



Office of the
CITY CLERK

June 29, 2012

Mr. Garrett Gordon
Lewis and Roca LLP
50 West Liberty St., Suite 410
Reno, NV 89501

Re: Denial of Commercial Improvement Permit Application (Permit No. A1200494)
950 Holman Way, Sparks, NV
Scolari's Warehouse Markets, Inc.
Your File No. 51813

Dear Mr. Gordon:

I am in receipt of a Notice of Appeal for the above referenced item. This matter will be placed on the Sparks City Council agenda for review at the July 23, 2012 meeting. The meeting commences at 2:00 p.m. in the Council Chambers, Chloris T. Goodwin Legislative Building, 745 Fourth Street, Sparks, Nevada.

Please submit any documentation that you would like considered by the City Council to my office in Sparks City Hall at 431 Prater Way no later than Thursday, July 12, 2012, to be included in the agenda packet to comply with Open Meeting Law (NRS 241.020(2)(c)(1).

If you are unable to meet this deadline, please contact my office at (775) 353-2350 to arrange a later City Council review date.

Sincerely,

A handwritten signature in cursive script that reads "Linda K. Patterson".

Linda K. Patterson
City Clerk and
Clerk of the City Council

tmg

cc: David L. Mousel, Lewis and Roca LLP
Chet Adams, Sparks City Attorney
Doug Thornley, Senior Assistant City Attorney
Shaun Carey, Sparks City Manager
Steve Driscoll, Assistant City Manager
Neil Krutz, Deputy City Manager of Community Services
Armando Ornelas, City Planner
Mark Meranda, Building Official



June 28, 2012

CLERK OF DISTRICT COURT
OFFICE OF THE CITY CLERK

JUN 28 2012

VIA HAND DELIVERY

Linda Patterson
City Clerk
City of Sparks
431 Prater Way
Sparks, Nevada 89432

Re: Written Notice of Appeal pursuant to SMC 20.07.030
Denial of Commercial Improvement Permit Application
Scolari's Warehouse Markets, Inc.
950 Holman Way, Sparks, Nevada

Dear Ms. Patterson:

This letter is written on behalf of Scolari's Warehouse Markets, Inc., a Nevada corporation ("Scolari's") related to its efforts to expand the nonrestricted gaming operations at its grocery store located at 950 Holman Way, Sparks, Nevada (the "Property").

On or about March 30, 2012, Scolari's submitted a Commercial Improvement Permit Application to expand the nonrestricted gaming operations at the Property (the "Application"). The Application is attached hereto as Exhibit "A". On April 12, 2012, Scolari's received a preliminary response from the City, attached hereto as Exhibit "B", where staff claimed the Application was not in conformance with the City's nonconforming use laws codified in Section 20.25.140 of the Sparks Municipal Code ("SMC"). After reviewing this letter and Sparks' nonconforming use laws, Scolari's submitted a response on May 10, 2012 confirming the Application is in compliance with SMC 20.25.140 and further supported by the Nevada Gaming Control Act (the "Response Letter"). The Response Letter is attached hereto as Exhibit "C".

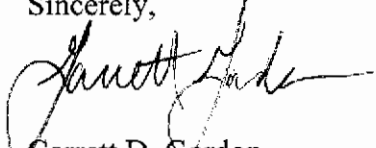
Finally, on June 7, 2012, we received the letter attached hereto as Exhibit "D" from Doug Thornley at the City Attorney's Office formally denying the Application. We believe this denial is based on an inaccurate interpretation of SMC and the Nevada Gaming Control Act, so are

filing this appeal pursuant to SMC 20.07.030. This appeal is not only supported by the points, authorities, and analysis outlined in our Response Letter, but also by the following:

- According to staff's research, this Property became a nonconforming use on August 13, 1990 when the definition of "gaming" was amended in Ordinance 1675. The slot machines were located in the grocery store on that date so the entire building was certainly the "area lawfully occupied by the nonconforming use as of the date on which it became nonconforming." SMC 20.25.140.
- According to the Nevada Gaming Control Board, this is the only nonrestricted gaming license in Sparks that is located in a grocery store.

We respectfully request that you set this matter for public hearing at the next available regular meeting of the Sparks City Council. We plan to make a formal presentation at this hearing and reserve the right to submit any additional supporting documentation at that time.

Sincerely,



Garrett D. Gordon

cc: Client
David L. Mousel, Lewis and Roca LLP

EXHIBIT "A"



Permit # _____

Page 1 of 3

City of



Building Division - Permit Services

431 Prater Way
Sparks, NV 89431
(Phone) 775 353-2306
(Fax) 775 353-2470

COMMERCIAL IMPROVEMENT PERMIT APPLICATION

Only complete applications can be accepted and processed. See plan requirements on reverse.

| Job Information | | Contractor Information (**see page two) | |
|--|--|--|--|
| Address: <i>950 Holman Way</i> | Unit: | Business Name: <i>Spring Creek Builders Inc.</i> | |
| Tenant Name: <i>Scolaris Food & Drug Co.</i> | | Responsible Person: <i>Josh Finn</i> | |
| **Valuation exclusive of mechanical (see below): <i>\$122,000</i> | | Address: <i>143 W. Taylor St.</i> | |
| **Mechanical Valuation: <i>\$65,000</i> | | City, State Zip: <i>Reno NV 89509</i> | |
| Contact Person (Individual responsible for plan revisions) | | | |
| Name: <i>Josh Finn</i> | | NV License #: <i>23171A</i> | |
| Address: <i>143 W. Taylor St.</i> | | Sparks License #: <i>049684</i> | |
| Business Phone: <i>356-1111</i> | Fax Number: <i>356-1117</i> | Business Phone: <i>356-1111</i> | Fax Number: <i>356-1117</i> |
| Cell Number: <i>771-0570</i> | Email: <i>jf.springcreek@sbcglobal.net</i> | Cell Number: <i>771-0570</i> | Email: <i>jf.springcreek@sbcglobal.net</i> |
| Preferred method of contact: | | | |
| Architect & Engineer Information | | | |
| Architect: <i>Van Woert Bigotti</i> | | Engineer: <i>Hartman Structural Engineering</i> | |
| Contact: <i>Del Fonchar</i> | | Contact: | |
| Address: <i>1400 S. Virginia Suite C</i> | | Address: <i>1500 Terminal way suite 165</i> | |
| City/State/Zip: <i>Reno NV 89502</i> | | City/State/Zip: <i>Reno NV 89502</i> | |
| Office Phone: <i>378-1010</i> | Fax: | Office Phone: <i>786-4714</i> | Fax: |
| Cell Phone: | | Cell Phone: | |
| Email Address: | | Email Address: | |
| Preferred method of contact: <i>Phone</i> | | Preferred method of contact: <i>Phone</i> | |
| Description of Work | | | |
| Please Be Specific and include everything that is being modified to the building. Use additional sheet if necessary | | | |
| <i>Remo existing offices and bathroom, new partition walls, (2) new bathrooms, grid ceilings, flooring, paint, relocate small offices, new HVAC unit and ductwork.</i> | | | |

