

**OFFICIAL PROCEEDINGS OF THE APACHE COUNTY  
BOARD OF SUPERVISORS MEETING  
September 6, 2016  
St. Johns, Arizona**

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

Chairman Shirley called to order the Board of Supervisors meeting at 8:33 a.m. in the Chinle District I Road Yard, Administrative Building, U.S. Highway 191 mile post 446.9 and welcomed all in attendance.

Delwin Wengert led the Pledge of Allegiance.

Chris Sexton gave the invocation.

Chairman Shirley called for the Public Health Services District items.

Chris Sexton, Health Director, requested approval of the contract with Sharon Waite, RN to provide clinical services as a subcontractor, and was budgeted in the FY16/17 budget. Mr. Weller moved approval, seconded by Mr. White. Vote was unanimous.

Chris Sexton, Health Director, requested approval of the contract with Jourdan Brown, RN to provide clinical services as a subcontractor, and was budgeted in the FY 16/17 budget. Mr. White moved approval, seconded by Mr. Weller. Vote was unanimous.

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

Mr. Wengert presented the **Consent Agenda items A-D** and recommended approval. Mr. Weller requested **Item A** be removed from the Consent agenda for separate consideration. Mr. Weller moved to approve **Items B-D**, seconded by Mr. White. **B.** Request approval of minutes dated August 5, 2016 and August 15, 2016. **C.** Request approval of a Special Event Liquor License Application for Wes Myers, American Legion Post 130 for Oktoberfest to be held on October 1, 2016 at the Concho Valley Lions Club, Commercial Drive, Concho, Arizona. **Personnel Items: D. Human Resources:** Request approval to modify the salary of Glenn Joy, Human Resources Specialist to \$45,500 per year, effective September 6, 2016. Vote was unanimous.

Mr. Weller stated at the August 15, 2016 Board meeting, the Board voted to not approve the County Attorney's Office demands and would like the County Manager and County Finance Department to explain how that was dealt with since he has seen checks printed and wanted to know what was done with those demands. Chairman Shirley asked for a motion. Mr. Weller made the motion to approve the demands as presented between August 1, 2016 to September 6, 2016 except for the County Attorney's demands. Hearing no second, motion died. A discussion was held regarding the expenses and the issue of withholding payroll and vendor expenses. Mr. Wengert stated the County cannot hold legitimate expenses so any legal bill that is submitted as well as all payroll must be paid. Mr. Whiting stated what Mr. Wengert stated is correct. Mr. Weller stated he wanted Mr. Whiting position on the record that ARS 11-532 does not apply and the Board does not have the right to refuse approval of demands. Mr. Whiting stated he is not referencing that statute. Mr. Weller stated the Board denied the approval of demands for the County Attorney's Office under ARS 11-532 and

would like Mr. Whiting to site the statute that gives him the right to override the Board's decision not to approve the demands. Mr. Whiting stated if the Board would like, they can approve the demands and he can provide a legal opinion upon request. Mr. Weller stated Mr. Whiting has taken the position to direct the County Manager to oppose the action of the board without communicating with the Board and would like an explanation how that could be done without approval by the Board. Mr. Whiting stated what Mr. Weller is saying is incorrect and hasn't been done, and he is not sure why Mr. Weller is saying those types of things; Mr. Weller he has been politically opposed to him for many years and he is sure some of Mr. Weller's frustration comes from not continuing as a Board member. Mr. Whiting stated if the Board desires, a motion can be made to approve the demands and then get a written legal opinion from his office. Mr. Weller stated Mr. Wengert has said he was advised by the County Attorney that he could pay the demands anyway and that is in opposition to the decision made at the August 15, 2016 Board meeting and he wants to know how the County Attorney can make a decision to override the Board. Mr. Shirley asked if the demands were not approved, would anyone who works for Apache County get paid. Mr. Wengert stated his understanding is that the County must pay the employees for time worked. Mr. Weller stated the motion approved at the last meeting had nothing to do with salaries, other than County Attorney employees, the motion was to not approve demands submitted by the County Attorney's Office, everything else can be paid. Mr. White stated he has a problem with the demands between August 1, 2016 to September 6, 2016, and he has concerns that County resources were used to influence the election therefore he cannot approve the demands for that time frame. Mr. Weller moved to not approve the demands until the issues associated with the Board's questions are answered to the satisfaction of the Board, seconded by Mr. White.

George Walsh, a resident of Vernon, stated he also has concerns with the demands related to District I's misuse of County resources and public funds to influence the election in both District I and District II, doing work outside the State of Arizona, using County resources for possible votes, work being done at the Chinle fairground under alleged partnerships which was not Board approved. Mr. Walsh stated he believes County employees, paid for with County resources and used during working hours to influence the election by supporting either Mr. Shirley or Alton Shepherd should be questioned. Mr. Walsh stated he submitted public information requests related to dances held and the use fee schedule adopted by the Board. Mr. Walsh stated he also has submitted a record request for where the fees were deposited for the dances that were held in District I and no response was given to him. Mr. Walsh stated he also filed a record request for the receipts and money paid by county attorney and deposited with County treasurer and no records were provided for those either. Mr. Walsh asked the demands for District I and County Attorney's Office be denied.

Marleita Begay, County Treasurer stated there are some accounts that are not under her wing which are County Attorney accounts and she has been wanting to put that on the agenda but for some reason the item only makes it to the County Manager and County Attorney. Ms. Begay stated she isn't sure if they are being paid out of those accounts so if the Board wants any information from her office she has no records. Mr. Wengert stated to his knowledge, the Treasurer has not submitted any agenda item regarding the County Attorney's funds. Mr. Wengert asked if the Board was directing him to not pay the County Attorney employees their regular payroll. Mr. Shirley stated he believes it may be the entire staff Mr. Weller is talking about. Mr. Weller stated he is willing to modify his motion to deny all demands except for payroll related issues within the County. Mr. White seconded the motion. Ms. Begay, Mr. Wengert and Mr. Weller held a discussion regarding the agenda item said she had submitted. Ryan Patterson, Finance Director, stated under the direction of Mr. Weller three years ago, the demand process was revamped and explained the process that has been in place ever since. Mr. Patterson stated based on that process, Finance received no emails from any supervisor to hold any checks so they were mailed out. Mr. Patterson asked if he is being given direction today to hold all checks now. Mr. Weller and Mr. Patterson held a discussion regarding the process to pay demands. Mr. Weller stated when the Board's direction to not pay

demands is given, paying demands stops, and on August 15th, the Board said to not pay demands. Mr. Patterson asked if that means turning off electricity, internet and all functionality of the County Attorney is to be eliminated. Mr. Weller stated if the County Attorney's Office refuses to comply with statutes, then lets shut them down. Mr. Wengert asked if Mr. Weller is speaking about paying the bills for all parts of the County including all payroll, except for the vendors associated with the County Attorney's Office. Mr. Weller stated if all questions could be answered, it would not take long before the demands could be paid. Mr. Weller modified his motion to approve all demands except for the demands from the County Attorney's Office and District I that have been presented to the Board today and in the future until answers to questions on issues, are provided to the Supervisors. Mr. Whiting stated Mr. Weller's motion is appropriate to the demands for August 1, 2016 to September 6, 2016, however, for Mr. Weller to make a motion regarding future demands, that would violate open meeting law since there is no agenda item to speak to future demands. Mr. Weller stated he agreed and his motion would apply to only those demands which are before the Board today and made the motion approve, except for County Attorney demands and District I demands. Mr. Whiting asked if that included paychecks to the District I employees. Mr. Weller stated his motion does not include employee salaries and benefits. Mr. White seconded Mr. Weller's amended motion. Mr. Shirley stated this demand issue and accusations regarding District I operations has been going on for almost 4 years and everything has been done according to the law and during the course of operations, and everything has been done legally and what is going on now is putting the County operations to a halt because of politics and he does not appreciate that. Mr. Weller stated he has done nothing other than try to create transparency to the County operation since he has been in office. Mr. Weller stated he is not running for re-election so this isn't a political ploy on his part; he isn't trying to get elected, he only want to improve transparency in this county. Mr. Weller stated he like Mr. White, has concerns with inappropriate spending and he is trying to keep an eye on taxpayer dollars. Mr. Shirley stated Mr. Weller tried to split Apache County and that is political; Mr. Weller doesn't like spending taxpayer money up north. Mr. Weller doesn't like deputies patrolling, and that is political. Mr. Weller stated he stands for certain issues because it is his belief, not because of politics. Mr. Weller stated there should be accountability and there should be appropriate spending and yes, he believes the Sovereign Nation of the Navajo Nation has their own expenses and their own police departments and he does not believe the County should be putting deputies up there without a tax base coming from the North to support that, and he has a right to stand for his beliefs in an elected position. Mr. Shirley and Mr. Weller held a discussion about the proposed split of the County. Motion passed 2-1 with Mr. Shirley voting nay.

Sueanne Czarnyska, Court Administrator, on behalf of Superior Court, requested pursuant to A.R.S. §12-141, §12-144 & §12-124, and based on the recommendation of the Apache County Committee on Appointment of Special Judicial Officers, request appointment of Steve Williams as a part-time Superior Court Judge Pro-Tempore with the pay rate capped at the statutory rate pursuant to A.R.S. §12-142. Judge Williams will take over Judge Roca's continuing case load assignments upon Judge Roca's retirement from continuing case load assignment on September 30, 2016. Therefore, Judge William's appointment shall begin October 1, 2016 and end June 30, 2017. Mr. White moved approval, seconded by Mr. Shirley. Brad Peterson and Mrs. Czarnyska held a discussion about the process for being on the Apache County Committee on Appointment of Special Judicial Officers. Mr. Weller stated until he sees an accounting of the use of the juvenile jail tax dollars that makes sense to him and written justification for so many judges when the workload isn't increasing, he will not support this action. Motion passed 2-1 with Mr. Weller voting nay.

County Attorney Whiting requested approval of the Attorney General's Victims Rights Program grant agreement, AG #2017-001 in the amount of twenty eight thousand, five hundred dollars (\$28,500) awarded for FY17 and no matching funds are required for this grant. Mr. Weller moved approval, seconded by Mr. White. Vote was unanimous.

Angela Romero, Election Director, requested approval of the Canvass of the August 30, 2016 Primary Election. Mr. Weller stated he has multiple concerns about the election results; one being the canvass was not presented in ample time to study in detail, also illegal use of county resources during the election process, accusations of inappropriate handling of ballots to potentially influence the outcome of the election, reports of use of county vehicles and personnel to campaign, reports of illegal use of county facilities and expenses on the demand list that targets campaign influencing, a candidate for office was involved with handling ballot delivery and removing seals from ballot boxes in election headquarters, and there does not seem to be a secure process to log and document specific seals on the County ballot boxes during transport with historical reports of ballot tampering. Mr. Weller stated due to those reasons, he cannot support approval of the canvass. Mr. Weller made the motion to direct the county manger to acquire an independent outside investigation into these matters before we approve the canvass. Mr. White stated he also has concerns with how the election was held, he knows of problems in Ft. Defiance when the machine wasn't working and people were saying their vote was not being counted. Mr. White stated he has had people tell him about things happening illegally, which he believes influenced the outcome of the election. Mr. White stated he agrees with Mr. Weller and seconded the motion. Mr. Wengert stated the election equipment is new and the election staff worked hard and was the first use of the new equipment and there were some bugs that had to be worked out. Mr. Wengert stated he is aware some of the poll workers who were trained did not show up on Election Day. Mr. Wengert stated as far as he knows, the equipment worked, the problem was not having enough workers show up so the IT crew was sent to assist to help and by mid-morning the problems had been resolved and the rest of the election went smoothly. Mr. Wengert stated knows everyone would have liked to have had the results sooner but Apache is a big county and it takes a while to get the ballots all the way from Teec Nos Pos. Mr. Wengert stated Mrs. Romero and her staff are dedicated and hardworking and commended those who helped with the election for their great effort. Mr. Wengert stated all other issues leading up to the election is a whole other issue. Mr. Weller agreed there was good work done by election staff to perform the election as successfully as possible, and commended all those who assisted with the election, but his points still stand and he has concerns about the process and personnel who were in the area when ballots were being brought in and opened so his motion stands for an independent outside investigation into these matters before we approve the canvass and that may be the Attorney General's Office or an independent company approved by the Board. Mr. Shirley asked where the funding would come from for the investigation. Mr. Weller stated the funding can come from the general fund and the emergency funding that Mr. Wengert uses for anything he wants in this county. Mr. Whiting stated there is nothing on the noticed agenda to discuss an investigation so Mr. Weller discussing an investigation is out of line and if he would like an investigation, that would need to be placed on a properly noticed agenda so the public is aware of what the Board will be discussing and the action that may be taken. Mr. Whiting stated approval or disapproval of the canvass is appropriate for a vote and Mr. Weller needs to re-state his motion to exclude action for an investigation. Mr. Weller stated he does not agree with the County Attorney and wants an outside legal opinion on this item due to potential bias; the accusations he has, has the County Attorney's office very much involved in inappropriate activities with the election process and that is potentially why we are getting some reticence from the County Attorney for an outside investigation and his concerns with the County Attorney not making a recommendation to allow this particular item to go forth. Mr. Weller stated he does not agree with the County Attorney but is unsure if he can get a vote so he will be asking for a special meeting to look into the investigation as soon as we can because as soon as we deny this, he is sure people are going to be concerned we do not have a canvass and we need to move forward quickly. Mr. Weller modified his motion to not approve the canvass due to the issues associated with all the things discussed today and he will soon be requesting a special meeting to look into an investigation. Mr. Whiting stated the investigation is a great idea; his office is very busy so it would be great for someone from the outside, and he wanted it on the record that he has heard nothing of what Mr. Weller is talking about and if the board wants the election looked into that is fine, it just cannot be done at this meeting since asking for an investigation was not on a publicly posted agenda for discussion and possible

action. Mr. White seconded Mr. Weller's motion. Mr. Shirley asked Mrs. Romeo what the action today does to the election. Mrs. Romero stated the Secretary of State has a deadline to canvass and they will not be able to canvass without all the counties canvass approved, so she will contact them. Mr. Shirley asked what the deadline is. Mrs. Romero stated the Secretary of State wanted the canvass to Phoenix by September 9th and believes their canvass is Monday. Mr. Wengert stated a special board meeting can be held to canvass the election but he can't imagine an investigation being done that quickly. Motion passed 2-1 with Mr. Shirley voting nay.

Angela Romero, Election Director, requested approval to cancel the special district elections and appoint the persons who filed the required paperwork to fill the position for the following districts: Alpine Fire District, Concho Fire District, Greer Fire District, Nutrioso Fire District-"two" 4 year terms, Puerco Fire District, Alpine Domestic Water Improvement District, Ojo Bonito Water District, Vernon Domestic Water District, Alpine Sanitary District, Concho Wastewater Improvement District, and Northern Apache County Special Health Care District. Mr. Weller moved approval, seconded by Mr. White. Mr. White and Mrs. Romeo discussed individuals running. Mr. Weller and Mrs. Romero held a discussion regarding the two year term for Nutrioso and a candidate which did not have a 500 threshold form submitted but is contesting the election and running against someone who did get his complete paperwork in. Mrs. Romero stated she was unsure of the specifics, but did know there were some issues regarding individual's 500 form but everyone has filed all their paperwork. Vote was unanimous.

Angela Romero, Election Director, requested approval based on the recommendation of the Republican Party County Chairman, Thomas Samoff, determine vacancies exist in the office of precinct committeeman and appoint the following: For Concho Precinct: Gail Golden, Thomas Samoff, Susan Roberts, Ann Avenenti, Jim Staffnik and Wes Myers, for the Coronado Precinct: Carl Wiltbank, for the Eagar Precinct: Myrna Udall, for the Flat Top Precinct: Doyel Shamley, for the Greer Precinct: Dean Wade and Betty Wade, for the Round Valley Precinct: Brett Elmer and Marcelle Donaldson, for the St. Johns Precinct: Delos Bond, Ray Trail, Jay Platt, Richard Brower, and Loren Smith. Mr. Weller moved approval, seconded by Mr. White. Vote was unanimous.

Barry Williams, School Superintendent requested approval to cancel the school districts elections and appoint the persons who filed the required paperwork to fill the positions for the following districts: Concho Elementary District #6 "three" 4 year terms, Alpine Elementary District #7 "one" 4 year term, Sanders Unified School District #18 "one" 2 year term, McNary Elementary District #23 "one" 4 year term and "one" 2 year term, Chinle Unified School District #24 "three" 4 year terms. Red Mesa Unified School District #27 "three" 4 year terms, Northern Arizona Vocational Institute of Technology- Joint Technical Education District (NAVIT JTED) District #35 -Round Valley "one" 4 year term, NAVIT JTED District #35- St. Johns "one" 4 year term, Northeast Arizona Technological Institute of Vocational Education (NATIVE) JTED District #36 – Ganado "one" 4 year term, NATIVE JTED District #36 – Sanders "one" 4 year term and NATIVE JTED District #36 – Window Rock "one" 4 year term. Mr. White moved approval, seconded by Mr. Weller. Vote was unanimous.

Supervisor Weller presented the item to accept or modify the proposed settlement and restitution amount in State v. Marla Thomas, CR21013-0164. Mr. Weller stated the proposed modification is sixty thousand dollars (\$60,000) restitution and 6 (six) months jail sentence and any legal advice regarding this issue be obtained from the Attorney General's Office. Mr. Weller stated the County Attorney's Office employees the brother of the person being discussed in the item and is inappropriate for the County Attorney's Office to advise too much on this particular item. Mr. Weller stated this case is about a person who was working in our treasurer's office that illegally took money from the Apache County taxpayers prior up to, and possibly including 2012. Mr. Weller stated the proposed settlement shows there may only be a \$10,000 settlement with no jail time for a crime

against the citizens that could be more than \$100,000 as well as felonies which require jail time. Mr. Weller stated the funds taken by the accused are in addition to \$10,000 in county costs to investigate and prosecute the crime which takes the total cost to over \$110,000 loss to the county. Mr. Weller stated the embezzlement case that was just discovered in the Recorder's Office would have probably been deterred if the Thomas case had been resolved earlier that sent appropriate signals that the county does not allow this activity. Mr. Weller stated this new case involves another \$20,000 or more. Mr. Weller stated he is unsure how such a low settlement was determined without input from the Board of Supervisors and he intends to find out who represented the County without Board knowledge and approval. Mr. Weller stated the settlement hearing is to be held before a Coconino County Judge on September 13, 2016 and believes representation is needed from the Board to present concerns and recommendations. Mr. Weller moved to assign himself to attend and represent the Board's concerns at the proceedings of the Marla Thomas case and recommend a minimum of \$60,000 restitution and a minimum jail term of six (6) month. Mr. White asked the possibility to table the item to review the information related to the case. Mr. Weller and Mr. White held a discussion regarding the timeframe for the case. Mr. White stated he would like to get hard copies sooner on issues like this so he has time to review. Mr. Weller provided an overview of the recommendation to be considered at the sentencing. Mr. Weller stated Coconino County is downgrading the felonies to misdemeanors without County input and he is recommending six months jail and \$60,000 which is much less than what could be applied, but still getting some restitution for the county. Mr. Weller stated this case seems to being brushed under the table for very little money and low penalty and that is why he is taking this position. Mr. White seconded Mr. Weller's motion. Mr. Whiting stated his office is not handling this case, Coconino County Attorney's Office is and they have handled it from the initial day of the investigation and asked Mr. Weller to re-state his motion. Mr. Weller moved to assign himself to attend and represent the Board of Supervisors at the proceedings of the Marla Thomas case and recommend at those proceedings, a minimum of \$60,000 in restitution and a minimum jail term of six months, seconded by Mr. White. Mr. Shirley asked what Coconino County's recommendation was. Mr. Wengert stated \$10,000 in restitution since they could not prove anything more than that and only probation with no time in jail. Motion passed 2-1 with Mr. Shirley voting nay.

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

Fred Footracer, a resident from the Sanders area, expressed his concerns some of the activities that went on during the Primary Election. Mr. Footracer stated absentee ballots were sent to people in the wrong district even though he had worked with the Recorder's Office to make sure it was corrected and asked the Board to look into it and make sure it has been corrected. Mr. Footracer stated there was drawings for prizes and wanted to know where the prizes came from and there were people who asked him to come to the meeting today and ask this be investigated.

George Walsh, a resident of Apache County stated the County Manager has failed to produce public records. Mr. Walsh stated he submitted record requests on July 14, July 18, and August 3, 2016 that are now outstanding and asked the board to place on the agenda, to discuss the public records policy because he has an email from the County Attorney to the County Manager that says he has to use a form and State law does not require a form to be used and would hope the Board would look into why the records he requested have not been produced.

Tama Bluehouse, a resident of Ganado, addressed the Board and outlined the concerns with the Elections that have been held over the past several years by the Navajo Nation, the County and the State. Ms. Bluehouse stated she would like to see some kind of report on the money spent on the election.

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

Approved this 20th day of September, 2016.

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

/s/ Delwin Wengert  
Clerk of the Board