



**County of Yellowstone Board of Adjustment**  
**AGENDA-Thursday, May 12, 2016, 4:00 p.m.**  
**Miller Building, 1<sup>st</sup> Floor Conference Room**  
**2825 3rd Avenue North, Billings, Montana**

NOTICE TO THE PUBLIC

Public Comment:

There will be a Public Comment Section as noted on the agenda. This is the time members of the public may comment on any item not appearing on the agenda. Under State law, matters presented under this section cannot be discussed or acted upon by the Zoning Commission during this time. For items appearing on the agenda, the public will be invited to make comments at the appropriate time. It is very important to speak clearly, and state your name and address for the record. Please limit your comments to three (3) minutes or less.

**Call the meeting to order.**

**Introduction of the County Board of Adjustment Members and Planning Department Staff.**

**Public Comment**

**Motion. Approval of Minutes: January 14, 2016. (The February and March meetings were canceled due to a lack of a quorum of members).**

**Disclosure of any Conflict of Interest-Members of the Commission and Staff**

**Disclosure of an Outside (Ex Parte Communication)-Members of the Commission and Staff**  
**a. The Exparté Communication Binder is available at the Sign-In and Agenda Station.**

**Regular Business:**

- A. Opening of public hearings.
- B. Reading of rules for the procedure by which the public hearings will be conducted.

## **Public Hearings:**

- a. **Variance 281 – 2999 Old Hardin Road – Entryway Landscaping for Bretz RV** – (This application was first scheduled to be heard in March 2016. Due to lack of a quorum at the March meeting and scheduling challenges for the Board and Applicant, the County Board of Adjustment rescheduled this for its May 12 meeting). A variance from Section 27-1006 requiring a bermed and landscaped bufferyard along the interstate frontage (1,780 linear feet of frontage) and along the Old Hardin Road frontage (360 lineal feet) requiring a minimum of 5 canopy trees and 10 shrubs per 100 lineal feet and no more than 10% of the area as non-living material; from Section 27-1006 requiring a minimum of 20 square feet of landscaping per parking space, 2 evergreen or canopy trees and five shrubs for each 9 parking spaces, and requiring landscaping islands dispersed throughout the parking lot with raised curb protection; and Section 27-1007 requiring buildings with facades facing the interstate or local street to provide a façade relief every 100 feet to allow a total of 60 trees (131 required), 60 shrubs (267 required); allow up to 50% of the landscaped areas to be non-living material; eliminate all landscaping islands in the parking lot and eliminate the façade relief requirement for the building facades facing the interstate and the local street. Tax ID: D06438A; C04279; C04713; C04714; C04715; C04716. Presented by Wyeth Friday, Planning Division Manager

## **Other Business/Announcements**

### **Adjournment**

The County Board of Adjustment will hear all persons wishing to speak relative to the proposed Variance. Testimony regarding the above mentioned item may also be submitted in writing to the Planning Division, 4<sup>th</sup> Floor of the Miller Building, 2825 3<sup>rd</sup> Ave North, Billings, MT 59101 or phone 247-8676. Additional information on any of these items is available in the Planning and Community Services Office. Public hearings are accessible to individuals with physical disabilities. Special arrangements for participation in the public hearings by individuals with hearing, speech, or vision impairment may be made upon request at least three days prior to the hearing.

Please notify Tammy Deines, Planning Clerk, at 247-8610 or e-mail at [deinest@ci.billings.mt.us](mailto:deinest@ci.billings.mt.us)

**County Board of Adjustment**

**Meeting Date:** 05/12/2016

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**Information**

**Subject**

**Motion. Approval of Minutes: January 14, 2016. (The February and March meetings were canceled due to a lack of a quorum of members).**

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**Attachments**

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# Yellowstone County Board of Adjustment

## Minutes

January 15, 2016

The County Board of Adjustment met on Thursday, January 16, 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 Reierson</b>	Board member	E	-										
<b>Blaine Poppler</b>	Board member	1	-										
<b>Carlotta Hecker</b>	Chairperson	1	-										
<b>Delores Terpstra Miner</b>	Vice Chairperson	1	-										
<b>Robert Bailey</b>	Board member	E	-										

**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 one 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 motion 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: DRAFT TO BE APPROVED BY A MOTION ON MAY 12, 2016**



## County Board of Adjustment

**Meeting Date:** 05/12/2016

**SUBJECT:** Variance 281 - 2999 Old Hardin Road - Entryway Landscaping for Bretz RV and Marine

**THROUGH:** Candi Millar, Planning & Community Services Department Director

**PRESENTED BY:** Wyeth Friday

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## Information

### REQUEST

**Variance 281 – 2999 Old Hardin Road – Entryway Landscaping for Bretz RV –** (This application was first scheduled to be heard in March 2016. Due to lack of a quorum at the March meeting and scheduling challenges for the Board and Applicant, the County Board of Adjustment rescheduled this for its May 12 meeting). A variance from Section 27-1006 requiring a bermed and landscaped bufferyard along the interstate frontage (1,780 linear feet of frontage) and along the Old Hardin Road frontage (360 lineal feet) requiring a minimum of 5 canopy trees and 10 shrubs per 100 lineal feet and no more than 10% of the area as non-living material; from Section 27-1006 requiring a minimum of 20 square feet of landscaping per parking space, 2 evergreen or canopy trees and five shrubs for each 9 parking spaces, and requiring landscaping islands dispersed throughout the parking lot with raised curb protection; and Section 27-1007 requiring buildings with facades facing the interstate or local street to provide a façade relief every 100 feet to allow a total of 60 trees (131 required), 60 shrubs (267 required); allow up to 50% of the landscaped areas to be non-living material; eliminate all landscaping islands in the parking lot and eliminate the façade relief requirement for the building facades facing the interstate and the local street. Tax ID: D06438A; C04279; C04713; C04714; C04715; C04716. Presented by Wyeth Friday, Planning Division Manager

### RECOMMENDATION

The Planning Division is recommending denial of the Variance 281.

### APPLICATION DATA

OWNER: Mark Bretz, Bretz RV and Marine

AGENT: Brad Farnsworth, In House Counsel, Bretz RV and Marine

LEGAL DESCRIPTION: N1/2SE of Section 19, Township 1 North, Range 27 East (2999 Old Hardin Road), Lots 5 & 6, Cole Acreage Tracts (2937 Old Hardin Road) and Lots 5 through 8, Johnston Subdivision 1st Filing

ADDRESS: 2999 Old Hardin Road

CURRENT ZONING: Entryway General Commercial

EXISTING LAND USE: Bretz RV and Marine Sales and Service facility under construction

PROPOSED USE: Same

SIZE OF PARCEL: 35 acres

### CONCURRENT APPLICATIONS

A Zoning Compliance Permit was approved for these properties in August 2015 (PLN-15-5294) for the site, building and landscaping as per the Entryway Zoning Regulations.

### APPLICABLE ZONING HISTORY

This property and many of the surrounding properties were part of the Johnson Lane Master Plan zone change approved in September 1995. The Board of County Commissioners approved the master plan by resolution in July 1994. The Johnson Lane Master Plan and the adopted zoning was intended to attract businesses that serve tourists and travelers and make this entry to Lockwood more appealing through enhanced building design with attractive and abundant landscaping. Similar interchange entryway plans and zoning were implemented at the South Billings Boulevard/I-90 Interchange and the Zoo Drive/I-90 Interchange.

No amendments to the approved Johnson Lane Master Plan have been made since its adoption. Several zone changes were adopted prior to the master plan including re-zoning from R-96 to CC, Neighborhood Commercial (NC) and Highway Commercial (HC). Properties northwest of the Johnson Lane interchange were specifically excluded from the Master Plan and remain in the Controlled Industrial (CI) zone or the Heavy Industrial (HI) zone.

There have been no variances previously applied for regarding the landscaping requirements of the Entryway/Interchange zoning districts in Yellowstone County.

Bretz RV and Marine did receive approval of an administrative appeal in July 2015 to allow the building the business is constructing to have exposed seam metal siding as a finish building material. Planning Division staff had found that the Entryway Zoning Regulations did not allow exposed seam metal siding as an acceptable building material and the County Board of Adjustment did not agree with that interpretation.

## **SURROUNDING LAND USE & ZONING**

NORTH:	Zoning: Heavy Industrial (HI) and Entryway Light Commercial (ELC) Land Use: Agricultural Uses, industrial uses and residential uses
SOUTH:	Zoning: ELC, Residential-9600 (R-96) and Residential-15000 (R-15) Land Use: Single family residential and commercial (west)
EAST:	Zoning: R-96 and ELC Land Use: Single family residential and vacant land
WEST:	Zoning: Entryway General Commercial (EGC) and ELC Land Use: Hotel and residential uses

## **BACKGROUND**

This application was first scheduled to be heard by the County Board of Adjustment in March 2016. Due to lack of a quorum at the March meeting and scheduling challenges for the Board and Applicant, the County Board of Adjustment rescheduled this for its May 12 meeting.

Representatives of Bretz RV & Marine began meeting with Planning Division staff in late 2014 and early 2015 to discuss the proposed new Bretz RV and Marine project at the subject property. Two initial meetings included County staff from Public Works, Lockwood Water and Sewer, County Engineering and Lockwood Fire. The intent of the meetings was to review draft site plans and proposals for the new Bretz RV & Marine (Bretz RV) sales and service location. The Planning Division provided copies of the County Zoning regulations pertaining to the Entryway/Interchange zoning districts. Planning Staff provided comments on the draft site plans including information on building materials, setbacks, parking, landscaping and signage. The Entryway Zoning Regulations were specifically developed to provide higher standards for site development to enhance the entryways into the County and City from the interstate **(See Attachment A)**.

In June 2015, Bretz RV appealed to the County Board of Adjustment the Planning Division's interpretation of the Entryway Zoning Regulations regarding acceptable building siding materials. Planning Division staff found that the Entryway Zoning Regulations did not allow exposed seam metal siding as an acceptable building material and Bretz RV had proposed to use exposed seam siding. This requirement in the code had been in place since the Entryway Zoning Regulations were first adopted by the County in 1995. The County Board of Adjustment supported Bretz appeal and exposed seam siding is allowed on the new building.

