

City Council Special Meeting Agenda

Date: 11/27/18
Time: 4:15 p.m.
Location: City Hall Council Chambers

- ❑ Mayor Matt Hall
- ❑ Donny Anderson
- ❑ Karen Ballinger
- ❑ Jerry Fritz
- ❑ Landon Greer
- ❑ Glenn Nielson
- ❑ Stan Wolz
- ❑ City Administrator, Barry Cook
- ❑ Administrative Services Officer, Cindy Baker
- ❑ City Attorney, Scott Kolpitcke

- ❑ 4:15-4:45 – Discuss Trailhead Planned Unit Development Plan
 - ❑ Staff Reference - Todd Stowell, City Planner

- ❑ Updates – City Administrator -
- ❑ Council Committee Reports
- ❑ Other Matters from Council
- ❑ Meeting Reminders:

- ❑ **Tuesday, December 4, 2018** – Regular Council Meeting 7:00 p.m. Council Chambers
- ❑ **Tuesday, December 11, 2018** – Special Work Session 4:15 p.m. Council Chambers
- ❑ **Tuesday December 18, 2018** – Regular Council Meeting 7:00 p.m. Council Chambers

MEETING DATE:	NOVEMBER 27, 2018
DEPARTMENT:	COMMUNITY DEVELOPMENT
PREPARED BY:	TODD STOWELL
CITY ADM. APPROVAL:	_____
PRESENTED BY:	TODD STOWELL

AGENDA ITEM SUMMARY REPORT

CONSIDER AMENDING THE TRAILHEAD PLANNED UNIT DEVELOPMENT PLAN TO AUTHORIZE ACCESSORY DWELLING UNITS FOR FAMILY MEMBERS

ACTION:

Consider whether to amend the Trailhead Planned Unit Development Plan to authorize accessory dwelling units (ADUs) for family members.

BACKGROUND:

In an effort to collect neighborhood input on their desires for allowing Accessory Dwelling Units in the Trailhead PUD, we scheduled a public hearing and sent the following notice on a postcard to lot owners in the Trailhead PUD.

IMPORTANT—TRAILHEAD VOTE

The Cody City Council will hold a public hearing at their 7:00 p.m. meeting on Tuesday, Nov. 6, 2018 in the Council Chambers (1338 Rumsey Ave.) to consider if the Trailhead Planned Unit Development Plan (all of Trailhead but Phase I) should be amended to permit Accessory Dwelling Units. Accessory dwelling units (ADUs) are fully independent “apartments” with provisions for living, cooking, eating, sleeping and sanitation. Examples would include a basement apartment, an apartment over the garage, and a guest cottage in the backyard. No more than one ADU would be allowed per lot. Please complete and return the following “ballot” to City Hall by Oct. 26, 2018. Questions? call (307) 527-3472.

Within the Trailhead Planned Unit Development, should an ADU be permitted:

- For use by family members (e.g. elderly parents)? YES NO
- For use as a long-term rental (30+ day rental)? YES NO
- For use as a short-term rental (a.k.a. vacation rental)? YES NO
- At all? YES NO
- If ADUs are allowed, should it be required that the owner live on the property? Y N

The city received responses from approximately 31% of the lot owners, who represent 50.2% of the lots in the PUD. The results, which represent one “vote” per lot, are as follows:

76% of the responses indicate support of ADUs for use by family members.

13% of the responses indicate support of ADUs for use as long-term rentals.

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12% of the responses indicate support of ADUs for use as short-term rentals.

96% of the responses indicate that if ADUs are allowed, it should be a required that the owner live on the property.

The only option presented that has any substantial support is that of allowing ADUs for use by family members, on the condition that the owner is living there.

That being the case, the Council would be able to act to amend the Trailhead PUD Plan in that manner with apparent clear support for the change. However, there are other considerations.

Conflict with Covenants:

Amending the PUD plan while leaving the Trailhead PUD Covenants unchanged could be interpreted as a conflict since the covenants limit all lots to “be used only for single family residence”. While the City does not generally enforce private covenants, there exists the potential that the City could change the PUD plan, issue permits for an ADU for someone’s family member, and then have a party to the covenants sue to have the covenants enforced and the City’s permits invalidated. What chance this would have of actually occurring is only speculation.

The Trailhead covenants require 60% of the lots to agree to amend the covenants. In the City’s efforts, the 76% in favor of ADUs for family members only represents about 36% of the lots—well below the 60% required to amend the covenants. However, with the petition signatures that will be noted later in this report, the 36% jumps to about 50%, only 10% less than needed to make a change to the covenants. It may be advisable to require the Trailhead lots owners to amend the covenants before, or at least in conjunction with, the city acting to amend the PUD Plan if the conflict with the covenants is a concern.

Other Options for Family Members:

The “ballot” specifically asked about fully independent dwelling units. It was not meant to address what is thought to be a much more common scenario—that of additional family members moving in and all living as effectively a single household. That scenario is available to all dwellings in Trailhead (and throughout the City).

In practice, family members can move in with other family and it does not change the classification of the single-family dwelling or even create an ADU if they interact as a single household. I speculate that most people that are looking at having a family member live with them would choose this option rather than create an independent ADU, due to the building code requirements and resulting expenses that are triggered in creating a separate dwelling unit—especially if they do not have the option to rent it out after the family situation ends.

All of these issues point to the complexity of the situation, and range of options. Additional points and ideas may occur at the public hearing on this matter. After hearing whatever additional comments are received, all input will need to be considered by the Council in deciding what direction to go.

It is noted that Beau Egger, an owner of a lot in Trailhead, collected signatures on a petition regarding accessory dwelling units. The petition is attached. While it requests that ADUs be

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permitted in Trailhead, it does not have details about use of the ADU that the “ballot” identified (e.g. short or long-term rental).

While petitions generally do not have the component of independence and weight as an individual ballot or letter, the petition was analyzed with the following results. The petition represents 37 lots and the owners of 10 of those lots also sent in ballots. Those 10 lots are already accounted for in the above analysis. It is unknown why the owners of the remaining 27 lots did not send in ballots, as requested by the notice. Whether the 27 lots should be counted could easily be challenged. However, even if they are counted and the most liberal interpretation presumed—that an ADU should be permitted in all cases and that there should not be an owner occupancy requirement, the petition does not come close to flipping or even equalizing any of the overall results. The results would be approximately as follows:

80% of the responses indicate support of ADUs for use by family members. (vs. 76%)

30% of the responses indicate support of ADUs for use as long-term rentals. (vs 13%)

29% of the responses indicate support of ADUs for use as short-term rentals. (vs 12%)

77% of the responses indicate that if ADUs are allowed, it should be a required that the owner live on the property. (vs. 96%)

Side Notes: It is noted that the following information calls into question the impartiality and representative nature of the petition. Staff received a complaint from a lot owner in Trailhead indicating that the way the petition was presented was very intimidating, to the point that they signed the petition, but later submitted a ballot in opposition. There appears to be a second instance of conflicting responses between a ballot and petition signature as well. It is evident from some of the letters that were submitted (attached) that the “story” presented to the neighbors regarding Beau Egger’s basement situation varies substantially from staff’s perspective. Making the City out as the “bad guy” is a common tactic to gain sympathy for one’s cause, yet dilutes the legitimacy of the petition. Lastly, the petition does not reflect how many lot owners refused to sign the petition. If all lot owners were approached, the petition represents only a 16.9% signature rate (lot basis)—far from a majority and well below the 50% of the lots represented by submitted ballots.

FISCAL IMPACT

No direct impact to the city budget is expected in amending the PUD Plan.

ALTERNATIVES

Determine whether or not to amend the Trailhead PUD Plan, and if so, in what manner.

RECOMMENDATION

Staff would recommend that Council not take any action on amending the PUD Plan at this time. If the Trailhead HOA is able to obtain a minimum of 60% support for amending their covenants to allow ADUs for family members (or otherwise), then Council could take action to amend the PUD Plan to match.

