

**THE REGULAR MEETING  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD JANUARY 24, 2011 AT 7:00 P.M.  
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

**CALL TO ORDER:**

Vice Mayor Lodzinski called the meeting to order at 7:01 p.m. with the pledge of allegiance. Vice Mayor Lodzinski then introduced Pastor A.B. Blair of the First Baptist Church who offered the invocation.

**ROLL CALL:**

Present were: Vice Mayor John Lodzinski, Councilmembers David Lambert, Nick Maldonado, Lori McGoffin and Al Sacco. Excused were Mayor Fenn and Councilmember Jo Deen Boncquet.

**EMPLOYEE RECOGNITION:** None.

**PROCLAMATION:**

Vice Mayor Lodzinski read a proclamation recognizing Benjamin Logan Allred as an Eagle Scout recipient. Vice Mayor Lodzinski then presented the proclamation to Mr. Allred and congratulated him on his accomplishment.

**PUBLIC HEARING:**

Vice Mayor Lodzinski opened the public hearing at 7:07 p.m. to receive comments from the public regarding two proposed Major Amendments to the General Development Plan that would change the Land Use Designation from Low or Medium Density Residential to Industrial/Business Park on all of Section 15, the east half of Section 16, the southeast portion of Section 10, the east half of Section 9 and all of Section 3 (in the vicinity east of Highway 90 and west of Highway 80) and various parcels in Section 12 (in the vicinity north of Interstate 10 at Highway 90).

Cheri Beck, 205 N. Wildcat, addressed Council thanking them for their dedicated time of service to the people and the community of Benson. Ms. Beck then stated she was present as a good neighbor and is a homeowner who lives on 5 acres north of I-10. Ms. Beck then stated in a letter she sent to the Planning & Zoning Commission, she said she and her husband oppose the rezoning of this land as vehemently as the voters opposed the development of Smith Ranch which was voted down a few years ago. Ms. Beck then gave the reasons they oppose this including the adverse affects of noise pollution, traffic control, safety issues, air/water/land pollution, lower property values, a decrease in comfort levels and comfort of living, the potential for increased crime, the disruption in the way of rural life as well as changing the character of the neighborhood. Ms. Beck then stated rezoning this area for industrialization would have a far reaching negative impact on the legacy of this neighborhood and would not be an appropriate use of this land nor would it be in the interest of her good neighbors living there. Ms. Beck then stated the integrity of their neighborhood has already been violated by the Arizona Department of Transportation (ADOT) and asked Council to please not further violate their neighborhood by considering this rezoning. Ms. Beck then thanked the Council for their time and the opportunity to address them.

Phil Beck, 205 N. Wildcat, addressed Council stating for over 40 years, he and his wife have been in the Benson area and when they retired, they had the option of moving anyplace, but they chose the location they're in now. Mr. Beck then stated they have been living there for just a couple of years on property that is just outside the City limits and is zoned R4. Mr. Beck then stated he and his wife were assured they would have the serenity of 5 acres, with all of their neighbors enjoying the same space and status and it is with great regret, they now find there are those who would like to change the zoning to something

more complex. Mr. Beck then stated there is certainly enough land in the valley to accommodate the kind of development that people want to see come to the area, but he feels this area is ideally suited for rural living. Mr. Beck then strongly urged the Council not to change the zoning of this property and thanked them for their time, their patience and their understanding.

John Whiteside, 1091 W. Possum Lane, addressed Council stating they have his comments, but he would like to reiterate that he is in favor of the application for the 2240 acre parcels and understands that the property is going to be used for a solar generating station. Mr. Whiteside then stated he is against the application for the 360 acres for 2 reasons, the first being, from what little information he has since there is no package on the proposed use for that land, is the project is not in place and the financing for any proposed project is not in place. Mr. Whiteside then stated the second reason is the property is being set up for annexation and the City doesn't need to be annexing anything. Mr. Whiteside then recommended a yes vote on Item #11 (Resolution 11-2011) and a no vote on Item #12 (Resolution 12-2011) and thanked the Council for their time.

