



City Council Staff Report

DATE: January 21, 2009

PUBLIC HEARING

SUBJECT: APPEAL BY THE NICHOLAS GROUP OF THE PUBLIC ARTS COMMISSION'S ACTION OF DECEMBER 11, 2008, DENYING THE PUBLIC ART INSTALLATION OF "AMERICA'S FAVORITE SINGING COWBOY" AT THE GENE AUTRY PLAZA PROJECT LOCATED AT 650 SOUTH GENE AUTRY TRAIL.

FROM: David H. Ready, City Manager

BY: Community and Economic Development

SUMMARY

The appellant, Nicholas Group, the developers of Gene Autry Plaza, is appealing a decision of the Public Arts Commission denying the installation of the artwork titled "America's Favorite Singing Cowboy" by artist De L'Esprie. The proposed sculpture will be 7 feet high, 5 feet wide and 5 feet deep and placed at the southeast corner of the project on Ramon Road and Gene Autry Trail. The developer has received permission from the Autry Estate to commission and install the sculpture.

RECOMMENDATION:

1. Open the public hearing and receive public testimony.
2. Adopt Resolution No. _____, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA GRANTING THE APPEAL, THEREBY APPROVING THE PUBLIC ART INSTALLATION OF "AMERICA'S FAVORITE SINGING COWBOY", BY ARTIST DE L'ESPRIE AT THE GENE AUTRY PLAZA PROJECT, LOCATED AT 650 SOUTH GENE AUTRY TRAIL."

STAFF ANALYSIS:

On November 13, 2008, the Nicholas Group presented a developer funded public art proposal to the Public Arts Commission. The proposal is for the installation of a figurative bronze sculpture of the actor and philanthropist Gene Autry. The sculpture, by the artist De L'Esprie, will be 7 feet high, 5 feet wide and 5 feet deep and was titled

Item No. **1.B.**

"Back in the Saddle Again". The approximate cost of the sculpture is \$150,000 and will be reimbursed from public art fees paid by the developer, which is estimated at \$200,000. The Public Arts Commission requested that a final rendering of the sculpture and a sales history from the artist be provided for their review before the December meeting.

At the December 11, 2008, meeting the Public Arts Commission received and discussed the additional materials submitted by the developer. The Commission also considered requirements set forth in the Palm Springs Municipal Code which provides that artwork to be displayed in the City cannot be "(1) Reproductions of original work except limited editions, (2) Unlimited editions of original work, (3) Mass-produced art objects". Upon consideration the Commission found that the public art piece be denied for the following reasons:

1. The City is only receiving half of a sculpture; the full sculpture is located at the *Autry National Center of the American West* in Los Angeles.
2. The sculpture is not an original work of art.
3. The original work that the sculpture is derived from can be purchased on the internet in unlimited quantities.
4. The proposed sculpture does not properly accomplish the goal of recognizing and paying tribute to Gene Autry.

A motion to approve the installation was made and seconded. Aye votes were Commissioner Kabler and Mazur. Nay votes were Butler, Kennedy, Stearns and Chair Stone. Commissioner Stern was absent. There were no other discussions and the motion failed on a 2/4 vote. No other motions were made.

On December 17, 2008, the Developer submitted a letter to the City requesting that the City Council review the proposal and overturn the Public Arts Commission's decision to deny the public art installation of the sculpture "America's Favorite Singing Cowboy" depicting the late Gene Autry. In the letter of appeal dated December 12, 2008 the appellant stated that the artwork will "be unlike any other bronze of Mr. Autry – and include unique title/name and foundation and will be signed "1 of 1" by the artist." However, the Public Arts Commission disagrees with the assertion, stating that "the sculpture is not an original work of art". The public art project being proposed has the support and approval of the Autry Estate and the developer would like to move forward with fabrication of the sculpture.


CONCLUSION

APPEAL BY THE NICHOLAS GROUP OF THE PUBLIC ARTS COMMISSION'S ACTION OF DECEMBER 11, 2008, DENYING THE PUBLIC ART INSTALLATION OF "AMERICA'S FAVORITE SINGING COWBOY" AT THE GENE AUTRY PLAZA PROJECT LOCATED AT 650 SOUTH GENE AUTRY TRAIL.


Staff recommends granting the request of the appellant and approving the proposal by The Nicholas Group to install the public artwork at the southeast corner on Ramon Road and Gene Autry Trail. Although the artwork is similar in nature to an existing sculpture at the *Autry National Center of the American West* in Los Angeles, there are sufficient differences to meet the criteria pursuant to the provisions set forth in the Municipal Code.

FISCAL IMPACT:

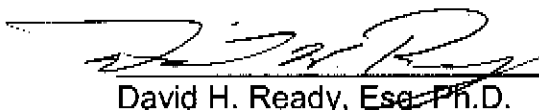
The Finance Department collects and maintains the public art fees collected on all projects with accounting records established to sufficiently identify and control the funds. There is no negative fiscal impact to the City as the Owner is seeking reimbursement for a cost they have incurred and which is allowed by the Palm Springs Municipal Code. No General Fund money will be used for this project.



Jennifer Henning
Public Arts & Special Project Coordinator



Thomas J. Wilson
Assistant City Manager



David H. Ready, Esq. Ph.D.
City Manager

Attachments:

1. Gene Autry Plaza Public Art Proposal
2. Image, "Back In The Saddle Again" sculpture located at the *Autry National Center of the American West*
3. November 13, 2008, Public Arts Commission Minutes
4. December 11, 2008, Public Arts Commission Draft Minutes
5. Public Arts Commission Resolution Approving the Nicholas Group's Proposal for the Public Art Installation "America's Favorite Singing Cowboy"
6. Palm Springs Municipal Code Section 3.37
7. Memorandum to Director of Planning Services for Public Art Placement
8. Memorandum from Director of Planning Services for Public Art Placement
9. Developer Appeal received 12-17-08
10. Developer Email Stating Placement of this Item on the January 21, 2009 Council Agenda

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, GRANTING THE APPEAL, THEREBY APPROVING THE PUBLIC ART INSTALLATION OF "AMERICA'S FAVORITE SINGING COWBOY", BY ARTIST DE L'ESPRIE AT THE GENE AUTRY PLAZA PROJECT, LOCATED AT 650 SOUTH GENE AUTRY TRAIL.

WHEREAS, the City Council created according to Chapter 2.24 of the Palm Springs Municipal Code (Section 2.24.010) the Public Arts Commission; and

WHEREAS, at the November 13, 2008 Public Arts Commission meeting, The Nicholas Group presented a public art proposal by De L'Esprie ("Artist"), for the Gene Autry Plaza Project located at 650 South Gene Autry Trail; and

WHEREAS, the Artist presented a proposal for the installation of a large scale figurative bronze sculpture of the actor Gene Autry, 7 feet high, 5 feet wide and 5 feet deep titled "America's Favorite Singing Cowboy"; and

WHEREAS, at the December 11, 2008 Public Arts Commission meeting, the Commission voted 2/4 against the approval of the public art installation "America's Favorite Singing Cowboy"; and

WHEREAS, on December 17, 2008 the Nicholas Group filed an appeal of the Public Arts Commission's decision to deny the public art installation "America's Favorite Singing Cowboy"; and

WHEREAS, on January 21, 2008, the City Council conducted a public hearing on the appeal by the Nicholas Group; and

WHEREAS, the City Council reviewed all of the evidence presented in connection with the matter, including, but not limited to, the staff report and exhibits prepared on the matter, 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 decision by the Public Arts Commission to deny the public art proposal by the Nicholas Group to install the sculpture "America's Favorite Singing Cowboy" by artist De L'Esprie at the Gene Autry Plaza Project, 650 South Gene Autry Trail, be overturned.

NOW, THEREFORE, BE IT RESOLVED that, based upon the foregoing, the City Council hereby grants the appeal and overturns the decision of the Public Arts Commission to deny the installation of the sculpture "America's Favorite Singing Cowboy" by artist De L'Esprie.

