

**THE REGULAR MEETING  
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA  
HELD DECEMBER 9, 2013, AT 7:00 P.M.  
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

**CALL TO ORDER:**

Mayor King called the meeting to order at 7:00 p.m. with the Pledge of the Allegiance. Mayor King then introduced Steve Medeiros of the New Life Family Worship Center who gave the invocation.

**ROLL CALL:**

Present were: Mayor Toney D. King, Sr., Vice Mayor Al Sacco, Councilmembers Patrick Boyle, Ron Brooks, Jeff Cook, Chris Moncada and Peter Wangsness.

**EMPLOYEE RECOGNITION:**

Mayor King recognized Natasha Martinez for 5 years of service with the City of Benson. Mayor King then recognized Kim McMillan for 5 years of service with the City of Benson.

**PROCLAMATION:** None

**PUBLIC HEARING:** The Mayor and Council will be available to receive comments from the public regarding the use of approximately \$170,697 in Fiscal Year 2014 Federal Community Development Block Grant (CDBG) funds from the Arizona Department of Housing Regional Account (RA).

Mayor King asked City Clerk Vicki Vivian to address the Council. Ms. Vivian stated a second public hearing would be held on December 23, 2013 at 7:00 p.m. and then read a statement informing the public about the CDBG funds and the criteria projects must meet to be eligible for the funding. Mayor King then opened the public hearing at 7:02 p.m. stating there was no one signed up to speak during the public hearing and asked if there was anyone present who wished to speak.

Councilmember Brooks stated he knew these funds were limited to certain things and that \$170,000 is a fair chunk of money in this economy. Councilmember Brooks then stated his pet project was a community lake, asking if some of the funding could be used toward that and added he knew there were some pretty bad roads in town also and they should also be considered.

Councilmember Cook then asked if he could address the Interim City Manager and Public Works Director, Brad Hamilton. Councilmember Cook stated some people who are traveling back and forth near the visitor center have used the area behind the gazebo and the walls as a public restroom, adding he believes a public restroom is needed in that area and asked if CDBG funds could be used for that. Mr. Hamilton stated he could look into it, adding there is a lot of criteria that must be met for a project to qualify for CDBG funding. Mr. Hamilton then stated the City was able to replace the restrooms at Lions Park because the former restrooms were not ADA compliant, again adding he would have to look into it. Councilmember Cook asked if Mr. Hamilton could get back to the Council before the next Council meeting with Mr. Hamilton stating the City would seek input from the public and the Council, will see which ideas qualify and then bring this issue back to Council to select which project they would like to do.

Councilmember Moncada stated he would like to see the replacement of the other restroom at Lions Park, adding it doesn't meet the ADA standards either and is in serious need of replacement. Councilmember Moncada then stated he has gotten a lot of positive feedback on the new restrooms at the park, adding there have been some attempts at vandalism but the restrooms are pretty sturdy.

Mayor King then asked if there was anyone else present who wished to speak. After receiving no requests to speak, Mayor King closed the public hearing at 7:08 p.m.

**PUBLIC HEARING:** The Mayor and Council will hold a public hearing to receive comments from the public regarding the proposed Major Amendment to the General Development Plan for a proposed Map Amendment (Land Use Designation).

Mayor King asked City Clerk Vicki Vivian to address the Council. Ms. Vivian then stated this public hearing is being held to address the General Development Plan Major Amendment for a proposed Map Amendment (Land Use Designation). Ms. Vivian then stated San Pedro Partners proposes to amend 5 parcels totaling approximately 183 acres from residential to commercial, the issue has been legally noticed and posted in all posting places, adding the Council is now holding the public hearing and the issue is on the agenda for Council action. Mayor King opened the public hearing at 7:09 p.m. stating there was no one signed up to speak during the public hearing and asked if there was anyone present who wished to speak. Councilmember Brooks asked if Mr. DeGrazia of San Pedro Partners was going to address the Council with Mayor King stating Mr. DeGrazia would address the Council when the item came up for action. After receiving no requests to speak, Mayor King closed the public hearing at 7:10 p.m.

