

**OFFICIAL PROCEEDINGS OF THE APACHE COUNTY
BOARD OF SUPERVISORS MEETING
January 20, 2015
St. Johns, Arizona**

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

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

Ryan Patterson led the Pledge of Allegiance.

Ferrin Crosby gave the invocation.

Scott A. Noll, Vice President-Project Manager & Gregory Bilson, Chief Development Officer for Concord Blue Energy provided an overview on the Eagar Biomass Project. Mr. Bilson stated Concord Blue is a company that has been around for 13 years and provided the background and new technology related to the project which is headquartered in Dusseldorf and employs about 200 individuals. Mr. Noll stated two marketable products, the bio-char from the pine wood and the renewable electricity which will be sold to Navopache Electric. Mr. Noll stated they are currently in the permitting status of the project and this will be the first project in North America and construction should begin on the 11.95 acre site this summer and be operational by the beginning of 2016. Mr. Weller asked what bio-char is used for. Mr. Noll stated it is used in agriculture for fertigation systems. Mr. Weller asked what permits were required. Mr. Noll stated air permits, aquifer protection permit, and storm water permit through ADEQ and conditional use permits and septic permit with Apache County. No action was needed or taken.

Milton Ollerton, Community Development Director presented the item for approval of the Final Plat for Four Seasons Condominium Subdivision located at 28 Main Street in Greer, Arizona, parcel 102-14-006. Mr. Ollerton stated this was unanimously approved by the Planning and Zoning Commission and provided an overview of the application process and the issues associated with the application. Mr. Ollerton stated there was one issue that was raised that was asked after the P & Z meeting and the question was can the units be used residentially. Mr. Ollerton stated he spent time reviewing the ordinances and also spoke with the County Attorney's office and though the attorney didn't answer the question if it could be used residentially, the point is, the plat map indicates it a commercial development so if they are going to use it residentially it is not stated in their application so he does not know if it is a violation of the ordinances or not. Mr. Ollerton stated if you read the Greer Zoning Ordinance, there is some question about if you are going to have a residential property in a commercial resort zone, it has to be one acre and meet the Greer Residential Zoning definitions so there is a question about that. Mr. Ollerton stated if they are used residentially, there are state law requirements that the applicant has to follow with the Department of Real Estate and if the applicant fails to do those required things and is in violation of Department of Real Estate requirements, they will address it and those fines are high. Mr. Ollerton stated we are at the final plat stage now and this application has been approved at the preliminary plat stage by both the P & Z Commission and the Board of Supervisors. Mr. Ollerton stated that if the question about the residential use issue is big enough that we need to table this and have the attorneys and the applicant discuss it then it should be tabled before we move forward so everyone is clear on what is going to be done. David Brown, attorney for the applicant addressed the Board and provided an overview of the process that the application has been through and was approved at the preliminary plat stage by the Board of Supervisors by a 3-0 vote and recommended to continue to approve this final plat application. Mr.

Brown stated this meets every requirement of the Apache County Ordinance, and all other requirements and utilities are in place. Mr. Brown stated these have been existing commercial developments for many years and there were minor changes made; the word lot was changed to the word unit, which is legally irrelevant but in order to satisfy concerns, the applicant went to the expense of changing all the plat maps from lot to unit and changed the plat map to reflect the adjacent property were not included with this particular plat just in case it wasn't clear. Mr. Brown stated the other issue is Four Seasons and Cattle Kate's are both commercial development and are intended for commercial use and there is nothing in the documents that say anything otherwise. Mr. Brown stated the State has no jurisdiction over Four Seasons because it is less than 6 units but may have some jurisdiction over Cattle Kate's but that is subject to the condominium statute 33-1205. Mr. Brown stated both Four Seasons and Cattle Kate's clearly meets all requirements of any subdivision he has worked on and urged the Board's approval of both Item #2 Four Seasons and #3 Cattle Kate's. Mr. White stated that since Four Seasons was unanimously approved by the P & Z Commission, he moved approval. Mr. Weller stated he is not willing to second the motion. Mr. Shirley seconded Mr. White's motion. Mr. Weller stated he posed two questions to the County Attorney's Office and did not receive clear answers back and that is a concern to him and now that Mr. Brown brings up the fact that the State does not have jurisdiction he has even more concern this needs to be addressed at the County level. Mr. Weller stated he placed a call to the Arizona Board of Real estate with Mr. Ollerton and Attorney Joe Young which raised questions and he would prefer to have these final plats continued until they receive solid written documentation from the County Attorney's Office for the questions he has. County Attorney Whiting stated both he and Mr. Young have looked at this extensively and answered the legal questions and contacted the Department of Real estate and talked to all departments involved within the County as well as the applicant and the P & Z commission reviewed it and voted unanimously on the Four Seasons and passed the other with only one abstention, as well as voluminous emails back and forth to all parties involved so if the Board wants to approve this today everything is legal. Motion passed 2-1 with Mr. Weller voting nay.

Milton Ollerton, Community Development Director, presented the approval of a Final Plat for Cattle Kate's Condominium Subdivision located at 80 Main Street, Greer, Arizona, parcel 102-11-0011 and was approved by the Planning and Zoning Commission by a 7-0 vote with one member abstaining. Mr. White moved approval, seconded by Mr. Shirley. Motion passed 2-1 with Mr. Weller voting nay for the reasons stated in item #2.

Mr. Wengert presented the **Consent Items A & B**. Mr. White moved to approve Items **A & B**, 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 January 6, 2015 to January 19, 2015. 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. Payee Amount 4 RIVERS EQUIPMENT LLC 1,556.36 ASHTONS REPAIR INC 2,461.33 AZ BOILER COMPANY INC 1,800.00 AZ DEPT OF RISK MANAGEMENT 2,262.10 BACKBONE COMMUNICATIONS 4,500.00 BRADCO 1,972.43 CAPPs, MELODY 1,615.00 CHEVRON USA INC 1,063.69 CS&S COMPUTER SYSTEMS 2,270.10 D & H PETROLEUM & ENVIRONMENTAL SERVICES 2,864.15 DELL COMPUTER CORPORATION 10,559.05 DEWITT, COLLIN J 1,600.00 EMILY L DANIES ATTORNEY AT LAW 1,320.00 EMPIRE MACHINERY 25,114.94 GALLUP LUMBER & SUPPLY 1,556.56 GOLIGHTLY TIRE 2,477.64 GOODYEAR AUTO SERVICE 3,813.22 GURULE, CHRISTIAN 1,767.20 HILLYARD INC 2,014.64 INGRAM LIBRARY SERVICES 1,163.00 KATHLEEN M MCGUIRE PSY D LLC 2,037.50 LAW OFFICE OF MARSHA GREGORY 8,676.00 LEXIS-NEXIS 1,029.73 LOWES #24 1,994.54 LOWES COMPANIES INC 2,016.34 NAVAJO TRIBAL UTILITY AUTHORITY 3,772.12 NEW WORLD SYSTEMS CORPORATION 76,904.00 QUILL CORP 2,554.55 RDO EQUIPMENT CO 4,933.86 RHODES, RAYMOND 1,767.20 ROMERO, DAVID JULIAN 1,579.77 S R ROBERTS I NC 1,359.50 SHELL OIL 2,319.62 SIERRA PROPANE 1,056.22 ST JOHNS CITY 2,379.60 THOMSON REUTERS WEST 6,501.37

TYLER TECHNOLOGIES INC 4,000.00 APACHE COUNTY HSA2,762.92 APACHE COUNTY MEDICAL 141,659.92 APACHE COUNTY TAX WITHHOLDING 147,196.24 AZ STATE RETIREMENT SYSTEM 89,142.75 COLONIAL LIFE AND ACCIDENT INS 1,431.81 CORRECTIONS OFFICER RET PLAN 8,507.07 CORRECTIONS OFFICER RETIREMENT PLAN 520 4,912.51 NATIONWIDE 1,605.00 PUBLIC SAFETY PERSONNEL 401 10,971.63 PUBLIC SAFETY SHERIFF RET 31,152.64 SECURITY BENEFIT GROUP 1,181.00 SUPPORT PAYMENT CLEARINGHOUSE 2,096.18 ALLEGRA 1,002.42 AZ COUNTIES INSURANCE POOL 2,451.10 AZ COUNTIES WORKERS COMPENSATION PLAN 55,758.74 BLUE HILLS ENVIRONMENTAL 1,622.98 BRADCO 17,476.65 COMMUNICATIONS SUPPLY CORPORATION 1,609.07 DEMCO 1,259.05 DIAMOND DRUGS INC 4,306.52 EMPIRE MACHINERY 2,660.27 FERRELLGAS 1,715.70 FILEONQ INC 24,707.00 FLINN SCIENTIFIC INC 1,708.95 GALL'S INC 10,038.56 GRAVES PROPANE CO INC 3,989.07 HILLYARD INC 3,395.82 HINDMAN, EMMA E 1,437.75 INGRAM LIBRARY SERVICES 1,273.23 LAW OFFICE OF DEVIN BROWN 1,276.00 LIFELOC TECHNOLOGIES INC 4,535.00 NAVOPACHE ELECTRIC COOPERATIVE 9,092.28 QUILL CORP 4,072.70 SANDOVAL, PATRICK J 1,447.43 SECURUS TECHNOLOGIES INC 1,025.02 SHELL OIL 2,127.87 SIERRA PROPANE 2,934.24 ST JOHNS CITY 1,415.47 ST JOHNS EMERGENCY SERVICES 2,036.42 STALEY LAW FIRM PLLC 2,871.00 THE AARONS COMPANY LLC 3,000.00 TRAK ENGINEERING INC 14,382.00 VALLEY AUTO PARTS 1,263.05 VERIZON WIRELESS 1,461.80 WHITE MOUNTAIN REGIONAL MEDICAL CENTER 1,425.79 WILLIAMS LAW GROUP PLLC 8,500.00 YAVAPAI COUNTY GOVERNMENT 12,100.00 YOUNGS FUTURE TIRE 2,956.32 AZ DEPT OF REVENUE 5,400.31 B. Approval of minutes dated January 6, 2015. Vote was unanimous.

Angela Romeo, Election Director, presented the item based on the recommendation by the Republican Party County Chairman, Delos Bond, determine vacancies exist in the office of precinct Committeeman and requested approval to appoint the following: For Eagar Precinct, Jack Whiting and Gary Kiehne, for the Round Valley Precinct, Dorothy Lesueur, for the Flat Top Precinct, Dan Muth. Mr. Weller moved approval, seconded by Mr. White. Vote was unanimous.

Superior Court Latham requested approval of the Letter of Understanding between the Superior Court and Dirk LeGate for public defender services action is to replace Marsha Gregory at the previously approved contract rate. Judge Latham stated the agreement will go to June 30, 2015 so it coincides with all the other public defender contracts will renew on the same date. Mr. White moved approval, seconded by Mr. Weller. Mr. Weller stated he is concerned with some of the wording in the agreement which he will review with the County Attorney's Office and asked where he could find all the contracts for the public defenders associated with The court so he can review them all. Judge Latham stated the Court has copy and is happy to provide them. Vote was unanimous.

Barry Weller, District III Supervisor, presented his request that the County Attorney's Office and the Sheriff's Department provide an update and documentation to the Board of Supervisors regarding assignment of the case to the appropriate jurisdictional authority and the charging and prosecution of the former employee who took Chinle Justice Court funds in 2013 for her own benefit. Mr. Weller stated he has seen some emails but since it has been ongoing for quite some time, he wants to see the documentation indicating the County has officially turned this matter over to another jurisdiction with our recommendation. Mr. Whiting stated he re-sent an email on January 15, 2015 detailing the item and it has been sent to the U.S Attorney's Office since Apache County does not have jurisdiction on this issue. Mr. Whiting stated the Sheriff's Office conducted an initial investigation and that was received a couple weeks ago and was sent on to the U.S. Attorney, which is the agency that will handle this issue and if they choose to proceed, that is up to them. Mr. Weller asked to see the documentation that was sent to the U.S. Attorney since it was not part of the email. Mr. Whiting stated he will send the letter out to all the Board members today. No action was needed or taken.

Doyel Shamley, Natural Resources Liaison, provided a presentation on game management hunt guidelines. Mr. Shamley stated if the Board had any ideas and commentary for submission to the Arizona Game and Fish Department, the deadline for submitting ideas and commentary is February 15, 2015. Mr. Weller stated this is a major issue for bringing economic dollars into the county and asked Mr. Shamley if there are any areas he knows about that are coming up that would negatively impact this that he would like to get the public involved with, or ideas to improve the area. Mr. Shamley and Mr. Weller held a discussion regarding the areas that may be impacted and Mr. Shamley stated that a census was needed on all the elk in all the units so that should be requested. No action was needed or taken.

Mr. Wengert presented the item for a possible executive session for legal advice pursuant to A.R.S. 38-431.03(A) (3) and possible action regarding the advertising publication services for the County as per A.R.S. 11-255. Mr. Wengert stated there was a memo that is attorney/client privilege and would defer to the County Attorney but it is probably wise to go into executive session. Mr. Weller stated he read the memo from the County Attorney's Office and has strong disagreement with the legal position the memo takes on the matter of the printing contract so he would like to see the Board go out for quotes on the publication services. Chairman Shirley asked if there was a motion to go into executive session. Mr. White stated he did not believe there was a need for executive session. Mr. Weller made the motion to direct staff to properly bid the contract as the statute requires. Mr. Wengert stated that is not the recommendation of the County Attorney. Mr. Weller stated the advice from the Attorney is not complete and the memo didn't direct the Board not to go out to bid, they said you can, so for this purpose he disagrees with some of the statements in the advice from the County Attorney's office and suggested the Board go out to bid. Mr. Weller stated that in the memo, the County Attorney stated the White Mountain Independent is the only legal paper and that is not a true statement; the Navajo Times meets the same constraints as the White Mountain Independent, they both distribute in the county. Chairman Shirley asked Mr. Whiting if there is a need to go into executive session. Mr. Whiting stated he advised going into executive session because Mr. Weller is starting to talk about client/attorney privilege memos in public and Mr. Weller can not divulge client/attorney privilege matters on his own; that has to be done by at least a majority vote of the Board so if we are going to talk specifically about the memo, executive session would be needed. Mr. Weller stated he didn't discuss what the memo says; he said he disagrees with it and he has permission to do that because he has freedom of speech. Mr. White stated he does not see a need for executive session, we should just advertise and put it out to bid and if the Navajo Times wants to bid then they should do that. Mr. Weller moved to direct staff to bid the publication services as required in statute 11-255, which includes Navajo Times and White Mountain Independent, seconded by Mr. White. George Walsh, a resident of Vernon, stated that since the Board is going out to bid, he asked for a forensic audit of all finances funded to the White Mountain Independent since this contract has not been done legally since at least 2002 and also a forensic audit on all notices to make sure they include and qualify by the legal standard set by the statutes and if the Board chooses not to, it just shows the Board is conspiring to violate the law. Vote was unanimous.

Mr. Weller made the motion to go into executive session for personnel matters pursuant to A.R.S. 38-431.03(A)(1) discussion and possible action regarding the performance evaluation of the county manager. Chairman Shirley called for a second. Hearing none, motion died for lack of a second. Mr. White stated he feels that if the county manager is evaluated, all three supervisors should do their own evaluation on Mr. Wengert then get together and finalize the evaluation. Mr. Weller stated he assumed the executive session would be to discuss the process but each supervisor could do their own evaluation and then meet in executive session and review them with one another to come out with a consolidated review. Mr. White agreed to separately evaluate the County Manager and then go into executive session. Chairman Shirley stated the evaluations can be done between now and the next Board meeting and hold an executive session at that time. Mr. White made the motion that the three supervisors evaluate the county manager separately then at the next Board meeting, go

into executive session and finalize the evaluation. Mr. Weller asked the motion be modified to include a self-evaluation by Mr. Wengert and be distributed to the Board members within the next week so they can review it since that is commonly done in industry. Mr. White amended his motion to include a self-evaluation done by Mr. Wengert. Mr. Weller stated Mr. Wengert has two positions clerk of the board and county manager, and asked if separate evaluations on each would be done. Mr. Wengert stated that is up to the Board and the reason it has been combined for many years is to save money and reminded the Board the next Board meeting is scheduled to be held in Ganado and not sure if there will be a full Board there. Mr. Weller stated it is up to the Board how they will evaluate Mr. Wengert and this is a new Board and they may want to discuss the combined position. Chairman Shirley stated the motion on the floor is that the evaluations will be done for both the Clerk of the Board and the County Manager and have Mr. Wengert complete a self-evaluation before the board takes action of the evaluations. Mr. Weller stated that is his understanding as well and seconded the motion. George Walsh, a resident of Vernon, stated the Clerk of the Board position is not on the agenda as part of the item and being an officer, as opposed to an employee, Mr. Wengert isn't qualified under that section of the human resources policy. Mr. Shirley asked Mr. Weller if he would be at the next meeting in Ganado, Mr. Weller stated his schedule does not allow being there. Vote was unanimous.

Chairman Shirley opened the floor for the call to the public.

George Walsh, a resident of Vernon, stated the possible violation of county policy and Arizona statutes related to the alteration of documents that were brought to the board as an agenda item and approved. Mr. Walsh stated two schedules in the last 6 months have been changed by the Clerk of the Board and/or County Manager without bringing it to the board for amendment and as such, it is a violation of county policy and a class 4 felony if done by the county manager and a class 6 felony if done by the clerk of the board. Mr. Walsh asked the clerk of the board and manager be suspended until it is investigated because this is a criminal action and violation of county policy and statutes. Mr. Walsh stated there is a portion in the statutes in the criminal section under forgery for the alteration of a document and that schedule has now been altered twice to say things that were not included when it was approved by the Board. Mr. Walsh stated that goes along with many contracts in the county that are on automatic renewal and the board nor the public is not made aware of any changes made to the contracts and one contract he has concern with is the public defenders contract that was approved here today; the increase of \$8,500 but it has never come before the board for any increase, nor since he has been coming to the Board meetings have any contract for public defenders come before the board and there is not a provision in statutes and/or purchasing policy for an automatic renewal contract. Mr. Walsh stated the Board is the fiduciary responsible persons and the public has no idea what is happening with contracts and could be changes like the schedule and asked an agenda item be placed on the next agenda for discussion of all county contracts to make sure they are meeting the legal requirements. Mr. Wengert stated under the call to the public guidelines, it allows for response to criticism and wanted the public to understand and not be misled by Mr. Walsh's statements, that anything done with the board or scheduling of meetings and notices of meetings, he works closely with the County Attorney's office and nothing is done without their input and approval and follows their direction very time as was the case with the schedule and Attorney Joe Young was involved with the issues and they follow the law. Chairman Shirley stated these types of things are reviewed before it comes before the board and he has been here almost 21 years and have always to the best of their ability, tried to do right by the people.

Brian Kramer, with White Mountain Independent, the official publication for Apache County and wanted to let everyone know they take the contract seriously and fully comply with state statutes regarding publication requirements and the rates they charge the county have not increased in over ten years and less than half of private party legal rate. Mr. Kramer stated that of the 15 newspapers that are official newspapers of their respective counties, they are the second lowest in the entire

state. Mr. Kramer stated that every notice published in the Independent is published in a timely manner pursuant to state statutes.

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

Approved this 3rd day of February, 2015

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

/s/ Delwin Wengert
Clerk of the Board