

**THE REGULAR MEETING  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD NOVEMBER 24, 2008 AT 7:00 P.M.  
AT CITY HALL, 120 W. 6<sup>TH</sup> STREET, BENSON, ARIZONA**

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

**PRESENT WERE: MAYOR FENN  
COUNCILMEMBERS BONCQUET, LAMBERT, LODZINSKI, McGOFFIN, and SACCO  
ABSENT WAS: VICE MAYOR KING**

**INVOCATION:**

Mayor Fenn introduced Father Henri who gave the invocation.

**EMPLOYEE  
RECOGNITION:**

None.

**CALL TO THE PUBLIC:**

Kathy Suagee addressed Council regarding the hiring of a new City Attorney stating she was against the hiring of Ms. Ann Roberts or Figueroa and Associates. Ms. Suagee asked Council to table the item and reopen the search for a City Attorney. Ms. Suagee requested that her Call to the Public statement be entered into the permanent records.

Stephen Insalaco addressed Council regarding the upcoming 2009 elections and that he hoped all Councilmembers up for reelection would run again, as they are doing a great job. Mr. Insalaco then stated he felt the community should seriously consider supporting the hopeful role of Mr. Glenn Nichols in a more permanent role as City Manager.

Tom Fitzgerald addressed Council stating he had done a quick survey of the phone books and found numerous attorneys in Cochise County and Pima County. Mr. Fitzgerald then stated he felt there wasn't proper advertising done for the important position of City Attorney and that there must be other attorneys in Tucson that would be willing to come to Benson. Mr. Fitzgerald then asked Council to table the hiring of a City Attorney until further advertising could be done.

Vicki Vivian, City Clerk of the City of Benson addressed Council concerning the upcoming City elections. Ms. Vivian stated the Primary Election will be held on March 10, 2009 with the General Election, if needed, to be held on May 19, 2009. Ms. Vivian then stated candidates seeking municipal office could obtain the materials which must be filed in order for their names to appear on the Primary Election ballot, in the administration office beginning November 10, 2008 with the deadline to file the necessary materials being December 10, 2008 at 5:00 p.m. Ms. Vivian then stated the voter registration deadline for the Primary Election is February 9, 2009 and for the General Election is April 20, 2009. Ms. Vivian then stated the City would be holding a Candidate Information Forum on December 1, 2008 at 7:00 p.m. at City Hall. Ms. Vivian stated the forum was for anyone interested in becoming a candidate or anyone else who wished to come.

Dianne Tipton addressed Council regarding the hiring of a City Attorney stating she would like to see Council table the item, leave the process open for more applications and make a diligent

effort to find a suitable replacement. Ms. Tipton then stated Ms. Ann Roberts is not qualified for the position of City Attorney. Ms. Tipton then spoke regarding Ms. Roberts' previous contract that was approved by Council, stating a different contract was executed than was approved by Council. Ms. Tipton stated this was illegal and should disqualify her from rehiring. Ms. Tipton stated over her objection, the Council chose to allow Ms. Roberts to continue serving the City in the capacity of City Prosecutor and felt it was wrong. Ms. Tipton then stated Ms. Roberts' expenses increased each year and that there was no accountability for how Ms. Roberts' spent her time. Ms. Tipton stated there were many times the City had to pay for outside counsel in addition to Ms. Roberts' salary. Ms. Tipton then stated the costs of City Attorney with the Benavidez Law Group, including the cost of the special investigation was less than with Ms. Roberts and Ms. Tipton felt the City got far superior representation with the Benavidez Law Group. Ms. Tipton then asked Council to show integrity in their decision.

Paul Lotsof addressed Council regarding the Resolution supporting the establishment of an Enterprise Zone. Mr. Lotsof stated at least 10 years ago, the Council declared the Benson area as an enterprise zone, saying the declaration cost nothing and was worth every penny that it cost. Mr. Lotsof then stated the City had, over the years, participated in various Arizona Department of Commerce programs such as the Main Street program, the first Enterprise Zone, being declared a colonia and the Commerce Department's REDI program and that while the City had the nice addition to our City Limits signs, the City got little else and the result of these programs spoke for themselves. Mr. Lotsof then stated various economic development committees had been formed and failed in the past, and that more recently, the Southeast Arizona Economic Development Group was formed, but that they had decided to spread themselves countywide meaning there was very little potential to benefit Benson. Mr. Lotsof then stated the City had formed the Economic Development Subcommittee, but that they suffered from the same problems failed economic development groups had in the past, which were no funding and no competent people. Mr. Lotsof then stated what the City needed was a well-funded program, with the purpose of luring industry into our community, with a person employed who was competent to sell Benson to corporate types and to appropriate enough cash so the person could do a good job. Mr. Lotsof stated when and if the City does that, we really will see the long-awaited boom town that Benson could become.

