

3/17/25

To: House Local Government Committee

From: Tom Fiddaman

1070 Bridger Woods Rd, Bozeman MT 59715,

tom@metasd.com, 406 582 7608

Re: SB 336

Dear Representatives,

I urge you to amend SB 336, for the following reasons. If you cannot amend, then please oppose it.

I 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.

Our board of 13 members from around the district has voted to oppose SB 336. We find the following issues.

It unlawfully interferes with private contracts. New sections 1 and 2 provide a specific interpretation of short-term rentals in *private* contracts for covenants and HOAs, that may differ from the interpretation available from context, expressions of purpose or other language in that contract. This is not just unnecessary and unlawful; it's unconstitutional.

ARTICLE II. DECLARATION OF RIGHTS

Section 31. Ex post facto, obligation of contracts, and irrevocable privileges. No ex post facto law nor any law impairing the obligation of contracts, or making any irrevocable grant of special privileges, franchises, or immunities, shall be passed by the legislature.

Remedy: Amend to indicate applicability of the sections only to newly executed contracts. If this cannot be implemented, you should oppose.

It violates common sense by declaring that STRs – even investor-owned, non-owner-occupied ones, are residential, noncommercial uses. These commercial uses might never have a “resident” as defined by MCA 1-1-215, so this is an absurd contradiction of existing law and common sense. Even VRBO and AirBnB agree that some STRs are commercial, as they have extensive web resources for “growing your business” (see Appendix A).

The STR residential declarations would be less problematic if they were internally consistent. New sections 1, 2, and 3 refer to short term rentals in general, rather than to the narrower short term rentals of primary residences, limited by the 7 month residency requirement in 3.(4)(a) (lines 15-16). Similarly, the following section 3.(4)(b) references MCA 15-68-01, which broadly defines STRs. Thus various sections of the bill refer to conflicting views of what a residential STR really is, and will cause spillover effects from legitimately residential use with occasional rental, to full-time commercialization.

Remedy: These definitions could be reconciled by creating a definition for a residential STR that distinguishes it from a property owned and operated remotely, which will never contain a “resident”, and referencing the new definition appropriately. If this cannot be implemented, you should oppose.

It violates the purpose of zoning subdistricts, by requiring STRs to be permitted everywhere, if permitted anywhere. New section 3 (2) (a) provides:

Unless expressly prohibited in the entirety of a jurisdictional area **or** a zoning district, if the jurisdictional area is divided into zoning districts, short-term rentals are permissible in any zoned area where residential use is allowed, including but not limited to areas where the use of single-family dwelling units, multifamily dwelling units, other dwelling units, or units or A group of units in a condominium, cooperative, timeshare, or owner-occupied residential home is allowed.

The intent seems to be to say, if STRs are permitted anywhere, they must be permitted everywhere. It makes no sense to tie the hands of cities, counties and citizens in this way. Land use is exquisitely local. The whole point of subdistricts within a zoning district is to provide fine-scale control of locally appropriate uses. In Bridger Canyon, for example, STRs have been part of the plan for the Bridger Bowl Base Area since the mid-1980s. They are not provided in the regulation or general plan for the rest of the district, in order to preserve the rural atmosphere, community and agricultural opportunities.

The ‘or’ emphasized above is problematic. How can a zoning district be divided into zoning districts? And why is there no mention of subdistricts within a zoning district? Our district comprises about 49,000 acres with six distinct subdistrict classifications, with unique and sensible uses. Some of these subdistricts are larger than cities. Similarly, traversing Gallatin County is more than a 100-mile adventure. Why should all parts of this vast area be treated the same? Whether or not you wish to promote STRs, this is a terrible model for land use planning of any kind. These inconsistencies are likely to lead to litigation.

Remedy: Strike the ~~entirety of a jurisdiction~~ language. If this cannot be implemented, you should oppose.

It goes beyond STRs to provide a rentable Accessory Dwelling for every property, breaking density provisions. This would be problematic in many areas, where accessory dwellings would lead to congestion. In the case of Bridger Canyon, the district seeks to preserve open space, views, wildlife, clean water and other features that make the rural atmosphere and community attractive. We don't want to micromanage land uses, and our regulation is relatively brief, because instead we choose to limit density. ADUs everywhere would break that model, requiring more intrusive regulation of uses, or causing loss of values from failing to achieve the district's goals.

