious about the number of public ... What the public comments were. I see there's, I guess a list of 37. Reading through those in the break here, majority of them, I think maybe all of them are from residents of the Bridger Canyon Zoning district. The overwhelming majority of those people who offered comments oppose this. Reading through some of the comments, there might be some confusion about what exactly is being proposed here. I can understand that. But I think it's important to note that it's the substance of density, building rights is what's primarily the theme that runs through all these particular emails and comments that you see.

What we would ask for and I would also point out too, it's not just Bridger Canyon. As staff has pointed out in one of its appendices to its reports, there are a number of 20 some zoning districts in Gallatin County and Bridger Canyon and two other zoning districts in Sypes Canyon have the same or substantially similar language in their particular zoning regulations. While you may be making a decision today about Bridger Canyon, there's also Sypes Canyon. I talked in my memo about notice and an opportunity to be heard there.

The individual lot owners whose properties are impacted by this as determined by the county. I think the people in Sypes Canyon, who I don't think have received any notice about this aside from general publication, I could be wrong, should have the same opportunity to weigh in on what a repeal of 14.2 and Bridger Canyon would mean to their district because if it's happens here, they're next. It's going to happen next in their district because the staff's position is that this is administrative, which I respectfully disagree with. But if they want to have conformity, they're the next domino to fall.

How that impacts their district, I don't know. Staff hasn't looked at that either. So I would just respectfully request that we just slow down a little bit. That's all we've asked for. The Kenseys complaint is something separate and apart from this with the Browns. Look at the public comment, the substance of the

comments that you've heard from people that live in the district and just give the people an opportunity working with the staff to address these issues rather just simply repeal and without any sort of replacement. I appreciate your time. Thank you.

Speaker 7: Thank you. Next on the list is John Maloney.

John Maloney: Good morning. I'm John Maloney. 11256 Bridger Canyon Road. Forty-five years ago I, with five other people came out here to ski and drove up Bridger Canyon Road. The statements from the group as we drove up is this is really a neat place. I can't help but think that since I came back 45 years later and was able to buy a house here simply because it was under foreclosure and Fannie Mae was happier having me have it than the previous developer, that the density, which is regulated by that ... mostly regulated by that portion in 14.2 is what makes Bridger Canyon the nice place that it is.

I live very close to the highway. I do have some trees blocking. But the view is Saddle Peak. One of the things that I was thinking while I was standing on the front deck while the realtor was trying to open the front door is I can't make one of those but I can fix anything in there. Maybe my fixing is taking a little bit longer than it should 'cause I've had some complaints from my wife, but what I look at out the window is still nice. It's a huge piece of property which formerly belonged to ... Can't remember the name off the top of my head ... Jim Taylor. But if it were to be built on with houses on 40 acre lots, I don't see where it would cause a problem. I don't see where it would cause a problem with ... One of the other things that I get to look at alternately between the front of my house on the back of my house, and that's a nice herd of elk or some of the other things that are there because our density is as it is.

The ridge itself, is a flyway. Eagles and hawks. Lots of times we get woken up by the Sandhill Cranes. Not annoying. Coyotes, wolves. My poodle chased a very pretty cinnamon bear out of our yard that was going after the bird feeder. Problem was solved by raising the bird feeder. I don't know why the bear got scared of my poodle, but it did. But those are things that if the density increases aren't going to be there. I've heard that this is very difficult to ... because of the number of zoning districts to have the staff be aware of all of the things. My suggestion would be to take each one of those zoning districts and catalog where there are differences so that it's very apparent. As far as correcting what has happened ... Well, my previous occupations and in particular the one I spent 20 years in, being a firefighter, a paramedic, a fire inspector, and then arson investigator, didn't allow me to make up for my mistakes by changing the rules.

It doesn't seem like that's a really good way to do things. One of the things that was up there before the map is a picture that I think kind of characterizes exactly what Bridger Canyon is. Agriculture has a place. Wild animals have a place. People have a place 'cause they seem to get along pretty well. I don't

want that to change. It isn't that I haven't made mistakes. I will have to absolutely admit I've made at least one a day. Thank you.

Speaker 7: Thank you, sir. Next on the list is Phil Rotherham.

Phil Rotherham: Hi. Phil Rotherham. 7894 Bridger Canyon Road. After this do I ... My comments don't necessarily deal with the complaint nor do they deal with the text of the amendment. They deal more with a personal issue that I have. As I look at the map that the county has produced, my two properties that I own or not on there. That's comforting. I know there's another map out there that was produced by Bridger Canyon property owners and they are on there. I think back in the early six, late '60s, early '70s, there was probably a bit of a rush to get property divided pending the new ... the new regular zoning regulation. Technology was far distant back then. I'm sure that barcodes weren't even invented yet. When our properties were created, they took 80 acres and they divided it into eight, 10 acre pieces. There are six homes that are built there. Then there are two vacant lots.

I live on one of my 10 acre pieces. I'm adjoined by a vacant 10 acre piece that I bought only about four or five years ago from my neighbor who was leaving. I don't want to be collateral damage. I want to maintain the building right which makes that piece of property worth more than it is today. Today it's a pasture. I like it as a pasture. But somewhere down the road I want to make sure that it doesn't lose its value by not ... by losing its right to have a home built there. I was chagrined to see that it was posted on one map and not on the other. I think you're potentially opening the flood gates for complaints. If people with longstanding nonconforming lots lose their right to build on them, that would be a problem for me. Thank you.

Speaker 7: Thank you. Next on the list is Tom Fiddaman.

Tom Fiddaman: Hi, I'm a Tom Fiddaman. I live at 1070 Bridger Woods Road in Bridge Canyon. First of all I'd like to thank the commissions for a reopening this matter. We ... Back in December felt that it was going to be problematic to blend the contentious hearing of 14.2 with the other items that were the outcome of the Petty settlement that we're mutually agreed upon. Prior to that hearing, it was our understanding that there would be no objection to deferring 14.2 for separate consideration. But evidently that was not the case. We apologize for our misunderstanding of what was a foot there. And ...

PART 2 OF 5 ENDS [00:58:04]

Understanding of what was afoot there. And, thank you for giving us another opportunity to comment. I'd also like to acknowledge that we're sure that there's no malice involved in this hearing of 14.2, that we've been working for a number of years in partnership and with good support from the planning

department on the Bridger Canyon zoning amendments. And, this is certainly a messy point of the zoning.

