

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Special Meeting of the City Council of the City of Benson held on the 7th day of February, 2011. I further certify that the meeting was duly called and held and that a quorum was present.

Date 3-1-11

City Clerk Vicki Vivian

**THE SPECIAL MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD FEBRUARY 7, 2011 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 6:59 p.m. with the pledge of allegiance.

ROLL CALL:

Present were: Mayor Mark M. Fenn, Vice Mayor John Lodzinski, Councilmembers Jo Deen Boncquet, David Lambert, Nick Maldonado, Lori McGoffin and Al Sacco.

EMPLOYEE RECOGNITION: None.

PROCLAMATION: None.

PUBLIC HEARING: None.

CITY MANAGER REPORT: None

NEW BUSINESS:

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, and the City Attorney and outside counsel, Litigation Attorney Jeff Murray by phone and the City Clerk at 7:00 p.m. Seconded by Councilmember Maldonado. Motion passed 7-0.

Council reconvened at 7:36 p.m.

NEW BUSINESS:

1. Discussion and possible action to direct staff in regards to Stagecoach Trails Mobile Home Court

Mayor Fenn asked City Attorney Mike Masee to give an overview of this item for those present. Mr. Masee then addressed Council stating when the City Council last met, they gave him direction to file a motion to amend the judgment from Division II of the Superior Court in Cochise County, which he filed on January 13, 2011. Mr. Masee then stated the pros and cons of such a filing were discussed, but the assumption was that the case, having been filed in Division II and having no reassignment order entered by that time, was staying in Division II and last November, the voters in Cochise County elected John Kelliher to be Judge of Division II. Mr. Masee then stated basic to that decision was the assumption there was a new judge presiding in Division II. Mr. Masee then stated in the process of doing what he needed to do to file the motion, he ordered a transcript from the court reporter to prepare for a new judge to review the proceedings that had occurred in Division II. Mr. Masee then stated he received a voicemail from the court reporter asking him to confirm if he still wanted the transcripts, since Judge Desens was keeping the case. Mr. Masee stated this was a very irregular type of notification of the retired judge staying on the case. Mr. Masee then stated in discussing this with the City Manager, he filed a motion to withdraw the motion to amend the judgment and filed a notice of appeal and was now seeking ratification of the motion to appeal which he filed on January 28, 2011. Mr. Masee then stated after he had confirmed with the court that the case was going to stay with Judge Desens, he didn't feel it made any sense to go to the same judge with a motion to amend the judgment.

Mr. Masee then stated the other issue he would like to get direction on is the ruling which included an order granting a writ of mandamus. Mr. Masee stated the writ of mandamus, if it were to be issued by the clerk and served on the Zoning Administrator, would direct him to issue the permit, adding that has not happened; there had been no writ of mandamus issued by the Clerk's office, nor has it been served to the Zoning Administrator, but instead of waiting to have it served, we should either go back to the trial judge and request a stay of enforcement of that ruling issuing the writ of mandamus or go ahead and direct the Zoning Administrator to issue the writ of mandamus, but his recommendation would be if the permit were to be issued, that it be with a reservation of rights. Mr. Masee then stated that would be to go ahead and issue the permit, but if the ruling was reversed on appeal, the City's position would be that the permit would be null and void. This would give the plaintiff their permit pending the outcome on appeal, noting if the appeal went the City's way, the permit would no longer be valid.

Mr. Masee then stated he would like to update the Council on other procedural matters, stating after filing the notice of appeal, he spoke with a staff attorney with the court of appeals in Tucson, and she indicated she had spoken to plaintiff's counsel and there was no strong objection to mediation. Mr. Masee then stated he agrees that it would be a good thing to have the case go to mediation and the staff attorney entered a procedural order that basically stayed the appeal, pending mediation. Mr. Masee then stated this keeps the City from having to go through, at this point, the time and the expense necessary, such as ordering the transcript, and do everything the party needs to do in order to prosecute an appeal. Mr. Masee then stated the staff attorney mentioned the mediation would be likely be scheduled sometime early to mid-March.

Mr. Masee then stated he would like to go back and address Judge Desens, stating he provided Council a copy of a minute entry of February 1, 2011 showing that Judge Desens is being appointed and designated to hear the issue of the application for attorney's fees currently scheduled for February 25, adding that may be rescheduled. Mr. Masee then stated what is curious about this is it purports to tell that Judge Desens is a Judge of Division II, and again, this is very irregular and doesn't make sense since there is a new Judge in Division II. Mr. Masee then stated he checked with the HR Department at the Arizona Supreme Court, since the Chief Justice of the Arizona Supreme Court is the person who appoints a Judge Pro Temp, which is like a temporary Judge of the Superior Court and as of today, there is no appointment of Steven Desens to be a Judge Pro Temp, so Steven Desens is not a Superior Court Judge, he is not a Judge Pro Temp, and Mr. Masee doesn't know how Judge Desens is looking at handling this case. Mr. Masee then stated with that in mind, he filed a notice of change of judge on Friday, which was noticed to the presiding judge and hopefully, the presiding judge will respect that and actually assign this case to a judge of the Superior Court or an appointed Superior Court Judge Pro Temp other than Steven Desens, who has not been appointed. Mr. Masee then stated he could answer any questions Council may have.

After no questions by the Council, Mayor Fenn asked if after listening to the update and overview by City Attorney Mike Masee, if there was a motion regarding the status of the appeal and the status of the permit issuance.

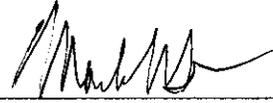
Mr. Masee then stated he would like the two issues addressed separately, adding he would like to address the ratification of the pursuit of the appeal and then would like to address the issuance of the permit. Councilmember Sacco moved to ratify the appeal. Seconded by Councilmember Lambert. Motion passed 7-0.

Mayor Fenn then asked if there was a motion regarding the status of permit. Councilmember Sacco moved to issue the permit with reservations. Seconded by Vice Mayor Lodzinski. Mayor Fenn asked if the motion was clear enough with Mr. Masee stating the point of "with reservations" was that the City, in compliance of the December 29, 2010 order, is issuing the permit, however, also in recognition of the fact that the ruling has been appealed, subject to the outcome of the appeal, the permit may be nullified. Motion then passed 6-1 with Councilmember Lambert voting nay.

DEPARTMENT REPORTS: None.

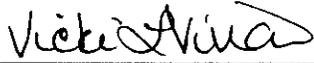
ADJOURNMENT:

Councilmember McGoffin moved to adjourn at 7:46 p.m. Seconded by Councilmember Maldonado.
Motion passed 7-0.



Mark M. Fenn, Mayor

ATTEST:



Vicki L. Vivian, CMC, City Clerk