City of Benson
City Council Communication

Regular Meeting **January 12, 2015**

To: Mayor and Council Agenda Item # 6

From: Bradley J. Hamilton, P.E. Director of Public Works/City Engineer

Subject:

Discussion and possible action on Ordinance 574 amending the City of Benson Zoning Regulations, Ordinance No. 243, as amended to: add a new Classification for replacement of Grand-Fathered structures permitted within B-1 Zoning Districts and establish the requirements for structures within that Classification

Discussion:

Mr. Paul Lotsof, owner and operator of the CAVE 97.7 radio station, located at 156 W. Fifth Street, has submitted an application for text amendment to the adopted City of Benson Zoning Regulations. A text amendment means that Mr. Lotsof is NOT proposing to rezone his property (or any property), but is instead proposing to change the permitted uses and site standards of the existing B-1 zoning district, under which his property is governed.

Background:

In May 1980, Mr. Lotsof submitted information to the Planning and Zoning Commission on three potential sites upon which he could locate a radio station. As a radio station is not a specifically permitted use under the City of Benson Zoning Regulations, the Planning and Zoning Commission agreed to consider granting a variance for any of the three possible sites, the best of which would be determined by "testing." The minutes reflect that a variance granted, on any of the three properties, was to be reviewed and renewed after 1 year. It does not appear that any review or renewal occurred.

On January 5, 1981, Mr. Lotsof returned to the Planning and Zoning Commission to request a variance for site #1, formerly addressed as 110 W. Fifth Street, now addressed as 156 W. Fifth Street. The variance was approved for Mr. Lotsof to operate a radio broadcasting station with a note that he would be operating out of a "mobile office" that would be skirted and landscaped to blend with the surrounding area. The radio station has been continually broadcasting from that site, from a 1964 mobile home installed sometime in 1981.

Since 2009, Mr. Lotsof has been in discussions with the City's Building Department regarding the requirements for a commercial structure and specifically the requirements and process to use a HUD residential manufactured home structure for a commercial purpose. At least since 2011, the state's Department of Fire, Building and Life Safety - Office of Manufactured Housing has also been involved with this discussion. Copies of correspondence between the parties dating back from 2009 are available upon request.

Summary of the Proposed Zoning Regulations Text Amendment and Attachments

The applicant, Mr. Lotsof, proposes to add text to the existing zoning regulations.

Specifically, in Section 8 of the Zoning Regulations, Mr. Lotsof wishes to increase the permitted uses of the B-1 district by adding the term "studio buildings" which he narrowly defines in regard to past duration of operation and type of construction (both existing and future). (See §1 of the proposed amendment)

Mr. Lotsof further proposes to add text to Section 14 of the Zoning Regulations to add the term "studio" to the list of uses requiring off-street parking, then requiring zero parking spaces for that specific use. (See §2 of the proposed amendment)

In Section 14 of the Zoning Regulations, Mr. Lotsof proposes to add the term "Studio" to the Schedule of Required Off-Street Parking and then require zero parking spaces. (See §2 of the proposed amendment)

Lastly, Mr. Lotsof proposes that conflicting provisions be resolved by the City's not requiring the removal of the HUD identification plate. (See §3 of the proposed amendment) As text intended to clarify Mr. Lotsof's proposed amendment, §3 would necessarily be added to the Zoning Regulations, most likely in the same location as the lengthy paragraphs that make up the proposed paragraphs of §1.

Paragraph §4 of the proposed amendment is <u>not</u> text to be added to the Zoning Regulations, but is simply a listing of what Mr. Lotsof believes are facts that support his proposal.*

**Ordinances written in the legal format the City uses also include supporting statements such as these. Therefore, if the ordinance is redrafted to match the City's format, these statements will be included but they will be located in the introduction which makes it easier to distinguish which statements are proposed text changes {§1,2,3} and which statements vocalize support for the change {§4}.*

Mr. Lotsof also submitted attachments to further discuss his position in support of the proposed text amendments.

Attachment 1 summarizes Mr. Lotsof's reasons for the proposed amendment, specifically his objection to being classified as an "office" and objection to the adopted Building Code's "business" classification. Mr. Lotsof states his opinion that the proposed use "studio building" is more appropriate to how his business functions, the number of people likely to be present, and the construction standards that he should be held to.

Attachment 2 summarizes Mr. Lotsof's opinion that the goals of the General Development Plan cannot be met by private development if the requirements for improvement and upgrade to a site are prohibitively expensive.

<u>Analysis of the Proposed Text Amendment</u>

Attachment 1:
Discussion relating to the type and classification of permitted uses within the Zoning Regulations is appropriate at both the Planning and Zoning Commission level as well as at the City Council level. Discussion of Building Code classifications, potential Occupant Loads and how those issues relate to uses defined with the Zoning Regulations may also be beneficial. However, recommending changes to the Building Code, such as changes to Building Code classification, or the way Building Code classifications are interpreted or applied, are outside the scope and authority of the Planning and Zoning Commission, and are instead under the scope and authority of the Building Department. Therefore, at the City Council level, it would be prudent to consult with the Building Department, rather than the Planning Department, on these specific issues.

