

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the regular meeting of the City Council of the City of Benson held on the 28th day of February, 2011. I further certify that the meeting was duly called and held and that a quorum was present.

Date 3-15-11

City Clerk Vicki A. Wilson

**THE REGULAR MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD FEBRUARY 28, 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 7:00 p.m. with the pledge of allegiance. Mayor Fenn then introduced David Krummenacker of the Baha'i Faith who gave the invocation.

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.

CALL TO THE PUBLIC:

Theresa Bennett addressed Council regarding New Business Item #10, stating it would be wonderful if we lived in a perfect world, where we could all feel that we could trust the fact that no one takes advantage of anything or anyone, everyone pays their share and no one cheats the system, whether it be welfare, food stamps or taxes, but that is not the way the system works and everyone wants to take that extra dollar. Ms. Bennett then asked why the honest have to bear the brunt of the dishonest. Ms. Bennett then asked if the City was throwing good money after bad and if it was cost effective to hire auditors to collect funds for the State, adding we should let the State go after those who the City thinks aren't paying their dues.

Nancy Iverson addressed Council regarding New Business Item #10, stating it is her understanding that the Mayor is the only business owner on the Council. Ms. Iverson then asked how many Council persons have individually studied the information they have been given by the Finance office and suggested if they haven't studied it, they should not vote in favor of the audit issue.

J.W. Hill addressed Council regarding New Business Item #10, stating along with his wife Betty Hill, they own Cates-Hill Trailer Supply on Hwy 80. Mr. Hill then stated there is enough government looking over their shoulders and they don't need another element of government. Mr. Hill stated they have a hard time making it as it is and the last thing they need is an audit, adding he believed the State would still be in the audit business, if it was profitable.

Jim Grey addressed Council regarding New Business Item #10, stating he feels this is not a personal issue, but is a policy issue, and it should not be taken lightly. Mr. Grey then stated this issue could create a multitude of unexpected costs to the City such as loss of business, loss of jobs, possible litigation and animosity. Mr. Grey then stated the cost is \$5,000 per audit and to recover \$5,000 would take \$200,000 of unreported income, adding there aren't that many businesses who could possibly under report \$200,000 in sales. Mr. Grey then stated the National Federation of Independent Businesses rank Arizona 38th as a business friendly state and Governor Brewer is scrambling right now to give businesses tax breaks. Mr. Grey then compared the yellow pages from last year to this year, stating there are more than a third less businesses advertising in the yellow pages, citing they are either gone or can't afford the advertising. Mr. Grey then stated the property tax rates on businesses for commercial property are over twice the amount of a homeowner's property tax rate. Mr. Grey then compared the 2008 Cochise County tax liens list to the 2011 list, noting it was larger and stated properties are being confiscated. Mr. Grey then stated business people, builders, developers, homeowners, and some of the people that would be audited might be in the

same position. Mr. Grey then stated Council needs to think about this issue, he feels it's a negative business vote and we need to attract businesses, not scare them away.

Ron Brooks addressed Council regarding New Business Item #10, stating he also brought the tax liens list to show Council and he feels a lot of businesses may not be paying their taxes because they don't have the money. Mr. Brooks then stated we should be cautious about going after people that maybe don't have bread on their table. Mr. Brooks then stated a number of businessmen have told him that Benson is not a friendly town for business to come to and he doesn't think this is a good way to show the businesses that we want them here.

Toney King addressed Council regarding New Business Item #10, stating he has been talking to some of the businesses in the City and listening to residents of the City and feels this is something Council needs to take their time on. Mr. King then stated many businesses are struggling right now and if the City starts auditing them, it will hurt a lot of businesses. Mr. King suggested the Council take a good look at what they're doing right now, that they get some input from the businesses, and that with the economy the way it is, now is not the right time to do this. Mr. King then asked the Council to table the issue to be able to take their time in considering it.

JT Moffett addressed Council regarding New Business Item #10, stating he is the owner of a business, a member of the Lion's Club and of the Chamber of Commerce, adding he gives to worthy causes including sponsoring some of the City's biggest events through the Chamber. Mr. Moffett then stated he cares about the community and so should each member of the Council. Mr. Moffett then stated unlike Jim Cox and other City employees, the City Council is not hired, but was elected by the citizens of Benson to be their voice and buffer with the City, adding the Councilmembers are also citizens of the community, and are here to speak for the citizens, make sure the City is acting in the citizen's best interests and hopefully, protect their civil rights. Mr. Moffett then stated the idea that the City should audit businesses is wrong, adding it's wasteful spending, gives one man power and power corrupts. Mr. Moffett then discussed the newly acquired golf course and expressed his concern about the employment practices in place, adding this comes from giving a City employee too much authority and there is a frightening parallel in the idea of allowing the same man to decide who should be audited. Mr. Moffett then stated to spend \$5,000 per audit to gain less than that is foolish and foolish spending is a sure way to rile the citizens in this community to action, adding he used to live in Lake Havasu City where he saw a populace get angry with their leaders and recall all of them. Mr. Moffett then stated he hopes this does not happen in Benson, but if the Council allows this nonsense to continue, he is afraid it will. Mr. Moffett then stated the Council can do a lot of good for this community with the money they would spend on audits. Mr. Moffett then stated it is the Council's duty to be good stewards of the taxpayers' money and chasing after sales tax dollars is not the way to do it, especially when it is already the job given to the IRS and the State of Arizona and implored the Council to vote no on this issue.

George Scott addressed Council stating on February 17, 2011, the Southeastern Arizona Economic Development Group (SAEDG), in cooperation with the City of Benson and the Chamber of Commerce, held its first Community Business Forum at City Hall, with the goal of getting ideas and suggestions on how to make Benson a community where a business would want to locate. Mr. Scott stated he had given each of the Council a summary of the forum, adding the plan is to hold a follow up session in 30-45 days. Mr. Scott then stated he would like to take a moment to thank City Manager Glenn Nichols, the person who spearheaded the event, for helping to host it as well. Mr. Scott then encouraged the Council to review the summary of the forum and give their feedback, adding he would like to have the Council plan on attending the next session. Mr. Scott then addressed the Council regarding New Business Item #10, stating approximately 50% of the commercial buildings are vacant and a lot of businesses are gone from our community due to the economy. Mr. Scott stated many local businesses struggle just to provide the goods and services that we enjoy and Council should ask themselves if this item is in the best interest of the local business community. Mr. Scott then stated in his opinion, from being in business and from being on the Council, this is just another reason businesses would not want to locate in Benson. Mr. Scott then stated local business can not afford nor will they support any more regulations, taxes and road blocks to doing business and more government is not the answer to the economic recovery; less government is a better solution. Mr. Scott then stated the Councilmembers were elected to represent the citizens of Benson, not to

be a rubberstamp on the City Staff's recommendations. Mr. Scott then stated common sense would tell you that businesses need help, not more regulations, fees and taxes and asked that we work together to make Benson a more business friendly community.

City Clerk Vicki Vivian addressed Council regarding the upcoming 2011 City elections stating the Primary Election is scheduled for March 8, 2011 with the General Election to be held on May 17, 2011. Ms. Vivian then stated City residents wishing to participate in the election process must be registered to vote, adding the deadline for voter registration for the 2011 Primary Election was February 7, 2011 and anyone who is not registered will be unable to vote in the Primary Election. Ms. Vivian then stated residents of the City could still register to vote in the General Election with the deadline being April 18, 2011. Ms. Vivian then stated the elections will be held to elect a Mayor and 3 Councilmembers. Ms. Vivian then stated the General Election will be held regardless of the Primary Election results to enable registered voters to cast their ballots on the referendum regarding Ordinance 550, the recent annexation of approximately 115 acres located west of State Route 90 and south of Interstate 10. Ms. Vivian stated the issue would be placed on the ballot as Proposition 401. Ms. Vivian then stated the franchise agreement with Sulphur Springs Valley Electric Cooperative approved by Council on January 24, 2011 would also be on the General Election ballot as Proposition 402.

CITY MANAGER REPORT:

City Manager Glenn Nichols then addressed Council, giving the dates of upcoming meetings and events.

