

**THE REGULAR MEETING  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD APRIL 12, 2010 AT 7:00 P.M.  
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

**CALL TO ORDER:**

Mayor Fenn called the meeting to order at 7:00 p.m. with the pledge of allegiance.

**ROLL CALL:**

Present were: Mayor Mark M. Fenn and Vice Mayor Toney King, Sr., Councilmembers Jo Deen Boncquet, David Lambert, John Lodzinski, Lori McGoffin and Al Sacco.

**EMPLOYEE RECOGNITION:** None

**PROCLAMATION:** None

**PUBLIC HEARING:**

Mayor Fenn opened the public hearing at 7:04 p.m. to receive comments from the public regarding the use of approximately \$327,096.93 in Fiscal Year 2010 Federal Community Development Block Grant (CDBG) funds from the Arizona Department of Housing Regional Account (RA) by reading a brief statement regarding the CDBG program and the possible projects that had been identified. Mayor Fenn then stated one person, Mr. Jeff Cook, had signed up for the public hearing and invited Mr. Cook to come forward and address the Council. Mr. Cook addressed Council stating he had spoken before regarding the flooding and draining issues north of 4th Street and in the Comstock Addition area and that he wanted to reinforce that the need was still there and would hope the flood study would encompass both areas.

Mr. Cook then stated he would like to speak on another issue. Mayor Fenn told Mr. Cook that he could speak at the Call to the Public. Mayor Fenn then stated one of the proposed projects was the flood study and after asking if anyone else present wished to address Council concerning the CDBG funds and receiving no response, Mayor Fenn closed the public hearing at 7:10 p.m.

**CALL TO THE PUBLIC:**

John Whiteside addressed Council concerning the major amendment to the General Development Plan. Mr. Whiteside's comments are incorporated into the minutes.

Jeff Cook addressed Council regarding major amendments to the General Development Plan and the pre-annexation development agreement. Mr. Cook stated that in the past, various things had been asked of the City Council, and that if the City is providing rights-of-way, pipe, roads or if they are providing an increase of density to a property that is increasing the value of that land, than it would be only normal that the owner, in return, should give us something not of nominal value, but of real value. Mr. Cook then stated sometimes developments are proposed by legitimate developers and sometimes they are proposed by investors and speculators and that unless the developer is going to give the City something of real value in return, the Council should vote no on these requests. Mr. Cook then stated as long as development is willing to pay its own way, he doesn't have a problem with it.

## **CITY MANAGER REPORT:**

City Manager Glenn Nichols addressed Council, giving the dates of upcoming meetings and events.

April 13, 2010 – Library Advisory Board, 4:00 p.m., City Library  
April 17, 2010 – Historic Preservation Commission, 9:30 a.m., City Hall  
April 26, 2010 – City Council Meeting, 7:00 p.m., City Hall  
April 27, 2010 – Community Watershed Alliance, 6:30 p.m., City Hall

April 23 – 25, 2010 – 5th Annual Benson Bluegrass Festival, Lions Park. Mr. Nichols stated Chamber Director Robert Mucci has informed him there is a great lineup for entertainment.

Mr. Nichols then reminded everyone about the Census, stating it was important that we all complete and return the census forms which help the community and the City. Mr. Nichols then stated if anyone did not receive census forms, they could obtain one at the Library, City Hall or the Visitor Center.

## **NEW BUSINESS:**

### **1. Consent Agenda**

- 1a. Minutes of the March 22, Regular Meeting
- 1b. Invoices processed for the period from March 16, 2010 through April 5, 2010

Councilmember Bonquet moved to approve the Consent Agenda. Seconded by Councilmember Lodzinski. Motion passed 6-0 with Councilmember McGoffin abstaining.