Resolution No. _____
Page 2

ADOPTED this _____ day of January, 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. _____ 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 _____, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

James Thompson, City Clerk
City of Palm Springs, California

**Developer's Application for Refund of Public Arts Fee
Project Proposal**

Project Name: Gene Autry Plaza

Project Location/Address: Corner of Ramon and Gene Autry Trail

Developer: The Nicholas Group

Work Phone: 760-341-9904

Property Owner: D.R. West, LLC

Work Phone: 760-341-9904

Public Art Fee: Approximately \$200,000

Artist: David L. Spellerberg – National Heritage Collectors Society

Address: 2139 Lindenberg, Westlake Village, CA 91361

Artist Phone: 818-991-0933

Title of Artwork: "Back in the Saddle Again"

Media: Bronze sculpture

Description of Artwork: Original bronze patina sculpture featuring Gene Autry

Approximate Weight: 1,500 lbs

Dimensions: 7' H, 5' wide, 5' deep

Approximate Cost: \$150,000

Location of Identification Plaque: On front of bronze as indicated on rendering

Description of Foundation: On bronze rock formation flat on bottom; low cement pedestal approximately 12" high with step-up to statue; circular stone and cement pad with built-in lighting to developer's and artist's specifications

Date of Installation: TBD – approximate timeframe June/July, 2009

Site: Corner of Ramon Road and Gene Autry Trail

Distance Between Public Street and Artwork: Approximately 20' from Ramon and Gene Autry Trail

Landscape Plans: Limited desert landscaping around sculpture with cement scape in order to maximize tourist/resident/customer interaction with and approach of sculpture – see rendering

Special Problems: N/A

Dedication Plans: City, VIP, artist dedication planned for unveiling – approximate timing June/July, 2009

***"Back
in the
Saddle
Again"***

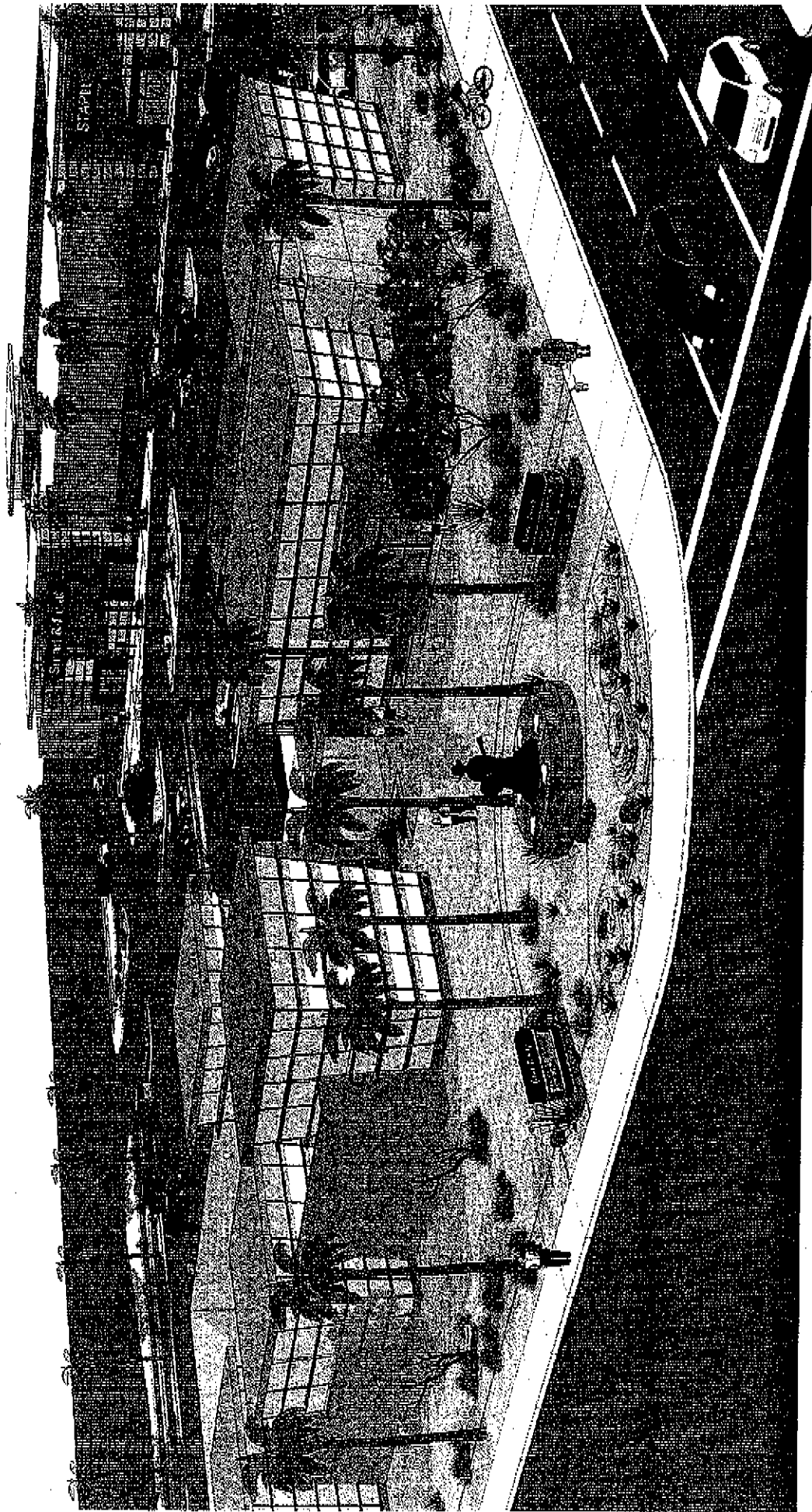
**Proposed bronze
sculpture for
Gene Autry Trail
in Palm Springs, Ca**

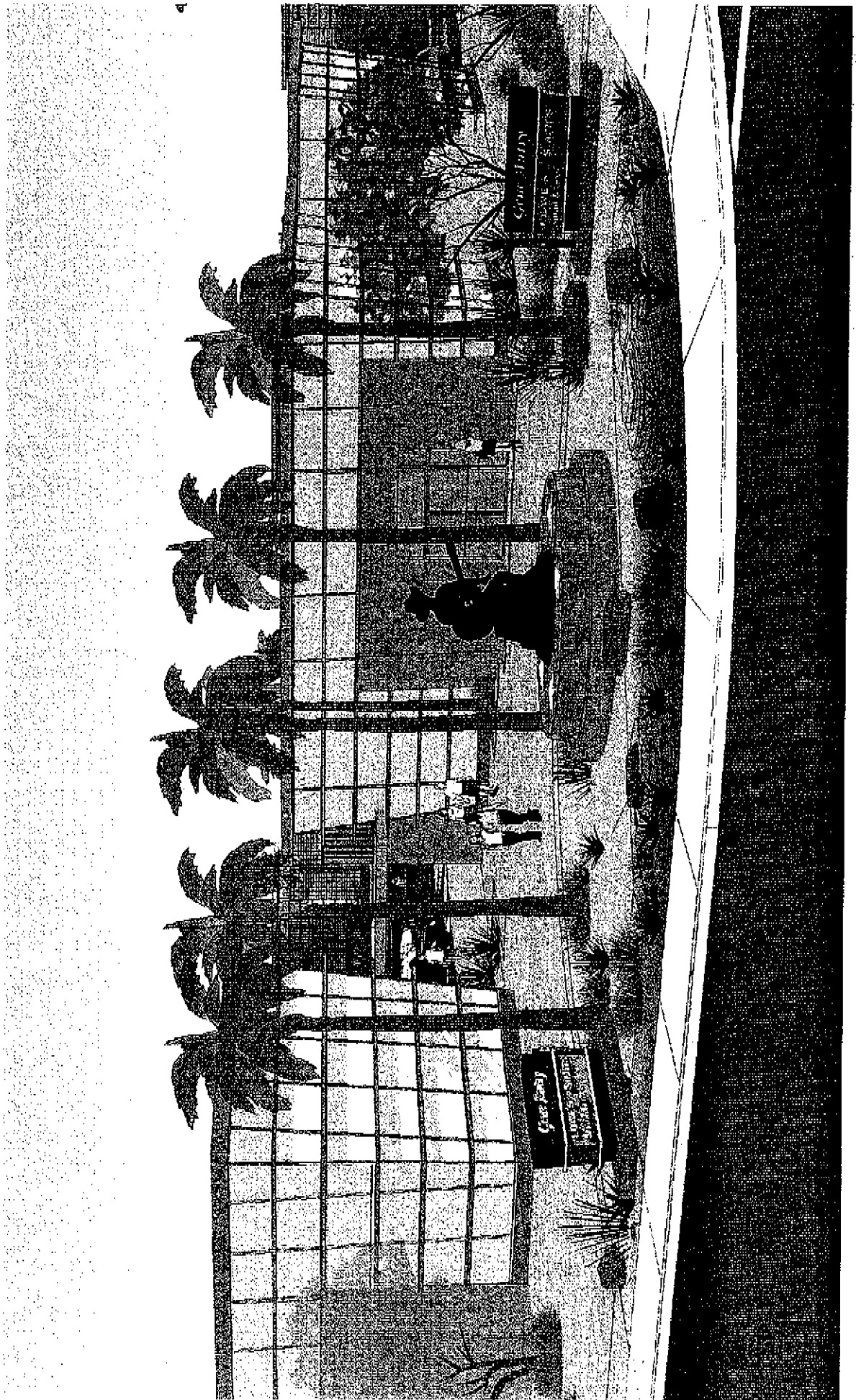
**Contact:
David L. Spellerberg
Founder
National Heritage
Collectors Society
(818) 991-0933**











