

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD SEPTEMBER 22, 2008 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 FENN, VICE MAYOR KING,
COUNCILMEMBERS BONCQUET, LAMBERT, LODZINSKI, McGOFFIN, and SACCO**

INVOCATION:

Mayor Fenn introduced Pastor Larry Pondoff who gave the invocation.

**EMPLOYEE
RECOGNITION:**

None.

PROCLAMATION:

Mayor Fenn asked Councilmember McGoffin to read the Proclamation of the Mayor and Council declaring the month of October, 2008 to be "Domestic Violence Awareness Month" urging all our citizens to make a commitment to ending the violence.

PROCLAMATION:

Mayor Fenn asked Councilmember Lodzinski to read the Proclamation of the Mayor and Council declaring the week of October 5 – 11, 2008 be designated "Public Natural Gas Week".

PUBLIC HEARING:

Mayor Fenn turned the meeting over to Vice Mayor King to conduct the public hearing. Vice Mayor King opened the public hearing to receive comments and questions from the public regarding the proposed rezoning of 2 parcels from a Split Zoning District of B-2 (General Business) and R-3 (High Density Residential) to B-2 (General Business). The property is located on Ocotillo Avenue across from the Benson Hospital, in the 400 South block of Ocotillo Avenue at 7:10 p.m. Vice Mayor King indicated no one had signed up for the public hearing and asked if there were comments from any others present who wished to speak. After receiving no comments from the public, Vice Mayor King closed the public hearing at 7:11 p.m.

NEW BUSINESS:

1. Swearing In and Seating of the Newly Elected Council Members

Mayor Fenn stated at this time, Council would address New Business Item 1 to swear in the newly elected Councilmembers. City Clerk Vicki Vivian then swore in newly elected Councilmembers JoDeen Boncquet and David Lambert, who were then seated. Mayor Fenn then stated the new Councilmembers had been officially sworn in on September 17, 2008 enabling them to participate in Council action.

CALL TO THE PUBLIC:

Marv Sorenson addressed Council regarding political signs stating he disagrees with our current sign ordinance, since early voting occurs prior to the election dates. Mr. Sorenson stated he felt signs should be up during the entire election process, which encompasses both the primary and general election. Mr. Sorenson also stated the sign ordinance was not published, was not enforced in the current manner in the past and that the ordinance was not equally or fairly enforced. Mr. Sorenson then stated city employees work hard and their time is valuable; therefore other projects should take priority over removing political signs, which are damaged by removing and storing them at the City yard. Mr. Sorenson then requested the Council to reconsider and change the political sign ordinance.

Dave Yager addressed Council concerning the improvements on Interstate 10, stating he was here to speak regarding his right to keep his property. Mr. Yager stated in proposing changes to State Route 90 and Interstate 10, ADOT was requesting a 150' right-of-way, displacing up to 18 families. Mr. Yager then asked if Council had a way to stop or delay the proposed project until he and others could figure out a way to fight ADOT, he was asking Council to do it. Mr. Yaeger then stated many changes have been made to the plan, including the right-of-way being offset of the access road, now cutting his house in half. Mr. Yager again asked Council to stop or delay this project, if they could.

Brian Kelly addressed Council concerning the political sign ordinance stating he felt it was never the intention to deprive the public of the right to get information. Mr. Kelly stated many people vote through mail-in ballots and they don't have the opportunity to have the same information others receive. Mr. Kelly then stated if "election day" could be interpreted from the day early ballots could be cast to the election day, the ordinance would not need to be changed.

David DiPeso addressed Council congratulating the newly elected Councilmembers. Mr. DiPeso then stated he was there to support the Benson Arts Commission's request to put on the Gathering of Artists & Friends in St. David. Mr. DiPeso stated he couldn't see a problem holding it outside the City limits and encouraged Council to approve the request.

Patricia Rogers addressed Council stating it was nice to see a full packed agenda addressing City business. Ms. Rogers then stated much damage has been done to the City of Benson. Ms. Rogers then stated she felt the newspaper did not encourage turmoil, but that the paper had editorials, where opinions of the editor or the publisher can be placed. Ms. Rogers felt the newspaper represented the situation of the City the best they could. Ms. Rogers then stated the City needed to move forward, asking the two former Councilmembers, to move forward, let the community heal and let cooler heads prevail. Ms. Rogers then stated from this experience, we have learned a lot and can now grow as a community philosophically, as well as economically. Ms. Rogers then asked the current Council move forward and try to avoid the nonsense of the past.