In July 2015, Bretz RV continued to move forward with submitting site plans and building plans for the property. The initial site plan submittals that included the landscaping plans were not in compliance with the Entryway

Zoning Regulations. Planning staff and Bretz RV representatives met, emailed, and discussed on the phone the requirements and what would be needed to bring the site plan into compliance with the landscape regulations. Planning staff explained in detail the requirements and worked at length with Bretz RV to ensure that while the landscape regulations were met, the need for visibility from the Interstate 90 corridor and parking lot circulation were addressed for a large RV and boat business. Accommodations staff provided that still met the regulations included clustering of trees along the I-90 and Old Hardin Road frontages, counting existing trees on the property toward the required number of trees, options for mulch to include wood chips. Bretz RV made modifications to the site plan to bring it into compliance with the landscape regulations and a Zoning Compliance Permit for the project was eventually approved and issued in August 2015 (**See Approved Site Plan in Attachment B**). Bretz RV states in its variance application that it made the changes to its site plan to avoid delaying the start of construction. Bretz RV contacted the Planning Division staff in September 2015 to begin researching how it might seek relief from the landscaping regulations of the Entryway Zoning District.

Bretz RV in this variance submittal is asking to significantly reduce the required numbers of trees and shrubs for the property because it states that the requirements "are inappropriate when considering the intended use of the property as a recreational vehicle and boat dealership." However, many commercial business have been built in the Entryway Zoning District in the County and City, and have followed the regulations. In addition, the same use has been developed in the Entryway Zoning District and met the landscaping requirements for Pierce RV Supercenter at 3800 Pierce Parkway at the Zoo Drive interchange. The Pierce RV Supercenter is located in an Entryway Light Industrial Zoning District, is adjacent to the I-90 corridor, and was subject to the same requirements as Bretz RV.

## **RECOMMENDATION**

Staff recommends denial of Variance 281.

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## **Attachments**

Variance Application  
Entryway Zoning Regulations  
Applicant Variance Request Letter  
Applicant Variance Landscape Plan  
Variance Determinations  
Letter of Opposition  
Attachment B - 2015 Approved Site Plan  
Site Photos

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APPLICATION FORM

COUNTY VARIANCE County Variance # \_\_\_\_\_ - Project # PLN-15-05394

The undersigned as owner(s) of the following described property hereby request a Variance from the terms of the City of Billings-Yellowstone County Unified Zoning Regulations.

TAX ID # 000D06438A COUNTY COMMISSIONER DISTRICT # \_\_\_\_\_

Legal Description of Property: T1N/R27E/SEC 19

Address or General Location (If unknown, contact County Public Works): \_\_\_\_\_

2999 Old Hardin Road

Zoning Classification: Interchange / Entryway General Commercial

Size of Parcel (Area & Dimensions): 34.995 acres

Covenants or Deed Restrictions on Property: Yes \_\_\_\_\_ No X

If yes, please attach to application

Variance Requested: See attached Petition for Variance.

Facts of Hardship: See attached Petition for Variance.

\*\*\* Additional information may be required as determined by the Zoning Coordinator in order to fully evaluate the application.

Owner(s): Mark A. Bretz  
(Recorded Owner)  
4800 Grant Creek Road, Missoula, MT 59808  
(Address)  
406-541-4800, ext. 11121 mbretz@bretzrv.com  
(Phone Number) (email)

Agent(s): Brad Farnsworth  
(Name)  
4800 Grant Creek Road, Missoula, MT 59808  
(Address)  
406-541-4800, ext. 11132 b.farnsworth@bretzrv.com  
(Phone Number) (email)

I understand that the filing fee accompanying this application is not refundable, that it pays for the cost of processing, and that the fee does not constitute a payment for a Variance. Also, I attest that all the information presented herein is factual and correct.

Signature:  Date: 12/23/2015  
(Recorded Owner)

## **ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS**

### **SEC. 27-1001. INTENT.**

The intent of the Interchange/Entryway Zoning Districts is to promote attractive, high quality development, to provide an appealing image of the City of Billings, to the traveling public and also the community. Further, it is the intent of this district to maintain a sensitivity toward existing development while preserving scenic vistas and protecting environmentally sensitive areas, including the Yellowstone River Corridor.

#### OBJECTIVES

- (a) Promote a unique, attractive physical landscape through topographic variations, water areas, native vegetation and scenic vistas;
- (b) Create and preserve open space;
- (c) Preserve and enhance unique qualities of the total environment;
- (d) Encourage creativity in design;
- (e) Provide for harmonious land design and quality site planning, which will produce a more desirable and attractive environment;
- (f) Reduce the level of adverse impacts from the transportation system on adjoining lands;
- (g) Promote development patterns in harmony with the goals and objectives of the 1990 Yellowstone County Comprehensive Plan; and
- (h) Promote compatible land use transitions with a sensitivity toward existing residential uses.

### **SEC. 27-1002. APPLICATION AND APPROVAL PROCESS.**

All plans and applications for development and signs shall be submitted to the City-County Planning Department. All applications must be submitted in person and signed by the property owner, lessee, the contract purchaser or the authorized agent of the property owner.

Planning Department approval is to ensure compliance with the Zoning Regulations. This does not in anyway construe approval by any other city or county department. A building permit and Planning Department approval are required prior to construction.

Each application shall include, but not be limited to the following information:

- (1) The name and address of the property owner;
- (2) The name and address of the applicant;
- (3) The legal description of the parcel;
- (4) A map drawn to scale showing the dimensions, acreage, location of the parcel, north arrow, streets and adjacent land uses;

## ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS

- (5) A complete site plan drawn to a scale of no less than 1" = 40' showing the dimensions and locations of all structures, streets, paving, parking, landscaping, signage, waterways or other significant features of the development;
- (6) Complete elevation drawings drawn to scale including the dimensions and height of the structure; and
- (7) Signage Plan specifications and location. (This applies to applications for signs only.)

Within fifteen (15) working days following the submittal of a complete application, the Planning Director or his/her designee shall issue Planning Department approval for development or a denial of the application, unless the applicant consents in writing to an extension of the review period. Should the application be denied, the applicant shall be notified in writing specifying all areas of noncompliance with this chapter.

### SEC. 27-1003. DEFINITIONS.

Terms not specifically defined in this chapter shall use the same meanings as they are defined in BMCC Section 27-201. The standard dictionary meaning shall be applied to terms not otherwise defined.

### SEC. 27-1004. ZONING DISTRICTS.

(a) **Entryway Light Commercial Zone (ELC):** The purpose of the Entryway Light Commercial zone is to provide limited entryway commercial convenience facilities, serving the nearby community.

- (1) *Permitted Uses:* The following uses shall be less than three thousand (3,000) square feet gross floor area (GFA)

Accessory uses and structures associated with a permitted principal structure

Apparel and accessory stores

Bakeries, retail

Banking and financial institutions

Barber and beauty shops

Book and stationery stores

Coin-operated laundry and dry cleaning pick up station

Convenience stores, with or without gas sales

Food stores

General merchandise stores

Hardware stores

Home furniture and furnishing stores

**ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS**

Mailing, photocopying, blueprinting and duplicating services

Newsstands

Offices

Paint stores

Pharmacies

Photo-finishing labs

Restaurants without the sale of alcoholic beverages

Shoe repair shops

Watch, clock and jewelry repair

- (2) *Special Review Uses:* Any of the above-permitted uses greater than three thousand (3,000) square feet GFA

Car washes

Commercial recreation uses only as listed below:

Arcades

Batting cages

Boat Rentals

Bowling alleys

Canoe and kayak rentals

Day camps

Driving ranges

Golf courses

Handball courts

Ice skating rinks

Miniature golf

Parks

Playing fields

Racquetball courts

Riding stables

Roller skating rinks

Schools and camps for sports instruction

Swimming pools

Tennis courts

## ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS

Waterslides

Gravel and/or sand extraction

Mixed use developments which include residential uses

Other retail uses similar in nature to those listed above

Restaurants with the sale of alcoholic beverages for on-premise consumption

(b) **Entryway General Commercial Zone (EGC):** The purpose of the Entryway General Commercial Zone is to provide a specialized classification for hotels, restaurants and other tourist-related facilities near major highway interchanges.

(1) *Permitted Uses:* Accessory uses and structures associated with a permitted principal structure

Apparel and accessory stores

Automobile and truck sales (New and Used)

Automobile rental agencies

Automotive service stations

Bakeries, retail

Banking and financial institutions

Barber and beauty shops

Book and stationery stores

Broadcasting studios, radio and television

Car washes

Coin-operated laundry and dry-cleaning pick up station

Commercial recreation uses only as listed below:

Arcades

Batting cages

Boat rentals

Bowling alleys

Canoe and kayak rentals

Day camps

Driving ranges

Golf courses

Handball courts

Ice skating rinks

**ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS**

Miniature golf

Parks

Playing fields

Racquetball courts

Riding stables

Roller skating rinks

Schools and camps for sports instruction

Swimming pools

Tennis courts

Waterslides

Convenience stores, with or without gas sales

Food stores

General merchandise stores

Hardware stores

Home furniture and furnishing stores

Hotels/Motels

Laundry and dry cleaning establishments

Mailing, photocopying, blueprinting and duplicating services

Newsstands

Offices

Paint stores

Pharmacies

Photo-finishing labs

Recreational vehicle sales and service

Restaurants without the sale of alcoholic beverages

Retail nurseries, lawn and garden supply stores

Shoe repair shops

Signs, computer controlled variable message

Theaters (Indoor)

Tire sales

Watch, clock and jewelry repair

Wholesale uses not to exceed three thousand (3,000) square feet gross floor area (GFA)

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(2) *Special Review Uses*

Campgrounds

Commercial Recreation uses only listed as below:

Go-cart tracks

Rodeos

Roping arenas

Gravel and/or sand extraction

Mixed use developments which include residential uses

Other retail uses similar in nature to those listed above

Restaurants with the sale of alcoholic beverages for on-premise consumption

Truck stops

Veterinary clinics

a. Boarding

b. Outpatient Only

Wholesale uses not to exceed ten thousand (10,000) square feet gross floor area (GFA)

Zoos

(c) **Entryway Mixed Use Zone (EMU):** The purpose of the Entryway Mixed Use Zone is to provide for commercial recreation development and a mixture of low intensity residential and low intensity commercial/office use. This zone allows for low impact commercial and residential development that will have minimal adverse effect on adjacent natural resources and existing uses.

