

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD MAY 10, 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, Vice Mayor Toney King, Sr., Councilmembers Jo Deen Boncquet, David Lambert, John Lodzinski and Al Sacco. Excused was Lori McGoffin.

EMPLOYEE RECOGNITION: None

PROCLAMATION:

Mayor Fenn read a proclamation declaring May 14, 2010 as "Benson Poppy Day". Mayor Fenn then presented the Proclamation to the Women of the American Leagues Auxiliary, who then presented poppies to the Council. Melissa DiPeso then gave a brief statement explaining why the poppy was chosen as the memorial flower.

PUBLIC HEARING:

None

CALL TO THE PUBLIC:

Steve Sacco, President of the Benson/San Pedro Valley of Commerce thanked the City for the support they provided for the annual Blue Grass Festival. Mr. Sacco stated the weather was a small problem on Friday, but that Saturday and Sunday were both well attended. Mr. Sacco then stated he also wanted to thank Bob Nilson in the Tourism Department for his assistance as well as the City employees and the Parks & Recreation Department. Mr. Sacco then thanked the Council for providing the funds needed to encourage the Chamber to provide a venue for people to visit and spend money in Benson.

Valerie Ritz spoke about the rights of property owners and expressed her concerns about manufactured park owners being able to move newer homes into their parks and the need to comply with Section 16 of the Zoning Regulations regardless of when the park was established. Ms. Ritz stated the parks established prior to Section 16 should be grandfathered and exempt from those regulations. Ms. Ritz stated the new policy in enforcing these regulations has the effect of reducing the number of allowable spaces for homes at 16 manufactured home parks in Benson and lessens property values for which the City should be held financially responsible and also disregards grandfathered property rights. Ms. Ritz then stated the enforcement of Section 16 to parks that should be grandfathered is also a change from what has been done for the past 12 years and while Mr. Masee calls the policy a new interpretation of code, she and many others consider it to be a misapplication of code, stating she feels Council should investigate and seek additional advisement on this matter.

Tom Fitzgerald addressed Council concerning an update on the current referendum effort, noting that it is going well. Mr. Fitzgerald then read from a letter he distributed to Council on May 6 stating he believes City Council has a duty to know the law of public meetings and feels they breached their duty to follow the law when passing a resolution that appears to find favoritism with a developer who has access to public

credit when there's a building bubble that's destroying America and the global economy. Mr. Fitzgerald then stated in people's Referendum REF-09-01, he represented 118 qualified electors filing a grievance about violations of the law and the standards of the City Council who voted yes to displace the Planning & Zoning Commission's stipulated recommendations, stating that Council has a duty to explain their actions and that they, again, breached their duty with a re-stated resolution. Mr. Fitzgerald then spoke about asking for the resignation of the City Attorney, but then told the Council they had his letter with his comments. Mr. Fitzgerald then stated it's time Council do the right thing and stand behind the people and make the special interest carpetbaggers responsible for their excessive spending and inflation activities, since Benson is a small city, and must do it's part to tighten up on spending to protect the public and deal with maintenance issues. Mr. Fitzgerald concluded by stating he feels he saved the City millions of dollars on the fraudulent vote last November and that \$10,000 is nothing when compared to the yearly loss of downtown revenue that's being directed to Wal-Mart and that now there is a high-density favoritism to rob the public for small businesses access downtown.

Jay Kendrick addressed Council stating he purchased Stagecoach Trails Mobile Home Park in 2003 and that it had been in very bad condition, adding that he has worked hard to move 34 nicer, newer homes in, has done landscaping and that every home is HUD approved and that he's followed all laws. Mr. Kendrick then stated the City Attorney's policy of the new interpretation of the law is a serious private property violation. Mr. Kendrick then stated in October, 2009, he met with a city official who told him that the attorney's mentality was to go after him and that his mother was a lightning rod, adding that he didn't want his mother to run for Council, but that he can't control her or what she does. Mr. Kendrick stated since that time, he has encountered a well-planned orchestrated attack by the City Attorney, stating the intent of Section 16 in the Zoning Regulation is for new development. Mr. Kendrick then stated he assumes Council knows nothing about this, because they have not been included in the correspondence regarding the issues he has. Mr. Kendrick then stated he was told he could put a home on Space 27, which was parked and was waiting 10 days for a permit and that the City filed criminal charges against the park, himself and the park manager. Mr. Kendrick then stated once he hired an attorney, he kept receiving notices of additional violations, that he doesn't deserve this treatment and will pursue every legal remedy to keep his rights.

