

DEMERSSEMAN JENSEN TELLINGHUISEN
STANTON & HUFFMAN, LLP

LAWYERS

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 516 FIFTH STREET, RAPID CITY, SD 57701

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 605-342-2814

September 2, 2011

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VIA EMAIL

Brett Limbaugh
 Fletcher Lacock
 Planning Department
 City of Rapid City
 300 Sixth Street
 Rapid City, SD 57701

RE: File No. 11UR014
 Conditional Use Permit to Allow an On-Sale Liquor Establishment
 City Council Item No. 128, September 6, 2011

Gentlemen:

Several questions came up at the first hearing of our appeal on August 1, 2011, which hearing was continued to the meeting on September 6, 2011. In an attempt to answer those questions, my client has basically done some investigation as to traffic and movement along Indiana Street. Steve Wynia did a traffic study on Tuesday, August 30, 2011, between 11:10 AM and 3:10 PM and the following are the results:

1. Arby's had 216 cars or 64 cars per hour.
2. Sonic had 390 cars or 97.5 cars per hour.
3. General traffic on Indiana Street going east totaled 485 cars and going west totaled 471 cars so about 120 cars per hour going each direction.
4. The Interim Healthcare office across the street had 18 cars or 4.5 cars per hour.

When you compare that with the traffic created by my clients' two double casinos, and I am enclosing the two calendars they keep for the day which is the actual business record of each of the double casinos that shows the number of patrons per day. The high number during this period registered is 80 over a 17 hour period or under 5 per hour. The low number is 27 over an 11 hour period or about 2 per hour.

DEMERSSEMAN JENSEN TELLINGHUISEN STANTON & HUFFMAN, LLP

September 2, 2011
Page 2

At the same time, I discussed the traffic with Jim Kleinfelder of McDonald's and they have approximately 1,200 customers per day coming and going on Cleveland Street.

It is obvious that traffic is not the issue. When coupled with my clients' minimal beer sales, which we previously provided you information on, with an average of less than one beer per hour, liquor is also not going to be a problem. In order however to alleviate any concerns that the building might later be converted to a regular bar, I am enclosing the Declaration of Restrictive Covenant that the landowner will file after Tuesday's hearing. The covenant makes it very clear that the property cannot be used for an on-sale retail liquor license without the consent of the City of Rapid City. In essence, this makes the ultimate use of this property for a normal operating bar impossible.

In addition, my clients have advised you and I am putting it in writing, that they are willing to flip the building so that the front of the building would face west and the back of the building would be on the lot line so there would be no business activity between the back of the building and the neighbors across the street to the east. With the back of the building facing east, there cannot possibly be a screening/buffering issue.

Please provide this information to the rest of your staff and the City Council members. Thank you.

We will be available at the meeting for any additional questions.

Very truly yours,



Richard E. Huffman reh@demjen.com
DEMERSSEMAN JENSEN TELLINGHUISEN
STANTON & HUFFMAN, LLP

REH/bjm
Enclosures

cc client (w/o enclosures)

8-30-11 11:10 AM - 3:10 PM

11:10 - 3:10

ARBY'S

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216

SONIC

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INTERIM HEALTHCARE

MED OFFICE

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E. ON INDIANA

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485

[Illegible scribbles] W. ON INDIANA [Illegible scribbles]
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471

RESIDENTS - [Illegible scribbles]

Lucky D's.
1330 E. St. Port.

April '11

Total
1512

SUN	MON	TUE	WED	THUR	FRI	SAT
					(9) 65 1 7-12 IIIIIII (24) 12-4 IIIIIII III IIIII (29) 4-9 IIIIIIIIIII III II (5) 7-12 III	(11) 80 2 7-12 IIIIIII (29) 12-4 IIIIIIIIIII III IIIII (31) 4-9 IIIIIIIIIII III IIIII (9) 7-12 IIIIIII
		(499)				
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Lucky D's
1330 E. St. Pat.

MAY 2011

1454

Sun	Mon	Tue	Wed	Thur	Fri	Sat
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<p>31</p> <p>21</p> <p>16</p> <p>3-9</p>	<p>40</p> <p>6</p> <p>8</p> <p>7</p> <p>18</p> <p>1</p> <p>9-11</p>	<p>9</p> <p>52</p> <p>13</p> <p>10</p> <p>16</p> <p>4</p> <p>9-11</p>	<p>47</p> <p>18</p> <p>12</p> <p>12</p> <p>2</p> <p>9-11</p>	<p>13</p> <p>58</p> <p>18</p> <p>25</p> <p>4</p> <p>9-11</p>	<p>11</p> <p>53</p> <p>19</p> <p>19</p> <p>4</p> <p>9-12</p>	<p>23</p> <p>58</p> <p>10</p> <p>19</p> <p>6</p> <p>7-12</p>

Lucky D's
1330 E. St. Pat.

