



## Yellowstone County Zoning Commission Minutes for the Meeting of Friday, February 12, 2016

The County Zoning Commission met on Friday, February 12, 2016 in the Billings Library Community Room, located at 510 North Broadway. This meeting is a continuance of the February 8, 2016 meeting. The Board of County Commissioners public hearing will be held on Tuesday, February 23, 2016, at 9:45 a.m. in Room 403A, 4<sup>th</sup> Floor of the Yellowstone County Courthouse.

At 4:00 p.m., Chairman Cook opened the meeting and introduced the County Zoning Commission members and staff in attendance: Nicole Cromwell, Zoning Coordinator; Tammy Deines, Planning Clerk, Robbin Bartley, Admin I, Lora Mattox, Transportation Planner,

| Commissioners and Staff |               | 01_11_2016 | 02_08_2016 | 02_12_2016 |  |  |  |  |  |  |  |  |  |  |  |
|-------------------------|---------------|------------|------------|------------|--|--|--|--|--|--|--|--|--|--|--|
| Dennis Cook             | Chairman      | -          | 1          | 1          |  |  |  |  |  |  |  |  |  |  |  |
| Al Littler              | Vice Chairman | -          | 1          | 1          |  |  |  |  |  |  |  |  |  |  |  |
| Jerry T. Ray            | Commissioner  | -          | 1          | 1          |  |  |  |  |  |  |  |  |  |  |  |
| Troy Boucher            | Commissioner  | -          | 1          | 1          |  |  |  |  |  |  |  |  |  |  |  |
| Ryan Wittman            | Commissioner  |            | 1          | 1          |  |  |  |  |  |  |  |  |  |  |  |

**Attending: (Attached)**

### **Public Comment**

Chairman Cook asked if there was anyone wishing to speak during the public comment portion of the meeting. He stated any member of the public can be heard on any subject that is not on the agenda; the Yellowstone County Zoning Commission will not take any action on these items at this time, but could choose to add an item to the next meeting agenda for discussion. There was none.

**Disclosure of Conflict of Interest or exparte communication:** Commissioner Littler disclosed Mr. Jim Scott contacted him to notify him of the letter he enclosed.

**Disclosure of Outside Communication:** These items are listed in the February 8 2016 meeting minutes.

**Item #3 - County Zone Change #669 (continued) – West of Billings Logan Airport – 2300 Block of Highway 3 North** – A zone change request from Agriculture-Open Space (A-1) to Public (P) on the north 600 feet of Tracts 13 and 14 of C/S 2037 (~18.49 acres), and Controlled Industrial (CI) on 20 acres directly south of the proposed Public zone on Tracts 13 & 14, C/S 2037, a 58.66 acre parcel of land. The 20 acres immediately north of Highway 3 will remain in



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the A-1 zoning district. A pre-application meeting was conducted on November 20, 2015 at the Tolliver Law Firm, 1004 Division Street. Tax IDs: D04575L, D04575M.

Chairman Cook welcomed those in attendance and stated this meeting is to continue the public hearing for Yellowstone County Zone Change #669 and called for proponents. He asked all attendees to have mutual respect for all opinions.

### **Proponents**

#### **Steve Arveschoug, 1081 Strawberry, Billings, Montana**

Mr. Arveschoug is the Executive Director of Big Sky Economic Development Authority. He described the role of BSEDA as a lead agency for economic development. He stated the importance of this business to Billings as an aviation centric airport related to business and the community. This expansion will create about 35 skilled technology related jobs and add about \$7.1 million in revenue to the local community. Mr. Arveschoug sees this discussion a great example of the need for planning for economic growth for a business perspective. He encouraged the Commission to look for a reasonable approach to this decision. He said the buffer makes sense, and once the Commission makes its decision, a detailed site plan will foster further support in the community.

#### **Bob Adler, 7707 Fritz Road, Billings, Montana**

Mr. Adler is a neighbor to the Blaines. He said the Blaines are very courteous. Mr. Adler supports this request as he feels this facility will generate funds for the community.

#### **Rich McKamey, 104 Sky Ranch Drive, Billings, Montana**

Mr. McKamey has been a pilot for 40 years and owns aircrafts and hangers. He said he has looked at this parcel from his property for 20 years. He stated the property has a barn and a windmill and is in a state of disrepair; and this development is a good chance to clean up the area north of Highway 3. He commented on the Highway 3 traffic and said he sees it becoming a 3-lane highway with turn lanes as the Inner Belt Loop project will change the complexion of Highway 3. The residents are attempting to shape policy that will affect the economics and value of the land from the airport westward. The subject land is under the approach and departure of the Runway 7 and 25 which is the only crosswind runway left at the Billings Airport. Mr. McKamey said Billings Flying Service is a \$50 million operation with 70 jobs. He spoke to the need for higher paying jobs in this area and said Billings Flying Service will take up some of the shortfall. He asked the Commission to "fast track" their building program for this project.