KK&A
architects

PROFESSIONAL SEAL
ARCHITECTS
STATE OF CALIFORNIA
EXPIRES 12/31/00
NO. 12345
123456789



Site Plan

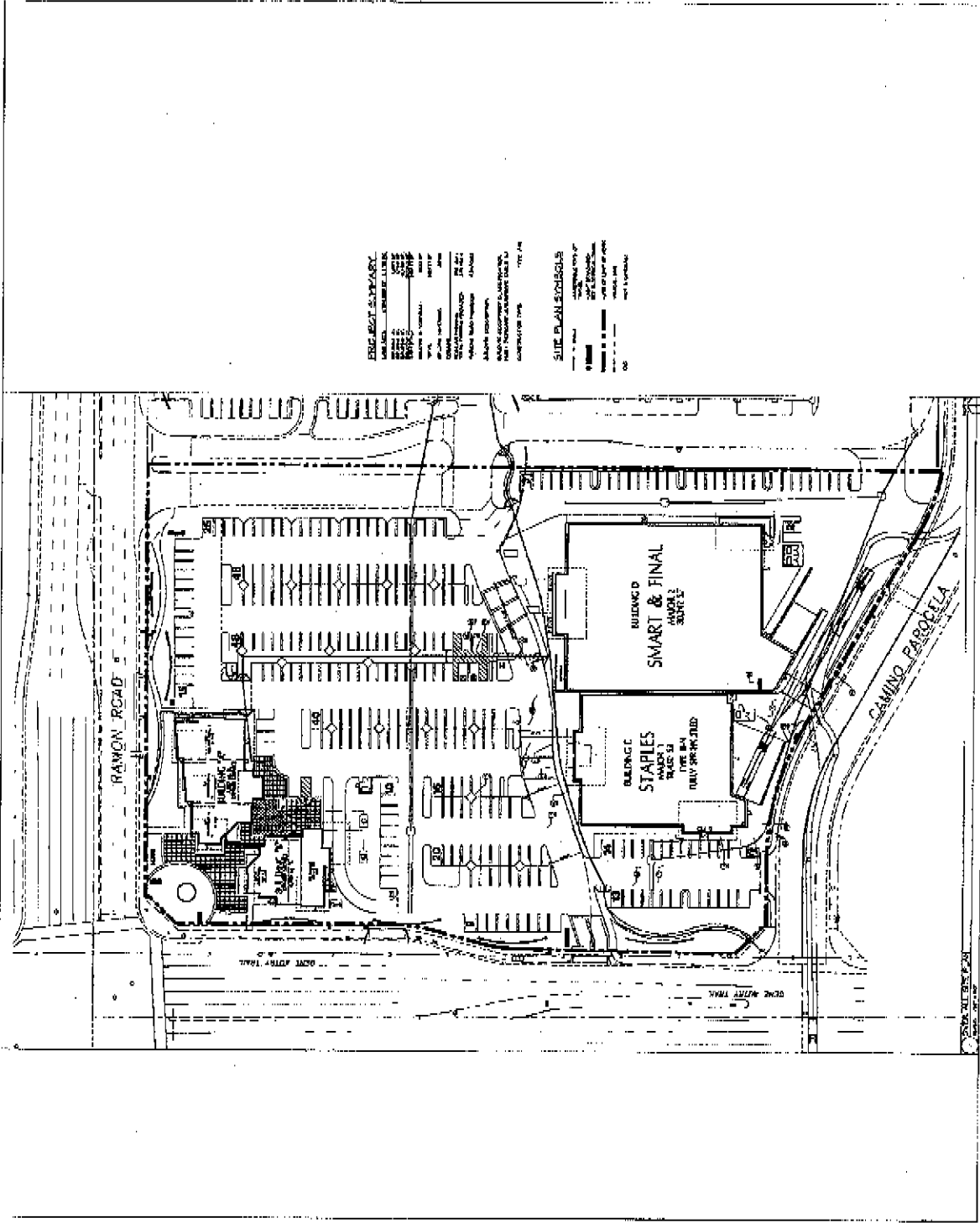
STAPLES

GENE AUTRY PLAZA
CORNER OF
RAMON ROAD &
GENE AUTRY TRAIL
PALM SPRINGS, CA

NO.	DATE	BY	DESCRIPTION
1	12/15/99	JK	PRELIMINARY
2	12/15/99	JK	REVISIONS
3	12/15/99	JK	REVISIONS
4	12/15/99	JK	REVISIONS
5	12/15/99	JK	REVISIONS
6	12/15/99	JK	REVISIONS
7	12/15/99	JK	REVISIONS
8	12/15/99	JK	REVISIONS
9	12/15/99	JK	REVISIONS
10	12/15/99	JK	REVISIONS
11	12/15/99	JK	REVISIONS
12	12/15/99	JK	REVISIONS
13	12/15/99	JK	REVISIONS
14	12/15/99	JK	REVISIONS
15	12/15/99	JK	REVISIONS
16	12/15/99	JK	REVISIONS
17	12/15/99	JK	REVISIONS
18	12/15/99	JK	REVISIONS
19	12/15/99	JK	REVISIONS
20	12/15/99	JK	REVISIONS

OVERALL SITE PLAN
FOR REFERENCE ONLY

DATE: 12/15/99
SCALE: AS SHOWN
DRAWN BY: JK
CHECKED BY: JK
PROJECT NO.: A101



PROJECT INFORMATION
 PROJECT NO. A101
 PROJECT NAME: STAPLES
 PROJECT ADDRESS: CORNER OF RAMON ROAD & GENE AUTRY TRAIL, PALM SPRINGS, CA
 CLIENT: STAPLES
 ARCHITECT: K&A ARCHITECTS
 DATE: 12/15/99
 SCALE: AS SHOWN
 DRAWN BY: JK
 CHECKED BY: JK

SITE PLAN LEGEND
 - - - - - EXISTING CONDITIONS
 - - - - - PROPOSED CONDITIONS
 - - - - - EXISTING PAVEMENT
 - - - - - PROPOSED PAVEMENT
 - - - - - EXISTING UTILITY LINES
 - - - - - PROPOSED UTILITY LINES
 - - - - - EXISTING CURBS
 - - - - - PROPOSED CURBS
 - - - - - EXISTING DRIVEWAYS
 - - - - - PROPOSED DRIVEWAYS
 - - - - - EXISTING SIDEWALKS
 - - - - - PROPOSED SIDEWALKS
 - - - - - EXISTING LANDSCAPE
 - - - - - PROPOSED LANDSCAPE

The Artist De L'Esprie

National Heritage Collectors Society
2139 Lindengrove Westlake Village, CA 91362
Contact: David L. Spellerberg (818) 991-0933

Born in Montreal, Canada in 1957, the artist De L'Esprie showed artistic talent at an early age. She attended Loyola University of Montreal, completing her degree at California State University Northridge. She has attended Brandis Art Institute and private and group classes over the course of 4 years with the following renowned instructors: Martine Vaugel, Marion Young, Don Gale and Richard McDonald. The French Canadian artist

De L'Esprie was proud to become a U.S. Citizen in May of 1991 and she currently resides in Westlake Village, California.

De L'Esprie is exclusively represented by David L. Spellerberg, Founder of the National Heritage Collectors Society. The National Heritage Collectors Society is a fine art bronze foundry in Westlake Village, CA which casts all of her pieces. They have worked together for over 20 years on over 20 monumental public works of art.

In 1986, De L'Esprie was honored to have been selected from over 16 artists to create the heroic bronze monument titled, "Back in the Saddle Again" of Gene Autry and his horse Champion which is the centerpiece of the Autry Museum of Western Heritage in Los Angeles, CA. De L'Esprie worked closely with Gene Autry, Jackie Autry and Joanne Hale, President and Director of the museum in all phases of sculpting the monument. She also designed 4 reduced versions of the monument which are sold through the museum to raise funds and create the prized awards honoring benefactors and those contributing to the history of the West through television and the film industry.

In 1987, De L'Esprie was selected by The Ronald Reagan Library to sculpt the coveted collector's edition Presidential Library Medallion. In addition, she created the Ronald Reagan "Freedom" Eagle bust which is sold on an ongoing basis at the Presidential Library in Simi Valley, CA.

In 1988, De L'Esprie was requested by Joe Weider publisher of Muscle and Fitness Magazine to design the Ms. Olympia bronzes, medals and monumental sculpture of Joe Weider himself and is featured in his monthly publications, marketing campaigns and product lines.

In 1989, State Farm Insurance Company commissioned De L'Esprie to create 1,600 wildlife statues as ceremonial awards for outstanding performance.

In 1990, "Crazy Horse" was commissioned by Michael Wayne (son of the late John Wayne). De L'Esprie deftly portrayed a compassionate, yet majestic, vision of the hero.

In 1994, De L'Esprie was commissioned by Sylvester Stallone to create the heroic commemorative tribute to "Rocky" titled "The Triumph of Victory" for his Miami estate. Her command of human anatomy accentuates both power and movement in this finished work of art. This 10 ft. sculpture was featured in the November 1997 issue of Architectural Digest.

In 1995, De L'Esprie was commissioned by the Janns Corp. and R.T.K.L. Associates to create the 9 ½ ft. tall Indian sculpture, "Message to the Creator" which is the centerpiece of the Janns Mall in Thousand Oaks, CA.

In 1996, De L'Esprie had the privilege to work with developer Rick Caruso of Caruso Affiliated Holdings to design and create the magnificent sculpture, "Joy to Life" for The Promenade shopping center in Westlake Village, CA. This bronze sculpture of a mother, father, three children and a dog is a tribute to the family.

In 1997, developer Hawkins-Smith commissioned De L'Esprie to create a second "Joy to Life" sculpture for their beautiful Spectrum Movie Theatre Complex in Boise, ID.

In May of 1998, De L'Esprie was again commissioned by Rick Caruso of Caruso Affiliated Holdings to design and create "Pirates Cove", a collection of children and animals, which is the centerpiece of The Commons Shopping Center in Calabasas, CA.

In November of 1998, The Disney Corporation and Jackie Autry commissioned De L'Esprie to create a larger than life-size bronze sculpture of "Gene Autry" to greet fans as they enter Edison Field in Anaheim, CA.

In 1999, De L'Esprie was commissioned by Dr. Robert Schuller to create a 8 ½ ft. tall sculpture of Jesus, 3 children and 2 sheep titled "The Lost is Found" for the Crystal Cathedral in Garden Grove, CA. This bronze sculpture reflects the Parable of the Lost Sheep based on Luke 15:3, "Rejoice with me, for I have found my sheep which was lost."

In March of 2000, De L'Esprie was again commissioned by Dr. Robert Schuller to create a sculpture 30% larger than life, titled "The Prodigal Son" from the biblical story from the book of Luke 15:11. This sculpture was added to the beautiful grounds of the Crystal Cathedral in Garden Grove, CA in January of 2002.

In August of 2000, De L'Esprie was selected by the city of Laguna Beach Arts in Public Places Program to have her sculpture "Chasing Butterflies" and "Airplane Ride" permanently exhibited and added to the city's public art collection.

In December of 2000, De L'Esprie was again commissioned by Rick Caruso of Caruso Affiliated Holdings to create a sculpture of 3 children and a dog titled, "Lemonade Stand" for The Farmer's Market in Los Angeles, CA.

In January of 2001, De L'Esprie was sought by Caruso Affiliated Holdings to create 2 larger than life angels entitled "The Spirit of Los Angeles". This monumental sculpture is a landmark in Los Angeles and the centerpiece for The Farmer's Market.

In August of 2001, De L'Esprie was commissioned by the City of Culver City to create a larger than life-size sculpture entitled "The Path of Life" for their new Senior Center.

In June of 2002, De L'Esprie was commissioned by the Orange County Fire Authority to create a Firefighters Memorial to pay tribute to those who risk their lives each day for their community.

In April of 2003, De L'Esprie was again commissioned by the City of Culver city to create the sculpture titled "A Moment in Time" to honor Harry Culver, the city founder and his family sitting on a park bench in front of the historic Culver hotel on Culver Blvd.

In 2004 De L'Esprie was commissioned for the 4th time to create a heroic work of art for The Lakes titled "A Day at the Lakes", a new shopping center in Thousand Oaks. This sculpture featured 4 children enjoying a day at the lakes, playing with the water and in the sandbox.

In 2005, De L'Esprie was commissioned by the Boeing Corporation and the City of Long Beach to create 2 heroic sculptures, one honoring "Donald Douglas", the founder of the Douglas Corporation, and the second a heroic 8 foot in diameter bronze globe with three airplanes circling the globe as a recreation of the famous Douglas Corporation logo.

In addition to these heroic works of art, De L'Esprie has created over 100 different bronze sculptures ranging in price from \$400.00 to \$250,000.00. Her subjects include children, Angels, Native Americans, ballerinas, Eagles, horses, lions and mermaids...just to mention a few.

All of her works are signed "De L'Esprie" which is French for "of the spirit."

De L'Esprie has been honored by the late Mayor Tom Bradley for her contributions towards the arts in Los Angeles. She has been written up by the Daily News, Los Angeles Times, U.S. Japan News, Lifestyle, Lively Arts and Fine Arts, Southwest Art, Beverly Hills Courier, News Chronicle, Horseman, Celebrity Society, Spur, and the Westlake Magazine to name a few.

De L'Esprie's works are in the collection of the late Gene Autry, Ambassador Robert D. Nesen, Sylvester Stallone, Fred Couples, the late Jimmy Stewart, Prince Mohammed Abdul-Aziz, Arnold Schwarzenegger, Charlton Heston, Jack Palance, Bob Pond and several banks and corporations throughout the world.

For all the above described works of art, David L. Spellerberg, founder of the National Heritage Collectors Society, has exclusively represented the artist De L'Esprie.

Heroic Works of Art by the Sculptor DeL'Esprie
That are on public display throughout the United States
Partial List

The Lakes

City of Thousand Oaks, Ca
"A Day at the Lakes" 2005
Commissioned by Caruso Affiliated
\$200,000

Calabasas Commons

City of Calabasas, Ca
"Pirate's Cove" 1998
Commissioned by Caruso Affiliated
\$180,000

Crystal Cathedral

Garden Grove, Ca
"The Lost is Found" 2000
Commissioned by Dr. Robert Schuller
\$280,000

Crystal Cathedral

Garden Grove, Ca
"Prodigal Son" 2002
Commissioned by Dr. Robert Schuller
\$190,000

Tribute to Rocky

Bel Air, Ca
"The Triumph of Victory" 1994
Commissioned by Sylvester Stallone
\$230,000

Janss Marketplace

Thousand Oaks, Ca
"Message to the Creator" 1995
Commissioned by the Janss Corporation
\$190,000

Westlake Promenade

Westlake Village, Ca

"Joy of Life" 1996

Commissioned by Caruso Affiliated

\$195,000

Edison Field

Anaheim, Ca

"Standing Gene Autry" 2000

Commissioned by Angeles Baseball Team

\$150,000

The Grove

Los Angeles, Ca

"Spirit of Los Angeles" 2002

Commissioned by Caruso Affiliated

\$320,000

The Grove

Los Angeles, Ca

"Lemonade Stand" 2001

Commissioned by Caruso Affiliated

\$170,000

City of Culver City

"A Moment in Time" 2006

Commissioned by the City of Culver City

\$225,000

City of Culver City

"Path of Life" 2001

Commissioned by the City of Culver City

\$254,000

Autry National Center of the American West

Griffith Park, Los Angeles, Ca

"Back in the Saddle Again" 1985

Commissioned by Jackie Autry of the Original Gene Autry Museum

\$350,000

Orange Country Fire Authority

Irvine, Ca

"OCFA Firefighter Memorial" 2002

Commissioned by the Orange County Fire Authority

\$450,000

Douglas Park

Long Beach, Ca

"Standing Figure of Donald Douglas" 2007

Commissioned by the Boeing Corporation

\$240,000

Douglas Park

Long Beach, Ca

"8 1/2 ft. round Globe with 3 TWC Airplanes"

Original Donald Douglas Logo, 2007

Commissioned by the Boeing Corporation

\$190,000

Americana at Brand

Glendale, Ca

"A Time to Reflect" 2008

Commissioned by Caruso Affiliated

\$250,000

Arts in Public Places

Laguna Beach, Ca

"Chasing Butterflies" 2002

Commissioned by the City of Long Beach

\$38,000

Laguna Beach, Ca

"WhirlyBird" 2002

Commissioned by the City of Long Beach

\$28,500

Burbank, Ca

"Old Glory" 2002

Commissioned by the City of Burbank

\$22,000

Burbank, Ca

"WhirlyBird" 2002

Commissioned by the City of Burbank

\$28,500

Boise, Id – Spectrum Plaza

"Joy of Life" 1998

Commissioned by the City of Boise

\$220,000

Tempe, Az – Angels Baseball Spring Training Headquarters

"Gene Autry Bust" 1990

Commissioned by the City of Tempe, Az

\$60,000

EXHIBIT A

GENE AUTRY

America's Favorite
Singing Cowboy



Proposed bronze
sculpture for
Gene Autry Trail
in Palm Springs, Ca

Contact:
David L. Spellerberg
National Heritage
Collectors Editions
(818) 991-0933

ABOUT US EXHIBITIONS EVENTS EDUCATION MEMBERSHIP RESEARCH SUPPORT

Sculpture

Gene Autry and Champion *Back in the Saddle Again*

Feature Items

Gene Autry Items

Books

Convergence

Maps, Posters, Notecards
& Stationery

Movies

Music

Collectibles

Apparel &
Accessories

Home Decor & Gifts

Masters Merchandise

Games, Puzzles, & Toys

Fine Arts & Crafts

Store Information

Shopping Cart



During the planning of the museum, Gene Autry posed for sculptor De L'Esprie for a larger than life statue in the museum's main plaza. All of Champion's tack was sculpted by artist Al Shel. This is a beautiful 13" bronze reproduction of that statue. It stands on a green marble base. Please call or e-mail for a shipping quote.

Autry National Center members save 10%

◀ Back to [Fine Art & Craft](#)

Qty.

13"

\$1700.00

18 (Available by special order only)

\$6000.00

36 (Available by special order only)

\$17000.00

Add to Shopping Cart

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**Public Arts Commission
CITY OF PALM SPRINGS, CALIFORNIA**



**MINUTES
Regular Meeting
Thursday, November 13, 2008
City Hall - Large Conference Room**

CALL TO ORDER: Chair Stone called the meeting to order at 2:00 p.m.

ROLL CALL:

	Present This Meeting	Present To Date	FY 2008/2009 Excused Absences	FY 2008/2009 Unexcused Absences
William Butler	x	2	1	
Jamie Kabler	x	1	1	
James Kennedy, Vice Chair		2	1	
Jeanne Mazur	x	3		
Robert Stearns	x	2		
Michael Stern	x	3		
Robert Stone, Chair	x	3		

Chair Stone welcomed Commissioner Kabler to his first meeting.

