

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD MARCH 10, 2014, AT 7:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

CALL TO ORDER:

Mayor King called the meeting to order at 7:00 p.m. with the Pledge of the Allegiance. Mayor King then introduced Sarah Isakson of the St. Raphael in the Valley Lutheran (Episcopal) Church who offered the invocation.

ROLL CALL:

Present were: Mayor Toney D. King, Sr., Vice Mayor Al Sacco, Councilmembers Pat Boyle, Ron Brooks, Jeff Cook, Chris Moncada and Peter Wangness.

EMPLOYEE RECOGNITION: None

PROCLAMATION: None

PUBLIC HEARING: None

CALL TO THE PUBLIC:

Danna Judd addressed Council stating 2 meetings ago she was presented a certificate for 5 years of service with the City and she appreciated the recognition from the Council. Ms. Judd then stated she appreciated the dedication and loyalty of each and every one of her co-workers and supervisors most of all, adding 5 years could have been a very slow time for her had she not had their support and the knowledge that they all work as a team, always. Ms. Judd then stated the employees of this City are what keep it running, not the Council, stating employees are the ones who work on holidays to make the City sponsored events possible, are the ones who haul raw sewage at 5:00 a.m. on a Saturday morning; not Council. Ms. Judd then stated employees are the ones who take care of citizens when mother nature throws a hard freeze at us and water pipes are bursting all over town, not the Council. Ms. Judd stated it is horrifying to hear a loudmouth around town is taking photos of employees when they are on their breaks and is threatening their jobs, adding it is wrong and horrifying. Ms. Judd then stated it is horrifying to think that this Council will just stand by and watch this happen to their employees, adding it is not right that the Council stand by and watch the employees be bullied and threatened. Ms. Judd then stated the Mayor promised at a meeting on June 20, 2013 that before anyone would be let go from the City, he would tender his resignation and stated she hoped he would keep his word. Ms. Judd then stated in August of this year, 5 of the 7 Council seats would be up for election, adding in the best interest of the residents of the City, the employees (noting most of the employees are City residents), the visitors, the business owners and the surrounding communities, each Councilmember up for election should consider throwing in the towel. Ms. Judd then stated this Council has been the most unproductive, vicious, self-serving Council she has ever seen and they have done no good here. Ms. Judd then stated she is in week 2 of her 2-week notice and she will no longer be subject to the humiliation brought on by these Council meetings. Ms. Judd then stated the Council has made it a very unhealthy and very hostile work environment for each and every employee and none of the employees deserve it. Ms. Judd then stated the Council would be told by an ignorant businessman that the Council saves money when employees leave or are let go, adding that is not what the Council is doing and they are not saving money; that it is called being short-staffed. Ms. Judd then stated no well-oiled machine will run properly without all of its working parts and asked Council to think about that and keep it in mind when they are working on the new budget. Ms. Judd then stated the Council has choices to make and they don't have to take it from her, that there is nowhere else to cut from, adding it is time to start learning how to make money and that is what the Council needs to do. Ms. Judd then stated for the sake of all those affected by the Council's decisions, they either needed to be productive and get work done and do it with respect or they needed to just get out.

Stephen Insalaco addressed Council regarding New Business Item 4, thanking Mr. George Scott for the opportunity to meet with the Corporate Development and Marketing Manager for Armstrong Consulting. Mr. Insalaco then spoke in favor of the proposed agreement between Armstrong Consulting and the City. Mr. Insalaco then spoke about capital improvements he would like to see at the airport, including extensions of the airport's runway and the need to build additional aircraft hangars. Mr. Insalaco spoke about the need for an airport advisory committee and asked Council to consider reconstituting the former committee. Mr. Insalaco then stated the citizens of Benson have several economic development teams working towards growing the economic prosperity of this community and he hoped that there would be a demonstrated collaborated effort between the various teams to bring greater economic growth to the community. Mr. Insalaco's comments will be retained with the Council packet.

Paul Lotsof addressed Council stating he would like to thank Councilmembers Boyle and Wangsness for putting his radio studio matter on the agenda, adding it has taken him years to get to this point. Mr. Lotsof then stated he was told the main contention of this issue is a question of whether his proposed amendment to the Zoning code must be submitted to the Planning & Zoning Commission for their consideration. Mr. Lotsof then stated he would have no problem with letting the Commission pass judgment on the proposal if it weren't for one factor; the amount of time it would take, adding if the matter were introduced to the Planning & Zoning Commission, it would set him back at least 2 months. Mr. Lotsof then stated the delay would pose a problem for 2 reasons, the first reason being that one of his employees is also the shop instructor at St. David High School, adding the employee will have some free time available when school lets out in May and that would help him a lot in improving a new building for the radio studio, but the employee will not be available after school starts in August. Mr. Lotsof then stated the second reason is that a couple of years ago, his central air conditioning went bad and he found out it would be very expensive to repair it, adding since he was considering moving to a different building, it would make no sense to fix the old air conditioner. Mr. Lotsof then stated he installed 2 new window air conditioners, but it gets very hot and they are grossly inadequate, adding that moving into the new building in a timely fashion would solve that problem and his employees would be able to say it's "cool" that the Council helped them. Mr. Lotsof then stated he would like to emphasize that any member of the Planning & Zoning Commission would have an opportunity to be heard if they would like to comment on his proposal when it came to the Council. Mr. Lotsof then stated he didn't think it should be necessary for the City Council to pass a special ordinance that allows the owner of a manufactured building to replace that building with a newer and better manufactured building. Mr. Lotsof stated when his business moved into the existing trailer in its present location, he got a permit from the City and after having it installed; the inspector looked at the installation and certified it for occupancy. Mr. Lotsof then stated for 30 years there has been no problem with the installation and he can only wonder why there is the need for all this complexity that currently exists, adding it wasn't necessary in the early 1980s and asked why this simple thing is being made difficult.

J.T. Moffett addressed Council stating they have two crucial executive sessions that can have a serious impact on the community and whether the impact is positive or negative, the Council will decide. Mr. Moffett stated on the issue of upgrading the trailer for CAVE FM radio, Mr. Lotsof has been told by the Zoning Administrator that there are multiple City and federal requirements that must be met, but the truth is, the only mandated requirement is a handicap ramp and all the rest is typical Benson City Hall nonsense. Mr. Moffett then stated if you look back over the past several years, you will notice a sick pattern of the City caving in for wealthy investors and suffocating the small businessman. Mr. Moffett stated the Council could just examine the cases involving Mr. Hartley and the golf course, Mr. Hirani and the Safeway Plaza and Mr. Rose from Little Caesar's Pizza, adding all those men were abundantly wealthy and all of them got what they wanted from the City. Mr. Moffett stated Wal-Mart and Tractor Supply were both treated like royalty when they came to Benson, he then stated the small businessmen such as Stagecoach Trails, Radio Shack, Postal Annex and now CAVE FM have all been harassed, ground into the dirt and/or sued by the City of Benson. Mr. Moffett then stated the pattern is revolting, adding when a small business wants to upgrade, the City gives them red tape and grief while bending over backward to appease the wealthy business owners. Mr. Moffett then stated the Council has both an opportunity and an obligation to stop this vicious cycle and instead of taking anymore directives from Mr. Garcia and the City Attorneys, the Council needed to do the directing. Mr. Moffett then

