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Late Info
F-3

September 28, 2016

VIA E-MAIL



Carson City Planning Commission
c/o Hope Sullivan, Planning Manager
Community Center
851 East Williams Street
Carson City, Nevada 89701
hsullivan@carson.org

Re: Opposition to SUP 15-077 (the "Application") for
Silver Bullet of Nevada, LLC ("Applicant")

Dear Planning Commissioners:

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 oppose 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"). Specifically, the Existing Operators oppose this Application for several reasons, including but not limited to: (i) the Application is not consistent with the objectives of the Master Plan elements, (ii) the Application will be detrimental to the economic value of the general neighborhood and will result in material damage and prejudice to other properties in the vicinity, (iii) the Application does not conform to the Nonconforming Use provisions set forth in the Carson City Municipal Code ("CCMC"), and (iv) the Application does not conform to the Gaming License provisions as set forth in CCMC.¹

As described in this letter, we respectfully request that the Carson City Planning Commission deny the Application for the reasons set forth herein.

¹ For purposes of CCMC 18.02.060, the Existing Operators reserve the right to make additional arguments under NRS and CCMC provisions including, but not limited to, any provisions set forth in the Silver Oak Planning Unit Development documents given these documents were referenced in the Staff Report but not attached to the Staff Report nor available when this letter was drafted.

I. Standard of Review

Nevada Revised Statutes (“NRS”) 278.315, entitled “Special Exceptions,” provides the statutory authority for the Carson City Planning Commission to approve special use permits under certain circumstances. A planning commission has discretionary authority to grant a special use permit; if this discretionary act is supported by substantial evidence, then there is no abuse of discretion.² Substantial evidence is evidence which “a reasonable mind might accept as adequate to support a conclusion.”³ Finally, the Carson City Code further defines this standard as “a preponderance of evidence” must indicate that the proposed use satisfies the Special Use Permit findings.⁴

Here, the Applicant has not met its burden to provide “substantial evidence” that all applicable findings are satisfied nor has the Applicant provided “substantial evidence” that the Application complies with the City’s Nonconforming Use provisions and/or the City’s Gaming License provisions. Because the Planning Commission does not have substantial evidence on these items, the Application must be denied otherwise it would be an abuse of discretion by the Planning Commission.

II. Master Plan

Page 6 of the Application’s staff report (“Staff Report”) refers to certain findings that are required by CCMC Section 18.02.080, including that the Application “***will be consistent with the objective of the Master Plan elements.***” The Staff Report references Goal 5.2b – Encourage Reuse/Redevelopment of Underused Retail Spaces, but fails to reference any gaming related elements in the Master Plan.

Goal 5.2a of the Master Plan states,

Encourage the development of regional retail developments consisting of shops, restaurants, entertainment venues, offices, hotels, premium amenities and upscale gaming venues in the City to allow residents access to a variety of retail service and entertainment needs close to home, and to attract patrons from surrounding growth areas.

The relocation of a grandfathered license, without 100 hotel rooms, with only a bar and restaurant are in no way a “premium amenity” and “upscale gaming venue” similar to the Carson Nugget Casino Hotel and Fandango Casino & Hotel venues which provide numerous amenities and attract patrons from the surrounding growth area. This project will not create any premium amenities or upscale gaming venue; therefore, is not consistent with the Master Plan.

² *Enterprise Citizens v. Clark Co. Comm’rs*, 112 Nev. 649,653, 918 P.2d 305, 308 (1996).

³ *Whitemaine v. Aniskovich*, 124 Nev. 302, 308, 183 P.3d 137, 141 (2008).

⁴ CCMC Section 18.02.080. entitled Special use permit (conditional uses), requires that the [f]indings from “a preponderance of evidence must indicate that the proposed use..”.

Goal 8.1a of the Master Plan states,

The integration of a broader mix of uses (including housing) is encouraged throughout the Downtown area. However, higher-intensity uses that tend to generate significant amounts of pedestrian and vehicular traffic (e.g., hotel/casinos, convention space, retail) should be concentrated along Carson Street and in area 3 highlighted on the Downtown Character Areas diagram that follows this section. Grouping active uses in these key locations within Downtown will help establish a series of “destinations” for Downtown residents and the surrounding community, while helping to preserve the more residential character of the surrounding neighborhoods.

According to this Goal, hotels and casinos should be located within area 3 of the Downtown Character Area diagram. Attached as **Exhibit “A”** is the Downtown Character Area diagram. **Clearly the Property is not located within area 3.** Moreover, the Applicant’s written description of the project in the Staff Report states that the Applicant is under contract to purchase the grandfathered, Horseshoe Club license and plans to relocate it to the Property. In other words, the Application does not only contemplate approving a casino located outside of the Downtown Character Area, also but contemplates moving a casino license from an existing property located within the Downtown Character Area. This proposal is clearly inconsistent with the objective of the Master Plan.

Finally, neither of these provisions are adequately addressed in the Application so the Applicant has failed to provide the necessary substantial evidence that the Application is consistent with the Master Plan; therefore, the Applicant should be denied.

III. Economic Value

The Staff Report refers to certain findings required by CCMC Section 18.02.080, including that the Application “will not be detrimental to the economic value of the surrounding neighborhood and “will not result in the material damage or prejudice to the other property in the vicinity”. These provisions, read in conjunction with Master Plan Goal 5.2A which encourages premium amenities and upscale gaming venues in the City to attract patrons from surrounding growth areas, do not support the proposed project.

The purpose of these provisions is to encourage new upscale gaming venues, that include the 100 rooms, to attract patrons from the surrounding growth area. This proposed project is a proposed neighborhood casino that will not attract any new customers from surrounding areas, but rather only displace current customers and dollars from the Existing Operators. For example, if the Project’s average daily win is \$50 per machine per day and there are 250 slot machines, the average win per year would average \$4,500,000. **These are not new dollars, but dollars taken away from the Existing Operators who collectively employ over 1,100 people and have been opened for decades.**

Given the Applicant does not contemplate the construction of 100 hotel rooms, the Project is not considered an upscale gaming venue that will attract patrons from the surrounding growth area. Therefore, the Application will be “detrimental” to the “economic value” of the Existing Operators and will “materially damage and prejudice” the Existing Operators given the displacement of the existing local customers. Therefore, the Application should be denied.

IV. Nonconforming Uses

Under 18.04.030, a lawful use of land not in conformance with the “regulations herein prescribed” may be continued. Here, the Horseshoe Club did not comply with the 100 hotel room requirement so is considered a Nonconforming Use. The Project will not comply with the 100 hotel room requirement so is also considered a Nonconforming Use. Under 18.04.030, a Nonconforming Use which is operationally abandoned or discontinued for a period of 12 consecutive months or more shall not be resumed. The Horseshoe Club has abandoned and discontinued the unlimited gaming use without 100 rooms for more than 12 months; therefore, this use cannot be resumed at the Horseshoe Property or at the Property.

CCMC 18.04.030 also states that a Nonconforming Use shall not be extended or expanded except by Special Use Permit. Assuming there is an unlikely path to get around the 12 month deadline discussed above, the Application does not include a Special Use Permit to extend/expand the unlimited gaming use without 100 hotel rooms from the Horseshoe Club Property to the Property. For these reasons, the Application should be denied.

V. Carson City Gaming License

As previously discussed, the Applicant is under contract to purchase the grandfathered, Horseshoe Club license and relocate it to the Property. 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.”** Below are the applicable CCMC provisions that apply and a discussion why there provisions cannot be satisfied.

1. When CCMC 4.14.045 was enacted, it was in response to concerns about problems being experienced by existing gaming entities in the City and a dilution of their market share in a limited market. Therefore, only limited exemptions to the effect of the 100-room rule were approved. Those were for existing non-restricted licensees, applicants for non-restricted licenses prior to August 1, 2002, and former non-restricted licensees who applied for a new license within 180 days of the ordinance becoming effective. **None of those exemptions apply on their face to the Horseshoe Club license which no longer exists.** Only a new application will be accepted for that location by the State and Carson City (we recently learned that Silver Bullet of Nevada LLC applied for a

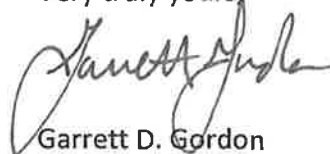
new State license at the Horseshoe Club on September 26, 2016; see Exhibit "B") so the ordinance and 100 room requirement should then apply without any exemption.

2. Section 4.14.046 of CCMC provides that if gaming operations cease for 24 months at any location, the 100-room exemptions do not apply unless the licensee demonstrates that the discontinuance of gaming is for the demolition and reconstruction of the structure in which the gaming takes place. **This ordinance contemplates the existence of a viable licensee (i.e. a person/entity with an active gaming license who has only "ceased gaming operations" not surrendered its license), not simply an entity that has no license whatsoever.**
3. CCMC Section 4.14.045(5) permits the transfer of a "license" in **good standing**. Here, there is simply **no license in good standing to be transferred** and no licensee to carry out the act of a transfer.
4. Finally, CCMC 4.14.050(1) forbids transfer to another person or location without the consent of a majority of the Board of Supervisors. That hasn't happened here, and it is inappropriate to approve this Special Use Permit until the Board of Supervisors approves the transfer of a grandfathered license (assuming the Applicant can overcome the other transferability problems discussed herein). **This requirement cannot simply be demonstrated to staff as contemplated in Condition No. 13 of the Staff Report, but rather must go to the Board of Supervisors for approval.**

VI. Conclusion

For the reasons stated in this letter, the Applicant has failed to meet its burden of providing substantial evidence that the Application meets all applicable findings and CCMC provisions. Accordingly, the Application should be denied by the Planning Commission.

