

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD ON JULY 13, 2015 AT 7:00 P.M.,
AT BENSON CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

CALL TO ORDER:

Mayor King called the meeting to order at 7:07 p.m. with the Pledge of Allegiance.

ROLL CALL:

Present were: Mayor Toney D. King, Sr., Vice Mayor Lori McGoffin, Councilmembers Pat Boyle, Jeff Cook, Joe Konrad, David Lambert and Chris Moncada.

EMPLOYEE RECOGNITION:

Mayor King recognized Molly Ingram for having 10 years of service with the City of Benson.

PROCLAMATION: None

PUBLIC HEARING: None

CALL TO THE PUBLIC:

Andrew Abernathy, 4th Street, Benson, stated he was representing the Western Heritage Cultural Center of Benson and wanted to address Council regarding New Business Item #4, the Community Facilities Development District (CFD) and then urged Council to approve the CFD proposed by El Dorado Holdings. Mr. Abernathy stated the diligence and responsibility is to check on El Dorado's record and the A team they presented. Mr. Abernathy stated the Council should start with the City of Maricopa's CFD and ask them about their most recent project and see how they performed, adding if there are no complaints, the Council should move onto the next projects El Dorado provided as references. Mr. Abernathy then stated El Dorado has proposed an experienced team to complete this portion of the project, adding it is El Dorado's money at risk and they have proven over and over again that they are a responsible long-term premier developer. Mr. Abernathy stated the Council should let El Dorado work with the community, adding everyone knows it is in El Dorado's best interest and the City's best interest to create a quality project. Mr. Abernathy then stated the opportunity to be part of that success by approving the CFD might slip from the Council's hands by delaying action any more than necessary. Mr. Abernathy then stated he doesn't want the Council to be known as the Council that prevented the project from moving forward, adding it will be part of the current Council's legacy and will reverberate through the southwest and the region that Benson is another Tucson when it comes to developing projects. Mr. Abernathy then stated the proposed project is a key component in restoring Benson's reputation as a community that wants to put business first and grow our economy strong. Mr. Abernathy then stated the Council has a community partner who is reaching out to help strengthen a dying city; one that continues to lose population, jobs and businesses. Mr. Abernathy then stated by approving the CFD, the Council moves one step closer to a balanced budget and a real promise of growth in the City and in the region. Mr. Abernathy stated the City and the County have long gone unrecognized and unappreciated for the crucial role the County has played in the formation of our State and it's time to take our place as first class citizens of Arizona and be acknowledged as understanding the full impact to the region that the Villages of Vigneto plays.

Mayor King stated he had missed the invocation. Mayor King asked if Pastor John Mitchell was in attendance, Pastor John Mitchell was not present; Mayor King then stated he would move forward with the meeting.

Kevin Oberg, a non-resident, (address not supplied) thanked the Council for the opportunity to speak. Mr. Oberg then stated he was first introduced to Benson about 10 years ago, adding he came to the community in the wake of the Pulte Homes Community, but things didn't go the right way and 10 years later he is standing here talking about what is the next great opportunity for this community. Mr. Oberg then stated he has made a long term commitment and is still here looking forward to the opportunities the community has in front of it, adding he

believes El Dorado Holdings is the kind of partner the City Council is really looking for for the benefit of the community. Mr. Oberg stated he thinks there are 3 Cs for these fellows; the commitment, adding El Dorado has spent \$30 million in round numbers getting to the position they are in and tonight, they are looking for further approvals, they have the concept of the Villages of Vigneto, adding he is excited about what a great community that is going to be and finally, they have the capital, adding one way or another, they will provide the capital required to make this an extremely successful community. Mr. Oberg then stated he hoped the Council will vote to move forward with what El Dorado needs tonight.

Lupe Diaz, S. Post Road, Benson, spoke in support of the El Dorado project, adding one of the Chamber of Commerce's missions is to promote business and business activity in the community, as well as to preserve the economic stability in the community. Mr. Diaz stated the Chamber does this by monitoring business activity and what's happening in the City and the region, as well as partnering with other organizations to accomplish this. Mr. Lupe spoke of the economic benefit of the proposed development including the reported \$24 billion that will be injected into the community over the life of the development construction.