### **2. Presentation on “First Things First” by Child & Family Resources, Inc., concerning the state-wide, voter-approved initiative which established funding for early childhood development and healthcare programs**

City Manager Glenn Nichols introduced Melissa Avant, from the Cochise Regional Partnership Council, who was present to speak to Council regarding the First Things First program. Melissa Avant then addressed Council thanking them for the opportunity to present this information. Ms. Avant then gave a power point presentation explaining the First Things First program and its mission to provide tools for learning and healthy development from birth, to provide preparation for success in school and beyond and to ensure services for all Arizona children. Ms. Avant then stated this program was created by Proposition 203 in 2006 when citizens became frustrated with the lack of dedicated funding to early childhood development programs, stating this proposition placed a tax on cigarettes to support these programs and that it was intentionally structured to be separate from the government so it would not take funding away from other services to children and families and to provide greater control to the local communities and parents who reside throughout Arizona and Cochise County. Ms. Avant then stated there is a 12 member statewide board located in Phoenix and there are 31 Regional Partnership Councils across the state made up of local people in those areas. Ms. Avant then stated the programs and services supported are selected at the community level to ensure funds are best used to provide programs and services for children and families in local communities. Ms. Avant then stated in our state, with the First Things First program, over 9,000 children have access to child care, parents of 80,000 newborns received tools to develop healthy, learning babies, medial outreach improved the healthcare of more than 330,000 children, teacher training improved child care for 33,000 children, home-based services developed nurturing parent/child relationships for 15,000 children and health professionals taught caregivers safer, healthier living for 66,000 children. Ms. Avant then spoke of the community impact stating 30 childcare centers/homes will be funded for three years with over \$1.5 million to improve the quality of care to 80% of young children in childcare centers in our region and over \$3.3 million will be spent over the next three years, reaching over 90% of young children and families within the Cochise County region.

Ms. Avant then introduced Ana Bae-Limb, a Benson resident who is on the Cochise Regional Partnership Council, asking her to address Council concerning her experiences with the First Things First Program. Ms. Bae-Limb addressed Council stating she was one of the original members when this program was created, to combat the lack of attention to early childhood education, care and health. Ms. Bae-Limb stated one of the things she appreciated about the program was that local communities had control over how the funding would be distributed and utilized. Ms. Bae-Limb then stated she had spoken in the past to Vice Mayor King about the lack of services for young children and that he expressed a lack of rehabilitation services such as pediatric physical therapists, occupational therapists and speech language pathologists. After researching these areas, they found this was one of the largest deficits and they have now allocated money to try to recruit pediatric physical therapists, occupational therapists and speech language pathologists. Ms. Bae-Limb stated the information on the lack of these services has been shared with other Regional Partnership Councils who found this need in their region also lacking and that a few other Regional Councils have also allocated funding for this need. Ms. Bae-Limb then stated she wanted to make sure everyone knew that the First Things First programs were not run by the State, but by citizens; people in our communities, who know those communities and can best understand the assets and gaps of each community to ensure funding is allocated in the best way. Ms. Bae-Limb then thanked Council for their assistance.

Ms. Avant then talked about the threats to early childhood programs, stating decreased tobacco sales are eroding the First Things First funding and the state budget cuts are increasing the need for the programs First Things First offers. Ms. Avant then stated the House and Senate passed legislation to place First Things First on the November 2, 2010 ballot to eliminate their funding. Ms. Avant stated they are currently in negotiations with State legislators, offering a \$300 million loan to the State with 0% interest and a repayment date of 2017, but the loan has been declined thus far. Ms. Avant then stated the First Things First Program will be on the ballot in some form on November 2, 2010 and that they need our support, asking us to engage community leaders, educate the local media and secure support from community organizations, adding the First Things First program is critical to our children. Ms. Avant then thanked the Council on behalf of the Cochise Regional Partnership Council for allowing her to speak and stated she and Ms. Bae-Limb would be happy to answer any questions they may have.

Mayor Fenn thanked them for their efforts regarding this program and then asked if the services were income based and how one would go about obtaining these services. Ms. Avant answered stating there is no income based criteria, but the emergency childcare scholarships, offered to parents that were struggling financially, may require some type of co-pay, but that most of their services were free to any child in Arizona and that many referrals come to them from Child Protective Services, the Department of Economic Security, Child Family Resources, the County Health Department and Arizona Children's Association.

