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FILED
Superior Court of California
County of Riverside

8/17/2017
irodriguez

By Fax

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF RIVERSIDE

13 PALM SPRINGS PRESERVATION
14 FOUNDATION

15 Plaintiff/Petitioner,
16 vs.

17 CITY OF PALM SPRINGS, a California
18 municipal corporation, CITY COUNCIL
19 OF CITY OF PALM SPRINGS; and
20 DOES 1-25, inclusive

21 Defendants/Respondents,

Case No: **PSC1704485**

**PETITION FOR PEREMPTORY WRIT
OF MANDATE AND COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF**

C.C.P. § 1085, 1094.5 & §1021.5; Pub. Res.
Code § 21000 *et seq.*, Palm Springs General
Plan, Municipal Code and Zoning Code

By Fax

22 Petitioner, PALM SPRINGS PRESERVATION FOUNDATION, alleges as follows:

23 **I. INTRODUCTION**

24 1. Petitioner PALM SPRINGS PRESERVATION FOUNDATION ("PSPF" or
25 "Petitioner") brings this action to address the City of Palm Springs' refusal to process and
26 adjudicate PSPF's application for historic site designation of a significant site known as the Abe &
27

1 Marion Schwartz Residence (“Schwartz Residence”), which is located at 1999 S. Joshua Tree
2 Place in Palm Springs. The Schwartz Residence is located on historically tribal land but within the
3 City limits. PSPF contends and seeks a judicial declaration stating that the City’s refusal to
4 process PSPF’s application is in violation of the Palm Springs Municipal Code, and therefore an
5 abuse of discretion. PSPF further seeks an order directing the City to adjudicate PSPF’s
6 application forthwith.

7 **II. THE PARTIES**

8
9 2. Petitioner and Complainant, PSPF, is a California non-profit membership
10 organization whose mission is “to educate and promote public awareness of the importance of
11 preserving the historical resources and architecture of the city of Palm Springs and the Coachella
12 Valley area.” Members of PSPF work, reside, and recreate in Palm Springs. PSPF brings this
13 action on its own behalf, for its members, and in the public interest.

14
15 3. Respondent and Defendant, City of Palm Springs (“City”) is a local governmental
16 agency and subdivision of the State of California charged with authority to regulate and administer
17 land use and development within its territory in conformity with the provisions of the City’s
18 General Plan, Municipal Code and all applicable provisions of state law, including the California
19 Environmental Quality Act, the Planning and Zoning laws, and the Subdivision Map Act.

20
21 4. Respondent and Defendant City Council of Palm Springs (“City Council”) is the
22 legislative body and highest administrative body of the City. The City Council is ultimately
23 responsible for the City’s land use policies and decisions, including designating historic sites and
24 districts that preserve areas and buildings of the City which reflect elements of Palm Springs’
25 cultural, social, economic, political, architectural, and archaeological history.

1 5. The Historic Site Preservation Board (“HSPB”) is:

2 A seven-member Palm Springs Historic Site Preservation Board,
3 established by the Palm Springs City Council in May 1981, identifies,
4 nominates, and recommends potential historic sites and districts to the
5 City Council while fostering public awareness and appreciation of the
6 City’s rich cultural and architectural heritage.

7 The Historic Site Preservation Board’s goals are to stabilize and
8 improve buildings, structures or areas which are considered to be of
9 historical, architectural, archaeological or ecological value, to foster
10 civic beauty, to strengthen the local economy and to promote the use
11 of specific buildings for the education and welfare of the citizens of
12 Palm Springs¹.

13 6. Petitioner does not know the identity of DOES 1-25, but will amend the Petition as
14 required to specifically identify each such person or entity as a real party in interest if the identity,
15 interest and capacity of such party, if any, becomes known.

16 **III. PROCEDURAL ALLEGATIONS**

17 7. Petitioner has performed any and all conditions precedent to filing the instant action
18 and has exhausted any and all administrative remedies to the extent required by law, by *inter alia*,
19 submitting written correspondence on issues that are the subject of this lawsuit and providing
20 notice of this lawsuit.

21 8. Petitioner has complied with the requirements of Code of Civil Procedure § 388 by
22 mailing a copy of the Petition/Complaint to the state Attorney General.

23 9. Petitioner has no plain, speedy or adequate remedy in the ordinary course of law
24 unless this Court grants the requested writ of mandate to require Respondents to process and
25 adjudicate PSPF’s application for historic designation of the Schwartz Residence.

