



April 19, 2013

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RE: SPARKS CITY COUNCIL MEETING – APRIL 22, 2013
AGENDA ITEM 8.2: PCN12022 SPECIAL USE PERMIT

Dear Mr. Thornley:

On behalf of Peppermill Resort Hotel, John Ascuaga's Nugget and Atlantis Casino Resort, thank you for your April 15, 2013 letter responding to my inquiries of April 12, 2013, in which you provided additional information regarding this matter. (For convenience, a copy of your letter is attached.)

Please take note of a preliminary, but very important aspect regarding the level of concern that this matter has generated. None of my clients has any interest in impeding the development of a resort hotel with non-restricted gaming operations if it complies with Nevada state law and the City of Sparks Municipal Code.

Accordingly, the Special Use Permit considered on September 30, 2010 and subsequently approved for the previously described resort hotel project did not raise concerns, as that project appeared to be squarely of a nature contemplated by the letter and intent of laws requiring uniform gaming standards in Sparks and Washoe County. Conversely, the project described in the report for the new Special Use Permit application at issue is substantially changed from the prior proposal.

As was discussed at the April 8, 2013, Sparks City Council meeting on this issue, we know and trust that the Council shares the goal of doing what is right for the community long term. With that goal in mind, we respectfully share our thoughts on how to accomplish the necessary and appropriate review of this matter at a local level.

We do want to be clear, however, that we do object to the prospect of using more than one hotel to reach the required 201 room requirement of NRS 463.01865. As set forth below, we do not believe multiple hotels comports with the law on this issue.

PCN 12022 Special Use Permit
Douglas R. Thornley
April 19, 2013
Page 2

Further, we do not think that the local governing bodies should abdicate this issue to the state, as it is a quality control issue of great importance to our region. We should not pursue a race to the bottom to see what multiple establishments can be cobbled together to create a new version of a Resort Hotel in Sparks and Washoe County.

If the Council chooses not to deny the Special Use Permit, we respectfully request that the Council refer the matter back to the planning commission for further consideration. We also request that if approved, Regional Planning review the matter. Alternatively, we request that the Council refer the matter to Regional Planning at this time. The bases for those requests are as follows:

The Planning Commission Should Re-notice and Reconsider the Application

We believe that lawful notice of the new and very different nature of the project that is being proposed was not given. NRS 241.020 (c) (1) requires that the planning commission's agenda consist of "a clear and concise statement of the topics to be scheduled to be considered." We do not believe the planning commission's agenda clearly stated the topic to be considered.

The agenda for the March 21, 2013 meeting stated that there would be considered a request for "a 201 room resort hotel/casino." However, as we all now know, what was actually being considered was "two hotels consisting of 201 rooms." As your April 15, 2013, letter acknowledges, "The City is not aware of any precedent involving multiple hotels in order to reach the 201 room threshold." That an unprecedented grouping of multiple hotels was going to be considered to meet the 201 room requirement should have been clearly stated on the agenda and was not.

Since the agenda was not clear, interested parties including my clients, as well as the Nevada Resort Association, were not able to make their concerns or objections known to the planning commission for this unprecedented, albeit novel, proposed deviation from NRS 463.01865. NRS 463.01865 states "a hotel... that has... more than 200 rooms" qualifies to be a resort hotel with non restricted gaming. Whatever notions that the applicant or City has that such a proposal is supportable, as well as opinions to the contrary, should have been able to have been fully discussed at the planning commission level. The seemingly benign notice of agenda that in reality

PCN 12022 Special Use Permit
Douglas R. Thornley
April 19, 2013
Page 3

portended to create a new breed of resort hotel in Sparks and Washoe County did not clearly state what was truly being considered.

Of concern here is that the proposal leads to attempts to take advantage of a perceived loophole in the State's definition of resort hotel beyond the intent pursuant to which the law was adopted. As set forth in the legislative history of S.B. 535 from the 1991 Legislative Session which enacted NRS 463.01865, S.B. 535 was to "ensure a high minimum standard for resorts" and eliminate inequities caused by differing local approaches to the matter. S.B. 535 would establish a uniform standard to ensure that all new gaming properties meet high standards, and to require newcomers to make an equitable and fair capital contribution to enhance the continued growth of the gaming industry." It was noted in testimony that Nevada's "leadership as a gaming destination is fragile" and that "the lack of uniformity among jurisdictions ... reduced their effectiveness as an economic development tool."

We believe it to be of the utmost importance that long-vested participants in the local non-restricted gaming industry be at the table when evaluating uniform standards for these activities.

Regional Planning Should Review the Project as it is of Regional Significance

With respect to regional planning, NRS 278.026 sets forth "projects of regional significance" which require review by regional planning. Such projects include those that will have use of "sewage by not less than 187,500 gallons a day" (NRS 278.026 (5)(d)(4)) and increase "traffic by not less than an average of 6,250 trips daily" ((NRS 278.026 (5)(d)(6)).

Here, the Special Use Permit report for the application states specifically, "The project will exceed 187,500 gallons of sewage per day and will most likely produce traffic which exceeds 6,250 ADTs (Average Daily Trips). It is unknown whether the development will employ more than 938 employees. It is not likely the development will use more than 625 acre feet per year of water." Therefore, the project is of regional significance by definition.