**CALL TO THE PUBLIC:**

Jim Cox addressed Council concerning New Business Item 5, the discussion and possible direction to instruct the City Attorney regarding allegations that Mr. Jim Cox violated the City's procurement code. Mr. Cox's statement will be retained with the Council packet.

J.T. Moffett stated it was becoming painfully apparent to everyone that the City is bleeding profusely financially, and has been robbing Peter to pay Paul to balance the budget for the past 5 years. Mr. Moffett then stated some of the Councilmembers may recall when Mr. Cox told the Council that the golf course was trending to break even, adding Mr. Moffett stood before the Council and basically called Mr. Cox a liar. Mr. Moffett then stated he did a public records request and predicted the golf course to lose \$80,000 and it did. Mr. Moffett then stated he often referred to Jim Cox's budget as a melting pot of tax dollars, adding no one could say where the money came from and where it went, but it looked good on paper. Mr. Moffett stated the City is not really in the black and as financially sound as Mr. Cox has said for years. Mr. Moffett then stated he received a call from a friend informing him the City was paying \$64,000 a year to RikerTek to maintain the computer systems, adding RikerTek is owned by Jared Riker, a former employee of the City who did IT work for about a \$40,000 a year salary. Mr. Moffett then stated he made another public records request to get the invoices for RikerTek for 2013 and has the total invoices paid from January to December 3, which is actually \$136,000 paid to RikerTek to maintain the computer systems for this small town of 5,000. Mr. Moffett then stated the final bill will top \$145,000 by yearend, which is staggering, adding Council will not find another town of 5,000 that pays this much for computer system maintenance. Mr. Moffett then stated there is a name for what RikerTek is doing to the City, but he can't think of it, so he will call it financial rape. Mr. Moffett then stated he would break it down, adding RikerTek bills the City \$1,600 every two weeks for a 40-hour a week onsite technician, which totals a \$64,000 salary for an onsite technician and anytime he helps anyone, the City gets an additional bill for \$40.00 per hour. Mr. Moffett stated the additional billing amounts to roughly \$80,000 with \$64,000 being paid for the pleasure of the onsite technician's company. Mr. Moffett then stated as an examples of the invoices, on January 18, there were 5 invoices for phone repairs totaling \$4,670 and the City was getting billed for onsite service calls. Mr. Moffett then stated on January 16, there were 5 more invoices for phone repairs, totaling \$827.50, adding the City paid RikerTek \$5,500 for one week for phone repairs when an entire new phone system could be purchased for \$8,000. Mr. Moffett then stated he had 29 invoices labeled miscellaneous or various repairs totaling over \$15,000. Mr. Moffett then stated being financially raped has been going on since last year, adding Mr. Hamilton and Ms. Moreno inherited this monster from Mr. Nichols and Mr. Cox, adding one can only surmise, they were both aware and condoned it. Mr. Moffett then stated Mr. Nichols and Mr. Cox are no longer employed here, and it falls to the replacements and the Council to fix it. Mr. Moffett then stated an example of change that could be made, there are 2