Okay. On to the substance. I think the real key here is that limited density is really central to the Bridger Canyon zoning regulation. It's the reason citizens got together in 1970, 71 and created a zoning district. And, it's also mentioned multiple times as we put in our written testimony that limiting density to preserve natural resources and avoid congestion is a major goal of the plan. And, that's also instantiated in the purposes of the regulation.

14.2 was evidently included as part of the implementation of that limitation of density. Merger, that kind of merger provision, is actually common in other areas. Less so in Gallatin county evidently. But, there are a couple of other districts that include similar provisions. And, the courts have recognized it as a legitimate way to manage congestion and other impacts of density. So, we think this is really actually essential and substantive issue in the zoning, not just an administrative issue.

But, we also recognize that it affects our membership in different ways. So, in another hat I wear is, apart from being on the zoning advisory board, is as chairman of BCPOA. We're occasionally portrayed as the lunatic fringe of Bridger Canyon, but, in fact, we're really the mainstream. We have typically between 150 and 250 memberships out of about 400 households that may exist in the canyon. We have a board of a dozen members who are distributed throughout Bridger Canyon. We hold monthly meetings and those meetings are open to whatever members would like to show up. We also opened them to whatever members of the public would like to show up and comment. So, we're not trying to push an agenda. We're trying to represent our broad membership of residents of Bridger Canyon. However, our membership is, in a sense, skewed towards the kind of person who likes Bridger Canyon, which is someone who's attracted by the existence of zoning and low density and the ability to preserve the incredible resources of the place. And, I think you got a flavor of that from John Maloney's testimony.

But, we are honestly not sure what we would get when we asked our mailing list what they thought of the repeal of 14.2. Because it does have effects on individual property rights, as you heard a few minutes ago, as well as on the public interest in maintaining low density. But, it's clear that I think like the letters in the packet, the responses to that survey, overwhelmingly favor limitation of density and oppose repeal of 14.2. And, the details I get are in your packet. So, as Brian Gallic put it, can we find a solution that doesn't throw out the baby with the bathwater? Oh, and actually before I move on to the remedy, let me mention one more thing, which is the map.

I'm happy to see this corrected version and, I think, probably the truth is somewhat closer to this map, then to our analysis because this takes one crucial additional step, which is to identify the parcels that were potentially in common

ownership as of 1971. So, I would view this as a more definitive artifact. We simply identified candidate parcels. But, there is still one caveat, which is a number of parcels may yet be undiscovered. The ones that are the subject of the complaint are an example. They were essentially rediscovered only recently. They've been treated, conveyed together on deeds, and they've been taxed as a single parcel for most of the last 48 years since zoning was put in place. So, it's possible that there are some additional parcels that could come out of the woodwork essentially with the repeal of 14.2.

But, we should be clear that if you preserve 14.2, you're not taking away any density rights from people now. It's only you repeal 14.2, you're granting 24 or more new density rights to parcels that haven't had it for almost 50 years. So, it's clear that the overwhelming majority of Bridger Canyon prefers to keep things the way they are, I think. So, what we think should happen is a search for a solution that resolves the administrative difficulties with 14.2, but preserves the density implications, essentially preserves the status quo. We think errors and omissions and liability in the future are unlikely, both because we've now gone through this process of identifying a lot of these candidate parcels and raised awareness of the issue, and if you look at the new draft administrative regulations, they transfer the burden of proof to the applicant for demonstrating that a building right, or that the nonconforming rights exist. And so, this would be a special case of that.

So, I don't think there's an overwhelming administrative problem there. But, there may be some additional considerations about how we handle the parcels that may have been developed that were subject to 14.2, but neglected or not opposed at the time. So, what we recommend the commission do is deny this amendment as it now stands as it is, as it is opposed by a majority of residents as so far, as we can determine. And, instead take one of the other options in the staff report, direct staff to seek an alternative approach that preserves the density effects. And, the status quo on property rights in 14.2, and resolves any administrative issues that may exist with that provision. Thank you very much.

Speaker 9: All right, thank you, Tom. Next on the list is Ellen Trygstad.

Ellen Trygstad: I'll still say good morning. 4801 Aspen Lane. My name's Ellen Trygstad. I have several points. I'll try to be really brief. Even if you approved the request to eliminate 14.2, it doesn't solve the planning department's wish to have uniformity because there would still be one more zoning district that was not in compliance with the procedures. So, that problem still remains for the planning department.

Secondly, one of the purposes of bottom up zoning is to provide a couple of things. One, the residents in a region, the opportunity to take the time to protect what they identify uniquely as important. And, that's different from region to region, and because residents uniquely know their area, they have a unique perspective and information to provide to the planning department and

to the commissioners, regarding what is unique and how it should be taken care of. So, I think by taking 14.2, and saying it's not uniform as a policy, to do that is problematic because that undercuts the uniqueness of districts.

The second reason why districts are important, in addition to the wide range of information that residents have about how it's unique, is that bottom up districts offer the county creativity in problem solving. And, at a time when we're having so many stresses for development, and we anticipate further problems with population pressures on wildlife and so forth, I think it's beneficial to have as many solutions being offered as possible. And, by allowing the people at each of these zoning districts to come forward with different ideas is important. And, I appreciate that that's problematic administratively. And, I think the solution is not to just simply piecemeal eliminate things in order to make it easier for the planning department, but actually maybe for the powers that be, and I don't know if that would be you or the public or the planning department, to hire more staff for the planning department because I think they're really worked very hard, and just having little piecemeal solutions isn't the answer. There are hundreds of rules and regulations in all of these districts. This is just one. Every profession, many professions, have complexity and just to piecemeal simplify things isn't the way to do it. So, that addresses that.

I think also the Bridger Canyon commission that's working on revising the zoning has worked a long time, and 14.2 is not something that has come up as a problem. But then, a few months ago, neither had rentals. So, now we have something that they need to look at, the district needs to look at. And, there are several things, for example, rather than just throwing out 14.2, maybe we need to look at what are these properties that are in subdivisions or subdivisions that were made before 71, and can that be distinguished between properties afterwards? There is history to a lot of these bottom up districts, and some of the history was out of consideration for property rights and for people who were afraid of zoning. I think, and I could be wrong, but I think 14.2 was one of those because you have people who have adjacent properties of undersized nonconforming and they've been getting tax benefits for a long time.

