



DATE: September 29, 2021

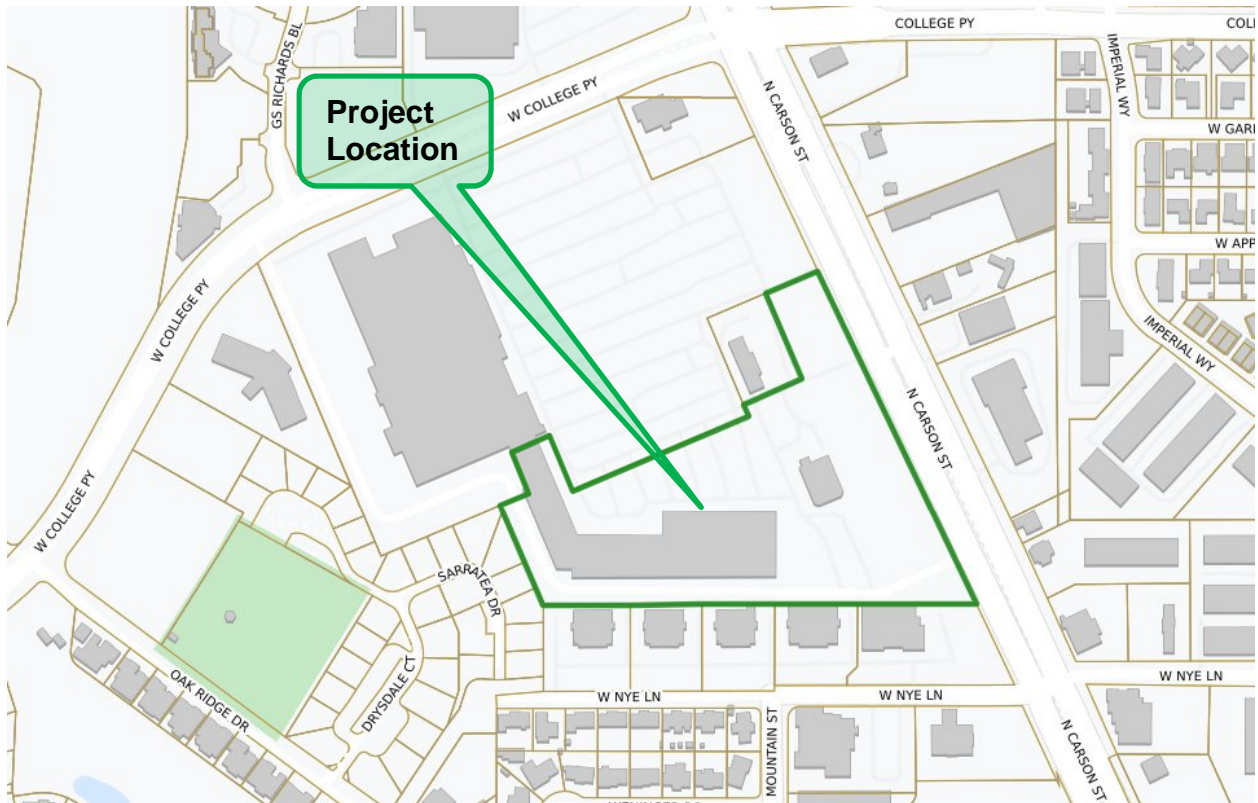
TO: Carson City Planning Commission

FROM: Heather Manzo, Associate Planner

SUBJECT: Item 13.B For Possible Action: Discussion and possible action regarding a request for an extension of the expiration date of SUP-16-090, a special use permit to allow the operation of an unlimited gaming casino, bar, and additional signage on a property zoned Retail Commercial – Planned Unit Development (“RC-P”), located at 3246 North Carson Street, APN: 007-462-06.

Recommended Motion: “I move to approve an extension of the expiration date for SUP-16-090 to November 17, 2024, as the approved special use permit continues to be appropriate, and the activity permitted by the special use permit will not adversely impact other properties in the area or the public interest.”

VICINITY MAP:



RECOMMENDED CONDITIONS OF APPROVAL:

NOTE: The base language in these conditions is the language from the conditions of approval approved for SUP-16-090 on November 17, 2016. Conditions that are code requirements have been stricken as they are required to be met and not part of the discretionary decision. Language proposed to be added appear in bold with an underline. Language proposed to be deleted appear with a strikethrough.

