



# California Fair Political Practices Commission

October 24, 1985

George Logan  
City Attorney  
750 Bellevue Road  
Atwater, CA 95301

Re: Your Request for Advice  
Our File No. A-85-188

Dear Mr. Logan:

Thank you for your letter requesting advice concerning the duties of Atwater City Councilmembers, Cardoza, Olzack and Rogers under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup> This letter confirms the advice I gave you in our telephone conversations of September 6, and September 23, 1985.

## QUESTION

You have informed us that the City of Atwater is considering building a community center. The initial decision facing the City Council when you requested advice was the location of the proposed community center. Two potential sites were under consideration. The first site, Site 1 on the map you provided, is currently the location of a City park. The second site, Site 2 on the map you provided, is within 600 feet of Parcel 1, but is privately owned.

You have asked whether the decision on the location of the proposed community center, and subsequent decisions concerning financing and design of the project, present a conflict of interest for three members of the Atwater City Council who have interests in real property in the immediate vicinity of proposed Sites 1 and 2. The three members of the City Council and their property interests are as follows:

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise specified.

1. Councilmember Dennis Cardoza works for his parents and has earned more than \$250 from his parents in the preceding 12 months. Mr. Cardoza's parents own an undeveloped parcel, Parcel 2 on the map you provided, part of which is within the boundaries of proposed Site 2. This undeveloped parcel is also within approximately 150 feet of proposed Site 1.

2. Councilmember Gregory R. Olzack owns a 50 percent interest in a parcel of real property, Parcel 3 on the map you provided, which is currently leased out for use as a liquor store. This property is located within 500 feet of proposed Site 1, and is adjacent to proposed Site 2.

3. Councilmember Richard Rogers owns a parcel of real property, Parcel 4 on the map you provided, and operates a car wash facility at that location. This property is located approximately 900 feet from proposed Site 1 and approximately the same distance from proposed Site 2.

The proposed community center would consist of a multi-purpose room, possibly with a stage, to be used for events such as dining, sports, dancing and concerts. The facility would also include restrooms, a kitchen, administration area, storage space, and a social hall for senior citizens. If funds permit, a teen room and crafts room would be added. the funding available for the project is approximately \$800,000 to \$1,000,000.

#### CONCLUSION

Councilmembers Cardoza and Olzack must disqualify themselves from participating in the initial decision concerning the location of the proposed community center. Councilmember Rogers may participate in that decision. As to future decisions concerning the financing or design of the project, Councilmembers Olzak and Rogers may participate in those decisions, but Councilmember Cardoza is required to disqualify himself from participating in basic decisions such as financing. Councilmember Cardoza may participate in other decisions concerning matters which are not crucial to the progress of the community center project.

#### ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to influence any governmental decision in which he knows or has reason to know he has a financial interest. A public official has a financial interest

in a decision if it is reasonably foreseeable that the decision would have a material financial effect, distinguishable from the effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(a)-(e).

The Commission has adopted regulations which specify when the reasonably foreseeable effect of a decision will be considered material. These regulations are contained in 2 Cal. Adm. Code Sections 18702, 18702.1 and 18702.2 (copies enclosed), and set forth different tests depending on the type of financial interest which would be affected.<sup>2/</sup>

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<sup>2/</sup> The Commission is also considering adopting several new regulations which would further define materiality for certain types of decisions, such as redevelopment decisions, or for certain types of financial interests, such as leasehold interests or businesses owning real property. See enclosed notice for regulations 2 Cal. Adm. Code Sections 18702.5, 18702.6 and 18702.9.

The following discussion of each Councilmember's situation is organized with regard to the type of decision concerning the location of the proposed community center. I shall first discuss whether any of the three Councilmembers may participate in the decision concerning the location of the proposed community center. Then, I shall discuss whether any of the three Councilmembers may participate in decisions regarding the financing or design of the community center project once the site has been chosen.

With respect to Councilmember Cardoza's financial interests, he has received \$250 or more in the preceding 12 months from his parents; therefore, his parents are a source of income to him and he must refrain from participating in any decision which could have a material financial effect on his parents. Councilmember Cardoza's parents own undeveloped property which is part of proposed Site 2, and which is within approximately 150 feet of proposed Site 1. An effect on Councilmember Cardoza's parents would be considered material if it is a significant effect. 2 Cal. Adm. Code Section 18702(b)(3)(D). Any decision which could substantially affect the use and enjoyment, or the fair market value, of Councilmember Cardoza's parents undeveloped property would therefore be considered to have a material financial effect on the Councilmember's parents. So long as Councilmember Cardoza's parents' property is being considered for acquisition by the City for the proposed community center, Councilmember Cardoza must disqualify himself from participating in any decisions about site selection. Furthermore, due to the proximity of proposed Site 1 to Councilmember Cardoza's parents' property, it is likely that the property's fair market value, or the use and enjoyment of the property, could be significantly affected by the location of the community center on proposed Site 1. Accordingly, Councilmember Cardoza would be prohibited from participating in decisions about site selection so long as either Site 1 or Site 2 is being considered for the proposed community center.

With regard to Councilmember Olzack's situation, he has an interest in real property located within 500 feet of proposed Site 1 and adjacent to proposed Site 2. Commission regulation 2 Cal. Adm. Code Section 18702(b)(2) provides that the effect of a decision on an official's interest in real property will be considered material if it is reasonably foreseeable that the decision will increase or decrease:

(A) The income producing potential of the property by the lesser of:

1. One thousand dollars (\$1,000) per month;  
or
2. Five percent per month if the effect is fifty dollars (\$50) or more per month; or

(B) The fair market value of the property by the lesser of:

1. Ten thousand dollars (\$10,000); or
2. One half of one percent if the effect is one thousand dollars (\$1,000) or more.

2 Cal. Adm. Code Section  
18702(b)(2)(A) and (B).

We think that the location of the proposed community center on Site 2, which is adjacent to Councilmember Olzack's property, could result in a material change in the value of Councilmember Olzack's property. Therefore, Councilmember Olzack must disqualify himself from participating in decisions about the choice between Site 1 and Site 2 as the location of the proposed community center. It is also important to note that because Councilmember Olzack's property is leased for use as a liquor store, Councilmember Olzack has other financial interests which could be affected by the proposed community center decision. Specifically, Councilmember Olzack has a 50 percent ownership interest in a business entity (which rents the property to the liquor store) as a result of leasing the property to a third party. Also, the third party lessee is a source of income to Councilmember Olzack. Section 82030(a). Since we have already concluded that Councilmember Olzack must disqualify himself from the decision on site selection, it is unnecessary to consider whether that decision would have a reasonably foreseeable effect on these other financial interests. However, whether the financing or design decisions could materially affect any of Councilmember Olzack's financial interests will be discussed below.

With regard to Councilmember Rogers, he has an interest in real property located approximately 900 feet from both proposed community center sites, and operates a car wash facility on that property. Therefore, Councilmember Rogers has an interest in real property and an ownership interest in a business entity (his car wash business). Due to the distance of Councilmember Rogers' property from both proposed community center sites, we conclude that it is not reasonably foreseeable that the decision regarding the location of the community center would

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materially affect the value of his real property. As to whether the decision could have a material financial effect on Councilmember Rogers' car wash business, it is necessary to apply regulation 2 Cal. Adm. Code Section 18702.2(g), which provides that an increase or decrease of \$10,000 in the gross revenues of Councilmember Roger's car wash business in a fiscal year would be considered material. Due to the distance of the car wash business from the proposed community center sites, and the lack of any foreseeable change in revenues of the car wash business as a result of the location of the community center at one of the proposed sites, we conclude that Councilmember Rogers may participate in the decision on the location of the community center.

I informed you, by telephone, of these conclusions on September 6, 1985. Subsequently you advised me that Councilmembers Cardoza and Olzack disqualified themselves from participating in the decision regarding the location of the proposed community center, and that the remaining three members of the City Council selected Site 1 as the site for the community center. You then requested advice concerning the application of Section 87100 to Councilmembers Cardoza, Olzack, and Rogers with regard to future decisions concerning the community center project, such as funding or design decisions. On September 23, 1985, I provided the advice below.

I advised you that Councilmember Cardoza should continue to disqualify himself from participating in major decisions concerning the community center project. Major decisions would include the financing decisions or any other basic decision which could determine whether or not the proposed community center is built. This conclusion is based on the fact that Councilmember Cardoza's parents own undeveloped real property which is located within 150 feet of the site selected for the proposed community center. In our opinion, the value of undeveloped real property is particularly likely to be significantly affected by the location of a project such as the proposed community center, especially when the undeveloped property is as close as 150 feet from the project. However, Councilmember Cardoza would not be required to disqualify himself from participating in all decisions concerning the community center project. Decisions such as which architect should design the project, the type of materials, the style of the design, or whether to spend additional money for purposes of the teen and crafts rooms, are implementing decisions in which Councilmember Cardoza may participate, unless it appears that one of those decisions will be of such significance that it could result in a cancellation of the community center project. Unless there is a specific decision pending before

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the City Council, I can provide only this general advice about Councilmember Cardoza's ability to participate in decisions about the community center project. If, in the future, you wish you can request specific advice about a particular decision, please contact me.

With regard to Councilmember Olzack's situation, it is necessary to consider whether decisions concerning the community center project are likely to have a material financial effect on the value of the Councilmember's real property interests or on any of his other financial interests stemming from the ownership of that property, specifically, the income he receives from the lease of the property, or the income of the liquor store which is a source of income to him. In this case, whether or not Councilmember Olzack must disqualify himself from participating in major decisions about the community center project, such as financing decisions, depends on the nature of the project, the type of use for which the property is suitable, the term of the lease to the present tenant, and the probable effects of the project on neighboring property values and businesses, but especially Councilmember Olzack's property and the liquor store business. I advised you that you were in the best position to consider all those factors and make a determination about whether the proposed community project could have a significant impact on Councilmember Olzack's financial interests. You replied that, in your opinion, the community center project would not materially affect Councilmember Olzack's financial interests. Based on that information, Councilmember Olzack would not be required to disqualify himself from participating in any decisions regarding the community center project after the City Council's decision to select Site 1 for the project location.

As to Councilmember Rogers, I again advised you that I did not foresee any material financial effect on Councilmember Rogers' financial interests as a result of decisions concerning the community center project. Therefore, Councilmember Rogers may participate in those decisions.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan  
Counsel  
Legal Division

KED:plh  
Enclosure

# City of Atwater



CIVIC CENTER  
750 BELLEVUE ROAD  
ATWATER, CALIFORNIA 95301  
PHONE (209) 358-5606

August 27, 1985

Jeanette E. Turvill, Legal Assistant  
Fair Political Practices Commission  
1100 K Street  
Sacramento CA 95814

Dear Ms Turvill:

In response to your letter of August 26, 1985, please be advised as follows:

1. The names and addresses of Councilmen A, B, and C are:

Councilman A           Dennis Cardoza  
                                  2025 Third Street  
                                  Atwater CA 95301

Councilman B           Gregory R. Olzack  
                                  2402 Bonjour Court  
                                  Atwater CA 95301

Councilmen C           Richard Rogers  
                                  1240 Winton Way  
                                  Atwater CA 95301

2.
  - a. Councilman Cardoza gains more than fifty percent (50%) of his income working for his parents. His parents own Parcel 2.
  - b. Councilman Olzack owns a fifty percent (50%) interest in Parcel 3 which is leased out to an unrelated party as a liquor store.
  - c. Councilman Rogers owns Parcel 4 and operates a car wash facility therein.
3. I have been specifically authorized by all three Councilpersons to obtain this advise on their behalf.

We have an absolute deadline of September 9, 1985, imposed by the State of California so your response prior to that date would be much appreciated.

Very truly yours,

  
George Logan  
City Attorney

GL:fmb

# City of Atwater



Aug 23 12 00 PM '85

CENTER  
750 BELLEVUE ROAD  
ATWATER, CALIFORNIA 95301  
PHONE (209) 358-5606

August 21, 1985

Fair Political Practices Commission  
1100 K Street  
Sacramento CA 95814

Attention: Legal Division

Gentlemen:

An advice letter is requested on the following set of circumstances.

The Atwater City Council is considering whether to build a Community Center Facility on Parcel 1 or Parcel 2 as shown on the attached map. Councilman A has a substantial financial interest in an undeveloped parcel shown as Parcel 2. Councilman B has a substantial financial interest in a liquor store located on Parcel 3 and Councilman C has a substantial financial interest in a car wash located on Parcel 4.

Questions:

1. Is Councilman A disqualified from voting on the issue of which parcel to select?
2. If Parcel 2 is eliminated as a site, is he still disqualified from voting on the issue concerning Parcel 1?
3. Are Councilmen B and C disqualified from voting on either site?
4. If all three are disqualified, what procedure should be followed to re-establish a quorum?

This matter is now pending and we are facing a critical deadline in State grant procedures; so your immediate response would be appreciated.

Very truly yours,

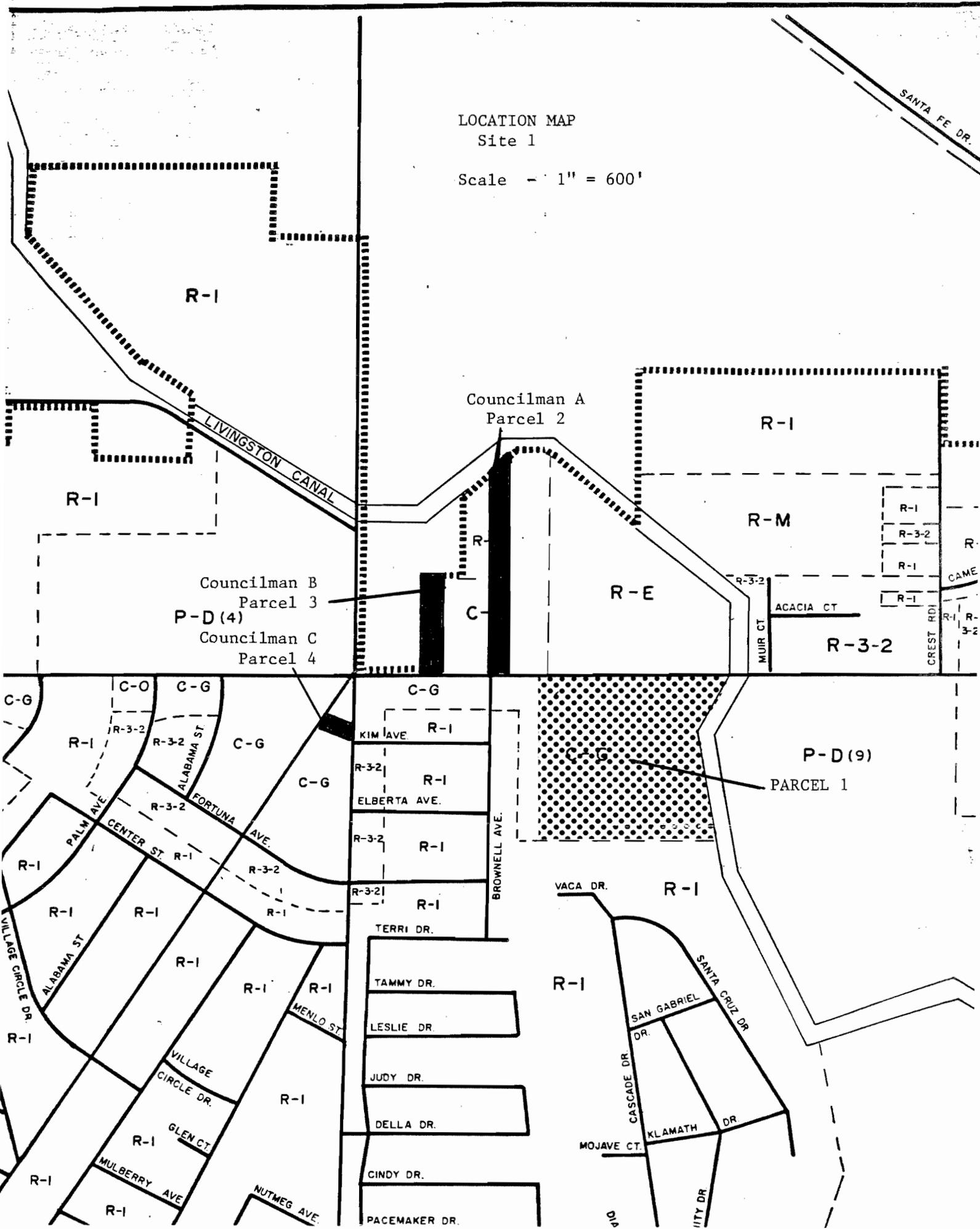
*George Logan*  
George Logan  
City Attorney

GL:fmb

Attachment

LOCATION MAP  
Site 1

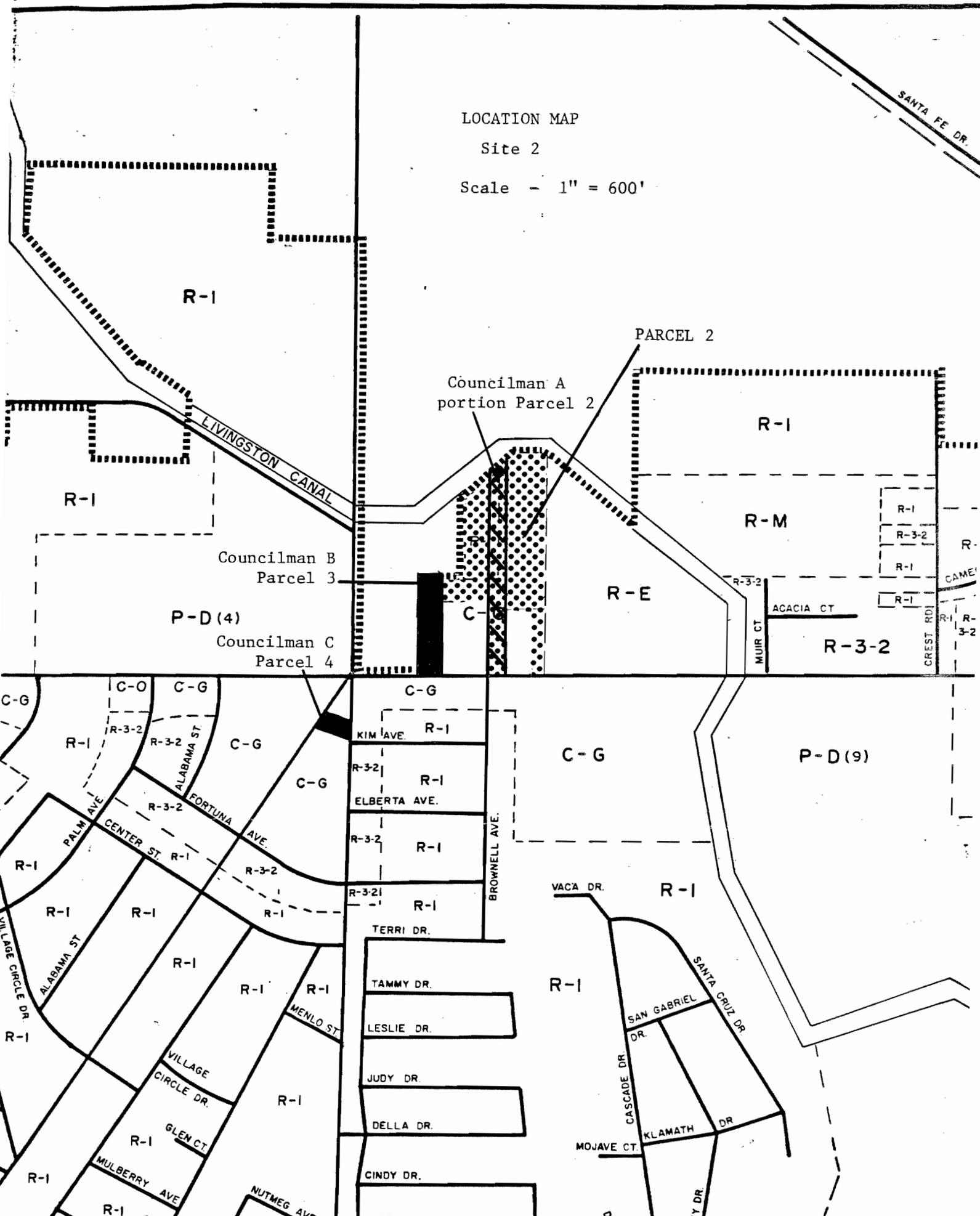
Scale - 1" = 600'



LOCATION MAP

Site 2

Scale - 1" = 600'



# City of Atwater



SEP 20 2 53 PM '85

CIVIC CENTER  
750 BELLEVUE ROAD  
ATWATER, CALIFORNIA 95301  
PHONE (209) 358-5606

September 12, 1985

Fair Political Practices Commission  
1100 K Street  
Sacramento CA 95814

Attention: Ms Donavan

Subject: Councilmen Cardoza, Olzack, and Rogers

Gentlemen:

Pursuant to your request, enclosed please find a description of the proposed Community Center facility.

At the meeting of September 10, 1985, Councilmen Cardoza and Olzack disqualified themselves and the remaining three members selected Parcel No. 1 as the site for the Center.

Please advise as to the disqualification of any of the three Council Persons as to future votes on the funding, design, etc. of the Center.

Very truly yours,

  
George Logan *fm*  
City Attorney

GL:fmb

Attachment

ATWATER COMMUNITY CENTER

DESIGN COMMITTEE

OUTLINE OF REQUIREMENTS FOR ARCHITECT  
AUGUST 26, 1985

1. Multi-purpose for 600 dining - seat 900  
Storage for table and chairs  
Utility Floor  
Divisible into 4-6 sections  
24' ceilings  
    Functions:  
        Dining  
        Sports  
        Dancing  
        Concert
2. Stage; (code defined Platform)  
    Restrooms with dressing room  
    Storage  
    Pull down screen  
    Adjacent to multi-purpose room
3. Kitchen  
    Space for full service kitchen (stubs for full service)  
    First phase - minimum catering  
    Second phase - Expand to full service  
    Centrally located for expansion
4. Bathrooms  
    For multi-purpose room (10 fixtures for male & 20 for female)  
    For expansion)
5. Storage  
    2 rooms 10' x 12'
6. Administration Area  
    Reception 2 - 3 people with work area  
    Offices - 3 each 10' x 10'  
    One room 10' x 12' for multi-purpose to serve as main entrance  
    (Foyer)
7. Lounge  
    For seniors - 30-50 people (social hall)  
    Off or part of Administration wing
8. Teen Room  
    30-50 teens  
    Pool Table/Ping Pong  
    Away from Senior Lounge