So, then if all of a sudden they're granted a building right, then they get a second benefit after having all this tax benefit. Whereas people who've had separate lots, have been paying taxes separately, and they do retain their building right. Also, the ones that were adjacent, prior to 71 when this 14.2 was put into place, I would assume it was on the deed. So, it's kind of a buyers beware that presumably these people knew. That brings me to another point.

I was on the board that Richard Lyon is now on and Tom Fiddaman for three years looking at the regulations and trying to revise them. And, the complexity and the messiness and the trying to resolve the mistakes, the problems, the confusions, the social different viewpoints, pre-zoning, and post-zoning, and even through zoning is a huge challenge. I honestly don't know how the planning department does it. But, nothing is perfect and they've had to work

through, I know a lot of imperfections., That said we came up with in the first three years that I was working with this group, with the planners, the suggestion that there be a list, a checklist of all possible things that might apply to any property owner. All the possible permits, not all of them would be relevant, but the entire list of possibilities, so that it would be checked off and everybody would get a copy of the paper, the planning department, the planner in charge, the owner, the seller, the lawyers, whoever's involved in all of this. And, I was assured that this was going to be followed through and it hasn't to my knowledge.

I could be wrong about that, but I haven't yet heard. But, I just think that would be useful. So, I would really like that to be revisited because then you would have everybody responsible for asking questions. What's on the deed? What are the requirements of the state? What are the city, what are the county? All of it. So, the responsibility is shared. And, also if a human being makes a mistake, which people can do, there's backup, so that it's thorough and you don't end up with future messes. I would suggest that, in addition to hiring extra planning staff because I think they probably could use it, as some solutions.

And, I want to bring up a couple more quick things. Please, as issues with Bridger Canyon come up, you do not forget the importance of water. Bridger Canyon is a complex geologic area. It does not have predictable water. There have been wells over the years that have gone dry. The more you add density, you raise a question. How long are those wells going to last because of the way the groundwater works and the streams, and there have been losing streams in the area because water has been pulled off. It's something that's difficult to bring up because people want to say, well, prove it. You know, show me that there's no water, or the burden of proof, show me there is water. But, the fact is that people do have wells that run dry. And, the more density you add, and I do believe personally that was one of the reasons why originally the people who came together to push for zoning for one and 40 acres did so, because that optimizes your chances of your well not impacting streams, groundwater and other people's water. And, it's an argument for less density.

I think it should be allowed that 14.2 go back to the Bridger Canyon Committee that is working on revisions, and that perhaps the planning department could make a list of their wishlist and you all may have observations from the things that you've been seeing, and then it can be revisited within the context of the other revisions that are being made, so that the solution can be something as fair and as easy to handle as possible. One second here.

I guess that's just the end. It's just I feel that standardizing in a bottom up is a real danger, and we should remember how unique each of these districts are. And also, oh yes, I remember, is that rather than being a burden that each of these districts is unique and has all of these different rules and the planners throw up their hands and go, oh my gosh, everybody's different. That's why we have property owners associations. That's why we have representatives. Those

people know their zoning inside and out. So, there can be conversation between the planning department and the districts and the homeowners. The information isn't lost, and no one's expecting everybody to know everything. But, if we pull together as a group, the information comes forward and then it's not a information burden or a gap. Thank you very much.

Speaker 9: Thank you, Ellen. Next on the list is Brady Brown.

Brady Brown: Afternoon, Commissioners. Thank you for your time today. My name is Brady Brown. I live at 8855 Bridger Canyon road with my wife and our three young kids. My property, as you've heard today, is the subject, and perhaps the source, of all of our discussions. One thing I want to bring up first, and it's been made clear today, but several of the commenters seem to have a lot of confusion. So, maybe you've read the comments from Canyon residents, but the lots at stake already exist. You can go find them in the clerk and recorders office. We're not creating more lots. We all know the zoning in Bridger Canyon isn't one in 40. So, these lots, the number of how many there are, is unknown, for sure, but they exist. They're there.

So, I want to give a quick background on my property, and my project that's currently on hold. April 2016, my wife and I purchased our house at 8855 Bridger Canyon road. We purchased it in an online foreclosure auction. Given the fact that it was an online auction, there were a lot of unknown and hard to find out pieces of the puzzle. The property was listed as 7.9 acres, but the legal description has always shown two parcels. And, I would bet that if you pull the title report on the Kinsey's property, it will also show parcel one and parcel two. One's about 2.6 acres, one's five and a quarter. About, I don't know, a few months later, I purchased an additional five acres next to my house, to the south of my house. So, at one point, I owned three separate lots. All we're adjacent along Bridger Canyon road, all have their own individual deed.

Only one of those lots had a house on it, and that's where I currently live. Last year, I sold one of those five acre lots. So, currently, as of today, I own two separate lots. One has a house where I live, the other has a partially constructed house, that is part of the issue today. It was always my intent to sell my house, and build a new house on one of the other undeveloped lots. The lot that my wife and I happened to like was the smaller of the two lots. It's a narrow, odd shaped lot, and so, I did go to the county and talked to them about a boundary line adjustment. A few discussions with the county, and educating myself on Bridger Canyon Zoning, I quickly figured out it'd be easiest to leave things the way they were and come up with a plan that would fit the lot.

April 2018, I got a land use permit approved by the county. Summer 2018, I began construction on my house. Mid August we started excavation, and on September 28th, I received a letter from the county attorney saying that there had been a complaint filed regarding the validity of my land use permit, and the work I continued to do would be at my own risk. As the Kinsey's, Mrs Kinsey

stated, I did continue to do work on my project, but that was simply to complete contractual obligations that I had previously made. A deal is a deal. I'm a man of my word. I had a handshake with several people, and I was going to uphold my end of the deal.

The work has since stopped, and today, I've spent roughly \$100,000. That includes excavation, backfill, my wells drilled, my powers in, my septic system is approved, my main floor's frame, my most of my main floor walls are framed, my trusses are on site, laying in the snow while I wait for this to get solved. I mean, that's a lot of money for me. It's a lot of money for anybody. And, it's on hold. My materials are taking on unnecessary abuse. Who pays for that? I mean, my trusses for my roof are laying in the snow right now. Today. On the ground. In the snow. I mean, I'm taking preventative measures, but I mean this is a real thing to me, today.

