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CF15-0475 ✓

ITEM 6 PLUM 5/5/15

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**STATEMENT of J.H. McQUISTON on
UNLAWFUL CONVERSION of 6616 DARBY PROPERTY**

Honorable Chairman and Members of the Committee:

This attempt to convert the zoning is incompatible with the General Plan and defies the Charter, the LAMC, the State Legislature, the Government Code, and the California Constitution. A similar attempt was denied by the Anaya case after this Committee approved it in 2005, which resulted in the Court's granting a writ of mandamus to set aside the City's permission of that project.

The General Plan Framework prescribes:

"California State Law requires that the day-to-day decisions of a city follow logically from and **be consistent with the general plan**. More specifically, Government Code sections 65860, 66473.5 and 65647.4 require that zoning ordinances and subdivisions and parcel map approval be consistent with the general plan."

The City's General Plan specifies: Preserve R-1 parcels for single-family use. This parcel is designated R-1 **in the General Plan**, part of which is the Community Plan which likewise specifies R-1 for the parcel.

In order to amend the zoning to R-3, the City must amend the General Plan and the Community Plan to remove requirements to preserve single-family parcels. That can't happen currently, per State law.

Such amendment must precede the rezoning, per Supreme Court decision. See Leshar Communications v City of Walnut Creek, 52 Cal 3d 531, 541 (in bank 1990):

"**The tail does not wag the dog. The general plan is the charter to which the ordinance must conform.** Un-restricted amendments of the general plan to conform to zoning changes would destroy the general plan as a tool for the comprehensive development of the community as a whole. (*deBottari v City Council*, 171 Cal App 3d 1204, 1212 (1985)."

In the similar case above, *Philip Anaya v City of Los Angeles*, BS 099892 (2006), the Court issuing the writ of mandamus said **City abused its discretion by permitting a zone change to R-3 next to R-1 in order to build town homes.** That is exactly what is proposed here.¹

Einstein would say, in this case repeating what was denied before in *Anaya*, **approval again would be defined as insanity.**

I believe the project would be acceptable if a lot-subdivision as R-1 is legally-possible. But this Committee, by law, is limited to a recommendation only of approval or a denial. The Charter, Government Code, and LAMC prohibit any other alternative.

I strongly urge denial: i.e., the Council should send the matter back to APC for reconsideration in light of controlling law.

Respectfully submitted,

J. H. McQuiston

c: Interested parties

¹Planning evidently won't pay attention to court decrees. It keeps on ignoring Plan, supporting void ab initio rezoning schemes instead