George Scott stated he was representing the Southeastern Economic Development Group in Benson, located at 168 E. 4th Street. Mr. Scott stated the group he represents is recommending that the Council approve New Business Items 4 and 5 on the Agenda tonight, adding these are the items as proposed by El Dorado Holdings. Mr. Scott then stated Mr. Larry Dempster gave him a letter to read to the Council and then read the letter supporting El Dorado Holding and the Villages of Vigneto. Mr. Dempster's letter will be retained with the Council packet.

Donald Buchanan, River Road, St. David, stated Phoenix and Tucson are under drought conditions and the San Pedro River in this area is at risk, adding he understands that every community has to grow, but water is very important here and he believes that El Dorado should use the best water conservation methods available. Mr. Buchanan then stated he was told by an El Dorado employee that they will use the most economical methods. Mr. Buchanan then stated there was a nice article in the Tucson Star this Sunday saying the Hispanic Chamber of Commerce is very enthusiastic with the development, but stated that chamber has connections with El Dorado. Mr. Buchanan then stated he also remembers an attorney recommending either locals or the City Council should be on the CFD board and not outsiders. Mr. Buchanan then stated one last thing he is concerned with is if someone doesn't disagree with the Council, they don't have to follow the rules, adding people who address the Council are supposed to address the Council, not people in attendance who they don't agree with. Mr. Buchanan stated he was concerned that whoever the Chairperson of the meeting is will let someone do this.

Mayor King stated he would like to respond to this at the end of the Call to the Public.

Lorene Whaley, a non-resident of Benson, stated she strongly supports the Villages of Vigneto, adding the idea of a clean well-built subdivision is very appealing.

Dave Thompson, La Cuesta Drive, Benson, stated he has been a Benson resident for 8 years and at the February 23, 2015 Council meeting, the Cave FM radio station was a topic of discussion, adding Mayor King asked Mr. Lotsof if Mr. Lotsof had anybody offer to help with the property and Mr. Lotsof replied saying that he was not aware of any offers of help. Mr. Thompson then stated he was curious and after asking around, he discovered that there had been, in fact, offers from a local contractor to help Mr. Lotsof with the laying of the foundation and with providing a newer trailer for the radio station to use. Mr. Thompson then stated he just wanted to bring this to the Council's attention.

Deb DiBiasie, no address given, stated she moved to the area a few months ago and helps small businesses with applying for grants. Ms. DiBiasie stated the day she arrived in Benson, the headline in the local newspaper was El Dorado and the new development, adding it looks like an amazing project and she supports it fully.

City Attorney Gary Cohen addressed Council stating to assist the Council and the public, he would like to read from State law concerning the Call to the Public. Mr. Cohen then read A.R.S. §38-431.01(H), "At the conclusion of an open call to the public, individual members of the public body may respond to criticism made by those who

have addressed the public body, may ask staff to review a matter or may ask that a matter be put on a future agenda.”

Mayor King stated that he wanted to address the comments made during the Call to the Public by Mr. Buchanan, adding the comments Mr. Buchanan referred to were made to the City Council and Mayor King wanted to remind Mr. Buchanan that Mr. Buchanan’s behavior at that meeting was unacceptable, adding should Mr. Buchanan repeat the behavior again, Mayor King would have Mr. Buchanan removed from the meeting.

Councilmember Cook asked if approving the Community Facilities District for the Villages at Vigneto was on the agenda for this meeting with City Manager William Stephens confirming it was not on the agenda, but that the item on the agenda was for the discussion and possible action or direction to Staff about other persons or entities to assist the City of Benson related to a Community Facilities District for the Villages at Vigneto.

CITY MANAGER REPORT:

City Manager William Stephens addressed Council, giving the dates of upcoming meetings and events.

- Tuesday, July 14, 2015 – Library Advisory Board, 4:00 p.m., City Library
- Saturday, July 18, 2015 – Historic Preservation Commission, 9:00 a.m., City Hall
- Monday, July 27, 2015 – City Council Meeting, 7:00 p.m., City Hall

- Wednesday, July 29, 2015 – The City Pool will close for the year.
- Thursday, July 30, 2015 – School starts at the Benson Unified School District.

