Stanislaus County Civil Grand Jury
City of Patterson
Case numbers 11-05C, 11-06C, 11-07C, & 11-18C
Part Six: Landlord/Developer
Appointed Member for City of Patterson Budget Advisory Committee

SUMMARY

The 2010/2011 Stanislaus County Civil Grand Jury (SCCGJ) received four (4) complaints alleging willful misconduct by a Patterson landlord, commercial developer, appointed member for the City of Patterson Budget Advisory and General Plan Boards. The Patterson General Plan Board has been dismantled. The landlord/developer is also an appointed official for the Stanislaus County Planning Commission.

After a review of documents and interviews of key personnel, it was determined:

1. The landlord/developer was the landlord for Council member A for at least 13 years. The landlord/developer leased Council member A a commercial business property and a storage unit. Some payments were intermittently late, not paid, or written off.

2. The landlord/developer filed a zoning appeal that was ruled in favor of the City of Patterson. The Del Puerto Health Care District facility (HCD) was a large tenant to his/her property and wanted to move to Keystone Business Park. The zoning matter was upheld and the landlord/developer lost an appeal to the Planning Commission and the Patterson City Council on a 5-0 vote.

Within two months, the Immediate Past Mayor (IPM) held a special closed session meeting for the City Council and there was a 3-2 vote to reimburse the landlord/developer an undetermined (non-verified) gift of public funds. The Immediate Past City Attorney (IPCA) was present at the special meeting. However, the IPCA was not inside this portion of the closed session for the vote to pay the legal expenses of the landlord/developer. Evidence suggests that members of the council voted without any evidence showing itemized legal expenses, verification of funds, lawsuit, or court order, contract or statutory authority. The City of Patterson wrote check # 93126 (in the amount of $27,790.94) to the landlord/developer on December 3, 2009.

3. A personal discussion occurred between the HCD, the landlord/developer and senior officials of Keystone Business Park. In an attempt to block the move of the facility from his/her property to Keystone, the landlord/developer had executed a two-year lease extension totaling $204,000.00. Further discussion implied that the landlord/developer could use his/her influence over the majority of the Patterson City Council to approve future projects.

GLOSSARY

§: A special character used to indicate the section of a statutory code.

California Constitution, Article XVI, Section 6: (In Summary). The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation.

CDD: City of Patterson Community Development Director.

Government Code § 87100 - Conflict of Interest: No public official at any level of state or local government shall make, participate in making or in any way attempt to use their official position to influence a governmental decision in which he/she knows or has reason to know he/she has a financial interest.

HCD: Del Puerto Health Care District facility.

Investigative Functions: Techniques such as interviewing, auditing, and observing that the grand jury uses to gather data for civil investigations.

IPM: Immediate Past Mayor.

Preponderance of Evidence: Preponderance of evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Recusal: To remove oneself from participation to avoid a potential or perceived conflict of interest.

SCCGJ: Stanislaus County Civil Grand Jury.

Sustain: To support by adequate proof.

Tort: A negligent or intentional civil wrong not arising out of a contract or statute. These include "intentional torts" such as battery or defamation, and torts for negligence.

Willful Misconduct: Willful misconduct generally means a knowing violation of a reasonable and uniformly enforced rule or policy. It means intentionally doing that which should not be done or intentionally failing to do that which should be done.

BACKGROUND

The landlord/developer is an influential business person in and around the City of Patterson. For a minimum of 13 years, Council member A was a tenant of a commercial building property and storage unit owned by the landlord/developer. Documented oral and written statements indicate that Council member A was intermittently late in rental payments. In some cases, rent was either not paid, late or "written off." When Council member A was initially appointed to the City Council, his/her business was prohibited from performing services related to city business by the Immediate Past City Manager (IPCM). Council member A was involved with the landlord/developer in a fiduciary capacity wherein he/she should have recused from voting on interests of the landlord/developer while conducting city business.

Council member B was a tenant of the landlord/developer with a storage unit and vacated the lease upon his/her appointment to the City Council.

The landlord/developer owns a parcel and building that houses the HCD. The lease was on a month-to-month basis until the move to Keystone Business Park was completed. In February of 2009, the landlord/developer appealed to the City of Patterson's Community Development Department that Keystone was not properly zoned for health care services and filed for an "environmental challenge" to block the move to Keystone. After research and legal consideration, the City of Patterson's Community Development Department, Planning Commission, and City Council ruled in favor of the HCD and denied the landlord/developer's challenge.