1

Permit # _____

Page 2 of 3

MINIMUM PLAN SUBMITTAL REQUIREMENTS

Commercial Improvement applications may require up to 6 complete stamped sets of plans (2 must be Wet-Stamped) Plans should be a minimum 18"x 24"
 Contact Permit Services to determine how many sets will be required for your project

| | | | |
|--|---|---|---|
| Building square footage: 33,275 | Does the building have mixed uses or occupancy? (circle) (Y) N | Existing or previous tenant(s): Scalaris | |
| Existing TI square footage: 3,169 | Existing Classification of TI: (See IBC 302) M | Occupancy Group(s): (See IBC 303 through 312) A-2 / M | |
| Proposed TI square footage: 3,169 | Proposed Classification of TI: (See IBC 302) A-2 | Current Fire Resistive Rating(s): (See IBC Chapter 5) 111-A | |
| Hours of operation: <input type="checkbox"/> <13 <input type="checkbox"/> 13-16 <input checked="" type="checkbox"/> >16 | Water Fixtures Count Adding: <u>16</u> Removing: <u>5</u> | Hazardous Materials <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES (If YES, include MSDS Sheets) | Fire Sprinklers <input checked="" type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> None |
| <input checked="" type="checkbox"/> Site Plan | <input checked="" type="checkbox"/> Complete Floor Plan (existing and proposed) | <input type="checkbox"/> Parking Calcs (see attached spreadsheet) Contact Planning Division Staff @ 353.2340 w/questions | |
| <input checked="" type="checkbox"/> Mechanical Plans and Compliance Cert | <input checked="" type="checkbox"/> Plumbing/Gas Piping Plans/ Specifications | <input checked="" type="checkbox"/> Electrical Plans/ Compliance Certificate | |

Separate Plan Review and Permit Application required for fire sprinkler/alarm, fences, walls, signage.
 Contact Permit Services for additional requirements

Required Sub-Contractor Information

Per SMC 105.3.1 no permit shall be issued without the names, addresses and phone numbers of the contractor and all subcontractors.
 Use additional sheet to show all sub-contractors and their appropriate licenses, if necessary

| Sub-Contractor Information | Sub-Contractor Information |
|---|--|
| Specialty: Electrical | Specialty: Plumbing |
| Name: Action Electric | Name: Timberidge Plumbing |
| Address: 636 Eureka Ave | Address: 2255 Glendale Ave |
| City, State, Zip: Reno NV 89509 | City, State Zip: Sparks NV 89432 |
| NV License #: 22600 | NV License #: 47584 |
| Sparks License #: 050081 | Sparks License #: 050500 |
| Office Phone: 322-6633 Cell Phone: | Office Phone: 357-9446 Cell Phone |
| Email Address: | Email Address: |



Permit # _____

Page 2 of 3

MINIMUM PLAN SUBMITTAL REQUIREMENTS

Commercial Improvement applications may require up to 6 complete stamped sets of plans (2 must be Wet-Stamped) Plans should be a minimum 18"x 24"
 Contact Permit Services to determine how many sets will be required for your project

| | | | |
|---|--|---|--|
| Building square footage: | Does the building have mixed uses or occupancy? (circle) Y N | Existing or previous tenant(s): | |
| Existing TI square footage: | Existing Classification of TI: (See IBC 302) | Occupancy Group(s): (See IBC 303 through 312) | |
| Proposed TI square footage: | Proposed Classification of TI: (See IBC 302) | Current Fire Resistive Rating(s): (See IBC Chapter 5) | |
| Hours of operation: <input type="checkbox"/> <13 <input type="checkbox"/> 13-16 <input type="checkbox"/> >16 | Water Fixtures Count Adding: _____ Removing: _____ | Hazardous Materials <input type="checkbox"/> NO <input type="checkbox"/> YES (If YES, include MSDS Sheets) | Fire Sprinklers <input type="checkbox"/> Existing <input type="checkbox"/> Proposed <input type="checkbox"/> None |
| <input type="checkbox"/> Site Plan | <input type="checkbox"/> Complete Floor Plan (existing and proposed) | <input type="checkbox"/> Parking Calcs (see attached spreadsheet) Contact Planning Division Staff @ 353.2340 w/questions | |
| <input type="checkbox"/> Mechanical Plans and Compliance Cert | <input type="checkbox"/> Plumbing/Gas Piping Plans/ Specifications | <input type="checkbox"/> Electrical Plans/ Compliance Certificate | |

Separate Plan Review and Permit Application required for fire sprinkler/alarm, fences, walls, signage.
 Contact Permit Services for additional requirements

