

# REGULAR MEETING OF THE BILLINGS CITY COUNCIL

**MONDAY, DECEMBER 13, 1999**

The Billings City Council met in regular session in the Council Chambers located on the second floor of the Police Facility, 220 North 27<sup>th</sup> 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 Michael Deisz.

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

**MINUTES – November 22nd.** The Minutes were approved as printed.

**COURTESIES – Retirements: Public Works, Fire Dept, Administration, Parks/Rec, Public Utilities, Airport/Transit.**

City Administrator Dennis Taylor introduced eight employees who are retiring from the City at the end of 1999. The retirees recognized were: Fire Chief Lorren Ballard with 10 years, 7 months of service with the City; Human Resources Associate Dorothy Clark with 33 years, 5 months of service with the City; Fire Captain Robert Evenson with 25 years of service with the City; Wastewater Treatment Superintendent Dale Ronghold with 30 years, 7 months of service with the City; Street and Traffic Superintendent Russ Shorten with 7 years and 9 months of service with the city; Senior Administrative Analyst Ellen Smith with 30 years, 1 month of service with the City; Cemetery Superintendent LeRoy Stewart with 32 years of service with the City; and MET Transit Operator Derald Thiessen with 17 years, 2 months of service with the City. Cumulatively these employees represent a total of 186 years and 7 months of experience and service.

Mayor Tooley welcomed members of Boy Scout Troop 23 in the audience this evening.

**BOARD & COMMISSION REPORTS** -- Sandy Fisher, Chair of the Traffic Control Board noted that the Board would be forwarding a recommendation to the council for consideration of photo radar speed control and enforcement. They will be recommending that the council review the presentation and evaluate the product for its effectiveness and appropriateness for Billings.

**ADMINISTRATOR REPORTS – Dennis Taylor.** Mayor Tooley noted that this is the first council meeting with the new City Administrator. The mayor briefly summarized Mr. Taylor's career in state and local government.

Mayor Tooley also commended Assistant City Administrator Bill McGill who was Acting City Administrator during the interim. The mayor noted that Mr. McGill directed all staff efforts in the search process for a new administrator, approval of the city's annual budget and was involved in a number of important issues during the last several months. "He saw us through a number of tough issues, including recreational vehicle regulations, the billboard issue, revised method of assessment for street maintenance districts, west end planning, the revolving loan program for the downtown, a review of City/County Planning functions, the general obligation bond for city parks and the information technology

strategic plan assessment," stated the mayor. On behalf of the council, he thanked Mr. McGill for "all the work he has put in."

Mayor Tooley noted that ITEM I on the Consent Agenda needed to be deleted and two late additions – ITEMS T and U needed to be added to the Consent Agenda. Councilmember Bradley moved to delete ITEM I, and add ITEM T: Boards and Commissions reappointments (SEE BELOW) and ITEM U: Subordination of Housing Rehab Loan (SEE BELOW) to the agenda, seconded by Councilmember Johnson. On a voice vote, the motion was approved. (CHANGES NOTED BELOW).

**CONSENT AGENDA:**

1. A. **Bid Awards:**

- (1) **Mobile Video Monitoring Systems for Police Department.** (Opened 11/16/99). Delayed from 11/22/99. Recommend Kustom Signals, Inc., \$78,267.00 for 21 units.
- (2) **Legal Advertising for 2000 Calendar Year.** (Opened 11/24/99). Recommend The Billings Times.
- (3) **2000 Cobb Field Stadium Restroom Renovation.** (Opened 12/7/99). Recommend Fisher Construction Co., \$10,400.00 for Schedule I; \$1,700.00 for Schedule III and \$27.00/unit and \$22.00/unit for Schedule II.
- (4) **Medium Duty Truck Cab & Chassis for PRPL.** (Opened 12/7/99). Recommend delaying award to 1/10/2000.
- (5) **New Portable Lift with Accessories for MET Shop.** (Opened 12/7/99). Recommend delaying award to 1/10/2000.

B. **Change Order #2, W.O. 94-07: Priority Signals**, Ace Electric, -\$64,339.04 and 0 days.

C. **Change Order #2, Landfill Infrastructure Project & Facility Upgrade**, Empire Sand & Gravel, \$73,463.32 and 0 days.

D. **Change Order #4, W.O. 95-10: Grand Avenue Reconstruction**, COP Construction, \$45,685.04 and 0 days.

E. **Change Order #2, Centrifuge Project at Wastewater Treatment Plant**, Star Service, -\$99.00 and 0 days.

F. **Contract Amendment #1, Phase II of Water Treatment Plant Improvements**, HDR Engineering, Inc., \$300,000.00.

G. **Vendor Agreements, Membrane Filter Pilot Plant for Water Plant Improvements**, Koch Membrane

Systems, Zenon, PALL Water Processing & US Filter, \$15,000 each.

**H. Lease Agreement** with Child & Family Intervention (CFI) Program for use of Maverick Fire Station (201 S. 30<sup>th</sup> Street), \$1/year. Term: 1/1/2000 – 12/31/2001.

**I. Utility Easement Agreement** with Montana Power Company for North Park pump service and associated Construction Agreement, \$10,324.00.

**J. Memorandum of Understanding** with HUD-OIG for Police Department overtime costs associated with "Operation Safehome" Initiative, \$70,000, term ending 10/1/2000.

**K. Approval** of Annual 2000 Exchange City Golf Corporation, (ECGC) Budget for Par 3 Golf Course.

**L. Resolution 99-17531** temporarily reducing Building, Electrical, Plumbing and Mechanical Permit Fees by 25% for period 1/1/2000 through 6/30/2000.

**M. Preliminary approval of resolution 99-17532** making the initial assessments for SID 1335: water, sewer, storm drain and street improvements in Parkland West Subdivision, 2<sup>nd</sup> Filing, C/S 2481, Shiloh Village, 2<sup>nd</sup> and 3<sup>rd</sup> Filings, C/S 1492 and setting a public hearing for 1/10/2000.

**N. First Reading Ordinance** extending the boundaries of Ward V to include recently annexed property: Annex #99-07, N2NW4NW4 of Section 12, T1S, R25E, less Emerick Subdivision, C/S 1702 and the North 120' previously annexed (containing approximately 15.5 acres) and setting a public hearing for 1/10/2000.

