

Application and pre-app meeting – Zone Change 676



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July 29, 2016

City/County Planning Department  
2825 3rd Avenue North  
4th Floor (Miller Building)  
Billings, MT 59101

**RE: Zone Change Application**

Dear Planning Division Representative,

Please find enclosed a completed Zone Change Application. This application concerns the southern 600 (ft) of the property recently zoned under Yellowstone County Zone Change—669. In Zone Change – 669, the bottom 600 (ft) was left zoned Agriculture Open (A-1). The property’s owner, Aviation Properties, LLC, (“Aviation”) now requests the property be rezoned to Highway Commercial (HC).

Currently, there are no restrictive covenants on the property. Efforts are currently underway to settle the lawsuit, which was filed after Yellowstone County approved County Zone Change – 669. Settlement might entail an agreement providing for restrictive covenants; however, no proposed covenants would restrict Aviation’s ability to seek this zone change. Under the proposed agreement, Aviation is required to seek this zone change.

Finally, the proposed agreement requires Aviation to bring another zone change in early December, seeking to rezone a portion of the property zoned Controlled Industrial (CI) to Highway Commercial (HC). This disclosure is made in an effort to assist your office in reviewing this application, with a mind towards the application which will follow.

All the Best

A handwritten signature in blue ink, appearing to read 'Tyler T. Dugger', is written over a horizontal line.

Tyler T. Dugger

Attorney at Law  
Tolliver Law Firm, P.C.

APPLICATION FORM

COUNTY ZONE CHANGE County Zone Change # 676 - Project # 82-16-00152

The undersigned as owner(s) of the following described property hereby request a Zone Change as outlined in the City of Billings-Yellowstone County Unified Zoning Regulations.

**Present Zoning:** Agriculture – Open Space (A-1)

**Proposed Zoning:** Highway Commercial (HC)

**Tax ID #** D04575L & D04575M COUNTY COMMISSIONER DISTRICT # 2

**Legal Description of Property:** Tracts 13 &14 C of S 2037 Yellowstone County

**Address or General Location (If unknown, Contact County Public Works):** West of Billings Logan International Airport & North of Montana Highway 3.

**Size of Parcel (Area & Dimensions):** This proposed zone change concerns the bottom 600 (ft) of both above referenced tracts. Beginning at the property’s southern boundary, the proposed zone change’s dimensions and acreage are as follows: approximately 600 (ft) North to South, 1343 (ft) East to West, and it encompasses approximately 20 acres.

**Present Land-Use:** The property currently sits as dormant agricultural acreage.

**Proposed Land-Use:** Aviation Properties, LLC seeks to have the property designated as Highway Commercial to allow for highway and airport compatible commercial development.

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

**If yes, please attach to application:** N/A

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

**Owner(s):** Aviation Properties, LLC  
6309 Jellison Road, Billings, MT 59101  
(406) 252-6937

**Agent(s):** Kenneth D. Tolliver - Attorney at Law - Tolliver Law Firm, P.C.  
P.O. Box 1913, Billings, MT 59103-1913  
(406) 256-9600 ktolliver@tolliverlaw.com

**County Zone Change Application (Continued)**

**1. In what ways is your proposal consistent with the goals and policies of the adopted Growth Policy?**

The proposed zone change compliments and contributes to Yellowstone County and the City of Billings' growth policy. In 2008, Yellowstone County, in partnership with the City of Billings, issued its Yellowstone County and City of Billings 2008 Growth Policy Update ("Growth Policy"). The Growth Policy analyzed and characterized how Yellowstone County's communities had changed overtime and what tools were needed to improve the area's communities. After the work was done, the completed report identified numerous issues, goals, and objectives. This proposed zone change addresses several of the report's stated issues and will assist Yellowstone County and the City of Billings in meeting its goals and objectives.

Successfully rezoning will allow the property to be commercially developed in a manner consistent with its proximity to Montana Highway 3 and Billings Logan International Airport ("Airport"). Yellowstone County zoning regulations provide as follows:

The highway commercial zone is intended to provide areas for commercial and service enterprises which are intended primarily to serve the needs of the tourist, traveler, recreationist, or the general traveling public. Areas designated as Highway Commercial should be located in the vicinity of, and accessible from interstate interchanges, intersections on limited access highways, or adjacent to primary or secondary highways. The manner in which the services and commercial activities are offered should be

carefully planned in order to minimize the hazard to the safety of the surrounding community and those who use such facilities.

(Unified Zoning Regulations, Article 27-300. Zoning Districts and Official Maps, Sec. 27-301. Zoning Districts).

Both Montana Highway 3 and the Airport, by their nature, are used exclusively by tourists, travelers, recreationists, and the generally traveling public. Accordingly, the property should be developed to provide services to the area's users.

Regarding economic development, the Growth Policy calls for a cohesive focus on economic development. Specifically, the plan aspires for: "Coordinated economic development efforts that target business recruitment, retention, and expansion." Currently, the property is underused. As the property's approximately 20 acres cannot be economically used for agricultural applications, rezoning will allow for effective economic use.

**2. Explain your need for the intended zone change and why the property cannot be used under the existing zoning. Explain how the new zoning will fit in with the existing zoning and land uses of the immediate area.**

Concerning proper land use, the Growth Policy sets two relevant goals:

- a. Predictable land use decisions that are consistent with neighborhood character and preferred land use patterns identified in neighborhood plans; and
- b. New developments that are sensitive to and compatible with the character of adjacent City neighborhoods and County town sites.

Future development of the property is barred by current zoning. The property is currently zoned as Agricultural-Open Space (A-1). This classification is designated to "protect and preserve agricultural lands for the performance of a wide range of agricultural functions. The intent is to limit the scattered intrusion of uses not compatible with an agricultural environment;

to encourage agricultural pursuits and protect environmental concerns.” Due to its location adjacent to the Billings Logan International Airport, development atop the Billings Rimrocks, and its small acreage, the property has no agricultural utility.

Aircraft noise and vertical limitations further limit the number of potential uses on the property. This proposed zone change affords Yellowstone County and the City of Billings the opportunity to put airport area property to full and effective use. The Airport indisputably dominates the landscape. Its presence brings a set of challenges and advantages to developers. Highway Commercial zoning effectively mitigates the challenges and capitalizes on the advantages.

Nearby residential neighborhoods may be impacted by the requested zone change; however, the proposed strip of Highway Commercial advantageously buffers residential neighborhoods south of Highway 3 from more intense land uses farther north. In addition, this zone change is consistent with and required by a proposed settlement agreement which would resolve Montana Thirteenth Judicial District proceeding DV 16-0627 which challenged Yellowstone County’s previous Zone Change 669. Plaintiffs in that case were concerned that land-uses, more intense than Highway Commercial, would eventually encroach upon the highway. Resolving this fear, the settlement agreement calls for Aviation Properties, LLC to seek this zone change. This zone change is brought after neighborhood collaboration, and the Plaintiffs in DV 16-0627 represent that they either support or are not opposed to this requested zone change.

Future development in the area is inevitable. Current plans for rezoning and development fit consistently with the existing zoning and land uses of the immediate area.

**Conclusion**

Considering Yellowstone County and the City of Billings' economic and land-use interests, this proposed zone change is consistent with the Growth Policy and general land-use principles. Accordingly, the property should be rezoned from Agricultural Open (A-1) to Highway Commercial (HC).

**Application Form Signature Page**

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

Signed:

**Owner:** Aviation Properties, LLC

Telephone: (406) 252-6937

Address: 6309 Jellison Rd, Billings, MT 59101

Email: N/A

Signature: *Aviation Properties LLC  
as Agent/Attorney in Fact*

Date: 7/29/2016

Aviation Properties, LLC (Signed by Kenneth Tolliver - Agent/Attorney in Fact)



### **Zone Change Application Meeting Synopsis**

The Pre-Application Neighborhood Meeting was held at Tolliver Law Firm, 1004 Division St., Billings, Montana, on Thursday July 22, 2016 at 4:00 p.m. Seven community members attended.

Almon Blain, Kenneth D. Tolliver, and Tyler T. Dugger were present representing Aviation Properties, LLC (“Aviation”). The meeting lasted approximately one hour. No attendee expressed opposition to the proposed zone-change.

Inquiries were made by attendees and addressed by Aviation’s representatives as detailed below:

1. Some attendees were interested in what the differences were between Controlled Industrial (CI) zoning and Highway Commercial (HC) zoning. Aviation representatives explained Highway Commercial (HC) zoning allows for less intense land-uses in comparison, and it does not allow many of the industrial/manufacturing land-uses allowed in Controlled Industrial zones;
2. Some attendees expressed concerns over water runoff. Aviation representatives discussed the entire property’s planned storm water detention facility and Aviation’s ongoing obligations to manage water runoff;
3. Aviation representatives discussed the potential of Billings Logan International Airport’s (“Airport”) expansion to the west and its possible impact on the property.
4. Not exclusively concerning the presently proposed zone change, aspects of Aviation’s total property development were discussed; and
5. Aviation’s proposed zone change and its favorable impact on the potential settlement of the lawsuit challenging previous Zone-Change 669 was discussed.