

Superintendent and Supervisor of Food & Beverage Operations for the San Pedro Golf Course. Seconded by Councilmember McGoffin. Motion passed 7-0 with Councilmember Sacco noting he was voting to approve job descriptions only.

**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 outside counsel, the litigation attorney provided to the City by the insurance pool by phone and the City Clerk at 7:50 p.m. Seconded by Councilmember McGoffin. Motion passed 7-0.

Council reconvened at 8:22 p.m.

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

Mayor Fenn stated he would like to make a few comments regarding this item and then stated he didn't know the exact timeline, but he supposed it was over a year ago that the City had a complaint from a citizen that was not living in the mobile home park. Mayor Fenn then stated that is when he began his discussion with Mr. Kendrick on what we could do to try and make it work for everybody to address the complaint of the citizen that lived adjacent to the park. Mayor Fenn then stated he did meet with Mr. Kendrick at the park on one occasion and has since learned their discussion may have been tape recorded, adding he has no knowledge of that; he has never heard the tape and it makes him wonder about the confidentiality or the trust that was placed between himself and Mr. Kendrick. Mayor Fenn then stated he felt he was giving some counsel or advice that he felt on his own was prudent at the time, that we needed to try to work this out and at the time, Mr. Kendrick seemed agreeable. Mayor Fenn stated there had been a few meetings since then trying to work out details on that particular lot in question that was adjacent to the non-resident of the park, and ultimately, even though it had been resolved, the neighbor is still not happy with the result of the installation of the trailer on the lot next to him, but as a City, we weigh complaints from all sides; we can't ignore one citizen and favor another. Mayor Fenn then stated after that issue was resolved; we made a concerted effort, having Mr. Nichols look at zoning issues throughout the City to try to clear up or avoid future situations such as the one that we had just experienced. Mayor Fenn then stated Mr. Nichols sent a notice to all trailer parks in the community on the enforcement of the City codes, adding what's the use in having codes and ordinances on the books, if they're not enforced? Mayor Fenn then stated codes are supposed to be enforced for the good of all and it's not always going to make everybody happy, adding he understands that and has experienced it himself. Mayor Fenn then stated at the same time, the other property came into question, which is the source of this litigation, Lot 27. On Lot 27 another trailer was going to be moved in and that's when the City staff, decided that that didn't comply with what the intent of the Zoning Regulations were and that's where this all started. Mayor Fenn then stated, as a staff and as a Council, that remedies were offered to Mr. Kendrick to try to make that work and it seems that the response was that, rather than try to work with the City, it came to litigation, adding he wanted to make it clear that Mr. Kendrick is the one who decided to sue the City, not the other way around. Mayor Fenn then stated the situation was unfortunate for everybody; it's costly for everybody and it's frustrating when there's not a clear answer, either from the City's side or from the citizen side and sometimes the answers just aren't readily apparent. Mayor Fenn then stated those were his comments regarding where the City stands right now on this situation. Mayor Fenn then opened the item up to other Councilmembers. Councilmember Lambert moved to direct Staff to file a post-trial motion to amend the judgment dated December 29, 2010. Mayor Fenn then stated there was a motion made to direct the City Attorney to follow up on the decision that was made and asked Mr. Masee if that was how Mr. Masee understood the motion. Mr. Masee then stated that was the motion and was then interrupted by Ms. Suagee in the audience, stating the Council needed a second on the motion before any discussion could be had. Motion was then seconded by Councilmember McGoffin. Mr. Masee then continued, stating the Council has a number of options and proceeded to explain each one. Mr. Masee


stated the first choice the Council had was to let the minute entry stand, do nothing and let it become a final ruling, which will happen if the Council and the attorneys representing the City do nothing within 30 days of the date of the ruling; the second option would be to file a post-judgment motion in the trial court, seeking an amendment or an alteration of this judgment, adding in his opinion the judgment is completely unsupported by the evidence in the record; and the third option would be to notice an appeal and take these issues to the court of appeals. Mr. Masee then stated he thinks eventually, the City may have to go to the court of appeals, adding he thinks the current ruling represents a high watermark the plaintiffs are likely to achieve and he thinks it was only even achievable at this point because they had a judge that was very favorable to their case. Mr. Masee then stated he thinks with a new judge in Division 2 that is presiding on this case, it would be worthwhile to take the time and effort to seek an alteration or an amendment of this judgment, adding if the new judge reviews the record, Mr. Masee is confident the new judge will see this ruling is completely unsupported. Councilmember Maldonado then stated he was new on the City Council, but as a manager of a mobile home park, he was told by the City that they would work with the park on anything brought to them to come up with an option that would help the park put in what they needed. Councilmember Maldonado then stated this had been offered to Mr. Kendrick, who refused and this is what the issue has come to.

After no further comments from the Council, Mayor Fenn stated there was a motion and a second directing the City attorney to file a post-trial motion and called for a vote. Motion passed 6-1 with Councilmember Sacco voting nay. Councilmember Sacco then stated he didn't agree with the proposed action and he wished his colleagues would put an end to this now, adding all Council does is talk about filing motions, files motions and keeps going to court. Councilmember Sacco then stated the City hasn't prevailed yet and he firmly believes the City will not prevail and felt we should not spend extra money to prolong the situation.

**DEPARTMENT REPORTS:** None

**ADJOURNMENT:**

Councilmember Lambert moved to adjourn at 8:30 p.m. Seconded by Councilmember McGoffin. Motion passed 7-0.

  
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Mark M. Fenn, Mayor

ATTEST:

  
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Vicki L. Vivian, CMC, City Clerk