ALSO PRESENT: Jennifer Henning, Arts and Special Projects Coordinator

ACCEPTANCE OF AGENDA:

Motion by Mazur, second by Butler to accept Agenda for November 13, 2008; unanimously carried

PUBLIC COMMENTS: There were no Public Comments

APPROVAL OF MINUTES:

ACTION: Approve Public Arts Commission Minutes of July 10, 2008.

Motion by Mazur, second by Chair Stone, motion carried 4/0 in a roll call vote. (Commissioners Kabler and Stearns not present at July meeting)

ACTION: Approve Public Arts Commission Minutes (Regular Meeting & Study Session) of September 11, 2008.

Motion by Stearns, second by Stern, motion carried 4/0 in a roll call vote. (Commissioners Butler and Kabler not present at September meeting)

A. PRESENTATIONS:

1. Tony and Karen Barone, Public Art Proposal for Palm Canyon Theatre
538 N. Palm Canyon Drive

Presentation/proposal material attached.

The commission discussed and/or commented on: maintenance for piece, including graffiti removal, if needed; commission requested list of previously sold pieces, including sales price, prior to next month's meeting; fabrication of piece; proposal will need to be brought before Historic Site Preservation Board (site is Class I historic site).

2. Alec Longmuir, Melissa Morgan Fine Art
Review Possible Sale of Dennis Oppenheim Sculpture to City

Presentation/proposal material attached.

The commission discussed and/or commented on: size (15' high, 20' base diameter); price approximately \$195,000; cost of acquisition of one piece vs. multiple pieces; color choices; possible temporary locations, i.e., Port Lawrence; piece would be simple to relocate after installation (if needed); architectural element; grouping of more than one piece; (Kabler requested Mr. Longmuir to provide photographs of pieces for possible donation – not Oppenheim pieces – this request should be placed on future Commission Agenda for discussion);

3. The Nicholas Group, Gene Autry Plaza Project, Artist Representative David Spellerberg
Developer Funded Art Project

Presentation/proposal material attached.

The commission discussed and/or commented on: Kabler feels this is a great sculpture for this location; commission invited to ground breaking; Chair Stone would like the commission to consider whether or not they should acquire additional literal figurative bronzes for the collection; this item will be added to next month's agenda as a legislative item; commission would like to see a sales history from the artist.

4. Guide Dogs of the Desert, Public Art Proposal for Guide Dog Depot (Loan of Artwork)
125 E. Tahquitz Canyon Way

Presentation/proposal material attached.

The commission discussed and/or commented on: installation and maintenance; patina; artwork is fabricated in steel; commission would like further information on protective coating for the piece and issues that may arise from the steel becoming extremely hot to the touch during hottest months; add to next month's agenda under legislative item.

B. NEW BUSINESS:

5. None

C. UNFINISHED BUSINESS:

6. City of Palm Springs Art Show 2009
RECOMMENDATION: Direct Staff as Appropriate

**Public Arts Commission
CITY OF PALM SPRINGS, CALIFORNIA**



**MINUTES
Regular Meeting
DRAFT**

Thursday, December 11, 2008
City Hall - Large Conference Room

CALL TO ORDER: Chair Stone called the meeting to order at 2:00 p.m.

ROLL CALL:

	Present <u>This Meeting</u>	Present <u>To Date</u>	FY 2008/2009 <u>Excused Absences</u>	FY 2008/2009 <u>Unexcused Absences</u>
William Butler	x	3	1	
Jamie Kabler	x	2	1	
James Kennedy, Vice Chair	x	3	1	
Jeanne Mazur	x	4		
Robert Stearns	x	3		
Michael Stern		3	1	
Robert Stone, Chair	x	4		

ALSO PRESENT: Jennifer Henning, Arts and Special Projects Coordinator

ACCEPTANCE OF AGENDA:

Motion by Stearns, second by Mazur to accept Agenda for December 11, 2008; unanimously carried

PUBLIC COMMENTS: There were no Public Comments

APPROVAL OF MINUTES:

ACTION: Approve Public Arts Commission Minutes of November 13, 2008.

Motion by Kabler, second by Stearns, motion carried 5/0 in a roll call vote. (Commissioner Kennedy not present at November meeting)

D. LEGISLATIVE:

7. RECOMMEND THE APPROVAL OF THE NICHOLAS GROUP'S PROPOSAL FOR THE PUBLIC ART INSTALLATION "AMERICA'S FAVORITE SINGING COWBOY", BY ARTIST DE L'ESPRIE, **RECOMMENDATION:** Adopt Resolution No. ___ "A RESOLUTION OF THE PUBLIC ARTS COMMISSION OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING THE NICHOLAS GROUP'S PROPOSAL FOR THE PUBLIC ART INSTALLATION "AMERICA'S FAVORITE SINGING COWBOY", BY ARTIST DE L'ESPRIE TO BE LOCATED AT THE GENE AUTRY PLAZA PROJECT."

The commission discussed and/or commented on: Butler, feels that the City is only receiving half of a sculpture, the full sculpture is located in Los Angeles at the Autry Museum of Western Heritage; Kennedy, agrees with Butler, does not feel that the sculpture is an original piece of artwork; Kabler, feels this is a great sculpture for location and will add to the site; Mazur, agrees with Kabler, was impressed by the rendering of the sculpture; Kennedy, understands relationship with development but has an issue with the fact that it is part of another sculpture elsewhere and that it does not qualify as an original sculpture; Butler, does not feel this is an original work of art; Chair Stone, agrees with Butler, the images at the November meeting have the same title as the sculpture located at the museum in Los Angeles, now the title of the work has been changed to "America's Favorite Singing Cowboy", the original work that the sculpture is derived from can be purchased on the internet in unlimited quantities, does not think that it meets the originality test of the ordinance, feels it is not in the best interest of the program to approve a work so derivative of a sculpture located elsewhere. Supports the project and the desire to pay tribute to Gene Autry, does not think this sculpture does that.

Motion by Butler, second by Kennedy, to approve resolution recommending the approval of the Nicholas Group's Proposal for the public art installation "America's Favorite Singing Cowboy". Motion failed 2/4 in a roll call vote (Commissioner Stern not present).

ADJOURNMENT: The Public Arts Commission adjourned at 4:15 p.m. to a Regular meeting, Thursday, December 11, 2008, at 2:00 p.m. at City Hall, Large Conference Room, 3200 E. Tahquitz Canyon Way, Palm Springs, California.

APPROVED BY A MOTION OF THE CITY OF PALM SPRINGS PUBLIC ARTS COMMISSION THIS 11th, DAY OF DECEMBER, 2008.

Respectfully Submitted,

Jennifer Henning
Public Arts and Special Projects Coordinator

RESOLUTION NO. _____

A RESOLUTION OF THE PUBLIC ARTS COMMISSION OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING THE NICHOLAS GROUP'S PROPOSAL FOR THE PUBLIC ART INSTALLATION "AMERICA'S FAVORITE SINGING COWBOY", BY ARTIST DE L'ESPRIE TO BE LOCATED AT THE GENE AUTRY PLAZA PROJECT, 650 SOUTH GENE AUTRY TRAIL AND PLACED AT THE PROJECT SITE'S MAIN CORNER ON RAMON ROAD AND GENE AUTRY TRAIL.

WHEREAS, the City Council created according to Chapter 2.24 of the Palm Springs Municipal Code (Section 2.24.010) the Public Arts Commission; and

WHEREAS, at the November 13, 2008 Public Arts Commission meeting, The Nicholas Group presented a public art proposal by De L'Esprie ("Artist"), for the Gene Autry Plaza Project located at 650 South Gene Autry Trail; and

WHEREAS, the Artist presented a proposal for the installation of a large scale figurative bronze sculpture of the actor Gene Autry, 7 feet high, 5 feet wide and 5 feet deep titled "America's Favorite Singing Cowboy"; and

WHEREAS, the proposed site for the installation is at the Gene Autry Plaza Project site's main corner on Ramon Road and Gene Autry Trail; and

NOW, THEREFORE, be it resolved that the Public Arts Commission approves the proposal by The Nicholas Group to install the public artwork titled "America's Favorite Singing Cowboy" by artist De L'Esprie at the Gene Autry Plaza Project, 650 South Gene Autry Trail, at the project site's main corner on Ramon Road and Gene Autry Trail.

ADOPTED the _____ day of _____, 2008

John Raymond, Director
Community & Economic Development

ATTEST:

Jennifer A. Henning, Public Arts & Special Projects Coordinator

- art is proposed for a new project.
- (11) Establish management policies for documentation, registration, maintenance and conservation of all artwork.
- (12) Develop a public information program.
- (13) Provide grants or loans to fund public education concerning art, but funded solely through private donations or endowments, and not from any funds collected pursuant to 3.37.070.
- (14) Act in an advisory capacity to the Planning Commission for review of works of art that are privately funded on private property that can be seen from the public right-of-way.