Required Sub-Contractor Information

Per SMC 105.3.1 no permit shall be issued without the names, addresses and phone numbers of the contractor and all subcontractors.
 Use additional sheet to show all sub-contractors and their appropriate licenses, if necessary

| Sub-Contractor Information | Sub-Contractor Information |
|--|----------------------------|
| Specialty: Refrigeration & HVAC | Specialty: |
| Name: Source Refrigeration & HVAC Inc | Name: |
| Address: 800 E. Orange-thorp Ave | Address: |
| City, State, Zip: Anaheim CA 92801 | City, State Zip: |
| NV License #: 53051 | NV License #: |
| Sparks License #: 058684 | Sparks License #: |
| Office Phone: 775-356-3151 Cell Phone: | Office Phone: Cell Phone |
| Email Address: | Email Address: |



Permit # _____

Page 3 of 3

PARKING ANALYSIS FOR TENANT IMPROVEMENTS

| Job Information | |
|--|------------------------------|
| Project Name: | Address: |
| Prepared by: | Responsible Person: |
| Address: | Business Phone: Fax: |
| City, State Zip: | Cell Phone: Email: |
| Current Parking Available: | Preferred method of contact: |
| Proposed Use: Also indicate on line one below | Tenant Name: |

CUMULATIVE PARKING AVAILABILITY

| Suite # | Tenant | Current Use | Leased SF | # Employees | Parking Required SMC 20.49 | Parking Allocation | |
|---------|------------------------------------|-------------|-----------|-------------|----------------------------|--------------------|----------|
| | | | | | | Current | Proposed |
| | <i>*Proposed this application:</i> | | | | | | |
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By signing this application, I certify that the information provided is true and complete to the best of my knowledge and that I am authorized to submit this application. I understand plan review fees must be paid whether or not the permit is approved or issued per the SMC Title 15, section 107.3. I certify that I am the owner/owner's authorized agent.

Josh Finn
Applicant's Signature

Josh Finn
Applicant Printed Name

3-28-12
Date Signed

Revised July 28, 2011





City of Sparks Receipt

RECEIPT NUMBER: R12000603

NOTATION:
spring creek builders

APD #: A1200494
 TYPE: Non Residential Building
 SITE ADDRESS: 950 HOLMAN WY SPKS
 PARCEL: 027-342-11

TRUST TRANSACTION LIST:

TRANSACTION PAYMENT LIST:

| Type | Method | Description | Amount |
|---------|--------|-------------|----------|
| Payment | Check | 11166 | 1,656.44 |
| Total: | | | 1,656.44 |

ACCOUNT ITEM DETAIL LIST:

| Description | Account Code | Current Pmts |
|--------------------|--------------|--------------|
| Plan Check - Fire | 090743 | 245.73 |
| Plan Check - Plan | 090748 | 573.00 |
| Plan Review - Bldg | 090737 | 837.71 |
| Total: | | 1,656.44 |

Trans Posted Date: 03/28/2012
 Receipt Issued by: AYOUNGREEN (AMY)
 Entered Date/Time: 03/28/2012 @ 12:12 PM



EXHIBIT "B"



April 12, 2012

Mr. Joey Scolari
Scolari's Warehouse Markets, Inc.
5410 Longley Lane
Reno, NV 89511

Re: proposed enlargement of gaming operation at 950 Holman Way

Dear Mr. Scolari:

Thank you for taking the time yesterday to meet with City staff to explain your plans for enlargement of the non-restricted gaming operation at 950 Holman Way. After reviewing the Commercial Improvement Permit Application (i.e., building permit application) submitted for this project, City staff does not believe it can approve the building permit application for enlargement of the non-restricted gaming use at this location.

The City staff's understanding of the existing gaming use and its proposed enlargement is as follows:

- The gaming use is nonrestricted, as defined in NRS 463.0177, and currently consists of a race and sports book and 16 or more slot machines and/or other gaming devices.
- The gaming use currently totals approximately 1,136 square feet. The proposed expansion would add approximately 2,034 square feet to the gaming use for a total of approximately 3,170 square feet.
- The gaming use is currently separated from the Scolari's grocery store by a wall and has a separate entrance. This separation would be maintained in the expansion.
- The gaming establishment is located at located at 950 Holman Way on a parcel within the C2 (General Commercial) zoning district.

Nonrestricted gaming is not a permitted use in the C2 (General Commercial) zoning district. City staff presumes that the nonrestricted gaming use was lawfully established at this location and that the nonrestricted gaming use is "grandfathered" from having to comply with current Nevada gaming law requirements that restrict new licenses for nonrestricted gaming to a "resort hotel" as defined in NRS 463.01865. City staff, therefore, considers the continued operation of a non-restricted gaming establishment in the C2 zoning district to be a



Joey Scolari
April 12, 2004
Page 2

"nonconforming use" as defined in Section 20.25.110 of the Sparks Municipal Code (SMC). A nonconforming use may be enlarged as specified in SMC 20.25.140:

"A nonconforming use shall not be extended or enlarged by more than ten percent of the area lawfully occupied by the nonconforming use as of the date on which it became nonconforming, except by special use permit.

- I. Any enlargement of a nonconforming use not requiring a special use permit shall obtain approval of a site plan review.
- II. A nonconforming use may be extended or enlarged by up to fifty percent of the area lawfully occupied by the nonconforming use as of the date on which it became nonconforming with an approved special use permit."

As understood by City staff, the building permit application proposes to expand the area occupied by the gaming use by approximately 179 percent (i.e., from approximately 1,136 square feet to 3,170 square feet). As a nonconforming use in the C2 zoning district, the gaming use may only be enlarged by up to 10 percent, subject to a site plan review, and by no more than 50 percent with an approved special use permit.

Based on these provisions of the Sparks Municipal Code, City staff do not believe that Scolari's can undertake, and the City can approve, an enlargement of the gaming use of the magnitude proposed at the Holman Way location. If Scolari's has information that the City lacks, or if City staff is misinformed about the circumstances or particulars of the proposal, I would ask that you provide such information to us so that we can potentially act on the building permit application or otherwise devise a path forward.

Should you have any questions please contact me at aornelas@cityofsparks.us or 775.353.1644.

Sincerely,



Armando Ornelas
City Planner

P.S. You may access the section of the SMC pertaining to nonconforming uses online at <http://library.municode.com/index.aspx?clientId=15068>).

