

**CITIZENS ADVISORY COMMITTEE**  
**and**  
**2000 MEASURE A CITIZENS WATCHDOG COMMITTEE**

**Wednesday, July 8, 2009**

**MINUTES**

**Call to Order**

The Regular Meeting of the Citizens Advisory Committee (CAC) was called to order at 4:34 p.m. by Chairperson Tebo in Conference Room B-104, VTA River Oaks Campus, 3331 North First Street, San Jose, California.

**1. ROLL CALL**

<b>Attendee Name</b>	<b>Title</b>	<b>Status</b>
Stephen Blaylock	CAC Member	Present
Chris Elias	CAC Member	Present
Ray Hashimoto	CAC Member	Present
Roberta Hughan	CAC Member	Absent
Robert Jacobvitz	CAC Vice Chair	Present
Erik Larsen	CAC Member	Present
Gaye Morando	CAC Member	Absent
Charlotte Powers	CAC Member	Present
Sally Probst	CAC Member	Present
Connie Rogers	CAC Member	Absent
Martin Schulter	CAC Member	Present
Peter Skinner	CAC Member	Present
Noel Tebo	CAC Chair	Present

**A quorum was present.**

**2. ORDERS OF THE DAY**

Chairperson Tebo noted Agenda Item #11, Recommend the VTA Board of Directors approve the attached response to the 2008-09 Santa Clara County Civil Grand Jury Final Report, will be heard immediately following the Consent Agenda.

Member Probst requested Agenda Item #6, Approve the Minutes of June 10, 2009, be moved to the Regular Agenda.

Member Larsen requested Agenda Item #6, Approve the Minutes of June 10, 2009, be heard following Agenda Item #4, Public Presentations.

**On order of Chairperson Tebo** and there being no objection, the Committee accepted the Orders of the Day.

### 3. PUBLIC PRESENTATIONS

Isabel Vargas, representing Silicon Valley Independent Living Center (SVILC), expressed concern over the unavailability of bus service for their San Jose facility located at 2306 Zanker Road. Ms. Vargas noted many of SVILC's approximately 600 physically disabled consumers travel via bus, light rail, or paratransit. Those who travel via bus or light rail must utilize bicycle lanes on Zanker Road due to the unavailability of sidewalks on the east side of Zanker. Ms. Vargas requested a bus route or shuttle service to the facility be established. Ms. Vargas reported SVILC is open five days per week from 9:00 a.m. until 5:00 p.m.

Frances Merrill, representing SVILC, noted a painted crosswalk and pedestrian sign had been added near the SVILC. Ms. Merrill stated multiple traffic lanes create an unsafe environment for those traveling within bicycle lanes and crossing the road. Ms. Merrill noted, although Paratransit is utilized by a portion of SVILC consumers, for many the cost for multiple visits via Paratransit becomes prohibitive. She encouraged the addition of a bus or shuttle service.

Vice Chairperson Jacobvitz confirmed with Ms. Merrill that SVILC funding is predicated on the number of consumers utilizing their services.

Ms. Merrill noted two other local nonprofit facilities affected by this problem are City Team Ministries and Catholic Charities.

Jeff Jokinen, resident of the City of Santa Clara and SVILC consumer, noted he commutes to the SVILC via a combination of VTA light rail and bicycle lanes. Mr. Jokinen expressed concern for the safety of those traveling on Zanker Road without benefit of a motor vehicle.

The Committee expressed their appreciation to Ms. Vargas, Ms. Merrill and Mr. Jokinen for bringing this issue to their attention.

Members of the Committee recommended this issue be brought to the attention of VTA and City of San José staff members.

Members of the Committee recommended staff look into this issue and report back to the CAC at its August meeting.

Member Schuller recommended SVILC executive directors send a letter to VTA, addressed to Chairperson Tebo, indicating the problem and providing statistics.

Stephen Flynn, Senior Management Analyst, stated he would be in contact with the SVILC representatives and provide them with the necessary contact information.