1. The applicant must sign and return the Notice of Decision for conditions of approval within 10 days of receipt of notification. If the Notice of Decision is not signed and returned within 10 days, then the item may be rescheduled for the next Planning Commission meeting for further consideration.
2. All development shall be substantially in accordance with the **approved** development plans, except as otherwise modified by these conditions of approval.
3. All on- and off-site improvements shall conform to City standards and requirements.
4. The use for which this permit is approved shall commence (**obtain a Building Permit**) **on or before November 17, 2024** or the permit shall become null and void.
5. At the time of building permit application, the applicant shall acknowledge the provisions of Section 4.14.045 of the Carson City Municipal Code and agree that any work occurring under the requested building permits is being done at the owner's risk and that the issuance of building permits do not constitute a vested right. The applicant shall also acknowledge in the letter that the City will not conduct a final inspection for purposes of issuing a Certificate of Occupancy and will not issue a business license until such time as the applicant has demonstrated possession of a transferred unrestricted gaming license consistent with the provisions of Section 4.14.045 and 4.14.050 of the Carson City Municipal Code.
6. The electronic message portion of the sign shall be equipped with technology that automatically dims the display according to ambient light conditions. Sign brightness shall be limited to 0.3 foot-candles over ambient light, measured at a distance of 10 times the square root of the electronic message center sign area (approximately 56 feet, to be verified based on the actual size of the sign display area when installed). The applicant shall contact the Planning Division to arrange testing once the sign is installed.
7. The minimum message hold time shall be three seconds.
8. Transition time between messages shall be a maximum of one second.

9. Video graphics may be displayed as part of the electronic message center usage, provided that the text messaging complies with the other operational parameters.
10. No sound display is allowed with the sign.
11. **At the time of building permit submittal, the applicant shall submit a sewer main analysis for the line(s) from the subject site to College Parkway. Should the sewer levels exceed capacity standards, the applicant shall enter into a pro-rata share agreement to upsize the line(s) which serves the project prior to the issuance of a building permit.**

BACKGROUND:

On September 28, 2016, the Planning Commission voted 6-1 to approve SUP-16-090, a special use permit to allow for the establishment of an unlimited gaming casino, bar, and additional signage on property located at 3246 North Carson Street. The approval was subject to 24 conditions of approval. The decision to approve the project was subsequently appealed.

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

On October 13, 2017, the Applicant requested a one-year extension which was approved by the Director on October 20, 2017.

On November 28, 2018, The Planning Commission considered a request by the applicant to allow for an extension of time. The applicant stated that there was current litigation regarding the applicability of certain restrictive covenants governing the commercial center in which the project is to be located. The applicant requested approval of a time extension which would begin once the litigation had concluded. The Planning Commission considered the applicant's request and in order to ensure that the use would be appropriate over time, voted 5-0-2 to extend the approval of the SUP for a period of 3 years. The project approval was extended to November 17, 2021.

Due to continued litigation associated with the property where the use is intended to locate, the applicant is seeking an extension of time for a period of two years to begin after the conclusion of the litigation. This is effectively a request for an open-ended extension of time because it is unclear when the litigation will conclude. Carson City Municipal Code 18.02.080(8)(c) authorizes the Planning Commission to approve additional extensions of time subject to the consideration of the continued appropriateness of the SUP and may impose additional conditions to ensure the activity permitted by the SUP will not adversely impact other properties in the area or the public interest.

Staff is not comfortable with an open-ended extension of time. In order to make the finding that there will be continued appropriateness of the use at the approved site, staff

is recommending the Planning Commission approve a modification to Condition No. 4 of the conditions of approval to extend the approval for an additional 3-year period. Condition Nos. 5 through 12, and 14 through 19 are recommended to be deleted as standards contained in the Carson City Municipal Code address these requirements.

It should be noted that the applicant will need to demonstrate Carson City standards are met at the time that a permit to establish the use is submitted. Plans will need to demonstrate that there is adequate backflow protection for domestic and fire lines. Check valves are also required on private fire lines that serve the site. Carson City standards for sewer capacity levels have been modified since the original approval was granted. Current standards require sewer infrastructure up-sizing when capacity of the line exceeds 50%. There is approximately 1,140 feet of 12-inch pipe in College Parkway that is at capacity and will be impacted by the project. The applicant will be required to perform a sewer main analysis in which they will be required to enter in a pro-rata share agreement for upsizing of the line (Condition No. 11).

