

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD JUNE 23, 2008 AT 7:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

**MAYOR FENN
OPENED THE MEETING AT 7:02 P.M WITH
THE PLEDGE OF ALLEGIANCE.**

**PRESENT WERE: MAYOR FENN, VICE MAYOR KING,
COUNCILMEMBERS LODZINSKI, MCGOFFIN, SACCO, SUAGEE and TIPTON**

INVOCATION:

Mayor Fenn introduced Pastor Dwain Hinskey who gave the invocation.

**EMPLOYEE
RECOGNITION:**

None.

PUBLIC HEARING:

Mayor Fenn opened the hearing to receive comments and questions from the public regarding the proposed City of Benson Fiscal Year 2008-2009 Tax Levy at 7:05 p.m. Mayor Fenn indicated one person, Mr. John Whiteside signed up for this public hearing. Mr. Whiteside stated he wished to address Council during the public hearing for the budget. Mayor Fenn then asked Finance Director Jim Cox to address Council concerning the proposed Fiscal Year 2008-2009 Tax Levy. Mr. Cox stated the proposed tax levy was decreased from .5498 to .5050, however, with the growing assessed valuation, the estimated property tax revenue would increase approximately \$15,000. Mayor Fenn asked if there were comments from any others present who wished to speak. After receiving no comments from the public, Mayor Fenn closed the public hearing at 7:07 p.m.

PUBLIC HEARING:

Mayor Fenn opened the hearing to receive comments and questions from the public regarding the proposed City of Benson Fiscal Year 2008-2009 Tentative Budget and the Capital Improvement Plan for 2008-2012 at 7:07 p.m. Mayor Fenn then stated Mr. John Whiteside wished to address Council during this public hearing. Mr. Whiteside then addressed Council concerning the budget stating his concerns over the proposed budget which included fuel and oil costs, road maintenance, loans listed in the tentative budget and the bed tax. Mr. Whiteside then spoke about the Capital Improvement Plan and feels that it should be separate from the budget. Mayor Fenn then asked if there were comments from any others present who wished to speak. After receiving no other comments from the public, Mayor Fenn informed the public of the Special Meeting on June 25, 2008 to consider the adoption of the City of Benson Fiscal Year 2008-2009 Tentative Budget. Mayor Fenn then closed the public hearing at 7:14 p.m.

CALL TO THE PUBLIC:

Fire Chief Keith Spangler addressed Council regarding the request for an Exemption of Fire Suppression Requirements under Section 19-10-4 of the City Code by Southwest Aviation L.L.C. Fire Chief Spangler stated the item was placed on the agenda before the Fire Department could

gather the necessary information to address Council as to why the use of sprinklers is required. Fire Chief Spangler asked for the Council, at a minimum to table this request, allowing the Fire Department time to submit information to Council and then stated if the Council chose to act upon this request, to please note the Fire Department was opposed to any exemption pertaining to suppression requirement.

Mr. John Whiteside then addressed Council concerning the budget and the water meter replacement program, stating he did not see anyway the water estimates lost through older meters could be correct. Mr. Whiteside then stated it was not necessary to pass the budget immediately, asking Council to table the budget for a month or two for further study.

Thomas Fitzgerald addressed Council stating we should build a new Council chamber since he believed in the separation of church and state. Mr. Fitzgerald then stated he hoped Council would make the right decisions for the City.

George Scott, Southeast Arizona Economic Development Group, addressed Council thanking them for their support of the Southeast Arizona Solar Forum that was held June 21, 2008. Mr. Scott stated the forum was a success with over 160 people attending and that it was clear from the forum that Benson and Cochise County stood to benefit from the coming expansion of the solar industry. Mr. Scott gave Council a thank you letter with a copy of the forum program showing the City of Benson as a sponsor.