**O. Preliminary Major Plat** of Lake Hills Subdivision, 28<sup>th</sup> Filing. (Generally located at the intersection of Baltusol Road and Lake Hills Drive.)

**P. Final Plat** of Billings Heights St. Vincent Medical and Health Park Subdivision. (Generally located south of Wicks Lane.)

**Q. Final Plat** of Poly Vista Estates Subdivision. (Generally located east of 38<sup>th</sup> Street West between Rimrock Road & Poly Drive.)

**R. Final Plat** of Bergquist Subdivision. (Generally located along Pemberton Lane to Lake Elmo Drive.)

**S. Bills and Payroll.**

**LATE ADDITIONS:**

**T. Mayor's Re-appointments:**

- John Felton, Board of Health
- Harry M. Andersen, Community Development Board
- Clarence Salley, Housing Authority
- Tim Powers, Parking Advisory Board
- Bill MacIntyre, Parking Advisory Board
- Myrna Knox, Police Commission
- Barry Nolan, Public Utilities Board
- Dan Bergstrom, Public Utilities Board
- Bill Shikany, Yellowstone County Air Pollution Board
- Dale Getz, Yellowstone County Planning Board
- Brent Nelson, Zoning Commission

**U. Subordination of Housing Rehab Loan, Beatrice Dvarishkis, 401 S. 33<sup>rd</sup> St., \$10,000.**

(Action: approval or disapproval of Consent Agenda.)

There were no separations of the Consent Agenda. Councilmember Bradley moved for approval of the Consent Agenda, seconded by Councilmember Elison. On a voice vote, the motion was unanimously approved.

**REGULAR AGENDA:**

**2. CONTINUATION OF PUBLIC HEARING AND FIRST READING ORDINANCE FOR ZONE CHANGE #654: a zone change from Residential 9600 to Residential Multi-Family-Restricted, Residential Professional, Neighborhood Commercial and Community Commercial on the NW4NW4 of Section 12, T1S-R25E, LESS Emerick Subdivision and C/S 1702, generally located at the southeast corner of Central Avenue and South 32<sup>nd</sup> Street West. Lena Emerick and Freda Emerick Trust, owners; Engineering, Inc., agent. Zoning Commission recommends denial. (VALID PROTEST). (Continued from 11/22/99.) (Action: approval or disapproval of Zoning Commission recommendation.)**

Zoning Coordinator Jeff Bollman said the subject property was annexed at the last council meeting. A subdivision plat has also been submitted on this property and is undergoing review and trailing behind this zone change request. The property is currently zoned R9600 and is proposed to be changed to 4 different zoning classifications, including some commercial zones. The DRC recommended approval of the request; the Zoning Commission reversed that recommended

and is recommending denial. Due to the fact that a valid protest has been received on this request, and in light of the change in state law, 2/3 of those present this evening (8) will need to vote in favor of the request to approve it.

The public hearing was opened. RENEE KOPICH OF THE CROWLEY LAW FIRM said she is an attorney representing the Emericks. She said they are lifetime residents of the city and the family has owned the property for over 50 years. Traditionally the property was used as the family farm and for agriculture. The surrounding property has changed dramatically as the city has grown. "The Emericks to date have stuck to their roots, despite complaints about dust from agricultural ground, weed spraying, and ditch burning. The Emericks are now faced with an opportunity to change in a manner consistent with the goals and policies of the Comprehensive Plan. The proposed zoning change will allow for a variety of housing types and a balanced mix of residential and commercial uses – changes that fit the City's needs without contributing to urban sprawl," she said. This zone change will prevent strip commercial development and concentrate such development at the intersection of arterial streets. She noted that the Emericks worked closely with the Planning Staff to reach an acceptable balance for the area – one that would provide affordable housing and increased revenue for this city. "The staff insured that the commercial areas were appropriately buffered and clustered at the arterial streets. Furthermore all of the requested zoning changes mirror the surrounding area," she stated. Ms. Kopich said she could find no articulated reason why the Zoning Commission is recommending denial. She stated further that she drove to the area to see what the impact of the zone change would be. "I could see no real impact. There are 8-plexes in the area and only one house had a clear view of the Rims. Further, the zoning already allows building on the land," she stated. She urged the council to visit the property, noting it will become apparent that the Emerick property is an island in the midst of development. "As a direct result of surrounding development, the Emericks have already paid close to \$100,000 in SIDs on agricultural land. They now want to put their money to use and develop the property. The requested changed will allow the developer, not the City, to pay for the infrastructure. This is not at all similar to the problems associated with the temple construction. There's already sewer and water available in the area," she stated. She urged the council to support the zone change.

BOB BARNHART OF 3131 SOLAR BLVD #1, said he and his wife moved here from Bozeman and purchased a home in the Terra West Sub. this past August. He said this subdivision is located immediately south of the subject property.

Mr. Barnhart said 4 categories were on their house-buying list last summer – location – reasonable access to businesses, services and entertainment as required, neighborhood – are the residences single family dwellings within comparable price ranges; was there excessive noise; were lawns and parkways maintained, etc. Cost – could they afford it and lastly, resale – if it became necessary to sell the property, could they recover their investment. Mr. Barnhart found that the Terra 2 Sub. is within  $\frac{1}{2}$  mile in one direction and  $\frac{3}{4}$  mile in another direction of a major shopping services. Entertainment complexes are also available. Residences in the area are single family homes and condominiums in the same price range. It is reasonably quiet and the properties are well maintained, as well as in their price range. He said after receiving notice of the zone change about a month ago, they raised two questions – does this application retain and improve the existing residential neighborhood and would additional commercial development provide services, shopping and entertainment not easily accessible to current property owners in the area. "The answer to both of these questions is 'no'. Businesses and structures as proposed are not compatible with the current residential buildings in the area," he stated. He said they oppose the zone change.

