



# Yellowstone County Board of Adjustment

## Minutes

January 14, 2016

The County Board of Adjustment met on Thursday, January 14, 2016 in the 1<sup>st</sup> Floor Conference Room, of the Miller Building located at 2925 3<sup>rd</sup> Avenue North. Chairperson Hecker called the meeting to order at 4:00 p.m.

Name	Title	01/14/2016	02/11/2016											
<b>Bruce Reiersen</b>	Board member	<b>E</b>	-											
<b>Blaine Poppler</b>	Board member	<b>1</b>	-											
<b>Carlotta Hecker</b>	Chairperson	<b>1</b>	-											
<b>Delores Terpstra Miner</b>	Vice Chairperson	<b>1</b>	-											
<b>Robert Bailey</b>	Board member	<b>E</b>	-											

**Chairperson Hecker** introduced the County Zoning Commission members and staff in attendance: Nicole Cromwell, Zoning Coordinator; Tammy Deines, Planning Clerk. Dave Mumford, Director, City Public Works Department; Will Robbins, Project Manager, Public Works Engineering; Vester Wilson, Solid Waste Superintendent, Public Works Solid Waste. Robert Church, Consultant, Great West Engineering; Commissioner John Ostlund, Councilman Richard Clark

**Attending:** Gail Homes; Doug & Diane Dolph; Ellen Knight, Matt Fetter, Georgia Garland, Jill Egan, Carla Bell, Denn McDonald, Eric Nord, Joe Mann, Paul A. Aaby, Laura Blatz, Lacy Tangedahl, Debi & Steve Stokke, Ben and Lisa Ballew, Paul Dennehy, Kelly Strobel, Patricia Bentley, Darlene and Bob Keefer, Joel Guthals, Gary Szhaff, Jim Clevenger, Ann Guthals, Mary Johnston, Dean Clark, Dave Bentz, Sherry Bentz, Gerry Sheppard, Loren Skjeret, Joel Leite, Tom Moore, Roger Kesler, Rhonda Megorden, Craig Megorden, Carey Ziebarth, Larry Bean, Carol and Pat Hagan, Jim and Kathy Boelter, Jet Holubek, Steve Shinnors, Al Quamen, Jeff Bollman, Alan Kuntz, Brad? Leach, Rose Cook, Kara J. Streets, Gordy Roma, Mary Scrim Dyre, Don Dejarnett, Ryan Wittman, Wayne Burke, Brenda Burch, Heather Weiland, Mike Weiland, Brian Hanson

**Public Comments**

Chairperson Hecker opened the public comment portion of the meeting and asked if anyone wished to speak on an item not on today’s agenda. Several citizens spoke out of turn, voiced dissent with the conference room size, and demanded to be heard. Chairperson Hecker asked those in attendance to follow the hearing procedures and asked them to act in an orderly fashion. She closed the public comment portion of the meeting.

## Approval of Minutes: December 10, 2015

### Motion

**Board member Miner moved and Board member Poppler seconded to approve the December 10, 2015 meeting minutes as submitted. The motion carried with a unanimous voice vote.**

**Disclosure of Conflict of Interest:** There was none.

**Disclosure of Exparte Communication:** Zoning Coordinator Nicole Cromwell noted 2 e-mails received by staff from Jennifer Takacs, dated Monday, January 11, 2016; and Sandra Hawke, dated Monday, January 11, 2016

### PUBLIC HEARINGS:

**Item #1 County Variance #279 – City of Billings Landfill Expansion – Land Use Contrary to Zoning** - A request to use public land contrary to zoning by a public agency on the following parcels: A - an un-platted parcel of land described as the NENE1/4, Section 29, Township 1 South, Range 26 East, in an Agriculture Open-Space (A-1) zone, a 34-acre parcel of land: B - an un-platted parcel of land described as the N1/2SE1/4, Section 29, Township 1 South, Range 26 East, in a Public zone, an 80-acre parcel of land: C – an un-platted parcel of land described as the N1/2SE1/4 Section 29, Township 1 South, Range 26 East, in an Agriculture-Open Space (A-1) zone, an 80-acre parcel of land: D – an un-platted parcel of land described as the S2SE4, S2SW4 (LESS COS 1130, 1443) Section 29, Township 1 South, Range 26 East, in an Agriculture-Open Space (A-1) zone, a 144.26 acre parcel of land. The City of Billings intends to expand the existing landfill south and east of Hillcrest Road. The County Board of Adjustment has no power to approve, deny or attached conditions to the proposed use. State law (MCA **76-2-402**) requires a forum before the Board of Adjustment to receive public comment. The City of Billings is preparing a separate application to the Department of Environmental Quality (DEQ), the regulatory authority for the State of Montana that reviews landfill expansions. Tax IDs: D02012, D02012B, D02007 & D02008.

### RECOMMENDATION

The Planning Division is recommending the Board conduct the public hearing and allow comment on the landfill expansion plans.

Chairperson Hecker asked Zoning Coordinator Nicole Cromwell to give the determinations for granting a variance and review the rules for the procedure by for conducting public hearings. She stated the chairman has asked those wishing to speak to keep comments to 3 minutes. Mr. Guthals objected to the 3-minute limitation as he is representing a number of people and has substantive comments. He demanded to make these comments to this Board. Others in this offered to “give their 3-minute allotment” to allow Mr. Guthals to speak for an extended time period.

