



Carson City Planning Division

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MEMORANDUM

Planning Commission Meeting of November 28, 2018

TO: Planning Commission **Item E-1**

FROM: Hope Sullivan, AICP
Planning Manager

DATE: November 13, 2018

SUBJECT: **SUP-16-090: Consideration of a request for an extension of the expiration date of a Special Use Permit to allow the operation of an unlimited gaming casino, bar, and additional signage on property zoned Retail Commercial, located at 3246 North Carson Street, APN: 007-462-06.**

Recommended Motion:

“I move to extend the expiration date of a SUP-16-090, a Special Use Permit to allow the operation of an unlimited gaming casino, bar, and additional signage on property located at 3246 North Carson Street to November 17, 2021”

BACKGROUND

On September 28, 2016, the Planning Commission voted 6 – 1 to approve SUP-16-090 to allow the operation of an unlimited gaming casino, bar, and additional signage on property located at 3246 North Carson Street. This approval was subject to 24 conditions of approval. Condition #4 stated: “The use for which this permit is approved shall commence within 12 months of the date of final approval. A single, one year extension of time may be requested in writing to the Planning Division thirty days prior to the one year expiration date. Should this permit not be initiated (obtain a Building Permit) within one year and no extension granted, the permit shall become null and void.’

On November 17, 2016, the Board of Supervisors considered an appeal of the Planning Commission’s decision and voted 2 – 0, 1 abstention and 2 recusals to deny the appeal and uphold the decision of the Planning Commission.

On October 13, 2017, the applicant requested a one year extension.

On October 20, 2017, the Community Development Director granted a one year extension.

The applicant has advised that the various owners of the Northtown Shopping Center are now in litigation regarding the applicability of certain restrictive covenants governing the Center. As such, the applicant is reluctant to invest in improvements until the litigation is concluded. The

applicant is now requesting an extension of time be granted for one year after the conclusion of the litigation. The applicant is not a party to the litigation.

Carson City Municipal Code 18.02.080.8.c authorizes the Planning Commission to approve additional extensions of time in the event that circumstances beyond the control of the applicant result in a failure to complete applicable Special Use Permit conditions and commence the use, subject to the consideration of the continued appropriateness of the Special Use Permit.

Staff finds that the on-going litigation is beyond the control of the applicant. But, staff cannot find that there will be continued appropriateness at an unknown date in the future. Staff finds that the Special Use Permit is still appropriate, and would support a three year extension, resulting in the expiration date being November 17, 2021.

ATTACHMENT:

Letter Dated November 5, 2018 from Severin A. Carlson, Kaempfer Crowell

KAEMPFER

CROWELL

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November 5, 2018

VIA HAND-DELIVERY

Ms. Hope Sullivan, Planning Manager
CARSON CITY PLANNING DIVISION
108 East Proctor Street
Carson City, Nevada 89701

Re: SUP-16-090 (Request for Extension of Time)

Dear Ms. Sullivan:

As you know, this Firm represents Silver Bullet of Nevada, LLC (“Silver Bullet”). On September 28, 2016, the Carson City Planning Commission (the “Planning Commission”) considered Silver Bullet’s request for a Special Use Permit (the “SUP”) to allow the operation of an unlimited (i.e. non-restricted) gaming casino, bar, and additional signage on property zoned Retail Commercial (RC), located at 3246 N. Carson Street, APN: 007-462-06 (the “Subject Property”). The Planning Commission granted Silver Bullet’s request, subject to 24 conditions of approval by a 6-1 vote. The Planning Commission’s Notice of Decision was filed with the Carson City Clerk on October 4, 2016.

Thereafter, several business competitors of Silver Bullet filed an appeal of the Planning Commission’s decision to grant Silver Bullet an SUP to the Carson City Board of Supervisors. On November 17, 2016, the Board of Supervisors denied the appeal and upheld the decision of the Planning Commission to approve SUP-16-090, and the conditions of approval, by a 2-0 vote, with 1 abstention and 2 recusals. The Board of Supervisors’ Notice of Decision was filed with the Carson City Clerk on December 5, 2016.

Subsequently, on December 19, 2016, three of Silver Bullet’s business competitors filed a Verified Petition for Writ of Mandamus, or, in the Alternative, Prohibition, with the First Judicial District Court seeking to overturn the Board of Supervisors’ decision (the “Petition”). On July 19, 2017, the District Court denied the Petition in its entirety. The petitioners appealed that decision to the Nevada Supreme Court on August 18, 2017 (the “Appeal”). The Appeal to the Nevada Supreme Court was ultimately resolved as a result of a stipulated dismissal entered on November 7, 2017.

Prior to the dismissal of the Appeal, on October 13, 2017, Silver Bullet requested a one-year extension of time to commence use of the SUP in light of the Petition and Appeal. On October 20, 2017, your office acknowledged the request and granted the extension. Pursuant to Carson City Municipal Code (“CCMC”) 18.02.080.8.a, a special use permit is deemed null and void if the use permitted by an approved SUP is not made on the property, absent additional time being sought.

Here, the effective date of Silver Bullet’s SUP is December 5, 2016, the date of the Notice of Decision of the Board of Supervisors deny the competitors’ appeal and upholding the Planning Commission’s grant of an SUP. The appeal to the Board of Supervisors filed by Silver Bullet’s competitors was out of Silver Bullet’s control. Despite Silver Bullet’s competitors stipulating to dismiss the Appeal to the Nevada Supreme Court, another lawsuit was subsequently initiated.

As set forth in my June 27, 2018, letter to your office, on June 2, 2017, the owner of 3246 N. Carson Street, C&A Investments, LLC, filed a lawsuit in the First Judicial District Court (Case No. 127RP000091B) against Jiangson Duke, LLC, Wells Fargo Bank Northwest, N.A., f/k/a First Security Bank of Utah, N.A., and Northern Nevada Comstock Investments, LLC, as collective owners of various parcels of property comprising the Northtown Shopping Center (“Northtown” or the “Center”), regarding the applicability of certain restrictive covenants governing the Center (the “Litigation”)

As indicated in my June 27, 2018, letter, Silver Bullet has intended to maintain its SUP until the Litigation is resolved. Neither Silver Bullet, nor any of its affiliates, is a party to the Litigation. It is our understanding that the Litigation remains active and that the parties are in the midst of conducting discovery. The Litigation, however, could adversely impact Silver Bullet’s interest in operating the casino contemplated by the SUP. The timing and ultimate resolution of the Litigation are entirely out of Silver Bullet’s control. A prudent business would not proceed with millions of dollars of investment under the SUP if the outcome of the Litigation has the potential to adversely impact Silver Bullet’s ability to ultimately operate the proposed use on the Subject Property. The Subject Property is owned by C&A Investments, LLC, one of the parties to the Litigation.

In light of these circumstances, Silver Bullet submits that good cause exists for the Planning Commission to grant an additional extension of time to commence use of the SUP. Silver Bullet additionally submits that the development standards and conditions in existence at the time the SUP was first granted have not changed and therefore an additional extension of time is appropriate.

Further, Silver Bullet respectfully requests that the extension of time be granted for one year after the conclusion of the Litigation. Although the Director is limited to granting an extension of time of up to one year pursuant to CCMC 18.02.080.8.c, the Code is silent as to the period of time an extension may be granted by the Planning Commission. The requested amount

of time is reasonable and preserves the resources of all parties, including the City. Please find enclosed the applicable \$600.00 fee for this request. We would finally ask that this request be considered by the Planning Commission at its November 28, 2018 meeting.

Cordially,

KAEMPFER CROWELL



Severin A. Carlson

SAC:adg
cc: Client
enclosure