

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD SEPTEMBER 13, 2010 AT 7:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

CALL TO ORDER:

Mayor Fenn called the meeting to order at 7:00 p.m. with the pledge of allegiance. Mayor Fenn then introduced Eileen Litrell of the Baha'i Faith who gave the invocation.

ROLL CALL:

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

EMPLOYEE RECOGNITION:

Mayor Fenn recognized Tim Behr for 15 years of service with the City and then recognized Peggy Scott for 20 years of service with the City.

PROCLAMATION:

Mayor Fenn read a proclamation recognizing Derek Alan Elsmore, T. Joseph Greer and J. Michael Greer as Eagle Scout Recipients. Mayor Fenn then presented the proclamations to the Eagle Scout recipients and announced they would officially receive their awards at the Court of Honor which would be held on Saturday, September 18, at 1:00 p.m. at the LDS Church.

PUBLIC HEARING: None

CALL TO THE PUBLIC:

Jose Torres addressed Council regarding the San Pedro Golf Course stating he moved here 3 years ago and would like to see the City open the golf course back up.

Sylvia Burnside of the San Pedro Valley Arts Council addressed the City Council announcing the art show and that the Arts Council was able to keep the Gallery open with volunteer help. Ms. Burnside stated there weren't many visitors but those that came were consistent and appreciated what is in the chamber gallery. Ms. Burnside stated the Arts Council also had a wall space gallery at Turquoise Hills Golf Course and due to the recent storm, had to remove some art work. Ms. Burnside thanked the staff at Turquoise Hills for rescuing the art work and stated she hopes they will be able to reopen the wall space in the coming week.

James Grey addressed Council concerning the bed tax stating he heard a rumor that the tax increase is dead and he hopes it is true. Mr. Grey stated about 22 people were going to come to the meeting, but hopefully, it won't have to happen and stated if there is a public meeting concerning the reinstatement of the tax, he would like to be notified. Mr. Grey then addressed the Council concerning the golf course stating it is an asset to the City, he thinks local people should get a discount, noting the City of Tucson does the same and that it sounds like the owner is willing to kick in the cost to run the course for 3 years and he thinks the City should take it over and make a hands on effort to run it properly.

Emelda Lopez addressed Council regarding the golf course stating she had been involved in the world of golf and had watched a lot of young children involved in golf and have spoken to young players that are concerned that they won't have a place next year. Ms. Lopez stated they can't drive out of town and don't have the time to do so. Ms. Lopez then stated the City already has 1 Arizona champion, Joe Ryan, and that she would like to see other young children have that opportunity. Ms. Lopez stated they could go to Turquoise Hills to play, but there is no driving range there. Ms. Lopez then asked the Council to help our youth by keeping the golf course open.

George Scott addressed Council regarding the golf course stating he has looked at the offer and thinks it's very fair adding the City has 3 years to make it work. Mr. Scott stated it is important for school kids to have a course, important for winter visitors, and if the City doesn't do something, they will probably lose

the golf course forever and probably won't get another one. Mr. Scott then stated the City should try it and if nothing else, in 3 years, they can close it, sell it or give it back. Mr. Scott then addressed Council concerning the bed tax stating the way the economy is, and the way business is, the City should not raise taxes right now, but should focus on how to make the City attract more winter visitors and how to get them to stay in Benson longer, instead of trying to run them off.

Stephen Insalaco addressed the Council concerning the airport stating the runway cracks are large enough to be felt by pilots and after the runway is repaired, he hoped the Council will replace the markings. Mr. Insalaco then stated he would like some clarification on the repairs that will be done and if the runway will be lengthened at either end, adding it was the recommendation of the past Airport Advisory Board to expand the runway to solicit larger traffic. Mr. Insalaco then stated regarding the helipad, which has been long awaited, he would also like some clarification on the number of helipads and where it will be placed as well as the dimensions. Mr. Insalaco then stated he would also like to share a conversation he recently had with a forest service agent. Mr. Insalaco said the while the forest service was fighting a fire, the helicopter was based in Douglas and the distance covered caused issues when they were responding to all of Cochise County. Mr. Insalaco stated they would like to relocate to Benson, but didn't see the facilities they require. Mr. Insalaco stated the addition of the helipad is a start and the next step would be to have a municipal hangar to lease to the forest service.

Jeff Cook addressed Council concerning the bed tax and transit system stating he thought with the new transit system in the City, it could be possible to sell advertising for local businesses on the buses and bus stops and maybe with the advertisement revenue, the City wouldn't need to increase the bed taxes.

CITY MANAGER REPORT:

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

- September 14, 2010 – Library Advisory Board, 4:00 p.m., Library
Planning & Zoning Meeting, 7:00 p.m., City Hall, Conference Room
- September 18, 2010 – Historic Preservation Commission, 9:00 a.m., City Hall
- September 20, 2010 – Economic Development Subcommittee, 5:15 p.m., City Hall
- September 27, 2010 – City Council Public Hearing – Annexation, 7:00 p.m., City Hall
City Council Meeting, 7:00 p.m., City Hall
- September 28, 2010 – Community Watershed Alliance, 6:30 p.m., City Hall

Every Saturday in
September, 2010 – The new art show at the City Hall Gallery is called “Stage West; New and Old Visions of the American West.” This show is sponsored by the San Pedro River Arts Council and will be open for viewing each Saturday in September from 1:00 p.m. to 4:00 p.m.

Mr. Nichols then stated the San Pedro Valley Observatory, 1311 S. Astronomers Road in Benson will be opening on September 18, from 2:00 p.m. to 9:00 p.m. for their grand opening, adding that refreshments will be served and there will be telescope viewing from 7:30 p.m. to 9:00 p.m.. Mr. Nichols stated it's nice to know the observatory is reopening.

NEW BUSINESS:

1. Consent Agenda

- 1a. Minutes of the August 9, 2010 Regular Meeting
- 1b. Appointment of Jane Scholer to the Planning & Zoning Commission
- 1c. Reappointment of Molly Ingram to the Local Public Safety Personnel Retirement Board for the Police Department
- 1d. Reappointment of Eddie Eismon to the Local Public Safety Personnel Retirement Board for the Police Department
- 1e. Resolution 53-2010 of the Mayor and Council of the City of Benson, Arizona, authorizing the Chief of Police to apply for a Public Safety Stabilization Grant to fund equipment purchases
- 1f. Invoices processed for the period from August 3, 2010 through September 6, 2010

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

2. **Recognition of the City crews and their response to the August 24, 2010 storm in Benson**

Mayor Fenn stated Vice Mayor King asked this item to be placed on the agenda to express his thanks to the City crews for the response to the recent weather damage; clearing debris and responding to damaged facilities.

3. **Presentation on the City's new transit system by Transit Marketing LLC; Discussion and possible action on the branding design for the City's "Benson Area Transit" buses and discussion and possible staff direction regarding transit marketing options**

Finance Director Jim Cox stated the Arizona Department of Transportation (ADOT) Rural Transportation Director Sam Chavez, Amy Ostrander of Ostrander Consulting and Selena Barlow of Transit Marketing Services were in attendance. Mr. Cox then stated Ms. Ostrander was going to give a general update to Council based on a visit throughout the City looking at transit sites, which was followed by a well attended Open House held immediately prior to the Council meeting. Mr. Cox stated Ms. Ostrander will summarize the results and Ms. Barlow will give a presentation on the marketing and branding of the transit system.

Ms. Amy Ostrander stated the effort to look at the transit system was triggered by Catholic Community Services (CCS) who would no longer provide the Dial-A-Ride program. Ms. Ostrander stated with assistance from ADOT, the City completed a transit feasibility review and implementation plan that was approved in October and subsequently a grant application was made to provide transportation to the general public, adding that services currently provided are limited to the elderly and persons with disabilities. Ms. Ostrander continued stating the grant was submitted in January to a competitive board panel and in March, it was approved with the funding in place to add a second vehicle. Ms. Ostrander stated one vehicle will remain for the Dial-A-Ride program and the second vehicle will be in place to operate a modified fixed route, providing opportunities to deviate from the route if someone requires curb service, adding this will be doubling the capacity without additional local funding because of the grant program. Ms. Ostrander stated she looked today at areas that could be served, some potential routes, that she will work on formalizing those and will be back before Council in October for further comment and approval on a recommended service plan. Ms. Ostrander then stated if everything goes the best way it could, service would be in place with a second vehicle in January, but she thinks it's more realistic to see it in place in the Spring of 2011. Ms. Ostrander then introduced Ms. Selena Barlow, who will assist in decision making regarding graphic information.

Ms. Barlow then gave a PowerPoint presentation and began by stating when new service goes into effect, ADOT is very interested that it is successful and in order to be successful, people need to know about it and use it, which is why they have not only Ostrander Consulting under contract to help with planning, but her services, which is to work with transit systems nationally to help them market themselves. ADOT has agreed for her to provide a number of marketing services to the 5311 Rural Transit program and in this case, to work with the City of Benson on branding the new service, developing vehicle graphics, bus stop signs, a passenger guide with maps and schedules, a website and a number of marketing recommendations that City staff will be able to implement in bringing the system up to speed. Ms. Barlow then stated tonight, she would start with branding, which is marketing at its most basic, and is the image we want to create in the mind of the potential consumer. Ms. Barlow stated consistency is vital and everything associated should communicate the same message that public transit is available to everyone, that it's good quality service and they should take advantage of it, adding the visual brand of a transit system includes its name, logo, color scheme, vehicle design, and bus stop designs. Ms. Barlow stated characteristics of a strong brand is that it is simple, immediately recognizable, communicates a clear, consistent message and communicates the same message in every element, adding these are the objectives we should work toward. Ms. Barlow then gave a few examples of graphic design on transit systems and gave Council options for the Benson Area Transit (BAT) system. Ms. Barlow continued stating one of the things for transit branding is to use colors that will set the vehicles apart on the street, adding they should look like transit vehicles and should catch attention by using distinctive colors consistently, using the word "transit" quite prominently, as well as listing the communities that are served by the service. Ms. Barlow stated from a marketing

consultant's perspective, the previous choices presented to Council could be mistaken for a shuttle to Kartchner Caverns or a tourist bus, and don't communicate a public transit system that is available to everyone and will provide public transportation. Ms. Barlow then recommended a design with dark wine and grey with the subtle bat symbol, but clearly communicates a public transit service which serves the various communities that are listed and asked Council if they had any questions.

Councilmember Lodzinski stated the local colors were blue and red and that we do use a hanging bat with the phrase "Hang Out in Benson" in some of our advertising, adding it could hang underneath the lettering. Ms. Barlow stated she thinks the bat works well as a tourism element, but the busier the design gets with more elements, the less clearly it communicates a transit system.

Councilmember McGoffin stated she likes the first design, but would like to go with a dark blue and grey and that she understands it is not for tourism, it is more for the general public and understands Ms. Barlow's point that it should communicate a transit system.

Mayor Fenn stated he also likes the darker blue and that he personally likes the design which has "BAT" in large letters with the bat superimposed upon it with the darker blue. Mayor Fenn then stated he understands the concerns Ms. Barlow expressed about the design not saying transit, but asked if the names of the communities could be moved to the top of the vehicle as the other design and could then display "Benson Area Transit" in its place, with Ms. Barlow stating that would be a Council decision.

Councilmember Lambert stated he thinks Council would all agree on a dark blue, but they need to decide if they want the bat superimposed and the word "transit" larger. Councilmember Sacco stated his suggestion would be the same; making the word "BAT" smaller and the word "transit" larger.

Councilmember McGoffin then moved to approve the first design with the colors being dark blue and grey. Seconded by Councilmember Boncquet. Motion passed 6-0.

4. **Presentation, discussion and request for Council direction to Staff related to donations to the City of Benson by Arizona Golf Systems, LLC of the San Pedro Golf Course and a pledge to provide up to \$900,000 to fund operating deficits over the next 3 years**

Finance Director Jim Cox addressed Council stating present for this item were Mr. Tom Hartley, representing the owners of the golf course, Dan Wickman, former general manager of the San Pedro Golf Course, currently the director of golf programs for the City of Tucson and Jay Tomerlin, who is the current golf pro at the San Pedro Golf Course. Mr. Cox then stated the offer was for Arizona Golf Systems (AGS) to donate the golf course, real estate, buildings and equipment to the City and up to \$900,000 to cover any operating deficits the City might have over the next 3 years. Mr. Cox then stated this was a tax planning move for AGS as well as part of their overall development plans for the property and they would like to see the golf course stay operating so they can develop additional land that surrounds the golf course. Mr. Cox then went over the benefits of the City accepting the golf course, including protecting our effluent disposal system, preserving an economic asset worth \$12 million, increasing the City's holdings and other reasons. Mr. Cox stated in reviewing the tee sheets, he found 75% of the rounds played have been played by persons who live outside the San Pedro Valley, meaning they spend dollars in Benson with hotels, restaurants and RV parks, adding based on numbers, he estimated the economic input of the golf course is around \$4 million a year to local area businesses in addition to money spent directly at the golf course, which translates to significant tax dollars to the City. Mr. Cox then stated the City would have a new recreational facility, could look at ways to utilize the golf course and the land surrounding it for future City activities and also by making it a community facility, could institute the PGA "First Tee" program for kids, as well as create other community programs, turning it into a strong community facility as opposed to a golf course that happens to be located in the City. Mr. Cox then reviewed the reasons the City should decline the offer, including the golf course may not be self sustaining in 3 years, adding that with the donation of up to \$900,000 from AGS, his professional opinion is that it will not be a cash drain on the City over the next 3 years, but that it doesn't mean it will be self sustaining at the end of 3 years, which would be the City's goal. Mr. Cox then stated it could also be a management challenge, but that he suspects with the people available to operate the golf course, it would be a very well run facility with a minimal amount of supervision and coordination done from City staff.

Mr. Cox then reviewed possible results if the City declines the offer, stating the golf course would close and the City would lose an economic asset, but the bigger challenge would be that the City would have an effluent disposal challenge. Mr. Cox then stated the City is permitted to discharge into river, but there would be a cost for set up as well as an ongoing analytical cost, and while we could consider pumping the effluent to parks and the other golf course, as is done in the City of Tucson, there would be the cost for the infrastructure and the time to install it. Mr. Cox then stated there would also be a loss of tourism revenue. Mr. Cox then reviewed possible results if the City accepted the offer, stating the risk of loss is mitigated for 3 years because of the pledge from AGS, however, if a loss persists, the City could close the golf course at any time and the land could be converted to other uses. Mr. Cox stated if the golf course is going to be closed regardless, the City would be in a better position to first accept the offer, since we would then own the land, buildings and equipment free of any debt and could still dispose of effluent on the property, adding it could be converted to a park.

Mr. Cox then briefly addressed some overall operational considerations, stating the City would probably lease the food and beverage operation since it usually provided a management challenge and it would be better to let someone else lease it. Mr. Cox then stated for golf operations, the management would be limited to a person to run the golf operations (a golf pro) and a superintendent to run the maintenance facilities with a part-time City liaison to report back to Council. Mr. Cox then stated ways to save money had been considered and he anticipates significant volunteers on the golf operations staff, resulting in very few paid full-time employees, a few part-time employees and again, a very large volunteer staff. Mr. Cox stated there was also a preliminary look at the use of Department of Corrections (DOC) labor for much of the maintenance on the golf course, and it was very encouraging based on their first meeting, adding the labor rate would be \$.50 per hour per person, and he would anticipate a 10 man crew working 5 days a week, 8 hours a day. Mr. Cox then offered to address any questions Council may have.

