

MINUTES OF THE  
MARICOPA ASSOCIATION OF GOVERNMENTS  
MAG REGIONAL COUNCIL EXECUTIVE COMMITTEE  
March 17, 2008  
MAG Offices, Cholla Room  
302 N. 1<sup>st</sup> Avenue, Phoenix, Arizona

MEMBERS ATTENDING

Mayor James M. Cavanaugh, Goodyear, Chair	# Mayor Keno Hawker, Mesa
Mayor Mary Manross, Scottsdale, Vice Chair	Mayor Thomas L. Schoaf, Litchfield Park
Vice Mayor Peggy Neely, Phoenix, Treasurer	Mayor Marie Lopez Rogers, Avondale
Mayor Steven M. Berman, Gilbert	

\* Not present

# Participated by video or telephone conference call

1. Call to Order

The Executive Committee meeting was called to order by Chair James M. Cavanaugh at 12:10 p.m. Chair Cavanaugh stated that public comment cards were available for those members of the public who wish to comment. He noted that transit tickets were available from Valley Metro for those using transit to come to the meeting. Parking validation was available from MAG staff for those who parked in the parking garage.

2. Call to the Audience

Chair Cavanaugh noted that, according to the MAG public comment process, members of the audience who wish to speak are requested to fill out the public comment cards and stated that there is a three-minute time limit. Public comment is provided at the beginning of the meeting for items that are not on the agenda that are within the jurisdiction of MAG, or non-action agenda items that are on the agenda for discussion or information only. He noted that no public comment cards had been received.

3. Consent Agenda

Chair Cavanaugh noted that prior to action on the consent agenda, members of the audience are provided an opportunity to comment on consent items that are being presented for action. Following the comment period, Committee members may request that an item be removed from the consent agenda. There were no public comment cards received.

Mayor Berman moved to approve items on the consent agenda. Mayor Manross seconded the motion.

3A. Approval of the February 19, 2008 Joint Regional Council Executive Committee and

Building Lease Working Group and February 19, 2008, Regional Council Executive Committee Meeting Minutes

The Regional Council Executive Committee, by consent, approved the February 19, 2008, Joint Regional Council Executive Committee and Building Lease Working Group and February 19, 2008, Regional Council Executive Committee meeting minutes.

3B. Development of the FY 2009 MAG Unified Planning Work Program and Annual Budget

The Regional Council Executive Committee, by consent, approved for information the FY 2009 MAG Unified Planning Work Program and Annual Budget. Each year, the MAG Unified Planning Work Program and Annual Budget is developed incrementally in conjunction with member agency and public input. The Work Program is reviewed each year by the federal agencies and approved by the Regional Council in May. This presentation and review of the draft FY 2009 MAG Unified Planning Work Program and Annual Budget represents the budget document development to-date. The elements of the budget document are about 80 percent complete. On March 14, 2008, the MAG Management Committee, by consent, approved this item for information.

3C. Status Update on the June 30, 2007 Single Audit and Management Letter Comments, MAG's Comprehensive Annual Financial Report (CAFR) and OMB Circular A-133 Reports (i.e., "Single Audit") for the Fiscal Year Ended June 30, 2007

The Regional Council Executive Committee, by consent, recommended acceptance of the MAG Comprehensive Annual Financial Report and Single Audit Report for the year ended June 30, 2007. The accounting firm of Cronstrom, Osuch and Company, PC has completed the audit of MAG's Comprehensive Annual Financial Report (CAFR) and Single Audit for the fiscal year ended June 30, 2007. An unqualified audit opinion was issued on January 12, 2008 on the financial statements of governmental activities, the aggregate discretely presented component units, each major fund and the aggregate remaining fund information. The independent auditors' report on compliance with the requirements applicable to major federal award programs, expressed an unqualified opinion on the Single Audit. The Single Audit report indicated there were no reportable conditions in MAG's internal control over financial reporting considered to be material weaknesses, no instances of noncompliance considered to be material and no questioned costs. The Single Audit report had no new or repeat findings. Two Management Letter comments were issued for the fiscal year ended June 30, 2007. The CAFR financial statements and related footnotes were prepared in accordance with the Government Finance Officers Association's (GFOA) standards for the Certificate of Achievement for Excellence in Financial Reporting awards program. Management intends to submit the June 30, 2007 CAFR to the GFOA awards program for review. If awarded the certificate for the June 30, 2007 CAFR, this would be the agency's tenth consecutive award. On March 14, 2008, the MAG Management Committee, by consent, recommended acceptance of this item.

3D. Revised Amendment to the FY 2008 MAG Unified Planning Work Program and Annual Budget to Accept Funding from Sponsors for Upcoming Human Services Events

The Regional Council Executive Committee, by consent, approved to amend the FY 2008 MAG Unified Planning Work Program and Annual Budget to Accept Funding from Sponsors for Upcoming Human Services Events. On March 11, 2008, MAG was notified that an additional sponsor would support the 2008 MAG Regional Conference on Housing and Transportation Human Services Coordination Conference. The Arizona Community Foundation will contribute \$5,000 to make scholarships available to conference participants. Also, on March 11, 2008, Casey Family Programs notified MAG that they will provide \$2,000 directly to Dr. Johnson for his presentation, "Preparing Youth for an Unsparing Global Economy."

By March 2008, MAG was notified that Southwest Gas, Arizona Department of Transportation's Arizona Rides Council, Valley Metro (RPTA), Veolia Transportation, Arizona Department of Economic Security, and the Arizona Council of Human Services Providers would support the 2008 MAG Regional Conference on Housing and Transportation Human Services Coordination Conference. On February 5, 2008, MAG was notified that Casey Family Programs would support the "How to Prepare Youth to Compete in an Unsparing Global Economy" presentation. On February 22, 2008, MAG was notified that an anonymous donor would support the process to develop the next Regional Plan to End Homelessness.

4. Regional Office Center Negotiations

Chair Cavanaugh noted that there was one item to be heard by the Executive Committee. Chair Cavanaugh introduced MAG Executive Director, Dennis Smith. Mr. Smith stated that he would discuss the historical time line of the project. He noted that Alana Chávez, Management Analyst and Regional Office Center (ROC) Project Manager, would provide an update to the Committee regarding activity pertaining to the ROC project in the previous month.

Mr. Smith noted that Ms. Chávez had prepared a time line and that its format was similar to that used on the Transportation Policy Committee to illustrate the history of the project. Mr. Smith recalled that the project began several years ago after the successful election in November 2004. He noted that MAG staff presented the possibility of constructing a building in January 2005. Mr. Smith stated that at that time there was a window of opportunity to move forward on a building and that the Executive Committee was generous to authorize MAG to move forward to explore the option. Mr. Smith noted that about a year ago, the MAG Regional Council authorized MAG to enter into a lease to move forward with building. He stated, however, that subsequent to that action, MAG re procured the project to satisfy one of the partnering agencies and to address possible legal concerns that were raised at that time. Mr. Smith noted that MAG is again in a position to decide whether to proceed on the project. He stated that his reason for presenting the time line was to illustrate that MAG is a regional planning agency and a council of governments. Mr. Smith noted that in his opinion MAG's role was not to be eternally involved in building negotiations. He expressed that building space is a function of what the organization needs in order to operate. Mr. Smith indicated that MAG is at capacity on its floors and that the last area remaining was remodeled on the third floor to accommodate another staff position. He noted that

potentially there is an option to use the bank space on the first floor that could give relieve MAG's space limitations a few more months until a more permanent option could be found. Mr. Smith stated that an ownership position for MAG would be nice, but is not necessary . He indicated that it was also possible for MAG to lease space. Mr. Smith stated that he had discussed once more with the City of Phoenix about possibility of buying the current building and that he was told that the building is not for sale and that the city would need it for its own purposes.

Chair Cavanaugh asked Mr. Smith for clarification about the current building.

Mr. Smith stated that the City of Phoenix would need the building. He noted that there is some flexibility for MAG but that MAG needs to make a decision about how and where to place staff in a location that has more space. Mr. Smith stated that as the Executive Director his focus is looking at how to best accommodate MAG's space needs. He introduced Ms. Chávez to review activity pertaining to the project during the prior month.

Ms. Chávez stated that she would provide an update on activity taking place since the February 19, 2008 Executive Committee meeting. She noted that at that meeting the Committee 1) Recommended approval of the amended and restated Memorandum of Cooperation (MOC) with no further changes, and 2) Recommended authorization for the MAG Executive Director to enter into a preconstruction services agreement with McCarthy Building Companies contingent upon approval of the amended and restated MOC from the other agency boards. Ms. Chávez stated that on February 20, 2008, the Valley Metro Rail (METRO) Board provided conditional approval of the amended and restated MOC and preconstruction services agreement pending consideration from MAG and the Regional Public Transportation Authority (RPTA) to accept an amendment to the MOC. She continued that on February 21, 2008, the RPTA Board approved the amended and restated MOC and preconstruction services agreement by a 7-6 vote.

Ms. Chávez subsequently provided an update on the status of the land acquisition, financing, design-build and legal processes pertaining to the ROC project. She stated that the land option payments of \$38,307.42 per month are ongoing and that another payment is expected to be paid on April 1, 2008. Ms. Chávez, noted that with respect to the financing, the credit report, which was ready to be presented to the credit agencies, was suspended due to the actions of the METRO and RPTA Boards. She added that the application to the Phoenix Industrial Development Authority was also put on hold. Ms. Chávez noted that the preconstruction services agreement with McCarthy is also on hold. She concluded that legal agreements, including the purchase and sale agreement with Mr. Kaye, the master development agreement with the City of Phoenix, the Form of Leases and the alley abandonment and re-platting processes are also on hold. Ms. Chávez stated that staff would be seeking direction from the Executive Committee on how to proceed and that an executive session had been scheduled.

Chair Cavanaugh asked members of the Committee if they wished to seek legal advice. He noted that it would be appropriate to recess the Executive Committee and go into executive session. Chair Cavanaugh asked for a motion to go into executive session for item 4.

Mayor Berman moved to adjourn the Executive Committee and go into executive session. Vice Mayor Neely seconded the motion. The motion passed unanimously.

Chair Cavanaugh recessed the Executive Committee meeting at 12:15 p.m. for the purpose of going into executive session.

Chair Cavanaugh reconvened the Executive Committee at 12:40 p.m.

Vice Mayor Neely asked legal counsel for clarification on the status of the MOC with the other two agencies. She stated that it was her understanding that what is in effect is the original agreement but that there is no amended agreement.

Ms. Fredda Bisman, MAG General Counsel, stated that Vice Mayor Neely was correct. She noted that what is in effect is the MOC that was approved by all the bodies on December 19, 2007. She reviewed that the amended and restated MOC was approved by the Executive Committee with the condition that there be no further amendments. Ms. Bisman noted that the METRO Board, however, approved the amended and restated MOC with amendments and that there has been no agreement on the amended and restated MOC at this time. She stated that as a result, the only agreement in effect between the parties is the original MOC from December 2007.

Vice Mayor Neely asked Ms. Bisman if it was correct that no further action was needed by the Executive Committee in addition to the action the Committee took at its last meeting.

Ms. Bisman noted that Vice Mayor Neely was correct as long as everyone agrees and understands that the Executive Committee's understanding is that there is no amended and restated MOC.

Mayor Schoaf had a question about the original MOC. He asked since the amended version was not adopted by the parties, whether MAG had the ability from the original agreement to terminate the original MOC.

Ms. Bisman stated yes. She noted that section 3.3 of the MOC provides that if any of the parties does not approve any of the additional agreements relating to the project, any of the parties has the right or option to terminate to original MOC.

Mayor Schoaf asked for how long did that option extend.

Ms. Bisman stated that the agreement did not provide a time frame for that option.

Mayor Schoaf stated that the Committee could choose not to terminate today but revisit the same issue in a month

Ms. Bisman noted that Mayor Schoaf was correct.

Mayor Schoaf asked if MAG would be taking any substantial risk of losing its ability to

terminate by waiting a month.

Ms. Bisman stated that at some point there might be a possibility that another party could say that by having not acted at the time of the failure to approve, that there had been some waiver of position. She indicated that it would depend on the conditions and what led to the action at the time.

Mayor Schoaf noted that he had been opposed to spending money to hold onto the land. He stated taking into consideration the extent to which MAG wanted to hold on to the land another month and suspend negotiations with McCarthy for a month so that MAG could maintain flexibility, would MAG still have the ability at the end of the month to terminate the MOC. He was concerned that MAG not end up in a worsened position.

Ms. Bisman commented that the same provision states that if at any time any of the parties does not approve any of the additional agreements relating to the project would include MAG. She noted that if the project went forward it would include the preconstruction agreement and other agreements. Ms. Bisman stated that by MAG failing to approve those documents, MAG would also be in the position to terminate the MOC.

Mayor Schoaf asked Ms. Bisman to confirm that MAG was not going to be taking on any substantial financial risk by not terminating the MOC.

Ms. Bisman confirmed that Mayor Schoaf was correct.

Chair Cavanaugh asked that whether an action taken on the agreement with McCarthy affect the MOC.

Ms. Bisman cautioned committee members that discussion was heading into legal advice and that the Committee may want to adjourn and go into executive session to continue those discussions. She stated that she was concerned about the propriety of the discussion in open session to address risks and liabilities. Ms. Bisman noted that although MAG is working cooperatively with the RPTA and METRO, representatives of those agencies were in the room and she wanted to be careful that the Committee was not discussing the strengths and weakness of MAG's position from a legal perspective.

Mayor Manross stated that she would like the Committee to go into executive session to be able to have further legal discussions.

Chair Cavanaugh asked for motion to go into executive session.

Mayor Manross moved to go into executive session. Vice Mayor Neely seconded the motion. The motion carried unanimously.

Chair Cavanaugh recessed the Executive Committee at 12:46 p.m. for the purpose of going into the executive session.

Chair Cavanaugh reconvened the Executive Committee at 1:00 p.m.

Mayor Schoaf moved to recommend to the Regional Council to terminate the MOC based upon METRO's action to not accept the amended and restated MOC without further changes, and instruct MAG staff to suspend further negotiations with McCarthy .

Chair Cavanaugh asked Ms. Bisman to restate the motion to ensure appropriate understanding of the action to take place.

Ms. Bisman stated that this was a motion to recommend to the Regional Council to terminate the terms of the Memorandum of Cooperation (MOC) for the Regional Office Center with the RPTA and METRO and direct MAG staff to inform McCarthy Building Companies that negotiations regarding the Regional Office Center are suspended until further notice from MAG.

Vice Mayor Neely asked Mayor Schoaf to confirm that the Executive Committee's termination of the MOC is based upon the actions of METRO.

Mayor Schoaf stated that Vice Mayor Neely was correct.

Vice Mayor Neely noted that she wanted to take an opportunity to state that she has a large disappointment in Valley Metro Rail considering their appearance before the Committee a month ago and proceeding with their action to their board. She stated that they should wholeheartedly understand that regional cooperation must not be in their board's interest. Vice Mayor Neely noted that she was disappointed due to efforts of many months worth of discussion and that it really is disturbing that the actions of a fairly smaller player could put the project where it is at.

Chair Cavanaugh asked if there was further discussion of the motion to terminate the terms of the Memorandum of Cooperation (MOC) for the Regional Office Center with the RPTA and METRO and direct MAG staff to inform McCarthy Building Companies that negotiations regarding the Regional Office Center are suspended until further notice from MAG. There was none.

Chair Cavanaugh called for a vote. The motion passed unanimously.

Vice Mayor asked whether MAG staff had appropriate direction from the Committee in the exploration of options for MAG.

Chair Cavanaugh stated that MAG staff has not been restricted in looking at options in the general centralized area taking into consideration that light rail may or may not be as critical and the possibility of considering a location at 44<sup>th</sup> Street had been presented. Chair Cavanaugh noted that if the Committee needed to provide guidance that it was the appropriate time to provide that direction to staff.

Vice Mayor Neely stated that one of the topics previously discussed is that the current building is not available.

Mr. Smith stated that she was correct.

Vice Mayor Neely noted that staying in the current building is not an option and that in the spirit of regional cooperation co location could have been beneficial. She stated that now MAG should look at options primarily as a sole entity and that although there could be a possibility that one other entity would like to participate with MAG, staff should go back to the search that was initiated when MAG wanted to be in a centralized location and that this could also include lease or purchase.

Mayor Berman stated that he would like to make the search a little deeper and look at various sites. He noted that he would like prices to be considered in the metro area that would be more reasonable and to also consider the time frame at which the project would break even.

Mayor Schoaf stated that he agreed with Mayor Berman's general concept that the option must be at a reasonable cost to MAG. He encouraged that MAG remain open to conversations with entities such as the League of Cities who may be interested in having a partner and who may already have a plan put together.

Mayor Manross stated that she had hoped for a central location but that she would now be open to another location which might include the League of Cities.

Mr. Smith noted that originally the League was configuring a deal with the Association of General Contractors.

Mayor Schoaf stated that he believed that had gone away.

Mr. Smith stated that MAG staff could inquire about the most recent status of that project.

Mayor Berman noted that going eighteen blocks to the west and perhaps going in with the League might not be possible because he had heard of conflicts among staff members. He stated that he hoped that despite conflicts that the organizations could find a way to work together.

Vice Mayor Neely expressed her concern that it is trying to get different parties together is what has caused difficulty in the current project and to add another could result in a similar situation. She said she is supportive about looking at other options, but not expending another 3 years to make something work. Vice Mayor Neely noted that her colleagues were optimistic and she was concerned that in trying to work with multiple parties the project has stopped and what would keep it from happening again.

Mr. Smith clarified that there is no conflict with the League staff. He noted that a concern began when MAG separated from the League in 1996 because the Legislature had difficulty distinguishing MAG from the League. Mr. Smith explained that when there were political differences between the Legislature and the League of Cities who represented the whole state, it was affecting MAG. He stated that he was a League staff member for more than 20 years and got along great with the staff and locating with the League was not a staff issue.

Mayor Lopez Rogers stated that MAG has been working on the effort to provide future office space a long time and that the current market might favor MAG and encouraged the Committee to leave all options open.

Mr. Smith stated that he agreed with Mayor Lopez Rogers.

Chair Cavanaugh noted that all the comments provided were to serve as guidance to MAG staff while considering future options.

5. Adjournment

There being no further business, the Executive Committee adjourned at 1:11 p.m.

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Chair

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Secretary