26 10. In pursuing this action, which involves enforcement of important rights affecting
27 _____

28 ¹ / <http://www.palmspringsca.gov/government/departments/planning/historic-resources>

1 the public interest, Petitioner will confer a substantial benefit on the general public and residents of
2 Palm Springs, and therefore will be entitled to attorneys' fees and costs pursuant to, *inter alia*,
3 Code of Civil Procedure §1021.5.

4 11. Petitioner brings this action in part pursuant to Code of Civil Procedure §1085 or
5 §1094.5, which require that an agency's approval of a Project be set aside if the agency has
6 prejudicially abused its discretion. Prejudicial abuse of discretion occurs either where an agency
7 has failed to proceed in a manner required by law or where its determination or decision is not
8 supported by substantial evidence. Respondents have prejudicially abused their discretion and
9 have failed to proceed as required by the applicable law, in this case the provisions of the City's
10 own Municipal Code, Chapter 8.05.

11 12. PSPF also seeks a judicial declaration indicating that the City's refusal to process
12 and adjudicate PSPF's application for historic designation of the Schwartz Residence was a
13 violation of the City's Municipal Code.

14 **IV. JURISDICTION AND VENUE**

15 13. The Court has jurisdiction over this action pursuant to Code of Civil Procedure
16 §§ 1085 and 1094.5. Venue is proper in this Court because the action concerns the City of Palm
17 Springs and real property located in Palm Springs, which is located in Riverside County.

18 **V. STATEMENT OF FACTS**

19 **A. Legal Framework for the City's consideration of applications for historic site 20 designation**

21 14. Pursuant to a valid agreement between the City and the Aqua Caliente Band of
22 Cahuilla Indians ("the Tribe"), the City has full responsibility and authority for administration of
23 the City's planning regulations on tribal territory within the City of Palm Springs, including the
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1 authority to evaluate the historical significance of properties consistent with the City's own
2 Municipal Code.

3 15. The City's policies and procedures concerning preservation of historically
4 significant sites are contained in Chapter 8.05 of the Palm Springs Municipal Code ("PSMC").
5 Chapter 8.05 "is intended to stabilize and improve buildings, structures or areas which are
6 considered to be of historical, architectural, archaeological or ecological value, to foster civic
7 beauty, to strengthen the local economy and to promote the use of specific buildings for the
8 education and welfare of the citizens. (Ord. 140 § 1, 1981)." PSMC §8.05.010.

10 16. The seven member board of HSPB, whose members are appointed by the City
11 Council, "shall seek nominations from the historical society board of directors, but are not required
12 to accept such nominations." PSMC §8.05.030.

13 17. The City's Historic Site Designation Application provides a useful explanation of
14 the manner in which the City processes applications for historic site designation:

15 The completed application and required materials may be submitted to the
16 Department of Planning Services. The submittal will be given a cursory check and
17 will be accepted for filing only if the basic requirements have been met. A case
18 planner will be assigned to the project and will be responsible for a detailed review
19 of the application and all exhibits to ensure that all required information is adequate
20 and accurate. Incomplete applications due to missing or inadequate information will
21 not be accepted for filing. Applicants may be asked to attend scheduled meetings
22 pertaining to their project. These will include the Historic Site Preservation Board
(HSPB) and the City Council.

23 **HISTORIC SITE PRESERVATION BOARD (HSPB)**

24 Once the application has been determined to be complete, the HSPB will review the
25 application to determine whether the site meets the minimum qualifications for
26 designation pursuant to Chapter 8.05 of the Palm Springs Municipal Code. If such
27 determination is made, a public hearing will be scheduled for a future meeting.
28 A public hearing will be held by the HSPB to receive testimony from all interested
persons concerning the Historic Site Designation. The public hearing may be
continued from time to time, and upon complete consideration, the HSPB will make
a recommendation to the City Council. Notice will be provided as indicated below.

1 **CITY COUNCIL**

2 After receiving the recommendation of the Historic Site Preservation Board, a
3 public hearing will be held by the City Council to receive testimony from all
4 interested persons concerning the requested Historic Site Designation. The public
5 hearing may be continued from time to time, and upon complete consideration, the
6 City Council will then conditionally approve, deny, or approve the application as
7 submitted. The City Council's decision on the application is final.

8 **NOTIFICATION**

9 Prior to consideration of the application by the HSPB and the City Council, a notice
10 of public hearing for an Historic Site Designation request will be mailed to all
11 property owners within 400 feet of the subject property a minimum of ten (10) days
12 prior to the hearing dates.

13 Historic Site Designation Application, at page 5.

14 18. The Tribe has no regulatory or legal authority over privately-owned land or
15 property that is privately owned by individuals who are not members of the Tribe and on land that
16 is not maintained in trust for the Tribe.