(1) *Permitted Uses:*

Accessory uses and structures associated with a permitted principal structure

Campgrounds

Commercial recreation uses only listed as below:

Batting cages

Boat rentals

Canoe and kayak rentals

Day camps

Driving ranges

Golf courses

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Handball courts

Ice skating rinks

Miniature golf

Parks

Playing fields

Racquetball courts

Riding stables

Schools and camps for sports instruction

Swimming pools

Tennis courts

Mixed use developments (incorporating Office/Commercial uses permitted in the EGC zone and residential uses)

Residential, Single-family

Residential, Multi-family

Restaurants without the sale of alcoholic beverages for on-premise consumption

(2) *Special Review Uses:*

Commercial Recreation uses only listed as below:

Go-cart tracks

Rodeos

Roping arenas

Gravel and/or extraction

Restaurants with the sale of alcoholic beverages for on-premise consumption

(d) **Entryway Light Industrial (ELI):** The purpose of the Entryway Light Industrial zone is to provide large lots located directly accessible to arterial and other transportation systems for warehousing and light manufacturing and allow for limited commercial facilities for the adjacent community and interstate travelers.

(1) *Permitted Uses:*

Accessory uses and structures associated with a permitted principal structure

Automotive service stations

Auto repair

Auto supply stores

## **ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS**

Bakery, wholesale

Broadcast studios, radio and television

Bus terminal operations with or without maintenance facilities

Car washes

Coin operated laundry and dry cleaning with pick up station

Convenience stores, with or without gas sales

Cabinet and furniture manufacturing

Engineering, physical and biological research laboratories

Funeral homes, mortuaries, and crematories

General warehousing and compartmentalized storage under 250,000 square feet GFA

Heavy equipment sales and service

Hotels/Motels

Laundry and dry-cleaning establishments

Light manufacturing:

Computer and Office Equipment (SIC-357)

Household Audio & Video Equipment and Audio Recording (SIC-365)

Communication Equipment (SIC-366)

Electronic Components & Accessories (SIC-367)

Measuring, analyzing & controlling instruments; photographic, medical and optical goods, watches, clocks (SIC-38)

Mailing, photocopying, blueprinting and duplicating services

Mobile Home Sales

Offices; professional, private, government

Photo-finishing labs

Recreational vehicle sales and service

Restaurants without the sale of alcoholic beverages

Retail uses allowed in the Entryway General Commercial

Retail nurseries, lawn and garden supply stores

Tire sales

Truck stops

Trucking terminal with or without maintenance facilities

US Postal Services with or without terminal facilities

Vet Clinics

**ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS**

Wholesale Trade (Except SIC-5093)

(2) *Special Review Uses*

Gravel and/or sand extraction

Mixed use developments

Passenger and freight terminals

Restaurants with the sale of alcohol beverages for on-premise consumption

Wood container manufacturing

Wood building and mobile home manufacturing

Misc. Wood Products manufacturing

Retail over 250,000 GFA

Warehousing over 250,000 GFA

**SEC. 27-1005. DEVELOPMENT STANDARDS.**

Minimum lot area for all non-residential development shall be twenty-thousand (20,000) square feet in the ELC, EGC , EMU, and ELI zoning districts.

Residential developments shall meet the minimum lot area, setbacks, lot coverage and height limits of the Residential 9,600 (R-9,600) zoning district for single family projects or for the Residential Multi-Family - Restricted (RMF-R) zoning district for multiple-family developments, as listed in BMCC Section 27-308.

Minimum building setback from property line:

	<b>EMU</b>	<b>EGC</b>	<b>ELC</b>	<b>ELI</b>
*Adjacent to Interstate right-of-way	25 feet	25 feet	25 feet	25 feet
*Adjacent to any other right-of-way	25 feet	25 feet	25 feet	25 feet
Adjacent to a residential zone	25 feet	25 feet	25 feet	25 feet
Adjacent to a non-residential zone	10 feet	10 feet	10 feet	10 feet
Structure Height	30 feet	40 feet	30 feet	40 feet
Maximum Lot Coverage	50%	50%	50%	50%

\*All arterial setbacks as outlined in BMCC Section 27-602 must be maintained.

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Setback areas not occupied by required bufferyards may be used for, but not limited to the following: display area, driveways and non-required parking.

All current City and County codes shall apply, including but not be limited to the following: building, zoning, site development, parking and drainage regulations that are not directly addressed in this chapter. Where requirements are addressed in one or more regulations, the most stringent shall apply.

*Traffic Accessibility Studies:* Current traffic accessibility study requirements in the subdivision and site development regulations shall apply, in addition to those requirements outlined below.

The following uses shall be required to submit traffic accessibility studies:

Drive-through services

Truck stops

### SEC. 27-1006. LANDSCAPING STANDARDS.

(a) *Definitions:*

- (1) Canopy tree: A species of tree which normally bears crown foliage no lower than six (6) feet above ground level upon maturity. Minimum size of canopy trees shall be two and one-half (2½) inches in caliper.
- (2) Evergreen tree or shrub: A tree or shrub of a species which normally retains leaves/needles throughout the year. Minimum size of evergreen trees shall be five (5) feet in height.

(b) *Street Frontage Landscaping.* All commercial zones are required to place a bufferyard (landscaping strip) adjacent to and along the length of all rights-of-way, excluding driveways. Rights-of-way include the following: ditches adjacent to streets, principal arterial streets, minor arterial streets, collector streets, local streets and US Interstate 90.

The developer shall have the option of bufferyard widths (see options below). Placement and landscaping design shall be at the discretion of the developer. It is recommended that a design professional or local nursery be contacted for assistance with the development of the landscape design.

*Bufferyard Requirements:* The developer shall have the option of one (1) of the following three (3) bufferyards. Bufferyard depth is measured from the property line inward. Any buffer area which overlaps another buffer area shall be subtracted from the total to avoid double counting.

Number of trees and shrubs required per one hundred (100) feet of frontage:

- (1) Twenty-five (25) foot wide bufferyard

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Five (5) Canopy or evergreen trees  
Ten (10) Shrubs

- (2) Twenty (20) foot wide bufferyard  
Ten (10) Canopy or evergreen trees  
Fifteen (15) Shrubs
- (3) Fifteen (15) foot wide bufferyard  
Fifteen (15) Canopy or evergreen trees  
Twenty (20) Shrubs

The following criteria shall also apply to the bufferyards.

- (1) The landscape strip shall be contoured. Berming shall be one (1) foot of rise to four (4) feet of run with a minimum of three (3) feet in height. Depressions shall be no lower than the existing grade of the site.
  - (2) All landscaped areas shall contain ground cover such as sod, shrubs, flower beds or organic materials. No more than ten (10) percent of the landscaped area shall contain fountains, rock, bark chips, stepping stones or similar material.
  - (3) All landscaped areas shall be irrigated, maintained and kept free of weeds, debris and litter.
- (c) *Off-Street Parking Lot Landscaping.* Landscaping shall be provided within all parking areas. The following requirements shall apply:
- (1) A minimum of twenty (20) square feet of landscaped area shall be provided for each parking space.
  - (2) Two (2) canopy and/or evergreen trees and five (5) shrubs shall be required for every nine (9) parking spaces.
  - (3) All landscaped areas shall contain ground cover such as sod, shrubs, flower beds or organic materials. No more than ten (10) percent of the landscaped area shall contain fountains, rock, bark chips, stepping stones or similar material.
  - (4) The minimum width and/or length of any parking lot landscaped area shall be five (5) feet.
  - (5) Internal parking lot landscaping provided shall be proportionately dispersed, at the developers discretion, in order to define aisles and limit unbroken rows of parking. The maximum horizontal or vertical unbroken length shall be limited to one hundred (100) feet. Landscaped areas provided shall be in a scale proportionate to parking lot.

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- (6) Any development that has parking abutting a required bufferyard, may extend the width of that bufferyard a minimum of five (5) feet and include the additional required parking landscaping plant material. The minimum bufferyard width and landscaping material is required in addition to the parking landscaping.
- (7) All landscaped areas shall be irrigated, maintained and kept free of weeds, debris and litter.
- (d) *Protection of Landscaped Areas.* Landscaped areas within parking lots or the along perimeter of the property must be protected from vehicular traffic through the use of continuous concrete curbs, extruded asphalt or other approved permanent barriers.
- (e) *Commercial Uses Abutting Residential Uses.* All commercial uses abutting residential uses shall install a bufferyard. The bufferyard shall be ten (10) feet wide and shall contain ten (10) evergreen and/or canopy trees and ten (10) shrubs per one hundred (100) lineal feet. A solid fence or wall that is architecturally compatible in color and design with the building, shall be required on the property line. The fence height shall be a minimum of six (6) feet. Chain link or other wire fencing material is prohibited.
- (f) *Recommended Tree Types.* It is recommended that the developer work with the City Parks Department, a local greenhouse operator, landscape architect or other design professional to determine the species of trees that are most suitable for each situation. The use of native, drought-tolerant plant material is strongly encouraged. Evergreen trees are encouraged for bufferyards and canopy trees are encouraged for parking areas, however, the planting of trees should be done in such a manner as to provide maximum solar efficiency throughout the site.

A list of recommended native plant material shall be available at the Planning Department.

- (g) *Fractions in the Calculation of Number of Trees and Shrubs.* In the calculation of trees and shrubs for bufferyards or parking landscaping, all fractions shall be rounded to the nearest whole number.