Councilmember McGoffin asked if the managers Mr. Cox spoke about, the golf pro and superintendent, would be City employees with Mr. Cox stating yes, those key employees would be City employees and depending on how many labor type employees were needed, the City could make them regular employees or could set up as a special class of employees, noting the City of Douglas combines DOC labor and a special class of employee that doesn't have the same benefits structure as the regular City employees have. Councilmember McGoffin then stated she had received only 1 negative comment and it was regarding the City government being in competition with Turquoise Hills, asking Mr. Cox how Turquoise Hills felt about it and if Mr. Cox saw a problem. Mr. Cox stated he did not see a problem and the 2 courses are totally different golf courses, one being an executive course and one being a championship course with each one having a loyal following. Mr. Cox then stated he sees the City having a very cooperative relationship with Turquoise Hills, each helping each other out. Mr. Art Bale from Turquoise Hills then addressed the Council stating he thinks it's a great idea and sees Turquoise Hills working with the City, adding it would no longer be a private ownership, so the competition element would be gone and he sees an increase in cooperation. Mr. Bale stated they could work together for 2 day tournaments, meals, and other things. Councilmember Sacco then stated he thinks one course would complement the other. Mr. Cox agreed stating he thinks it's an underexploited market with 2 of the best courses in the state in their respective categories and that it is a real opportunity for the City.

Councilmember Lodzinski agreed stating some people will play both courses and that he feels they can work together and that he thinks a City golf course would be a good place to offer classes for retired citizens. Mr. Cox agreed stating the golf course could be a cornerstone for some marketing efforts such as offering City sponsored programs for persons who spend over a month here.

Councilmember Lambert asked about the current condition of the course, stating he had seen some of the weeds were very tall on the sidelines. Mr. Cox stated the greens are in good shape, which is the key thing. Jay Tomerlin, the golf pro, then addressed Council stating there are a lot of weeds, but they have mowed all fairways, the greens are in good conditions and with a crew back in place, the course could be ready in 3 weeks, adding that the course is playable now and would not require a long process to get it back in shape. Councilmember Lambert then asked about the buildings, stating he knows there was one problem with a building settling and a gas line and what would need to be done to open the course. Mr. Cox stated an engineering study done by Brown & Associates evaluated the condition of the clubhouse building that had the problem and came back with a summary retail cost, which was to hire at full retail, to fix the concerns

of the building and the drainage around the building, would cost about \$120,000. Mr. Cox then stated he had a meeting with Mr. Hartley today, who has offered to kick in \$85,000 to assist with this and with start up costs. Mr. Cox then stated with this amount of money up front, he believes we would have no problem at all having enough money to correct the problems and get the course open without tapping any City funds at the beginning or during the next 3 years, adding that has been his goal all along: to look at 3 years out and not touch any general fund money for this endeavor.

Mayor Fenn then asked with DOC labor, how much other staff would be needed to put the course back to being ready and to maintain it with Mr. Tomerlin stating with the DOC labor, a superintendent, an irrigation technician and assistants, it would probably require a staff of 8. Mayor Fenn confirmed he was indicating they were 8 full-time personnel and then asked if Mr. Tomerlin knew if the employees were there and ready to come back with Mr. Tomerlin stating he had spoken to some of them, some were present now and with those employees there wouldn't be a long training process, so once acquisition is done, it would only take 2 to 3 weeks to get the golf course open. Mr. Tomerlin then stated they have done all the proper spraying, would mow outlying areas, that the turf conditions are there, and they could even have the practice facility ready in 1 week. Mayor Fenn then asked if the golf course would operate as a stand alone course, with no transfers from other departments with Mr. Cox stating it would be a stand alone course, operated separately and the only time the City would roll the financials together would be in the annual audit, stating he would keep the Council updated monthly as to operations. Mayor Fenn asked if the operations and proposed funding from AGS would run concurrently to ensure the City covered the potential losses as they occur with Mr. Cox stating this agreement would not be an agreement where both parties could walk away, since they both had a continuing interest to make sure the golf course is a viable entity. Mr. Cox stated Mr. Hartley owns additional land around the golf course and the conditions of the tax benefit to AGS require the City own the golf course for 3 years, as well as the substantial amount that would be given up front to make sure the City has plenty of cash for start up operating expenses and to correct the building problems. Mayor Fenn asked if the funding would be placed in escrow with Mr. Cox stating it would not need to be placed in an escrow account, but it would be in a separate account, solely for golf course operations, with donations coming in and all expenses coming out of that account making the accounting very simple and giving him the ability of easily giving Council and Mr. Hartley an accounting each month.

Mayor Fenn then stated he did not see government being in the business of golf course ownership a problem, noting Tucson has both municipal and private courses that feed off each other. Mayor Fenn then stated Council would probably look to Mr. Cox to be the liaison but asked if Mr. Cox had the time for it with Mr. Cox stating he projects that he would. Mayor Fenn then asked if there were any other comments or thoughts. Councilmember McGoffin asked who would be in charge of classes, etc. with Mr. Cox stating it would be determined by golf pro who may have 1 or 2 employees for the golf operations but that most would be volunteer.

Mayor Fenn then stated he agrees with the comment that local residents should get a discount on fees with Mr. Cox stating he agrees also.

Councilmember Sacco asked Mr. Cox where he was in the fact finding process with Mr. Cox stating his overall due diligence was complete and then he had examined the finances enough to stand before Council and say, in his professional opinion, with the transaction he is envisioning, the City would not have to dip into the City funds for the next 3 years. Councilmember Sacco asked Mr. Cox if he had interviewed any employees from the golf course and if the restaurant goes with the deal with Mr. Cox stating he had interviewed employees and the restaurant does come with the offer. Mr. Cox then stated earlier there had been mention of the golf course utilizing City employees from the parks department, but that he sees it the other way with the City being able to use the golf course maintenance supervisor and extra equipment for the parks and recreation department. Councilmember Sacco stated the golf pro would run the golf end and then asked what the superintendent would do with Mr. Cox stating the superintendent's job would be maintenance operations, sand traps, greens, etc. while the golf pro would run operations, the driving range, sell lessons, etc.

