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March 4, 2014

CF14-0171

ITEM 6 PLUM 3/4/14

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STATEMENT of J.H. McQUISTON on
REMAND of 10550 WEST BELLAGIO ROAD

Honorable Chairman and Members of the Committee:

This time the Committee may come to a proper conclusion: Affirm for the reasoning of the APC that the variance is not permitted by law.

I was surprised at the prior hearing that the Chairman having practiced law would permit no rebuttal of testimony which was patently irrelevant as a matter of settled law.

We are not given many chances in our lives to erase our mistakes.

Please use this chance to erase the Committee's mistake of February 25, 2014.

As the Court said in *Younger v Berkeley City Council*, 45 Cal App 3d 825 (1975) at 828:

"Under article XI, §5, subd. (A), of the Calif. Const, a municipal government 'may make and enforce all ordinances and regulations [] subject only to **restrictions and limitations provided in their several charters** and in respect to other matters **they shall be subject to general laws.**

"§37100 of the Govt Code provides that the legislative body of a municipality ' may pass ordinances **not in conflict** with the Constitution and laws of the State or United States."

It was apparent to any lawyer that the process of the prior hearing in PLUM **was in conflict with the laws of the State.**

Process in conflict with laws is *ultra vires* and is a nullity, per *Leshar* for example.

Respectfully submitted,

c: Interested parties

J. H. McQuiston