

**THE SPECIAL MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD MAY 28, 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 7:01 p.m. with the Pledge of the Allegiance.

ROLL CALL:

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

NEW BUSINESS:

1. **Discussion and possible action on Resolution 11-2014 of the Mayor and Council of the City of Benson, Arizona, declaring as a public record that certain document entitled, "Benson City Code, Chapter 18 – Boards, Commissions and Committees, Article 18-6, Benson Economic Development Committee"**

City Attorney Gary Cohen stated he was given the charge to create a proposed ordinance for the Benson Economic Development Committee, adding he was given a draft prepared by Mr. Stephen Insalaco, a citizen and used that as well as the current City Code to try and select the best provisions for Council consideration. Mr. Cohen then stated the proposed document is relatively simple, straight forward, and gives the committee room to breathe and work the way the committee thought best, while balancing with the law. Councilmember Brooks stated he went through the draft and thinks it's good and will save some time to help get this committee formed and operating. Councilmember Brooks then moved to approve Resolution 11-2014. Seconded by Vice Mayor Sacco. Motion passed 4-0 with Councilmember Cook abstaining.

2. **Discussion and possible action on Ordinance 568 of the Mayor and Council of the City of Benson, Arizona, creating the Benson Economic Development Committee and amending the Benson City Code, Chapter 18 regarding Boards, Commissions and Committees by adopting new Article 18-6 as contained in that certain public record entitled, "Benson City Code, Chapter 18 – Boards, Commission and Committees, Article 18-6, Benson Economic Development Committee"**

Councilmember Brooks stated this is the full ordinance and since the Council is using Resolution 11-2014, it's a moot point to vote on this. City Clerk Vicki Vivian addressed Council stating the ordinance does need Council action, adding there is a provision in State law that allows a city or town to adopt a lengthy ordinance by reference. Ms. Vivian then stated the first step is to declare the document a public record by resolution and the second step is to approve the ordinance which actually adopts the declared public document, adding this saves the City publication costs in publishing the ordinance.

Councilmember Brooks moved to approve Ordinance 568. Seconded by Councilmember Boyle. Motion passed 4-0 with Councilmember Cook abstaining.

3. **Discussion and possible action to appoint members to the Benson Economic Development Committee**

Mayor King stated the City Attorney requested an executive session regarding this item with City Attorney Gary Cohen stating he wanted to provide some legal advice on an issue that has arisen with regard to the appointing of members to the Benson Economic Development Committee. Mr. Cohen then stated the agenda has language allowing the Council to enter into an executive session to get legal advice, adding he didn't think it would take very long and it was his recommendation to do so. Mayor King then moved to enter into an executive session with Councilmember Brooks stating he didn't see the language on the agenda. City Clerk Vicki Vivian addressed Council stating the language is on the second page of the agenda and reads, "Executive Session – Upon a vote of the majority of the City Council, the Council may enter into Executive Session

pursuant to Arizona Revised Statutes §38-431.03 (A)(3) (legal advice) to obtain legal advice on matters listed on the Agenda.”

Mayor King then completed his motion to enter into an executive session with the Mayor and Council, the City Manager, City Attorney and City Clerk at 7:08 p.m. Seconded by Councilmember Boyle. Motion passed 5-0.

Council reconvened at 7:21 p.m.

Mayor King asked if the Council could act on all 7 applicants at once with Councilmember Brooks stating there was one applicant he would have to decline and then asked if Mr. Muller was present. Mr. Muller was not. Councilmember Brooks then stated Mr. Muller lived in Phoenix and questioned his availability with Councilmember Cook stating on Mr. Muller’s application, it states Mr. Muller is the general manager of a local business on 4th Street. Councilmember Brooks stated he would also like to hear the City Attorney’s advice, adding all the questions on the application should be filled out and one of the questions was if the applicant had ever been convicted of a felony and the question was not answered. City Clerk Vicki Vivian stated there was a letter attached to that application stating the applicant had never been convicted of a felony. Councilmember Brooks then moved to appoint all the applicants except Barbara Nunn, adding he is hesitant to let an individual on the committee that’s come against the Council and him in particular in the past. Councilmember Brooks then stated he didn’t want any politics on this committee, adding he would like maybe some time to talk with Ms. Nunn later about this. Councilmember Brooks then again moved to appoint the first 6 applicants, adding he has does have reservations about Ms. Nunn and apologized, but stated he did have reservations. Mayor King asked if Councilmember Brooks thought the Council should go ahead and appoint Ms. Nunn and once the committee starts having meetings, they could work out their differences, adding he thinks the Council should allow Ms. Nunn to be on the committee. Councilmember Brooks stated he could always bring it back to Council if it’s a problem, adding he wants this committee to be very non-political and wants people interested in making a difference.

Councilmember Boyle asked why Mr. Muller, who lives in Phoenix, would want to be on the committee with Councilmember Cook stating in his application, Mr. Muller seemed to be heavy on political rhetoric so it seemed that he has some political background and that’s why it appears to Councilmember Cook that Mr. Muller wants to be on the committee. Councilmember Boyle questioned him living in Phoenix with Councilmember Cook stating if Mr. Muller runs a facility in Benson, he is likely to be here regularly.

Councilmember Brooks then amended his motion to appoint all 7 applicants to the Benson Economic Development Committee and asked if in the same motion, he could restrict the committee to 7 members. City Attorney Gary Cohen stated the ordinance that was just adopted by Council says the committee has to consist of an odd number of members, with a minimum of 5 and a maximum of 9, so the Council action to appoint 7 members would fall within the parameters of the ordinance, adding the number of members could change at the pleasure of the Mayor and Council, but should always remain at an odd number. The motion was then seconded by Councilmember Boyle.

Councilmember Cook then stated Councilmember Moncada wasn’t there to make his point, but that the Council has held numerous discussions about having 1 or 2 Councilmembers on a committee or subcommittee that reports back to the Council, adding there is a strong influence of politics and because the committee reports back and is subordinate to the Council, there appears to be a strong conflict of interest possibility. Councilmember Cook then stated he thought the Council should appoint the 5 applicants to the committee and leave the 2 City Councilmembers who submitted applications off of the committee. Mayor King asked Councilmember Brooks if he wanted to amend his motion with Councilmember Brooks stating he did not. Councilmember Brooks then stated he knew that Councilmember Cook was on the Economic Development Subcommittee in the past with other Councilmembers, adding there wasn’t a problem then and he didn’t see why there should be a problem now. Councilmember Boyle agreed, stating on the Economic Development Subcommittee the Council recently dissolved had Councilmember Moncada on it, adding it wasn’t a problem then, so he wasn’t sure why it made a difference now. Mayor King called for a vote. Motion passed 3-1 with Vice Mayor Sacco abstaining and Councilmember Cook voting nay.

4. **Discussion and possible action on Resolution 12-2014 of the Mayor and Council of the City of Benson, Arizona, declaring as a public record that certain document entitled, “Benson City Code, Chapter 18 – Boards, Commissions and Committees, Article 18-7, Benson Airport Advisory Committee”**

Councilmember Brooks moved to approve Ordinance 569. Seconded by Councilmember Boyle. City Manager William Stephens and City Attorney Gary Cohen stated Ordinance 569 was the next agenda item. Mr. Stephens then stated currently, the Council was addressing Resolution 12-2014, adding that’s what the motion should be related to. Councilmember Brooks then moved to approve Resolution 12-2014. Seconded by Councilmember Boyle. Motion passed 4-0 with Councilmember Cook abstaining.

5. **Discussion and possible action on Ordinance 569 of the Mayor and Council of the City of Benson, Arizona, creating the Benson Airport Advisory Committee and amending the Benson City Code, Chapter 18, regarding Boards, Commissions and Committees by adopting new Article 18-7 as contained in that certain public record entitled, “Benson City Code, Chapter 18 – Boards, Commissions and Committees, Article 18-7, Benson Airport Advisory Committee”**

Councilmember Brooks stated this item is very similar to the previous resolution for the Benson Economic Development Committee; then moved to approve Resolution 12-2014. City Clerk Vicki Vivian and City Manager both stated the Council action should be related to Ordinance 569. Councilmember Brooks then moved to approve Ordinance 569. Mayor King stated he believed Vice Mayor Sacco wanted to be the liaison for this committee. Councilmember Brooks stated that was not an item listed on the agenda and then asked if Vice Mayor Sacco wanted to be on the committee with Vice Mayor Sacco stating he did. City Attorney Gary Cohen stated the appointment of members to the committee was the next agenda item. The motion was then seconded by Councilmember Boyle. Motion passed 4-0 with Councilmember Cook abstaining.

6. **Discussion and possible action to appoint members to the Benson Airport Advisory Committee**

Councilmember Brooks stated there were 11 applicants to consider. City Attorney Gary Cohen then addressed the Council stating this ordinance pretty much mirrors the prior one, adding based on feedback received from the Council, the committee should have 5, 7 or 9 members, so the Council will have to consider not appointing all the applicants. Councilmember Brooks stated the Council could also consider increasing the membership to 13 members. Mr. Cohen stated that would require going back and undoing what the Council just did by approving the ordinance. Councilmember Brooks then stated he would like to get Mr. Stephen Insalaco’s opinion because Mr. Insalaco knows these people a lot better than Councilmember Brooks does and because he thinks Mr. Insalaco is going to be a lot closer in this committee. Mayor King stated he thought the appointments should be a Council decision. Councilmember Brooks stated he just wanted Mr. Insalaco’s recommendation. Councilmember Boyle agreed with Councilmember Brooks stating he only knows 1 or 2 of the applicants and would like Mr. Insalaco’s opinion. Councilmember Cook stated he would like to hear from Barbara Nunn and David Thompson also.

While Mr. Insalaco was coming forward, City Attorney Gary Cohen stated he would verify that a majority of the Councilmembers present would constitute the passing of a motion, citing the declaration that the motion to appoint all 7 applicants to the Benson Economic Development Committee passed 3-1.

Mr. Insalaco then addressed Council stating he was unaware there were this many applicants, adding he was pleased to see them and that he was familiar with all the individuals. Mr. Insalaco then stated he would like to see all of the applicants on the committee, noting he thinks more opinions on this or any other committee is valuable and leads the committee in a better direction. Mr. Insalaco then stated it would be his preference for the Council to accept all the applicants and go back and revisit the resolution and ordinance Council passed to amend it to allow all the applicants to be appointed. Councilmember Brooks asked if this was something that could be done with Mr. Cohen stating his direction was to prepare an ordinance with no more than 9 people on the committee and since the Council adopted that ordinance, the Council couldn’t expand the committee, adding he would like to remind the Council that the ordinance was drafted in accordance to the feedback he received from them. Mr. Cohen then stated he would like to note that the ordinance was also designed to

allow and encourage the Chairperson to have members of the public participate in discussions, adding while the ordinance has been adopted with the 9 voting members, any additional people will be allowed to participate fully at the meetings other than being able to vote, unless they are misbehaving or disrupting the meeting. Mr. Cohen then stated the committee membership was up to the Council, but if they wanted to appoint more than 9 members, they would need to backtrack a bit.

Councilmember Brooks stated he would like to remove himself as an applicant, adding he didn't think it was critical for him to be on the committee since he could still attend the committee meetings. Councilmember Brooks then read through the list of applicants indicating who has a presence at the airport. Councilmember Brooks then stating removing himself got the applicants down to 10 and the Council needed to remove one more applicant, adding Ms. Barbara Nunn and Mr. David Thompson fly together and possibly one of them could be on the committee and not the other one, noting that would bring the number down to 9 applicants.

Councilmember Cook stated he would like to hear from Mr. Thompson and Ms. Nunn, adding he is opposed to pulling either one of them off just because they fly together. Councilmember Cook then stated he thought they both had a lot of insight and experience.

Mr. Thompson stated he thought the committee members should be people who are involved with aircraft and the airport, adding if someone on the list is not directly involved, he would think they wouldn't be appointed.

Councilmember Brooks again noted there were 11 applicants and after removing himself, the Council still needed to remove 1 more applicant. Councilmember Cook stated he was considering Martin Stickford and Marty Stickford, adding Martin lives in Tucson and Marty lives in Vail. Mr. Thompson stated the Stickfords are father and son, adding they both have aircraft and share a hangar. Councilmember Cook asked if they were actively involved since they didn't live nearby with Mr. Insalaco stating they are at the airport every Saturday and both are very involved.

Councilmember Brooks then stated Barbara Nunn and David Thompson both live in the same home, and by having 2 votes, it's almost a sense that there could be a little collusion if they both agreed or talked a lot together. Councilmember Brooks then stated most of the other applicants own aircraft, and asked if removing either Mr. Thompson or Ms. Nunn sounded reasonable to them. Councilmember Cook stated he would propose that the same logic can be applied to Martin Stickford, Sr. and Marty Stickford, Jr. Councilmember Brooks asked if the Stickfords lived together with Councilmember Cook stating he didn't find living arrangements a valid reason to remove someone from the committee.

Ms. Barbara Nunn then addressed Council stating she lives in the same house with David Thompson and his wife, adding she has her own room and there is no collusion in their home. Ms. Nunn then stated she goes to the airport and cleans the bathrooms and hangars and sets up for the fly-ins every month, adding she is at the airport every weekend, she has flown 2,000 hours in small aircraft and she is not willing to remove herself as an applicant.

Councilmember Brooks stated he believed Mr. Insalaco will be running the committee meetings, adding he isn't sure, but he has a sense he will be and he believes Mr. Insalaco can let nonmembers attending the meeting give their suggestions and ideas, adding they just won't have the ability to vote. Councilmember Boyle stated that since the Stickfords both live outside of town and the Council is looking for people who are just local, it would seem to him that even though they are both at the airport and both have planes, adding the Stickfords are welcome and he is glad they are there, that the Council is just creating a committee for the economic development of the Benson Airport, and the Council should just have local citizens on the committee. Councilmember Brooks stated he would like to hear from Mr. Insalaco again. Mr. Insalaco stated he would like to say something on behalf of the Stickfords and would then like to address the committee size. Mr. Insalaco stated Martin Stickford and Marty Stickford have been very active at the airport since 2004, noting they both have aircraft, are both hangar tenants, are both members of the former airport advisory committee, attending those meetings actively, and were also members of the committee that revised the airport master plan. Mr. Insalaco then stated Marty Stickford, Jr. works for Pima County and he has a great many personnel resources they have used in the past that have been a benefit to their endeavors at the airport and Mr. Insalaco

would really hate to lose him as a committee member. Mr. Insalaco then stated he would strongly encourage the Council, if necessary, to postpone judgment of personnel assignments and in the next City Council meeting revisit the ordinance, adding he understands the Council gave information to the City Attorney and the Attorney did what he was instructed to do, but again stated there are a lot of good people, who would contribute positively to the committee, and are willing to give their time for free to the committee, the community and the airport.

Councilmember Brooks moved to table this item until such time the City Attorney can look this over to see if the Council could increase this committee to a larger size and do a change to the prior resolution the Council approved. Seconded by Vice Mayor Sacco. Councilmember Cook asked for the motion to be restated. Councilmember Brooks then stated his motion was to table this item until such time that the City Attorney can review the ordinance limiting this committee to 9 members so that the Council can find out if they can increase it to 13 or an odd number. Mr. Cohen apologized for interfering with the meeting, but stated it would be cleaner for if the motion was simply to table this item, as opposed to having the additional language because that would be considered to be mixing agenda items, which is problematic for legal reason. Councilmember Brooks stated the Council needed to give the Attorney a directive with Mr. Cohen stating he understood the direction and again asked if the motion could be amended to just table the item. Councilmember Brooks stated he would reiterate his motion and moved to table this item and direct the City Attorney to look into expanding the committee. The motion was seconded again by Vice Mayor Sacco. Mayor King asked if the Council could vote on this motion with Mr. Cohen stating the Council could vote on it, but again, it would help him if the motion would simply be to table this item, adding he just advises the Council and it was up to them. Councilmember Brooks stated if the Council didn't give the Attorney a directive, he wouldn't have to look into this and he does need to, so he would like to give that directive. Councilmember Brooks then stated his motion again, was to table this item and direct the City Attorney to see if the Council could expand this committee to a larger number. Mr. Cohen stated expanding the committee and changing the ordinance is another matter, adding as the City Attorney, he is just trying to follow the law and when Councilmember Brooks adds the additional language to the motion about expanding the committee, the Council is now addressing another agenda item, which is an open meetings issue. Mr. Cohen then stated if the Council wanted to be technical about this, the motion would be to just table this item. Mr. Cohen then stated the Council could then deal with the other things later, adding he is very well aware of what the Council wants to do with the committee. Councilmember Brooks then stated he hates to put something on the agenda and then have the attorney look into it another month or 2 later, adding it just takes forever, but if the Council gives him a directive now, he will look into it. Councilmember Brooks then stated he didn't realize how many applicants the Council had and then stated he stood by his motion to table this item with a directive to the City Attorney to look into the possible expanding of the committee. Councilmember Cook stated the Council could simply table the item and then anyone of the Council could call Mr. Cohen and say the Council needed more people on the committee and Mr. Cohen would tell the Council he was working on it and would then bring an item forward to be on the next Council agenda to change the committee from 9 members to 11 or 13 or whatever number the Council decided to have on the committee. Mayor King stated he agreed with Councilmember Cook, adding he thinks the City Attorney has enough common sense to know what the Council is asking him to do. Councilmember Brooks then stated for the purpose of explaining this issue to the public, the City Attorney isn't really supposed to do anything without direction from the City Council, adding one Councilmember cannot ask him to research anything. Mayor King then called for a vote. During the vote, Councilmember Cook asked for the motion to be restated. City Clerk Vicki Vivian stated the motion is to table the item with a directive to the City Attorney to look into increasing the committee size. Motion then passed 3-2 with Mayor King and Councilmember Cook voting nay. Mr. Cohen stated the motion passed with a majority of the Councilmembers present, but he would confirm that information.

7. **Discussion and possible action approving a bid proposal with the Ace Asphalt for Paving Services in the amount of \$32,540.00 to pave designated City-owned rights-of-way generally located within or adjacent to the Stagecoach Trails mobile home park**

City Manager William Stephens stated the City Engineer, Brad Hamilton and he went out and met with Mr. Kendrick at Stagecoach Trails to discuss several streets, adding some need complete paving, and others need to be repaved. Mr. Stephens then stated part of the streets are owned by the City, adding those would be done

at an expense borne by the City and the other streets would be paid for by Mr. Kendrick. Mr. Stephens then stated based on the agreement with Mr. Kendrick, they have come to another agreement to use the same contractor so all the streets in question can be paved at the same time with the same materials. Mr. Stephens then stated we are still talking to the Benson school about their street on south side and seeing if it could be done at the same time. Mr. Stephens then stated he would have Mr. Hamilton to address the Council with details for engineering. Mr. Hamilton addressed Council stating Mr. Stephens did a very good job of explaining this item. Mr. Hamilton then stated it makes sense to use the same contractor, adding the bid came in very reasonable and he recommend moving forward with the contract. Councilmember Cook asked if the projects would be considered separate and would be billed separate so that if one party didn't pay their contracted amount, the other party wouldn't be bound by the contract to pay it with Mr. Hamilton confirming each project was separate, they would be billed separately and each party would be held responsible for their own project cost.

Councilmember Brooks asked about utilities with Mr. Hamilton stating the City does have utilities there and will have to make adjustments, but it shouldn't be too costly. Councilmember Brooks then asked about the street south of the park and if the Council could have that done later with Mr. Hamilton stating it would depend on the negotiations with the school. Councilmember Boyle moved to approve the bid proposal with Ace Asphalt for Paving Services in the amount of \$32,540.00 to pave designated City-owned rights-of-way generally located within or adjacent to the Stagecoach Trails mobile home park. Seconded by Councilmember Brooks. Motion passed 5-0.

ADJOURNMENT:

Councilmember Brooks moved to adjourn at 8:01 p.m. Seconded by Mayor King. Motion passed 5-0.

Toney D. King, Sr., Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk