

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD MARCH 8, 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 Councilmembers Jo Deen Boncquet, David Lambert, John Lodzinski and Lori McGoffin. Excused were Vice Mayor King and Councilmember Al Sacco.

EMPLOYEE RECOGNITION: None

PROCLAMATION:

Mayor Fenn read a proclamation declaring March 12th and 13th as days set aside for the distribution of Forget-Me-Nots from the Disabled American Veterans. Mayor Fenn then thanked the veterans for their service.

PUBLIC HEARING: None

CALL TO THE PUBLIC:

Larry Martinez addressed Council on the status of the Food Pantry, stating they had a rent increase on their facility and have been given a notice to vacate. Mr. Martinez stated they are searching for a new location that can meet their needs, indicating the building must be a minimum of 3,000 sq. ft. and needs to offer parking for 35-50 cars. Mr. Martinez then said some people think the rent and food are being provided at no cost to the Food Pantry, but stated they pay rent, fuel costs and utilities with the monthly cost estimated at \$1100.00 less the amount the City gives them for their electric bill. Mr. Martinez then stated without this contribution from the City, they would have a hard time, since they depend on donations to operate and due to the present state of the economy, donations are down. Mr. Martinez stated they have applied for grants, that the Food Pantry currently serves 285 to 325 families every Wednesday and that the Food Pantry is an asset that must remain open, in order to fulfill the needs of those less fortunate. Mr. Martinez then thanked Council for their support and asked if they had any questions. Mayor Fenn indicated they did not and Council wished him well in his endeavors.

Joseph Febbrini addressed Council regarding the proposed temporary holding center stating he was opposed to the project. Mr. Febbrini stated he watched illegal aliens come up his wash daily. Mr. Febbrini stated if illegal aliens are looking for work, the Justice Department should issue work permits, that these people are not criminals, but when they come to this country unlawfully, they are criminals. Mr. Febbrini stated they don't need to stay here while we support them with quiet rooms, soccer fields, teachers and nurses; all of the things that the lower income people in Benson and Cochise County don't have. Mr. Febbrini stated if we spent as much time on our own people, we would be doing a great job for our community. Mr. Febbrini then stated behind this project are special interest groups and we must step up and say no to this plan, since it's not in the best interest of the American people. Mr. Febbrini then stated in 21 years, when the facility is completely finished, the facility will need several million dollars to restore it and again stated he is against the project and he hoped Council considers it very seriously.

Linda Febbrini addressed Council regarding the proposed temporary holding center and stated she wanted to understand the project, stating she only heard about it on the radio Sunday night and that she doesn't usually listen to the radio or read the paper. Ms. Febbrini then asked if the revenue stream was the per

diem that will be charged to the agencies that have the authority to charge these individuals. Mayor Fenn stated this item will be discussed by Council during the meeting. Ms. Febbrini then said she had a few more questions, stating she was not very informed as to water, but knows there is a big problem in this part of the country and that a facility of that size would be a pull on the water, stating she doesn't know what bearing it would have on Benson. Ms. Febbrini then asked if there are other facilities like this in existence and asked why her husband was asked to sign a request to get the document on this proposed project. City Manager Glenn Nichols stated if she would like to speak to him after the meeting, he would discuss it with her.

Karen Pike addressed Council stating she was concerned about the proposed temporary holding center. Ms. Pike stated she wasn't sure how much discussion was going to be allowed from the audience, but that she wanted to point out that when United States citizens go to another country, they aren't given the amenities this proposed project would provide. Mayor Fenn then stated the Council could listen to the comments from the public, but could not respond, indicating Council would try to address the comments made from the public during the discussion of this item later in the meeting.

Kevin Rasch with the Solar Park Foundation addressed Council stating he wished to speak on behalf of efforts to bring jobs to the community and that he appreciated the Council's efforts in supporting that endeavor. Mr. Rasch said he thinks we have some good things going on in the community and that he was not there to speak in debate about the proposed temporary holding center, but that to say it was very challenging to bring business and jobs to the community. Mr. Rasch then stated his motivation is for his family and children, that the community has meaningful employment. Mr. Rasch then stated again he is not there to debate the issues in the item as much to state that we don't always have the opportunity to bring the amount of jobs that would be involved with this project. Mr. Rasch then stated he supported bringing business and jobs to our community, and that whatever we can do, it's the right thing to achieve that goal and that he would certainly support that.

John Whiteside addressed Council regarding the temporary holding center. Mr. Whiteside stated the company was the same company who tried to bring a prison to Benson in 2004. Mr. Whiteside stated that meetings went on between Councilmembers in groups of 3 and developers which were closed from the public and during these meetings, the developer said they would have to have water, sewer and gas. Mr. Whiteside said the site has apparently not been decided yet, but developer said they had been told by the City to go north, by the airport and that it should be kept in mind that certain high dollar interest want to expand north in Benson. Mr. Whiteside then expressed concern over water issues, stating this project will add to our consumption and at build out, the City will no longer have a 100 year assurance of water, which will affect our grandchildren. Mr. Whiteside then stated the City still has a hostile annexation with an unlawful change to General Development Plan, which will be coming back to Council in the next few meetings. Mayor Fenn indicated that Mr. Whiteside's time had expired and granted him 30 more seconds. Mr. Whiteside then concluded stating the project is a prison and that the location for it does not seem logical. Mr. Whiteside then thanked Council for their time and attention.

CITY MANAGER REPORT:

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

- March 9, 2010 – Library Advisory Board, 4:00 p.m., City Library
- March 20, 2010 – Historic Preservation Commission, 9:00 a.m., City Hall
- March 22, 2010 – City Council Public Hearing, 7:00 p.m., City Hall
City Council Public Meeting, 7:00 p.m., City Hall
- March 23, 2010 – Community Watershed Alliance, 6:30 p.m., City Hall

- March 10, 2010 – American Crown Circus, Benson Lions Park will hold two shows at 5:00 p.m. and 7:00 p.m., The Circus is partially sponsored by the City of Benson Parks & Recreation Department.

March 13 – 21, 2010 – San Pedro River Arts Council presents the “Celebrate the Arts” at Cochise College, Benson Center. Most events are free and all events are open to the public. There will be free live performances, an art show, creative workshops and Kids’ Day. Mr. Nichols then stated in the Council Chambers, the Teen drawings were put up as part of the “Celebrate the Arts” event and that brochures were available in the back giving more information on the event.

NEW BUSINESS:

1. Consent Agenda

- 1a. Minutes of the February 22, 2010 Regular Meeting
- 1b. Invoices processed for the period from February 12, 2010 through March 1, 2010

Councilmember McGoffin moved to approve the Consent Agenda. Seconded by Councilmember Lambert. Motion passed 5-0.

2. Discussion and possible action regarding permission to celebrate the 4th of July festivities on Saturday, July 3, 2010

City Manager Glenn Nichols addressed Council stating the 4th of July falls on a Sunday and this item is presented for Council’s direction to possibly move the celebration activities to Saturday, July 3rd. Mayor Fenn asked if historically, this has been done in the past when the holiday falls on a Sunday, with Mr. Nichols indicating it had.

Councilmember Boncquet moved to change the 4th of July festivities to Saturday, July 3rd. Seconded by Councilmember Lodzinski. Motion passed 5-0.

3. Resolution 18-2010 of the Mayor and Council of the City of Benson, Arizona, approving an Intergovernmental Agreement with the Arizona Department of Transportation and authorizing \$70,000 to be spent from the City’s Water Development Fees

Public Works Director Brad Hamilton addressed Council stating as the Arizona Department of Transportation (ADOT) moves forward with the reconstruction of Highway 90/Interstate 10 transportation interchange, the City requested the installation of 3 sleeves. Mr. Hamilton then stated this Intergovernmental Agreement (IGA) has two parts; one similar to our existing IGA for 4th Street, stating the City would participate in landscaping and lighting and the second part, is for the installation of sleeves as part of the construction. Mr. Hamilton stated two sleeves will be under I-10 and one sleeve will be under the north side of Highway 90, stating they will be for future water development, allowing the City to run pipelines to the airport, which hydrology studies show is where more of our water is. Mr. Hamilton then said that he had debated the IGA, but that is far cheaper to do the sleeve installation now as part of ADOT’s project than to try to come back later and do it as our own project. Councilmember Lodzinski confirmed the location of the sleeves, with Mr. Hamilton stating these sleeves would also give the City the ability to both sides of Highway 90. Mr. Hamilton then stated he had searched for an installation of sleeves to give the Council a cost estimate and that it was approximately \$100,000 plus material for one bore and that this agreement gave the City 3 bores for \$70,000, which would come from impact fees. Mayor Fenn then stated that impact fees are fees that have been collected in the past from prior development.

