



## City Council Staff Report

DATE: JULY 26, 2017

CONSENT CALENDAR

SUBJECT: A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ACKNOWLEDGING COMPLIANCE WITH WRIT OF MANDATE RE PLANNED DEVELOPMENT DISTRICT PD-374, THE "750 LOFTS" PROJECT LOCATED AT 750 N. PALM CANYON DRIVE, AND ORDERING RECONSIDERATION BY THE ARCHITECTURAL ADVISORY COMMITTEE AND THE PLANNING COMMISSION OF CASE 5.1350 PDD 374/GPA/CUP/3.3795 MAJ TO ADDRESS THREE PROJECT ISSUES INCLUDING PARKING, BUILDING HEIGHT AND SETBACK

FROM: David Ready, City Manager

BY: Edward Kotkin, City Attorney

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### SUMMARY:

Upon the City Council's last consideration of the "750 Lofts" project, it made some decisions in order to comply with a writ of mandate issued by the Court that presided over litigation regarding this project. The City has complied with the writ, and at the request of staff, this matter is returned to the Council's agenda for one purpose, formalization of the Council's actions in the context of a resolution. Now that the Council has acted, it will be up to the developer whether to continue to pursue this project, or not. If the developer wishes to do so, the proposed resolution will provide a context for the City's future land use entitlements for the project.

### RECOMMENDATION:

Adopt "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ACKNOWLEDGING COMPLIANCE WITH WRIT OF MANDATE RE PLANNED DEVELOPMENT DISTRICT PD-374, THE "750 LOFTS" PROJECT LOCATED AT 750 N. PALM CANYON DRIVE, AND ORDERING RECONSIDERATION BY THE ARCHITECTURAL ADVISORY COMMITTEE AND THE PLANNING COMMISSION OF CASE 5.1350 PDD 374/GPA/CUP/3.3795 MAJ TO ADDRESS THREE PROJECT ISSUES INCLUDING PARKING, BUILDING HEIGHT AND SETBACK." (SEE ATTACHMENT A)

ITEM NO. 1.I.

## DISCUSSION.

On May 3, 2017, the Council formally rescinded the City's prior approvals of certain land use entitlements for this project – the planned development district, the conditional use permits, and the major architectural application. Through a public hearing process, the City Council determined that in order to approve this project in a manner consistent with the writ's requirement of resolution of the parking issue, and to renew all factual findings supportive of the rescinded entitlements' re-instatement, the Council needed the project to change.

The city attorney worked with legal counsel for the developer in preparing the City's "RETURN TO PEREMPTORY WRIT OF MANDATE" filed with the Court. The return, a true and correct copy of which is incorporated by reference in the proposed resolution, provides as follows:

*The City Council ("Council") of the City of Palm Springs ("City"), took consideration of the "750 Lofts" matter (commencing on May 3, 2017, continuing during proceedings on May 17, 2017, June 7, 2017, June 21, 2017 and July 5, 2017), Case 5.1350 PDD 374/GPA/CUP/3.3795 (the "Project"). Pursuant to this Court's Peremptory Writ of Mandate, on May 3, 2017, the City voted to rescind Ordinance No. 1886, the City's approval of the Project's Planned Development District 374, granted on September 16, 2015, and Resolution No. 23899, the City's approval of the major architectural application and conditional use permits for the Project, also granted on September 16, 2015.*

*In the course of completing a public hearing and the Council's inquiry into the terms and conditions applicable to the Project, including without limitation conditions that address parking issues including "event space" parking as required by the City's municipal code, the City took the following action on July 5, 2017.*

*The Project was referred to the City's Architectural Advisory Committee and the City's Planning Commission to consider and determine the terms and conditions of new approvals that satisfactorily conform the Project to the City's municipal code with respect to parking issues including "event space" parking, height of the building that comprises the Project, [and] [sic.] setback issues.*

Significantly, the City requested leave of the Court to file a "supplemental return" that updates the Court as to the Project's status in no more than one hundred and eighty (180) days' time. The City promised to "refrain from issuing any Project-related permits arising from or related to the Project, pending the filing of the City's supplemental return and this Court's issuance of an order consistent therewith."

