

**THE SPECIAL MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD AUGUST 18, 2008 AT 7:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

**VICE MAYOR KING
OPENED THE MEETING AT 6:00 P.M WITH
THE PLEDGE OF ALLEGIANCE.**

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

CONSENT AGENDA:

None.

NEW BUSINESS:

- 1. Presentation of and discussion regarding the report of the investigation concerning allegations of conflicts of interest on the part of the Mayor by special counsel Mary Judge Ryan, Ryan Turchik, P.C.**

Vice Mayor King opened this item stating the Interim City Manager would like to make a statement.

Interim City Manager Glenn Nichols asked everyone present to respect one another, stating there would be no "Call to the Public", but that this was the final part of the investigation. Mr. Nichols informed those present that at the conclusion of the presentation, the Council would be able to ask questions of Ms. Ryan. Mr. Nichols then turned the item over to the City Attorney, Thomas Benavidez.

City Attorney Thomas Benavidez addressed Council stating the City engaged special counsel to conduct an outside investigation concerning allegations of conflicts of interest on the part of the Mayor. Mr. Benavidez then stated Mary Ryan was present to give Council the results of her investigation. Mr. Benavidez then introduces Mary Ryan.

Ms. Ryan of Ryan Turchik, P.C. addressed Council giving a brief history on her practice and experience. Ms. Ryan stated she would like to acknowledge Mayor and Council for taking the step to engage in this type of investigation, citing it is never easy. Ms. Ryan then stated she had prepared a report under State Statute §38-507 becomes a public record. Ms. Ryan then stated she would like to give Council a summary of the task she set out to do, a summary of the investigation that she conducted and a short summary of the allegations she looked into and some of the concerns that arose from that. Ms. Ryan stated at the end of her presentation, she would be happy to answer any questions from Council.

Ms. Ryan stated the initial request for the investigation arose out of a specific letter that is an exhibit to the report; which was a letter from two members of the Council who raised specific questions and concerns. Ms. Ryan stated that letter was the framework for the investigation, which led Ms. Ryan to look at 7 allegations. Ms. Ryan stated the role of the investigation was to attempt to get information concerning those allegations, gather the facts and then to apply the appropriate law. Ms. Ryan stated interviews were conducted with Mayor Fenn, Councilmember Dianne Tipton, Councilmember Kathy Suagee, City Manager Martin Roush, Public Works Director/City Engineer Brad Hamilton, Building Official Mike Lockett, Building Inspector Jeff Smith, City Clerk Vicki Vivian and Finance Director Jim Cox.

Ms. Ryan explained that conflict of interest law is a very difficult area to make determinations. Ms. Ryan then summarized her report going over each allegation and each finding. Ms. Ryan stated her report was supported by 50 different exhibits, referring specifically to e-mails and documents and attached those exhibits in an effort to allow Council to see not only the summary within the report, but the supporting documentation. Ms. Ryan then stated she was available to answer questions or to provide clarification, if she could.

Vice Mayor King then opened the item for questions. Councilmember Tipton verified that Ms. Ryan's report determined there were serious concerns, with Ms. Ryan stating that was correct.

Councilmember Sacco then stated Ms. Ryan had stated she had serious concerns on 3 of the allegations, but that she had not concluded there had been a conflict of interest and that that determination would have to be done in the courts. Ms. Ryan stated the penalty for conflict of interest in the State of Arizona, is a criminal penalty; therefore Councilmember Sacco was correct in stating that would have to be done through the criminal justice system. Councilmember Sacco then verified there were no charges being filed, with Ms. Ryan stating he was correct. Ms. Ryan then stated her role was to complete an investigation of the allegations and her role was not to be filing criminal charges. Councilmember Sacco then asked if the interviews were conducted under oath or if there were affidavits signed by the individuals interviewed or if there were any recordings of the interviews with Ms. Ryan indicating the interviews were not conducted under oath, there were no affidavits and no recordings. Ms. Ryan then stated if the investigation was a criminal investigation, the interviews would have been conducted under oaths and affidavits would have been prepared; citing that was not the nature of the investigation she conducted. Councilmember Sacco then asked if her conclusions were based on the interviews, with Ms. Ryan stating her conclusions were based on the interviews and documentation.

Councilmember Suagee thanked Ms. Ryan and then stated that the issue on Prickly Pear probably didn't violate a conflict of interest, but that it didn't mean Mayor Fenn didn't break City laws by not obtaining building permits before finishing work on his building. Ms. Ryan stated that she understood there was notification to Mayor Fenn concerning the violations regarding the lack of building permits. Councilmember Suagee asked if it was normal for 5 City employees, in a City the size of Benson, to feel so intimidated by a public official that they would go to the lengths of making dual signature letters and filing letters with the Attorney General. Ms. Ryan stated that was a question that was impossible to answer. Councilmember Suagee then asked if the employees that did not feel intimidated by the Mayor had any responsibilities in the areas of building and rezoning requests. Ms. Ryan stated it appeared that some of the higher level decision makers were the individuals that felt more intimidated. Councilmember Suagee then asked in Ms. Ryan's opinion, would be a good process for vetting whether a termination has any connection to an employee's dismissal. Ms. Ryan stated her recommendation would always be to very carefully consider all aspects of any disciplinary or adverse action that is taken against an employee. Councilmember Suagee then stated her final question was that the Attorney General is keeping abreast of this and where it goes from here. Ms. Ryan stated her understanding was that there had been notification to the Attorney General's office but that she had had no contact with the Attorney General's office.

Councilmember Lodzinski asked about speculative interests, with Ms. Ryan stating the courts look very carefully at the interest the individual has and it is very difficult to determine speculative or a contingent interest or a direct substantial interest.

Mayor Fenn then thanked Ms. Ryan for her presentation. Mayor Fenn then asked above the determination of a speculative interest, with Ms. Ryan stating again it was a very difficult area to make determinations. Mayor Fenn then stated he felt he had been careful over the years to abstain from voting in any issue he felt he had any interest in, but that Ms. Ryan seemed to take it

further and asked what her interpretation was concerning his attendance as an interested observer at informational meetings, where no decisions were made. Ms. Ryan stated the statute looks beyond the formal making of a decision, stating it looked at meetings and the process coming up to and in preparation of decisions. Ms. Ryan stated it may be the case, that in some of the meetings she looked at, lots of people were there and if it was just an informational meeting, Mayor Fenn may be correct and it may be a distinction. Ms. Ryan then stated when a public official is participating in meetings and discussion in preparation for decisions the City Council will ultimately make, if there is a substantial interest present, then it is not simply the participation in the final vote, but in the processes that revolve around the decision as well.

Mayor Fenn then asked about the exhibits that indicated him as an individual and questioned addressing a member of staff as a private citizen and yet being seen as the Mayor. Mayor Fenn felt there should have been distinction in the report as to when he was acting as an individual and when he was acting as the Mayor. Ms. Ryan stated that was an area that was very difficult and that as public officials, they also have the ability to have and run businesses, but that the concern in this situation was that access to information or access to staff was different because he was the Mayor. Ms. Ryan then stated the question was if other developers in town had simply sent e-mails to members of staff, would they have received the same response as Mayor Fenn would have. Ms. Ryan stated, again, this was very difficult. Mayor Fenn then stated since this was the first opportunity to see how some of the specific allegations were placed, that he would reserve the right to address them in written fashion. Mayor Fenn then stated he felt there were some omissions, mistakes and mis-statements in the report that he could back up with documentation. Mayor Fenn then stated an example was his attendance at a meeting, which never occurred. Mayor Fenn stated other examples were meetings that he attended being informational meetings only, records showing a distinction between his acting as a Mayor and an individual, some timelines that he can clarify with documentation, that don't seem to add up. Mayor Fenn also stated some words, such as pressure, intimidation, anger, hostility, fear of losing jobs, pushing, that were statements that were made by those individuals, that were not necessarily facts, but statements that they made. Ms. Ryan confirmed that, saying she was careful in stating that in the report. Mayor Fenn verified that Ms. Ryan also stated those that said they did not feel intimidated. Mayor Fenn then stated his first response was that he would reserve the opportunity to make a formal response in writing with documentation to the concerns raised in the report.

Ms. Ryan then stated she would like to reiterate that the Mayor and Council were provided her report earlier in the day and that it was a lot of information to deal with in a short period of time. Ms. Ryan stated the initial plan was simply to present the report at the meeting and that it was then determined Council should see the report before the meeting, with the hope that by having the report and exhibits available, Ms. Ryan could make her presentation and then have the opportunity to answer questions and clarify, as Council needed.

Councilmember Tipton asked Ms. Ryan if it was her opinion that there was anything irregular, unusual or anything with the letter that was the beginning of the request for an investigation or if there was anything improper by the Councilmembers bringing this issue forward. Ms. Ryan stated it was not uncommon in her experience and that the statute makes provision for such a request. Ms. Ryan stated pursuant to the statute, the request for the investigation can, itself be maintained as confidential, but also pursuant to the statute, the report or opinion made, becomes public record.

Councilmember Suagee stated under item 6, the allegation that Mayor Fenn has an unfair advantage as the Mayor getting his projects done before other developers' projects, the timeline for a rezoning request was addressed and that it was suspicious that the request took 53 days when the application usually takes 6 months. Ms. Ryan stated it was noted in the investigation that staff had recommended that the meeting where the rezoning would be on the Council agenda would be later. Ms. Ryan stated the rezoning request was expedited because of the close of

escrow, at the request of Mr. Fenn. Mayor Fenn clarified the request was made in the capacity of an individual.

Councilmember Sacco verified with Ms. Ryan that the report and its exhibits are public record, with Ms. Ryan stating Councilmember Sacco was correct in his understanding that the opinion or report, with all exhibits is public record.

Councilmember Tipton asked Ms. Ryan if she had, at any time, requested the report be marked confidential, with Ms. Ryan indicating she had not, apologizing for any confusion.

Vice Mayor King thanked Ms. Ryan for what she had done and her presentation. Vice Mayor King then thanked City Attorney Thomas Benavidez also.

COUNCIL DIRECTIVES:

None.

ADJOURNMENT:

Councilmember McGoffin moved to adjourn at 6:50 p.m. Seconded by Councilmember Tipton. Motion passed 7-0.

Mark M. Fenn, Mayor

ATTEST:

Vicki L. Vivian, City Clerk