



**CITY OF PALM SPRINGS**  
**DEPARTMENT OF PLANNING SERVICES**

**MEMORANDUM**

**Date:** January 23, 2013  
**To:** Planning Commission  
**From:** Ken Lyon, RA, Associate Planner *Ken Lyon*  
**Subject:** Case 5.1282 CUP and 5.1283 CUP Intervention 911 – Appeal of Planning Director's determination. 1590 East Palm Canyon Drive and 1425 Via Soledad

At its meeting of December 12, 2012, the Commission continued a hearing to a date uncertain on an appeal by Ken Seeley of Intervention 911. The appeal was based on a determination by the Planning Director that the current uses at the appellant's two properties are not hotels, but rather are more similar to assisted living facilities / substance abuse recovery center uses.

The Commission asked Planning staff to meet with representatives of the Building and Fire departments to review whether there were alternative ways of evaluating and defining the proposed uses within the California Building Code and the Fire & Life Safety Code that might avoid the requirements (and expense) for installation of an automatic fire suppression system (fire sprinklers) and fire alarms at the two properties.

On December 20, 2012, staff from the three departments met and reviewed the details of the case<sup>1</sup>. A memo summarizing the fire code official's review and interpretation of the State's building and fire codes is attached. This summary concludes that the current uses and activities at the two properties constitute a "change of use" to a more hazardous use occupancy classification, and thus installation of fire alarms and fire sprinklers at the two sites is mandatory.

Compliance with State building codes and State fire and life safety codes is independent from local zoning and land use regulations. Thus regardless of the Commission's decision on the appeal; the State fire and life safety code requirements for the life safety upgrades (fire alarms and sprinklers) will apply on their own terms.

Based on this; the staff recommendation of upholding the determination of the planning director remains as noted in the attached draft resolution as previously submitted.

**Attachments:** Fire Prevention Bureau memo dated 12-26-12 and draft resolution.

<sup>1</sup> Staff present were Ron Beverly (PSFD, Deputy Fire Marshall), Bob Rose (PSFD), Terry Tatum, (Bldg/Safety Code Officer) John Allen (PSFD Fire Code Officer), Nadine Fieger (Bldg/Safety), Craig Ewing (Planning), James Webb (PSFD) and Ken Lyon (Planning).



**CITY OF PALM SPRINGS FIRE DEPARTMENT  
FIRE PREVENTION BUREAU**

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December 26<sup>th</sup>, 2012

Evaluation on the proposed change of use for the properties described below:

**1590 E. Palm Canyon Drive – Palm Tee Hotel**

**1425 Via Soledad – Alexander Inn**

When evaluating a potential change of use occurring at an existing occupancy, the Palm Springs Fire Department will assess the intended use of the new occupant and compare the intended use with that of the previous occupant, as well as the existing occupancy group classification as determined by the City of Palm Springs Building Official.

“Intervention 911 Treatment Centers” (applicant) provides substance abuse services which include in-facility residential stays for clients enrolled in their drug and alcohol abuse programs.

The applicant is currently operating two such facilities in Palm Springs at the above addresses without the approval of the City’s Planning, Building, or Fire Departments.

*The 2010 California Building Code, Chapter 3, Section 302.1 states: “Structures or portions of structures shall be classified with respect to occupancy in one or more of the groups listed below. A room or space that is intended to be occupied at different times for different purposes shall comply with all of the requirements that are applicable to each of the purposes for which the room or space will be occupied. Structures with multiple occupancies or uses shall comply with Section 508. Where a structure is proposed for a purpose that is not specifically provided for in this code, such structure shall be classified in the group that the occupancy most nearly resembles, according to the fire safety and relative hazard involved.”*

### **1590 East Palm Canyon Drive**

This occupancy is the former location of the "Palm Tee Hotel", a two-story, sixteen-unit hotel. The occupancy group classification of the existing structure, as determined by the Palm Springs Building Department, is that of R-1<sup>1</sup>. R-1 occupancies are defined as "residential occupancies containing sleeping units where the occupants are primarily transient in nature".

The applicants proposed use of this occupancy does not meet the intent of this occupancy classification in that the occupant's term of stay exceeds the definition of "transient"<sup>2</sup>, which for the purposes of the building and fire code is defined as a length of stay not exceeding 30 days.

The services provided by the applicant, as well as the stated intended use of the applicant, most nearly resemble the definition of an R-4<sup>3</sup> occupancy group as defined in the *2010 California Building and Fire Codes* which includes alcoholism or drug abuse recovery or treatment facilities.

Therefore, it is the determination of the Palm Springs Fire Department that a change of use has occurred at this address.

### **1425 Via Soledad**

This occupancy is the former location of the "Alexander Inn", a one-story, five-unit apartment building. The occupancy group classification of the existing structure, as determined by the Palm Springs Building Department is that of R-2<sup>4</sup>. R-2 occupancies are defined as "residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature".

The applicants proposed use of this occupancy does not meet the intent of this occupancy classification, in that the occupant's term of stay would be neither transient, nor permanent but would be defined as "temporary", in that the occupant's term of stay is directly related to the completion of their drug and alcohol treatment program. It is the service provided by the applicant that determines the client's term of stay.

The services provided by the applicant as well as the stated intended use of the applicant most nearly resemble the definition of an R-2.1<sup>5</sup> occupancy group as defined in the *2010 California Building and Fire Codes* which includes alcoholism or drug abuse recovery or treatment facilities.

Therefore, it is the determination of the Palm Springs Fire Department that a change of use has occurred at this address.

### Additional Considerations

The applicant has stated their intention of providing care and supervision services to their clients in the form of: 24/7 support services; nurse / doctor assisted medication management; counseling services, etc.

In addition, based on the applicant's business model, it can also be assumed that client's occupying the two facilities will be subject to some level of supervision that may include: Diet and nutritional supervision; supervision of schedules and activities; and being subject to rules of conduct, such as curfew restrictions, the ability to receive visitors at any hour and the prohibition of drugs and/or alcohol on the premises.

In considering the above personal care services provided by the applicant, the intended use of the two facilities is further removed from the existing occupancy group classifications of R-1 and R-2, as occupants of hotels and apartment buildings are not subject to this level of control over their daily lives. The *2010 California Building and Fire Codes* clearly classify the applicant's intended use of that of an "alcoholism or drug abuse recovery or treatment facility".

### Change of Use or Occupancy

The *2010 California Fire Code, Division II, Section 102.3* states: "No change shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made to comply with the requirements of this code and the International Building Code. Subject to the approval of the fire code official, the use or occupancy of an existing structure shall be allowed to be changed and the structure is allowed to be occupied for purposes in other groups without conforming to all the requirements of this code and the International Building Code for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use."

The fire code official has the authority to waive compliance with current fire code requirements if it is determined, by the fire code official, that the proposed change of use will result in a "less hazardous" use than the existing use. The Palm Springs Fire Department finds no argument supporting any proposition that the occupants of an alcohol / drug abuse recovery facility represent a potential life safety or fire hazard, that would be considered less than, or even equal to, the general population of a hotel, or apartment building.

Therefore, it is the determination of the Palm Springs Fire Department that a "more hazardous" change of use has occurred at the above addresses based upon the change in occupancy classifications described above.

Fire protection requirements for R-4 and R-2.1 occupancies include automatic fire sprinkler systems and fire alarm and detection systems which will be addressed at the time of plan submittal and approval, as required by the City of Palm Springs for the occupancy of the above addresses.

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<sup>1</sup> CFC Chapter 2, Definitions - Residential Group R. Residential Group R includes, among others, the use of a building or structure, or a portion thereof, for sleeping purposes when not classified as an Institutional Group I or when not regulated by the California Residential Code. Residential occupancies shall include the following:

R-1 Residential occupancies containing sleeping units where the occupants are primarily transient in nature, including:

Boarding houses (transient)  
Hotels (transient)  
Motels (transient)

Congregate living facilities (transient) or congregate residences (transient) with 10 or fewer occupants are permitted to comply with the construction requirements for Group R-3.

<sup>2</sup> 2010 California Building Code, Chapter 2, Definitions – "TRANSIENT". Occupancy of a dwelling unit or sleeping unit for not more than 30 days.

