2/14/25

To: Senate Local Government Committee

From: Tom Fiddaman

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For the Bridger Canyon Property Owners' Association, BCPOA.net

Re: SB214

Dear Senators,

As you move toward consideration of SB214, we wanted to share the reasons for our strong opposition to the measure, as it is currently drafted, and request that you vote to oppose it.

We represent the board of the Bridger Canyon Property Owners' Association (BCPOA), formed in 1971 with paying membership of about 250 households in a 49,000 acre zoning district in Gallatin County. Our district is citizen-initiated under Part 1, created by ranchers and residents who had the foresight to protect the rural atmosphere, agricultural opportunities, and natural resources of the area. Many of the people now living here were attracted to the district by the protections our zoning regulation affords.

Let us assure you that we have a keen interest in our property rights on what be half a billion dollars of real estate. But most of us also live and recreate here, and recognize that our property value and quality of life doesn't end at our driveways and fences. We also cherish the wildlife, clean water, dark skies, and other features that make this some of the most valuable land in the state. Over the decades, Bridger Canyon zoning has enjoyed overwhelming support for its protection of these values.

At our last meeting, our board of 13 members from around the district voted unanimously to oppose SB214, because we share the concerns expressed by the Montana Association of Planners, that this bill would have the unfortunate effect of complicating zoning and permitting uses that would be excluded, if named.

> *https://mtplanners.org/session/69th-montana-legislative-session/*
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> *Senate Bill 214 requires that the interpretation of zoning provisions favors the free use of property if there is any ambiguity regarding whether the use is permitted. However, zoning codes do not explicitly list every possible land use as either permitted or prohibited. This*

means that some level of interpretation is always necessary.

For example, if a zoning code states that “retail businesses” are allowed in a district but does not explicitly mention cannabis dispensaries, an ambiguous interpretation could lead to unintended approvals. Similarly, if “light industrial use” is permitted but does not define whether that includes auto salvage yards, the bill could open the door for such businesses to operate without clear local approval.

To uphold zoning’s purpose of preventing nuisances and protecting public health and safety, local governments may have to create exhaustive zoning provisions listing every possible land use, which would be an overwhelming and impractical task. Without such specificity, undesired uses—such as nightclubs opening in quiet residential neighborhoods or large-scale livestock operations appearing near suburban developments—could be difficult to regulate.

Furthermore, State law and local zoning provisions already provide ways for citizens to appeal land use interpretations if they believe they are incorrect. For example, if a homeowner disputes a local ruling that a short-term rental violates zoning laws, they can seek an appeal through the local zoning board.

This bill also affects the public participation process, which is critical for local land use decisions. Zoning codes undergo significant public input before adoption, with hearings and comment periods where residents can voice concerns about how a zoning decision might impact their neighborhood. Senate Bill 214 would drastically limit the public’s ability to weigh in on land uses that affect their homes, businesses, and services.

For instance, if a new industrial warehouse is proposed near a residential area, current processes allow for public hearings where residents can express concerns about traffic, pollution, and noise. However, if ambiguity in the zoning code must automatically favor property owners, the warehouse could be approved without meaningful public input, despite community opposition.

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Due to the high level of ambiguity this bill introduces, the lack of public participation in local land use decisions, and the potential for unintended and harmful consequences, we urge a “Do Not Pass” on Senate Bill 214.

We do not object to the language promoting interpretation of ambiguity in favor of free use of property. That is already a well-established principle of interpretation in Montana, which I have seen cited at all levels, including the MT Supreme Court. In that sense, it is unnecessary to state, though not objectionable.

The problem is that the automatic resolution of ambiguity provided by this bill short-circuits existing interpretation processes that are fair, adaptable, and promote public participation. As an example, consider a novel zoning issue from a decade ago. A cell tower developer proposed to build a 160' lighted tower on undeveloped Green Mountain. A resident in a relatively high-density (for Bridger Canyon) subdivision offered to host it. The site owner would receive a small revenue stream, which would be massively outweighed by loss of property value on adjacent properties. This is a classic case of what economists term a negative externality, and exactly the motivation for zoning to mitigate such problems. At the time, cell towers were not a listed use in the zoning, because they hardly existed at the time of the last update (1989). Under SB214 language, the ambiguous similarity of cell towers to radio antennae would have required approval of a novel use, resulting in a large net loss in value for the canyon. Instead, the county-convened Zoning Advisory Committee, with BCPOA support, proposed that the developer could either go through the "similar use" interpretation in that edition of the zoning, or we could amend the zoning to provide an orderly classification for cell towers. All concerned agreed on the latter path, and we created a regulation that developers later hoped could be a model for all Montana districts. Ultimately an attractive, unlighted, concealed tower of modest height was constructed at Bridger Bowl. This was a win for all concerned: the tower developer, phone users, public safety, and property values.