In 2020, we lost 30 homes to a wildfire that went from ignition to 8000 acres in one day. We were actually lucky that it didn't cross into some of the older subdivisions with nonconforming smaller lots, where congestion on roads that don't meet today's subdivision standards was already a problem on the day of the fire. Forcing more ADU density into these areas would create material hazards from egress problems in a future event. This is not a land use decision that should be managed with a one-size-fits-all approach. Mechanisms such as the Conditional Use Permit are needed to protect the general welfare, health and safety in such areas.

Remedy: Strike out new section 3(2)(b)(i), ~~a single, separate residence on the same parcel as a property owner's primary residence~~. If this cannot be implemented, you should oppose.

It grandfathers illegal uses. Uses that were legal prior to inception or amendment of zoning are protected as nonconforming under both state statute and Gallatin County's unified administrative regulations. The proposed section 11 however proposes to grandfather STRs, even if they were explicitly illegal prior uses, so long as they *existed* and complied with accommodation licensing and taxation:

New section 3 (3) IF THE JURISDICTION RESTRICTS OR PROHIBITS SHORT-TERM RENTALS AS AUTHORIZED IN THIS SECTION, ANY SHORT-TERM RENTAL IN COMPLIANCE WITH APPLICABLE STATE LICENSING AND TAXING REQUIREMENTS AT THE TIME THE REGULATION RESTRICTING OR PROHIBITING SHORT-TERM RENTALS IS ADOPTED IS CONSIDERED A LEGAL NONCONFORMING USE.

As any county Health Department officer will tell you, licensing and taxation do not consider the zoning compliance of structures and uses. They are solely concerned with issues like safety. Here in Bridger Canyon, we have had several instances of violations that concern misuse of Conditional Use Permits for structures – a zoning issue, not a licensing issue (see Appendix E). You might ask proponents of SB 336 whether their statements to legislators are consistent with statements they have previously submitted to Gallatin County.

This is a bad policy that rewards violators, and again privileges STRs above every other use, even primary residences.

Remedy: Amend this section to require that short-term rentals must also have been in compliance with zoning and other applicable laws. If this cannot be implemented, you should oppose.

It elevates Short Term Rentals above other uses. The analysis burden added to 76-2-104 (pages 7-8) and 76-2-203, 76-2-303 set a different standard for regulation of STRs than any other use. This makes no sense. Why should STRs be uniquely privileged, even above primary residences, public infrastructure like fire stations, or commercial engines like a ski area base?

Remedy: fortunately, this provision has been amended, replaced by a more neutral standard in 76-2-104 (3). However, what remains is at best redundant, given that it states provisions which are part of the rationale for zoning generally. I would recommend striking the addition in the interest of simplicity.

There are internal inconsistencies. The draft does not identify which new section is to be inserted into which chapter and part, so it is difficult to interpret and may introduce additional ambiguities. The proposed Section 1 and Section 2 identify two different criteria for covenants and HOA bylaws to override the determination of residential use, but there is no way to resolve a conflict if these do not agree. These conflicts are likely to lead to litigation.

Finally, I would ask, if the arguments for uniquely permissive STRs are so powerful, why did proponents – some of the same now testifying for this bill - need to resort to misleading testimony on SB 214 and SB 146 recently? We heard that zoning threatens the rights to hunt and have children (though it has nothing to do with these) and that recent arbitrary county interpretations revoked previous STR rights (though in fact there were public hearings and the issues were first raised years earlier). The material arguments for STRs seem to involve doublethink: that putting residents in competition with a commercial use will somehow provide more housing, and that promoting unsupervised investor-owned STRs will somehow prevent commercialization from eroding our communities.

In short, SB 336 breaks the 54-year-old Bridger Canyon General Plan and overrides local control, reversing the will of residents expressed by the overwhelming opposition to the STR amendment considered by our P&Z Commission in December (see Appendices B and C).

As a general principle, state zoning statutes should create a framework for orderly local control of uses. They should not be used to provide special treatment for every interest group's favorite use. Historically, state zoning law has only mentioned broad categories of uses, like agriculture, and that is a wise approach that should be retained.

Respectfully submitted,



Tom Fiddaman, 1070 Bridger Woods Rd., Bozeman

Appendix A

Most STRs are commercial in nature, particularly when they are investor-owned and unsupervised, with an internet front desk. Everyone knows this – even the internet hosts themselves:

 Airbnb
<https://www.airbnb.com> > ... > Common questions

How to start a business on Airbnb - Resource Center

Jun 24, 2022 — **How to start an Airbnb business** and earn money as an Airbnb Host, from assessing your local market and profitability to listing your space.

