CITY OF BIGGS

465 C STREET
P.O. BOX 307
BIGGS, CALIFORNIA 95917
TELEPHONE (530) 868-5493

FILED
Butte County
Superior Court
AUG 19 2008
Sharol Strickland Clerk
By K. Mortensen Deputy
FILED

August 18, 2008

Honorable James Reilley, Presiding Judge
c/o Court Administration
Superior Court of California, County of Butte
One Court Street
Oroville, CA 95965

Honorable Judge Reilley:

In response to the Butte County Grand Jury report released on June 27, 2008, the following is provided by the City Council of the City of Biggs, endorsed by unanimous vote of its members in public session of its regular meeting of August 18, 2008.

Finding F1 *- The current Mayor and City Council have taken actions that have been perceived by many Biggs citizens as contrary to the best interests of the City of Biggs.*

(Response) – Respondent disagrees wholly with the finding.

Council questions how many citizens of Biggs were actually surveyed to arrive at this claim of "many citizens," and how many of those interviewed actually reside within the city limits. Council members are accustomed to strident criticism from some county residents and landowners outside the city limits who use a Biggs mailing address; nevertheless, the council is elected by the citizens of Biggs to represent the interests of the people of the City of Biggs, exclusively.

The one page of Biggs Council meeting minutes included in the Grand Jury's report is an extract from unsigned draft minutes that were never returned to Council; the official, signed minutes presented the discussion in a condensed format. One wonders how and why the Jury considered an unofficial draft as some sort of credible evidence of anything, let alone its stated finding.

The Grand Jury cites the General Plan Amendment/Update issue, with its purported negative sales tax revenue impact on the city, as apparently the sole evidence of its so-called finding. Several points are pertinent:

- The Grand Jury claims a "thorough investigation" was done. If this was so, then why were only two current City Council members interviewed? The Biggs City Planner was not interviewed, explaining the Grand Jury's definite lack of knowledge and understanding of a "General Plan Update" compared to a "General Plan Amendment" as it pertains to the City of Biggs.
- The General Plan Update proposal had been considered at length and approved unanimously by the City of Biggs Planning Commission before it was brought before the City Council. Records of this were and are available to the Jury, the Court and the public.
- There were several developers with interests surrounding the City of Biggs whose proposals would have been considered and affected by a General Plan Update. If the City of Biggs would have allowed one of the many developers to proceed with a General Plan Amendment, all of the developers would have demanded equal treatment and would have wanted to use the General Plan Amendment process.
- LAFCO informed the city that its agency would prefer to have one General Plan Update brought before it, rather than several Plan Amendments.
- The time differential between the two approaches is not a matter of years but only months. This time differential would not significantly affect what the Jury suggests would be the City of Biggs' possible "tax revenue infusion."
- An Amendment must address environmental and land-use issues. There were some outstanding issues with some of the property owners between SR99 and the current city limits who expressed reluctance to be annexed to the City. This would pose a problem in that LAFCO does not accept leap-frogging or gaps in the city limits lines. LAFCO and the City Council oppose forced annexation in principle. These and other issues not discussed in the Grand Jury report lead the reasonable observer to conclude that chances were high that this Amendment application could have been delayed indefinitely and would not necessarily have benefited the City with any tax revenue.
- It was a 3-2 majority vote that approved the General Plan Update process June 19, 2006. On June 23 Council again took up the issue as an agenda reconsideration item and this time voted unanimously to table the topic. In that same meeting, Council voted unanimously to direct city staff to begin working on the General Plan Update process.

The finding's reference to "Mayor and City Council" actions discounts the fact that by Biggs City Code and by State Government Code, the mayor of Biggs is elected as a councilmember by the citizens then selected from among the Council's members. The role is to preside at meetings and represent the city ceremonially. There is no separate or independent power to act vested in the mayoral position. The mayor has one vote, no super power, no veto authority.

It should also be noted that if the Jury's finding of "many Biggs citizens" being unhappy with the Mayor and Vice-Mayor had any credibility at all, surely there would be someone willing to run against them for their seats on the council at reelection time. Mr. Busch and Mr. Frith are currently running unopposed on the November ballot.

Finding F2 *- The Biggs City Council currently has a total of four members out of the authorized five members, due to a vacancy which occurred on July 7th of 2007. The Grand Jury finds the lack of action to fill the vacancy disturbing.*

(Response) – Respondent disagrees wholly with the finding.

First, it must be noted that the Grand Jury's statement is incorrect as a matter of fact. Official records available to the Grand Jury clearly show:

1. Council member D.Richins' position was declared vacant (as a result of Mr. Richens' relocation outside city limits) July 16, 2007 and was filled three weeks later (August 6, 2007) when Council appointed one citizen from among three applicants – all of whom were interviewed in a public meeting. The Council was obviously acting quickly – with speed uncommon to any government agency -- to replace a vacancy.
2. Council member J.Terry's position was declared vacant September 16, 2007 (as a result of Ms. Terry's resigning from office) and Council again immediately advertised the vacancy in an aggressive effort to fill it.
    a. The Council interviewed in public session the one and only applicant on October 15, 2007. No motion was immediately made to appoint the applicant, and the applicant announced he was withdrawing his application.
    b. City Attorney advised Council that if no appointment were made within 30 days of the declared vacancy, then a special election is to be held, per State Code.
    c. Council then voted unanimously to call for the position to be filled by election of the voters. Council considered election laws, dates and costs that night and more thoroughly November 2 and again January 28, deciding it would be in the best interests of the city to hold an election in conjunction with the November 2008 general election. This decision was reconsidered and reaffirmed February 4, 2008.
    d. County elections officials and the City Attorney were consulted extensively throughout this consideration process. This process was officially recorded, and records were available to the Grand Jury to examine.

Secondly, please note that in both vacancy cases the City Council advertised publicly and requested applications to be submitted from the citizens of Biggs for the filling of a vacant position. A notice was placed in all the publications and public locations that are required by law, and at city hall. One and only one person stepped forward to submit an application. This person was indeed one of the many former council members still residing in Biggs; the other two that were mentioned but unnamed by the Jury did not show any interest in the position and did not turn in an application. It is difficult to appoint someone who is not interested in the position, former council member or not.

Council therefore finds the Grand Jury's assertion of a "lack of action to fill the vacancy" unfounded.

Finding F3 *– Serious concerns regarding trust of the City Council decision-making process, transparency of government, and insufficient consideration of the public good in City Council decisions exist among many Biggs citizens.*

(Response) – Respondent disagrees wholly with the finding.

It is difficult to respond to such a statement. As is no doubt typical in any local jurisdiction, there are some Biggs citizens who may have an undisclosed reason (e.g., personal grudge) that would serve as motivation for making this kind of a complaint without just cause. As set forth above, the Council has no way of knowing how "many" of Biggs' citizens share this view. The Council asserts that they have not received such complaints either directly or indirectly.

Biggs City Council agendas are clearly posted as prescribed by law. Meetings are normally held per established schedules and in the evenings to allow maximum public participation. Citizens are actively welcomed to comment on items on or not on the agenda. News media are welcome to observe and report at will, and do so. The debate and decisions of this City Council have always been done in an open and public forum along with ample opportunity for public questions and comments. The City Council has always and will always have the City of Biggs and its citizens' best interests in mind when making the decisions it takes to run the City and plan for its future.

The Grand Jury members and its report readers should understand that in the normal and expected course of the democratic process, there will always be some people satisfied and some unsatisfied with the outcome of decisions by legislative bodies. The Jury cited no evidence (there is no evidence) of a lack of transparency in the decision-making process, nor insufficient consideration of the public good in Biggs City Council decisions.

Recommendation R1 -- *City Council members who vote on issues which might create a strong public concern that a conflict of interest exists, should consider recusing from that vote in order to maintain public confidence and trust in the City Council.*

(Response) -- This recommendation is State law, was implemented years ago and continues to be the normal practice in Biggs.

Biggs City Council members have always and always will consider self-disqualifying and abstaining from any vote that presents a conflict of interest. This practice is consistent with the Government Code and commonly accepted practices of good ethics in government. City Council members have completed State-approved ethics training classes and are guided by their City Attorney who is in attendance during all City Council meetings. Records available to the public and to the Grand Jury prove that Council members have in numerous cases disqualified themselves and abstained from voting, thus maintaining public confidence and trust.

Members of city councils and planning commissions commonly earn their living with business interests in their cities; this experience and commitment to the community tends to qualify them more than disqualify them for participation in policy making. Exposure to perceived conflicts of interest are naturally a more common occurrence in smaller jurisdictions. Actual conflict vs supposed conflict is an issue for ongoing, balanced consideration. Council members do disqualify themselves from debating and voting on matters which might directly and significantly affect their financial interests, but should fully participate on matters of a general, long-term, city-wide nature.

As to the application of this principle in the case cited by the Jury (purported conflict by the Vice-Mayor in voting on the General Plan Update) – to expect any business-owning council member to abstain from voting on all development and growth issues is unwarranted and unsubstantiated by State law. To apply the Grand Jury's discussion comments on this subject broadly would have the effect of disqualifying most members of the state legislature, most county board of supervisors, and most city councils from participating in decision-making on most land-use issues.

Moreover, it must be stated that the vote in question did not constitute a conflict of interest under the Fair Political Practices Act for several fundamental reasons. First, the matter did not involve a direct economic interest. Second, the matter did not involve a material financial

impact. Finally, any impact would have affected the public generally as any land use decision would have affected all city business entities. (See, 2 CCR sections 19704.1, 18705.1, 18707.)

The Grand Jury reports that when it "interviewed the Vice-Mayor on 9 April, 2008, his only stated reason for opposing commercial development of 'B' street and highway 99 was that he 'did not like strip-malls.'" The vice-mayor more fully expressed his views in public meetings in 2006, including concerns about fairness to all developers in the development process. City Council is well satisfied that its members are indeed considering the best interest of the city, and are acting in accordance with Government Code and the highest standards of ethics.

Recommendation R2 -- *The City Council should act immediately to find a qualified individual to serve in the City Council position that has been vacant since July of 2007.*

(Response) – This recommendation cannot legally be implemented. The Grand Jury should have known that, having not made an appointment within 30 days following the declaration of a vacancy, the earliest that this vacant position can legally be filled is in an election (and the next election is the November general election), pursuant to State election code for general law cities.

Additional Comment Relative to the Grand Jury Report:
Enclosed for the Court's consideration is a Letter to the Editor of the Gridley-Herald, published July 16, 2008, penned by an area resident, unsolicited, reflective of what we have good reason to believe is a commonly held local sentiment relative to the Grand Jury report and the City of Biggs.

Respectfully submitted this 18th day of August, 2008,

City Council of City of Biggs, California

John G. Busch
Mayor

Roger Frith
Vice-Mayor

Doug Arnold
Council Member

Jon Crawford
Council Member

Deanna Carbajal
City Clerk

-OG

n. a subject was
varning for tres-
1500 block of

m. a report was
violation of a
e 1600 block of

n. a report was
i disturbance of
400 block of B

).m. a caller
l standby at B
ts in Biggs.
n. a report was
a hit-and-run
nage in the 300
:e St.
12-08
n. a report was
a hit-and-run
nage in the 600
St.
:. a 911 caller
l aid in the 300
3t.
. a report was
a residential
900 block of

.m. a caller
standby in the
in Biggs.
i caller report-
sers in the 200
:.

LETTER TO THE EDITOR

This letter is in response to the report from the Butte County Grand Jury that was in your Wednesday, July 2 edition of the Gridley Herald. I have lived in the Biggs-Gridley area since 1985 and my husband has been here since 1955.

I found the report from the Grand Jury to be VERY negative and discouraging. I would have thought that they would have been able to report SOMETHING positive about either Biggs or Gridley, but they failed to mention anything of a positive nature.

I was just driving through Biggs the other day and was thinking to myself how Biggs is beginning to improve over the last few years. The roads are looking much better, we are going to have a new meter system for the water which should increase revenue for the city, the little parks in town are being well maintained and groomed, and the new skate park/picnic area is continually being used by children and families. Every time I have driven by the park someone is there using the facilities.

Our home is located on the north end of the Third Street where the drainage has ALWAYS been an issue and the street has ALWAYS been in ill-repair. It is finally looking good with new asphalt and not full of potholes.

It is my understanding that this whole investigation was conducted, based on a complaint by a disgruntled former City Council member. Maybe the Grand Jury should have interviewed more citizens, just to see how we feel about our small town and if we are happy with our current City Council. I may not always agree with the political positions of our Mayor and Vice-Mayor, or the rest of the council, but I feel over-all they are doing the best job they can with what resources they have been given.

I must agree with Vice-Mayor Frith, when he says he "doesn't like strip malls." Why in the world should we spend hundreds of thousands of dollars improving the land along the highway putting in shopping, when we already have a downtown district. Let's spend that same money on renovating downtown, then place a banner, or some other signage along the highway DRAWING people into the downtown area. Wouldn't it be absolutely wonderful to see the old Hotel up and running? Frith's makes one of the best turkey and cheese sandwiches I've had in a while.

Under the Grand Jury "Findings" they wrote that "many citizens" have perceived that the Mayor and City Council have done things that were in conflict of interest. Was that really MANY citizens or just the one that wrote the letter of complaint? I've spoken with many citizens and most of them didn't even know about the investigation, let alone about the "conflicts of interest." Secondly, if no one applies for the City seat, how could it possibly be filled? And if the only person applying isn't qualified or doesn't get a nomination, then the City can't fill the seat. I am wondering if anyone from the Grand Jury is willing to move to Biggs, become an involved citizen and apply for the seat, so it can be filled?

Thank you,
Martha Rickaby

CCEPTING APPLICATIONS!

G AUTHORITY OF BUTTE COUNTY
DLEY FARM LABOR HOUSING
droom Duplexes available for rent*
530) 846-3640 for more information

Eligibility:

t be a U.S. Citizen or Legal Resident.
st have annual farm labor earnings of at

CASA LUPE
mexican restaurant
Gridley
We Have Great Margaritas!
COUPON
20% Off
Dinners & Combinations
with this coupon
Monday thru Thursday After 4:00pm