### SEC. 27-1007. BUILDING DESIGN STANDARDS.

- (a) All buildings shall be completed on all sides with an acceptable finishing material. The following materials are acceptable: brick, fluted block, colored textured block, glass, stucco, architectural concealed fastener metal panels, exterior insulation and finishing systems (i.e. Dryvit, etc.), stone or wood. Exposed seam metal buildings shall be prohibited unless covered with an acceptable finishing material.
- (b) Roofs shall be finished with a material that is architecturally compatible in color and design with the construction of the building. Metal roofs, fascia and mansards shall be limited to the following: standing seam, metal shakes or shingles and architectural metal treatments. All mechanical equipment placed on top of any roof shall be screened by a parapet or other similar architectural apparatus being at least the height of the mechanical equipment. Pitched roofs are encouraged whenever possible.

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(c) Long, flat facades, having local street or interstate highway frontage, having more than one hundred (100) lineal feet are prohibited. Buildings over one hundred (100) feet in length shall incorporate one of the following: recesses, off-sets, angular forms, landscaping features or other architectural features such as bell towers, clock towers, to provide a visually interesting shape. The break in the facade shall be minimum of eight (8) feet in length. A single uninterrupted length of a facade shall not exceed one hundred (100) lineal feet. It is encouraged that each offset area contain landscaping or other similar amenities which will complement the offset area.

### SEC. 27-1008. ADDITIONAL PROVISIONS FOR COMMERCIAL USES.

(a) *Storage of Merchandise.* Any permitted storage of merchandise outside an approved building shall be within an area enclosed with a sight obscuring fence at least six (6) feet in height that is architecturally compatible in color and design with the building. However, promotional displays, vehicle sales lots and plant materials may be displayed outside of an approved building or enclosed area so long as they are placed appurtenant to a building wherein the business displays the bulk of its goods for sale. In addition, retail nurseries shall be exempt from the enclosure of plant materials. Bufferyards or required landscaping shall not be used for the displaying of merchandise. Chain link or other type of wire fencing is prohibited.

(b) *Site Lighting:*

(1) All outdoor lighting shall be designed, located and mounted at heights no greater than:

- a. Eighteen (18) feet above grade for non-cutoff lights; and
- b. Thirty-five (35) feet above grade for cutoff lights.

(2) *Maximum Illumination.* All outdoor lighting shall be designed and located such that the maximum illumination measured in footcandles at the property line shall not exceed three-tenths (0.3) footcandle for non-cutoff lights and one and five-tenths (1.5) footcandles for cutoff lights.

(c) *Storage of Junk.* No person shall store junk, partially or completely dismantled vehicles, or salvaged materials in any commercial zone outside a building. In the case of automobile repair shops, such materials must be enclosed within a building or an area having a sight obscuring fence at least six (6) feet in height. Chain link or other type of wire fencing is prohibited.

(d) *Solid Waste Area.* All solid waste storage facilities shall be located within an area enclosed with a sight obscuring fence or wall that is architecturally compatible in color and design with the building. Chain link or other type of wire fencing is prohibited.

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### SEC. 27-1009. SIGNS.

(a) *Intent.* This section shall not regulate official traffic or government signs; the copy and message of signs; signs not intended to be viewed from a public right-of-way; window displays; product dispensers and point of purchase displays; scoreboards on athletic fields; flags of any nation, government or fraternal organization; gravestones; barber poles; religious symbols; or any display or construction not defined herein as a sign.

(b) *Definitions.* Words and phrases used in this section are defined in this section. Principles for computing sign area are outlined in subsection E of this section.

- (1) *Animated Sign:* Any sign that uses movement or change or lighting to depict action or create a special effect or scene.
- (2) *Area of Sign:* The entire area of a sign including the area within a perimeter which forms the outside shape including the frame, forming an integral part of the display, but excluding the necessary supports or uprights on which the sign may be placed. The frame of a sign may be excluded from the area where such frame conveys no message and is constructed or affixed for aesthetic reasons beyond the necessary supports.

For computing the areas of any wall or canopy sign which consists of letters mounted or painted on a wall or canopy, the area shall be deemed to be the area of the smallest rectangular figure which can encompass all of the letters. (See below subsection E for calculation of sign area.)

- (3) *Banner Sign:* Any sign (other than an official flag) made of cloth, paper or fabric of any kind, which is used to attract attention, whether or not imprinted with words or characters.
- (4) *Beacon:* Any light with one (1) or more beams directed into the atmosphere or directed at one (1) or more points not on the same lot as the light source; also, any light with one (1) or more beams that rotate or move.
- (5) *Building Marker:* Any sign indicating the name of a building and date and incidental information about its construction, which sign is cut into a masonry surface or made of bronze or other permanent material.
- (6) *Canopy Sign:* Any sign that is a part of or attached to any awning, canopy or other fabric, plastic or structural protective cover over a door, entrance, window or outdoor service area, and which does not extend horizontally beyond the limits of the canopy.
- (7) *Changeable Copy Sign:* A sign whose informational content can be changed or altered by manual or electric, electro-mechanical or electronic means. Changeable signs include the following types:

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1. Manually Activated: Signs whose alphabetic, pictographic or symbolic information content can be changed or altered by manual means.
  2. Electrically Activated: Signs whose alphabetic, pictographic or symbolic informational content can be changed or altered on a fixed display surface composed of electrically illuminated or mechanically driven changeable segments. Electrically activated signs include the following two (2) types:
    - a. Fixed Message Electronic Signs: Signs whose basic informational content has been pre-programmed to include only certain types of information projections, such as time, temperature, predictable traffic conditions or other events subject to prior programming.
    - b. Computer Controlled Variable Message Electronic Signs: Signs whose informational content can be changed or altered by means of computer-driven electronic impulses.
- (8) *Copy*: The graphic content of a sign surface in either permanent or removable letter, pictographic, symbolic or alphabetic form.
- (9) *Directional/Informational Sign*: An on-premise sign giving directions, instructions or facility information and which may contain the name or logo of an establishment but no advertising copy, e.g., parking or exit and entrance signs. The sign may contain a logo provided that the logo may not comprise more than twenty (20) percent of the total sign area.
- (10) *Director*: The Planning Director of the County or his/her designee.
- (11) *Flag*: Any fabric, banner or bunting containing distinctive colors, patterns, or symbols, used as a symbol of a government, political subdivision or other entity.
- (12) *Freestanding Sign*: Any sign supported by structures or supports that are placed on, or anchored in, the ground and that are independent from any building or other structure, including monument signs.
- (13) *Government Sign*: Any temporary or permanent sign erected and maintained by the city, county, state or federal government for traffic direction or for designation of or direction to any school, hospital, historical site or public service, property or facility.
- (14) *Height of Sign*: The vertical distance measured from the highest point of the sign to the crown of the adjacent street, not including the interstate highway.
- (15) *Lot*: Any piece or parcel of land or a portion of a subdivision, the boundaries of which have been established by some legal instrument of record, which is recognized and intended as a unit for the purpose of transfer or ownership.

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- (16) *Maintenance:* For the purposes of this chapter, the cleaning, painting, repair or replacement of defective parts of a sign in a manner that does not alter the structure of the sign.
- (17) *Monument Sign:* A sign mounted directly to the ground with maximum height not to exceed six (6) feet.
- (18) *Nonconforming Sign:* A sign which was erected legally, but which does not comply with subsequently enacted sign restrictions and regulations.
- (19) *Portable Sign:* Any sign not permanently attached to the ground or other permanent structure, or a sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; signs converted to A- or T-frames; menu and sandwich board signs; balloons used as signs; umbrellas used for advertising; and signs attached to or painted on vehicles parked and visible from the public right-of-way, unless said vehicle is used in the normal day-to-day operations of the business.
- (20) *Principal Building:* A structure accommodating the principal use to which the property is devoted. Lots with multiple principal uses may have multiple principal buildings, but storage buildings, garages and other clearly accessory uses shall not be considered principal buildings.
- (21) *Projecting Sign:* A sign, other than a flat wall sign, which is attached to and projects from a building, wall or other structure not specifically designed to support the sign. Supports shall be covered in a neat and orderly fashion. Guy wire support is prohibited.
- (22) *Roof Sign, Above-peak:* Any sign erected and constructed wholly on and over the roof of a building, supported by the roof structure, and extending vertically above the highest portion of the roof.
- (23) *Roof Sign, Integral:* Any sign erected or constructed as an integral or essentially integral part of a normal roof structure of any design, such that no part of the sign extends vertically above the highest portion of the roof and such that no part of the sign is separated from the rest of the roof by a space of more than six (6) inches.
- (24) *Setback:* The distance from the property line to the nearest part of the applicable building, structure or sign, measured perpendicularly to the property line.
- (25) *Sign:* Any device, fixture, placard or structure that uses any color, form, graphic, illumination, symbol or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public.