Vice Mayor Lodzinski then asked if there was anyone else present who wished to speak. After receiving no requests, Vice Mayor Lodzinski closed the public hearing at 7:15 p.m.

### **CALL TO THE PUBLIC:**

City Clerk Vicki Vivian addressed Council regarding the upcoming 2011 City elections stating the Primary Election is scheduled for March 8, 2011 with the General Election to be held on May 17, 2011. Ms. Vivian then stated for City residents wishing to participate in the election process, they must be registered to vote, adding the deadline for voter registration for the 2011 Primary Election is February 7, 2011 and for the 2011 General Election, the deadline is April 18, 2011. Ms. Vivian then stated the elections will be held to elect a Mayor and 3 Councilmembers, adding there are currently 2 candidates for Mayor and 3 candidates for Councilmembers. Ms. Vivian then stated the General Election will be held regardless of the Primary election results to enable registered voters to cast their ballots on the referendum regarding Ordinance 550, the recent annexation of approximately 115 acres located west of State Route 90 and south of Interstate 10. Ms. Vivian stated the issue would be placed on the ballot as Proposition 401 and should the proposed franchise agreement with Sulphur Springs Valley Electric Cooperative be approved by Council this evening, it will also be placed on the General Election ballot, as Proposition 402.

### **CITY MANAGER REPORT:**

City Manager Glenn Nichols then addressed Council, giving the dates of upcoming meetings and events.

- January 25, 2011 – Community Watershed Alliance, 6:30 p.m., City Hall
- February 1, 2011 – Planning & Zoning Commission, 7:00 p.m., City Hall
- February 8, 2011 – Library Advisory Board, 4:00 p.m., Library
- February 14, 2011 – City Council Worksession, 6:00 p.m., City Hall  
City Council Meeting, 7:00 p.m., City Hall
- February 19, 2011 – Historic Preservation Commission, 9:00 a.m., City Hall
- February 22, 2011 – Community Watershed Alliance, 6:30 p.m., City Hall
- February 28, 2011 – City Council Meeting, 7:00 p.m., City Hall
  
- February 12 & 13, 2011 – Antique Tractor Pull & Engine Show at the Arena Rodeo Grounds, Engine Show, 9:00 a.m., Tractor Pull, 11:00 a.m.
- February 21, 2011 – HOLIDAY – City Offices Closed
- February 26, 2011 – Dallas Memorial Fund Fundraiser, Cochise Terrace

## **NEW BUSINESS:**

### **1. Consent Agenda**

- 1a. Minutes of the January 10, 2011 Regular Meeting, Including Executive Session Minutes
- 1b. Renewal of the Construction Services Agreement with D. Fenn Enterprises for Job Order Contract for Miscellaneous Paving Services
- 1c. Invoices processed for the period from January 4, 2011 through January 18, 2011

Councilmember McGoffin moved to approve the Consent Agenda. Seconded by Councilmember Lambert. Motion passed 5-0.

### **2. Fire Service Agreement between Benson Volunteer Fire Department, Inc. and the City of Benson for Fire Personnel**

Fire Chief Keith Spangler addressed Council stating this agreement is to update the contract the City has in place with Benson Volunteer Fire Department, Inc., adding the current contract was executed in 2001. Chief Spangler then identified the changes in the proposed contract which include how the Fire Chief is put into place, how much the City pays monthly for the service and how much the City contributes to the Firefighters' Pension and Relief Fund and that the amounts will be determined during the budget approval process and worker's compensation will be provided during any service the firefighters perform. Councilmember Sacco thanked Chief Spangler for providing the current agreement as a reference and asked about the number of firefighters with Chief Spangler stating the maximum number of volunteers was set at 35 by Council, but there are currently 28 volunteers. Councilmember McGoffin moved to approve the Fire Service Agreement between Benson Volunteer Fire Department, Inc. and the City of Benson for Fire Personnel. Seconded by Councilmember Sacco. Motion passed 5-0.

