

OFFICE OF BOARD OF SUPERVISORS

YAVAPAI COUNTY, ARIZONA

Prescott, Arizona

April 9, 2001

The Board of Supervisors met in special session on April 9, 2001.

Present: Gheral Brownlow, Chairman; Lorna Street, Vice Chairman; Chip Davis, Member; Bev Staddon, Clerk.

Also present: Jim Holst, County Administrator; Dave Hunt, Board Attorney/Assistant County Administrator.

ITEM NO. 1. Board of Supervisors.

1. Consider appeal of action taken on March 5, 2001, by the Central Yavapai Fire District Board of Directors to authorize circulation of petitions for annexation of the Morgan Ranch area, Williamson Valley area northwest of Prescott. Chairman Brownlow told those present that discussion would be limited to only the fire district's action as it pertained to the Morgan Ranch issue. He said he hoped this issue would not result in a feud between the Williamson Valley Volunteer Fire Department (WVFD) and Central Yavapai Fire District (CYFD), and that at the end of this day's meeting people would leave without hard feelings. WVFD Fire Chief Jim Koile said that A.R.S. 48-262(A)(1) says that an impact statement must contain a description of the boundaries and a detailed map and that the impact statement did not have a good legal description. He said the impact statement had also contained misleading statements because it indicated that people in the area do not have good fire protection at the present time. Chief Koile said the WVFD had been in service for the last 13 years and that it had grown a great deal over the last two years. He noted the services provided by the WVFD, saying that his Emergency Medical Technicians (EMTs) receive the same training as those with fire districts and that the department was in the process of receiving state certification for its firefighters. Chief Koile said that A.R.S. 48-262(A)(5) states in part that at the hearing on the impact statement the governing body is to hear those who appear, but that the CYFD board was not prepared to hear those who were present to speak. He said the CYFD board left the impression that their minds were already made up, and that the fire board had said the few letters they received and the one person who spoke in support of the annexation carried more weight than those who were opposed. Supervisor Davis asked if some people had been denied the right to give their opinion, and how many people there had been in the hallway or outside the room during the hearing. Chief Koile said that some people had been denied the right to speak. He said he was not sure how many people had been in the hallway or otherwise outside the room during the hearing, but that people in the room were not allowed to speak. He said he thought there might have been 60 to 80 people present at the meeting. Chairman Brownlow said he had listened to the tape of the meeting and that it appeared to him that the CYFD board had in fact opened the floor to comments for about 38 minutes. He noted that the Board members had received an extensive packet of materials regarding this issue, saying that he had read through all of it. He said the materials submitted by the WVFD had stated that CYFD was a for-profit organization, and that he wanted to make it clear that that was incorrect. He said that CYFD was a fire district and not for profit. CYFD Attorney Bill Whittington introduced CYFD board members Bob Leonard, Charlie Allen, Marilyn Rinehart, and Vince Oppesidano and Fire Chief Dave Curtis and Administrative Services Manager Mary Vanatta. Mr. Whittington told the Board that the fire district had been doing annexations for a long time and had done them the same way for a long time and had never before had a problem. He described one of the issues surrounding this annexation effort as political, saying that that the WVFD did not want the Morgan Ranch area to be annexed into CYFD. He said that the proponents of annexations sometimes include in the proposed annexation boundaries people who really do not want to be annexed. Mr. Whittington said that the legal side of the issue was what he

would try to address. He said he believed the issue of the legal description was a substantial compliance issue and that the statute does not require strict compliance. He told the Board that both the impact statement and the petition process were encumbered with substantial compliance, and that the purpose of the impact statement was to get in front of the fire district board enough information to send out notices to everyone who might be affected. Mr. Whittington said the law says that as long as the requirement for substantial compliance is met, it was okay. He said that in the particular case of proposed annexation of the Hootenanny Holler area, the impact statement was rejected by the CYFD board because the board felt that substantial compliance had not been met. He said the in the case of the Morgan Ranch impact statement, the board new the property owners would be notified because the line on the map separated state land from private land. Mr. Whittington said the legal description was not exact, but that it did not have to be and that, in fact, the statute does not say the description even has to be a legal description but just an accurate description. He stated that the publication of notice was one day late, but that the law says that a technicality should not stop the intent of the process. Mr. Whittington said he had seen no evidence of people being denied the right to be heard at the hearing on the impact statement, but that there were some instances where people wanted to discuss the Hootenanny Holler impact statement when the board was discussing the Morgan Ranch impact statement. He said that in his opinion the substantial compliance test had been met, and that while there was a time when it would be necessary to spend money to get a good legal description of the proposed annexation it did not make sense to do that until after the fire district knew for sure that petitions would be circulated. Chairman Brownlow asked Mr. Hunt for the results of his review of the materials. Mr. Hunt said that the annexation process is described in A.R.S. 48-262 and that the statute says specifically that a description of the boundaries and a detailed, accurate map of the area must be attached to the impact statement. He said he believed that the issue of what was intended and how that standard had been met in this case was critical. He explained that the impact statement is sent to the governing body, which in turn sends it to the Board of Supervisors, and that at the hearing on the impact statement the comments of the Board of Supervisors are to be considered. Mr. Hunt said the first issue was the description of the boundaries, and that the WVFD had also referred to the benefits of allowing things to remain as they are. He said whether or not things remain the same would be a decision of the people in the Morgan Ranch area. Mr. Hunt said there was also an issue regarding whether the hearing was sufficient. He said he had read the transcript of the hearing and that although he found it somewhat confusing, in his opinion the hearing process was adequate. He said that, finally, there was the issue of notice of the hearing. He said that Mr. Whittington had spoken about substantial compliance and that while he differed with Mr. Whittington over whether the notice was one day or two days late, he did not believe that failing to meet the statutory requirement by two days was a fatal error and that there was, in fact, substantial compliance. Mr. Hunt said he believed the main issue in this case was the description of the boundaries, and that there was a question as to whether or not a "description of the boundaries" means a legal description. He said he believed the experience that staff had in trying to provide comments on impact statements was that a legal description is necessary in order to provide information about assessed valuation and whether the legal description is correct. He said it was not possible to do that in this case because there was not enough information available. Mr. Hunt said the statute also provides that the Board can require additional information in the impact statement. He said that in this case there was not a requirement made by the Board but that Ms. Staddon had sent a letter to the fire district noting that there was not enough information contained in the impact statement to make a review by the Assessor and Cartography possible. He said he also wanted to note that language in the statute related to attachments on the petitions, namely a description of the boundaries and an accurate detailed map, was identical to language requiring the same elements in the impact statement. He said he believed one could infer that what must go into the petitions could also be considered to be a requirement for the impact statement. Mr. Hunt said that Ms. Staddon had indicated that in previous discussions with Deputy County Attorney Randy Schurr regarding establishments of fire districts, Mr. Schurr had indicated that the six-month waiting period that must be observed if circulation of petitions is denied could be avoided if slight changes were made to the boundaries. He said that in this case, the legal description contained in the impact statement talked about portions of sections and that there would be no way to know, in the event a new impact statement was submitted, whether the boundaries were actually different than the original impact statement. Mr. Hunt said it was his feeling that in this case, it might be best to uphold the appeal and allow the proponents to bring back a new impact statement at a later date. He reiterated that if a new impact statement was submitted prior to the end of the six-month waiting period, there would be no way for staff to know whether the legal description was actually different from that submitted

with the original impact statement. Supervisor Street asked if the petitions were required to have attached a map and legal description. Mr. Hunt said they were. Supervisor Street asked Mr. Whittington how the fire district obtained the addresses of property owners in order to send notices. Mr. Whittington said he did not know. Supervisor Street said that in the past such information had been provided by the Assessor's Office. She asked how the district had obtained the addresses if it had not been able to get them from the Assessor's Office. Ms. Vanatta said the district had used the County's GIS system on the website and had pulled out whatever was not state land, creating its own list from the Internet. Mr. Whittington said there was a presumption of validity for everything the fire district board does. He agreed that the statutory language pertaining to requirements for the impact statement and petitions were the same, but said the purpose was different. He said it was not the responsibility of the fire district to provide a legal description for the impact statement, and that the fire district only needed to ask whether everyone had been given notice. Chairman Brownlow said his concern was that the legal description in the notice published in the newspaper did not give enough information for people to be able to determine the boundaries of the proposed annexation. He said he did not think the boundaries were accurate. He said Mr. Whittington had said it was up to the proponents of an annexation to do the legal description but that they didn't, and that the fire district didn't. He said he believed the best thing to do be able to pass petitions in a situation where there were no challenges. Chairman Brownlow said he wanted to uphold the appeal, send it back to the fire board and that hopefully they would do the right thing to uphold the standard. He asked Mr. Whittington if he could say what section of house is located in. Mr. Whittington said he could not. Chairman Brownlow said the legal submitted with the impact statement did not tell people anything, and that it should be laid out so that there would be no misunderstanding about where the boundaries of the proposed annexation would be. He said he did not believe anyone would be harmed by having to wait until it could be done right. Chairman Brownlow then moved to uphold the appeal because of inadequate description of the boundaries of the proposed annexation. Supervisor Davis seconded the motion, saying there were some things that needed to be cleared up if there was another effort to develop an impact statement. He asked if there was a disclaimer on the County's website with regard to property information. Mr. Holst responded that there was. Supervisor Davis said he knew that the map and property information was not as accurate as it should be. Supervisor Street said that in cases such as this, emotions tend to ride high. She said she believed that when people undertake something like this they need to be very careful to make sure everything is done correctly, and that one should always err on the side of the taxpayer. Chairman Brownlow called for the vote, which carried unanimously. Ron Chase, who said he was a resident of Morgan Ranch and the former fire chief of the WVFD, told the Board he felt that as a lay person, he had met his obligation with regard to the impact statement.

2. **Schedule budget meetings with departments.** There was general agreement that meetings could be held April 30 through May 3, with the meeting on April 30 to end at 3:00 p.m., and meetings on May 1 through 3 to end by 3:30 p.m. There was also general agreement that meetings could be held on May 7 and 8, with the meetings on both days to end at 3:00 p.m., and that on all days the meetings should begin at 9:30 a.m., and should have a 45-minute lunch allowance. (Clerk's note: May 7 is a regular Board meeting day, so any budget sessions would likely be held following Public Works items at 1:00 p.m.)
3. **Consider formal response to Yavapai-Apache Reservation status issue.** Mr. Holst explained that this issue had been brought to the County's attention in a letter from the U.S. Department of Interior, and that it had to do with a request of the Yavapai-Apache Tribe to change the status of property that it owns from privately held property to reservation trust status. He said that most of the property in question is within the towns of Camp Verde and Clarkdale, saying that the councils of both those towns had held a number of discussions regarding their positions on the Tribe's application for trust status. Mr. Holst said that the property taxes currently paid by the Tribe on the subject property amount to about \$65,000 per year, with the County's share of that amount being about 15% to 17%. Supervisor Davis asked if anyone had heard whether the Yavapai Community College District had declared its position. Mr. Holst said he had not heard anything. Supervisor Davis said he was concerned about the loss of property tax revenues for local school districts and the Community College District. Mr. Holst noted that those entities may have already responded to the Department of Interior. He said that the County's sales tax for regional roads and the sales tax for the Jail District would continue to be collected on the property even if it was put into trust status. He noted that the County's impact fee did not come into question because the property was within incorporated town limits, and that for the same reason there was not a question with regard to County services. Supervisor Davis said

the Town of Clarkdale was opposing the application and that the Town of Camp Verde was going to have another meeting about it. He said it did not appear that the County would lose any revenues generated from commercial or retail sales if the property was put into trust status, and that the only impact to the County would be the loss of about \$10,000 in property tax revenues. He asked if the Board could ask the Tribe if it would be willing to pay the property tax with increases based on the Consumer Price Index, or, in the alternative, review the property tax that would be generated every ten years based on improvements to the property. Mr. Holst asked if Supervisor Davis was suggesting that only for the County's portion of the property tax. Supervisor Davis said he doubted that any of the other jurisdictions involved could do that. He noted that the Tribe willingly gives money to help kids go to college whether they are on the reservation or not. Chairman Brownlow said there had been an excellent article in the Daily Courier about this issue. He said it would be hard to go back and correct any injustice done in the past to different groups of people. He said it was his understanding that children living on the reservation still attend public schools and still receive medical assistance without paying taxes for either. Mr. Holst suggested indicating in the letter to the Department of Interior that the Board would expect the Tribe to work with the different jurisdictions regarding the loss of property tax revenues. Supervisor Davis said the impact to the County would be small, and that aside from the loss of property tax revenue to the County, there would also be a loss for the Library District and Flood Control District. Supervisor Street said she disagreed, and that as long as there was a property tax system she was opposed to taking anyone off of it because when someone goes off everyone else has to pay more. She said that right now the impact did not appear to be very great, but that 68 acres of the subject property were proposed for commercial development and that commercial development would have a great future impact on property taxes. She said she believed there was also a question as to whether only Tribal members would be allowed to live in residences on the property or whether non-members would also be allowed to live there. Chairman Brownlow said he doubted whether the Board's action on this day would really have much influence with the Department of Interior. He said he felt that the parts of the property that would be used for parks, open space and homes should have trust status, but that what would be used for commercial purposes should pay tax like everyone else. Supervisor Davis said he had hoped that the Board would be able to analyze the whole situation. He said that the Tribe's existing reservation is very small compared to the number of members in the Tribe, and that there was a waiting list for elders who wanted to have homes on the reservation. He said it was clear there is a housing deficiency for Tribal members, and that he agreed that those lands used for homes, open space, parks and the like should be exempt from tax. He said it had not been the Tribe's choice in 1876 to be driven off their land and sent to the San Carlos Reservation, and that when they returned to the Verde Valley in 1900 all their land was gone. He said he also agreed with Supervisor Street that everyone should pay into the system, and thought it would be good if the Board could say it agreed with having those areas set aside for homes, parks and the like receive tax-exempt status but that areas set aside for commercial ventures should still be subject to tax. Supervisor Street said this was new territory for the Board, and that the Tribe could still put its elders into homes on the property without the property being reservation. There was brief discussion regarding whether the Board should simply decline to respond to the Department of Interior, during which Supervisor Street said she did not know if failure to respond would be interpreted as the Board not having a problem with the application for trust status. She asked if the Tribe had approached the County about this issue. Supervisor Davis said he had seen the politics in the Verde Valley and some of the issues with the Tribe, and that the Board should probably have had this discussion much earlier. He said he believed this was an opportunity for the Board to identify its interests and negotiate to protect those interests. He said it was already known that taxes for the Jail District and the regional road program would be preserved, but that there were some other issues to consider. Supervisor Davis said if the Board did nothing, it would have to accept whatever happens. He said he believed the County's relationship with the Tribe at this time was very good, and that if the Board could show the Tribe its concerns the Tribe would likely be willing to work with the Board. In response to a question from Chairman Brownlow, Mr. Holst said he thought the Board could propose whatever it wanted to, and that there was a lot of latitude. Supervisor Street said she would rather err on the side of being very cautious. She said that the Tribes are now in a position to make money like never before, and she asked whether this request for trust status would be the end of it or whether there would be more such requests in the future. She said the Tribe already owned the property and that it could use it any way it wanted to, just like anyone else. Supervisor Street said she was very concerned with taking it off the tax rolls. Supervisor Davis suggested asking that the property be exempt until it used, and that at that time it be subject to all taxing authorities.

There was brief discussion regarding requesting a payment in lieu of taxes program, similar to what

is already in place for other federal lands. Daily Courier Reporter Joanna Dodder told the Board the Tribe believed it was important to have the property held in trust because then it could not be sold. Supervisor Davis moved to direct staff to draft a letter to be passed to each Board member for approval. The motion died for lack of a second. Following additional brief discussion regarding issues already touched on, Supervisor Davis moved to support the application of the Tribe for trust status provided that the issues listed (discussed by the Board on this day) are satisfactorily addressed. Supervisor Street seconded the motion. Chairman Brownlow called for the vote, which carried 2-to-1, with Chairman Brownlow and Supervisor Davis voting "yes" and Supervisor Street voting "no."

- 4. Consider approval of items appearing on the Consent Agenda and on the Consent Agenda for Special Districts. Approved by unanimous vote. Motion by Supervisor Davis, second by Supervisor Street. No comments from the public.

ITEM NO. 2. Board of Supervisors. The items listed below are study session items for discussion only.

- 1. Progress report on architectural services for the new building at Fair Street in Prescott, and Health Department and Free Clinic in Prescott Valley. Present and participating in discussion were Special Projects Coordinator Angelo Manera, Health Department Director Marcia Jacobson and Community Health Clinic of West Yavapai Director Peggy Nies, and Yavapai Regional Medical Center CEO Tim Barnett and Chief Financial Officer Doug Bristol. There was brief discussion regarding increases in Health Department services and the potential of working with YRMC to obtain space in the Prescott Valley area for additional facilities. Ms. Jacobson said the County had received \$500,000 in grant funding for remodeling the Health Department facility in Prescott, and that since that property had been sold to YRMC, it was possible to transfer the grant to new facilities. Mr. Holst said this would allow the County to put a free clinic and health facilities together with what is already at the Del Webb center in Prescott Valley. Mr. Manera said that fully finished, the facility would be about 11,000 square feet and that it would cost about \$2.4 million to build, or \$1.9 million after taking the grant into consideration. He added that this project would also allow the County to save money on the new building at Fair Street because it would not need to add space for health facilities, other than space for administration. Ms. Jacobson said she believed there were many people currently using the Health Department's facilities in Prescott who would use such facilities in Prescott Valley if they were available. She said a Prescott Valley facility would help a great deal with growth, and would address a very strong health program in the western part of the County. She said the facilities in Prescott would stay at the same level, with an increase in services in Prescott Valley. Mr. Manera said that YRMC would own the property and the buildings and would lease them back to the County for 20 years at no charge. Supervisor Davis suggested just purchasing the property. Ms. Jacobson said she believed that June 30 would be the deadline for the County to reach a decision or risk losing the \$500,000. In response to comments from Supervisor Davis, Ms. Jacobson said that the clients who use Health Department services are usually there just for that purpose and are not availing themselves of other County services. She said that a free standing clinic would be beneficial and that having it located next to hospital services was a real plus. Supervisor Davis said he had no problem with the location, but just felt the County should purchase the land outright instead of leasing it. Mr. Holst said consideration could be given to the County having separate ownership of a part of the facility. Discussion turned to the new Fair Street building, with DLR Group representatives Howard Cohen, Richard Drinkwater, and Starla Norstrom participating. Mr. Manera explained that meetings had been held with the appropriate departments regarding space needs. There was discussion regarding whether to include the Mackin Building in the master planned, during which there appeared to be general agreement that it would be appropriate to do so. Mr. Cohen reviewed a list of planning goals for the new building, and there was some discussion regarding a new Board Room and how the Board members would like to see that room and Board offices configured.
- 2. Discussion regarding County parking in downtown Prescott. Chairman Brownlow said that some years ago the County had made a commitment to participate in a downtown parking lot, but that it had finally dropped it out of the budget, and that it was not in the budget now. He said the Prescott magistrate court was located in the Courthouse and that the County would need that space soon, adding that that court contributes to parking problems downtown. He said he thought the Board should consider moving the justice court out of the Courthouse, and that there were a number of buildings available

for purchase in the downtown area at the present time. He suggested getting together with the City of Prescott regarding the possibility of a joint courtroom. City of Prescott Economic Development Coordinator Greg Fister was present.

- 3. Discussion regarding solid waste policies. Public Works Director Richard Straub and Assistant to the Public Works Director Cathy Heath presented this item. Ms. Heath said that staff had been ovrking on a policy for community clean-ups and free dump days. She said that currently there is about \$3,000 per year allocated for each district for community clean-ups but that the costs are more than that, running between \$2,500 and \$4,500 for each clean-up. She said she would like direction as to whether only the unincorporated areas of the County should be included in clean-ups, saying that in the past some incorporated areas had been included. Mr. Straub said that as the budget process moves forward, it would be important to talk about free dump days because they are very expensive and that the County was absorbing a great deal of the cost. Supervisor Street said she was in favor of transfer stations in the rural areas and in favor of clean-up projects in the County, but that incorporated areas are their own government and most of them have trash pickup. She said if the Board did not spend money on clean-ups, it would end up spending money to hire trash patrol employees. Supervisor Davis said he was in favor of community clean-ups because it often helps to avoid zoning violation problems, and that helping a community clean itself up was a productive thing. He said he would like a realistic figures showing what each district has spent over the last few years for clean-ups, and that he would also like to have a little leeway to negotiate with cities and towns on clean-ups. Mr. Straub said he would return to the Board with recommendations at a later date.
- 4. Update on County's use of technology (if time permits). This item was not discussed due to time constraints.

ITEM NO. 3. Convene in executive session pursuant to A.R.S. 38-431.03(A)(7) for the purpose of discussing and instructing staff regarding the purchase or lease of real property. Approved by unanimous vote. Motion by Supervisor Davis, second by Supervisor Street. The Board did not reconvene in open session on this day.

CONSENT AGENDA FOR BOARD OF SUPERVISORS: Approved by unanimous vote. Motion by Supervisor Davis, second by Supervisor Street. No comments from the public.

- 1. Request from Finance for approval of an agreement with the Northern Arizona Council of Governments for the 2001 Summer Youth Employment and Training Program.

There being no further business to discuss, the meeting was adjourned.

ATTEST:

\_\_\_\_\_Clerk \_\_\_\_\_Chairman