

RESOLUTION 51-2010

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA APPROVING A SPECIAL WARRANTY DEED AND MAINTENANCE AND ACCESS EASEMENT AGREEMENT WITH WAL-MART STORES, INC.

WHEREAS, on October 31, 2005, the City executed a Development Agreement with Wal-Mart Stores, Inc.; and

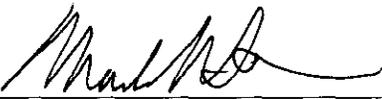
WHEREAS, the terms of that Agreement included a requirement that Wal-Mart convey to the City certain real property referred to therein as Parcels 1 through 4; and

WHEREAS, the Agreement contemplated that Wal-Mart would continue to maintain the landscaping on Parcel 1 and detention basins located on Parcels 2 and 4 after they were conveyed to the City; and

WHEREAS, the City believes it to be advisable and consistent with the terms of the Development Agreement to convey to Wal-Mart a maintenance easement that will allow it to continue to enter upon Parcels 1, 2 and 4 for the purpose of maintaining the landscape and detention basins, and an access easement over Parcel 3.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Benson, Arizona that the Special Warranty Deed and Maintenance and Access Easement Agreement, attached hereto as Exhibits A and B respectively, are hereby approved and the City Manager is authorized to execute same, as well as such other additional documents as necessary to effect transfer of Parcels 1 through 4 to the City as contemplated by the terms of the Development Agreement with Wal-Mart Stores, Inc.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA this 9th day of August, 2010.



Mark M. Fenn, Mayor

ATTEST:



Vicki L. Vivian, City Clerk

APPROVED AS TO FORM:


Michael J. Masee, City Attorney

Danna Judd

From: Mike Masee [bensonattorney@qwestoffice.net]
Sent: Thursday, September 02, 2010 9:47 AM
To: Mingyi Kang
Cc: Danna Judd
Subject: Letter today re Walmart's easment
Attachments: IMG.pdf; ATT00001..htm

Ming,

I'm attaching to this email the letter I am mailing to you today regarding your concern about lack of complete description of the access easement in the Resolution. Please see the letter; it is my opinion that this minor defect does not in any way undermine the validity of council action, which was to approve the form of deed and the easement agreement. By copy to Danna Judd, I am requesting that this letter be printed and filed with the city clerk's records of this council action. If you have any further concerns, please let me know. Thanks.

Michael J. Masee
Benson City Attorney
1071 N. Grand Avenue #103
Nogales, AZ 85621
(520) 287-3462
bensonattorney@qwestoffice.net

_____ Information from ESET NOD32 Antivirus, version of virus signature database 5419 (20100902)

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

BENSON CITY ATTORNEY

September 2, 2010

Mingyi Kang
Gust Rosenfeld, P.L.C.
201 E. Washington Street, 7th Floor
Phoenix, AZ 85004

Re: Wal-Mart's deed and easement agreement with Benson

Dear Ming,

In a recent email you raised the question of the validity of Resolution No. 51-2010, by which the Benson City Council approved the form of the deed and an easement agreement relating to four parcels of land to be conveyed to the City. The question arises because the last "whereas" clause of the Resolution mentions that the access easement the City is granting to Wal-Mart encumbers Parcel 3. No mention is made in the Resolution that the easement also partially encumbers Parcel 4.

Although I agree that the Resolution's language is not as descriptive as it could have been, in my opinion this lack of complete description of the access easement in the "whereas" clause you specify does not undermine the validity of the action paragraph of the Resolution. The deed and the easement agreement were incorporated by reference into this Resolution as if fully set forth therein, and the two documents were presented to council with the Resolution. Further, council discussed this transaction in depth. During this discussion, I pointed out the recent change to the legal description of the access easement, which had been clarified to describe the easement across both parcels. Therefore, it is clear from the record that the council approved the documents as presented, regardless of any minor defect in the wording of the Resolution.

I hope this resolves your concerns regarding City Council's approval of the easement document as presented.

Sincerely yours,


Michael J. Masee