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- (26) *Street:* A public way for vehicular traffic, whether designated as a street, highway, thoroughfare, parkway, throughway, road, avenue, boulevard, land, place or however otherwise designated which has been dedicated to or acquired for public use and which extends the full width between right-of-way lines.
- (27) *Street Frontage:* The length of the property line of any one (1) premises along each public right-of-way it borders excluding alleys, serviceways and the interstate highway.
- (28) *Suspended Sign:* A sign that is suspended from the underside of a horizontal place surface and is supported by such surface.
- (29) *Temporary Sign:* A non-permanent sign erected and maintained for a specific limited period of time.
- (30) *Wall Sign:* Any sign attached parallel to, painted on the wall surface or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building, and which displays only one (1) sign surface. Wall signs shall not exceed twenty-two (22) inches in depth measured from the face on the wall on which the sign is mounted.
- (31) *Wind-Driven Sign:* Any sign consisting of one (1) or a series of two (2) or more banners, flags, pennants, ribbons, spinners, streamers or other objects or material fastened in such a manner as to move upon being subjected to pressure by wind or breeze.
- (32) *Window Sign:* Any sign, pictures, symbol or combination thereof, designed to communicate information about an activity, business, commodity, event, sale or service, that is placed inside a window or upon the window panes or glass and is visible from the exterior of the window.
- (c) *Signs Prohibited.* All signs not expressly permitted under this section or exempt from regulation hereunder in accordance with the following section are prohibited. Such signs include, but are not limited to:
- (1) Beacons;
  - (2) Wind-driven sign, except flags as defined in this section;
  - (3) Strings of lights not permanently mounted to a rigid background, except those exempt under the following section;
  - (4) Inflatable signs and tethered balloons;
  - (5) Portable signs;
  - (6) Animated signs;
  - (7) Above-peak roof signs;
  - (8) Banner signs;

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- (9) Abandoned signs;
  - (10) Snipe signs or signs attached to trees, telephone poles, public benches, streetlights or placed on any public property or public right-of-way; and
  - (11) Signs placed on vehicles or trailers which are parked or located for the primary purpose of displaying said signs (this does not apply to signs or lettering on buses, taxis, or vehicles operating during the normal course of business).
- (d) *Signs Not Requiring Permits.* The following types of signs are exempted from permit requirements but must be in conformance with all other requirements of this section:
- (1) Construction signs of sixteen (16) square feet or less;
  - (2) Special event or holiday lights or decorations;
  - (3) Nameplates of two (2) square feet or less;
  - (4) Public signs or notices, or any sign relating to an emergency;
  - (5) Real estate signs; (see below subsection I, 2)
  - (6) Political signs; (see below subsection I, 4)
  - (7) Interior signs not visible from the exterior of the building; and
  - (8) Directional signs not to exceed twelve (12) square feet in area or six (6) feet in height.
- (e) *Calculation of Sign Area.* The sign area for a sign with more than one face shall be computed by adding together the area of all sign faces visible from any one point. When two (2) identical sign faces are placed back to back, so that both faces cannot be viewed from any point at the same time, and when such sign faces are part of the same sign structure, the sign area shall be computed by the measurement of one of the faces.
- (f) *Maintenance.* All signs shall be properly maintained. Exposed surfaces shall be clean and painted if paint is required. Defective parts shall be replaced.
- (g) *Lighting.* Unless otherwise prohibited by this section, all signs may be illuminated.
- (h) *Changeable Copy.* Unless otherwise specified by this section, any sign herein allowed may use manual, or fixed message electronic sign.
- Computer controlled variable message electronic signs shall be permitted provided that the bottom of the reader board is ten (10) feet above the crown of the adjacent road. Computer controlled variable message electronic signs shall not be permitted in the Entryway Light Commercial (ELC) and the Entryway Mixed Use (EMU) zones.
- (i) *Signs Permitted in Residential Districts:*

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- (1) One (1) non-illuminated sign for each street frontage of a construction project, not to exceed forty-eight (48) square feet in sign area. Such signs may be erected thirty (30) days prior to beginning of construction and shall be removed thirty (30) days following completion of construction.
- (2) One (1) non-illuminated real estate sign per lot or premises not to exceed sixteen (16) square feet in sign area for residential properties and thirty-two (32) square feet for commercial properties. Such signs must be removed fifteen (15) days following sale, rental or lease of the real estate involved.
- (3) One (1) non-illuminated attached building nameplate per occupancy, not to exceed two (2) square feet in sign area.
- (4) One (1) non-illuminated political sign not to exceed sixteen (16) square feet in sign area. Such signs shall not be erected more than forty-five (45) days prior to the election or referendum concerned and shall be removed ten (10) days following such election or referendum. Political signs may be placed only on private property and only with the permission of the property owner.
- (5) One (1) subdivision sign per street frontage not to exceed forty-eight (48) square feet in sign area in each location.
- (6) One (1) identification sign per entrance to apartment or condominium complex, not to exceed thirty-six (36) square feet in sign area.

(j) *Signs Permitted in Commercial Districts:*

- (1) All signs permitted in residential districts as listed in above subsection I.
- (2) The total square footage of all signs located on the property, including, but not limited to freestanding, wall, projecting, integrated roof, canopy, under-canopy and directional signs, shall not exceed three (3) square feet in sign area for each lineal foot of property frontage. This frontage shall be calculated using local streets, not the interstate highway.
- (3) One (1) freestanding sign within the Interchange/Entryway Zoning District may be installed to a height of forty (40) feet and may be a maximum of three hundred-fifty (350) square feet if the principal purpose of such signs is to address interstate traffic. The sign must be oriented perpendicularly to the interstate so the sign is visible to the interstate traveler. In addition, the property must be adjacent to the Interstate right-of-way.
- (4) Freestanding signs which do not address interstate traffic may be installed to a maximum height of twenty-four (24) feet and may have a maximum size of one hundred-fifty (150) square feet.

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- (5) The setback for the leading edge of freestanding signs shall be a minimum of ten (10) feet.
  - (6) No sign may be placed or designed so as to simulate or interfere with traffic control devices or official highway directional/informational signs.
  - (7) One (1) freestanding sign per frontage, including the interstate highway, shall be allowed. Where a street frontage exceeds five hundred (500) feet, one (1) additional freestanding sign may be allowed per five hundred (500) foot increment. Freestanding signs shall have a minimum distance of one hundred-fifty (150) feet between signs. The total square footage of all freestanding signs shall not exceed the total allowable square footage for freestanding signs.
  - (8) Wall signs shall not exceed twenty (20) percent of the square footage of the wall area upon which they are installed. Electric awning and canopy signs shall not exceed twenty (20) percent of the square footage of the wall area upon which they are installed. The combination of wall signs, electric awning, canopy signs and projecting signs shall not exceed twenty (20) percent of the allowed wall sign area.
  - (9) Integrated roof signs may be used instead of wall signs. The integrated roof sign size shall not exceed the allowable size for a wall sign. Integrated roof signs shall be constructed so as to conceal all structures and fastenings. The height of the sign shall not exceed the roof to which it is attached.
  - (10) Projecting signs may be used instead of any wall or freestanding signs provided they do not project beyond the property line and maintain a clearance of ten (10) feet over sidewalk and fourteen (14) feet over any parking lot, driveway or crown of the street, whichever is higher. Projecting sign size shall not exceed the allowable size for a wall sign.
  - (11) One (1) under-canopy sign for each separate occupancy or separate entrance not to exceed eight (8) square feet in sign area. Under-canopy signs must have a minimum clearance of nine (9) feet from the sidewalk.
  - (12) Window signs shall not cover more than thirty (30) percent of the window area.
  - (13) On-site directional signs as required.
- (k) *Shopping Center Signs:*
- (1) Shopping centers shall be allowed one (1) freestanding sign directory sign per frontage. The sign shall not exceed one hundred-fifty (150) square feet

## ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS

plus five (5) percent of the one hundred-fifty (150) square feet per tenant. Maximum sign size shall not exceed three hundred-fifty (350) square feet.

- (2) Shopping centers signs shall not exceed the maximum allowable freestanding signage.
  - (3) Shopping center signs cannot be used if the Common Signage Plan is used.
- (1) *Common Signage Plan:*
- (1) Common Signage Plan. If the owners of two (2) or more contiguous or adjacent (disregarding intervening streets and alleys) lots or the owner of a single lot with more than one building (excluding accessory buildings) or multiple use buildings file with the Planning Director for such lot(s) a Common Signage Plan conforming with the provisions of this section, a twenty-five (25) percent increase in the maximum total sign area shall be allowed for each included lot. This bonus shall be allocated within each lot as the owner(s) elects.
  - (2) Provisions of Common Signage Plan. The Common Signage Plan shall contain all of the following information:
    - a. An accurate plot plan of the lot, at such scale as the Planning Director may reasonably require;
    - b. Location of buildings, parking lots, driveways, clear vision triangles and landscaped areas on such lot;
    - c. Computation of the maximum total sign area, the maximum area for individual signs, the height of signs and the number of freestanding signs allowed on the lot(s) included in the plan under this chapter; and
    - d. An accurate indication on the plot plan of the proposed location of each present and future sign of any type, whether requiring a permit or not.
    - e. Window signs may simply indicate the areas of the windows to be covered by window signs and the general type of the window signs (e.g., paper affixed to window, painted, etched on glass, or some other material hung inside the window) and need not specify the exact dimension or nature of every window sign.

The Common Signage Plan shall also specify standards of consistency among all signs on the lots affected by the Plan with regard to:

## ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS

- a. Color scheme;
  - b. Letter or graphic style;
  - c. Lighting;
  - d. Location of each sign on the building(s);
  - e. Material; and
  - f. Sign proportions.
- (3) *Limit on Number of Freestanding Signs Under Common Signage Plan.* The Common Signage Plan, for all lots with multiple uses or multiple users, shall limit the number of freestanding signs to a total of one (1) for each street on which the lots included in the plan have frontage and shall provide for shared or common usage of such signs. Where street frontage exceeds five hundred (500) feet, one additional freestanding sign may be allowed per five hundred (500) foot increment.
- (4) *Other Provisions of the Common Signage Plan.* The Common Signage Plan may contain other restrictions as the owners of the lots may reasonably determine.
- (5) *Consent.* Common Signage Plan shall be signed by all owners or their authorized agents in such form as the Planning Director shall require.
- (6) *Procedures.* Common Signage Plan shall be included in any development plan, site plan, planned development or other official plan required by the City or County for the proposed development and shall be processed simultaneously with such other plan.
- (7) *Amendment.* Common Signage Plan may be amended by filing a new Common Signage Plan that conforms with all requirements of the chapter then in effect.
- (8) *Existing Signs Not Conforming to Common Signage Plan.* If any new or amended Common Signage Plan is filed for a property on which existing signs are located, it shall include a schedule for bringing into conformance, within five (5) years, all signs not conforming to the proposed amended plan or to the requirements of this section effective on the date of submission.
- (9) *Binding Effect.* After approval of a Common Signage Plan, no sign shall be erected, placed, painted or maintained, except in conformance with such plan, and such may be enforced in the same way as any provision of this

## ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS

chapter. In case of any conflict between the provisions of this section and Common Signage Plan, the section shall control.

- (10) *Dissolution of Common Signage Plan.* If the signatories of a Common Signage Plan wish to dissolve the Common Signage Plan, written notice must be submitted to the Planning Director. All signs on the property for which the Common Signage Plan was dissolved must bring all signs into conformance with this section within thirty (30) days of the date written notice was submitted to the Planning Director.

(m) *Nonconforming Signs.* Existing signs which do not conform to the specific provisions of this section may be eligible for the designation "legal nonconforming" provided that:

- (1) The Planning Director determines such signs are properly maintained and do not in any way endanger the public;
- (2) The sign was installed in conformance with a valid permit or variance or complied with all applicable laws on the date of adoption of this section; and
- (3) The sign owner registers the sign with the Planning Director within six (6) months of the adoption of this section. If the owner fails to register the nonconforming sign with the Planning Director, the sign then must be brought into compliance with this section within thirty (30) days.

A legal nonconforming sign may lose this designation if:

1. The sign is relocated or replaced; or
2. The structure or size of this sign is altered in any way except toward compliance with this section. This does not refer to change of copy or normal maintenance.

The legal nonconforming sign is subject to all requirements of this section regarding, safety, maintenance, and repair. However, if the sign suffers more than fifty (50) percent damage or deterioration, as based on appraisal, it must be brought into conformance with this section or removed.

(n) *Construction Specifications:*

1. All signs shall be installed in compliance with the Uniform Building Code (UBC) and the National Electric Code (NEC).
2. All signs shall be inspected by the City of Billings Building Division for compliance with all applicable codes. (Including, but not limited to structure, wind load, and electrical hook-up.)

**ARTICLE 27-1000. INTERCHANGE/ENTRYWAY ZONING DISTRICTS**

3. All electrical freestanding signs must have underground electrical service to such signs.

**SEC. 27-1010. SPECIAL REVIEW PROCESS.**

Special reviews shall follow the procedure as outlined in BMCC Sections 27-1503 (City) and 27-1509 (County).

**SEC. 27-1011. VARIANCES.**

Variations from this chapter shall follow the process outlined in BMCC Sections 27-1506 (City) and 27-1511 (County).

(Ord. No. 97-5048, § 8, 12-22-97; Ord. No. 99-5101, § 1, 9-13-99)

## PETITION FOR VARIANCE

Bretz RV & Marine respectfully requests Administrative Relief from the application of the landscaping regulations that govern the construction of its new dealership in the Lockwood area.

### Background Information

Bretz RV & Marine (Bretz) is a family-owned business that was started in Missoula in 1967. Over the years, the business has continued to grow and in January, 2008, Bretz expanded and purchased a dealership in Billings. Business has been good in Billings and as a result the company outgrew the capacity of its original facility. As a result, in March of 2015, Bretz purchased new property, of which approximately 34 acres of vacant land is being developed at 2999 Old Hardin Road in Lockwood, Montana. This parcel is zoned as Entryway General Commercial.

This parcel was selected as the site of Bretz' new dealership due to the fact that it has approximately 1780 feet of frontage on Interstate 90 and it also has easy access via the Johnson Lane interchange and Old Hardin Road. It is important to note that other suitable property was available at a much lower price, but these other parcels did not have frontage on the Interstate that would allow for effective public display of motorhomes, recreational vehicles, and boats.

Applications and drawings were submitted by Bretz to the Planning and Community Services Department. During this process, Bretz was notified by the Planning Division that several elements of its proposed landscape plan did not satisfy the requirements of Article 27-1006 of the Landscape Zoning Requirements. Therefore, in order to avoid delaying the start of construction, Bretz amended its proposal to address these concerns and as a result, on August 14, 2015, Building Permit # PLN-15-5394 was issued for the construction of the new dealership.

### Landscaping Standards

A total of four landscaping regulations and one building design zoning regulation are at issue:

**BERM** - Zoning Regulation Section 27-1006 provides that "All commercial zones are required to place a bufferyard (landscaping strip) adjacent to and along all rights-of-way, excluding driveways. Rights-of-way include...Interstate 90." The regulations further provide that this bufferyard must include a berm, and as a result Bretz has installed a 25 **foot** wide berm that is 3 feet in height along its Interstate 90 frontage at a cost of \$75,390.00. This berm will be covered with sod.

**TREES & SHRUBS** - The regulations state that the owner must plant five canopy or evergreen trees and 10 shrubs on every 100 feet of frontage. In other words, one tree every 20 feet and one shrub every 10 feet. Since we have 1780 feet of frontage, we would need to plant 89 trees and 178 shrubs along

Interstate 90. Similarly, Bretz has 180 feet of frontage along Old Hardin Road, and therefore would need to plant an additional 18 trees and 36 shrubs here.

**GROUND COVER** – “All landscaped areas shall contain ground cover such as sod, shrubs, flowerbeds or organic materials. No more than ten (10) percent of the landscaped area shall contain fountains, rock, bark chips, stepping stones, or similar material.”

**PARKING LOTS** – Two trees and five shrubs are required for every nine parking spaces. The maximum unbroken length of the rows of parking is 100 feet. Landscaped areas within parking lots must be protected from vehicular traffic through the use of continuous concrete curbs or other permanent barriers. Based on the size of Bretz’ parking lots, 21 trees and 53 shrubs are required around the parking area.

**FACADES** – Section 27-1007 provides that “Buildings over one hundred (100) feet in length shall incorporate one of the following: recesses, off-sets, angular forms, landscaping features or other architectural features...to provide a visually interesting shape. The break in the façade shall be minimum of eight (8) feet in length. A single uninterrupted length of a façade shall not exceed one hundred (100) lineal feet.” Bretz’ new building is 300 feet long by 110 feet wide. It is designed with garage doors that are recessed 8 inches and with siding that transitions from one color to another color at the top of the doors. In addition to this, Bretz is being required to install a landscape planter and install 3 trees between three of the doors.

### Request for Relief

Bretz believes that the regulations noted above are inappropriate when considering the intended use of its property as a recreational vehicle and boat dealership. While a vast majority of businesses display their merchandise indoors, RV and boat dealers are largely prevented from doing so due to the extremely large size of their vehicles and boats. Indeed, the need to display and maneuver a large number of these units is the very reason that Bretz needed to purchase 34 acres of land for its new dealership location and display lots.

Equally as important is the fact that these large units essentially block the public’s view of the dealership building itself. While the view of most large retail buildings is unobstructed, RV dealerships are unique in that the motor homes and recreational vehicles on display shield the building from view and tend to preoccupy the viewer’s attention and focus. In fact, Bretz has learned through the years that customers are drawn to the dealership when they can easily view our units. It is for these reasons that Bretz made the business decision to purchase property with Interstate 90 frontage, even though this property came at a much higher price than non-frontage property.

Despite the hefty price tag of \$75,390.00, Bretz has already installed the 3 foot high berm described above all along Interstate 90, even though none of the other businesses in the area have been required to do so. This berm obviously reduces the visibility of our display lot. Now, if Bretz is also required to

plant 89 trees and 178 shrubs along this frontage, our Interstate 90 frontage will lose much of its value because our customers and potential customers will simply not be able to clearly see our merchandise. The same is true for the required 18 trees and 36 shrubs along Old Hardin Road.

In regards to ground cover, the regulations cited above allow no more than 10 percent of the landscaped areas to be covered with rock. However, it has been Bretz' experience at its dealership in Missoula that river rock placed on a weed barrier makes a very attractive ground cover that is easy to maintain. Perhaps more importantly, the river rock is much more environmentally responsible than sod or other organic materials because it does not require constant watering and irrigation. Simply put, it conserves water resources. It should also be noted that the berm that extends all along our Interstate 90 frontage will be covered with sod, as will one side of our entire entrance drive.

As to parking lots, the size of motor homes and recreational vehicles is again a significant concern. Most of Bretz' customers drive their motorhome or recreational vehicle to the dealership when they visit. The turning radius on some motorhomes is 45 feet, and if we add a boat or tow vehicle behind, which many of our customers do, this radius increases even more. Clearly the regulation noted above that mandates a maximum of 100 feet of unbroken rows of parking is unworkable in an RV dealership environment.

Finally, in addressing the façade requirements, the recessed doors and the transition in the color of the siding on the building fully provides for the desired relief from the appearance of a long, flat uninterrupted wall. And again, large motorhomes and RVs will be displayed between the building and Interstate 90 and Old Hardin Road, thereby breaking up the view of the side of the building. Further, the required addition of islands and trees next to the building is problematic because as the trees mature they will interfere with ingress and egress through the doors of the building, and because the necessary soil and irrigation for these trees will provide an avenue for water to seep down beneath the foundation and pavement and cause freeze damage.

It should also be noted that other businesses in this Entryway General Commercial zoning area appear to not be abiding by the zoning regulations noted above.

In view of this information, Bretz is respectfully requesting that the County Board of Adjustment provide relief from these regulations by approving the following Variance:

1. Reduce the number of trees required from 131 to 60. The trees to be planted would be 32 Quaking Aspen, 7 Corkbar Fir, 15 Canada Red Chokecherry, and 6 Springsnow Crabapple-sterile. These varieties were selected because they will provide a variety of color year round.
2. Reduce the number of shrubs required from 267 to 60. The shrubs to be planted would be 15 evergreen shrubs (Min Mair Birds Nest Spruce), and 45 deciduous shrubs (potentilla in yellow, white and pink); Spirea (Snowmound in white and Anthony Waterer in pink); and Redleaf Barberry.
3. Allow river rock to be used for ground cover on 50% of the area that is required to be landscaped.
4. Eliminate the requirement for concrete islands in the parking lots.
5. Eliminate the islands and trees required next to the building façade.

A sketch of how the property would look with the proposed landscaping is attached. A landscape plan showing the proposed locations of the trees and shrubs is also attached.