CONSENT AGENDA:

- 1a. Approval of Minutes of the May 28, 2008 Worksession *
- 1b. Approval of Minutes of the May 29, 2008 Worksession *
- 1c. Approval of Minutes of the June 9, 2008 Regular Meeting *
- 1d. Approval of Minutes of the June 16, 2008 Special Meeting *
- 1e. Appointment of Officer Ingram to the Public Safety Personnel Retirement System Local Board for the Police Officers *
- 1f. Appointment of Officer Eismon to the Public Safety Personnel Retirement System Local Board for the Police Officers *
- 1g. Resolution 45-2008 of the Mayor and Council of the City of Benson, Arizona approving and authorizing the execution of a Memorandum of Understanding with the Public Safety Communications Commission (PSCC) *
- 1h. Processed Invoices *

Councilmember Lodzinski moved to approve the consent agenda. Seconded by Councilmember McGoffin. Motion passed 7-0.

NEW BUSINESS:

1. **Benson Union High School Softball Team Donation request to purchase Championship Rings:**

Benson Union High School Softball Team Coach Shad Housley addressed Council thanking them for their support and requesting any donation to assist with the purchase of Championship rings. Coach Housley spoke regarding the dedication and the accomplishments of the Softball team, including continuous recognition as model citizens and model players. Coach Housley stated four years ago the team started participating in a memorial tournament for Gracie Hopp. The tournament resulted in the Gracie Hopp Foundation which was responsible for opening the children's wing at the Payson Hospital and the softball team chose to raise funds and was able to donate over \$2,000 to the foundation.

Vice Mayor King stated he would like to see a donation of \$1500.00. After discussion, Councilmember Sacco moved to approve Vice Mayor King's suggestion of a \$1500.00 donation to the Benson Union High School Softball team. Seconded by Councilmember Suagee. City Attorney Thomas Benavidez spoke regarding the requirement of the determination of a benefit to the citizens of Benson. Vice Mayor King stated the benefit of community pride, rewarding the team for their dedication, effort and work and their volunteering efforts to the City. Motion passed 7-0.

2. **Recognition of the City pool contributions:**

Mayor Fenn stated this item had been placed on the agenda at the request of Councilmember Sacco, who then asked City Clerk Vicki Vivian to read aloud the list of donations received for the City pool. Councilmember Sacco requested a thank you letter be sent to the contributors. Mayor Fenn asked City Manager Martin Roush if the City has anymore pledges. City Manager Martin Roush stated there was approximately an additional \$250,000, which are being pursued. Mayor Fenn requested timely recognition for those who contribute to future projects for the City.

3. **Introduction of the members of the Public Safety Personnel Retirement System Local Board for the Fire Department and the Police Department:**

Councilmember Sacco, Chairman of the Public Safety Personnel Retirement System Local Board for the Fire Department and the Police Department, introduced the members of the board for the Fire Department: Fire Chief Keith Spangler, also serving as secretary, civilians Paul Castro and Gerald Hoskinson; for the Police Department: Sergeant Floyd Graf, also serving as secretary, Officer Molly Ingram, Officer Edward Eismon, and civilians Paul Castro and Gerald Hoskinson. Councilmember Sacco stated meetings for both boards are held at the Benson Fire Department and are open to the public, inviting them to attend the meetings. Councilmember Sacco then welcomed the members and thanked them for their work.

4. **Resolution 46-2008 of the Mayor and Council of the City of Benson, Arizona, recommending approval of the interim permit and person transfer for a Type 06 (bar) liquor license at the Arena Bar:**

City Clerk Vicki Vivian addressed the Council stating the posting requirements had been fulfilled and that no written arguments received in favor of or opposed to the application for transfer of the liquor license. Councilmember McGoffin expressed concerns over the legal history of the applicants, stating she did not recommend approval of this liquor license transfer. Councilmember Tipton stated she agreed with Councilmember McGoffin. Vice Mayor King asked for comments from the City Attorney who confirmed the Council's right to approve or deny a liquor license transfer request. Councilmember Lodzinski inquired about the procedure of the application with Ms. Vivian stating the process starts with the application being sent to the Arizona Department of Liquor Licenses and Controls who then forward it to the local governing body, who then enters an order recommending approval or disapproval of the application within 60 days of the application filing. Councilmember McGoffin then confirmed with the City Attorney that the ultimate authority and decision lie with the Arizona Department of Liquor Licenses and Control. Councilmember McGoffin moved to disapprove the interim permit and person transfer for a Type 06 (bar) liquor license at the Arena Bar. Seconded by Councilmember Lodzinski. Motion passed 5-2 with Mayor Fenn and Councilmember Sacco voting nay.

5. **Ordinance 525 of the Mayor and City Council of the City of Benson, Arizona, amending the Benson City Code, Chapter 12, "Traffic, Sidewalks, Parking and Bicycles," to include Article 12-5, "Gross Vehicle Weight Restrictions for Designated Streets and Exceptions," allowing the City Engineer to establish Gross Vehicle Weight Restrictions for Designated**

Streets; Providing Enforcement Procedures; Providing Penalties for Violations and Establishing Exceptions:

Public Works Director Brad Hamilton addressed Council stating he was asking Council for the authority to set weight limits on certain roads for the purpose of preserving the pavement. Mr. Hamilton stated the proposed ordinance would still allow for vehicles with no alternative routes and deliveries. Discussion was had regarding the notification of new weight limits, the exemption of recreational vehicles and the possibility of additional language to dissuade deliveries when another alternate route is available.

Councilmember Tipton stated alternate routes could be posted through signage, which may eliminate excess use or abuse. City Manager Martin Roush stated this ordinance is intended to eliminate the use of roads as a "bypass". Councilmember Sacco moved to approve Ordinance 525. Seconded by Councilmember McGoffin. Motion passed 7-0.

6. **Resolution 47-2008 of the Mayor and Council of the City of Benson, Arizona, declaring as a Public Record that Certain Document filed with the City Clerk and Entitled "The 2008 Amendments to the Tax Code of the City of Benson":**

Finance Director Jim Cox addressed Council stating this is an annual update of our model city tax code, put together by the League of Arizona Cities and Towns reflecting the changes made by the Arizona State Legislature during the past year. Mr. Cox then addressed the main amendments to the tax code stating two were housekeeping nature and one is a new provision to exempt solar energy devices from sales tax. Councilmember Suagee moved to approve Resolution 47-2008. Seconded by Vice Mayor King. Motion passed 7-0.

7. **Ordinance 526 of the Mayor and Council of the City of Benson, Arizona, relating to the privilege License Tax; adopting "The 2008 Amendments to the Tax Code of the City of Benson" by reference; establishing an effective date; providing for severability and providing penalties for violations:**

Councilmember Tipton moved to approve Ordinance 526. Seconded by Councilmember Suagee. Motion passed 7-0.

8. **Request for an Exemption of Fire Suppression Requirements under Section 19-10-4 of the City Code by Southwest Aviation L.L.C.:**

Airport Manager Brad Hamilton addressed Council stating the office building, which is a 12 x 60 trailer has never had fire sprinklers installed. Councilmember McGoffin asked why the building didn't have the sprinklers installed previously. Building Official Mike Lockett then addressed Council giving a history of this issue, stating when the building was first moved to the airport, the owner requested more time to have this done, stating when the City stated the sprinklers be installed, the issue went political with the owner contacting Mayor and Council and the previous City Manager. Mr. Lockett stated he had the owner cited in court, which was dismissed. Councilmember Tipton stated she saw no purpose in approving an exemption, stating sprinklers should be installed for the protection of people and that they made more sense than a fire alarm. Councilmember Tipton stated she did not feel a precedent should be set. Vice Mayor King stated he felt Council should rely on the Fire Chief's recommendation. Councilmember Suagee read from the City Code regarding exemptions and stated even though she considered the points made in the requesting letter from Southwest Aviation, she felt it was not a good idea to grant the exemption, moving to deny the request for an exemption. Seconded by Councilmember Tipton. Discussion was then had regarding the requirement for sprinklers and if it was in connection to the condition of Aviation Drive. Fire Chief Keith Spangler stated the condition of the road was

not the factor, but the time/distance factor was one of the reasons for the sprinkler system requirement. Motion passed 6-1 with Mayor Fenn voting nay.

9. **Resolution 48-2008 of the Mayor and Council of the City of Benson, Arizona approving and authorizing the submission of an Application for grant funding under the Federal Staffing for Adequate Fire and Emergency Response (“SAFER”) Program:**

Fire Chief Keith Spangler addressed Council stating this is the same SAFER grant applied for last year, with a five year commitment on the City’s part with the Federal Government’s Department of Homeland Security and FEMA. Chief Spangler stated in this application he is requesting four firefighters. Councilmember Lodzinski moved to approve Resolution 48-2008. Seconded by Vice Mayor King. Motion passed 7-0.

10. **Discussion regarding the recent Butterfield Plaza condemnation and the extension granted to the property owner; to include correspondence between the City and the property owner and between the City and the tenants:**

Mayor Fenn stated this item was requested by Councilmember Sacco who then addressed Council stating he requested correspondence from Building Official Mike Lockett concerning this item. Councilmember Sacco noted the first action taken by the City was via a letter dated February 4 advising the owner of the structural problems of the building and requesting a structural observational report. Councilmember Sacco then asked if there were any previous complaints from any tenants of the building about the structure of the building itself. Mr. Lockett stated that was what initiated his discussion with the building owner. Councilmember Sacco stated that subsequently there was an exchange of correspondence between the City and the structural engineers and the owner of the building from the period of February 15 through May 19, at which time a condemnation notice with thirty days to vacate was served on the owner and tenants, which Mr. Lockett confirmed. Councilmember Sacco then stated on May 23, a memo was sent to the City Manager from Mr. Lockett with copies being sent to Mayor and Council informing them a thirty day vacate notice was served on the owner and tenants. Councilmember Sacco then questioned Mr. Lockett stating this was a sensitive issue with many businesses involved, and asking why it took four months to advise the Council and if Council should have been advised in February when the issue first surfaced. Mr. Lockett addressed Council stating this issue is his everyday operation and that he attempted to work with the building owner to fix the problems that needed to be addressed. Mr. Lockett stated he had a third party dealing with the owner and that on May 5, he was notified that Mr. Kaiser Engineering was no longer onboard with the project, leaving him no choice but to issue a condemnation out to the property owner. Mr. Lockett then read the memo dated May 5, from Brown & Associates notifying him that Mr. Kaiser Engineering had completed their evaluation of the building as its possible cause of the structural failure and an approved structural engineer should now follow through by overseeing all repairs to the building and certify the work as required by Arizona State Law. Mr. Lockett then continued reading the memo that notified the owner of the building that they were required to obtain an engineer of record to coordinate and oversee the repairs to the building. Mr. Lockett then addressed Councilmember Sacco stating there has been over two inches of correspondence between the City and the building owner stating the City has done their due diligence in this matter. Mayor Fenn then stated he had comments on the procedure of this issue, addressing Councilmember Suagee’s and Councilmember Tipton’s concerns regarding the discussion, stating he would like to gather information on how the procedure was done and the sequence of events to see if the procedure could be better in the future. Discussion was then had between Councilmembers regarding the tenants’ complaints with the previous and present building owner to address these issues and whether or not the issue was addressed then. Councilmember Sacco then stated he felt we should have engaged a structural engineer to find out how serious the problem is, with Councilmembers Suagee and Tipton stating this would be the owner’s responsibility. Mr. Lockett stated it is the owner’s responsibility to take care of the building and

