



Gallatin County

STAFF REPORT

TO: BRIDGER CANYON ZONING DISTRICT PLANNING & ZONING COMMISSION

FROM: MEGAN K. GIBSON, CODE COMPLIANCE OFFICER
CODE COMPLIANCE DEPARTMENT *MKG*

SUBJECT: APPEAL OF THE SEPTEMBER 18, 2023 ZONING ENFORCEMENT AGENT'S DETERMINATION THAT THE SHORT TERM RENTAL USE OF THE PRINCIPAL SINGLE-FAMILY DWELLING ON THE LEWIS PROPERTY VIOLATES THE GALLATIN COUNTY "PART 1" ADMINISTRATIVE REGULATION AND THE BRIDGER CANYON ZONING REGULATION (COMPLIANCE ID #2022-041)

PUBLICATION

DATE: JANUARY 4, 2024

HEARING DATE: JANUARY 11, 2024

LOCATION: GALLATIN COUNTY COURTHOUSE COMMUNITY ROOM
311 W. MAIN STREET, BOZEMAN

BACKGROUND:

On September 13, 2021, the Code Compliance Department (Department) received a Citizen Complaint Form from Tom Fiddaman on behalf of the Bridger Canyon Property Owners Association (Complainant) alleging that Sean A. Lewis (Lewis) is renting both the primary and the caretaker building on the Property independently and simultaneously as short-term rentals on sites such as vrbo.com. (Exhibit A, Administrative Record, pp. 001 to 007)

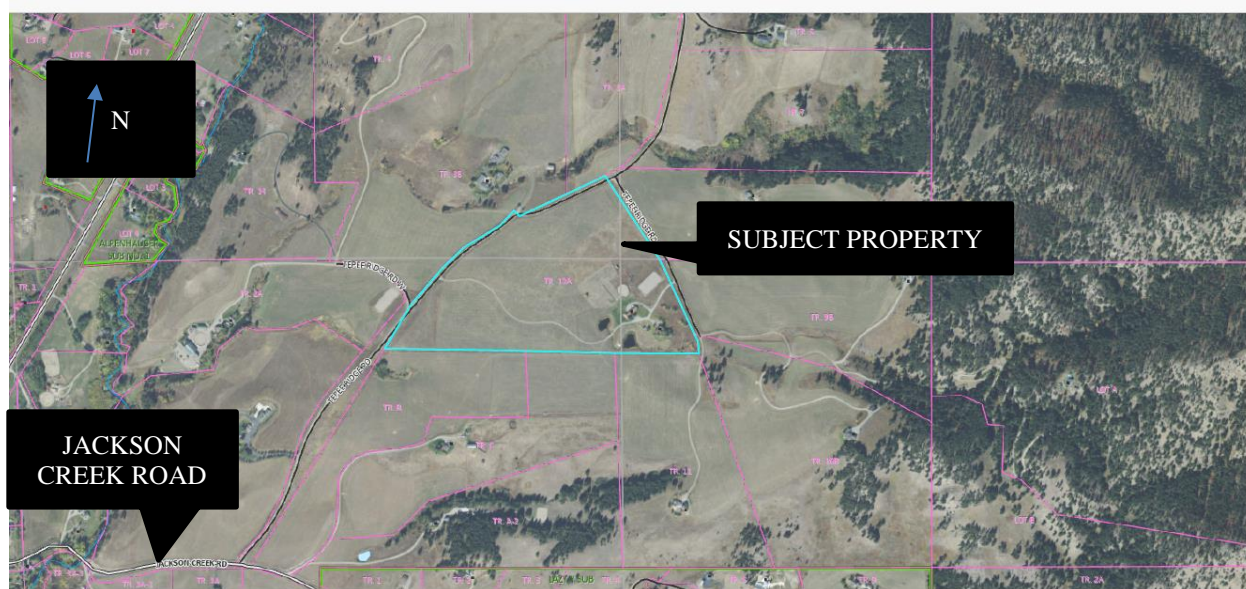
On September 18, 2023, the Department notified Lewis, his representative Amy C. McNulty (McNulty) of Tarlow Stonecipher Weamer & Kelly, PLLC, and the Complainant of the Department's Notice of Violation and Demand for Corrective Action Letter that the continued Use of the Dwelling Units on the Property as short-term rentals is a violation of the Bridger Canyon Zoning Regulation (Zoning Regulation) and the Gallatin County "Part 1" Administrative Regulation (Administrative Regulation). (Administrative Record, pp. 284 to 351)

McNulty submitted an appeal on October 18, 2023 (Appellant Exhibit 1) with an appeal brief submitted on December 15, 2023 (Appellant Exhibit 2). The appeal challenges the Department's

decision only as to the Principal Single-Family Dwelling on the Property, not the Structure formerly conditionally permitted as a Caretaker's Residence.

LOCATION:

The Subject Property is legally described as Tract 12A of Certificate of Survey No. 1265A located in the SE $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 17 and the NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of Section 20, Township 1 South, Range 7 East, P.M.M., Gallatin County, Montana. Generally, the Subject Property is addressed as 153 & 155 Tepee Ridge Road East, Bozeman, Montana (Property).



The Subject Property is located within the Agricultural Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District) and is therefore subject to the Bridger Canyon Zoning Regulations (Zoning Regulation). The Zoning District was adopted by the Board of County Commissioners on July 12, 1971, and the Zoning Regulation was adopted by the Board of County Commissioners on October 26, 1971, and has been amended thereafter.

Because this Property is subject to the Zoning Regulation, it must also comply with the Gallatin County "Part 1" Zoning Administrative Regulation (Administrative Regulation). The Administrative Regulation was adopted for use with this Zoning Regulation on June 29, 2021.

APPLICABLE DEFINITIONS AND DEVELOPMENT STANDARDS OF THE ADMINISTRATIVE REGULATION AND ZONING REGULATION:

Definitions (Section 2 Administrative Regulation). The following definitions provide clarification and guidance regarding this Administrative Regulation. Additional terms are defined in the District Regulations. In the case of a conflict between the definitions below and the definitions provided in an applicable District Regulation, the definitions in this Administrative Regulation control except where specifically stated otherwise.

- ***Dwelling Unit (Section 2.10 Administrative Regulation):*** A Building or portion thereof providing complete, independent living facilities for one or more persons, including

permanent provisions for living, sleeping, eating, cooking, and sanitation. Where a portion of a Building containing complete, independent living facilities may be separated from another portion of a Building also containing complete, independent living facilities, such Building shall be considered to contain more than one Dwelling Unit.

- **Dwelling Unit, Single Family (Section 2.11 Administrative Regulation):** *A Building or portion thereof containing a single Dwelling Unit for habitation by one or more persons co-residing therein and their domestic employees.*
- **Dwelling Unit (Section 3.22 Zoning Regulation):** *A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.*
 - a. **Dwelling Unit, Accessory:** *A separate Dwelling Unit located within the Principal Single-Family Dwelling Unit or in an Accessory Building.*
 - b. **Dwelling Unit, Principal Single-Family:** *A Building or portion thereof containing a single Dwelling Unit for habitation by a Family.*
- **Family (Section 3.33 Zoning Regulation):**
 - a. *A person living alone;*
 - b. *b. any number of people related by blood, marriage, adoption, guardianship, or other authorized custodial relationship;*
 - c. *c. two (2) unrelated people and any children related to either of them;*
 - d. *d. not more than four (4) unrelated people living together as a single nonprofit housekeeping unit and sharing common living, sleeping, cooking, and eating facilities.*
- **Overnight Accommodations (Section 3.52 Zoning Regulation):** *Permanent, separately rentable accommodations that are not available for residential use, except for the proprietors of a Bed and Breakfast Inn or Guest Ranch. Overnight Accommodations include Hotel or motel rooms, hostels, cabins, Bed and Breakfast Inns, Guest Ranches, and time-shared units. Individually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, Employee Housing, and similar accommodations do not qualify as Overnight Accommodations for purpose of this definition.*
- **Zoning Regulation Conformance (Section 3.2 Administrative Regulation).** *Property owners are responsible for ensuring all activity within and on their property conforms to this Administrative Regulation and the applicable District Regulation. No Building, Structure, or land shall hereafter be used or occupied, and no Building, Structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved or Structurally Altered unless it is in conformity with all the Zoning Regulations.*

No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure, or unless such Use is deemed to be an appropriate Use pursuant to the interpretation process of Section 3.8 of this Administrative Regulation. All other uses are prohibited unless otherwise authorized by federal or state law.

The burden of proof is on an applicant to demonstrate that applicable requirements and review criteria of the Zoning Regulations are met. Where conditions of approval are attached to any approval issued under the Zoning Regulations, the failure to comply with any condition of approval is a violation of the Zoning Regulations.

- **AE: Agricultural District (AE) (Section 4 Zoning Regulation).**
 - ***Intent Section 4.1 Zoning Regulation:*** *It is the intent of this District to protect and preserve the existing rural character of Bridger Canyon and to preserve existing developed and undeveloped farmlands from unplanned residential, commercial, and industrial development. It is further the intent of this Regulation to encourage agriculture as one of the occupational pursuits and an economic endeavor in Bridger Canyon. The purpose of the Agricultural Exclusive District is, when applied to particular land, to encourage the following land uses:*
 - a. *Residential uses that do not impair the rural character of Bridger Canyon;*
 - b. *The cultivation of ground, including the preparation of soil, planting or seeding, and raising and harvesting of crops;*
 - c. *The raising, feeding, and managing of livestock;*
 - d. *Incidental uses that are customarily and necessarily related to and included within an agricultural pursuit; and,*
 - e. *Incidental unrelated uses that are necessary to protect and promote the health, safety, welfare, and convenience of rural residential citizens.*
 - ***Permitted Uses (Section 4.2 Zoning Regulation):***
 - a. *Agriculture, as defined under Section 76-2-902, MCA.*
 - (1) *The sale on the premises of agricultural products produced thereon.*
 - (2) *The packing, storing, and processing of produce grown on the land, together with Accessory Buildings and Structures required for agricultural production.*
 - b. *One Principal Single-Family Dwelling Unit on each parcel created in conformance with the Zoning Regulation or in existence at the time of its original adoption.*

- c. One Accessory Dwelling Unit in accordance with Section 12.2.*
- d. Accessory Buildings, where each Accessory Building is equal to or less than 2,400 square feet of General Floor Area.*
- e. Essential Services, Type I.*
- f. Domestic Wireless Equipment.*
- g. Signs, in accordance with Section 13.*
- h. Home Occupations.*
- i. Accessory Solar Energy Systems.*
- ***Uses Permitted After Securing Approval of a Conditional Use Permit (Section 4.3 Zoning Regulation):***
 - a. Non-commercial airstrips for the use of aircraft used for agricultural purposes together with Accessory Buildings and Structure required therefor.*
 - b. Religious organizations and Places of Worship.*
 - c. The development and processing of natural resources in accordance with Appendix A, Natural Resources Conditional Use Permits.*
 - d. Guest Ranches.*
 - e. Bed and Breakfast Inns.*
 - f. An Accessory Building greater than 2,400-square-feet of general Floor Area.*
 - g. Personal Wireless Service Facilities, subject to Section 14.*
 - h. Essential Service Type II.*
 - i. Emergency Services.*
 - j. Small-scale Wind Energy Systems.*

ZONING ENFORCEMENT AGENT'S INVESTIGATION/BACKGROUND:

According to the records with the Gallatin County Clerk & Recorder, Mr. Lewis purchased the Property in September 2003.

According to the Department of Planning and Community Development (Planning Department) records, the following zoning applications are associated with the Property:

1. #Z2006-023 Conditional Use Permit (CUP) application for a Caretaker's Residence was submitted to the Planning Department in August 2005.
 - A. The Planning Department issued a letter on September 20, 2005 stating they could not process the application as there were no structures constructed on the property and a principal dwelling unit was required to be constructed prior to applying for an accessory dwelling unit (i.e., a Caretaker's Residence).
2. #L2006-089 Land Use Permit (LUP) for one 4,246 square foot Single Family Dwelling Unit with three bedrooms, an attached five stall horse barn with storage and a covered car port, and detached six stall garage with multiple storage areas.
3. #Z2007-038 CUP application to change the designation of the existing Single Family Dwelling Unit to a Caretaker's Residence submitted December 1, 2006.
 - A. The request was conditionally approved by the Bridger Canyon Planning & Zoning Commission on February 8, 2007 via the Findings of Fact Conclusions of Law and Order with six Conditions of Approval.
 - B. On November 9, 2023, the Bridger Canyon Planning and Zoning Commission revoked the Lewis Caretaker's Residence Conditional Use Permit via the Findings of Fact, Conclusions of Law and Order issued on November 20, 2023.
4. #L2013-172 LUP for a new detached garage, and additions and a remodel to the original detached garage converting it into a Dwelling Unit.
5. #L2023-130 LUP modification for the Dwelling Units on the Property to review and approve what was actually constructed between 2006 and 2013. This approval included updated plans for the Principal Single-Family Dwelling Unit showing the actual location constructed, the actual buildout of the Structure with an attached garage with five stalls, and no detached garage or additional storage areas.

On September 24, 2021, the Department sent an Investigation Letter notifying Lewis of the Complaint on his Property and requesting a site visit and information regarding the uses and structures on the Property. (Exhibit A, Administrative Record, pp. 024 to 031). The Department received an email from McNulty on October 13, 2021, stating that she would be in touch with the information requested and to schedule a site visit. No further communications were received.

On October 22, 2021, the Department sent Lewis and McNulty a Warning Letter. (Exhibit A, Administrative Record, pp. 032 to 038). Code Compliance Officer Gibson met with Lewis for a site visit on November 22, 2021. (Exhibit A, Administrative Record, pp. 039 to 040).

On November 29, 2021, the Department sent Lewis and McNulty a Corrective Action Letter, directing Lewis to provide the Department with a proposed written plan of correction no later than December 29, 2021. (Exhibit A, Administrative Record, pp. 041 to 049)

On December 21, 2021, McNulty had a phone conversation with Sean O'Callaghan, Chief Planning Officer, regarding the permits required for the Structures on the Property. (Exhibit A, Administrative Record, p. 050)

On December 28, 2021, the Department received a written response from McNulty indicating that she had started conversations with both the Planning Department and Health Department, that she was still investigating some of the items raised as potential violations, and that Lewis would be back in touch with the Planning Department by January 14, 2022. (Exhibit A, Administrative Record, pp. 056 to 057)

Over the course of January and February 2022, McNulty corresponded with the Department regarding the short-term rental Use, but no further information was provided to the Department or the Planning Department as described in the December 28, 2021 response from McNulty.

On February 2, 2022, the Department sent Lewis and McNulty a Partial Closure/Corrective Action Letter #2, that in part, stated “Pursuant to § 7-5-121 MCA (2021), the County may not restrict you **at this time** from operating private businesses [short-term rentals or tourist homes] on the Property as Overnight Accommodations/short-term rentals/tourist homes. Doing so would deny your customers access to your private business.” (emphasis added) (Exhibit A, Administrative Record, pp. 065 to 071). This letter was sent as a result of HB 257, codified at § 7-5-121, MCA (2021), which prohibited local governments from adopting regulations that would have the effect of prohibiting customers from accessing a private business and broadly including any sole proprietorships.

On May 26, 2022, McNulty met with Allyson Brekke, the previous Deputy Planning Officer, to discuss various Planning related issues including, but not limited to, short-term rentals and the process to request an Administrative Determination. (Exhibit A, Administrative Record, p. 079)

On June 14, 2023, the Department sent Lewis and McNulty a Corrective Action Letter #2 regarding the change in state statute (§ 7-5-121 MCA (2023)) and the short-term rental or tourist home Use of the Principal Single-Family Dwelling Unit and Caretaker’s Residence located on the Property. During the 2023 legislative session, the Legislature amended § 7-5-121, MCA, to clarify that the limitations previously adopted through HB 257 “do not apply to the enforcement of zoning provisions as allowed in 76-2-113 and 76-2-210.” § 7-5-121(4) (2023).

Mr. Lewis and Ms. McNulty were directed to provide the Department with a proposed written plan of correction no later than June 29, 2023, describing the specific actions and dates they would take to address the short-term rental or tourist home Use. (Exhibit A, Administrative Record, pp. 179 to 181)

On June 29, 2023, McNulty provided a written response to the Department’s Corrective Action Letter #2 regarding the short-term rental Use of the Principal Single-Family Dwelling Unit and Caretaker’s Residence on the Property. (Exhibit A, Administrative Record, pp. 185 to 187)

McNulty argued the short-term rental Use is allowed because Lewis is not using the Property as an Overnight Accommodation (i.e., for at least 48 weeks per calendar year). According to McNulty, Overnight Accommodations are the only short-term rental use regulated by the Zoning Regulation. She further argues that all other short-term rentals fall within the definition of Single-Family Dwelling Unit and Accessory Dwelling Unit.

McNulty concluded her response with the following:

- *Understanding that there are some limits imposed by the Zoning Regulation, and in an effort to resolve any outstanding issues, my clients can agree to the following plan to ensure compliance with the applicable regulations:*
 1. *The Lewis Property will not be listed as available for overnight rental for the general public for 48 or more weeks per calendar year; and*
 2. *The Lewis Property will only be rented to groups meeting the definition of “Family” under the Zoning Regulations.*

On July 12, 2023, the Department sent Lewis and McNulty a Corrective Action Letter #3 regarding the short-term rental Use of the Principal Single-Family Dwelling Unit and Caretaker’s Residence on the Property reiterating the County’s position that short-term rentals or tourist homes is a prohibited Use on the Property. Lewis and McNulty were directed to provide the Department with a proposed written plan of correction no later than July 27, 2023, describing the specific actions and dates they would take to address the short-term rental or tourist home Use. (Exhibit A, Administrative Record, pp. 188 to 191)

On July 27, 2023, McNulty provided a written response to the Department’s Corrective Action Letter #3 regarding the short-term rental or tourist home Use of the Property. (Exhibit A, Administrative Record, pp. 197 to 199) McNulty sums up her response with the following:

The law supports interpretation of short-term rental of property as a Permitted Use in this Sub-district. As such, my clients are not willing to cease short-term rental of their property as requested in your last letter.

On September 18, 2023, the Department sent Lewis and McNulty a Notice of Violation & Demand for Corrective Action Letter regarding the short-term rental Use of the Principal Single-Family Dwelling Unit and Caretaker’s Residence on the Property reiterating the Department’s position that short-term rentals or tourist homes is a prohibited Use on the Property. (see Exhibit A, Administrative Record, pp. 318 to 325) The Letter demanded that Lewis bring the Property into compliance with the Administrative and Zoning Regulations no later than October 18, 2023.

SUMMARY OF SEPTEMBER 18, 2023 NOTICE OF VIOLATION & DEMAND FOR CORRECTIVE ACTION LETTER:

It is my determination that the Use of the Dwelling Units on the Property as short-term rentals or tourist homes, whether rented separately or together, is a violation of the Gallatin County “Part 1” Administrative Regulation and the Bridger Canyon Zoning Regulation.

The Zoning Regulation does not list short-term rentals or tourist homes as a Permitted or Conditional Use for the AE Sub-district. Consequently, the Use of the Property as a short-term rental or tourist home is prohibited. The use of the Property in this manner is contrary to the plain language, as well as the spirit and intent of the Zoning Regulation and Administrative Regulation. The Administrative Regulation states in relevant part:

- 3.2 Zoning Regulation Conformance. Property owners are responsible for ensuring all activity within and on their property conforms to this Administrative

Regulation and the applicable District Regulation. No Building, Structure, or land shall hereafter be used or occupied, and no Building, Structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved or Structurally Altered unless it is in conformity with all the Zoning Regulations.

No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure, or unless such Use is deemed to be an appropriate Use pursuant to the interpretation process of Section 3.8 of this Administrative Regulation. All other uses are prohibited unless otherwise authorized by federal or state law.

The burden of proof is on an applicant to demonstrate that applicable requirements and review criteria of the Zoning Regulations are met. Where conditions of approval are attached to any approval issued under the Zoning Regulations, the failure to comply with any condition of approval is a violation of the Zoning Regulations.

Both the Zoning Regulation and Administrative Regulation must be interpreted according to their plain language. The plain language of the Regulations does not support Lewis's interpretation that short-term rentals or tourist homes are encompassed within the uses permitted within the AE Sub-District. This interpretation seeks to "insert what has been omitted," when Section 3.2 clearly prohibits all uses not specifically listed as a Permitted or Conditional Use.

Section 3.22 defines Dwelling Unit as a Structure "providing complete, independent living facilities for one (1) or more persons, **including permanent provisions** for living, sleeping, cooking, and sanitation." (Emphasis added).

Section 4.1 defines the intent of the AE Sub-district as to "protect and preserve the existing rural character of Bridger Canyon and to preserve existing developed and undeveloped farmlands from unplanned residential, commercial, and industrial development." The same section encourages "Residential land uses that do not impair the rural character of Bridger Canyon," incidental uses "customarily and necessarily related to and included within an agricultural pursuit," and incidental uses unrelated to an agricultural pursuit "that are necessary to protect and promote the health, safety, welfare, and convenience of rural residential citizens."

Section 4.1 defines the intent of the AE Sub-district as to "protect and preserve the existing rural character of Bridger Canyon and to preserve existing developed and undeveloped farmlands from unplanned residential, commercial, and industrial development." The same section encourages "Residential land uses that do not impair the rural character of Bridger Canyon," incidental uses "customarily and necessarily related to and included within an agricultural pursuit," and incidental uses unrelated to an agricultural pursuit "that are necessary to protect and promote the health, safety, welfare, and convenience of rural residential citizens."

The reliance on the Montana Supreme Court's opinion in *Craig Tracts Homeowners' Association, Inc. v. Brown Drake LLC*, 2020 MT 305, 402 Mont. 223, 477 P.3D 283, continues to be misplaced. That case is specific to private subdivision covenants. The issue was whether the defendant was

violating private covenants by using its property as a short-term rental. The Court did not interpret or apply local zoning regulations.

While the Montana Supreme Court determined the covenants' allowed use for "residential purposes" included short-term rentals, the Court reached this decision by relying on evidence outside the plain language of the covenants, due to their ambiguity. *Craig Tracts*, ¶ 15. This evidence included the covenants' prior amendment removing restrictions on commercial business uses, like a motel, hotel, or apartment house; the prior use of the property by the former owner (the HOA's president) as a short-term rental; and the defendant's own use of the property for a majority of the year. *Id.*, ¶¶ 16-18. This case is inapplicable both as a matter of law and fact.

Finally, an agency's interpretation of its regulations control and is given deference. *See e.g., Powell Co. v. Country Village, LLC*, 2009 MT 294, ¶ 8, 352 Mont. 291, 217 P.3d 508 ("An agency's interpretation of its rule is afforded great weight, and the court should defer to that interpretation unless it is plainly inconsistent with the spirit of the rule.") (Citing *Clark Fork Coalition v. Mont. Dept. of Env'tl. Quality*, 2008 MT 407, ¶ 20, 347 Mont. 197, 197 P.3d 482). The plain language and spirit of the Regulations demonstrate that short-term rentals are not permitted on the Property.

APPEAL:

McNulty submitted an appeal on October 18, 2023, pursuant to Section 13.2.a of the Administrative Regulation, with an appeal brief submitted on December 15, 2023. (see Appellant Exhibits 1 & 2). The appeal brief clarifies that McNulty and Lewis are appealing the Notice of Violation and Demand for Corrective Action only regarding the Principal Single-Family Dwelling, and not the Structure that previously had conditional use approval as a Caretaker's Residence.

Within the appeal brief, Lewis continues to assert that short-term rentals are a permitted residential use of the Property as long as they do not fall within the definition of Overnight Accommodation. He also contends that property owners have an inherent right to rent or lease their property:

The plain language of the applicable Zoning Regulations do not support an interpretation that short-term rentals of dwellings are not an allowable or permitted use of property within the AE Sub-District of the Bridger Canyon Zoning District. In fact, the language of the applicable Zoning Regulations expressly recognizes the rental of single-family dwellings as inherent to the permitted use as a single-family dwelling, and there is no provision supporting on any particular time-restriction on such rental to make it prohibited.

The interpretation of the Code Compliance Officer in the September 18, 2023 Notice of Violation impermissibly inserts what has been omitted from the Zoning Regulations and effectively strips property owners of their inherent right to rent or lease their property without any basis or support in the Zoning Regulations. Such an interpretation is contrary to law and must be reversed.

NOTICE:

On November 3, 2023, Erin Arnold, Chief Civil Deputy County Attorney, provided a letter to McNulty and the Department, on behalf of County Commissioner Brown, Chair of the Planning

and Zoning Commission, establishing the basic procedures for the appeal hearing in this matter, including the timeframe for pre-hearing submittals and the hearing format. (Exhibit B)

McNulty requested an extension to Arnold's letter regarding the date of submittal of the appeal brief on December 13th from the 13th until end of day on December 15th. The County agreed to McNulty's extension request.

Public notice was published in the *Bozeman Daily Chronicle* on December 27, 2023 and January 3, 2024. (Exhibit C)

Adjacent property owners, Tepee Ridge Homeowner's Association, the Complainant, Ms. McNulty, and Mr. Lewis were also mailed a copy of the legal notice via Certified Mail with Return Receipt Requested on December 21, 2023. (Exhibit D)

PUBLIC COMMENT:

No public comment has been received as of the publication date of the Staff Report.

REQUIRED ACTIONS OF THE PLANNING AND ZONING COMMISSION:

The Planning and Zoning Commission may, pursuant to Section 13.2.c of the Administrative Regulation, reverse the Decision of the Department only if the Planning and Zoning Commission finds, based on facts presented in the Hearing Record, that the Department erred in its Decision.

A. Sample Motions. The role of the Planning and Zoning Commission in this instance is to make a decision on the appeal pursuant to Section 13.2.c of the Administrative Regulation. The following sample motions have been provided by Staff for consideration by the Planning and Zoning Commission:

- **Sample Motion to Affirm Determination:** Having reviewed and considered the appeal materials, staff report, all testimony, and public comment, in accordance with the requirements of Section 13.2 of the Administrative Regulation, I move to affirm in whole the Department's September 18, 2023 Determination.
- **Sample Motion to Reverse Determination:** Having reviewed and considered the appeal materials, staff report, all testimony, and public comment, in accordance with the requirements of Section 13.2 of the Administrative Regulation, I move to reverse in whole the Department's September 18, 2023 Determination.
- **Sample Motion for Continuance:** Having reviewed and considered the appeal materials, staff report, all testimony, and public comment, I move to continue this matter for the purpose of (explain reason for continuance, and if applicable, specify any additional information that is being requested) until (state the date when the item will be heard again).

B. Required Findings. The Planning and Zoning Commission's decision must be supported by findings explaining why or why not the Commission believes the Department erred in its determination.

- C. Motion for Issuance of Findings of Fact, Conclusions of Law and Order:** I move to authorize the Chair of the Planning and Zoning Commission to sign and issue written Findings of Fact, Conclusions of Law and Order that incorporate all of the findings and conclusions entered into the record in this matter.

Appellant Exhibits:

1. October 18, 2023 Appeal Documents
2. December 15, 2023 Appeal Brief

Staff Report (Zoning Enforcement Agent) Exhibits:

- A. Administrative Record (p. 001-0351)
- B. November 3, 2023 Chief Civil Deputy County Attorney Procedural Letter
- C. December 30, 2023 & January 6, 2024 Bozeman Daily Chronicle Notice
- D. December 21, 2023 Certified Mail Notice

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FAX (406) 586-9720
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ATTORNEYS

October 18, 2023

Megan Gibson
Gallatin County Compliance Department
311 West Main Street, Room 108
Bozeman, MT 59715

Via E-mail only:
megan.gibson@gallatin.mt.gov

**RE: Plan of Correction; Bridger Canyon Zoning Regulation Complaint
(Compliance ID #22-041)
NOTICE OF APPEAL**

Dear Megan:

I received your letter of September 18, 2023 regarding the Lewis Property.

I understand from your letter that you have demanded that my client cease operating short-term rental or a tourist home on the property located at Tepee Ridge Road East in Bozeman, Montana.

It seems we have a continuing fundamental disagreement regarding the interpretation of the applicable regulations as it relates to short-term rental of property. My clients' position remains that they are in compliance with applicable zoning regulations that allow uses incidental and inherent to permitted uses, such as rental or lease of property used as a residential dwelling unit.

In accordance with Administrative Rule 13.2, this letter serves to appeal your decision, as a "Zoning Enforcement Agent," that short-term rentals are noncompliant with the applicable Zoning Regulations.

Please acknowledge receipt of this request for appeal and advise as to when the appeal shall be heard by the Planning and Zoning Commission.

Very truly yours,

/s/ Amy C. McNulty
Amy C. McNulty

ACM/hgg

Gibson, Megan

From: Gibson, Megan
Sent: Wednesday, October 18, 2023 3:39 PM
To: 'Hailey Garbett'
Cc: 'Amy McNulty'
Subject: RE: Lewis Property Compliance ID #22-041 | Notice of Appeal
Attachments: manager_95181__Receipt_23-000721_2023-10-18_3.35PM.pdf

Please see the attached payment receipt.

Thank You,

Megan K. Gibson
Code Compliance Officer
Junk Vehicle Director
Gallatin County Code Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

From: Gibson, Megan
Sent: Wednesday, October 18, 2023 2:20 PM
To: Hailey Garbett <HaileyG@lawmt.com>
Cc: Amy McNulty <AMcNulty@lawmt.com>
Subject: RE: Lewis Property Compliance ID #22-041 | Notice of Appeal

Hello Again,

Erin Arnold will be in touch regarding scheduling of the hearing date.

Thank You,

Megan K. Gibson
Code Compliance Officer
Junk Vehicle Director
Gallatin County Code Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

From: Gibson, Megan
Sent: Wednesday, October 18, 2023 1:48 PM
To: Hailey Garbett <HaileyG@lawmt.com>
Cc: Amy McNulty <AMcNulty@lawmt.com>
Subject: RE: Lewis Property Compliance ID #22-041 | Notice of Appeal
Importance: High

Hello –

I am in receipt of your appeal of my September 18, 2023 decision. I will be in touch regarding hearing dates, etc.

Please note that the attached invoice for the appeal and required adjoiner notice mailings must be paid by 5 pm today. This can be paid in the office via check or cash.

Thank You,

Megan K. Gibson
Code Compliance Officer
Junk Vehicle Director
Gallatin County Code Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

From: Hailey Garbett <HaileyG@lawmt.com>
Sent: Wednesday, October 18, 2023 1:13 PM
To: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>
Cc: Amy McNulty <AMcNulty@lawmt.com>
Subject: Lewis Property Compliance ID #22-041 | Notice of Appeal

Good afternoon,

Attached please find a letter from Amy McNulty, appealing the decision of your letter dated September 18, 2023.

Thanks,

Hailey Garbett
Certified Paralegal
Tarlow Stonecipher Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913

Phone: (406) 586-9714
Facsimile: (406) 586-9720
Website: www.lawmt.com

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PLANNING AND ZONING COMMISSION
SEAN LEWIS APPEAL OF SEPTEMBER 18, 2023 NOTICE OF VIOLATION

INTRODUCTION

This is an appeal of the September 18, 2023 “Notice of Violation & Demand for Corrective Action” issued by the Code Compliance Officer against property owner Sean Lewis of 6400 Teepee Ridge Road. That Notice of Violation was based on the listing of rental of a Principal Single-Family Dwelling and Caretaker’s Residence as an alleged violation of Bridger Canyon Zoning Regulations.

ISSUE ON APPEAL

The issue on appeal is the question of whether the Code Compliance Officer erred in issuing the September 18, 2023 Notice of Violation and Demand for Corrective Action. Mr. Lewis is only appealing the portion of that Notice of Violation related to the Principal Single-Family Dwelling, not the Caretaker’s Residence.

The issue on appeal is a question of law related to the correct interpretation of the Bridger Canyon Zoning Regulations, that is:

Whether rental of any duration of a Principal Single-Family Dwelling is permitted as an allowable use in the AE Sub-District of the Bridger Canyon Zoning District under the Bridger Canyon Zoning Regulations.

RELEVANT FACTS

The material facts to the question on appeal are not in dispute. Mr. Lewis is a property owner at what is known as 6400 Teepee Ridge Road (though the Planning Office asserts the correct address is 153/155 Teepee Ridge Road) (the “Property” or “Lewis Property”). See *Lewis STR Administrative Record (Admin. Record)* 001, 004,

024. The Property is legally described as Tract 12A of Certificate of Survey No. 1265A located in Gallatin County, Montana. *Admin. Record*, 004. The Property is located within the Bridger Canyon Zoning District, within the Agricultural Exclusive (AE) Sub-District.

Mr. Lewis lists his Single-Family Dwelling for rental on the rental website VRBO. *Admin Record*, 006-023. Persons renting the Principal Single-Family Dwelling use the Property for residential purposes, using the Property for living, sleeping, cooking, and sanitation. *Admin Record*, 186. The Property is not rented for commercial or business purposes. *Id.* Persons renting the Lewis Property meet the definition of “family” as defined by the Bridger Canyon Zoning Regulations.¹ *Admin Record*, 187. The Lewis Property is not available for rent more than 48 weeks per year. *Admin Record*, 186, 187.

SUMMARY OF ARGUMENT

The plain language of the applicable Zoning Regulations do not support an interpretation that short-term rentals of dwellings are not an allowable or permitted use of property within the AE Sub-District of the Bridger Canyon Zoning District. In fact, the language of the applicable Zoning Regulations expressly recognizes the rental of single-family dwellings as inherent to the permitted use as a single-family dwelling, and there

¹

- a. A person living alone;
- b. any number of people related by blood, marriage, adoption, guardianship, or other authorized custodial relationship;
- c. two (2) unrelated people and any children related to either of them;
- d. not more than four (4) unrelated people living together as a single nonprofit housekeeping unit and sharing common living, sleeping, cooking, and eating facilities.

is no provision supporting on any particular time-restriction on such rental to make it prohibited.

The interpretation of the Code Compliance Officer in the September 18, 2023 Notice of Violation impermissibly inserts what has been omitted from the Zoning Regulations and effectively strips property owners of their inherent right to rent or lease their property without any basis or support in the Zoning Regulations. Such an interpretation is contrary to law and must be reversed.

ARGUMENT

As an initial matter, the law supports the free use of property and strictly construes zoning regulations in favor of the free use of property. See *Whistler v. Burlington N. R. Co.*, 741 P.2d 422, 425 (Mont. 1987). (because “zoning laws and ordinances are in derogation of the common law right to free use of private property, such ordinances should be strictly construed.”)

The basic rules of statutory interpretation apply to the interpretation of the Zoning Regulations. See *Egan Slough Community v. Flathead County Board of County Commissioners*, 2022 MT 57, ¶ 22. One such rule is to give effect to all of a zoning regulation’s provisions. *Id. see also, League to Save Lake Tahoe v. Crystal Enterprises*, 685 F.2d 1142, 1145 (9th Cir. 1982) (“The ordinance must be construed in its entirety.”).

If all the provisions of the Zoning Regulation are to be given effect, it is clear they permit the renting of Lewis’s Principal Single-Family Dwelling Unit. Indeed, it is apparent that drafters of the regulation considered renting how it usually is considered: an assumed, incidental, and inherent use and right to ownership of property.

I. The Plain Language of the Zoning Regulations Permit the Lease or Rental of Principal Single-Family Dwelling Units in the AE Sub-District.

Here, use as a Principal Single-Family Dwelling Unit is an expressly Permitted Use of the Lewis Property, listed as a “Permitted Use” in the AE Sub-District.

Principal Single-Family Dwelling Unit is defined as a “Building or portion thereof containing a single Dwelling Unit for habitation by a Family.” In turn, Dwelling Unit is defined as a “Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.” Section 3.22. “Family” is defined as follows:

- a. A person living alone;
- b. any number of people related by blood, marriage, adoption, guardianship, or other authorized custodial relationship;
- c. two (2) unrelated people and any children related to either of them;
- d. not more than four (4) unrelated people living together as a single nonprofit housekeeping unit and sharing common living, sleeping, cooking, and eating facilities.

It is undisputed that the Lewis Property has a Principal Single-Family Dwelling Unit. The Property has (1) a structure, (2) providing complete independent living facilities for one or more persons, (3) including permanent provisions for living, sleeping, cooking, and sanitation, (4) used by a Family.

Uses that are implied, accessory, and incidental uses of property are to be read as Permissible Uses under the Zoning Regulations. Section 3.78.

Rental of property is such a use that is an implied use of property. In fact, the Montana Supreme Court has ruled that short-term rental of property is an incidental residential use of property. See *Craig Tracts Homeowners’ Association, Inc. v. Brown Drake, LLC*, 2020 MT 305, ¶ 12, 402 Mont. 223, 477 P.3d 283.

Renting a dwelling for residential purposes is a use consistent with the definition of Principal Single-Family Dwelling Unit. Such a use is inherent and implicit within this Permitted Use and must be permitted.

The fact that rental is considered as part of a Permitted Use of a Single-Family Dwelling is made clear by express reference to rental in the applicable Zoning Regulations. In discussion about allowable use of an “Accessory Dwelling Unit,” Section 12.2 states that an Accessory Dwelling Unit “may not be rented or sold separately from the Principal Single-Family Dwelling Unit.” (emphasis added).

The necessary inference from this provision is that the renting of a Principle Single-Family Dwelling Unit is permitted. If it was not permitted, Section 12.2 would have no effect. Plainly, there would be no reason to say that Accessory Dwelling Units may not be rented separately from the Principal Single-Family Dwelling Units if neither of them could be rented in the first place. Again, if all the provisions of the Zoning Regulations are to be given effect, it is clear the renting of a Principal Single-Family Dwelling Unit is a Permitted Use.

II. The Regulations Do Not Support Any Time Limitation on Rental of a Principal Single-Family Dwelling.

As outlined above, it is clear that the Zoning Regulations permit rental or lease of Principal Single-Family Dwellings within the AE Sub-District. Yet, the interpretation of the Code Compliance Officer is that the Zoning Regulations somehow prohibit the “short-term rental” of property. Notwithstanding the fact that “short-term rental” is not defined by the Zoning Regulations, such an interpretation is not based on any language in the Zoning Regulations and cannot be supported.

The Code Compliance Officer points to the definition of Dwelling as requiring “permanent provisions for living, sleeping, cooking, and sanitation,” as an alleged prohibition against short-term rental. But, the plain and ordinary understanding of this provision is that the *provisions* are permanent, not that the duration of tenancy is permanent. Such a reading would have absurd results that restrict the free use and sale of property.

To read into the Zoning Regulations a time duration requirement for a Permitted Use would be to insert what has been omitted in the Zoning Regulations. This is in direct conflict with how courts interpret the meaning of Zoning Regulations. See *Hartshorne v. City of Whitefish*, 486 P.3d 693, 702 (Mont. 2021) (“Terms and words are intended to be understood in their ordinary sense, and this Court assumes a legislative body used particular words for a particular reason.”) *Egan Slough Community* ¶ 22 (“Interpretation of zoning ordinances is done according to its plain meaning to give effect to all of its provisions, and an interpretation cannot ‘insert what has been omitted,’ or ‘omit what has been inserted.’”)

Courts interpreting similar zoning ordinances have found that when a use does not place a temporal or duration requirement for residential use, the zoning ordinance cannot be interpreted to restrict short-term residential rental of property. “There is nothing inherent in the concept of residence or dwelling that includes time. . . . If [a zoning authority] is going to draw a line requiring a certain time period of occupancy in order for property to be considered a dwelling or residence, then it needs to do so by enacting clear and unambiguous law.” 361 Wis.2d 185, 194, 861 N.W.2d 797, 802; See also, *Lowden v. Bosley*, 395 Md. 58, 909 A.2d 261 (2006) (nothing in restrictive covenant that required

residential use distinguished between long-term and short-term rentals); *Brown v. Sandy City Bd. of Adjustment*, 957 P.2d 207 (Utah Ct.App.1998) (ordinance that allows use of dwelling for occupancy by single family and does not limit use by duration of occupancy does not prohibit short-term rentals).

III. The Property is Not Being Used as an Overnight Accommodation in Violation of the Zoning Regulations.

The only reference to a prohibition against rentals for a Principal Single-Family Dwelling in the AE Sub-District is the definition of “Overnight Accommodations.” This definition states that “[i]ndividually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service.” Section 3.52.

Overnight Accommodations are not listed as a permitted or conditional use in the AE Sub-District. But, it is undisputed that the Lewis Property is not “available for overnight rental use by the general public for at least 48 weeks per calendar year.”

This provision against supports that, so long as a rental does not meet this definition, it is not regulated by the Zoning Regulations and can be considered an incidental use of a Permitted Use of the Property.

The Overnight Accommodation definition consists of uses of property that are properly reserved for the Base Area Business District near the ski area (Section 7), areas with a concentration of recreation activities (Section 8), and the Base Area Recreation and Forestry District (Section 9). The definition provides that

Overnight Accommodations are commonly owned units within a structure

designed to house multiple groups of people, such as “Hotel or motel rooms, hostels, cabins, Bed and Breakfast Inns, Guest Ranches, and time-shared units.” Section 3.52. At the same time, “individually owned units” within such structures are considered Overnight Accommodations “if they are available for overnight rental use by the general public for at least 48 weeks per calendar year...”

The prohibition of Overnight Accommodations in the AE subdistrict indicates that the drafters of the Zoning Regulation were concerned about hotels and motels springing up in areas intended to remain rural and agricultural. Offering the Principal Single-Family Dwelling Unit to renters would not result in any circumstances sought to be avoided prohibiting Overnight Accommodations because the dwelling remains one house that is limited in capacity.

This provision cannot be used to restrict Lewis’s rental of his property.

IV. The Code Compliance Office Cannot Be Given Deference to Make an Interpretation Contrary to Law.

The Code Compliance Officer argues that its interpretation of the Zoning Regulation is entitled to deference. But no deference is owed if the interpretation “is plainly inconsistent with the spirit of the rule.” *Powell County v. County Village, LLC*, 2009 MT 294, ¶ 8 (citing *Clark Fork Coalition v. Montana Dept. of Environmental Quality*, 2008 MT 407, ¶ 20, 197 P.3d 482, ¶ 8). That is the case here because, as described above, renting is entirely consistent with use of the property as a Principal Single-Family Dwelling Unit. So not only is the interpretation “plainly inconsistent with the spirit of the rule,” it is “plainly inconsistent with” the plain language of the rule, and the interpretation is not entitled to deference. See *Clark Fork Coalition*, 2008 MT 407, ¶21 (stating no deference is owed to an incorrect agency decision).

CONCLUSION

The decision of the Code Compliance Officer is an incorrect and unlawful interpretation of the Zoning Regulations, and it should be reversed. A reading of the Zoning Regulations to restrict rental of property for undefined periods of time that the Code Compliance Officer deems unacceptable is not supported by the language of the Zoning Regulations and is in direct violation of the free use of property.

Lewis respectfully requests that the Commission REVERSE the decision of the Code Compliance Officer.

DATED this 15th day of December, 2023.

TARLOW STONECIPHER
WEAMER & KELLY, PLLC

/s/ Amy C. McNulty
Amy C. McNulty
Attorney for Sean Lewis



Exhibit A

For Administrative Use Only	
Received by: <input type="checkbox"/> Phone	<input type="checkbox"/> Electronic
<input type="checkbox"/> Post	<input type="checkbox"/> In-Person
Complaint ID#: _____	

GALLATIN COUNTY CITIZEN COMPLAINT FORM

Zoning Floodplain Community Decay Subdivision Water/Wastewater Other

COMPLAINANT CONTACT INFORMATION (CANNOT BE SUBMITTED ANONYMOUSLY)

Name: _____ Phone: _____

Mailing Address: _____ Physical Address (if different): _____

Email: _____ Reply Requested? Yes No

COMPLAINT INFORMATION

Date Observed: _____ Zoning District (if applicable): _____

Complaint Visible from Which Public Road (if applicable): _____

Complaint Location: _____

Name of Responsible Party: _____

Email: _____ Phone: _____

Mailing Address: _____ Physical Address (if different): _____

Detailed description of alleged violation (please attach appropriate supporting documentation, photos, etc.):

Complainant Signature: _____ Date: _____

THIS COMPLAINT FORM IS A PUBLIC RECORD

This form may be delivered by mail or email. If submitted via email type your name and date in the Signature and Date fields above.

Compliance Department • 311 W. Main, Rm. 108 • Bozeman, MT 59715
 Phone (406) 582-3775 • Email: megan.gibson@gallatin.mt.gov

Gibson, Megan

From: Gibson, Megan
Sent: Monday, September 13, 2021 3:04 PM
To: Tom Fiddaman
Cc: Seessel Andrew J; Lyon Richard G
Subject: RE: CUP compliance complaint - Tepee Ridge, Bridger Canyon

Hello Tom,

I have received your complaint and will open an investigation and be contact.

Thank You,
Megan

Megan K. Gibson
Code Compliance Officer
Gallatin County Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

-----Original Message-----

From: Tom Fiddaman <tom@metasd.com>
Sent: Monday, September 13, 2021 12:03 PM
To: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>
Cc: Seessel Andrew J <drew@seesselinvestments.com>; Lyon Richard G <richardglyon@att.net>
Subject: CUP compliance complaint - Tepee Ridge, Bridger Canyon

It has come to BCPOA's attention that Mr. Sean Lewis is offering the Caretakers Residence at 6400 Tepee Ridge Road as a vacation rental, in violation of its CUP conditions of approval.

This creates several issues:

- The CUP conditions explicitly forbid rental.
- A vacation renter is in no sense a bona fide caretaker.
- The Caretaker's Residence is offered separately from the primary residence; offering two dwellings to separate parties violates the basic density of the district, because the parcel is 60 acres, short of the 80 needed for 2 separate dwellings.
- Short term rentals are not a listed use in the district.
- Neighbors in Tepee Ridge report nuisances from noise, unsafe use of ATVs, trespassing, and winter vehicle accidents.

We have contacted Mr. Lewis about the issue but received no reply.

I have attached a complaint form, a vicinity map, a copy of the CUP conditions recorded as a covenant, and copies of the VRBO listings, which are still active at:

<https://www.vrbo.com/734934>

<https://www.vrbo.com/850456>

These refer to one another, "Another home on the same property is separately listed VRBO# 734934 and is available for rent unless rented to other guests. (The home is equipped with Gourmet Kitchen, Living and Dining areas, 3 bedrooms, 2 full baths, 1 half bath, 2 fireplaces, outdoor living space and outdoor fire pits.) Ideal for 2 families wanting to share an incredible Montana experience."

Thank you for your attention to the issue.

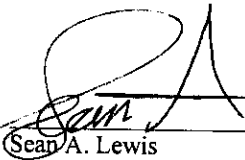
Regards,

Tom Fiddaman, BCPOA



I, Sean A Lewis, here by place the following restrictive covenants, as required by Bridger Canyon Planning and Zoning Commission's order of February 08th, 2007, approving the request by Sean A. Lewis for a Conditional Use Permit for a caretaker's residence, located at Agricultural Exclusive (AE) District of the Bridger Canyon Zoning District, located in Section 20 of Township One South, Range Seven East; PMM, Gallatin County, Montana; with an address of 6400 Teepee Ridge Road East, Bozeman, Montana: TRACT 12A C.O.S, NO. 1265-A

- a) The caretaker's residence shall not be rented.
- b) The caretaker's residence shall not be divided or sold separately from the original parcel.
- c) All structures shall be constructed in compliance with Montana State adopted codes for construction, including codes for seismic zone 3, and national Fire Protection codes.
- d) Flame retardant roofing material shall be used.
- e) Spark arrestor screens shall be placed on all fireplace and woodstove chimneys.
- f) Smoke detectors shall be installed on each level of dwelling units.
- g) Areas within 30 feet of habitable structures shall be cleared of all flammable materials.
- h) Open fires shall be prohibited.
- i) Any covenant which is included herein as a condition of permit approval and required by the Bridger Canyon Planning and Zoning Commission may not be amended or revoked without the mutual consent of the property owners and the Planning and Zoning Commission.


Sean A. Lewis

State of Texas
County of Dallas

This instrument was acknowledged before me RINA KATON on 5/17/07
by Sean Lewis



Notary Public for the State of ~~Montana~~ TEXAS
Residing at:
My commission expires November 1, 2009



\$550 avg/night
★★★★★ 8 Reviews
Exceptional! 5/5

Enter dates for accurate pricing

Check In Check Out

Guests

Check Availability

Free cancellation up to 60 days before check-in

Sean Lewis
Contact host

Property # 850456

About Rooms & beds Amenities Policies Reviews Map Host Rates & Availability

About this rental

Estate 2750 sq. ft | **3 bedrooms** 8 beds · Sleeps 7 | **4 bathrooms** 3 full baths · 1 half bath | **Spaces** Kitchen · Living Room · Deck/Patio

Spa-Like Luxurious 3 Bedroom, 3 Full Bath, 1 Half Bath...Sleeps 7!

Designed by renowned architect, Larry Pearson, our home evokes the feel of a 5 star luxury hotel with a modern yet rustic twist. Think simplicity & modern lines with warm colors and local textures...East meets West in the Rockies. Designed to respect the agrarian history of the area, the exterior of the home mimics an old Montana granary and barn. The interior evokes the feeling of a spa and is equipped with all the modern luxuries including a gourmet kitchen, wine cooler, beautiful artwork, low-voltage lighting, high ceilings, floor to ceiling windows, a wood burning stone fire place and gym. The master bedroom has a king bed, a private bath with oversized soaking tub and cozy fireplace. The second bedroom has a queen size bed and private bath. The third bedroom has 3 oversized custom bunks. The technology is the highest quality with touch pad Lutron lighting system throughout and Crestron controlled audio/visual system. Accommodations can include a 22 foot luxury tepee (late spring through early fall). Amenities include outdoor living spaces, outdoor fire pit, custom barn with tack room & 4 oversized stalls, 2 stocked ponds with creek, outdoor riding arena, round pen and corrals, children's fort and play set. The property's purpose can range from a family fun retreat to a private romantic getaway.

Another home on the same property is separately listed VRBO# 734934 and is available for rent unless rented to other guests. (The home is equipped with Gourmet Kitchen, Living and Dining areas, 3 bedrooms, 2 full baths, 1 half bath, 2 fireplaces, outdoor living space and outdoor fire pits.) Ideal for 2 families wanting to share an incredible Montana experience. (Please request ASAP as the property tends to book quite fast.) Common grounds include the ponds, the barn and the play fort area.

Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee that can be used for sleeping under the stars and by the pond.

Although, Dos Marias is it's own secluded paradise nestled among the local Montana wildlife, the convenience of Downtown Bozeman is still just a short beautiful drive away.

Because of cell reception and Montana weather conditions, wi fi can be unavailable. This can affect internet and television viewing. We do not offer discounts should this be the case. We encourage unplugging from electronics and plugging into nature.

[View less](#)

Hosted by Sean Lewis



Where
Bozeman, Montana, United States of America

Check-in

Check-out

Guests

Check Availability

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Stunning 60 Acre Ranch in Bridger Canyon

[Share](#) [Save](#)

\$608 avg/night
★★★★★ 21 Reviews
Exceptional! 5/5

Enter dates for accurate pricing

Check In Check Out

Guests

Check Availability

Free cancellation up to 60 days before check-in

Contact host

Property # 734934



[About](#) [Rooms & beds](#) [Amenities](#) [Policies](#) [Reviews](#) [Map](#) [Host](#) [Rates & Availability](#)

About this rental

Estate 2750 sq. ft	3 bedrooms 8 beds - Sleeps 7	4 bathrooms 2 full baths - 2 half baths	Spaces Kitchen - Living Room - Deck/Patio
------------------------------	--	---	---

Spa-like Luxurious 3 Bedroom, 2 Full Bath, 2 Half Baths...Sleeps 7!

Designed by renowned architect, Larry Pearson, our home evokes the feel of a 5 star luxury hotel with a modern yet rustic twist. Think simplicity & modern lines with warm colors and local textures...East meets West in the Rockies. Designed to respect the agrarian history of the area, the exterior of the home mimics an old Montana granary and barn. The interior evokes the feeling of a spa and is equipped with all the modern luxuries including a gourmet kitchen, wine cooler, beautiful artwork, low-voltage lighting, high ceilings, floor to ceiling windows, a wood burning stone fire place and pool table. The master bedroom has a king bed, a private bath with oversized soaking tub and cozy fireplace. The second bedroom also has a king bed and the third bedroom has 3 oversized custom bunks with single sleeper mattresses. The technology is the highest quality with touch pad Lutron lighting system throughout and Crestron controlled audio/visual system.

Amenities include outdoor living spaces, outdoor spa, custom barn with tack room & 4 oversized stalls, horseshoe pits, 2 stocked ponds with creek, outdoor riding arena, round pen and corrals, children's fort and play set. The property's purpose can range from a family fun retreat to a private romantic getaway.

Another home on the same property is separately listed VRBO# 850456 and is also available for rental unless rented by someone else. (The home is equipped with Gourmet Kitchen, Living and Dining areas, 3 bedrooms, 3 full baths, 1 half bath, exercise facility, 2 fireplaces and 2 outdoor living spaces with an outdoor fire pit.) Ideal for 2 families wanting to share an incredible Montana experience. (Please request ASAP as the property tends to book quite fast.) Houses are approximately 100 yards apart. Common grounds include the the ponds, the barn, and the play fort.

Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee.

S17, T01 S, R07 E, TRACT 3B SECS 17 & 20 1S 7E 97.598AC COS 1521

- 0 Acres

TEMPLE K
S16, T01 S

LEWIS SEAN A - 59.61 Acres
S20, T01 S, R07 E, TRACT 12A SEC 16,17,20 & 21 1S 7E 59.607AC COS 1265A

TRANAHAN DUANE III & STEPHANI - 10.1 Acres
S20, T01 S, R07 E, TR IN NW4 E OF BRIDGER RD SEC 20 1S 7E 10.10AC PLAT 11P1036

BIENEN LEIGH B & HENRY S - 35 Acres
S20, T01 S, R07 E, TRACT B SEC 20 1S 7E 35.00AC COS 1178D

HAINES RICHARD C & BARBARA E - 40 Acres
S20, T01 S, R07 E, TRACT C SEC 20 1S 7E 40.00AC COS 1178D

MARTIN ROSE TRUST - 15 Acres
TR SW4NW4 SEC 20 1S 7E 15AC PLAT 2P1464A

ABER JESSE E JR CREDIT SHELTER - 43.095 Acres
S21, T01 S, R07 E, 1265, PARCEL 011, TRACT 11 NW4 SEC 21 1S 7E 43.095AC COS 1265

DOROTHY M - 2 Acres
E4NE4 SEC 19 1S 7E 2.00AC

SEESSEL ANDREW JONATHAN & - 40 Acres
S20, T01 S, R07 E, TRACT A-2 NE4, NW4 & SW4 SEC 20 1S 7E 40.00AC

JACKSON CREEK

LEWIS STR ADMINISTRATIVE RECORD 007



Gallatin County, MT | Document Search | Vacation Rentals | Vrbo.com | Luxurious 60 Acre Ranch Compound

https://www.vrbo.com/850456?adultsCount=2&arrival=2021-10-11&departure=2021-10-16&unitId=1398395

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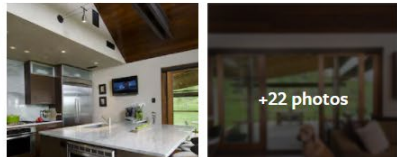
Where: Gallatin County, Montana, United States of America | Check-in: Oct 11 | Check-out: Oct 16 | Guests: 2 Guests | Search

United States of America / Montana / Gallatin County

Luxurious 60 Acre Ranch Compound In The Heart Of Beautiful Bridger Canyon

Save

Share



\$649 /night
★★★★★ 8 Reviews

Stay awhile. Get 10% off if you add 2 nights. Add nights

Check In Oct 11	Check Out Oct 16
Guests 2 guests	

Total \$4,046.00
Total includes fees, not tax [View details](#)

Or as low as \$335/mo with [affirm](#). [Learn more](#)

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Sean Lewis
[Contact host](#)

Property # 850456





About this rental

Estate 2750 sq. ft
3 bedrooms 8 beds · Sleeps 7
4 bathrooms 3 full baths · 1 half bath
Spaces Kitchen · Living Room · Deck/Patio

Spa-Like Luxurious 3 Bedroom, 3 Full Bath, 1 Half Bath...Sleeps 7!

Designed by renowned architect, Larry Pearson, our home evokes the feel of a 5 star luxury hotel with a modern yet rustic twist. Think simplicity & modern lines with warm colors and local textures...East meets West in the Rockies. Designed to respect the agrarian history of the area, the exterior of the home mimics an old Montana granary and barn. The interior evokes the feeling of a spa and is equipped with all the modern luxuries including a gourmet kitchen, wine cooler, beautiful artwork, low-voltage lighting, high ceilings, floor to ceiling windows, a wood burning stone fire place and gym. The master bedroom has a king bed, a private bath with oversized soaking tub and cozy fireplace. The second bedroom has a queen size bed and private bath. The third bedroom has 3 oversized custom bunks. The technology is the highest quality with touch pad Lutron lighting system throughout and Crestron controlled audio/visual system. Accommodations can include a 22 foot luxury tepee (late spring through early fall). Amenities include outdoor living spaces, outdoor fire pit, custom barn with tack room & 4 oversized stalls, 2 stocked ponds with creek, outdoor riding arena, round pen and corrals, children's fort and play set. The property's purpose can range from a family fun retreat to a private romantic getaway.

Another home on the same property is separately listed VRBO# 734934 and is available for rent unless rented to other guests. (The home is equipped with Gourmet Kitchen, Living and Dining areas, 3 bedrooms, 2 full baths, 1 half bath, 2 fireplaces, outdoor living space and outdoor fire pits.) Ideal for 2 families wanting to share an incredible Montana experience. (Please request ASAP as the property tends to book quite fast.) Common grounds include the ponds, the barn and the play fort area.

Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee that can be used for sleeping under the stars and by the pond.

\$649 /night
 ★★★★★ 8 Reviews


Stay awhile. Get 10% off if you add 2 nights. Add nights

Check In Oct 11	Check Out Oct 16
Guests 2 guests	

Total \$4,046.00
 Total includes fees, not tax [View details](#)

Or as low as \$335/mo with [affirm](#). [Learn more](#)

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 **Sean Lewis**
[Contact host](#)

Property # 850456

About Rooms & beds Amenities Policies Reviews Map Host Rates & Availability

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Hosted by Sean Lewis

Rooms & beds

Bedrooms: 3 (Sleeps: 7)



\$649 /night

★★★★★ 8 Reviews

[Stay awhile.](#) Get 10% off if you add 2 nights. [Add nights](#)

Check In Oct 11	Check Out Oct 16
Guests 2 guests	

Total \$4,046.00
Total includes fees, not tax [View details](#)

Or as low as \$335/mo with [affirm](#). [Learn more](#)

[Request to Book](#)






Sean Lewis
[Contact host](#)

Property # 850456





About Rooms & beds Amenities Policies Reviews Map Host Rates & Availability

Rooms & beds

Bedrooms: 3 (Sleeps: 7)

<p>Guest Suite 3 double</p> 	<p>Master Suite king</p> 	<p>Bunkroom 3 Bunk bed (3)</p> 
--	---	---

Bathrooms: 3, Half Baths: 1

<p>Guest Bathroom 3 Toilet · shower</p> 	<p>Downstairs powder bath Toilet</p> 	<p>Master Bath tub · Toilet · shower</p> 
<p>Bunk Bathroom 2 Toilet · shower</p> 		

\$649 /night

★★★★★ 8 Reviews

[Stay awhile.](#) Get 10% off if you add 2 nights. [Add nights](#)

Check In Oct 11	Check Out Oct 16
Guests 2 guests	

Total \$4,046.00
 Total includes fees, not tax [View details](#)

Or as low as \$335/mo with [affirm](#). [Learn more](#)

[Request to Book](#)



Sean Lewis
[Contact host](#)

Property # 850456

About Rooms & beds Amenities Policies Reviews Map Host Rates & Availability

Three room cards with bed icons: 1 bed, 1 bed, 3 beds.

Bunk Bathroom 2
Toilet · shower
2 beds

Spaces

- Kitchen
- Deck/Patio
- Lawn/Garden
- Living Room
- Dining Seating for 6 people
- Outdoor play area

[View all rooms & beds details](#)

Amenities

- Internet
- TV
- Parking

\$649 /night

★★★★★ 8 Reviews

[Stay awhile.](#) Get 10% off if you add 2 nights. [Add nights](#)

Check In Oct 11	Check Out Oct 16
Guests 2 guests	

Total \$4,046.00
Total includes fees, not tax [View details](#)

Or as low as \$335/mo with [affirm](#). [Learn more](#)

Request to Book



Sean Lewis
[Contact host](#)

Property # 850456

Amenities

- Internet
- Air Conditioning
- Pets Welcome
- Fireplace
- TV
- Satellite or cable
- Washer & Dryer
- Children Welcome
- Parking
- No Smoking
- Heater

[View all 76 amenities](#)

Policies

Cancellation Policy

Your booking will not qualify for a refund based on your trip dates.  *If you have upcoming trips, you can manage or cancel your booking in your traveler account.*
[Learn more about cancellation policies.](#) [View upcoming trip](#)

Damage and incidentals

\$649 /night
★★★★★ 8 Reviews


[Stay awhile.](#) Get 10% off if you add 2 nights. [Add nights](#)

Check In Oct 11	Check Out Oct 16
Guests 2 guests	

Total \$4,046.00
Total includes fees, not tax [View details](#)

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[Request to Book](#)

 **Sean Lewis**
[Contact host](#)

Property # 850456

Learn more about [cancellation policies](#).

[View upcoming trip](#)

Damage and incidentals

You will be responsible for any damage to the rental property caused by you or your party during your stay.

House Rules

[Check in after: 4:00 PM](#) [Check out before: 10:00 AM](#)

- Children allowed
- Pets allowed
W/ approval based on size, \$250 non-refundable fee
- No events
- No smoking
- Max guests: 7

Cleaning practices

- Cleaned with disinfectant
- Check in and check out with no person-to-person contact
- All towels and bedding washed in hot water that's at least 60°C/140°F
- High-touch surfaces cleaned with disinfectant (like countertops, light switches, handles, and faucets)

\$649 /night

★★★★★ 8 Reviews

[Stay awhile.](#) Get 10% off if you add 2 nights. [Add nights](#)

Check In Oct 11	Check Out Oct 16
Guests 2 guests	

Total \$4,046.00
Total includes fees, not tax [View details](#)

Or as low as \$335/mo with [affirm](#). [Learn more](#)

[Request to Book](#)



Sean Lewis
[Contact host](#)

Property # 850456

8 Reviews

★★★★★ 5/5

Perfect Get Away

5/5 ★★★★★ Stayed Mar 2021

Becky W.

Perfect spot for a relaxing break with breathtaking views of the mountains. House is located in a great spot for hiking trails, day trip to Yellowstone and downtown Bozeman. Our teenage boys loved exploring and watching the elk grazing the property. Thank you!

Published Apr 17, 2021

Great house! Beautiful views!

5/5 ★★★★★ Stayed Jan 2021

Megan C.

We felt very fortunate that we were able to stay at this lovely home- what a beautiful view to take in every day!

The property manager was very helpful, the house was exactly as listed.

Not sure there's anything to be done here, but Internet/WiFi is spotty at best- probably best to not plan on being able to work remotely or using streaming services. This was the only downside, as it did present a problem for us. It appeared to be satellite internet but not 100% sure.

If you don't need to worry about working remotely/distance learning, we highly recommend this place- absolutely loved it!

Published Apr 17, 2021

\$649 /night

★★★★★ 8 Reviews

Stay awhile. Get 10% off if you add 2 nights. Add nights

Check In Oct 11	Check Out Oct 16
Guests 2 guests	

Total \$4,046.00
 Total includes fees, not tax [View details](#)

Or as low as \$335/mo with [affirm](#). [Learn more](#)

Request to Book



Sean Lewis
[Contact host](#)

Property # 850456

About Rooms & beds Amenities Policies Reviews Map Host Rates & Availability

Not sure there's anything to be done here, but Internet/WiFi is spotty at best- probably best to not plan on being able to work remotely or using streaming services. This was the only downside, as it did present a problem for us. It appeared to be satellite internet but not 100% sure.

If you don't need to worry about working remotely/distance learning, we highly recommend this place- absolutely loved it!

Published Feb 15, 2021

Modern home in the beautiful Montana mountains

5/5 ★★★★★ Stayed Dec 2019

Michael M.

Gorgeous location only 20 minutes from the city center and only 15 minutes from great downhill and cross country skiing. The house is modern and well-appointed. Was perfect for our visit.

Published Jan 12, 2020

Beautiful property. Top notch appliances and furnishings. Spectacular views.

5/5 ★★★★★ Stayed Oct 2019

Megan N.

Great experience. Hope to be back!

Published Nov 4, 2019



\$649 /night

★★★★★ 8 Reviews

[Stay awhile.](#) Get 10% off if you add 2 nights. [Add nights](#)

Check In Oct 11	Check Out Oct 16
Guests 2 guests	

Total \$4,046.00
Total includes fees, not tax [View details](#)

Or as low as \$335/mo with [affirm](#). [Learn more](#)

[Request to Book](#)



Sean Lewis
[Contact host](#)

Property # 850456

About Rooms & beds Amenities Policies **Reviews** Map Host Rates & Availability

Beautiful property. Top notch appliances and furnishings. Spectacular views.

5/5 ★★★★★ Stayed Oct 2019

Megan N.

Great experience. Hope to be back!

Published Nov 4, 2019

Awesome.

5/5 ★★★★★ Stayed Dec 2017

kevin f.

Beautiful property. Just far enough away from everything. Hope to return.

Published Feb 1, 2018



1-5 of 8



Map

Gallatin County, Montana, United States of America

\$649 /night

★★★★★ 8 Reviews

[Stay awhile.](#) Get 10% off if you add 2 nights. [Add nights](#)

Check In Oct 11	Check Out Oct 16
Guests 2 guests	

Total \$4,046.00
Total includes fees, not tax [View details](#)

Or as low as \$335/mo with [affirm](#). [Learn more](#)

Request to Book



Sean Lewis
[Contact host](#)

Property # 850456



Where
Gallatin County, Montana, United States of America

Check-in
Oct 11

Check-out
Oct 16

Guests
2 Guests

Search

United States of America / Montana / Gallatin County

Stunning 60 Acre Ranch in Bridger Canyon

Save

Share



\$649 /night
★★★★★ 22 Reviews
Exceptional! 5/5

Your dates are not available.

Check In Oct 11	Check Out Oct 16
Guests 2 guests	

Request to Book

Contact host

Property # 734934

About this rental

Estate 2750 sq. ft
3 bedrooms 8 beds · Sleeps 7
4 bathrooms 2 full baths · 2 half baths
Spaces Kitchen · Living Room · Deck/Patio

Spa-like Luxurious 3 Bedroom, 2 Full Bath, 2 Half Baths...Sleeps 7!

Designed by renowned architect, Larry Pearson, our home evokes the feel of a 5 star luxury hotel with a modern yet rustic twist. Think simplicity & modern lines with warm colors and local textures...East meets West in the Rockies. Designed to respect the agrarian history of the area, the exterior of the home mimics an old Montana granary and barn. The interior evokes the feeling of a spa and is equipped with all the modern luxuries including a gourmet kitchen, wine cooler, beautiful artwork, low-voltage lighting, high ceilings, floor to ceiling windows, a wood burning stone fire place and pool table. The master bedroom has a king bed, a private bath with oversized soaking tub and cozy fireplace. The second bedroom also has a king bed and the third bedroom has 3 oversized custom bunks with single sleeper mattresses. The technology is the highest quality with touch pad Lutron lighting system throughout and Crestron controlled audio/visual system.

Amenities include outdoor living spaces, outdoor spa, custom barn with tack room & 4 oversized stalls, horseshoe pits, 2 stocked ponds with creek, outdoor riding arena, round pen and corrals, children's fort and play set. The property's purpose can range from a family fun retreat to a private romantic getaway.

Another home on the same property is separately listed VRBO# 850456 and is also available for rental unless rented by someone else. (The home is equipped with Gourmet Kitchen, Living and Dining areas, 3 bedrooms, 3 full baths, 1 half bath, exercise facility, 2 fireplaces and 2 outdoor living spaces with an outdoor fire pit.) Ideal for 2 families wanting to share an incredible Montana experience. (Please request ASAP as the property tends to book quite fast.) Houses are approximately 100 yards apart. Common grounds include the the ponds, the barn, and the play fort.

\$649 /night

★★★★★ 22 Reviews
Exceptional! 5/5

Your dates are not available.

Check In Oct 11	Check Out Oct 16
Guests 2 guests	

[Request to Book](#)

[Contact host](#)

Property # 734934

About Rooms & beds Amenities Policies Reviews Map Host Rates & Availability

Another home on the same property is separately listed VRBO# 850456 and is also available for rental unless rented by someone else. (The home is equipped with Gourmet Kitchen, Living and Dining areas, 3 bedrooms, 3 full baths, 1 half bath, exercise facility, 2 fireplaces and 2 outdoor living spaces with an outdoor fire pit.) Ideal for 2 families wanting to share an incredible Montana experience. (Please request ASAP as the property tends to book quite fast.) Houses are approximately 100 yards apart. Common grounds include the the ponds, the barn, and the play fort.

Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee.

Although, Dos Marias is its own secluded paradise nestled among the local Montana wildlife; the convenience of Downtown Bozeman is still just a short, beautiful drive away.

Because of cell reception and Montana weather conditions, wi fi can be unavailable. This can affect internet and television viewing. We do not offer discounts should this be the case. We encourage unplugging from electronics and plugging into nature.

[View less](#)



Hosted by Sean Lewis
Premier Host

Rooms & beds

Bedrooms: 3 (Sleeps: 7)

- Master Suite**
king
- Bunkroom 3**
Bunk bed (3)
- Bedroom 2**
king

\$649 /night

★★★★★ 22 Reviews
Exceptional! 5/5

ⓘ Your dates are not available.

Check In Oct 11	Check Out Oct 16
Guests 2 guests	

[Request to Book](#)

[Contact host](#)

Property # 734934



Spaces

- Kitchen
- Deck/Patio
- Outdoor play area
- Living Room
- Lawn/Garden

[View all rooms & beds details](#)

Amenities

- Internet
- Air Conditioning
- Hot Tub
- Pets Welcome
- Fireplace
- TV
- Satellite or cable
- Washer & Dryer
- Children Welcome
- Parking
- No Smoking
- Heater

[View all 72 amenities](#)

Policies

\$649 /night

★★★★★ 22 Reviews

Exceptional! 5/5

ⓘ Your dates are not available.

Check In Oct 11	Check Out Oct 16
Guests 2 guests	

[Request to Book](#)

[Contact host](#)

Property # 734934



Gallatin County

INVESTIGATION LETTER

September 24, 2021

Sean A. Lewis
5064 Bridge Creek Drive
Plano, TX 75093

Sent via First Class Mail

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625

Sent via First Class Mail

Re: Bridger Canyon Zoning Regulation, unpermitted wastewater disposal, and Public Accommodation Licensing Compliant (Compliance ID #22-041)

Dear Mr. Lewis:

The Gallatin County Compliance Department (Department) recently received a complaint regarding your property addressed by Gallatin County as 153 & 155 Tepee Ridge Road East, Bozeman; legally described as Tract 12A of Certificate of Survey (COS) No. 1265A (Property). The Property also appears to be associated with 6400 Teepee Ridge Road. This address appears to have been derived from Google Maps and is not recognized or assigned by Gallatin County. Specifically, the complainant is concerned that you are renting out two Dwelling Units on the Property to members of the public as two separate short-term rentals/Overnight Accommodations/Tourist Homes in violation of the Bridger Canyon Zoning Regulation (Zoning Regulation) and that users of the rentals are creating nuisances with noise and road safety for other residents in the area.

During my investigation I also discovered potential unpermitted wastewater disposal and Public Accommodation Licensing violations. The Gallatin City-County Health Department Environmental Health Services (Health Department) has authorized me to investigate the unpermitted wastewater disposal and Public Accommodation Licensing violations.

Nuisances

Concerns regarding general safety, noise or public nuisances should be addressed with the Sheriff's Department. For questions regarding these concerns the Sheriff's Department can be reached at 406-582-2100.

Bridger Canyon Zoning District

According to County records, the Property is located in the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District) and therefore must comply with the Zoning Regulation. The Zoning District was adopted by the Board of County Commissioners on July 12, 1971 and Zoning Regulation was adopted by the Board of County Commissioners on October 26, 1971, and has been amended thereafter. The Zoning Regulation can be found in its

entirety online at the Gallatin County Department of Planning and Community Development (Planning Department) website.

Because this Property is subject to the Zoning Regulation, it must also comply with the Gallatin County “Part 1” Zoning Administrative Regulation (Administrative Regulation). The Administrative Regulation can be found in its entirety online at the Planning Department website.

The requirement for property to conform to the Zoning Regulation is found in Section 3.2 of the Administrative Regulation and requires property owners to ensure that all Uses and Structures comply with the Zoning Regulation.

I searched the Planning Department records and located four permits for the Property:

- #Z2006-023 Conditional Use Permit (CUP) application for a Caretaker’s Residence was submitted to the Planning Department in August 2005
 - The Planning Department issued a letter on September 20, 2005 stating they could not process the application as there were no structures constructed on the property and a principle dwelling unit was required to be constructed prior to applying for an accessory dwelling unit (Caretaker’s Residence) and provided two potential solutions
- #L2006-089 Land Use Permit (LUP) approved October 20, 2005 for one Single Family Dwelling Unit, barn and detached garage (Accessory Building):
 - Single Family Dwelling Unit:
 - a “lower floor” that contained mechanical room, all three (3) bedrooms, two (2) bathrooms, laundry room, and a recreation room
 - a “main floor” that contained a bathroom, closet, office, fire place, living room, kitchen and dining area
 - Horse Barn, attached to Single Family Dwelling Unit:
 - storage room, bathroom, tack room, five (5) stalls, car port
 - Detached Garage:
 - seven (7) parking stalls of differing sizes, an entryway, storage room, dry storage room, and wet storage room
 - “upper floor” all labeled as storage only
- #Z2007-038 CUP application to change the designation of the current Single Family Dwelling Unit to a Caretaker’s Residence submitted December 1, 2006
 - The request was conditionally approved by the Bridger Canyon Planning & Zoning Commission on February 8, 2007 via the Findings of Fact Conclusions of Law and Order with six (6) conditions of approval:
 1. The conditional use permit authorizes the use of this structure as a caretaker’s residence. The structure shall not be utilized for any other use unless such use is a permitted use in conformance with the Regulation.
 2. A land use permit for the single-family residence shall be issued by the Gallatin County Planning Department prior to construction.

3. The following restrictive covenants shall be recorded in the Gallatin County Clerk and Recorder's Office prior to issuance of the new single-family residence:
 - a. *The caretaker's residence shall not be rented.*
 - b. *The caretaker's residence shall not be divided or sold separately from the original parcel.*
 - c. *All structures shall be constructed in compliance with Montana State adopted codes for construction, including codes for seismic zone 3, and National Fire Protection codes.*
 - d. *Flame retardant roofing materials shall be used.*
 - e. *Spark-arrestor screens shall be placed on all fireplace and woodstove chimneys.*
 - f. *Smoke detectors shall be installed on each level of dwelling units.*
 - g. *Areas within 30 feet of habitable structures shall be cleared of all flammable materials.*
 - h. *Open fires shall be prohibited.*
 - i. *Any covenant which is included herein as a condition of permit approval and required by the Bridger Canyon Planning and Zoning Commission may not be amended or revoked without the mutual consent of the property owners and the Planning and Zoning Commission.*
1. The future single-family residence shall be constructed with an automatic fire sprinkler system meeting the requirements of NFPA 13D/Uniform Fire Code. The fire district shall receive a stamped set of engineered sprinkler system plans for review and approval prior to construction. Inspections shall be scheduled, with 48-hour notice, during construction and after completion.
2. Applicant shall receive an approved Emergency Vehicle Turnaround Plan from the Bridger Canyon Fire Department prior to land use permit approval for the future single-family residence.
3. Approval from the Gallatin City-County Environmental Health Department for the septic system for the new single-family residence shall be obtained prior to the issuance of a land use permit.

- #L2013-172 LUP application approved June 7, 2013 for a new garage (Accessory Building), additions and a remodel to the Structure opposite the original Single-Family Dwelling Unit and barn
 - Existing structures listed as studio, barn and pergola

According to the records maintained by the Montana Department of Revenue the Property contains the following:

- Single Family Residence with 3 bedrooms, 2 bathrooms, 2 porches, approximately 654 square feet of living area, built in 2006
- Single Family Residence with 3 bedrooms, 2 bathrooms, 2 decks, a porch, and 2 garages, with approximately 2,523 square feet of living area, built in 2007
- Barn, 720 square feet, built in 2007

- Pole frame building, 305 square feet, built in 2010
- Pole frame building, 264 square feet, built in 2010
- Lean-to, 60 square feet, built in 2010

Overnight Accommodations

Section 4 of the Zoning Regulation lists the requirements for the AE sub-district. Section 4.2 lists the Permitted Uses **after** a Land Use Permit is approved. Section 4.3 lists Uses Permitted After Securing Approval of a Conditional Use Permit.

There are active listings for two (2) Overnight Accommodations on your Property:

- www.vrbo.com/850456 three (3) bedrooms, two (2) full and two (2) half baths, kitchen, living room, deck/patio
- www.vrbo.com/734934 three (3) bedrooms, two (2) full and one (1) half baths, gourmet kitchen, indoor and outdoor living space, multiple fire places

Both listings indicate that the Property has eight (8) beds and sleeps seven (7) people, includes the use of a hot tub and goes on to state that “Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee.”

The AE sub-district, Sections 4.2 and 4.3 of the Zoning Regulation, does not list Overnight Accommodations, and Guest Ranches and Bed and Breakfast Inns are considered Conditional Uses for which the Planning Department has no record of for this Property. Short term rentals are not a listed or defined term within the Zoning Regulation.

Section 3.8 of the Zoning Regulation states:

Interpretations. Requests for Official interpretations concerning the Zoning Regulations, boundaries, and maps shall be made in writing, accompanied by the appropriate application and fee, and shall be handled as follows:

- a. *Administrative Interpretations. Interpretations concerning the Zoning Regulations and maps, except those interpretations listed at subsection (b) or (c)(vii) below, may be made by the Planning Director and are subject to Appeal as described in Section 13 of this Administrative Regulation. If the Planning Director determines the interpretation is of significant public interest, the Planning Director may refer the request to the Planning & Zoning Commission. The Planning & Zoning Commission shall consider the request in a public hearing.*
- b. *Interpretation of Use Classification. If questions arise concerning the appropriate classification of a particular Use, or if the specific Use is not listed, the Planning and Zoning Commission shall determine the appropriate classification of that Use. In interpreting a Use classification, the Planning and Zoning Commission shall hold a public hearing, consider the recommendation of any Zoning Advisory Committee, and determine whether the use meets all of the following criteria:*
 - i. *The proposed Use is compatible with the Uses allowed in the Sub-district;*

- ii. *The proposed Use is similar to one or more Uses allowed in the Sub-district;*
- iii. *The proposed Use will not adversely affect property in the neighborhood or Sub-district or Zoning District; and*
- iv. *The proposed use will not abrogate the intent of the Zoning Regulations and applicable growth policy or neighborhood plan.*

Temporary Occupancy

Section 12.5 of the Zoning Regulation addresses Temporary Occupancy and states:

Temporary Occupancy: The intent of this Subsection is to provide for temporary occupancy during the construction of a Principal Single-Family Dwelling Unit, and to accommodate temporary visitors. A Temporary Dwelling Unit may be a Recreational Vehicle. Mobile Home, tepee, tent, or yurt. A Temporary Dwelling Unit is subject to the following requirements.

a. A property owner may reside in a Temporary Dwelling Unit while a Principal Single-Family Dwelling Unit is under construction, for a maximum of one year, provided:

- (1) A Land Use Permit has been approved for a permanent Principal Single-Family Dwelling Unit, with a removal date;*
- (2) Said mobile home or tepee does not violate any valid existing deed restrictions;*
- (3) A Temporary Dwelling Unit must comply with all siting requirements set forth in the Regulation;*
- (4) The temporary site shall be bear-proof;*
- (5) Temporary Dwelling Units shall not be moved on site nor utilized for occupancy until sewage disposal and water supply systems are installed that meet all State and County Health Department regulations.*

b. Temporary visitor occupancy of a Temporary Dwelling Unit is permitted provided:

- (1) Only one Temporary Dwelling Unit may be occupied on a residential Lot at any one time.*
- (2) The Temporary Dwelling Unit may not occupy any Lot for a period longer than three weeks in any 90-day time period except for storage purposes of a Recreational Vehicle.*
- (3) No fire source shall be allowed for any soft wall Temporary Dwelling Unit.*

According to your listings on www.vrbo.com, you offer a 22 foot luxury tepee (late spring through early fall) for an additional fee for use by members of the public renting your Dwelling Units located on the Property.

Land Use Permits

Section 6 of the Administrative Regulation addresses Land Use Permits. Specifically, Section 6.2 addresses the Requirement for Land Use Permits.

Any Structural Alteration of a Structure or new construction requires an approved Land Use Permit be issued by the Planning Department pursuant to Section 6 of the Administrative Regulation, unless otherwise exempted.

Based on the permits that were located within the Planning Department you have approval for:

- One Single-Family Dwelling Unit with three (3) bedrooms attached to a horse barn
- One detached garage with seven (7) parking stalls and storage
- A CUP permit that was conditionally approved for a Caretaker's Residence
- A new detached new garage, additions and a remodel to a Structure opposite the original Single-Family Dwelling Unit and barn
 - Existing structures in 2013 were listed as studio, barn and pergola

The Planning Department records do not include:

- any documentation that the conditions of approval associated with the conditionally approved Caretaker's Residence were ever met,
- any documentation or approved LUP for a second Dwelling Unit,
- it is unclear what Structure the 2013 additions and remodels were approved for, or what Structure and Use existed at the location prior to this approval

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

In order to clarify compliance with the Zoning Regulation, additional information is needed from you.

Septic Permit (Health Code)

I searched Gallatin County septic permit files and located one approved septic permit for your Property:

- Permit #14111 approved in May 2007 for:
 - One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
 - One (1) attached bedroom above garage generating 155 gallons per day, and
 - One (1), three (3) bedroom barn generating 300 gallons per day

Section 1.10 of Chapter 3 of the Health Code requires that an Authorization to Construct is required prior to the construction of a wastewater disposal system and a Permit to Operate must be granted before a person can lawfully use a wastewater treatment system. Any wastewater treatment system constructed within Gallatin County must comply with Health Code and State law. Chapter 3 of the Health Code can be found in its entirety on the Health Department website.

There is one approved wastewater system installed or used on your Property for:

- One (1), four (4) bedroom residential dwelling generating 350 gallons per day,

Compliance Department • 311 W. Main, Rm. 108 • Bozeman, MT 59715

Phone (406) 582-3775 • Email: megan.gibson@gallatin.mt.gov

- One (1) attached bedroom above garage generating 155 gallons per day, and
- One (1), three (3) bedroom barn generating 300 gallons per day

Any additional wastewater disposal or configuration taking place on your Property outside of the approved system is considered a violation.

According to my research you have multiple Living Units on the Property with somewhere between six (6) and eight (8) bedrooms.

In order to clarify whether the wastewater treatment system installed or used on your Property complies with the Health Code, additional information is needed from you.

Establishment License

According to records maintained by the Health Department there are no Public Accommodation Licenses approved for the operation of any “establishments” on your Property. There are active listings for two Tourist Home rentals on the Property as described above.

Section 50-51-201 of the Montana Code Annotated (MCA) states that, “...a person engaged in the business of conducting or operating an establishment shall annually procure a license”. A Tourist Home is listed under the definition of “Establishment” and defined as, “a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis”. See Section 50-51-102, MCA.

A Public Accommodation License is required for the operation of any Establishment on your Property.

In order to clarify whether your Property complies with the Establishment Licensing requirements, additional information is needed from you.

Response Required

In order to clarify these concerns, I would like to meet with you on the Property to view and discuss how the Property and Structures are used, learn about when the Structures were constructed, and learn about how wastewater is disposed of on the Property. I will also document any additional information relevant to determine compliance with the applicable statutes and regulations.

Additionally, at the time of the site visit, please provide the following:

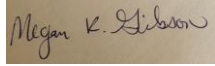
- Copy of paid Lodging Facility Sales and Use Tax from the Montana Department of Revenue for each rented Dwelling Unit
- Copy of rental contract(s) for each rented Dwelling Unit
- Copies of any other permits or documentation you have approving the Structures and Uses occurring on the Property

Please contact me at 406-582-3775 no later than 15 days from the date of this letter, to set up a time to meet on site.

Once I have this information, the County will review it and determine whether additional investigation is necessary.

Please be aware that failure to submit the responses within the timeframe specified may result in additional enforcement action which may include the assessment of a penalty. If you have any questions about this letter, please contact me at 406-582-3775.

Sincerely,

A rectangular box containing a handwritten signature in cursive that reads "Megan K. Gibson".

Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc: County Attorney's Office
Department of Planning and Community Development
Environmental Health Department
Complainant



Gallatin County

WARNING LETTER

October 22, 2021

Sean A. Lewis
5064 Bridge Creek Drive
Plano, TX 75093-5702

Sent via First Class Mail &
Certified Mail # 7018 1130 0001 1432 1850

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625

Sent via First Class Mail &
Certified Mail # 7018 1130 0001 1432 1867

Re: Bridger Canyon Zoning Regulation, unpermitted wastewater disposal, and Public Accommodation Licensing Compliant (Compliance ID #22-041)

Dear Mr. Lewis:

As you know, the Gallatin County Compliance Department (Department) recently received a complaint regarding your property addressed as 153 & 155 Tepee Ridge Road East, Bozeman; legally described as Tract 12A of Certificate of Survey (COS) No. 1265A (Property). The Property also appears to be associated with 6400 Teepee Ridge Road. This address appears to have been derived from Google Maps and is not recognized or assigned by Gallatin County. Specifically, the complainant is concerned that you are renting out two Dwelling Units on the Property to members of the public as two separate short-term rentals/Overnight Accommodations/Tourist Homes in violation of the Bridger Canyon Zoning Regulation (Zoning Regulation) and that users of the rentals are creating nuisances with noise and road safety for other residents in the area.

During my investigation I also discovered potential unpermitted wastewater disposal and Public Accommodation Licensing violations. The Gallatin City-County Health Department Environmental Health Services (Health Department) has authorized me to investigate the unpermitted wastewater disposal and Public Accommodation Licensing violations.

I initially sent you notification of this complaint in an Investigation Letter dated September 24, 2021 (Investigation Letter). You were to contact me to arrange a site visit and provide me with a written response within 15 days of the date of the Investigation Letter.

I received an email your legal representative Amy McNulty on October 13, 2021, stating that she would be in touch with the information requested and to schedule the site visit by October 15, 2021.

As of the date of this letter, I have not heard back from you or Ms. McNulty.

Bridger Canyon Zoning District

According to County records, the Property is located in the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District) and therefore must comply with the

Zoning Regulation. The Zoning District was adopted by the Board of County Commissioners on July 12, 1971 and Zoning Regulation was adopted by the Board of County Commissioners on October 26, 1971, and has been amended thereafter. The Zoning Regulation can be found in its entirety online at the Gallatin County Department of Planning and Community Development (Planning Department) website.

Because this Property is subject to the Zoning Regulation, it must also comply with the Gallatin County "Part 1" Zoning Administrative Regulation (Administrative Regulation). The Administrative Regulation can be found in its entirety online at the Planning Department website.

The requirement for property to conform to the Zoning Regulation is found in Section 3.2 of the Administrative Regulation and requires property owners to ensure that all Uses and Structures comply with the Zoning Regulation.

I searched the Planning Department records and located four permits for the Property:

- #Z2006-023 Conditional Use Permit (CUP) application for a Caretaker's Residence was submitted to the Planning Department in August 2005
 - The Planning Department issued a letter on September 20, 2005 stating they could not process the application as there were no structures constructed on the property and a principle dwelling unit was required to be constructed prior to applying for an accessory dwelling unit (Caretaker's Residence) and provided two potential solutions
- #L2006-089 Land Use Permit (LUP) approved October 20, 2005 for one Single Family Dwelling Unit, barn and detached garage (Accessory Building):
 - Single Family Dwelling Unit:
 - a "lower floor" that contained mechanical room, all three (3) bedrooms, two (2) bathrooms, laundry room, and a recreation room
 - a "main floor" that contained a bathroom, closet, office, fire place, living room, kitchen and dining area
 - Horse Barn, attached to Single Family Dwelling Unit:
 - storage room, bathroom, tack room, five (5) stalls, car port
 - Detached Garage:
 - seven (7) parking stalls of differing sizes, an entryway, storage room, dry storage room, and wet storage room
 - "upper floor" all labeled as storage only
- #Z2007-038 CUP application to change the designation of the current Single Family Dwelling Unit to a Caretaker's Residence submitted December 1, 2006
 - The request was conditionally approved by the Bridger Canyon Planning & Zoning Commission on February 8, 2007 via the Findings of Fact Conclusions of Law and Order with six (6) conditions of approval:
 1. The conditional use permit authorizes the use of this structure as a caretaker's residence. The structure shall not be utilized for any other use unless such use is a permitted use in conformance with the Regulation.