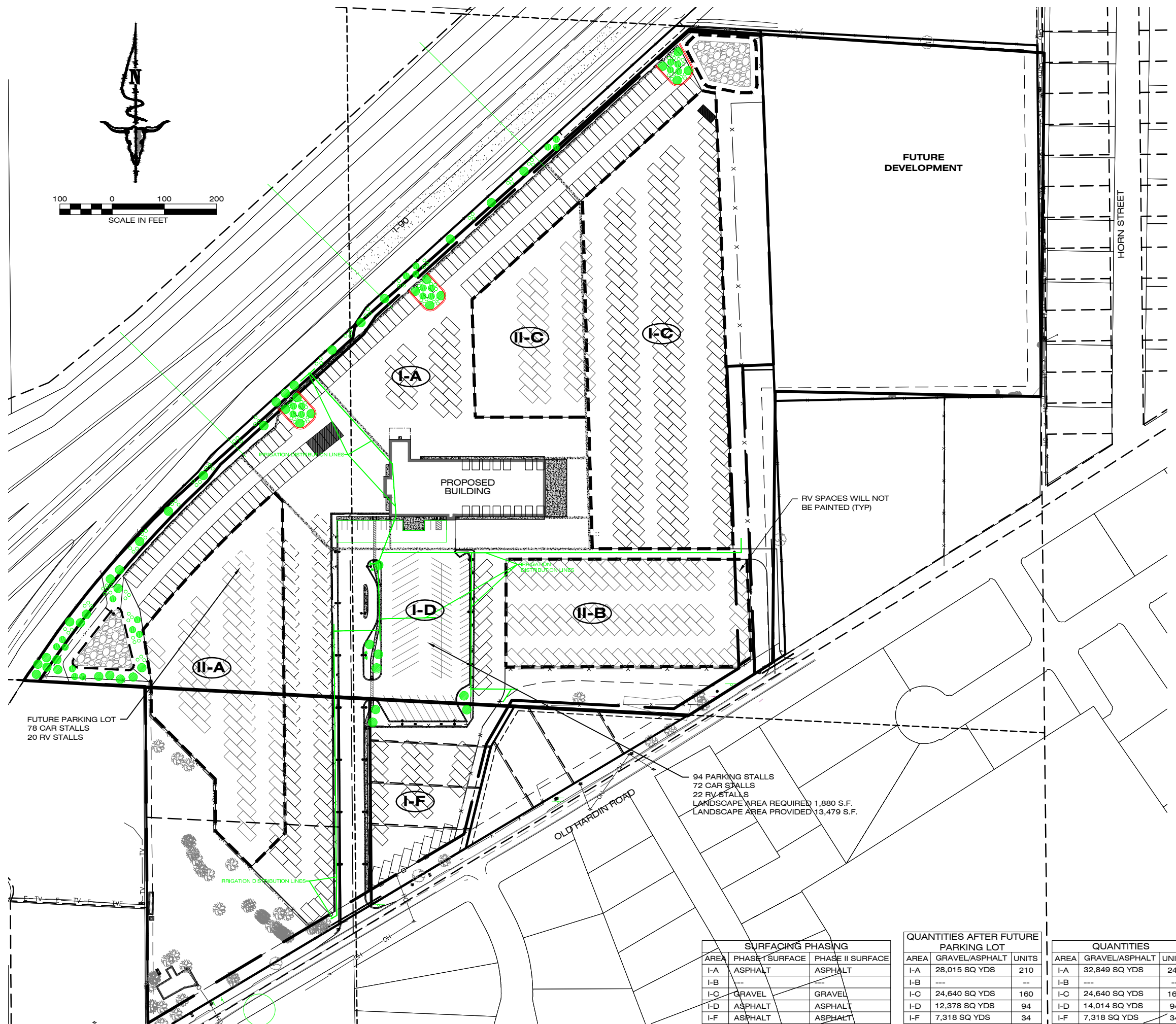
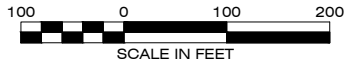
In sum, the granting of this Variance will allow the business owner to effectively display his merchandise to the public, it will conserve water, and it will allow for the necessary maneuverability of large motor homes, recreational vehicles and boats. At the same time, it will provide an attractive entryway commercial appearance for this growing area of Lockwood.

Respectfully submitted,



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Mark A. Bretz, President  
Bretz RV & Marine



SURFACING PHASING		
AREA	PHASE I SURFACE	PHASE II SURFACE
I-A	ASPHALT	ASPHALT
I-B	---	---
I-C	GRAVEL	GRAVEL
I-D	ASPHALT	ASPHALT
I-F	ASPHALT	ASPHALT

QUANTITIES AFTER FUTURE PARKING LOT		
AREA	GRAVEL/ASPHALT	UNITS
I-A	28,015 SQ YDS	210
I-B	---	---
I-C	24,640 SQ YDS	160
I-D	12,378 SQ YDS	94
I-F	7,318 SQ YDS	34

QUANTITIES		
AREA	GRAVEL/ASPHALT	UNITS
I-A	32,849 SQ YDS	245
I-B	---	---
I-C	24,640 SQ YDS	160
I-D	14,014 SQ YDS	94
I-F	7,318 SQ YDS	34

## DETERMINATIONS

The Board of Adjustment, before it grants a variance shall determine:

- 1. That special conditions and circumstances exist which are peculiar to the land, the lot or something inherent in the land which causes the hardship, and which are not applicable to other lands in the same district;**

There are no special conditions and circumstances that are peculiar to the land that create a hardship. The property is relatively flat, was almost completely cleared for the construction of the Bretz RV facility, and is similar to other properties in the same district. The property directly to the west of the subject property is in the same Entryway General Commercial (EGC) zone and a Holiday Inn Express is located on the site. The Holiday Inn Express was subject to the same regulations. The Pierce RV Supercenter located at 3800 Pierce Parkway at the far west edge of Billings is in the Entryway Light Industrial (ELI) zone and also was subject to the same site development requirements.

Bretz RV in its variance application references the cost of the land it purchased for the new facility and the cost of the landscape berm it has already installed. It appears to indicate these costs should be considered a hardship. However, monetary costs are not identified as criteria in variance determinations.

- 2. That a literal interpretation of the provisions of this Chapter would deprive the applicant of rights commonly enjoyed by other tracts in the same district;**

Approving this variance would give the applicant a privilege that is denied others in the same zoning district. There have been no variance requests from the landscaping requirements of the Entryway Zoning Districts since the regulations were first adopted by the City and County. Businesses of varying sizes and uses have developed in compliance with the regulations. Some businesses have begun construction and were found to be out of compliance with the regulations and were brought into compliance. There are likely a few businesses in the Entryway Zoning District in the County that may not be in compliance since building permits are not required in the County. County Code Enforcement requires a complaint to be filed before investigating a potential violation. No variances for landscaping have been submitted for this district and many existing businesses in the district have complied with the regulations. A literal interpretation of the regulations does not deprive these owners of rights commonly enjoyed by others in the same zoning district.

Planning staff also worked extensively with the applicant to develop a landscape plan that met the Entryway Zoning requirements while also enabling the applicant to have multiple open areas for motorists on I-90 and Old Hardin Road to see the property and displayed merchandise. The applicant could have even done more with clustering of landscaped areas along the I-90 frontage to consolidate trees to further improve views of the property. Only two landscape bump outs from the I-90 frontage were placed on the site plan where trees could have been clustered, while additional bump outs could have further concentrated the trees in specific areas to further open the spaces between them for views of the property.

**3. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Chapter to other land in the same district;**

Granting the variance would confer on the applicants a special privilege that is denied other land in the district. The applicants are asking for more than a 55% reduction in the number of trees required (131 to 60), a 78% reduction in the number of shrubs required (267 to 60), to be allowed to have 50% of the ground cover to be non-living (rock) instead of 10%, complete elimination of the required bump outs in the parking lots for landscape areas, and complete elimination of the six (three per building frontage on Old Hardin Road and I-90) small landscape areas with one tree per location to be installed along the building façade between the garage bays to break up the long façade.

While the landscape requirements are significant in this district, the subject property is almost 1.5 million square feet in area, with nearly 2,000 feet of combined street frontage on Old Hardin Road and the I-90 corridor. To meet the intent and requirements of the Entryway Zoning District, a property of this size and scale will have a significant amount of landscaping.

**4. That the granting of the variance will be in harmony with the general purpose and intent of this Chapter and with the Growth Policy;**

Granting this variance will not be in harmony with the general purposes and intent of the zoning regulations. Section 27-1001 of the zoning code indicates that the purposes of the Entryway Zoning Regulations is *“to promote attractive, high quality development, to provide an appealing image of the City of Billings (and Yellowstone County), to the traveling public and also the community. Further, it is the intent of this district to maintain sensitivity toward existing development while preserving scenic vistas and protecting environmentally sensitive areas, including the Yellowstone River Corridor.”*

This property and many of the surrounding properties were part of the Johnson Lane Master Plan zone change approved in September 1995. The Board of County Commissioners approved the master plan by resolution in July 1994. The Johnson Lane Master Plan and the adopted zoning was intended to attract businesses that serve tourists and travelers, and make this entry to Lockwood more appealing through enhanced building design with attractive and abundant landscaping. Similar interchange entryway plans and zoning were implemented for the same purpose at the South Billings Boulevard/I-90 Interchange and the Zoo Drive/I-90 Interchange. Reducing the landscape requirements does not promote attractive, high-quality development in this area, and will not be sensitive to the surrounding existing residential and some commercial development.

Granting this variance will not be in harmony with the 2008 City of Billings and Yellowstone County Growth Policy. The variance conflicts with the following Growth Policy goals:

- Goal: Predictable land use decisions that are consistent with neighborhood character and land use patterns. (p. 6)

*This project is in the Entryway Zoning District near the Johnson Lane Interchange in Lockwood. The development in this area is intended to promote attractive, high-quality*

*development and be sensitive to the surrounding existing development. Significantly varying from the landscaping requirements will make this development inconsistent with the character of the area.*

- Goal: New developments that are sensitive and compatible with the character of adjacent County townsites. (p. 6)

*The Entryway Zoning District requirements are intended to make development in the area appealing to the traveling public and also sensitive and compatible with the character of the Lockwood area. A lack of landscaping and site improvements will diminish the compatibility of this property with others in the same area and zoning district.*

- Goal: An inviting and attractive urban interstate corridor through the County. (p. 9)

*The Entryway Zoning District requirements are intended to make development in the area appealing to the traveling public. Limited landscaping will not make the interstate corridor more inviting or attractive in this area of the County.*

- 5. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this Chapter. Violation of such conditions and safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this Chapter;**

Staff is recommending denial of this variance and so conditions of approval are not applicable.