There is documentary evidence to suggest that the landlord/developer sought legal advice from a local attorney in an effort to discuss an office lease agreement with the HCD. The SCCGJ has not received any evidence to suggest that there are documents to indicate the retention of an attorney, verification of costs, itemized statements, purpose of action, or intent to bring a tort action against the HCD or the City of Patterson.

However, witnesses claim that although no verification of funds or threatened legal action was in motion, the Immediate Past City Council continued to bring the matter up during closed session hearings. On October 26, 2009, the IPM made a motion to "reimburse" the landlord/developer his/her attorney fees. At the time of this motion and subsequent vote, there was no verification of costs, itemized billing statements, lawsuit, contract or statutory authority presented to the city. The IPM, Council member A, and Council member B voted to return the unknown amount of money back to the landlord/developer. Council member C and Council member D voted not to pay any public funds until a verification of fees and additional legal opinion(s) were presented. The vote was 3-2 to pay non-verified funds to the landlord/developer. Absent additional

facts, this is considered a gift of public funds, in the SCCGJ's opinion, from the taxpayers of Patterson's general fund.

There is no evidence to indicate that the landlord/developer was treated with bias, illegal interpretations, or disparate treatment. The landlord/developer wanted to be reimbursed for the legal fees he/she incurred on his/her own behalf to stop the HCD from moving to Keystone from the building he/she owned. The SCCGJ asked for any examples of bias or conspiracies against the landlord/developer and none could be provided. The landlord/developer was adamant that the CDD was incorrect with the zoning determination and in the process, held-up a vital infrastructure need for medical care to the residents of Patterson.

Three days after the October 26, 2009 vote, Council member A drafted an email to the IPCA asking for verification of the funds for the landlord/developer that had not yet been presented. At the time of the vote on October 26, 2009, City Council had not viewed any verified expenses by the landlord/developer. On December 3, 2009, the City of Patterson issued the landlord/developer check #93126 in the amount of $27,790.94 from the city's general fund.

INVESTIGATION METHODOLOGY

- Reviewed submitted complaints.
- Requested documents (emails and correspondence) through the Public Records Act.
- Reviewed voluntarily submitted memorandums and correspondence by interested witnesses.
- Reviewed thousands of emails - some of which were not included in our Public Records Act request but brought forward by witnesses.
- Attendance at City of Patterson Council meetings.
- Direct testimony was received by numerous witnesses. The testimony was under oath and recorded with their knowledge.

FINDINGS

F-1: The landlord/developer had a fiduciary relationship for 13 years with Council member A.

F-2: There is no evidence that either the landlord/developer or Council member A ever recused themselves from any vote where a potential or perceived conflict of interest existed.

F-3: In the SCCGJ's opinion, the vote to give the landlord/developer funds amounted to a gift of public funds from the City of Patterson's general fund.

F-4: In the SCCGJ's opinion, the vote by the City of Patterson's City Council to provide the gift of public funds to the landlord/developer was **invalid.**

- The IPCA was not in the closed session portion of the vote for anticipated litigation.
- The IPM was not a resident of the city and his/her position became immediately vacant on or before May 14, 2008, when he/she admitted to a constituent that he/she was not eligible to be the Mayor. Therefore, his/her vote is null and void.
- Council member A neglected to recuse his/her vote due to a fiduciary conflict of interest with the landlord/developer.

RECOMMENDATIONS

R-1: The landlord/developer shall recuse from voting as a member of the City of Patterson Budget Advisory Committee when there is a perceived conflict(s) of interest.

R-2: The actual amount of funds were ***non-verified and unknown at the time of this vote*** (emphasis added). The special session vote of October 26, 2009, is groundless. The SCCGJ recommends that the landlord/developer return the funds in the amount of $27,790.94 to the City of Patterson's general fund.

REQUEST FOR RESPONSES

Patterson City Council.

REFERENCES

- California Fair Political Practices Commission http://www.fppc.ca.gov/.
- California Government Code.
- City of Patterson, California. http://ci.patterson.ca.us/.
- City of Patterson, Municipal Code.
- Correspondence voluntarily submitted by witnesses.
- Correspondence acquired from certified letter to commercial developers.
- Documents obtained via the Public Records Act.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code § 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal

Code § 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

RECUSAL ADVISEMENT

This report of cases 11-01C through 11-08C and 11-18C are issued by the 2010/2011 Stanislaus County Civil Grand Jury with the following exception: One (1) member of the grand jury volunteered to recuse his/her self due to a perceived conflict of interest. This grand juror was excluded from all phases of the investigation, including interviews, deliberations, voting, and in the writing and approval of this report. None of the information included in this report was obtained from the excluded grand juror as a means of mitigating a potential bias to the integrity of this report.