2. A land use permit for the single-family residence shall be issued by the Gallatin County Planning Department prior to construction.
3. The following restrictive covenants shall be recorded in the Gallatin County Clerk and Recorder's Office prior to issuance of the new single-family residence:
 - a. *The caretaker's residence shall not be rented.*
 - b. *The caretaker's residence shall not be divided or sold separately from the original parcel.*
 - c. *All structures shall be constructed in compliance with Montana State adopted codes for construction, including codes for seismic zone 3, and National Fire Protection codes.*
 - d. *Flame retardant roofing materials shall be used.*
 - e. *Spark-arrestor screens shall be placed on all fireplace and woodstove chimneys.*
 - f. *Smoke detectors shall be installed on each level of dwelling units.*
 - g. *Areas within 30 feet of habitable structures shall be cleared of all flammable materials.*
 - h. *Open fires shall be prohibited.*
 - i. *Any covenant which is included herein as a condition of permit approval and required by the Bridger Canyon Planning and Zoning Commission may not be amended or revoked without the mutual consent of the property owners and the Planning and Zoning Commission.*
1. The future single-family residence shall be constructed with an automatic fire sprinkler system meeting the requirements of NFPA 13D/Uniform Fire Code. The fire district shall receive a stamped set of engineered sprinkler system plans for review and approval prior to construction. Inspections shall be scheduled, with 48-hour notice, during construction and after completion.
2. Applicant shall receive an approved Emergency Vehicle Turnaround Plan from the Bridger Canyon Fire Department prior to land use permit approval for the future single-family residence.
3. Approval from the Gallatin City-County Environmental Health Department for the septic system for the new single-family residence shall be obtained prior to the issuance of a land use permit.

- #L2013-172 LUP application approved June 7, 2013 for a new garage (Accessory Building), additions and a remodel to the Structure opposite the original Single-Family Dwelling Unit and barn
 - Existing structures listed as studio, barn and pergola

According to the records maintained by the Montana Department of Revenue the Property contains the following:

- Single Family Residence with 3 bedrooms, 2 bathrooms, 2 porches, approximately 654 square feet of living area, built in 2006

- Single Family Residence with 3 bedrooms, 2 bathrooms, 2 decks, a porch, and 2 garages, with approximately 2,523 square feet of living area, built in 2007
- Barn, 720 square feet, built in 2007
- Pole frame building, 305 square feet, built in 2010
- Pole frame building, 264 square feet, built in 2010
- Lean-to, 60 square feet, built in 2010

Overnight Accommodations

Section 4 of the Zoning Regulation lists the requirements for the AE sub-district. Section 4.2 lists the Permitted Uses **after** a Land Use Permit is approved. Section 4.3 lists Uses Permitted After Securing Approval of a Conditional Use Permit.

There are active listings for two (2) Overnight Accommodations on your Property:

- www.vrbo.com/850456 three (3) bedrooms, two (2) full and two (2) half baths, kitchen, living room, deck/patio
- www.vrbo.com/734934 three (3) bedrooms, two (2) full and one (1) half baths, gourmet kitchen, indoor and outdoor living space, multiple fire places

Both listings indicate that the Property has eight (8) beds and sleeps seven (7) people, includes the use of a hot tub and goes on to state that “Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee.”

The AE sub-district, Sections 4.2 and 4.3 of the Zoning Regulation, does not list Overnight Accommodations, and Guest Ranches and Bed and Breakfast Inns are considered Conditional Uses for which the Planning Department has no record of for this Property. Short term rentals are not a listed or defined term within the Zoning Regulation.

Section 3.8 of the Zoning Regulation states:

Interpretations. Requests for Official interpretations concerning the Zoning Regulations, boundaries, and maps shall be made in writing, accompanied by the appropriate application and fee, and shall be handled as follows:

- Administrative Interpretations. Interpretations concerning the Zoning Regulations and maps, except those interpretations listed at subsection (b) or (c)(vii) below, may be made by the Planning Director and are subject to Appeal as described in Section 13 of this Administrative Regulation. If the Planning Director determines the interpretation is of significant public interest, the Planning Director may refer the request to the Planning & Zoning Commission. The Planning & Zoning Commission shall consider the request in a public hearing.*
- Interpretation of Use Classification. If questions arise concerning the appropriate classification of a particular Use, or if the specific Use is not listed, the Planning and Zoning Commission shall determine the appropriate classification of that Use. In interpreting a Use classification, the Planning and Zoning Commission shall hold a*

public hearing, consider the recommendation of any Zoning Advisory Committee, and determine whether the use meets all of the following criteria:

- i. The proposed Use is compatible with the Uses allowed in the Sub-district;*
- ii. The proposed Use is similar to one or more Uses allowed in the Sub-district;*
- iii. The proposed Use will not adversely affect property in the neighborhood or Sub-district or Zoning District; and*
- iv. The proposed use will not abrogate the intent of the Zoning Regulations and applicable growth policy or neighborhood plan.*

Temporary Occupancy

Section 12.5 of the Zoning Regulation addresses Temporary Occupancy and states:

Temporary Occupancy: *The intent of this Subsection is to provide for temporary occupancy during the construction of a Principal Single-Family Dwelling Unit, and to accommodate temporary visitors. A Temporary Dwelling Unit may be a Recreational Vehicle, Mobile Home, tepee, tent, or yurt. A Temporary Dwelling Unit is subject to the following requirements.*

- a. A property owner may reside in a Temporary Dwelling Unit while a Principal Single-Family Dwelling Unit is under construction, for a maximum of one year, provided:*
 - (1) A Land Use Permit has been approved for a permanent Principal Single-Family Dwelling Unit, with a removal date;*
 - (2) Said mobile home or tepee does not violate any valid existing deed restrictions;*
 - (3) A Temporary Dwelling Unit must comply with all siting requirements set forth in the Regulation;*
 - (4) The temporary site shall be bear-proof;*
 - (5) Temporary Dwelling Units shall not be moved on site nor utilized for occupancy until sewage disposal and water supply systems are installed that meet all State and County Health Department regulations.*
- b. Temporary visitor occupancy of a Temporary Dwelling Unit is permitted provided:*
 - (1) Only one Temporary Dwelling Unit may be occupied on a residential Lot at any one time.*
 - (2) The Temporary Dwelling Unit may not occupy any Lot for a period longer than three weeks in any 90-day time period except for storage purposes of a Recreational Vehicle.*
 - (3) No fire source shall be allowed for any soft wall Temporary Dwelling Unit.*

According to your listings on www.vrbo.com, you offer a 22 foot luxury tepee (late spring through early fall) for an additional fee for use by members of the public renting your Dwelling Units located on the Property.

Land Use Permits

Section 6 of the Administrative Regulation addresses Land Use Permits. Specifically, Section 6.2 addresses the Requirement for Land Use Permits.

Any Structural Alteration of a Structure or new construction requires an approved Land Use Permit be issued by the Planning Department pursuant to Section 6 of the Administrative Regulation, unless otherwise exempted.

Based on the permits that were located within the Planning Department you have approval for:

- One Single-Family Dwelling Unit with three (3) bedrooms attached to a horse barn
- One detached garage with seven (7) parking stalls and storage
- A CUP permit that was conditionally approved for a Caretaker's Residence
- A new detached new garage, additions and a remodel to a Structure opposite the original Single-Family Dwelling Unit and barn
 - Existing structures in 2013 were listed as studio, barn and pergola

The Planning Department records do not include:

- any documentation that the conditions of approval associated with the conditionally approved Caretaker's Residence were ever met,
- any documentation or approved LUP for a second Dwelling Unit,
- it is unclear what Structure the 2013 additions and remodels were approved for, or what Structure and Use existed at the location prior to this approval

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

Septic Permit (Health Code)

I searched Gallatin County septic permit files and located one approved septic permit for your Property:

- Permit #14111 approved in May 2007 for:
 - One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
 - One (1) attached bedroom above garage generating 155 gallons per day, and
 - One (1), three (3) bedroom barn generating 300 gallons per day

Section 1.10 of Chapter 3 of the Health Code requires that an Authorization to Construct is required prior to the construction of a wastewater disposal system and a Permit to Operate must be granted before a person can lawfully use a wastewater treatment system. Any wastewater treatment system constructed within Gallatin County must comply with Health Code and State law. Chapter 3 of the Health Code can be found in its entirety on the Health Department website.

There is one approved wastewater system installed or used on your Property for:

- One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
- One (1) attached bedroom above garage generating 155 gallons per day, and
- One (1), three (3) bedroom barn generating 300 gallons per day

Any additional wastewater disposal or configuration taking place on your Property outside of the approved system is considered a violation.

According to my research you have multiple Living Units on the Property with somewhere between six (6) and eight (8) bedrooms.

Establishment License

According to records maintained by the Health Department there are no Public Accommodation Licenses approved for the operation of any “Establishments” on your Property. There are active listings for two Tourist Home rentals on the Property as described above.

Section 50-51-201 of the Montana Code Annotated (MCA) states that, “...a person engaged in the business of conducting or operating an establishment shall annually procure a license”. A Tourist Home is listed under the definition of “Establishment” and defined as, “a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis”. See Section 50-51-102, MCA.

A Public Accommodation License is required for the operation of any Establishment on your Property.

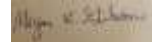
Required Response

Based on the information available to me at this time, your Property appears to remain in violation of the Zoning Regulation, Health Code, and Establishment Licensing. **You must schedule a site visit and submit the information requested in the September 24, 2021 Investigation Letter and initiate corrective actions, or provide documentation demonstrating how the Property is in compliance with the Zoning Regulation, Health Code, and Establishment Licensing no later than 30 days (November 21, 2021) from the date of this letter.**

Please be aware that this is the Department’s final attempt to resolve this situation informally. The failure to contact this Department and submit the requested information or submit the statement of compliance within the timeframe specified will result in additional enforcement action.

If you have any questions about this letter please contact me directly at 406-582-3775.

Sincerely,



Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

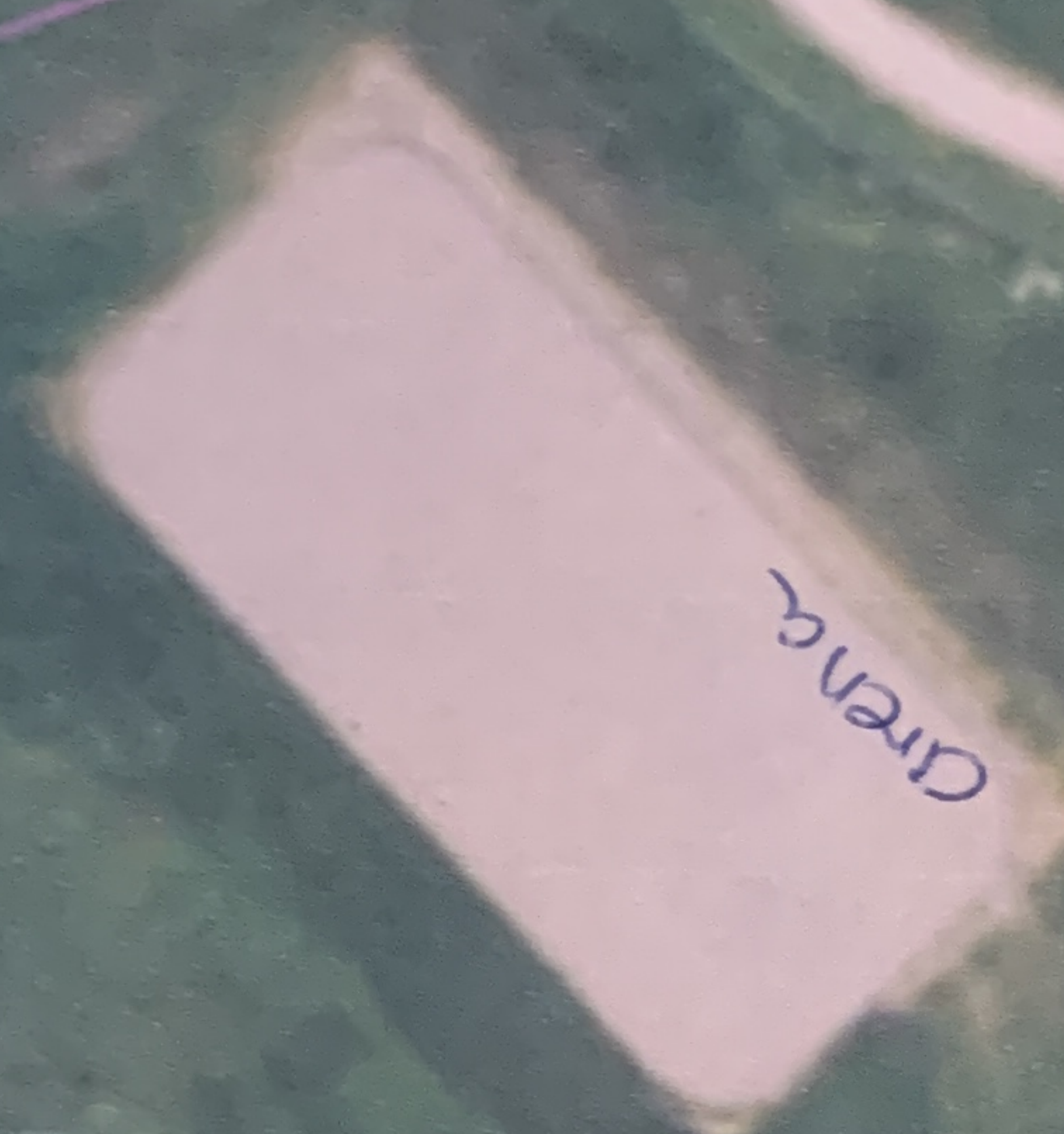
cc: County Attorney’s Office
Department of Planning and Community Development
Environmental Health Department
Amy McNulty, amcnulty@lawmt.com
Complainant

Site Visit Notes 11.22.21

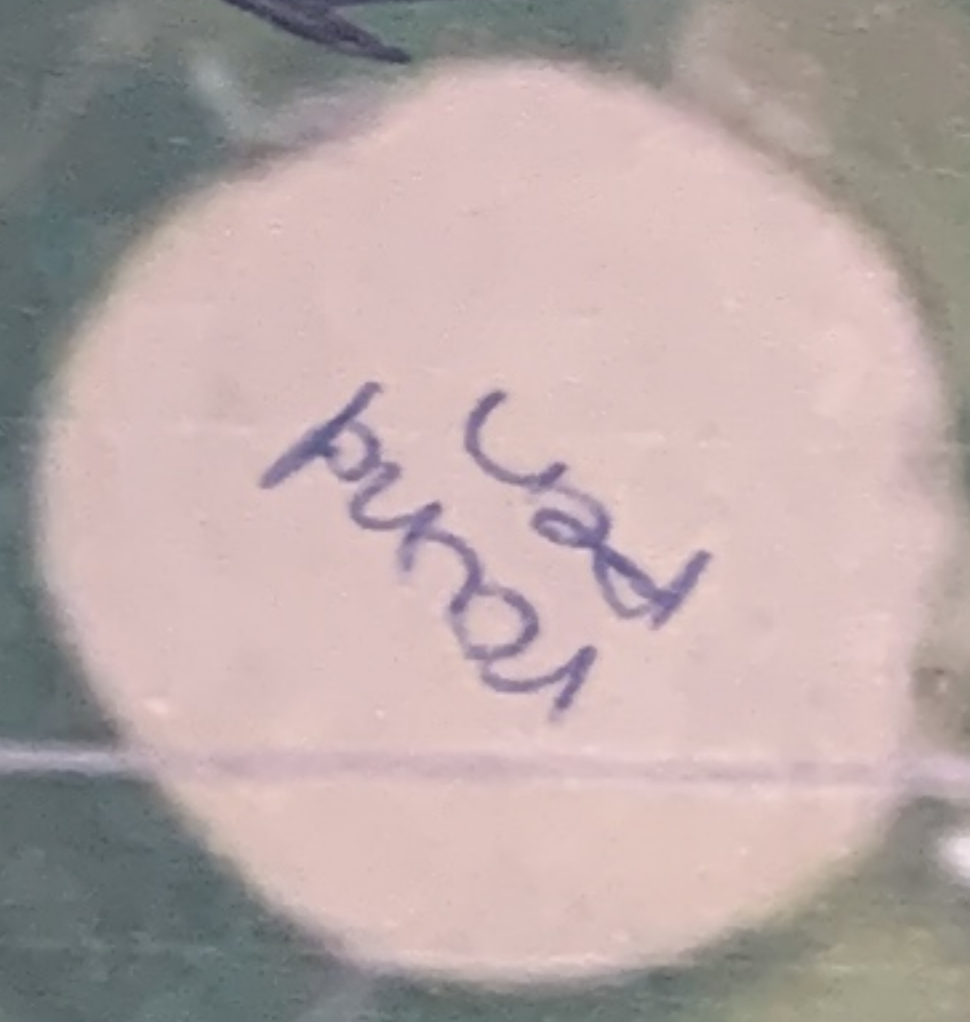
Met on site with owners and their attorney

- Dwelling Unit/Living Unit with attached garage
 - First floor:
 - Half bath/powder room
 - Bedroom with on-suite bathroom, kitchenette with sink, fridge, two burner stove
 - Three car attached garage
 - Weight room
 - Second floor:
 - Full kitchen and living area
 - Bedroom with three bunk beds
 - Bathroom
 - Bedroom with on-suite bathroom
 - Deck
 - Patio dining area
- Accessory Building “Horse Barn”
 - Horse stalls and tack room
- Accessory Building “Kids Play Set”
- Dwelling Unit/Living Unit connected to Accessory Building by a covered walk way
 - First floor:
 - Bedroom with three bunk beds
 - Bedroom
 - Bathroom
 - Bedroom with on-suite bathroom
 - Second floor:
 - Full kitchen and living area
 - Half bath/powder room
- Well #1
 - Used for pond and irrigation only
- Well #2
 - Used for Dwelling/Living Units
- Wastewater
 - Dwelling Unit/Living Unit with attached garage
 - Has tank and drain field
 - Dwelling Unit/Living Unit connected to Accessory Building by a covered walk way
 - Has tank and drain field

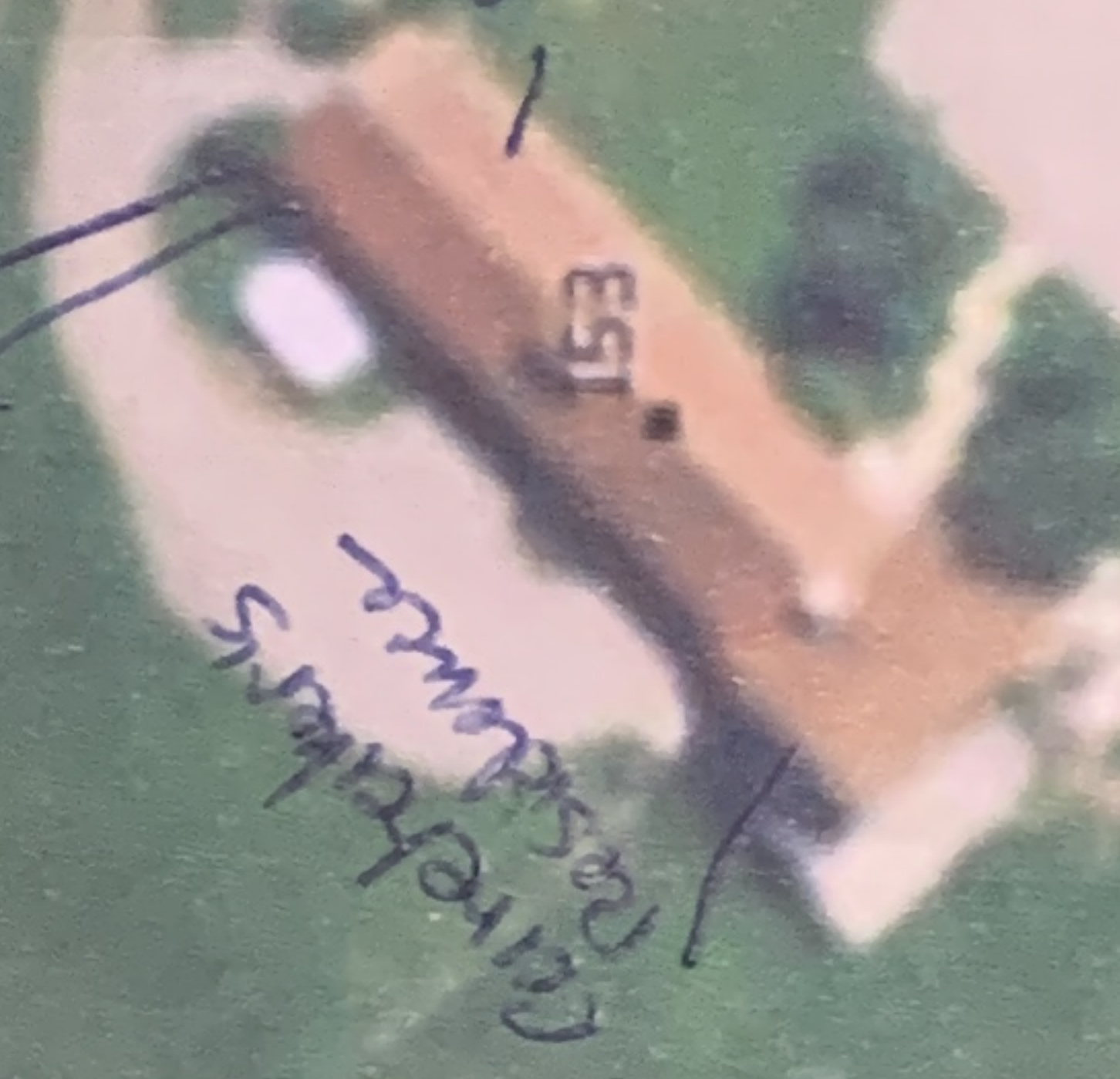
N ↑



Arena



Round Pen

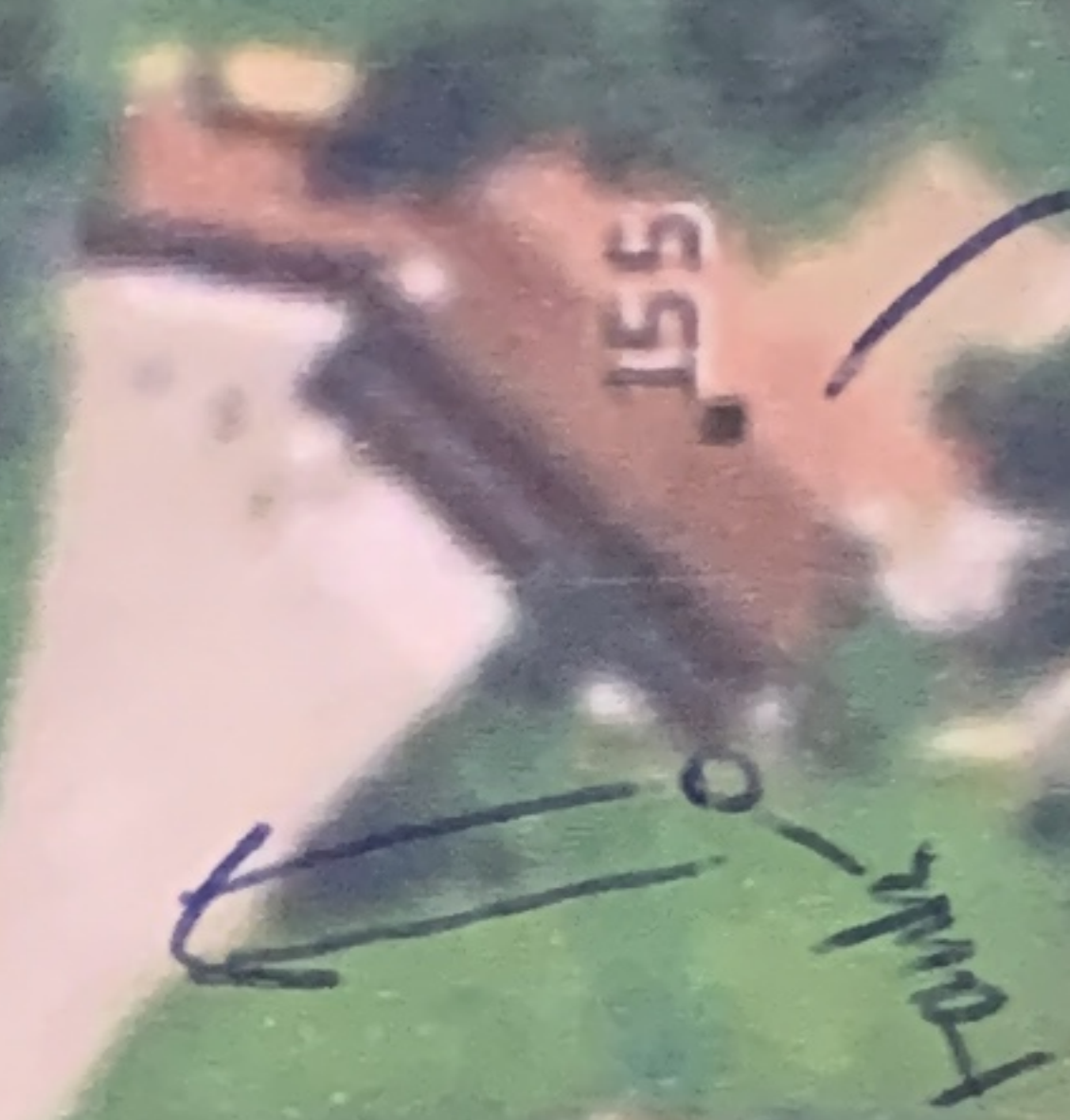


Barn

EST

Exercise Pens
Pastures

Trails



EST

Kids Play Set

Trails

Private SFD

Wood

Horse Shed

Horse Shed

TR 12A

Water

TR C



Gallatin County

CORRECTIVE ACTION LETTER

November 29, 2021

Sean A. Lewis
5064 Bridge Creek Drive
Plano, TX 75093-5702

Email: sean.a.lewis@gmail.com

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625

Email: sean.a.lewis@gmail.com

Re: Bridger Canyon Zoning Regulation, unpermitted wastewater disposal, and Public Accommodation Licensing Compliant (Compliance ID #22-041)

Dear Mr. Lewis:

As you know, the Gallatin County Compliance Department (Department) has been working with you to resolve potential violations occurring on your property addressed as 153 & 155 Tepee Ridge Road East, Bozeman; legally described as Tract 12A of Certificate of Survey (COS) No. 1265A (Property).

Thank you, Mr. Lewis, Ms. De Guzman, and Ms. McNulty, for meeting with me on the Property on November 22, 2021 (Site Visit).

Based on the Site Visit the following structures and uses exist on the Property and are labeled on the attached aerial photo:

- Dwelling Unit/Living Unit with attached garage (Structure A on aerial photo)
 - First floor:
 - Half bath/powder room
 - Bedroom with on-suite bathroom, kitchenette with sink, fridge, two burner stove (considered an additional Dwelling/Living Unit)
 - Three car attached garage
 - Weight room
 - Second floor:
 - Full kitchen and living area
 - Bedroom with three bunk beds
 - Bathroom
 - Bedroom with on-suite bathroom
 - Deck
 - Patio dining area
- Dwelling Unit/Living Unit connected to Accessory Building by a covered walk way (Structure B on aerial photo)

Compliance Department • 311 W. Main, Rm. 108 • Bozeman, MT 59715

Phone (406) 209-1161 • Email: megan.gibson@gallatin.mt.gov LEWIS STR ADMINISTRATIVE RECORD 041

- First floor:
 - Bedroom with three bunk beds
 - Bedroom
 - Bathroom
 - Bedroom with on-suite bathroom
- Second floor:
 - Full kitchen and living area
 - Half bath/powder room
- Accessory Building “Horse Barn” (Structure C on aerial photo)
 - Horse stalls and tack room
- Tepee (Structure D on aerial photo)
 - Used seasonally personally and can be part of Uses when rented with one of the Dwelling/Living Units
- Accessory Building “Kids Play Set” (Structure E on aerial photo)
- Accessory Buildings “Horse Sheds” (Structures F & G)
 - Built in 2010
 - Shelters for the horses
- Well #1
 - Used for pond and irrigation only
- Well #2
 - Used for Dwelling/Living Units
- Wastewater
 - Structure A
 - Has tank and drain field
 - Structure B
 - Has tank and drain field

Bridger Canyon Zoning District

According to County records, the Property is located in the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District) and therefore must comply with the Zoning Regulation. The Zoning District was adopted by the Board of County Commissioners on July 12, 1971 and Zoning Regulation was adopted by the Board of County Commissioners on October 26, 1971, and has been amended thereafter. The Zoning Regulation can be found in its entirety online at the Gallatin County Department of Planning and Community Development (Planning Department) website.

Because this Property is subject to the Zoning Regulation, it must also comply with the Gallatin County “Part 1” Zoning Administrative Regulation (Administrative Regulation). The Administrative Regulation can be found in its entirety online at the Planning Department website.

The requirement for property to conform to the Zoning Regulation is found in Section 3.2 of the Administrative Regulation and requires property owners to ensure that all Uses and Structures comply with the Zoning Regulation.

I searched the Planning Department records and located four permits for the Property:

- #Z2006-023 Conditional Use Permit (CUP) application for a Caretaker's Residence was submitted to the Planning Department in August 2005
 - The Planning Department issued a letter on September 20, 2005 stating they could not process the application as there were no structures constructed on the property and a principle dwelling unit was required to be constructed prior to applying for an accessory dwelling unit (Caretaker's Residence) and provided two potential solutions

- #L2006-089 Land Use Permit (LUP) approved October 20, 2005 for one Single Family Dwelling Unit, barn and detached garage (Accessory Building):
 - Single Family Dwelling Unit:
 - a "lower floor" that contained mechanical room, all three (3) bedrooms, two (2) bathrooms, laundry room, and a recreation room
 - a "main floor" that contained a bathroom, closet, office, fire place, living room, kitchen and dining area
 - Horse Barn:
 - storage room, bathroom, tack room, five (5) stalls, car port
 - Detached Garage:
 - seven (7) parking stalls of differing sizes, an entryway, storage room, dry storage room, and wet storage room
 - "upper floor" all labeled as storage only

- #Z2007-038 CUP application to change the designation of the current Single Family Dwelling Unit to a Caretaker's Residence submitted December 1, 2006
 - The request was conditionally approved by the Bridger Canyon Planning & Zoning Commission on February 8, 2007 via the Findings of Fact Conclusions of Law and Order with six (6) conditions of approval:
 1. The conditional use permit authorizes the use of this structure as a caretaker's residence. The structure shall not be utilized for any other use unless such use is a permitted use in conformance with the Regulation.
 2. A land use permit for the single-family residence shall be issued by the Gallatin County Planning Department prior to construction.
 3. The following restrictive covenants shall be recorded in the Gallatin County Clerk and Recorder's Office prior to issuance of the new single-family residence:
 - a. *The caretaker's residence shall not be rented.*
 - b. *The caretaker's residence shall not be divided or sold separately from the original parcel.*

- c. *All structures shall be constructed in compliance with Montana State adopted codes for construction, including codes for seismic zone 3, and National Fire Protection codes.*
- d. *Flame retardant roofing materials shall be used.*
- e. *Spark-arrestor screens shall be placed on all fireplace and woodstove chimneys.*
- f. *Smoke detectors shall be installed on each level of dwelling units.*
- g. *Areas within 30 feet of habitable structures shall be cleared of all flammable materials.*
- h. *Open fires shall be prohibited.*
- i. *Any covenant which is included herein as a condition of permit approval and required by the Bridger Canyon Planning and Zoning Commission may not be amended or revoked without the mutual consent of the property owners and the Planning and Zoning Commission.*

1. The future single-family residence shall be constructed with an automatic fire sprinkler system meeting the requirements of NFPA 13D/Uniform Fire Code. The fire district shall receive a stamped set of engineered sprinkler system plans for review and approval prior to construction. Inspections shall be scheduled, with 48-hour notice, during construction and after completion.
2. Applicant shall receive an approved Emergency Vehicle Turnaround Plan from the Bridger Canyon Fire Department prior to land use permit approval for the future single-family residence.
3. Approval from the Gallatin City-County Environmental Health Department for the septic system for the new single-family residence shall be obtained prior to the issuance of a land use permit.

- #L2013-172 LUP application approved June 7, 2013 for a new garage (Accessory Building), additions and a remodel to the Structure opposite the original Single-Family Dwelling Unit and barn
 - Existing structures listed as studio, barn and pergola

Principal Single Family Dwelling Unit

The original Land Use Permit (LUP) approval for a Principal Single Family Dwelling Unit was within LUP #L2006-089 in October 2005 and appears to have been Structure B. Then in December 2006, a request was made to turn this Structure into the Caretaker's Residence.

The original detached garage in LUP #L2006-089, appears that it was converted into the Principal Single Family Dwelling Unit after the conditional approval of CUP #Z2007-038 now labeled as Structure A, but it is unclear if an actual LUP approval was ever granted.

The basement bedroom contains an on-suite bathroom, kitchenette with sink, fridge, two burner stove and is considered an additional Dwelling Unit at this time.

The Principal Single Family Dwelling Units are currently used by you and rented out on a short-term basis.

Therefore, corrective action is required.

Dwelling Unit #2 - Caretaker's Residence

The Planning Department records include the December 2006 Conditional Use Permit #2007-038 for a Caretaker's Residence. The conditional approval included six conditions of approval that are listed above.

The original Land Use Permit (LUP) approval for this Structure was within LUP #L2006-089 in October 2005 as the Principal Single Family Dwelling Unit (Structure B). Then in December 2006, a request was made to turn this Structure into the Caretaker's Residence.

The Planning Department records do not include any documentation that the conditions of approval associated with the conditionally approved Caretaker's Residence CUP #Z2007-038 were ever met.

The Caretaker's Residence is currently used as a Dwelling Unit that is rented out on a short-term basis and used by friends and family.

Therefore, corrective action is required.

Accessory Building – Detached Garage

The Planning Department records include this Structure in the August 2005 LUP approval #L2006-089 in the area of what now appears to be Structure A.

It appears that this Structure was converted to the Principal Single Family Dwelling Unit in December 2006, but there is no clear record.

Therefore, corrective action may be required.

Overnight Accommodations

Section 4 of the Zoning Regulation lists the requirements for the AE sub-district. Section 4.2 lists the Permitted Uses after a Land Use Permit is approved. Section 4.3 lists Uses Permitted After Securing Approval of a Conditional Use Permit.

There are active listings for two Overnight Accommodations on your Property:

- www.vrbo.com/850456 three bedrooms, two full and two half baths, kitchen, living room, deck/patio
- www.vrbo.com/734934 three bedrooms, two full and one half bath, gourmet kitchen, indoor and outdoor living space, multiple fire places

Both listings indicate that the Property has eight beds and sleeps seven people, includes the use of a hot tub and goes on to state that "Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee."

The AE sub-district, Sections 4.2 and 4.3 of the Zoning Regulation, does not list Overnight Accommodations. Short term rentals/tourist homes are not a listed or defined term within the Zoning Regulation.

Section 3.8 of the Administrative Regulation addresses Interpretations for when a Use is not listed.

Section 14 of the Administrative Regulation addresses Amendments to the Zoning Regulation.

Both the Principal Single Family Dwelling Unit and Caretaker's Residence are advertised and used as short term rentals/tourist homes on the Property.

Therefore, correction action is required.

Temporary Occupancy - Tepee

Section 12.5 of the Zoning Regulation addresses Temporary Occupancy.

During the Site Visit you stated that you use the tepee throughout the summer personally. Additionally, your listings on www.vrbo.com, offer a 22 foot luxury tepee (late spring through early fall) for an additional fee for use by members of the public renting your Dwelling Units located on the Property.

The Planning Department has no record of any approvals for this Structure or Use.

Therefore, corrective action is required.

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

Septic Permit (Health Code)

Gallatin County has one current septic permit on file for your Property (see attached):

- Permit #14111 approved in May 2007 for:
 - One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
 - One (1) attached bedroom above garage generating 155 gallons per day, and
 - One (1), three (3) bedroom barn generating 300 gallons per day

Section 1.10 of Chapter 3 of the Health Code requires that an Authorization to Construct is required prior to the construction of a wastewater disposal system and a Permit to Operate must be granted before a person can lawfully operate a wastewater treatment system or dispose of wastewater into the system. Any wastewater treatment system constructed within Gallatin County must comply with Health Code and State law. Chapter 3 of the Health Code can be found in its entirety on the Health Department website at www.healthygallatin.org.

There is one approved wastewater system installed or used on your Property for:

- One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
- One (1) attached bedroom above garage generating 155 gallons per day, and
- One (1), three (3) bedroom barn generating 300 gallons per day

Any additional wastewater disposal or configuration taking place on your Property outside of the approved system is considered a violation of Health Code.

According to the Site Visit there are three Living Units and six Bedrooms.

The following definitions are from the Montana Department of Environmental Quality Circular 4:

§ 1.2.9 **Bedroom** means any room that is or may be used for sleeping. An unfinished basement is considered an additional bedroom.

§ 1.2.51 **Living unit** means the area under one roof that can be used for one residential unit and which has facilities for sleeping, cooking, and sanitation. A duplex is considered two living units.

After discussions with the Health Department they would like to see a permit modification application and an accurate, descriptive site plan so that they can confirm that the number of Living Units and Bedrooms and that the size of the tanks works with what was actually constructed and so that a new Permit to Operate can be issued that reflects what was actually built on the Property.

Therefore, corrective action is required.

Establishment License

Section 50-51-201 of the Montana Code Annotated (MCA) states that, "...a person engaged in the business of conducting or operating an establishment shall annually procure a license". A Tourist Home is listed under the definition of "Establishment" and defined as, "a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis". See Section 50-51-102, MCA.

A Public Accommodation License is required for the operation of any Establishment on your Property.

According to records maintained by the Health Department there are no Public Accommodation Licenses approved for the operation of any "Establishments" on your Property. There are active listings for two Tourist Home rentals on the Property as described above.

Therefore, corrective action is required.

Corrective Action

Thank you for your efforts to discuss and clarify the violations on your Property. Based on the information available to me at this time, your Property appears to be in violation of the Health Code, Zoning Regulation, and Administrative Regulation. Therefore, corrective action is required.

The Health Department would like to assist you in understanding what wastewater facilities are approved for use on your Property and those that need improvements/modifications, along with the Establishment licensing requirements. The Health Department can also help you formulate a plan of correction to resolve these outstanding issues. An acceptable plan of correction may include discussions with the Health Department, and then establishing the necessary actions and dates those actions will be completed by. The Health Department can be reached at 406-582-3120 or ehs@gallatin.mt.gov with any questions.

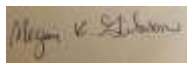
The Planning Department would like to assist you in understanding the requirements of the Zoning Regulation and Administrative Regulation. They can also help you formulate a plan of correction to resolve the outstanding issues. An acceptable plan of correction may include scheduling a

meeting with a Planner who can help determine the correction actions and then establishing the necessary actions and dates those actions will be completed by. You can reach Sean O'Callaghan of the Planning Department at 406-582-3130 or sean.ocallaghan@gallatin.mt.gov to discuss the options that are available to you.

Whatever corrective actions you decide to pursue, **you must notify me in writing of your plan of correction within 30 days of the date of this letter.**

Please keep in mind that a failure to notify me in writing of your proposed plan of correction could result in additional enforcement action, which may include the assessment of a penalty. If you have any questions about this letter, feel free to call me at 406-582-3775.

Sincerely,



Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc with attachment:

County Attorney's Office
Department of Planning and Community Development
Environmental Health Department
Leah De Guzman, leahdg2004@gmail.com
Amy McNulty, amcnulty@lawmt.com
Complainant

N ↑

Horse shed
(G)

Horse shed
(F)

Round Pen

Arena

TR 12A

Amelbers residence
(B)

Barn
(C)

(D) *tepee*

Kids play set
(E)

Principal SFD
(A)

Truck

W O W O

TR C

Gibson, Megan

From: O'Callaghan, Sean
Sent: Tuesday, December 21, 2021 2:19 PM
To: Gibson, Megan
Subject: Lewis Property Meeting
Attachments: zone reg 112204.pdf

Hi Megan,

I just finished my phone call with Amy McNulty and wanted to provide you with a quick rundown on the meeting.

- Buildings A, B, and C were largely discussed together. From the piecing together of the LUP info we have been able to find it doesn't appear there is an exact match for what has been built, and this needs to be rectified in one way or another. While a CUP (Z2007-038) was issued to convert Building B into a Caretaker's Residence, and allow construction of a new principal dwelling (Building B), the Conditions of the CUP don't appear to have been met, and based on the requirements of the Bridger Canyon Zoning Regulations that were in place when the CUP was approved, it is likely the CUP automatically expired (see Section 17.3.8(a) of attached regs). The number of dwelling units on the property needs to be brought into compliance with the requirements of the Bridger Canyon Zoning Regs, and the process to do that will vary depending on whether Z2007-038 expired. Amy will do some research on this. We also discussed the matter that Overnight Accommodations are not allowed in the AE sub-district.
- Building D – based on a 22' diameter, the Teepee would require a LUP, unless it is a temporary structure in place for less than 90 days per Section 12.3.e
- Structure E – the playground equipment should be exempt from LUP requirements per Section 12.3.D.
- Buildings F&G require LUPs unless it is proven that they are less than 200 square feet.

Amy was going to do some more research and then get back in touch with us. She mentioned your deadline, so was aware of that/

Thanks,

Sean O'Callaghan, AICP, CFM
Chief Planning Officer

Department of Planning & Community Development
Gallatin County
311 W. Main St., Rm. 108
Bozeman, MT 59715

Phone: (406) 582-3130
Fax: (406) 582-3135
sean.ocallaghan@gallatin.mt.gov

Gibson, Megan

From: Haskell, Nicholas
Sent: Tuesday, December 28, 2021 2:04 PM
To: amcnulty@lawmt.com
Cc: Gibson, Megan; Sevareid, Theresa; Jenks, Jeremy; Krahn, Brittany; Settles, Edward
Subject: RE: Lewis-Teepee Road Property- Corrective Action
Attachments: Site-Evaluator-List-20210910.pdf

Good afternoon Amy –

The current wastewater treatment system permit is for 3 structures with a total flow of 800 Gallons per day. This number comes from a 4-bed, a 3-bed and a 1-bed approved on Permit # 14111. The easiest way to fix the wastewater side of this and make the bedroom numbers match on the permit is to hire a site evaluator/engineer to submit a permit modification with a site plan that accurately shows what is on the lot and where the structures are located with the # of bedrooms in each structure etc.

Attached is our current list of Registered Site Evaluators / Engineers. The site evaluators should all be very familiar with what is required, you're basically asking them to "submit a permit modification to match what is in the ground with what the permit allows". If additional tanks or drainfield expansion is required, they are the ones who design the wastewater systems too so they can deal with everything and recommend an installer if one is required to do any digging/installations.

If these are being used as short term rentals (they appear to be) there are also additional licenses required from the Establishment side of the Department. They can be reached at 406-582-3120, but licenses will not be available until the wastewater component is fixed.

Feel free to give me a call if you have any questions or if this is confusing to read.

From: EHS
Sent: Tuesday, December 28, 2021 10:09 AM
To: Sevareid, Theresa <Theresa.Sevareid@gallatin.mt.gov>
Subject: FW: Lewis-Teepee Road Property- Corrective Action



NANCY RANGEL / Program Technical Assistant

GALLATIN CITY-COUNTY HEALTH DEPARTMENT

P 406 582 3120 / F 406 582 3128 / E nancy.rangel@gallatin.mt.gov



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From: Amy McNulty <AMcNulty@lawmt.com>
Sent: Tuesday, December 28, 2021 9:48 AM
To: EHS <EHS@gallatin.mt.gov>
Subject: RE: Lewis-Teepee Road Property- Corrective Action

Hello! I wanted to check in on this matter. I don't think I've missed a call/message from anyone, but wanted to make sure.

Thanks for your help.
Amy

From: EHS <EHS@gallatin.mt.gov>
Sent: Friday, December 17, 2021 2:48 PM
To: Amy McNulty <AMcNulty@lawmt.com>
Subject: RE: Lewis-Teepee Road Property- Corrective Action

Good afternoon Amy,

I've forwarded your email to the Septic Sanitarians. One of them should be getting back to you shortly.

Happy Holidays



Miranda Hoffman/ Environmental Health Program Assistant

GALLATIN CITY-COUNTY HEALTH DEPARTMENT

P 406 582 3120 / F 406 582 3128 / E miranda.hoffman@gallatin.mt.gov



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From: Amy McNulty <AMcNulty@lawmt.com>
Sent: Friday, December 17, 2021 1:53 PM
To: EHS <EHS@gallatin.mt.gov>
Subject: Lewis-Teepee Road Property- Corrective Action

Hello,

I am assisting a property owner with the attached Corrective Action Letter from County Compliance Officer Megan Gibson. She listed your office as the contact for us to work with on the plan of corrective action as necessary for the approved wastewater facilities for this property.

My clients are out of town for the holiday, but I wanted to get the ball rolling to see what we might be able to do with your office. Could you let me know next steps from your perspective? Or if I should schedule a meeting with someone in your office to go over these items?

Thanks so much for your assistance,

Amy

Amy C. McNulty
Tarlow Stonecipher
Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913

Phone: (406) 586-9714
Facsimile: (406) 586-9720
Website: www.lawmt.com

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Gibson, Megan

From: Gibson, Megan
Sent: Wednesday, December 29, 2021 12:05 PM
To: Hailey Garbett
Cc: sean.a.lewis@gmail.com; Amy McNulty; leahdg2004@gmail.com
Subject: RE: Notice of Plan for Correction

Hailey,

I have received the response. I will review and be in touch next week.

Thank You,

Megan K. Gibson
Code Compliance Officer
Gallatin County Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

From: Hailey Garbett <HaileyG@lawmt.com>
Sent: Tuesday, December 28, 2021 4:41 PM
To: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>
Cc: sean.a.lewis@gmail.com; Amy McNulty <AMcNulty@lawmt.com>; leahdg2004@gmail.com
Subject: Notice of Plan for Correction

Good afternoon,

Please see the attached letter from Amy McNulty outlining Mr. Lewis's plan for correction. Please let us know if you have any questions.

Thanks,

Hailey Garbett
Legal Assistant for Amy C. McNulty
Tarlow Stonecipher
Weamer & Kelly, PLLC

1705 West College Street
Bozeman, MT 59715-4913
Phone: (406) 586-9714
Facsimile: (406) 586-9720
Website: www.lawmt.com

The health and safety of our staff, their families, and clients are very important to us. We will continue to provide the high level of service our clients expect, while doing our part to help reduce the spread of COVID-19. Please call in advance to schedule an appointment. Video conferencing is available.

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you received this transmission in error, please delete it from your system without copying it and notify the sender of the error. Thank you.

**TARLOW
STONECIPHER
WEAMER & KELLY PLLC**

ATTORNEYS

1705 WEST COLLEGE STREET
BOZEMAN, MT 59715-4913

PHONE (406) 586-9714
FAX (406) 586-9720
www.LawMT.com

December 28, 2021

Megan Gibson
Gallatin County Compliance Department
311 West Main Street, Rm. 108
Bozeman, MT 59715

Via e-mail:
megan.gibson@gallatin.mt.gov

RE: Plan of Correction; Bridger Canyon Zoning Regulation and Public Accommodation Licensing Complaint (Compliance ID #22-041)

Dear Megan,

Thank you for your letter on November 29, 2021, following up on the site visit to Mr. Lewis's property. Your letter requested a written notice of Mr. Lewis's plan for correction of the items noted in your letter within thirty (30) days. This letter serves as this notice.

Per your directions, Mr. Lewis plans to engage with both the Gallatin County Health Department and the Gallatin County Planning Department to identify and address the items discussed in your corrective action letter.

On Mr. Lewis's behalf, I have reached out to the Gallatin County Health Department. I received a response today (that you were copied on) that indicates that there is an approval for up to 8 bedrooms on the current wastewater treatment system permit. But, it appears there may be an issue with an accurate site plan and licenses required for short-term rentals. I will review the Health Department's proposed solutions to these issues with Mr. Lewis. I will update you regarding movement on this issue by January 14, 2022.

On Mr. Lewis's behalf, I have started a conversation with the Gallatin County Planning Department to review outstanding issues with Zoning Regulations applicable to the property. I met with Sean O'Callaghan over a telephone conference to review the outstanding items. Following up from that conference, Mr. Lewis is looking at the following items:

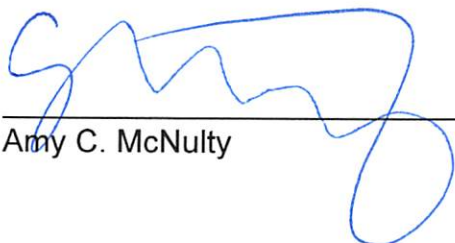
- Confirming the square footage of the horse sheds to determine whether they are exempt from any land-use permit requirement;
- Confirming the applicability of exemption to land-use permit requirements for the teepee structure that is used during the summer months if used less than ninety (90) days and if not on permanent foundation; and
- Determining whether the Conditional Use Permit approved in February 2007, was ever "put into use" to determine whether the Conditional Use Permit is valid or was voided under the prior version of the applicable Zoning Regulations.

Mr. Lewis will plan to get back in touch with Mr. O'Callaghan related to these items by January 14, 2022. Depending on the status of the 2007 Conditional Use Permit, I understand our options for corrective action will be different, and Mr. Lewis will work on a plan for corrective action related to these items.

Mr. Lewis is still investigating some of the items raised as violations, including the ability to use the property for a short-term rental. Mr. Lewis will review this with the Planning Department as he works through the other issues related to the Zoning Regulations.

Please advise if you require any further information at this time. Thank you again for the direction provided in your November 29, 2021 letter. We will be in touch soon.

Very truly yours,



Amy C. McNulty

ACM/hgg

Gibson, Megan

From: Gibson, Megan
Sent: Friday, January 14, 2022 12:32 PM
To: Amy McNulty
Subject: RE: Follow Up on Lewis Property

Thank you Amy,

I will review and discuss during my compliance meeting next week and be in touch on the Lewis property.

Megan K. Gibson
Code Compliance Officer
Gallatin County Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

From: Amy McNulty <AMcNulty@lawmt.com>
Sent: Friday, January 14, 2022 10:54 AM
To: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>
Subject: RE: Follow Up on Lewis Property

Thanks, Megan-

I appreciate that your interpretation of this helps my client's position, but I do feel that this is a bit of a different analysis than I would argue for why the property is not in violation of the Zoning as it relates to the short-term rental. I am attaching a recent Montana Supreme Court cases that discussed how rental of property, including short-term rental, is a residential use of property. I think this would be consistent with the Zoning, where rental of property in this way does not meet the definition of overnight accommodations or Hotels. As such, I am not sure why you need to confirm the Tax issue if you can explain that.

Also- you'll see from the email from my office that I am working on another matter involving your office- look forward to talking with you about that one. Thanks!

Amy

Amy C. McNulty
Tarlow Stonecipher
Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913

Phone: (406) 586-9714
Facsimile: (406) 586-9720
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From: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>
Sent: Friday, January 14, 2022 8:54 AM
To: Amy McNulty <AMcNulty@lawmt.com>
Subject: RE: Follow Up on Lewis Property

Yep, HB 257 now codified as § 7-5-121 MCA.

Megan

From: Amy McNulty <AMcNulty@lawmt.com>
Sent: Friday, January 14, 2022 8:51 AM
To: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>
Subject: Re: Follow Up on Lewis Property

Hi Megan, can you remind me of the statute you referred to? I wrote down HB 256, but when I looked it up, it didn't drem right.

Thanks!

From: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>
Sent: Friday, January 14, 2022 8:47:57 AM
To: Amy McNulty <AMcNulty@lawmt.com>
Subject: Follow Up on Lewis Property

Hi Amy,

I wanted to follow up on our conversation last week concerning the use of the homes as tourist homes. I am ready to partially close that portion of the complaint as it relates to zoning once I receive the documentation demonstrating that the Lodging Facility Sales and Use Taxes have been paid quarterly. Then we can work on the plans of correction for the remaining items.

Thanks,
Megan

Megan K. Gibson
Code Compliance Officer
Gallatin County Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

402 Mont. 223
Supreme Court of Montana.

CRAIG TRACTS HOMEOWNERS' ASSOCIATION, INC., Tara J. Chapman
& Matthew B. Losey, Donald C. and Beverly A. Friend, Robert J. & Andrea
E. Maricich Family Trust, Mickelson Investments, LLC, Sallie A. Losey,
Hemingway Patrick & Carol T. Revocable Living Trust, Plaintiffs and Appellants,
v.
BROWN DRAKE, LLC, Defendant and Appellee.

DA 20-0214

Submitted on Briefs: October 28, 2020

Decided: December 8, 2020

Synopsis

Background: Homeowners' association brought action against owner of fishing lodge located within association for injunctive and declaratory relief, alleging that operation of the lodge violated requirement in association's amended covenants that property be used for residential purposes only. The District Court of the First Judicial District, County of Lewis & Clark, Michael F. McMahon, P.J., granted owner summary judgment. Association appealed.

The Supreme Court, McGrath, C.J., held that use of lodge as a short-term rental did not violate requirement in covenant that property be used for residential purposes only.

Affirmed.

****284** APPEAL FROM: District Court of the First Judicial District, In and For the County of Lewis and Clark, Cause No. BDV 2018-1622, Honorable Michael F. McMahon, Presiding Judge

Attorneys and Law Firms

For Appellants: Dave Dalthorp, Scott Svee, Jackson, Murdo & Grant, P.C., Helena, Montana

For Appellee: Reid J. Perkins, Worden Thane P.C., Missoula, Montana

For Amicus Curiae Community Association Institute: Alanah Griffith, Patrick Tillisch, Griffith & Cummings, PLLC, Big Sky, Montana

For Amicus Curiae Steven and Gayle Muggli: Afton E. Ball, Stephanie Baucus, Moulton Bellingham PC, Billings, Montana

Opinion

Chief Justice Mike McGrath delivered the Opinion of the Court.

*225 ¶1 Plaintiffs appeal a First Judicial District Court ruling on cross motions for summary judgment in favor of defendant Brown Drake, LLC. We affirm.

¶2 We restate the issue on appeal as follows:

Whether the District Court erred in determining that Brown Drake, LLC's operation of the Brown Drake Lodge violated the Amended Covenant's requirement that the property be "used for residential purposes only."

FACTUAL AND PROCEDURAL BACKGROUND

¶3 Brown Drake, LLC (Brown Drake) consists of four individuals and owns a fishing lodge on the Missouri River known as the Brown Drake Lodge (the Lodge). Brown Drake's owners built the Lodge in 2017 with fly anglers in mind. The Lodge is on property that is part of the Craig Tracts Homeowners' Association (HOA). A restrictive covenant (Original Covenants) recorded on July 13, 1983, restricted the property as follows:

USE FOR RESIDENCE ONLY: The above described real property ... shall be used for residential purposes only.

There shall be no use of the real property or any building constructed thereon for commercial or business use or for the use of a motel, hotel or apartment house, except for professional occupations.

¶4 The Original Covenants were amended on September 29, 1984 (Amended Covenants), deleting the reference to commercial, business, or hotel/motel/apartment house uses such that it simply reads: "USE FOR RESIDENCE ONLY: The above described real property ... shall be used for residential purposes only." The Amended Covenants were in effect at the time Brown Drake purchased the property. While a member of Brown Drake was undertaking this purchase, a real estate agent informed the individual that at least one other home in the area subject to the HOA had previously been used for a short-term rental at various times. The Brown Drake member went forward with the purchase with the expectation that Brown Drake would use the property in a similar manner.

¶5 Brown Drake advertises short term stays at the Lodge on a website and a Facebook page. A local flyfishing shop also advertises the *226 Lodge and does all of the Lodge's booking. A stay at the Lodge costs \$650 per night, plus a seven percent lodging tax and a three percent sales tax. The Lodge is licensed and insured as a "tourist home" under **285 Montana law. See § 50-51-102(12), MCA. According to Brown Drake, those who stay at the Lodge spend their time doing various activities including: bathing; showering; grooming; dressing; sleeping; cooking; preparing, eating, and cleaning up after meals; talking; rearing children; watching television; enjoying the scenery; playing; using the bathroom; maintaining hygiene; sitting and relaxing; walking; entertaining; browsing the internet and social media; reading; sheltering; and to "couple." For approximately eight or nine months out of the year, the owners of Brown Drake stay at the property, on and off, when the Lodge is not occupied by paying members of the public.

¶6 On December 28, 2018, the plaintiffs (collectively, "the HOA") commenced this action for injunctive and declaratory relief against Brown Drake, alleging that the operation of the Lodge violated the Amended Covenants' requirement that property be "used for residential purposes only." After both parties moved for summary judgment, the District Court issued a March 10, 2020 order ruling in favor of Brown Drake. This appeal followed.

STANDARD OF REVIEW

¶7 A district court's interpretation of a restrictive covenant is a conclusion of law which the Montana Supreme Court reviews for correctness. *Czajkowski v. Meyers*, 2007 MT 292, ¶21, 339 Mont. 503, 172 P.3d 94 (citation omitted). We review a district court's summary judgment ruling de novo. *Bardsley v. Pluger*, 2015 MT 301, ¶11, 381 Mont. 284, 358 P.3d 907 (citation omitted).

DISCUSSION

¶8 *Issue: Whether the District Court erred in determining that Brown Drake, LLC's operation of the Brown Drake Lodge violated the Amended Covenant's requirement that the property be "used for residential purposes only."*

¶9 The HOA challenges the District Court's conclusion that the Lodge's use complies with the Amended Covenants and grant of summary judgment. Summary judgment is appropriate when there is "no genuine issue as to any material fact" and the party "is entitled to judgment as a matter of law." M. R. Civ. P. 56(c)(3). Restrictive covenants, like contracts, are interpreted to ascertain the intention of the parties. *Creveling v. Ingold*, 2006 MT 57, ¶ 8, 331 Mont. 322, 132 P.3d 531 (citations omitted). Where language is clear and explicit, the *227 Court will apply the language as written. *Creveling*, ¶ 8. The language should be interpreted according to its ordinary and popular meaning. *Creveling*, ¶10 The Court will construe restrictive covenants strictly and resolve ambiguities in favor of free use of property. *Czajkowski*, ¶ 21 (citation omitted). We will consider evidence extrinsic to the language of the restrictive covenant itself if an ambiguity is found. *See Creveling*, ¶ 9. Ambiguity is a question of law for the Court to determine and exists where the language, as a whole, is subject to two different reasonable interpretations. *Czajkowski*, ¶ 21. The simple presence of a dispute among the parties is insufficient to establish an ambiguity. *Creveling*, ¶ 8 (citations omitted).

¶10 What appears to be the majority of other jurisdictions to have considered this issue have found that "residential purposes" provisions do not prohibit short term rentals. *See Santa Monica Beach Prop. Owners Ass'n v. Acord*, 219 So.3d 111, 114 (Fla. Ct. App. 2017); *Houston v. Wilson Mesa Ranch Homeowners Ass'n*, 360 P.3d 255 (Colo. Ct. App. 2015); *Wilkinson v. Chiwawa Communities Ass'n*, 180 Wash.2d 241, 327 P.3d 614 (2014) (en banc); *Estates at Desert Ridge Trails Homeowners' Ass'n v. Vazquez*, 300 P.3d 736 (N.M. Ct. App. 2013); *Slaby v. Mountain River Estates Residential Ass'n*, 100 So. 3d 569 (Ala. Civ. App. 2012); *Russell v. Donaldson*, 222 N.C.App. 702, 731 S.E.2d 535 (2012); *Applegate v. Colucci*, 908 N.E.2d 1214 (Ind. Ct. App. 2009); *Mason Family Trust v. DeVaney*, 146 N.M. 199, 207 P.3d 1176 (N.M. Ct. App. 2009); *Ross v. Bennett*, 148 Wash.App. 40, 203 P.3d 383 (2008); *Scott v. Walker*, 274 Va. 209, 645 S.E.2d 278 (2007); *Lowden v. Bosley*, 395 Md. 58, 909 A.2d 261 (2006); *Mullin v. Silvercreek Condo. Owner's Ass'n*, 195 S.W.3d 484 (Mo. Ct. App. 2006); *Pinehaven Planning Bd. v. Brooks*, 138 Idaho 826, 70 P.3d 664 (2003); **286 *Yogman v. Parrott*, 325 Or. 358, 937 P.2d 1019 (1997) (en banc); *Catawba Orchard Beach Ass'n v. Basinger*, 115 Ohio App.3d 402, 685 N.E.2d 584 (1996). These decisions focus on *what* is being done at a particular premises, not *how long* any particular individual is doing the activity for. *See Acord*, 219 So.3d at 114 ("[T]he critical issue is whether the renters are using the property for ordinary living purposes such as sleeping and eating, not the duration of the rental." (citation omitted)). According to Brown Drake, because those staying at the Lodge use it to eat, drink, use the bathroom, sleep, and conduct other activities consistent with "residential purposes," the Lodge is being used in a manner that does not violate the restrictive covenant at issue.

¶11 Brown Drake's proposed analysis focuses on the consequences stemming from particular *activities* taking place on a given parcel. For example, the disturbances caused by a neighboring Lodge occupant *228 "enjoying the scenery" are likely negligible compared with that of a neighbor's busy autobody shop—regardless of whether the activity is undertaken by the same person or someone new each day.

¶12 In contrast, other jurisdictions looking at similar language have reached different conclusions. *See Hensley v. Gadd*, 560 S.W.3d 516, 524 (Ky. 2018) ("[O]ne-night, two-night, weekend, weekly inhabitants cannot be considered 'residents' within the commonly understood meaning of the word, or the use by such persons as constituting 'residential.' "); *Eager v. Peasley*, 322 Mich.App. 174, 911 N.W.2d 470, 478 (2017) ("Defendant's transient, short-term rental usage violates the restrictive covenant requiring 'private occupancy only' and 'private dwelling.' "). These determinations appear to align with dictionary definitions that frequently describe these terms with reference to an expectation of regularity over time. *See Reside*, Merriam-Webster Dictionary, <https://perma.cc/RW2A-EYBD> (last visited December 2, 2020) (defining "reside" as "to dwell permanently or continuously: occupy a place as one's legal domicile."); *Residence*, Black's Law Dictionary (5th ed. 1979) (defining "residence"

as “personal presence at some place of abode with no present intention of definite and early removal and with purpose to remain for undetermined period, not infrequently, but not necessarily combined with design to stay permanently.”).

¶13 We agree with these jurisdictions that the common understanding of the word “residential” often goes beyond the mere existence of an activity at a fleeting instant in time to imply a pattern of regularity or duration. *See, e.g., O'Connor v. Resort Custom Builders*, 459 Mich. 335, 591 N.W.2d 216, 221 (1999) (adopting the trial court's conclusion that a “residential purpose” has a “permanence to it, and a continuity of presence”). For example, most weekend vacationers, after booking a place to spend the night, would probably not list their local place of accommodation as their “residence.” However, it is also the case that many people in Montana, like the members of Brown Drake, have vacation properties that do serve residential purposes but are clearly not intended as the owner's principal residence.

¶14 Related legal provisions suggest a similar understanding of the durational role of residence. Montana statutes regulate enterprises such as the Lodge similarly to hotels, requiring health inspections and a lodging tax. *Compare* § 50-51-103, MCA (regulating a “tourist home” such as the Lodge in the chapter regulating hotels, motels, and rooming houses), *with* Title 70, chapter 24, MCA (Residential Landlord and Tenant Act of 1977 regulating residential rentals).

¶15 While the HOA's interpretation of the Amended Covenants is *229 reasonable, the Amended Covenants' text does not explicitly say how long—if at all—a given person or their belongings must remain within a particular property in order for the property to serve a residential purpose.¹ We have defined “residential” as “dwelling in a place for some time,” *Tipton v. Bennett*, 281 Mont. 379, 382, 934 P.2d 203, 205 (1997) (quotation omitted), but we have not determined how long constitutes **287 “some time.” We cannot say that the many jurisdictions—as well as our own District Court—to have adopted Brown Drake's proposed interpretation of “residential” were unreasonable. Since there are multiple reasonable interpretations of this language, we join with those courts to have found such language ambiguous in this context. *See Czajkowski*, ¶ 21 (defining language as ambiguous when susceptible to multiple reasonable interpretations); *see also Scott*, 645 S.E.2d at 283; *Applegate*, 908 N.E. 2d at 1220; *Yogman*, 937 P.2d at 1021 (“The ordinary meaning of ‘residential’ does not resolve the issue ... because a ‘residence’ can refer simply to a building used as a dwelling place, or it can refer to a place where one intends to live for a long time.”); *Dunn v. Aamodt*, 695 F.3d 797, 800 (8th Cir. 2012) (finding the phrase “residential purposes” in restrictive covenant ambiguous as to short-term rental of property).

¶16 Because the language of the restrictive covenant in question is ambiguous, we look to evidence beyond the face of the document. *See Creveling*, ¶ 9. Notably, the Original Covenants' prohibition against the use of the property for “commercial or business use or for the use of a motel, hotel or apartment house, except for professional occupations” was removed in the Amended Covenants, suggesting that the parties intended to take a less restrictive approach.

¶17 Furthermore, before purchasing the property at issue, an agent of Brown Drake had been informed by the real estate agent that at least one other home subject to the HOA had been rented out at various times. For a period of approximately eight years, that property had been rented out on a short-term basis by none other than by the former president of the HOA. This prior use not only sheds light on the interpretation of the Amended Covenants but raises issues of Brown Drake's reasonable expectation of the use of its property. *See Wilkinson*, 327 P.3d at 622-23 (invalidating short term rental prohibition in part because owners “were not on notice” and in the interests of “protecting the reasonable and settled expectation of *230 landowners in their property”); *see also Goeres v. Lindsey's Inc.*, 190 Mont. 172, 619 P.2d 1194 (1980) (declining to enforce implied restriction as inequitable, considering owner's knowledge when purchasing the property); *Bordas v. Virginia City Ranches Ass'n.*, 2004 MT 342, ¶ 21, 324 Mont. 263, 102 P.3d 1219 (finding “the crucial covenants were those which were in place and of record at the time [the owners] purchased their property.”); *Town & Country Estates Ass'n v. Slater*, 227 Mont. 489, 492, 740 P.2d 668, 670 (1987) (“We will closely review any enlargement of restrictions which conflict with reasonable land use, and which hinder substantive due process.”). Brown Drake's members assert they bought the property based upon the understanding that the HOA had previously allowed short term rentals. Under the language of these Amended Covenants, Brown Drake's expectation that it could use the property for such purposes going forward was reasonable.

¶18 Brown Drake's use of the property is not inconsistent with that of a residential location. The owners of Brown Drake themselves stay on the property, on and off, throughout a majority of the year. The Lodge is made up of only three-bedroom suites, so the total quantity of guests brought into the neighborhood is limited. The HOA does not claim that the Lodge is the source of disturbance or intrusive, nuisance-like activity. There is no evidence here that the Lodge's use detracts from the other neighborhood members' enjoyment of their own property or the area's "residential" character. *See Acord*, 219 So. 3d at 115 (upholding short term rentals under a restrictive covenant by distinguishing case at bar from cases involving intensive uses with an "indicia of business use" such as a manager to "control the guests" or use as a wedding and event venue).

¶19 We construe restrictive covenants strictly and strive to resolve ambiguities in favor of the unencumbered use of property. *Czajkowski*, ¶ 21 (citation omitted). Here, Brown Drake's operation of the Lodge does not violate the Amended Covenants under the HOA.

CONCLUSION

¶20 For the reasons stated above, we agree with the District Court's conclusion ****288** that Brown Drake's use of the Lodge is not in violation of the Amended Covenants. Because there remains no dispute of material facts on the matter, the District Court did not err in granting summary judgment to Brown Drake.

¶21 Affirmed.

We Concur:

INGRID GUSTAFSON, J.

LAURIE McKINNON, J.

BETH BAKER, J.

JIM RICE, J.

All Citations

402 Mont. 223, 477 P.3d 283, 2020 MT 305

Footnotes

1 It is undisputed that the owners of the property stay at the Lodge eight or nine months of the year.



Gallatin County

PARTIAL CLOSURE LETTER/ CORRECTIVE ACTION LETTER #2

February 2, 2022

Sean A. Lewis
5064 Bridge Creek Drive
Plano, TX 75093-5702

Email: sean.a.lewis@gmail.com

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625

Email: sean.a.lewis@gmail.com

Re: Bridger Canyon Zoning Regulation, unpermitted wastewater disposal, and Public Accommodation Licensing Compliant (Compliance ID #22-041)

Dear Mr. Lewis:

Thank you for the attached written response from Any McNulty dated December 28, 2021 (Response) to my November 29, 2021 Corrective Action Letter (Corrective Action Letter). This letter replies to your Response and requests further corrective action regarding compliance with Land Use Permitting, the septic permit and Establishment licensing on the Property. However, as discussed below, I am closing the portion of the complaint related to overnight accommodations/short-term rentals/tourist homes uses and structures.

Bridger Canyon Zoning Regulation

As previously explained in my Corrective Action Letter, the Property is located at 153 & 155 Tepee Ridge Road East, Bozeman (Property) and is located entirely within the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District).

The requirement for property to conform to the Zoning Regulation is found in Section 3.2 of the Gallatin County "Part 1" Administrative Regulation (Administrative Regulation) and requires property owners to ensure that all Uses and Structures comply with the Zoning Regulation.

Section 4 of the Zoning Regulation lists the standards and requirements for the AE sub-district. Section 4.2 lists the Permitted Uses **after** a Land Use Permit is approved. Section 4.3 lists Uses Permitted After Securing Approval of a Conditional Use Permit.

Overnight Accommodations/Short-Term Rental/Tourist Home

None of the listed Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit include Overnight Accommodations, short-term rentals or tourist homes.

Section 3.22 of the Zoning Regulation defines Dwelling Unit as:

A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.

- a. Dwelling Unit, Accessory: A separate Dwelling Unit located within the Principal Single-Family Dwelling Unit or in an Accessory Building.*
- b. Dwelling Unit, Principal Single-Family: A Building or portion thereof containing a single Dwelling Unit for habitation by a Family.*

Section 3.52 of the Zoning Regulation defines Overnight Accommodations as:

Permanent, separately rentable accommodations that are not available for residential use, except for the proprietors of a Bed and Breakfast Inn or Guest Ranch. Overnight Accommodations include Hotel or motel rooms, hostels, cabins, Bed and Breakfast Inns, Guest Ranches, and time-shared units. Individually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, Employee Housing, and similar accommodations do not qualify as Overnight Accommodations for purpose of this definition.

The term short-term rental or tourist home is not a defined term within the Zoning Regulation or Administrative Regulation. The Planning Department considers a rental of less than 30 days as a short-term rental or tourist home.

There are active listings for two Overnight Accommodations/short-term rentals/tourist homes on your Property:

- www.vrbo.com/850456 three bedrooms, two full and two half baths, kitchen, living room, deck/patio
- www.vrbo.com/734934 three bedrooms, two full and one half bath, gourmet kitchen, indoor and outdoor living space, multiple fire places

Both listings indicate that the Property has eight beds and sleeps seven people, includes the use of a hot tub and goes on to state that “Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee.”

Based on my research of the Property, and discussions with Ms. McNulty, there are two Overnight Accommodations/short-term rentals/tourist homes operating on your Property. In review, I have been provided or I have discovered the following information for the Property:

- The Property is advertised through the website www.vrbo.com (website)
 - Lodging Facility Sales and Use Taxes are paid to the Montana Department of Revenue by the website quarterly
 - The use contract is provided by the website

- The AE sub-district prohibits the Use of Overnight Accommodations, while the terms short-term rental and tourist home are not defined
 - The Principal Single Family Dwelling Unit, the basement Dwelling Unit in the Principal Single Family Dwelling Unit, Caretaker's Residence, and tepee are associated with this use
- An Establishment License must be obtained as described below
- The appropriate wastewater permits must be obtained as described below

Based on this information, it appears that a private businesses is being operated on the Property as Overnight Accommodations/short-term rentals/tourist homes utilizing the Dwelling Units and Temporary Occupancy of the tepee.

Recently, the Montana Legislature passed House Bill 257 that was signed into law by Governor Gianforte and became immediately effective. The legislation prohibits a governing body from adopting a resolution that “compel[s] a private business to deny a customer of the private business access to the premises or access to goods or services,” or that “deny a customer of a private business the ability to access goods or services provided by the private business; . . .” House Bill 257 defines “private business” to include “a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company.” The legislation also is retroactive and applies to any regulations enacted, adopted, or in force on or after May 1, 2021. The portion of House Bill 257 applicable here is codified at § 7-5-121 Montana Code Annotated (MCA).

Pursuant to § 7-5-121 MCA (2021), the County may not restrict you at this time from operating private businesses on the Property as Overnight Accommodations/short-term rentals/tourist homes. Doing so would deny your customers access to your private business. Accordingly, no further action is required from you on this item.

This portion of the complaint is closed.

The Department's decision to close this portion of the complaint may be appealed. Section 13 of the Gallatin County “Part 1” Zoning Administrative Regulation governs appeals.

Principal Single Family Dwelling Unit – REMAINS OPEN

As previously explained, the original Land Use Permit (LUP) approval for a Principal Single Family Dwelling Unit was within LUP #L2006-089 in October 2005 and appears to have been Structure B as described in the Corrective Action Letter. Then in December 2006, a request was made to turn this Structure into the Caretaker's Residence.

The original detached garage in LUP #L2006-089, appears that it was converted into the Principal Single Family Dwelling Unit after the conditional approval of CUP #Z2007-038 now labeled as Structure A in the Corrective Action Letter, but it is unclear if an actual LUP approval was ever granted.

The basement bedroom contains an on-suite bathroom, kitchenette with sink, fridge, two burner stove and is considered an additional Dwelling Unit at this time.

While the County cannot restrict you from operating a private business on the Property as described above, you must still obtain Land Use Permit approval for the Structure for where it is currently located pursuant to Section 6 of the Administrative Regulations.

Therefore, corrective action is required.

Dwelling Unit #2 - Caretaker's Residence– REMAINS OPEN

As previously explained, the Planning Department records include the December 2006 Conditional Use Permit #2007-038 for a Caretaker's Residence. The conditional approval included six conditions of approval listed in the Corrective Action Letter.

The original LUP approval for this Structure was within LUP #L2006-089 in October 2005 as the Principal Single Family Dwelling Unit (Structure B in the Corrective Action Letter). Then in December 2006, a request was made to turn this Structure into the Caretaker's Residence.

The Planning Department records do not include any documentation that the conditions of approval associated with the conditionally approved Caretaker's Residence CUP #Z2007-038 were ever met.

While the County cannot restrict you from operating a private business on the Property as described above, you must still obtain Land Use Permit approval for the Structure for where it is currently located pursuant to Section 6 of the Administrative Regulations.

Therefore, corrective action is required.

Accessory Building – Detached Garage– REMAINS OPEN

As previously explained, the Planning Department records include this Structure in the August 2005 LUP approval #L2006-089 in the area of what now appears to be Structure A in the Corrective Action Letter.

It appears that this Structure was converted to the Principal Single Family Dwelling Unit in December 2006, but there is no clear record.

While the County cannot restrict you from operating a private business on the Property as described above, you must still obtain Land Use Permit approval for the Structure for where it is currently located pursuant to Section 6 of the Administrative Regulations.

Therefore, corrective action is required.

Accessory Building – Horse Sheds – REMAINS OPEN

Pursuant to Section 12.3.c of the Zoning Regulation:

Accessory Buildings equal to or less than 200 square feet of General Floor Area are not required to obtain a Land Use Permit.

The square footage of these sheds are unknown.

Therefore, corrective action may be required.

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

The portions of the complaint that remain open are listed and described above. Within the Response, Ms. McNulty states that she met with Mr. O'Callaghan in December via a telephone conference regarding the Property and outlined certain items that require actions and that Mr. Lewis would follow up with Mr. O'Callaghan by January 14, 2022 and then work on a plan of correction.

As of the date of this letter, no additional information or proposed actions and timelines have been submitted to the Department.

Septic Permit (Health Code)

Gallatin County has one current septic permit on file for your Property.

- Permit #14111 approved in May 2007 for:
 - One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
 - One (1) attached bedroom above garage generating 155 gallons per day, and
 - One (1), three (3) bedroom barn generating 300 gallons per day

Section 1.10 of Chapter 3 of the Health Code requires that an Authorization to Construct is required prior to the construction of a wastewater disposal system and a Permit to Operate must be granted before a person can lawfully operate a wastewater treatment system or dispose of wastewater into the system. Any wastewater treatment system constructed within Gallatin County must comply with Health Code and State law. Chapter 3 of the Health Code can be found in its entirety on the Health Department website at www.healthygallatin.org.

There is one approved wastewater system installed or used on your Property for:

- One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
- One (1) attached bedroom above garage generating 155 gallons per day, and
- One (1), three (3) bedroom barn generating 300 gallons per day

Any additional wastewater disposal or configuration taking place on your Property outside of the approved system is considered a violation of Health Code.

According to the Site Visit there are three Living Units and six Bedrooms.

The following definitions are from the Montana Department of Environmental Quality Circular 4:

§ 1.2.9 **Bedroom** means any room that is or may be used for sleeping. An unfinished basement is considered an additional bedroom.

§ 1.2.51 **Living unit** means the area under one roof that can be used for one residential unit and which has facilities for sleeping, cooking, and sanitation. A duplex is considered two living units.

Within the Response, Ms. McNulty explains that she reached out to the Gallatin City-County Health Department Environmental Health Services (Health Department) and received a response indicating that there are approvals for up to eight bedrooms under the current permit, but that there appears to be an issue with an accurate site plan. Ms. McNulty stated that she would review the Health Department's proposed solutions with Mr. Lewis and then update me by January 14, 2022.

As of the date of this letter, no additional information or proposed actions and timelines have been submitted to the Department.

Therefore, corrective action is required.

Establishment License

Section 50-51-102(4), MCA defines an Establishment as:

a bed and breakfast, hotel, motel, rooming house, guest ranch, outfitting and guide facility, boardinghouse, or tourist home

Further, § 50-51-201(1) requires that:

[A] person engaged in the business of conducting or operating an establishment shall annually procure a license issued by the [Department of Public Health and Human Services].”

The requirement to obtain an establishment license to operate a tourist home also is required by Chapter 2 of the Gallatin City-County Health Code.

Chapter 2, Section 1.13 states:

B) A person violates these regulations or does not comply with the rules set forth in these regulations if the person operates, controls or uses an Establishment without a License or Registration.

There are active listings for two Tourist Homes on your Property:

- www.vrbo.com/850456 three bedrooms, two full and two half baths, kitchen, living room, deck/patio
- www.vrbo.com/734934 three bedrooms, two full and one half bath, gourmet kitchen, indoor and outdoor living space, multiple fire places

Both listings indicate that the Property has eight beds and sleeps seven people, includes the use of a hot tub and goes on to state that “Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee.”

Based on my research and discussions with Ms. McNulty, there are two Tourist Homes operating on your Property. A Public Accommodation License is required for the operation of Establishments on your Property. Since the hot tub is available as part of the Tourist Home, additional permitting/licensing is required.

Therefore, corrective action is required.

Partial Closure and Corrective Action

As described above, the County cannot restrict you from operating a private business on the Property. Therefore, this portion of the complaint is closed and no further enforcement action will be taken.

The portions of the Complaint concerning compliance with Section 6 of the Administrative Regulation, Health Code and Establishment Licensing requirements remain open until resolved.

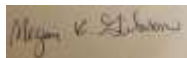
The Health Department would like to assist you in understanding what wastewater facilities are approved for use on your Property and those that need improvements/modifications, along with the Establishment licensing requirements. The Health Department can also help you formulate a plan of correction to resolve these outstanding issues. An acceptable plan of correction may include discussions with the Health Department, and then establishing the necessary actions and dates those actions will be completed by. The Health Department can be reached at 406-582-3120 or ehs@gallatin.mt.gov with any questions.

The Planning Department would like to assist you in understanding the requirements of the Zoning Regulation and Administrative Regulation. They can also help you formulate a plan of correction to resolve the outstanding issues. An acceptable plan of correction may include scheduling a meeting with a Planner who can help determine the correction actions and then establishing the necessary actions and dates those actions will be completed by. You can reach Sean O'Callaghan of the Planning Department at 406-582-3130 or sean.ocallaghan@gallatin.mt.gov to discuss the options that are available to you.

Whatever corrective actions you decide to pursue, **you must notify me in writing of your plan of correction that includes specific actions and dates, within 15 days of the date of this letter.**

Please keep in mind that a failure to initiate the corrective actions and notify me as discussed above, could result in additional enforcement action. If you have any questions about this letter, feel free to call me at 406-582-3775

Sincerely,



Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc w/ attachment:

County Attorney's Office via Email
Department of Planning and Community Development via Email
Environmental Health Department via Email
Leah De Guzman, leahdg2004@gmail.com
Amy McNulty, amcnulty@lawmt.com
Complainant via Email

Compliance Department • 311 W. Main, Rm. 108 • Bozeman, MT 59715

Phone (406) 582-3775 • Email: megan.gibson@gallatin.mt.gov

LEWIS STR ADMINISTRATIVE RECORD 071

Gibson, Megan

From: Gibson, Megan
Sent: Wednesday, May 18, 2022 7:13 AM
To: Hailey Garbett
Cc: Amy McNulty
Subject: RE: Plan of Correction - Compliance ID #22-041

Hello Hailey,

I have received the attached letter and after review will be in touch with Amy with any questions.

Thank You,

Megan K. Gibson
Code Compliance Officer
Gallatin County Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

From: Hailey Garbett <HaileyG@lawmt.com>
Sent: Tuesday, May 17, 2022 4:48 PM
To: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>
Cc: Amy McNulty <AMcNulty@lawmt.com>
Subject: Plan of Correction - Compliance ID #22-041

Good afternoon Megan,

I am reaching out on behalf of Amy McNulty in regard to Compliance ID #22-041 against Sean A. Lewis. Attached please find a letter from Amy describing the Plan for Correction of the property in question. Please reach out to the office if you have any questions.

Thanks,

Hailey Garbett
Legal Assistant
Tarlow Stonecipher Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913

Phone: (406) 586-9714
Facsimile: (406) 586-9720
Website: www.lawmt.com

This electronic mail message is confidential and may constitute attorney-client communication that is privileged by law. It is not intended for transmission to, or receipt by, any unauthorized persons. If you received this transmission in error, please delete it from your system without copying it and notify the sender of the error. Thank you.

May 17, 2022

Megan Gibson
Gallatin County Compliance Department
311 West Main Street, Rm. 108
Bozeman, MT 59715

Via e-mail:

megan.gibson@gallatin.mt.gov

RE: Plan of Correction; Bridger Canyon Zoning Regulation and Public Accommodation Licensing Complaint (Compliance ID #22-041)

Dear Megan,

This letter serves to respond to your letter of April 18, 2022, and provide you with responses to the items noted in that letter as potential items requiring corrective action.

It seems there are three main issues remaining open related to this Property — (1) existence of a property Septic Permit in compliance with the Gallatin County Health Department; (2) existence of a proper Land Use and Conditional Use Permits for the Property in compliance with County Planning; and (3) receipt of establishment license for use of the property as a “tourist home.”

Allow me to detail my understanding of these issues and the actions my clients are taking to ensure that they are in compliance with the County.

Septic Permit (Health Department)

As you note, there is an approved wastewater system on the property for up to eight (8) bedrooms. There are only six (6) bedrooms on the Property, but the bedrooms are apparently in a different configuration than what is reflected on the Permit.

My client has hired an engineer approved by the Health Department, Richard Kerin of Kerin and Associates, P.C. Brandon Spitzer, to submit to the County Health Department an updated site plan/permit application to reflect the configuration of the existing bedrooms on the Property.

Mr. Kerin and Mr. Spitzer have inspected the Property and reviewed the existing permit and site plan. It is their opinion that the current septic system matches the as-built system shown on the septic permit, and that the current septic system is sufficient to handle the number of existing bedrooms. As such, it appears all that County Health requires is the modified site plan of the bedroom configuration. **Mr. Spitzer is completing that modified site plan and should be prepared to submit it to the Gallatin County Health Department in the next two weeks. I will copy you once that is completed.**

Land Use Permit/Conditional Use Permit Issues

The history of the building and permitting of the improvements on this Property is difficult to piece together. My clients and I have done a significant amount of work to attempt to track down any records to reflect exactly what occurred back in 2005-2007 when the construction took place, but given the passage of time, there is not much to go off on other than what your office has on record.

After reviewing all the available records provided by your office, it seems to me that there is an explanation for the discrepancy between the Condition Use Permit and the existing structures. My understanding of what occurred is as follows:

In 2005, Sean Lewis applied for a Land Use Permit for a "single family residence and detached garage." This Land Use Permit was for a 3-bedroom dwelling unit. The drawings for this Land Use Permit show that it was for what is currently the "lower house" on the Property (attached to the barn) as well as the garage that is now attached to the "upper house" on the Property.

This Permit was approved on October 20, 2005, and these structures were built.

In 2006, Sean Lewis applied for a Conditional Use Permit to convert the existing single-family residence attached to the barn into a "caretaker's residence," to allow construction of a separate dwelling that would be considered the "main house" or principal residence. The proposal was that Mr. Lewis would construct an 8,424 square-foot single-family residence to attach to the existing and already-approved garage on the Property.

The Conditional Use Permit was approved to allow for the use of the structure as a caretaker's residence on February 8, 2007 with a variety of conditions concerning the construction of a new single-family residence.

Then, it appears that plans for the construction of a single-family residence stalled.

But eventually, in 2013, Mr. Lewis proceeded with a slightly modified plan to have a “main house.” He applied for, and received, a Land Use Permit for a residential addition to the existing garage for a 3-bedroom dwelling unit. It appears that this was built as what is now the 3-bedroom “upper house” on the property attached to the previously existing garage. I presume that this was approved by Gallatin County Planning because there already was a Conditional Use Permit authorizing an additional living structure on the property as a “Caretaker’s Residence.”

It seems to me that both living structures on the property have an approved Land Use Permit—the “lower house” as a 3-bedroom dwelling attached to the barn, approved in 2005, and the “upper house” as a 3-bedroom dwelling attached to the garage, approved in 2013.

Given the existence of the land use permits for the two 3-bedroom dwellings, it seems the issue is simply addressing the lack of documentation that the conditions of approval for the Conditional Use Permit approved in 2008 were met. I understand that the Planning Office looks at the Regulations in effect at the time of the issuance of the Conditional Use Permit to determine whether a Conditional Use Permit is “put into use” within a year to ensure that it did not expire. Here, I would content that it was “put into use,” as it was used as a caretaker’s residence when Mr. Lewis was not on the Property. Further, it seems that the issuance of the Land Use Permit in 2013 for the “upper house,” constitutes an approval of Gallatin County of the conditional listed in the Conditional Use Permit given that the Conditional Use Permit indicates that a Land Use Permit will not be issued without the conditions being met.

To the extent that the County believes that the records is unclear on these points and still needs to be remedied, I have a letter into the Planning Office outlining this same history that I outline here. **I have set up a “concept meeting” with Allyson Brekke at County Planning for Thursday May 26, 2022 to discuss next steps to remedy these issues.**

As a final point on the existing land use permits, your letter references existing “horse sheds,” on the Property. It appears you are talking about two, open-air lean-tos located on the Property. We measured these lean-tos and they are less than 200 square feet. My understanding is that no land use permit would be required for such structures. Please advise if you need further information on these structures.

Megan Gibson

May 17, 2022

Page 4

Establishment License

My clients and I understood from your letter dated February 2, 2022, that you were closing the portion of your Complaint regarding my clients renting their Property. I misunderstood that this included the Establishment License issue. In your February 2, 2022, letter, you did not include the "[REMAINS OPEN]" heading on your discussion of the Establishment License as you did the other issues, so I believe I included it in your analysis of the partial closure.

Now that I understand that this issue is still open, I have reviewed the statutes you cite, and I understand the requirement for my clients to apply for an Establishment License to operate a "tourist home."

My clients have preliminary filled out the application for the Establishment License and are completing some of the items required for such a license (such as testing of water, etc.) **We will complete this application and submit in the next two weeks. I will provide you a copy once submitted.**

Thanks for your assistance in working through these items. Please feel free to call or email with any questions on the next steps my clients are taking.

Very truly yours,

/s/ Amy C. McNulty

Amy C. McNulty

ACM/hgg

Concept Meeting Information Form

Complete the form with **detailed information** and attach **additional materials**.

Please email this form to the Planning Department (planning@gallatin.mt.gov) no later than Tuesday at 12pm.

Main Contact Information (Name, Email, Phone Number):

Amy C. McNulty
amcnulty@lawmt.com
406-586-9714

Additional Attendees:

Sean Lewis and Leah deGuzman

Property address and legal description:

Property address: 6400 Teepee Ridge Road, Bozeman, MT 59715

Legal description: Northeast Quarter (NE1/4) Section 21. Township 1 South. Range 7 East.

Geocode: 06-0906-20-1-02-15-00000

Brief narrative of your project:

We would like to work through what the Planning Committee may require to clear up any Planning/Zoning issues raised in Compliance Letter from Gallatin County related to property located at 6400 TeePee Ridge Road. See Attached Letters.

Specific questions or concerns you would like addressed or discussed:

See Attached Letters.

Supporting Documentation Attached?

Site Plan

Aerial Photo

Plat/COS

Other? If so, please describe.

Permits

Planner(s): _____

Date & Time: _____

Planner Comments:

Road & Bridge Comments:

Gibson, Megan

From: Brekke, Allyson
Sent: Thursday, November 3, 2022 2:02 PM
To: Gibson, Megan
Subject: FW: Concept Meeting Notes
Attachments: 2022_05_17_Concept_Meeting_Form with Staff Comments.pdf

Lewis Case – concept meeting notes

Allyson Brekke, AICP
Deputy Planning Officer

Department of Planning & Community Development
Gallatin County

office: (406) 582-3193
cell: (406) 579-5875

From: Brekke, Allyson
Sent: Wednesday, June 29, 2022 8:12 AM
To: Amy McNulty <AMcNulty@lawmt.com>
Subject: Concept Meeting Notes

Good morning Amy,

Apologies for getting these notes to you so late...most of my June has consisted of quarantining for Covid reasons (though we did sneak a trip to Disneyland in the middle).

Don't hesitate to ask me any additional questions and please send out to Sean Lewis (his email wasn't on the form).

Best,

Allyson Brekke, AICP
Deputy Planning Officer

Department of Planning & Community Development
Gallatin County
311 W. Main Street, Room 108
Bozeman, MT 59715

office: (406) 582-3193
cell: (406) 579-5875
email: allyson.brekke@gallatin.mt.gov

Gibson, Megan

From: Gibson, Megan
Sent: Monday, August 29, 2022 8:28 AM
To: 'Amy McNulty'; 'Hailey Garbett'
Subject: RE: Plan of Correction - Compliance ID #22-041 (Lewis)

Morning Amy,

I understand that the Public Accommodation Applications were submitted to the Health Department on August 23rd and that they are under review.