JUNE 2011

1381

Sun	Mon	Tue	Wed	Thur	Fri	Sat
<p>(547)</p>			<p>(16) (53) 1 7-12 (5) 12-3 (24) 3-9 1111 (7) 9-11</p>	<p>(6) (48) 2 7-11 (5) 11-2 (11) 2-5 (21) 5-9 111 (2) 9-11</p>	<p>(11) (59) 3 7-11 (14) 11-2 (18) 2-5 111 (13) (3) 9-12</p>	<p>(11) (42) 4 7-12 (16) 12-4 (14) 4-9 (1) 9-12</p>
<p>(32) 5 (19) 10-3 (15) 3-9</p>	<p>(4) (43) 6 7-11 (13) 11-1 (9) 1-4 (20) 4-9 (3) 9-11</p>	<p>(18) (44) 7 7-11 (6) 11-1 (8) 1-4 (16) 4-9 (2) 9-11</p>	<p>(23) (54) 8 7-12 (18) 12-4 (19) 4-9 (1) 9-11</p>	<p>(12) (54) 9 7-12 (15) 12-4 (24) 4-9 (6) 9-11</p>	<p>(11) (65) 10 7-12 (26) 12-4 (25) 4-9 (3) 9-12</p>	<p>(19) (57) 11 7-12 (16) 12-4 (21) 4-9 (1) 9-12</p>

Lucky D's

1330 E. St. Pat.

July 2011

Total 1362

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<p>⑳ 10-5 IIIII</p> <p>⑲ 3-9 IIIII</p>	<p>① 7-11 IIIII</p> <p>② 11-1 IIIII</p> <p>③ 1-4 IIIII</p> <p>④ 4-9 IIIII</p> <p>⑤ 9-11 IIIII</p>	<p>① 7-11 IIIII</p> <p>② 11-1 IIIII</p> <p>③ 1-4 IIIII</p> <p>④ 4-9 IIIII</p> <p>⑤ 9-11 IIIII</p>	<p>① 7-12 IIIII</p> <p>② 12-4 IIIII</p> <p>③ 4-9 IIIII</p> <p>④ 9-11 IIIII</p>	<p>① 7-12 IIIII</p> <p>② 12-4 IIIII</p> <p>③ 4-9 IIIII</p> <p>④ 9-11 IIIII</p>	<p>① 7-12 IIIII</p> <p>② 12-4 IIIII</p> <p>③ 4-9 IIIII</p> <p>④ 9-12 IIIII</p>	<p>① 7-12 IIIII</p> <p>② 12-4 IIIII</p> <p>③ 4-9 IIIII</p> <p>④ 9-12 IIIII</p>

437

	9-11 III ③ (37)	9-11 III ② (34)	9-11 III ① (59)	9-11 III (63)
8-10 III III III III (31)	8-10 III III III III (30)	8-10 III III III III (33)	8-10 III III III III (27)	8-10 III III III III (25)
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4-9 III III III III (41)	4-9 III III III III (22)	4-9 III III III III (37)	4-9 III III III III (21)	
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8-10 III III III III (15)	8-10 III III III III (13)	8-10 III III III III (28)	8-10 III III III III (25)	
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9-11 III ④ (53)	9-11 III (46)	9-11 III III (77)	9-11 III (74)	

GOOD FRIDAY

(11/11/2010)

1420

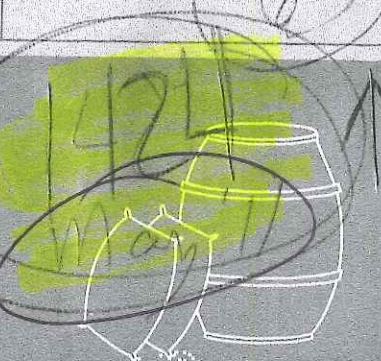
435

Royal 2530 w Mein

31	9-11 IIIII (30)	9-11 IIII (38)	9-11 IIII (72)	9-11 IIII (10) (68)
18	8-11 IIII IIII IIII (37)	8-11 IIII IIII IIII (22)	8-11 IIII IIII IIII (30)	8-11 IIII IIII IIII (25) ARMED FORCES DAY
30	4-9 IIII IIII IIII (21)	4-9 IIII IIII IIII (17)	4-9 IIII IIII IIII (30)	4-9 IIII IIII IIII (20)
52	9-11 (49)	9-11 (40)	9-11 (66)	9-11 (57)
11 (19)	8-11 IIII IIII IIII (20)	7-3 IIII IIII IIII (17)	8-11 IIII IIII IIII (23)	8-11 IIII IIII IIII (17)
38	9-9 IIII IIII IIII (14)	3-9 IIII IIII IIII (31)	7-9 IIII IIII IIII (27)	4-9 IIII IIII IIII (17)
12	9-11 IIII (36)	9-11 IIII (50)	8-11 IIII (63)	7-11 IIII (37)

Royal Clydesdales
25-30 w. Moir

FACTS & FIGURES



On a typical day one Budweiser Clydesdale consumes as much as 20 to 25 quarts of whole grains, minerals and vitamins, 50 to 60 pounds of hay and over 30 gallons of water.

(1991-2010)

Roya
2930 W. Main

June 11
1200

AP1

4-11 III (15)
4-11 III (10)
4-11 III (25)

6-11 III (23)
4-9 III (13)
9-11 III (6) (46)

7-11 III (23) J
4-9 III (18)
9-11 III (2) (43)

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8-11 III (20) V
4-9 III (18)
9-11 III (5) (43)

9-11 III (2) (38)
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9-11 III (21)

4-11 III (15) V
4-11 III (35)

13-11 III (23) J
4-9 III (9)
9-11 III (5) (46)

14-11 III (23) J
4-9 III (23)
9-11 III (50)

15-11 III (19) J
4-9 III (15)
9-11 III (2) (32)

16-11 III (15)
4-9 III (18)
9-11 III (1) (37)

FATHER'S DAY
4-11 III (20)
4-11 III (19) (45)

20-11 III (13) J
4-9 III (16)
9-11 III (2) (36)

21-11 III (15) J
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9-11 III (4) (39)

22-11 III (16) J
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27-11 III (9) V
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28-11 III (13) V
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29-11 III (20) V
4-9 III (11)

30-11 III (17)
4-9 III (16)

TUESDAY

WEDNESDAY

THURSDAY

FRIDAY

SATURDAY

Royal Casino
2530 W. Main

July
Total
1317

1-4
1
4-9
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63

2-4
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19

BUDWEISER TRADEMARK
REGISTERED WITH U.S. PATENT
OFFICE (1878)

Prepared by:
Richard E. Huffman
DEMERSSEMAN JENSEN TELLINGHUISEN
STANTON & HUFFMAN, LLP
516 5th Street, PO Box 1820
Rapid City, SD 57709-1820
(605) 342-2814

DECLARATION OF RESTRICTIVE COVENANT

This Declaration is made this 1st day of September, 2011, by REEL WYNING LLC, a South Dakota limited liability company, of PO Box 2551, Rapid City, SD 57709-2551 hereinafter called "Declarant."

WHEREAS, the Declarant is the owner of and is desirous of committing the following described property to a restrictive covenant as stated below:

Lots 3 and 4 of Block 26 of South Boulevard Addition to
the City of Rapid City, Pennington County, South Dakota.

NOW, WHEREFORE, the Declarant makes the following declaration:

The above property is hereby bound by the following restrictive covenant so that in the event the City of Rapid City grants the currently pending appeal of the Rapid City Planning Commission's decision to deny a use on review so as to allow liquor to be served on the above described property which would result in an entity related to Declarant to operate what is commonly referred to as a "casino" on the property with just on sale malt beverage licenses (which licenses issued by the Department of Revenue are designated RB) then the property shall never be used to sell anything other than malt beverages in connection with a casino and any use of the property or attempted use of the property in connection with an on sale license (which licenses issued by the Department of Revenue are designated RL) which allows all liquors to be sold shall be prohibited without the City Council of Rapid City approving another use on review for that establishment and that use.

This Covenant shall run with the land and shall automatically renew in accordance with the statutes of the state of South Dakota and the case law in such cases provided for.

Dated this 1st day of September, 2011.

REEL WYNING, LLC, a South Dakota limited liability company

Damon Reel

Damon Reel, Member

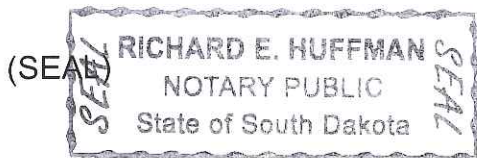
Steve Wynia

Steve Wynia, Member

State of South Dakota)
) ss
County of Pennington)

On this the 1st day of September 2011, before me, the undersigned notary public, personally appeared Damon C. Reel and Steve Wynia who acknowledged themselves to be the only members of REEL WYNING LLC, a South Dakota limited liability company, and as such members, subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



[Signature]

Notary Public

My Comm. Expires: March 29, 2017