Should this request be approved, an updated notice of decision (“NOD”) will be issued with these conditions which will supersede any previously issued NOD letters.

ATTACHMENT:

Letter dated August 17, 2021 from Severin A Carlson, Kaempfer Crowell on behalf of the Applicant.

KAEMPFER

CROWELL

ATTORNEYS AT LAW

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August 17, 2021

Via Reno-Carson Messenger Service

Ms. Heather Manzo
CARSON CITY PLANNING DIVISION
108 East Proctor Street
Carson City, Nevada 89701

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

Dear Ms. Manzo:

As you know, this Firm represents Silver Bullet of Nevada, LLC ("Silver Bullet"), a wholly owned subsidiary of G Peg I, LLC. As described below, Silver Bullet obtained a special use permit, SUP-16-090 (the "SUP"), in 2016, 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 SUP is currently under an extension of time that is set to expire on November 17, 2021. By way of this letter, Silver Bullet is seeking an additional extension of time.

By way of background, on September 28, 2016, the Carson City Planning Commission (the "Planning Commission") considered Silver Bullet's request for a SUP. 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 granting Silver Bullet the 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 "Competitors' Petition"). On July 19, 2017, the District Court denied the Competitors' Petition in its entirety. The Competitors appealed that decision to the Nevada Supreme Court on August 18, 2017 (the

“Competitors’ Appeal”). The Competitors’ 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 Competitors’ Petition and Competitors’ 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.

Despite the Competitors stipulating to dismiss the Competitors’ Appeal to the Nevada Supreme Court, another lawsuit was subsequently initiated. 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 where the Property subject to the SUP is located (the “Litigation”). Northern Nevada Comstock Investments, LLC is a competitor of Silver Bullet as a result of its ownership and operation of multiple casinos in Carson City. Silver Bullet, nor its parent or affiliates, are a party to the Litigation.

Although the Litigation went to trial before the First Judicial District Court and an order was entered in September 2019, the parties thereto filed cross-appeals to the Nevada Supreme Court. One of those appeals was filed on October 29, 2019 (Supreme Court Case No. 79881). This appeal is in the midst of briefing and has not yet been submitted to the Supreme Court for decision. A second appeal was filed on March 18, 2020 (Supreme Court Case No. 80824), which was dismissed on September 25, 2020. A third appeal, however, was filed last month on July 27, 2021 (Supreme Court Case No. 83279). As such, the parties’ Litigation is far from resolved at this time, and with neither Silver Bullet nor its affiliates being a party to those proceedings, Silver Bullet has no control as to when or how the Litigation may be resolved.

Prior to the first appeal being filed and while the Litigation was being heard by the District Court, Silver Bullet sought a second extension of time for the SUP, which was granted by the Planning Commission on November 28, 2018. That second extension of time is set to expire on November 17, 2021.

Silver Bullet intends to maintain its SUP until the Litigation is resolved. Neither Silver Bullet, nor any of its affiliates, is a party to the Litigation. 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.

Furthermore, as you are well aware, development at the Center remains relatively stagnant for a multitude of reasons, which may include the Litigation as well as the underlying Covid-19 Pandemic. Silver Bullet is not aware of any changes to the City's planning documents (e.g. Master Plan or zoning code) that indicates a change in desired course for the Center since the time of Silver Bullet's initial SUP. Furthermore, 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. Therefore, 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.

In light of these circumstances, Silver Bullet respectfully requests that an additional extension of time be granted, extending the SUP for two years after the Litigation ceases. Silver Bullet requests this amount of time so that the Litigation can be fully concluded while giving Silver Bullet time thereafter to ramp up its development plan for the Property.

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 under the circumstances and preserves the resources of all parties, including the City. Please find enclosed the applicable \$600.00 fee for this request. Should you need any further information, please do not hesitate to contact the undersigned.

Cordially,

KAEMPFER CROWELL



Severin A. Carlson

SAC:tjc
enclosure
cc: Client