

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD AUGUST 13, 2007 AT 7:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

**MAYOR FENN
OPENED THE MEETING AT 7:03 P.M WITH
THE PLEDGE OF ALLEGIANCE.**

**PRESENT WERE: MAYOR FENN, VICE MAYOR KING,
COUNCILMEMBERS LODZINSKI, McGOFFIN, SACCO, SUAGEE, AND TIPTON**

EMPLOYEE

RECOGNITION: None.

COUNCIL AND
ADMINISTRATION
REPORT:

None.

Call to the Public:

John Whiteside addressed Council expressing his concerns regarding the proposed Procurement Code. Mr. Whiteside also stated there has not been time for public input on this proposed version. Mr. Whiteside then addressed Council regarding the status of the City Attorney Contract and City Prosecutor Position. Mr. Whiteside expressed concerns for Legal Counsel contracts being exempt from the proposed Procurement Code and stated he was watching for Council to do the right thing.

CONSENT AGENDA: Councilmember McGoffin moved to approve the Consent Agenda. Seconded by Councilmember Sacco. Motion passed 7-0.

- 1a. Approval of Minutes of July 23, 2007 Work Session
- 1b. Approval of Minutes of July 23, 2007 Regular Meeting
- 1c. Approval of Minutes of July 30, 2007 Special Meeting
- 1d. Appointment of Kim Ray to the Mayor's 4th of July Committee
- 1e. Reappointment of Irma Bernal to the Benson Historic Preservation Committee
- 1f. Dog Days of Summer Event
- 1g. South Eastern Arizona Behavioral Health Services (SEABHS) Back to School Fair Event
- 1h. Benson Junior Women's League Christian Concert Event
- 1i. Bills

NEW BUSINESS:

Southwestern Power
Group presentation
on the Bowie Power
Plant:

David Getts, Southwestern Power Group gave a brief power point presentation on the Bowie Power Plant. Mr. Getts stated with the projected growth for the state of Arizona, one large power plant needs to be built each year. Mr. Getts explained the Bowie Power Plant and its operation. The plant will use Integrated Gasification Combined Cycle

(IGCC) with coal. This method is a much cleaner process as well as using less water. This method also enables the sequestering of CO2 to be more cost effective. Mr. Getts stated the water used will come from the San Simon aquifer and therefore have no affect on Benson's water source. Mr. Getts also informed Council of the economic benefits of the plant. Based on various studies, the plant will take approximately 4 years to construct offering between 600 and 1200 jobs during this time, at the time of operation, the plant will offer between 100 and 120 full time jobs. In a study done by the University of Arizona, it is estimated the plant, over a thirty year period, will pay over \$100 million in property taxes and between the years of 2009 – 2016, the plant will have an economic impact of approximate \$1 billion. Mr. Getts then opened the presentation to discussion and questions. Discussion included the use of solar and wind instead of the IGCC with coal. Mr. Getts addressed this issue stating at the current time, the plant will sell their energy to customers such as Arizona Public Service (APS), Salt River Project (SRP) and possibly Sulphur Springs Valley Electric Co-op (SSVEC), and that right now, using solar would be an option that would raise the cost of their product too high for customers to pass on to consumers. Mr. Getts stated Arizona is moving in this direction and they will be open to looking at this when it's feasible. Mr. Getts stated that the wind in Arizona was not a reliable. Discussion then included the process of sequestering CO2. Mr. Getts stated currently no power plant sequesters CO2, but there is legislation coming that will require CO2 management of some sort. Mr. Getts also stated the Bowie plant will not sequester all the CO2 and said the issue of sequestering CO2 is very technical and will be an issue for all power plants to address, but that the Bowie plant will generally produce less CO2 than traditional methods of operation. Mr. Getts also addressed comments regarding the reuse of water on the plant stating the plant will reuse all the water it can through evaporative cooling of the plant's greenhouses and possible irrigation of non-food crops.

Mayor Fenn then thanked Mr. Getts for his presentation and stated if there was no opposition, the Council would likely support this project.

Councilmember Al Sacco then motioned to support the Bowie Power Plant Project. Seconded by Vice Mayor King. Motion passed 5-2 with Councilmember Lodzinski voting present and Councilmember Suagee voting nay.

