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May 12, 2015

CF15-0377

APPELLANT'S REPLY to APPLICANT'S APRIL 20,2015 RESPONSE

I

Applicant claims Appellant lacks standing because Appellant does not claim to own property abutting Applicant's proposal. Applicant claims LAMC Section 12.22A 25 (g) is the controlling statute for standing.

Applicant's claim is incorrect.

Section 65860(b), California Government Code, gives any owner or resident in the City standing to object to ordinances violating City Plan. The LAMC cannot over-rule State law.

Moreover, City prohibited Appellant from filing on the point raised by Applicant concerning density-bonus, citing the above LAMC.

The point raised by Applicant is totally-irrelevant to the appeal to this body. Applicant admits the density bonus issue is not before this body in this appeal.

Applicant claims **totally-irrelevant material, including legally-irrelevant zoning-ordinances, maybe to divert this body from the appeal's central issue: The Commission violated the City's Plan; violation is prohibited by State law and Courts' rulings against the City already prohibit the violation.**

Appellant of course may raise the larger-point of City's denial of process-due at the appropriate venue.

II

Applicant claims a City ordinance permits the City Planning Commission to decide matters controlled by "SNAP" (Vermont Western Station Neighborhood Area Plan). Applicant claims ordinance allows City Planning Commission to decide the matter. Applicant also claims the City Charter specifically-allows the jurisdiction.

Applicant's claims are incorrect.

The City Charter was amended by the voters on June 8, 1999, partly to defuse three attempts to secede from the City. The secessionists claimed as one injury that the City Planning Commission was composed of people from outside their districts and who treated them unfairly as a consequence.

To mollify those discontents, the Charter Commission gave the voters its reason for creating "Area Planning Commissions" in the Proposed Charter before the voters:

"Executive Summary - Proposed Charter

"The Elected Los Angeles Charter Reform Commission

"Introduction

"The Elected Los Angeles Charter Reform Commission has spent the last year and a half carefully studying every aspect of City government and debating how to improve it. The proposed draft Charter is designed to create a government that is **more responsive**, more accountable, and more efficient. This summary describes the reforms, contained in our draft Charter, designed to achieve each of these objectives.

"The draft Charter is much, much shorter than the existing Charter and is *more of a constitution* than the current Charter, which is akin to a detailed operations manual. []

● **Area Planning Commissions.** The proposed Charter creates five **Area Planning Commissions which will bring zoning and development decisions closer to the people. This will allow land use decisions to be made by those more familiar with the areas affected and sensitive to their needs.** (*Emphasis added*)

A. SNAP is legally a Plan permitted by Calif Govt Code 65301(b) as part of City's General Plan. SNAP Section

3B specifically prescribes that “the Specific Plan *shall prevail and supersede* the applicable provisions of this Code.”

SNAP Section 12 B specifically prescribes the Area Planning Commission as the sole Commission to permit exceptions to the Specific Plan.

Charter Section 552 grants APC power to “hear and determine” matters “delegated to it by ordinance”.

The above specific prescriptions relative to Charter, Plan and ordinance grants APC exclusive jurisdiction on matters desired by Applicant. It eliminates jurisdiction for CPC.

Applicant’s convoluted claims to the contrary are not consistent with the plain language of SNAP and the claims must be rejected.

B. Applicant claims: “Under LAMC Sec 12.36C 1, the City Planning Commission had jurisdiction over the entire project and all required approvals **despite the fact that some approvals required for the project would have been heard by the Director as the initial decision-maker in the absence of additional requested approvals required to be heard by the City Planning Commission in the first instance.**”

Applicant’s claim again is incorrect.

Applicant alleges the Zoning ordinance in LAMC governs the City Plan. **Government Code Section 56860(a) prescribes the reverse.** As it was specifically-cited to Planning and Commission, not only in this but in *every case similar* where the issue was the **supremacy of Plan over incompatible ordinance**:

“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) 171 Cal.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.**” *Leshar Comm. v Walnut Creek*, 52 Cal.3d 531 (S Ct 1990 In Bank), interpreting the current Government Code applicable since 1971 to this City.