### **3. Resolution 7-2011 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the expenditure of public funds, in an amount not to exceed \$30,776.00 to allow Cochise County ("County") to proceed with the construction of improvements to City park ball fields pursuant to the January 25, 2005 Intergovernmental Agreement with the County**

Public Works Director Brad Hamilton addressed Council stating the fields at Lions Park have had significant settlement over the years, especially in the centers and this item proposes using the County's ability to move soil to fill in the fields and level them. Mr. Hamilton stated the fields will then be reseeded fixing the problems. Discussion on which fields would be addressed followed with Mr. Hamilton stated it would start with the sand lot and the soccer field, adding once those are leveled, reseeded and growing, the softball and baseball fields would be looked at next winter. Mr. Hamilton then addressed different aspects of the project stating the County would be moving soil, adding the Arizona Department of Transportation is giving the City approximately 1500 cubic yards of topsoil, the County would complete the grading, with the City removing and replacing the irrigation system and working with golf course staff for the reseeded and regrowth of the fields.

Councilmember Lambert expressed concern for the 4th of July celebration and the condition of the main field utilized for the day with Mr. Hamilton stating the field should be grown out by then and they are trying to time the project to reseed as spring starts so as the weather heats up, the field can be heavily watered. Councilmember Sacco asked about the timeframe of the project with Mr. Hamilton stating when the County works on City projects, they do so on Friday and Saturday, adding it will probably take 4 to 5 weekends to move the soil. Councilmember Lambert moved to approve Resolution 7-2011. Seconded by Councilmember Sacco. Motion passed 5-0. Vice Mayor Lodzinski then confirmed with Mr. Hamilton that this project will be funded by the City's bond proceeds.

### **4. Resolution 8-2011 of the Mayor and Council of the City of Benson, Arizona, approving an Agreement with Bestway Electric for Benson Production Water Well VFD Upgrades, AZBS-**

**EECBG #RO16-10-12**

Public Works Director Brad Hamilton addressed Council stating this grant is funded by the Federal Government to improve energy efficiency and after meeting all Federal requirements, the proposed project was bid as requested by the grant, with Bestway Electric being the lowest qualified bidder and this contract will authorize the completion of the project. Councilmember Lodzinski asked about the benefits of the project with Mr. Hamilton stating the City has 2 wells and booster stations with VFDs as well as using them throughout the wastewater treatment plant and they have resulted in longer motor life and less electricity consumption. Councilmember Sacco asked how much funding was in the grant with Mr. Hamilton stating there was just under \$30,000 adding another project will go to bid as long as the funding is not rescinded. Councilmember Sacco moved to approve Resolution 8-2011. Seconded by Councilmember McGoffin. Motion passed 5-0.

5. **Ordinance 552 of the Mayor and Council of the City of Benson, Arizona, amending Chapter 16 of the City Code relating to Fee Schedules to delete Articles 16-1, 16-2, 16-3, 16-5 and 16-6, Renumbering Article 16-4 as 16-1 and adding new Article 16-2**

Public Works Director Brad Hamilton addressed Council stating multiple departments are working on Chapter 16 fees and this ordinance will allow the fees to be set by resolution instead of an ordinance, adding if approved, each department with fees in Chapter 16 can submit resolutions for Council approval instead of presenting one ordinance that would set all the fees in the chapter. Mr. Hamilton stated at the next meeting, Council would see resolutions for fees. Vice Mayor Lodzinski stated that at that time, the Council could review individual fees and amend them as they would like. Councilmember Lambert moved to approve Ordinance 552. Seconded by Councilmember Maldonado. Motion passed 5-0.

6. **Approval of the Benson Area Transit (BAT) Three Year Plan**

City Manager Glenn Nichols addressed Council stating this plan is the result of staff working with a consulting service to develop a continuing three year plan for the Benson Area Transit. Mr. Nichols then noted some of the larger aspects of the plan were the recommended fee schedule which, after researching other communities, was found to be comparable. Mr. Nichols then stated another large element was the route service determining at what age we will allow juveniles to ride the bus by themselves, that there will be no bikes on the buses, but there will be bike racks on the buses, that strollers will have to be folded up when they are brought on the bus, and it is proposed to limit the number of bags and packages allowed on the bus to what someone can carry on and off in 1 load. Mr. Nichols then addressed the sample mission statements stating staff is currently working with consultants to bring back a mission statement for approval. Mr. Nichols then stated the plan included a maintenance program, showing how the buses will be maintained. Mr. Nichols then addressed the service information and rules in the plan, which will inform riders of the service and rules for riding the bus.

Councilmember Sacco asked about the times in the plan and if there would be handouts for the public with information on the service with Mr. Nichols stating the times for the bus stops were determined after the routes were driven and will let the public know what time the bus will be at the different bus stops. Mr. Nichols then stated part of the marketing program as explained in the plan is to put brochures and information out to the public, possibly some advertisements on the radio and in the newspaper and posters at different locations. Mr. Nichols then stated we have also purchased bus stop signs to put up at the locations where people have agreed they would like bus stops and will initially also have 5 bus stop facilities. Vice Mayor Lodzinski asked if those facilities would be similar to Tucson's bus stops with Mr. Nichols confirming they would be. Councilmember Sacco thanked Mr. Nichols for providing the map to Council. Mr. Nichols then asked for direction on the approval of the three year plan. Vice Mayor Lodzinski asked when the service would be starting with Mr. Nichols stating three buses, two for the routes and one for the Dial-A-Ride program, should be delivered in the near future and it is planned to start the services the first of April. Councilmember Maldonado moved to approve the Benson Area Transit (BAT) Three Year Plan. Seconded by Councilmember Lambert. Motion passed 5-0.

7. **Discussion and possible approval of the Benson Area Transit (BAT) Routes**

City Manager Glenn Nichols addressed Council stating at the January 10, 2011 meeting, Council requested a map of the proposed bus routes, which has been given to Council. Mr. Nichols stated a timeframe of the routes is also included giving the time of the bus stops. Mr. Nichols then stated the routes will continue to be a work in progress, that a close count of the ridership will be kept and provided to Council on a monthly basis, adding this will allow the routes to change, adding or deleting stops to make the system as efficient and timely as possible. Vice Mayor Lodzinski added ridership patterns can change throughout the year. Councilmember Lambert asked about the St. David area with Mr. Nichols stating at this time, St. David will not be included in a direct route, but depending on the interest and requests for service, the City may look at providing a route to St. David once a week and go from there. Councilmember Lambert then noted all 3 routes meet at 6th Street and Patagonia, adding if someone rides one route, they could switch buses at 6th and Patagonia to reach a destination on a different route. Mr. Nichols stated there will be just one bus providing all three routes. Councilmember Lambert then asked if there would be something indicating the stop at that location with Mr. Nichols stating there will initially be a bus stop sign at that location. Councilmember Maldonado moved to approve the Benson Area Transit (BAT) Routes. Seconded by Councilmember Sacco. Motion passed 5-0.

8. **Resolution 9-2011 of the Mayor and Council of the City of Benson, Arizona, approving a Special Event Liquor License for The Dallas Memorial Hope Fund of Benson, for February 26, 2011 at Cochise Terrace, 1030 S. Barrel Cactus Ridge, Benson, Arizona**

City Clerk Vicki Vivian addressed Council stating the Dallas Memorial Hope Fund has applied for a special event liquor license which allows for a charitable organization to sell and serve liquor for consumption only on the premises where the liquor is sold and only for the period authorized on the license. Ms. Vivian then stated the application is sent to the Arizona Department of Liquor Licenses and Control where the director may, subject to the approval of the local governing body, issue the license on a temporary basis. Ms. Vivian stated it is further stipulated that these organizations can be granted this license for no more than 10 days in any given calendar year and this is the first request from this organization. Ms. Vivian then stated in the previous year, this event was held under Cochise Terrace Helping Hands organization, but this year, the Dallas Memorial Hope Fund is a qualifying organization and they are holding the event on their own. Ms. Vivian then stated they are requesting the permit for the fundraiser to be held on Saturday, February 26, 2011 from 5:00 p.m. to 10:00 p.m. Ms. Vivian then stated Dr. Paula Tyler, of the Dallas Memorial Fund, was present to answer any questions Council may have. Dr. Tyler addressed Council stating Dallas was her dog and the organization was created as an attempt to allow senior citizens to keep their pets until they are no longer able to care for them, such as in the cases of infirmity or death. Dr. Tyler stated the organization then takes the pet in, finds a permanent foster home and pays for the medical costs for that pet for the rest of its life, adding the organization has approximately 15 pets they currently care for. Dr. Tyler then stated the organization also provides short-term respite for elderly people who might not be able to take care of their pets for a few months, due to medical reasons; the organization will take the pet and care for it until the owner is ready to have their pet back. Dr. Tyler then stated she thinks it is very important for elderly people to keep their pets until they are no longer able to care for them and that's the service the organization provides. Councilmember McGoffin moved to approve Resolution 9-2011. Seconded by Councilmember Lambert. Motion passed 5-0, with Councilmember Sacco expressing his support for the organization.

9. **Ordinance 553 of the Mayor and Council of the City of Benson, Arizona, granting a franchise to Sulphur Springs Valley Electric Cooperative Inc., an Arizona Corporation, to maintain and operate an Electric Energy Transmission and Distribution System within the Corporate Limits of the City of Benson**

Vice Mayor Lodzinski began stating on the advice of counsel, he would not be participating in this item, however, City Attorney Mike Masee, addressed Council, stating after further consideration, he would like to reverse his opinion, and he does not believe Vice Mayor Lodzinski has a conflict of interest as a

result of working for an affiliate of Sulphur Springs Valley Electric Cooperative (SSVEC), not SSVEC itself. Mr. Masee then stated in that situation, the line of potential benefit is too indirect to Vice Mayor Lodzinski, however, Councilmember McGoffin mentioned she has a brother who works directly for SSVEC, and that is a close enough familial relationship imputed to the Councilmember, concluding Vice Mayor Lodzinski does not have a conflict of interest and can participate in this item, but Councilmember McGoffin does have a conflict of interest. Councilmember McGoffin then stated she would be abstaining from this item.

Mr. Masee then addressed the Council concerning the proposed franchise agreement stating SSVEC had a franchise with the City of Benson from 1984 until it expired and that agreement was used it as the basis for what the franchise agreement would look like in the future. Mr. Masee then stated the attorney for SSVEC and he had essentially reached an agreement, which was submitted to Council last week, but subsequent to that, they continued their discussion and clarified paragraph 3A. Mr. Masee stated the intent of the new language is if there is a right-of-way that is annexed into the City in the future, the mere fact of annexation won't control whether there's going to be a right to relocation reimbursement or not. The general rule will apply regardless of whether that street had been annexed or not, which is if the facilities pre-date the dedication of the roadway as a right-of-way, and the facilities need to be moved, the City, as the entity that is doing the public works project, will bear the relocation costs, otherwise SSVEC would have to pay the cost.

Mr. Masee then addressed other changes from the original agreement stating the franchise fee which is now 2.5% will now increase over the life of the agreement, remaining 2.5% for 5 years, then increasing to 3% for 10 years, then increasing again to 3.5% for the final 10 years of the agreement. Mr. Masee then stated this is because the City doesn't double tax a franchisee, explaining that currently, the City's model city tax code says that a franchisee that pays a franchise fee gets a credit for the amount of the fee against the sales tax, so the current position is that without a franchisee agreement, since the agreement previously expired, SSVEC is paying a sales tax, with the proposed agreement keeping the rate at the same 2.5% for 5 years before increasing as he previously explained. Mr. Masee then stated in discussions with other city attorneys in the state, he found many cities are able to impose both a franchise fee and a sales tax, and whether the franchisee pays only a fee or a fee plus sales tax, the average is right around 4%, stating the proposed agreement keeps SSVEC's fee rate under that average, but close to it over the life of the agreement.

Vice Mayor Lodzinski noted the City has other franchise agreements, such as Cox Cable and Southwest Gas with Mr. Masee stating the City doesn't have an agreement with Southwest Gas, but there are Southwest Gas facilities in the City's right-of-way, so staff is currently engaging them in discussions to possibly lead to a franchise agreement very similar to this. Mr. Masee then stated however, this Council meeting is the last City Council meeting that would allow for referring the franchise agreement to the voters in May, adding State law says that when a corporation desires to have a franchise agreement with a City, they present the proposed ordinance to Council and if Council determines it is beneficial and if it is approved, it automatically gets referred to the next available election date, which is in May and then only becomes effective upon passage by a majority of the voters.

Councilmember Sacco asked about the language in the agreement referring to A.R.S.§42-5603, with Mr. Masee stating the statute defines what type of electrical sales are taxable and in trying to make the administration of franchise fees simple, the agreement stipulates the franchise fees are imposed as a percentage on the exact same type of electrical sales that would otherwise trigger a sales tax; the franchisee fees will be in lieu of a sales tax. Mr. Masee further clarified stating there are some types of sales that are exempt from sales tax and those same sales, if they occur within the City would be exempt from the franchisee fee. Mr. Masee then stated this was a result of the City's finance director had with SSVEC's finance manager, adding SSVEC's finance manager is very familiar with the kind of sales that are taxed since they have to track them very carefully, and the City agreed not to put SSVEC to the effort of running 2 different sets of books because the type of sales that would trigger franchise fees might be slightly different and the amount of the difference would be so insignificant for the kind of administrative

burden, that we readily agreed to put the franchise fee based on the same type of electrical sales that would otherwise trigger a sales tax. Councilmember Lambert moved to approve Ordinance 553. Seconded by Councilmember Maldonado. Motion passed 4-0 with Councilmember McGoffin abstaining.

10. **Resolution 10-2011 of the Mayor and Council of the City of Benson, Arizona, designating the Election Dates and purpose of the Elections and designating the Deadline for Voter Registration**

City Clerk Vicki Vivian addressed Council stating a resolution was approved the end of 2010, calling and giving information about the upcoming elections, but the information regarding the General election stated there may be a proposition concerning a referendum since at that time she had not received confirmation of the number of valid signatures from the County. Ms. Vivian then stated the City was also in negotiations with Sulphur Springs Valley Electric Cooperative, Inc. which was approved as the previous item. Ms. Vivian then stated this resolution is simply stating those two items will be placed on the May election ballot and needs to be passed 90 days prior to that election. Councilmember McGoffin moved to approve Resolution 10-2011. Seconded by Councilmember Lambert. Motion passed 5-0.

11. **Resolution 11-2011 of the Mayor and Council of the City of Benson, Arizona, approving as part of a Major Amendment to the General Development Plan the redesignation of approximately 2240 acres of land from Low Density Residential to Industrial Park and 320 acres from Low Density Residential to Open Space**

City Attorney Mike Masee addressed Council stating this item and the following item are relating to the General Development Plan major amendments that were noticed on the agenda and were the subject of the required public hearing at the beginning of the meeting. Mr. Masee then stated major amendments must be approved by a super majority vote or 2/3 of the Council, which would require 5 votes to pass. Mr. Masee then stated there were only 5 members of the Council present and Staff is recommending to table these items to the next Council meeting to have a full Council consider these proposed amendments, adding both applicants agreed with the recommendation. Councilmember Lambert moved to table Resolution 11-2011. Seconded by Councilmember Maldonado. Motion passed 5-0.

12. **Resolution 12-2011 of the Mayor and Council of the City of Benson, Arizona, approving a Major Amendment to the General Development Plan the redesignation of approximately 360 acres of land from Low Density Residential to Industrial Park**

Councilmember Lambert moved to table Resolution 12-2011. Seconded by Councilmember Maldonado. Motion passed 5-0.

**DEPARTMENT REPORTS:** None

**ADJOURNMENT:**

Councilmember Lambert moved to adjourn at 7:54 p.m. Seconded by Councilmember McGoffin. Motion passed 5-0.

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Mark M. Fenn, Mayor

ATTEST:

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Vicki L. Vivian, CMC, City Clerk