Mickey Bacholier addressed Council stating he was a property owner in Benson and is opposed to the City Attorney contract renewal stating he feels the Attorney's actions constitute a very serious violation of personal property rights for every citizen in Benson, not just park owners.

Jeff Cook addressed Council and thanked them for the opportunity to speak. Mr. Cook then stated he would like to speak about the holding facility, noting he had nothing to gain from his comments and that he was not there to discredit anyone, but that he feels strongly about the issue. Mr. Cook then stated he is glad the item is on the agenda so there can be discussion before the public and was thankful for News-Sun reporter Thelma Grimes' research on this issue. Mr. Cook said he didn't know if the project was a good or bad idea, but that there were some issues that needed to be looked into, stating he wondered why Corplan chose Benson, and if they were looking for a place with less sophistication and experience in dealing with this type of facility. Mr. Cook then stated if they had chosen Tucson, they would have had more law enforcement in the area which would have benefitted them; so again, he wondered why they chose Benson. Mr. Cook then stated there are more drug and illegal transporting trials in Tucson than in Benson and the people housed would be testifying, so again he wondered why choose Benson over Tucson, since they would have to transport them, feed them, etc. and the costs were higher than if they chose Tucson. Mr. Cook then stated if the people housed there are not free to come and go, the facility is a detention center and should be called such. Mr. Cook stated no information had been given to the public regarding security and wondered if it would be fenced, if there would be razor wire, guard towers, cameras or motion detectors. Mr. Cook then stated if the facility were to hold people waiting to testify against drug and people traffickers, then it would stand to reason the traffickers would try and prevent them from testifying, adding that to the traffickers, life is cheap and they would try to cut through the security, maybe even setting up bases in Benson. Mr. Cook then stated people who traffic drugs and people have a lower threshold for violence and killing and that he doesn't want this type of people in Benson. Mr. Cook then stated his second point about the facility was his concern regarding fraud, adding that if Corplan were to build the

facility here and get the City to sign on for bonds, what would be in place to prevent them from building it for \$5 - \$10 million after the City signed on for \$27 million, adding Corplan wouldn't have to answer to anyone on the costs, where the money went and then if they decided not to make the payments, could walk away from it like they did in Montana and leave everyone with the problem.

CITY MANAGER REPORT:

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

- May 11, 2010 – Library Advisory Board, 4:00 p.m., City Library
- May 15, 2010 – Historic Preservation Commission, 9:30 a.m., City Hall
- May 24, 2010 – City Council Worksession, 6:00 p.m., City Hall
City Council Meeting, 7:00 p.m., City Hall
- May 25, 2010 – Community Watershed Alliance, 6:30 p.m., City Hall
- May 28, 2010 – Benson City Pool opens. The pool will be open Monday through Saturday from 11:00 a.m. to 5:00 p.m. and Sunday from 1:00 p.m. to 5:00 p.m., Swim lesson schedule and other activities can be found at www.cityofbenson.com
- May 29, 2010 – Free Swim Day – Benson City Pool, sponsored by All the Kings Horses during regular hours.
- May 31, 2010 – HOLIDAY – City Offices Closed

NEW BUSINESS:

1. Consent Agenda

- 1a. Minutes of the April 26, 2010 Regular Meeting
- 1b. Invoices processed for the period from April 20, 2010 through May 4, 2010

Councilmember Sacco moved to approve the Consent Agenda with the minutes amended on page 8 to read “Councilmember Sacco stated there have been some accusations made *here tonight by Kathy Suagee* and he would like Council to have an opportunity to investigate before they went any further...” Seconded by Vice Mayor King. Motion passed 6-0.

2. Update on the City of Benson Public Library Grant to upgrade the Front Entry and Circulation Desk

Library Director Peggy Scott addressed Council thanking them for supporting the State Grants-in-Aid for remodeling the front area of the library. Ms. Scott stated the library will be closed June 4 through June 8, allowing them to remove all the existing circulation desk, carpeting, etc, and that the Friends of the Library are paying for that area to be tiled. Ms. Scott then stated on Tuesday, June 8th, they should be able to bring in new circulation desk, set up computers and be ready to open on Wednesday, June 9th. Ms. Scott then stated the night drop will also be closed, since that area will also be under construction. Ms. Scott then apologized for the inconvenience stating they have been noticing patrons and that it will be in the newspaper. Ms. Scott said the library staff was looking forward to the improvements. Vice Mayor King thanked Ms. Scott and her staff for the fine work they do and the service they provide at the library.

3. Discussion and possible direction to staff regarding the continuation of investigation of the possible development of a Benson Family Residential Temporary Holding Center in the City of Benson

Mayor Fenn opened the item stating this was addressed at a previous Council meeting and then asked City Manager Glenn Nichols to give the Council a brief update since that time.