Do you have any updates for me on the Planning side of things? Were you able to meet with Allyson and submit the LUP modification and CUP/Administrative Determination that you mentioned on July 29th?

Thanks,
Megan

Megan K. Gibson
Code Compliance Officer
Gallatin County Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

From: Gibson, Megan
Sent: Monday, August 1, 2022 7:35 AM
To: Amy McNulty <AMcNulty@lawmt.com>; Hailey Garbett <HaileyG@lawmt.com>
Subject: RE: Plan of Correction - Compliance ID #22-041

Amy,

Thank you for the update.

Megan

Megan K. Gibson
Code Compliance Officer
Gallatin County Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

From: Amy McNulty <AMcNulty@lawmt.com>
Sent: Friday, July 29, 2022 4:21 PM
To: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>; Hailey Garbett <HaileyG@lawmt.com>
Subject: RE: Plan of Correction - Compliance ID #22-041

Hi Megan-

Thanks for the email. I did get confirmation that the Health Department approved the modification, so I am glad that piece is taken care of.

We had completed the Public Accommodation Application, but then learned from the Health Dept. that the one we were completed was a State form and Gallatin County has a different one that we had to work through. I am going to submit this application Monday after getting the Owner's signature.

Next week- I am working on the LUP Application for Modification of the LUP to reflect the existing building as recommended by Allyson.

Next week- I am following up with Allyson regarding the CUP/Administrative Decision options regarding the short-term rental.

Appreciate you moving this along.

Thanks,

Amy

Amy C. McNulty
Tarlow Stonecipher
Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913

Phone: (406) 586-9714
Facsimile: (406) 586-9720
Website: www.lawmt.com

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From: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>

Sent: Tuesday, July 26, 2022 7:42 AM

To: Amy McNulty <AMcNulty@lawmt.com>; Hailey Garbett <HaileyG@lawmt.com>

Subject: RE: Plan of Correction - Compliance ID #22-041

Hi Amy,

I understand that the Health Department approved the wastewater application modifications that Brandon Spitzer has submitted on Friday, July 22nd.

Have the public accommodation applications been submitted?

Did you have a chance to follow up with Allyson in Planning?

Thanks,
Megan

Megan K. Gibson

Code Compliance Officer
Gallatin County Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

From: Amy McNulty <AMcNulty@lawmt.com>
Sent: Tuesday, June 28, 2022 7:59 AM
To: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>; Hailey Garbett <HaileyG@lawmt.com>
Subject: RE: Plan of Correction - Compliance ID #22-041

Hi Megan-

Just wanted to update you with the final permit that Brandon Spitzer provided to the Health Department on the 16th – attaching here.

I am also attaching the public accommodations application that we are about to finalize and submit for that application.

I am in an arbitration today and will be turning to finalize this application and following up with the planning office later this week.

Thanks,
Amy

Amy C. McNulty
Tarlow Stonecipher
Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913

Phone: (406) 586-9714
Facsimile: (406) 586-9720
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From: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>
Sent: Friday, June 10, 2022 11:51 AM
To: Amy McNulty <AMcNulty@lawmt.com>; Hailey Garbett <HaileyG@lawmt.com>
Subject: RE: Plan of Correction - Compliance ID #22-041

Thanks for the update, Amy. I'll double check with the Health Department because when I spoke with them this morning they said they didn't have a record of the submittal.

Look forward to hearing from you next week.

Megan

Megan K. Gibson
Code Compliance Officer
Gallatin County Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

From: Amy McNulty <AMcNulty@lawmt.com>
Sent: Friday, June 10, 2022 11:24 AM
To: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>; Hailey Garbett <HaileyG@lawmt.com>
Subject: RE: Plan of Correction - Compliance ID #22-041

Hi Megan-

Thanks for checking in. A couple items I will need to get you a fuller answer next week, but two quick updates.

1. I understand the attached Permit Modification was submitted to the Health Department by Brandon Sptizer, P.E. on Tuesday of this week .
2. We just completed the water testing required for the Accommodation Application, so we are finalizing that. I will provide you that once submitted.
3. We had a fruitful conversation with Allyson, and am looking at the options for moving forward on the remaining issues with planning. That is what is requiring a little more thought to move forward on.

Amy

Amy C. McNulty
Tarlow Stonecipher
Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913

Phone: (406) 586-9714
Facsimile: (406) 586-9720
Website: www.lawmt.com

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From: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>
Sent: Friday, June 10, 2022 10:57 AM
To: Hailey Garbett <HaileyG@lawmt.com>
Cc: Amy McNulty <AMcNulty@lawmt.com>
Subject: RE: Plan of Correction - Compliance ID #22-041

Hello Hailey,

I'm checking in for an update as I understood from Amy's letter that there were three action items that would occur by roughly the end of May and that she would let me know when action was taken. I understand that Amy met with Allyson in the Planning Department on May 26th, but other than that I haven't heard anything and have confirmed that no applications have been submitted to Planning Department or the Health Department.

I look forward to the response.

Thank You,

Megan K. Gibson
Code Compliance Officer
Gallatin County Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

From: Gibson, Megan
Sent: Wednesday, May 18, 2022 7:13 AM
To: Hailey Garbett <HaileyG@lawmt.com>
Cc: Amy McNulty <AMcNulty@lawmt.com>
Subject: RE: Plan of Correction - Compliance ID #22-041

Hello Hailey,

I have received the attached letter and after review will be in touch with Amy with any questions.

Thank You,

Megan K. Gibson
Code Compliance Officer
Gallatin County Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

From: Hailey Garbett <HaileyG@lawmt.com>
Sent: Tuesday, May 17, 2022 4:48 PM
To: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>

Cc: Amy McNulty <AMcNulty@lawmt.com>

Subject: Plan of Correction - Compliance ID #22-041

Good afternoon Megan,

I am reaching out on behalf of Amy McNulty in regard to Compliance ID #22-041 against Sean A. Lewis. Attached please find a letter from Amy describing the Plan for Correction of the property in question. Please reach out to the office if you have any questions.

Thanks,

Hailey Garbett

Legal Assistant

Tarlow Stonecipher Weamer & Kelly, PLLC

1705 West College Street

Bozeman, MT 59715-4913

Phone: (406) 586-9714

Facsimile: (406) 586-9720

Website: www.lawmt.com

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https://www.vrbo.com/734934?noDates=true&unitId=1282872

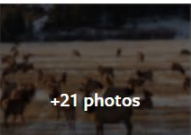



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 Sean Lewis
Contact host

Property # 734934
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About this rental

Estate 2750 sq. ft	3 bedrooms 8 beds · Sleeps 7	4 bathrooms 2 full baths · 2 half baths	Spaces Kitchen · Living Room · Deck/Patio
------------------------------	--	---	---

Spa-like Luxurious 3 Bedroom, 2 Full Bath, 2 Half Baths...Sleeps 7!

Designed by renowned architect, Larry Pearson, our home evokes the feel of a 5 star luxury hotel with a modern yet rustic twist. Think simplicity & modern lines with warm colors and local textures...East meets West in the Rockies. Designed to respect the agrarian history of the area, the exterior of the home mimics an old Montana granary and barn. The interior evokes the feeling of a spa and is equipped with all the modern luxuries including a gourmet kitchen, wine cooler, beautiful artwork, low-voltage lighting, high ceilings, floor to ceiling windows, a wood burning stone fire place and pool table. The master bedroom has a king bed, a private bath with oversized soaking tub and cozy fireplace. The second bedroom also has a king bed and the third bedroom has 3 oversized custom bunks with single sleeper mattresses. Amenities include outdoor living spaces, outdoor spa, custom barn with tack room & 4 oversized stalls, horseshoe pits, 2 stocked ponds with creek, outdoor riding arena, round pen and corrals, children's fort and play set. The property's purpose can range from a family fun retreat to a private romantic getaway.

Another home on the same property is separately listed VRBO# 850456 and is also available for rental unless rented by someone else. (The home is equipped with Gourmet Kitchen, Living and Dining areas, 3 bedrooms, 3 full baths, 1 half bath, exercise facility, 2 fireplaces and 2 outdoor living spaces with an outdoor fire pit.) Ideal for 2 families wanting to share an incredible Montana experience. (Please request ASAP as the property tends to book quite fast.) Houses are approximately 100 yards apart. Common grounds include the the ponds, the barn, and the play fort.

Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee.

Although, Dos Marias is its own secluded paradise nestled among the local Montana wildlife; the convenience of Downtown Bozeman is still just a short, beautiful drive away.

***Because of cell reception and Montana weather conditions, wi fi can be unavailable. This can affect internet and television viewing. We do not

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Sean Lewis
[Contact host](#)

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Browser tabs: Clerk and Recorder's Office | Gall... SearchResults Top 50 Tepee Ridge Rd W, Mont... Luxurious 60 Acre Ranch Comp...
URL: https://www.vrbo.com/850456?noDates=true&unitId=1398395

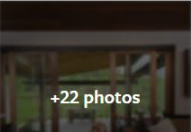



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 **Sean Lewis**
[Contact host](#)

Property # 850456
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2750 sq. ft 8 beds · Sleeps 7 3 full baths · 1 half bath Kitchen · Living Room · Deck/Patio

Spa-Like Luxurious 3 Bedroom, 3 Full Bath, 1 Half Bath...Sleeps 7!

Designed by renowned architect, Larry Pearson, our home evokes the feel of a 5 star luxury hotel with a modern yet rustic twist. Think simplicity & modern lines with warm colors and local textures...East meets West in the Rockies. Designed to respect the agrarian history of the area, the exterior of the home mimics an old Montana granary and barn. The interior evokes the feeling of a spa and is equipped with all the modern luxuries including a gourmet kitchen, wine cooler, beautiful artwork, low-voltage lighting, high ceilings, floor to ceiling windows, a wood burning stone fire place and gym. The master bedroom has a king bed, a private bath with oversized soaking tub and cozy fireplace. The second bedroom has a queen size bed and private bath. The third bedroom has 3 oversized custom bunks. Accommodations can include a 22 foot luxury tepee (late spring through early fall). Amenities include outdoor living spaces, outdoor fire pit, custom barn with tack room & 4 oversized stalls, 2 stocked ponds with creek, outdoor riding arena, round pen and corrals, children's fort and play set. The property's purpose can range from a family fun retreat to a private romantic getaway.

Another home on the same property is separately listed VRBO# 734934 and is available for rent unless rented to other guests. (The home is equipped with Gourmet Kitchen, Living and Dining areas, 3 bedrooms, 2 full baths, 1 half bath, 2 fireplaces, outdoor living space and outdoor fire pits.) Ideal for 2 families wanting to share an incredible Montana experience. (Please request ASAP as the property tends to book quite fast.) Common grounds include the ponds, the barn and the play fort area.

Although, Dos Marias is it's own secluded paradise nestled among the local Montana wildlife, the convenience of Downtown Bozeman is still just a short beautiful drive away.

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Sean Lewis
[Contact host](#)

Property # 850456

[Report this property](#)



Gallatin County

NOTICE OF NON-COMPLIANCE & INTENT TO INITIATE CONDITIONAL USE PERMIT REVOCATION

January 17, 2023

Sean A. Lewis
155 Tepee Ridge Road E.
Bozeman, MT 59715-7866

Sent via First Class Mail &
Certified Mail # 7021 2720 0003 1089 1025

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625

Sent via First Class Mail &
Certified Mail # 7021 2720 0003 1089 1018

Re: Bridger Canyon Zoning Regulation Compliant (Compliance ID #22-041)

Dear Mr. Lewis:

As you know, the Gallatin County Compliance Department (Department) has been working with you to resolve potential violations occurring on your property addressed as 153 & 155 Tepee Ridge Road East, Bozeman; legally described as Tract 12A of Certificate of Survey (COS) No. 1265A (Property).

The concerns regarding unlicensed Establishments have been referred back to the Gallatin City-County Health Department Environmental Health Services (Health Department) effective December 22, 2022.

The Property is located within the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District) and therefore must comply with the Bridger Canyon Zoning Regulation (Zoning Regulation) unless otherwise exempted.

Background:

The Zoning District was adopted by the Board of County Commissioners on July 12, 1971 and Zoning Regulation was adopted by the Board of County Commissioners on October 26, 1971, and has been amended thereafter.

The Gallatin County Part 1 Administrative Regulation was adopted for use within the Zoning District on May 21, 2019.

According to the records with the Gallatin County Clerk & Recorder you purchased the Property in September 2003.

According to the Department of Planning and Community Development (Planning Department) records the following zoning related applications are associated with your Property:

- #Z2006-023 Conditional Use Permit (CUP) application for a Caretaker's Residence was submitted to the Planning Department in August 2005
 - The Planning Department issued a letter on September 20, 2005 stating they could not process the application as there were no structures constructed on the property and a principle dwelling unit was required to be constructed prior to applying for an accessory dwelling unit (Caretaker's Residence) and provided two potential solutions
- #L2006-089 Land Use Permit (LUP) approved October 20, 2005 for one Single Family Dwelling Unit, barn and detached garage (Accessory Building):
 - Single Family Dwelling Unit:
 - a "lower floor" that contained mechanical room, all three bedrooms, two bathrooms, laundry room, and a recreation room
 - a "main floor" that contained a bathroom, closet, office, fire place, living room, kitchen and dining area
 - Horse Barn, attached to Single Family Dwelling Unit:
 - storage room, bathroom, tack room, five stalls, car port
 - Detached Garage:
 - seven parking stalls of differing sizes, an entryway, storage room, dry storage room, and wet storage room
 - "upper floor" all labeled as storage only
- #Z2007-038 CUP application to change the designation of the current Single Family Dwelling Unit to a Caretaker's Residence submitted December 1, 2006
 - The request was conditionally approved by the Bridger Canyon Planning & Zoning Commission on February 8, 2007 via the Findings of Fact Conclusions of Law and Order with six Conditions of Approval:
 1. The conditional use permit authorizes the use of this structure as a caretaker's residence. The structure shall not be utilized for any other use unless such use is a permitted use in conformance with the Regulation.
 2. A land use permit for the single-family residence shall be issued by the Gallatin County Planning Department prior to construction.
 3. The following restrictive covenants shall be recorded in the Gallatin County Clerk and Recorder's Office prior to issuance of the new single-family residence:
 - a. *The caretaker's residence shall not be rented.*
 - b. *The caretaker's residence shall not be divided or sold separately from the original parcel.*
 - c. *All structures shall be constructed in compliance with Montana State adopted codes for construction, including codes for seismic zone 3, and National Fire Protection codes.*

- d. *Flame retardant roofing materials shall be used.*
 - e. *Spark-arrestor screens shall be placed on all fireplace and woodstove chimneys.*
 - f. *Smoke detectors shall be installed on each level of dwelling units.*
 - g. *Areas within 30 feet of habitable structures shall be cleared of all flammable materials.*
 - h. *Open fires shall be prohibited.*
 - i. *Any covenant which is included herein as a condition of permit approval and required by the Bridger Canyon Planning and Zoning Commission may not be amended or revoked without the mutual consent of the property owners and the Planning and Zoning Commission.*
4. The future single-family residence shall be constructed with an automatic fire sprinkler system meeting the requirements of NFPA 13D/Uniform Fire Code. The fire district shall receive a stamped set of engineered sprinkler system plans for review and approval prior to construction. Inspections shall be scheduled, with 48-hour notice, during construction and after completion.
 5. Applicant shall receive an approved Emergency Vehicle Turnaround Plan from the Bridger Canyon Fire Department prior to land use permit approval for the future single-family residence.
 6. Approval from the Gallatin City-County Environmental Health Department for the septic system for the new single-family residence shall be obtained prior to the issuance of a land use permit.
- #L2013-172 LUP application approved June 7, 2013 for a new garage (Accessory Building), additions and a remodel to the Structure opposite the original Single-Family Dwelling Unit and barn
 - Existing structures listed were studio, barn and pergola

According to the records maintained by the Montana Department of Revenue the Property contains the following:

- Single Family Residence with 3 bedrooms, 2 bathrooms, 2 porches, approximately 654 square feet of living area, built in 2006
- Single Family Residence with 3 bedrooms, 2 bathrooms, 2 decks, a porch, and 2 garages, with approximately 2,523 square feet of living area, built in 2007
- Barn, 720 square feet, built in 2007
- Pole frame building, 305 square feet, built in 2010
- Pole frame building, 264 square feet, built in 2010
- Lean-to, 60 square feet, built in 2010

On September 13, 2021, the Department received a complaint stating that:

- “Mr. Lewis is renting both the primary home and the caretaker building independently and simultaneously at 6400 Tepee Ridge Rd on short-term rental sites such as VRBO.

Neighbors complain that renters create nuisances, particularly with respect to noise and road safety.”

- The email with the complaint states the VRBO site and rental use goes back to at least January 2, 2020.

Compliance Department Investigation:

I initially sent you notification of this complaint in an Investigation Letter dated September 24, 2021 (Investigation Letter) via First Class Mail. You were to contact me to arrange a site visit and provide me with a written response within 15 days of the date of the Investigation Letter.

Amy McNulty, your legal representative, emailed me on October 13, 2021, saying that she would be in touch by October 15, 2021 with a response to the Investigation Letter and to arrange the requested site visit.

No further response or correspondence was received.

I sent you a Warning Letter on October 22, 2021 (Warning Letter), via First Class Mail and Certified Mail #7018 1130 0001 1432 1850 and # 7018 1130 0001 1432 1867 to both mailing addresses associated with the Property. You were to schedule a site visit and submit the information requested no later than 30 days after the date of the Warning Letter.

Ms. McNulty contacted me on October 22, 2021 and we arranged the requested site visit for November 22, 2021 as you would be in town that week staying on the Property for Thanksgiving.

The site visit was completed as scheduled on November 22, 2021 with Ms. McNulty, you, Leah De Guzman (your partner) and me (Site Visit).

I sent you a Corrective Action Letter on November 29, 2021 (Corrective Action Letter) via email explaining my findings from the Site Visit. You were to contact the Planning Department and the Health Department to discuss your options and provide me with a proposed written plan of correction no later than 30 days after the date of the Corrective Action Letter.

Ms. McNulty reached out to the Health Department and Planning Department on December 18, 2021 and was able to discuss options with them on December 28, 2021 and December 22, 2021.

On December 28, 2021, I received a written response from Ms. McNulty indicating that she had started conversations with both departments, that you would be back in touch with the Planning Department by January 14, 2022, and that you were still investigating some of the items raised as potential violations.

I sent you a Partial Closure/Corrective Action Letter #2 on February 2, 2022 (Partial Closure/Corrective Action Letter #2) further clarifying which items would require corrective actions. You were to provide me with a proposed written plan of correction no later than 15 days after the date of the Partial Closure/Corrective Action Letter #2.

On February 22, 2022, Ms. McNulty notified me in writing that she was aware that the response was past due and would have it to me by February 25, 2022.

No further response or correspondence was received, other than an email on March 1, 2022 stating that Ms. McNulty needed more time with her clients.

I sent you a Warning Letter #2 on April 18, 2022 (Warning Letter #2), via email, First Class Mail and Certified Mail #7018 1130 0001 1432 1577 and #7018 1130 0001 1432 1560 to both mailing addresses associated with the Property. You were to submit a written plan of correction that included specific actions and dates, as requested in previous letters and email correspondence, no later than 30 days after the date of the Warning Letter #2.

On May 17, 2022, Ms. McNulty provided a response to the Warning Letter #2 (Response).

On May 26, 2022, Ms. McNulty, you, and Ms. De Guzman met with Allyson Brekke, Deputy Planning Officer to discuss options regarding the Land Use Permits, Conditional Use Permit, and Uses on the Property as identified within the previous letters from the Department.

Meeting notes from Ms. Brekke stated:

“Recommend to first revise second LUP #2013-172 (that was an addition to a previous detached garage) to ensure it reflects the existing building on the site. This will [be] a LUP Modification per our zoning fee schedule: https://gallatincomt.virtualtownhall.net/sites/g/files/vyhlijf606/f/pages/zoning_fee_schedule_-_for_resolution.pdf

Use the same LUP Application for the Modification: https://gallatincomt.virtualtownhall.net/sites/g/files/vyhlijf606/f/pages/lupapp.11.2.21_fillable_1.pdf

Secondly, decide how you want to use the structure that is approved through a CUP as a caretaker's residence. If want to maintain caretaker's approval, submit a narrative showing how CUP #2007-038 conditions of approval are met. Be mindful of definitions included in Section 3 of the Bridger Canyon Zoning District, including "caretaker's residence": https://gallatincomt.virtualtownhall.net/sites/g/files/vyhlijf606/f/pages/bc_02_22_0.pdf

Another option is to submit an Administrative Determination application that a short term rental is a permitted or conditional use within the AE zoning sub-district of the Bridger Canyon Zoning District. That application can be found here: https://gallatincomt.virtualtownhall.net/sites/g/files/vyhlijf606/f/pages/admindet_1217.webside.pdf. Look at Section 3.8 within the Part 1 Zoning District Administrative Regulations to see how Administrative Interpretations are handled. It would required [sic] the County's Planning & Zoning Commission's consideration.”

On June 17, 2022, Ms. Brekke emailed a copy of the above meeting notes to Ms. McNulty.

I reached out to Ms. McNulty on August 29, 2022, regarding the outstanding actions for the Land Use Permit and Conditional Use Permit on the Property. Ms. McNulty provided a response to me on October 17, 2022, stating:

“Hi Megan- Thanks for your voicemail on this last week. Sounds like I am going to connect with my clients in the next day or so, so I hope to be able to answer your questions on where they are at with (1) the LUP application; and (2) the licensing with the Health Dept.”

As of the date of this letter, no written plan of correction or additional information has been provided, no correction actions have been initiated, and no documentation demonstrating compliance with the Zoning Regulation or Administrative Regulation have been submitted.

Bridger Canyon Zoning Regulation

The pertinent sections of the Zoning Regulation and Administrative Regulation are attached as Exhibit A for your reference

Section 4 of the Zoning Regulation lists the standards and requirements for the AE sub-district. Section 4.2 lists the Permitted Uses **after** a Land Use Permit is approved. Section 4.3 lists Uses Permitted after Securing Approval of a Conditional Use Permit.

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

1. Principal Single-Family Dwelling Unit

The former Principal Single-Family Dwelling Unit (Structure B in the Corrective Action Letter) was approved through LUP #L2006-089 in October 2005. It appears this Structure was converted into the Caretaker’s Residence conditionally approved through CUP #Z2007-038.

It appears the original detached garage approved in LUP #L2006-089 (Structure A) was then converted into the existing Principal Single-Family Dwelling Unit.

It does not appear that an LUP modification was approved for these converted uses.

The basement bedroom within the existing Principal Single-Family Dwelling Unit contains an on-suite bathroom, kitchenette with sink, fridge, and two burner stove. Consequently, the basement constitutes an additional Dwelling Unit.

Section 6 of the Administrative Regulations requires Land Use Permit approval for the existing Principal Single-Family Dwelling Unit, as constructed.

The additional Dwelling Unit in the basement is the third Dwelling Unit on the Property. Section 4.2 of the Zoning Regulation only permits one Principal Single-Family Dwelling Unit and one Accessory Dwelling Unit on the Property.

Therefore, corrective action is required as described below.

2. Caretaker’s Residence

The December 2006 Conditional Use Permit #2007-038 for a Caretaker’s Residence includes six conditions of approval as listed above.

Pursuant to Section 10.12 of the Administrative Regulation, the Bridger Canyon Planning and Zoning Commission may revoke a Conditional Use Permit when it determines that the person holding a CUP has not complied with the conditions upon which it was issued.

The Planning Department records do not include any documentation and your Response did not include any documentation that the conditions of approval associated with the conditionally approved Caretaker's Residence CUP #Z2007-038 have been met.

In addition, Section 6 of the Administrative Regulation requires Land Use Permit approval for the Structure, as constructed, and its current Use.

Therefore, corrective action is required as described below.

3. *Accessory Building – Detached Garage*

As previously explained, the Planning Department records indicate the Structure previously approved through LUP #L2006-089 as a Detached Garage was attached to the existing Principal Single-Family Dwelling Unit.

During the November 22, 2022 site visit, it was documented that there is no detached garage located on the Property. Instead, a three-car attached garage is associated with the existing Principal Single-Family Dwelling Unit.

Section 6 of the Administrative Regulations requires Land Use Permit approval for the three-car attached garage, as constructed.

Therefore, corrective action is required as described below.

4. *Accessory Building – Horse Sheds*

Pursuant to Section 12.3.c of the Zoning Regulation:

Accessory Buildings equal to or less than 200 square feet of General Floor Area are not required to obtain a Land Use Permit.

Within the May 17, 2022 response from Ms. McNulty states that the square footage of the horse sheds are under 200 square feet. No documentation was provided.

However, according to the records maintained by the Montana Department of Revenue there are three outbuilding Structures on the Property as follows:

- Pole frame building, 305 square feet, built in 2010
- Pole frame building, 264 square feet, built in 2010
- Lean-to, 60 square feet, built in 2010

Only one of which is listed as being under 200 square feet.

Section 6 of the Administrative Regulations requires Land Use Permit approval for the Accessory Structures over 200 square feet of General Floor Area as defined within the Zoning Regulation and as constructed.

Therefore, corrective action is required as described below.

Notice of Intent to Initiate Conditional Use Permit Revocation

No documentation or corrective actions have been identified or initiated to demonstrate compliance with Conditional Use Permit #Z2007-038 for the Caretaker's Residence as requested by the Department in previous letters. The Department hereby provides you with written notice, pursuant to Section 10.12 (Revocation) of the Administrative Regulation, that the Department has determined you have not complied with the conditions upon which CUP #Z2007-038 were issued. If you do not take the corrective actions described below, the Department will initiate the process for the Revocation of CUP #Z2007-038 pursuant to Section 10.12 of the Administrative Regulation.

**Corrective Action – Opportunity to Remedy per Section 10.12:
By no later than February 16, 2023, you must:**

- Submit Land Use Permit application(s) and applicable fee(s) to the Planning Department for the Principal Single-Family Dwelling Unit, three car attached garage, Accessory Buildings to demonstrate compliance with Structures as constructed and Uses on the Property
 - Additionally, you may provide documentation demonstrating how the Accessory Buildings are 200 square feet of General Floor Area or less as defined in the Zoning Regulation
- Submit an Interpretation application and applicable fee to the Planning Department for the additional Dwelling Unit in the basement of the Principal Single-Family Dwelling Unit
 - Alternatively, you may submit a written plan of correction describing in detail the specific actions you will take, and the dates by which you will take such actions, to remedy the third Dwelling Unit on the Property
- Provide documentation and a narrative demonstrating how all conditions of CUP #Z2007-038 have been completed/met for use as a Caretaker's Residence

Failure to correct the violations within the timeframe specified will subject you to further enforcement action and the revocation process for the CUP #Z2007-038.

Should you have any questions regarding this letter, please contact me at 406-582-3775.

Sincerely,



Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc w/ attachment:

County Attorney's Office via email
Environmental Health Department via email

Compliance Department • 311 W. Main St., Rm. 108 • Bozeman, MT 59715
Phone (406) 582-3775 • www.gallatincomt.virtualtownhall.net/code-compliance

Planning Department, Allyson Brekke, Allyson.Brekke@gallatin.mt.gov
Montana Department of Revenue via email
Bridger Canyon Fire District via email
Sean Lewis, sean.a.lewis@gmail.com
Leah De Guzman, leahdg2004@gmail.com
Amy McNulty, amcnulty@lawmt.com
Complainant via Email

Exhibit A – Applicable Regulations:**Gallatin County “Part 1” Administrative Regulation**

- 3.2 Zoning Regulation Conformance. Property owners are responsible for ensuring all activity within and on their property conforms to this Administrative Regulation and the applicable District Regulation. No Building, Structure, or land shall hereafter be used or occupied, and no Building, Structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved or Structurally Altered unless it is in conformity with all the Zoning Regulations.

No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure, or unless such Use is deemed to be an appropriate Use pursuant to the interpretation process of Section 3.8 of this Administrative Regulation. All other uses are prohibited unless otherwise authorized by federal or state law.

The burden of proof is on an applicant to demonstrate that applicable requirements and review criteria of the Zoning Regulations are met. Where conditions of approval are attached to any approval issued under the Zoning Regulations, the failure to comply with any condition of approval is a violation of the Zoning Regulations.

- 3.8 Interpretations. Requests for Official interpretations concerning the Zoning Regulations, boundaries, and maps shall be made in writing, accompanied by the appropriate application and fee, and shall be handled as follows:
- a. Administrative Interpretations. Interpretations concerning the Zoning Regulations and maps, except those interpretations listed at subsection (b) or (c)(vii) below, may be made by the Planning Director and are subject to Appeal as described in Section 13 of this Administrative Regulation. If the Planning Director determines the interpretation is of significant public interest, the Planning Director may refer the request to the Planning & Zoning Commission. The Planning & Zoning Commission shall consider the request in a public hearing.
 - b. Interpretation of Use Classification. If questions arise concerning the appropriate classification of a particular Use, or if the specific Use is not listed, the Planning and Zoning Commission shall determine the appropriate classification of that Use. In interpreting a Use classification, the Planning and Zoning Commission shall hold a public hearing, consider the recommendation of any Zoning Advisory Committee, and determine whether the use meets all of the following criteria:
 - i. The proposed Use is compatible with the Uses allowed in the Sub-district;
 - ii. The proposed Use is similar to one or more Uses allowed in the Sub-district;

- iii. The proposed Use will not adversely affect property in the neighborhood or Sub-district or Zoning District; and
 - iv. The proposed use will not abrogate the intent of the Zoning Regulations and applicable growth policy or neighborhood plan.
- 6.1 Intent. The Land Use Permit review process is intended to verify a Structure's conformity to the applicable requirements of the Zoning Regulations.
- 6.2 Requirement for Land Use Permit. Except as provided in Section 6.4 below, no Structure shall be built or moved and no Structural Alteration shall commence without an approved Land Use Permit issued under this Section. Construction without an approved Land Use Permit constitutes a violation of the Zoning Regulations. Preparatory site work may occur prior to Land Use Permit approval, but occurs at the risk of the landowner. Pouring of concrete or installation of other permanent improvements prior to Land Use Permit approval is prohibited.
- 8.1 Intent. The Certificate of Completion is intended to verify that all Exterior Construction and other relevant conditions of approval for a project have been completed in conformance with the plans approved through the Conditional Use Permit, Variance, Land Use Permit or Change of Use Permit review processes.
- 8.2 Requirement for a Certificate of Completion. Where the Planning Director has determined as part of the approval of a Land Use Permit or Change of Use Permit that a Certificate of Completion is required for a project, a Certificate of Completion shall be obtained after completion of all Exterior Construction and prior to expiration of the Land Use Permit or Change of Use Permit. A Certificate of Completion may also be required as a condition of approval for a Conditional Use Permit or Variance.
- 10.1 Intent. The Conditional Use Permit review process is intended to provide a transparent, public review process for Uses that, because of their widely varying design, operational characteristics, and potential to cause off-site impacts, require case-by-case review in order to determine whether they will be compatible with surrounding Uses and patterns of development and, if necessary, develop appropriate conditions of approval. Where District Regulations provide specific procedures and requirements for Planned Unit Developments, Wireless Communication Facilities, Natural Resource Conditional Uses, or Open Cut (Gravel Pit) Operations, those District Regulations shall control.
- 10.2 Requirement for a Conditional Use Permit. Conditional Use Permits are required prior to operation of a Use and/or occupancy of a Structure which is listed as a Conditional Use under the applicable District Regulation.
- 10.7 Authorized Use. A Conditional Use is not authorized until all conditions of approval and the following are satisfied:

- a. Structures proposed for construction in connection with the proposed Use have obtained any required Land Use Permit or Change of Use Permit and are in the process of Actual Construction on the site; or
 - b. If remodeling is proposed for existing Structures in connection with the proposed Use, any required Land Use Permit or Change of Use Permit has been approved and Actual Construction of the remodeling has begun on the site; or
 - c. If no construction or remodeling is required, then the permittee has obtained any necessary Change of Use Permit and is regularly engaged on the site in performing and carrying out the Use, and has secured all necessary federal, state, and local permits and licenses.
- 10.8 Expiration. Unless specifically provided otherwise in the Planning and Zoning Commission's approval, all Conditional Use Permits shall automatically expire if the Authorized Use as set forth in Section 10.6 above is not started within two years of the date of approval. All Conditional Use Permits issued for a definite term shall automatically expire at the end of the specified term.
- 10.12 Revocation. The Planning and Zoning Commission is authorized to revoke Conditional Use Permits.
- a. If the Planning Director or Zoning Enforcement Agent finds that a person holding a Conditional Use Permit has not complied with the conditions upon which it was issued, the Planning Director or the Zoning Enforcement Agent may, after providing the person holding the Conditional Use Permit with written notice and an opportunity to remedy the matter, initiate the process to revoke a Conditional Use Permit.
 - b. If an Advisory Committee has been established, the Planning Director or Zoning Enforcement Agent shall forward the revocation request to the Committee, which, after holding a meeting and taking comment, may forward a recommendation to the Planning and Zoning Commission.
 - c. The Planning and Zoning Commission shall consider the revocation request during a public hearing for which Published Notice has been provided and issue a Decision in accordance with the Planning and Zoning Commission Hearing Rules.
 - d. The Planning and Zoning Commission may revoke a Conditional Use Permit when the Planning and Zoning Commission finds that the person holding a Conditional Use Permit has not complied with the conditions upon which it was issued.

Bridger Canyon Zoning Regulation

- 4.2.b. One Principal Single-Family Dwelling Unit on each parcel created in conformance with the Zoning Regulation or in existence at the time of its original adoption.

4.2.c. One Accessory Dwelling Unit in accordance with Section 12.2.

Gibson, Megan

From: Gibson, Megan
Sent: Friday, February 17, 2023 7:33 AM
To: Amy McNulty; sean.a.lewis@gmail.com
Cc: leahdg2004@gmail.com; Hailey Garbett
Subject: RE: Lewis Property Non-Compliance & Intent to Initiate Conditional Use Permit Revocation Letter

Hello Amy,

Thank you for the responses. These will be reviewed and Allyson and I will be in touch.

Kindly,

Megan K. Gibson
Code Compliance Officer
Junk Vehicle Director
Gallatin County Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

From: Amy McNulty <AMcNulty@lawmt.com>
Sent: Thursday, February 16, 2023 4:29 PM
To: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>; sean.a.lewis@gmail.com
Cc: leahdg2004@gmail.com; Hailey Garbett <HaileyG@lawmt.com>
Subject: RE: Lewis Property Non-Compliance & Intent to Initiate Conditional Use Permit Revocation Letter

Hello, Megan-

On behalf of my client- please see the attached correspondence responding to your January 17 letter.

Amy

Amy C. McNulty
Tarlow Stonecipher
Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913

Phone: (406) 586-9714
Facsimile: (406) 586-9720
Website: www.lawmt.com

This electronic mail message is confidential and may constitute attorney-client communication that is privileged by law. It is not intended for transmission to, or receipt by, any unauthorized persons. If you received this transmission in error, please delete it from your system without copying it and notify the sender of the error. Thank you.

From: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>

Sent: Tuesday, January 17, 2023 9:11 AM

To: sean.a.lewis@gmail.com

Cc: leahdg2004@gmail.com; Amy McNulty <AMcNulty@lawmt.com>

Subject: Lewis Property Non-Compliance & Intent to Initiate Conditional Use Permit Revocation Letter

Hello Sean –

Please see the attached letter regarding your Property addressed as 153 & 155 Tepee Ridge Road E. This letter was also sent to you today via First Class and Certified Mail.

If you have any questions, let me know.

Thank You,

Megan K. Gibson
Code Compliance Officer
Junk Vehicle Director
Gallatin County Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

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February 16, 2023

Megan Gibson
Gallatin County Compliance Department
311 West Main Street, Rm. 108
Bozeman, MT 59715

Via e-mail:
megan.gibson@gallatin.mt.gov

**RE: Plan of Correction; Bridger Canyon Zoning Regulation and Public
Accommodation Licensing Complaint (Compliance ID #22-041)**

Dear Megan,

This letter responds to your letter of January 17, 2023, and specifically serves to provide the requested information and narrative demonstrating how the conditions of CUP #Z2007-038, the Conditional Use Permit for my client's property, were met.

Allow me to address the CUP conditions as listed in your letter together with the information we have related to how these items were met and the CUP was validly put into use following its issuance in 2007.

1. The conditional use permit authorizes the use of this structure as a caretaker's residence. The structure shall not be utilized for any other use unless such use is a permitted use in conformance with the Regulation.

Following approval of the conditional use permit in 2007, the structure (the "lower house" attached to the barn) was used as a caretakers' residence where the property owner would have a caretaker using the residence to watch over the property during periods he was away.

I understand there is a compliance issue with my client renting out the Caretakers Residence at times since 2020, but this does not negate the fact that the CUP was "put into use" following its issuance in 2007.

I further understand that the current Zoning Regulations allow for an "Accessory Dwelling Unit," which, unlike a caretaker's residence, may be rented together with the Principal Dwelling Unit. My client is interested in proceeding with the conversion of the existing Caretaker's Residence to an Accessory Dwelling Unit under the Regulations.

2. A land use permit for the single-family residence shall be issued by the Gallatin County Planning Department prior to construction.

As we have discussed, the Gallatin County Planning Department issued a land-use permit in 2013 (L2013-172). Upon investigation, it appears that this land-use permit included "existing" structures that constitute the existing single-family residence attached to the garage. The structure for this residence was part of the approved plans in the 2005 land-use permit. The County's approval of the 2013 Land Use Permit, including approval of plans showing the existing residence at that time, constitutes an approval for what now exists as the "upper house" single-family residence.

Per your direction, we have applied for a Land Use Permit Modification with the Gallatin County Planning Department to ensure that the existing Land Use Permit matches the existing structures on the property.

3. The following restrictive covenants shall be recorded in the Gallatin County Clerk and Recorder's Office prior to issuance of the new single-family residence:

- a. The caretaker's residence shall not be rented.*
- b. The caretaker's residence shall not be divided or sold separately from the original parcel.*
- c. All structures shall be constructed in compliance with Montana State adopted codes for construction, including codes for seismic zone 3, and National Fire Protection codes.*
- d. Flame retardant roofing materials shall be used.*
- e. Spark-arrestor screens shall be placed on all fireplace and woodstove chimneys.*
- f. Smoke detectors shall be installed on each level of dwelling units.*
- g. Areas within 30 feet of habitable structures shall be cleared of all flammable materials.*
- h. Open fires shall be prohibited.*
- i. Any covenant which is included herein as a condition of permit approval and required by the Bridger Canyon Planning and Zoning Commission may not be amended or revoked without the mutual consent of the property owners and the Planning and Zoning Commission.*

A restrictive covenant addressing these points was filed with the Gallatin County Clerk and Recorder on June 26, 2007 as Document 2270716 following the Commission's Order of February 8, 2007. I am attaching a copy of the recorded covenants to this letter.

4. The future single-family residence shall be constructed with an automatic fire sprinkler system meeting the requirements of NFPA 13D/Uniform Fire Code. The fire district shall receive a stamped set of engineered sprinkler system plans for review and approval prior to construction. Inspections shall be scheduled, with 48-hour notice, during construction and after completion.

Mr. Lewis tells me that the “upper house” single-family residence was constructed with an automatic fire sprinkler system in conjunction with the Fire Code and this condition. Is this an item that you confirmed when you conducted a site visit of the property?

Additionally, I have an inquiry to the Bridger Canyon Fire Department regarding whether they still have the plans for the sprinkler system as contemplated by this condition. I will update you when I hear from them.

5. Applicant shall receive an approved Emergency Vehicle Turnaround Plan from the Bridger Canyon Fire Department prior to land use permit approval for the future single-family residence.

I understand that the Planning Department approved the 2013 Land Use Permit, indicating that this condition was completed/approved given the Department’s requirement that this be completed “prior to land use permit approval.” This approval serves as presumptive confirmation that this condition was met.

In addition to this presumptive confirmation, I have an inquiry into the Bridger Canyon Fire Department regarding whether they still have an approved plan.

6. Approval from the Gallatin City-County Environmental Health Department for the septic system for the new single-family residence shall be obtained prior to the issuance of a land use permit.

Again, I understand that the Planning Department approved the 2013 Land Use Permit, which indicates that this condition was completed/approved given the Department’s requirement that this be completed “prior to land use permit approval.” This approval serves as presumptive confirmation that this condition was met.

Further, as part of the 2013 land use permit, there was an approved wastewater system for up to eight (8) bedrooms. Per your directive as part of this compliance investigation, my client submitted a modification to the septic permit with the Health Department last year to confirm the configuration of the septic system and dwelling units served and this modification was approved in July of last year.

Megan Gibson
February 16, 2023
Page 4

We view the foregoing information as sufficient to confirm that the conditions for the 2007 Conditional Use Permit were met and it was put into place following its issuance.

I have addressed the other directives in your January 17, 2023 letter through the Planning Department and copied you on those correspondence.

Very truly yours,

/s/ Amy C. McNulty
Amy C. McNulty

ACM/hgg

2270716

Page: 1 of 1
05/26/2007 01:58P



Charlotte Mills-Gallatin Co MTMISC 11.00

I, Sean A Lewis, here by place the following restrictive covenants, as required by Bridger Canyon Planning and Zoning Commission's order of February 08th, 2007, approving the request by Sean A. Lewis for a Conditional Use Permit for a caretaker's residence, located at Agricultural Exclusive (AE) District of the Bridger Canyon Zoning District, located in Section 20 of Township One South, Range Seven East; PMM, Gallatin County, Montana; with an address of 6400 Teepee Ridge Road East, Bozeman, Montana: TRACT 12A C.O.S, NO. 1265-A

- a) The caretaker's residence shall not be rented.
- b) The caretaker's residence shall not be divided or sold separately from the original parcel.
- c) All structures shall be constructed in compliance with Montana State adopted codes for construction, including codes for seismic zone 3, and national Fire Protection codes.
- d) Flame retardant roofing material shall be used.
- e) Spark arrestor screens shall be placed on all fireplace and woodstove chimneys.
- f) Smoke detectors shall be installed on each level of dwelling units.
- g) Areas within 30 feet of habitable structures shall be cleared of all flammable materials.
- h) Open fires shall be prohibited.
- i) Any covenant which is included herein as a condition of permit approval and required by the Bridger Canyon Planning and Zoning Commission may not be amended or revoked without the mutual consent of the property owners and the Planning and Zoning Commission.

Sean A. Lewis

State of Texas
County of Dallas

This instrument was acknowledged before me RINA KATON
by Sean Lewis

ON 5/17/07

Notary Public for the State of ~~Montana~~ TEXAS
Residing at:
My commission expires November 1, 2009

**TARLOW
STONECIPHER
WEAMER & KELLY PLLC**

ATTORNEYS

1705 WEST COLLEGE STREET
BOZEMAN, MT 59715-4913

PHONE (406) 586-9714
FAX (406) 586-9720
www.LawMT.com

February 16, 2023

Allyson Brekke
Gallatin County Planning Office
Gallatin County Courthouse
311 W. Main Street, Room 108
Bozeman, MT 59715

Via Hand Delivery

RE: Compliance ID #22-041

Dear Allyson,

This letter serves to address an item raised by Gallatin County Compliance Officer Megan Gibson in her letter to my client, dated January 17, 2023.

The Compliance Officer directs my client to do three things:

1. Submit a Land Use Permit to your office for the Principal Single-Family Dwelling Unit, three car attached garage, Accessory Buildings;
2. Submit an Interpretation application to your office related to what the Compliance Officer classifies as an "additional Dwelling Unit in the basement of the Principal Single-Family Dwelling Unit."
3. Provide documentation and a narrative demonstrating how all conditions on CUP #Z2007-038 have been completed/met for use as a Caretaker's Residence.

Under separate cover, I have provided you with a Land Use Permit Modification Application for the Lewis Property to address the first items raised in the latest compliance letter.

I am writing separately regarding the Compliance Officer's request related to the classifications of horse barns as "Accessory Buildings," and the classification of the downstairs bedroom in the "upper house" as an "additional Dwelling Unit."

First, the compliance letter addresses that there are two “horse barns” on the property that may require a land use permit. I am attaching a picture of these improvements for your reference. They are really three-sided, open-air structures that allow for sunshade for horses. Last year I measured these structures with assistance from Mr. Lewis’s property manager and our measurements indicated that these structures were under 200 square feet of area. But, the Compliance Officer states that the Montana Cadastral shows these as structures as more than 200 square feet. Given that they are open-air structures used in conjunction with livestock, I am wondering whether your office would consider these structures to be exempt from the land-use permit requirement, regardless of the precise measurements? If not, can we measure these together with your office to confirm whether they exceed 200 square feet?

The compliance letter next addresses the “additional Dwelling Unit in the basement of the Principal Single-Family Dwelling Unit.” My understanding is that this ensuite kitchenette/bathroom is not classified as a Dwelling Unit given that does not have its own separate entrance or exit from the Single-Family Dwelling Unit, and does not meet the definition of the zoning regulations of “complete, independent living facilities” given the lack of a separate entrance or exit or any laundry facilities.

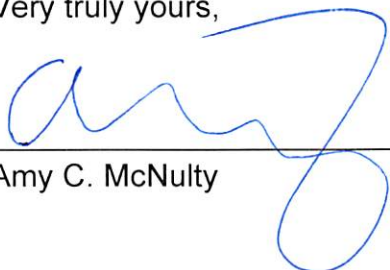
This bedroom is not classified by the Department of Revenue as being an additional dwelling unit. Further, the septic permit modification for Permit #14111 classifies the bedroom as being a part of the “upper house” Single Family Dwelling Unit.

The Compliance Officer requests that we “submit an Interpretation application” regarding this analysis. In light of the status of the Department of Revenue’s classification and the Septic Permit, I am wondering whether there is a need from your office’s perspective to submit an “Interpretation application,” or if we can consider this particular issue resolved.

If an Interpretation application is required, please advise if the proper form for such a request is the “Administrative Determination Application Form” on your website-- [https://gallatincomt.virtualtownhall.net/sites/g/files/vyhlf606/f/pages/admindet_1217.web site.pdf](https://gallatincomt.virtualtownhall.net/sites/g/files/vyhlf606/f/pages/admindet_1217.web%20site.pdf) or if there is another process for the “Interpretation Application” the Compliance Officer references.

Thank you for your guidance on these items.

Very truly yours,



Amy C. McNulty

ACM/hgg



TARLOW
STONECIPHER
WEAMER & KELLY PLLC

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February 16, 2023

Allyson Brekke
Gallatin County Planning Office
Gallatin County Courthouse
311 W. Main Street, Room 108
Bozeman, MT 59715

Via Hand Delivery

RE: Land Use Permit- Modification of Existing Land Use Permits.

To Allyson,

As you know, I represent Sean Lewis, owner of property located at 155 Teepee Ridge Road in the Bridger Canyon Zoning District.

This letter serves as a cover letter/explanation for the attached Application for Modification to Land Use Permit.

When we spoke about Sean's property last year, we discussed the existence of the current land-use permits for the structures associated with the property. I know there was discussion of clearing up the existing land use permits with what is actually present on the site.

Given your direction, and the recent directive from Compliance Officer, Megan Gibson, my client proceeded with filling out the Land Use Permit form to apply for a modification to the existing land use permits for the property. The attached application lists the existing structures, but, because my client is not interested in any additional structures, we did not fill out any information regarding proposed structures.

We are happy to discuss this application and what submittals might be necessary to comply with the Compliance Department's directive related to the Land Use Permit.

For reference, our understanding of the history of existing/approved land-use permits is as follows:

- In 2005, Mr. Lewis applied for a Land Use Permit for a “single family residence and detached garage.” This Land Use Permit was for a 3-bedroom dwelling unit. The drawings for this Land Use Permit show that it was for what is currently the “lower house” on the Property (attached to the barn) as well as the garage that is now attached to the “upper house” on the Property. This Permit was approved on October 20, 2005, and these structures were built. **I have attached this Land Use Permit to the current Land Use Permit Application.**
- In 2013, Mr. Lewis applied for, and received, a Land Use Permit for a residential addition to the existing garage structure. **I have attached this Land Use Permit to the current Land Use Permit Application.** The plans attached to the 2013 land use permit refer to “existing” residential space and proposed “new construction.” The “existing” portion of the plan appears to have been built in conjunction with the 2005 Land Use Permit as well as the 2007 conditional use permit and constitutes the existing “upper house” and garage on the property. The new construction that was approved in 2013 did not end up being completed.

Together with this letter, I am submitting a separate letter to address two other items raised by Compliance Officer Megan Gibson’s letter to my client, dated January 17, 2023.

Thanks for your assistance in working through this issue, we appreciate it.

Very truly yours,



Amy C. McNulty

ACM/hgg



GALLATIN COUNTY

Land Use Permit Information & Application

PURPOSE

Gallatin County contains several zoning districts with corresponding zoning regulations. In order to ensure that development occurs in accordance with applicable zoning regulations, a **Land Use Permit (LUP)** is required prior to the construction of most structures within the County's zoning districts. Where required, construction without an approved LUP is a violation of the zoning regulations.

APPLICATION PROCESS *(Do not commence construction until permit approval has been issued.)*

- **A separate Land Use Permit application shall be submitted for each structure**, except one accessory structure may be included as part of a Land Use Permit application for a residence.
- **Application processing times change with seasonal demand.** In the summer, please allow a minimum of four weeks to process applications. In the winter, please allow a minimum of two weeks. The period of review for incomplete or inaccurate applications may be longer; likewise, projects in remote areas of the County may require a longer review period.
- **Applicant consults applicable Zoning Regulation.** (All Zoning Regulations can be found under Zoning Information and Forms on the Gallatin County Planning Department website). Contact a planner at the County Planning Department if you have any questions, at (406) 582-3130, planning@gallatin.mt.gov or 311 W. Main, Room 108, Bozeman, MT.
- **Applicant obtains pertinent approvals from other entities/agencies as required.** Required approvals described below, under "required materials."
- **Prior to submittal of the application, applicant clearly marks property corners and proposed building footprint** with flags, stakes, etc. including garage and deck/porch. *(If site visit occurs and property is not staked, a revisit fee will be charged and further review will be delayed.)*
- **Applicant submits required materials, no larger than 12"x18", drawn to scale and/or with measurements clearly labeled.**
 - ◆ **Land Use Permit Application Form** completed and signed by property owner or authorized representative.
 - ◆ **Address** must be obtained from the Gallatin County GIS Department prior to submitting this LUP form. Please complete the Property Information Request Form (PIF) in the Planning Department in order to obtain an approved address from GIS.
 - ◆ **Elevations** showing the North, East, South and West sides of proposed new structure or connection to existing structure with dimensions **clearly labeled on all sides**.
 - ◆ **Floor plans** including garage, basement, and all finished and unfinished spaces labeled.
 - ◆ **Site plan:**
 - Existing and Proposed Structures
 - Property Lines, Easements, and adjacent roads
 - Decks, Porches, and Outdoor amenities (hot tubs, fire pits, etc.)
 - Driveways
 - Distances must be shown on the Site Plan for:

Planning Department • 311 West Main, Room 108 • Bozeman, MT 59715
Phone (406) 582-3130 • Fax (406) 582-3135 • Email: planning@gallatin.mt.gov

- To Watercourses (as defined in applicable Zoning Regulation) and/or Floodplain
- Property Line to Eaves and Property Line to outer wall of structure
- ◆ **Waste-water approvals as applicable.** For projects utilizing on-site septic, obtain an approved septic permit from the Gallatin City-County Health Department at 215 W. Mendenhall St., Rm. 108, (406) 582-3120. For projects utilizing community sewer systems, provide documentation of approval to connect.
 - Four Corners Water and Sewer connections require a signed approval permit.
 - Big Sky Water and Sewer District connections require written connection approval.
- ◆ **Floodplain permit approvals as applicable.**
- ◆ **Other attachments, based on zoning district-specific requirements:**
 - **Gallatin Canyon / Big Sky**
 - Big Sky Fire District Land Use Permit Form. This form is available on the Big Sky Fire Department website.
 - Copy of Soils Report or Geotechnical Survey, if property slope is in excess of 15%.
 - **Landscaping plans as required, see applicable Zoning Regulation.**
 - **Staff may request further information as needed throughout the review process.**
- **Online Submittal.** Requires all of the same materials and information, however the application form and supporting documents are uploaded to the MyGov online platform. Instructions available here. Fees are payable by credit card with an additional 3% processing fee.
- **Application fee.** Please refer to the Fee Schedule on the Planning and Community Development Website for required fees, due at the time of application. The application fee is double for after-the-fact applications.

REVIEW PROCESS

- **County Planning Department reviews application materials and conducts site inspection.** Inspections are performed on a first-come, first-serve basis. Submittal of this application gives the County Planning staff permission to access the property. The property associated with this permit must be accessible; if gates or other obstacles are in place that restrict access to the property, please notify the Department when submitting your permit. Please ensure that the lot number or address is posted. If the Planning Department attempts to perform an inspection, but is unable to gain access or if the project is not staked, the applicant will be subject to the \$180 re-inspection fee.
- **County Planning Department completes review and notifies applicant whether Land Use Permit request is approved or denied.** Upon approval applicant will be notified of Certificate of Compliance requirements, if applicable*. In all Zoning Districts subject to the Gallatin County "Part 1" Zoning Administrative Regulations, need for a Certificate of Compliance is determined during the Land Use Permit or Change of Use Permit review process. They are required as determined by the Planning Director. A Certificate of Compliance is required in the Middle Cottonwood Zoning district.

*Gallatin County/Bozeman Area, see Section 25.09 for applicability.

- **The property owner is responsible for ensuring proper permits are obtained. Please convey all zoning-related documents to future owner(s).**

Landowners are reminded that they may need to obtain approvals from other federal, state, or local government agencies with requirements applicable to their project. These requirements may include but are not limited to:

- *Access or system impact approvals required by the Gallatin County Road & Bridge Department or the Montana Department of Transportation;*
- *Approvals from the local fire district pertaining to any adopted fire code;*
- *Building, plumbing, and electrical permit requirements administered by the Montana Department of Labor & Industry - Building Codes Bureau;*
- *Water rights from Montana Department of Natural Resource Conservation; or*
- *A General Permit for Storm Water Discharges Associated with Construction Activity from Montana Department of Environmental Quality.*

Landowners are also reminded to check their covenants and consult with their Homeowners' Association concerning any necessary approvals.

Permit # _____



GALLATIN COUNTY Land Use Permit Application

1. **Property Owner:** Sean Lewis

2. **Site Address:** 155 Teepee Ridge Road East

Section: 20 Township: 1S Range: 7E

Subdivision/COS #/ Deed Reference: 1265A

Block: _____ Lot/Tract/Parcel: 12A

DOR/Geocode #: 06 0906 20 1 02 15 0000
(4) (2) (1) (2) (2) (4)

Lot Area: 59.61 acres, or _____ sq. ft.

3. **Zoning District:** Bridge Canyon **Sub-District:** AE (PUD-20)

4. **Is this Application in Response to a Letter from the Compliance Department?:** Yes No

5. **Estimated Market Value of Construction (not including land cost):** NA

6. **Existing Structure(s) on Property?** YES (Describe Below) NO

Describe all other Structures on the parcel and provide proof of permits or documentation of year built:

Structure	Use of Structure	Date Built	Office Use Only – Existing LUP/CUP/Variance?	App. #
Lower House	Living unit	2006		
Upper House	Living unit	2007		
Barn	Storage	2006		

7. **Structure Proposed:** (If more than one structure, please attach additional sheets in order to complete Sections #7-11)

a. **Single-Family**

1. Number of Bedrooms: _____

2. Square Feet of Floor Area: _____

3. Total Impervious Surface: _____ Maximum Allowed % Lot Coverage: _____

4. Height: _____ Maximum Height Allowed by Zoning Regulation: _____

5. Pitch of Main Roof: _____

- 6. Foundation Type: _____
- 7. Use of Structure: Permanent / Temporary Date of Removal (if temporary): ___/___/___
- 8. Condominium Exemption Required?: Yes No

b. Multi-Family

- 1. Number of Structures: _____
- 2. Number of Units: _____ Are they being rented?: Yes No
- 3. Number of Bedrooms per Unit: _____
- 4. Square Feet of Living Space per Unit: _____
- 5. Total Impervious Surface: _____ **Maximum Allowed % Lot Coverage:** _____
- 6. Height: _____ **Maximum Height Allowed by Zoning Regulation:** _____
- 7. Pitch of Main Roof: _____
- 8. Foundation Type: _____
- 9. Condominium Exemption Required/Proposed?: Yes No

c. Commercial/Industrial

- 1. Number of Structures: _____
- 2. Number of Units: _____ Are they being rented?: Yes No
- 3. Square Feet per Unit: _____
- 4. Total Impervious Surface: _____ **Maximum Allowed % Lot Coverage:** _____
- 5. Height: _____ **Maximum Height Allowed by Zoning Regulation:** _____
- 6. Pitch of Main Roof: _____
- 7. Foundation Type: _____
- 8. Use of Structure:

Permanent / Temporary Date of Removal (if temporary): ___/___/___

- 9. Condominium Exemption Required/Proposed?: Yes No

d. Addition onto Existing Structure

- 1. The Existing Structure is: Single Family Residence Multi-Family
 Commercial/Industrial Other (please describe): _____
- 2. Height: _____ **Maximum Height Allowed by Zoning Regulation:** _____
(as defined in the specific zoning regulation & ensure building dimension are clearly labeled on elevation drawings)
- 3. Pitch of Main Roof: _____
- 4. Foundation Type: _____

5. Square Feet of Proposed Addition: _____
6. New Total Impervious Surface: _____ Maximum Allowed % Lot Coverage: _____
7. Use of Addition (sauna, bedroom, kitchen expansion, bathroom addition, deck enlargement, etc.): _____
8. Please attach current pictures of existing Structure.

e. **Other** (*Accessory Dwelling Unit, Accessory Structure, Fireworks Stand, Home Occupation, etc.*)

1. Use of Structure:

Permanent / Temporary _____ Date of Removal (if temporary): ___/___/___

2. Number of Bedrooms: _____
3. Square Feet of Living Space: _____
4. Total Square Footage: _____
5. Height: _____ Maximum Height Allowed by Zoning Regulation: _____
6. Pitch of Main Roof: _____
7. Foundation Type: _____
8. Short Term Rental: Yes No (*short-term rentals will be considered anything less than 30 days, or as described in zoning regulations*)

8. **Zoning Setbacks** (*one Table per proposed Structure: Actual measurements always required*):

	Zoning Required Setback to Structure	Zoning Permitted Encroachments (Eaves/Other Overhang(s))	OFFICE USE ONLY	Actual Measurement to Outer Wall of Structure	Actual Measurement to Encroachments (Eaves/Other Overhang(s))	OFFICE USE ONLY
Front Property Line	25'			670'		
Rear Property Line	25'			350'		
Side (East) Property Line	25'			310'		
Side (West) Property Line	25'			785'		
Watercourse				NA		
Irrigation Ditch				NA		
Manmade Water Feature				NA		

9. **Septic/Sewer System** (complete one):

- No Septic/Sewer Connection Needed (because structure is unplumbed).
 - Porta-potty. (must be approved by Gallatin City-County Health Department: include correspondence if applicable)
Approved For: _____ Employees Date of Removal (if applicable): ___/___/___
 - Septic System. (must be approved by Gallatin City-County Health Department before submitting this application. A copy must be provided).
Permit Number: 14111 Approved For: 8 Bedrooms
 - Proposed Structure Will be Connected to a Community Sewer System:
(attach written approval to connect to community sewer system, if applicable.)
-

10. **Floodplain** – Is a Portion of the Property is Located in a Mapped Floodplain? YES NO
(If Yes, you may be required to submit: a copy of the appropriate floodplain map; documentation from a licensed professional engineer or land surveyor showing the development activity is out of the floodplain; or a copy of the approved floodplain development permit. Please contact the Planning Department prior to submitting a Land Use Permit.)

11. **Required Attachments as Described on Page One of the Application Cover Letter.**

- Elevations (please make sure Height is clearly labeled on all sides as defined by the specific zoning regulations).
- Floor Plans.
- Site Plan.
- Other Attachments (as required by specific zoning regulation).

12. **Preparation For Inspection** (must be completed prior to submittal of application):

- All Corners of Proposed Structure Are Clearly Marked.
Date Structure will be/is Staked: ___/___/___
 - All Property Corners Are Clearly Marked.
 - The Lot is labeled by: Lot Number Address
and is visible from Tepee Ridge Road road, as of 02 / 10 / 2022
 - Gate Code: _____
 - Other relevant information Planner needs to know prior to Site Visits (dogs, accessibility, etc.):
-
-

PLEASE INCLUDE ALL CONTACT INFORMATION & SIGNATURE ON FINAL PAGE

13. **Contact Information** (please check the box below to identify the primary contact for questions).
Approval documents will be emailed to the property owner and representative, if noted.

Property Owner Name: Sean Lewis
Address: 10421 Big Horn Trail
City: Frisco State: TX Zip: 75035
Phone: 972-450-3875 Email: sean.a.lewis@gmail.com, leahdg2004@gmail.com

Representative: Amy C. McNulty
Address: 1705 West College Street
City: Bozeman State: MT Zip: 59715
Phone: 406-586-9714 Email: amcnulty@lawmt.com

AGREEMENT

By signing below, the above named property owner or their authorized agent hereby certifies that the information submitted in this application is true and correct; and that the proposed work shall be done in accordance with the approved plans and in compliance with the requirements of the applicable zoning regulation.

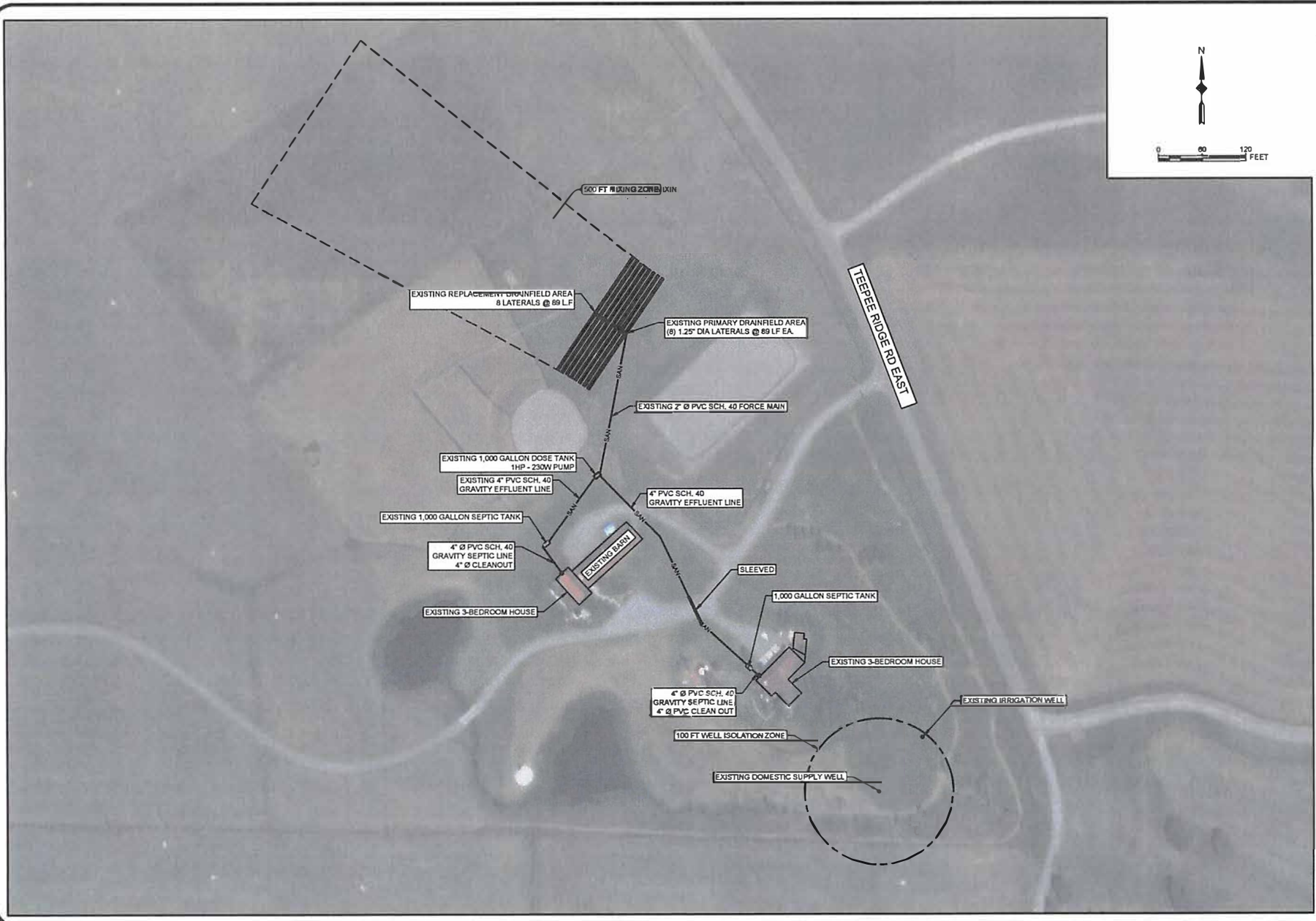


Property Owner or Authorized Representative Signature

2/16/23

Date

W:\Projects\17000\17000.dwg PLOT DATE: 2024-01-11 11:11 AM User: mab202



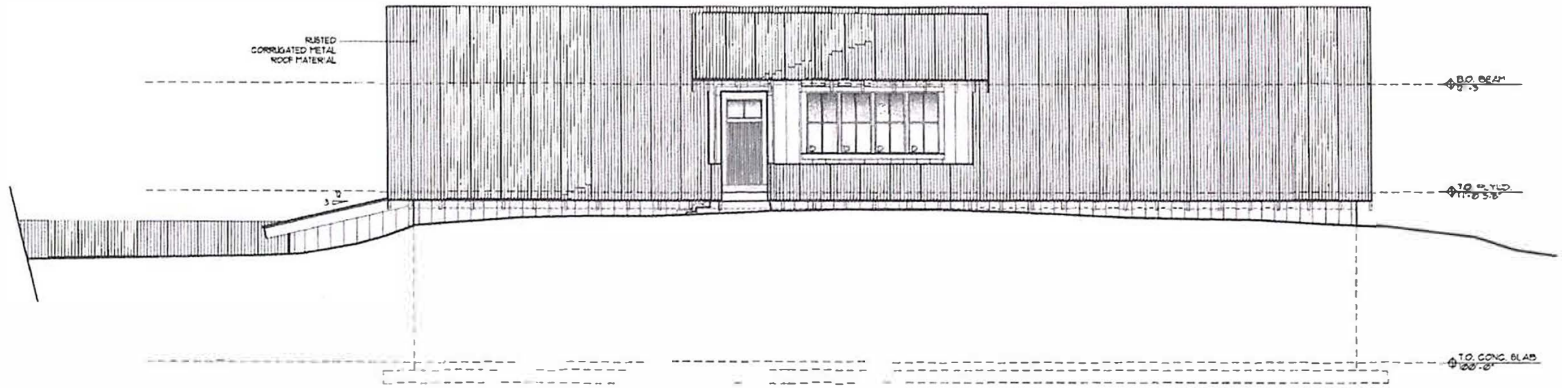
NO.	DATE	DESCRIPTION
1	01/11/24	ISSUED FOR PERMIT
2		
3		
4		
5		
6		
7		
8		
9		
10		

Project No: 17000
 Project Name: 17000.dwg
 Date: 01/11/24
 User: mab202

W&A Engineering, Inc.
 115 Corporation Drive
 Wallingford, VT 05475
 (800) 360-0011
 www.waeng.com

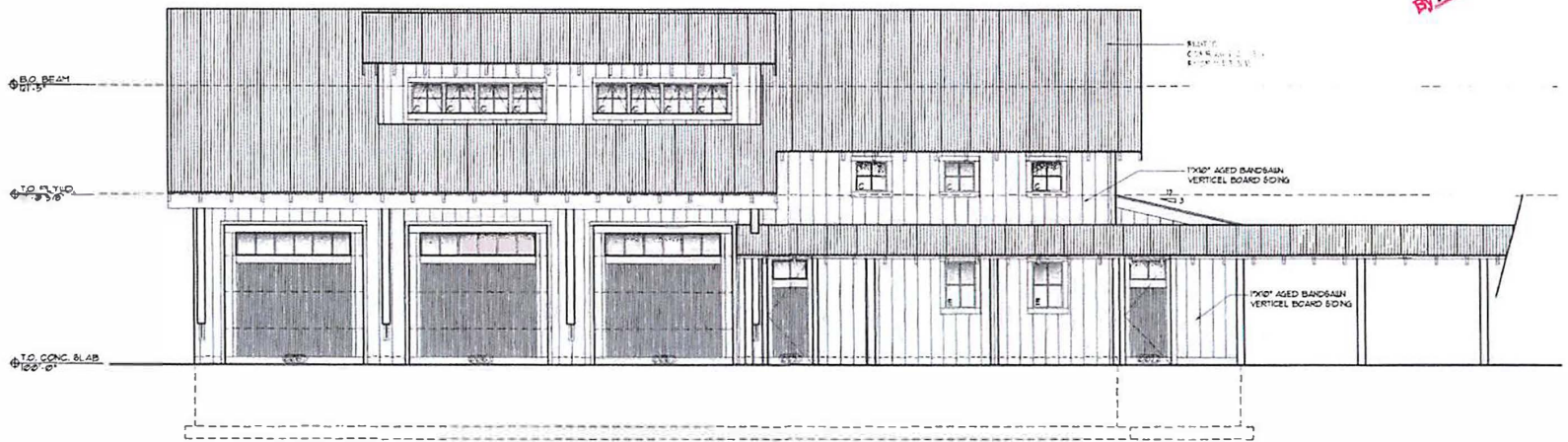
AS-BUILT SITE CONDITIONS
 PROJECT NAME: 17000.dwg
 PROJECT NO: 17000
 DATE: 01/11/24
 USER: mab202

JOB NO:	SLEWIS01
DATE:	01/22/24
DRAWN BY:	RP
CHECKED BY:	BS
SHEET	
C1	



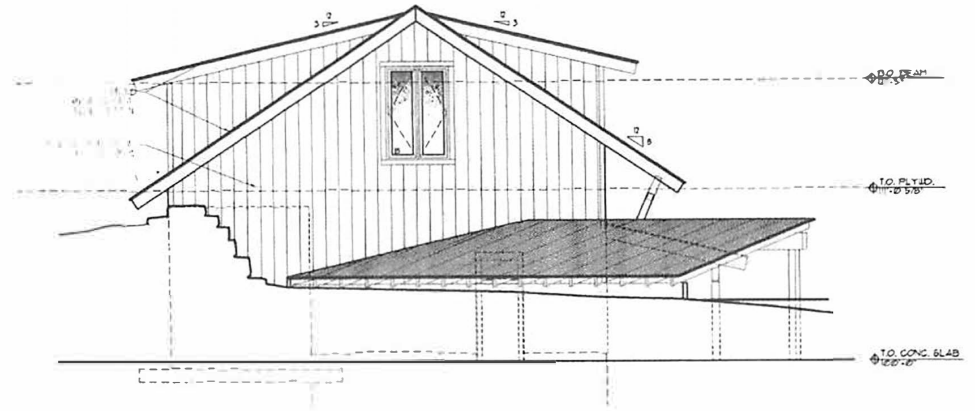
13 SOUTH ELEVATION
SCALE: 1/4"=1'-0"

Challaco County Planning Dept.
APPROVED
Land Use Permit 10/20/05
By *Kearney*

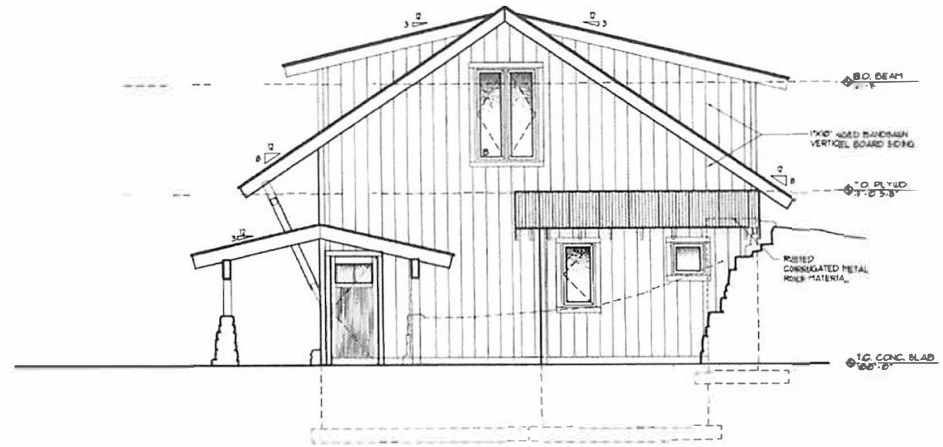


14 NORTH ELEVATION
SCALE: 1/4"=1'-0"

PRELIMINARY
NOT FOR
CONSTRUCT

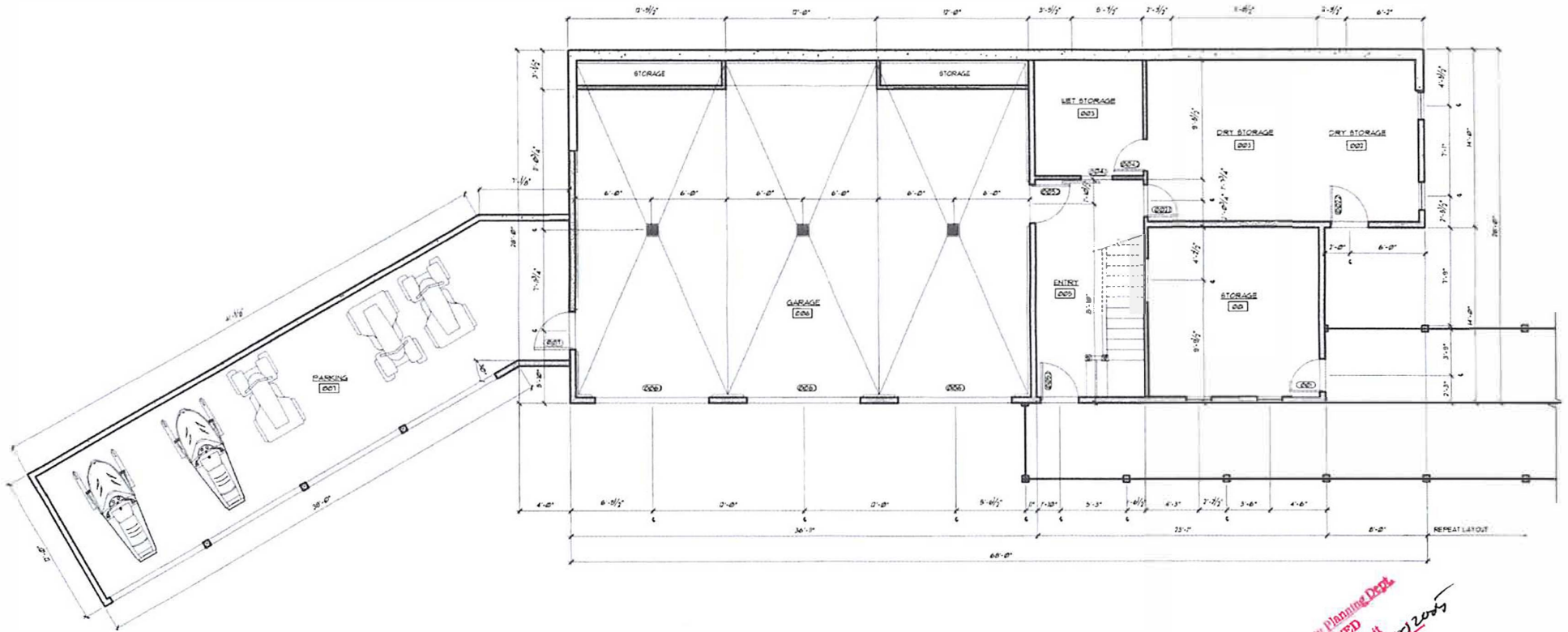


E
EAST ELEVATION
 SCALE: 1/4" = 1'-0"



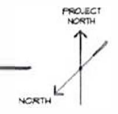
W
WEST ELEVATION
 SCALE: 1/4" = 1'-0"

PRELIMINARY
 NOT FOR
 CONSTRUCTION

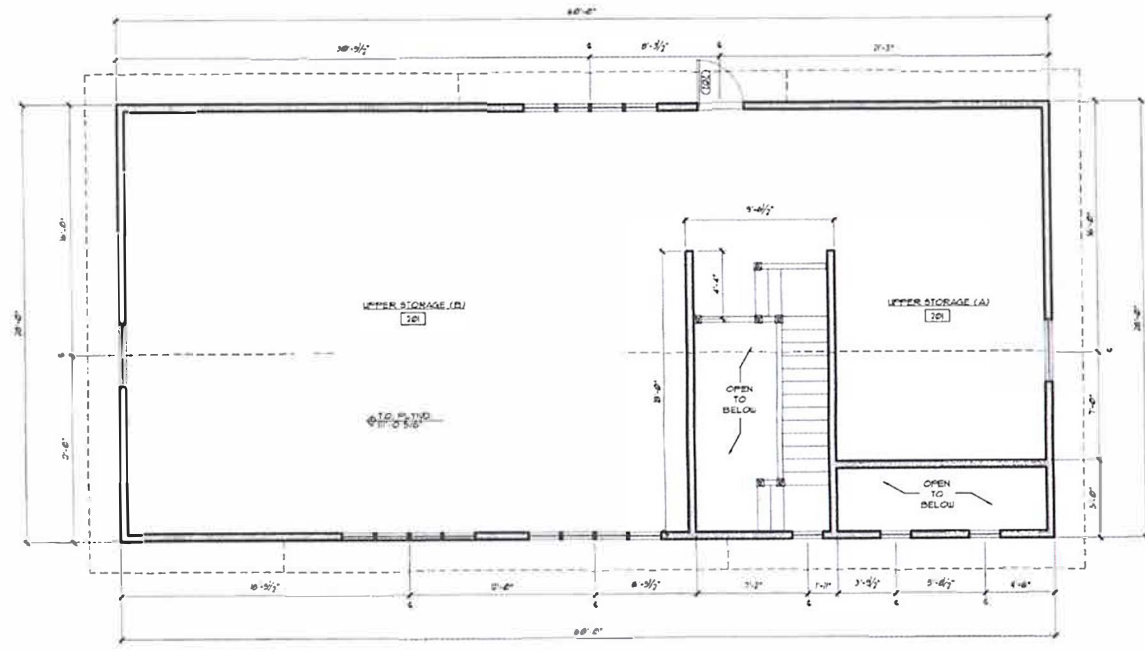


Gallatin County Planning Dept.
 APPROVED
 Land Use Permit
 By *Wendy* 10/22/2005

MAIN FLOOR PLAN
 SCALE: 1/4" = 1'-0"

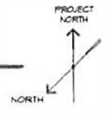


PRELIMINARY
 NOT FOR
 CONSTRUCTION



Ontario County Planning Dept.
 AP# 1007710
 Land Use Permit
 By: *[Signature]* 10/20/05

UPPER FLOOR PLAN
 SCALE: 1/4" = 1'-0"



PRELIMINARY
 NOT FOR
 CONSTRUCTION

1 c. 101

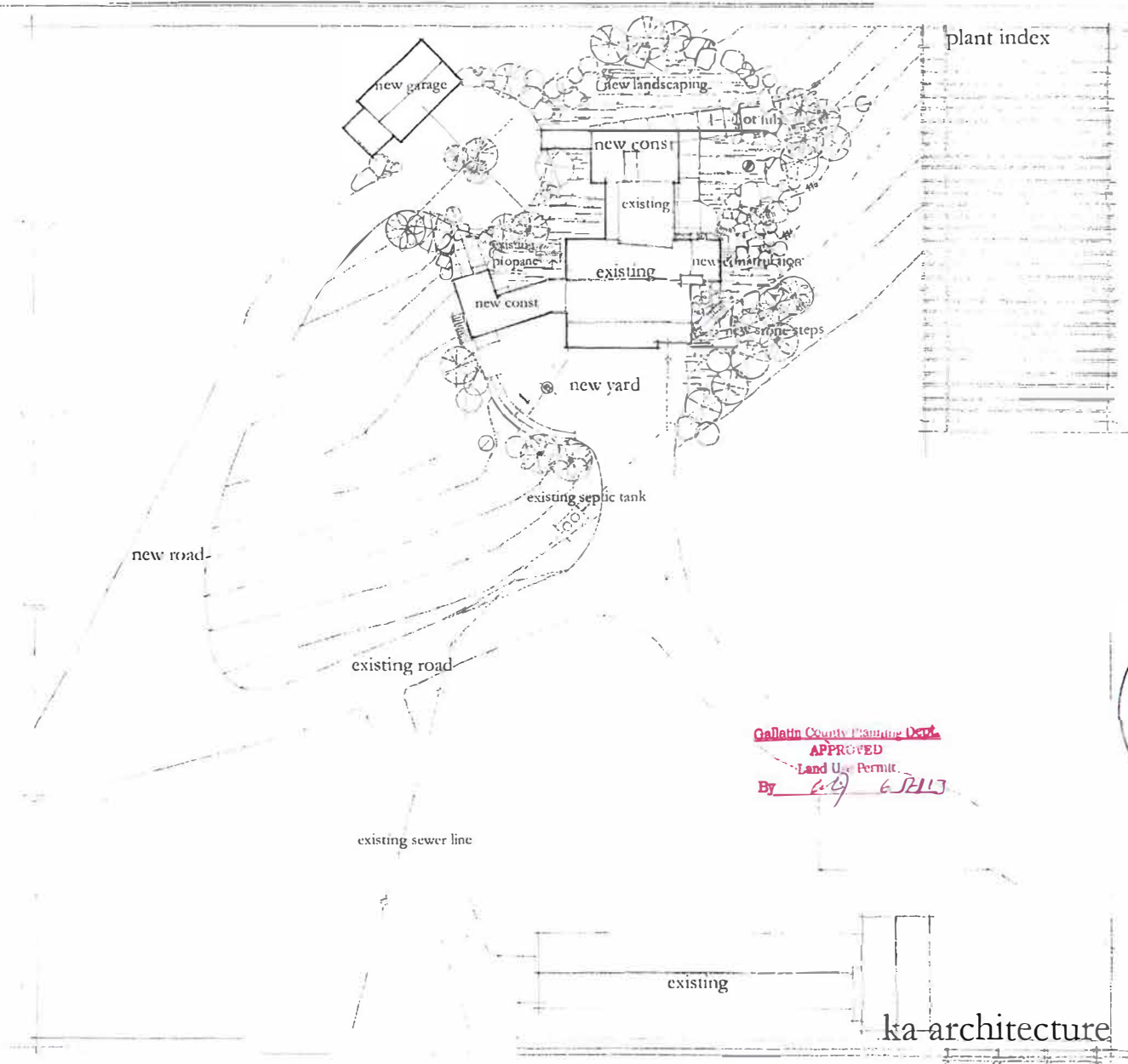
2 detail

3 detail

4 detail

5 c. 101

plant index

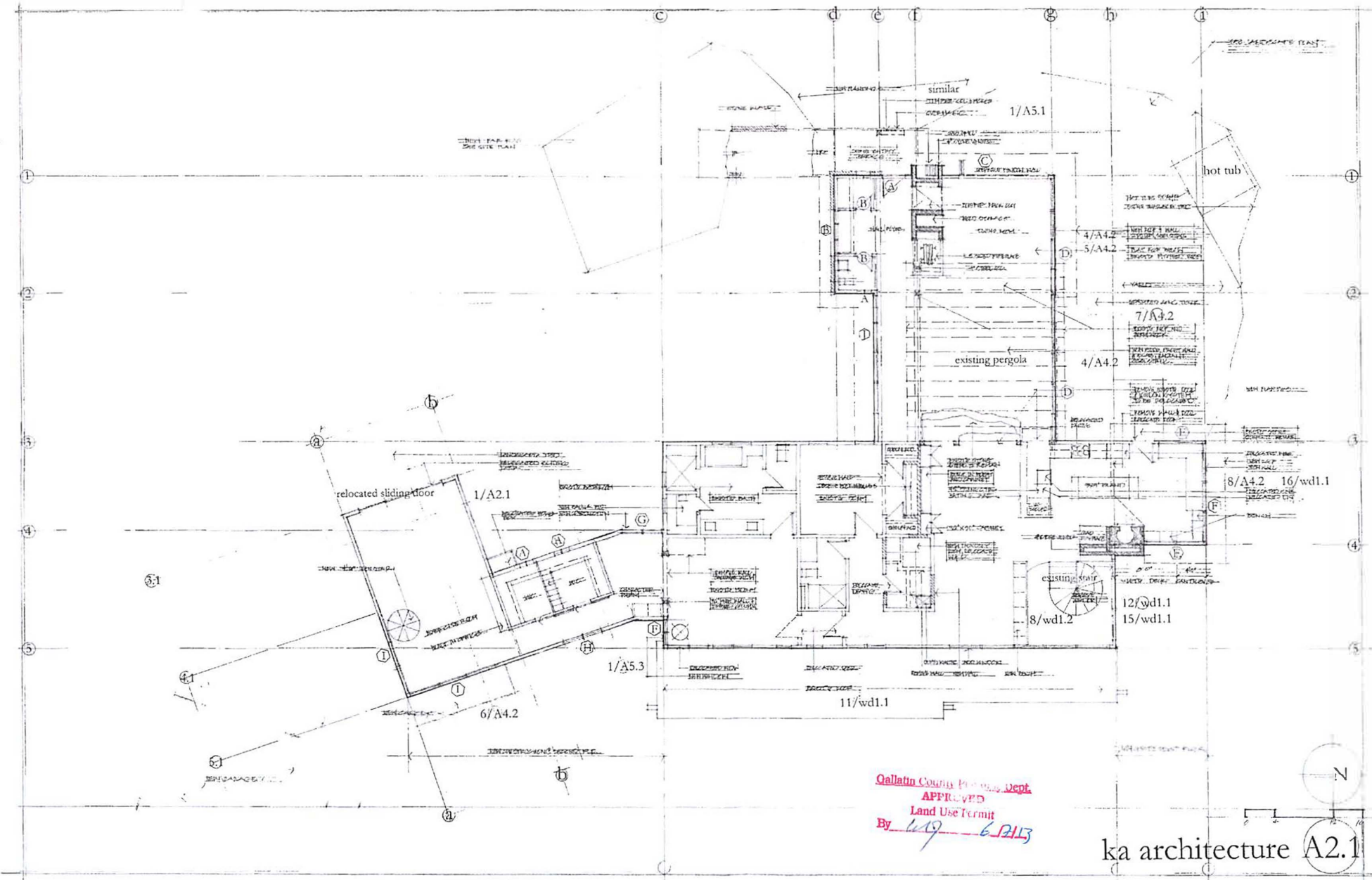


Gallatin County Planning Dept.
APPROVED
 Land Use Permit
 By 6-9 6/21/17



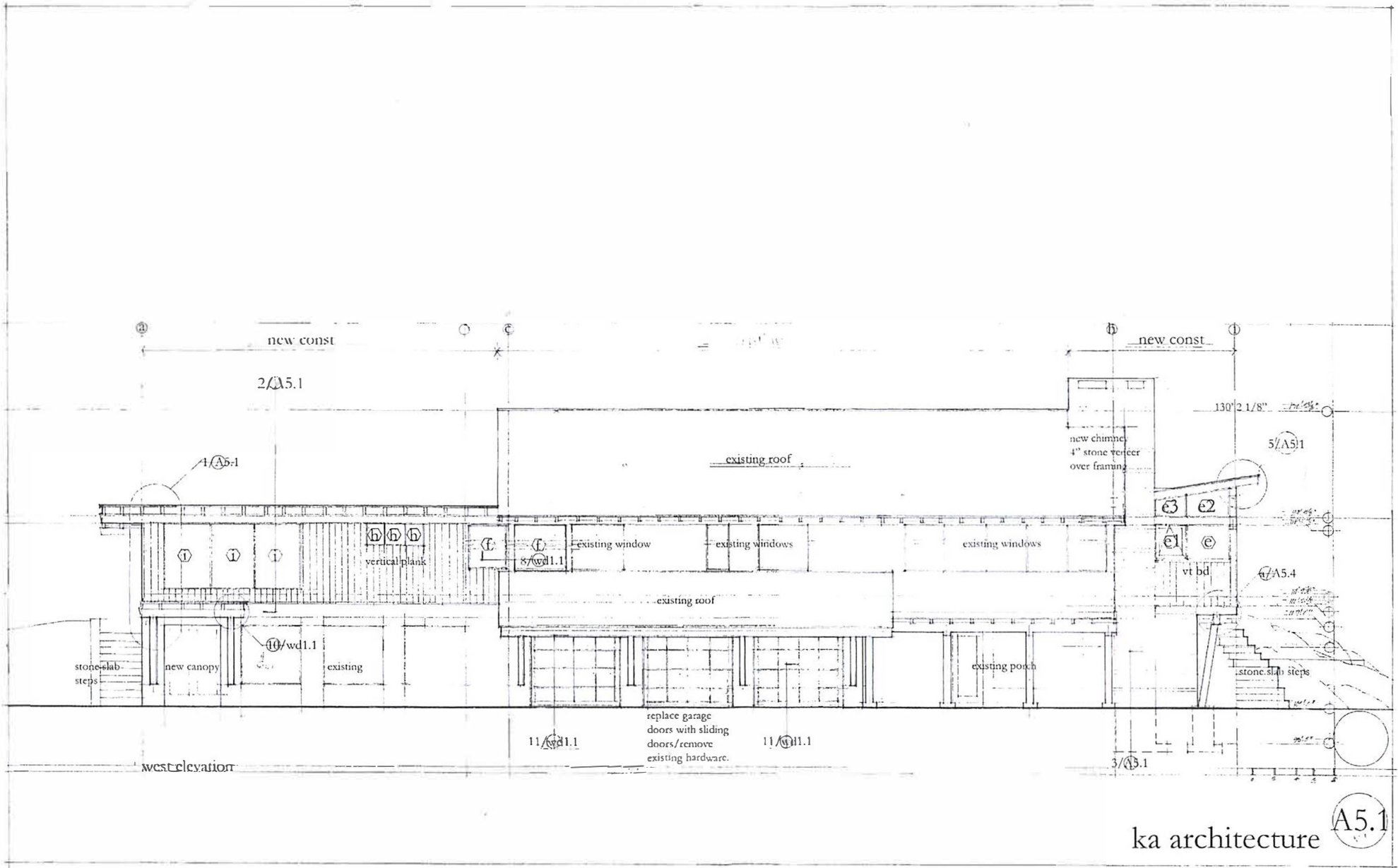
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ka-architecture

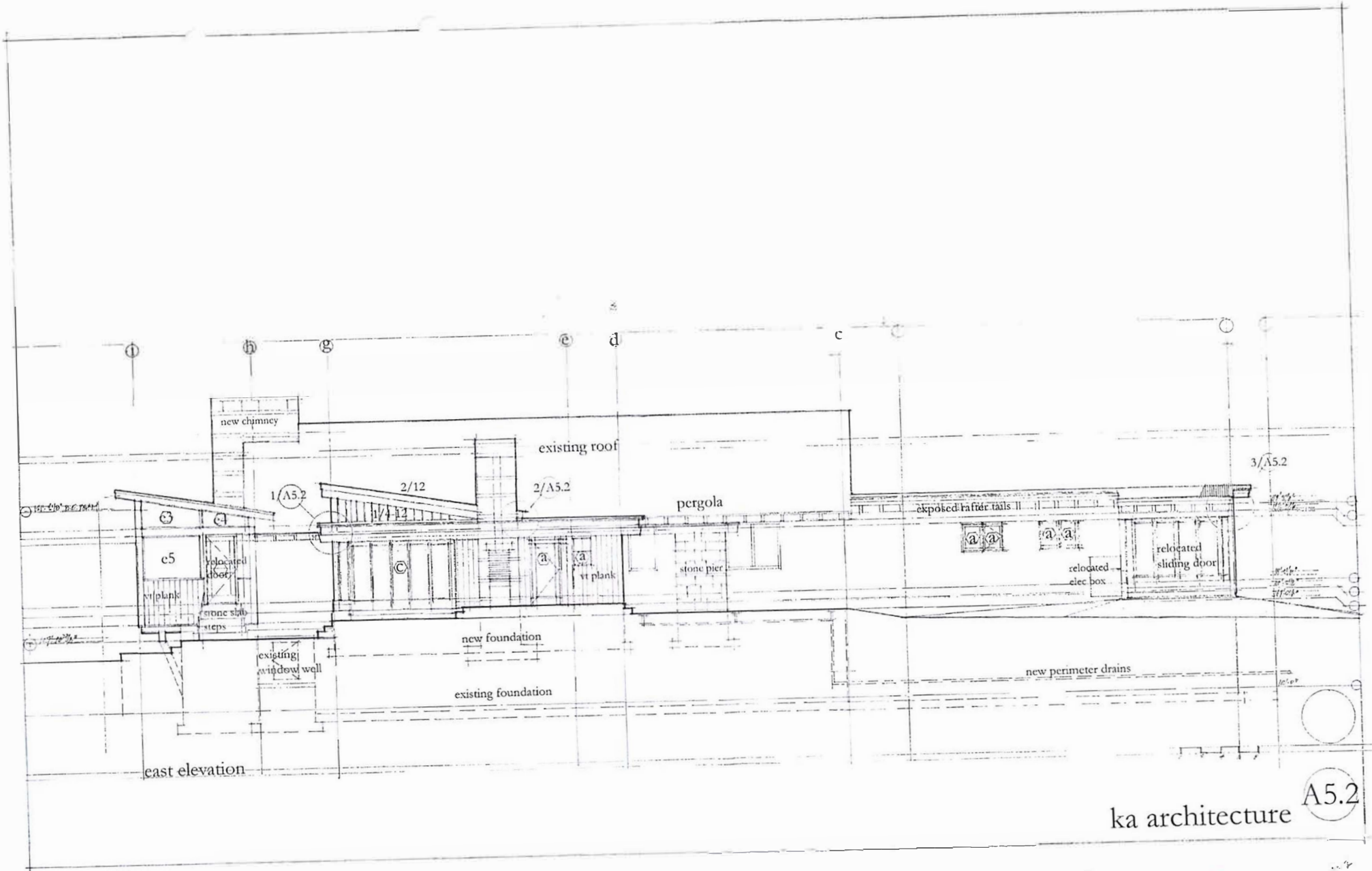


Gallatin County Planning Dept.
APPROVED
 Land Use Permit
 By 6/19 6/21/13

ka architecture A2.1

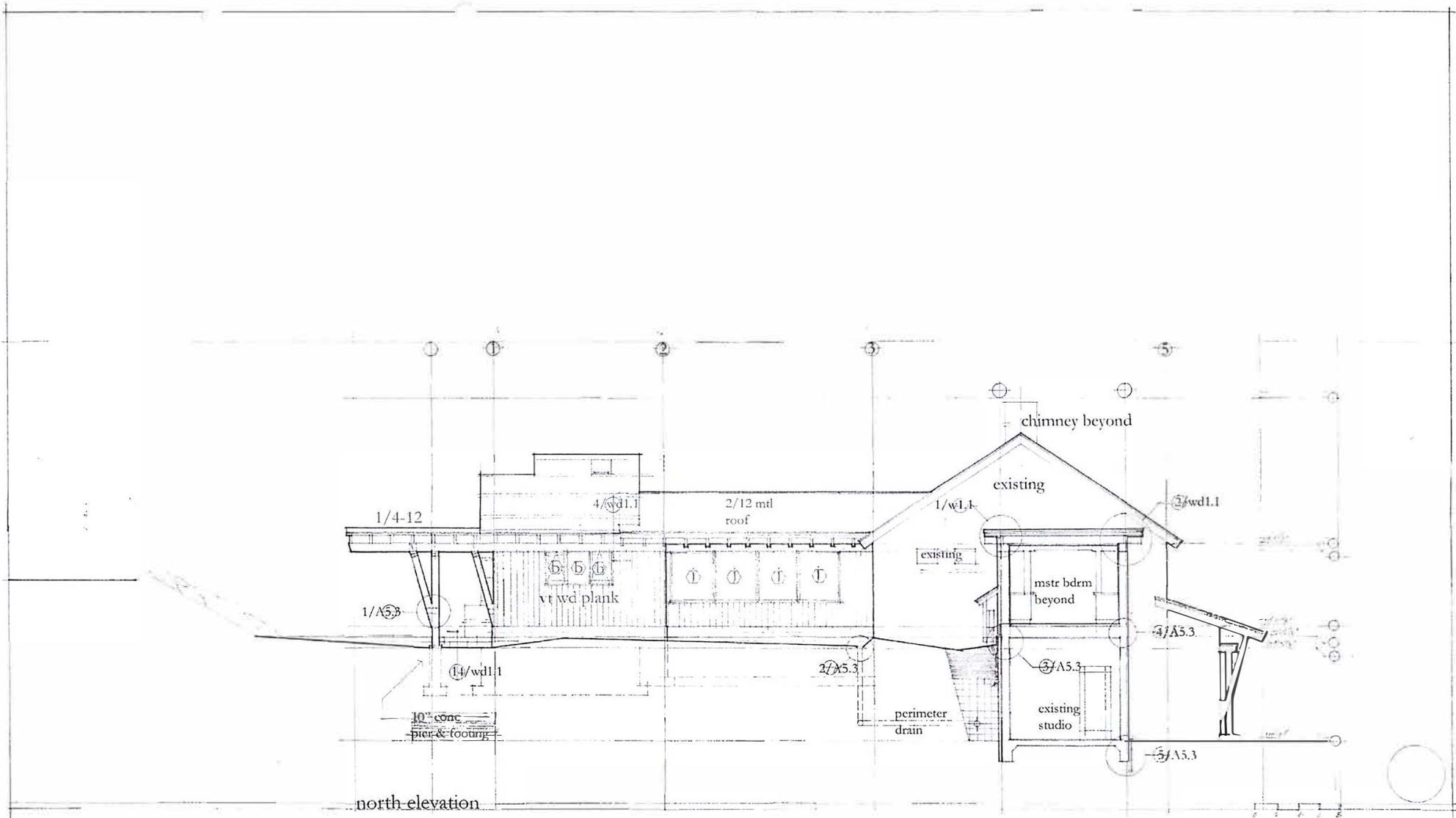


Gallatin County Planning Dept.
 APPROVED
 Land Use Permit
 By: *[Signature]* 6.12.13



ka architecture **A5.2**

04/11/2013
 11:45 AM
 6/14/13



north elevation

A5.3

ka architecture

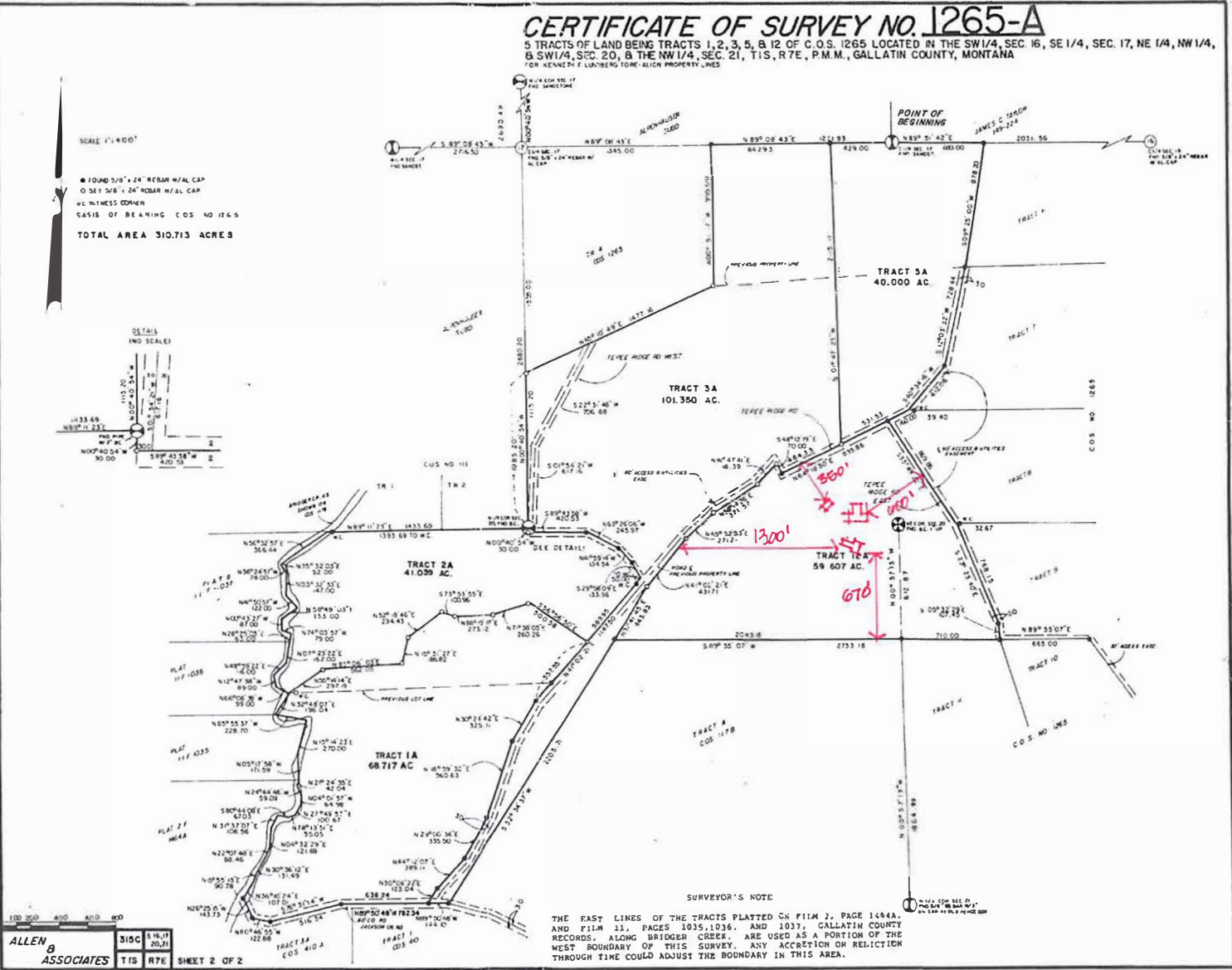
6.1 1/2 2007.11.14
 APPROVED
 Land Use Permit
 1. [Signature] 6.12.13

CERTIFICATE OF SURVEY NO. 1265-A

5 TRACTS OF LAND BEING TRACTS 1, 2, 3, 5, & 12 OF C.O.S. 1265 LOCATED IN THE SW 1/4, SEC. 16, SE 1/4, SEC. 17, NE 1/4, NW 1/4, & SW 1/4, SEC. 20, & THE NW 1/4, SEC. 21, T1S, R7E, P.M.M., GALLATIN COUNTY, MONTANA
FOR KENNETH F. LUNBERG TO ALLEN PROPERTY, INC.

