

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD NOVEMBER 23, 2009 AT 7:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

**MAYOR FENN
OPENED THE MEETING AT 7:00 P.M. WITH
THE PLEDGE OF ALLEGIANCE.**

**PRESENT WERE: MAYOR MARK M. FENN, VICE MAYOR TONEY KING, SR.
COUNCILMEMBERS JO DEEN BONCQUET, DAVID LAMBERT,
JOHN LODZINSKI, LORI McGOFFIN and AL SACCO**

INVOCATION:

Mayor Fenn introduced Vice Mayor King who offered the invocation.

**EMPLOYEE
RECOGNITION:**

None.

PUBLIC HEARING:

Mayor Fenn opened the public hearing to receive comments and questions from the public regarding the use of approximately \$334,000 in Fiscal Year 2010 Federal Community Development Block Grant (CDBG) funds from the Arizona Department of Housing Regional Account (RA) at 7:03 p.m. Mayor Fenn then stated a second public hearing would be held on December 14, 2009 at 7:00 p.m. and then read a statement informing the public about the CDBG funds and the criteria projects must meet to be eligible for the funding. Mayor Fenn then invited comments from those who signed in for the public hearing.

Kathy Suagee addressed the Council asking that Council consider the sewer line down Ocotillo Road, stating she thinks it would be a very good project. Ms. Suagee then stated while she was on Council, it was discovered how bad the condition of that sewer line was. Ms. Suagee then stated she realized the project may not meet low income status requirements, but hoped that Council would consider the project to the extent that it could. Ms. Suagee then stated another area that needs reparative sewer construction is the Comstock area and the flooding that occurs there, stating due to a flood a couple of years ago in July, several homes had to be abandoned and she wanted to remind Council of those projects.

Jeff Cook addressed Council stating he lives at Huachuca and 3rd Street and that his family has lived in that block for 55 years, giving him knowledge of the history of the area and that he thinks the funding should be used to address flood and storm water runoff. Mr. Cook stated he understood various efforts have been made to deal with flooding on the north side of the railroad tracks, that he drove around the neighborhood and that water is funneled toward Walker Street. Mayor Fenn stated Mr. Cook identified problems the City could look into and that Council would make a note of his suggested use for the funds and suggest Mr. Cook speak with Public Works Director Brad Hamilton, who can give Mr. Cook information regarding engineering and the status of addressing this situation. Mr. Cook asked if he could have a continuing discussion with Mr. Hamilton and stay informed of the City's position as the situation is addressed. Mayor Fenn indicated Mr. Cook could speak with Mr. Hamilton anytime.

Harry Golden addressed Council stating he was sure they were aware of the water drainage problem and that he would like to address a different problem. Mr. Golden stated he was thankful for the repaving on Walker Street, but that it was narrow, leaving dirt on each side for drainage and that the sheriff's office planted cactus on the side of the street. Mr. Golden stated he has filed a complaint and is worried about the

cactus growing on the side of the street and the affect it would have on the drainage issues in the future. Mayor Fenn indicated Mr. Hamilton could look into the situation.

Mayor Fenn then asked if there were comments from any others present who wished to speak on the potential use of the CDBG funds. Mayor Fenn then indicated there will be another public hearing for this purpose on December 14, 2009 at 7:00 p.m. at the Council meeting. Mayor Fenn then closed the public hearing at 7:18 p.m.

PUBLIC HEARING:

Mayor Fenn opened the public hearing to receive comments from the public regarding the proposed Major Amendments to the General Development Plan that include Land Use Designation and Text Amendments at 7:18 p.m.

Kathy Suagee addressed Council stating the last time Council met, they passed ordinance penalizing those in the community who are judged to be in violation of the City's zoning laws and ordinances and that she finds it ironic that they are now considering a contract with a developer in which they suspend all zoning laws and ordinances, stating that Section 8 in the agreement states that it supersedes all City laws, asking the Council if that is the legacy they want to leave behind. Ms. Suagee then said the contract states the taxpayers of Benson will repay the developer for the development of the water system infrastructure that will benefit people buying homes in the area of exit 302. Ms. Suagee stated the City went through this 15 years ago when they promised to payback the developer of exit 302 businesses for the sewer line he had to install. Ms. Suagee then stated the developer wants the Council to scrap the Benson Development Plan so carefully laid out, making what is now minimum development into the maximum density and that even the Planning & Zoning Commission has trouble visualizing this area as maximum development. Ms. Suagee then stated the so called legal notices did not include maps and gives so little information about what the public hearing was supposed to be about that it would have been impossible for people to know what the meeting was to be about, stating she did not think it was an appropriate notice of the public hearing. Ms. Suagee then stated she also wondered about the legality of changing the development plan in such a hurried and cavalier fashion and thinks that Council had all start working very hard to make sure they aren't being totally bamboozled.

