



● **McQUISTON ASSOCIATES**

6212 Yucca St, Los Angeles, CA 90028-5223

(323) 464-6792 FAX same

consultants to technical management

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CF 13-1499

ITEM 8 COUNCIL 1/28/14

P. Lattimore

**STATEMENT of J.H. McQUISTON on
UNLAWFUL REPORT and FALSE AGENDA LISTING**

Honorable President and Members of the Council:

The Agenda improperly-describes this Item. And, Council is prohibited by State and City law from acting on the Item even if the Agenda-description were true.

Council action would be *void ab initio*. See decisions of California Supreme Court, e.g. *Leshar Communications v City of Walnut Creek*.

1. This is not a matter of approving the administration of the Zoning and Planning statutes. **The Agenda failed to say: The Planning Commission disapproved the application so the Council has no jurisdiction.** That is State and City law. It is shocking that the Agenda failed to disclose that conclusive fact.

2. *Leshar* authoritatively said, "The tail does not wag the dog." By that it meant every zoning ordinance *must be consistent with City Plan*. **Planning Commission's Decision in the File correctly-stated that this application does not conform to City Plan. Without a General Plan Amendment this parcel may not violate the Plan.**

Moreover, State Government Code and LAMC *prohibit the Council from over-riding a Planning-Commission disapproval of an application to develop in contravention of City Plan, even if the Council wishes to amend a Plan-parcel which a Planning Commission disapproved.*

Furthermore, Government Code to stop prior corrupt-practice *permits only 5 City-plan amendments per year.*

The only recourse for the Council, if it wishes to effectively-trash its City Plan, is to remand the Council's suggestion to the Commission for its consideration. **Council is prohibited from acting on its own if the Commission has vetoed the application. Commission's veto is legally-"final" for this matter.**

Courts have made that point, per the Government Code and, e.g. *per Los Angeles v California*, crystal-clear.

If the applicant wishes to contest the Commission's veto, it must file an action in Court, not in the Council.

That is the law in this State and in this City. You are presumed to know the law. Please obey it.

Respectfully submitted,

J. H. McQuiston

c: Interested parties