

RESOLUTION No. 1-2008

WHEREAS, the Town of Gilbert Arkansas has previously authorized the institution of legal action in the Circuit Court filed as The Town of Gilbert v. Benjamin Fruehauf II, and

WHEREAS, this litigation has been instituted in order to insure the Town maintains full control over and the integrity of its streets and other public passage ways; and

WHEREAS, the Circuit Court has rendered a decision finding, in part, the Town's claimed right-of-way, commonly referred to as Spring Street had been part of the prior right-of-way of the Missouri and North Arkansas Railroad, and that title to such right-of-way has reverted to the Defendant, Benjamin Fruehauf II; and

WHEREAS, this decision, if allowed to stand, would have an adverse impact on the Town's ability to utilize the public right-of-ways for the citizens now, and in the future, thereby establishing unacceptable consequences; and

WHEREAS, the Circuit Court has indicated that the other matters and issues pending the same styled cause are to be scheduled for future trial.

THEREFORE, BE IT RESOLVED that the Town Council of the Town of Gilbert hereby authorizes as follows:

A. The continued retention of Attorney Stephen Giles to represent the Town in its current litigation with the Defendant, Benjamin Fruehauf II, in the trial of the case pending in the Circuit Court of Searcy County as well as initiating an appeal to the Arkansas Court of Appeals and/or the Arkansas Supreme Court, for an agreed upon retainer of \$15,000; and

WHEREAS the Town hereby appropriates the sum of \$ 30,000⁰⁰ for fees and costs for the purposes of this pending litigation and an appeal, reserving the right to increase this sum as necessary by Order of Town Council; and

WHEREAS the Town Council authorizes the Mayor of the Town of Gilbert to enter into any appropriate agreement with Attorney Stephen Giles and/or other attorneys in order to prosecute any appeals and/or represent the Town in any trial or other appropriate litigation on behalf of the case of The Town of Gilbert v. Benjamin Fruehauf II currently pending in the Circuit Court of Searcy County.


MITCH MORTVEDT/MAYOR

Attest: 
WILLIAM WEIDMAN
RECORDER/TREASURER