Councilmember McGoffin moved to approve Resolution 18-2010. Seconded by Councilmember Lodzinski. Motion passed 5-0.

4. Resolution 19-2010 of the Mayor and Council of the City of Benson, Arizona, authorizing the City Librarian to apply for a Library Services Technology Grant

Library Director Peggy Scott addressed Council stating this grant would pay for the installation of a public computer management system, enabling the public to sign themselves up for computer use, which would ease up the traffic at the circulation desk. Ms. Scott stated there is no required match for the grant.

Councilmember Lambert moved to approve Resolution 19-2010. Seconded by Councilmember McGoffin. Motion passed 5-0.

5. **Ordinance 542 of the Mayor and Council of the City of Benson, Arizona, amending the Benson City Code, Chapter 3, "Administration," deleting Sections 3-1-1 and 3-1-2 and adding revised Section 3-1-1 and 3-1-2 and new Subsection 3-3 (B)**

City Attorney Mike Masee addressed Council stating this proposed amendment comes about from a minor controversy raised by a member of the public regarding a supposed wrong doing when the Mayor contacted the Attorney through the City Clerk for an opinion. Mr. Masee stated it was obvious that for a good and fair functioning Council, they should be able to speak to staff members that are responsible to the City Council. Mr. Masee then stated that the state statutes address officers of the City that must be appointed by Council, indicating these are positions that are responsible to Council. Mr. Masee then stated the City Manager is not one of the officers listed in the statute and of course, to put the City Manager in the proper role, Council would want to go to City Manager, keeping others out of the multiple lines of responsibility, but that he thinks the Clerk and the Attorney, as well as the City Magistrate are not in that category and that Council should be able to go to those officers. Mr. Masee then said the proposed change is really a clarification to make sure elected officials have the discretion and ability to turn to immediate staff members that are in their day to day operations assisting the Council and they wouldn't be inhibited by an argument that is somewhat supported by the current code. Mr. Masee stated he did some research on limiting Council's contact to only the City Manager, and that while several cities do that, he also saw the provision to clarify that that applies only to those who are under the supervision of the City Manager.

Discussion was then had regarding positions that are appointed directly by Council and positions appointed by the City Manager with the consent and approval of the Council with Mr. Masee stating the change to Section 3-1-2 of the code makes it very clear and that the proposed subsection 3-3-b makes it very clear that Council can communicate directly with the Clerk and seek information and give direction if they feel it's appropriate.

Mayor Fenn then stated if Council had a question of a legal nature, they can contact the City Attorney, stating the incident that brought this about was twisted around to insinuate that he had given the Attorney a direct order to do something that was only the ability of the Council to do. Mayor Fenn stated that was not true; that he had been simply asking for a legal opinion on hypothetical Council action, stating he initiated this inquiry through the City Clerk and since it was a legal question, it was referred to the City Attorney.

Mayor Fenn then stated he would hope Council would always feel they could speak directly with City Manager, the City Attorney regarding legal questions concerning their functions as City Council or to the City Clerk for anything that falls under the City Clerk's expertise, stating they could request an opinion or counsel, but that formal orders or something that needs to come before Council officially, would be placed on an agenda for a City Council meeting. Councilmember McGoffin asked about the appointment of the City Prosecutor with Mr. Masee stated the prosecutor is not an official officer per state statute or code, but that most cities do have a separate position for prosecutor and in Benson, it was a contract for the position.

Councilmember Bonquet moved to approve Ordinance 542. Seconded by Councilmember McGoffin. Motion passed 5-0.

6. **Presentation and discussion on possible development of a Benson Family Residential Temporary Holding Center in the City of Benson**

Councilmember McGoffin excused herself for a possible conflict of interest, citing a possible pharmaceutical contract if the project were to be realized.