Councilmember Lambert asked about leasing the restaurant and if it would be to an individual or shared with Mr. Cox stating he had no details, since he had only held conceptual conversations with a potential single operator to handle the food and beverage operation with no financial risk to the City, but with a

profit sharing type arrangement. Councilmember Lambert asked about the liquor license with Mr. Cox stating the license would remain with the facility but would need to be transferred to the facility manager. Mr. Cox then stated there are also on-course sales of food and beverage through a mobile cart which would probably be handled by the golf pro instead of the restaurant operator.

Mayor Fenn asked if there had been full disclosure from Mr. Hartley and if he had been able to view the necessary information to determine with the potential \$300,000 per year, the City would be safe to operate the golf course, with Mr. Cox stating he has had excellent assistance from Mr. Hartley and Jay Tomerlin and all the staff he has spoken with.

Councilmember McGoffin moved to direct staff to proceed with preparation of draft documents to accept the donation of the San Pedro Golf Course and the pledge of up to \$900,000 and to proceed with the preparation of an operating plan for the golf course. Seconded by Councilmember Lambert. Mayor Fenn thanked Mr. Hartley and the golf course staff for attending the meeting and for their offer to the City, stating he hopes it is mutually beneficial and the golf course is certainly an asset we don't want to see gone. Motion passed 6-0.

5. **Benson Butterfield Rodeo Committee request for assistance by providing and assisting with set up of serpentine fencing, providing equipment and personnel to assist with the chalking of the parking lot at the Arena and becoming a Sponsor for the Benson Butterfield Rodeo**

City Manager Glenn Nichols introduced Heather Floyd of the Benson Butterfield Rodeo Committee who addressed Council stating she would like to point out that this is the 10th anniversary of the rodeo, they are proud to have been here 10 years with a consistent event and they appreciate the City's support. Ms. Floyd stated they are a very small committee and the City's support is essential to the event, which grows each year, adding she is pleased to say for the past 2 years, they haven't requested help with bleachers, but since the attendance has grown they have requested assistance with the chalking of the parking lot at the Arena. Mayor Fenn asked if the assistance makes the City a sponsor or if the City became a sponsor with financial assistance with Councilmember McGoffin stating the City purchases a sponsorship. Councilmember Lambert moved to provide the assistance requested by the Benson Butterfield Rodeo Committee and to become an Area Sponsor in the amount of \$500.00 and a Children's Event Sponsor in the amount of \$250.00 for a total monetary sponsorship of \$750.00. Seconded by Councilmember McGoffin. Motion passed 6-0.

6. **Resolution 54-2010 of the Mayor and Council of the City of Benson, Arizona, approving an application for a Wine Festival License/Wine Fair License for Sonoita Winery, for October 9, 2010 at Lions Park, Adams Street, Benson, Arizona**

Mayor Fenn stated New Business Items 6 through 10 are applications for a wine festival/wine fair license from different applicants and asked City Attorney Mike Masee if the Council needed to name each applicant individually. Mr. Masee stated Council could make one motion, however, there is a public hearing process and he would like Council to see if there was any individual present who would like to speak relating to the items, that discussion can be taken as a group and then a vote can include all the items together. Mayor Fenn asked if there was anyone who would like to speak with Chamber Director Robert Mucci addressing Council. Mr. Mucci stated the original application would allow the Chamber to be the dispensers of the wine for tasting, but since their intent was to have each individual winery provide the tasting and be able to sell their products, they had each winery apply for their own individual license. Mr. Mucci then stated each winery was also to list the City as a co-insured for the event. Councilmember Lambert moved to approve items 6 through 10, which include Resolutions 54-2010, 55-2010, 56-2010, 57-2010 and 58-2010. Seconded by Councilmember Sacco. Motion passed 6-0.

7. **Resolution 55-2010 of the Mayor and Council of the City of Benson, Arizona, approving an application for a Wine Festival License/Wine Fair License for Charrone Vineyards, for October 9, 2010 at Lions Park, Adams Street, Benson, Arizona**

See New Business Item 6

8. **Resolution 56-2010 of the Mayor and Council of the City of Benson, Arizona, approving an**

application for a Wine Festival License/Wine Fair License for Jerome Winery, for October 9, 2010 at Lions Park, Adams Street, Benson, Arizona

See New Business Item 6

9. **Resolution 57-2010 of the Mayor and Council of the City of Benson, Arizona, approving an application for a Wine Festival License/Wine Fair License for Bitter Creek Winery, for October 9, 2010 at Lions Park, Adams Street, Benson, Arizona**

See New Business Item 6

10. **Resolution 58-2010 of the Mayor and Council of the City of Benson, Arizona, approving an application for a Wine Festival License/Wine Fair License for Kokopelli Winery, for October 9, 2010 at Lions Park, Adams Street, Benson, Arizona**

See New Business Item 6

11. **Resolution 59-2010 of the Mayor and Council of the City of Benson, Arizona, recommending approval of the addition of Sampling Privileges License (Series 9S) to an active Liquor Store (Series 9) License for Safeway #1275, 599 4th Street, Benson, Arizona**

Mayor Fenn stated this application was for Safeway to provide sampling in their stores, with City Clerk Vicki Vivian stating recent legislation effective July 29, 2010 allowed certain liquor licenses to be “stacked” and this allows Safeway to stack a Sampling license on their Series 9 license, adding that Safeway has applied for this license statewide. Councilmember Lodzinski moved to approve Resolution 59-2010. Seconded by Councilmember Sacco. Motion passed 6-0.

12. **Resolution 60-2010 of the Mayor and Council of the City of Benson, Arizona, authorizing Stantec Consulting, Inc., to proceed with Construction Management Services for the construction of a helicopter parking apron and rehabilitation of Runway 10/28 of the Benson Municipal Airport in an amount not to exceed \$88,608**

Councilmember Lodzinski removed himself stating his son is an employee of Stantec Consulting, Inc. Mayor Fenn then excused Councilmember Lodzinski. Public Works Director Brad Hamilton asked if he could address both New Business Item 12 and 13 at the same time stating this item is the authorization of Stantec to proceed with the construction administration as required by the grant Council accepted on July 26, 2010 and New Business Item 13 is the actual construction contract with the contractor, Pavex, who was the lowest qualified bidder in the bidding process. Mr. Hamilton then stated to answer a few questions that were presented at the Call to the Public, the one helipad is 75’x 75’ and is concrete with asphalt surrounding it, and will be placed east side of the current apron. The actual runway work is to go in, cut out the large cracks in the runway, patch them, crack seal the runway and come back and fog seal the surface to seal it back up. Mr. Hamilton added they will obliterate all the markings on the runway and will go back with a different product on the runway instead of the thermoplastic, adding this was decided after discussions with the engineer and the FAA. Mayor Fenn then invited Mr. Insalaco to speak with Mr. Hamilton individually regarding his concerns, but noted that it seemed Mr. Hamilton had addressed them. Councilmember Sacco moved to approve Resolution 60-2010. Seconded by Councilmember McGoffin. Motion passed 5-0 with Councilmember Lodzinski abstaining.

13. **Resolution 61-2010 of the Mayor and Council of the City of Benson, Arizona, authorizing the City to enter into an Agreement with Pavex Corporation, for the Construction of a Helipad and to rehabilitate runway 10/28 of the Benson Municipal Airport in an amount not to exceed \$255,505**

Councilmember Lambert moved to approve Resolution 61-2010. Seconded by Councilmember Sacco. Motion passed 6-0.

14. **Resolution 62-2010 of the Mayor and Council of the City of Benson, Arizona, approving and authorizing the expenditure of Public Funds, in an amount not to exceed \$205,578, to allow Cochise County ("County") to proceed with the construction of improvements to City streets pursuant to the January 25, 2005, Intergovernmental Agreement with the County**

Public Works Director Brad Hamilton stated this item would be to approve the County under our Intergovernmental Agreement (IGA) to come in and chip seal using their equipment and manpower. Mr. Hamilton stated one advantage of this is that the County is doing a lot of chip sealing right now and therefore are buying more quantities than the City can afford to buy resulting in a lower rate. Mr. Hamilton then explained the process which is to come in and hot patch pot holes and then come back and chip seal over them to seal them up. Mayor Fenn stated these are streets that haven't seen any improvements in a long time. Councilmember McGoffin asked if the 2005 IGA was the current agreement with Mr. Hamilton stating the IGA stays in place unless one party notifies the other of an intent to cancel it. Mayor Fenn asked about a starting date and how long the work would take with Mr. Hamilton stating he would like to get it done before it freezes, but it would depend on County's schedule, noting when the County works on a project under this IGA, they work Monday through Thursday for the County and on Friday for the City and on use Friday and Saturday for the chip seal. Mayor Fenn stated this project was part of the bond process and asked if the streets were chosen by priority. Mr. Hamilton stated he had included 7th Street and Patagonia Street due to the traffic loads and the amount of water they carry, but the other streets were scheduled based on condition. Mr. Hamilton stated he would love to do more, that many more need it, but these were identified to start. Mr. Hamilton then stated he would like to point out there is a skip on Union Street since he is planning a future water project in that intersection and didn't want to patch it and then have to come back and patch it again. Mayor Fenn asked about Ridge where there is no curbing and if they would define the edge better with Mr. Hamilton stating they would try to do so, but the City was trying to get most bang for the buck. Mayor Fenn then verified this included no base work with Mr. Hamilton stating it was strictly patch and chip seal. Councilmember Sacco asked about the timeframe with Mr. Hamilton stating once the City gave authorization, the County will let us know what the schedule is. Mayor Fenn asked if the County would take care of traffic control with Mr. Hamilton stating the City will participate in traffic control, since we told the County we would assist them in any way we could to get it done. Councilmember Lodzinski asked how long the project would take with Mr. Hamilton stating the patching would take approximately 2 to 3 days and the chip seal would be over 2 days, a Friday and Saturday, adding the restriping would come in after that. Councilmember Boncquet moved to approve Resolution 62-2010. Seconded by Councilmember McGoffin. Motion passed 6-0.

EXECUTIVE SESSION: Pursuant to A.R.S. §38-431.03 (A)(3) & (4), for discussion or consultation for legal advice with the attorney or attorneys of the public body regarding the City's position and to instruct its attorney(s) regarding pending litigation, Stagecoach Trails Mobile Home Court (MHC) vs. the City of Benson, Arizona, et. al.

