

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

Wednesday, April 11, 2007

MINUTES

1. CALL TO ORDER

The Regular Meeting of the Citizens Advisory Committee (CAC) and the 2000 Measure A Citizens Watchdog Committee (CWC) was called to order at 5:31 p.m. by Chairperson Schulter, in VTA Auditorium, Valley Transportation Authority (VTA), 3331 North First Street, San Jose, California.

ROLL CALL

Members Present

Stephen Blaylock
Don Burnett
Chris Elias
Ellen Fletcher
Ray Hashimoto
Roberta Hughan
Luis Mendez
Gaye Morando

Charlotte Powers
Sally Probst
Margaret Okuzumi
Connie Rogers
Martin Schulter, Chairperson
Laura Stuchinsky
Noel Tebo

Representing

Mass Transit Users
West Valley Cities
Environmentalists
Bicyclists
Building Industry Association
Santa Clara County
Pedestrians
Santa Clara County Chamber of Commerce
Coalition
City of San Jose
Senior Citizens
North County Cities
South County Cities
Disabled Persons
Silicon Valley Leadership Group
City of San Jose

Members Absent

Robert Jacobvitz, Vice Chairperson

Irene Hsu

Representing

Building Owners and Managers Association
(BOMA) –Silicon Valley
South Bay AFL-CIO Labor Council

A quorum was present.

2. ORDERS OF THE DAY

There were no Orders of the Day.

3. PUBLIC PRESENTATIONS

Tim Pitsker, Interested Citizen and Santa Clara County Employee, requested that the CWC audit the Dumbarton Rail Project. He expressed concern that there is “gross misspending of money” for the Dumbarton Rail Project as the right-of-way from Hayward to Fremont is problematic. He noted that another problematic issue related to the project is the proposal to build a “freight only bridge” in Niles, which will be handed to the Union Pacific Railroad (UPRR). He expressed concern that building the freight only bridge then giving it to the UPRR is an illegal spending of money.

Member Mendez arrived and took his seat at 5:33 p.m.

Member Probst arrived and took her seat at 5:34 p.m.

4. Committee Staff Report

Jim Lawson, Government Affairs Manager and Staff Liaison, provided a brief report including: 1) the Board’s receipt of the Organizational and Assessment Report from the Hay Group; 2) Recognition of former Ex-Officio Board Member John McLemore; 3) the Board’s receipt of a report from VTA Federal Lobbyist Susan Lent; 4) Board discussion of the Comprehensive Operations Analysis (COA); 4) Board authorization to refinance \$33 million in revenue refunding bond; 5) Board authorization for the Hay Group to draft work plan to implement recommendations based on the organizational and financial assessment; 6) introduction of Jerry Mikolajyck, interim Chief Financial Officer; and 7) adjournment of the Board Meeting in memory of three VTA employees (Marilyn Torgesen, Antwaine Day, and Chuck Flores) who recently passed away.

Member Stuchinsky arrived and took her seat at 5:36 p.m.

On order of Chairperson Schulter, there being no objection, the Committee Staff Report was received.

5. Chairperson’s Report

Chairperson Schulter reported that Chris Moylan, Policy Advisory Committee (PAC) Chairperson indicated that PAC would like to have a joint meeting with CAC. Items to be discussed at the joint meeting (i.e. improvement to communication) and logistics need to be determined. Chairperson Schulter suggested that the Committee further discuss these details at the May 2007 CAC meeting.

Member Burnett expressed support for the joint meeting, especially considering the criticisms about the effectiveness of the VTA Advisory Committees.

Member Powers requested that staff conduct the appropriate actions to make the joint meeting possible.

Member Okuzumi expressed support for the joint meeting with PAC. She noted the importance of determining what items will be included on the joint meeting agenda. She suggested including an item on how to effectively utilize VTA Advisory Committees.

Mr. Lawson responded that staff will work with the respective Chairpersons of both CAC and PAC. He encouraged Members to provide their suggestions about potential topics of discussion for the joint meeting.

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

COMBINED CAC AND 2000 MEASURE A CITIZENS WATCHDOG COMMITTEE CONSENT AGENDAS

6. Minutes of March 7, 2007

M/S/C (Probst/Powers) to approve the Minutes of February 7, 2007.

7. Programmed Projects Quarterly Monitoring Report for January-March 2007

M/S/C (Probst/Powers) to review the Programmed Projects Quarterly Monitoring Report for January-March 2007.

