

**OFFICIAL PROCEEDINGS OF THE APACHE COUNTY
BOARD OF SUPERVISORS MEETING
January 19, 2016
St. Johns, Arizona**

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

Chairman Shirley called to order the Board of Supervisors meeting at 8:35 a.m. in the Board of Supervisors chambers, County Annex Building, 75 West Cleveland Street, St. Johns, Arizona and welcomed all in attendance.

Glenn Joy led the Pledge of Allegiance.

Milton Ollerton gave the invocation.

Chairman Shirley called for the Library District item.

Judith Pepple, Library Director, requested approval to accept State Grant-In-Aid in the amount of \$25,000 and is an ongoing grant from the Arizona State Library. Mr. Weller moved approval, seconded by Mr. White. Vote was unanimous.

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

Chairman Shirley called for the regular agenda items.

Dan Bevier and Jason Baran, Salt River Project, provided an update on the Environmental Protection Agency requirements for Coronado Generating Station and the future action that will be implemented to comply with the new imposed regulations. No action was needed or taken.

Milton Ollerton, Community Development, presented the item for a public hearing, discussion and possible approval the changes to Article 23 Medical Marijuana. Mr. Weller moved to open the public hearing, seconded by Mr. White. Vote was unanimous. Mr. Ollerton provided an overview of the ordinance and the permit process. Mr. Ollerton stated if approved, it would allow any size outdoor grow in an agriculture zone anywhere in the county with a conditional use permit and eliminate restrictions on private growers who will have to follow the state requirements on regulating commercial growers.

Gregg Levendoski, a resident of the county, expressed his support of marijuana for medical purposes.

Santiago Bazan, a resident of the county stated he supported the use of medical marijuana and spoke of fencing regulations.

Robert Riddiford, a resident of the county, stated he has an issue with the marijuana farm near his area and the crime it may bring. Mr. Weller asked Mr. Riddiford if he had any data or statistics to

show any increase in crime to areas with marijuana farms. Mr. Riddiford stated he had none with him but has friends in Colorado that have data.

Ken Schneider, a resident of the county expressed his concerns with changing growing to agriculture status which will put it far from police and is concerned for the security of people who live near the cultivation farms. Mr. Schneider stated he was told by a grower that a non-maintained road is part of the security for his marijuana farm but this crop is not like tomatoes as the growers say; it is a controlled substance and should be near police and fire protection and on a county maintained road.

Joel Young, a resident of the county, stated the ordinance referenced in 2303 Section A-4 under Community Impacts, he would like to know what the definition is of "substantial evidence". Chief Deputy Attorney Joe Young responded that substantial evidence would consist of not only facts and statistics but also testimony and experiences which would include a broad range of things, and is a discretionary term used by decision makers.

Rael Johnston, a resident of the county, asked for clarification on several issues related to the Article 23 of the Ordinance. Mr. Ollerton provided clarification on her issues and concerns.

Gloria Braathan, a resident of the county stated the county sheriffs are harassing medical marijuana patients and her home was destroyed by deputies and because of that, she does not spend any money in Apache County.

Steven Ames, a resident of Concho, stated he has concerns with changing from commercial to agriculture zone because marijuana growth is a business and should be done near a maintained road to be checked on and to allow emergency response to be able to get there. Mr. Ames also expressed his concern with regulating dispensaries that are in such remote areas because monitoring them would be difficult.

Mr. Ollerton stated there are two topics being talked about; one is for the dispensary and one is for the cultivation location for the dispensary's commercial grow area, and the permit for the dispensary is good for three years and a conditional use permit for a cultivation location for the dispensary is good for two years.

George Walsh, a resident of Vernon, expressed his concerns with how the ordinance was published in the newspaper and how it was posted on the County website because it is confusing to the public. Mr. Walsh stated a third option has been added to Mr. Ollerton's recommendation which has not been seen by the Planning and Zoning Commission. Mr. Walsh cited statutes regarding requirements for posting notifications of public hearings and stated the requirements have not been followed so he does not believe the Board can move forward until the County follows the statutory requirements.