At this point, Council would only indicate an openness to amend the PUD Plan if the covenants are first amended.

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ATTACHMENT

Letter(s) submitted for public hearing.
Petition collected by Beau Egger

Written Public Comments received in response to notice of public hearing to consider if the Trailhead Planned Unit Development Plan should be amended to permit Accessory Dwelling Units.

Comments written on post card responses:

“My understanding is no kitchen—still single family.” (Ballot generally in favor of ADUs)

“No Absentee Landlords. I Do Not want guest cottages in back yards.” (Ballot in favor of ADUs)

“No guest cottage in the back yard.” (Ballot in favor for family only)

“Why!! We were promised so many things and got none! Plus, the yearly amount is for what?” (Ballot opposed)

“But we are zoned single family dwellings.” (Ballot opposed)

“We very strongly feel that Beau Egger should be allowed an exception—allowing his project to be accepted by the City.” (Votes NO otherwise. See also letter from same.)

Letters submitted (Attached):

Oct. 16, 2018 Letter from David & Bendene Engelhardt. (Signed petition supporting Beau Egger, yet says NO otherwise.)

Oct. 31, 2018 Letters from Bob & Ruth Bayuk to Todd Stowell and Members of Planning and Zoning Board. (Opposed to allowing accessory dwelling units in subdivision. Not opposed to allowing Beau Egger an ADU.)

110 “Ballots” returned by lot owners in Trailhead PUD (Ballot below. Results attached.):

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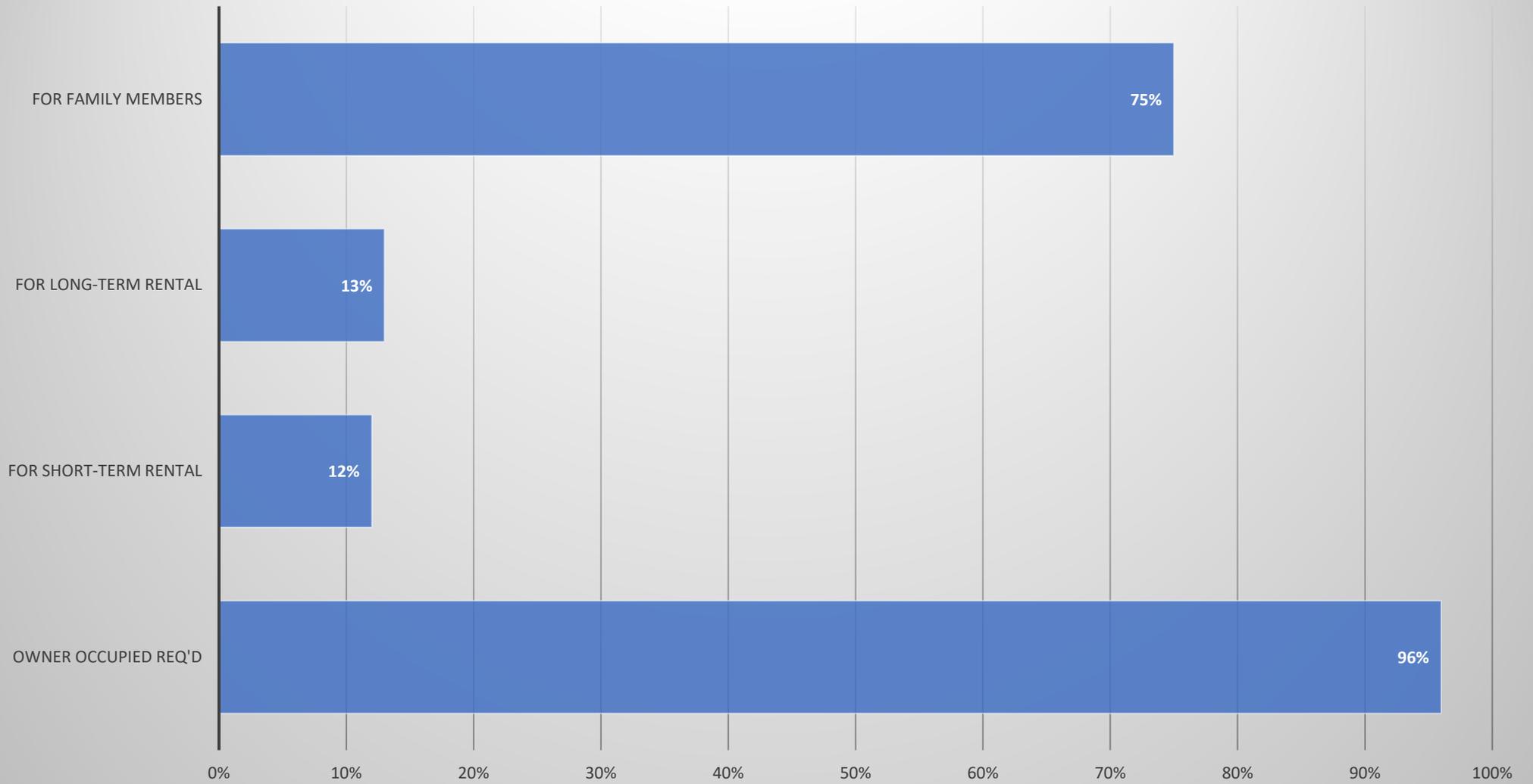
For use as a short-term rental (a.k.a. vacation rental)? YES NO

At all? YES NO

If ADUs are allowed, should it be required that the owner live on the property? Y N

Petition submitted by Beau Egger, representing 37 lots (10 of which also returned ballots). Attached.

Percent of Trailhead Responses that Support ADUs:



Responses represent 50.7% of lots in Trailhead PUD (111 of 219).

October 16, 2018

RE: Public comments of Trailhead Subdivision PUD

Dear Mayor Hall and members of the Cody City Council,

My apologies for this short letter, but my wife and I will be out of town and unable to attend the public hearing scheduled for November 6, 2018.

Pease accept our enclosed "ballot" and consider these comments:

- 1) City Planner Todd Stowell's comments on Trailhead Subdivision's HOA are correct; the HOA is "barely functioning". Having lived in Trailhead for nearly 5 years and attended the annual HOA meetings, there have been several discussions on the restrictive covenants and the lack of enforcement of them. The most recent HOA meeting (spring of 2018) ended with a discussion that the current covenants are unenforceable as written. Given that history, this issue needs to be resolved at the City level rather than relying on Trailhead Subdivison's HOA.
- 2) I have spoken at length with Beau Eggers and sincerely believe that he has made a "good faith effort" during the process of modifying his residence to be in compliance with the City of Cody's applicable building/use code(s). In addition, I feel that he is genuinely trying to be a good neighbor and we personally have seen no negative impact from the commercial use of his residence. In that light, after discussions with my wife, I have signed the petition supporting Beau.
- 3) That being said, our enclosed ballot is marked, "No" not at all. I feel that the City Council should take definitive action to address this issue by closing the door to similar usage (ADU's) in the future. In fairness to Beau Eggers, given his efforts to comply with the existing City code, the amount of time, money and effort he has invested; his home needs to be "grandfathered" in as an exemption.

My best regards and sincere thanks to each of you for your time in considering and addressing this issue.



David & Bendene Engelhardt, 3313 Twin Creek Trail Ave (307) 250-1832

Mr. Todd Stowell and members of the Planning and Zoning Board,

October 31, 2018

First, we would like to thank Mr. Stowell and members of the Planning Board for raising awareness of particulars surrounding allowing accessory dwelling units being considered in planned unit developments in the City of Cody. Second, we would like to thank each and every member of the Planning and Zoning Board for devoting their time and energy in a usually thankless pursuit of serving the community in which we all live.

A recent article, reported by Ms. Rhonda Schulte in the October 15 edition of the Cody Enterprise, caused some concern in some who live in the Trailhead subdivision. The article noted that there was a lack of interest or concern about the issue of accessory dwelling units being located in the Trailhead subdivision. If there is a lack of interest, it is likely because of a lack of knowledge of the proposal(s) rather than apathy or lack of caring for what takes place in our neighborhood. A brief drive around the Trailhead neighborhood will readily reveal intense interest and caring for the neighborhood as evidenced by the care taken of the homes and properties. For the most part, our neighbors care deeply, intensely and fervently about how the neighborhood looks. Yards, lawns, landscaping, and upkeep of properties in the Trailhead subdivision are very much a demonstration of a commitment to the wellbeing of the neighborhood. Conforming to the guidelines and rules of the Homeowner's Association is clearly evident. And, for many with whom we have spoken, the Homeowner's Association guidelines were a significant reason for choosing to live in the Trailhead neighborhood.

Another concern highlighted by Ms. Schulte's article was the reported "barely functioning" status of the Trailhead Homeowner's Association. While neither of us are Board Members of the Trailhead Homeowner's Association, we are residents. We are interested in the neighborhood. We care that our neighbors uphold the guidelines set forth in the Association's documents. We agree that discussions have been very limited. Nowadays, involvement in most any community activity is very limited unless there is an immediate, direct, and consequential need.

Regarding solicitation of input by the City and the Planning Board: residents received a standard-sized postcard soliciting input about accessory dwelling units in the neighborhood. Thank you for doing that. It should be noted that the means of gathering input did not follow the suggestion of Mr. Higbie or Mr. Jones to have a return envelope along with a detailed ballot. We hand-delivered our comments directly to the Planning Office. Getting information, from interested parties, by this (or any) method is difficult under the best of circumstances.

As residents of the Trailhead subdivision, we, and other residents with whom we have spoken, are opposed to allowing accessory dwelling units in the subdivision. The allowance of these types of dwelling accommodations goes against the concepts of the planned development and the understanding of homeowners who elected to live in the Trailhead subdivision.

Bob and Ruth Bayuk
3301 Appalachian Ave.
Cody, WY 82414
307-213-5272

Handwritten signatures of Bob and Ruth Bayuk in cursive script. The signature for Bob is on top and Ruth is on the bottom.

Mr. Todd Stowell and members of the Cody Planning and Zoning Board.

October 31, 2018

Mr. Beau Egger, a neighbor of ours in the Trailhead subdivision, asked us to consider a petition he was circulating regarding a change in the status of his property on Twin Creek Trail Road. He had made changes to his single home residence to allow for an apartment in the below-grade level of his home. He said that he had been working with the Planning Board for quite some time and had complied with all directives and suggestions for the apartment to be in compliance with existing zoning, planning and ordinance requirements. At some point, Mr. Egger was advised that his apartment in his single-family home may not be in compliance with requirements of the planned unit development designation of the Trailhead subdivision. Clearly this was disconcerting to Mr. Egger as he had complied with all directions and suggestions of both Mr. Stowell and the Planning Board.

In our opinion, Mr. Egger's project should be allowed in our subdivision. He completed all modifications to his dwelling according to directions offered by the City. He obtained all necessary City permits and kept in contact with Mr. Stowell about his home modifications. While there may now be a question of this apartment being allowed in his home in the subdivision, he should be allowed this exception or variance. He proceeded with the project in good faith. Mr. Egger should not be penalized because of a change of thinking on the part of the Planning Board after following their direction.

Bob and Ruth Bayuk
3301 Appalachian Ave.
Cody, WY 82414
307-213-5272

Handwritten signatures of Bob and Ruth Bayuk. The signature for Bob is written above the signature for Ruth. Both signatures are in cursive and appear to be in black ink.

October 7, 2018

Trailhead Subdivision Residents

City of Cody, Park County, Wyoming

To Mayor Matt Hall and Council Members:

Over the last (6) months there has been discussion between the City Planner, the remaining members of the Trailhead Home Owners Association, and subdivision residents regarding the approval and lawful permitting of Accessory Dwelling Units (ADU) within the Trailhead Subdivision. Attempts to work with the City Planner, Homeowners Association, and the City Council have been met with little to no results, and have only further confused subdivision residents regarding the permitting and enforcement of the PUD restrictions and City Code.

By signing below we show support for the permitting of Accessory Dwelling Units within the Trailhead Subdivision with the conditions that the ADU is built at the time of construction or any time thereafter and the ADU must be within the footprint of the residence and cannot be in a detached outbuilding.

Please consider this letter as affirmation and support of our rights as property owners and community members to have a voice in the usage and management of our own property.

Thank You,

Members of the Trailhead Subdivision.

Name	Address	Signature	Phone Number
BEAU J. EGGEN	3214 TWIN CRK. TRAIL AVE	<i>Beau J. Eggen</i>	250-0319
LAYNE STEWART	3208 Twin Creek Trail Ave	<i>Layne Stewart</i>	272-2006
Lette Stewart	3207 Lame Deer	<i>Lette Stewart</i>	250-6656
Daniel M. Zientek	3314 Twin Creek Trail Ave	<i>Daniel M. Zientek</i>	250-1702
Mike Emmert	3301 Twin Creek Trail Ave	<i>Mike Emmert</i>	250-0964
Martin Schauer mann	3225 Twin Creek Trail Ave.	<i>Martin Schauer mann</i>	(970) 302-6902
Sara Schauer mann	3225 Twin Creek Trail Ave.	<i>Sara Schauer mann</i>	(307) 460-0110
Landon Green	3213 " " "	<i>Landon Green</i>	272-1803
Quel Green	3213 Twin Creek Trail Ave	<i>Quel Green</i>	254-1761
John Casey	3201 TWIN CREEK TRAIL AVE	<i>John Casey</i>	272-9236
John Smith	207 Pleasant view	<i>John Smith</i>	271-2950
Deb Zehill	3219 Twin Creek trail ave	<i>Deb Zehill</i>	605-695-3773
Jon Zehill	" "	<i>Jon Zehill</i>	307-213-0386
Brian Sullivan	3126 Twin Ck Trl Ave	<i>Brian Sullivan</i>	435-720-7414
Margo Sullivan	3126 Twin Ck Trl Ave	<i>Margo Sullivan</i>	435-720-7517
Rebecca Elkins	3131 Twin Creek Trail Ave	<i>Rebecca Elkins</i>	307-272-9500
Paul Johnson	3120 Twin Creek trail Ave	<i>Paul Johnson</i>	509-899-4715
James Kubeck	3119 Twin Ck Trl Ave	<i>James Kubeck</i>	307-899-4202
Jake Tuten	3113 Twin Ck Trail Ave	<i>Jake Tuten</i>	307-899-4634
Deak Moore	3102 Twin Ck Trl	<i>Deak Moore</i>	250-7044
DAVID ENGELHART	3313 Twin Ck Trl	<i>David Engelhart</i>	250-1832
Jack Kubeck	3119 Twin Creek TR	<i>Jack Kubeck</i>	899-4204
ZACH SMITH	3108 LAME DEER	<i>Zach Smith</i>	250-6085
BILL PECK	3130 LAME DEER	<i>Bill Peck</i>	925-963-0533
Kathy Donchat	3101 Lame Deer	<i>Kathy Donchat</i>	512-213-5510
Michael Whitmore	3107 Lame Deer	<i>Michael Whitmore</i>	307-214-0741
Michael Neihoff	3119 Hardpan Ave	<i>Michael Neihoff</i>	307-752-5880
Kelly Nicholson	3131 Hardpan Ave	<i>Kelly Nicholson</i>	307-250-9774
Randy Smith	3107 Hardpan Av	<i>Randy Smith</i>	316-217-2074
Parla Smith	3107 Hardpan Ave.	<i>Parla F. Smith</i>	316-217-2052
Jacy Mojetic	3119 Lame Deer Ave	<i>Jacy Mojetic</i>	303-941-4318
Whitney Meyerich	3119 Lame Deer Ave	<i>Whitney Meyerich</i>	281-407-2130
Cody Courtmaker	3002 Hardpan Ave	<i>Cody Courtmaker</i>	307-899-3375
	3004 Hardpan Ave		
	3038 Hardpan Ave		
	+ 3 Other Lots		