The proposed resolution incorporates the return to the writ into the City's records, and provides a context for whatever future awaits this project. During Council discussion on July 5, 2017, the Council agreed that it accepted the proposed hotel use, and did not want to reject the Project. In the event that the developer decides to pursue this Project further, the City will cooperate with the developer to explore how the Project might best conform to the

expectations of the City Council as to parking issues including "event space" parking, height of the building that comprises the Project, and setback issues

ALTERNATIVES:

Decline to adopt the proposed resolution

ENVIRONMENTAL ASSESSMENT:

The environmental assessment prepared and approved in conjunction with the 750 Lofts Project remains the controlling environmental assessment for purposes of this matter. The only defect in this assessment, per the Court's ruling issued in relation to the Writ, was analysis of parking related to the event space. If the Project's future development incorporates elements that eliminate the parking problem that arose from and related to the presence of the event space in the Project, and Project modifications do not create any new actual, potential or cumulative impacts not already analyzed and addressed by the prior assessment, the Court's ruling in the litigation that precipitated the writ of mandate is that the project is compliant with CEQA.

FISCAL IMPACT:

No significant change to City revenue or expenditures is expected as a result of adopting the proposed Resolution.



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Edward Z. Kotkin,  
City Attorney

ATTACHMENT:

- A. Resolution
- B. Return to Writ of Mandate

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, ACKNOWLEDGING COMPLIANCE WITH WRIT OF MANDATE RE PLANNED DEVELOPMENT DISTRICT PD-374, THE "750 LOFTS" PROJECT LOCATED AT 750 N. PALM CANYON DRIVE, AND ORDERING RECONSIDERATION BY THE ARCHITECTURAL ADVISORY COMMITTEE AND THE PLANNING COMMISSION OF CASE 5.1350 PDD 374/GPA/CUP/3.3795 MAJ TO ADDRESS THREE PROJECT ISSUES INCLUDING PARKING, BUILDING HEIGHT AND SETBACK

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, FINDS:

A. In 2014, 750 Lofts, LLC a California limited liability company applied for approval of Planned Development District PD-374, General Plan Amendment, Conditional Use Permit and Major Architectural Application (the "Entitlements") in order to construct a 39 room hotel on 1.13 acres of property located at 750 N. Palm Canyon Drive, Palm Springs (the "Property").

B. The Property, while itself not a historic structure, is located within the Las Palmas Business Historic District. On October 12, 2014, the Historic Site Preservation Board ("HSPB") reviewed the General Plan Amendment ("GPA"), Conditional Use Permit ("CUP"), and Planned Development District ("PDD") for the original project application which, at that time, included a hotel with forty-six (46) rooms, sixty-two (62) parking spaces and a maximum height of fifty feet (50'), with lower heights at the street frontages. The HSPB approved the Project subject to certain conditions, one of which required that the Major Architectural Application ("MAJ") come back to the HSPB for review.

C. The Project, including the MAJ, was brought back to the HSPB on January 13, 2015, and at that time, the HSPB approved the Project subject to conditions requiring reductions in building height, limitations on rooftop structures, and a requirement that the parking study be reviewed by the City Engineer for adequacy of off street parking such that the Project would not adversely impact the historic district.

D. The Project was revised in an effort to respond to the HSPB conditions, resulting in a hotel of only thirty-nine (39) rooms, thereby reducing room count by seven (7), and reducing some building heights

E. An initial study was prepared for the Project pursuant to the California Environmental Quality Act ("CEQA"), and was circulated for a twenty (20) day period from February 6, 2015 to February 25, 2015. With the revisions to the Project prompted

by the HSPB review, the initial study was revised and re-circulated for public comment from June 29, 2015 to July 20, 2015.

F. On June 24, 2015, July 22, 2015, and August 12, 2015 the Planning Commission conducted a public hearing and reviewed the project. At its August 12, 2015 meeting, the Planning Commission recommended that the Project be approved subject to the conditions of approval.

G. On September 16, 2015, the City Council held a public hearing and, after taking public testimony, approved the Project, including the GPA, PDD, CUPs, MAJ and Mitigated Negative Declaration and deleted HSPB conditions 1, 2 and 3.

H. On October 23, 2015, Advocates for Better Community Development filed a Petition for Writ of Mandate (the "Petition"), seeking to compel the City to rescind its approval of the Entitlements.