A few other things I want to point out. I'm not a developer trying to exploit loopholes in Bridger Canyon zoning. I'm a local small business owner who employs two people. I'm a family man who participates in several local organizations. I'm an average guy who was taking advantage of a good real estate deal, and trying to build my wife and my kids a house to call our own. I mean, given the environment of the real estate around here now, anybody would want to take advantage of a good real estate deal. I mean, I'm not, like I said, I'm not a developer trying to exploit loopholes. My wife and my kids, we all got to take part in the design of our house. My wife's excited about outdoor living spaces. My son's planned out his bunk beds. My daughter has a reading nook and so on. I would bet that most residents of Bridger Canyon, or anywhere else, who are building a new house could tell a similar story. It just so happens that my new house happens to be on one of the small lots with a neighbor that has an issue with it. I followed the rules, I have an approved permit, and now I'm potentially paying a hefty price.

Another reason I'm here is to talk about BCPOA, and who they claim to be, and directly respond to some things that Mr. Fiddaman said. I want to defend residents of Bridger Canyon who are not members of BCPOA. One Canyon resident who wrote a letter, and I feel like she did a good job explaining her opinions, which I would argue reflect many of the opinions of residents in Bridger Canyon and our skepticism of BCPOA. People you don't hear from, I mean, they don't even know this was going on.

It's a one sided outspoken organization. And they project their opinions as that of the entire Canyon like they have done today. I assure you their opinions are from a select group of Canyon residents. The person who wrote in says she is only a member because she doesn't trust them, and she wants to stay abreast of what they're doing to hopefully mitigate future negative impacts to her property.

What Mr. Fiddaman said about, their group is mainstream, 150 to 250 members, which is maybe about half the households in Bridger Canyon. The survey they did, and are relying heavily on for their arguments today reach less than 60 canyon residents. Most of the respondents are likely members of BCPOA. And, I would even go farther and say that most of those people that responded are husband and wife. So, if you want to count households, I mean, I could be generous and say that 50 of the 400 gave input. 12 percent of the Canyon from their highly one sided survey. 12 percent. That doesn't represent a valid survey sample size in any statistical analysis. So, I just wanted to point that out. From my experience, BCPOA, I mean, they don't build community. They're divisive, there's always a lawsuit. I mean, and people that I talked to, long time Canyon residents, so I mean there's obviously a divide of opinions in the Canyon. And, with an organized, educated, well informed group like BCPOA, obviously you hear from them a lot.

Final, probably the most important point I want to discuss, are these two land ownership maps that we've talked about. The exact number of property owners that might be affected by removing 14.2 has yet to be determined, as both Gallatin County, and BCPOA, each have their own individual assessments and have come up with different results. The thing that both groups seem to be discussing are the number of undeveloped lots. BCPOA skewed one way, Gallatin County, the other. I choose to look at their numbers a bit different. Rather than look at undeveloped lots, I want to highlight the number of nonconforming lots that have already been developed. Okay.

If you take the BCPOA map, their numbers are 338 lots that are subject to 14.2. Of those 338 lots, 124 don't have structures. What does that mean and why is it important to me? If you use the numbers and do simple math, you take 338 potential lots. You subtract the 124 lots that don't have a structure, and the result is 214 projects that have already been completed in Bridger Canyon. My project, for instance, has happened 214 times already without a complaint that I know of. If their numbers are correct, like I said, 214 houses have been built in the past, on small lots without a complaint. That is significant and is proof that no matter what the zoning says, a precedent has been set over the past 40+ years that small lots in Bridger Canyon have building rights.

According to the Gallatin County numbers, they suggest that 20 of their 67 identified parcels have already been built on, not nearly as many as BCPOA, but still noteworthy. When considering the numbers, especially the 214 already complete projects claimed by BCPOA, it is clear that my project is the outlier. Building on small lots in Bridger Canyon has clearly not been an issue in the past. Why is my lot different than the 214 people prior to me? Why should I or another person with property similar to mine not have the same rights as the people before us? You know as well as I do that the precedent that has been set allowing buildings on so many small lots in the past, if it comes to a judge or jury, it will be almost impossible for BCPOA or the [Kenseys 01:28:08] to prove

why I don't have the same rights as the 214 people before me. Thanks for your time.

Speaker 11: Thank you. Next on the list Linell Cary, is that right? Lin— I'm sorry? Llewelyn?

Lowell Cary: Lowell.

Speaker 11: Lowell.

Lowell Cary: Lowell Cary.

Speaker 11: I apologize.

Lowell Cary: No problem.

Lowell Cary: So, as you can tell, name's Lowell Cary, I was a past, I've been in the Canyon for 26 years, building contract for 25, I was on the BCPOA board for 9 years, was a past president, was on their Zoning Committee, tried to help the county rewrite Bridger Canyon Zoning's regulation, probably from 1998 through '08, never happened. Okay? That's because, well, one thing or another. Huber fought off Huber and cold-bed methane. Bridger Canyon partners came into the base area and wanted to expand the base area, so every time there's been a financial interest, not to rewrite these regulations, okay? It's drug on for a long time, it's a county- these guys know, okay?

I understand that what you guys do every day here in the County Planning Office is actually an obligation of the noble, because you could make a hell of a lot more money if you went out there and bought a foreclosure or whatever, and used your knowledge to expand the speculation of escalating real estate prices. Hell, we live in one of the [inaudible 01:30:01] economies in the nation. Right? You all know that, I'm not telling you anything you don't know.

But if you're gonna have a strong economy and avoid what this young man's going through, you gotta have clear and concise regulations. That's means we have them invest in ourselves. We have to get it done. It's been 20 years since I started looking at it.

The point that I want to make is that his lot was split in '66. Okay? 1966, five years before the zoning was put in. I have a copy of the plot map of that subdivision. Was it the intent of the two adjacent land owners who bought that lot? And they didn't buy it from the subdivider, they bought it from a party who owned it, and they both closed about two weeks apart in November of '66.

So if you look at the plot map from that time, well, who knows when? From that time in '66 or when the regulation went in at '71, the plot map had a crayon on it that designated those two lots as one. And in every subsequent transaction, those two lots were included in a title transfer, okay? So he came along and

divided it. More power to him. Was it the right thing to do? That's what our whole discrepancy is about; that's why we're all here today.

We're concerned that if you throw out 14.2 without the proper language, without more discussion of everybody that's involved, what other can of worms are we gonna open up? Who else is gonna get burned? I mean let's face it, there's litigation here, a massive litigation. Who's gonna get it? Who knows. Is it against us? Is it for him? It's gonna get solved one way or another in the courts, but we're trying to prevent that.

