



December 22, 2011

Via E-Mail and U.S. Mail

Mayor Greg Bryan
Town of Tusayan
c/o Bill Sims, Town Attorney
LaSota & Peters, PLC
722 East Osborn Road, Suite 100
Phoenix, Arizona 85014

*Re: Complaint of Misconduct and Violations of Law by Tusayan Town Councilman
William Fitzgerald*

Dear Mayor Bryan:

I am writing on behalf of my client, Stilo Development Group, USA, LP (“Stilo”) to lodge a formal complaint against Tusayan Town Councilman William Fitzgerald for violations of the Town of Tusayan Ethics Policy, as well as for other conduct unbecoming of a public official. For the reasons set forth below, we request that you, the Town Council or the Town Attorney take immediate action in response to this complaint, including but not limited to (1) prohibiting Councilman Fitzgerald from participating in or voting on any proposals, contracts, or legislation relating in any way to Stilo; (2) screening Councilman Fitzgerald from any information, files, or discussions of the Town Council that may reveal confidential information about any proposals, contracts, or legislation relating to Stilo; (3) formally censuring Councilman Fitzgerald for violating the Town of Tusayan Ethics Policy; and (4) providing education and training to Councilman Fitzgerald about the Town of Tusayan Ethics Policy, conflicts of interest, and requirements for recusal.

As you know, Councilman Fitzgerald is an outspoken opponent of development in Tusayan and, particularly, of Stilo. While he has the right to his personal opinions and to vote as a qualified elector in Tusayan elections, Councilman Fitzgerald also has an obligation to represent the citizens of Tusayan and to discharge his duties as a member of the Tusayan Town Council in a fair and impartial way. Moreover, he must abide by the laws of the Town of Tusayan and State of Arizona. Chief among those laws is the Town of Tusayan Ethics Policy. That law provides, in pertinent part:

It is the policy of the Town of Tusayan to uphold, promote, and demand the highest standards of ethical behavior from its Town officials....Use of one's position or office for personal gain or inappropriate influence will not be tolerated.

...

One definition of conflict of interest is when an official is no longer able to remain impartial or objective in choosing between the interest of the Town and the interest of oneself.

A conflict of interest arises when a person or an entity of which a Town official...has a substantial interest, is actively engaged in an activity that involves the Town's decision making processes. "Decision-making processes" is broader than just voting and includes being involved with discussions or any other aspects of any decisions the Town makes, such as contracting, sales, purchases, permitting, and zoning.

When a conflict of interest arises, the Town official knowingly involved must immediately refrain from participating in any manner in the Town's decision-making processes on the matter as a Town official. In addition, the Town official must declare the specific nature of the interest in the Town's official records.

...

...Members of the Town Council are cautioned not to interfere with that authority by giving orders or explicit directions or requests, publicly or privately, regarding Town matters to any subordinates of the Town Manager.

...

No Council member or public official shall, except as allowed by law or required in the performance of his or her duties, or in the course of any conduct reasonably believed to be in the performance of his or her duties, disclose confidential information, gained by reason of his or her official position, nor shall he or she otherwise use the information for his or her personal interest....

Town of Tusayan Ethics Policy, enacted 10/5/2011 (emphasis added).

Councilman Fitzgerald is in violation of the Town of Tusayan Ethics policy for a number of reasons. First and foremost, he has a conflict of interest relating to all development and annexation proposals, contracts, and resolutions involving Stilo. Recently, the Tusayan Town Council considered and voted on five resolutions relating to development and annexation that were supported, in part, by Stilo. Councilman Fitzgerald adamantly opposed passage of the

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resolutions and, consistent with his position, he voted against them at the Town Council meeting at which they were presented. However, he was in the minority and the majority of the Town Council voted to pass the resolutions. In an unprecedented and highly unusual move, Councilman Fitzgerald filed a Statement of Organization to open a political committee to advocate for the passage of five referenda relating to resolutions that were passed by the Town of Tusayan. He is the committee chairperson and the person who took out referenda petitions to call a referendum election to reverse the actions of the Town Council. He did all of this while also serving as a Councilman on the Town Council.

There can be no doubt that Councilman Fitzgerald's conduct constitutes a conflict of interest. As expressly defined in the Town of Tusayan Ethics Policy, Councilman Fitzgerald has a conflict of interest because he is "no longer able to remain impartial or objective in choosing between the interest of the Town and the interest of [him]self." Indeed, he is leading the effort to undermine and reverse the actions of the Town Council which, upon a majority of votes, passed resolutions in the interest of the Town.

In addition, Councilman Fitzgerald has violated the Town of Tusayan Ethics Policy by failing to recuse himself from any "discussions or any other aspects of any decisions the Town makes, such as contracting, sales, purchases, permitting, and zoning" that involve or relate to Stilo. Upon information and belief, Councilman Fitzgerald has inserted himself in the decision-making process and has contacted the Town Manager on a number of occasions to obtain information and provide his opinion on matters before the Council relating to Stilo. Not only should Councilman Fitzgerald recuse himself from these matters in light of his conflict of interest, but he should refrain from using his position or office for personal gain or inappropriate influence.

The Town of Tusayan Ethics Policy clearly prohibits undue influence on subordinates and disclosure or use of confidential information gained through official means. Councilman Fitzgerald has violated both provisions of the Ethics Policy. Accordingly, he must be censured.

Further, Councilman Fitzgerald has also engaged in other conduct unbecoming of a public official. Namely, he has misused his position as a United States Postal Service ("USPS") contracted provider to gain information about the political positions of various residents in Tusayan and has used such information to further his own political agenda.

As you know, Councilman Fitzgerald is solely responsible for providing postal services at the General Store in Tusayan pursuant to a contract with USPS. Upon information and belief, he is engaging in prohibited political activity while on duty and is misusing his position to advance his personal political agenda. For example, Councilman Fitzgerald solicited signatures for recall petitions for Town Council members from customers while on duty. Indeed, on or about August 16, 2011, Councilman Fitzgerald was tape-recorded while on duty at the General Store admitting that he "was collecting signatures here at the window" at the General Store.

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Councilman Fitzgerald was not only the individual responsible for leading the effort to recall three of the five members of the Town Council by taking out recall petitions with the Town of Tusayan, but he was the primary person responsible for circulating petitions and collecting signatures. He did so while on duty at the General Store. His conduct not only violates the Town of Tusayan Ethics Policy because he sought to recall members of the Town Council while serving as a Councilman, but it is conduct unbecoming of a public official.

In addition, multiple residents in Tusayan reported that they previously experienced problems with mail delivery (both sending and receiving) relating to political and/or election-related mail. One resident reported that she discovered she did not receive a piece of election-related mail addressed to her when she was informed it was posted on the bulletin board outside the General Store with handwritten comments and scribbling defacing the mail. Others also complained that they requested, but never received, early voting ballots to vote by mail for the incorporation election. Upon further inquiry, these residents were informed by the Coconino County Recorder's Office that their early ballots had been returned as undeliverable by the Tusayan Post Office.

Based on the foregoing, we believe it is imperative that you, the Town Council, or the Town Attorney take immediate action against Councilman Fitzgerald for his violations of the Town of Tusayan Ethics Policy and for his general misuse of authority. Specifically, we request that you (1) prohibit Councilman Fitzgerald from participating in or voting on any proposals, contracts, or legislation relating in any way to Stilo; (2) screen Councilman Fitzgerald from any information, files, or discussions of the Town Council that may reveal confidential information about any proposals, contracts, or legislation relating to Stilo; (3) formally censure Councilman Fitzgerald for violating the Town of Tusayan Ethics Policy; and (4) provide education and training to Councilman Fitzgerald about the Town of Tusayan Ethics Policy, conflicts of interest, and requirements for recusal. By copy of this letter, we are also notifying Councilman Fitzgerald's employer, Delaware North, and Representative Paul Gosar of our serious concerns and our request for immediate action.

If you have any questions, please do not hesitate to call me at 602-224-0999.

Sincerely,



Roopali H. Desai

RHD:slm

cc: The Honorable Paul Gosar
Royal Johnson, COO, DNC Parks & Resorts, Inc.