

Sather & Holm, PLLC

Attorneys at Law

2301 Montana Ave., Ste. 202
P.O. Box 1115
Billings, MT 59103
Phone: 406-294-1700
Fax: 406-794-0673
ben@satherandholm.com

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SENT BY EMAIL AND U.S. MAIL

Nicole Cromwell
Zoning Coordinator
Planning Division
CITY OF BILLINGS
2825 Third Avenue North
Billings, MT 59101
crowmwelln@ci.billings.mt.us

Re: *Proposed Zone Change
Billings Flying Service/Almon Blain*

My Clients: *Robert Sukin (Robert H. Sukin Trust)
Jack Sukin (Jack D. Sukin Revocable Trust)*

Dear Ms. Cromwell:

As you know, this firm represent two of the adjacent landowners, Robert Sukin (Robert H. Sukin Trust) and Jack Sukin (Jack D. Sukin Revocable Trust) regarding the Billings Flying Service application for zoning change. My clients will be collectively referred to as the Sukins throughout this submission. This letter is provided as a supplement to our original Objection, dated November 20, 2015. Also, we note that the proponent of the change, Billings Flying Service, has indicated it plans to modify its proposal so that additional submissions from any opponents may be necessary in anticipation of the February 8 zoning commission hearing.

The Sukins object to the proposed zone change as written. The proposed zone change and the anticipated use of the property are not compatible with the surrounding neighborhood and do not meet the eleven criteria for a zone change. The zone change and the intended use would negatively impact surrounding property values and would significantly erode the quality of life in those neighborhoods. With that said, the Sukins are aware of the valuable nature of the properties located along Highway 3 and possible commercial development which would be beneficial to both the individual property owners and the City of Billings/Yellowstone County. The Sukins are not, per se, opposed to development. The proposed zone change here, however, is not only an improper zone request; but this type of development will stunt possible future development by the remaining landowners located adjacent to the Blain property.

The Sukins rely on their November 20 submission with respect to the potential problems arising from traffic, noise, stormwater runoff problems, along with a description of the issues

stemming from controlled industrial zoning. Also, the Sukins have been in contact with other neighbors, including the Stony Ridge Development, LLC, residents (through counsel Tim Filz of Christensen Fulton & Filz). Mr. Filz has prepared a well-reasoned analysis of the problems facing the County in whether or not to approve this application. Further, the Stony Ridge neighbors have provided a presentation from Sanderson Stewart, a local engineering firm, which sets forth alternative uses for the property at issue which does not intend to stifle economic growth; but rather encourage economic growth in this area the right way. The Sukins are supportive of the position set forth in the Stony Ridge submission (of course, the Sukins reserve the right to amend this submission depending on the contents of the modified zoning application).

The purpose of this supplemental submission is to point out the potential litigation risks Yellowstone County faces should these zoning changes be approved. All of the Controlled Industrial zone lands in Yellowstone County are located along the Interstate. To allow a small Controlled Industrial zone tract south and east of Agricultural-Open Space and north of residential zoned areas (all of which are significantly more restrictive in terms of allowed uses) amounts to illegal spot zoning. The test of whether unconstitutional spot zoning has occurred requires a three-part analysis.

Whether impermissible spot zoning has occurred presents a fact-specific inquiry that will vary from one case to the next. *Little*, 193 Mont. 334, 346, 631 P.2d 1282, 1289. The presence of three conditions generally will indicate, however, that a given situation constitutes spot zoning, regardless of variations in factual scenarios. *Id.*

The first prong of the three-part *Little* test examines whether the requested use would differ significantly from the prevailing land uses in the area. *Id.* The second prong explores whether the area requested for the rezone would be “rather small” in terms of the number of landowners benefitted by the requested zone change. *Id.* Finally, the third prong analyzes whether the requested zone change would be in the nature of “special legislation” designed to benefit one or a few landowners at the expense of the surrounding landowners or the public. *Id.* A court must analyze the second and third prongs of the *Little* test in concert. *Boland v. City of Great Falls*, 275 Mont. 128, 134, 910 P.2d 890, 894 (1996). The number of landowners benefitted by the zone change speaks directly to the issue of whether the requested change constitutes special legislation in favor of one or a small number of landowners. *Id.*

Plains Grains Ltd. P'ship v. Bd. of Cty. Comm'rs of Cascade Cty., 2010 MT 155, ¶¶ 58-59, 357 Mont. 61, 238 P.3d 332.

As discussed in our original submission, the allowed uses under Controlled Industrial are considerably more expansive than the adjacent Public zoning to the east and north, the residential development immediately to the south and a mile down the road in the Rehberg Ranch Estate development, as well as the agricultural zoning to the west. The area sought to be rezoned is approximately 40 acres, which is relatively small in comparison to the lands surrounding it. The

use of the helipad is considerably different than the private uses of the adjoining properties (mostly residential and agricultural). Regarding element two of the spot zoning test, this zoning change would only benefit Billings Flying Service. There appears to be no benefit to any other adjoining landowner. When considering the vast amount of neighbors to this property, this element especially sticks out considering only Billings Flying Service will benefit. This extends to element three of the spot zoning test, which requires us to focus on whether only one landowner will benefit over a zoning change to the detriment of nearly all other landowners. Again, we submit that is the case here.

This result could easily be construed as spot zoning, a result which has not been allowed by the Montana Supreme Court and will expose Yellowstone County to additional litigation and liability exposure.

We strongly oppose the proposed zone change and the intended use of the property next to the airport, as originally proposed by Billings Flying Service. This will not lessen congestion on Highway 3 and it will not promote the health and general welfare of the residents of the City of Billings and the surrounding properties. Additionally, the proposed use will create additional risk. Years ago, we had a helicopter crash in the baseball field on North 27th Street. The proposed zone change is inconsistent with the character of the district. As I mentioned, industrial zoning and the applicants intended uses are inconsistent with the surrounding properties and should not be permitted on a major entrance into the City of Billings. The zone change and the proposed uses will have a detrimental impact on the value of the surrounding properties and residential neighborhoods. The bottom line is that the controlled industrial zoning and the proposed use of this property is not the most appropriate use of the land.

My clients are proponents of economic growth. We believe the record in this case will show examples of how the properties along Highway 3 can be grown to encourage and develop economic growth, but not at the cost currently proposed by Billings Flying Service.

Finally, I will close with a comment regarding the sheer size and girth of a Chinook Helicopter. Attached is a photo of a Chinook helicopter transporting two smaller vehicles in the air. These machines are massive. Although there has been some dispute over the noise these machines emit, documentation available online shows noise levels over 100 dB(A). We will reserve final comment pending the revisions to the proposed application and will supplement this submission if necessary.

Sincerely,



Ben T. Sather

Enclosures

BTS/cj

cc: Jack Sukin
Bob Sukin
Bill Davies, Esq.