That's what zoning's all about. It's an open discussion to figure out this is what you can do beforehand, this is what happened before the zoning, this is how we're gonna deal with it. That's why 14.3 was put in place, and that's why it was there. Look we know there's non-conforming lots. So if you own a non-conforming lot contiguous with the parcel next to it, we're gonna treat it as one, that was the whole idea behind 14.3.

Other than that I'd just like to say that democracy is messy. Democracy is on the one hand, "Well we tried to hold back the unbridled capitalism on the other." Other than that, that's what I'd like to say so I'd like you to say 'No' on repealing 14.2 right now so we can discuss this in further detail and actually have a comprehensive plan that makes sense. Thank you.

Speaker 11: Thank you. That's the end of the sign up list, is there anybody else who'd like to comment? Any other public comment, please come to the microphone.

John Kensey: Alright. Excuse me, my name is John Kensey. I live with my wife Linda who I think rightly summarized our position. Just listening to all of this, it makes it kind of clear to me that there are two problems here, the County has really two problems to solve, not one. Problem number one is what to do with 14.2 and the language in 14.2. And the other problem is what to do about our complaint. And it's important I think that they not be conflated.

14.2, I think you've heard enough to know that it has a purpose, it's consistent with the overall density control objectives of the zoning regs. It may have some language problems and all but those language can be fixed, and fixing them should have nothing to do with the resolution of our complaint against the county for their error in issuing the building permits to the Browns. The County was in error to issue that building permit because there was language in the zoning regs that precluded it, namely 14.2. And if the County had been aware of 14.2 when they granted that permit, they wouldn't have granted it. It's pretty clear.

Now they have to deal with my poor neighbor, and he's done a good job of describing the problem that he has with a house that is about 1/4 built. A lot of money spent already and what is he going to do about it if the building permit

gets pulled as it should get pulled? That's should be the County's responsibility, in my opinion to compensate him for their error in issuing that building permit.

The other alternative they have and it's not an alternative that I wish to pursue, is to compensate us for the loss of value that the existence of that house, when built, will cause us in terms of impacting the value of our property because of view restrictions and other things. But it's important not to conflate these two problems. Eliminating 14.2 won't really solve the problem that the county has with respect to the building permit that they issued in error. That language is 14.2 was in existence when that building permit was issued. You can't just wish it away, it was in existence.

So, I don't know what the answer's gonna be, I wouldn't want to be in the position of the County and have to make this kind of a judgment. But they've got to recognize the mistake they made. Thank you very much.

Speaker 11: Thank you. Is there any more public comment? Any more public comment? Seeing none, comments from staff and Sean I think what we need to do, I need you to put on the record that this is a map that is representative and probably not the official map of all the properties that may be affected by 14.2. Just to make sure that we understand that, that there may be differences. It's not the final map.

Sean O'Callaghan: Sean, Gallatin County planning director. I don't disagree with your comment, I guess my response is I think the methodology and the limitations of that methodology are adequately outlined in the memo I prepared.

Speaker 11: That's fine.

Sean O'Callaghan: There's limitations. I do want to respond to a few items that were raised in the written public comment and here today in the verbal comments. We're hearing multiple times that these amendments should go to the Advisory Committee. I want to be clear that Bridger Canyon does not have a formal Advisory Committee. We have Advisory Committees in the Gallatin Canyon Big Sky Zoning district and the Hebgen Lake Zoning districts.

I don't know the exact year, but I think it's close to 10 years ago at this point. A group of stakeholders was appointed to a committee to look at comprehensive amendments to the Bridger Canyon Zoning Regulation. Their work is not yet complete, they continue to meet periodically to do that. This is being proposed outside of the scope of the amendments that they were originally appointed to consider. The appointments to that stakeholder group have all lapsed, it is best described now as just sort of an ad hoc committee.

So there is not a formal Advisory Committee. The request to have this go to the Advisory Committee is peculiar to me in that the Bridger Canyon Properties' Owner's Association was all too happy to have the County consider

amendments that resulted from the settlement agreement without the input from that Committee, so that's not lost on me.

There was a request in one of the comments, an email for me attached to it asking that I take a different action other than coming back to the Planning and Zoning Commission here today and that I declined to do so. It's accurate that I declined to do so but the reasoning, which is explained in the email but not in the written comment is because I was following the clear direction from the County Commission to bring this matter back to the Planning and Zoning Commission, and I think that's important.

It's already been described that there's some differences in the analysis that BCPOA conducted in the resulting map versus what the County did. I think Tom [Fitterman 01:40:40] mentioned, or was under the impression that the County looked at ownership back in 1971, that's not true. We did not look at ownership in 1971. That's beyond the scope of that analysis that we did, I just want that to be clear for the record, but I have numerous questions that I'm unclear about how BCPOA produced their map and the methodology they used, and that's okay. I tried to be very clear about the methodology I employed.

I think some things that might be interesting just to put on the record is based on the County's accounting for the number of parcels, the [tan 01:41:29] parcels that are accounting for within the Bridger Canyon Zoning district. There's 946 parcels, 73% of those are less than 40 acres, 57% of those are less than 36 acres, so where does the 36-acre number come from? That's something that's not explained in my memo that probably warrants some additional explanation.

The Bridger Canyon Zoning Regulation generally prescribes a 40-acre minimum lot size, and then it says "Parcels that are within 10% of that shall be considered as being that minimum parcel size." So that's the 36 acres. 49% of the parcels in the zoning district are less than 20 acres, 32% are less than 10 acres. And so in the memo from Brian [Gallick 01:42:34], page four that he's really asking you to interpret a goal that's included ... kind of the overall objective and language of the Bridger Canyon Zoning Regulation as limiting density, limiting development as it pertains to non-conforming lots and actually look at the number of non-conforming lots in the zoning district. If you actually take that suggestion to it's conclusion, that impacts ... 73% of the lots in the zoning district are less than 40 acres and 57 are less than 36 acres. So that doesn't really work.

I agree with the numerous comments that were made here today that the goal of today's meeting is not to resolve the complaint that is related to the Brown property. That's not what's been noticed, that's not what's before the Planning and Zoning Commission. Again for transparency purposes the staff just wanted to make sure that the Planning and Zoning Commission was aware that there was a complaint that the subject matter is related to.

Requests about providing further opportunities for public comment and additional hearings on this matter, again today is the fourth hearing on this subject. So there has been opportunity for public comment, and again to try and provide additional notice beyond what's required in the zoning regulations or in statute, in addition to publishing notice and the minimum posting in three locations in the district, staff posted it in 10 locations in an attempt to kind of hit to population centers of the zoning district and make sure the public was aware of it.

Page 11 of Brian Gallik's memo ... there's reference to a source he's referring to, [Ziegler 01:45:11]. And it's talking about the appropriateness of minimum lot size appearing in zoning regulations. And minimum lot size I think is a well-recognized established principle for regulating density and development, but when you actually look at the language and at the end of the section that he's citing here, he talks about minimum lot size regulations as "being of assistance and avoiding the incursion of narrow or undersized lots which would be inconsistent with existing development and which would result in the erection of in-harmoniously sized structures."

I think it's really important to look at that language closely and realize that that's focused on creation of new lots. It's talking about the impact on existing development. Here, the issue before us is dealing with lots of record, lots that were in existence at the time the zoning regulation was adopted. We're not talking about the creation of new lots after 1971 and, yes when you look at the total number of dwelling units that are possible within the Bridger Canyon Zoning District, striking section 14.2 would impact the overall density calculation for the zoning district. But we're not talking about the creation of new lots, creation of new development, new lots in the zoning district after 1972, I'm sorry 1971 are absolutely subject to the minimum lot size, density requirements and other standards that appear in the zoning regulation.

Page 12 of that same memo, kinda the middle of the page, he's talking about how the zoning regulation has the effect of aggregation. In my eyes aggregation is a very specific term that we use in planning purposes and when I think of aggregation I think of legally combining more than one distinct tract of record, and when there's an aggregation there's either a deed restriction or a survey filed in the Clerk on the [Courter's 01:47:44] office that would make that aggregation clearly part of the land records. Section 14.2, while it has the intent of us treating multiple tracts of record that are subject to it as a single tract, I don't think it has the same affect of legally aggregating the tracts as other actions that are on record in the Clerk of the Courter's office has.

Again, in the interest of just making sure the record's clear, there's three other zoning districts in the County that have similar language. Sypes Canyon Zoning District #1, Sypes Canyon Zoning District #2 and then what's called Zoning District #6. These are much smaller districts with very limited development activity. Bridger Canyon on the other hand is a very large district with quite a bit

of development activity. Part of that, and just the activeness of that zoning district is one of the reasons we thought it was important to start this conversation and bring this matter before the Planning and Zoning Commission and County Commission.

Richard Lyon made a comment that it's not for the planning department to determine the enforceability of the zoning regulation. That's up to the Planning and Zoning Commission and County Commissioners, but I agree. It is up to the commission, but based on my tenure and experience I think I have some insight into issues that might be complicated or be challenging to enforce and again that's part of the reason we undertook the action that we did to bring it forward so that the Planning and Zoning Commission and County Commission can have these discussions.

I think I'll leave it at that, I'm happy to answer any questions from the Commission.

Speaker 11: Any questions the staff? Here.

Eric: Thank you. I've got a lot of questions and we'll start here. I believe it says in here, I couldn't find it when I was looking again but ... and Mr. Kinsey referred to it that this does not affect anything to do with the litigation that's going on, is that correct? If we make a decision to approve this change, it will not affect the litigation or ...?

Speaker 12: I'd like to answer that if I can Eric. There's no litigation going on right now. All that's been filed is just a complaint with the Code Compliance Department, so there's no litigation, no effect on the litigation. That doesn't exist.

Eric: Okay. And would it affect the decision on the complaint, or could it?

Speaker 12: It might, but again that's outside of any decision you should be making today. I would not take that into consideration and your vote.

Eric: Thank you. I have another question and it's kind of about the operation of this board because I'm new and I should've asked this before but it just occurred to me as we're sitting up here. Who are we representing as we sit on this commission? Are we representing the County or are we representing just the Bridger Canyon Zoning District in this instance?

Speaker 12: In this instance you are representing the Bridger Canyon Zoning District. You're sitting as a Bridger Canyon Planning and Zoning Commission.

Speaker 11: And just so were sure, that is in an advisory capacity to the County Commission.

Speaker 12: With regard to zone text amendments yes.

Speaker 11: Eric?

Eric: It also seems to me, it's been representative that this is administrative change and it looks like if we make the change, all the red dots on this map go away. Is that correct?

Speaker 13: If you make the change that's being proposed ... I'm trying to think of how to respond here. The dots don't go away, the parcels are still there. The parcels of record are the parcels of record. The limitation on what's arguably their inability to develop [inaudible 01:53:14] from the zoning regulation.

Eric: So my observation is that would be substantive to the district?

Speaker 13: I don't disagree with that, I think it's an administrative provision in the sense that the non-conforming provisions ... I have a lot of administrative processes in them throughout our zoning districts and it's not to say that that can't have an impact on the ground for the Bridger Canyon Zoning District.

Eric: That last question I think. In some of these there's two adjacent parcels and in some of these I count the large one there, there's 16 together. Are those 16 parcels being treated as a single parcel or are they ... how does it affect those?

Speaker 13: So that's an excellent question. And I think the specific instance you're referring to [crosstalk 01:54:32]

Eric: Yeah, they look like a bunch of 20s in there.

Speaker 13: They're owned by the Forest Service, and so arguably-

Eric: Forest Service, okay. Won't be developed.

Speaker 13: Arguably they are treated as a single parcel in that instance. There are other instances particularly that I'm thinking of in the north part where there are seven tracts that are shown next to one another. I don't think off the top of my head more than two of those were owned by the same party. So there's multiple land ownerships represented by those seven tracts.

Eric: If that's the case, why are they on this map? Why are they indicated?

Speaker 13: Because two of them would be treated as a single parcel, then you move to the next two and maybe those two would be treated as a single tract.

Eric: But they're not in single ownership.

Speaker 13: Let me try and rephrase that another way. All seven of them are not owned by the same party. Several of those tracts of record, amongst those seven-

Eric: Some of them are.

Speaker 13: All of them ... they're on the map and identified because they are adjacent to another tract that has the same ownership. Does that make sense?

Speaker 11: But not all of them are the same ownership.

Eric: Oh I gotcha., I gotcha.

Speaker 13: Not all seven of them are owned by the same party.

Speaker 14: Oh, I gotcha, I gotcha, okay-

Speaker 15: Not all seven of them are owned by the same party.

Speaker 14: Got it. I understand.

Speaker 15: All of them are adjacent to another property that is owned-

Speaker 14: Okay. Thank you. That explains it.

Speaker 26: Any other questions? Ma'am, public comment is over. We've had that.

