

ATTACHMENT Q
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April 10, 2024

Mendocino County Board of Supervisors
501 Low Gap Rd
Ukiah, CA 95482
bos@mendocinocounty.gov

RE: Faizan Corporation U_2021-0016, V_2021-0005

Dear Honorable Supervisors:

The applicant for the above referenced project Faizan Corporation hereby demands that supervisor Ted Williams recuse himself or that the Board disqualify him from further participation, deliberation and voting at any further hearings regarding this application on the following grounds:

Applicable Law

Land use decisions such as the instant minor use permit application that apply existing standards like zoning ordinances to a specific real property and are determined by facts specific to that parcel are treated as “quasi-judicial” or adjudicatory in nature. *Horn v. County of Ventura* (1979) 24 C 3d 605, 613-614 While granting or denying the permit application is in the discretion of the Board of Supervisors, California law does set forth procedural due process requirements and other limitations on the decision makers such that they cannot base their decisions on their own personal whim. Specifically, the property owner applying for a use permit is entitled to a fair hearing with unbiased decision makers who do not prejudicially abuse their discretion. A prejudicial abuse of discretion is established if the decision makers do not proceed in a manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. California Code of civil Procedure Section 1094.5(b)

A decisionmaker is biased if he has prejudged the specific facts of the case or harbors prejudice for or against any of the parties. A commitment to a certain result by a decision maker (perhaps, even a tentative commitment) can be held to violative of the permit applicant’s

procedural due process rights. *Breakstone Billiards v. City of Torrance* (2000) 81 Cal. App. 4th 1205, 1236

A decision maker also violates the applicant's due process rights if he considers evidence and information outside of the record. *Vollstedt v. City of Stockton* (1990) 220 Cal. App. 3d. 265, 272-276

An abuse of discretion is established if a court determines that the agencies' findings are not supported by substantial evidence in light of the whole record. Code of Civil Procedure Section 1094.5 (c) "Substantial evidence" includes fact, a reasonable assumption predicated on fact, or an expert opinion supported by fact. "Substantial evidence" is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to or are not caused by physical impacts on the environment. The existence of a public controversy over the environmental impacts of a project shall not require the preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment. [See *McCann v. City of San Diego* (2021) 70 Cal App. 5th 51, 86]

Comments Made By Supervisor Willams at the March 26th Public Hearing

The following comments were made on the record by Supervisor Williams at the March 26, 2024 public hearing on the above refenced permit application:

- 2:46:13 – This is a discretionary permit from the County. Discretion means we get to evaluate, um, not does it have any benefit. Tom Allman may be right. There may be benefits to the County having more fuel reserves and it's also true, it may be good if the County were receiving some of the sales tax. But that's not the test. It's not are there any benefits? It's, if we were to issue th – a use permit – under the use – would there be any – uh – cu – could we say there would be no detrimental impact on health, safety, peace, morals, comfort, or general welfare of persons residing or working in or passing through the neighborhoods. And Redwood Valley has shown up to tell us that this project would impact their health, safety, peace, and morals and comfort. And I don't think any further traffic study would convince the people of Redwood Valley that this is a project that they want in their neighborhood.
- 2:47:09 It's not right for me, I don't live in Redwood Valley. It's not right for me to say we're going to stick you with this project because the applicant needs a return on his investment. That's exploiting the people of Redwood Valley. They – through the MAC process. They've discussed this time and time again. Their community is not in favor of it. It doesn't matter if anyone else thinks it's a good idea. They don't want it. And I would feel outraged if the County were pushing a project in my district if it were going – a – a gas station of this scale were going in Comptche or Mendocino or uh Gualala or Point Arena or uh – uh Boonville – uh – I would feel the same thing – that we're exploiting those communities. Having an outside influence and the County condone exploiting a community. And so uh – I'm – I'm gonna stick with the Motion because I think no matter what findings

come back, it will not change – the – the stance of people in that community has that their health, safety, morals, and comfort would be negatively impacted by this project.

255:43 Even if we accept the new information – I still couldn't find that this doesn't have a detrimental effect on health and safety, peace, morals and comfort, general welfare, of the people of Redwood Valley. And so we're spending a lot of County money cycling through. The same people will be in the room. Positions won't change. "I know how Redwood Valley feels. And I want to support them" So I don't think we need to get into – uh – is it 10 cars per day or 10,000 cars per day – it doesn't have much bearing. It adds an additional safety concern but separate from that there's grounds to not approve the project.

2:59:53 – “we don't have the obligation to find the reason to deny it”
[In response to a question from Supervisor Mulheren asking if he would like to articulate the “moral and health and safety general welfare”]

3:00:22 I think it can be found in the planning commission hearing – there's plenty of public comments that touches on these points. There's a letter from MAC that touches on these points.

3:00:30 “somebody could cobble it together, I could do that, but the bottom line is – I'm – I'm NOT going to approve this. My vote is not to issue a use permit

Discussion

Supervisor William's comments on the record clearly demonstrate that Faizan cannot receive the due process required under California law that the hearing be fair, that the decision makers not be biased or committed to a certain result, and that the decision makers do not abuse their discretion.

This is not a case of the appearance of bias or potential bias. Instead, Supervisor Williams exhibited actual bias on the record. Despite the fact that numerous members of the public including Redwood Valley residents either sent letters to the Board of Supervisors supporting the project or spoke at the hearing in favor of the project, Supervisor Williams has somehow drawn his own conclusion that “Redwood Valley has spoken” against the project or “does not want this project.” Based on this half-baked conclusion, he simply does not want to hear the evidence- even further evidence on the key issue of how much traffic the project will generate. If the scientific studies show that the project will only generate ten trips per day, this evidence will have no bearing on his decision because at least in his mind, the people of Redwood Valley “have spoken” against the project he “knows how Redwood Valley feels.”

Factual findings do not matter to Supervisor Williams either. These are something that someone can “cobble together” later after he has made his decision already on God only knows what basis. He even thinks he does not have to have any reason to justify denying a permit application and apparently has no clue that he is supposed to be acting as a quasi-judicial hearing

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officer following well established law and basing whatever decision he makes on substantial evidence in the record.

Faizan and Mr. Alam who have developed many nice projects in this community and have spent tens of thousands of dollars processing this permit application and a 2016 permit application for a similar project at this site in good faith, deserve to be treated professionally by this Board. Allowing Supervisor Williams to continue to participate in deliberations and vote on this project after making the above-mentioned outrageous comments on the record would be disgraceful and ultimately lead to the Superior Court remanding this matter back to the Board if William's vote is the deciding vote that denies the application.

For these reasons, Faizan and Mr. Alam respectfully request that Supervisor Williams be disqualified from further participation, deliberation or voting regarding this permit application or that he recuse himself.

Very truly yours,

VANNUCCI MOMSEN MORROW

BY:


BRIAN S. MOMSEN

cc: H. Alam
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