- March 1, 2011 – Planning & Zoning Commission, 7:00 p.m., City Hall
- March 7, 2011 – Economic Development Subcommittee, 5:15 p.m., City Hall (rescheduled to March 21, 2011)
- March 8, 2011 – Library Advisory Board, 4:00 p.m., City Library
- March 14, 2011 – City Council Meeting, 7:00 p.m., City Hall
- March 19, 2011 – Historic Preservation Commission, 9:00 a.m., City Hall
- March 22, 2011 – Community Watershed Alliance, 6:30 p.m., City Hall
- March 28, 2011 – City Council Meeting, 7:00 p.m., City Hall

- March 2 - April 3, 2011 – Southeastern Arizona Teen Art Competition, Final Meeting and Presentation of Awards on April 3, Council Chambers
- March 8, 2011 – Primary Election Day
- March 10 - 19, 2011 – “Celebrate the Arts” presented by the San Pedro River Arts Council, Cochise College
- March 19 & 20, 2011 – Territorial Days, Arena Bar, 8:00 a.m. both days

NEW BUSINESS:

1. Consent Agenda

- 1a. Minutes of the February 7, 2011 Special Meeting, Including Executive Session Minutes
- 1b. Minutes of the February 14, 2011 Worksession
- 1c. Minutes of the February 14, 2011 Regular Meeting
- 1d. Correction of Ordinance 553 of the Mayor and Council of the City of Benson, Arizona, granting a franchise to Sulphur Springs Valley Electric Cooperative Inc., an Arizona Corporation, to maintain and operate an Electric Energy Transmission and Distribution System within the Corporate Limits of the City of Benson to correct scrivener's error
- 1e. Resolution 13-2011 of the Mayor and Council of the City of Benson, Arizona, authorizing the Chief of Police to apply for a Governor's Office of Highway Safety Grant to fund Equipment Purchases and Overtime
- 1f. Resolution 14-2011 of the Mayor and Council of the City of Benson, Arizona, authorizing the Fire Chief to apply for a Governor's Office of Highway Safety Grant to fund the purchase of Extrication Equipment
- 1g. Invoices processed for the period from February 8, 2011 through February 21, 2011

Councilmember McGoffin moved to approve the Consent Agenda. Seconded by Councilmember Sacco. Motion passed 7-0.

2. **Resolution 15-2011 of the Mayor and Council of the City of Benson, Arizona, approving a Schedule for Fees relating to Administration Services**

Mayor Fenn stated a worksession had been held to review fees the City charges for various services and there had been some updates, but most were very minimal. Mayor Fenn then stated New Business Items #2 through 8 all related to the fee schedules that were discussed in the worksession. Mayor Fenn then stated the resolutions would start with Administration Services and asked if there was any discussion. Councilmember Sacco stated he would like to have the department heads go through the schedules, explaining the difference between the old fees and the new fees. City Clerk Vicki Vivian addressed Council stating in the proposed Administration Services fee schedule was the addition of language addressing the fees for commercial copies and electronic copies. Ms. Vivian then stated the current fees for these records would not change and explained commercial copies are when a business entity obtains records in order to solicit business. Ms. Vivian then stated there were two changes in the fee schedule; Staff time fees for the City Manager and City Attorney, which have been changed to reflect the City Attorney's hourly rate and the slight increase in recording documents to reflect what the County charges the City, along with the removal of recording subdivision documents, which are now in the Public Works fee schedule. Vice Mayor Lodzinski moved to approve Resolution 15-2011. Seconded by Councilmember Lambert. Motion passed 6-1 with Councilmember Sacco voting nay.

3. **Resolution 16-2011 of the Mayor and Council of the City of Benson, Arizona, approving a Schedule for Fees relating to Building Services**

Building Official Luis Garcia addressed Council stating as discussed in the worksession, the Building Services fee schedule is unchanged with the exception of the addition of the manufactured home installation inspection fee that was adopted under the recently approved Intergovernmental Agreement. Councilmember Sacco noted there were changes to the Planning & Zoning fee schedule and asked why the changes were made. Mr. Garcia stated the changes to the Planning & Zoning fee schedule, done under Resolution 18-2011, were done to streamline fee structure formulas. Mayor Fenn then stated the item being discussed was Resolution 16-2011 and when the Council discussed Resolution 18-2011, Mr. Garcia could have the opportunity to discuss those changes then. Councilmember Sacco then stated he pointed out in the worksession, there was a terminology issue between the City Code and the proposed schedule and they need to be compatible. Mr. Garcia stated Staff is currently reviewing each chapter of the City Code for terminology updates and other changes and the Building Department fee schedule will be in line with proposed City Code amendments. Councilmember Bonquet moved to approve Resolution 16-2011. Seconded by Councilmember McGoffin. Motion passed 7-0.

4. **Resolution 17-2011 of the Mayor and Council of the City of Benson, Arizona, approving a Schedule for Fees relating to Library Services**

City Manager Glenn Nichols addressed Council stating at the worksession, fees for copies and lost interlibrary loan materials were discussed, and all fees were now in a proposed schedule, but no fees were changing. Councilmember Sacco stated he would like to compliment the librarian for not increasing the fees. Councilmember Lambert moved to approve Resolution 17-2011. Seconded by Councilmember Bonquet. Motion passed 7-0.

