

**BOARD OF SUPERVISORS MINUTES
GILA COUNTY, ARIZONA**

Date: January 25, 2011

MICHAEL A. PASTOR
Chairman

JOHN F. NELSON
Clerk of the Board

TOMMIE C. MARTIN
Vice-Chairman

By: Marilyn Brewer
Deputy Clerk

SHIRLEY L. DAWSON
Member

Gila County Courthouse
Globe, Arizona

PRESENT: Michael A. Pastor, Chairman; Tommie C. Martin, Vice-Chairman; Shirley L. Dawson, Supervisor; Don McDaniel, Jr., County Manager; Marian Sheppard, Chief Deputy Clerk; and Bryan Chambers, Chief Deputy County Attorney.

Item 1 – Call to Order – Pledge of Allegiance

The Gila County Board of Supervisors met in a work session and special meeting at 10:00 a.m. this date in the Board of Supervisors hearing room. Darryl Griffin led the Pledge of Allegiance.

Item 1A - Work Session Item - Presentation/Discussion regarding the Boards, Commissions, and Committees Report and an analysis and evaluation of each BC&C's current status of compliance with applicable statutes, laws, policies and procedures.

Don McDaniel, County Manager, noted that at the last meeting, discussion was held on all of the boards where the Board of Supervisors acts as the governing board, which included the Board of Deposit and Board of Equalization, etc. Mr. McDaniel had prepared a compliance checklist for each of those boards regarding the critical issues and information that is considered to be important for them to be operating legally and properly within the direction prescribed by the Board. Today the Board would be discussing another board known as the Industrial Development Authority (IDA). Mr. McDaniel provided a compliance checklist, which he reviewed with the Board, as follows:

- 1) Name: Industrial Development Authority – a political subdivision of the State
- 2) Gila County Staff Liaison: John Nelson, Jacque Griffin
- 3) Legal basis for establishment: A.R.S. §35-701 through §35-761
 - Date of creation: August 7, 1972 (Articles of Incorporation)
 - Bylaws: October 3, 1972

- Charter: N/A
 - Legal counsel: Shughart, Thomason & Kilroy Law Firm and now Polsjnnelli & Shughart.
- 4) Assigned areas of responsibility: See A.R.S. §35-706 and Articles of Incorporation
 - 5) Membership: No less than 3 nor more than 9; currently 6 members
 - Terms of office: 6 years
 - Appointing authority: Elected by Board of Supervisors
 - 6) Meeting schedule – Annually in August and as needed and called
 - Location: The principal office of the corporation
 - 7) Meeting legal posting and advertising: 24-hour notice and posting of agenda.
 - 8) Meeting agendas: Provide minimum 24 hours
 - 9) Meeting minutes: Detailed minutes provided
 - 10) Funding sources: Gila County; Mines Contrarian funds
 - Amounts: \$45,000 annual Gila County; \$299,700 mines; settlement \$120K
 - 11) Significant actions and accomplishments: Gila Community College \$120K; Miami Sewer \$10K; Copper Spike Train \$5K, Hayden Cyber Cafe \$15K
 - 12) Notes: As a separate political subdivision and corporation, annual Arizona Corporation Commission reports are filed.

Mr. McDaniel explained that the IDA is a little different from the other boards because by statute it is described as a totally separate political subdivision of the state that may be authorized by statute, but then the board of directors is appointed by the Board of Supervisors (BOS). He read aloud from the Arizona Revised Statutes (ARS), which does require that “any qualified elector of a municipality or county may bring a suggestion that they set up an IDA and then that governing body of either the city or county, by resolution, finds and determines that it is wise, expedient, necessary or advisable that the corporation be formed.” He noted that all of this was done in 1972 when the Gila County IDA was formed. He continued quoting from ARS §35-702 the portion that pertains to the formation of an IDA: “Any such corporation when formed shall be a political subdivision of the state and have only such governmental powers as are set forth in this chapter...” He noted that all statutes pertaining to IDAs are contained in ARS §35-701 through ARS §35-761 and were provided in the Boards, Commissions, and Committees Report. He stated that the board of directors, which the BOS elects, by statute requires that a minimum of 3 and a maximum of 9 members be elected and it then has all the powers and authority vested as a political subdivision and as prescribed in the statutes. The members are required to hold their offices for overlapping terms and as is often the case, some of the overlap gets messed up as the years go by and expired terms are filled for a full six years. With the present IDA, there is currently a situation where some of the terms are not totally overlapping, but that could be taken care of during the next round of appointments. He also noted that in ARS §35-705 it states: “The governing

body (the BOS) may remove a director at any time, with or without cause.” In ARS §35-706 there is also a list of the corporate powers of the IDA, which includes acquiring property to leasing, to selling, to issuing bonds, contracting, making secured and unsecured loans, acquiring or holding obligations, purchasing or entering into advanced commitments to purchasing loans or other securities, etc. Chairman Pastor inquired if 2007 was the last time these IDA statutes were revised. Mr. McDaniel stated that the copies of the statutes that the Board received were taken from the currently posted online version of the statutes. Mr. McDaniel stated that Gila County’s IDA currently has 6 members on its board and in regard to the terms of service, 2 expire in 2010 and 4 will expire in 2013. If the Board wanted to correct the overlap, it could appoint 2 of those set to expire in 2013 for an additional 3 years and the others for an additional 6 years to provide the separation of terms. Also listed in the information provided were the current members, how they were appointed, their current service, the officers and a list of recent actions and accomplishments of the IDA. Since 2007, some of the significant actions were various donations such as those given to the Gila Community College in 2007; Signal Peak Community Foundation in 2008; Gila Community College again in 2008; Consultant Gutierrez for the Miami Sewer Project along with another consultant in 2009; the Copper Spike Train in 2009; and the most recent contribution is to the Cyber Café, a youth center in Hayden-Winkelman. Mr. McDaniel then reviewed the current IDA checkbook ledger of funds at Great Western Bank, which began in January 2006 and reflected the deposits/income and line-by-line expenditures. He noted that this account was not the only source of funds or the only accounts, but it was the primary source and the balance as of April 2010 was \$91,516.57. In 2006 was the beginning of a change for the way the books were kept for the IDA. Prior to that the funds were managed by the Gila County Treasurer and there was no detailed information available until this change when the IDA began keeping this ledger. The IDA funds transferred by the Gila County Treasurer by warrant in January 2006 totaled \$36,549. He then reviewed the ledger amounts starting with a deposit from Gila County of \$45,000, which was received yearly from Gila County for fiscal years 2006 through 2008, when the contributions from Gila County ended. Also noted were the funds received from Contrarian for the ASARCO claim as well as a \$46,199 money market account transfer from another bank account. No incoming funds were reflected in 2009 or 2010. Supervisor Dawson inquired about the \$46,199 transfer since it did not reflect a bank name and she wanted to know the bank name. Mr. McDaniel stated that it was a transfer from a money market account, but he was not sure of the financial institution from which it was drawn. He noted that there was also a CD account in Great Western Bank in the amount of \$73,000; one at Bank of America for \$90,000; one at Great Western Bank for \$38,000 and a final one at Wells Fargo, which reflected that it had been closed. Supervisor Dawson inquired if all of the accounts were set up under the County federal identification number. Mr. McDaniel stated that he did not believe they would be under the County’s ID number; however, he was unsure and called on John Nelson, Deputy County Manager/Clerk, to

address the question. Mr. Nelson stated that there are a lot of organizations that have used the County's ID number and "I can't be certain that the IDA isn't one of those." Mr. McDaniel stated that it would be important to know exactly what those accounts are and the County should get that information and have that available. He continued reviewing the account noting that there was another wire transfer of \$119,888 from the Contrarian funds and an additional \$155,000 that was transferred in September of 2010, which the IDA received from the ASARCO settlement after its bankruptcy. Mr. Nelson inquired what the total was including the IDA's checking account and the various money market accounts. Mr. McDaniel stated that the balance was not known as of today, but as of the filing of the report with the Arizona Corporation Commission, it indicated a balance of \$382,676, which coincides with the ledger sheet that was just reviewed and it was also showing a total cash fund balance of \$382,676. He stated that of that balance \$91,516.57 is in the primary checking account, which means the other accounts total approximately \$290,000 in other accounts as of April 2010. He stated that when the Arizona Corporation Commission report for 2010-2011 is completed in October 2011, it will reflect the \$155,000, which is all that's happened in this last year. Supervisor Dawson stated that she hasn't reviewed all of the records, but has reviewed everything up to 2005 and at that time she was inquiring where the \$300,000 was located because at that time the money was being run through the County account number 127. She requested a review of that account, which did not show that the \$300,000 was not there; however, it was listed on the Arizona Corporation Commission report. She stated, "The problem is ASARCO borrowed money, bonded through the IDA, I believe in 1998 or 1999, and at that time is when one mine executive called it extortion and others said that it was smart action by the IDA. Historically the IDA was a pass-through agency and I love having these copies (of the minutes)...which are invaluable in what the IDA did in the smelter bonding, the hospital bonding, really important actions. The IDA never charged anybody anything until this current, some members of the current board took office and then..." Chairman Pastor interrupted stating, "We don't want to discuss individuals and we can at a later time bring the IDA Commission in." Supervisor Dawson stated, "I believe that there are still enough questions that need to be answered. I certainly do not want to just assume that this money is where it is based on the Arizona Corporation Commission account report because I can verify with you and with our finance director that was not the case in 2005, 2006. I assume right here where in 2007 some of the money did get deposited. I believe we do need to discuss it and I would welcome a meeting with the IDA board. I think there are things we might want to question. I would really like to repeat a request I made of the administration in 2005 and that is to show me where the money is and show me that it's under one authority. At that time I was asking, 'Where are the certificates of deposit?'" and then it came to light that 'Well we hadn't been receiving...' Oddly the amount was \$45,000 that ASARCO was supposed to be paying annually. At the same time Gila County suddenly started paying the IDA not \$50,000, not \$20,000, but \$45,000. So with that I had some real questions. I appreciate what they are

doing. I am concerned about some other questions I would have if their board were present. So I would appreciate us having a work session or whatever before we move in any way to make new appointments and or renew appointments to that board.” Mr. McDaniel stated that the purpose of this meeting was to get this information out and apparently there were more questions that needed to be answered. He recommended that the Board not fully discuss it in the absence of the IDA board members since they weren’t present to provide answers and explanations. Mr. McDaniel stated, “By way of some explanation though on their behalf, I kind of go back to the point that they are a separate political subdivision. I believe that during the 2003, 2004, 2005 time frame and maybe before that, it appears to me that there was some confusion as to who the fiduciary responsible was, where that actually rested, and there was some confusion that somehow that was partly involved with the court and with the County Treasurer. I believe that question was brought as a legal question and there was an answer provided at that time that’s not the way it is. So you see the change in January 2006 that reflects the understanding that the way those monies were kept was not in accordance with state law with regard to the way you are supposed to run an IDA. I think since then and I feel as confident as I can based on a fairly quick look at these ledgers of the 4 accounts, that those accounts now held by the IDA do have all of the funds that are recorded on the Arizona Coporation Commission’s annual report of \$382,000, that some of that is here to the tune of...the new number now, by the way, for this account that you are looking at in the book, the new number for that account balance is now \$228,000.” Chairman Pastor inquired if Mr. McDaniel was referring to the checking account. Mr. McDaniel replied, “Correct, in that particular account, and that’s because of the addition of the \$155,000 and then some other transfers, but all the \$382,000 recorded on that sheet, which shows all the assets, are now being able to be identified as small business checking account number, Bank of America checking account, Great Western Bank and whatever else was in there. So again, that’s for them, the IDA, to substantiate to us, not for us to substantiate to anybody else. That’s just my tracking of it based on what I see.” Supervisor Dawson stated that any other discussion she would like to reserve until members of IDA board were present. Chairman Pastor reminded the Board that it was previously suggested that the BOS invite the entire IDA board to a work session so they can sit in and be able to answer for themselves and “I think that might be the proper way to handle it when you want to talk about individuals.” He then inquired of Bryan Chambers, Chief Deputy County Attorney, if the Board was going to address the individual IDA board members wouldn’t the BOS want them present at the meeting before it started discussing same? Mr. Chambers stated that would probably be a good idea. He also noted that when this item was listed on the agenda as a topic, it’s a review of boards and commissions and if the BOS was going to go on to a more detailed conversation you would probably want to more specifically address it to the IDA and have the IDA listed specifically (on the agenda). Chairman Pastor recommended that if the Board would like specific questions asked, he felt it was advisable to develop a list of questions and provide them to the County Manager or Mr. Chambers for review

prior to the meeting. Mr. Chambers replied that the Board could have questions drawn up for the County Manager to review first and if the BOS wanted the County Attorney's Office to review them, he would be happy to do so. Mr. McDaniel recommended that the Board develop as many written questions as it could to give the IDA the advantage of the opportunity to find out the answers. There may be things that they would know, but might not have the answers for unless they first reviewed their files; however, more follow-up questions could be asked rather than just following a set agenda of questions. The Board then moved on to discuss the IDA appointment overlaps. Supervisor Dawson stated, "When we started out talking about commissions and boards, we are talking of people who have served 40 years or however many years and we have no new blood in these organizations. And with this one (meaning the IDA), I've contacted a few other counties and nobody has a bank account of any significant amount of money because they are a transfer through agency for bonding. That said, I find it interesting that we have this paradox here and how it developed, but as far as this board, I mean I'm not singling out the IDA board. I believe when we started talking about reviewing boards, we were talking about term limits or how does someone feel like this board wants new ideas." Vice-Chairman Martin stated that once the Board has reviewed all of the information, she would like to canvass folks to see if anyone would be interested in serving on a County board or commission. She stated that the County would profit from their participation and counsel so she wanted to discuss the makeup of the IDA board, including filling all 9 seats. She stated, "Where would we like to target them from? And I'm not so sure that we're the smartest at picking somebody to put on there without saying, 'This is one of the boards and commissions that we need help filling. Is anybody out there that would like to get in on this?' And we have a bank of talent in this county that we don't draw on and I would love to use this as a way to draw on that talent in any of the areas that somebody might be interested in, but this one in particular." Chairman Pastor inquired what the process would be if the Board decided to develop a 9-member board. Mr. McDaniel stated that he would have to go back and verify that because ultimately the election of the members is by the board. The IDA board may have the power to determine how many members they have rather than the Board of Supervisors. Vice-Chairman Martin stated that she would like to know as well because she was under the assumption that it could be a 9-member board and hasn't been 9 members because the Board of Supervisors hasn't filled all of the positions even though it has that ability. Mr. McDaniel stated that the IDA began as 3 members and then went to 6. Vice-Chairman Martin stated it has been more than this because there were members on there that she could name from up north that were there for a number of years and then dropped out. Mr. McDaniel noted one minor correction on the list of members. He explained that the list was done at a time when 2010 was the expiration date for two members; however, those have been reappointed and approved by the BOS so their terms actually expire in 2016. So there are 2 members whose terms expire in 2016 and 4 that expire in 2013. Vice-Chairman Martin inquired if the BOS were to appoint new members, could they

be appointed for a shorter term so they would be staggered? Mr. McDaniel suggested that the Board wait until 2013 and then appoint a couple of the members with a term to run to 2019 and a couple of them to 2017 and then the 2 remaining in 2016. That would provide more overlap than it is currently. He didn't know if that was a critical issue; however, the law says they should be overlapping. Vice-Chairman Martin suggested asking the present IDA board members if any of them would be interested in serving shorter terms if there was a need to shuffle members in order to get the overlapping terms corrected? Vice-Chairman Martin stated that she was also in favor of increasing the IDA Board members to a total of 9 and she would like to see if anyone in the community was interested in serving on that board. Mr. McDaniel suggested that part of the invitation to the IDA board should include having them provide a statement of their vision because he believes that there may be a difference of opinion. He stated that Supervisor Dawson suggested that most IDAs don't have a large account balance, but simply act as a pass-through in terms of bonding and setting up funding for these other development and redevelopment projects and it's fairly unusual, so the Board might be interested to hear what they see as their mission and where they are going to go and what their plans are for the \$382,000 in order to get some understanding about that. He again reiterated that, "They are an independent, autonomous, political subdivision, which means they are like the City of Globe. The only real connection is the election of the members and that is a strange connection. Once they are on, they kind of like have a life of their own. I won't repeat myself. It's just kind of important to keep that in mind." Chairman Pastor stated that a discussion was held about County employees working for the IDA and using County facilities, so the Board needs to be aware that is probably not a practice that should be continued because they are a separate political entity. Mr. McDaniel stated that having a County liaison would be wise for keeping track of changes, etc., but beyond that it's probably not appropriate. Jesse Bryant, a reporter, posed the question, "If they (the IDA) are a separate, autonomous, political subdivision, how are they held accountable by the taxpayers?" Supervisor Dawson stated that the IDA is not accountable. Chairman Pastor stated that he couldn't answer that question and deferred to the County Manager. Mr. McDaniel stated that the IDA would have accountability to the voters through the BOS. Mr. Bryant replied that the Board just discussed that the only part the BOS has is the election of the IDA board members. Vice-Chairman Martin responded by stating, "We can unappoint them at any time." Chairman Pastor stated that one of the unifying thoughts of this discussion is to have these boards, commissions and committees report to the BOS on some sort of regular basis. So in discussion with the IDA board, the BOS would probably make the request that the IDA make a report to the BOS on a quarterly basis that would include when their meetings will be held, if they are posted and the BOS should be receiving the minutes from every board/commission/committee so the BOS is aware of what's going on with each group. He stated that the basis of this whole project is to make sure the BOS has some sense or some knowledge of what's going on with each one because some of these groups have never reported anything to

the BOS in the past. Vice-Chairman Martin inquired again about when the BOS could hold a serious discussion about adding members to the board, when that would be started and how to go about doing it? Mr. McDaniel replied that could be discussed after the BOS had its meeting with the IDA. Vice-Chairman Martin stated that she would be telling the IDA that her intent with the IDA would be to increase the number of members to 9 and she would be seeking volunteer nominations out of the community. Vice-Chairman Martin stated that she would be interested in what their vision is, but she would also be interested in what their vision would be with the new members on there as well. She stated, "What I would like to see from them is to fill out the 9-member board if that's possible for us to do and to have them at some point in the next 6 months, have some kind of a get together where they talk about their vision for what they do, not just report back to us, but I would like some specific reporting back to us. How do you view yourself? What do you see? Because some of these and this may be one of them, but with that kind of money, I think it changes the game. Other IDAs may just simply sit there and hold spots open, hold the opportunity open for pass through, and that might be all this one wants to do too, but with some funding there, they have some opportunity to do some other things. And I would like to hear from them what they think that would be and tell them what I think that ought to be, just a series of questions to them, more of a workshop, less of a grilling and more of a dialogue. We could hand them the questions and they could get us the answers ahead of time and that would suit me, too. I'm seriously not wanting to sit and grill them. I'd rather sit and go from here. Where are we? Are we all comfortable with where we are? Do we know where the money is? Are we comfortable with that? Do we trust this data?" Supervisor Pastor stated that when he was on the IDA he wasn't provided much information on his duties and responsibilities and maybe the members should be provided some type of orientation. Chairman Pastor then referred back to the conversation about other organizations using the County's ID number and inquired of Mr. Nelson if that was legal or if those organizations should have their own ID number? Mr. Nelson stated that each group should have its own ID number. Chairman Pastor asked that Mr. Nelson make a note of that for Joe Heatherly, Finance Director, to follow up. Vice-Chairman Martin suggested providing a copy of the information that the Board reviewed on the IDA, which may be more information than some of the members currently have. Mr. McDaniel requested that the Board provide him with all of their questions and then he would send the IDA a letter inviting them to a meeting and include all of the information that the Board has just reviewed. Various dates were discussed for holding this work session with the IDA, which will be approximately a month from now to allow them ample time to get their information together and arrange for their work schedules so as many as possible could attend the meeting. Jesse Bryant questioned who in the previous years has been responsible for giving out the County's tax ID number to these organizations. Mr. McDaniel stated, "My guess would be that it's something you can probably get off of about any form the County puts out so who knows; it's not a secret number." No action was taken by the Board.

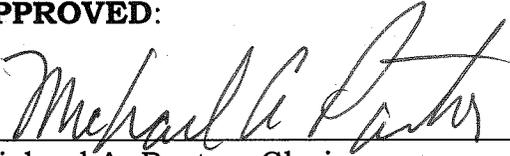
Item 1B - Special Meeting Item - Information/Discussion/Action to conduct a personnel evaluation on the Gila County Manager. Pursuant to A.R.S. § 38-431.03(A)(1), the Board may vote to go into executive session to conduct the evaluation.

Upon motion by Supervisor Dawson, seconded by Vice-Chairman Martin, the Board moved into executive session at 11:00 a.m.

At 1:10 p.m., Chairman Pastor reconvened the meeting and announced that the executive session was held (Item 1B); however, there would be no Board action.

Upon motion by Supervisor Dawson, seconded by Chairman Pastor, the meeting was adjourned at 1:11 p.m.

APPROVED:



Michael A. Pastor, Chairman

ATTEST:



Marian Sheppard, Chief Deputy Clerk