

REGULAR MEETING OF THE BILLINGS CITY COUNCIL MONDAY, JANUARY 10, 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 Mark Kennedy.

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

SWEARING IN OF COUNCILMEMBERS – Mayor Tooley administered the Oath of Office to re-elected Councilmembers Bradley, Deisz, Kennedy, Ohnstad and Larson.

Mayor Tooley asked for nominations for the position of **Deputy Mayor**. Councilmember Elison nominated Councilmember Larson, seconded by Councilmember Iverson. There were no other nominations. Nominations were closed. On a voice vote, the nomination was unanimously confirmed.

Mayor Tooley asked for nominations for the position of **Mayor Pro Tem**. Councilmember Elison nominated Councilmember Kennedy, seconded by Councilmember Iverson. Councilmember Deisz nominated Councilmember Bradley, seconded by Councilmember McDermott. There were no other nominations. Nominations were closed. On a voice vote, Councilmember Kennedy was confirmed as Mayor Pro Tem on an 8-3 vote.

MINUTES – December 13th. The Minutes were approved as printed.

COURTESIES – City Administrator Dennis Taylor recognized employees involved in the annual United Way/Montana Shares campaign. This year City employees donated over \$25,000 to organizations in the community and the state, an increase of 11.4% in the total giving. 233 employees gave an average of \$35/employee. The winner of the annual Spirit Award for its annual contributions is the Library. Those annual contributions totaled about \$143/employee. He thanked Karen Collins of the Library for her efforts in coordinating the Library's giving efforts. Don Rebal of Human Resources was also recognized for his work in compiling and calculating all of the contributions and associated payroll deductions for the annual campaign.

Councilmember Kennedy introduced his wife and family in the audience, who came to see him take his oath of office. Councilmember Larson introduced his wife and family in the audience. Councilmember Deisz introduced his friends – the Alreds in the audience.

BOARD & COMMISSION REPORTS - Councilmember Larson said he and Councilmember McDanel have been working for over a year with the Community Crime Prevention Council. The CCPC is a local organization charged with assisting the Police Department with crime prevention programs. The past year, the organization has been under review – its history, strengths and weaknesses, culminating with a decision to come to the Council with a recommendation that the Police Department take a stronger role in the management of the CCPC. The proposal is to have staff put together a formal resolution to take care of some of the details of how this would work and to create a Board of the Crime Prevention Council, with members appointed through the Mayor's Office and the City Council.

ADMINISTRATOR REPORTS – Dennis Taylor.

1. **Multi-Use Parking Structure.** Mr. Taylor asked Bruce McCandless of the Downtown

MINUTES: 01/10/2000

Billings Partnership to report on this issue. Mr. McCandless said the preferred developer is here tonight to address the Council. The Partnership has been negotiating with this development group over the past few months to arrive at a preliminary development agreement that will lay out a process to arrive at a mixed-use parking structure later this year. He introduced Mike Tuss of CTA Architects. Mr. Tuss said he is the local part of the development team for this project. It is a public/private partnership project that is proposed to contain parking, housing, an athletic facility, a suite hotel, some office space and some retail space. He noted that CTA will be doing the planning, architecture and engineering, but is also an investor in the project and hopefully able to relocate their offices downtown. He introduced Ron Muir, owner of the Billings Athletic Club and the Billings Hotel and Convention Center. Mr. Muir is interested in putting an athletic center in this complex and is a potential investor in the project. Mr. Tuss also introduced Don Sterhan, a local businessman interested in doing a 40-unit suite-hotel in the complex. He also introduced Curtis Wagner, a developer who has done similar public/private projects. Mr. Wagner said they built a very large successful project with CTA Architects in Fort Belknap. They have done other similar projects in Memphis, TN as well.

Councilmember Deisz asked when the Council will be getting the answers to the questions about this entire process – questions asked back in September. Mr. McCandless replied the answers will be provided in the agenda packets for the January 24th council meeting.

2. **Upgrade of Planning Dept. position.** Mr. Taylor informed the Council that this item was removed from the Council agenda this evening after being delayed several times. This is a personnel matter that will be handled administratively instead.
3. **Strategic Planning.** Mr. Taylor informed the Council that last week Thursday and Friday the Leadership Team assembled working on the first phase of strategic planning. This information will be provided to the Council before their 3-day retreat later this month.

CONSENT AGENDA:

1. A. **Bid Awards:**
 - (1) **Medium Duty Truck Cab & Chassis for PRPL.** (Opened 12/7/99). Recommend rejecting the bid received and rebidding next year.
 - (2) **New Portable Lift with Accessories for MET Shop.** (Opened 12/7/99). Recommend Automotive Resources, Inc., \$31,075.00.
- B. **Change Order #1, Poly Drive Water Main Project,** Gary Weber Construction, Inc., \$698.90.
- C. **Change Order #1, AIP #17: Taxiway “A” shoulder rehab, Taxiway “B” overlay and lighting,** JTL Group, -\$1,324.57.
- D. **Change Order #1, 1999 Water Improvement Project at Billings Logan International Airport,** COP Construction, \$3,274.31.
- E. **Change Order #1, 1999 Sanitary Sewer Improvement Project for Billings Logan International Airport,** COP Construction, -\$4,924.77.

MINUTES: 01/10/2000

F. Contract Amendment #1, Process Control System Conversion, Integrated Solutions Engineering, \$16,840.00.

G. Hangar Ground Lease with Russell Schmitt, \$856.80 for first year, adjusted by CPI-U each subsequent year, 20-year term.

H. Airport Operating Permit, Executive Air Montana, Inc., \$6,000.

I. Reimbursement Agreement with Ron S. Hill, dba Specialized Construction, covering wastewater special benefit facilities on Lots 1-4, Block 11, Lake Hills Subdivision, 17th Filing; Lots 1-3, Block 10, Lake Hills Subdivision, 18th Filing; Lots 4A, 5A, 6A and 6B, Block 10, lake Hills subdivision, 28th filing; Lots 11A, 12A, 13A, 13B, 14A, 15A, 16A, 16B, and 17A, Block 9, Lake Hills Subdivision, 28th filing; the north 120' of Tr. C of C/S 793, \$0.00.

J. Modification to STPE 1099(12): MetraPark Trails General Project Development and Construction Agreement, Montana Dept. of Transportation, \$122,175. (New cumulative total: \$1,111,440.00).

K. Grand Avenue Right-of-Way Agreements and accompanying Warranty Deeds:

- (1) **Parcel 102:** 487 sf in Lots 2, 3, and 20, Block 2, Van Bramer Subdivision, located at 1133 Grand Avenue, Alvin Carlson, owner, \$0.00
- (2) **Parcel #103:** 550 sf in Lots 1, 2, and 20, Block 2, Van Bramer Subdivision, located at 1125 Grand Avenue, Automatic Carwash Inc., owner; \$0.00.
- (3) **Parcel 125:** 1850 sf in Lots 9-10, Block 2, Sunset Subdivision, 2nd Filing, located at 990 Grand Avenue, Big Sky Federal Credit Union, owner, \$0.00.

L. Acceptance of Quitclaim Deed for Tr. 3B of Amended Tr. 3 of C/S 1221, amended, for street right-of-way on Hilltop Road, just west of Main Street, from Stockman Bank of Montana, owner.

M. Resolution of Intention 00-17534 to Create SILMD 270, on Rimrock Road from Wisconsin to 17th Street West, and setting a public hearing for 2/14/2000.

N. Acceptance of 1999 Local Law Enforcement Block Grant #2000-LB-VX-0260, \$132,139.00. (City match is \$14,682.00 from Drug Forfeiture Fund.)

O. Acceptance of HUD Special Purpose Grant for improvements to the Billings Depot, (Billings Depot Inc.), \$750,000.00.

P. HUD-OIG DETAIL AND THE BILLINGS POLICE DEPT:

- (1) Authorization to increased FTE sworn officers from 120 to 121.
- (2) Inter-Agency Task Force Agreement with HUD-OIG for reimbursement of salary, benefits and overtime of one officer for period 9/1/1999 through 8/30/2000.