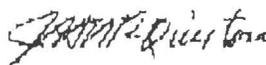
C. Applicant had the *burden of proving* the project was before the appropriate Commission, and Applicant **failed to prove the City Planning Commission had jurisdiction. The City General Plan by its Specific Plan said otherwise.**

Govt Code Section 65904 prescribes that this body may not decide this matter *de novo* because the City created a Commission to do so.

This body is restricted by law to examining the materials submitted to the CPC. **Those materials were not given to this body. This body must therefore look only to the law, which plainly prescribes that the APC must review this matter if Applicant wishes to get departures from SNAP law.**

The legal conclusion is that the matter must be sent to the APC for its Report; the CPC Report is void *ab initio*, per *Leshar* at 544.

Respectfully submitted,



J. H. McQuiston, Appellant

c: Interested parties



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ITEM 7 plum 5/19/15

S. Gin

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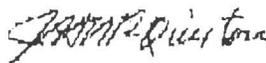
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ITEM 7 PLUM 5/19/15

S. Gin

**APPELLANT'S RESPONSE to PLANNING'S RESTATEMENT of
APPEAL of 211-241 N. VERMONT AVE**

Honorable Chairman and Members of the Committee:

COUNCIL FILE DOES NOT HAVE MATERIALS FROM THE COMMISSION'S HEARINGS.

STANDARD OF REVIEW

Court of Appeal sternly said the City Council must observe law in Charter and Code when it acts upon applicant's requests for "departures from law"¹. **This Committee got that order 4 years ago in 2011, in *West Chandler Assn v City of Los Angeles*, 2011 Cal App LEXUS 6176:**

"As we have stated, the Municipal Code **requires the appellate body's decision to be based on the record** as to whether the [Commission] erred or abused [its] discretion, and the appellate body is required to set forth specifically how the [Commission] erred [or was correct]."

I know the Council doesn't observe statutory and case law governing its proceedings. But I remain hopeful this Committee will recognize:

"(1) the agency proceeded without, or in excess of, jurisdiction; (2) there wasn't a fair hearing; and (3) the agency abused its discretion. *McAllister v. California Coastal Com.* (2008) 169 Cal. App. 4th 912, 921; § 1094.5, subd. (b.) 'Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.'"

AND, the Council "**may not isolate only the evidence which supports the administrative finding and disregard other relevant evidence in the record.** [Citations.] On the other hand, **neither [it] nor [a] trial court may disregard or overturn the ... finding** 'for the reason that it is considered that a contrary finding would have been equally or more reasonable.'" [Citations.] [Citation.]' (*Craik v. County of Santa Cruz* (2000) 81 Cal. App. 4th 880, 884.)" *West Chandler v Los Angeles, supra.* **In 2011 the court said the City did not do the above per law.**

Also, the **Council per the above is not allowed to introduce nor evaluate facts which were not presented to the administrator for its evaluation prior to its decision-below.**

It might-be falsely-argued in this appeal the Council is acting legislatively and not administratively; *ergo* the rule of *Topanga v County of Los Angeles*, 11 Cal 3d 506 (S Ct 1974) cited in *West Chandler* above might not apply. But if the Council's act is legislative, LAMC Sec 12.32 C7 restricts the Council **only** to approve or disapprove the Commission; **Council cannot amend Commission's product and thereafter approve the application.**

With the above Standard of Review, this Appeal is before the Council, perhaps subsequently before a court.

DISCUSSION of REASONS FOR THE APPEAL

1. & 3. A. INCORRECT JURISDICTION

Applicant and City both look in *Zoning Code* attempting to find jurisdiction for City Planning Commission. But simple-response is: **Vermont Western Station Neighborhood Area Plan ("SNAP")**, Ordinance 173749, in Section 12 removed jurisdiction from the City Planning Commission, naming the Area Planning Commission to

¹A "departure from law" is legally-defined as a "variance", which may take several forms which are called other names but which the landholder may not practice "by right". It may be a conditional use, a bonus, or a plan amendment, for example.

adjudicate the matters which are the bases for Applicant's requests.

Establishing supremacy over other Code-sections at odds, also SNAP Sec 3 B prescribes:

"[T]he Specific Plan shall prevail and supersede the applicable provisions of this [Zoning] Code."