Mayor Fenn stated the Council appreciated the comments of everyone present, but that he wanted to make it clear the City had no official action, that he was approached as Mayor as he had been on other occasions from different interests that had come to the City and was asked “what if” questions such as does the City have infrastructure and workforce, stating we welcome those types of inquiries and we never know what will come to town. Mayor Fenn then said this project was presented to Council as a residential holding facility and the person that approached him wanted to know what the sense would be of the Council. Mayor Fenn told him he was welcome to talk to other members of the Council, but that he would have to arrange it on his own and that he did not arrange any secret meetings. Mayor Fenn stated the project manager arranged to meet with Council on his own, which he has the right to do just like Council has the right to know what’s going on. Mayor Fenn then stated as far as the public being surprised the Council was discussing the item, he didn’t know any other way to announce it, stating the item was placed on the agenda like any other item presented to Council. Mayor Fenn stated the item was only for discussion with no official action to be taken; again stating Council was open by scheduling discussion at the Council meeting. Mayor Fenn then stated for those who are familiar with the similar experience in some years back, that there were some big differences, stating back then, the way the City initially undertook the proposed detention center was not the best way to do it. Mayor Fenn then stated at that time, in that previous venture, the City was going to own the property, but that in this venture, the company looking to do this is on their own; they have asked about different properties that are not owned by the City and have asked about utilities, so the City identified utilities, stating if the property needs utilities, the developer would have to pay for it, just as anyone else.

Mayor Fenn then addressed the issue of funding stating as it’s been presented, we still need to gather information before they addressed this again, but that the funding would come from the entity that would install the facility and there is no funding that the City provides. Mayor Fenn stated there is a bonding component and Finance Director Jim Cox may be able to explain a little more about the City’s role in that as it’s been presented to us, and the liability the City may or may not have. Mr. Cox then addressed Council stating this was very preliminary; that he had been told these would be project revenue bonds that the City would sponsor but would have no liability for; the private company would issue the bonds and the bondholders would be paid off out of the revenues from the facility only. Mr. Cox then stated he has had preliminary discussions with City’s bond counsel and was told these bonds were intricate and they need to be managed properly. Mr. Cox stated he had decided not to look into it further unless it looked like the next step was taken and so he had no opinion at that point until more research is done.

Mayor Fenn then spoke regarding the nature of the facility stating it is a hot topic and in his own personal opinion, is basically in agreement with what has been shared tonight. At the same time, however, we need to look at the situation of someone coming here with a federally funded project, through health and human services, that houses families and that he understands how some feel that we shouldn’t sponsor or promote the offer of something attractive so that if illegal aliens get caught across the border they will be able to live at the facility and be educated, etc., but that the sad truth is many times, a family will be in the group and there is no decent facility for them to go to. Mayor Fenn continued, stating this project is trying to accommodate the situation of a family that is here illegally, stating it’s not just a matter of turning them back to Mexico, since many times they are from Central and South America, and that it isn’t just as easy as taking them across the border. Mayor Fenn then stated the facility is to house illegal aliens, as presented to Council, for 2 to 3 months, and that they could be part of the prosecution and needed as witnesses against the person who brought them across. Mayor Fenn stated any males held at the facility would be if their only offense was that they were here illegally; that if they were guilty of any other crime, they would be shipped to another facility.

Mayor Fenn then stated if someone was presenting an equal facility as a private university with dorms and soccer fields, we would embrace it, stating he realizes, he’s speaking for himself and that the nature of the center is very controversial, but do we as a City put our foot down and say, as Americans, that we don’t support this type of thing and don’t want this in our community or do we weigh those issues at the same time with the creation of up to 150 well-paying jobs, the construction sales tax the facility would generate and other revenue? Mayor Fenn then stated we have to balance those sides and that he wanted to go on

record that he doesn't completely endorse the facility, that there is still a lot of background to research, checking into the financial end of it and checking into the company, stating that the other hard part is that this type of facility doesn't exist; that there is a similar one back east. Mayor Fenn then stated he realizes a lot of apprehension exists and that there is still a lot of research to be done.

Councilmember Lodzinski stated he was here the last time a project like this was looked at and a lot of the problems last time were bonding issues. Councilmember Lodzinski stated he would like to reiterate that if any illegals were found to be wanted somewhere, they would be shipped there and that the facility would hold people who are willing to testify as part of a prosecution and that many of the people also held are from other countries, besides Mexico, such as Guatemala and other countries, which must be held until the federal government have enough to take them back. Councilmember Lodzinski then stated the other people that may be held are those who ask for asylum and must be held until the court hearing, which can take from 3 to 6 months. Councilmember Lodzinski then stated he thinks the idea of this project is good, but that he has a lot of questions about the company and the financing and more research on the financing and the company must be done.

Councilmember Boncquet stated she agrees with Mayor Fenn and Councilmember Lodzinski stating the proposed project is not a settling thing, that she looks at the income issue, but isn't really sure about the company that is proposing it. Councilmember Boncquet stated we also need to remember that when we have illegals coming across, we pay for them, whether it's at a facility or a hotel and that it's not that easy to return them across the border. Councilmember Boncquet then stated for her, it's a mixed bag, because it would bring in jobs and might help our economy, but that we need to do a lot more research.

Councilmember Lambert then spoke stating during call to the public, the Council is not allowed to speak, but that he appreciated comments and water concerns, stating this was a concern of the Council and was an issue they brought up when they spoke to the developer. Councilmember Lambert then stated the only facility that houses these people is in Philadelphia, so taxpayers are paying to send these families all the way to Philadelphia for holding at another facility and the federal government is looking for a better way to house these people locally. Councilmember Lambert then stated there are many issues to look at and would like to direct staff to investigate and come back to Council with information.

Mayor Fenn then stated this proposed project is different than a developer looking to develop some type of private facility, where the only role the City had would be to make sure the zoning was in place and they complied with any other regulations as any other building being built, but that this was more of a responsibility of the City, since we have to be involved with the bonding. Mayor Fenn then stated the nature of the facility, in that they are actually holding people, is a secure facility, so people can't get in and at the same time, they can't get out, but that it was not the type with guard towers. Mayor Fenn then stated the facility requires police authority of the municipality of where it's built. Mayor Fenn then stated the benefit, or trade off, are the jobs and the per diem fee the facility pays to the City depending on the number of residents being held and that Council must ask themselves if the jobs created and the revenue source outweigh the possible risk the City takes with the bonding, stating all of those questions still need to be resolved. Mayor Fenn then stated that he would support the facility if all of these issues were resolved; that we knew without a doubt that our bonding capacity would not be impaired in the future, if the higher paying jobs they say are going to be created, are created and that if the facility is going to be built anyway somewhere, why not Benson, stating that like it or not, we're paying for it one way or another, so if the federal government was going to spend the money, why shouldn't Benson get its share and take advantage of it.

Mayor Fenn then stated he agrees that Staff should research it thoroughly and investigate the company and get back to Council, but that meanwhile, he assumed the company would probably continue looking for property and come before Council as anyone else, to present their program.

Councilmember Lodzinski then stated the Council had done our own independent water study that indicated we had adequate water here, but that we could also do certain things to improve our supply, such

as conservation requirements for new developments, raising water rates, which Council had implemented. Councilmember Lodzinski then stated based on a regular prison, water consumption was about 60 gallons a day, a normal household is around 120 gallons a day and this proposed project would be a little less than that, since most of cooking and laundry would be in a common area, allowing for some conservation. Councilmember Lodzinski stated the proposed project was relatively small when we considered the build out of the incorporated area of Benson is 50,000 and that 200 residents was small compared to that.

Mayor Fenn then stated as we look as future development, we have to be realistic and realize that new development will use water, but take the measures to make sure we have adequate water and that if there was a development that used huge amounts of water, some type of industrial facility, they would look at it, but that something like this proposed project is relatively a low water user for the overall use of the property.

Councilmember Lambert then stated it was also mentioned that the developer was told to go north on Ocotillo, but that the Council didn't tell him where to go; the developer chose what places he looked at and told Council what they were thinking about. Councilmember Lambert then stated the City has no choice on that and the only thing Council would have rights regarding property, would be in zoning. Councilmember Lambert then stated that no open meeting laws were broken.

Mayor Fenn told members of the public that he hoped Council had addressed concerns, the this issue was very preliminary; that they came to Council and Council is responding with what we might do, but that it needs be presented to Council and that we will do research in the meantime.

DEPARTMENT REPORTS: None

ADJOURNMENT:

Councilmember McGoffin moved to adjourn at 8:11 p.m. Seconded by Councilmember Boncquet. Motion passed 5-0.

Mark M. Fenn, Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk