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Via Email and U.S. Mail

Palm Springs City Council
City of Palm Springs, c/o City Clerk
3200 E. Tahquitz Canyon Way
Palm Springs, California 92262
cityclerk@palmsprings-ca.gov
Steve.Pougnnet@palmsprings-ca.gov
Chris.Mills@palmsprings-ca.gov
Ginny.Foat@palmsprings-ca.gov
Rick.Hutcheson@palmsprings-ca.gov
Paul.Lewin@palmspringsca.gov

1504 Marsh Street
San Luis Obispo
California 93401
ph: 805-593-0926
fax: 805-593-0946

**RE: 4/15/15 Agenda Item 1C
Aberdeen**

Honorable Councilmembers,

Advocates for Better Community Development, (“ABCD”) and Palm Springs Preservation Foundation (“PSPF”) collectively submit this letter in opposition to the Aberdeen project (“Project”), which will be before you on the project applicant’s appeal of the Planning Commission’s denial of the Project, including the demolition permit. We strongly believe you may not lawfully approve this Project at this time because as proposed, the Project is inadequately reviewed under CEQA and violates a great many development standards set forth in the Section 14 Specific Plan. This application could be the poster child for the flaws in the City of Palm Springs’ approach to land use planning. The City Staff’s analysis and recommendations exemplify the City’s disregard, bordering on contempt, for planning laws as well as the City’s own development standards and land use regulations.

We are puzzled by the fact that the Staff Report barely mentions the public’s strong opposition to this Project in large part due to the proposed demolition of the historically significant and much beloved Tahquitz Plaza. In fact, this issue is not even mentioned in the introduction and is not touched upon until the very end of the Staff Report.

Given the substantial number of public comments the City has received on this issue, including comments by experts and the State Commission on Historic Preservation and the noted architect, Hugh Kaptur, himself, it is simply unfathomable that the Staff Report to the City Council does not mention the controversy up front.

As set forth below, we agree with the Architectural Advisory Committee and the Planning Commission's conclusion that the Project should be denied because it violates many of the applicable development standards. While staff has attempted to cobble together a number of procedural devices --such as a conditional use permit and planned development district-- to shoe-horn this ill-fitting Project into this location, the Project breaks too many rules and is inconsistent with too many development standards to be approved.

Equally puzzling is the City's failure to objectively assess the historic significance of the Tahquitz Plaza as required by CEQA. The City cannot approve this Project before undertaking a detailed review of the Project's impact on this significant historic resource by preparing a detailed Environmental Impact Report. The well-documented and reasoned opinion of the many experts who have weighed in on this Project amounts to substantial evidence supporting the conclusion that as proposed, the Project will result in a substantial adverse impact on a significant historic resource.

Finally, it should be noted that the applicant's appeal of the Planning Commission's denial of the Project fails to articulate a coherent basis for this appeal. The Planning Commission forcefully articulated a number of significant concerns about the Project's inconsistency with various development standards, including those governing building heights, setbacks and building separation. The Commission, moreover, expressed serious concern about the Project's height and impact on a historically significant resource. The applicant's response to these concerns was merely to accuse the Planning Commission of sending mixed messages and to complain about finding it difficult to determine how to address the Commission's concerns. These complaints do not articulate a basis for appeal. Ordinarily, it would be the staff's job to evaluate the appellant's arguments in support of an appeal, but in this case, it seems abundantly clear that it is the Staff who has supplied all the arguments in support of the appeal.

A. The Project is inconsistent with Section 14 development standards.

The Staff Report admits the project is inconsistent with the underlying R (Resort) overlay, which the staff explains:

is intended primarily to provide for accommodations and services for tourists and visitors while guarding against the intrusion of competing land uses. The Resort Combining Zone runs along Palm Canyon Drive for nearly its entire length through the City, as well as through the heart of Section 14 along Tahquitz Canyon Way from Amado Road to Arenas Road.

To address this inconsistency, the Project includes an application for a Conditional Use Permit (CUP). As explained below, the evidence in the record does not support the findings the City is required to make in support of the CUP.

The Staff Report also admits that single-family units are not permitted in the REO and RA Section 14 land use designation. Staff Report (“SR”) at p. 5. The Staff Report attempts to excuse this inconsistency by claiming “the proposed small-lot residential use is similar to multi-family residential (MFR) due to a majority of units being attached and density.” Ibid., (emphasis added). No matter how the Staff attempts to spin the facts, the Specific Plan specifically prohibits single-family residential developments in RA and REO land use designations. See, Table 6-1, p. 6-4. Accordingly, even if the proposed Project is “similar” to multi-family because of its relatively high density (which is still below the density levels for HDR zone), and because some units are attached, it does not fundamentally change the character of the development from single-family to multi-family. The City has not adduced any evidence or cited any convincing authority to show a residential development that is proposed on individual lots can be considered multi-family.

At the very end of the Staff Report (page 16), staff again attempts to rebut the argument that “the project proposed single family residential development in an area where such development is not allowed.” Here, for the first time Staff claims “the units are multi-family units because they comply with the definition of multi-family units in the City’s Zoning Ordinance, “which according to the Staff Report, ...” “means a building containing two (2) or more dwelling units or containing a combination of two or more dwelling units in one(1) lot or parcel.” SR p.16-17.

Even according to this unidentified definition, the Project cannot be described as multi-family because there is no evidence to suggest the Project includes more than one residential dwelling per single lot. According to the Staff Report’s “Background and Setting” description, the Tentative Tract Map for the Project seeks to subdivide the roughly 8 acre site into 93 numbered lots and 8 letter lot streets, and common open space. The Project as proposed includes 73 residential units and 13 detached live/work lofts, in addition to the 7811 square feet of commercial space. It is therefore evident that the single-family and live/work units will be built on individual lots. There is no evidence to suggest any building containing two or more dwelling units would be built on any one lot or parcel. Accordingly, the Project does not meet the definition of multi-family housing. Accordingly, the claim that this Project involves multi-family dwellings must be rejected.

The Staff Report is internally inconsistent because elsewhere in the Report, staff admits that the Project consists of single-family dwellings which are merely “similar” to multi-family. The City moreover, has consistently treated similar projects as small lot, single-family dwellings.

Moreover, the proposed residential units have all the hallmarks of single-family dwellings to the extent that each dwelling would be built on a separate numbered lot and will enjoy private amenities.

B. The Project is not a “consolidated project”.

Staff invokes the “consolidated project” concept under Section 14 Specific Plan to argue the Project may be approved despite the many inconsistencies with the Specific Plan’s development standards. This contention is utterly without merit as the Project does not qualify as a consolidated project under the Section 14 Specific Plan.

The Specific Plan contains certain incentives for the development of “consolidated projects” in order to aid in the development of projects on vacant and underutilized parcels:

With a significant amount of vacant and underutilized land available for development in Section 14, an exciting opportunity exists for consolidating individual parcels/allotments into larger development sites. Larger, consolidated sites provide the chance to develop integrated projects that offer greater amenities, creative building designs, greater options for site access, and ultimately a stronger impact. To encourage consolidation of parcels and ultimately fulfillment of its vision, the Specific Plan provides both development incentives and flexible zoning standards for development. Sp. Pl. at 6-11.

As the current Project is proposed on land already occupied by four historically significant buildings, it is clear that this is not the type of parcel on which the Specific Plan intended to promote the development of consolidated projects.

The Specific Plan delineates two types of consolidated projects: (1) commercial or mixed use development on sites designated as REO, RA, LSC or NC or (2) residential or hotel development on sites designated as HR. Both types of consolidated projects must be proposed on at least two or more parcels/allotments totaling 5 or more acres combined “are consolidated for one planned project.” Sp. Pl. 6-12 (emphasis added.)

The staff report does not specifically explain what type of consolidated project applies here, but the Project does not qualify as either. The Project is primarily a residential project, as

the residential portion of the Project takes up 5.6 acres of the 8 acre site. But as the underlying parcel is designated REO/RA, the Project does not meet the definition of a residential project. Likewise, the Project does not meet the definition of a commercial/mixed use development because only a small fraction of the over-all Project is designated as mixed use. The Project is overwhelmingly residential.

The Project cannot be considered a “consolidated project” also because the applicant does not propose to “consolidate” any lots to form a larger development plan. To the contrary, the applicant intends to split the parcel into many small pieces each with individual ownership.

C. The Project cannot exceed the 35 Foot Height Limit.

Even if the Project qualified as a “consolidated project”, it would still be inconsistent with Section 14 Specific Plan development standards, including height restriction. The Staff Report vaguely claims “since the project meets the definition of a Consolidated Project, the Section 14 Specific Plan allows flexible zoning standards as a development incentive.” The Staff goes on to claim that the structures are two and three-stories in habitable space with covered roof deck as amenities, reaching heights of up to 45 feet and triggering the “high-rise buildings” ordinance, Section 34.03.00 of the Zoning Code. The Project proponent is seeking approval to allow the flexibility of the proposed height for the entire Project site, which is consistent with the REO/RA “Building Height” requirements. SR p. 8. Staff does not point to any specific provision of the Specific Plan that would permit single-family residential buildings to exceed 35 feet.

While it is not entirely clear what kind of flexibility the Project would be afforded if it meets the definition of a “Consolidated Project,” the Staff appears to believe by labeling it a “Consolidated Project”, the 73 or 74 single-family residential buildings can exceed the underlying 35 feet height limit for residential buildings. This conclusion is untenable.

The only “flexibility” the Specific Plan accords “Consolidated Projects” is increased density. See Sp. Pl at p. 6-12. Commercial/mixed use projects proposed on consolidated RA or REO parcels “may be developed under either the RA or REO land use designations.” *Ibid*. There is otherwise nothing in the Specific Plan to suggest that single-family residential buildings can exceed the 35 feet subject maximum height subject to the High Rise Ordinance.

According to the Section 14 Specific Plan, only Specialty Retail-Entertainment-Office (REO) and Resort Attraction (RA) developments can exceed the 35 feet height limit with the adoption of a CUP. See, Sp. Pl., Table 6-2, p.6-2. Even Local Serving Commercial (LCS) and Neighborhood Commercial (NC) type developments are limited to 35 feet and cannot exceed that height even with a CUP. *Ibid*. Table 6-3 provides that High Density Residential

(HR) developments are also subject to the 35 foot height limit. Sp. Pl. p. 6-9. There is no provision in the Specific Plan indicating that multi-family or single-family dwellings may exceed the 35 foot height limit, even with the adoption of a CUP.

Even if even the Section 14 Specific Plan allowed residential dwellings in excess of 35 feet, this Project could not be approved as proposed because the Project does not meet the minimum setbacks required under the City's High Rise Ordinance. The Planning Commission recognized that the proposed Project does not meet the minimum setback requirements required by the High Rise Ordinance. The Staff Report seems to believe that the setback provisions of the High Rise Ordinance do not apply within Section 14. The problem with the Staff's contention is that the exemption from the minimum setback requirements applies only to buildings within the REO and RA land use designations. There is nothing in the Section 14 Specific Plan to suggest the exemption from the requirements of the High Rise Ordinance, including the minimum setback requirements, apply in any other context.

D. The City cannot make the findings necessary to permit the proposed single-family residential development in the "R" resort overlay zone.

As the Staff Report readily admits, the "R" overlay is intended to accommodate and provide services to meet the needs of tourists. Single-family dwellings are not allowed and multi-family dwellings are allowed only if the City can find that (1) the proposed use is compatible with the surroundings and (2) "that the site in question is not appropriate for other uses allowed by right within the underlying zone." There is no evidence or analysis supporting the second finding.

The Staff Report claims both findings can be made because, according to Staff, the proposed "commercial and live/work units" would be consistent with surrounding uses. SR p. 11. Staff further claims "the mix of uses provides an appropriate balance for the site." On this basis, "staff believes the proposed project is consistent with this finding." Ibid.

Initially, we note that the City cannot make the necessary findings because the Project does not consist of "multi-family housing." The Specific Plan does not permit single-family residential housing in the R overlay, even if the Project will include well maintained common areas or a Home Owners Association (HOA). Staff does not offer any coherent arguments as to how single-family residences can morph into multi-family housing merely because the Project will include common areas that would be maintained by an HOA. There are plenty of gated single-family residential developments that include such an arrangement. If Staff is correct, then all such projects would be considered multi-family projects, which they clearly are not.

The Staff Report, moreover, fails to explain how the City can make a finding that the “the site in question is not appropriate for other uses allowed by right within the underlying zone.” Table 6-1 includes a long list of allowable uses, including office buildings, financial institutions, food facilities, etc. There is simply no evidence in the record to suggest the site could not be developed with any other type of development, particularly one that would be compatible with the historically-significant Tahquitz Plaza complex.

E. The City cannot make the necessary findings in support of the Tentative Tract Map.

The City cannot make all the findings necessary to approve a tentative tract map for this Project. Specifically, the City cannot make a finding that “the proposed Tentative Tract Map is consistent with all applicable general and specific plans” because, as set forth above, the Project is inconsistent with the Section 14 Specific Plan land use designations, which does not permit single-family residential developments in the “R” overlay. Moreover, as set forth above, the City cannot make the necessary findings to permit the Project even as a multi-family project.

Likewise, the City cannot make a finding that the proposed map is consistent with the underlying RA/REO land use designation because the Project is inconsistent with the applicable development standards.

F. The Proposed Planned Development District (PDD) is not permitted pursuant to the Section 14 Specific Plan.

The Staff Report explains that the proposed PDD is intended to “change the split zoning to a single PD zone designation with its own development standards.” SR at p 11. A PDD would be needed presumably to excuse the Project’s inconsistency with the minimum yard setbacks for residential units (see SR at p. 6) and front and yard setbacks for the Live/Work units. SR at P. 7.

The Section 14 Specific Plan, however, does not permit relief from the established development standards through the adoption of a PDD. According to Table 6-3 of the Specific Plan, which establishes the “Residential Development Standards,” the only permissible exception to the applicable development standards is for lot size and lot setback requirements, which may be reduced “for single-family residential development if it can be demonstrated that through the CUP process that the reductions are necessary or desirable, and are not detrimental to neighboring uses (existing or future permitted).” Sp. Pl. at p. 6-9. Accordingly, yard and front setbacks may not be modified through the adoption of a PDD.

Moreover, even the lot size and setback exception does not apply to this Project because the City is apparently processing the Project as a multi-family project. Per Table 6-3, the lot size and setback exception only applies to single-family residential developments.

G. The proposed Negative Declaration violates CEQA because the City has failed to adequately consider whether the Tahquitz Plaza qualifies as a historically significant resource

The Initial Study/Negative Declaration's ("ND") discussion in support of the conclusion that the Project would have no impact on a historically significant resource is grossly inadequate and violates CEQA. The ND's discussion is limited to the following short paragraph:

No Impact. The project site is fully developed with a parking lot and 1971 vintage office buildings. The existing buildings do not qualify or meet the criteria of a historical resource as defined in Section 15064.5. The existing buildings are not listed as a state historical resource of significance, nor are the buildings locally listed with the City of Palm Springs. No impacts to historic resources are expected to occur as a result of build out of the proposed project. The site has not been included in any previous studies of historical resources and is not included in the current study of historical resources.

There are a number of significant problems with this "analysis".

1. The ND's discussion of the historical significance of the Tahquitz Plaza fails to adequately discuss the nature and significance of this resource. As by now should be clear to the City, Tahquitz Plaza is a magnificent example of the work of the noted architect, Hugh Kaptur, whose exemplary architecture has been recognized by among others, the City of Palm Springs. The ND fails to adequately describe the Tahquitz Plaza or mention the fact that it was designed by this decorated architect. Likewise, the ND fails even to mention that the noted architect and historian, Alan Hess, who serves as a consultant on the City's Historic Resource Survey Update, has made a strong case that the Tahquitz Plaza should be considered a significant historic resource.
2. The ND fails to set forth the CEQA criteria for historic significance, including CEQA Guideline §15064.5(a)(3)(C), according to which, a resource must be considered "historically significant" if it "embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high historic values." The ND never considers whether the Tahquitz Plaza

should be considered significant under this criteria. The City Council will not be able to comply with its responsibility under CEQA to determine whether the Plaza is a historically significant resource unless it is made aware of the applicable criteria.

3. The ND misleadingly reports that “The existing buildings are not listed as a state historical resource of significance, nor are the buildings locally listed with the City of Palm Springs,” implying that these facts inexorably lead to the conclusion that the resource is not historically significant. This implication is false, because “the fact that a resource is not listed in, or determined to be eligible for listing in the California Register of Historical Resources, not included in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource.” CEQA Guideline §15064.5 The ND is also misleading because the Tahquitz Plaza may be listed on the City’s Historic Resource Survey Update based on the strong recommendation of Alan Hess.

4. The ND fails to evaluate the historic significance of the Tahquitz Plaza under the City’s Municipal Code, Chapter 8.05. In its April 8, 2015 comments to the City, analyzed the Tahquitz Plaza’s historic significance based on the criteria set forth in Chapter 8.05 and concluded that it should be considered historically significant. The ND is grossly inadequate in that it fails even to consider whether the Tahquitz Plaza should be considered significant based on Chapter 8.05.

5. Perhaps most significantly, the ND fails to consider whether the evidence supports a finding that the Tahquitz Plaza meets the definition of a historically significant resource under Guideline §15064.5(a)(3)(C). The ND thus fails as an informational document because it does not identify or document the evidence that supports its factual finding that the Tahquitz Plaza is not a historically significant resource. Center for Sierra Nevada Cons. V. County of El Dorado (2012) 202 Cal.App.4th 1156, 1170.

The Staff Report does not make any serious effort to remedy the ND’s failure to evaluate the historic significance of the Tahquitz Plaza. The Staff Report spends a lot of breath taking issue with the comments of the Office of Historic Preservation’s (“OHP”) particularly their statement that in the course of the City’s survey of historical sites, the Tahquitz Plaza was evaluated and identified as a historic resource. Staff insists that the draft survey has not evaluated the Tahquitz Canyon, a fact that in itself has no legal significance.

This is especially true because, as explained by Payton Hall in his April 9, 2015 letter, the City's contract with Historic Resources Group, LLC for the historic resources survey does not authorize consideration of any building constructed after 1968. Accordingly, it is appears that the City has already decided that post-1968 buildings have no historic value.

The Staff Report otherwise fails to address the OHP or other expert commentator's argument that the Tahquitz Plaza meets the criteria for a historic resource. More importantly, the Staff Report itself fails to actually consider whether, based on the evidence in the record and expert opinion submitted by the public, the Tahquitz Plaza should be considered a historically significant resource.

CEQA does not permit the lead agency to hide behind its own failure to investigate the significance of a Project's potential impacts:

"The agency [will] not be allowed to hide behind its own failure to gather relevant data. . . . CEQA places the burden of environmental investigation on government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." (Sundstrom v. County of Mendocino (1988) 202 Cal. App. 3d 296, 311 [248 Cal.Rptr. 352]; see also Christward Ministry v. Superior Court (1986) 184 Cal. App. 3d 180, 197 [228 Cal.Rptr. 868] [fact that initial study checklist was incomplete and marked every impact "no" supported fair argument that project would have significant environmental effects].)

Gentry v. City of Murrieta, (1995) 36 Cal. App. 4th 1359, 1378. See, also, Sundstrom v. County of Mendocino (1988) 202 Cal. App. 3d 296, 311 ("Sundstrom") (CEQA places the burden of environmental investigation on government rather than the public.)

H. Because Tahquitz Plaza is a historically significant resource, the City must prepare an Environmental Impact Report.

Testimony of experts and other evidence in the record support the conclusion that the Tahquitz Plaza is a historically significant resource because it "embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high historic values." CEQA Guideline §15064.5(a)(3)(C).

The Tahquitz Plaza embodies Hugh Kaptur's distinctive "Desert Modern" style, which according to the noted historian and architect, Alan Hess, uses "Modern concepts to solve the challenges of climate, function, and new materials."

The Tahquitz Plaza also exemplifies a period when “an extraordinary group of talented architects lived or worked in Palm Springs.” Finally, the Plaza “is an important and well preserved example of Kaptur's unique approach which “draws on draws on organic forms and ideas from the American Southwest, and Frank Lloyd Wright.”

Because the Tahquitz Plaza meets the criteria set forth in §15064.5(a)(3)(C), the City Council “shall” determine that it is a historically significant resource.

According to Public Resources Code §21084.1, a substantial adverse change in the significance of an historical resource results in a “significant effect on the environment.” The proposed demolition of the Tahquitz Plaza therefore amounts to a substantial adverse change in the significance of historical resource. CEQA Guideline §15064(b)(1). The Project, therefore will result in a significant adverse environmental impact, triggering the need for the preparation of an EIR.

Conclusion

For all the foregoing procedural and substantive reasons, I urge you to deny the Project as proposed.

Sincerely,

/s/ Babak Naficy

Babak Naficy
Counsel for ABCD and PSPF