Charter-Revision Commission said Area Commissioners from the community affected by a project, not City Planning Commissioners, must decide if the project is legal and proper.

Therefore, plain language of the laws prohibited City Planning Commission's jurisdiction.

1. & 3. B. NO DISCRETION TO APPROVE MATTER

Applicant and City acknowledge SNAP Section 8 ("Subarea B Mixed-Use Boulevards") controls land-use on Applicant's parcels. Uses it permits are specified therein, including R-3 use and C1.5 else (Sec 12.13.5 "C1.5 Limited Commercial Zone"). R-4 use permitted in C1.5 per Sec 12.13.5A1 is prohibited per SNAP.

Applicant and City falsely-claimed the parcels permit C-2 and R-4 use, among other false facts:

"The land use designation for the project site is Neighborhood Office Commercial with corresponding zones of C1, C1.5, C2, C4, P, CR, RAS3 and RAS4. The project site has a zoning classification of C2-1." *City Planning Report* at "Background".

Applicant and City falsely-claimed: (1) Parcels' commercial uses may exceed a 1.5 to 1 FAR, either exclusively or as mixed-use; and (2) Maximum height for commercial use may exceed 35 feet. SNAP Sec 8D prohibits exceeding those limits. Council would have to enact a comprehensive Plan amendment to do so.

And, SNAP transitional height limitation per Section 8 C prohibits Applicant's "departure from it".

City's Report at "Description" lists the lot area as "42,930" and the buildings at "98,981", for a FAR of 2.31. SNAP limit of 2 FAR per Section 8B (if entirely mixed-use) is exceeded. So it's doubtful parcels' "open space" is "usable" as required by Section 8D; FAR-limited open-space will have plants, not the required recreation.

Framework Plan Design and Development Policy 3.13.5 is to develop recreation and parks near mixed-use structures, and 3.13.6 is to "Design multi-family residential units to minimize the impact of traffic and noise and incorporate recreational and open space amenities to support the needs of the residents." Yet Applicant testified it intends not to contribute to SNAP's "Parks First" program, despite the urgent need for the recreational-park-starved population. Not only will there be no usable open-space on the property but also there will be a decrease in public safety due to intentionally-withholding organized sports-activities.

Supreme and other Courts said: City ordinances regarding use must be consistent with SNAP and the rest of the City's General Plan. See e.g., *City of Los Angeles v State of California*, 138 Cal. App.3d 526 (1982); *deBottari v City Council*, 171 Cal. App. 3d 1204 (1985); *Sierra Club v Board of Supervisors*, 126 Cal. App. 3d 698 (1981); *Leshar Communications v City of Walnut Creek*, 52 Cal.3d 531 (In Bank 1990); *deVita v County of Napa*, 9 Cal.4th 763 (1995); *Philip Anaya v City of Los Angeles*, BS 099892 (2006); *Chazanov v City of Los Angeles*, BS 135382 (2013). This project requests departures which are not consistent with the Plans cited; yet, Commission failed to disapprove.

Commission and Planning also failed to protect people's safety. Commission also allowed Appellant to violate building and setback restrictions imposed in the Code for public safety, shocking the conscience.

Commission neither discussed nor evaluated these legally-important issues, although these issues were set before them in writing and verbal testimony.

Therefore assuming for discussion it had jurisdiction Commission could not approve Applicant's "departures from law".

1. & 3. C. PROPERTY IS USABLE WITHOUT "DEPARTURE FROM LAW"

For generations subject parcels were used for lawful purposes. **Applicant made no claim the property was unusable per SNAP.** Appellant made no claim low-income housing *could not* be constructed in compliance with SNAP.

Absent validating such claims, Constitution Article I Section 7(b) prohibits “departure from law” because to do so violates equal protection of law. See e.g., *Broadway Laguna v Board of Appeals*, 66 C. 2d 767 (S Ct 1967); and *Topanga, supra*. *Stolman v City of Los Angeles*, 114 Cal App 4th 916 (2003) said:

“[I]f the property can be put to effective use consistent with the existing [SNAP] without the deviation sought, it is not significant that the changes sought would enable it to recover a greater income. *Broadway Laguna v Board*, 66 Cal 2d 707.” See also *West Chandler, supra*.