SECTION 2. A new Chapter 3.37 is hereby added to the Palm Springs Municipal Code to read in its entirety as follows:

Chapter 3.37

PUBLIC ARTS FEE, FUND AND PROGRAM

Sections:

- 3.37.010 Purpose.
- 3.37.020 Program Execution.
- 3.37.030 Definitions.
- 3.37.040 Public Arts Fund.
- 3.37.050 Projects Subject to Public Arts Program Requirements.
- 3.37.060 Certificates of Occupancy.
- 3.37.070 Requirements to Provide Artwork or Pay Development Fee.
- 3.37.080 Art Site Acceptability.
- 3.37.090 Criteria for Artwork Selection.
- 3.37.100 Maintenance of Artwork.
- 3.37.110 Application Procedures for Placement of Artwork on Private Property.
- 3.37.120 Approval Procedures for Placement of Artwork on Private Property.
- 3.37.130 Procedure for Refund of Public Arts Fee for Art-in-Lieu of Fee.
- 3.37.140 Ownership of Artwork on Private Property.
- 3.37.150 Application Procedure for Donation of Artwork to the City.
- 3.37.160 Review and Acceptance of Artwork Donated to the City.

3.37.010 Purpose.

- (a) The purpose of the Palm Springs Public Arts Program is to develop and maintain a visual arts program for the residents and visitors of Palm Springs; to add to the economic viability of the community; and to enhance the environment and unique character of Palm Springs by providing for the acquisition and maintenance of quality works of public art.
- (b) The City Council finds and declares as follows:
 - (1) Cultural and artistic resources enhance the quality of life for individuals living in, working in and visiting the City.
 - (2) Balanced development of cultural and artistic resources preserves and

- improves the quality of the urban environment and increases real property values.
- (3) As development and revitalization of the real property within the City continues, the opportunity for creation of cultural and artistic resources is diminished.
 - (4) As this development and revitalization continues as a result of market forces, urbanization of the community results.
 - (5) As these opportunities are diminished and this urbanization occurs, the need to develop alternative sources for cultural and artistic outlets to improve the environment, image and character of the community is increased.
 - (6) Development of cultural and artistic assets should be financed by those whose development and revitalization diminishes the availability of the community's resources for those opportunities and contributes to community urbanization.
 - (7) Establishment of this Public Arts Program will promote the general welfare through balancing the community's physical growth and revitalization and its cultural and artistic resources.
 - (8) It is the purpose of this Chapter to modify, clarify and codify the City's existing Public Arts Program.

3.37.020 Program Execution. The Palm Springs Public Arts Commission shall carry out the duties established by this Chapter.

3.37.030 Definitions. For the purpose of this Chapter:

- (1) "Commission" shall mean the Palm Springs Public Arts Commission.
- (2) "Public Arts Fund" shall mean a separate fund and account which is established to receive monies collected for the designated purposes of the Public Arts Program.
- (3) "Public Arts Program" shall mean the program adopted by the City Council of Palm Springs.
- (4) "Arts Administrator" shall mean the staff person hired by the City to administer the Public Arts Program. The salary and other compensation of the Arts Administrator, may be paid from the Arts Fund to the extent such person is performing the duties prescribed herein.

3.37.040 Public Arts Fund.

- (a) **Creation.** There is hereby established a "Public Arts Fund" into which shall be deposited all funds collected under this Chapter of the Palm Springs Municipal Code and such other funds as may be appropriated by the City Council or donated to the City for expenditures in conjunction with the Public Arts Program.
- (b) **Accounting.** This fund shall be maintained by the City Treasurer, with accounting records established to sufficiently identify and control these funds. Expenditures shall be processed through the City's established warrant payment procedure.
- (c) **Use of Fund.** The funds shall be used solely for the acquisition, installation,

improvement, maintenance and insurance of artwork to be displayed in the city and the administration of the Public Arts Program.

(d) Permissible Expenditures:

- (1) The cost of artwork and its installation.
- (2) The cost of purchase or lease of art sites.
- (3) Waterworks, landscaping lighting and other objects which are commissioned from an artist as an integral aspect of a structure or site or which are necessary for the property aesthetic presentation and structural placement of the artwork.
- (4) Frames, mats, pedestals, and other objects which are necessary for the proper presentation of the artwork.
- (5) Expenditures for maintenance and repair of artworks.
- (6) Administrative expenses, including legal, to otherwise implement uphold or carry out any provision of this Chapter.

(e) Ineligible Expenditures:

- (1) Reproductions of original work except limited editions.
- (2) Unlimited editions of original work.
- (3) Mass-produced art objects.
- (4) Works that are decorative, ornamental or functional landscape or architectural elements except when commissioned from an artist as an integral aspect of a structure or site.
- (5) Architectural rehabilitation or historical preservation of buildings.

(f) Endowments. The Public Arts Fund shall also be used as a depository for endowments, bequests, grants or donations. Such endowments, bequests, grants or donations may be expended as set forth in 3.37.040(c) and (d) and when approved by the Commission:

- (1) Art exhibitions or displays.
- (2) Promotion of art education within the community, either separate from or complementary to art programs of schools, museums or other non-profit organizations.

(g) Replacement. For those artworks that have been purchased with monies from the Public Arts Fund or donated to the City, the City Council may determine to sell or exchange existing artworks for replacement artworks. Any funds obtained from the sale of artwork shall be credited to the Public Arts Fund.

3.37.050 Projects Subject to Public Arts Program Requirements.

(a) Requirements. Except as provided below in 3.37.050(b), the requirements of this Chapter shall apply to all works of construction and rehabilitation for which a building permit is required, including, but not limited to:

- (1) New commercial and industrial construction.
- (2) Remodeling or reconstruction of existing commercial or industrial property.
- (3) New residential subdivisions or developments of two or more units, whether by detached single-family residential structures, condominiums, apartments, duplexes, townhouses or other dwelling units being built in the same tract by the same owner or developer.
- (4) New individual single-family residential units constructed on a lot located in an existing subdivision whose building permit valuation is over \$100,000.

(b) Exceptions. The requirements of this Chapter shall not apply to the following activities:

- (1) Public projects undertaken by any agency of the City, the State, County, School District or any other governmental entity.
- (2) Remodeling, repair or reconstruction of structures to comply with earthquake seismic safety code standards or which have been damaged by fire, flood, wind, earthquake or other calamity.
- (3) Remodeling, repair or reconstruction of residential units.
- (4) Nonprofit social service or cultural institution projects.
- (5) Low to moderate housing projects as defined by household income Health and Safety Code Section 50093.
- (6) Affordable housing developments receiving City, State or Federal assistance.
- (7) Private educational institutions which provide general education equivalent to the public school system (kindergarten through high school or any part thereof).
- (8) Architectural rehabilitation or historical preservation of properties which are designated as Class I Historic Sites by the City Council.

3.37.060 Certificates of Occupancy.

(a) No final City approval, such as final inspection or a certificate of occupancy, for any project subject to this Chapter shall be granted or issued unless and until full compliance with the Public Arts Program is achieved, in one or more of the following ways:

- (1) The approved artwork has been placed in a manner satisfactory to the Public Arts Commission.
- (2) In-lieu art fees have been paid.
- (3) Financial security in an amount equal to the acquisition and installation costs of an approved artwork, in a form approved by the City Attorney, has been posted.
- (4) An approved artwork has been donated and accepted by the Public Arts Commission.

(b) Full compliance with the Public Arts Program shall not be deemed to exist until the entire Program Allocation for the project, as defined in 3.37.070 has

been provided.

3.37.070 Requirement to Provide Artwork or Pay Development fee.

- (a) The applicant shall be deemed to have satisfied his or her obligations under this Chapter through the placement of artwork in a manner consistent with this Chapter, valued at an amount equal to the Program Allocation.
- (b) In-lieu of placement of an approved artwork, the applicant may, at his or her discretion, pay to the City for deposit into the Public Arts Fund an amount equal to the Program Allocation set forth in 3.37.070(d).
- (c) Fees are to be collected with respect to all projects prior to issuance of a building permit, except in the case of residential developments of more than one dwelling unit, where the fee shall be collected on a pro rata basis for each dwelling when it receives its final inspection or certificate of occupancy, whichever occurs first.
- (d) The Program Allocation, as used in this Chapter, is the percentage of the building cost which is set aside for the City's Public Arts Program. The total building valuation shall be computed using the latest Building Valuation Data as set forth by the International Conference of Building Officials (ICBO) unless, in the opinion of the Building Official, a different valuation measure more accurately represents the value of the building. Excluding land acquisition and off-site improvement costs, the program allocation shall be an amount equal to the percentage of the total building valuation for an applicable project, as listed herein:
 - (1) One half of one percent ($\frac{1}{2}\%$) for new commercial and industrial construction.
 - (2) One half of one percent ($\frac{1}{2}\%$) for remodel or reconstruction of existing commercial or industrial property.
 - (3) One quarter of one percent ($\frac{1}{4}\%$) for new residential subdivisions or developments of two or more units, whether by detached single-family residential structures, condominiums, apartments, duplexes, townhouses or other dwelling units being built in the same tract by the same owner or developer. A project shall be considered a development of two or more units when two or more building permits are issued to the same person for development of new residential structures within a one hundred and eighty (180) day period.
 - (4) One quarter of one percent ($\frac{1}{4}\%$) for new individual single-family residential units constructed on a lot located in an existing subdivision for that portion of building permit valuation in excess of \$100,000.
- (e) Nothing in this Section shall prohibit the applicant from placing an approved artwork with acquisition and installation costs in an amount less than the Program Allocation; provided that the applicant shall also pay to the Public Arts Fund an amount equal to the difference between the Program Allocation and the costs of acquisition and installation of such artwork.
- (f) Nothing herein shall restrict the City Council from waiving the requirements of this Chapter, in whole or in part, with respect to any project otherwise subject to the provisions of this Chapter, provided that the City Council

determines that the Project Applicant has entered into an agreement with the City providing for the applicant's acquisition and installation of artwork in connection with the development of the project which addresses the goals and aims of this Chapter in a manner equally or more favorable to the City than would be achieved by strict compliance with this Chapter. In such an event, the City Council shall make findings to this effect on the basis of substantial evidence.

3.37.080 Art Site Acceptability.

- (a) Placement of art by applicant. The applicant shall place artwork in outdoor areas of the private property that are accessible and used by the public a minimum of eighteen (18) hours per day. Interior spaces, including lobbies, courtyards, malls, etc., may be eligible if they are accessible to the public a minimum of twelve (12) hours per day.
- (b) Art purchased through Public Arts Fund. When selecting the location for art purchased through the Public Arts Fund, preference shall be given to publicly accessible public places. This would include libraries, parks, office buildings, sidewalks, traffic islands, etc. Lobbies, plazas, adjacent open spaces or exterior treatment of publicly owned buildings shall be potential sites, but the offices themselves of publicly owned buildings shall not be considered acceptable sites.

3.37.090 Criteria for Artwork Selection.

- (a) Eligibility requirements for each project will be established by the Public Arts Commission. Specifically excluded are artworks done by students under the supervision of art instructors to satisfy course requirements and artists who are members of the Public Arts Commission. The following criteria shall be considered in the selection of artwork:
 - (1) Quality of the artwork.
 - (2) Media - all visual art forms may be considered, subject to limitations set by the selection jury or the Arts Commission.
 - (3) Style - artworks of all schools, styles, and tastes should be considered for the City Collection.
 - (4) Environment - artworks and art places should be appropriate in scale, material, form and content for the immediate, general, social and physical environments with which they relate.
 - (5) Permanence - consideration should be given to structural and surface integrity, permanence, and protection against theft, vandalism, weathering, excessive maintenance, and repair costs.
 - (6) Elements of design - consideration should take into account that public art, in addition to meeting aesthetic requirements, also may serve to establish focal points, terminate areas, modify, enhance, or define specific spaces, or establish identity.
 - (7) Diversity - The Public Arts Program should strive for diversity of style, scale, media, artists - including ethnicity and gender and equitable distribution of artworks and art places throughout the City.

- (b) The following methods may be used to select artwork:
- (1) Direct purchase: A completed work of art may be purchased for a specific project or location.
 - (2) Direct commission: An artist may be chosen directly by an artist-selection jury and paid to submit a proposal. Artists will be selected on the basis of their qualifications for a particular project and its probability of successful completion.
 - (3) Limited competition: A small number of artists may be invited and paid by the selection jury to submit proposals.
 - (4) Open competition: Any artist may apply subject to limitations established by the selection jury. No proposal fee is paid to artists, however, a small number of finalists may be selected to submit details, models or plans for which a fee is paid.
- (c) In selecting an artwork, the Arts Commission may appoint a selection jury of qualified persons. The jury shall be subject to the provisions of the Brown Act.
- (d) Review by Department of Planning and Zoning - A Department of Planning and Zoning representative shall review the artwork and its placement and landscaping elements and may refer the artwork to the Planning Commission for approval pursuant to Section 9404.00 of the Zoning Ordinance.

3.37.100 Maintenance of Artwork on Public and Private Property.

- (a) Public artwork on public property. A maintenance fund shall be established as part of the Public Arts Program. Procedures for custody, maintenance and conservation of artworks shall be established by the Public Arts Commission as well as a maintenance schedule. Specific instructions for care of each work shall be kept on file as part of the collection management. The Public Arts Commission will strive to include maintenance provisions in the artwork contracts stipulating the length of time (typically one year) the artist will be responsible for repairs, that urge artists to provide a maintenance manual, and that allow the artist first-refusal on repair contracts within a fair market rate of remuneration. Regular inspection-for-condition reporting shall be conducted so that the collection is maintained in the best possible condition as supervised by designated City personnel. When necessary, a conservation plan will be established prioritizing the work which is to be done.
- (b) Private artwork on private property. The obligation to provide all maintenance necessary to preserve the artwork in good condition shall remain with the owner of the site. Art installed on or integrated into a construction project pursuant to the provisions of this Chapter shall not be removed or altered without the approval of the Public Arts Commission. Artwork installed pursuant to this Chapter shall be maintained as specified in the written agreement between the City and the private property owner with regard to that artwork. Maintenance of artwork, as used in this Chapter, shall include without limitation, preservation of the artwork in good condition to the satisfaction of the City, protection of the artwork against physical

defacement, mutilation or alteration, and securing and maintaining fire and extended coverage insurance and vandalism and other similar acts in an amount to be determined by the City Attorney. Prior to placement of an approved artwork, applicant and owner of the site shall execute and record a covenant in a form approved by the City for maintenance of the artwork. Failure to maintain the artwork as provided herein is hereby declared to be a public nuisance. If the artwork is not maintained in the manner prescribed, or is removed or altered without approval of the Public Arts Commission, in addition to all other remedies provided by law, the City may, upon reasonable notice, perform all necessary repairs, maintenance, secure insurance, or take such legal or other action deemed necessary to have the artwork maintained and if necessary, restored, and the costs therefore shall become a lien against the real property.

3.37.110 Application Procedures for Placement of Artwork on Private Property. Any artwork being placed on private property as part of the City's Public Arts Program shall be a one-of-a-kind piece. The City encourages applicant's to submit an application prior to the development of the architect's schematic design. The requirements and procedures for the processing of a Public Arts Program proposal application (an "arts application") shall be as follows:

- (1) Upon submission of a development project application for a project subject to the requirements of this Chapter, the Department of Planning and Zoning shall provide to the project applicant a copy of this Chapter, an arts application form and the name and telephone number of the City's Art Administrator.
- (2) The project applicant shall submit to the Arts Administrator the completed arts application form, describing the manner in which the project applicant intends to comply with this Chapter.
- (2) The arts application shall include:
 - (A) Preliminary sketches, photographs, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed artwork.
 - (B) An appraisal or other evidence of the value of the proposed artwork, including acquisition and installation costs.
 - (C) Preliminary plans containing such detailed information as may be required by the Public Arts Commission to adequately evaluate the location of the artwork in relation to the proposed development, and its compatibility with the proposed development (the artwork shall be an integral part of the landscaping and/or architecture of the building), including compatibility with the character of adjacent conforming developed parcels and existing neighborhoods if necessary to evaluate the proposal; and,
 - (D) A narrative statement to demonstrate that the artwork will be displayed in an area open and freely available to the general public, or otherwise provide public accessibility in an equivalent manner based on the characteristics of the artwork or its placement on the site.

- (E) Maintenance factors required to insure its permanence.

3.37.120. Approval Procedures for Placement of Artwork on Private Property.

- (A) The application for the proposed artwork and its placement will be considered at a monthly public meeting of the Palm Springs Public Arts Commission. A Department of Planning and Zoning representative will also review the artwork and its placement and landscaping elements and may refer the application to the Planning Commission for approval pursuant to Section 9404.00 of the Zoning Ordinance. Any changes, questions or recommendations shall be conveyed in writing to the applicant. The Commission will determine when all issues have been addressed and accept or reject the artwork. The applicant will be notified in writing of the Public Arts Commission's decision.
- (B) If the applicant proposes or the Planning Commission or City Council recommends significant revisions to the architecture or physical design and layout of the proposed project subsequent to the receipt of the Public Arts Commission's approval, the application shall, if legally permitted, be returned to the Public Arts Commission for further review and recommendation concerning the revised proposal prior to final approval unless the Council otherwise directs.
- (C) A contract between the City and the applicant spelling out all requirements, including insurance and maintenance, shall be executed prior to the City's formal acceptance of the applicant's art-in-lieu proposal.

3.37.130 Procedure for Refund of Public Arts Fee for Artwork-in-Lieu of Fee. If In-lieu artwork has been placed subsequent to payment of a public art fee, the applicant shall submit to the Arts Administrator a written request for refund of the amount spent on artwork placed on the applicant's property. The amount to be refunded shall not exceed the amount that would have been paid into the Public Arts Fund should the applicant have chosen to pay a fee instead of placing artwork on the site. The request for reimbursement shall be submitted after the artwork is installed, approved by the Public Arts Commission and accepted by the City.

3.37.140 Ownership of Artwork on Private Property. Artwork placed on the applicant's property by the applicant in satisfaction of the applicant's program requirement shall remain the property of the applicant.

3.37.150 Application Procedure for Donation of Artwork to the City. The prospective donor shall submit to the Arts Administrator:

- (2) Sketches, photographs, or other documentation of sufficient descriptive clarity to indicate the nature of the proposed artwork to be donated.
- (3) Additional samples of artist's work other than the proposed donation.
- (4) Background information on artist who created the proposed donation.
- (5) Installation costs, if available.
- (6) Maintenance factors required to insure its permanence.

3.37.160 Review and Acceptance of Artwork Donated to the City. The proposed donation will be considered at a monthly public meeting of the Public Arts Commission. All details of the proposed donation, including the feasibility and expense of placing and caring for the work of art will be considered. The Commission will review and discuss the donation and will direct the Arts Administrator as to any questions to be asked of the donor or artist. A personal appearance by artist may be requested. The Commission will determine when all issues have been addressed and accept or reject the artwork.

