

# **CRUSHED BY HYPE**

## ***How Greed, Ego and Ignorance Combine to Con Santa Clara Residents***

*by J. Byron Fleck & Karen Hardy<sup>1</sup>*

### **CHAPTER II**

## **Off the Record, On the QT, and Very Hush-Hush**

***“Any proposed or approved stadium project in the City of Santa Clara will be the result of a visible, public process, open to the community.”***

- Guideline unanimously adopted by Santa Clara City Council, January 2, 2007

***“[C]ouncilmember Kevin Moore has been in conversations with the Niners for a number of months about the possibility of locating their new stadium in Santa Clara...”***

- Ronald E. Garratt Santa Clara Assistant City Manager email, July 19, 2006

***“Niners Secretly Wooed Santa Clara For A Year”***

- *San Francisco Chronicle*, November 30, 2006

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<sup>1</sup> Byron Fleck is a resident, attorney and former City of Santa Clara Planning Commissioner. Karen Hardy is a teacher, community volunteer and City Planning Commissioner. The views expressed by Ms. Hardy are her own. They not intended to reflect the views of the Commission or the views any other member of the City of Santa Clara Planning Commission.

In the one month period between April 24, 2007 and May 24, 2007, Santa Clara's Mayor received 73 emails, letters or calls from people either asking questions, or expressing their views about the Yorks stadium proposal.<sup>2</sup>

Of those 73, Mayor Patricia Mahan responded to but one.

County Assessor's Larry Stone's.<sup>3</sup>

Stone, a York and 49er advocate, is not a Santa Clara resident.

In contrast to the other 72, most, Santa Clara residents who were yea or nay or just asking for more information, only Stone merited the Mayor's written response.

Stone expressed his dismay that the Mayor had reduced speakers' time limits at the April 24, 2007 Council meeting on the Yorks financing proposal, beginning shortly before Stone's remarks. Stone wrote the following to the Mayor:<sup>4</sup>

**“Literally, three minutes before I was called to speak, the [speaker's time] limit was reduced to two minutes...[O]ne third of my presentation was eliminated. It was embarrassing for you and me.”**

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<sup>2</sup> See, <http://cityclerkdatabase.ci.santa-clara.ca.us/wx/pubhtml/pubhtml/3009.html> and go to <http://cityclerkdatabase.ci.santa-clara.ca.us/pdfCreator/Export.aspx?did=AAAAP070525211424714.DID&db=SCAGENDA> p.1 Also, in the same report to Council, Staff announced they would no longer track correspondence by those supporting or opposing the subsidy request. There is no dispute that correspondence received through this date from Santa Clara residents revealed that residents overwhelmingly opposed granting a subsidy to billionaires' York.

<sup>3</sup>  
<http://cityclerkdatabase.ci.santa-clara.ca.us/pdfCreator/Export.aspx?did=AAAAP070525211424714.DID&db=SCAGENDA>

<sup>4</sup>  
<http://cityclerkdatabase.ci.santa-clara.ca.us/pdfCreator/Export.aspx?did=AAAAP070525211424714.DID&db=SCAGENDA> p.135

In Larry Stone's world, he is an important man, with important things to say, who takes slight (perceived or real), not well. On his official County stationary, Stone noted how meticulous he and his taxpayer funded office prepare for his three minutes of fame:

**“Whenever I prepare to speak where a time limit is imposed, I carefully prepared my remarks to meet the time allowed. In addition, I practice my presentation to ensure I don't violate any time limit....[O]n Tuesday, my office checked Santa Clara's website to confirm that public comments were limited to three minutes...[I] prepared my remarks for 2:55 minutes.”**

Mayor Mahan's "Dear Larry" full page response consisted of an analysis of the origins and operation of the "three minute rule."<sup>5</sup> She also referred Stone's concern to the City Manager and City Clerk's office for further consideration. She concluded her letter to "Larry" with the hand written notation, "*Larry - Thanks for your understanding. Pat.*"

The disconnect between Stone's letter for 49er tickets, quoted contempt for constituents, presented in Chapter I, and a perceived slight so apparently insignificant (but nonetheless meriting the Mayor's and Staffs' attention), in the face of an oncoming fiscal train wreck, is illustrative of the saga.

It is a continuing theme repeated throughout this report.

We can debate forever how greed, ego and ignorance got us to the point of the absurd; however, as we shall see, that was our ultimate destination.

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**K**evin Moore is at once feckless and the kind of guy whom bad things seem to follow in his wake.<sup>6,7</sup> It is as if he can walk through an intersection causing a six car pile up, while traipsing away unscathed and clueless to the calamity he wrought. Moore is a current Santa City Council member and unabashed champion of the Yorks' subsidy.

On April 24, 2007 Moore declared.<sup>8</sup>

**“There's a risk with anything, but we're going to bring the ball all the way down the field and score on this one. This is an absolute winner for the city.”**

At the time of his statement, Moore had not yet seen the 49er proposal.

Perhaps a review prior to issuing his verdict on the yet unseen proposal was unnecessary. Moore, after all, had been in secret discussions with 49er executives for a year or more before his April 24, 2007 comment.

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<sup>6</sup> In Santa Clara's 2002 election, Moore contributed \$4,000 to fund a questionable “hit piece” against a challenger to now Mayor Mahan.  
<http://www.metroactive.com/metro/11.16.05/fly-0546.html> See, also [http://www.smartvoter.org/2004/11/02/ca/scl/vote/hardy\\_k/paper3.html](http://www.smartvoter.org/2004/11/02/ca/scl/vote/hardy_k/paper3.html) where the *Mercury News*, quoted the Council's ethics advisor as calling the Moore funded piece as an “old-style political ad” relying in half-truths.” Mahan described the hit piece as merely, “unfortunate.” The publisher of the Moore funded article, Chris Stampolis, was subsequently censored for his conduct by the County Democratic Central Committee.

<sup>7</sup> Moore, in the 1994 City Council election allegedly orchestrated illegal campaign contributions totaling 66% of a Santa Clara council candidate's total campaign expenditures, James Arno, on behalf of Moore's then employer, Mission Trail. Mission Trail sought an exclusive no bid contract with the City of Santa Clara. Then council member James Arno, as was widely reported, cast the deciding vote to give Mission Trail, a no bid contract. Both Arno and the owners of Mission Trail were convicted in court. The current Mission Trail Garbage Company has no connection to neither Moore's, Arno's nor the prior Mission Trail owners' conduct.

<sup>8</sup> [http://cbs5.com/local/local\\_story\\_113220204.html](http://cbs5.com/local/local_story_113220204.html)

From an email dated July 19, 2006 obtained under a California Public Records Act request:<sup>9</sup>

**“Mr. MacNeil [49er CFO] understood this very clearly Councilmember Kevin Moore has been in conversations with the Niners for a number of months about the possibility of locating their new stadium in Santa Clara and facilitated this first meeting between Mr. MacNeil, and City staff...” (emphasis added).**

**Ronald E. Garratt, Assistant City Manager”**

What Moore and the 49ers discussed in those stadium relocation discussions, beginning “[A] number of months” prior to July 19, 2006, is unknown.

In our Public Records Request, we specifically asked for memos, letters, emails or any other writings between any Council member and any member of the 49er staff, any of the Yorks or their representatives. The City Attorney’s office has reminded each council member that they are required to produce such documents or emails residing on their home computer.<sup>10</sup>

To our knowledge, no council member, including, notably, Mr. Moore, has.

It would take more than six more months for the City Council to authorize negotiations with the 49ers about “locating their stadium in Santa Clara.” Despite absence of authorization, discussions between Council, Staff and the Yorks and their representatives, would continue unabated in the interim.

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<sup>9</sup> Email from Asst. City Mgr. Garratt to Dep. City Mgr. McCarthy and *Santa Clara Weekly* reporter, Larry Sacks 7/19/06 “Re: Football Stadium.” An explanation of how a tiny newspaper was “in the know” is offered in the next chapter.

<sup>10</sup> November 13, 2006 memo from City Manager to “Mayor and City Council.” The same warning from the City Manager issues every time a demand under the Public Records Act is made. To date, no Council member has disclosed any documents.

Some see County Assessor Larry Stone and Santa Clara Council member Kevin Moore as joined at the hip. They have been close personally for two decades. Both seem to share a little interest for the often mundane duties of their respective elected positions versus, the opportunity to get all gushy over professional athletes. To be perceived as a “player,” appear to each, to equate with being a “leader.”

Stone explained his latter part of 2005 meetings with 49ers CFO Larry MacNeil as follows<sup>11</sup>:

**“We didn’t want to put the 49ers in a position where they were seen as playing one community off against another, which is absolutely not what they [the 49ers] were doing,” Stone said.**<sup>12</sup>

Why any public official, let alone one charged with assessing property values and collecting property taxes, would be so concerned with the perception of a professional sports franchise, is unclear.

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<sup>11</sup> The secret meetings were first disclosed to the public in response to a Public Records Act Request. Specifically, Stone sent MacNeil a letter marked “CONFIDENTIAL” suggesting that Stone, 49er owner York and 49er CFO York schedule further confidential meetings. See, Chapter I of “Crushed By Hype.”

[http://www.notwithmymoney.org/pdfs/CRUSHED BY HYPEHow Greed.pdf](http://www.notwithmymoney.org/pdfs/CRUSHED_BY_HYPEHow_Greed.pdf)  
p.4.

<sup>12</sup> San Francisco Chronicle, November 30, 2006.  
<http://www.sfgate.com/cgi-bin/article.cgi?file=/c/a/2006/11/30/MNGFMMML141.DTL>

**O**n August 7, 2006, Santa Clara City Council members received an exclusive invitation.

**“In Monday’s mail, each of you received an invitation from The San Francisco 49ers (for you and up to 3 family members or staff) to attend a training camp event, which will not be open to the general public.”<sup>13</sup>**

Mayor Mahan responded that she, her husband, son and Debbie Costa would attend the August 18 event.<sup>14</sup>

What the mayor and any other Council members who attended discussed with their hosts, is unknown.

What is certain is that less than a month after the August 18 closed to the public training camp event, relationships between City Staff and Council members, appear to have grown unusually cordial. The term “unusually cordial” is apt, we believe, for two reasons. First, as seen below, it is not common that even residents are addressed so warmly and so responsively in their dealings with the City. Second, neither is it common that City Staff take their direction from a lone City Council member as opposed to the City Manager. The latter practice is generally forbidden as “Councilmanic interference.” Why such interference was ignored in this instance is not clear. The following email of September 11, 2006 is illustrative:

**“Larry: Councilmember Moore mentioned that you would be interested in looking at any soils reports for the north side of Tasman. Our Engineering Department has performed certain studies and I have asked them to copy me with what they have. I should to be able to send it to you shortly.”<sup>15</sup>*(emphasis added)*.**

**Sincerely,  
Ron Garratt (*Assistant City Manager*)**

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<sup>13</sup> Email dated August 11, 2006 from Staff to Mayor and Council members

<sup>14</sup> Id.

<sup>15</sup> Email dated September 11, 2006 11:43 am, from Asst. City Manager Ron Garratt to 49ers CFO Larry MacNeil with copy to Moore and City Manager Jennifer Sparacino.

Two minutes later, Garratt tasked two staff members to obtain the report adding:

**“They [49ers] are trying to figure out what the structural challenges might be in siting a stadium in the Great America Parking lot. They are anxious to get the information.”<sup>16</sup>**

The next day, September 12, the requested soils report was emailed to “Larry” from Assistant City Manager Garratt.<sup>17</sup>

**O**n October 3, 2006, Mayor Mahan received an invitation from 49ers owners John and Denise York, through City staff, to attend the 49ers / Raiders game on Sunday October 8 as the Yorks guest.

Only thing was, the invitation was old news to the Mayor.

**“I had heard about this from Kevin Moore and so had put it on the calendar. ..I will be there with my husband.”<sup>18</sup>**

What the Mayor and Moore discussed with the Yorks at the game, is unknown.

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<sup>16</sup> Email dated September 11, 2006 11:45 am, from Asst. City Manager Garratt to Staff.

<sup>17</sup> Email dated September 12, 2006 from Asst. City Manager Garratt to 49ers CFO Larry MacNeil.

<sup>18</sup> Email dated October 3, 2006 from Staff to Mayor Mahan and reply.



The gap.

Between Mayhan's and Moore's attendance at the October 8, 2006 49ers / Raiders game, courtesy of the former, and the 49ers November 9, 2006 press release announcing the City of Santa Clara as the Yorks preferred site for a new stadium, the email trail goes silent. There are three possible explanations for the "gap."

First, documents were not disclosed. Second, all communications were oral. Third, there were no discussions between the City and the 49ers in this period.

Looking at each, the third is implausible. That scenario necessarily assumes the 49ers and the City of Santa Clara coincidentally woke up on November 9, 2006 to draft and review a press release announcing Santa Clara as the preferred 49ers site.

The second assumes an express or implicit understanding that emails are discoverable under the Public Records Act, and so, the way to evade the Act is to conduct discussions having no paper trail. This scenario is plausible, but would require a high degree of discipline, not commonly found among local politicians.

By the process of elimination, it is probably the first. Hiding documents.

In an email dated November 8, 2006, sent at 8:15 pm, 49ers Public relations manager, Steve Fine, sent Assistant City Manager Carol McCarthy a copy of a proposed press release.

In part, the proposed release quoted Mayor Mahan as follows:

**“We’re proud to have the San Francisco 49ers as part of our community,” said Santa Clara Mayor Patricia Mahan. “We have been looking to expand our entertainment options in the Great America/Convention Center area for years, and this stadium can be a great addition. The 49ers have been clear that their goal is to put together a project that has no impact on the City’s general fund and no increase in taxes, and we are ready to give this project our full attention.” she added.<sup>19</sup>**

If Mayor Mahan approved her quote, there is no email confirming it.

What is certain is that the deceptive mantra of “No impact on the City’s general fund and no increase in taxes” would become the sound bite for the billionaires York \$160 million subsidy request. Translated, what the Yorks were saying is that “We promise not to raid your checking account, we will raid your savings account.”

The Mayor, for whatever reason, bought it.

On November 9, 2006, the 49ers issued their press release. Mayor’s quote and all.

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<sup>19</sup> Email and attachment dated November 8, 2006 from 49ers Steve Fine to Asst. City Manager Carol McCarthy.

Liar, liar pants on fire.

On November 14, 2006, the following appeared on the City's website:

**"If the 49ers submit a proposal to the City of Santa Clara...the City Council would then make a decision about having discussions with the 49ers about this issue over the next few months..."**<sup>20</sup>

**Comment:**

Where secrecy... begins, vice or roguery is not far off.<sup>21</sup>

It would be two months later before the Santa Clara City Council would promise residents that:

***"Any proposed or approved stadium project in the City of Santa Clara will be the result of a visible, public process, open to the community."***

Self serving promises are castles made of sand. The facts are what they are. The Mayor, City Council and Staff had been well into discussions with the 49ers for a year before the City Council's cynical promise.

We believe the void created by secrecy is filled by a river of speculation. It is not the originators of speculation who are at fault, but, rather, those who unnecessarily created the secrecy to begin.

***Next: The Best City Council Money Can Buy...on the Cheap***

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<sup>20</sup> See, [http://www.ci.santa-clara.ca.us/city\\_gov/49er\\_stadium\\_proposal.html](http://www.ci.santa-clara.ca.us/city_gov/49er_stadium_proposal.html)

<sup>21</sup> Samuel Johnson (1709 - 1784) English lexicographer, critic