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CF09-3072 & 15-0455 ✓

ITEMS 9 & 10 PLUM 5/5/15

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**STATEMENT of J.H. McQUISTON on
CPC 2006-8689, DISAPPROVED BY CPC**

Honorable Chairman and Members of the Committee:

This project was correctly disapproved by CPC because it does not comply with the General Plan, of which the Wilshire Plan is a part.

1. It is out of scale with the surroundings. The General Plan thus prohibits the project until it is substantially-reduced in scale.

Likewise, the zone changes do not comply with the General Plan, which established reasonable rules to protect safety and neighborhood, and therefore changes must not be allowed without first amending restrictions in the General Plan.¹ See, e.g., *Leshar Communications v City of Walnut Creek*, 52 Cal 3d 531, 541 (in bank 1990).

Amendment of this parcel alone and not all other, identical parcels in the zone and area also contravenes Const Art I Sec 7 (equal protection clause).

Additionally, there was no evidence at the CPC hearing that would prove the property cannot be operated in accordance with the Plan restrictions.

2. To overturn the CPC, the Council cannot write its own grant of approval. It must show that the CPC failed to follow law or failed to show legally-relevant facts which supported its decision.

The Council cannot reach an alternative decision if, given facts at CPC hearing, CPC could have reached its decision despite the presence of alternative facts also presented to it.

If Council finds legal-fault with the CPC denial, it must send the matter back to the CPC for its reconsideration.

3. Reviewing the CPC evaluation and conclusion, there is no legal foundation enabling the Council to disagree with the CPC disapproval.

See also my Statements on this matter prior to this Statement, in the Council File and dated Feb 3, 2014 and Jan 27, 2015.

Respectfully submitted,

J. H. McQuiston

c: Interested parties

¹This is another case where Planning deliberately ignored clear direction by Supreme Court not to continue treating the General Plan as insignificant to Planning's *non-conforming* ideas regarding process and *ad hoc* grants of use. But, "The tail does not wag the dog."