stated CAVE FM has been an asset to this community for 30 years, adding he remembers several years ago, he bought his wife a horse which ran off as soon as they got it home and CAVE FM helped get it back by putting out regular public announcements about the lost horse. Mr. Moffett then stated CAVE FM has done this for every need in the community. Mr. Moffett stated the morning DJ, Mr. Joaquin Haro, loves and supports this community and it shows. Mr. Moffett then stated CAVE FM needs this new trailer and they should not have to pour a slab and pave a driveway, which are a couple of the ridiculous demands made by Mr. Garcia and company, adding fire sprinklers are not a mandate either. Mr. Moffett then asked the Council to come out of the executive session and direct Staff to make it happen without all the extra burdens. Mr. Moffett then spoke about Stagecoach Trails, beginning with Jay Kendrick. Mr. Moffett stated Mr. Kendrick came to Benson several years ago and purchased a down and out mobile home park and replaced the dilapidated, rat-infested trailers with nice homes over 30 times. Mr. Moffett stated Mr. Kendrick's efforts and money enhanced the City and gave a nice clean home to many people who could not qualify for financing otherwise. Mr. Moffett stated Mr. Kendrick has never harmed anyone in this community and has done a world of good in Benson. Mr. Moffett stated even after 4 years, he thinks Mr. Kendrick and his family are still in a state of shock, wondering why the City of Benson has pursued him so viciously. Mr. Moffett then asked the Council to consider the question, "What has Jay Kendrick done wrong?" adding if the Council asked the same question about Mr. Masee, Mr. Fenn, Mr. Nichols, Mr. Cox, Mr. Garcia, and so on, they would have a good many answers come to mind, then asked again what Jay Kendrick has done to deserve this torment from the City of Benson and its staff for the past 4 years. Mr. Moffett then stated the Council all received an email that clearly demonstrates the cases at all levels of the judicial system won by Stagecoach Trails. Mr. Moffett then stated the court rulings are final, and asked why the Council is listening to some of the same voices that led them down this path and lost ruling after ruling. Mr. Moffett stated the City issued a permit on Space 27 two years ago in compliance with a court order and the judge ordered that the permit was to be issued without restrictions, and then asked why Mr. Garcia and the City Attorneys are going back to court on Space 27. Mr. Moffett then asked why Mr. Garcia, who is a named defendant in the lawsuit, is allowed to continue harassing Jay Kendrick under the guise of doing his job, adding this is nothing more than the same harassment game the City has been playing against the small businessman for decades. Mr. Moffett stated there can be no good purpose and certainly no good fruit come out of this hearing. Mr. Moffett then stated the insurance money has run out on this case and it's going to cost the taxpayers around \$30,000 to go back to court on this permit, therefore, the insurance pool's attorneys should not dictate any further action in this case, unless they want to do it for free. Mr. Moffett then stated there is an 80-year-old woman living in her home on Space 27 who would be evicted if Mr. Garcia has his way in court. Mr. Moffett then stated it is time the Mayor and Council stop the madness and the abuse of power at City Hall and stop being led around by the City Attorney's sketchy advice. Mr. Moffett stated the Council could start a new chapter in Benson history tonight and let CAVE FM put their trailer in and direct the attorneys to cancel this vindictive and fruitless court case against Stagecoach Trails and Jay Kendrick and in doing so, defend the rights of all property owners in this fine community.

CITY MANAGER REPORT:

Interim City Manager Brad Hamilton addressed Council, giving the dates of upcoming meetings and events.

- Tuesday, March 11, 2014 – Library Advisory Board, 4:00 p.m., Library
- Wednesday, March 12, 2014 – Planning & Zoning Citizen Review, 7:00 p.m., City Hall
- Monday, March 24, 2014 – City Council Worksession, 6:00 p.m., City Hall
 City Council Public Hearing on Transit, 7:00 p.m., City Hall
 City Council Meeting, 7:00 p.m., City Hall
- Tuesday, March 25, 2014 – Community Watershed Alliance, 6:30 p.m., City Hall
- Wednesday, March 26, 2014 – City Council Worksession, 6:00 p.m., City Hall

- March 28-30, 2014 – Crossroads Country Music & Poetry Gathering, River Basin Ranch

Mr. Hamilton then informed the Council that that a Request for Proposals (RFP) for IT services would be advertised next week.

EXECUTIVE SESSION: Pursuant to A.R.S. §38-431.03 (A)(3) & (4), for discussion or consultation for legal advice with the attorney or attorneys of the public body regarding the City's position and to instruct its attorney(s), in accordance with A.R.S. section 38-431.03(D), regarding pending litigation, Stagecoach Trails Mobile Home Court (MHC) vs. the City of Benson, Arizona, et. al. and 1983 Civil Rights Claim – Stagecoach Trails Mobile Home Court (MHC), LLC and Jay Kendrick vs. the City of Benson, Arizona, et al. and/or 1983 Civil Rights Claim – Dianne Tipton vs. the City of Benson, Arizona, et. al.

Mayor King stated the Council would be addressing the Executive Sessions regarding Stagecoach Trails at this time. Councilmember Moncada moved to enter into an executive session with the Mayor and Council, the Interim City Manager, the City Attorney, outside legal counsel assigned by the Arizona Municipal Risk Pool Insurance (via telephone) and the City Clerk at 7:20 p.m. Seconded by Councilmember Boyle. Motion passed 6-1 with Vice Mayor Sacco voting nay.

Council reconvened at 8:08 p.m.

NEW BUSINESS:

1. **Consent Agenda**

- 1a. Minutes of the February 24, 2014 Regular Meeting
- 1b. Resignation of Ina Jones from the Benson Library Advisory Board
- 1c. Appointment of Maizie Kay McMillan to the Benson Library Advisory Board
- 1d. Invoices processed for the period from February 12, 2014 through February 26, 2014

Councilmember Moncada moved to approve the Consent Agenda. Seconded by Councilmember Brooks. Motion passed 7-0.

2. **Presentation of Certified Audit Report for the City of Benson for the fiscal year ended June 30, 2013**

Finance Director Megan Moreno introduced Jim Usevitch of Colby & Powell who was in attendance to present the audited financial statements for the fiscal year ending June 30, 2013. Mr. Usevitch addressed Council stating they should have all received the audit report beforehand from Ms. Moreno. Mr. Usevitch began by speaking about management responsibilities, stating management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America. Mr. Usevitch then stated management is responsible for the design, implementation and maintenance of good internal controls so the financial statements are presented fairly without material mistakes. Mr. Usevitch then addressed the auditor's responsibilities, stating the auditor is to express an opinion on the financials based on their audit, adding the auditor is required to go through records and gather evidence that all the numbers on the financial statements are materially correct; they are required to look for fraud and if they ever find material fraud, they are required to report it. Mr. Usevitch then stated if they find fraud that is not material, they still need to report it to the proper level of management; then noted he was very happy to report they found no fraud during the audit. Mr. Usevitch then stated in the auditor's opinion, the financial statements present fairly, in all material respects, the respective financial position of the governmental activities and business activities. Mr. Usevitch then stated this audit was the first audit under Ms. Moreno, adding it went very well. Mr. Usevitch then stated there was 1 audit finding as a repeat from last year, adding he spoke with Ms. Moreno and she has a good plan to resolve that finding for next year. Mr. Usevitch then stated he could address something specifically should Council ask him to or he would be happy to answer any questions the Council had.

Councilmember Boyle asked about the audit finding with Mr. Usevitch stating the Finance Department does a good job month-to-month, but at the end of the year, Staff should be cleaning up the financial statements and making some adjustments if they are needed to close out everything properly, adding with grants, the City usually gets an extra 60 days to close the grant out and Staff just needs to make sure everything is closed out correctly.

Councilmember Cook stated he liked that there was no fraud found and asked if there was a specific statement about it in the report. Mr. Usevitch stated under auditor responsibilities, it states that the procedures selected in the audit depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. Mr. Usevitch then stated, again, the auditor is required to look for fraud and if any is found, they are required to report it. Councilmember Cook then asked if there was any specific statement in the audit report that stated no fraud was found with Mr. Usevitch stating in our auditor's opinion it says that on all material respects; the financial positions are correct, adding this means all the numbers are correct and none are wrong due to error or to fraud, but the report doesn't specifically say that "no fraud was found." Mr. Usevitch then stated the Council will have to refer to the auditor's opinion, but added if any fraud had been found, they would have been required to report it to the Council; therefore since their opinion states that there were no material deficiencies, it means there was no fraud found. Mr. Usevitch then stated he would like to thank Ms. Moreno and her staff, adding they are very willing to help his office. Council thanked Mr. Usevitch for his presentation.

3. **Discussion and possible action regarding Resolution 2-2014 of the Mayor and Council of the City of Benson, Arizona, urging the Arizona Legislature and Governor to direct dedicated transportation funding such as HURF to its intended uses**

Interim City Manager Brad Hamilton addressed Council stating with this resolution, the City would be joining other cities and towns, counties and transportation planning organizations throughout the State in asking the State legislature and the Governor to restore the Highway User Revenue Funding for street maintenance to their original levels, adding over the past few years, it was borrowed heavily from to support the General Fund, but now that the economy has turned around, they are being asked to restore the funding. Councilmember Brooks stated he had spoken to Ken Strobeck at the League of Arizona Cities and Towns and hopefully, this issue will be before the Senate next Friday, adding the issue is approximately \$115 million coming back to cities and towns throughout Arizona and if it passes in the Senate, it will be before the Governor to sign. Councilmember Moncada moved to approve Resolution 2-2014. Seconded by Councilmember Brooks. Motion passed 7-0.

4. **Discussion and possible action regarding Resolution 3-2014 of the Mayor and Council of the City of Benson, Arizona, entering into an independent contractor's agreement with Armstrong Consultants, Inc. for consulting engineering services on as as-needed basis**

Interim City Manager Brad Hamilton addressed Council stating this contract is in response to a Request for Qualifications for airport engineers. Mr. Hamilton stated the City had 3 firms submit proposals and after the committee evaluated them, they found Armstrong Consultants to be the strongest submittal. Mr. Hamilton then stated the committee was recommending the contract with Armstrong Consultants, Inc.

Councilmembers Brooks and Wangness both expressed they were in favor of the RFQ from Armstrong Consultants. Councilmember Moncada moved to approve Resolution 3-2014. Seconded by Councilmember Wangness. Motion passed 7-0.

5. **Discussion and possible action regarding the "Call to the Public" form**

City Clerk Vicki Vivian addressed Council stating at the January 13, 2014 Council worksession, the Council discussed the Call to the Public and a proposed new form to use when the public is making their request to address the Council during the Call to the Public. Ms. Vivian then stated at the February 24, 2014 Council meeting, Council reviewed the current Call to the Public form along with the proposed new form and then held an executive session to obtain legal advice about the language in these forms. Ms. Vivian then stated the forms with modifications are before Council for them to consider and take action, if desired. Councilmember Wangness stated the open meeting law did not require people wishing to address the Council to give their address and he would like the form to state that providing their address was optional. City Attorney Gary Cohen stated Councilmember Wangness was correct in that the open meeting law did not require an address

disclosure, but noted at the same time, the law doesn't preclude asking a member of the public to disclose their address. Mr. Cohen then stated it was his understanding that the Council felt it would be helpful to know if the person addressing the Council was a resident, adding if Council wanted to adopt one or both forms and a majority of the Council wanted to note on the forms that listing an addresses was optional, they could amend the forms to do so.

Mayor King stated he liked the new form, adding it was simplified and would be easier for residents to understand. Councilmember Brooks stated he brought this forward from another city in Arizona that had a similar form and he liked the way the form asks the speakers to keep their language civil, adding most people should know this, but the form serves as a reminder that if they don't stay in the guidelines, they will be asked to step down from the podium. Councilmember Brooks then stated as far as residency goes, he likes knowing if the person addressing Council is a resident or not so he will know if they are asking for rules to be imposed on other people or are willing to have the same rules imposed on themselves, adding if they are a resident and are willing to be subjected to their own request, he gives the request more weight. Councilmember Brooks then stated the form also asks for a brief description of what they want to speak about so the Council will have that in advance and is a nice formal form to use to conduct Council meetings. Councilmember Brooks then stated he would like to restrict the public to City business, because too many times they get outside the issues or jurisdiction Council has and the Call to the Public turns out to be more of a place for someone to hold a forum and give their opinions on world and regional views, adding Council can't do anything about those issues. Councilmember Brooks then stated his time is limited and he is here to hear suggestions on the meeting and agenda items.

Councilmember Moncada moved to approve the proposed new Call to the Public form. Seconded by Mayor King. Motion passed 7-0.

6. **Discussion and possible action regarding a "City Council Agenda Request" form**

City Clerk Vicki Vivian addressed Council stating as with the previous item, during the January 13, 2014 Council worksession, the Council discussed the proposed "City Council Agenda Request" form as one of many mechanisms members of the public can use to request that an item be placed on a Council agenda. Ms. Vivian stated at the February 24, 2014 Council meeting, Council reviewed the proposed form and held an executive session to obtain legal advice about the language therein, adding the revised form is now before Council for their consideration. Mayor King stated the new form is to allow the public to possibly put something on the agenda if it is ok with the Council and the City Manager, adding he thinks it's a nice form and will help the Council know what's going on in the public and what they want done. Mayor King stated a lot of the time, the Council is guessing what certain persons are looking for when they ask for something to be put on the agenda, adding the new form asks for a brief explanation of their request, so the Council will know what it is they want.

Councilmember Brooks stated a lot of times, it's hard for people to track down a Councilman or they feel hesitant, adding this is another way for them to put something on the agenda or at least request that something be put on an agenda. Councilmember Brooks then stated the form gives the citizens another way to try and help get the business of the City done, especially if the Council isn't aware of it, adding they can bring it to the Council's attention. Councilmember Brooks then stated a completed form would go through the proper checks with Staff so before the Council sees it, they would know the request is something in the Council's jurisdiction. Councilmember Brooks then moved to approve the City Council Agenda Request form. Seconded by Councilmember Boyle. Councilmember Wangsness asked if the form would be available to download from the City's website with Ms. Vivian stating she would add it to the website and it would be available at City Hall. Councilmember Brooks stated he would also like it available during Council meetings with Ms. Vivian stating it would be. Ms. Vivian then stated she would also like the public to know that they could always call the Administration office to make a request for an item to be placed on a Council agenda, adding that request would go through the same consideration and be presented to Council for their decision. Mayor King then called for a vote. Motion passed 7-0.

7. **Discussion and possible action regarding the Deed of Dedication from the Cochise County Community College District**

Interim City Manager Brad Hamilton addressed Council stating he would like to speak about both this item and the next item since both are accepting new roadways that were constructed by a developer. Mr. Hamilton then stated the first one is the new entrance into Cochise College, adding the deed transfers the property as right-of-way to the City of Benson. Mayor King stated the new roadway looks very nice with Mr. Hamilton stating the contractor also did some modifications to the speed bumps with asphalt, so they are not as harsh as they used to be. Councilmember Moncada asked when the 1-year warranty started with Mr. Hamilton stating the warranty would begin now. Councilmember Brooks moved to approve the deed of dedication from the Cochise County Community College District. Seconded by Vice Mayor Sacco. Motion passed 7-0.

8. **Discussion and possible action regarding the Deed of Dedication from Tres Alamos Ranch II, L.L.C., an Arizona Limited Liability Company**

Interim City Manager Brad Hamilton addressed Council stating as with the previous item, this is a deed of dedication for the new roadway, Neuva Jennella, which was completed by the same contractor at the same time and has the same warranty. Councilmember Moncada moved to approve the deed of dedication from Tres Alamos Ranch II, L.L.C. Seconded by Vice Mayor Sacco. Motion passed 7-0.

EXECUTIVE SESSION: Pursuant to 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 the proposed amendment to Ordinance 243 submitted by Paul Lotsof for Council consideration

Councilmember Moncada moved to enter into an executive session with the Mayor and Council, the Interim City Manager, City Attorney and City Clerk at 8:32 p.m. Mayor King asked if Councilmember Moncada wanted to include the Building Official/Zoning Administrator. Councilmember Moncada then included the Building Official/Zoning Administrator in his motion. Seconded by Councilmember Wangness. Motion passed 7-0.

Council reconvened at 9:00 p.m.

EXECUTIVE SESSION: Pursuant to A.R.S. §38-431.03 (A)(3) & (4), for discussion or consultation for legal advice with the attorney or attorneys of the public body regarding the City's position and to instruct its attorney(s), in accordance with A.R.S. section 38-431.03(D), regarding pending litigation, Stagecoach Trails Mobile Home Court (MHC) vs. the City of Benson, Arizona, et. al. and 1983 Civil Rights Claim – Stagecoach Trails Mobile Home Court (MHC), LLC and Jay Kendrick vs. the City of Benson, Arizona, et al. and/or 1983 Civil Rights Claim – Dianne Tipton vs. the City of Benson, Arizona, et. al.

This executive session was held at the beginning of the meeting just prior to New Business.

DEPARTMENT REPORTS: No comments from Council.

ADJOURNMENT:

Councilmember Brooks moved to adjourn at 9:00 p.m. Seconded by Councilmember Moncada. Motion passed 7-0.

ATTEST:

Toney D. King, Sr., Mayor

Vicki L. Vivian, CMC, City Clerk