

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD AUGUST 12, 2013, AT 7:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

CALL TO ORDER:

Mayor King called the meeting to order at 7:00 p.m. and stated before going any further he would like to make a statement. Mayor King then stated before the Call to the public there are some things he would like to make clear. Mayor King explained he has been on Council for over 12 years and has learned that public officials have to have thick skin and when they take the oath to serve, they have to allow the public to bring forth criticism of their actions and performance. Mayor King then stated the Call to the Public is an avenue for the public to voice their opinions, ideals and criticisms; it is not however, a time for Councilmembers or City Officials to do the same. Mayor King stated if Councilmembers or City Officials wish to refute something said at the Call to the Public, he will allow it unless that person makes accusations, criticizes or slanders a member of the public body or the public. Mayor King then stated in addition to this he will not tolerate any intemperate accusations or criticism toward employees or members of the public body from any speaker during the Call to the Public. Mayor King stated the public has a right to voice opinions about Council, Department Heads or any other City business and anyone who does not follow these criteria respectfully will be ruled out of order, and he will ask them to stop and sit down. Mayor King advised that Councilmembers have a choice to either address the Council from the podium or to speak from the dais. Mayor King then stated it is time to stop all the bickering and fighting, and they need to start working as a Council. Mayor King stated the other part of his statement is he will continue to allow 5 minutes, however since the Call to the Public takes so long and makes people wait for the meeting; he may end up moving it to the end of the meeting. Mayor King then stated he is at a point where he is tired of the riff-raff adding everyone needs to focus on what the Call to the Public is truly about.

Mayor King then led the public in the Pledge of the Allegiance.

ROLL CALL:

Present were: Mayor Toney D. King, Sr., Vice Mayor Al Sacco. Councilmembers Ron Brooks, Jeff Cook, Brian Crafts, Chris Moncada and Peter Wangness.

Mayor King then introduced then introduced Steve Medeiros of the New Life Family Worship Center who gave the invocation.

EMPLOYEE RECOGNITION: None.

PROCLAMATION:

Mayor King asked Dr. Woodall of the Benson Unified School District and Anita Choate of the Benson School Board to come forward. Mayor King then read a proclamation acknowledging Benson Unified School District as the #1 2013 Top Performing Public School District in the State of Arizona and presented the proclamation to Dr. Woodall and Ms. Choate. Dr. Woodall then thanked those present and the community of Benson for all the support they give the Benson school.

PUBLIC HEARING: None

CALL TO THE PUBLIC:

Councilmember Brooks stated he would like to remind those who address Council to give their name and address.

Paul Lotsof stated he would like to address the new members of the Board of Adjustments. Mr. Lotsof stated Jim Kolbe served in government for a long time, adding at a press conference, someone asked Mr. Kolbe about term limits and it just so happens that after being elected 11 times, he was not in favor of term limits. Mr. Lotsof then stated Mr. Kolbe answered the question on term limits with the quote, "if someone is doing a good job, why fire them?" adding he thinks we can take a look at that and apply it effectively and see who should be on the Board of Adjustments. Mr. Lotsof stated Councilmember Brooks and Mr. Barnaby both have experience in construction work and the 2 ladies who are also candidates for these positions don't claim to have a background in construction or building matters. Mr. Lotsof stated one would wonder why you would select them as opposed to the 2 known candidates. Mr. Lotsof then stated Councilmember Brooks has been on the Council for a couple of years and has been on the Board of Adjustments a lot longer than that adding he has heard a lot of criticism toward Councilmember Brooks as a Councilmember, but has not heard any criticism of his performance on the Board of Adjustments. Mr. Lotsof stated Councilmember Brooks and Mr. Barnaby have plenty of experience and information when the only credential the ladies seem to have is that they are not named Brooks and Barnaby. Mr. Lotsof then stated he would like to address money losing festivals stating Bluegrass, according to Mr. Cox, lost \$9,000 and the only justification is that tourists spend more than that, which is speculative. Mr. Lotsof stated he has a much better idea Council might want to consider which is instead of spending \$9,000 on a money losing festival, spending the same amount and produce 900 vouchers, each worth \$10.00 to be good toward a night at a motel or RV park. Mr. Lotsof stated once this became known, the truck drivers and RV people would catch on that Benson is a heck of a good deal for a night's accommodation. Mr. Lotsof then stated the hotels and RV parks would have to participate and agree not to raise the rates for people who use the vouchers, but he thinks in no time at all, the fact that you could save all this money would make Benson a primary tourist destination, adding money would then be spent at local restaurants and other local businesses. Mr. Lotsof stated eventually the City could cancel the fireworks at Butterfield Stage Days and expand the voucher program, adding another idea could be to make it available during the off-season when the motels and RV parks need the coverage the most. Mr. Lotsof stated this was his suggestion and he hoped the Council would give it some consideration.

Charles Hoelzel addressed Council stating he is speaking on his and his wife's behalf, stating they have been residents of Benson for about 9 years and have been absolutely delighted with their choice of a place to live. Mr. Hoelzel stated occasionally he makes the comment that Benson is still struggling to come to grips with the 20th century, never mind the 21st century, adding on the other hand, his wife's smart phone is too much for him because he is not a 21st century person yet. Mr. Hoelzel then spoke regarding the property tax ordinance the City decided on adopting, in which Council increased the budget and increased the tax rate. Mr. Hoelzel stated we all know that Benson and the surrounding territory are in some fairly dire economic circumstances; we have been losing businesses and people are moving out of Benson, adding it seems the only people who are unaware of this is the City Council who raised the budget and raised the property taxes. Mr. Hoelzel stated the most irritating part of the statement about a the tax levy rate is that it has increased slightly from last year, adding when you calculate it, the increase in the rate is 10% and he doesn't consider that slight or small. Mr. Hoelzel stated for Council to have believed their constituents would go for that is kind of a surprise. Mr. Hoelzel then stated he doesn't think anyone has seen a 10% raise in the last 2 years, yet every one of the citizens is going to have to pay this 10% increase, noting even renters will have to pay it, as he is sure the landlords are not a charitable institution and will pass the increase on to their tenants. Mr. Hoelzel stated he thinks Council has made a mistake in going for more money and increasing the tax rate considering our economic situation.

