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CF 15-0036
ITEM 2 PLUM 2/10/15
S. Gin

STATEMENT of J.H. McQUISTON on UNLAWFUL CONVERSION of INDUSTRIAL PROPERTY[1]

Honorable Chairman and Members of the Committee:

THIS PROJECT WAS PASSED-THROUGH ONCE BY PLUM FOR LACK OF QUORUM.

Project is indefensible as a matter of law.

I suggest you **scrutinize it thoroughly at Committee level, and report to oppose it. (TIME LIMIT 3/27)**

This project, if "enacted", would be void *ab initio*, *because the City Plans specifically-preserve industrial zoning having viable industrial usage.* **There is substantial industrial usage in this zone and on this block.**

1. The proposer makes use-assertions not in accordance with the General Plan; to condone the Plan Amendment which makes the General Plan internally-inconsistent and thus invalid is unlawful.

Developer's assertion, that industrial parcels in this area *may* be converted to commercial or residential use, violates the Plan, the Plan-Framework, and the Plan's Community-portion.

Opposing Developer, the Plans *unequivocally*-**require preservation of viable industrial sites, and there is a substantial demand for land in this area for-use industrially.[2] For example, as a landowner therein I am besieged by persons wanting to locate their industrial companies in this area.**

2. Already the Plan's 313 acres specified for purely-industrial use was severely cut in violation of Plan.

By unlawful piecemeal depredation, 25 percent of the available industrial land in this area was converted to commercial use (not by grandfather permit), forcing industry elsewhere and depriving the City.

The CRA-Planning recent Report said *preserving industry in Hollywood is a necessity.* **It decried deprivation and Management sternly admonished the planners not to contemplate nor permit it.**

I am shocked that the Department would renege on its principles, jeopardizing retention of the City's most-valued industry. Ad-hoc "planning" desecrates the principle for which planning-law stands.

3. California Law and the Supreme Court *absolutely do not allow* **the City to violate its Plans.** It is *unconstitutional* to grant this *special privilege* to this proposer: Article I §7 **protects us property owners in this zone, who lost-opportunity by this Plan, from injury arising out of such a grant of** *special privilege.*

As the Supreme Court said in *deVita v County of Napa,* 9 Cal.4th 763 (1995), 773:

"The **plan must include** seven elements--**land use**, circulation, conservation, housing, noise, safety and open space--and address each of these elements in whatever level of detail local conditions require (id., § 65301). General plans are **also required** to be "comprehensive [and] long [ ]term" (id., § 65300) as well as "**internally consistent.**" (Id., § 65300.5.) The **planning law thus compels cities and counties to undergo the discipline of drafting a master plan to guide future local land use decisions.**"

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[1] 6640-87 w. Santa Monica, 1120-22 N. Las Palmas, 6624-50 W. Lexington.

[2] E.g, "To preserve this valuable land resource from the intrusion of other uses." *Community plan.*

And at 778:

"**When two statutes touch upon a common subject, they are to be construed in reference to each other, so as to 'harmonize the two in such a way that no part of either becomes surplusage.**' (*Mar v. Sakti Internat. Corp.* (1992) 9 Cal.App.4th 1780, 1784, 12 Cal.Rptr.2d 388; *see also Woods v. Young* (1991) 53 Cal.3d 315, 323, 279 Cal.Rptr. 613, 807 P.2d 455.) **Two codes " 'must be read together and so construed as to give effect, when possible, to all the provisions thereof.'** " (*Tripp v. Swoap* (1979) 17 Cal.3d 671, 679, 131 Cal.Rptr. 789, 552 P.2d 749.)." *(Emphasis added)*

The City's General, Framework, and Community Plans *en masse* are at-one: **Preserve Media Industry**.

Plans' mandates to "preserve this particular industrial land" **may not be countermanded as proposed without also deleting the mandates from each Plan's-segments and opening-up the** *entire* **zone.**

Otherwise this project is **void *ab initio*, as the Supreme Court said in** *Lesher Communications v City of Walnut Creek,* 52 Cal 3d 531 (1990) at 541:

"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.**" *(Emphasis added)*

4. This proposed amendment **makes the General Plan internally-inconsistent,** which per *Sierra Club* is **not allowable.**

DeVita also said at 789:

"As we stated in *Selby Realty Co. v. City of San Buenaventura* (1973) 10 Cal.3d 110, 120, 109 Cal.Rptr. 799, 514 P.2d 111, in explaining the rationale behind general and specific plans: "The **deleterious consequences of haphazard community growth in this state and the need to prevent further random development are evident to even the most casual observer**. The Legislature has attempted to alleviate the problem by author-izing the adoption of long-range plans for orderly progress." [ ] One survey of California city and county plan-ning departments shows that approximately 75 **percent of proposed planning and zoning amendments are privately initiated in conjunction with development applications, and that approximately 66 to 75 percent of these amendments are ultimately approved**. [Citations] [ ] **[P]lanning decisions are frequently driven by the desire of local governments to approve development that will compensate for their diminished tax base** in the post-Proposition 13 era. (See Fulton, *Guide to California Planning, supra.*)

"It was presumably to curb an excessively ad hoc planning process that the Legislature limited in 1984 the number of amendments to any mandatory element of the general plan to four per year. (Gov. Code, § 65358, subd. (b).) General **plans that change too frequently to make room for new development will obviously not be effective in curbing "haphazard community growth."** (*Selby Realty Co, supra.*)

Do not take the false statements and assertions in the Planning Report as truthful. Look at the plain words in the General Plan which will continue to prescribe: Preserve the industrial-base of the City.

Respectfully submitted,

J.H. McQuiston

c: Interested parties

J.H. McQuiston, Property Owner in zone.