5. **Resolution 18-2011 of the Mayor and Council of the City of Benson, Arizona, approving a Schedule for Fees relating to Planning & Zoning Services**

Building Official Luis Garcia addressed Council stating in answer to Councilmember Sacco's earlier question, the terminology in the Planning & Zoning fee schedule will mimic those in the City Code, adding the City Code is currently being reviewed and all the terminology will be the same. Mr. Garcia then stated as far as the overhaul to the Planning & Zoning fee schedule, what was done was to eliminate the formulas

behind the fees and go to a flat fee type structure, which would help in the planning of developments and was the intent behind the change. Councilmember Sacco asked how the rates were developed with Mr. Garcia stating taking the current fee structure into consideration and using mock developments, fees were determined and compared to what those same fees would be using the flat rate structure. Mr. Garcia then stated the flat rate structure allowed the City to recoup its costs in review, yet allowed for better planning in the project planning stages. Councilmember Sacco then asked how these fees compared to other cities with Mr. Garcia stating the fees were lower than Sierra Vista and in line with other cities of our size. Councilmember McGoffin moved to approve Resolution 18-2011. Seconded by Vice Mayor Lodzinski. Motion passed 7-0.

6. **Resolution 19-2011 of the Mayor and Council of the City of Benson, Arizona, approving a Schedule for Fees relating to Police Department Administrative Services**

Chief of Police Paul Moncada addressed Council stating the only proposed change in fees for the Police Department Administrative Services was the Animal Control adoption fee from \$7.00 per day to \$10.00 per day, adding the current fee has been in place since 1993 and when a cost analysis was completed, it was found to cost the City \$9.50 per day. Councilmember McGoffin verified this was the quarantine fee, not the adoption fee with Chief Moncada confirming it was the quarantine fee. Vice Mayor Lodzinski moved to approve Resolution 19-2011. Seconded by Councilmember Maldonado. Motion passed 7-0.

7. **Resolution 20-2011 of the Mayor and Council of the City of Benson, Arizona, approving a Schedule for Fees relating to Public Works Administrative Services**

Public Works Director Brad Hamilton addressed City Council stating the only change, as discussed in the worksession, is the City increasing the recording costs on the subdivision documents to reflect what the County is charging the City to record documents. Councilmember Sacco asked Mr. Hamilton to explain to the public what those documents are with Mr. Hamilton stating those are subdivision documents that must be recorded with the County Recorder's office. Councilmember Lambert moved to approve Resolution 20-2011. Seconded by Councilmember McGoffin. Motion passed 7-0.

8. **Resolution 21-2011 of the Mayor and Council of the City of Benson, Arizona, approving a Schedule for Fees relating to Recreation Services**

City Manager Glenn Nichols addressed City Council stating these recreation fees were discussed at the worksession and are the rates that had been previously established for use of the facilities. Mr. Nichols then stated some of the fees weren't in the schedule before, such as the rental of the Community Center and summer programs and camps. Mr. Nichols then stated the fee for programs and camps will remain at \$5.00, however in some instances, when there is an additional cost for materials, the fee might be adjusted. Councilmember Sacco then asked about the change to charge for the electricity costs of the different fields at the park with Mr. Nichols stating those changes are not in Resolution 21-2011, but would be brought to Council in the near future and as discussed at the worksession, would be effective July 1, 2011. Councilmember Bonquet moved to approve Resolution 21-2011. Seconded by Councilmember McGoffin. Motion passed 7-0.

9. **Resolution 22-2011 of the Mayor and Council of the City of Benson, Arizona, appointing a City Tax Collector**