Mr. Stephens then stated for information on meetings and events, the public could visit the City’s website www.cityofbenison.com. Mayor King then asked everyone to be careful driving, as the return to school will result in more traffic and the school’s parking lots being very busy.

NEW BUSINESS:

1. Discussion and possible action on the Consent Agenda

- 1a. Minutes of the June 8, 2015 Regular Meeting
- 1b. Minutes of the June 18, 2015 Special Meeting
- 1c. Invoices processed for the period from May 29, 2015 through June 11, 2015

Councilmember Konrad stated questioned an expense for \$33,000 for software maintenance on Consent Agenda Item 1c, with Finance Director Dustin DeSpain stating the expense is for accounting software the City has to renew every year and other software and updating I.T. services used within City Hall. Councilmember Konrad asked if the work was done by Executech with Mr. DeSpain confirming it was.

Councilmember Lambert then stated the June 8th City Managers Report mentioned the Movie in the Park that was put on by the City’s Recreation Department and it also mentioned the July 4th celebrations. Councilmember Lambert then stated Ms. Laura Parkin from the Recreation Department and Mr. Bob Nilson from the Tourism Department were both present and he would like to recognize them for all their hard work in putting on these events. Mayor King concurred and thanked them both.

Councilmember Lambert then moved to approve the Consent Agenda. Seconded by Vice Mayor McGoffin. Motion passed 7-0.

2. Discussion and possible action on Ordinance 578 levying upon the assessed valuation of the property within the City of Benson, Arizona, subject to taxation a certain sum upon each One Hundred Dollars (\$100) of valuation, sufficient to raise the amount estimated to be required in the annual budget, less the amount estimated to be received from fines, licenses and other sources of revenue providing a General Fund for the General Municipal Expenses: All for the Fiscal Year ending June 30, 2016

Mayor King stated the Council is only talking about .5836 with Finance Director Dustin DeSpain confirming the tax levy is moving from .5531 to .5838. Mr. DeSpain then stated the adjustment is to maintain the collected amount of \$230,000, adding there is really no increase in taxes, monetary-wise. Councilmember Konrad stated the Council discussed this before and if the levy rate were to remain the same, the City would collect \$12,000 less in property tax and would need to lower the budget by \$12,000. Councilmember Lambert moved to approve Ordinance 578. Seconded by Councilmember Moncada. Motion passed 5-2 with Councilmembers Boyle and Konrad voting nay.

3. **Discussion and possible direction to Staff about economic development projects in Benson. May include, but not be limited to, existing and potential economic development opportunities; projects being sought as well as completed; and developing projects**

City Manager William Stephens stated this item was on the agenda at the request of Councilmembers Boyle and Lambert. Councilmember Lambert stated he requested the item to be on the agenda in case there was any action the Council wanted to take. Councilmember Lambert then moved to pull this item from the agenda. Seconded by Councilmember Konrad. Motion passed 7-0.

4. **Discussion and possible action or direction to Staff about Bond Counsel to assist the City of Benson related to a Community Facilities District for the Villages at Vigneto**

City Manager William Stephens addressed Mayor and Council stating bond counsel, one of the roles to be filled with the Communities Facilities District process, would help in the formation of a Community Facilities District. Mr. Stephens then stated the Council has received presentations in the past from separate legal firms requesting to fill that role; Kutak Rock and Greenberg Traurig, adding each firm has submitted letters of engagement for Council's consideration for the selection of bond counsel.

Mayor King stated he looked over and heard from both firms and he felt Kutak Rock would be a good direction to go. Councilmember Moncada stated the City Attorneys have recommended an executive session and then moved to enter in an executive session with Mayor and Council, the City Attorneys, the City Manager and the Deputy City Clerk at 7:48 p.m. Seconded by Vice Mayor McGoffin. Motion passed 7-0.

Council reconvened at 8:37 p.m.

Mayor King then asked Council for comments.

Councilmember Konrad asked Mr. Guckenberger from Kutak Rock to come to the podium. Councilmember Konrad then asked Mr. Guckenberger if his firm would be willing to renegotiate their fee schedule to a contingency rather than an hourly pay as you go fee, citing the financial situation of the City. Councilmember Konrad then asked if Kutak Rock would be willing to collect their fees when the bonds are sold and asked if Mr. Guckenberger could give the Council some options, if possible. Mr. Guckenberger stated costs were typically paid at the bond closing with the specific request to District formation, which is the reason for the hourly fee. Mr. Guckenberger then stated one of the issues to consider would be how to tie that in, adding it's such a long-term project, he would have to talk to some of his partners. Mr. Guckenberger then stated he had Mr. Giancana from their Arizona office here and he thought they could figure out a way to come up with a solution and work with the City. Councilmember Konrad then asked about Mr. Guckenberger being in Colorado and being the main player with Mr. Guckenberger stating there were 50 lawyers in their Scottsdale office and he will work with them to be the most cost effective. Mr. Guckenberger then stated he was not going to bill the City for travel, but noted something he would need to think about is that the reason he set up the fee on an hourly basis was to work with the City's Attorneys to review an application from the landowner, which he believes the Council is anticipating. Mr. Guckenberger then stated the Council probably wants to have bond counsel engaged for that purpose in order to set up a district that is able to issue bonds that are hopefully tax-exempt, adding this is what Mr. Giancana specializes in; the actual application of the tax code to whatever project is being financed. Mr. Guckenberger then stated the goal is to make growth pay for itself and to do it in a way that does not overwhelm the City, especially with a project of this magnitude. Councilmember Konrad agreed that the City wants to be in a position to process the application when it's submitted with Mr. Guckenberger stating his firm could cap their hourly rate and then

put the rest of it in at bond closing, adding there are some options and he would work with the City Manager and the City Attorneys and try and figure them out, noting he understands what the City's budgeted limitations are.

Councilmember Boyle then stated the City does have some very serious budget constraints and once the project gets started, the City needs to be sure those costs can be covered. Councilmember Boyle then stated an hourly rate between now and the time the bonds start selling could be upwards of \$200,000 and the City would not be able to afford that. Councilmember Boyle then stated contingencies will need to be brought forward such as Mr. Guckenberger being willing to wait or renegotiate a different proposal so the City wouldn't have to pay that amount of cash up front with Mr. Guckenberger stating one point to emphasize was as bond counsel, they are compensated by a combination of tax abatement, which carries a risk with it and is what he calls the opinion risk portion, but they could defer some of the hourly effort.

Mr. Stephens then stated Mr. Reinbold had spoken to him regarding bond fees. Mayor King asked Mr. Reinbold to come to the podium. Mr. Reinbold stated it may help to know that El Dorado was not expecting the City to advance money on behalf of the legal process for the CFD formation and while the process generally pays for itself through bond issues, El Dorado would ensure that the City doesn't incur those costs in the process. City Attorney Gary Cohen asked Mr. Reinbold if he was referring to costs or fees with Mr. Reinbold stating it was fees, adding the City was not going to be incurring fees. Mr. Reinbold then stated given the current budget situation, El Dorado will make sure those fees are covered and recovered through the bond issue in the future.

Councilmember Moncada asked Mr. Reinbold how El Dorado would ensure they are covered and if Mr. Reinbold was offering to pay these fees with Mr. Reinbold stating that was correct, adding El Dorado will cover the fees so at the time of closing, the fees will get paid by El Dorado and the City will not pay them. Mayor King confirmed the City wouldn't pay a penny for it and that this would be something the Council would have in writing with Mr. Reinbold confirming this. Mayor King then stated his concern is that this is something the Council did not put in the budget and because of budgetary constraints; the Council wants to make sure the City doesn't get a bill for \$100,000 or \$200,000. Mr. Reinbold stated El Dorado will ensure that does not happen and that El Dorado will pay the legal fees. Mr. Stephens stated this would be something to meet with El Dorado and negotiate with Mayor King stating El Dorado would need to meet with the City Manager and the City Attorneys to make sure this would be something done in the next week or two, noting he would prefer it be done immediately. Mr. Reinbold stated approval of an engagement letter moves them into the next process, then stated within the week he could have an agreement for the Council that stipulates El Dorado will cover the legal fees and the City will not be obligated to pay those.

Vice Mayor McGoffin stated the bond counsel would be representing the City and she felt there would be some conflict if El Dorado paid them, adding she felt it would need to be some sort of a processing fee the Council would need to determine with Mr. Guckenberger stating the development agreement the Council is going to enter into is between the newly created district, the developer and the City, adding based on Mr. Reinbold's statements, the developer is going to offer to pay some or all of the City's organizational costs, which include legal fees associated with the review of their application, the review of the plans submitted, the review of the development agreement, elections questions and whatever else comes across the Council's bow. Mr. Guckenberger then stated what he understands is that El Dorado would put money in an escrow account as part of their application, to be used to pay those fees until an agreement is developed that is acceptable to everyone to make it is clear that he would be representing the City in the review. Mr. Guckenberger then stated the agreement would be a 3-way agreement between the City, the newly created special district and the developer that his firm would get paid just like any organizational cost they come across; not just legal costs.

Mr. Cohen stated he wanted to point out Mr. Guckenberger didn't say some of the costs; he said all of the costs, which is important. Mr. Cohen then stated attorneys get nervous when things are on the fly and then advised the Council to continue, but that he hoped the Council would not approve the item with an amendment to contain the comments made, adding he would not want the Council to approve an engagement letter now and then deal with the terms later. Mr. Cohen then stated the Council could direct Staff to continue this discussion and bring it back to the Council in the form of all of these items being an actual document the Council could see rather than approving a document tonight that has terms that are different than what is being discussed now.

Mayor King asked Mr. Guckenberger if he would be willing to renegotiate his contract and asked Mr. Guckenberger for a yes or no answer with Mr. Guckenberger stating yes.

Councilmember Cook stated it appeared the direction the Council was taking is that all of Mr. Guckenberger's fees will be paid from the proceeds of the bonds with Mr. Guckenberger stating the way to think about it is that there are 2 components of bond counsel fees; one is loosely related to organizational costs and he believes he heard the developer say tonight that they would reimburse all legal costs associated with the organizational review. Mr. Guckenberger then stated he believes that legal review is subject to the engagement letter, adding the whole scope of the engagement letter is the review of organizational costs when it comes to issuing bonds, which is down the road and would be an action taken by the district board at the time the district is created and is in a capacity to issue debt, adding that portion of the process is not before the Council and he has not been asked to prepare or submit an engagement letter that covers that.

Councilmember Cook then asked Mr. Reinbold if he expected the bonds to reimburse El Dorado for any of the fees they are paying up front for Mr. Guckenberger with Mr. Reinbold stating that would be a normal part of issuing bonds; the reimbursement at that time would either be to the City or to El Dorado, adding when the bonds are finally issued, the district will pay for its own legal costs. Mr. Reinbold then stated El Dorado would be basically advancing the dollars so that there is no cost to the City, adding in moving forward, the issued bonds should pay their own legal fees and in a worse case, if something doesn't happen, El Dorado is still covering the costs so the City has no exposure either way.

Councilmember Lambert stated he has studied both firms extensively, then moved to approve the engagement letter that was presented by Kutak Rock. Seconded by Mayor King. City Attorney Paul Loucks stated this was without regard to the repayment of the fees by El Dorado with City Attorney Gary Cohen stating this engagement letter does not have any of the terms that were discussed and should Council approve it right now, they will be approving the engagement letter that does not have those terms the Council was discussing. Mr. Cohen then stated the approval of the engagement letter was not something the Council should do.

Councilmember Moncada stated he understood the point the City Attorneys were making, but he wanted to make it very clear that if the Council approved the engagement letter from Kutak Rock, there will be no dollars spent and no movement forward on the CFD formation application until the Council has the agreement for the repayment of these costs from Mr. Reinbold. Councilmember Moncada then stated again, even though the Council may engage Kutak Rock, there will be no work or anything else done until the Council has an agreement as stated by Mr. Reinbold, adding the City does not have the money to pay those fees, again stating, there will be no work done or anything else until the Council has that written agreement.

Mr. Cohen then stated with the approval of the engagement letter, there would be no obligation for Kutak Rock to renegotiate the deal, which is what Council just had Mr. Guckenberger commit to. Councilmember Lambert stated he agrees with Councilmember Moncada that if the Council has an agreement from El Dorado Holdings to reimburse the City for all of these fees, which he strongly suggests the Council have in the next 48 hours, then the Council could move forward with the approval because El Dorado was going to reimburse the City for any fees incurred. Councilmember Lambert then stated since that is the case, he doesn't care if the fees are restructured on the engagement letter as long as the Council has the agreement from El Dorado Holdings. Mayor King stated if the agreement is not received in a timely manner, he would call a special meeting to cancel the engagement letter, adding he expects the agreement to be presented to the City in a timely manner. Councilmember Konrad stated there is a quote, "that growth requires a surrender of security" and that is what the Council is wrestling with right here, adding at some point in time the Council has to let go and let something happen, but he agrees with Councilmember Moncada that nothing will happen until the Council gets the letter of agreement from El Dorado.

Councilmember Cook stated he was very uncomfortable with this and he thought the Council needed to renegotiate the engagement letter first, adding this reminds him of a person buying a car and signing a contract and then going back moments later saying they want to renegotiate that contract or they won't pay for it and it looks like that is what the Council is doing. Councilmember Cook then stated the local radio station and the Benson newspaper like to make this Council and the City look like a bunch of stooges both when things are done and aren't done right. Councilmember Cook then stated if the Council does this, the media is going to have a

field day with it and he would not criticize them for making the Council look stupid this time. Councilmember Cook then stated if the Council is going to approve this letter of engagement and then rescind it immediately, he thinks all the Council is doing is window dressing for all the people who want the CFD created immediately, which is not even on the Agenda. Councilmember Cook then stated he thought the Council needed to do this this rationally and in a way that makes sense to El Dorado, Mr. Guckenberger, City employees, citizens and the media. Mayor King then said it has been stated very clearly what the Council expects and he is serious when he says that he will call a special Council meeting, adding everyone is committed and he is putting the burden on Mr. Reinbold to get the agreement to the Council. Motion then passed 5-2 with Vice Mayor McGoffin and Councilmember Cook voting nay.

5. **Discussion and possible action or direction to Staff about other persons or entities to assist the City of Benson related to a Community Facilities District for the Villages at Vigneto**

City Manager William Stephens stated now that the City has an approved bond counsel to assist in forming and executing a Community Facilities District (CFD), there are other roles required to be filled, adding this discussion allows the opportunity to identify those other roles and the individual organizations or companies who wish to fill those roles. Mr. Stephens then stated additionally Council can identify, discuss and establish the process which should be followed to fill those positions, for example; through a Request for Proposal (RFP) process, Cooperative Purchasing Agreement, or other possible, allowable, ways to fill those positions.

Councilmember Moncada stated the first thing Staff would do is to identify the roles the Council will need in the future, adding he would like to have at least two choices for each position come before the Council and give a formal presentation at a worksession. Councilmember Moncada then stated he thinks the sooner this can be done, the better, although the Council still has a little way to go before they have to select these positions.

Mayor King stated that he agreed with Councilmember Moncada and wants this to be done quickly with worksessions, adding the Council needs to pick their team and move forward with it and he wants to do it in a timely manner to get this rolling.

Councilmember Konrad stated that he agrees the Council needs to get this rolling adding the other thing the Council needs to consider is the formation of the board, noting the Council needs the application for the formation of the CFD board and it's time to start getting this done. Councilmember Konrad then stated if the Council is going to have Worksessions, the Council will need to have all the information in a timely fashion.

Mr. Stephens stated that he would start working with Staff and the City Attorneys and at some point with the Bond Counsel and will begin to move forward with the very next step, adding it will be laid out with the timing so items can be brought forward appropriately to Council. Mr. Stephens then stated if a special meeting is required as a result of timing, he would ask for a special meeting to be called and if it was not necessary, items would be brought to Council at regular meetings.

DEPARTMENT REPORTS: No comments from Council.

ADJOURNMENT

Councilmember Moncada moved to adjourn at 9:06 p.m. Seconded by Councilmember Lambert. Motion passed 7-0.

Toney D. King, Sr., Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk