



April 8, 2025

Mayor Hillary Schieve & Honorable City Council
Members
City of Reno
1 East First Street
Reno, Nevada 89501

Womble Bond Dickinson (US) LLP

One East Liberty Street
Suite 300
Reno, NV 89501-2128

VIA E-MAIL

**RE: Response to Smart Growth Reno’s Appeal of
LDC25-00031 (J Resort Festival Grounds)**

Garrett D. Gordon
Partner
Admitted in Nevada
Direct Dial: 775.321.3420
Direct Fax: 775.321.5569
E-mail: Garrett.Gordon@wbd-us.com

Dear Mayor Schieve & Honorable City Council Members:

This office represents Reno Real Estate Development, LLC, the applicant in the above-referenced matter (“Applicant”). On February 19, 2025, the Planning Commission held a public hearing and approved the Applicant’s request for a conditional use permit (“CUP”) to allow for the establishment of an outdoor festival/event space, with associated live entertainment, within the Mixed-Use Downtown Entertainment District (MD-ED) zone (the “Project”). The outdoor event space will have a maximum capacity of 15,000 patrons. Approval of the application will allow for 1) the establishment of an outdoor recreational venue and 2) outdoor live entertainment until 11:00 p.m. on Fridays and Saturdays. In an unanimous decision, the Planning Commission made all the requisite general and CUP specific findings after thoroughly considering the Project and hearing considerable public comment for and against the Project.

We are aware that the City has received an adverse appeal from Magali Rivera and Rick Heroux on behalf of Smart Growth Reno (collectively, the “Appellants”). The Appellants have aired a number of personal grievances against the Project in their appeal but have failed to demonstrate *how* exactly the Project will result in substantial adverse impacts that cannot be mitigated. The Appellants’ appeal is procedurally and substantively without merit; the former because the Appellants clearly lack standing to bring this appeal and the latter because most of the Appellants’ appeal is comprised of sweeping claims about the potential negative impacts of the Project, but none of these claims are substantiated with facts or evidence. Specifically, the Appellants’ claims of decreased property values or diminished quality of life are generalized and speculative, lacking solid evidence. Their position is entirely based on biased assumptions, not on proven facts. Furthermore, the Appellants’ claims about noise, traffic, and parking conditions are directly contradicted by the traffic impact study and acoustical analysis provided during the CUP process.

Below, we will address each of these concerns in detail and explain why the City Council should affirm the Planning Commission’s approval of the CUP.



I. Appellants Do Not Have Standing to Appeal this Project

The Appellants fail to meet the “aggrieved person” standard set forth in the Code¹ and NRS 278.3195(4)(b). *See DeMartini v. City of Reno*, No. CV20-00096 (Nev. Dist. Ct. Dec. 08, 2020) (Order Denying Petition for Judicial Review). The Appellants have aired a number of grievances, yet none of them rise to the level of demonstrating how their personal or property rights are adversely affected. If any person were allowed to appeal without alleging how any personal or property right would be harmed, then there would have been no reason for the City Council to adopt the aggrieved person standard, which must be met for an individual to have standing. As demonstrated in depth below, nowhere in the Appellants’ appeal have the Appellants demonstrated that any personal or property right is being substantially harmed. Instead, the Appellants ask the City Council to overturn the Planning Commission’s decision based on their specious claims.

Because Appellants do not have standing, the City Council must dismiss their appeal. In *DeMartini*, the Second Judicial Court provided guidance regarding standing pursuant to the “aggrieved person” standard required by NRS 278.3195(4)(b) and the Code. There, the Court explained that appellants who do not provide any explanation as to how their personal or property rights will be affected lack standing to bring an appeal, and the appeal must be dismissed. The Court considered petitioner DeMartini’s claims that he was an aggrieved person due to the petitioner’s “claims [that] his water rights will be adversely and substantially affected ... for quasi-municipal purposes” and that the basis for his appeal was “the alleged failure to evaluate wastewater impacts regionally.” *DeMartini* at *5. Before reaching any merits of DeMartini’s contentions, the Court found that DeMartini “failed to provide reasoning as to how the application would impact his water rights for quasi-municipal purposes.” *Id.* (internal quotation marks omitted). That is, DeMartini merely *claimed* he was aggrieved without providing at least some explanation as to *how* he was aggrieved, which was not sufficient for the case to proceed.

