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August 12, 2003

Members of the Rapid City Council
300 6th St.
Rapid City, SD 57701

Via: Electronic and U.S. Mail
Re: Conditional Use Permit to Allow an On-Sale Liquor
Establishment in a General Commercial Zoning District
Applicant: Robert Tschetter
File No.: 03UR010

Dear Council Member:

My name is Greg Erlandson and I represent Robert Tschetter, the owner of Cash With Us, Pawn With Us, Furnish With Us and Wash With Us, located within his strip mall at 406 East North Street. On August 18th you will be considering Mr. Tschetter's appeal of the City of Rapid City Planning Department's denial of a conditional use permit ("CUP") to allow an on-sale liquor establishment in a general commercial zoning district.

We understand and appreciate the value of your time and your busy schedule. Therefore, we provide you with a summary of our position in advance of the City Council meeting. We will be appearing at the same and, rather than restating this letter entirely, would appreciate the opportunity to answer any questions you may have so you may make an informed decision.

BACKGROUND

Mr. Tschetter purchased the property at issue in 1998. Since that time he has made substantial improvements. He has added to and remodeled the building so that it is now aesthetically pleasing, clean, and modern—as compared to several nearby properties and the abandoned structure it replaced. In June of 2000, Mr. Tschetter met with the planning commission on his request to open a casino. His request was denied based upon planning's feeling there were too many casinos in the area. However, Mr. Tschetter was assured that if any casinos were to close on or near East North Street his request for a CUP would be approved. Based upon this assurance, Mr. Tschetter purchased a video lottery license at a cost of \$10,000 from TREA. TREA has closed its casino and it is anticipated it will move its bingo hall in the next few months.

Mr. Tschetter then hired Hermanson Egge Engineering, Inc. to develop a suitable site plan to replace Furnish With Us with a casino. Despite Mr. Tschetter's best efforts and substantial investment he has been unable to make Furnish With Us a profitable business. Since Mr. Tschetter's property is zoned in a General Commercial District he filed an application for a CUP to allow an on-sale liquor establishment.

PLANNING DEPARTMENT DECISION

On July 24, 2003, the Planning Department denied Mr. Tschetter's request for a CUP based upon a Planning Department Staff Report that recommended against the granting of a CUP. The Staff Report reviewed the request in light of the four criteria identified in Section 17.50.185 of the Pennington County Zoning Ordinance. Each factor as well as the Staff's and Mr. Tschetter's position is set forth below:

Under 17.50.185 **an on-sale liquor establishment *must be issued*** if:

- A. The requested use will not adversely affect the use of any place used for religious worship, school, park, playground or similar use within a five hundred-foot radius.

The Staff noted there were **no such churches, schools or parks within a five hundred foot radius from the site** of the proposed use. The Staff did indicate is was "concerned with the potential adverse effect the on-sale liquor establishment may have on the residential development located directly north of the subject property...." The Staff correctly noted that there exists a medium density *residential district* to the north of Mr. Tschetter's property. However, any perceived impact to a neighboring residential district is not a valid consideration under this factor and should not have been considered.

- B. The requested use is sufficiently buffered with respect to residential areas so as not to adversely affect such areas.

Under this factor the Staff again addressed concerns about potential adverse impacts to neighboring areas. The Staff notes that Mr. Tschetter's property is located in the Weed and Seed Program Area. Mr. Tschetter advises that he has recently communicated with a representative of the **Weed and Seed Program** and advised it **does not have any objection to his CUP request**.

The Staff also notes that, pursuant to 17.80.080, Mr. Tschetter would have to install a fence to buffer it from the residential area to the north. Jeff Marino of the Planning Department agreed that if a fence was installed this factor would not prohibit the granting of the CUP.

- C. The proposed use will not create an undue concentration of similar uses, so as to cause blight, deterioration or substantially diminish or impair property values.

There are two aspects to this factor. The first is there must be a finding that the proposed use would create an "undue concentration of similar uses." **The sole reason for the denial of the**

CUP is based upon the assumption that the subject area would not support an additional casino or that the area was also saturated with Casinos. This finding was made even in light of the fact Mr. Tschetter's purchase of TREA's liquor license did not add to but merely replaced a prior existing license. In short, the granting of the CUP would not "create" an undue concentration of similar uses.

The second aspect of this factor is made after a finding that the use would create an "undue concentration of similar uses." If such a finding is made, then the Planning Commission *must determine causation* (i.e. that such a use would cause "blight, deterioration or substantially diminish or impair property values."). Importantly, no such finding was made either by the Planning Staff or the Commission. During the Commissioner's meeting the Staff did indicate it had concerns over the impacts of having a pawnshop next to a casino. However, this concern was unsupported and unsubstantiated. I have been unable to locate any ordinance or regulation requiring any certain distance between two particular businesses such as these. The implications and uncertainty this creates are obvious and vast. Further, there are numerous examples of other pawnshops located near on in the same location as casinos in Rapid City.

Mr. Tschetter submits that the granting of his CUP will enhance and increase property values in the area. The strip mall at issue is a clean, modern and attractive complex. Allowing Mr. Tschetter to open a casino in the mall will turn an unprofitable use (Furnish With Us) into a profitable use thereby allowing Mr. Tschetter to make further improvements to his property. One need only make a cursory inspection of the uses and condition of property surrounding the strip mall to determine that the successful operation of a casino could do nothing but improve surrounding property values.

The issue of police calls to the area was discussed before the Commission. The Rapid City Police Department remained neutral but did indicate that most of the calls for police assistance were the result of circumstances not related to Mr. Tschetter's property.

- D. The proposed use complies with the standards of Sections 5.12.140 and 17.54.030 of this code. (Ord. 3270, 1996; Ord. 2391 (part), 1992)

The Staff addressed issues such as screening and parking under this factor. However, these issues were resolved through a revised site plan and do not appear to be an obstacle to the granting of the CUP.

PENNINGTON COUNTY ZONING ORDINANCES

The zoning ordinances support the granting of Mr. Tschetter's CUP. Some of the zoning plan's purposes are to encourage the use of lands, to conserve economic stability, and to foster community development. 17.02.020. Mr. Tschetter's property is located in a general commercial district which is for "person and business services and the general retail business of the city." 17.18.010. While an on-sale liquor establishment is not specifically listed as a permitted use under 17.18.020, such establishments are specifically held to be a proper

conditional use assuming compliance with 17.50.185. See 17.18.030. As detailed above, Mr. Tschetter's proposed use satisfies the four requirements of an on-sale liquor establishment. The Planning Department decision is unfair and not supported by the evidence.

CONCLUSION

Mr. Tschetter respectfully requests you reverse the Planning Department's denial of his CUP application. Mr. Tschetter had invested a great deal of time, money, and efforts into turning East North Street into an appealing and successful section of town. Mr. Tschetter is willing to consider any conditions necessary for the granting of his application. We appreciate your time and attention to this very important issue. Please contact me with any questions or concerns. Thank you.

VIA E-MAIL

Best Regards,

BANGS, MCCULLEN, BUTLER, FOYE & SIMMONS, L.L.P.

/s/ Greg

Gregory J. Erlandson

CC: Client (via: electronic mail)