Very truly yours,

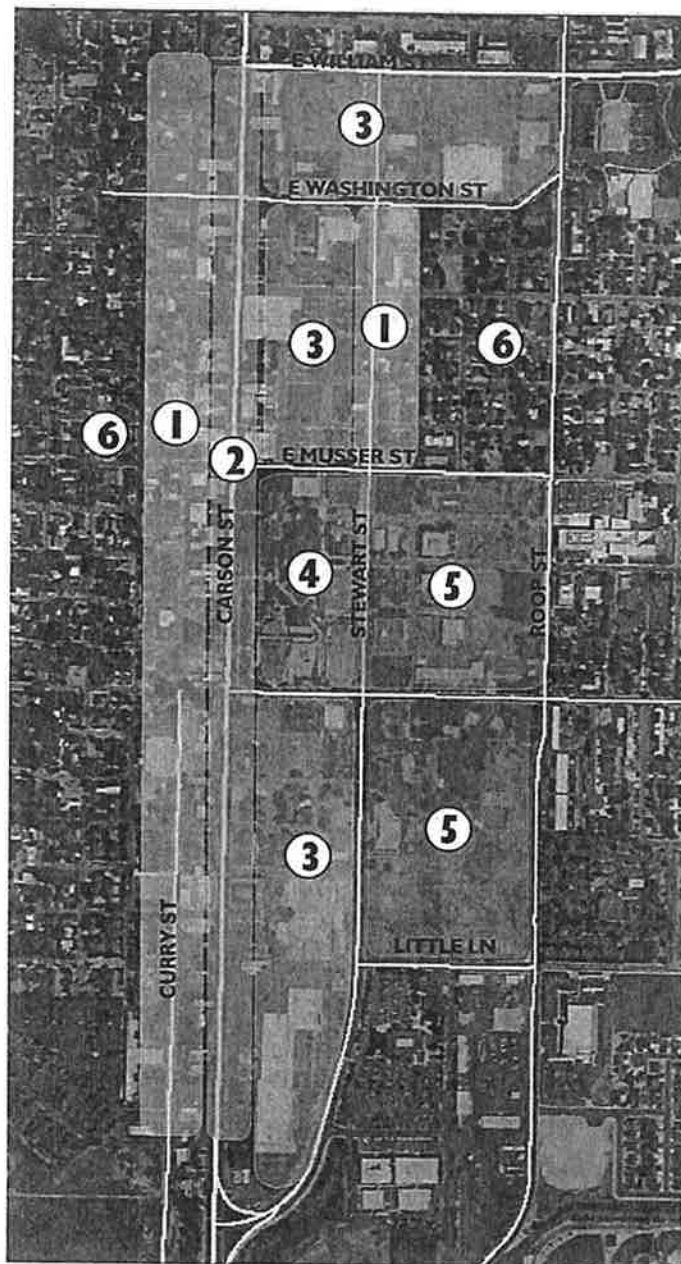


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Exhibit "A"

DOWNTOWN CHARACTER AREAS

DOWNTOWN CHARACTER AREAS

**1 NEIGHBORHOOD TRANSITION**

- Height of buildings steps down towards surrounding residences (typically 3 stores max.)
- Massing of buildings becomes less blocky and "urban"—more residential character
- Primarily mix of office, residential, and small-scale retail uses

2 MAIN STREET MIXED-USE

- Retain traditional "main street" character
- Infill and redevelopment encouraged in keeping with established core area
- Vertical mixed-use required to encourage pedestrian activity
- Heights may "step-up" away from Carson Street, but will generally be limited to 3-4 stories. Limited areas of increased height allowed where already established (e.g., Adjacent to Ormsby House)

3 URBAN MIXED-USE

- High concentrations of vacant or underutilized land with significant infill and redevelopment opportunities
- Building heights will vary, but may go as high as 8-10 stories on some blocks
- Concentrations of active uses such as convention space, casinos, hotels, urban residential, and supporting retail encouraged
- Vertical mixed-use buildings encouraged along major street frontages or public spaces

4 CAPITOL COMPLEX**5 STATE OFFICE COMPLEX****6 DOWNTOWN NEIGHBORHOODS**

- These neighborhoods are not included within the Downtown boundary but play an important supporting role in promoting Downtown revitalization efforts
- Infill and redevelopment encouraged provided it is compatible with the scale and historic character of the surrounding area

Exhibit "B"

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-Pending	09/26/2016	