Dianne Tipton addressed Council stating she would like to echo what Ms. Suagee said; that she didn't feel the notices were adequate to let people know what was going on or give them the opportunity to go to the meeting. Ms. Tipton then stated not that long ago, there was a referendum, Proposition 400, where people spoke loud and clear about how they felt about high density. Ms. Tipton stated the people did put their input on the General Development Plan and she thinks most of the voters, at least the ones she has spoken to and residents are not in favor of making this a high density area and she hopes there will not be cause for another referendum. Ms. Tipton then stated just because someone speaks out against this issue, doesn't mean they are against developers, development, builders or progress, but means that this particular avenue that some want to take the City down is one that the voters may not want to see. Ms. Tipton then asked Council to consider the feelings of those who put their input into the General Development Plan and try to recall how the people felt about it with Proposition 400.

Mayor Fenn asked if there was anyone else present who would like to speak regarding the major amendments to the General Development Plan.

Thomas Fitzgerald stated he would like to address Council. Mr. Fitzgerald then stated when he saw the proposed change in the density of 148 acres, he did a little research and thinks the Planning & Zoning Commission came to the same conclusion he thought was adequate and reasonable, which was the designation of Medium Density. Mr. Fitzgerald stated he doesn't think it's setting a good precedence to jump from low density to high density in one move and hopes Council will reconsider it.

After receiving no further comments from the public, Mayor Fenn closed the public hearing at 7:26 p.m.

CALL TO THE PUBLIC:

Stephen Insalaco addressed the Council regarding the appointment of Kathy Suagee to the Benson Historical Preservation Commission stating Ms. Suagee co-authored a book regarding the history of the area, he thinks she has a lot to contribute to the Benson Historical Commission and hopes Council approves the consent agenda as is and appoints her to the Commission.

Harry Golden, who had signed up for the Call to the Public, after being asked by Mayor Fenn if he wished to address the Council, indicated his comments were made during the public hearing regarding the use of CDBG funds.

Dianne Tipton addressed Council regarding the pre-annexation agreement stating she believes that Council needs to take more time to look at it closer and to do some fine tuning to the agreement. Ms. Tipton stated she was concerned about the hierarchy clause and asked why it was necessary, stating the proposed new clause seemed to contradict first half of the clause. Ms. Tipton then stated she had other concerns such as the cost for reimbursement and participation concerning water, stating not too long ago, the City made an agreement with the County that if someone wanted to annex into the City, they had to show where they're getting their water and they had to bring that water to the City in order to annex their property and she doesn't understand why there would be something in the agreement asking for a reimbursement for this cost. Ms. Tipton stated the agreement, as she reads it, isn't just for this one, but believes it will be set in place for all developers who wish to develop here. Ms. Tipton then stated she is concerned about the powers of persuasion that are forcing Mr. MacDonald to have his property annexed into the City and hopes that Council will consider what they are doing and Mr. MacDonald's rights, that she doesn't think Mr. MacDonald should have to be forced to be abiding by City laws since he didn't expect that when he purchased his property. Ms. Tipton then stated she doesn't think San Pedro Partners has given any indication as to why or how this would benefit the City of Benson and she doesn't think it's something we should do, that the Council has a responsibility to the City, to the people who live here and believes if they were able to ask the people, they would oppose forcing someone into an annexation.

John Whiteside addressed Council regarding the pre-annexation agreement. Mr. Whiteside's comments are incorporated into the minutes.

