

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD OCTOBER 25, 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.

ROLL CALL:

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

EMPLOYEE RECOGNITION: None.

PROCLAMATION: None.

CALL TO THE PUBLIC:

Robert Mucci, the Executive Director of the Chamber of Commerce addressed Council stating the Chamber will once again sponsor a special program during the month of November for shopping local, adding their motto this year is "Live Local? Shop Local!" and posters will be distributed in the community. Mr. Mucci stated the program was very successful last year and the Chamber is asking Council for a proclamation at the next Council meeting, on November 8. Mr. Mucci then stated the new Chamber Board President Don Grafues wanted to thank the Council for participating in the forum they hosted regarding the proposed changes to the City's audit procedures, noting there were close to 40 people in attendance, they think it's an important function of the Chamber and they hope to host similar forums in the future.

James Grey addressed Council stating he had walked the town and counted 60 vacant businesses or spaces. Mr. Grey then stated if he was in the City, running the City, that would be a real concern and in Willcox, it is even worse. Mr. Grey then stated he was not here to badger Council, but that the City needs to do something to promote the businesses and the town and sell itself to people, adding Benson is a word of mouth town, and he thinks the City needs to have the same friendly attitude the businesses have. Mr. Grey then stated for the first time, he looked at the City's website and was able to see a lot of information such as the tourism budget being cut 10%. Mr. Grey then stated Council really needs to look at increasing the budget on tourism to get people to come to Benson, noting once they get here, the businesses and people get them to come back, but we have to get them here first. Mr. Grey then stated the tax rate of 9.6% is a hard pill to swallow for a lot of tourist visitors. Mr. Grey then stated while the visitors are here, he would like not to see bad press between the City and people since it turns the visitors off that come to Benson. Mr. Grey then stated the audit situation brings up a lot of question in giving power to government which could be abused, stating he thinks it may be a heavier question that may be for the people instead of the Council, noting that the people could have a special election to overturn it, but rather than do that, the Council should put it on hold or put it out for an election and let the people decide. Mr. Grey then concluded stating he was just trying to make some suggestions.

Bob Iannarino with Benson Land Investors, addressed Council stating he had last spoken to Council 3 years ago and it was a pleasure to be back, adding for those that don't know, they are the owners of approximately 2000 acres of land that are contiguous to the western boundaries of the City of Benson with frontage along Interstate 10. Mr. Iannarino then stated he had sent a letter to Mr. Hamilton to discuss their concerns over the Northwest Cochise County Transportation Plan and that they felt it was premature for Council to take a formal action now, since it hasn't been fully vetted by some of the major stakeholders. Mr. Iannarino stated he hoped Council was able to see that letter, but wanted to express their concern regarding taking formal action on the plan as they have been working with Cochise County, with Karen

Lamberton to work through some of the concerns they have on the recommendations of that study. City Clerk Vicki Vivian stated the letter Mr. Iannarino referred to had been given to Council.

Dianne Tipton addressed Council stating she would like to request her comments be made part of the record. Ms. Tipton then stated at this time it appears the only businesses the City wishes to audit are RV and manufactured home parks. Ms. Tipton then stated she finds this suspect in view of the ongoing litigation between the City and a particular manufactured home park. Ms. Tipton stated this issue is a big trust issue and confidentiality is a major concern and wished to express it is almost nonexistent within the City of Benson staff, with a few exceptions. Ms. Tipton then stated concerning Mr. Cox, he has information that can be very damaging to others' reputations and businesses and should refrain from even the appearance of any violation of confidentiality of privacy. Ms. Tipton then stated the News-Sun reported Jim Cox gave confidential information about a taxpayer that happens to be the one involved in the current litigation she mentioned earlier. Ms. Tipton then stated Mr. Cox disclosed emails to and from Jay Kendrick concerning tax information and argued the emails should have been confidential and protected under tax law privacy. Ms. Tipton then said other statements from Mr. Cox were that right now the arrangement is to have the State administrator collect taxes and perform audits, but the State auditors keep losing personnel and nothing the City has passed onto them has been investigated over the last year. Ms. Tipton then stated when Mr. Cox was questioned about the need to do the audit procedure amendment right now, he stated it's something he's wanted to do for a long time and that there is one current case in the City where this new authority should be used, but by law, he could not disclose the details. Ms. Tipton then stated if all of this was for only one business, it reeks with abuse of power, intimidation, selective enforcement, harassment and more. Ms. Tipton then stated in newspaper articles Mr. Cox stated until now the City has relied on the State to conduct audits, but as the State budget crisis has hit every department, that staff levels are depleted and investigations have been halted. Ms. Tipton then asked what investigations have been halted. Ms. Tipton then stated after being questioned by business owners, Mr. Cox admitted only one case has been submitted to the State for investigation. Ms. Tipton continued quoting newspaper articles and then stated it appeared Mr. Cox was not truthful in his statements. Ms. Tipton then stated Mr. Cox is asking the City Council to amend the model City tax code to give City officials the authority to audit local residents and businesses suspected of not paying taxes, stating this would be opening the gates of Hell on every taxpayer in the City, the Council should not support this, and they should let it remain in the hands of the State, where it belongs.

Nilda Lopez addressed Council stating this statement comes from several people who could not be here tonight, not just her, but from her heart, she wants to say thank you to all the Councilmembers who voted yes for the San Pedro Golf Course. Ms. Lopez then stated she will personally do whatever it takes to make the golf course successful and thanked the Council again for voting yes on the golf course.

CITY MANAGER REPORT:

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

- October 26, 2010 – Community Watershed Alliance, 6:30 p.m., City Hall
- November 8, 2010 – City Council Meeting, 7:00 p.m. City Hall
- November 9, 2010 – Library Advisory Board, 4:00 p.m., Library
Planning & Zoning Commission, 7:00 p.m., City Hall
- November 20, 2010 – Historic Preservation Commission, 9:30 a.m., City Hall
- November 22, 2010 – City Council Meeting, 7:00 p.m., City Hall
- November 23, 2010 – Community Watershed Alliance, 6:30 p.m., City Hall

- November 10, 2010 – Chamber Mixer & Art Show, 5:00 – 7:00 p.m., City Hall
- November 11, 2010 – HOLIDAY – City Offices Closed
- November 25 & 26, 2010 – HOLIDAY – City Offices Closed

Mr. Nichols stated the Chamber mixer will be hosted by the Benson/San Pedro Valley Chamber of Commerce and the San Pedro River Arts Council. Mr. Nichols also stated on Saturday, October 30, 2010 the Benson Junior Women's Club and the Benson Firemates will host a Halloween Night "Spooktacular" at the Benson Fire Department from 6:00 – 8:30 p.m., with a be a haunted house, a costume contest and a jack-o-lantern contest.

NEW BUSINESS:

1. Consent Agenda

- 1a. Minutes of the October 11, 2010 Regular Meeting
- 1b. Invoices processed for the period from October 5, 2010 through October 18, 2010

Councilmember McGoffin moved to approve the Consent Agenda. Seconded by Vice Mayor King. Motion passed 7-0.

2. Presentation on Appendix IV – Modifications to the Model City Tax Code for Cities and Towns in the State Collection System Performing Supplementary Local Audits

Mayor Fenn stated this item is being presented for information only. Finance Director Jim Cox addressed Council stating he would first like to respond to the comments that were made impeaching his integrity and his dedication. Mr. Cox then began with the statement there was one case in one industry the City would be interested in auditing, saying that is not the case as there are several businesses in several different industries we have an interest in. Mr. Cox then stated the City has one case that has been officially turned over to the State, which was a multijurisdictional case involving several million dollars that was not practical for the City to pursue on its own behalf, adding the case would amount to approximately \$48,000 to the City of Benson and the City is just one small piece of a great big puzzle. Mr. Cox then stated there were a couple of misquotes in the newspaper that were discussed at the forum held last Monday and those items were addressed, but he wanted to make the statement unequivocally that he has never misrepresented anything to anyone publicly or privately and he has never discussed any tax matter with anyone other than his staff and the City Manager.

Mr. Cox then began his presentation on the adoption of Appendix IV stating it adds language to the administrative section of the Tax Code which provides for supplementary local audit procedures in addition to the State. Mr. Cox said as it is now, the State has the exclusive authority to perform audits and all the City does now is refer cases to the State. Mr. Cox then added he has spoken to State personnel and several fellow finance directors and found they have begun withholding cases since they don't get any action and that after a case has been referred to the State, the City can't take the cases back and deal with them. Mr. Cox then stated there had been a public hearing held at the Council meeting on October 11, 2010, an informal meeting held with several business owners on October 11, prior to the public hearing and he spoke for 1 ½ hours at the forum hosted by the Chamber of Commerce on October 18. Mr. Cox thanked the Chamber for hosting the forum and said he feels it was one of the many forums we should have on an ongoing basis. Mr. Cox then stated at this meeting, we are having an information item for Council to address any questions.

Mr. Cox then gave a brief description of what is being proposed and how it differs from what we do today stating in the current compliance procedures, every month, the City receives, along with the money from the State, a very detailed several hundred page report that allows the City to identify who is paying how much tax and how much gross income each individual business in the City is producing. Mr. Cox stated staff then uses the information to analyze each industry, each segment of each industry, each type of tax right down to the individual business level, adding they do track many of the City's businesses on an individual level. Mr. Cox then stated today, if questions or potential problems arise, they immediately contact the taxpayer and almost all questions are resolved at that level. Mr. Cox then stated they have had contact with many business owners during the past 3 years, and never had what he would call a negative

contact with any taxpayer with whom they had a resolved issue. Mr. Cox then stated there have been a few people who have not responded and there are some non-filers who have not responded, but everyone they have had contact with has had a satisfactory experience with staff because staff is user-friendly. Mr. Cox stated businesses and the City government is a partnership and the City is to serve businesses and help them through the process. Mr. Cox then stated the enforcement of compliance would be in the interest of all people, all businesses and all citizens in the City, adding right now we don't have the power to enforce compliance and since the State is not enforcing, we're left with the situation where there is no effective enforcement. Mr. Cox then stated it is much like a police officer issuing a ticket to a speeding driver and asked Council to imagine the situation with a police officer having no enforcement authority, stating the officer could ask the driver not to speed, but since we don't enforce our speed limit, it would be voluntary. Mr. Cox then stated our situation with tax law enforcement is not much different. Mr. Cox then stated the proposed compliance procedures would have the initial review; analysis and communication with the taxpayer to resolve issues remain the same. Mr. Cox then stated where the difference comes in is the next step, where instead of doing nothing or turning the case over to the State, the City would turn that case over to an independent auditing firm, asking them to analyze the situation and give us their determination. From that point, the firm will confer with the City, and if we are in agreement that it is likely an enforcement situation, we will come to an agreement on how the case will proceed, whether it will be a formal audit, whether they will try to work with the taxpayer first or what it will be. Mr. Cox then stated the independent firm then proceeds and reports their results to the City, and then it's up to the City tax collector to negotiate a settlement with the taxpayer. Mr. Cox then stated the City has a different attitude about the success of the taxpayer than the State does, adding if the State performs an audit, they'll assess penalties, the maximum tax they can and be done with it, but the City has an interest in keeping every taxpayer successful and in business. If the City has control at the local level, we have the ability to work with the taxpayer to set up payment arrangements, and if the situation warrants, to forgive penalties and/or forgive interest. Mr. Cox then stated the City doesn't have that power if the case is turned over to the State. Mr. Cox then stated he realizes the words "tax" and "control" are like waving red flags in front of a bull, but when the dust settles at the end of the day, the City doesn't have a choice, we either enforce tax laws or let them go and if we let them go, we'd better be prepared for the consequences, which won't be pretty because our tax collections will dwindle, adding a voluntary tax system just doesn't work. Mr. Cox then stated this is being brought before Council because it's his duty to do so, that he can see a very significant potential problem and urged Council to be serious in their considerations. Mr. Cox then stated he had previously mentioned the City would probably turn over any audits to an independent accounting firm such as Albert Holler & Associates and then introduced Mr. Al Holler, the President of Albert Holler & Associates. Mr. Cox then stated Mr. Holler was the former chief auditor for the Arizona Department of Revenue, was one of the drafters of the Model City Tax Code and was a former chairman of the tax enforcement committee of the Model City Tax Code. Mr. Cox then stated his company performs independent audits and consulting services regarding sales tax collections with cities around the State, adding Mr. Holler's company has performed these services for approximately 20 cities around the state, and that 42 cities have adopted Appendix IV.

