



Correspondence is available for review in the Office of the City Clerk or on the City's Official Website at http://www.cityofsacramento.org/webtech/streaming_video/live_council_meetings.htm

Correspondence

Meeting of January 3, 2008

1. Item # 9 Land-Curtis Park Street Lighting Assessment District No. 2007-04 (Notice mailed on 11-14-07)

Please note correspondence has been received from many sources and duplications may have occurred.

a. Correspondence

1. Letter: from Craig K. Powell to Eileen Teichert (City Attorney)
2. Email: from Joe Cerullo Esq. to Craig K. Powell
3. Email: from Shirley Concolino (City Clerk) to Craig K. Powell
4. Email: from Shirley Concolino (City Clerk) to Craig K. Powell
5. Letter: from Joe Cerullo Esq. to Craig K. Powell

Previously submitted correspondence is available for review at the City of Sacramento Website at http://sacramento.aranicus.com/ViewPublisher.php?view_id=7 October 16th Agenda Item # 28 or the City Clerk's office at Historic City Hall- 915 I Street.

November 28, 2007

VIA FAX & FIRST CLASS MAIL

Ms. Eileen M. Teichert,
City Attorney
Office of the City Attorney
City of Sacramento
915 I Street, 4th Floor
Sacramento, CA 95814

Re: Protest of Land/Curtis Parks Streetlighting Assessment Election

Dear Ms. Teichert:

I am the general partner of Powell Properties, L.P., which owns the 23-unit apartment complex known as the "Villas Encantadoras" located at 2709, 2715 and 2725 21st Street, Sacramento, CA 95822. Please treat this letter as our omnibus protest of the Land/Curtis Parks Streetlighting Assessment election that is currently underway in our community and is scheduled to be completed on January 3, 2008, as contemplated by Proposition 218. This letter also constitutes our formal demand that this election be immediately *cancelled* and rescheduled *only* after the serious law violations evident in the conduct of this election are fully corrected and are not repeated in any rescheduled election on this matter.

In the brief twelve days since this election began, we have discovered numerous and manifest improprieties, irregularities and illegalities in the City's conduct of this election, each of which is described in detail below.

The Lack of Prior Written Notice of this "Pop" Election Deprived Measure Opponents of Their Constitutional Right to Communicate with Early Voters and Deprived Early Voters of Their Constitutional Right to Hear the Arguments of Measure Opponents.

A week ago Thursday, November 15, 2007, we received a ballot in the mail for an assessment election relating to proposed streetlights in the Land Park and Curtis Park neighborhoods. This was the first we and many, many of our neighbors had heard of this "pop" election.

Ms. Eileen Teichert
November 28, 2007
Page 2

We, as property owners, received absolutely no prior notice from the City that an election on this matter was about to be held. While the proponents of this election, including the City, have known for many, many months that this election was coming, we property owners have had absolutely no prior written notice. This has entirely deprived the opponents of this measure of the opportunity to communicate with their neighbors and to campaign against this measure before the voters in this proposed district had already received their ballots and *were already voting*. This is unfair, undemocratic and a clear violation of the First Amendment rights of both: (1) the opponents who effectively had their voices muzzled until after voters were already casting their ballots; and (2) the early voters who have been significantly deprived of their right to receive information from *both* sides of this issue *before* they started casting their ballots.

Voters, including our firm, received their ballots on November 15th. We did not have a chance to write a letter to our neighbors, to have it printed in bulk (there are over 2,000 voters in this election), and to begin distributing our letter door-to-door to our neighbors until the next day, Friday evening, November 16, 2007. The voters had two full days to vote and mail back their ballots - all without voters having the opportunity to hear our view or the views of other property owners who have been handing out flyers opposing this measure. The measure proponents, on the other hand, knew precisely when this election was going to be held and were able to time their delivery of their campaign literature to voters to obtain the maximum impact on all voters just before the voting had begun.

You know as well as we do that a significant percentage of voters who end up casting ballots in this election will be folks who marked their ballots and mailed them back on the same day they received them (the non-procrastinating voters). Fundamentally, the failure of the City to provide property owners with advance written notice of this election allowed the proponents of this election (including the City) with the exclusive opportunity to communicate with voters during that crucial 24 to 48-hour period immediately following each voter's receipt of their ballot. The City's biased election process allowed the measure's proponents (who include the City itself) to effectively "embargo" early voters from any contact whatsoever from opponents of the measure.