Q. Preliminary Minor Plat of Malia Subdivision, generally located on North 27th Street, south of Montana Avenue. (Lot split).

R. Preliminary Minor Plat of Amended Lot 13, Mattson Acres Subdivision, generally located on the north side of Mattson Lane. (Lot split).

MINUTES: 01/10/2000

S. Bills and Payroll.

(Action: approval or disapproval of Consent Agenda.)

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

REGULAR AGENDA:

2. PUBLIC HEARING AND SECOND 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. Staff recommends delaying action to 1/24/2000. (Action: approval or disapproval of staff recommendation.)

Zoning Coordinator Jeff Bollman said staff is recommending the Council delay action on second reading of this zone change because they have not yet received a final revised version of the development plan that was acted on by the Council at their December 13th meeting. He said he hoped by that time Walmart will have submitted a revised development plan that can be brought back to the Council for their consideration and approval, along with approval of the zone change on second reading.

Councilmember Elison moved to delay action to January 24th and continue the public hearing to that date as well, seconded by Councilmember Johnson. On a voice vote, the motion was unanimously approved.

Councilmember McDanel said he would not be able to attend the January 24th meeting, "as perhaps some of these people in the audience may have additional conflicts. I think it is unfair to have published this notice of public hearing and then not to allow these people to speak this evening, and then continue the public hearing after their testimony." Councilmember Deisz asked if the motion could be amended to include the public hearing this evening and continue it to January 24th. Councilmember Elison said he didn't think having the public hearing begin tonight in any way changes his motion.

The public hearing was opened. AUDREY STANISLAW, NO ADDRESS GIVEN, said she is speaking for her parents who had to move over the weekend. It was a hardship for them. She said she feels Wal-Mart should assist people with relocation costs.

DIANE ALLEN OF 706 MATTSON said she had just moved into the apartment building in October and had to find another place right after Christmas. She said it wasn't fair of the landlord not to tell her about the Wal-Mart deal. She said she would like compensation as well.

JOHNNIE LENGLE, NO ADDRESS GIVEN, said he has lived in that apartment building for the past four years. Instead of getting a letter of explanation, they were served with an eviction notice right after Christmas when money is really short. They were given 30 days to move.

There were no other speakers. The public hearing was continued to January 24th.

3. CONTINUATION OF SECOND READING ORDINANCE FOR ZONE CHANGE #654: a zone change from Residential 9600 to Residential Multi-Family-Restricted, Residential Professional,

MINUTES: 01/10/2000

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 32nd Street West. Lena Emerick and Freda Emerick Trust, owners; Engineering, Inc., agent. Zoning Commission recommends denial. (VALID PROTEST). (Action continued from 12/13/99.) APPLICANT REQUESTS WITHDRAWAL. (Action: approval or disapproval of withdrawal request.)

Zoning Coordinator Jeff Bollman said the Council delayed this item from their December 13th meeting to allow the developer a chance to regroup and either request withdrawal or go forward and see if the zone change would be approved. The applicant has submitted a letter requesting withdrawal.

Councilmember Bradley moved for approval of the withdrawal request, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

4. PUBLIC HEARING AND FIRST READING ORDINANCE 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 Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said the subject property is located on the south side of Laurel Road, just east of Paul Road. The surrounding uses on the south and southwest are single family, to the west is a motel. Amend Park is located on the southern edge of the 300 ft radius and further east is Controlled Industrial zoning. The Zoning Commission recommends approval, as does the staff. The property had previously been used for mobile home sales and later converted to RV sales. RV sales are allowed in a Community Commercial zone; mobile home sales, once that use was discontinued are not allowed in a Community Commercial zone, but are allowed in Controlled Industrial zones. This zone change would unify the zoning on this property, which currently has two zoning classifications and change it to Controlled Industrial to allow manufactured home sales.

The public hearing was opened. SHELBY WALDRON, NO ADDRESS GIVEN, said he is the agent for the Thiel Family Trust. He noted this property is behind one fence and they are asking for the change so that the zoning is all Controlled Industrial.

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

5. PUBLIC HEARING AND SPECIAL REVIEW #669: a special review to allow the placement of an all-beverage liquor license in a Community Commercial zone on Tracts A1 and A2 of C/S 1136, 2nd amended and Tract B of C/S 1136 Amended, located at 2520 Central Avenue (former World West Theater), Macerich Rimrock Limited Partnership, owner; Macerich Company, agent. Zoning Commission recommends conditional approval. (Action: approval or disapproval of Zoning Commission recommendation.)

Zoning Coordinator Jeff Bollman said the Macerich Company has requested a 30-day delay on this item. Councilmember Deisz moved for approval of the 30-day delay and continuing the public hearing to that date as well, seconded by Councilmember Larson. On a voice vote, the motion was unanimously approved.

The public hearing was opened. There were no speakers. The public hearing was continued to February 14th.

6. PUBLIC HEARING AND SECOND READING ORDINANCE 00-5109 extending the boundaries of Ward V to include recently annexed property: Annex #99-07 covering the N2NW4NW4 of Section 12, Township 1 South, Range 25 East, LESS Emerick Subdivision, C/S 1702 and the North 120 feet previously annexed, generally located at the SE corner of Central Avenue and South 32nd Street West, containing approximately 15.5 acres. Staff recommends approval. (Action: approval or disapproval of ordinance on second reading.)

The public hearing was opened. There were no speakers from the audience. The public hearing was closed. Councilmember McDanel moved for approval of the ordinance on second reading, seconded by Councilmember Deisz. On a voice vote, the motion was unanimously approved.

7. PUBLIC HEARING REGARDING A 41-UNIT MULTI-FAMILY HOUSING PROJECT on Pemberton Lane, Opportunity Builders, Inc., developer. (Action: public hearing only.)

HOME Coordinator Joe Burst said the 1999 Legislature passed SB167 which allows non-profit developers that are applying for federal tax credits, the opportunity to also request an exemption in property taxes. Prior to the allocation of the tax credits, its required that a unit of local government hold a public hearing to receive comments on whether the proposed project meets a community need. The proposed project is 41 units on Pemberton Lane. He reminded the Council about the Housing Needs Assessment that was conducted in November 1999 for staff to use as a guide on whether or not a project meets a community need. The assessment said, "in 1993, 3/4 of the apartments rented in Billings were for \$375 or less. In 1998, less than 1/3 were in that range. Of the renters that responded to the survey, 61% were cost burdened, which meant they paid more than 30% of their income for rent. Rental rates are rising faster than incomes. From 1990 – 1998, the median rent in Billings rose 51% from \$294 to \$443, but incomes only rose 40%. The most significant gap is a shortage of housing for households earning less than \$15,000 annually. The current shortfall is more than 700 units. For future needs, it is projected that by 2003, 1040 new households will be needed to help with low-income renters. For a person on an annual income of \$15,000, HUD considers an affordable rent to be \$375/month." He introduced Eric Kelgard of Opportunity Builders.

The public hearing was opened. ERICK KELGARD, EXECUTIVE DIRECTOR OF OPPORTUNITY BUILDERS, said they are a 501(c)(3) non-profit development organization based in Monterey County, CA. He said they currently have 13 rental communities fully developed and occupied in California and are involved in an additional seven communities in California, as well as the states of Colorado, West Virginia and Michigan. "Our desire is to submit an application for funding here in the State of Montana for a development that we are calling Pemberton Heights, a 41-unit rental community located on Pemberton Lane," he stated. He said it would have 1, 2 and 3-bedroom units and would serve quite a few members of the population that Mr. Burst just mentioned. He said their goal in rents is to set them at a level of 40 and 50% of the county median income, which by HUD standards is considered very low-income households. Mr. Kelgard said the intent of this meeting is to fulfill state regulations. With the passage of the new state law, they are able to receive a property tax exemption. "The reason that is such a benefit to these types of communities is that it is from all outward appearances a very good looking, well maintained, well managed rental community with all of the proper expenses of what would normally be called a market rate apartment community. But it isn't a market rate apartment community because its rents are much lower, serving household incomes much lower.

Thus our total income for the community is much lower than a market rate community and we have a lot less income to pay for those property taxes. So the ability to receive a property tax exemption for this type of restricted income community is a great help to the financial feasibility of these types of communities," he stated. Mr. Kelgard said they believe that through the needs assessment and the prior City of Billings consolidated plan, there is specific mention for the need of this type of community. In the state law, it does

MINUTES: 01/10/2000

ask that a public hearing be held, comments to made, (not a specific decision to be made), but comments as to the benefit of this type of affordable housing community to the City of Billings. He closed by offering to answer any questions. Councilmember Deisz asked for how many years the tax credit would be given, "or do you build these properties, get them going for 3 or 4 years and then sell them or turn them into a profit-making venture?" Mr. Kelgard said the financing mechanism is called the low income housing tax credit. Through it's federal guidelines it has a minimum 15-year restricted income covenant on the property. The State of Montana adds additional years beyond that to make sure it stays affordable for at least 30 years. He said they cannot come along and kick everyone out and decide to turn it into a market rate development. It must stay restricted rents and affordable for a minimum of 30 years. Councilmember Deisz asked if they are to come back at a later plan with a development plan for the council to approve on that property. Mr. Kelgard said he wasn't sure, but he knows the zoning on the property is presently Community Commercial. "My understanding is that if we design the community within all of the specifications of that zoning designation, that it does not have to come back to the City Council. If we were to ask for some special circumstance or a variance to have fewer parking spaces (which I'm not going to do), then we would have to definitely come back. But if we meet all of the requirements, I don't believe we do need to come back." Councilmember Larson asked if all 41 units are required to be rented to low income individuals or is there some leeway. Mr. Kelgard said the design is such that 40 of the units will be considered rent restricted units and one unit will be considered a manager's unit, where the on-site manager would live. That unit is not considered a rent-restricted unit because their income may exceed the maximum income allowable for the property. One of the great aspects of this funding program is that when a household moves in and they qualify at an income level below the maximum, they are in the community. When their income rises, they are not "kicked out". Their rent stays the same as their income rises, which allows them to start saving money that they may not have the opportunity to do before. He noted that in California when that has occurred, a number of families have left their community to buy their first single family home because they were able to save enough for a down payment while living in one of their communities.

There were no other speakers. The public hearing was closed. Councilmember McDanel asked what the approximate current vacant rental rate was in the City. Mr. Burst said the housing needs assessment estimated it to be between 4 and 5%.

8. PUBLIC HEARING AND FINAL APPROVAL OF RESOLUTION 99-17532 for the initial assessment on SID 1335: street, storm drain, water and sanitary sewer service improvements in Lot 1, Block 20, Lots 17-23, Block 19, Parkland West Subdivision 2nd filing, Tract 1 of C/S 2481, Block 8 of Shiloh Village 2nd Filing, Block 8 of Shiloh Village 3rd Filing and C/S 1492. Staff recommends approval. (Action: final approval or disapproval of resolution.)

The public hearing was opened. There were no speakers. The public hearing was closed. Councilmember Kennedy moved for final approval of the resolution, seconded by Councilmember Iverson. On a voice vote, the motion was unanimously approved.

9. RESOLUTION 00-17535 AUTHORIZING SALE OF CITY-OWNED LAND described as Lots 1-12, Block 245 O.T. and located on the 1000 Block of South 27th Street to TNT Springs, Inc., \$105,000.00 to construct an office building for their business. (Public hearing held 12/13/1999.) Staff recommends approval. (Action: approval or disapproval of staff recommendation.)

Councilmember Iverson moved for approval of the resolution, seconded by Councilmember Elison. On a voice vote, the motion was unanimously approved.