Finance Director Megan Moreno addressed Council stating she was notified last week that Standard and Poor's has affirmed the City's AA- Stable Bond Rating for our excise tax and State Shared Revenue Obligation Series 2010 and our Revenue Refunding Obligations Series 2010 and they have given the City a stable outlook. Ms. Moreno then stated she had provided a copy of that letter from them, which shows their rationale and outlook, to the Council prior to the meeting. Ms. Moreno then stated some highlights and factors that went into affirming our stable bond rating she wanted to mention were that the City has strong pledged revenues vs. the debt service requirements, adding the City has very strong ratios and the City's unreserved General Fund balance of \$1.6 million at the end of FY2012 was equal to 115% of the General Fund expenditures, which they consider very strong.

Phil Holly of Benson Auto Body & Glass and Phil's Cars, stated he wanted to bring to Council's attention that after sponsoring this year's 4th of July celebration, he received a sponsorship certificate. Mr. Holly then stated as a business owner, having the banner at the event showing his sponsorship is good, but having the certificate he can display in his office all year is great, adding the certificate has value because people who come in when they are having their car serviced or anything else see the certificate hanging on the wall and see that he supports his community. Mr. Holly then stated it also causes him to look forward to the new year and make sure he has sponsorship funding for the event in his budget. Mr. Holly then stated this is the first year he remembers getting a certificate and he wanted to express his thanks and say it's a great idea, adding he hopes it continues to be done in the future.

Lupe Diaz stated as President of Chamber of Commerce, he is asking the Council to vote against New Business Item 4, adding raising property taxes of the Benson residents and business owners is not a good idea. Mr. Diaz then stated the local economic climate is difficult enough without getting hit with a raise in taxes. Mr. Diaz then stated he knows there are some arguments that the State cutbacks on sales tax is something that was a benefit to us, but it shouldn't be taken out on Benson residents. Mr. Diaz then stated in the past year, there have been 8 businesses that have closed in Benson, which should be enough reason to not raise taxes. Mr. Diaz then stated we need to keep taxes down and work on getting a larger number of operating businesses that thrive and not try to get more taxes out of the small number of businesses. Mr. Diaz then stated keeping taxes low will help the business community and if Council must have more revenue, they should look at offering early retirements, cuts on salaries and things like that. Mr. Diaz then urged Council to not take it out of the business community and residents and to vote no on item 4.

J.T. Moffett stated he would like to elaborate on some of the Brookie propaganda out there, stating he wanted to make it clear that Stagecoach Trails has not won their lawsuit against the City, adding he keeps hearing the City lost, but he has heard no final judgment in the case. Mr. Moffett then stated the propaganda says the City lost some rulings, so they need to pay up. Mr. Moffett then stated the case may go on for another 2 years and the City shouldn't settle it early, adding if the City loses the appeal or loses the entire case, who can say what the penalty will be, if any, noting there may or may not be monetary damages awarded. Mr. Moffett then stated the City cannot settle the case prematurely, because if the City loses in the end, the insurance will pay the money awarded, less the deductible, not to exceed \$100,000 from the City, but if they settle now, as Councilmember Brooks is trying to push, the taxpayers will foot the entire bill and the money will come from the contingency fund set aside for the community. Mr. Moffett then stated one should examine why Councilmember Brooks is so eager to give away \$1 million dollars of the Benson citizens' money to pay off a friend of his, adding the prevailing logic would be to wait until the courts decide the case and let the insurance company pay the bulk of the judgment, if any. Mr. Moffett then stated there was a letter in the paper regarding the lawsuit that stated the cost to the "taxpayers is already over \$1 million that doesn't include more than \$300,000 paid to Masee." Mr. Moffett stated the burden of stating the truth falls to him when he tells Council that the legal representation for Stagecoach Trails has cost the City less than \$200,000 and that includes invoices paid to Mike Masee, noting \$29,517 paid to Sims and Murray, \$42,101 paid to the Risk Pool and approximately \$97,000 to Mike Masee, which is around \$169,000, a far cry from the \$1,300,000 we have been told. Mr. Moffett then stated Mr. Masee has been paid a total of \$288,870 for 4 years of combined service up to July 8 and that includes any invoices for Stagecoach Trails, adding he has the copies of the public records to prove this, which he obtained by going to City Hall. Mr. Moffett stated the Stagecoach Trails case is far from over and the Council needs to sit tight and let the courts and insurance handle it. Mr. Moffett then stated Councilmember Brooks told the newspaper that the recall effort is based on misinformation about him, but the truth is the recall is based on mistrust and the public is fed up with his Brookie agenda and propaganda tactics. Mr. Moffett then stated Councilmember Brooks sat here the last 2 meetings, blasting Mr. Moffett, loudly stating Mr. Moffett had attacked every member of this Council, asking for a show of hands from the Councilmembers Mr. Moffett attacked. Mr. Moffett then stated Councilmember Brooks either lied to the people of Benson once again, or he really believes that he and 2 others are the Council, adding Councilmembers' behavior toward the other members of this Council have proved that since they seem to enjoy keeping the majority of their fellow Councilmembers in the dark as to what they are doing. Mr. Moffett then stated he would like to emphasize Councilmember Brooks' attitude and quote from an email

