

**THE REGULAR MEETING  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD JANUARY 25, 2010 AT 7:00 P.M.  
AT CITY HALL, 120 W. 6<sup>TH</sup> STREET, BENSON, ARIZONA**

**CALL TO ORDER:**

Mayor Fenn called the meeting to order at 7:00 p.m. with the pledge of allegiance. Mayor Fenn then introduced Cliff Marshall of the Church of Christ who offered the invocation.

**ROLL CALL:**

Present were: Mayor Mark M. Fenn, Vice Mayor Toney King, Sr. and Councilmembers Jo Deen Boncquet, David Lambert, John Lodzinski, Lori McGoffin and Al Sacco.  
Absent was: Councilmember McGoffin.

**EMPLOYEE RECOGNITION:**

None

**PROCLAMATION:**

None

**PUBLIC HEARING:**

None

**CALL TO THE PUBLIC:**

Thomas Fitzgerald addressed Council concerning the attendance of residents at the Council meetings. Mr. Fitzgerald stated more people should be in attendance since Council discussed important matters. Mr. Fitzgerald emphasized the importance of residents attending meetings to be aware of the decisions the Council makes. Mr. Fitzgerald then asked Council to think carefully about their positions with regards to items 2, 3 and 4 and if there was a possibility of a conflict of interest, to declare it.

**CITY MANAGER REPORT:**

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

February 2, 2010 – Planning & Zoning Commission, 7:00 p.m., City Hall  
February 8, 2010 – City Council Public Hearing and Meeting, 7:00 p.m., City Hall  
February 9, 2010 – Library Advisory Board, 4:00 p.m., City Library  
February 20, 2010 – Historic Preservation Commission, 9:00 a.m., City Hall  
February 22, 2010 – City Council Meeting, 7:00 p.m., City Hall  
February 23, 2010 – Community Watershed Alliance, 6:30 p.m., City Hall

February 13 & 14, 2010 – Territorial Days, Arena Bar  
February 15, 2010 – HOLIDAY, City Offices Closed

Mr. Nichols then read a statement to the Council concerning the current issue of the proposed referendum. The statement is incorporated into the minutes.

## **NEW BUSINESS:**

### **1. Consent Agenda**

- 1a. Approval of Minutes of the January 11, 2010 Regular Meeting, Including Executive Session Minutes
- 1b. Contract for proposed American Crown Circus event on March 10, 2010, in Benson
- 1c. Ratification of grant of a Right-of-Way Easement at the Benson Municipal Airport owned by the City of Benson for Sulphur Springs Valley Electric Cooperative, Inc. for installation of electric service
- 1d. Resolution 7-2010 of the Mayor and Council of the City of Benson, Arizona, approving and adopting the Intergovernmental Agreement (IGA) between the City of Benson (CITY) and those Participating Public Agencies as defined in A.R.S. § 11-951 (PARTIES) for the purpose of defining Workers' Compensation Coverage in Joint Activities and authorizing the Mayor to execute the IGA
- 1e. Invoices processed for the period from January 5, 2010 through January 15, 2010

Councilmember Sacco moved to approve the Consent Agenda. Seconded by Councilmember Lambert. Motion passed 5-0, with Vice Mayor King abstaining.

### **2. Trust Assurance Agreement to construct subdivision improvements with the Southeast Arizona Economic Development Group, Inc. for House Ridge Estates Lots 1 through 18, Blocks 1 and 2**

Public Works Director Brad Hamilton addressed Council asking if he could address items 2 and 3 since they were related. Mr. Hamilton then stated this item was to establish a new trust assurance agreement with Southeast Arizona Economic Development Group, Inc., (SAEDG) the new owners of the House Ridge Estates, so the subdivision improvements could be completed. Mr. Hamilton then stated the next item on the agenda is to abandon the existing trust assurance agreement for House Ridge Estates with the previous owners, who had been foreclosed on before SAEDG became the new owners. Councilmember Lodzinski asked if the new owners had an engineering firm, stating his son worked with Stantec, Inc. with Mr. George Scott of SAEDG stating the engineering firm was not Stantec, Inc. Councilmember Lodzinski then moved to approve the trust assurance agreement to construct subdivision improvements with the Southeast Arizona Economic Development Group, Inc. for House Ridge Estates Lots 1 through 18, Blocks 1 and 2. Seconded by Councilmember Sacco. Mayor Fenn then stated for the record that he was an officer in the Economic Development Group, which was a non-profit group and he in no way was personally involved with the development of the project. City Attorney Michael Masee then stated the conflicts of interest statutes made an express exception for officers of non-profit entities. Motion passed 6-0.

### **3. Resolution 8-2010 of the Mayor and Council of the City of Benson, Arizona, authorizing the Release of Assurances for the Subdivision known as House Ridge Estates, Lots 1 through 18, Blocks 1 and 2**

Mayor Fenn stated this item was to dissolve the existing trust assurance with the previous property owner. Councilmember Lambert moved to approve Resolution 8-2010. Seconded by Vice Mayor King. Motion passed 6-0.

### **4. Substitute Trust Assurance Agreement to construct subdivision improvements with BIF-Benson, L.L.C. for San Pedro Golf Estates, Lots 1-224 and Common Areas A, B and C**

Public Works Director Brad Hamilton addressed Council stating the subdivision had been sold and this item was to approve the substitute trust assurance agreement with the new owners. Councilmember Lodzinski confirmed the engineering firm was not Stantec, Inc. Councilmember Bonquet moved to approve the substitute trust assurance agreement to construct subdivision improvement with BIF-Benson, L.L.C., for San Pedro Golf Estates, Lots 1-224 and Common Areas A, B and C. Seconded by Vice Mayor King. Motion passed 6-0.

### **5. License Agreement for Locating Facilities in the Public Right-of-Way between Level 3**

## **Communications, L.L.C. and the City of Benson**

Public Works Director Brad Hamilton addressed Council stating this agreement would allow a fiber optic cable to be installed all underground in the existing right-of-way and would run from the Union Pacific right-of-way along Ocotillo, down Direct Way to the west and south sides of Lions Park over to Pearl Street and then back down Patagonia to tie back in to the fiber optic cable that runs along Southern Pacific. Mr. Hamilton then stated if the City decided to make improvements, Level 3 Communications would have to move the cable and noted that the City did receive a license fee for it. Councilmember Lambert asked if there was a timeline for this installation with Mr. Hamilton stating he did not have the construction dates, but that Level 3 Communications was anxious to move forward with their improvements. Mayor Fenn then confirmed the annual fee the City would receive was approximately \$3,700.00. Councilmember Lambert moved to approve the license agreement for locating facilities in the public right-of-way between Level 3 Communications, L.L.C. and the City of Benson. Seconded by Councilmember Sacco. Motion passed 6-0.

## **6. Review of City Finances with emphasis on December, 2009, financial results, the City's financial position at December 31, 2009, and discussion of future revenue streams**

Finance Director Jim Cox addressed Council beginning with citywide financial highlights, stating cash has decreased by \$42,000 for the month of December, but that the decrease was seasonal and has already been reversed in the month of January. Mr. Cox then stated the citywide fund balances decreased by \$53,000 in December and decreased \$418,000 year-to-date due almost exclusively to debt pay downs the City has made. Mr. Cox stated the citywide fund balances will probably be slightly negative at the fiscal year end, but that was to be expected in this economic climate. Mr. Cox then addressed citywide financial results, stating City revenues decreased by \$114,000 in December and decreased \$843,000 year-to-date, which on the surface would be concerning, but that when it was looked at, the City was down \$216,000 in construction sales tax which are used for capital improvements; \$299,000 in grants which was principally due to the large construction project at the airport last year; and \$213,000 in gas revenues, citing the warmer weather and the lower price for gas being directionally proportional to gas revenues. Mr. Cox then stated in summary, the City has adopted a recessionary mode for the last two fiscal years and it's reflected in our financial statements, stating we've kept our expenses at the minimum in both years. Mr. Cox then addressed the summary of all City funds, which includes the general fund and the enterprise funds, stating general fund revenues were down \$12,000 for the month of December and down \$156,000 year-to-date, stating it was due to \$63,000 less collected in sales tax, \$77,000 less in state shared revenues and \$63,000 less in excess asset sales. Mayor Fenn asked about the timing of the state shared revenues, with Mr. Cox stating state shared revenues from the state trail by 2 years, stating in 2010, we receive 2008 tax collections, noting we will see state shared revenues continue to decrease for the next two years, if not longer. Mr. Cox then continued with personnel expenditures stating at fiscal year end, they would be flat. Mr. Cox then stated the general fund balance was down \$56,000 in December, which was expected since the receipts were based on October sales tax collections and were down \$294,000 year-to-date, stating the first 6 months of the year are considered slow collection times of the year the City is right on track. Mr. Cox then addressed the enterprise funds, stating the Gas Fund is up \$8,000 for December but down \$65,000 year-to-date and was due to the warmer weather and decreased gas cost and will turn around dramatically in the next 2 months. Mr. Cox then stated the Water Fund was up \$5,000 for December and up \$106,000 year-to-date, due to a little heavier water consumption in the fall, which was dry and warmer than normal and to very limited capital spending in the interest of conserving cash. The Wastewater Fund is down \$3,000 for December and up \$31,000 year-to-date, again stating it was due to the limited capital spending and were essentially at breakeven. Mr. Cox then stated in summary, the City's local sales tax revenues were right on budget for this time of year and would probably finish the year slightly ahead of budget. Mr. Cox then stated cash balances remain at breakeven levels except for debt payments, that have come out of reserves and that state revenues continue to slide, the state recovery will trail the national recovery significantly and that the new budget will be very similar to the budget in fiscal year 2010, except there will be less revenue from the state, due to the lower state shared revenues, related to income tax and lower sales tax collections.

Mr. Cox then briefly addressed City Tax Collections, including Sales Tax, Construction Tax and Bed Tax

collections stating in City sales tax collections the City is right on line with what we did last year and that based on sales tax receipts this month, it looks like we're going to begin to move above what we did last year and that the signs are that Benson is easing very, very gently out of recession. Mr. Cox stated the General Fund sales tax collections are also right on track with last year and are poised to be gaining on last year and that construction sales tax collections are also basically on track with the past couple of years. Mr. Cox then stated bed taxes are following last year, but slightly lower and that he's hoping it will change in the months of January and February, noting preliminary indications are that there will be a positive change. Mr. Cox then discussed as a reminder where our sales taxes come from, stating transaction privilege tax makes up 82% of our total sales collections; construction sales tax makes up 14% and hotel/motel taxes make up 3% with the other sources being miniscule. Mr. Cox stated that restaurants and bars are doing a little better this year than they have the prior two years. Mr. Cox then compared the City sales tax collections to state tax collections, and stated the City went into a recession, but bottomed out and signs indicate the City is starting to climb out of it, but that on the state level, the state is still in a deep recession with no sign that a recovery is happening.

Mr. Cox then stated this prompted the addition of 4 slides to the presentation addressing a potential City budget crisis and that he would begin with the good news; that he had done some preliminary work on the fiscal year 2010-2011 budget and that it looks like revenues will be down 5% but that is entirely related to known decreases in state shared revenues. Mr. Cox then stated after holding discussions with other department heads, it looked like we'll be able to absorb that 5% without making any significant cuts in services, which means more belt tightening in all departments. Mr. Cox then said the state has got a serious structural budget crisis, and it could become the City's crisis. Mr. Cox stated there were harsh realities the state was facing right now with the projected cash deficits at the state level for the remainder of the current fiscal year at \$1.2 billion; in the fiscal year ending 2011 the projected deficit is \$3.4 billion and in the fiscal year ending 2012 the projected deficit is \$4 billion. Mr. Cox then stated there is very little being done about this issue and that even though this is a state crisis, it could become a City crisis, citing if the state can't pay its obligations, the problem will fall on the cities.

Mr. Cox then stated City funding from the state consists of 3 components; the first being state shared revenues, which is based on income tax collections from 2 years ago, which are pre-recession and in the fiscal year ending in 2009, the City received \$710,000; in the current fiscal year, we'll receive \$612,000 and in the fiscal year ending 2011, we'll receive \$461,000 and in the following fiscal year the City should receive around \$300,000. Mr. Cox then stated the second component is state sales tax collections and that in the fiscal year ending 2009, the City received \$378,000; in the current fiscal year, we'll receive \$350,000 and in the fiscal year ending 2011, he's predicting the City will receive approximately \$320,000. The third component is the Highway User Fund (HURF) that supports our streets program and in the fiscal year ending 2009, the City received \$382,000; in the current fiscal year, we'll receive \$350,000 and in the fiscal year ending 2011, he's projecting the City will receive approximately \$320,000, at best.

Mr. Cox then stated these are the reductions we know of and that there is a real possibility that the state will not even be able to pay us the amounts that we are depending on now, totaling \$1.1 million, which will be a direct hit to the general fund and is approximately 1/4 of our general fund total expenditures and that in the interest of prudent financial management, the City must consider its own crisis plan if the state is forced to pay the City in IOUs, since our employees would not appreciate receiving an IOU in their paycheck, so we've got to come up with a contingency plan that addresses this situation.

Mr. Cox stated fiscal responsibility means being prepared and that Council and staff have done an excellent job of keeping the City fiscally responsible through some tough economic times; that the City pulled back and managed everything that's under its control, but that now we're talking about a situation that is not under the City's control, so all we can do is respond and be prepared for the actions the City must take if we don't receive these funds. Mr. Cox stated the City could dip into our reserves and probably will, to a certain extent, but that we can't depend on our reserves to last for the next 3 or 4 budget cycles and we have to be prepared to make some tough decisions, which is the reason to discuss this. Mr. Cox stated at a financial presentation earlier Mayor Fenn asked if he slept well at night and Mr. Cox had stated he did and

continued to do so because the City is doing everything we can, but during the days, he was starting to get a little fidgety about what's happening at the state level and how it might affect us and that he thinks we need to be prepared.

Mr. Cox then stated he has met with staff to discuss this and decided that what he'd like to suggest is that staff prepare a list of measures that could be implemented to cut \$1.1 million from our \$4.6 million projected expenditures in the budget in the next fiscal year. Mr. Cox stated that is draconian, that would mean the state is not going to give the City a single penny, which he doesn't think will happen, but that we need to be prepared for a worse case scenario. Mr. Cox then stated cutting \$1.1 million from a \$4.6 million general fund budget is going to hurt; that these cuts in budget will mean cuts in service, so what he's proposing is for staff to submit to Council for their consideration, a list of potential actions, with not just the amount to be cut, but the consequence of that cut since everything we decrease or eliminate would involve a reduction in services and that it was Council's decision as to what services could be reduced or eliminated and hurt the least.

Mr. Cox then stated that by cuts, he meant reductions in expenditures, which will again mean a cut in services, such as turning off street lights, turning off park lights or not sweeping the streets, stating those items were what we were down to at this point since we were already operating as efficiently as we can operate. Mr. Cox then stated that personnel costs are 68% of the general fund budget, so personnel cuts had to be looked at in conjunction with this and that things we're going to be quantifying and submitting for Council consideration would include hiring freezes, early retirements, furloughs, salary reductions, layoffs and eliminations of some positions that are considered non-essential. Mr. Cox then requested a directive to staff that as soon as possible, staff put together a list of considerations for Council to give the information to Council; stating that nothing has to be acted upon, but that the sooner we're all thinking about this, the better we'll react if, as and when something happens. Mr. Cox then asked Council if they had any questions.

Mayor Fenn then said the City knew it was coming to this point and it was not a total surprise and then stated a presentation from Tim Bee from the Governor's office, presented to Mayors and Managers of cities in Cochise County, showed things were much more bleak at the state level and was not encouraging, stating we could see that the state is already cutting, citing news reports of state parks closing, rest areas closing and the possibility that our local Department of Motor Vehicle (DMV) office will be closing shortly. Mayor Fenn stated staff should come to Council with numbers and realistic ideas for them to look at. Mr. Cox then added that to put things into perspective, we needed to know that all the horrendous cuts being made at the state level that we read about in the newspapers amount to approximately \$221 million and that the state is looking at a \$1.2 billion problem left between now and June 30, 2010.

Vice Mayor King then stated that we, as a City, have done very well the last 2 years, noting that we started preparing 2 years ago and that even during the last budget planning for the current fiscal year, they talked about tough decisions and tough cuts they made be forced to make and that Council and staff are prepared to take on the task and make it happen.

Mayor Fenn then stated that we shouldn't be fooled; that the City's reserves in the overall picture aren't that great and are not that big of a cushion to fall back on right now. Mayor Fenn then thanked Mr. Cox for the information and said they look forward to the ideas he brings to Council from all the Department Heads and then asked when it would be brought to Council. Mr. Cox stated it should be within the next couple meetings, since he didn't believe it would be possible to have the information organized for the next meeting, stating his idea was to have staff list the cut, the nature of the cut, the amount of cost savings and the effect on services and that it's essential we all understand all of the ramifications of any cut that we would be looking at. Mayor Fenn then stated Council would look for the information in the near future.

#### **DEPARTMENT REPORTS:**

Written Department Reports were provided to Councilmembers as part of the Council packet.

**ADJOURNMENT:**

Councilmember Sacco moved to adjourn at 7:45 p.m. Seconded by Councilmember Lodzinski. Motion passed 6-0.

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Mark M. Fenn, Mayor

ATTEST:

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Vicki L. Vivian, City Clerk

City Manager Glenn Nichols' statement to Council – 1-25-10 Regular Meeting

In conducting research, the City Attorney ran across the following sentence from ARS 9-461.06H: "The adoption or readoption of or a major amendment to the general plan shall be approved by affirmative vote of at least two-thirds of the members of the governing body of the municipality." On November 23, 2009, at the regular City Council meeting, Resolution 74-2009, which approved a major amendment to the General Development Plan changing approximately 148 acres from Low Density to High Density and Commercial was presented for Council action and received 4 votes. At the meeting, it should have been brought to your attention that the motion failed. What this means is that the major plan amendment did NOT pass since it failed to obtain the necessary super majority vote. What this also means is that since Resolution 74-2009 did not pass, the referendum to refer that resolution to the people is moot. Therefore there is not going to be a referendum election in May.

Had the ruling been made on November 23 that the motion, as presented failed, the City Council would have had jurisdiction to consider another motion, and the applicant could have requested, a different and lesser plan use designation. The Planning and Zoning Commission recommended granting MDR for all the parcels. Such a motion was not entertained due to the mistaken belief that the earlier motion had passed. Therefore, in the interest of fairness and justice, it would seem proper to put the applicant back in this position. We can do this by noticing a public hearing on the application as presented, and then allow the City Council to consider such a request.

We have informed the applicant of the status of the resolution, which is that it failed. If the applicant chooses the offer to be placed back in the position he was in on November 23, we will be noticing a public hearing on the major amendment to the general development plan in the near future and scheduling action at a subsequent meeting.