

State of California

rezoning of area from limited commercial to residential



Fair Political Practices Commission

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October 2, 1978

A-78-305

Susan Murray
71-607 Sahara Road
Rancho Mirage, CA 92270

Dear Ms. Murray:

Thank you for your letter of September 18, 1978, seeking advice with respect to the disqualification provision of the Political Reform Act. The facts as we understand them are as follows: You serve on the Planning Commission of the City of Rancho Mirage. On October 4, 1978, the Planning Commission will hold public hearings to discuss the merits of changing the zoning of property on the north side of Sahara Road from limited commercial (LC) to existing single family dwellings (ESF). Your principal place of residence is located across the street from the area subject to the proposed rezoning.

The question which you have asked us to consider is whether you must refrain in your official capacity from participating in or voting upon decisions regarding the rezoning of the Sahara Road area. Closely related to the rezoning question you have posed, is whether you may participate in decisions concerning proposed projects within the Sahara Road limited commercial zone. The Sahara Corporation is currently seeking a permit to build two professional office buildings in that zone. The proposed location of the buildings is less than two blocks away from your principal place of residence. Therefore, this letter will also address both questions.

Section 87100 of the Act provides:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

Section 87103 provides that:

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

...

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

Sections 87100 and 87103 of the Act require that you disqualify yourself if it is reasonably foreseeable that the proposed rezoning or the construction of the office buildings will have a material financial effect upon your real property, in this case your residence. The Commission has determined that effects of a governmental decision are foreseeable if there is a reasonable likelihood that those effects could occur. Thus for events to be foreseeable the possibility for their occurrence must be more than merely conceivable but may be less than certain.

It is the position of the Commission staff that, based on the facts you have provided, it is not reasonably foreseeable that the proposed rezoning will have a material financial effect upon your property. The Sahara Road area was zoned limited commercial more than two years ago. During that time no commercial development has occurred which has materially affected the value of residential property located along Sahara Road. Nor is there any evidence available to us which suggests that a ban on future commercial development will significantly increase the value of residential property located in the area. The information provided to us indicates that any development proposed for the limited commercial zone must meet very strict standards whose very purpose are to preserve the value of the surrounding residential uses. The city ordinance establishing the limited commercial zone specifically sets forth the applicable standards a proposed project must comply with before a permit will be granted. Section 17.12.070 provides that:

17.12.070 Planned Unit Development--Limited Commercial (PUD-LC) zone. The PUD-LC zone is created to allow commercial uses in areas which, because of pervious development, find commercial, multifamily residential and single-family residential uses juxtaposed. The intent of this zone is to allow only such commercial and parking uses which shall not unreasonably interfere with the peaceful and relatively quiet use of the residential uses close by, as a result of the following:

- A. Emission of dust, gas, smoke, noise, fumes, odors, vibrations or night illumination; or
- B. Creation of an unreasonable amount of traffic on streets also serving residential uses; or
- C. Construction of the structure, the height or bulk of which unreasonably obstructs the view of the desert or surrounding mountains from adjacent properties. (Ord. 88 §3(a)(2)(b), 1975).

A permit will not be granted unless a proposed structure is designed in such a way that it will be consistent with residential uses in the area. Because the limited commercial zoning works to protect residential property values, changing the zoning to residential is not likely to have anything more than a minimal impact on the value of surrounding residential property. Testimony from many area residents supports this conclusion.

Similarly, the restrictive nature of the limited commercial zoning makes it unlikely that any particular project built in that Sahara Road commercial area will have a material financial effect on surrounding residential property. Accordingly, if the proposed Sahara Project meets the requisite standards for building in the limited commercial zone, we believe it will not have a material financial effect on residential property in the immediate area.

I hope that this advice has been helpful. If we can be of further assistance regarding this matter please do not hesitate to contact us.

Sincerely,

ED

Dwight E. Dickerson
Legal Counsel
Conflict of Interest
Division

DED:plh