

REGULAR MEETING OF THE BILLINGS CITY COUNCIL MONDAY, JANUARY 24, 2000

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27th Street, Billings, Montana. Mayor Charles F. Tooley called the meeting to order and served as the meeting's presiding officer. The Pledge of Allegiance was led by the Mayor, followed by the Invocation, which was given by Councilmember Mick Ohnstad.

ROLL CALL – Councilmembers present on roll call were: Bradley, McDermott, Deisz, Kennedy, Iverson, Ohnstad, Johnson and Larson. Councilmembers McDanel and Elison were excused.

MINUTES – January 10th. The Minutes were approved as printed.

COURTESIES – Police Chief Ron Tussing recognized members of the Community Crime Prevention Council for their efforts over the past year and a half and accomplishing the difficult task of getting the organization out of the “red” and making it a viable program. Those individuals recognized were: Myrna Knox, Larry Drane, Al Jones, Joe Walters, Pete Hansen, Councilmember Larson and Councilmember McDanel.

Chief Tussing also presented Canine Officer Mark Lam (with canine Tyko) a Meritorious Service Medal. Officer Lam was selected for the award because he was one of the first canine officers selected for the program in 1996. He has maintained a very high standard in all aspects of the program, especially the training aspects. Beyond his commitment to the training module, Officer Lam and his canine Tyko have seized \$62,714 in cash, almost \$1 million worth of illegal drugs and \$1,500 in drug paraphernalia. He and Tyko have made 98 misdemeanor and 91 felony arrests in the past 3 years.

Community Development Manager John Walsh recognized Carmen Gonzales for her outstanding service on the Community Development Board (CDB). Carla has been very instrumental to the CDB over the past 8 years. Mayor Tooley presented Carmen with a Certificate of Service for her efforts on the CDB and her work throughout the community and commended her on her outstanding service.

Mayor Tooley recognized Dick Clark in the audience. Mr. Clark is a former City Councilmember for Ward V and former Deputy Mayor.

PROCLAMATIONS – Mayor Tooley proclaimed January 29, 2000, as National Girls and Women in Sports Day.

BOARD & COMMISSION REPORTS – There were no Board or Commission reports.

ADMINISTRATOR R EPORTS – Dennis Taylor.

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Mr. Taylor noted the additions to Item 1A of the Consent Agenda and the deletion of Item H of the Consent Agenda.

CONSENT AGENDA:

1. A. Mayor's Appointments:

- (1) Joe Souther – Planning Board. (Reappointment).
- (2) Spencer Stone – Traffic Control Board (Reappointment).
- (3) Jean M. Neyrinck – Community Development Board.
- (4) Owen Neiter – Airport Commission.
- (5) Robert Tehle – Board of Appeals.
- (6) Dick Clark – Zoning Commission.

LATE ADDITIONS:

- (7) Ann Ferguson – Yellowstone Historic Preservation Board (Reappointment)
- (8) Eugene Carroll – Yellowstone Historic Preservation Board (Reappointment)
- (9) Stanley Griswold – Yellowstone Historic Preservation Board (Reappointment)

B. Bid Awards:

(1) **W.O. 98-09: Rose Park Bridge.** (Opened 1/11/2000). Recommend delaying award to 2/14/2000.

C. Change Order #3, W.O. 99-01, Schedule II: 1999 Water and Sewer Replacement Project, Gray Construction, Inc., \$113,804.98 and 9 days.

D. Change Order #5, W.O. 95-10: Grand Avenue Reconstruction, COP Construction, \$3,990.12 and 0 days.

E. Change Order #3, Landfill Infrastructure Project and Facility Upgrade, Empire Sand & Gravel, \$6,165.00 and 0 days.

F. Hangar Ground Lease with Picacho Aviation, LLP, \$856.80 for first year, adjusted by CPI-U each subsequent year, 20-year term.

G. Executive Hangar Ground Lease with Bottrell Family Investments, LLP, \$4,700 for first year, adjusted by CPI-U each subsequent year, 20-year term.

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~~_____ H. _____ **Executive Hangar Ground Lease** with Williams Enterprises, \$6,140 for first year, adjusted by CPI-U each subsequent year, 20-year term.~~

I. Vehicle Lease Agreement for Street Crimes Unit, Selover Buick, 3 vehicles for \$3,000.00, term: 2/1/2000 to 6/30/2000.

J. Annual Turnkey Agreement for Cobb Field, Billings Mustangs and American Legion Post No. 4.

K. Banking Contract with Norwest Bank, 2-year term.

L. Revolving Loan to Galles Filter Service, \$75,000, @ 6%, 10-year term.

M. Revolving Loan to Paul Hatzell (dba Crown Parts Manufacturing), \$170,000 @ 6%, 10-year term.

N. Addendum to Loan Agreement with Yvonne P. Robson and David R. Robson extending payments additional 3 years, \$48,900 @ 8.5%.

O. Acceptance of FY 1998/1999 Comprehensive Annual Financial Report, (CAFR) for period beginning 7/1/98 and ending 6/30/99.

P. Amendment to the Billings Urban Area Functional Classification Map: 48th Street West and 46th Street West between Grand Avenue and Rimrock Road.

Q. Approval of funding for FY2000 CTEP projects:

1. BikeNet (River to Downtown Connection), CTEP Funding: \$850,000.
2. Broadway Avenue Improvements, CTEP Funding: \$488,500.
3. BikeNet (Culvert @ Shiloh Road), CTEP Funding: \$455,000.