TONYA FISHER CLARK OF 3131 SOLAR BLVD #5, said at first she was happy to hear that the field behind her home was going to be developed. Then she became aware of what was being proposed. "A large apartment complex will destroy the integrity of the area. The majority of 32<sup>nd</sup> Street is currently single family housing, mostly duplexes and patio homes. This is true from Broadwater to King Avenue, with the exception of a few churches and a couple of commercial sites. Eaton and Yost are selling duplexes as fast as they can build them. This type of housing is obviously needed at this time in Billings. It seems that these blend into the existing developments. I pray that you will deny the request for this zone change and encourage development which will uphold the integrity of the existing neighborhoods," she stated.

JACK HADLEY OF 3131 SOLAR BLVD #8, said he and his wife own a patio home in Terra 2 Homeowners Assn, adjacent to the subject property. He said they oppose the zone change because the residential classification would bring numerous multi-story apartments to the area, which is in direct conflict with the homes adjacent to Terra 2 and Terra West, composed of single family patio homes and townhomes in homeowner associations. "I also question if the new zoning has taken into consideration the conserving of the value of the existing residences on the surrounding property. Several proposed commercial classifications are numerous for this area, currently close to the easily accessible, well known commercial developments which are one block east on Central and a ½ mile south on 32<sup>nd</sup> Street all the way out to King Avenue. In conclusion, the traffic congestion that would result from this zone change would be dramatic from the already stressed arterials of 32<sup>nd</sup> and Central Avenue," he stated.

TOM SENN, NO ADDRESS GIVEN, said he is president of Terra West I Assn. He said he was not notified of what is to be built in that area. "The boundary skips my association by a couple houses. The people that are involved in that are terribly concerned with the property value of their house going down, once these are built. We are not opposed to developing the area. We feel that the extreme measures that are requested by the people right now are just a little out of hand. We would like to see something built out there, but if they are going to build that, I would just as soon live next to the cattle and stuff, because they are much easier to get along with than what they want to build," he stated.

PAUL WOLD OF 3131 SOLAR BLVD #6, said he is opposed to the zone change. "It is extremely aggressive in its entirety. The change from R9600, a non-dense single family zone to RMF-R, the densest classification is a wide swing in the zone change... The designated RMF-R proposed is right next to our homeowners association. The apartments can be built as high as 40 feet and can be very close to our property lines. The new zoning doesn't give reasonable consideration to the character of the neighborhood... It increases concentration of population in small area, having an impact on neighborhood streets and schools. The commercial aspects of the zone change are extremely aggressive too. By having approximately 10.25 acres of Community Commercial, 5.5 acres on 32<sup>nd</sup> Street and 2.65 on Central Avenue... I believe that commercial development at this location would promote strip development and extend urban sprawl, rather than to anything to discourage further urban sprawl," he said. He also said the traffic impacts are another major factor and closed by urging the council to vote against the zone change.

DENNIS RANDALL OF ENGINEERING INC., 1001 S 24<sup>TH</sup> STREET WEST, said they are the agents for the applicant. He noted there is a valid protest from the properties to the south of the subject property. "In those properties, the easterly portion is divided into single family lots currently zoned R8000. The remaining portion to the west is a PUD with an underlying zone of RMF-R – which is exactly what we are asking for on the property adjacent to that. The second point I

wanted to make is that we did mass the commercial near the intersection. The intent of that is to develop strip development. 32<sup>nd</sup> Street and Central are principal arterials. With that in mind, I think it would be very difficult to develop this property with the R9600 scenario. We are all very aware of what principal arterial construction costs are. With an R9600 development, it wouldn't even be economically feasible for that development to install the infrastructure on Central and 32<sup>nd</sup>," he stated.

DON FLOBERG OF 1002 NORTH 30<sup>TH</sup> STREET said he is the realtor involved in the possible sale of this land. He said that it is much more favorable to develop commercial in a large parcel and close to a busy intersection, rather than the type of strip commercial development that sometimes occurs. He noted that there is always opposition to anything like this, "so we kind of have to think through logically. This piece of property is absolutely in the path of major commercial development on its way west... Just down the block to the east is the huge development of the mall... I feel it is time and for what the developer wants to do, it is most logical, and I ask for approval," he stated.

There were no other speakers. The public hearing was closed. Councilmember McDanel MOVED for approval of the Zoning Commission recommendation (DENIAL), seconded by Councilmember Deisz. Councilmember Elison said he agrees with the developer on a couple of issues: (1) city staff has pressed very hard for "hub" developments, developments that are not strips and do not require a large number of curbcuts on a major arterial. "However, I don't think that pushing the RMF-R right up against the Terra West Sub is in the best interest of those residents. While I don't have any objection to the corner being commercial, I would be much more favorably disposed to this if there were a large buffer zone of perhaps even R6000 or R8000 in that area as it comes down into Terra West Sub. Those are the only people complaining. I would suggest that the developer put a buffer zone along that southern boundary that has some higher zoning restrictions – R7000 minimum... The rest of it appears appropriate to what the city has asked developers to do," he stated.

Councilmember Larson asked if this zone request is refused tonight, when can an alternative zone request be brought forward to the council. Mr. Bollman replied that the applicant would have to wait one year before bringing forward another zone change request.

Councilmember Larson made a SUBSTITUTE MOTION to postpone the vote for eight (8) weeks to give the developer an opportunity to put together an alternative proposal and alter the proposal to make it more acceptable and remove the valid protest, seconded by Councilmember Kennedy. Councilmember Larson said he didn't think the council was too far off from having a plan that gets the development on the property. Councilmember McDanel agreed that the council and applicant are close to a proposal that will meet the objectives of the city's own planning. He noted that he is still concerned with the southern edge along Terra West, and questioned whether or not eight weeks was sufficient time. City Administrator Dennis Taylor said that the applicant would need to withdraw the application, then wait 4 months to re-apply with a new proposal. Planning Director Kerwin Jensen informed the council that the applicant could not alter the proposal at this time. He suggested the council delay this item to 1/10, which would give the applicant a chance to withdraw.

Councilmember Deisz made a SECOND SUBSTITUTE MOTION to postpone the vote to January 10<sup>th</sup> to allow the applicant a chance to withdraw if they chose to, seconded by Councilmember Kennedy. On a voice vote on the second substitute motion, the motion was unanimously approved.