17 19. On March 14, 2017, the Tribal Council adopted Interim Ordinance No. 49 (“the
18 Ordinance”), pursuant to which, the Tribe announced its intention to assume certain
19 responsibilities vis-a-vis evaluation and national registration of historic Tribal sites. The Tribe’s
20 adoption of the Ordinance did not, however, affect the City’s authority and responsibility under the
21 City’s Municipal Code to process and adjudicate applications for historic designation of sites
22 within the City of Palm Springs.

23 20. The unambiguous language of the Ordinance demonstrates that the Tribe itself did
24 not intend to circumvent or supplant the City’s authority under the Municipal Code to review and
25 designate historic resources. By adopting the Ordinance, the Tribe intended merely to protect,
26 preserve, and regulate the uses and disposition of “Tribal Property”, which clearly does not include
27 privately owned sites such as the Schwartz Residence.

1 21. The Ordinance also recognizes that the Tribe, through its Tribal Historic
2 Preservation Officer, intends to step into the shoes of the State Historic Preservation Officer with
3 respect to sites on Tribal lands, and assume the responsibility to identify and nominate eligible
4 properties to the National Register and to “otherwise administer applications for listing historic
5 properties in the National Register.” The Tribe makes no assertion that it intends to assume
6 responsibility for administering applications for historic designation or listing under the Palm
7 Springs’ Municipal Code. In fact, the Ordinance admits that the City approves historic properties
8 on Tribal lands for “local designation.”
9

10 22. Unambiguous language of the Ordinance also makes it clear that the Tribe intends
11 to suspend only the filing and submission of applications for nominations to the National Register
12 or listing on the Tribal Register. The Tribe does not attempt or claim it has the authority to extend
13 this interim moratorium to applications for historic designation under the City’s Municipal Code.
14

15 23. Accordingly, on its face, Interim Ordinance No. 49 has no bearing on the City’s
16 responsibility to consider and process PSPF’s application for nomination of the Schwartz
17 Residence.

18 24. Nor can or does the Tribe assert any authority to determine historic designations
19 pursuant to the National Historic Preservation Act (“NHPA”). According to the NHPA, the Tribe
20 may assume the responsibilities of a State Historic Preservation Officer only if the Tribe has
21 developed an approved plan for discharging the responsibilities assigned to the State Officer.
22 Therefore, even if the Tribe here has an approved plan, the NHPA does not specifically grant the
23 Tribe the responsibility or jurisdiction over privately-owned land not held in trust by the Tribe.
24

25 25. In any event, nothing in the NHPA gives the Tribe the authority to step into the
26 shoes of a local agency, such as the City of Palm Springs, and to assume the responsibility for
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1 administering local programs and regulations as they relate to evaluation of the significance of
2 historical resources or authorization for demolition of same.

3 **B. Procedural History**

4 This case revolves around PSPF's application for historical designation of the Schwartz
5 Residence, which was constructed in 1964 at 1999 South Joshua Tree Place in Palm Springs.
6 According to the April 28, 1964 building permit, the Schwartz Residence includes "7 Room
7 Dwelling & Carport" that was to be constructed by the "owner/builder." The Schwartz Residence
8 is worthy of historic designation because it is an important and largely intact example of a custom
9 modernist structure that exhibits numerous stylistic markers that place it in the historic context of
10 Palm Springs' modern period. See, Application for Historical Designation, attached hereto as
11 Exhibit A.

12 26. PSPF submitted a complete application for the designation of the Schwartz
13 Residence in October 2016. The City never formally responded to this application. Prior to
14 initiating this lawsuit, PSPF repeatedly urged the City, both orally and in writing, to take action on
15 the Schwartz Residence application, but to date, the City has not responded to any of PSPF's
16 written correspondence. PSPF gave the City written notice of its intent to commence legal action
17 to address the City's failure to process its application. The evidence shows, therefore, that the City
18 has no intention of acting on PSPF's application.
19

20 **FIRST CAUSE OF ACTION**
21 (Declaratory Relief)

22 27. PSPF refers to and incorporates herein by this reference all preceding paragraphs,
23 inclusive, of this Petition as though fully set forth herein.

24 28. Pursuant to Chapter 8.05 of the Palm Springs Municipal Code, and established
25 policies and procedures, the HSPB is required to carefully consider and evaluate a properly
26 completed and submitted application for historic site designations and conduct a properly-noticed
27 hearing concerning a proposed site.

1 29. Following such a hearing, the Historic Site Preservation Board shall make findings
2 upon which it shall base its recommendation to the City Council concerning the designation of
3 such proposed historic site or district. Within thirty days after the conclusion of the public hearing,
4 the historic site preservation board shall file its recommendation with the city council, together
5 with a report of findings, hearings, and other supporting data. PSMC §8.04.145.

6 30. PSPF filed a well-documented application for the nomination of the Schwartz
7 Residence for historic designation. See Exhibit A.

8 31. To date, the City, including the HSPB, has failed to consider PSPF's application, or
9 to conduct any studies, or to notice a hearing, or to conduct a hearing, or to adopt a resolution
10 including findings concerning the PSPF's application. Despite numerous attempts to discuss this
11 matter with the City's representatives, including the City Attorney, the City has refused to explain
12 or make any attempt to justify its refusal to adequately process and consider PSPF's application for
13 historic designation of the Schwartz Residence, as required by the Palms Springs Municipal Code.
14

15 32. Accordingly, an actual controversy exists between PSPF and the City of Palm
16 Springs. Petitioner and Plaintiff PSPF contend that the City has unlawfully and without any
17 justification refused to process PSPF's application for the historic designation of the Schwartz
18 Residence.

19 WHEREFORE, PSPF prays for declaratory judgment against Respondents, as set forth herein
20 below.

21 **SECOND CAUSE OF ACTION**
22 (Injunctive Relief)

23 33. PSPF refers to and incorporates herein by this reference all preceding paragraphs,
24 inclusive, of this Petition as though fully set forth herein.

25 34. As set forth above, the City of Palm Springs has refused to process, consider and act
26 on PSPF's application for historic designation of the Schwartz Residence.
27

1 35. PSPF and other residents of Palm Springs can and will continue to suffer irreparable
2 harm if the City fails to act on this application.

3 36. PSPF does not have a plain, speedy, and adequate remedy in the ordinary course of
4 law.

5 WHEREFORE, PSPF prays for injunctive relief against Respondents, as set forth herein below.

6 **THIRD CAUSE OF ACTION**
7 (For Writ of Mandate)

8 37. PSPF refers to and incorporates herein by this reference all preceding paragraphs of
9 this Petition as though fully set forth herein.

10 38. Pursuant to established practice and policy, as well as PSMC Chapter 8.05, the City
11 of Palm Springs, including the HSPB, has a ministerial duty to process, consider and act on all
12 properly submitted, complete applications for historic designation.

13 39. By refusing to process, consider and act on PSPF's application for historic site
14 designation of the Schwartz Residence, the City has failed to proceed in the manner required by
15 the City's own Municipal Code and established practice. The City has no discretion to unilaterally
16 refuse to take action.

17 40. The City's refusal to process, consider and act on PSPF's application, therefore,
18 amounts to an abuse of discretion.

19 41. WHEREFORE, PSPF prays for judgment against the City of Palm Springs and
20 Palm Springs City Council, as set forth below:

- 21 a. For declaratory judgment, stating that the City's refusal to process,
22 consider and act on PSPF's application for historic designation of the Schwartz
23 Residence is unlawful as it is in violation of the requirements of Chapter 8.05 of the
24 Palm Springs Municipal Code;

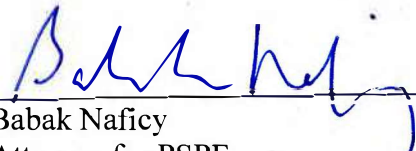
1 b. for temporary, preliminary, and permanent injunctive relief in the
2 form of an Order directing the City to take all necessary steps adequately process,
3 consider and act on PSPF's application for historic designation of the Schwartz
4 Residence;

5 c. for an award of costs and attorneys' fees pursuant to CCP §1021.5;
6 and

7 d. for such other and further relief as the Court deems just and proper.
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11 Dated: August 16 , 2017

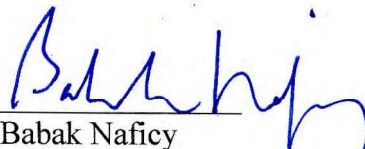
LAW OFFICES OF BABAK NAFICY

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13 By: 
14 Babak Naficy
15 Attorney for PSPF
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VERIFICATION

I, Babak Naficy, am counsel to petitioner/plaintiff and have personal knowledge of the following facts. The offices and governing boards of petitioner/plaintiff, Palm Springs Preservation Foundation, are located outside San Luis Obispo County, the county in which I maintain my office. I have read the foregoing Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief. The facts alleged in the above petition are true to the best of my knowledge and belief, and, on that ground, petitioner/plaintiff alleges that the matters stated herein are true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this Verification was executed in San Luis Obispo, California, on August 16 2017.


Babak Naficy