Attachment 2:
Mr. Lotsof verbalizes a commonly heard refrain that improvement is desired but improvement to the legally adopted standard (be it zoning regulation standard or building code standard) is too expensive. The Planning staff and the Planning and Zoning Commission have the authority to consider amending the Zoning Regulations regarding site development standards and requirements in hopes of making site improvements more financial feasible. However, neither the Planning staff nor the Planning and Zoning Commission has authority to propose alterations to the adopted building code standards. Therefore, at the City Council level, it would be prudent to consult with the Building Department, rather than the Planning Department, on the specific construction issues mentioned within the proposal.

§1 of the proposed amendment: Amendment to Section 8- B-1 Neighborhood Business District
The proposed amendment asks for the term "studio buildings" to be added to the list of permitted uses. The proposal then narrowly defines the term "studio buildings" to mean structures that house only programming and broadcast operations.

Staff agrees that the function of a small-scale programming and broadcast use is appropriate to the B-1 district, but objects to the proposed term "studio building" on the grounds that the word "studio" also connotes structures that house fine art operations, such as dance studios, photography studios and art studios. Staff recommends the term "broadcast studio", as defined by A Planner's Dictionary (see below), be considered by the City Council as an appropriate use for the B-1 district.

Broadcast Studio:
1) Commercial and public communications uses including radio and television broadcasting and receiving stations and studios with facilities entirely within buildings.

2) An establishment containing one or more broadcasting studio for over-the-air, cable or satellite delivery of radio or television programs, or studios for the audio or video recording or filming of musical performances, radio or television programs or motion pictures. This term does NOT include a transmission tower.

§1 of the proposed amendment: Permitted Building and Uses Allowed…
This section attempts to define the site standards that will govern the proposed "studio building" (recommended to be termed "broadcast studio") use.

First Paragraph: Notwithstanding any provision in any ordinance of this City…
If the proposed text amendment is adopted as written, the applicability of the amendment is moot for most B-1 district parcels for 15 or more years. In order for a property owner to benefit from the proposed use, the property owner must FIRST wait at least 15 years to be applicable. THEN the property owner must prove to have met additional qualifications within that 15 year time frame (continuously operate only 1 type of business-programming and broadcast studio, in only one type of structure-factory built). The practical applicability of the proposed language results in only one parcel benefitting from the proposed text amendment.
The paragraph also proposes to legalize the placement of a HUD labeled manufactured home as a replacement for the existing structure. HUD labeled manufactured homes are already allowed to be placed in the B-1 district. However, by state and federal law, HUD labeled manufactured home structures are ONLY permitted to be used for single family residential purposes. Therefore, allowing a HUD labeled manufactured home to be used as a commercial facility is beyond the authority of the City to allow.*

** Though HUD labeled manufactured homes are intended solely for single family residential use, the State of Arizona Department of Fire, Building and Life Safety - Office of Manufactured Housing does provide and allow for a manufactured home to be modified into a commercial structure. This process is governed by the Office of Manufactured Housing and requires removing the HUD identification plate from the structure. Once the HUD identification plate is removed, the structure is no longer certified as a HUD manufactured home. Therefore, structure is considered just a building, like any other building, and comes under the jurisdiction of the local building department to meet any local commercial construction requirements.*

The clause "…built to … (HUD Code) shall preempt any more stringent, additional, inconsistent or contrary requirements…" is outside the scope and intent of Planning functions as the wording addresses construction elements. This specific provision should be addressed by the Building Department.

Second paragraph: Such structures and their foundations shall be installed…
This paragraph addresses construction elements, specifically foundation construction and accessibility provisions. Construction elements, including foundation construction and accessibility provisions, are outside the scope and intent of the Planning functions and should be addressed by the Building Department.

Note: Construction-related accessibility provisions are governed by the federal Americans with Disabilities Act (ADA). Therefore, even though the applicant explicitly notes that he will follow any ADA requirements, the following of ADA is presumed as the City has no authority to waive ADA requirements. ADA construction, as with all construction elements, is under the authority of the Building Department.

§2 of the proposed amendment: Amending Section 14- Off-Street Parking & Loading Requirements
Because the proposed amendment seeks to increase the permitted uses of the B-1 Neighborhood Business district by adding "studio buildings" (or whatever term the City Council recommends) to the list of permitted uses, the applicant recognizes that the proposed use should consider site development standards. In particular, as the City of Benson Zoning Regulations have specific off-street parking requirements for the various uses enumerated within the zoning districts, the applicant proposes to add the term "studio" to the list of existing uses having parking requirements. Upon listing the "studio" use in the Schedule of Required Off-Street Parking (Section 12, page 70 of the Zoning Regulations), the applicant then proposes that zero off-street parking spaces be required.

Staff agrees that if a new use is permitted within a zoning district, that the new use should warrant specific consideration on the topic of off-street parking. However, staff disagrees with the proposed requirement of zero parking spaces.

Firstly, because not every possible use can be enumerated in the Zoning Regulations, phrases such as "and the like" or "most similar" are used to encompass potential uses that are similar to a permitted or listed use, but not explicitly named. In proposing to add the generic term "studio" to the Schedule of Required Off-Street Parking, there is the possibility that other studio-type uses (dance, art, photography) will fall under the category. In proposing that NO parking spaces be required, none of those potential uses will be required to provide off-street parking either. Additionally, should future programming and broadcast studios, the type of studio most functionally similar to applicant's existing use, locate in Benson, they would not be required to provide off-street parking either.

Not requiring off-street parking also seems to confer special privilege on the "studio building"/ "broadcast studio" proposed use. All other uses within the City of Benson are required to provide some number off-street parking spaces. City Council should consider whether there are specific and persuasive reasons why this particular use should be granted a waiver from a common site development standard that other uses are not granted. City Council should also bear in mind that municipalities require off-street parking for multiple reasons including street visibility and maintaining a uniform appearance.

§3 of the proposed amendment: Inapplicability of Conflicting Provisions
If adopted as written, the proposed §3 text
1) contains wording that would place the City of Benson in direct conflict with a state agency and
2) references a portion of the Zoning Regulation that are is longer applicable.

Firstly, the proposed amendment states "…removal of HUD identification plates (HUD labels) shall not be required." This phrase is in direct opposition to the State law which requires that HUD labels be removed when/if a manufactured home is no longer used for single family residential purposes. As state authority supersedes municipal authority, the City cannot knowingly permit the HUD identification plate to remain attached to a manufactured home used for commercial purposes.

Secondly, the reference to §16-7 is irrelevant because Section 16 of the City of Benson Zoning Regulations, including §16-7, was ruled invalid by the Cochise County Superior Court in August 2010.

§4 of the proposed amendment: Philosophy for Amendments
As noted above in the <u>Summary of the Proposed Zoning Regulations Text Amendment and Attachments,</u> the text included in §4 is not text to be amended into the Zoning Regulations, but is rather a list of points that the applicant believes support the proposal.

Statement (a):
While staff cannot speak for City Council, staff can presume that City Council does appoint value to the presence of a local radio station. On May 12, 2014, Councilman Ron Brooks placed an item on the City Council agenda to recognize CAVE 97.7 for 30 years of service. At this time, there is no record of other businesses being recognized for longevity.

Statement (b):
This statement is contradictory as the sole intent of the proposal is to increase the permitted uses of the B-1 district by formally adding a term related to programming and broadcast facility uses. It is true that adding the proposed use does not immediately change or increase what is physical located and operating in the B-1 district.

Statement (c):
Staff cannot confirm nor deny this statement as staff has not investigated applicant's existing use to determine its traffic volume and compare it to other "office" uses.

Statement (d):
This provision refers to a former state law that is no longer in effect. Additionally, the law cited §11-830(A) applied only to counties and so was not applicable to municipalities even when it was in effect.

Attachments

- Ordinance for the proposed Zoning Regulations text amendment, submitted by Mr. Paul Lotsof
- Attachment 1: The Reasons for the Proposed Amendment, submitted by Mr. Paul Lotsof
- Attachment 2: The Proposed Amendment Reflects the Objectives of the General Development Plan, submitted by Mr. Paul Lotsof
- Map delineating B-1 Zoning district
- Citizen Review sign in sheet and notes (October 29, 2014)
- Planning and Zoning Commission public hearing and minutes (December 2, 2014)

Attachments Available Upon Request

- 1980-1981 Planning and Zoning Commission minutes regarding a variance approval of a radio station
- 2009-2014 communications between Mr. Lotsof, the Office of Manufactured Housing and City staff
- February 24, 2014 Call of the Public in which Mr. Lotsof addresses City Council regarding the condition of his facility
- Minutes of the May 12, 2014 City Council meeting in which the CAVE 97.7 is recognized for 30 years of operation and in which Mr. Lotsof addresses City Council regarding the condition of his facility
- Minutes of the October 13, 2014 City Council meeting in which Mr. Lotsof addresses City Council regarding his desire for the seated Council to hear his zoning amendment prior to the new Council being seated
- December 8, 2014 Call to the Public in which Mr. Lotsof addresses City Council regarding his desire for the seated Council to hear his zoning amendment prior to January 2015.

Recommendations

The Planning and Zoning Commission recommends that:
Mayor and Council deny the proposed zoning regulations text amendment as written.

The Planning and Zoning Commission did not make any further recommendations.

Staff recommends that:
Mayor and Council deny the amendment as written.

The term "broadcast studio" be added to the list of permitted use in Section 8- B-1 Neighborhood Business District. That the term "broadcast studio" be either added to the uses enumerated in letter (c) or added as a new use letter (n).

That a definition of the term broadcast studio, in line with and similar to the definitions provided by A Planner's Dictionary, be added to Section 1- Definitions.

That both paragraphs of §1: Permitted Building and Uses Allowed… be stricken and removed from consideration because:

1) the operation and construction conditions of the 15 year stipulation are impractical and non-beneficial for the majority of property owners of the B-1 district and are only relevant to one parcel within the entire district for at least 15 years.

2) an amendment to the Zoning Regulations via the Planning Department is an inappropriate means to address the applicant's construction-related requests regarding

(a) adopted building code standards and requirements and

(b) the allowance the use of HUD labeled manufactured homes contrary to Federal or State law.

That the term "studio" be added to Section 14 under the Schedule of Required Parking with the understanding that the term may reference both programming and broadcast studios such as the applicant's as well as fine art studios.

That the term "studio" be assigned a minimum number of required parking spaces, a number greater than zero. That the minimum number of required parking spaces be calculated based on the size of the individual structure to account for the potential variation in studio size in the form of 1 parking space required per *X* square feet.

That §3 Inapplicability of Conflicting Provisions clause be stricken because it:

1) conflicts with state requirements regarding the removal of the HUD identification plate and
2) references a voided chapter of the City of Benson Zoning Regulations.

<u>Recommendation Summary:</u>

- The text amendment be denied as written
- That a term for broadcast studio-type facilities be defined (Section 1) and added to the list of permitted uses for the B-1 district (Section 8)
- That a means of calculating off-street parking be determined and added to the Schedule of Required Parking (Section 14)

Staff Recommendation:

Staff recommends sustaining the Planning & Zoning Commission's recommendation

ORDINANCE 574

AN ORDINANCE AMENDING THE CITY OF BENSON ZONING REGULATIONS, ORDINANCE NO. 243, AS AMENDED, TO: ADD A NEW CLASSIFICATION FOR REPLACEMENT OF GRAND-FATHERED STRUCTURES PERMITTED WITHIN B-1 ZONING DISTRICTS AND ESTABLISH THE REQUIREMENTS FOR STRUCTURES WITHIN THAT CLASSIFICATION

WHEREAS, the Council has determined that Benson's having its own radio station with a studio centrally located in the City itself is of substantial value to the community;

WHEREAS, the Council has determined that the provisions of this Ordinance do not increase or decrease permitted uses;

WHEREAS, the Council has determined the ratio of traffic volume to floor space typically experienced at office buildings is greater than the ratio experienced at Studio Buildings, as this term is defined at §1; and

WHEREAS, the Council has determined the following provision of former State law, §11-830(A), properly expresses the attitude of the Council toward the adoption of this Ordinance:

Nothing contained in any ordinance authorized by this chapter shall:

Affect existing uses of property or the right to its continued use of the reasonable repair or alteration thereof for the purpose for which used at the time the ordinance affecting the property takes effect.

NOW, THEREFORE BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BENSON, ARIZONA, as follows:

<u>§1. Amendment to SECTION EIGHT- B-1 NEIGHBORHOOD BUSINESS DISTRICT</u>

To the list of uses and structures within any Class B-1 Business District the following provisions are added.

(n) Studio Buildings, meaning structures for the production of original programming of news and entertainment, recording of voice and music, performances without audiences of skits to be broadcast electronically, mixing of sound to enhance its entertainment potential, and preparing advertisements for broadcast over the airwaves and via microwave link or satellite.

<u>Permitted Buildings and Uses Allowed Pursuant to Sub-Section (n):</u>
Notwithstanding any provision in any ordinance of this City to the contrary, where a structure defined herein as a "Studio Building" has for the fifteen years most recently preceding an application for a building permit, or a longer period of time, been situated upon the same parcel of land within a Class B-1 Business District, and has been used continuously over the same period of time as a "Studio Building," and said structure is a pre-fabricated or Factory-Built Structure, the structure may be replaced with a newer and superior pre-fabricated or Factory-Built Structure, built to the Manufactured Home Construction and Safety Standards (HUD Code), the provisions of

which shall preempt any more stringent, additional, inconsistent or contrary requirements, notwithstanding the non-residential use and any non-structural interior modifications such as sound-proofing, drywall relocation and installation of double-pane windows.

Such structures and their foundations shall be installed in accordance with the manufacturer's instructions, HUD code Chapter 5, or as determined by a competent designer. The foundation shall be sufficient safely to support the load imposed, as determined from the character of the soil and the standards for such manufactured homes. The foundation may consist of columns or piers. Where a site has an existing manufactured building that is to be replaced with a newer and superior manufactured building, the existing foundation, if in good condition, may be used provided it is expanded if necessary using like material and the same design, type of construction and specifications as the existing foundation, to accommodate the entire replacement building. Accessibility for disabled persons shall be governed by federal law.

§2. Amendment to SECTION FOURTEEN- OFF STREET PARKING AND LOADING REQUIREMENT

To the Schedule of Required Parking the following provision is added:

.25	Studios	None

§3. INAPPLICABILITY OF CONFLICTING PROVISIONS

(A) Being inapplicable to B-1 zoning district, to the extent it is inconsistent with §1, above, the following provision is inapplicable to buildings qualifying under §1, above, and the removal of the HUD identification plate (HUD Labels) shall not be required:

§16-7 Prohibited Uses
Only Manufactured Homes Bearing the United States Department of Housing and Urban Development identification plate will be permitted to be installed within the City.

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, this 12th day of January, 2015.

_____
TONEY D. KING, SR., Mayor

ATTEST:

_____
VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:

_____
MESCH, CLARK & ROTHSCHILD, P.C.
by GARY J. COHEN
City's Attorney

STEREO 97, INC.
P.O. Box 18899
Tucson, Arizona 85731
(520) 290-9797
studio: 586-9797

August 16, 2014

Vicki Vivian
City Clerk
City of Benson
Box 2223
Benson, AZ 85602

Dear Ms Vivian:

Enclosed herewith please find an application to amend the city's zoning ordinance.

Please convey this application to the person who is acting as the Zoning Administrator.

I'm enclosing the required filing fee in the form of a check for $50.

Please also send me either a file stamped application form or some other form of confirmation that this application has been received. I'm enclosing an extra copy of the form along with a stamped envelope.

Sincerely,

Paul S. Lotsof
Station Manager

Enclosures

STEREO 97, INC.
P.O. BOX 18899
TUCSON, AZ 85731

3844

91-527/1221 1894
6678797256

August 16, 2014
Date

Pay to the Order of City of Benson $ 50.00

Fifty**********

Dollars

Security Features Details on Back.

WELLS FARGO
Wells Fargo Bank, N.A.
Arizona
wellsfargo.com

For filing fee

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Box 18899, Tucson, Arizona 85731

Stereo 97, Inc.
Box 18899
Tucson, AZ 85731

Benson
Arizona Founded in 1880

Application for Zoning Regulations Text Amendment

Applicant Name: Stereo 97, Inc. (CAVE-FM)

Applicant Address: 156 West Fifth Street, Benson, Arizona

Mailing Address: Box 18899, Tucson, Arizona 85731

Applicant Telephone
& Email: 290-9797; CAVE@gainbroadband.com

Please state the specific section, subsection, and paragraph of the City of Benson Zoning Regulations for which amendment is sought.

1. §8 B-1 District - Adds classification (n), including definition and detailed provisions for structures qualifying for classification (n).
2. §14 Parking Requirements - Adds provision .25 - Parking for new classification (n).
3. §16 - 7 HUD Specifications - Excludes structures within classification (n) from effect, if any, of §16 - 7.

Does the proposed amendment:

☒ add text to Zoning Regulations
☐ delete text from the Zoning Regulations
☐ revise existing text in the Zoning Regulations

Please attach a separate sheet with the proposed text amendment. If proposing to revise existing text, please submit the proposed amendment with "track changes" visible.

Please attach a separate sheet describing the reason(s) for the proposed text amendment.

Please attach a separate sheet describing how the proposed zoning amendment reflects the goals and policies of the General Development Plan.

Paul S. Lotsof — August 16, 2014

Signature of Applicant Paul S. Lotsof for Stereo 97, Inc. — Date

Benson
Arizona Founded in 1880

Application for Zoning Regulations Text Amendment

Applicant Name: Stereo 97, Inc. (CAVE-FM)

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☐ revise existing text in the Zoning Regulations

Please attach a separate sheet with the proposed text amendment. If proposing to revise existing text, please submit the proposed amendment with "track changes" visible.

Please attach a separate sheet describing the reason(s) for the proposed text amendment.

Please attach a separate sheet describing how the proposed zoning amendment reflects the goals and policies of the General Development Plan.

Paul S. Lotsof — August 16, 2014

Signature of Applicant Paul S. Lotsof
for Stereo 97, Inc.

Date

ATTACHMENT 1

THE REASONS FOR THE PROPOSED AMENDMENT

The present ordinance provides a minimal number of classifications of uses and calls for uses that do not fall within the denominated classifications to be placed within the closest denominated classification. The use in question is a studio where a very minimal number of persons are generally present. This use is simply not close to any of the designated use classifications. It is for that reason quite arbitrary to assign this use any of these designated classifications. The notion has been presented that the closest classification is "office," a classification that clearly is intended to embrace uses that have a mean Occupant Load much greater than the use in question. The present proposal would establish a new, more precise classification designated as classification (n), for radio studios.

The present ordinance, with its limited classifications, none of which really fits the present use, together with the International Building Code's arbitrary lumping together into one large classification called "Business" all commercial use structures having occupancy loads of fewer than 50 persons, is on its face arbitrary, for which reason giving literal effect to it without providing for departure in appropriate circumstances, would be legally unsound. Due process is violated by pigeonholing that places a use in a unfairly restrictive classification. It requires a fair hearing resulting in relief from "pigeonholing."

How overly broad the classification "office" would be if it included studios can be appreciated by noting the overly broad classification would include such uses as dentists offices, physicians' offices, a post office, a motor vehicle showroom and a dry cleaning and laundry pick-up, which examples are taken from the 2006 IBC.

ATTACHMENT 2

THE PROPOSED AMENDMENT REFLECTS THE OBJECTIVES OF THE GENERAL DEVELOPMENT PLAN

The Benson General Development Plan is extremely pro-business. It specifically endorses measures to enhance the City's diversity in economic and employment opportunities and to foster an environment that makes the City attractive to new employers and businesses while remaining faithful to its historic and natural assets. The General Development Plan calls for long-term measures that will "encourage land use balance," classifying such measures as "Required Activity," but delegating the responsibility for completing such measures to "private development." Private development will not be feasible in the face of requirements that render upgrading prohibitively expensive. The net result of having harsh rules that actually in the long run prevent replacement of decrepit structures is opposite in effect from the philosophy expressed in the General Development Plan. The proposed measure ameliorates the adverse effect of harsh building standards and thereby fosters the objectives of the General Development Plan.

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF BENSON, ARIZONA, AMENDING THE ZONING REGULATIONS, ORDINANCE NO. 243, AS AMENDED, TO: ADD A NEW CLASSIFICATION FOR REPLACEMENT OF GRAND-FATHERED STRUCTURES PERMITTED WITHIN B-1 ZONING DISTRICTS AND ESTABLISH THE REQUIREMENTS FOR STRUCTURES WITHIN THAT CLASSIFICATION.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BENSON, COCHISE COUNTY, ARIZONA AS FOLLOWS:

§1. *Amendment to SECTION EIGHT - B-1 NEIGHBORHOOD BUSINESS DISTRICT*

To the list of uses and structures within any Class B-1 Business District the following provisions are added:

(n) Studio Buildings, meaning structures used for the production of original programming of news and entertainment, recording of voice and music, performances without audiences of skits to be broadcast electronically, mixing of sound to enhance its entertainment potential, and preparing advertisements for broadcast over the airwaves and via microwave link or satellite.

