

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

Date: December 20, 2011

TOMMIE C. MARTIN
Chairman

JOHN F. NELSON
Clerk of the Board

SHIRLEY L. DAWSON
Vice-Chairman

By: Marilyn Brewer
Deputy Clerk

MICHAEL A. PASTOR
Member

Gila County Courthouse
Globe, Arizona

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

Item 1 – Call to Order – Pledge of Allegiance – Invocation

The Gila County Board of Supervisors met in a regular session at 10:00 a.m. this date in the Board of Supervisors hearing room. Mai-lin Steele led the Pledge of Allegiance and Reverend Marc Cadwell of the Calvary Shadows Assembly of Globe Church in Globe delivered the invocation.

Item 2 – PUBLIC HEARINGS:

2A. Public Sale – Information/Discussion/Action for the public sale of an unnecessary public roadway being Smelter Street from Coplan to Silicate between blocks 16 and 17, as shown on the Plat of Arlington Heights, Gila County Recorded Map No. 31, and accept bids in the amounts of \$100.00 from Joe and Kathy Wilson, \$58.00 from Ronald and Chrisanna Attaway, and \$16.00 from Eugene Attaway.

Steve Sanders, Public Works Division Deputy Director, stated that the process to abandon a portion of Smelter Street began in August 2011. The road has never been built because it's physically impossible to build. There are 3 residents along the road who inquired about the possibility of purchasing this unnecessary public roadway. Mr. Sanders felt that was appropriate so the process was initiated to this stage of accepting bids on the road. The bids received have all met the minimum requirements established by County policy on addendums and roadways. He recommended that the Board accept the bids from the petitioners and, if approved, quit claim deeds will be drawn up for these 3 pieces of property that are adjacent to each bidder. He advised that

this would then be brought back to the Board for adoption of a resolution to finalize the quit claim deeds as per title to the property. Chairman Martin opened the public hearing and called for comments from the public; none were received. She closed the public hearing and entertained a motion. Upon motion by Vice-Chairman Dawson, seconded by Supervisor Pastor, the Board unanimously approved the public sale of an unnecessary public roadway being Smelter Street from Coplan to Silicate between blocks 16 and 17, as shown on the Plat of Arlington Heights, Gila County Recorded Map No. 31, and accepted bids in the amounts of \$100.00 from Joe and Kathy Wilson, \$58.00 from Ronald and Chrisanna Attaway, and \$16.00 from Eugene Attaway.

2B. Public Sale – Information/Discussion/Action for the public sale for a portion of Upper Pinal Creek Road as shown on Gila County Record of Survey Map 3841A-C, and accept bids in the amounts of \$30.00 from Allen Palmer, and \$15.00 from Robert and Doris Short.

Mr. Sanders stated that this Upper Pinal Creek Road in Gila County was acquired from the City of Globe in 2010. When the County started working on the road a septic tank and leach fields were located in the right-a-way and are serving a mobile home park adjacent to the road. County staff met with the owner of the park who was unaware that the tank had been placed at that time on city right-of-way. Investigation into the location of the leach lines found that they had also been placed adjacent to another property and that property owner was involved. The owner of the mobile home park identified everything and determined that abandoning the tank in place and the lines in place were easier than trying to relocate them under private property. The County still maintains the roadway and would have no problem selling those portions of the road. The County has received bids that meet the minimum requirement of County policy on abandonments for that portion of Pinal Creek. Mr. Sanders recommended that the Board accept the bids. He advised that an item would then be brought back to the Board for adoption of a resolution to finalize the quit claim deeds as per title to the property. Mr. Sanders stated that he believes the various parties have an agreement amongst themselves that once the properties are deeded, the leach lines will be deeded to the owner of the mobile home park where the park owner will be able to control everything. Upon motion by Supervisor Pastor, seconded by Vice-Chairman Dawson, the Board unanimously approved the public sale of a portion of Upper Pinal Creek Road as shown on Gila County Record of Survey Map 3841A-C, and accepted bids in the amounts of \$30.00 from Allen Palmer, and \$15.00 from Robert and Doris Short.

Item 3 – REGULAR AGENDA ITEMS:

3A. (Motion to adjourn as the Gila County Board of Supervisors and convene as the Gila County Flood Control District Board of Directors.) Information/Discussion/Action to consider an appeal of the decision of the Gila County Floodplain Administrator to direct that a stop work order

be issued for a fence that was begun without a floodplain use permit within the regulatory floodway of Ice House Canyon on parcel number 102-23-011H, owned by Ms. Margaret L. Brantley, based on the allegation that the building of a fence around her property does not violate the Gila County Floodplain Management Ordinance. (Bryan Chambers/Darde de Roulhac)

Upon motion by Vice-Chairman Dawson, seconded by Supervisor Pastor, the Board adjourned as the Gila County Board of Supervisors and convened as the Gila County Flood Control District Board of Directors.

Chairman Martin called on Bryan Chambers, Chief Deputy County Attorney. Mr. Chambers advised that Attorney Hal Galbraith of the Pima County Attorney's Office, Civil Division, was present in Globe because Mr. Chambers will be representing the Gila County Flood District Administrator and Mr. Galbraith will represent the Board in case of a need for legal advice or guidance on this item. Mr. Chambers then stated, "I think to sum everything up before getting into more detail, the gist of this appeal and this hearing, the response of the Floodplain Administrator is that it's possible that the planned fence that the appellant would like to build on the property may not affect the floodplain. We don't necessarily know that. What we do know is that it is in the floodplain and that its construction there is the development under our Floodplain Ordinance and that because of that the appellant has the burden of actually showing that it's not going to affect the floodplain and that it's not going to do damage to other properties around it. The Floodplain Administrator, if presented with engineering evidence showing that it would not affect, would be able to issue the permit that they are requesting. The challenge we have under the Ordinance is it is their burden to produce that evidence and they have not done so. I think if you go through the information that's in the agenda item that was prepared by Darde de Roulhac, the Administrator, it goes through point by point and shows how what was issued here isn't a building permit. It's as to whether or not they had a flood use permit to be able to build a fence there. Just because you don't need a building permit doesn't mean you don't need to go through the Flood Control District and get a permit there as well. Without going into all the details and perhaps I can reserve a little time to respond to any arguments that the appellant makes, essentially unless or until they show that there won't be any harm done by the fence built in the floodplain, the decision that was made by our Flood Control Administrator and his department to actually issue the stop work order to prevent the fence, that should stand until it's proven otherwise. And our Ordinance places on the person who wants to do otherwise to prove that it would not affect other properties and the floodplain to the detriment of other neighbors. And that's the gist of the Floodplain Administrator's position on this." Mr. de Roulhac did not have any additional information to offer. Vice-Chairman Dawson stated, "I have visited this property over the past 2 years and in addition to whether the regulation is being followed or not there are conflicts with neighbors who use the entrance there to this area. So I have

visited the property and I have seen what has persisted in actions to put some type of barrier in this area so I am aware of that.” Supervisor Pastor stated that he, too, had visited the property and he was unsure of the exact area in which the fence would be located. He had read that a road had been chained off and was concerned if that was the emergency vehicle access. Another concern Supervisor Pastor expressed was that this is the second incident in the last few months where there has been a conflict on building permits and floodplain use permits. Once this issue has been resolved, he would like that problem reviewed because recently the County stopped a work order in Tonto Basin. He stated, “I think we need to do a little due diligence on this issue because it seems like we’re getting our communications crossed between building permits and floodplain use permits.” Chairman Martin noted that Mrs. Brantley and her Attorney, Tom Thompson, were present and wished to address the Board. Mr. Thompson, a resident of Globe, stated that on behalf of Mrs. Brantley, he was appealing this Notice of Violation of a Gila County Floodplain Management Ordinance. He stated, “By way of history of what has happened in this case and I can direct some of this later, Mrs. Dawson has been involved, but I don’t think that particular involvement has anything to do with the floodplain issue. In April of this year Mrs. Brantley was planning to build a fence around her house. The fence we are talking about is one of these decorative wire fences. A lot of times they call them rabbit fences. They are really designed to keep out animals. You have a lot of issues out there with javelinas and things of that nature. This fence, just to give you some idea, and I apologize to Bryan because I assumed he would be here and I would show him the pictures and I certainly can’t show everybody the pictures, but I’ll show the pictures here.” He provided the pictures to the Board members in Globe. Mr. Thompson continued, “The picture you are seeing is commonly called the rabbit fence and this is the type of fence being put up. By the way, this house is in Ice House Canyon. The property that we are talking about, I think she has owned this property for the last 30+ years. Prior to the building of the fence and there’s already been made comment that the Gila County Planning and Zoning was contacted and she was told that there was no permit necessary because the fence was not a wall and it was not going to be over 6’ tall and met those requirements. On April 29th, construction was started and on May 2nd she was served with a Notice of Violation. That Notice says any construction in the floodway requires engineering and a floodway use permit. It is our position that it does not require a floodway use permit. Section 3.3 of the Ordinance defines what is meant by compliance with the Ordinance, which states: ‘No structure or land shall be constructed, located, extended, converted or altered without full compliance with the terms of the Ordinance.’ Structure is defined in the Ordinance as ‘a walled or roofed building including a gas or a liquid storage tank whether installed on or above or below the surface of the land or water as well as a manufactured home.’ Obviously this is not a structure. And the next sentence is: ‘and the land itself is not being altered.’ There is no altering of the land. All we are doing is putting a small fence on this property, a wire fence on the property. More importantly, common sense should rule on this. Anything in terms of flooding, water will go through this

fence. There is no danger to herself or any of the neighbors by having this fence up here. Finally I would like to point out something that just makes this whole thing so ridiculous to me because we are making this sound like this is such a big deal what she is doing. I've gone all up and down Ice House Canyon. There are fences and walls--like this is something that is so serious. So I want to show you some pictures of some of the walls and fences that are currently up in our area." Mr. Thompson provided additional pictures to the Board members in Globe, which showed a wood plank fence right next door to Mrs. Brantley's house. He continued, "You can see right up in the right hand corner that's where her house is and this wood fence was put up after she was cited. Nobody has done anything about that fence, but I assume there was no engineering study before that fence was put up. Now that was the house right next door on the west side." Mr. Thompson provided more pictures to the Board and continued by stating: "This is the house directly in front of her. As you will notice they have put a small wall up; they have filled in their yard. I assume that has been alteration of the land. That also assumes there was no engineering study and if I'm going to guess if there's going to be water coming out of that creek what that's going to do is direct it over to Ms. Brantley's property. So I don't know and maybe they have already had an engineering study, but my guess is there has been no engineering study. The third property--now I'm telling you, the first property was directly to the west, the second property was directly in front of her property and the third property is directly to the east. This is the Four Star Trailer Park. What you are looking at is a mobile home that is right on the edge of the creek and you'll notice the fence that is completely around that and I doubt very seriously if there was any kind of a study done on that. And one more thing and I'm not opposed to this--the next photo is the beginning of Ice House Canyon and the Boys and Girls Club. I doubt very seriously if that wall that was put in if there was any engineering study done on the wall for that piece of property and that's at the lowest level of Pinal Creek. I can go all up and down that Creek and tell you that there are walls, there are all kinds of fences and her house isn't even nearest the Creek. Her house you can see is set far back from where the Creek is. So to say that--I mean it's just common sense at this point. Common sense tells you that a fence like that is not going to have an effect. If it did have an effect, all these other fences should be taken down too because they certainly would have an effect on what's going on out there. To have her have to have an engineering study where first of all the cost is so prohibitive for someone to have to go through this unless there was a real need, all we are talking about here is simple logic. This is not something that is going to create any problem out there and we ask that she be allowed to continue to build her fence. If there are other issues and I direct that to Mrs. Dawson because Mrs. Dawson's good friend happens to live right in front of that house." Vice-Chairman Dawson inquired, "Who's my good friend?" Mr. Thompson replied, "Oh I assume that she's...you've been out there and you've talked to them and they're the ones that...well, maybe not and I apologize then if you've had nothing to do with any of this. I certainly do apologize, but I know you've contacted the Brantleys about trying to resolve their issues with their

neighbors and so this became a neighbor versus neighbor thing and I assume that's the only reason this has gotten to where it's gotten right now because I can guess if you want to look all up and down that road there are many things that certainly if this is classified as modifying and altering, then all of these places are doing the same thing. If you put a tree on your place, I guess that's altering your land then. I just ask that she be allowed to build her fence." Vice-Chairman Dawson stated, "I would like to emphasize I do not recall the name of the person who did make contact with my office because they do live in this area. The photographs that we've been shown like the Boys and Girls Club and these others are not property that was at one time all one piece of land like the Brantley Trailer Park and residences. Probably if ordinances were in effect way back when we had this subdivision selling off pieces of land...I think all this comes down to is safe ingress and egress of this property. Mr. Thompson stated, "We would guarantee that Shirley, safe ingress and egress." Vice-Chairman Dawson stated, "And that the fire equipment can get in there safely." Mr. Thompson replied, "Shirley, I'll speak on that. The fire department did come out there and they said it was no problem; we don't have a problem with that. But that should be an issue that is not part of the flood control issue. That's a problem if the fire department thinks it's got an issue, but they did come out there and they did review it. So I don't think that's a problem and if it still is a problem, it would be addressed." Vice-Chairman Dawson stated, "Because it's been a year ago or whatever when this was first, being in the neighbor's estimation, being blocked off that they couldn't..." Mr. Thompson stated, "Let me make a point to that because what we are talking about is the neighbors were not being blocked off. They were parking their vehicles on her property. That was the issue of blocking off. The neighbors started putting big trucks over there. They had a number of things over there, which really put her in the position where she needed to do that because they would not remove their vehicles from her property." Vice-Chairman Dawson replied, "Okay. As I said, this property was at one time one big chunk of land owned by Emma Brantley and then it was divided off. It was probably designated roadways. Easements weren't as established and now are becoming legally more designated. I think we need to have Darde give us why he feels or what the flood control people feel is a problem. If we don't have ingress and egress problems then I'm just concerned about what we see is a floodplain problem." Mr. Chambers stated, "The one thing that I think the Floodplain Administrator agrees with Mr. Thompson on is, in fact, this doesn't have anything to do with ingress and egress. That may be an issue and there may be other forms to deal with that, but this is the Floodplain Board and the issue before the Floodplain Board is whether or not the decision they made to issue the stop work order on the fence was in conformance with the Floodplain Ordinance and it's our position that, in fact, it was, in fact, in compliance and so issues of ingress and egress really aren't germane to the issue of whether or not the stop work order should have been issued. Some of the arguments that were made by Mr. Thompson is all that was being put up was rabbit fence. Now according to the Floodplain Administrator and his understanding, the trenches were actually being dug and it was their understanding that block

was going to be placed as opposed to rabbit fencing. But be that as it may, even the rabbit fence in a flood, if there was, in fact a flood, is capable and, in fact, very probable that will actually catch debris in a flood creating sort of a damming situation which could shift the flood waters into areas they would not have otherwise been in during a flood. So the fact that it's a rabbit fence doesn't affect the situation. That's still a development within the floodplain. Mr. Thompson also mentioned that there are fences all up and down this wash that are in his opinion likely in the floodplain. There are 2 things there--I think the first one is though there may be fences up and down this wash, our Floodplain Ordinance has not been in existence forever and some of these would have been grandfathered in prior to the date that the Floodplain Ordinance took effect and there is not much the County can do about those preexisting conditions. After, conditions that may have been placed in after that, whether or not those should have been there, whether or not they should remain there, does not really affect the issue of whether or not this stop work order should have been issued when it was...Just because there are other violators, that doesn't necessarily mean that the Floodplain Administrator was outside of his authority when he issued the stop work order in this case. What certainly is available to the Brantleys is to actually file a Request for a Variance and if they do that certainly this Floodplain Board can consider whether or not there are factors that would justify going ahead and granting a variance to the Floodplain Ordinance. The other thing the Brantleys could do and this goes back to what I was mentioning at the very beginning is if they could actually go out and get an engineering study done to show the effect on the floodplain and if there was a sealed engineering study done that would enable the Floodplain Administrator to be able to consider that and decide whether or not to allow the construction of this development even though it's purported to be a rabbit fence within the floodplain. Darde de Roulhac, Chief Engineer of the Flood Control District, stated that this is a standard requirement that's applied nationwide as part of FEMA's (Federal Emergency Management Agency) regulations as well as being in the County's ordinance that any development within a regulatory floodway has to show that it does not cause a rise in the 100-year flood elevation. Mr. de Roulhac stated, "When I was told that they were digging trenches and it was reported they were putting up a fence, it just seemed appropriate to issue the stop work order and give them time to meet the requirements." Supervisor Pastor stated, "Tommie, I appreciate your argument, but I can tell you in dealing with my constituency out in Tonto Basin rabbit fences become very dangerous when there is flooding because they do create damming situations and what-not. So I understand Darde's argument. It seems kind of illogical that we would require these ordinances, but in the 3 years that I've been on the Board, I've run into many of these cases where I thought they were illogical, but after we studied them and worked with our staff, I understand the purpose of those ordinances. And right now even the suggestion that we grant a variance, I would probably have a real difficult time in doing that because we have faced this issue with constituents where we wouldn't grant a variance. And I might add, too, that just before I came on the Board, we had somebody up Ice house Canyon, I think, as I was attending as a

citizen before I ran for office, where the County granted a building permit for a garage or a storage building in the creekway, but the individual was required to meet all the requirements of our ordinances, which was flood-proofing and water vents for pressure buildup and stuff like that and he went to the extra expense of having to do that. So it's not a unique case where we are enforcing the ordinances. This problem has come up before and usually it happens along creekways and waterways in Gila County, which are all over the place and for some reason we have a lot of folks who like to live in the creek, but we have to deal with those issues as they come up. So right now at this point I understand your argument and I've been up and down that canyon hundreds of times and I've seen fences developed all over the neighborhoods and I understand your argument, but at this point I would have to support our Floodplain Ordinance Director." Mr. Thompson concluded by stating, "If I might make one comment. That first picture that I showed you of literally a wooden wall that was put on since then, I'm assuming now that the County Attorney's Office knows that it's an illegal wooden wall, that they will probably be contacting them to have it either torn down or have some kind of an engineering study because that would be much worse I could imagine than anything that she could have built. I'm also concerned about the house directly in front. Those were all built--these were all built way after this Ordinance was put in place. I have a hunch there must be 20-25 things that have been done since then. Like I said, to me it's just common sense. This is not something that takes rocket science to know that this is not going to have a tremendous or any kind of real affect on what is going to happen when there is a flood that hasn't occurred since probably 60-70 years ago. It's sad to me that we're at this point in the stage of what's required when somebody owns a home that they can't do something simple like that. We're not asking that it be something real serious. All we are asking for is a real simple fence that would be around her property." Vice-Chairman Dawson stated "My only comment is, when I got involved with this I was trying to have neighbors be able to be neighbors and historically I think that's how things used to get worked out. And it's unfortunate that we end up with regulations that end up with neighbors pitted against each other rather than being able to work things out. I've been in Ice House and Six Shooter Canyon when floods have come down and it hasn't been 60 years since there was a bad flood out there. And as Mike said, we've seen what rabbit fencing can be in a flood and so with Darde's responsibilities I, too, believe we have to uphold and as Mr. Chambers pointed out just because somebody in front of you did it doesn't mean it is okay to do it." Upon motion by Vice-Chairman Dawson, seconded by Supervisor Pastor, the Board unanimously upheld the decision of the Gila County Floodplain Administrator to direct that a stop work order be issued for a fence that was begun without a floodplain use permit within the regulatory floodway of Ice House Canyon on parcel number 102-23-011H owned by Ms. Margaret L. Brantley, based on the allegation that the building of a fence around her property does not violate the floodplain management ordinance.

**3B. Information/Discussion/Action to approve a variance from Section 5.2.C of the Gila County Floodplain Management Ordinance to allow Kathy Hunt to construct a 2400 square foot agricultural building to be used solely for storage of hay and tack with the lowest floor elevation approximately 5.3 feet below the regulatory flood elevation, and providing a degree of protection for the building by using flood-resistant materials below the regulatory flood elevation, and by providing permanent unobstructed openings to allow the water pressure to equalize on both sides of the walls to reduce the probability of wall collapse from water pressure. (Steve Sanders/Darde de Roulhac)
(Motion to adjourn as the Gila County Flood Control District Board of Directors and reconvene as the Gila County Board of Supervisors.)**

Steve Sanders, Public Works Division Deputy Director, stated that the Gila County Floodplain Department received a variance request to allow a prefabricated metal building to be built in the floodplain in Young on Cherry Creek. The other option was to elevate out of the floodplain and bring fill material in, which would be very cost prohibitive. The building will be used for hay and tack storage only and will not have any utilities. One of the County's requests was for engineering details to show what was going to be done so that the water passing through wouldn't be a detriment to the building. He stated that since this was published, the County held a meeting with the applicant. The cost of engineering again would be very expensive to prove that, so the Hunts have asked to be allowed to leave the ends of the barn open as an outlet for the water to pass through instead of flood-proofing the vents and that would allow greater access. Staff has agreed that would suffice if the Hunts were comfortable leaving the ends open up to or above 5.3 feet or whatever height they chose. Mr. Sanders recommended that the Board approve the variance with the ends of the building left open to the regulatory flood elevation to allow water to pass through. He noted that Mrs. Hunt was present to answer any questions. Supervisor Pastor stated that the Board just went through a case (Item 2C above) where it required people to do engineering studies and look at hydraulic and hydrology studies for less than a 6-foot-high fence and this was discussion on a 2,400 square foot building and no plans. Supervisor Pastor didn't understand the logic of that other than the building having openings on both ends. Mr. Sanders stated that it was his understanding was that if Mrs. Brantley would have come to the County for a variance and had shown the fence she was going to build, the County would have done calculations based on that and potentially, possibly granted a variance. He stated this one would be the same way if the Hunts wanted to put this building in and stated it was not going to cause a rise at all and would go ahead and do it without following the Ordinance. The Ordinance does allow for a variance in the floodplain if certain steps are followed and wet flood-proofing is one of the steps in allowing flood vents in a building over 600 square feet; however, instead of doing that the Hunts are allowing a bigger access than wet flood-proofing. Mr. de Roulhac stated that the difference between the requests is that the Brantley's property is within a regulatory floodway, which is the

area that needs to be unrestricted in order for the water to flow through. He stated that FEMA maps these areas based on an engineering study and determines that if someone is going to encroach into a floodway, it needs to be shown that they are not causing a further rise in the flood elevation. In this situation with Mrs. Hunt, the proposed building is not within a regulatory floodway; it is in the floodway fringe. In that area the encroachment analysis to show no rise is not required because that is already taken care of by FEMA when they did the study to determine the floodway, which is kind of a maximum encroachable area. What is at issue here is elevation of the floor which would normally be required, but in the case of an accessory building that is used solely for parking and storage, they do allow it to be wet flood-proofed, which is basically to allow the water to enter the building and equalize the water pressure on both sides to protect the walls of the building. With the standard-sized vents and with the velocity of flow that exists at this location and the depth of flow, it was unclear whether the structure would be protected with the standard flood vents so that is the reason the County recommended engineering in the beginning. However, with the proposal to leave the ends off of the building up to the flood elevation this would accomplish the goal of equalizing the water pressure and Mr. de Roulhac did not see a problem with that. He stated that the fact that it is not in the floodway to reiterate is the differentiating factor that does not necessitate the engineering to show a rise in the water level. What the County had proposed was structural engineering to show that the building would be protected. Chairman Martin added that when Star Valley was still under the County's jurisdiction, there were several garages that the Board allowed in the same situation with the vent openings at both ends, so it's not something that the Board hasn't done before, but the difference here is the applicant is in the beginning stages in dealing with the County instead of in the middle or ending stages. Supervisor Pastor inquired of Mr. de Roulhac if he had stated that he would be more comfortable with some engineering plans on this project. Mr. de Roulhac replied that he felt that if the applicant were to leave the ends of the building open up to the water level, then engineering would not be required to certify the integrity of the building. However, a floodplain use permit would still be required and he would need to see the plans, but if the Board approves the variance, the County can go ahead and issue that permit based on those conditions. Chairman Martin inquired whether Supervisor Pastor's questions had been answered. Supervisor Pastor replied that he was still a little bit in the dark on this issue. He stated that when dealing with FEMA there are different zones where people are located and inquired as to the zone this barn would be located in or if that would apply to this case. Mr. de Roulhac stated that this would be an A-E zone, which is a studied area with elevation put on the flood map; however, it's outside of the floodway. Supervisor Pastor stated that it's going to be right by the creek that is presently there. Mr. de Roulhac clarified that it will be near the floodway, but it will be outside of what FEMA has designated as the floodway. Supervisor Pastor stated that the Brantley property probably sits 100-200 feet away from the creek. Supervisor Pastor stated, "I'm a little hesitant on this whole idea. I sit here and listen to one

argument and then I get another argument on the other side. Floodplain, floodway, I get confused with this, so at this point I think I need a little bit more information.” Mr. de Roulhac explained again the difference in floodplains and floodways and the different requirements for both. He also explained the difference in the two items being heard today. Chairman Martin, Mr. Sanders and Steve Stratton, Public Works Division Director, also added additional information. Supervisor Pastor’s final inquiry was about how full the building was going to be with hay and vehicles and equipment and wouldn’t that create an obstruction if that building was filled up? Mr. Sanders stated that the hay is brought in by semi-loads to sell and to move so it’s not going to be permanently stored in there; however, the Hunts will run the risk of a big flood coming in and losing some of the hay. Chairman Martin added that with 5-foot openings, the hay would go right on down with the water in the event of a flood and would not stop the water passing through. Upon motion by Vice-Chairman Dawson, seconded by Chairman Martin, the Board unanimously approved a variance from Section 5.2.C of the Gila County Floodplain Management Ordinance to allow Kathy Hunt to construct a 2,400 square foot agricultural building to be used solely for storage of hay and tack with the lowest floor elevation approximately 5.3 feet below the regulatory flood elevation, and providing a degree of protection for the building by using flood-resistant materials below the regulatory flood elevation, and by providing permanent unobstructed openings to allow the water pressure to equalize on both sides of the walls to reduce the probability of wall collapse from water pressure. The motion passed by a 2-1 vote. Supervisor Pastor voted nay.

Upon motion by Supervisor Pastor, seconded by Vice-Chairman Dawson, the Board adjourned as the Gila County Flood Control District Board of Directors and reconvened as the Gila County Board of Supervisors.

3C. Information/Discussion/Action to approve an Intergovernmental Agreement between Gila County (County) and Rim Country Education Alliance, Separate Legal Entity (SLE) wherein County agrees to sell and SLE agrees to purchase Parcel 2, Record of Survey 4004 consisting of 20.863 acres in Payson, AZ for \$600,000 subject to all terms and conditions in the IGA.

Don McDaniel, County Manager, stated that at the October 18, 2011, meeting the Board authorized staff to prepare an Intergovernmental Agreement (IGA) that would sell this 20 acres to the Rim County Educational Alliance, the separate legal entity (SLE). The IGA will accomplish 3 specific things--first it’s for the entire 20.863 acres, which is the remainder of the property of the Payson campus after the Board quit-claimed back to Gila County Community College District (GCCCD) the other 30+acres. The second thing is that the sales price is for the full appraised value of \$600,000. The third thing would be that if within 3 years the SLE has not signed an agreement to proceed and has not started construction on the property of a 4-year university, the County has the first right of refusal to purchase the property for the original \$600,000.

The County has drafted that IGA and it has been discussed with the SLE. Mr. McDaniel stated that he believes that the IGA has been done in a manner that will protect the interest of all 3 parties while at the same time recognizing that it's the County and the SLE that have some legal standing here and that at this point in time GCCCD really has no real legal standing although it's the County's interest to satisfy the GCCCD's needs and concerns. The SLE met last week on December 14, 2011, and approved the IGA. He also pointed out that even though this IGA has been drafted, has been approved by the SLE and, if approved by this Board, it would not necessarily and automatically transfer ownership of that property to the SLE. The proper deeds still need to be prepared, the money still needs to be received, and there is still some question as to whether or not the SLE will want to have some other actions taken such as a title search, title report, an ALTA (American Land & Title Association) survey, and then all of the transactions will have to be recorded with the County Recorder. Mr. McDaniel recommended that the Board approve the IGA. Supervisor Pastor stated that he understood that the SLE has signed the IGA, but since they signed it there's been some upheaval on the current SLE Board with one Board member resigning and he questioned whether that would affect this IGA in any way. Mr. Chambers stated that he was unaware of this; however, he advised that if the members of the Board who were in office at the time the action was taken voted in favor by a majority then the action would be valid. Supervisor Pastor stated it was his understanding that the resignation was submitted the night of the meeting and he wasn't sure what the vote was as to approving the IGA. Vice-Chairman Dawson stated she had a concern about the possibility that there might be other conditions, such as the title search, after this Board has approved of the IGA. She inquired if the SLE was going to ask for a title search and who was going to pay for it. She stated that if the SLE wanted to spend a bunch of money doing something else, that was their prerogative; however, what this Board was agreeing to do was to sell them this parcel of land for \$600,000. She questioned the wording of "subject to" and wanted to know if something new was being added. Mr. McDaniel replied that there are no additional conditions and that perhaps he had overemphasized the fact that he didn't want the Board to leave the meeting feeling that the sale was completed and that the County had received the money and the deed had been transferred because those are still details and issues that have to be worked out by staff. Chairman Martin noted that she had several requests from the public to address the Board. She called on Tom Loeffler, who requested that Larry Stephenson speak first. Mr. Stephenson, a resident of Star Valley and also a member of the GCCCD Board, stated that this land was land acquired for educational purposes for the expressed purpose at the time to build a community college. The community mobilized and had buildings built so the intent for the land all along has been for educational purposes. Because he is on the GCCCD Board, he has an interest in the college and an interest in its neighbors. He stated that the GCCCD Board passed a resolution of support for the sale and is not opposed to having a 4-year university campus as neighbors. However, they also want the assurance that this land will be used for educational purposes because the SLE has an

economic development component to it that is fairly broad and could be used to go outside the educational realm. Mr. Stephenson stated that it is fully understood that there's entrepreneurship involved in higher education in dorms, food service, book stores, etc. and he was not addressing those types of commercial activities that are educational in nature, but rather other retail and commercial stores of industrial land uses that are outside the educational purview. He stated, "It's the desire of the governing board and it's been consistent since we first heard about this proposed campus next door that we ask for a deed restriction on the land as part of the transfer of the deed assuring that the land will be used only for educational purposes. I think that's consistent with the expectations of the residents of Gila County and Payson in particular." He urged the Board to have a condition added as a deed restriction that assures the use of that land for educational purposes only. Vice-Chairman Dawson stated that with GCCCD becoming a land owner, the cost of maintaining that land and those buildings has been assumed and is going to be a challenge as the state continues to look at financing community colleges. She stated that with the soaring costs of education throughout Arizona and the country, it will take some far thinking, modern-thinking people to finance and keep education at an affordable cost and the way to do that is using economic development. She cited an example of a university where all types of medical research companies are located around the area, which results in the students getting a top quality education because they have research entities of these big companies in there. She stated that there have been 30+ acres reserved for GCCCD to expand and double its size and she does not believe it will ever need any additional land. She was opposed to putting deed restrictions on the property to the SLE because it wouldn't give them the opportunity to finance in a modern way. She stated, "If they've got a company that will come in there and put an industry in there that will enhance the educational opportunities for the students and finance the cost of operations, I say more power to them and at the same time we have guaranteed GCCCD adequate space for all future growth." Tom Loeffler, a resident of Payson and also a member of the GCCCD Board, stated that in 2 areas of the GCCCD resolution there are 2 phrases that seem to be a sticking point—one is where the GCCCD is asking that only educational endeavors be constructed on that land and the second one is that the GCCCD would be opposed to having that land used for industrial purposes. He believes there is a large room for interpretation for those 2 phrases and that all parties should sit down and come up with some common ground to resolve this. Mr. Loeffler stated that he is in support of a deed restriction simply because he's been told that is the best way to reserve and preserve that land for educational endeavors only. The GCCCD is not opposed to other research facilities that could be built there that students could benefit from that would be educational in nature and still be supportive financially of a 4-year university. He stated that retail establishments that are open to the general public are not what the GCCCD Board considers educational endeavors. He also noted there is land just to the north of this land in question that has been considered for use for industrial purposes that would support the college and the GCCCD Board would have no

problem with that. He concluded by stating, "I think what we need to do is better define what educational endeavors and industrial definitions would be." Next to address the Board was JoAnne Bergman, a resident of Payson, who was also in support of a deed restriction so that this property would be used strictly for educational purposes. Don Ascoli, a resident of Payson, spoke in favor of the agreement between Gila County and the SLE as it would bode well for the whole County's future from an educational standpoint as well as an economic status. He also supported the idea that the land would be best if it was related to educational activities as opposed to a commercial adventure. Shirley Dye, a resident of Payson, also spoke in favor of the deed restriction. She felt that the definitions of what was commercial property and industrial property could be worked out amongst the parties so it didn't end up being something that is not actually ancillary to the educational state. She also stated that rumors were flying that the 22 acres was currently zoned as commercial in that whole area by the Tyler Parkway. Chairman Martin stated that she believes that the Town of Payson has the property zoned as Residential 3 (R3). Mr. Stephenson addressed the Board for a second time and stated that when he was talking about the deed restriction for the property that would be transferred to the SLE, he also thought that the GCCCD property should have a similar deed restriction on its land and as a Board member he would propose and ask for that as well to be assured that land will also be used for educational purposes. John Wakelin, a resident of Payson, stated that he did not wish to address the Board, but asked that his comments sent via email to Supervisor Pastor and Chairman Martin be entered into the record. Mr. Wakelin's email included the following: "As a resident of Payson, I want to express my support for a 4-year institution. However, I have some very real concerns that without deed restrictions for the above referenced land sale; land that was reserved for educational purposes could be circumvented. Mike (Pastor), as my direct representative, please take into account my concerns. Tommie (Martin), as Payson residents, we both understand the importance of a 4-year college coming to Payson. This should not be at the expense of selling land for a purpose not for what it was intended. Prudence would dictate restrictions to safeguard that intent." Supervisor Pastor stated he knew there is a lot of concern about the development of a 4-year university. He stated that the IGA right now is basically an agreement that allows for the purchase of the parcel for the development of a 4-year university, which will aid the economic development of the County. He stated, "I think that language was especially put in there to address the idea of a 4-year university on the parcel of land that we are selling them." Mr. Pastor thought the deed restrictions and the request for protection or direction would take place after the Board approved the IGA and moved into negotiations and he inquired whether that was correct. Mr. McDaniel stated, "That would actually be all taken care of in the agreement that you would be approving today...and that agreement simply says that if the SLE fails to enter into a signed agreement to proceed with and has not actually started construction of the facility for a 4-year university within 3 years of the recording of the executed instrument conveying the property or if in addition, the SLE determines that it does not intend nor cannot proceed with the

construction of a 4-year university within 3 years, that the County shall have 90 days as a first right of refusal to purchase back the entire property. I think that the attorneys and certainly staff feel that's a sufficient guarantee that it will be developed or come back." Supervisor Pastor expressed that he had received numerous emails from people that although they feel that a 4-year university is an excellent plan, which he does too, there are still a lot of questions, still a lot of lack of transparency as to if it's a plan set in stone. However, at this point Supervisor Pastor believes the County needs to move forward and take this action because he believes there is "plenty of protection." Supervisor Pastor stated that he was not sure there were going to be any more clear answers until "we take the next step in this process and I think the County has invested plenty of man hours and time and money and expense to develop this IGA and I think it's time to move forward with it." Vice-Chairman Dawson stated that she believes any new idea always has questions and if the Board throws up a roadblock and says until it knows every detail of how this is going to develop, it's not going to get approved. She believes it would be postponing something that can certainly be a bright light in GCCCD and its development. Vice-Chairman Dawson made the motion to approve an Intergovernmental Agreement between Gila County and Rim Country Educational Alliance, Separate Legal Entity (SLE), wherein Gila County agrees to sell and SLE agrees to purchase Parcel 2, Record of Survey 4004 consisting of 20.863 acres in Payson, AZ for \$600,000 subject to all terms and conditions in the IGA. Chairman Martin advised that there was another request to speak before the Board voted. Mr. Loeffler stated in reference to item 3 in the IGA, that he believes the County has done a very good job of insulating itself from any problems; however, he believes that the one phrase "construction of a 4-year university" leaves the door open for just about anything to be built there. He stated, "I think it would be better served if that was defined as to what normally encompasses a 4-year university." He then addressed a question to Mr. Chambers which was if the Board votes in the affirmative on the IGA, is it correct that this would be a done deal and no other conditions could possibly be put in there? Mr. Chambers replied that the County Attorney's Office also represented the GCCCD Board; however, where there may be conflicts between the GCCCD and the Board of Supervisors, by statute, the County Attorney's Office would then represent the Board of Supervisors. Mr. Chambers advised that Mr. Loeffler is correct and that Mr. McDaniel stated pretty much the same earlier that if this agreement is approved, this is the agreement as it is written and there would be no additions made thereafter. However, if the Board of Supervisors decided it wanted to make additions to this IGA, then that would put the Board in a position of going back to the table with SLE to negotiate some different terms. He stated that these would be the conditions and there would be no other conditions and this would be the Agreement to transfer the property. He stated that the only way the property would ever come back to the jurisdiction of the Board of Supervisors to have a say in what ultimately happens to the property is under that subsection 3 that provides essentially if a university isn't built within 3 years, the Board of Supervisors would then have the option of first refusal to buy the property back and it outlines what

the purchase price would be. Chairman Martin called for a vote of the Board and the IGA was unanimously approved.

3D. Information/Discussion/Action to review all bids submitted for Invitation for Bids No. 091511-1 for pavement marking on roads in Gila County; award to the lowest, responsible and qualified bidder; and authorize the Chairman's signature on the award contract for the winning bidder.

Mr. Sanders stated that the County recently advertised for bids for pavement marking roads in Gila County and 4 bids were received that ranged in prices from \$.067/foot to \$.12/foot. He stated that there is a provision in the contract for a 5% discount if the County pays for the project within 30 days. He advised that Traffic Safety was the only bidding company that took advantage of this discount, and although it was not the low bidder strictly based on numbers, with the discount it brought their bid down from \$.068/foot to \$.0646/foot, which makes them the low bidder for the project. Mr. Sanders recommend that the contract be awarded to Traffic Safety. Supervisor Pastor inquired whether this was the same contractor that striped the bypass bridge for the Arizona Department of Transportation (ADOT) because that was a poorly done job. Mr. Sanders was unsure, but he doubted it because Traffic Safety has been doing work for the County for the past 3 years and the County has been very happy with their work. He also advised that the other job was probably a more hot-applied type of stripe; whereas, this job will be done with only paint. Mr. Stratton stated that he also doubted that the contractor for ADOT was Traffic Safety and he also noted that with the County's job there would be a different surface, different temperature and different paint; however, any contractor does have to guarantee its work so that option is also available. Upon motion by Supervisor Pastor, seconded by Vice-Chairman Dawson, the Board unanimously reviewed all bids submitted for Invitation for Bids No. 091511-1 for pavement marking on roads in Gila County; awarded a contract to Traffic Safety Inc. at a price of \$0.646 per linear foot for a term of one year from January 1, 2012, to December 31, 2012, with 2 one-year renewal options; and authorized the Chairman's signature on the award contract.

3E. Information/Discussion/Action authorizing the listing of a 160'x40' metal structure located at 1342 E. Monroe Street, Globe, Arizona; a crane; and wash bay as surplus property to allow this property to be auctioned at a later date.

Steve Stratton, Public Works Division Director, stated when he came to work 10 years ago for the County, one of his instructions was to find a new location for the County shop, which has now been accomplished. The only remaining item is to have the paving completed at the new building, which has been delayed for 2 weeks due to the weather. He stated that the process for this item is as follows: the Board must first declare it as surplus property, then it will be appraised, then it will be advertised for 30 days and then either an

onsite auction or a sealed bid auction will be held. The process will comply with all state statutes. Vice-Chairman Dawson and Chairman Martin stated that they had both received inquiries from interested parties on the building. Mr. Stratton advised them to turn those names into Valrie Bejarano in the Finance Department so she can notify those interested in the sale. Upon inquiry from Supervisor Pastor about using the old crane, Mr. Stratton advised that the old crane was reviewed and he feels that the County made the best economic decision by purchasing a new crane with newer safety features for its employees. Upon motion by Vice-Chairman Dawson, seconded by Supervisor Pastor, the Board unanimously authorized the listing of a 160'x40' metal structure located at 1342 E. Monroe Street, Globe, Arizona; a crane; and wash bay as surplus property to allow this property to be auctioned at a later date.

3F. Information/Discussion/Action to review all bids submitted for Call for Bids No. 110211-1 to provide all advertising, publications and printing required to be done or made by all departments of Gila County for calendar year 2012; award to the lowest, responsible and most qualified bidder; and authorize the Chairman's signature on the contract for the winning bidder.

Marian Sheppard, Chief Deputy Clerk, advised that Arizona Revised Statute §11-255 specifies that the Board of Supervisors must annually go out for bid for its newspaper publications contract. The selected newspaper is responsible for publishing all publications of Gila County including legal ads, classified ads, display ads, etc. She advised that in Gila County there are 2 qualified bidders--the Arizona Silver Belt and the Payson Roundup. When the bids were opened initially on November 21st, there were 2 qualified bidders; however, at a later date it was noticed that the bid amount submitted by the Payson Roundup was quoted incorrectly. The total amount to publish the sample publication item should have been double the amount that was quoted. Also, the bid specifications require that the sample publication item be quoted as a legal advertisement; however, the Payson Roundup based their quote on publishing the sample publication item as a display advertisement. Based on either of those facts, the Payson Roundup was then disqualified. She stated that the Arizona Silver Belt submitted a bid of \$3.00/column inch for a total cost of the sample publication item at \$15.00 plus 2% sales tax would be added to the total. Ms. Sheppard recommended award for contract year 2012 be given to the Arizona Silver Belt newspaper. Upon motion by Vice-Chairman Dawson, seconded by Supervisor Pastor, the Board unanimously awarded Call for Bids No. 111510-1 to provide for all advertising, publications and printing for all departments within Gila County for the period January 1, 2012, through December 31, 2012, to the Arizona Silver Belt at a price of \$3.00/column inch and authorized the Chairman's signature on the contract. The Arizona Silver Belt will be known as the official newspaper of the County for 2012.

Item 4 – CONSENT AGENDA ACTION ITEMS:

4A. Approval of Amendment No. 7 to Contract No. 700518523 between Arizona Public Service and the Gila County Division of Community Services, Community Action Program, whereby Arizona Public Service will provide funding in an amount not to exceed \$106,429 for the repairs, reconditioning, replacement or restoration of deficiencies in a customer's qualified home in order to make such homes energy efficient (Weatherization Services), to eligible citizens residing in Gila County for the period January 1, 2012, through December 31, 2012.

4B. Approval of Amendment No. 1 to Contract No. 07012011-12 between the Arizona Community Action Association and the Gila County Division of Community Services, Community Action Program, whereby Arizona Community Action Program will allocate additional Utility, Repair, Replacement and Deposit (URRD) Program funds in the amount of \$100,000 (\$92,593 for direct service and \$7,407 for program delivery) in order to provide additional URRD services to eligible families residing in Gila County for the period July 1, 2011, through June 30, 2012.

4C. Authorization of the Chairman's signature on Amendment No. 2 to Contract No. 061909-1 between Gila County and Payson Concrete & Materials, Inc., whereby the contractor will continue to provide chips, AB and asphalt for the repair and maintenance of Gila County Timber Region roads from December 17, 2011, to December 16, 2012.

4D. Approval of Amendment No. 9 to Contract No. CMKOL090002 between the Bureau of Indian Affairs and Gila County, on behalf of the Gila County Juvenile Detention Center, to increase the total contract amount by \$215 for payment purposes. This Amendment completed Contract No. CMKOL090002 and the financial obligation was paid in full.

4E. Authorization of the Chairman's signature on Amendment No. 2 to the Crew Use Contract dated November 28, 2011, between Gila County and the Arizona State Forestry Division to allow Gila County to expend up to the remaining \$44,022.08 from the original agreement of March 3, 2011, utilizing the Wild Land Fire Crews for removal of debris from Tonto Creek for the period December 1, 2011, through March 31, 2012.

4F. Approval of the reappointments of the following as Judges Pro Tempore for both the Payson and Globe Regional Justice Courts: Rebecca Baeza, Peter DeNinno, J. Dee Flake, William Flower, John Huffman, Paul Julien, Paul Larkin, Ronnie O. McDaniel, and Gary Scales; the reappointment of John Perlman as Judge Pro Tempore for the Payson Regional Justice Court; and the appointments of Patricia Arnold and Don Calendar as Judges Pro Tempore for both the Payson and Globe Regional Justice Courts, all for the term of one (1) year (January 1, 2012, through December 31, 2012).

4G. Acknowledge the resignation of Mitchell Holder from the Industrial Development Authority of Gila County Board of Directors as of August 16, 2011, and appoint Mickie Nye to fill Mr. Holder's unexpired term of office through May 14, 2013.

4H. Approval of a request for a waiver of fees submitted by Lani Hall, on behalf of the U of A Gila County Cooperative Extension Office - 4-H Program, for the use of the Fairgrounds' Exhibit Hall and/or other areas at the Fairgrounds for all Gila County 4-H activities in 2012.

4I. Approval of the November 2011 monthly departmental activity report submitted by the Payson Regional Constable's Office.

4J. Approval of the October 2011 monthly departmental activity report submitted by the Recorder's Office.

4K. Acknowledgment of contracts under \$50,000 which have been approved by the County Manager for the weeks of November 26, 2011, to December 2, 2011, and December 3, 2011, to December 9, 2011.

Copies of the contract reports are permanently on file in the Board of Supervisors' Office.

4L. Approval of finance reports/demands/transfers for the weeks of December 13, 2011, and December 20, 2011.

December 13, 2011

\$1,740,646.56 was disbursed for County expenses by check numbers 242009 through 242191.

December 20, 2011

\$507,886.94 was disbursed for County expenses by check numbers 242192 through 242309. **(An itemized list of disbursements is permanently on file in the Board of Supervisors' Office.)**

Upon motion by Supervisor Pastor, seconded by Vice-Chairman Dawson, the Board unanimously approved Consent Agenda items 4-A through 4-L.

Item 5 - CALL TO THE PUBLIC: Call to the Public is held for public benefit to allow individuals to address issue(s) within the Board's jurisdiction. Board members may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to Arizona Revised Statute §38-431.01(G), action taken as a result of public comment will be limited to directing staff to study the matter, responding to criticism, or scheduling the matter for further discussion and decision at a future date.

There were no requests to speak from the public.

Item 6 - At any time during this meeting pursuant to A.R.S. §38-431.02(K), members of the Board of Supervisors and the Chief Administrator may present a brief summary of current events. No action may be taken on issues presented.

Each Board member presented information on current events.

There being no further business to come before the Board of Supervisors, Chairman Martin adjourned the meeting at 12:08 p.m.

APPROVED:



Tommie C. Martin, Chairman

ATTEST:



Marián Sheppard, Chief Deputy Clerk