Similarly, the Appellants have made broad, sweeping claims that their property rights will be harmed, but they have provided no explanation, evidence, or facts to demonstrate *how* such rights are substantially harmed. Instead, the facts clearly demonstrate that the Applicant, the City’s Staff, and the Planning Commission spent significant time and resources ensuring that the Project would comply with all provisions of the Code and the Master Plan. There is no standing in this case, and the *DeMartini* Court has made it clear that the Appellants may not simply confer standing upon themselves merely because they are unhappy about a use permit approved by the Planning Commission. Allowing this appeal to move forward would render meaningless the aggrieved person standard under NRS 278.3195(4) and the Code.

In *DeMartini*, the Court also briefly considered DeMartini’s merits arguments despite concluding that standing did not exist. There, DeMartini based his appeal on the claims that:

the City failed to properly “consider” relevant provisions of NRS 278.349(3) when approving the tentative map because “(1) the Project requires the importation of water to Cold Springs and the impacts of water importation have not been evaluated regionally or

¹ *See* RMC Article 4, § 18.08.307(j).



included in the Comprehensive Regional Water Management Plan; and (2) water rights for the tentative map have not been identified and secured.”

DeMartini at *5. Yet the Court found that the City had “substantial evidence” in approving the applications in that case based on every element in the current version of NRS having been satisfied, finding that “DeMartini’s arguments directly contradict the record.” *Id.* at 6. In other words, even if DeMartini had standing, the record showed that the City had demonstrated how it had examined the statutory requirements and was able to make the requisite findings. The situation here is very similar, as the Appellants have only made emotional but unfounded arguments while City Staff, the Applicant, and the Planning Commission have all demonstrated with extensive analysis that the Project does meet all the requisite findings under the Code.

II. Traffic

The Applicant submitted a comprehensive Traffic Impact Study (“TIS”) with its CUP request, which was reviewed and deemed sufficient by Staff, various City divisions, and the Regional Transportation Commission (“RTC”). The Appellants’ concerns about traffic impacts are generalized, with no specific data or evidence supporting their claims. The TIS considered peak traffic times, event sizes, and existing traffic volumes to analyze the peak hour intersection level of service for sixteen intersections around the Project site. The TIS determined that even with an event with the maximum number of attendees, 15,000 people, only two of the sixteen intersections will operate at a Level of Service E/F conditions without any traffic mitigation measures. The Applicant has proposed, and the Planning Commission approved, several mitigation measures designed to reduce the traffic impact. These proposed measures vary by event size and can be found in Table 5 of the TIS. These proposed measures were explicitly designed to reduce traffic disruption, and there’s no evidence provided by the Appellants to suggest that these measures will be ineffective.

Further demonstrating the lack of due diligence on the Appellants’ part, they make several erroneous statements in their appeal. First, the Appellants claim that the CUP approval will cause LOSF traffic conditions and unmitigated post-event congestion, which will hinder safe access and mobility in the area. This is an incorrect statement on several levels. As discussed above, only one intersection would operate at LOSF condition and that is without any traffic mitigations in place. The Appellants completely ignore that numerous traffic mitigation measures proposed in the TIS will assist that one intersection in operating at a LOS higher than it would without any mitigation measures.

Second, as provided for above, and discussed at length in TIS and at the Planning Commission meeting, there are numerous traffic mitigation measures proposed that will be implemented based on each event size. Additionally, these traffic mitigation measures will be implemented from the event start time until 30 minutes after the event end time to manage egress traffic, which directly contradicts the Appellants’ claim that the approval of the CUP will cause unmitigated post-event congestion. Lastly, the Planning Commission reviewed the TIS and heard related concerns from some members of the public regarding traffic and concluded that the Project site would not result in significant adverse traffic impacts that would warrant denying this CUP.



III. Parking

The Appellants' argument in their supplemental written appeal statement regarding the parking situation fails to address a critical point: the Applicant owns all of the parking lots in question. As the owner of the land, the Applicant is in the unique and sole position to determine the highest and best use for these properties. This includes the decision to utilize the parking lots to support the Applicant's entertainment venues, including this Project.

The notion that using these parking lots for the Project would "remove this real estate for a future higher purpose" is fundamentally flawed. The Applicant, as the landowner, is already exercising their discretion to determine the highest and best use of these properties is to provide essential support to their entertainment venues, which includes accommodating event parking. Lastly, dismissing the Applicant's parking plans based on the Appellants' hypothetical concerns about future land use, without any solid evidence or justification, is an unreasonable argument. The Applicant has a vested interest in ensuring the success of this Project, which includes providing adequate and well-managed parking access during events.

IV. Consistent and Compatible with the Reno Master Plan and Zoning Code

Similar to their other claims, the Appellants' argument that the Project is inconsistent with the Reno Master Plan and the purpose of the applicable zoning district is based on an unsupported and generalized claim. Like their others, this claim lacks any facts or evidence to substantiate it. Simply stating that the Project is inconsistent with the Master Plan and the purpose of the applicable zoning district does not make it so. These claims from the Appellant are merely broad assertions made as if they were facts. Yet, these statements contrast directly with the detailed analysis and compelling evidence presented by the Applicant during the Planning Commission meeting, evidence that the Appellants have failed to counter with any proof at all.

As discussed at the Planning Commission meeting, the Project is located in the Mixed Use Entertainment District, the purpose of which is to function "as the 24-hour gaming area, as facilitated by the Gaming Overlay District, and includes major hotel-casinos and cultural/entertainment/recreational facilities."² This zoning district has been the Entertainment District for decades, and before it was the Entertainment District, it was the Downtown Casino District. The Entertainment District is the heart of Reno's entertainment and tourism economy, and its purpose is expressly to foster uses that enhance the vibrancy of Downtown Reno, including entertainment venues like the Project. As outlined in the Reno Municipal Code (the "Code"), the purpose of the Entertainment District is to accommodate high-intensity uses, including gaming, cultural activities, entertainment, and recreational facilities. The Project directly aligns with these goals by providing an entertainment facility that enhances the cultural and recreational opportunities available in Reno.

The Appellants' argument that the Project is incompatible with the Entertainment District's purpose is not only unsupported by the facts but also directly contradicts the intent behind the Entertainment District's creation. Additionally, the Appellants failed to demonstrate how the Project would negatively impact the

² RMC § 18.02.301(a).



overall objectives of the Entertainment District. The Appellants' failure to engage with the specifics of the Entertainment District's purpose or to explain precisely how the Project does not align with that purpose demonstrates just how meritless their appeal is.

Furthermore, the Appellants' claim that the Project is inconsistent with the Reno Master Plan completely ignores the policies and goals outlined in the Master Plan. For example, Policy 3.1C of the Master Plan states that the City should "encourage reinvestment in established casinos and the introduction of new uses and activities that strengthen Downtown's appeal as a tourism and entertainment destination. Strive to make Downtown the location of choice within the region for annual events, cultural celebrations, and other community gatherings." The Project directly supports this policy by introducing a new use that will appeal to tourists and locals and strengthen Downtown Reno's appeal as an entertainment destination. The Project will become a central gathering point for a wide range of events that will draw visitors and locals alike and enhance Downtown's reputation as the entertainment hub of Reno. In addition to Policy 3.1C, the Project advances many of the Master Plan's guiding principles, goals, policies, and strategies, including but not limited to the following:

- 1.1B: Community Development. The Project will provide a community venue which will attract visitors to this once neglected portion of Downtown Reno, promote patronizing businesses in the area, and improve on quality of life for residents and businesses. The Project will host a wide variety of events that will foster further engagement within the community and
- 1.2A: Arts and Outdoor Recreation Tourism. The Project will further support the J Resort's efforts to revitalize Downtown Reno, and will add a new venue for music, arts and cultural events that will add to Reno's tourism assets by stimulating the growth of visitors to the area and its reputation as a national destination for outdoor recreation, arts and culture.
- 1.2C: Existing Businesses. The Project is an extension of the J Resort Hotel & Casino. This use permit would support and encourage the expansion of the J Resort by adding an outdoor live entertainment venue to the J Resort property.
- 1.4E: Arts and Culture. The Project will provide an attractive venue and platform for local and regional artists and encourage the growth, creation and retention of artists and creative entrepreneurs.
- 1.5A: Quality of Life. The Project will provide a venue for arts and culture which will enhance a high quality of life and attract potential workers to the area.
- 1.5B: Urban Revitalization. The Project will continue the Applicant's efforts to revitalize Downtown Reno by providing a safe and accessible outdoor entertainment venue that will contribute to efforts to create a vibrant urban core.
- 3.1A: Downtown Districts. The Project supports a diverse mix of land uses by creating a new venue for the Entertainment District. The purpose of the Entertainment District is to support



“cultural/entertainment/recreational facilities, as well as retail, restaurants, high-density residential, and urban open spaces.” The Project is compatible and complimentary to the purposes of the Entertainment District and support the vision for the zoning District.

- 3.1F: Recreation. The Project provides a venue that will support the enhancement and expansion of recreational amenities, and contribute the enjoyment and quality of life of residents and visitors.
- 3.1G: Arts and Culture. The Project will enhance and promote arts and culture within Downtown Reno by providing a venue accessible to individuals who wish to celebrate the arts and culture.
- 3.2B: Public Spaces. The Project will enhance a space that has already been used as an event space and will expand recreational opportunities, increase opportunities for and the visibility of public art, and provide for the enjoyment of downtown residents, visitors and workers.
- 3.3B: Tourism, Arts and Entertainment. The Project directly supports the J Resort, an arts and entertainment resort, which is a core part of Downtown Reno’s tourism industry, while also broadening the range of tourism, arts and entertainment uses that will appeal to a more diverse demographic.
- 3.3D: Blighted and Underutilized Properties. The Project is redeveloping an underutilized surface parking lot into a valuable community amenity and entertainment destination.
- 4.2D: Community Amenities. The Project provides an entertainment venue that will promote community engagement.
- DTRC-ED.2: Mix of Uses. The Project will revitalize an underutilized lot and provide a live music and entertainment venue which is an identified activity-generating use that is ideal for the Entertainment District.

Once again, the Appellants’ claim that the Project is not compatible with the Master Plan, or the Entertainment District is not only unfounded but blatantly ignores the very goals and policies outlined in the Master Plan and the purpose of the Entertainment District provided in the Code. The Appellants’ position lacks substantive engagement with either the Master Plan or the Code. They make broad, unsupported statements about incompatibility with the Master Plan and the Code, but they fail to demonstrate how the Project actually conflicts with either. The Appellants’ claim is not rooted in any substantive analysis but is merely a meritless attempt to obstruct a perfectly appropriate and compatible Project.

V. Compatibility with Adjacent Uses

The Project is fully compatible with the surrounding uses. The Project will be part of the greater overall development plan for the J Resort’s Neon Line, which already includes the J Resort’s Glow Plaza and the J Resort itself, which is an established arts and entertainment resort in Downtown Reno. As the Project is



located in the Entertainment District, the surrounding uses are comprised of other mixed-uses that are compatible with the intended uses of the Entertainment District, which as provided above, is intended as the district for 24-hour gaming and entertainment facilities. The Project fits seamlessly into this context and will enhance the Entertainment District's role as Reno's center for cultural, entertainment, and recreational activities.

VI. Impact on Property Values

The Appellants claim that the Festival Grounds will harm property values without any credible evidence to support this claim. This claim is nothing short of speculative, unsubstantiated conjecture to detract from the well-planned, well-supported Project that will contribute to Downtown Reno's long-term growth and appeal. Nowhere in the appeal or the administrative record from the Planning Commission hearing did the Appellants provide any credible data or analysis to substantiate their claim that the Project would negatively impact property values. In reality, the Project will benefit neighboring properties because it will enhance Downtown Reno's vibrancy, attractiveness, and economic vitality.

VII. Quiet Enjoyment

The Appellants' claim that the Project will disrupt their "quiet enjoyment" of their property is entirely misguided. The right to quiet enjoyment is a legal principle implied in every lease agreement, providing tenants with security "against the acts or hindrances of landlords." Winchell v. Schiff, 124 Nev. 938, 947 (Nev. 2008). While property owners in Nevada are also afforded a right to enjoy their property, the right to quiet enjoyment is not an absolute, unfettered right to peace and solitude that extends to the exclusion of all entertainment activity in the surrounding area, particularly in an area that is explicitly zoned as the Entertainment District. As discussed above, the Project is located in a zoning district that is specifically intended as an entertainment zone with high-intensity, 24-hour uses. Property owners who choose to live or operate their businesses in such districts are expected to be aware that the noise, traffic, and public entertainment events are part of the urban downtown environment they choose to situate themselves. Property owners who choose to live in areas designated for entertainment, gaming, and high-intensity uses cannot reasonably expect the same level of quiet and solitude that might be found in a more suburban or residential area.

