

**OFFICIAL PROCEEDINGS OF THE APACHE COUNTY  
BOARD OF SUPERVISORS MEETING  
December 1, 2015  
St. Johns, Arizona**

Present were: Chairman Joe Shirley, Jr., Vice Chairman Tom M. White, Jr. and Supervisor Barry Weller. Also present, County Manager/Clerk of the Board Delwin Wengert and Chief Deputy County Attorney Joseph Young.

Chairman Shirley called to order the Board of Supervisors meeting at 8:32 a.m. of Supervisors chambers, County Annex Building, 75 West Cleveland Street, St. Johns, Arizona and welcomed all in attendance.

George Walsh led the Pledge of Allegiance.

Ryan Patterson gave the invocation.

Chairman Shirley called for the Flood Control District items.

Ferrin Crosby, County Engineer, requested approval of funding renewal in the amount of \$22,400 per year for maintenance of flood warning gauges for fiscal year 2016 and 2017 located in southern Apache County. Mr. Crosby stated the gauges are located near the Wallow Fire burn area and recommend approval. Mr. Weller moved approval, seconded by Mr. White. Vote was unanimous.

Mr. White moved to adjourn the Flood Control District meeting, seconded by Mr. Weller. Vote was unanimous.

Chairman Shirley called for the regular agenda items.

Erin Collins, Arizona Local Government Employee Benefit Trust (AZLGEBT), provided an update on the Wellness program and the implementation of Fitbits for eligible employees. No action was needed or taken.

Mr. Wengert presented the **Consent items A-D** and recommended approval. Mr. White moved Approval of the Consent items **A-D**, seconded by Mr. Weller. **County Manager/Clerk of the Board: A.** Request approval of demands as distributed to the Apache County Board of Supervisors between November 17, to December 1, 2015. Payee Amount Shirley, Joe Junior 1,923.82 Rogers, Kent 1,133.61 Stradling, Reed 1,437.04 Redhouse, Francis 1,001.74 Farr, Damion 3,682.41 King, Walter Scott 1,188.23 Burbank, Lorenzo 1,076.77 APACHE COUNTY HAS 2,094.17 APACHE COUNTY MEDICAL 139,104.18 APACHE COUNTY TAX WITHHOLDING 131,895.54 AZ STATE RETIREMENT SYSTEM 88,697.76 COLONIAL LIFE AND ACCIDENT INS 1,378.20 CORRECTIONS OFFICER RET PLAN 5,936.26 CORRECTIONS OFFICER RETIREMENT PLAN 520 5,676.31 NATIONWIDE 1,605.00 PUBLIC SAFETY PERSONNEL 401 10,971.63 PUBLIC SAFETY SHERIFF RET 44,188.79 SECURITY BENEFIT GROUP 1,141.00 SUPPORT PAYMENT CLEARINGHOUSE 2,272.27 ADHS AZ HEALTH CARE COST 22,400.00 ALLEGRA 2,444.50 ARCHER MANUFACTURING 1,140.00 ASHTONS REPAIR INC 1,919.12 AVAYA COMMUNICATIONS 1,381.19 AZ BOILER COMPANY INC 3,722.93 AZ DEPT OF REVENUE 1,446.48 BLUE HILLS ENVIRONMENTAL 1,419.95 BRADCO 19,947.96 BUNTON, KELLY L 3,435.00 CATERPILLAR FINANCIAL SERVICES CORPORATION 25,393.01 CDW GOVERNMENT LLC 1,084.12 CONSOLIDATED ELECTRICAL DISTRIBUTORS 2,846.25 CORONADO LAW FIRM

PLLC 1,281.50 CREATIVE MULTIMEDIA INC (CMI) 23,272.50 DAVID'S PROFESSIONAL FIRE SYSTEMS INC 1,600.00 DIAMOND DRUGS INC 4,745.38 EBSCO SUBSCRIPTION SERVICES 2,803.03 EMPIRE MACHINERY 4,655.51 FRONTIER 4,477.80 GALL'S INC 2,050.39 GMCO CORPORATION 47,440.71 GOLIGHTLY TIRE 2,245.69 GOODYEAR AUTO SERVICE 1,497.21 HILLYARD INC 2,667.88 INGRAM LIBRARY SERVICES 3,051.02 KIMBALL EQUIPMENT COMPANY 39,120.49 LARKINS, PETER M 3,060.00 LAW OFFICE OF DIRK LEGATE PLLC 8,610.00 LIN CUM 4,838.08 LITTLE COLORADO BEHAVIORAL HEALTH CENTERS INC 1,730.00 MINKUS 1,065.00 NAVAJO COUNTY 7,500.00 NAVAJO TRIBAL UTILITY AUTHORITY 1,704.30 NAVOPACHE ELECTRIC COOPERATIVE 23,044.15 OFFICE DEPOT 1,987.98 PATTERSON, DANA BRYCE 8,500.00 PIMENTEL CONTRACT CLEANING 6,600.50 PLATT DDS, RANDOLPH 10,148.00 QUILL CORP 4,124.47 REIDHEAD, BRANDY 2,855.00 REYES, KAREN 2,520.00 SANOFI PASTEUR INC 1,131.73 CHIFF, LAURENCE 1,500.00 SECURUS TECHNOLOGIES INC 4,662.37 ST JOHNS CITY 1,606.22 ST JOHNS CITY 11,530.67 ST JOHNS EMERGENCY SERVICES 1,406.99 TATES AUTO CENTER 36,770.65 THOMSON REUTERS WEST 1,139.52 TJP COMMUNICATION 3,139.41 TOWN OF EAGAR 10,648.55 VERITAS RESEARCH CONSULTING 3,200.00 VERIZON WIRELESS 2,731.34 WALETA LAKE HAVASU CITY 2,400.00 WELLER, BARRY GLEN 1,157.99 WESTERN EMULSIONS INC 2,818.71 WHITE MOUNTAIN PERFORMANCE 1,018.35 WILLIAMS LAW GROUP PLLC 8,500.00 ALL PRO TRANSMISSIONS 1,940.60 BERRY, CURTIS H 1,101.51 BRADCO 19,931.89 KATHLEEN M MCGUIRE PSY D LLC 2,125.00 NORCHEM DRUG TESTING LABORATORY 1,364.50 RITCHIE BROS AUCTIONEERS 18,871.28 TJP COMMUNICATIONS 1,244.88 CHEVRON USA INC 1,017.69 D & H PETROLEUM & ENVIRONMENTAL SERVICES 1,150.00 DELL COMPUTER CORPORATION 2,508.56 ESCUDILLA INTERIORS 1,500.00 INGRAM LIBRARY SERVICES 3,107.46 J AND J TRUCK SERVICE INC 2,398.00 NAVAJO TRIBAL UTILITY AUTHORITY 1,012.62 NORTHLAND PIONEER COLLEGE 300,000.00 PACIFIC PONDEROSA CO INC 1,410.82 THE GUIDANCE CENTER 1,950.00 TYRONE T WHITE 1,028.13 TYRONE T WHITE 1,028.12 VERITAS RESEARCH CONSULTING 1,800.00 WHITE RAVEN OF ARIZONA LLC 2,627.38

Demands are payments made or to be made, by the County. Specific details of the demands may be requested through the County public record request process. **B.** Request approval of minutes dated November 17, 2015. Community Development: **C.** Request approval for a Conditional Use Permit for SunState Towers to construct a 195' multi-carrier wireless telecom lattice tower and equipment cabinets within a 50' x 50' chain link compound. Property is located near Nutrioso, Arizona, parcel 102-23-002. The Planning and Zoning Commission voted unanimous approval. Personnel Items: D. Human Resources: Request approval to increase the hours of Administrative Assistant I, Juanita Clark from 20 per week to 30 hours per week. This action will add an additional cost of \$5,460.00 per year. Vote was unanimous.

Mr. Wengert presented the item for approval of a Liquor License Application recommendation for Jon Dahl, Stanford General Store, #4 County Road 8235 in Concho. Mr. Wengert stated no protests were received. Mr. Weller moved approval, seconded by Mr. White. Mr. Dahl addressed the Board and stated the business has had a Class 10 for the past five years and is now requesting a Class 6 to be able to serve beverages on the property. Vote was unanimous.

Mr. Wengert presented the item for approval of the 2016 Board of Supervisors Meeting Dates. Mr. White moved to approve the meeting schedule with the five meetings to be held up North. Mr. White stated people are happy there are meetings held in Ganado and Chinle. Mr. Weller seconded the motion for sake of purpose of discussion. Mr. Weller stated this is an undue cost to the County to transfer so many different departments and personnel to conduct County business when the County seat is here in St. Johns and County business should be done in the County seat. Mr. Weller stated he will be opposing the parts of the meeting schedule that are translocated to the northern part of the County. Motion passed 2-1 with Mr. Weller voting nay.

Karen Houston, Human Resources Director, presented the item for approval of a modification to the Human Resources Policy Manual Sections 1.26 (Hiring of Relatives and Section 4.3 Conflict of Interest). Ms. Houston stated Section 1.26 adopts a new Personal Relationship section to the policy and Section 4.3 is being modified to be consistent with the new section. Ms. Houston stated this policy is an addendum to the nepotism policy and hiring of relatives in the same department is discouraged and relatives who work in the same department will have to disclose if they are hired. Ms. Houston was not feeling well and excused herself from the meeting. Mr. Wengert stated the County worked with the Arizona Counties Insurance Pool (ACIP) and the County Attorney's Office to develop the policy and is an extension of the nepotism policy that extends to employees who have a romantic or sexual relationship. Mr. Wengert stated the policy gives the guidelines on what happens in those instances and the employees have to report their relationship to their elected official or department head and then accommodations will try and be made to so it does not violate the nepotism policy. Mr. White stated since this policy change is recommended by ACIP and the County Attorney, he moved approval, seconded by Mr. Shirley. Mr. Weller stated he has concerns with the policy change on a very sensitive issue and there is some very loose language in the policy that has him concerned and even though ACIP has been involved in putting this together, he believes the loose language will set up the County for more litigation than protecting us from litigation. Mr. Weller outlined his concerns with who investigates and determines whether it is an inappropriate romantic relationship or just a friendship, and who is responsible to make judgement on those people who might just be friends having dinner and someone does not like them. Mr. Weller stated the policy could be more simply put in a manner that says the county stands in caution of romantic relationships that may affect the work environment and address documenting work issues and not give someone the ability to make a moral judgements and be investigated. Mr. Weller stated he suggests the policy just state it is the policy of the County that we would like romantic relationships not to interfere and refer them to the nepotism policy. Mr. Weller stated he would modify the motion to make it more simple and a less complex policy where we don't get into investigations. Mr. Weller stated he is also concerned with lack of equal application of policies throughout the County because of the many different elected official levels and departments; some departments follow certain policies and some don't. Mr. Weller asked if this policy will be applied to every department, every elected officials and every employee in the County or does it apply only to certain individuals. Mr. Weller asked who will conduct the investigation and who does this policy apply to. Chairman Shirley asked Mr. Weller if he was making a motion to modify the motion. Mr. Weller moved to table the item until the next meeting to have the policy simplified in a manner that is not so complex because in its present form, he cannot support it. Chairman Shirley called for a second to Mr. Weller's motion to table the item. Hearing no second, motion to table the item died for lack of a second. Mr. Weller asked Mr. Shirley who he thinks should do the investigation and be the ultimate judge on the moral standards of our employees. Chairman Shirley stated he first wanted to clarify there is a still a motion and a second to approve the policy. Mr. Shirley stated in regard to Mr. Weller's question to him relative as to who should do the investigation, he believed the County Attorney, Department Heads and Supervisors would ask questions, the County Manager could also take on the job of investigating, so he feels it rests with the department heads. Chairman Shirley stated the sheriff's department could look into things in the case of a conflict but there is a myriad of supervisors and staff that could do the investigating. Mr. Weller asked Mr. Shirley if within an investigation, what is the standard that will be used for a romantic relationships. Mr. Shirley referred the question to Chief Deputy County Attorney, Joseph Young. Mr. Young responded as far as enforcement, the policy sets up rules but it does not set up enforcement so some kind of sexual investigative unit is a scary thought so that is why they specifically avoided that by placing the burden on the individual in the relationship with the higher title to self-report, so there is not necessarily an investigation unit set up, it is more a protection for the County for sexual harassment claims. Mr. Young stated if there is clear evidence there is a relationship going on, it is up to the departments to report that to Human Resources and move forward. Mr. Weller responded if the policy is being violated, will the employee be able to be terminated for having a romantic relationship inappropriately in a department. Mr. Young stated termination is a possibility so that is where the sexual harassment comes into play;