capable IT people in the City and one should be retained as a consultant to get the City on the right track and keep it there and the other should be contracted to be an on-call technician for 20 hours a week and between them, the City should expend \$80,000. Mr. Moffett then stated RikerTek's contract should be terminated immediately and an audit of all their invoices should be done with the City being due a refund for all the double billing and the inflated charges. Mr. Moffett then stated there is no reason the City could justify paying \$3,200 every two weeks for an onsite technician and then getting billed for everything he does. Mr. Moffett then stated there is also no excuse for the email service to be down for weeks, adding the lost emails now jeopardize the City, because federal law requires records to be saved for a number of years. Mr. Moffett then stated it is also a suspicious coincidence that is happened shortly after public record request was made, adding RikerTek should have provided the City with a sound record backup plan and now the City has lost those records forever. Mr. Moffett then stated to pay \$145,000 to RikerTek and get incompetence in return is unforgivable. Mr. Moffett then stated this morning he requested a copy of the RikerTek contract and was told if there is a contract, it's is locked away and not filed with other contracts, adding no one knew if it existed or where it was, which is starting to sound like Obama's birth certificate. Mr. Moffett then stated this afternoon, he was informed there is no contract between the City and RikerTek. Mr. Moffett then stated on August 13, 2013, Mr. Cox met with RikerTek and Ms. Moreno and a verbal agreement was made allowing RikerTek to continue unchecked invoicing until a new City Attorney and a new City Manager were hired, then RFPs would be sent out and asked how the City sent out the recent RFPs without these positions being filled. Mr. Moffett then asked why it was decided to have a meeting in August and then allow it to continue, adding invoices go back to 2012 and asked who set up the agreement in the first place and where is the accountability to Council. Mr. Moffett then stated questions Council needs to have answered are who authorized the blank check to RikerTek, why wasn't it brought to Council and why wasn't the procurement code followed. Mr. Moffett then stated for the record, the iPads purchased by the previous Council were purchased from RikerTek; no bids were put out from at least 3 companies for the iPads and they were just bought from RikerTek even though the procurement code clearly states purchases over \$5,000 must have 3 bids and the iPads cost over \$8,000. Mr. Moffett then stated any common Joe could have purchased the iPads for half that price, the City was ripped off and it reeks of malfeasance, as does the budget over the last 5 years. Mr. Moffett then stated coupled with that, Jim Cox breaking the law and paying \$10,000 for a futile investigation, this Council has some work to do, stating they need to direct Staff to do an independent audit on Jim Cox's books and on RikerTek's invoices, adding once they start digging, they will be amazed what they will uncover. Mr. Moffett then stated in addition, Jim Cox must still be held accountable for his blatant violation of City laws; prosecute criminally and pursue financially to recover the money he illegally spent. Mr. Moffett then asked how long the Councilmembers will allow this fine community to be used and abused by greedy and power hungry miscreants. Mr. Moffett then stated he would like to implore the Council to take immediate and decisive action against both RikerTek and Jim Cox. Mr. Moffett then stated on one final note, the Police Department is struggling to do their jobs and are now short 3 patrolmen, having lost yet another of our best officers to the Border Patrol. Mr. Moffett then stated the City doesn't have the money to hire cops because it is too busy trying to keep up with the invoices being thrown at it by RikerTek. Mr. Moffett then stated he had 13 pages that totaled 350 invoices this year so far and asked the Council to please the madness and save this City.

George Scott stated he was representing the Southeast Arizona Economic Development Group, and was attending on a brighter note with positive information. Mr. Scott then stated he would like to ask for support for New Business Item 2, Resolution 33-2013, adding it is a good move on the Council's part to support the resolution. Mr. Scott then stated some new businesses are wanting to locate on Highway 90 and Interstate 10 and getting Resolution 33-2013 approved will help the future of Benson, adding it's important for the future development of Benson. Mr. Scott then again asked for the Council to support Resolution 33-2013.

#### **CITY MANAGER REPORT:**

Interim City Manager Brad Hamilton addressed Council, giving the dates of upcoming meetings and events.

- Tuesday, December 10, 2013 – Library Advisory Board, 4:00 p.m., City Hall  
Monday, December 23, 2013 – City Council Worksession, 6:00 p.m., City Hall  
CDBG Public Hearing, 7:00 p.m., City Hall  
City Council Meeting, 7:00 p.m., City Hall
- Saturday, December 14, 2013 – The Season’s Traditions Light Parade, 6:30 p.m. Prizes will be given for 1st, 2nd, and 3rd place and a donation to a charity of the winner’s choice for 1st, 2nd, and 3rd place. More information can be found on the City’s website, [www.cityofbenison.com](http://www.cityofbenison.com) under “What to do today”
- Christmas on Main along with a mini-carnival hosted by the Benson/San Pedro Valley Chamber of Commerce, 8:00 a.m. - 5:00 p.m. at 4th and Land Streets. For more information, see the Benson/San Pedro Valley Chamber of Commerce website, [www.bensonchamberaz.org](http://www.bensonchamberaz.org)
- Festival of Lights Craft Fair, 8:00 a.m. - 8:00 p.m., Benson Museum, 180 S. San Pedro Street. More information can be found on the City’s website, [www.cityofbenison.com](http://www.cityofbenison.com) under “What to do today”
- Shop with a Cop Event
- December 24 and 25, 2013 – Christmas Holidays, City Offices Closed  
December 31, 2013 and  
January 1, 2014 – New Year’s Holidays, City Offices Closed

Mr. Hamilton stated information for continuing projects and closures and seasonal events on any ADOT right-of-ways could be found at [www.adot.gov](http://www.adot.gov).

**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. and 1983 Civil Rights Claim – Stagecoach Trails Mobile Home Court (MHC), LLC and Jay Kendrick vs. the City of Benson, Arizona, et al. and 1983 Civil Rights Claim – Dianne Tipton vs. the City of Benson, Arizona, et. al.

Vice Mayor Sacco moved to go into Executive Session with Mayor and Council, Interim City Manager, City Attorney, the City’s outside legal counsel provided by the Arizona Municipal Risk Retention Pool (via phone) and the City Clerk at 7:27 p.m. Seconded by Councilmember Moncada. Motion passed 7-0.

Council reconvened at 8:32 p.m.

**NEW BUSINESS:**

1. **Consent Agenda**

- 1a. Minutes of the November 12, 2013 Special Meeting
- 1b. Minutes of the November 14, 2013 Special Meeting
- 1c. Invoices processed for the period from November 15, 2013 through November 29, 2013

Councilmember Moncada made a motion to approve the Consent Agenda. Seconded by Vice Mayor Sacco. Motion passed 7-0.

2. **Resolution 33-2013 of the Mayor and Council of the City of Benson, Arizona, approving as part of a Major Amendment to the General Development Plan the Redesignation of approximately 183 acres of land from High Density Residential and Medium Density Residential to Commercial**

Building Official Luis Garcia addressed Council stating this is the first step in changing land designation/use in the City, adding in changing the General Development Plan (GDP), the applicant is requesting to change his planning designation. Mr. Garcia then stated Mr. DeGrazia from San Pedro Partners and representing the Harlan Trust was present. Mr. Garcia then stated the applicants have currently requested a Commercial designation, however after conversations with the applicants, Staff recommended a Mixed Use designation and that is something the applicants would like considered, adding Mr. DeGrazia can answer questions Council may have. Mayor King asked Mr. Garcia if this action was trying to fill in the gap because everything around the subject property is zoned, but the subject property wasn't zoned yet with Mr. Garcia stating that was incorrect. Mr. Garcia then stated the General Development Plan designation was the first layer and the applicant had not requested a zoning designation, adding this is the first step to get to the zoning. Mr. Garcia then stated the Mixed Use planning designation would allow for the underlying zoning district to allow both commercial and residential uses on the subject property.

Mr. DeGrazia addressed Council showing a map of the General Development Plan designations in 2012 of the subject property, stating the subject properties were designated C (Commercial), MDR (Medium Density Residential) and HDR (High Density Residential) and were zoned B2 and C, adding the application was to request all 3 properties be given a C (Commercial) designation, however, in discussions in the last few days and in understanding some things, the applicants have come to the conclusion that MXU (Mixed Use Designation) is the best designation for these sites, so instead of requesting a C designation, they would like to request the MXU designation. Mr. Garcia then stated the MXU designation is a combination of commercial and residential uses and would actually position the property to be able to be rezoned to the equivalent of a B2 zoning classification, which would allow, with the top-down zoning structure currently in place, both commercial and residential uses. Mr. Garcia then stated the application was for the C designation, however the MXU designation would be less intensive and would still give the applicant the full benefit of the uses he is intending, adding the applicants are now requesting the less intensive use of the MXU designation.

Councilmember Brooks asked if the MXU designation required a certain amount of the property to be commercial or business or residential with Mr. Garcia stating no such requirement existed and the MXU designation gives the applicants flexibility for the sites. Mayor King stated he felt the City Council should designate the subject property as MXU and then moved to approve the MXU designation. Seconded by Councilmember Brooks. Mayor King then stated his motion should include the language to approve Resolution 33-2013 to MXU. Councilmember Brooks asked about the proposed resolution, stating he didn't see the MXU language present. Mr. Garcia stated the approval of the MXU designation would be an amendment to the resolution on behalf of the applicants and because the amendment is to a less intense designation according to the GDP, it could be considered by Council. Councilmember Brooks stated the proposed resolution didn't specify the change with Mr. Garcia stating the proposed resolution would need to be amended by Council if they chose to do so.