Councilmember Brooks sent, that “I personally like blindsiding my enemies, so they have their hat in hand when the gavel comes down.” Mr. Moffett then stated he must insist on telling Councilmember Brooks once again, what the people of Benson want is transparency, not blindsiding. Mr. Moffett then stated another example of Councilmember Brooks embellishing the truth is the last session when he responded to the facts about his \$50,000 court judgment for illicit building practices, stating Councilmember Brooks told the public the judgment was 6 years ago and he has been taking care of it, but the truth is the judgment was in May, 2009, which is only 4 years ago and Councilmember Brooks has only paid back around \$5,000 of the \$50,000 he owes an elderly widowed woman. Mr. Moffett stated, worse than that, is watching Councilmember Wangsness and Councilmember Crafts vote for Councilmember Brooks to be put back on the Board of Adjustments, even after learning of his record in the building industry, adding they have no concern for what he did to a senior widow and that is very unsettling. Mr. Moffett then stated they don’t even bother to think or listen to reason, they just vote with Councilmember Brooks, like someone took a cookie cutter image of Councilmember Brooks and stamped out 2 more of him. Mr. Moffett then stated Councilmembers Wangsness and Crafts need to start keeping their campaign promises to the people of Benson and stop being Brookie cookies, adding right now, they may as well sign a proxy vote and give it to Councilmember Brooks. Mr. Moffett then stated that is the way the Brookie cookies crumble, adding all the public has seen from Councilmember Wangsness has been him quoting law after law to the City Manager, the City Clerk and to the Mayor and Council. Mr. Moffett then stated an example of his expertise at work was in an email to City Hall and quoted it, reading, “it looks like we need to postpone the City Manager interview tomorrow. Open Meeting Laws and our code say we need to post the notice of a public meeting that is not regularly scheduled at least 48 hours prior. Since it was not posted today, we cannot do it until Wednesday.” Mr. Moffett then stated Councilmember Wangsness carried on, but the point Mr. Moffett wanted to make is that after Councilmember Wangsness was informed he was incorrect, instead of apologizing, he sent another email stating, “I understand now that the posting is only 24 hours for all meetings and that Chris called the meeting tomorrow, but we are never informed of the source for call to a meeting as standard protocol.” Mr. Moffett then stated the Brookies need to come out of their caves and find out what the people of Benson are saying they want from them, they need to get off their laptops and get on with their campaign promises or resign their seats on Council, adding the community has dire needs, but the Councilmembers’ legal opinions are not one of them. Mr. Moffett then stated he keeps hearing from folks around town that the Brookies are calling people and pushing them to get on board with Councilmember Brooks, adding he and his wife were watching Titanic and during a scene where it was sinking, he thought about the Brookie campaign and asked if anyone ever got on the Titanic when it was sinking. Mr. Moffett then stated Mayor King’s speech at the beginning of the meeting reminded him of something, adding no one criticized Lori McGoffin at Council meetings more than Mr. Moffett and he was often pretty harsh, but never once did Lori McGoffin retaliate or attack him or any other member of the public body as Councilmember Brooks so often does. Mr. Moffett then stated he would like to commend Lori McGoffin for her fortitude and example. Mr. Moffett then stated lastly, during some heated debates over the golf course, he had made some comments regarding Jim Cox’s wife, Sue and he was out of line and because he made the remarks in public, he wanted to apologize to Jim Cox and his wife publicly and promised it would never happen again.

Jay Kendrick stated he wasn’t expecting that comment from Mr. Moffett, adding when Mr. Moffett started contacting him, he told Mr. Moffett he didn’t want to engage in any conversation with him regarding any political issues. Mr. Kendrick then stated the point he wanted to make is that Mr. Moffett sent him a text, to let Mr. Kendrick know how much he supported his family and his litigation against the City and that the City had treated him horribly, again, noting he was taken aback by Mr. Moffett’s comments. Mr. Kendrick then stated he had never met most of the Council and he wanted to introduce himself in person, adding he hoped this could be an open dialogue and had requested an agenda item from all of you, but he didn’t even get a response. Mr. Kendrick then stated he was here to ask the Council to stop the State Court litigation and let the Court of Appeal’s decision stand. Mr. Kendrick stated he wanted to address the public along with the Council, and asked them to imagine for a minute that they own a property in Benson, a business, and their mom gets on the Council and there’s politics and you don’t want to participate, you just own a property and suddenly, the City starts coming after you so you meet with the Mayor of Benson. Mr. Kendrick then stated this is all in the public records and the City Council voted to have former Mayor Mark Fenn investigated and hired an outside law firm, which resulted in a 58 page report, called the Ryan Report, which is a public record. Mr. Kendrick