Ms. Cromwell read the legal description and reviewed the staff report with a PowerPoint presentation for the audience. She stressed The County Board of Adjustment has no power to approve, deny or attached conditions to the proposed use. She referred to a posted map and clarified the existing zoning on the property. The property is located on both sides on Hillcrest Road but there is no intent to abandon Hillcrest road. State Statue 76-2-402 sets out the procedure s for this hearing and the role of the Board of Adjustment to moderate today's meeting and receive all of the public comment. She defined the phrase, “Land use contrary to Zoning” and stated the landfill expansion will have to have City Council approval for the construction and expansion; and there will be two more opportunities

for public input. She deferred all questions to the applicant and the applicant's agent. Chairperson Hecker asked interested citizens to write down their questions and hold them until recognized.

### **Applicant Presentation**

#### **Robert Church, Great West Engineering, ([rchurch@greatweteng.com](mailto:rchurch@greatweteng.com)), 2501 West View Dr., Billings, Montana**

Mr. Church stated he is very familiar with this property as he has worked with the City on landfill projects since 1991. The City hired his company to put together the permitting and licensing for the landfill expansion. He circulated a Billings Landfill Expansion Fact Sheet including an aerial photo to the audience and the Board. The City purchased this property for the purpose of obtaining to expand the landfill license boundary to the east and south of Hillcrest Road, and provide long term options for the City and Yellowstone County. The State of Montana has already licensed the western portion of the landfill. The existing landfill has about 40 years of remaining capacity so no disposal will take place on this parcel for about 40 years. This request is a long term investment by the City to secure disposal space. The City is considering expanding its compost and recycling operations, which might be moved to this property before the 2055 time period. He noted a graphical description of the site's soils and geology with test pit and boring locations. Of the 41 borings and 21 test pits, only one test boring that showed ground water. Mr. Church said from a landfill perspective, this good as there is not a groundwater resource to be polluted. As an additional protection, the City has taken additional precautions and the facility will have lined landfill cells. This landfill has been at this location since the early 1970's and there has never been any indication of pollution of ground waters. The City completed an exhaustive environmental assessment and there are no environmental resources that would hinder this property. As a part of the expansion to the south of Hillcrest Road, the City has made commitments to improvements on Hillcrest Road to improve site distance including building a right hand turn lane, and making shoulder and grade improvements for traffic accessibility. He pointed out a figure in the handout that depicts the improvements. The existing scale facility will be moved onto the new property within 10-20 years. The City submitted the application last April and comments were received in the fall. The State will be conducting their review and will provide notice for a public hearing where DEQ will take public comment. A citizen asked how they will be notified and Director Mumford replied, "The Billings Times" There was an outburst of laughter and comments of dissent from members of the audience. Chairperson Hecker called for order and asked Mr. Church to finish his presentation. Mr. Church stated he will forward this meeting's sign in sheet as part of the DEQ notice. He said their expectation is this will be licensed at some time next year.

He listed the contacts included on the fact sheet:

**Contacts: Robert Church, Great West Engineering, [rchurch@greatweteng.com](mailto:rchurch@greatweteng.com), 406-495-6177; Will Robbins, PW Engineering, [robbinsw@ci.billings.mt.us](mailto:robbinsw@ci.billings.mt.us), 406-657-8237; Vester Wilson, Solid Waste Superintendent, [wilsonv@ci.billings.mt.us](mailto:wilsonv@ci.billings.mt.us), 406-247-8620; Mary Louise Hendrickson, Montana DEQ, 406-444-1808, [MHendrickson@mt.gov](mailto:MHendrickson@mt.gov)**

#### **Paul Abbey, 6200 Southridge Road, Billings, Montana**

Mr. Abbey asked for clarification of the construction timeline and if the City's commitment to the road improvements will take place prior to the movement of the scales. Mr. Church responded, "Yes."

#### **Joel Leite, 5245 Crestview Road, Billings, Montana**

Mr. Leite asked how this meeting who received noticed of this meeting. He asked if staff will

commit to notices south of the river. Nicole Cromwell stated as required by regulation, Staff notices by mail all property owners within a radius of 300-feet of the exterior boundary of the property; places legal notices in the Billings Gazette to be published twice one week apart with the last publication being

15 days before the public hearing; and posts a zoning request sign on the property. She stated the public notification was effective for the purpose of this zoning hearing. There were several outbursts of dissent from the audience. Mr. Abbey interjected and spoke to his experience with providing public notices in Blue Creek. He said it is difficult to notice everyone and door-to-door notice is the most effective means. Nicole Cromwell stated staff submitted the legal ad and it was published in the classified section of the Billings Gazette as it is the paper of record for Yellowstone County.

**Gary Szhaff, 5620 Windrift Road, Billings, Montana**

Mr. Szhaff asked about the dumping process. Mr. Church said there will be an on grade crossing constructed on Hillcrest Road to go to the dump.

**Gordy Roma, 3870 Crestridge Court, Billings, Montana**

Mr. Roma asked if a stop light will be placed at the intersection. Mr. Church said the design has not been completed but it will be either a stop sign or a light.