There is not a judge in this land who would find that this deeply flawed process meets the "fundamental fairness" test demanded by the U.S. Constitution for the conduct of elections.

The Lack of Prior Written Notice of This Election Violated the Equal Protection Rights of Both Early Voters and Measure Opponents.

The City's unfair election procedure violates the "equal protection" rights of *both* early voters and measure opponents under the Equal Protection clause of the U.S. Constitution. The disparate treatment of early voters vs. later voters, with the former deprived of the opportunity that later voters have had to hear the views and argument of the measure's opponents, is not justified by any conceivable "compelling state interest" that could be advanced by the City, as required by long-established U.S. Supreme Court precedent. Similarly, there is no conceivable "compelling state interest" that the City could assert that would justify the disparate treatment of measure proponents and opponents, with proponents given the *de facto* exclusive opportunity to communicate with early voters while measure opponents were deprived of this same opportunity by the City's failure to provide prior notice of the election.

To employ an analogy, the City's failure to give voters advance written notice of the election was the equivalent of government calling a "pop" special election to fill an open seat in Congress caused by the resignation of an incumbent member of Congress and then not letting voters or potential candidates know in advance the specific date of the election or, worse yet, *not even letting them know that the member of Congress had resigned leaving an open seat.*

It is no answer for the City to say that Proposition 218 (which imposed on local government the obligation to conduct elections before they could impose assessments on real property) does not specifically compel the City to send out prior written notice to voters before the commencement of voting. Proposition 218 establishes an obligation on the City to conduct such elections and imposes certain minimal voter disclosure requirements before a City can impose an assessment. Proposition 218 does not and cannot supplant or supersede the requirements of the Due Process or the Equal Protection clauses of the U.S. Constitution.

The problems with this election do not stop there.

The City's Ongoing Refusal to Turnover the Mailing Addresses of Absentee Owners to Measure Opponents Unconstitutionally Deprives Measure Opponents of Their Right to Communicate With Absentee Property Owners and Absentee Owners' Rights to Hear the Arguments of Measure Opponents.

An estimated 25 to 30% of the voters in this election are absentee owners: folks who do not live or occupy the property that they own. The only way to communicate

with such voters is by mail. Over the past week, we have repeatedly asked City staffers for the mailing list that the City used to mail out the ballots and we have been repeatedly refused access to this list. We have been told that the list is "private." We have been told that the City Attorney's office has told City staffers that the City is under no obligation to provide measure opponents with a copy of the mailing addresses of voters. We were told the City obtained its mailing list from the Sacramento County Assessor's office.

We have directed City staff to the official website of the Sacramento County Assessor's office wherein it *specifically states* that the names and mailing addresses of property owners are a matter of public record. We have also pointed out to City staff that we have neither the manpower nor the time to do the laborious work of looking up the parcel numbers of each of the over 2,000 parcels in this proposed district and matching them up, one-by-one, with the names and mailing addresses of owners as they appear in the Assessor's records.

We recently received word that the City Attorney's office is reevaluating its position on the mailing list issue and that it would get back to us with its updated opinion two days ago or yesterday. It did not. Instead, we received word from an attorney in your office that he now may get back to us sometime this afternoon *if* he gets hold of "some information" that he needs. Voters are voting *now*. We submitted our public records request to the City a full week ago. There is simply no justification for any further delay in providing us with this public record. It unconstitutionally impairs our right to communicate with voters who are absentee property owners. The City's ongoing refusal also unconstitutionally impairs the rights of absentee property owners to hear the views and arguments of measure opponents.

The City's Long Delay in Releasing a Copy of the Petition Circulated by Measure Proponents Served to *Mask* the Petition's False and Misleading Statements Until After the City Council Had Approved the Election and After Early Voters Had Commenced Voting.