Michelle Johnson-Bowen addressed Council regarding ADOT's proposed plan to rerouting of the Interstate 10/State Route 90 interchange stating ADOT has never officially contacted them regarding this issue. Ms. Johnson-Bowen stated she had heard unofficially that construction could begin as soon as the summer of 2009. Ms. Johnson-Bowen stated any taking of property for access roads and right-of-ways would have to occur before any construction started and wanted Council to know that they had not been contacted by ADOT.

Ron Fritz addressed Council stating he was in favor of the approval of the Benson Arts Commission's request to hold the Gathering of Artists & Friends in St. David. Mr. Fritz stated artists need the correct environment to produce in and stated the request is not unreasonable since the environment in the Gallery of Dreams is conducive to artists and is an appropriate place to hold this event.

Sylvia Burnside addressed Council regarding the possible turnback of Business 10 to the City of Benson stating she would love to see the City accept the turnback. Ms. Burnside stated this would give the City of Benson control for signs, traffic and banners, urging Council to consider accepting the turnback.

Paul Lotsof addressed Council concerning the selection of a new City Manager stating when we recruit candidates for the position of City Manager, there is a lot of talk of the qualities this person must have to do the best possible job for the City. Mr. Lotsof stated what we rarely hear is what the City of Benson offer in return. Mr. Lotsof then stated job seekers want to be well compensated, including benefits, nice working conditions and to know with reasonable certainty that they will have the job for a long time to come. Mr. Lotsof then stated that job security is not something that Benson gives to City Managers in Benson, stating that every City Manager, since 1997, has been fired and the average tenure is approximately 2 ½ years. Mr. Lotsof stated with this type of job security, the City must pay vastly higher salaries than any other communities pay their City Managers. Mr. Lotsof stated the unused vacation time and the severance pay buys the taxpayers of Benson nothing and is a spectacular waste of public funds. Mr. Lotsof then stated in the past Council has used the City Manager as a scapegoat when problems have arisen. Mr. Lotsof then stated the Council needs to learn from past mistakes and give a City Manager at least as much job security as the guy who rounds up the stray dogs and cats.

Irma Bernal addressed Council stating she supported the Benson Arts Commission's request to hold the Gathering of Artists & Friends and asked Council to approve the request.

John Whiteside addressed Council regarding the proposed rezoning request stating he felt the Council should approve the request. Mr. Whiteside stated it was good for Benson, was well within the confines of the General Development Plan and was the kind of development we needed to see more of.

Bill Beck declined to speak at this time.

CONSENT AGENDA:

- 1a. Approval of Minutes of the September 8, 2008 Regular Meeting
- 1b. Skip Loader Purchase (CIP PW 07-11) – Authorization of expenditure to purchase a 2007 Caterpillar 414 E Skip Loader for \$41,911.17
- 1c. Water Truck Purchase (CIP WW 07-8) – Authorization of expenditure to purchase a 2006 Inland Kenworth 2K Water Truck for \$34,794.32
- 1d. Approval to use a single Purchase Order issued to United Fire Equipment Company for Apparatus Repair and Maintenance
- 1e. Processed Invoices for August 30, 2008 through September 12, 2008

Councilmember Lodzinski moved to approve the Consent Agenda with the minutes of September 8, 2008 to indicate in bolder font that the meeting had adjourned before all items had been considered. Seconded by Councilmember McGoffin. Motion passed 7-0.

NEW BUSINESS:

1. Swearing In and Seating of the Newly Elected Council Members

See above. This item was addressed after the Public Hearing.