Speaker 14: Is there other questions down here?

Speaker 26: Sean, there's been no new non-conforming tracks formed since zoning went in 71, 72?

Sean: I sure hope not.

Speaker 15: We can assume not.

Sean: If a non-conforming ... if a tract of record was created that doesn't conform to the minimum lot size requirements of a zoning regulation, it could be created through the planned unit development provisions of the zoning regulation. Okay? So, in conformance through the PUD process, or ... I am aware of at least one variance that I believe was issued from the minimum lot size requirements to facilitate a boundary relocation. So they could be created through those kinds of provisions.

Speaker 26: Are either of those lots indicated on this map?

Sean: I don't know that for sure.

Speaker 26: But, I guess my point is, prior to zoning, a large portion of these, shall we say, had a building right on them prior to zoning.

Sean: The parcels that I identified ... the parcel data that we use, when you look at the GIS layer and the table, the attributes for the parcel data, it lists a year that a survey was done, okay. And then there's also ... sometimes that's blank, and that indicates either we don't have that information, or the property was never surveyed. And so I identified the parcels that had a survey date prior to the effective date of the zoning regulation of 1971, or where that field was left blank, meaning we don't really know. But they had a building right prior to zone pass, zoning. They existed prior to 1971. I don't want to necessarily say they all had a building right, so to speak. There are some just absolute slivers of land that technically show up as distinct tracts of record. Whether that's by surveyor, whether they were 40 foot wide tracts that were created to facilitate access. Not saying that all of them could have been physically developed.

Speaker 26: Okay. Okay. Any other questions for staff?

Speaker 16: I do have a couple questions.

Speaker 15: Go for it.

Speaker 16: Okay. Sean, if it's in here, I apologize, but we've had a lot of numbers thrown at us today. So I'm interesting in hearing, or having someone explain, how many homeowners live in this district, or property owners live in this district? Does that make sense? And I'm not talking two people that on the same ... you know, a husband and a wife, or partner, whatever.

Sean: I don't think that information has been presented today. I don't know how many residences there are in a district, and of those, how many are occupied or full-time or part-time. I know that based on that map, there's 946 parcels in the Bridger Canyon zoning district. That's the best answer I can give you.

Speaker 16: That's fine. Thank you.

Speaker 26: Any other questions?

Speaker 17: All right.

Speaker 16: For now is [crosstalk 02:00:45] for now? I do have some questions of the Bridger Canyon Property Owners Association.

Speaker 26: Okay.

Speaker 16: But I don't ... is this-

Speaker 26: Sure.

Speaker 16: Okay.

Speaker 15: You've got time to ask those.

Richard Lyon: Ask away.

Speaker 16: All right. Thank you for coming up here.

Richard Lyon: Richard Lyon. 4794 Aspen Lane.

Speaker 16: So Mr. Lyon, a couple of times I heard from ... and maybe this was just my ... I didn't get it all down. How many members are there of your association? I heard 150 or 250.

Richard Lyon: It has varied from 150 to 250. If I may ask Mr. Miller, who is the treasurer and keeps those rolls, he could probably give a current number.

Mitch Miller: I would say approximately [inaudible 02:01:48].

Speaker 26: Excuse me, Mr. Miller, I'll have to have you come forward just to make sure we get it on the record.

Mitch Miller: Rich Miller. 15870 Bridger Canyon Road. Off the top of my head, I would say we have at least 280 currently. 280, but I would have to check that, but that seems pretty representative of what we got.

Speaker 26: Okay. Very good. Thank you.

Speaker 16: If I can ask you another question, Mr. Lyon. Okay. Of these respondents here that we have, these exhibits and the emails that we received, are the majority of these folks that were notified by the Bridger Canyon Property Owners Association?

Richard Lyon: I don't know. I have not read them all, and I have not compared it against the BCPOA membership list. Speculating, I'd say they're probably on our mailing list, which I believe is bigger than our membership list. Anybody can get on our mailing list, particularly if he or she owns property in the Canyon. And Mr. Fiddaman's survey that he testified about would certainly have brought this to that list members' attention.

Speaker 26: Other questions for Mr. Lyon?

Speaker 19: Do you charge fees to be a member?

Richard Lyon: We have a ... there's annual dues of \$25 per household.

Speaker 26: All right. Any other questions for Mr. Lyon? Okay. Thank you Richard. Any other questions? Okay. We'll bring it up for a motion and findings.

Speaker 20: Well, I'll make a motion. Mr. Chair, having reviewed and considered the zone text amendment materials staff report and public comment in accordance with the requirements in Section 18.6, the Bridger Canyon zoning regulation, I move to affirm planning and zoning resolution number 2018-010.

Speaker 26: Is there a second?

Speaker 16: I'll second that.

Speaker 26: Move to second it. I'm sure we're going to have discussions, so let's go to discussion before findings. We're not going to have discussion.

Eric: Well-

Speaker 26: Go for it.

Eric: I guess personally I have a problem with 14.2. I think it's taking land rights from properties that existed already in that sense. I agree with Mr. Brown's assessment of it, that these properties existed prior to the zoning, and at the time the zoning was created, those rights were removed from those properties. But I'm not an attorney, and so I don't even know if I can consider that my decision. My observation is that, yes, this would indeed make things much easier for the county to administer. No question about that. This is a sticky issue. And I would love to be able to support the planning department and the county to be able to address these issues without having this kind of hanging over any of these properties. It really confuses the issue, and I'll admit I am confused how this works for these particular properties, and why they're so unique. Because there are many, many non-confirming properties in this district.

Eric: The number that we got. 57 percent is ... not sure if that's the correct number, but seems like that's the number of non-confirming properties was 57 percent. I may be wrong with that, but the other side of it is that all but three of the people who testified and submitted public comment were opposed to it. I believe what Mr. Brown said, that there are ... and maybe it was in that other letter too ... regarding that the opinions that align with BCPOA in their opposing this change, there are a lot more people out there that are not opposed to it. But those people did not show up today, did not submit comment, so I really struggle with this decision and quite honestly, I'm going to be listening to what the other commissioners have to say. I haven't made up my mind at this moment. So that's my comment at this point.

Speaker 20: Yeah, Eric. I tend to agree with you. Especially the first part of what you said about certainly appears to this amendment, as it exists currently, seems to have removed rights that we would consider generally just as a society, as a general expectation of right of their property. And that amending this, or correcting this, would I guess restore rights to properties more consistent with the ways that I

would think of property right. And I would add that I find it very problematic that there's little or no way for people that had purchased properties through all these decades to have known that these restrictions were upon their lots. Because these were done without any filing deed restriction or other instrument that's recorded in your current office that would allow them to know that these restrictions were there. It seems pretty special.