Copies: Neil C. Krutz, Deputy City Manager; Doug Thornley, Deputy City Attorney; Mark Meranda, Building Official

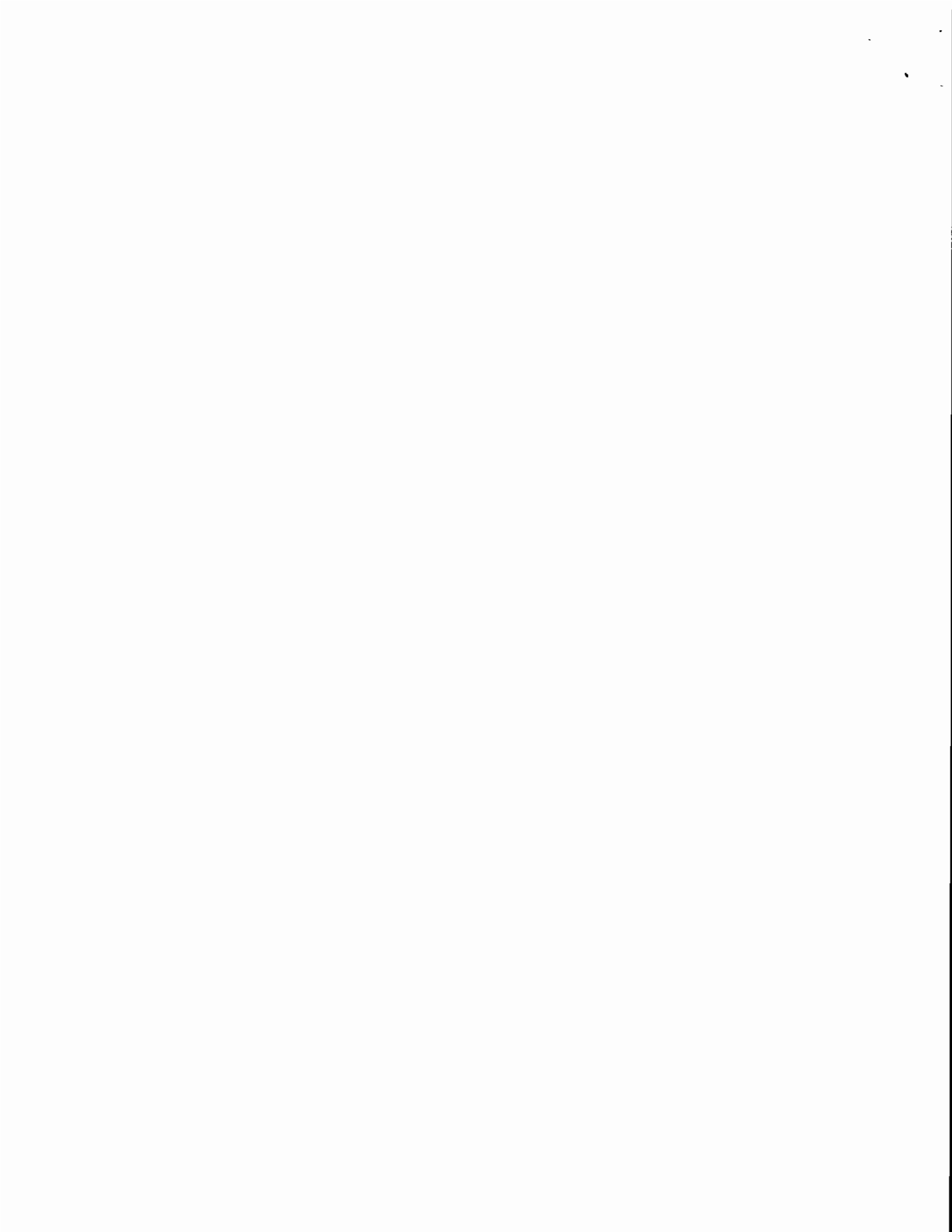
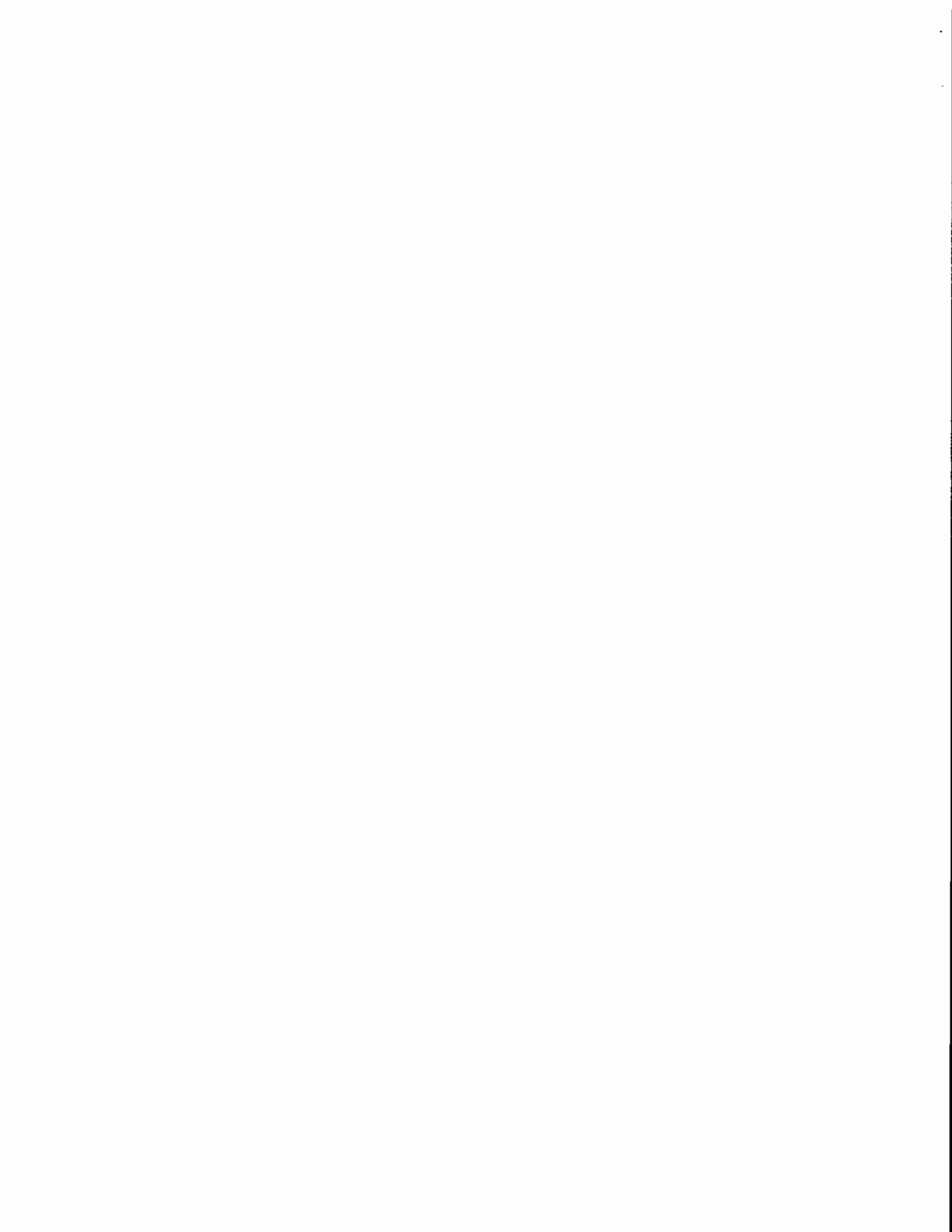


