



STATE OF NEVADA

Nevada Tahoe Regional Planning Agency

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MINUTES

DATE/TIME: Wednesday, July 23, 2020 – 10:30 am

PLACE: **Virtual Meeting.** This meeting will be held virtually pursuant to NRS 241.023 and State of Nevada Declaration of Emergency Directive 006.

MEMBERS PRESENT: – Marsha Berkbigler – Chair; Shelly Aldean; Mark Bruce; Jim Lawrence, Wesley Rice, and Mark Wlaschin (Alternate).

MEMBERS ABSENT: Barbara Cegavske – Vice Chair and Timothy Cashman.

OTHERS PRESENT: Charles Donohue – NTRPA Executive Officer; Scott Carey – State Lands; Tori Sundheim – Attorney Office of the Attorney General; Gary Midkiff – Midkiff & Associates; George Higgins – Northern Nevada Comstock Investments; and D. Scott Tate – Northern Nevada Comstock Investments.

1. **CALL TO ORDER** – Chair Berkbigler called the meeting to order at 10:33 am.
 - a. Roll Call – Scott Carey took roll and a quorum was established.
 - b. Approval of Agenda – Member Bruce moved to approve the agenda as submitted. The motion was seconded by Member Lawrence. The motion was passed unanimously. ***ACTION**
 - c. Approval of Minutes of the December 18, 2019 Meeting – Member Aldean proposed a change to the minutes on the last paragraph on page 2 of the minutes. In the first sentence of this paragraph, Member Aldean proposed the addition of “a” between the words was and way. Member Bruce moved to approve the minutes with the corrections as proposed by Member Aldean. The motion was seconded by Member Aldean. The motion was passed unanimously. ***ACTION**
2. **PUBLIC COMMENTS** – Chair Berkbigler called for public comment. Scott Carey stated that the meeting notice included instructions for how to submit a public comment before the meeting and as of the deadline of July 22, 2020 at 5:00 PM staff did not receive any public comments. Chair Berkbigler called for any additional public comment. There was no public comment.

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3. **REPORT OF THE EXECUTIVE OFFICER ON ACTIVITIES OF THE AGENCY: JANUARY 2019 – NOVEMBER 2019** – Executive Officer Donohue provided the Governing Board with an update on the activities of the NTRPA. Mr. Donohue stated that he recently talked with Heather Bacon who is the President of the Tahoe Biltmore to receive an update on the implementation of the Boulder Bay project. He stated that the project continues to progress, the 18 units off SR 28 have been completed and that most of these units have been sold. He stated that the Tahoe Biltmore project hoped to begin phase 2 which includes the wellness center, but the project has been impacted by the COVID-19 pandemic. He further stated that the Tahoe Biltmore hopes to begin construction on phase 2 of the project within this construction season.

Mr. Donohue provided an update on the Cal-Neva project and reported that he talked recently with Gary Midkiff who was the consultant for the owner this project. He stated that project has been delayed by the involvement of an investment partner who has joined the project and is engaged with the design and other activities. Mr. Donohue stated that he will continue to monitor this project and will report back to the Governing Board on its status as the project continues.

Mr. Donohue stated that the Lakeside Inn in Stateline has decided to close permanently following a temporary closure caused by the COVID-19 pandemic this spring. He stated that the NTRPA received a request from an attorney the day after a newspaper published an article about the closure of the Lakeside Inn. He stated that the attorney was inquiring to NTRPA about the certified base data for the Lakeside Inn. He stated that it is unclear what the future plans are for the building at this time but there could be future actions requested by the NTRPA on this site.

Mr. Donohue stated that the corporate merger between Caesars Entertainment and Eldorado Resorts Inc. was completed earlier this week. He stated that the completion of this merger changes the gaming ownership landscape of South Lake Tahoe. With the completions of this merger, Caesars Entertainment/Eldorado Resorts Inc. now owns the Mont Bleu, Harveys Lake Tahoe, and Harrah's Lake Tahoe resorts. He stated that with the new ownership structure there could be some future actions requested by the NTRPA.

4. **DETERMINATION OF CERTIFIED BASE DATA ELIGIBILITY FOR THE ED'S TAHOE NUGGET IN STATELINE** – Scott Carey presented the [staff report](#) for this item to the Governing Board. Mr. Carey stated that this was an unusual request and that staff believes this is the first time that that NTRPA and Governing Board have considered such a request. In June, the NTRPA received a request from Northern Nevada Comstock Investments to make a determination on the eligibility of the certified base data for the Ed's Tahoe Nugget building in Stateline. Mr. Carey stated that Northern Nevada Comstock Investments is in the process of purchasing the building and that upon completion of the sale, they intend to reestablish a non-restricted gaming use within the building. Exhibit 1 of the staff report includes a copy of the applicant's requested action. Exhibit 2 of the staff report includes plans showing the configuration and use of the Ed's Tahoe

Nugget building today. Exhibit 3 of the staff report includes a copy of the applicant's plans for use of the building in Phase 1 of the project. Exhibit 4 of the staff report includes a copy of the applicant's plans for the building upon completion of all phases of the project. Exhibit 5 of the staff report is a copy of the certified base data plans for the Ed's Tahoe Nugget building.

Mr. Carey stated that the Ed's Tahoe Nugget building was originally constructed in 1964, and for much of its history was used as a structure housing gaming and operated under the names, Tahoe Nugget, Ed's Tahoe Nugget, and John's Tahoe Nugget. He stated that the building was included in the original structures housing gaming list and was declared to be an existence before May 4, 1979. The certified base data for the Ed's Tahoe Nugget building was certified by that NTRPA Governing Board in 1987. Mr. Carey stated that in 1996 the building underwent a renovation which converted the use of the building from a structure housing gaming to restaurant, retail and office uses without gaming.

Mr. Carey stated that to the best of staff's knowledge this is the first time that an applicant has requested to return a non-restricted gaming use on a site after the original gaming use was modified. In this instance, the Ed's Tahoe Building went from a primarily gaming use with supporting restaurant, office, kitchen and other supporting uses to a building primarily used for restaurants, retail, and office uses. Mr. Carey stated that the applicant is requesting that the Governing Board decide on the eligibility of the certified base data on this site which if approved would allow them to reestablish the gaming use on the site.

Mr. Carey stated that the applicant is proposing to reestablish 2,339 square feet of gaming floor area in Phase 1 of the project and upon build out of all phases the maximum gaming floor area proposed would be 8,409 square feet. The total certified gaming floor area for the Ed's Tahoe Nugget site is 8,773 square feet. Mr. Carey stated that staff is recommending approval of the requested determination of eligibility of the certified base data on the Ed's Tahoe Nugget site.

He stated that from reviewing the Tahoe Regional Planning Compact, NTRPA Ordinance 1980-1, and NTRPA Plan Review Procedures Policy there was never a scenario envisioned where a structure housing gaming with certified base data would change its main use away from gaming and later request to reinstate this use. He further stated that it is staff's interpretation that the intent of regulating structures housing gaming within the Lake Tahoe basin was to freeze the square footages of the certified base data and location of these uses in order to achieve the environmental and scenic findings and declarations of the Lake Tahoe Planning Compact. He stated that it is staff's interpretation that the certified base data remains on the site forever and can therefore be reinstated or used subject to being able to make specific findings.

Mr. Carey presented the following findings to the Governing Board for consideration of the Ed's Tahoe Nugget certified base data eligibility request.

- 1) Pursuant to the Tahoe Regional Planning Compact Article VI, Section (e) any structure housing gaming may be rebuilt replaced to a size not to

exceed the cubic volume, height, and land coverage existing or approved on May 4, 1979.

Mr. Carey stated it is staff's interpretation of the compact that there is no time limit or expiration of the certified base data on a particular site. He stated that the applicant's proposed use of the certified base data on the site does not exceed the gaming floor area which was previously certified by the NTRPA on this site. He further stated that the certified base data on this site included a total of 8,773 sq ft and the applicant if approved would be utilizing a maximum of 8,409 sq ft upon completion of all future phases. He stated that staff finds the proposed request for determination of the eligibility of the certified base data on this site in compliance with the Tahoe Regional Planning Compact Article VI.

- 2) NTRPA Ordinance 1980-1 Article 3, Section 3.1 any structure housing gaming shall not enlarge the cubic volume of the structure, increase the total square footage of an area to or approved for public use; and convert private use area to public use area.

Mr. Carey stated that the applicant's proposed use of the certified base data on this site does not enlarge the cubic volume of the structure, it does not increase the square footage of the public use area, and it does not propose to covert private use areas to public use. He stated that staff finds the proposed request for determination of the eligibility of the certified base data on this site in compliance with the NTRPA Ordinance 1980-1.

- 3) Pursuant to NTRPA Plan Review Procedures Policy Section 1(d) all plans and proposals which will change the area in square feet devoted to gaming or change the location of gaming with any such structure must be accompanied by an information report.

Mr. Carey stated that staff finds that the plans and correspondence submitted by the applicant to be sufficient and to meet the information report requirement and therefore are in compliance with the NTRPA Plan Review Procedures Policy.

Mr. Carey stated that if the Governing Board wishes to approve the request, staff is recommending that the request be approved subject to 1 condition of approval. He stated that the applicant currently does not own the property and does not have access to the site in order to perform accurate measurements for the certified base data calculations. He further stated that the staff report and plans submitted by the applicant do have some minor differences with the certified base data on file with the NTRPA.

Mr. Carey proposed that in order to clean up these discrepancies and to clean up the certified base data, that the applicant be required within 6 months of acquiring the property to provide the NTRPA with detailed architectural floor plans and base data calculations for the building.

Member Lawrence asked for clarification of the Governing Board's requested action today. Mr. Lawrence stated that today's action by the Governing Board is not based on

the numbers and calculations submitted by the applicant but rather the Governing Board's actions today are based on reinstituting or acknowledging the certified base data on the site from 1987.

Mr. Carey stated that Member Lawrence was correct. He stated that the primary questions for the Governing Board today are whether or not the applicant is exceeding the certified base data calculations in this building and whether those calculations are still in existence and active on the site.

Member Aldean asked for clarification from the staff report about the proposed condition of approval requiring the applicant to submit detailed architectural floor plans and base data calculations. Member Aldean acknowledged that with modern technologies that there may be some discrepancies between the calculations that applicant submits and that the certified base data may need to be reviewed by the NTRPA. Member Aldean further stated that she did not think that the NTRPA had flexibility with doing anything that was not verifiable.

Mr. Carey stated that the intent of the proposed condition of approval is to allow for the applicant to submit new architectural floor plans and base data calculations to ensure that building is in compliance with the certified base data on record with the NTRPA. He stated that if the applicant's base data calculations show an increase in public area or cubic volume or anything else that would trigger a recertification of the base data, that staff would bring forth the recertification request for the Governing Board's review and consideration.

Member Rice stated that Douglas County continues to lose gaming at Lake Tahoe and that he keeps hearing about efforts to reestablish gaming in the area. He stated that many locals are not pleased with the gaming being offered and are leaving the area for their entertainment. He stated that when he first moved to the area, the subject property was known as Ed's Tahoe Nugget and that he is encouraged to see gaming be reestablished on this site. He further stated he finds it very encouraging to see that someone wants to reuse the Ed's Tahoe Nugget building for its original intent.

Gary Midkiff with Midkiff & Associates spoke on behalf of the applicant, Northern Nevada Comstock Investments. Mr. Midkiff stated that without owning the building, the applicant has not had access to the building in order to conduct accurate measurements. He stated that once the applicant has access to the building, they will be able to submit detailed architectural floor plans and base data calculations to the NTRPA. He stated that as far as they know, there have not been any changes to the interior of the building which would impact the gross area of the building. He stated that they do know that some areas inside of building have been modified from what they were previously used for and that they will work with staff to confirm the base data calculations.

Chair Berkbigler opened a public hearing for this item and invited anyone from the public to provide public comment. Scott Carey stated that as of the public comment deadline of July 22, 2020 at 5:00 PM staff did not receive any public comments on this

item and that they do not have any requests to speak. No public comment was provided, Chair Berkbigler closed the public hearing.

Member Rice made a motion to find that the certified base data for the Ed's Tahoe Nugget site, Douglas County APN 1318-23-401-049 is valid and eligible to be used on the site and moved to approve the applicant's request to utilize the certified base data on this site as indicated on Exhibit 5 of the staff report subject to Condition 1 as listed in the staff report. Member Aldean seconded the motion. There was no discussion on motion. Chair Berkbigler called for a roll call vote on the motion. ***ACTION**

AYES: Chair Berkbigler, Member Aldean, Member Bruce, Member Lawrence, Member Rice, and Member Wlaschin.

NAYS: None

ABSTAINERS: None

ABSENT: Member Cashman

5. **BOARD MEMBER COMMENTS** – There were no Board Member Comments.
6. **PUBLIC COMMENTS** – Chair Berkbigler called for public comment. Scott Carey stated that the meeting notice included instructions for how to submit a public comment before the meeting and as of the public comment deadline of July 22, 2020 at 5:00 PM that staff did not receive any public comments. Chair Berkbigler called for any additional public comment. There was no public comment.
7. **ADJOURN** – Chair Berkbigler adjourned the meeting. The meeting was adjourned at 11:04 AM. ***ACTION**