Councilmember Lodzinski then asked about the proposed loan to the State with Ms. Avant stating the funding for First Things First started with Proposition 203 in 2006 and by statute they were unable to start programs until 2008. Ms. Avant stated before programs could be implemented, they performed needs and assessments and strategic workshops within the County and across the State, adding that they knew the fund balance would be required to maintain the programs after they were implemented.

Vice Mayor King then stated he was an advocate of this program and offered his support. Mayor Fenn then thanked Ms. Avant again for her presentation.

3. **Resolution 21-2010 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the application by the Benson Volunteer Fire Department for Rural Fire Assistance Grant Funds from the Arizona State Forestry Division**

Mayor Fenn stated he would ask Fire Chief Keith Spangler to address this item and the following item at the same time. Fire Chief Keith Spangler addressed Council stating these items use the same application, but they require different matching amounts by the City. Fire Chief Spangler then stated the Rural Fire Assistance Grant is for Wildland equipment only and requires a 10% match, adding that they are going to

utilize this grant funding, if awarded, to purchase protective clothing and backpacks for the firefighters. Fire Chief Spangler then stated we had received this grant last year and used it to purchase equipment for apparatus. Mayor Fenn then stated this grant application is for \$10,000 and the City's match would be \$1,000. Fire Chief Spangler stated \$10,000 is the maximum we can apply for and the amount of funding awarded is determined by the selection committee. Councilmember Sacco moved to approve Resolution 21-2010. Seconded by Vice Mayor King. Motion passed 7-0.

4. **Resolution 22-2010 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the application by the Benson Volunteer Fire Department for Volunteer Fire Assistance Grant Funds from the Arizona State Forestry Division**

Fire Chief Keith Spangler stated the information is basically the same for this item, but that this application is for structural firefighting equipment that bridges the gap for the wildland interface which would be some equipment for the apparatus and some equipment for the firefighters, adding that this grant requires a 50% match from the City. Mayor Fenn then stated the application is for \$10,000 and the City's match would be \$5,000. Councilmember Lambert moved to approve Resolution 22-2010. Seconded by Councilmember McGoffin. Motion passed 7-0.

5. **Discussion and possible action regarding direction to staff to establish a utility assistance fund utilizing Round Up contributions to aid Utility Assistance Programs**

Finance Director Jim Cox addressed Council stating in the past there was a lot of interest in a program to provide a utility assistance fund and with the recent Caselle software update, we now have the capability to do this and he would like formal direction from Council. Mr. Cox then explained the Round Up program stating utility bills can be rounded up to the next whole dollar amount, adding that customers can also request to have an additional amount billed to them each month. Mr. Cox then stated this money would then be put into a utility assistance fund and staff is recommending that the City have a third party administer the plan. Mr. Cox stated the City works with 3 local agencies that provide assistance: SEACAP who works with customers Countywide, St. Vincent de Paul that offers assistance occasionally and the Salvation Army, who utilizes the community center and is available 3 days each month. Mr. Cox stated staff spends a significant amount of time each month to ensure people have been notified of the danger of having their utilities turned off; noting that usually only 3 to 5 people are turned off each week and that staff is diligent about directing customers to the proper agency to get assistance. Mr. Cox then stated he had spoken to these entities and they all agree that the City should direct all utility assistance funding to the Salvation Army since they are very accessible, have a pretty wide definition of families in need, examine each individual's situation and needs and pay special attention to families with children and the elderly, which the City also does. Mr. Cox then stated this item is to request direction from Council on a policy and a third party administering the program.

Councilmember Sacco asked what administering the program would entail with Mr. Cox giving an example of a customer calling in about their utility bill. Mr. Cox said the first thing the City does is ask if they would like to make a payment arrangement, stating that in the current economic climate, many times unemployment explains the hardship and that the City then immediately refers them to the three agencies, noting that probably 3/4 of those customers go to the Salvation Army since it's local and is available very quickly. Mr. Cox stated the Salvation Army then determines the need, that it's not a recurring need and awards an assistance amount. Councilmember Sacco asked about the standards to qualify for assistance with Mr. Cox stating the required standard is a family in "financial crisis" and that they look at the overall situation and assess the award based on needs. Councilmember Sacco then asked if the customer would receive the assistance directly with Mr. Cox stating the assistance from the Salvation Army or any program the City would have them administer would be distributed directly to the City.

