

## **FIX THE CITY**

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June 24, 2015

From: James O'Sullivan, Fix the City

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**Attn. Council President Herb Wesson**

VIA EMAIL

RE: CPC-2014-3119-ZC-SN-COD-MCUP-ZV-ZAI-SPR

Dear Council President Wesson:

Please accept these addition comments on the above mentioned EIR into the record.

### C2 Zone, No Museum Argument

Apparently, the City's Zoning Administrator purports to act under LAMC 12.21.A to "interpret" the City's zoning code to allow other land uses in particular zones even though the City's legislative body, the City Council, failed to list such uses in those particular zones. The legal infirmity of such a concept is obvious. No City official has the authority to rewrite the zoning code contrary to the plain language of the code.

But this reality has not halted the City persisting in its claim that the City may now approve a new Zoning Administrator Interpretation that allows the Academy Project in a C2 zone because in a 2003 Zoning Administrator Interpretation non-profit uses were allegedly "interpreted" into a C2 zone. Yet even the new document, relied upon the City and not revealed to the public until included as an exhibit to the Final EIR, does not support the City's claim with consistency.

The 2003 ZAI consists of two parts. Part One lists each of the City's zones (e.g., R-1, PF, M, CR, C1.5, C2, C4, etc.) and under each zone heading lists the various land uses permitted. Part Two is actually an index to Part One. Part Two lists each type of land use (body shop, factory, retail shops, single family homes, amusement halls, museums, for-profit, etc.) and under each land use

type is a list of zone numbers/letters in which that particular land use is allegedly permitted.

Significantly, in Part One where the Zoning Administrator analyzed each zone, under the C2 zone museum, non-profit IS NOT LISTED. In Part Two, where the Zoning Administrator lists the zones in which a Museum non-profit is permitted, C2 is listed; however, that is inconsistent with the plain language of LAMC Section 12.14 (C2 Zone), and also inconsistent with Part One that did not list museum, non-profit as a permitted use in a C2 zone. Thus, without disclosing to the public in the FEIR that the new legal theory is facially inconsistent with the LAMC and even within the same document, the City made a new claim that the Academy Project was a permitted use in a C2 zone “by right.” Nothing could be further from the truth. The effort to use bad faith EIR responses does not constitute substantial evidence in the administrative record that the Project will not trigger a substantial undisclosed land use impact.

Non-profit museums are NOT permitted in the C2 zone. The entire premise of the 2003 ZAI that a City official can re-write the permissible uses in the municipal code is unlawful. Furthermore, even if such a process was in any way legitimate, we refer the City to the contents of the file for ZA-2003-4248-ZAI located at the City’s archive. The file contains only the use list, a copy of a legal notice published in a newspaper, and a notice of intent to adopt the use list. Completely absent from the ZA-2003-4248-ZAI file is one scintilla of evidence or factual finding justifying the Zoning Administrator’s re-writing of a municipal code ordinance.

Even worse, ZA-2003-4248-ZAI is internally inconsistent. The inclusion of C2 among the list of zones permitting non-profit museums in Part Two (essentially the index) does not match the actual analysis in Part One (the actual zone analysis).

Further examination of the ZA-2003-4248-ZAI also reveals that certain exceptions regarding museums found in the City’s enacted municipal code are omitted from the analysis contained in the Use List published under the “authority” of ZA-2003-4248-ZAI. Thus, the Use List now relied upon by the City as the “last word” of whether the Academy’s project is a lawful use in a C2 zone is, itself, directly contrary to exception language found in the City’s organic law. Accordingly, the Project as proposed violates the Los Angeles Municipal Code, and the City’s failure to disclose, analyze, and avoid significant land use impacts in the DEIR/FEIR is a prejudicial failure to proceed in accordance with law.

As an additional “argument”, the City claims without any supporting evidence that other museums have been approved in the C2 zone. However,

the City provides no documentation of the history of each of these sites, including whether or not the museums were established under a different zone in compliance with law and then later became a grandfathered nonconforming use. Such unsubstantiated claims that the City previously unlawfully approved non-profit museums in C2 zones when no one filed objections or a lawsuit to overturn it does not constitute substantial evidence now that the Academy's project is somehow lawful. Numerous individuals and organizations object on this basis, and the City and Academy risk a court order enjoining construction if the City decides to proceed by ignoring its own laws and the objections of its residents.

**Additionally this is a copy of the statement I read into the record at today's PLUM meeting.**

Good afternoon. I am Jim O'Sullivan, Pres. of the Miracle Mile Residents Association and VP of Fix the City.

Before we start I want to make sure you know that our attorney has submitted a letter addressing the timing of this appeal. If you don't have copies for you.

I know many people here are convinced that the MMRA does not support Museums. That is not true. What we don't support is an entertainment venue masquerading as a Museum.

We don't support heavy handed techniques and a rushed and flawed process like the one we are going through.

Scheduling this project to go to Council the day after PLUM gives the impression that the outcome is pre-approved and nothing we say here matters. That would also be a violation of CEQA but I am sure you are aware of that.

What we also don't approve of is an 828 page errata document dump the night before this hearing. There is new and different information in that document and it is not in the Council File. We discovered it quite by accident.

