

Measure B Citizens Watchdog Committee
Tuesday, February 28, 2018
Minutes

1. Call to Order/Roll Call

Chair Melissa Erickson called the meeting to order at 1:34 p.m. Roll Call was conducted by Clerk Crump.

Members Present: David Cameron (left at 2:24 p.m.) Nadia Naik
Isaac Contreras Andrew Nussbaum
Penny Ellson Howard Okayama
Melissa Erickson, Chair Matthew Quevedo (arrived 1:50 p.m.)
Marty Michaels

Members Present Via Conference Call: None

Members Absent: Betty Duong

Measure B and County Staff: Maxine Galaviz, Office of the County Executive; Ahmad Gharaibeh, Vavrinek, Trine, Day, and Company (VTD); Wendy Jhong, Office of the County Executive; Lesley Pak, Office of the County Counsel.

2. Public Comment: None

3. Introduction of New Members and Staff: Each member and staff introduced themselves and provided a brief background.

4. Draft Minutes from February 5, 2016 Meeting: Tabled due to the absence of a quorum.

5. Draft Minutes from February 27, 2017 Meeting: Moved by Member Michaels and seconded by Member Nussbaum the minutes from February 27, 2017 were approved unanimously.

6. Report Back on Sales Tax Residual Overpayment by State Board of Equalization:

- Ms. Lesley Pak reported on what the County Counsel's Office found last year through communications with the State Board of Equalization (SBE). Ms. Pak said it was determined that these types of overpayments typically occur from adjustments made after audits as well as resolutions of taxpayer disputes and that is why the amount of the overpayment fluctuated, but seems to be steadily decreasing. SBE is unlikely to seek a return of any overpayments in the foreseeable future. The amount of the Measure B deficit is relatively small compared to other jurisdictions in the State, adding that the SBE has not made attempts to collect from any other jurisdiction. Ms. Pak said this should not be an issue going forward but even if there were some attempt to collect it would not affect the close-out and disbanding of the Measure B Citizens Watchdog Committee when that time comes, because it is a matter of dealing with a deficit as opposed to exercising oversight of expenditures under Measure B.

Chair Erickson said at one point they talked about an agreement with the County and Valley Transportation Authority (VTA) concerning the returns of the funds because these funds were given to VTA.

Ms. Jhong said she received another communication from the Finance Manager at VTA that all funds sent to them fifteen days (15) after they were received from BOE have been spent on projects, so they are not going to record this as any type of liability.

Member Cameron said he understands the fund is down to \$476,000 of the unreported liability and asks how the fund is closed and who would be responsible.

Ms. Pak said she is not sure from an accounting perspective how this action would be handled, adding that legally, Measure B Committee will not be affected as it closes out its duties.

Mr. Gharaibeh said his company audits older sales tax measures and that they had one that expired in 1986 and watched as it fluctuated from a positive to a negative territory, with the SBE having done nothing about it. Mr. Gharaibeh said he has never seen SBE come back and ask for the return of funds. However, if SBE comes back, it is something outside the capability of Measure B to make a payment, that it should be something for the County or the Supervisors to decide.

Member Cameron said he is trying to understand the record keeping of Measure B because at some point Measure B will end with a zero fund balance. Mr. Cameron said the unfunded liability should be memorialized.

Mr. Gharaibeh said that information could be put on the financial statements, saying the likelihood of money coming out of Measure B is almost at zero, as Measure B is winding down, will close-out, so if there is going to be payment and liability, it would be likely that the County or VTA would have to pay instead of Measure B. Additional audits may reduce the deficit.

Member Ellson said this has to be accounted for somehow.

Member Cameron concurred saying that is why they suggested an agreement with VTA to provide a trail. VTA has received these overpayments and has spent the money.

Mr. Gharaibeh said at one point in time these sets of statements will all close-out. He said it is highly unlikely the money would come from Measure B and that it would be the responsibility of the County and/or VTA.

Member Ellson asked about the standard practice.

Mr. Gharaibeh said they have sales tax measures that started and ended and agencies were created as a result of those sales tax measures, and once the sales tax measures expired those agencies were dissolved. Mr. Gharaibeh added there really is no standard practice, his company has never seen SBE request a refund for overpayment, and it would be hard for SBE to enforce after such a long period of time.

Member Naik asked if it is possible to have a public record a copy of communications that the Measure B Committee has had with VTA and other various agencies to have a better paper trail.

Member Nussbaun asked if precedence has ever been set for SBE to come back and ask for the overpayment.

Mr. Gharaibeh said he assumes there might be other measures instead of having \$200,000 to \$300,000 deficit might have 5 or 10 million dollar deficit and what they have on their side and how they pursued it afterwards. The State Controller does not have independent auditors, but has divisions within various departments.

Member Naik asked if Elaine Howell is the State Auditor and if she could perform the audit.

Member Ellson said it only takes one person in the State Controller's Office to discover that millions of dollars in overpayments have not been collected and therefore there should be a record of the liability.

Member Cameron concurred with Member Ellson and said they need to book the liability and added that the liability is 30% of the net worth of what remains. Once it is closed out as a deficit retained earnings it will be the responsibility of VTA and the County.

Mr. Gharaibeh said in terms of booking the liability vs. closing it, specific guidelines have to be followed and there are government accounting standards rules to when a liability is booked.

Member Nussbaum asked if a letter could be obtained from SBE saying they are not going to come after the funds.

Ms. Jhong said she tried obtaining a letter, with negative results.

Moved by Member Naik and seconded by Member Nussbaum to include needed documentation, so the public record shows there has been communication and an official report back. The motion passed unanimously.

7. Report Back on Butterfly Sanctuary Proposal:

- Ms. Jhong said the Coyote Ridge Butterfly Habitat Management Program was a completion of the biological opinion issued by U.S. Fish and Wildlife Services as compensation for the threatened and endangered species impacted from Measure B construction of U.S. 101 widening, S.R.85 and U.S. 101 south interchange and consolidated biological mitigation site projects. It provides long term management, required by U.S. Fish and Wildlife Services, for a number of special status plants and animal species including the Bay Checkered Spot Butterfly on 548 acres located on Coyote Ridge in South San Jose.

Member Michaels asked why \$800,000 was being spent on this habitat, who approved this project and what was the approval process.

Ms. Jhong said the project was initially decided by Measure B and also by BOS. It really is not the County's choice but a condition to do all projects.

Member Naik said she has some experience in this area and that what Ms. Jhong was saying is that during the approval process, the County decided that it was enough for the California Environmental Quality Act laws to include that as part of the mitigation project.

Member Ellson said it is on-going mitigation and this is a measure with a sunset, asking where the funding will come from in the future if it is on-going mitigation.

Member Michaels said about two years ago the audit report dollarized the project at \$800,000. He asked how much has been spent and how much is left to be spent.

Ms. Jhong said they are not getting that much detail yet, but she will ask VTA to provide it.

Member Cameron said that is another disclosable liability, if the project is in perpetuity and we are running out of funds.

Ms. Jhong said after all pre-payments to VTA we're are not going to pay anymore. VTA will continue to pay. VTA used and spent funds and whatever remaining projects to fund additional CALTRANS projects or any other pavement management projects at the sole discretion of the VTA's Board of Directors. It ultimately is VTA's responsibility.

Member Michaels asked where the butterfly habitat is located.

Ms. Jhong said that VTA would have the information.

Moved by Member Naik and seconded by Member Cameron to include more detailed paperwork, reporting on how much the Butterfly Habitat was originally supposed to cost, how much has been paid out of Measure B, how much is expected to be an on-going payment, at what point does the responsibility of Measure B stop and VTA start, and any other details to support public understanding of the issue. The motion passed unanimously.

8. Measure B Financial Audit for FY 2016 and Public Hearing Regarding How Measure B Funds Are Spent:

- Mr. Gharaibeh gave an overview, saying it is the opinion of VTD that the financial statements are fairly presented. No revenues were collected for Measure B this year. The expenses are the liquidation of the pre-payment made to VTA.

Member Naik asked where she may find more detail on transportation projects spent in the last year.

Ms. Jhong said VTA sends invoices showing project numbers that include labor and any purchases or, if they have contract payment which are sent quarterly to the County. Ms. Jhong added that it is at the discretion of VTA to do any project according to the initial designation.

Member Cameron asked Mr. Gharaibeh if VTD audits the compliance of the \$100,000 and VTD's procedures would test these for compliance with the Measure.

Mr. Gharaibeh said the cash is with VTA and that invoices state how VTA depleted the funds. The invoices are spread through various reports sent to the County over the past 10 years or more as to how they expended funds. When they look at the compliance we look at the backup and compare it to the ballot language and we see if it is in compliance with the ballot language. VTA would be able to provide more detail per project.

Chair Erickson said more detailed information for new Members Naik and Ellson will be provided.

Member Michaels asked Mr. Gharaibeh if invoices are sampled to be sure the work was performed satisfactorily and; how big are the sample sizes.

Mr. Gharaibeh said all expenses charged to the Measure A program, whether they were expended by VTA or County, are sampled in a way to give a good confidence level that the funds were expended in accordance with the ballot language. The sample will encompass not just small and big dollar amounts but also encompass the different types which include vendor related, time and accounting and payroll. Expenses this year were minimal. Expenses were incurred by VTA. Internal expenses are only about \$30,000 this year. The rest is the depletion of the prepayment VTA received approximately 10 years ago.

Member Naik asked if VTA received their money up-front when Measure was passed.

Mr. Gharaibeh said VTA was a division of the County and once they spun off in the 90's, they took over the administration of the Measure adding that for legality reasons, only the County can receive the cash. They signed a master agreement in 1996 when the ballot was passed. The prepayments were occurring when the County was receiving sales tax collections.

- a. **Open Public Hearing** - None
- b. **Close Public Hearing** - Closed
- c. **Approved Audit Report**

Moved by Member Cameron and seconded by Member Michael to approve the audit report for FY 2017 with a friendly request that VTD continue to research the liability due to the of lack of practice of BOE is not recordable and see if we should re-evaluate in this fiscal year. The motion passed unanimously.

- d. **Authorized Administration to Publish Report**

- Member Naik asked will the publishing of this report mention the overpayment in the financial report.

Mr. Gharaibeh said \$476, 000 is mentioned on page 8 of the audit report.

Moved by Member Michaels and seconded by Member Ellson to authorize County Administration to publish the report on the County Executive’s website. The motion passed unanimously.

Member Michaels asked if a final report will be necessary to close-out.

Chair Erickson said a report would probably be needed and that Ms. Jhong will provide information on close-out and timeline and the next steps necessary.

9. Informational Report on Financial Closeout of Projects:

- Ms. Jhong distributed the Santa Clara Valley Transportation Authority Measure B Close-Out Projects dated February 28, 2018. Measure B still has funding left for VTA in the amount of \$1,100,000. Ms. Jhong said the \$107,000 remaining in the Roads fund is not enough to complete a project and they are thinking of applying for a Federal grant to combine for a larger project. Roads is also thinking of applying for BOS to use the \$107,000 for the San Tomas Expressway Bike Trail.
- There are six (6) VTA Measure B Close-Out Projects to complete with anticipated close-out dates:
 - Vasona Light Rail (June 2018)
 - RT 85/101 Interchange North (March 2018)
 - RT 152 Safety Improvement (June 2018)
 - Habitat Conservation Plan (December 2065)
 - Coyote Ridge Butterfly Habitat (In Perpetuity)
 - Measure B Bike Program – Bicycle Facility Safety Improvements (July 2018)

Mr. Gharaibeh suggested asking VTA to expend the remaining funds so it can be closed out for FY 18 or 19.

Chair Erickson said the committee should have a final meeting to conduct a final close-out.

Member Cameron asked if it is easy for VTA to lose track of the funding.

Mr. Gharaibeh said the funding being tracked and that VTA is required to send reports to VTD.

Member Naik asked how many tax measures the County has done that may have similar problems because of SBE's work, to what degree it is an issue for the County and what is the BOS awareness of how much we are off by on each Measure.

Mr. Gharaibeh said the existing sales tax measures in the County of Santa Clara are either closed out completely or continue to collect cash. Sales tax measures occur about every five (5) years. Measure B 1996 Tax Measure was County sponsored; 2000 was VTA sponsored; the other Measures are 2008 Measure B and 2016 B.

Member Naik asked if the BOS receives a report on the status of these Measures.

Mr. Gharaibeh said there are two members from BOS sitting on VTA's Board. Mr. Gharaibeh said anything transit-related happening after 1996 is under VTA's jurisdiction.

Member Naik asked if VTA has a report showing how SBE mishandled each of those tax measures.

Mr. Gharaibeh said he is unaware of any tax measures that have expired, with the exception of Measure B in 1996. The 2000 Measure is a 20 year tax measure with 6-7 years left. Mr. Gharaibeh said he is reluctant to book anything on the financial statements because of the way it fluctuates. Alameda County had a Measure similar to Measure B 1996 that expired.

Member Ellison asked what Alameda County did with the money.

Mr. Gharaibeh said Alameda County kept \$1,000,000 in cash and did not spend it.

10. Adjournment:

On the consensus of the Committee Chair Erickson adjourned the meeting at 2:33 p.m.

Minutes recorded and prepared by Barbara Crump.