Councilmember McGoffin moved to enter in to an Executive Session with the City Council, City Manager, City Attorney, City Engineer and the City Clerk. Seconded by Councilmember Lodzinski. Motion passed 6-0.

Council reconvened at 9:25 p.m.

15. **Discussion and possible direction in regards to Stagecoach Trails Mobile Home Court**

Mayor Fenn stated Council had been given legal counsel and were in the midst of litigation and Council could decide how to proceed from this point. Councilmember McGoffin stated she personally feels the City should stay the course and see how the courts play it out and would also like to see staff work with Mr. Kendrick on possibly getting a variance and going to the Board of Adjustment to see if some of the details can be worked out at that point, but for now, to see how the courts finish the pending motions. Mayor Fenn asked City Attorney Mike Masee if he could clarify what is pending before the court. Mr Masee stated the status that exists now in this litigation is that the judge made a ruling on motion practice, that Mr. Masee filed a motion for summary judgment and the other side filed a motion for partial summary judgment. Mr. Masee then stated the judge granted the partial motion for summary judgment which

means he found that the City did not adequately follow the statutory procedures when we adopted the ordinance at issue, which is Section 16, back in 1997. Mr. Masee then stated the other motion that is pending right now, is that because the judge allowed the plaintiff to go ahead and file that form of judgment, he filed an objection to the form of judgment as presented by plaintiff and also filed a motion to reconsider some of the other oral rulings the judge made at the hearing that he strongly believes are not supported by the facts or the law. Mr. Masee stated the judge recently, in a minute entry last week, allowed the other side to respond to his motion to reconsider and then gave Mr. Masee an opportunity to reply in support of the motion and what is important about that is the motion to reconsider cannot be granted without this kind of brief, which indicates to him that the judge is at least open to reconsider and that it relates to whether at this point in the case a writ of mandamus is appropriate to be issued from the court. Mr. Masee then stated a writ of mandamus is a type of a formal judgment that directs some named defendant, in this case the Acting Zoning Administrator, to do a particular act, adding that is where we are; whether a writ of mandamus is appropriate to be issued. Mr. Masee then stated a declaratory judgment is likely to be issued very soon declaring Section 16 invalid, but the issue is what, if any additional, relief such as mandamus could be available on the record before the Court at this time.

Mayor Fenn asked if Mr. Masee had any idea when that will be forthcoming with Mr. Masee stating the briefing schedule wraps up on October 4, so he expects it to be sometime early to mid-October. Mr. Masee then stated if the judge does grant his motion to reconsider, it is likely there will be a rule 16 conference which is a scheduling conference to come together, establish where we are and what needs to be done as far as entering any other facts or law that might need to be discovered or briefed to determine what, if any, other further relief could be available to plaintiff, adding it is his belief that no further relief should be available to the plaintiff.

Councilmember Sacco stated he thinks staff should work with Mr. Kendrick to try and find a solution to this and that each party should be cooperative with each other. Councilmember Sacco stated this was the only way to resolve it, otherwise, it could go on forever and attorney fees will continue to go up, again stating both parties should get together and ought to work with each other to try and reach a solution.

Mayor Fenn asked Mr. Masee if, with the issue that's pending before the court anticipated to be resolved early to mid-October, it would it be his legal advice to the City Council to wait until that plays out before any action be taken. Mr. Masee then responded stating he thinks that is advisable, since the issue really at this point is whether the judge would enter an award of attorney's fees and whether the record at this point allows for an entry and award of attorney's fees, adding if the judge grants his motion to reconsider, basically the judge will reverse himself from an oral ruling he made, which Mr. Masee thinks is precipitous at the last hearing that seemed to indicate the judge would grant a mandamus and attorney's fees would follow from that. Mr. Masee then stated the defense at this point is based on resisting the entry of a writ of mandamus and resisting monetary liability to the City for the plaintiff's attorney fees.

Councilmember Lambert wanted to reiterate that Council should direct the City Attorney to stay the course and also needed to direct staff to work with Mr. Kendrick to try to get some type of permit or variance to go to the Board of Adjustment.

Mr. Masee stated he hears the Council very clearly and wanted to express the City has always worked with Mr. Kendrick's counsel to try and resolve the issues cooperatively and will continue to attempt to resolve the issues in a reasonable and cost efficient manner.

Councilmember Lodzinski stated he agrees with Councilmember McGoffin.

Councilmember Boncquet stated she agrees with Councilmember McGoffin and Councilmember Lambert.

Councilmember Sacco stated he is concerned that this issue will go on indefinitely, with both sides taking a hard nose approach, adding there is a time we have to stop it and thinks the time is now, that we can't wait for a judgment and thinks we should take that action now.

City Attorney Mike Masee stated if Councilmember Sacco wanted to give direction in that regard, he would need to make a motion and give specific direction. Councilmember Sacco moved to take action immediately to resolve this issue without incurring further expenses on both parties. Mayor Fenn asked if the motion needed to be more specific with Councilmember Sacco stating his motion was for both parties to work together to resolve the issue as expeditiously as possible, adding otherwise it would go on indefinitely. City Attorney Mike Masee stated he thought the judge was trying to wrap the case up as soon as he could. Councilmember Sacco then stated if Mr. Masee was thinking along the lines of taking it to the Arizona Supreme Court, he knew it would be longer. Mr. Masee stated it has not been his recommendation to take this case to the Arizona Supreme Court. Motion died for lack of a second.

Mayor Fenn then stated he would like to acknowledge Mr. Nichols' efforts to work with Mr. Kendrick in reviewing the property with him in its present state and at issue, particularly, lot 27, which is the property in question right now. Mayor Fenn then stated over the years, he has seen the City get into a pattern of doing things and that it's frustrating to him as a property owner, adding this is where he understands Mr. Kendrick's position that over the years if the City had continually granted Mr. Kendrick permission to bring in new units and Mr. Kendrick had no other basis to go on other than to know the City gave him a permit on each previous lot, he would continue to do so with over 30 units. Mayor Fenn then stated if at the very start, someone would have said the unit is too big, issues could have been headed off. Mayor Fenn then stated it is also frustrating for the City to go back and think that we can stand on something like Section 16 and find out that through a technicality, it wasn't approved properly, adding who would have known, no one would have ever thought to check to see if Section 16 was approved appropriately unless this case had come before Council, again expressing his frustration for both sides, the property owner and the City, that neither one of them seems to be able to prevail and walk away. Mayor Fenn then acknowledged the efforts that have been made in the park to improve it, and stated he had had several discussions with Mr. Kendrick, that he thought at the time may mitigate some of the situations he could see coming to a head, but added the City had a complaint from a neighbor to the park that couldn't be ignored, just as the City can't ignore an issue if the park brought it to Council, adding the City has to address a complaint no matter who it comes from. Mayor Fenn then stated when the City addressed lot 41, they were trying to address specific issues that he feels were resolved, maybe not completely how he thinks they should have been, but nevertheless the permit was issued and that he feels the City gave proper notice after that not only to that park but to all parks to look at this now that it came to our attention and does need to be addressed. Mayor Fenn then stated he doesn't want to see the City pay exorbitant legal fees and doesn't want to see a homeowner or property owner have to do that either, that he is of the persuasion to say grant the permit and make it the last one in there so the parties could all walk away and learn from it, but at the same time, with the judge saying he might look at something else, maybe the City has the responsibility to at least wait that out and decide from that point if we're going to take it any further or not.

Councilmember Sacco stated he thinks it will only work if we don't get into the mode of filing motions, cross-motions, appeals and so forth, and if we do that, this case will never be resolved.

City Attorney Mike Masee stated the judge did resolve this on motion practice which obviated the need for an evidentiary hearing, so there was some savings in that regard and that he thinks there hasn't been any wasted effort at this point.

Mayor Fenn then stated in early October this will come to a head one way or the other with Mr. Masee stating if there is any meaningful ruling or change in the status of the case, Council could schedule future executive sessions, including if necessary, a special meeting with an executive session if there is some urgent need to get direction from Council, but it will definitely be his approach to keep Council informed where the case is and the status of settlement discussions.

EXECUTIVE SESSION: Pursuant to A.R.S. §38-431.03 (A)(3) & (4), for discussion or consultation for legal advice with the attorney or attorneys of the public body regarding the City's position and to instruct its attorney(s) regarding pending litigation, Silver Two Investments, LLC; Butterfield Plaza Benson, LLC; Butterfield Plaza Benson, LLC, dba Butterfield Plaza vs. City of Benson

Mayor Fenn stated he would be turning the Chair over to Councilmember Lodzinski to direct the executive

session and the following New Business Item regarding Silver Two Investments, the litigation in the Butterfield Plaza, stating as one of the named defendants, it would not be proper that he would join in the executive session or the discussion afterward. Councilmember McGoffin moved to enter in to an Executive Session with the City Council excluding the Mayor, the City Manager, City Attorney and the City Clerk at 9:44 p.m. Seconded by Councilmember Lambert. Motion passed 5-0 with Mayor Fenn abstaining.

Council reconvened at 9:51 p.m.

16. **Discussion and possible action in regards to dismissing the Mayor from the Silver Two Investments, LLC; Butterfield Plaza Benson, LLC; Butterfield Plaza Benson, LLC, dba Butterfield Plaza vs. City of Benson litigation**

Councilmember McGoffin moved to direct the City Attorney to agree to the Mayor's dismissal from this case on condition of not naming him in a non-party at fault. Seconded by Councilmember Sacco. Motion passed 5-0 with Mayor Fenn abstaining.

17. **Ordinance 547 of the Mayor and Council of the City of Benson, Arizona, repealing Ordinance 544 adopted by action of the Council on June 28, 2010, amending Section 8A-447 of the Model City Sales Tax Code for the City of Benson changing the tax rate for Transient Lodging; to include possible direction to Staff regarding the City's rate for Transient Lodging**

Mayor Fenn returned to the Chair and stated this item would be to repeal Ordinance 544. Councilmember Lambert moved to approve Ordinance 547. Seconded by Councilmember McGoffin. Councilmember Sacco asked how this would impact the budget with City Manager Glenn Nichols stating the revenue line item for the transient bed tax in tourism and economic development will not be supported by the collections, and the actual budget will reflect the lower revenues. Motion passed 6-0. Mayor Fenn verified notice would be given to all the involved parties, with Mr. Nichols stating notice was given to the parties on September 3, 2010 that it would be addressed at this Council meeting.

DEPARTMENT REPORTS: None

ADJOURNMENT:

Councilmember McGoffin moved to adjourn at 9:55 p.m. Seconded by Councilmember Lodzinski. Motion passed 6-0.

Mark M. Fenn, Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk