

**MINUTES – SPECIAL BENSON CITY COUNCIL MEETING
OCTOBER 26, 2023**

The meeting was called to order at 5:30 p.m. by Mayor Evenson. Members present: Jack Evenson, Chris Carruth, Dan Enderson, Mark Schreck & Nancy Maanum. Members Absent: None. Also present: City Manager Kyle Harris, Director of Finance Lisa Kent, City Clerk Valerie Alsaker, Assistant City Attorney Stephen Kowal, Public Works Director Dan Gens and his Attorney Jason Lina. Present Telephonically: City Personnel Attorney Christina C. Petsoulis.

The Council recited the Pledge of Allegiance.

Mayor Evenson announced the purpose of today's meeting is evaluation of the performance of a City of Benson employee under Minnesota Statutes, section 13D.05, subdivision 3, clause a. The employee is Dan Gens. Mr. Gens received written notice of this meeting. The Mayor said this portion of the meeting will be closed pursuant to Minnesota Statutes, section 13D.05, subdivision 3 (a) because the City Council will be evaluating the performance of an individual subject to the City's authority – Dan Gens. He went on to say He will now entertain a motion to close this portion of the meeting for the evaluation of performance of Mr. Gens as a City of Benson employee under Minn. Stat. sec. 13D.05, subd. 3(a). It was moved by Schreck and seconded by Carruth to close the meeting. Gens attorney Lina asked if the meeting could remain open per Minnesota Statutes per his client's request. The Mayor asked Gens if he preferred an open meeting to which Gens replied yes. There was no vote taken, and the Mayor said the meeting will remain open. Mayor Evenson restated the purpose of today's meeting will be to discuss and review the job performance of Dan Gens. Lina asked if he could speak, to which Mayor Evenson said yes. Lina asked if the Councilmembers had received 2 letters from him he sent at 9:00 a.m. this morning. They all responded yes. Enderson said he was out of town and received the information at 3:30 p.m. and said he did not have enough time to review all the information. Evenson agreed. Harris and Kowal approached the Council. Harris said in September, he met with the personnel committee of Schreck and Evenson and was asked to address issues concerning Gens work performance. At this time, he said he reached out to the City's labor lawyer Petsoulis. After discussion, a letter was drafted and addressed to Gens giving him notice placing him on paid administrative leave while City staff could look into the concerns. Among the concerns were Gens approving contractor work above his and the City Manager's spending authority, using City property for personal use, as well as other job responsibilities he was not meeting. Harris recommended to City Council they move forward with termination. There are three options; Termination, settlement or reinstate his employment.

Mayor Evenson asked for discussion of complaints from the Council. Carruth said he feels the Council should move forward with termination, as he is not happy with his work performance before and after coming on the City Council. He sited leaving expensive equipment outside, when old equipment is inside adds to his concerns. Evenson said he has been on the Council for 10 years, and Mayor for 9 months. He has had many citizens contact him on various topics or jobs not getting done, with more issues becoming more apparent over time. He said as Mayor he can only bring his concerns to the City Manager. He then said he too would like to move forward with termination.

Enderson said during his time as Councilmember, he has not had citizens coming to him. But he said he has seen evidence with City vehicles and the need for improved care. He said he has had no departments come to him.

Maanum said she agrees with Enderson and Carruth.

Schreck said he hasn't made up his mind as of right now. Enderson concurred.

The Mayor then said from here, Gens has an opportunity to address these concerns. Gens approached and thanked the Council for the opportunity to speak. He has been here for ten years and has trained several employees, and has undergone many administrative changes. He went on to say he was surprised when he received his letter of administrative leave. He stated public works director is a demanding job. He said if there was job performance issues he wished it would have been brought to his attention, so he could improve himself. He stated he has always been honest and the City will lose a lot of institutional knowledge if he leaves. There were several discussions on jobs that were missed and phone calls not returned. Enderson asked Gens what does he want to see happen. Gens asked what his options were. Evenson said three possible options mentioned earlier. Gens said he wants 6 months severance with full benefits and an agreement signed there be no slander from either the City or himself. If this isn't an option he would take his job back with extra protections for himself.

Enderson said in his past experience, when someone has been overwhelmed in their job there are options to mitigate this. Gens said he thought a foreman in water wastewater would help but Harris denied his request. Maanum asked if he was unable to get his job done, had he ever gone to the City Manager and asked for help. Gens then described storage for equipment and said we have always managed to get everything done. There was discussion on trees on the east Pacific Avenue project.

At this time, the Mayor asked for any further comments from Council or Gens or our attorney. He said at this time we will deliberate. Schreck asked what are our options. Harris said the Council can:

1. Agree to continue an employer/employee relationship with Gens
2. Chose termination – City Council can vote whether to pay vacation and other benefits
3. Come to a Separation Agreement

Harris said if a separation agreement is what Council decided, the lawyers will need time to negotiate the agreement, and Council will have to agree to that negotiated settlement at the November 6, 2023 regular City Council meeting. City Personnel Attorney Petsoulis said there is a fourth option which is retain an employer/employee relationship with disciplinary action.

Schreck asked what the numbers would look like with a 6-month settlement. Kent stated 6 months salary would be approximately \$51,000 in salary and tax matches. If benefits are added in \$9,000-\$13,000 additional. Also, just under \$10,000 in vacation payout is due. Unemployment would be 26 weeks maximum, at \$820/week max, \$21,320 max pay-out.

Enderson then enquired about the next item on the agenda which is to contract with someone for a Class A wastewater license. We have reports due and cannot be without a Class A operator too much longer. Harris said the contract is for \$2,400 a month, services 24-30 hours per week. He would be on call 24/7. If hours over 30 per week, his services would be at a rate of \$70/hour.

Discussion returned to a separation agreement and how the Council didn't feel they received all the information far enough ahead of this meeting. Options are to continue the meeting to another special meeting or to the regular November 6, 2023 City Council meeting. Gens agreed to the meeting continuation.

Lina asked to speak. Mayor Evenson agreed. Lina asked about the severance package of the last City Manager. Mayor Evenson said it is irrelevant. Lina stated it should be based on years of service. Evenson said he was a contracted employee. Enderson asked to go into closed session for discussion. Council expressed in the interest of coming to a decision in a timely manner, a closed session would be beneficial. It was moved by Carruth, seconded by Maanum to close the meeting for discussion. Lina protested. Petsoulis said the Council can close the meeting under client-attorney privilege. The motion passed and the meeting was closed at 6:44 p.m.

The Mayor reconvened the meeting at 7:14 p.m. It was moved by Enderson, seconded by Maanum and carried unanimously to continue the discussion of Gens employment to the November 6, 2023 regular Council meeting.

Harris then passed out the previously discussed contract with Mr. Powers for his Class A Wastewater services. Mr. Powers contracts with other cities with good reviews. After discussion, it was moved by Enderson, seconded by Carruth and carried unanimously to approve the Wastewater Treatment Plant Independent Contractor Agreement for services as presented.

It was then moved by Schreck, seconded by Maanum and carried unanimously to adjourn the special meeting at 7:19 P.M.

Mayor

City Clerk