then stated former Mayor Fenn was found to have conflicts of interest and to have possibly committed felonies. Mr. Kendrick then stated he met with former Mayor Mark Fenn, adding he didn't have a problem with him, but thankfully, he brought a tape recorder along, and former Mayor Fenn told him that "I've got", noting former Mayor Fenn didn't say the City has, but "I've got a City Attorney, Mr. Masee that wants to slam you guys, saying I've got case law, let's go after him." Mr. Kendrick stated this is all taped and the Council has all been given a copy of it. Mr. Kendrick then stated at the end of the conversation, he told former Mayor Fenn that he didn't want a problem, but wanted unity and asked what he could do with former Mayor Fenn telling him the only thing he could do was "head off your mother." Mr. Kendrick then stated there was a grand jury subpoena issued and former Mayor Fenn was being investigated. Mr. Kendrick then stated his question to the Council is what kind of City Attorney would not recuse himself immediately, and asked again that the Council accept the Court of Appeal's decision, adding this litigation has been before the Superior Court, where Mr. Masee filed 20 motions and Judge Desens ruled on his property rights, then went to the Court of Appeals, where the decision was vacated for a procedural issue, and then went all the way to the Arizona Supreme Court, where they agreed Judge Desens had jurisdiction and then went back to the Court of Appeals, where it is now. Mr. Kendrick then stated this has gone on for 4 years at a cost of \$700,000 to his family and apparently \$200,000-300,000 to the City and asked what purpose this serves. Mr. Kendrick then stated he can't imagine how it is right for a Mayor to threaten a property owner in Benson and then the City Attorney comes after him and everyone just sat back, adding this doesn't go for all of the Council, since many of them are new. Mr. Kendrick then asked why the City would oppose him operating his park as it has been run for 40 years, especially when he has turned it from blight conditions to a very respectable place with affordable housing. Mr. Kendrick then asked if the Council and the City of Benson were going to require all property owners to litigate their property rights or if it was just him, adding he is the only one that has had to litigate for 4 years. Mr. Kendrick then stated his family is bankrupt and the Council has no idea what this has done to them. Mr. Kendrick stated no one even looked into the Fenn tape and no one investigated if former Mayor Fenn had animus toward him. Mr. Kendrick then stated he had given the Council the Ryan Report, adding the conclusion is that former Mayor Fenn had conflicts of interest and he had potentially committed felonies, adding the report was done by an independent law firm that this Council hired to complete. Mr. Kendrick then asked if the Council would investigate the case or if they would continue to let Mr. Masee, who's conflicted, file more and more motions in court and keep the litigation going. Mr. Kendrick then stated after his meeting with former Mayor Fenn, the City went out of their way to reinterpret zoning codes, to create a zoning problem where none had existed for 40 years and Mr. Masee filed fire code violations against him, adding under oath at his deposition, Chief Spangler stated he wasn't even aware of it. Mr. Kendrick then stated Mr. Masee doesn't have the authority to do that. Mr. Kendrick then asked why the City would spend \$3,000 and have his property surveyed and then threatened to sue him and his tenants for encroachments; some of which have existed since 1978, adding Mr. Masee threatened to sue him and his tenants to move a home back 18 inches that has been in the park since 1978. Mr. Kendrick then stated the City then after creating zoning issues where none existed and creating alleged fire code issues, which by the way Mr. Masee sent a notice of violation in 2010, claiming there were serious issues, but has taken no action since, but if that weren't enough, put him at the top of the list to be audited by the State. Mr. Kendrick then stated his parks are the only ones in Benson who have been audited, adding there are other parks in Benson that have never paid a TPT tax and just like him, didn't know it even applied to their property and were told it didn't. Mr. Kendrick then stated the City Finance Director allowed one of those parks to just come in and write a check, adding they didn't even have to be audited; they just got to come in and say this is what I think I owe. Mr. Kendrick then stated he was asking the Council to take a hard look at what has happened and begged them to get a legal opinion from someone other than someone who is being sued by him in Federal Court and someone else that is not on tape with the former Mayor saying they want to slam Mr. Kendrick. Mr. Kendrick then stated he wanted the Council to understand what this litigation has done to him, his wife and his 2 kids, adding up until 2010, he was a manager at a Basha's supermarket, just like Mayor King, adding he worked 6 days a week, 12 hours a day, and started when he was 16 years old. Mr. Kendrick then stated by 2003, he had saved enough money to put a down payment on a mobile home park in Benson, adding at the time, the park was half empty, the weeds were knee high, many of the homes were literally falling down off their supports and the City roads were dirt, adding there was even a crack house in the park. Mr. Kendrick then stated he cleaned up the park, graveled the yards and City roads, got rid of the crack house and even had his wife threatened doing it. Mr. Kendrick then stated before he bought the park, he met with Bryan Smith, who told him in no uncertain words

that his park was grandfathered and that he could move homes into the park as long as he got a City permit, met the fire code separation setbacks and that he only needed a State permit, which he has complied with on all 34 homes. Mr. Kendrick then stated his efforts have not only benefitted him but also benefitted the community and the City of Benson, but in late 2009, the City Manager at that time and the City Attorney pulled the rug out from under him, adding immediately following former Mayor Fenn's threats, they City changed the City's zoning codes interpretations to make it impossible for him to move more units into the park and his property was made worthless. Mr. Kendrick then stated this was done with Mr. Nichols' and Mr. Masee's stroke of a pen, adding they just sent him a letter, without any due process of law and no zoning hearing, adding since 2009, he has been fighting with the City of Benson for his financial life. Mr. Kendrick then stated this battle has taken a tremendous toll on him and his family and has tied up all of his resources and time so that he had to stop pursuing other ventures. Mr. Kendrick then stated it's been awful and he is pleading with the Council to bring this nightmare to an end without more litigation, asking the Council to please instruct their attorneys to accept the decision of the Court of Appeals, which will protect the property rights of every person in Benson.

Kathy Suagee addressed Council stating she added 2 pages to her letter that contain portions of the Arizona Revised Statutes. Ms. Suagee then stated she is one of those people Mr. Moffett described as a citizen of Benson, adding she does pay property taxes and lives within the City boundaries. Ms. Suagee then read her statement concerning the Stagecoach Trails litigation to the Council. Ms. Suagee's comments will be retained with the Council packet.

