



California Fair Political Practices Commission

July 20, 1987

Susan M. Schectman
City Attorney
City Hall
170 Santa Maria Avenue
Pacifica, CA 94044

Re: Your Request for Advice
Our File No. A-87-159

Dear Ms. Schectman:

You have requested advice on behalf of three City of Pacifica Planning Commissioners, Stewart Cross, John Curtis and John Lucia, concerning their duties under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

May Commissioners Cross, Curtis and Lucia participate in decisions concerning a rezoning study of the West Sharp Park area in Pacifica?

CONCLUSION

Commissioners Cross and Curtis must disqualify themselves if the decisions would materially increase or decrease the fair market value of Councilmember Cross' real property. Commissioner Lucia must disqualify himself if his property is to be rezoned or if the decisions would materially increase or decrease the fair market value of his real property interests. We do not have sufficient information to determine if the commissioners' properties will be materially affected. However, the analysis below will provide guidance to assist you in making the necessary determinations.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

FACTS

State law requires that city zoning ordinances be consistent with the general plan of the city. (Section 65860.) Numerous parcels in an area of Pacifica commonly known as West Sharp Park are currently inconsistent with the city's general plan designations for those parcels. In order to come into compliance with state law, the city is embarking upon a rezoning study of West Sharp Park.

Approximately 275 parcels in the West Sharp Park area are expected to be rezoned as part of the study. Most of the area is developed. However, there are some undeveloped infill lots.

Commissioners Cross and Lucia own property in the West Sharp Park area. Commissioner Curtis rents a house in the area and also has received \$250 or more in income from Commissioner Cross' business during the past 12 months.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his immediate family, or on, among other interests:

(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.

Section 87103(b) and (c).

We now discuss the economic interests of each of the three planning commissioners and their duties under the conflict of interest provisions of the Act.

Commissioner Cross

Commissioner Cross owns one parcel of real property in the West Sharp Park area. The property consists of one substandard-size lot developed with a single-family residence in which Commissioner Cross' mother resides. Most of the adjacent property is already developed; however, the development may not be consistent with the city's current general plan.

The proposed decision is to down-zone three parcels of already developed property on the same block as Commissioner Cross' parcel. The parcels are currently zoned for high density, multi-family residential use. The change in zoning would permit only medium density use (duplexes). In addition, it is proposed that nine parcels on the next block will be down-zoned. Seven of these parcels are already developed and will be down-zoned from high density to single-family residential use. Two of the parcels are vacant; one of these will be down-zoned from high density to single-family residential use and the other will be down-zoned from high density to medium density use.

A commercial strip runs through the center of the West Sharp Park area and some of this property also will be rezoned. Most of the parcels in the commercial strip are developed. The current zoning is C-3 (service commercial district, which permits light industry such as auto wrecking or welding). The proposed zoning of the portion of the commercial strip near Commissioner Cross' property is C-2 (which generally permits retail and office use).

Commissioner Cross may participate in decisions to rezone the parcels in the West Sharp Park area unless those decisions would foreseeably and materially affect his own property interests. We do not have sufficient information about the community in question to predict the effect of the zoning changes on Commissioner Cross' real property. Accordingly, we provide the following general guidelines for you and Commissioner Cross to apply.

Foreseeability

An effect is considered reasonably foreseeable if there is a substantial likelihood that it will occur. Certainty is not required; however, if an effect is only a mere possibility, it is not reasonably foreseeable. (Thorner Opinion, 1 FPCC Ops. 198 (75-089, Dec. 4, 1975), copy enclosed.)

Materiality

Regulation 18702(b)(2) (copy enclosed) contains guidelines for determining whether the reasonably foreseeable effect of a decision on an official's real property will be considered material. These materiality guidelines vary with the value of the real property in question. According to Commissioner Cross' most recent statement of economic interests, the real property in question is valued at more than \$100,000, but we do not know its actual value. If the fair market value of the property is \$200,000 or less, a \$1,000 increase or decrease in value would be considered material. If the fair market value is between \$200,000 and \$2,000,000, an increase or decrease of one-half of one percent of the value of the property would be considered material. If the fair market value of the property is \$2,000,000 or more, a \$10,000 increase or decrease in value would be considered material. (Regulation 18702(b)(2).) You should determine the actual value of the property and then decide which of these materiality tests applies. If a material effect is reasonably foreseeable as a result of the zoning changes, Commissioner Cross must disqualify himself from participating in the zoning changes.

Commissioner Curtis

Commissioner Curtis resides in the West Sharp Park area. He is a tenant in a month-to-month tenancy. Regulation 18233 (copy enclosed) provides that a periodic tenancy of one month or less is not an interest in real property for purposes of the Act. Accordingly, his residence would not be the basis for his disqualification.

Commissioner Curtis also is a former employee of Commissioner Cross' business. In our telephone conversation, you advised me that Commissioner Cross' business is a closely-held corporation owned and controlled by Commissioner Cross and his spouse. The corporation has provided \$250 or more in income to Commissioner Curtis during the past 12 months. Because Commissioner Cross owns and controls the corporation, we also consider Commissioner Cross to be a source of income to Commissioner Curtis. (See Waggoner Advice Letter, No. A-85-146, Hentschke Advice Letter, No. A-80-069, copies enclosed.) Accordingly, if the zoning changes would foreseeably and materially affect either Commissioner Cross or his corporation, Commissioner Curtis must disqualify himself from participating in those decisions.

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Commissioner Cross' corporation is located outside of Pacifica and would not foreseeably be affected by the zoning changes in West Sharp Park. Therefore, we need analyze only the effect of the decisions on Commissioner Cross.^{2/}

Regulation 18702(b)(3) provides that for sources of income which are not "business entities" (i.e., individuals and nonprofit organizations), an effect is material if it is "significant." There is no specific standard for determining whether a particular effect on Commissioner Cross would be considered significant; however, the standards set forth in Regulation 18702(b)(2) are helpful as guidelines. (See, Katz Advice Letter, No. A-84-112; Sprague Advice Letter, No. A-86-260, copies enclosed.)

If the decisions would foreseeably and materially affect the fair market value of Commissioner Cross' real property, the effect on Commissioner Cross would be foreseeable and material and it would require Commissioner Curtis' disqualification. However, Commissioner Curtis' disqualification is required only for the 12-month period after receipt of \$250 or more in income from Commissioner Cross. You have informed us that Commissioner Curtis is no longer employed by Commissioner Cross. If Commissioner Curtis will receive no more income from Commissioner Cross, his disqualification is required only for 12 months after his receipt of the last payment which made his total income from the business \$250 or more.

Commissioner Lucia

Commissioner Lucia owns two parcels of real property in the West Sharp Park area. These parcels are both designated for commercial use and are fully developed. One parcel is currently zoned C-3 (service commercial district, light industry) and would be down-zoned to C-2 (retail and office). Commissioner Lucia's other parcel currently is zoned C-1 (neighborhood commercial). No change in the zoning of his second parcel is proposed.

^{2/} Commissioner Curtis' statement of economic interests indicates that he has an "investment" in Commissioner Cross' business. The investment interest is described as participation in profit-sharing and retirement programs of the business. From this description, it is not clear that Commissioner Curtis has an "investment" in the business, as that term is defined in Section 82034. We suggest that Commissioner Curtis discuss his "investment" with you or with our Technical Assistance and Analysis Division (916/322-5662) to determine whether he in fact has a reportable investment in the business.

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Regulation 18702.1(a)(3) (copy enclosed) provides that an official must disqualify himself from any decision to change the zoning of real property in which he has an interest. Thus, Commissioner Lucia must disqualify himself from the decision to change the zoning on his one parcel. In addition, if the other zoning changes to nearby parcels would affect the value of Commissioner Lucia's property by a material amount, as described in Regulation 18702(b)(2), Commissioner Lucia also is disqualified from participating in those decisions.

Structuring Decisions to Minimize Conflicts of Interest

In your letter, you requested guidance on the possibility of proceeding with the rezoning decisions in segments, so as to permit the commissioners to participate in the decisions to rezone areas further removed from their property. You suggested that Commissioner Cross might remove himself from discussing the northern one-third of the area, but participate in the decisions on the remainder.^{3/} Similarly, Commissioner Lucia would remove himself from any actions concerning the center one-third of the area, but participate in the decisions on the other two-thirds. In the past, we have endorsed such an approach to decisionmaking, if the nature of the decisions permits a piecemeal approach. (See, Huffaker Advice Letter, No. A-86-343; Cook Advice Letter, No. A-83-163, copies enclosed.)

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

Sincerely,

Diane M. Griffiths
General Counsel

Kathryn E. Donovan

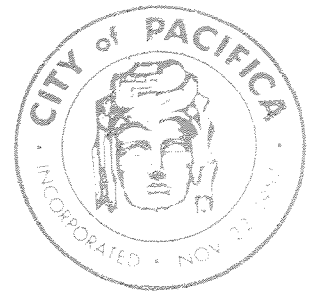
By: Kathryn E. Donovan
Counsel, Legal Division

KED:km
Enclosures

^{3/} Based on the above analysis, if Commissioner Cross is required to disqualify himself from the decisions, Commissioner Curtis is similarly disqualified until 12 months have passed from the time Commissioner Curtis last received \$250 or more in income from Commissioner Cross.

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Scenic Pacifica

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June 10, 1987

Fair Political Practices Commission
Legal Division
P. O. Box 807
Sacramento CA 95814

Re: Request for Advice Letter

Dear Sir or Madam:

Please provide me with an Advice Letter regarding a potential conflict of interest question concerning three City of Pacifica Planning Commissioners, Commissioners Cross, Lucia and Curtis. These Commissioners have authorized me to seek written advice from your agency. The following is a summary of the facts and the questions presented.

Government Code Section 65860 requires that city zoning ordinances be consistent with the general plan of the city. Numerous parcels in an area of Pacifica commonly known as "West Sharp Park" are current inconsistent with the City's general plan designations for those parcels. In order to come into compliance with Section 65860, the City is embarking upon a rezoning study of West Sharp Park.

A map of the West Sharp Park area has been enclosed for your reference. The West Sharp Park area is outlined in yellow. The map reflects the proposed zoning in the shaded areas. The white areas reflect existing zoning. The West Sharp Park area which will be part of the zoning study consists of approximately 83 acres and 468 parcels of varying sizes. Approximately 275 parcels are expected to be rezoned as a part of the study. Most of the West Sharp Park area is developed. However, there are some undeveloped infill lots.

Commissioners Cross and Lucia own property in the West Sharp Park area. Commissioner Curtis rents a house in the West Sharp Park area.

The purpose of this request for advice is to determine whether any of these three Commissioners has a potential conflict of interest which would require disqualification in either informal study sessions or formal Planning Commission action on the West Sharp Park rezoning proposal. Each of the Commissioner's interest will be discussed in order.

Commissioner Cross

Commissioner Cross' property appears on the enclosed map in red. Commissioner Cross' property consists of one substandard lot of approximately 2,500 square feet. The lot is developed with a single family residence and Commissioner Cross' mother resides there. Most of the adjacent property is already developed.

The anticipated rezoning in the West Sharp Park area in the vicinity of Commissioner Cross' property is as follows: The general plan currently calls for a combination of low, medium and high density residential uses in this area, with the exception of the commercial strip which runs through this area. Three parcels on Carmel Avenue on the same block as his property are proposed to be down-zoned from R-3 (high density, multi-family residential district) to R-2 (medium density, duplexes). These parcels are already developed. Nine parcels on the next block will be also down-zoned. Eight parcels will be down-zoned to R-1 and one parcel will be down-zoned to R-2. These parcels appear between Carmel Avenue and Santa Maria, below Commissioner Cross' property. The parcel to be rezoned to R-2 is vacant as is one of the parcels to be rezoned R-1.

The rezoning I have just described is typical of what will be done throughout the West Sharp Park area. Other parcels on the east side of Cross' property may also be down-zoned to R-2 or R-1. Most of these parcels are developed.

Additional rezoning will involve the center commercial strip which is currently a combination of commercial zones. One segment of the strip will be down-zoned from C-3 (service commercial district which permits light industry such as auto wrecking or welding) to C-2 (community commercial which permits generally retail and office). Most of these parcels are also developed.

Commissioner Lucia

Commissioner Lucia owns two parcels which are marked in blue on the enclosed map. The general plan designation for this strip is commercial. The existing zoning for the commercial strip is a combination of C-1, C-2 and C-3. There are vacant parcels in the commercial strip. The larger of the two parcels owned by Commissioner Lucia is in a segment currently zoned C-3 and will be down-zoned to C-2 under this proposal. There is one vacant parcel in this segment. The smaller of the parcels owned by Commissioner Lucia is zoned C-1 and is currently proposed for no change. Commissioner Lucia's lots are fully developed.

Commissioner Curtis

Commissioner Curtis' residence appears in green. He is a tenant on an oral, month-to-month tenancy and has no other property rights. My interpretation of FPPC regulations is that he has no property interest sufficient to create a conflict of interest in this situation.

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However, in addition, Commissioner Curtis is a former employee of Commissioner Cross' business. Commissioner Cross' business is not located in Pacifica.

Commissioner Cross' business is a corporation and has been a source of income of over \$250.00 to Commissioner Curtis in the past year. Would this otherwise disqualify Mr. Curtis from making a decision which might have a material financial effect on Mr. Cross' property?

Although this rezoning proposal is largely to come into compliance with Government Code Section 65860, different choices may potentially be made. For example, the Commission could decide to change the general plan and retain existing zoning.

If the staff concludes that any of the Commissioners have a conflict requiring disqualification, I would appreciate your additional advice on whether the City could allow the disqualified Commissioner to participate in rezoning studies of areas further removed from his property. For example, could the City address this problem by proceeding with the rezoning in segments? The West Sharp Park area could be drawn into one, two or three segments. Commissioner Cross could remove himself from discussing the rezoning of the northern one-third of the area. Similarly, Commissioner Lucia could remove himself from any actions concerning the center one-third of the West Sharp Park area. I would appreciate your advice on whether such an approach might allow Commissioner Cross or Lucia to participate if they might otherwise be disqualified.

I have tried to present you with a general outline of the rezoning proposal without inundating you with each individual parcel's status. If you require any further information, I would be happy to supply it. Please call me if you have any questions concerning this request.

I appreciate your assistance.

Very truly yours,



SUSAN M. SCHECTMAN
City Attorney

SMS:jh

Attachment

cc: Commissioner Stewart Cross
Commissioner John Curtis
Commissioner John Lucia
City Manager, Dan Pincetich

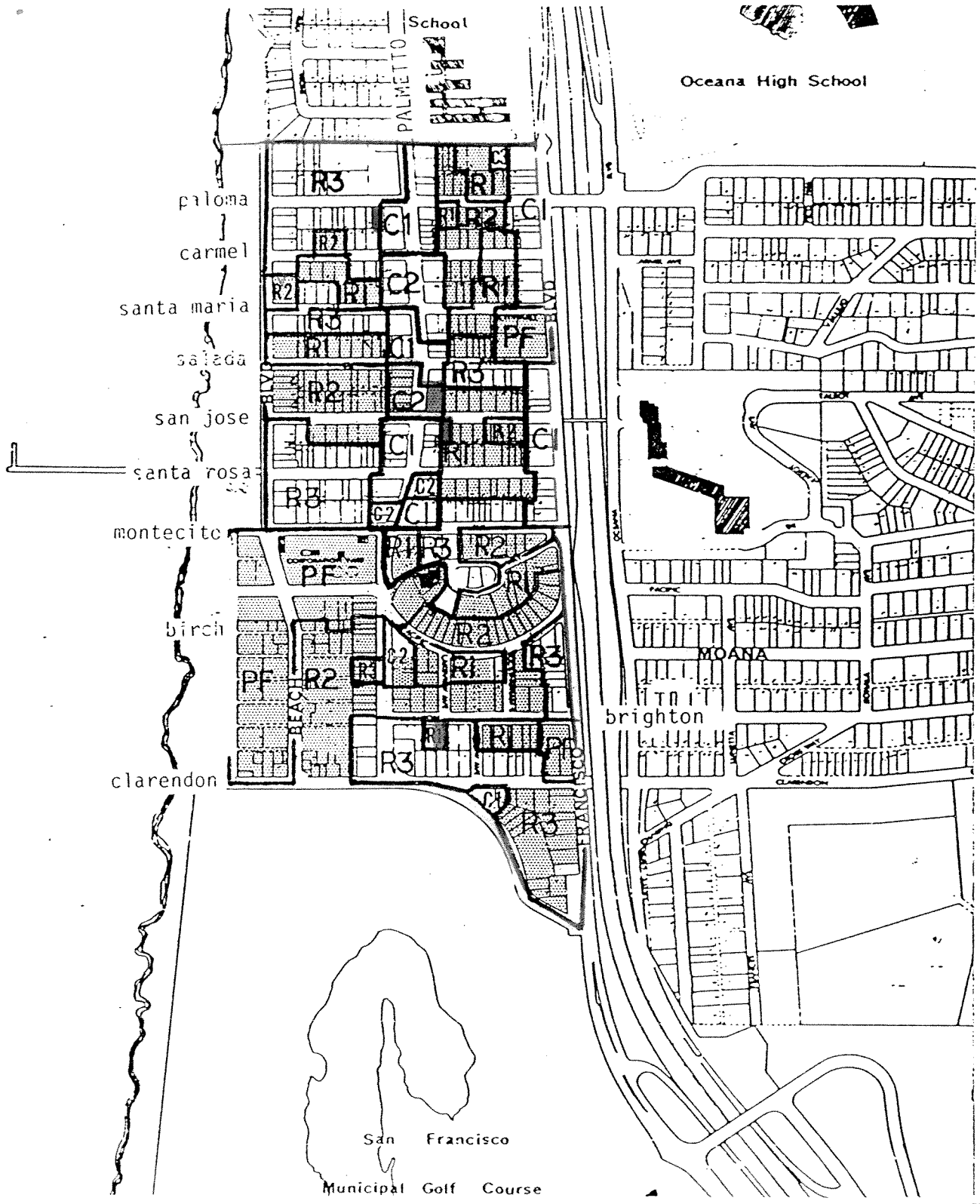


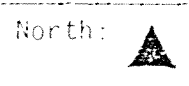
EXHIBIT:
Proposed Zoning and Affected
Parcels

PROJECT:
West Sharp Park Rezone

Scale:
1" = 600'

LEGEND:

- R-1 - single family residential
- R-2 - two family residential
- R-3 - multiple family residential
- C-1 - neighborhood commercial
- C-2 - community commercial
- C-3 - service commercial
- P-F - public facilities
- designates parcels to be rezoned



To: File No. A-87-159

From: Kathy Donovan

Re: Additional information

On June 22, 1987, I received additional information from Sue Schectman, City Attorney of Pacifica, concerning her request for advice. This information concerned Planning Commissioner Curtis' employment with Commissioner Cross' corporation. Ms. Schectman informed me that Commissioner Cross and his spouse are the sole owners of the corporation. This information was material to the resolution of the conflicts analysis Ms. Schectman requested.



California Fair Political Practices Commission

June 12, 1987

Susan M. Schectman
City Attorney
City Hall
170 Santa Maria Avenue
Pacifica, CA 94044

Re: 87-159

Dear Ms. Schectman:

Your letter requesting advice under the Political Reform Act was received on June 12, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh
cc: Stewart Cross
John Curtis
John Lucia