Discussion regarding the
Benson Police Department

Commander Position: Police Chief Glenn Nichols addressed Council concerning this item. Chief Nichols informed Council if a member of the Police Department retires and is then rehired, that person would not be eligible to participate in the Public Safety Personnel Retirement System, but would be eligible to participate in the City's retirement system (currently the Arizona State Retirement System). Chief Nichols stated through continuous improvement, it would be possible in the future for current personnel to fill positions that become open.

Contract for Magistrate Services for the City of Benson:

Councilmember Tipton directed questions she had on this contract to City Attorney Ann Roberts. They included the begin and end dates, the 6 month notice required to terminate the contract and the amount of the contract. Ms. Roberts stated the Intergovernmental Agreement the City has with Cochise County required the elected official to serve in this capacity. Ms. Roberts stated the 6 month notice would benefit both parties in the event the City decided to put its own Court system in place and the amount of the contract would be a Council decision. Councilmember Suagee then asked what the pay raises have been for employees in the past. Mr. Roush, City Manager informed Councilmembers the current fiscal year budget included a 5% cost of living adjustment with a 5% possible merit increase. Vice Mayor King then stated the Magistrate was working for the city and should be entitled to a city raise. Councilmember Suagee stated she would like the IGA with the County to possibly address some questions she had. Councilmember Lodzinski asked about the reports on the court activity and if these could be done on a monthly basis. Mayor Fenn then addressed Mr. Knoblock regarding the court activity, confirming the court has been busier over the last 18 months and Mr. Knoblock stated new changes in the law will make the court even busier. Councilmember McGoffin moved to approve the contract for Magistrate Services for the City of Benson. Seconded by Vice Mayor King. Motion passed 6-1 with Councilmember Tipton voting nay.

Resolution 25-2007 of the Mayor and City Council of the City of Benson, Arizona authorizing the submission of an Application to the Arizona Department of Commerce for the Growing Smarter Planning Grant Program, certifying that said project described within the application meets the Community's desires for the use of a Planning Tool through the Development of a Geographic Information Systems (GIS) Program and authorizing all actions necessary to implement and complete the activities outlined in said Application:

Michelle Johnson, GIS Manager, addressed Council stating this grant would assist the City in mapping the City utilities, streets, right of ways, easements, washes, parcels and other items. Ms. Johnson stated this information can then be shared with other entities and to begin, a base map must be developed. Ms. Johnson stated this would be done with the

assistance of Ron Long from Cochise County and would take approximately 10 months. Ms. Johnson informed Council this grant would pay for this assistance. Ms. Johnson then stated the total estimated cost of this project is \$35,000 and this grant is a matching grant with the City's contribution equaling the amount of the award, therefore, if the City received the maximum grant award of \$10,000, the City would contribute \$10,000. Ms. Johnson stated the software had been purchased in the previous fiscal year and this work would be the next step. Vice Mayor King stated this is an important project for the City and moved to approve Resolution 25-2007 as presented. Seconded by Councilmember Suagee. Motion passed 7-0.

Resolution 26-2007 of the Mayor and City Council of the City of Benson, Arizona authorizing the City of Benson to enter into a Joinder Agreement with the Arizona Public Safety Personnel Retirement System (PSPRS) on behalf of the Full-Time (normally works 40 or more hours per week), paid Municipal Fire Fighters of the City of Benson who are or were regularly assigned to Hazardous Duty in the State of Arizona:

Fire Chief Keith Spangler addressed Council stating this is the final step Council takes to enter into the Arizona Public Safety Personnel Retirement System (PSPRS) for the Benson Fire Department. Vice Mayor King moved to approve Resolution 26-2007 as presented. Seconded by Councilmember Sacco. Motion passed 7-0.

Basic Service Contract with South Eastern Arizona Governments Organization (SEAGO):

City Manager Martin Roush addressed Council stating this basic service contract with SEAGO provides the City with planning and technical assistance in conjunction with Community Development Block Grants. Councilmember Lodzinski moved to approve the Basic Service Contract with South Eastern Arizona Governments Organization (SEAGO). Seconded by Councilmember McGoffin. Motion passed 7-0.

City of Benson Procurement Code:

Councilmember Sacco addressed Council giving a brief background of the proposed procurement code, which is patterned after the City of Tucson's procurement code. Councilmember Sacco stated that the City formed a procurement team that consisted of himself, the City Manager, the City Attorney, the Finance Director and the Public Works Director. That team drafted the product brought before Council. City Manager Martin Roush stated this procurement code was progressive and included items such as job order contracts. Councilmember Suagee stated she

appreciated the shorter version and believed the code would be visited by Council from time to time. Councilmember Suagee and Mayor Fenn expressed their appreciation to the procurement team for their work. Vice Mayor King moved to approve the City of Benson Procurement Code. Seconded by Councilmember Lodzinski. Motion passed 7-0.

Resolution 27-2007 of the Mayor and the City Council of Benson, Arizona, declaring as a Public Record that Certain Document entitled "Chapter 20, Procurement Code", Dated July, 2007:

Vice Mayor King moved to approve Resolution 27-2007 as presented. Seconded by Councilmember McGoffin. Motion passed 7-0.

An Ordinance of the Mayor and City Council of the City of Benson, Arizona, amending the Benson City Code; Creating Chapter 20; Adopting the "PROCUREMENT CODE", Dated July, 2007; and Declaring and Emergency:

After discussion, Councilmember Suagee moved to approve the Ordinance of the Mayor and City Council of the City of Benson, Arizona, amending the Benson City Code; Creating Chapter 20; Adopting the "PROCUREMENT CODE", Dated July, 2007 with the amendment to remove the emergency clause. Seconded by Councilmember Tipton. Motion passed 7-0.

Status of City Attorney Contract and City Prosecutor Position:

Mayor Fenn addressed Council stating City Attorney Ann Roberts had submitted her resignation as City Attorney effective August 31, 2007 and informed Council of her desire to continue with the City in the capacity of City Prosecutor. Councilmember Suagee moved to accept the City Attorney's resignation with the stipulation that the City Attorney must take vacation beginning immediately extending through August 31, 2007; and the City Manger hiring an interim City Attorney until such time a Request for Proposal and the subsequent hiring of a City Attorney could be done. Seconded by Councilmember Tipton. Vice Mayor King expressed concern over not having someone available immediately for legal opinions. After discussion, Mayor Fenn called for the motion on the floor to be clarified. Councilmember Suagee then repeated her motion to accept the City Attorney's resignation with the stipulation that the City Attorney take vacation to begin immediately and extend through August 31, 2007; and the City Manager hiring an interim City Attorney until such time a Request for Proposal and the subsequent hiring of a City Attorney could be done. Mayor Fenn verified the Second by

Councilmember Tipton. Mayor Fenn then clarified that as the motion stood, no legal opinions would be available beginning immediately. City Manager Martin Roush then addressed Council stating he would like to ask Council for their approval in hiring the Benavidez Law Group, P.C. for interim City Attorney Services until such time as a Request for Proposal could be processed and approved. Discussion between Council was had regarding the fees and the advertising of a Request for Proposal. Councilmember McGoffin stated she felt it was fiscally irresponsible to pay \$150.00 per hour for a lawyer and \$75.00 per hour for a legal assistant when the current rate the City pays for a lawyer is \$58.50 and the City will be paying the City Attorney to be on vacation while utilizing the proposed law firm. Councilmember Tipton then stated that the current City Attorney would receive her vacation pay regardless and that legal counsel would only be paid for as needed. Councilmember Sacco asked if the hiring of the interim attorney services would be for available hours or as needed. Mr. Roush stated that Department Heads could write their own resolutions and ordinances and he anticipates legal counsel not to exceed 10 hours a week. Councilmember Suagee stated she felt this would be a cost effective way to fill the gap, since the hiring of an employee also costs the City other expenses including benefits, incidentals and liability. Mayor Fenn then stated that, should the City need legal counsel immediately, as the motion stands, the City would not be able to contact the City Attorney. Councilmember Lodzinski then stated a motion and second was on the floor. Councilmember Suagee then restated her motion to accept the City Attorney's resignation with the stipulation that the City Attorney must take vacation beginning immediately extending through August 31, 2007; and the City Manager hiring an interim City Attorney until such time as a Request for Proposal and the subsequent hiring of a City Attorney could be done. Seconded by Councilmember Tipton. At Councilmember Sacco's request Councilmember Suagee amended her motion to include the hiring of an interim City Attorney for a maximum of 10 hours a week. Seconded by Councilmember Tipton. Motion passed 5-2 with Councilmembers McGoffin and Sacco voting nay.