Patrick Boyle addressed Council concerning the tax increase, stating he understands this has been on the books for a while but it has not been used and now for whatever reason, it is being considered by the Council to start using this money to make up for some deficit in the values of homes, since the values have declined over the past few years due to the recession. Mr. Boyle then stated everyone has heard of "mission creep" and what we have here is "tax creep," adding the situation starts with a small amount of tax, only \$10.00 per family or household, which gets passed and then a year and a half from now, the City has the same problem again, and will say we need to go ahead and do this, but the previous tax, that the Council is considering tonight, will still be on the books, so another tax will be added on top of it and then later down the road, another tax will be added on and what ends up happening is there is a substantial tax in place because instead of going back through these tax increases and chopping them off and getting rid of them, we continue to keep them on the books and continue to collect the money, with the citizens of Benson suffering the consequences. Mr. Boyle then stated he thinks there are many other places the Council can cut the money, adding there have been some good suggestions this evening. Mr. Boyle stated he recently understood there are some murals that are going to be painted on the City's welcome center by someone from New Mexico that are going to cost around \$17,000, adding he may be wrong, but if that is the case, it would have been better to hire a local person, who might have done it for \$5,000 or even less, keep that money right here in town and save \$10,000 which probably would be the amount of money that we're talking about with this tax increase. Mr. Boyle then stated he thinks there are many opportunities throughout the City to cut expenditures and he thinks before taxes are increased, Council needs to stop and take a hard look at things that have been mentioned before, such as the costs of employees, extra employees and other things, adding he thinks they will find there is plenty of money to spare. Mr. Boyle stated he understands the City actually has a surplus right now and if that is the case, it means the taxpayers are being overtaxed, adding he thinks the Council should back off from this tax increase and just use the money they currently have and maybe in a few years when situations are better, if they are, then perhaps the City could go ahead and look at increasing their budget and doing a few of these other things, but right now the way things are, they need to stop and not do that.

Councilmember Moncada stated he would like to correct Mr. Boyle, stating the City donated \$1,500 and permission to use City property to the mural project, with the Benson Clean & Beautiful Committee paying for the rest of the project. Councilmember Wangsness stated the Commission had the rest of the money and the artist is actually moving to Benson and Councilmember Cook stated Union Pacific donated \$5,000 toward the beautification at the Visitor Center for the railroad logos.

CITY MANAGER REPORT:

Interim City Manager Jim Cox addressed Council, giving the dates of upcoming meetings and events.

- August 13, 2013 – Library Advisory Board, 4:00 p.m., City Library
- August 17, 2013 – Historic Preservation Commission, 9:00 a.m., City Hall
- August 26, 2013 – City Council Meeting, 7:00 p.m., City Hall
- August 27, 2013 – Community Watershed Alliance, 6:30 p.m., City Hall

- September 2, 2013 – Labor Day – City Offices Closed

Mr. Cox reminded those present to check the ADOT project closures at www.adot.gov for more information.

NEW BUSINESS:

1. Consent Agenda

- 1a. Minutes of the July 8, 2013 Regular Meeting
- 1b. Resolution 22-2013 of the Mayor and Council of the City of Benson, Arizona, authorizing the Release of Assurances for the Subdivision known as Cottonwood Bluffs, Lots 1 through 100, Blocks 1 and 2 and common area “A”
- 1c. Extension of the Trust Assurance Agreement on the subdivision known as Cottonwood Highlands
- 1d. Contracts with Xpress Bill Pay, Bank of American Fork and chase Paymentech for establishment of online bill paying capabilities
- 1e. Resolution 23-2013 of the Mayor and Council of the City of Benson, Arizona, authorizing the execution of an Intergovernmental Agreement between the City of Benson and the St. David Unified School District (The “District”) to permit reciprocal use of the buildings and grounds of the City of Benson and the District
- 1f. Invoices processed for the period from July 13, 2013 through August 1, 2013

Councilmember Wangsness stated he would like to remove item 1a. Councilmember Brooks then stated he would like to remove item 1b. Councilmember Moncada moved to approve the remaining Consent Agenda with items 1c through 1f. Seconded by Councilmember Brooks. Motion passed 7-0.

Consent Agenda – Items Removed:

- 1a. Minutes of the July 8, 2013 Regular Meeting

Councilmember Wangsness stated he had a statement that he read at the Council meeting that did not appear in the minutes. City Clerk Vicki Vivian addressed Council stating anytime someone brings a statement to the City Council, the statement is retained with the Council packet. Councilmember Brooks stated he thought Councilmember Wangsness wanted to make his statement a public record with Ms. Vivian stating the letter is a public record and will be retained with the Council packet. Councilmember Moncada moved to approve item 1a. Seconded by Vice Mayor Sacco. Motion passed 6-1 with Councilmember Wangsness voting nay.

- 1b. Resolution 22-2013 of the Mayor and Council of the City of Benson, Arizona, authorizing the Release of Assurances for the Subdivision known as Cottonwood Bluffs, Lots 1 through 100, Blocks 1 and 2 and common area “A”

Councilmember Brooks stated he would like to have Public Works Director Brad Hamilton address the Council, adding he would like Mr. Hamilton to give the Council information on the resolution. Mr. Hamilton stated the owners of the subdivision are present, adding this type of resolution, which is the final release of assurances for subdivision improvements, used to be fairly common when more development was occurring. Mr. Hamilton then stated when the release was approved in 2007; it didn't include the language needed to

release everything, adding this resolution will do that. Mr. Hamilton then stated the subdivision is located by the new SSVEC building on Cooperative Way. Councilmember Brooks asked what some of the things the owners developed with Mr. Hamilton stating the development of sewer, water, streets, utilities and any other infrastructure to support the lots was completed. Councilmember Brooks asked who the owner of the development was with Mr. Hamilton stating the subdivision was owned by Whetstone Development. Councilmember Moncada moved to approve Resolution 22-2013. Seconded by Councilmember Brooks. Motion passed 7-0.

2. **Appointments to the Benson Board of Adjustment to fill the two terms that expire July 31, 2013 (Possible appointments are renewals of Ron Brooks and Robert Barnaby and new applicants Jean Baden and Jane Scholer)**

Councilmember Cook moved to appoint Robert Barnaby and Jean Baden to the Board of Adjustments. Seconded by Vice Mayor Sacco. Councilmember Brooks stated he didn't understand why he is being taken off the Board of Adjustments, adding it would be nice to hear discussion on that in front of the public. Councilmember Brooks then stated normally when a committee member's term expires; the secretary for the committee calls them and asks them if they want to continue to serve or if they are done so Staff can put out an announcement to fill that position. Councilmember Brooks then stated he was never called, so he felt that something was going on and he wanted to make that clear to the public and to the Council. Councilmember Brooks then stated Mr. Barnaby's never done anything, adding he doesn't know why he's not being accepted, even if someone has something against Councilmember Brooks, he didn't see why anyone would have something against Mr. Barnaby. Councilmember Brooks then stated he thinks the Council should consider him, adding he has never done anything on that board that would warrant his removal and he would like to continue serving on that board and would request that he be reappointed. Councilmember Wangsness stated he felt the issue should have been broken into 2 separate agenda items; the first part would be the renewal of Ron Brooks and Robert Barnaby and having that fail, the second part would be the new applicants. Councilmember Moncada stated the standard procedure is having all the options before Council. Councilmember Brooks then stated normally someone would have to decide to get rid of a couple people first before they went and hired 2 new people, adding he has never seen a committee member that wanted to continue to serve, refused that opportunity, which is why he is bringing up that the issue should have been split into 2 agenda items. Councilmember Cook stated Councilmember Brooks shouldn't take this personally, adding through discussions he has had with different members of the community and board members, they tell him they feel that a City Councilmember being on the Board of Adjustments is a conflict of interest, noting he has heard that numerous times. Councilmember Cook then stated he wished this had not come up for public discussion, because he wasn't going to bring it up, but Councilmember Brooks forced his hand, adding he has had 1 person tell him face-to-face that if Ron Brooks is on the Board of Adjustment, they do not want to serve on it. Councilmember Cook then stated he had heard through other people that others have said the same thing, adding these people are on the Board of Adjustment. Councilmember Cook then stated mistakenly, Councilmember Brooks thinks that he doesn't want to reappoint Robert Barnaby, but clarified his motion was to appoint Robert Barnaby and Jean Baden to the Board of Adjustments. Motion passed 4-3 with Councilmembers Brooks, Crafts and Wangsness voting nay.

3. **Discussion and possible direction to Staff regarding the annual Bluegrass Festival**

Interim City Manager Jim Cox addressed Council giving a brief background of Bluegrass stating the issue was placed on the agenda because the City needs to make plans and enter into a contract with the Promoter if the event is going to be staged next year. Mr. Cox then stated the City has sponsored the Annual Bluegrass Festival event for the past eight years and for the past 2 years, has run it from start to finish. Mr. Cox stated in 2013, expenditures for the event exceeded revenues by about \$9,000 and in addition to that, the City spent about 500 man hours of City employee time to put the event on. Mr. Cox then stated special events sponsored by the City are designed to provide entertainment for Benson area residents and to attract tourists, noting all of the other venues do one or the other or a combination of both, adding the goal is to stimulate local business and increase sales tax revenues during the events. Mr. Cox then stated the Bluegrass Festival attracts a loyal group of tourists who follow the Bluegrass circuit, who typically travel in RVs from concert to concert, noting

during the day they attend the concert and evenings are usually spent with fellow travelers in jam sessions or just visiting, which typically means they do not spend a lot of money while here and they leave as soon as the event is concluded. Mr. Cox then stated we have a lot of evidence that is what happens and local vendors don't see any significant spike while they are here. Mr. Cox stated the festival does not draw a large local crowd because the ticket prices are too high for most Benson area families and Bluegrass music is not especially popular in this area of the country, adding Staff feels that the money and Staff time spent on the Bluegrass Festival could be put to better use on events that will draw more tourists who spend more money locally and/or events that provide affordable entertainment for local residents. Mr. Cox then stated Mr. Lotsof had an interesting proposition, and the City could also sponsor RV shows, special concerts or things like that to try to attract more of our bread and butter tourists. Councilmember Wangsness stated he did some calculations on this \$9,000 loss, adding the City would have needed an additional \$360,000 in sales to adjust for the sales tax at 2.5%, adding he doesn't think they came close to that. Councilmember Moncada stated he has been a big fan of bluegrass for the last 2 years, adding he became involved in the event when the City decided to put it on. Councilmember Moncada then stated the City put a lot of effort into the event this year and the daily ticket sales were up 40% over last year, but the event didn't create the push out of the park they were hoping for. Councilmember Moncada then stated he loves the music and the atmosphere, but he thinks the Council should look at something else, adding for the money the City puts into the event, the return isn't enough, noting this is the event that the City spends the most money on as a City. Councilmember Moncada then stated he was in touch with a concert promoter who does country music, adding no-name bands are available for \$5,000 all the way up to big performers that cost up to \$140,000, adding he doesn't think the City is anywhere near those, but there are other options for events and he has some discussions with Mr. Cox regarding this issue. Councilmember Moncada then stated he asked for this item to be placed on the agenda because he knows that Mr. Sandoval needs to know pretty soon whether the City wanted to do the Bluegrass Festival so he could line up his contracts. Councilmember Brooks stated not funding the festival would result in about \$9,000 in tax cuts right there, adding he doesn't think the City can afford to have these kind of events right now with the times the way they are. Councilmember Crafts stated he liked bluegrass music, but agreed these are harsh numbers here and the City just can't do the event. Councilmember Cook then stated he struggled with this and thought initially the way to go was to improve it for the residents of Benson and possibly extending it to include evening hours and activities, but it was pointed out that this would increase the costs of the event, so it would negate any increased revenue from ticket sales. Councilmember Cook then stated he also thought about who the people were who attended the event, which are mostly RVers who stay in their RV, not using motels or restaurants and not participating in the economy of Benson, so essentially the City is putting the event on for other people and losing money in the process. Councilmember Cook then stated he has heard for many years that the City needs to have programs and activities and facilities for the kids in Benson, adding the City also needs to hire a new City manager, may have to pay for a recall election and has many projects they need to address, such as the planned football and soccer fields at Lions Park and improving main street. Councilmember Cook then stated if the City didn't pay for the Bluegrass Festival, these were all things that could be considered with that earmarked funding. Councilmember Cook then stated the City needed to use revenues for things other than paying Little Caesar's money just so they won't talk bad about the City and stated there are also forces urging the City to pay off Stagecoach Trails before the City gets to the end of the litigation. Mayor King then stated Council needed to direct Staff regarding the Bluegrass with Councilmember Cook stating part of the consideration and discussion was what the City could do with that funding if they decided not to put the event on, adding after considering everything the City potentially has to face and the benefit the event provides to Benson, he was very opposed to the City putting the Bluegrass Festival on. Councilmember Moncada then stated he thinks the agreement is that Council does not want to put on the Bluegrass Festival. Councilmember Brooks then moved to not put on the Bluegrass Festival anymore and to return that funding to the General Fund (in the Community Enrichment line item). Seconded by Councilmember Wangsness. Motion passed 7-0.

4. **Ordinance 563 levying upon the assessed valuation of the property within the City of Benson, Arizona, subject to taxation. A certain sum upon each One Hundred Dollars (\$100) of valuation, sufficient to raise the amount estimated to be required in the annual budget, less the amount estimated to be received from fines, licenses and other sources of revenue providing a General Fund for the General Municipal Expenses: All for the Fiscal Year ending June 30, 2014**

Vice Mayor Sacco stated this is a campaign to establish a property tax ordinance for any property located within the City of Benson, adding contrary to the polished language used for this ordinance, the bottom line is that this is a tax increase for a very large percentage of property owners located within the City limits of Benson. Vice Mayor Sacco then stated his research revealed that the total property tax revenues for the last year amounted to \$224,000 and this year the revenues will amount to \$230,000, which is an increase of \$6,000. Vice Mayor Sacco then stated this is a tax increase that will be passed on to the property owners and it is time the Council start looking at the expense side of the ledger for possible reductions, adding he is sure if they look at the expense side of our multi-million dollar budget, they certainly could find \$6,000 or possibly more that could be used to offset the requested increase and save many of the Benson taxpayers from paying an unnecessary tax increase. Vice Mayor Sacco then stated he is sure most of the Council would agree the City government needs to tighten its belt and do without, therefore, he will vote no on this agenda item and urged his colleagues to do likewise by casting a no vote. Councilmember Brooks stated he would like to add a number of his constituents weren't happy about this either and even the Mayor agreed the Council needs to find a way to tighten our budget and belts in these down times, adding he would definitely agree with not raising this tax. Councilmember Wangness stated if the Council were to increase the economy around Benson, the values would go up and the revenues would come up without changing the rate, adding that is what Council really needs to focus on.

Finance Director Megan Moreno then addressed Council stating the proposed rate was put in the budget, adding the amount was approved during the budget process. Ms. Moreno stated the Council held a public hearing on the tax levy rate and no one from the public attended. Ms. Moreno then stated the County will be adopting the tax levy rates on Monday, August 19 and if the Council should choose to not approve an ordinance with a tax levy rate by then, the tax levy rate would not remain the same, but would be reduced to be 0%, adding the Council does need to choose a property tax rate and if the Council did not do so tonight, they would need to hold a special meeting to do so. Ms. Moreno then stated if Council cuts the property tax, then the budget must also be cut and the revised budget must be published. Councilmember Brooks asked about the tax rate for last year with Ms. Moreno stating the rate last year was .4609 and if Council were to keep the same rate, the primary tax levy will decrease to \$209,072.97, which is a decrease of approximately \$21,000 from the proposed revenue. Interim City Manager Jim Cox then addressed Council stating the reason the decrease would be so much is that the overall assessed valuation decreased during the past year, adding the budget was prepared with an attempt to collect the same amount of property taxes. Mr. Cox then stated for the past 8 years, Council has decreased the tax levy rate because of increases in assessed valuation and new construction each year, adding with those factors, the City was able to actually decrease the rate, noting when he started as the Finance Director in 2006, the rate was .57, and last year it was .4609. Mr. Cox then stated if Council chooses to keep the tax levy rate of .4609, they would need to cut about \$21,000 from the current budget. Vice Mayor Sacco asked where Mr. Cox would propose the cuts with Mr. Cox stating he would propose not cutting it, but that was a Council decision. Vice Mayor Sacco then stated Mr. Cox told Council a \$21,000 cut would have to be made with Mr. Cox stating if Council keeps the current tax levy rate, the amount of money expected to be raised and should be budgeted is \$209,000, which is considerably less than the \$224,000 from last year and the \$230,000 in the current budget, so Council would have to make cuts in the budget, adding he doesn't have a suggestion on where to make the cuts, noting again, that was a Council decision. Councilmember Brooks stated the City had some CIP projects that are long term and don't have to be done this year with Mr. Cox stating CIP projects are not funded through property taxes, but are funded through various one-time sources, such as construction sales tax, bonds, loans and grants. City Attorney Mike Masee then addressed Council stating he would like to echo Ms. Moreno that the time to set the rate is tonight, unless the Council wanted to come back for a special meeting sometime later this week. Mr. Masee then stated if the Council didn't want to approve the rate in the proposed ordinance, which is .5070, they could move to amend the ordinance to include a different rate, adding he thinks the better practice would be to go ahead and act tonight rather than come back for a special meeting later this week. Vice Mayor Sacco then stated if a special meeting was needed, he would welcome that, adding he was not about to sit here and tell the public the Council was going to increase their taxes. Mr. Cox stated the Council was not increasing taxes with Vice Mayor Sacco asking if Mr. Cox had a plan to decrease taxes. Mr. Cox then stated the tax rate was reduced for the past 8 years. Vice Mayor Sacco asked how much the decreases were with Mr. Cox replying as