CITY MANAGER REPORT:

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

- November 24, 2009 – Community Watershed Alliance, 6:30 p.m., City Hall
- December 1, 2009 – Planning & Zoning, 7:00 p.m., City Hall
- December 8, 2009 – Library Advisory Board, 4:00 p.m., Library
- December 14, 2009 – City Council Public Hearing on Fiscal Year 2010 Federal Community Development Block Grant Funds, 7:00 p.m., City Hall
City Council Meeting, 7:00 p.m., City Hall
- November 26-27, 2009–HOLIDAY, City Offices Closed
- December 12, 2009 – Christmas on Main Street, Activities from 10:00 – 5:30 p.m. with a Crafts & Art Fair, Entertainment and an appearance from Santa

Mr. Nichols then stated the Benson Fire Department would be collecting new, unwrapped toys for the "Toys for Tots" program for the Benson Junior Women's Club. Mr. Nichols indicated the Fire Department will be on 4th Street, north of Safeway on each Saturday until December 19. Mr. Nichols also stated the Benson Junior Women's Club would like to be contacted with information on people who may need assistance, stating the contact information will be available at the Administration office at City Hall.

CONSENT AGENDA:

- 1a. Approval of Minutes of the November 9, 2009 Regular Meeting
- 1b. Appointment of E. Kathy Suagee to the Benson Historic Preservation Commission
- 1c. Invoices processed for the period from November 3, 2009 through November 16, 2009

Consent Agenda died for lack of a motion.

NEW BUSINESS:

1. Permission to purchase a 2006 Caterpillar 430D 4EO IT Backhoe Loader for \$39,900.00 from Empire Machinery of Tucson

Public Works Director Brad Hamilton addressed Council stating he was approached about purchasing the backhoe the City currently rents. Mr. Hamilton stated this would be a substantial savings, with a credit for our rental payments and \$5,280.00 in rebates which would bring the price down to \$39,900.00. Mr. Hamilton then stated he had searched on the open market and equivalent machines cost between \$73,000.00 and \$82,500.00, noting that he had found one piece of similar equipment for \$42,000.00, but that it had flood damage and was not running. Mr. Hamilton stated there was the possibility of financing the purchase, but after consulting with Finance Director Jim Cox, it was recommended to purchase the equipment without financing it. Mr. Cox then addressed Council stating while this was not a budgeted purchase, the City would be well served by making this purchase and proposed moving the \$24,000 in rental allocations in various funds that were applicable to this loader in this fiscal year to the capital projects funds and combine with a portion of the unallocated capital projects funds to pay for the purchase of the backhoe. Mayor Fenn asked if this piece of equipment in use everyday and if the City did not purchase it, if we would continue to rent it, with Mr. Hamilton verified its heavy use. Mr. Hamilton stated this backhoe would be a replacement for the backhoe that was stolen out of the City yard, adding that the City received \$52,000.00 reimbursement on the insurance claim. Councilmember Lodzinski moved to approve the purchase of the 2006 Caterpillar 430D 4EO IT Backhoe Loader for \$39,900.00 from Empire Machinery of Tucson. Councilmember Bonquet asked if she could amend the motion to include moving \$24,000.00 from the rental allocations to the Capital Projects Funds as recommended by staff. Councilmember Lodzinski indicated he was amenable to the amendment. Councilmember Bonquet then seconded the motion. Amended motion passed 7-0.

2. Resolution 71-2009 of the Mayor and Council of the City of Benson, Arizona approving an Agency Agreement with the Governor's Office of Highway Safety to receive \$6,500.00 in funds to purchase new Radar Equipment for the Police Department

Chief of Police Paul Moncada addressed Council stating this grant had been applied for earlier this year for approximately \$11,000.00 and was approved for \$6,500.00, which will be used to purchase 3 new permanent mount radar units for the police department. Mr. Moncada stated there are no matching funds required. Councilmember Sacco moved to approve Resolution 71-2009. Seconded by Vice Mayor King. Motion passed 7-0.

3. Review of Apache Park Site Plan

Public Works Director Brad Hamilton addressed Council stating he would like to have Michelle Johnson address Council regarding this item. Ms. Johnson addressed Council stating this grant was applied for in the last fiscal year and the final site plan had been presented to Council in April, 2009. Ms. Johnson stated we recently received the engineering drawings for the restrooms and gazebos, which was the final part of the grant that had been awarded, and that the plans were reviewed by contracted building official. Ms. Johnson stated the plans were not authorized for actual construction since we need more information on soils and footing, but that they are approved preliminary engineering plans. Ms. Johnson stated the City has been paid for the grant, the architect has been paid and grant has been closed. Mayor Fenn commented