Tom Samoff, a resident of the county, stated he is concerned with the medial marijuana ordinance turning over the oversight to the State and not at a county level. Mr. Samoff stated he has property in California and has seen the effects of growing marijuana and his property values have dropped in half in California and without county regulations to watch over what is going on, he is concerned they will also destroy the property values here so the county should stay involved and not just let the State regulate the marijuana farms.

Art Modica, a resident of Apache County asked what the county gets in the way of monetary value from an operation of selling marijuana because if it is grown in our county and then sent to a dispensary out of the county we won't get any sales tax.

Guy Fillipeli, the manager of the Green Farmacy in Springerville, asked if any of the proposed changes to the County ordinance would affect how he does business. Mr. Ollerton stated Springerville is in an incorporated community so the business falls under the Town of Springerville's jurisdiction; the County Planning and Zoning Commission only regulates unincorporated portions of Apache County.

Mr. Weller moved to close the public hearing, seconded by Mr. White. Vote was unanimous.

Mr. Weller stated he provided the County Attorney copies of statutes and stated he believes if we had followed those statutes we wouldn't be as confused as to what is being considered for approval. Mr. Weller moved to table the item until the next Board meeting or until all legal posting can be done on the language to be voted on and ask that the recommendations be properly posted and organized in a manner that the Board and the public know what is being voted on. Mr. White seconded the motion. Mr. Ollerton stated the posting cannot happen before the next Board meeting because of time constraints so the soonest it could be heard would be February 16th. Mr. Ollerton stated he would appreciate some clear direction by the Board on how they would like him to proceed with the two ordinances. Mr. Weller stated for him, there are lots of issues to be worked out and would like to see it all consolidated but that is up to the County Attorney to say if a fully consolidated version needs to go back to the Planning and Zoning Commission to be reviewed first or if staff has the ability to take input from all resources and make another version which the commission has not looked at, and bring it to the Board. Mr. Weller stated he was not sure if that could be done without going back to the Commission because they are the ones appointed to handle the zoning discussions because now the Board is considering things the Commission hasn't even looked at. Mr. Weller modified his motion to send it back to be Planning and Zoning Commission until it is consolidated into that position. Chairman Shirley stated Mr. Ollerton needs to get with the attorneys and staff and work out the issues. Motion to table the item was unanimous.

Milton Ollerton, Community Development Director, presented the item, following a public hearing, discussion and possible approval of a Reversion to Acreage to allow Jesse Brazel and Ed Coleman to amend the plat map for Gobbler Peak Estates; dissolving Lot 1 and divide its area between Lot 2 and 17 and creating a lot combination and reconfiguration of lot 2 and 17. Property is located near Nutrioso, parcels 101-69-002 and 101-69-017. Mr. Ollerton stated the Planning and Zoning Commission voted unanimously to approve. Mr. Weller moved to approve, seconded by Mr. White. Mr. Weller asked if there were any conditions related to the application. Mr. Ollerton stated there were no conditions associated with the application. Vote was unanimous.

Mr. Wengert presented the Consent Agenda items A-G. Mr. White moved approval, seconded by Mr. Weller, with discussion on Item G. County Manager/Clerk of the Board: A. Request approval of demands as distributed to the Apache County Board of Supervisors between January 5, 2016 to January 19, 2016. Payee Amount ARCHER MANUFACTURING 1,140.00 ARROWHEAD ROCKDRILL CO INC 26,082.00 AZ BOILER COMPANY INC 3,694.23 AZ DEPARTMENT OF ENVIRONMENTAL QUALITY 4,520.00 AZ DEPT OF HEALTH SERVICES 1,145.00 AZLGEBT 263,190.06 BASIN PUMP AND SUPPLY CO INC 1,798.81 BAUMAN HOME AND AUTO INC 1,216.96 BENDER, JUDITH A 6,787.50 BRADCO 31,338.67 DELL COMPUTER CORPORATION 4,153.62 EMPIRE MACHINERY 1,443.80 ETR ASSOCIATES 1,589.10 GALLUP BLUEPRINT 1,092.67 GOLIGHTLY TIRE 1,552.10 HILLYARD INC 2,313.49 NEWMAN SIGNS INC 1,780.00

PFIZER INC 1,520.12 PLATT DDS, RANDOLPH 1,472.00 QUILL CORP 2,435.10 SECURUS TECHNOLOGIES INC 1,491.69 ST JOHNS CITY 5,972.59 STAPLES CREDIT PLAN 4,582.14 TEN COW COMPANY INC 1,408.03 THE AARONS COMPANY LLC 3,000.00 TOWN OF EAGAR 14,000.00 TRINITY SERVICES GROUP INC 18,707.10 US POSTMASTER 3,768.00 VERITAS RESEARCH CONSULTING 1,080.00 WELLS FARGO BANK 1914 1,020.01 YOUNGS FUTURE TIRE 1,848.63 TWIN ARROWS NAVAJO CASINO RESORT 1,000.00 APACHE COUNTY HSA 2,006.67 APACHE COUNTY MEDICAL 139,891.43 APACHE COUNTY TAX WITHHOLDING 134,481.30 ASRS LEGACY EORP 1,009.62 AZ STATE RETIREMENT SYSTEM 89,837.32 COLONIAL LIFE AND ACCIDENT INS 1,378.20 CORRECTIONS OFFICER RET PLAN 5,808.71 CORRECTIONS OFFICER RETIREMENT PLAN 520 6,039.02 NATIONWIDE 1,605.00 PUBLIC SAFETY PERSONNEL 401 11,393.58 PUBLIC SAFETY SHERIFF RET 40,158.91 SECURITY BENEFIT GROUP 1,091.00 SUPPORT PAYMENT CLEARINGHOUSE 2,069.77 LAW OFFICE OF DEVIN BROWN 1,182.50 MISBACH, CHRISTOPHER BRIAN 1,800.00 NATIONAL ASSOC COUNTY AND CITY HEALTH OFF 3,210.00 NAVAJO TRIBAL UTILITY AUTHORITY 1,636.59 NAVOPACHE ELECTRIC COOPERATIVE 17,471.25 QUILL CORP 5,525.72 REDW LLC 6,700.00 RUSH TRUCK CENTER 1,443.92 SCHIFF, LAURENCE 1,600.00 SECURUS TECHNOLOGIES INC 1,386.71 SIERRA PROPANE 1,927.17 ST JOHNS CITY 1,279.07 ST JOHNS EMERGENCY SERVICES 1,406.99 TJP COMMUNICATIONS 1,455.00 TWIN CITY HARDWARE – TCH SOUTHWEST 3,765.65 US GEOLOGICAL SURVEY 5,600.00 VALLEY AUTO PARTS 1,381.27 VERITAS RESEARCH CONSULTING 2,640.00 WELLS FARGO BANK 1914 2,431.60 WORLD OF TRAVEL 2,177.70 YAVAPAI COUNTY GOVERNMENT 12,350.00 4IMPRINT 2,572.92 A & E REPROGRAPHICS 1,080.00 ARIZONA STATE FORESTRY DIVISION 4,865.56 AZ COUNTIES WORKERS COMPENSATION PLAN 54,041.23 AZ DEPT OF RISK MANAGEMENT 1,943.35 AZ EMERGENCY PRODUCTS 1,087.79 BLUE HILLS ENVIRONMENTAL 1,678.16 BRADCO 20,049.06 CRESCENT ELECTRIC SUPPLY CO 1,588.56 CRESTLINE SPECIALTIES INC 1,393.30 DELL COMPUTER CORPORATION 1,777.81 EMPIRE MACHINERY 4,595.24 FRONTIER 1,797.78 FRONTIER 1,078.91 GOODYEAR AUTO SERVICE 1,040.36 GRAVES PROPANE CO INC 1,040.31 HILLYARD INC 2,209.82 HISTORICSTREETSCAPES PLLC 1,970.00 JW MARRIOTT STARR PASS RESORT & SPA 1,624.08 KATHLEEN M MCGUIRE PSY D LLC 2,190.00

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 January 5, 2016 and January 7, 2016. C. Request appointment of Diana Morgan as Apache County's representative on the Development Authority Council for Real Arizona. Personnel Items: D. Human Resources: Request approval to modify the position of Crusher Operator II from a pay range 29 to a pay range 26 on Human Resources Table 3. Also, request authorization to amend the Crusher Operator II job description to reflect the requirement of an Arizona Driver's License (Class D) only. E. District I: Request approval to convert the currently vacant Road Worker II position (range 26) to a Road Worker III (range 34) and to fill the vacancy with David Curley at a salary of \$34,104. Engineering Department: F. Request ratification of the purchase of three (3) Caterpillar Truck Tractors through the National Intergovernmental Purchasing Alliance at a cost not to exceed \$310,500 plus tax, utilizing District II and District III HURF. G. Request authorization to solicit bids for the demolition of the District I Chinle buildings to include the old justice of the peace building and the former administration building. Mr. Weller and Mr. Wengert held a discussion related to the buildings that would be demolished in Chinle. Mr. Wengert stated the building were inspected and were found to be deficient in lots of ways and was determined it would cost more to make the changes than what the buildings were worth. Mr. Wengert stated it is recommended to demolish the buildings and build the area up to alleviate the flooding that occurs and bring a modular building for the Justice Court. Mr. Wengert stated once they put together a proposal, they will bring it back to the Board for consideration. Mr. Wengert stated this will provide betting housing for the staff who work for the justice of the peace. Mr. Wengert stated the staff will be housed in the Chinle administrative office until the new building is set up. Vote was unanimous on approval of all consent agenda items.

Chief Deputy County Attorney Joe Young requested approval of the conversion of a vacant Attorney II position to an Attorney III position, and to hire Joshua T. Covey to fill such position at a salary of \$89,732 and to pay relocation costs pursuant to H.R. Policy 1.7. Mr. Covey has over ten years of experience in both criminal law and civil representation. This action will not create an additional attorney position, but is necessary to fill the position of an attorney leaving the office. Mr. White moved approval, seconded by Mr. Weller. Mr. Weller asked if the letter of resignation was received from the leaving attorney. Mr. Young stated the resignation was submitted to Human Resources to terminate the end of the month and that is when Mr. Covey will start work. Vote was unanimous.

Glenn Joy, Human Resources, requested modification of the Human Resources Policy Manual, Section 4.92, Hearing Officer Appointment Procedure. Mr. Joy stated the modification will allow for the appointment of certain judicially trained Apache County employees to act as hearing officers in employment disciplinary appeals. Mr. Weller stated he is concerned this action violates A.R.S. 11-251.18 and is a significant policy change with the county and needs to be posted for two weeks to give time for the public comment before the Board moves forward. Chief Deputy Attorney Joe Young stated he always recommends the cautious route but does not entirely agree it needs to be noticed, but being cautious is always wise in situations like this. Mr. Weller stated this change gives him concerns relative to the statute because it is attempting to modify the appeal process and who sees the appeals on the issues that come from the citizens. Mr. Weller made the motion to table the item to give time for proper notice, seconded by Mr. White. Vote was unanimous.

Mr. Wengert stated the next item was related to the previous item that was table and may need to be tabled as well. Mr. White moved to table the item for Human Resources for possible authorization to appoint Judge Pro-Tem Allen Perkins to act as an employment hearing officer under section 4.92 of the Human Resources Policy Manual. Mr. Weller seconded the motion. Vote was unanimous.

Glenn Joy, Human Resources, requested approval to authorize Attorney Douglas Brown to act as an employment hearing officer under section 4.9 of the Human Resources Policy at a rate of \$275.00 per hour. Mr. Weller moved to approve, seconded by Mr. White. Mr. Weller asked who is currently hearing the appeals. Mr. Joy stated Mr. Patton who was an attorney with the City of Winslow was being used but he has now retired and moved to the valley and is not interested in continuing as the hearing officer. Mr. Weller asked what the rate he was being paid. Mr. Joy stated Mr. Patton was paid \$300 per session.

George Walsh, a resident of Vernon, asked when the publishing was made to solicit people to apply to be a hearing officer and is it required to put out to bid to see who could provide the best service at the lowest price. Mr. Joy stated per the direction of the County Attorney's Office, letters were sent out to several attorneys in the area and Mr. Brown was the only attorney to submit a cost. Mr. Wengert stated this action as needed because Mr. Patton will no longer hear the appeals at such a low rate so letters were sent out. Mr. Wengert stated Mr. Brown was the only attorney to respond and that is what generated the previous items to use in-house judges to hear the appeals. Mr. Weller stated it concerns him that the county selected who they sent the letter out to and did not post it in Apache and Navajo County at the very least to potentially get a better price. Mr. Weller stated his needs to be posted throughout the state and accept bids to see if we can save money and be transparent at the same time. Mr. Shirley stated if you go statewide you are looking at higher fees for travel and per diem. Chairman Shirley called for the vote. Motion died for lack of a vote. Mr. Weller moved to table the item until a proper and complete posting in newspapers in surrounding counties and appropriate human resources sites can be made, seconded by Mr. White. Vote was unanimous. Mr. Wengert stated this item actually falls under professional services which changes how the County obtains services and cost is not the only factor and he will work with the county attorney's