Permitted Buildings and Uses Allowed Pursuant to Sub-Section (n):

Notwithstanding any provision in any ordinance of this City to the contrary, where a structure defined herein as a "Studio Building" has for the fifteen years most recently preceding an application for a building permit, or a longer period of time, been situated upon the same parcel of land within a Class B-1 Business District, and has been used continuously over the same period of time as a "Studio Building," and said structure is a pre-fabricated or Factory-Built Structure, the structure may be replaced with a newer and superior pre-fabricated or Factory-Built Structure, built to the Manufactured Home Construction and Safety Standards (HUD Code), the provisions of which shall preempt any more stringent, additional, inconsistent or contrary requirements, notwithstanding the non-residential use and any non-structural interior modifications such as sound-proofing, drywall relocation and installation of double-pane windows.

Such structures and their foundations shall be installed in accordance with the manufacturer's instructions, HUD Code Chapter 5, or as determined by

a competent designer. The foundation shall be sufficient safely to support the load imposed, as determined from the character of the soil and the standards for such manufactured homes. The foundation may consist of columns or piers. Where a site has an existing manufactured building that is to be replaced with a newer and superior manufactured building, the existing foundation, if in good condition, may be used provided it is expanded if necessary using like material and the same design, type of construction and specifications as the existing foundation, to accommodate the entire replacement building. Accessibility for disabled persons shall be governed by federal law.

§2. *Amendment to SECTION FOURTEEN - OFF-STREET PARKING AND LOADING REQUIREMENTS*

To the Schedule of Required Parking the following provision is added:

.25	Studios	None

§3. *INAPPLICABILITY OF CONFLICTING PROVISIONS*

(A) Being inapplicable to B-1 zoning district, to the extent it is inconsistent with §1, above, the following provision is inapplicable to buildings qualifying under §1, above, and removal of HUD identification plates (HUD Labels) shall not be required:

§16 - 7 Prohibited Uses

Only Manufactured Homes Bearing the United States Department of Housing and Urban Development identification plate will be permitted to be installed within the City.

§4. *PURPOSE: PHILOSOPHY FOR AMENDMENTS*

The Council has determined:

(a) that Benson's having its own radio station with a studio centrally located in the City itself is of substantial value to the community;

(b) that the provisions of this Ordinance do not increase or decrease permitted uses;

(c) The ratio of traffic volume to floor space typically experienced at office buildings is greater than the ratio experienced at Studio Buildings, as this term is defined at §1, above; and

(d) The following provision of former State law, §11-830(A), properly expresses the attitude of the Council toward the adoption of this Ordinance:

> Nothing contained in any ordinance authorized by this chapter shall:
>
> Affect existing uses of property or the right to its continued use or the reasonable repair or alteration thereof for the purpose for which used at the time the ordinance affecting the property takes effect.

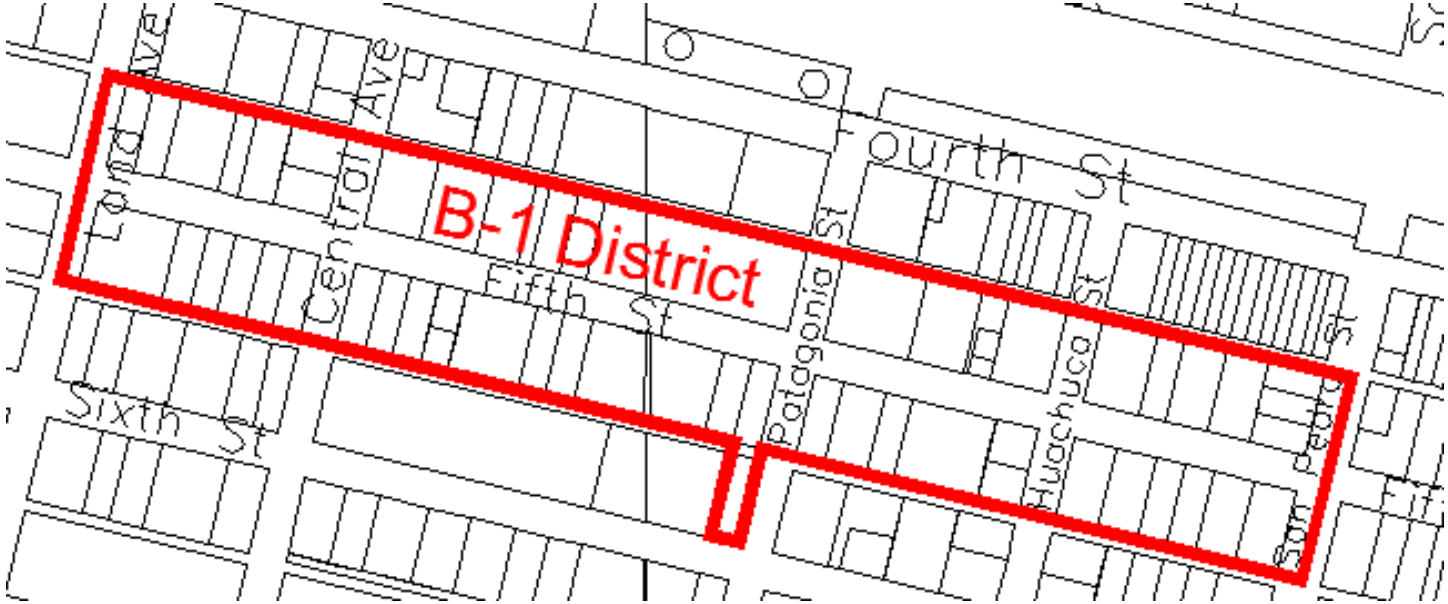
PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BENSON, ARIZONA. DATED THIS ____ DAY OF _____, 2014.

_____
Mayor

Attest: _____
City Clerk

Approved as to Form:

_____
City Attorney


B-1 District
Central Ave
Fourth St
Fifth St
Sixth St
Patagonia St
Huachuca St
San Pedro St

CITIZEN REVIEW REGARDING: Proposed text amendment to the Zoning Regulations (Lotsof proposal)
October 929, 2014
7:00 P.M.
BENSON CITY HALL, 120 WEST SIXTH STREET, BENSON, AZ 85602

NAME	ADDRESS	PHONE
Randy Robichaud	303 W Duane St	266 2K
Reagan Farley	256 E 5th St	520-686-0540

Citizen Review Session Notes for the Lotsof Zoning Regulations Text Amendment Proposal

Wednesday, October 29, 2014 at 7pm at Benson City Hall

The Citizen Review Session began at 7:07pm.

Applicant Paul Lotsof passed around a copy of his proposed amendment to the two attendees, Randy Robichaud and Peggy Farley, both of whom own property in the B-1 district.

Planner Michelle Johnson explained that the proposed amendment would apply to the entire district in that the new use would be applicable to any B-1 property that could meet the criteria to implement the proposed use.

Upon flipping through the proposed amendment, Randy Robichaud noted that including structural components did not conform to city standards. As a property owner in the same district, he expressed concern that another manufactured home in the area would negatively affect property values.

When Peggy Farley asked if he was opposed to the radio station or the structure, Randy Robichaud clarified that he was not opposed to the presence of the radio station and listens to it regularly, but was opposed to the idea of using a manufactured home. Applicant Paul Lotsof stated that under current regulations that he can put in a manufactured home already to which Randy Robichaud replied that if the amendment is approved as written it seems to encourage more manufactured homes 20 years down the line.

Peggy Farley commented that local manufactured home parks seem to do fair business and she supports anything that is beneficial to the business community but she also owns an older site built home in the B-1 district that had to be brought up to current codes so she has gone through the process.

Randy Robichaud reiterated his concern about neighboring property values if another manufactured home was put in and he expressed his desire for a nice site built structure that would increase property values over the long term.

When Randy Robichaud asked the applicant Paul Lotsof specifically what he was trying to accomplish, Paul Lotsof responded that he wants to remove the 1964 mobile home unit and replace it with a newer manufactured home. Paul Lotsof also stated that existing standards require him to put in a foundation, paved parking with handicap accessibility and fire retardant measures. Randy Robichaud pointed out that those requirements are in place because the building would be a business. Paul Lotsof retorted that those are the requirements because the rules have never been changed and that such rigidity would force him to leave the city and he would probably end up in Sierra Vista. Randy Robichaud pointed out that Sierra Vista also has site and building code requirements

which may cost more than Benson's requirements to which Paul Lotsof responded that he would probably sell the business to someone who already has facilities because he cannot afford to comply.

Randy Robichaud expressed his opinion that cities' have codes for a reason and Peggy Farley stated that others, including herself, have also had to follow them. Paul Lotsof repeated his statement that the community will have to decide between codes and if they want a local radio station.

Randy Robichaud asked Paul Lotsof what other options he had considered for raising money, specifically mentioning a telethon. When Paul Lotsof expressed his doubts, Randy Robichaud agreed that the funds could not come from one person but hopefully the community would get behind the project. Peggy Farley asked if there were grants available for such projects.

Applicant Paul Lotsof stated that he cannot continue to do business in the existing structure as it is falling apart and that his employees also do not like working there. He stated that it makes senses to get a newer structure because the existing building was never meant to last 50 years. Randy Robichaud said that was exactly his point, that bringing in another manufactured home creates the same situation in the future because manufactured homes are so difficult to maintain and repair over time. Peggy Farley agreed that sites built structures are easier to repair and bring up to code when the need arises.

Randy Robichaud again expressed his preference for a site built structure stating that as the city grows both the radio station and a nice structure will be beneficial and that meeting code standards are for the safety and well-being of the neighbors. Peggy Farley agreed that code requirements are used for safety purposes. Paul Lotsof stated that operating out of a 1964 unit was not safe, to which both Randy Robichaud and Peggy Farley agreed, with Randy Robichaud stating that the old unit should be removed, but not replaced with another. Randy Robichaud reiterated that he was not opposed to the studio use, but was opposed to specifying a manufactured home in the amendment because it locks both the city and the property owner into something that may not be right in the future.

Peggy Farley stated that Benson will continue to grow and she hopes the radio station will say as it is a benefit to the community. Paul Lotsof stated that his proposed amendment wouldn't likely affect other parcels, just his. Peggy Farley replied that she would like to see a structure on the property. Randy Robichaud suggested a community barn-raising to help with labor for a site built structure. He stated that he'd be willing to donate time, though he understands the final decision rests with City Council.

The Citizen Review Session ended at 7:31pm

PLANNING AND ZONING MINUTES
MINUTES OF THE BENSON PLANNING AND ZONING COMMISSION
DECEMBER 2, 2014

1. CALL TO ORDER- Chair Cliff Deane called the meeting to order at 7:01pm.

2. PLEDGE- Chair Cliff Deane led the pledge.

3. ROLL CALL- Randy Robichaud, Cliff Deane, Bob Baden, Terry LaDuke and Jim Thelander were present. Debbie Braatz was absent. A quorum was present.

4. CALL TO PUBLIC-There was no answer to the call.

5. APPROVAL OF MINUTES-
September 2, 2014
Commissioner Randy Robichaud motioned to approve the minutes with the correction of adding the word "day" in the first line of the second paragraph under the heading Work Session. Commissioner Terry LaDuke seconded. Motion passed 5-0.

6. OLD BUSINESS- There was no old business.

7. PUBLIC HEARING-
The public hearing opened at 7:04pm. As there were no speakers signed up, the public hearing closed at 7:05pm.

8. NEW BUSINESS-
Proposed Text Amendment to the Zoning Regulations Section 8 and Section 14
Applicant Paul Lotsof introduced himself, stating that he believes that most of the community is aware of the problem with his radio station facility. Mr. Lotsof traced the history of the radio station, noting that he had the idea in the late 1970s and with the financial assistance of his father, set a 1964 mobile home unit on the property in 1981 with the expectation that revenues would improve enough to improve the site. He stated that revenues never significantly improved and the 1964 unit is now too old and too small to be functional.

Mr. Lotsof explained that he had spoken with Mac McMillian and Luis Garcia, both former Building Officials, and that both of them had given him similar checklists of expensive requirements. Mr. Lotsof expressed his opinion that the past 30 years of operation didn't seem to count as both Building Officials had treated the improvement as if it were a totally new use and both gave him requirements for site-built structures when he wanted to use a manufactured home. Mr. Lotsof also stated that he did not see the need for a foundation or a paved parking lot.

Mr. Lotsof then commented that classifying the structure as an office was a misrepresentation because his radio station rarely invites the public in and there is usually only employee present at a time. With only one employee, Mr. Lotsof noted that street

parking has been adequate for the past 30 years and that a parking lot requirement would be prohibitively expensive. Mr. Lotsof also commented that fire retardant wall material would be too costly to install and that ADA requirements do not apply to radio stations, but the city ordinance requires compliance.

Mr. Lotsof stated that he would not be able to improve his property if he were held to the existing rules so he is proposing new regulations, differentiating the studio use from the office use with its own studio requirements. Mr. Lotsof noted that the proposal was drafted by an attorney and he would like to see his proposal adopted so he can have a bigger, nicer building and improve his property. He further stated that many businesses currently located in manufactured buildings will eventually need to upgrade as well.

Chairman Cliff Deane questioned the issue of leaving the HUD identification plate attached, commenting that the HUD plate allows for single family residential use and that once the plate is removed the structure comes under city building codes and that the Planning and Zoning Commission has no authority over building codes.

Vice Chair Randy Robichaud listed 8 specific concerns:

- The fact that the Commission cannot change building code requirements
- The proposed 15 year time period as he felt it would force others to wait too long
- Leaving the HUD plate attached contrary to state law
- That business and residential construction have differing building code requirements, which the Commission does not have jurisdiction over
- The lack of parking as he does not want on-street parking to continue
- The term “studio” itself due to connotations with other uses, such as art studios
- The potential conflict between the City and the governing state agency regarding the usage of HUD plates
- Setting a precedent for other businesses to request a reduction in code requirements

Mr. Lotsof interjected that he didn’t know where the topic of removing the HUD tags came from as that was an item from former Building Official Luis Garcia, but if it was necessary it could be done. He stated that he wants to use a manufactured building for a commercial purpose and that if a manufactured building for commercial functions is available he would consider that.

Commissioner Bob Baden commented that Vice Chair Randy Robichaud touched on all the major issues but his main concern is setting the precedent of removing bits and pieces of the city codes upon request. Commissioner Terry LaDuke commented that he would suggest considering alternative structures that could meet Mr. Lotsof’s needs as well as city code requirements to which Commissioner Bob Baden interjected that the Commission is not the proper body to address and approve construction issues presented.

Chairman Cliff Deane noted that he had reviewed all the paperwork and agreed that the Commission does not have the authority on some aspects of the proposal. Commissioner Jim Thelander questioned why the building codes would need to be changed and suggested that a variance may have been a better route.

Chair Cliff Deane summed up discussion by stating that he wants the radio station to remain operational, but a HUD manufactured home presents conflicts with state law. He noted that removing the HUD plate puts the structure under the authority of the city building codes, under the direction of the Building Official. He further stated that the recommending approval may open the city to future liability.

Vice Chair Randy Robichaud motioned to recommend denial of the application as written. Commissioner Bob Baden seconded.

Planner Michelle Johnson asked if they wished to include any of the other recommendations as shown on the staff report to which Vice Chair Randy Robichaud responded that he did not want to include those recommendations at this time, that they could be addressed in the future if the issue returns before the Commission and that he simply wants to motion to recommend denial of the proposal as written.

There was no further discussion and the motion passed 5-0.

Chair Cliff Deane addressed Mr. Lotsof that he wishes the Commission could help the radio station, but the Commission does not have authority to act. Vice Chair Randy Robichaud suggested Paul Lotsof hold a barn-raising as the radio station has many listeners who may be willing help.

Vice Chair Randy Robichaud motioned to close. Commissioner Bob Baden seconded and the meeting adjourned at 7:24pm.