Councilmember Lambert stated Sulphur Springs Valley Electric Co-operative (SSVEC) also has a Round Up program and asked Mr. Cox if he knew who administered their program. Mr. Cox answered that he believed it was administered in-house, but that he has not confirmed this or spoken to them about this type

of a program. Councilmember Lambert then asked if the City used the Salvation Army, who would control the money with Mr. Cox stating the funds would be accounted for through the monthly accounting process, stating the City would develop a fund and then process a check to the Salvation Army, adding that those funds would be segregated by the Salvation Army to assist those customers only in Benson. Mr. Cox then stated the Salvation Army would then give an audit statement to the City each month. Mr. Cox then stated he would like direction from the Council as to how they would like him to proceed. Councilmember McGoffin then asked if a customer paid more than what was due on their utility bill, how would the City determine if the customer would receive a credit on the following billing cycle or if it was to be used for the Round Up program. Mr. Cox then stated to participate in the Round Up program, a customer would have to sign up for it and at that time, would state if they would like to round up to the next whole dollar and if they would like to pay an additional amount, such as \$1.00 or \$5.00 per month to aid the utility assistance fund even further. Mr. Cox then stated unless a customer signed this request, any overpayment to their account would result in a credit on their account in the following billing cycle. Mayor Fenn asked if the program would be part of the billing process with Mr. Cox stating if he received direction to proceed with the program, he would first run a campaign and then design a form to ask people to complete and would then program their participation into the billing software and they would automatically be billed for the additional amount they requested.

Councilmember Sacco asked if the City had a program like this at one time with Mr. Cox stating it was looked at in the past and was budgeted with \$10,000 in the utility fund, but was never used since the City did not development specific standards to administer the program. Councilmember Boncquet asked if Mr. Cox could contact SSVEC and see how they administer their program with Mr. Cox stating he would do that. Vice Mayor King then stated he believes in this program and that his only concern is where the money would be applied, stating it should be strictly applied to utility assistance only and that there shouldn't be any administrative charge. Mr. Cox stated he would include those concerns in any discussions he had.

Mayor Fenn then moved to direct Mr. Cox to bring back a policy and information for Council to act on at a future Council meeting. Seconded by Councilmember Sacco. Motion passed 7-0.

6. **A Trust Assurance Agreement to construct subdivision improvements with Homes Under the Sun, L.L.C. for Iron Horse Village Lots 13, 36-39**

Public Works Director Brad Hamilton addressed Council asking if he could address this item and the following item at the same time since they were related. Mr. Hamilton then stated this item is to establish a new trust for Iron Horse Village since the company that currently holds the trust went out of business. Mr. Hamilton then stated after establishing a new trust, we would abandon the old trust. Mayor Fenn then confirmed with Mr. Hamilton that there would be no changes to the project, just a change in title companies. Councilmember Boncquet then stated she wished to disclose that she owned two rental properties in this area and after talking to legal counsel, was advised that as long as she had no substantial interest in this item she could participate. Councilmember McGoffin moved to approve the Trust Assurance Agreement to construct subdivision improvements with Homes Under the Sun, L.L.C. for Iron Horse Village, Lots 13, 36-39. Seconded by Vice Mayor King. Motion passed 7-0.

7. **Resolution 23-2010 of the Mayor and Council of the City of Benson, Arizona authorizing the Release of Assurances for the Subdivision known as Iron Horse Village, Lots 13, 36-39**

Mayor Fenn stated this item would release these lots, but that they were now captured by the new trust assurance agreement. Public Works Director Brad Hamilton stated this was correct; Council had created the new trust assurance agreement and was now releasing the lots from the old trust assurance agreement and dissolve it. Councilmember McGoffin moved to approve Resolution 23-2010. Seconded by Vice Mayor King. Motion passed 7-0.

8. **Resolution 24-2010 of the Mayor and Council of the City of Benson, Arizona adopting a Fair Housing Policy making known its commitment to the principle of Fair Housing and describing actions it shall undertake to affirmatively further Fair Housing**

Public Works Director Brad Hamilton addressed Council stating this item was required for us to participate in the Community Development Block Grant (CDBG) program. Councilmember Lodzinski moved to approve Resolution 24-2010. Seconded by Councilmember Lambert. Motion passed 7-0.

9. **Resolution 25-2010 of Mayor and Council of the City of Benson, Arizona authorizing the submission of an application(s) for FY2010 State Community Development Block Grant Funds, certifying that said application(s) meets the Community's previously identified Housing and Community Development needs and the requirements of the State CDBG Program, and authorizing all actions necessary to implement and complete the activities outlined in said application(s)**

Public Works Director Brad Hamilton addressed Council stating this resolution is to declare the projects for the CDBG application, stating these projects would go to construction in 2011 and that we are currently working on wrapping up the last project from the program. Mr. Hamilton then stated there were several projects that were looked at and that the City had to conduct a special survey to look at repaving 5th Street and Cactus Street, since they are out of the defined service area. Mr. Hamilton then stated that 5th Street qualified but that the City did not receive enough response for Cactus Street to qualify as a project. Mr. Hamilton then stated the funding could also be split between 5th Street repaving and a drainage study, noting that he was still working out the scope of the projects, but that preliminary prices for the projects indicated we could do both. Mayor Fenn then asked if the drainage study would include the Comstock area with Mr. Hamilton indicating it would. Councilmember Sacco asked if these were projects that staff recommended with Mr. Hamilton stating they were. Vice Mayor King stated the drainage study is very important and is needed to find how the issue of flooding will need to be addressed.

Mayor Fenn then stated the funding amount is basically the same as the previous year and that the projects would begin late next summer. Mr. Hamilton confirmed this and that the only physical change that would take place would be the repaving of 5th Street from Ocotillo to Quarterhorse. Mayor Fenn then stated the drainage study will help the City in the future with Mr. Hamilton noting that the study is an important component if the City attempts to secure any other sources of funding such as FEMA, stating the City needs to have something to show that merits further study or actual projects to address the issue.

Councilmember Lodzinski stated we had looked at completing a study before, but that we didn't have the necessary aerials and asked if we had them now with Mr. Hamilton stating the study was looked at before the recession hit and that the City has the aerials now. Mr. Hamilton then stated we were now looking at a little larger area for the study than we were in the past.

Councilmember McGoffin suggested contacting the owners of the businesses that may be interested in completing the paving on 5th Street that was in the commercial area and could not be paved with the CDBG funds, with Mr. Hamilton indicating he could do that. Mr. Hamilton then stated that the census is very important and that the CDBG funding amounts are determined by the census figures, reminding everyone how important it is to complete and return the census forms.

Councilmember Lambert asked about Cactus Street with Mr. Hamilton stating a special survey requires a 95% response rate and that the City only received a 65% response rate. Mr. Hamilton stated the City Manager and the Engineering Aide tried going door-to-door and ran into a lot of people that didn't want to be bothered or didn't want to talk to staff. Councilmember Lambert moved to approve Resolution 25-2010. Seconded by Councilmember McGoffin. Motion passed 7-0.