SECTION 3. Section 9311.00 of the Zoning Ordinance of the City of Palm Springs is hereby repealed and of no further force or effect.

SECTION 4. EFFECTIVE DATE. This ordinance shall be in full force and effect thirty (30) days after passage.

SECTION 5. PUBLICATION. The City Clerk is hereby ordered and directed to certify to the passage of this Ordinance, and to cause the same or a summary thereof or a display advertisement, duly prepared according to law, to be published in accordance with law.

ADOPTED this _____ day of _____, 1994.

AYES:
NOES:

ATTEST:

CITY OF PALM SPRINGS, CALIFORNIA

By: _____
City Clerk

Mayor

REVIEWED AND APPROVED: _____



City of Palm Springs
Community Redevelopment Agency

MEMORANDUM

Date: December 22, 2008
To: Craig A. Ewing, AICP, Director of Planning
From: *JA* Jennifer Henning, Public Arts and Special Projects Coordinator
Re: Public Art Placement: *Gene Autry Plaza Project*, 650 South Gene Autry Trail

On November 13, 2008 the Public Arts Commission did not approve a recommendation to place artwork at the Gene Autry Plaza Project, located at 650 South Gene Autry Trail. The proposed site for the sculpture is at the southeast corner of the project at Gene Autry Trail and Ramon Road. The sculpture is cast bronze with a natural bronze patina finish. The overall size of the sculpture is seven (7) feet tall, five (5) feet wide and five (5) feet deep.

The proposal is for the installation of a large scale figurative bronze sculpture of the actor and philanthropist Gene Autry, entitled *America's Favorite Singing Cowboy*, by artist De L'Esprie. The sculpture will be placed on a bronze rock formation which will sit on a low cement pedestal, approximately twelve (12) inches high, with a step leading up to the statue. The sculpture weighs approximately fifteen hundred pounds, will be placed on a circular concrete pad with built-in lighting and installed approximately twenty (20) feet behind the property line at the corner of Gene Autry Trail and Ramon Road.

In accordance with the Public Arts Ordinance No. 1479 of the Municipal Code Chapter 3.37.090 (d) Review by Department of Planning and Zoning - a Department of Planning and Zoning representative shall review the artwork and its placement and landscaping elements and may refer the artwork to the Planning Commission for approval pursuant to Section 9404.00 of the Zoning Ordinance.

Findings: The artwork meets the criteria for Art Site Acceptability Chapter 3.37.080 (b) of the Public Arts Ordinance No. 1479. The artwork also meets requirements under Chapter 3.37.090 Criteria for Artwork Selection (a) as it relates to quality, style, environment, permanence, and elements of design and diversity.

Staff is requesting the Planning Director's approval for the placement of artwork at the main southeast corner of the Gene Autry Plaza Project located at 650 South Gene Autry Trail.



CITY OF PALM SPRINGS

DEPARTMENT OF PLANNING SERVICES

MEMORANDUM

Date: December 30, 2008
To: Jennifer Henning, Public Arts and Special Projects Coordinator
From: Craig A. Ewing, AICP, Director of Planning Services
Subject: Placement of Public Art – "Gene Autry Plaza" 650 South Gene Autry Trail

On December 30, 2008, staff reviewed your memo and attachments regarding the placement of a metal sculptures at the corner of the Gene Autry Plaza retail center (Case No. 3.3036) at the above address. In accordance with Section 3.37.090, the Municipal Code requires that a representative of the planning department "...review the artwork and its placement and landscaping elements." The department may forward the art project to the Planning Commission for review under the Architectural Review Procedures of Section 94.04 of the Zoning Code.

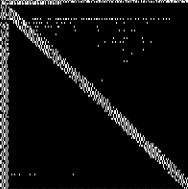
In order to avoid duplication of review authority over art esthetics, the planning staff limits its review of the art project to the placement of the pieces at the site. Specifically, the planning staff considers if the art pieces are located within an approved landscape area of the project, contribute to the overall scale and design of the immediate vicinity and avoid the potential for any hazardous conditions.

In this case, the metal sculpture is located at the corner of the site, facing the intersection of Ramon Road and Gene Autry Trail. It is to be located within the landscaped portion of the corner and its placement and height will emphasize the area as a landmark at an intersection of two designated Major Thoroughfares. At a height of eight (8) feet, the sculptures will be a significant visual element of the landscaped area, but will not be as tall as the adjacent structures.

Staff understands that the structure is not intended to be for climbing or other play purposes. To avoid any potential hazards, staff recommends that the sculptures be located, as follows:

1. At least three feet from any sidewalk, and
2. At least six feet from any wall or monument sign.

The sculptures must also provide sufficient anchoring to resist any lateral displacement. The Department of Building and Safety shall review the anchoring system prior to installation.



NICHOLAS GROUP

December 12, 2008

Ms. Jennifer Henning
Public Arts & Special Projects Coordinator
Community & Economic Development
CITY OF PALM SPRINGS
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262

Dear Ms. Henning,

Thank you again for your on-going communication and direction during the approval process of the proposed bronze sculpture honoring Gene Autry and part of the Gene Autry Plaza neighborhood retail project in Palm Springs.

While we can appreciate the Palm Springs arts commission's point-of-view - to characterize the piece as not meeting the "one of a kind" ordinance criteria, as we explained during our November 13, 2008 presentation, is simply not true. Regardless of its similarity to any other existing bronze of Gene Autry that exists in the world, as we noted, the re-design and re-casting of this piece will, in fact, be unlike any other bronze of Mr. Autry - and include unique title, name and foundation, and will be signed "1 of 1" by the artist.

It also has the enthusiastic endorsement of Mrs. Jackie Autry, who continues to honor the myriad of business and philanthropic contributions her late husband has made and continues to make to the City of Palm Springs and the entire Coachella Valley.

Ultimately, we were disappointed that the Arts Commission rejected the piece - and would like to request that the approval of the sculpture be moved into final consideration with the Palm Springs City Council - where it can be reviewed for its complete merit, which includes appropriateness of the piece to the site and for whom the center is named.

Look forward to hearing from you as soon as possible about next steps - and can be reached at my office at 760-341-9904.

Cordially,

George Nicholas, Jr.
Founder and Managing Partner

cc: David Ready
Palm Springs Arts Commission

NICHOLAS GROUP
3200 E. TAHQUITZ CANYON WAY
PALM SPRINGS, CA 92262

TEL: 760-341-9904
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Kathie Hart

From: George Nicholas [g2@tng-2.com]
Sent: January 15, 2009 5:55 PM
To: Jennifer Henning
Cc: Richard Kerlin; Milt Jones; Kathie Hart; Jim Slaughter
Subject: RE: Public Art Appeal - Jan. 21

Ms. Henning,

I accept and waive on behalf of the applicant the City requirement for the 10-day notification prior to City Council consideration on January 21, 2009.

It was my understanding from our meeting last week that the City requested of the applicant to postpone the appeal in front of the City Council from the January 7th Agenda to January 21st. We also discussed at this meeting that I would represent your concerns and recommendations of the art piece to the group and if there was a change in direction to the our application presently in front of the city I would notify you and we would then postpone the appeal from the Council's Agenda.

We have met and we will proceed with the application as presented and will address the Public Art Committee's "ONLY" concern in which you stated "the art piece was not an "ORIGINAL" piece of art" and we are prepared to have that discussion with council if necessary.

I would like to make sure that the following language is included in staff's report to Council which will confirm our conversation in person on January 6th.

- 1: The developer is requesting a credit of the Public Art Fee from the City which is approximately +/- \$25,000 (twenty-five thousand dollars) and for that will provide an access maintenance easement in favor of the City of Palm Springs for the purpose if the Owner/Developer of the project fails to adequately maintain the public art piece:
- 2: The developer will carry liability insurance in the amount of the cost of the public art piece:
- 3: The developer will maintain the public art piece. (I would like to understand the city's procedure for public art and the notification process to the developer for non-maintenance of Public Art? Please provide me with this information):

These points need to be included in your report to council so that we are clear on them and if there are any other conditions or comments. I would like to speak with you in the morning or at your first available and review/discuss the Staff Report that will be presented to the City Council.

Thank you. George

From: Jennifer Henning [mailto:Jennifer.Henning@palmsprings-ca.gov]
Sent: Thursday, January 15, 2009 9:20 AM
To: George Nicholas
Cc: Richard Kerlin; Milt Jones; Kathie Hart
Subject: Public Art Appeal - Jan. 21
Importance: High

Mr. Nicholas,
 Pursuant to PSMC Section 2.05.050, this item shall be presented to the City Council for consideration within 45-days of your appeal being filed, no later than Saturday, January 31, 2009; and the appellant shall be notified in writing 10-days before it is presented to the City Council for consideration. As of today there is less than 10-days before Jan. 21, 2009 City Council meeting; will you be willing to consent to this item being placed the January 21, 2009, agenda?

Your response to this email will support this requirement in lieu of the City sending you the notice. Thank you for your cooperation with this matter.

Best,

Jennifer Henning

Public Arts & Special Projects Coordinator

Community & Economic Development

City of Palm Springs

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