Mr. Nichols stated back in March, Mr. Toby Michael and Mr. James Parkey, of Corplan Correction presented a proposal for the City to become a partner in what they called a temporary residential center to house undocumented women and children and they were planning on using the City's bond rating for the construction of the facility. Mr. Nichols then stated they did tell us that they did not have contracts in place at that time, but felt once the facility was built, they thought they would easily obtain the contracts. Mr. Nichols then stated he had since been in touch with numerous communities that have been involved with Corplan, stating that some situations have been positive and others have not, noting that the ones that worked well had the advantage of having numerous federal agencies in that community such as ICE, the Marshall's service and Customs and Border protection. Mr. Nichols then stated he had spoken to most of those organizations and though they stated they did not have contracts for a facility at this time, they would use the facility if they did have a valid contract. Mr. Nichols then stated that Mr. Toby Michael was here to answer questions Council may have as far as where the project might go.

Mr. Toby Michael then addressed Council thanking them for the opportunity to come before them and then stated to design, build and finance a facility to house undocumented alien families in Benson is a wonderful economic opportunity.

Mr. Michael stated he wanted to address comments that were made earlier and said that any witness in a major drug case would not be housed in this type of facility, adding that the City of Benson would have a lot of say on who would be housed here. Mr. Michael stated he anticipates families that have been picked up for being here illegally would be housed here, not witnesses in a major drug case since those would need to be placed in a much more secure facility with some sort of witness protection type of security. Mr. Michael then stated what they are asking is for the City of Benson to join them in pursuing the design and building of the facility here; that the City of Benson would not incur any liability whatsoever in pursuing it and that if at any time, the City decided it was something they did not want to pursue, they could back away. Mr. Michael then stated the commitment would be when the City was asked to issue either project revenue or industrial revenue bonds, whichever the financing group decided they wanted to use, and at that time, he can assure Council that the financing people would have been assured that the facility was going to be utilized (as would the City) long term. Mr. Michael then stated beyond that, the City is not being asked to contribute anything; that the land will be bought by the project and the utility expansion, if needed, would be paid for by the project again stating that the City would not be asked to contribute any funds whatsoever or to pledge any funds whatsoever. Mr. Michaels then stated the facility would employ about 125 people with an average wage of \$32,000 per year, adding some of those jobs would be for counselors and security personnel, noting it will be safe and secure facility, with no razor wire or towers, but will be fenced and have security personnel who pass psychological and drug tests. Mr. Michael then said the facility, after the financing period is complete about 21 years, will become the sole property of the City to use as they see fit, that it will be maintained so that at the end of this term, the City will have a good facility to be used as is has been used or for something else, if Council so decides.

Mayor Fenn then asked if there were any questions or comments from the Council. Councilmember John Lodzinski stated he had previously lived in a prison town in Michigan, so that part did not bother him, but that he would like to know more, that he had questions and a lot of people like Mr. Cook have questions Council needs to be able to answer. Councilmember Lodzinski stated he would like to go on, but would be keeping his hand on the City's wallet and wants to make sure of the project stating he was not going to give a rousing endorsement of the project at this time.

Councilmember Boncquet stated she feels the same way Councilmember Lodzinski does, but that she feels we could use our bond rating for other things more to our benefit. Councilmember Boncquet then stated she also lived in prison towns, that she was not afraid, but that she was not sure we have enough law enforcement here and with the immigration issues on hand, she's not sure she wants to see this project in Benson.

Vice Mayor King then stated at the beginning he thought this could be a great thing, but the more he looked into it, the more concerns he had, stating his concerns are about the what ifs, such as what if we build it and

get stuck with the bill, what if it turns into a federal prison instead of a holding facility and that the what ifs currently outweigh the what it could be. Vice Mayor King then stated now he is holding back on it, and that given our current economic times, he doesn't want to see the Council get into a situation where they could bankrupt the City, again stating in the beginning he was for the project but now he was not.

Councilmember Sacco then stated he understands the proposal doesn't have the federal contracts now with Mr. Michael stating Corplan believes there is a need for the facility. Councilmember Sacco then asked what assurances the City has that the government agencies are going to go along with it with Mr. Michael stating the facility would never be built unless contracts are in place for utilization of the facility and that in terms of liability, the City would have none, because on the face of the bond instruments, it would state that no one can look to the City of Benson for repayment of the obligation, and that the investors know this. Mr. Michaels again stated the liability would fall on the investors' shoulders, not the City of Benson, Cochise County or the State of Arizona, stating that before the facility would be built at all, the financing group would have to be assured that the facility would be used and they would need the contracts in place. Mr. Michael continued, stating the City would not be asked to pass bonds, unless those assurances are in place with those agencies, but that what they are asking is for the City to join them in going to Washington and try to obtain those commitments from those various agencies, such as Health & Human Services, ICE, Border Patrol, etc. that they would use the facility in Benson if it were built. Mr. Michael stated a preliminary stage would be for Council to agree in joining them in pursuing those assurances and if they are not obtained, the facility wouldn't be built. Mr. Michaels then stated Corplan has done quite a few projects, citing a detention center in New Mexico that is now housing over 2,500 people and then added that in Benson they are only proposing a family holding facility. Mr. Michael then stated the State of Arizona is currently out with an RFP to build 5,000 beds in Arizona, and will be coming out with another RFP in June for additional beds because Arizona is currently housing 5,000 inmates out of state.

Councilmember Sacco then said that Mr. Michael had made the statement that the City will not be asked to contribute anything and that he respectfully disagrees, stating they are being asked to contribute the City's good name. Councilmember Sacco then stated he will not support the proposal and will not encourage any further action.

Councilmember Lambert then stated he agrees with the comments made so far and that he only had one additional comment and that was if it was such a great economic development opportunity, why are they proposing financing it with bonds instead of locating investors that just want to invest so they can make the money. Mr. Michael stated the investors buy the bonds, get a return on those bonds and that the bonds are tax exempt which is what makes it attractive to investors. Mr. Michael then stated this is a typical way of financing these facilities. Councilmember Lambert then stated he still feels there would be other funding sources out there, with other investors, so the City wouldn't be at risk.

Mayor Fenn then asked Mr Michael about the RFP he mentioned with Mr. Michael stating the RFP had been withdrawn, but that he understood it would be coming back out, adding that Corplan thinks there is real need for this type of facility since they had talked to different agencies, and they were having problems finding places to house these families when they pick them up, adding this facility would be a safe, secure and humane way of housing them.

Mayor Fenn then spoke about Mr. Michael's statement on going to Washington to obtain commitments from agencies and asked if that could be done by Corplan without the City's support with Mr. Michael stating Corplan has to have a location in place to see if it meets with the agencies' criteria and to show that there is a place to build it. Mayor Fenn asked if a preliminary step to that would be to talk to those agencies about how they feel about the Southeast Arizona area and get their opinion, adding that he thinks Council would feel better if that step was taken and Corplan came back and said those agencies identified Southeast Arizona and would like a facility built in that area, that it makes sense logistically, etc. That way Corplan could come to Council and be able to say they will guarantee a contract, but now we need to find a City, adding that it seems that this step is what has been missing up to this point. Mr. Michael stated that is something they could do, but that everyone concerned feels more comfortable with a partner. Mayor Fenn

then stated he doesn't feel Corplan has the willing partner in Council, but that if that step is taken, it may make a difference. Mr. Michael said he understood and that Corplan didn't want to force the issue, but that they would like to see it, they think it is an ideal location and that we could use the jobs and revenue from it, but again, if the interest wasn't here, they could go elsewhere. Mayor Fenn then stated he appreciates that and understands the potential for the economic activity the facility could generate, but at the same time, feels there is a gap between where we've come and where we could get, and maybe it could be filled if Mr. Michael was able to come back with something more in writing regarding the bonding. Mayor Fenn then stated although Council understands that Mr. Michael says the City doesn't financially pay for the bonds, there is the concern regarding the risk the City would have with our bond rating should something happen down the road, adding he doesn't know if that's something Corplan can produce, but that he thinks Mr. Michael knows now where the Council stands. Mayor Fenn then stated he doesn't know if there's any additional comments or further direction to give staff at this time, adding maybe the direction should be to Mr. Michael to come back and when he is able to say he's been to Washington, that the agencies he met with like the area, and that if someone will sign up, they'll sign up. Mayor Fenn then stated he appreciated Mr. Michael coming and presenting this issue before Council. Mr. Michael thanked the Council for the opportunity to address them.

4. Presentation on the awareness and the need for the Community Food Pantry

City Manager Glenn Nichols stated Mr. Larry Martinez was present to address Council on this issue. Mr. Larry Martinez, President of the Community Food Pantry then addressed Council stating he was there asking for assistance as the need for their services grows each week, adding some of the programs they are involved in are the USDA Commodities, Feeding America through Wal-Mart, Senior Boxes, and Emergency Boxes for those arriving in Benson and for those who have fallen on hard times. Mr. Martinez then stated the pantry lost their lease at 451 Easy Street and must vacate by May 24th, and after searching for a location since January, 2010, they have finally located a site on 4th Street, next to Roy's Rug Service, which will be a temporary facility since it's only 900 square feet and is too small, but will have to do for now. Mr. Martinez stated the current tenant will vacate May 31st, so they will be forced to be closed until June 14th for cleaning and preparation. Mr. Martinez then stated the entrance will be off Easy Street so it will be easy to find for those who currently use the pantry. Mr. Martinez then said with the state of our present economy, the number of families visiting the pantry will continue to grow and they presently serve 275 to 300 families weekly. Mr. Martinez then spoke about their rent increasing from \$215.00 per month to \$500.00 per month, stating they exist on donations from the general public and some small grants. Mr. Martinez stated they will need a larger building and that the old skating rink would be ideal, that he talked to the owner who is asking \$200,000 but told Mr. Martinez he would sell it for \$150,000 if it were used for the pantry. Mr. Martinez said the owner is willing to work with them if they can come up with a good down payment and they have applied for a grant to see if they can obtain funding for it. Mr. Martinez then asked the Council to please consider them when the City is donating funds to different organizations. Mr. Martinez stated he believes now is the time for the community to stand together and support those less fortunate and thanked Council for the opportunity to inform them and the citizens of Benson about their situation, adding the Council has an open invitation to visit the pantry any Wednesday to witness why they are an asset to this community.

Mayor Fenn asked if they will be adding on or if they will be outside with Mr. Martinez stating they would be planning as they go adding that it all depends on funding, and the plans they have been discussing, like an overhang, would require cement to be poured first, adding they are trying to do the best they can with as little money as they can. Mr. Martinez then said he hopes they can open on June 9th, but it will depend on work that needs to be done and they will announce the opening date as soon as they know when it will be.

Vice Mayor King asked Mr. Martinez if they had been out to the community asking for assistance or talking with different people who could offer building material or other items to see if they could be helped in putting up the cement, moving or other things that will be needed to operate at the temporary facility with Mr. Martinez stating he had not, but was hoping this presentation may bring someone forward with that type of information or that type of help. Vice Mayor King then said he's has seen amazing help, with a

lot of neighbors helping neighbors, people helping people, and a lot of good will and thinks that if they reach out and explain the situation, they will probably get more assistance. Vice Mayor King then stated he believes in food banks and sees the service they provide. Mr. Martinez agreed stating hard times are abundant and they are looking for community support from anyone.

Mayor Fenn asked what was left in the community enrichment fund in the current fiscal year with Finance Director Jim Cox stating there was approximately \$3,000. Mayor Fenn then asked what the City has done for the food pantry this year with Mr. Cox stating the City pays \$130.00 per month in utility assistance. Mayor Fenn then stated the Council may be able to help with moving expenses and asked Mr. Cox to bring an item for action back to Council at the next meeting. Mr. Martinez then stated they appreciate the \$130.00 each month for utilities, adding that it is a great help since all they rely on are grants and donations. Vice Mayor King asked the media for their help in letting the community know the pantry really needs assistance.

EXECUTIVE SESSION: As per A.R.S. §38-431.03 (A)(3), for discussion or consultation for legal advice with the attorney or attorneys of the public body regarding Stagecoach Trails Mobile Home Court, Benson, Arizona.

Vice Mayor King moved to enter in to an Executive Session with the City Council, City Manager, City Attorney and City Clerk, the Public Works Director and the Fire Chief at 8:05 p.m. Seconded by Councilmember Lodzinski. Motion passed 6-0.

EXECUTIVE SESSION: As per A.R.S. §38-431.03 (A)(1), for discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, specifically, the City Attorney.

Vice Mayor King then moved to enter in to an Executive Session immediately following the first Executive Session with the City Council, City Manager, City Clerk, the Public Works Director, the Finance Director, the Fire Chief and the Chief of Police at 8:06 p.m. Seconded by Councilmember Sacco. Motion passed 6-0.

Council reconvened at 9:17 p.m.

5. Review, discussion and possible action regarding approval and renewal of Municipal Legal Services Contract for the City Attorney, Michael Masee

Mayor Fenn opened the item for discussion. Councilmember Boncquet moved to approve the renewal of the Municipal Legal Services Contract for the City Attorney with Michael Masee. Seconded by Councilmember Lodzinski. Motion passed 6-0.

DEPARTMENT REPORTS: None

ADJOURNMENT:

Councilmember Lodzinski moved to adjourn at 9:19 p.m. Seconded by Mayor Fenn. Motion passed 6-0.

Mark M. Fenn, Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk