

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD FEBRUARY 24, 2020 AT 7:00 P.M.
AT THE BENSON COMMUNITY CENTER, 705 W. UNION STREET, BENSON, ARIZONA**

CALL TO ORDER:

Mayor King called the meeting to order at 7:00 p.m. with the Pledge of Allegiance.

ROLL CALL:

Present were: Mayor Toney D. King, Sr., Vice Mayor Joe Konrad, Councilmembers: Pat Boyle, Lupe Diaz, Larry Dempster, Barbara Nunn and Nick Maldonado.

EMPLOYEE RECOGNITION:

Mayor King recognized Natasha Martinez for five years of service with the City. Mayor King also stated the City is very grateful for our Police Department and our Communication Specialists.

PROCLAMATION: None

PUBLIC HEARING:

The Mayor and City Council will be available to receive comments on the proposed General Development Plan map amendment. The rezoning will only be considered by the City if the Mayor and Council approve the General Plan amendment. These items are being concurrently noticed to ensure that affected parties are aware that these two related processes are being separately considered.

Mayor King stated anyone who wished to speak should state their name, address and whether they live within 300 feet of the property proposed for the rezoning, adding the Council's discretionary decision to rezone the property will be in accordance with Arizona Law. Mayor King then opened the Public Hearing at 7:04 p.m.

Tricia Gerrodette, Eagle Ridge Drive, Sierra Vista, stated she does not live within 300 feet of the property. Ms. Gerrodette stated these two issues were not totally separate and the people who purchased their homes in that neighborhood were expecting a Benson Auto Body or an Animal Hospital permitted under General Commercial, but she was concerned about a big change. Ms. Gerrodette stated this was a big step and obviously Council all thought it was acceptable, but she was concerned about the rezoning and the re-designation. Ms. Gerrodette stated that although the City received assurances from the current owner that they had no plans to do anything else, the sunset clause was perhaps long enough that it would allow the property owner to resell the property to someone else not bound by these same conditions that Council thinks the current property owner was accepting and proposing. Ms. Gerrodette asked Council to keep those concepts in mind as they discuss the terms of both the re-designation which she thought was a huge step and she would think some of the neighbors would not be happy with it, and the second step which she believes is about the conditions and whether or not there should be more safeguards in the terms of the agreement.

George Scott, representing the Southeast Arizona Economic Development Group, East 4th Street, Benson, stated he does not live within 300 feet of the property. Mr. Scott stated the amendment to the General Development Plan was important if Benson was going to grow and bring in new businesses and new jobs and this project does just that, adding the Council must be flexible in amending the Development Plan as needed. Mr. Scott then stated he supports it and hopes all Council would as well.

Scott Decker, Heartleaf Lane, Benson, stated he lives about 600 feet from this property, but his legal access goes right through this property. Mr. Decker stated the two railroad crossings, on Country Club and on Heartleaf Lane, both have only a stop sign and if someone were to improve their properties beyond those, typically a railroad crossing would require arms, adding he wondered if that was something the City of Benson required for Commercial

zoning. Mr. Decker stated if there was a change in zoning from Commercial to Industrial, the City should seek to upgrade those railroad crossings to be current so they wouldn't be sub-par crossings, adding they should have lights and arms and everything else that's required.

Mayor King asked Ms. Michelle Johnson, AICP, Planner/GIS, if she had discussed railroad crossing upgrades with anyone; Ms. Johnson stated she had not. Mr. Bradley Hamilton, P.E., Director of Public Works/City Engineer stated the gate arms and anything else for railroad crossings are not regulated by the City of Benson but are regulated by the Arizona Corporation Commission, the Office of Railroad Safety, and the Federal Railroad Administration and what was required would be in their purview.

Mr. Decker then continued, stating the legend, or the story that people tell, was if the City of Benson was involved in approving occupancy of a commercial property by the railroad tracks, the crossing would need arms with Mr. Hamilton stating it is at the discretion of the Federal Railroad Administration and the other agencies, not the City, adding the City has no say in the matter.

Mayor King asked if there was anyone else who wanted to speak and after receiving no responses, closed the Public Hearing at 7:14 p.m.

PUBLIC HEARING:

The Mayor and City Council will be available to receive comments on the proposed rezoning. The rezoning will only be considered by the City if the Mayor and Council approve the General Plan amendment. These items are being concurrently noticed to ensure that affected parties are aware that these two related processes are being separately considered.

Mayor King stated anyone who wished to speak should state their name, address and whether they live within 300 feet of the property being proposed for rezoning, adding the Council's discretionary decision to rezone the property will be in accordance with Arizona Law. Mayor King then opened the public hearing at 7:15 p.m.

Cindy Iverson-Beeman, stated she was representing the Sahara Motel, on south Highway 80 in Benson, and it was within 300 feet of the property being proposed. Ms. Iverson-Beeman explained they have spoken at all of the Planning & Zoning meetings because of their strong feelings about this project. Ms. Iverson-Beeman then stated her mom, Nancy Iverson, canvassed all of the mobile home parks affected by this: Saguaro Park with 343 spaces, Valley High with 56 spaces, San Pedro Resort with 123 spaces, and Encore (Valley Vista) with 140 spaces. Ms. Iverson-Beeman stated this totals 662 spaces of people in homes on wheels who can choose to leave if this quiet part of town is no longer quiet due to the proposed project, adding if they leave, it will have a major impact on Benson. Ms. Iverson-Beeman explained that Sahara Motel is directly across the street from the entrance of this property and it would have a drastic effect on their business, adding they don't have the railroad noise that other places downtown have, but with this project, they will have trucks, and in fact already have truck noise from the trucks hauling the wall parts. Ms. Iverson-Beeman then stated this was not a good project for those on Highway 80 and with Highway 80 only being a two-lane road, there is already an immense amount of traffic. Ms. Iverson-Beeman then spoke about the wear and tear on the highway, adding no one seems to pay attention to the speed limit signs. Ms. Iverson-Beeman then asked everyone to remember that Benson is not unique, these people with their homes can travel anywhere they want and can leave on a whim. Ms. Iverson-Beeman stated Quiburi Mission was also nearby, and with all the senior citizens, elderly and sick there, the excessive noise could make a difference to those residents. Ms. Iverson-Beeman stated she hoped Council gives this matter sincere thought because of the major impacts on those businesses along Highway 80.

Daniel Arnold, Country Club Drive, Benson, stated he lives within 300 feet of the property, adding it runs right through his property. Mr. Arnold explained he has been a neighbor of this property for the last seven years, and the railroad has always been good to him, adding they treat them well and he has never had any issues with them, noting they have a great relationship. Mr. Arnold stated he was a pro-growth individual, he likes to see progress made and he would like to remind a lot of people speaking tonight that if he was not mistaken, this property was already zoned B2, which means there are a lot of other options that could be done besides a railyard, adding it could be a Lowe's, a Home Depot, or a lot of things much worse than what was being discussed tonight, and he personally does not

feel it is a bad situation. Mr. Arnold stated he lives within a 100 feet of the railroad engine and he wakes up to it every morning and it has never been a problem for him. Mr. Arnold then addressed complaints about traffic on Country Club Drive, stating he lives at the end, so people turn around in his driveway and his front yard every day, adding people have complained about semis and various other traffic issues and he feels most of those people driving down that road are lost. Mr. Arnold then stated he attended every one of the other meetings, then added over the last three weeks, he has paid close attention to the traffic that comes up and down that road, and there was just one delivery truck that came to the railyard in those three weeks, noting the driver backed in, dropped off some freight and left. Mr. Arnold then stated there are not “all these trucks” everyone keeps talking about, adding people who drive down the road are typically lost, adding most of them are winter visitors who think the old golf course is still open. Mr. Arnold then stated he works in Tucson as a commercial real estate developer by trade, adding he is obviously pro-growth, and he noticed that the issues on Highway 80 are ADOT issues; they are not railroad issues, they are not gas station issues, or trailer park issues. Mr. Arnold stated the road needs a little bit of work done to it and possibly some signage changes, but he is absolutely in favor of the railroad being his neighbors, adding he worked with them for seven years and never had a problem with their honesty or their integrity so he believes in them. Mr. Arnold then stated he also has worked with The WLB Group, Inc. in Tucson on several projects stating it was one of the finest engineering companies he had dealt with in years, so he trusts their integrity as well. Mr. Arnold then stated he trusts the Council to figure out and deal properly with this project, adding he appreciates those listening.

Tricia Gerrodette, Eagle Ridge Drive, Sierra Vista, stated she does not live within 300 feet from this property. Ms. Gerrodette then stated one of the first things she wanted to know was if this rezoning would affect the ongoing effort for a railroad quiet zone, and she apologized for being uninformed about the distances, but she read this could involve a 50 percent increase and obviously more in noise, and she wondered if it impacted the quiet zone and what they are trying to achieve. Ms. Gerrodette stated she wanted to make sure people were aware that Heavy Industrial allows a lot of things beyond just increased railroad traffic and one of her biggest concerns were the conditions on the proposal to both re-designate and rezone as she did not feel these conditions provided enough protection if the land ownership changed or if the intent to use the property changed. Ms. Gerrodette then stated among the things permitted automatically if the rezone to Heavy Industrial was allowed would be the manufacturing of chemicals and allied products, adding she means heavy duty, nasty stuff fairly close to a lot of people and their homes and it is within Council’s control to place conditions on the rezone to really restrict it to just the increase in railroad traffic. Ms. Gerrodette then stated she understands the Council wants this and they feel it is good for business, but it is really opening up a huge potential if they don’t put provisions on the rezone. Ms. Gerrodette stated she understood from the first speaker that they just flat don’t want this to happen, but she was pretty sure it will happen based upon her knowledge of Council. Ms. Gerrodette asked Council to consider for safety sake, some additional traffic conditions, such as a third lane, a turn lane, or something that would allay some of the concerns about traffic and getting in and out of the residential RV Park areas.

Councilmember Nunn interjected, asking Ms. Gerrodette how she knew Councilmember Nunn’s feeling on the project, adding earlier Ms. Gerrodette made a comment stating obviously the Council all felt the same way and now just made another comment with a little dig at the Council. Ms. Gerrodette stated she hoped she didn’t say obviously with Councilmember Nunn stating she definitely did. Ms. Gerrodette stated she should have said she was reasonably certain on how the majority of Council will vote and she does believe the proposal will carry. Councilmember Nunn then asked why Ms. Gerrodette was so concerned about what happens in Benson when she lives in Sierra Vista. Ms. Gerrodette then stated she has been concerned about what happens in a lot of other areas beyond where she lives and part of it was because people frequently are reluctant to speak up. Councilmember Nunn then stated Ms. Gerrodette feels it is her job to do so with Ms. Gerrodette stating it is something she feels is important to do as an informed citizen. Ms. Gerrodette further stated that a lot of people do not know about rezonings and changes in land use designation and she has been involved in it for a number of years, and because of her knowledge she likes to share and let people know what might happen. Ms. Gerrodette stated she was asking Council to be prudent on behalf of the people who live there and bought their properties with General Commercial in place because a change to Heavy Industrial would be a really big change.

Mayor King stated he would like to address Ms. Michelle Johnson, AICP, Planner/GIS, Ironhorse Resources, and/or The WLB Group, Inc. asking one of them to address the claim of a 50 percent increase on the railroad with the trains going through with Mr. Hildeberto Moreno of Ironhorse Resources stating that was not the case and Ms.

Johnson stating not at the beginning. Mayor King asked Ms. Johnson to explain her statement with Ms. Johnson stating she didn't think there would be at 50 percent increase any time soon. Mayor King then asked her say how many years it would take with Ms. Johnson stating this was a shortline railroad, not the whole mainline. Mayor King then stated he wanted to clear up that the section they are talking about is the shortline that goes towards Naco with Ms. Johnson stating it goes to Apache Powder. Mayor King then asked about a timeline for an increase by 50 percent with Mr. Moreno stating it would depend on the new business and they really can't say. Mayor King stated it could be one year, ten years, fifteen, twenty or more. Mr. Moreno then stated right now, from Dragoon, they are transporting a half mile north where they have their offices, and they are going to continue that. Mayor King stated he was trying to determine a timeline because Ms. Johnson said "not at first" so he wants to clarify there is no timeline and there is really no way of knowing if or when it will happen.

Mayor King then stated this has gone through Planning & Zoning already and it was unclear if any restrictions were discussed. Ms. Johnson said the Planning & Zoning Commission discussed putting in a sunset clause stating if there were no railroad type use, or no industrial type use within X amount of years, then it would revert back to B-2, adding the length of time for that sunset clause could be determined and could be part of Council's discussion. Ms. Johnson then stated although this was not something recommended, Council could place other conditions on the exact type of use although she would not suggest "railroad use" as that term was pretty broad, but Council may want to include railroad functions, office functions and things of that nature, adding she was not entirely sure about the ability to verbalize every possible thing to include, but she suggested Council could have some discussion about specifying uses on the property. Mayor King stated this is probably something that was discussed in the Planning & Zoning meetings with Ms. Johnson stating they did not discuss putting in specific uses, they just discussed and agreed upon a sunset clause. Mayor King stated there were a few comments about a turn lane and a few other items included in the report with Ms. Johnson stating that is correct and those are under the purview of ADOT.

City Attorney Gary Cohen stated Ms. Gerradotte had questions about the effect on the quiet zone with Mr. Hamilton stating he didn't see it having any effect on the quiet zone as the quiet zone was on the mainline, adding there are a lot more trains on the mainline. Mayor King thanked Mr. Cohen for bringing the question back up and Mr. Hamilton for the information.

Tom Goode, East Saguario, Benson, stated he was not within 300 feet of the property, but he was across the road and his concern was future increased traffic on the road. Mr. Goode stated he felt it was fairly dangerous right now turning into the SKP Park because when someone slows down to make a right hand turn, there are people pulling in the left turn lane to use it as a passing lane. Mr. Goode stated he feels right turn lanes are needed and his understanding was that ADOT was handling that part, but again he feels right turn lanes should be considered with the increased traffic because there are a lot of trucks going up and down Highway 80.

Mayor King then spoke about the comments relating to the possible turn lane, asking if anyone had already approached ADOT with Mr. Robert Longaker, a Planning Consultant from The WLB Group Inc. stating they will be doing that. Mayor King thanked Mr. Longaker.

George Scott stated he was representing the Southeast Arizona Economic Development Group, East 4th Street, Benson, adding he does not live within 300 feet of the property. Mr. Scott stated he feels this project is important to the future of Benson so they can improve their business model here in town. Mr. Scott stated that once Council votes on the General Development Amendment and this Rezoning, there were a lot of questions to consider about Highway 80 and traffic; however he feels these questions have nothing to do with what was being proposed, rather they are related to the Arizona Department of Transportation who is responsible for that section of the Highway. Mr. Scott then stated if any improvements were required by Arizona Department of Transportation, they would notify WLB about anything that needs to be done like a turn lane. Mr. Scott then reiterated that traffic on Highway 80 may be a problem, but it is only going to be solved with Arizona Department of Transportation. Mr. Scott then expressed his encouragement for Council to approve the rezoning, as it is important for the future of Benson, and will let the applicant bring in more jobs and employ more people in Benson.

Vice Mayor Konrad stated he would like to speak on the issue of Highway 80 traffic, stating if the City is going to experience growth and prosperity, he feels the City should take some ownership as far as putting pressure on ADOT to make these improvements if they become necessary. Vice Mayor Konrad then stated obviously the developer

will take some of that responsibility, the City should take some responsibility as well to influence improvements that might be necessary. Mr. Hamilton stated the City can try with Vice Mayor Konrad stating we should. Mayor King stated the Vice Mayor was basically saying to make some calls if this the item passes tonight and he agrees with the Vice Mayor.

John Warden stated he lives at SKP Park, Benson and he was not within 300 feet, but there are 350 RV sites out there with people coming through all the time, and he appreciates the Council's interest in pushing someone to put in turn lanes and that kind of thing. Mr. Warden then stated no one else seems to have any interest in making the turn lanes or doing railroad things as it seems to be someone else's issue. Mr. Warden stated Council are the ones who need to be pushing this and keeping it safe for our people and other people who pass through there all the time, adding the Children's Ranch is down through there and they have kids coming and going. Mr. Warden then stated he was not sure what the plan is or what was really going to happen there, but he hasn't heard very much in the way of interest in making sure things are going to work right.

Mayor King asked if there was anyone else who wanted to speak and after receiving no responses, closed the Public Hearing at 7:37 p.m.

CITY MANAGER REPORT:

City Manager Vicki Vivian announced the following:

Tuesday, March 3, 2020 – Planning & Zoning Meeting, 7:00 p.m., Community Center
Monday, March 9, 2020 – City Council Meeting, 7:00 p.m., Community Center
Monday, March 9, 2020 – Planning & Zoning Meeting, 7:00 p.m., Community Center

Thursday, February 27, 2020 – Last Library Guest Speaker for this program: Eric Kaldahl
10:30 a.m., City Library
“Indigenous Arts and Communities”
Our region is home to many different indigenous communities. Learn about the arts and crafts produced by native artists of the southwest US and Northern Mexico.

NEW BUSINESS:

1. Discussion and possible action on the Consent Agenda

- 1a. Minutes of the June 13, 2019 Special Meeting
- 1b. Minutes of the February 10, 2020 Regular Meeting
- 1c. Invoices processed for the period from February 14, 2020 through February 17, 2020

Councilmember Boyle moved to approve the Consent Agenda. Seconded by Councilmember Maldonado. Motion passed 7-0.

2. Discussion and possible action regarding Resolution 7-2020 of the Mayor and Council of the City of Benson, Arizona, approving a major amendment to the General Development Plan that redesignates approximately 35 acres of land at parcels 124-16-006A and 124-16-006B from Commercial to Industrial

Ms. Michelle Johnson, AICP, Planner/GIS, stated the applicants were present tonight to answer questions, then stated everyone should have the basic understanding that Ironhorse Resources, Inc. (IR), who purchased the San Pedro Railroad about 18 months ago wishes to expand their operations. Ms. Johnson stated IR currently does transloading and storage to the north of Country Club and they are looking for a larger parcel to potentially build another short track where they would pull cars off and unload the goods from that car. Ms. Johnson stated IR currently owns that property with access to Highway 80 through Heartleaf Lane which is a dirt road, and obviously if they are going to use that in any capacity, they would work with ADOT to make improvements to Highway 80. Ms. Johnson stated these would include the size of apron to the road, the turn outs to Highway 80, and so on which

would require a traffic impact analysis, adding this is not required by the City of Benson at this phase, but it certainly will by ADOT. Ms. Johnson then stated if and when any improvements were made to that parcel, the City would look at it as well.

Mayor King asked for additional information on the proposal for the public.

Rob Longaker, PLA, AICP, from The WLB Group, Inc., stated his personal address is in Tucson, then stated with him were two gentlemen from Ironhorse Resources, Inc., Mr. Hildeberto Morano, and Mr. Aaron Lovelady, who were both excited to be here speaking about the project and are very excited to bring it to the City of Benson. Mr. Longaker stated as Ms. Johnson mentioned they are looking to expand operations, adding this property is a unique piece of property and was what they were looking for as it has both rail and highway access, so it's the perfect site. Mr. Longaker then stated he would like to take a moment to briefly explain some of their operations and describe what they do, adding as mentioned, San Pedro Valley Railroad is a small railroad and operates from Benson down to St. David at the Apache Nitrogen Products Plant. Mr. Longaker then explained the current products hauled on the railroad consisted of various mining chemicals which are transloaded to trucks at the Benson and St. David locations and then delivered to points beyond. Mr. Longaker then stated the railroad was a major supplier of products to Apache Nitrogen, and in fact last year about 80 percent of the rail cars delivered to Benson were delivered directly to Apache Nitrogen Products. Mr. Longaker stated IR expects similar operations will occur this year with a slight increase in the number of cars and then stated they are also working on a short-term project receiving rail cars loaded with fencing material for the border, transloading those materials to trucks for delivery to the border in Douglas, but this project was scheduled to end in the middle of next month. Mr. Longaker stated the office for the operation was at Country Club Drive and minimal traffic uses that road to access the office, adding a gentleman mentioned there were a lot of vehicles on that road accessing the office and that was not true. Mr. Longaker then stated there are a few vehicles and occasionally a delivery truck but not that many cars and trucks use that road, adding existing operations generate about eight to ten truckloads between their two locations. Mr. Longaker stated as it relates to Highway 80, it is expected with the expansion of this operation and once it gets going, there may be another approximately 300 rail cars visiting the site, meaning maybe three, four or five truckloads or trucks accessing the site on a daily basis. Mr. Longaker then stated on the subject of Highway 80, the next step will be development plans for this project and the applicants/owners will definitely coordinate any access or other improvements with ADOT. Mr. Longaker explained they will be required to do a traffic impact analysis analyzing the site, its operations and the traffic generated by it and if improvements need to be made to the adjacent roadway to facilitate safe and efficient access to and from the site, they will be ready to do that. Mr. Longaker then stated this site was available and meets their criteria and the next step was to get it zoned, so that they can start attracting users to the site.

Mr. Longaker stated there were questions about hours of operation, adding it will be a Monday through Friday facility, operating from 8 a.m. to 4 p.m. Mr. Longaker then stated he brought the plan with him that reflects some of the items discussed at the Planning & Zoning Commission Meeting, adding that on the northern boundary they had originally proposed a 75' natural buffer but the Planning & Zoning Commission felt strongly about a 100' buffer, so the applicants now show the 100' natural buffer on the north on the updated plan and they are committed to this update. Mr. Longaker stated there were also concerns about creating a no-build area between the site and Benson Animal Hospital and Benson Autobody, noting the updated plan shown tonight shows a 20' no-build area, creating a buffer between the proposed operations and the current commercial facilities. Mr. Longaker then stated Heartleaf Lane was mentioned and it will remain open as the applicants realize there are people who use it to access the sites beyond and to the east, adding this was an existing easement and if Heartleaf Lane needs to be refigured and realigned, then the new easement will be written and recorded to maintain public access through that street, through that road in perpetuity. Mr. Longaker stated that the plan shows Development Units 1, 2 and 3; then stated Development Unit 1 is in the northeast corner of the site next to the proposed start and where operations will begin initially. Mr. Longaker stated the south side of the site adjacent to Beta Properties is zoned B-2 and R-4 with an existing wash going through the southern portion of the site and that will remain in its natural condition and will serve as a buffer between the site and any future development to the south.

Mr. Longaker then stated there were a few other concerns expressed at the Planning & Zoning meeting and the neighborhood meeting held in December and he would like to address those beginning with dust. Mr. Longaker explained that addressing dust was actually a requirement and a compliance issue, noting a zoning of I-2 requires

that the site, parking, and roadway access were developed with a dust-free surface, and the applicants are prepared to do that. Mr. Longaker then stated another concern was noise of the operations, adding the hours of the operation will be 8 a.m. to 4 p.m. and that should help to alleviate that concern. Mr. Longaker then stated another concern was about the soil and that prior to development of the site, the applicants will have a soils report, geotechnical report, and a professional will analyze the site and soils conditions, adding if any amendments or modifications need to be made to the soil to provide a stable base to build, the applicants will do that as well. Mr. Longaker stated the trespass issue was not mentioned tonight but it was a concern that came up at other meetings, then stated the City Code requires lighting to be shielded and to not trespass to adjacent properties, adding they will obviously commit to that. Mr. Longaker stated there was also a concern about the bus stop near Heartleaf Lane and Highway 80 that a gentleman mentioned during the neighborhood meeting and the applicants have committed to reserving a location on their property for future construction of a bus stop. Mr. Longaker then stated air and noise pollution were also a concern, then noted those are regulated by ADEQ and the City's Zoning regulations.

Mr. Longaker stated they were happy to be present, and appreciated everyone's time, and are asking Council to approve these items tonight, adding they agree with the conditions of approval. Mr. Longaker then stated he wanted to point out one thing, stating there is a sunset clause Ms. Johnson mentioned tonight that shows 8-12 years and the applicants would like to request 12 years to give them more flexibility in finding users for the site, but otherwise they agree with all the other information. Mr. Longaker announced they are all available to answer questions and if the Council would like to discuss the project further, they would be happy to do so.

Councilmember Boyle stated he went and inspected the site last week and he was clarifying this for the benefit of everyone; IR will not clear the entire property off, instead they are going to use the area where the track comes in and only clear that area off, adding the remaining natural growth and the desert will remain the same. Mr. Longaker confirmed this, stating any area that was not under construction or not being used on the site will remain in its current condition.

Councilmember Maldonado asked about the operations being Monday through Friday with Mr. Longaker confirming that was correct. Councilmember Maldonado then asked how many days a week they estimated traffic with Mr. Longaker stating it was hard to estimate that, adding it may not be every day as it depends on the user and the demand, reiterating it would be very difficult to say if there would be traffic every day.

Vice Mayor Konrad stated IR will be seeking out anyone needing product moved by rail and transloading so it may be lumber or chemicals or basically anything on a rail car with Mr. Longaker confirming this was correct. Vice Mayor Konrad then stated he works in an industry where they handle rail cars daily, with chemicals, coal and such, and you won't find any better safety standards than what the railroad has mandated upon themselves plus there are a lot of government regulations. Mr. Longaker stated he was glad this was mentioned because Ironhorse Resources has an outstanding record for safety, adding management meets on a regular basis to ensure they adhere to all the safety standards, and this is something they are very focused on.

Councilmember Dempster asked if there would be a Traffic Impact Study done, noting it would probably cost about \$15,000 with Mr. Longaker stating a study will be done and the cost would depend on the consultant used; then noted the applicants will pay for it. Councilmember Dempster directed a remark Cindy Iverson-Beeman, stating he was sensitive to when someone buys property and they are expected to maintain the property to make certain it continues to be the same as when they bought it, and in that , there is 200 acres of Union Pacific property to the north of her business. Councilmember Dempster stated he may be one of the few that remember when that property was a very active site, and was very loud, adding it was used to store rails, ties and other things and there was a lot of traffic going in and out of there, although it didn't any longer. Councilmember Dempster then stated he wanted to let Ms. Iverson-Beeman know that the proposed project will probably not be nearly as loud or as obnoxious in any way compared to that one which he thinks was still zoned to allow that previous use. Ms. Johnson confirmed Councilmember Dempster was talking about a site different from the proposed property with Councilmember Dempster stating he was. Ms. Johnson then stated she would have to confirm that was still zoned to allow that use with Councilmember Dempster stating his point was that the proposed property would not be nearly as bad as that other site could be. Ms. Johnson then stated the railroad was there well before zoning was in place, adding the zoning had been created around it. Councilmember Dempster then commended the Planning & Zoning Commission for the compromises that were all worked out, regarding the setbacks, and so on.

Councilmember Diaz stated the Council was offered a tour of the property and it was a good tour, adding the Council had a lot of questions and were able to ask them. Councilmember Diaz then stated he also read the Planning & Zoning report and all the comments that were made, adding he thought there were really a lot of good comments brought up and the Council is taking those comments into consideration and is hearing the concerns.

Mayor King stated he would like to thank Ms. Johnson and the Planning & Zoning Commission for going through everything, adding as he read through it, he saw a lot of good questions and comments. Mayor King then stated Ironhorse Resources has done an amazing job answering questions and he has respect for what they are doing; the buffers they are putting in, the lighting and the different things, including the traffic study that will happen in the future. Mayor King stated the Council appreciates them being very straight up about it all. Mayor King then stated he was sorry he didn't get a chance to join the tour, but he had to attend another program that day and will be there one day soon to tour the site. Mayor King then stated the information IR provided was good information and the Council heard the good, the bad, and the ugly questions and comments from the Planning & Zoning meetings and hearings.

Ms. Johnson then stated at the very bottom of the proposed resolution there is a sunset clause with a blank because Planning & Zoning had at first recommended an eight-year sunset clause and IR requested twelve years. Ms. Johnson then stated she has brought this to Council's attention because if they were to put in a sunset clause, that timeframe must be the same for both the General Plan Amendment and the Rezoning request. Ms. Johnson then stated the Council can discuss this and decide what they would like to do, but should they decide on a time for a sunset clause, they needed to verbalize it and include it in the resolution. Mayor King stated that would need to be included in the motion with City Attorney Gary Cohen stating this is something he was going to mention at the appropriate time which is apparently now, adding when Council gets to the point of making a motion on the resolution, the motion should be phrased something like "to approve Resolution 7-2020 without the sunset clause" or ... "with the sunset clause to be X number of years." Mr. Cohen then stated as Ms. Johnson mentioned the proposed rezoning issue, which is the separate related matter, the motion would need to address the sunset clause and it should be consistent with this sunset clause.

Mayor King asked if there was any further discussion. Vice Mayor Konrad stated it had been a long time since he got to sit down and read 326 pages over the weekend and IR did a fantastic job putting it together, adding there was a lot of information in there and he encourages anyone in the public to pick up a copy and read it, noting a lot of work went into this.

Vice Mayor Konrad moved to approve Resolution 7-2020 with a sunset clause of 12 years. Seconded by Councilmember Nunn. Motion passed 7-0.

3. **Discussion and possible action regarding Ordinance 602 of the Mayor and Council of the City of Benson, Arizona, approving a request to rezone assessor's parcel numbers 124-16-006A and 124-16-006B from a zoning district of General Business (B-2) to Heavy Industrial (I-2)**

Ms. Michelle Johnson, AICP, Planner/GIS, addressed Council stating there was a blank in the proposed ordinance for the number of years for the sunset clause and there was also a blank for the size of the buffer, adding it was originally proposed as 75' and the Planning & Zoning Commission recommended 100', and the applicant agreed to that. Ms. Johnson then stated the motion would need to not only include the number of years for the sunset clause but the size of the buffer zone. City Attorney Gary Cohen stated if there was a motion it could be framed something like "to approve Ordinance 602 with the blanks in paragraph three to be filled out as X number of feet, noting the suggestion of 100', and the blank in paragraph five being twelve" noting the sunset clause needed to be consistent with the resolution approved in the previous motion.

Vice Mayor Konrad stated his comment reverts back to the subject of ADOT, and the turn lanes the applicant will be responsible for, adding he wants the City to work with IR and do whatever it takes on our end to make the improvements on Highway 80 happen and make it safer for everyone involved. Vice Mayor Konrad stated he was not going to be quiet about that and encouraged the City to work with IR and accommodate them because Benson was founded as a railroad town asking why anyone would not want the railroad business in this town.

Mayor King stated he agreed with Vice Mayor Konrad that the City needs this, and that Benson was founded as a railroad town, adding he knows this might upset some people, but these jobs are needed also. Mayor King then stated Benson needs to keep growing and anything that can be done in a professional way, trying to satisfy the public concerns or the majority of what the public has asked to be done, is a good thing.

Ms. Johnson stated there was no condition on specific railroad uses but if that was something Council wishes to consider, they certainly could; however, she feels it would be difficult to enumerate every single possible thing. Ms. Johnson then stated she was just reminding Council of the possibility because the rezoning is Heavy Industrial and if the railroad decided to sell the property as industrial property, something like a chicken factory could be possible, adding it was unlikely, but possible.

Vice Mayor Konrad asked if the Council would have some kind of jurisdiction and permitting requirements over that should it become a reality at some point in time and someone wanted to build a chicken factory or a marijuana factory or whatever it might be with Ms. Johnson stating as far as a marijuana factory, yes, it would go through Planning & Zoning, but it would not necessarily come to Council because it would be compliant with the zoning. Ms. Johnson then stated this was part of the sunset clause and if the railroad didn't do something in X amount of years, the zoning would revert back to its current zoning, but there was always the possibility the applicant could sell the land within that timeframe, adding if the Council wanted to try and enumerate uses, they can try to do so, but if Council has confidence in the railroad, and they are here and moving forward on the project, you can leave it as is, stipulating the number of years of the sunset clause.

Vice Mayor Konrad stated he was not opposed to putting restrictions in place, but he was opposed to restricting it to the point where a related business couldn't move in there that would complement that business. Mr. Cohen stated just because there is a zone use, there is still ADEQ, EPA, and ADWR requirements, so there is a litany of other arguable protections that could come into play in that regard.

Mayor King stated he agrees with Mr. Cohen and Vice Mayor Konrad, and thinks with so many agencies involved, he feels a restriction is not necessary.

Councilmember Dempster stated a lot of things can happen in twelve years and that was a central part of town and a very important part of town, and he feels it is important the City have some sort of control. Councilmember Dempster then stated he probably won't be around but he has seen it before and these guys are great and everyone says they have a good reputation but that can change. Councilmember Dempster then stated he feels if the project is railroad use now, it should maintain some degree of "railroad-ish" to it or it come back for an additional Planning & Zoning review. Ms. Johnson stated a requested change in use would go to the Planning & Zoning Committee for approval.

Mayor King asked about that process and where it would go after Planning & Zoning with Ms. Johnson stating it would either be approved or not at the Planning & Zoning level. Mayor King then asked about the process for an appeal if it were denied at Planning & Zoning with Ms. Johnson stating they could appeal the Planning & Zoning decision to Council.

Mayor King stated he hated to put a restriction on every little thing and if for some reason, it were to go to Planning & Zoning and be denied, the appeals process would come to Council with Ms. Johnson stating she does feel the sunset clause suffices. Councilmember Dempster stated it could be difficult or easy. Mayor King stated he was trying to think how the Council would limit the possibilities with Vice Mayor Konrad stating that would also be his question. Mayor King then reiterated he didn't think the Council needed to worry about restrictions and mentioned other agencies such as ADEQ, EPA and ADWR that would be involved in projects involving something serious like chemicals, air pollution or storage tanks underground. Vice Mayor Konrad agreed that the Council could be complicating things. Ms. Johnson then stated this was something that was brought up and she wanted the Council to know it was discussed, but agreed that it would be very difficult to do.

Councilmember Diaz stated he thinks that the proposed ordinance as written was good, adding the Council's crystal ball doesn't go that far, and Mayor King is right in that some of the things mentioned would have other agencies' involvement. Councilmember Diaz then stated if something should change, Planning & Zoning can look at it,

adding the Council could request Planning & Zoning brief them on anything that may change this in the future, but it would be too difficult for the Council to try and figure it all out now adding he thinks the ordinance should stand the way it is now.

Mayor King stated he believes Council has the power to bring anything from Planning & Zoning to the Council for consideration, adding it only takes two Councilmembers to say they want something placed on the Council agenda. Mayor King then stated the Council's hands are not tied and on something very serious like this, even though Planning & Zoning would get it, it should still be before the Council if it were something detrimental to people with Ms. Johnson stating she got it. Councilmember Dempster then stated he is good now with Mayor King stated again, Council's power is not limited, and they can request any item be placed on the agenda.

Vice Mayor Konrad moved to approve Ordinance 602 with a sunset clause of 12 years, and a 100-foot buffer as part of that Ordinance. Seconded by Councilmember Diaz. Motion passed 7-0.

4. **Discussion and possible action regarding Resolution 8-2020 of the Mayor and Council of the City of Benson, Arizona, recommending approval of the issuance of a Series 12 (Restaurant) Liquor License at Rigo's Restaurant, 660 N. Ocotillo Road, Benson Arizona**

Mayor King stated the owner of Rigo's Restaurant was present and invited him to come forward in case the Council had questions.

Rigoberto Lopez stated he was the very proud owner of Rigo's Restaurant and it has been open in Benson for eight months now, and he thanked everyone for their support. Mr. Lopez explained he petitioned three months ago for a Liquor License with 90 percent food and 10 percent alcohol, adding this was not his first restaurant; he has two places in Tucson, one on the south side, and one in the north, noting Benson is his third restaurant.

Mayor King asked if there were any questions. Councilmember Nunn inquired if it was limited to beer and wine with Mr. Lopez stating it would allow the sale of beer and wine. Councilmember Diaz asked if there would be any margaritas with Mr. Lopez stating he could also sell margaritas. Vice Mayor Konrad asked Mr. Lopez to clarify is the license was strictly for beer and wine or if it included alcohol. Mr. Lopez then stated the license is a Series 12 license that allows the sale of beer, wine and alcohol.

Mayor King moved to approve Resolution 8-2020. Seconded by Councilmember Maldonado. Motion passed 7-0.

5. **Discussion and possible action regarding Resolution 9-2020 of the Mayor and Council of the City of Benson, Arizona, authorizing the Fire Chief to execute a Cooperative Fire Rate Agreement with the Arizona Department of Forestry and Fire Management**

Fire Chief Keith Spangler stated every two years the Department of Forestry and Fire Management brings back the contract they have with Fire Departments that allows Fire Departments to charge them or bill the Forestry Division when we go outside our City limits to fight wildlife fires and things like that or if we go out on extended assignments. Chief Spangler then stated the current contract expires on March 31 and the new contract term is two years.

Mayor King questioned changes with Chief Spangler stating there were some operational changes, but the allowable charge amounts for vehicles and personnel is all the same.

Councilmember Maldonado questioned what kinds of vehicles go out with Chief Spangler stating it is mainly a Brush Truck, the Type 3 Engine and the Tender, but the department also has the Support Truck, an F150 and the Type 1 Engine to go out if they were needed, adding a few years ago they called for a Type 1 Engine to go out to Springerville, he believes for a wildfire, so with this agreement in place, if that request was made, the City could respond. Councilmember Maldonado asked if the equipment would be manned by the Fire Department personnel with Chief Spangler stating it would, adding we wouldn't just let vehicles go out to whoever, they would have to be manned by personnel from the Fire Department.

Mayor King asked how many of fires we were involved with in the last few years with Chief Spangler stating that in 2018, there were 11 billable fires and in 2019 there were 12 billable fires. Councilmember Maldonado asked about the revenue with Chief Spangler stating in 2018, equipment brought in \$28,697 and for personnel, brought in \$18,938 and in 2019, equipment brought in \$9,631 and personnel brought in \$13,249. Mayor King questioned where that revenue goes with Chief Spangler stating the personnel revenue goes back to Benson Fire because they pay the firefighters from Fire Inc. and the equipment revenue goes back into the City.

Councilmember Dempster asked how it was determined to be billable or not with Chief Spangler stating if they request us and if it's outside of our District. Chief Spangler then stated if they were to call us for an extended assignment up in Idaho, all that time would be billable to the Forest Service or to the Department of Forestry and Fire Management, adding they have a contract with the United States Forest Service to pay them and they would then pay us.

Vice Mayor Konrad stated when you talk about out of state fires, that is how that progresses and so the federal government might ask for help from Arizona and they would in turn ask for help from the City with Chief Spangler stating that was correct. Chief Spangler then stated if they wanted a Type 6 Engine, which is a Brush Truck and the department has an Engine Boss and other firefighters to go with it, we can send it, then noted if the department doesn't have the personnel available or the truck is out of service, it doesn't count against the department.

Councilmember Maldonado moved to approve Resolution 9-2020. Seconded by Councilmember Nunn. Motion passed 7-0.

6. **Discussion and possible action regarding Resolution 10-2020 of the Mayor and Council of the City of Benson, Arizona, authorizing the City Manager and/or the Fire Chief to apply for an Assistance to Firefighter's Grant for Self-Contained Breathing Apparatus and Compressor to fill such**

Chief Spangler stated FEMA (Federal Emergency Management Agency) puts out an Assistance to Firefighter Grant every year in which we can ask for equipment, adding in 2014 we got a Fire Truck. Chief Spangler stated this grant application is for a regional grant for Benson, Pomerene, Mescal and St. David, for Self-Contained Breathing Apparatus, which are packs firefighters have on their backs when they go into fires or hazardous environments. Chief Spangler then stated getting the same packs will give these departments interoperability should they get on scene and need extra bottles or if someone shows up and needs a pack, they will already know how the pack works and they can pull a pack off the truck, adding this would be a good thing since the department works closely with all the agencies when there is a structure fires, vehicle fires and such.

Vice Mayor Konrad asked where the compressor would be kept and if Chief Spangler would offer the use of it to others with Chief Spangler confirming that was correct. Chief Spangler then stated he believes the current compressor is 24 years old, adding it's a 5,000 PSI Compressor and the department needs a 6,000 PSI Compressor because the new bottles will be 4,500 PSI bottles, which are the standard. Chief Spangler then stated it used to be when a firefighter arrived at a fire and when their air alarm went off, they would have so much time to walk out of a building, but they have now changed the standard to a third, noting a firefighter has a third of their time to get into the building, a third of their time to work, and they need to be out before they reach the last third of their tank, adding this gives firefighters a little bit of emergency air should they get stuck, fall or whatever.

Mayor King asked if the funds for the grant would be in the current budget or the upcoming budget with Chief Spangler stating it would be in the upcoming budget, adding the amount of the entire grant would be \$805,673.00, and requires a five percent match, noting Benson would be the lead on the grant, but the other departments would pay their five percent too. Mayor King then stated the City's match would be \$17,675; J-Six's match is \$8,598, St. David's match is \$7,004 and Pomerene's match is \$7,004, adding he thinks this is a good thing. Mayor King questioned budgeting for the grant with Chief Spangler stating it will be in the upcoming budget because while the application is due on the 13th of March, nothing would be awarded until after October.

Councilmember Maldonado asked if the bottles would be aluminum, fiberglass or something else with Chief Spangler stating they will be fiberglass, adding they don't make the aluminum anymore and these are lighter than the aluminum sealed tanks the department currently uses.

Councilmember Nunn moved to approve Resolution 10-2020. Seconded by Councilmember Maldonado. Motion passed 7-0.

7. **Discussion during and/or after presentation by City staff of City Finances, with emphasis on December 31, 2019 financial results and the City's financial position at the end of December 2019. All revenues and expenses of the City may be discussed**

Finance Director Seth Judd stated he would be discussing December, 2019 so this would be October sales tax and everything that came in during that time, and to give Council a bit of an overview, 50 percent of the fiscal year has passed and he would be comparing this year to FY 2018. Mr. Judd stated for the month of December, the City brought in just over \$1.1 million in revenue compared to \$919,000 last year so there was an increase of \$230,873, adding year-to-date, the City was up about \$2 million from last year and a lot of that has to do with some different grants, adding some of it was due to the utility rate increases that were passed, and the City was doing better overall with sales tax as both the State and City's sales taxes are both over what they were last year. Mr. Judd then stated this is a good sign the economy was doing well. Mr. Judd then stated as far as expenses, he looked back over his presentation and this is the first month of this fiscal year that the City decreased expenses over last year, adding the City spent \$811,296 this fiscal year and \$843,863 last fiscal year, which was a decrease of \$32,567, adding year-to-date, the City had \$5,440,664 in expenses this year and had \$4,854,949 in expenses last year, which is an increase of \$585,715. Mr. Judd then stated the City's net position for the month increased by about \$263,440 as it went from \$75,378 to \$338,818 in the positive, and year-to-date, the City was at \$1,410,853 this year and were at \$27,548 last year, so the Council could see that revenue has caused a big swing in the City's net position.

Vice Mayor Konrad asked what the increase in expenses could be attributed to with Mr. Judd stating it was due to grants, noting any grant funding comes in as revenue and also shows up as an expense, adding there were also some much needed repairs that had been put off in the past that were completed this year.

Mr. Judd then stated he wanted to provide a quick budget update, adding he sent out budgets to the different departments so they should be working to get those back to him next week. Mr. Judd then stated his last full-time day with the City will be next Thursday, March 5, so he is trying to get as much done as possible before that. Mr. Judd stated the audit was finalized so he can go ahead and start the budget model and he will be working with Ms. Vivian on that in the next week or so.

Mayor King stated it is nice to hear the City is doing well, adding we are heading into the latter part of the year so we will see how it rolls on down and thanked Mr. Judd for all he does.

8. **Discussion and possible action regarding Ordinance 603 of the Mayor and Council of the City of Benson, Arizona, amending the Benson City Code, Chapter 7, "Building", Article 7-1, "Uniform Codes", Section 7-11, "Adoption"**

City of Benson Prosecutor Ann Roberts stated she prepared this ordinance to do a bit of housekeeping on the 2015 International Codes the Council adopted, adding the International Building Code (IBC) and the International Residential Code (IRC) are the two that will be utilized the most for code enforcement prosecutions. Ms. Roberts then stated she wanted to make sure there were no loopholes as far as any kind of misunderstanding for the enforcement of the stop work order portion of that code.

Councilmember Maldonado asked if these codes were the most current codes with Ms. Roberts stating she is looking at the most recently adopted codes, adding she knew that the Council would be looking at these codes in the near future, so the purpose of the proposed ordinance is simply just to address those portions of the stop work order provisions. Ms. Roberts then continued, stating when the Council adopted Ordinance 588, it addressed the different building codes and had different sections addressing and prescribing penalties for violations, adding they specifically included both the violations and the stop work order process for the Plumbing Code, the Mechanical Code, and the Electrical Code, but for some reason in the International Building Code (IBC) and the International Residential Code (IRC), the stop work order section was overlooked. Ms. Roberts then stated the IBC had three different sections regarding the stop work order, but the IRC had two sections, and the authority section was missing.

Ms. Roberts then stated she wanted to make sure both codes were identical not only for Staff purposes, but for the code enforcement process and for presentation to the Judge, noting it is much easier when everything is consistent.

Councilmember Diaz stated he saw the current language of “as prescribed by law” was vague and that changing it would make her job easier, adding now it is going to be \$2,500 penalty per incident and every day after it will be a new incident up to 180 days with Ms. Roberts stating that would be a possibility. Ms. Roberts confirmed this stating the current language does use “as prescribed by law” because the International Code Council doesn’t want to determine what the violation would be, adding that legislation is up to the Council, who is acting as the legislative body for the City of Benson. Ms. Roberts then stated the Council could decide violations could be criminal or civil and there are many other components that the Council has the ability to decide when determining what the punishment should be.

Councilmember Diaz asked if a fine of \$2,500 was standard on all the other codes with Ms. Roberts stating it was, adding what Council adopted in the past was that every violation of the Building Code would be a class one misdemeanor, which is punishable by a fine up to \$2,500 plus assessments and imprisonment of up to 180 days in jail or both, noting that is how the previous ones are written. Ms. Roberts then stated it does not necessarily mean that Council might not want to change that in the future, adding the Council has the ability to change it at any time.

Vice Mayor Konrad then confirmed that it could be up to a \$2,500 fine and that it would be at the discretion of the Judge, based on her recommendation. Ms. Roberts stated she does not typically make recommendations, then stated in the County, they have a County bond book that states a charge of criminal damages is a Class 1 misdemeanor with a maximum penalty of \$2,500, but the standard County fine is \$667, but noted the maximum penalty could be up to \$2,500 plus jail time, which is all within the Judge’s discretion. Ms. Roberts then stated she does make a recommendation if she feels someone is a repeat offender or is a dangerous individual who needs to go to jail or such, adding she does have the opportunity to ask the Judge to initiate that sentence. Vice Mayor Konrad then confirmed that the Judge is who makes that determination with Ms. Roberts stating that was correct. Ms. Roberts then stated this was the problem in the past and there is still a provision in the general penalty section that needs to be fixed regarding the misdemeanor class, adding there are three different classes of misdemeanors and the Council, not the Judge, who decides which class it is. Ms. Roberts then stated she would be pushing to get that to Council in the near future. Ms. Roberts then stated she found these issues when she was reviewing the process, adding she likes to do this before she starts trying to prosecute a case, so the process doesn’t get tripped up in court.

Vice Mayor Konrad asked if these provisions would stay in place, should the Council adopt new building codes later with Ms. Roberts stating they would not. Ms. Roberts then stated if the Council were to adopt new building codes, they would have to regurgitate the violations sections and the penalty sections. Vice Mayor Konrad then confirmed the Council would be doing that as part of the adoption, rather than after the fact with Ms. Roberts stating that was correct. Ms. Roberts then stated the other alternative she discussed with City Manager Vicki Vivian was that a good catchall would be to just put a general penalty provision in Chapter 7 of the City Code for every code that is adopted in Chapter 7. Ms. Roberts then stated it would be one section applying to all those building codes instead of four or five or six little sections individually addressing each building code the Council adopted. Ms. Roberts then stated should the Council adopt a 2018 version of one building code and a 2012 or 2015 version of a different building code, such as plumbing or mechanical, it would make things simpler. Ms. Roberts then stated this is something that can be discussed further during future Council worksessions on the building codes.

Councilmember Maldonado moved to approve Ordinance 603. Seconded by Vice Mayor Konrad. Motion passed 7-0.

EXECUTIVE SESSION: Pursuant to A.R.S. § 38-431.03 (A)(3) & (7), for discussion or consultation for legal advice with the attorney or attorneys of the public body and discussions or consultations with the Mayor and Council’s designated representatives to consider its position and possibly instruct its representatives regarding negotiations for the purchase, sale, lease, or exchange of city-owned real property.

No Executive session was held.

ADJOURNMENT:

Councilmember Diaz moved to adjourn at 8:40 p.m. Seconded by Councilmember Maldonado. Motion passed 7-0.

ATTEST:

Toney D. King, Sr., Mayor

Vicki L. Vivian, CMC, City Clerk