



# Yellowstone County Board of Adjustment Meeting Minutes, June 8, 2023 DRAFT-To be approved at the next scheduled meeting

The County Board of Adjustment meeting will be held in the 1<sup>st</sup> Floor Conference Room, 2825 3<sup>rd</sup> Ave North (Miller Building).

Citizens are invited to:

- Review the Agenda Packet on the City’s website at: <https://ci.billings.mt.us/117/Agendas-Minutes>
- View the meeting live online at Facebook: <https://tinyurl.com/yckr478k>

Public comment will be taken only during the Public Comment periods as indicated on the agenda and during the Public Hearings, if any are scheduled, under the Regular agenda.

Comments may be sent to Board via email before 10:00 AM on the meeting date. All emails received prior to this time will be read into the record for the public hearing. Comments may be submitted by: mail to: City/County Planning Division, 2825 3rd Ave N 4th Floor, Billings, MT 59101 Email: [deinest@billingsmt.gov](mailto:deinest@billingsmt.gov)

Call in during the Public Comment periods as indicated on the agenda: Citizens may call in during specific Public Comment periods at **406.237.6165**. All callers will be placed in a queued system and are asked to remain on hold and be patient. Calls will be taken in the order in which they are received. Callers will be limited to 3 minutes of testimony as is customary.

Name	Title	01/12/2023	06/08/2023								
<b>Blaine Poppler</b>	Vice Chair	1	1								
<b>Carlotta Hecker</b>	Board member	1	1								
<b>Tyler Bush</b>	Chairman	A	1								
<b>Troy Boucher</b>	Board member	1	E								
<b>Morgan Tuss</b>	Board member	-	-								

**Commissioner Bush** introduced the County Board of Adjustment members and staff in attendance: Nicole Cromwell, Zoning Coordinator, Tammy Deines, and Planning Clerk

**Virtual:** Morgan Tuss, future appointee for the YC Board of Adjustment, Maxon R. Davis, Davis, Hatley, Haffeman & Tighe P.C.

**Attendees:** Allie Carley, Lamar Companies, Kelly Strobel, Lamar Companies; Marion Teyler,

**Public Comments** Commissioner Bush announced the public comment period. There were no Public Comments.

## Approval of Minutes January 12, 2023

Delayed. The meeting minutes will be considered during the July 13, 2023 YC Board of



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Adjustment meeting.

**Disclosure of Conflict of Interest:** There were no disclosures of conflict of interest.

**Disclosure of Exparte Communication**

There were no disclosures of exparte communication from the Board.

**PUBLIC HEARINGS:**

Zoning Coordinator Nicole Cromwell reviewed the procedures for public hearing and stated the Board will open a public hearing and allow public comment this evening. She reviewed the hearing and presentation processes for the meeting for reviewing and acting on the appeal.

**REQUEST**

**Administrative Appeal 23-01 – 330 Charlene St** – Appeal of an administrative decision regarding a Billboard sign permit PLN-23-00301 - An Administrative Appeal regarding the denial of a County sign permit to upgrade an existing billboard (off-premise) sign from a permanent graphic display to an Electronic Message Display (EMD) on property general located at 330 Charlene Street, C/S 1406, Parcel 13, in a Heavy Commercial (CX) zone. Tax ID: D01225. The Board may affirm, modify or reverse the determination of the Zoning Coordinator in this matter. Yellowstone County Zoning Regulations Section 27-1615. Regulations are on line here: <https://www.billingsmt.gov/755/Zoning-Information>

**RECOMMENDATION**

Planning staff recommends the Board affirm in whole the decision to not grant the sign permit to upgrade the existing billboard sign from a permanent graphic display to an Electronic Message Display (EMD).

**BACKGROUND**

This sign code did not explicitly state that a "computer controlled variable message electronic sign" was allowed to be used on a billboard sign. Reading the code as a whole, it can be inferred that a billboard sign with an EMD sign display could be allowed. (Archived County sign Code attached) This code expired on December 15, 2020, when the County adopted an entire new zoning code including an update of the sign code section. (new Code Sections 27-1405.C (EMD) and 27-1409 (Billboards)). Prior to the new code adoption, no billboard sign company had applied for or was interested in updating any existing billboard sign to an EMD technology if the sign was located outside the city limits. Until 2016, the state Outdoor Advertising Bureau, part of the MT Department of Transportation, and the MT Highway Commission did not allow billboard signs advertising on the Interstate system to have an electronic message display. It was considered to be too distracting to motorists and the Federal Highway Administration (FHA) had not issued guidance on the allowance of the technology. In 2016, the state updated its regulations to allow Electronic Billboards (EBB) on the interstate system subject to their limitations in the Administrative Rules of Montana 18.6.237. Planning staff does not believe the intent, or more



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significantly, the wording of the new County sign code would allow an EMD sign to be used on a billboard. Section 27-1405.C clearly intends for an EMD display to be used for on premise signs. A billboard is not an on premise sign. An EMD sign face is required to be used only in conjunction with a permanent graphic display on the same sign structure and cannot be more than 40% of the total sign area. The billboard sign code section at 27-1409 does not mention using an EMD display and only includes the language carried forward from the previous code regarding lighting "*be designed to minimize glare and interference with any residential uses or traffic.*" Planning staff recommends the Board uphold the administrative decision. The applicant can pursue a request to amend the County sign code to allow an EMD display on billboard signs, but the current code does not allow this technology.

### **Board of Adjustment determination:**

Did staff properly interpret the code?

Did staff properly and accurately apply the code to the appellant's permit request?

County Sec 27-1409 – Billboard Signs –

Staff has not denied the placement. Staff has denied a request to remove a static billboard sign face and replace it with an electronic message display.

### **Discussion**

Chairman Tyler Bush asked if this provision was carried forward into the 2020 adopted County Sign Code with intent or omission. Nicole Cromwell said she does not recall a firm intent but she believes the County was cognizant as there was discussion about electronic message displays as the City had amended their sign code to address electronic message displays. The County Sign Code does not allow or provide for an allowance of an EMD sign face on a billboard sign. Board member Poppler asked if the electronic message language specifically prohibited or just not addressed. Zoning Coordinator Nicole Cromwell said it never came up as an issue during the public hearing the Summer of 2020 and there was nothing specifically said during a public hearing to prohibit it. She said the sign would be allowed if it was located in the City. In response to question by Chairman Bush, Nicole Cromwell explained and said the intent of Operation ReCode was to address conflicts and streamline the process. It wasn't just conflicts but there are different needs in zoning in the County than the City. The County wanted to keep their code separate. Chairman Bush asked how far is this sign is located from City limits. Nicole Cromwell referred to a posted zoning map and pointed out the City limits and said this parcel is immediately adjacent to the City. She said in 2016, the State of Montana adopted new rules allowing electronic billboards on the interstate system. In response to question by Board member Hecker, Nicole Cromwell explained the regulations for changing the display on an electronic sign located within the City.

### **Public Hearing**

Chairman Bush opened the public hearing and called for anyone wishing to speak in favor or against the request for Administrative Appeal 23-01.



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**Kelly Strobel, Lamar of Billings, Kelly Strobel, leasing agent, 7505 Entryway Drive, Billings, MT.**

Mr. Strobel said the sign face will become digital but it will not change in size. He said there is no case study stating this is a distraction. This parcel is currently zoned Heavy Commercial within the County. The main difference in definition is this is a “bulletin” and in the City it is considered a “poster”. The MDOT permitting process requires a distance separation from another billboard and this will meet the MDOT regulations. Positive comments have been received from the Highway Department. There are digital billboards throughout the County that are animated. Mr. Strobel feels that as the rezone came into play it was a way of eliminating billboards within the City as well as the County. He is asking that this request be approved by this Board.

## **Discussion**

Chairman Bush said the location of the sign is permanently permitted and this variance merely changes it to an electronic sign. The current sign is illuminated with LED lighting during the night. Board member Hecker asked if this is a digitized picture that stays in place and could be streaming if approved. Kelly Strobel explained they are not designed to do streaming and it doesn't fade or burst. He continued and said all of the artwork is done by computer and this is the way of the technology. Board member Poppler asked if they were aware this would be an issue when applying for the variance. Kelly Strobel said this is the first time they applied for a digital billboard in the County, and his primary responsibility is permitting of the signs. He said he attended several Project ReCode public hearings, and some of the allowable zoning for billboards was changed during Project ReCode rezoning. He stated this is another example of trying to eliminate billboards. He said the closest EMD sign is located on the Montana interstate and this one would be the first one in the Billings area. It is allowable by the state but it is in conflict with the County Zoning Code. Mr. Strobel said he feels this EMD will fit in with the MDOT regulations. He said not a lot of time was spent during the ReCode public hearings on billboards and he feels it was preventative and the County code isn't clean one way or another.

## **Maxon R. Davis, Agent and Counsel, Davis, Hatley, Haffeman & Tighe P.C.**

Mr. Davis represents Appellants Lamar of Billings, Kelly Strobel, leasing agent, 7505 Entryway Drive, Billings, MT. Mr. Davis resides in Great Falls and drives by a similar sign on a daily basis. He feels the answer to the question is that wasn't a deliberate intent but inadvertent. He referenced Section 27-4105 c-3-b. Their position is that they chose not to regulate electronic messages on billboards and he feels that they weren't prohibited. Instead, it just wasn't addressed. Mr. Davis said it wouldn't be an issue if it were located on the either side of Charlene Street. He suggested consideration of an amendment to the County Sign Code to allow electronic message displays and feels a variance would be in order for this particular sign.