EXHIBIT "C"





David L. Mousel
50 West Liberty Street
Suite 410
Reno, Nevada 89501

Direct Dial: 775-321-3430
Direct Fax: 775-321-5574
DMousel@LRLaw.com
Admitted in: Nevada and California

Our File Number 51813-00001

May 10, 2012

VIA EMAIL

dthornley@cityofsparks.us

ORIGINAL VIA US MAIL

Douglas R. Thornley, Esq.
Senior Assistant City Attorney
City of Sparks
431 Prater Way
P.O. Box 857
Sparks, NV 89432

Re: Commercial Improvement Permit Application
950 Holman Way, Sparks, Nevada
Scolari's Warehouse Markets, Inc.

Dear Doug:

Initially, please accept my thanks for the time taken to discuss this matter with me last week. I know you are busy with the budget cycle and I appreciate your accommodation.

As you will recall, Scolari's Warehouse Markets, Inc., a Nevada corporation, has filed a Commercial Improvement Permit Application for demolition and new construction at its grocery and drug store located at 950 Holman Way (the "Market"). The project encompasses the demolition of existing offices and bathroom facilities, the relocation of those facilities, new ceilings, flooring, new heating and air conditioning and associated duct work (the "Project"). The Project will not entail any expansion of the building in which the Market is located but a relocating of existing facilities to accommodate the proposed addition of 29 slot machines to the existing nonrestricted gaming operation.

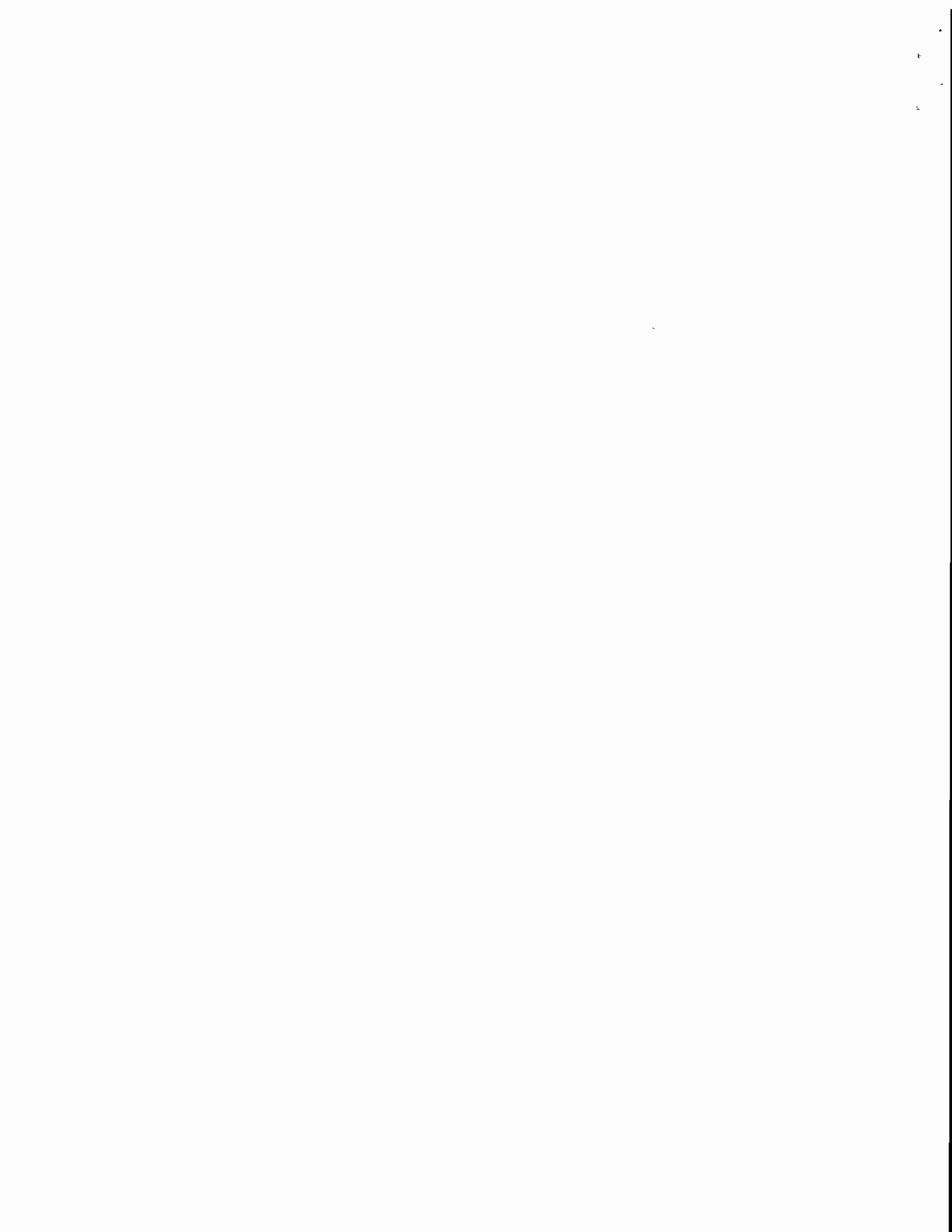
There is a long history of continuous nonrestricted gaming at this location with the first gaming license having been issued by the Nevada Gaming Commission (the "Commission") on January 25, 1979, to Don Baldwin for nonrestricted gaming operations at the Market, which he owned. The Scolari's acquired the Market from Baldwin in November of 1982 and took over the gaming operation through their wholly owned Orcutt Boys Enterprises, LLC, on January 1, 1991, following licensure by the Commission on November 19, 1990. The addition of a race and sports book was approved by the Sparks City Council on October 13, 2008, and subsequently approved and licensed by the Commission on November 20, 2008. I should also note that Joey E. Scolari and Jerry G. Scolari are the holders of the vast majority of the shares of Scolari's Warehouse Markets, Inc. (except for a small interest held by their chief financial officer), the sole limited partners of Orcutt Boys Enterprises Limited Partnership and the sole shareholders of its general partner, Two/Twenty one, Inc., a Nevada corporation. The limited partnership has