The Appellants' attempt to use the legal term "quiet enjoyment" as a blanket justification to stop all forms of activity that they find disruptive is a complete misapplication of the law. The right to quiet enjoyment does not equate to the Appellants' right to block any developments simply because they might generate noise or activity that the Appellant finds personally disruptive. Furthermore, the Appellants are not being asked to endure constant, daily, or even weekly, unchecked noise or disruption. The Project proposes limited hours of operation, and events will be limited to a certain number of days per calendar year. The Appellants' personal expectations of a residential standard level of noise do not align with the realities of urban living, particularly in an area zoned for entertainment.

Lastly, the Appellants claim that the Project violates RMC § 18.08.605(e)(6)(a)'s protection against nuisances. However, it is critical to look at this entire section of Code as a whole:



The granting of the conditional use permit will not be materially detrimental to the public health, safety, or welfare. The factors to be considered in evaluating this application shall include:

- a. Property damage or nuisance resulting from noise, smoke, odor, dust, vibration, or illumination;
and
- b. Any hazard to persons and property.

What the Appellants left out in their appeal is that this finding requires the nuisance to be such that it is **materially detrimental to public health, safety, or welfare**. While the Appellants may personally perceive the Project as a nuisance, it does not rise to the level of material detriment. The Appellants have failed to provide any evidence to substantiate their claims that the Project does not meet the finding required in RMC § 18.08.605(e)(6). Additionally, the entire Planning Commission was unanimously able to make all findings for the Project, including this one.

VIII. Availability of Public Services

The Appellants also state that there is a “lack of adequate public services” to support the Project. Again, this claim by the Appellants is unfounded. The Appellants state it as if it were a fact. The CUP is for an infill project, and the City confirmed for itself that there are sufficient public services to support the Project, and there is no evidence to suggest otherwise. The Planning Commission’s unanimous approval of the CUP reflects the conclusion that the public services currently available in the downtown area are more than adequate to support the Project. The Appellants have not provided any credible evidence to challenge this conclusion, and their statement regarding inadequate public services is without merit. Additionally, as pointed out by City Staff at the Planning Commission hearing, the Reno Police Department will be reviewing the special activity permits for each event and can evaluate for themselves whether they can provide the necessary amount of police officers to ensure public safety at each event. Reno Police Department is in the best position to determine if it has the requisite staffing for each event, not the Appellants.

IX. Noise Conditions

In addition to the other erroneous statements made in their appeal, the Appellants also incorrectly state that the CUP allows for unlimited noise amplification. Attached to the Appellants’ statement are the conditions of approval, which contain three separate conditions (Conditions 10-12) which provide for limitations on amplified sound and hours of operations, which directly contradicts the Appellants’ statement that the CUP permits unlimited noise amplification. The Appellants’ concern regarding noise levels overlooks the fact that noise levels are controlled to minimize impact. The Applicant has agreed to noise reduction measures, including a maximum number of large events, setting event end times and positioning the stage and sound equipment in a way that minimizes spillover into nearby residential uses.

X. Public Health, Safety, and Welfare

The Appellants have failed to provide any tangible evidence that the Project will have a material, harmful impact on the public health, safety, or welfare. Their argument is based solely on speculation and personal



preference rather than a substantive claim of harm. First, noise associated with outdoor events, particularly in an entertainment district, does not present a threat to public health, safety, or welfare. Second, the TIS demonstrates that the Project will operate in a manner that minimizes traffic congestion and considers pedestrian safety with specific measures designed to ensure the safe movement of pedestrians during events. Third, prior to each event, the Applicant will provide a Security Management Plan for review and approval to the Zoning Administrator, Code Enforcement Department, Public Works Department, Reno Fire Department, and Reno Police Department to ensure each event has an optimal security and public safety plan in place.

The Planning Commission unanimously determined that granting the CUP would not result in detrimental harm to public health, safety, or welfare. Additionally, the Applicant's proposed mitigation measures for noise controls and traffic management will minimize any potential negative effects on the surrounding community. Moreover, the Project will enhance the quality of life for residents because it will provide opportunities for cultural enrichment, community engagement, and recreational activities, all of which contribute positively to public health and welfare.

Accordingly, we respectfully request that this honorable body find that the Appellants' claims have no standing, and the appeal has no merit, and uphold the decision of the Planning Commission to approve the CUP.

Sincerely,

Womble Bond Dickinson (US) LLP

Garrett D. Gordon

Garrett D. Gordon