## **Allie Carley, 2525 Aspen Creek Trail, Billings, MT**

Ms. Carley said digital billboards are the wave of the future. She said they partner with the National Amber Alert System and the National Weather service and this would be no different here in Billings.



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**Wayne Teyler, 2319 Belknap Ave, Billings, MT**

Mr. Teyler said he is the primary caretaker of the parcel. He purchased this parcel and used it for his landscape business. He commented he is “gun shy” around Zoning Coordinator Nicole Cromwell, as the previous denial was costly. Mr. Teyler said this project is income for him and he hopes this is not personal.

Chairman Bush asked if there is anyone else wishing to speak. There was none. Chairman Bush closed the testimony for public hearing and moved to deliberation and discussion.

Chairman Bush asked Ms. Cromwell to refer to the sections of code provided in the staff presentation

**County Sec. 27-1409 – Billboard Signs**

**SECTION 27-1409 BILLBOARD SIGNS**

**A. APPLICABILITY WITHIN THE INTERSTATE CORRIDOR**

Billboards shall be permitted in the Interstate Corridor (660 feet either side of the right-of-way of the Interstate Highway) on properties zoned C3, CX, I1, or I2 as follows:

1. Billboards located within the Interstate Corridor shall have a maximum size of 600 square feet in size and shall be no more than 40 feet in height.
2. Billboards shall be separated by a minimum distance of 500 feet.
3. Lighting shall be designed to minimize glare and interference with any adjacent residential uses or traffic.

**Sec. 27-1405.C – EMD signs**

**C. ELECTRONIC MESSAGE DISPLAY (EMD) SIGNS**

3. Incorporation in Wall or Freestanding Sign
  - (a) An EMD may only be used in conjunction with an adjacent wall sign or as part of a freestanding sign and shall not be displayed on its own.

Chairman Bush said the existing billboard meets the restrictions, and the conflict is for the request for the sign to be electronic. He said Section 27-1409 has to do with billboards and Section 27-1405 deals specifically with billboard. Nicole Cromwell concurred and provided clarification between the City and the County codes. She pointed out that neither Section 1405 or Section 1409 specifically say whether message displays are allowed on billboard signs. Section 1405 stated and EMD sign cannot be displayed on its own but has to be with a permanent graphic display. This is in direct conflict with a digital sign as it has multiple sign displays with well time and then changes. She said Mr. Davis believes this is inadvertent and the County never intended to prohibit electronic signs. Chairman Bush said his argument is that since it is not specifically excluded in billboards and it is addressed in another section of code, they chose not to regulate it. Mr. Davis agreed with this assessment. Ms. Cromwell said the Board of County



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Commissioners could reconsider this as a text amendment. Board member Hecker commented that this would be a better way of dealing with it. Chairman Bush suggested approving the appeal and simultaneously including a recommendation that the Code be cleaned to avoid similar instances happening in the future. He said he feels that somehow this was omitted and not clarified during Project ReCode. Board member Hecker said if the variance approved and the Commissioners do not make the recommendation, it would return to this Board. She commented that there is no pressure to address this issue. Chairman Bush could site this incident as a precedent. Board member Hecker stated she would like to see it addressed. Nicole Cromwell said the Yellowstone County Zoning Commission and Planning Board can on their own initiative propose text amendments. Board member Poppler stated he understands the need for zoning. He concurs with Chairman Bush and said this wasn't addressed by the State or Commissioners and they haven't taken the opportunity to deal with this. He knows there will be more than one electronic billboard that will be built on a County parcel. He doesn't see any downside to upgrading this sign as there are several pluses to having an electronic sign. He feels this Board needs to respectfully ask the Board of County Commissioners to look at this and give a decision. He doesn't see reasoning to deny this variance request due to an unintended undealt with item of the Zoning Code.

### **Motion**

**Board member Boucher made a motion and Board member Hecker seconded the motion to reverse in whole the staff decision and approve the permit with a notation of the modification and proposed change to correct the change in the code to avoid future Board of Adjustment requests for variances.**

### **Discussion**

Board member Boucher stated he agrees with the staff findings.

**The motion carried 2-1, with Board member Boucher voting against the motion. The Administrative Zoning decision is affirmed.**

### **Other Business/Announcements**

- **Motion by Chairman Bush and seconded by Board member Hecker to approve the Morgan Tuss to serve on the YC Board of Adjustment. The motion carried with a unanimous voice vote.**
- **Announcement:** The July 6, 2023 Yellowstone County Board of Adjustment meeting will be held as legally announced and advertised.

**Adjournment: Adjourned 5:05 p.m.**

**Tamara L. Deines, Planning Clerk**

**DRAFT- TO BE APPROVED BY A MOTION JULY 13, 2023**

