

DRAFT

**PROCEEDINGS OF THE COCHISE COUNTY BOARD OF SUPERVISORS
REGULAR MEETING HELD ON
Tuesday, January 5, 2016**

A regular board meeting of the Cochise County Board of Supervisors was held on Tuesday, January 5, 2016 10:00 a.m. in the Board of Supervisors' Hearing Room, 1415 Melody Lane, Building G, Bisbee, Arizona.

Present: Richard R. Searle, Chairman; Patrick G. Call, Vice-Chairman; Ann English, Member
Staff: James E. Vlahovich, County Administrator; Edward T. Gilligan, Deputy County
Present: Administrator; Arlethe G. Rios, Clerk of the Board; Elda Orduno, Civil Deputy County
Attorney

Chairman Searle called the meeting to order at 10:00 a.m.

ANY ITEM ON THIS AGENDA IS OPEN FOR DISCUSSION AND POSSIBLE ACTION

PLEDGE OF ALLEGIANCE

THE ORDER OR DELETION OF ANY ITEM ON THIS AGENDA IS SUBJECT TO MODIFICATION AT THE MEETING

PRESENTATION

Presentation of Proclamation to Jessica Vincent, Co-Founder of the 4P Project, declaring Cochise County a Zero Tolerance Human Trafficking Zone.

The Board, Sheriff Mark Dannels, and Mr. Brian McIntyre, County Attorney, presented Ms. Vincent with the proclamation.

Ms. Vincent gave a brief background of the issue and thanked the Board for their action of approving this proclamation. She also noted that January was Human Trafficking Awareness Month so this was a great time to make the community aware of this problem.

CONSENT

Board of Supervisors

1. Approve a Proclamation declaring Cochise County a Zero Tolerance Human Trafficking Zone.
2. Approve the Minutes of the regular meeting of the Board of Supervisors of December 15, 2015.

3. Approve a letter to the U.S. Endowment for Forests and Communities supporting the proposal of Arizona Land and Water Trust (ALWT) for the Readiness Environmental Protection Integration Program grant.
4. Approve Resolution 16-01 to amend County Merit Award System Board members.

Community Development

5. Approve the award of Request for Qualifications (RFQ) 16-04-HFP-04 for On Call Hydrology & Hydraulic Analysis Services for the Community Development Highway and Floodplain Division for a three year period from January 5, 2016 through December 31, 2018 with possible renewal periods of two one-year periods.
6. Approve holding a public hearing for February 9, 2016 to accept the exchange of lands for a portion of Willson Road and the abandonment of an undeveloped highway established in 1988.
7. Approve an Intergovernmental Agreement (IGA) with the Town of Huachuca City for Rural Street Naming and Addressing Services effective January 5, 2016 through January 5, 2021 with automatic annual renewals.

County Attorney

8. Approve the proposed tax appeal settlement in Fasciola v. Cochise County, ST2015-000172, now pending in the Arizona Tax Court, a division of the Superior Court of Arizona in Maricopa County.

Finance

9. Approve demands and budget amendments for operating transfers. Warrants Nos. 94521-94636, 94638-94668, 94681-94885 were issued in the amount of \$1,225,785.24.

Pursuant to A.R.S. §11-217(C), the published minutes shall include all demands and warrants approved by the Board in excess of one thousand dollars except that multiple demands and warrants from a single supplier or individual under one thousand dollars whose cumulative total exceeds one thousand dollars in a single reporting period shall also be published. The voided warrants are listed below:

<u>Fund</u>	<u>Vendor</u>	<u>Amount</u>
100	Munoz, Cornelia G	\$155.00
109	AZ Dept of Transportation Equipment	3,666.06
105	AZ Dept of Environmental Quality	252.27
600	Empire Southwest LLC	3348.74
100	AZ State Land Dept	200.00
100	Edie Patricia	39.26
100	Allen, James C	24.00
100	Munson, Holly A	19.29
171	Amazon.com LLC	4,368.97
100	United Fire Equipment Co	381.66

Issued warrants are listed as an attachment at the end of the minutes

Health & Social Services

10. Approve Amendment 1 to Contract ADHS15-094960, Healthy People Healthy Communities, between the Arizona Department of Health Services and Cochise Health & Social Services for the period of 07/01/2015 to 6/30/2020 in the total amount of \$513,577, which includes the incremental amounts of \$22,700 for Family Planning and \$68,207 for Teen Pregnancy.

Juvenile Probation

11. Approve Food Program Permanent Service Agreement-Contract ED09-0001 between Cochise County Juvenile Detention and the Arizona Department of Education (ADE) in the amount of \$22,000 for the period of July 1, 2015 through June 30, 2016.

Workforce Development

12. Approve Amendment #1 to Title IB Adult, Youth, and Dislocated Worker contract DI16-002121 between Cochise County and the Arizona Department of Economic Security for the workforce Innovation and Opportunity Act (WIOA) Service Delivery Area from April 1, 2015 to June 30, 2017.

Vice-Chairman Call moved to approve items 1-12 on the consent agenda. Supervisor English seconded the motion and it carried unanimously.

PUBLIC HEARINGS

Board of Supervisors

13. Approve a new liquor license application for a series #13 Farm Winery liquor license submitted by Mr. John McLoughlin for Heavens Cellars, located at 8001 S Bell Ranch Road, Willcox, AZ 85643.

Ms. Arlethe Rios, Clerk of the Board, presented this item. Ms. Rios said the Sheriff's Office did not have a recommendation and the Planning and Zoning Department had recommended approval. The Environmental Health Division noted that they have no concerns with the issuance of the liquor license; the Treasurer's Office noted that all property taxes are current. The applicant has paid the \$100 processing fee and the Board staff recommended approval.

Chairman Searle opened the public hearing.

No one chose to speak and Chairman Searle closed the public hearing.

Supervisor English moved to approve a new liquor license application for a series #13 Farm Winery liquor license submitted by Mr. John McLoughlin for Heavens Cellars, located at 8001 S Bell Ranch Road, Willcox, AZ 85643. Vice-Chairman Call seconded the motion.

Chairman Searle called for the vote and it was approved 3-0.

14. [ITEM TABLED FROM December 15, 2015 Meeting] Adopt Ordinance 48-15 amending fee schedules to provide for a standardized cost of copying and electronic media for purposes of public records requests.

Vice-Chairman Call moved to remove the item from table. Supervisor English seconded the motion.

Chairman Searle called for the vote and it was approved 3-0.

Chairman Searle reopened the public hearing.

No one chose to speak and Chairman Searle closed the public hearing.

The item failed for lack of a motion.

Community Development

15. Affirm the decision of the Planning and Zoning Commission to deny a Special Use request for a facility for personal services and the cultivation and dispensing of medical marijuana on an RU-4 zoned property located 2.8 miles north of Davis Road on Central Highway south of Elfrida, AZ submitted by Sonoran Care LLC.

Vice-Chairman Call moved to affirm the decision of the Planning and Zoning Commission to deny a Special Use request for a facility for personal services and the cultivation and dispensing of medical marijuana on an RU-4 zoned property located 2.8 miles north of Davis Road on Central Highway south of Elfrida, AZ submitted by Sonoran Care LLC. Supervisor English seconded the motion.

Ms. Jesse Drake, Planning Manager, Planning & Zoning, Community Development Department, presented this item using a PowerPoint presentation. Ms. Drake gave the background and showed a map of the location and said six residents had spoken in opposition during the Planning & Zoning Commission meeting, where the application was denied.

She said the main concerns of those citizens opposed were:

1. Water Usage
2. Pesticide contamination
3. Broad accessibility of marijuana
4. Distance from the site to schools
5. A general desire to avoid having marijuana in Cochise County

The applicant's rebuttal in regard to the opposition:

1. Water would be hauled and stored, no well would be used
2. No pesticides would be used
3. The State has stringent regulations on the medical marijuana industry
4. Student access is more difficult from a dispensary than from the black market
5. There is no evidence that dispensaries attribute to crime or increase of drug use

She outlined the Commission's discussion and outcome of the vote:

- Commissioner Edie raised concerns about traffic safety at the proposed location
- Commissioner Gregan stated that the Commission should not be considering water and security issues since those items are regulated by the State
- Commissioner Miller spoke about the agricultural nature of the County and her concerns about water issues and private property rights
- Commissioner Martzke readdressed that water issues were not an issue for the Commission and that the Commission was considering only the land use.

The motion for approval failed 2-3 with Commissioners Miller, Brauchla and Edie in opposition

She stated that Sonoran Care LLC believes that the Cochise County Planning and Zoning Commission acted in error, arbitrarily, capriciously and contrary to law in denying its request for a Special Use authorization for SU-15- 18. The basis for this claim is the 10/29/15 staff report that stated that the applicant's request complied with eight of the ten factors used to analyze Special Use requests. The ninth factor, concerning Hazardous Materials was not applicable; the tenth and last factor, Traffic Circulation Patterns, could comply with conditions. The Transportation analysis in the staff Memo indicated that the growing operation is unlikely to alter the type or volume of traffic.

Ms. Drake moved on to list the basic factors that the applicant feels that the Commission denied their special use permit:

1. Opinions about Arizona's marijuana laws
2. Speculative and personal opinions raised as objections made by persons residing more than a mile from the proposed site
3. Bias against the applicants raised by persons in the audience during the public hearing who objected to the applicants because they reside outside Cochise County.

She presented a slide with factors in favor of approving the appeal:

1. Medical marijuana cultivation and dispensary facilities are authorized by the State of Arizona
2. Personal services and medical marijuana land uses are allowed in Cochise County as Special Uses in the Rural Districts
3. The proposal meets minimum site development standards for Special Uses in the Rural Zoning District, as well as those standards specific to medical marijuana uses
4. Sonoran Care LLC submitted an application that was in major conformance with the criteria used by the County to evaluate these requests

One factor in favor of denying the appeal:

1. Staff has received 12 letters in support of denial.

She then stated that staff recommended approval of the appeal with the following conditions:

1. Within 30 days of approval of the Special Use, the Applicant shall provide the County a signed Acceptance of Conditions form and a Waiver of Claims form arising from ARS Section 12-1134. Prior to operation of the Special Use, the Applicant shall apply for a building/use permit for the project within 12 months of approval. The building/use permit shall include a site plan in conformance with all applicable site development standards (except as modified) and with Section 1705 of the Zoning Regulations, the completed Special Use permit questionnaire and application, and appropriate fees. A permit must be issued within 18 months of the Special Use approval, otherwise the Special Use may be deemed void upon 30 day notification to the Applicant;
2. It is the Applicant's responsibility to obtain any additional permits, or meet any additional Conditions, that may be applicable to the proposed use pursuant to other federal, state, or local laws or regulations
3. Prior to or concurrent with the first Commercial Permit application the applicant will provide a Basic Traffic Report to the County Transportation Department that will include an assessment of the most suitable location for the driveway location and the design criteria of the driveway
4. Prior to or concurrent with the first Commercial Permit application the applicant shall obtain a Cochise County Right-of-Way/Encroachment Permit
5. The applicant shall design and construct any access from Central Highway to a commercial driveway standard per the Cochise County Roadway Design Standards or as approved by the County Engineer.

Ms. Drake concluded her presentation and clarified that an affirmation would deny the application.

Chairman Searle said before opening the public hearing he would allow the applicant or their representative to speak.

Mr. Michael Monti, applicant's attorney (Munger Chadwick Law Firm), said that the most important consideration is to take into account that the people of Arizona voted to approve the use of medical marijuana. He stated that his clients were trying to pursue the American Dream and become entrepreneurs. He clarified that the approval today should not include any bias against the use of marijuana, but instead it is an approval for the type of land use. He noted that the application did meet the County's requirements and that the State has a set number of dispensary certificates, so the County would not be overrun by medical marijuana dispensaries. He explained that the water and security issues are regulated by the State and he urged the Board to reconsider the Commission's decision and approve the permit.

Chairman Searle asked how large the growing facility would be.

Mr. Monti said that it would be two acres.

Chairman Searle opened the public hearing.

Ms. Judith Ramirez Short, McNeal resident, addressed the Board on her concerns with allowing a medical dispensary to be built: community does not support; would be a disruption to a quiet community; increase in danger; dispensary saturation in area; prison-like façade; light pollution, and traffic increase. (In favor of affirmation)

Mr. Terry Maddux, Elfrida resident, addressed the Board on his concerns with medical marijuana and noted that the approval of the ballot before the State had been by a very small percentage. He added that marijuana was still a dangerous drug and cited several journal articles that supported that marijuana is not a good drug and added that transport would be difficult since Border Patrol would seize the product. (In favor of affirmation)

Mr. JK Powell, Elfrida resident, addressed the Board on his concerns with marijuana being labeled for medical purposes. He noted that people in favor are trying to legalize marijuana for recreational purposes and those people do not understand the negative impacts of marijuana use. He also reminded the Board that they were elected to represent the local interests of the citizens. (In favor of affirmation)

Mr. Paul White, Elfrida resident, addressed the Board on his view of this proposal and said that the land investment is not very much because land is cheap and added that it would not have a positive impact for the community. (In favor of affirmation)

Ms. Cecelia Zuck declined to speak, but noted in her speaker request form that she was opposed to the approval of the permit.

Mr. Ray Zuck, McNeal resident, addressed the Board on his concerns with the approval of this permit. He noted that he agreed with all the opposition, but his main concern was the Douglas Irrigation Non-Expansion Area (INA) and should not be approved for any type of commercial crop. (In favor of affirmation)

Ms. Sandra Akers declined to speak, but noted in her speaker request form that she was in favor of the Board issuing the permit.

Mr. Monti asked the Board if he could answer some of the issues brought up. He began by

saying that there were very few medical marijuana certificates left; he noted that the land is not cheap to his client; and clarified that the operation of the dispensary would be lawful and enforcement for any illegal activities would be subject to the State.

No one else chose to speak and Chairman Call closed the public hearing.

Supervisor English said she understood that the Board had to have a denial based on a factual and legal reason and asked for Ms. Orduno and Mr. Vlahovich to comment on that.

Ms. Elda Orduno, Civil Deputy County Attorney, confirmed that the Board does have to include a factual and legal basis. She also provided the standard of review as erroneous, arbitrary, capricious or an abuse of discretion under zoning regulation 1716.04. She further stated that the decision had to be provided to the appellant in writing within 10 days.

Mr. Vlahovich noted that special use permits are allowed not as a right in specific zoning districts, but the zoning regulation indicates that due to their unique characteristics and often time high potential to adversely impact surrounding properties, special use permits may be permitted only when they can demonstrate that negative offsite impact has been mitigated. Planning & Zoning staff has a list of criteria: compliance with the duly adopted plan - County's Comprehensive Plan; compliance with the RU zoning district purpose section; compliance with development along major street; traffic circulation factors need to be addressed; address adequate services and infrastructure; address any significant site development structures; hazardous materials; offsite impacts; water conservation; and public input is a factor. He noted that if there is major public opposition; the recommendation of denial may be appropriate and clarified that staff is looking at land use, not the use of marijuana. He also stated that Planning Staff had evaluated these criteria and felt that they had been complied with in recommending approval of the special use application.

Vice-Chairman Call said that the Board had tried its best to meet the requirements of the law, whether they agreed with it or not, but thought that there was enough of these types of special use permits in the County and added that since the community was obviously in opposition that was also important and at this time he thought it was best to approve the recommendation of the Planning & Zoning Commission going forward.

Supervisor English did not want this to be an emotional decision and thought that it was the responsibility of the Board to base the decision on factual and legal reasons. She noted that she knew the neighborhood and was concerned with the ingress/egress of getting on the property, lack of water, and the neighbors being opposed. She thought these were good reasons to deny the special use permit.

Ms. Orduno stated that the factual reasons provided by the Board members met the factual basis requirement that the Board had to provide. She also stated that the Board's stated reliance on the factors in 1716.02 met the legal basis requirement that the Board also had to provide.

Chairman Searle stated that the reason that the public input criteria was added was to ensure the community was in support. He added that he was also concerned with the water issue and would support the motion as it is presented, which is to affirm the Planning & Zoning's recommendation.

Chairman Searle called for the vote and it was approved 3-0.

ACTION

Elections & Special Districts

16. Authorize payout of accrued vacation hours in excess of annual policy limit for Elections Program Coordinator.

Ms. Katie Howard, Elections/Special District Director, presented this item. Ms. Howard gave the background and said that this request was coming to the Board because it was not in line with established policy. She noted that time off had been difficult to take for her department with the election season and the purchase of new equipment and software and only having three staff members to man the office and attend trainings. Finally she said that over the last five years Ms. Rodriguez had already lost 271 vacation hours and that Ms. Howard would cover the estimated \$2,000 payment from the department's vacancy savings.

Mr. Vlahovich said that he thought the request was appropriate as this was not equatable to a management issue.

Supervisor English said that she could not support this item as she did not want to set a precedent.

Supervisor English moved to authorize payout of accrued vacation hours in excess of annual policy limit for Elections Program Coordinator. Vice-Chairman Call seconded the motion.

Vice-Chairman Call said that this was a special circumstance that allowed the Board to use its discretion and did not think it would set a precedent.

Chairman Searle said he did not want to set a precedent, but thought this was a reasonable exception.

Chairman Searle called for the vote and it was approved 2-0-1 (English opposed).

CALL TO THE PUBLIC

Chairman Searle opened the call to the public.

Mr. John McLoughlin, winery owner, addressed the Board regarding the Willcox American Viticultural Area designation and noted that it was number one on the federal list.

Mr. Jack Cook addressed the Board on matters of personal concern.

No one else chose to speak and Chairman Searle closed the call to the public.

This is the time for the public to comment. Members of the Board may not discuss items that are not specifically identified on the agenda.

REPORT BY JAMES E. VLAHOVICH COUNTY ADMINISTRATOR -- RECENT AND PENDING COUNTY MATTERS

Mr. Vlahovich wished every one a Happy New Year and said the County was entering the second half of fiscal year, which meant it is budget preparation time. He noted that he would be hosting a countywide meeting with all departments to discuss this year's budget process on January 20th.

SUMMARY OF CURRENT EVENTS

Report by District 1 Supervisor, Patrick Call

Vice-Chairman Call said he would be attending a meeting with US Customs and Border Patrol to fund use of water impact in the County and he would also attend the Veteran of the Year Ceremony in Sierra Vista.

Report by District 2 Supervisor, Ann English

Supervisor English wished everyone a Happy New Year and noted that the County's birthday was coming up.

Report by District 3 Supervisor, Richard Searle

Chairman Searle said he would be attending a meeting in Tucson with the Bureau of Land Management (BLM) regarding the Mexican Wolf issue.

8.

Chairman Searle adjourned the meeting at 11:15 a.m.

APPROVED:

Richard R. Searle, Chairman

ATTEST:

Arlethe G. Rios, Clerk of the Board