10. **Resolutions 26-2010, 27-2010, and 28-2010 of the Mayor and Council of the City of Benson, Arizona approving a Major Amendment to the General Development Plan changing approximately 106 acres from Low Density Residential to Medium Density (53 acres) Residential and Commercial (approximately 53 acres)**

City Attorney Michael Masse addressed Council stating he would speak initially, but also wanted to let them know the applicant was present for any questions. Mr. Massee then stated this matter has come before Council several times, most recently, last November when the matter of the major plan amendment was before the Council. Mr. Massee stated at that point, the motion to pass the amendment as applied for was voted on 4-3 and was considered passed, but upon further research he found that the motion failed since it required a super majority. Mr. Massee then stated he talked to applicant to see how he would like to proceed and the applicant indicated he would like to come back before the Council for essentially an alternate or compromise vote. Mr. Massee stated had the correct determination been made in November that the motion failed; an alternative could have been to consider the recommendation of the Planning & Zoning Commission which was to approve a designation of Medium Density Residential. Mr. Massee then stated San Pedro Partners have now acquired ownership of the McDonald parcel, noting that in the development agreement, which is the next item on the agenda, the McDonald parcel is now part of the land that is being referenced in the agreement as the San Pedro Partners land.

Mr. Massee then stated the applicant said he would like to present the amendment to Council one more time with the agreement of a Medium Density Residential designation. Mr. Massee then stated we published notices of the public hearing before Council, which took place on March 22, and are now bringing the item to Council for action. Mr. Massee then stated the development agreement, now called the Restated Development agreement, has now been amended, stating that in the original agreement the applicant asked for B2, which can not be obtained on a Medium Density development, so the agreement now states the larger parcel also owned by San Pedro Partners, which is currently zoned B2 and is in the City limits, would be presented with the other parcels in the agreement via the manner outlined in Section 13 of the Zoning Regulations, which is the Community Master Plan. Mr. Massee then stated this would allow some of the densities on the larger parcel to be transitioned and used on the smaller parcel as well and that some of the commercial could be moved to this property and some of the residential density could theoretically be transferred to the other property. Mr. Massee stated there would be two more actions required at the Council level before the development goes forward, which would be the annexation action and the rezoning request.

Mr. Massee then stated the development agreement doesn't promise any votes and states very clear that the Council reserves discretion, saying that in November, there was some language Council agreed to in Section 14 that says to the extent possible, the agreement made would rule over current ordinances and policies, but City Council maintains jurisdiction and discretion to adopt ordinances that would apply to those properties.

Mr. Massee then stated the law requires that all major plan amendments to the General Development Plan be presented at one Public Hearing in one calendar year, adding that the recent public hearing we just held in March will be the only one held this calendar year. Mr. Massee then stated we are not aware of any applications that are making their way to Council, however, next year, City staff will propose some changes. Mr. Massee then stated while all major plan amendments must be presented at one public hearing, there isn't a limit on the number of major amendments that can be made. Mr. Massee then stated the changes before Council have been referenced as one major plan amendment, but after discussions and after looking at one of the elements of the major plan amendment that staff went ahead and agreed to incorporate the request of two other outside property owners, it seemed appropriate to present the three separate elements to Council in three separate resolutions for action.

Mr. Massee then stated the first element and resolution was regarding the 53 acres owned by San Pedro Partners, who was looking to go from Low Density Residential to Medium Density Residential, which is consistent with the Planning & Zoning Commission's recommendation. Mr. Massee then stated the second

element and resolution was regarding the Harlan property by itself, stating that at least 2/3 of the property was already designated commercial and that they are seeking the commercial designation to match the rest of their property, adding this change would affect approximately 20 acres. Mr. Masee then stated the third element and resolution was regarding the parcels owned by Triple L and Mahlon MacKenzie, which together comprised approximately 33 acres. Mr. Masee stated this change was the result of contacting them through the community outreach process and the property owners stating they were agreeable to the amendment if they could get the same land designation as the Harlan property, which was commercial.

Mr. Masee then stated it was Council's pleasure to combine all the elements together in one motion, but in light of the complexities involved, it seemed best to take each element on its own merit, even though it was noticed as one major amendment. Mr. Masee then stated the applicant, San Pedro Partners, was present if they would like to add anything.

Jerry DeGrazia, of San Pedro Partners, addressed Council stating they are requesting that each element is acted on individually, stating their request is to change the designation on 53 acres, which includes the property they purchased several years ago and the McDonald property they just acquired, to Medium Density Residential. Mr. DeGrazia then stated San Pedro Partners was also representing the Harlan property, and that they would like to have a second action specific to the Harlan property and that the request is to have this property of approximately 20 acres conform with the rest of the Harlan property, which is currently commercial. Mr. DeGrazia then stated as far as the last element, they had nothing to do with it, but are requesting specific votes on the first two requests.

Vice Mayor King asked why there was only one public hearing before Council when in the past, there has been more than one public hearing before the item was presented before Council. City Attorney Mike Masee then stated there was a number of public outreach processes that had already been done at the end of 2009, including the public hearing before the Planning & Zoning Commission and the community meetings held prior to that at City Hall. Mr. Masee stated in meeting with the applicant, the question was whether the applicant wanted to go with the application as currently stated and agree to a compromise option such as the designation the Planning & Zoning Commission recommended or to reevaluate and change the application, adding that had the applicant changed or altered the application in any way, the City would have started all over again, but since the applicant decided to go with the application as written, requesting consideration of the alternative designation as recommended by the Planning & Zoning Commission, we are in the same amendment process and don't need to begin completely over, that we could go back and take the matter to City Council provided we properly vest jurisdiction with City Council by holding a public hearing at the City Council level. Mr. Masee then stated since the Planning & Zoning Commission held a public hearing on the application and made a recommendation and since the application is not changing, the goal was to put the applicant back to the position he would have been in at the end of November, 2009.

Councilmember Sacco asked about the exhibits on the Resolutions and the language that requests "HDR or Commercial", stating it should be one or the other. Mr. Masee then stated the exhibit from the application referenced the total area on the original application, but now that there were three separate resolutions, each exhibit indicated the three separate properties. Councilmember Sacco stated he felt the exhibit should be changed to clarify the designation requested. Mr. Masee then stated we can make the change on the exhibits, asking for any motion made to include that amendment.

Councilmember Lambert then stated after speaking to Mr. Masee extensively, he recommended the correction of the language of Resolution 26-2010 to show 43 undeveloped and 10 acres that has 1 home site, instead of 53 undeveloped acres. Councilmember Lambert then stated he had read the Planning & Zoning Commission's recommendation to designate the properties Medium Density Residential and then moved to approve Resolution 26-2010 with the correction on the exhibit to delete the language "comprehensive plan amendment from LDR to HDR or Commercial". Seconded by Councilmember McGoffin. Motion passed 6-1 with Councilmember Sacco voting nay.

Mayor Fenn then opened the discussion on Resolution 27-2010 stating this resolution was concerning the Harlan property, changing approximately 20 acres from its current designation of Low Density Residential to Commercial, matching the remaining Harlan property of approximately 42 acres. Councilmember McGoffin moved to approve Resolution 27-2010 with the change on the exhibit to delete the wording “comprehensive plan amendment from LDR to HDR or Commercial”. Seconded by Mayor Fenn. Councilmember Lambert then stated he would like to clarify that this designation is for approximately 20 acres and is to make the entire Harlan property of approximately 62 acres one designation, which is Commercial. Mayor Fenn then stated there are two more steps that will come before Council for action in the future; the annexation of the property and the zoning change, repeating that those are requests that will come forward at a future date. Mayor Fenn then asked if there was further discussion before calling for a vote. Motion passed 5-2 with Councilmember Boncquet and Councilmember Sacco voting nay.

Mayor Fenn then opened the discussion on Resolution 28-2010 stating this resolution was for the property located south of the Harlan property which is owned by Mahlon MacKenzie and Triple L, and is requesting a change from Low Density Residential to Commercial. Councilmember Lambert asked if the City had an application from the property owners, with Mr. Masee stating the City had nothing in writing; that this request was the result of notifying property owners according to the outreach effort that is built into the general plan amendment procedure and that upon discussions, the owners indicated they would not object to the amendment if they could get the same designation. City staff then determined the request had merit so as to not leave these properties as a relatively small low density pocket in the middle of some higher density designated areas. Staff then processed the request as part of the application and it was included in the public notice at all levels since it was incorporated into the original proposed changes.

