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Item No.: 2  
Deputy: PUBLIC



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CF10-1832  
ITEM 2, PLUM 4/26/11  
M. Espinosa

**STATEMENT of J.H. McQUISTON on  
MOTION to GRANT SPECIAL PRIVILEGE to CERTAIN VENTURES**

Honorable Chairman and Members of the Committee:

Black's Law Dictionary, the "default" authority on law terms, defines "variance" as "a departure from existing zoning".

This Motion is defined as proposing a variance, and must be assessed under the Statutory Mandate for grants thereunder: **A grant must correct a discriminatory injustice, but must not grant a "special privilege" not enjoyed by other properties similarly-zoned and in the vicinity.**

**There can be no legally-justifiable basis for granting what the Motion proposes, because it clearly proposes a legally-prohibited "special privilege" not allowed by other residential properties.**

**Farmers' Markets do not need to be exalted over any other commercial establishment. Each may co-exist. I suggest the following amendments are imperative:**

**1. Propose that Farmers' Markets are commercial establishments (which factually they are), entitled to inhabit any parcel zoned for commercial use (any zone C-1 or less-restrictive), but they may not inhabit a parcel which does not specifically-permit commercial use. It validates the concept of Zoning, which is a dispensation from Const Amendment XIV, fleshed-out in §65906, California Government Code and *Broadway, Laguna*, and Mandated on the City per *Topanga Assn* by the Court in *Philip Anaya*.**

**2. If there is an area bereft of Commercial zoning in the City, correct the Area Plan but do not suggest or patch by variance. *Topanga's decree is that variances should be rare items.* The City's grants of variances (re-zone of one parcel in a zoned subarea is legally a variance) do not comply with the rigorous justification required to prove unconstitutional denial of equal protection but absence of special privilege that exempts the parcel under examination from adherence to the subarea-restrictions.**

**3. There is no legally-sustainable fact which proves Farmers'-Market articles are superior to or healthier than articles available through regular commercial channels. The opposite may be true. A Report alleging that denial of Farmers' Market access dooms people to substandard fare risks actions against the City for false-defamation. Abhor such inference.**

**4. A Report should not propose more process than is necessary to control area uses; the City must balance uses irrespective of areas. Plans should not invite variances. If land use is deficient, the zoning must be amended to comply without granting any parcel a special privilege. Breaking-down zoning with variances means Plans are incompetent; Plans must defend against and resist variances, especially in developed areas because land-use as-is was acceptable.**

**5. The City is fractured into myriad sub-areas internally-uniform. Fracturing them requires as basis necessity for public safety and security, to be constitutionally-acceptable. And, fracturing is why the City needs and employs planning experts. Planning must not invite destruction of established subareas.**

This comment applies not only to Farmers' Market zone-busting but also to all other zone-busting.

Respectfully submitted,

c: Interested parties

J. H. McQuiston