R. First reading ordinance amending BMCC and adding Sections 7-604, 15-603 and 27-304(C), providing that the City Council may temporarily suspend the enforcement of any or all ordinances relating to business licenses, public lodging and zoning regulations to accommodate and assist special events hosted by the City, and setting a public hearing date for March 27, 2000.

S. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

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Councilmember Kennedy moved for the addition of 3 more appointments under Item 1A, seconded by Councilmember Larson. The motion was unanimously approved. Councilmember Kennedy moved to remove Item H, seconded by Councilmember Ohnstad. The motion was approved. Councilmember Diesz separated Item O from the Consent Agenda. Councilmember Iverson moved for approval of the Consent Agenda EXCEPT Item O, seconded by Councilmember Larson. The motion was unanimously approved.

Councilmember Iverson moved for Approval of Item O, seconded by Councilmember Larson. Councilmember Deisz asked if there were representatives from the firm that compiled the Comprehensive Annual Financial Report (CAFR). City Administrator Dennis Taylor indicated that there were members of the accounting firm present. Councilmember Deisz asked if there was an audit committee and who served on that committee. Mr. Handley of KPMG Peat Marwick said that the entire City Council acts as the audit committee. There is not a separate and designated audit committee of councilmembers. Councilmember Deisz asked if that was within the scope of the state law.

Mr. Handley responded that to his understanding, it was. Councilmember Deisz asked if there were lists of the specific audited items in Mr. Handley's office and if they were available for inspection. Mr. Handley responded, "the financial statement audit report is issued on the financial statements overall. During the process of forming our opinion of the financial statements we conduct test work which consists of examining report documentation, review of financial and other records and inquiries of the City Council. Those are documented in our account work papers, which substantiate our opinion of the financial statements. Under both state law and professional standards and under the firm policy, the audit work papers are actually owned by the accounting firm and are not an integral part of the audit itself. We are precluded, under state law, from making the information available to parties. The work papers can be made available under various processes of law or to regulators." Councilmember Deisz asked City Attorney Brent Brooks, "if I am a party to this document and supposedly sat on the audit committee, am I able to legally see the documents I requested?" Mr. Brooks said he would have to review the privilege before he could answer. Councilmember Deisz asked Mr. Brooks if he could have an answer within a week or so. Mr. Brooks said he could.

On a voice vote, Item O was unanimously approved.

REGULAR AGENDA:

2. PRESENTATION AND REPORT ON AMBULANCE SERVICE by Emergency Medical Services (EMS) Advisory Review Task Force. (Action: acceptance of report).

EMS Advisory Review Task Force Chairman Ed Ulledalen gave a brief presentation on the report. He said the EMS Advisory Review Task Force met on December 6, 1999

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and by a vote of 6-0, with 3 absent, recommended that the EMS Transport Feasibility Study, dated 12-21-98, drafted and presented by the Billings Fire Department at the request of the City Council, NOT be implemented at this time. However, the task force believes the time is near when the City will have to deal with this issue because a private provider may be absent. He went on to say the Billings Fire Department is highly qualified to provide the service, but at this time the financial risks are very significant to city tax payers. In addition, the task force did not like the idea of the City reducing a private company's ability to conduct business, or to force them out of business by providing the same service. He went on to say that the Task Force believes the chances are great the City Council will have to deal with the EMS issue in the near future. Therefore, the Task Force recommended the following:

- 1) Appoint a permanent EMS Commission to provide ongoing study and evaluation of EMS with input from the Billings Fire Department.
- 2) City Council and 911 Center enact an up-to-date Emergency Medical Dispatch System implementing Priority Dispatch for 911 calls.
- 3) Because public intoxication and drug abuse are a huge financial problem for city taxpayers and specifically for the health care community, the Task Force urged Council to appoint a steering committee or empower an existing committee to work with all affected entities to explore the development of a Detox Center in Billings.

Mr. Ulledalen said that most of the current members of the task force would be willing to serve on the committee to be created.

Mr. Ulledalen noted a correction to page 2 of their report, stating that the Fire Department could provide a lower ambulance bill, but it would include a property tax levied on the City as a whole in an amount of approximately "\$60.00 per year on a home of approximately \$100,000 in value." That amount should be changed to read \$74.00 on a home of approximately \$100,000 in value." He said that is the Task Force's estimate of what it would take (based on numbers in the proposal) to buy the equipment, forward the capital, and create approximately a 6-month operating reserve.

Councilmember Bradley asked if the Task Force had an approximate size or cost for the Detox Center. Mr. Ulledalen responded, "no." He said the issue came up after visiting with a broad spectrum of people throughout the community. He said it was an issue that came up as a very high cost issue for the Fire Department, Police Department and the ambulance provider. The City of Billings currently has no structured way of dealing with public intoxication.

Councilmember Deisz publicly thanked Mr. Ulledalen for being the Chairman of the Task Force, and the City employees that donated their time and all the health care workers that provided testimony to the Task Force.