2. Approval for the Benson Arts Commission to hold its second annual “Gathering of the Artists & Friends” at the Gallery of Dreams in St. David, Arizona

Sylvia Burnside, Benson Arts Commission addressed Council welcoming the newly seated Councilmembers. Ms. Burnside thanked her colleagues and fellow citizens for their supporting comments. Ms. Burnside then stated financial problems are everywhere, but that it is still a good time to put on this event, which will serve to bring artists together and is a valley wide effort to ensure the creativity stays here. Mayor Fenn then stated he had met with Ms. Burnside and the Interim City Manager and felt this was a worthy event. Councilmember Lambert stated the banner purchase would be a one-time expense since it could be used again. Councilmember Lodzinski stated through economic development research we found that many people who live outside the City limits still claim Benson as their home and that he did not feel it would be unusual to hold an event outside the City limits from time to time. Councilmember Sacco then moved to give approval for the Benson Arts Commission to hold its second annual "Gathering of the Artists & Friends" at the Gallery of Dreams in St. David, Arizona. Seconded by Councilmember McGoffin. Motion passed 7-0.

3. **Ordinance 528 of the Mayor and Council of the City of Benson, Arizona, approving a request to rezone assessor's parcel numbers 123-20-129 and 123-20-130, located in the Southwest Quarter of the Southeast Quarter of Section 9, Township 17 South, Range 20 East of the Gila and Salt River Base and Meridian, from a split Zoning District of B-2 (General Business) and R-3 (High Density Residential) to B-2 (General Business)**

Mayor Fenn stated he would be turning this item over to Vice Mayor King to conduct. Mayor Fenn then stated he was declaring a potential conflict of interest, stating he had no financial or business dealings with the applicant or the request to rezone the property, but that there was a slight chance he would, in the future, therefore he would withdraw from participation and discussion. Vice Mayor King then opened this item for discussion. Councilmember Lodzinski stated when he was on the Planning & Zoning Commission, they considered this area to be a potential for medical related offices due to the proximity to the hospital and fit within the General Development Plan. Councilmember Lambert stated he had spoken with the residents of Water Crest development and they had no objections to the proposed medical facility on this property. Councilmember McGoffin moved to approve Ordinance 528. Seconded by Councilmember Sacco. Motion passed 6-0 with Mayor Fenn abstaining.

4. **Presentation by Arizona Department of Transportation (ADOT) and discussion regarding transportation plans and development for Northwest Cochise County, State Route 80, State Route 90, the Interstate 10-State Route 90 Traffic Interchange, the possible co-sponsorship of plans and the possible turn back of Business 10 to the City of Benson**

Bill Harmon, ADOT addressed Council congratulating the newly seated Councilmembers and thanking Public Works Director Brad Hamilton. Mr. Harmon stated he was very impressed with Mr. Hamilton's diligence, skill and desire to do the right thing and that Mr. Hamilton was a great asset in the teamwork between ADOT and the City of Benson. Mr. Harmon then stated the Interstate 10-State Route 90 Traffic Interchange for the entire reconstruction project was \$44 million. Mr. Harmon then stated this project would be done in two phases, with the first phase being advertised in the summer of 2009. Mr. Harmon stated the first phase would include realigning the curves on the west side of the interchange, improving two curves on the east side of the traffic interchange, relocating the existing frontage road. Mr. Harmon stated the bridges, as well as the start of the climbing lane on the west bound side of Ocotillo will remain until the second phase. Mr. Harmon then mentioned the economic status and financial challenges the State faces and indicated many projects across the State will be potentially delayed, indicating it may be several years before the second phase is started. Mr. Harmon then stated although he was not involved in negotiations for property acquisition, if anyone would like to contact him, he would be happy to direct them to the proper people who can assist them in providing answers. Councilmember Lodzinski stated affected property owners had rights to be properly compensated and that information was available to assist property owners.

Mr. Harmon then addressed Council concerning State Route 80 and the five lane widening from Business 10 to Post Ranch Rd, including the intersection improvements at Business 10-State Route 80. Mr. Harmon stated the scoping had been completed on the project entitling petitioning the system to program it into a 5-year plan for construction. Mr. Harmon then noted again, the financial challenges and stated he was reluctant to comment or speculate when it could be programmed in. Mr. Harmon then stated the project would remain on their list of projects they wanted to have programmed for construction.

Mr. Harmon then spoke regarding the status of the Northwest Cochise County Plan stating that while he recognizes the current financial circumstances, the economy will warm up again and there will be the need to deal with growth. Mr. Harmon stated Benson is a cross roads in terms of location as well as in terms of the past, present and future. Mr. Harmon stated Benson is a pivotal point for the traveling public. Mr. Harmon then stated ADOT, Cochise County and the City of Benson have undertaken the task of developing a plan and will be soliciting consultants to assist with that plan, that will be based on numerous studies and will help us understand the tributary areas for the existing traffic interchanges on Interstate 10 and will look at State Route 90 and State Route 80 to anticipate the growth in the area and determine what improvements will be needed. Mr. Harmon stated he will introduce the consultant and keep the City updated on the plan.

Mr. Harmon then spoke regarding the possible turnback of Business 10 to the City stating in the past this has been discussed informally. Mr. Harmon stated if Council would be interested in discussing the turnback options, he would proceed and bring information to Council in the future. Mayor Fenn stated he would like to know if there were other cities that have accepted a turnback and would like to gather comments from those jurisdictions and would like to see an itemized list from ADOT of the offer to the City in return for the City accepting the turnback. Mr. Harmon stated he would be happy to work with our staff to gather that information for Council. Mayor Fenn then stated he would like Mr. Hamilton create a list of advantages of accepting the turnback to see if they would offset the burden and responsibility of taking over the maintenance. Vice Mayor King stated he would like to see the costs of the maintenance ADOT currently expends on the proposed turnback. Mr. Harmon stated he would put together an information packet for Council to review in the future.

Mayor Fenn then asked Mr. Harmon to discuss State Route 90 in conjunction with New Business Item #5.

5. **Resolution 56-2008 of the Mayor and Council of the City of Benson, Arizona, accepting the Arizona Department of Transportation/City of Benson State Route 90 Conceptual Right-of-Way and Roadway Plan for the City of Benson dated November, 2007**

Mr. Harmon addressed Council stating ADOT wanted to manage State Route 90 to assure it was an efficient regional arterial, not preventing access, but managing access to prevent the loss of efficiency. Mr. Harmon stated to do this, ADOT looks at determining the number of lanes that State Route 90 will need, the existing crossovers and the access points. Mr. Harmon stated the conceptual design will assist in the management of State Route 90, serving as a guideline for growth.

Public Works Director Brad Hamilton then addressed Council stating modifications to the traffic interchange on State Route 90 are beyond the scope of the conceptual design; the conceptual design has nothing to do with the traffic interchange. Mr. Hamilton stated this conceptual design would serve strictly as a guideline as development comes through to keep State Route 90 efficient.

Mr. Harmon then spoke stating that ADOT needs to address growth on State Route 90 ranging from a development of 10,000 homes to a convenient store, stating the way to do that is to ask the developer to provide a traffic impact analysis (TIA) which will describe a recommended access, the number of access points, the number of lanes and whether a traffic signal is needed.

Councilmember Lodzinski moved to approve Resolution 56-2008. Seconded by Councilmember Lambert. Motion passed 7-0.

6. Lions Park (CIP PR 06-1) Approval of Lions Park Master Plan Layout

Mr. Wayne Schiebe addressed Council concerning the proposed Lions Park master plan layout stating the plan adds two full size football/soccer fields that is multi-use, two junior courts east of the main court, a disc course, which is basically frisbee-golf, an expanded playground area with ramadas, a family picnic area in the southwest corner of the project with large ramadas and a central area for barbequing, additional restrooms and a couple of sand volleyball courts on the east side. Mayor Fenn stated by approving the master plan layout, it would direct staff to proceed with more in-depth design beyond the conceptual design. Mr. Schiebe stated in one of the very first proposals, a rodeo area was proposed, but there was not enough land for both a rodeo area and the large fields. Councilmember Lambert asked if there were plans for another bridge close to Jackson Road for access, with Mr. Schiebe stated the existing bridge is the only access point unless the wash was addressed at the far north side to allow vehicular and pedestrian access to that proposed area. Councilmember Lambert stated it would need to be addressed since the frisbee-golf course continues on both sides of the wash. Councilmember Lambert asked Interim Chief Nichols about an estimated timeline for this project with Interim City Manager stating it would depend on the City's finances and grant availability.

Councilmember Lambert moved to approve the Lions Park Master Plan Layout. Seconded by Councilmember McGoffin. Motion passed 7-0.

7. Discussion and direction to staff regarding issuing a Request for Proposals for Municipal Legal (City Attorney) Services

Mayor Fenn opened this item stating the City's Attorney, Mr. Benavidez has indicated that he will not seek renewal of his contract, which expires November, 2008. Council directed staff to move forward on the advertising process for the Request for Proposals.

8. Discussion and Direction to staff to initiate the search and selection process for the position of City Manager

Mayor Fenn stated Council had received a packet explaining the process the League of Arizona Cities and Towns uses to assist Cities and Towns with the selection of a City Manager. Mayor Fenn confirmed the cost of this service is \$5,000. Interim City Manager Glenn Nichols stated if this service was chosen, there would be dialogue between the Council and the League concerning how Council would like them to proceed, the number of candidates forwarded to Council, etc. Council directed staff to proceed with this service.

9. Resolution 57-2008 of the Mayor and City Council of the City of Benson, Arizona, rescinding Resolution 52-2008 and lifting the temporary moratorium on the involuntary termination of City employees

City Attorney Thomas Benavidez addressed Council stating it was their pleasure if they chose to lift the moratorium imposed by Resolution 52-2008. Councilmember Lodzinski stated he felt Resolution 52-2008 had lived out its usefulness and moved to approve Resolution 57-2008. Seconded by Councilmember Sacco. Motion passed 7-0.

10. Discussion and possible action to direct City staff to conduct rate studies for water and gas service

Councilmember McGoffin stated the utilities funds were breaking even, but that staff needed to conduct the rate studies to ensure the funds remained fiscally sound. Councilmember McGoffin stated the rate studies should include wastewater. Council then directed staff to complete the rate studies for utilities.

EXECUTIVE SESSION: Pursuant to A.R.S. section 38-431.03 (A)(3) & (4) for legal advice from the City's Attorney concerning a complaint made by former Councilmember, Dianne Tipton, alleging violation of conflict of interest law, open meeting law and City Code section 3-3, on the part of Councilmember McGoffin; and allegations that former City Manager, Martin Roush, was wrongfully terminated

Mayor Fenn then explained that the nature of the executive session was a complaint made by former Councilmember, Dianne Tipton, stating that various points in the complaint dealt with Councilmember McGoffin and himself. Mayor Fenn then stated he would like to see an Executive Session that only dealt with the items as the related to Councilmember McGoffin and then to hold a second Executive Session that would deal with the complaint as it related to himself. Mayor Fenn stated Councilmember McGoffin had indicated she would not participate in the first Executive Session and Mayor Fenn stated he would not participate in the second Executive Session.

City Attorney Thomas Benavidez stated since the complaint mentioned both Councilmember McGoffin and Mayor Fenn, the Council could bifurcate the Executive Session so members of the Council could excuse themselves from part of the Executive Session. Vice Mayor King then moved to enter in Executive Session with the City Council, Interim City Manager, City Attorney and City Clerk at 8:49 p.m. Seconded by Councilmember Bonquet. Motion passed 7-0.

Council reconvened at 9:27 p.m.

11. Discussion and possible action to direct the City's staff with respect to the above allegations, including, possible hiring of an outside investigator

Vice Mayor King opened this item for discussion. This item died for a lack of direction or motion.

CITY MANAGER REPORT:

Interim City Manager Glenn Nichols addressed Council with upcoming meetings:

October 7, 2008 – Planning & Zoning Meeting, 7:00 p.m., City Hall

October 13, 2008 – City Council Meeting, 7:00 p.m., City Hall

October 14, 2008 – Arts Commission Meeting, 9:00 a.m., City Hall
– Library Advisory Board Meeting, 4:00 p.m., City Library

October 18, 2008 – Historic Preservation Commission Meeting, 9:00 a.m., City Hall

October 27, 2008 – City Council Meeting – 7:00 p.m., City Hall

Mr. Nichols then stated he would like to remind everyone October 11-12 will be Butterfield

Overland Stage Days with the parade and many other activities. Councilmember Lambert then stated the Arts Commission would be holding their Gathering of Artists & Friends on October 25.

COUNCIL DIRECTIVES:

None.

DEPARTMENT REPORTS:

None.

ADJOURNMENT:

Councilmember Sacco moved to adjourn at 9:30 p.m. Seconded by Councilmember Lambert. Motion passed 7-0.

Mark M. Fenn, Mayor

ATTEST:

Vicki L. Vivian, City Clerk