



Public Works Department

Minutes

REGULAR MEETING OF THE CITIZEN STREET OVERSIGHT COMMITTEE

Monday, January 27, 2014, 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, Liz Ozselcuk (arrived at 8:04 p.m.)

Absent: none

Other Attendees: Staff Liaisons Jerry Bradshaw, Interim Senior Engineer, and Yvetteh Ortiz, Interim Public Works Director / City Engineer, City Attorney Woodruff, City Attorney

2. Comments from the Public

None.

3. Approval of Minutes

Comment by Committee Member Thomas Miller – he stated that the record did not reflect his statement that what had transpired constituted an insult to the Committee. Liaison Bradshaw indicated that he would review the November 4, 2013 meeting recording and correct the minutes if appropriate to reflect this comment.

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

4. Discussion of Non-Pavement Expenditures

Liaison Bradshaw summarized the packet items, which were listed in the staff report on page 4-1 and 4-2. That report referenced two letters written by Thomas Miller on November 11 and Lynne Kessler on November 23. The letters were written subsequent to the last meeting and there were also two articles printed in the Contra Costa Times and the El Cerrito Journal subsequent to the last meeting about how Measure A money was spent. Staff responded to the

letter from Lynne Kessler and is included in the packet and Thomas Miller stated that he has yet to receive the courtesy of an answer to his letter that he addressed to City Council.

Committee member, Thomas Miller, references the first paragraph in the response letter on page 4-10 to Lynne Kessler stating that the City staff has not been transparent and that the opposite is the case. He references the third paragraph and states that the diversion of Measure A funds for non-pavement purposes was never mentioned in 2012 since he has been to every meeting. Lynne Kessler stated she was stunned at the November meeting and did not know about the memo to City Council recommending the transfer of funds and if she would have had a chance to discuss it she would not have a problem with it now.

Thomas Miller feels that this should go back to the voters because Measure A is defective because it was a specific measure to raise funds for a specific purpose and there was no sunset clause included in the measure and should be included. He stated that there was no provision for what to do with the funds and that the funds belong to the taxpayers and not the City. He stated that the City Council went along with the staff and had no legal authority to do what they did and that they “disenfranchised the voters.”

Al Miller stated that he disagrees and that the primary purpose of the measure is to fix the streets, curbs, and gutters but that there are several categories that include improving handicap ramps, bicycle lanes, crosswalks, maintain road markings, and signage. He states that this was approved by City Council and the funds can be spent on those items as well. He doesn't agree that the funds were expended on items outside of the provisions of Measure A and doesn't see how Thomas Miller comes to that conclusion. Thomas Miller states that the measure states that the funds are for improving the streets, fixing potholes, sealing cracks, and maintaining the streets. He states that it is ridiculous that the money is being spent on purchasing radars.

Lynne Kessler does not completely agree with Thomas Miller and her main concern is that she was not advised of the recommendation of transferring \$100,000 from Measure A funds to other projects not only once but on three occasions. She did not see the memo from Jerry Bradshaw from August until the November meeting and was stunned about the transfers. She states that all that the Oversight Committee is able to do is review the annual report and object. Thomas Miller stated that the Committee is shorn any ability to oversee anything once this diversion of funds began and should be informed before, during or right after something has happened not one year and several months later. He stated that the voters voted for the Committee and that the City has no legal authority to spend money because it should be used exclusively for street improvements and that is what the voters voted for. Al Miller disagrees and feels that the monies that are taken in by Measure A are spent on road improvement projects as approved by City Council. The Committee is not tasked to approve the policy of the City Council and not asked to comment on decisions or considerations that the City Council has made. As individuals, they have the opportunity to do that at a City Council meeting when the staff is making the recommendation. The recommendation then goes through the City Attorney and City manager and is approved in a resolution. He feels that if people feel this strongly about a cause then they should be present at City Council meetings.

Liaison Bradshaw interjects to begin discussing the five items Lynne Kessler requested be discussed at the January 27 meeting.

1. Description of the Traffic Safety and Management Program, and an accounting for expenditures of Measure Funds

Liaison Bradshaw asks that the Committee go to page 4-12, Attachment B. It is page 204 from the budget document and reads the project description. He explains that the table above the paragraph is a ten year projection of what might be spent but only one year is adopted at a time. Lynne Kessler asks if City Council adopts \$100,000 each year and Bradshaw responds that they can if they choose to in that particular year. He stated that at this point in time only prior years 2013 and 2014 have been adopted totaling \$200,000 of authorization. Staff will review this anew next year if another \$100,000 is recommended and will come up with a recommendation for Council for the next budget cycle next May and June.

2. Summary of Measure A funds allocated for non-pavement projects

Liaison Bradshaw addresses the second item and directs the Committee to page 4-13 that shows only \$46,415 has been spent to date out of the \$200,000. He states that this is what he showed in the September meeting and only about \$6,000 more has been spent since then. Thomas Miller asks if \$200,000 has already been diverted and Bradshaw states that \$100,000 was done back in August of 2012 and another \$100,000 has been allocated in the current budget year and that only \$46,000 has been spent. He asks that the Committee review page 4-14 that provides a summary of all the non-paving projects as defined in the recent discussions of Measure A. The Traffic Safety and Management Program is listed along with three other projects that received money from Measure A and in order of when they received the funds.

- The Moeser/Ashbury project received \$30,000 with the Fiscal Year (FY) 10-11 budget and that money has not been spent through the last year because the project was waiting to move forward. It finally did this spring and summer so it wasn't in the last fiscal year reports and not brought to the Committee. In February of 2013, Council awarded an additional \$78,000 to the same project.
- The Traffic and Safety Management Program has received an allocation of \$200,000.
- The Central/Liberty project has two allocations totaling \$260,000 all together and is by far the biggest allocation.
- The Arlington Safety project is a project for long-term improvements on Arlington and spins off from earlier work that was done as interim improvements done through the Traffic and Safety Management Program. A grant was applied for to perform long-term improvements and budgeted another \$50,000 of Measure A funds to go with the grant.

With these four projects and seven different actions by Council, the total allocation of Measure A funds equals \$618,000. The column next to the Measure A column shows that Measure A

funds used to supplement or leverage the grant funds helped to secure \$2.2 million worth of grant funds. \$14.8 million of Measure A funds have been spent since its inception and the funds were used to leverage another \$2.8 million worth of grant money. Measure A funds allocated are only \$618,000 out of about \$15.5 million to the four projects. Three projects are one time projects whereas the Traffic Safety Management project is an ongoing project and has the potential of capturing Measure A money each year but must be evaluated each year by staff and ultimately City Council. The Arlington project has yet to begin whereas the other two projects are close to finishing. Thomas Miller believes the projects should not be funded by Measure A because the voters did not vote for the money to be used for these projects and thanks Bradshaw for documenting the City's transgressions.

3. Committee's Annual Report with certain exceptions noted

Liaison Bradshaw addresses the third item but unfortunately the annual report cannot be added to the agenda because the audit wasn't completed on time. This is the audit for the whole City not just the audit for this and staff is still working with the auditors to draft the report. This will be discussed later to schedule a subsequent meeting to review the audit.

4. Amend Measure A to allow for non-pavement projects

Liaison Bradshaw addresses the fourth item. He states there was discussion that Measure A be amended to allow for non-pavement projects and put back in front of the voters. He introduces the City Attorney, City Attorney Woodruff, and asks him to give his opinion on what the measure would or wouldn't support and what his stand is on this. City Attorney Woodruff was not with the City at the time of Measure A and would be reading it with a fresh set of eyes just like a voter would have at the time Measure A was put in front of the voter.

City Attorney Woodruff states that besides City Attorney work he also specializes in election law and has worked with dozens of cities on dozens of ballot measures. He has litigated issues regarding the interpretation of voter intent and one way the courts approach the issue is to understand what the voters intended is to look at all of the documents they had in front of them at the time the measure was proposed. The things that the courts have said should be looked at among others are the ballot question itself, the City Attorney's impartial analysis, the legislation proposed, in this case the Measure A Ordinance, and the ballot arguments. In addition to these, any information documents sent out by the City, opponents or proponents of Measure A are also looked at in attempting to understand what the voters intended. City Attorney Woodruff has reviewed all of these things and worked with the staff in the past on implementing it and looked at it again when it was brought to his attention to give it a fresh set of eyes. The documentation is replete with a variety of types of work that Measure A intended to fund. It is very clear that paving is a top priority and the City has honored that within a few years by basically repaving every street in the City. Beyond that, the documents speak to a variety of projects including pedestrian safety, curb ramps for the disabled, sidewalk improvements for mobility, signage, striping streets, and striping crosswalks. The documentation put in front of the voters in time of the ballot does not to him indicate that the voters intended to spend money only on paving. He states

that it is a discredit to the voters of the City to say that all they intended to vote for was for paving and that in his experience voters vote for things for a lot of reasons. This is true for El Cerrito because the voters wanted the streets repaved and intended to have it done but many voters thought it an equally high priority to have disabled curb ramps or bicycle lanes installed and to say that the only thing money should be spent on is paving is to say that those voters don't count. The priority of Measure A has been satisfied and now City Council is attempting to fund a variety of other projects that were priorities to the voters when they voted for Measure A and were specifically identified by type in the ballot question, in the Ordinance, and by the City Attorney's impartial analysis. All of these documents speak to things beyond paving and the City Council is trying to honor this by funding other projects.

Liaison Bradshaw would like to add that when the measure was building momentum, they had neighborhood meetings before it was drafted to describe the different types of problems people saw and to get thoughts from the members of the community what was important to them. It was a two-way exchange of information, to inform and be informed about what the priorities were and what was in the best interest of the community. Some wanted curbs and gutters to be repaired and others wanted other things and it was important to have the one-on-one interaction at the meetings. Polling questionnaires were sent and reviewed and they clearly spoke to bicycle lanes, traffic safety, and pedestrian safety in addition to paving, potholes and other issues. Some items ranked higher in the polls than others but there was support for all items and all having different levels of support. At the end of summer 2007, staff put together a measure which is all of those things combined. The measure was put before the voters in November, December and January and the actual election was in February of 2008. The ballot was based on all kinds of input not just what was recalled from meetings and what one particular person recalled from their interactions but what was voted on by the public and was a broader spectrum than just paving. It is clear from the poll that paving was paramount but there were things on there that were also important in the realm of what Measure A covers and what Council is able to do with the money.

Thomas Miller states that the proposal was for paving only and what was put on the ballot was what the voters voted for and not getting it now. Lynne Kessler stated that many don't read the fine print. Al Miller stated that just because they don't read everything or don't understand it doesn't make it wrong. He disagrees entirely with Thomas Miller and doesn't think the staff put something past the public to confuse or cover their eyes to get support for something that is not what it is. Lynne Kessler states that there wasn't much you could put on the ballot and Bradshaw states that Contra Costa County limits the ballot to 75 words and believes they succeeded in reflecting the broad scope of Measure A in mentioning bicycle lanes, crosswalks, and handicap ramps. The Ordinance itself is ten pages or so. Thomas Miller stated that the City took advantage of the fact that the streets were in terrible condition and that the voters would vote on almost anything to get them fixed. He is not concerned about buying radars or traffic management. He states that the measure is defective and should include a sunset clause to know what to do with the money that keeps coming in and considers this a wrongful action and has not been able to sleep well since September. Bradshaw responds to the sunset clause comment by stating that if the measure was intended to build or finance a facility then he might agree with the sunset clause to pay

off debt that may be appropriate. This was a measure that includes maintenance of streets and the maintenance will not end.

Lynne Kessler asks if all of the streets have been repaved and Bradshaw responds that about 70% of the streets have been repaved. When they started the repaving, only 44% were in the good category and some slipped below good as they went forward so about 20-30% of the streets did not require attention.

Lynne Kessler asks if there is enough Measure A money retained to redo the streets when they need replacing. Bradshaw responded that before any actions are taken, they halted to make sure they are not shortchanging and that the primary mission is there be enough to manage the streets in the foreseeable future. The street saver program software and all the analysis that goes with it is based on a five year projection that is done every two years and a report was completed in 2012 that showed that there was enough money left to do these projects. The last three years the total of \$600,000 is finite and they don't anticipate projects coming up and don't foresee Measure A money going away.

5. Justification for continued existence of the Committee

Liaison Bradshaw interjects to discuss item number five and that both the letters mention why the Committee should continue if they are limited to such a narrow role. He reviewed the Ordinance and it is clear what the role is and was summed up by Al Miller. The role is to review expenditures made according to the expenditure plan which is defined by City Council each year primarily during the budget process or as amended throughout the year. Lynne Kessler asks if the City Council can take funds away from Measure A that might not be for streets and Bradshaw responds by stating that non-pavement projects are Measure A eligible and not taking money away from Measure A but bringing Measure A money to these projects within the scope of the Ordinance. Technically speaking the role of the Committee is to review and make sure what the City Council deemed an appropriate expense and what the money was actually spent on. The role is fairly narrow and not much more than an auditing role. Lynne Kessler reads the purpose of the Committee stating that the citizens shall review the expenditures or revenue collected and issue a report on its findings to City Council and publicly at least annually. She asks if the Committee can issue a report and say to their findings that they want the public to know how the money was spent. City Attorney Woodruff responds by stating that he views the Committee as verifying the funds were spent the way Council determined as appropriate under Measure A. He doesn't think that the voters intended for the Committee to opine on Council's decision how to spend the money but ultimately it is the report of the Committee and if want to bring it to the public's attention and issue that in the report they can but doesn't think that's what the voters authorized the Committee to do. Thomas Miller states that it should go back to the voters to clarify what they wanted to do and that this is an unsound situation because we have people of intelligence, good faith, good intention and are unable to agree on what's right so it should go back to the voters and let them decide if they want to continue paying one of the highest sales tax in the area to do these projects that have great merit but also a cost. Al Miller responds as to how the streets will be taken care of for the rest of the life of the streets if the voters do not want it. Thomas Miller states that this is

a problem the City brought on to itself by being dishonest with the voters. Lynne Kessler states that the wording on the ballot does cover bicycle lanes, signage and other things and that she voted for that. Thomas Miller states that there is no question about what is mentioned on the ballot but what is not mentioned is not appropriate for use of Measure A funds.

Liaison Bradshaw interjects by stating that there has been no action and these are just discussion items. He brings up item no. 3, the annual report, and states that since it is not in front of the Committee tonight that there will be a request to schedule another meeting and that it does not have to be done tonight according to the standing rules. The Chair can call a special meeting once the audit is ready which may be a month or so from now.

Thomas Miller submits attached questions to City staff and Liaison Bradshaw said he will take the request and give him a written response.

Thomas Miller is bothered that the audit is not ready and Bradshaw agrees that the staff is upset about it too. The annual report was not added to the agenda as explained earlier and deferred by virtue of fact that it is not on tonight's agenda.

Public comment: Would like to clarification regarding the project related to traffic radars.

Staff member Yvetteh Ortiz responds that the radar is a component of the traffic safety management program. She states that Barrett and Arlington are arterial streets and have a posted speed limit of 25 mph and that the City can only legally set the speed limit based on prevailing speeds and only set the speeds 5 miles below the prevailing speeds if collisions on the street show that the street is unsafe for the speed set and that setting the speed based on prevailing speeds allows the police department to use radar and lidar for enforcement purposes. If the speed limit was set based prevailing speeds, the City would have to raise the speed limit on Arlington and Barrett to 30 and there are already concerns about safety on those streets. City Council instead set the speed limit to 25 mph and the police department has to use other measures such as pacing for enforcement. City staff has to use other measures to calm speeds such as bulb-outs and speed feedback signs and asked City Council to approve the use of Measure A funds to install these devices to reduce speed and improve safety.

Thomas Miller asks what useful purpose the Committee serves and believes it is a waste of taxpayer money. Al Miller states that it is required as part of Measure A. Thomas Miller asks what benefit does the City get from the Committee and City Attorney Woodruff responds that the Committee reviews the expenditures approved by City Council to ensure that the money spent is consistent with what City Council decides is consistent with Measure A and that the Committee is set up as for post review after the expenditures are authorized by City Council. City Council adopts a budget set of expenditures consistent with Measure A and adopts a budget authorizing staff to move forward with projects. The Committee is to review the money spent with the City Council ultimately making the determination that it is spent consistent with Measure A. Al Miller states that after the audit, a list is provided by City staff of projects approved as funded by Measure A including invoices of expenditures to match up with Measure A. Thomas Miller asks what if the money spent is gone and City Attorney Woodruff

indicates that if that occurred they would have to find money from another place to repay it. Lynne Kessler states that she has never seen an approved list of projects in the seven years she's been on the Committee. Bradshaw states that they show pages from the capital improvement budget as approved by City Council and has shown excerpts of the budget in prior years.

Public comment: Have all the projects been submitted to the Oversight Committee?

Liaison Bradshaw responds that most of the committees formed help to advise Council on what they should do regarding policy decisions and the Council takes the input and takes action based on the information but this Committee does the opposite. It does not help Council on policy or which projects should be put in the approved plan and only reviews the funds after they have been collected and spent and that they conform to what Council approved. This Committee does not have an advisory role and is not apprised ahead of time of endeavors but given a heads-up.

Public follow-up question: When does the Committee review the funds after they are spent?

Liaison Bradshaw responds by saying that every September the Committee reviews a summary of expenditures that are unaudited and most are what was spent in the prior year, item by item and project by project.

5. Staff Liaison Report

- a. Report on MTC's recent Pothole Report; El Cerrito wins the Most Improved Streets Award again: In December, the City received notice that they won the Metropolitan Transportation Commission (MTC) 2012 Most Improved Roads award. The MTC is a regional agency that gauges pavement conditions in all of the Bay Area. The letter from the MTC is included at page 5-1. The award is based on three years of data and El Cerrito has the most improved roadway conditions out all Bay Area jurisdictions. El Cerrito has in the third highest pavement condition index and is one of seven jurisdictions in the Bay Area to have very good pavement conditions in the 80's. MTC recognized the City's investment and commitment to the roads and improving streets by passing Measure A to do that. In 2006, the City had some of the worst pavement conditions and was in the bottom 10. The PCI was 51 and had dropped to 48 at that time. The initial push was to get a PCI of 70 but we are at 84 which is more than we anticipated. There are 9 counties and 107 jurisdictions that are included in the review.

6. Committee Standing Rules

Thomas Miller requests to revise and amend the standing rules. He hands out suggested changes in writing (attached). He would like to delete rule 10 and insert a new rule 10 stating that meeting proceed if no City staff is present. City Attorney Woodruff states that City Council recently amended the code and believes that it doesn't require liaisons to be present but doesn't recall and will have to wait to review the Ordinance once it's adopted. Thomas Miller's next request is to add a new rule number 16 that the meetings be conducted by the Chair or Vice Chair and that the Roberts Rules of Order shall be followed. Thomas Miller states that there has been sloppiness at

the meetings and that the Committee should vote to adjourn the meeting and should not be adjourned by the staff. Al Miller doesn't recall the meeting ever being adjourned by the staff. Thomas Miller states that the Robert Rules of Order were given to him by the City clerk when the Committee first formed and should be implemented.

Action taken: Motion made by Thomas Miller: rule 16 be adopted. Lynne Kessler seconded the motion.

Ayes: Thomas Miller

Nays: Lynne Kessler, Al Miller, Liz Oszelcuk

Motion fails

Thomas Miller would like to add another rule number 17 that "Meetings can only be ended by a motion to adjourn, seconded and approved by a majority of the members present. In the event of a tie vote, the Chair shall decide whether to continue the meeting or declare it adjourned."

Action taken: Motion made by Thomas Miller: rule 17 be adopted. Lynne Kessler seconded the motion.

Ayes: Thomas Miller, Lynne Kessler

Nays: Al Miller, Liz Oszelcuk

Motion fails

Action taken: Delete rule 10 and insert a new rule 10. Lynne Kessler seconded the motion.

Ayes: Thomas Miller, Lynne Kessler

Nays: Al Miller, Liz Oszelcuk

Motion fails

7. Election of Committee Officers

The Chair position is up for nomination. Lynne Kessler nominates Thomas Miller and he accepts the nomination. Al Miller seconds the nomination.

Action taken: Call for approval for Thomas Miller as Chairman in 2014

Ayes: Lynne Kessler, Al Miller, Liz Oszelcuk

Nays: none

Thomas Miller appointed Chair.

The Vice-Chair position is up for nomination. Thomas Miller nominates Lynne Kessler and she accepts the nomination. Al Miller seconds the nomination.

Action taken: Call for approval for Lynne Kessler as Vice-Chair in 2014

Ayes: Thomas Miller, Al Miller, Liz Oszelcuk

Nays: none

Lynne Kessler appointed Vice Chair.

8. Future Agenda Items

Call for special meeting once audit is complete to review the annual report. Thomas Miller would like every Committee member to draft a report for City Council because he believes this is a

significant report before the Committee. He would like a draft by the next meeting. Liaison Bradshaw states that he has no objection and will add to the agenda but it will take some effort to sort through the drafts and prepare a memo and a special meeting should be called to approve the final draft. He states that Council is conducting interviews and there is one candidate so there may be a fifth member at the next meeting. Thomas Miller asked if it is possible to have a stand-by member in case one falls to the wayside. Bradshaw responds that he does not see that in the structure here because this Committee is set at five members. He also states that the new Ordinance not yet in effect regarding Committees states that annual terms not expire in January and re-elect in March but felt that it is appropriate for this Committee to have elections in January since the next meeting doesn't happen until September and March is in between January and September and the Chairpersons don't take a seat until September.

9. Adjourned at approximately 9:02 p.m.