office to follow the policy on this item. Mr. Young stated the procurement policies were met in this case, but that does not mean the Board may want more procurement issues, but the policy was met.

Ryan Patterson, Finance Director, requested approval to engage Heinfeld, Meech & Company to perform the annual cost allocation plan at a not to exceed cost of \$23,500. Mr. Weller moved approval, seconded by Mr. White. Mr. White and Mr. Patterson held a discussion regarding what the company provides to the county. Vote was unanimous.

Ferrin Crosby, County Engineer, requested approval to amend the County Safety Boots Program to reflect a change of allowance from \$150.00 to \$200.00 and change the purchase frequency from every two years to annually. Mr. Weller asked County Attorney Young to rule on if Statute 11-251 applies to this since it is a change in policy and by his understanding, it should have been posted so the public knows what is going on before any action is taken. Mr. Young stated he does not believe this is a rule that would fall within the publishing requirements; the program already exists and this simply changes the amounts to reflect costs. Mr. White and Mr. Crosby held a discussion regarding the need to change the program to every year. Mr. White stated he does not feel new boots are needed for everyone every year. Mr. Crosby stated the purpose of changing the program is because he is continuing to see unsafe footwear from wear and tear and is seeing a recurring event of people asking for a replacement boot prior to two years. Mr. Crosby stated he met with each road yard and found the boots are not lasting the full two years. Mr. Crosby stated by increasing the cost amount, a better boot can be purchased that may last longer. Mr. White stated he would like to see the program modified on an as needed basis. Mr. Weller stated he agreed with Mr. White. Mr. Weller moved to approve the cost limit up to \$200.00 and maintain every two year replacement unless the employee shows cause to their supervisor for a replacement. Mr. White seconded the motion. Motion passed 2-0 with Mr. Weller abstaining because he is not convinced the County is in connection with the statute requirements.

Mr. Wengert provided notification of the Indian Nations and Tribes Legislative Day on January 19, 2016 at 9:00 a.m. at both lawns of the Arizona State Capital building, 1700 West Washington Street, in Phoenix. Notification of the County Supervisors Association (CSA) Legislative Reception on Wednesday, January 20, 2016 at the CSA building, 1905 West Washington Street in Phoenix, at 5:00 p.m. Also, notification of the County Supervisors Association meeting on Thursday, January 21, 2016 at the CSA building, 1905 West Washington Street in Phoenix, at 10:00 a.m. No action was needed or taken.

Chairman Shirley opened the floor for call to the public.

Art Modica, a resident of the County stated he received some paperwork from the state about the Hopi water litigation issue and asked who he could get clarification from on the information but concerns him because he has a well. Mr. Shirley stated that is a legal matter and needs to be taken up with the County Attorney but is not sure they can give any direction. Mr. Weller stated he agreed this is a legal issue but the county attorney cannot provide legal advice but he is concerned with the County's position so he will be writing an email to the County Attorney on the issue to see what the direction will be.

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

George Walsh, a resident of Vernon, stated he wanted to address the Board. Mr. Walsh stated he has been following Facebook and wanted to know what the liability is to the County taxpayers and the County insurance pool in turning the Chinle Road Yard building into a nightclub on the

weekends, charging a cover fee and removing the equipment out so a dance can take place. Mr. Walsh stated he wanted to know if there is a rental agreement and if this is allowed under County policy. Mr. Walsh stated this is being promoted by the District I Road Yard and he would like to know if this is legal and if alcohol is being served and who authorized the parties.

Vote was unanimous to adjourn.

Approved this 2nd day of February, 2016.

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

/s/ Delwin Wengert
Clerk of the Board