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● McQUISTON ASSOCIATES

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Consultants to technical management

July 24, 2015

CF15-0655

ITEM 3 PLUM 7/28/15

S. Gin ✓

**STATEMENT of J.H. McQUISTON on
UNCONSTITUTIONAL OMISSION of APPELLANT in CASE**

Honorable Chairman and Members of the Commission:

1. I am the Appellant in this Case. I filed my appeal and paid the appeal-fee May 18, 2015. I pray this Council will hear my appeal per my constitutional right to "petition the City for redress of grievances".

The Clerk of this Committee told me on or about May 18 that she was cognizant of my Appeal, but the Agenda for this Item does not contain any reference to it.

Attached to this Statement is a copy of my Appeal (without its repro of the Commission "Determination" which is in the Council File), plus letter to the Planning Director sent by FAX May 28 relating to the appeal.

I am entitled to be heard by this Committee as the "Appellant" and entitled to an appellant's rights regarding time to present and rebut testimony on this matter in this Committee.

2. There are many violations of State Constitution and Laws regarding the subject attempt to convert the use of the subject property. I raised these violations at the Commission's hearing on the matter, and as a Los Angeles City property owner, and as a Los Angeles City resident, I am empowered to act as "private attorney general" to enlist the power of the State to prevent the violations.

3. The Charter of Los Angeles is its "constitution" regarding matters compatible with State law. The Elected Charter Commission, which the electors created to reform the pre-1999 Charter, listened to people's complaints regarding the City Planning Commission and responded by creating "Area Planning Commissions" in the Charter draft, membership thereon being restricted to residents of the area. The Charter Commission explained their operation thusly to the voters when the "draft" became law after the vote in 1999 (binding on the City's operation of all Commissions):

"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)

Since 1999, the Department inconsistently-follows Charter Section 552 ("Area Planning Commissions"); in the subject case it did not obey the restriction per the above Summary. People failed to get this decision from

Commissioners “more familiar with the area and sensitive to its needs”, as their constitution the Charter prescribes.¹ The City Planning Commission’s decision is void *ab initio*.

4. State Government Code requires separation of uses. As Leshner said at 535-536:

“A general plan must set out a statement of the city’s development policies and objectives, and include specific elements among which are land use and circulation elements. (§ 65302² subds. (a) & (b).) Once the city has adopted a general plan, all zoning ordinances must be consistent with that plan, and to be consistent must be ‘compatible with the objectives, policies, general land uses, and programs specified in such a plan.’ (§ 65860, subd. (a)(ii).)”

Los Angeles claimed that to subject it to the State Law Section 65860 was “unconstitutional”. In response the Court in *City of Los Angeles v. State of California*, 138 Cal.App.3d 526 (1982), said at 532:

“[G]eneral law prevails over local enactments of a chartered city, even in regard to matters which would otherwise be deemed strictly municipal affairs, where the subject of the general law is of statewide concern.” (*Professional Fire Fighters, Inc. v. City of Los Angeles* (1963) 60 Cal.2d 276, 292 [32 Cal. Rptr. 830, 384 P.2d158]; *Baggett v. Gates* (1982) 32 Cal.3d 128, 136 [185 Cal.Rptr. 232, 649 P.2d824].)

“[] Here, we can but conclude that the challenged statute is not unconstitutional on its face.” *ibid* at 535.

The issue remains that the General Plan portion controlling this parcel, for example, requires 213 acres for “industrial” use, and specifies *the Industrial* area should be “MR”, which prohibits residential and industry-unrelated commercial use. Other parts controlling this parcel command preserving land for industrial use.³ If Council chops-off MR land in one place it must restore the land in another place concurrently.

5. The Council, partly on the faulty-word of the “expediter” for this applicant, has reduced-piecemeal the Plan’s command to *restrict* the industrial area it set-forth. The rationale for State Government Code Section 65906 and echoed in LAMC is the mandate on this Council per Const Art I §7(b) to provide equal protection of law to the area’s landowners. Council may not provide a “special privilege” to a landowner not allowed by right to all other landowners in the same zone of the Plan.

