



## AGENDA REPORT

**Meeting Date:** June 3, 2010  
**Item Number:** F-5  
**To:** Honorable Mayor & City Council  
**From:** City Attorney  
**Subject:** RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS  
REVOKING BUILDING PERMIT NO. BS0725308 FOR A SINGLE  
FAMILY RESIDENCE AT 1201 LAUREL WAY AND MAKING  
FINDINGS IN SUPPORT THEREOF  
**Attachments:** 1. Resolution

---

### RECOMMENDATION

It is recommended that the City Council adopt the resolution.

### INTRODUCTION

The attached resolution revokes the Building Permit for the property located at 1201 Laurel Way.

### DISCUSSION

At its meeting on May 4, 2010, the City Council directed the City Attorney's Office to draft a resolution of findings revoking the Building Permit for the property located at 1201 Laurel Way.

### FISCAL IMPACT

There is no fiscal impact on the City.

---

Laurence S. Wiener, City Attorney

RESOLUTION NO. 10-R-\_\_\_\_\_

RESOLUTION OF THE COUNCIL OF THE CITY OF  
BEVERLY HILLS REVOKING BUILDING PERMIT NO.  
BS0725308 FOR A SINGLE FAMILY RESIDENCE AT 1201  
LAUREL WAY AND MAKING FINDINGS IN SUPPORT  
THEREOF

WHEREAS, Papcap Laurel Way, LLC, (the “Appellant”) is the owner of the property at 1201 Laurel Way, Beverly Hills, California; and,

WHEREAS, on November 11, 2007, Building Permit No. BS0725308 (the “Building Permit”) was issued for the alteration of and addition to a single family residence located at 1201 Laurel Way; (the “project”) and,

WHEREAS, the Appellant’s construction plans that served as the basis for the issuance of the Building Permit specified that demolition of existing walls would not exceed 49.88% and that demolition of the roof of the structure would not exceed 45%, so that the Appellant could maintain certain aspects of the existing structure that do not comply with current zoning requirements, such as pad edge setbacks; and,

WHEREAS, contractors for the Appellant demolished approximately 90% of the walls and roof of the existing structure, and Appellant does not dispute that demolition exceeded that which was permitted by the Building Permit; and,

WHEREAS, contractors for the Appellant reconstructed substantial portions of the structure, but did not do so in accordance with the approved plans upon which the Building Permit was based; and,

WHEREAS, on July 14, 2009, the City issued a stop work notice and advised the Appellant to submit revised plans reflecting the changes to the project; and,

WHEREAS, the Appellant failed to submit revised plans; and,

WHEREAS, on December 14, 2009, the City’s Building Official informed the Appellant that the building permit was revoked pursuant to the City’s Administrative Code Section 303.5

because of Appellant's failure to submit revised building plans that conform to code requirements; and,

WHEREAS, the Building Official's determination regarding revocation of the Building Permit was appealed by the Appellant to the City Council, pursuant to Beverly Hills Municipal Code Sections 1-4-101 and 1-4-102 A; and,

WHEREAS, upon the filing of the appeal, the Building Official's revocation of the Building Permit was stayed pursuant to Beverly Hills Municipal Code Section 1-4-104, pending a final decision by the City Council; and,

WHEREAS, the City Council conducted a public hearing on March 2, 2010 and May 4, 2010 and concluded its deliberation regarding the Appellant's appeal of the revocation of the Building Permit.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY FINDS AND RESOLVES AS FOLLOWS:

Section 1. Based on the evidence presented in the record of proceedings before the City Council, the facts set forth in the recitals are true and correct.

Section 2. The Appellant agreed at the public hearing that the existing partially constructed building at 1201 Laurel Way does not conform to the approved construction plans that served as the basis for the issuance of the Building Permit. The Appellant and its representatives do not dispute that the construction does not match the approved plans. Based on the testimony from City staff, the City provided ample opportunity after issuance of the stop work notice for the Appellant to submit revised plans for review by the City's Building Division. The Appellant has not availed itself of this opportunity. The City Council finds that, even if the City Council believes the testimony from Mr. Keith Bae and accepts the argument by Appellant's counsel that Appellant was given oral permission to violate the conditions of the Building Permit by City code inspector Tabor, Appellant was not relieved of the requirement to make its building plans reflect the completed and proposed construction on the site. Appellant's failure to submit such plans is a separate and independent basis for revoking the Building Permit.

Section 3. The City Council also finds, as a separate and independent basis for revoking the building permit, that City Code Inspector Tabor did not approve or otherwise authorize the Appellant or its representatives to demolish more of the structure than permitted by the approved construction plans and that the demolition of the residence in violation of the Building Permit conditions justifies revocation of the Building Permit. In support of this conclusion, the City Council finds as follows:

- 3.1. The record of proceedings contains no contemporaneous documentary evidence of any City Staff approval of demolition in excess of the restrictions in place on the approved construction plans and Building Permit. Inspector Tabor testified directly that no such approval was given. The City Council finds that Inspector Tabor's testimony that he did not approve demolition of more than 50% of the structure was credible and supported by the fact that there was no documentation in the record to support or corroborate any such approval.
- 3.2. The record supports Inspector Tabor's testimony that he did not issue an approval to the Appellant to demolish more than 50% of the residence. The City's standard protocol for inspections is to document the results of an inspection in writing. This protocol was followed for the March 12, 2008 inspection during which Appellant alleges that Inspector Tabor issued such approval. The notes from the inspection are consistent with Inspector Tabor's testimony. It is not plausible that the inspector would make a note regarding site maintenance, while making no note regarding the more material matter of approving demolition in excess of the conditions permitted by the Building Permit based on a concern regarding safety.
- 3.3. The record of proceedings shows that the Appellant failed to call for the post-demolition inspection as required by the approved construction plans and building Permit, which inspection is intended to allow the City's inspector the opportunity to verify that demolition has occurred in accordance with the approved plans.
- 3.4. The City's inspection staff failed to identify or call to the Appellant's attention the excess demolition in a timely manner. However, the City Council finds that this failure is not evidence that Inspector Tabor approved or otherwise authorized the

Appellant to demolish more than 50% of the structure pursuant to Beverly Hills Municipal Code Section 10-3-4100 C. To the extent that the City Council could infer such approval from the staff's failure to identify the violation over a period of time, the City Council finds that this inference is not justified in light of the record as a whole, including the records surrounding the March 12, 2008 inspection.

3.5. The City Council does not find credible the declaration and testimony of Mr. Keith Bae, Appellant's contractor, that, on March 12, 2008 he received oral permission from Inspector Tabor to demolish more than 50% of the residence. Mr. Bae's declaration states that he began demolishing the residence in January 2008, developed concerns regarding safety during the ensuing months and expressed his safety concerns to the Project's structural engineer in March, 2008. Mr. Bae's declaration further states that he called a meeting with Inspector Tabor for March 12, 2008 and received permission on that day from Inspector Tabor to demolish more than 50% of the existing structure. These statements in the declaration, and Mr. Bae's testimony, are contradicted by emails between others involved in the construction of the project. The record of proceedings includes electronic correspondence from Marc Canadell to Richard Papalian (who identified himself at the hearing as the property owner) dated January 18, 2008, in which Mr. Canadell states that he met with Keith Bae and his partner and that "[t]hey are saying that they will end up demolishing 90% of the house." Furthermore, the email indicates that Mr. Bae reported that the inspector is "OK with it because they have to dig a basement." This email is dated almost two months before Mr. Bae alleges that he expressed his concerns about safety to the project's structural engineer and approximately two months before he alleges that he received permission from Inspector Tabor to demolish more than 50% of the structure for safety reasons. No explanation of the discrepancy between the testimony and the email was provided in the record.

3.6. Mr. Bae's credibility is also undercut by the documentary evidence presented by the City. Mr. Bae's declaration states that he "called for another onsite meeting with Inspector Tabor, which took place on March 12, 2008." This statement is inconsistent with the City's records, which show that the March 12, 2008 inspection

was not scheduled by Mr. Bae, but instead was scheduled by City Staff without notice to Mr. Bae. The City's records indicate that the purpose of the inspection was to address issues related to the conditions of the job site. Mr. Bae further declares that: "In further preparation for the meeting, my crew removed the house's sheetrock, insulation and flooring to expose beams and footings throughout the house." This statement is not credible because the City's records show that the inspection was performed without notice to Mr. Bae. Thus, he could not have directed his crew to prepare for this inspection.

- 3.7. The contemporaneous documentary evidence surrounding the March 12, 2008 inspection supports the testimony of Inspector Tabor and undercuts the testimony of Mr. Bae. For these reasons, in addition to the evaluation of the credibility of each witness based on their oral testimony, the City Council finds the testimony of the City's inspector to be more credible than the declaration and testimony of Mr. Bae.
- 3.8. The record of proceedings contains no contemporaneous documentary evidence demonstrating that the demolition of more than 50% of the existing residence at 1201 Laurel Way was necessary to bring the nonconforming structure into compliance with Title 9 of the Beverly Hills Municipal Code. Additionally, the record of proceedings contains no contemporaneous documentary evidence suggesting or confirming that the extent of the demolition performed by Appellant was necessary to bring the nonconforming structure into compliance with Title 9.
- 3.9. At the hearing, Appellant presented no documentary evidence of any conditions that threatened life or safety at the site. Although numerous photographs were submitted, none of those photographs showed any structural conditions that would warrant application of the exception to the 50% demolition limitation set forth in the Municipal Code.
- 3.10. Appellant submitted a single page of construction notes allegedly prepared by Mr. Keith Bae. Appellant provided no other construction logs or notes despite requests by the City Council to do so. The City Council finds that the construction notes are at best ambiguous in their meaning and are of limited evidentiary value without the

construction logs that preceded or followed these notes. The notes do not identify any safety issues that would justify the demolition performed by the Appellant. The notes do not mention any conversation with Inspector Tabor.

3.11. The City Council finds that substantial evidence in the record supports the conclusion that Inspector Tabor did not approve the excess demolition performed by the Appellant and that the contrary evidence offered by Appellant is insubstantial and does not outweigh the evidence supporting this conclusion.

3.12. The record, including the report summarizing the April 15, 2010 site inspection, contains substantial evidence that the structure as it presently exists on the site has not been constructed in compliance with the approved plans. The Appellant does not dispute this fact. Thus, the City Council finds that the existing construction is in violation of the Building Permit conditions and, therefore, the Municipal Code.

Section 4. For each of the reasons set forth in Sections 2 and 3, and based on either Section, independently, the City Council hereby denies the Appellant's appeal and upholds the decision to revoke the Building Permit.

Section 5. The City Clerk shall certify to the adoption of this Resolution and shall cause this Resolution and his certification to be entered in the Book of Resolutions of the Council of this City.

Adopted \_\_\_\_\_.

---

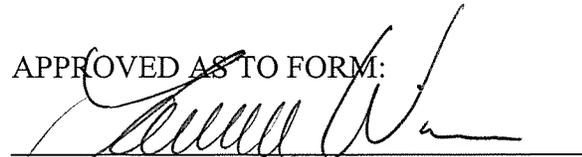
JIMMY DELSHAD  
Mayor of the City of  
Beverly Hills, California

ATTEST:

\_\_\_\_\_  
BYRON POPE  
City Clerk

(SEAL)

APPROVED AS TO FORM:



---

LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

---

JEFFREY KOLIN  
City Manager