on the concept tying into the theme of neighborhood, and stated the perimeter street light design looks modern. Ms. Ruth Wilson of the Benson Historic Preservation Commission stated they haven't chosen street lights yet and the drawings don't reflect the choices that will be made. Ms. Wilson stated the restrooms will be more modern with a stucco façade. Mayor Fenn then stated there could be some simple things can be done architecturally to tie the restroom architecture into the neighborhood homes. Ms. Johnson and Ms. Wilson stated they could speak with the architecture. Vice Mayor King agreed, stating he felt the park needs to tie into the homes and theme of the neighborhood of Apache Park. Ms. Wilson stated the restrooms will be stucco and have rod iron work to accent the neighborhood. Councilmember Lambert asked about the trees in the park and if any would be removed or added. Ms. Wilson stated we will not be removing any trees, but that the park is also used for soccer, so there won't be any additional trees placed in the park. Mayor Fenn then stated this item was for information only.

4. **Resolution 72-2009 of the Mayor and Council of the City of Benson, Arizona approving the application by the Benson Historic Preservation Commission for Historic Preservation Heritage Funds for assistance in completing the Apache Park Rehabilitation**

Michelle Johnson addressed Council stating this item was the second part of the Apache Park Rehabilitation which is to do soil sampling to determine what would be needed for the foundation of the footings for the buildings. Ms. Johnson stated the Historic Preservation Commission has applied for a 60/40 grant, which is under review, and that the City's portion would be approximately \$5,800.00. Vice Mayor King asked if this was in the current budget, with Mr. Cox stating he had spoken to Ms. Johnson regarding this grant and that there were unallocated grant funds in the budget. Mayor Fenn stated the estimates for the work seemed high and that staff should utilize the opportunity to look at other estimates. Vice Mayor King agreed, stating the economy has helped with competitive rates and that we need to take advantage of that. Councilmember McGoffin moved to approve Resolution 72-2009. Seconded by Councilmember Lambert. Motion passed 7-0.

5. **Resolution 73-2009 of the Mayor and Council of the City of Benson, Arizona approving a purchase agreement for unimproved real property in the City of Benson with Paul Wattles and Dan Wattles in the amount of \$10,000.00 to secure physical access to a City well site**

City Manager Glenn Nichols addressed Council stating in July 2009, he was contacted by Paul and Dan Wattles asking why the City was using their property next to the Foothills well site which is located on the southwest corner of their property. Mr. Nichols stated Mr. Wattles, Sr. in the early '80s had made an agreement that the City could use the property, but after checking City records, he was unable to find any paperwork showing that the property in question belonged to the City. Mr. Wattles, Sr. has now passed away, Mrs. Wattles is being moved and his sons are in the process of listing the property for sale. Mr. Nichols stated after numerous correspondences back and forth by e-mail and many phone conversations it was determined that the best course of action was to reach an agreement on purchasing the property from Paul and Dan Wattles. Mayor Fenn asked if the agreement was not only a physical access issue, but if there were water lines coming out of the tank going into Foothills Drive with Public Works Director Brad Hamilton confirming this.

Councilmember Sacco asked if there would be an issue with probate, with City Attorney Michael Masee stating part of the purchase agreement will be opening escrow and if there is any problems with the authority to deed the property to the City, escrow will not close. Councilmember McGoffin moved to approve Resolution 73-2009. Seconded by Councilmember Boncquet. Motion passed 7-0.

6. **Resolution 74-2009 of the Mayor and Council of the City of Benson, Arizona approving a Major Amendment to the General Development Plan changing approximately 148 acres from Low Density Residential to High Density Residential and Commercial**

Councilmember Sacco stated at the Planning & Zoning Commission meeting, the designation of Medium Density Residential was recommended and agreed to by the developer and asked why this item indicated

the change to High Density Residential. Mayor Fenn asked if Public Works Director Brad Hamilton would like to address the Council. Mr. Hamilton then addressed the Council stating the staff gives Council the original request as applied for and Planning & Zoning's recommendation for their consideration. Mr. Hamilton then gave a brief statement about this item indicating it was a change in the General Development Plan for properties on the west side of Benson, near Highway 90 and it was the necessary direction of the attorney at that time, that must be made before Council could approve the proposed pre-annexation agreement. Mr. Hamilton stated the developers that initiated the change were present and available to answer questions also.

Vice Mayor King asked if the public notices were advertised correctly, with City Attorney Michael Masee stating the notices did comply with statutory requirements and noted that the General Development Plan maps would have prohibitively expensive to publish or would have been such a small size that they would have been completely uninformative. Mr. Masee then stated the maps were at all times available through out the public notice process at City Hall and on the City's website.