been used as the holder of the gaming licenses to isolate the grocery business from the regulatory supervision of the Nevada gaming regulators. In sum and substance, however, the Scolari brothers are the owners of all involved entities.

The licensing and regulation of gaming in Nevada has, in large part, been delegated by the Nevada legislature to the Commission subject to administration by the State Gaming Control Board (the "Board"). NRS 463.140. The primacy of the State regulatory apparatus is clear in that a person is not permitted to engage in gaming operations in any county, city or town unless that person has in force a valid state license. NRS 463.190. More precisely, no city may grant a gaming license to any applicant unless the applicant holds a valid state gaming license. NRS 463.240. The grant of a state gaming license, however, imposes no requirement upon any city to issue a gaming license to the applicant.

In addition, the taxing powers of local governments have been preserved (NRS 463.270) and, except in Clark County where the state has preempted the field (NRS 463.3072, et. seq.), as noted below, their traditional role as regulators of land use and development are preserved. (See Commission Regulation 3.010.2 which authorizes the Board to recommend the denial of an application for premises located in a place where gaming is contrary to a valid local zoning ordinance unless those premises have been used for licensed gaming prior to the effective date of such zoning ordinance, i.e., the right to continue a nonconforming gaming use as under Sparks Municipal Code ("SMC") 20.25.110 which applies here). While local governments generally control land use, that is not always the case as the Nevada Legislature has seen fit to limit the power of the Commission to issue nonrestricted gaming licenses only for those properties which meet the definition of a "Resort Hotel" under NRS 463.01865 (200 hotel rooms, etc.) except in those cases where the establishment held a nonrestricted license prior to July 1, 1992 and has not ceased operations for a period of more than 2 year after that date. NRS 463.1605. This limit on the Commission's licensing powers has the effect of limiting local government land use regulation by imposing a like "resort hotel" requirement since, as noted above, no local gaming license can issue unless a state gaming license has issued.

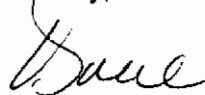
Under this state/local system, individuals are licensed to own, manage and operate gaming but only at a specific "establishment" meaning the premises where business is conducted, including all buildings, improvements, equipment and facilities used or maintained in connection with such business. Commission Regulation 1.110. Moreover, an establishment may not contain more than one licensed operation (NRS 463.245) with the exception that, as is the case here, a third party may be licensed to operate a race and sports book at an establishment at which nonrestricted gaming is conducted. The "establishment" in the instant case is Scolari's Food & Drug Company, 950 Holman Way, Sparks, Nevada, the Market as defined above. Orcutt Boys Enterprises Limited Partnership and Sierra Development Company are licensed by the Commission to conduct their gaming operations at that establishment, 950 Holman Way, Sparks, Nevada. Although the Orcutt Boys' gaming business has been isolated from the Market by a partition, and will continue in that configuration if the permit application is approved, the partition was erected in March of 2008 to meet conditions imposed by the County Health Department in order to permit smoking by gaming patrons. Notwithstanding the partition, the gaming area together with the associated improvements, equipment and facilities is and will remain a part of the Market, all under one roof and within four walls. The proposed remodeling will not change the footprint of the building.



This nonrestricted gaming use is a nonconforming use under SMC 20.25.110 which may be continued under SMC 20.25.120. Enlargement of nonconforming uses is governed by SMC 20.25.140 which provides that a nonconforming use shall not be enlarged by more than ten percent of the "area lawfully occupied by the nonconforming use" except by special use permit in which case the use may be enlarged by up to fifty percent of the "area lawfully occupied by the nonconforming use." By letter dated April 12, 2012, Mr. Armando Ornelas, City Planner, has taken the position that proper construction of this ordinance requires a comparison of only the physical space occupied by the gaming equipment (1,136 square feet) with the additional space proposed under the permit application (2,034 square feet) concluding that applicants propose to "expand the area occupied by the gaming use by approximately 179 percent" and, in his view, in excess of the permitted maximum enlargement. We believe, however, that under the peculiar circumstances of this gaming use, it is the full area of the Market/establishment which constitutes the "area lawfully occupied by the nonconforming use" with which the enlargement must be compared. As noted above, the Market is the establishment for licensing purposes and both state and city gaming licenses authorize gaming by Orcutt Boys at the Market. The State and local address for the Market and the gaming operation is the same, there is no separate suite number or other designation distinguishing the area occupied by gaming devices from the grocery area. No additional gaming licenses can be issued for this establishment other than those presently held and no expansion of the establishment is proposed. The total square footage of the establishment is 33,275 and under this construction of the ordinance the total space proposed to be devoted to gaming (3,170 square feet), not simply the additional space (2,034 square feet), will be less than 10 percent of total square footage of the establishment.

For these reasons I ask that you reconsider the position taken by the City's planning staff and approve the pending permit application. Please give me a call if I can provide further information or documentation.

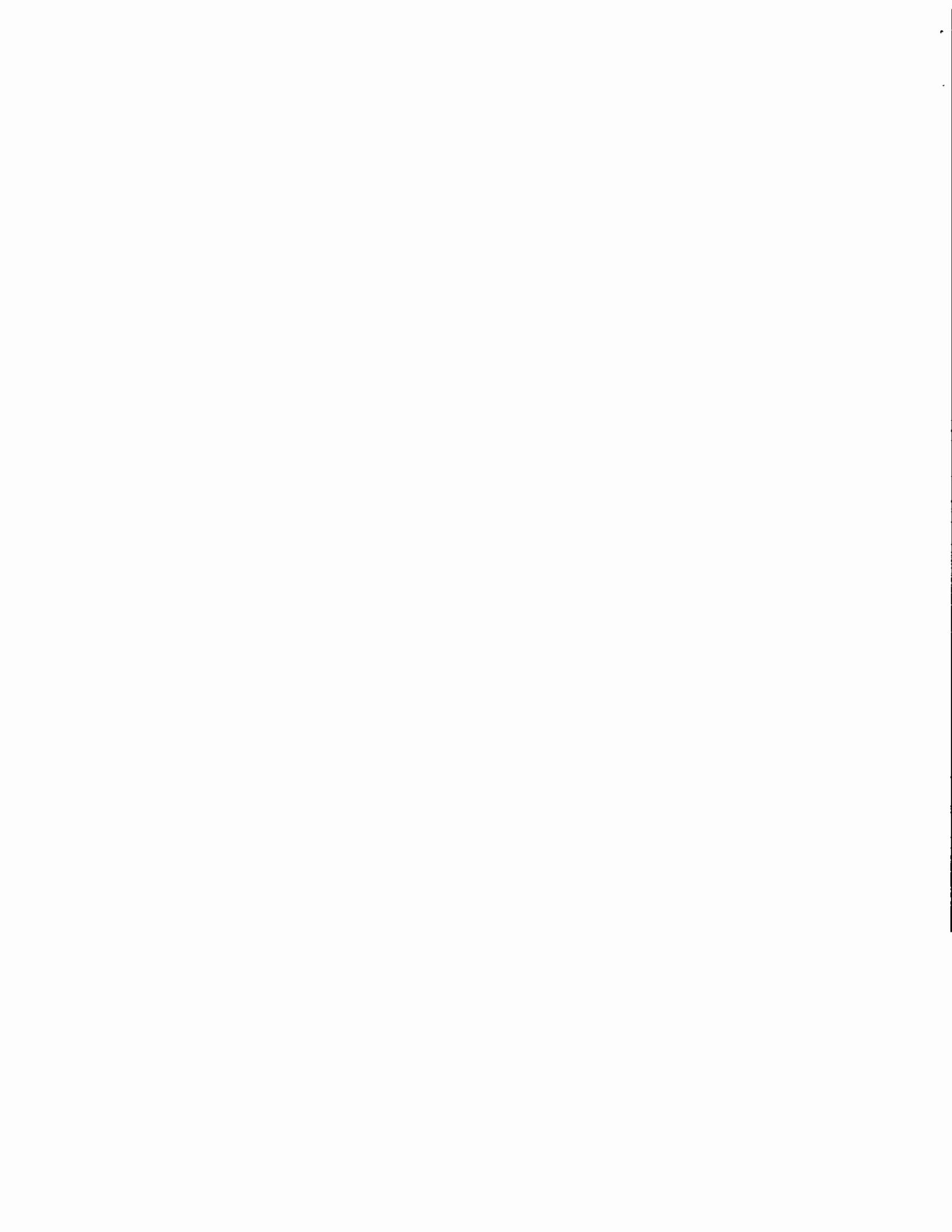
Sincerely,



David L. Mousel

DLM:dlg

EXHIBIT "D"





CHET ADAMS
CITY ATTORNEY

June 7, 2012
Via E-Mail and U.S. Mail

David L. Mousel, Esq.
Lewis and Roca
50 West Liberty Street, Suite 410
Reno, NV 89501

RE: Denial of Commercial Improvement Permit Application (Permit No. A1200494)
950 Holman Way, Sparks, Nevada
Scolari's Warehouse Markets, Inc.
Your File No. 51813

