



Public Works Department

Minutes

SPECIAL MEETING OF THE CITIZEN STREET OVERSIGHT COMMITTEE

Monday, November 04, 2013, 7:00 p.m.
El Cerrito City Hall
Hillside Conference Room
10890 San Pablo Avenue

Call to Order at 7:00 p.m.

1. Roll Call

Present: Vice Chair Lynne Kessler, Committee Members Al Miller, Thomas Miller and Liz Ozselcuk

Absent: none

Other Attendees: Staff Liaisons Jerry Bradshaw, Interim Senior Engineer, and Yvetteh Ortiz, Public Works Director / City Engineer, Daniel Emerling, resident

2. Comments from the Public

None.

3. Approval of Minutes

Comment by Committee Member Al Miller – page 3-3, Item 5-c, second to last line, the word “if” should be “is”. The grammar will be modified to make the sentence clearer.

The Roll Call item (#1) incorrectly referred to Al Miller as the Chair; he is no longer an officer.

Action taken: M/S Al Miller/Ozselcuk to approve minutes as corrected. Approved unanimously.

4. Review Use of Measure A Funds for non-Pavement Projects

Liaison Bradshaw summarized the packet items, which were listed in the brief staff report on page 4-1. That report also quoted the Measure A ballot language.

- The ordinance is contained in pages 4-3 through -11; attention is directed to page 4-8 where the Section 4.60.150 spells out the use of tax proceeds.
- The Expenditure Plan, which was attached to the ordinance, begins on page 4-12. The Expenditure Plan did not itemize specific projects, but rather set out the process for an

annual plan of expenditures to be approved by the City Council in the annual capital budgeting process. The phrase “and Citizens’ Oversight Committee” was struck through since the Committee does not set priorities per the ordinance.

- Beginning on page 4-15 is a staff report written for the City Council meeting of August 21, 2012 that recommends the use of \$100,000 of Measure A funds for a Traffic Safety and Management Program. This was the first time any Measure A funds were approved for non-pavement work. On the bottom of page 4-16 was a sentence that reinforced that pavement improvements were considered by staff to be the first priority for Measure A money, but that significant improvements had been made such that a modest amount of funding would be appropriate for secondary aspects of the fund.
- Beginning on page 4-21 are other documents that accompanied the original Measure A when presented to the Council in November 2007.

Two committee members, Kessler and Thomas Miller, believe that funding traffic projects goes against the spirit of Measure A; that which was presented to voters in the run-up to the 2008 election where pavement condition was paramount. The authorization to use the funding for “other such projects as are deemed necessary by the City Council for the benefit of the residents of the City” is “fine print” that should not determine the correct course.

Thomas Miller feels that an incorrect action has been taken and the ordinance should be rescinded. Voters approved the money to “fix the streets”; they didn’t vote for that money to be used for anything other than that. Al Miller feels that the Committee was created to review financial records to ensure that all the money received from the State for Measure A was spent on projects approved by the City Council within Measure A. Thomas Miller disagreed saying the Council has nothing to do with it – the committee’s loyalty is owed to the voters at large. He has a strong perception of why they voted for the measure, and must see to it that these “raids” on the funds are not allowed.

Al Miller relies on the work by staff, the City Attorney, and the City Manager to write a valid ordinance where all the provisions are legal. Thomas Miller stated those people are bureaucrats, and why was an oversight committee put in to place if the voter has such wonderful confidence in the staff. Al Miller answered that it was a layer of transparency afforded to the public. Thomas Miller responded that, although Mr. (Al) Miller’s point may prevail, he would have no part in it.

Kessler believes that the Measure was explicit in what the money could be used for (inferring a narrow interpretation), and no authority was given to transfer money to other traffic-related projects. But it has been done, and the Committee should protest it and make sure it doesn’t happen again. Al Miller again refers to page 4-8 (ordinance language), “...and other such improvements as are deemed necessary by the City Council for the benefit of the residents of the City.” Kessler stated that could mean anything. Al Miller responded, Yes, as long as a majority of the Council approves it. Kessler: then why are we (the Committee) here?

29.22 Bradshaw asked for clarification from Thomas Miller: he suggested that the ordinance be “rescinded”; what did he mean by that? The only ordinance was the Measure A approved by

voters; that cannot be rescinded by Council. He meant the action to move money to the traffic projects (Resolution 2012-61, August 2012).

Kessler thinks that the most the Committee can do is to note the action and report that they do not think it complies with Measure. Thomas Miller stated it should be publicized as much as possible and is a blatant violation of what was presented to the voters. They both felt that there may be no end to fund diversions away from pavement work. Bradshaw restated staff's commitment to pavement condition maintenance as a first priority; staff did not take these actions lightly and continue to verify that sufficient monies for that effort are preserved. Thomas Miller argued that this was precisely the mission of the Committee – to ensure that fund diversions are not done. If there's too much money, the City should not simply find other ways to spend it; what's wrong with reducing the tax measure?

Al Miller reminded the group of Ordinance section 2.04.320, C.3 (page 4-10); "The Committee is not charged with decision-making on spending priorities, schedules, project details, funding source decisions, financing plans or tax rate assumptions. The Committee shall serve in an advisory-only role to the City Council." The Council is not looking to the Committee for advice on which projects to include. The Council is depending on the Committee to make sure that Measure A money is used to fund those approved projects. Thomas Miller believes that the definition of an oversight body is to reach conclusions as to whether the funds were spent pursuant to Measure A. All agreed with that assessment, and Al Miller went on to say that if the Council stepped outside Measure A to fund a project, then the Committee should state so, but that is not the case here. Kessler agreed with Thomas Miller that this violated the spirit of Measure A.

Thomas Miller reiterated what a wonderful job the City and its staff has done on the street conditions so far. But he thinks that funds have been misappropriated, and unless something is done, he cannot remain on the committee.

Ozselcuk stated that as a member of the voting public the traffic and other safety projects are worthy for Measure A funds if there's enough money.

Kessler asked if there might be other projects that would get Measure A funds. Bradshaw stated that there have been other projects. These were shown at the prior meeting when the expenditures for the past year were reviewed, and the Capital Improvement Program for the current year was discussed. Most are individual, one-time projects. The Traffic Safety and Management Program is set up to be possibly an annual program. However, this would be incumbent on several things; primarily the budget needs of the pavement program. Ortiz added that pavement is the priority; the pavement condition status is checked every two years and the financial needs of that program would be assessed annually.

Action taken: Motion made by Thomas Miller: notify the City Council that the Committee is of the opinion that Measure A funds have been misappropriated. Motion died for lack of a second.

Mr. Emerling stated that the word “misappropriated” implies something illegal was done. He stated that Al Miller had made a good case that nothing illegal was done. Thomas Miller stated that he wanted his motion to be strongly worded.

Thomas Miller asked to whom he should address his letter of resignation. Bradshaw advised him to submit to the City Clerk.

Al Miller asked a few follow-up questions about the language in the Ordinance:

- Section 4.60.150, (b) at the bottom of page 4-8 and on to page 4-9: indebtedness is limited such that the annual debt service is not in excess of 75% of the projected annual tax proceeds. Question: is that something the Committee should be reviewing? Answer: That was assessed at the beginning as debt was incurred. The debt incurred resulted in an annual debt service of \$750,000 and the projected annual revenue was \$1.3 million. That was about 60%. No further review is necessary.
- Expenditure Plan, top of page 4-13, “In addition, approximately 15% of the [tax] would be set aside to improve the non-vehicular mobility and accessibility (curb ramps, improved striping) and significant drainage problems associated with the City’s street system.” Question: How is that tracked? Answer: That is not tracked per se, however staff did compute the share of curb ramps after the major work at 9%.
- Expenditure Plan, top of page 4-14, first paragraph: the phrase “... and the Citizen Oversight Committee” should be struck out the same as it was on page 4-12.
- Expenditure Plan, page 4-14, Administrative costs. Question: are these the administrative costs discussed each year on the expenditure report? Answer: Yes, except for the bullet 1, which should be struck out. As discussed in 2008, those administrative costs are disallowed by the ordinance.

5. Staff Liaison Report

- a. Committee Terms: Page 5-1 is a chart showing the terms of committee members. Al Miller and Kessler were initially put into 4-year terms beginning in 2008. Those would be up in 2016. The other two (Thomas Miller and Ozselcuk) were put into 3-year terms initially. Those would be up in 2015. Terms are limited to 2 full terms. For the latter group that began with a 3-year term, the initial term is not considered a full term for term limits purposes.
- b. Distribution of Maddy Act List: This list shows all current or upcoming vacancies for any boards, commissions or committees. The Citizens’ Street Oversight Committee is shown with one vacancy.

6. Future Agenda Items and Meeting Schedule

The next regular meeting is scheduled November 11th; however that has already been cancelled due to the Veterans Day Holiday. The following regular meeting is set for January 27th.

Agenda items include the normal January meeting. If there are any new members appointed, the Standing Rules could be put on the agenda.

Desired items for the November 4th agenda include:

- Discussion of the practice of allocating Measure A money to non-pavement/curb/gutter projects.

7. Adjourned at approximately 8:05 p.m.