Mr. Holler then spoke thanking Council for the opportunity to address them and answer their questions. Mr. Holler then stated he has been in business since 1992, adding as Mr. Cox stated, he was formerly the chief auditor for the Department of Revenue and also was the supervisor of auditing for the City of Mesa. Mr. Holler then stated they currently do work for 22 different cities, both bigger and smaller cities. Mr. Holler stated they have a very low key approach and tailor their services to the way the City wants it done. Mr. Holler then stated they also do a canvass of the City to familiarize themselves with the City, its operations and the areas there may be some misunderstanding or noncompliance in. Mr. Holler then stated normally most cities will let them do their analysis of building permits, public records, etc. and from that, they prepare a list for the City Manager or Finance Director that lists where it appears there may be some misunderstandings or noncompliance. Mr. Holler then stated if the City then refers the audit to them, they will perform it also. Mr. Holler stated their low key approach is a matter of fact, determining either something is taxable or not and they don't get into grey areas, which allows them to have very good rapport with taxpayers and that it is to the City's benefit to have someone who can get along with people. Mr. Holler then stated they have very few protests with maybe 1 out of every 100 audits protested and they try to resolve them or refer those to the City to resolve them. Mr. Holler then stated his firm does everything

from the selection, the audit, the assessment, the preparation of liens and the administration of protests. Mr. Holler then asked if Council had any questions he could address.

Councilmember Lodzinski asked about fees for their services ranging from a simple investigation to more, stating it seems to be the thought that the City will be doing all kinds of audits, but he felt if an audit cost around \$500.00, the City would not perform one to recover \$50.00 in unpaid taxes. Mr. Holler stated that is why they do a review and prioritize their recommendations, adding they can estimate the amount of tax that is owed by their review. Mr. Holler then stated some cities are on a per audit basis and that one audit could be approximately \$1500.00 and other cities are on a flat yearly fee for their full services which include all the analysis and audits that are necessary, adding the minimum annual fee is \$24,000 a year, but depending on the size of the City and the complexities of how many accounts they have, it could be \$36,000 per year. Councilmember Lodzinski then stated he was thinking if the City paid for each audit instead of having an auditing firm on a retainer, it may make the public more comfortable about the auditing process, since they know the City would have to pay for each audit. Mr. Holler stated his firm could offer services the way the City wants and if a per audit fee is what they would like, they could offer it. Councilmember Lodzinski then stated about 6 months ago, either Bisbee or Douglas hired a firm like his and they came up with 100 or 200 people that didn't pay their taxes. Mr. Holler confirmed it was something like that and that an honor system doesn't necessarily work. Mr. Holler then stated he could say after working for that entity for 11 months, he knew they had collected approximately \$70,000 to \$80,000 of the couple hundred thousand dollars that was found through their services. Councilmember Lodzinski then stated in examining bids, he found some contractors did not include the correct tax rates, adding until someone with authority explains the tax rates to them, the bids will be incorrect and the taxes will be wrong. Mr. Holler then stated building permits are one of the areas they look at and know how much money they should be reporting by utilizing the valuation of the projects, adding Councilmember Lodzinski is correct in that there is a lot of misinformation in the contracting area.

Councilmember Sacco stated he was also interested in cost and asked what the full service fee included with Mr. Holler stating they canvass town, identify all the businesses, compares the business licenses with sales tax journals, an analysis of correct rates and would build up a 6 year history for businesses. They would also review building permits in detail for the 4 to 6 years, review County records in detail looking for ownership, looking for rentals and then would select a certain amount of audits, perform the audits, complete them, and if they were protested, they would defend the protest, if liens need to be filed, they will prepare them, they will also hold public meetings explaining various tax laws if the City would like.

Finance Director Jim Cox then stated he would envision a relationship with Mr. Holler's firm or a counterpart that would be a little different from what Mr. Holler is describing, stating the City already has a targeted list. Mr. Cox then stated there are some things we have not done that we would probably engage a firm to do such as search of property records, stating they had not gone to that level of detail, but they already have a list based on apparent non-compliance that would keep the firm busy to start with. Mr. Cox then stated the City would engage a firm like Mr. Holler's on a taxpayer by taxpayer basis, unless we decided to hire them for an analysis on property records or review of building permits, etc. which is something we don't have the staff to do. Mr. Cox then stated before we would embark on something like that, they would in all likelihood, come to Council to seek permission before they did that. Councilmember Sacco asked if the procedures could be a combination of staff and an independent firm, with Mr. Cox stating that is correct and the City maintains control at all times. Mr. Cox then stated the City can even request an audit and after receiving the results of the audit, the City can decide to proceed with enforcement action or not. Councilmember Sacco then asked what the fees would be for an audit if the City went on a case by case basis, with Mr. Holler stating almost all his fees are based on yearly retainer, but stated the cost would depend on the complexities of the audits and if they could schedule the audits to be done on the same trip to Benson, but thought they would be approximately \$1,500.00 - \$2,000.00, stating they would want the price to be cost effective for both his firm and the City. Councilmember Sacco asked what their hourly rate was for projects other than audits, with Mr. Holler stating he doesn't charge by the hour, but by the project and it would depend on the number of cases, etc., but he would be able to give a price for the proposed project if the City would like him to. Mr. Holler then stated he would like to stress their work is

confidential and he would only speak about cases with whoever was the designated tax collector. Councilmember Sacco stated he was asking to determine if it's worth going to an independent auditor or if these are things the City can do internally. Mr. Holler stated it takes a certain amount of expertise and since every business is different, every bookkeeping system is different, there is expertise involved to also be able to get in and out with as little disruption to the business as possible.

Vice Mayor King then asked if the City retained his firm and they performed an audit, what happens after that and what if a taxpayer refuses to pay the tax or if they refuse to allow the auditor to look at their books. Mr. Holler stated if the taxpayer refuses to allow their firm to review their books, the tax code allows the firm to make an estimate based on reasonable information and there are penalties that can be imposed. Vice Mayor King then asked if the fee for an audit increased with the time spent on an audit with Mr. Holler stating the fee for the audit covers from the start of the audit to the end, whether it is resolved with the filing of a lien or a protest.

Councilmember Lambert then asked Mr. Cox when the multi-million dollar case he mentioned was turned over to the State with Mr. Cox stating it was turned over on December 15, 2009 and to his knowledge, nothing has happened with the case. Mr. Cox then stated he had checked with the State as recently as 3 weeks ago and had been informed the State had requested 48 documents from the taxpayer and had gotten 5 documents. Councilmember Lambert then asked if the proposed procedures took effect, how long it would take from the time a request for an audit is made to having the audit completed. Mr. Cox stated the City has several cases we could turn over to Mr. Holler's firm immediately and added in one case his staff has reconstructed income based on receipts of comparable establishments where the taxpayer has refused to turn over any information and has refused to file and refused to respond to us. Councilmember Lambert then asked Mr. Holler how many people he had on his staff and if they were backed up at all with Mr. Holler stating he had 4 people on staff and if the City were to refer a case to him, a letter to the taxpayer would go out within a week, then the taxpayer has 10 days to contact their firm, after which the firm contacts the taxpayer to set up the appointment, which may take another week, and after that they leave contact stating his firm will make an assessment in a week. Mr. Holler then stated this adds up to approximately one month for the City to receive an assessment after the request is made.

Mr. Holler then stated last month he received 4 different calls from the Department of Revenue regarding taxpayers who had paid the wrong city by mistake and these cases were 3 years old, adding that he agrees with Mr. Cox that the State has a huge backlog and stacks of cases they are working on clearing up.

Councilmember Sacco asked Mr. Cox about the request to the State for a tax audit with Mr. Cox confirming the City has 1 active case with the State at this point in time, which is a large multijurisdictional case, which the City of Benson initiated. Councilmember Sacco asked about the status of the case with Mr. Cox stating as of 3 weeks ago, the State, after requesting 48 documents from the taxpayer, had received 5 documents. Mr. Cox stated there has been no forward movement. Councilmember Sacco then asked if Mr. Cox if he could look up the amount of delinquencies the City has with Mr. Cox stating he would need to check with legal counsel to see what could be released.

City Attorney Mike Masee then stated he would appreciate the opportunity to verify any information given out was fully disclosable, but that his sense was simple numbers without any kind of taxpayer identification was disclosable. Mr. Cox then stated he already represented publicly that approximately, in his opinion, 95% of taxpayers are law abiding taxpayers and it's not a large amount of businesses we're talking about, but if it's any business, it needs to be dealt with since we're not being fair to the honest taxpayers. Councilmember Sacco asked if we have contacted other cities to see what they are doing with Mr. Cox stating there are several other cities that are looking at the adoption of Appendix IV also. Councilmember Sacco then asked if the City had any guidelines on the selection of audits with Mr. Cox stating there is a number of criteria that is used, but there are no guidelines in writing, adding he follows standard auditing techniques that he's learned as a CPA. Mr. Cox then stated it is much more than being delinquent, stating his staff looks at trends and watch for big differences in the trends, which gives staff the flag to call the taxpayer and in many cases it is not the taxpayer's fault, but a processing error at the State level. Mr. Cox

then stated his office hasn't been as active as they would like in searching out non-filers, since it's more difficult to research those cases, adding it's easy to track someone who files and doesn't pay, because there is a paper trail. Mr. Cox stated the people who don't file and don't pay are more difficult to find, but they recently have gone through the business licenses and compared them to the sales tax receipts. Mr. Cox then added for the last 5 years, the City will not issue a business license until the State sales tax license is issued if it's applicable in that business. Mr. Cox then stated he feels very confident that businesses that have been formed or come into Benson in the past 5 years, but there are many businesses that are older than the 5 years that potentially have a City business license but don't have a transaction privilege tax license from the State. Councilmember Sacco asked Mr. Cox about the addition of staff stating he is trying to look at the costs of an independent auditor with Mr. Cox stating he would not add any staff unless Council directed his department to conduct all the audits in-house, adding for Mr. Holler to give an estimate for audits is very difficult to do, since he needs to understand the climate before he can give an estimate. Mr. Cox then stated he feels it is very cost effective, as well as very transparent to use an outside independent auditor, at least to begin with. Mr. Cox then stated maybe down the road, he could develop expertise of staff and it may make sense, but initially we have too big a job to do to not ask for outside expertise and help.