Fast-forwarding to today, proponents testified on February 10th that the same interpretation processes were used to harm their property rights. Unfortunately the story presented constitutes substantial mischaracterization of what actually transpired.

From several we heard that zoning was changed "all of a sudden" in 2024 and that jurisdictions had a habit of "reinterpreting well-established zoning ordinances." This is simply false. In 2017, the Zoning Advisory Committee convened by Gallatin County held a public meeting on Short Term Rentals (STRs), attended by planning staff and interested residents, including Ms. Dickson. At that meeting, it was discussed that STRs were not a permitted use under the prevailing zoning (as amended in 1989), that a finding of "similar use" could be procured, but that no one had attempted to do so - thereby rendering any existing STRs unpermitted. Subsequently the county-convened Zoning Advisory Committee, with BCPOA support, drafted a standard that would have permitted STRs. In 2019, Ms. Dickson wrote to the commissioners to disparage that effort, which would have avoided later enforcement actions had it been adopted. So in short, the 2024 decision was no surprise; it was the culmination of a long series of events that could have been avoided though constructive action.

Similarly, we heard that Gallatin County had a "long history of allowing short term rentals". One might better say that it had a history of ignoring a few unpermitted STRs. As far back as 1971, the zoning regulation provided 2 commercial rental classifications, the Bed & Breakfast, and the Guest Ranch. In the 1980s, it added 2 more: Recreational Housing and Overnight Accommodations, which it provided only in the Bridger Bowl Base Area. Recreational Housing is the closest analog to todays' STRs, so if one had sought an interpretation any time between 1989 and today at least, the answer would have been that STRs were not a permitted use. There is, and was, no ambiguity. To the extent that the county declined to enforce this through benign neglect, owners might have recourse under the doctrine of laches, but they are not eligible to "continue as a nonconforming use."

Ms. Baucus and Ms. Dickson worried that zoning would threaten the "right to hunt on your own land", or "pet ownership", or the right to decide whether to "have 3 children instead of two." The enabling statutes for zoning clearly limit its purview to structures and occupational or commercial uses. These fearmongering tactics are substantially responsible for the souring of public opinion, which at one time was amenable to some accommodation of STRs.

Returning to the cell tower example, cell towers were not anticipated in the zoning because they didn't exist. Today's STRs, with remote investor ownership and the internet as the front desk also did not exist until recently. Under our current zoning, we have an orderly Interpretation of Use process that permits public input for deciding such things (section 3.8 of the Gallatin County harmonized Part 1 administrative regulations). Tellingly, to date no STR operator has sought an Interpretation of Use, presumably because the answer would likely be adverse to their interests.

In 2024, the county did make a de facto interpretation of use when it upheld an enforcement finding, that STRs were not permitted. This happened in the open with a public hearing that attracted a great deal of participation. As of today, the original owner and a coalition spearheaded by the Property Rights Coalition (PRC) are appealing this decision. The makeup of the plaintiffs is telling: several operators of out-of-state, internet-hosted STRs, one operator of an STR who is in violation of a Conditional Use Permit unrelated to STRs per se, and a nonresident commercial STR service. These are, by and large, not the long-term residents aggrieved by property taxes that the PRC claims to represent. In fact, they substantially represent the "epidemic of property turnover to rich people" that was bemoaned in testimony. Putting these commercial operations in competition with residential use will, regrettably, not provide the increase in housing to market that Mr. Brown hoped for; quite the opposite.

The real purpose of the current property rights and STR legislation (SB146, SB214, and LC1007) appears to be to overturn the result of a participatory process here in Gallatin County. The PRC proposed a zoning amendment to permit STRs, but with terms that were unappealing to a majority of residents, because it provided for commercialization and violated the density of our General Plan (see https://bcpoa.net/2024/05/). The Planning and Zoning Commission, in June ’24, continued the application to give the PRC an opportunity to improve it. This was not a burden on the applicant; it was a generous courtesy, given that it would otherwise have been denied. The PRC presented a slightly improved application in December ‘24, not yielding on the primary sticking points that led residents to oppose it. Going in to that hearing, the written record showed 56 letters of opposition from bona fide residents of the district, and only 8 letters of support (plus a few nonresident and commercial interests). Facing overwhelming opposition, the PRC withdrew its application. All of the elements of its amendment are now present in the various proposed legislation, in an affront to local control and citizen participation.

At BCPOA, we take a broader view of our property rights, property values, and quality of life. We would like to see a process that is locally controlled, provides for broad participation, and values the whole rather than the parts one owner at a time. We urge you to oppose SB214.

Respectfully submitted,

Tom Fiddaman, 1070 Bridger Woods Rd., Bozeman

Chairman, Bridger Canyon Property Owners Association

for the Bridger Canyon Property Owners' Association board, BCPOA.net