

NOVATO "STREETGATE" – TIME TO PUT IT TO REST

SUMMARY

Combine an overly reactive Public Works Department, poor communication, and a dysfunctional Novato City Council and the result is the media circus known as "Streetgate."¹

The Marin County Civil Grand Jury (Grand Jury) could not determine whether the over-reaction of staff was due to conflicts within the City Council or some other cause. However, it was clear that the multiple conflicts which existed, and which went beyond a clash between two or three individual council members, were the main cause of the controversy.

The actions and decisions taken by individuals within the Public Works Department and the City Manager, who oversees that department's activities, are open to criticism, but it is clear that no Measure B funds were used inappropriately, no undue influence was exerted on city staff, and no laws were broken. Had the City Council been operating as it should have, the public's trust would not have been breached and there would have been no need for investigations by the "Blue Ribbon Panel" or this Grand Jury.

The Grand Jury recommends that:

- A comparison report of expenditures to rate of completion for Measure B be presented to the public no less than annually
- The City Council should take specific steps to ensure that requests to the staff from a council member are transparent, putting no undue pressure on city staff
- Any changes to the existing implementation plan for Measure B should be given the full light of day at City Council meetings
- Internal communications within Public Works should be improved
- The City Council should review the positives and negatives of televised council meetings

BACKGROUND

If the average Californian is in love with the car, the next most cherished item is the stretch of road that carries this person to work or play. Many people fervently believe that a well-paved street in front of their home is deserved and that local government is obligated to provide it, and it is the one place where local government often feels it can make itself particularly visible. Hence those campaigning for local, statewide, and national office have often pledged better roads.

The City of Novato is no different. Elected and appointed leaders know that streets are icons of city prowess. The problem is that acquiring the necessary funds for maintaining streets is a constant challenge. While general revenues, gas tax, state and federal funds are available, cities like Novato have found it increasingly difficult to raise sufficient funds for road

¹ One member of the Grand Jury has been active in the civic affairs of the City of Novato and recused himself from participation in the investigation and preparation of this report.

maintenance and/or reconstruction and other city services. Increasingly cities have turned to a variety of financial structures to accomplish what they believe its citizens desire.

City of Novato Measure B was a \$15 million General Obligation Bond for Streets, Storm Drains and Sidewalk Improvements proposed by the Novato City Council in 1999. Those in favor of Measure B, which included the current mayor, distributed materials naming specific streets that would be candidates for repair if the bond measure were approved. Measure B was approved by voters in March of 2000.

The Streetgate controversy arose in 2003 (a City Council election year) when:

- A non-Measure B street (Estado Court) was paved in conjunction with a Measure B project
- A non-Measure B street (Celeste Court) where the son of a Novato council member resided, was reconstructed
- A Measure B street (Hancock Street) was given temporary paving with non-Measure B funds and deferred for two years

This raised two questions:

Had Measure B funds been used to fund non-Measure B projects?

Was undue influence being exerted on the Novato Public Works Department to pave streets with a lower priority (non-Measure B streets)?

With animosity present among council members neither the City Council nor the city staff was able to speak with a clear and certain voice to explain the situation to its constituency. The issue blossomed into what became known as Streetgate, and resulted in a number of complaints to the Grand Jury. Despite an investigation and report by a "Blue Ribbon Panel" appointed by the City Council, the issue continued and was a factor in the 2003 City Council election.

While the Grand Jury is not interested in becoming involved with council member personality conflicts and election campaign issues, it believes that it is important for public confidence in future bond issues to determine whether Measure B funds had been used appropriately and if undue influence was exerted on the city staff by individual council members. For these reasons, the Grand Jury decided to investigate the use of Measure B funds and issue this report.

METHODOLOGY

The Grand Jury reviewed extensive documentation:

- Measure B documents from 1999 through 2003. This included Novato City Council minutes, promotional material for the bond election in 2000, consultant and city staff engineering reports, lists of the Measure B Streets showing planned construction and progress, contractor bidding documents, the awarded contract, change orders, invoices, correspondence, and other related documents
- Financial records for all the Capital Improvement Projects (CIP) for Fiscal Year 2002-2003

- The Panel Report Upon Administrative Investigation of the City of Novato Street Paving Issues (Blue Ribbon Panel) including 19 tape recordings of the interviews conducted by the Panel. Listening to the tapes eliminated the need for the Grand Jury to interview some participants
- Articles published in local newspapers
- City of Novato e-mail records, phone records, and correspondence
- Job descriptions for staff members
- State of California Professional Licensing records

The Grand Jury conducted interviews:

- Members of the City Council
- City of Novato staff from the City Manager's Office, Financial Records Office, and Public Works Department
- Former City of Novato staff
- Measure B Oversight Committee
- Other citizens of Novato

The Grand Jury made personal observations:

- Novato City Council meetings
- Various Measure B streets completed, in-process, and yet-to-be done

DISCUSSION

Use of Measure B Funds

In March of 2000, the voters of Novato passed a bond issue, with 70% of the vote, of \$15 million (known as Measure B) to fund approximately 200 street rehabilitation projects. The bonds were to be sold in three \$5 million increments and the overall project was expected to take about 10 years to complete. Principal and interest on these bonds would be paid over a thirty-year period. This was not a unique event in Novato. A similar bond issue, Measure F, was passed in 1989 to perform street repaving and rehabilitation. Measure B was its successor.

To accomplish the scope of work described in Measure B, it was planned and expected that the bond money would be supplemented with additional funds from gas taxes, state and federal funds, and other sources.

With the passage of Measure B, the Novato City Council appointed three citizens to serve as an Oversight Committee to ensure that Measure B bond money was spent on Measure B projects. This committee reviews the timing of the 200+ projects to be funded by the Measure B program. It is expected by at least one member of this committee that, as was the case with Measure F, there will be insufficient funds to complete all the projects and another bond measure will be required not only to finish the Measure B projects, but also deal with additional non-Measure B streets that will need repair in the future.

The Oversight Committee found no instance where Measure B funds were budgeted for use on streets or projects not listed in the bond issue materials.

The Grand Jury reviewed financial records relating to the allocation of funds for CIP for fiscal year 2002-2003 and for the first quarter of fiscal year 2003-2004. Those records included all Measure B funds allocated to projects up to September 30, 2004. According to those records, Measure B money was allocated only to projects specified in the bond issue materials. The Grand Jury noted that as anticipated, other sources of funds (gas tax, State and Federal funds, etc.) have been allocated to Measure B projects.

The Grand Jury did not find any documents indicating a comparison between the percentage of dollars expended and the percentage completion of Measure B projects. This kind of comparison would give the Oversight Committee, the City Council and the Public Works Department feedback about how efficiently Measure B money was being expended and the likelihood that the Measure B scope of work would be accomplished with the available funds.

The Grand Jury believes the Streetgate controversy was driven by three primary factors:

- Over-reaction of staff in response to inquiries from members of the City Council
- Poor communication in the Public Works Department
- Dysfunctional behavior by members of the Novato City Council

Over-reaction to Council Member Inquiries

The Maintenance and the Engineering Divisions are both part of the Public Works Department of Novato. The Maintenance Division usually deals with minor street repairs, including pothole repair, small patch, and small street section repaving using city personnel and equipment. These projects rarely cost more than \$10,000. If a project is expected to cost more than \$15,000, it must be put out to competitive bid by private contractors. Maintenance work is typically funded by gas tax and general fund revenues.

The Engineering Division is responsible for the management of CIP, including all Measure B projects and all major street repaving and reconstruction. This Division does not field construction crews. It employs and retains engineers to design and oversee projects performed by private contractors to ensure that the work performed meets city specifications. It is unusual for the Maintenance and Engineering Divisions to share employees.

The Public Works Department is sensitive to reports by residents pertaining to the need for street repair. The Maintenance Division regularly reschedules and reprioritizes work in response to complaints and requests. It could be said that the Maintenance Division is reactive rather than proactive in its approach to performing its work.

While no evidence uncovered efforts by individual council members to exert undue influence on staff, investigation revealed that staff tends to respond to council member inquiries faster than it would to an ordinary citizen's inquiry. Council members admitted that they were aware that if they simply made an inquiry about an issue, chances were good that a quick and pointed response would result. Two examples relevant to this controversy demonstrate this observation:

Estado Court – A resident (a past mayor) of Estado Court (a non-measure B Street) made an inquiry to a council member as to why his street was not included as one of the streets to be repaved under Measure B. This inquiry was passed to the Public Works Department by the

council member and resulted in a review of the street's condition by a city engineer. The engineer determined that Estado Court qualified for inclusion in Measure B, but inadvertently had been left off of the list. Based on those findings, the street was immediately scheduled for repaving as part of a group of streets in the vicinity that were already scheduled. Financial records show that \$7,200 in gas tax (non-Measure B) funds were used to perform the Estado Court work, and the combination of projects was an efficient use of the paving contractor. Had this decision either been made by or reviewed with the City Council, this action might not have become controversial.

Celeste Court – One of the residents of Celeste Court (a non-Measure B street) was the son of a sitting council member. The council member inquired of the City Manager whether Celeste Court would be paved with Measure B streets. That inquiry was passed to the Public Works Department, which resulted in two inspections of the street. The first inspection found that Celeste Court did not meet the standards for reconstruction, but the second, which took place a day or two later, found that it did. Based on the second inspection, the decision was made to have the Maintenance Division of the Public Works Department completely reconstruct the street. This decision and its execution are unusual from a number of perspectives:

- First, the decision to rehabilitate Celeste Court was made on April 7, 2003 and work started on April 21, 2003, which is an unusually short lead time considering the lack of a finding of hazardous conditions
- Second, the Maintenance Division is neither staffed nor equipped to do projects of this magnitude. The Grand Jury could not find a recent example of an entire street being reconstructed by the Maintenance Division
- Third, the cost of the project ultimately exceeded \$15,000, which was double the cost to perform a similar scope of work on Estado Court
- Fourth, City policy dictates that a project of this magnitude be competitively bid and awarded to an outside contractor
- Last, the City Council Policy Manual contains a one-hour rule which requires approval by a majority vote for any inquiry or issue taking more than one hour of total staff time. Given the number of e-mails, discussions, and visits to Celeste Court, it appears the one-hour rule was violated

Had established policies been followed, this project would have been reviewed with the City Council prior to its execution, issues settled, and public controversy avoided.

Testimony before the Grand Jury revealed that the above reactions to council member inquiry were extraordinary. While the Public Works staff is responsive to ordinary citizens, it appears to over-react to council member requests, and in some cases, in excess of that intended by the council member. In the case of Celeste Court, a simple council member inquiry became the focal point of controversy. The result was a reputation damaged, excessive expense to the city, and city policies and procedures violated - all because the city staff did not say "no".

Given the role that council members play, the motivation of staff appears to be to keep them "happy." Council members should be conscious of the impact of their inquiries to staff, and go out of their way to avoid any actual or perceived personal conflicts of interest. This sensitivity was not in evidence in the circumstances surrounding the reconstruction of Estado Court and Celeste Court.

Poor Communication Within Public Works

In addition to its failure to inform the City Council of the change in scope of work on Estado Court and the magnitude of the project on Celeste Court, the Public Works Department also lacks adequate internal communication.

Due to its condition, Hancock Street was scheduled to be rehabilitated in the first wave of Measure B projects. Responding to inquiries from residents of the street, a decision was made by the Maintenance Division to put a temporary asphalt cap on the street, which was expected to last for a period of two to three years. The Maintenance Division was unaware that the Engineering Division had scheduled Hancock Street to be included as part of Measure B Rehabilitation Project #1. While this breakdown in communication within the Public Works Department may have resulted in an unnecessary expense for the capping, the problem was exacerbated when, Engineering learning of Maintenance's action, made the decision to defer repair of Hancock Street rather than tear up and replace the recently applied asphalt cap. Unfortunately, the Public Works Department failed to notify the City Council of the change in plans and their rationale. The result was confusion, mistrust, and misinterpretation of the actions of the Public Works Department both by individual council members and the local media.

The Grand Jury did not limit its investigation to the three streets at the center of the controversy. A number of other situations were identified and investigated. The Grand Jury found these issues were usually caused by communication problems within the Public Works Department. This could be partly due to individual conflicts and the reluctance on the part of long-term employees to accept the introduction of new procedures. Other causes may include shortage of personnel due to budgetary considerations and the number of inquiries to which the Department must respond. Nevertheless, the Grand Jury recommends that efforts be made to improve communication within the Public Works Department.

Novato City Council Dysfunctional Behavior

The role of an elected City Council is to set policy and oversee the activities of the city to ensure that the interests of its citizens are well-served. To be most effective in this role it is imperative that the City Council appear not only honest and trustworthy, but that it place the interests of citizens ahead of its own individual self-interest. Had the City Council been acting in this manner, the Grand Jury believes that the tempest set off by the above examples and others not mentioned could have been managed effectively and would not have spun out of control into the media frenzy that resulted.

The public looks to a City Council to help it understand extraordinary issues. When a council is perceived as speaking with one voice, clarity, understanding, and acceptance are usually the outcome. When a Council speaks with five separate voices driven by individual agendas and/or political motivation, the result is usually increased distrust and doubt as to motive, honesty, and credibility. One council member, after having made allegations relative to misuse of Measure B funds on the part of a fellow council member, refused to discuss the issue further in open forum. This prevented the Novato City Council from being able to fully discuss and possibly resolve the Streetgate issue.

The Grand Jury also reviewed tape recordings pertaining to the Streetgate issue made by the Blue Ribbon Panel. The tapes confirmed what was apparent from Grand Jury interviews, that the council did not seem able to function effectively during this controversy. Interviewees spoke of council members who appeared to play to the cameras during televised council meetings. This behavior of seeking to be heard on all issues, whether necessary or not, took valuable council meeting time, and was resented by other council members. Given the behavior that seems to result from televising Novato City Council meetings, it is worth asking whether the benefit of informing the public is greater than the damage done to council member interpersonal relationships and efficient execution of the public's business. Overall, the personality conflicts resulted in a council that did not represent the interests of the public to the extent that it should have.

Certainly, the actions and decisions taken by individuals within the Public Works Department, and the City Manager who oversees that department's activities are open to criticism, but it is also clear that no Measure B funds were used inappropriately, no undue influence was exerted on staff, and no laws were broken.

Had the City Council been operating in an appropriate manner, the public's trust would not have been breached and there would have been no need for investigations by either the Blue Ribbon Panel or this Grand Jury.

FINDINGS

- F1. There is no evidence that Measure B funds have been used inappropriately.
- F2. There is a list that tracks the progress of Measure B construction projects.
- F3. There is no readily available report that tracks budgeted expenditures and completion rate vs. actual expenditures and completion rate for the Measure B program of street repair.
- F4. City staff is responsive to requests by members of the council and public pertaining to street maintenance.
- F5. There is no system that tracks council member and citizen requests and prioritizes them in a way that minimizes charges of favoritism.
- F6. Estado Court, a non-Measure B street, was combined with a Measure B construction contract which led to public confusion about the integrity of the use of Measure B funds, and negative public comment.
- F7. The paving of Celeste Court was an over-reaction to citizen and council member inquiries that resulted in reprioritization of projects, premature expenditure of funds, and award of a large maintenance/reconstruction project without competitive bidding.
- F8. Communication between divisions in the Public Works Department is poor.
- F9. The postponement of the rehabilitation of Hancock Street, a Measure B street, without City Council approval led to public confusion and negative public comment.

- F10. Council member personality conflicts led to public confusion and distrust of the actions of the City Council and the staff.
- F11. Television coverage of City Council meetings may have exacerbated existing personality conflicts among council members.

RECOMMENDATIONS

- R1. The City Finance Manager in conjunction with the Director of Public Works should prepare an annual report to the City Council detailing budgeted expenditures and completion rate versus actual expenditures and completion rate for the Measure B program of street repair.
- R2. The City Council should adopt a process which allows council member requests to city staff to be transparent to the public, and which puts no undue pressure on any city staff member.
- R3. Any changes to the published plan for implementation of Measure B street rehabilitation projects should be made at City Council meetings.
- R4. Communications within the Public Works Department should be improved.
- R5. The Novato City Council should review the advantages and disadvantages of televising council meetings to determine whether or not the benefits outweigh the disadvantages of longer council meetings and fractured intra-council relationships.

REQUEST FOR RESPONSES

Pursuant to Penal code section 933.05, the Grand Jury requests a response from the City Council of Novato for all Findings and Recommendations.

GLOSSARY

The following are definitions used in this report.

- Capping - Adding a thin layer of asphalt on top of existing pavement.
- Reconstruction - Rebuilding a street by removing the existing asphalt and putting on an entirely new structure of asphalt.
- Rehabilitation - Grinding the asphalt of the whole street from gutter to gutter and adding a thick layer of asphalt.

Repaving - Any of the methods that allows for a new smooth, hard surface.

Slurry seal - Filling in cracks and breaks in the pavement with an asphalt mixture.