We are also deeply troubled by a report of improper conduct by City staff in the handling of another matter relating to this election. For several months, a homeowner in Land Park, John Boudier, repeatedly asked City staff to provide him with a copy of the petition that the proponents of this measure circulated to property owners. It is our understanding that it is established City policy to not initiate an assessment election for new streetlights unless and until a majority of the property owners in the proposed district sign a petition asking the City to conduct such an election.

Mr. Boudier suspected that the petition contained false or misleading statements and that these falsehoods may have induced property owners into signing the petition. For months City staffers stonewalled Mr. Boudier and came up with one excuse after another for why they could not provide him with a copy of the petition. Finally, on October 25, 2007, Mr. Boudier submitted to the City a formal public record request for a copy of the petition with the City. According to a signed receipt, City staff received his formal record request the following day, October 26th.

When Mr. Boudier did not receive a response to his request for almost three weeks, he called City staff on November 15th to inquire about the status of his request. He was told that a copy of the petition had been mailed to him on November 9th. Mr. Boudier elected to go downtown to personally pick up another copy of the petition from the City that very day - November 15th. That same day – six days after the City purportedly mailed the petition to him – Mr. Boudier finally received in the mail a copy of the petition.

Once he examined the petition, Mr. Boudier immediately discovered that it included not one but two materially false and misleading statements. First, the petition *understated by over 25 percent the cost of the assessment to property owners*. Secondly, it made the patently false statement that property owners would not be asked to vote on the assessment until “construction bids” were received and “actual costs were known” to voters. In fact, *no* construction bids have been received and *no one knows* what the actual costs of this project will be, as the City’s own web site acknowledges.

What is so troubling about this episode is that on November 13th, two days before Mr. Boudier’s belated receipt of the petition, the City Council approved the commencement of this election. The next day the City mailed out ballots to over 2,000 voters. The following day, November 15th – the day Mr. Boudier received a copy of the petition – voters received their ballots and commenced voting.

It is quite difficult to believe that it took the mails just one day to deliver over 2,000 ballots to voters, but it took the mails *six days* for a copy of the petition, purportedly mailed by City staff on November 9th, to reach Mr. Boudier. An honest City staff member on this project who was aware of Mr. Boudier’s numerous requests candidly admitted that she was “mortified” at the City’s stonewalling of his record requests.

By delaying delivery of the petition to Mr. Boudier until November 15th, he was deprived of the chance to testify at the City Council’s November 13th hearing on this matter and draw the Council’s attention to the petition’s material misrepresentations. Did

City staff, whose job it was to review and validate the petition, draw the Council's attention to the readily apparent misrepresentations contained in the petition? Apparently not, as the assessment election was approved by the Council at its November 13th meeting as part of its consent agenda with nary a dissenting voice.

Furthermore, the City's late delivery of the petition to Mr. Boudier deprived him of any opportunity to bring these misrepresentations to the attention of early voters in this election – and, consequently, deprived early voters of the opportunity to consider this highly relevant information. By the time Mr. Boudier received a copy of the petition, early voters had already marked their ballots and were mailing them back to the City.

The City has a duty to respond promptly to public record requests, a duty it failed to perform in this instance. That failure effectively deprived Mr. Boudier of his civil right to petition his government (in this case, the City Council) for a redress of grievances, a right guaranteed by the Bill of Rights. The City's inaction also deprived him of his First Amendment right to communicate highly relevant information to early voters and, correspondingly, deprived early voters of their First Amendment right to receive such information.

Given the City's multi-month delay in turning over the petition to Mr. Boudier until *after* the Council had approved the election and *after* over 2,000 ballots had already been mailed, and given the "six days" it supposedly took for the City's transmittal of the petition to reach Mr. Boudier by mail, a reasonable observer of these facts is compelled to ask the obvious question:

Was City staff's delay in handing the petition over to Mr. Boudier done knowingly and intentionally for the purpose of: (1) covering up the petition's readily apparent false and misleading statements; (2) keeping Mr. Boudier from challenging the legitimacy of the petition at the November 13th City Council meeting; and (3) keeping him from bringing these misrepresentations to the attention of early voters?

I do not have the answer of that question, but we do strongly believe that it is incumbent on the City to promptly initiate a full internal investigation of this matter and to find the answer to this very troubling question. If the City fails to commence such an investigation, we call upon the U.S. Attorney's Office and the Sacramento County Grand Jury to step in and conduct such an investigation. If a City staffer with intimate familiarity with the facts of this matter found herself compelled to admit that she was "mortified" by the City staff's actions in this matter, perhaps so should we all.

The City Has Failed to Take the Adequate Steps to Assure that All Eligible Voters Receive a Ballot.

If that were not enough, I personally have received three phone calls from voters in the last seven days who have not received ballots in this election. They asked for our help in obtaining ballots for them. These folks *would not have even known* that an assessment election was being held if we had not hand-delivered flyers to their front door. The City could have very easily provided assurance that every eligible voter received a ballot in this election by the simple expedient of mailing the ballots via certified mail, with return receipts requested.

What, if anything, did the City do to follow-up on undeliverable ballots with bad mailing addresses? Did the City even request that it be notified by the Post Office in the case ballots were not deliverable by the post office? Does the City have any way of even knowing how many people have not received ballots in this election? If three voters called me for help in obtaining ballots, we can only guess at how many voters in total failed to receive their ballots and did not call me to complain about it. These questions go to the fundamental integrity of the election process and to the right of every property owner to vote in this election.

This election is of immense importance to each and every voter in this district. Economically, this election will likely have a greater direct impact on voters' lives of any election in which they vote in their entire lives. Each voter will be assessed a minimum assessment of \$4,970 if this measure passes, rising to \$11,400 or more if they elect to pay the assessment over 30 years. Some voters, including the undersigned, face a \$25,000 assessment, rising to over \$66,000 if it is paid over 30 years.

This election also represents the election in which each voter's individual vote may very well have the greatest proportionate impact on the outcome of any election in which they may vote in their entire life. Each voter has (at least) one vote out of 2,000 voters, compared to, say, a state assembly election in which a voter has but one vote out of 250,000 potential voters.

It is fair and equitable that the degree of vigilance and effort required of the City in assuring that each voter has a ballot should correlate directly with the consequence of the election's outcome on each voter and the relative impact of each voter's vote on that outcome. In the instant case, the consequence on each voter of this election's outcome is exceedingly high and the relative impact of each voter's vote on the outcome is at its zenith. Accordingly, the City should be subject to a high standard of diligence in ensuring that each voter receives a ballot.

Ms. Eileen Teichert
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To meet that standard, the City could have: (1) mailed out prior written notice to property owners at their mailing addresses of record which could also have served as a test of the validity of each voter's mailing address; (2) followed up on mail returned by the Post Office as undeliverable from that mailing; (3) mailed the ballots via certified mail, return receipt requested; and (4) actively sought out alternate addresses for voters whose ballot mailings were returned as undeliverable, including checks of city utility billing records and county voter records. In fact, the City has apparently taken none of these steps and, consequently, has failed to conform to the "one-man, one-vote" holdings of the federal courts.

We are submitting copies of this letter to the Mayor and City Council, the U.S. Attorney's office and the Sacramento Country Grand Jury, as well as to local media. We strongly believe that this sordid election needs the bright light of public scrutiny to cleanse it of its distinct stench.

Very truly yours,

Craig K. Powell

cc: Honorable Mayor Fargo and
Members, Sacramento City Council
Ray Kerridge, City Manager
Shirley Concolino, City Clerk
McGregor Scott, U.S. Attorney
Sacramento County Grand Jury
Land Park Community Association
Sierra Curtis Neighborhood Association
Media Distribution List

CKP/lm
C532

1a2

From: Shirley Concolino
To: Jennifer Carlino
Date: 11/30/2007 2:49 PM
Subject: Fwd: Re: Land-Curtis Park Street Lighting Assessment District [PL19662]
Attachments: C532.doc

it gets better

Shirley Concolino, CMC
Sacramento City Clerk
916/808-5442
916/808-7672 (fax)
916/804-2544 (cell)
sconcolino@cityofsacramento.org

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>>> <Ckpinsacto@aol.com> 11/30/2007 2:24 PM >>>

Joe Cerullo, Esq.
Senior Deputy City Attorney
City of Sacramento

Mr. Cerullo-

I do appreciate you forwarding me a copy of the mailing addresses for the property owners in the proposed Land-Curtis Parks Street Lighting Assessment District in response to our multiple prior requests. However, there is simply no legal justification for the City withholding the owners' names associated with those addresses from those who oppose this assessment measure. The Sacramento County Assessor's office, which is where the City obtained its list of owners' names and mailing addresses for the mailing of ballots in this election, sets forth precisely what is and is not a matter of public record on its official web site. On the Assessor's web page entitled "Access to Public Records" (hot link: [_Access to Public Records, Assessor, County of Sacramento, California, USA_](#) (<http://www.assessor.saccounty.net/AccessstoPublicRecords/index.htm>)), the Assessor clearly states:

"Many public records kept or prepared by the Assessor are considered public documents and are available for viewing...Among such public records are: Assessment Rolls...which include:...Owner's Name."

Frankly, I am at a total loss to explain how the City Attorney's office has come to the conclusion that it may legally redact owners' names from the mailing list we requested. The above link to the Assessor's "Access to Public Records" web page is the exact same link that I included in my original e-mail to Senior Engineer Cooper of a week ago, a copy of which you acknowledge receiving. Simply by pressing a button on your computer you could have accessed this web page and confirmed the Assessor's statement of the law on this matter. Instead, almost a week later you partially comply with our request but go to the extra effort of redacting owners' names - names which are

unambiguously a matter of public record and access to which we are legally entitled to have.

We have an active election going on and the City, instead of facilitating our exercise of our democratic rights to communicate with voters, instead persists in illegally throwing up one road block after another to hamper and impede our exercise of those rights. The City's consistent bias in the conduct of this election (as noted in my May 28th letter to City Attorney Eileen Teichert, a copy of which is attached) is reaffirmed with your latest refusal to follow the law and turn over the complete records. The City of Sacramento may very well be one of the few governmental bodies outside of North Korea which has ever actively sought to keep the names of voters secret from election campaigners.

We could go down to the Assessor's and compile each and every one of the names and mailing addresses of the more than 2,000 property owners in this election from its records, but to do so would take a massive amount of time and manpower that we do not have. The City possesses this list and could send it to us with a simple click of a button - a click that the City is legally obligated to make.

Any mailings that we might make to absentee owners that do not include the names of the recipients are likely to be treated as junk mail by those recipients. (How do you typically respond to mail you receive which is addressed to "Dear Property Owner"?) Also, mailing addresses are often shared by more than one party, leaving it impossible to assure that our mailings will reach the intended recipients. The City's ongoing refusal to follow the law in this matter illegally interferes with the exercise of our civil rights, including our Constitutional right to communicate with absentee owners, as well as prejudicing the First Amendment rights of such voters to hear what we have to say. As I pointed out in my e-mail to Mr. Cooper, mail is the only means by which we can communicate with absentee owners.

We all know that the City is biased in this election and is clearly on the side of trying to get this measure passed by property owners. (The City Council specifically directed the City Manager to vote "yes" with respect to the parcels that the City owns in the proposed assessment district). But it really crosses the line into corruption when the City actively and illegally seeks to rig an election by impeding measure opponents from effectively communicating with the voters.

Mr. Cerullo, we implore you: follow the law and simply click the "send" button.

Sincerely,

Craig K. Powell,
Land/Curtis Parks Coalition to Stop the Streetlight Madness
(916) 456-9839

cc: Mayor and Members, Sacramento City Council

Ray Kerridge, City Manager
Eileen Teichert, City Attorney
Shirley Concolino, City Clerk
McGregor Scott, U.S. Attorney
Sacramento County Grand Jury
Land Park Community Association
Sierra Curtis Neighborhood Association
Media Distribution List

*****Check out AOL's list of 2007's hottest
products.
(<http://money.aol.com/special/hot-products-2007?NCID=aoltop00030000000001>)

1a3

From: Shirley Concolino
To: Ckpinsacto@aol.com
CC: Cooper, Bob; cosmog@newsreview.com; esanchez@sacbee.com; Fong, Robert...
Date: 12/19/2007 2:48 PM
Subject: Re: Land/Curtis Parks Street Light Assessment Election - 2nd Letter

Thank you for your letter. By copy of this letter I am referring you to Bob Cooper, Supervising Engineer, and coordinator for this process, who will be able to verify the address(es) and determine how best to provide the ballot(s) as necessary.

Shirley Concolino, CMC
 Sacramento City Clerk
 916/808-5442
 916/808-7672 (fax)
 916/804-2544 (cell)
 sconcolino@cityofsacramento.org

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>>> <Ckpinsacto@aol.com> 12/19/2007 2:32 PM >>>
 Land/Curtis Parks Coalition to Stop the Streetlight Madness
 Phone: (916) 456-9839; E-mail: ckpinsacto@aol.com
 (<mailto:ckpinsacto@aol.com>)

Craig

K. Powell
 Shirley Concolino,
 City Clerk
 City of Sacramento
 915 I Street, First Floor
 Historic City Hall
 Sacramento, CA 95814

Dear Ms. Concolino-

Since my e-mail to you of this morning regarding voters who did not receive ballots in this election, we have been notified by two additional property owners that they did not receive ballots in this election. Set forth below are their names, property addresses and phone numbers:

Voter # Phone	Property Owner	Property Address
13. 972-1665	Robert Bavenditti	3019 1/2 Portola Way
14.	Robert & Cynthia Shallit	1520 11th Avenue
e-mail: RShallit@aol.com (mailto:RShallit@aol.com)		
(Yes, the Business Editor/Columnist for the Sacramento Bee)		

Thank you very much for your assistance in this matter. Should you have any questions, please do not hesitate to contact us.

Very truly yours,

Craig Powell,
Land/Curtis Parks Coalition to Stop the Streetlight Madness,
(916) 456-9839

*****See AOL's top rated recipes
(<http://food.aol.com/top-rated-recipes?NCID=aoltop00030000000004>)

la4

From: Shirley Concolino
To: Ckpinsacto@aol.com
CC: rcooper@cityofsacramento.org, ETeichert@cityofsacramento.org, LHammond@cit...
Date: 12/19/2007 9:12 PM
Subject: Re: Land/Curtis Parks Street Light Assessment District Election

It is certainly our intent and the responsibility of the city to make every effort to provide ballots to all property owners in this district and we will do all we can to make certain that we do this. Bob Cooper is the person coordinating the ballot mailings and has the data base to do so. The city clerk's roll is to collect, open and count the ballots. By copy of this email Bob will ascertain that the addresses are within the ballot district area and will do his best to get ballots to those missed property owners. Thank you for bringing this to our attention.

Shirley Concolino, CMC
 Sacramento City Clerk
 916/808-5442
 916/808-7672 (fax)
 916/804-2544 (cell)
 sconcolino@cityofsacramento.org

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>>> <Ckpinsacto@aol.com> 12/19/07 10:02 AM >>>
 Land/Curtis Parks Coalition to Stop the Streetlight Madness
 Phone: (916) 456-9839; E-mail:
 ckpinsacto@aol.com (mailto:ckpinsacto@aol.com)
 Craig

K. Powell
 Shirley Concolino,
 City Clerk
 City of Sacramento
 915 I Street, First Floor
 Historic City Hall
 Sacramento, CA 95814

Dear Ms. Concolino-

I represent an ad-hoc group known as the "Land/Curtis Parks Coalition to Stop the Streetlight Madness." We have been actively campaigning against a proposed assessment tax in the election that is currently being conducted in portions of the Lark Park and Curtis Park neighborhoods by the City of Sacramento. We recently copied you on a letter we sent to City Attorney Eileen Teichert which lodged our objections to the City's conduct of this election. While we continue to strongly protest the conduct of this election, our group is also trying to do everything we can to assure that all eligible voters receive ballots in this election and are able to vote.

To date, we have received phone calls from 12 individuals who inform us that they own property in the proposed assessment district but have not received ballots from the City. They have contacted us in response to the 7,000 flyers our volunteers delivered to their homes and the 2,500 mailers that our group sent to the property owners in this election. Set forth below are the names, property addresses, mailing addresses (if different) and phone numbers of each of these 12 property owners:

Property Owner	Property Address	Phone
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our help in getting them ballots. In an election with just 2,000 voters, that is an unacceptable high error rate in our view.

We will supplement this list with the names and relevant information of other property owners who may contact us seeking help in obtaining ballots. We will also let you know of Mr. Seniorarty's property and mailing addresses (Voter #10 above) once we are able to reach him.

Thank you very much for your assistance in this matter. Should you have any questions, please do not hesitate to contact us.

Very truly yours,

Craig Powell,
Land/Curtis Parks Coalition to Stop the Streetlight Madness,
(916) 456-9839

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(<http://food.aol.com/top-rated-recipes?NCID=aoltop00030000000004>)



2007 DEC 26 A 9:12

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CITY ATTORNEY**

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CITY ATTORNEY
ASSISTANT CITY ATTORNEYS
RICHARD E. ARCHIBALD
SANDRA G. TALBOTT
SUPERVISING DEPUTY CITY ATTORNEYS
GUSTAVO L. MARTINEZ
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GARY P. LINDSEY, JR.
JENNIFER S. McGEORGE
SHERYL N. PATTERSON
JOE ROBINSON
KATHLEEN T. ROGAN
JOSEPH L. RUSSELL
JANETH D. SAN PEDRO
MICHAEL T. SPARKS
CHANCE L. TRIMM
LAN WANG
DAVID S. WOMACK

December 22, 2007

By E-mail & U.S. Mail

Craig K. Powell
Law Offices of Craig K. Powell
4678 Cabana Way
Sacramento, California 95822

Re: **Land-Curtis Park Street Lighting Assessment District No. 2007-04
(Our File No. 19662)**

Dear Mr. Powell:

Your letter to Ms. Teichert, dated November 28, 2007, accuses the city of several improprieties in connection with the proposed assessment for street lights in the Land and Curtis Parks neighborhoods:

- By calling a "pop" election without prior written notice, the city has deprived the owners who oppose the assessment of their constitutional right to communicate with early "voters" and deprived "early voters" of their constitutional right to hear from the opponents.
- By failing to give prior written notice of election, the city deprived not just the opponents of the assessment but also the early "voters" of their rights to due process and equal protection.
- The city's delay in releasing the petition circulated by proponents of the assessment "masked" the petition's false and misleading statements until after the city council approved the "election" and early "voters" had begun "voting."

- The city has failed to take the adequate steps to assure that all eligible “voters” received a ballot, thereby violating the one-person, one-vote doctrine.
- The city’s refusal to turn over the mailing addresses of absentee owners unconstitutionally deprived the opponents of their right to communicate with the absentee owners and deprived those owners of their right to hear opponents’ arguments.

Except for the last one—which is factually wrong—each of these accusations rests on a fundamental misconception: that an election is now under way to determine whether the proposed assessment should be levied. Not so. What is really going on is a majority-protest proceeding in accordance with article XIID of the California Constitution, which was enacted when the voters passed Proposition 218 in November 1996.

Under Proposition 218, the city may not create an assessment district and levy a special assessment without first conducting a majority-protest proceeding in which the owners of real property within the proposed district can indicate their support for, or opposition to, the assessment. The city is to do this by mailing each “record owner” a notice of hearing that includes an “assessment ballot” the owner may return before the hearing concludes. Each owner’s ballot is weighted according to the amount proposed to be assessed against the owner’s property. If the weighted assessment ballots submitted in favor of the assessment do not exceed the weighted ballots opposed to it, then the city may not levy the assessment. The Proposition 218 Omnibus Implementation Act (the “Omnibus Act”) makes clear that this majority-protest proceeding constitutes neither an election nor voting for purposes of the California Elections Code and article II of the California Constitution (titled *Voting, Initiative and Referendum, and Recall*). See subdivision (e)(4) in section 53753 of the California Government Code.

You can see, then, that the city has not called an election, “pop” or otherwise. It is simply measuring the level of protest against the proposed assessment, in accordance with the California Constitution. Your accusations are thus wholly unfounded. In particular:

- **The city provided all legally required notice of the proposed assessment, and property owners are free to change their minds until the hearing closes.**

In conducting this majority-protest proceeding, the city has scrupulously complied with all notice requirements of Proposition 218 and the Omnibus Act. Those laws require that both a notice of hearing and an assessment ballot be mailed, at least 45 days before the hearing, to the “record owner” of each parcel that would be assessed. “Record owner” in this context means “the owner of a parcel whose name and address appears on the last equalized secured property tax assessment roll” See article XIID, section 4, of the California Constitution and section 53753 of the California Government Code. The city not only mailed notices and ballots

to the record owners but also mailed notices and ballots to several owners whose names did not appear on the current assessment roll. No law we are aware of—whether constitutional, statutory, or decisional—requires that the city do more than it has.

You make much of the likelihood that many property owners will submit their ballots before the opponents have had the chance to talk to them. Again, this is not an election. Owners who have already submitted their ballots have the right to change their minds any time before the public hearing concludes on January 3. In the words of the Omnibus Act, “an assessment ballot may be submitted, or changed, or withdrawn by the person who submitted the ballot prior to the conclusion of the public testimony on the proposed assessment at the hearing” See subdivision (c) in section 53753 of the California Government Code.

At the hearing on January 3 we will have an ample supply of replacement ballots for those owners who wish to withdraw their previously submitted ballots and submit new ones. Note, too, that lack of a majority protest won’t by itself authorize the assessment. Even if the ballots in favor of the assessment do exceed those in opposition, the city council can still decide not to impose the assessment.

- **The petition was circulated solely to gauge the support for an assessment; it was not legally required.**

The petition that was circulated by the proponents has no legal significance. Neither Proposition 218, nor the Omnibus Act, nor any other law required it. The city simply asked that the proponents show evidence of wide community support for the assessment before the city went forward.

- **The one-person, one-vote doctrine does not apply to this majority-protest proceeding.**

You assert that the city’s failure to go beyond the notice requirements of Proposition 218 and the Omnibus Act violated the one-person, one-vote doctrine laid down by the United States Supreme Court in the 1960’s. But the one-person, one-vote doctrine does not apply to majority-protest proceedings under Proposition 218. See *Not About Water v. Solano County* (2002) 95 Cal.App.4th 982; see also *Southern California Rapid Transit District v. Bolen* (1992) 1 Cal.4th 654, *Ball v. James* (1981) 451 U.S. 355, and *Salyer Land Co. v. Tulare Water District* (1973) 410 U.S. 719.

- **The city provided you with the addresses used to mail the notices and assessment ballots.**

On November 20, we received your request under the California Public Records Act for the names and addresses of all owners of property within the proposed district. By e-mail on

Mr. Craig K. Powell
Re: Land-Curtis Park Street Lighting Assessment District
December 22, 2007
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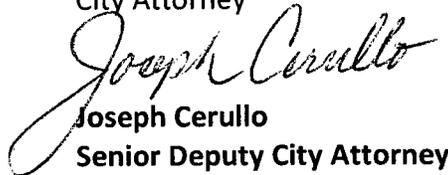
November 28, we provided you with a list of the assessor's parcel numbers for the properties plus a list of the addresses to which the city mailed the notice of hearing and assessment ballots, with the two lists linked by common assessment numbers. In so doing, we had to balance your rights under the act against the privacy interests of the owners, who may not want to be disturbed or who may believe that their exercise of the right to submit an assessment ballot is no one else's business. That's why we provided the parcel numbers but not the names. In no way does the lack of names prevent you from mailing information. Indeed, I understand that your group was able to send "2,500 mailers . . . to the property owners in this election [sic]." (E-mail from Craig Powell to Shirley Concolino, City Clerk, sent December 19, 2007.) The city has fully complied with the California Public Records Act.

☞☞☞☞☞

The city has complied with all notice and majority-protest requirements imposed by Proposition 218. No court has held those requirements to be constitutionally deficient. Certainly the sponsors of Proposition 218, which included the Howard Jarvis Taxpayers Association, would be surprised to discover that in seeking to enhance property owners' control over special assessments they had championed "a deeply flawed" and unconstitutional procedure.

Sincerely,

EILEEN M. TEICHERT
City Attorney


Joseph Cerullo
Senior Deputy City Attorney

CC: Mayor Fargo and the Sacramento City Council
Ray Kerridge, City Manager
Shirley Concolino, City Clerk
Edgar Sanchez, *Sacramento Bee*