Councilmember Ohnstad moved for acceptance of the report, seconded by Councilmember Johnson. Councilmember Larson said he would be very interested in

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seeing the proposal move forward. Councilmember Larson made an amendment to the motion directing staff to begin the process of determining what steps need to be taken to establish the committee and present that to Council by the February 14, 2000 Council meeting, seconded by Councilmember Deisz. Councilmember McDermott said she was concerned about moving forward with recommendations without having a Fire Chief in place. Councilmember Larson said that the formation of the committee would take some time and most likely a Fire Chief would be in place before the committee actually started forwarding any specific recommendations. He said the only thing that had been outlined was that the committee would begin to address some of the issues. Councilmember McDermott agreed that some of the recommendations were good and needed to move forward. She said she just wanted to be a little cautious without a permanent Fire Chief. Councilmember Deisz urged voting for the amendment to put something in place. On a voice vote on the amendment, the amendment was approved. On a voice vote on the original motion as amended, the motion was unanimously approved.

3. PRELIMINARY DEVELOPMENT AGREEMENT between CTA Development Group LLC, the Downtown Billings Partnership, Inc and the City of Billings for the development of a Multi-Use Parking Structure in Downtown Billings. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Bruce McCandless, Executive Director of the Downtown Billings Partnership (DBP) gave a brief history of the project. He said the concept of the mixed-use parking structure was initiated by the City's Parking Advisory Board in 1998. The concept was adopted as the first priority for the Downtown Billings Property Owners Committee and in February 1999 the report was presented to the City Council. The concept was then adopted by the Downtown Billings Partnership. A Request for Qualifications (RFQ) was authorized by City Council in April 1999. There were several responses received for the RFQ by the July 2, 1999 deadline. The Selection Committee that was developed selected CTA Development Group as the preferred developer. The City Council approved negotiations with CTA Development Group in September 1999. The first negotiations with CTA were in October 1999. The Negotiating Committee recommended a preliminary development agreement to the City and also recommended that to the DBP in January. The DBP board of directors approved the agreement unanimously with one extension earlier in January. Mr. McCandless said that when the concept was first discussed, they considered two primary approaches to try to couple private investment with a City parking garage. The first of those options would have been for the City to prepare much of the site and market analyses, to acquire a site, to design a parking structure and then try to attract the developer to partner with the City. The other approach, which was the one selected, was to try to select a developer – someone that had been involved in these types of partnerships with public entities before – and who had developed mixed-use facilities similar to what was being envisioned. He said the idea was to select the developer,

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partner with them, and then conduct the site and market analyses. He said the agreement was uncommon because it was an uncommon arrangement for the City of Billings. He said the project is truly a public-private project. Mr. McCandless said the agreement involves many steps. The City Council controls the process and says "yes" or "no" to every step. He said the one issue he knows everyone is concerned with is compensation to the development team. Most times the developer has most of the say, in this particular case the City has the control. Throughout the agreement the City Council gets to continue to make decisions about how and whether the project proceeds. This is not a traditional project. The site is unknown, the project is unknown, the public financing is contingent upon a number of things happening, and the City Council has all the control throughout the process. The Parking Enterprise Fund is specifically identified and reserved for these types of uses. None of the City's General Fund is at risk in order to develop the project.

Mike Tuss with CTA Development said the group has invested much time to determine whether the project is feasible and to determine whether they want to be involved. He said they feel the project is feasible and are very interested in being involved.

Mr. Tuss introduced Ron Muri for the health club component of the project; Don Sterhan for the boutique/suite-type hotel component; Curtis Wegener of Flintco/Grace Development for the development component; and Steve Turgeon for the housing component.

Mr. Wegener said Flintco is a large general contractor with a development arm solely for the purpose of bringing financing to construction projects that are outside of the typical norm. Flintco has been heavily involved in public-private partnerships. He said they were not solely interested in the planning of the project, but the development of the project.

Their goal is to develop a project that works for the City, and also leverage the City's dollars to the maximum amount and hopefully create a larger project.

Councilmember Deisz asked what types of high-end housing were being planned for the project. Mr. Turgeon said that he has had significant experience developing a range of housing styles at various income levels. He said the purpose of the Preliminary Development Agreement is to provide them with information to help determine the type of housing to be incorporated based on market data. Until they get that information, they do not know what income level or product type. He said they do understand that upper income type housing is clearly a desire in this community. Councilmember Deisz asked how many units were being planned. Mr. Wegener said he felt they were looking at a minimum of 50 to 100 units. Councilmember Deisz asked Mr. Sterhan why he would want to build a hotel in downtown Billings when there was a 60% hotel occupancy level in downtown Billings hotels last year and how another hotel would impact the income of existing hotels in downtown Billings. Mr. Sterhan responded by saying what they are contemplating at this point is a high-end, boutique hotel with 40 to 50 units, unlike anything else in Billings. They do not feel it will impact existing hotels in downtown Billings. He said they are trying to add to what Billings currently has downtown. They are trying to present visitors with another option. Councilmember Deisz asked Mr. Sterhan if he had investigated any financial incentives for hotel chains to locate in downtown Billings. Mr.

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Sterhan responded, "no". He stated that national chains were not interested because the project at this point has so many unknowns. A national chain did not make sense for this type of hotel. Councilmember Deisz asked if the project envisioned removing buildings currently occupied by retail tenants in downtown Billings, and if so, what provisions would be made for these tenants so they would remain downtown. Mr. Wegener (Flintco) responded by saying he could not answer that question at this point. He said they have located 3 to 4 different sites, some of those sites have retail uses. He said there are sites that would require demolition and others that would not. Mr. Wegener said they would make every effort to relocate tenants if that becomes necessary. Councilmember Deisz asked what kinds of provisions Flintco had made to relocate tenants in the past with similar projects. Mr. Wegener responded by saying that they had relocated tenants within the development. He said it would depend on the requirements of the tenants. Councilmember Deisz asked if the downtown property owners and the downtown business owners would have an opportunity to provide direct input into the site selection process. Mr. Wegener said that this is an open process. The City Council is the ultimate decision maker, but it would not make good sense to ignore the wishes of the downtown business owners. He said as the project develops, the downtown property/business owners are going to have a great deal of input into the process. Councilmember Deisz asked who the principals of the LLC were. Mr. Wegener said there are four principals: Ron Muri, Don Sterhan, CTA Architects and himself (Flintco).

Councilmember Kennedy said there is the chance the current developers may decide they are not interested in this type of project, after receiving all the necessary information. That information can be used by the community to solicit individuals who may fit the project better. He sees the development agreement and project as a positive step. Councilmember Johnson said he agrees with Councilmember Kennedy.

Councilmember Johnson moved for approval of the Preliminary Development Agreement, seconded by Councilmember Ohnstad. Councilmember Deisz asked City Attorney Brent Brooks if there was a clear "out" for the City Council if time schedules set out in the contract are not met. Mr. Brooks responded that if it is something that the Council as a whole is uncomfortable with then a time frame should be incorporated in some way. The city is limited to what is stated in the Preliminary Development Agreement.

Councilmember Deisz said he would vote for approval of the Preliminary Development Agreement and ask it be stipulated that the City Attorney read the agreement and report to Council by the February 7th Agenda Meeting so if there are problems, the item can be put up for reconsideration. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #656: a zone change from Residential 9600 to Residential Professional on Lots 1-2, Block 20, Kober Subdivision, 4th Filing, located at 1702 Colton Boulevard, SEA Enterprises, LLC, owner; Erik and Sheri Anderson, agents. (VALID PROTEST).

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Zoning Commission recommends denial. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman gave a brief presentation of the requested zone change. He said the current zoning for the subject property and the property to the west, north and south, is R9600; the property to the east, across 17th Street West, is Planned Unit Development with some existing single family homes. Most of the zoning west of 17th Street West is zoned single-family R9600. The subject property has been involved in two unsuccessful special review proposals in the past two years. The Zoning Commission is recommending denial because they did not feel the zoning was appropriate for this particular location and were concerned about impacts on the neighborhood and felt the zone change might be setting a precedent for future zone changes further west on Colton Boulevard. He did point out there was a valid protest and approval would require a two-thirds vote of the members present to override the valid protest.

The public hearing was opened. ERIK ANDERSON, NO ADDRESS GIVEN, said he was speaking in favor of the zone change. He said the intended use of the area is for office space. He said the only option they currently have is to lease the space to another church. He said he and his wife sent out fliers to 135 churches in the area. Only one church responded and was unable to meet the terms of the lease. During an open house he and his wife held for the neighbors to discuss their preferences, the neighbors indicated that they did not want any increase in signage or traffic. Most did indicate that they would be satisfied with a professional business office with regular business hours. Mr. Anderson said he felt the Zoning Commission was in error in their recommendation of denial. He said the zone change is not intended to enhance the future development of Colton. He recommended the Zoning Commission and the City Council take a closer look at the proposed zone change.

ANNA LYDIE OF THE ROXY HOTEL, said she was in favor of a daycare at the site.

SHERI ANDERSON said she is the wife of Erik Anderson and owner of the subject property. She said she understood the concerns of neighbors. She pointed out that they were not trying to change the status of the property. The building was built as an office building 30 years ago. They want it to continue to be an office space. The only change would be that it would not be a church office building but a professional office building. She said she feels the neighbors' fears are unfounded. Their fear of future development along Colton should be addressed as the need arises. "Commercial growth would only be down 17th Street West, not Colton," she stated. She said she and her husband bought the property as an investment property and paid a commercial property price and commercial taxes for the property. She stated that if the zone change was not approved, they would be forced to convert the property to residential. "As a homeowner or potential renter I would not want a home with this strange floor plan. It is very unconventional for a home. It has an extremely small kitchen area with no eating or dining area, no closets, no

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basement, two bathrooms side-by-side with no shower. There is no laundry room or unattached garage,” she stated. She said they were willing to work with the neighbors to come to some sort of compromise with the neighbors’ requests.

CECILIA EMERICK OF 1736 COLTON BLVD said she is opposed to the zone change. The residents do not want a business on the corner of the block. When the church was granted a non-conforming use exception 30 years ago the neighbors were told the property would only be used as a church, and that is what those neighbors believed. The development on 17th Street is not conducive to single-family dwellings and the residents do not want that development to continue up Colton. She said many churches have gone through this same process and Council denied the zone changes. She asked Council to not give preferential treatment to the request by allowing it to pass.

CONNIE WARDELL of 1400 Poly Drive said there is great concern about having commercial zoning on Colton. She said this one change in zoning could change Colton into something like Broadwater or Grand Avenues. She said there are other options under residential zoning available for the property – adult day care or housing for people with brain injuries. She asked Council not to allow this commercial zoning to begin on Colton.

RAYE MCCLEAN OF 1736 CULLEN COURT said she is opposed to the zone change for the same reasons that had been previously stated.

CAROL KRAFT OF 1140 MINUTEMAN STREET said she is in favor of the zone change. She said she thinks most of the opposition is because of people’s fear of change. She said the zone change does not need to be looked at as a bad thing; it could be very positive.

SCOTT EMERICK OF 1736 COLTON BLVD said he is against the zone change mainly with regard to equity in the zoning regulations. He said if Council allowed the zone change, the same thing would happen with similar church establishments in residential areas. He asked Council to rule in “just fairness.”

ALICE METCALF 1720 COLTON BLVD said she is opposed to the zone change.

There being no other speakers, the public hearing was closed. Councilmember Larson moved for approval of the Zoning Commission recommendation, seconded by Councilmember Johnson. Councilmember Larson said this was a tough issue and he felt bad for the people that purchased the building. “Churches enjoy a unique position in our community of being able to place themselves into a residential area. To use that, even unwinningly, as an entrée into a commercial venture into that same neighborhood is bad policy. We have enough non-conforming use issues on existing small businesses that are in neighborhoods that have been brought to us time and time again and we have had to deal with that issue,” he stated. He said he was surprised the building was sold to someone with the idea that it could be anything other than the office facility it is now. He said he felt the decision of the Zoning Commission was valid and should be upheld. Councilmember Johnson said the size of the lot (16,000+ sq. ft.) might allow the lot to be split into two lots, removing the current structure and replacing it with two homes. On a voice vote, the motion was unanimously approved.

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5. PUBLIC HEARING AND SPECIAL REVIEW #670: a special review to allow the placement of an all-beverage liquor license in a Community Commercial zone on Lot 5, Block 2, Circle Fifty Subdivision, located at 1407 Country Manor Boulevard, James L. Pickens, owner; Engineering Inc., agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said the subject property is located at the northeast corner of Grand Avenue and Country Manor Boulevard. He said that all of Block 1 and 2 are zoned Community Commercial and are in the city limits. The property to the south is zoned Agricultural Open-Space and is in the county. In 1998 the Council conditionally approved a special review for the placement of an all beverage liquor license on Lot 2. He said this is a special review to also allow the placement of an all-beverage liquor license. Both the Development Review Committee and the Zoning Commission are requesting conditional approval – the one condition is with regard to placement of landscaping on the site. He noted that there was no requirement to waive the 600-foot separation for the property.

The public hearing was opened. JOHN STEWART OF ENGINEERING, INC., 1001 S. 24TH STREET WEST, said they prepared the application and site plan for Jim Pickens, owner of the property, and Dave Swain, purchaser and proprietor of the Red Door Lounge. He said Mr. Swain plans to construct a new facility to replace his existing business that would include 3,000 sq. ft. of restaurant and 2,200 sq. ft. of lounge. He said the lot is within a two-block area that is zoned for such usage. The infrastructure of all the adjacent streets, arterial and collector, has previously been installed to serve a commercial establishment on that block. He said the structure is set back diagonally in order to maximize the impact of the landscaping and maintain visual integrity within the subdivision. He requested Council's favorable approval.

JAMES PICKENS OF 341 MORNINGSIDE LANE NORTH said he had a number of reasons for urging Council's approval of the special review. He said he has been the owner of the property for 17 years and now has an opportunity to sell it. He said he was also one of the developers of the Circle 50 Subdivision. He and the other developers went to great lengths to lay the subdivision out based on zoning recommendations from the Planning Department with commercial property buffering multi-family and single family residential to the north. Mr. Pickens also stated that his past experience with Dave Swain and Mr. Swain's positive reputation with regard to business operations was another reason he was urging Council's approval.

The public hearing was closed. Councilmember Bradley moved for approval of the Zoning Commission recommendation of conditional approval, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved.

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6. **PUBLIC HEARING AND SECOND READING ORDINANCE 00-5110 FOR ZONE CHANGE #655: a zone change from Community Commercial to Controlled Industrial on Tracts 1 and 2, C/S 426, located at 5124 Laurel Road, Thiel Family Trust, owner; Shelby Waldron, agent. Zoning Commission recommends approval. (Action: approval or disapproval of ordinance on second reading.)**

The public hearing was opened. There being no speakers, the public hearing was closed. Councilmember McDermott moved for approval of the ordinance on second reading, seconded by Councilmember Ohnstad. On a voice vote the motion was approved.

Mayor Tooley called for a recess at 9:05 p.m. The City Council meeting reconvened at 9:10 p.m.

7. **ZONE CHANGE #653:**

A. **MODIFIED DEVELOPMENT AGREEMENT. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

B. **PUBLIC HEARING CONTINUED AND SECOND READING ORDINANCE 00-5111 FOR ZONE CHANGE #653: a zone change from Highway Commercial and Residential 6,000 to Planned Development with an underlying zoning of Community Commercial on Lots 1-8 of Mattson Acres Subdivision, Lots 19 and 20 (less Highway) of Holling Ranch Subdivision and Tracts 1 and 2 of C/S 385 Amended. Multiple property owners; Elkhart Realty Corporation and Michael Dockery, agents. (Wal-Mart). Zoning Commission recommends approval. (Delayed from 1/10/2000). (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman referenced the Modified Development Agreement and pointed out the deviations from that agreement and what Council had requested from the developer. Those deviations were:

1. Council had requested that all storm water be retained on site. The agreement has the water detained on site but will be connected into the City stormwater pipeline that exists at Wicks Lane and Bench Boulevard.
2. Council requested that Wal-Mart be responsible for all improvements on Main Street, Wicks Lane, Mattson Lane and Bench Boulevard. Mr. Bollman said the Wal-Mart representatives excluded the improvements on Wicks and Main because those improvements (curb, gutter, sidewalk, widening of streets) have already been made, but Wal-Mart will handle improvements for Mattson Lane and Bench Boulevard, those opposite portions which are unimproved and do not have curb, gutter and sidewalk.

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Mr. Bollman said staff requested Wal-Mart make some other minor changes to the agreement and those changes have been made. Those changes did not substantially affect the agreement. He also pointed out that along with the zone change there is a minor subdivision that has been put on hold pending the outcome of the zone change. He said this would not be the last time Council saw a development proposal for this site. He indicated that at some point in the future there would be a request for approval of a minor plat for the property. With that minor plat, there will be a Subdivision Improvement Agreement, which will more specifically spell out some improvements needing to be completed.

Councilmember Deisz asked if other developers had been requested to retain storm drainage on site. City Administrator Dennis Taylor stated that Public Works Director Kurt Corey indicated it had been requested of developers in the past if there was no storm drain available. Councilmember Deisz asked if staff was stating there was sufficient storm drain in the area to handle the storm water if the current Development Agreement was accepted. Mr. Taylor stated, "following our statements for storm water." Councilmember Deisz said he was concerned with the statement 7(1) on Page 5 that the owner should not be required to obtain any additional right-of-way on the north side of Mattson Lane or east side of Bench Boulevard. He said he felt the requirement that Wal-Mart be responsible for that right-of-way purchase be mandatory with the recent decision by the Department of Transportation for no egress onto Main Street. Mr. Bollman indicated that he did not know if the State's decision for the right turn onto Main Street was final. Councilmember Deisz said that if it is final, there would be some increased right-of-way needed. Mr. Corey said that in the event that additional right-of-way is needed on Mattson Lane to accommodate an additional lane or street widening, that right-of-way would probably come from the Wal-Mart side of the street. Councilmember Deisz requested that language indicating that fact be incorporated into the Agreement so the City is not liable for purchasing additional right-of-way in the future. Mr. Corey indicated his impression was that it was implicit in the Agreement, but the City Attorney could better address that issue. City Attorney Brent Brooks stated that it would be best to have it specifically stated and it would be subject to Wal-Mart agreeing to that condition.

The public hearing was opened. MICHAEL DOCKERY, agent for the project, said the Development Agreement was drafted to include all those conditions imposed by the Council at the December 13, 1999 meeting. He said the additional right-of-way is of great concern to Wal-Mart. He said it is not possible for Wal-Mart to dedicate all of the right-of-way that would be necessary for Bench Boulevard without causing a serious problem with the alignment of that street as it adjoins the intersection to the south. "That is a principle arterial designed to be 120-foot wide. Wal-Mart is certainly dedicating its share of the right-of-way on its side through the platting process but is in no position to dedicate an additional 60 feet, which is what would be needed, nor is Wal-Mart in a position to acquire that right-

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of-way from the multiple owners," he stated. He did not feel Wal-Mart should be required to acquire that additional right-of-way.

With regard to assistance to the tenants of the property, Mr. Dockery said Wal-Mart agreed to buy the property from the landowners and the landowners agreed to deliver the land free of any tenants. The eviction notices being given were not from Wal-Mart; they were from the current owners of the property. "Wal-Mart is not insensitive to the issues raised and is committed with meeting with the neighborhood and will do what is fair and necessary to help them offset some of the costs of relocation," he stated. Mr. Dockery said that recently labor issues have also been raised about Wal-Mart. He said there may be some requests to delay the zone change pending an economic impact study. "All the properties are scheduled to close February 15th and Wal-Mart is out of extensions. If they do not close because of a delay with this process, it will probably seriously jeopardize the project. Without approval of the zone change Wal-Mart is in no way able to move forward with the project," he stated. Mr. Dockery spoke briefly about the issue of impacts to existing grocers (Albertsons, Smiths, County Market). He said those stores are national chains that compete with Wal-Mart throughout the United States already and doesn't know why those competitors would be afraid to compete with Wal-Mart in this economy. To this point, there have not been any owners from those various organizations come forth to express concerns about Wal-Mart. With respect to Wal-Mart's labor practices he said Wal-Mart pays very competitive wages and benefits to employees, both full-time and part-time. He said this particular development is expected to generate 400 new jobs, 300 of those would be full-time. He said Wal-Mart competes in the labor market the same as any other business in Billings. Wal-Mart cannot dictate lower wages simply because they are Wal-Mart. He said the fact that Wal-Mart is non-union should not even be considered for the zone change and the request for an economic impact study should not be allowed. Councilmember Johnson asked how many of Wal-Mart's one million employees were full time. Mr. Dockery said the standard ratio for Wal-Mart is three-fourths of its employees are full-time.

Councilmember Deisz asked if Mr. Dockery would have any objections to including in the agreement the condition that if additional right-of-way was needed on Mattson Lane it would come from the Wal-Mart property. Mr. Dockery said Wal-Mart has already agreed to dedicate an additional 10 feet to the 50-foot right-of-way. Councilmember Deisz asked with the additional requirements imposed by the Department of Transportation, if Wal-Mart would give the additional right-of-way off their property. Mr. Dockery said that even with the State's decision of non-acceptance of the right-turn out, Michael Sanderson of Engineering, Inc. had indicated that decision would not change any of the current recommendations. If an additional lane were needed on Mattson to accommodate both left turns and right turns, the proposed street width Wal-Mart is prepared to build would be adequate to handle that.

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ANNA SUE LYDIE, OF THE ROXY HOTEL said she is opposed to having the Wal-Mart in the Heights. She said Wal-Mart's price for leather stretch belts is too low. She said that was too much of a burden on so-called cheap, southern-European labor.

BEVERLY HILL OF 1649 BENCH BLVD said she lives directly across from the proposed Wal-Mart loading dock. She stated that at the last Heights Task Force meeting the issue of water wells for property owners on Bench and Mattson was presented. She wanted to know what action Wal-Mart has taken to protect the water wells when they drill for their pilings. She said the vote on the zone change should be set aside until there is an answer to that question.

JOE DWYER, SECRETARY-TREASURER OF THE TEAMSTERS UNION, asked Council to carefully consider all the facts, not just the zoning issues, before allowing Wal-Mart to build their superstore in the Heights. He said it would be beneficial for the entire community to first discuss the problems encountered by other communities when Wal-Mart moved into the area grocery business. He said those facts show that three existing jobs are destroyed for every two new jobs at Wal-Mart. Wal-Mart actually lowers wages and community living standards. An average Wal-Mart employee makes approximately \$11,700 per year, nearly \$2,000 below the poverty level for a single mother with two children. He said facts show that Wal-Mart brings empty storefronts, ruined downtowns, lost jobs, diminished tax revenues and desolated communities. He requested Council delay action and thoroughly examine the impact of Wal-Mart on the community before making a decision on the zone change.

KEVIN CRAVENS OF BSW INTERNATIONAL (ARCHITECTS/CONSULTANTS ON PROJECT) said he was project manager on the project. He stated that design modifications had been made to provide screening for the truck docks, both the grocery and retail, and for the refrigerator compressors on the grocery side. The screening is for both visual and sound. He said this process has been lengthy and Wal-Mart has met the additional building requirements. He urged project approval so that they could stay on schedule. Councilmember Deisz asked Mr. Cravens to address the right-of-way issues on Mattson Lane. Mr. Cravens responded that BSW is the building architect and the civil engineer would have to address those questions.

CHAD FABER OF BOYLE ENGINEERING said he would address the groundwater concerns. He said it is Boyle's opinion as well as the opinion of their Technical Engineer that the groundwater will not be affected by this project. The building is equipped with spring footings as opposed to deep pile footings. He said the footings would not encounter groundwater as far as they can determine from the borings they had done. He said even if the footings did encounter groundwater, he did not feel the groundwater would be affected in any way. The proposed improvements for Mattson Lane, even without the right turn from Main Street, should be enough to accommodate traffic based on preliminary studies that were conducted. Councilmember Deisz asked if plans could be changed to accommodate the increased necessary right-of-way from the Wal-Mart property if there was not sufficient right-of-way on Mattson. Mr. Faber said that Michael Sanderson of

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Engineering, Inc. could better answer that question based on studies he had conducted. Councilmember Deisz asked how deep the footings were. Mr. Faber said they extend to the natural gravel bed, which ranges from 2 to 7½ feet. He said the borings ranged from 4 to 14 feet and none of the borings encountered groundwater.

MICHAEL SANDERSON, TRAFFIC ENGINEER FOR ENGINEERING INC., 1001 S. 24TH STREET WEST addressed the issue of the Montana Department of Transportation (MDT) findings. He said MDT concurred with the recommendations of the traffic study conducted by Engineering, Inc., but recommended that there not be a right turn out onto Main Street. He did not feel that was a final decision from MDT. He said Engineering Inc. did additional analyses by reassigning that traffic to the other intersections and based on the analyses, they would not change any of their recommendations with regard to off-site improvements. He did say the current street width being recommended on Mattson Lane is sufficient, if 10 additional feet is needed, that is available from the Wal-Mart property. Mr. Sanderson said there would be continuing analyses and discussions with City staff on traffic issues.

Councilmember Bradley asked if MDT provided any reasons for their decision. Mr. Sanderson said they have some concerns about traffic exiting onto a high-speed highway.

Councilmember Deisz said to Mr. Sanderson, "there would be no problem with your plan to give additional right-of-way on Mattson if the occurrence is necessary and mandated by the traffic studies that should occur, subsequent to MDT's decision." Mr. Sanderson concurred.

BILL HILL OF 1649 BENCH BLVD said there are 50 water wells in that area. He said he finds it hard to believe that this development would not affect the water. He also said he did not want Wal-Mart's berm in his front yard (it can be seen out his front window). He said the berm could have been moved 200 feet to the west so that it was not in his front yard.

VICKIE JOHNSON OF 727 MATTSON LANE said that she is in favor of the Wal-Mart in the Heights. She lives directly across from the proposed location of the compressor units. She said her father has worked in heating and air conditioning for over 30 years. He indicated to her that the compressor units could be on the inside of the store. Managers from both Smith's and Albertson's indicated their compressor units were located inside their building or on the roof of the building. She said locating the units on the roof would prevent some of the noise. She was curious about why it was planned to have the compressors located on the outside of the building.