that between two people in a relationship, the one that is the supervisor has the obligation and duty to report and to be reassigned. Mr. Young stated the policy allows reassignment first but that may not be realistic in every situation since there may not be a positions they could be reassigned to, so in that case, if the relationship is ongoing, it is up to the one in the supervisory position to resign in lieu of termination. Mr. Weller stated that still presents concern that by putting it on the onus of the employees to report it and then don't, and evidence appears to be significant, someone still has to take that evidence and do an investigation, utilizing some kind of standard and make a decision. Mr. Weller asked if that is the County Attorney's responsibility and if so, what is the standard for a romantic relationship. Mr. Young responded the romantic relationship is a sexual relationship and as far as enforcement of the policy, it would be the same as any employment issue, it would be Human Resources who may seek advice from the department head, elected officials or the County Attorney's office but the responsibility for employment issues rests on Human Resources. Mr. Weller asked if a romantic relationship is the same as a sexual relationship why is redundant in the policy. Mr. Young stated it is to avoid the defining of what sexual means to avoid having our county documents getting into specifics on sexual conduct. Mr. Young stated sexual conduct could be defined more specifically if that is desired by the Board but does not believe it is necessary; a sexual or romantic relationship beyond the County has meaning; it has meaning is court cases and is the specific definition given anywhere in language so regardless of what the County determines a romantic or sexual relationship, it has meaning outside the County. Mr. Weller stated that is why he thinks we are opening ourselves for more litigation than we are protecting ourselves from. Mr. Weller asked Mr. Shirley who is held to this standard; is it every elected official and employee in the County or just certain employees that are held to the standard. Mr. Shirley responded that it is law and a rule that covers all staff, wherever people are working in County government. Mr. Weller stated he asked the question because nepotistic activity in certain departments has occurred in this county that has not been addressed due to the fact it was under an elected official and there has been history of some unequal application of the rules that we have so that is why he brought it up for discussion. Mr. Wengert stated if there is nepotism going on the County he would like Mr. Weller to send him something in writing giving him specific details about his statement so he can address it. Mr. Wengert stated all lawsuits against the County are handled by ACIP automatically and that being the case they have a lot of experience in the area and given that background, they wrote this policy to try and protect County individuals and the liability insurance pool. Mr. Wengert stated there is another section in the policy manual under Section 4.6, Employee Conduct, so that would also come into play in situations where a department head or elected official has to deal with this issue and there are lots of things in that section that would help them work through the problem. Mr. Weller responded the minutes will reflect that he stated historically there have been nepotistic activities that were not dealt with and he personally discussed that with Mr. Wengert in the past and Mr. Wengert told him that is under the elected officials and cannot go after that particular issue. Mr. Weller stated he will remind Mr. Wengert, in writing of some of those issues that they talked about in the past. Mr. Weller stated the County requested ACIP be involved in this; it was not something ACIP decided to do on their own and recommend to all the counties so it's not like there have been discussion about this policy around the State but he asked for documentation of the other counties that are doing this and who else has this particular policy and he hasn't received any of that information. Mr. Weller stated he didn't want it presented as something that is common already in every other jurisdiction because he hasn't seen evidence of that.

George Walsh, a resident of Vernon, stated possibly unintentional, there have been some misstatements have been said and in the Hounshell vs. Apache County case, elected officials, unless they agree, are not subject to the Human Resources Policy that is adopted by the Supervisors and until such time all the elected official agree they will fall under this policy he would ask the item be tabled because it only applies to those employees under the Board's purview. Mr. Walsh stated certain employees are held to a higher standard than others because there is no Human Resource Policy that affects elected officials, as proven with the Hounshell case.

The motion to approve the amendments to the Human resources Policy passed 2-1 with Mr. Weller voting nay.

District III Supervisor Barry Weller requested an update on current status of the Medical Marijuana Ordinance because of comments made at a previous meeting. Mr. Weller provided an overview of the timeline of the Medical Marijuana issue by the Planning and Zoning Commission and the Board of Supervisors. Mr. Weller stated he would like some explanation as to why the amendment to the ordinance has not come before the Board and is back on the Agenda for the Planning and Zoning Commission meeting to be held on December 3, 2015. Mr. Weller stated according to A.R.S. 11-802J4, every issue associated with any action by the Planning and Zoning Commission should be brought before the Board for discussion to give due process for any applicant who might want something done, a second chance. Mr. Weller stated he is requesting an update from staff on why it is not before the Board of Supervisors. Mr. Ollerton stated he received an application from a person wanting to put in a commercial marijuana grow site in the County and the current ordinance only allows 2000 square feet of indoor commercial grow and the applicant wanted a much larger 40 acres of commercial grow so an amendment was put together for the Ordinance and in January. Mr. Ollerton stated in February, 2015, the amendment was put before the Board of Supervisors and there was discussion about some of the items in the ordinance and the Board of Supervisors tabled the item. Mr. Weller stated the Board did not table the item; the Chairman tabled the item with no vote by the Board. Mr. Shirley stated the point was, the item was tabled. Mr. Ollerton stated the direction he received from the County Attorney based on the comments from the Board that the changes were drastic enough that they needed to go back to the Planning and Zoning Commission. Mr. Ollerton state in April, 2015, because of the delay the applicant no longer had an interest in growing in Apache County so once the Planning and Zoning approved it in April, and set a meeting in May and recalls there were several Board members and the County Attorney out of town and the attorney had questions he needed some answers to so it was tabled at that meeting. Mr. Weller stated the minutes he read, there was a vote on that by the Commission to move it on to the Board. Mr. Weller stated there was only one question that was to be answered and when he sees legal approval on the agenda for the Board he presumed that answer was made and would be available for the Board. Mr. Weller stated his remembrance and research by the activities of the Planning and Zoning Commission was there was a vote to put it before the Board of Supervisors with one answer still needed from the County Attorney's Office. Mr. Ollerton stated the current status of the ordinance is it is scheduled to go before the Planning and Zoning Commission on Thursday, December 3, 2015 with a public hearing. Mr. Weller asked the County Attorney to comment on why A.R.S. 11-802J4 is not being followed through on this specific item. Chief Deputy County Attorney Joseph Young, stated he believes Mr. Weller is referring to a statute that states issues that go to the Planning and Zoning Commission then go to the Board for action. Mr. Young stated he disagrees with Mr. Weller's interpretation of that statute but having said that; he thinks it is the Board of Supervisors' prerogative to demand every vote, even yay or nay votes from the Commission to then come to the Board. Mr. Young stated in this specific issue, he spoke with Mr. Ollerton and because it is already before the Planning and Zoning Commission, that vote will come to the Board as well as record of the previous vote. Mr. Young stated as far as the County Attorney's Office is concerned there are still legal issues with the previous drafts and though Deputy Attorney Misbach was at the Planning and Zoning meeting, there were still certain issues that may have been overlooked that may be problematic and didn't want the Board to be confronted with the decision to approve/disapprove an ordinance that the Attorney's office didn't feel was fully legal. Mr. Young state the Board of Supervisors will be given both versions before them when the time comes. Mr. Weller stated he appreciated Mr. Young's compassion and protection of the aboard because he would hate the Board to have to look at something before the attorney's office approved it but that is not the way the statute reads as he sees it and since Mr. Young disagrees with his interpretation, to provide the Board with a written opinion that shows how he can ignore that particular statute legally, since it say the Commission shall transmit all recommendations, decisions, findings, reports and official actions regardless of vote to the Board of Supervisors. Mr. Weller stated he does not see any reference to the County

Attorney's Office so he would like a written opinion for the Board on how to bypass that particular statute and do what is being done and once he gets that opinion, he believes that item should come back before the Board of Supervisors before it goes back to the Planning and Zoning Commission. Mr. White stated Supervisor Weller is requesting from legal counsel and that request should not be made by an individual and should be made by the Board. Mr. Weller stated he is requesting it from the County Attorney's Office and if he doesn't get it from them he will request it from the Attorney General. Mr. Weller stated we are members of a public body, and just like a commissioner, can ask the County Attorney for advice as any member of the Board of Supervisors and would hope the Board members are concerned enough to want an understanding of the issue, but he believes he has that authority as a Board member, as an elected official, to request the County Attorney's Office provide an opinion on such an issue and if they choose not to he will look elsewhere for that opinion. Mr. Shirley stated we have staff in place and an attorney to address the issues so he will wait until it comes before the Board and deal with it at that time. Chairman Shirley stated there will be a public hearing on the issue before the Planning and Zoning Commission on Thursday, December 3, 2015 and they will take action and then it will come before the Board of Supervisors for action.

Mr. Wengert presented notification of the Small Counties Forum on December 9, 2015 at 5:30 p.m. at the County Supervisors Association (CSA) building, 1905 W. Washington Street, in Phoenix, and the County Supervisors Association meeting on December 10, 2015 at 10:00 a.m. at the CSA building, 1905 W. Washington Street, in Phoenix where two or more members of the Apache County Board of Supervisors may be in attendance.

Chairman Shirley opened the floor for call to the public.

George Walsh, a resident of Vernon, Arizona stated in reference to the marijuana issue, he was the commissioner that asked for that legal opinion, it was not asked to be directed to the Board, it was asked to be brought back either provide to him to the Commission as a whole and if you read the minutes that what it says. Mr. Walsh stated there was no legal opinion ever issued to the commissioner related to what was requested and does not believe the legal opinion was ever presented to the Board of Supervisors and believed the current ordinance is in excess of what is allowed by state statute because you are exceeding the powers of what is granted to the Board.

Mr. White moved to adjourn the meeting, seconded by Mr. Weller. Vote was unanimous.

Approved this 15th day of December, 2015.

/s/ Joe Shirley, Jr.  
Chairman of the Board

/s/ Delwin Wengert  
Clerk of the Board