Councilmember Sacco then asked Mr. Cox to elaborate on enforcement asking other than sending letters out, if the power to levy a lien on property would be part of it with Mr. Cox confirming a lien would be part of it, stating enforcement would be the step beyond asking the taxpayer to pay the tax. Mr. Cox then stated informing the taxpayer of the enforcement action that could be taken against them is usually sufficient and effective. Councilmember Sacco then asked about protests with Mr. Cox stating there is a group of hearing officers who hear the case. Mr. Holler addressed Council stating this never happens in the course of audits, but if there is a protest, they will also handle the protest, adding in his experience most people cooperate. City Attorney Mike Masee then stated he believes the question is regarding the appeal process with Mr. Holler stating once an assessment is made, the taxpayer has 45 days in which to appeal the assessment. Mr. Holler then stated if an appeal is made, it will go before the independent hearing officer out of Phoenix and he would present the City's case and the taxpayer would present their case and a ruling is due 45 days later. Mr. Holler then stated if someone doesn't agree with that decision, they can then go to the superior court to appeal that decision.

Councilmember McGoffin stated since Benson is small and there is a lot of personal contact, she doesn't think the City should be involved in choosing the audits and the only way she will support it is if the City does not recommend who gets audited, adding the independent auditor would need to select and perform the audits. Mayor Fenn then stated the process would have to start somewhere at staff level, since that is where the reports come in and analysis are generated. Mayor Fenn then stated there will not be any action at this meeting, it will be a policy decision of the Council in what direction they want to go and if they do go in this direction, when it comes to them again, whether it would be through an independent source or if Council decides to keep it in-house and direct staff to do the best they can. Mayor Fenn then asked about subpoena powers with Mr. Holler stating there is an administrative subpoena addressed in the tax code that could be issued for records, but in his experience, since he has the authority to estimate, it's easier to estimate the taxes before issuing a subpoena for records. Mayor Fenn then stated he did want to say that he has been familiar over the last couple of years that Mr. Cox and his staff have conducted inquiries to businesses. Mayor Fenn stated Mr. Cox made him aware that they were working on sales tax compliance, they were making progress and what the process they used was, but never with an individual or business and to address Mr. Cox's integrity, Mayor Fenn stated to his knowledge, Mr. Cox has never mentioned to him or any other Councilmember the business they were working on and how much they owe. Mayor Fenn stated he would not expect it from Mr. Cox. Mayor Fenn then thanked Mr. Holler for his time and the information he gave Council.

3. Request to paint the Whetstone Ranch Water Tank from Whetstone Ranch Development Company

Public Works Director Brad Hamilton addressed Council stating the Whetstone Ranch Development Company had requested permission to paint the Whetstone Ranch water tank with their logo and the City's

logo. Mr. Hamilton then stated Mr. Ernie Graves was present to answer any questions Council may have. Mayor Fenn stated a picture of the proposed painting was in the Council packet and he felt it was appealing. Mr. Graves then addressed Council stating they were open to Council's suggestions for the painting, but would like to paint The Whetstone Ranch and City of Benson names on the tank. Councilmember McGoffin stated she felt the proposed painting was nicer than the current plain tank. Councilmember Sacco moved to approve the request to paint the Whetstone Ranch Water Tank from Whetstone Ranch Development Company. Seconded by Councilmember Lodzinski. Motion passed 7-0.

4. **Resolution 64-2010 of the Mayor and Council of the City of Benson, Arizona, accepting the Northwest Cochise County Long Range Transportation Plan for the City of Benson dated September, 2010**

Public Works Director Brad Hamilton gave an overview of how this plan came to be stating in 2006 and in 2007, Benson did Small Area Transportation Study (SATS) funded by the Arizona Department of Transportation (ADOT), which looked at transportation as growth happened over the next 30 years. After the study was complete, ADOT, Cochise County, and the City, in ongoing transportation meetings, agreed the study needed to be tied into northern Cochise County. Mr. Hamilton then stated ADOT thought it was a great idea and funded it completely with a Planning Assistance Rural Areas (PARA) grant, which is funding for rural areas as well as funding a PARA grant for Cochise County to develop a full-scale model of Cochise County. Mr. Hamilton then stated this helped update our SATS, noting our SATS was very optimistic with the rate of growth being from 7-8% per year, but was now more realistic with a growth rate of 2-3%. Mr. Hamilton stated this process took approximately 2 years and Ms. Karen Lamberton, the Cochise County Transportation Planner, was present for any questions about the modeling or Cochise County's portion of the plan. Mr. Hamilton then stated if accepted, the plan will be used for the required 2012 update to City's General Development Plan. Mayor Fenn then asked if the City were to adopt the plan, what is done with it, with Mr. Hamilton stating the approval of the plan would be direction to staff to use its recommendations in the update of the General Development Plan and would be seen again as part of the circulation element of the General Development Plan. Mayor Fenn then asked if there was anything in the corporate limits of Benson that does not reflect what has been requested from the City with Mr. Hamilton stating all the requests put in the SATS were retained; public meetings brought up the need to develop a downtown corridor for Highway 80, the traffic growth on Highway 80 and the plan points out the need for a link between Highway 80 and State Route 90.

Mayor Fenn then asked about Mr. Iannarino's comment that not all ideas or requests were reflected in the plan with Mr. Hamilton stating Mr. Iannarino's property is actually in Cochise County, so it would be between them, but noted the plan is a very conceptual plan and if we see a lot of growth or if other routes are identified, the plan will need to be updated. Mayor Fenn then asked how often the plan would be reviewed with Mr. Hamilton stating a review would be heavily dependent on our growth, adding one of the goals is trying to keep the level of service of the roadways up where they are functioning properly and improvements needed to keep the roads at that level will be examined with reviews.