Councilmember Cook stated some residents in Meritage homes asked for a 300 ft. buffer, and asked if the residents could be accommodated. Mr. Garcia stated a buffer was discussed at the Planning & Zoning Commission level as part of an additional GDP amendment, so the Planning & Zoning recommendation was to approve the application as it was submitted. Mr. Garcia then stated there is a buffer designation in the GDP as it currently exists, but it wasn't part of the motion initially. Councilmember Cook then stated he was slightly horrified that so many residents across the fence from this property asked for a buffer and were completely ignored, adding he thinks they have valid concerns. Councilmember Cook then stated if residences are built on the other side of the fence, there would be no need for a buffer, but if a more commercial/business type use is done and if the residents' concerns aren't addressed now, he fears they

won't be addressed at all. Mr. DeGrazia stated the MXU designation does allow for both commercial and residential uses, adding not all the residents in the Meritage property are affected, only the east stretch would be, but when the applicants come back to rezone the site, that is the time they will discuss and present the uses for the property. Mr. DeGrazia then stated the property Councilmember Cook is concerned about is not owned by San Pedro Partners, but is owned by Mr. Jimmy Harlan, who is not present, adding the property is already designated Commercial. Mr. DeGrazia then stated the request for the MXU designation could only help as it was a less intensive designation. Mr. DeGrazia then stated the property where residents who will be affected contains washes and while he didn't want to speak for Mr. Harlan, but there will probably be some open space designated, adding that is addressed during the zoning request process. Mr. DeGrazia then stated during the zoning request process, the applicant will have topography plans and some aerial photos and will show the different slopes and be very detailed, adding that is when the applicant will make those decisions on where the uses will best be made and present them to the Planning & Zoning Commission who will then make a recommendation for Council action, again stating the property owner will address buffers and other concerns during the zoning process.

Councilmember Cook stated in discussions he had in the past couple of weeks with Mr. Garcia, Mr. Garcia indicated the zoning process would not be able to require the buffer being requested and it could only be required during the GDP amendment with Mr. Garcia stating the conversation was that a buffer classification or designation is only viable at the GDP amendment, because the City doesn't have a specific buffer zoning district. Mr. Garcia then stated the zoning request process would be design specific on the property owner's behalf and Council may want to consider the buffer request at the time of the development. Mr. Garcia then stated the original recommendation from Staff was to provide the buffer designation at this point, because the City doesn't have a buffer designation in the zoning regulations, but it was not well received at the Planning & Zoning level.

Councilmember Wangsness then asked if Mayor King's motion included changing the resolution to include the Mixed Use designation with Mayor King stating it did.

Councilmember Brooks stated he saw the buffer request as a zoning issue to be addressed in the zoning process. Councilmember Brooks then stated he did have a conversation with Mr. DeGrazia and Mr. DeGrazia doesn't have a problem with a buffer zone, noting currently commercial property doesn't require any buffer. Mr. Garcia stated commercial zoning requires no setback, but that is a different site development standard, rather than a reservation of property. Councilmember Brooks stated the MXU designation wouldn't really change anything, so when development is proposed for the property, he would like to see the comments by the citizens stay with this parcel, to ensure they will be addressed in the future and aren't dropped through the cracks if a zoning request or development is applied for. Councilmember Brooks then stated he didn't know what the lighting conditions are, but he would like to see the skyline stay as dark as can be. Mr. Garcia stated any development would have to adhere to the City's lighting ordinance and regulations in place at that time.

Councilmember Cook asked Mr. Garcia about business or commercial development done on the other side of the fence from the Meritage homes, having no setback requirement with Mr. Garcia stating in the underlying zoning district, there is no setback requirement, but the development would also include parking lots and wouldn't just consist of structures. Councilmember Cook stated he considered that, but noted the development could also include a building being constructed right up to the property line. Councilmember Cook then asked the City Attorneys if the Council neglected to provide for a buffer zone at this stage, and the property comes to rezoning process and the City has no provision for a buffer in the zoning process, could the Council be able to deny a zoning request, if the developer or applicant didn't provide a buffer with City Attorney Paul Loucks stating the Council is always able to deny a rezoning request. Councilmember Cook then stated he has been around to see where the City has high business uses, high traffic and lighting issues, which are the concerns residents are asking about and he thinks at this stage, the Council needs to impose a buffer, adding maybe the buffer doesn't need to be 300 ft., but that if there was a 150 ft. buffer running north and south and beyond the last existing home, it would be taking care of the concerns of our citizens and not setting in place expectations a subsequent Council or a developer might

have by there being no buffer. Councilmember Cook then stated he would like to amend the motion to include a 150 ft. buffer east to west from where they requested and an additional 150' north from the final house on the north side.

Mr. DeGrazia stated he wanted to preface remarks with the fact that San Pedro Partners doesn't own the property being discussed, adding it is part of the co-application of another person not here tonight. Mr. DeGrazia then noted the reserved open space on the subject properties in the current GDP and stated with the open space already designated, he would prefer Council not go beyond that designation because 150 ft. or 300 ft. can mean nothing in terms of distance of open space when dealing with different type of uses. Mr. DeGrazia then stated, again, it's not San Pedro Partner's property, but his point is when Council looks at the property for the zoning request, they can deny it, and asked the Council to consider adding language to the resolution requiring a buffer along the existing residential area on the west when the zoning application is submitted. Mr. DeGrazia then stated as part of the record for the approval of the resolution, it won't be lost in the cracks down the road, when the applicant comes in for the zoning request. Mr. DeGrazia then stated he thinks it will come into play, no matter what, noting the applicant will have more public input meetings, residents can bring their comments to the Planning & Zoning Commission and to the Council and Staff will be looking at the proposal. Mr. DeGrazia then stated possibly at that time, the Council will have a more sophisticated set of rules or zoning regulations in place. Mr. DeGrazia then stated he agrees there should be a buffer of some kind, but the determination of what kind could be made when the site plan is reviewed, adding there will be many chances to address a buffer zone through the zoning request process.

Mayor King stated he would not be amending his motion, adding the Council can address requirements during the zoning request process.

Councilmember Brooks agreed, stating the development could also be residential, which wouldn't need a buffer, adding why would the Council try and impose something ahead of time, when they don't know what the development will be. Councilmember Brooks then stated the Council may want to put something in the City code to address buffers between commercial and residential zoned properties for any development in the City, adding he agrees he didn't want a commercial or business building with lights shining in someone's kitchen window, but tonight he would like to vote on the original motion.

Councilmember Cook stated if a residential development is built, a buffer would not be needed and then asked Mr. DeGrazia why, if he doesn't have any objection to a buffer, he is opposing it at this point with Mr. DeGrazia stating the concerns of the buffer are not on his property, but in terms of buffering, there is a lot of zoning information on how to do it. Mr. DeGrazia then stated he didn't know what development would be on that property, adding he didn't even have a right to know, since it wasn't his property and was up to the property owner, but there are many good ways of solving the buffer issue and it should be coming up as part of the development and zoning request process since now, the issue was just general uses with land use designations. Mr. DeGrazia then stated he knows the property and the corner Councilmember Cook is concerned about has washes going through it, legislative washes called 404, and in terms of plans, some of the things he has seen Staff do shows areas as open space, noting San Pedro Partners has open space already identified on other property they have in Benson on things they did years ago.

Mayor King stated it was too early to look at buffer issues with Councilmember Wangsness agreeing. Councilmember Wangsness stated he would like to keep the properties flexible, adding the development may include something that is 150 ft. away at one point and 300 ft. at another, because it is what is manageable, once again, stating he would like to see it flexible. Mayor King then stated there was a motion and second on the floor and called for a vote. Councilmember Moncada asked for the motion to be repeated with City Clerk Vicki Vivian stating Mayor King moved to approve Resolution 33-2013 with the amendment to change the land use designation from Commercial to Mixed Use. Seconded by Councilmember Brooks. Motion passed 6-1 with Cook voting nay.

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

Councilmember Moncada moved to go into an Executive Session with Mayor and Council, the Interim City Manager, the City Attorney and the City Clerk at 8:59 p.m. Seconded by Councilmember Boyle. Motion passed 7-0.

Council reconvened at 9:40 p.m.

3. **Discussion and possible action in approving an employment contract with William Stephens for the position of City Manager**

Mayor King stated negotiations would continue.

4. **Discussion and possible direction to Staff to evaluate the performance of the present IT contractor**

Mayor King asked Interim City Manager Brad Hamilton if he had looked at how much the IT costs were over the last year with Mr. Hamilton stating he had not had an opportunity to do so since the issue was brought up the end of last week. Mayor King stated it sounded like the City was spending a lot of money and he couldn't comprehend the money being spent on IT services. Mr. Hamilton then stated he did have an RFP or RFQ he could send it to the attorneys this week. Councilmember Brooks stated an executive session was on the agenda for this item and moved to enter into an executive session. Mayor King stated the executive session was for the next item.

Councilmember Moncada moved to direct Staff to proceed with the RFP or RFQ, whichever is appropriate for IT services and bring it back to Council. Councilmember Brooks stated he would like to amend the motion, adding he had security concerns, because when he went to load his mail, he noticed on youtube that he was being watched by the City of Benson with Google and anything connected with Google contained things the City could look at, adding he didn't want that invasion. Councilmember Brooks then stated IT services is all radios, phones and everything and what he would like to suggest was to have someone professional that does big corporations and a lot of this, be a consultant and come in and tell Council what the City needs, whether it be a full-time person and what is the best way to work with what the City has, adding the City may need a separate radio person for the Police Department radios. Councilmember Moncada stated that information will come back in the RFQ, adding if it comes back and Council finds out that the money the City has spent is cheaper, they could look at it and see if hiring a full-time person is better, but by putting out an RFQ, the Council would find companies that are qualified to deal with all the issues the City has to deal with and will get a rate.

City Attorney Gary Cohen stated he would like to make sure the Council adheres to the agenda item, which is simply to evaluate the performance of the present IT contractor, adding as the attorney, he is concerned about going beyond the scope of the listed agenda item. Councilmember Moncada asked if the motion should be to direct Staff to present it on the next agenda for a possible RFP or RFQ and amended his motion to such. Amended motion seconded by Councilmember Cook.

Councilmember Brooks stated he would like to amend the motion, stating the Council should be talking about evaluating the performance of current IT contractor and by putting out an RFP, they are not doing that. Councilmember Moncada stated his motion doesn't end the discussion; he just wanted to have the Council consider putting out an RFP at the next meeting.

Mayor King stated he would also like to have Staff look at what was spent over the last year, adding it is important to find out and Council needs to know. Mayor King then stated if the City was being billed 5 times in 1 day for something it shouldn't have been billed for, the Council needs to take a look at it. Mayor

King then stated he would like to know whether it is true or not and how much the City paid and then what the Council needs to do after that.

Mr. Cohen clarified the Council request, stating he understood the Council to say as part of the evaluation of the current contractor, they would like an analysis of how much the contractor has been paid. Councilmember Brooks stated a motion was on the floor already by Councilmember Moncada to direct Staff to put it on the next agenda, adding he doesn't have a problem with that, but he would like to amend it. Councilmember Brooks then stated he thinks a consultant would be preferable to first evaluate the City's IT system, adding there are radios the current IT contractor doesn't handle and if the Council puts out an RFP for an IT company, they may not do phones or radios. Councilmember Moncada stated the RFQ would spell out what the Council expects them to do with radios, phones and IT and if they are not qualified, they wouldn't apply or if they did apply, they could be removed. Councilmember Wangness noted it would be more like a communication specialist.

Mr. Cohen stated he believed the Council was talking about 2 different things. Councilmember Moncada withdrew his motion.

Councilmember Brooks stated he was concerned, adding most of the companies he has worked for only had computer communications down for a couple of days maximum because it was critical to have information going back and forth. Councilmember Brooks then stated also, a lot of documents were lost in this process, adding he asked for a records request involving a lot of communication with Mr. Cox, and they are gone and are history. Councilmember Brooks then stated the internal documents are there, but there are some serious problems in IT services along with money. Councilmember Brooks then moved to have an investigation done on the lost emails and the money that was spent to do this, adding it is outrageous. Councilmember Brooks then stated he didn't want to say too much or badmouth people in the past, but he talked to two different entities and they both told him things were going on with the other entity. Councilmember Brooks then repeated his motion would be to direct the City Attorneys to have an investigation done on the costs that have been submitted to the City since they came on board, when RikerTek took control of the City's computers and see if there are excessive expenses and also if there's been emails or documents that have been lost in the past, and have that verified, and if they haven't been recovered, then they need to be held accountable. Councilmember Brooks stated he was really messing up his motion, then stated the investigation needs to be done on the expense this company has cost the City on the lost emails. Seconded by both Vice Mayor Sacco and Councilmember Boyle.

Councilmember Cook stated he was not opposed to that part of the amendment, adding it appears to him that if the City has an IT person and if the City has an IT issue, the Council needs to find out what the IT person does now besides computers, printers, phones and radios, not only for this fiscal year, but should see what was budgeted for this year and last year, noting he would like to go back 5 years in the budgets and would like to see information for all the parts of the City's communications for printers and all that they took care of now and how were they paid for before this, adding that information might not even have come under the IT budget, but he wanted to make sure it wasn't left out and was looked at also.

Councilmember Brooks stated his motion was made to include anything incurred from RikerTek, which has been since 2006. Mr. Cohen stated it was his understanding that Council wanted to investigate how things were done by the prior contractor in order to help evaluate the performance of the present contractor, adding if that was not correct, and if Council was talking about going back 5 years, then they were not talking about evaluating the performance of the current IT person. Councilmember Brooks stated they were. Mr. Cohen then verified the Council wanted to evaluate the way things were done by the prior IT contractor going back 5 years in order to assist in evaluating the performance of the present IT contractor with Councilmember Cook stating that is what he wants and if there was more than 1 contractor taking care of different parts, he wanted to include them also.

Mayor King then stated there was a motion and second on the floor and asked for the motion to be repeated. City Clerk Vicki Vivian stated Councilmember Brooks' motion was to direct the City Attorneys

to have an investigation done on the costs that have been submitted to the City since they came on board, when RikerTek took control of the City's computers and see if there are excessive expenses and also if there's been emails or documents that have been lost in the past, if they haven't been recovered and on the expense this company has cost the City and on the lost emails, which was seconded by both Vice Mayor Sacco and Councilmember Boyle.

Councilmember Brooks then stated Councilmember Cook was trying to add that there was another individual who was working for the City for some period of time and without saying too much hearsay, that he was doing things that may not have been correct, so the investigation needs to have that be looked at also, adding he could supply the attorneys with the name of that person if they needed him to do so. Motion passed 7-0.

**EXECUTIVE SESSION:** As per A.R.S. §38-431.03 (A)(3), Discussion or consultation for legal advice with the attorney or attorneys of the public body regarding Mr. Jim Cox allegedly violating the procurement code.

Councilmember Brooks moved to go into an Executive Session with Mayor and Council, the Interim City Manager, the City Attorney and the City Clerk at 9:54 p.m. Seconded by Councilmember Boyle. Motion passed 7-0.

Council reconvened at 10:12 p.m.

5. **Discussion and possible direction to instruct the City Attorney regarding allegations that Mr. Jim Cox violated the City's procurement code**

Councilmember Brooks moved to direct the City Attorney to look into the possible violation of the past City Manager and any violation of the City's procurement Code. Seconded by Councilmember Boyle. City Attorney Gary Cohen then stated he understood the direction is to investigate potential violations of the City's procurement code by Mr. Jim Cox with regards to the hiring of the Jackson-Lewis law firm. Councilmember Brooks then amended his motion to direct the City Attorneys to start an investigation into a possible misuse of procurement monies in regards to the Jackson-Lewis investigation. Amended motion seconded by Councilmember Boyle. Motion passed 7-0.

**DEPARTMENT REPORTS:** None

**ADJOURNMENT:**

Vice Mayor Sacco moved to adjourn at 10:14 p.m. Seconded by Councilmember Moncada. Motion passed 7-0.

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Toney D. King, Sr., Mayor

ATTEST:

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Vicki L. Vivian, CMC, City Clerk