

**THE SPECIAL MEETING
OF THE MAYOR AND CITY COUNCIL OF BENSON, ARIZONA
HELD JANUARY 16, 2018 AT 7:00 P.M.
AT CITY HALL, 120 W. 6TH STREET, BENSON, ARIZONA**

CALL TO ORDER:

Mayor King called the meeting to order at 7:08 p.m. with the Pledge of Allegiance.

ROLL CALL:

Present were: Mayor Toney D. King, Sr., Vice Mayor Joe Konrad, Councilmembers Pat Boyle, Larry Dempster and David Lambert. Absent was: Councilmember Levi Garner.

Mayor King then stated he would have the Council address New Business Item 1 before considering the Executive Session.

NEW BUSINESS:

1. **Discussion and possible action regarding an agreement between GMAC Mortgage, LLC, and the City of Benson to address and settle ongoing litigation filed in the Cochise County Superior Court under Cause No. CV 2016-530**

City Attorney Gary Cohen stated City Attorney Paul Loucks has been the lead on this litigation matter from the time the property was taken over and through the bankruptcy court in New York, so Mr. Loucks was going to address this. City Clerk called Mr. Loucks, who attended via phone. City Manager Bill Stephens then stated in 2016, the City Building Official issued an order under the City Building Code to abate a nuisance at the Benson Motel, 185 W. 4th Street. Mr. Stephens then stated when the City Building Official received no response, he and the City Manager decided to pursue an action in the Superior Court seeking a Court Order that the property be cleaned. Mr. Stephens then stated after a hearing, Superior Court Judge Charles Irwin determined that the improvements on the property had to be removed to abate the ongoing nuisances and ordered that, if the property owner did not clean up the property, the City was authorized to do so. Mr. Stephens then stated the City eventually demolished the property and brought the property to a safe condition in February 2016, adding when the City returned to the Court to obtain a judgment in the amount of the costs it spent to clean up the property, the owner, GMAC Mortgage appeared for the first time and convinced the Court to stay the proceedings until a bankruptcy court in New York decided how the City could proceed. Mr. Stephens then stated after GMAC entered into bankruptcy, the Court formed a Trust to collect GMAC's assets, sell the assets, and resolve all pre-bankruptcy claims against GMAC from the resulting fund. Mr. Stephens then stated insufficient funds exist in that Trust to pay in full all pre-bankruptcy claims, noting this claim would have a different priority because it arose after the date GMAC filed its bankruptcy petition. Mr. Stephens then stated without an agreement with the GMAC, the City faces the possibility that it would expend significant funds to resolve the question of how to collect on a judgment on a post-petition claim against GMAC, adding this proposed settlement agreement allows the City to take a judgment for the costs it incurred to clean up the GMAC property and to file an action in the Superior Court to foreclose GMAC's interests in the property – in other words to take the property in satisfaction of its claim. Mr. Stephens then stated Staff recommends the approval of the agreement, then noted the total costs to the City for the property was \$74,258.90. Mr. Cohen then stated he would like to make sure the record reflect the dates Mr. Stephens mentioned in 2016 were actually 2017, adding the dates are not material to the discussion. Mr. Cohen then stated he would like to note the settlement agreement before Council has been amended to remove the confidentiality clause, adding the revised version was sent to Council and was posted on the City's website earlier in the day, again noting the only difference was the removal of the confidentiality provision from the original agreement. Mr. Cohen stated often times, parties in settlement agreements, will put in confidentiality clauses, but cities are not allowed to keep settlement agreements confidential.

Mr. Loucks stated he was on the phone to answer any questions the Council may have, then briefly explained the bankruptcy, stating GMAC was a national mortgage lender and following the financial difficulties of 2008,

GMAC filed for bankruptcy. Mr. Loucks then stated at that time, GMAC's assets were small compared to their debt and a committee was appointed to liquidate its assets, adding in that process, questions came up about pre-petition debts vs. post-petition debts, and GMAC has now threatened to come down to Cochise County and litigate the issue. Mr. Loucks then stated rather than spending time and money on the case, the settlement agreement seemed like a good alternative and Mr. Stephens approved negotiating it, adding the agreement will allow the City to take the property in satisfaction of the judgment.

Councilmember Boyle asked if anyone had any idea of what the property appraises for with Public Works Director Brad Hamilton stating at this point, the City has not had the property appraised. Councilmember Boyle then stated he thought \$74,000 would be a pretty good deal for a piece of property on Main Street of that size, but it would be hard to know without an appraisal. Mr. Stephens then stated that was his thinking, adding the other possibility was to pay to send Mr. Loucks to New York to the Federal Bankruptcy court to battle in court, which would have been extremely expensive.

Vice Mayor Konrad then asked if there would be any legacy problems with the property should the Council decide to sell it with Mr. Hamilton stating that was the reason the City had a contractor come in to do both the survey and the full abatement; then noted those did add significantly to the cost.

Councilmember Lambert asked if GMAC was 100% on board with giving the City the property with Mr. Loucks stating they were, adding both GMAC and the Trustee are signing different documents that will allow this to go forward.

Councilmember Dempster stated the City has about \$74,000 in the property that will be free and clear, then asked about specific expenses with Mr. Hamilton stating the outside expenses were about \$65,000 and City employees, time and equipment was another \$8,500.

Councilmember Boyle asked where the funding was taken from to complete the project with Mr. Hamilton stating the funding was taken from the General Fund. Mayor King then confirmed that any income from the property would go back to the General Fund; then thanked everyone involved for their work on the project and the settlement agreement.

Councilmember Lambert moved to approve an agreement between GMAC Mortgage, LLC, and the City of Benson to address and settle ongoing litigation filed in the Cochise County Superior Court under Cause No. CV 2016-530. Seconded by Boyle. Motion passed 5-0.

EXECUTIVE SESSION: Executive session pursuant to A.R.S. section 38-431.03(A)(1), (3) and (4) regarding City Manager Stephens' recent resignation, existing contract, and relevant terms thereof for the remainder of his tenure.

Mayor King moved to enter into an Executive Session at 7:20 p.m. with the Council, the City Attorney and the City Clerk. Seconded by Councilmember Boyle. Motion passed 4-1 with Councilmember Lambert voting nay.

Council reconvened at 8:24 p.m.

ADJOURNMENT:

Vice Mayor Konrad moved to adjourn at 8:24 p.m. Seconded by Councilmember Boyle. Motion passed 5-0.

Toney D. King, Sr., Mayor

ATTEST:

Vicki L. Vivian, CMC, City Clerk