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### **Diane Cooper, 5307 Roland Drive, Billings, Montana**

Ms. Cooper stated she has lived in Billings since 1964 and at this residence for 40 years. She said the initial idea of having a housing development on the rims was an unpopular idea. She said the nearby freeway and gravel pit generates noise and dust. Her home is in the flight path of the HELP helicopter but she finds this to be tolerable. She said airport noise is minimal when compared with the traffic noise from Highway 3. Ms. Cooper said the Blaine family has helped the community; are good neighbors; and considered to be a “user friendly” company.

Ms. Cooper stated the Blaines should be allowed to take their passion to the next level at this location and she encouraged the Commission to support this request.

### **Russ Fagg, 3053 Thousand Oaks Street, Billings, Montana**

Mr. Fagg noted he had submitted a letter to the Board earlier. Mr. Fagg has been a friend of Al and Gary Blaine for 40 years. He said they taught him to fly, and he is just one of hundreds they have helped over the years with donated time, gas, or airport runs. He said the Blaines are good neighbors and have not asked for recognition. Mr. Fagg stated he understands the neighbors’ concerns. He recounted his instructors’ tutorials teaching him to be a good neighbor while flying by staying near the river and away from neighbors and houses. Mr. Fagg believes this is a good location as the airport supports their operation. He said he believes that within 10 years, the neighbors will find Billings Flying Service to be a good neighbor. Mr. Fagg urged the Commission to “do right” by the Blaines as it will be good for the community.

### **Bob Keefer, 3150 Lupine Drive, Billings, Montana**

Mr. Keefer urged supporting this zone change. Mr. Keefer feels this area is good for the nature of Billings Flying Service as it is close to the airport. He said this will be an economic boost to tax dollars generated for Yellowstone County. He asked the Commission to consider the potential for new jobs and asked them not to hesitate starting a business that will boost the economy. Mr. Keefer lives less than a quarter mile from the present location and enjoys seeing the activity. He said there are no better neighbors than the Blaine family, their staff, and their crew. He said he doesn't feel his property value has decreased with the current business in the present location, as they are conscious of the neighborhood. Mr. Keefer asked the Commission to support this request as it will boost economics and it is a better use of this land.

### **Randy Krebill, 5145 Hillcrest Road, Billings, Montana**

Mr. Krebill is part of the 3rd generation of Krebills living next to the Blaine Family. He commended the Blaine family for their efforts in the community. He stated this proposal is a “win-win” for everyone involved, and said there will be a good working relationship in the future. Mr. Krebill is in favor of this zone change application.



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### **Rob Stephens, 5202 Bell Avenue, Billings, Montana**

Mr. Stephens is in agreement with the testimonies received about the Blaine family. He said this is a strong growing company that will bring high paying jobs to the community.

### **Terry Munyan, 4115 Neibauer Road, Billings, Montana**

Mr. Munyan said he appreciates this process. He asked the Zoning Commission to vote to approve this request so this business may continue.

### **Frank Chesarek, 2324 Green Briar Road, Billings, Montana**

Mr. Chesarek said he has been in real estate business for 35 years. He said he was the first to contact Mr. Crippen regarding a federally funded project to extend the runway to create a clear zone, address safety concerns, and create a noise buffer. He commented on the federally enforced sound restrictions. Mr. Chesarek said Bruce Crippen was forwarding thinking at that time as he wished to use this land for aviation related activities coming to the community. Mr. Chesarek said the time has come and this business is a good community neighbor.

### **Tony George, 2955 Colonial Place, Billings, Montana**

Mr. George manages a financial service firm and helps Billings Flying Service's employees with their retirement plans. Mr. George commented on the diverse backgrounds of their staff and said the Blaines provide a unique opportunity for them. He said the Blaines are interested in mentoring people. Mr. George said people in the aviation community both nationally and internationally are paying attention to Billings Flying Service and the Chinook helicopters. Mr. George said we can be for growth or for anti-growth. He asked the Commission to move forward with the zone change and thanked them for their service.

### **Mike Nash, 505 Cemetery Road, Billings, Montana**

Mr. Nash was a former employee of Billings Flying Service. He gave a personal testimony of how Al and Gary Blaine changed his life with their mentoring to become an airline pilot. Mr. Nash thanked the Blaines and asked that they be allowed to continue and grow their business.

### **Joe Mutchler, 2512 Shiloh Road, Billings, Montana**

Mr. Mutchler stated he is a 14-year Air Force veteran and he related his military experiences. He retired and decided to return to Billings due the fantastic community. He said he is grateful to the community. He is serving the community as an employee of Billings doing avionics work. Mr. Mutchler is in favor of this request as it will be great for the Billings community.

### **Gillian Hunter, Gilliankeiky@msn.com, Billings, Montana**

Ms. Hunter is a recent resident of Billings. She said her husband is a Navy veteran who moved



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400 miles to Billings to work for Billings Flying Service and the opportunity it affords. She is a proponent of the economic advantages of new families coming to Billings; being housing, additional property tax revenues, new college attendees, and generating new income into the community. She said Billings Flying Service has a proven track record of doing things in the community. Ms. Hunter asked the Commission to invest locally in Yellowstone County and to vote for the best use of this property.

### **Kyle Zimmerman, 9 Alderson, Billings, Montana**

Mr. Zimmerman is a Rocky Mountain College student in the aviation program. He spoke to the need for more airline pilots in the next five to ten years. He said Billings Flying Service has donated flight time and planes to the program which benefits students who will eventually create an influx in the number of pilots. He said the FAA nationally recognizes Rocky's aviation program. Mr. Zimmerman said the noise generated from the Chinook helicopters will be minimal in comparison to the surrounding highway truck traffic and commercial airline noise. He encouraged keeping airport businesses near the airport and stated he is in support of this request.

### **Alex Monterrosa, 517 Crow Lane, Billings, Montana**

Mr. Monterrosa has been a Billings Flying Service employee for five years. He said the Blaines welcomed him as family and they provided him with opportunities to attend advanced courses to become a better aircraft mechanic. He commented on the staff diversity as there are several veterans, interns, and first generation US citizens. Mr. Monterrosa plans to finish his career with this company. He commented on the passion that can drive youth towards a career in aviation. Mr. Monterrosa is in favor of this zone change as it will provide a service to the City of Billings and the next generation by providing another source for success.

### **Scott Johnson, 2606 Raymond Place, Billings, Montana**

Mr. Johnson stated he appreciates this review process, the Commissioners' insight and the Planning staff's work as he finds it comforting there is planned growth associated with this community. Mr. Johnson spoke to the benefits of having emergency responders, and City and County services; and stated he understands the need for more tax dollars to get this done. He said this business will contribute to the income stream. Mr. Johnson said he understands the neighbors' concerns with the potential noise and traffic. He doesn't feel the property values will drop as they will continue to have a beautiful view and access to the airport and the community. Mr. Johnson asked the Commission to forward a unanimous affirmative decision on this zone change.



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### **Bridger Blaine, 555 Park Lane, Billings, Montana**

Mr. Blaine is a member of the general aviation community and an employee of Billings Flying Service with a vested interest in seeing the airport grow. He feels this project will match up nicely with the airport. He finds the Chinook project to be fascinating and exciting. The Chinook helicopters are newer, safer, and more fuel efficient and will add to fire fighting and rescue operations. He refuted noise concerns and explained differences in helicopters and the contributing factors to the noise. He said the intent is to build a nice looking facility and there will be no razor wire on the fences. He stated they will address dust as it is detrimental to their operation.

Mr. Blaine reviewed a posted diagram and pointed out the proposed lands for the zone change, and Runway 7 and Runway 25 which accommodates small aircraft and medium jets. He explained the approach and the flight crossover patterns and said his point is that the uses of this property is limited due to the airport. He stated this business will be an asset to this community and commented he is excited to see the possibilities for this land. It is their goal is to attach support for this project by attracting companies who rebuild components as a satellite operation. Mr. Blaine stated Billings Flying Service is proud to be good neighbors in their current location and they want to work with these neighbors. Mr. Blaine hopes to make this a priority as they go forward in the future.

### **Kevin Nelson, 4235 1st Ave, Billings, Montana**

Mr. Nelson read aloud the background section of the staff report stating the proposed Controlled Industrial, (CI), zoning is not compatible with adjacent zoning and public zoning has merit. He said the only issue is the parcel with CI zoning. He said staff states a predictable use in the document but there are conflicts between the language in the criterion and background in the staff report. The proposed use is absolutely predictable and consistent with land use patterns. Mr. Nelson argued that the predictable use already exists as the as the airport overlay zone allows uses for storage of airplanes, warehousing, and machine shops to rebuild planes. He pointed out the staff addresses the height restriction due to airport influence zone; and visibility as the CI zone requires landscaping so that the land use has site obscurity. As for the requirement for a traffic impact analysis, the City may make recommendations but it does not have the authority as the road is under MDT's jurisdiction. Mr. Nelson stated he opposes the staff recommendation of denial due to the inconsistency in the criterion.



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### **Scott Chesarek, 5301 Travertine, Billings, Montana**

Mr. Chesarek is a third generation of his family who reside in the Blue Creek area.

Mr. Chesarek related that the Blaine family is committed to living in Billings and they spend their tax dollars in the community. Mr. Chesarek is a member of the Big Sky Economic Group and is involved with business recruitment to Yellowstone County and surrounding areas for businesses like Billings Flying Service. He said this business will bring businesses with it. He stressed the importance of paying attention to tax dollars and building the community.

Mr. Chesarek asked the Commission to vote unanimously in favor of this request.

### **Scott Godfrey, 5819 Wind Drift Road, Billings, Montana**

Mr. Godfrey has been the Blaines's neighbor for 25 years. Mr. Godfrey expressed his appreciation for Billings Flying Service as they have protected his home with their quick response to three grass fires. Mr. Godfrey said this business will enhance the fire protection for this area. He has worked with Billings Flying Service in bringing this concept to go forward with the Chinook helicopters.

### **Ken Tolliver, 1004 Division Street, Billings, Montana**

Mr. Tolliver represents Billings Aviation. Mr. Tolliver stated he is involved with aviation and was practicing law when the State of Montana, Yellowstone County, and the City of Billings began the process of land use planning.

He discussed the concept of expected use and presented the Master Plan for this area.

Mr. Tolliver expounded and said the concept of zoning is to create compatible land use. This urban area was subject to the Comprehensive Plan in the 1966-1967 time frame. It was presented to the governing bodies in the City and the County in 1968. It covered all concepts of urban planning, transportation and public services, and appropriate land use. The area south of Highway 3 was master planned to be parkland. Over time, the master plan was ignored and residential development took place south of the highway. The dominant use is the airport due to the nature, size, noise, and importance to the community. He emphasized an airport is critical to a community of our size. He said the 1969 Master Plan forecasted this land use decision when it was adopted. Although the Growth Policy is currently used, the 1969 Master Plan clearly shows the need for associated industrial development near the airport. He pointed out surrounding topographic confinements and the fact that the land masses available for development are limited. Critical to this application is the fact that these are fixed wing aircraft that will not consume lands needed for other aircraft. The airport runways 7 and 25 directly impact this property and its only possible use is a commercial use.



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Mr. Tolliver stated they did not anticipate the objections and disputes from neighbors' south of the highway. In response to the concerns, they withdrew the lower 20 acres from the zone change. They committed to creating a Planned Development on the 20 acre parcel next to the highway as the 40 acre parcel is sufficient for the aviation.

Mr. Tolliver illustrated a rough 600-foot strip parcel proposed for a planned development. They plan to use this strip of land to accommodate the neighbors' concerns. He said they addressed concerns with dust and noise with a flyover demonstration and the highway noise was louder than helicopter noise. He discussed concerns with the view shed. He pointed out the airport hangar project landscaping and stated this will be a good looking project.

Mr. Tolliver explained the Chinook project began in December 2013 with the acquisition of the first Chinook helicopter. At that time, no one had to operate this complex aircraft in civilian use in the United States. In July 2015, Billings Flying Service obtained full certification to operate them. There are only two companies in the world that have this authority. Mr. Tolliver stated this is an opportunity for Billings to be the base for a worldwide heavy lift operation. Billings Flying Service wishes to establish a facility in Billings. It will bring jobs, skills, and talent to community to benefit Billings in the future.

Chairman Cook called for any other proponents. He read aloud a letter submitted to the Commission by Tanner Woodcock as he is unable to attend today's meeting.

### **Tanner Woodcock, 2115 Pueblo Drive, Billings, Montana -**

Mr. Woodcock is an advocate for the proposed zone change for Billings Flying Service. His grandparents owned a parcel adjacent to the current location and the Blaines are good neighbors. Mr. Woodcock's career has benefitted from the mentorship and opportunities given him from Billings Flying Service. Mr. Woodcock is a pilot with a lifetime commitment to aviation. He recognizes the legitimate concerns with this zone change proposal. He stated dust has to be mitigated as dust and moving parts do not mix around these aircraft. The aesthetics will be addressed as aviation is a tidy and detail oriented business. As to noise concerns, these aircraft will fly the same flight path regardless of where they are parked on the airport. The chairman submitted a copy of the letter to the Planning Clerk on behalf of Tanner Woodcock.

At 12:25 p.m., Chairman Cook called for opponents to County Zone Change #669

### **Opponents**

### **Lyle Gabrian, 3142 Zimmerman Place, Billings, Montana**

Mr. Gabrian is the Interim Chairman of the Rimrock Task Force and also represents the



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neighbors residing on top of and below the rim rocks. He also speaks as a concerned citizen. The Rimrock Task Force recommends denial as denoted in their February 8, 2016 statement. Their main objection is the request for the Controlled Industrial, (CI), zoning on the 20 acres, as it will adversely impact neighbors in the surrounding area. A precedent will be set for parcels on land further west if the CI zoning is approved for this request. He suggested that Highway Commercial, Residential Professional or Entryway Zoning will be more appropriate for those that live, work, and recreate along the Highway 3 Corridor. He referred to the April 2015 Highway 3 Corridor Study which describes transportation plans for this corridor and along the proposed Inner Belt Loop connecting the Billings Heights to West Billings. Mr. Gabrian would like to see a similar land use plan. He asked the Committee to use this study as a reference when considering zoning decisions in this corridor. He pointed out there are no plans to widen Highway 3 within the next 20 years due to lack of funding. He reminded the Commissioners that this Commission is not an economic development commission or a judging panel seeking the “employer of the year”. To make a decision or recommendation, the Zoning Commission should highly consider findings of Planning staff, apply regulations to best of their ability, and listen to proponents and opponents. Mr. Gabrian asked the Commission to deny County Zone Change #669. He noted there are several citizens unable to speak as this hearing was continues and asked that future applications with this much interest be handled as single agenda items.

### **Nancy McGrath, 3005 Zimmerman Trail, Billings, Montana**

Ms. McGrath’s property is located north of Rimrock Road. Ms. McGrath stated the Controlled Industrial zoning lends itself to further zoning changes on the land west. She paraphrased George F. Will’s Billings Gazette editorial which commented the “Controlled Industrial zoning smacks of a connected entity bending public power for its private benefit. It favors certain groups over others on economic grounds”. Mr. Will cited various circuits and stated this is in fact, illegal.

Ms. McGrath commented this land would be a park if the master plan was not been ignored. Ms. McGrath pointed to the Highway 3 Corridor Plan. She said it is upsetting that planning studies are conducted, paid for, and ignored. Ms. McGrath asked if this is zone change is legal; benefits everyone equally; and if there a long range plan. She asked what the buildings will look like as there is nothing concrete with this request. She stated their property taxes have fallen due to the increased traffic on Zimmerman Trail. She urged the Commission to make these considerations prior making a decision based on economics and a good business.

### **Jim Beley, 3382 Storey Ridge Road, Billings, Montana**

Mr. Beley doesn't disagree with testimonies to the Blaine Family but he is disappointed that only three persons have addressed the zoning. He said an appropriate zone must be determined for



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this project and area. He pointed out the Planning Staff's and Rimrock Task Force's recommendation for denial of this request. Mr. Beley said the "red herring" is the Controlled Industrial zoning requested for the middle section of the property. Controlled Industrial zoning is visually unattractive and there is no other Controlled Industrial zoning near this project. If approved, this will set a precedent for setting the stage for the next tracts of land westward to Zimmerman Trail. This may change the gateway to the City to a new industrial area. He suggested rezoning both sections to Public zoning for the heliport and maintenance facility. Heavy manufacturing could be conducted at their current location which is zoned Controlled Industrial. He asked the applicant to add an open space easement to the 20 acres along the highway. This project dramatically points out the need for the City and County Planning staff in partnership with the Rimrock Task Force to develop a Planned Development for the north side of Highway 3 from the airport to Zimmerman Trail. Mr. Beley said he recommends denial of the proposed zone change until the applicant changes the request from Controlled Industrial zoning to Public zoning. He feels the Planned Development brought forward is good, and that an agreement might be reached to work with the community to create a Planned Development along Highway 3 to control expansion.

### **Theresa Helus, 3362 Stoney Ridge Road, Billings, Montana**

Ms. Helus has lived at this address for 21 years and her residence is directly across from this parcel. She commented she found it interesting that those who spoke in favor of this project do not live in the affected area. Ms. Helus said the question is not whether the Blaine family has a stellar reputation but whether Controlled Industrial zoning is appropriate for the residential area. She stressed the need for planning and voiced concern with setting a precedent for the future. Ms. Helus finds the prospect of looking out her front door at this type of project worrisome. She stated she and her husband are adamantly opposed to this zone change.

### **Alice Lahran, 108 Sky Ranch Drive, Billings, Montana**

Ms. Lahran is in opposition to this zone change. She stated she is not opposed to commercial development but is encouraging the Zoning Commission to support a Planned Development to enhance this area. Zoning the 20 acres as Controlled Industrial does not support the 2008 Growth Policy as the land use decisions are not consistent with neighborhood character. The Controlled Industrial zoning is not compatible with adjacent residential and agricultural uses. Ms. Lahran referred to a zoning map and said they are questioning this zoning as there is no Controlled Industrial zoning near the residential zones. Controlled Industrial zoning along Highway 3 could bring businesses with open storage, machine shops, and heavy construction. Ms. Lahran voiced concern that without landscaping, building restrictions, and signage limitations, the land might be developed similarly to Cerise Road or King Avenue West. She



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pointed out several existing commercial type buildings and said they should not set precedents for future developments. Ms. Lahran suggested looking at S 27th St Corridor or the Shiloh Overlay District which were designed to promote an aesthetically pleasing distinctive entryway corridor. The Highway 3 Corridor/Rimrock area needs to be considered. She commented that the Billings Gazette reported as late as Saturday the Blaine family didn't know how long the agricultural lands would remain as such and there was no disclosure of a Planned Development.

### **Elaine (Dave) Kinnard, 106 Sky Ranch Drive, Billings, Montana**

Ms. Kinnard stated the rim rocks are a jewel of the community that deserves protection and enhancement. She said the Highway 3 Corridor Study has taken into consideration many issues including safety and beauty to this entrance to the Community. She asked why this corridor should be made a safe place if there is no consideration as to what the area will look like.

Ms. Kinnard suggested consideration for a long term plan rather than the spot zoning sought here. She commended the Blaines for their success and desire to grow their business but she said it should not be done to the long term detriment of citizens of the valley by creating a new industrial entrance where it does not belong. She hopes City and State officials will consider the long range negative impacts this zone change will make. She said this would best fit in the airport industrial park and asked the Commission to accept the staff recommendation of denial of this zone change request.

### **Sharon Peterson, 102 Sky Ranch Drive, Billings, Montana**

Ms. Peterson stated she is in agreement with the opponents' testimonies. She is opposed to the zone change as presented at this time. She said she and her husband have attended the public meetings and no one is addressing the zone change. She stated they have heard different versions of the zone change proposal and they would like to see a real plan instead of suggestions.

### **Crystal Jones, Sather & Holm, PLLC, 2301 Montana Ave, Billings, Montana**

Ms. Jones is representing Attorney Ben Sather who represents Bob Sukin and Jack Sukin, who are neighbors who reside west of this property. Ben Sather was unable to attend this meeting. He wanted to affirm his clients' objections set forth in his letters submitted November 20, 2015 and January 7, 2016.

### **Von Deleeuw, 2607 US Highway 3, Billings, Montana**

Mr. Deleeuw opposes this zone change request as he is unsure of having a business like this at this location. He suggested that the airport buy land and expand in order to protect the people and what happens on this land.



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### **Dr. Bill Moyer, 107 Sky Ranch, Billings, Montana**

Dr. Moyer would like to address the noise issue and said the video provided at the hearing did not demonstrate the situation.

He read aloud the written testimony from **Jim Camp, 101 Sky Ranch Drive, Billings, Montana** as he is unable to attend today.

Mr. Camp is the closest resident as he is within 300 feet of this property. Mr. Camp is an experienced Vietnam Marine Corp Veterans with 2 tours, including "Operation Frequent Wind". Mr. Camp said the applicant "got lucky" with the test flight. He reported he heard the "bird" almost 4 miles north from his porch. It was a slowest landing not typical of landing operations. The sound of a loaded "bird" is deafening but the demonstration flight had no cargo. He stated this helicopter is extremely loud as they cut the air and he doesn't want these "birds" in his backyard. This business will increase traffic and decrease home values. He would not have bought this home if this business was in operation at the time.

Mr. Moyer continued, and said he has military experience in Iraq and is familiar with the beauty, use, and wonder of helicopter rescue. He said the flight test noise was clear inside his home. He stated the noise issue was not addressed and he is opposed to this zoning request.

### **Jim Grubbs, 3342 Stoney Ridge Road, Billings, Montana**

Mr. Grubbs commented on the testimonies regarding the integrity of Billings Flying Service included those received from the Yellowstone County Sheriff and a District judge. He said clarification is needed to point out that no one doubts the integrity or community spirit of the Blaines. The problem is the request for Controlled Industrial zoning. Mr. Grubbs asked the Commission deny this request as submitted.

### **Leslie Moyer, 107 Sky Ranch Drive, Billings, Montana**

Ms. Moyer concurred with Mr. Dailey's comments as a solution might be found but it needs careful consideration. She said a concept design would have been helpful as it is hard to take someone's word about a project without seeing the plans. She said she speaks for several others who were unable to attend today due to work related conflicts. She respectfully asked the Commission to deny the zone change request as submitted and said she thinks there can be a solution.

### **Andrew Morgan, 3024 Stanford Drive, Billings, Montana**

Mr. Morgan's stated his interest peaked as it is his understanding there is no master plan for this



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area. He is concerned with the potential for ad hoc planning and he wished to bring this to the Commissioners' attention.

### **Dave Kinnard, 106 Skyranch Drive, Billings, Montana**

Mr. Kinnard is a long term Billings resident. He referenced his written comments submitted on Monday. He said when driving on Highway 3 from the Indian Cliffs toward the airport, there is no commercial or industrial development until one reaches the DOT facility. Mr. Kinnard stated Highway 3 should remain an impressive gateway to Billings due to the proximity of the rims. He noted that the Highway 3 traffic study concluded the corridor should be utilized and enhanced as a scenic entryway. As the Planning staff noted, many of the uses along the proposed Controlled Industrial zoning would not be compatible. He continued and said the proposed heliport does not meet the criterion in the Billings Airport Master Plan. He suggested the Blaines expand into the airport areas as it is already zoned Public. He said they are choosing to twist the zoning regulations to fit their private purpose. After full review, the Planning Staff concluded it is not compatible with the adjacent zoning in the City and County and the findings do not support the criterion. Mr. Kinnard stated if this request is approved, this will be spot zoning and defeat the prospect of a gateway to the City of Billings. He commented on a Billings Gazette article reporting on the February 2014 arrival of the Chinooks to Billings stating, "The house was vibrating. It was as loud as the biggest thunderstorm I ever heard." He thanked the Blaines for Friday's demonstration. In closing, Mr. Kinnard said the Blaines have gone to great lengths to portray themselves as pillars of the community. However, being good to the community is not what is considered but instead whether the zoning meets the criterion and does not give privileges allowed to others. Mr. Kinnard said this zoning request should be denied and does not meet the criterion.

### **Tim Filz, 2825 3rd Avenue North, Billings, Montana**

Mr. Filz is an attorney and represents Stoney Ridge Development.

Mr. Filz also represents James and Chris Scott, and he read into the record a letter from his client, **James Scott, 2244 Stoney Ridge Circle, Billings, Montana.** Mr. Scott is opposed to this zone change. He and his wife have lived on the rims for 15 years and love the combination of open space, residential uses, nature, and the airport. This request is important to the community as it is a key entrance to the City from the northwest. He is not opposed to all development as evidenced by their retainage of Sanderson Stewart to prepare a thoughtful conceptual plan of the property. Sanderson Stewart concluded Highway Commercial zoning made the most sense and could accommodate a number of uses. The purchasers were not interested in this proposal, so Mr. Scott stopped moving in this direction. Mr. Scott feels the



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land should be developed in a way that works. They respect the Blaine family and consider them as friends but this zone change request does not address the long term direction. For these reasons, Mr. Scott and his wife Chris are opposed to this zone change.

Mr. Filz continued and spoke as representative for Stoney Ridge Development.

Mr. Filz stated there are two legal issues, being private for profit use within a public zone and secondly the issue of spot zoning.

### Issue #1: Private for profit use within a Public zone

The zoning ordinances state the Public zone is intended to be reserve land public or semi-public uses. This facility is a private for profit facility. Regarding Mr. Dugger's alleged FAA preemption of local zoning ordinations, he stated there is no authority for the propositioned site that the FAA regulations supersede local regulations. As to the existence of private golf courses in publicly zoned lands, the Highlands Golf Course, (1922), and the Yellowstone County Club (1957), predated zoning in Yellowstone County. The existence of a grandfathered use does not allow extending Public zoning to a purely private use. Heliports are primarily used for taking off and landing helicopters, which is only allowed in the Medical Corridor. Ignoring the Zoning Code is not the way to do this.

### Issue #2: Spot Zoning

Zoning by its nature is an infringement on private property rights. It only passes constitutional muster is if it is applied uniformly within each district within a community. If an application is discriminatory, it is called "spot zoning" and it is thrown out. By Montana code, there are three factors defining "spot zoning".

1. The requested use differs from the prevailing use in the area.
2. Whether the area proposed for zoning is small.
3. Whether the zone change resembles special legislation designed to benefit only one or a few landowners at the expense of the surrounding landowners.

He submitted that all of these factors exist with this proposal.

1. The proposed 20 acres of controlled industrial zoning is inconsistent with the surrounding areas. The second highest industrial commercial zone would be located adjacent to agricultural open land near and residential zoning.
2. 20 acres is a small parcel for a zoning area.
3. This "smacks" of special legislation. He related the many testimonies of the Blaines' character which unwittingly establishes the third element. They want special legislation for their benefit. This removes the underpinning of zoning as it is not uniform. They are encouraging approval of something that violates zoning and is unconstitutional as it is spot zoning.



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Mr. Filz continued and stated this is too important of a decision to do in a hurry. He said something may develop of the Planned Development on the lower 20 acres. He suggested developing a comprehensive plan that requires landscaping, noise reduction, and dust reduction in consideration of the surrounding uses. He asked the Commissioners to have applicant go back and "do it right" with a Planned Development. He asked that this Commission forward a unanimous recommendation to the Board of County Commissioners of denial as this request is illegal and unconstitutional as presently put together.

### **Discussion**

In response to question by Commissioner Littler, Mr. Filz stated Mr. Scott paid for the Sanderson Stewart proposal. It was done as a thoughtful development for this area considering berming, landscaping, and heavy commercial to lighter "work to live" concepts. Commissioner Ray asked why Mr. Scott didn't do anything until this proposal was submitted, such as purchasing the property to protect himself. Mr. Filz said he warned his clients they may be accused of the "Not In My Back Yard" perspective. He stated Mr. Scott is not against development but is not interested in purchasing this property. Commissioner Ray asked how they know whether or not the Blaines will do this type of landscaping. Mr. Filz said it is his position this zone change request is illegal. If a Planned Development is done it will require development in a thoughtful fashion rather than hoping it will be done in a thoughtful fashion.