Councilmember Suagee moved to approve the selection by the City Manager of the Law Firm of Benavidez Law Group, P.C. as interim City Attorney until such time as a Request for Proposal could be fulfilled. Seconded by Councilmember Tipton. Motion passed 5-2 with Councilmembers McGoffin and Sacco voting nay.

Mayor Fenn then addressed Council stating Ms. Roberts had indicated she would like to continue employment with the City in the capacity of the City Prosecutor. There were two contracts presented to Council in the Council packet and a third contract that was given to Council with Ms. Roberts' resignation. Councilmember Sacco stated the two contracts in the Council packet were very general and the third contract presented was specific protecting both the City and the Prosecutor. Councilmember Sacco then moved to approve the third contract presented. Seconded by Vice Mayor King. Discussion was then opened to include Councilmember Suagee's concerns in the wording in Exhibit A of the contract presented. Councilmember Suagee stated she would like to see the following changes to Exhibit A: #2 – Work time shall

include but is not limited to travel, research, trials, casework and interviews. Training and associated travel are not included, except upon prior pre-approval by the Mayor City Manager. #3 – Shall supervise and direct the Work, using her best skills and attention and CITY shall not have the authority to supervise or control Work. #11 – City shall provide all necessary research materials, clerical assistance, printing and copying as may be required to comply with this scope of work. City personnel, specifically the Legal Assistant, will be available to provide necessary research assistance to legal counsel as may be required to allow Contractor Employee to perform services for the City. Discussion was further had to include the Prosecutor preparing a monthly department report for Council and that Ms. Roberts had discussed the prosecuting duties with the Judge and they believe the prosecuting duties can be carried out in 20 hours a week. However, Ms. Roberts will keep track of the hours worked and will address the issue with Council in the future if it is needed. Ms. Roberts then clarified that with this contract, the Prosecutor would not be eligible for sick pay, vacation or holidays. Councilmember Tipton then stated she would be against Ann Roberts being an employee, contract or otherwise, citing ethical issues. Mayor Fenn then addressed Council and the public stating there had been discrepancies in the contract between the City and the City Attorney. Mayor Fenn stated some on the Council felt this was sloppiness and others felt otherwise, however the resulting bottom line was that Ms. Roberts felt it was in her best interest to resign as City Attorney and continue employment in the capacity of the City Prosecutor. Councilmember Sacco then amended his motion to approve the third contract with the amendments as outlined by Councilmember Suagee. Seconded by Vice Mayor King. Mayor Fenn then stated that if he felt there were grounds to pursue this matter, he would have it pursued, but he respected the views of Councilmember Tipton. Motion passed 6-1 with Councilmember Tipton voting nay.

Job Description for
the City Prosecutor:

Councilmember Suagee moved to table this item. Seconded by Councilmember Sacco. Motion passed 7-0.

Job Description for the
City Legal Assistant:

Vice Mayor King moved to table this item. Seconded by Councilmember McGoffin. Councilmember Suagee then stated she would like to see this item addressed since it concerns a current full-time employee. City Manager Martin Roush addressed Council stating the only change to the job description was in the reporting responsibility. Councilmember Sacco expressed concerns that the job description was more that of a paralegal. Ms. Roberts then addressed Council stating the job description was to provide clerical support for both the City Attorney and the City Prosecutor. Vice Mayor King then withdrew his motion. Councilmember Suagee moved to approve the job description for the City Legal Assistant as revised. Seconded by Councilmember Tipton. Mr. Roush clarified that the number of hours for the Prosecutor and the City Attorney would be worked out with staff. Motion passed 7-0.

COUNCIL DIRECTIVES:

None.

Adjournment:

Vice Mayor King moved to adjourn at 8:57 p.m. Seconded by Councilmember McGoffin. Motion passed 7-0.

ATTEST:

Mark M. Fenn, Mayor

Vicki L. Vivian, City Clerk