

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD APRIL 27, 2009 AT 7:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

**MAYOR FENN
OPENED THE MEETING AT 7:01 P.M. WITH
THE PLEDGE OF ALLEGIANCE.**

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

INVOCATION:

Mayor Fenn introduced Pastor Kirk Sorenson of The First Assembly of God who gave the invocation.

PROCLAMATION:

Mayor Fenn stated he had asked Councilmember Lambert to read a Proclamation declaring the week of May 4, 2009 as "Youth Week". Mayor Fenn then presented the Proclamation to the Esteemed Leading Knight Jerry Pollard of the Benson Elks Club.

Mayor Fenn read a Proclamation declaring May 15, 2009 as "Benson Poppy Day". Mayor Fenn then presented the Proclamation to the Women of the American Leagues Auxiliary, who then presented poppies to the Council.

**EMPLOYEE
RECOGNITION:**

None.

CALL TO THE PUBLIC:

George Scott addressed Council regarding the pre-annexation and development agreement with San Pedro Partners. Mr. Scott stated he has been following this issue for a couple of years and that this proposed agreement represents a good project for Benson. Mr. Scott asked the Council to keep the City of Benson moving forward by supporting the project and approving the agreement.

John Whiteside addressed Council stating he was against the pre-annexation and development agreement between San Pedro Partners, L.L.C., an Arizona Limited Liability Company, and Jimmy Harlan and Yoke Lin Harlan, Trustees, and the City of Benson, Arizona. Mr. Whiteside's comments are incorporated into the minutes.

CONSENT AGENDA:

- 1a. Approval of Minutes of the April 13, 2009, Worksession
- 1b. Approval of Minutes of the April 13, 2009, Regular Meeting, Including Executive Session Minutes
- 1c. Proclamation declaring the weekend of April 24, 25, 26, 2009 "Benson Bluegrass Festival Weekend," given to the San Pedro Valley Chamber of Commerce
- 1d. Processed Invoices for April 7, 2009 through April 20, 2009

Councilmember McGoffin moved to approve the Consent Agenda with a correction to the minutes of the April 13, 2009 Regular Meeting. Seconded by Councilmember Lambert. Motion passed 5-0, with Vice Mayor King abstaining.

NEW BUSINESS:

1. **Resolution 29-2009 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the application by the Benson Volunteer Fire Department for EMS Provider Assistance Program Grant funds from the Southeast Arizona Emergency Medical Services Council**

Fire Chief Keith Spangler addressed Council stating this grant application was for equipment to put on the engine companies enabling better treatment of injured parties. Mr. Spangler stated the amount of the grant request was \$6,962.04 and the grant requires no matching funds from the City. Vice Mayor King moved to approve Resolution 29-2009. Seconded by Councilmember Lambert. Motion passed 6-0.

2. **Discussion and possible action on proposed new City of Benson official logo**

Finance Director Jim Cox addressed Council stating the City's existing logo is intricate and is a work of art that served us well for many years, but that due to its intricate design was costly to reproduce. Mr. Cox then stated the City does not own the rights to the current logo and therefore cannot use it for monetary gains without paying a royalty. Mr. Cox then stated due to the reproduction costs, staff had looked at a new logo and presented options to Council at the April 13, 2009 meeting and after incorporating Council's suggestions, now have proposed logos for Council action. Councilmember Lambert asked about the trademark of the "Gateway to the San Pedro Valley" with City Clerk Vicki Vivian stating staff had checked with the Secretary of State's office and after verifying it was available, was now in the process of the obtaining the trademark. Councilmember McGoffin then moved to approve the logo as presented in option B. Seconded by Councilmember Lambert. Motion passed 5-1 with Vice Mayor King voting nay.

3. **Resolution 30-2009 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the application by the Benson Police Department for Gerald Hardt Memorial Criminal Justice Records Improvement Program Grant Funds from the Arizona Criminal Justice Commission**

City Manager Glenn Nichols introduced Acting Police Chief Paul Moncada who addressed Council concerning this item. Mr. Moncada stated the grant was for records enhancement that would provide new servers and would enable the installation of mobile data terminals in each patrol car, giving the ability for silent dispatch and the ability for officers to run checks in their vehicles. Mr. Moncada stated the grant application was for \$307,935.00 with a 25% required match of \$76,930.00, but since the grant was part of the stimulus plan, there was a possibility the match could be waived, depending on the financial ability of the City. Vice Mayor King verified the required match was built into the upcoming budget for Fiscal Year 2009-2010. Mr. Nichols then stated if the required match would not be waived, the City had the ability to deny the grant funding. Councilmember Sacco moved to approve Resolution 30-2009. Seconded by Vice Mayor King. Motion passed 6-0.

4. **Review and discussion of City Finances with emphasis on March, 2009, financial results**

Finance Director Jim Cox addressed Council stating that the citywide fund balances increased and the City was running slightly positive, even in these tough economic times. Mr. Cox stated the trends were that revenues and expenditures were down. Mr. Cox then addressed the summary of all City funds, which includes personnel, the general fund and the enterprise funds. Mr. Cox

then addressed City Tax collections, including Sales Tax, Construction Tax and Bed Tax collections. Mr. Cox stated our sales tax collections were down compared to sales tax collections in March, 2008. Mr. Cox then stated the City's large retailers continue to do well, compared to last year and is the reason the City's sales taxes have not gone down as much as other communities. Mayor Fenn thanked Mr. Cox and asked him to keep Council up to date regarding the City's finances.

5. **Resolution 31-2009 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the execution of an Intergovernmental Agreement with the State Land Department for the granting of non-exclusive special land use permit for the placement, maintenance and operation of a wireless telecommunication antenna facility and related equipment**

Councilmember Lodzinski stated he would be abstaining from this item. City Manager Glenn Nichols addressed Council stating this Resolution would approve the renewal of the contract with State Land Department for the use of Southwest's Cooperative tower for the City's radio equipment. Councilmember McGoffin moved to approve Resolution 31-2009. Seconded by Councilmember Sacco. Motion passed 5-0 with Councilmember Lodzinski abstaining.

6. **Resolution 32-2009 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the expenditure of funds for the City of Benson's portion of the Cochise County Tourism Council's operating budget in the amount of Ten Thousand Eleven and 00/100 Dollars (\$10,011.00) for the FY 2009-2010**

Finance Director Jim Cox addressed Council stating the City of Benson is very active in the Cochise County Tourism Council (CCTC) and that the Benson portion of the CCTC operating budget will remain the same as the previous fiscal year. Mr. Cox stated CCTC will apply for an Arizona Rural and Regional Marketing grant to market Cochise County, benefiting the City of Benson. Vice Mayor King moved to approve Resolution 32-2009. Seconded by Councilmember McGoffin. Motion passed 6-0.

7. **Resolution 33-2009 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the application by the City for Arizona Rural and Regional Marketing (ARRM) Grant Funds from the Arizona Office of Tourism for Tourism Marketing During the FY 2009-2010**

Finance Director Jim Cox addressed Council stating this Resolution approves a grant reimbursement application for the Arizona Rural and Regional Marketing grant to be used for a marketing program in the amount of \$14,777.90, requiring a 50% match from the City in the amount of \$7,388.95. Mr. Cox stated the marketing program has been successful in the past. Vice Mayor King moved to approve Resolution 33-2009. Seconded by Councilmember Lodzinski. Motion passed 6-0.

EXECUTIVE SESSION: As per A.R.S. § 38-431.03 (A)(3) & (4), for discussion and consultation with the City Attorney for legal advice and to instruct the City's representatives concerning the Pre-Annexation and Development agreement between San Pedro Partners, L.L.C., an Arizona Limited Liability Company, and Jimmy Harlan and Yoke Lin Harlan, Trustees, and the City of Benson, Arizona

Mayor Fenn moved to enter in Executive Session with the City Council, City Manager, City Attorney, Public Works Director and City Clerk at 7:43 p.m. Seconded by Councilmember McGoffin. Motion passed 6-0.

Council reconvened at 8:31 p.m.

8. **Discussion and possible action regarding the Pre-Annexation and Development Agreement**

between San Pedro Partners, L.L.C., an Arizona Limited Liability Company, and Jimmy Harlan and Yoke Lin Harlan, Trustees, and the City of Benson, Arizona

City Manager Glenn Nichols stated Mr. Ashton of San Pedro Partners would like to address Council concerning this item. Mr. Ashton then gave a brief history of the proposed project, stating it was their intention to build a planned community that the City could be proud of. Mr. Ashton then stated they had begun the process of annexing a portion of property into the City and that the annexation agreement for that property was approved in October, 2005 with the property being rezoned in March, 2006 and additional rezoning requests being approved by Mayor and Council in 2007. Mr. Ashton then stated the proposed agreement is for the balance of the property needed to develop the project, due to the elevation sloping from the southwest corner to the northeast corner of the property. Mr. Ashton then stated Mr. & Mrs. McDonald own 10 acres that is surrounded by San Pedro Partners, but that their property has access easements and they do not wish to sell their property at this time. Mr. Ashton then stated after speaking to Mr. & Mrs. Harlan, they were willing to join with San Pedro Partners to bring their property into the annexation at this time. Mr. Ashton then stated Mr. MacKenzie, who owns 7 acres and LLL Management, who owns approximately 20 acres as well as an additional 700 acres approximately 1 mile to the south of this property. Mr. Ashton stated LLL Management stated it was their desire to bring all of their property in at the same time, so San Pedro Partners has not included any of their property in this proposed agreement. Mr. Ashton then stated the proposed project has approval of adequate water availability through the Arizona Department of Water Resources and that he wanted to make it clear that all development costs for the project are being borne by the developer with all the facilities to be given to the City. Mr. Ashton then stated the property would still need to go through many steps, including annexation and rezoning and then asked Council to approve this agreement. Mayor Fenn then stated the proposed agreement was arrived at after several reviews by City staff and attorney as well as San Pedro Partners and their attorney and asked Mr. Hamilton, Public Works Director if he was satisfied with the agreement and if it met with the requirements the City had put forth, with Mr. Hamilton indicating it did. Councilmember Lodzinski asked if Section 14 in the proposed agreement was consistent with the previous pre-annexation agreement with San Pedro Partners. Mayor Fenn then stated this proposed pre-annexation agreement, if approved, would set the wheels in motion for the annexation process, but that the burden lied on the property owner to apply for that action, which would include a public hearing. Mayor Fenn then stated there would also need to be an amendment to the General Development Plan that would be instituted by the property owners before the property could be annexed. Mayor Fenn then stated the pre-annexation agreement basically lays down ground rules for both the City and the developer to know what to expect as the developer moves forward with their investment. Mayor Fenn then stated in the future, Council will probably look less at pre-annexation agreements as a method of doing business with the development community, stating a property would petition to be annexed and then any other agreements would be entered into after annexation, if approved. Councilmember McGoffin then asked Mr. DeGrazia of San Pedro Partners to give Council his definition of Section 14 in the proposed agreement stating her interpretation was that the agreement would lock current impact fees. City Attorney Thomas Benavidez stated there was a concern that Section 14 would be interpreted by the developer to bind the City's legislative authority to pass future laws or to charge future fees. Mr. DeGrazia stated the City maintained the right to change ordinances and impact fees that would be applicable to the project they proposed as long as they were treated the same as the rest of the community. City Attorney Thomas Benavidez then stated since both parties were of the same mind, that provision could be clarified. City Attorney Thomas Benavidez then stated Council could not formally approve or execute the agreement since property is not consistent with the General Development Plan and that an amendment to the General Development Plan would have to be approved. Councilmember Sacco then moved to approve the pre-Annexation and development agreement between San Pedro Partners, L.L.C., an Arizona Limited Liability Company, and Jimmy Harlan and Yoke Lin Harlan, Trustees, and the City of Benson, Arizona in principle with the provision to modify Section 14 as discussed. Seconded by Councilmember Lodzinski. Motion passed 4-2 with Vice Mayor King and

Councilmember Lambert voting nay.

9. Recommendation from Legal Services Review Committee to Council regarding proposed candidate for City Attorney

Councilmember Lodzinski stated after the Committee reviewed the 11 proposals; the Committee interviewed 4 candidates, feeling each candidate could do the job. Councilmember Lodzinski then stated after taking several items into consideration including the current economic environment, the committee was recommending Mr. Michael Masee be selected to fill the position of the City Attorney. Councilmember Sacco stated another element in the decision was reviewing attorney billing statements. Vice Mayor King then thanked Mr. Benavidez for his service and asked if Mr. Benavidez could be available and asked if there were items Mr. Benavidez would complete. City Attorney Thomas Benavidez then stated he felt there wouldn't be any overlap, unless an issue came up, but that Mr. Masee should be able to handle all items after May 11, 2009. Mr. Benavidez then stated he would do everything he could to make the transition as smooth as possible. Mayor Fenn then stated he had the privilege of meeting with Mr. Masee and that he currently worked as an assistant City Attorney in Nogales at this time, and that he assured he would work out the logistics of continued employment of Nogales. Mayor Fenn then invited Mr. Masee forward to introduce himself. Mr. Masee then addressed Council stating he appreciated the confidence expressed in him by the selection committee and that he looked forward to working with the City Council. Mr. Masee then stated he is currently a full-time employee with the City of Nogales and that he has discussed this issue with his immediate superior, who has informed Mr. Masee that he will be able to transition to a contract employee, similar as he would be with Benson. Mr. Masee then stated his priority would be with the City of Benson and that his desire would be to make sure there is no loss in the level of legal services the Council has become accustomed to. Mayor Fenn then asked Mr. Masee to give a brief history of his government experience with Mr. Masee stating he worked exclusively with the City of Nogales for approximately 3 years, with employment with Maricopa County and Santa Cruz County prior to that. Mayor Fenn thanked Mr. Masee for attending the Council meeting.

10. Review, discussion and possible action regarding approval and adoption of Municipal Legal Services Contract for the City Attorney

City Manager Glenn Nichols addressed Council stating the proposed contract was similar to the contract currently in place with Mr. Benavidez. Mayor Fenn then stated he wanted to publicly express his appreciation for Mr. Benavidez's service and his patience. Mayor Fenn stated he felt Mr. Benavidez added to our City government and would hope that the level of service Mr. Benavidez gave Council would continue with Mr. Masee. Mayor Fenn then wished Mr. Benavidez well in his other endeavors. City Attorney Thomas Benavidez thanked Council on behalf of his firm, stating it was an honor to serve the City and that the City is headed in a great direction. Mr. Benavidez then stated they would do everything they could to ensure a smooth transition. Councilmember McGoffin moved to approve the municipal legal services contract for the City Attorney with Mr. Michael J. Masee. Seconded by Councilmember Sacco. Motion passed 6-0.

CITY MANAGER REPORT:

City Manager Glenn Nichols then addressed Council with upcoming meetings:

- April 28, 2009 – Community Water Alliance, 6:30 p.m., City Hall
- May 4, 2009 – Economic Development Subcommittee, 5:15 p.m., City Hall
- May 5, 2009 – Planning & Zoning, 7:00 p.m., City Hall
- May 11, 2009 – City Council Worksession, 6:00 p.m., City Hall
City Council Meeting, 7:00 p.m., City Hall
- May 12, 2009 – Arts Commission, 9:00 a.m., City Hall

- May 16, 2009 – Library Advisory Board Meeting, 4:00 p.m., City Library
- May 25, 2009 – Historic Preservation Commission Meeting, 9:00 a.m., City Hall
- City Council Meeting, 7:00 p.m., City Hall
- HOLIDAY – City Offices Closed
- May 26, 2009 – Community Water Alliance, 6:30 p.m., City Hall

City Manager Glenn Nichols then stated Mr. Robert Mucci of the Benson/San Pedro Valley/ Chamber of Commerce wanted to thank the City and the Council for all their support, stating Bluegrass in the Park was very successful and that Mr. Mucci will address Council at the next meeting with more details. Mr. Nichols then informed Council of upcoming events:

- May 2, 2009 – San Pedro Off Road Association’s Annual Mud Bog, Arena Bar
7th Annual Southwest Transmission Lineman’s Charity Golf Tournament
San Pedro Golf Course, 10:00 a.m.
- May 9-10, 2009 – Fiesta de la Primavera at Holy Trinity Monastery, 10:00 a.m.
- May 16, 2009 – Bike Safety Day Sponsored by the City of Benson Parks & Recreation
Department

COUNCIL DIRECTIVES:

None.

DEPARTMENT REPORTS:

None.

ADJOURNMENT:

Vice Mayor King moved to adjourn at 9:10 p.m. Seconded by Councilmember Sacco. Motion passed 6-0.

Mark M. Fenn, Mayor

ATTEST:

Vicki L. Vivian, City Clerk