- 6. The Board shall prescribe a time limit within which the action for which the variance is required shall be begun or completed, or both. Failure to begin or complete such action within the time limit set shall void the variance; and**

Staff is not recommending approval of this variance and so a time limit is not applicable.

- 7. Under no circumstances shall the Board grant a variance to allow a use not permissible under the terms of this Chapter in the district involved. A variance shall not be a grant of special privilege inconsistent with limitations placed upon other property in the district.**

Granting of this variance will not allow a use that is prohibited in the Entryway Zoning District, but would grant a special privilege to the property owner inconsistent with the limitations placed upon other property in the District.

Carol Kraft  
PO Box 533  
Billings, MT 59103

City-County Planning Division  
2825 3<sup>rd</sup> Ave North  
Billings, MT 59101

February 29, 2016

Re# County Variance #281 Entryway Landscaping for Bretz RV

To Whom it May Concern:

As a neighboring property owner of Bretz RV, I am writing to express my opposition to the proposed variance.

First note, per Background Information, it appears Bretz knew the requirements of the code before starting construction. "Bretz was notified by the Planning Division that several elements of its proposed landscape plan did not satisfy the requirements of Article 27-1006 ..... in order to avoid the delay of construction ..... Bretz amended its proposal ....." Point being, they knew the requirements going into their project, yet chose to proceed anyhow.

It is not necessary to quote the entire proposal, in a nutshell Bretz is wanting to place less than half of the required trees, a fifth of the required bushes, half of the required living material and eliminate all landscaping islands in the parking lot and eliminate the façade relief requirement facing the interstate and Old Hardin Rd.

I am reminded, daily, of the more than 34 acres of natural vegetation, wildlife habitat and wildlife, grassland covering, trees and bushes that have been removed. Several very large, old trees, in fairly good condition were destroyed.

Trees placed along roadsides will certainly not block the view of a sea of RV's, or a customer's awareness that an RV dealership is in place. Window-shopping from any roadway doesn't seem to be in the best interest of public safety.

Conservation of water has been addressed, yet the Lockwood Irrigation Ditch borders the property. The land should have been water righted and the owner is paying an irrigation fee if they use the water or do not use the water.

I searched the county website but was unable to locate the results of Bretz last variance request in regard to the steel sided building, that they have erected. The building does not incorporate "recesses, off-sets, angular forms, landscaping features or other architectural features ..... to provide a visually interesting shape."

Bretz is a welcome neighbor, but complying with the code should be required. The property will be a visual welcome of what to expect from the City of Billings, my understanding of why a code has been implemented and exists. Bretz indicated in their request that many businesses are not abiding by the regulations. I disagree. Many are and have built visually pleasing buildings and landscaped accordingly. Any that are not in compliance are probably old businesses, in place for many years, who may be willing to bring their property up to standard with a reasonable allotment of time. However, granting elimination, or reduction, of the code for Bretz, certainly sets precedence for future developments.

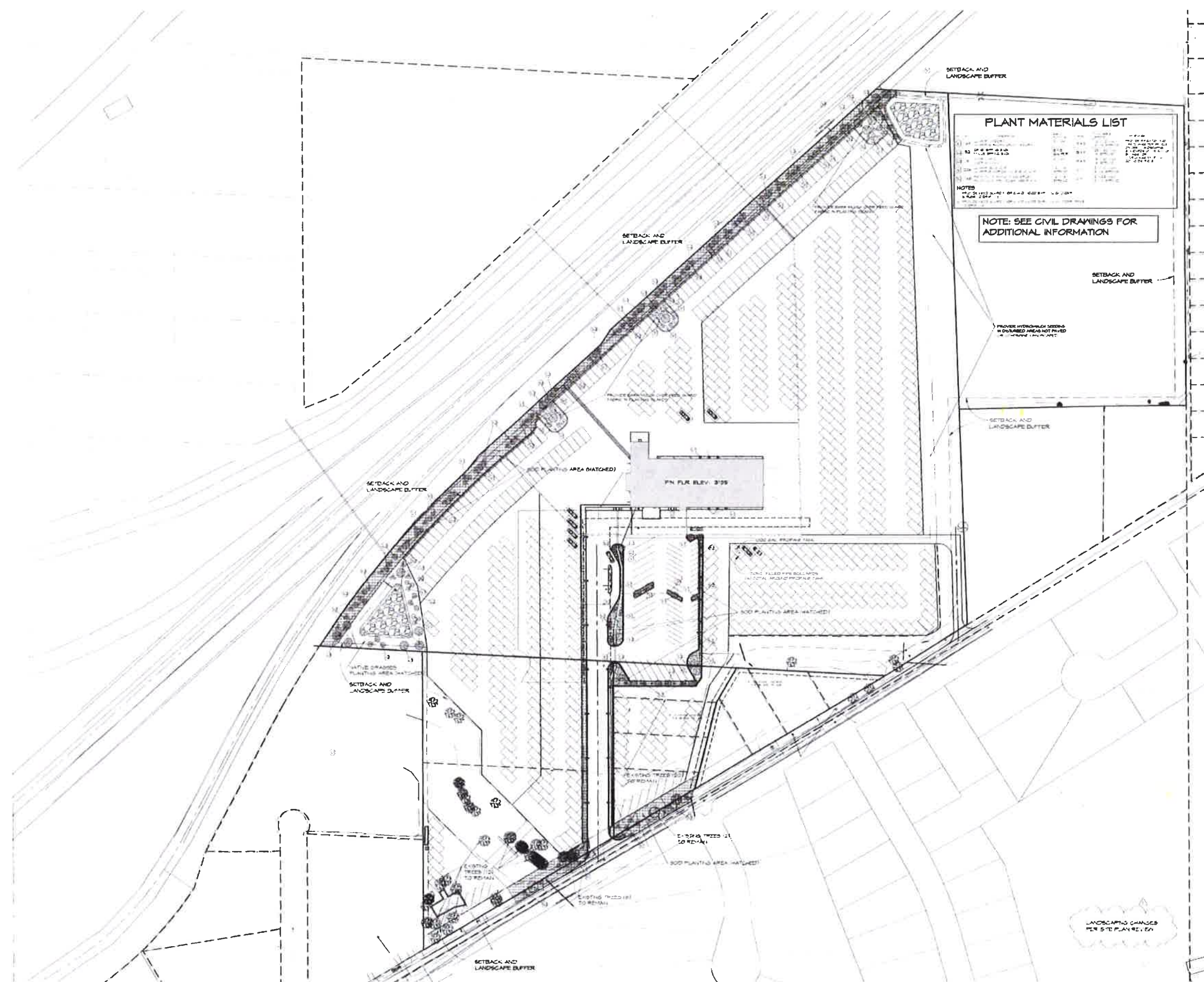
Bretz is not simply asking to redistribute the environmentally friendly requirements of landscaping to a position that maybe more suitable for the traffic they will host. They are asking to eliminate requirements clearly stated in the code, requirements that they knew were in place prior to beginning the project.

As a property owner, I respectfully request that the request for a Variance of Entryway Landscaping for Bretz RV be denied.

Thank you to all of the Planning Division for your commitment and enforcement of our city and county code.

Sincerely,  
Carol Kraft  
406-672-2372

All drawings are the property of Hoffmann Morgan & Associates, Inc. (HMA). They are to be used only for the project and site for which they were prepared. They are not to be reproduced, copied, or distributed in any form without the written consent of HMA. HMA shall not be held responsible for any errors or omissions in these drawings. All dimensions are in feet and inches. All materials and methods of construction shall be as shown unless otherwise noted. All work shall conform to the applicable codes and standards in effect at the time of preparation of these drawings.



**PLANT MATERIALS LIST**

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NOTE: SEE CIVIL DRAWINGS FOR ADDITIONAL INFORMATION

PROVIDE HYDROLOGICAL STUDY AND DRAINAGE PLAN FOR THE ENTIRE SITE

**SITE PLAN**  
1:1000

**ADDENDUM 1**  
C:\HARDWARE\... 8/12/2015 12:43 PM

**HOFFMANN MORGAN & ASSOCIATES ARCHITECTURE & PLANNING**  
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8/14/15

LANDSCAPE PLAN

**FINAL**

APPROVED

A NEW PROJECT FOR:  
**BRETZ RV & MARINE**  
BILLINGS, MONTANA

drawn by: C. TRIGA  
checked by: M. MORGAN  
project no. 1A040  
date: 08-30-15  
revision: 1 08-11-15  
sht. no.:

**L1.1**  
of:

## Site Photos of the Subject and Surrounding Property



Bretz RV –Main Entrance to the property off of Old Hardin Road looking north.



Bretz RV entrance on Old Hardin Road is just to the right outside the photo. This is looking west along Old Hardin Road at residential use adjacent to the subject property to the west.



Bretz RV entrance on Old Hardin Road is in the foreground – view is looking southeast across Old Hardin Road at residential uses on the south side of the street.



Looking north across Old Hardin Road at Bretz RV property. Building is visible in the background and RVs are shown parked in the right of the photo on a portion of the site's parking area.



Looking at the Bretz RV property from across Old Hardin Road at the Southeast corner of the property. An emergency access/future access is shown in the foreground that accesses the east side of the property and a portion of the property that is being left vacant for future development at this time.



Existing residential development just east of the Bretz RV property along Old Hardin Road.



Holiday Inn Express property just east of Bretz RV property. Photo was taken looking south from I-90 ROW.



Bretz RV property from the I-90 ROW looking east. Building is in the background and RVs and boars are parked on a portion of the paved storage and sales area.



Bretz RV property from the I-90 ROW looking west along the property frontage. The chain link fencing in the foreground does not meet Entryway Zoning Districts standards but was erected by MDT along its interstate ROW. Bretz is using this existing fencing as its perimeter fencing in this area.



Bretz RV building from I-90 ROW looking south at the property. Part of the variance request is to not provide small landscaped bump outs in 3 locations between some of the garage bays on this building frontage that faces I-90.