Commission thus failed to establish the critical foundation necessary to justify “departures from law”.

1. & 3. D. FINDINGS LACK LEGAL-RELEVANCE

Every Finding must be in the affirmative. *Broadway, supra*, and *Topanga, supra*, prescribed that **Findings must be based on legally-pertinent facts**, and the **burden is on the applicant to prove**, and **Commission to demonstrate**, facts and law are **legally-pertinent**. *Topanga, supra* at 521.

But e.g., Finding 1(c) merely says: “The project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable Community Plan, and any applicable Specific Plan”. **This is mere-allegation, turning law on its head.** *SNAP controls here.* **The project violations cannot be said to conform to it.**

Findings’ **extraneous verbiage** distracts from **project violations**: E.g., immaterial discussion of the Wilshire Plan (as if it were supreme); selected-goals set-forth (as-if the cites-alone could legally-justify the project).

False-claim of C-2 zoning is repeated at page F-6. Legally-irrelevant assertions masquerade as “conclusions”: E.g.: “Relief from the area requirements will ensure that the project will be able to provide affordable housing at the residential density that is needed [].”

But **SNAP by-right allows 69,322 residents per sq mi** (vs. Manhattan’s 64,966). **City’s average density is only 5,879.** **Applicant’s project exceeding maximum SNAP-density is obviously aimed at the wrong area.**

Others developed property without relief from SNAP requirements. SNAP may be onerous and detailed, but **Applicant did not offer a scintilla of evidence** that an *appropriate project could not* satisfy SNAP.

Voluminously-excessive **Finding 1 didn’t show why** a “departure from law” is *necessary to build affordable units of quality yet could not provide* SNAP’s prescribed social requirements.

Regarding all other Findings, **none analyzes the impact on safety and social welfare “departures from law” Applicant will cause.**

SNAP was argued-over and re-written for years before enactment; legislative history is in its record. **Over-riding SNAP requirements requires proving injury, not just describing an intent to build.** **City Planning Commissioners know that is not Constitutionally-valid** to permit a use not-allowed to neighboring properties in the same Plan and zoning.

“The claim that the development would probably serve various community needs may be highly desirable, but it too **does not bear on the issue at hand.** Likewise, without more, the data suggesting that **development of the property in conformance with the general zoning classification could require substantial expenditures are not relevant** to the issue whether the [“departure from law”] was properly granted. Even **assuming for the sake of argument** that if, confined to the subject parcel and no more than a few others in the zone, such a burden could support a [“departure”], for all we know from the record, conforming development of **other property in the area would entail a similar burden.** [] Since there has been **no affirmative showing that the subject property differs substantially and in relevant aspects from other parcels** in the zone, we conclude that

the ["departure from law"] granted amounts to the kind of "**special privilege**" explicitly prohibited by Government Code section 65906 [Art I §7]." *Topanga, supra* at 521-522.

And: "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) 171 Cal.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 tall does not wag the dog. The general plan is the charter to which the ordinance must conform.**" *Leshner, supra* at 541.

1. & 3. E. IMPROPER INTERFERENCE BY CD13

The participation of CD13 in the hearing before the City Planning Commission violated the California Government Code, according to 81 Op Atty Gen 156 (1998), which said:

"Members of the legislative body of a local public agency **may not ask questions or make statements** while attending a meeting of a standing committee of the legislative body "as observers."

An "**observer**" is a person who is not a Member of the standing committee. At City hearings, Councilpersons personally, or by assistant, improperly-deliver their "decision" to the committee (or in this case, the Commission) after public participation is prohibited at hearings. They engage in dialog, which is prohibited the public. **And, almost never are non-Members refused whatever they wish the hearing-body to pronounce.**²

The basis in law for 81 Op Att Gen is Government Code Section 54952.2, which it interpreted to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." [Citation.]" (*California Teachers Assn. v. Governing Bd. of Rialto Unified School Dist.* (1997) 14 Cal.4th 627, 632.) "[E]very word and phrase employed [in a statute] is presumed to be intended to have meaning and perform a useful function . . . [and] a construction rendering some words in the statute useless or redundant is to be avoided." [Citation.]" (*People v. Contreras* (1997) 55 Cal.App.4th 760, 764.) The words of a statute are to be given "a plain and commonsense meaning." [Citations.]" (*People v. Valladoli* (1996) 13 Cal.4th 590, 597.)" 81 Op Att Gen at 158.

So: "Accordingly, we believe that the Legislature, **having used the word "only"** in conjunction with the words "as observers," **intended to limit attendance** in these circumstances to **watching and listening** without further participation. Those intending to qualify as observers under subdivision (c)(6) of section 54952.2 **must refrain from asking questions or making statements.** Any conduct other than observing and listening would transcend the statutory authorization, as interpreted under the "plain and commonsense meaning" rule." Att Gen at 159.

Breach of law by CD13 means *West Chandler's* 2nd requirement: "(2) there was a fair hearing", **failed** to be met.

West Chandler, supra, encountered a similar situation. A City Councilmember made a "deal" with the Applicant and presented it to the Council **after** public comment was barred by Council-rule; Council then-approved the "deal" at the Councilmember's request and without Council-debate.

The court noted such process raised a Constitutional question, but the Court of Appeal having decided it could invalidate the Council's action on other grounds, said:

"In light of our conclusion that the City Council **abused its discretion by failing to proceed in the manner required by law, we need not consider** appellants' arguments that their due process rights were violated by the City Council allegedly acting in a legislative manner rather than a quasi-judicial manner, because it is **not necessary to our disposition of the appeal.** (*See Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals Bd.* (2006) 40 Cal.4th 1, 17, fn. 13 ["As a prudential matter, we routinely decline to address constitutional

²The one exception has been if the body has a firm time-deadline the CD wishes to violate.

questions when it is unnecessary to reach them."]; *Palermo v. Stockton Theatres, Inc.* (1948) 32 Cal.2d 53, 65; *Shaw v. County of Santa Cruz* (2008) 170 Cal.App.4th 229, 259.)”

1. & 3. F. CITY CONTINUES TO DISREGARD COURT DECISIONS

Philip Anaya, supra, cited to Commission, is on “all fours” with this case: Applicant wanted permission to **increase the allowed-density** of a parcel **adjacent to R-1 parcels**. *Anaya* said the City Plan prohibited such; City’s Plan mandated a “density-reduction” if dense “R” parcels neared or were adjacent to R-1. And in *Chazanov, supra*, City **again violated Plan just like in Anaya**, and **again was mandated to desist**.

Applicant wants to increase density **near R-1 parcels** above what the Plan permits; also Applicant wants to increase Plan’s allowable transitional-height near R-1 parcels. **These social-protections which SNAP protects for nearby parcels would be lost per Applicant’s wants**. Commission, despite notification of contrary authority, again abused its discretion; it rewarded Applicant by revoking the community’s social-protections.

Lastly, the Commission’s process invalidates all of its hearings: It considers nothing not received at least ten days before the hearing; yet it does not advertise its hearing more than 7 days before the hearing is scheduled. This process **prohibits all substantive participation by the public in any Commission hearing.** It clearly violates *West Chandler’s criterion Number 2, “Fair hearing”*.

One may ask, “How can the attending Assistant City Attorney *permit* a **City agency to disregard** statutory and case law?. Some time ago Appellant asked that question of a distinguished City Attorney advising City agencies on Planning law: The City Attorney said **the City Attorney’s mission is not to keep City agents from disregarding statutory and case law.**

The “professed-mission” **encourages litigation.** Litigation siphons-away City funds from repairing City’s infrastructure-defects. City continues to disregard Court decisions **regardless of the cost to the City.**

CONCLUSION

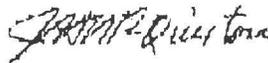
To keep this Response brief, Appellant did not specify in detail each legal-deficiency in the Commission’s decision. But this Response coupled with the Appeal manuscript positively demonstrates the **Commission erred on every point** of fact and law as specified in the body of the Appeal.

I must insist: The City unfairly-treats reputable-developers, due to these recurring City transgressions.

To correct the Commission’s **vold decision**, the Council **must determine the Commission’s decision is invalid, and Council must send the matter to the Area Planning Commission for appropriate determination.**

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