Mayor Fenn stated he would like to make a few remarks to address and to correct, respectfully, some of the comments made at the call to the public concerning the tax issues. Mayor Fenn then stated the proposed document would designate the City Manager as the tax collector, should it be approved. Mayor Fenn then stated the City Finance Director, Mr. Cox, who he feels has done an honorable job in enforcing in a respectful and professional manner up to this point, any discrepancies that he found within the City sales tax collection, would be the Tax Resolution officer, to act as an independent third party for appeals. Mayor Fenn then stated if any business were found to be obviously either not paying taxes or perhaps underpaying taxes, and if an audit were to be warranted, the talk among the Council is that it would be hired out to a third party auditor only if the amount collected would warrant the fee, so we're not going to pay \$5,000 for

each audit, as was stated. Mayor Fenn then stated he appreciated the passion that's been shown. Mayor Fenn then stated when he looked at this issue as a business owner in the community, he didn't have an issue with it because he felt that if any business was paying their fair share of sales tax, they wouldn't be subject to an audit. Mayor Fenn then stated he knows we can't say that with certainty, just as we can't say that about the IRS, noting there may be some who have experienced, after paying their full income tax, being randomly selected for an audit, but he believes the City's policy would not be to randomly pick a business for an audit, but only select those who have a red flag raised, such as a big change from past history of payments. Mayor Fenn then stated perhaps there have been in the past, some businesses in the City that have flat out paid no sales tax, and yet we know they are a viable business in the City, which is an obvious red flag that the City should be concerned with and as elected officials and City Staff, the public should expect that from your City government. Mayor Fenn then stated if there were rampant non-payment of taxes in the City or rampant underpayment of taxes, he would hope the public would have the same passion and come to the Council wanting to correct that, wanting neighboring businesses, who may be their competitors, to pay their taxes also. Mayor Fenn then stated he wanted to put the issue into perspective for everyone. Mayor Fenn then stated the City, right now, relies on the State to take it to the next level of enforcement and Mr. Cox, as he has informed the Council throughout these proceedings, has a process in place to contact a business when he feels there may be an underpayment or non-payment of sales tax. Mayor Fenn then stated Mr. Cox has said probably 90% of the time, the issue is able to be resolved at that level, but if there's no response or there is a defiant response from the business, then something in writing is sent to them and if that's not addressed or if there's no response, a second letter goes out and if there is still no response, that's when the call to the State would come and it would go further. Mayor Fenn then stated he was a little surprised, as Mr. Grey pointed out, to hear that the City had been contacting the State with a phone call and the City has never formally sent a written request to the State for asking for an audit of a Benson City business. City Manager Glenn Nichols then stated he believes that is correct, however, Mr. Cox has contacted the State in writing regarding a business that was violating tax laws in numerous areas of the State, and still nothing has been done. Mayor Fenn then stated he hoped his remarks addressed some of the concerns expressed and that he understood there is probably some lack of confidence in City government. Mayor Fenn then stated in these economic times, to think of granting audit power to a local community, may be viewed somewhat as a twist of the knife to some, but again, those that are paying their taxes shouldn't have any issue with this and those that are not, should be concerned. Mayor Fenn then stated as he has had a chance to reflect on the issue and after the Call to the Public comments, he feels there is a time to push and a time to pull back and he's going to pull back, adding if Mr. Cox's process is working 90% of the time, he's fine with that and if going after the other 10% is going to cause such a stigma to the City of Benson, he doesn't feel it's worth it. Mayor Fenn then asked the Council if they had any comments.

Councilmember Sacco stated he couldn't get an answer on how many weren't paying their taxes and how much was owed, adding he didn't believe it's time to change what we are doing right now. Vice Mayor Lodzinski stated he would have to agree.

Vice Mayor Lodzinski then stated in working on a number of projects with the Economic Development Subcommittee, there are times you wonder how people could not know what we're working on, noting it may be due to a lack of communication. Vice Mayor Lodzinski then stated he did talk to a lot of businesses and they had no problem with the City having audits done, because they have no problems with their books, adding again he thinks the lack of communication and fear has caused the concerns. Vice Mayor Lodzinski then stated \$5,000 is the maximum the City would pay for an audit and would be on large collection entities, not smaller businesses. Vice Mayor Lodzinski then stated he looks at what Douglas went through when they hired an auditor to go through and check their businesses and licenses and found well over 100 businesses that weren't paying taxes, adding while he thinks we're doing a little better job than Douglas did, he is a little concerned both ways because if the State's not going to enforce the tax code, the City should. Vice Mayor Lodzinski then stated for the time being, he agrees that now may not be the time to move forward on this issue, that maybe 6 months from now, if we see numbers are increasing, we might want to bring it back up and we need to do a better job of explaining it to the public.

Councilmember Sacco then stated last month Senator Steve Pearce, introduced a bill that will probably make all this moot anyway, adding Senate Bill 1220 repeals the Model City Tax Code, forces all cities and

towns to have the same tax base, repeals any local taxes not part of the State tax rate, even if voter approved and requires the State to perform all tax collections and audits for municipalities, adding the bill has been signed in committee so it's well on its way.

Mayor Fenn then asked if there was any other discussion with Councilmember Sacco stating he had more comments. Councilmember Sacco then stated he believes the business owners in town are honest people, and with the low level of projected non-compliance, doesn't think this change is buying the City much. Councilmember Sacco then moved to table this item until we know what our experiences are and what our costs are since we do have procedures in place right now.

Councilmember Lambert called for a point of order, stating this item is only changing the Tax Collector from the City Finance Director to the City Manager and asked for clarification on what issue Councilmember Sacco wanted to table, noting it seemed like he was attempting to take action on New Business Items #10 and 11 before Item #9. City Attorney Mike Masee then addressed Council stating Councilmember Sacco could clarify his motion or since there's nothing that requires the Council to address each item in order, they could address items out of order with the consent of the rest of the Council and Councilmember Sacco could amend his motion to reflect that request.

Mayor Fenn then asked Councilmember Sacco if he was moving to table Resolution 22-2011 as far as appointing a City Tax Collector with Councilmember Sacco stating he would like to table this item and everything that is related to the tax code. Vice Mayor Lodzinski asked if the items were tabled, if they are required to come back to the Council with City Attorney Mike Masee stating it is subject to how specific the motion is made, adding if Council wishes to table an item indefinitely, it means that item can not be taken off the table unless it's placed on an agenda as part of the open meeting notice, but if Council wishes to table an item for a specific meeting, the item doesn't necessarily have to be included on the agenda. Mr. Masee then stated either way, Staff is going to make sure that the agenda reflects the items to be presented at any Council meeting.

Councilmember Sacco then amended his motion to table New Business Items #9, 10 and 11, Resolutions 22-2011, 23-2011 and Ordinance 554 indefinitely. Seconded by Vice Mayor Lodzinski. Motion passed 6-1 with Councilmember Lambert voting nay.

10. **Resolution 23-2011 of the Mayor and Council of the City of Benson, Arizona, declaring as a Public Record that certain Document filed with the City Clerk and entitled "Supplementary Local Audit Procedures for the City Tax Code of the City of Benson, Arizona"**

This item was tabled indefinitely with New Business Item #9.

11. **Ordinance 554 of the Mayor and Council of the City of Benson, Arizona, relating to the Privilege License Tax; Adopting "Supplementary Local Audit Procedures for the City Tax Code of the City of Benson, Arizona" by Reference; Amending Article I – General Conditions and Definitions, Article V – Administration, and Regulation 8A-555.1 of the City Tax Code; Providing Penalties for the Violation thereof; Providing Severability and Establishing an Effective Date**

This item was tabled indefinitely with New Business Item #9.

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.

Mayor Fenn moved to enter into an executive session with the City Council, the City Manager, the City Attorney and the City Clerk at 7:54 p.m. Seconded by Vice Mayor Lodzinski. Motion passed 7-0.

Council reconvened at 8:08 p.m.

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

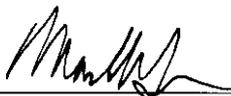
Councilmember Boncquet moved to withdraw the notice to appeal. Seconded by Councilmember Maldonado.

City Attorney Mike Masee asked if he could explain, for the benefit of those present, that the other side in this litigation, the plaintiff in the Stage Coach Trails matter, has formally taken the position in the pending litigation in the trial court that the ruling that has been entered in this case dated December 29, 2010, is not a final ruling. Mr. Masee then stated case law declares when a ruling is in writing, is filed and is signed by the judge, noting the December 29, 2010 ruling satisfies all those considerations, then it's a final and appealable ruling, but the plaintiff is relying on a newer civil rule that has been adopted since those cases have been decided, which states that you should first decide all issues including attorney's fees before entry of a final judgment. Mr. Masee then stated with the plaintiff taking the position that the ruling is not yet final; it's a safe opportunity for the City to agree to that position and withdraw the notice of appeal. Mr. Masee then stated once a final ruling does get entered, then we'll be back to discuss the Council's position at that point. Motion then passed 5-2 with Councilmembers Sacco and Lambert voting nay.

DEPARTMENT REPORTS: None

ADJOURNMENT:

Vice Mayor Lodzinski moved to adjourn at 8:11 p.m. Seconded by Councilmember McGoffin. Motion passed 7-0.



Mark M. Fenn, Mayor

ATTEST:



Vicki L. Vivian, CMC, City Clerk