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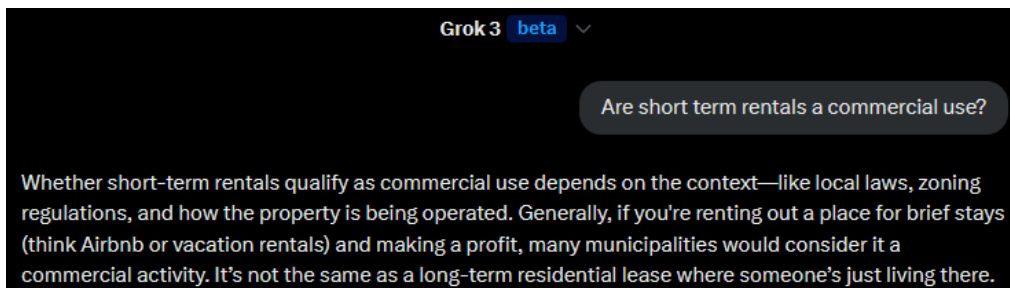
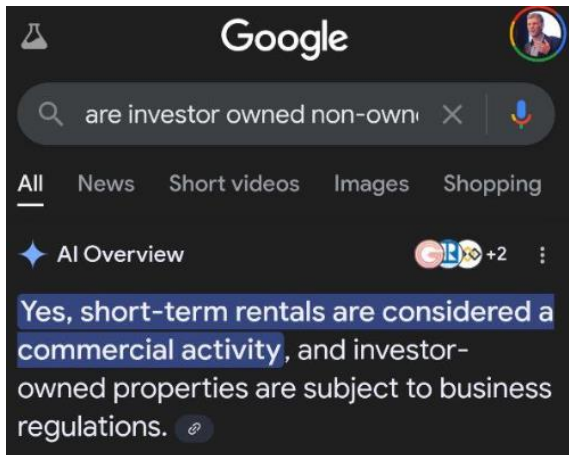
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Appendix B

Tally of public comment from Bridger Canyon residents prior to the Dec. 2024 hearing on a zone text amendment similar to SB 336 in Gallatin County.

----- Forwarded Message -----

Subject: Written comments for Dec 12 Dickson hearing
Date: Wed, 11 Dec 2024 15:27:56 -0700
From: Kent Madin <kent.madin@gmail.com>
To: Tom Fiddaman <tom@metasd.com>, sean.ocallaghan@gallatin.mt.gov

 Public comment for P and Z dec 12 flattened.pdf

Hi Sean and Tom,

I merged the 5 .pdf files you sent me into a single file attached.

My eyes are kind of cross-eyed right now but I searched any names that did not give an address in Montana Cadastral to determine if the writer was a Bridger Canyon property owner and marked them accordingly. There is a key on the first page.

54 BC property owners against the ZTA

6 BC property owners for the ZTA

26 letters from non-property owners

6 of those non-property owners are from realtors or property management companies

The bulk of the 26 non-property owners are in favor of continuance.

I count 86 letters in this file. (could be off by one or two)
those marked with **PO** are property owners within the zoning district and are **AGAINST** the Dickson ZTA.

Some property owners who favor STRs or favor continuance are marked **PO Pro STR**

Non-property owners are noted in **RED**.

Of the 86 letters"

I count **54 property owners against the ZTA**

I count **6 property owners in favor of the ZTA**

I count **26 non-property owners in the Canyon**

Of those 26, all express either support for the ZTA or support for continuance. 6 are either realtors or property managers running vacation rental websites in the Gallatin Valley.

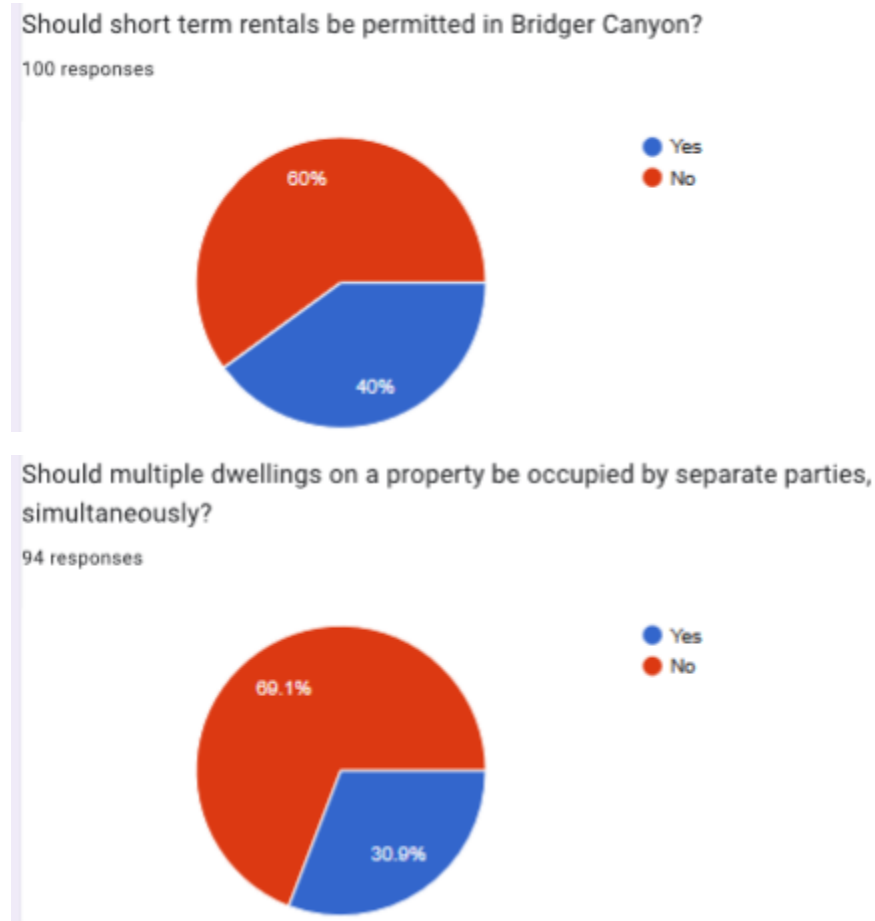
4 are sons or daughters a single Property owner.

Appendix C

The Bridger Canyon Property Owners' Association surveyed members and non-members on its email list, which reaches a majority of residents. A first attempt was marred by multiple sock-puppet responses from STR proponents, but a second attempt – with email registration – predicted public opinion at subsequent hearings well.

Respondents substantially oppose unregulated STRs, and overwhelmingly oppose the density increase from Accessory Dwellings everywhere.

<https://bcpoa.net/2024/05/may-2024-str-survey-preliminary-responses/>



Appendix D

Documentation pertaining to testimony from the SB 214 hearing.

<https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20250211/-1/52583>

Claim: Zoning threatens the rights to hunt, have pets, or determine family size.

Reality: The enabling statutes for zoning do not permit regulation of any of these, nor has anyone tried.

Claim: local governments use ambiguity to arbitrarily reinterpret regulations to ban STRs (among other things).

Reality: zoning regulations have interpretation procedures that provide a fair and open hearing process for resolution of ambiguity. Example: Gallatin County Part 1 Interpretation of use, 3.8.b.:

- 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.

Claim: Gallatin County suddenly reinterpreted its zoning last year.

Reality: Bridger Canyon zoning provided short term rental classifications (known as Recreational Housing and Overnight Accommodations) in the Bridger Bowl Base Area since the 1980s. These classifications were never available in areas that are now contested. The county-convened Zoning Advisory Committee pointed this out in a well-attended public meeting Jan. 10, 2017. Excerpt:

So the matter of right uses, you can just go get a land use permit or any other permit at all. You just do it and there's no remaining standards, but there's certain knowing components of that. Next there is a conditional use permit. To get that, you need to meet whatever standards are set and then get a permit through a hearing. And the nice thing about that is it creates some visibility of what's happening and gives neighbors an opportunity to comment on the permit. And the commission can impose additional conditions, you know,

restrictions on hours of operation or whatever they think it takes for them to negate impacts on neighbors.

And then anything else is that's not listed is implicitly forbidden except that maybe similar enough to an existing to a list of use that you get what's called finding similar use and get permitted that way. So cell towers could come in by finding similar use to a microwave tower. No one has actually done that for a short term rental. So they're not mentioned, no one to obtain a similar use finding, but it's not good. They wouldn't get one if they asked for it.

Full text: <https://bcpoa.net/2024/10/a-bit-of-str-history/>

Appendix E

Previously illegal uses, unrelated to regulation of short term rentals per se, that would be grandfathered.

Claim: Gallatin County revoked previously permitted STRs upon which residents had relied.

