



2006-2007 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

PROPOSED SARATOGA LAND SALE LACKED POLICIES AND PROCEDURES

Summary

In response to a complaint by a citizen of the City of Saratoga, the 2006-2007 Santa Clara County Civil Grand Jury (Grand Jury) investigated events surrounding the proposed sale of a City-owned parcel of land. The complaint charged that the Saratoga City Council (City Council) was willing to surrender up to \$500,000 in taxpayer money in possibly illegal negotiations with a real estate developer.

The Grand Jury did not find any evidence of collusion between any members of the City Council or City staff and the potential buyer of the property. It did conclude that there is a serious lack of written policies and procedures in Saratoga regarding standard practices in conducting public business. It also found that there is no consistency in keeping written records of meetings and decisions where public policy is discussed and implemented.

The Grand Jury recommends that the City of Saratoga (1) commission an audit of its policies and prepare written procedures manuals as recommended, and (2) require official written records be kept of all meetings.

Background

In 2002, the City of Saratoga purchased a 2.5 acre parcel of land from Grace United Methodist Church for \$4.5 million. This property is located at 19828 Prospect Avenue in Saratoga and has come to be known as the North Campus. The purchase price was below the estimated market value of \$6.3 million. The Church sold the property at a reduced price with the understanding that the property would be kept by the City for community use.

The City planned to move its senior center from its downtown civic center location to this property to free up office space for a sheriff's substation. The cost to move the senior center was more than anticipated and the sheriff's substation eventually relocated to Cupertino. Since these original plans for the property failed, Saratoga decided to repair the four buildings on the property and make them available for public use. Beginning December 2002 through June 2004, fees collected for using the property were never enough to offset the repair and maintenance costs so the property became a financial burden on the City.

Due to mounting financial difficulties, the City Council decided, after contentious debate, to sell the North Campus property in February 2005 to raise money for infrastructure and facilities repair. After a year-long process in which the Public Works Department prepared the property and solicited bids for the sale, a buyer was selected in February 2006 from a group of nine bidders, and a sale price was agreed at \$7 million. The proposed sale was complicated when a group of citizens, organized under the name *Citizen's Committee to Save Saratoga's North Campus* (CCSSNC), sent a letter to the City Council informing it that they planned to collect signatures for a ballot referendum for the November 7, 2006 General Election to halt the sale of the property. This delay threatened to disrupt the sale, so to expedite the decision, the question of whether to sell the property was proposed by City Council as Measure J in the June 6, 2006 Primary Election. The citizens of Saratoga voted to keep the property and the sale was cancelled.

The Grand Jury received a complaint from a citizen of Saratoga that alleged improper behavior on two counts between City officials and the prospective buyer. The complainant stated there were suspicious circumstances involving the Measure J campaign that might represent California Election Code violations; in addition, the negotiations that reduced the agreed purchase price would have potentially cost the taxpayers as much as \$500,000 to the advantage of the buyer if the sale were approved.

Discussion

The Grand Jury reviewed those allegations in the complaint that were within its jurisdiction concerning the negotiations surrounding the sale of the North Campus property.

The complaint revolved around events in February and early March 2006. On February 8, 2006, the selected buyer signed an agreement to purchase the North Campus property for \$7 million. Presentation and approval of the agreement was planned for the regular City Council meeting on March 1, 2006. On February 28, 2006, CCSSNC delivered a letter to the City Council stating their determination to prevent the sale by placing a referendum on the November 2006 General Election ballot. Within one day, the prospective buyer and City officials met to renegotiate the terms of the sale. In the absence of any formal direction from the City Council, City officials determined it would be better to accommodate the prospective buyer than to have him rescind the agreement and start the bidding process over again. The City Attorney prepared a revised sales agreement. The new agreement and resolution were ready for the City Council by the evening of March 1. This new agreement would have reduced the purchase price by \$500,000 if voters approved the sale.

A special session of the City Council was held on March 9, 2006, to discuss the property sale again in light of the potential referendum and alternatives to expedite the process. Between the March 1 City Council meeting and the March 9 special session, the contract with the buyer was renegotiated a second time, anticipating that the City

Council would call the question of the sale at the June 6 Primary Election by its own referendum rather than waiting for the citizen action at the November 7 General Election. The final contract approved by City Council set the purchase price at \$6.75 million and the City agreed to waive \$85,000 in fees for the buyer.

The Grand Jury conducted interviews with two Saratoga Council members and three City staff officials concerning the negotiations surrounding the sales agreement. In separate interviews, two City officials stated that neither had managed the sale of public property before. When the decision was made by City Council to sell the property, the City considered hiring a real estate broker to manage the sale but determined that it could save money and realize more profit if it performed the work itself. Documentation provided to the Grand Jury demonstrates that all actions, including the bidding process, evaluation of the proposals, and selection of a buyer were performed effectively. The request for bids package was complete, the tentative subdivision map was made available to bidders, and the property was offered for sale to public agencies before private bidders, as legally required. Had no special circumstances occurred, the sale would have been completed successfully. Inexperience and lack of established procedures became factors when the City had to renegotiate terms with the buyer because of the impending citizen referendum.

The City staff interviewed stated that the City Council had not advised them about terms and conditions for renegotiating the contract or whether they should renegotiate the contract at all. It was apparent during the March 1 Council meeting that the Council members were unaware of the negotiations and change in the contract terms. One of the Council members questioned the City Manager about who gave him direction and authority to change the contract. The two Council members interviewed stated that there were no discussions following the March 1 Council meeting to give direction to City staff on terms and limits of negotiations prior to the special session on March 9.

The Grand Jury finds that throughout this process there were no established written policies or procedures for City officials to rely on for guidance. All of the officials interviewed confirmed that there is no formal contract policy regarding the sale of City property. When asked to provide the City's formal procurement procedures, two City officials referred the Grand Jury to § 2-45 of the Saratoga City Code concerning the City purchasing system. While this policy statement authorizes the Purchasing Officer to establish procurement policies and procedures, it does not specify them. Regarding disposal of City property relevant to this real estate sale, § 2-45.170 of the City Code states "The disposition of any property having a value of two thousand dollars or more shall first be authorized by the City Council." This appears insufficient as a formal procedures document.

With neither procedures nor historical precedent to guide them, the City Council and staff did not discuss guidelines on roles and responsibilities when they agreed to proceed with the sale in February 2005. At the most critical stage of this transaction when citizens moved to halt the sale, no documentation was kept by those conducting

negotiations with the buyer. Specifics of real estate transaction negotiations are allowed to be confidential; however, some written acknowledgement that a meeting occurred and the reason for the negotiations would be appropriate to document the timeline of events as a public record. No one is certain how contact was made between the buyer and the City, there were no documents indicating discussion or direction from City Council regarding negotiating parameters, and there was no staff report to the City Council at the March 1, 2006 meeting describing the events. Finally, after the sale issue was resolved, there were no discussions by the City Council or among City staff to review the process or to write a procedures document to help future officials in a similar situation.

Independent of this Grand Jury review, the Certified Public Accountants who perform the annual financial audit for Saratoga identified other instances where a lack of procedures and controls may jeopardize City operations. This report highlighted lack of internal controls on certain financial transactions and lack of written policies and procedures in specific areas of departmental operations.

Conclusion

The Grand Jury finds there was no evidence of illegal activity surrounding the bidding process, the selection of a buyer, or the negotiations following intervention by the citizens group. However, the Grand Jury is concerned that lack of experience and lack of written procedures in executing such a complicated transaction could have resulted in the loss of \$500,000 in taxpayer money.

The Grand Jury recognizes that certain discussions of public business may be held in confidence, including real estate negotiations, certain personnel issues, and matters of litigation. The concern is not about this specific real estate transaction but the general lack of written guidelines and procedures that allow consistent administration of policy.

Written procedures are crucial for accountability and consistency in implementing public policy. When City Council or staff make decisions that affect the public, documenting these processes to demonstrate that official procedures were followed alleviates potential legal issues.

Findings

The following findings were reviewed with the subject agency:

- F1.** There is a lack of written policies and procedures defining how City Council and staff conduct official business.
- F2.** During the negotiation process in the sale of the North Campus property involving City officials and a private party, there was no documentation of meetings, discussions or decisions, either among City officials or between the City and the private party.

Recommendations

The Civil Grand Jury recommends that the Saratoga City Council take the following actions:

- R1.** Commission an independent management audit of its official policies and procedures manuals for conducting government business and implement the audit recommendations.
- R2.** Adopt and enforce a policy that all City staff maintain a written record of meetings, decisions, and actions that implement policy.

Bibliography

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Caporicci & Larson, Certified Public Accountants, *Recommendations to Management for the Year Ended June 30, 2006*, October 13, 2006.

City of Saratoga, *Agreement for Purchase and Sale of Real Estate by and between City of Saratoga, as Seller and Mike Masoumi, as Buyer*, February 8, 2006.

City of Saratoga, *Agreement for Purchase and Sale of Real Estate by and between City of Saratoga, as Seller and Mike Masoumi, as Buyer*, March 1, 2006.

City of Saratoga, *Agreement for Purchase and Sale of Real Estate by and between City of Saratoga, as Seller and Mike Masoumi, as Buyer*, March 9, 2006.

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City of Saratoga, City Council, *Meeting Minutes*, February 16, 2005.

City of Saratoga, City Council, *Video Recording of City Council Meeting*, March 1, 2006.

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City of Saratoga, *Mutual Cancellation Instructions from City Manager to Alliance Title Company*, June 8, 2006.

City of Saratoga, Public Works Department, *North Campus Bid Proposals*, January 31, 2006.

City of Saratoga, Public Works Department, *Notice of Intent to Sell Real Property*, November 8, 2005.

City of Saratoga, Public Works Department, *Staff Report to City Council*, March 16, 2005.

City of Saratoga, Public Works Department, *Staff Report to City Council*, June 1, 2005.

City of Saratoga, Public Works Department, *Staff Report to City Council*, July 6, 2005.

Interviews

December 13, 2006 Interviewed two City of Saratoga officials

January 19, 2007 Interviewed City of Saratoga Councilmember
Interviewed City of Saratoga official

January 31, 2007 Interviewed City of Saratoga Councilmember

PASSED and **ADOPTED** by the Santa Clara County Civil Grand Jury on this 24th day of April 2007.

David M. Burnham
Foreperson Pro tem

Kathryn C. Philp
Secretary