#### **CONSENT AGENDA:**

- 1a. Approval of Minutes of the November 10, 2008 Regular Meeting
- 1b. Processed Invoices for November 1, 2008 through November 17, 2008

Councilmember Lodzinski moved to approve the Consent Agenda. Seconded by Councilmember Sacco. Motion passed 5-0 with Mayor Fenn abstaining.

#### **NEW BUSINESS:**

1. **Resolution 63-2008 of the Mayor and City Council of the City of Benson, Cochise County, Arizona, supporting the Establishment of a Regional Enterprise Zone within Cochise County, approving an Enterprise Zone Commission to explore the possibility of creating a Regional Enterprise Zone within Cochise County Arizona, and appointing members to the Enterprise Zone Commission**

Finance Director Jim Cox addressed Council stating in 2004 the City joined with the County to create a county wide enterprise zone to collectively market Cochise County. Mr. Cox stated this resolution expresses support for the continuation of the Enterprise Zone Commission to continue exploring for economic development opportunities within the county. Mr. Cox stated the establishment of a county wide enterprise zone assists with grant opportunities that would not otherwise be available. Mr. Cox then recommended Bob Nilson be the Council appointed

member to the Enterprise Zone Commission. Councilmember McGoffin expressed interest in being appointed to the Enterprise Zone Commission, stating she had been involved with the Economic Development Subcommittee and had taken economic development classes. Councilmember McGoffin asked if there could be more than one appointment to the Commission. Mr. Cox then suggested Councilmember McGoffin be appointed to the Commission with Mr. Nilson assisting Councilmember McGoffin and the Commission. City Clerk Vicki Vivian stated she had been contacted by the County requesting the information on the Council appointment which needed to be received by November 28, 2008. Councilmember Lodzinski moved to approve Resolution 63-2008 with the appointment of Councilmember McGoffin to the Enterprise Zone Commission. Seconded by Councilmember Boncquet. Motion passed 6-0.

2. **Resolution 64-2008 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the Execution of an Intergovernmental Agreement between the City of Benson and the Benson Unified School District #9 (The "District") to permit reciprocal use of the Buildings and Grounds of the City of Benson and the District – Permitting Use of Parks, Recreation and Sports Facilities**

Interim City Manager Glenn Nichols addressed Council stating the previous Intergovernmental Agreement with the Benson Unified School District had expired and that the new Intergovernmental Agreement was amended to allow both the City and School to use each other's facilities. Councilmember Sacco moved to approve Resolution 64-2008. Seconded by Councilmember McGoffin. Motion passed 6-0.

3. **Lease Agreement between the Benson Unified School District #9 and the City of Benson for the property located at 197 E. 7th Street for the purpose of operating a Charter High School Program**

Interim City Manager Glenn Nichols addressed Council stating this lease agreement was the same lease agreement previously executed for the Benson Unified School District to operate a Charter High School Program. Mr. Nichols stated the changes to the contract were the small increase in the lease fee, which was incorporated in the original lease and the legal required language regarding illegal workers and notification of conflict of interest laws. Councilmember McGoffin then moved to approve the lease agreement between the Benson Unified School District #9 and the City of Benson for the property located at 197 E. 7th Street for the purpose of operating a Charter High School Program. Seconded by Councilmember Lambert. Motion passed 6-0.

4. **Review and possible action regarding approval and adoption of Municipal Legal Services Contract for the City Attorney**

Mayor Fenn stated he had a professional business relationship with Ms. Ann Roberts and had, therefore, submitted a conflict of interest statement and would not be participating in the discussion or action regarding this agenda item. Mayor Fenn then stated with Vice Mayor King absent, he would be turning the item over to Councilmember Sacco to conduct. Councilmember McGoffin then stated she dined with Ms. Roberts for lunch and asked City Attorney Thomas Benavidez if she was able to participate and act on this item. Mr. Benavidez stated based on that kind of relationship, he did not see a conflict of interest. Councilmember Sacco then stated the City of Benson had advertised the Request for Proposals (RFP) for municipal legal services in three publications in October. Councilmember Sacco then stated two firms had submitted proposals; Figueroa and Associates and Ann Roberts of Battaglia and Roberts. Councilmember Sacco then stated a selection committee then reviewed the proposals and that interviews were conducted with both candidates. Councilmember Sacco then stated that based upon Ms. Ann Roberts' previous work experience with the City of Benson, her personal knowledge of the City, her proximity to City Hall and her readiness to return to her former position, along with continuing services as City Prosecutor, the committee found that Ms. Roberts' response to the

RFP was advantageous to the City, combining all legal services to one firm without any interruptions in legal services. Councilmember Sacco then stated at Council's pleasure, the committee unanimously recommended Ms. Roberts be selected to fill the dual position of City Attorney and City Prosecutor and suggests that direction be given to staff to commence negotiations of a legal service contract with Ms. Roberts for Council's review. Councilmember Sacco then opened the item for discussion. Councilmember Lodzinski asked Interim City Manager Glenn Nichols if the City had received other inquiries with Mr. Nichols stating RFPs were emailed to six other firms that requested them, but only two proposals were submitted. Councilmember Lodzinski then verified that if selected for the City Attorney, Ms. Roberts benefits cost would increase, such as increased payroll taxes and retirement contributions. Councilmember Sacco stated on Ms. Roberts' proposal, she indicated 25 hours a week would be sufficient to perform both the City Attorney position and the City Prosecutor position. City Attorney Thomas Benavidez then stated his firm spent approximately 15 hours a week performing duties as the Benson City Attorney. Councilmember Lodzinski then stated the committee found that Mr. Figueroa's experience in rezoning and water issues were limited and that the committee had discussed the problems in the past with Ms. Roberts and how things have changed with the City Attorney position, to primarily legal review of proposed documents and less direct involvement with departments, such as writing regulations. Councilmember Lodzinski then stated the committee felt Ms. Roberts had more experience in the areas of rezonings, annexation law, development contracts and employee relations. Councilmember Boncquet then suggested placing Ms. Roberts as an Interim City Attorney for a period of 6 months while continuing to look for a City Attorney, citing both constituents' concerns and constituents' recommendation. Councilmember Lodzinski then stated if Ms. Roberts accepted the offer, the contract would renew after the new Council was elected in May, 2009. Councilmember Boncquet then moved to hire Ms. Roberts as an Interim City Attorney for a period of 6 months, while continuing to look and make sure that is what Council wants. Seconded by Councilmember Lodzinski. Motion passed 5-0 with Mayor Fenn absent.

### **CITY MANAGER REPORT:**

Interim City Manager Glenn Nichols addressed Council with upcoming meetings and important dates:

December 1, 2008 – Economic Development Subcommittee, 5:15 p.m., City Hall

December 8, 2008 – City Council Worksession, 6:00 p.m., City Hall  
City Council Meeting, 7:00 p.m., City Hall

December 9, 2008 – Arts Commission, 9:00 a.m., City Hall  
Historic Preservation Commission Meeting, 9:00 a.m., City Hall  
Planning & Zoning Commission, 7:00 p.m., City Hall

December 20, 2008 – Historic Preservation Commission, 9:00 a.m., City Hall

December 22, 2008 – City Council Worksession, 6:00 p.m., City Hall  
City Council Meeting, 7:00 p.m., City Hall

December 25, 2008 – Christmas, HOLIDAY, City Offices Closed

Mr. Nichols also stated he and City Clerk Vicki Vivian would be holding a Candidate Information Forum on December 1, 2008 at 7:00 p.m., following the Economic Development Subcommittee Meeting and that the Benson Fire Department was continuing to assist the Benson Junior Women's Club with their Toy Drive.

**COUNCIL DIRECTIVES:**

None.

**DEPARTMENT REPORTS:**

None.

**ADJOURNMENT:**

Councilmember McGoffin moved to adjourn at 8:05 p.m. Seconded by Councilmember Boncquet. Motion passed 6-0.