The Agenda was taken out of order.

**6. (Deferred to the August 12, 2009, CAC Meeting)**

Approve the Minutes of Wednesday, June 10, 2009.

Members of the Committee expressed concern that the June 10, 2009, Minutes for Agenda Item #12, Santa Clara County Civil Grand Jury (CGJ) Report, did not fully reflect member comments given during the June CAC meeting. The Committee requested the Minutes be revised to better represent the views expressed by committee members. The Committee requested the revised Minutes for Agenda Item #12 be provided to the CWC Subcommittee for its review.

Member Larsen restated the Committee's responses during the June meeting for each CGJ finding and recommendation. These responses will be reflected in the revised June 10, 2009, CAC Minutes.

Member Powers questioned whether the Committee's responses at the June 10, 2009, meeting were via consensus or motion. Chairperson Tebo stated motions were not taken. He noted the Committee discussed each item.

Member Schuller noted, in preparing the CWC's response to the CGJ, the importance of soliciting comments from the entire Committee as well as utilizing comments made at the June 10, 2009, CWC meeting.

It was determined the Subcommittee would meet in July.

**M/S/C (Larsen/Powers)** to defer approval of the June 10, 2009, Citizens Advisory Committee Minutes until the Minutes are revised, forwarded to the Subcommittee for review, and presented to the Committee for approval at its August 12, 2009, meeting.

**11. VTA Response to 2008-09 Santa Clara County Civil Grand Jury (CGJ) Report**

The Committee discussed VTA's response to the CGJ Report and determined they would remain independent of VTA's response.

Chairperson Tebo noted the CWC Subcommittee will be preparing a draft response to the CGJ for the Committee's review and approval at the August 12, 2009, meeting.

Chairperson Tebo provided the Committee his proposed suggestion to address Finding 14, Recommendation 14 of the CGJ Report:

Finding 14

"Measure A funds were used on non-Measure A projects. The Measure A fund exchange violates the 2000 Measure A ballot requirement that 2000 Measure A revenue was to be spent only on 2000 Measure A programs. But VTA believes it is entitled to use these funds for other programs as long as repayment is certain. It appears that there is in fact repayment uncertainty. Even though the initial \$50M swap was approved in February 2007, the CWC certified (over the chairperson's signature) in the FY 2007 2000 Measure A Status Report that all Measure A revenue was spent only on Measure A programs. It is

clear that the CWC does not fully understand its responsibility with respect to this requirement.”

#### Recommendation 14

“The Board should give the CWC the opportunity to review all 2000 Measure A fund transfers. The CWC should point out such usage of funds to the public in their reports. The CWC should make a public decision whether this usage of funds is consistent with the intention of the voters with respect to 2000 Measure A.”

Chairperson Tebo noted in his handout: 1) The CWC specifically asked their independent auditor to examine the ‘fund swap’ process and procedures during their annual audit; 2) The auditors found the Board had the authority to do fund swaps, but that there were no established policies to assure that Measure A funds were returned promptly and compensate the fund for the money lost over time; 3) The auditors recommended interest payments be included in fund swap reimbursements; 4) Discussion with a previous chair of the 1996 Measure B Sales Tax Citizens Watchdog Committee confirmed they approved fund swaps only when reimbursement was guaranteed as in a fund exchange for immediate benefits to the VTA; 5) No intermediate or long-term borrowing of funds were allowed; and 6) Further, it is suggested that swaps or transfers of funds of a specific voter-approved fund, like Measure A, is likely to lead to public misunderstanding or mistrust as displayed in the Grand Jury Report. Such swaps or borrowing should be avoided.

Chairperson Tebo recommended the Measure A Sales Tax fund specific transit projects and any long-term or intermediate-term swap of funds be prohibited. Interim short-term, temporary transfers may be specifically authorized by the Board for the overall benefit of the VTA if there will be no detrimental impact on Measure A projects. Any funds so transferred will be fully documented, specifying the repayment date and interest to be paid to the Measure A account. Any funds previously transferred should be reimbursed as a soon as possible with interest.

Greta Helm, Chief External Affairs Officer and Staff Liaison, reminded the Committee during the fund swap discussion between the CWC, the Congestion Management Agency Chief, and the Auditors, her recollection was a policy would be developed and submitted to the CWC for discussion.

Member Powers noted perhaps reasonable time limits for fund swaps could be considered with a binding guarantee there would be no impact on future Measure A projects.

Member Probst noted the importance of not being too restrictive to the point where the value of fund swaps is lost. She noted that during times of uncertainty, as we are currently experiencing, it makes it even more important not to put handcuffs on the VTA.

Chairperson Tebo disagreed with Member Probst stating it is the CWC’s responsibility to put handcuffs on the VTA.

Member Elias noted, although the Committee may agree with the sentiments of Chairperson Tebo, the Committee’s role is not to handcuff the VTA, but instead to ensure

controls are in place. He suggested the Committee request staff provide an update on the status of the fund swap policy and repayment provisions.

Ms. Helm noted the CGJ Report does not reflect the CWC did their job in giving feedback to VTA with regard to developing a policy. VTA agreed to develop a policy. This was identified, discussed with the auditors and VTA prior to the CGJ report, and will be brought back to the CWC as a recommended policy.

Member Probst noted she would not like Chairperson Tebo's handout to be presented as a Committee recommendation.

Member Skinner noted his agreement with Member Elias' comments. Member Skinner recommended the CWC ask staff what the recommended timelines would be for repayment of funds. He noted his hope staff would put in place a reasonable timeline that repays the funds as expected. He noted the CWC should not unduly tie VTA's hands.

Member Elias stressed the importance of 2000 Measure A Funds being available when needed.

Member Schuler stated it is within the CWC's role to make an ethical recommendation back to VTA. He noted the CWC wants to partner and work effectively with VTA and it is not the CWC's intent to put handcuffs on VTA.

Member Schuler expressed concern VTA may be impacting voter approved Measure A projects by potentially increasing future costs as well as delaying product delivery. He noted taxpayer intent was for projects to be completed in a timely fashion without additional costs. He suggested a reasonable policy be established that supports swaps, with the understanding Measure A projects are the priority and not the swaps.

Stephen Flynn, Senior Management Analyst, reminded the Committee they first brought up the need for a fund swap policy at the January and February meetings. John Ristow, Chief Congestion Management Agency Officer, met with the CWC at the February meeting to discuss the fund swap. Mr. Ristow indicated at that time there was no negative impact to the Measure A light rail project.

Chairperson Tebo acknowledged hearing the statement from Mr. Ristow, but noted two months later he learned work had stopped on the Evergreen/Capitol Light Rail because of money concerns.

Mr. Flynn noted perhaps the provisions for repayment of Measure A Funds were not made clear to the Committee. He noted during his meeting with Mr. Ristow prior to the July 8, 2009, CAC meeting he understood Mr. Ristow to say the repayment is programmed in either the 2010/11 or 2011/12 STIP. Mr. Ristow also indicated the repayment was part of the Board's programming action. Mr. Flynn suggested this information should have been made clearer to the Committee.

Chairperson Tebo stated these factors had not been made clear to the Committee. He noted his issue with the scheduled repayment was the timing of the repayment being several years away.

Member Blaylock stated the Committee would not be having this discussion if the fund swap did not occur. He stated his belief the fund swap should not have happened. He questioned how fund swaps would be perceived in the public realm. He noted the average member of the public does not understand a fund swap and would question the action. Member Blaylock stated the CWC is not trying to put handcuffs on the VTA; it is trying to perform the fiscal business of the public. Member Blaylock noted he would vote for zero fund swaps.

Member Probst stated she completely disagreed with Member Blaylock's comments.

Member Powers stated the resolution will go to staff for policy determination. She noted there may be a time constraint.

Member Schuler noted the fiscal climate within California's governmental entities has radically changed since January with all being in worse fiscal shape. He questioned what would happen if the swaps could not be repaid within the expected timeframe. He noted concern that such a scenario would negatively affect Measure A.

Member Schuler stated he does not agree with zero swaps. He suggested an option be found with parameters and policies responsible to Measure A, not to the agenda of other projects. He noted the Committee needs to hear what those policies will be for recommendations. He then noted the suggestions Chairperson Tebo presented are good starting points for recommendations and would encourage further discussion and feedback from staff.

Ms. Helm questioned whether the Committee had additional input on VTA's report.

Member Powers noted her belief the Committee should agree in some way with VTA's recommendation, but also note the Committee will be filing its own report with the CGJ.

Member Larsen stated his belief when the Subcommittee looks at the June 10, 2009, revised CWC Minutes the Subcommittee will note much of the conversation lines up with VTA's recommendations. Member Larsen noted the Committee should expand on their responses to CGJ Findings 9, 11, 12 and 14.

Chairperson Tebo questioned whether the Committee could express general agreement with the report, but note the CWC will be submitting its own response due to some specific issues.

Member Powers made a motion, seconded by Member Probst, stating the CWC is in general agreement with the VTA response to the Grand Jury, but the CWC will be submitting its own response to the Civil Grand Jury.

Member Schuler noted he had a problem with Member Powers' motion, because the Committee had some disagreement with VTA's response.

Chairperson Tebo stated the Committee is in general agreement, but there are some specific issues of disagreement.

Member Schuller questioned if Member Powers would accept the amended motion.

**M/S/F (Powers/Probst)** the Citizens Watchdog Committee is in general agreement with the VTA response to the Civil Grand Jury, but there are some areas where we are in specific disagreement and the Citizens Watchdog Committee will be submitting its own response to the Civil Grand Jury. Members Blaylock and Skinner abstained.

Member Skinner noted he was not comfortable with a generally agree but generally disagree motion. He would rather not say anything about the Board's response to the CGJ Report. He felt the CWC should simply state the Committee will be making its own recommendation.

**M/S/C (Elias/Powers)** to restate the motion as the Citizens Watchdog Committee duly notes the draft report by VTA staff for consideration and the Citizens Watchdog Committee will be developing its own response to the Civil Grand Jury.

**4. Committee Staff Report**

There was no Staff Report.

**5. Chairperson's Report**

There was no Chairperson's Report.

**BUSINESS REFERRED TO THE COMMITTEE BY THE BOARD OF DIRECTORS/ GENERAL MANAGER**

**COMBINED CITIZENS ADVISORY COMMITTEE AND CITIZENS WATCHDOG COMMITTEE CONSENT AGENDAS**

**7. CAC Quarterly Attendance Report**

**M/S/C (Powers/Hashimoto)** to receive the Citizens Advisory Committee Quarterly Attendance Report.

**8. Monthly Legislative History Matrix**

**M/S/C (Powers/Hashimoto)** to receive the Monthly Legislative History Matrix.

**9. VTP Highway Program Semi-Annual Report**

**M/S/C (Powers/Hashimoto)** to receive the VTP Highway Program Semi-Annual Report.

Vice Chairperson Jacobvitz left the meeting at 5:52 p.m.

Members Larsen and Schuller left the meeting at 5:52 p.m., the quorum was lost, and a Committee of the Whole was declared.

## **CITIZENS WATCHDOG COMMITTEE REGULAR AGENDA**

### **10. (Deferred to August 12, 2009, Citizens Watchdog Committee (CWC) Meeting)**

Citizens Watchdog Committee's (CWC) Annual Report for Fiscal Year 2008.

**On order of Chairperson Tebo** and there being no objection, the Committee deferred the recommendation for the Citizens Watchdog Committee's (CWC) Annual Report for Fiscal Year 2008.

### **11B. (Deferred to August 12, 2009, Citizens Watchdog Committee (CWC) Meeting)**

2000 Measure A Citizens Watchdog Committee response to the 2008-09 Santa Clara County Civil Grand Jury Report.

**On order of Chairperson Tebo** and there being no objection, the Committee deferred to discuss and take possible action regarding 2000 Measure A Citizens Watchdog Committee response to 2008-09 Santa Clara County Civil Grand Jury Report.

## **CITIZENS ADVISORY COMMITTEE REGULAR AGENDA**

### **12. Advisory Committee Enhancement (ACE) Update: July**

Jennie Loft, Public Information Officer, and Stephen Flynn, Senior Management Analyst, provided a brief update on the ACE Task Force.

The goals of ACE process are: 1) the efficient use of resources; 2) looking at enhanced communications; 3) consensus building; and 4) informed discussion.

At the June 24, 2009, ACE meeting the Task Force discussed Agenda Item #2, Continue Discussion of Strategies for Improving Advisory Committee Process with Focus on Increasing Efficiencies, Communication and Collaboration. Carmen Clark facilitated the meeting, as she has done multiple times during the ACE process.

The Task Force reviewed a list of strategies developed from the Hay Group Report and through input from the ACE Subcommittee Members: 1) Combine the PAC and TAC: This idea was not supported by the Task Force; 2) Modifying frequency of meetings: Idea not supported by the Task Force; and 3) Modifying existing committee structures, i.e., grouping the policy committees CAC and PAC and grouping technical groups BPAC, CTA and TAC: Idea partially supported by the Task Force.

Member Powers noted the grouping was not a merging of the committees, but an alignment of committees with similar tasks and different representation to work collaboratively, i.e., the PAC is comprised of council members, with the CAC representing different constituent groups within the community. Ms. Loft noted this was a concept requiring more refinement.

The Task Force discussed holding joint meetings or conducting workshops in lieu of regularly scheduled meetings.

Member Powers noted the Task Force recommended the Committee Chairs and the Board Chair meet on an annual or semi-annual basis to keep communication links open.

The next ACE meeting is scheduled for July 22, 2009, with a follow-up meeting tentatively scheduled for July 29, 2009, if the Task Force deems it necessary.

Member Probst questioned whether new committee appointments were being delayed until completion of the ACE process. Mr. Flynn stated the appointments have been delayed. He noted positions will be filled once a determination is made whether the existing committee structure will be modified or whether a position will be filled from a similarly represented position on another committee (for example, a BPAC member serving in the Bicyclists position on CAC.)

Greta Helm, Chief of External Affairs and Staff Liaison, noted the ACE process has taken longer than anticipated. A decision is expected in August, at which time staff will know whether there will be a recommended change to the committee structure or to proceed with the appointments for all committees.

**On order of Chairperson Tebo** and there being no objection, the Committee received a brief update on the status and progress of the Advisory Committee Enhancement process to date.

Member Skinner left the meeting at 6:10 p.m.

**13. Advisory Committee Enhancement (ACE) Subcommittee Report**

**On order of Chairperson Tebo** and there being no objection, the Committee received a verbal update from the Committee's Advisory Committee Enhancement (ACE) Subcommittee.

**COMBINED CITIZENS ADVISORY COMMITTEE AND CITIZENS WATCHDOG COMMITTEE ITEMS**

**14. Citizens Advisory Committee and Citizens Watchdog Committee Work Plans**

**On order of Chairperson Tebo** and there being no objection, the Committee reviewed the CAC and CWC Work Plans.

**OTHER**

**15. ANNOUNCEMENTS**

Greta Helm, Chief External Affairs Officer and Staff Liaison, announced the CWC BART tour will be held on August 12, 2009, prior to the regular committee meeting. An invitation will be sent to the committee members.

**16. ADJOURNMENT**

**On order of Chairperson Tebo** and there being no objection, the meeting was adjourned at 6:12 p.m.

Respectfully Submitted,

Susan E. Garcia, Board Assistant  
VTA Board of Directors