2000 MEASURE A CITIZENS WATCHDOG COMMITTEE REGULAR AGENDA

8. VTA June 30, 2006 Audit Management Letter

Susan Stark, Controller, noted that at the request of the CWC, staff is providing the Audit Management Letter from Vavrinek, Trine, Day & Company, LLP (VTD). Ms. Stark explained that the Management Letter was written considering VTA as a whole and not specific to one project or program such as Measure A. Ms. Stark noted that there are three things to look for in an audit: 1) Audit Findings; 2) Observation; and 3) Management Response. The Management Letter did not have any audit findings, which means that there is no serious violation of internal controls, procedures, reportable condition, and material weakness.

NOTE: M/S/C MEANS MOTION SECONDED AND CARRIED AND, UNLESS OTHERWISE INDICATED, THE MOTION PASSED UNANIMOUSLY.

Ms. Stark stated that observations in the Management Letter pertinent to the CWC include the Indirect Cost Allocation Plan (ICAP). ICAP refers to how the overhead cost is applied throughout the agency, including capital projects. The ICAP has increased the overhead from three percent to eight percent effective Fiscal Year (FY) 2006. Ms. Stark noted that ICAP is a standard among public agencies. As a transit agency, the Federal Transit Administration (FTA) must approve VTA's ICAP before it can be implemented. Another observation noted in the Management Letter (Page 3) is the Journal Entry Processing, an internal control measure that ensures appropriate and accurate charges are posted to each program, including Measure A. The audit's test general journal processing showed that seven out of 40 did not show second signature (approval) prior to posting. The second signature is not an audit requirement but instead a VTA policy and procedure.

Ms. Stark noted that management has responded to the auditors' observations. The appropriate measures have either been implemented or will be implemented before the current fiscal year ends. Ms. Stark introduced Ahmad Gharaibeh, Manager, VTD.

Member Stuchinsky referred to the Hay Group's concerns regarding retirement benefits and inquired if the benefits are part of the audit. Ms. Stark responded that the audit covered benefits. She referred to Page 2 of the Management Letter, "Governmental Accounting Standards Board (GASB) Statements 43 and 45 are effective for VTA for fiscal years ending June 30, 2007 and June 30, 2008" and noted that the pension balances and post-employment benefits will have a new accounting treatment for all public agencies. All public agencies, including VTA, have addressed how to handle the posting of retirement. The implementation date is June 30, 2007 and VTA already has procedures in place that will be in compliance with this requirement. Ms. Stark noted VTA is probably one of the few agencies in the country that sets aside funds for pension benefits on a regular basis.

Member Okuzumi inquired about what prompted the increase of indirect cost from three percent to eight percent and noted that it is a large increase. She inquired if it was an FTA requirement.

Ms. Stark noted that the FTA reviews the Indirect Cost rates on an annual basis. Ms. Stark explained that the formula is: general administrative costs divided by total construction costs. The determined rate is applied to the subsequent year.

Member Okuzumi inquired if there is a standard among agencies. Ms. Stark noted that for VTA, FTA reviews it to determine if the charges are charged equitably and fairly across the board.

Member Tebo expressed concern that moving from three percent to eight percent is a huge number. He requested an explanation.

Mr. Gharaibeh noted that based on the formula, the rate is between six to eight percent in the previous years. VTA is charging less (three percent). The auditors are recommending that the rate be revisited.

Ms. Stark added that the application of the rate of three percent is a managerial decision, however, the rate of eight percent was initiated in November 2006. She provided background noting that VTA implemented the first ICAP in 2003, and at that time the rate was approximately 2.58 percent. In 2004 and 2005 the rate became three percent. When the rate was analyzed in 2006, it was determined that the rate should be increased to eight percent.

Member Mendez noted that the indirect cost rates vary from agency to agency. He suggested that staff provide more information about the formulas used to determine what the indirect cost rate is as the rate is based on a number of factors.

Members Tebo and Burnett expressed concern about the huge change of the ICAP rate.

Ms. Stark noted that staff could provide the ICAP Presentation to the Committee for more information and better understanding of the procedures.

Members Tebo and Powers inquired about the outstanding checks noted on Page 3 of the Management Letter. Mr. Gharaibeh noted that amount listed for the outstanding checks is insignificant.

Member Okuzumi referred to the indirect cost and inquired what is the typical rate among agencies. Mr. Gharaibeh explained that there is no typical rate and that the rates will usually fluctuate, as the computation is administrative costs divided by total capital projects cost. The administrative costs is often constant, however the capital project costs are sometimes high or low, depending on how many projects are ongoing.

Member Stuchinsky asked about the amount of the administrative costs. Ms. Stark responded that over the last three years, the administrative costs were between \$18 to \$20 million. Ms. Stark added that the variable to the indirect cost are the construction projects.

On order of Chairperson Schulter, there being no objection, the VTA June 30, 2006 Audit Management Letter was received.

Member Hashimoto left the meeting at 6:07 p.m.

The Agenda was taken out of order.

10. Citizens Watchdog Committee Public Hearing

Chairperson Schulter noted that the CWC is conducting a Public Hearing in accordance with the 2000 Measure A ballot to provide the community the opportunity to express their concerns and opinions on 2000 Measure A Program expenditures, the results of the annual independent audit, and on 2000 Measure A Program reports. The next step will be for the CWC to write an annual report that will published in local newspapers to reflect whether 2000 Measure A tax dollars are being spent in accordance with the intent of the measure.

Chairperson Schulter noted the history and background of the 2000 Measure A Program, noting the specified projects in the measure. He also reviewed the CWC's responsibilities and limitations. He reviewed the processed utilized for noticing the hearing as well as the hearing protocol.

Stephen Flynn, Senior Management Analyst, noted that staff received comment through e-mail from Jim Stallman. A copy of the e-mail is placed on the Members' table.

Upon inquiry of Member Stuchinsky, Mr. Lawson responded that there will be a response to Mr. Stallman and the CWC will be provided a copy.

9. **Determine Independent Auditor Per Audit of FY 2007 2000 Measure A Program Financial Records and Statements**

Member Probst recommended that the CWC retain VTD. It would be economically inefficient to go out for bid at this time.

10. **Citizens Watchdog Committee Public Hearing (continued)**

M/S/C (Stuchinsky/Powers) to close the public hearing.

9. **Determine Independent Auditor Per Audit of FY 2007 2000 Measure A Program Financial Records and Statements (continued)**

Member Okuzumi commented that unless the CWC goes through a competitive bid process for the audit services, it would appear that the CWC is not independent.

Member Power expressed concern about the time constraints relating to conducting a competitive bid for the audit services, commenting that it is late in the process. Mr. Lawson responded that staff can execute a competitive bid, if the CWC decides to do so.

Upon inquiry of Member Mendez, Mr. Lawson responded that VTA typically replaces auditors in every few years. 2007 is VTD's second year on VTA.

Member Rogers recognized Member Okuzumi's comments. However, she commented that it seems too late in the season to hire a new auditor and it would be more efficient to retain VTD for one more year. She suggested that staff forward the selection of the audit firm earlier next year, around February or March 2008 timeframe.

Member Stuchinsky concurred with Member Rogers' comments. She suggested that for the next cycle, staff educate the CWC about the criteria and process for selecting audit firm.

Upon inquiry of Member Blaylock, Ms. Stark responded that there were five to six firms that responded, scored, and interviewed for the competitive bid process that VTD won. Staff has records of that competitive bid.

Member Tebo inquired if VTD has the resource to assign a separate team to conduct the audit for Measure A. Mr. Gharaibeh responded that during the audit of Measure A, there were a couple of auditors that were exclusively assigned to do that particular audit independent from the VTA audit but they were part of the team that audited VTA.

Member Mendez noted that the CWC's major consideration is to determine if there is a perception of conflict if VTD continues to audit the Measure A while they are also VTA auditors. He commented that it is safer to hire a separate audit firm, as a perception of conflict is enough for the public to feel suspicious.

Member Elias noted Member Mendez's comments about "appearance" and commented that appearance goes a long way to the public. He noted that in the interest of maintaining independence, the CWC must do its due diligence and go through the process of selecting an audit firm. He noted that this would prevent incorrect perception and ensure that there are "truly independent" recommendations.

Member Powers suggested that in the interest of time, if VTD could assure that they will utilize two separate audit teams to conduct audit for this year. She then suggested installing a process to start early next year to obtain an independent auditor.

Member Okuzumi expressed opposition to the suggestion, noting that it will still provide an appearance of conflict as VTA also uses VTD. She stated that the CWC could benefit from getting two perspectives. She urged that the CWC pursue the competitive bid process as soon as possible and see what will be the outcome.

M/S/F (Probst/Rogers) on a vote of 8 ayes, 5 noes, and 1 abstention to retain the services of VTD for FY 2007 audit. Members Blaylock, Elias, Hughan, Mendez, and Okuzumi opposed. Member Tebo abstained.

Member Powers recommended to retain VTD for FY 2007-08 with the guarantee that there would be independent teams conducting the audit and that VTA would go to competitive in FY 2008-09. If the auditor cannot guarantee a separate independent team in FY 2007-08, a competitive bid process will be initiated.

Member Elias expressed his opposition to the recommendation noting that he is comfortable with retaining VTD.

NOTE: M/S/F MEANS MOTION SECONDED AND FAILED.

Member Stuchinsky expressed her support for Member Powers' recommendation and she expressed her hesitation on conducting a competitive bid process for the purpose of "appearing to be independent". In addition to that, there are time constraints. She noted

that she wants to make sure that the CWC has good information to ensure that the CWC can make good informed decision at the time that an audit firm is selected.

Upon inquiry of Member Okuzumi, Ms. Stark responded that typically the competitive bid process for auditors commences in February timeframe and auditors begin their field work around May. Ms. Stark assured that whatever CWC decides, staff can work with their decision to either select a new auditor or retain current auditors.

M/S/C (Probst/Rogers) on a vote of 9 ayes, 5 noes, and 0 abstention to retain VTD for FY 2007-08 with the guarantee that there will be two independent teams conducting the audit and go to competitive for FY 2008-09. If the auditor cannot guarantee a separate independent team for FY 2007-08, a competitive bid process will be initiated. Members Blaylock, Elias, Hughan, Mendez, and Okuzumi opposed.

CITIZENS ADVISORY COMMITTEE REGULAR AGENDA

11. VTA Organizational and Financial Assessment

Ann Carey, Executive Assistant to the General Manager, provided a presentation entitled, "Organizational and Financial Assessment." She noted the background and study origins noting that this is the first review of VTA since its creation in 1996. She reviewed the process utilized to select the Hay Group (selected consultant), scope of work, and methodology.

Ms. Carey reviewed the Executive Report and Technical Memorandum findings, noting categories of recommendations: governance, organizational structure, and financial management. Ms. Carey enumerated the top nine recommendations and the Board Committee findings. She reviewed the next steps and the integration of the recommendations to other VTA efforts such as the Transit Sustainability Policy (TSP) and the COA. She briefly discussed the General Manager's goals for VTA, including: 1) improve and build relationships; 2) increase ridership; 3) deliver capital program; and 4) achieve financial stability.

Member Okuzumi referred to comments made by the Hay Group report about having too many Advisory Committees. Ms. Carey noted that the Hay Group's recommendation is to consolidate the PAC and Technical Advisory Committees (TAC). Ms. Carey noted that the next step is to examine the recommended structure and determine if it will be effective and appropriate for VTA. She noted that it might be appropriate for all Advisory Committees to determine their mission and vision to ensure that there is no overlaps or redundancies within the advisory committees.

Member Burnett supported the recommendation to consolidate the PAC and TAC, with the elected official as the regular member and city staff as the alternate member.

Member Elias inquired how the restructuring of the governance will address the tenure and training of the Board Members. He also asked how it will address issues on how to make the Board Members focus more on regional issues versus local interests.

Ms. Carey noted that Board Members' parochialism will be addressed through training with emphasis that as a VTA Member, their responsibility is VTA. In terms of membership and tenure, that information is contained in the Enabling Legislation and the Hay Group did not recommend changing that as the current structure has worked in the past.

Member Elias noted that there should be a Board Workshop that should be dedicated to discussing if the current structure still works for the community and determine alternatives. He noted that pursuing legislation in Sacramento to change the Enabling Legislation is premature at this time.

Mr. Lawson recognized Member Elias' comments and that it is a major challenge when appointed members do not exercise their fiduciary responsibility to make decisions that are in the best interest of VTA and the region as a whole.

Member Mendez expressed concern that he did not see any mention of VTA's clients/riders in the recommendations. He stressed the importance of better and desirable services and facilities. Ms. Carey responded that the Hay Group endorsed the TSP and COA and these address how to better serve the riders.

Member Blaylock noted the importance of keeping the meetings open and public. He referred to Agenda Item 10, Public Hearing, and noted that on Page 2 of 2, bullet 4, the word "brief" be stricken.

Member Stuchinsky inquired about the non-mention of the underfunded pension and retiree plans in the VTA audit. Ms. Carey clarified that the work done by Hay Group was not a financial audit but rather an assessment of VTA. She noted that VTA has set aside funds but still has unfunded liabilities, which is not uncommon among private or public agencies.

Member Okuzumi concurred with Member Elias' suggestion to dedicate a meeting to discuss the structure of the VTA Board of Directors. She noted that this is a recurring issue and expressed that in her opinion there are some structural issues that hinder even the best intentioned people to do due diligence and carry out their duty for the region. She also expressed concern that the VTA Advisory Committees cannot set their own agendas.

Member Powers supported the Hay Group's recommendation to establish an audit committee. She noted that as a founding member of the VTA Board of Directors, she understands that it is very important to focus on regional issues. She also supported the recommendations related to VTA's financial structure, noting that it is important to think about constructing, operating, and maintaining capital assets.

Member Elias suggested that as part of the budget process, VTA should establish an asset management fund and performance monitoring system.

Member Tebo commented that the harsh tone of the report was refreshing. He applauded the Board and Executive Management for their decision to pursue the assessment. He noted that CAC is pleased with Michel T. Burns' openness.

Mr. Lawson assured the Committee that as recommendations are made the Committee will be informed. He encouraged the Members to provide their comments and suggestions about the report.

Member Powers recommended that CAC work on its mission, vision, and timelines.

Upon inquiry of Member Stuchinsky, Ms. Carey noted that staff will prepare a score card that will illustrate the timeline and action taken.

Member Okuzumi suggested inviting representatives from City/County Association of Governments of San Mateo County (C/CAG) Advisory Committees and Richard Napier, Executive Director, to talk about how their process works.

On order of Chairperson Schulter, there being no objection, the VTA Organizational and Financial Assessment was reviewed.

13. Recommended FY 2007-08 Congestion Management Program Work Program

Mr. Flynn noted that the Congestion Management Program (CMP) has a separate funding and mission from the transit side of VTA. This year the budget process is modified, as the CMP budget will be a component of VTA biennial budget. Mr. Flynn noted the efforts for the FY 2007-08 Work Program such as 2007 CMP, prioritizing and programming of Santa Clara County's Regional Improvement Program (RIP) share of the 2008 State Transportation Improvement Program (STIP), developing policies and project priorities for the Highway Safety Traffic Reduction, Air Quality and Port Security Bond Act of 2006 (I-Bond) programs. Mr. Flynn noted that Page 3 of 5 of the staff report will note many efforts that are included in the Work Program.

Upon inquiry of Member Probst, Mr. Flynn noted that the CMP receives Member Agency Fees, Planning Grants, Program Manager Fees, and special grants are the major funding sources.

M/S/C (Powers/Tebo) to review and recommend the Board of Directors approve the Recommended FY 07-08 Congestion Management Program Work Program.

12. Fiscal Year 2008 Transportation Fund for Clean Air Program Manager (TFCA 40%) Funds

Bill Hough, Transportation Planner, provided a brief background noting the fund source and how the money is allocated. Mr. Hough referred to Attachment A – Santa Clara County FY 2007-08 TFCA 40% Funds and noted that there were six eligible projects with a total grant request amount of \$1,520,653. Staff recommends funding for all six projects.

Member Blaylock requested that in the future, staff include projects that were not funded in the report.

Member Blaylock inquired if non-Bicycle Expenditure Plan (BEP) projects compete with BEP projects and vice versa.

Member Stuchinsky inquired about the BEP Tiers, prioritization of BEP projects, and sources of funding.

Mr. Lawson noted that staff could prepare a written response.

M/S/C (Elias/Probst) on a vote of 14 ayes, 0 noes, and 1 abstention to review and recommend that the VTA Board of Directors approve the programming of FY 2008 Transportation Fund for Clean Air Program Manager (TFCA 40%) funds. Member Blaylock abstained.

Member Elias urged that VTA consider signing up for climate action registry to get credit and good public image that VTA deserves.

COMBINED CAC AND 2000 MEASURE A CITIZENS WATCHDOG COMMITTEE ITEMS

- 14. Review** the CAC and the 2000 Measure A Citizens Watchdog work plan. (Lawson)

Mr. Lawson noted that staff will plan for a joint meeting with PAC.

On order of Chairperson Schulter, there being no objection the CAC and the 2000 Measure A Citizens Watchdog work plan was reviewed.

OTHER

- 15. Announcements**

Member Okuzumi expressed concern that her suggestion that the “Announcements” be changed to “Announcement/Items of Concern” is not implemented. She expressed concern about how VTA posts agenda items on the website. She noted that the scanned agenda items are hindrance and may not be in compliance with the Americans with Disabilities Act (ADA).

- 16. ADJOURNMENT**

On order of Chairperson Schuler, there being no objection, the Meeting was adjourned at 7:48 p.m.

Respectfully submitted,

Elaine F. Baltao, Board Assistant
VTA Board of Directors