SCALE 1" = 400'

● FOUND 1/8" x 24" REBAR W/AL CAP
○ 3/8" x 1/8" x 24" REBAR W/AL CAP
WC WITNESS CORNER
BASIS OF BEARING C.O.S. NO. 1265
TOTAL AREA 310.713 ACRES



ALLEN & ASSOCIATES
 315C 8140/1 20,211
 T1S R7E SHEET 2 OF 2



206-089
#2125

GALLATIN COUNTY
Land Use Permit Application Form



1. Applicant: SEAN LEWIS

2. Site 157
 Address: 6400 TEPEE RIDGE RD EAST
 Section: 20 Township: T0105 Range: R070E
 Subdivision/COS: 1265A Block: _____ Lot: 12A
 Other legal description: TRACT 12A IN SECS 16, 17, 20, 21, 15, 7E
 DOR# 06 0906 20 1 02 15 0000
 (2) (4) (2) (1) (2) (2) (4)

3. Zoning
 Zoning district: BRIDGER CANYON Zoning designation: AE

4. Structure(s)
 Type and use of proposed structure(s): SINGLE FAMILY RESIDENCE DETACHED GARAGE
 Estimated market value of construction (not including land cost): \$ 850,000
 Total square feet (including garage and any unfinished spaces): 4,246
 Square feet of living space: 1,972 # of dwelling units: 1 # of bedrooms: 3
 Height (as defined in zoning regulation): 26'-6"
 Pitch of main roof: 5/12 Distance from eaves to ridge: 15'-1"
 Type of foundation: CONCRETE Narrowest width of structure: 20'-0"
 Siding: type, color and direction: 1"x10" AGED CIRCULAR SAWN HORIZ/VERTICAL BOARD SIDING (BROWN)
 Is structure manufactured off-site? NO If yes, does it meet current HUD codes? -
 Do you plan to incorporate radon resistant construction features? YES
 Description of other structures on this parcel: N/A

5. Setbacks (including deck/porch)

	<u>Minimum</u> (as required by zoning regulation)	<u>Actual</u> (as shown on site plan and as physically staked)
Front property line	<u>25'</u>	<u>1,858'</u>
Rear property line	<u>25'</u>	<u>427'</u>
Side property line	<u>25'</u>	<u>310'</u>
Side property line	<u>25'</u>	<u>785'</u>
Public road	<u>125'</u>	<u>N/A</u>
Stream high water mark	<u>100'</u>	<u>N/A</u>

6. Lot size and coverage

Lot dimensions: SEE ATTACHED Lot frontage on public road: N/A
Lot area: 257,648.092 sq. ft. Lot area to be covered by structure(s): 4,246 sq. ft. 1.64 %

7. Septic/sewer system (complete one)

- Proposed structure is approved by City-County Environmental Health Department.
Permit number # 14111 ; approved for 8 bedrooms.
- Proposed structure will be connected to the following community sewer system:
N/A

8. Required attachments

- Building elevation plans, 11 X 17 (to scale and/or height measurements labeled).
- Floor plans, 11 X 17 (drawn to scale and/or with outside dimensions labeled).
- Site plan, 11 X 17 (including all existing and proposed structures, decks/porches, driveways, property lines, watercourses and easements (drawn to scale and/or with setback measurements labeled). (For "donut" zoning district, submit 3 copies.)
- Other attachments, septic permit, certification that structure meets current HUD codes, etc., based on district-specific requirements, if applicable.
- Application fee.

9. Preparation for inspection by County Planning Department staff

- All corners of proposed structure are clearly marked.
- All property corners are clearly marked.

Gallatin County Planning Dept.
 APPROVED
 Land Use Permit
 By W. Smith 1/24/05


10. Contact information

Property owner: SEAN LEWIS
 Address: 5064 BRIDGE CREEK, PLANO, TX 75240
 Daytime phone: 972-450-3875 Fax: 972-450-3898

Builder: MICHAEL CASEY, AUTHENTIC MONTANA HOMES
 Address: _____
 Daytime phone: 406-682-7266 Fax: 406-682-5326

Architect: LARRY PEARSON AIA
 Address: 777 EAST MAIN, SUITE 203, BOZEMAN, MT 59715
 Daytime phone: 406-587-1997 Fax: 406-587-0311

Applicant: _____
 Address: _____
 Daytime phone: _____ Fax: _____

—AGREEMENT—

The undersigned hereby certifies that the information submitted in this application is true and correct; and that the proposed work shall be done in accordance with the plans and specifications submitted in this application and in compliance with the requirements of the applicable zoning regulation.

[Signature]
Applicant's signature

03/04/2005
Date

SQUARE FOOTAGE CALCULATIONS

MAIN LEVEL LIVABLE 957 SQ. FT.

LOWER LEVEL LIVABLE 1015 SQ. FT.

BARN 2274 SQ. FT.

TOTAL (LIVABLE) 1972 SQ. FT.

TOTAL 4246 SQ. FT.

ACCESSORY SPACES

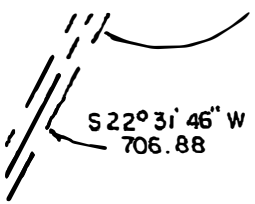
MECHANICAL 103 SQ. FT.

TOTAL (ACCESSORY) 103 SQ. FT.

COVERED PORCHES

MAIN LEVEL 509 SQ. FT.

TOTAL (ACCESSORY) 509 SQ. FT.

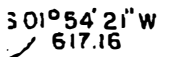


TRACT 3A
101.350 AC.

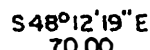
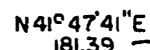
TEPEE RIDGE RD

N C

C O S
N O
P E R



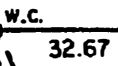
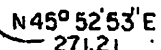
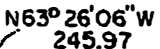
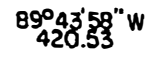
60' ACCESS & UTILITIES EASE



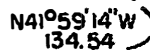
TEPEE RIDGE RD. EAST

60' ACCESS & UTILITIES EASEMENT

TRACT 8



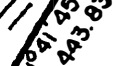
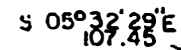
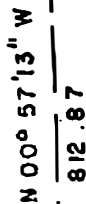
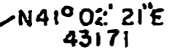
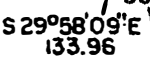
DETAIL!



ROAD & PREVIOUS PROPERTY LINE

TRACT 12A
59.607 AC.

TRACT 9



2043.18

S 89° 55' 07\"/>

2753.18

710.00

N 89° 55' 07\"/>

665.00

TRACT 11

TRACT 10

TRACT A
COS 1178

C.O.S. NO. 1265

LOT DIMENSIONS

ON-SITE WASTEWATER TREATMENT SYSTEM APPLICATION & PERMIT TO CONSTRUCT

Gallatin County Health Department, Environmental Health Services
311 West Main, Bozeman, MT 59715 (406) 582-3120

Please see important information on the back.

PRINT/TYPE in black or blue ink. Please press firmly. See fee schedule.

Purpose of Application: New Upgrade/Expansion _____ Replacement _____ Failed Yes No (old permit # _____)
(Check all that apply) Individual/Shared _____ Multiple-User(3-14 connections) _____ Public _____ Commercial _____

Current Property Owner: SEAN LEWIS Phone: _____
Mailing Address: _____
City/Zip: _____

Applicant/Authorized Agent: _____ Phone: 725-0590
Mailing Address: 2150 Alexander Dr.
City/Zip: Bozeman MT 59718

Address of Site: 6400 Terrace Ridge Rd East Certificate of Survey No.: 1265 A
[An Authorized Road Address may be obtained by contacting the Gallatin County GIS Department at (406) 582-3049]

Subdivision: _____ Approval Date (mm/yyyy): _____

Lot/Tract/Parcel: 12A Block _____ Section 20 Township 15 Range 7E Size of Parcel: 59.6 acres

Type of Structure(s) proposed: Single Family Dwelling Other _____ (please describe) _____

Unfinished Basement: Yes or No Total # of Bedrooms Proposed (+1 for unfinished basement): _____
(An unfinished basement must be considered as an additional bedroom.) OR gpd to be produced: 800

Please refer to the Certificate of Subdivision Approval, data from the site evaluation, and/or public WWTS approval to complete the following. Be sure to mark all spaces. Site evaluation data must be submitted with this application (if applicable).

Is the Certificate of Subdivision Approval Statement recorded in Clerk & Recorders? Yes No EQ #: _____

Confirmation # 2005140.01 Public WWTS: MDEQ Approval Yes No EQ #: _____

Water Supply: Individual Well 308736 Public System _____ Multi-User System _____

Type of Wastewater Treatment System Required: indoor drain, gravelless absorption trench

Number & type of structures allowed: 3 - 1 1/2 bath w/ garage 1 bedroom

Amount of drainfield required per bedroom: _____ ft² or application rate: .3 gallons/ft²/day

Are there any other requirements? (monitoring, trench depth, etc.): ✓ If yes, please specify: _____

I (We) hereby certify under penalty of perjury that I (we) am the legal owner(s) of the above real property or an authorized agent thereof and that the information above is true, complete, accurate and correct to the best of my (our) knowledge. I (We) further certify that the wastewater treatment system will be installed according to state and local regulations for Wastewater Treatment Systems and any permit conditions.

I have read the information on the back of this application. _____ (Initial)

Date: _____ Signature: _____

The following section is to be completed by the Health Department only.

PERMIT TO CONSTRUCT

A permit to construct is valid for 24 months (unless otherwise noted). The system must be installed and an inspection scheduled with GCCHD.

Type of System Required Standard Pressure Distribution Type: STD

Minimum Requirements (based on # of bedrooms/GPD proposed): Dist: PD

Septic Tank: 1 x 1500 gallons: Type: Concrete

Pump Tank/Chamber: 1000 gallons Maximum Trench Depth 36"

Absorption Area (Square Feet): Gravel & Pipe 2667 Gravelless 2136 1" P.D.

CERTIFICATION AND AS-BUILT OF INSTALLED SYSTEM WILL BE REQUIRED FOR FINAL APPROVAL

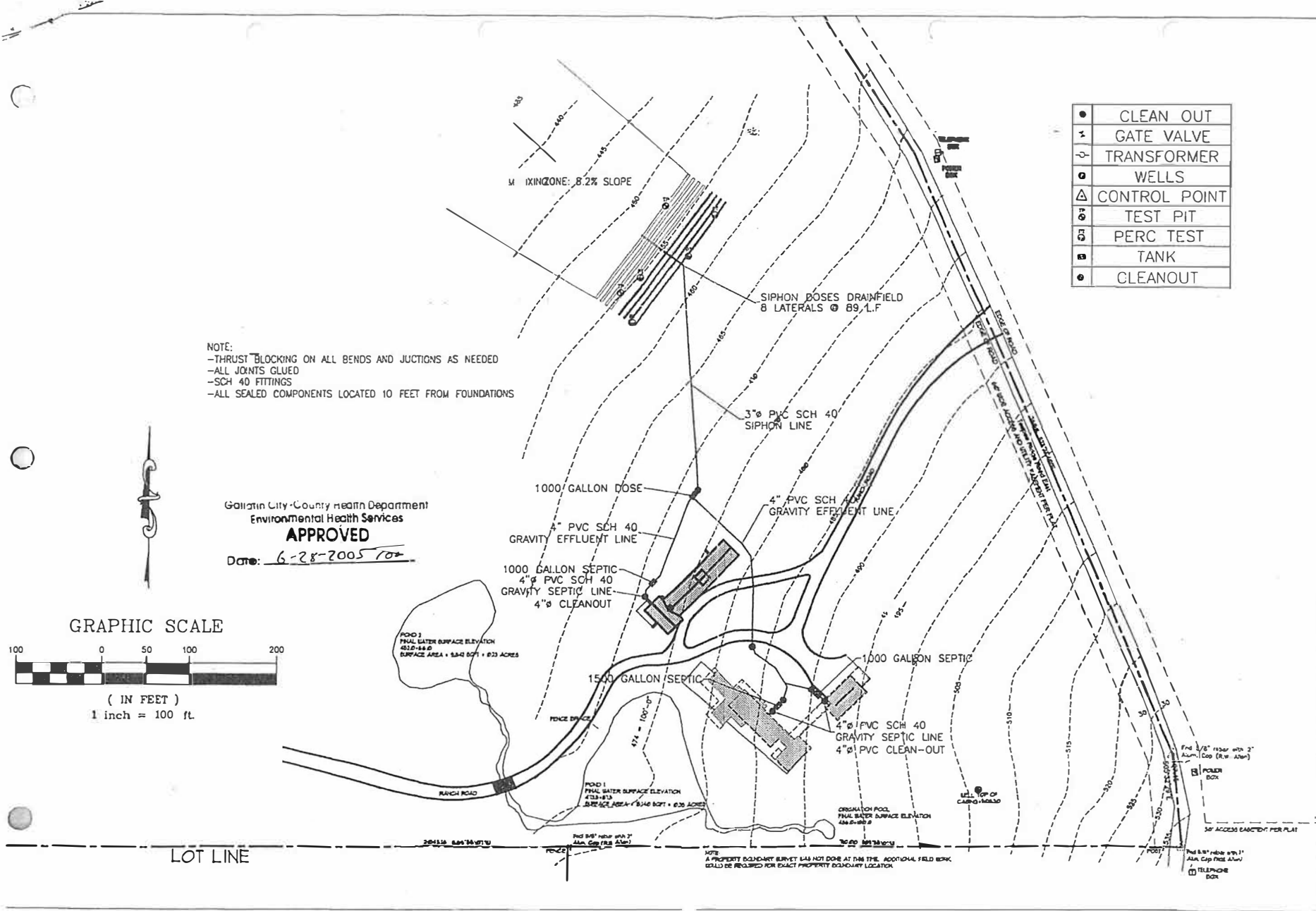
Certification required by: Professional Engineer Registered Site Evaluator Installer

Contact engineering firm to certify siphon when installing along with GCCHD

Install per approved plans maintaining all setbacks. Drainfield configuration changes require pre-approval by system designer and GCCHD. • Effluent Filter Screen Required • Sanitary Well Seal Required

Permit Number 14111 Approved by: Thomas C Moore ES Date Issued: 6-28-2005 Date Expires: 6-28-2007

Please submit all three copies to GCCHD for review White - Office Copy Yellow - Property Owner's Copy Pink - Applicant's Copy



●	CLEAN OUT
⊥	GATE VALVE
⊖	TRANSFORMER
○	WELLS
△	CONTROL POINT
⊙	TEST PIT
⊕	PERC TEST
⊞	TANK
⊚	CLEANOUT

NOTE:
 -THRUST BLOCKING ON ALL BENDS AND JUNCTIONS AS NEEDED
 -ALL JOINTS GLUED
 -SCH 40 FITTINGS
 -ALL SEALED COMPONENTS LOCATED 10 FEET FROM FOUNDATIONS

Gallatin City-County Health Department
 Environmental Health Services
APPROVED

Date: 6-28-2005

GRAPHIC SCALE



(IN FEET)
 1 inch = 100 ft.

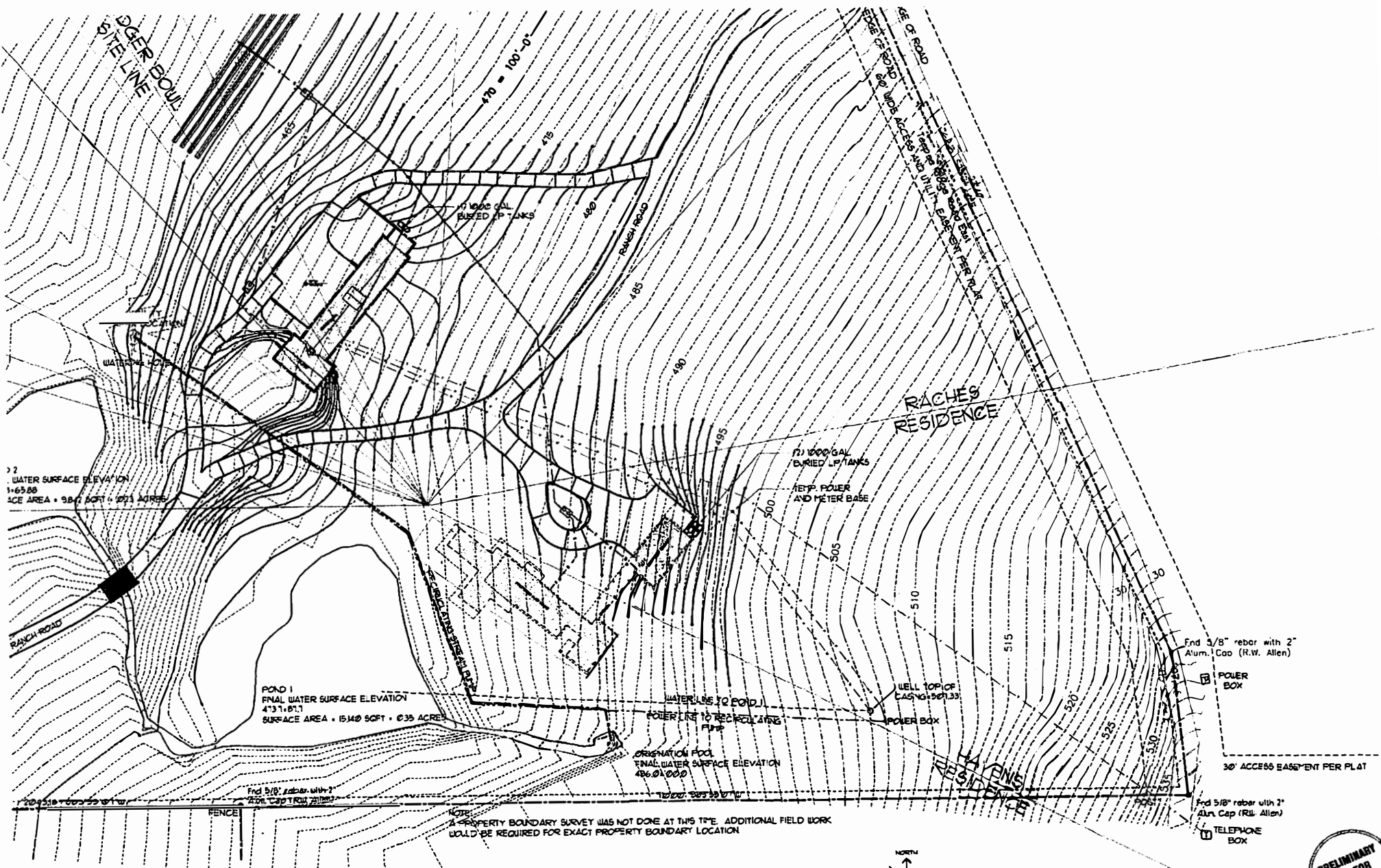
DATE: 10/08/04
 REVISION: DATE:
 WARNING
 IF THIS BAR DOES NOT MEASURE 1/2" THEN DRAWING IS NOT TO SCALE

LAUREY PEARSON AIA
 ARCHITECT
 1000 1/2 STREET, SUITE 100
 BOZEMAN, MONTANA 59717
 (406) 552-1100

BEI
 BRIDGEMAN ENGINEERS, INC.
 1000 1/2 STREET, SUITE 100
 BOZEMAN, MONTANA 59717
 (406) 552-1100

LEWIS PROJECT
 SITE TOPO
 LOT 2 RESERVE RIG EAST, GALLATIN COUNTY

DATE: 10/08/04
 REVISION: DATE:
 SHEET NO.

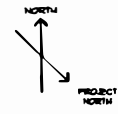


2
 WATER SURFACE ELEVATION
 1+69.88
 ACE AREA = 98,780 SQ FT = 2.25 ACRES

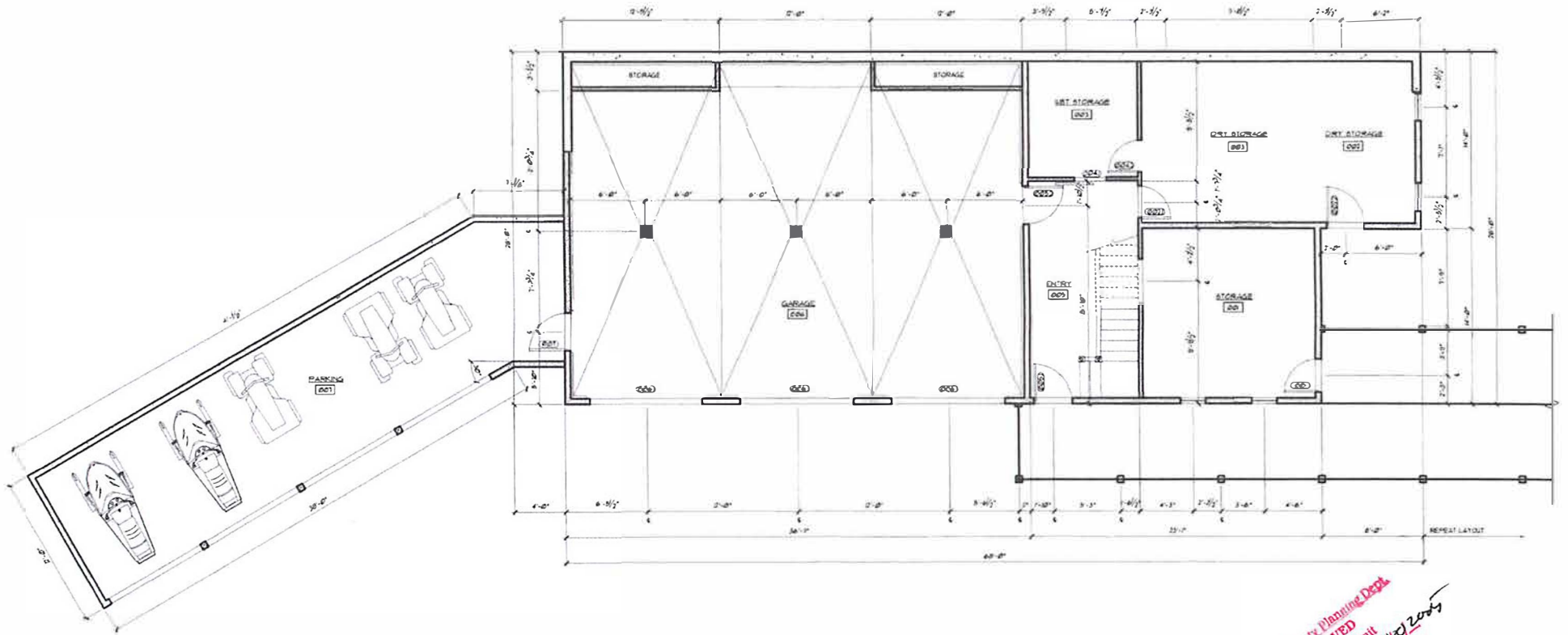
POND 1
 FINAL WATER SURFACE ELEVATION
 4131.011
 SURFACE AREA = 98,780 SQ FT = 2.25 ACRES

RECREATION POOL
 FINAL WATER SURFACE ELEVATION
 486.01000

ENLARGED SITE PLAN
 SCALE: 1/8" = 1'-0"



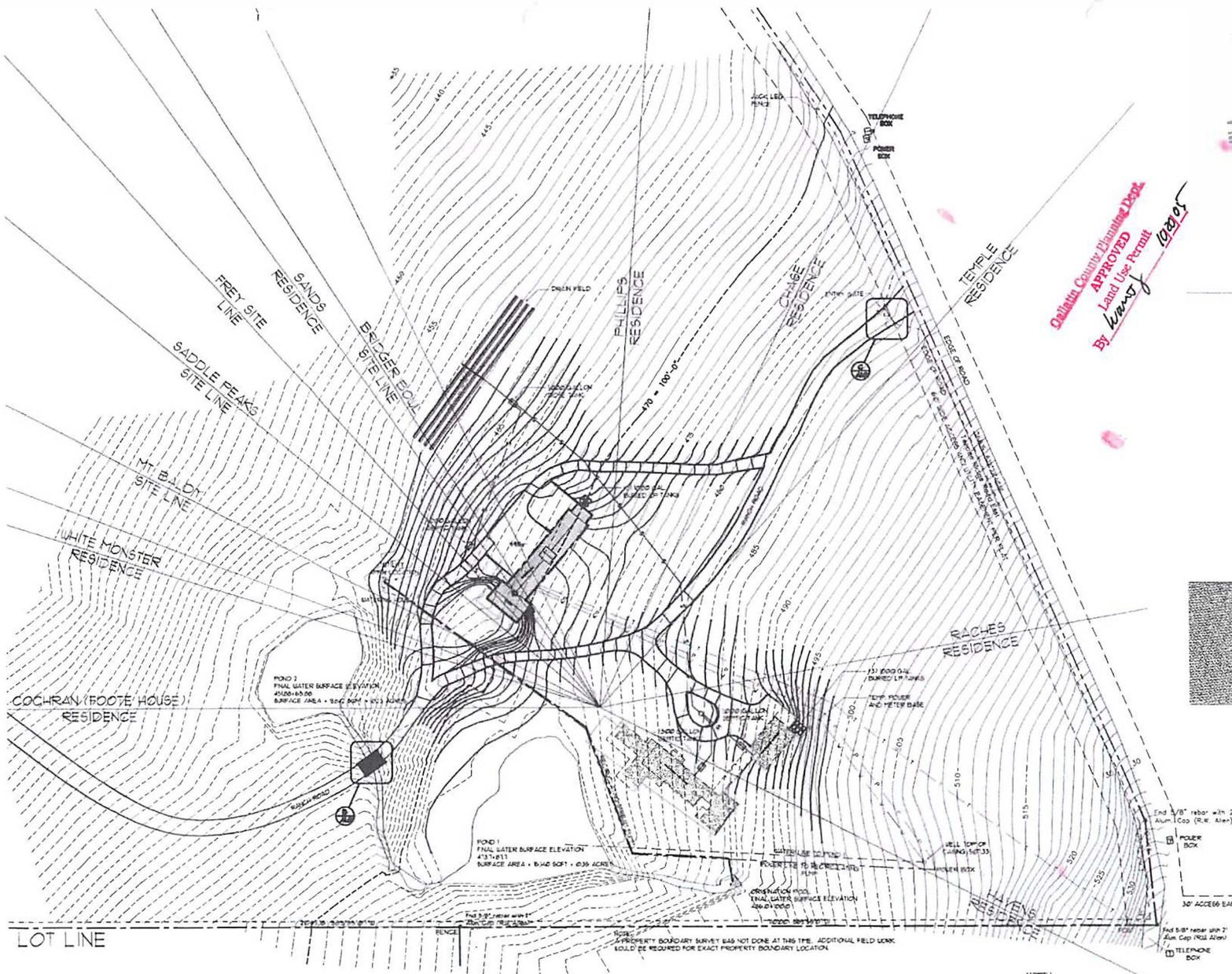
PRELIMINARY
 NOT FOR
 CONSTRUCTION



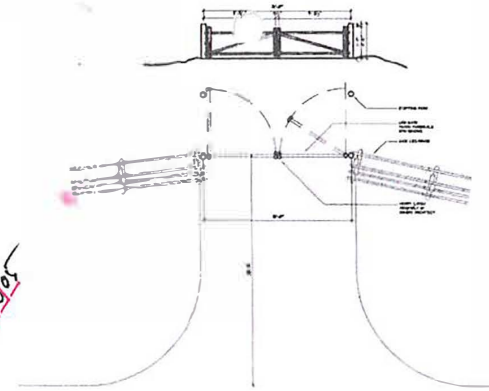
Galinda County Planning Dept.
 APPROVED
 Land Use Permit
 By *Wentz* 10/22/2005

MAIN FLOOR PLAN
 SCALE: 1/4" = 1'-0"

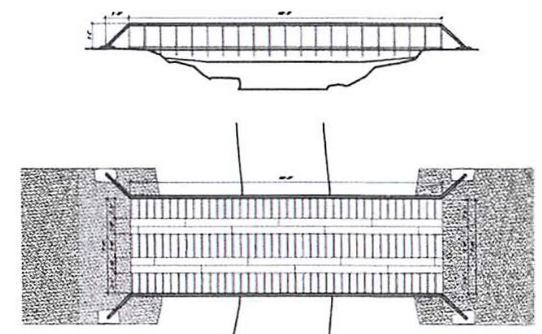
PRELIMINARY
 NOT FOR
 CONSTRUCTION



Dakota County Drainage Dept
APPROVED
 Land Use Permit
 By *Kenny* 10/20/05

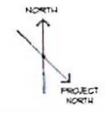


UPPER GATE DETAIL
 SCALE: 1/8" = 1'-0"

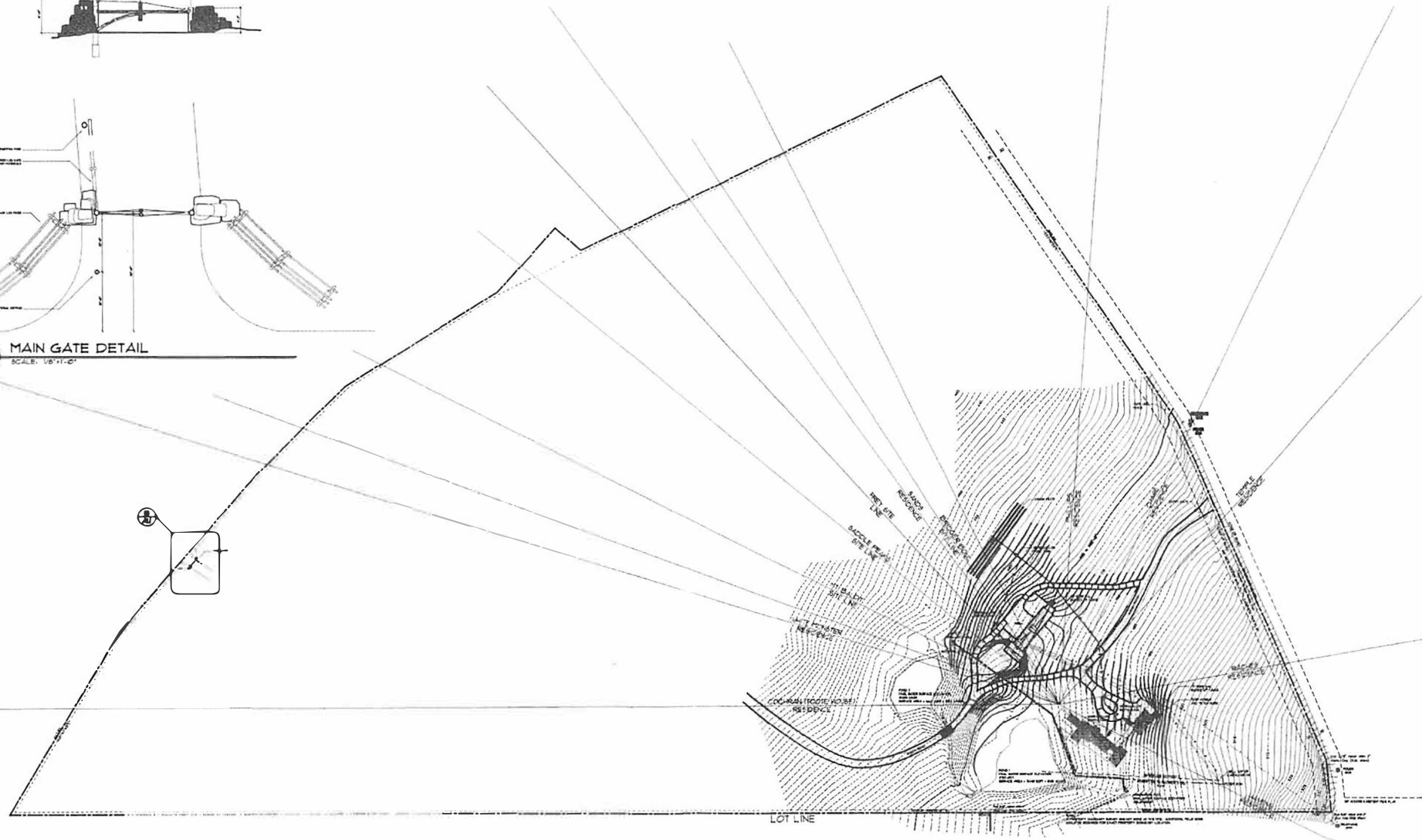
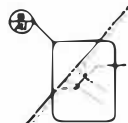
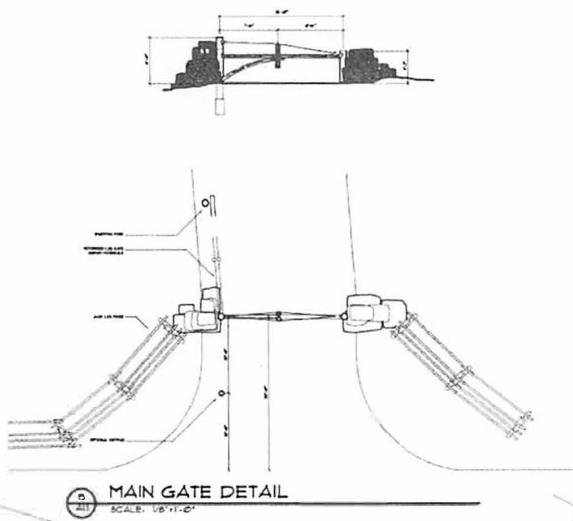


BRIDGE DETAIL
 SCALE: 1/8" = 1'-0"

OVERALL SITE PLAN
 SCALE: 1" = 50'



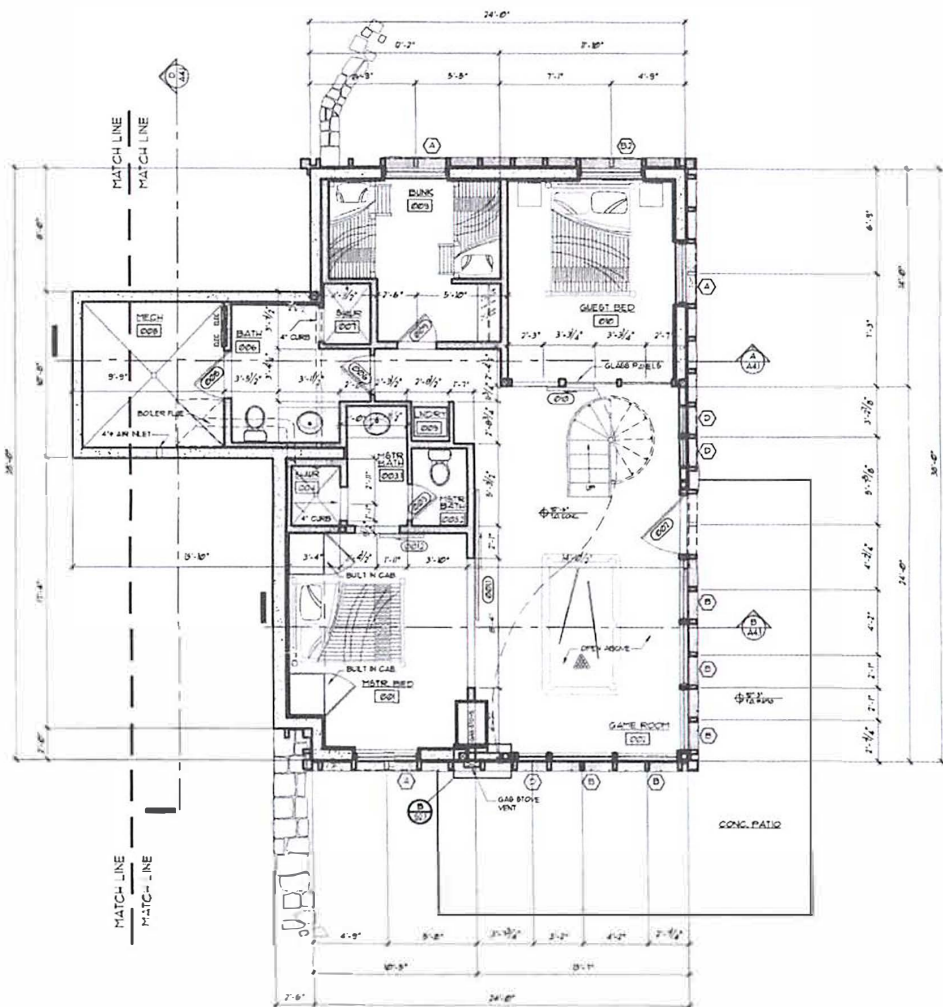
PRELIMINARY
 NOT FOR
 CONSTRUCTION



SITE PLAN EXTENTS
SCALE: 1" = 100'



PRELIMINARY
NOT FOR
CONSTRUCTION



SQUARE FOOTAGE CALCULATIONS	
MAIN LEVEL LIVABLE	151 SQ. FT.
LOWER LEVEL LIVABLE	109 SQ. FT.
SHED	274 SQ. FT.
TOTAL LIVABLE	534 SQ. FT.
TOTAL	436 SQ. FT.

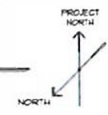
ACCESSORY SPACES	
MECHANICAL	103 SQ. FT.
TOTAL ACCESSORY	103 SQ. FT.

COVERED PORCHES	
MAIN LEVEL	508 SQ. FT.
TOTAL ACCESSORY	508 SQ. FT.

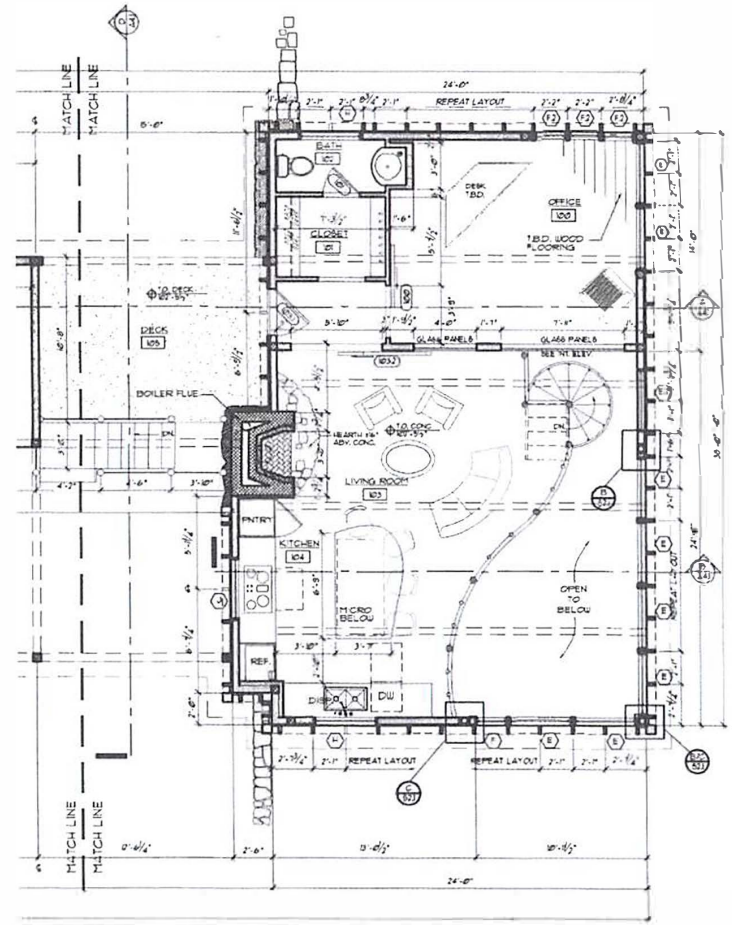


Callahan County Planning Dept.
APPROVED
 Land Use Permit
 By *Kenny* 10/19/21

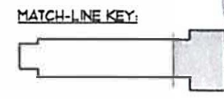
LOWER FLOOR PLAN (LIVING)
 SCALE: 1/4" = 1'-0"



PREP: HARRY
 '21 OR
 CF: ST. JCTON

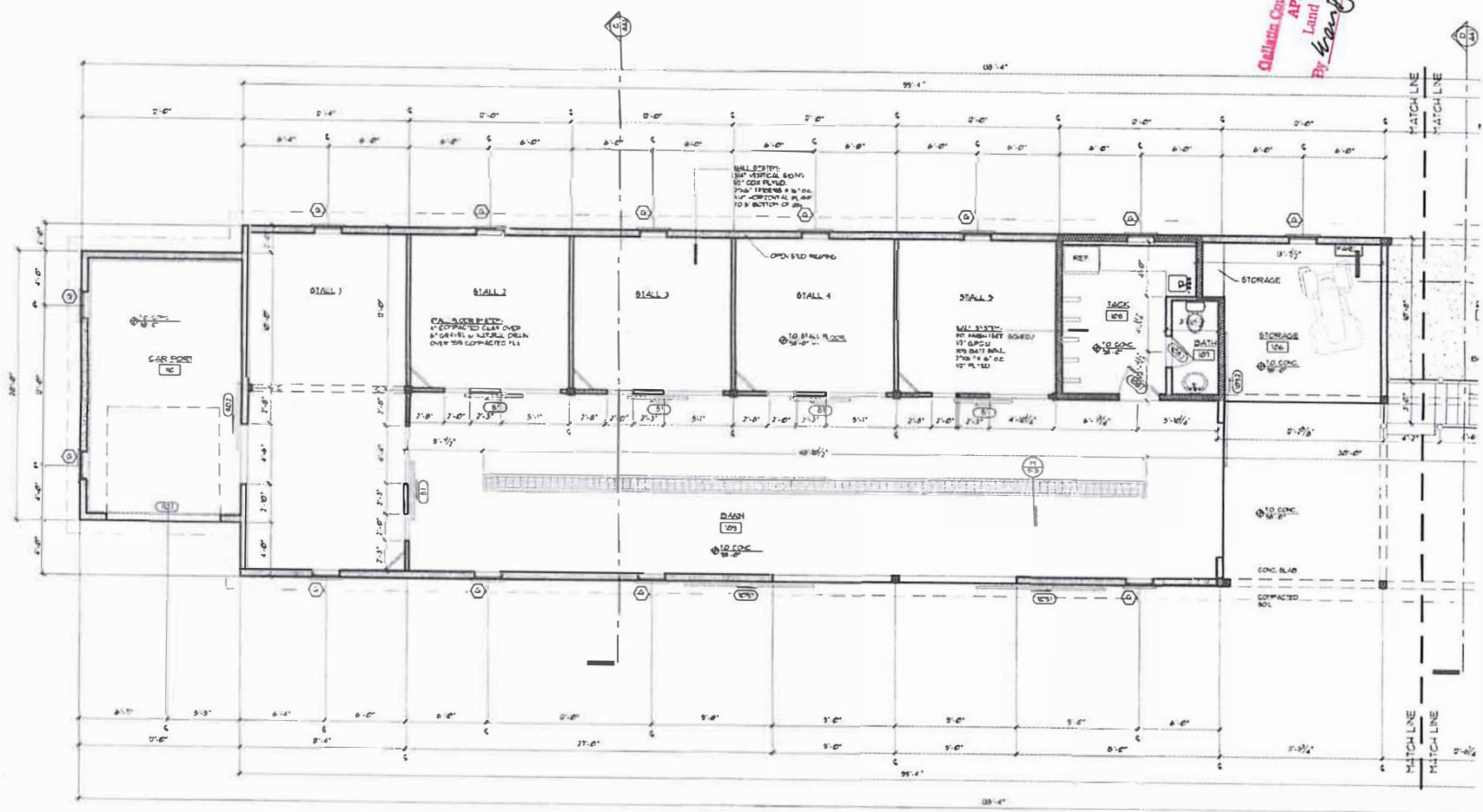


Galatin County Planning Dept.
 APPROVED
 Land Use Permit
 By *J. R. R. R.*

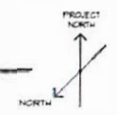


PRELIMINARY
 NOT FOR
 CONSTRUCTION

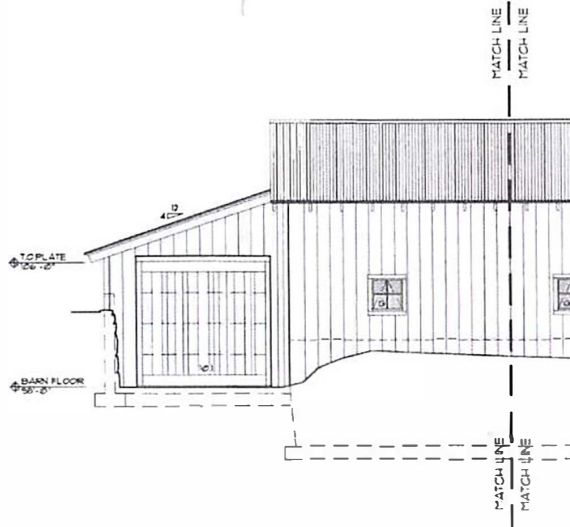
Galatin County Planning Dept.
 APPROVED
 Land Use Permit
 By *[Signature]* 10/29/05



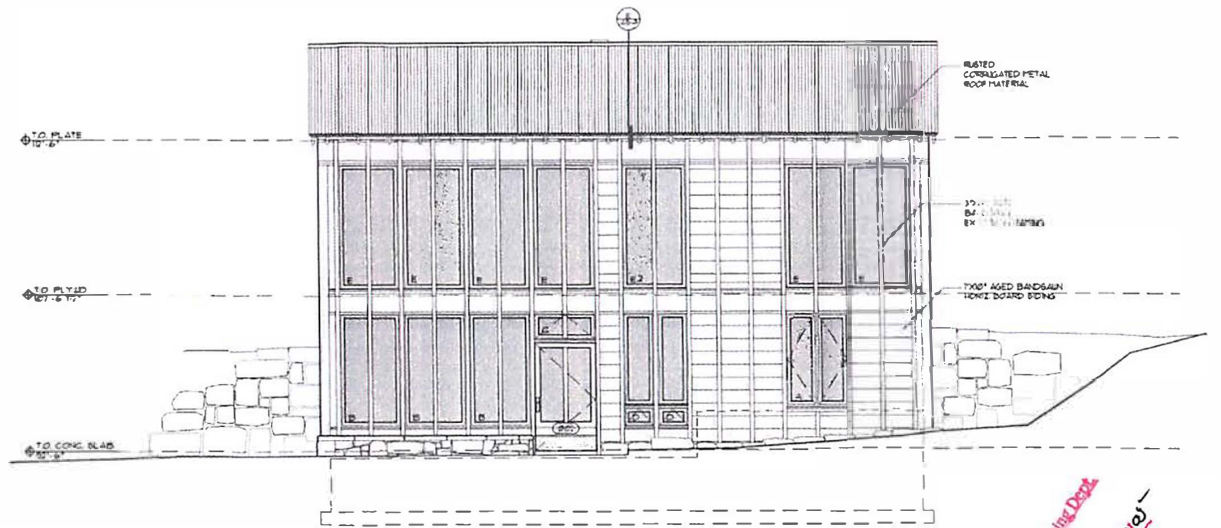
MAIN FLOOR PLAN (BARN)
 SCALE: 1/4" = 1'-0"



PRELIMINARY
 NOT FOR
 CONSTRUCTION

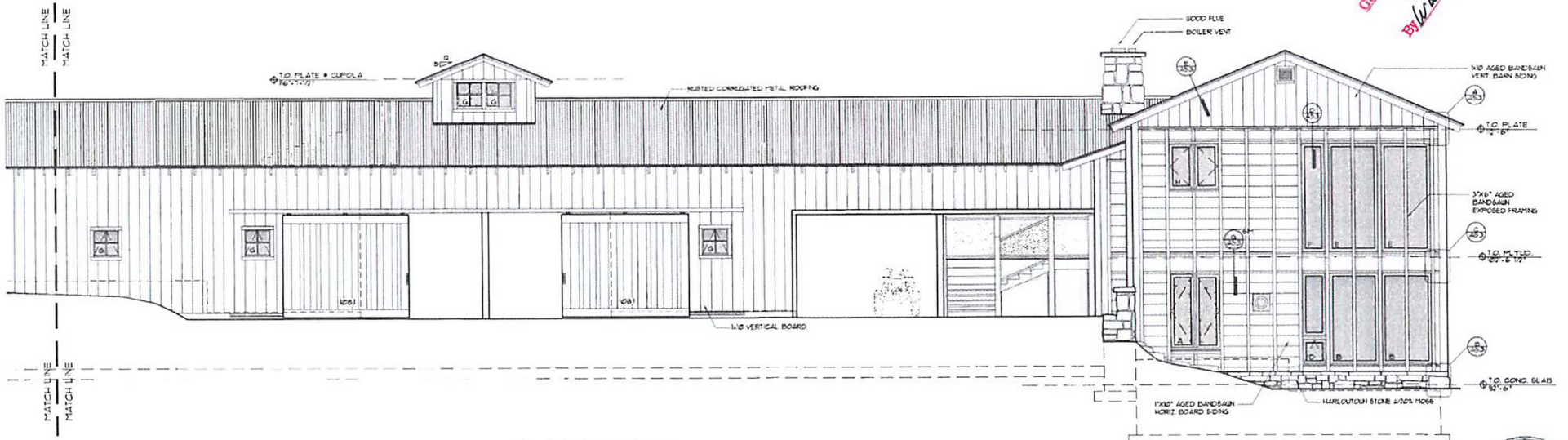


WEST ELEVATION
SCALE: 1/4"=1'-0"



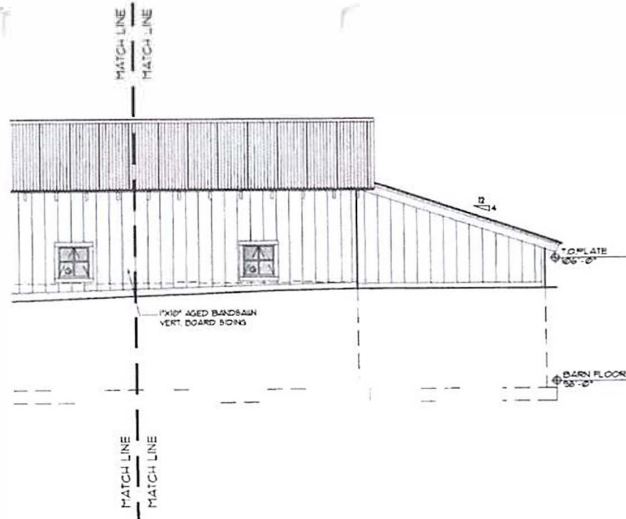
SOUTH ELEVATION
SCALE: 1/4"=1'-0"

Callaghan County Planning Dept.
APPROVED
Land Use Permit
By [Signature] 11/20/20

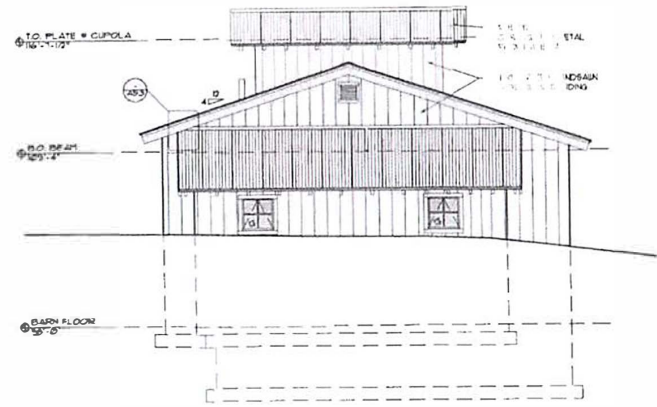


WEST ELEVATION
SCALE: 1/4"=1'-0"

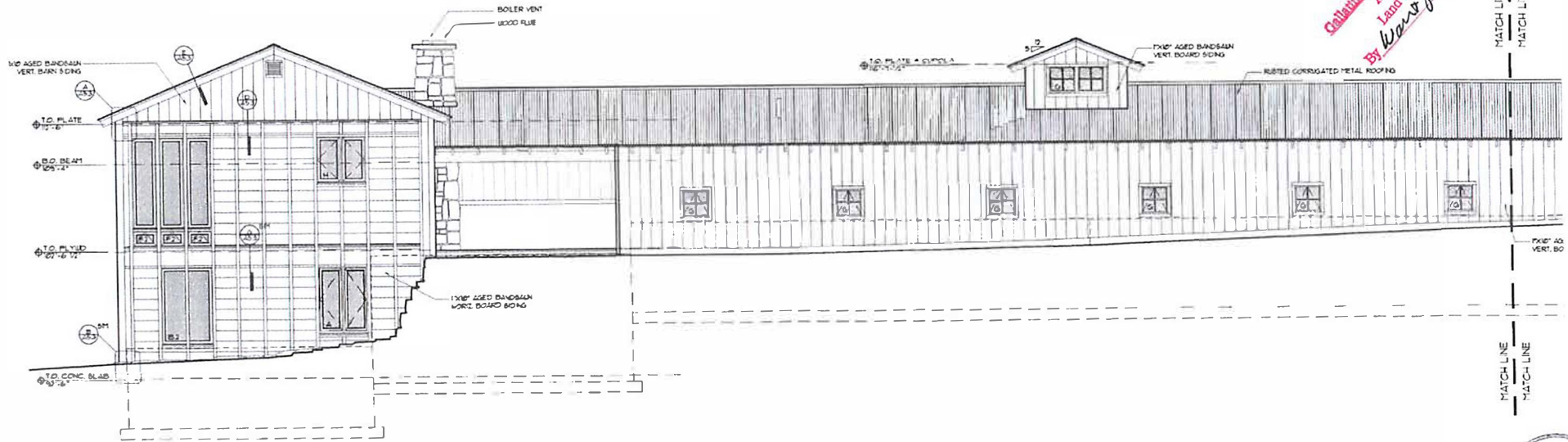
**PRELIMINARY
NOT FOR
CONSTRUCTION**



NORTH ELEVATION
SCALE: 1/4"=1'-0"



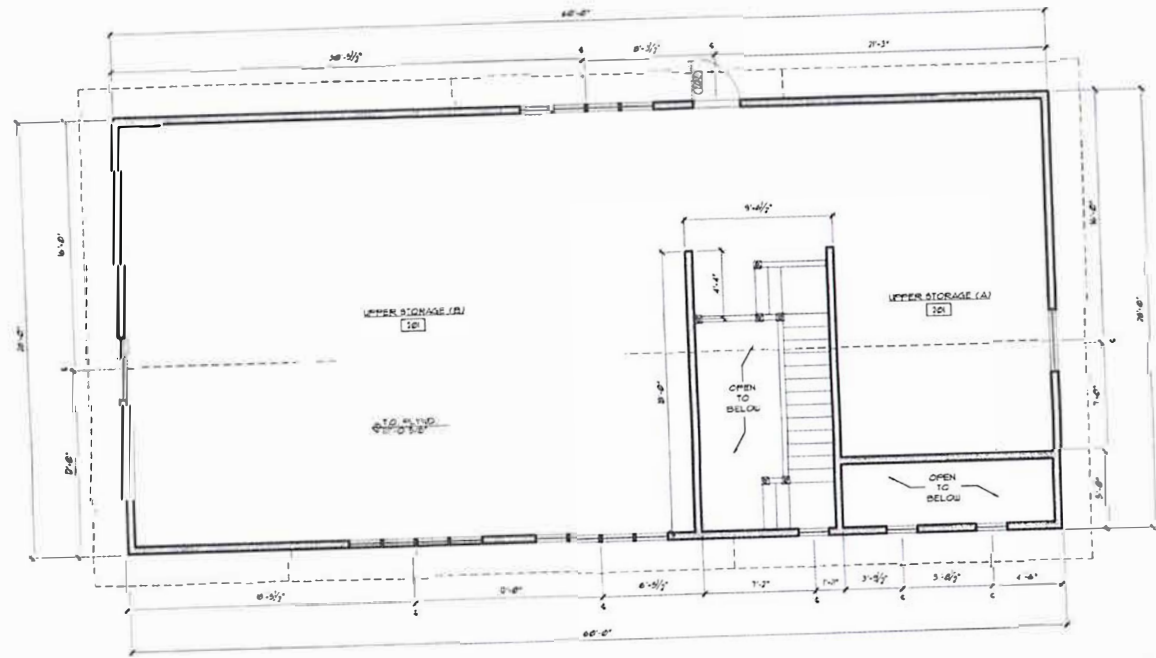
EAST ELEVATION
SCALE: 1/4"=1'-0"



NORTH ELEVATION
SCALE: 1/4"=1'-0"

Coliata County Planning Dept
APPROVED
Land Use Permit
By *Ward* 10/20/05

**PRELIMINARY
NOT FOR
CONSTRUCT**



Galatin County Planning Dept.
 AP# 2007-10
 Land Use Permit
 By *Wandy* 10/20/05



 UPPER FLOOR PLAN
 SCALE: 1/4" = 1'-0"

PRELIMINARY
 NOT FOR
 CONSTRUCTION



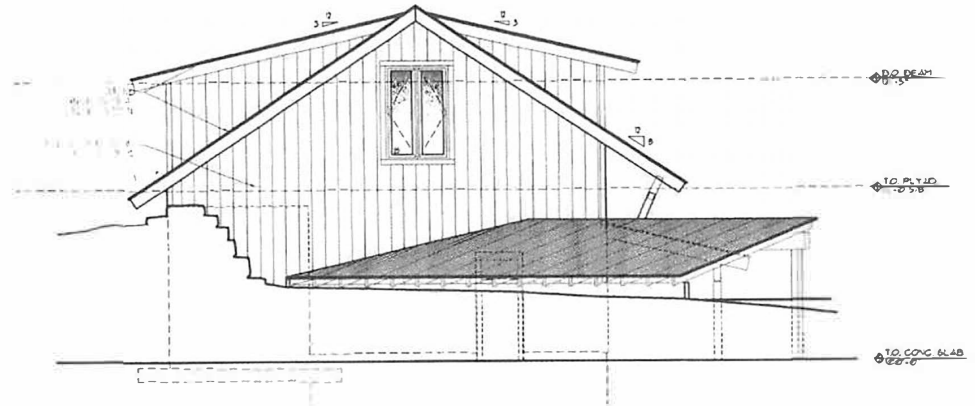
3 SOUTH ELEVATION
SCALE: 1/4"=1'-0"

Gallatin County Planning Dept.
APPROVED
Land Use Permit
By *K. W. J.* 10/29/05

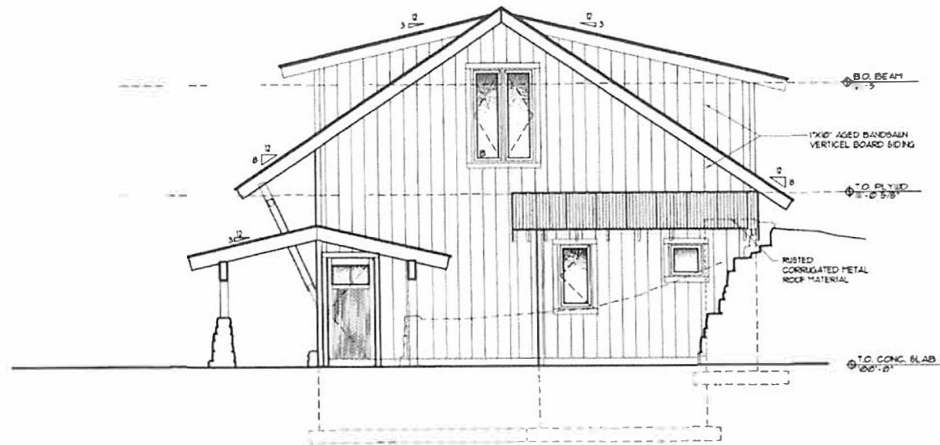


4 NORTH ELEVATION
SCALE: 1/4"=1'-0"

PRELIMINARY
NOT FOR
CONSTRUCT



237 EAST ELEVATION



238 WEST ELEVATION
SCALE: 1/4" = 1'-0"

PRELIMINARY
NOT FOR
CONSTRUCT

Tim Tipton
Project Manager

YELLOWSTONE HERITAGE CONST. LLC

PO Box 11633
Bozeman, MT 59719

406 539 0673

Gallatin County Planning Dept.
311 W. Main, Room 208
Bozeman, MT 59715

RECEIVED FROM

Sean Lewis / Larry Pearson

DATE *11-04-05*

NO. *2586*

ADDRESS

DOLLARS \$ *2125.⁰⁰*

FOR *206-089*

ACCOUNT		HOW PAID	
AMT. OF ACCOUNT		CASH	
AMT. PAID	<i>2125 -</i>	CHECK	<i>15853</i>
BALANCE DUE	<i>0</i>	CREDIT	

BY *[Signature]*



GALLATIN COUNTY

Land Use Permit Application Form



1. Property Owner: SEAN LEWIS

2. Site

Address: 6400 TEEPLES RIDGE

* Section: 20+21 Township: 15 DE Range: 7E

Subdivision/COS: COS 1265 A Block: Lot: 12A

Other legal description: NA

* DOR# 06 0906 20 1 02 15 0000

3. Zoning

582.3400

Zoning district: BRIDGECANYON Zoning designation: AEPD20

4. Structure(s)

-Type of structure (new on-site vertical construction, manufactured off-site, new non-vertical poured concrete slab): GARAGE / ADDITIONS / PERM'D DEL.

-Use of structure (residential, agricultural, commercial, recreational, industrial, etc): RESIDENTIAL

-Estimated market value of construction (not including land cost): 450,000 \$

-Total square feet (including garage and any unfinished spaces): 1600 SF LIVING 1000 SF GARAGE

-Square feet of living space: 3400 SF # of dwelling units: 1 # of bedrooms: 3

-Height (include height as defined in zoning regulation): DOES NOT EXCEED EXIST'G HGT. - 30'-0"

-Pitch of main roof: 8/12 & 2/12 Vertical Distance from eaves to ridge: MAX. - 18'-0"

-Type of foundation: CONCRETE Narrowest width of structure: 12'-0"

-Siding (type, color and direction): VT. PD & BATH / BROWNISH - GREY

-If structure is manufactured off-site, does it meet current HUD codes? yes no

-Description of other structures on this parcel:

EXIST'G STUDIO & BATH & PERCOLA

BRADDER CANTON ZONING - PUD

5. Setbacks (including deck/porch)

	Minimum (as required by zoning regulation)	Actual (as shown on site plan and as physically staked)
Front property line		670'
Rear property line		350'
Side property line		1300'
Side property line		600'
Public road		600'
Stream high water mark	NA	NA
Ditches (Water Conveyance Facility)	NA	NA

6. Lot size and coverage

Lot dimensions: _____ Lot frontage on public road: _____
 Lot area: _____ sq. ft. Lot area to be covered by structure(s): 9700 sq. ft.
 or 60 acres 2,880,000 SF 0.333 %

7. Septic/sewer system (complete one)

- Proposed structure is approved by City-County Environmental Health Department. SEE: ATTACHMENT
 Permit number 14111 Approved for 2 bedrooms.
- Proposed structure will be connected to the following community sewer system:
NA

8. Floodplain

If any portion of the property is located in a mapped floodplain, provide the following: NA

- Copy of the appropriate floodplain map.
- Documentation from a licensed professional engineer or land surveyor showing the proposed structure is out of the floodplain; or
- A copy of the approved floodplain development permit.

9. Required attachments

- Building elevation plans, Half Size (to scale and/or height measurements labeled).
- Floor plans, Half Size (drawn to scale and/or with outside dimensions labeled).
- Site plan, Half Size (including all existing and proposed structures, decks/porches, driveways, property lines, watercourses and easements (drawn to scale and/or with setback measurements labeled).
- Other attachments, septic permit, certification that structure meets current HUD codes, etc., based on district-specific requirements, if applicable. SEE: SEPTIC PERMIT.
- Application fee.

10. Preparation for inspection by County Planning Department staff

- All corners of proposed structure are clearly marked. SEE: SITE PLAN
- All property corners are clearly marked.

11. Contact information

Property owner SEAN LEWIS
Address 5064 Bridge Creek Rd
City Plano State TX Zip 75093
Daytime phone 972.342.7021 (m) Fax _____
Builder PEAK CONSTRUCTION - BURT HAMMER
Address _____
City _____ State _____ Zip _____
Daytime phone 406.570.0784 (m) Fax _____
Architect KA ARCHITECTURE KEITH ANDERSON
Address 5277 W. CAMERON BRIDGE RD
City Manhattan State MT Zip 59741
Daytime phone 406.223.2146 Fax _____
Applicant SAME AS ABOVE
Address _____
City _____ State _____ Zip _____
Daytime phone _____ Fax _____

—AGREEMENT—

The undersigned hereby certifies that the information submitted in this application is true and correct; and that the proposed work shall be done in accordance with the plans and specifications submitted in this application and in compliance with the requirements of the applicable zoning regulation.


Property Owner Signature _____ Date 5-31-13

Gallatin County Planning Dept.

APPROVED

Land Use Permit

By  6/17/13

Gallatin County Planning and Floodplain Viewer

Help

Parcel Queries ▾ Subdivision Queries ▾ Township/Range Find Road Find Address Print 1:13,984 Go

Results

- 6400 Teepee Ridge Road (1)
- 6400 TEEPEE RIDGE RD, GALLATI
- 1220 Mt. Ellis Lane (No results fo
The address could not be found.
Check that you have entered all
information correctly and try again.
- 4063 Summer Cutoff Road (1)

Map Contents

- Planning
 - Recent Addresses
 - Structure Addresses
 - Transportation Layers
 - Planning Jurisdiction Layers
 - Zoning Layers
 - Neighborhood Plans
 - Fire Districts
 - Subdivision Layers
 - Parcels
 - PLSS
 - Water Layers
 - FEMA FLOODWAYS

The map displays a geographic area with several roads: TAINIE STRASSE ST, BIRCH CANYON RD, JACKSON CREEK RD, TEEPEE RIDGE RD, and SKYLINE LN. A green highlighted area is shown on Teepee Ridge Road. The map includes a scale bar (0 to 1850 feet) and a north arrow. The background shows parcel boundaries and other planning layers.

JUN 2 2005 PM 1:12

ON-SITE WASTEWATER TREATMENT SYSTEM APPLICATION & PERMIT TO CONSTRUCT

Gallatin City-County Health Department, Environmental Health Services
311 West Main, Bozeman, MT 59715 (406) 582-3120

Please see important information on the back.

PRINT/TYPE in black or blue ink. Please press firmly. See fee schedule.

Purpose of Application: New Upgrade/Expansion _____ Replacement _____ Failed Yes No (old permit # _____)
(Check all that apply) Individual/Shared _____ Multiple-User(3-14 connections) _____ Public _____ Commercial _____

Current Property Owner: Sean Lewis Phone: _____
Mailing Address: 5064 Bridger Creek Dr.
City/Zip: Plano TX 75093

Applicant/Authorized Agent: Bridger Engineers Phone: 585-0590
Mailing Address: 2150 N. Starlight Dr.
City/Zip: Bozeman MT 59718

Address of Site: 4400 Trapee Ridge Rd. East Certificate of Survey No.: 1265 A
[An Authorized Road Address may be obtained by contacting the Gallatin County GIS Department at (406) 582-3049]

Subdivision: _____ Approval Date (mm/yyyy): _____

Lot/Tract/Parcel: 12A Block _____ Section 20 Township 15 Range 7E Size of Parcel: 59.6 acres

Type of Structure(s) proposed: Single Family Dwelling Other _____ (please describe) _____

Unfinished Basement: Yes or Total # of Bedrooms Proposed (+1 for unfinished basement): _____
(An unfinished basement must be considered as an additional bedroom.) OR gpd to be produced: 800

Please refer to the Certificate of Subdivision Approval, data from the site evaluation, and/or public WWTS approval to complete the following. Be sure to mark all spaces. Site evaluation data must be submitted with this application (if applicable).

Is the Certificate of Subdivision Approval Statement recorded in Clerk & Recorders? Yes EQ #: _____

Confirmation # 8005140.01 Public WWTS: MDEQ Approval Yes EQ #: _____

Water Supply: Individual Well 208136 Public System _____ Multi-User System _____

Type of Wastewater Treatment System Required: Siphon design gravelless absorption trench

Number & type of structures allowed: 2 => Manufacture w/ garage 1 bedroom

Amount of drainfield required per bedroom: _____ ft² of application rate: 0.3 gallons/ft²/day

Are there any other requirements? (monitoring, trench depth, etc.): ~ If yes, please specify: _____

I (We) hereby certify under penalty of perjury that I (we) am the legal owner(s) of the above real property or an authorized agent thereof and that the information above is true, complete, accurate and correct to the best of my (our) knowledge. I (We) further certify that the wastewater treatment system will be installed according to state and local regulations for Wastewater Treatment Systems and any permit conditions.

I have read the information on the back of this application. EM (Initial)

Date: 6.02.05 Signature: Ed [Signature] PE

The following section is to be completed by the Health Department only.

PERMIT TO CONSTRUCT

A permit to construct is valid for 24 months (unless otherwise noted). The system must be installed and an inspection scheduled with GCCHD.

Type of System Required: Standard - Pressure Distribution Type: STD

Minimum Requirements (based on # of bedrooms/GPD proposed): Dist: PD

Septic Tank: 1 x 1500 gallons: Type: Concrete

Pump Tank/Chamber: 1000 gallons Maximum Trench Depth: 36"

Absorption Area (Square Feet): Gravel & Pipe 2667 Gravelless 2136 As per Design

CERTIFICATION AND AS-BUILT OF INSTALLED SYSTEM WILL BE REQUIRED FOR FINAL APPROVAL

Certification required by: Professional Engineer Registered Site Evaluator _____ Installer

Contact engineering firm to certify siphon when installing along with GCCHD

Install per approved plans maintaining all setbacks. Drainfield configuration changes require pre-approval by system designer and GCCHD.
• Effluent Filter Screen Required • Sanitary Well Seal Required

Permit Number 14111 Approved by: Thomas O'Brien Date Issued: 6-08-2005 Expires: 6-28-2007

Please submit all three copies to GCCHD for review White - Office Copy Yellow - Property Owner's Copy Pink - Applicant's Copy
LEWIS STR ADMINISTRATIVE RECORD 158
Date: 6/11/05 Title: W-300 3/22/07

14111

15

1. Owner: Lewis ed, Date, & Initials: Y/N
- a. Planning approval form complete? Y/N Comments: LUP Req Date Signed: 6-2
2. Road Address: GIS Verifiable? Y/N Access Database or phone (x3067 or 3166)
3. Purpose of Application:
- a. If a replacement or upgrade, pull old permit & attach to permit application for processing.
- b. If upgrade from May 1, 1992- Dec 8, 2000 see Section 3.3 D Does exclusion apply? Y/N Do they have the proper form? Y/N
- Multi-User = 3-14 units/connections & <24 people (or > 700gpd) Public = serves > 15 living units/connections or > 25 people for 60 calendar days or >5000 gpd
- c. Check for previously denied permit. If Yes, what were major issues?
- d. Is there a public system within 200'? Y/N If Yes, must connect or provide a letter of explanation why connection is not feasible.
- e. Is project possibly commercial? Y/N If yes, is commercial addendum form completed? Y/N
- f. Is this a food service establishment? Y/N If yes, then it must be public (usually).
4. Type and # of structures to be served 4 Bed SED, 1 bed garage, 3 bed barn
5. # of Bedrooms or GPD 800 gpd Don't forget that unfinished basement
6. Other dwellings on property? Y/N Do they have a septic permit? Y/N/NA If Y Permit # _____ If N is it pre 1966? Y/N
7. Lot Size 59.6 acres If less than 20 acres and application has site eval., check with C&R Office for creation date to find if it should have had or does have a COSA (see regs. history Appendix B). Might need subdivision review if improperly filed.
- a. Was a Clerk and Recorder check necessary? Y/N Problems Noted _____
- b. Does it have a COSA? Y/N If yes, then go to #20 OR Is it OK for Site Eval review? Y/N If yes go to #8

SITE EVALUATION N/A

8. Was a Site Eval performed? Y/N
- a. Name of registered site evaluator: Ed Matos Signature? Y/N Engineer's Seal? Y/N/NA
- b. Confirmation #? Y/N Date(s) Test Pits Excavated: 5-24-05 Did GCCHD Observe Site Eval? Y/N
9. Has the floodplain been delineated? Y/N/NA If Yes, is proposed DF 100' from FP? Y/N Any buildings located within the FP? Y/N
- If FP has not been delineated, is a FP study needed? Y/N Any water accumulation noted? Y/N/NA
- If flows greater 1000 gpd ground water mounding evaluated? Y/N
10. Estimated Depth to seasonally high groundwater (shgw): > 8'
- a. How was it determined? Test pits
- b. Was water found at 7 feet? Y/N if Y then → GW monitoring and peak provided? If No need to monitor.
- c. GW monitor wells within 20 feet of proposed area Y/N/NA
11. Non-Degradation addressed? Y/N Phosphorous Breakthrough done? Y/N/NA Comments? See back:
- a. Mixing Zones Drawn Correctly Y/N/NA Are Surrounding Wells/DF shown within 200' of proposed/existing Mixing Zones or DF? Y/N
- b. Existing well, proposed wells AND zone of influence not allowed in mixing zone Y/N/OK

SOIL DATA SUBMITTED TO INCLUDE AS A MINIMUM:

12. Slope across absorption area 8.2% (No systems > 25%)—If slope is 20% + must show detail, or GCCHD check site.
13. Data from test pits dug to 96 inches provided? Y/N
- a. Thickness of horizons Y/N d. Depth to water if observed: Not Noted None observed
- b. Texture and structure of horizons Y/N e. Depth to limiting layer (>60 min./in.): Noted Not Noted None
- c. Color and mottling (color variations) Y/N f. Other (stoniness, root depth): Roots to 65" Noted Not Noted
14. Results of perc tests submitted? Y/N (1) 65 min/in. at 30" deep (2) 45 min/in. at 28" deep
- (circle result closest to df) (3) 24 min/in. at 30" deep (4) 51 min/in. at 30" deep
15. Is Perc rate <3 min/in Y/N If Yes, then CHECK if soil 3 feet below infiltrative surface contains less than 15% gravel, and that there is 6 feet from bottom of trench and a limiting layer OR soil loading rate of 0.8gpd/ft² may be used.
16. Are soils = 125ft² or <3 min/inch or 3-10 min/inch? Y/N If Yes, then Pressure Dose more than 4 X per day
17. Drainfield sizing based on soil type and/or perc rate 0.3 gpd/ft²
18. Do Perc tests and soils data differ? Y/N If Yes, sized most conservative? Y/N (Can't just size to avoid pump)
19. Is system greater than 500 Lineal Feet? Y/N If Yes, then must Pressure Dose!

Wastewater Treatment System Certification

Gallatin City-County Health Department, Environmental Health Services

25 2007 AM 10:27

In accordance with the Regulations for Wastewater Treatment Systems (effective June 27, 2004), Section 7, a completed system certification form and as-built is required for all wastewater treatment systems installed and must be submitted to EHS within 30 days of the date the inspection was scheduled with EHS. Failure to submit a system certification form and as-built for an installed system may result in the invalidation of the permit and the revocation of the registration of competency.

Please print or type the following information (black or blue ink):

Scheduled Inspection Date: 3/22/07 Permit Number: 14111
Property Owner: Lewis
Site Address: Lot 12 A COS No. 1205A - 6400 Taper Ridge Rd. East
Type of System Installed: Pressurized Gravelless Drainfield
Size of Septic Tank: 2-1000 ¹⁻¹⁵⁰⁰ Double / Single Compartment (Circle one) Size of Dose Tank (if used): 1000
Total Sq./Ft of Drainfield Installed: ~~2208~~ 2208 Trench Width: 36"
Distribution Method: Gravity / Dosed Pressure Distribution (Circle One) Trench Depth: 18" - 24"
Size and Type of Pump: Goulds 1 HP
Name of Installer: John Hazen Type of Drainfield Installed: (Circle one)
Business Name: GWD Gravel & Pipe / Gravelless Chambers

Certification Of System Installation

I hereby certify the above-referenced wastewater treatment system was installed in the approved location and in accordance with the approved plans and applicable regulations. All required setbacks have been met and all materials used in construction of the system comply with state and local regulations. I also verify that any water well on site at the time of the system inspection was located according to the approved plans.

