

**THE REGULAR MEETING  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD NOVEMBER 9, 2009 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 MARK M. FENN, VICE MAYOR TONEY KING, SR.  
COUNCILMEMBERS JO DEEN BONCQUET, DAVID LAMBERT,  
LORI McGOFFIN and AL SACCO  
ABSENT WAS: COUNCILMEMBER JOHN LODZINSKI**

**INVOCATION:**

Mayor Fenn introduced Pastor Blair from the First Baptist Church who offered the invocation.

**EMPLOYEE  
RECOGNITION:**

Mayor Fenn recognized Gary Douglas for 10 years of service with the City.

**PROCLAMATION:**

Mayor Fenn read a proclamation declaring November 9 – November 15, 2009, “Veterans Awareness Week”. Mayor Fenn then stated he would present the proclamation to the VFW on Veterans Day at 10:30 a.m. at the Veterans Memorial Park.

**PUBLIC HEARING:**

Mayor Fenn opened the public hearing to receive comments and questions from the public regarding the proposed amendment to the Zoning Regulations regarding the addition of an enforcement clause at 7:05 p.m. Mayor Fenn indicated Dianne Tipton was the only person who wished to address Council.

Dianne Tipton addressed Council stating she did not understand what Council was trying to achieve since Section 17 of the Zoning Regulations contained enforcement and penalties. Ms. Tipton then stated she saw no reason to declare an emergency on the proposed ordinance. Ms. Tipton then stated the only issue that may not be the way they want was the process of service, but that everything else is there. Ms. Tipton then stated there was supposed to be one board for appeals of the Planning & Zoning Regulations and another board for appeals of the City Code, but that the Board of the Appeals for the City Code didn't seem to exist since all the appointments to the board had expired. Ms. Tipton then stated she would like to see the City have something in both the Zoning Regulations and the City Code that allows for people to have an appeal process before having to go to court, stating the proposed ordinance makes it so the only recourse you have is to go to court, which doesn't behoove anyone and that we should all have the opportunity to try to discuss this in a civil way before going to court, noting it would save everyone a lot of time and money.

Mayor Fenn then asked if there were comments from any others present who wished to speak. After receiving no comments from the public, Mayor Fenn closed the public hearing at 7:07 p.m.

## CALL TO THE PUBLIC:

Kathy Suagee addressed Council stating the issues of the birding trail and of paving the end of Patagonia Street may be attributed to staff members wearing too many hats, but that the proposed land purchase was still on the Council's plate and was a mistake that could still be avoided. Ms. Suagee stated the problem with asbestos is not the shingles of the house, which had not yet been disturbed, but that the owner had already tried to remove asbestos from inside the house and asbestos that has been disturbed is more dangerous and releases deteriorated asbestos particles into the air that don't just disappear. Ms. Suagee then stated the City paid for an evaluation, but that the investigator was not told about the asbestos that had already been removed, so the air was not tested. Ms. Suagee then stated the real question is why Council would want to purchase the property after previous Councils had rejected the purchase of this property in the past, noting that the appraised value was less than the proposed price. Ms. Suagee then stated there is a recession and after having to repay grants because of City errors, spending taxpayers' dollars on property of questionable value to the City was bordering on malfeasance. Ms. Suagee then stated the Council had approved a Capital Improvement Plan which was meant to drive spending and that if Council didn't watch out, they would slip back into a pattern of costs driving need instead of need driving costs. Ms. Suagee then stated it was disturbing to her to see that the format of the agenda has backslid into stating business items were for the "consideration of approval" stating this suggests subliminally that Council's ultimate resolution of that item will be to approve it and she thinks there could be better wording on the agenda items.

David DiPeso addressed Council regarding the proposed property purchases stating that tests were done before any material was removed from the house as required by the City at that point and that to his knowledge, there had been no asbestos removed, but that the owner was simply remodeling, stating again that everything was done according to City Code and City rules, that the drywall, insulation and tar paper on the outside were all tested and all came back negative before the owner took anything out. Mr. DiPeso stated the siding on the home was a standard siding at the time of construction, noting many homes in town still have that siding on them. Mr. DiPeso stated the asbestos on the siding is encapsulated and all that is needed to make it safe was either painting or stuccoing the building. Mr. DiPeso then stated as far as the appraised value of the property, Ms. Suagee must have been talking about the tax appraisal which, by any means, is not an accurate appraisal and has nothing to do with the actual value of the home. Mr. DiPeso stated he would be present if Council needed any questions answered or had any concerns.

Dianne Tipton addressed Council stating she would like to qualify why she was suggesting the things she was, noting she had a nephew who specializes in the removal of asbestos and asbestos testing. Ms. Tipton stated there was removal of asbestos inside the house before the City made any offer on it and both Mr. Nichols and Mr. DiPeso were aware of it. Ms. Tipton then stated the real issue is the fact that when you disturb asbestos in a home or other building, you make it far worse and in order to discover whether or not there was still asbestos left in the home as residue from what was removed, you have to run a fan and do an air quality test. Ms. Tipton then stated she had spoken to Bruce, who did the testing, and that he agreed an air test needed to be done and that it would take 2 days and cost \$100.00. Ms. Tipton then stated she felt the item should be tabled and that the property could be dangerous to someone's health. Ms. Tipton then stated there are laws regulating the disposal of asbestos and questioned the disposal of any material that was removed from the property. Ms. Tipton then stated the assessed values on the properties, which were different than the appraised value, was \$3,700.00 on the vacant lot and \$5,700.00 on the home and questioned how we got from such low assessed values to such high purchase prices, stating the prices are excessive and that there would be the additional costs of removing the asbestos, then asking Council to reconsider the purchase of the properties. Ms. Tipton then stated she would like to make a suggestion for the City to consider sending out a voucher with utility bills to those citizens who live within the City limits for a 2.5% discount on their groceries, allowing the grocery stores to turn that voucher back in to the City as a tax credit which would give immediate tax relief and some relief to the citizens who live here in Benson. Ms. Tipton stated this would help and encourage citizens to shop in Benson and would not remove the taxes from people outside of Benson who come here to shop, but it would be something

Council could do to help the citizens here, noting the money to purchase property the City did not need might be put to better use helping some of the people who live here now.

Paul Lotsof addressed Council stating he would like to start out by directing Council's attention to "Old Business" and "New Business" on the agenda. Mr. Lotsof stated all 3 items under New Business have appeared on recent agendas and questioned why the items were not considered Old Business. Mr. Lotsof then stated he would like to comment on the way the previous minutes were written, noting the minutes contained the word "stated" or "stating" in nearly every sentence and that he would like to "state" that its poor English composition. Mr. Lotsof then addressed the first item under New Business that called for amending the zoning ordinance pertaining to mobile home parks. Mr. Lotsof said he was told that the enforcement provision should have been included when the ordinance was enacted and questioned who the City attorney was at that time, stating his conclusion was that the attorney at that time was negligent and when and if this attorney requests to get his or her job back, Council should seek someone more qualified. Mr. Lotsof then stated he was also troubled by the proposal to declare an emergency, considering this ordinance had been on the books a long time and asked why there was a need to declare an emergency instead of allowing 30 days for the amendment to take effect. Mr. Lotsof then spoke about the property purchases, stating Council had before them a proposal to pay cash for two pieces of real estate and that no compelling need for these purchases had been identified and that another factor to consider was that once the City bought this property, it came off the tax rolls causing the schools and other entities to suffer. Mr. Lotsof then stated there are reports the City is dangerously short-staffed and suggested calling off the property purchases and to use the money to hire some badly needed personnel. Mr. Lotsof then concluded saying that the City should consider building a new City Hall where the old one was on Huachuca Street, that the present City Hall location was never meant to be a municipal complex and rather than expand it, he would suggest selling it, possibly to a church, which is what it was designed to be.

#### **CITY MANAGER REPORT:**

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

- November 10, 2009 – Library Advisory Board, 4:00 p.m., Library
- November 21, 2009 – Historic Preservation Commission, 9:00 a.m., City Hall
- November 23, 2009 – City Council Public Hearing on the proposed major amendments to the General Development Plan, 7:00 p.m., City Hall  
City Council Public Hearing on Community Development Block Grants, 7:00 p.m., City Hall  
City Council Meeting, 7:00 p.m., City Hall
- November 24, 2009 – Community Watershed Alliance, 6:30 p.m., City Hall
- November 11, 2009 – HOLIDAY, City Offices Closed  
Veterans Day Ceremony, 10:30 a.m., Veterans Memorial Park
- November 26-27, 2009–HOLIDAY, City Offices Closed
- November 14, 2009 – The Capitol Christmas Tree, cut down in Alpine, will be traveling around the state stopping in many different communities before being delivered to Washington D.C. The tree will be in Benson between 8:30 p.m. and 9:30 p.m. at the Apple Farm Restaurant on Ocotillo, who volunteered the use of their property.

#### **CONSENT AGENDA:**

- 1a. Approval of Minutes of the October 26, 2009 Regular Meeting
- 1b. Advertising Agreement between the City of Benson and Arizona Range News/San Pedro Valley News-Sun
- 1c. Invoices processed for the period from October 20, 2009 through November 2, 2009

Councilmember McGoffin moved to approve the Consent Agenda. Seconded by Vice Mayor King. Motion passed 6-0.

**NEW BUSINESS:**

1. **Ordinance 537 amending the City of Benson's Zoning Regulations by adding Section Twenty "A" regarding prosecuting violations of the zoning regulations**

Public Works Director Brad Hamilton addressed Council stating there had been several meetings about enforcement of the zoning regulations, stating the current zoning code doesn't have enforcement provisions. Mr. Hamilton stated the City does have the right, under State law, to enforce the zoning code through the superior court, but that most other cities have put their enforcement through their municipal courts. Mr. Hamilton then presented a brief powerpoint presentation stating the goals were to add enforcement, violation and penalty language to the current zoning regulations, that state law requires a legislative body to establish the office of the Zoning Administrator, who is charged with the responsibility of enforcement of the zoning ordinance and that the proposed ordinance would add the enforcement provisions of our own City code, found in Chapter 9. Mr. Hamilton stated after looking at several other City codes, it was recommended to adopt those found in our City code, indicating it was a good process, easy to follow and was something staff has used and the proposed ordinance would incorporate the process into the zoning regulations. Mr. Hamilton then stated a Citizen Review Session and a Planning & Zoning meeting were held and the minutes from these meetings are included for Council's information, noting that the Planning & Zoning minutes are draft minutes. Mr. Hamilton then stated Planning & Zoning did recommend approval of Ordinance 537 with changing the word "prosecute" to "process", but that after talking to the City Attorney, staff recommendation was to approve the ordinance as presented, noting that "prosecute" enabled the Zoning Administrator to take the action through court.

Councilmember Sacco asked about Section 17 of the Zoning Regulations with City Attorney Mike Masee indicating Section 17 that was referred to in the Public Hearing was the Outdoor Lighting Regulations. Councilmember Sacco then stated he had some concerns with the proposed ordinance indicating he had spoken to the City Attorney about them and then stated Council had been given the ordinance with the changes he proposed, which were:

"SECTION TWENTY "A" - VIOLATIONS **AND ENFORCEMENT** OF THESE REGULATIONS

In addition to all other remedies available at law, the Zoning Administrator **and/or the Director of Planning and Zoning** is authorized and directed to enforce these regulations by issuing ~~and prosecuting civil and/or criminal~~ citations for violations of these regulations pursuant to the procedures set forth in Sections 9-2-11 through 9-2-18 and 9-2-23 and 9-2-24 of the City Code, which sections are hereby made applicable to the Zoning Regulations."

City Attorney Mike Masee stated it was the Council's decision to approve the ordinance with or without the proposed changes, then explained the reasons it was written stating Arizona law refers to the Zoning Administrator as the official responsible for enforcement and that our current code also uses the language of a Zoning Administrator and the Planning & Zoning Director would be the Zoning Administrator. Mr. Masee then stated if the wording "and/or the Director of Planning and Zoning" was added and there were more than two people working in Planning & Zoning, it would leave a little ambiguity of who is responsible for the enforcement. Mr. Masee then addressed the subject of deleting "and prosecuting civil and/or criminal" stating it would leave the person issuing the citations, but would then create some question for the process after the citation was issued. Mr. Masee stated the word "prosecute" was being used in the broader sense of the person being in charge of pursuing the action in court and being responsible for all phases of the enforcement action. Mr. Masee stated he felt initially in court proceedings, the City Attorney or the City Prosecutor would be involved, but that when the comfort level of staff increases and in the proper case, when it is not a complex case and doesn't present possibilities of setting a bad precedent, the non-attorney official could go to court and manage the case, which is what the current provision

anticipates. Mr. Masee stated this will save money and will be keeping with the informality of the procedures that we're adopting out of the City Code in Chapter 9. Mr. Masee then stated the City's approach to the zoning code is consistent with all other government entities in that compliance is what sought, not revenue, but that to convince some people the zoning code is mandatory sometimes requires something official being served on them notifying them of court action in order for them to see there is a problem that needs to be remedied. Mr. Masee then stated he felt the concise wording of who is going to control the issue is good, leaving it not up to the City Attorney or the prosecuting attorney, but to the Zoning Administrator.

Councilmember Sacco stated he disagreed and that zoning violations were more complex than traffic citations, which are handled by the City Prosecutor and that he doesn't believe the Zoning Administrator has been delegated the responsibility to do prosecution. Mr. Masee answered that the state statutes require the Zoning Administrator be responsible for enforcement and that he felt enforcement was the entire process, stating the proposed ordinance directs the Zoning Administrator to enforce the regulations by "issuing and prosecuting" which makes enforcement clear. Councilmember Sacco then stated he doesn't think the Zoning Administrator is knowledgeable of the law and felt that was the job of the City Prosecutor and that the changes he proposed to the ordinances are simple and don't subtract from the intent of the ordinance.

Mayor Fenn asked Council if there were other comments. Vice Mayor King stated he understood Councilmember Sacco's comments and that his concern was that Public Works Director Brad Hamilton was wearing too many hats as it is and wondered how Mr. Hamilton would find the time to do this.

City Attorney Mike Masee addressed Council stating the word "prosecute" should be given broader connotation than just prosecuting in court and that the intent of the proposed ordinance is for the Zoning Administrator to decide when to bring an action and what type of outcome is necessary in any particular action. Mr. Masee then stated the proposed ordinance does take into consideration that the City is currently advertising for a full-time Planning & Zoning Director and that Planning & Zoning Directors are quite knowledgeable in the area of their expertise, noting the first thing a Planning & Zoning Director would do would be to familiarize themselves with the regulations of the City. Mr. Masee then stated in most cases, an attorney would be involved, but the proposed ordinance would allow flexibility, on a case by case basis, if something was routine and was well within the expertise of the non-attorney staff member, that could be the decision on how to pursue the matter. Mr. Masee indicated this would be an administrative decision on how to properly manage the resources of the City, ultimately vested with the City Manager, to help make those decisions on when to utilize the City Attorney, the City Prosecutor and when to allow a non-attorney to be responsible for something.

Mayor Fenn recognized that state statute requires the establishment of a Zoning Administrator, stating in a smaller entity, such as Benson, the Planning & Zoning Director would be the Zoning Administrator and that the person in that position should be knowledgeable. Mayor Fenn agreed that the proposed ordinance indicates one person, that he likes the wording Zoning Administrator and that it leaves out the ambiguity, making it clear on who the authority lies with.

Councilmember Sacco then stated he had originally suggested to change the word "prosecuting" to "processing" since an attorney may argue that the Zoning Administrator does not have the authority to prosecute, with Mr. Masee stating as the proposed ordinance is written, it would remove the ambiguity, and the Zoning Administrator would be vested specifically by this ordinance.

Councilmember Boncquet asked why it was necessary to declare an emergency with City Attorney Mike Masee answering the situation of not being able to have a cause effective remedy for zoning violations was troubling and that it was anomalous that a City would adopt zoning regulations without an effective means of prosecuting or enforcing them. Mr. Masee stated it was going to take a while to change the culture of the City to understand that there is something out there that we can use to enforce these regulations. Mr. Masee indicated that emergencies were used for the preservation of health, peace and

safety and that the zoning regulations enhance the health, safety and betterment of the community. Mr. Masee then stated the decision to declare an emergency is a legislative decision solely vested in the discretion of the City Council.

Councilmember Sacco moved to approve Ordinance 537 with the changes he suggested, which was to add the words “AND ENFORCEMENT” to the Title of Section Twenty “A”, to add the words “and/or the Director of Planning and Zoning” and to change “and prosecuting civil and/or criminal citations” to “processing civil and/or criminal citations”. City Attorney Mike Masee addressed Council suggesting the motion be to amend the language in the proposed ordinance with a vote on the language before taking action on the underlying ordinance. The motion died for lack of a second. Councilmember McGoffin then moved to approve Ordinance 537 without the emergency clause. Seconded by Mayor Fenn. Motion passed 5-1 with Councilmember Sacco voting nay.

Councilmember Sacco then stated he would like the minutes of the Planning & Zoning meeting to reflect that he addressed the Planning & Zoning Commission as a private citizen, not as a Councilmember.

2. **Presentation and discussion of the survey for asbestos of the real property located at 100 W. 6th Street, Benson, Arizona**

City Manager Glenn Nichols addressed Council stating due to the discussion and tabling of the authority to execute the purchase of the property due to the asbestos question, a survey was conducted and the report of the results of the survey from a certified laboratory was attached. Mr. Nichols said the report states that the interior of the building and the materials in the interior have less than (1%) one percent asbestos by volume, which is well within the legal requirements, noting that anything under one percent is considered to be good. Mr. Nichols then stated that all of the materials they tested from inside the building showed no asbestos and the only piece that had asbestos was the exterior siding. Mr. Nichols then said that it had been brought to his attention that we should have done an air quality test and that Mr. Hamilton had spoken to Southwest Hazard Control and would address Council. Mr. Hamilton stated Southwest Hazard Control explained to him that stirring up dust would pollute the sample for an air quality test, but that they could conduct a tape test, however, based on earlier samples done before they removed the material, and the fact that we went through and resurveyed material, including scrapped material, that was left and found no more asbestos, it would be completely up to the City to order additional tests, but that he didn't see a problem with moving forward with the purchase.

Vice Mayor King asked about the cost of removal of the asbestos with City Manager Glenn Nichols indicating the cost of removal was automatically brought forward as part of the survey report. Vice Mayor King asked if stucco over the siding would fix the problem with Public Works Director Brad Hamilton stating the recommendation was to remove the siding, noting it would be better overall. Vice Mayor King then asked about the estimated costs to repair the plumbing and heating issues. Mike McMillan of Brown & Associates addressed Council stating that when you are looking at a tenet improvement project, you take the cost of new construction and use the price per square foot, which is currently \$100.00 per square foot, and then take each trade individually; mechanical, electrical and plumbing and break those out at 25% of that total cost, giving as an example a 1,000 square feet at \$100.00 would be \$10,000.00 and then 25% of that would be the cost for plumbing, 25% more for mechanical and 25% more for electrical. Mr. McMillan stated commercial is done a little bit differently, taking the total cost of the building less the 60% that would be the shell, leaving a 40% total for mechanical, electrical and plumbing, with an additional cost for the removal of the asbestos.

Mayor Fenn asked if there was any further discussion, noting this item was for information only.

3. **Resolution 70-2009 of the Mayor and City Council of the City of Benson, Arizona, approving two contracts for the purchase of real property within the City of Benson and authorizing the City Manager to execute same**

Mayor Fenn opened the item stating the property was the house discussed in the previous item and the vacant lot behind City Hall next to the laundry mat. Mayor Fenn then stated he wanted it to be clear that the contracts were written so that they did not stand alone; that the seller would only take the offer to purchase the properties if both contracts were approved. Mayor Fenn then concluded stating if Council approves one contract, they are approving the other, since one sale was contingent upon the other, indicating for this reason he will be voting no. Councilmember McGoffin spoke stating she thinks it's a good idea and good location, but that there seem to be more problems with a bigger price tag and at this time she doesn't think it's a wise idea and that we could wait until we are in a better financial situation so we could afford to renovate the property. Councilmember Sacco then asked if there was an offer from the owner to reduce the price. City Manager Glenn Nichols stated the owner said he felt the price that he had on the property was a fair price. Councilmember Boncquet stated she agreed with Councilmember McGoffin; that there were too many hidden charges, that she was not sure it was a wise idea and that the money for this purchase could be used in a better manner. Councilmember Sacco agreed stating he felt we could find a better use of our money, such as replacing some of the obsolete equipment in the fire department.

Mayor Fenn asked if there was any further discussion or a motion. Item died for lack of a motion.

**COUNCIL DIRECTIVES:**

None.

**DEPARTMENT REPORTS:**

None.

**ADJOURNMENT:**

Councilmember McGoffin moved to adjourn at 8:00 p.m. Seconded by Councilmember Boncquet. Motion passed 6-0.

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Mark M. Fenn, Mayor

ATTEST:

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Vicki L. Vivian, City Clerk