



## CITY COUNCIL STAFF REPORT

DATE: February 17, 2010 UNFINISHED BUSINESS

SUBJECT: CASE NO. 5.0909; CONDITIONAL USE PERMIT 5.0909 – VICEROY HOTEL; 415 S. BELARDO ROAD; CONSIDERATION OF REVOCATION

FROM: David H. Ready, City Manager

BY: Department of Planning Services

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### SUMMARY

The City Council will receive a report on the status of the Viceroy Hotel Conditional Use Permit and determine if the CUP should be revoked for failure to meet the conditions of approval. No public hearing is required.

### RECOMMENDATION

1. Direct staff, as appropriate.

### PRIOR ACTIONS

On July 24, 2002, the Planning Commission approved a Conditional Use Permit (Case 5.0909-CUP) to allow a restaurant, spa and other accessory facilities at the existing Viceroy Hotel (formerly Estrella Inn). Among the conditions of approval were certain improvements along the property's Belardo Road and Cahuilla Road frontages, including landscape plans, a parking management program, activities program, and street improvement plans.

On February 26, 2003, the Planning Commission approved the submitted parking management program, with the condition that the applicant submit detailed construction plans for the required Belardo Road and Cahuilla Road street improvements.

On June 25, 2003, the Planning Commission reviewed the applicant's street improvement plans, and approved staff's recommended improvements along the Belardo Road and Cahuilla Road frontages.

ITEM NO. 4.B.

On July 8, 2003, Ms. Sheryl Hamlin, on behalf of the Historic Tennis Club Neighborhood Organization and Historic Tennis Club District Hotel Association, filed an appeal of the Planning Commission's approval of the required Belardo Road and Cahuilla Road street improvements.

On September 17, 2003, the City Council considered the appeal filed by Ms. Hamlin, and upheld the Planning Commission's approval of the required street improvements on Belardo Road. However, with regard to Cahuilla Road, the City Council returned the street improvements to the Planning Commission for further review.

During November, 2004, the Planning Commission conducted studies of the proposed street plans. Subsequently, neighborhood meetings were held to review the revised street improvement plans.

On May 11, 2005, the Planning Commission reviewed and approved the final concept plans for the required Cahuilla Road street improvements. No appeal was filed.

On November 8, 2006, the Planning Commission concluded that the conditions regarding the installation of street, parking and landscape improvements had not been implemented and directed staff to set a revocation hearing for the CUP.

On April 8, 2009, the Planning Commission conducted a public hearing and directed staff to prepare a resolution modifying the CUP to include a schedule of completion for the required street, parking and landscape improvements. The resolution was adopted by the Commission on April 22, 2009.

On July 22, 2009, the City Council conducted a public hearing and amended the conditions of the CUP to establish a completion schedule for the street, parking and landscape improvement, and provided for revocation of the CUP in the event the Council determines that the schedule is not met.

On September 2, 2009, the City Council received an update on the project status and also determined that an existing completion bond of \$171,909 would be satisfactory for the project's street, parking and landscape improvements.

#### ANALYSIS

The latest amendments to the Viceroy Hotel CUP were adopted by the City Council on July 22, 2009 and include the following two conditions:

1. *That all street improvement required for Belardo and Cahuilla Roads shall be completed on or before December 31, 2011, with the intermediate milestones completed according to the following schedule:*

- *Within 30 days of this hearing (no later than August 21, 2009), the applicant / property owner shall:*
    - i. *Obtain an encroachment license from the City to construct the Cahuilla and Belardo Roads street improvements, as approved by the City in July, 2007.*
    - ii. *Provide a completion bond of \$250,000 to the City in a form acceptable to the City Engineer / Director of Public Works.*
  - *Within 90 days of this hearing (no later than October 20, 2009) the applicant / property owner shall begin construction of the Cahuilla and Belardo Roads street improvements, as approved by the City in July, 2007.*
  - *Phase 1 to be completed no later than January 31, 2010: Cahuilla Road hardscape improvements (for pedestrians and parking areas) and paving of Cahuilla Road, as shown on the Street Improvement plans approved by the City in July of 2007.*
  - *Phase 2 to be completed no later than January 31, 2010: Cahuilla Road landscaping, as shown on the Street Improvements plans approved by the City in July of 2007*
  - *Phase 3 to be completed no later than December 31, 2011: Belardo Road improvements as shown on the Street Improvement plans approved by the City in July of 2007.*
2. *That failure to meet any of the milestones of Condition No. 1 of this resolution shall cause Case No. 5.0909-CUP to be reviewed for revocation by the City Council, with no notice or public hearing required.*

Staff has been following the work at the site, noting that progress has been sporadic. The City Engineering inspector visited the site on December 9, 2009 (after being informed by another City inspector that demolition work had begun on Cahuilla Road). The work on street improvements started on December 20, 2009, and only a portion of the concrete work on Cahuilla Road has been completed as of the writing of this memo (2/9/10):

- Two new colored concrete driveway approaches have been completed successfully.
- The formwork for 450 feet of ribbon curb was started on 12/21/09. By 12/28/09, the ribbon curb was installed, but was installed in gray concrete. The City is requiring that the contractor remove the ribbon gutter and replace it with colored concrete in accordance with the approved plans. The demolition of the ribbon gutter has not yet started.
- The 6" curb around the parking lot inside the Viceroy Inn site has been formed, but has never been placed.

- No curb & gutter, sidewalk, or concrete parking area has been constructed to date.
- The installation of fire services and water services has been completed, but Desert Water Agency is requesting that one fire service be relocated to be 18 inches from property line.

No concrete work has been started on Belardo Road, and no landscaping work on either street has been completed to date.

In their inspection of the project, Engineering staff notes that the contractor (W.J. Aiken General Contractor) is not responsive and that the project has started and stopped several times. Work crews have not been on the site since January 18, 2010 and the contractor reports that there have been contract issues with the owners of the Viceroy Hotel. Other concerns noted by the inspector:

- The feldspar material that is to be sprinkled on top of the 4 inch colored concrete sidewalk and the 6 inch reinforced colored concrete parking area, could not be located for purchase. The City is going to allow the use of Japanese chips in lieu of the feldspar so that this work can proceed.
- On February 1, 2010, Desert Water Agency notified the contractor and the City that one of the fire services that Aiken had installed, was placed too close to the property line and will have to be relocated; the issue of who should pay for the relocation of the fire service has not been resolved.
- Aiken has been delayed by several rain storms.

Aiken reportedly plans to resume work on Thursday, February 11, 2010, reporting that contract issues with the Viceroy have been resolved. The contractor's foreman has worked on survey work on the site, while the concrete crew has not been working. The contractor also plans to place the concrete for the curb, apron, driveway, and the sidewalk around the fire hydrant.

The City Engineering Department has estimated the completion time for the Project assuming work proceeds on a regular basis and no inclement weather:

Cahuilla Road Street Improvements & Landscaping:

Forty-five (45) calendar days, including 8 calendar days needed to complete the Cahuilla Road landscaping. (If work is begun now, the estimated completion date would be March 26, 2010.)

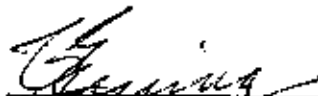
Belardo Road Street Improvements & Landscaping:

Fourteen (14) calendar days following completion of Cahuilla Road improvements.

Staff believes that adequate evidence has been presented to allow the Council to determine that the completion schedule has not been met for the Viceroy Hotel's street, parking and landscape improvements. Consequently, the City Council may determine that the associated Conditional Use Permit is revoked. Should this be the City Council

decision, the revocation would be effective immediately and the hotel would be required to shut down the restaurant and spa until a new Conditional Use Permit is approved. (Please note that the hotel operation itself could continue as only the restaurant and spa are subject to a CUP.)

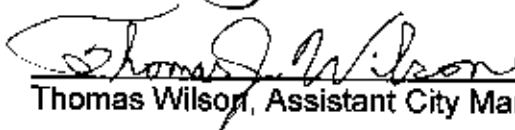
**FISCAL IMPACT:** Revocation of the CUP is expected to have a minor impact on sales tax and transient occupancy tax revenues.



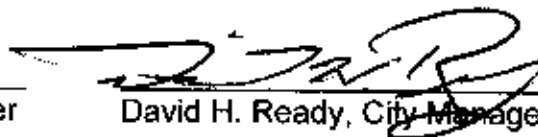
Craig A. Ewing, AICP  
Director of Planning Services



David J. Barakian  
Director of Public Works / City Engineer



Thomas Wilson, Assistant City Manager



David H. Ready, City Manager

**Attachments:**

1. Resolution No. 22569
2. Photographs of the site

RESOLUTION NO. 22569

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, MODIFYING A CONDITIONAL USE PERMIT (CASE NO. 5.0909-CUP) DUE TO NON-COMPLIANCE WITH CONDITIONS, FOR THE VICEROY HOTEL LOCATED AT 415 SOUTH BELARDO ROAD.

WHEREAS, on July 24, 2002, the Planning Commission approved a Conditional Use Permit (Case 5.0909-CUP) to allow a restaurant, spa and other accessory facilities at the existing Viceroy Hotel (formerly Estrelia Inn); and

WHEREAS, the restaurant, spa and other accessory uses granted by Case No. 5.0909-CUP were soon thereafter established and remain in use to the present day; and

WHEREAS, among the conditions of approval for 5.0909-CUP were certain improvements along the property's Belardo Road and Cahuilla Road frontages, including landscape plans, a parking management program, activities program, and street improvement plans; and

WHEREAS, on February 26, 2003, the Planning Commission approved the submitted parking management program, with the condition that the applicant submit detailed construction plans for the required Belardo Road and Cahuilla Road street improvements; and

WHEREAS, on June 25, 2003, the Planning Commission reviewed the applicant's street improvement plans, and approved staff's recommended improvements for street, parking and landscaping along the Belardo Road and Cahuilla Road frontages; and

WHEREAS, on July 8, 2003, Ms. Sheryl Hamlin, on behalf of the Historic Tennis Club Neighborhood Organization and Historic Tennis Club District Hotel Association, filed an appeal of the Planning Commission's approval of the required Belardo Road and Cahuilla Road street, parking and landscape improvements; and

WHEREAS, on September 17, 2003, the City Council considered the appeal, and upheld the Planning Commission's approval of the required street, parking and landscape improvements on Belardo Road and returned the street improvements for the Cahuilla Road frontage to the Planning Commission for further review; and

WHEREAS, on May 11, 2005, the Planning Commission reviewed and approved the final concept plans for the required Cahuilla Road street improvements; and no appeal was filed; and

WHEREAS, Section 94.02.00.1 of the Palm Springs Zoning Code allows the revocation of a Conditional Use Permit for noncompliance with any of the conditions set forth in granting the permit; and

WHEREAS, on November 8, 2006, the Planning Commission concluded that the conditions regarding the installation of street, parking and landscape improvements for Belardo and Cahulla Roads had not been implemented as required by the Conditions of Approval for Case 5.0909-CUP, and directed staff to set a revocation hearing for the CUP; and

WHEREAS, notice of public hearing of the Planning Commission of the City of Palm Springs to consider a recommendation for revocation of Case 5.0909-CUP has been given in accordance with applicable law; and

WHEREAS, on April 8, 2009, following notification in the prescribed manner, a public hearing was held by the Planning Commission to consider revocation of Case 5.0909-CUP in accordance with applicable law, at which hearing the Commission carefully reviewed and considered all of the evidence presented in connection with the hearing on the project, including, but not limited to, the staff report, and all written and oral testimony presented, following which the Commission voted to recommend modification of the CUP to establish a completion schedule for the uncompleted street, parking and landscape improvements; and

WHEREAS, on July 22, 2009, following notification in the prescribed manner, a public hearing was held by the City Council to consider revocation of Case 5.0909-CUP in accordance with applicable law, at which hearing the Council carefully reviewed and considered all of the evidence presented in connection with the hearing on the project, including, but not limited to, the staff report, and all written and oral testimony presented.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. That the uses of a restaurant, spa and accessory uses as granted by Case No. 5.0909-CUP have been established, and the benefits of said uses have been continuously enjoyed by the property owner to the present day.

SECTION 2: That among the conditions approved by Case No. 5.0909-CUP for establishing the restaurant, spa and accessory uses include the installation of certain street improvements along the street frontages of the subject site on Belardo and Cahulla Roads.

SECTION 3: That, as of July 22, 2009, said street improvements have not been installed in accordance with the conditions of approval for Case No. 5.0909-CUP, and


that failure to install said improvements have allowed the property owner to enjoy the benefits of the permitted uses while causing the neighborhood to bear the detrimental effects of esthetic, parking, pedestrian access and other problems associated with the unfinished landscaping, sidewalk, parking and street improvements.

**SECTION 4.** Based upon the foregoing, the City Council hereby modifies the conditions of approval for Case 5.0909-CUP for restaurant, spa and other accessory uses for the Viceroy Hotel, located at 415 S. Belardo Road, by adding the following additional conditions:

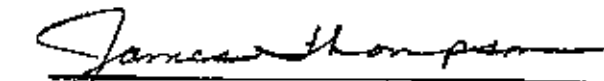
1. That all street improvement required for Belardo and Cahuilla Roads shall be completed on or before December 31, 2011, with intermediate milestones completed according to the following schedule:
  - Within 30 days of this hearing (no later than August 21, 2009), the applicant / property owner shall:
    - i. Obtain an encroachment license from the City to construct the Cahuilla and Belardo Roads street improvements, as approved by the City in July, 2007.
    - ii. Provide a completion bond of \$250,000 to the City in a form acceptable to the City Engineer / Director of Public Works.
  - Within 90 days of this hearing (no later than October 20, 2009), the applicant / property owner shall begin construction of the Cahuilla and Belardo Roads street improvements, as approved by the City in July, 2007.
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  - Phase 2 to be completed no later than January 31, 2010: Cahuilla Road landscaping, as shown on the Street Improvements plans approved by the City in July of 2007.
  - Phase 3 to be completed no later than December 31, 2011: Belardo Road improvements, as shown on the Street Improvements plans approved by the City in July of 2007.
2. That failure to meet any of the milestones of the Condition No. 1 of this resolution shall cause Case No. 5.0909-CUP to be reviewed for revocation by the City Council, with no notice or public hearing required.



ADOPTED THIS 22<sup>ND</sup> DAY OF JULY, 2009.

  
David H. Ready, City Manager

ATTEST:


  
James Thompson, City Clerk

CERTIFICATION

STATE OF CALIFORNIA )  
COUNTY OF RIVERSIDE ) ss.  
CITY OF PALM SPRINGS )

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. 22569 is a full, true and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on July 22, 2009, by the following vote:

AYES: Councilmember Foat, Councilmember Hutcheson, Councilmember Weigel, Mayor Pro Tem Mills, and Mayor Pougnet.  
NOES: None.  
ABSENT: None.  
ABSTAIN: None.

  
James Thompson, City Clerk  
City of Palm Springs, California 07/29/2009





