

COMMISSIONERS APPROVAL

KANENWISHER

FOSS 

CHILCOTT 

IMAN 

STOLTZ 

Members Present.....Commissioner Matt Kanenwisher, Commissioner Suzy Foss,
Commissioner J.R. Iman and Commissioner Ron Stoltz

Date.....March 6, 2012

- ▶ Minutes: Glenda Wiles
- ▶ Commissioner Greg Chilcott was in Washington DC for a NACo legislative conference.
- ▶ The Board met at 9:39 a.m. for the following administrative matters:
 - Request for Commission Action on Gleason Lots Subdivision (see attached): Present was Planning Administrator Terry Nelson and Planner Kevin Waller. It was noted this request also addresses the agricultural revocation which has been addressed by Engineer John Horat as consultant for the developer and Planning Staff's recommendation is to approve of the Final Plat Approval and Revocation of Agricultural Covenant. **Commissioner Iman made a motion to accept the recommendation of Planning Staff for the approval of the Final Plat for Gleason Lots which includes revocation of agricultural covenant. Commissioner Stoltz seconded the motion and all voted "aye". (4-0)**
 - Commissioner Reports: Commissioner Kanenwisher gave a brief report on Road Department activities. The Board discussed Commissioner Kanenwisher's trip to Helena tomorrow in regard to the Large Predator Policy adoption by the Ravalli County Commissioner. Commissioner Stoltz gave a report on the Airport Conference he attended in Bozeman and certain FAA requirements for grant eligibility. Commissioner Iman addressed water rights on exempt wells and the upcoming meetings around the state. Commissioner Kanenwisher addressed software for 'time clocks' that he is researching.
- ▶ The Board met with Human Resource Director Robert Jenni for an update and to approve the IMSHW requirements for hearing tests for road employees.
- ▶ The Board met with Chief Financial Officer Klarryse Murphy for an update.

►The Board met at 2:04 p.m. to discuss a draft of the Off-Premise Sign Ordinance in order to bring it forward for an amended ordinance. Present was Planning Administrator Terry Nelson and Planner Kevin Waller. Commissioner Iman was not present for this meeting. Terry noted this is the second meeting on this subject and presented a power point presentation (as attached).

►Commissioner Iman attended a Human Resource Council meeting in Hamilton at 3:00 p.m.



Ravalli County Off-Premise Sign Ordinance

The constitutionality of a sign ordinance depends upon what signs and billboards the restriction prohibits and how it prohibits them. The courts have articulated four criteria that, when mixed and matched, serve as a blueprint to determine whether a sign and billboard restriction violates the First and Fourteenth Amendments:

- (1) whether the prohibited signs are posted on *public or private property*;**
- (2) whether the prohibited signs display *commercial or noncommercial messages*;**
- (3) whether the prohibited signs convey *information related to premises where the sign is located (an on-site sign) or not (an off-site sign)*; and**
- (4) whether the prohibition restricts *particular content (a content-based restriction) or not (a content-neutral restriction)*.**

No single criterion is dispositive of whether a particular sign ordinance passes constitutional muster. Instead, when the four criteria are examined in combination, prior court decisions dealing with similar ordinances expose whether the current restriction is constitutionally permissible.

Localities May Ban All Signs on Public Property,

Members of the City Council of Los Angeles v. Taxpayers for Vincent

But May Not Ban All Signs on Private Property

City of Ladue v. Gilleo



According to the U.S. Supreme Court, communities can constitutionally prohibit billboards, while not restricting other signage, as long as they observe two rules:

(1) commercial speech cannot be favored over noncommercial speech; and

(2) Some noncommercial speech cannot be favored over other noncommercial speech.

Thus, if a community allows any billboards at all, it must allow billboards displaying any and all noncommercial messages.

Metromedia, Inc. v. City of San Diego

VIACOM

Childhood obesity.
Don't take it lightly.

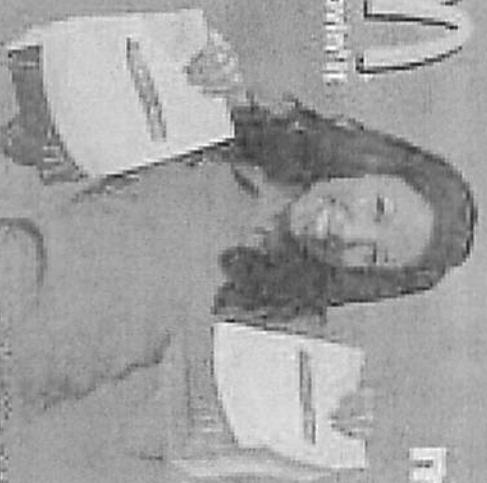


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4151

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For Iovanni:



my kinda
shoppin'
spree

Dollar Menu

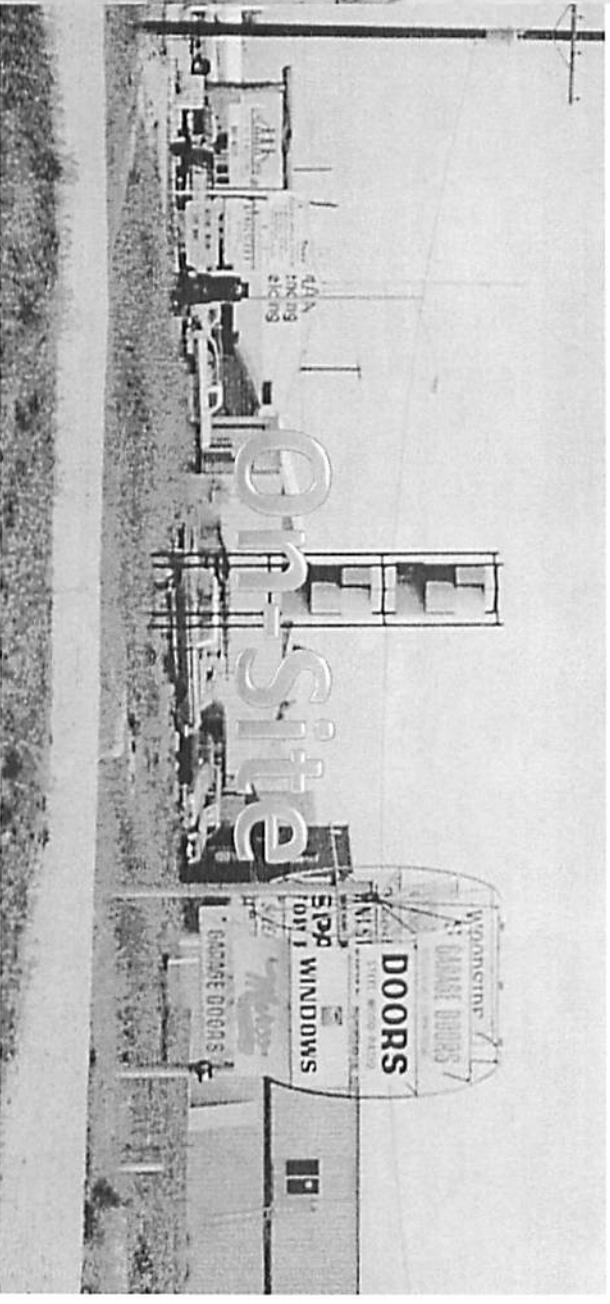
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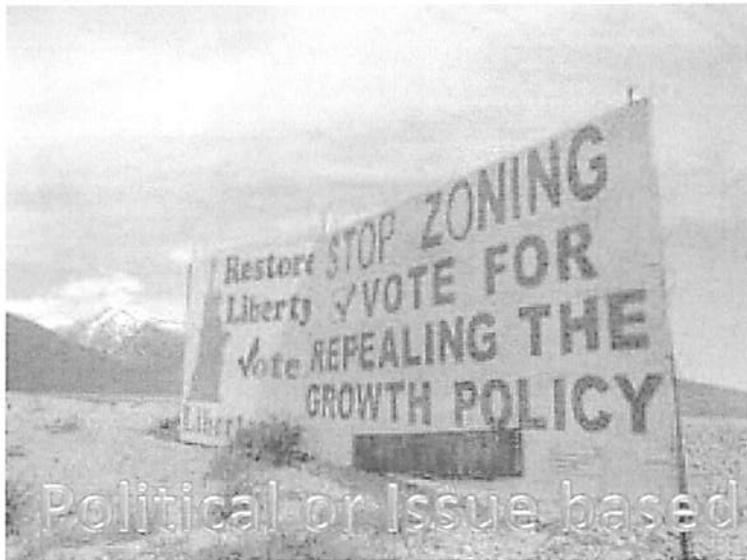
Commercial

Commercial

Courts, including the U.S. Supreme Court, have found that sign ordinances may constitutionally prohibit or restrict **off-site commercial** signs while allowing **on-site commercial** signs. *Metromedia, Inc. v. City of San Diego*



Courts, including the U.S. Supreme Court, have constitutionally allowed local governments to make the content-based distinction between on-site and off-site in restricting commercial signs. However, beyond this distinction, ***sign ordinances that prohibit or regulate signs based on their content are subject to the highest constitutional scrutiny*** under the First Amendment and are presumptively invalid.



M 200 m →

M 197 m →

Spacing and Density



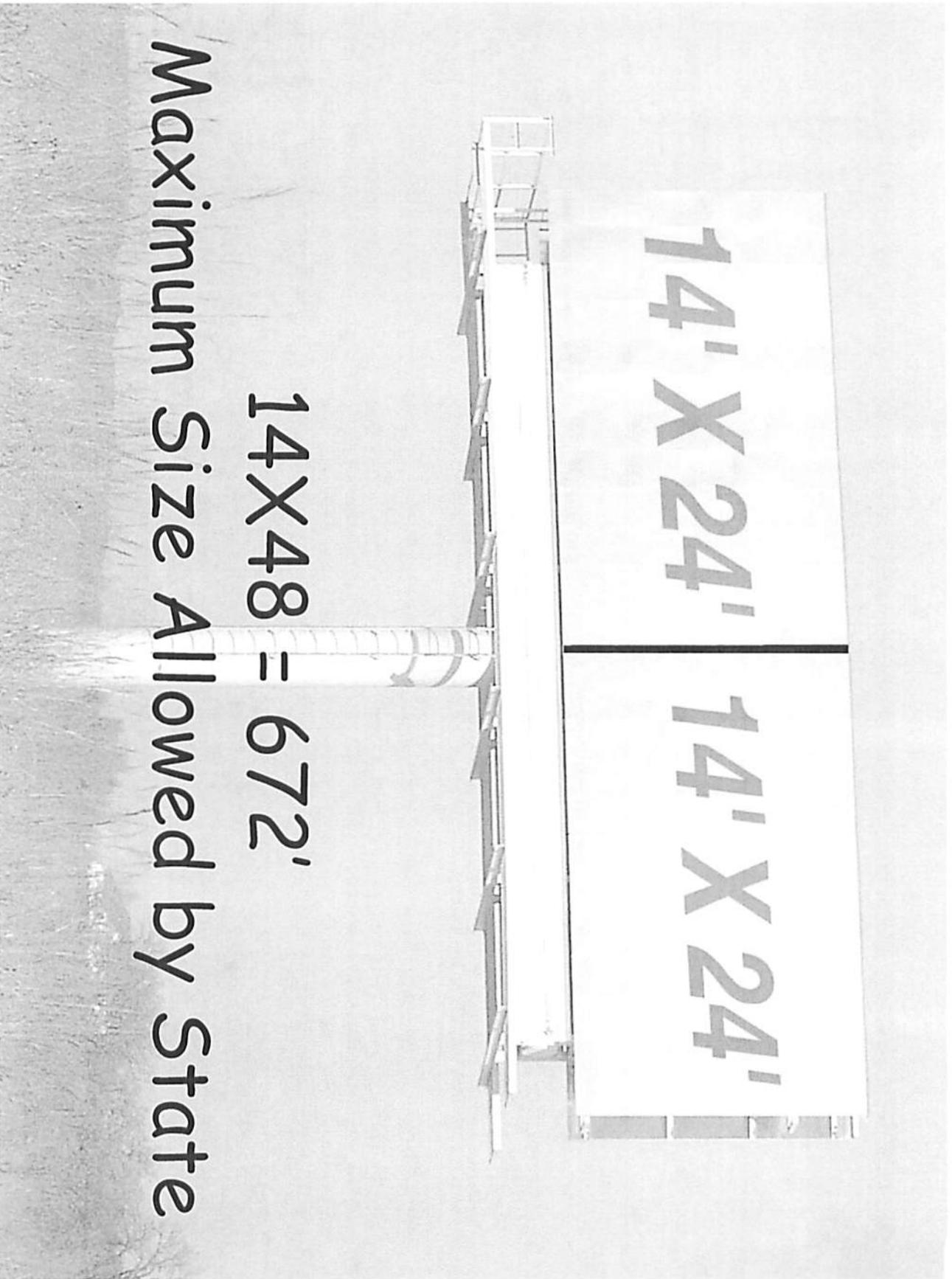
The University of
Montana

Land Use Clinic
School of Law

The University of Montana - Missoula
Missoula, Montana 59812
Phone: (406) 243-2528
Fax: (406) 243-2576

- In 2008, The UM LULC made recommendations to Ordinance 12 to include
 - Remove Self-Government Powers **Done**
 - ~~Include on-premise signs OR~~
 - Broaden exemptions
Now only includes non-commercial- temporary - and directional signs – 32 SqFt limit
 - Clarify if on HWY 93 **Covered by State**
 - Change Land Services to Planning Dept. **Done**
 - Also warns about 7 year non-conformance policy
No longer requires removal of grandfathered signs

	Current County	State	Proposed
	before election	before election	
Political Signs	none	90 days	Political would be non-commercial -
Timing	after election	after election	No time limit
	10 days	30 days	
Setbacks	100 feet	none	none
Separation	1000 feet	300+ feet	300'
Height	10 feet	30 feet	30 feet
Size	32 sqft	672 sqft	130 sq ft
Width	none	48 feet	size restriction should limit width
Abandoned Sign	60 Days	6 Months	6 months



14' X 24'

14' X 24'

$$14 \times 48 = 672'$$

Maximum Size Allowed by State



12'X24'

288 sqft

8'X16'

128 sqft

4'X8'

32 sqft

14' X 24'

MERIDIAN RD

100' Setback and Distance Between Signs

~725'

US HIGHWAY 93 N

OL FOGIE TRL





Size Restrictions

Standard sizes for billboards are 20'x 60', **14'x 48'**, and 10'6"x36'. Regulation of signs by size varies greatly, but a range can be established from six square feet to 672 square feet. When limiting signs to smaller sizes, the city or county should allow for reasonable exceptions, either through an "exempt signs" section or a variance section (see below for guidance on both).

No sample language is included here because the language used in this section will vary greatly depending on the goals established by the jurisdiction and whether the restrictions are applied based on existing zoning districts. It is best to obtain the ordinances of communities with restrictions similar to the type desired, and review those options with an attorney expert in zoning and sign regulation. Also, **reasonableness is the standard that courts look to when deciding whether ordinances are legitimate. Therefore, it is important for a city or county that is interested in strictly limiting the size of signs to address their motivations for the restrictions in their purpose and intent section.**

The Supreme Court specifically addressed the issue of billboard regulation in *Metromedia, Inc. v. San Diego*, 453 U.S. 490 (1981). This case has been difficult to interpret since it is a plurality opinion. However, the implications of the case are that in an outright ban of billboards, the government must leave ample alternative media channels for communication of the information. This case also addressed the issue of distinguishing between on-premises and off-premises signs. The rule is that commercial speech can be restricted more than non-commercial speech; likewise, off-premises signs can be regulated more than on-premises signs. Making those distinctions can be tricky. Those seeking to do so should do so only with great caution. Risk- and litigation-adverse jurisdictions should avoid making the distinctions entirely, if possible. Many billboard experts suggest restricting by size rather than by content. Even though the U.S. Supreme Court has made the distinction between commercial and non-commercial speech relative to permissible regulation, some courts have problems with any category that even addresses the message on signs. The bottom line on content is to be sure categories are content neutral. Do not favor or disfavor signs based on a particular message. Whether or not the intent is to restrict speech based on content, a court may see any regulation based on what signs say as evidence of such an intent.

Although the Supreme Court has not considered the issue, the overwhelming majority of courts that have reviewed sign ordinances imposing durational limits for temporary political signs tied to a specific election date have found them to be unconstitutional.

Whitton v. Gladstone (C.A.8, 1995), 54 F.3d 1400 (ordinance deemed unconstitutional which limited placement or erection of political signs to thirty days prior to the election to which the sign pertains until seven days after the election); *Dimas v. Warren* (E.D.Mich.1996), 939 F.Supp. 554 (ordinance deemed unconstitutional which prohibited posting of political yard signs earlier than fortyfive days prior to any election, and ordering removal within seven days after); *Orazio v. North Hempstead* (E.D.N.Y.1977), 426 F.Supp. 1144 (holding that no time limit on the display of preelection political signs is permissible under the First Amendment); *Antioch v. Candidates' Outdoor Graphic Serv.* (N.D.Cal.1982), 557 F.Supp. 52 (ordinance deemed unconstitutional which limited display of political signs to the period sixty days before election); *Collier v. Tacoma* (1993), 121 Wash.2d 737, 854 P.2d 1046 (ordinance deemed unconstitutional which limited posting of political signs to the period sixty days prior to election to seven days after, where no time restrictions were imposed on other temporary signs); *Curry v. Prince George's Cty.*, *supra*, 33 F.Supp.2d 447 (ban on political campaign signs posted on private residences for all but forty-five days before and ten days after an election deemed unconstitutional); see, also, *Christensen v. Wheaton* (Feb. 16, 2000), N.D.Ill. No. 99C8426, unreported, 2000 WL 204225 (granting preliminary injunction enjoining enforcement of ordinance the effect of which was to prohibit the display of political signs for more than thirty days); *Knoeffler v. Mamakating* (S.D.N.Y.2000), 87 F.Supp.2d 322, 327 (noting that "durational limits on signs have been repeatedly declared unconstitutional"); *Union City Bd. of Zoning Appeals v. Justice Outdoor Displays, Inc.* (1996), 266 Ga. 393, 467 S.E.2d 875 (limitation of 9 political signs to six weeks prior to and one week after election deemed unconstitutional); *McCormack v. Clinton Twp.* (D.N.J.1994), 872 F.Supp. 1320 (limitation on political signs to ten days prior to and three days after election deemed unconstitutional). Cf. *Waterloo v. Markham* (1992), 234 Ill.App.3d 744, 175 Ill.Dec. 862, 600 N.E.2d 1320 (ninety-day time limitation for temporary signs not unconstitutional)

I have worked with the Montana Department of Transportation since I started the billboard project several years ago. They are aware of my progress. When I first told the MDT of my plan they told me there was a ninety day rule. However, in the last few years, there have been several challenges to that time restraint. The high court has ruled it is unconstitutional to put a time restriction on political signs, citing freedom of speech.

Re: Jim O'Hara Political Signs

Jim O'Hara Governor
oharagov.com

CHAPTER 1

SIGNS; OUTDOOR ADVERTISING

SECTION:

- 8-1-1: Purpose
- 8-1-2: Authority
- 8-1-3: Applicability
- 8-1-4: Definitions
- 8-1-5: Permit Administration
- 8-1-6: Permit and Fee
- 8-1-7: General Standards
- 8-1-8: Construction Standards
- 8-1-9: Variances
- 8-1-10: Variance Criteria
- 8-1-10: Nonconforming Signs
- 8-1-11: Exemptions
- 8-1-12: Violation; Penalty

8-1-1: PURPOSE:

The purpose of this Section is intended to accomplish the following objectives:

- A. To ensure that signs are designed, constructed, installed, and maintained so that public safety and traffic safety are not compromised.
- B. To minimize the distractions and the obstructing-of-view that contributes to traffic hazards and endangers public safety.
- C. To encourage a high standard for signs in order that they should be appropriate to and enhance the aesthetic appearance and attractiveness of the county and, further, create an aesthetic environment that contributes to the ability of the county to attract sources of economic development and growth.
- D. To allow for adequate and effective signs for communicating identification while preventing signs from dominating the visual appearance of the area in which they are located.

8-1-2: AUTHORITY:

The BCC adopts this Ordinance under the County's general legislative power to provide for public health, welfare, and safety. Mont. Const. Art. XI, Sec. 4; §§ 7-5-2101, -2102; 51 Op. Atty. Gen. Mont. 51 (2005). In addition, the BCC adopts this Ordinance under its express authority under sections 7-14-2101, -2102, MCA, and under its authority to "maintain, control, and regulate "sidewalks, streets and highways under their jurisdiction," by "enacting as ordinances . . . any other law regulating traffic, pedestrians, vehicles, and operators of vehicles that are not in conflict with state law or federal regulations and enforcing the ordinance." Section 61-12-101, MCA.

8-1-3: APPLICABILITY:

This chapter shall apply in all of the unincorporated areas of the County not covered by 75-15-111 MCA (Highway 93). Nothing contained herein shall prohibit more restrictive covenants, easements, agreements, or zoning for any particular area.

8-1-4: DEFINITIONS:

A. General Definitions: Defined terms specific to this chapter are described in the subsections below. Words and phrases not specifically defined in this chapter shall have their usual and customary meaning in the context of sign regulation and land use planning.

B. ABANDONED SIGN: A sign that no longer correctly directs or exhorts any person, advertises a bona fide business, lessor, owner, product or activity conducted or product available. Any sign that remains blank, or contains only the owner's/agent's advertisement for lease, for more than six (6) months.

Comment [A1]: Public Comment that 90 days would be better.

C. BILLBOARD: An off-premise object, device, display, sign, or structure, or part thereof, displayed outdoors or visible from a public way, which is used to advertise, identify, display, or direct or attract attention to an object, person, institution, organization, business, product, service, event or location, or to express a point of view, by any means, including words letters, figures, symbols, advertising flags, fixtures, colors, illuminations, or projected images. Each substantially different face of a billboard structure shall constitute a separate billboard. Billboards do not include on-premise commercial or

political signage or small commercial or non-commercial signs temporarily placed in residential lawns by residents, owners, contractors, realtors, or by or on behalf of political candidates or issues.

D. COMMERCIAL SIGN. A sign containing copy that relates primarily to the economic interests of the publisher or its audience or directs attention to a business, industry, profession, commodity, service, activity, institution, product or entertainment offered for sale.

E. MAXIMUM TOTAL HEIGHT: The vertical distance from elevation of the finished grade at the structure to the highest point of the sign structure.

F. NON-COMMERCIAL SIGN. A sign containing copy that does not relate primarily to the economic interests of the publisher or its audience nor directs attention to a business, industry, profession, commodity, service, activity, institution, product or entertainment offered for sale.

G. OFF-PREMISE SIGN: A sign directing attention to a specific business, product, service, entertainment event or activity, or other commercial activity that is not sold, produced, manufactured, furnished, or conducted at the property upon which the sign is located. This shall include billboards.

H. SIGN: A structure or device designed or intended to convey information to the public in written or pictorial form.

I. SIGN ADMINISTRATOR: The designated County official responsible for administering the provisions of this chapter. These activities may include, but are not limited to, reviewing applications, issuing/denying permits, inspecting signs, and interpreting and enforcing the provisions of this Ordinance.

8-1-5: PERMIT ADMINISTRATION:

SIGN ADMINISTRATOR: A sign administrator shall be appointed by the Administrator of the County Planning Department, who shall administer and enforce this chapter.

8-1-6: PERMIT AND FEE:

A. PERMIT REQUIRED: A sign permit shall be required for any non-exempt off-premise sign allowed by this chapter.

B. PERMIT APPLICATIONS: Applications for sign permits shall be obtained in the County Planning Department. The applicant shall provide information requested by the Sign Administrator, including a signed and dated landowner statement that the landowner consents to the erection and maintenance of the sign on the property.

C. PERMIT FEE: A sign permit fee, established by resolution of the BCC, shall be charged for each individual sign erected, as allowed by this chapter. These fees are intended to provide for the costs of administration and enforcement of this chapter.

8-1-7: GENERAL STANDARDS:

A. APPLICANT TO MEET ALL STANDARDS: All off-premise signs subject to this chapter must meet the general standards in the subsections below.

B. HEIGHT: No off-premise sign shall exceed a maximum of Thirty feet (30') in elevation above the elevation of the centerline of the adjacent roadway.

Comment [A2]: Public Comment to keep at 10'

C. SEPARATION: All off-premise signs shall be separated a minimum of three hundred feet (300') from the nearest off-premise sign on the same side of the roadway.

Comment [A3]: Public Comment to keep at 1000'

D. SIZE: No off-premise sign shall exceed the maximum of One Hundred Thirty (130) square feet in area. The sign area shall be determined by the exterior of one side of the sign face.

Comment [A4]: Public Comment that this is 4 times what it was, too big of a change.

E. LIGHTING: Lighting shall only be allowed so as to illuminate the message on the face of the sign. No lighting shall be reflected onto the adjacent roadway or adjoining properties. No off-premise signs shall have flashing or blinking lights, movement or moving parts, or simulate motion with reflective parts. All electrical work associated with a lighted sign must be completed by an electrical contractor, bonded and licensed by the State of Montana.

Comment [A5]: Public comment to add full cutoff lighting language.

F. IDENTIFICATION: Every off-premise sign permitted by these regulations shall have an identification of the owner's name and contact information attached to the sign structure.

Comment [A6]: Public Comment to include Sign Permit # & Date of Issue

G. MAINTENANCE: Maintenance of a sign shall include periodic cleaning, replacement of flickering, burned out or broken light bulbs or fixtures, repair or replacement of any faded, peeled, cracked, or otherwise damaged or broken parts of a sign, and any

other activity necessary to restore the sign so that it continues to conform to the requirements and contents of the sign permit issued for its installation.

8-1-8: CONSTRUCTION STANDARDS:

A. **MINIMUM STANDARDS:** All off-premise signs shall meet the following minimum construction standards in the subsections below.

B. **APPLICABLE CODES:** All requirements of applicable building and electrical codes.

C. **ANCHORING:**

1. No sign shall be suspended by non-rigid attachments that will allow the sign to swing or sway.
2. All freestanding signs shall have self-supporting structures erected on or permanently attached to concrete foundations.
3. All temporary signs, as allowed under section 8-1-12 of this chapter, shall be braced or secured so as to prevent any motion.
4. All signs shall be constructed to withstand a wind load of eighty (80) miles per hour.
5. **Inspection:** Signs and sign structures shall be inspected to ensure compliance with all provisions of this chapter. A certificate of compliance shall be filed in the Planning Department. Such inspection and a subsequent certification shall be made every two (2) years.

8-1-9: VARIANCES; Application; Notice of Meeting:

A. **BCC to Consider Variance Applications:** The BCC may grant a reasonable variance from the standards of this chapter.

B. **Forms:** Applications for variances shall be filed with the Planning Department on forms provided by the sign administrator. The variance application form shall be submitted at least thirty (30) days prior to any decision by the board.