**Mr. Bud Leach, 5708 Windrift Road, Billings, Montana**

Mr. Leach stated he has been a resident in this area for 36 years. He said that due to the number of traffic accidents, the intersection at Blue Creek Road needs a stop sign and a cautionary light. During the summer, the distance from Jellison Road to the scale is packed with traffic trying access the dump. Mr. Leach spoke of new developments coming on Hillcrest Road with about 270 houses which will create a tremendous amount of traffic. He suggested alternate routes be used for the landfill. He said if this is not addressed it is neglect of public safety.

Public Works Director Mumford stated the City is in the permitting process and is not intending to do anything at this time. He thanked Mr. Leach and the audience for their comments. He stated he would be happy to have a separate meeting to address issues with the current operation. He emphasized that the City is not going to be making improvements to Hillcrest Road for 10-20 years. The City initiated this process to get it permitted to allow for expansion as there is no additional landfill area available. If the comments are mostly technical on the current operation he would like to have a separate meeting. He said nothing is happening with this permit for at least 15 years.

**Alan Kuntz, 5445 Crest View Drive, Billings, Montana**

Mr. Kuntz stated he will be one of the most affected landowners due to the location of his property. He voiced concern with his property values. Mr. Kuntz is against the proposal for the road. He said he contacted Mr. Mumford regarding the landfill master plan and landfill cleanup of garbage along the fence, and did not receive answers. He commented on the negative responses he receives from realtors and others due to the mess at the dump. He said if this is approved, he will have an additional stigma of driving through the dump to get to his house. He said the City is not thinking of the taxpayers or the property owners; and there should be other ways of operating the landfill without using Hillcrest Road. He suggested using an overpass or underpass underneath the highway for an

access and save the money of constructing a new container site and scale. Public Works Mumford stated he doesn't disagree with Mr. Kuntz and he regrets Mr. Church brought up preliminary information as there are no design plans in place.

Several persons spoke out of order. Chairman Hecker warned participants to follow the meeting order or she will close the meeting. She stressed the importance of order so everyone may be heard.

Mr. Kuntz continued and the City will make this happen sooner than later and voiced concern with the at-grade crossing. He suggested improvements to an at-grade crossing as there have been accidents at the intersection. Robert Church said there are concepts discussing improvements to Hillcrest Road that used an overpass or an underpass but they have not moved to the design process. The landing will be improved to meet MDT standards. Mr. Kuntz reported vehicles waiting on Hillcrest to enter the dump.

**Gerry Sheppard, 5748 Windrift Road, Billings, Montana**

Mr. Sheppard reported that he has a pond on the opposite site of Stratton Road and at for the last few years it has an oily substance coming into the pond. He as contacted the City of Billings and they have not taken a sample for testing. Mr. Sheppard asked why this has not been addressed. He said there is groundwater and a spring on the landfill property. The ponds are 25 year ponds and he asked what will happen if a 50-year storm event takes place. He suggested alternately building the road in a coulee behind the electric business. He voiced concern with the wind strewn garbage.

Chairman Hecker cautioned the audience and stated these concerns are related to the design process. Mr. Kuntz stated they want to be involved in the decision making process and they don't want four persons making decisions at the table. Mr. Sheppard said he has filed complaints about the strewn garbage and it has not been addressed which is not fail.

**Gail Holmes, 5245 Crestview, Billings, Montana**

Ms. Holmes reiterated language from the City website and said a variance is not allowed to create anything that creates a hardship to the committee. Director Mumford said this language does not apply for this application as this request will be decided by DEQ. Nicole Cromwell clarified and said this application is not a formal variance from the zoning code and the criterion for granting variances does not apply to this application. State law allows this public hearing for land uses contrary to zoning and DEQ completes the review for the permit.

**Laura Blatz, 5714 Wood Rose Drive, Billings, Montana**

Ms. Blatz said the population in this area will double in 20 years and there will be more concern at that time. She said the City is proposing to fill a valley, and she noticed the homes in the area have a view of the landfill area even at large distances. She stated if this is approved, their view will be affected along with property values. She said they purchased their property due to their desire to live in the country; not to drive through a landfill.

**Dave Bentz, 5345 Crestview, Billings, Montana**

Mr. Bentz asked who will be reimbursing the loss of value to the real estate?

**Joel Guthals, 5843 Deer Park Road, Billings, Montana**

Mr. Guthals asked for clarification on the process and procedures for this hearing as there have been several comments of testimony in opposition. Chairperson agreed to take comments at this point of the meeting.

Mr. Guthals is speaking in opposition on behalf of his wife, Ann Guthals, and his sister-in-law Ellen Knight, (6112 Sunflower, Billings, Montana). He said his residence is within a mile of this proposed site and Ellen's residence is within .75 miles. He is also speaking on behalf of the Hillcrest Natural area foundation which owns and operates a public park for the benefit of the City and the citizens of their community. He suggested this issue should be taken to the legislators that enacted this statute since the authority of this Board does not have the power to deny the proposed use. He said the statute allows public entities such as the City of Billings to violate laws and regulations and citizens are unable to do anything about it. He commented this hearing is not a "sham", and although this Board cannot deny the application, it can make comment in the public interest and there is no prohibition in the statute for passing a resolution.

Mr. Guthals said the citizens' intention is to live in a rural natural area. Under the proposal, Hillcrest Road will become the main access road to the landfill and residents will have to drive through the largest landfill dump in the state of Montana.