Mayor Fenn then addressed Mr. Iannarino, stating he knows Mr. Iannarino is concerned but asked if the property Mr. Iannarino is referring to is all in the County, noting that would be an issue for the County and if there was anything within the corporate limits of Benson that he had a comment on with Mr. Iannarino then addressing the Council. Mr. Iannarino stated he would like to explain his concerns, stating he feels they are a collaborative neighbor as the City moves forward under the General Development Plan; they are probably within the sphere of influence, and what they see is that this is a 2040 plan which coincides with the Arizona Sun Corridor, a 2050 plan, that shows the basic growth patterns down from Phoenix, along I-10 and frontage. Mr. Iannarino then stated their concern is that perception is everything, and the exhibit in the proposed plan that shows the recommendation on the Skyline interchange and the fact that there has been some documentation for an East-West frontage road on the south side of I-10 has them concerned, adding these issues all come into play when trying to entice some interest. Mr. Iannarino then stated the idea of moving ahead with a formal action on the current exhibit is a concern, because if it gets on record, someone who is interested could investigate within the corridor and see what is on the current

recommendation. Mr. Iannarino then stated it would need to be clarified, but that they don't have any concerns within the current corporate limits, adding he felt he needed to elaborate what their mindset is. Vice Mayor King then asked if those concerns and the clarification would be a County issue with Mr. Iannarino stating they are a County issue and the County has been gracious enough to take their concerns into account, but if the City Council acts on this particular document, there is a concern that there is a governing entity that has accepted what is currently shown on the recommendations and he felt it was important to express their concerns because of their collaborative neighbor position with the City. Mayor Fenn then asked if there were any other questions or comments. Councilmember Lambert stated he had met with Ms. Lambertson and had heard comments from a lot of people in the J6/Mescal area, in the County, who have concerns and want some type of access out there, because whenever there is an accident between mile post 303 and 297 there is no other access. Councilmember Lambert then stated he can understand their concern and thinks it needs to be looked at, adding he feels the Skyline interchange would be a benefit to the people in that area. Councilmember Lambert then asked Mrs. Lambertson if the plan had gone before the Cochise County Board of Supervisors with Ms. Lambertson stating it went before the Board in a worksession and it was discussed with them prior to the final recommendations being made. Ms. Lambertson then stated a public meeting was organized by ADOT, as well as some individual meetings, and there were stakeholder meetings held very early in the process that included some of the large land holders in the area. Ms. Lambertson then stated at the conclusion of the planning process, they were looking at a technical analysis of what kinds of infrastructure made the most sense if growth happened as projected and as a result, ended up with this situation where we have a great deal of stakeholder input agreeing an alternate route on the Interstate is needed. Ms. Lambertson stated they also looked at what the modeling, safety and costs were showing. Ms. Lambertson then stated the Skyline interchange was being represented as a new interchange rather than a reconstruction, with one of the reasons being the cost, which was \$44 million to reconstruct Skyline in place vs. \$33 million to build a new one to meet the height for trucks. Ms. Lambertson then stated the plan is a very conceptual plan, but will give us the baseline to move forward to a deeper detailed study, adding based on the numbers in this plan, ADOT and Federal Highways have included that section of Interstate 10 all the way to State Route 90 in a Design Concept Report (DCR) that was funded originally only to go to Empirita Road. Ms. Lambertson then stated the study has already started and will be going for approximately 1 ½ years, which will give us a much more detailed level of information, so at the County they will engage in conversations with landholders, like Mr. Iannarino, in terms of what the technical analysis stated would be the most functional traffic circulation and will then bring it forward as a roads and streets map in Cochise County and eventually into their comprehensive plan. Ms. Lambertson then stated they will then see how the growth plays out and come back to the study again, adding it is a continuous process to refine it until they are have a short range plan.

Vice Mayor King asked Ms. Lambertson about the curve on Interstate 10 being one of the most dangerous areas in the State of Arizona with Ms. Lambertson stating part of the cause of accidents are curves with 84% of the crashes in the northwest area occurring on the state highway system and one of the major reasons for the crashes were left turning movements, adding this is one of the reasons ADOT is always looking at the B10-4th Street section. Ms. Lambertson then went back to the modeling stating one of the biggest advantages to this plan was that it was imbedded in a full County transportation model and is a much more technically driven document than they have had the ability to do in the past. Ms. Lambert then stated one of the things they discovered is that Highway 191 has a crossing that is difficult for trucks to maneuver and as a result, trucks coming up from the port are coming down Davis Road, getting on Highway 80, congesting up the middle of Benson and then heading east to Willcox. Ms. Lambertson stated she brought the situation up and ADOT contacted the County asking if the County would support their attempt to get the Highway 191 crossing rebuilt. Ms. Lambertson stated the County would support it and so should Benson, because if the crossing is rebuilt, it will relieve some of the congestion on Highway 80 and the level of improvements that are currently needed won't have to be done if those trucks use a different route. Ms. Lambertson then stated all these components will come into play and as we see an improvement in State Routes 90 and 191, the conditions will change, adding those entities with developers, such as Whetstone Ranch, will be at the table partnering and one of the things we're going to see is a lot more partnering between the State, Counties, Cities and the developers as they come to the table to try to meet those bigger infrastructure needs.

After no other discussion, Councilmember McGoffin moved to approve Resolution 64-2010. Seconded by Councilmember Lambert. Motion passed 6-1 with Mayor Fenn voting nay.