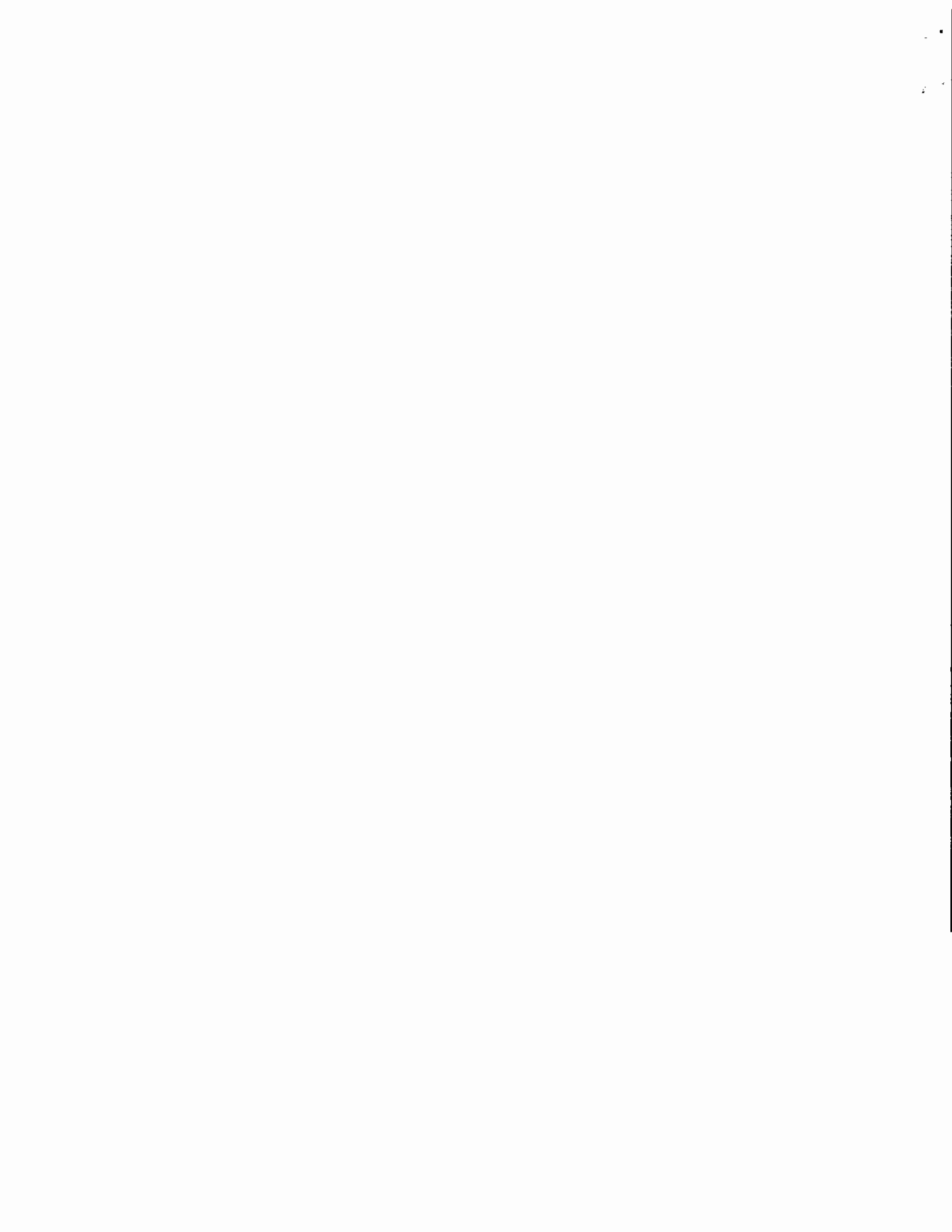
Dear Dave:

Thank you for your correspondence dated May 10, 2012. I personally appreciate the time and effort expended in drafting the letter, and found the historical information related to nonrestricted gaming at the subject location immeasurably helpful. Nevertheless, after careful consideration of the position articulated in your letter, and for the reason enumerated below, your client's application has been denied. This will be the only notice of the disposition provided by the City.

In March of this year, your client, Scolari's Warehouse Markets, Inc., applied for a Commercial Improvement Permit related to a proposed expansion of the nonrestricted gaming facility associated with the Scolari's grocery store at 950 Holman Way in Sparks. At present, approximately 1,136 square feet of floor space is occupied by the gaming use. This area is separated from the remainder of the building by a permanent partition, which was required by the Washoe County Health Department in 2008. The plans submitted to the City as part of the permit application reflect a realignment of the partition which results in a net increase to the gaming area of 2,034 square feet. All told, the area dedicated to nonrestricted gaming after the proposed changes would equal 3,170 square feet.

The facility at 950 Holman Way is zoned C2 (General Commercial), a designation which does not include nonrestricted gaming as an allowed use. SMC 20.85.020. Although City Staff has not yet researched the zoning history of the property, based on the extensive history of nonrestricted gaming at this location, and for purposes of this letter only, we assume that the gaming use is legally established. As you know, the area dedicated to a legally established nonconforming use may be expanded under the Municipal Code by up to ten percent with a site plan review and up to fifty percent with a special use permit. SMC 20.25.140.

City Hall: 431 Prater Way • P. O. Box 857 • Sparks, Nevada 89432-0857
Criminal: (775) 353-2320 FAX (775) 353-1617 • Civil: (775) 353-2324 FAX (775) 353-1688



Denial of Commercial Improvement Permit
June 7, 2012
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Prior to issuing the Commercial Improvement Permit, the City must be able to discern what area was lawfully occupied by the nonrestricted gaming use as of the date on which it became nonconforming. You have proposed that this measurement is the entire footprint of the Scolari's Market, some 33,275 square feet, and while your letter concludes that the proposal results in an expansion of nonrestricted gaming by less than ten percent of the dedicated area, the logical endpoint of your view is that the proposal is not actually an expansion of the use at all. The argument is based on the regulatory primacy of the State of Nevada with respect to gaming establishments, the fact that state and local gaming licenses attach to an address and not a delineated physical space within the address, and the common ownership of both the gaming operation and the grocery business. The City does not agree.

Because the building in question houses mixed uses, we believe the area occupied by the nonrestricted gaming use is the amount of floor space that physically supports actual gaming activity. As a result, the proposed increase of floor space dedicated to gaming - from 1,136 square feet to 3,170 square feet - represents a 179 percent expansion of the nonconforming use; an enlargement of this magnitude cannot be accomplished under the Municipal Code. The Application for Commercial Improvement Permit is therefore denied.

This denial is based on the above referenced provisions of Chapter 20 of the Sparks Municipal Code and is therefore subject to the appeal procedures outlined in SMC 20.07.030. Should your client choose to appeal this decision to the Sparks City Council, written notice of the appeal must be filed with the City Clerk within twenty-one days of the date of this letter.

Very truly yours,



Douglas R. Thornley,
Senior Assistant City Attorney

DRT/Ea