I. In adjudicating the Petition, the Court heard three (3) basic arguments: (a) that the City Council abused its discretion when it deleted the HSPB conditions without sending the Project back to the HSPB, (b) that the City violated its municipal code for approving the Project without considering the parking requirements for the "event space", and (c) that the approval of the Project was "spot zoning."

J. The Court denied the Petition as to the claim that the City Council abused its discretion in deleting the HSPB conditions and it found nothing in the municipal code that requires the Council to refer the revised Project back to the HSPB.

K. The Court also denied the Petition as to the claim of spot zoning, finding that no spot zoning occurred as no "island" was created, and the Court further found that even if it had been spot zoning, such zoning was in the public interest as it provided tourist accommodations and revitalized Indian Avenue.

L. The Court, however, granted the Petition as to the issue of parking, and on April 6, 2017, issued a "Peremptory Writ of Mandate" (the "Writ") to the City. The Writ requires neither more nor less than that the City set aside its approvals of the Entitlements until such time as the City adequately addresses all parking issues, including event space parking, as required by the City's Municipal Code.

M. On May 3, 2017, the Council took affirmative action rescinding Ordinance No. 1886 (the past approval of the PDD), Resolution No. 23899 (the past approval of the MAJ), and directing staff to schedule a public hearing in this matter.

N. Staff first issued and gave proper notice of this public hearing to take place on May 17, 2017, then re-noticed this public hearing for June 7, 2017, and then continued, after being opened and properly adjourned until June 21, 2017.

O. At the public hearing in this matter, the City Council considered a report and a supplemental report from its staff, inclusive of the entire City Council staff report considered on September 16, 2015 inclusive of all attachments, and a true and correct

copy of the Writ; in addition, the Council received any and all written or oral testimony offered, and deliberated upon its intended action with respect to the Entitlements.

P. The public hearing concluded on June 21, 2017, and the City Council instructed staff to present this case to them for a final decision upon the precise manner in which it would comply with the Court’s Writ on July 5, 2017.

Q. The City Council has carefully, and independently reviewed and considered all of the evidence presented in connection with this public hearing, including but not limited to the staff report and all written and oral testimony presented and has reviewed and considered the Initial Study and Mitigated Negative Declaration as approved pursuant to Resolution No. 23898.

R. Given the scope and nature of the Court’s Writ and the need for the Council to adopt new findings in support of the approvals rescinded on May 3, 2017, the Council determined on July 5, 2017 that this Project must be referred to the City’s Architectural Advisory Committee and the City’s Planning Commission to consider and determine the terms and conditions of new approvals that satisfactorily conform the Project to the Palm Springs Municipal Code with respect to parking issues, including “event space” parking, the height of the building that comprises the Project, and setback issues.

S. Pursuant to the terms of the “return” filed with the Superior Court with respect to the Writ of Mandate, the City shall file a “supplemental return” with the Clerk of the Court that updates the Court as to the Project’s status, no more than one hundred and eighty (180) days’ after July 10, 2017, *i.e.*, on or before January 8, 2018, the first weekday after January 6, 2018, which is a Saturday.

T. Further, the City shall refrain from issuing any Project-related permits arising from or related to the Project, pending the filing of the City’s supplemental return and this Court’s issuance of an order consistent therewith.”

**THE CITY COUNCIL HEREBY FURTHER FINDS AND RESOLVES:**

Section 1: The true and correct recitals above are incorporated by this reference herein as the factual basis for this Resolution.

Section 2: The “event space” must be eliminated from this Project if future Project approvals are to be granted.

Section 3: This Project is hereby referred to the City’s Architectural Advisory Committee and the City’s Planning Commission to consider and determine the terms and conditions of new approvals that satisfactorily conform the Project to the Palm Springs Municipal Code with respect to parking issues, including “event space” parking, the height of the building that comprises the Project, and setback issues.

Section 4: Pursuant to that certain “RETURN TO PEREMPTORY WRIT OF MANDATE” filed in the Court action that precipitated the City’s reconsideration of this Project, a copy of

which is attached to and incorporated in this Resolution as **EXHIBIT A**, the City shall file a "supplemental return" with the Clerk of the Court that update

Section 5. The environmental assessment prepared and approved pursuant to and in accord with the California Environmental Quality Act in conjunction with the Project is the controlling environmental assessment for purposes of this Resolution. The only defect in this assessment, per the Court's ruling issued in relation to the Writ, was the City's parking analysis related to the "event space." The significance of that approved assessment with respect to the Project, as it may be modified pursuant to and consistent with this Resolution, shall be determined by the City staff in relation to the City's consideration of the modifications in question.

