

Lewis Roca Rothgerber Christie LLP
50 West Liberty Street
Suite 410
Reno, NV 89501

775.823.2900 main
775.823.2929 fax
lrrc.com

Garrett D. Gordon
Admitted in Nevada
775.321.3420 direct
775.321.5569 fax
ggordon@lrrc.com

November 16, 2016

VIA E-MAIL

Carson City Board of Supervisors
c/o Hope Sullivan, AICP
108 E. Proctor Street
Carson City, Nevada 89701

Re: Response to Silver Bullet of Nevada, LLC ("Applicant") Letter Dated October 25, 2016

Dear Board of Supervisors:

This firm represents Carson Nugget Casino Hotel, Fandango Casino & Hotel, Gold Dust West Casino Hotel, Carson City Max Casino and SlotWorld Casino (together, the "Existing Operators") who appealed the Carson City Planning Commission's approval of the request for a Special Use Permit by Silver Bullet of Nevada, LLC that would allow the operation of an unlimited gaming casino and bar at 3246 North Carson Street (the "Property").

The Applicant argues that the Existing Operators do not have standing to appeal the Planning Commission's approval of the Application. Contrary to the Applicant's assertions, Nevada law indicates that the Existing Operators are aggrieved parties pursuant to CCMC 18.02.060 and NRS 278.3195 and have standing to appeal the Planning Commission's approval of the Application.¹

The Existing Operators have standing to bring the immediate appeal.

The Existing Operators are aggrieved parties for the purpose of appealing the Planning Commission's approval of the Application because (1) the approval of the Application is in direct contravention of established laws governing gaming licenses, and (2) absent substantial compliance with the Carson City Master Plan, the Application imposes a substantial harm and

¹ While the Existing Operators assert that they are aggrieved parties within the Applicant's proffered interpretation of "aggrieved party" in CCMC 18.02.060, the Existing Operators contend that the Applicant's interpretation of the plain language of the ordinance is too narrow. The general rule is that, where a statute creates a public benefit, the Court will construe it **liberally and broadly**. *Citizens of Cold Springs v. City of Reno*, 125 Nev. 625, 631, 218 P.3d 847, 851 (2009) (emphasis added) (internal citation omitted) (interpreting a similar statute which provides that any person claiming to be adversely affected by an annexation decision may apply for judicial review).

burden on the Existing Operators that is not shared by the general public. Therefore, the Existing Operators have standing to appeal the Planning Commission's approval of the Application.

A party is "aggrieved" "when either a personal right or right of property is adversely and substantially affected." *Valley Bank of Nevada v. Ginsburg*, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994). In addition, the term "aggrieved" means a "substantial grievance," *Esmeralda County v. Wildes*, 36 Nev. 526, 535, 137 P. 400, 402 (1913), which "includes the **imposition of some injustice, or illegal obligation or burden**, by a court, upon a party, or the denial to him of some equitable or legal right." *Las Vegas Police Prot. Ass'n Metro, Inc. v. Eighth Judicial Dist. Court*, 122 Nev. 230, 240, 130 P.3d 182, 189 (2006) (internal quotation omitted) (emphasis added).

The Existing Operators are five gaming operators, some of whom have been operating in Carson City for more than 20 years, who collectively employ roughly 1,200 people. Each of the Existing Operators has gone to great lengths to obtain and maintain a gaming license in compliance with every section of CCMC Chapter 4.14 "GAMING LICENSES AND REGULATIONS." Gaming licenses are a privilege and the ability to operate a gaming establishment in Carson City is not shared with the general public.² **This specialized economic activity is a highly regulated and competitive business and every operator depends on the fair and equal application of the law in order to ensure their continued operation.** No other member of the public stands to suffer the same injustice and burden as the Existing Operators as a result of the Commission's approval of the Application in contravention of existing gaming laws and absent substantial compliance with the Master Plan.

As stated in the appeal, the Applicant is under contract to purchase the grandfathered Horseshoe Club license and relocate it to the Property.³ NRS 463.302 states, "[t]he Board shall not approve a move and transfer" until "**the license receives all necessary approvals from the local government having jurisdiction over the location to which the establishment wants to move and transfer its license.**" Local approval of the transfer of the Horseshoe Club license is contingent on compliance with CCMC 4.14.045 and 4.14.046. Such compliance is impossible. CCMC 4.14.045 requires the holder of any new gaming license to maintain no fewer than one hundred guest rooms that shall be held out to the public for transient night occupancy. CCMC 4.14.045 provides an exception to this requirement for licenses held at the time of its enactment. The Horseshoe Club license no longer qualifies for this exception. CCMC 4.14.060 states that "[e]very license issued under the provisions of this chapter shall be for a period of three (3) months and shall expire at the end of the quarterly period when issued." According to City records, the Horseshoe Club license expired on December 31, 2014. There is no city ordinance that allows a city gaming license to be reinstated once it has expired. Therefore, the Planning Commission approved the Application in contravention of existing gaming laws—laws

² *Coury v. Robison*, 115 Nev. 84, 88, 976 P.2d 518, 520 (1999).

³ See "Exhibit A."

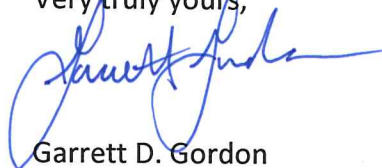
that the Existing Operators have complied with for the better part of twenty years. Allowing the Applicant to resurrect an expired gaming license and grant it the exemption in CCMC 4.15.045 would create a new legal precedent that would have far-reaching and potentially detrimental effects on all licensed gaming operators, including the Existing Operators. This interest is personal and specific to the Existing Operators and is sufficient to qualify them as "aggrieved parties" pursuant to NRS 278.3195 and CCMC 18.02.060.

Here, the Existing Operators are aggrieved parties within the meaning of CCMC 18.02.060 because they will suffer a unique and substantial burden as the result of the Planning Commission's approval of the Application. As such, the Board of Supervisors has jurisdiction to properly consider the appeal.

Conclusion

For the reasons set forth above, the Existing Operators have standing to appeal the Planning Commission's approval of the Application.

Very truly yours,



Garrett D. Gordon

Lewis Roca Rothgerber Christie LLP

"Exhibit A"

Nevada Gaming Control Board

Location Details - Public

Location Information

00213-11 HORSESHOE CLUB

Name: SILVER BULLET OF NV, LLC

Status: Application-Pending

DB As: HORSESHOE CLUB

Account Type: Nonrestricted

DB At:

Physical: 402 N CARSON ST
 CARSON CITY NEVADA 89701

Mailing: 402 N CARSON ST
 CARSON CITY NEVADA 89701

Status Dates

Applied: 09/26/2016

Started:

Closed: N/A

Old Names

No old names found.

Approvals

No approvals found.

Conditions

No conditions found.

Owners

HORSESHOE CLUB

(00213-11)

Name

Relationship

Status

Effective

Removed

SILVER BULLET OF NV, LLC (33840-01)

DBAS

Application- 09/26/2016
 Pending