



● McQUISTON ASSOCIATES

6212 Yucca St, Los Angeles, CA 90028-5223

(323) 464-6792 FAX same

consultants to technical management

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