Mark Westergaard
Print name of Installer, Site Evaluator or PE
Certifying System
Mark Westergaard
Signature of Installer, Site Evaluator or PE
Certifying System

W A INC.
Business Name
4/22/07
Date

HEALTH DEPARTMENT USE ONLY

Installation Approval By: GCCHD Inspector Coes Date: 3/22/07
Final Approval By: [Signature] Date: 5/14/07

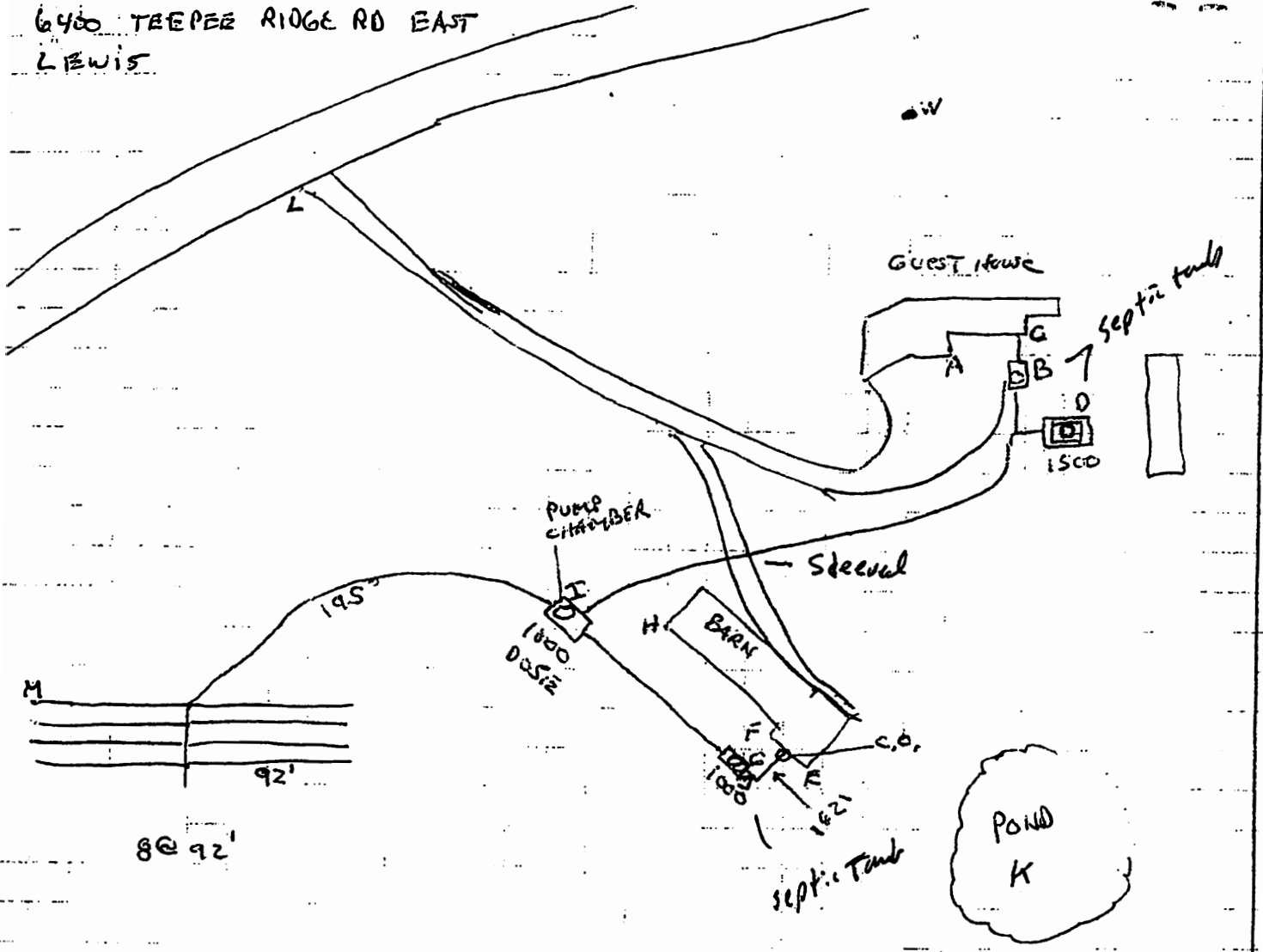
Final approval is the approval granted upon review and acceptance of the system certification and as-built drawing. The permit to construct then becomes a permit to operate the system as approved.

Inspections are performed only for determining compliance with these regulations and the approved permit. EHS is not responsible for ensuring workmanship. Final approval of a wastewater treatment system shall not be construed as a guarantee to the life expectancy or operation of the system.

Permit To Operate: Approved for Bedrooms or 800 GPD

Revised 6/04

6400 TREPPER RIDGE RD EAST
LEWIS



- A-B 24'
- C-B 16'
- A-D 51'
- C-D 40'
- B-W 100'+
- D-W 100'+
- E-G 73'
- E-F 71'
- F-I 144'
- H-I 83'
- G-K 100'+
- D-K 100'+
- L-M 308'

1 HP 230 V PUMP

Gallatin City-County Health Department
Environmental Health Services

ACCEPTED AS-BUILT

Date: 5/14/07

DRAWING BY
JOHN HAZEN GWWS
4-24-07

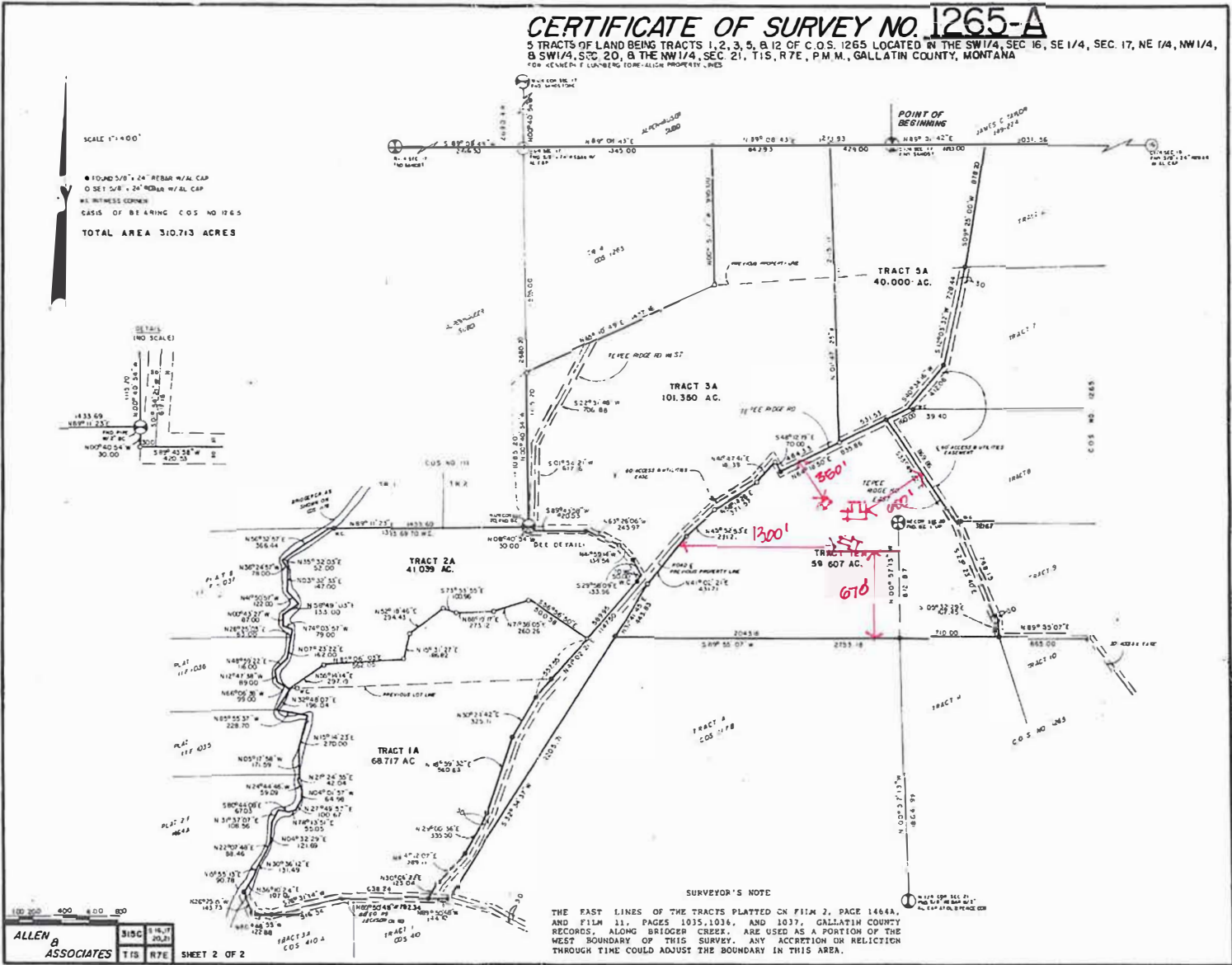
ALTANUS 25'+ FROM PROPERTY LINE
ALL TANK 100' FROM WATER SOURCES

CERTIFICATE OF SURVEY NO. 1265-A

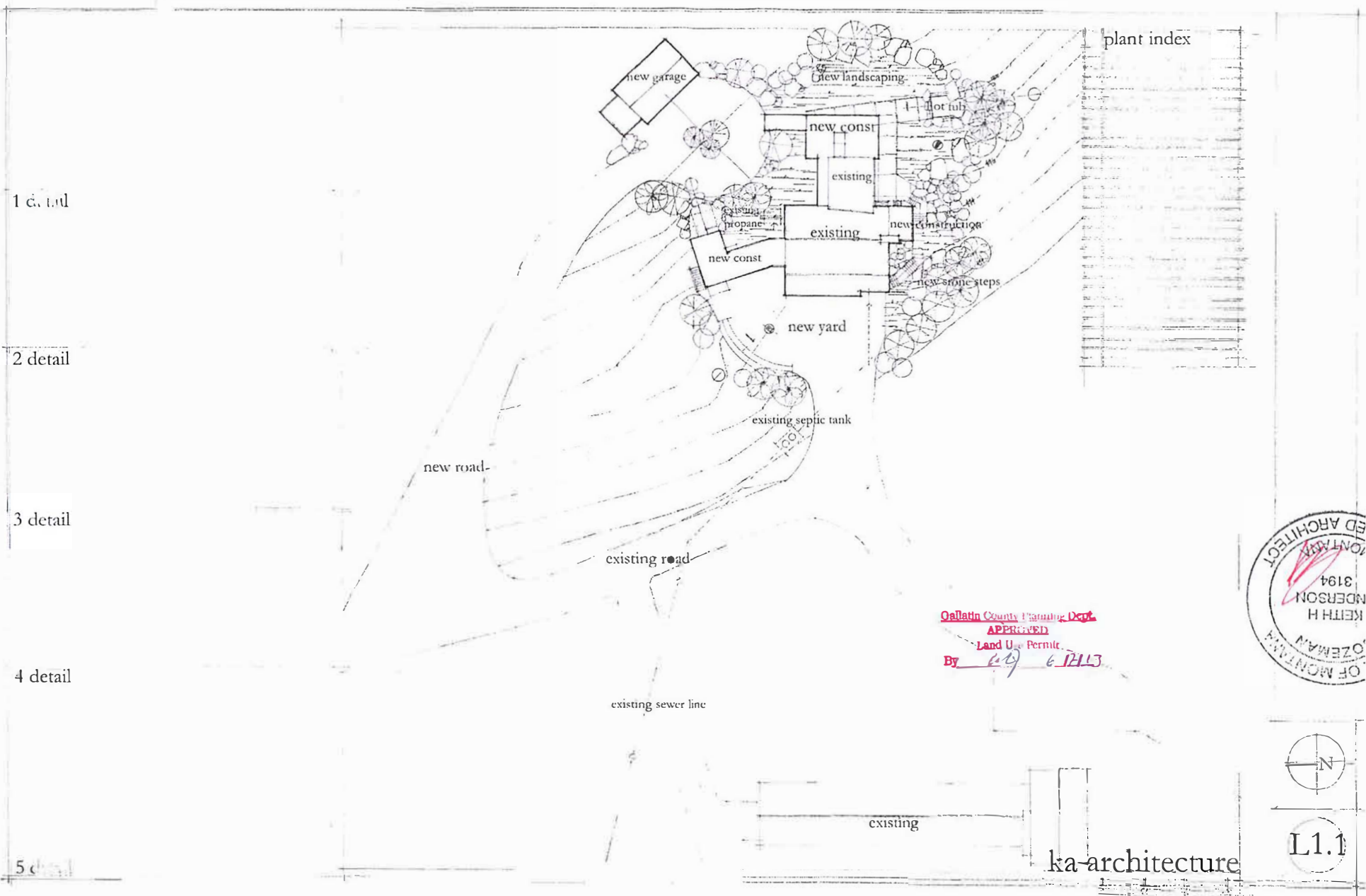
5 TRACTS OF LAND BEING TRACTS 1, 2, 3, 5, & 12 OF C.O.S. 1265 LOCATED IN THE SW 1/4, SEC. 16, SE 1/4, SEC. 17, NE 1/4, NW 1/4, & SW 1/4, SEC. 20, & THE NW 1/4, SEC. 21, T.15, R.7E, P.M.M., GALLATIN COUNTY, MONTANA
 FOR & IN FAVOR OF THE FOLLOWING PROPERTY OWNERS

SCALE 1"=400'

• 10x10x5/8" 24" REBAR W/AL CAP
 ○ SET 5/8" x 24" REBAR W/AL CAP
 WE WITNESS CORNER
 BASIS OF BEARING C.O.S. NO. 1265
 TOTAL AREA 310.713 ACRES



ALLEN ASSOCIATES
 315C
 T15 R7E SHEET 2 OF 2



plant index

Symbol	Description
⊙	Tree
⊗	Shrub
⊘	Plant
⊚	Plant
⊛	Plant
⊜	Plant
⊝	Plant
⊞	Plant
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Gallatin County Planning Dept.
APPROVED
 Land Use Permit
 By *[Signature]* 6/14/13



L1.1

ka-architecture

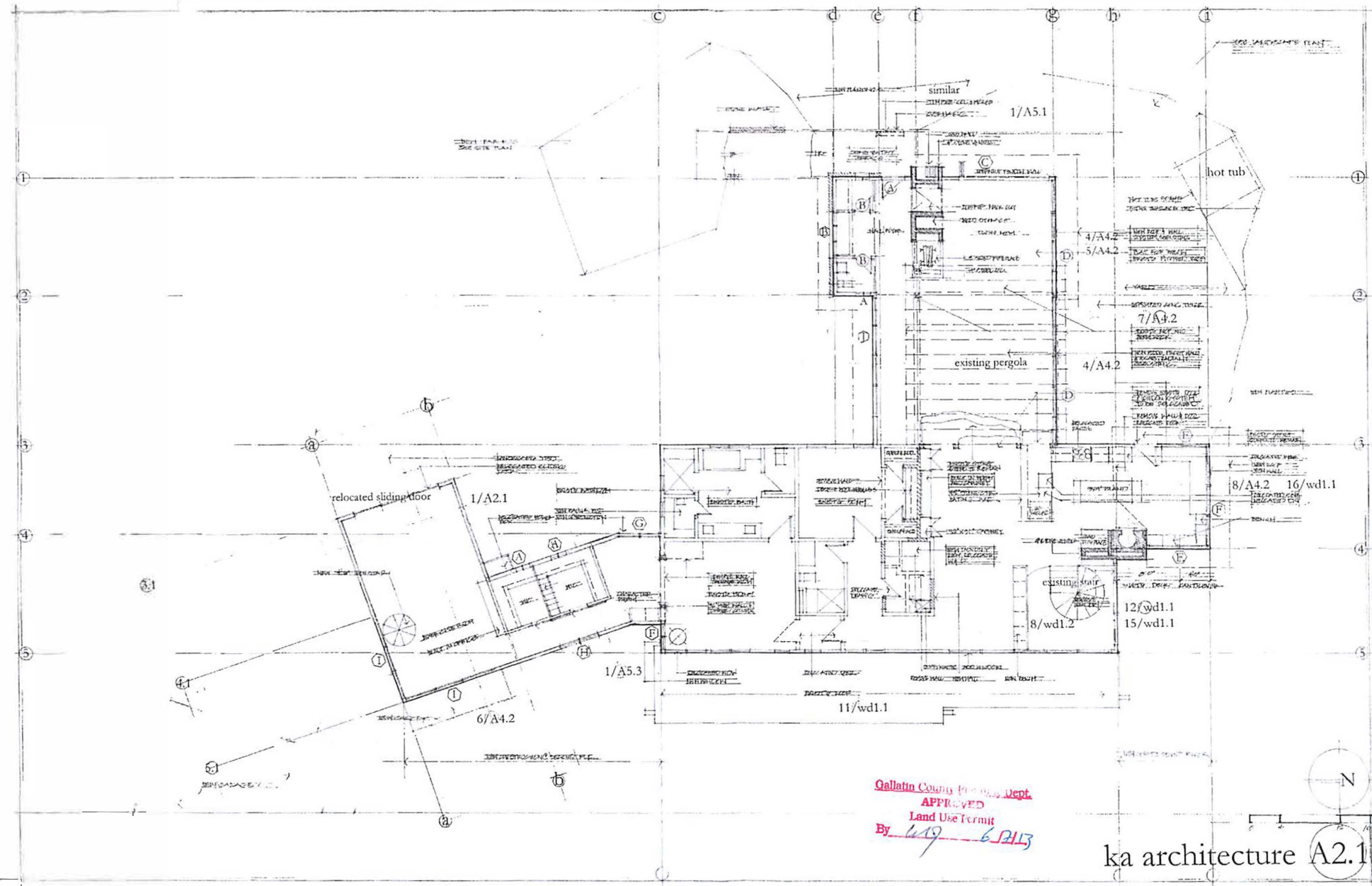
1 detail

2 detail

3 detail

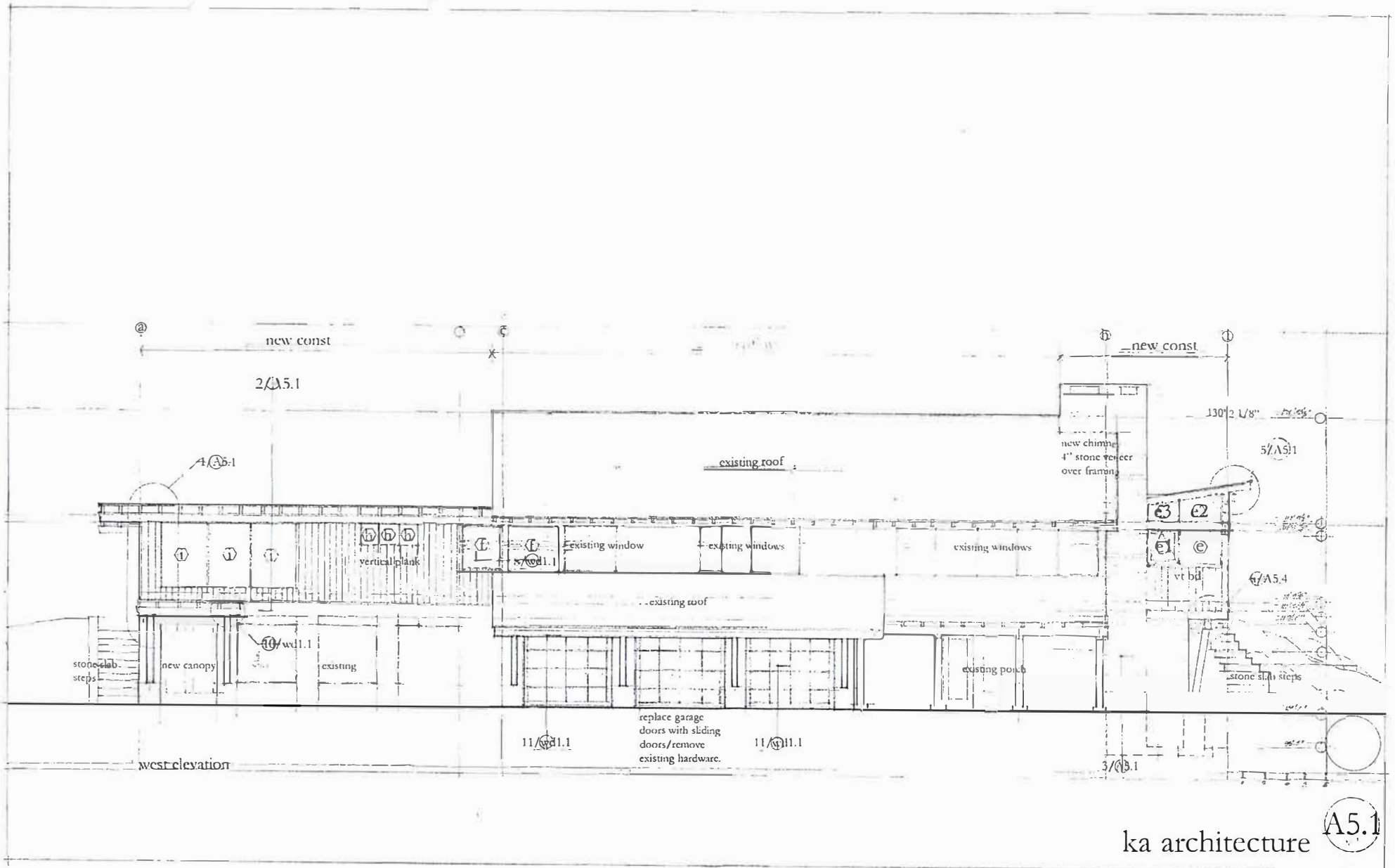
4 detail

5 detail



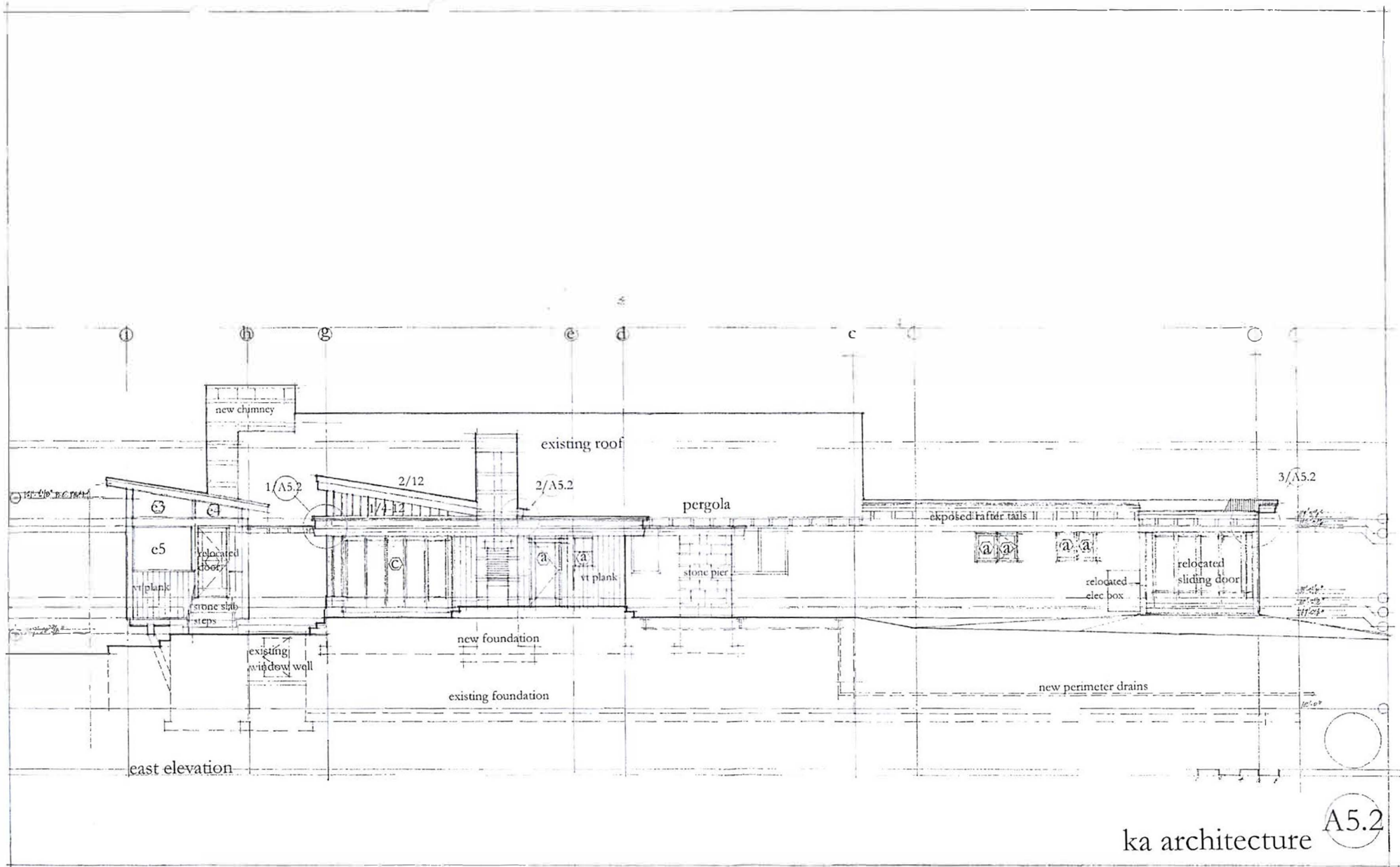
Gallatin County Planning Dept.
 APPROVED
 Land Use Permit
 By 6/19 6/21/13

ka architecture A2.1



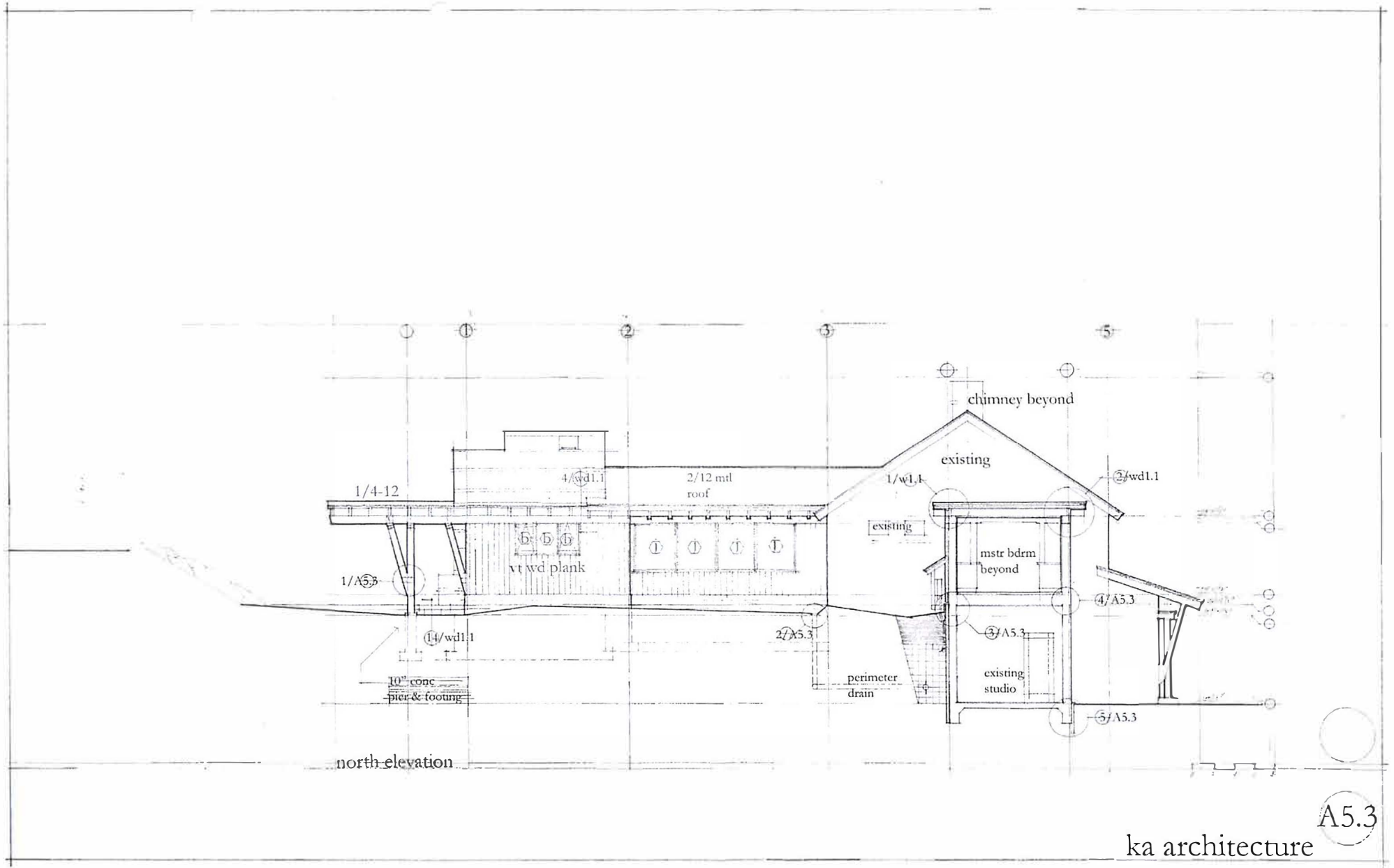
ka architecture A5.1

Gallatin County Planning Dept
 APPROVED
 Land Use Permit
 By: *[Signature]* 6.7.11



ka architecture A5.2

01/11/2013
 11/16/13
 6/11/13



A5.3

ka architecture

6/1/2015
 APPROVED
 Land Use Permit
 11-6-15



107414

Gallatin County Planning Department
311 West Main, Room 108
Bozeman, MT 59715
Phone: 406.582.3130
Fax: 406.582.3135

Invoice#: 002256
File#: L2013-172
Date: 06/03/2013

Project Name: Lewis SFR addition

Project Type: Land Use Permit

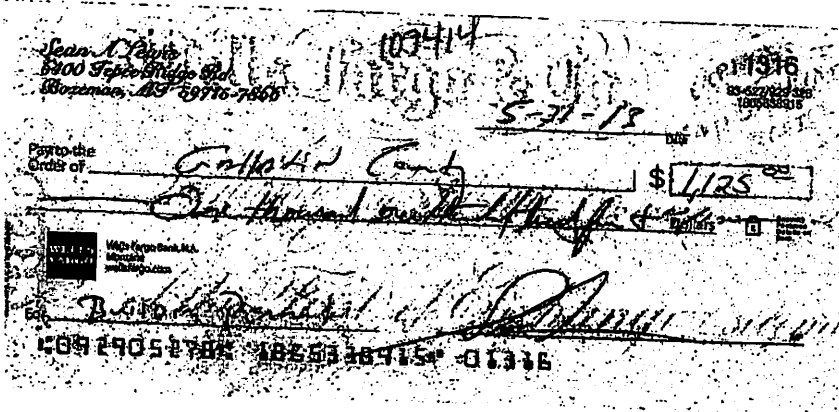
Primary Contact: Sean Lewis

Estimated Value: \$450,000.00

Fee Type	Account #	Amount
Standard	1000-295-34-10-72	\$1,125.00
Minor / Ag	1000-295-34-10-72	\$0.00
Temporary Structure	1000-295-34-10-72	\$0.00
Site Plan Review	1000-295-34-10-72	\$0.00
Other:	1000-295-34-10-72	\$0.00

AMOUNT DUE \$1,125.00

Please make checks payable to the Gallatin County Treasurer. Payment must be made before application is reviewed. Acceptance of payment does not guarantee approval. Gallatin County will process appropriate refunds within 10 business days upon approval by the Planning Department.





Gallatin County

March 8, 2023

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625

Sent via Email:
sean.a.lewis@gmail.com

Re: Bridger Canyon Zoning Regulation Compliant (Compliance ID #22-041)

Property: 153 & 155 Tepee Ridge Road East, Bozeman Montana; legally described as Tract 12A of Certificate of Survey (COS) No. 1265A, located in the SE1/4 and SW1/4 of Section 17 and the NE1/4 and NW1/4 of Section 20, Township 1 South, Range 7 East, P.M.M., Gallatin County (Property).

Dear Mr. Lewis:

Thank you for the written responses from your attorney, Amy McNulty dated February 16, 2023 (Responses) to my January 17, 2023 Notice of Non-Compliance & Intent to Initiate Conditional Use Permit Revocation Letter.

The Code Compliance Department will keep the Response to the conditions of approval for the Conditional Use Permit #Z2007-038 under consideration for now, while additional information is gathered by you as stated in the Response, and while the Department of Planning & Community Development reviews the Responses for the 1) Land Use Permit application for the Principal Single-Family Dwelling Unit, three car attached garage, and the Accessory Buildings, and 2) the additional Dwelling Unit in the basement of the Principal Single-Family Dwelling Unit.

If you have any questions about this letter, feel free to call me at 406-582-3775.

Sincerely,

A small rectangular image showing a handwritten signature in cursive that reads "Megan K. Gibson".

Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc: Erin Arnold, Chief Civil Deputy County Attorney via email
Allyson Brekke, Deputy Planning Officer via email
Leah De Guzman, leahdg2004@gmail.com
Amy C. McNulty, Tarlow Stonecipher, Weamer & Kelly, PLLC, AMcNulty@lawmt.com
Hailey Garbett, Tarlow Stonecipher, Weamer & Kelly, PLLC, HaileyG@lawmt.com
Complainant via Email

Gibson, Megan

From: Brekke, Allyson
Sent: Friday, April 21, 2023 11:35 AM
To: Amy McNulty
Cc: Gibson, Megan
Subject: RE: Follow Up to February 16, 2023 Letter Re: Compliance ID #22-041

Good morning Amy,

I haven't received a response to the email below. I should have mentioned we allow 60 days to receive a response. So I'll need to hear from you by May 11th.

Kind regards,

Allyson Brekke, AICP
Deputy Planning Officer

Department of Planning & Community Development
Gallatin County

office: (406) 582-3193
cell: (406) 579-5875

From: Brekke, Allyson
Sent: Thursday, March 16, 2023 2:12 PM
To: Amy McNulty <AMcNulty@lawmt.com>
Cc: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>
Subject: Follow Up to February 16, 2023 Letter Re: Compliance ID #22-041

Good afternoon Amy,

Thank you for your letter dated February 16, 2023 re: Compliance ID #22-041. I have reviewed your summary and questions and have the following response:

- 1) **Horse Barns:** Per Section 6.4, "Exempt Structures," of the Gallatin County "Part 1" Zoning District Administrative Regulations: "Unless clearly stated otherwise in the District Regulation, Structures exempt from Land Use Permitting requirements as set forth in the applicable District Regulation must still comply with applicable development standards (e.g. Setbacks, building height, number of accessory structures, lot coverage, etc.)." Per Section 3.35, "Floor Area, General," of the Bridger Canyon Zoning District definitions, "The sum of the horizontal areas of each floor of a Building, measured from the outside faces of the exterior walls or from the centerline of walls separating two distinct Uses in the same Building." Per Section 12.3.c, "Accessory Buildings and Structures," of the Bridger Canyon Zoning District, "Accessory Buildings equal to or less than 200 square feet of General Floor Area are not required to obtain a Land Use Permit." Therefore, the two "horse barns" on the property that are described as open-air structures do not require a Land Use Permit.
- 2) **Additional Dwelling Unit:** When determining whether something has "complete, independent living facilities," we primarily are referencing public health and safety related facilities including a kitchen or bathroom. Please send a written description and pictures of the "ensuite kitchenette/bathroom" to me so that we can determine if they are "complete, independent living facilities."

3) **CUP #Z2007-038 CUP Conditions:** This Compliance Officer item wasn't addressed in the 2.16.23 letter. Please follow up with Compliance on this issue.

Don't hesitate to contact me with additional questions.

Kind regards,

Allyson Brekke, AICP
Deputy Planning Officer

Department of Planning & Community Development
Gallatin County
311 W. Main Street, Room 108
Bozeman, MT 59715

office: (406) 582-3193

cell: (406) 579-5875

email: allyson.brekke@gallatin.mt.gov

May 11, 2022

Allyson Brekke
Gallatin County Courthouse
311 W. Main Street, Room 108
Bozeman, MT 59715

Via E-mail Only:
allyson.brekke@gallatin.mt.gov

RE: Compliance ID #22-041 – Response to March 16, 2023 Request for Further Information

Dear Allyson:

This letter will serve to respond to your emails dated March 16, 2023 and April 21, 2023, which requested further information on the property located at 155 Teepee Ridge Road in the Bridger Canyon Zoning District. Your response addressed three issues: horse barns, an alleged additional dwelling unit, and CUP Conditions.

You indicated that my client would not need to obtain a Land Use Permit for the open-air “horse barns” on the property.

Thank you for this clarification. We respond as follows to the other issues raised in your correspondence:

Additional Dwelling Unit

Your email then addresses the issue of an alleged “additional dwelling unit” on the property. Specifically, you requested a written description and photographs of the “ensuite kitchenette/bathroom” to determine whether an additional dwelling unit exists on the property.

The room at issue is located within, and can only be accessed through, entering the main entrance of the main house on the property. There is no separate entrance to this room. The kitchenette itself is located within the bedroom, between two closets. The location of the kitchenette is not conducive to independent living, as the layout is more similar to a den or family room space with an extra sleeping space, rather than a fully independent unit or bedroom. The room is not metered separately and does not have

laundry facilities—one person staying in this bedroom could not live independently from any other persons using the property.

Our client has also relayed that the stovetop affixed to the kitchenette has never been connected to power, and there is no intention to do so. The kitchenette serves only an accessory/ancillary purpose to the main kitchen in the home.

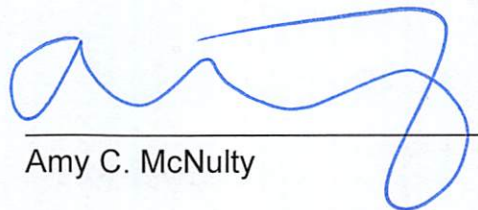
Photographs depicting the layout/location of this bedroom are attached to this letter. Further, a video showing the entrance of the main home is sent together with this letter. As you can see, the bedroom is contained within the home with no separate entrance and the kitchenette at issue is akin to a family room that allows for storage of beverages and preparation for drinks or snacks in a place other than a main kitchen in the home.

CUP #Z2007-038 CUP Conditions

Your email requests that we follow up with a Compliance Officer regarding CUP #Z2007-038 Conditions. We reached out to Megan separately on those issues at the time of our last letter.

With this letter and the above explanation, we would appreciate a confirmation that any issues raised in your last message have been addressed.

Very truly yours,



Amy C. McNulty

ACM/hgg
Enclosures: As referenced





Gibson, Megan

From: Brekke, Allyson
Sent: Thursday, June 8, 2023 9:20 AM
To: Hailey Garbett; Amy McNulty
Cc: Gibson, Megan; Pare, Shea
Subject: RE: Follow Up to February 16, 2023 Letter Re: Compliance ID #22-041

Good morning Amy and Hailey,

Please consider this email as my determination that the kitchenette, as described in your letter and video sent on May 11, 2023, is not classified as a separate or additional dwelling unit at 155 Teepee Ridge Road.

Thank you,

Allyson Brekke, AICP
Deputy Planning Officer

Department of Planning & Community Development
Gallatin County

office: (406) 582-3193
cell: (406) 579-5875

From: Hailey Garbett <HaileyG@lawmt.com>
Sent: Thursday, May 11, 2023 3:42 PM
To: Brekke, Allyson <Allyson.Brekke@gallatin.mt.gov>
Cc: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>; Amy McNulty <AMcNulty@lawmt.com>
Subject: RE: Follow Up to February 16, 2023 Letter Re: Compliance ID #22-041

Good afternoon Allyson,

Attached please find a letter from Amy in response to the items raised in your email below. Please advise if you need anything further.

Thanks,

Hailey Garbett
Legal Assistant
Tarlow Stonecipher Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913

Phone: (406) 586-9714
Facsimile: (406) 586-9720
Website: www.lawmt.com

This electronic mail message is confidential and may constitute attorney-client communication that is privileged by law. It is not intended for transmission to, or receipt by, any unauthorized persons. If you received this transmission in error, please delete it from your system without copying it and notify the sender of the error. Thank you.

From: Brekke, Allyson <Allyson.Brekke@gallatin.mt.gov>
Sent: Friday, April 21, 2023 11:35 AM
To: Amy McNulty <AMcNulty@lawmt.com>
Cc: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>
Subject: RE: Follow Up to February 16, 2023 Letter Re: Compliance ID #22-041

Good morning Amy,

I haven't received a response to the email below. I should have mentioned we allow 60 days to receive a response. So I'll need to hear from you by May 11th.

Kind regards,

Allyson Brekke, AICP
Deputy Planning Officer

Department of Planning & Community Development
Gallatin County

office: (406) 582-3193
cell: (406) 579-5875

From: Brekke, Allyson
Sent: Thursday, March 16, 2023 2:12 PM
To: Amy McNulty <AMcNulty@lawmt.com>
Cc: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>
Subject: Follow Up to February 16, 2023 Letter Re: Compliance ID #22-041

Good afternoon Amy,

Thank you for your letter dated February 16, 2023 re: Compliance ID #22-041. I have reviewed your summary and questions and have the following response:

- 1) **Horse Barns:** Per Section 6.4, "Exempt Structures," of the Gallatin County "Part 1" Zoning District Administrative Regulations: "Unless clearly stated otherwise in the District Regulation, Structures exempt from Land Use Permitting requirements as set forth in the applicable District Regulation must still comply with applicable development standards (e.g. Setbacks, building height, number of accessory structures, lot coverage, etc.)." Per Section 3.35, "Floor Area, General," of the Bridger Canyon Zoning District definitions, "The sum of the horizontal areas of each floor of a Building, measured from the outside faces of the exterior walls or from the centerline of walls separating two distinct Uses in the same Building." Per Section 12.3.c, "Accessory Buildings and Structures," of the Bridger Canyon Zoning District, "Accessory Buildings equal to or less than 200 square feet of General Floor Area are not required to obtain a Land Use Permit." Therefore, the two "horse barns" on the property that are described as open-air structures do not require a Land Use Permit.

- 2) **Additional Dwelling Unit:** When determining whether something has “complete, independent living facilities,” we primarily are referencing public health and safety related facilities including a kitchen or bathroom. Please send a written description and pictures of the “ensuite kitchenette/bathroom” to me so that we can determine if they are “complete, independent living facilities.
- 3) **CUP #Z2007-038 CUP Conditions:** This Compliance Officer item wasn’t addressed in the 2.16.23 letter. Please follow up with Compliance on this issue.

Don’t hesitate to contact me with additional questions.

Kind regards,

Allyson Brekke, AICP
Deputy Planning Officer

Department of Planning & Community Development
Gallatin County
311 W. Main Street, Room 108
Bozeman, MT 59715

office: (406) 582-3193
cell: (406) 579-5875
email: allyson.brekke@gallatin.mt.gov



Gallatin County

CORRECTIVE ACTION LETTER #2

June 14, 2023

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625

Sent via Email:
sean.a.lewis@gmail.com

RE: Bridger Canyon Zoning Regulation Complaint (Compliance ID #22-041)

Dear Mr. Lewis:

As you know, the Gallatin County Compliance Department (Department) has been working with you to resolve potential violations occurring on your property addressed as 153 & 155 Tepee Ridge Road East, Bozeman, Montana; legally described as Tract 12A of Certificate of Survey (COS) No. 1265A located in the SE ¼ and SW ¼ of Section 17 and the NE ¼ and NW ¼ of Section 20, Township 1 South, Range 7 East, P.M.M., Gallatin County (Property).

Specifically, this letter addresses the recent changes in state statute that amend House Bill 257 that was codified at § 7-5-121 Montana Code Annotated (MCA) in 2021. Recently, the Montana Legislature passed House Bill 299 that was signed into law by Governor Gianforte and became immediately effective. House Bill 299 clarifies that “The prohibitions provided for in subsection (2) do not apply to the enforcement of zoning provisions as allowed in 76-2-113 and 76-2-210.”

Consequently, the Property is again subject to Section 4 of the Bridger Canyon Zoning Regulation (Zoning Regulation), which does not list Overnight Accommodations, Short-Term Rentals, or Tourist Homes as Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit in the AE Sub-district.

Bridger Canyon Zoning Regulation

As previously explained in my letters, the Property is located entirely within the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District).

The requirement for property to conform to the Zoning Regulation is found in Section 3.2 of the Gallatin County “Part 1” Administrative Regulation (Administrative Regulation) and requires property owners to ensure that all Uses and Structures comply with the Zoning Regulation.

Section 4 of the Zoning Regulation lists the standards and requirements for the AE sub-district. Section 4.2 lists the Permitted Uses after a Land Use Permit is approved. Section 4.3 lists Uses Permitted After Securing Approval of a Conditional Use Permit.

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

Overnight Accommodations, Short-Term Rentals, Tourist Homes

As stated above, none of the listed Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit include Overnight Accommodations, short-term rentals or tourist homes.

Section 3.22 of the Zoning Regulation defines Dwelling Unit as:

A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.

- a. Dwelling Unit, Accessory: A separate Dwelling Unit located within the Principal Single-Family Dwelling Unit or in an Accessory Building.*
- b. Dwelling Unit, Principal Single-Family: A Building or portion thereof containing a single Dwelling Unit for habitation by a Family.*

Section 3.52 of the Zoning Regulation defines Overnight Accommodations as:

Permanent, separately rentable accommodations that are not available for residential use, except for the proprietors of a Bed and Breakfast Inn or Guest Ranch. Overnight Accommodations include Hotel or motel rooms, hostels, cabins, Bed and Breakfast Inns, Guest Ranches, and time-shared units. Individually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, Employee Housing, and similar accommodations do not qualify as Overnight Accommodations for purpose of this definition.

The term short-term rental or tourist home is not a defined term within the Zoning Regulation or Administrative Regulation.

Section 3.2 of the Administrative Regulation states, with emphasis added:

Zoning Regulation Conformance. Property owners are responsible for ensuring all activity within and on their property conforms to this Administrative Regulation and the applicable District Regulation. No Building, Structure, or land shall hereafter be used or occupied, and no Building, Structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved or Structurally Altered unless it is in conformity with all the Zoning Regulations.

No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure, or unless such Use is deemed to be an appropriate Use pursuant to the interpretation process of Section 3.8 of this Administrative Regulation. All other uses are prohibited unless otherwise authorized by federal or state law.

The burden of proof is on an applicant to demonstrate that applicable requirements and review criteria of the Zoning Regulations are met. Where conditions of approval are attached to any approval issued under the Zoning Regulations, the failure to comply with any condition of approval is a violation of the Zoning Regulations.

There are two active listings for Overnight Accommodations, short-term rentals, or tourist homes operating on the Property:

- www.vrbo.com #734934 “Stunning 60 Acre Ranch in Bridger Canyon” lists three bedrooms with two king sized beds and three twin bunk beds, two plus bathrooms, kitchen, hot tub and outdoor spa

- www.vrbo.com #850456 “Luxurious 60 Acre Ranch Compound In The Heart Of Beautiful Bridger Canyon” lists three bedrooms with one king bed, one queen bed and three win bunk beds, three plus bathrooms, kitchen, indoor and outdoor living space, multiple fireplaces

Overnight Accommodations, short-term rentals and tourist homes are not listed Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit for the Property. **Therefore, the Use is prohibited, and corrective action is required as described below.**

Corrective Action

No later than June 29, 2023, you must:

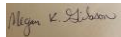
1. **provide me with a written, proposed plan of correction that includes the specific actions and dates by which you will take those actions to bring the Property into compliance with the Zoning Regulation as described above;**

The Planning Department is available to provide general information and review specific questions about the County’s Land Use Regulations. Please see the attached memo from the Planning Department regarding the expectations they have for you prior to discussion. Your primary contact at the Planning Department is Allyson Brekke who can be reached at 406-582-3193 or allyson.brekke@gallatin.mt.gov.

Please keep in mind that a failure to initiate the corrective actions and notify me as discussed above, could result in additional enforcement action.

If you have any questions about this letter, please contact me at 406-582-3775.

Sincerely,



Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc w/ attachment:

Erin Arnold, Chief Civil Deputy County Attorney via email
Allyson Brekke, Deputy Planning Officer, Allyson.brekke@gallatin.mt.gov
Montana Department of Revenue via email
Bridger Canyon Fire District via email
Leah De Guzman, leahdg2004@gmail.com
Amy McNulty, Tarlow Stonecipher Weamer & Kelly, PLLC, amcnulty@lawmt.com
Complainant via email



Gallatin County

MEMO

TO: Interested Parties

FROM: Sean O'Callaghan, AICP, Chief Planning Officer

RE: Planning Department Role in Working with Responsible Parties to Resolve Compliance Matters

DATE: December 15, 2022

The Department of Planning and Community Development (Planning Department) works in partnership with the Compliance Department to administer and enforce the County's various planning-related land use regulations (i.e. subdivision, zoning, floodplain, building for lease or rent regulations, etc.). This memo is intended to help interested parties understand the two primary roles of Planning Department in the compliance process.

The Planning Department's primary role in the compliance process is to review applications that are submitted by a landowner or responsible party to bring a property into compliance with regulatory requirements. In some instances the Planning Department is the reviewer and decision maker, in other situations we facilitate the review with the decision being made by the appropriate board or commission. Our role as the objective reviewer and sometimes decision maker on applications limits what we can do to help landowners and responsible parties, as described in greater detail below.

Second, the Planning Department is a source of information for landowners and responsible parties working through compliance matters, but we have limited staff resources and capacity, and there are limits to the assistance we can provide. The Planning Department will work with **a single point of contact** for the landowner or responsible party to:

- Provide access to the various planning-related regulations through our website and in our office;
- Provide information on application forms, fees, and timelines associated with various processes;
- Promote an understanding of the general requirements of the relevant regulations, recognizing that most members of the public are not land use experts;
- The Planning Department **does not** act as a technical advisor or provide legal advice to a landowner or responsible party. There are a variety of private sector consultants (e.g. planners, engineers, surveyors, attorneys, etc.) that work with and advise parties that are working to bring a property into compliance with regulatory requirements; and
- The Planning Department **does not** develop remedies to compliance issues for people, but may be able to provide feedback on the potential remedies identified by a landowner or responsible party.

Gibson, Megan

From: Gibson, Megan
Sent: Friday, June 30, 2023 7:11 AM
To: Hailey Garbett
Cc: Amy McNulty; leah de guzman; Sean Lewis (sean.a.lewis@gmail.com)
Subject: RE: Plan of Correction; Bridger Canyon Zoning Regulation Complaint (Compliance ID # 22-041)

Thank you Hailey. I'll review the response and be in touch with you.

Megan K. Gibson
Code Compliance Officer
Junk Vehicle Director
Gallatin County Code Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

From: Hailey Garbett <HaileyG@lawmt.com>
Sent: Thursday, June 29, 2023 5:11 PM
To: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>
Cc: Amy McNulty <AMcNulty@lawmt.com>; leah de guzman <leahdg2004@gmail.com>; Sean Lewis (sean.a.lewis@gmail.com) <sean.a.lewis@gmail.com>
Subject: Plan of Correction; Bridger Canyon Zoning Regulation Complaint (Compliance ID #22-041)

Dear Megan,

Attached please find a letter from Amy McNulty in response to your request for a Plan of Correction dated June 14, 2023.

Please let us know if you have any questions or concerns.

Thanks,

Hailey Garbett
Legal Assistant
Tarlow Stonecipher Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913

Phone: (406) 586-9714
Facsimile: (406) 586-9720
Website: www.lawmt.com

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June 29, 2023

Megan Gibson
Gallatin County Compliance Department
311 West Main Street, Room 108
Bozeman, MT 59715

Via E-mail only:
megan.gibson@gallatin.mt.gov

**RE: Plan of Correction; Bridger Canyon Zoning Regulation Complaint
(Compliance ID #22-041)**

Dear Megan:

I am in receipt of your letter regarding my client's property on Tepee Ridge Road (the "Lewis Property") dated June 14, 2023. Your letter asked for a "written, proposed plan of correction," by today, June 29, 2023, "to bring the Property into compliance with the Zoning Regulations." Specifically, you identified my clients' use of the property as a short-term rental as a violation of the applicable zoning regulations.

I understand that your most recent letter is the result of a change in the law to clarify the County's ability to enforce zoning regulations. I know that we previously have discussed a difference of interpretation of the applicable zoning regulations on this issue. I have refreshed my memory on these issues, and my client's position continues to be that residential rental, whether short or long-term, is a permissible use under the regulations so long as it is not meeting the definition of an "Overnight Accommodation."

This letter serves to outline my client's position on this issue and proposes a plan for compliance with the applicable regulations.

As your letter notes, neither the Bridger Canyon Zoning Regulations nor the Administrative Regulations include any reference to "short-term rentals." The only reference to short-term rentals within the Bridger Canyon Zoning Regulations is included with the definition of "Overnight Accommodations." This definition states that ***"[i]ndividually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service."*** (Section 3.52, emphasis added).

I understand that Overnight Accommodations are not listed as a permitted or conditional use in the sub-district the Lewis Property is located in. But, my clients are not using their property as an Overnight Accommodation. The Lewis Property is not “available for overnight rental use by the general public for at least 48 weeks per calendar year.”

Interpretation of zoning ordinances is done according to its plain meaning to give effect to all of its provisions, and an interpretation cannot “insert what has been omitted,” or “omit what has been inserted.” *Egan Slough Community v. Flathead Co. Bd. Of Co. Comms.*, 2022 MT 57, ¶ 22, 408 Mont. 81, 506 P.3d 996.

The Bridger Canyon Zoning Regulations were drafted to specifically identify what kind of short-term rental would be regulated—Overnight Accommodations. The Regulations do not otherwise purport to restrict rental of property for residential use. To read into the Zoning Regulations, a prohibition against short-term rental of property that is not an Overnight Accommodation would impermissibly “insert what has been omitted.”

The Montana Supreme Court has ruled that short-term rental of property is an incidental residential use of property. See *Craig Tracts Homeowners’ Association, Inc. v. Brown Drake, LLC*, 2020 MT 305, ¶ 12, 402 Mont. 223, 477 P.3d 283. While this case concerns restrictive covenants rather than zoning regulations, it is instructive for identifying that rental of property constitutes residential use as a matter of law. In looking at whether short-term rental was allowed under covenants that prohibited non-residential uses of property, the Court stated, “the critical issue is whether the renters are using the property for ordinary living purposes, such as sleeping and eating.” *Id.* at ¶ 10.

Here, the permitted uses under the AE sub-district include both “One Principal Single-Family Dwelling Unit,” and “One Accessory Dwelling Unit.”

Section 3.22 defines a “Dwelling Unit,” as a “A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.” It specifies that a Principal Single-Family Dwelling is a “Dwelling Unit for habitation by a Family.”

Similar to the covenants at issue in the *Craig Tracts* case, nothing in the definitions of these permitted uses restricts the *duration* someone must be using the property for “living, sleeping, cooking, and sanitation.” When renting, tenants use the Lewis Property for living, sleeping, cooking, and sanitation. This constitutes an allowable use under the applicable regulations.

The ability to lease one’s property is a core property right and an implied, accessory, and incidental use of property. Pursuant to the definition of “Use,” in the Bridger Canyon Zoning Regulations at Section 3.78, such a use is permissible as if it was written as a permissible use explicitly.

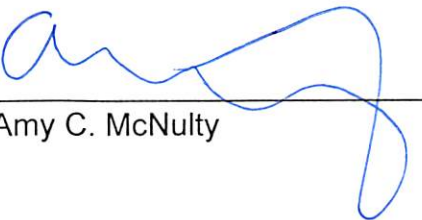
Given the plain language of the Zoning Regulations and the authority from the Montana Supreme Court, my clients disagree that any corrective action on their part is necessary or required to wholly remove listings for short-term rental of their property.

Understanding that there are some limits imposed by the Zoning Regulation, and in an effort to resolve any outstanding issues, my clients can agree to the following plan to ensure compliance with the applicable regulations:

1. The Lewis Property will not be listed as available for overnight rental for the general public for 48 or more weeks per calendar year; and
2. The Lewis Property will only be rented to groups meeting the definition of "Family" under the Zoning Regulations.

I look forward to your response regarding this plan for corrective action.

Very truly yours,



Amy C. McNulty

ACM/hgg



Gallatin County

CORRECTIVE ACTION LETTER #3

July 12, 2023

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625
sean.a.lewis@gmail.com

Sent via First Class Mail & Email

Amy C. McNulty
Tarlow Stonecipher
Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913
AMcNulty@lawmt.com

Sent via First Class Mail & Email

RE: Bridger Canyon Zoning Regulation Complaint (Compliance ID #22-041)

Property: 153 & 155 Tepee Ridge Road East, Bozeman, Montana; legally described as Tract 12A of Certificate of Survey (COS) No. 1265A located in the SE $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 17 and the NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of Section 20, Township 1 South, Range 7 East, P.M.M., Gallatin County (Property)

Dear Mr. Lewis:

Thank you for the attached written response from Ms. McNulty, dated June 29, 2023 (Response) in response to my June 14, 2023 Corrective Action Letter #2 (Corrective Action Letter #2).

This letter addresses the items discussed and again requests corrective action.

As previously explained in my letters, the Property is located entirely within the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District).

The requirement for property to conform to the Zoning Regulation is found in Section 3.2 of the Gallatin County "Part 1" Administrative Regulation (Administrative Regulation) and requires property owners to ensure that all Uses and Structures comply with the Zoning Regulation.

Section 4 of the Zoning Regulation lists the standards and requirements for the AE sub-district. Section 4.2 lists the Permitted Uses after a Land Use Permit is approved. Section 4.3 lists Uses Permitted After Securing Approval of a Conditional Use Permit.

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

As previously explained in my letters, none of the listed Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit include Overnight Accommodations, short-term rentals or tourist homes for the AE sub-district.

Section 3.22 of the Zoning Regulation defines Dwelling Unit as:

A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.

- a. Dwelling Unit, Accessory: A separate Dwelling Unit located within the Principal Single-Family Dwelling Unit or in an Accessory Building.*
- b. Dwelling Unit, Principal Single-Family: A Building or portion thereof containing a single Dwelling Unit for habitation by a Family.*

Section 3.33 of the Zoning Regulation defines Family as:

- a. A person living alone;*
- b. any number of people related by blood, marriage, adoption, guardianship, or other authorized custodial relationship;*
- c. two (2) unrelated people and any children related to either of them;*
- d. not more than four (4) unrelated people living together as a single nonprofit housekeeping unit and sharing common living, sleeping, cooking, and eating facilities.*

Section 3.52 of the Zoning Regulation defines Overnight Accommodations as:

Permanent, separately rentable accommodations that are not available for residential use, except for the proprietors of a Bed and Breakfast Inn or Guest Ranch. Overnight Accommodations include Hotel or motel rooms, hostels, cabins, Bed and Breakfast Inns, Guest Ranches, and time-shared units. Individually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, Employee Housing, and similar accommodations do not qualify as Overnight Accommodations for purpose of this definition.

The term short-term rental or tourist home is not a defined term within the Zoning Regulation or Administrative Regulation.

Section 3.2 of the Administrative Regulation states, with emphasis added:

Zoning Regulation Conformance. Property owners are responsible for ensuring all activity within and on their property conforms to this Administrative Regulation and the applicable District Regulation. No Building, Structure, or land shall hereafter be used or occupied, and no Building, Structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved or Structurally Altered unless it is in conformity with all the Zoning Regulations.

No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure, or unless such Use is deemed to be an appropriate Use pursuant to the interpretation process of Section 3.8 of this Administrative Regulation. All other uses are prohibited unless otherwise authorized by federal or state law.

The burden of proof is on an applicant to demonstrate that applicable requirements and review criteria of the Zoning Regulations are met. Where conditions of approval are attached to any approval issued under the Zoning Regulations, the failure to comply with any condition of approval is a violation of the Zoning Regulations.

Within the Response, you state that:

- “...my clients position continues to be that residential rental, whether short or long-term, is a permissible use under the regulations so long as it is not meeting the definition of an “Overnight Accommodation.” *Id.*, p. 1.
- “I understand that Overnight Accommodations are not listed as a permitted or conditional use in the sub-district the Lewis Property is located in. The Lewis Property is not “available for overnight rental use by the general public for at least 48 weeks per calendar year.””
- The Montana Supreme Court has ruled that short-term rental of property is an incidental use of property. See *Craig Tracts Homeowners’ Association, Inc. v. Brown Drake LLC*, 2020 MT 305, ¶ 12, 402 Mont. 223, 477 P.3D 283. While this case concerns restrictive covenants rather than zoning regulations, it is instructive for identifying that rental of property constitutes residential use as a matter of law. In looking at whether short-term rental was allowed under covenants that prohibited non-residential uses of property, the Court states, “the critical issue is whether the renters are using the property for ordinary living purposes, such as sleeping and eating.” *Id.* At ¶ 10.
- “Understanding that there are some limits imposed by the Zoning Regulation, and in an effort to resolve any outstanding issues, my clients can agree to the following plan to ensure compliance with the applicable regulations:
 1. The Lewis Property will not be listed as available for overnight rental for the general public for 48 or more weeks per calendar year; and
 2. The Lewis Property will only be rented to groups meeting the definition of “Family” under the Zoning Regulations.”

As stated above, the Administrative Regulations provide that “No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure. . . .”

As previously explained in my letters, the Property has the applicable Zoning Regulation approvals for a Principal Single-Family Dwelling Unit and a Guest House. No interpretation or determination has been made that the second Dwelling Unit on the Property is anything but a Guest House that must comply with its applicable conditions of approval.

It is understood that you will not list or Use the Dwelling Units located on the Property as Overnight Accommodations as defined within the Zoning Regulation. However, that does not resolve the violation occurring on the property. Neither short-term rentals nor tourist homes are a Permitted Use of the Principle Single-Family Dwelling or Guest House.

Lastly, *Craig Tracts Homeowners' Association, Inc. v. Brown Drake LLC*, 2020 MT 305, ¶ 12, 402 Mont. 223, 477 P.3D 283, is inapplicable. The case is specific to private subdivision covenants. The Court did not interpret or apply local zoning regulations.

There are two active listings for short-term rentals or tourist homes operating on the Property:

- www.vrbo.com #734934 “Stunning 60 Acre Ranch in Bridger Canyon” lists three bedrooms with two king sized beds and three twin bunk beds, two plus bathrooms, kitchen, hot tub and outdoor spa
- www.vrbo.com #850456 “Luxurious 60 Acre Ranch Compound In The Heart Of Beautiful Bridger Canyon” lists three bedrooms with one king bed, one queen bed and three bunk beds, three plus bathrooms, kitchen, indoor and outdoor living space, multiple fireplaces

Short-term rentals and tourist homes are not listed Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit for the Property. **Therefore, the Use is prohibited, and corrective action is required as described below.**

Corrective Action

No later than July 27, 2023, you must:

1. **provide me with a written, proposed plan of correction that includes the specific actions and dates by which you will take those actions to bring the Property into compliance with the Zoning Regulation as described above.**

Please keep in mind that a failure to initiate the corrective actions and notify me as discussed above, could result in additional enforcement action.

If you have any questions about this letter, feel free to contact me at 406-582-3775.

Sincerely,

Megan K. Gibson

Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc w/ attachment:

Erin Arnold, Chief Civil Deputy County Attorney via email
Allyson Brekke, Deputy Planning Officer, Allyson.brekke@gallatin.mt.gov
Bridger Canyon Fire District via email
Leah De Guzman, leahdg2004@gmail.com
Complainant via email

June 29, 2023

Megan Gibson
Gallatin County Compliance Department
311 West Main Street, Room 108
Bozeman, MT 59715

Via E-mail only:
megan.gibson@gallatin.mt.gov

**RE: Plan of Correction; Bridger Canyon Zoning Regulation Complaint
(Compliance ID #22-041)**

Dear Megan:

I am in receipt of your letter regarding my client's property on Tepee Ridge Road (the "Lewis Property") dated June 14, 2023. Your letter asked for a "written, proposed plan of correction," by today, June 29, 2023, "to bring the Property into compliance with the Zoning Regulations." Specifically, you identified my clients' use of the property as a short-term rental as a violation of the applicable zoning regulations.

I understand that your most recent letter is the result of a change in the law to clarify the County's ability to enforce zoning regulations. I know that we previously have discussed a difference of interpretation of the applicable zoning regulations on this issue. I have refreshed my memory on these issues, and my client's position continues to be that residential rental, whether short or long-term, is a permissible use under the regulations so long as it is not meeting the definition of an "Overnight Accommodation."

This letter serves to outline my client's position on this issue and proposes a plan for compliance with the applicable regulations.

As your letter notes, neither the Bridger Canyon Zoning Regulations nor the Administrative Regulations include any reference to "short-term rentals." The only reference to short-term rentals within the Bridger Canyon Zoning Regulations is included with the definition of "Overnight Accommodations." This definition states that ***"[i]ndividually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service."*** (Section 3.52, emphasis added).

I understand that Overnight Accommodations are not listed as a permitted or conditional use in the sub-district the Lewis Property is located in. But, my clients are not using their property as an Overnight Accommodation. The Lewis Property is not “available for overnight rental use by the general public for at least 48 weeks per calendar year.”

Interpretation of zoning ordinances is done according to its plain meaning to give effect to all of its provisions, and an interpretation cannot “insert what has been omitted,” or “omit what has been inserted.” *Egan Slough Community v. Flathead Co. Bd. Of Co. Comms.*, 2022 MT 57, ¶ 22, 408 Mont. 81, 506 P.3d 996.

The Bridger Canyon Zoning Regulations were drafted to specifically identify what kind of short-term rental would be regulated—Overnight Accommodations. The Regulations do not otherwise purport to restrict rental of property for residential use. To read into the Zoning Regulations, a prohibition against short-term rental of property that is not an Overnight Accommodation would impermissibly “insert what has been omitted.”

The Montana Supreme Court has ruled that short-term rental of property is an incidental residential use of property. See *Craig Tracts Homeowners’ Association, Inc. v. Brown Drake, LLC*, 2020 MT 305, ¶ 12, 402 Mont. 223, 477 P.3d 283. While this case concerns restrictive covenants rather than zoning regulations, it is instructive for identifying that rental of property constitutes residential use as a matter of law. In looking at whether short-term rental was allowed under covenants that prohibited non-residential uses of property, the Court stated, “the critical issue is whether the renters are using the property for ordinary living purposes, such as sleeping and eating.” *Id.* at ¶ 10.

Here, the permitted uses under the AE sub-district include both “One Principal Single-Family Dwelling Unit,” and “One Accessory Dwelling Unit.”

Section 3.22 defines a “Dwelling Unit,” as a “A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.” It specifies that a Principal Single-Family Dwelling is a “Dwelling Unit for habitation by a Family.”

Similar to the covenants at issue in the *Craig Tracts* case, nothing in the definitions of these permitted uses restricts the *duration* someone must be using the property for “living, sleeping, cooking, and sanitation.” When renting, tenants use the Lewis Property for living, sleeping, cooking, and sanitation. This constitutes an allowable use under the applicable regulations.

The ability to lease one’s property is a core property right and an implied, accessory, and incidental use of property. Pursuant to the definition of “Use,” in the Bridger Canyon Zoning Regulations at Section 3.78, such a use is permissible as if it was written as a permissible use explicitly.

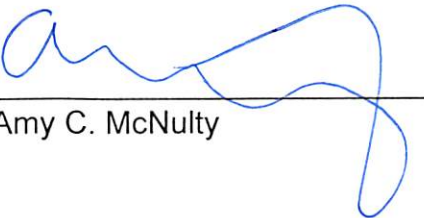
Given the plain language of the Zoning Regulations and the authority from the Montana Supreme Court, my clients disagree that any corrective action on their part is necessary or required to wholly remove listings for short-term rental of their property.

Understanding that there are some limits imposed by the Zoning Regulation, and in an effort to resolve any outstanding issues, my clients can agree to the following plan to ensure compliance with the applicable regulations:

1. The Lewis Property will not be listed as available for overnight rental for the general public for 48 or more weeks per calendar year; and
2. The Lewis Property will only be rented to groups meeting the definition of "Family" under the Zoning Regulations.

I look forward to your response regarding this plan for corrective action.

Very truly yours,



Amy C. McNulty

ACM/hgg

Gibson, Megan

From: Gibson, Megan
Sent: Friday, July 28, 2023 10:24 AM
To: Amy McNulty; Brekke, Allyson; Arnold, Erin
Cc: Hailey Garbett
Subject: RE: Lewis Property Zoning Regulation Complaint (22-041)

Hello Amy,

I am in receipt of your response and requests for information. I will review these and provide any applicable requested documents and fees by the end of the day Friday, August 4, 2023.

A response specific to Mr. Lewis's property will be provided once that is prepared.

Thank You,

Megan K. Gibson
Code Compliance Officer
Junk Vehicle Director
Gallatin County Code Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

From: Amy McNulty <AMcNulty@lawmt.com>
Sent: Thursday, July 27, 2023 5:06 PM
To: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>; Brekke, Allyson <Allyson.Brekke@gallatin.mt.gov>; Arnold, Erin <Erin.Arnold@gallatin.mt.gov>
Cc: Hailey Garbett <HaileyG@lawmt.com>
Subject: Lewis Property Zoning Regulation Complaint (22-041)

Hello, Megan-

I am attaching a letter responding to your last letter of July 12. I see you copied Erin Arnold on that letter, and I am copying her on this email. Erin, please advise if you would like me to just deal with your office on this matter moving forward.

I am separately attaching a records request.

Thank you,
Amy

Amy C. McNulty
Tarlow Stonecipher
Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913

Phone: (406) 586-9714
Facsimile: (406) 586-9720

Website: www.lawmt.com

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July 27, 2023

Megan Gibson
Gallatin County Compliance Department
311 West Main Street, Room 108
Bozeman, MT 59715

Via E-mail only:
megan.gibson@gallatin.mt.gov

**RE: Plan of Correction; Bridger Canyon Zoning Regulation Complaint
(Compliance ID #22-041)**

Dear Megan:

I received your letter of July 12, 2023 regarding the Lewis Property.

I understand from your letter that you have rejected my clients' proposed plan of corrective action to be in compliance with the applicable Zoning Regulations by not renting their property for more than 48 weeks per calendar year and only renting to parties that meet the definition of a "Family" under the Regulations.

It seems we have a fundamental disagreement regarding the interpretation of the applicable regulations as it relates to short-term rental of property. This letter serves to provide more authority for my client's position and seek clarification from you regarding the County's position.

Your last letter appears to rely solely on the provision in the Zoning Regulations that "no Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-District . . ." But this argument ignores that the use at issue—residential use of a dwelling—is a Permitted Use in the applicable Sub-District.

The AE Sub-District includes as permitted uses "One Principal Single-Family Dwelling Unit," and "One Accessory Dwelling Unit."

Section 3.22 defines a "Dwelling Unit," as a "A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation." It specifies that a Principal Single-Family Dwelling is a "Dwelling Unit for habitation by a Family."

This definition does not place any temporal requirement for dwelling of a family to constitute a Permitted Use under the Regulations. As such, short-term rental of the Lewis Property falls under the definition of Permitted Uses. The Lewis Property is rented to persons meeting the definition of "Family," and such persons used the property for "living, sleeping, cooking, and sanitation." The Lewis Property is not leased for non-dwelling purposes.

To the extent you continue to disagree, what evidence does the County have that any short-term rental of the Lewis Property is not consistent with use as a dwelling? Further, can you confirm whether it is the County's position that a homeowner in this Sub-district may not rent or lease their home for residential purposes to a tenant for any length of time? If not, what authority is the County relying on for determining an allowable period of time for rental of property versus an impermissible period of time?

To read into the Zoning Regulations a duration requirement for a Permitted Use would be to insert what has been omitted in the Zoning Regulations. This is in direct conflict with how courts interpret the meaning of Zoning Regulations. See *Hartshorne v. City of Whitefish*, 486 P.3d 693, 702 (Mont. 2021) ("Terms and words are intended to be understood in their ordinary sense, and this Court assumes a legislative body used particular words for a particular reason.") *Egan Slough Community v. Flathead Co. Bd. Of Co. Comms.*, 2022 MT 57, ¶ 22, 408 Mont. 81, 506 P.3d 996. ("Interpretation of zoning ordinances is done according to its plain meaning to give effect to all of its provisions, and an interpretation cannot 'insert what has been omitted,' or 'omit what has been inserted.") These rules of interpretation apply similarly to restrictive covenants, such as those at issue in the *Craig Tracts* case, making that case instructive for how a Court would interpret the applicable Zoning Regulation at issue here.

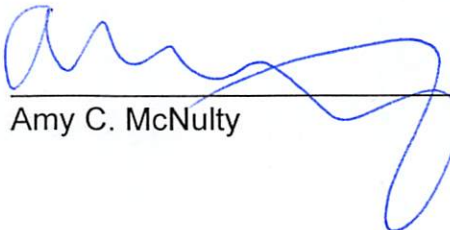
Further, as the Montana Supreme Court did in the *Craig Tracts* matter, a court interpreting this issue may look to law in other jurisdictions. Courts interpreting similar zoning ordinances have found that when a use does not place a temporal or duration requirement for residential use, the municipality cannot interpret a zoning ordinance to restrict short-term residential rental of property. "There is nothing inherent in the concept of residence or dwelling that includes time. . . . If [a zoning authority] is going to draw a line requiring a certain time period of occupancy in order for property to be considered a dwelling or residence, then it needs to do so by enacting clear and unambiguous law." 361 Wis.2d 185, 194, 861 N.W.2d 797, 802; See also, *Lowden v. Bosley*, 395 Md. 58, 909 A.2d 261 (2006) (nothing in restrictive covenant that required residential use distinguished between long-term and short-term rentals); *Brown v. Sandy City Bd. of Adjustment*, 957 P.2d 207 (Utah Ct.App.1998) (ordinance that allows use of dwelling for occupancy by single family and does not limit use by duration of occupancy does not prohibit short-term rentals).

The Montana Supreme Court has held that because “zoning laws and ordinances are in derogation of the common law right to free use of private property, such ordinances should be strictly construed.” *Whistler v. Burlington N. R. Co.*, 741 P.2d 422, 425 (Mont. 1987). Here, as in the cases cited above, there is no “clear and unambiguous” requirement of a certain period of occupancy to constitute use as a Dwelling Unit as permitted by the Zoning Regulations. Reading into the Zoning Regulations a prohibition against use of a property as a dwelling for short-term periods would not be a strict construction of the Regulations.

The law supports interpretation of short-term rental of property as a Permitted Use in this Sub-district. As such, my clients are not willing to cease short-term rental of their property as requested in your last letter.

Together with this letter, I am submitting a public records request to understand if you are proceeding with enforcement of other short-term rentals in the Sub-district or singling out my clients. Once my clients have your position to the questions asked in this letter together with these public records, they will be in a better position to evaluate how they wish to proceed. If you have ideas for resolution of this dispute short of a court action to for interpretation of the applicable Regulations, please advise.

Very truly yours,



Amy C. McNulty

ACM/hgg

Gibson, Megan

From: Gibson, Megan
Sent: Thursday, August 3, 2023 3:50 PM
To: Amy McNulty; Brekke, Allyson; Arnold, Erin
Cc: Hailey Garbett
Subject: RE: Lewis Property Zoning Regulation Complaint (22-041)

Amy,

I did not identify any records relevant to your request.

Please be aware that I am only able to search for records of complaints and compliance inquiries if a file is opened with my department. With regard to the two VRBO listings provided in your request, I am unable to determine whether I have records relevant to those specific properties without an address or legal description of the properties. If you have any specific addresses you would like me to check my records for, please let me know.

Thank You,

Megan K. Gibson
Code Compliance Officer
Junk Vehicle Director
Gallatin County Code Compliance Department
(E): megan.gibson@gallatin.mt.gov
(O): 406-582-3775
(C): 406-209-1161

From: Gibson, Megan
Sent: Friday, July 28, 2023 10:24 AM
To: Amy McNulty <AMcNulty@lawmt.com>; Brekke, Allyson <Allyson.Brekke@gallatin.mt.gov>; Arnold, Erin <Erin.Arnold@gallatin.mt.gov>
Cc: Hailey Garbett <HaileyG@lawmt.com>
Subject: RE: Lewis Property Zoning Regulation Complaint (22-041)

Hello Amy,

I am in receipt of your response and requests for information. I will review these and provide any applicable requested documents and fees by the end of the day Friday, August 4, 2023.

A response specific to Mr. Lewis's property will be provided once that is prepared.

Thank You,

Megan K. Gibson
Code Compliance Officer
Junk Vehicle Director
Gallatin County Code Compliance Department
(E): megan.gibson@gallatin.mt.gov

(O): 406-582-3775

(C): 406-209-1161

From: Amy McNulty <AMcNulty@lawmt.com>

Sent: Thursday, July 27, 2023 5:06 PM

To: Gibson, Megan <Megan.Gibson@gallatin.mt.gov>; Brekke, Allyson <Allyson.Brekke@gallatin.mt.gov>; Arnold, Erin <Erin.Arnold@gallatin.mt.gov>

Cc: Hailey Garbett <HaileyG@lawmt.com>

Subject: Lewis Property Zoning Regulation Complaint (22-041)

Hello, Megan-

I am attaching a letter responding to your last letter of July 12. I see you copied Erin Arnold on that letter, and I am copying her on this email. Erin, please advise if you would like me to just deal with your office on this matter moving forward.

I am separately attaching a records request.

Thank you,

Amy

Amy C. McNulty
Tarlow Stonecipher
Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913

Phone: (406) 586-9714
Facsimile: (406) 586-9720
Website: www.lawmt.com

This electronic mail message is confidential and may constitute attorney-client communication that is privileged by law. It is not intended for transmission to, or receipt by, any unauthorized persons. If you received this transmission in error, please delete it from your system without copying it and notify the sender of the error. Thank you.



Gallatin County Compliance Department Request for Information

Requestor Name: _____

Requestor Address: _____

Requestor Email: _____

Requestor Phone #: _____

File/Info Requested: _____

Compliance Dept. Files Planning Department Files Health Department Files

Format of Information Provided: Email Hard Copy

Department will notify you of applicable fees prior to providing information.

Is this request related to litigation? Yes No

If so, please describe _____

THIS REQUEST FORM IS A PUBLIC RECORD

This form may be delivered by mail or email. If submitted via email type your name and date in the Signature and Date fields above.

For Administrative Use Only

Received By: Phone Electronic Post In-Person

Other Department Signoffs: Compliance Planning Health

Staff Signature: _____

Date Requested Information Provided: _____

version 4.21.23

Compliance Department • 311 W. Main, Rm. 108 • Bozeman, MT 59715

Phone (406) 582-3775 • Email: megan.gibson@gallatin.mt.gov

www.gallatincomt.virtualltownhall.net/code-compliance

Request for information on any complaints and/or enforcement actions against short-term rentals in the AE Sub-district of the Bridger Canyon Zoning District since 2020, including any compliance inquiries, requests for corrective action, responses thereto, including, but not limited to, any information regarding enforcement action against owners of the following listings for short-term rentals:

https://www.vrbo.com/83952?branch_match_id=967529069185666302&branch_referrer=H4sIAAAAAAAAAA8soKSkottLXL9ErK0rK18vM1y8tCfXM988ydHZKAgDXVtw%20HQAAAA%3D%3D&adultsCount=1&childAgeString=%7B%7D&oc=znCsDFDGgWPEh72~9UmwS&utm_campaign=earned%3Avrbo%3Ashare%3AXXX%3AUS%3Aios&utm_content=83952&utm_medium=social&utm_source=direct

https://www.vrbo.com/697036?branch_match_id=967529069185666302&branch_referrer=H4sIAAAAAAAAAA8soKSkottLXL9ErK0rK18vM1w8si3IMzYs0cHZKAgBnJ%20eHQAAAA%3D%3D&adultsCount=1&childAgeString=%7B%7D&oc=OxmQ9i7EQZZsLjUvU5ujx&utm_campaign=earned%3Avrbo%3Ashare%3AXXX%3AUS%3Aios&utm_content=697036&utm_medium=social&utm_source=direct

Gibson, Megan

From: EHS
Sent: Monday, August 7, 2023 8:46 AM
To: sean.a.lewis@gmail.com; Amy McNulty
Cc: leahdg2004@gmail.com
Subject: Notice of Violation and Enforcement Order for 153 & 155 Tepee Ridge Rd
Attachments: HO2023-016 153 155 Tepee Ridge Rd.pdf

Good morning,

Attached please find a copy of the letter that went out in the mail on Friday regarding continued violation of operation unlicensed establishments at 153 & 155 Tepee Ridge Rd.

Sincerely,



Miranda Hoffman/ Environmental Health Program Assistant

GALLATIN CITY-COUNTY HEALTH DEPARTMENT

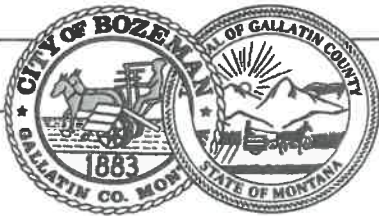
P 406 582 3120 / F 406 582 3128 / E ehs@gallatin.mt.gov



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Take our Customer Survey!





www.healthygallatin.org

Gallatin City-County Health Department

Environmental Health Services
215 W. Mendenhall, Rm 108
Bozeman, MT 59715-3478
406-582-3120 • Fax: 406-582-3128

NOTICE OF VIOLATIONS & ENFORCMENT ORDER Health Officer Order # 2023-016

August 4, 2023

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625
sean.a.lewis@gmail.com

SENT VIA FIRST CLASS MAIL, EMAIL &
CERTIFIED MAIL NO.
7020 1810 0000 8383 3532

Amy C. McNulty
Tarlow Stonecipher
Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913
AMcNulty@lawmt.com

SENT VIA FIRST CLASS MAIL, EMAIL &
CERTIFIED MAIL NO.

RE: Continued violation of operating unlicensed Establishments

Property: 153 & 155 Tepee Ridge Road East, Bozeman, Montana; legally described as Tract 12A of Certificate of Survey (COS) No. 1265A located in the SE ¼ and SW ¼ of Section 17 and the NE ¼ and NW ¼ of Section 20, Township 1 South, Range 7 East, P.M.M., Gallatin County (Property)

Dear Mr. Lewis & Ms. McNulty:

The Gallatin City-County Health Department (GCCHD) and the Gallatin County Code Compliance Officer (CO) have been working with you to resolve the conditions existing on the above-described Property that are in violation of state and local regulations regarding unlicensed Establishments. Specifically, there are two Living Units on the Property that you are advertising and renting as Tourist Home Establishments without the required licensing.

Despite staff's efforts to work with you to address these concerns informally, the violations remain. **I therefore ORDER you to take the corrective actions described below, within the set timelines, to avoid further enforcement action.**

Background

On September 13, 2021, the CO received a Complaint about your Property. The Complaint alleged that both Living Units located on the Property are used as Establishments, specifically Tourist Homes.

The CO initially sent you notification of this Complaint in an Investigation Letter dated September 24, 2021 (Investigation Letter). You were directed to contact the CO within 15 days to schedule a site visit.

The CO spoke with Ms. McNulty regarding the Investigation Letter and requested site visit on October 13, 2021. Ms. McNulty informed the CO that she would provide the information requested and schedule a site visit by October 15, 2021.

No further response was received.

The CO sent you a Warning Letter dated October 22, 2021 (Warning Letter). The Warning Letter again directed you to provide the CO with the information requested and to schedule the site visit within 30 days.

Ms. McNulty spoke with the CO again on October 22, 2021, and arranged the site visit for November 22, 2021.

The CO sent you a Corrective Action Letter dated November 29, 2021 (Corrective Action Letter). You were directed to provide the CO with a proposed written plan of correction within 30 days describing specific actions and dates to address both unlicensed Tourist Home Establishments on the Property. You were also notified that Establishments are not permitted to operate without approved licensing.

No complete proposed written plan of correction was received.

Between December 2021 and August 2022, Ms. McNulty emailed the CO with various updates and questions regarding the Property.

On August 23, 2022, a Public Accommodation Plan Review application for one Tourist Home Establishment was submitted to the GCCHD for the Living Unit addressed as 155 Tepee Ridge Road East.

The GCCHD sent you and Ms. McNulty a Pre-Operational Plan Review Letter (Pre-Operational Plan Review Letter) dated September 21, 2022, identifying actions required by you, and requesting you to schedule a pre-operational inspection. You were again notified that Establishments are not permitted to operate without approved licensing.

No response to the Pre-Operational Plan Review Letter was received.

The GCCHD sent you and Ms. McNulty an email on December 5, 2022, requesting that you submit a second Public Accommodation Plan Review application for the Living Unit addressed as 153 Tepee Ridge Road East. Additionally, GCCHD requested four additional items beyond what was requested on September 21, 2022.

The GCCHD emailed you and Ms. McNulty on December 12, 2022, requesting that the second application and all additional information requested be submitted by December 19, 2022.

NOTICE OF VIOLATIONS & ENFORCEMENT ORDER

Page 2 of 5

On January 4, 2023, a Public Accommodation Plan Review application for one Tourist Home Establishment was submitted to the GCCHD for the Living Unit addressed as 153 Tepee Ridge Road East.

The GCCHD sent you and Ms. McNulty a second Pre-Operational Plan Review Letter (Pre-Operational Plan Review Letter #2) dated February 2, 2023, identifying actions required by you, and requesting you to schedule a pre-operational inspection within 24 months. You were again notified that Establishments are not permitted to operate without approved licensing.

No response to the Pre-Operational Plan Review Letter #2 was received.

The GCCHD called and emailed you and Ms. McNulty on June 2, 2023, again notifying you that Establishments are not permitted to operate without approved licensing.

No further response was received.

Applicable Regulations

1. **Gallatin City-County Health Code, Chapter 2 – Regulations for Licensing and Inspection of Establishments and Facilities Including Retail Food, Wholesale Food, Cottage Food, Hotels, Motels and Rooming Houses, Public Pools, Trailer Courts and Campgrounds, Tattooing and Body Piercing Establishments (“Health Code, Chapter 2”)**

§ 1.13

- A) A person is subject to all remedies available under law for failure to comply with or for violation of these regulations or the State Regulations.
- B) A person violates these regulations or does not comply with the rules set forth in these regulations if the person operates, controls or uses an Establishment without a License or Registration.

§ 2.3 The Health Officer may invalidate, revoke, or recommend revocation of any License, Registration, Validation, or authorization upon good cause shown that a provision of these regulations, State Regulations, local ordinances or state and federal law has not been followed. The Health Officer may deny an Application, Registration or Validation or may invalidate, revoke, recommend revocation, suspend, or modify any Validation, Registration or License, permit, authorization, approval, or registration for any person who has:

- A) Failed or refused to comply with the provisions of these regulations or any other law.

2. **Title 50, Chapter 51, Part 1 (“Health And Safety – Licensing”), Montana Code Annotated (MCA)**

MCA 50-51-102 Definitions:

(4) "Establishment" means a bed and breakfast, hotel, motel, roominghouse, guest ranch, outfitting and guide facility, boardinghouse, or tourist home.

3. **Title 50, Chapter 51, Part 2 ("Health And Safety – General Provisions"), Montana Code Annotated (MCA)**

MCA 50-51-201 License Required:

(1) a person engaged in the business of conducting or operating an establishment shall annually procure a license issued by the department.

(4) Before a license may be issued by the department, it must be validated by the local health officer or, if there is no local health officer, the sanitarian, in the county where the establishment is located.

Notice of Violations

Based on the information known to the GCCHD at this time, you have violated the following state and local regulations for unlicensed Establishments:

1) Violation of § 2.3 – Health Code, Chapter 2

The existing Establishments on the Property are not licensed. The continued use of Living Units as Establishments is a violation of this regulation and state laws.

2) Violation of MCA 50-51-201, Licensing Required

The existing Establishments on the Property are not licensed. The continued use of the Living Units as an Establishments is a violation of local and state laws.

Enforcement Order

Due to the above-identified violations, and as authorized by § 2.3 of the Health Code, Chapter 2, you are hereby **ORDERED** to take the following corrective measures:

1. **Immediately:**

- A. Test the onsite drinking water well for total coliform and nitrates-nitrites. The results must be provided to the GCCHD by close of business on Friday, August 18, 2023. This proof can be emailed to ehs@gallatin.mt.gov.
- B. Cease all advertising and rental operations of both Living Units as Tourist Home Establishment. Provide proof by Friday, August 18, 2023. This proof can be emailed to ehs@gallatin.mt.gov.
- C. Advertisement and rental as Tourist Home Establishment shall not resume until after the appropriate Licenses have been issued by GCCHD and the State of Montana.

Note: DEQ and GCCHD approval of a second Living Unit and wastewater treatment system does not fulfill any obligation or requirement of other state or local agencies, such

NOTICE OF VIOLATIONS & ENFORCEMENT ORDER

Page 4 of 5

as requirements related to zoning, floodplain determinations, building codes or DEQ regulations.

This Enforcement Order is effective as of the date of the first page of this letter. **Failure to take the corrective actions identified above will result in further enforcement action against you, which may include civil litigation and/or criminal prosecution.**

Appeal Rights

An appeal of a written decision of the Health Officer may be made to the Gallatin City-County Board of Health. Section 4.8 of the Health Code, Chapter 3, states:

The Board shall hear appeals which allege error of any written decision of the Health Officer. Appeals shall be conducted in accordance with regulations, rules or policies the Board establishes for that purpose. An appeal to the Board must be made within 21 days of a written decision of the Health Officer and the Board shall either affirm, modify or reverse the decision of the Health Officer.

If you have any questions regarding the licensing process, please contact Shane Lewis at (406) 582-3120. If you have other questions, please contact me, Lori Christenson, at (406) 582-3100. Mr. Lewis and I also can be contacted by mail at the address listed at the top of this letter.

Sincerely,



Lori Christenson
Health Officer

Lori.christenson@gallatin.mt.gov

C: Erin Arnold, Chief Civil Deputy County Attorney (email)
Travis Horton, Environmental Health Director (email)
Megan K. Gibson, Gallatin County Code Compliance Officer (email)
Leah De Guzman, leahdg2004@gmail.com
Complainant (email)
HO #2023-016
Complaint # 21-000100

The screenshot shows a web browser window with the VRBO website. The browser's address bar displays the URL: https://www.vrbo.com/850456?dateless=true&x_pwa=1&fr=HSR&pwa_ts=1692637759605&referrerUrl=aHR0cHM6Ly93d3cudnJiby5jb20vSG90ZW.... The VRBO logo is in the top left, and navigation links like 'Get the app', 'United States', 'Trip Boards', 'List your property', 'Help', 'My trips', and 'Sign in' are in the top right. The main content area features a large image of a ranch at dusk, with a moon in the sky. Below this are several smaller images showing the interior of the ranch, including a kitchen, a living area with a fireplace, and a view of the property. The listing title is 'Luxurious 60 Acre Ranch Compound In The Heart Of Beautiful Bridger Canyon'. It has a 5.0/5 'Exceptional' rating and 13 reviews. The property is an 'Entire home' with 3 bedrooms, 3+ bathrooms, and sleeps 7. Popular amenities listed include a kitchen, washer, dryer, pet-friendly policy, free WiFi, and air conditioning. A promotional banner for OneKeyCash is visible, along with a price of \$617 per night and a 'Sign in' button. The booking section shows 'Start...' and 'End...' date pickers, and 'Travelers' set to '1 traveler'. A 'Price details' link is also present.