<sup>3</sup> 2010 California Building Code, Chapter 3, Section 310.1 - R-4 Residential occupancies shall include buildings arranged for occupancy as residential care/assisted living facilities including more than six ambulatory clients, excluding staff.

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3, except as otherwise provided for in this code or shall comply with the California Residential Code, provided the building is protected by an automatic sprinkler system installed in accordance with Section 903.2.8.

This occupancy classification may include a maximum six nonambulatory or bedridden clients (see Appendix Chapter 4, Section 425 Special Provisions For Licensed 24-Hour Care Facilities in a Group R-2.1, R-3.1, or R-4 Occupancy).

Group R-4 occupancies shall include the following:

Assisted living facilities such as:  
Residential care facilities  
Residential care facilities for the elderly (RCFEs)  
Adult residential facilities  
Congregate living health facilities  
Group homes.  
Social rehabilitation facilities such as:  
Halfway houses  
Community correctional centers  
Community correction reentry centers  
Community treatment programs  
Work furlough programs  
Alcoholism or drug abuse recovery or treatment facilities

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<sup>4</sup>2010 California Building Code, Chapter 3, Section 310.1- R-2 Residential occupancies containing sleeping units or more than two dwelling units where the occupants are primarily permanent in nature, including:

- Apartment houses
- Boarding houses (nontransient)
- Convents
- Dormitories
- Fraternities and sororities
- Hotels (nontransient)
- Live/work units
- Monasteries
- Motels (nontransient)
- Vacation timeshare properties

Congregate living facilities or congregated residences with 16 or fewer occupants are permitted to comply with the construction requirements for Group R-3.

<sup>5</sup>2010 California Building Code, Chapter 3, Section 310.1- R-2.1 This occupancy shall include buildings, structures or parts thereof housing clients, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment that provides personal care services.

This occupancy may contain more than six nonambulatory and/or bedridden clients. (See Appendix Chapter 4, Section 425 Special Provisions For Licensed 24-Hour Care Facilities in a Group R-2.1, R-3.1 or R-4 Occupancy).

This group shall include, but not be limited to, the following:

- Assisted living facilities such as:
  - Residential care facilities
  - Residential care facilities for the elderly (RCFEs)
  - Adult residential facilities
  - Congregate living health facilities
  - Group homes
  - Residential care facilities for the chronically ill
  - Congregate living health facilities for the terminally ill
- Social rehabilitation facilities such as:
  - Halfway houses
  - Community correctional centers
  - Community correction reentry centers
  - Community treatment programs
  - Work furlough programs
  - Alcoholism or drug abuse recovery or treatment facilities

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PALM SPRINGS, CALIFORNIA UPHOLDING A DETERMINATION MADE BY THE DIRECTOR OF PLANNING SERVICES THAT THE APPELLANTS' USES AT 1590 EAST PALM CANYON DRIVE AND 1425 VIA SOLEDAD ARE NOT HOTELS, BUT RATHER ARE SUBSTANCE ABUSE RECOVERY CENTERS / ASSISTED LIVING FACILITIES.

WHEREAS, on April 12, 2012, the applicant/appellant was notified in writing by the Department of Building and Safety / Code Enforcement that a conditional use permit (CUP) is required at two facilities owned and operated by the applicant, and

WHEREAS, on May 3, 2012 the applicant/appellant was served a Courtesy Notice by certified mail notifying them that they were in violation of the City's Municipal Code by operating the substance abuse recovery centers / assisted living facilities at the subject addresses without approval of Conditional Use Permits.

WHEREAS, on June 24, 2012, the applicant/appellant submitted CUP applications for both properties requesting approval to operate them as substance abuse recovery centers / assisted living facilities, and

WHEREAS, on September 26, 2012, the City received correspondence from the appellant's attorney notifying the City that the applicant was withdrawing their CUP applications and asserting that the two properties were being operated as hotels, not substance abuse recovery centers / assisted living facilities, and

WHEREAS, on November 1, 2012, the Planning Director made a determination pursuant to section 91.00.08 (B) of the Palm Springs Zoning Code (PSZC) that the appellant's current uses at 1590 East Palm Canyon Drive and 1425 Via Soledad are not hotels, but rather are substance abuse recovery centers / assisted living facilities and require approval of Conditional Use Permits from the Planning Commission in order to continue to operate, and

