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CF14-0650
ITEMS 4 & 5 , PLUM 6/17/14
S. Gin

STATEMENT of J.H. McQUISTON on
7108 AMIGO and 18561 GAULT

Honorable Chairman and Members of the Committee:

There is a problem with this conversion. The General Plan conflict prevents conversion from Single-family residential. Plan requires conserving single-family zoning.

Just because other parcels do not comply with the General Plan requirement does not permit another parcel not to comply.

Moreover, the Plan is **not set forth in whole in the material for review, a CEQA violation..**

What the Council must do is adopt a Plan Amendment if the project is to go forward. A specific plan to the contrary is not sufficient justification to permit Plan violation. *See* Calif Const Art I §7(b).

CEQA cases have painfully-set forth that **there is no such thing as a "minor" departure from CEQA and from Government Code.** In *Citizens Assn for Sensible Development v County of Inyo,* 172 Cal App 3d 151 (1985), the Court, invoking ***No Oil Inc v City of Los Angeles,*** 13 Cal 3d 68 (1984), said:

"[T]he **Legislature intended [CEQA] to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.** [ ] Accordingly, **'CEQA requires more than merely preparing environmental documents.**'(Cal. Admin. Code, tit. 14, § 15002, subd. (h).)"

Moreover, *Topanga Assn. for a Scenic Community v County of Los Angeles,* 11 C.3d 506 (S Ct 1974) said:

"A zoning scheme, after all, is similar in some respects to a contract; **each party foregoes rights to use its land as it wishes in return for the assurance that the use of neighboring property will be similarly restricted,** the rationale being that such mutual restriction can enhance total community welfare. (See, e.g., 1 Appendix to Sen. J. (1970 Reg. Sess.) Final Rep. of the Joint Committee on Open Space Land (1970) p. 91; Bowden, *Article XXVIII-Opening the Door to Open Space Control* (1970) 1 Pacific L.J. 461, 501.)If the interest of these parties in preventing unjustified [zoning amendments] for neighboring land is not sufficiently protected, the **consequence will be subversion of the critical reciprocity upon which zoning regulation rests.**"

Ultimately, *deVita v County of Napa,* 9 Cal 4th 763 (S Ct) almost **20 years ago said:**

"Although California law has prescribed that cities and counties adopt general or master plans since 1927 (Stats.1927, ch. 874, pp. 1899-1913), the general plan prior to 1972 has been characterized as merely an "interesting study," and no law required local land use decisions to follow the general plan's dictates. (*City of Santa Ana v. City of Garden Grove* (1979) 100 Cal.App.3d 521, 532, 160 Cal.Rptr. 907.)

"In 1971 several legislative **changes were made to significantly alter the status of the general plan.** For the first time, proposed subdivisions and their improvements were **required to be consistent** with the general plan (Gov.Code, § 66473.5 [formerly in Bus. & Prof.Code, § 11526]), **as were zoning ordinances** (Gov.Code, § 65860). (Stats.1971, ch. 1446, §§ 2, 12, pp. 2855, 2858; *City of Santa Ana, supra,* 100 Cal.App.3d at p. 532, 160 Cal.Rptr. 907.)

"Moreover, **charter cities were no longer completely exempted** from the requirements of the planning law; these cities had to at least adopt general plans with the required mandatory elements. (Gov.Code, § 65700, subd. (a); Stats.1971, ch. 1803, § 2, p. 3904.) Thus after 1971 the **general plan truly became, and today remains, a " 'constitution' for future development"** (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540, 277 Cal.Rptr. 1, 802 P.2d 317 (*Lesher Communications*)) located at the top of "the hierarchy of local government law regulating land use" (*Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1183, 203 Cal.Rptr. 401).

(*de Vita* at 772-73).

Government Code prohibits General Plan revision (including all Community Plan components) more than 4 times a year. *Lesher* forbids implied Plan amendment or repeal, saying:

"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) 171Cal.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.** " *(Lesher* at 541)

The State recognizes only one zoning per parcel and insists that the Plan adhere to that zoning. There is no excuse to claim a parcel may choose between a host of mutually-exclusive zones and claim it applies to it.

Over 30 years ago, City tried to legally-escape the above State constraint, but in *City of Los Angeles v State of California*, 238 Cal App 3d 526, endorsed also by the Supreme Court, **City was denied an exception. Article XI, Calif. Constitution, requires City to observe the State law.**

I suggest looking at the **entire** General Plan first, then determining what is appropriate for the area, **for the City, and for surrounding Cities and County,** just like California requires the City to do. Council may revise the Plan if it wants this parcel to be redeveloped to a less-restrictive use, but **General Plan inclusive of all Community Plans comprising it may be amended only 4 times each year**. Spend each amendment wisely.

It will be painful, but **now is the time for Los Angeles to realize it is part and parcel of this State and obey it.** California condemned piecemeal zone-changes and variances long ago.

Remember: "**The tail does not wag the dog".**

For further facts on State law, *see Government Code* at 65300 *et seq*, and also CF14-0608 "Comment".

Respectfully submitted,

J. H. McQuiston

c: Interested parties

Date: 6/17/14

Submitted in via fax ~~Committee~~

Council File No: 14-0650

Item No.: 5

Deputy: Comm from Public