he stated earlier when I started at the City as the Finance Director, the tax levy rate was .57 and when he concluded as Finance Director, the rate was .4609, adding there was a reduction in the rate consistently each year. Mr. Cox then stated the reason the rate was raised this year was that the assessed values of homes went down and in order to collect the same amount of money, the rate had to be increased, but the decision on a tax levy rate was up to the Council.

Councilmember Moncada asked about the cost to publish the revised budget with Ms. Moreno stating she had talked to the League to find out everything that might be involved, adding publishing the entire budget costs approximately \$4,000, but the entire revised budget won't have to be published again. Ms. Moreno then stated the revised budget will have to be posted on the City's website, new budgets will have to be printed out for Council and Staff and it will have to be sent to the Auditor General's office. Councilmember Moncada then asked if Ms. Moreno had the rate needed to keep the primary tax levy at the \$224,000 which is what it was budgeted at last year with Ms. Moreno stating the primary tax rate would be .4938, adding with the drop in valuation, the taxes collected would stay the same. Councilmember Moncada then moved to amend the Ordinance with the tax levy rate of .4938. Seconded by Councilmember Cook. Motion failed 3-4 with Vice Mayor Sacco and Councilmembers Brooks, Crafts and Wangsness voting nay. Mr. Masee then stated the motion was to amend the ordinance to that rate, so the ordinance is still in front of Council and again, the question is are they going to pass any ordinance at any rate tonight or do they want to come back at a special meeting because the Council needs to act this week, adding if they don't the reduction in the budget revenues won't be \$3,000 or even \$6,000, but will be \$230,000, which was the budgeted revenue from property taxes. Councilmember Wangsness stated he would like to keep the same rate as the last year, adding if people's property values went down, he didn't feel comfortable charging them more money for this. Councilmember Cook stated Councilmember Wangsness had just voted to turn down keeping the same rate with Councilmember Wangsness stating he voted against the rate of .4938. Mr. Masee then stated the first motion was a motion to amend the ordinance to insert the rate of .4938, and he understands Councilmember Wangsness wants to insert the rate of .4609. Councilmember Wangsness stated that is correct and moved to do so. Seconded by Councilmember Moncada. Councilmember Cook asked if the proposed rate of .4609 was approved, how much would need to be cut from the budget with Ms. Moreno stating the adopted budget includes property tax revenues in the amount of \$230,000 and the proposed rate of .4609 would result in a collection of approximately \$209,000, so a \$21,000 reduction would need to be decided by Council, adding it would be brought back to Council for discussion and action to do so. Councilmember Moncada asked if Ms. Moreno could include which fund property taxes revenues are allocated to with Ms. Moreno stating property taxes are part of the General Fund revenues. Mayor King then called for a vote with the motion passing 5-2 with Vice Mayor Sacco and Councilmember Cook voting nay.

5. **Discussion and possible action to appoint a Selection Committee to review the Municipal Legal Services (City Attorney) Proposals**

Councilmember Brooks stated he would like to propose the existing City Council be the Selection Committee, adding with the process taking so long to find a new City Manager, he thinks the Council could make it a little swifter and get a City Attorney much faster if the Council was the selection committee. Council concurred. Councilmember Moncada moved to use the City Council as the selection committee with Mayor King as the chair. Seconded by Councilmember Brooks. Motion passed 7-0.

EXECUTIVE SESSION: As per A.R.S. §38-431.03 (A)(1), (3) & (4), Discussion or consideration of employment, assignment, appointment, promotion, salaries, or resignation of a public officer, appointee or employee of the City. The Council will discuss and consider the appointment and employment contract of the Interim City Manager and the City Manager, and may receive legal advice and give instructions to the City Attorney

Councilmember Brooks stated he did not think the Council needed an executive session, adding they were to interview Mr. Van Wormer over the weekend, but that did not happen so he thinks the Council needs to go back to the Committee and look at the next candidate. Councilmember Moncada then moved to enter into an executive session with the Mayor and Council, Interim City Manager, City Attorney and the City Clerk at

8:31 p.m. Seconded by Councilmember Cook. Motion passed 5-2 with Councilmembers Brooks and Wangness voting nay.

Council reconvened at 8:49 p.m.

6. **Discussion and possible action regarding the City Manager position, possible appointment of a City Manager and approval of an employment contract**

Councilmember Brooks moved to not address this item since the Council did not interview Mr. Van Wormer over the weekend, adding there's really no discussion or action the Council needs to take in this matter. Seconded by Councilmember Wangness. City Attorney Mike Masee stated essentially the motion is to table this issue. Motion passed 4-3 with Mayor King, Vice Mayor Sacco and Councilmember Moncada voting nay.

DEPARTMENT REPORTS: None

ADJOURNMENT:

Vice Mayor Sacco moved to adjourn at 8:51 p.m. Seconded by Councilmember Brooks. Motion passed 7-0.

Toney D. King, Sr., Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk