

**Special Meeting Minutes**  
**Tuesday, December 23, 2008**  
**Meeting Scheduled Start Time: 1:00 PM**

**BOARD OF SUPERVISORS**  
**Maricopa County, Arizona**

(and the Boards of Directors of the Flood Control District,  
Library District, Stadium District, Improvement Districts,  
and/or Board of Deposit)



"The mission of Maricopa County is to provide regional leadership and fiscally responsible, necessary public services to its residents so they can enjoy living in healthy and safe communities"

**Board Members**

Andrew Kunasek, District 3, Chairman  
Max Wilson, District 4, Vice Chairman  
Fulton Brock, District 1  
Don Stapley, District 2  
Mary Rose Wilcox, District 5

**County Manager**

David Smith

**Clerk of the Board**

Fran McCarroll

**Meeting Location**

Supervisors' Conference Room  
301 W. Jefferson, 10th Floor  
Phoenix, AZ 85003

## **BOARD OF SUPERVISORS**

The Board of Supervisors of Maricopa County Arizona convened in Special Session at 1:00 PM on Tuesday, December 23, 2008, in the Supervisors Conference Room with the following members present: Andrew Kunasek, Chairman, District 3; Fulton Brock, Supervisor District 1; Don Stapley, Supervisor, District 2; Max Wilson, Supervisor, District 4; Mary Rose Wilcox, Supervisor, District 5. Also present: Lori Pacini, Deputy Clerk of the Board; Shirley Million, Minutes Coordinator; Sandi Wilson, Acting County Manager; Paul Golab, Outside Counsel to the Board.

### **County Manager**

1. Approve a motion by the Board of Supervisors to take back its authority to direct and control the prosecution, defense and compromise of all civil legal actions to which the County is a party or has an interest by: (1) directly hiring and managing all legal counsel for the purpose of defending, initiating, prosecuting and compromising all civil legal actions and litigation to which the County is a party or has an interest; (2) delegating such hiring and management to the County Manager; (3) directing the County Manager to take any such steps as are needed to implement this action (for instance, establishing a review committee that makes recommendations to the County Manager for cost efficient or otherwise improved litigation management practices and procedures) and manage the transition from the present method of hiring and managing legal counsel to a new method approved by the County Manager; (4) appointing Shughart, Thomson & Kilroy, PC, previously appointed by the Board on December 5, 2008, as its Special Counsel for the filing of any actions necessary as a result of any conflict with the County Attorney, and to provide all necessary legal advice related to the conflict of interest issue, to now provide all necessary legal advice and support required by the Board of Supervisors and/or County Manager to implement and defend the action taken by the Board of Supervisors regarding this Agenda item; and (5) authorizing the County Manager to appoint additional legal counsel as needed to implement and defend the action taken by the Board of Supervisors regarding this Agenda item. (C-20-09-040-3-00)

Outside Counsel Tom Irvine, Paul Golab, and Rick Romley, County Consultant, joined the Board at the conference table.

Tom Irvine said the Board of Supervisors had entered into a Memorandum of Understanding (MOU) with the County Attorney, Andrew Thomas, in 2006 dealing with

the Risk Management Trust, the appointment of counsel and the handling of lawsuits. That MOU expired on December 1, 2008, with the intent to have an arrangement when it expires. This agenda item addresses information for a "successor" to the expired MOU. The changes follow case law from the Arizona Territorial Supreme Court in 1904, establishing that the filing and defending of lawsuits is a fiscal matter and is not considered legal advice. He said that the County Attorney is the legal adviser to the Board, according to statute, however the Supreme Court established case law saying that the Board of Supervisors can hire, fire, control and decide when to settle, and when to compromise lawsuits. He said, "this is a well-trod precedent" and was adopted by the Utah Supreme Court in 1999. He said the 2006 MOU gave the Board additional, partial control over the selection of case attorneys, and that wording in the MOU recognized this precedent. He said this new action extends the Board's power when it comes to attorney selection for civil lawsuits and other litigation to which the County is a party. The Board would direct the County Manager to take such steps as necessary to appoint legal counsel and law firms to assist the Board when the County is sued.

Mr. Irvine said this action does not change any case currently being handled by outside counsel or by county attorneys. This changes the overall management and brings it more closely under the Board's scrutiny and authority, as was done in a limited way in the 2006 MOU. This action moves it directly under the Board's control through the County Manager. Legally the Board had delegated this action partially to the County Attorney in the past and this withdraws that delegation and re-delegates it to the County Manager.

Mr. Irvine said that along with the Board's increased involvement in lawyer selection, the Board will continue to have the final say in the financial settlement of any case. The County Attorney cannot, and has never had the authority to settle a case without receiving the Board of Supervisors' prior approval.

2. Approve a motion by the Board of Supervisors to: approve revisions to the Specialty Legal Services Providers – County Attorney Contract, 08038-ROQ ("Contract"), as described in this Agenda Item and in the agreement presented to the Board for consideration as an attachment to this Agenda Item, and to direct the County Manager to amend any other contracts or legal documents that the County Manager subsequently determines must be amended in order to further or otherwise facilitate any action authorized by the Board of Supervisors relating to Item Nos. 1 and 3 on this same Agenda. Specifically, the County Manager is directed to amend any contracts or documents, and to take any other actions that are necessary to carry out the Board's action taken regarding Agenda Item No. 1, above, so that the assignment of litigation matters is directed and controlled by the Board of Supervisors, and to do all other things necessary to carry out and implement that authorization, including conveying written contract amendments to outside counsel for acceptance and agreement, and evaluating whether it is appropriate to terminate any litigation assignment(s), as provided in Paragraph 27 of the Contract. (C-20-09-041-3-00)

Tom Irvine said that as part of the delegation under the 2006 MOU, that had both the County Attorney and the Board involved in selecting lawyers, the Board had entered into contracts with outside law firms and counsel. He stressed that these contracts were with Maricopa County and not with the County Attorney's Office that "managed the contracts."

He said this delegation would now be re-delegated to the County Manager. However, the type of case now being dealt with by Risk Management will continue under Peter Crowley's, Director of Risk Management, management. Today's action would not

change Risk Management's responsibilities.

The Risk Management Trust was changed in 2006 to accommodate the changes to the Board's increased control in appointing attorneys, and those changes to the Trust also expired on December 1, 2008, along with the MOU. Today's changes to the Risk Management Trust are necessary to effectuate the changes in item #1. The Trust was changed in 2006 to effectuate the changes brought by the MOU and now the Trust must be changed, in 2008, to effectuate the changes brought by agenda item #1.

Chairman Kunasek clarified any changes to the Trust would come back before the Board for consideration and final approval. Mr. Irvine said that all the proper boards and consultants will have to agree that any changes fit with the goals set by the Board and also with the policy that will be established by the County Manager in effectuating the changes - in item #1.

Mr. Irvine said this is a logical evolution of the 2006 MOU when the Board became more active because of the fiscal magnitude of the litigation directed at Maricopa County.

Sandi Wilson said information had been prepared on the financial component of this action and it was found that in 2004 legal costs for the Civil Division, County Attorney's Office, Tax Appeal, Outside Counsel and Risk Management were \$12.1 million. In reviewing the actuals for 2008, these costs have increased to \$22.1 million. In looking at this increase it is hoped that this action will help control those increasing costs.

Supervisor Wilson made a motion to approve agenda items #1, #2 and #3, motion was seconded by Supervisor Brock.

Supervisor Wilcox said she would support the motion even though it may seem drastic, believing it must be done so that one-fifth of Maricopa County residents are not disenfranchised.

The meeting was interrupted before a vote could be taken.

3. Approve a motion by the Board of Supervisors to amend the Restated Declaration of Trust for Maricopa County, Arizona Self-Insured Trust Fund, dated May 18, 2006, so that the Restated Declaration of Trust conforms to the Board's action taken regarding Item No. 1 of this Agenda. The County Manager shall have prepared a formal amendment for presentation to the Administrator and to any other persons identified by the County Manager. After a reasonable period for review and consultation, the County Manager shall present a formal Restated Declaration of Trust to the Board of Supervisors. Pending enactment of such formal Restated Declaration of Trust, this motion shall be deemed an amendment to the Trust and shall be adhered to and interpreted consistent with the intent expressed in this Agenda item, and in a manner consistent with the intentions stated and action taken in Agenda Item No. 1, above.

In the interim and pending receipt of a formal Restated Declaration of Trust by the County Manager, the Restated Declaration of Trust dated May 18, 2006 shall be regarded as amended on an interim basis to reflect the revisions contained in the attachment to this Agenda Item No. 3.

(C-20-09-042-3-00)

An unidentified gentleman in the audience called to the Chairman to speak on this item.

Chairman Kunasek ruled the man was out of order as a motion was under consideration and ready for the vote.

The gentleman said he had comments on behalf of the County Attorney, asking if the County Attorney was not legal advisor to the Board.

Chairman Kunasek said he would defer that question to legal counsel, but did assure the gentleman that there is a great deal of uncertainty on the ability of the County Attorney's Office to represent the best interests of the Board. He added that this topic (of fair representation because of previously declared bias) is not under discussion at this meeting. He explained that today's agenda items address the Trust and litigation efforts on behalf of the County, and there is a motion and a second on the floor. He added that he would support these items because clarity needs to be found in all of the confusion that has been generated. He hoped the Board and County Attorney could resolve this matter through the efforts of outside counsel, but it was not fair to the citizens of Maricopa County for the situation to continue as it has done. He called for the vote at this time.

Motion to approve agenda items #1, #2 and #3 by: Supervisor Wilson, Seconded by: Supervisor Brock  
Ayes: Kunasek, Stapley, Brock, Wilcox, Wilson

**MEETING ADJOURNED**

There being no further business to come before the Board, the meeting was adjourned at 1:17 p.m.

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Andrew Kunasek, Chairman of the Board

ATTEST:

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Lori Pacini, Deputy Clerk of the Board