Reality: In at least two cases, the revocations primarily concerned misuse of Caretaker's Residences (a conditional use), to house short term renters who are obviously not bona fide caretakers. For example,



Gallatin County WARNING LETTER

March 28, 2024

Jeffrey T. Morrison
Cynthia B. Morrison
14243 Kelly Canyon Road
Bozeman, MT 59715

Sent via First Class, Email, &
Certified Mail # 9589 0710 5270 0950 4662 81

RE: Bridger Canyon Zoning Regulation Complaint (Compliance ID #23-000667)

Property: 14241 & 14243 Kelly Canyon Road, Bozeman, Montana; legally described as Tract 2 of Certificate of Survey No. 1755, located in the SE¼ of Section 1, Township 2 South, Range 6 East, and the SW¼ of Section 6, Township 2 South, Range 7 East, P.M.M., Gallatin County, Montana

Dear Mr. Morrison & Mrs. Morrison:

Thank you for the written response received on February 29, 2024 (Response) in response to my February 13, 2024 Partial Closure & Corrective Action Letter (Corrective Action Letter).

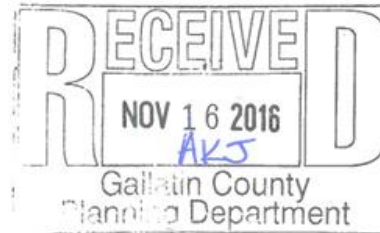
You are receiving this Warning Letter because you have failed to provide a written, proposed plan of correction that includes the specific actions and dates by which you will take those actions to bring the Property into compliance with the Bridger Canyon Zoning Regulation (Zoning Regulation) and Gallatin County "Part 1" Zoning Administrative Regulation (Administrative Regulation).

Caretaker's Residence Conditional Use Permit

The December 2016 Conditional Use Permit #Z2017-030 for a Caretaker's Residence includes four conditions of approval. Based on the information available to me at this time, the status of the four conditions of approval for CUP #Z2017-030, are as follows:

- A. The Conditional Use Permit authorizes the use of the existing 1,650 square foot cabin as a Caretaker's Residence on a permanent basis and shall not be utilized for any other use unless such use is permitted in conformance with the Bridger Canyon Zoning Regulation.
 - The 1,650 square foot cabin on the Property is not being used as a Caretaker's Residence. The cabin is being used as what is commonly known as a short-term rental or tourist home.

14350 Kelly Canyon Road
Conditional Use Permit Application
Jeffrey and Cynthia Morrison
8522 Lookfar Way
Bozeman, MT 59715
406-548-2406
jcmorrison92@msn.com



November 1, 2016

Dear Commissioners and Review Board:

Our names are Jeffrey and Cynthia Morrison. We recently purchased 64 acres located at 14350 Kelly Canyon Road within the Bridger Canyon Zoning District. We are submitting this application for a Conditional Use Permit in hopes of getting approval to make an existing cabin on the property into a ranch hand residence so that we can build a residence for our family on the property.

The property currently has a 1650 square foot cabin in need of repairs and a much smaller log structure of 210 square feet. Our vision for the property is to develop it into a small agricultural business including hay and livestock. We would like to live on the property in a new home and keep the existing cabin for a ranch hand residence. We plan to hire assistance in the agricultural business from a young cowboy from northern Wyoming by the name of Hyrum Hopkin, who was raised and recently employed in the farm and ranch industry.

Due to business and personal travel in the upcoming years we see the need for a caretaker/ranch hand residence. We feel that the existing 1650 square foot cabin is in a good location, and that with repair, could be ideal for a ranch hand residence. The other small log structure would be used for storage. **We do not intend to use any of the structures, proposed or currently on the property, for any rental purpose whatsoever.**

You'll notice on the plot plan the current location of the two existing structures. You will also see the location of the proposed home. We anticipate the new home to require a 2500 square foot footprint with an estimated total square footage of 5,000 square feet. The house would include a garage/ barn that is attached to the home with an enclosed breezeway. The garage is anticipated to be approximately a 30 x 75foot structure. To reduce sprawl on the property, the new house is intended to be 200 feet from the existing log structures and 100 feet from the existing well that would be located directly between the new house and the existing structures. We hope to use the existing well for both homes. The septic system for the new home would be located to the west. We consulted with Environmental Health to ensure this septic location would be suitable. As the plot plan illustrates, we would also like to build a new road that would be a more direct, less steep, route to the new home. At this time we do not have house plans or elevations to present because we feel it is premature to spend financial resources designing a home we currently do not have approval to build. Thank you for your consideration of our application.

Sincerely,


Jeffrey Morrison


Cynthia Morrison