What **we do support** is the central concept of Rules Matter – even for museums.

We are aware that the Academy's Attorney's disagree with our complaint about the changing addresses associated with this project and the project itself from a 2.2 Acre project located at 6067 Wilshire to a 3 acre project at 6001- 6067 Wilshire and 6000 West 6<sup>th</sup> Street at the Planning Commission confused us until we saw the new parcel map. Now we understand that the approval of this project involves the entire parcel from Fairfax to the vacated Ogden Drive, from Wilshire Blvd to 6<sup>th</sup> street. I'm sure some will say it is just a technical change but to those of us who live here, I can assure you it is not. The whole parcel will now be zoned for a sign district.

That means you will be voting on removing the Permanent Q conditions from the whole parcel. Many of those Q conditions were mentioned in prior approvals for this Parcel.

One of the project's conditions of approval is to remove [Q] conditions that were included as mitigation in the 1993 EIR for the Forest City project. There has not been full disclosure which [Q] conditions were imposed as mitigation measures for the portions of that 1993 project that have since been constructed. The CPC's findings do not contain evidence showing which [Q] conditions are being removed and whether those conditions were necessary mitigation measures for the portions of the prior project that were constructed. We believe those Q Conditions were Mitigations placed on the parcel by the earlier EIR. They were in the implementing ordinance for the zone changes.

Site Plan Review Must Be Denied Because the Project Does Not Conform to the Applicable Plans.

The Design Overlay Does Not Comply with the Miracle Mile CDO Because a Sign District Cannot Be Created in the Miracle Mile CDO.

The CPC abused its discretion when it granted the project a design overlay, because the project does not comply with the intent, policies, or standards of the Miracle Mile Community Design Overlay District (CDO). The CDO was established because the Miracle Mile area "contains some of the best examples of Art Deco architecture in the country." As the City observed when enacting the CDO, new development in this area has not been consistent with that architecture. The purpose of the CDO is to "preserve the existing Art Deco architecture and insure that new construction is consistent with the spirit of the [Miracle Mile] District." While it is true that the project will preserve the exterior of the Streamline Moderne 1939 May Company building, the signage component of the project is inconsistent with the historic nature of that structure and with the requirements and policies of the CDO in general. The CDO specifically notes that "the placement, construction, color, font style, and graphic composition of signs has a collective impact on the appearance of an entire district." The guidelines require that "signs should not dominate or obscure the architectural elements of building facades, roofs, or landscaped area." Signs hanging on the face of a building are not as encourage as signs hanging perpendicular to the buildings. The size and quantity of window signs are limited. The CPC's determination to grant the Design Overlay inappropriately relies upon the fact that the City Council may grant a Sign District zoning designation to the project, and does not address the inconsistency with the CDO. Moreover, a [Q] condition currently in place on this parcel specifically incorporates the signage limitations of the CDO for this specific property. Finally, the Design Overlay is not consistent with the General Plan's Transportation Element, in which Wilshire Boulevard in the Miracle Mile area is a designated Scenic Highway. Signage is highly restricted within 500 feet of the Centerline of a scenic highway. The CPC's determination to grant the Design Overlay ignores this conflict with the Transportation Element and is thus an abuse of discretion.

The CPC's determination to grant the Design Overlay also fails to consider the degree to which the new construction deviates from the CDO's design guidelines, including the use of a spherical structure when the CDO guidelines require flat roofs and the use of projecting spires instead of flat roof line. The guidelines also seek continuity of roof heights, which is not present in the

project because the sphere and the spires are higher than the original 1939 Robinson May building.

It is particularly inappropriate to grant a Design Overlay without involvement of the Cultural Heritage Commission.

Site Plan Review Must Be Denied Because the Project Does Not Conform to the Applicable Plans

The CPC abused its discretion by granting a Site Plan review to the project due to its many inconsistencies with the General Plan and the Community Design Overlay. One of the required findings in support of Site Plan Review is that the project conforms to the policies of the General Plan and any applicable community plan or specific plan. As set forth above, the project does not conform to the CDO for several reasons: the signage plan conflicts with the CDO, the architecture conflicts with the CDO's architectural guidelines, and the signage plan conflicts with the General Plan Transportation Element's requirement that signage be limited within 500 feet of the centerline of a scenic highway.

In addition, the CPC erred in granting Site Plan Review because it cannot support the findings that the project is compatible with existing development on adjacent and neighboring properties. Permitting oversized supergraphic signage in an historic area will detrimentally affect the aesthetics of the neighborhood – this is the precise reason that the CDO prescribes signage guidelines, which the project entirely disregards.

The project's mitigation measures are also inadequate to ensure proper performance of the infrastructure, particularly with regard to emergency medical services.

The Wilshire Community plan, Policy 16-2.1 states "No increase in density shall be effected ... unless the Decision-makers make the following findings or a statement of overriding considerations: The transportation infrastructure serving the project site and surrounding area, specifically the Freeways, Highways, and Streets presently serving the affected area within the Wilshire Community Plan, have adequate capacity to accommodate the existing traffic flow volumes, and any additional traffic volume which would be generated from projects enabled by such discretionary actions."

Sincerely

James O'Sullivan

Board Member