He that said once the City obtains the permit, the City will do what is expedient for their purposes. He stated contrary to the City's statement, the Billings landfill not a good neighbor as it is an eyesore and violates State law in its operations. There is a lack of monitoring by DEQ as to what goes into the dump. Mr. Guthals has forwarded letters, calls, and e-mails in the form of complaints and most of the communications have gone ignored. The footprint of the dump has expanded over the years moving closer to Hillcrest and Stratton roads.

Mr. Guthals submitted a copy of his letter to the City dated May 13, 2013 to the Board as evidence. The letter includes attached photographs of trash that has disseminated across other properties. Mr. Guthals stated he received no response to his letter from Superintendent Vester Wilson. Mr. Guthals said his letter includes a memorandum of twenty remedial actions for the Billings Landfill. He said the landfill is a nuisance as it is an endangerment to safety and health, and read aloud portions statutory references dealing with garbage within 200 yards of a public road and defines public nuisance. He said the landfill is a public nuisance and violates the statutes of the State of Montana. The City has been actively promoting other Cities and Counties to bring their trash to the landfill. Mr. Guthals stated history will repeat itself if this permit is granted to the City.

He pointed out this proposed site is in the middle of several private properties. He said there are 350 platted homes within 1 mile of the landfill and they all will suffer negative impacts. This is a highly used area and this will have a substantial effect on the values on future residents. He commented the City should consider the potential for inverse condemnation claims.

Chairperson Hecker asked Mr. Guthals to move towards conclusion of his statement.

He stated Hillcrest Road should not become the main road to the dump, as it will necessitate residents to drive through the dump to and from their homes. Regarding the water issues, Mr. Guthals said the proposed dump site is in a watershed that flows into residential properties and eventually flows into Blue Creek. This proposal will create a vast wasteland of what is now beautiful property and will be there in perpetuity beyond the residents' lifetimes. Currently this site is unspoiled range land with a diversity of natural life that is adapted to the soils and climate which will be gone if this proposal is approved.

Mr. Guthals asked the Board to determine the application is not in the best interest of the public and hundreds of neighbors that reside in the area. (Applause by audience).

**Jill Egan, 4020 Hillcrest Road, Billings, Montana**

Ms. Egan asked where they should go to request denial of this application. Mr. Church said Montana DEQ has the ultimate license authority. Director Mumford clarified and stated DEQ will consider the permit. Nicole Cromwell stated the Board of Adjustment has no decision authority to decide whether or not the City expands the landfill. She said this application will be decided through the review and approval process for DEQ, the City of Billings, and City Council. DEQ will schedule public hearings within next the next few months and suggested contacting Mary Louise Hendrickson, Montana DEQ. Ms. Egan stated she appreciated the City's effort to install the fence and she feels it is an improvement to the landfill.

Chairperson Hecker recognized the clerk who asked participants to identify themselves with name and address for the record.

**Pat Hagan, 3509 MacDuff Circle, Billings, Montana**

Mr. Hagan stated he doesn't understand why this location was chosen for a landfill and said this proposal will make the situation worse. He asked why it is located so close to the City.

**Brian Whitman, 3865 Crestridge Court, Billings, Montana**

Mr. Whitman stated he concerned the City may expedite the use of this property if this is approved. He has asked if there has been any discussion with increasing the waste intake. Director Mumford replied and said there is not another large landfill between here and Baker. He pointed out that Yellowstone County residents are contractual users. The City has to use the existing property before moving, which is at least 40 years. Mr. Whitman asked if there have discussion about using alternative methods. Mr. Mumford stated the City is trying to improve and extend the life of the current facility. They have had discussions to consider recycling alternatives such as bundling or shredding. He pointed out the City is using green barrels for yard waste and are considering a construction waste area for reusable construction materials.

**Heather Wiand, 5170 Crestview Road, Billings, Montana**

Ms. Wiand stated they just purchased their property as they wanted a rural peaceful area for their home to enjoy wildlife and the view. She invited others to visit her property to look and consider what the disruption will be if the expansion is approved. She commented residents are picking up

garbage on their own to take care of their purchases. She said the proposed expansion will add more congestion to a road used for water and propane delivery to maintain their homes.

**Carol Hagen, 3509 McDuff Circle, Billings, Montana**

Ms. Hagen asked for clarification on the language posted on the City of Billings website as she thought it said there is less than a year of life expectancy for the current City dump. Director Mumford apologized if there is an error on the website. He stated the last study projects an estimated 40 years left at the current rate of use with inflation for growth.

**Cara Streets, 3870 Crestridge Court, Billings, Montana**

Ms. Streets said she was aware the location and need to haul water may be detrimental to resale of her property when it was purchased. Ms. Streets is concerned this proposal will directly affect the resale value of the homes in this community. She said it may deter potential buyers if they have to wait in a line of vehicles to get to the property.

**Matt Fetter, 4832 Old Jellison Road, Billings, Montana**

Mr. Fetter asked how many counties and cities are dumping in this site and how much it will extend the life expectancy if they took care of their own garbage.

**Commissioner John Ostlund, 5540 Keller Road, Billings, Montana**

Commissioner Ostlund thanked Director Mumford for the City's efforts. He stated Hillcrest Road is an inappropriate entryway to the dump due to the grade creating a blind corner at the bottom of the hill. He suggested using an access on Jellison Road or south on Blue Creek Road. He said he would like to discuss a grade separated crossing with the City to avoid traffic conflicts. He suggested doing the best to mitigate the problems going forward and planting perimeter trees to lessen the effect of the wind on the blowing garbage and limit aesthetic problems. Commissioner Ostlund stressed the importance of mitigating the impacts since the City owns the land and the landfill will continue to be at this location.

Public Works Director Mumford stated they did some schematics to meet the requirements of the DEQ application. He concurred with the Commissioner's suggestions and said these are viable options as they move forward. He thanked those citizens that make an effort to pick up the trash daily.

**Joel Eide, Crestview Road, Billings, Montana**

Mr. Eide stated there has to be another location as Montana is a big state. He said continuing the current location does not make sense. He voiced concern with putting the landfill in a drainage at Blue Creek which above the Yellowstone River. He asked the City to find a viable alternative and not move across the road.

**Martin Visser, 3342 Hillcrest Road, Billings, Montana**

Mr. Visser has lived for 20 years in this location which is less than an eighth of a mile from the southern border of the planned expansion. When they purchased their property, their realtor obtained letters from the City stating the landfill will not grow beyond its present size due to a required buffer zone in residential areas. He referred to a September 14 article in the "Waste Advantage" magazine

saying that several counties and the cities of Big Timber and Pryor use the current facility. Mr. Visser stated it may be time for these entities to take responsibility, and suggested creating smaller satellite landfills in the west, north, or east of town. He stressed it is time for the landfill and the City to consider where the trash is coming from. He asked why the residents have to be in the scattershot of the City's responsibility if there are other opportunities. When the Hillcrest area natural foundation purchased the land, the City promised in writing that none of the operation of the landfill would be visible from the natural area south of Stratton Road. He said consideration was given for landscaping but nothing has been done. Mr. Visser stated thanks to State law MCA 762-402, this Board, the State of Montana, or the City has no say unless there is a class action lawsuit. He said this legislation "has to go".

Chairperson Hecker reminded the attendees of the time, (5:30 p.m.), as there is another agenda item.

**Mary Skrim Dier, 235 Clark Ave., Billings, Montana**

Ms. Skrim Dier asked staff to post the aerial map as a reference. She stated she is attending to present the comments of Bonnie Atchison Riley, her husband Thomas Riley Jr., children Heather Jean Riley Murphy, and Nelson Elliot Murphy, who are the owners of the Montana Corporation Jean Elliot Company located on the edge of the expansion. Jean Elliot acquired their parcel in 1979 with the intent to develop and create residential properties. Ms. Skrim Dier pointed out a number of spectacular building sites at this location. She said she is here today to make the City of Billings aware of their concerns with the unattractive views, the smells, and other attributes of landfill's effects on this bordering property. If this request is approved, there will be negative impacts, it will significantly diminish the value of the property, and derail her clients' plans for future expansion. She stated the damages by the proposed change of use is a foreseeable consequence of the use. Even though there will be no physical invasion of the Jean Elliot parcel, the interference with the owners' private property interests and the limitations placed on the marketability of this parcel and other parcels in the area will constitute a taking. At best, the Jean Elliot parcel will be reduced to becoming a buffer to the other parcels in the area impacted by the change in use. Ms. Skrim Dier stated her clients' long range plans will be thwarted with an expansion such as this.

**Don DeJarnett, 2323 Blue Creek Road, Billings, Montana**

Mr. DeJarnett resides at the bottom of Hillcrest Road. He asked what process will be used to monitor his well. He voiced concern on the effects of several residents' wells after the expansion is completed. Director Mumford stated the City continually monitors several wells surrounding the landfill but does not monitor private systems. Mr. DeJarnett asked if the City will monitor his well. Mr. DeJarnett stated there is an underground stream that runs under Blue Creek Road. Director Mumford said the City monitors what leaves the site but does not monitor private systems. . Chairperson Hecker commented on her personal experience with monitoring her well annually and suggested Mr. DeJarnett take his samples to Energy Labs for testing.

**Unidentified Citizen, (no address given)**

This Citizen asked if the City will recognize a petition from a group of County residents. Director Mumford replied it has been his experience that the City Council recognizes anyone who speaks. Including Yellowstone County, the City has taken in seven other contracts. He stated Yellowstone County's contract would be considered along with all contracts should the City had to stay within the confines of the existing landfill and protect the City of Billings.

**Rose Cook, 2914 Tartan Road, Billings, Montana**

Ms. Cook asked Mr. Church about the proposed expansion of Blue Creek Road. She is a local realtor and lives in Briarwood. Mr. Church stated a realignment would be needed on Blue Creek Road as there is a site distance issue at the intersection of Hillcrest Road. Director Mumford stated this is in the conceptual plan and Mr. Church said the details will have to be worked out when the City goes to a design process.

**Carla Bell, 7225 Jellison Road, Billings, Montana**

Mr. Bell said the presentation today indicates alignments as a concept. She asked when the public will be made aware of the actual design. Director Mumford explained MDT would conduct a public hearing process for improvements on Blue Creek Road; and the Board of County Commissioners will need to approve improvements on Hillcrest Road to ensure it meets County standards. He said there would be numerous public meetings, and concepts need approval by State or the County.

**Unidentified Citizen, (no address given)**

This citizen asked Director Mumford if he how much money brought into the city from outside contracts. Director Mumford replied it is a small amount. Chairperson Hecker suggested contacting Director Mumford for this information during his office hours.

Chairperson Hecker closed the public hearing at 5:40 p.m. She thanked those who attended this hearing and stated she appreciated the comments. She said Commissioner Ostlund is aware of the issues and they may wish to bring other concerns to him. She suggested interested parties forward their comments to DEQ as they will make this decision.

**Item #2: County Variance 280 – 2531 Old Hardin Road** – Lamar – An appeal of an Administrative decision to deny an application for a new billboard sign at 2531 Old Hardin Road in a Community Commercial (CC) zone. Located on Lot C1, Dick's Tracts Subdivision, a 0.98 acre parcel of land generally located at 2531 Old Hardin Road. Tax ID: C06869. Presented by: Nicole Cromwell, Zoning Coordinator

**RECOMMENDATION**

The Zoning Coordinator recommends the decision to deny the billboard sign application by Lamar for a new billboard sign at 2531 Old Hardin be affirmed in whole. The decision was made without error and was the correct decision based on all the facts and within the scope of the County Sign Code as adopted.

Zoning Coordinator Nicole Cromwell explained to the members of the Board the Board of Adjustment Determination. This Board may reverse, affirm, or modify in whole or in part the determination to deny the sign permit. She continued and gave an overview of the area in question and an explanation of the County sign code Article X-Sec 4.06-Billboards. She gave the background and statement of facts from the Staff Report.

## **BACKGROUND**

This is an appeal of a final administrative decision regarding a billboard sign proposed for property at 2531 Old Hardin Road in Lockwood. The property is zoned Community Commercial (CC) and is owned by Junior Land and Livestock. The property is currently developed for GFK Trailer Sales. The business property manager is Paul Lambert. The appellant is Lamar, represented by Kelly Strobel, Real Estate Manager and Paul Dennehy, General Manager.

On October 14, 2015, the property owners at 2511 Old Hardin Road submitted a billboard sign permit through their agent, Bella Outdoor (Joe Mancuso, agent), to replace the existing Lamar billboard sign currently on the property. The property owners indicated in writing, and at the Planning Division front counter, that their intent was not to renew an expiring lease with Lamar. The lease would expire at the end of November, 2015. Zoning Coordinator Nicole Cromwell denied this permit application from the property owners of 2511 Old Hardin Road because the property had an existing billboard sign and it was likely the sign would remain in place through the expiration of the lease with Lamar. Ms. Cromwell indicated in the permit denial that a new application for a billboard sign could be submitted after the Lamar billboard was removed. The property owner and their agent indicated they would submit a new sign permit after the expiration of the lease and the removal of the existing sign.

On or about October 20, 2015, Kelly Strobel of Lamar visited the Planning office and spoke with Ms. Cromwell concerning billboard sign matters in general. Ms. Cromwell indicated to Mr. Strobel that she had just received a permit application for 2511 Old Hardin Road, a location where Lamar had a current, but expiring, lease with the property owner. She told Mr. Strobel she was going to deny the application as being premature. She made a copy of the application and gave it to Mr. Strobel.

On October 28, 2015, Lamar submitted a billboard sign permit for property at 2531 Old Hardin Road. The proposed location was not at least 500 feet distant from the current billboard sign location at 2511 Old Hardin Road. On November 9, 2015, Ms. Cromwell informed Mr. Strobel of Lamar by letter of her decision to deny the billboard sign permit at 2531 Old Hardin Road because of non-compliance with the 500-foot separation requirement (Article X, Section 4.06 – County Sign Code) and because the Lamar billboard sign at 2511 Old Hardin Road was still in place. She also stated in the letter of denial the need for Lamar to secure a location at least 500 feet distant from 2511 Old Hardin Road.

Lamar filed this appeal pursuant to the Zoning Coordinator's final administrative decision on November 9, 2015, for the billboard sign at 2531 Old Hardin Road. Subsequently, on December 2, 2015, both Lamar and Bella Outdoor filed billboard sign permit applications. Bella Outdoor filed on behalf of the property owners at 2511 Old Hardin Road, the former location of Lamar's lease. Lamar filed for a permit at 2531 Old Hardin Road, less than 500 feet from the location at 2511 Old Hardin Road.

The property owners of 2511 Old Hardin Road, through filing a permit on October 14, 2015, indicated to this office and the Zoning Coordinator their prior intent to continue using this property for a billboard sign. It is the practice of all planners to apply the

doctrine of fairness to all applicants and in particular property owners who have a vested interest in securing land use entitlements for their property. Bella Outdoor on behalf of the property owners at 2511 Old Hardin Road did submit a billboard sign permit as soon as the Lamar billboard sign lease expired and the structure was removed from the property. Lamar was aware from at least October 20, 2015, until today, that the owners of 2511 Old Hardin Road intended to contract with Bella Outdoor to construct a new billboard sign on their property. Subsequent submittals by Lamar for a billboard sign permit for property within 500 feet of 2511 Old Hardin Road were not approved because the property owners of 2511 Old Hardin Road stated intent was to place a new billboard sign on their property once the Lamar sign was removed. If the property owners had indicated no intent to replace the billboard with another billboard sign, the Lamar application for 2531 Old Hardin would have been approved.

The Zoning Coordinator recommends the decision to deny the billboard sign application by Lamar for a new billboard sign at 2531 Old Hardin be affirmed in whole. The decision was made without error and was the correct decision based on all the facts and within the scope of the County Sign Code as adopted. The decision was not arbitrary or capricious. The property owners of 2511 Old Hardin Road did not intend to renew a land lease with Lamar but did intend to replace the billboard sign once the Lamar lease expired. The property owners stated this intent by filing a billboard sign permit at least 6 weeks in advance of the land lease expiration. Lamar was aware of these facts. Lamar was aware of the required separation distance of 500 feet between billboard signs. A new billboard sign permit could not be approved for a location within 500 feet of the billboard sign located at 2511 Old Hardin Road.

### **Discussion**

Chairperson Hecker asked for questions and discussion from the members of the Board. In response to a question by Chairperson Hecker, Nicole Cromwell referred to a posted site plan and responded that there is no location on this property where a sign to be placed in this area and conform to the regulations. There is not enough room and it would have to move to 2539 Old Hardin Road or 2575 Old Hardin Road.

Board member Poppler noted the ordinance requires 500-foot separations between the signs and not the properties. He asked if they would have accomplished the 500-foot separation if they had located the sign on the west quarter of the property. Nicole Cromwell replied it would not have been less than 500 feet from the next west billboard sign. Board member Poppler pointed out both applicants submitted on December 2, 2015 and asked if there was a time separation. Nicole Cromwell said there was a time separation but both permits were placed on her desk for review at the same time. She stated generally applications received are not reviewed the same day they are received. The Code requires staff review within 10 days of submittal. The applicant at 2511 had stated prior intent to locate a billboard on the property. The County sign and zoning regulations are meant to protect the investments and entitlements of the owners. They had stated a clear intent for the entitlement for the billboard on their property. She explained she would have checked with the applicant for their intent if they had not submitted on the same date. Board member Poppler noted a reference in the staff report to a process MDT conducts as far as the condition of the sign. Nicole Cromwell said she received letters from MDT that were sent to Lamar requesting the sign be brought into compliance within 60 days or ask for a hearing. Another letter was a denial of the permit application by Bella Outdoor as there is a permitted sign at 2511 Old Hardin Road. She subsequently received a letter from Bella Outdoor as asking for a hearing on MDT's denial. She explained that billboard sign

companies put a sign “on system”, they must have a signed permit from Planning giving authority prior to making application to the State.

## **Appellant**

### **Paul Dennehy, General Manager, 7505 Entryway Drive, Lamar Advertising**

Mr. Dennehy stated he is here to request an appeal to the administrative decision to deny their application to move their sign. Presently, Lamar Advertising owns the permit #00149 at 2511 Old Hardin Road. They have paid all the fees and have maintained the billboard since the purchase in 2000. The lessor has no interest in the permit. The current lease with the landowner expired November 30, 2015. Lamar Advertising applied prior to this date to move the sign to 2531 Old Hardin Road. The application requested moving the sign 300-feet east of the present location. MDT requires 500-feet between signs and they would have satisfied the requirement as the sign would have been removed from 2511 Old Hardin Road.

Mr. Dennehy said the County is to ensure the location is legal and conforming but has no standing in the private negotiations and the issuing of the permit. Seeing Lamar owns the permit, the letter of intent and permit application should have no bearing on the application to move the sign. The Zoning Coordinator denied the permit application on the basis of the required distance separation of 500 feet from 2511. The application from Bella Outdoor on October 15, 2015 should have been denied, as Lamar still owned the permit at that site.

Lamar Advertising requested a copy of the denied sign permit application on December 21, 2015 and just received it today. The application was stamped October 14, 2016 but was received on October 15, 2015. He referred to the staff summary stating it is the practice of planners to apply doctrine of fairness to all applicants. Ms. Cromwell failed to state Lamar also applied as soon as the structure was removed. Mr. Dennehy stated that timing matters, as during a meeting discussion with Ms. Cromwell she stated “first come, first serve, when the sign is removed”. Lamar’s application was submitted prior. Lamar’s application was denied on December 9, 2015 and Bella’s application was accepted on December 8, 2015.

Ms. Dennehy stated the intent does not vest landowner with priority and the only thing to be considered is their permit. Lamar meets all of the requirements under the State and County ordinance. The code was not administered in this case. Lamar submitted an application first after the sign was removed and they were denied; and the permit was given to Bella Outdoors. Mr. Dennehy said there is absolutely no reason for the denial and he asked the Board to appeal the administrative decision.

Board member Poppler asked Mr. Dennehy if they are able to own the permit for 2511 when they do not have a lease. Mr. Dennehy explained the sign was removed and they have right with MDT to hold a permit for a period of time to move the sign or address the disrepair. The lease expired November 30, 2015. Lamar received a letter from the landowners’ attorney stating the sign should be removed no later than December 7, 2015. Lamar removed the sign on December 2, 2015. Board member Hecker asked if they were aware of another company’s interest in the site. Mr. Dennehy stated they had tried to contact the landowner without avail but the landowner’s attorney contacted them requesting removal of the sign. Ms. Cromwell had let them know someone else was interested during their meeting.

**Eric Nord, Crist, Krogh & Nord, 2708 1<sup>st</sup> Ave N #300, Billings, Montana**

Attorney Eric Nord represents the new lessee of the site, Bella Outdoor. Mr. Nord asked the Board of Adjustment to affirm the administrative decision. He stated they agree with the timeline set forth with respect to the application process. They strongly disagree with Lamar that they can own a permit, as a permit is a governmental grant tied specifically to a property. In this case it is tied to this parcel, and Lamar does not get the right to arbitrarily decide where to use or move a permit. Lamar is asking for a determination they are able to move it where they may and take away property owner Mr. Moore's right of entitlement. Bella Outdoors's position is that Lamar has no legal right to move the permit to a new location. With respect to the State, the State is looking for this body to make a determination. Given the regulations of the County, it is Bella Outdoors's position it is improper to have Lamar's application granted. Instead, the location should remain with Mr. Moore's property.

**Tom Moore, 941 Bonanza Place, Billings, Montana**

Mr. Moore is the property owner. He wished to clarify that he notified Lamar with a certified letter stating his intent to terminate the lease on October 15, 2015. Board member Poppler asked about Mr. Moore's reasoning for deciding to change companies. Mr. Moore replied it seems Lamar has a monopoly in this market and he is for the "underdog". In a response to a question by Board member Miner, Mr. Moore stated there was a considerable increase in income for the lease. He explained this lease has been in his family for several years but in all those years he is not aware of an increase from Lamar. Board member Popper asked about Lamar's response to his statement of intent. Mr. Moore said he didn't hear from Lamar. He said he did everything he could to maintain his position with the sign on the property. Mr. Moore said he contact Bella Outdoors and met with Joe Mancuso; and decided to move forward. He said they would have ended the lease anyway as the old sign was an eyesore.

**Kelly Strobel, Lamar Advertising, 7505 Entryway Drive, Billings, Montana**

Mr. Strobel clarified and stated he did the leasing for this sign. He gave an overview of the events related to this application. He stated he offered to meet with Mr. Moore but the offer was refused. They received a letter dated October 15, 2015 from Mr. Moore with a notice of cancellation and a request for communications to go through his attorney, Mr. Nord. Mr. Strobel said he had an active permit through November. He submitted an application on October 28, 2015 to the Planning Division as He wanted to invest in his company and his job and relocate the sign to a conforming location. Mr. Strobel stated they cannot invest a lot of money on a year to year lease. He commented they did have a good relationship with Mr. Miller's in-laws who wanted a year to year lease.

**Rebuttal**

Zoning Coordinator Nicole Cromwell connected to the Innoprise project manager for permitting. She noted Mr. Dennehy's comments on the Planning Division's lack of response to his request to produce public records for the sign permit submitted on or about October 14, 2015. In response to a phone call today, Bella Outdoor returned a copy of the permit that she had returned to them. She did not save a copy as she had denied the permit. Bella Outdoor submitted the application on October 14, 2015, and entered into the project management system on October 15, 2015. She pointed out the permit status is "Rejected" and noted the comment section of the review. Ms. Cromwell stated all activities on the record are recorded into this application and they cannot be altered or changed. The activity tab shows thirty activities on this permit, with the final activity recording the scanning and attaching of the Bella Outdoor permit. She noted she rejected the permit on October 27, 2015 and the permit was denied. This permit was entered on October 15, 2015 at 10:44 a.m. The entire packet

was returned to the applicant following her denial. She sent a copy of the permit she received from Bella Outdoors to Mr. Strobel today after it was received.

**Paul Dennehy, General Manager, 7505 Entryway Drive, Lamar Advertising**

Mr. Dennehy noted Ms. Cromwell's comments in the review stating Bella Outdoors's application is premature as there is an existing leaseholder as with an existing lease that expires December 31, 2015. He continued and read her review comments aloud. He said the Bella permit is stamped as received on October 14 and entered on October 15. There is nothing completed or stamped on the permit that it was denied. The records request was presented on December 21, 2015 but they did not receive a copy of the permit until today.

Chairman Hecker asked if there was anyone else wishing to speak on this matter. There was none. Chairman Hecker closed this hearing at 6:32 p.m. and called for discussion and a motion from the Board.

**Discussion**

Board member Poppler stated there should be some method of selection for one single permit if they are received on the same day. The Zoning Coordinator has 10 days to process a sign application and she selected on of the applicants. He stated he is unsure of the merits.

Board member Hecker said Staff received two applications and one was the landowner. She said she believes the land owner should have been selected.

Zoning Coordinator Cromwell explained to the Board a unanimous majority vote is needed in order to overturn the administrative decision. She reminded the Board the decision may be deferred so the other Board members may review the record and perhaps participate in their decision. It was the consensus of the Board to move forward.

**Motion**

**Board member Poppler made a moved and it was seconded by Board member Miner to recommend affirmation in whole of the Zoning Coordinator's decision to deny the billboard sign application by Lamar Advertising for a new billboard sign at 2531 Old Hardin Road.**

**The motion carried with a unanimous voice vote, 3-0.**

**Other Business**

- A. Elections for the 2015 officers will be held at the next scheduled meeting.

**Adjournment:**

**The meeting was adjourned at 6:36 p.m.**

**ATTEST: APPROVED BY A MOTION ON MAY 12, 2016**