5. **Presentation on Whetstone Hills Estates by Ryan Stucki (located south of Cochise Terrace, west of Highway 90)**

Public Works Director Brad Hamilton stated Mr. Ryan Stucki of EEC would like to address Council regarding changes that were made to the preliminary plat of Whetstone Hills Estates. Mr. Stucki then addressed Council stating he was representing Tres Alamos Ranch II, L.L.C., the owner and developer of the Whetstone Hills Estates property for which the preliminary plat was approved in June, 2010. Mr. Stucki stated even though the preliminary plat was approved, there were concerns about the number of parks in the area and Council's desire to include some parks in the area of Whetstone Hills Estates, adding the owner listened to those concerns and has decided to dedicate one of the former commercial parcels, Parcel C18, as a park area. Mr. Stucki stated it is a 39,000 sq. ft. parcel located pretty centrally and will now be labeled as a park on the plat itself and the final plat, as well. Mr. Stucki then said they made additional changes to satisfy the Department of Transportation's concern regarding access off of State Route 90, placing a no access easement along the entire route across the commercial parcels to prevent any new entries from being made off of State Route 90 in the future as well as modifying the note to match the Core of Engineers language regarding natural open space set aside areas, after receiving their 404 set aside designation. Mayor Fenn then stated he appreciated those items being addressed and confirmed with Mr. Hamilton that this item required no action at this time. Mr. Hamilton stated this item was to inform Council of the changes that will be on the final plat brought before Council in the future. Vice Mayor King then expressed his thanks for the owner listening and taking Council's comments into consideration, adding he truly appreciates it and knows the entire Council also appreciates it.

6. **Preliminary Plat for Sunset Trail (located west of Ocotillo, north of Union)**

Public Works Director Brad Hamilton addressed Council stating the preliminary plat for Sunset Trail was previously approved on April 28, 2008. Mr. Hamilton then stated when the economy took a downturn the developer did not move forward with the project and the approval expired. Mr. Hamilton then stated the only difference is the updated engineering stamp. Mayor Fenn then verified with Mr. Hamilton that this was a housekeeping item since no other changes to the plat had been made since the April, 2008 approval with Mr. Hamilton confirming there were no other changes. Councilmember Lambert stated Council had seen a lot of preliminary plats and asked if any were moving forward. Mr. Hamilton answered stating it was dependent on the economy. Mayor Fenn then stated the paperwork didn't involve a lot of costs for the City, but the preliminary plats keep the City ready for the economic recovery. Mr. Hamilton agreed stating it was an encouraging sign that developers want to keep their plats current. Vice Mayor King moved to approve the preliminary plat for Sunset Trail, noting there were no changes except the date on the preliminary plat. Seconded by Councilmember Sacco. Motion passed 7-0.

7. **Resolution 65-2010 of the Mayor and Council of the City of Benson, Arizona, approving a Charitable Donation Agreement (Cash) and a Charitable Donation Agreement (Golf Course) with Arizona Golf Systems, L.L.C.**

Finance Director Jim Cox addressed Council stating at the Council meeting held on September 13, staff was instructed to proceed with negotiations and the drafting of agreements for the donations of the golf course, 3 buildings, approximately \$1.5 million in equipment and a charitable donation of up to \$950,000 over the next 3 years. Mr. Cox then stated during intervening period, Mr. Hartley, of Arizona Golf Systems (AGS) allowed the existing and former golf course staff to bring the golf course up to playable standards to allow the City to not miss the prime fall golf season. Mr. Cox then asked City Attorney Mike Masee if he would like to address Council regarding the agreements. Mr. Masee stated he had highlighted the principal terms of the agreements on the Council communication and if Council moves to approve Resolution 65-2010, he would ask them to delete Exhibit C, the Special Warranty Deed, noting he would

like a correction made to the Special Warranty Deed to reflect the City will take the property free and clear of all taxes and that the legal description is with the surveyor and will be completed soon. Mr. Massee then stated these will be brought back to Council at the second meeting in November for the final approval and he would like the record clear that those items will not be approved and they are not part of the agreements right now.

Mr. Massee then stated he would like to point out the resolution not only approves the agreements, but also authorizes the execution of documents and the early transfer of possession of the golf course, adding it is contemplated the transfer will happen by the end of the week and once that happens, the risk of loss of the property and the landowner type liability would both transfer to the City. Mr. Massee then stated we're getting our insurance in place, but when that transfer does occur, what is immediately triggered is the first principal transfer of \$135,000 cash and \$15,000 in pro shop inventory. Mr. Massee then stated the agreements contemplate another 32 months of \$25,000 per month transferred from AGS to the City to fund any operating deficits during that period of time. Mr. Massee then stated the agreement does not mandate or obligate the City to operate the golf course as a golf course, but if at any time during these 32 months, the City decides to not operate the golf course, the \$25,000 per month subsidy would be excused. Mr. Massee then went over the conveyance of the property stating the golf course is being transferred to the City as is, with only a couple of warranties with one relating to hazardous substances and the other that the property is free and clear of all monetary liens, adding we are in the process of getting a preliminary title report that we should have before any documents are executed, but that it doesn't look like there is any liens. Mr. Massee then stated there are multiple non-contiguous parcels being conveyed to the City which are the golf course tees, greens and throughways and in addition to the parcels themselves, there is a commitment for all easements for operation and utilities and access that will be conveyed between the parcels for operation. Mr. Massee then stated Mr. Ted Amox, a surveyor, was present to explain how many parcels we're looking at. Mr. Massee stated the City is committing to keep ownership of the golf course for at least 3 years for tax purposes in order for the donation to be considered a verified donation and that the City is obligating to sign the necessary tax documents stipulating the appraised value is \$12.5 million. Mr. Massee then stated the City is also agreeing to allow AGS at its sole cost, at no cost to the City, to plan, design, bid and build revisions to the wastewater treatment plant, that are necessary to relocate some of the plant operation internal to the City's parcel the treatment plant is on, at no diminution to the current or future capacity of the treatment plant and no prejudice to the good running and operation of the treatment plant. Mr. Massee stated the reason for this is Mr. Hartley is planning to do some residential development on some of the larger remaining parcels retained by AGS and the Arizona Department of Environmental Quality (ADEQ) requires at least 300' setbacks between some of the treatment plant processes and residential development. Mr. Massee stated this will rearrange odor producing elements of treatment plant away from the prime area for the proposed development and satisfy the ADEQ requirement. Mr. Massee then wanted it noted that the agreement itself, does not obligate the City to approve any kind of rezoning, plan amendment or any kind of plat, adding the City reserves all rights and discretion in that regard. Mr. Massee then stated the agreement calls for AGS to plan and obtain all permits from ADEQ within 3 years, adding Mr. Hartley has to start the construction of the revisions to the treatment plant within 3 years and they must be completed within 5 years. Mr. Massee then asked Mr. Ted Amox to come forward and address Council regarding where he is in the planning and permitting process and where he is in completing the survey on the individual parcels that will be conveyed as part of the donation agreement. Mr. Amox addressed Council thanking them for the opportunity to speak. Mr. Amox then stated he was a licensed land surveyor out of Safford, but was not a registered civil engineer, therefore he would not be able to address the treatment plant relocation in detail, but would answer any questions he could. Mr. Amox then noted he was not representing the engineering firm listed on the aerial map given to Council.

Mayor Fenn stated his question was more on the operation on the golf course and asked Finance Director Jim Cox if he was confident that \$25,000 per month will cover the reasonable operation of the golf course with Mr. Cox stating he felt it was and that he planned to come back to Council on November 8 with a complete balanced budget for the golf course through June 30, 2011. Mr. Cox then stated he will be asking for a budget amendment to move some line items to create the line items needed for the golf course and then stated he will probably be able to give a rough budget projection of how we expect the golf course to

look in 3 years.

Mayor Fenn then stated future proposed development could only enhance the desirability of the golf course with Mr. Cox agreeing stating this is a rare win/win situation that is good for both parties.

Councilmember Lodzinski verified the budget won't be exceeded with Mr. Cox stating the City is not allowed to exceed our budget, and there is approximately \$3 million excess in the revenues and expenditures in the grants funds and he will be petitioning Council to move a balanced amount of revenue and expenditures into what will be the new golf course enterprise fund and thereafter will include the golf course budget in the regular budgeting process.

Councilmember Sacco asked about the legal description with Mr. Amox stating the legal description will be in the form of a record of survey map, since all the meets and bounds you would normally see in the body of a legal description, because of the multitude of courses, lines and parcels, would be a very large stack of paper. Mr. Amox stated the record of survey map will suffice for the legal description and be the actual legal instrument that describes the property. Councilmember Sacco asked when Mr. Amox was scheduled to complete the legal description with Mr. Amox stating, he would complete it tomorrow (October 26, 2010) and would deliver it to Mr. Hamilton on Wednesday (October 27, 2010).

Councilmember Sacco then asked if the agreement contained the language regarding easements with Mr. Masee stating the language is in Section 1.2 of the golf course donation agreement. Mr. Masee then stated the agreement contemplates sewer lines going through AGS parcels and as part of the agreement, the City wants to make sure we'll be able to not only get the easements we need to operate the golf course, but the easements to legitimize the sewer lines that will remain on AGS' property. Mr. Masee then stated the agreement will be brought back to Council to finalize and to ask for Council's approval of the legal description, which will include all of the easements between the non-contiguous parcels at that time. Mr. Masee then stated tonight is an actual approval of the agreements, and if approved, the City will go forward as outlined in the agreements, adding this will vest discretion in the City Manager to exercise the option we are given to transfer possession prior to closing, but prior to closing the legal description with final documents will be brought to Council for approval and if approved, the closing will then be scheduled.

Councilmember Sacco then asked if there were any open issues that need to be resolved with Mr. Masee stating there are development issues and the agreements set in place a pre-condition to development, but those are separate issues and those will come to Council when AGS pursues development. Councilmember Sacco asked about the \$15,000 in inventory with Finance Director Jim Cox stating the golf course books were made available to him and after reviewing invoices and retail costs, he has a high degree of confidence in the inventory valuation.

Councilmember Lambert moved to approve Resolution 65-2010, with the exception of Exhibit C, the Special Warranty Deed, as per our City Attorney. Seconded by Councilmember McGoffin. Motion passed 7-0.

8. Review of City Finances with emphasis on September, 2010, financial results and the City's financial position at September 30, 2010 and discussion of sales tax revenues and projected future net revenues

Mayor Fenn asked for Mr. Cox's indulgence to forgo this item with a summary to be given to Council at the next Council meeting.

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 into an executive session with the City Council, the City Manager, the City Attorney and the City Clerk at 8:54 p.m. Seconded by Councilmember Lambert. Motion passed 7-0.

Council reconvened at 9:32 p.m.

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

Councilmember McGoffin stated she feels Council should wait until Wednesday and if there is a judgment on Wednesday; schedule a special meeting, if needed.

Councilmember Lambert stated he agrees with Councilmember McGoffin, and then stated there are 2 pending litigations for complaints that would fall underneath the City's insurance coverage and moved to instruct the City Attorney to ratify the tendering of those two new complaints to the Management Risk Pool Attorneys. Seconded by Councilmember Bonquet. Motion passed 5-2 with Vice Mayor King and Councilmember Sacco voting nay.

DEPARTMENT REPORTS: None

ADJOURNMENT:

Councilmember McGoffin moved to adjourn at 9:35 p.m. Seconded by Councilmember Lambert. Motion passed 7-0.

Mark M. Fenn, Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk