

Special Meeting Minutes
Thursday, December 10, 2009
Meeting Scheduled Start Time: 10:30 AM

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

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

County Manager

David Smith

Clerk of the Board

Fran McCarroll

Meeting Location

Sullivan Conference Room
301 W. Jefferson - 10th Floor
Phoenix, AZ 85003

BOARD OF SUPERVISORS

The Board of Supervisors of Maricopa County, Phoenix, Arizona, convened in Special Session at 10:30 AM on Thursday, December 10, 2009, in the Sullivan Conference Room, 301 W. Jefferson, Phoenix, Arizona, with the following members present: Max Wilson, Chairman, District 4; Don Stapley, Vice Chairman, District 2; Fulton Brock, District 1; Andrew Kunasek, District 3; Mary Rose Wilcox, District 5, (entered late). Also present: Constance Copeland, Deputy Clerk of the Board; Constance Copeland, Deputy Clerk of the Board; David Smith, County Manager; and Legal Counsel.

1. EXECUTIVE SESSION

Vote to convene in Executive Session to consider the items on the Special Executive Agenda dated December 10, 2009, for Board of Supervisors and relevant Special Districts pursuant to the statutory authority listed for each item.

Motion to approve by Supervisor Brock, seconded by Supervisor Stapley
Ayes: Kunasek, Stapley, Brock, Wilson
Absent: Wilcox

OPEN SESSION RECONVENED

Chairman Wilson reconvened open session at 2:12 p.m. to vote on one open agenda item. Members present as given above with Supervisor Wilcox, District 5, and Fran McCarroll, Clerk of the Board, absent for this item.

2. CONSIDERATION OF ACTION TO WAIVE LEGAL CONFLICTS OF INTEREST

Consideration of action to waive legal conflicts of interest that may arise as a result of the lawsuit filed by Sheriff Joseph Arpaio and County Attorney Andrew Thomas against the Board of Supervisors, legal counsel and others. (U.S. District Court, District of Arizona Case 2:09-cv-02492-GMS). (To be discussed in executive session 12/10/09.) (C-06-10-222-M-00)

Paul Golab, legal counsel, stated that the Board was informed and advised in Executive Session today by outside counsel regarding the conflicts of interest brought against the Board of Supervisors and their outside legal counsel as co-defendants in the filing of RICO charges.

Mr. Golab read the following motion into the record:

Motion: Acknowledge that the attorney's appointed by the Board of Supervisors to represent the Board and Maricopa County in a number of actions – Polsinelli Shughart, PC (including all attorneys employed by the firm), Mr. Thomas Irvine and Mr. Edward Novak (collectively "PS") as well as Maricopa County employee Wade Swanson, Director, Office of General Litigation Services ("Swanson"), were sued along with Maricopa County Board of Supervisors, as well as other county employees including David Smith, County Manager, in District of Arizona case number 2:09-cv-02492-GMS (Arpaio & Thomas v. Maricopa County, Smith, Wilson, Swanson, Irvine, Novak & Polsinelli Shughart et al) (the "District Court Case") that the Board has been fully informed as to these matters; has sought independent legal counsel on the question of whether the suit causes a conflict of interest in PS and Swanson continuing to represent the Board as legal counsel and Smith in his role as County Manager; with full disclosure of the risks associated with granting a waiver of the conflict, including the possibility that PS and Swanson might have to withdraw from representing the Board in the future if their interests should become adverse to the Board of Supervisors or Maricopa County, and that the Board's interest and PS and Swanson's interest could diverge in the District Court Case; as such, gives its informed consent to waive the potential conflict with PS or Swanson continuing their legal representation of and for the Board and Maricopa County in all matters (however they will not be appearing as trial counsel in the District Court Case), and if such conflict does arise, affirmatively gives its informed consent to waive such conflict. The Board has been advised that if an actual conflict arises in the future with respect to the District Court Case, the lawyers may need to withdraw from all matters on behalf of the Board. The Board also finds that David Smith is employed as County Manager and does not provide legal advice to the Board of Supervisors or to the County, and thus no conflict waiver is necessary for him to continue his services to the Board and the County. However, to the extent that any legal ethics rules are implicated by this lawsuit, having received independent legal counsel on the matter and being fully informed, the Board also knowingly gives its informed consent to waive any conflict of interest that may exist relating to Mr. Smith.

Motion to approve as given by Mr. Golab, by Supervisor Brock, seconded by Supervisor Kunasek
Ayes: Kunasek, Stapley, Brock, Wilson
Absent: Wilcox

EXECUTIVE SESSION RECONVENED

Chairman Wilson reconvened Executive Session at 2:15 p.m. to continue the executive agenda.

MEETING ADJOURNED

After consideration of the executive session items and there being no further business to come before the Board, the meeting was adjourned.

Max W. Wilson, Chairman of the Board

ATTEST:

Constance Copeland, Deputy Clerk of the Board