

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

Date: September 30, 2014

MICHAEL A. PASTOR

Chairman

MARIAN E. SHEPPARD

Clerk of the Board

TOMMIE C. MARTIN

Vice-Chairman

By: Marian Sheppard
Clerk of the Board

JOHN D. MARCANTI

Member

Gila County Courthouse
Globe, Arizona

PRESENT: Michael A. Pastor, Chairman; Tommie C. Martin, Vice-Chairman (via ITV); John D. Marcanti, Member; Don E. McDaniel, Jr., County Manager; Bryan B. Chambers, Deputy County Attorney/Civil Bureau Chief; Marian E. Sheppard, Clerk of the Board; and Laurie J. Kline, Deputy Clerk.

COMMUNITY DEVELOPMENT DIVISION STAFF PRESENT: Bob Gould, Director; Scott Buzan, Chief Building Official; Jake Garrett, Environmental Engineering Manager; and Margie Chapman, Code Enforcement Supervisor (via ITV).

DEFENDANTS: Barbara Mahaffey, David Wicks and Kelly Mahaffey.

GUESTS: Mike Harper, Attorney for David Wicks and Kelly Mahaffey, and Karri Hansen.

Item 1 – CALL TO ORDER

The Gila County Board of Supervisors met in a special session at 3:00 p.m. this date in the Board of Supervisors' hearing room. Chairman Pastor called the meeting to order and announced the names and titles of County staff and others present at the meeting, both in Globe and Payson.

Item 2 - REGULAR AGENDA ITEMS:

A. Information/Discussion/Action to affirm, modify, or reverse the decision of the Gila County Hearing Officer regarding Community Development Division Complaint No. HCP1402-003.

Bob Gould, Community Development Division Director, advised the Board of Supervisors that due to some recent circumstances that occurred after the hearing with the Gila County Hearing Officer and before today's meeting, it has

forced the Community Development Division staff to reconsider its recommendation to the Board of Supervisors regarding a suggested motion on this case. Mr. Gould reviewed the Hearing Officer's ruling on this case, as follows: Defendant David Wicks was ordered to immediately pay a fine of \$500; vacate the subject property within 72 hours; and pay a daily fine of \$500 until the property is brought into compliance with County Building Code requirements. The deadline for compliance was set for September 12, 2014. (Note: Mr. Gould stated that Mr. Wicks was assessed the fines, etc.; however, the ruling also applies to Defendant Kelly Mahaffey.) Mr. Gould added that during that hearing, Defendant Barbara Mahaffey, owner of the subject property, stated that she would not allow a septic system to be installed on her property. Mr. Gould advised that because Mrs. Mahaffey stated that she would not allow a new septic system to be installed on her property, it would be impossible for Ms. Mahaffey and Mr. Wicks to bring the property into compliance.

Mr. Gould advised that on September 19, 2014, he met with Mrs. Mahaffey at which time she agreed to allow a septic system to be installed on her property, and she also agreed to allow Ms. Mahaffey and Mr. Wicks to temporarily live in an RV (recreational vehicle) on the property for 60 days until the septic system is installed.

Mr. Gould advised that he would propose some options for the Board's consideration. He stated that the first option would be to request that Mrs. Mahaffey allow the septic system to temporarily be reconnected to the house for up to 60 days until a new septic system would be installed; however, he added that it is actually not Mrs. Mahaffey's choice because the property where the septic system is located is owned by Mrs. Mahaffey's son, Kevin Mahaffey. Mr. Gould then provided some background information regarding this case, as follows: A one-acre parcel of land was initially purchased by Gerald Mahaffey (deceased) and Barbara Mahaffey, husband and wife. The parcel was split and one-half acre of land was deeded to Kevin Mahaffey. The initial intent was for Mr. and Mrs. Mahaffey to deed ownership of the other half-acre of land to their daughter, Kelly Mahaffey; however, to date Mrs. Mahaffey is the property owner. Each parcel of land contains a house. Kevin Mahaffey resides in a house on his property with Karri Hansen; and Kelly Mahaffey and David Wicks reside in a house that is owned by Mrs. Mahaffey. Since the initial installation of the septic system, it has provided wastewater service to both houses until recently when Kevin Mahaffey had the septic system capped to the house that is occupied by Ms. Mahaffey and Mr. Wicks. Mr. Gould stated that if permission were given for the septic system to be temporarily reconnected for up to 60 days, he would like the Board to also order Ms. Mahaffey and Mr. Wicks to submit plans for the installation of a new septic system to the County by October 3, 2014. If the plans are not submitted to the County by that date, he would like the Board to order Ms. Mahaffey and Mr. Wicks to vacate the property no later than October 8, 2014, and levy a \$200 per day fine on the

property owner (Mrs. Mahaffey) and the occupants (Kelly Mahaffey and David Wicks) for non-compliance after the date of October 5, 2014. Mr. Gould advised that to date, Mr. Wicks has been assessed fines in the total amount of \$25,200. Mr. Gould stated that if Mr. Wicks requests the Board to waive the fines, he would have no objections. Mr. Gould added that if plans are submitted to the County, he would like the Board to order that the porta-john be removed from the property due to complaints from neighboring property owners regarding odors. Mr. Gould and Jake Garrett, Environmental Engineering Manager, inspected the property last week and Mr. Gould advised that odors were not evident nor was there any wastewater on the ground; however, they both believe that it would be best to remove the porta-john if the RV is temporarily allowed to be used upon the property. If an RV is allowed upon the property, Mr. Gould advised that a temporary use permit must also be obtained from the County. He added that the septic system installation would need to be completed by November 24, 2014, and a Discharge Authorization and Certificate of Occupancy would need to be issued by the County no later than November 26, 2014. If the installation has not been completed and the Discharge Authorization and Certificate of Occupancy have not been issued by the County by November 26th, Mr. Gould recommends that the Board order Ms. Mahaffey and Mr. Wicks to vacate the property by December 1, 2014, of which that process is outlined in the County Building Code.

Chairman Pastor called on Mrs. Mahaffey to speak. Mrs. Mahaffey did not have any statements at this time; however, she offered to answer any questions. Mr. Gould then asked Mrs. Mahaffey if she thought there was any possibility that the septic system could be temporarily reconnected for 60 days. Karri Hansen replied “absolutely not” and she proceeded to explain that she and Keven Mahaffey chose to cap the system because the situation had become “volatile” between the occupants of both properties. Ms. Hansen advised that the power was on a shared system, and it has been disconnected to the house occupied by Ms. Mahaffey and Mr. Wicks. She stated that “ample” notice was provided to Ms. Mahaffey and Mr. Wicks before the power and septic system were disconnected from the house. Mrs. Mahaffey provided an explanation regarding Mr. Mahaffey’s ownership of one-half of the original parcel of land and the reason Ms. Mahaffey had not been given ownership of the other half of the property. Chairman Pastor clarified that prior to the septic system being capped to the house occupied by Ms. Mahaffey and Mr. Wicks, both houses were using the same septic system for the past 16 years.

Mr. Wicks presented his position on this situation, as follows: It is his belief that the septic system is still connected because gray water has been released from the property onto Columbine (Road). The system has been capped, so he and Ms. Mahaffey have been “gravely injured by this situation.” The location of the septic system should not be an issue because Ms. Mahaffey and Mr. Wicks have used that system for 16 years, and it is Mr. Wicks’ belief that the County

would not have previously permitted the house to be built without confirming information related to a septic system for the house. He believes that Ms. Hansen instigated the capping of the septic system in order to drive Ms. Mahaffey and Mr. Wicks off of the property. He stated that testimony has been provided in justice court that the property is owned by Ms. Mahaffey. All of the non-compliance issues are a result of actions taken by Ms. Hansen and Mr. Mahaffey. He requested that the Board waive any fines imposed upon Ms. Mahaffey and himself due to this situation, and to impose any fines on Ms. Hansen and Mr. Mahaffey as they caused the situation. Prior to September 19, 2014, Mr. Wicks submitted plans for the new septic system to Mr. Garrett on two separate occasions. At no time was Mr. Wicks told to obtain Mrs. Mahaffey's signature on the plans.

In reference to Mr. Wicks' statement that the septic system is still connected to the home that he and Ms. Mahaffey occupy, Mr. Garrett confirmed that he has seen pictures which show that the septic line was cut and capped to the house.

Mike Harper, Attorney for Ms. Mahaffey and Mr. Wicks, advised that he represents Ms. Mahaffey in a pending court case with regard to the ownership of her property, which has been ongoing for a couple of years. He stated that there have been efforts made to remove Ms. Mahaffey and Mr. Wicks from the property. There were two separate forcible detainers efforts made by Mrs. Mahaffey to remove Ms. Mahaffey and Mr. Wicks from the property and Mrs. Mahaffey lost both cases. He emphasized that Ms. Mahaffey and Mr. Wicks used the septic system for 15 years until the line was capped. Capping the line caused the property to be in non-compliance because others decided the system should be capped and, as a result, there are fines assessed to Ms. Mahaffey and Mr. Wicks of approximately \$25,000. After the septic line had been capped, Ms. Mahaffey and Mr. Wicks paid an engineer to develop plans for a new septic system. He knows that to be a fact because the engineer that was hired is Mr. Harper's father. He added that fines are being assessed daily to Ms. Mahaffey and Mr. Wicks, even though they took no action to cap the septic line. Mrs. Mahaffey is the property owner; however, it is Mr. Harper's clients that are being fined. To date, the County has refused to accept the plans for the new septic system. Mr. Harper advised that the plans are ready to be submitted to the County.

A discussion ensued as to the status of the plans for a new septic system to be installed on the subject property. Mr. Garrett summarized the actions that have been occurred to date regarding the plans. He verified that Mr. Wicks had tried twice to submit the plans to the County; however, when those plans were submitted the County was unable to accept them because there was no written proof that the property owner, Mrs. Mahaffey, had agreed to the plans. He advised that Mrs. Mahaffey has since signed a Power of Attorney document giving Mr. Wicks authority to install a new septic system on her property. The County also has a signed copy of the Power of Attorney document. Mr. Garrett

listed the remaining steps that need to be taken for the installation of a new septic system to be hooked up to the house that is occupied by Ms. Mahaffey and Mr. Wicks, as follows: 1) The plans need to be submitted to the County and at that time a fee needs to be paid (There is a \$775 fee if the plans are submitted as an owner/builder, or a \$475 fee if the owner chooses to have the system installed by a licensed contractor.); 2) Upon receipt of the plans and the fee, the County will review and approve the plans; 3) Mr. Wicks may then proceed to have the new septic system installed upon Mrs. Mahaffey's property. 4) The County will inspect the system several times during installation and then if it has been installed correctly, the County will issue the final approval documents.

Vice-Chairman Martin asked for clarification regarding the fees and she inquired if there would be a problem with the porta-john remaining on the property. Mr. Garrett clarified the fees that could be charged. He advised that per Arizona State law, a porta-john is allowed on the property if it is approved by a County ordinance; however, Gila County's ordinance is "silent" on that issue. Mr. Gould felt that a porta-john could be allowed on the property during the time a septic system is being installed as it would fall under the guise of the County Building Code Ordinance as long as there were no odors or wastewater on the ground from the porta-john.

Chairman Pastor asked Mr. Wicks if he was ready to submit the plans to the County. Mr. Wicks stated that the plans are ready to be submitted to the County, but his concern is the fines that have been assessed. He asked the Board to waive those fines as it will be a financial burden to pay for the materials and installation of the new septic system in addition to the expenses he has already paid regarding the septic system. If the fines cannot be waived, Mr. Wicks requested an extension of time to install the septic system due to his limited income. Vice-Chairman Martin replied that she would agree to waive the fines, but not any of the required County fees. Supervisor Marcanti expressed a desire to also come up with a resolution so that the septic system could be expeditiously installed. Mr. Gould reiterated his earlier comment that due to unusual circumstances pertaining to this particular case, it was impossible for Ms. Mahaffey and Mr. Wicks to comply with County requirements; therefore, he was in favor of the Board of Supervisors waiving the fees that, to date, total \$25,200. Mr. Gould was more concerned with establishing a time frame for the installation of the septic system and he advised that a time frame of 60 days is ample.

The discussion then focused on the porta-john and whether or not it should be allowed to remain on the property during construction of the septic system. Mr. Wicks advised that since the time the porta-john was placed upon the property, it has been serviced on a weekly basis; and there have been no odors and no wastewater on the ground; therefore, he believes it has all been done "legally." He stated that he could place an RV upon the property during

construction. It was agreed that the porta-john could remain on the property for 60 days and an RV could be temporarily placed upon the property for 60 days in order to utilize running water with the condition that the gray water from the RV must not be released upon the property.

The Board discussed the information that would be required in their motion. Bryan Chambers, Deputy County Attorney/Civil Bureau Chief, advised the Board that in forming the motion, the Board may want to consider the course of action that needs be taken in the event that the septic system is not installed within the required 60-day time frame. He recommended that the Board of Supervisors continue this proceeding for 60 days and to have a provision included in the motion that at the end of the 60 days, the fines (\$25,200) will be waived **if** all of the Board of Supervisors' requirements have been met. In that way, the Board would have a "built-in enforcement mechanism." The Board agreed to Mr. Chambers' recommendation.

Vice-Chairman Martin made a motion to hold this hearing open for 60 days to allow the occupants (Ms. Mahaffey and Mr. Wicks) to live in an RV upon the property that will contain the gray water; allow the use of a porta-john with the condition that it is serviced on a weekly basis; reduce the County's permitting fee to \$475 for the installation of a new septic system; and at the end of the 60-day period, if the new septic system is in place, the Board of Supervisors will waive the fines totaling \$25,200 and close the hearing. If the Board's requirements have not been met at the end of the 60 days, the Board will start proceedings to evict Ms. Mahaffey and Mr. Wicks from the property for non-compliance of the septic system. Supervisor Marcanti seconded the motion; however, Vice-Chairman Martin continued revising the motion as more comments were being made to which the Board members were in agreement as each change in the motion was added. Vice-Chairman Martin amended her motion to add that the Board is requiring the plans to be submitted to the County and she reiterated that the permitting fee would be reduced to \$475 and that everything related to this issue must be completed within 60 days. Mr. Garrett suggested that the Board's motion include a deadline of November 24th to submit the final paperwork to the County because upon receipt of the final paperwork from Mr. Wicks, the County would need to do their final tests of the installed septic system and final paperwork. Mr. Gould suggested the date of December 1, 2014, as the end of the 60-day period. Vice-Chairman Martin added to her motion that December 5, 2014, would be better because "we may be more in line with fines that these folks have coming in." Chairman Pastor announced that December 5, 2014, would be the 60-day deadline. Scott Buzan, Chief Building Official, stated that gray water from the RV could not be released on the property. Mr. Chambers stated that if the Board is agreeing to the date of December 5, 2014, as the 60-day deadline; he suggested adding a date certain for the continuance of this hearing. He mentioned that December 5th is a Friday, and he suggested that the Board may want to set the date for a regular Board meeting day, which would be December 2nd. Vice-Chairman

Martin revised her motion by stating that December 9th would be a better day to set the hearing to which the Board agreed. Chairman Pastor stated that the motion was made and seconded, and he asked for the vote. Each Board member said “aye” to the vote, but before he announced that the motion passed with a unanimous vote, Vice-Chairman Martin advised that Mrs. Mahaffey had a question. Mrs. Mahaffey asked if there is a time frame to allow the RV upon the property or “just anytime we get around to it?” Chairman Pastor responded that Ms. Mahaffey and Mr. Wicks have 60 days (until December 5, 2014) to complete the entire project, so he recommended that actions need to be taken immediately in order to meet that 60-day deadline. In response to Mrs. Mahaffey’s question, Vice-Chairman Martin stated that it is her expectation that Ms. Mahaffey and Mr. Wicks immediately move into the RV. Chairman Pastor added that it is also his expectation.

To ascertain that all Board members were in agreement to all of the requirements added to the motion, Chairman Pastor asked the Board for another vote on the motion. Each Board member voted in favor of the motion, and Chairman Pastor announced that the motion carried by a unanimous vote.

Complete Motion as Approved:

Vice-Chairman Martin made a motion to continue this hearing until December 9, 2014, to allow the owners/occupants to install an approved septic system on the property. The time between September 30, 2014, and December 9, 2014, shall be used to complete the installation of an approved septic system including: plan submittal, permit issuance, installation and final inspection & approval by the Community Development Department. The County agrees to reduce the permit fee to \$475.00.

Further, during the time between September 30, 2014, and December 9, 2014, the owners/occupants are allowed to: 1) live in an RV on the property; 2) use the RV to collect the gray water only and properly dispose of it off-site; and, 3) use of a porta-john with the condition that it will be serviced and emptied on a no less than weekly basis.

Further, if at the December 9, 2014, continued hearing, all conditions have been met and the septic system has been installed and approved by the County, the Board of Supervisors will waive the fines totaling \$25,200 and close the hearing. However, if at the December 9, 2014, continued hearing all conditions have not been met and the septic system has not been properly installed and approved by the County, the Board of Supervisors will immediately start proceedings to evict the owners/occupants from the property for non-compliance of the septic system regulations.

Item 3 - CALL TO THE PUBLIC: Call to the Public is held for public benefit to allow individuals to address the Board of Supervisors on any issue

within the jurisdiction of the Board of Supervisors. Board members may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to Arizona Revised Statute §38-431.01(H), at the conclusion of an open call to the public, individual members of the Board of Supervisors may respond to criticism made by those who have addressed the Board, may ask staff to review a matter or may ask that a matter be put on a future agenda for further discussion and decision at a future date.

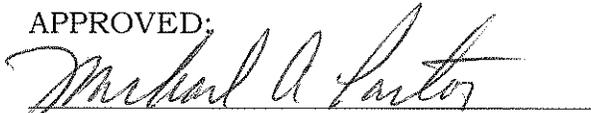
There were no comments from the public.

Item 4 - At any time during this meeting pursuant to A.R.S. §38-431.02(K), members of the Board of Supervisors and the County Manager may present a brief summary of current events. No action may be taken on issues presented.

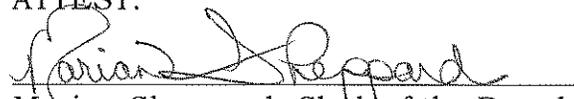
There were no comments from the Board members or the County Manager.

There being no further business to come before the Board of Supervisors, Chairman Pastor adjourned the meeting at 3:55 p.m.

APPROVED:


Michael A. Pastor, Chairman

ATTEST:


Marian Sheppard, Clerk of the Board