Commission Work Session (Quo... | Gallatin County Interactive Map | Tepee Ridge Rd W, Montana 597... | Luxurious 60 Acre Ranch Compo... | +

https://www.vrbo.com/850456?dateless=true&x_pwa=1&fr=HSR&pwa_ts=1692637759605&referrerUrl=aHR0cHM6Ly93d3cudnJiby5jb20vSG90ZW...

vrbo

Get the app United States Trip Boards List your property Help My trips Sign in

← See all properties Save

Overview Amenities Policies Location

Entire home

Luxurious 60 Acre Ranch Compound In The Heart Of Beautiful Bridger Canyon

★ 5.0/5 Exceptional

See all 13 reviews >

Entire home

3 bedrooms 3+ bathrooms Sleeps 7

Popular amenities

- Kitchen
- Washer
- Dryer
- Pet friendly
- Free WiFi
- Air conditioning

Earn OneKeyCash each time you stay at a place that feels like home

Sign in

\$617 avg per night

Start... End ...

Travelers

1 traveler

Price details

Overview Amenities Policies Location

Entire home

Luxurious 60 Acre Ranch Compound In The Heart Of Beautiful Bridger Canyon

★ 5.0/5 Exceptional
[See all 13 reviews >](#)

Entire home

🏠 3 bedrooms 🚿 3+ bathrooms 👤 Sleeps 7

Popular amenities

- 🍳 Kitchen
- 🧺 Washer
- 🧺 Dryer
- 🐾 Pet friendly
- 📶 Free WiFi
- 🌬️ Air conditioning



Bozeman, MT
[View in a map >](#)

Explore the area

📍 Bozeman, MT (BZN-Gallatin Field) 28 min drive

Rooms & beds

3 bedrooms (Sleeps 7)

Earn OneKeyCash each time you stay at a place that feels like home

K

[Sign in](#)

\$617 avg per night

Start date → End date

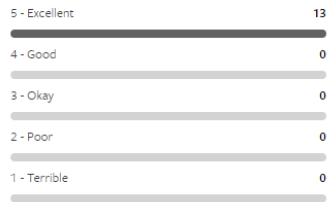
August 2023							September 2023						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
		1	2	3	4	5						1	2
6	7	8	9	10	11	12	3	4	5	6	7	8	9
13	14	15	16	17	18	19	10	11	12	13	14	15	16
20	21	22	23	24	25	26	17	18	19	20	21	22	23
27	28	29	30	31			24	25	26	27	28	29	30

[Clear dates](#) [Submit](#)

★ **5.0** **Exceptional**
13 reviews

Reviews are presented in chronological order, subject to a moderation process, and verified unless otherwise labeled.

[Learn more](#)



5.0/5
Cleanliness

5/5 Excellent

Julianne S.
Aug 1, 2023

Liked: Cleanliness

Wonderful Getaway

The property could not be in a more beautiful location, away from the city and so peaceful. You can tell the owners built this house for themselves and their family to enjoy, everything is high quality and the attention to detail was very impressive. It appears they do still actively use the property (lots of personal items there, plenty of kitchen/houseware essentials, etc.), which did not bother us, but just something to be aware of if it does bother you. Would definitely stay again!

Stayed 4 nights in Jun 2023

0

5/5 Excellent

Elizabeth W.
Nov 2, 2022

Liked: Cleanliness

Beautiful Location

We spent a week at this unique property with our kids and grandkids. It's a beautiful location and so close to Bozeman. The kids loved the playground, the tipi, and watching grandpa fly fishing at the pond. Great stay and hope to go back again!

Stayed 7 nights in Oct 2022

0

5/5 Excellent

Verified traveler
Sep 5, 2022

Liked: Cleanliness

Awesome place!

Everything was as advertised, We GREATLY enjoyed our stay!!

Stayed 7 nights in Aug 2022

0

5/5 Excellent


Taylor G., San Diego, California
Feb 4, 2022

Commission Work Session (Quor... | Gallatin County Interactive Map | Tepee Ridge Rd W, Montana 597... | Stunning 60 Acre Ranch in Bridg... | +

https://www.vrbo.com/734934?dateless=true&x_pwa=1&fr=HSR&pwa_ts=1692637759605&referrerUrl=aHR0cHM6Ly93d3cudnJib20vSG90ZW...

vrbo Get the app United States Trip Boards List your property Help My trips Sign in

← See all properties Save



Overview Amenities Policies Location

Entire home

Stunning 60 Acre Ranch in Bridger Canyon

★ 4.9/5 Exceptional
[See all 36 reviews](#)

Entire home

3 bedrooms 2+ bathrooms Sleeps 7

Popular amenities

- Hot Tub
- Kitchen
- Washer
- Dryer
- Pet friendly
- Free WiFi

Earn OneKeyCash each time you stay at a place that feels like home
[Sign in](#)

\$604 avg per night

Start... End ...

Travelers
1 traveler

[Price details](#)

Commission Work Session (Quor... | Gallatin County Interactive Map | Teepee Ridge Rd W, Montana 597... | Stunning 60 Acre Ranch in Bridg... | +

https://www.vrbo.com/734934?dateless=true&x_pwa=1&frfr=HSR&pwa_ts=1692637759605&referrerUrl=aHR0cHM6Ly93d3cudnJib5j20vSG90ZW...

Overview Amenities Policies Location

Entire home

Stunning 60 Acre Ranch in Bridger Canyon

★ 4.9/5 Exceptional
[See all 36 reviews >](#)

Entire home

🏠 3 bedrooms 🚿 2+ bathrooms 👤 Sleeps 7

Popular amenities

- 🛁 Hot Tub
- 🔪 Kitchen
- 🧺 Washer
- 🧺 Dryer
- 🐾 Pet friendly
- 📶 Free WiFi

Explore the area

📍 Bozeman, MT (BZN-Gallatin Field) 28 min drive

Bozeman, MT
[View in a map >](#)

Rooms & beds

3 bedrooms (Sleeps 7)

Bedroom 2 Bunkroom 3 Master Suite

Earn OneKeyCash each time you stay at a place that feels like home

[Sign in](#)

\$604 avg per night

Start date → End date

August 2023							September 2023						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
		1	2	3	4	5						1	2
6	7	8	9	10	11	12	3	4	5	6	7	8	9
13	14	15	16	17	18	19	10	11	12	13	14	15	16
20	21	22	23	24	25	26	17	18	19	20	21	22	23
27	28	29	30	31			24	25	26	27	28	29	30

[Clear dates](#) [Submit](#)

Commission Work Session (Quor... | Gallatin County Interactive Map | Tepee Ridge Rd W, Montana 597... | Stunning 60 Acre Ranch in Bridg...

https://www.vrbo.com/734934?adults=1&bedroom_count_gt=&chain=&children=&chkin=&chkout=&dateSelectedByUser=false&dateless=true&d...

★ **4.9** Exceptional
36 reviews

Reviews are presented in chronological order, subject to a moderation process, and verified unless otherwise labeled.

[Learn more](#)

5 - Excellent	32
4 - Good	4
3 - Okay	0
2 - Poor	0
1 - Terrible	0

4.8/5
Cleanliness

5/5 Excellent
Matthew W.
Aug 10, 2023
Liked: Cleanliness

Amazing!
We had such a great stay with family! The home was clean and views were amazing!!
Stayed 7 nights in Jul 2023
0

4/5 Good
katie k.
Jun 12, 2023

Bozeman Retreat
An amazing place and as advertised. Easy directions and check in. Private. We did have issues and the hot tub was not usable during our stay. Issues were communicated to management and the owner personally responded. These things were not solvable during our stay but were well received. The management company needs to step up their game in preparing the place, especially for the price and advertised experience. We would stay again.
Stayed 5 nights in May 2023
0

5/5 Excellent
Brian B.
May 4, 2023
Liked: Cleanliness

Amazing property and location
We stayed in the guest house and it was an amazing place for my family. It comfortably slept four adults, three kids and a dog. We went to ski and it is very convenient to Bridger Bowl (10-15 mins), but still within reach of Big Sky (90 mins). The hot tub and pool table were thoroughly enjoyed each night. The views are amazing and worth the trip alone. The property manager and homeowner were very responsive to minor issues encountered. I'd highly recommend this property if you're looking for a luxurious, comfortable stay with close proximity to Bozeman and breathtaking scenery. We would definitely stay there again. (Other posts about needing AWD/4WD in the winter are correct.)
[See less](#)
Stayed 7 nights in Apr 2023
0



Gallatin County

NOTICE OF NON-COMPLIANCE & INITIATION OF THE CONDITIONAL USE PERMIT REVOCATION PROCESS

September 7, 2023

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625
sean.a.lewis@gmail.com

Sent via First Class Mail & Email

Amy C. McNulty
Tarlow Stonecipher
Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913
AMcNulty@lawmt.com

Sent via First Class Mail & Email

Re: Bridger Canyon Zoning Regulation Compliant (Compliance ID #22-041)

Property: 153 & 155 Tepee Ridge Road East, Bozeman, Montana; legally described as Tract 12A of Certificate of Survey No. 1265A located in the SE¹/₄ and SW¹/₄ of Section 17 and the NE¹/₄ and NW¹/₄ of Section 20, Township 1 South, Range 7 East, P.M.M., Gallatin County, Montana

Dear Mr. Lewis and Ms. McNulty:

The Gallatin County Compliance Department (Department) has been working with you to resolve violations occurring on your Property since at least September 24, 2021. This letter pertains to the violations concerning Conditional Use Permit (CUP) #Z2007-038 and the outstanding conditions of approval. The conditions have not been completely satisfied to date, despite the significant passage of time since the CUP was issued on February 8, 2007 and my prior written notice to you on January 17, 2023 with the opportunity to remedy the matter.

As a result, I am initiating the process to revoke the CUP pursuant to Section 10.12 of the Gallatin County "Part 1" Zoning Administrative Regulation (Administrative Regulation). The matter will be heard before the Planning and Zoning Commission on October 12, 2023, as further discussed below.

Background:

The Property is located within the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District) and therefore must comply with the Bridger Canyon Zoning Regulation (Zoning Regulation) unless otherwise exempted.

The Zoning District was adopted by the Board of County Commissioners on July 12, 1971 and Zoning Regulation was adopted by the Board of County Commissioners on October 26, 1971, and has been amended thereafter.

The Administrative Regulation was adopted for use within the Zoning District on May 21, 2019.

According to the records with the Gallatin County Clerk & Recorder you purchased the Property in September 2003.

According to the Department of Planning and Community Development (Planning Department) records the following Conditional Use Permit applications are associated with your Property:

- #Z2006-023 Conditional Use Permit (CUP) application for a Caretaker's Residence was submitted to the Planning Department in August 2005
 - The Planning Department issued a letter on September 20, 2005 stating they could not process the application as there were no structures constructed on the property and a principal dwelling unit was required to be constructed prior to applying for an accessory dwelling unit (Caretaker's Residence).
- #Z2007-038 CUP application to change the designation of the existing Single Family Dwelling Unit to a Caretaker's Residence submitted December 1, 2006
 - The request was conditionally approved by the Bridger Canyon Planning & Zoning Commission on February 8, 2007 via the Findings of Fact Conclusions of Law and Order with six Conditions of Approval:
 1. The conditional use permit authorizes the use of this structure as a caretaker's residence. The structure shall not be utilized for any other use unless such use is a permitted use in conformance with the Regulation.
 2. A land use permit for the single-family residence shall be issued by the Gallatin County Planning Department prior to construction.
 3. The following restrictive covenants shall be recorded in the Gallatin County Clerk and Recorder's Office prior to issuance of the new single-family residence:
 - a. *The caretaker's residence shall not be rented.*
 - b. *The caretaker's residence shall not be divided or sold separately from the original parcel.*
 - c. *All structures shall be constructed in compliance with Montana State adopted codes for construction, including codes for seismic zone 3, and National Fire Protection codes.*
 - d. *Flame retardant roofing materials shall be used.*
 - e. *Spark-arrestor screens shall be placed on all fireplace and woodstove chimneys.*
 - f. *Smoke detectors shall be installed on each level of dwelling units.*

- g. *Areas within 30 feet of habitable structures shall be cleared of all flammable materials.*
 - h. *Open fires shall be prohibited.*
 - i. *Any covenant which is included herein as a condition of permit approval and required by the Bridger Canyon Planning and Zoning Commission may not be amended or revoked without the mutual consent of the property owners and the Planning and Zoning Commission.*
4. The future single-family residence shall be constructed with an automatic fire sprinkler system meeting the requirements of NFPA 13D/Uniform Fire Code. The fire district shall receive a stamped set of engineered sprinkler system plans for review and approval prior to construction. Inspections shall be scheduled, with 48-hour notice, during construction and after completion.
 5. Applicant shall receive an approved Emergency Vehicle Turnaround Plan from the Bridger Canyon Fire Department prior to land use permit approval for the future single-family residence.
 6. Approval from the Gallatin City-County Environmental Health Department for the septic system for the new single-family residence shall be obtained prior to the issuance of a land use permit.

On September 13, 2021, the Department received a complaint stating that:

- “Mr. Lewis is renting both the primary home and the caretaker building independently and simultaneously at 6400 Tepee Ridge Rd on short-term rental sites such as VRBO. Neighbors complain that renters create nuisances, particularly with respect to noise and road safety.”
- The email with the complaint states the VRBO site and rental use goes back to at least January 2, 2020.

Compliance Department Investigation:

I initially sent you notification of this complaint in the attached Investigation Letter dated September 24, 2021 (Investigation Letter). You were to contact me to arrange a site visit and provide me with a written response within 15 days of the date of the Investigation Letter.

Amy McNulty, your legal representative, emailed me on October 13, 2021, saying that she would be in touch by October 15, 2021 with a response to the Investigation Letter and to arrange the requested site visit.

No further response or correspondence was received.

I sent you the attached Warning Letter dated October 22, 2021 (Warning Letter). You were to schedule a site visit and submit the information requested no later than 30 days after the date of the Warning Letter.

Ms. McNulty contacted me on October 22, 2021 and we arranged the requested site visit for November 22, 2021 as you would be in town that week staying on the Property for Thanksgiving.

The site visit was completed as scheduled on November 22, 2021, with you, Ms. McNulty, Leah De Guzman (your partner) and me (Site Visit).

I sent you the attached Corrective Action Letter on November 29, 2021 (Corrective Action Letter). You were to contact the Planning Department and the Health Department to discuss your options and provide me with a proposed written plan of correction no later than 30 days after the date of the Corrective Action Letter.

On December 28, 2021, I received a written response from Ms. McNulty indicating that she had started conversations with both departments, that you would be back in touch with the Planning Department by January 14, 2022, and that you were still investigating some of the items raised as potential violations.

I sent you the attached Partial Closure/Corrective Action Letter #2 dated February 2, 2022 (Partial Closure/Corrective Action Letter #2) further clarifying which items would require corrective actions. You were to provide me with a proposed written plan of correction no later than 15 days after the date of the Partial Closure/Corrective Action Letter #2.

On February 22, 2022, Ms. McNulty notified me in writing that she was aware that the response was past due and would have it to me by February 25, 2022.

No further response or correspondence was received, other than an email on March 1, 2022 stating that Ms. McNulty needed more time with her clients.

I sent you the attached Warning Letter #2 on April 18, 2022 (Warning Letter #2). You were to submit a written plan of correction that included specific actions and dates, as requested in previous letters and email correspondence, no later than 30 days after the date of the Warning Letter #2.

On May 17, 2022, Ms. McNulty provided a response to the Warning Letter #2 (Response).

On May 26, 2022, Ms. McNulty, you, and Ms. De Guzman met with Allyson Brekke, the then Deputy Planning Officer to discuss options regarding the Land Use Permits, Conditional Use Permit, and Uses on the Property as identified within the previous letters from the Department.

Meeting notes from Ms. Brekke, specific to the Caretaker's Residence CUP, stated:

“Secondly, decide how you want to use the structure that is approved through a CUP as a caretaker's residence. If want to maintain caretaker's approval, submit a narrative showing how CUP #2007-038 conditions of approval are met. Be mindful of definitions included in Section 3 of the Bridger Canyon Zoning District, including "caretaker's residence": https://gallatincomt.virtualtownhall.net/sites/g/files/vyhlijf606/f/pages/bc_02_22_0.pdf”

On June 17, 2022, Ms. Brekke emailed a copy of the above meeting notes to Ms. McNulty.

I reached out to Ms. McNulty on August 29, 2022, regarding the outstanding actions for the Conditional Use Permit on the Property. Ms. McNulty provided a response to me on October 17, 2022, stating:

“Hi Megan- Thanks for your voicemail on this last week. Sounds like I am going to connect with my clients in the next day or so, so I hope to be able to answer your questions on where they are at with (1) the LUP application; and (2) the licensing with the Health Dept.”

No proposed, written plan of correction, additional information or documentation demonstrating compliance with the Caretaker’s Residence CUP, Zoning Regulation or Administrative Regulation was provided.

On January 17, 2023, I sent you the attached Notice of Non-Compliance & Intent to Initiate Conditional Use Permit Revocation (Non-Compliance Letter). Specific to the Caretaker’s Residence you were to provide documentation and a narrative demonstrating how all conditions of CUP #Z2007-038 have been completed/met for use as a Caretaker’s Residence, no later than February 16, 2023.

On February 16, 2023, I received the attached written response from Ms. McNulty regarding the Caretaker’s Residence CUP conditions of approval. Ms. McNulty indicated that additional information regarding some the conditions was still in process and that the information would be provided to the Department upon receipt.

On March 8, 2023, I sent you the attached Response Letter. The additional items mentioned in the Response Letter were resolved over the summer of 2023; however, no additional information regarding the Caretaker’s Residence CUP conditions of approval was provided by you or Ms. McNulty as of the date of this letter.

Bridger Canyon Zoning Regulation

The pertinent sections of the Zoning Regulation and Administrative Regulation are attached as Exhibit A for your reference

Section 4 of the Zoning Regulation lists the standards and requirements for the AE sub-district. Section 4.2 lists the Permitted Uses **after** a Land Use Permit is approved. Section 4.3 lists Uses Permitted after Securing Approval of a Conditional Use Permit.

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

The December 2006 Conditional Use Permit #2007-038 for a Caretaker’s Residence includes six conditions of approval as listed above. The following conditions have not been satisfied:

- 1. The conditional use permit authorizes the use of this structure as a caretaker’s residence. The structure shall not be utilized for any other use unless such use is a permitted use in conformance with the Regulation.*

You are actively renting the Caretaker's Residence as a short-term rental. This use is prohibited by the Zoning Regulation and expressly contrary to this condition of approval. The Administrative Regulation states in relevant part:

3.2 Zoning Regulation Conformance. Property owners are responsible for ensuring all activity within and on their property conforms to this Administrative Regulation and the applicable District Regulation. No Building, Structure, or land shall hereafter be used or occupied, and no Building, Structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved or Structurally Altered unless it is in conformity with all the Zoning Regulations.

No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure, or unless such Use is deemed to be an appropriate Use pursuant to the interpretation process of Section 3.8 of this Administrative Regulation. All other uses are prohibited unless otherwise authorized by federal or state law.

The burden of proof is on an applicant to demonstrate that applicable requirements and review criteria of the Zoning Regulations are met. Where conditions of approval are attached to any approval issued under the Zoning Regulations, the failure to comply with any condition of approval is a violation of the Zoning Regulations.

Section 3.16 of the Zoning Regulation defines "Caretaker's Residence" as a "Dwelling Unit for a person that takes care of the house or land of an owner who may be absent."

Use of the Caretaker's residence as a short-term rental is inconsistent with the definition at Section 3.16 and the CUP approval. Furthermore, short-term rentals are not listed as a permitted use within the AE Subdistrict.

4. *The future single-family residence shall be constructed with an automatic fire sprinkler system meeting the requirements of NFPA 13D/Uniform Fire Code. The fire district shall receive a stamped set of engineered sprinkler system plans for review and approval prior to construction. Inspections shall be scheduled, with 48-hour notice, during construction and after completion.*

No documentation has been submitted demonstrating the single-family residence was constructed with the automatic fire sprinkler system as required, nor that the Fire District approved the plans prior to or post construction.

Initiation of Conditional Use Permit Revocation Process

Pursuant to Section 10.12 of the Administrative Regulation, the Bridger Canyon Planning and Zoning Commission may revoke a Conditional Use Permit when it determines that the person holding a CUP has not complied with the conditions upon which it was issued.

I provided you with written notice on January 17, 2023, regarding my intent to initiate the Conditional Use Permit revocation process for CUP #Z2007-038 for the Caretaker's Residence. That notice provided you an opportunity to remedy the matter by fulfilling the outstanding conditions of approval. You have not satisfied that request.

The Department is initiating the process for the Revocation of CUP #Z2007-038 pursuant to Section 10.12 of the Administrative Regulation. The public hearing for this revocation is scheduled for **Thursday, October 12, 2023 starting at 9:00 am** before the Bridger Canyon Planning & Zoning Commission. The hearing will be held in the Community Room, 3rd Floor, at the Gallatin County Courthouse, located at 311 West Main, Bozeman, Montana.

You will be provided with an opportunity to respond to the revocation request during the hearing. **Should you have any written documentation you would like to submit for consideration by the Planning & Zoning Commission, please ensure that 12 complete hard copies are provided to the Department no later than Tuesday, October 3, 2023.**

Should you have any questions regarding this letter, please contact me at 406-582-3775.

Sincerely,

Megan K Gibson

Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc w/ attachments:

Erin Arnold, Chief Civil Deputy County Attorney via email
Sean O'Callaghan, Chief Planning Officer via email
Complainant via email

Exhibit A – Applicable Regulations:
Gallatin County “Part 1” Administrative Regulation

- 3.2 Zoning Regulation Conformance. Property owners are responsible for ensuring all activity within and on their property conforms to this Administrative Regulation and the applicable District Regulation. No Building, Structure, or land shall hereafter be used or occupied, and no Building, Structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved or Structurally Altered unless it is in conformity with all the Zoning Regulations.

No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure, or unless such Use is deemed to be an appropriate Use pursuant to the interpretation process of Section 3.8 of this Administrative Regulation. All other uses are prohibited unless otherwise authorized by federal or state law.

The burden of proof is on an applicant to demonstrate that applicable requirements and review criteria of the Zoning Regulations are met. Where conditions of approval are attached to any approval issued under the Zoning Regulations, the failure to comply with any condition of approval is a violation of the Zoning Regulations.

- 3.8 Interpretations. Requests for Official interpretations concerning the Zoning Regulations, boundaries, and maps shall be made in writing, accompanied by the appropriate application and fee, and shall be handled as follows:
- a. Administrative Interpretations. Interpretations concerning the Zoning Regulations and maps, except those interpretations listed at subsection (b) or (c)(vii) below, may be made by the Planning Director and are subject to Appeal as described in Section 13 of this Administrative Regulation. If the Planning Director determines the interpretation is of significant public interest, the Planning Director may refer the request to the Planning & Zoning Commission. The Planning & Zoning Commission shall consider the request in a public hearing.
 - b. Interpretation of Use Classification. If questions arise concerning the appropriate classification of a particular Use, or if the specific Use is not listed, the Planning and Zoning Commission shall determine the appropriate classification of that Use. In interpreting a Use classification, the Planning and Zoning Commission shall hold a public hearing, consider the recommendation of any Zoning Advisory Committee, and determine whether the use meets all of the following criteria:
 - i. The proposed Use is compatible with the Uses allowed in the Sub-district;
 - ii. The proposed Use is similar to one or more Uses allowed in the Sub-district;
 - iii. The proposed Use will not adversely affect property in the neighborhood or Sub-district or Zoning District; and

- iv. The proposed use will not abrogate the intent of the Zoning Regulations and applicable growth policy or neighborhood plan.
- 6.1 Intent. The Land Use Permit review process is intended to verify a Structure's conformity to the applicable requirements of the Zoning Regulations.
- 6.2 Requirement for Land Use Permit. Except as provided in Section 6.4 below, no Structure shall be built or moved and no Structural Alteration shall commence without an approved Land Use Permit issued under this Section. Construction without an approved Land Use Permit constitutes a violation of the Zoning Regulations. Preparatory site work may occur prior to Land Use Permit approval, but occurs at the risk of the landowner. Pouring of concrete or installation of other permanent improvements prior to Land Use Permit approval is prohibited.
- 8.1 Intent. The Certificate of Completion is intended to verify that all Exterior Construction and other relevant conditions of approval for a project have been completed in conformance with the plans approved through the Conditional Use Permit, Variance, Land Use Permit or Change of Use Permit review processes.
- 8.2 Requirement for a Certificate of Completion. Where the Planning Director has determined as part of the approval of a Land Use Permit or Change of Use Permit that a Certificate of Completion is required for a project, a Certificate of Completion shall be obtained after completion of all Exterior Construction and prior to expiration of the Land Use Permit or Change of Use Permit. A Certificate of Completion may also be required as a condition of approval for a Conditional Use Permit or Variance.
- 10.1 Intent. The Conditional Use Permit review process is intended to provide a transparent, public review process for Uses that, because of their widely varying design, operational characteristics, and potential to cause off-site impacts, require case-by-case review in order to determine whether they will be compatible with surrounding Uses and patterns of development and, if necessary, develop appropriate conditions of approval. Where District Regulations provide specific procedures and requirements for Planned Unit Developments, Wireless Communication Facilities, Natural Resource Conditional Uses, or Open Cut (Gravel Pit) Operations, those District Regulations shall control.
- 10.2 Requirement for a Conditional Use Permit. Conditional Use Permits are required prior to operation of a Use and/or occupancy of a Structure which is listed as a Conditional Use under the applicable District Regulation.
- 10.7 Authorized Use. A Conditional Use is not authorized until all conditions of approval and the following are satisfied:
- a. Structures proposed for construction in connection with the proposed Use have obtained any required Land Use Permit or Change of Use Permit and are in the process of Actual Construction on the site; or

- b. If remodeling is proposed for existing Structures in connection with the proposed Use, any required Land Use Permit or Change of Use Permit has been approved and Actual Construction of the remodeling has begun on the site; or
 - c. If no construction or remodeling is required, then the permittee has obtained any necessary Change of Use Permit and is regularly engaged on the site in performing and carrying out the Use, and has secured all necessary federal, state, and local permits and licenses.
- 10.8 Expiration. Unless specifically provided otherwise in the Planning and Zoning Commission's approval, all Conditional Use Permits shall automatically expire if the Authorized Use as set forth in Section 10.6 above is not started within two years of the date of approval. All Conditional Use Permits issued for a definite term shall automatically expire at the end of the specified term.
- 10.12 Revocation. The Planning and Zoning Commission is authorized to revoke Conditional Use Permits.
- a. If the Planning Director or Zoning Enforcement Agent finds that a person holding a Conditional Use Permit has not complied with the conditions upon which it was issued, the Planning Director or the Zoning Enforcement Agent may, after providing the person holding the Conditional Use Permit with written notice and an opportunity to remedy the matter, initiate the process to revoke a Conditional Use Permit.
 - b. If an Advisory Committee has been established, the Planning Director or Zoning Enforcement Agent shall forward the revocation request to the Committee, which, after holding a meeting and taking comment, may forward a recommendation to the Planning and Zoning Commission.
 - c. The Planning and Zoning Commission shall consider the revocation request during a public hearing for which Published Notice has been provided and issue a Decision in accordance with the Planning and Zoning Commission Hearing Rules.
 - d. The Planning and Zoning Commission may revoke a Conditional Use Permit when the Planning and Zoning Commission finds that the person holding a Conditional Use Permit has not complied with the conditions upon which it was issued.

Bridger Canyon Zoning Regulation

- 4.2.b. One Principal Single-Family Dwelling Unit on each parcel created in conformance with the Zoning Regulation or in existence at the time of its original adoption.
- 4.2.c. One Accessory Dwelling Unit in accordance with Section 12.2.



Gallatin County

INVESTIGATION LETTER

September 24, 2021

Sean A. Lewis
5064 Bridge Creek Drive
Plano, TX 75093

Sent via First Class Mail

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625

Sent via First Class Mail

Re: Bridger Canyon Zoning Regulation, unpermitted wastewater disposal, and Public Accommodation Licensing Compliant (Compliance ID #22-041)

Dear Mr. Lewis:

The Gallatin County Compliance Department (Department) recently received a complaint regarding your property addressed by Gallatin County as 153 & 155 Tepee Ridge Road East, Bozeman; legally described as Tract 12A of Certificate of Survey (COS) No. 1265A (Property). The Property also appears to be associated with 6400 Teepee Ridge Road. This address appears to have been derived from Google Maps and is not recognized or assigned by Gallatin County. Specifically, the complainant is concerned that you are renting out two Dwelling Units on the Property to members of the public as two separate short-term rentals/Overnight Accommodations/Tourist Homes in violation of the Bridger Canyon Zoning Regulation (Zoning Regulation) and that users of the rentals are creating nuisances with noise and road safety for other residents in the area.

During my investigation I also discovered potential unpermitted wastewater disposal and Public Accommodation Licensing violations. The Gallatin City-County Health Department Environmental Health Services (Health Department) has authorized me to investigate the unpermitted wastewater disposal and Public Accommodation Licensing violations.

Nuisances

Concerns regarding general safety, noise or public nuisances should be addressed with the Sheriff's Department. For questions regarding these concerns the Sheriff's Department can be reached at 406-582-2100.

Bridger Canyon Zoning District

According to County records, the Property is located in the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District) and therefore must comply with the Zoning Regulation. The Zoning District was adopted by the Board of County Commissioners on July 12, 1971 and Zoning Regulation was adopted by the Board of County Commissioners on October 26, 1971, and has been amended thereafter. The Zoning Regulation can be found in its

entirety online at the Gallatin County Department of Planning and Community Development (Planning Department) website.

Because this Property is subject to the Zoning Regulation, it must also comply with the Gallatin County “Part 1” Zoning Administrative Regulation (Administrative Regulation). The Administrative Regulation can be found in its entirety online at the Planning Department website.

The requirement for property to conform to the Zoning Regulation is found in Section 3.2 of the Administrative Regulation and requires property owners to ensure that all Uses and Structures comply with the Zoning Regulation.

I searched the Planning Department records and located four permits for the Property:

- #Z2006-023 Conditional Use Permit (CUP) application for a Caretaker’s Residence was submitted to the Planning Department in August 2005
 - The Planning Department issued a letter on September 20, 2005 stating they could not process the application as there were no structures constructed on the property and a principle dwelling unit was required to be constructed prior to applying for an accessory dwelling unit (Caretaker’s Residence) and provided two potential solutions
- #L2006-089 Land Use Permit (LUP) approved October 20, 2005 for one Single Family Dwelling Unit, barn and detached garage (Accessory Building):
 - Single Family Dwelling Unit:
 - a “lower floor” that contained mechanical room, all three (3) bedrooms, two (2) bathrooms, laundry room, and a recreation room
 - a “main floor” that contained a bathroom, closet, office, fire place, living room, kitchen and dining area
 - Horse Barn, attached to Single Family Dwelling Unit:
 - storage room, bathroom, tack room, five (5) stalls, car port
 - Detached Garage:
 - seven (7) parking stalls of differing sizes, an entryway, storage room, dry storage room, and wet storage room
 - “upper floor” all labeled as storage only
- #Z2007-038 CUP application to change the designation of the current Single Family Dwelling Unit to a Caretaker’s Residence submitted December 1, 2006
 - The request was conditionally approved by the Bridger Canyon Planning & Zoning Commission on February 8, 2007 via the Findings of Fact Conclusions of Law and Order with six (6) conditions of approval:
 1. The conditional use permit authorizes the use of this structure as a caretaker’s residence. The structure shall not be utilized for any other use unless such use is a permitted use in conformance with the Regulation.
 2. A land use permit for the single-family residence shall be issued by the Gallatin County Planning Department prior to construction.

3. The following restrictive covenants shall be recorded in the Gallatin County Clerk and Recorder's Office prior to issuance of the new single-family residence:
 - a. *The caretaker's residence shall not be rented.*
 - b. *The caretaker's residence shall not be divided or sold separately from the original parcel.*
 - c. *All structures shall be constructed in compliance with Montana State adopted codes for construction, including codes for seismic zone 3, and National Fire Protection codes.*
 - d. *Flame retardant roofing materials shall be used.*
 - e. *Spark-arrestor screens shall be placed on all fireplace and woodstove chimneys.*
 - f. *Smoke detectors shall be installed on each level of dwelling units.*
 - g. *Areas within 30 feet of habitable structures shall be cleared of all flammable materials.*
 - h. *Open fires shall be prohibited.*
 - i. *Any covenant which is included herein as a condition of permit approval and required by the Bridger Canyon Planning and Zoning Commission may not be amended or revoked without the mutual consent of the property owners and the Planning and Zoning Commission.*
1. The future single-family residence shall be constructed with an automatic fire sprinkler system meeting the requirements of NFPA 13D/Uniform Fire Code. The fire district shall receive a stamped set of engineered sprinkler system plans for review and approval prior to construction. Inspections shall be scheduled, with 48-hour notice, during construction and after completion.
2. Applicant shall receive an approved Emergency Vehicle Turnaround Plan from the Bridger Canyon Fire Department prior to land use permit approval for the future single-family residence.
3. Approval from the Gallatin City-County Environmental Health Department for the septic system for the new single-family residence shall be obtained prior to the issuance of a land use permit.

- #L2013-172 LUP application approved June 7, 2013 for a new garage (Accessory Building), additions and a remodel to the Structure opposite the original Single-Family Dwelling Unit and barn
 - Existing structures listed as studio, barn and pergola

According to the records maintained by the Montana Department of Revenue the Property contains the following:

- Single Family Residence with 3 bedrooms, 2 bathrooms, 2 porches, approximately 654 square feet of living area, built in 2006
- Single Family Residence with 3 bedrooms, 2 bathrooms, 2 decks, a porch, and 2 garages, with approximately 2,523 square feet of living area, built in 2007
- Barn, 720 square feet, built in 2007

- Pole frame building, 305 square feet, built in 2010
- Pole frame building, 264 square feet, built in 2010
- Lean-to, 60 square feet, built in 2010

Overnight Accommodations

Section 4 of the Zoning Regulation lists the requirements for the AE sub-district. Section 4.2 lists the Permitted Uses **after** a Land Use Permit is approved. Section 4.3 lists Uses Permitted After Securing Approval of a Conditional Use Permit.

There are active listings for two (2) Overnight Accommodations on your Property:

- www.vrbo.com/850456 three (3) bedrooms, two (2) full and two (2) half baths, kitchen, living room, deck/patio
- www.vrbo.com/734934 three (3) bedrooms, two (2) full and one (1) half baths, gourmet kitchen, indoor and outdoor living space, multiple fire places

Both listings indicate that the Property has eight (8) beds and sleeps seven (7) people, includes the use of a hot tub and goes on to state that “Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee.”

The AE sub-district, Sections 4.2 and 4.3 of the Zoning Regulation, does not list Overnight Accommodations, and Guest Ranches and Bed and Breakfast Inns are considered Conditional Uses for which the Planning Department has no record of for this Property. Short term rentals are not a listed or defined term within the Zoning Regulation.

Section 3.8 of the Zoning Regulation states:

Interpretations. Requests for Official interpretations concerning the Zoning Regulations, boundaries, and maps shall be made in writing, accompanied by the appropriate application and fee, and shall be handled as follows:

- a. Administrative Interpretations. Interpretations concerning the Zoning Regulations and maps, except those interpretations listed at subsection (b) or (c)(vii) below, may be made by the Planning Director and are subject to Appeal as described in Section 13 of this Administrative Regulation. If the Planning Director determines the interpretation is of significant public interest, the Planning Director may refer the request to the Planning & Zoning Commission. The Planning & Zoning Commission shall consider the request in a public hearing.*
- b. Interpretation of Use Classification. If questions arise concerning the appropriate classification of a particular Use, or if the specific Use is not listed, the Planning and Zoning Commission shall determine the appropriate classification of that Use. In interpreting a Use classification, the Planning and Zoning Commission shall hold a public hearing, consider the recommendation of any Zoning Advisory Committee, and determine whether the use meets all of the following criteria:*

- i. The proposed Use is compatible with the Uses allowed in the Sub-district;*

Compliance Department • 311 W. Main, Rm. 108 • Bozeman, MT 59715

Phone (406) 582-3775 • Email: megan.gibson@gallatin.mt.gov

LEWIS STR ADMINISTRATIVE RECORD 229

- ii. *The proposed Use is similar to one or more Uses allowed in the Sub-district;*
- iii. *The proposed Use will not adversely affect property in the neighborhood or Sub-district or Zoning District; and*
- iv. *The proposed use will not abrogate the intent of the Zoning Regulations and applicable growth policy or neighborhood plan.*

Temporary Occupancy

Section 12.5 of the Zoning Regulation addresses Temporary Occupancy and states:

Temporary Occupancy: The intent of this Subsection is to provide for temporary occupancy during the construction of a Principal Single-Family Dwelling Unit, and to accommodate temporary visitors. A Temporary Dwelling Unit may be a Recreational Vehicle. Mobile Home, tepee, tent, or yurt. A Temporary Dwelling Unit is subject to the following requirements.

a. A property owner may reside in a Temporary Dwelling Unit while a Principal Single-Family Dwelling Unit is under construction, for a maximum of one year, provided:

- (1) A Land Use Permit has been approved for a permanent Principal Single-Family Dwelling Unit, with a removal date;*
- (2) Said mobile home or tepee does not violate any valid existing deed restrictions;*
- (3) A Temporary Dwelling Unit must comply with all siting requirements set forth in the Regulation;*
- (4) The temporary site shall be bear-proof;*
- (5) Temporary Dwelling Units shall not be moved on site nor utilized for occupancy until sewage disposal and water supply systems are installed that meet all State and County Health Department regulations.*

b. Temporary visitor occupancy of a Temporary Dwelling Unit is permitted provided:

- (1) Only one Temporary Dwelling Unit may be occupied on a residential Lot at any one time.*
- (2) The Temporary Dwelling Unit may not occupy any Lot for a period longer than three weeks in any 90-day time period except for storage purposes of a Recreational Vehicle.*
- (3) No fire source shall be allowed for any soft wall Temporary Dwelling Unit.*

According to your listings on www.vrbo.com, you offer a 22 foot luxury tepee (late spring through early fall) for an additional fee for use by members of the public renting your Dwelling Units located on the Property.

Land Use Permits

Section 6 of the Administrative Regulation addresses Land Use Permits. Specifically, Section 6.2 addresses the Requirement for Land Use Permits.

Any Structural Alteration of a Structure or new construction requires an approved Land Use Permit be issued by the Planning Department pursuant to Section 6 of the Administrative Regulation, unless otherwise exempted.

Based on the permits that were located within the Planning Department you have approval for:

- One Single-Family Dwelling Unit with three (3) bedrooms attached to a horse barn
- One detached garage with seven (7) parking stalls and storage
- A CUP permit that was conditionally approved for a Caretaker's Residence
- A new detached new garage, additions and a remodel to a Structure opposite the original Single-Family Dwelling Unit and barn
 - Existing structures in 2013 were listed as studio, barn and pergola

The Planning Department records do not include:

- any documentation that the conditions of approval associated with the conditionally approved Caretaker's Residence were ever met,
- any documentation or approved LUP for a second Dwelling Unit,
- it is unclear what Structure the 2013 additions and remodels were approved for, or what Structure and Use existed at the location prior to this approval

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

In order to clarify compliance with the Zoning Regulation, additional information is needed from you.

Septic Permit (Health Code)

I searched Gallatin County septic permit files and located one approved septic permit for your Property:

- Permit #14111 approved in May 2007 for:
 - One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
 - One (1) attached bedroom above garage generating 155 gallons per day, and
 - One (1), three (3) bedroom barn generating 300 gallons per day

Section 1.10 of Chapter 3 of the Health Code requires that an Authorization to Construct is required prior to the construction of a wastewater disposal system and a Permit to Operate must be granted before a person can lawfully use a wastewater treatment system. Any wastewater treatment system constructed within Gallatin County must comply with Health Code and State law. Chapter 3 of the Health Code can be found in its entirety on the Health Department website.

There is one approved wastewater system installed or used on your Property for:

- One (1), four (4) bedroom residential dwelling generating 350 gallons per day,

Compliance Department • 311 W. Main, Rm. 108 • Bozeman, MT 59715

Phone (406) 582-3775 • Email: megan.gibson@gallatin.mt.gov

- One (1) attached bedroom above garage generating 155 gallons per day, and
- One (1), three (3) bedroom barn generating 300 gallons per day

Any additional wastewater disposal or configuration taking place on your Property outside of the approved system is considered a violation.

According to my research you have multiple Living Units on the Property with somewhere between six (6) and eight (8) bedrooms.

In order to clarify whether the wastewater treatment system installed or used on your Property complies with the Health Code, additional information is needed from you.

Establishment License

According to records maintained by the Health Department there are no Public Accommodation Licenses approved for the operation of any “establishments” on your Property. There are active listings for two Tourist Home rentals on the Property as described above.

Section 50-51-201 of the Montana Code Annotated (MCA) states that, “...a person engaged in the business of conducting or operating an establishment shall annually procure a license”. A Tourist Home is listed under the definition of “Establishment” and defined as, “a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis”. See Section 50-51-102, MCA.

A Public Accommodation License is required for the operation of any Establishment on your Property.

In order to clarify whether your Property complies with the Establishment Licensing requirements, additional information is needed from you.

Response Required

In order to clarify these concerns, I would like to meet with you on the Property to view and discuss how the Property and Structures are used, learn about when the Structures were constructed, and learn about how wastewater is disposed of on the Property. I will also document any additional information relevant to determine compliance with the applicable statutes and regulations.

Additionally, at the time of the site visit, please provide the following:

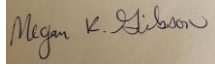
- Copy of paid Lodging Facility Sales and Use Tax from the Montana Department of Revenue for each rented Dwelling Unit
- Copy of rental contract(s) for each rented Dwelling Unit
- Copies of any other permits or documentation you have approving the Structures and Uses occurring on the Property

Please contact me at 406-582-3775 no later than 15 days from the date of this letter, to set up a time to meet on site.

Once I have this information, the County will review it and determine whether additional investigation is necessary.

Please be aware that failure to submit the responses within the timeframe specified may result in additional enforcement action which may include the assessment of a penalty. If you have any questions about this letter, please contact me at 406-582-3775.

Sincerely,

A small rectangular image showing a handwritten signature in cursive that reads "Megan K. Gibson".

Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc: County Attorney's Office
Department of Planning and Community Development
Environmental Health Department
Complainant



Gallatin County

WARNING LETTER

October 22, 2021

Sean A. Lewis
5064 Bridge Creek Drive
Plano, TX 75093-5702

Sent via First Class Mail &
Certified Mail # 7018 1130 0001 1432 1850

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625

Sent via First Class Mail &
Certified Mail # 7018 1130 0001 1432 1867

Re: Bridger Canyon Zoning Regulation, unpermitted wastewater disposal, and Public Accommodation Licensing Compliant (Compliance ID #22-041)

Dear Mr. Lewis:

As you know, the Gallatin County Compliance Department (Department) recently received a complaint regarding your property addressed as 153 & 155 Tepee Ridge Road East, Bozeman; legally described as Tract 12A of Certificate of Survey (COS) No. 1265A (Property). The Property also appears to be associated with 6400 Teepee Ridge Road. This address appears to have been derived from Google Maps and is not recognized or assigned by Gallatin County. Specifically, the complainant is concerned that you are renting out two Dwelling Units on the Property to members of the public as two separate short-term rentals/Overnight Accommodations/Tourist Homes in violation of the Bridger Canyon Zoning Regulation (Zoning Regulation) and that users of the rentals are creating nuisances with noise and road safety for other residents in the area.

During my investigation I also discovered potential unpermitted wastewater disposal and Public Accommodation Licensing violations. The Gallatin City-County Health Department Environmental Health Services (Health Department) has authorized me to investigate the unpermitted wastewater disposal and Public Accommodation Licensing violations.

I initially sent you notification of this complaint in an Investigation Letter dated September 24, 2021 (Investigation Letter). You were to contact me to arrange a site visit and provide me with a written response within 15 days of the date of the Investigation Letter.

I received an email your legal representative Amy McNulty on October 13, 2021, stating that she would be in touch with the information requested and to schedule the site visit by October 15, 2021.

As of the date of this letter, I have not heard back from you or Ms. McNulty.

Bridger Canyon Zoning District

According to County records, the Property is located in the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District) and therefore must comply with the

Zoning Regulation. The Zoning District was adopted by the Board of County Commissioners on July 12, 1971 and Zoning Regulation was adopted by the Board of County Commissioners on October 26, 1971, and has been amended thereafter. The Zoning Regulation can be found in its entirety online at the Gallatin County Department of Planning and Community Development (Planning Department) website.

Because this Property is subject to the Zoning Regulation, it must also comply with the Gallatin County "Part 1" Zoning Administrative Regulation (Administrative Regulation). The Administrative Regulation can be found in its entirety online at the Planning Department website.

The requirement for property to conform to the Zoning Regulation is found in Section 3.2 of the Administrative Regulation and requires property owners to ensure that all Uses and Structures comply with the Zoning Regulation.

I searched the Planning Department records and located four permits for the Property:

- #Z2006-023 Conditional Use Permit (CUP) application for a Caretaker's Residence was submitted to the Planning Department in August 2005
 - The Planning Department issued a letter on September 20, 2005 stating they could not process the application as there were no structures constructed on the property and a principle dwelling unit was required to be constructed prior to applying for an accessory dwelling unit (Caretaker's Residence) and provided two potential solutions
- #L2006-089 Land Use Permit (LUP) approved October 20, 2005 for one Single Family Dwelling Unit, barn and detached garage (Accessory Building):
 - Single Family Dwelling Unit:
 - a "lower floor" that contained mechanical room, all three (3) bedrooms, two (2) bathrooms, laundry room, and a recreation room
 - a "main floor" that contained a bathroom, closet, office, fire place, living room, kitchen and dining area
 - Horse Barn, attached to Single Family Dwelling Unit:
 - storage room, bathroom, tack room, five (5) stalls, car port
 - Detached Garage:
 - seven (7) parking stalls of differing sizes, an entryway, storage room, dry storage room, and wet storage room
 - "upper floor" all labeled as storage only
- #Z2007-038 CUP application to change the designation of the current Single Family Dwelling Unit to a Caretaker's Residence submitted December 1, 2006
 - The request was conditionally approved by the Bridger Canyon Planning & Zoning Commission on February 8, 2007 via the Findings of Fact Conclusions of Law and Order with six (6) conditions of approval:
 1. The conditional use permit authorizes the use of this structure as a caretaker's residence. The structure shall not be utilized for any other use unless such use is a permitted use in conformance with the Regulation.

2. A land use permit for the single-family residence shall be issued by the Gallatin County Planning Department prior to construction.
3. The following restrictive covenants shall be recorded in the Gallatin County Clerk and Recorder's Office prior to issuance of the new single-family residence:
 - a. *The caretaker's residence shall not be rented.*
 - b. *The caretaker's residence shall not be divided or sold separately from the original parcel.*
 - c. *All structures shall be constructed in compliance with Montana State adopted codes for construction, including codes for seismic zone 3, and National Fire Protection codes.*
 - d. *Flame retardant roofing materials shall be used.*
 - e. *Spark-arrestor screens shall be placed on all fireplace and woodstove chimneys.*
 - f. *Smoke detectors shall be installed on each level of dwelling units.*
 - g. *Areas within 30 feet of habitable structures shall be cleared of all flammable materials.*
 - h. *Open fires shall be prohibited.*
 - i. *Any covenant which is included herein as a condition of permit approval and required by the Bridger Canyon Planning and Zoning Commission may not be amended or revoked without the mutual consent of the property owners and the Planning and Zoning Commission.*
1. The future single-family residence shall be constructed with an automatic fire sprinkler system meeting the requirements of NFPA 13D/Uniform Fire Code. The fire district shall receive a stamped set of engineered sprinkler system plans for review and approval prior to construction. Inspections shall be scheduled, with 48-hour notice, during construction and after completion.
2. Applicant shall receive an approved Emergency Vehicle Turnaround Plan from the Bridger Canyon Fire Department prior to land use permit approval for the future single-family residence.
3. Approval from the Gallatin City-County Environmental Health Department for the septic system for the new single-family residence shall be obtained prior to the issuance of a land use permit.

- #L2013-172 LUP application approved June 7, 2013 for a new garage (Accessory Building), additions and a remodel to the Structure opposite the original Single-Family Dwelling Unit and barn
 - Existing structures listed as studio, barn and pergola

According to the records maintained by the Montana Department of Revenue the Property contains the following:

- Single Family Residence with 3 bedrooms, 2 bathrooms, 2 porches, approximately 654 square feet of living area, built in 2006

- Single Family Residence with 3 bedrooms, 2 bathrooms, 2 decks, a porch, and 2 garages, with approximately 2,523 square feet of living area, built in 2007
- Barn, 720 square feet, built in 2007
- Pole frame building, 305 square feet, built in 2010
- Pole frame building, 264 square feet, built in 2010
- Lean-to, 60 square feet, built in 2010

Overnight Accommodations

Section 4 of the Zoning Regulation lists the requirements for the AE sub-district. Section 4.2 lists the Permitted Uses **after** a Land Use Permit is approved. Section 4.3 lists Uses Permitted After Securing Approval of a Conditional Use Permit.

There are active listings for two (2) Overnight Accommodations on your Property:

- www.vrbo.com/850456 three (3) bedrooms, two (2) full and two (2) half baths, kitchen, living room, deck/patio
- www.vrbo.com/734934 three (3) bedrooms, two (2) full and one (1) half baths, gourmet kitchen, indoor and outdoor living space, multiple fire places

Both listings indicate that the Property has eight (8) beds and sleeps seven (7) people, includes the use of a hot tub and goes on to state that “Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee.”

The AE sub-district, Sections 4.2 and 4.3 of the Zoning Regulation, does not list Overnight Accommodations, and Guest Ranches and Bed and Breakfast Inns are considered Conditional Uses for which the Planning Department has no record of for this Property. Short term rentals are not a listed or defined term within the Zoning Regulation.

Section 3.8 of the Zoning Regulation states:

Interpretations. Requests for Official interpretations concerning the Zoning Regulations, boundaries, and maps shall be made in writing, accompanied by the appropriate application and fee, and shall be handled as follows:

- a. Administrative Interpretations. Interpretations concerning the Zoning Regulations and maps, except those interpretations listed at subsection (b) or (c)(vii) below, may be made by the Planning Director and are subject to Appeal as described in Section 13 of this Administrative Regulation. If the Planning Director determines the interpretation is of significant public interest, the Planning Director may refer the request to the Planning & Zoning Commission. The Planning & Zoning Commission shall consider the request in a public hearing.*
- b. Interpretation of Use Classification. If questions arise concerning the appropriate classification of a particular Use, or if the specific Use is not listed, the Planning and Zoning Commission shall determine the appropriate classification of that Use. In interpreting a Use classification, the Planning and Zoning Commission shall hold a*

public hearing, consider the recommendation of any Zoning Advisory Committee, and determine whether the use meets all of the following criteria:

- i. The proposed Use is compatible with the Uses allowed in the Sub-district;*
- ii. The proposed Use is similar to one or more Uses allowed in the Sub-district;*
- iii. The proposed Use will not adversely affect property in the neighborhood or Sub-district or Zoning District; and*
- iv. The proposed use will not abrogate the intent of the Zoning Regulations and applicable growth policy or neighborhood plan.*

Temporary Occupancy

Section 12.5 of the Zoning Regulation addresses Temporary Occupancy and states:

Temporary Occupancy: *The intent of this Subsection is to provide for temporary occupancy during the construction of a Principal Single-Family Dwelling Unit, and to accommodate temporary visitors. A Temporary Dwelling Unit may be a Recreational Vehicle, Mobile Home, tepee, tent, or yurt. A Temporary Dwelling Unit is subject to the following requirements.*

- a. A property owner may reside in a Temporary Dwelling Unit while a Principal Single-Family Dwelling Unit is under construction, for a maximum of one year, provided:*
 - (1) A Land Use Permit has been approved for a permanent Principal Single-Family Dwelling Unit, with a removal date;*
 - (2) Said mobile home or tepee does not violate any valid existing deed restrictions;*
 - (3) A Temporary Dwelling Unit must comply with all siting requirements set forth in the Regulation;*
 - (4) The temporary site shall be bear-proof;*
 - (5) Temporary Dwelling Units shall not be moved on site nor utilized for occupancy until sewage disposal and water supply systems are installed that meet all State and County Health Department regulations.*
- b. Temporary visitor occupancy of a Temporary Dwelling Unit is permitted provided:*
 - (1) Only one Temporary Dwelling Unit may be occupied on a residential Lot at any one time.*
 - (2) The Temporary Dwelling Unit may not occupy any Lot for a period longer than three weeks in any 90-day time period except for storage purposes of a Recreational Vehicle.*
 - (3) No fire source shall be allowed for any soft wall Temporary Dwelling Unit.*

According to your listings on www.vrbo.com, you offer a 22 foot luxury tepee (late spring through early fall) for an additional fee for use by members of the public renting your Dwelling Units located on the Property.

Land Use Permits

Section 6 of the Administrative Regulation addresses Land Use Permits. Specifically, Section 6.2 addresses the Requirement for Land Use Permits.

Any Structural Alteration of a Structure or new construction requires an approved Land Use Permit be issued by the Planning Department pursuant to Section 6 of the Administrative Regulation, unless otherwise exempted.

Based on the permits that were located within the Planning Department you have approval for:

- One Single-Family Dwelling Unit with three (3) bedrooms attached to a horse barn
- One detached garage with seven (7) parking stalls and storage
- A CUP permit that was conditionally approved for a Caretaker's Residence
- A new detached new garage, additions and a remodel to a Structure opposite the original Single-Family Dwelling Unit and barn
 - Existing structures in 2013 were listed as studio, barn and pergola

The Planning Department records do not include:

- any documentation that the conditions of approval associated with the conditionally approved Caretaker's Residence were ever met,
- any documentation or approved LUP for a second Dwelling Unit,
- it is unclear what Structure the 2013 additions and remodels were approved for, or what Structure and Use existed at the location prior to this approval

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

Septic Permit (Health Code)

I searched Gallatin County septic permit files and located one approved septic permit for your Property:

- Permit #14111 approved in May 2007 for:
 - One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
 - One (1) attached bedroom above garage generating 155 gallons per day, and
 - One (1), three (3) bedroom barn generating 300 gallons per day

Section 1.10 of Chapter 3 of the Health Code requires that an Authorization to Construct is required prior to the construction of a wastewater disposal system and a Permit to Operate must be granted before a person can lawfully use a wastewater treatment system. Any wastewater treatment system constructed within Gallatin County must comply with Health Code and State law. Chapter 3 of the Health Code can be found in its entirety on the Health Department website.

There is one approved wastewater system installed or used on your Property for:

- One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
- One (1) attached bedroom above garage generating 155 gallons per day, and
- One (1), three (3) bedroom barn generating 300 gallons per day

Any additional wastewater disposal or configuration taking place on your Property outside of the approved system is considered a violation.

According to my research you have multiple Living Units on the Property with somewhere between six (6) and eight (8) bedrooms.

Establishment License

According to records maintained by the Health Department there are no Public Accommodation Licenses approved for the operation of any “Establishments” on your Property. There are active listings for two Tourist Home rentals on the Property as described above.

Section 50-51-201 of the Montana Code Annotated (MCA) states that, “...a person engaged in the business of conducting or operating an establishment shall annually procure a license”. A Tourist Home is listed under the definition of “Establishment” and defined as, “a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis”. See Section 50-51-102, MCA.

A Public Accommodation License is required for the operation of any Establishment on your Property.

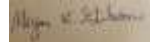
Required Response

Based on the information available to me at this time, your Property appears to remain in violation of the Zoning Regulation, Health Code, and Establishment Licensing. **You must schedule a site visit and submit the information requested in the September 24, 2021 Investigation Letter and initiate corrective actions, or provide documentation demonstrating how the Property is in compliance with the Zoning Regulation, Health Code, and Establishment Licensing no later than 30 days (November 21, 2021) from the date of this letter.**

Please be aware that this is the Department’s final attempt to resolve this situation informally. The failure to contact this Department and submit the requested information or submit the statement of compliance within the timeframe specified will result in additional enforcement action.

If you have any questions about this letter please contact me directly at 406-582-3775.

Sincerely,



Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc: County Attorney’s Office
Department of Planning and Community Development
Environmental Health Department
Amy McNulty, amcnulty@lawmt.com
Complainant



Gallatin County

CORRECTIVE ACTION LETTER

November 29, 2021

Sean A. Lewis
5064 Bridge Creek Drive
Plano, TX 75093-5702

Email: sean.a.lewis@gmail.com

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625

Email: sean.a.lewis@gmail.com

Re: Bridger Canyon Zoning Regulation, unpermitted wastewater disposal, and Public Accommodation Licensing Compliant (Compliance ID #22-041)

Dear Mr. Lewis:

As you know, the Gallatin County Compliance Department (Department) has been working with you to resolve potential violations occurring on your property addressed as 153 & 155 Tepee Ridge Road East, Bozeman; legally described as Tract 12A of Certificate of Survey (COS) No. 1265A (Property).

Thank you, Mr. Lewis, Ms. De Guzman, and Ms. McNulty, for meeting with me on the Property on November 22, 2021 (Site Visit).

Based on the Site Visit the following structures and uses exist on the Property and are labeled on the attached aerial photo:

- Dwelling Unit/Living Unit with attached garage (Structure A on aerial photo)
 - First floor:
 - Half bath/powder room
 - Bedroom with on-suite bathroom, kitchenette with sink, fridge, two burner stove (considered an additional Dwelling/Living Unit)
 - Three car attached garage
 - Weight room
 - Second floor:
 - Full kitchen and living area
 - Bedroom with three bunk beds
 - Bathroom
 - Bedroom with on-suite bathroom
 - Deck
 - Patio dining area
- Dwelling Unit/Living Unit connected to Accessory Building by a covered walk way (Structure B on aerial photo)

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- First floor:
 - Bedroom with three bunk beds
 - Bedroom
 - Bathroom
 - Bedroom with on-suite bathroom
- Second floor:
 - Full kitchen and living area
 - Half bath/powder room
- Accessory Building “Horse Barn” (Structure C on aerial photo)
 - Horse stalls and tack room
- Tepee (Structure D on aerial photo)
 - Used seasonally personally and can be part of Uses when rented with one of the Dwelling/Living Units
- Accessory Building “Kids Play Set” (Structure E on aerial photo)
- Accessory Buildings “Horse Sheds” (Structures F & G)
 - Built in 2010
 - Shelters for the horses
- Well #1
 - Used for pond and irrigation only
- Well #2
 - Used for Dwelling/Living Units
- Wastewater
 - Structure A
 - Has tank and drain field
 - Structure B
 - Has tank and drain field

Bridger Canyon Zoning District

According to County records, the Property is located in the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District) and therefore must comply with the Zoning Regulation. The Zoning District was adopted by the Board of County Commissioners on July 12, 1971 and Zoning Regulation was adopted by the Board of County Commissioners on October 26, 1971, and has been amended thereafter. The Zoning Regulation can be found in its entirety online at the Gallatin County Department of Planning and Community Development (Planning Department) website.

Because this Property is subject to the Zoning Regulation, it must also comply with the Gallatin County “Part 1” Zoning Administrative Regulation (Administrative Regulation). The Administrative Regulation can be found in its entirety online at the Planning Department website.

The requirement for property to conform to the Zoning Regulation is found in Section 3.2 of the Administrative Regulation and requires property owners to ensure that all Uses and Structures comply with the Zoning Regulation.

I searched the Planning Department records and located four permits for the Property:

- #Z2006-023 Conditional Use Permit (CUP) application for a Caretaker's Residence was submitted to the Planning Department in August 2005
 - The Planning Department issued a letter on September 20, 2005 stating they could not process the application as there were no structures constructed on the property and a principle dwelling unit was required to be constructed prior to applying for an accessory dwelling unit (Caretaker's Residence) and provided two potential solutions
- #L2006-089 Land Use Permit (LUP) approved October 20, 2005 for one Single Family Dwelling Unit, barn and detached garage (Accessory Building):
 - Single Family Dwelling Unit:
 - a "lower floor" that contained mechanical room, all three (3) bedrooms, two (2) bathrooms, laundry room, and a recreation room
 - a "main floor" that contained a bathroom, closet, office, fire place, living room, kitchen and dining area
 - Horse Barn:
 - storage room, bathroom, tack room, five (5) stalls, car port
 - Detached Garage:
 - seven (7) parking stalls of differing sizes, an entryway, storage room, dry storage room, and wet storage room
 - "upper floor" all labeled as storage only
- #Z2007-038 CUP application to change the designation of the current Single Family Dwelling Unit to a Caretaker's Residence submitted December 1, 2006
 - The request was conditionally approved by the Bridger Canyon Planning & Zoning Commission on February 8, 2007 via the Findings of Fact Conclusions of Law and Order with six (6) conditions of approval:
 1. The conditional use permit authorizes the use of this structure as a caretaker's residence. The structure shall not be utilized for any other use unless such use is a permitted use in conformance with the Regulation.
 2. A land use permit for the single-family residence shall be issued by the Gallatin County Planning Department prior to construction.
 3. The following restrictive covenants shall be recorded in the Gallatin County Clerk and Recorder's Office prior to issuance of the new single-family residence:
 - a. *The caretaker's residence shall not be rented.*
 - b. *The caretaker's residence shall not be divided or sold separately from the original parcel.*

- c. *All structures shall be constructed in compliance with Montana State adopted codes for construction, including codes for seismic zone 3, and National Fire Protection codes.*
- d. *Flame retardant roofing materials shall be used.*
- e. *Spark-arrestor screens shall be placed on all fireplace and woodstove chimneys.*
- f. *Smoke detectors shall be installed on each level of dwelling units.*
- g. *Areas within 30 feet of habitable structures shall be cleared of all flammable materials.*
- h. *Open fires shall be prohibited.*
- i. *Any covenant which is included herein as a condition of permit approval and required by the Bridger Canyon Planning and Zoning Commission may not be amended or revoked without the mutual consent of the property owners and the Planning and Zoning Commission.*

1. The future single-family residence shall be constructed with an automatic fire sprinkler system meeting the requirements of NFPA 13D/Uniform Fire Code. The fire district shall receive a stamped set of engineered sprinkler system plans for review and approval prior to construction. Inspections shall be scheduled, with 48-hour notice, during construction and after completion.
2. Applicant shall receive an approved Emergency Vehicle Turnaround Plan from the Bridger Canyon Fire Department prior to land use permit approval for the future single-family residence.
3. Approval from the Gallatin City-County Environmental Health Department for the septic system for the new single-family residence shall be obtained prior to the issuance of a land use permit.

- #L2013-172 LUP application approved June 7, 2013 for a new garage (Accessory Building), additions and a remodel to the Structure opposite the original Single-Family Dwelling Unit and barn
 - Existing structures listed as studio, barn and pergola

Principal Single Family Dwelling Unit

The original Land Use Permit (LUP) approval for a Principal Single Family Dwelling Unit was within LUP #L2006-089 in October 2005 and appears to have been Structure B. Then in December 2006, a request was made to turn this Structure into the Caretaker's Residence.

The original detached garage in LUP #L2006-089, appears that it was converted into the Principal Single Family Dwelling Unit after the conditional approval of CUP #Z2007-038 now labeled as Structure A, but it is unclear if an actual LUP approval was ever granted.

The basement bedroom contains an on-suite bathroom, kitchenette with sink, fridge, two burner stove and is considered an additional Dwelling Unit at this time.

The Principal Single Family Dwelling Units are currently used by you and rented out on a short-term basis.

Therefore, corrective action is required.

Dwelling Unit #2 - Caretaker's Residence

The Planning Department records include the December 2006 Conditional Use Permit #2007-038 for a Caretaker's Residence. The conditional approval included six conditions of approval that are listed above.

The original Land Use Permit (LUP) approval for this Structure was within LUP #L2006-089 in October 2005 as the Principal Single Family Dwelling Unit (Structure B). Then in December 2006, a request was made to turn this Structure into the Caretaker's Residence.

The Planning Department records do not include any documentation that the conditions of approval associated with the conditionally approved Caretaker's Residence CUP #Z2007-038 were ever met.

The Caretaker's Residence is currently used as a Dwelling Unit that is rented out on a short-term basis and used by friends and family.

Therefore, corrective action is required.

Accessory Building – Detached Garage

The Planning Department records include this Structure in the August 2005 LUP approval #L2006-089 in the area of what now appears to be Structure A.

It appears that this Structure was converted to the Principal Single Family Dwelling Unit in December 2006, but there is no clear record.

Therefore, corrective action may be required.

Overnight Accommodations

Section 4 of the Zoning Regulation lists the requirements for the AE sub-district. Section 4.2 lists the Permitted Uses after a Land Use Permit is approved. Section 4.3 lists Uses Permitted After Securing Approval of a Conditional Use Permit.

There are active listings for two Overnight Accommodations on your Property:

- www.vrbo.com/850456 three bedrooms, two full and two half baths, kitchen, living room, deck/patio
- www.vrbo.com/734934 three bedrooms, two full and one half bath, gourmet kitchen, indoor and outdoor living space, multiple fire places

Both listings indicate that the Property has eight beds and sleeps seven people, includes the use of a hot tub and goes on to state that "Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee."

The AE sub-district, Sections 4.2 and 4.3 of the Zoning Regulation, does not list Overnight Accommodations. Short term rentals/tourist homes are not a listed or defined term within the Zoning Regulation.

Section 3.8 of the Administrative Regulation addresses Interpretations for when a Use is not listed.

Section 14 of the Administrative Regulation addresses Amendments to the Zoning Regulation.

Both the Principal Single Family Dwelling Unit and Caretaker's Residence are advertised and used as short term rentals/tourist homes on the Property.

Therefore, correction action is required.

Temporary Occupancy - Tepee

Section 12.5 of the Zoning Regulation addresses Temporary Occupancy.

During the Site Visit you stated that you use the tepee throughout the summer personally. Additionally, your listings on www.vrbo.com, offer a 22 foot luxury tepee (late spring through early fall) for an additional fee for use by members of the public renting your Dwelling Units located on the Property.

The Planning Department has no record of any approvals for this Structure or Use.

Therefore, corrective action is required.

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

Septic Permit (Health Code)

Gallatin County has one current septic permit on file for your Property (see attached):

- Permit #14111 approved in May 2007 for:
 - One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
 - One (1) attached bedroom above garage generating 155 gallons per day, and
 - One (1), three (3) bedroom barn generating 300 gallons per day

Section 1.10 of Chapter 3 of the Health Code requires that an Authorization to Construct is required prior to the construction of a wastewater disposal system and a Permit to Operate must be granted before a person can lawfully operate a wastewater treatment system or dispose of wastewater into the system. Any wastewater treatment system constructed within Gallatin County must comply with Health Code and State law. Chapter 3 of the Health Code can be found in its entirety on the Health Department website at www.healthygallatin.org.

There is one approved wastewater system installed or used on your Property for:

- One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
- One (1) attached bedroom above garage generating 155 gallons per day, and
- One (1), three (3) bedroom barn generating 300 gallons per day

Any additional wastewater disposal or configuration taking place on your Property outside of the approved system is considered a violation of Health Code.

According to the Site Visit there are three Living Units and six Bedrooms.

The following definitions are from the Montana Department of Environmental Quality Circular 4:

§ 1.2.9 **Bedroom** means any room that is or may be used for sleeping. An unfinished basement is considered an additional bedroom.

§ 1.2.51 **Living unit** means the area under one roof that can be used for one residential unit and which has facilities for sleeping, cooking, and sanitation. A duplex is considered two living units.

After discussions with the Health Department they would like to see a permit modification application and an accurate, descriptive site plan so that they can confirm that the number of Living Units and Bedrooms and that the size of the tanks works with what was actually constructed and so that a new Permit to Operate can be issued that reflects what was actually built on the Property.

Therefore, corrective action is required.

Establishment License

Section 50-51-201 of the Montana Code Annotated (MCA) states that, "...a person engaged in the business of conducting or operating an establishment shall annually procure a license". A Tourist Home is listed under the definition of "Establishment" and defined as, "a private home or condominium that is not occupied by an owner or manager and that is rented, leased, or furnished in its entirety to transient guests on a daily or weekly basis". See Section 50-51-102, MCA.

A Public Accommodation License is required for the operation of any Establishment on your Property.

According to records maintained by the Health Department there are no Public Accommodation Licenses approved for the operation of any "Establishments" on your Property. There are active listings for two Tourist Home rentals on the Property as described above.

Therefore, corrective action is required.

Corrective Action

Thank you for your efforts to discuss and clarify the violations on your Property. Based on the information available to me at this time, your Property appears to be in violation of the Health Code, Zoning Regulation, and Administrative Regulation. Therefore, corrective action is required.

The Health Department would like to assist you in understanding what wastewater facilities are approved for use on your Property and those that need improvements/modifications, along with the Establishment licensing requirements. The Health Department can also help you formulate a plan of correction to resolve these outstanding issues. An acceptable plan of correction may include discussions with the Health Department, and then establishing the necessary actions and dates those actions will be completed by. The Health Department can be reached at 406-582-3120 or ehs@gallatin.mt.gov with any questions.

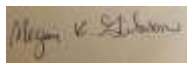
The Planning Department would like to assist you in understanding the requirements of the Zoning Regulation and Administrative Regulation. They can also help you formulate a plan of correction to resolve the outstanding issues. An acceptable plan of correction may include scheduling a

meeting with a Planner who can help determine the correction actions and then establishing the necessary actions and dates those actions will be completed by. You can reach Sean O'Callaghan of the Planning Department at 406-582-3130 or sean.ocallaghan@gallatin.mt.gov to discuss the options that are available to you.

Whatever corrective actions you decide to pursue, **you must notify me in writing of your plan of correction within 30 days of the date of this letter.**

Please keep in mind that a failure to notify me in writing of your proposed plan of correction could result in additional enforcement action, which may include the assessment of a penalty. If you have any questions about this letter, feel free to call me at 406-582-3775.

Sincerely,



Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc with attachment:

County Attorney's Office
Department of Planning and Community Development
Environmental Health Department
Leah De Guzman, leahdg2004@gmail.com
Amy McNulty, amcnulty@lawmt.com
Complainant

N ↑

Horse shed
(G)

Horse shed
(F)

Round Pen

Arena

TR 12A

Amelbers residence
(B)

Barn
(C)

(D) *tepee*

Kids play set
(E)

Principal SFD
(A)

Truck

W O W O

TR C



Gallatin County

PARTIAL CLOSURE LETTER/ CORRECTIVE ACTION LETTER #2

February 2, 2022

Sean A. Lewis
5064 Bridge Creek Drive
Plano, TX 75093-5702

Email: sean.a.lewis@gmail.com

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625

Email: sean.a.lewis@gmail.com

Re: Bridger Canyon Zoning Regulation, unpermitted wastewater disposal, and Public Accommodation Licensing Compliant (Compliance ID #22-041)

Dear Mr. Lewis:

Thank you for the attached written response from Any McNulty dated December 28, 2021 (Response) to my November 29, 2021 Corrective Action Letter (Corrective Action Letter). This letter replies to your Response and requests further corrective action regarding compliance with Land Use Permitting, the septic permit and Establishment licensing on the Property. However, as discussed below, I am closing the portion of the complaint related to overnight accommodations/short-term rentals/tourist homes uses and structures.

Bridger Canyon Zoning Regulation

As previously explained in my Corrective Action Letter, the Property is located at 153 & 155 Tepee Ridge Road East, Bozeman (Property) and is located entirely within the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District).

The requirement for property to conform to the Zoning Regulation is found in Section 3.2 of the Gallatin County "Part 1" Administrative Regulation (Administrative Regulation) and requires property owners to ensure that all Uses and Structures comply with the Zoning Regulation.

Section 4 of the Zoning Regulation lists the standards and requirements for the AE sub-district. Section 4.2 lists the Permitted Uses after a Land Use Permit is approved. Section 4.3 lists Uses Permitted After Securing Approval of a Conditional Use Permit.

Overnight Accommodations/Short-Term Rental/Tourist Home

None of the listed Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit include Overnight Accommodations, short-term rentals or tourist homes.

Section 3.22 of the Zoning Regulation defines Dwelling Unit as:

A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.

- a. Dwelling Unit, Accessory: A separate Dwelling Unit located within the Principal Single-Family Dwelling Unit or in an Accessory Building.*
- b. Dwelling Unit, Principal Single-Family: A Building or portion thereof containing a single Dwelling Unit for habitation by a Family.*

Section 3.52 of the Zoning Regulation defines Overnight Accommodations as:

Permanent, separately rentable accommodations that are not available for residential use, except for the proprietors of a Bed and Breakfast Inn or Guest Ranch. Overnight Accommodations include Hotel or motel rooms, hostels, cabins, Bed and Breakfast Inns, Guest Ranches, and time-shared units. Individually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, Employee Housing, and similar accommodations do not qualify as Overnight Accommodations for purpose of this definition.

The term short-term rental or tourist home is not a defined term within the Zoning Regulation or Administrative Regulation. The Planning Department considers a rental of less than 30 days as a short-term rental or tourist home.

There are active listings for two Overnight Accommodations/short-term rentals/tourist homes on your Property:

- www.vrbo.com/850456 three bedrooms, two full and two half baths, kitchen, living room, deck/patio
- www.vrbo.com/734934 three bedrooms, two full and one half bath, gourmet kitchen, indoor and outdoor living space, multiple fire places

Both listings indicate that the Property has eight beds and sleeps seven people, includes the use of a hot tub and goes on to state that “Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee.”

Based on my research of the Property, and discussions with Ms. McNulty, there are two Overnight Accommodations/short-term rentals/tourist homes operating on your Property. In review, I have been provided or I have discovered the following information for the Property:

- The Property is advertised through the website www.vrbo.com (website)
 - Lodging Facility Sales and Use Taxes are paid to the Montana Department of Revenue by the website quarterly
 - The use contract is provided by the website

- The AE sub-district prohibits the Use of Overnight Accommodations, while the terms short-term rental and tourist home are not defined
 - The Principal Single Family Dwelling Unit, the basement Dwelling Unit in the Principal Single Family Dwelling Unit, Caretaker's Residence, and tepee are associated with this use
- An Establishment License must be obtained as described below
- The appropriate wastewater permits must be obtained as described below

Based on this information, it appears that a private businesses is being operated on the Property as Overnight Accommodations/short-term rentals/tourist homes utilizing the Dwelling Units and Temporary Occupancy of the tepee.

Recently, the Montana Legislature passed House Bill 257 that was signed into law by Governor Gianforte and became immediately effective. The legislation prohibits a governing body from adopting a resolution that “compel[s] a private business to deny a customer of the private business access to the premises or access to goods or services,” or that “deny a customer of a private business the ability to access goods or services provided by the private business; . . .” House Bill 257 defines “private business” to include “a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company.” The legislation also is retroactive and applies to any regulations enacted, adopted, or in force on or after May 1, 2021. The portion of House Bill 257 applicable here is codified at § 7-5-121 Montana Code Annotated (MCA).

Pursuant to § 7-5-121 MCA (2021), the County may not restrict you at this time from operating private businesses on the Property as Overnight Accommodations/short-term rentals/tourist homes. Doing so would deny your customers access to your private business. Accordingly, no further action is required from you on this item.

This portion of the complaint is closed.

The Department's decision to close this portion of the complaint may be appealed. Section 13 of the Gallatin County “Part 1” Zoning Administrative Regulation governs appeals.

Principal Single Family Dwelling Unit – REMAINS OPEN

As previously explained, the original Land Use Permit (LUP) approval for a Principal Single Family Dwelling Unit was within LUP #L2006-089 in October 2005 and appears to have been Structure B as described in the Corrective Action Letter. Then in December 2006, a request was made to turn this Structure into the Caretaker's Residence.

The original detached garage in LUP #L2006-089, appears that it was converted into the Principal Single Family Dwelling Unit after the conditional approval of CUP #Z2007-038 now labeled as Structure A in the Corrective Action Letter, but it is unclear if an actual LUP approval was ever granted.

The basement bedroom contains an on-suite bathroom, kitchenette with sink, fridge, two burner stove and is considered an additional Dwelling Unit at this time.

While the County cannot restrict you from operating a private business on the Property as described above, you must still obtain Land Use Permit approval for the Structure for where it is currently located pursuant to Section 6 of the Administrative Regulations.

Therefore, corrective action is required.

Dwelling Unit #2 - Caretaker's Residence– REMAINS OPEN

As previously explained, the Planning Department records include the December 2006 Conditional Use Permit #2007-038 for a Caretaker's Residence. The conditional approval included six conditions of approval listed in the Corrective Action Letter.

The original LUP approval for this Structure was within LUP #L2006-089 in October 2005 as the Principal Single Family Dwelling Unit (Structure B in the Corrective Action Letter). Then in December 2006, a request was made to turn this Structure into the Caretaker's Residence.

The Planning Department records do not include any documentation that the conditions of approval associated with the conditionally approved Caretaker's Residence CUP #Z2007-038 were ever met.

While the County cannot restrict you from operating a private business on the Property as described above, you must still obtain Land Use Permit approval for the Structure for where it is currently located pursuant to Section 6 of the Administrative Regulations.

Therefore, corrective action is required.

Accessory Building – Detached Garage– REMAINS OPEN

As previously explained, the Planning Department records include this Structure in the August 2005 LUP approval #L2006-089 in the area of what now appears to be Structure A in the Corrective Action Letter.

It appears that this Structure was converted to the Principal Single Family Dwelling Unit in December 2006, but there is no clear record.

While the County cannot restrict you from operating a private business on the Property as described above, you must still obtain Land Use Permit approval for the Structure for where it is currently located pursuant to Section 6 of the Administrative Regulations.

Therefore, corrective action is required.

Accessory Building – Horse Sheds – REMAINS OPEN

Pursuant to Section 12.3.c of the Zoning Regulation:

Accessory Buildings equal to or less than 200 square feet of General Floor Area are not required to obtain a Land Use Permit.

The square footage of these sheds are unknown.

Therefore, corrective action may be required.

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

The portions of the complaint that remain open are listed and described above. Within the Response, Ms. McNulty states that she met with Mr. O'Callaghan in December via a telephone conference regarding the Property and outlined certain items that require actions and that Mr. Lewis would follow up with Mr. O'Callaghan by January 14, 2022 and then work on a plan of correction.

As of the date of this letter, no additional information or proposed actions and timelines have been submitted to the Department.

Septic Permit (Health Code)

Gallatin County has one current septic permit on file for your Property.

- Permit #14111 approved in May 2007 for:
 - One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
 - One (1) attached bedroom above garage generating 155 gallons per day, and
 - One (1), three (3) bedroom barn generating 300 gallons per day

Section 1.10 of Chapter 3 of the Health Code requires that an Authorization to Construct is required prior to the construction of a wastewater disposal system and a Permit to Operate must be granted before a person can lawfully operate a wastewater treatment system or dispose of wastewater into the system. Any wastewater treatment system constructed within Gallatin County must comply with Health Code and State law. Chapter 3 of the Health Code can be found in its entirety on the Health Department website at www.healthygallatin.org.

There is one approved wastewater system installed or used on your Property for:

- One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
- One (1) attached bedroom above garage generating 155 gallons per day, and
- One (1), three (3) bedroom barn generating 300 gallons per day

Any additional wastewater disposal or configuration taking place on your Property outside of the approved system is considered a violation of Health Code.

According to the Site Visit there are three Living Units and six Bedrooms.

The following definitions are from the Montana Department of Environmental Quality Circular 4:

§ 1.2.9 **Bedroom** means any room that is or may be used for sleeping. An unfinished basement is considered an additional bedroom.

§ 1.2.51 **Living unit** means the area under one roof that can be used for one residential unit and which has facilities for sleeping, cooking, and sanitation. A duplex is considered two living units.

Within the Response, Ms. McNulty explains that she reached out to the Gallatin City-County Health Department Environmental Health Services (Health Department) and received a response indicating that there are approvals for up to eight bedrooms under the current permit, but that there appears to be an issue with an accurate site plan. Ms. McNulty stated that she would review the Health Department's proposed solutions with Mr. Lewis and then update me by January 14, 2022.

As of the date of this letter, no additional information or proposed actions and timelines have been submitted to the Department.

Therefore, corrective action is required.

Establishment License

Section 50-51-102(4), MCA defines an Establishment as:

a bed and breakfast, hotel, motel, rooming house, guest ranch, outfitting and guide facility, boardinghouse, or tourist home

Further, § 50-51-201(1) requires that:

[A] person engaged in the business of conducting or operating an establishment shall annually procure a license issued by the [Department of Public Health and Human Services].”

The requirement to obtain an establishment license to operate a tourist home also is required by Chapter 2 of the Gallatin City-County Health Code.

Chapter 2, Section 1.13 states:

B) A person violates these regulations or does not comply with the rules set forth in these regulations if the person operates, controls or uses an Establishment without a License or Registration.

There are active listings for two Tourist Homes on your Property:

- www.vrbo.com/850456 three bedrooms, two full and two half baths, kitchen, living room, deck/patio
- www.vrbo.com/734934 three bedrooms, two full and one half bath, gourmet kitchen, indoor and outdoor living space, multiple fire places

Both listings indicate that the Property has eight beds and sleeps seven people, includes the use of a hot tub and goes on to state that “Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee.”

Based on my research and discussions with Ms. McNulty, there are two Tourist Homes operating on your Property. A Public Accommodation License is required for the operation of Establishments on your Property. Since the hot tub is available as part of the Tourist Home, additional permitting/licensing is required.

Therefore, corrective action is required.

Partial Closure and Corrective Action

As described above, the County cannot restrict you from operating a private business on the Property. Therefore, this portion of the complaint is closed and no further enforcement action will be taken.

The portions of the Complaint concerning compliance with Section 6 of the Administrative Regulation, Health Code and Establishment Licensing requirements remain open until resolved.

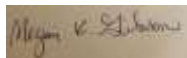
The Health Department would like to assist you in understanding what wastewater facilities are approved for use on your Property and those that need improvements/modifications, along with the Establishment licensing requirements. The Health Department can also help you formulate a plan of correction to resolve these outstanding issues. An acceptable plan of correction may include discussions with the Health Department, and then establishing the necessary actions and dates those actions will be completed by. The Health Department can be reached at 406-582-3120 or ehs@gallatin.mt.gov with any questions.

The Planning Department would like to assist you in understanding the requirements of the Zoning Regulation and Administrative Regulation. They can also help you formulate a plan of correction to resolve the outstanding issues. An acceptable plan of correction may include scheduling a meeting with a Planner who can help determine the correction actions and then establishing the necessary actions and dates those actions will be completed by. You can reach Sean O'Callaghan of the Planning Department at 406-582-3130 or sean.ocallaghan@gallatin.mt.gov to discuss the options that are available to you.

Whatever corrective actions you decide to pursue, **you must notify me in writing of your plan of correction that includes specific actions and dates, within 15 days of the date of this letter.**

Please keep in mind that a failure to initiate the corrective actions and notify me as discussed above, could result in additional enforcement action. If you have any questions about this letter, feel free to call me at 406-582-3775

Sincerely,



Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc w/ attachment:

County Attorney's Office via Email
Department of Planning and Community Development via Email
Environmental Health Department via Email
Leah De Guzman, leahdg2004@gmail.com
Amy McNulty, amcnulty@lawmt.com
Complainant via Email

Compliance Department • 311 W. Main, Rm. 108 • Bozeman, MT 59715

Phone (406) 582-3775 • Email: megan.gibson@gallatin.mt.gov

LEWIS STR ADMINISTRATIVE RECORD 256

**TARLOW
STONECIPHER
WEAMER & KELLY PLLC**

ATTORNEYS

1705 WEST COLLEGE STREET
BOZEMAN, MT 59715-4913

PHONE (406) 586-9714
FAX (406) 586-9720
www.LawMT.com

December 28, 2021

Megan Gibson
Gallatin County Compliance Department
311 West Main Street, Rm. 108
Bozeman, MT 59715

Via e-mail:
megan.gibson@gallatin.mt.gov

RE: Plan of Correction; Bridger Canyon Zoning Regulation and Public Accommodation Licensing Complaint (Compliance ID #22-041)

Dear Megan,

Thank you for your letter on November 29, 2021, following up on the site visit to Mr. Lewis's property. Your letter requested a written notice of Mr. Lewis's plan for correction of the items noted in your letter within thirty (30) days. This letter serves as this notice.

Per your directions, Mr. Lewis plans to engage with both the Gallatin County Health Department and the Gallatin County Planning Department to identify and address the items discussed in your corrective action letter.

On Mr. Lewis's behalf, I have reached out to the Gallatin County Health Department. I received a response today (that you were copied on) that indicates that there is an approval for up to 8 bedrooms on the current wastewater treatment system permit. But, it appears there may be an issue with an accurate site plan and licenses required for short-term rentals. I will review the Health Department's proposed solutions to these issues with Mr. Lewis. I will update you regarding movement on this issue by January 14, 2022.

On Mr. Lewis's behalf, I have started a conversation with the Gallatin County Planning Department to review outstanding issues with Zoning Regulations applicable to the property. I met with Sean O'Callaghan over a telephone conference to review the outstanding items. Following up from that conference, Mr. Lewis is looking at the following items:

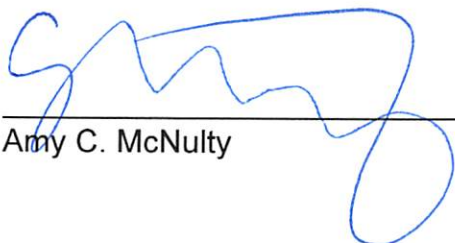
- Confirming the square footage of the horse sheds to determine whether they are exempt from any land-use permit requirement;
- Confirming the applicability of exemption to land-use permit requirements for the teepee structure that is used during the summer months if used less than ninety (90) days and if not on permanent foundation; and
- Determining whether the Conditional Use Permit approved in February 2007, was ever "put into use" to determine whether the Conditional Use Permit is valid or was voided under the prior version of the applicable Zoning Regulations.

Mr. Lewis will plan to get back in touch with Mr. O'Callaghan related to these items by January 14, 2022. Depending on the status of the 2007 Conditional Use Permit, I understand our options for corrective action will be different, and Mr. Lewis will work on a plan for corrective action related to these items.

Mr. Lewis is still investigating some of the items raised as violations, including the ability to use the property for a short-term rental. Mr. Lewis will review this with the Planning Department as he works through the other issues related to the Zoning Regulations.

Please advise if you require any further information at this time. Thank you again for the direction provided in your November 29, 2021 letter. We will be in touch soon.

Very truly yours,



Amy C. McNulty

ACM/hgg



Gallatin County

WARNING LETTER #2

April 18, 2022

Sean A. Lewis
5064 Bridge Creek Drive
Plano, TX 75093-5702

Sent via First Class Mail &
Certified Mail # 7018 1130 0001 1432 1577

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625

Sent via First Class Mail &
Certified Mail # 7018 1130 0001 1432 1560

Re: Bridger Canyon Zoning Regulation, unpermitted wastewater disposal, and Public Accommodation Licensing Compliant (Compliance ID #22-041)

Dear Mr. Lewis:

As you know, the Gallatin County Compliance Department (Department) received a complaint regarding your property addressed as 153 & 155 Tepee Ridge Road East, Bozeman; legally described as Tract 12A of Certificate of Survey (COS) No. 1265A (Property).

I initially sent you notification of this complaint in an Investigation Letter dated September 24, 2021 (Investigation Letter). You were to contact me to arrange a site visit and provide me with a written response within 15 days of the date of the Investigation Letter.

I received an email your legal representative Amy McNulty on October 13, 2021, stating that she would be in touch with the information requested and to schedule the site visit by October 15, 2021.

No further response or correspondence was received.

I sent you a Warning Letter on October 22, 2021, via First Class Mail and Certified Mail #7018 1130 0001 1432 1850 and # 7018 1130 0001 1432 1867 to both mailing addresses associated with the Property. You were to schedule a site visit and submit the information requested no later than 30 days after the date of the letter.

Ms. McNulty contacted me on October 22, 2021 and we arranged the requested site visit for November 22, 2021 as you would be in town that week staying on the Property.

After the site visit was completed, I sent you a Corrective Action Letter on November 29, 2021. You were to contact the Department of Planning and Community Development (Planning Department) and the Gallatin City-County Health Department Environmental Health Services (Health Department) to discuss your options and provide me with a written plan of correction no later than 30 days after the date of the letter.

Ms. McNulty reached out to the Health Department on December 18, 2021 and was able to discuss options with them on December 28, 2021 and the Planning Department on December 22, 2021.

On December 28, 2021, I received a written response from Ms. McNulty indicating that she had started the conservation with both departments and that Mr. Lewis would be back in touch with the Planning Department by January 14, 2022 and that he was still investigating some of the items raised as potential violations.

I sent you a Partial Closure/Corrective Action Letter #2 on February 2, 2022 further clarifying items would require corrective actions. You were to provide me with a proposed written plan of correction no later than 15 days after the date of the letter.

On February 22, 2022, Ms. McNulty notified me in writing that she was aware that the response was past due and would have it to me by February 25, 2022.

No further response or correspondence was received, other than an email on March 1, 2022 stating that Ms. McNulty needed more time with her clients.

As of the date of this letter, no written plan of correction has been provided, no correction actions have been initiated and no documentation demonstrating compliance have been submitted.

Bridger Canyon Zoning Regulation

As previously explained in my Corrective Action Letter, the Property is located entirely within the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District).

The requirement for property to conform to the Zoning Regulation is found in Section 3.2 of the Gallatin County "Part 1" Administrative Regulation (Administrative Regulation) and requires property owners to ensure that all Uses and Structures comply with the Zoning Regulation.

Section 4 of the Zoning Regulation lists the standards and requirements for the AE sub-district. Section 4.2 lists the Permitted Uses **after** a Land Use Permit is approved. Section 4.3 lists Uses Permitted After Securing Approval of a Conditional Use Permit.