C. **Notice:** A public notice, at the expense of the applicant, shall be published in a newspaper of general circulation at least fifteen (15) days prior to the board meeting for action on the variance.

8-1-10: VARIANCE CRITERIA:

A. APPLICANT TO DEMONSTRATE VARIANCE CRITERIA ARE MET: No variance shall be granted unless the applicant can provide sufficient evidence for the BCC to find that all the variance criteria are met.

B. CRITERIA:

1. Compliance with the provision for which a variance is sought constitutes a hardship that is created by the strict application of this chapter. A financial hardship does not constitute sole grounds for a variance.
2. Special conditions and/or circumstances exist which are peculiar to the land, the lot or something inherent in the land on which the sign is to be placed which causes the hardship, and which are not generally applicable to other lands.
3. Granting the variance will not confer on the applicant any special privilege compared to other landowners.
4. Granting the variance will be in harmony with the general purpose and intent of this chapter.
5. Granting the variance will not substantially affect the rights of other landowners.

C. CONDITIONS: The BCC may condition variance approval upon appropriate conditions and safeguards in conformity with this chapter. Violation of such conditions and/or safeguards, when made a part of the terms upon which the variance is granted, shall be deemed a violation of this chapter.

8-1-11: NONCONFORMING SIGNS:

Signs not conforming to the requirements of this Ordinance, and which were legally erected prior to the adoption of the Ordinance are permissible nonconforming signs. Any such sign shall be brought into compliance under the following circumstances:

A. At such time as the sign is replaced or relocated;

1. Changing the sign face does not constitute replacement.

B. At such time as the sign is abandoned for a period of six months or more after being contacted by the Sign

Administrator;

8-1-12: EXEMPTIONS:

A. EXEMPT SIGNS: The signs in the subsections below are exempt from the provisions of this chapter. Exempt signs shall not exceed thirty-five (35) square feet in area, including border and trim, but excluding base or apron, supports and other structural members.

1. NON-COMMERCIAL SIGNS: A sign containing copy that does not relate primarily to the economic interests of the publisher or its audience nor directs attention to a business, industry, profession, commodity, service, activity, institution, product or entertainment offered for sale.

2. TEMPORARY SIGNS: A sign used for temporary purposes. No temporary sign may be erected for more than one-hundred-twenty (120) days.

8-1-13: VIOLATION; PENALTY:

A. VIOLATIONS: Any person that violates the provisions of this chapter shall be subject to the provisions of section 1-1-4 of this Code.

B. ADDITIONAL FEE: An additional fee of one hundred dollars (\$100.00) shall be assessed to the cost of a sign permit for any sign construction that commenced prior to obtaining the required permit.



REQUEST FOR COMMISSION ACTION

OG-12-02-57

BCC Meeting: March 6, 2012 @ 9:30 a.m.
Subject: Subdivision Final Plat Approval

I. Action Requested

This is a request from John Horat, represented by Bitterroot Engineering and Design, to approve the final plat submittal for the Gleason Lots Subdivision.

II. Applicable Regulations

Ravalli County Subdivision Regulations (RCSR) Section 3-4-4(c) gives the Board of County Commissioners (BCC) the authority to approve final plat submittals if they conform to the conditions of preliminary plat approval, the terms of the MSPA, and the RCSR.

III. Background

- The Gleason Lots Subdivision was conditionally approved by the Board of County Commissioners (BCC) in a public hearing on December 12, 2011.
- The Preliminary Plat Decision was mailed to the subdivider on January 9, 2012, beginning the 18-month preliminary plat approval period.
- The Planning Department has reviewed the final plat submittal for the Gleason Lots Subdivision and has determined that the Board of County Commissioner's conditions of approval and requirements of final plat submittal have been met.

IV. Planning Staff Recommendation

The Planning Department has reviewed the final plat submittal for the Gleason Lots Subdivision and recommends the BCC approve the final plat.

Attachments: Final Plat Materials
Staff: Kevin Waller, Terry Nelson
Date: February 29, 2012
Cc: John Horat, Shawn and Elisabeth Gleason