show the City of Benson that he has a plan of action to address the faults in his structure. Mr. Lockett stated the City was monitoring the situation and that the building owner had been pushed to the limit to address the situation. Vice Mayor King stated when he worked at the this shopping center, an engineer had been on the premises to address these issues. Councilmember Sacco then stated he had heard some tenants had engaged attorneys and asked the City Attorney about the City's legal exposure, stating the condemnation order was sent, a 120 day extension was granted at the request of the owner, and the condemnation order was rescinded. Mr. Lockett stated the 120 day extension was granted and after meeting with the structural engineer of record, who was now Mr. Kaiser Engineering, the building owner, and Mike Brown from Brown & Associates and being convinced that the building was not in an immediate danger of collapse, rescinded the condemnation order. Mr. Lockett stated he was convinced they were going to follow through with the repairs of the building. Councilmember Suagee asked if Mr. Lockett had seen any evidence the repairs were moving forward with Mr. Lockett stating they were jacking up the back of the building and that Mr. Kaiser was drawing up the plans for repairs. Councilmember Suagee questioned with the repairs being made if the building was safe to occupy. Mr. Lockett stated that there may be some inconvenience to the tenants at some time during the repairs. Councilmember Suagee questioned the responsibility of the City if something were to happen during the course of repairs, with City Attorney Thomas Benavidez stating it's a hard role, to either being not diligent enough in enforcing the code and therefore being responsible to the tenants who can get injured or being too diligent and interfering with the business relationships with their tenants. Mayor Fenn then stated he would like to look at the procedure to see if it could be improved in the future. Mayor Fenn stated Mr. Lockett brought a previous condemnation to the Council, which he appreciated, since Council received calls from the public. Mr. Lockett stated the abatement policy was written for buildings that the Historic Preservation Commission disagreed with the condemnation, which would then be brought forward to Council. Mayor Fenn stated in the current situation, which was also a condemnation, it would have been nice to have notification, stating he knew the frustration Mr. Lockett had in dealing with the landlord and attempting to get the issues addressed. Mayor Fenn then asked the City Attorney about the condemnation notices delivered to the tenants, asking if it is normal procedure to deliver the notices directly to the tenants and if the owner was served with the notice simultaneously. City Attorney Thomas Benavidez stated he learned of the situation after the fact, but he thought the City's obligation was to notify anyone with an interest. Mayor Fenn stated he researched the issue and the building owner was to be notified. Mayor Fenn stated in the condemnation notice, it states the owner could appeal the condemnation through the Board of Appeals and asked if this was done. Mr. Lockett stated the owner could request the appeal, however, Mr. Kaiser requested a 120 day notice, which he was able to grant per the abatement code. Mayor Fenn then asked about the decision of the Building Official and if it could be changed without the Board of Appeals. Councilmember Suagee stated the appeal could be requested if the Building Official did not waiver from his original decision, however since the Building Official gave a 120 day extension, the appeal was not necessary. Mayor Fenn continued reading that: any person having legal title, record or legal interest in the building may appeal the notice and order any action of the Building Official to the Board of Appeals. Mr. Lockett stated no person had requested an appeal. City Attorney Thomas Benavidez then addressed Council stating the Mayor was correct in that once the notice is given, the ball is in the court with those with interest to file an appeal, however, it begs the question of whether or not the Building Official is robbed of jurisdiction to revoke or rescind his own order, but that the normal thing is to put the ball in their court to file the appeal. Mayor Fenn stated his question was if the Building Official has the right or ability to rescind the condemnation, also noting in the correspondence that the vacate notice was rescinded, but that he saw no where in the correspondence that the condemnation is rescinded, removed or is no longer in effect. Mayor Fenn then stated he is looking at the City's exposure in how the process was handled and what could be done better in the future and what aftermath we have from the situation, stating he did not know if it was conducted properly and asking if and why the City Attorney was not involved in the proceeding. Mr. Lockett stated he does not consult the City Attorney on every action, but if the Council would

like him to, he would be more than willing to. Mayor Fenn asked City Manager Martin Roush if he thought to consult the City Attorney as he was overseeing this. Mr. Roush stated he believed he and the Building Official discussed contacting the attorney's office, with Mr. Lockett stating he had made some contact after the fact. Vice Mayor King stated he felt that the City Attorney should have been consulted considering the size of the situation and that the safety of the building was a concern.

Councilmember Suagee asked at what point in the process the building was in. Mr. Lockett stated they are working to brace the building and Mr. Kaiser is working on a plan to address the issues. Mayor Fenn asked if Mr. Lockett felt totally comfortable relying on the engineer and the repairs and the temporary bracing. Mr. Lockett indicated he did and that he had two structural engineers from Brown & Associates working with Rick Kaiser on this project. Councilmember Tipton stated she had driven behind the building and saw one section that is jacked up and being held up by supports, but didn't see anything else being done. Councilmember Tipton then stated that Mr. Lockett has the responsibilities to do his job with the tools that Council gives him, stating that she felt he did his job, and that there may be some questions as to how they want it done in the future, but as far as what he did do, she felt he did the proper thing.

Councilmember Sacco then read from a letter dated June 3, that there was a question as to whether the bracing would hold up if subjected to a major wind event, stating the letter reads: as of June 3, the bracing was not done as requested. Councilmember Sacco asked if the bracing was now done as requested. Mr. Lockett stated the front bracing is installed as well as the bracing in the back. Mr. Lockett then stated Brown & Associates is working directly with Mr. Kaiser, completing inspections, looking at his work, saying there are two engineers on board, as well as an inspector. Councilmember Sacco asked if there was a schedule for completion. Mr. Lockett stated he didn't think Mr. Kaiser had the total repair plan completed yet. Councilmember Sacco confirmed with Mr. Lockett that he was confident that the building was safe to occupy. Mr. Lockett stated with three structural engineers telling him it's safe, he felt confident. Councilmember Tipton then stated Mr. Lockett was relying on the expertise of these people telling him it was structurally sound, that he agreed with them and was going to take their advice and didn't know what choice Mr. Lockett had. Councilmember Sacco asked City Manager Martin Roush if we were going to take steps to prevent this in the future, either with a consultation with the City Attorney or with the Council. Mr. Roush stated he was sure that Mr. Lockett checked with an attorney at the Benavidez Law Group and that he had discussed communicating with Council. Mr. Roush stated he audited the project by going into the room with the owner and the two structural engineers who indicated the building was safe. Mayor Fenn then stated with the aftermath, he wanted Mr. Benavidez to look at a condemnation notice served on a Friday to the tenants, some of which took action that will probably not be reversed and he is concerned about a legal issue between those tenants and the landlord and can't see that the City is not going to be exposed in this, wanting Mr. Benavidez to research this and see or make sure that every step we took was proper. Councilmember Suagee asked about the initial notification to the tenants was Mr. Lockett's idea. Mr. Lockett stated he copied the tenants the original condemnation notice he sent to the owner, addressing the letters to the tenants, stating maybe he ought to have delivered the letters himself. Mayor Fenn stated he would like Mr. Benavidez to look at this letter and would be interested in his legal comment on the letter, stating the letters looked like they were specifically directed to each tenant, that they are ordered to vacate and that their space is condemned giving them thirty days to vacate.

Councilmember Sacco then asked if there is damage to the tenants' property during the repair cycle, who would be responsible; the owner or the City. Mr. Benavidez responded that the owner would be responsible. City Attorney Thomas Benavidez stated that the City has qualified immunity in enforcing its codes and exercising its discretion, stating we can raise defenses of immunity and qualified immunity, not meaning we can't be sued, but the legislature does try to protect local governments when they are acting in good faith and trying to do their best.

Councilmember Tipton stated she understands why everyone is upset, but there could come a time when the repairs will affect each tenant and it may come to that point where they would need to take necessary steps to protect what is in the building.

Councilmember Lodzinski then confirmed that Mr. Lockett didn't send the condemnation notice until he was informed the engineer was no longer on staff to evaluate the building, verifying the owner had broken down the communication with the City. Mr. Lockett confirmed that was correct. Councilmember Lodzinski then stated once a new engineer came on, Mr. Lockett reviewed the numbers and calculations and that the building was for the time-being safe and the owner was given 120 days to take correction action. Councilmember Lodzinski stated as far as liability goes, the company performing the jacking and bracing of the building usually carry good liability insurance.

Councilmember Suagee then questioned if Council has the power to declare a building uninhabitable while the repairs are being made with Mr. Benavidez stating he believes Council does have the power to if an engineer notifies the City or if they are not complying with the Building Official's order, they do have the power to do that, but if reasonable means are being used to remedy the situation and if the experts with the information and the right degrees tell Council it's safe, then it wouldn't be reasonable to ask people to leave.

Mayor Fenn then stated he would like for Mr. Benavidez to look at the situation, how it came through and the possible ramifications are from how the process happened and what possible exposure the City may have.

11. Update by the City Attorney on the status of the investigation regarding allegations concerning Mayor Fenn:

Mayor Fenn stated Councilmember Sacco requested this item. Councilmember Sacco then read an opening statement that the Council authorized the City Attorney to select an outside investigator to review the conflict of interest allegations made against Mayor Fenn. Councilmember Sacco continued, he had some observations and comments regarding the contract fee agreement executed by the City Manager with the law firm of Ryan-Turchick on April 21, even though the Council authorized the expenditure of money to investigate the allegations, the Council did not have an opportunity to review the contract prior to its execution, stating he is troubled by the fact that the contract is open ended as it does not contain a target of completion date or a not to exceed price for the services or any details as to the content of the final report. He was also troubled by the signature authority in light of the fact that the City Attorney estimated the cost of the investigation to be \$20,000-\$25,000 or more. Councilmember Sacco then stated that since it was a known fact as the time the contract was executed and the contract could possibly exceed \$20,000, the Council and the community would have been better served if the contract was presented to Council for review and executed by the Vice Mayor since by code the City Manager's authority is limited to \$20,000.00 Councilmember Sacco then stated he believed the contract should not have been executed by one of the complainants, as it would have the appearance and be construed or viewed as a further conflict of interest. If Council had been afforded the opportunity to review the contract before hand, he would have insisted that a not to exceed price and a targeted completion date be made part of the contract. Councilmember Sacco said he points out the concerns for future reference to other contracts. Councilmember Sacco then stated he had heard many phrases regarding this investigation and asked Mr. Benavidez and Mr. Roush the status of the investigation. Mr. Benavidez stated he had spoken to Ms. Ryan and that she expected to be completed in three to four weeks. Councilmember Sacco then asked if other interviews with City employees who have or have had dealings with the Mayor been scheduled. Mr. Benavidez stated he believed she had completed her interviewing. Councilmember Sacco then asked about the hours expended to date, with Mr. Benavidez

responding that \$4,500 in fees had been generated so far. Councilmember Sacco then confirmed the estimated completion date of the investigation was three to four weeks, asking when Council could expect a report. Mr. Benavidez stated he felt the report would be completed in three to four weeks. Mr. Benavidez then asked if Council would like for him to address Councilmember Sacco's other comments. Mr. Benavidez then stated when he and the City Manager were directed to hire outside counsel in this matter, it was conveyed with the urgency that this needed to be done as quickly as possible. Councilmember Suagee stated the motion was for the City Manager and the City Attorney to hire outside counsel empowering them to do so and that the motion contained no stipulations and that if the stipulations of time and a monetary limit were desired it should have been done with the motion.

Councilmember Tipton then stated that there isn't a way to determine how long an investigation would take and that Council instructed the City Manager and City Attorney to hire outside counsel immediately.

Councilmember Sacco stated an estimated completion date should have been included in the contract as well as a not to exceed price.

Mayor Fenn stated Councilmember Sacco stated earlier that he is clarifying for future contracts, they should have a not to exceed amount.

Vice Mayor King asked if the interviews were completed with Mr. Benavidez stating that Ms. Ryan indicated to him that the interviews were completed. Mayor Fenn stated that was incorrect and that when he met with Ms. Ryan, she had told Mayor Fenn that Councilmembers Tipton and Suagee, Mr. Roush, Mr. Lockett and Mr. Hamilton have been interviewed, as well as himself. Mayor Fenn then stated he gave a list to Ms. Ryan of people he felt should be interviewed, including City staff that had interaction with him at the City level and his business partner. Mayor Fenn then stated he had contacted Ms. Ryan and she indicated she will probably be making some calls. Mayor Fenn stated that he hoped in all fairness that if the attorney was going to interview five people who seem to have information on him regarding these allegations, that she should be talking to people that he also gave her a list of if it's going to be a fair investigation. Mayor Fenn then stated as City Attorney, Mr. Benavidez who represents all Council, make sure it's a fair investigations. Mayor Fenn then stated no specific charges were given to him in his interview, stating he came out of it still wondering what this is about. Mayor Fenn then asked Mr. Benavidez if he had any specific interaction or legal advice given to members of Council, stating he knew he had no interaction regarding this. Mayor Fenn then asked Mr. Benavidez if, since this issue has started, he had sit-down sessions with either Councilmember Tipton or Councilmember Suagee or with Mr. Roush to go over the allegations or discuss it in any form, with Mr. Benavidez stating he had not. Mayor Fenn then stated he had his own private legal counsel but, since he did not know the answer, asked if he would be entitled to legal counsel from Mr. Benavidez, since he is the legal counsel for the Mayor and Council. Mr. Benavidez stated he does represent the entire Council and is welcome to call him for legal advice anytime. Mr. Benavidez then stated as representing the entity of the City of Benson, the entity must always come first.

Councilmember Tipton then stated she felt it was very important to be very careful to not interfere with the investigation in any way and that at this point Ms. Ryan just needed to do her job.

Mayor Fenn then stated it was not as personal to others as it is to him, stating he is the one who lives with the allegations and the rumors that not only he hears, but that his children hear at school, stating he does not appreciate Mr. Roush playing one Councilmember against another citing different comments and asking for him to keep his comments to himself. Mayor Fenn then stated if there are specific allegations, he would like to know what they are. Mayor Fenn stated

the investigation was authorized April 21, and he was just contacted two weeks ago. Councilmember Tipton stated she understood Mayor Fenn's frustration and that she was sorry it had gone the direction that it did, although it is what it is, stating many people have had things said about them that aren't true and it's been tough on everyone, not as profoundly as the Mayor, but that we all share in it.

Councilmember Sacco questioned if the interviews were completed giving her three weeks to complete a final report. Mayor Fenn stated after he spoke to Ms. Ryan, she had indicated that she was going to be making some calls to speak to other people. Mayor Fenn stated that he felt the two hours he spent with Ms. Ryan were unbiased and neutral.

EXECUTIVE SESSION: As per A.R.S. §38-431-03(A)(3) & (4), for legal advice and to consider the City's position and instruct its attorneys regarding potential settlement of the litigation between the City of Benson and Arizona Golf Systems, LLC (Cochise County case number CV200400507)

Councilmember Lodzinski moved to enter into executive session with the City Council, the City Manager, the City Attorney, our legal counsel, Mr. Mueller (via telephone), and the City Clerk at 9:04 p.m. Seconded by Councilmember Tipton. Motion passed 7-0.

Mayor Fenn then stated Council would take a 5 minute break before convening into the Executive Session.

Council then reconvened into the Regular Meeting at 9:30 p.m.

12. Resolution 49-2008 of the Mayor and City Council of the City of Benson, Arizona, authorizing the approval of a settlement agreement in the litigation between the City of Benson and Arizona Golf Systems, LLC (Cochise County case number CV200400507):

City Attorney Thomas Benavidez addressed Council stating staff is recommending approval of the agreement with the amendment to paragraph 3 to include at the end of the first sentence, the words: "which schedule is incorporated herein by this reference".

Mayor Fenn asked for Mr. Benavidez to give the basic details of the settlement with Mr. Benavidez stating the City has been involved in litigation with Arizona Golf Systems that operates the San Pedro Golf Course. Mr. Benavidez stated the lawsuit that Arizona Golf Systems brought against the City and the result of that were settlement negotiations and today we have the consideration of a settlement and release agreement that basically has the City of Benson convey the property in fee to Arizona Golf Systems in exchange for release of claims against the City.

Councilmember Tipton moved to approve Resolution 49-2008 with the amendment as indicated by staff's recommendation. Seconded by Councilmember Suagee. Motion passed 5-2 with Vice Mayor King and Councilmember Sacco voting nay.

CITY MANAGER REPORT:

Mayor Fenn reminded those present that the Council has a Special Meeting on June 25, 2008.

City Manager Martin Roush gave the Council an update on the current pavement management projects that include the parking lot at Lion's park and Mark Street as well as Ocotillo Road.

COUNCIL DIRECTIVES:

None.

DEPARTMENT REPORTS:

ADJOURNMENT:

Vice Mayor King moved to adjourn at 9:33 p.m. Seconded by Councilmember Lodzinski.
Motion passed 7-0.

Mark M. Fenn, Mayor

ATTEST:

Vicki L. Vivian, City Clerk