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February 24, 2014

CF14-0171

ITEM 5, PLUM 2/25/14

S. Gin

**ADDITIONAL STATEMENT of J.H. McQUISTON on
§245 REFERRAL of 10550 W. BELLAGIO ROAD**

Honorable Chairman and Members of the Committee:

There is no Constitutional way that this Committee may support the Application for variance for this property.

My prior Statement appears to be lost from the Council File. Attached is a copy of it.

And importantly, in *I.N.S. v Chadha*, 462 U.S. 919 (S Ct 1983), at 949 the Chief Justice quoted James Wilson:

"Despotism comes on mankind in different shapes. sometimes in an Executive, sometimes in a military, one. Is there danger of a Legislative despotism? Theory & practice both proclaim it. If the Legislative authority be not restrained, there can be neither liberty nor stability; and it can only be restrained by dividing it within itself, into distinct and independent branches. In a **single house there is no check, but the inadequate one**, of the virtue & good sense of those who compose it." 1 Farrand 254.

And Joseph Story: "Public bodies, like private persons, are occasionally under the dominion of strong passions and excitements; impatient, irritable, and impetuous. . . . If [a legislature] feels no check but its own will, it rarely has the firmness to insist upon holding a question long enough under its own view, to see and mark it in all its bearings and relations on society." 1 Story 383.

At 960 Justice Powell quoted James Madison: "[t]he accumulation of all powers legislative, executive and judiciary in the same hands, whether of one, a few or many, and whether hereditary, self appointed, or elective, may justly be pronounced the **very definition of tyranny.**" *The Federalist* No. 47.

Councilmember Koretz said the reason for his §245 Motion was that there is a stream running through the property, but *APC addressed that issue thoroughly (see CF14-0171) and properly rejected it as legally-trivial.*

The Standard of Review for this Committee, per LAMC and numerous Court authorities, is not to second-guess the Commission if it addressed the issue and *its decision can be reached*. **The Record which you have in the CF proves its decision was reached reasonably. The stream's presence cannot be a factor justifying a variance because the stream is present on other similar properties and it doesn't prevent construction without variance. That is what the Record and evidence proved to the Commission.**

Topanga Assn v Los Angeles County, 11 C 3d 506 (Cal S Ct in bank 1974) *emphasized* at 520 that variance grants **should be rare**. Councilmembers must heed what the Supreme Court said. **There is a breakdown of law which affects public safety if laws are scoffed-at by City leaders. If leaders don't believe the law, why should anyone else obey it?**

There was substantial evidence that a substantial building could be constructed without any variance whatsoever. And building as asked-for could, upon serious thought, be dangerous to public safety.

Respectfully submitted,

J. H. McQuiston, P.E.

encl 2/11 Statement to Council
c: Interested parties



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February 10, 2014

CF14-0471
ITEM 18 COUNCIL 2/11/14
A. Alietti

**STATEMENT of J.H. McQUISTON on
§245 JURISDICTION over 10550 W. BELLAGIO ROAD**

Honorable President and Members of the Council:

Notwithstanding Councilmembers' comity, Council must deny jurisdiction for this case.

Assertion is legally "frivolous" and wastes City funds. Commission's decision is legally-impregnable.

1. McQuiston reviewed this matter closely. Commission's decision was analyzed. **Contrary to many Commission decisions, this one is substantiated with facts, laws, and Court decisions. All are per law pertinent, conclusive, and not legally-capable of being rebutted. Council must therefore deny assertion.**

2. The developer's sole *raison d'etre* for violating the City's Plan is only because the developer wants this building (on a slope) to have a "flat roof" regardless of City Plan's mandate to follow the slope's contour.

Commission correctly cited (1) controlling Court decisions which say the developer's reason is legally-insufficient to violate City-Plan's prohibition on such "flat roof" for hillside development, and (2) construction per Plan is legally-practical and practiced by others in the zone.

3. Commission could have cited what the California Supreme Court said is "at the hierarchy of local law governing land use": *Leshar Communications v City of Walnut Creek*, 52 Cal 3d 531. *Leshar* said:

"Once the city has adopted a general plan, all zoning ordinances must be consistent with that plan, and to be consistent must be 'compatible with the objectives, policies, general land uses, and programs specified in such a plan.' (§ 65860, subd. (a)(ii).)" §65680(d) **mandates the section specifically on this City.**

Leshar also said:

"The Planning and Zoning Law itself precludes consideration of a zoning ordinance which conflicts with a general plan as a *pro tanto* repeal or implied amendment of the general plan. The general plan stands. A zoning ordinance that is inconsistent with the general plan is invalid when passed (*deBottari v. City Council* (1985) 171 Cal.App.3d 1204, 1212, 217 Cal.Rptr. 790; *Sierra Club v. Board of Supervisors* (1981) 126 Cal.App.3d 698, 704, 179 Cal.Rptr. 261) and one that was originally consistent but has become inconsistent **must be brought into conformity with the general plan.** (§ 65860.) The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. **The tail does not wag the dog. The general plan is the charter to which the ordinance must conform.**"

4. Commission' reasoning is legally-correct in every part of its Finding, and each reason separately is sufficient to support its denial. But violating Plan is the threshold which by-itself mandates disapproval notwithstanding all else in Commission's decision.

Respectfully submitted,

J. H. McQuiston

c: Interested parties