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

Principal Single Family Dwelling Unit

As previously explained, the original Land Use Permit (LUP) approval for a Principal Single Family Dwelling Unit was within LUP #L2006-089 in October 2005 and appears to have been Structure B as described in the Corrective Action Letter. Then in December 2006, a request was made to turn this Structure into the Caretaker's Residence.

The original detached garage in LUP #L2006-089, appears that it was converted into the Principal Single Family Dwelling Unit after the conditional approval of CUP #Z2007-038 now labeled as Structure A in the Corrective Action Letter, but it is unclear if an actual LUP approval was ever granted.

The basement bedroom contains an on-suite bathroom, kitchenette with sink, fridge, two burner stove and is considered an additional Dwelling Unit at this time.

Section 6 of the Administrative Regulations requires Land Use Permit approval for the Structure for where it is currently located.

Therefore, corrective action is required as described below.

Dwelling Unit #2 - Caretaker's Residence

As previously explained, the Planning Department records include the December 2006 Conditional Use Permit #2007-038 for a Caretaker's Residence. The conditional approval included six conditions of approval listed in the Corrective Action Letter.

The original LUP approval for this Structure was within LUP #L2006-089 in October 2005 as the Principal Single Family Dwelling Unit (Structure B in the Corrective Action Letter). Then in December 2006, a request was made to turn this Structure into the Caretaker's Residence.

The Planning Department records do not include any documentation that the conditions of approval associated with the conditionally approved Caretaker's Residence CUP #Z2007-038 were ever met.

Pursuant to Section 10.12 of the Administrative Regulation the Bridger Canyon Planning and Zoning Commission may revoke Conditional Use Permits when it is determined that the conditions of approval are not being met as further described in this Section.

There is no documentation that the CUP conditions of approval have been met and Section 6 of the Administrative Regulation requires Land Use Permit approval for the Structure for where it is currently located.

Therefore, corrective action is required as described below.

Accessory Building – Detached Garage

As previously explained, the Planning Department records include this Structure in the August 2005 LUP approval #L2006-089 in the area of what now appears to be Structure A in the Corrective Action Letter.

It appears that this Structure was converted to the Principal Single Family Dwelling Unit in December 2006, but there is no clear record.

During the November 22, 2022 site visit, it was documented that there was no detached garage located on the Property and that instead a three car attached garage is associated with Principal Single Family Dwelling Unit.

Therefore, corrective action is required as described below.

Accessory Building – Horse Sheds

Pursuant to Section 12.3.c of the Zoning Regulation:

Accessory Buildings equal to or less than 200 square feet of General Floor Area are not required to obtain a Land Use Permit.

The square footage of these sheds are unknown. Additional information on the Accessory Buildings is required to determine if they comply with the Zoning Regulations.

Therefore, corrective action may be required as described below.

Further correspondence with the Planning Department on the above items is encouraged.

Septic Permit (Health Code)

Gallatin County has one current septic permit on file for your Property:

- Permit #14111 approved in May 2007 for:
 - One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
 - One (1) attached bedroom above garage generating 155 gallons per day, and
 - One (1), three (3) bedroom barn generating 300 gallons per day

Section 1.10 of Chapter 3 of the Health Code requires that an Authorization to Construct is required prior to the construction of a wastewater disposal system and a Permit to Operate must be granted before a person can lawfully operate a wastewater treatment system or dispose of wastewater into the system. Any wastewater treatment system constructed within Gallatin County must comply with Health Code and State law. Chapter 3 of the Health Code can be found in its entirety on the Health Department website at www.healthygallatin.org.

There is one approved wastewater system installed or used on your Property for:

- One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
- One (1) attached bedroom above garage generating 155 gallons per day, and
- One (1), three (3) bedroom barn generating 300 gallons per day

Any additional wastewater disposal or different configuration taking place on your Property outside of the approved system is considered a violation of Health Code.

During the November 22, 2021 site visit I documented three Living Units and six Bedrooms.

The following definitions are from the Montana Department of Environmental Quality Circular 4:

§ 1.2.9 **Bedroom** means any room that is or may be used for sleeping. An unfinished basement is considered an additional bedroom.

§ 1.2.51 **Living unit** means the area under one roof that can be used for one residential unit and which has facilities for sleeping, cooking, and sanitation. A duplex is considered two living units.

According to the December 28, 2021 email from the Health Department states that the bedroom numbers do not match the permit and goes on to explain how that discrepancy may be corrected.

Therefore, corrective action is required as described below.

Establishment License

Section 50-51-102(4), MCA defines an Establishment as:

a bed and breakfast, hotel, motel, rooming house, guest ranch, outfitting and guide facility, boardinghouse, or tourist home

Further, § 50-51-201(1) requires that:

[A] person engaged in the business of conducting or operating an establishment shall annually procure a license issued by the [Department of Public Health and Human Services].”

The requirement to obtain an establishment license to operate a tourist home also is required by Chapter 2 of the Gallatin City-County Health Code.

Chapter 2, Section 1.13 states:

B) A person violates these regulations or does not comply with the rules set forth in these regulations if the person operates, controls or uses an Establishment without a License or Registration.

There are active listings for two Tourist Homes on your Property:

- www.vrbo.com/850456 three bedrooms, two full and two half baths, kitchen, living room, deck/patio
- www.vrbo.com/734934 three bedrooms, two full and one half bath, gourmet kitchen, indoor and outdoor living space, multiple fire places

Both listings indicate that the Property has eight beds and sleeps seven people, includes the use of a hot tub and goes on to state that “Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee.”

Based on my research, comments from the Health Department and discussions with Ms. McNulty, there are two Tourist Homes operating on your Property. A Public Accommodation License is required for the operation of Establishments on your Property. Since the hot tub is available as part of the Tourist Home, additional permitting/licensing is required.

Therefore, corrective action is required as described below.

Required Response

Based on the information available to me at this time, your Property appears to remain in violation of the Zoning Regulation, Administrative Regulation, Health Code, and Establishment Licensing.

The Health Department would like to assist you in understanding what wastewater facilities are approved for use on your Property and those that need improvements/modifications, along with the Establishment licensing requirements. The Health Department can also help you formulate a

plan of correction to resolve these outstanding issues. An acceptable plan of correction may include discussions with the Health Department, and then establishing the necessary actions and dates those actions will be completed by. The Health Department can be reached at 406-582-3120 or ehs@gallatin.mt.gov with any questions.


The Planning Department would like to assist you in understanding the requirements of the Zoning Regulation and Administrative Regulation. They can also help you formulate a plan of correction to resolve the outstanding issues. An acceptable plan of correction may include scheduling a meeting with a Planner who can help determine the correction actions and then establishing the necessary actions and dates those actions will be completed by. You can reach Allyson Brekke of the Planning Department at 406-582-3193, 406-579-5875 or allyson.brekke@gallatin.mt.gov to discuss the options that are available to you.

You must submit a written plan of correction that includes specific actions and dates as requested in the previous letters, and initiate those actions no later than 30 days after the date of this letter (May 18, 2022).

Please be aware that this is the Department's final attempt to resolve this situation informally. The failure to contact this Department and submit the requested information will result in additional enforcement action.

If you have any questions about this letter please contact me directly at 406-582-3775.

Sincerely,



Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc: County Attorney's Office via email
Department of Planning and Community Development via email
Environmental Health Department via email
Sean Lewis, sean.a.lewis@gmail.com
Leah De Guzman, leahdg2004@gmail.com
Amy McNulty, amcnulty@lawmt.com
Complainant via Email



Gallatin County

NOTICE OF NON-COMPLIANCE & INTENT TO INITIATE CONDITIONAL USE PERMIT REVOCATION

January 17, 2023

Sean A. Lewis
155 Tepee Ridge Road E.
Bozeman, MT 59715-7866

Sent via First Class Mail &
Certified Mail # 7021 2720 0003 1089 1025

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625

Sent via First Class Mail &
Certified Mail # 7021 2720 0003 1089 1018

Re: Bridger Canyon Zoning Regulation Compliant (Compliance ID #22-041)

Dear Mr. Lewis:

As you know, the Gallatin County Compliance Department (Department) has been working with you to resolve potential violations occurring on your property addressed as 153 & 155 Tepee Ridge Road East, Bozeman; legally described as Tract 12A of Certificate of Survey (COS) No. 1265A (Property).

The concerns regarding unlicensed Establishments have been referred back to the Gallatin City-County Health Department Environmental Health Services (Health Department) effective December 22, 2022.

The Property is located within the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District) and therefore must comply with the Bridger Canyon Zoning Regulation (Zoning Regulation) unless otherwise exempted.

Background:

The Zoning District was adopted by the Board of County Commissioners on July 12, 1971 and Zoning Regulation was adopted by the Board of County Commissioners on October 26, 1971, and has been amended thereafter.

The Gallatin County Part 1 Administrative Regulation was adopted for use within the Zoning District on May 21, 2019.

According to the records with the Gallatin County Clerk & Recorder you purchased the Property in September 2003.

According to the Department of Planning and Community Development (Planning Department) records the following zoning related applications are associated with your Property:

- #Z2006-023 Conditional Use Permit (CUP) application for a Caretaker's Residence was submitted to the Planning Department in August 2005
 - The Planning Department issued a letter on September 20, 2005 stating they could not process the application as there were no structures constructed on the property and a principle dwelling unit was required to be constructed prior to applying for an accessory dwelling unit (Caretaker's Residence) and provided two potential solutions

- #L2006-089 Land Use Permit (LUP) approved October 20, 2005 for one Single Family Dwelling Unit, barn and detached garage (Accessory Building):
 - Single Family Dwelling Unit:
 - a "lower floor" that contained mechanical room, all three bedrooms, two bathrooms, laundry room, and a recreation room
 - a "main floor" that contained a bathroom, closet, office, fire place, living room, kitchen and dining area
 - Horse Barn, attached to Single Family Dwelling Unit:
 - storage room, bathroom, tack room, five stalls, car port
 - Detached Garage:
 - seven parking stalls of differing sizes, an entryway, storage room, dry storage room, and wet storage room
 - "upper floor" all labeled as storage only

- #Z2007-038 CUP application to change the designation of the current Single Family Dwelling Unit to a Caretaker's Residence submitted December 1, 2006
 - The request was conditionally approved by the Bridger Canyon Planning & Zoning Commission on February 8, 2007 via the Findings of Fact Conclusions of Law and Order with six Conditions of Approval:
 1. The conditional use permit authorizes the use of this structure as a caretaker's residence. The structure shall not be utilized for any other use unless such use is a permitted use in conformance with the Regulation.
 2. A land use permit for the single-family residence shall be issued by the Gallatin County Planning Department prior to construction.
 3. The following restrictive covenants shall be recorded in the Gallatin County Clerk and Recorder's Office prior to issuance of the new single-family residence:
 - a. *The caretaker's residence shall not be rented.*
 - b. *The caretaker's residence shall not be divided or sold separately from the original parcel.*
 - c. *All structures shall be constructed in compliance with Montana State adopted codes for construction, including codes for seismic zone 3, and National Fire Protection codes.*

- d. *Flame retardant roofing materials shall be used.*
 - e. *Spark-arrestor screens shall be placed on all fireplace and woodstove chimneys.*
 - f. *Smoke detectors shall be installed on each level of dwelling units.*
 - g. *Areas within 30 feet of habitable structures shall be cleared of all flammable materials.*
 - h. *Open fires shall be prohibited.*
 - i. *Any covenant which is included herein as a condition of permit approval and required by the Bridger Canyon Planning and Zoning Commission may not be amended or revoked without the mutual consent of the property owners and the Planning and Zoning Commission.*
4. The future single-family residence shall be constructed with an automatic fire sprinkler system meeting the requirements of NFPA 13D/Uniform Fire Code. The fire district shall receive a stamped set of engineered sprinkler system plans for review and approval prior to construction. Inspections shall be scheduled, with 48-hour notice, during construction and after completion.
 5. Applicant shall receive an approved Emergency Vehicle Turnaround Plan from the Bridger Canyon Fire Department prior to land use permit approval for the future single-family residence.
 6. Approval from the Gallatin City-County Environmental Health Department for the septic system for the new single-family residence shall be obtained prior to the issuance of a land use permit.
- #L2013-172 LUP application approved June 7, 2013 for a new garage (Accessory Building), additions and a remodel to the Structure opposite the original Single-Family Dwelling Unit and barn
 - Existing structures listed were studio, barn and pergola

According to the records maintained by the Montana Department of Revenue the Property contains the following:

- Single Family Residence with 3 bedrooms, 2 bathrooms, 2 porches, approximately 654 square feet of living area, built in 2006
- Single Family Residence with 3 bedrooms, 2 bathrooms, 2 decks, a porch, and 2 garages, with approximately 2,523 square feet of living area, built in 2007
- Barn, 720 square feet, built in 2007
- Pole frame building, 305 square feet, built in 2010
- Pole frame building, 264 square feet, built in 2010
- Lean-to, 60 square feet, built in 2010

On September 13, 2021, the Department received a complaint stating that:

- “Mr. Lewis is renting both the primary home and the caretaker building independently and simultaneously at 6400 Tepee Ridge Rd on short-term rental sites such as VRBO.

Neighbors complain that renters create nuisances, particularly with respect to noise and road safety.”

- The email with the complaint states the VRBO site and rental use goes back to at least January 2, 2020.

Compliance Department Investigation:

I initially sent you notification of this complaint in an Investigation Letter dated September 24, 2021 (Investigation Letter) via First Class Mail. You were to contact me to arrange a site visit and provide me with a written response within 15 days of the date of the Investigation Letter.

Amy McNulty, your legal representative, emailed me on October 13, 2021, saying that she would be in touch by October 15, 2021 with a response to the Investigation Letter and to arrange the requested site visit.

No further response or correspondence was received.

I sent you a Warning Letter on October 22, 2021 (Warning Letter), via First Class Mail and Certified Mail #7018 1130 0001 1432 1850 and # 7018 1130 0001 1432 1867 to both mailing addresses associated with the Property. You were to schedule a site visit and submit the information requested no later than 30 days after the date of the Warning Letter.

Ms. McNulty contacted me on October 22, 2021 and we arranged the requested site visit for November 22, 2021 as you would be in town that week staying on the Property for Thanksgiving.

The site visit was completed as scheduled on November 22, 2021 with Ms. McNulty, you, Leah De Guzman (your partner) and me (Site Visit).

I sent you a Corrective Action Letter on November 29, 2021 (Corrective Action Letter) via email explaining my findings from the Site Visit. You were to contact the Planning Department and the Health Department to discuss your options and provide me with a proposed written plan of correction no later than 30 days after the date of the Corrective Action Letter.

Ms. McNulty reached out to the Health Department and Planning Department on December 18, 2021 and was able to discuss options with them on December 28, 2021 and December 22, 2021.

On December 28, 2021, I received a written response from Ms. McNulty indicating that she had started conversations with both departments, that you would be back in touch with the Planning Department by January 14, 2022, and that you were still investigating some of the items raised as potential violations.

I sent you a Partial Closure/Corrective Action Letter #2 on February 2, 2022 (Partial Closure/Corrective Action Letter #2) further clarifying which items would require corrective actions. You were to provide me with a proposed written plan of correction no later than 15 days after the date of the Partial Closure/Corrective Action Letter #2.

On February 22, 2022, Ms. McNulty notified me in writing that she was aware that the response was past due and would have it to me by February 25, 2022.

No further response or correspondence was received, other than an email on March 1, 2022 stating that Ms. McNulty needed more time with her clients.

I sent you a Warning Letter #2 on April 18, 2022 (Warning Letter #2), via email, First Class Mail and Certified Mail #7018 1130 0001 1432 1577 and #7018 1130 0001 1432 1560 to both mailing addresses associated with the Property. You were to submit a written plan of correction that included specific actions and dates, as requested in previous letters and email correspondence, no later than 30 days after the date of the Warning Letter #2.

On May 17, 2022, Ms. McNulty provided a response to the Warning Letter #2 (Response).

On May 26, 2022, Ms. McNulty, you, and Ms. De Guzman met with Allyson Brekke, Deputy Planning Officer to discuss options regarding the Land Use Permits, Conditional Use Permit, and Uses on the Property as identified within the previous letters from the Department.

Meeting notes from Ms. Brekke stated:

“Recommend to first revise second LUP #2013-172 (that was an addition to a previous detached garage) to ensure it reflects the existing building on the site. This will [be] a LUP Modification per our zoning fee schedule: https://gallatincomt.virtualtownhall.net/sites/g/files/vyhlijf606/f/pages/zoning_fee_schedule_-_for_resolution.pdf

Use the same LUP Application for the Modification: https://gallatincomt.virtualtownhall.net/sites/g/files/vyhlijf606/f/pages/lupapp.11.2.21_fillable_1.pdf

Secondly, decide how you want to use the structure that is approved through a CUP as a caretaker's residence. If want to maintain caretaker's approval, submit a narrative showing how CUP #2007-038 conditions of approval are met. Be mindful of definitions included in Section 3 of the Bridger Canyon Zoning District, including "caretaker's residence": https://gallatincomt.virtualtownhall.net/sites/g/files/vyhlijf606/f/pages/bc_02_22_0.pdf

Another option is to submit an Administrative Determination application that a short term rental is a permitted or conditional use within the AE zoning sub-district of the Bridger Canyon Zoning District. That application can be found here: https://gallatincomt.virtualtownhall.net/sites/g/files/vyhlijf606/f/pages/admindet_1217.webside.pdf. Look at Section 3.8 within the Part 1 Zoning District Administrative Regulations to see how Administrative Interpretations are handled. It would required [sic] the County's Planning & Zoning Commission's consideration.”

On June 17, 2022, Ms. Brekke emailed a copy of the above meeting notes to Ms. McNulty.

I reached out to Ms. McNulty on August 29, 2022, regarding the outstanding actions for the Land Use Permit and Conditional Use Permit on the Property. Ms. McNulty provided a response to me on October 17, 2022, stating:

“Hi Megan- Thanks for your voicemail on this last week. Sounds like I am going to connect with my clients in the next day or so, so I hope to be able to answer your questions on where they are at with (1) the LUP application; and (2) the licensing with the Health Dept.”

As of the date of this letter, no written plan of correction or additional information has been provided, no correction actions have been initiated, and no documentation demonstrating compliance with the Zoning Regulation or Administrative Regulation have been submitted.

Bridger Canyon Zoning Regulation

The pertinent sections of the Zoning Regulation and Administrative Regulation are attached as Exhibit A for your reference

Section 4 of the Zoning Regulation lists the standards and requirements for the AE sub-district. Section 4.2 lists the Permitted Uses **after** a Land Use Permit is approved. Section 4.3 lists Uses Permitted after Securing Approval of a Conditional Use Permit.

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

1. *Principal Single-Family Dwelling Unit*

The former Principal Single-Family Dwelling Unit (Structure B in the Corrective Action Letter) was approved through LUP #L2006-089 in October 2005. It appears this Structure was converted into the Caretaker’s Residence conditionally approved through CUP #Z2007-038.

It appears the original detached garage approved in LUP #L2006-089 (Structure A) was then converted into the existing Principal Single-Family Dwelling Unit.

It does not appear that an LUP modification was approved for these converted uses.

The basement bedroom within the existing Principal Single-Family Dwelling Unit contains an on-suite bathroom, kitchenette with sink, fridge, and two burner stove. Consequently, the basement constitutes an additional Dwelling Unit.

Section 6 of the Administrative Regulations requires Land Use Permit approval for the existing Principal Single-Family Dwelling Unit, as constructed.

The additional Dwelling Unit in the basement is the third Dwelling Unit on the Property. Section 4.2 of the Zoning Regulation only permits one Principal Single-Family Dwelling Unit and one Accessory Dwelling Unit on the Property.

Therefore, corrective action is required as described below.

2. *Caretaker’s Residence*

The December 2006 Conditional Use Permit #2007-038 for a Caretaker’s Residence includes six conditions of approval as listed above.

Pursuant to Section 10.12 of the Administrative Regulation, the Bridger Canyon Planning and Zoning Commission may revoke a Conditional Use Permit when it determines that the person holding a CUP has not complied with the conditions upon which it was issued.

The Planning Department records do not include any documentation and your Response did not include any documentation that the conditions of approval associated with the conditionally approved Caretaker's Residence CUP #Z2007-038 have been met.

In addition, Section 6 of the Administrative Regulation requires Land Use Permit approval for the Structure, as constructed, and its current Use.

Therefore, corrective action is required as described below.

3. *Accessory Building – Detached Garage*

As previously explained, the Planning Department records indicate the Structure previously approved through LUP #L2006-089 as a Detached Garage was attached to the existing Principal Single-Family Dwelling Unit.

During the November 22, 2022 site visit, it was documented that there is no detached garage located on the Property. Instead, a three-car attached garage is associated with the existing Principal Single-Family Dwelling Unit.

Section 6 of the Administrative Regulations requires Land Use Permit approval for the three-car attached garage, as constructed.

Therefore, corrective action is required as described below.

4. *Accessory Building – Horse Sheds*

Pursuant to Section 12.3.c of the Zoning Regulation:

Accessory Buildings equal to or less than 200 square feet of General Floor Area are not required to obtain a Land Use Permit.

Within the May 17, 2022 response from Ms. McNulty states that the square footage of the horse sheds are under 200 square feet. No documentation was provided.

However, according to the records maintained by the Montana Department of Revenue there are three outbuilding Structures on the Property as follows:

- Pole frame building, 305 square feet, built in 2010
- Pole frame building, 264 square feet, built in 2010
- Lean-to, 60 square feet, built in 2010

Only one of which is listed as being under 200 square feet.

Section 6 of the Administrative Regulations requires Land Use Permit approval for the Accessory Structures over 200 square feet of General Floor Area as defined within the Zoning Regulation and as constructed.

Therefore, corrective action is required as described below.

Notice of Intent to Initiate Conditional Use Permit Revocation

No documentation or corrective actions have been identified or initiated to demonstrate compliance with Conditional Use Permit #Z2007-038 for the Caretaker's Residence as requested by the Department in previous letters. The Department hereby provides you with written notice, pursuant to Section 10.12 (Revocation) of the Administrative Regulation, that the Department has determined you have not complied with the conditions upon which CUP #Z2007-038 were issued. If you do not take the corrective actions described below, the Department will initiate the process for the Revocation of CUP #Z2007-038 pursuant to Section 10.12 of the Administrative Regulation.

Corrective Action – Opportunity to Remedy per Section 10.12:
By no later than February 16, 2023, you must:

- Submit Land Use Permit application(s) and applicable fee(s) to the Planning Department for the Principal Single-Family Dwelling Unit, three car attached garage, Accessory Buildings to demonstrate compliance with Structures as constructed and Uses on the Property
 - Additionally, you may provide documentation demonstrating how the Accessory Buildings are 200 square feet of General Floor Area or less as defined in the Zoning Regulation
- Submit an Interpretation application and applicable fee to the Planning Department for the additional Dwelling Unit in the basement of the Principal Single-Family Dwelling Unit
 - Alternatively, you may submit a written plan of correction describing in detail the specific actions you will take, and the dates by which you will take such actions, to remedy the third Dwelling Unit on the Property
- Provide documentation and a narrative demonstrating how all conditions of CUP #Z2007-038 have been completed/met for use as a Caretaker's Residence

Failure to correct the violations within the timeframe specified will subject you to further enforcement action and the revocation process for the CUP #Z2007-038.

Should you have any questions regarding this letter, please contact me at 406-582-3775.

Sincerely,



Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc w/ attachment:

County Attorney's Office via email
Environmental Health Department via email

Compliance Department • 311 W. Main St., Rm. 108 • Bozeman, MT 59715
Phone (406) 582-3775 • www.gallatincomt.virtualtownhall.net/code-compliance

Planning Department, Allyson Brekke, Allyson.Brekke@gallatin.mt.gov
Montana Department of Revenue via email
Bridger Canyon Fire District via email
Sean Lewis, sean.a.lewis@gmail.com
Leah De Guzman, leahdg2004@gmail.com
Amy McNulty, amcnulty@lawmt.com
Complainant via Email

Exhibit A – Applicable Regulations:**Gallatin County “Part 1” Administrative Regulation**

- 3.2 Zoning Regulation Conformance. Property owners are responsible for ensuring all activity within and on their property conforms to this Administrative Regulation and the applicable District Regulation. No Building, Structure, or land shall hereafter be used or occupied, and no Building, Structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved or Structurally Altered unless it is in conformity with all the Zoning Regulations.

No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure, or unless such Use is deemed to be an appropriate Use pursuant to the interpretation process of Section 3.8 of this Administrative Regulation. All other uses are prohibited unless otherwise authorized by federal or state law.

The burden of proof is on an applicant to demonstrate that applicable requirements and review criteria of the Zoning Regulations are met. Where conditions of approval are attached to any approval issued under the Zoning Regulations, the failure to comply with any condition of approval is a violation of the Zoning Regulations.

- 3.8 Interpretations. Requests for Official interpretations concerning the Zoning Regulations, boundaries, and maps shall be made in writing, accompanied by the appropriate application and fee, and shall be handled as follows:
- a. Administrative Interpretations. Interpretations concerning the Zoning Regulations and maps, except those interpretations listed at subsection (b) or (c)(vii) below, may be made by the Planning Director and are subject to Appeal as described in Section 13 of this Administrative Regulation. If the Planning Director determines the interpretation is of significant public interest, the Planning Director may refer the request to the Planning & Zoning Commission. The Planning & Zoning Commission shall consider the request in a public hearing.
 - b. Interpretation of Use Classification. If questions arise concerning the appropriate classification of a particular Use, or if the specific Use is not listed, the Planning and Zoning Commission shall determine the appropriate classification of that Use. In interpreting a Use classification, the Planning and Zoning Commission shall hold a public hearing, consider the recommendation of any Zoning Advisory Committee, and determine whether the use meets all of the following criteria:
 - i. The proposed Use is compatible with the Uses allowed in the Sub-district;
 - ii. The proposed Use is similar to one or more Uses allowed in the Sub-district;

- iii. The proposed Use will not adversely affect property in the neighborhood or Sub-district or Zoning District; and
 - iv. The proposed use will not abrogate the intent of the Zoning Regulations and applicable growth policy or neighborhood plan.
- 6.1 Intent. The Land Use Permit review process is intended to verify a Structure's conformity to the applicable requirements of the Zoning Regulations.
- 6.2 Requirement for Land Use Permit. Except as provided in Section 6.4 below, no Structure shall be built or moved and no Structural Alteration shall commence without an approved Land Use Permit issued under this Section. Construction without an approved Land Use Permit constitutes a violation of the Zoning Regulations. Preparatory site work may occur prior to Land Use Permit approval, but occurs at the risk of the landowner. Pouring of concrete or installation of other permanent improvements prior to Land Use Permit approval is prohibited.
- 8.1 Intent. The Certificate of Completion is intended to verify that all Exterior Construction and other relevant conditions of approval for a project have been completed in conformance with the plans approved through the Conditional Use Permit, Variance, Land Use Permit or Change of Use Permit review processes.
- 8.2 Requirement for a Certificate of Completion. Where the Planning Director has determined as part of the approval of a Land Use Permit or Change of Use Permit that a Certificate of Completion is required for a project, a Certificate of Completion shall be obtained after completion of all Exterior Construction and prior to expiration of the Land Use Permit or Change of Use Permit. A Certificate of Completion may also be required as a condition of approval for a Conditional Use Permit or Variance.
- 10.1 Intent. The Conditional Use Permit review process is intended to provide a transparent, public review process for Uses that, because of their widely varying design, operational characteristics, and potential to cause off-site impacts, require case-by-case review in order to determine whether they will be compatible with surrounding Uses and patterns of development and, if necessary, develop appropriate conditions of approval. Where District Regulations provide specific procedures and requirements for Planned Unit Developments, Wireless Communication Facilities, Natural Resource Conditional Uses, or Open Cut (Gravel Pit) Operations, those District Regulations shall control.
- 10.2 Requirement for a Conditional Use Permit. Conditional Use Permits are required prior to operation of a Use and/or occupancy of a Structure which is listed as a Conditional Use under the applicable District Regulation.
- 10.7 Authorized Use. A Conditional Use is not authorized until all conditions of approval and the following are satisfied:

- a. Structures proposed for construction in connection with the proposed Use have obtained any required Land Use Permit or Change of Use Permit and are in the process of Actual Construction on the site; or
 - b. If remodeling is proposed for existing Structures in connection with the proposed Use, any required Land Use Permit or Change of Use Permit has been approved and Actual Construction of the remodeling has begun on the site; or
 - c. If no construction or remodeling is required, then the permittee has obtained any necessary Change of Use Permit and is regularly engaged on the site in performing and carrying out the Use, and has secured all necessary federal, state, and local permits and licenses.
- 10.8 Expiration. Unless specifically provided otherwise in the Planning and Zoning Commission's approval, all Conditional Use Permits shall automatically expire if the Authorized Use as set forth in Section 10.6 above is not started within two years of the date of approval. All Conditional Use Permits issued for a definite term shall automatically expire at the end of the specified term.
- 10.12 Revocation. The Planning and Zoning Commission is authorized to revoke Conditional Use Permits.
- a. If the Planning Director or Zoning Enforcement Agent finds that a person holding a Conditional Use Permit has not complied with the conditions upon which it was issued, the Planning Director or the Zoning Enforcement Agent may, after providing the person holding the Conditional Use Permit with written notice and an opportunity to remedy the matter, initiate the process to revoke a Conditional Use Permit.
 - b. If an Advisory Committee has been established, the Planning Director or Zoning Enforcement Agent shall forward the revocation request to the Committee, which, after holding a meeting and taking comment, may forward a recommendation to the Planning and Zoning Commission.
 - c. The Planning and Zoning Commission shall consider the revocation request during a public hearing for which Published Notice has been provided and issue a Decision in accordance with the Planning and Zoning Commission Hearing Rules.
 - d. The Planning and Zoning Commission may revoke a Conditional Use Permit when the Planning and Zoning Commission finds that the person holding a Conditional Use Permit has not complied with the conditions upon which it was issued.

Bridger Canyon Zoning Regulation

- 4.2.b. One Principal Single-Family Dwelling Unit on each parcel created in conformance with the Zoning Regulation or in existence at the time of its original adoption.

4.2.c. One Accessory Dwelling Unit in accordance with Section 12.2.

TARLOW
STONECIPHER
WEAMER & KELLY PLLC

ATTORNEYS

1705 WEST COLLEGE STREET
BOZEMAN, MT 59715-4913

PHONE (406) 586-9714
FAX (406) 586-9720
www.LawMT.com

February 16, 2023

Megan Gibson
Gallatin County Compliance Department
311 West Main Street, Rm. 108
Bozeman, MT 59715

Via e-mail:
megan.gibson@gallatin.mt.gov

**RE: Plan of Correction; Bridger Canyon Zoning Regulation and Public
Accommodation Licensing Complaint (Compliance ID #22-041)**

Dear Megan,

This letter responds to your letter of January 17, 2023, and specifically serves to provide the requested information and narrative demonstrating how the conditions of CUP #Z2007-038, the Conditional Use Permit for my client's property, were met.

Allow me to address the CUP conditions as listed in your letter together with the information we have related to how these items were met and the CUP was validly put into use following its issuance in 2007.

1. The conditional use permit authorizes the use of this structure as a caretaker's residence. The structure shall not be utilized for any other use unless such use is a permitted use in conformance with the Regulation.

Following approval of the conditional use permit in 2007, the structure (the "lower house" attached to the barn) was used as a caretakers' residence where the property owner would have a caretaker using the residence to watch over the property during periods he was away.

I understand there is a compliance issue with my client renting out the Caretakers Residence at times since 2020, but this does not negate the fact that the CUP was "put into use" following its issuance in 2007.

I further understand that the current Zoning Regulations allow for an "Accessory Dwelling Unit," which, unlike a caretaker's residence, may be rented together with the Principal Dwelling Unit. My client is interested in proceeding with the conversion of the existing Caretaker's Residence to an Accessory Dwelling Unit under the Regulations.

2. A land use permit for the single-family residence shall be issued by the Gallatin County Planning Department prior to construction.

As we have discussed, the Gallatin County Planning Department issued a land-use permit in 2013 (L2013-172). Upon investigation, it appears that this land-use permit included "existing" structures that constitute the existing single-family residence attached to the garage. The structure for this residence was part of the approved plans in the 2005 land-use permit. The County's approval of the 2013 Land Use Permit, including approval of plans showing the existing residence at that time, constitutes an approval for what now exists as the "upper house" single-family residence.

Per your direction, we have applied for a Land Use Permit Modification with the Gallatin County Planning Department to ensure that the existing Land Use Permit matches the existing structures on the property.

3. The following restrictive covenants shall be recorded in the Gallatin County Clerk and Recorder's Office prior to issuance of the new single-family residence:

- a. The caretaker's residence shall not be rented.*
- b. The caretaker's residence shall not be divided or sold separately from the original parcel.*
- c. All structures shall be constructed in compliance with Montana State adopted codes for construction, including codes for seismic zone 3, and National Fire Protection codes.*
- d. Flame retardant roofing materials shall be used.*
- e. Spark-arrestor screens shall be placed on all fireplace and woodstove chimneys.*
- f. Smoke detectors shall be installed on each level of dwelling units.*
- g. Areas within 30 feet of habitable structures shall be cleared of all flammable materials.*
- h. Open fires shall be prohibited.*
- i. Any covenant which is included herein as a condition of permit approval and required by the Bridger Canyon Planning and Zoning Commission may not be amended or revoked without the mutual consent of the property owners and the Planning and Zoning Commission.*

A restrictive covenant addressing these points was filed with the Gallatin County Clerk and Recorder on June 26, 2007 as Document 2270716 following the Commission's Order of February 8, 2007. I am attaching a copy of the recorded covenants to this letter.

4. The future single-family residence shall be constructed with an automatic fire sprinkler system meeting the requirements of NFPA 13D/Uniform Fire Code. The fire district shall receive a stamped set of engineered sprinkler system plans for review and approval prior to construction. Inspections shall be scheduled, with 48-hour notice, during construction and after completion.

Mr. Lewis tells me that the “upper house” single-family residence was constructed with an automatic fire sprinkler system in conjunction with the Fire Code and this condition. Is this an item that you confirmed when you conducted a site visit of the property?

Additionally, I have an inquiry to the Bridger Canyon Fire Department regarding whether they still have the plans for the sprinkler system as contemplated by this condition. I will update you when I hear from them.

5. Applicant shall receive an approved Emergency Vehicle Turnaround Plan from the Bridger Canyon Fire Department prior to land use permit approval for the future single-family residence.

I understand that the Planning Department approved the 2013 Land Use Permit, indicating that this condition was completed/approved given the Department’s requirement that this be completed “prior to land use permit approval.” This approval serves as presumptive confirmation that this condition was met.

In addition to this presumptive confirmation, I have an inquiry into the Bridger Canyon Fire Department regarding whether they still have an approved plan.

6. Approval from the Gallatin City-County Environmental Health Department for the septic system for the new single-family residence shall be obtained prior to the issuance of a land use permit.

Again, I understand that the Planning Department approved the 2013 Land Use Permit, which indicates that this condition was completed/approved given the Department’s requirement that this be completed “prior to land use permit approval.” This approval serves as presumptive confirmation that this condition was met.

Further, as part of the 2013 land use permit, there was an approved wastewater system for up to eight (8) bedrooms. Per your directive as part of this compliance investigation, my client submitted a modification to the septic permit with the Health Department last year to confirm the configuration of the septic system and dwelling units served and this modification was approved in July of last year.

Megan Gibson
February 16, 2023
Page 4

We view the foregoing information as sufficient to confirm that the conditions for the 2007 Conditional Use Permit were met and it was put into place following its issuance.

I have addressed the other directives in your January 17, 2023 letter through the Planning Department and copied you on those correspondence.

Very truly yours,

/s/ Amy C. McNulty
Amy C. McNulty

ACM/hgg

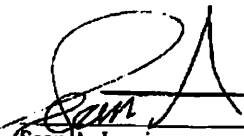
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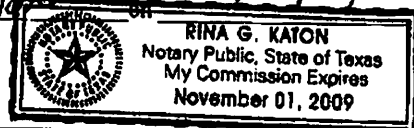
I, Sean A Lewis, here by place the following restrictive covenants, as required by Bridger Canyon Planning and Zoning Commission's order of February 08th, 2007, approving the request by Sean A. Lewis for a Conditional Use Permit for a caretaker's residence, located at Agricultural Exclusive (AE) District of the Bridger Canyon Zoning District, located in Section 20 of Township One South, Range Seven East; PMM, Gallatin County, Montana; with an address of 6400 Teepee Ridge Road East, Bozeman, Montana: TRACT 12A C.O.S, NO. 1265-A

- a) The caretaker's residence shall not be rented.
- b) The caretaker's residence shall not be divided or sold separately from the original parcel.
- c) All structures shall be constructed in compliance with Montana State adopted codes for construction, including codes for seismic zone 3, and national Fire Protection codes.
- d) Flame retardant roofing material shall be used.
- e) Spark arrestor screens shall be placed on all fireplace and woodstove chimneys.
- f) Smoke detectors shall be installed on each level of dwelling units.
- g) Areas within 30 feet of habitable structures shall be cleared of all flammable materials.
- h) Open fires shall be prohibited.
- i) Any covenant which is included herein as a condition of permit approval and required by the Bridger Canyon Planning and Zoning Commission may not be amended or revoked without the mutual consent of the property owners and the Planning and Zoning Commission.


Sean A. Lewis

State of Texas
County of Dallas

This instrument was acknowledged before me RINA KATON
by Sean Lewis

ON 5/17/07


Notary Public for the State of ~~Montana~~ TEXAS
Residing at:
My commission expires November 1, 2009



Gallatin County

March 8, 2023

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625

Sent via Email:
sean.a.lewis@gmail.com

Re: Bridger Canyon Zoning Regulation Compliant (Compliance ID #22-041)

Property: 153 & 155 Tepee Ridge Road East, Bozeman Montana; legally described as Tract 12A of Certificate of Survey (COS) No. 1265A, located in the SE1/4 and SW1/4 of Section 17 and the NE1/4 and NW1/4 of Section 20, Township 1 South, Range 7 East, P.M.M., Gallatin County (Property).

Dear Mr. Lewis:

Thank you for the written responses from your attorney, Amy McNulty dated February 16, 2023 (Responses) to my January 17, 2023 Notice of Non-Compliance & Intent to Initiate Conditional Use Permit Revocation Letter.

The Code Compliance Department will keep the Response to the conditions of approval for the Conditional Use Permit #Z2007-038 under consideration for now, while additional information is gathered by you as stated in the Response, and while the Department of Planning & Community Development reviews the Responses for the 1) Land Use Permit application for the Principal Single-Family Dwelling Unit, three car attached garage, and the Accessory Buildings, and 2) the additional Dwelling Unit in the basement of the Principal Single-Family Dwelling Unit.

If you have any questions about this letter, feel free to call me at 406-582-3775.

Sincerely,

A small rectangular image showing a handwritten signature in cursive that reads "Megan K. Gibson".

Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc: Erin Arnold, Chief Civil Deputy County Attorney via email
Allyson Brekke, Deputy Planning Officer via email
Leah De Guzman, leahdg2004@gmail.com
Amy C. McNulty, Tarlow Stonecipher, Weamer & Kelly, PLLC, AMcNulty@lawmt.com
Hailey Garbett, Tarlow Stonecipher, Weamer & Kelly, PLLC, HaileyG@lawmt.com
Complainant via Email



Gallatin County

NOTICE OF VIOLATION & DEMAND FOR CORRECTIVE ACTION

September 18, 2023

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625
sean.a.lewis@gmail.com

Sent via First Class Mail, Email &
Certified Mail # 7021 2720 0003 1089 1308

Amy C. McNulty
Tarlow Stonecipher
Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913
AMcNulty@lawmt.com

Sent via First Class Mail, Email &
Certified Mail # 7021 2720 0003 1089 1292

RE: Bridger Canyon Zoning Regulation Complaint (Compliance ID #22-041)

Property: 153 & 155 Tepee Ridge Road East, Bozeman, Montana; legally described as Tract 12A of Certificate of Survey No. 1265A located in the SE¹/₄ and SW¹/₄ of Section 17 and the NE¹/₄ and NW¹/₄ of Section 20, Township 1 South, Range 7 East, P.M.M., Gallatin County, Montana

Dear Mr. Lewis and Ms. McNulty:

The Gallatin County Code Compliance Department (Department) has been working with you to resolve violations occurring on your Property since at least September 24, 2021, pertaining to the use of the Principal Single-Family Dwelling and Caretaker's Residence as short-term rentals or tourist homes in violation of the Bridger Canyon Zoning Regulations. Because the Uses continue to date, I am issuing this final letter formally notifying you of the violations and demanding corrective action.

Background:

The Property is located entirely within the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District) and therefore must comply with the Bridger Canyon Zoning Regulation (Zoning Regulation) unless otherwise exempted.

The Zoning District was adopted by the Board of County Commissioners on July 12, 1971 and Zoning Regulation was adopted by the Board of County Commissioners on October 26, 1971, with amendments thereafter.

The Administrative Regulation was adopted for use within the Zoning District on May 21, 2019.

According to the records with the Gallatin County Clerk & Recorder you purchased the Property on September 23, 2003.

On September 13, 2021, the Department received a complaint stating that:

- “Mr. Lewis is renting both the primary home and the caretaker building independently and simultaneously at 6400 Tepee Ridge Rd on short-term rental sites such as VRBO. Neighbors complain that renters create nuisances, particularly with respect to noise and road safety.”
- The email with the complaint states the VRBO site and rental use goes back to at least January 2, 2020.

Compliance Department Investigation:

I initially sent you notification of this complaint in the Investigation Letter dated September 24, 2021 (Investigation Letter). You were to contact me to arrange a site visit and provide me with a written response within 15 days of the date of the Investigation Letter.

After a Warning Letter was issued on October 22, 2021, and a site visit occurred, I issued the Corrective Action Letter dated November 29, 2021. You were directed to provide me with a proposed written plan of correction no later than December 29, 2021.

On December 28, 2021, I received the written response from Ms. McNulty indicating that she had started conversations with both departments, that you would be back in touch with the Planning Department by January 14, 2022, and that you were still investigating some of the items raised as potential violations

Over the course of January and February 2022, Ms. McNulty corresponded with me regarding the short-term rental Use, but no further information was provided to me or the Planning Department as described in the December 28, 2021 response from Ms. McNulty.

I sent you the attached Partial Closure/Corrective Action Letter #2 dated February 2, 2022 (Partial Closure/Corrective Action Letter #2), that in part, stated “Pursuant to § 7-5-121 MCA (2021), the County may not restrict you **at this time** from operating private businesses [short-term rentals or tourist homes] on the Property as Overnight Accommodations/short-term rentals/tourist homes. Doing so would deny your customers access to your private business.” (emphasis added)

I sent you the attached Corrective Action Letter #2 dated June 14, 2023 (Corrective Action Letter #2) regarding the change in state statute (§ 7-5-121 MCA (2023)) and the short-term rental or tourist home Use of the Principal Single-Family Dwelling Unit and Caretaker’s Residence located on the Property. You were directed to provide me with a proposed written plan of correction no later than June 29, 2023. In the written plan of correction, you were to describe specific actions and dates to address the short-term rental or tourist home Use.

On June 29, 2023, Ms. McNulty provided the attached written response to my Corrective Action Letter #2 regarding the short-term rental Use of the Principal Single-Family Dwelling Unit and Caretaker’s Residence on the Property. Ms. McNulty concludes her response with the following:

- *Understanding that there are some limits imposed by the Zoning Regulation, and in an effort to resolve any outstanding issues, my clients can agree to following plan to ensure compliance with the applicable regulations:*

1. *The Lewis Property will not be listed as available for overnight rental for the general public for 48 or more weeks per calendar year; and*
2. *The Lewis Property will only be rented to groups meeting the definition of “Family” under the Zoning Regulations.*

I sent you and Ms. McNulty the attached Corrective Action Letter #3 on July 12, 2023 (Corrective Action Letter #3) regarding the short-term rental Use of the Principal Single-Family Dwelling Unit and Caretaker’s Residence on the Property reiterating the County’s position that short-term rentals or tourist homes is a prohibited Use on the Property. You were to provide me with a proposed written plan of correction to address the violation no later than July 27, 2023. In the written plan of correction, you were to describe specific actions and dates to address the short-term rental or tourist home Use.

On July 27, 2023, Ms. McNulty provided the attached written response to my Corrective Action Letter #3 regarding the short-term rental or tourist home Use of the Property. Ms. McNulty sums up her response with the following:

- *The law supports interpretation of short-term rental of property as a Permitted Use in this Sub-district. As such, my clients are not willing to cease short-term rental of their property as requested in your last letter.*

As of the date of this letter, the Use of the Principal Single-Family Dwelling Unit and Caretaker’s Residence on the Property as short-term rentals or tourist homes continues, including allowing the Dwellings to be rented separately from each other.

Applicable Regulations:

Gallatin County “Part 1” Administrative Regulation:

- 2 Definitions. The following definitions provide clarification and guidance regarding this Administrative Regulation. Additional terms are defined in the District Regulations. In the case of a conflict between the definitions below and the definitions provided in an applicable District Regulation, the definitions in this Administrative Regulation control except where specifically stated otherwise.
- 2.5 **Building.** A Structure with a roof, built for support, shelter, or enclosure of persons, animals, chattels, or property of any kind.
- 2.10 **Dwelling Unit.** A Building or portion thereof providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. Where a portion of a Building containing complete, independent living facilities may be separated from another portion of a Building also containing complete, independent living facilities, such Building shall be considered to contain more than one Dwelling Unit.
- 2.11 **Dwelling Unit, Single Family.** A Building or portion thereof containing a single Dwelling Unit for habitation by one or more persons co-residing therein and their domestic employees.

- 2.26 Use. Any purpose for which a Building or other Structure or tract of land may be designed, arranged, intended, maintained, or occupied for any activity, occupation, business, operation, or residence, including Permitted and Conditional Uses.
- 3.2 Zoning Regulation Conformance. Property owners are responsible for ensuring all activity within and on their property conforms to this Administrative Regulation and the applicable District Regulation. No Building, Structure, or land shall hereafter be used or occupied, and no Building, Structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved or Structurally Altered unless it is in conformity with all the Zoning Regulations.

No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure, or unless such Use is deemed to be an appropriate Use pursuant to the interpretation process of Section 3.8 of this Administrative Regulation. All other uses are prohibited unless otherwise authorized by federal or state law.

The burden of proof is on an applicant to demonstrate that applicable requirements and review criteria of the Zoning Regulations are met. Where conditions of approval are attached to any approval issued under the Zoning Regulations, the failure to comply with any condition of approval is a violation of the Zoning Regulations.

- 12.4 Remedies. The Zoning Enforcement Agent may put any person or entity believed to be responsible for a violation of the Zoning Regulations on notice of such violation.
- a. The Zoning Enforcement Agent may give such notice, in the name of Gallatin County, and require the cessation of the violation. Such notice shall be sent by mail and may be sent by other means and is subject to appeal in accordance with Section 13 below. Nothing in this Administrative Regulation shall be interpreted to prohibit the continuation of previous enforcement actions, undertaken by Gallatin County under previous, valid regulations, ordinances, and laws.
 - b. The County Commission, at its option, notwithstanding any action taken by the Zoning Enforcement Agent, may begin proceedings set forth in Section 76-2-113, MCA at any time.
 - c. Legal Remedies. The County Attorney may pursue all available legal remedies to compel compliance with this Administrative Regulation and any District Regulation, including filing an action in district court to enjoin any violations thereof. The owner or tenant of any Building, Structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person or entity who commits, participates in, assists, or maintains such violation may each be held accountable. The prevailing party in any such action may be awarded all costs, including attorney's fees. This Section 12.4(c) is in addition to and not in

lieu of any other remedies available to the County, or to any aggrieved person or entity, at law or in equity.

Bridger Canyon Zoning Regulation

- 3.16 Caretaker's Residence: Dwelling Unit for a person that takes care of the house or land of an owner who may be absent.
- 3.22 Dwelling Unit: A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.
- a. Dwelling, Unit, Accessory: A separate Dwelling Unit located within the Principal Single-Family Dwelling Unit or in an Accessory Building.
 - b. Dwelling Unit, Principal Single-Family: A Building or portion thereof containing a single Dwelling Unit for habitation by a Family.
- 3.33 Family:
- a. A person living alone;
 - b. Any number of people related by blood, marriage, adoption, guardianship, or other authorized custodial relationship;
 - c. Two (2) unrelated people and any children related to either of them;
 - d. Not more than four (4) unrelated people living together as a single nonprofit housekeeping unit and sharing common living, sleeping, cooking, and eating facilities.
- 3.52 Overnight Accommodations: Permanent, separately rentable accommodations that are not available for residential use, except for the proprietors of a Bed and Breakfast Inn or Guest Ranch. Overnight Accommodations include Hotel or motel rooms, hostels, cabins, Bed and Breakfast Inns, Guest Ranches, and time-shared units. Individually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, Employee Housing, and similar accommodations do not qualify as Overnight Accommodations for purpose of this definition.
- 4.1 Intent: It is the intent of this District to protect and preserve the existing rural character of Bridger Canyon and to preserve existing developed and undeveloped farmlands from unplanned residential, commercial, and industrial development. It is further the intent of this Regulation to encourage agriculture as one of the occupational pursuits and an economic endeavor in Bridger Canyon. The purpose of the Agricultural Exclusive District is, when applied to particular land, to encourage the following land uses:
- a. Residential uses that do not impair the rural character of Bridger Canyon;
 - b. The cultivation of ground, including the preparation of soil, planting or seeding, and raising and harvesting of crops;

- c. The raising, feeding, and managing of livestock;
- d. Incidental uses that are customarily and necessarily related to and included within an agricultural pursuit; and,
- e. Incidental unrelated uses that are necessary to protect and promote the health, safety, welfare, and convenience of rural residential citizens.

4.2 Permitted Uses:

- b. One Principal Single-Family Dwelling Unit on each parcel created in conformance with the Zoning Regulation or in existence at the time of its original adoption.
- c. One Accessory Dwelling Unit in accordance with Section 12.2.

12.2 Accessory Dwelling Unit:

- f. The Accessory Dwelling Unit may not be rented or sold separately from the Principal Single-family Dwelling Unit.

Determination of Violation of the Bridger Canyon Zoning Regulation and Gallatin County “Part 1” Administrative Regulation:

Based on the facts that have been provided to me and the provisions of the Zoning Regulations and Administrative Regulations as set forth above, I make the following determination:

- 1) Both the Principal Single-Family Dwelling Unit and Caretaker’s Residence located on the Property are advertised and Used as short-term rentals. The Principal Single-Family Dwelling Unit and Caretaker’s Residence are available to be rented separately or together.

Therefore, you are in violation of Section 3.2 of the Administrative Regulation due to your lack of compliance with the Zoning Regulation.

Section 3.2 provides that no Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure. Section 3.2 prohibits all other uses unless otherwise authorized by federal or state law.

As previously explained in my letters, the Zoning Regulation does not list Short-term rentals or tourist homes as a Permitted or Conditional Use for the AE Sub-district. Consequently, the Use of the Property as a short-term rental or tourist home is prohibited. The use of the Property in this manner is contrary to the plain language, as well as the spirit and intent of the Zoning Regulation and Administrative Regulation.

Both the Zoning Regulation and Administrative Regulation must be interpreted according to their plain language. In *Egan Slough Community v. Flathead County Board of County Commissioners*, the Montana Supreme Court recognized that, “[i]n interpreting zoning ordinance, courts apply the basic rules of statutory construction.” 2022 MT 57, ¶ 22, 408 Mont. 81, 506 P.3d 996 (citations omitted). Consequently, “[i]f the language of an ordinance is plain and unambiguous, it is not

subject to interpretation or open to construction but must be accepted and enforced as written.” *Id.* Consistent with § 1-2-101, MCA, a court will not “insert what has been omitted” or “omit what has been inserted.” *Id.*

The plain language of the Regulations does not support your interpretation that short-term rentals or tourist homes are encompassed within the uses permitted within the AE Sub-District. Your interpretation seeks to “insert what has been omitted,” when Section 3.2 clearly prohibits all uses not specifically listed as a Permitted or Conditional Use.

Neither the plain language nor the spirit of the Regulation allows for short-term rentals or tourist homes within a Principle Single-Family Dwelling. Section 3.22 defines Dwelling Unit as a Structure “providing complete, independent living facilities for one (1) or more persons, **including permanent provisions** for living, sleeping, cooking, and sanitation.” (Emphasis added).

Section 4.1 defines the intent of the AE Sub-district as to “protect and preserve the existing rural character of Bridger Canyon and to preserve existing developed and undeveloped farmlands from unplanned residential, commercial, and industrial development.” The same section encourages “Residential land uses that do not impair the rural character of Bridger Canyon,” incidental uses “customarily and necessarily related to and included within an agricultural pursuit,” and incidental uses unrelated to an agricultural pursuit “that are necessary to protect and promote the health, safety, welfare, and convenience of rural residential citizens.”

Further, as defined by Section 3.16 of the Zoning Regulation, a Caretaker’s Residence can only be used as a Dwelling Unit by a person “that takes care of the house or land of an owner who may be absent.” Even if the Caretaker’s Residence qualified as an Accessory Dwelling Unit (which would first require Conditional Use Permit approval), Section 12.2.f prohibits an Accessory Dwelling from being “rented or sold separately from the Principal Single-family Dwelling Unit.” Use of the Caretaker’s Residence as a short-term rental or tourist home is a clear violation of the Zoning Regulation.

Your reliance on the Montana Supreme Court’s opinion in *Craig Tracts Homeowners’ Association, Inc. v. Brown Drake LLC*, 2020 MT 305, 402 Mont. 223, 477 P.3D 283, continues to be misplaced. That case is specific to private subdivision covenants. The issue was whether the defendant was violating private covenants by using its property as a short-term rental. The Court did not interpret or apply local zoning regulations.

While the Montana Supreme Court determined the covenants’ allowed use for “residential purposes” included short-term rentals, the Court reached this decision by relying on evidence outside the plain language of the covenants, due to their ambiguity. *Craig Tracts*, ¶ 15. This evidence included the covenants’ prior amendment removing restrictions on commercial business uses, like a motel, hotel, or apartment house; the prior use of the property by the former owner (the HOA’s president) as a short-term rental; and the defendant’s own use of the property for a majority of the year. *Id.*, ¶¶ 16-18. This case is inapplicable both as a matter of law and fact.

Finally, an agency’s interpretation of its regulations control and is given deference. *See e.g. Powell Co. v. Country Village, LLC*, 2009 MT 294, ¶ 8, 352 Mont. 291, 217 P.3d 508 (“An agency’s interpretation of its rule is afforded great weight, and the court should defer to that interpretation unless it is plainly inconsistent with the spirit of the rule.”) (Citing *Clark Fork Coalition v. Mont.*

Dept. of Env'tl. Quality, 2008 MT 407, ¶ 20, 347 Mont. 197, 197 P.3d 482). The plain language and spirit of the Regulations demonstrate that short-term rentals are not permitted on your Property.

Corrective Action:

Based on the above findings, corrective action is required to address the violations listed above. **Gallatin County demands that you cease operating the short-term rentals or tourist homes on the Property. You must bring the Property into compliance with the Zoning Regulation and Administrative Regulation no later than October 18, 2023.**

Failure to correct the violations within the timeframe specified will subject you to further enforcement action, which may include referring this matter to the County Attorney's Office for civil or criminal prosecution.

Appeal Rights:

- 13.2 Appeal of Planning Director or Zoning Enforcement Agent Decision. A Decision of the Planning Director or Zoning Enforcement Agent may be appealed to the Planning and Zoning Commission.
- a. An appeal of a Decision made by the Planning Director or Zoning Enforcement Agent must be made in writing to the Planning Director or Zoning Enforcement Agent and received within 30 days of the date of the Decision. The Planning Director or Zoning Enforcement Agent shall acknowledge receipt and notify the appellant of the preliminary date of the appeal hearing in writing.
 - b. An appeal shall be heard by the Planning and Zoning Commission after providing Published Notice and Certified Mail Notice. The Planning and Zoning Commission shall issue its decision on an appeal within a reasonable time.
 - c. The Planning and Zoning Commission may reverse the Decision of the Planning Director or Zoning Enforcement Agent only if the Planning and Zoning Commission finds, based on facts presented in the Hearing Record, that the Planning Director or Zoning Enforcement Agent erred in their Decision.

Should you have any questions regarding this letter, please contact me at 406-582-3775.

Sincerely,

Megan K. Gibson

Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc w/ attachments:

Erin Arnold, Chief Civil Deputy County Attorney via email
Sean O'Callaghan, Chief Planning Officer via email
Leah De Guzman, leahdg2004@gmail.com
Complainant via email



Gallatin County

PARTIAL CLOSURE LETTER/ CORRECTIVE ACTION LETTER #2

February 2, 2022

Sean A. Lewis
5064 Bridge Creek Drive
Plano, TX 75093-5702

Email: sean.a.lewis@gmail.com

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625

Email: sean.a.lewis@gmail.com

Re: Bridger Canyon Zoning Regulation, unpermitted wastewater disposal, and Public Accommodation Licensing Compliant (Compliance ID #22-041)

Dear Mr. Lewis:

Thank you for the attached written response from Any McNulty dated December 28, 2021 (Response) to my November 29, 2021 Corrective Action Letter (Corrective Action Letter). This letter replies to your Response and requests further corrective action regarding compliance with Land Use Permitting, the septic permit and Establishment licensing on the Property. However, as discussed below, I am closing the portion of the complaint related to overnight accommodations/short-term rentals/tourist homes uses and structures.

Bridger Canyon Zoning Regulation

As previously explained in my Corrective Action Letter, the Property is located at 153 & 155 Tepee Ridge Road East, Bozeman (Property) and is located entirely within the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District).

The requirement for property to conform to the Zoning Regulation is found in Section 3.2 of the Gallatin County "Part 1" Administrative Regulation (Administrative Regulation) and requires property owners to ensure that all Uses and Structures comply with the Zoning Regulation.

Section 4 of the Zoning Regulation lists the standards and requirements for the AE sub-district. Section 4.2 lists the Permitted Uses **after** a Land Use Permit is approved. Section 4.3 lists Uses Permitted After Securing Approval of a Conditional Use Permit.

Overnight Accommodations/Short-Term Rental/Tourist Home

None of the listed Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit include Overnight Accommodations, short-term rentals or tourist homes.

Section 3.22 of the Zoning Regulation defines Dwelling Unit as:

A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.

- a. Dwelling Unit, Accessory: A separate Dwelling Unit located within the Principal Single-Family Dwelling Unit or in an Accessory Building.*
- b. Dwelling Unit, Principal Single-Family: A Building or portion thereof containing a single Dwelling Unit for habitation by a Family.*

Section 3.52 of the Zoning Regulation defines Overnight Accommodations as:

Permanent, separately rentable accommodations that are not available for residential use, except for the proprietors of a Bed and Breakfast Inn or Guest Ranch. Overnight Accommodations include Hotel or motel rooms, hostels, cabins, Bed and Breakfast Inns, Guest Ranches, and time-shared units. Individually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, Employee Housing, and similar accommodations do not qualify as Overnight Accommodations for purpose of this definition.

The term short-term rental or tourist home is not a defined term within the Zoning Regulation or Administrative Regulation. The Planning Department considers a rental of less than 30 days as a short-term rental or tourist home.

There are active listings for two Overnight Accommodations/short-term rentals/tourist homes on your Property:

- www.vrbo.com/850456 three bedrooms, two full and two half baths, kitchen, living room, deck/patio
- www.vrbo.com/734934 three bedrooms, two full and one half bath, gourmet kitchen, indoor and outdoor living space, multiple fire places

Both listings indicate that the Property has eight beds and sleeps seven people, includes the use of a hot tub and goes on to state that “Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee.”

Based on my research of the Property, and discussions with Ms. McNulty, there are two Overnight Accommodations/short-term rentals/tourist homes operating on your Property. In review, I have been provided or I have discovered the following information for the Property:

- The Property is advertised through the website www.vrbo.com (website)
 - Lodging Facility Sales and Use Taxes are paid to the Montana Department of Revenue by the website quarterly
 - The use contract is provided by the website

- The AE sub-district prohibits the Use of Overnight Accommodations, while the terms short-term rental and tourist home are not defined
 - The Principal Single Family Dwelling Unit, the basement Dwelling Unit in the Principal Single Family Dwelling Unit, Caretaker's Residence, and tepee are associated with this use
- An Establishment License must be obtained as described below
- The appropriate wastewater permits must be obtained as described below

Based on this information, it appears that a private businesses is being operated on the Property as Overnight Accommodations/short-term rentals/tourist homes utilizing the Dwelling Units and Temporary Occupancy of the tepee.

Recently, the Montana Legislature passed House Bill 257 that was signed into law by Governor Gianforte and became immediately effective. The legislation prohibits a governing body from adopting a resolution that “compel[s] a private business to deny a customer of the private business access to the premises or access to goods or services,” or that “deny a customer of a private business the ability to access goods or services provided by the private business; . . .” House Bill 257 defines “private business” to include “a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company.” The legislation also is retroactive and applies to any regulations enacted, adopted, or in force on or after May 1, 2021. The portion of House Bill 257 applicable here is codified at § 7-5-121 Montana Code Annotated (MCA).

Pursuant to § 7-5-121 MCA (2021), the County may not restrict you at this time from operating private businesses on the Property as Overnight Accommodations/short-term rentals/tourist homes. Doing so would deny your customers access to your private business. Accordingly, no further action is required from you on this item.

This portion of the complaint is closed.

The Department's decision to close this portion of the complaint may be appealed. Section 13 of the Gallatin County “Part 1” Zoning Administrative Regulation governs appeals.

Principal Single Family Dwelling Unit – REMAINS OPEN

As previously explained, the original Land Use Permit (LUP) approval for a Principal Single Family Dwelling Unit was within LUP #L2006-089 in October 2005 and appears to have been Structure B as described in the Corrective Action Letter. Then in December 2006, a request was made to turn this Structure into the Caretaker's Residence.

The original detached garage in LUP #L2006-089, appears that it was converted into the Principal Single Family Dwelling Unit after the conditional approval of CUP #Z2007-038 now labeled as Structure A in the Corrective Action Letter, but it is unclear if an actual LUP approval was ever granted.

The basement bedroom contains an on-suite bathroom, kitchenette with sink, fridge, two burner stove and is considered an additional Dwelling Unit at this time.

While the County cannot restrict you from operating a private business on the Property as described above, you must still obtain Land Use Permit approval for the Structure for where it is currently located pursuant to Section 6 of the Administrative Regulations.

Therefore, corrective action is required.

Dwelling Unit #2 - Caretaker's Residence– REMAINS OPEN

As previously explained, the Planning Department records include the December 2006 Conditional Use Permit #2007-038 for a Caretaker's Residence. The conditional approval included six conditions of approval listed in the Corrective Action Letter.

The original LUP approval for this Structure was within LUP #L2006-089 in October 2005 as the Principal Single Family Dwelling Unit (Structure B in the Corrective Action Letter). Then in December 2006, a request was made to turn this Structure into the Caretaker's Residence.

The Planning Department records do not include any documentation that the conditions of approval associated with the conditionally approved Caretaker's Residence CUP #Z2007-038 were ever met.

While the County cannot restrict you from operating a private business on the Property as described above, you must still obtain Land Use Permit approval for the Structure for where it is currently located pursuant to Section 6 of the Administrative Regulations.

Therefore, corrective action is required.

Accessory Building – Detached Garage– REMAINS OPEN

As previously explained, the Planning Department records include this Structure in the August 2005 LUP approval #L2006-089 in the area of what now appears to be Structure A in the Corrective Action Letter.

It appears that this Structure was converted to the Principal Single Family Dwelling Unit in December 2006, but there is no clear record.

While the County cannot restrict you from operating a private business on the Property as described above, you must still obtain Land Use Permit approval for the Structure for where it is currently located pursuant to Section 6 of the Administrative Regulations.

Therefore, corrective action is required.

Accessory Building – Horse Sheds – REMAINS OPEN

Pursuant to Section 12.3.c of the Zoning Regulation:

Accessory Buildings equal to or less than 200 square feet of General Floor Area are not required to obtain a Land Use Permit.

The square footage of these sheds are unknown.

Therefore, corrective action may be required.

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

The portions of the complaint that remain open are listed and described above. Within the Response, Ms. McNulty states that she met with Mr. O'Callaghan in December via a telephone conference regarding the Property and outlined certain items that require actions and that Mr. Lewis would follow up with Mr. O'Callaghan by January 14, 2022 and then work on a plan of correction.

As of the date of this letter, no additional information or proposed actions and timelines have been submitted to the Department.

Septic Permit (Health Code)

Gallatin County has one current septic permit on file for your Property.

- Permit #14111 approved in May 2007 for:
 - One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
 - One (1) attached bedroom above garage generating 155 gallons per day, and
 - One (1), three (3) bedroom barn generating 300 gallons per day

Section 1.10 of Chapter 3 of the Health Code requires that an Authorization to Construct is required prior to the construction of a wastewater disposal system and a Permit to Operate must be granted before a person can lawfully operate a wastewater treatment system or dispose of wastewater into the system. Any wastewater treatment system constructed within Gallatin County must comply with Health Code and State law. Chapter 3 of the Health Code can be found in its entirety on the Health Department website at www.healthygallatin.org.

There is one approved wastewater system installed or used on your Property for:

- One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
- One (1) attached bedroom above garage generating 155 gallons per day, and
- One (1), three (3) bedroom barn generating 300 gallons per day

Any additional wastewater disposal or configuration taking place on your Property outside of the approved system is considered a violation of Health Code.

According to the Site Visit there are three Living Units and six Bedrooms.

The following definitions are from the Montana Department of Environmental Quality Circular 4:

§ 1.2.9 **Bedroom** means any room that is or may be used for sleeping. An unfinished basement is considered an additional bedroom.

§ 1.2.51 **Living unit** means the area under one roof that can be used for one residential unit and which has facilities for sleeping, cooking, and sanitation. A duplex is considered two living units.

Within the Response, Ms. McNulty explains that she reached out to the Gallatin City-County Health Department Environmental Health Services (Health Department) and received a response indicating that there are approvals for up to eight bedrooms under the current permit, but that there appears to be an issue with an accurate site plan. Ms. McNulty stated that she would review the Health Department's proposed solutions with Mr. Lewis and then update me by January 14, 2022.

As of the date of this letter, no additional information or proposed actions and timelines have been submitted to the Department.

Therefore, corrective action is required.

Establishment License

Section 50-51-102(4), MCA defines an Establishment as:

a bed and breakfast, hotel, motel, rooming house, guest ranch, outfitting and guide facility, boardinghouse, or tourist home

Further, § 50-51-201(1) requires that:

[A] person engaged in the business of conducting or operating an establishment shall annually procure a license issued by the [Department of Public Health and Human Services].”

The requirement to obtain an establishment license to operate a tourist home also is required by Chapter 2 of the Gallatin City-County Health Code.

Chapter 2, Section 1.13 states:

B) A person violates these regulations or does not comply with the rules set forth in these regulations if the person operates, controls or uses an Establishment without a License or Registration.

There are active listings for two Tourist Homes on your Property:

- www.vrbo.com/850456 three bedrooms, two full and two half baths, kitchen, living room, deck/patio
- www.vrbo.com/734934 three bedrooms, two full and one half bath, gourmet kitchen, indoor and outdoor living space, multiple fire places

Both listings indicate that the Property has eight beds and sleeps seven people, includes the use of a hot tub and goes on to state that “Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee.”

Based on my research and discussions with Ms. McNulty, there are two Tourist Homes operating on your Property. A Public Accommodation License is required for the operation of Establishments on your Property. Since the hot tub is available as part of the Tourist Home, additional permitting/licensing is required.

Therefore, corrective action is required.

Partial Closure and Corrective Action

As described above, the County cannot restrict you from operating a private business on the Property. Therefore, this portion of the complaint is closed and no further enforcement action will be taken.

The portions of the Complaint concerning compliance with Section 6 of the Administrative Regulation, Health Code and Establishment Licensing requirements remain open until resolved.

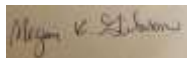
The Health Department would like to assist you in understanding what wastewater facilities are approved for use on your Property and those that need improvements/modifications, along with the Establishment licensing requirements. The Health Department can also help you formulate a plan of correction to resolve these outstanding issues. An acceptable plan of correction may include discussions with the Health Department, and then establishing the necessary actions and dates those actions will be completed by. The Health Department can be reached at 406-582-3120 or ehs@gallatin.mt.gov with any questions.

The Planning Department would like to assist you in understanding the requirements of the Zoning Regulation and Administrative Regulation. They can also help you formulate a plan of correction to resolve the outstanding issues. An acceptable plan of correction may include scheduling a meeting with a Planner who can help determine the correction actions and then establishing the necessary actions and dates those actions will be completed by. You can reach Sean O'Callaghan of the Planning Department at 406-582-3130 or sean.ocallaghan@gallatin.mt.gov to discuss the options that are available to you.

Whatever corrective actions you decide to pursue, **you must notify me in writing of your plan of correction that includes specific actions and dates, within 15 days of the date of this letter.**

Please keep in mind that a failure to initiate the corrective actions and notify me as discussed above, could result in additional enforcement action. If you have any questions about this letter, feel free to call me at 406-582-3775

Sincerely,



Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc w/ attachment:

County Attorney's Office via Email
Department of Planning and Community Development via Email
Environmental Health Department via Email
Leah De Guzman, leahdg2004@gmail.com
Amy McNulty, amcnulty@lawmt.com
Complainant via Email

Compliance Department • 311 W. Main, Rm. 108 • Bozeman, MT 59715

Phone (406) 582-3775 • Email: megan.gibson@gallatin.mt.gov

LEWIS STR ADMINISTRATIVE RECORD 298

**TARLOW
STONECIPHER
WEAMER & KELLY PLLC**

ATTORNEYS

1705 WEST COLLEGE STREET
BOZEMAN, MT 59715-4913

PHONE (406) 586-9714
FAX (406) 586-9720
www.LawMT.com

December 28, 2021

Megan Gibson
Gallatin County Compliance Department
311 West Main Street, Rm. 108
Bozeman, MT 59715

Via e-mail:
megan.gibson@gallatin.mt.gov

RE: Plan of Correction; Bridger Canyon Zoning Regulation and Public Accommodation Licensing Complaint (Compliance ID #22-041)

Dear Megan,

Thank you for your letter on November 29, 2021, following up on the site visit to Mr. Lewis's property. Your letter requested a written notice of Mr. Lewis's plan for correction of the items noted in your letter within thirty (30) days. This letter serves as this notice.

Per your directions, Mr. Lewis plans to engage with both the Gallatin County Health Department and the Gallatin County Planning Department to identify and address the items discussed in your corrective action letter.

On Mr. Lewis's behalf, I have reached out to the Gallatin County Health Department. I received a response today (that you were copied on) that indicates that there is an approval for up to 8 bedrooms on the current wastewater treatment system permit. But, it appears there may be an issue with an accurate site plan and licenses required for short-term rentals. I will review the Health Department's proposed solutions to these issues with Mr. Lewis. I will update you regarding movement on this issue by January 14, 2022.

On Mr. Lewis's behalf, I have started a conversation with the Gallatin County Planning Department to review outstanding issues with Zoning Regulations applicable to the property. I met with Sean O'Callaghan over a telephone conference to review the outstanding items. Following up from that conference, Mr. Lewis is looking at the following items:

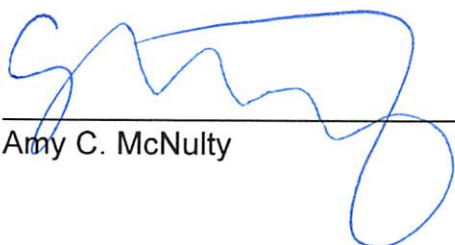
- Confirming the square footage of the horse sheds to determine whether they are exempt from any land-use permit requirement;
- Confirming the applicability of exemption to land-use permit requirements for the teepee structure that is used during the summer months if used less than ninety (90) days and if not on permanent foundation; and
- Determining whether the Conditional Use Permit approved in February 2007, was ever "put into use" to determine whether the Conditional Use Permit is valid or was voided under the prior version of the applicable Zoning Regulations.

Mr. Lewis will plan to get back in touch with Mr. O'Callaghan related to these items by January 14, 2022. Depending on the status of the 2007 Conditional Use Permit, I understand our options for corrective action will be different, and Mr. Lewis will work on a plan for corrective action related to these items.

Mr. Lewis is still investigating some of the items raised as violations, including the ability to use the property for a short-term rental. Mr. Lewis will review this with the Planning Department as he works through the other issues related to the Zoning Regulations.

Please advise if you require any further information at this time. Thank you again for the direction provided in your November 29, 2021 letter. We will be in touch soon.

Very truly yours,



Amy C. McNulty

ACM/hgg



Gallatin County

CORRECTIVE ACTION LETTER #2

June 14, 2023

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625

Sent via Email:
sean.a.lewis@gmail.com

RE: Bridger Canyon Zoning Regulation Complaint (Compliance ID #22-041)

Dear Mr. Lewis:

As you know, the Gallatin County Compliance Department (Department) has been working with you to resolve potential violations occurring on your property addressed as 153 & 155 Tepee Ridge Road East, Bozeman, Montana; legally described as Tract 12A of Certificate of Survey (COS) No. 1265A located in the SE ¼ and SW ¼ of Section 17 and the NE ¼ and NW ¼ of Section 20, Township 1 South, Range 7 East, P.M.M., Gallatin County (Property).

Specifically, this letter addresses the recent changes in state statute that amend House Bill 257 that was codified at § 7-5-121 Montana Code Annotated (MCA) in 2021. Recently, the Montana Legislature passed House Bill 299 that was signed into law by Governor Gianforte and became immediately effective. House Bill 299 clarifies that “The prohibitions provided for in subsection (2) do not apply to the enforcement of zoning provisions as allowed in 76-2-113 and 76-2-210.”

Consequently, the Property is again subject to Section 4 of the Bridger Canyon Zoning Regulation (Zoning Regulation), which does not list Overnight Accommodations, Short-Term Rentals, or Tourist Homes as Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit in the AE Sub-district.

Bridger Canyon Zoning Regulation

As previously explained in my letters, the Property is located entirely within the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District).

The requirement for property to conform to the Zoning Regulation is found in Section 3.2 of the Gallatin County “Part 1” Administrative Regulation (Administrative Regulation) and requires property owners to ensure that all Uses and Structures comply with the Zoning Regulation.

Section 4 of the Zoning Regulation lists the standards and requirements for the AE sub-district. Section 4.2 lists the Permitted Uses after a Land Use Permit is approved. Section 4.3 lists Uses Permitted After Securing Approval of a Conditional Use Permit.

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

Overnight Accommodations, Short-Term Rentals, Tourist Homes

As stated above, none of the listed Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit include Overnight Accommodations, short-term rentals or tourist homes.

Section 3.22 of the Zoning Regulation defines Dwelling Unit as:

A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.

- a. Dwelling Unit, Accessory: A separate Dwelling Unit located within the Principal Single-Family Dwelling Unit or in an Accessory Building.*
- b. Dwelling Unit, Principal Single-Family: A Building or portion thereof containing a single Dwelling Unit for habitation by a Family.*

Section 3.52 of the Zoning Regulation defines Overnight Accommodations as:

Permanent, separately rentable accommodations that are not available for residential use, except for the proprietors of a Bed and Breakfast Inn or Guest Ranch. Overnight Accommodations include Hotel or motel rooms, hostels, cabins, Bed and Breakfast Inns, Guest Ranches, and time-shared units. Individually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, Employee Housing, and similar accommodations do not qualify as Overnight Accommodations for purpose of this definition.

The term short-term rental or tourist home is not a defined term within the Zoning Regulation or Administrative Regulation.

Section 3.2 of the Administrative Regulation states, with emphasis added:

Zoning Regulation Conformance. Property owners are responsible for ensuring all activity within and on their property conforms to this Administrative Regulation and the applicable District Regulation. No Building, Structure, or land shall hereafter be used or occupied, and no Building, Structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved or Structurally Altered unless it is in conformity with all the Zoning Regulations.

No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure, or unless such Use is deemed to be an appropriate Use pursuant to the interpretation process of Section 3.8 of this Administrative Regulation. All other uses are prohibited unless otherwise authorized by federal or state law.

The burden of proof is on an applicant to demonstrate that applicable requirements and review criteria of the Zoning Regulations are met. Where conditions of approval are attached to any approval issued under the Zoning Regulations, the failure to comply with any condition of approval is a violation of the Zoning Regulations.

There are two active listings for Overnight Accommodations, short-term rentals, or tourist homes operating on the Property:

- www.vrbo.com #734934 “Stunning 60 Acre Ranch in Bridger Canyon” lists three bedrooms with two king sized beds and three twin bunk beds, two plus bathrooms, kitchen, hot tub and outdoor spa

- www.vrbo.com #850456 “Luxurious 60 Acre Ranch Compound In The Heart Of Beautiful Bridger Canyon” lists three bedrooms with one king bed, one queen bed and three win bunk beds, three plus bathrooms, kitchen, indoor and outdoor living space, multiple fireplaces

Overnight Accommodations, short-term rentals and tourist homes are not listed Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit for the Property. **Therefore, the Use is prohibited, and corrective action is required as described below.**

Corrective Action

No later than June 29, 2023, you must:

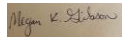
1. **provide me with a written, proposed plan of correction that includes the specific actions and dates by which you will take those actions to bring the Property into compliance with the Zoning Regulation as described above;**

The Planning Department is available to provide general information and review specific questions about the County’s Land Use Regulations. Please see the attached memo from the Planning Department regarding the expectations they have for you prior to discussion. Your primary contact at the Planning Department is Allyson Brekke who can be reached at 406-582-3193 or allyson.brekke@gallatin.mt.gov.

Please keep in mind that a failure to initiate the corrective actions and notify me as discussed above, could result in additional enforcement action.

If you have any questions about this letter, please contact me at 406-582-3775.

Sincerely,



Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc w/ attachment:

Erin Arnold, Chief Civil Deputy County Attorney via email
Allyson Brekke, Deputy Planning Officer, Allyson.brekke@gallatin.mt.gov
Montana Department of Revenue via email
Bridger Canyon Fire District via email
Leah De Guzman, leahdg2004@gmail.com
Amy McNulty, Tarlow Stonecipher Weamer & Kelly, PLLC, amcnulty@lawmt.com
Complainant via email



Gallatin County

MEMO

TO: Interested Parties

FROM: Sean O'Callaghan, AICP, Chief Planning Officer

RE: Planning Department Role in Working with Responsible Parties to Resolve Compliance Matters

DATE: December 15, 2022

The Department of Planning and Community Development (Planning Department) works in partnership with the Compliance Department to administer and enforce the County's various planning-related land use regulations (i.e. subdivision, zoning, floodplain, building for lease or rent regulations, etc.). This memo is intended to help interested parties understand the two primary roles of Planning Department in the compliance process.

The Planning Department's primary role in the compliance process is to review applications that are submitted by a landowner or responsible party to bring a property into compliance with regulatory requirements. In some instances the Planning Department is the reviewer and decision maker, in other situations we facilitate the review with the decision being made by the appropriate board or commission. Our role as the objective reviewer and sometimes decision maker on applications limits what we can do to help landowners and responsible parties, as described in greater detail below.

Second, the Planning Department is a source of information for landowners and responsible parties working through compliance matters, but we have limited staff resources and capacity, and there are limits to the assistance we can provide. The Planning Department will work with **a single point of contact** for the landowner or responsible party to:

- Provide access to the various planning-related regulations through our website and in our office;
- Provide information on application forms, fees, and timelines associated with various processes;
- Promote an understanding of the general requirements of the relevant regulations, recognizing that most members of the public are not land use experts;
- The Planning Department **does not** act as a technical advisor or provide legal advice to a landowner or responsible party. There are a variety of private sector consultants (e.g. planners, engineers, surveyors, attorneys, etc.) that work with and advise parties that are working to bring a property into compliance with regulatory requirements; and
- The Planning Department **does not** develop remedies to compliance issues for people, but may be able to provide feedback on the potential remedies identified by a landowner or responsible party.

June 29, 2023

Megan Gibson
Gallatin County Compliance Department
311 West Main Street, Room 108
Bozeman, MT 59715

Via E-mail only:
megan.gibson@gallatin.mt.gov

**RE: Plan of Correction; Bridger Canyon Zoning Regulation Complaint
(Compliance ID #22-041)**

Dear Megan:

I am in receipt of your letter regarding my client's property on Tepee Ridge Road (the "Lewis Property") dated June 14, 2023. Your letter asked for a "written, proposed plan of correction," by today, June 29, 2023, "to bring the Property into compliance with the Zoning Regulations." Specifically, you identified my clients' use of the property as a short-term rental as a violation of the applicable zoning regulations.

I understand that your most recent letter is the result of a change in the law to clarify the County's ability to enforce zoning regulations. I know that we previously have discussed a difference of interpretation of the applicable zoning regulations on this issue. I have refreshed my memory on these issues, and my client's position continues to be that residential rental, whether short or long-term, is a permissible use under the regulations so long as it is not meeting the definition of an "Overnight Accommodation."

This letter serves to outline my client's position on this issue and proposes a plan for compliance with the applicable regulations.

As your letter notes, neither the Bridger Canyon Zoning Regulations nor the Administrative Regulations include any reference to "short-term rentals." The only reference to short-term rentals within the Bridger Canyon Zoning Regulations is included with the definition of "Overnight Accommodations." This definition states that ***"[i]ndividually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service."*** (Section 3.52, emphasis added).

I understand that Overnight Accommodations are not listed as a permitted or conditional use in the sub-district the Lewis Property is located in. But, my clients are not using their property as an Overnight Accommodation. The Lewis Property is not “available for overnight rental use by the general public for at least 48 weeks per calendar year.”

Interpretation of zoning ordinances is done according to its plain meaning to give effect to all of its provisions, and an interpretation cannot “insert what has been omitted,” or “omit what has been inserted.” *Egan Slough Community v. Flathead Co. Bd. Of Co. Comms.*, 2022 MT 57, ¶ 22, 408 Mont. 81, 506 P.3d 996.

The Bridger Canyon Zoning Regulations were drafted to specifically identify what kind of short-term rental would be regulated—Overnight Accommodations. The Regulations do not otherwise purport to restrict rental of property for residential use. To read into the Zoning Regulations, a prohibition against short-term rental of property that is not an Overnight Accommodation would impermissibly “insert what has been omitted.”

The Montana Supreme Court has ruled that short-term rental of property is an incidental residential use of property. See *Craig Tracts Homeowners’ Association, Inc. v. Brown Drake, LLC*, 2020 MT 305, ¶ 12, 402 Mont. 223, 477 P.3d 283. While this case concerns restrictive covenants rather than zoning regulations, it is instructive for identifying that rental of property constitutes residential use as a matter of law. In looking at whether short-term rental was allowed under covenants that prohibited non-residential uses of property, the Court stated, “the critical issue is whether the renters are using the property for ordinary living purposes, such as sleeping and eating.” *Id.* at ¶ 10.

Here, the permitted uses under the AE sub-district include both “One Principal Single-Family Dwelling Unit,” and “One Accessory Dwelling Unit.”

Section 3.22 defines a “Dwelling Unit,” as a “A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.” It specifies that a Principal Single-Family Dwelling is a “Dwelling Unit for habitation by a Family.”

Similar to the covenants at issue in the *Craig Tracts* case, nothing in the definitions of these permitted uses restricts the *duration* someone must be using the property for “living, sleeping, cooking, and sanitation.” When renting, tenants use the Lewis Property for living, sleeping, cooking, and sanitation. This constitutes an allowable use under the applicable regulations.

The ability to lease one’s property is a core property right and an implied, accessory, and incidental use of property. Pursuant to the definition of “Use,” in the Bridger Canyon Zoning Regulations at Section 3.78, such a use is permissible as if it was written as a permissible use explicitly.

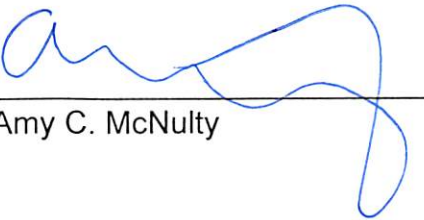
Given the plain language of the Zoning Regulations and the authority from the Montana Supreme Court, my clients disagree that any corrective action on their part is necessary or required to wholly remove listings for short-term rental of their property.

Understanding that there are some limits imposed by the Zoning Regulation, and in an effort to resolve any outstanding issues, my clients can agree to the following plan to ensure compliance with the applicable regulations:

1. The Lewis Property will not be listed as available for overnight rental for the general public for 48 or more weeks per calendar year; and
2. The Lewis Property will only be rented to groups meeting the definition of "Family" under the Zoning Regulations.

I look forward to your response regarding this plan for corrective action.

Very truly yours,



Amy C. McNulty

ACM/hgg



Gallatin County

CORRECTIVE ACTION LETTER #3

July 12, 2023

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625
sean.a.lewis@gmail.com

Sent via First Class Mail & Email

Amy C. McNulty
Tarlow Stonecipher
Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913
AMcNulty@lawmt.com

Sent via First Class Mail & Email

RE: Bridger Canyon Zoning Regulation Complaint (Compliance ID #22-041)

Property: 153 & 155 Tepee Ridge Road East, Bozeman, Montana; legally described as Tract 12A of Certificate of Survey (COS) No. 1265A located in the SE $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 17 and the NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of Section 20, Township 1 South, Range 7 East, P.M.M., Gallatin County (Property)

Dear Mr. Lewis:

Thank you for the attached written response from Ms. McNulty, dated June 29, 2023 (Response) in response to my June 14, 2023 Corrective Action Letter #2 (Corrective Action Letter #2).

This letter addresses the items discussed and again requests corrective action.

As previously explained in my letters, the Property is located entirely within the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District).

The requirement for property to conform to the Zoning Regulation is found in Section 3.2 of the Gallatin County "Part 1" Administrative Regulation (Administrative Regulation) and requires property owners to ensure that all Uses and Structures comply with the Zoning Regulation.

Section 4 of the Zoning Regulation lists the standards and requirements for the AE sub-district. Section 4.2 lists the Permitted Uses after a Land Use Permit is approved. Section 4.3 lists Uses Permitted After Securing Approval of a Conditional Use Permit.

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

As previously explained in my letters, none of the listed Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit include Overnight Accommodations, short-term rentals or tourist homes for the AE sub-district.

Section 3.22 of the Zoning Regulation defines Dwelling Unit as:

A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.

- a. Dwelling Unit, Accessory: A separate Dwelling Unit located within the Principal Single-Family Dwelling Unit or in an Accessory Building.*
- b. Dwelling Unit, Principal Single-Family: A Building or portion thereof containing a single Dwelling Unit for habitation by a Family.*

Section 3.33 of the Zoning Regulation defines Family as:

- a. A person living alone;*
- b. any number of people related by blood, marriage, adoption, guardianship, or other authorized custodial relationship;*
- c. two (2) unrelated people and any children related to either of them;*
- d. not more than four (4) unrelated people living together as a single nonprofit housekeeping unit and sharing common living, sleeping, cooking, and eating facilities.*

Section 3.52 of the Zoning Regulation defines Overnight Accommodations as:

Permanent, separately rentable accommodations that are not available for residential use, except for the proprietors of a Bed and Breakfast Inn or Guest Ranch. Overnight Accommodations include Hotel or motel rooms, hostels, cabins, Bed and Breakfast Inns, Guest Ranches, and time-shared units. Individually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, Employee Housing, and similar accommodations do not qualify as Overnight Accommodations for purpose of this definition.

The term short-term rental or tourist home is not a defined term within the Zoning Regulation or Administrative Regulation.

Section 3.2 of the Administrative Regulation states, with emphasis added:

Zoning Regulation Conformance. Property owners are responsible for ensuring all activity within and on their property conforms to this Administrative Regulation and the applicable District Regulation. No Building, Structure, or land shall hereafter be used or occupied, and no Building, Structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved or Structurally Altered unless it is in conformity with all the Zoning Regulations.

No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure, or unless such Use is deemed to be an appropriate Use pursuant to the interpretation process of Section 3.8 of this Administrative Regulation. All other uses are prohibited unless otherwise authorized by federal or state law.

The burden of proof is on an applicant to demonstrate that applicable requirements and review criteria of the Zoning Regulations are met. Where conditions of approval are attached to any approval issued under the Zoning Regulations, the failure to comply with any condition of approval is a violation of the Zoning Regulations.

Within the Response, you state that:

- “...my clients position continues to be that residential rental, whether short or long-term, is a permissible use under the regulations so long as it is not meeting the definition of an “Overnight Accommodation.” *Id.*, p. 1.
- “I understand that Overnight Accommodations are not listed as a permitted or conditional use in the sub-district the Lewis Property is located in. The Lewis Property is not “available for overnight rental use by the general public for at least 48 weeks per calendar year.””
- The Montana Supreme Court has ruled that short-term rental of property is an incidental use of property. See *Craig Tracts Homeowners’ Association, Inc. v. Brown Drake LLC*, 2020 MT 305, ¶ 12, 402 Mont. 223, 477 P.3D 283. While this case concerns restrictive covenants rather than zoning regulations, it is instructive for identifying that rental of property constitutes residential use as a matter of law. In looking at whether short-term rental was allowed under covenants that prohibited non-residential uses of property, the Court states, “the critical issue is whether the renters are using the property for ordinary living purposes, such as sleeping and eating.” *Id.* At ¶ 10.
- “Understanding that there are some limits imposed by the Zoning Regulation, and in an effort to resolve any outstanding issues, my clients can agree to the following plan to ensure compliance with the applicable regulations:
 1. The Lewis Property will not be listed as available for overnight rental for the general public for 48 or more weeks per calendar year; and
 2. The Lewis Property will only be rented to groups meeting the definition of “Family” under the Zoning Regulations.”

As stated above, the Administrative Regulations provide that “No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure. . . .”

As previously explained in my letters, the Property has the applicable Zoning Regulation approvals for a Principal Single-Family Dwelling Unit and a Guest House. No interpretation or determination has been made that the second Dwelling Unit on the Property is anything but a Guest House that must comply with its applicable conditions of approval.