Mayor Fenn then stated Council had opportunity to read through the packet and notes from the Planning & Zoning Commission and that the last General Development Plan amendment was done in 2006. Mayor Fenn then stated he felt the proposal made sense, as far as that area of the City, the density given, the commercial corridor and that adjacent development to a commercial development seems to be a higher density, certainly around a freeway interchange which was hopefully a busier commercial corridor, and that it seemed to keep in the general spirit of the General Development Plan.

Councilmember Sacco stated the approval of this item does not imply approval of the pre-annexation agreement, with City Attorney Michael Masee stating that was correct, and these were two independent items. Mr. Masee stated there is a nexus between the two since the General Development Plan amendment had to be approved in order to consider the pre-annexation agreement, since the statute regarding development agreements requires that before a pre-annexation development agreement can be signed, the contemplated development has to be consistent with the General Development Plan. Mr. Masee then stated the proposed amendment to the General Development Plan is such that would be consistent with the pre-annexation agreement.

Mayor Fenn then stated the MacDonald property, is surrounded by the proposed annexation and that he would like it noted that Mr. MacDonald, in a statement dated October 22, 2009, supports the proposed designation of High Density and Commercial. Mayor Fenn then asked if there were other comments and that Council only sees proposed major amendments to the General Development Plan once a year.

Councilmember Lambert the read from the Planning & Zoning minutes that "Commissioner Cliff Deane motioned to recommend approval of the General Development Plan map amendments to Council with the recommendation that the land use designation for all 5 parcels in question be changed from High Density Residential/Commercial to Medium Density Residential" and stated all 6 Commissioners present recommended the change to Medium Density. Councilmember Sacco stated that is what he brought up first during this discussion. Councilmember McGoffin then stated the amendment had to be brought to Council the way it was applied for and that the Planning & Zoning Commission could only make recommendations for Council's consideration. Councilmember Sacco asked about the process with City Attorney Michael Masee stating that Councilmember McGoffin was correct in that the notices have been published consistent with the applicant's original application; the Planning & Zoning Commission made a recommendation to alter the designation to another option that is within the range of what Council can do, which is to approve it as originally applied for, deny it or approve with a lesser density or lesser planning designation, stating these are all the options on the table for City Council to act on. Mr. Masee then stated the applicant was present, if Council would like to hear from him.

Mr. Jerry DeGrazia, San Pedro Partners, addressed Council stating Mr. Ashton was also present and available to answer questions. Mr. DeGrazia then stated Councilmember Sacco was correct when he says that Mr. DeGrazia agreed with Medium Density Residential at the Planning & Zoning meeting, but that he

would like to qualify that; stating the Planning & Zoning Commission wanted to delay or postpone the item, which would result in the change waiting another year. Mr. DeGrazia then stated, respectfully, they have been standing in front of Council for over 3 years on this particular property, noting that his other property in the City is identified as High Density Residential, and that he was concerned about getting beyond the Planning & Zoning Commission to have a chance to get the proposed change in front of the City Council to make his case. Mr. DeGrazia apologized to Councilmember Sacco, stating he wanted Council to take action on the item this year and asked them to approve the application as it was submitted, stating the rationale for the proposed change was that the City side of the interstate and quadrant of the interchange has great possibility down the road. Mr. DeGrazia then stated the amendments are a guideline as to what Council sees could be built in this area after they, hopefully, come into the City and after they request zoning. Mr. DeGrazia stated the parcel literally to the west, that they own, designated High Density Residential, is zoned B2 Commercial and that properties to the south, at least the one they own, is also High Density Residential, stating he felt and at that time, the City felt that area should always be for a residential use. Mr. DeGrazia stated the real issue that will come up, assuming the amendment is approved and assuming it goes through zoning, is going to really relegate itself to can this property support Commercial? Mr. DeGrazia stated there is no question that it's the right location, that supporting itself and access would be the issues. Mr. DeGrazia then stated he felt it should be Commercial at this time, and as time passes and if something does positively happen as far as access in the future, then Council wouldn't have to go through this process again. Mr. DeGrazia then noted that their property is the only High Density Residential designation and that the other properties will be identified as Commercial. Mr. DeGrazia then stated he respectfully requests the City Council to consider what was proposed originally and apologized to Councilmember Sacco for giving him the wrong impression, which Councilmember Sacco rightly got.

Mayor Fenn stated Council was not approving any zoning, but was looking at approving an amendment to the General Development Plan that says that that area down the road has the potential to receive the zoning under that designation, which would only come after the whole rezoning process, going through the Planning & Zoning Commission before coming to Council. Mayor Fenn then stated he was supportive of the amendment since the property to the west is designated High Density Residential and that a good portion of the property that would be annexed would be Commercial. Mayor Fenn stated this basically completes that portion of their existing property to be in compliance with what they already have to the west. Mayor Fenn then stated the resolution as stated on the agenda is to take action regarding the change in the plan to High Density Residential and Commercial.

Councilmember Lodzinski stated he believed he was the only Councilmember on the Planning & Zoning Commission when the original General Development Plan was approved. Councilmember Lodzinski then stated when the Planning & Zoning Commission looked outside the City limits, it was pretty general and quick look and they viewed the plan as a guideline to the County and with the intention of the plan being a living document, subject to change on a regular basis as the economic forces dictated. Councilmember Lodzinski then stated if you really get down to it, High Density refers to the number of homes per acre and that while there is the potential of putting homes on the property, Council not only has to approve the zoning, but also has to approve the plat before any project moves forward. City Attorney Michael Masee stated there is another step which is the annexation ordinance, stating there are really three steps; the annexation ordinance, the rezoning, and the platting process. Councilmember Lodzinski asked if the next item affect this property at all, with Public Works Director Brad Hamilton stating if it is so, the impact would be minimal.

Councilmember Lodzinski moved to approve Resolution 74-2009. Seconded by Vice Mayor King. Motion passed 4-3 with Councilmembers Bonquet, Lambert and Sacco voting nay.

7. **Resolution 75-2009 of the Mayor and Council of the City of Benson, Arizona approving a Major Amendment to the General Development Plan adopting Certain Text and Map Amendments proposed by City Staff**

Public Works Director Brad Hamilton addressed Council stating this amendment was completely brought

forward by staff and covered two areas; map changes and text changes. Mr. Hamilton stated the map changes were to connect washes, noting that while we had a little more defined map, its still a high altitude map showing basic terrain and that a proposed project would still require locating washes, obtaining a hydrology report, finding the flood control limits, locating the 404s and other things to address wash issues during the platting process. Mr. Hamilton stated the second area was the text amendments initiated by the State's requirement for the City to complete the State scorecard, noting that the City hired WC Scoutten and that it was their recommendation to change the text to give us a better score with the State. Mr. Hamilton stated the scorecard will be used in the future to decide certain grant funding available through the State, but that it hasn't been defined how the scorecard will be used. Councilmember Lodzinski moved to approve Resolution 75-2009. Seconded by Vice Mayor King. Motion passed 6-1 with Councilmember Sacco voting nay.

8. **Discussion and possible action regarding the Pre-Annexation and Development Agreement 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**

Public Works Director Brad Hamilton addressed Council stating this item was to bring back the pre-annexation agreement that Council approved in principle with a change requested in Section 14, "Hierarchy of Documents." Mr. Hamilton stated since Council could not approve the agreement until a General Development Plan Amendment was made, the agreement is now before Council for action and that it contains a proposed revision in Section 14.

Mayor Fenn stated he would liked to clear up some inaccuracies in previous statements made regarding the reimbursement of infrastructure costs, stating if any developer installs within his property, water infrastructure, it's that's persons responsibility to pay for that cost. Mr. Hamilton stated this was correct, that the reimbursement mechanism in this agreement is for the well site only. Mayor Fenn then stated the City will not pay the developer, but will give a credit against the impact fees that would be used to develop that, reiterating that no Benson taxpayer will have to come up with any money to repay the developers, that it's just a credit from fees that the developer would have been charged, but there's no need to charge those impact fees because the developer will have already installed the system, stating again that there is no out of pocket from any existing Benson citizen and that it was an inaccurate statement that was given before.

Mayor Fenn then stated Section 14 was revised and that it did not give up any zoning enforcement down the road. City Attorney Michael Masee stated that was exactly right, indicating that in several areas in the agreement, it is explicit that the Council retains full discretion of the exercise of it's legislative powers in the future as we go down the road with this particular developer toward developing this property, including the annexation decision itself which is still vested in the discretion of the City Council and any kind of rezoning decision or ordinance in the future, stating the agreement preserves the discretion of the City Council. Mr. Masee stated what the agreement does do, if the ordinance isn't adopted or if the rezoning isn't approved, is to allow the parties to back out, that the agreement is presenting some sort of a map of how we go forward with the development, so that both sides can understand what the process is and what the options will be depending upon the decisions that the City Council will make in the future.

Mayor Fenn stated in the past some annexation didn't protect the rights of the City and that as he reads this agreement, it does but at the same time, it can assure an investor in the City that he can reasonably expect some direction from the City. Mayor Fenn then stated this was at this point and that the Council five years from now may have a totally different view on the matter. City Attorney Michael Masee stated the preservation of the discretion of those clauses were designed to make sure that the future Councils will have full exercise of its legislative power and can enforce them. Mr. Masee then stated Section 14 was standard language based on cities' many ordinances and resolutions on the books and that developers can't be charged with knowing them all, but that this section addresses those specific provisions of the agreement which the parties have come together and negotiated, that those provisions will be implemented even if there is any kind of contrary ordinance out there. Mr. Masee then stated as a result of one of the Councilmember's comments in May regarding the possibility of a general ordinance that is adopted later on

that would be applicable to the project, that the last sentence in Section 14 was submitted by the applicant's attorney, to modify the agreement, again preserves the discretion of the legislative authority of the Council in the future to say if there is a specific ordinance adopted in a general Citywide application, it would also apply to this property.

Mayor Fenn then noted a minor, technical change that should be made to the agreement on page 5, number 7, under water services, from "In the event that the fails..." to "In the event that the 'City' fails...". Mayor Fenn then stated another issue he heard earlier, was that this pre-annexation agreement does not require at this point, the developer bring forward any type of water adequacy data, stating with the annexation, they would have to provide that information, then verifying this with Public Works Director Brad Hamilton who stated this would have to be done with the annexation or before any plat was approved.

Mayor Fenn then stated that he would like the public to know that the trend for cities and for the City of Benson would be to not enter into pre-annexation agreements, but that given the history of this particular property, he felt a responsibility to do due diligence and to continue with it. Mr. Hamilton stated a lot of cities are not looking at pre-annexation agreements.

Councilmember Lodzinski asked if it was a County rule or State rule that requires a development to provide its own water with Mr. Hamilton saying it was a State rule the County adopted and once the County accepted it, it applied to the City, that before they can get a subdivision plat they have to have assured water and have to prove up their own.

Councilmember McGoffin moved to approve the Pre-Annexation and Development Agreement 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. Seconded by Councilmember Lodzinski. Motion passed 6-1 with Councilmember Sacco voting nay.

9. **Review of City Finances with emphasis on October, 2009, financial results, the City's financial positions at October 31, 2009, sales tax collections through October, 2009, and discussion of future City finances**

Finance Director Jim Cox addressed Council beginning with citywide financial highlights, stating cash has decreased \$221,000, but that it was due to a \$220,000 CDBG payment to the contractor and didn't receive the reimbursement until the first week in November indicating our cash is about where it was last month. Mr. Cox then stated the citywide fund balances increase by \$114,000 during the month of October, but year-to-date were still down \$334,000 which is similar to the payment of \$360,000 to Zion's bank on July 1, 2009, so we're right at breakeven on our fund balances for the year with the exception of our debt payment. Mr. Cox stated the trends were almost a carbon copy of last year at this time. Mr. Cox then addressed citywide financial results, stating City revenues increased by \$196,000 in October compared to October of last year, but that it was due to grant revenues from CDBG and that year-to-date decreased \$536,000, stating \$300,000 of that decrease was due to grants revenues being down, stating last year the City had a very large airport grant. Mr. Cox then addressed the summary of all City funds, which includes personnel, the general fund and the enterprise funds, stating gas revenues are down \$98,000 due to the weather and the price we're paying for gas, personnel costs were down \$55,000 in October and down \$121,000 year-to-date citywide, due to unfilled positions, expects to be flat at the end of the fiscal year, and that other costs are almost identical fund by fund, which are direct operating costs. Mr. Cox stated the General Fund revenues increased \$6,000 in October compared to October of last year, but that we're still down \$49,000 below this time last year in overall revenues, which is very close to the reduction in sales tax revenues. Mr. Cox then addressed City tax collections stating last month it was up \$10,000, and this month it was down \$10,000, due to timing, and that he felt we were bouncing right along where we were last year, stating even though it's down \$35,000 year-to-date, we're right on budget, and these are the slowest months of the year, so he's pleased with that. Mr. Cox then stated expenditure wise, personnel costs in the General Fund are down, just like citywide and again, he expects them to be flat at the end of the fiscal year. Mr. Cox stated other costs are down \$31,000 year-to-date, probably due to timing, and that he expects them to

be flat at the end of the fiscal year. Mr. Cox then addressed our Fund Balance stating it's up \$1,000 for the month of October, which is essentially a breakeven, and still down \$147,000 year-to-date, but that it's to be expected since these are our low revenue months. Mr. Cox then said that considering it's a slow time of year, we're doing quite well. Mr. Cox then spoke about the enterprise Funds, stating the Gas Fund showed a profit, but is still down for the year, noting it should be showing a good profit over the next few months and be back to close to breakeven by year-end, that the Water Fund was up \$31,000 for October and \$93,000 year-to-date that was due to timing of the billings and exceptionally dry weather and the Wastewater Fund is up \$33,000 year-to-date, which is basically a breakeven. Mr. Cox then addressed the future, stating our local sales tax revenues are almost identical to last year and that he expects it to continue and possibly improve slightly, noting it appears to be a carbon copy of last year, except for the decrease in our State shared revenues, which is a permanent decrease and stated we have to make up by saving money or generating different revenue sources.

Mr. Cox then briefly addressed City Tax Collections, including Sales Tax, Construction Tax and Bed Tax collections. Mr. Cox stated total sales tax collections appeared to be down a bit, but that includes our portion of the State shared revenues and taxes, which drag us down. Mr. Cox stated the General Fund sales tax collections are similar to last year, that Construction sales tax collections are a little lower than last year, but he believes it's going to finish a little stronger than last year, that Bed taxes are just slightly below last year, but basically running along the same line and that Restaurants and Bars are doing a little better this year than they have the prior two years. Mr. Cox then compared the City sales tax collections to State tax collections, noting the interesting thing about the City sales tax collections is that they are very consistent with what they were last year, which is why he says we're bouncing along the bottom and thinks we'll continue to do that, while the State tax collections show a continuing deterioration, meaning statewide, the economy retail sales are continuing to deteriorate. Mr. Cox stated the bottom line is that we can survive in this economic environment if we don't have any unexpected expenditures.

Mayor Fenn thanked Mr. Cox for the update on the City's finances.

COUNCIL DIRECTIVES:

None.

DEPARTMENT REPORTS:

None.

ADJOURNMENT:

Councilmember McGoffin moved to adjourn at 8:44 p.m. Seconded by Councilmember Lodzinski. Motion passed 7-0.

Mark M. Fenn, Mayor

ATTEST:

Vicki L. Vivian, City Clerk

Mr. Mayor, Councilmembers, Ladies and Gentlemen, Good Evening!
My name is John L. Whiteside, and I live at 1091 West Possum Lane.

Ref: Item 8. Your packet contains my previous comments regarding the San Pedro Partners Pre-Annexation Agreement. I would like to add the following:

I haven't seen it, but I have heard that Harlan finally provided a copy of their Power of Attorney (to SPP) to Benson. You need to confirm this before proceeding.

Pg 3 F, 3rd and 2nd lines up from bottom. The words, after [benefit of] "City", "and the Public" were ordered stricken/Deleted by Staff; and, agreed to by SPP Attorney Rob Ruah in his letter of 11/19/08. DELETE these words!!!

1. ANNEXATION.....

1.1 2ND line from bottom: "hold the Public Hearing". My memory fails me. Did we hold the Public Hearing?

Pg 5 7,2 TransferWater Rights

I am not aware of any SPP Hydrology Report. This is (or should be) required before annexation. CHECK Az. Revised Statues.

Pg 7 10 ROADWAY IMPROVEM,ENTS

3RD AND 4TH sentences down: DELETE remainder of sentence ending in "Owner's Properties" The part labeled (ii) is inserted to benefit Smith Ranch, which is NOT part of Benson. NOTICE 10,2

Pg 9 14 & 15. SEE my Pre-Annex notes of 12 January, 2009; Pg SPP 4.

22 I hope we have our wading boots on. This Entire Agreement creates a Partnership. Last Line: DELETE11 Denies access to courts.
Thank you for your time and attention.