We disagree with the report's statement that, "Since the project contemplates lesser impacts that what was proposed in the previous approvals, staff believes the

PCN 12022 Special Use Permit
Douglas R. Thornley
April 19, 2013
Page 4

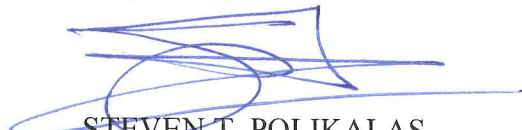
believes the Regional Planning Commission's prior action of finding the project in conformance with the adopted regional plan is still valid." The previous SUP, as indicated in the report, was for a "800-room resort/hotel/casino." No notion was previously indicated of any of those proposed rooms being amalgamated from multiple hotels. That the new application contemplates less rooms, but still has criteria that define the project one of regional significance, does not eliminate the need for review by regional planning.

Thank you in advance for the Council's consideration of these requests.

If I can provide you with any additional information, please let me know.

My best regards.

Very truly yours,



STEVEN T. POLIKALAS

STP:jd

Enclosure

CC: Clients
Nevada Resort Association

REFRENCED STATUES:

NRS 463.01865 “Resort hotel” defined. “Resort hotel” means any building or group of buildings that is maintained as and held out to the public to be a hotel where sleeping accommodations are furnished to the transient public and that has:

1. More than 200 rooms available for sleeping accommodations;
2. At least one bar with permanent seating capacity for more than 30 patrons that serves alcoholic beverages sold by the drink for consumption on the premises;
3. At least one restaurant with permanent seating capacity for more than 60 patrons that is open to the public 24 hours each day and 7 days each week; and
4. A gaming area within the building or group of buildings.

(Added to NRS by 1991, 1405)

NRS 241.020 Meetings to be open and public; limitations on closure of meetings; notice of meetings; copy of materials; exceptions.

1. Except as otherwise provided by specific statute, all meetings of public bodies must be open and public, and all persons must be permitted to attend any meeting of these public bodies. A meeting that is closed pursuant to a specific statute may only be closed to the extent specified in the statute allowing the meeting to be closed. All other portions of the meeting must be open and public, and the public body must comply with all other provisions of this chapter to the extent not specifically precluded by the specific statute. Public officers and employees responsible for these meetings shall make reasonable efforts to assist and accommodate persons with physical disabilities desiring to attend.
2. Except in an emergency, written notice of all meetings must be given at least 3 working days before the meeting. The notice must include:
 - (a) The time, place and location of the meeting.
 - (b) A list of the locations where the notice has been posted.
 - (c) An agenda consisting of:
 - (1) A clear and complete statement of the topics scheduled to be considered during the meeting.
 - (2) A list describing the items on which action may be taken and clearly denoting that action may be taken on those items by placing the term “for possible action” next to the appropriate item.
 - (3) Periods devoted to comments by the general public, if any, and discussion of those comments. Comments by the general public must be taken:

NRS 278.026 Definitions. As used in NRS 278.026 to 278.029, inclusive, unless the context otherwise requires:

1. “Affected entity” means a public utility, franchise holder, local or regional agency, or any other entity having responsibility for planning or providing public facilities relating to transportation, solid waste, energy generation and transmission, conventions and the promotion of tourism, air quality or public education. The term does not include:
 - (a) A state agency; or
 - (b) A public utility which is subject to regulation by the Public Utilities Commission of Nevada.
2. “Facilities plan” means a plan for the development of public facilities which will have a regional impact or which will aid in accomplishing regional goals relating to transportation, solid waste, energy generation and transmission, conventions and the promotion of tourism, air quality or public education. The term does not include a plan for the development of a specific site or regulations adopted by an affected entity to implement the comprehensive regional plan.
3. “Governing board” means the governing board for regional planning created pursuant to NRS 278.0264.
4. “Joint planning area” means an area that is the subject of common study and planning by the governing body of a county and one or more cities.
5. “Project of regional significance,” with respect to a project proposed by any person other than a public utility, means a project which:
 - (a) Has been identified in the guidelines of the regional planning commission as a project which will result in the loss or significant degradation of a designated historic, archeological, paleontological, cultural or scenic resource;
 - (b) Has been identified in the guidelines of the regional planning commission as a project which will result in the creation of significant new geothermal or mining operations;

(c) Has been identified in the guidelines of the regional planning commission as a project which will have a significant effect on the natural resources, public services, public facilities, including, without limitation, schools, or the adopted regional form of the region; or

(d) Will require a change in zoning, a special use permit, an amendment to a master plan, a tentative map or other approval for the use of land which, if approved, will have an effect on the region of increasing:

- (1) Employment by not less than 938 employees;
- (2) Housing by not less than 625 units;
- (3) Hotel accommodations by not less than 625 rooms;
- (4) Sewage by not less than 187,500 gallons per day;
- (5) Water usage by not less than 625 acre feet per year; or
- (6) Traffic by not less than an average of 6,250 trips daily.