WHEREAS, on November 15, 2012, the appellant, Ken Seeley of Intervention 911, filed an appeal of the Planning Director's determination; and

WHEREAS, Sections 91.00.08 (B) of the Palm Springs Zoning Code allows decisions by the Director of Planning Services to be appealed to the Planning Commission; and

WHEREAS, on December 12, 2012, the Planning Commission conducted a public review of the appeal request, including all of the evidence presented in connection with the matter, including, but not limited to, the staff report prepared on the matter, and all

written and oral testimony presented, and whereas the matter was continued to a date certain of January 23, 2013.

THE PLANNING COMMISSION HEREBY FINDS AS FOLLOWS:

Section 1: That the determination by the Director of Planning was justified based on the following:

1. The Planning Director's determinations were based on many factors, including the applicant / appellant's conditional use permit application, marketing brochures, information on the appellant's website, and meetings with the appellant at the time they received their Building Department / Code Compliance Courtesy Notice. The appellants' marketing materials describe a facility for customers to seek treatment from substance abuse, and to learn various life skills to aid in re-entering the workplace, among other things. The determination was supported by review of facts, and the legal authority of the Planning Director to make such determinations is established in the City's Zoning Code.
2. The Director's determination did not violate state or federal fair housing law nor was his decision in conflict with the City's General Plan. The City permits assisted living facilities in many zones subject to a conditional use permit. Furthermore, pursuant to the Palm Springs Zoning Code (PSZC) Section 92.03.01 and 92.04.01(Uses Permitted in the R-2 and R-3 zones) the city also allows hotels with less than 10% of the rooms having cooking facilities to be permitted "by right" in the R-2 and R-3 zones. Furthermore, hotels in which more than 10% of the rooms contain kitchens (which is the case for both of these properties) are permitted in both zones subject to a CUP. The Planning Commission has determined that no fair housing laws were violated by the Planning Director in making his determination.
3. The General Plan land use designation for both parcels is Tourist Resort Commercial. This land use designation notes that the primary use should be that of hotel and tourist-related uses. Residential uses are to be a secondary use ancillary to the hotel uses. Both hotels with more than 10% of the rooms containing kitchens and assisted living facilities are conditionally permitted in the R-2 and R-3 zones. Thus, the Planning Director's determination was not in conflict with the City's General Plan.
4. The Planning Director determination was not discriminatory nor was it bad social policy. The Planning Director's determination was based upon review of all the information available at the time, that the proposed use was not a hotel, but rather a substance abuse recovery center / assisted living facility. These facilities are permitted in many multiple family residential zones throughout the City of Palm Springs subject to a CUP. Sober living facilities are not defined in the PSZC nor are they listed as a permitted use in any zone in Palm Springs. The State of California regulations protect the establishment of sober living



facilities of six beds or less in residential zones and encourages cities and counties to permit operators to establish such facilities as a means of integrating this population back into the community at large. Neither of the subject properties fall under the regulatory guidelines of the State for sober living facilities of six beds or less: the Palm Tee facility is proposed to have 32 patient beds and the Alexander is proposed to have 17 patient beds.

5. The director identified appropriate sections of the zoning code in making his determination. PSZC Section 91.00.08(B) "*Conflicting or Ambiguous Provisions*". This section states that "*where there may be conflicting or ambiguous provisions within this zoning code, the director of planning and building, or his authorized representative, shall determine the applicability of such provisions.*" The appellant has asserted that their proposed use at the two sites are "hotels", however based on the material presented by the appellant, the director has determined them to be substance abuse recovery centers, which are classified in Palm Springs as "assisted living facilities". The Planning Commission believes this is an appropriate application of the relevant provisions of the Zoning Code.
6. The uses at the two sites are not hotels. The appellants' CUP application, states, "*We would like the CUP application to allow for and include the following: Onsite therapy (individual and group), Life Skills classes, 12-step meetings, nursing or doctor assisted medication management and services that would be found at a drug and alcohol treatment center*". From these statements, the Planning Commission has concluded that assisted living services are indeed being offered, thus the facilities are not being operated as "hotels".
7. Financial burden was not a factor that the director used in making the determination that the proposed uses are not "hotels". The "financial burden" or conducting due diligence of the viability of a "business model" or of adapting any site to a particular proposed use, is solely the responsibility of applicants and business owners. "Financial viability" is not a finding or requirement of approval, nor was it a factor used in the Planning Directors' determination that the uses at the two sites are not hotels.
8. The subject properties are not providing affordable housing for the community. The appellant's brochure notes that the monthly rate for a "shared occupancy room" is \$2,800 per month per patient. Thus a typical room with two beds may rent for roughly \$5,600 per month. Pursuant to Table 3-8 of the City's Housing Element in the General Plan (which was updated in 2010); maximum affordable rents for extremely low to moderate income households is between \$500 and \$1,860 per month in Palm Springs. The monthly rate for the subject properties well exceeds the typical monthly rental for affordable housing. In comparison, the average rate for a monthly hotel stay in Palm Springs is roughly \$116 per night or about \$3,480 per month; thus the subject properties also generate income greater than the average 30-day hotel stay in Palm Springs. The

Commission does not believe the subject properties are providing affordable housing for the community.

NOW, THEREFORE, BE IT RESOLVED that, based upon the foregoing, the Planning Commission hereby rejects the appeal and upholds the determination of the Director of Planning Services that the appellant's uses at 1590 East Palm Canyon Drive and 1425 Via Soledad are not hotels, but rather are substance abuse recovery centers / assisted living facilities requiring the approval of a Conditional Use Permit by the Planning Commission to operate.

ADOPTED this 23rd day of January, 2013.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

CITY OF PALM SPRINGS, CALIFORNIA

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Craig A. Ewing, AICP  
Director of Planning Services



## Planning Commission Staff Report

Date: December 12, 2012

Case No.: 5.1282 CUP and 5.1283 CUP (APPEAL)

Type: Appeal of a decision by the Director of Planning Services

Applicant: Ken Seeley, Intervention 911 Treatment Centers

Location: 1590 East Palm Canyon Drive (The Palm Tee Hotel) and  
1425 Via Soledad (The Alexander Inn)

APN: 508-454-007 and 508-344-001

General Plan: Tourist Resort Commercial

Zone: R-2 Multiple Family Residential and R-3 High Density Residential and  
Resort Combining Overlay Zone

From: Craig A. Ewing, AICP, Director of Planning Services

Project Planner: Ken Lyon, Associate Planner

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### **PROJECT DESCRIPTION:**

The appellant has filed an appeal of the Planning Director's decision of November 1, 2012 determining that the current substance abuse recovery center / sober living facility uses occurring at the two subject properties do not meet the definition of a hotel use, but rather they conform to the definition of assisted living facilities, which require approval of a Conditional Use Permit (CUP). The appellant is requesting the Commission to overturn the decision of the Director of Planning and determine that the proposed uses are consistent with that of a hotel and thus do not require CUP's.

### **RECOMMENDATION:**

That the Planning Commission uphold the decision of the Planning Director determining that the uses at the two facilities are substance abuse recovery centers / assisted living facilities, not hotels, and require the approval of a CUP by the Planning Commission to operate.

### **BACKGROUND:**

On April 12, 2012, the applicant/appellant was notified in writing by the Department of

Building and Safety/ Code Enforcement that a conditional use permit (CUP) is required for two facilities owned and operated by the applicant; one at 1425 Via Soledad and the other at 1590 East Palm Canyon Drive, at which the applicant was operating the current use without permits, appropriate business licenses or planning approvals.

On May 3, 2012, the City served the applicant / appellant a Courtesy Notice via certified mail notifying them that they were in violation of the City's Municipal Code by operating substance abuse recovery centers / assisted living facilities without approval of a Conditional Use Permit at the subject sites.

On June 25, 2012, the applicant/appellant submitted CUP applications for both properties requesting approval to operate them as substance abuse recovery centers / assisted living facilities.

On September 26, 2012, the City received correspondence from the appellant's attorney notifying the City that they were withdrawing their CUP applications and asserting that the two properties were being operated as hotels, not substance abuse recovery centers / assisted living facilities.

On November 1, 2012, the Director of Planning Services sent correspondence to the appellant, advising them that upon review of the uses, their marketing literature, and internet presence, a determination was made that the uses are not hotels, but rather are substance abuse recovery centers / assisted living facilities; requiring the approval of Conditional Use Permits from the Planning Commission in order to continue to operate.

On November 15, 2012, the appellant submitted an appeal of the director's decision.

#### **BACKGROUND AND SETTING:**

The two properties were developed roughly fifty years ago; The Palm Tee (1590 Palm Canyon) as a sixteen-unit hotel, and The Alexander (1425 Via Soledad) as a five-unit apartment building. Each property is briefly described below.

##### The Palm Tee Hotel.

The existing 16-unit hotel at 1590 East Palm Canyon Drive was constructed in 1962. It is at the northeast corner of Calle Rolph and East Palm Canyon Drive. For many years it was operated as the Palm Tee Hotel.

The existing two-story building is roughly 8,379 square feet in area. There are ten (10) existing hotel rooms on the first floor which totals roughly 5,379 square feet. Two of these are one-bedroom units with full kitchens. There are six (6) hotel rooms on the second floor, comprising 3,136 square feet. One of the second floor rooms is configured with two bedrooms and a common bathroom. Most of the rooms are configured with small kitchenettes. There are seventeen (17) bay parking spaces which take access directly off South Calle Rolph. East Palm Canyon Drive is a major thoroughfare on the City's General Plan Circulation Map.

*Surrounding Land Uses and Existing Development*

The Palm Tee is located on the south side of the city immediately adjacent to the Deepwell neighborhood, in a fully developed area of multi-family units, small hotels and single family homes. The table below denotes the zoning, general plan and surrounding existing land uses.

	Land Use	General Plan	Zoning
North	Single Family Residential	VLDR (Very Low Density Residential (4du/ac)	R-1-C (Single Family Residential)
South	Condominiums	Tourist Resort Commercial	PD 69A
East	Hotel / Apartments	Tourist Resort Commercial	R-2 / R-3
West	Hotel / Apartments	Tourist Resort Commercial	R-2 / R-3



AERIAL PHOTO SHOWING 1590 EAST PALM CANYON DRIVE

The site of the Palm Tee Hotel is approximately 103 feet in width and 201 feet in depth. For purposes of zoning analysis, the East Palm Canyon Drive frontage is considered the front of the lot and the lot is considered a reverse corner lot (meaning it is a corner lot, the side line of which is substantially a continuation of the front lot lines of the lots to its rear). The parcel has split zoning: the southern half of the parcel is in the R-3 zone and the northern half is in the R-2 zone. It also lies within the Resort Combining Zone. For purposes of density analysis, it is noted that the two-story portion of the building lies roughly in the R-3 zone and the one-story portion lies generally in the R-2 zone.

In their original CUP application, the applicant proposed an occupancy at the Palm Tee of thirty-two (32) patient beds and four (4) staff persons at any time, one of whom would be the resident manager. The applicant proposed on-site therapy and treatment for the clients/guests including on-site individual and group counseling, life skills classes,

twelve-step meetings, nursing or doctor-assisted medication management and medical services. In addition the applicant requested the ability to host events that would be open to the community (both the Alcoholics Anonymous community and the greater neighborhood community)

Via Soledad.

The existing five unit apartment building at 1425 Via Soledad was constructed in 1957. It is at the southwest corner of Sonora Road and Via Soledad. For many years it was operated as the Alexander Inn, a vacation rental. The existing building is roughly 4,895 square feet in area. There are eight (8) bay parking spaces which take access directly off Sonora Road. This segment of Sonora Road is a two-lane local collector street on the City's General Plan Circulation Map.

*Surrounding Land Uses and Existing Development*

The Alexander Apartments are located on the south side of the city, in a fully developed area of multi-family units, small hotels and single family homes. The table below denotes the zoning, general plan and surrounding existing land uses.

	<b>Land Use</b>	<b>General Plan</b>	<b>Zoning</b>
North	Single Family Residential	VLDR (Very Low Density Residential (4du/ac)	R-1-C (Single Family Residential)
South	Hotel / Apartments	Tourist Resort Commercial	R-2 (Multi-Family Residential)
East	Single Family Residential	VLDR (Very Low Density Residential: 4du/ac)	R-1-C
West	Hotel / Apartments	Tourist Resort Commercial	R-2



AERIAL PHOTO SHOWING 1425 VIA SOLEDAD

The site is approximately 105.6 feet in width and 136 feet in depth. For purposes of

zoning analysis the Sonora frontage is considered the front of the lot.

The appellant's CUP application proposed to change the use from an apartment building to a substance abuse recovery center for persons recovering from alcoholism, drug abuse and other addictions. The current facility is comprised of four, two-bedroom apartments and one, three-bedroom apartment.

The appellant proposed an occupancy of seventeen (17) patient beds and two (2) persons occupying the resident manager's unit. The appellant proposed on-site treatment for the clients/guests including on-site individual and group counseling, life skills classes, twelve-step meetings, nursing or doctor-assisted medication management and medical services. In addition the appellant requested the ability to host events that would be open to the community (both the Alcoholics Anonymous community and the greater neighborhood community)

The appellant initiated the current non-permitted use at Via Soledad under an office use business license, not as a sober living facility or substance abuse recovery center. The Palm Canyon facility is currently being operated without planning approval, business licenses or other permits.

## **APPEAL**

Staff reviewed the appellant's letter and the reasons for the appeal. The appellant's reasons are listed below followed by staff's response.

1. *"The determinations are not supported factually or legally,..."*

The Planning Director's determinations were based on many factors, including the applicant / appellant's conditional use permit application, marketing brochures, information on the appellant's website, and meetings with the appellant at the time they received their Building Department / Code Compliance Courtesy Notice. The appellants' marketing materials describe a facility for customers to seek treatment from substance abuse, and to learn various life skills to aid in re-entering the workplace, among other things. (Copies of the CUP application, marketing material and website information are attached.) Staff believes the determination was supported by review of facts, and the legal authority of the Planning Director to make such determinations is established in the City's Zoning Code.

2. *(The determinations) "...violate state and federal fair housing laws and the City's General Plan,..."*

The appellant has not provided information to support the above assertion, and therefore it is unclear how the director's determination violates these laws. The City permits assisted living facilities in many zones subject to a conditional use permit. Furthermore, pursuant to the Palm Springs Zoning Code (PSZC) Section 92.03.01 and 92.04.01(Uses Permitted in the R-2 and R-3 zones) the city also allows hotels with less

than 10% of the rooms having cooking facilities to be permitted “by right” in the R-2 and R-3 zones. Furthermore, hotels in which more than 10% of the rooms contain kitchens (which is the case for both of these properties) are permitted in both zones subject to a CUP. It is not clear where any fair housing laws have been violated.

No reference to any specific General Plan policy that the appellant believes had been violated was offered. Staff notes that the General Plan land use designation for both parcels is Tourist Resort Commercial. This land use designation notes that the primary use should be that of hotel and tourist-related uses. Residential uses are to be a secondary use ancillary to the hotel uses. Both hotels with more than 10% of the rooms containing kitchens and assisted living facilities are conditionally permitted in the R-2 and R-3 zones, thus it is not clear how the director’s determination that the use at the two sites are assisted living facilities – not hotels – violates any fair housing laws.

3. *(The determinations) “...are discriminatory and based on bad social policy...”*

The Planning Director determined based upon review of all the information available at the time, that the proposed use was not a hotel, but rather a substance abuse recovery center / assisted living facility. These facilities are permitted in many multiple family residential zones throughout the City of Palm Springs subject to a CUP. Sober living facilities are not defined in the PSZC nor are they listed as a permitted use in any zone in Palm Springs. The State of California regulations protect the establishment of sober living facilities of six beds or less in residential zones and encourages cities and counties to permit operators to establish such facilities as a means of integrating this population back into the community at large. Neither of the subject properties fall under the regulatory guidelines of the State for sober living facilities of six beds or less: the Palm Tee facility is proposed to have 32 patient beds and the Alexander is proposed to have 17 patient beds. Staff believes the appellant has not provided information to support the assertion of “discrimination” or “bad social policy”.

4. *(The determinations) “...are based on misunderstandings, assumptions and speculation...”*

The appellant does not identify or explain where or how they believe “misunderstandings, assumptions or speculation” have occurred. The Director’s determination is based on written material provided by the applicant both in their original CUP applications and their promotional material, as well as the definitions for hotels and assisted living facilities in the Palm Springs Zoning Code. Additional information that was the basis of the Director’s determination is described in the Exhibit attached to this staff report.

5. *(The determinations) “...are made pursuant to inapplicable provisions of the City’s Zoning Code.”*

The director identified PSZC Section 91.00.08(B) “*Conflicting or Ambiguous Provisions*”.



The appellant has not explained or described why this is an “inapplicable provision”. This section states that *“where there may be conflicting or ambiguous provisions within this zoning code, the director of planning and building, or his authorized representative, shall determine the applicability of such provisions.”* The appellant has asserted that their proposed use at the two sites are “hotels”, however based on the material presented by the appellant, the director has determined them to be substance abuse recovery centers, which are classified in Palm Springs as “assisted living facilities”. Staff believes this is an appropriate application of the relevant provisions of the Zoning Code.

6. *“No ‘assisted living’ services are occurring on site:”*

The examples noted above as well as the description of the proposed use in the CUP application would seem to argue otherwise. From their CUP application, the appellant states, *“We would like the CUP application to allow for and include the following: Onsite therapy (individual and group), Life Skills classes, 12-step meetings, nursing or doctor assisted medication management and services that would be found at a drug and alcohol treatment center”*. From these statements, the Director has concluded that assisted living services are indeed being offered, thus the facilities are not being operated as “hotels”.

7. *“The financial burden upon the applicant if deemed “assisted living” is in excess of \$200,000, far out of line in light of the preferred public policy in favor of sober living and affordable housing.”*

Analysis of the “financial burden” or conducting due diligence of the viability of a “business model” or of adapting any site to a particular proposed use, is solely the responsibility of applicants and business owners. “Financial viability” is not a finding or requirement of approval, or a factor used in determining whether a proposed use is permitted use in a particular zone. Financial burden was also not a factor that the director used in making the determination that the proposed uses are not “hotels”.

The appellant’s brochure notes that the monthly rate for a “shared occupancy room” is \$2,800 per month per patient. Thus a typical room with two beds may rent for roughly \$5,600 per month. Staff assumes a single occupancy room would have a higher monthly rate. Pursuant to Table 3-8 of the City’s Housing Element in the General Plan (which was updated in 2010); maximum affordable rents for extremely low to moderate income households is between \$500 and \$1,860 per month in Palm Springs. The monthly rate for the subject properties well exceeds the typical monthly rental for affordable housing. In comparison, the average rate for a monthly hotel stay in Palm Springs is roughly \$116 per night or about \$3,480 per month<sup>1</sup>; thus the subject properties also generate income greater than the average 30-day hotel stay in Palm Springs. Staff does not believe the subject properties are providing affordable housing for the community.

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<sup>1</sup> Pursuant Aftab Dada of the Palm Springs Hotel Association, from a sampling of 3,900 rooms, the average nightly rate is \$115/night.

## **CONCLUSION:**

Staff believes that the appellant has not submitted material in his appeal letter that would support an argument for overturning the Planning Director's determination. Staff recommends the Planning Commission uphold the decision of the Planning Director determining that the current uses at the two subject sites are not hotels, but rather are a form of assisted living facility (substance abuse recovery treatment) for which submission and approval of a Conditional Use Permit is required.

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Ken Lyon, RA  
Associate Planner

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Craig A. Ewing, AICP  
Director of Planning Services

## **ATTACHMENTS:**

1. Vicinity Map
2. Draft Resolution
3. April 12, 2012 Fieger to Seeley letter
4. May 3, 2012 Courtesy Notice from Building Department to the Appellant.
5. September 26, 2012 Flannery to Lyon letter.
6. November 1, 2012 Ewing to Seeley / McLaughlin letter.
7. November 15, 2012 Flannery to City Clerk appeal letter.
8. Miscellaneous pages from the Appellant's original CUP application, website and marketing materials.
9. Exhibit A – Additional information referenced for the basis of the Director's determination
10. Public Comment letters on the applicant / appellant's original CUP application