Speaker 20: It's not something somebody would go looking for, it's not something they would expect. That they would buy a piece of land and then find out that because it was in joint ownership at some prior date, that they had lost or they had never gained some right to develop the land that they expect to have. I personally would find that very troubling, that expectation would be placed on ... this special exemption would be placed on buyers of lots, which is precisely why that kind of speaks to the problematic nature of applying this language.

Speaker 16: Personally, I'm looking at this as, you know, like we all are. Sean, you do a great job, but I'm not making a decision based on staff restrictions. It's truly based on the rights of the homeowners, of the owners of these parcels out in this district. I think that's just my statement. This is where I'm at right now. This is not easy.

Speaker 21: No.

Speaker 22: Nope.

Speaker 26: I think it's important to understand that we're not here representing the Bridger Property Canyon Owners Association. We're here representing those that own property in Bridger Canyon. And I agree with the comments that have been made as far as it's almost a defacto aggregation of lots, a merger of lots, an aggregation of lots, without anything really being filed in a clerk and recorders office. So there's a possibility that somebody that purchased one of these lots, that even for a period of time as short as five minutes, was owned by the same person. Be that the developer, as it was a subdivision in there. The developer may have owned part of his subdivision. Unload lots, sold lots in his subdivision at the time that it was implemented, zoning was implemented. And this really doesn't ... 14.2 does not actually increase density. The density was there. 14.2 actually decreases density. So when we say the testimony's been that this actually increases density, it does not.

Speaker 26: It decreases it in that, because prior too there was ability, at least on portions of these lots, and maybe these odd lots for access and everything that Sean mentioned that are not buildable anyway. So this does not increase density by allowing building on these lots. It actually decreases it by not allowing it. I know that's confusing, but stick with me on this. So it's concerning to me that ... the actual taking his claim is something that probably only a court is ever going to figure out, and that's not what we're here to do. So it is potentially, in my mind, is spot zoning, because they are treating lots differently just based on size.

Speaker 23: As it currently sits.

Speaker 26: As it currently sits. We treat things different. If this regulation was to the point where we had two conforming lots of the same size owned by the same person that they lost building rights, that would be an entirely other story. But we are treating these smaller lots differently. So I'm in favor of the motion, and when we get there I will make other findings, but that's where I'm at. I'm in favor of the motion.

Eric: Thank you [inaudible 02:14:38].

Speaker 26: Please.

Eric: Yeah. The commission remanded this back to us, and two thirds of the commission are sitting right here. Can I ask what your thinking was in that?

Speaker 26: Yeah. I will tell you what it was. It was that this was paired with the Petty settlement, which was amending some other portions of the regulation, and then this one was right beside it. My belief is that the commission's intent was to separate the two so that we could have this hearing today on just this one subject.

Speaker 16: This is the fourth ... sorry, may I ask Sean a question?

Speaker 26: Certainly.

Speaker 16: This is the fourth hearing, Sean, on this matter to which everybody had been given public notice.

Sean: Correct. The resolution of intention was published on the commission's agenda. There wasn't a separate legal notice requirement for that.

Speaker 26: One more thing. Talk about this ... and Sean mentioned it. I think I need to clarify this a little bit. Where ownership of two adjacent lots is used, it's mainly used in urban settings. If you go to the plot of the City of Bozeman, for example, there are numerous houses that have been built over two lots, three lots, fairly near lot frontages. And so this was done typically in urban kinds of things, so that if you wanted to buy ... if you wanted a bigger house, you buy four lots. If you wanted a smaller house, you bought two lots. But you didn't gain the rights to build ... just because you had four lots, you couldn't build four houses to meet those kind of requirements.

Speaker 26: And so it's more of an urban thing. I think that's actually demonstrated by the comments in [inaudible 02:16:56] about to ensure, what is it, light and air and all that other stuff. So I think that that's pretty representative of how that was intended to be used in an urban setting rather than a rural setting on 40 acre

lots. So I think that language was sort of co-opted and put in there from more urban design, urban standards of zoning.

Eric: That sounds very reasonable, but the section was added to the regulation nevertheless.

Speaker 15: Nevertheless.

Eric: And a whole group of people here are asking us to keep that in the regulation.

Speaker 26: And our question is probably is it appropriate to keep it in the regulation? Any more discussion? Anybody want to put findings on before we make a vote?

Speaker 20: I do find that I feel this amendment serves a public necessity. I choose to remain sensitive to the fact that we are representing nearly 1000 parcels in one large piece of our county, and not necessarily a subset of those people, but everyone in trying to make decisions that are of the greatest public necessity and convenience to general welfare. So I feel that this motion and its message would serve that purpose.

Speaker 26: Mr. Commissioner? Okay. I'll make a finding as well. That there is public necessity, and general welfare. I would go that it ensures a fair treatment of all the owners of parcels in that particular zoning area. That it ensures that all the parties are treated fairly. As far as necessity and convenience, I think as far as we have to truly adjust whether the county can defend this. While this bizarre part one zoning district, we certainly do take public input, not only in the creation of those zoning but in the amendments and all of that. However, it is kind of incumbent that it is the county that has to defend these regulations, and I think there is an inherent problem defending these. Not only in the legal system, but it's difficult to defend them to the public. And I think that's important.

Speaker 26: I would find that I would adopt the findings in the staff report as they exist. I would find that we have also followed the procedures as far as notification in hearings, and as was mentioned, this is the fourth hearing, so I would also take into consideration the public comments, the presentation by our planning staff, and that we have done the proper procedures prescribed by law and the zoning regulations. Miss Arnold, is there anything else we needed to make for findings?

Miss Arnold: No. Thank you.

Speaker 26: Any other comments? Any other findings? If not, I will call for the question. All in favor of the motion in the second on the floor, say "Aye." Aye. Opposed? There are none. It passed unanimous. Thank you all for coming. Thank you for participating. You'd be surprised the number of hearings we have where we don't have participants. It's always nice to have people here. Thank you very much. Let's take-

Speaker 24: Close the joint meeting?

Speaker 26: Oh. Want to close our joint meeting?

Sean: Yeah. I hereby close this joint meeting of Gallatin County Board of Commissioners and the Planning and Zoning Commission.