Vice Mayor King then asked if the motion passed, could the property owners come back and have an issue with the change in land use designation with Mr. Masee stating the property owners would need a basis to complain, adding that a change from Low Density Residential to Commercial would benefit the land owners, but that if the property owners were to complain, the City could expeditiously revert them to their previous designation, adding that since these properties together equal approximately 33 acres, a change in their land use designation for this property on its own does not meet the criteria for a major amendment, so the change could be reverted fairly easily since it would be a minor amendment. Mr. Masee then stated the property owners indicated this change is what they wanted as a buy in to not oppose the proposed amendments and staff included it in the process.

Councilmember McGoffin stated since staff acted on this item after speaking to the property owners, there would be no application for the changes on file. Councilmember Lambert asked who from staff did the public outreach with Public Works Director Brad Hamilton stating Michelle Johnson in the Planning office conducted the public outreach process and in contacting major property owners around the area that was changing and explaining the application, these property owners said they had no problem with the amendment and went along so it would not create an island of Low Density Residential surrounded by High Density Residential or Commercial. Mr. Masee then stated their request was for a Commercial designation, which was advertised.

Councilmember McGoffin then moved to approve Resolution 27-2010 with the change on the exhibit to delete the wording “comprehensive plan amendment from LDR to HDR or Commercial”. Seconded by Councilmember Lambert. Motion passed 5-2 with Councilmember Boncquet and Councilmember Sacco voting nay.

11. **Resolution 29-2010 of the Mayor and Council of the City of Benson, Arizona approving a Restated Pre-Annexation Development Agreement by and between San Pedro Partners, L.L.C., An Arizona Limited Liability Company and Jimmy Harlan and Yoke Lin Harlan, Trustees and the City of Benson, Arizona**

City Attorney Mike Masee addressed Council stating they were given changes to the development agreement as approved in November, 2009 in a red-lined version, and that Section 14 is correct and is the

same language that was approved by Council in November. Councilmember Sacco stated the exhibit maps have the incorrect language and he would like to see it corrected on both Exhibit A and B.

Councilmember Lambert asked if the Restated Development Agreement does not include the properties owned by Triple L and Mahlon MacKenzie, but only the San Pedro Partners and Harlan properties, with Mr. Massee indicating this was correct, noting the San Pedro Partners property now includes the McDonald property. Mr. Massee then stated that Section 4 had been changed to show the Community Master Plan language.

Councilmember Lodzinski asked about the infrastructure, verifying that the developer will pay for the infrastructure but that if he is required to build a larger main, the City would only pay the difference in cost. Mr. Jerry DeGrazia stated that was correct and that if the City needs a larger main to serve other properties or a larger well to serve other properties, the City will pay the difference in costs, adding that this would only apply to water and wastewater, since the developer is doing roads, etc. on their own. Mr. Hamilton then stated the difference the City would pay would be in credits toward the impact fees owed by the developer, so that even the oversize would not be an out of pocket expense to the City.

Councilmember Lodzinski then stated the development doesn't come into the existing City's water assurance, but requires the developer to have their own water assurance. Mr. DeGrazia then stated they already have their own water assurance and will have it added to the City's, stating they are providing additional water for their site.

Councilmember Lodzinski moved to approve the Restated Pre-Annexation Development Agreement by and between San Pedro Partners, L.L.C., An Arizona Limited Liability Company and Jimmy Harlan and Yoke Lin Harlan, Trustees and the City of Benson, Arizona with the change to delete the language "comprehensive plan amendment from LDR to HDR or Commercial" from the exhibits. Seconded by Councilmember McGoffin. Motion passed 5-2 with Councilmember Boncquet and Councilmember Sacco voting nay.

**DEPARTMENT REPORTS:** None

**ADJOURNMENT:**

Councilmember McGoffin moved to adjourn at 8:39 p.m. Seconded by Vice Mayor King. Motion passed 7-0.

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Mark M. Fenn, Mayor

ATTEST:

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Vicki L. Vivian, CMC, City Clerk