It is understood that you will not list or Use the Dwelling Units located on the Property as Overnight Accommodations as defined within the Zoning Regulation. However, that does not resolve the violation occurring on the property. Neither short-term rentals nor tourist homes are a Permitted Use of the Principle Single-Family Dwelling or Guest House.

Lastly, *Craig Tracts Homeowners' Association, Inc. v. Brown Drake LLC*, 2020 MT 305, ¶ 12, 402 Mont. 223, 477 P.3D 283, is inapplicable. The case is specific to private subdivision covenants. The Court did not interpret or apply local zoning regulations.

There are two active listings for short-term rentals or tourist homes operating on the Property:

- www.vrbo.com #734934 “Stunning 60 Acre Ranch in Bridger Canyon” lists three bedrooms with two king sized beds and three twin bunk beds, two plus bathrooms, kitchen, hot tub and outdoor spa
- www.vrbo.com #850456 “Luxurious 60 Acre Ranch Compound In The Heart Of Beautiful Bridger Canyon” lists three bedrooms with one king bed, one queen bed and three bunk beds, three plus bathrooms, kitchen, indoor and outdoor living space, multiple fireplaces

Short-term rentals and tourist homes are not listed Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit for the Property. **Therefore, the Use is prohibited, and corrective action is required as described below.**

Corrective Action

No later than July 27, 2023, you must:

1. **provide me with a written, proposed plan of correction that includes the specific actions and dates by which you will take those actions to bring the Property into compliance with the Zoning Regulation as described above.**

Please keep in mind that a failure to initiate the corrective actions and notify me as discussed above, could result in additional enforcement action.

If you have any questions about this letter, feel free to contact me at 406-582-3775.

Sincerely,

Megan K. Gibson

Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc w/ attachment:

Erin Arnold, Chief Civil Deputy County Attorney via email
Allyson Brekke, Deputy Planning Officer, Allyson.brekke@gallatin.mt.gov
Bridger Canyon Fire District via email
Leah De Guzman, leahdg2004@gmail.com
Complainant via email

TARLOW
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June 29, 2023

Megan Gibson
Gallatin County Compliance Department
311 West Main Street, Room 108
Bozeman, MT 59715

Via E-mail only:
megan.gibson@gallatin.mt.gov

**RE: Plan of Correction; Bridger Canyon Zoning Regulation Complaint
(Compliance ID #22-041)**

Dear Megan:

I am in receipt of your letter regarding my client's property on Tepee Ridge Road (the "Lewis Property") dated June 14, 2023. Your letter asked for a "written, proposed plan of correction," by today, June 29, 2023, "to bring the Property into compliance with the Zoning Regulations." Specifically, you identified my clients' use of the property as a short-term rental as a violation of the applicable zoning regulations.

I understand that your most recent letter is the result of a change in the law to clarify the County's ability to enforce zoning regulations. I know that we previously have discussed a difference of interpretation of the applicable zoning regulations on this issue. I have refreshed my memory on these issues, and my client's position continues to be that residential rental, whether short or long-term, is a permissible use under the regulations so long as it is not meeting the definition of an "Overnight Accommodation."

This letter serves to outline my client's position on this issue and proposes a plan for compliance with the applicable regulations.

As your letter notes, neither the Bridger Canyon Zoning Regulations nor the Administrative Regulations include any reference to "short-term rentals." The only reference to short-term rentals within the Bridger Canyon Zoning Regulations is included with the definition of "Overnight Accommodations." This definition states that ***"[i]ndividually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service."*** (Section 3.52, emphasis added).

I understand that Overnight Accommodations are not listed as a permitted or conditional use in the sub-district the Lewis Property is located in. But, my clients are not using their property as an Overnight Accommodation. The Lewis Property is not “available for overnight rental use by the general public for at least 48 weeks per calendar year.”

Interpretation of zoning ordinances is done according to its plain meaning to give effect to all of its provisions, and an interpretation cannot “insert what has been omitted,” or “omit what has been inserted.” *Egan Slough Community v. Flathead Co. Bd. Of Co. Comms.*, 2022 MT 57, ¶ 22, 408 Mont. 81, 506 P.3d 996.

The Bridger Canyon Zoning Regulations were drafted to specifically identify what kind of short-term rental would be regulated—Overnight Accommodations. The Regulations do not otherwise purport to restrict rental of property for residential use. To read into the Zoning Regulations, a prohibition against short-term rental of property that is not an Overnight Accommodation would impermissibly “insert what has been omitted.”

The Montana Supreme Court has ruled that short-term rental of property is an incidental residential use of property. See *Craig Tracts Homeowners’ Association, Inc. v. Brown Drake, LLC*, 2020 MT 305, ¶ 12, 402 Mont. 223, 477 P.3d 283. While this case concerns restrictive covenants rather than zoning regulations, it is instructive for identifying that rental of property constitutes residential use as a matter of law. In looking at whether short-term rental was allowed under covenants that prohibited non-residential uses of property, the Court stated, “the critical issue is whether the renters are using the property for ordinary living purposes, such as sleeping and eating.” *Id.* at ¶ 10.

Here, the permitted uses under the AE sub-district include both “One Principal Single-Family Dwelling Unit,” and “One Accessory Dwelling Unit.”

Section 3.22 defines a “Dwelling Unit,” as a “A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.” It specifies that a Principal Single-Family Dwelling is a “Dwelling Unit for habitation by a Family.”

Similar to the covenants at issue in the *Craig Tracts* case, nothing in the definitions of these permitted uses restricts the *duration* someone must be using the property for “living, sleeping, cooking, and sanitation.” When renting, tenants use the Lewis Property for living, sleeping, cooking, and sanitation. This constitutes an allowable use under the applicable regulations.

The ability to lease one’s property is a core property right and an implied, accessory, and incidental use of property. Pursuant to the definition of “Use,” in the Bridger Canyon Zoning Regulations at Section 3.78, such a use is permissible as if it was written as a permissible use explicitly.

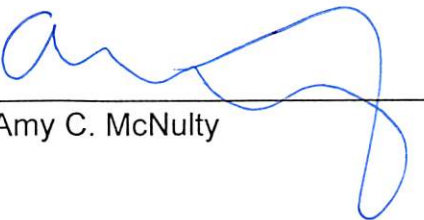
Given the plain language of the Zoning Regulations and the authority from the Montana Supreme Court, my clients disagree that any corrective action on their part is necessary or required to wholly remove listings for short-term rental of their property.

Understanding that there are some limits imposed by the Zoning Regulation, and in an effort to resolve any outstanding issues, my clients can agree to the following plan to ensure compliance with the applicable regulations:

1. The Lewis Property will not be listed as available for overnight rental for the general public for 48 or more weeks per calendar year; and
2. The Lewis Property will only be rented to groups meeting the definition of "Family" under the Zoning Regulations.

I look forward to your response regarding this plan for corrective action.

Very truly yours,



Amy C. McNulty

ACM/hgg

July 27, 2023

Megan Gibson
Gallatin County Compliance Department
311 West Main Street, Room 108
Bozeman, MT 59715

Via E-mail only:
megan.gibson@gallatin.mt.gov

**RE: Plan of Correction; Bridger Canyon Zoning Regulation Complaint
(Compliance ID #22-041)**

Dear Megan:

I received your letter of July 12, 2023 regarding the Lewis Property.

I understand from your letter that you have rejected my clients' proposed plan of corrective action to be in compliance with the applicable Zoning Regulations by not renting their property for more than 48 weeks per calendar year and only renting to parties that meet the definition of a "Family" under the Regulations.

It seems we have a fundamental disagreement regarding the interpretation of the applicable regulations as it relates to short-term rental of property. This letter serves to provide more authority for my client's position and seek clarification from you regarding the County's position.

Your last letter appears to rely solely on the provision in the Zoning Regulations that "no Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-District . . ." But this argument ignores that the use at issue—residential use of a dwelling—is a Permitted Use in the applicable Sub-District.

The AE Sub-District includes as permitted uses "One Principal Single-Family Dwelling Unit," and "One Accessory Dwelling Unit."

Section 3.22 defines a "Dwelling Unit," as a "A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation." It specifies that a Principal Single-Family Dwelling is a "Dwelling Unit for habitation by a Family."

This definition does not place any temporal requirement for dwelling of a family to constitute a Permitted Use under the Regulations. As such, short-term rental of the Lewis Property falls under the definition of Permitted Uses. The Lewis Property is rented to persons meeting the definition of "Family," and such persons used the property for "living, sleeping, cooking, and sanitation." The Lewis Property is not leased for non-dwelling purposes.

To the extent you continue to disagree, what evidence does the County have that any short-term rental of the Lewis Property is not consistent with use as a dwelling? Further, can you confirm whether it is the County's position that a homeowner in this Sub-district may not rent or lease their home for residential purposes to a tenant for any length of time? If not, what authority is the County relying on for determining an allowable period of time for rental of property versus an impermissible period of time?

To read into the Zoning Regulations a duration requirement for a Permitted Use would be to insert what has been omitted in the Zoning Regulations. This is in direct conflict with how courts interpret the meaning of Zoning Regulations. See *Hartshorne v. City of Whitefish*, 486 P.3d 693, 702 (Mont. 2021) ("Terms and words are intended to be understood in their ordinary sense, and this Court assumes a legislative body used particular words for a particular reason.") *Egan Slough Community v. Flathead Co. Bd. Of Co. Comms.*, 2022 MT 57, ¶ 22, 408 Mont. 81, 506 P.3d 996. ("Interpretation of zoning ordinances is done according to its plain meaning to give effect to all of its provisions, and an interpretation cannot 'insert what has been omitted,' or 'omit what has been inserted.") These rules of interpretation apply similarly to restrictive covenants, such as those at issue in the *Craig Tracts* case, making that case instructive for how a Court would interpret the applicable Zoning Regulation at issue here.

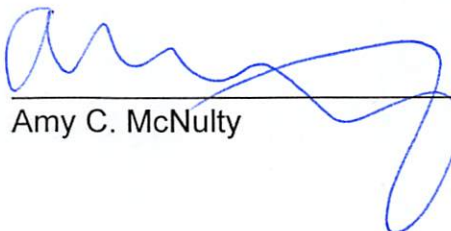
Further, as the Montana Supreme Court did in the *Craig Tracts* matter, a court interpreting this issue may look to law in other jurisdictions. Courts interpreting similar zoning ordinances have found that when a use does not place a temporal or duration requirement for residential use, the municipality cannot interpret a zoning ordinance to restrict short-term residential rental of property. "There is nothing inherent in the concept of residence or dwelling that includes time. . . . If [a zoning authority] is going to draw a line requiring a certain time period of occupancy in order for property to be considered a dwelling or residence, then it needs to do so by enacting clear and unambiguous law." 361 Wis.2d 185, 194, 861 N.W.2d 797, 802; See also, *Lowden v. Bosley*, 395 Md. 58, 909 A.2d 261 (2006) (nothing in restrictive covenant that required residential use distinguished between long-term and short-term rentals); *Brown v. Sandy City Bd. of Adjustment*, 957 P.2d 207 (Utah Ct.App.1998) (ordinance that allows use of dwelling for occupancy by single family and does not limit use by duration of occupancy does not prohibit short-term rentals).

The Montana Supreme Court has held that because “zoning laws and ordinances are in derogation of the common law right to free use of private property, such ordinances should be strictly construed.” *Whistler v. Burlington N. R. Co.*, 741 P.2d 422, 425 (Mont. 1987). Here, as in the cases cited above, there is no “clear and unambiguous” requirement of a certain period of occupancy to constitute use as a Dwelling Unit as permitted by the Zoning Regulations. Reading into the Zoning Regulations a prohibition against use of a property as a dwelling for short-term periods would not be a strict construction of the Regulations.

The law supports interpretation of short-term rental of property as a Permitted Use in this Sub-district. As such, my clients are not willing to cease short-term rental of their property as requested in your last letter.

Together with this letter, I am submitting a public records request to understand if you are proceeding with enforcement of other short-term rentals in the Sub-district or singling out my clients. Once my clients have your position to the questions asked in this letter together with these public records, they will be in a better position to evaluate how they wish to proceed. If you have ideas for resolution of this dispute short of a court action to for interpretation of the applicable Regulations, please advise.

Very truly yours,



Amy C. McNulty

ACM/hgg



Gallatin County

NOTICE OF VIOLATION & DEMAND FOR CORRECTIVE ACTION

September 18, 2023

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625
sean.a.lewis@gmail.com

Sent via First Class Mail, Email &
Certified Mail # 7021 2720 0003 1089 1308

Amy C. McNulty
Tarlow Stonecipher
Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913
AMcNulty@lawmt.com

Sent via First Class Mail, Email &
Certified Mail # 7021 2720 0003 1089 1292

RE: Bridger Canyon Zoning Regulation Complaint (Compliance ID #22-041)

Property: 153 & 155 Tepee Ridge Road East, Bozeman, Montana; legally described as Tract 12A of Certificate of Survey No. 1265A located in the SE¹/₄ and SW¹/₄ of Section 17 and the NE¹/₄ and NW¹/₄ of Section 20, Township 1 South, Range 7 East, P.M.M., Gallatin County, Montana

Dear Mr. Lewis and Ms. McNulty:

The Gallatin County Code Compliance Department (Department) has been working with you to resolve violations occurring on your Property since at least September 24, 2021, pertaining to the use of the Principal Single-Family Dwelling and Caretaker's Residence as short-term rentals or tourist homes in violation of the Bridger Canyon Zoning Regulations. Because the Uses continue to date, I am issuing this final letter formally notifying you of the violations and demanding corrective action.

Background:

The Property is located entirely within the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District) and therefore must comply with the Bridger Canyon Zoning Regulation (Zoning Regulation) unless otherwise exempted.

The Zoning District was adopted by the Board of County Commissioners on July 12, 1971 and Zoning Regulation was adopted by the Board of County Commissioners on October 26, 1971, with amendments thereafter.

The Administrative Regulation was adopted for use within the Zoning District on May 21, 2019.

According to the records with the Gallatin County Clerk & Recorder you purchased the Property on September 23, 2003.

On September 13, 2021, the Department received a complaint stating that:

- “Mr. Lewis is renting both the primary home and the caretaker building independently and simultaneously at 6400 Tepee Ridge Rd on short-term rental sites such as VRBO. Neighbors complain that renters create nuisances, particularly with respect to noise and road safety.”
- The email with the complaint states the VRBO site and rental use goes back to at least January 2, 2020.

Compliance Department Investigation:

I initially sent you notification of this complaint in the Investigation Letter dated September 24, 2021 (Investigation Letter). You were to contact me to arrange a site visit and provide me with a written response within 15 days of the date of the Investigation Letter.

After a Warning Letter was issued on October 22, 2021, and a site visit occurred, I issued the Corrective Action Letter dated November 29, 2021. You were directed to provide me with a proposed written plan of correction no later than December 29, 2021.

On December 28, 2021, I received the written response from Ms. McNulty indicating that she had started conversations with both departments, that you would be back in touch with the Planning Department by January 14, 2022, and that you were still investigating some of the items raised as potential violations

Over the course of January and February 2022, Ms. McNulty corresponded with me regarding the short-term rental Use, but no further information was provided to me or the Planning Department as described in the December 28, 2021 response from Ms. McNulty.

I sent you the attached Partial Closure/Corrective Action Letter #2 dated February 2, 2022 (Partial Closure/Corrective Action Letter #2), that in part, stated “Pursuant to § 7-5-121 MCA (2021), the County may not restrict you **at this time** from operating private businesses [short-term rentals or tourist homes] on the Property as Overnight Accommodations/short-term rentals/tourist homes. Doing so would deny your customers access to your private business.” (emphasis added)

I sent you the attached Corrective Action Letter #2 dated June 14, 2023 (Corrective Action Letter #2) regarding the change in state statute (§ 7-5-121 MCA (2023)) and the short-term rental or tourist home Use of the Principal Single-Family Dwelling Unit and Caretaker’s Residence located on the Property. You were directed to provide me with a proposed written plan of correction no later than June 29, 2023. In the written plan of correction, you were to describe specific actions and dates to address the short-term rental or tourist home Use.

On June 29, 2023, Ms. McNulty provided the attached written response to my Corrective Action Letter #2 regarding the short-term rental Use of the Principal Single-Family Dwelling Unit and Caretaker’s Residence on the Property. Ms. McNulty concludes her response with the following:

- *Understanding that there are some limits imposed by the Zoning Regulation, and in an effort to resolve any outstanding issues, my clients can agree to following plan to ensure compliance with the applicable regulations:*

1. *The Lewis Property will not be listed as available for overnight rental for the general public for 48 or more weeks per calendar year; and*
2. *The Lewis Property will only be rented to groups meeting the definition of "Family" under the Zoning Regulations.*

I sent you and Ms. McNulty the attached Corrective Action Letter #3 on July 12, 2023 (Corrective Action Letter #3) regarding the short-term rental Use of the Principal Single-Family Dwelling Unit and Caretaker's Residence on the Property reiterating the County's position that short-term rentals or tourist homes is a prohibited Use on the Property. You were to provide me with a proposed written plan of correction to address the violation no later than July 27, 2023. In the written plan of correction, you were to describe specific actions and dates to address the short-term rental or tourist home Use.

On July 27, 2023, Ms. McNulty provided the attached written response to my Corrective Action Letter #3 regarding the short-term rental or tourist home Use of the Property. Ms. McNulty sums up her response with the following:

- *The law supports interpretation of short-term rental of property as a Permitted Use in this Sub-district. As such, my clients are not willing to cease short-term rental of their property as requested in your last letter.*

As of the date of this letter, the Use of the Principal Single-Family Dwelling Unit and Caretaker's Residence on the Property as short-term rentals or tourist homes continues, including allowing the Dwellings to be rented separately from each other.

Applicable Regulations:

Gallatin County "Part 1" Administrative Regulation:

- 2 Definitions. The following definitions provide clarification and guidance regarding this Administrative Regulation. Additional terms are defined in the District Regulations. In the case of a conflict between the definitions below and the definitions provided in an applicable District Regulation, the definitions in this Administrative Regulation control except where specifically stated otherwise.
- 2.5 **Building.** A Structure with a roof, built for support, shelter, or enclosure of persons, animals, chattels, or property of any kind.
- 2.10 **Dwelling Unit.** A Building or portion thereof providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation. Where a portion of a Building containing complete, independent living facilities may be separated from another portion of a Building also containing complete, independent living facilities, such Building shall be considered to contain more than one Dwelling Unit.
- 2.11 **Dwelling Unit, Single Family.** A Building or portion thereof containing a single Dwelling Unit for habitation by one or more persons co-residing therein and their domestic employees.

- 2.26 Use. Any purpose for which a Building or other Structure or tract of land may be designed, arranged, intended, maintained, or occupied for any activity, occupation, business, operation, or residence, including Permitted and Conditional Uses.
- 3.2 Zoning Regulation Conformance. Property owners are responsible for ensuring all activity within and on their property conforms to this Administrative Regulation and the applicable District Regulation. No Building, Structure, or land shall hereafter be used or occupied, and no Building, Structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved or Structurally Altered unless it is in conformity with all the Zoning Regulations.

No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure, or unless such Use is deemed to be an appropriate Use pursuant to the interpretation process of Section 3.8 of this Administrative Regulation. All other uses are prohibited unless otherwise authorized by federal or state law.

The burden of proof is on an applicant to demonstrate that applicable requirements and review criteria of the Zoning Regulations are met. Where conditions of approval are attached to any approval issued under the Zoning Regulations, the failure to comply with any condition of approval is a violation of the Zoning Regulations.

- 12.4 Remedies. The Zoning Enforcement Agent may put any person or entity believed to be responsible for a violation of the Zoning Regulations on notice of such violation.
- a. The Zoning Enforcement Agent may give such notice, in the name of Gallatin County, and require the cessation of the violation. Such notice shall be sent by mail and may be sent by other means and is subject to appeal in accordance with Section 13 below. Nothing in this Administrative Regulation shall be interpreted to prohibit the continuation of previous enforcement actions, undertaken by Gallatin County under previous, valid regulations, ordinances, and laws.
 - b. The County Commission, at its option, notwithstanding any action taken by the Zoning Enforcement Agent, may begin proceedings set forth in Section 76-2-113, MCA at any time.
 - c. Legal Remedies. The County Attorney may pursue all available legal remedies to compel compliance with this Administrative Regulation and any District Regulation, including filing an action in district court to enjoin any violations thereof. The owner or tenant of any Building, Structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person or entity who commits, participates in, assists, or maintains such violation may each be held accountable. The prevailing party in any such action may be awarded all costs, including attorney's fees. This Section 12.4(c) is in addition to and not in

lieu of any other remedies available to the County, or to any aggrieved person or entity, at law or in equity.

Bridger Canyon Zoning Regulation

- 3.16 Caretaker's Residence: Dwelling Unit for a person that takes care of the house or land of an owner who may be absent.
- 3.22 Dwelling Unit: A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.
- a. Dwelling, Unit, Accessory: A separate Dwelling Unit located within the Principal Single-Family Dwelling Unit or in an Accessory Building.
 - b. Dwelling Unit, Principal Single-Family: A Building or portion thereof containing a single Dwelling Unit for habitation by a Family.
- 3.33 Family:
- a. A person living alone;
 - b. Any number of people related by blood, marriage, adoption, guardianship, or other authorized custodial relationship;
 - c. Two (2) unrelated people and any children related to either of them;
 - d. Not more than four (4) unrelated people living together as a single nonprofit housekeeping unit and sharing common living, sleeping, cooking, and eating facilities.
- 3.52 Overnight Accommodations: Permanent, separately rentable accommodations that are not available for residential use, except for the proprietors of a Bed and Breakfast Inn or Guest Ranch. Overnight Accommodations include Hotel or motel rooms, hostels, cabins, Bed and Breakfast Inns, Guest Ranches, and time-shared units. Individually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, Employee Housing, and similar accommodations do not qualify as Overnight Accommodations for purpose of this definition.
- 4.1 Intent: It is the intent of this District to protect and preserve the existing rural character of Bridger Canyon and to preserve existing developed and undeveloped farmlands from unplanned residential, commercial, and industrial development. It is further the intent of this Regulation to encourage agriculture as one of the occupational pursuits and an economic endeavor in Bridger Canyon. The purpose of the Agricultural Exclusive District is, when applied to particular land, to encourage the following land uses:
- a. Residential uses that do not impair the rural character of Bridger Canyon;
 - b. The cultivation of ground, including the preparation of soil, planting or seeding, and raising and harvesting of crops;

- c. The raising, feeding, and managing of livestock;
- d. Incidental uses that are customarily and necessarily related to and included within an agricultural pursuit; and,
- e. Incidental unrelated uses that are necessary to protect and promote the health, safety, welfare, and convenience of rural residential citizens.

4.2 Permitted Uses:

- b. One Principal Single-Family Dwelling Unit on each parcel created in conformance with the Zoning Regulation or in existence at the time of its original adoption.
- c. One Accessory Dwelling Unit in accordance with Section 12.2.

12.2 Accessory Dwelling Unit:

- f. The Accessory Dwelling Unit may not be rented or sold separately from the Principal Single-family Dwelling Unit.

Determination of Violation of the Bridger Canyon Zoning Regulation and Gallatin County “Part 1” Administrative Regulation:

Based on the facts that have been provided to me and the provisions of the Zoning Regulations and Administrative Regulations as set forth above, I make the following determination:

- 1) Both the Principal Single-Family Dwelling Unit and Caretaker’s Residence located on the Property are advertised and Used as short-term rentals. The Principal Single-Family Dwelling Unit and Caretaker’s Residence are available to be rented separately or together.

Therefore, you are in violation of Section 3.2 of the Administrative Regulation due to your lack of compliance with the Zoning Regulation.

Section 3.2 provides that no Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure. Section 3.2 prohibits all other uses unless otherwise authorized by federal or state law.

As previously explained in my letters, the Zoning Regulation does not list Short-term rentals or tourist homes as a Permitted or Conditional Use for the AE Sub-district. Consequently, the Use of the Property as a short-term rental or tourist home is prohibited. The use of the Property in this manner is contrary to the plain language, as well as the spirit and intent of the Zoning Regulation and Administrative Regulation.

Both the Zoning Regulation and Administrative Regulation must be interpreted according to their plain language. In *Egan Slough Community v. Flathead County Board of County Commissioners*, the Montana Supreme Court recognized that, “[i]n interpreting zoning ordinance, courts apply the basic rules of statutory construction.” 2022 MT 57, ¶ 22, 408 Mont. 81, 506 P.3d 996 (citations omitted). Consequently, “[i]f the language of an ordinance is plain and unambiguous, it is not

subject to interpretation or open to construction but must be accepted and enforced as written.” *Id.* Consistent with § 1-2-101, MCA, a court will not “insert what has been omitted” or “omit what has been inserted.” *Id.*

The plain language of the Regulations does not support your interpretation that short-term rentals or tourist homes are encompassed within the uses permitted within the AE Sub-District. Your interpretation seeks to “insert what has been omitted,” when Section 3.2 clearly prohibits all uses not specifically listed as a Permitted or Conditional Use.

Neither the plain language nor the spirit of the Regulation allows for short-term rentals or tourist homes within a Principle Single-Family Dwelling. Section 3.22 defines Dwelling Unit as a Structure “providing complete, independent living facilities for one (1) or more persons, **including permanent provisions** for living, sleeping, cooking, and sanitation.” (Emphasis added).

Section 4.1 defines the intent of the AE Sub-district as to “protect and preserve the existing rural character of Bridger Canyon and to preserve existing developed and undeveloped farmlands from unplanned residential, commercial, and industrial development.” The same section encourages “Residential land uses that do not impair the rural character of Bridger Canyon,” incidental uses “customarily and necessarily related to and included within an agricultural pursuit,” and incidental uses unrelated to an agricultural pursuit “that are necessary to protect and promote the health, safety, welfare, and convenience of rural residential citizens.”

Further, as defined by Section 3.16 of the Zoning Regulation, a Caretaker’s Residence can only be used as a Dwelling Unit by a person “that takes care of the house or land of an owner who may be absent.” Even if the Caretaker’s Residence qualified as an Accessory Dwelling Unit (which would first require Conditional Use Permit approval), Section 12.2.f prohibits an Accessory Dwelling from being “rented or sold separately from the Principal Single-family Dwelling Unit.” Use of the Caretaker’s Residence as a short-term rental or tourist home is a clear violation of the Zoning Regulation.

Your reliance on the Montana Supreme Court’s opinion in *Craig Tracts Homeowners’ Association, Inc. v. Brown Drake LLC*, 2020 MT 305, 402 Mont. 223, 477 P.3D 283, continues to be misplaced. That case is specific to private subdivision covenants. The issue was whether the defendant was violating private covenants by using its property as a short-term rental. The Court did not interpret or apply local zoning regulations.

While the Montana Supreme Court determined the covenants’ allowed use for “residential purposes” included short-term rentals, the Court reached this decision by relying on evidence outside the plain language of the covenants, due to their ambiguity. *Craig Tracts*, ¶ 15. This evidence included the covenants’ prior amendment removing restrictions on commercial business uses, like a motel, hotel, or apartment house; the prior use of the property by the former owner (the HOA’s president) as a short-term rental; and the defendant’s own use of the property for a majority of the year. *Id.*, ¶¶ 16-18. This case is inapplicable both as a matter of law and fact.

Finally, an agency’s interpretation of its regulations control and is given deference. *See e.g. Powell Co. v. Country Village, LLC*, 2009 MT 294, ¶ 8, 352 Mont. 291, 217 P.3d 508 (“An agency’s interpretation of its rule is afforded great weight, and the court should defer to that interpretation unless it is plainly inconsistent with the spirit of the rule.”) (Citing *Clark Fork Coalition v. Mont.*

Dept. of Env'tl. Quality, 2008 MT 407, ¶ 20, 347 Mont. 197, 197 P.3d 482). The plain language and spirit of the Regulations demonstrate that short-term rentals are not permitted on your Property.

Corrective Action:

Based on the above findings, corrective action is required to address the violations listed above. **Gallatin County demands that you cease operating the short-term rentals or tourist homes on the Property. You must bring the Property into compliance with the Zoning Regulation and Administrative Regulation no later than October 18, 2023.**

Failure to correct the violations within the timeframe specified will subject you to further enforcement action, which may include referring this matter to the County Attorney's Office for civil or criminal prosecution.

Appeal Rights:

- 13.2 Appeal of Planning Director or Zoning Enforcement Agent Decision. A Decision of the Planning Director or Zoning Enforcement Agent may be appealed to the Planning and Zoning Commission.
- a. An appeal of a Decision made by the Planning Director or Zoning Enforcement Agent must be made in writing to the Planning Director or Zoning Enforcement Agent and received within 30 days of the date of the Decision. The Planning Director or Zoning Enforcement Agent shall acknowledge receipt and notify the appellant of the preliminary date of the appeal hearing in writing.
 - b. An appeal shall be heard by the Planning and Zoning Commission after providing Published Notice and Certified Mail Notice. The Planning and Zoning Commission shall issue its decision on an appeal within a reasonable time.
 - c. The Planning and Zoning Commission may reverse the Decision of the Planning Director or Zoning Enforcement Agent only if the Planning and Zoning Commission finds, based on facts presented in the Hearing Record, that the Planning Director or Zoning Enforcement Agent erred in their Decision.

Should you have any questions regarding this letter, please contact me at 406-582-3775.

Sincerely,

Megan K. Gibson

Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc w/ attachments:

Erin Arnold, Chief Civil Deputy County Attorney via email
Sean O'Callaghan, Chief Planning Officer via email
Leah De Guzman, leahdg2004@gmail.com
Complainant via email



Gallatin County

PARTIAL CLOSURE LETTER/ CORRECTIVE ACTION LETTER #2

February 2, 2022

Sean A. Lewis
5064 Bridge Creek Drive
Plano, TX 75093-5702

Email: sean.a.lewis@gmail.com

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625

Email: sean.a.lewis@gmail.com

Re: Bridger Canyon Zoning Regulation, unpermitted wastewater disposal, and Public Accommodation Licensing Compliant (Compliance ID #22-041)

Dear Mr. Lewis:

Thank you for the attached written response from Any McNulty dated December 28, 2021 (Response) to my November 29, 2021 Corrective Action Letter (Corrective Action Letter). This letter replies to your Response and requests further corrective action regarding compliance with Land Use Permitting, the septic permit and Establishment licensing on the Property. However, as discussed below, I am closing the portion of the complaint related to overnight accommodations/short-term rentals/tourist homes uses and structures.

Bridger Canyon Zoning Regulation

As previously explained in my Corrective Action Letter, the Property is located at 153 & 155 Tepee Ridge Road East, Bozeman (Property) and is located entirely within the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District).

The requirement for property to conform to the Zoning Regulation is found in Section 3.2 of the Gallatin County "Part 1" Administrative Regulation (Administrative Regulation) and requires property owners to ensure that all Uses and Structures comply with the Zoning Regulation.

Section 4 of the Zoning Regulation lists the standards and requirements for the AE sub-district. Section 4.2 lists the Permitted Uses **after** a Land Use Permit is approved. Section 4.3 lists Uses Permitted After Securing Approval of a Conditional Use Permit.

Overnight Accommodations/Short-Term Rental/Tourist Home

None of the listed Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit include Overnight Accommodations, short-term rentals or tourist homes.

Section 3.22 of the Zoning Regulation defines Dwelling Unit as:

A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.

- a. Dwelling Unit, Accessory: A separate Dwelling Unit located within the Principal Single-Family Dwelling Unit or in an Accessory Building.*
- b. Dwelling Unit, Principal Single-Family: A Building or portion thereof containing a single Dwelling Unit for habitation by a Family.*

Section 3.52 of the Zoning Regulation defines Overnight Accommodations as:

Permanent, separately rentable accommodations that are not available for residential use, except for the proprietors of a Bed and Breakfast Inn or Guest Ranch. Overnight Accommodations include Hotel or motel rooms, hostels, cabins, Bed and Breakfast Inns, Guest Ranches, and time-shared units. Individually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, Employee Housing, and similar accommodations do not qualify as Overnight Accommodations for purpose of this definition.

The term short-term rental or tourist home is not a defined term within the Zoning Regulation or Administrative Regulation. The Planning Department considers a rental of less than 30 days as a short-term rental or tourist home.

There are active listings for two Overnight Accommodations/short-term rentals/tourist homes on your Property:

- www.vrbo.com/850456 three bedrooms, two full and two half baths, kitchen, living room, deck/patio
- www.vrbo.com/734934 three bedrooms, two full and one half bath, gourmet kitchen, indoor and outdoor living space, multiple fire places

Both listings indicate that the Property has eight beds and sleeps seven people, includes the use of a hot tub and goes on to state that “Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee.”

Based on my research of the Property, and discussions with Ms. McNulty, there are two Overnight Accommodations/short-term rentals/tourist homes operating on your Property. In review, I have been provided or I have discovered the following information for the Property:

- The Property is advertised through the website www.vrbo.com (website)
 - Lodging Facility Sales and Use Taxes are paid to the Montana Department of Revenue by the website quarterly
 - The use contract is provided by the website

- The AE sub-district prohibits the Use of Overnight Accommodations, while the terms short-term rental and tourist home are not defined
 - The Principal Single Family Dwelling Unit, the basement Dwelling Unit in the Principal Single Family Dwelling Unit, Caretaker's Residence, and tepee are associated with this use
- An Establishment License must be obtained as described below
- The appropriate wastewater permits must be obtained as described below

Based on this information, it appears that a private businesses is being operated on the Property as Overnight Accommodations/short-term rentals/tourist homes utilizing the Dwelling Units and Temporary Occupancy of the tepee.

Recently, the Montana Legislature passed House Bill 257 that was signed into law by Governor Gianforte and became immediately effective. The legislation prohibits a governing body from adopting a resolution that “compel[s] a private business to deny a customer of the private business access to the premises or access to goods or services,” or that “deny a customer of a private business the ability to access goods or services provided by the private business; . . .” House Bill 257 defines “private business” to include “a nonprofit or for-profit entity, a corporation, a sole proprietorship, or a limited liability company.” The legislation also is retroactive and applies to any regulations enacted, adopted, or in force on or after May 1, 2021. The portion of House Bill 257 applicable here is codified at § 7-5-121 Montana Code Annotated (MCA).

Pursuant to § 7-5-121 MCA (2021), the County may not restrict you at this time from operating private businesses on the Property as Overnight Accommodations/short-term rentals/tourist homes. Doing so would deny your customers access to your private business. Accordingly, no further action is required from you on this item.

This portion of the complaint is closed.

The Department's decision to close this portion of the complaint may be appealed. Section 13 of the Gallatin County “Part 1” Zoning Administrative Regulation governs appeals.

Principal Single Family Dwelling Unit – REMAINS OPEN

As previously explained, the original Land Use Permit (LUP) approval for a Principal Single Family Dwelling Unit was within LUP #L2006-089 in October 2005 and appears to have been Structure B as described in the Corrective Action Letter. Then in December 2006, a request was made to turn this Structure into the Caretaker's Residence.

The original detached garage in LUP #L2006-089, appears that it was converted into the Principal Single Family Dwelling Unit after the conditional approval of CUP #Z2007-038 now labeled as Structure A in the Corrective Action Letter, but it is unclear if an actual LUP approval was ever granted.

The basement bedroom contains an on-suite bathroom, kitchenette with sink, fridge, two burner stove and is considered an additional Dwelling Unit at this time.

While the County cannot restrict you from operating a private business on the Property as described above, you must still obtain Land Use Permit approval for the Structure for where it is currently located pursuant to Section 6 of the Administrative Regulations.

Therefore, corrective action is required.

Dwelling Unit #2 - Caretaker's Residence– REMAINS OPEN

As previously explained, the Planning Department records include the December 2006 Conditional Use Permit #2007-038 for a Caretaker's Residence. The conditional approval included six conditions of approval listed in the Corrective Action Letter.

The original LUP approval for this Structure was within LUP #L2006-089 in October 2005 as the Principal Single Family Dwelling Unit (Structure B in the Corrective Action Letter). Then in December 2006, a request was made to turn this Structure into the Caretaker's Residence.

The Planning Department records do not include any documentation that the conditions of approval associated with the conditionally approved Caretaker's Residence CUP #Z2007-038 were ever met.

While the County cannot restrict you from operating a private business on the Property as described above, you must still obtain Land Use Permit approval for the Structure for where it is currently located pursuant to Section 6 of the Administrative Regulations.

Therefore, corrective action is required.

Accessory Building – Detached Garage– REMAINS OPEN

As previously explained, the Planning Department records include this Structure in the August 2005 LUP approval #L2006-089 in the area of what now appears to be Structure A in the Corrective Action Letter.

It appears that this Structure was converted to the Principal Single Family Dwelling Unit in December 2006, but there is no clear record.

While the County cannot restrict you from operating a private business on the Property as described above, you must still obtain Land Use Permit approval for the Structure for where it is currently located pursuant to Section 6 of the Administrative Regulations.

Therefore, corrective action is required.

Accessory Building – Horse Sheds – REMAINS OPEN

Pursuant to Section 12.3.c of the Zoning Regulation:

Accessory Buildings equal to or less than 200 square feet of General Floor Area are not required to obtain a Land Use Permit.

The square footage of these sheds are unknown.

Therefore, corrective action may be required.

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

The portions of the complaint that remain open are listed and described above. Within the Response, Ms. McNulty states that she met with Mr. O'Callaghan in December via a telephone conference regarding the Property and outlined certain items that require actions and that Mr. Lewis would follow up with Mr. O'Callaghan by January 14, 2022 and then work on a plan of correction.

As of the date of this letter, no additional information or proposed actions and timelines have been submitted to the Department.

Septic Permit (Health Code)

Gallatin County has one current septic permit on file for your Property.

- Permit #14111 approved in May 2007 for:
 - One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
 - One (1) attached bedroom above garage generating 155 gallons per day, and
 - One (1), three (3) bedroom barn generating 300 gallons per day

Section 1.10 of Chapter 3 of the Health Code requires that an Authorization to Construct is required prior to the construction of a wastewater disposal system and a Permit to Operate must be granted before a person can lawfully operate a wastewater treatment system or dispose of wastewater into the system. Any wastewater treatment system constructed within Gallatin County must comply with Health Code and State law. Chapter 3 of the Health Code can be found in its entirety on the Health Department website at www.healthygallatin.org.

There is one approved wastewater system installed or used on your Property for:

- One (1), four (4) bedroom residential dwelling generating 350 gallons per day,
- One (1) attached bedroom above garage generating 155 gallons per day, and
- One (1), three (3) bedroom barn generating 300 gallons per day

Any additional wastewater disposal or configuration taking place on your Property outside of the approved system is considered a violation of Health Code.

According to the Site Visit there are three Living Units and six Bedrooms.

The following definitions are from the Montana Department of Environmental Quality Circular 4:

§ 1.2.9 **Bedroom** means any room that is or may be used for sleeping. An unfinished basement is considered an additional bedroom.

§ 1.2.51 **Living unit** means the area under one roof that can be used for one residential unit and which has facilities for sleeping, cooking, and sanitation. A duplex is considered two living units.

Within the Response, Ms. McNulty explains that she reached out to the Gallatin City-County Health Department Environmental Health Services (Health Department) and received a response indicating that there are approvals for up to eight bedrooms under the current permit, but that there appears to be an issue with an accurate site plan. Ms. McNulty stated that she would review the Health Department's proposed solutions with Mr. Lewis and then update me by January 14, 2022.

As of the date of this letter, no additional information or proposed actions and timelines have been submitted to the Department.

Therefore, corrective action is required.

Establishment License

Section 50-51-102(4), MCA defines an Establishment as:

a bed and breakfast, hotel, motel, rooming house, guest ranch, outfitting and guide facility, boardinghouse, or tourist home

Further, § 50-51-201(1) requires that:

[A] person engaged in the business of conducting or operating an establishment shall annually procure a license issued by the [Department of Public Health and Human Services].”

The requirement to obtain an establishment license to operate a tourist home also is required by Chapter 2 of the Gallatin City-County Health Code.

Chapter 2, Section 1.13 states:

B) A person violates these regulations or does not comply with the rules set forth in these regulations if the person operates, controls or uses an Establishment without a License or Registration.

There are active listings for two Tourist Homes on your Property:

- www.vrbo.com/850456 three bedrooms, two full and two half baths, kitchen, living room, deck/patio
- www.vrbo.com/734934 three bedrooms, two full and one half bath, gourmet kitchen, indoor and outdoor living space, multiple fire places

Both listings indicate that the Property has eight beds and sleeps seven people, includes the use of a hot tub and goes on to state that “Accommodations can include a 22 foot luxury tepee (late spring through early fall) for an additional fee.”

Based on my research and discussions with Ms. McNulty, there are two Tourist Homes operating on your Property. A Public Accommodation License is required for the operation of Establishments on your Property. Since the hot tub is available as part of the Tourist Home, additional permitting/licensing is required.

Therefore, corrective action is required.

Partial Closure and Corrective Action

As described above, the County cannot restrict you from operating a private business on the Property. Therefore, this portion of the complaint is closed and no further enforcement action will be taken.

The portions of the Complaint concerning compliance with Section 6 of the Administrative Regulation, Health Code and Establishment Licensing requirements remain open until resolved.

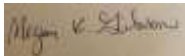
The Health Department would like to assist you in understanding what wastewater facilities are approved for use on your Property and those that need improvements/modifications, along with the Establishment licensing requirements. The Health Department can also help you formulate a plan of correction to resolve these outstanding issues. An acceptable plan of correction may include discussions with the Health Department, and then establishing the necessary actions and dates those actions will be completed by. The Health Department can be reached at 406-582-3120 or ehs@gallatin.mt.gov with any questions.

The Planning Department would like to assist you in understanding the requirements of the Zoning Regulation and Administrative Regulation. They can also help you formulate a plan of correction to resolve the outstanding issues. An acceptable plan of correction may include scheduling a meeting with a Planner who can help determine the correction actions and then establishing the necessary actions and dates those actions will be completed by. You can reach Sean O'Callaghan of the Planning Department at 406-582-3130 or sean.ocallaghan@gallatin.mt.gov to discuss the options that are available to you.

Whatever corrective actions you decide to pursue, **you must notify me in writing of your plan of correction that includes specific actions and dates, within 15 days of the date of this letter.**

Please keep in mind that a failure to initiate the corrective actions and notify me as discussed above, could result in additional enforcement action. If you have any questions about this letter, feel free to call me at 406-582-3775

Sincerely,



Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc w/ attachment:

County Attorney's Office via Email
Department of Planning and Community Development via Email
Environmental Health Department via Email
Leah De Guzman, leahdg2004@gmail.com
Amy McNulty, amcnulty@lawmt.com
Complainant via Email

Compliance Department • 311 W. Main, Rm. 108 • Bozeman, MT 59715

Phone (406) 582-3775 • Email: megan.gibson@gallatin.mt.gov

LEWIS STR ADMINISTRATIVE RECORD 332

**TARLOW
STONECIPHER
WEAMER & KELLY PLLC**

ATTORNEYS

1705 WEST COLLEGE STREET
BOZEMAN, MT 59715-4913

PHONE (406) 586-9714
FAX (406) 586-9720
www.LawMT.com

December 28, 2021

Megan Gibson
Gallatin County Compliance Department
311 West Main Street, Rm. 108
Bozeman, MT 59715

Via e-mail:
megan.gibson@gallatin.mt.gov

RE: Plan of Correction; Bridger Canyon Zoning Regulation and Public Accommodation Licensing Complaint (Compliance ID #22-041)

Dear Megan,

Thank you for your letter on November 29, 2021, following up on the site visit to Mr. Lewis's property. Your letter requested a written notice of Mr. Lewis's plan for correction of the items noted in your letter within thirty (30) days. This letter serves as this notice.

Per your directions, Mr. Lewis plans to engage with both the Gallatin County Health Department and the Gallatin County Planning Department to identify and address the items discussed in your corrective action letter.

On Mr. Lewis's behalf, I have reached out to the Gallatin County Health Department. I received a response today (that you were copied on) that indicates that there is an approval for up to 8 bedrooms on the current wastewater treatment system permit. But, it appears there may be an issue with an accurate site plan and licenses required for short-term rentals. I will review the Health Department's proposed solutions to these issues with Mr. Lewis. I will update you regarding movement on this issue by January 14, 2022.

On Mr. Lewis's behalf, I have started a conversation with the Gallatin County Planning Department to review outstanding issues with Zoning Regulations applicable to the property. I met with Sean O'Callaghan over a telephone conference to review the outstanding items. Following up from that conference, Mr. Lewis is looking at the following items:

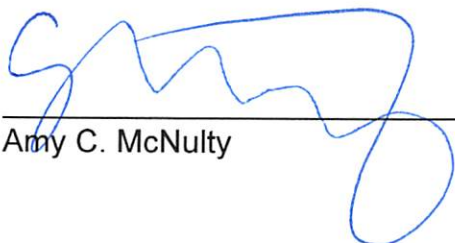
- Confirming the square footage of the horse sheds to determine whether they are exempt from any land-use permit requirement;
- Confirming the applicability of exemption to land-use permit requirements for the teepee structure that is used during the summer months if used less than ninety (90) days and if not on permanent foundation; and
- Determining whether the Conditional Use Permit approved in February 2007, was ever "put into use" to determine whether the Conditional Use Permit is valid or was voided under the prior version of the applicable Zoning Regulations.

Mr. Lewis will plan to get back in touch with Mr. O'Callaghan related to these items by January 14, 2022. Depending on the status of the 2007 Conditional Use Permit, I understand our options for corrective action will be different, and Mr. Lewis will work on a plan for corrective action related to these items.

Mr. Lewis is still investigating some of the items raised as violations, including the ability to use the property for a short-term rental. Mr. Lewis will review this with the Planning Department as he works through the other issues related to the Zoning Regulations.

Please advise if you require any further information at this time. Thank you again for the direction provided in your November 29, 2021 letter. We will be in touch soon.

Very truly yours,



Amy C. McNulty

ACM/hgg



Gallatin County

CORRECTIVE ACTION LETTER #2

June 14, 2023

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625

Sent via Email:
sean.a.lewis@gmail.com

RE: Bridger Canyon Zoning Regulation Complaint (Compliance ID #22-041)

Dear Mr. Lewis:

As you know, the Gallatin County Compliance Department (Department) has been working with you to resolve potential violations occurring on your property addressed as 153 & 155 Tepee Ridge Road East, Bozeman, Montana; legally described as Tract 12A of Certificate of Survey (COS) No. 1265A located in the SE ¼ and SW ¼ of Section 17 and the NE ¼ and NW ¼ of Section 20, Township 1 South, Range 7 East, P.M.M., Gallatin County (Property).

Specifically, this letter addresses the recent changes in state statute that amend House Bill 257 that was codified at § 7-5-121 Montana Code Annotated (MCA) in 2021. Recently, the Montana Legislature passed House Bill 299 that was signed into law by Governor Gianforte and became immediately effective. House Bill 299 clarifies that “The prohibitions provided for in subsection (2) do not apply to the enforcement of zoning provisions as allowed in 76-2-113 and 76-2-210.”

Consequently, the Property is again subject to Section 4 of the Bridger Canyon Zoning Regulation (Zoning Regulation), which does not list Overnight Accommodations, Short-Term Rentals, or Tourist Homes as Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit in the AE Sub-district.

Bridger Canyon Zoning Regulation

As previously explained in my letters, the Property is located entirely within the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District).

The requirement for property to conform to the Zoning Regulation is found in Section 3.2 of the Gallatin County “Part 1” Administrative Regulation (Administrative Regulation) and requires property owners to ensure that all Uses and Structures comply with the Zoning Regulation.

Section 4 of the Zoning Regulation lists the standards and requirements for the AE sub-district. Section 4.2 lists the Permitted Uses after a Land Use Permit is approved. Section 4.3 lists Uses Permitted After Securing Approval of a Conditional Use Permit.

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

Overnight Accommodations, Short-Term Rentals, Tourist Homes

As stated above, none of the listed Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit include Overnight Accommodations, short-term rentals or tourist homes.

Section 3.22 of the Zoning Regulation defines Dwelling Unit as:

A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.

- a. Dwelling Unit, Accessory: A separate Dwelling Unit located within the Principal Single-Family Dwelling Unit or in an Accessory Building.*
- b. Dwelling Unit, Principal Single-Family: A Building or portion thereof containing a single Dwelling Unit for habitation by a Family.*

Section 3.52 of the Zoning Regulation defines Overnight Accommodations as:

Permanent, separately rentable accommodations that are not available for residential use, except for the proprietors of a Bed and Breakfast Inn or Guest Ranch. Overnight Accommodations include Hotel or motel rooms, hostels, cabins, Bed and Breakfast Inns, Guest Ranches, and time-shared units. Individually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, Employee Housing, and similar accommodations do not qualify as Overnight Accommodations for purpose of this definition.

The term short-term rental or tourist home is not a defined term within the Zoning Regulation or Administrative Regulation.

Section 3.2 of the Administrative Regulation states, with emphasis added:

Zoning Regulation Conformance. Property owners are responsible for ensuring all activity within and on their property conforms to this Administrative Regulation and the applicable District Regulation. No Building, Structure, or land shall hereafter be used or occupied, and no Building, Structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved or Structurally Altered unless it is in conformity with all the Zoning Regulations.

No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure, or unless such Use is deemed to be an appropriate Use pursuant to the interpretation process of Section 3.8 of this Administrative Regulation. All other uses are prohibited unless otherwise authorized by federal or state law.

The burden of proof is on an applicant to demonstrate that applicable requirements and review criteria of the Zoning Regulations are met. Where conditions of approval are attached to any approval issued under the Zoning Regulations, the failure to comply with any condition of approval is a violation of the Zoning Regulations.

There are two active listings for Overnight Accommodations, short-term rentals, or tourist homes operating on the Property:

- www.vrbo.com #734934 “Stunning 60 Acre Ranch in Bridger Canyon” lists three bedrooms with two king sized beds and three twin bunk beds, two plus bathrooms, kitchen, hot tub and outdoor spa

- www.vrbo.com #850456 “Luxurious 60 Acre Ranch Compound In The Heart Of Beautiful Bridger Canyon” lists three bedrooms with one king bed, one queen bed and three win bunk beds, three plus bathrooms, kitchen, indoor and outdoor living space, multiple fireplaces

Overnight Accommodations, short-term rentals and tourist homes are not listed Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit for the Property. **Therefore, the Use is prohibited, and corrective action is required as described below.**

Corrective Action

No later than June 29, 2023, you must:

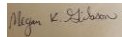
1. **provide me with a written, proposed plan of correction that includes the specific actions and dates by which you will take those actions to bring the Property into compliance with the Zoning Regulation as described above;**

The Planning Department is available to provide general information and review specific questions about the County’s Land Use Regulations. Please see the attached memo from the Planning Department regarding the expectations they have for you prior to discussion. Your primary contact at the Planning Department is Allyson Brekke who can be reached at 406-582-3193 or allyson.brekke@gallatin.mt.gov.

Please keep in mind that a failure to initiate the corrective actions and notify me as discussed above, could result in additional enforcement action.

If you have any questions about this letter, please contact me at 406-582-3775.

Sincerely,



Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc w/ attachment:

Erin Arnold, Chief Civil Deputy County Attorney via email
Allyson Brekke, Deputy Planning Officer, Allyson.brekke@gallatin.mt.gov
Montana Department of Revenue via email
Bridger Canyon Fire District via email
Leah De Guzman, leahdg2004@gmail.com
Amy McNulty, Tarlow Stonecipher Weamer & Kelly, PLLC, amcnulty@lawmt.com
Complainant via email



Gallatin County

MEMO

TO: Interested Parties

FROM: Sean O'Callaghan, AICP, Chief Planning Officer

RE: Planning Department Role in Working with Responsible Parties to Resolve Compliance Matters

DATE: December 15, 2022

The Department of Planning and Community Development (Planning Department) works in partnership with the Compliance Department to administer and enforce the County's various planning-related land use regulations (i.e. subdivision, zoning, floodplain, building for lease or rent regulations, etc.). This memo is intended to help interested parties understand the two primary roles of Planning Department in the compliance process.

The Planning Department's primary role in the compliance process is to review applications that are submitted by a landowner or responsible party to bring a property into compliance with regulatory requirements. In some instances the Planning Department is the reviewer and decision maker, in other situations we facilitate the review with the decision being made by the appropriate board or commission. Our role as the objective reviewer and sometimes decision maker on applications limits what we can do to help landowners and responsible parties, as described in greater detail below.

Second, the Planning Department is a source of information for landowners and responsible parties working through compliance matters, but we have limited staff resources and capacity, and there are limits to the assistance we can provide. The Planning Department will work with **a single point of contact** for the landowner or responsible party to:

- Provide access to the various planning-related regulations through our website and in our office;
- Provide information on application forms, fees, and timelines associated with various processes;
- Promote an understanding of the general requirements of the relevant regulations, recognizing that most members of the public are not land use experts;
- The Planning Department **does not** act as a technical advisor or provide legal advice to a landowner or responsible party. There are a variety of private sector consultants (e.g. planners, engineers, surveyors, attorneys, etc.) that work with and advise parties that are working to bring a property into compliance with regulatory requirements; and
- The Planning Department **does not** develop remedies to compliance issues for people, but may be able to provide feedback on the potential remedies identified by a landowner or responsible party.

June 29, 2023

Megan Gibson
Gallatin County Compliance Department
311 West Main Street, Room 108
Bozeman, MT 59715

Via E-mail only:
megan.gibson@gallatin.mt.gov

**RE: Plan of Correction; Bridger Canyon Zoning Regulation Complaint
(Compliance ID #22-041)**

Dear Megan:

I am in receipt of your letter regarding my client's property on Tepee Ridge Road (the "Lewis Property") dated June 14, 2023. Your letter asked for a "written, proposed plan of correction," by today, June 29, 2023, "to bring the Property into compliance with the Zoning Regulations." Specifically, you identified my clients' use of the property as a short-term rental as a violation of the applicable zoning regulations.

I understand that your most recent letter is the result of a change in the law to clarify the County's ability to enforce zoning regulations. I know that we previously have discussed a difference of interpretation of the applicable zoning regulations on this issue. I have refreshed my memory on these issues, and my client's position continues to be that residential rental, whether short or long-term, is a permissible use under the regulations so long as it is not meeting the definition of an "Overnight Accommodation."

This letter serves to outline my client's position on this issue and proposes a plan for compliance with the applicable regulations.

As your letter notes, neither the Bridger Canyon Zoning Regulations nor the Administrative Regulations include any reference to "short-term rentals." The only reference to short-term rentals within the Bridger Canyon Zoning Regulations is included with the definition of "Overnight Accommodations." This definition states that ***"[i]ndividually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service."*** (Section 3.52, emphasis added).

I understand that Overnight Accommodations are not listed as a permitted or conditional use in the sub-district the Lewis Property is located in. But, my clients are not using their property as an Overnight Accommodation. The Lewis Property is not “available for overnight rental use by the general public for at least 48 weeks per calendar year.”

Interpretation of zoning ordinances is done according to its plain meaning to give effect to all of its provisions, and an interpretation cannot “insert what has been omitted,” or “omit what has been inserted.” *Egan Slough Community v. Flathead Co. Bd. Of Co. Comms.*, 2022 MT 57, ¶ 22, 408 Mont. 81, 506 P.3d 996.

The Bridger Canyon Zoning Regulations were drafted to specifically identify what kind of short-term rental would be regulated—Overnight Accommodations. The Regulations do not otherwise purport to restrict rental of property for residential use. To read into the Zoning Regulations, a prohibition against short-term rental of property that is not an Overnight Accommodation would impermissibly “insert what has been omitted.”

The Montana Supreme Court has ruled that short-term rental of property is an incidental residential use of property. See *Craig Tracts Homeowners’ Association, Inc. v. Brown Drake, LLC*, 2020 MT 305, ¶ 12, 402 Mont. 223, 477 P.3d 283. While this case concerns restrictive covenants rather than zoning regulations, it is instructive for identifying that rental of property constitutes residential use as a matter of law. In looking at whether short-term rental was allowed under covenants that prohibited non-residential uses of property, the Court stated, “the critical issue is whether the renters are using the property for ordinary living purposes, such as sleeping and eating.” *Id.* at ¶ 10.

Here, the permitted uses under the AE sub-district include both “One Principal Single-Family Dwelling Unit,” and “One Accessory Dwelling Unit.”

Section 3.22 defines a “Dwelling Unit,” as a “A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.” It specifies that a Principal Single-Family Dwelling is a “Dwelling Unit for habitation by a Family.”

Similar to the covenants at issue in the *Craig Tracts* case, nothing in the definitions of these permitted uses restricts the *duration* someone must be using the property for “living, sleeping, cooking, and sanitation.” When renting, tenants use the Lewis Property for living, sleeping, cooking, and sanitation. This constitutes an allowable use under the applicable regulations.

The ability to lease one’s property is a core property right and an implied, accessory, and incidental use of property. Pursuant to the definition of “Use,” in the Bridger Canyon Zoning Regulations at Section 3.78, such a use is permissible as if it was written as a permissible use explicitly.

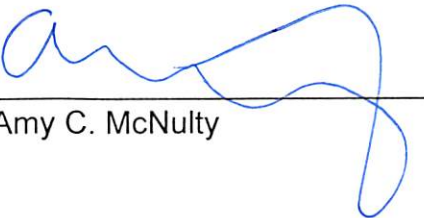
Given the plain language of the Zoning Regulations and the authority from the Montana Supreme Court, my clients disagree that any corrective action on their part is necessary or required to wholly remove listings for short-term rental of their property.

Understanding that there are some limits imposed by the Zoning Regulation, and in an effort to resolve any outstanding issues, my clients can agree to the following plan to ensure compliance with the applicable regulations:

1. The Lewis Property will not be listed as available for overnight rental for the general public for 48 or more weeks per calendar year; and
2. The Lewis Property will only be rented to groups meeting the definition of "Family" under the Zoning Regulations.

I look forward to your response regarding this plan for corrective action.

Very truly yours,



Amy C. McNulty

ACM/hgg



Gallatin County

CORRECTIVE ACTION LETTER #3

July 12, 2023

Sean A. Lewis
10421 Big Horn Trail
Frisco, TX 75035-6625
sean.a.lewis@gmail.com

Sent via First Class Mail & Email

Amy C. McNulty
Tarlow Stonecipher
Weamer & Kelly, PLLC
1705 West College Street
Bozeman, MT 59715-4913
AMcNulty@lawmt.com

Sent via First Class Mail & Email

RE: Bridger Canyon Zoning Regulation Complaint (Compliance ID #22-041)

Property: 153 & 155 Tepee Ridge Road East, Bozeman, Montana; legally described as Tract 12A of Certificate of Survey (COS) No. 1265A located in the SE $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 17 and the NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of Section 20, Township 1 South, Range 7 East, P.M.M., Gallatin County (Property)

Dear Mr. Lewis:

Thank you for the attached written response from Ms. McNulty, dated June 29, 2023 (Response) in response to my June 14, 2023 Corrective Action Letter #2 (Corrective Action Letter #2).

This letter addresses the items discussed and again requests corrective action.

As previously explained in my letters, the Property is located entirely within the Agriculture Exclusive (AE) sub-district of the Bridger Canyon Zoning District (Zoning District).

The requirement for property to conform to the Zoning Regulation is found in Section 3.2 of the Gallatin County "Part 1" Administrative Regulation (Administrative Regulation) and requires property owners to ensure that all Uses and Structures comply with the Zoning Regulation.

Section 4 of the Zoning Regulation lists the standards and requirements for the AE sub-district. Section 4.2 lists the Permitted Uses after a Land Use Permit is approved. Section 4.3 lists Uses Permitted After Securing Approval of a Conditional Use Permit.

The applicable Definitions are found in Section 3 of the Zoning Regulation and Section 2 of the Administrative Regulation.

As previously explained in my letters, none of the listed Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit include Overnight Accommodations, short-term rentals or tourist homes for the AE sub-district.

Section 3.22 of the Zoning Regulation defines Dwelling Unit as:

A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.

- a. Dwelling Unit, Accessory: A separate Dwelling Unit located within the Principal Single-Family Dwelling Unit or in an Accessory Building.*
- b. Dwelling Unit, Principal Single-Family: A Building or portion thereof containing a single Dwelling Unit for habitation by a Family.*

Section 3.33 of the Zoning Regulation defines Family as:

- a. A person living alone;*
- b. any number of people related by blood, marriage, adoption, guardianship, or other authorized custodial relationship;*
- c. two (2) unrelated people and any children related to either of them;*
- d. not more than four (4) unrelated people living together as a single nonprofit housekeeping unit and sharing common living, sleeping, cooking, and eating facilities.*

Section 3.52 of the Zoning Regulation defines Overnight Accommodations as:

Permanent, separately rentable accommodations that are not available for residential use, except for the proprietors of a Bed and Breakfast Inn or Guest Ranch. Overnight Accommodations include Hotel or motel rooms, hostels, cabins, Bed and Breakfast Inns, Guest Ranches, and time-shared units. Individually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service. Tent sites, recreational vehicle parks, Employee Housing, and similar accommodations do not qualify as Overnight Accommodations for purpose of this definition.

The term short-term rental or tourist home is not a defined term within the Zoning Regulation or Administrative Regulation.

Section 3.2 of the Administrative Regulation states, with emphasis added:

Zoning Regulation Conformance. Property owners are responsible for ensuring all activity within and on their property conforms to this Administrative Regulation and the applicable District Regulation. No Building, Structure, or land shall hereafter be used or occupied, and no Building, Structure, or part thereof shall hereafter be erected, constructed, reconstructed, moved or Structurally Altered unless it is in conformity with all the Zoning Regulations.

No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure, or unless such Use is deemed to be an appropriate Use pursuant to the interpretation process of Section 3.8 of this Administrative Regulation. All other uses are prohibited unless otherwise authorized by federal or state law.

The burden of proof is on an applicant to demonstrate that applicable requirements and review criteria of the Zoning Regulations are met. Where conditions of approval are attached to any approval issued under the Zoning Regulations, the failure to comply with any condition of approval is a violation of the Zoning Regulations.

Within the Response, you state that:

- “...my clients position continues to be that residential rental, whether short or long-term, is a permissible use under the regulations so long as it is not meeting the definition of an “Overnight Accommodation.” *Id.*, p. 1.
- “I understand that Overnight Accommodations are not listed as a permitted or conditional use in the sub-district the Lewis Property is located in. The Lewis Property is not “available for overnight rental use by the general public for at least 48 weeks per calendar year.””
- The Montana Supreme Court has ruled that short-term rental of property is an incidental use of property. See *Craig Tracts Homeowners’ Association, Inc. v. Brown Drake LLC*, 2020 MT 305, ¶ 12, 402 Mont. 223, 477 P.3D 283. While this case concerns restrictive covenants rather than zoning regulations, it is instructive for identifying that rental of property constitutes residential use as a matter of law. In looking at whether short-term rental was allowed under covenants that prohibited non-residential uses of property, the Court states, “the critical issue is whether the renters are using the property for ordinary living purposes, such as sleeping and eating.” *Id.* At ¶ 10.
- “Understanding that there are some limits imposed by the Zoning Regulation, and in an effort to resolve any outstanding issues, my clients can agree to the following plan to ensure compliance with the applicable regulations:
 1. The Lewis Property will not be listed as available for overnight rental for the general public for 48 or more weeks per calendar year; and
 2. The Lewis Property will only be rented to groups meeting the definition of “Family” under the Zoning Regulations.”

As stated above, the Administrative Regulations provide that “No Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-district and approval for that Use is obtained through the proper procedure. . . .”

As previously explained in my letters, the Property has the applicable Zoning Regulation approvals for a Principal Single-Family Dwelling Unit and a Guest House. No interpretation or determination has been made that the second Dwelling Unit on the Property is anything but a Guest House that must comply with its applicable conditions of approval.

It is understood that you will not list or Use the Dwelling Units located on the Property as Overnight Accommodations as defined within the Zoning Regulation. However, that does not resolve the violation occurring on the property. Neither short-term rentals nor tourist homes are a Permitted Use of the Principle Single-Family Dwelling or Guest House.

Lastly, *Craig Tracts Homeowners' Association, Inc. v. Brown Drake LLC*, 2020 MT 305, ¶ 12, 402 Mont. 223, 477 P.3D 283, is inapplicable. The case is specific to private subdivision covenants. The Court did not interpret or apply local zoning regulations.

There are two active listings for short-term rentals or tourist homes operating on the Property:

- www.vrbo.com #734934 “Stunning 60 Acre Ranch in Bridger Canyon” lists three bedrooms with two king sized beds and three twin bunk beds, two plus bathrooms, kitchen, hot tub and outdoor spa
- www.vrbo.com #850456 “Luxurious 60 Acre Ranch Compound In The Heart Of Beautiful Bridger Canyon” lists three bedrooms with one king bed, one queen bed and three bunk beds, three plus bathrooms, kitchen, indoor and outdoor living space, multiple fireplaces

Short-term rentals and tourist homes are not listed Permitted Uses or Uses Permitted After Securing Approval of a Conditional Use Permit for the Property. **Therefore, the Use is prohibited, and corrective action is required as described below.**

Corrective Action

No later than July 27, 2023, you must:

1. **provide me with a written, proposed plan of correction that includes the specific actions and dates by which you will take those actions to bring the Property into compliance with the Zoning Regulation as described above.**

Please keep in mind that a failure to initiate the corrective actions and notify me as discussed above, could result in additional enforcement action.

If you have any questions about this letter, feel free to contact me at 406-582-3775.

Sincerely,

Megan K. Gibson

Megan K. Gibson
Code Compliance Officer
megan.gibson@gallatin.mt.gov

cc w/ attachment:

Erin Arnold, Chief Civil Deputy County Attorney via email
Allyson Brekke, Deputy Planning Officer, Allyson.brekke@gallatin.mt.gov
Bridger Canyon Fire District via email
Leah De Guzman, leahdg2004@gmail.com
Complainant via email

TARLOW
STONECIPHER
WEAMER & KELLY PLLC

ATTORNEYS

1705 WEST COLLEGE STREET
BOZEMAN, MT 59715-4913

PHONE (406) 586-9714
FAX (406) 586-9720
www.LawMT.com

June 29, 2023

Megan Gibson
Gallatin County Compliance Department
311 West Main Street, Room 108
Bozeman, MT 59715

Via E-mail only:
megan.gibson@gallatin.mt.gov

**RE: Plan of Correction; Bridger Canyon Zoning Regulation Complaint
(Compliance ID #22-041)**

Dear Megan:

I am in receipt of your letter regarding my client's property on Tepee Ridge Road (the "Lewis Property") dated June 14, 2023. Your letter asked for a "written, proposed plan of correction," by today, June 29, 2023, "to bring the Property into compliance with the Zoning Regulations." Specifically, you identified my clients' use of the property as a short-term rental as a violation of the applicable zoning regulations.

I understand that your most recent letter is the result of a change in the law to clarify the County's ability to enforce zoning regulations. I know that we previously have discussed a difference of interpretation of the applicable zoning regulations on this issue. I have refreshed my memory on these issues, and my client's position continues to be that residential rental, whether short or long-term, is a permissible use under the regulations so long as it is not meeting the definition of an "Overnight Accommodation."

This letter serves to outline my client's position on this issue and proposes a plan for compliance with the applicable regulations.

As your letter notes, neither the Bridger Canyon Zoning Regulations nor the Administrative Regulations include any reference to "short-term rentals." The only reference to short-term rentals within the Bridger Canyon Zoning Regulations is included with the definition of "Overnight Accommodations." This definition states that ***"[i]ndividually owned units may be considered Overnight Accommodations if they are available for overnight rental use by the general public for at least 48 weeks per calendar year through a central reservation and check-in service."*** (Section 3.52, emphasis added).

I understand that Overnight Accommodations are not listed as a permitted or conditional use in the sub-district the Lewis Property is located in. But, my clients are not using their property as an Overnight Accommodation. The Lewis Property is not “available for overnight rental use by the general public for at least 48 weeks per calendar year.”

Interpretation of zoning ordinances is done according to its plain meaning to give effect to all of its provisions, and an interpretation cannot “insert what has been omitted,” or “omit what has been inserted.” *Egan Slough Community v. Flathead Co. Bd. Of Co. Comms.*, 2022 MT 57, ¶ 22, 408 Mont. 81, 506 P.3d 996.

The Bridger Canyon Zoning Regulations were drafted to specifically identify what kind of short-term rental would be regulated—Overnight Accommodations. The Regulations do not otherwise purport to restrict rental of property for residential use. To read into the Zoning Regulations, a prohibition against short-term rental of property that is not an Overnight Accommodation would impermissibly “insert what has been omitted.”

The Montana Supreme Court has ruled that short-term rental of property is an incidental residential use of property. See *Craig Tracts Homeowners’ Association, Inc. v. Brown Drake, LLC*, 2020 MT 305, ¶ 12, 402 Mont. 223, 477 P.3d 283. While this case concerns restrictive covenants rather than zoning regulations, it is instructive for identifying that rental of property constitutes residential use as a matter of law. In looking at whether short-term rental was allowed under covenants that prohibited non-residential uses of property, the Court stated, “the critical issue is whether the renters are using the property for ordinary living purposes, such as sleeping and eating.” *Id.* at ¶ 10.

Here, the permitted uses under the AE sub-district include both “One Principal Single-Family Dwelling Unit,” and “One Accessory Dwelling Unit.”

Section 3.22 defines a “Dwelling Unit,” as a “A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation.” It specifies that a Principal Single-Family Dwelling is a “Dwelling Unit for habitation by a Family.”

Similar to the covenants at issue in the *Craig Tracts* case, nothing in the definitions of these permitted uses restricts the *duration* someone must be using the property for “living, sleeping, cooking, and sanitation.” When renting, tenants use the Lewis Property for living, sleeping, cooking, and sanitation. This constitutes an allowable use under the applicable regulations.

The ability to lease one’s property is a core property right and an implied, accessory, and incidental use of property. Pursuant to the definition of “Use,” in the Bridger Canyon Zoning Regulations at Section 3.78, such a use is permissible as if it was written as a permissible use explicitly.

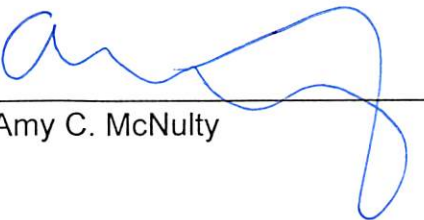
Given the plain language of the Zoning Regulations and the authority from the Montana Supreme Court, my clients disagree that any corrective action on their part is necessary or required to wholly remove listings for short-term rental of their property.

Understanding that there are some limits imposed by the Zoning Regulation, and in an effort to resolve any outstanding issues, my clients can agree to the following plan to ensure compliance with the applicable regulations:

1. The Lewis Property will not be listed as available for overnight rental for the general public for 48 or more weeks per calendar year; and
2. The Lewis Property will only be rented to groups meeting the definition of "Family" under the Zoning Regulations.

I look forward to your response regarding this plan for corrective action.

Very truly yours,



Amy C. McNulty

ACM/hgg

July 27, 2023

Megan Gibson
Gallatin County Compliance Department
311 West Main Street, Room 108
Bozeman, MT 59715

Via E-mail only:
megan.gibson@gallatin.mt.gov

**RE: Plan of Correction; Bridger Canyon Zoning Regulation Complaint
(Compliance ID #22-041)**

Dear Megan:

I received your letter of July 12, 2023 regarding the Lewis Property.

I understand from your letter that you have rejected my clients' proposed plan of corrective action to be in compliance with the applicable Zoning Regulations by not renting their property for more than 48 weeks per calendar year and only renting to parties that meet the definition of a "Family" under the Regulations.

It seems we have a fundamental disagreement regarding the interpretation of the applicable regulations as it relates to short-term rental of property. This letter serves to provide more authority for my client's position and seek clarification from you regarding the County's position.

Your last letter appears to rely solely on the provision in the Zoning Regulations that "no Building, Structure, or land in any Sub-district may be used for any purpose unless such Use is listed as a Permitted or Conditional Use in that Sub-District . . ." But this argument ignores that the use at issue—residential use of a dwelling—is a Permitted Use in the applicable Sub-District.

The AE Sub-District includes as permitted uses "One Principal Single-Family Dwelling Unit," and "One Accessory Dwelling Unit."

Section 3.22 defines a "Dwelling Unit," as a "A Structure or portion thereof providing complete, independent living facilities for one (1) or more persons, including permanent provisions for living, sleeping, cooking, and sanitation." It specifies that a Principal Single-Family Dwelling is a "Dwelling Unit for habitation by a Family."

This definition does not place any temporal requirement for dwelling of a family to constitute a Permitted Use under the Regulations. As such, short-term rental of the Lewis Property falls under the definition of Permitted Uses. The Lewis Property is rented to persons meeting the definition of "Family," and such persons used the property for "living, sleeping, cooking, and sanitation." The Lewis Property is not leased for non-dwelling purposes.

To the extent you continue to disagree, what evidence does the County have that any short-term rental of the Lewis Property is not consistent with use as a dwelling? Further, can you confirm whether it is the County's position that a homeowner in this Sub-district may not rent or lease their home for residential purposes to a tenant for any length of time? If not, what authority is the County relying on for determining an allowable period of time for rental of property versus an impermissible period of time?

To read into the Zoning Regulations a duration requirement for a Permitted Use would be to insert what has been omitted in the Zoning Regulations. This is in direct conflict with how courts interpret the meaning of Zoning Regulations. See *Hartshorne v. City of Whitefish*, 486 P.3d 693, 702 (Mont. 2021) ("Terms and words are intended to be understood in their ordinary sense, and this Court assumes a legislative body used particular words for a particular reason.") *Egan Slough Community v. Flathead Co. Bd. Of Co. Comms.*, 2022 MT 57, ¶ 22, 408 Mont. 81, 506 P.3d 996. ("Interpretation of zoning ordinances is done according to its plain meaning to give effect to all of its provisions, and an interpretation cannot 'insert what has been omitted,' or 'omit what has been inserted.") These rules of interpretation apply similarly to restrictive covenants, such as those at issue in the *Craig Tracts* case, making that case instructive for how a Court would interpret the applicable Zoning Regulation at issue here.

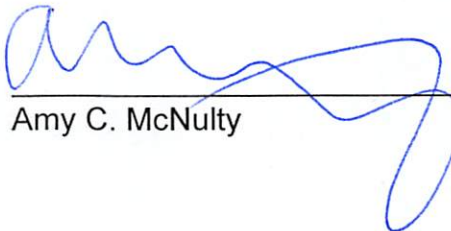
Further, as the Montana Supreme Court did in the *Craig Tracts* matter, a court interpreting this issue may look to law in other jurisdictions. Courts interpreting similar zoning ordinances have found that when a use does not place a temporal or duration requirement for residential use, the municipality cannot interpret a zoning ordinance to restrict short-term residential rental of property. "There is nothing inherent in the concept of residence or dwelling that includes time. . . . If [a zoning authority] is going to draw a line requiring a certain time period of occupancy in order for property to be considered a dwelling or residence, then it needs to do so by enacting clear and unambiguous law." 361 Wis.2d 185, 194, 861 N.W.2d 797, 802; See also, *Lowden v. Bosley*, 395 Md. 58, 909 A.2d 261 (2006) (nothing in restrictive covenant that required residential use distinguished between long-term and short-term rentals); *Brown v. Sandy City Bd. of Adjustment*, 957 P.2d 207 (Utah Ct.App.1998) (ordinance that allows use of dwelling for occupancy by single family and does not limit use by duration of occupancy does not prohibit short-term rentals).

The Montana Supreme Court has held that because “zoning laws and ordinances are in derogation of the common law right to free use of private property, such ordinances should be strictly construed.” *Whistler v. Burlington N. R. Co.*, 741 P.2d 422, 425 (Mont. 1987). Here, as in the cases cited above, there is no “clear and unambiguous” requirement of a certain period of occupancy to constitute use as a Dwelling Unit as permitted by the Zoning Regulations. Reading into the Zoning Regulations a prohibition against use of a property as a dwelling for short-term periods would not be a strict construction of the Regulations.

The law supports interpretation of short-term rental of property as a Permitted Use in this Sub-district. As such, my clients are not willing to cease short-term rental of their property as requested in your last letter.

Together with this letter, I am submitting a public records request to understand if you are proceeding with enforcement of other short-term rentals in the Sub-district or singling out my clients. Once my clients have your position to the questions asked in this letter together with these public records, they will be in a better position to evaluate how they wish to proceed. If you have ideas for resolution of this dispute short of a court action to for interpretation of the applicable Regulations, please advise.

Very truly yours,



Amy C. McNulty

ACM/hgg

Exhibit B

November 3, 2023

**OFFICE OF THE
GALLATIN COUNTY
ATTORNEY**



MARTIN D. LAMBERT
Gallatin County Attorney

Judge Guenther Memorial Building
1709 West College, Suite 200
Bozeman, Montana 59718

Telephone: +1 (406) 582-3745
Facsimile: +1 (406) 582-3758

Erin Arnold
Chief Deputy Gallatin County Attorney
Civil

Bradley Bowen
Deputy Gallatin County Attorney
Civil

By Email Only

Amy McNulty
Tarlow, Stonecipher, Weamer & Kelly, PLLC
AMcNulty@lawmt.com

Megan Gibson
Megan.Gibson@gallatin.mt.gov

**Re: Appeal by Sean A. Lewis of September 18, 2023 Notice of
Violation & Demand for Corrective Action (Compliance ID
#22-041)**

Dear Amy and Megan,

This letter is provided on behalf of Commissioner Zach Brown, Chair of the Planning & Zoning Commission. The letter establishes basic procedures for the appeal hearing in this matter, including the timeframe for pre-hearing submittals and the hearing format.

This matter will be heard before the Bridger Canyon Planning and Zoning Commission ("Planning & Zoning Commission") pursuant to Section 13 of the Gallatin County "Part 1" Zoning Administrative Regulation and the 2018 Hearing Rules for the Gallatin County Planning & Zoning Commission.

The hearing will be held on **Thursday, January 11, 2024**, during the Planning & Zoning Commission's regularly scheduled meeting. That meeting commences at 9:00 a.m. in the Community Room on the third floor of the Gallatin County Courthouse at 311 W. Main, Bozeman, Montana.

In-person attendance is requested, although you may appear remotely by Zoom.

Pursuant to Section 13.2.c of the Administrative Regulation, the Planning & Zoning Commission will determine whether, based on the facts presented in the Hearing Record, the Code Compliance Officer erred in issuing the September 18, 2023 Notice of Violation & Demand for Correction Actions. The Planning & Zoning Commission may affirm, reverse, or modify, in whole or in part, the Code Compliance Officer's decision.

The format for the appeal hearing will be as follows:

1. Opening Presentations
 - a. Code Compliance Officer
 - b. Appellant Sean Lewis
2. Public Comment
3. Rebuttal Presentations
 - a. Code Compliance Officer
 - b. Appellant Sean Lewis
4. Planning & Zoning Commission Discussion
5. Planning & Zoning Commission Decision

Each party will have a total of thirty (30) minutes to provide their opening presentation and a total of fifteen (15) minutes to provide a rebuttal, if desired. The segment for public comment is limited solely to private members of the public who are not speaking on behalf of either party. The Planning & Zoning Commission may ask questions of the parties throughout the proceedings. The time taken for questions and answers will not count toward the allotted times for presentations and rebuttals.

The Planning & Zoning Commission will not require any presenting party or the public to be placed under oath. Objections under the rules of evidence will not be ruled upon by the Planning & Zoning Commission, nor will direct or cross examination of any witnesses be allowed by any party.

The parties shall submit the following documents by the dates set forth below:

- | | |
|---|--|
| By Wednesday, November 22, 2023: | The Code Compliance Officer shall produce a bates-stamped copy of the administrative record on which she made her September 18, 2023 decision. |
| By Wednesday, December 13, 2023: | Appellant Sean Lewis shall submit an appeal brief setting forth the grounds for the appeal. |
| By Wednesday, January 3, 2014: | The Code Compliance Officer shall submit a staff report responding to the appeal and containing the administrative record and the appeal brief as exhibits for the Planning and Zoning' Commission's review. |

The Administrative Record, appeal brief, and staff report shall be emailed to Commissioner Brown, the Code Compliance Officer, and myself by the above deadlines.

Except as permitted through the above schedule, no other documents are allowed to be submitted by the parties before or during the appeal hearing. All submittals must be limited to information contained within the administrative record. No new evidence or information

will be allowed. When referring to portions of the administrative record, the parties are requested to use the bates-stamps for ease of reference.

Parties may use demonstrative exhibits during their presentations or rebuttals; however, exhibits must be duplicates of information contained within the administrative record. Please contact me to coordinate any demonstrative exhibits at least two days prior to the hearing.

If there are any questions or concerns, please contact me at soon as possible

Sincerely,

/s/ Erin L. Arnold

Erin L. Arnold

Erin.Arnold@gallatin.mt.gov

C (email): Commissioner Zach Brown

BOZEMAN DAILY CHRONICLE

ADVERTISING PROOF

PO Box 1190
2820 W College, 59718,
Bozeman, MT 59771
Ph. Fax: (907) 452-5054

Exhibit C

BILLING DATE:	ACCOUNT NO:
01/02/24	32601

G.C. PLANNING
311 W. MAIN, ROOM 108
BOZEMAN, MT 59715

GALLATIN COUNTY

**NOTICE OF PUBLIC HEARING
BEFORE THE GALLATIN COUNTY PLANNING & ZONING COMMISSION AND THE GALLATIN COUNTY COMMISSION
8:30 AM January 11, 2024**

To be held at the Gallatin County Courthouse, Community Room, 311 W. Main, Bozeman. Contact the Gallatin County Planning Department for more information or to view applications, 311 W. Main, Rm. 108, Bozeman, MT 59715, (406) 582-3130. Testimony on these requests will be taken at the hearing. If you have a disability that limits your participation in this hearing or providing testimony in these formats, or otherwise need additional accommodations, please contact the Gallatin County ADA Coordinator at 406-582-3007. A JOINT HEARING is specified before the description of the joint hearing item.

AD #	DESCRIPTION	START	STOP	TIMES	AMOUNT
462702	GALLATIN COUNTY NOTI	12/27/23	01/03/24	4	\$200.00

1. Bridger Canyon Zoning District

a. McNulty on behalf of Lewis, Appeal of September 18, 2023 Determination regarding the Use of the Dwellings as short-term rentals or tourist homes (Compliance ID #2022-041). The purpose of the public hearing is to consider Amy McNulty's request, on behalf of her client Sean A. Lewis, to **appeal the interpretation of the Zoning Enforcement Agent that the Lewis Property is in violation of Section 3.2 of the Gallatin County "Part 1" Zoning Administrative Regulation and the Bridger Canyon Zoning Regulation** by allowing two short-term rentals or tourist homes to be advertised and used on the Property individually and separately. The Subject Property is located within the Agricultural Exclusive (AE) sub-district of the Bridger Canyon Zoning District and is therefore subject to the Bridger Canyon Zoning Regulations. The Subject Property is legally described as Tract 12A of Certificate of Survey No. 1265A located in the SE $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 17 and the NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of Section 20, Township 1 South, Range 7 East, P.M.M., Gallatin County, Montana. **Generally, the Subject Property is addressed as 153 & 155 Tepepe Ridge Road East, Bozeman, Montana.**

Payments:

Date	Method	Card Type	Last 4 Digits	Check	Amount
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Discount: **\$0.00**
Surcharge: **\$0.00**
Credits: **\$0.00**

Gross: **\$200.00**
Paid Amount: **\$0.00**

Amount Due: **\$200.00**

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b. Guest House Conditional Use Permit for Appert. (Z2024-012) The purpose of the hearing is to consider a request for an extension to a previously approved Conditional Use Permit by Holly March Summers (Applicant) on behalf of Christopher Appert (Property Owner) for approval of a Guest House. A Conditional Use Permit for a Guest House was approved in 2021. An extension is required because one Condition of Approval could not be met within 2 years of issuance. As required by Section 10.10 of the Gallatin County Part 1 Zoning Regulations, a General Extension is needed. The property is located in the Agriculture Exclusive Sub-District of the Bridger Canyon Zoning District. The Subject Property is a 77.7 acre parcel known as Tract 1 of Certificate of Survey 2129, located in Section Five (S5) of Township One South (T01S), Range Seven East (R07E), P.M.M., Gallatin County. **The parcel is addressed as 13345 Bridger Canyon Road and is subject to the Bridger Canyon Zoning Regulations.**

c. Caretaker's Residence Conditional Use Permit for Appert. (Z2024-011) The purpose of the hearing is to consider a request for an extension to a previously approved Conditional Use Permit by Holly March Summers (Applicant) on behalf of Christopher Appert (Property Owner) for approval of a Caretaker's Residence. A Conditional Use Permit for a Caretaker's Residence was approved in 2021. An extension is required because one Condition of Approval could not be met within 2 years of issuance. As required by Section 10.10 of the Gallatin County Part 1 Zoning Regulations, a General Extension is needed. The property is located in the Agriculture Exclusive Sub-District of the Bridger Canyon Zoning District. The Subject Property is a 77.7 acre parcel known as Tract 1 of Certificate of Survey 2129, located in Section Five (S5) of Township One South (T01S), Range Seven East (R07E), P.M.M., Gallatin County. **The parcel is addressed as 13345 Bridger Canyon Road and is subject to the Bridger Canyon Zoning Regulations.**

2. Trail Creek Zoning District

a. Taygan Oversized ADU CUP (Z2024-036). The purpose of the hearing is to consider a request by Grege Dennee of Locati Architects (Applicant) on behalf of Taygan Trust (Landowner) for approval of a **Conditional Use Permit for 369 additional square feet in an Accessory Dwelling Unit per Section 4.3.d of the Trail Creek Zoning Regulation.** The Subject Property is located within the

AR-20 sub-district of the Trail Creek Zoning District and is legally described as Tract 23 of COS 36P, located in Section 27 (S27), Township 2 South (T02S), Range 7 East (R07E), P.M.M., Gallatin County, Montana. **The Subject Property is addressed as 820 Sundown Road, Bozeman, Montana.**

3. Gallatin Canyon/Big Sky Zoning District

a. Lemkemeier Interpretation of Use Classification (Z2024-039). The purpose of the hearing is to consider a request by James Lemkemeier (Applicant) for an Interpretation of Use Classification per Section 3.8.b of the Gallatin County "Part 1" Zoning Administrative Regulation. **Specifically, the Applicant is requesting that a multi-unit rental building concept be interpreted as a Short Term Rental and a Permitted Use in the Community Commercial (CC) sub-district of the Gallatin Canyon/Big Sky Zoning District.** The results of this interpretation are not specific to an individual property but would apply to any property zoned Community Commercial.

4. Hyalite Zoning District

a. Thorsen Home Occupation Conditional Use Permit (Z2024-031). The purpose of the public hearing is to consider a Conditional Use Permit by Patrick M. Thorsen (Applicant) for a Home Occupation Requiring a Conditional Use Permit per Section 9.13 of the Hyalite Zoning Regulation. **Specifically, the Applicant is requesting the Home Occupation for their landscaping business.** The Subject Property consists of approximately 0.931 acres and is legally described as Lot 6 of the Hyalite Heights Subdivision, located in S36, T02S, R05E, P.M.M., Gallatin County, MT. In general, the Subject Property is addressed as 1500 Parkview Place, Bozeman, MT 59715.

MNAXLP



Gallatin County

NOTICE OF PUBLIC HEARING BEFORE THE BRIDGER CANYON PLANNING AND ZONING COMMISSION

NOTICE IS HEREBY GIVEN of a public hearing to be held before the **Bridger Canyon Planning and Zoning Commission on January 11, 2024 at 8:30 a.m.** The hearing will be held in the Community Room of the Gallatin County Courthouse, 311 West Main Street, Bozeman, MT 59715 or by electronic means. Please contact the Planning Department at (406) 582-3130 if you wish to participate via Zoom.

The purpose of the public hearing is to consider Amy McNulty's request, on behalf of her client Sean Lewis, to appeal the September 18, 2023 interpretation of the Zoning Enforcement Agent that the Lewis Property is in violation of Section 3.2 of the Gallatin County "Part 1" Administrative Regulation and the Bridger Canyon Zoning Regulation by allowing two short-term rental or tourist homes to be advertised and used on the property individually and separately.

The Subject Property is located within the Agricultural Exclusive (AE) sub-district of the Bridger Canyon Zoning District and is therefore subject to the Bridger Canyon Zoning Regulations. The Subject Property is legally described as Tract 12A of Certificate of Survey No. 1265A located in the SE $\frac{1}{4}$ and SW $\frac{1}{4}$ of Section 17 and the NE $\frac{1}{4}$ and NW $\frac{1}{4}$ of Section 20, Township 1 South, Range 7 East, P.M.M., Gallatin County, Montana. Generally, the Subject Property is addressed as 153 & 155 Tepee Ridge Road East, Bozeman, Montana.

Verbal testimony will be taken at the hearing. Written testimony should be directed to the Gallatin County Code Compliance Department, 311 W. Main Street, Room 108, Bozeman, MT 59715, or by email megan.gibson@gallatin.mt.gov. For questions, please contact the Code Compliance Department by phone at (406) 582-3775.

If you have a disability that limits your participation in this hearing or providing testimony in these formats, or otherwise need additional accommodations, please contact the Gallatin County ADA Coordinator at 406-582-3007.

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Susan F. Kelly, Trustee
Sue Kelly Living Trust 50%
Brian J. Kelly, Trustee
Brian J. Kelly Living Trust 50%
7180 Tepee Ridge Road
Bozeman, MT 59715

Susan F. Kelly, Trustee
Sue Kelly Living Trust 50%
Brian J. Kelly, Trustee
Brian J. Kelly Living Trust 50%
7180 Tepee Ridge Road
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Susan F. Kelly, Trustee
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Saint Helena, CA 94574-1845

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Tiny Viking LLC
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Laguna Beach, CA 92651-6731

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111 S. LA Senda Drive
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Arrow Leaf Investments LLC
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Bozeman, MT 59715-9682

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Arrow Leaf Investments LLC
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Richard C. Haines
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Charles H. & Marcia B. Raches Jr.
Living Trust
Marcia B. Raches, Trustee
Charles H. Raches, Trustee
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Bellevue, WA 98005

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Bridger Canyon Property Owner's
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Bozeman, MT 59715

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