If the Council decided to amend the specific Industrial part of City’s General Plan, it cannot make its General Plan internally-inconsistent. If City did so, the Plan would not comply with the State’s mandate on City per Govt Code 65300 *et seq.* In *Sierra Club v Board of Supervisors*, 12Cal App 3d 698 (1981), cited with approval by *Leshner*, the Plan was rendered internally-inconsistent by an amendment alleged to be an attempt to skirt the Govt Code prohibition on inconsistent zoning. The attempt of the Supervisors was declared void *ab initio*.

Likewise, *Leshner* cited *deBottari v City Council*, 171 Cal App 3d 1204 (1981) which denied that Council similarly. Lately, the Council’s recent Hollywood Plan amendment was declared unlawful, citing *deBottari*.

DeVita v County of Napa, 9 Cal 4th 763 (S Ct 1995) added to the matter by saying at 790-791:

“Commentators have noted the tension between the ideal of the general plan as a long-range vision of local land use, and the reality that general plans are often amended in a fragmentary fashion to accommodate new development. One survey of California city and county planning departments shows that

¹ Planning decreed the matter did not affect the City’s *total* environment, so Planning thereby had to put the matter to the Area Planning Commission per the Charter, not the City Planning Commission. The City Planning Commission’s product is void *ab initio*. See, e.g. *Leshner Communications v City of Walnut Creek*, 52 Cal 3d 531, 539-541 and 543-546 (S Ct In Bank 1990).

2. “The land use element must designate “the proposed general distribution and general location and extent of the uses of the land for housing, business, industry, open space, including agriculture, natural resources, recreation, and enjoyment of scenic beauty, education, public buildings and grounds, solid and liquid waste disposal facilities, and other categories of public and private uses of land. The land use elements shall include a statement of the standards of population density and building intensity recommended for the various districts and other territory covered by the plan...” (§ 65302, subd. (a).) The circulation element must consist “of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals and other local public utilities and facilities, all correlated with the land use element of the plan.” (§ 65302, subd. (b).)”

³ “Industrial” use isn’t “smokestack”, but computer programming, medical research, document storage, and production. §12.17.5.

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. (Dalton, *Limits of Regulation: Evidence from Local Plan Implementation in California* (1989) 55 J.Am. Planning Assn., 151, 156, 159 (hereafter *Limits of Regulation*); see also Fulton, *Guide to California Planning* (1991) 66; Glickfeld, *Local Initiatives in the 90s: Coming to Terms with an Imperfect Voice of Democracy in 1 Land Use Forum* (Cont.Ed.Bar 1992) pp. 99, 100 (hereafter *Local Initiatives in the 90's*); and see, e.g., *Yost v. Thomas, supra*, 36 Cal.3d at p. 569, 205 Cal.Rptr. 801, 685 P.2d 1152; *Citizens Assn. for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 156-157, 217 Cal.Rptr. 893.)

“As the author of that survey has concluded, the **planning and zoning amendment process has become in many communities one of "piecemeal adjustment" by local planners and local legislators in response to development pressures.** (*Limits of Regulation, supra*, 55 J.Am. Planning Assn. at pp. 151, 159.) This conclusion comports with the well-known phenomenon commonly referred to as the **"fiscalization of land use,"** whereby planning 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*, at pp. 15-17, 208-213.)

“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. v. City of San Buenaventura, supra*, 10 Cal.3d 110, 120, 109 Cal.Rptr. 799, 514 P.2d 111.)”

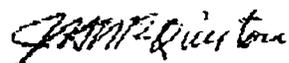
By simple mathematics, **Los Angeles is the culprit for most of the State Law violations *deVita* described.**

Los Angeles seems to amend its General Plan at almost every weekly session. It apparently utilizes the Josef Stalin or Andrew Jackson approach to obeying law, namely: **“How many police has the Court?”**

In this case Los Angeles must stop its scofflaw-approach to Charter, State and Constitution and laws.

The LAMC clearly states **no use not specifically permitted by the Plan may be allowed.**⁴ This Committee **may not constitutionally-support the Commission’s determination.**

Respectfully submitted,



J, H. McQuiston, Property owner in Applicant’s zone
substantially-injured by Council’s piecemeal amendments

c: Interested parties

⁴ See e.g §12.27 D 5: “A variance shall not be used to grant a special privilege or to permit a use substantially inconsistent with the limitations upon other properties in the same zone and vicinity.” See also *Leshner* at 541: “Tail doesn’t wag the dog”. This prohibition rests on Constitution Article I §7(b) (“Equal protection”) and cannot be evaded by Council’s legislation.

MASTER APPEAL FORM

City of Los Angeles - Department of City Planning

RECEIVED AT THE CITY PLANNING DEPARTMENT ON: 5/19/15 DA

APPEAL TO THE: City Council

REGARDING CASE #: CPC 2014-4074-GPA-ZC-HD-ZAA-SPR

PROJECT ADDRESS: 900-932 North LaBrea Avenue

FINAL DATE TO APPEAL: May 19, 2015

TYPE OF APPEAL: 1. Appeal by Applicant

2. Appeal by a person, other than the applicant, claiming to be aggrieved

3. Appeal by applicant or aggrieved person from a determination made by the Department of Building and Safety

APPELLANT INFORMATION - Please print Clearly

Name:

Are you filing for yourself or on behalf of another party, organization or company?

Self Other: _____

Address: 6212 Yucca St, Los Angeles, CA 90028

My Aggrieved-Property Address: 1235 North Orange Drive, Los Angeles CA 90038

Telephone: 323-464-6792

* Are you filing to support the original applicant's position?

Yes NO

REPRESENTATIVE INFORMATION

Name: To Be Added if hired

Address: _____

Zip: _____

Telephone: _____ E-mail: _____

This application is to be used for any appeals authorized by the Los Angeles Municipal Code for discretionary actions administered by the Department of City Planning.

JUSTIFICATION/REASON FOR APPEALING - Please provide on separate sheet.

Are you appealing the entire decision or parts of it?

Entire

Part

Your justification/reason must state:

- * The reasons for the appeal
- * How you are aggrieved by the decision
- * Specifically the points at issue
- * Why you believe the decision-maker erred or abused their discretion

ADDITIONAL INFORMATION/REQUIREMENTS

Eight (8) copies of the following documents are required (1 original and 7 duplicates):

- * Master Appeal Form
- * Justification/Reason for Appealing document
- * Original Determination Letter
- * Original applicants must provide the original receipt required to calculate 85% filing fee.
- * Original applicants must pay mailing fees to SIC and submit copy of receipt.
- * Applicants filing per 12.26 K "Appeals from Building Department Determinations" are considered original applicants and must provide notice per 1226 K 7.
- * Appeals to the City Council from a determination on a Tentative Tract (T1 or V1T) by the City (Area) Planning Commission must be filed within 10 days of the written determination of the Commission.
- * A CEQA document can only be appealed if a non-elected decision-making body (i.e. ZA, APC, CPC, etc...) makes a determination for a project that is not further appealable.

"if a nonelected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any."

—CA Public Resources Code § 21151 ©

I certify that the statements contained in this application are complete and true:

Appellant Signature: *JRM/Queenston*

Date: May 17, 2015

Planning Staff Use Only

Project	Reviewed and Accepted by	Date
Receipt No.	Deemed Complete by	Date

Determination Authority Notified

Original Receipt and BTC Receipt (if original applicant)

1. Jurisdiction

Per LAMC §12.24.1, and §12.32, the City Council has jurisdiction for this appeal.

2. Reasons for the appeal

A. Applicant's proposed use is not permitted in this **RESTRICTED INDUSTRIAL ZONE**. It does not conform to any of the specific uses *permitted* by law. Every Commission recommendation and approval is appealed as not in accordance with specific requirements in the City General Plan.

B. The General Plan specifically mandates parcels in this specific zone to be restricted solely to industrial or industrially-related use; amending the Plan to permit this interior parcel in the specific zone to allow residents or non industrially-related business renders the General Plan internally-inconsistent.

C. The Supreme Court interpreted California Law relative to this proposal, and prohibits it.

D. City Charter requires the determination for this parcel to be performed by the Area Planning Commission, not the City Planning Commission. Determination by the City Planning Commission is *ultra vires*, void *ab initio*. By law the Council is required to approve the appeal, and law requires Council to send the matter to the Area Planning Commission for its determination *de novo*.

E. It is overdue for the City to abide State and Charter Constitution and law controlling cases like this one. City is repeatedly-mandated by courts to do so in similar cases.

F. Appellant is empowered to pursue compliance by the City to its General Plan, which includes City's compliance with all components of City's Plan.

3. How McQuiston is aggrieved

McQuiston is a City resident and property-owner in the subject zone, equally-restricted by City's General Plan MR-1 which is mandatory for the zone. Govt Code §65860(b) empowers McQuiston to enforce the restriction imposed on this parcel by the City Plan in case the City fails to do so.

The **RESTRICTED INDUSTRIAL** area specified by the Plan is proven to provide the required social and safety protection to McQuiston's and the other properties in that specific area: When that protection is suspended in the zone, thereafter McQuiston's property experiences severe and continuing damage.

McQuiston is also aggrieved by the City's failure to enforce law without McQuiston's having to take action. As a sworn person, McQuiston must act to correct the Commission's tort in this case.

4. Points at issue

A. City concedes the property is "MR1", which per LAMC means "SEC. 12.17.5. "MR1" RESTRICTED INDUSTRIAL ZONE". Commission falsely alleges property is *also* "SEC. 12.17.6. "M1" LIMITED INDUSTRIAL ZONE". MR1 is diametrically-opposite to M1. M1 permits non-industrial use; MR1 forbids it. M1 permits residential use; M1 forbids a residence except for a caretaker.

General Plan does not designate as Commission states: "The site for Limited Industrial land use with corresponding Zones of CM, MR1, and M1." *Commission's General Plan/Charter Findings, #1 General Plan Land Use Designation at F-1*. Commission's above allegation is obviously-false.

Parcel was used industrially for decades successfully, per MR1 by the Mole-Richardson company to make and supply lighting and other equipment to media-production companies. Commission failed to prove that continuing-industrial use was not possible on the property, nor that applicant's non-industrial use was allowable by the City's General Plan, which specifically mandates otherwise in each segment of the Plan:

“Preserve industrial property for industrial users”. (The general-list doesn’t show zoning of specific lots.)

Commission in Finding #3 (at F-2) cited but abused General Plan’s Policy 3.14.6, which preserves existing industrial parcels for industrial use, and prohibits use-conversion “if alternative use will create a fragmented pattern of development” (i.e., “spot zoning” is barred in the midst of the MR1 area).

Commission in Finding #2 (at F-1) omitted the General Plan’s 1988 specification applicable to the parcel:

“To preserve this valuable land resource from the intrusion of other uses, and to ensure its development with high quality industrial uses in keeping with the urban residential character of the community, the Plan proposes classifying industrial land in restricted zoning categories, such as the MR zones, wherever possible.”

Since 1976 the parcel at issue has been classified as RESTRICTED INDUSTRIAL, MR1, in accordance with the General Plan. The Land Use Element of the General Plan Framework prescribes:

“It is the intent of the General Plan Framework Element to preserve industrial land for the retention and expansion of existing and attraction of new industrial uses that provide job opportunities for the city’s residents.”

Commission made no Finding that a “departure from law”⁵ is required to permit the parcel to be used; Applicant’s proposed “special privilege” to use non-industrially is UNCONSTITUTIONAL per Art I §7.

B. Commission’s wont, to amend the “Hollywood Plan” segment of the General Plan but not the requirement in the General Plan to preserve existing industrial property, makes the General Plan internally-inconsistent. Supreme Court in *Sierra Club v Board of Supervisors*, 126 Cal. App. 3d 698 (1981) decided that if a Plan by amendment is internally-inconsistent, the amendment is invalid.

C. *Leshar Communications v City of Walnut Creek*, 52 Cal.3d 531 (S Ct In Bank 1990) said 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.”

***Topanga Assn v County of Los Angeles*, 11 Cal 3d 506 (1974), said at 514-515:**

“[J]udicial review of zoning variances must not be perfunctory or mechanically superficial. [] If the interests of these parties [in the zone thus restricted] in preventing unjustified [“departure from law”] awards for neighboring land is not sufficiently protected, the consequence will be subversion of the critical reciprocity upon which zoning regulation rests.”

AND: ““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,

⁵A “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 single-parcel conditional use, a bonus, or a plan amendment, for example.

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.

Commission failed to apply the above tests and therefore proceeded without a basis in law. Findings did not compare parcel with properties complying with MRI in the surrounding MRI area.

D. The project does not have an impact on the entire City. It just affects Hollywood, Central Area Planning Commission's domain.

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 created "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*)

Charter Sec 552 (c) and (d) among other sections clearly echo the above and verify that the Area Planning Commission was the proper venue below and the City Planning Commission was not.

E. The participation of CD4 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.⁶

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

⁶The one exception has been if the body has a firm time-deadline the CD wishes to violate.

. . . [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.

F. In *City of Los Angeles v State of California*, 138 Cal.App.3d 526 (1982), the City claimed it would be unconstitutional for the State to make the City obey §65860. The Court disagreed, saying the State intended all venues to have their zoning obey the venue's General Plan. Those Plans the State said in §65300 *et seq* must be specific and set aside areas for specific purposes as delineated therein.

Unfortunately, the State has no "enforcer" to *force* the City to follow its General Plan, except "private attorneys-general" per §65860 expending *their* resources again and again, to get the City to *obey the law*. But Area Planning Commissions, "outsiders", can enforce law when a City administrator fails to do so.

4. 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" . 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 Commission for its evaluation prior to its **decision-below**. Council is confined to "yes" or "no".

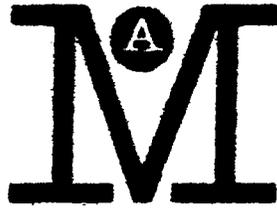
It might-be falsely-argued in this appeal the Council is acting legislatively and not administratively; *ergo* the rule of *Topanga v County of Los Angeles*, 11 Cal 3d 506 (S Ct 1974) cited in *West Chandler* above might not apply. But if the Council's act is legislative, LAMC Sec 12.32 C7 restricts 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.⁷

⁷The Commission's Determination does not say that any of the project's residences are for lower-income persons. But in C-1, #1, there is mention of requirement for executing a covenant concerning Very Low Income households.

This appeal considers the question of such covenant moot, because Government Code **does not require parcels Restricted to Industry** by Plan to be eligible for "affordable housing". Nor does Govt Code §65300 mandating General Plans contemplate the siting of residences surrounded by and in a Restricted Industrial Zone. Thus Govt Code §59515 **is not applicable; C-1 #1 is not appropriate here.**



● McQUISTON ASSOCIATES
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consultants to technical
management
May 27, 2015

Honorable Michael LoGrande, Director
Los Angeles City Planning Department

BY FAX

Dear Mr LoGrande:

This matter is urgent. I demand a quick reply, in writing by FAX to the above FAX number.

Today, your employee Jane Choi left, by telecon to the above number, with my assistant a demand that I return Choi's call regarding an "appeal problem".

Later May 27 I returned her call.

She said she was going to prevent me from appealing a matter to the Council, and she was going to return the fee I paid to appeal the matter to the City Council.

I said to deny me the right to petition the City Council for redress of my grievance is a constitutional tort.

She hung up on me as I was talking to her.

I immediately called you about it. I was required to leave you a message, in which I said Choi was denying me my constitutional right to petition, and that I wanted your immediate response.

Your designated-assistants previously-decided in my presence, after they read my petition and verified timeliness as set forth in the "decision" filed by the secretary of the Commission which made the allegedly-spurious decision of your Department, my petition was filed timely.

I demand you tell me if Ms Choi's act is official-policy of the Department, if it is official-policy of the City, or just the policy of Ms Choi.

Please do not violate my constitutional right.

Respectfully submitted,

J.H. McQuiston, aggrieved property owner and resident
of the City of Los Angeles