Section 6: If any section, subsection, clause or phrase of this Resolution is for any reason held by a court of competent jurisdiction to be invalid, such a decision shall not affect the validity of the remaining portions of this Resolution. The City Council of the City of Palm Springs, hereby declares that it would have passed this Resolution and each section of subsection, sentence, clause and phrase thereof, irrespective of the clauses or phrases being declared invalid.

Section 7: This Resolution shall be effective immediately upon its adoption, and the City Attorney and City Clerk are hereby directed to take all necessary action to ensure the City's timely conformance herewith, consistent with **EXHIBIT A**, including without limitation the filing of a "supplemental return" to the Writ, updating the Superior Court as to the status of this Project.

ADOPTED this 26<sup>th</sup> day of July, 2017.

\_\_\_\_\_  
David H. Ready, City Manager

ATTEST:

\_\_\_\_\_  
Kathleen Hart, Interim City Clerk

CERTIFICATION

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

I, Kathleen Hart, Interim 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:

\_\_\_\_\_  
Kathleen Hart, Interim City Clerk  
City of Palm Springs, California



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6 ATTORNEYS FOR RESPONDENTS, CITY OF PALM SPRINGS, A CALIFORNIA MUNICIPAL  
CORPORATION; CITY COUNCIL OF CITY OF PALM SPRINGS; AND REAL PARTIES IN INTEREST  
7 750 LOFTS, LLC, A LIMITED LIABILITY COMPANY

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF RIVERSIDE - MAIN BRANCH

11 ADVOCATES FOR BETTER COMMUNITY )  
DEVELOPMENT, )

12 Plaintiff/Petitioner, )

13 vs. )

14 CITY OF PALM SPRINGS, a California )  
15 municipal corporation; CITY COUNCIL OF )  
CITY OF PALM SPRINGS; and DOES 1-25, )

16 Defendants/Respondents, )

17 \_\_\_\_\_ )  
18 750 LOFTS, LLC, a limited liability company; )  
and ROES 26-50 inclusive, )

19 Real Parties in Interest. )  
20 \_\_\_\_\_ )

CASE NO. RIC1512884

[Assigned for all Purposes to Hon. Sharon  
Waters, Dept. 10]

Action Filed: 10/23/2015

RETURN TO PEREMPTORY WRIT OF  
MANDATE

BY FAX

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1 Respondent City of Palm Springs and the City Council of City of Palm Spring makes  
2 the following return to the Peremptory Writ of Mandate issue in this action:

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4 The City Council ("Council") of the City of Palm Springs ("City") took further  
5 consideration of the "750 Lofts" matter (commencing on May 3, 2017, continuing during  
6 proceedings on May 17, 2017, June 7, 2017, June 21, 2017 and July 5, 2017), Case  
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12 2015.

13 In the course of completing a public hearing and the Council's inquiry into the  
14 terms and conditions applicable to the Project, including, without limitation, conditions  
15 that address parking issues, including "event space" parking as required by the City's  
16 municipal code, the City took the following action on July 5, 2017:

17 The Project was referred to the City's Architectural Advisory Committee and the  
18 City's Planning Commission to consider and determine the terms and conditions of new  
19 approvals that satisfactorily conform the Project to the City's municipal code with respect  
20 to parking issues, including "event space" parking, height of the building that comprises  
21 the Project, and setback issues.

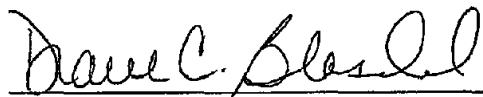
22 The City requests leave of this Court to file a supplemental return that updates the  
23 Court as to the Project's status in no more than one hundred and eighty (180) days' time.  
24 The City will continue to refrain from issuing any Project-related permits arising from or  
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Dated: July 10, 2017

BLASDEL GUINAN, LAWYERS

By:   
Diane C. Blasel  
Co-Counsel for Respondents/Parties in  
Interest

