

ORDINANCE 626

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF BENSON, ARIZONA, APPROVING A REQUEST TO REZONE ASSESSOR'S PARCEL NUMBERS 123-10-004, 123-10-006, AND 123-10-007 FROM A ZONING DISTRICT OF RURAL TRANSITIONAL (RT) TO HEAVY INDUSTRY (I-2)

WHEREAS, the Owner of the above-referenced property, also described on Exhibit A, attached hereto and incorporated herein by this reference (the "Property"), Rasch Construction, Inc., seeks to change the land-use designation of parcels it owns to accommodate possible future development along the corridor leading to the Benson Municipal Airport - Paul Kerchum Field; and

WHEREAS, under the City's zoning code, the Property's current zoning contemplates residential use and/or development with compatible commercial uses. Applicant intends to put the Property to more intensive and/or noxious uses that are incompatible with residential and similar uses. The anticipated development of the Owner's project accordingly requires a rezoning of parcels 123-10-004, 123-10-006, and 123-10-007, and the Applicant has requested this zoning change; and

WHEREAS, the City wants to encourage development on the above-described parcels; and,

WHEREAS, rezoning the Property from Rural Transitional (RT) to Heavy Industry (I-2) is in accordance with the City of Benson General Development Plan; and

WHEREAS, the City believes it has complied with all legal requirements in order for this Ordinance to be adopted; and

WHEREAS, the City Council has received the written transmittal of recommendation from the Planning and Zoning Commission, conducted a public hearing on November 13, 2023, and has heard from the representative of the owner, City staff, and the Mayor and Council discussed the rezoning application between a properly noticed regular City Council meeting held November 13, 2023 and a Special Meeting held November 14, 2023. Mayor and Council have determined that the Owner's rezoning request is in conformance with the City's General Development Plan and that approval is in the City's best interest,

BE IT NOW HEREBY ORDAINED by the Mayor and Council of the City of Benson, Arizona, that the City of Benson's Zoning Regulations are amended to rezone the Property currently zoned Rural Transitional (RT) to Heavy Industry (I-2), contingent on the following conditions:

1. Owner and Owner's Representative must execute a waiver of any and all claims against the City pursuant to Proposition 207, A.R.S. § 12-1131 *et seq.*

PASSED AND ADOPTED BY THE MAYOR AND COUNCIL OF THE CITY
ARIZONA, this 14th day of November 2023.



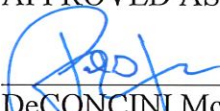
JOE A. KONRAD, Mayor

ATTEST:



VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:



DeCONCINI McDONALD YETWIN & LACY, PC
By Paul A. Loucks
City's Attorney

CERTIFICATION OF MAP OF AREA TO BE REZONED I, JOE A KONRAD, Mayor of the
City of Benson, Arizona, do hereby certify that the foregoing map as shown on Exhibit "A", is a
true and correct map of the area to be rezoned by Ordinance 624, as shown on said map.

CERTIFIED this 14th day of November 2023.




JOE A. KONRAD, Mayor

ATTEST:



VICKI L. VIVIAN, CMC, City Clerk

APPROVED AS TO FORM:



DeCONCINI McDONALD YETWIN & LACY, PC
By Paul A. Loucks
City's Attorney

When Recorded Mail to:

Vicki Vivian, City Clerk
City of Benson
120 W. 6th Street
Benson, Arizona 85602

AGREEMENT TO WAIVE RIGHTS AND REMEDIES UNDER ARIZONA REVISED STATUTES §12-1134

This Agreement to Waive Rights and Remedies under Arizona Revised Statutes § 12-1134 (hereinafter, the "Agreement") is made between Rasch Construction, Inc. (hereinafter, the "Owner"), and the City of Benson, Arizona, an Arizona municipal corporation (hereinafter, the "City"), regarding the following property located in APN 123-10-004, 123-10-006, and 123-10-007 and more fully described by the legal description, attached as Exhibit "A" (hereinafter, the "Property").

1. The Owner has requested the change of Zoning Classification, or Owner has requested the approval of a final plat for a subdivision, or Owner has requested some other change of land use by the City (hereinafter, the "Change of Land Use"). Owner agrees and consents to all of the requirements, conditions and stipulations imposed by the City Council regarding the Change of Land Use for the Property. See Exhibit "B" which is a copy of the Zoning Ordinance or other Council action for the Change of Land Use.

2. Owner acknowledges that Owner's request for the Change of Land Use was voluntary, and that there are uses for the Owner's property which do not require a Change of Land Use. Owner also acknowledges that Owner has had the opportunity to give the City Council the Owner's input on the requested Change of Land Use. Owner shall sign and deliver this Agreement to the City Clerk within thirty (30) days of the Council Action which was taken at the public City Council meeting held on November 14, 2023 (the "Council Action").

3. Owner has the right to withdraw Owner's request for the Change of Land Use for this Property (See Exhibits "A" and "B," attached) by not signing and delivering this Agreement to the City Clerk within the time period required in paragraph 2, above. Owner further understands that if Owner has not signed and delivered this Agreement to the City Clerk within the time period required in paragraph 2, above; Owner's request for the Change of Land Use shall be deemed withdrawn. The Change of Land Use granted by the City Council is conditioned upon the execution and delivery of this Agreement and will not take effect unless and until Owner signs and delivers this Agreement to the City Clerk within the time period set forth in paragraph 2, above. If this Agreement is not signed and delivered to the City Clerk within the time period required in paragraph 2, above, Owner will have to reapply for the Change of Land Use for the Property.

4. **By signing and delivering this Agreement to the City Clerk, Owner acknowledges that Owner waives any right to claim diminution in value or pursue a claim for just compensation for diminution in value under Arizona Revised Statutes § 12-1134 relating to the Change of Land Use for the Property set forth in Exhibits "A" and "B".**

5. The Owner warrants and represents that Owner is the Sole Owner of fee title to the Property, and that no other person has an ownership interest in the Property. The Owner further warrants and acknowledges that Owner has reviewed and understands this Agreement and the exhibits and attachments, including the requirements, conditions and stipulations imposed by the City Council regarding the Change

of Land Use for the Property. The person(s) who sign on behalf of Owner personally warrants and guarantees to the City that he or she has the legal power to bind Owner to this Agreement.

6. This Agreement, any exhibits attached hereto, and any addenda, constitute the entire understanding and agreement between the Owner and the City and shall supersede all prior Agreements or understandings between the Owner and City regarding the Property or the Change of Land Use of the Property. This Agreement may not be modified or amended except by written agreement, approved and signed by both the Owner and the City.

7. This Agreement shall run with the land and is binding upon all present and future owners of the Property. This Agreement is subject to the cancellation provisions of Arizona Revised Statutes § 38-511.

8. Within ten (10) days after receipt of this signed Agreement, the City Clerk shall file the original Agreement in the Official Records of the Cochise County Recorder's Office, Cochise County, Arizona.

DATED and **SIGNED** this 14th day of November, 2023.

City of Benson




Joe A Konrad, Mayor

[Owner]:

 owner

Name & Title of Person Signing

ATTEST:




Vicki L. Vivian, CMC, City Clerk

 owner

Name & Title of Person Signing

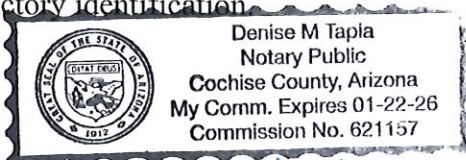
APPROVED AS TO FORM:



Paul A. Loucks, City Attorney

State of Arizona)
) ss
County of Cochise)

SUBSCRIBED AND SWORN to before me this 14th day of November,
2023 by Kevin Rasch and _____ who are the
Owner(s) or the authorized representatives of the Owner(s), and who are either known to me or have shown
satisfactory identification.



My commission expires: 1/22/26



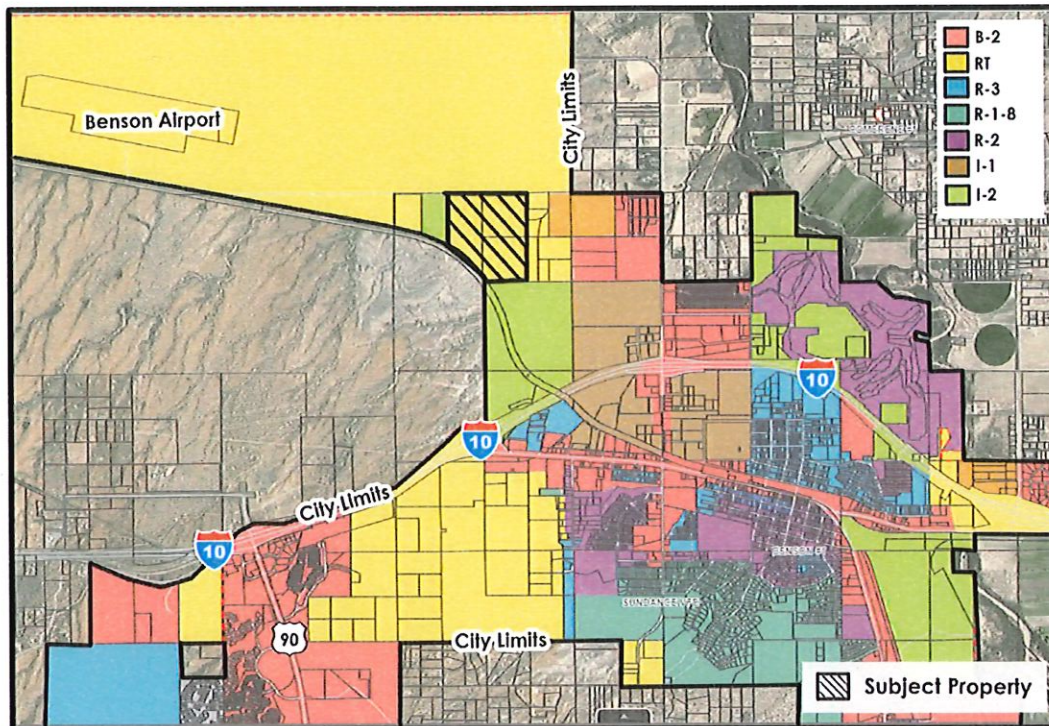
Notary Public

EXHIBIT "A"
LEGAL DESCRIPTION
of the PROPERTY

APNs 123-10-004, 123-10-006, 123-10-007

Lots 26, 27, and 34, according to the Record of Survey at Bk. 1, Page 16 in the
Records of the Cochise County Recorder.

OCOTILLO GRANDE RANCHES (SURVEY OF) LOT 34 (SW NE) SEC 5 17 20 39.81AC
OCOTILLO GRANDE RANCHES (SURVEY OF) LOT 27 (NW NE) SEC 5 17 20 39.87AC
OCOTILLO GRANDE RANCHES (SURVEY OF) LOT 26 (POR NENW & POR SENW)
SEC 5 17 20 46.91AC



Current Zoning
Rezoning (Aviation Drive)

N.T.S.
Benson
Arizona
founded in 1913
Following the Sun Valley Model

EXHIBIT “B”
CITY ORDINANCE OR DESCRIPTION OF COUNCIL ACTION

(To be provided by the City.)