\_\_\_\_\_  
Mark M. Fenn, Mayor

ATTEST:

\_\_\_\_\_  
Vicki L. Vivian, City Clerk

Attachments:

Statement at Call to the Public from Kathy Suagee  
Call to the Public Address from Stephen Insalaco

Statement at Call to the Public from Kathy Suagee  
November 24, 2008

Mr. Mayor, Honorable Council,

I am speaking to you tonight about Agenda Item No. 4—the proposed hiring of a new city attorney. I wonder if any of you realize the past two years, while Martin Roush was our manager and the Benavidez Law firm represented Benson, NO NEW LAWSUITS WERE FILED AGAINST THE CITY OF BENSON.

I wonder whether any of you remembers how long the City was embroiled in the Benson Golf Systems lawsuit, and the SKPS Park lawsuit and the wastewater treatment plant lawsuit? These lawsuits went on and on and on when they were being handled by former city attorney Ann Roberts. We had to hire outside attorneys at every step of the way, because Ms. Roberts was not qualified to negotiate difficult legal matters.

The Benavidez Law Group not only put these issues to bed but kept us out of any further actions against the City. Their combined expertise no doubt contributed to this record. In a law firm, it is so much better to have colleagues with whom you can brainstorm and research issues important to a city like Benson, compared to an individual who has the limitation of no one with whom to discuss sensitive issues.

Please refer to the memo from Mr. Cox to Mr. Lambert dated October 13, 2008. Under the contract with Benavidez, the City saved \$99,000 in legal fees this fiscal year. They graciously did not charge us for mileage, even though gasoline was at its highest prices during their time with us. Because they were under contract, we did not have to pay them insurance, retirement, vacations, or FICA. I'm sure any contract Ann Roberts proposes to the City will include all of these expenses.

During the same period of time, Roberts was City Prosecutor. Expenses for that office increased from \$54,000 with a private contractor to \$122,320 for Roberts and her secretary, an increase of \$68,000.

A rehire of Roberts <sup>would</sup> be fiscally irresponsible, as well as a step backward. Contacts I have in Willcox do not give Mr. Figueroa high marks either.

As Council you do have a third option: **open the search up again**. This time, try advertising someplace besides Benson and Sierra Vista. It could be that no reputable attorney will want to come to Benson, but on the other hand, it's a buyers market right now, and we might just get a reputable law firm to take the contract..

I hope you will remember, also, that the Attorney General's eye is on Benson. He is looking at all of you, not just the mayor, and he has the whole story of Benson's sordid history, including Ms. Roberts' unethical altering of her former contract.

And let's not forget the conflicts of interest inherent in this case. Mark Fenn has been consulting with Ms. Roberts on a personal basis for some time. Al Sacco also has been consulting regularly with Ms. Roberts. Neither of these council members should have anything to do with either an interview or a voting process if Roberts is one of the candidates for this service. Lori McGoffin has a long-time close friendship with Ann Roberts, and she, also, should carefully weigh her conflict of interest, especially in view of her already overreaching conflicts being married to a police officer.

Remember, also, that when Ann Roberts' resignation was accepted two years ago, there was no public outcry of indignation. The people are watching this process as well. If the present Council has any devotion at all to fiscal responsibility and attendance to the wishes of the people, you will reopen this search, advertise in Tucson, and find an attorney or firm that Benson can rely on for honesty, hard work and integrity.

Doing this is simple. When that agenda item comes up, one of you makes a motion to table. One of you seconds the motion. Then you vote, without Mr. Fenn or Mr. Sacco's participation. I understand Mr. Fenn has already recused himself from the vote. Mr. Sacco should do the same. Then Vicki advertises in the Tucson papers and the Arizona Attorney, and in January you consider this issue again. Meanwhile, I'm, if Benavidez Law Firm won't help you out on an hourly basis, Lewis and Roca or some other reputable firm in Tucson will. *sure*

I would like a copy of this letter to be entered into the permanent record, please. Thank you for listening to this voter, and know that I speak for many, many more.

*Kathy Swager*

CALL TO PUBLIC ADDRESS

Stephen Insalaco

2008.11.24

Mayor Mark Fenn

Vice-Mayor Toney King

Councilmember Jo Deen Boncquet

Councilmember David Lambert

Councilmember John Lodzinski

Councilmember Lori McGoffin

Councilmember Al Sacco

My name is Stephen Insalaco. My permanent place of residence is 3280 West Pinto Place, J6 Ranch. While I live outside the city limits, I am a hangar tenant at the Benson Municipal Airport where I predominately spend my weekend activities.

Good evening Mr. Mayor, Vice-Mayor, council members, and good citizens of Benson. This represents my first address before this city council, with our new city council members. I wish to afford a belated welcome to Councilmembers Mr. David Lambert and Ms. Jo Deen Boncquet.

I wish to address the council this evening concerning the upcoming municipal primary election, currently scheduled for 10 March 2009; and more specifically on the topic of the nomination packets.

As you know, nomination materials were made available starting 10 November 2008, and are due no later than 5:00 PM 10 December 2008, or something approaching that. I understand that the seats of Mayor Mark Fenn, Vice-Mayor Toney King, and Councilmembers Lori McGoffin and David Lambert will be up for re-election. Further, I understand that some of the perspective candidates have picked up their nomination packets, while others have not, or remain debating the topic. I wish to encourage each of you to consider running for re-election.

The last calendar year has been a trying one for the city of Benson. It has been a year of bitter bi-partisan politics that have fractured the effectiveness of municipal government, hidden agendas that have reduced municipal efficiency, and "turmoilus" events that have dominated the municipal editorials. Nonetheless, it shouldn't have been this way. Members of the city government and the community should support their elected officials. We shouldn't create an environment where citizens don't want to serve the community. Despite all of this, the performance of several members of city government have shined, and hopefully much of the pain can be put behind this community now.

Mayor Mark Fenn has been the topic of conflict of interest throughout the year, subject to repeated attacks on his personal character, and a subsequent investigation. Yet through all of this, he has maintained his composure and led this city through perhaps one of the most turbulent times in recent memory. I commend Mayor Mark Fenn for his stead-fast leadership qualities, and it is my hope and aspiration that he will seriously consider running for re-election as Mayor of this community. This community *needs* his leadership qualities. I am confident, that Mayor Mark Fenn will find the way to isolate his business ventures to everyone's satisfaction, while perusing his role in public office. I hope that Mayor Fenn will consider his ongoing business of building a better Benson, while continuing to hold his seat as Mayor of this community.

Vice-Mayor Toney King is now a seasoned councilmember and Vice-Mayor of his own right. It should be no surprise then, that this community and Mr. King himself, should be considering his continuing role on the council, and as a likely candidate as a future Mayor following Mayor Mark Fenn's administration. Vice-Mayor Toney King has shown his charitable qualities to the community on numerous occasions, while demonstrating the objective leadership qualities that this community will need in the not too distant future. I hope that Mr. King will also seriously consider running for re-election as Vice-Mayor, and subsequently as the Benson Mayor in the future.

Councilmember Lori McGoffin was a freshman councilmember not too long ago, and it seemed at first that she was a bit timid to vote on some of the more difficult agenda topics. I hope that the council will accept my apologies, for my inept early judgment of Ms. McGoffin's performance as a councilmember. This because Ms. McGoffin has performed very splendidly in her position on the council, and in recent months this community has been witness to her ability to literally champion some of the most difficult agenda items. And in so doing, maintaining an objective posture all of the time, this despite attacks on her personal property. It is my hope, too, that councilwoman McGoffin will consider running for re-election.

And while I understand that it is only Councilmember David Lambert's seat that is up for re-election, I would like to address the council concerning both Mr. Lambert and Ms. Boncquet's council seats, in saying that this community needs the objective leadership of ~~selfish~~ <sup>selfless</sup> individuals like these Councilmembers, and I trust that they will both succeed in their continued community service to this township.

While Councilmember Al Sacco and Councilmember John Lodzinski's seats are not currently up for re-election, I wish to share with the council that they are both doing a great job, and that I hope that they will both consider re-election options when the appropriate time approaches.

In addition, this community should seriously consider supporting the hopeful role of Mr. Glenn Nichols in a more permanent role as City Manager. I believe that I am speaking for a great many, when I say that there is a great degree of confidence in Mr. Nichols' role as an objective and fair City Manager, and his willingness to work through the future issues with the city council, and other members of city government. Other municipal servants too numerous to mention here, hold city offices and continue to show promise of working together. Several other public offices need to be filled, and I hope that you will find dedicated, helpful individuals that are equally willing to work together, to fill these seats.

In closing, I see for the first time in a long time, a body of community servants within Benson municipal government, that have the hope of truly working together to find solutions to the agenda items, and build a better community with a stronger economy. I find it important that someone should say *"I appreciate the service and efforts of each of you to this community."*

And finally, I want to wish each of you and yours, a happy and safe Thanksgiving holiday.

Thank you.

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