3. ZONE CHANGE #653:

(A) PUBLIC HEARING AND FIRST READING ORDINANCE 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. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman briefly summarized the criteria that the council can consider in a zone change request and subjects for consideration in a development plan. He reminded the council that they cannot place conditions on a zone change or a development plan. The council can however recommend modifications to a development plan and allow the developer a chance to respond to the recommended modifications.

Mr. Bollman noted that the Zoning Commission recommended approval of the development plan with three modifications: (1) that the traffic accessibility study further address the potential impacts for existing non-signalized median cuts in Main Street, more specifically looking at the median cuts and the existing cueing and stacking in those median cuts and whether the impact of this development would worsen those conditions. He said it was his understanding that the traffic engineer has done a preliminary analysis of these items, but staff has not yet reviewed that. (2) a section be added that no access be allowed off of Bench Boulevard for this development and (3) there be walls extended along the loading dock to mitigate some of the noise impacts that the residences on the east side of Bench Boulevard may experience from the semi traffic that will come into those loading docks to drop off their trailer.

Councilmember Deisz asked how "dense" the tree plantings would be along Bench Boulevard. Mr. Bollman said the development plan currently reads that the landscape should be developed according to the submitted site plan. Planning Director Kerwin Jensen said the trees are 15-20 feet apart. Mr. Bollman reminded the council that that area is also bermed up.

Councilmember Bradley asked, "is that a berm or an olympic-size swimming pool down there?" Mr. Bollman replied that it is a detention facility. Councilmember Bradley asked if it was 8-feet deep, adding, "so, the Heights gets their swimming pool after all." Mr. Bollman said the consulting engineer was in the audience this evening and could probably answer that question. Councilmember Bradley said the detention pond was a safety hazard, "if we are going to retain water at an 8-ft depth... If I was a little kid and I saw that full of water, I'd be tempted," he stated. Mr. Bollman said when the DRC reviewed the submittal, the depth of the retention facility was not deep enough to require any type of fencing around it.

Councilmember Deisz said the neighbors have repeatedly asked for percolation tests and any effects it will have on groundwater tables in that area. "Has Walmart done anything to study those effects to date," asked Councilmember Deisz. Mr. Bollman replied that he was not aware of any such study or tests. Councilmember Deisz said, "not that they would dig any wells, but the placement of their building on such a large area would change the water table."

Councilmember Elison asked about the three lots on Highway 10 and whether they would also be Community Commercial lots. Mr. Bollman replied affirmatively. Councilmember Elison asked if they could be developed as separate commercial establishments. Mr. Bollman said that was correct – they could be developed with any use allowed in a

Community Commercial district. The current zoning is Highway Commercial. The proposed zoning is more restrictive.

The public hearing is opened. LEE DEFORD said he lives in Shepherd on Shepherd Road and is a member of the Billings Labor Council. He is a licensed electrician in Montana. "As general principle, we oppose the development of a Walmart out here. Montana is median income, 50<sup>th</sup> in the US right now. Putting a Walmart here is not going to raise that level. We all know what Walmart pays their employees. Walmart has a terrible human rights record – employing sweatshops in economic zones in El Salvador. They recently cut the pay of the El Salvadorian employees they do have and the CEO received a \$750,000 bonus shortly thereafter. So in principle, we are generally opposed to Walmart. We've had a long and troublesome history with Walmart – organized labor and Walmart. They don't like us and we don't like them," he stated. He said he listened to the community meetings in the Heights and Walmart didn't really answer any questions. He said what concerns them most is "who is going to build this Walmart – Montanans or out of staters? Walmart, in other parts of this country has had a history of importing out-of-state labor to build the Walmarts. We are concerned that might also happen here," he stated. Mr. Deford said they are not opposed to developing the parcel and having a Walmart go in there, although they don't like Walmart's labor practices. "We would like to see Walmart, at least in substance, obligate themselves to employing Montanans to build this Walmart. We're not asking for union labor, just Montanans," he stated.

MIKE DOCKERY OF THE CROWLEY LAW FIRM, said he is an attorney representing Walmart. He said the proposal is for a Walmart Superstore, a combination general merchandise, grocery store, specialty shops, hair salon, etc. It is one of their newest types of stores, intended to be an all-purpose store and serve all of their customers' needs. There is also a minor subdivision plat in process now – a companion item to this zone change and will reach the council in January. It will take all the various lots and create one large lot where the Walmart store would be located and three outlots. In connection with that subdivision, the various offsite improvements will be addressed, including storm sewer in Mattson Lane and Bench Boulevard, the curb, gutter and sidewalk on the south side of Mattson and the west side of Bench, as well as the sidewalks on all 3 perimeters. "There has also been a traffic study prepared in connection with this project – which has recommended changes. Walmart intends to implement all of those changes – including a dedicated right turn bay off Wicks Lane into this project, a dedicated right turn deceleration bay in Main Street to the single entrance proposed, as well as Walmart's full participation in both the traffic signal proposed for Wicks/Bench..." he stated. He said staff recommended one change in respect to the signage on the site. "There were seven recommended changes to the signage plan in the planned development agreement. Most are acceptable. With respect to condition #3, where it indicates the outlot monument signs are limited to 75 sf, the code would allow 175 sf. Walmart has no problem with the monument sign, as opposed to a pylon sign, but would ask for the size limitation to be 175 sf. Condition #4 limits wall signs to 3. The current signage plan is closer to 5 or 6. Walmart has no problem with the square footage limitations imposed by the code. The code will allow up to 6 wall signs on this building and they would ask for 6," he stated.

WALT PENNINGTON, NO ADDRESS GIVEN, said he is the civil engineer for the project. Mr. Pennington said they had a number of meetings with the neighbors and listened to their concerns and addressed a number of them. There are three access points for this project. There is perimeter landscaping with a 5-ft berm in the back and a 20-ft buffer along Bench Blvd. The building is set back 700 ft from Main Street. The project is being signed so that the truck traffic and the circulation for delivery trucks will be from Wicks Lane. The site will be provided with shielded lighting, focused onto the site

with very little spill onto Mattson Lane and Bench Boulevard. Sound walls will be installed on the truck docks. Mr. Pennington also said that due to neighbor concerns, Walmart has agreed to change the color of the store, from their traditional blue and gray to earth tone colors. The drainage report has not yet been finalized, but will be submitted for staff review. The detention does not stand in the pond very long – about an hour. The depth and grading of the pond is not finalized yet, but the design of the pond includes slopes that make it a pretty safe design.

DANNY GRAVES, NO ADDRESS GIVEN, said the Heights Task Force met last week in a special meeting. Representatives from Walmart were there. Mr. Graves said he had questions that pertained to taxation and asked Walmart if they would be seeking tax abatement from by Council. He said the Walmart representative responded they would not seek any tax abatement. Walmart said they would be adding landscaping to their parking lot area and on the berm for noise abatement, as well as shielding on the lights. Mr. Graves asked that the council demand the maximum amount of trees allowable for the best possible noise abatement. Regarding the drainage issue, Mr. Graves said he questioned the adequacy of the drainage system proposed to adequately protect the neighbors on Bench Blvd that do sit lower. "I do have quite an extensive career in hydrology and I do question that system with 27 acres of drainage to be put into one small area, dumped out to Bench Blvd. I'm afraid some of those folks in the residences on Bench Blvd will have some urban flood damage. Consequently, I request that the council demand curb, gutter, sewer and street improvements for the protection of personal property. The council should demand traffic signals at Bench and Wicks and at Mattson Lane and Main Street for public safety. I believe we are on the road to a good partnership with Walmart. Let's keep on improving, striving for the best possible solution for Walmart and all the area residents," he stated. Councilmember Kennedy informed Mr. Graves that tax abatements fall under the jurisdiction of the Yellowstone County Commissioners.

SANDY FISHER OF FISHER & ASSOCIATES LANDSCAPE ARCHITECTS, 2815 MONTANA AVENUE, said her firm drew the landscape plan for Walmart. She clarified two items regarding the landscaping. She said the requirement for trees is 199, but they have twice added trees to a current proposal of 245 trees. The code requires a 3-ft high berm and Walmart is proposing a 5-ft high berm. Ms. Fisher noted that both the trees and berms exceed the current requirements. "I think it is important to point out that this will be one of the best landscaped properties on Main Street. Because the Unified Zoning Code is fairly recently adopted, I think this is probably the first development to be built on Main Street under the new code. It's not fair in criticizing the development proposal and trying to understand it, to think that it will look like most of the properties on Main Street. It will actually be quite a bit more landscaping," she stated. The existing vegetation on the outlots will be preserved until a specific development proposal comes forward for them. The ratio of evergreen trees along Mattson and Bench is over 75% of the total trees proposed. They would be either spruce or pine trees, spaced 15-20 feet apart in a staggered arrangement. Some shade trees are also included to conform to the ordinance in trying to create tree-lined streets. A canopied tree will do that more readily than an evergreen tree.

MICHAEL SANDERSON OF ENGINEERING INC, 1001 S 24<sup>TH</sup> STREET WEST, said they prepared the Traffic Accessibility Study. In that study the evaluated the travel demand using computer models to evaluate travel in Billings Heights as well as the outlying areas. With that information, items evaluated were the impacts at adjacent intersections as well as up and down the Main Street corridor – both before and after the addition of the Walmart traffic. Based on those evaluations, we've recommended a number of improvements: a right turn bay off of Main Street to a single approach.

There are a number of existing approaches along that piece of Main Street that would be eliminated and consolidated into one approach. A dedicated right turn bay from Wicks Lane is also recommended, as well as curb, gutter and sidewalk and street on the south half of Mattson Lane and the west half of Bench Blvd. This project would warrant a signal at Wicks/Bench. Walmart has agreed to pay its share of this signal. The school route issue has come up at several meetings. Mr. Sanderson said the increase of traffic on Bench Blvd is not predicted to be that sizeable. The school route should not be an issue because the School District has moved the school route off Bench Blvd to the bike path. The signal at Mattson/Main does not appear to be warranted from their study. In response to a question from Councilmember Deisz, Mr. Sanderson said they are showing an increase of 5000 trips on the system – not all on Main Street however. Mr. Sanderson said he could not give a definitive number of car trips that would be added just to Wicks Lane.

JERRY RAY OF 711 CENTRAL AVENUE said he is a property owner within the 150 feet of the proposed zone change. He said it was his understanding that the people who live along Mattson Lane and Bench Boulevard were being bought out by the developers for Walmart. Only recently he found out that was not the case. "As I look at that street, especially Mattson Lane, where Walmart wants to access Mattson Lane for part of their ingress and egress into their store, the traffic is going to increase tremendously on that street. Most of those people on the east end, I'm talking about the ones with R6000 zoning are stuck down there in little homes, like one of them told me paid \$60,000 for his home. It won't be too long before we're in here throwing a big SID on him for sidewalk, curb, gutter and streetlights along that side of the street. It isn't these properties fault that brought this on their neighborhood. If anything, it's Walmart. If you look at a street like Mattson, I doubt if there is on any given day more than a handful of people who go down that street, who were lost and didn't live there. I'm here to recommend and hope that the council forces the big guy – Walmart, to at least offer to buy those people out or pay for their infrastructure improvements... These residential properties across from Walmart on that busy street have effectively lost their value as a residential home – even in the price they are in," he said.

PETE HANSEN, CHAIRMAN OF THE HEIGHTS COMMUNITY DEVELOPMENT TASK FORCE said they have concerns for the immediate area. The residents are concerned about the effect on the water table. "Many of those people use that both for home water and for irrigation. The massive runoff that a project like this will create, as far as running across that parking lot and ends at the only swimming pool we will have up there in the Heights, I'm afraid, I would insist that it would be a good idea that they fence that off for public safety in particular, for curious children. We have a concern about the storm drains and the water running down Mattson Lane. We don't think it's fair that the people on the north side of Mattson should all of a sudden pay massive SIDs etc. to improve that property on behalf of Walmart. Walmart is going to make a lot of money here. Why should the people on the north side have to pay anything into that? We believe Walmart should do that. The traffic signal is a major stumbling block. I think their traffic engineer is overly optimistic and I don't feel the taxpayers in any way, shape or form should pay for a traffic light, particularly on Mattson Lane where it meets Main Street, whether or not it calls for a traffic light now. I'd like to see a requirement that they pay for a traffic light there so the taxpayers don't have to pay for it when it becomes necessary, and that will be soon," he stated.

PHILIP JOHNSON OF 727 MATTSON LANE said he is concerned about property values decreasing. He said he is not opposed to Walmart and noted they have been working with the neighbors well, but they still had some concerns about the sidewalks, curbs and gutters, as well as the air and noise pollution. Mr. Johnson said his wife runs a daycare there, so

the traffic is of concern to them. He also said from photos he's seen, there are compressors that will be facing their front door and he wondered if there was anyway to have those enclosed or inside the building to reduce the noise. Councilmember McDanel noted that concerns have been expressed about the water table in the area. He asked if they were using that water for drinking water? Mr. Johnson said they used it for irrigation only.

VICKY JOHNSON OF 727 MATTSON LANE said they have two lots there and she is the operator of a daycare there. Ms. Johnson said the top half of Mattson has deteriorated and the bottom half is going to experience the same with increased traffic. She said they will make a lot of money, since it will be the only store in the Heights. If the Heights were a city, it would be the 5<sup>th</sup> largest city in Montana. "They are going to make a killing on this property, along with the three outlots that they will sell off. The aesthetics of building: not only do we want earth tones, but we would like some river rock and sandstone added to it, not just a brown building. The noise from the compressors bothers me. They are in front of our house... We do use our well water to water our entire yard. We do have 1/2 acre that we have to water and if that were to affect our well water, would we be compensated in any way as far as watering our yard, if the well water were affected by this development?" she asked. Ms. Johnson said their property value has increased since they bought it and so have the taxes. She said she has been told that the value of their property will now decrease because of Walmart and the traffic. "We bought this house, knowing that our children could walk 1/2 block to school. There is no way I'm going to let my little children walk to school with 5,000 more cars a day driving in that area... There's no sidewalk and yes, they are going to make me pay for it. I have to do child daycare and this could kick me out of my house if my taxes go up that much higher," she stated. Ms. Johnson noted concerns about air pollution as well.

TERRY LAWSIG OF 643 MATTSON LANE said that Walmart said they were not asking for anything, but "they are asking us to be their neighbors. I would like to see them do the curb, gutter, storm drain on both sides of Mattson and Bench and would like to see the streetlights in the parking lot yellow instead of white. I would like to see evergreen bushes in between the evergreen trees. They said they were going to change to a 5-ft berm all the way down Mattson with a 20-ft setback, I'd like to see that," she stated. She also said she would like to see the speed limit changed from 45 mph to 35 mph.

MARY WESTWOOD OF 1432 YELLOWSTONE AVENUE said she is involved in the downtown revitalization projects and has very mixed feelings about Walmarts. "Across the nation Walmarts have been very involved in the destruction of downtowns. I'm hopeful that getting our second Walmart will not create that kind of problem. I'm hoping that Walmart as an entity and as a powerful economic force in all our communities has begun to mature in the sense that they are willing to become a part of the community and accept the responsibilities that are inherent in something of this size. Corporations are not always responsive to communities, but I believe the people of the Heights communicated what they want in this Walmart. They want it to be a part of the community that is acceptable; they want it to be sensitive to the community's needs. I would urge you to consider the special needs of that area, especially the impact costs. This is an issue that we will face throughout our community. We need to look at how we make developers pay for the impacts that they cause," she stated. She urged the council to use this opportunity to begin that process.

PAUL BRINIG OF 1745 BENCH BLVD said he is opposed to the zone change. He's concerned about the decrease of his property values and doesn't want to see Bench Blvd turn into another 24<sup>th</sup> Street West. "As far as the SIDs, I think

Walmart shouldn't just pay their share, they should pay for all of them, because I've already paid for SIDs and I don't want any more," he stated.

FAYE PALMER OF 1251 LONESOME PINE said one of the consistent problems she faces is that people do not want to go into the Heights because there is no shopping out there and it's too far from everything and they have to go clear to the westend of town. "There is no perfect situation, but really do lack shopping... You cannot buy small appliances or things like that in the Heights. I do maintenance work on my building and if have to get any of that kind of stuff, if you can't get it at Ace Hardware, you can't get it. I would very much like to see a store like Walmart go in. We only have Kmart... We very definitely need a store than can compete on a financial basis with everybody else," she stated.

BILL HILL OF 1649 BENCH BLVD said people do use the water year round; they drink it. "The school children are another thing. It says they are going to move the school children  $\frac{1}{4}$  mile off Bench to go to school... To walk on a gravel road, go back  $\frac{1}{4}$  mile, then go down to the school, then walk back  $\frac{1}{4}$  mile on the gravel road. I don't think the bike path was built to act as a schoolchildren's pathway," he said.

There were no other speakers. The public hearing was closed. Councilmember Deisz moved for approval of the Zoning Commission recommendation, seconded by Councilmember Kennedy. On a voice vote, the motion was unanimously approved

**(B) DEVELOPMENT AGREEMENT. Staff recommends approval with modifications. (Action: approval or disapproval of staff recommendation.)**

Councilmember Deisz MOVED for approval of the development agreement with the staff modifications, which are the following: (1) no access near or off of Bench Blvd in perpetuity; (2) walls on the loading docks that will be above the 5-ft berms, (3) a continued traffic study or re-study of the traffic accessibility within one year of Walmart opening to determine if the preliminary study was valid and any additional improvements are to be paid for by the development at that time, and in addition to these items identified by the Zoning Commission, ADD the following: (4) the developer shall be responsible to pay for any and all roadway mitigations and improvements to Main Street, Mattson Lane, Bench Blvd and Wicks Lane, including, but not limited to sidewalks on both sides of the street and all traffic signals, which may be required at this time, minus any monies already paid into the City by other developers, and (5) the developer shall be responsible to pay for any roadway mitigations or improvements identified to the Montana Dept of Transportation's technical review of a sufficient traffic impact study and site plan for this project, which must be completed by the developer prior to final plat approval. Timing of the construction for necessary improvements shall be at the discretion of the Montana Dept of Transportation and all department standards must be met. (6) In addition, all runoff must be retained on site. Councilmember McDanel seconded the motion.

Councilmember Deisz said a precedent has been set for the council to require Walmart to pay for these improvements and "we did it when we required the developer on Reda Lane who was developing the 5 10-plexes to put in the curbs, gutter, street, sidewalks on Reda Lane for their 5 10-plexes... I don't think it is that much to ask of Walmart, when you consider the amount of traffic that they are going to increase on those stretches around their property," he said.

Councilmember Bradley asked Councilmember Deisz if he really wanted to retain all the stormwater on site.

Councilmember Deisz said it is the only option he has at this time after talking to the MDOT. Councilmember Bradley asked where the discharge is to be. Public Works Director Kurt Corey said the stormwater discharge is currently in Wicks Lane. The developers will be submitting a stormdrain plan for the property. Mr. Corey said it is his initial belief that the stormwater facilities in Wicks Lane will be satisfactory to handle the discharge. He added that the drainage from the site would be a combination of discharge to the Wicks Lane facilities and some retention on site.

Councilmember Larson asked if the color scheme change is assumed to be part of the motion. Councilmember Deisz said they were told that is what it would be. Councilmember Larson said it is not part of the motion. Councilmember McDanel AMENDED the motion to add the following conditions: (7) the exterior color of the building shall be natural earth-tone colors ranging from tan to brown and (8) that a façade be erected to reduce the harshness of the exterior profile of the building's front face. The façade should be constructed in a way that complements other recent additions to the Main Street corridor. The façade shall be constructed in a way that maximizes the use of natural and native material, while highlighting the history of Billings and Yellowstone County. The amendment was seconded by Councilmember McDermott.

Councilmember Elison said, "we're not building a museum." Councilmember McDanel said they are not asking for a museum, "what we are asking for is something that complements the more recent building that has been taking place along the Main Street corridor. If you look at buildings that have been built in the last five years along that corridor, there's been a significant architectural improvement in the way those buildings face the street and their appearance in general is much more conducive to the neighborhood community sense of feeling," he said.

Councilmember Bradley said the issue of silencers for the compressors has not been addressed. Councilmember Ohnstad said that is a difficult to do, "not knowing what we are talking about. They are air conditioning motors; they can't be inside."

On a voice vote on the AMENDMENT, the motion was approved. On a voice vote on the original motion as amended, the motion was approved. Councilmember Kennedy voted "no".

Mayor Tooley called a brief recess at 9:25 p.m. The meeting was called back to order 9:30 p.m.

**4. PUBLIC HEARING AND RESOLUTION 99-17533 CREATING SPECIAL IMPROVEMENT LIGHT MAINTENANCE DISTRICT #269: Popelka Heights View Subdivision (Wicks Lane and Bench Boulevard). Staff recommends approval. (Action: approval or disapproval of resolution.)**

The public hearing was opened. There were no speakers from the audience. The public hearing was closed. Councilmember Iverson moved for approval of the staff recommendation, seconded by Councilmember Deisz. On a voice vote, the motion was unanimously approved.

**5. PUBLIC HEARING AND SITE DEVELOPMENT VARIANCE #99-03: 1203 Rimhaven Way, Lot 19-A-2, Block 1 of Amended Lot 19 of Foote Subdivision, 2<sup>nd</sup> filing. Robert & Shari Dayton, owners. Staff recommends denial. (Action: approval or disapproval of staff recommendation.)**

Councilmember McDanel said he understood that as this design went through the review process, it was submitted

to the appropriate city authorities and reviewed and stamped approved at some point. "Was the problem associated with this variance identified on the plan at that time?" he asked. Public Works Director Kurt Corey said he did not know the details of the plan approval, but he did not think the problem was identified on the submitted plan. He said typically with a residential plan submittal, you would not get a profile of a driveway approach.

Councilmember Deisz said he also received a call on this matter stating that the department (i.e. Building Dept) had okayed the plan at some point. "Weren't detailed descriptions of what was going in there okayed by your department?" he asked. Mr. Corey replied that with a residential plan submittal, typically if there is a driveway approach required, if there is curb, gutter or sidewalk required, there is a right-of-way permit issued through the City Engineer's office that generally makes the condition that improvements will be constructed in accordance with the Montana Public Works Standard specifications.

Councilmember McDermott asked if any inspectors went out to this site at any time during the building phase. Mr. Corey replied that the need to consider a deviation from the standard specifications would typically occur at the time the contractor is on site. It would not be a normal circumstance to have a detailed plan profile of a residential drive approach submitted in conjunction with the residential building permit. Mr. Corey also confirmed that inspectors were on site during the course of the construction. The need for a deviation from standard specifications was not identified at the time the plan was submitted.

The public hearing was opened. JIM SHEPHERD OF CTA ARCHITECTS, 1500 POLY DRIVE said they are the architects for the Dayton residence. He said they went through the formal review process. The exception to the slope of the driveway and the transition was taken about four months after we received the building permit. "As Mr. Corey indicated, we did have a site plan and we did show the contours and elevations for the slope of the drive, which basically follows the natural grade that is on that site. However, we didn't do a specific cut through the transition point. I'm sure those standards exist;... we were unaware of them or we would have complied. We did do a change in the height of the building as was indicated during the plan review process. The site in that neighborhood is directly under the Rims. It is steeply sloping and a unique area in Billings – unique slopes, unique soils. Standard design is very difficult to achieve in a situation like that. So, we are asking for your consideration that this is not a typical lot or site. The standard does not exist in this neighborhood now. Many of the neighbors have steeper driveways with no transition," he stated. Mr. Shepherd noted that meeting the transition that has been requested by engineering, will cause the driveway to be even steeper.

JEFF RUPE OF CTA ARCHITECTS, 1500 POLY DRIVE said the main difference between the drive approach the City is requesting and the drive approach they are proposing is the City is requiring a 5-ft minimum drive approach which would rise at  $\frac{3}{4}$ -inch/foot instead of the natural slope of the site, which is significantly steeper than  $\frac{3}{4}$  inch. The requested variance will allow the driveway to go down to a 21% slope instead of a 26% slope. The difference is that the proposed design will be able to rise at a slope with the natural slope right away instead of having to go at a shallower slope the first 5 feet. The 21% slope does work with vehicles. There are other driveways in the neighborhood with driveways significantly steeper than the proposed driveway. There is one with a 30% slope, a 27% slope and one with a 24% slope. The variance request will allow the Daytons to have a substantially less steep drive. He noted also that there are no

sidewalks in the area.

SHARI DAYTON OF 1804 ARCADIA said that transition issue was mentioned in a letter dated to us on November 8<sup>th</sup>, in response to our variance request. "In that letter it said that increasing the slope from  $\frac{1}{4}$  inch/foot to  $\frac{3}{4}$  inch/foot would be acceptable to the City. But then it said increasing it beyond that point 'nearly assures that any vehicle short of a 4 wheel drive or a high clearance vehicle would drag in the street.' So, we of course wanted to see if that would happen to our vehicle. We did not want to damage our vehicle or damage any city streets. We can't drive in our driveway now as it is, so we tried to find a driveway nearby that would be similar to ours. We found the one with the 24% slope directly east of us. We have a car that is not 4-wheel drive, drove it all the right up that driveway that is 3% steeper than we hope to have and the car did not drag at any point on the driveway or in the street. So, the concern to the city ... will not be a problem," she stated.

BOB DAYTON OF 1804 ARCADIA said he would ask for common sense and fair judgement in terms of what they are asking. "We thought we did everything right; there was no doubt in our mind. I'm not the type of person that would ask for a special favor. We went to CTA and had them provide a detailed plan. The contour lines were well established. Those plans were submitted in May. The City came back and asked us to reduce the height of the house and we obliged. Those plans were approved in June. I look at this site with these contour lines and I certainly go through some degree of frustration as to why this crisis came to our table in October, 4 months after we started the project. It came the day we were going to lay the concrete. A city inspector came up and said we had to go 5 feet in to lay a sidewalk. There is no sidewalk in that plan. We never accounted for a sidewalk. Why would be put in a sidewalk – that street goes nowhere; it deadends into a cul de sac. It makes no sense for a sidewalk... So we asked for an exception. We received a letter back in early November. Not once in that letter was the word sidewalk ever used," he stated. The letter suggests anything less than a 4-wheel drive vehicle would drag. He said they tried their vehicle in the neighbor's driveway and it did not drag or scrape.

There were no other speakers. The public hearing was closed. Councilmember Kennedy MOVED for approval of the variance, seconded by Councilmember Johnson. Councilmember Deisz asked for confirmation of the slope. Mr. Corey said there is no argument here, "simply a difference of the piece that CTA is showing in the top portion is flat versus a more severe slope at the bottom, which if constructed in the course of the variance would be about a foot and a half rise from street grade to the back. Recognizing and drawing your attention back to the staff recommendation, as variance requests are processed, we look for hardship issues, vehicular use issues. In response to the sidewalk issue, there is no question that current policy of this council is that sidewalks are not required on this street. However, we have built in various liabilities throughout the city similar to this, that in the event a future city council determines that sidewalks are going to be involved in some of these neighborhoods, we are simply guaranteeing ourselves today that we will reconstruct a massive portion of this driveway if at a point sidewalk goes in. It's no more and no less than that. The difference between 26% and 21% is probably incomprehensible to most people. The benefit that the Dayton's would see from approval of the variance is that they would get a flatter landing immediately adjacent to their garage...," he stated. The basis of the staff recommendation is to make sure that we go into this with our eyes wide open and that we are precluding that possibility of a sidewalk down the line, he explained. Deviation from state standards requires a variance

and in the absence of a hardship, staff always recommends disapproval. Councilmember Deisz asked if the only reason the city wants to deny this is the possibility of the council imposing a sidewalk on the property. Mr. Corey said the staff recommendation is based on the fact that not all cars would be engineered and designed to navigate this type of driveway and "yes, you are precluding the possibility of sidewalk some time in the future without substantial cost to the property owners." On a voice vote, the motion was approved.

**6. PUBLIC HEARING AND SECOND READING ORDINANCE 99-5108 extending the boundaries of Ward 1 to include recently annexed property: Annex #99-06, N2 of Lot 5 of Clark Subdivision, containing approximately 1.7 acres. Staff recommends approval. (Action: approval or disapproval of staff recommendation.)**

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Johnson moved for approval of the staff recommendation, seconded by Councilmember McDermott. On a voice vote, the motion was unanimously approved.

**7. PUBLIC HEARING for the proposed sale of City-owned land described as Lots 1-12, Block 245 O.T. and located on the 1000 Block of South 27<sup>th</sup> Street. (Action: public hearing only.)**

Community Services Director John Walsh said this part of the land the city has available for redevelopment purposes along the South 27<sup>th</sup> Street Corridor. TNT Springs is proposing to purchase this parcel for a retail/wholesale business for springs and suspension parts. All properties within 300 feet of the subject property have been notified. Mr. Walsh said the South Side Task Force has reviewed the project and has given its support. The sales price being asked for by the developer is \$2.50/sf and they are asking for no other assistance from the City. The developer would also landscape the entire site. Councilmember Deisz asked what the original price paid for this property was. Mr. Walsh said the property was donated to the City in 1996. At that time the owners received an appraisal for the property –which was \$3.10/sf. The most recent appraisal of property in that area was for \$2.70/sf on the Chamber of Commerce land a block and a half from the subject property.

The public hearing was opened. DEL PIERCE OF TNT SPRINGS said they have been in business for fourteen years in a small facility that they have outgrown. They employ fourteen people. He said the South 27<sup>th</sup> street location is centrally located for them because they have customers on both sides of the community. "We are a small business. We don't have a lot of trucks coming in. The main delivery is UPS delivery and pickup. We do have city deliveries coming in – normal freight companies with their smaller trucks..." he stated.

There were no other speakers. The public hearing was closed. The council took no action this evening. The next council action on this item is scheduled for January 10, 2000.

**ADJOURN** – With all business complete, the Mayor adjourned the meeting at 10:07 p.m.

THE CITY OF BILLINGS:

BY: Charles F. Tooley



Charles F. Tooley

## MAYOR

ATTEST:

BY: Marita Herold

Marita Herold, CMC/AAE