At 1:30 p.m., Chairman Cook called for anyone else wishing to speak in opposition of the zone change. There was none.

**Rebuttal:** Chairman Cook called for rebuttal.

### **Ken Tolliver, 1004 Division Street, Billings, Montana**

Mr. Tolliver stated the Federal regulations relative to zoning ordinance are not FAA regulations. The regulations Mr. Dugger referred to are OSHA based and are adopted into zoning laws. He said Mr. Filz' spot zoning argument had no mention of the Billings airport. The proposed use is not incompatible with the adjacent use. In his judgement, the impact of the City airport makes it impossible to contemplate development of this property with a residential development as proposed by the engineering firm. This site will take detailed engineering as there are a lot of aeronautical issues to address.

Mr. Tolliver stated the character testimonies have relevance. This is a growing company and the company's character is important from the standpoint of economic growth. From a zoning and land use standpoint, this is a compatible use. He asked what is most important? Allowing full development of the aviation facility or meeting the interest of residents living on the rims to



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counter balance the needs of the aviation community? He stated “Airports need some breathing room”.

### **Discussion**

Al Littler commented on the planned unit development concept plan designed by Sanderson Stewart and asked why the applicant chose to submit this zone change application with a schematic plan. Mr. Tolliver replied an actual development plan for this facility takes a lot of engineering and not a just a pretty picture. He said unless they can deliver according to the picture, they should not present it. The engineering, FAA compliance, and design work cannot be done to build until September or October at the earliest. They did not want to be misleading.

Commissioner Littler commented the airport is so significant, the Public zoning cannot be discarded. He asked if they considered having the first two parcels Public zoning. Mr. Tolliver explained it was a legal recommendation from his office after consultation with the Planning Staff. He said they choose the zoning classifications that would most honestly depict their intended use. They included Controlled Industrial zoning rather than Highway Commercial zoning, as it includes some industrial processes which might in the future be capable of use on this property under special review. He said their goal is to bring avionics aerospace type of business. They wish to ensure people can bring in high tech equipment and do processes needed to support the facility. The zoning classifications are outdated by decades and most of the uses needed in connection with this kind of facility are not mentioned in the classifications.

Commissioner Ray asked Gary Blaine what the view will be looking north from Highway 3. Mr. Blaine said initially they are taking dirt from the upper area to make a berm to be compatible with blocking noise and view in consideration with the runway requirements. They have considered interspersing plantings of fast growing trees along with other plantings to block the view of the facility. This will take place as soon as a design is created that is compatible with the facility. Commissioner Ray asked about the plans for water and sewerage. Mr. Blaine said there is a well on the property. City water with a cistern and septic will be used for the facility.

At 1:44 p.m. Chairman Cook called for a recess.

At 1:57 p.m. Chairman Cook called for a motion.

### **Motion**

**Commissioner Boucher made a motion and Commissioner Ray seconded the motion to forward a recommendation to the Board of County Commissioners of approval of County Zone Change #669 based on the 11 criterion on the revised staff report.**



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### Discussion

Commissioner Boucher stated he extensively poured over the information. He reviewed 11 criterion in the revised staff report he could not find a reason outlined in the criterion to recommend denial. He referred to Criterion #10:

10. Will the new zoning encourage the most appropriate use of land in Yellowstone County?  
The proposed Public zoning does encourage the most appropriate use of land in this area of the County given it is adjacent to the Billings Airport and allows the same uses as are permitted on the Airport property. It is also in an area where aircraft are arriving and departing regularly and so air traffic is expected in this area. While leaving the south 20 acres of the property in the A-1 zoning to provide a buffer from the CI zoning proposed, the CI zoning does not encourage the most appropriate use of land in this area of the County. Uses allowed in the CI zone may have more of a noise impact than aircraft uses. Manufacturing uses may generate more noise than retail or service businesses. Uses allowed in the CI zone are also more likely to generate noise and traffic outside of normal business hours and have more impact on the health and general welfare of the residential neighborhoods south of Highway 3, the residences along the north side of Highway 3 to the west of the subject property, and the traffic circulation on Highway 3

Chairman Cook called for other comments or discussion from the Commissioners. There was none. He called for a roll call vote on the motion.

| Name                 | Favor | Against | Abstain |
|----------------------|-------|---------|---------|
| Chairman Cook        | x     |         |         |
| Commissioner Boucher | x     |         |         |
| Commissioner Littler | x     |         |         |
| Commissioner Ray     | x     |         |         |
| Commissioner Wittman | x     |         |         |

**The motion passes with a unanimous vote.**

This item will be heard by the Board of County Commissioners on March 1, 2016, Room 403A, Yellowstone County Courthouse.

**Adjournment:** The meeting adjourned at 5:45 p.m.

**ATTEST: Approved by a motion on Monday, April 11, 2016**