DAVE CROSMER OF 1325 FLORIAN IN HUNTLEY said Wal-Mart is coming to town with a lot of promises. He said Wal-Mart is a predatory retailer. He said they reduce costs by exploiting their own workforce with low wages, benefits and jobs. They deal with wholesalers that deal with cheap foreign labor. He stated that when the world's largest retailer (Wal-Mart) drives down wages and benefits, its competitors do the same. Virtually all independent studies demonstrate that Wal-Mart's entry into the economy eventually leads to fewer and lower quality jobs. He said 6 to 7 community grocery stores could be

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lost because they cannot compete with the mega Wal-Mart box stores. He requested the Council conduct an economic impact study before approving the zone change.

SANDY OWEN OF 430 19TH STREET WEST said what used to be her nice quiet neighborhood on 19th Street is now like the Indy 500. She said she works for County Market, which is union employed, and they pay good wages. She said she would not welcome Wal-Mart into the community again. "They are not good neighbors; they do not tell the truth; they do not help their employees," she stated.

CAROL MARSHALL OF 3207 DURWIN DRIVE said she works at County Market. She requested that Council not allow Wal-Mart to come to Billings. She said the new Wal-Mart would cause employees' hours to be cut at all stores in Billings. She stated that by their hours being cut, most of the employees at County Market would also lose their health insurance coverage.

MICKEY MILLER, NO ADDRESS GIVEN, said she has resided in Billings for 50 years and works for Smith's. She said she is opposed to Wal-Mart coming to the community. She doesn't feel Wal-Mart has done anything to improve the community. She said Wal-Mart should pay their employees what they are worth.

JERRY RAYE OF 711 CENTRAL AVENUE said his concern is the storm water retainage. He said he is working on a project down the street from the proposed Wal-Mart and he is approaching costs of \$40,000 for retaining his storm water. He said Wal-Mart should be held responsible for paying their share for their 23 acres of storm sewer and that issue should be addressed right now. He also said there should be more research on the effects Wal-Mart will have on the well water.

CINDY LEENKNECHT OF 219 ROLLING HILLS ROAD said she admired the Council's tenacity in addressing all the problems, but felt the City continued to increase the expectations of Wal-Mart. She said every time a proposal is presented, there is always one more issue to address. She said she was in favor of the much needed development and seriously needed services in the Heights.

KEVIN CRAVENS returned to address the issue of the sound from the loading docks. He said the hours of operation for the loading docks are addressed by city ordinance and can be adjusted if it becomes a detriment to the neighborhood. He also indicated that screen walls would be constructed to screen the noise from the compressors. He said a sound study could be conducted to confirm the effectiveness of the screen walls.

BILL HILL returned to speak about the water situation. He said the ditch that runs north along Bench used to run year-round with fresh water. He said the ditch has been dry since the Popelka project began.

AUDREY STANISLAW, NO ADDRESS GIVEN, said that she spoke once before on behalf of her parents who were evicted. Without assistance from family members she said her parents would have been financially unable to pay for the costs of their move. She said she feels all the people evicted from the apartment building endured a financial burden. She felt Wal-Mart should compensate the people in some way for moving expenses.

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There being no other speakers, the public hearing was closed. Councilmember Deisz moved for approval of the modified Preliminary Development Agreement with an additional 3 conditions: 1) if additional right-of-way is necessary on Mattson Lane, it will come from Wal-Mart property, 2) Wal-Mart will conduct a noise study after construction is complete and mitigate effects if necessary 3) Wal-Mart will conduct a post-construction water study and mitigate effects of depleted water if necessary, seconded by Councilmember Johnson.

Councilmember Bradley noted that there is only a loss of water in the proposed development area during the construction season. "After construction is over the groundwater surcharges itself and comes back up," he stated. He said there would not be any long-term effects on the water. Councilmember Larson commented on the economic impact of Wal-Mart on the community. He stated that people should stop shopping at Wal-Mart if they don't like the way they treat their employees. He said the issue before Council was for a zone change only and was not an opportunity for Council to put other demands on Wal-Mart. "Zoning law was not designed to bring about change in Wal-Mart's improper behavior. Wal-Mart will not change the way they behave as long as they are a successful retailer and as long as we line up to buy our stuff there," he stated. Zoning regulations are designed for appropriate land use and dealing with the issues of land use. Councilmember Johnson said he agreed with Councilmember Larson's remarks. He said Council would not conduct an economic impact study because that is not their business, but said Council was concerned and interested in the workers, wages, benefits and conditions of employment in Billings. He said most people he has talked to in the Heights wanted the Wal-Mart. He recommended the union reps keep working to change the employment issues. Councilmember McDermott said she agreed with Councilmember Johnson's remarks and thought this was something the people of the Heights wanted.

On a voice vote, the motion for approval of the Preliminary Development Agreement with the three additional conditions was approved. Councilmember Bradley voted "no".

Councilmember Deisz moved for approval of the ordinance on second reading, seconded by Councilmember Johnson. On a voice vote, the motion was unanimously approved.

8. PUBLIC HEARING AND SPECIAL REVIEW #668: a special review to allow the placement of a public parking lot in a Residential Multi-Family-Restricted zone on Lots 24-31, Block 1 of West Side Addition, located at the southeast corner of Wyoming Avenue and 1st Street West. Clifford and Donna Dunn, Fred Grider, Cindy Wong Grider and Vera Brougner Roybal, owners; Roman Catholic Bishop of Great Falls and CTA Architects Engineers, agents. Zoning Commission makes no recommendation. (Delayed from 11/22/99). Staff recommends delaying action to February 28, 2000. (Action: approval or disapproval of staff recommendation).

