



Storey County Board of County Commissioners

Agenda Action Report

Meeting date: 1/05/16

Estimate of time required: 15 minutes

Agenda: Consent Regular agenda Public hearing required

1. **Title:** Possible action on Order of Remand from District Court requiring Storey County Board of County Commissioners to state on the record the basis for their decision on October 6, 2015 to deny the applications for a business license for the Bonanza.

2. **Recommended motion:** No motion is required. Hearing is for the purpose of clarifying the Board's reasons for the denial of the business license for the Delta Saloon as requested by Judge Wilson in his order of remand.

3. **Prepared by:** Keith Loomis

Department: District Attorney's Office

Telephone: 847-0964

4. **Staff summary:** See attached

5. **Supporting materials:** Order of Remand from District Court; Attachment.

6. **Fiscal impact:**

Funds Available:

Fund:

___ Comptroller

7. **Legal review required:**

District Attorney

8. **Reviewed by:**

___ Department Head

Department Name:

___ County Manager

Other agency review: _____

9. **Board action:**

Approved
 Denied

Approved with Modifications
 Continued

Agenda Item No. | |

Attachment to Agenda Request Form

On December 17, 2015, Judge Wilson of the First Judicial District Court filed an Order of Remand remanding the case of Malfitano et al v. County of Storey, Case No. 15 OC 00008 1E back to the Storey County Liquor Board and to the Board of County Commissioners. In the order, Judge Wilson stated:

This matter is remanded to the respective Boards **for the sole purpose** of having the respective boards state on the record the basis for their decisions to deny the applications.

The order is attached (emphasis added). The reference to “applications” appears to refer to the applications for liquor licenses and business license made by Dr. Malfitano, Virginia City Gaming LLC and Delta Saloon Inc. for liquor and business licenses for the Delta Saloon and the Bonanza. Judge Wilson is not ordering the Board to reconsider its decision nor is he ordering the Board to consider new evidence. Accordingly, the Liquor Board should expressly state its reasons for denying the liquor licenses. The Board of County Commissioners should expressly state why it denied the Bonanza a business license.

FILED

DEC 17 2015

Storey Co. Clerk

Deputy

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6 **IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR STOREY COUNTY**
8

9 **DR. VINCENT M. MALFITANO, an**
10 **individual; VIRGINIA CITY GAMING,**
11 **LLC, a Nevada limited liability**
12 **company; and DELTA SALOON, INC., a**
13 **Nevada corporation,**

Petitioners,

vs.

14
15 **COUNTY OF STOREY, acting by and**
16 **through the STOREY COUNTY BOARD**
17 **OF COUNTY COMMISSIONERS and the**
18 **STOREY COUNTY LIQUOR BOARD,**

Respondents.

-o0o-

CASE NO. 15 OC 00008 1E

DEPT. 2

**ORDER REMANDING TO
STOREY COUNTY BOARD OF
COUNTY COMMISSIONERS
AND STOREY COUNTY
LIQUOR BOARD**

19
20 Dr. Vincent M. Malfitano, Virginia City Gaming, LLC, and Delta Saloon,
21 Inc. (collectively Malfitano) raised issues they had not raised in their Ex Parte
22 Motion for Temporary Restraining Order and Motion for Preliminary
23 Injunction. Storey County did not object to the court considering the new issues,
24 so the court is going to consider those issues.
25

26 The basis for the Boards' decisions to deny the applications is relevant to
27 the new issues. The basis for the Boards' decisions is not clear.
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IT IS ORDERED:

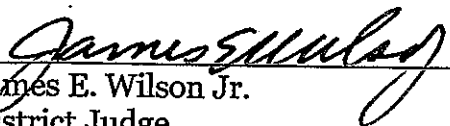
This matter is remanded to the respective Boards for the sole purpose of having the respective Boards state on the record the basis for their decisions to deny the applications.

The Boards will:

1. Set this matter on the earliest possible date consistent with notice requirements;
2. Give Malfitano lawful notice of the meeting; and
3. Within five days after the hearings, file with the court and serve Malfitano with a copy of the minutes of the Boards' meetings.

Within five days after the minutes have been filed the parties will confer and determine whether either or both want to file supplemental briefs. If the parties agree regarding supplemental briefing counsel for Malfitano will file a stipulation and submit a proposed order to the court. If the parties cannot agree, counsel for Malfitano will arrange for a telephone conference with the court and counsel.

December 18, 2015.

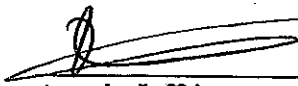

James E. Wilson Jr.
District Judge

1 CERTIFICATE OF MAILING

2 Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District
3 Court, and that on this 17th day of December, 2015, I deposited for mailing at Carson City,
4 Nevada, a true and correct copy of the foregoing Order addressed as follows:

5
6 Anne Langer, District Attorney
7 P.O. Box 496
8 Virginia City, NV 89440

9 Matthew Hippler, Esq.
10 5441 Kietzke Lane, Second Floor
11 Reno, NV 89511

12 
13 _____
14 Angela Jeffries
15 Judicial Assistant, Dept. 1
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CARSON CITY OFFICE

SEP 28 2015

HOLLAND & HART LLP

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STATE OF NEVADA
BEFORE THE NEVADA GAMING CONTROL BOARD

In the Matter of Nonrestricted
Agenda Item
N15-0234

DEWING GAMING MANAGEMENT, LLC, dba
DELTA SALOON,
18 S C ST
VIRGINIA CITY, NV 89440

and

DEWING GAMING MANAGEMENT, LLC, dba
BONANZA SALOON
27 N C ST
VIRGINIA CITY NV 89440

BRUCE EDWARD DEWING 100%
(Transferor)
VIRGINIA CITY GAMING, LLC 100%
(Transferee)
Sole Member

VINCENT MICHAEL MALFITANTO
Manager

APPLICATION FOR TRANSFER OF INTEREST

**APPLICATION FOR LICENSURE AS SOLE
MEMBER**

**APPLICATION FOR LICENSURE AS MANAGER
OF DEWING GAMING MANAGEMENT, LLC**

VIRGINIA CITY GAMING, LLC
3950 LONE TREE WAY
ANTIOCH, CA 94509

VINCENT MICHAEL MALFITANTO 100%
Member/Manager

**APPLICATION FOR REGISTRATION AS A
HOLDING COMPANY**

**APPLICATION FOR FINDING OF SUITABILITY
AS SOLE MEMBER AND MANAGER.**

ORDER

Office of the Attorney General
Gaming Division
5420 Klatzke Lane, Suite 202
Reno, Nevada 89511

1 **APPLICATION OF PLEDGE EQUITY**
2 **SECURITIES OF DELTA SALOON, INC. TO**
3 **ANGELO PETRINI, IN CONJUNCTION WITH THE**
4 **SECOND DEED OF TRUST DATED**
5 **SEPTEMBER 20, 2014**

6 *Or, in the alternative:*

7 VIRGINIA CITY GAMING, LLC
8 3950 LONE TREE WAY
9 ANTIOCH, CA 94509

10 VINCENT MICHAEL MALFITANO 100%
11 Member/Manager

12 **APPLICATION FOR FINDING OF SUITABILITY**
13 **AS A LANDLORD OF BONANZA SALOON**

14 **APPLICATION FOR FINDING OF SUITABILITY**
15 **AS A SOLE MEMBER AND MANAGER**

16 **APPLICATION FOR FINDING OF SUITABILITY**
17 **AS A LENDER FOR DEWING GAMING**
18 **MANAGEMENT, LLC**

19 **APPLICATION FOR REGISTRATION AS A**
20 **HOLDING COMPANY OF DELTA SALOON, INC.**

21 DELTA SALOON, INC.
22 (Virginia City Gaming, LLC – 100%)
23 18 S C ST
24 VIRGINIA CITY, NV 89440

25 VINCENT MICHAEL MALFITANO
26 President/Secretary/Treasurer/Director

27 **APPLICATION FOR FINDING OF SUITABILITY**
28 **AS A LANDLORD OF DELTA SALOON**

APPLICATION FOR FINDING OF SUITABILITY
AS AN OFFICER AND DIRECTOR

APPLICATION FOR FINDING OF SUITABILITY
AS A LENDER FOR DEWING GAMING
MANAGEMENT, LLC

29 THIS MATTER having come before the NEVADA GAMING CONTROL BOARD
30 (BOARD) during its hearing on August 5, 2015, in Carson City, Nevada, upon the applications
31 for transfer of interest in DEWING GAMING MANAGEMENT; LLC, dba DELTA SALOON and
32 dba BONANZA SALOON (DEWING) to VIRGINIA CITY GAMING, LLC (VIRGINIA CITY

Office of the Attorney General
Gaming Division
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511

1 GAMING); the application to license VIRGINIA CITY GAMING as the sole member of
2 DEWING; the application of VINCENT MICHAEL MALFITANO (MALFITANO) for licensure as
3 the manager of DEWING; the application of VIRGINIA CITY GAMING to be registered as a
4 holding company; the application of MALFITANO to be found suitable as the sole member and
5 manager of VIRGINIA CITY GAMING; and the application of VIRGINIA CITY GAMING to
6 pledge the equity securities of DEWING dba DELTA SALOON (collectively "licensing
7 applications"); AND, IN THE ALTERNATIVE, the application of VIRGINIA CITY GAMING to
8 be found suitable as the landlord of DEWING dba BONANZA SALOON; the application of
9 MALFITANO to be found suitable as the sole member and manager of VIRGINIA CITY
10 GAMING, the application of VIRGINIA CITY GAMING to be found suitable as a lender to
11 DEWING; the application of VIRGINIA CITY GAMING to be registered as a holding company
12 of DELTA SALOON, INC. (DELTA); the application of DELTA to be found suitable as the
13 landlord of DEWING dba DELTA SALOON; the application of MALFITANO to be found
14 suitable as an officer and director of DELTA; and the application of DELTA to be found
15 suitable as a lender to DEWING (collectively "landlord applications"); AND

16 WHEREAS THE BOARD, having received and reviewed all information relative thereto;
17 and having determined that VIRGINIA CITY GAMING, MALFITANO, and DELTA failed to
18 satisfy their burden of proving their qualifications to be licensed, registered, and/or found
19 suitable as required by NRS 463.170 and Nevada Gaming Commission Regulation 3.090;
20 AND

21 Specifically, the BOARD having found that VIRGINIA CITY GAMING, MALFITANO,
22 and DELTA failed to meet the requirements of NRS 463.170(3)(a) with regard to the licensing
23 applications by failing to prove themselves to have adequate business probity; Nevada
24 Gaming Commission Regulation 3.090(1)(c) with regard to the licensing applications and the
25 landlord applications by failing to prove themselves to have adequate business competence;
26 and, with regard to the licensing applications and the landlord applications, failing to disclose a
27 significant number of important items to the BOARD. AND SPECIFICALLY HAVING FOUND:

28

1 VIRGINIA CITY GAMING, MALFITANO, and DELTA filed applications with the BOARD
2 and failed to disclose numerous, recent, and financially significant items including, but not
3 limited to lawsuits, foreclosures, business interests, delinquent tax payments, tax liens, and
4 default notices. These are reasonable causes for denial of both the licensing applications and
5 the landlord applications.

6 VIRGINIA CITY GAMING, MALFITANO, and DELTA failed to carry their burdens to
7 demonstrate adequate business probity. This is demonstrated through nondisclosure of
8 business related issues to the BOARD, significant disclosed and nondisclosed litigation,
9 significant employment related issues from MALFITANO's assisted living business and his
10 prior dental practice, significant citations and actions by other regulatory agencies concerning
11 MALFITANO's assisted living business and his prior dental practice, the existence of
12 numerous prior tax liens, and the appearance of significant cash flow problems. These are
13 reasonable causes for denial of the licensing applications.

14 VIRGINIA CITY GAMING, MALFITANO, and DELTA failed to carry their burdens to
15 demonstrate adequate business competence. For the licensing applications, this is
16 demonstrated through nondisclosure of business related issues to the BOARD, significant
17 disclosed and nondisclosed litigation, significant employment related issues from
18 MALFITANO's assisted living business and his prior dental practice, significant citations and
19 actions by other regulatory agencies concerning MALFITANO's assisted living business and
20 his prior dental practice, the existence of numerous prior tax liens, and the appearance of
21 significant cash flow problems. For the landlord applications, this is demonstrated by
22 significant issues concerning foreclosures, delinquent tax payments, tax liens, and default
23 notices concerning the real property of MALFITANO or businesses owned by MALFITANO
24 which indicate MALFITANO is not suitable to be the landlord of a gaming establishment.
25 These are reasonable causes for denial of the licensing applications and the landlord
26 applications.

27 NRS 463.200 requires an applicant to file an application with complete details
28 concerning, at a minimum, his criminal history, antecedents, habits, character, business

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Gaming Division
5420 Kietzke Lane, Suite 202
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1 activities, financial affairs, and business associates. Nevada Gaming Commission Regulation
2 4.040(2) sets out it is grounds for denying an application if an applicant willfully omits any
3 material fact on his application. NRS 463.170(3)(a) requires applicants to demonstrate
4 adequate business probity. Nevada Gaming Commission Regulation 3.090 requires
5 applicants to demonstrate adequate business competence for the role or position for which
6 the application is made. NRS 463.1405(3) sets out that the Board may recommend the denial
7 of any application to the Commission for any cause deemed reasonable by the BOARD.

8 Based on the significant nondisclosures and the failure to demonstrate adequate business
9 probity and/or business competence of VIRGINIA CITY GAMING, MALFITANO, and DELTA;
10 AND

11 Consequently, good cause appearing:

12 IT IS HEREBY ORDERED, upon unanimous vote, that a recommendation of the denial
13 of the licensing applications and the landlord applications of VIRGINIA CITY GAMING,
14 MALFITANO, and DELTA, be and hereby are issued to the Nevada Gaming Commission
15 pursuant to NRS 463.1405(3) and 463.210(3), said recommendations being based upon


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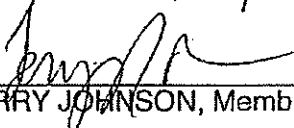
1 NRS 463.0129, NRS 463.170, NRS 463.200, Nevada Gaming Commission Regulation 4.040,
2 and Nevada Gaming Commission Regulation 3.090.

3 DATED this 26th day of August, 2015.

4 NEVADA GAMING CONTROL BOARD

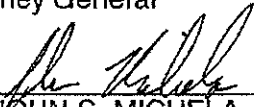
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6 
A.G. BURNETT, Chairman

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8 
SHAWN R. REID, Member

9
10 
TERRY JOHNSON, Member

11
12 Submitted by:

13 ADAM PAUL LAXALT
14 Attorney General

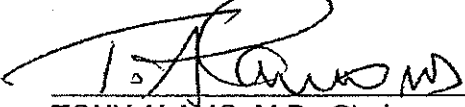
15 By: 
16 JOHN S. MICHELA
17 Senior Deputy Attorney General
18 Gaming Division
19 Attorneys for Nevada Gaming Control Board

20 **ORDER**

21 IT IS SO ORDERED in Agenda Item # N01-08-15, N15-0234.

22 DATED this 17 day of Sept ~~August~~ 2015.

23 NEVADA GAMING COMMISSION

24 
25 TONY ALAMO, M.D., Chairman

Office of the Attorney General
Gaming Division
5420 Kietzke Lane, Suite 202
Reno, Nevada 89511

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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Nevada Gaming Control Board as an Administrative Assistant to Marie Bell, the Executive Secretary of the Nevada Gaming Commission and the Nevada Gaming Control Board, and that on the date shown below I deposited for mailing at Carson City, Nevada, a true copy of the attached **ORDER OF DENIAL** addressed to:

VIRGINIA CITY GAMING LLC
C/O SCOTT SCHERER
377 S NEVADA ST
CARSON CITY NV 89703

I further certify that I provided an e-mail copy to John Michela (jmichela@ag.nv.gov) and Rebecca Zatarain (rzatarain@ag.nv.gov) Reno Attorney General's Office and Record's and Research.

DATED this 23rd day of September, 2015.



Kathi Franco, Administrative Assistant

1 MR. MCBRIDE: Aye, unanimous. Okay. Moving along now
2 to, uh, Item B on this, 13B. This would be on the general
3 license, which I assume would be for selling souvenirs or
4 logoed items for the --

5 MR. MORRIS: Conducting events and that type of
6 thing.

7 MR. MCBRIDE: Conducting events. Yeah.

8 MR. MORRIS: Yeah.

9 MR. MCBRIDE: Okay. Commissioners, any discussion on
10 this? Anyone in the audience have any questions regarding
11 this license? Can we get a motion for approval?

12 MR. L. GILMAN: I'll move to approve the second
13 reading for the general business license of Storey County
14 School District for Piper's Opera House.

15 MR. MCGUFFEY: I'll second that motion.

16 MR. MCBRIDE: It's been moved and seconded to
17 approve the general business license for Piper's Opera
18 House. All those in favor, signify by saying aye.

19 ALL: Aye.

20 MR. MCBRIDE: Aye. And motion carries. All right.
21 Moving along now to item Number 14.

22 This is discussion of possible action, approve
23 liquor and general business licenses for the Bonanza and
24 the Delta. We'll handle this like the last item. We're
25 going to handle 14A as liquor and 14B as general.

1 Uh, at this time, I -- I'll make a -- a, uh,
2 disclosure that, uh, I am in business on C Street and
3 hold a liquor license. Uh, I do not have any pecuniary,
4 uh, interest in either the Delta or Bonanza Saloons.

5 MR. L. GILMAN: Um, I've also disclose that I, uh,
6 operate a business on C Street. Um, I have no pecuniary
7 interest in the Delta Saloon or the Bonanza.

8 MR. MCBRIDE: Okay. Madame D.A.

9 MS. LANGER: Good morning. I think initially, uh,
10 when looking for the application -- and we're starting
11 out with, uh, Delta and the Bonanza on the liquor
12 licenses.

13 Um, it came to my attention, through numerous phone
14 calls and discussions, that, uh, NRS 369.190 would apply
15 to the, uh, liquor license, uh, regarding both
16 establishments.

17 And under that statute, it talks about when you
18 apply for a liquor license, that your moral character
19 would be one of the, uh, items that the board would take
20 into consideration and that they shall take it into
21 consideration when making their opinion on whether to
22 grant a liquor license.

23 However, in, um, further reviewing the statute and
24 researching, uh, deeper into the subject, uh, it's come
25 to the DA's office attention that actually, when you're

1 looking at a -- a liquor license, the, uh, 369.190
2 applies to wineries or breweries, places along that line.

3 However, when you're looking for a -- to a general,
4 uh, liquor license, what would apply in this, uh,
5 scenario would be, uh, the county code.

6 And the county code, in this circumstance, is, uh,
7 Section 5. So at this time, uh, the person that's done
8 the major research in this area is Bob Morris.

9 And so he will be taking on the, uh, presentation as
10 to, um, just procedures that the board, uh, would
11 probably, uh, legally like to know before making this
12 decision. Thank you.

13 MR. MCBRIDE: Okay. Thank you. Mr. Morris.

14 MR. MORRIS: Uh, thank you, uh, Mr. Chairman. Um,
15 Robert Morris, for the record. Uh, I was just going to
16 point out a -- a few sort of legal, um, areas that
17 provide the groundwork for the board's decision in this
18 matter.

19 Uh -- uh, initially, NRS 244.350 is the
20 authorization, uh, allowing the board of county
21 commissioners, uh, pass -- or -- or become the liquor
22 board and to pass regulations on the sale of, uh,
23 intoxicating liquors in their, uh -- in this county.

24 And so the, uh, NRS section allows the county to go
25 ahead and adopt ordinances, uh, for that purpose.

1 Uh, the county has adopted two different sections,
2 uh, Chapter 5.04 and that's, uh, for business licenses.
3 There is an additional section, Chapter 5.12, which deals
4 with the sale of alcoholic beverages.

5 Now, there's, um, the basic requirements, uh, for
6 any license within the county is contained in Chapter
7 5.04. Uh, there is a hearing on application Section
8 5.04.050 and it talks about, um, the need to have a
9 hearing on any license.

10 Since the alcoholic beverage license has additional
11 requirements, there is an additional section in the code
12 that -- that deals with it.

13 Um, I would just point out a couple of sections, um
14 -- uh, as I said, um, 5.04.050 is -- uh, has, uh, a
15 section about the hearing on the application. Generally,
16 uh, for a business license, there's a Section 5.04.100,
17 which, uh, gives grounds for the refusal of, uh, a
18 license.

19 And that basically says that a license may be
20 refused by any licensing agency until the applicant
21 complies or agrees to comply with all the ex- -- other
22 existing ordinances, laws in force, including the county
23 master plan and a license may be revoked for failure to
24 comply therewith.

25 And then it, uh, goes on specifically to say, for a

1 business license, um, if, uh, there's any unpaid taxes,
2 that that's a ground for re- -- uh, refusing, um, the
3 license. Since this is the, um, license, uh, for the --
4 the sales of, uh, alcoholic beverages, I think it's
5 important to, um, look at the -- the requirement for that
6 one.

7 And it's basically the -- in the first section of
8 5.12.010 and it says, basically, all new applicants for
9 liquor license authorizing the sale of alcoholic
10 beverages on or off prem- -- premises shall provide the
11 county liquor license board with the following.

12 And it, uh, seems like the primary consideration is,
13 uh, A, uh, proof of financial standing to warrant an
14 expected satisfactory and profitable business operation.
15 And so that's basically the -- uh, to provide the board
16 evidence to show that, um, the applicant, uh, is -- has
17 the financial standing to -- to have a -- a profitable
18 business operation.

19 Uh, I could probably talk about, uh, some more
20 areas, but I think that provides the -- the board with a
21 basic legal framework for, um, their decision today.

22 Uh, the business license has a lower standard of --
23 of what's required for its approval. Since there is a
24 specific section about, um, the sale of alcoholic
25 beverages, uh, there is an additional, uh, requirement,

1 uh -- uh, proof of financial standing.

2 And so what I think is important for the board to --
3 to look at is, um, if there is evidence, um, to show that
4 or if there's evidence not to show that. And I would
5 encourage the board, uh, to ask questions about that.

6 Um, the thing that I think is important in -- in,
7 uh, items like this is that the board to specifically
8 call out the reasons why they are voting one way or the
9 other on an item such as this.

10 So if -- if there are particular reasons that --
11 that you feel like your voting, uh, convinces you to vote
12 in a certain way, I think that it would be a -- um, good
13 to put those on the record.

14 Um, I -- I do have a little bit more, but I think,
15 um, the sheriff can go now. It's, uh, generally under the
16 -- the code sections the sheriff is, um, to do an
17 investigation in- -- into the, uh, background.

18 Uh, some of the other sections is that, uh, complete
19 background as to the applicant's criminal record and
20 experience in saloon or liquor vending businesses. Um --
21 uh, so, um, he is the one that's to report to the board
22 on this matter on -- on that part of it. So I'll turn it
23 over to the sheriff at this point.

24 MR. ANTINORO: Okay. Uh, in this case, the applicant
25 did make application to the county for the liquor

1 license. Uh, we did conduct, uh, an investigation as
2 outlined in [inaudible], um, finding nothing of a
3 criminal nature that would preclude him from having a
4 license.

5 Uh, during the course of the investigation, there
6 was, um, showing no significant finances and financial
7 background knowledge to where, uh, there would be no
8 reason for him to expect -- or no reason to expect that,
9 uh, the business would fail.

10 Um, I -- I think the reason we're here in doing this
11 with such bravado or gusto, whatever you want to call it,
12 is because of what happened recently with this particular
13 applicant with gaming.

14 Uh, gaming has a significantly higher standard than
15 what our county ordinances have, uh, requiring a much
16 larger showing of financial background and, um, knowledge
17 of the industry, things like that.

18 Uh, for the purposes of Storey County licenses and,
19 uh, licenses we have issued in the past, uh, nothing was
20 found in the applicant's background or during the course
21 of the investigation that would preclude him from
22 obtaining a -- a Storey County liquor license.

23 MR. MORRIS: And -- and, um, what I would suggest is
24 that, um, since the -- the matter of -- of the gaming
25 control board and -- and its order has been raised as --

1 as, uh, something that, um, the board might want to
2 consider, I do have a copy of -- of that order and I
3 would provide it to the record.

4 Um, I don't know if the board has had an opportunity
5 to -- to read this. Um, the- -- there is one section
6 that, um, I think, uh, the board might want to consider
7 and it's on page 4. If I could just read a paragraph.

8 It says, "Virginia City Gaming, Malfitano and Delta
9 failed to carry their burdens to demonstrate adequate
10 business competence, uh, for the licensing applications.
11 This is demonstrated through the nondisclosure of
12 business related issues to the board, significant
13 disclosed and non-disclosed litigation, significant
14 employment related issues from Malfitano's assisted
15 living and his prior dental practice, significant
16 citations and actions by other regulatory agencies,
17 including" -- or "Concerning Malfitano's assisted bus- --
18 uh, living business and prior dental practice, uh, the
19 existence of numerous prior tax liens and appearance of
20 significant cash flow problems."

21 Um, and I think the only reason you would use that
22 is to consider, uh, the financial standing of the
23 applicant and whether that would, uh, assist you in -- in
24 deciding whether you could expect, uh, satisfactory and
25 profitable -- profitable business, uh, operation.

1 MR. ANPINORO: I would offer up at this point, in
2 response to Mr. Morris' comments, is again, gaming has an
3 extremely high standard.

4 Uh, several of the state agencies have standards
5 that far exceed what we have ever given consideration to
6 in Storey County in the past. Um, I know one regulatory
7 agency, they require you have \$20,000 cash sitting in the
8 bank at your disposal for your business.

9 I don't know specifically what gaming requires,
10 however, in the course of our investigation, I think Mr.
11 Malfitano has, uh, significant personal holdings, uh,
12 according to the financial documentation he provided to
13 us.

14 He does have, uh, liquid resources along with real
15 property holdings and, uh, the CPA that we discussed, who
16 is familiar with Malf- -- Mr. Malfitano's, um, finances,
17 said that, uh -- uh, he doesn't see any reason why, uh,
18 he would not be successful in this endeavor.

19 Um, and if -- if -- if we're going to truly consider
20 what gaming offers on his financial status, then we
21 should look at what gaming requires as the level of proof
22 of financial stability, because I'm -- I'm sure, uh,
23 Commissioner McBride, I'm sure that with your knowledge
24 of the gaming industry, they have quite a significant
25 level of proof that's needed.

1 Um, and if we're going to hold this applicant to
2 that standard that gaming requires for a gaming license,
3 because I mean, now we're going to have to go back and
4 reconsider all our other liquor applicants who may have a
5 difficult time reaching that same threshold.

6 MR. MORRIS: And -- and just to follow up on, uh,
7 the sheriff's comments, uh, I would remind the board that
8 -- that it's not the gaming, uh, requirements that, um,
9 the applicant has to meet.

10 Uh, today, what you're deciding is basically this
11 one sentence, proof of financial standing to warrant an
12 expected satisfactory and profitable business operation.
13 So I think, um -- uh, what you're, um, looking at is that
14 specific standard or -- or the requirement.

15 MR. ANTINORO: And I'll throw out, uh, I believe,
16 uh, the county manager included too all the investigative
17 reports.

18 Um, well, I did not include -- include the personal
19 financial matters, because there's some protected
20 information in there.

21 Uh, the bottom line estimated value of, uh, Mr.
22 Malfitano's holdings are in excess of \$5 million is what
23 is listed.

24 MR. MORRIS: Um, I think we could ask the applicant

25 --

1 MR. L. GILMAN: [inaudible]

2 MR. MCBRIDE: I don't see the applicant in the
3 audience.

4 MR. L. GILMAN: Well, I -- I think the applicant's
5 agent is here.

6 MR. MCBRIDE: Bruce, are you representing Mr.
7 Malfitano today?

8 MR. KIDDIS: No. I'm going to -- no. I'm not
9 representing him, but I'm a citizen and I wanted to
10 comment when appropriate.

11 MR. MCBRIDE: Okay. Very good.

12 MR. MORRIS: And then -- then [inaudible].

13 MR. MCBRIDE: Tina, are -- are you here to represent
14 Mr. Malfitano today? You are?

15 MR. MORRIS: Yeah. Well -- well, we can do that at
16 the end of the public hearing --

17 MR. L. GILMAN: Okay.

18 MR. MORRIS: -- and, um, I'm surprised that he's not
19 here.

20 MR. L. GILMAN: Okay.

21 MR. MORRIS: Um --

22 MR. L. GILMAN: His general manager, she's prepared
23 to, uh, give testimony.

24 MR. MORRIS: Okay. Yes. Uh, I -- I think the -- uh,
25 you sort of have, uh, staff's, uh, view of the matter and

1 -- and I think it's appropriate for the applicant or
2 anybody that wants to speak to go ahead and -- and, um,
3 give public testimony. My understanding is the chair
4 might have some testimony as well, um, and then, uh, af-
5 -- after that, if there's any other questions, I think we
6 could answer them and -- and allow the board to go ahead.

7 MR. MCBRIDE: Okay. If you'd like to come up to the
8 podium and, uh, if you'll, uh -- uh, for the record, go
9 ahead and identify yourself once you get to the, uh,
10 microphone so the clerk will, uh, [inaudible] the
11 recording.

12 MS. PERKINS: Uh, Tina Perkins. I am the current
13 general manager at the Bonanza and the Delta for Dr.
14 Malfitano. Um, we have been working tirelessly getting
15 these properties prepared and we had health inspections
16 yesterday, which went very well.

17 Um, we were approved for the Bonanza Restaurant and
18 the bar and four of the bars in the Delta were approved.
19 We are not doing the restaurant there yet. It has a lot
20 of work to do.

21 Um, we have retained at least 15 of the prior
22 employees, um, 5 of them which came from the Sawdust
23 Restaurant. We really are trying to keep everybody
24 employed and everybody that has asked to stay has stayed.
25 So that's --

1 MR. MCBRIDE: Okay. Does anybody have any questions
2 for Ms. Perkins? Uh, yeah. We might -- we might ask you
3 to come back up; okay? Thank you. Bruce, did you want to
4 give testimony?

5 MR. KIDDIS: Bruce -- Bruce Kiddis [ph], resident of
6 Carson City, friend of Dr. Malfitano for 20 years. If I
7 had to describe the gaming board commission process in
8 one word, I'd say tilt.

9 I doubt any of you could pass the gaming commission
10 if they decided we don't want to. I mean, I watched that
11 whole process. You can be accused and you get the
12 documents. Anyway, I've seen how they twisted all that,
13 but that's not the point.

14 This is Virginia City. This is the -- the Old West.
15 Commissioner Gilman, you represent the best of
16 entrepreneurship. I mean, this young man -- I'll be 81
17 tomorrow, so I can call him a young man -- this young man
18 has made his money the old fashioned way.

19 He paid the seller, Mr. Petrini, \$4 million. I'm
20 sorry if Mr. Petrini regrets selling it. He could have
21 very easily in the contract -- they spent a year
22 negotiating.

23 He could've easily have said, if you don't get your
24 gaming license, I get first option to buy it back. He
25 didn't. Yes, we're sorry to mach- -- to see the machines

1 leave the Delta, but they may come back.

2 So, um, you know, I -- I -- it -- it's -- uh, this
3 whole process, uh, to me, having been born in '34 and
4 gone through the Depression and the war, I mean, uh, it -
5 - it -- it -- it is -- it's discouraging. All we hear is
6 government, government, government.

7 And this young man is an entrepreneur and he
8 deserves a change to run a business. And if he doesn't
9 make it, he'll go bankrupt or he'll sell it. Thank you.

10 MR. MCBRIDE: Thank you. Anyone else like to give
11 public testimony? Mr. Gallagher.

12 MR. GALLAGHER: Uh, Mr. Chairman, for the record,
13 Hugh Gallagher, um, Storey County Comptroller. I'm a -- I
14 merely don't comment on these things, but I have a couple
15 of things to -- that I want to remind the commission
16 about or at least, uh, advise them on.

17 Uh, number one is first and best use, um, going
18 forward. Um, that was a gaming establishment, uh,
19 originally continued, uh, and the process was it was
20 going to be, uh, continued as such.

21 It is no longer going to be that case. Uh,
22 profitability at that point of time, uh, comes somewhat
23 salted down. I don't know that.

24 Uh, so, uh, understanding the fact that the gaming
25 control board decided not to license the applicant, uh,

1 is a big concern going forward as to the profitability of
2 those two locations. Um, the other side is is that, uh,
3 there has been a number thrown out as to, um, the net
4 worth of the applicant, which is somewhere around \$5
5 million.

6 I'm not sure if there's -- uh, if that's an audited
7 statement or just an application, but if that's the case,
8 then, uh, that also should be probably examined to see if
9 that is not true. Thank you.

10 MR. MCBRIDE: Thank you, Mr. Gallagher. Anyone else
11 like to make public testimony. All right. Mr. Morris, uh,
12 following up, I will, uh, disclose that I -- after --
13 after reading that the applicant was denied by the, uh,
14 Nevada Gaming Control Board, decided to attend the next
15 meeting, which is before the Nevada Gaming Commission,
16 which was two weeks later. And I sat in the room with,
17 uh, several people, some that are in this room today.

18 And it was, uh, three hours of testimony and, uh --
19 and as, uh, Mr. Morris pointed out that, uh, you have to
20 have, uh, a -- a strong financial standing in order to be
21 licensed and that's not only by the, uh, liquor
22 regulations, but by gaming.

23 Uh, gaming pointed out, uh, a whole host of
24 different things of the, uh, lawsuits, foreclosures,
25 delinquent tax payments, tax liens, default notices, uh,

1 all of these items.

2 Uh, it was -- it was very discomfoting sitting
3 there, uh, listening to this testimony. Um -- uh, the
4 vote against the applicant for the gaming control board
5 was 3-0 for denial. And with the gaming commission, uh,
6 the vote was 5-0 for denial.

7 Uh, we're talking about financial stability and, uh,
8 a net worth of approximately \$5 million, uh, that -- that
9 dwarfs in what, uh, Commissioner Townsend on the gaming
10 commission, uh, stated that the debt that Mr., uh,
11 Malfitano has is \$12 million.

12 So, uh, there, uh -- it gives pause to that also.
13 Uh, Bruce, uh, suggested that Mr. Malfitano, uh, paid \$4
14 million for the properties.

15 It's probably true, but it's no secret that there
16 are, uh, large sums of debt that are attached to this
17 purchase in the -- in the amount of \$2.5 million.

18 So, uh, if you look at his financials and he's
19 upside down by \$7 million and he has outstanding debt of
20 \$2.5 million, uh, by removing gaming from the properties
21 and reducing the -- the, uh -- the -- probably the cash
22 flow by 60/70 percent, uh, doesn't make it a sustainable
23 business.

24 And as the sheriff pointed out earlier, I do have a
25 little bit of knowledge when it comes to gaming. Uh --

1 uh, my family's been in the gaming business since, uh,
2 the prohibition on gaming was lifted in 1931.

3 Uh, so, uh, with that said, I -- this is a pretty
4 up- -- uphill climb, uh, to, uh, ask to be licensed when
5 it doesn't look like there's any financial stability in
6 order to -- to operate these two businesses.

7 MR. ANTINORO: I would like to just throw out
8 something for consideration. I'm not, uh -- not a legal
9 beagle or anything, but what kind of precedent are we
10 setting with this?

11 Uh, we just licensed an entity without going through
12 this discussion on finances. Now, we assume that the
13 school board has sufficient money to keep that license
14 going and run a sustainable business, different type of
15 business, but when we're going to start looking --

16 Uh, I know Mr. Morris says we're not holding him to
17 a gaming standard, but in essence, we are, because
18 everything that we're talking about is what gaming says,
19 what gaming says, what gaming says.

20 And if gaming is going to say he has lawsuits, and
21 tax liens, and judgments, again, do we go back and look
22 at our existing license holders? Because we have existing
23 license holders that have suffered some of those same
24 issues, maybe not for the same reasons, maybe for the
25 same reasons.

1 Um, I'm not judging the applicant's business model.

2 Uh, from a personal perspective, I think -- uh, like Mr.
3 Gallagher pointed out, I think trying to run it just as a
4 bar, that the business is probably going to fail, because
5 I just don't see enough business supporting it.

6 However, that's not my bus- -- business to run or my
7 decision to make. Um, but are we going to hold this
8 applicant to a different standard and what we have, at
9 least for the last five years that I'm aware of, and a
10 different standard to what we just held the last approval
11 to?

12 MR. MCBRIDE: Well, I don't know if we're holding to
13 a different standard. It's just under -- here under, you
14 know, liquor license provisions are in Chapter 5.12.

15 "An applicant is required to provide to county
16 liquor license board the proof of financial standing to
17 one expected satisfactory profitable business operation."

18 With everything that's been laid out, can you -- can
19 you operate a profitable operation when you've just --
20 when you've just taken out the major source of revenue?

21 MR. ANTINORO: Um, I don't know what the breakdown
22 of revenues were. I don't know what his entire business
23 plan is for the operation of the buildings.

24 All I'm looking at is the consistent application of
25 the ordinances and the issuance of the liquor licenses

1 and I'm just wondering if we're treading on dangerous
2 waters, because it is -- it seems to me like a different
3 standard, but --

4 MR. MCBRIDE: I'd like the other commissioners to
5 weigh in on this.

6 MR. L. GILMAN: I'm -- I'm very, very troubled, uh,
7 in trying to weigh this evidence between two -- I -- uh,
8 the elephant in the room is the -- is the gaming board,
9 uh, review and analysis and I have reviewed that.

10 And -- and I'm going to assume that they had
11 investigative staff that was very qualified and they
12 looked carefully at this individual beyond perhaps what
13 we would do for a license, but, um, I can't ignore the
14 fact that were, uh -- that were explained in that
15 particular program.

16 And -- and if you follow what they found and the
17 reason they denied that gaming license, I don't see how,
18 as a body, that we can support, uh, a license for a
19 liquor license based upon our statutes. It -- it -- it
20 doesn't add up to me.

21 I understand the sheriff has done his investigation,
22 but I have another investigation over here that was done
23 by the gaming board in depth and I don't understand why
24 we're apart candidly, because the gaming board's license,
25 uh, investigation was clear and the violations are clear.

1 And the standard wasn't reached either for the
2 gaming license or in my opinion, for -- for a liquor
3 license. So I'm very troubled by that.

4 MR. MCBRIDE: Mr. McGuffey.

5 MR. MCGUFFEY: Yeah. Well, I -- I kind of find it,
6 uh -- uh, a tough pill to compare it with, uh, the school
7 board getting a -- a liquor license. They're not relying
8 on that liquor license to make lots of money. It's a perk
9 to get more business in receptions and in meetings of
10 that sort up there.

11 Uh, yeah. They do make some money. That's great.
12 That's -- that's -- they're trying to help support that
13 old building. It, uh, costs a lot of money to re- -- to
14 restore old buildings.

15 Uh, the -- as far as try- -- uh, are we going to
16 rely on the -- what the gaming board says? No. But it
17 sure gives you, uh -- the information in here sure gives
18 you an idea of what kind of person he is.

19 Uh, I mean, when they're -- they're saying that, you
20 know, on Page 4 here, "Other regulatory agencies
21 concerning this applicant's assisted living business and
22 prior dental practice, the existence of numerous prior
23 tax liens, appearance of sig- -- significant cash flow
24 prob- -- problems."

25 Uh, and -- and for the -- the landlord, he wasn't

1 even qualified to be a landlord. So there's -- there's no
2 -- he can't use somebody else's license.

3 He's -- you know, they're -- they put the hammer
4 down on him, but it kind of show you what kind of person
5 he's been. Has he changed? I don't know, I don't know the
6 man. So I -- I have a hard time.

7 I mean, the -- as you're looking at somebody who
8 lacks probity, uh, doesn't -- is not showing integrity
9 here, uh, to run a business and that's -- that's the way
10 the gaming board sees it. And with knowing that
11 information that they put out there as a public record is
12 like a question -- I would have to question that.

13 MR. ANTINORO: And again, the gaming board is
14 holding that position on the basis of their requirements
15 to hold a gaming license.

16 We have license holders in Storey County who have
17 had lawsuits, we have ha- -- we have license holders in
18 Storey County who have had judgments, we have license
19 holders in Storey County who have had tax liens.

20 Again, do we go back and review all of their license
21 now because we're going to hold them to a different
22 standard?

23 I could care less about Mr. Malfitano's business. I
24 could care less about gaming, because we're not talking
25 about a gaming license, we're talking about a Storey

1 County liquor license.

2 What I care about is that we are applying things
3 equally and fairly across the board to all our license
4 holders and all past, present and future applicants.

5 MR. WHITTEN: Can I [inaudible] -- can I
6 [inaudible]?

7 MR. KIDDIS: [inaudible]

8 MR. WHITTEN: Okay. I'd like to, uh -- I'd like to -

9 MR. MCBRIDE: We'll come back to you in a minute,
10 Bruce.

11 MR. WHITTEN: -- I'd like to extend, uh, the quote
12 into the record that Bob Morris started from Page 4 of
13 the gaming order, uh, and, uh, I believe Commissioner
14 McGuffey just touched on it. Uh, it continues on beyond
15 where it says, "And the appearance of significant cash
16 flow problems," which is where Council Morris stopped.

17 It says, "For the landlord applications, this is
18 demonstrated by significant issues concerning
19 foreclosures, delinquent tax payments, tax liens and
20 default notices concerning the real property of Malfitano
21 or business owned by Malfitano, which indicates Malfitano
22 was not suitable to be the landlord of the gaming
23 establishment."

24 Um, those were the basis for the gaming. I would --
25 I would tell you that those last ones that I've just

1 read, the foreclosures, the delinquent tax payments, the
2 tax liens, those are serious contraindicators of
3 financial standing.

4 Um, I issued these licenses for six years as
5 sheriff. I have sat in this seat for the subsequent 10
6 years of so, um, and I applied similar standards under
7 what are known in the industry -- in the banking industry
8 as the five Cs of credit where you're looking at
9 character, uh, and capacity as two of those major Cs in
10 order to extend things, like lines of credit, which I
11 did, um, secured and unsecured.

12 And I would tell you that once you become
13 knowledgeable -- once I became knowledgeable of this
14 level of concern from gaming, seeing the gaming's order,
15 in my opinion, you can't deny it.

16 Are we holding every other liquor license to the
17 same standard? I would argue that if we knew this type of
18 information about them, yes, we should, but we don't. In
19 this case, we know because of the gaming order.

20 We know because of the testimony you reflected that
21 you heard at the, uh -- at the gaming commission hearing.

22 Um, and I think once you're knowledgeable of this,
23 it really are serious indicators of lack of financial
24 strength and ability to -- to conduct a -- a business. So
25 staff recommendation would be to deny both liquor

1 licenses based on those findings.

2 MR. MCBRIDE: Okay. I'm prepared to take more public
3 testimony. Bruce, you wanted to, uh, come back up.

4 MR. KIDDIS: Earlier you approved your September 1st
5 minutes. In the minutes, on Item 13, it says, "If Dr.
6 Malfitano were to sever relations with doing gaming to
7 operate the businesses himself, there would be no delay
8 in obtaining the licenses. There is no reason not to
9 license Dr. Malfitano, except for the fact that it would
10 be a duplicate license." So that was a month ago. You
11 heard all about gaming.

12 You were also there, Commissioner, that, um, his
13 attorney, who had served on the gaming board, argued that
14 the standard for the gaming was different than the stan-
15 -- standard for being a landlord. So you heard that, but
16 it didn't matter, because, um, it was already -- the --
17 it -- it was already set.

18 Anyway, that's it. So what you say here, on
19 September 1st, is meaningless. So that's what your word
20 is. That's the story in Storey County, your word doesn't
21 count. It's -- you're a pathetic [inaudible] and do
22 whatever you want.

23 MR. MCBRIDE: Well, I'll re- -- I'll respond to your
24 comment. And you are correct, that is what was said in
25 the meeting here and I -- and I misspoke that day.

1 What I should've said, and -- and I'll say it right
2 now, to correct the record, I -- I should've said that
3 you can come back for consideration to have your license
4 approved. I did- -- I -- I admit, I did misspeak. You're
5 abs- -- you're absolutely correct.

6 But as -- as, uh, your friend's lawyer, uh, as he
7 testified before the gaming commission, lost his argument
8 all [inaudible] --

9 MR. KIDDIS: Yes.

10 MR. MCBRIDE: And here he was -- he is an expert,
11 because he kne- -- he's an expert in gaming law since he
12 was on the ga- -- since he was on the gaming board. So he
13 went -- he went amongst his peers and lost, which rarely
14 happens and it -- and it rarely happens that a person
15 goes through the application process all the way to
16 denial.

17 And I know this as a matter of fact, because myself
18 and my brother had to go through the same scrutiny that
19 your friend did in order for us to receive our gaming
20 licenses.

21 It's -- it's -- it's arduous. Uh, they undress you
22 all the way and when stuff like that comes out, that's --
23 that's just the way it is. So, uh, most of the items that
24 were there were items that were undisclosed, numerous
25 lawsuits.

1 I think there was in excess of 40 lawsuits. Numerous
2 lawsuits were undisclosed, sexual harassment, uh,
3 settlements that, uh -- all of these things that were
4 undisclosed. So I'm not talking out of school here.

5 The facts -- the facts are the facts. He had an
6 option to go ahead and withdraw his application, never
7 did it, took it to the mat and he got beat. So that's --
8 that's the way it is with gaming.

9 We're sitting here reading this five-page letter of
10 denial -- or six pages. You've read it too. So this is
11 public record. I'm not hiding anything from anybody. This
12 is public record.

13 So, uh, Bruce, I know he's your -- I know he's your
14 friend -- I know he's your friend, but I have to -- I
15 have to look out for what's good for Storey County, this
16 community of Virginia City, the taxpayers and the
17 wellbeing of the people who work and live in this
18 community.

19 This has been the most controversial issue that's
20 come up in my almost three years sitting on this
21 commission. I've gotten more phone calls and more walk-
22 ups to me at the post office, people that are so upset
23 and displeased at the decision that now we're going to
24 turn the Delta into a sports bar.

25 We have a -- we have a history of gaming in there

1 from back in the days, uh -- uh, of Angela's father
2 Dominic [ph]. Dominic and -- and my -- and my grandmother
3 Murray [ph] both immigrated from Italy before World War
4 II and were -- and had friendly, uh -- uh, rivalry and
5 competition on C Street all of those years.

6 And I -- and this isn't the way it's supposed to
7 turn out, not at all. He -- he had time -- he had time --
8 the gaming commission awarded Mr. Duing [ph], the
9 operator, a 90-day extension to operate with a denied
10 applicant giving -- giving Mr. Malfitano time where he
11 could find other avenues to -- to either sell his
12 property, sell it to the operator or do something else.
13 He opted -- he opted to take this path.

14 And -- and from my chair, it's -- it's not a good
15 path. And -- and -- and that's why we have so many people
16 in this room today, because, uh, pretty much everybody is
17 displeased, except maybe you and Tina. So --

18 MR. KIDDIS: My apology. Thank you.

19 MR. MCBRIDE: Anyway, I'll take any more public
20 testimony. Uh, Nicole [ph], I think you had your hand up.

21 MR. WHITTEN: And I do, while Nicole comes up, have
22 one item to clarify. Further in the -- in the minutes,
23 uh, that Bruce was, uh, citing, uh, it does indicate
24 County Manager Whitten stated that Sheriff Antinoro had
25 asked me to explain the licenses will be considered for

1 approval. So we did correct your misstatement at the time
2 to indicate they'd be considered, they would not be
3 approved.

4 MR. MCBRIDE: Now --

5 MR. WHITTEN: And this just reflect what was said
6 and what was corrected.

7 MR. MCBRIDE: -- you can just read the highlighted
8 parts of the, uh, minutes, which is most, uh,
9 entertaining.

10 MR. L. GILMAN: Well, the decision was made on what
11 we knew at the time and, uh -- and of course, we now have
12 more information on the table and it's important that we
13 make the proper decision.

14 I'm still so perplexed on why the two reports and
15 investigations are so different. I don't understand that.

16 MR. MCBRIDE: Ms. Bart [ph].

17 MS. BART: Nicole Bart, Storey County resident. I
18 understand, uh, you know, the concerns here, but before
19 you go up the slippery slope of trying to apply a higher
20 standard as demanded by gaming to our own local standard,
21 let's go back to our own local standard.

22 Did he disclose -- do we ask, on our liquor lic- --
23 our liquor application on business license, for
24 disclosure of the issues that came up at the gaming
25 commission? Do we ask people -- do -- do we ask them to

1 tell us if they --

2 You know, most employment applications ask if you've
3 ever been convicted of a felony, you know, so on and so
4 forth. Do our applicants ask for disclosure of this
5 information?

6 MR. ANTINORO: Some, yes. Some of the financial
7 stuff, yes, some of it, no. Uh, all the criminal stuff is
8 asked for disclosure, things like that. There was no --

9 MS. BART: Okay. Did he --

10 MR. ANTINORO: -- there were no omissions by Mr.
11 Malfitano on what we inquired of.

12 MS. BART: So -- because if there's something wrong
13 with our process that allows this -- the level of
14 magnitude of issue to pass by our investigation, if -- if
15 that's what's happening, we need to plug that hole at
16 home.

17 If, on the other hand, on our application, it asks
18 for this information and he failed to disclose that, then
19 it sounds to me that we can deny it based on our own
20 local requirement that it get disclosed.

21 Because I'm concerned, and certainly, we've got two
22 other people here, that if we take a step outside our own
23 local realm and -- and regulations and now start to use
24 that higher standard of the gaming commission, it may
25 have implications and set precedence for us locally we

1 may not like.

2 I'm -- I'm just -- I'm just saying if the violation
3 is on our regulations, our applications, our ordinances,
4 that's clean for us to say a denial. If we're stepping
5 outside of that, that may cause some problems. Just
6 asking that question.

7 MR. MCBRIDE: Okay.

8 MS. BART: I'm not advocating for or against it. I'm
9 just saying it leaves you open.

10 MR. MCBRIDE: Thank you, Ms. Bart. Anyone else like
11 to give public testimony? Uh, yes. Ms. Coen [ph].

12 MS. COEN: Judy Coen, C Street business owner and
13 Storey County resident. Although I don't have a liquor
14 license, my business is just a general business license,
15 I think that number one, nobody on C Street likes to see
16 what's happening, because I'm there every day.

17 But I think if there is a discrepancy, I think that
18 perhaps, as you -- as there have been overhauls and other
19 -- the statutes and whatnot, perhaps Storey County needs
20 to be really looked at if there are people, like Sheriff
21 Antinoro said, that have some of the same problems.

22 Maybe the whole statute needs to be -- or the law,
23 whatever it's called, needs to be looked at. But I -- as
24 a business owner, I don't like to see all this happening.
25 I don't have a vote, I don't have a voice. I just have an

1 opinion. But that's all I'm going to say. Thank you.

2 MR. MCBRIDE: Okay. Thank you. Anyone else.

3 MS. LANGER: Chairmen, before the vote, I'd just
4 like to go over a few, uh, rules. As I talked about
5 earlier, one of the, uh, first issues that have, uh, kind
6 of been wafting around was under NRS 369.190, moral
7 character.

8 And I think a lot of the issues that have, uh, come
9 up, uh, before the vote is to look at the licensing
10 procedure having to do with the ordinances of Storey
11 County to get a liquor license, a local liquor license.

12 That comes down to proof of financial standing to
13 warrant an expected satisfactory and profitable business
14 operation, that's it. None of this moral character,
15 doesn't apply.

16 Financial wellbeing under the -- the local
17 ordinance, that is what you're looking at and that is
18 what I would direct you to as counsel, uh, or, uh, Storey
19 County District Attorney.

20 MR. MCBRIDE: Thank you, DA Langer. Anyone else?
21 Okay. Staff's recommendation.

22 MR. WHITTEN: Staff's recommendation is to deny both
23 liquor licenses for the grounds that have been explained
24 to you and that you have explained on the record, your
25 concerns.

1 Uh, deny both licenses for the Bonanza and the
2 Delta, liquor.

3 MR. MCBRIDE: Okay. That being said, uh, looking for
4 a motion.

5 MR. MCGUFFEY: In what exactly grounds? You want to
6 specify those grounds again?

7 MR. WHITTEN: Uh, I believe each of you stated, you
8 know, fairly clearly in the record that you believe that
9 there are reasons to be concerned over the financial
10 standing and ability to conduct a business.

11 MR. MCGUFFEY: Well, might we want to, uh, make a
12 decision later and kind of verify those standings or do
13 we need to?

14 MS. LANGER: Depending on what your motion is, if
15 you, uh, choose to approve or deny the license, please
16 make it specific as to your reasoning behind approving it
17 or denying it in your motion.

18 That gives everybody an opportunity to agree with
19 the specific reasons for denying or approving the
20 license.

21 MR. MCBRIDE: Okay. Calling for motion, uh, for
22 denial on this license. Uh, I think financial standing
23 probably is a -- is a -- is a good measure to go by.

24 MR. L. GILMAN: I would move to deny the licenses
25 for, uh, the liquor for both the Bonanza and the Delta,

1 uh, based upon, uh, the probability of financial
2 instability to operate successfully here in Virginia
3 City.

4 MR. MCBRIDE: Do I have a motion?

5 MR. WHITTEN: I'll second that motion.

6 MR. MCBRIDE: I have a motion and a second. Call out
7 individually, uh, for, uh, members of the, uh, liquor
8 board to vote. Sheriff Antinoro.

9 MR. ANTINORO: Nay.

10 MR. MCBRIDE: Sheriff votes nay.

11 MR. L. GILMAN: Aye.

12 MR. WHITTEN: Aye.

13 MR. MCBRIDE: And aye. The record show three
14 commissioners aye, the sheriff a nay. So liquor license
15 is denied. Can we get through the general license?

16 MR. L. GILMAN: Yes. You can. You bet.

17 MR. MCBRIDE: Okay. And now we're going to move
18 onto, uh, 14B. This will be licensing for the general
19 license for the Delta and the Bonanza.

20 MR. L. GILMAN: [inaudible] from this one. Is that
21 me, the general?

22 MR. MORRIS: Uh, if I could just address the board
23 again, uh, briefly.

24 Um, if there's consideration of refusal of a
25 license, um, Section 5.04.100, um, has the specific

1 grounds that you can use for refusal and that, um, is
2 basically, uh, a license may be refused by any licensing
3 agen- -- agency until the applicant complies or agrees to
4 comply with all other existing ordinances, law
5 enforcement -- or law in force, including the county
6 master plan and license, uh, may be revoked for failure
7 to comply therewith.

8 And so the requirement is a general, uh, requirement
9 that, um, the applicant abide by existing ordinances and
10 laws. And so the refusal would be based on them -- uh,
11 the applicant not, um, complying with existing ordinances
12 and laws.

13 There's also a section about -- the following
14 section is about, uh, any unpaid real property taxes. And
15 my understanding is that has not, um, been brought up.

16 Um, so the business license has a different, uh,
17 requirement for approval and -- and denial than the --
18 the -- the liquor one.

19 MR. WHITTEN: So as that pertains right now, um, it
20 would be staff's position, subject to, uh, further input
21 from legal counsel, um, that as far as the Delta is
22 concerned, to the best of my knowledge, uh, they are
23 current on inspection requirements for both building and
24 fire, um, and would be eligible to meet that burden of
25 standard.

1 Uh, however, the Bonanza is not. There are still
2 some fire code, uh, issues being worked on as we speak.

3 So staff's recommendation, uh, is to go ahead, I
4 guess and -- and, uh, recommend approval for the Delta
5 and continuation of the Bonanza, uh, therefore, revoking
6 any temporary licenses granted earlier, um, and, uh --
7 and allow them to operate, uh, without liquor or gaming.

8 So the Bonanza would -- would not be allowed to
9 operate.

10 MR. MCGUFFEY: In the past, have we granted them to
11 operate their business in -- while they're making their,
12 let's say, fire, sprinkler improvements or anything like
13 that?

14 MR. WHITTEN: That is correct.

15 MR. MCGUFFEY: We have?

16 MR. WHITTEN: Yes.

17 MR. MCGUFFEY: Yeah. So, uh, we might -- may
18 entertain that possibility.

19 MR. WHITTEN: Uh, I'd like to speak chief to
20 compliance with that or status of that, I'm not sure.

21 MR. HAMES: Uh, thank you, Mr. Commissioner. Um,
22 Gary Hames for the record, Storey County Fire Protection
23 District Fire Chief. Uh, we've been working with them for
24 the last probably nine months.

25 And I apologize not having exact dates. Um,

1 generally accepted practices for our district is six
2 months. Um, we've gone over by three months. I think it's
3 a point and time where that building's not safe.

4 That building was disclosed, from my understanding,
5 at escrow that had to be fire sprinkled. Um, it's going
6 into almost a year now. Um, I don't think it's a safe
7 building. I would recommend that you do not issue a
8 general business license for that facility.

9 MR.. WHITTEN: Thank you.

10 MR. MCBRIDE: Do you have any questions on this?

11 MR. MCGUFFEY: I don't.

12 MR. MCBRIDE: Okay. Bruce, come on up.

13 MR. KIDDIS: Bruce Kiddis, Carson City. Would you
14 ask the chief if there is an agreement -- a written
15 agreement that says the sprinklers will be in by December
16 31st and that was negotiated in the county manager's
17 office. Is there agreement that says December 31st or
18 isn't there? There is.

19 MR. MCBRIDE: Chief.

20 MR. HAMES: Uh, thank you, Mr. Chairman. No. There
21 is not. There is an agreement in place that states that
22 it ties back to the gaming license approval. Uh, the
23 gaming license approval was not successful.

24 Um, in my opinion, that agreement is null and void,
25 because it -- it was tied to the gaming license. That

1 process was not fulfilled.

2 MR. MCBRIDE: Okay. Thank you, Chief. Any other
3 public comment on this? Any other questions from the
4 board?

5 MR. MCGUFFEY: Staff's recommendation to approve the
6 Delta business license and to deny the, uh, Bonanza
7 business license; is that correct?

8 MR. WHITTEN: That is correct. That is correct.

9 MR. MCBRIDE: So staff's recommendation is to, uh,
10 deny the Bonanza's general business license and to
11 approve the Delta's general business license.

12 MR. L. GILMAN: So moved. I would move to deny the,
13 uh, Bonanza business license and approve the Delta
14 general business license.

15 MR. WHITTEN: I'll -- I'll second that motion.

16 MR. MCBRIDE: And, uh, the denial would -- would be
17 lifted upon the time that the sprinkler systems were
18 completed with the Bonanza.

19 MR. WHITTEN: Uh, if you're going to -- if --

20 MR. MCGUFFEY: Reapply.

21 MR. WHITTEN: -- if you're going to do that, they'd
22 have to reapply.

23 MR. MCBRIDE: Reapply. Okay.

24 MR. MCGUFFEY: Reapply.

25 MR. MCBRIDE: All right. Motion on the floor is den-

1 -- deny the Bonanza business license and to approve the
2 Delta's general business license. All those in favor,
3 signify by saying aye.

4 ALL: Aye.

5 MR. MCBRIDE: Aye. That makes it unanimous. All
6 right. Um, we're going to go ahead and take about 10
7 minutes. We're going to go into recess right now. Come on
8 up, Bruce.

9 [audio break]

10 MR. MCBRIDE: First of all, is everybody ready?
11 Ready to go?

12 MR. MCGUFFEY: Yes. I'm sorry. Yes.

13 MR. MCBRIDE: Okay. Okay. We're going to reconvene.
14 The Storey County Board of County Commissioners meeting
15 and immediately recess to convene as a straight county
16 fire protection district board.

17 Item number 15, discussion of possible action
18 approval of resolution 15-431 approving portal to portal
19 payment for CFAA mutual aid request.

20 Chief Hames?

21 MR. HAMES: Thank you, Mr. Chairman.

22 Uh, the CFAA is, uh, a five party agreement between,
23 uh, federal parties, uh, U.S. forest service BLM,
24 California emergency service, Cal Fire, and then local
25 government.



Storey County Board of County Commissioners

Agenda Action Report

Meeting date: 1/05/16

Estimate of time required: 15 minutes

Agenda: Consent Regular agenda Public hearing required

1. **Title:** Possible action on Order of Remand from District Court requiring Storey County Liquor Board to state on the record the basis for their decisions to deny the applications for liquor licenses for the Delta Saloon and the Bonanza.

2. **Recommended motion:** No motion is required. Hearing is for the purpose of clarifying the Board's reasons for the denial of the liquor licenses for the Delta Saloon and the Bonanza as requested by Judge Wilson in his order of remand.

3. **Prepared by:** Keith Loomis

Department: District Attorney's Office

Telephone: 847-0964

4. **Staff summary:** See attached

5. **Supporting materials:** Order of Remand from District Court; Attachment.

** Please previous item for copy of supporting materials.*

6. **Fiscal impact:**

Funds Available:

Fund:

_____ Comptroller

7. **Legal review required:**

District Attorney

8. **Reviewed by:**

_____ Department Head

Department Name:

_____ County Manager

Other agency review: _____

9. **Board action:**

Approved
 Denied

Approved with Modifications
 Continued

Agenda Item No. 12

Attachment to Agenda Request Form

On December 17, 2015, Judge Wilson of the First Judicial District Court filed an Order of Remand remanding the case of Malfitano et al v. County of Storey, Case No. 15 OC 00008 1E back to the Storey County Liquor Board and to the Board of County Commissioners. In the order, Judge Wilson stated:

This matter is remanded to the respective Boards **for the sole purpose** of having the respective boards state on the record the basis for their decisions to deny the applications.

The order is attached (emphasis added). The reference to “applications” appears to refer to the applications for liquor licenses and business license made by Dr. Malfitano, Virginia City Gaming LLC and Delta Saloon Inc. for liquor and business licenses for the Delta Saloon and the Bonanza. Judge Wilson is not ordering the Board to reconsider its decision nor is he ordering the Board to consider new evidence. Accordingly, the Liquor Board should expressly state its reasons for denying the liquor licenses. The Board of County Commissioners should expressly state why it denied the Bonanza a business license.

FILED

DEC 17 2015

Storey Co. Clerk

Deputy

**IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR STOREY COUNTY**

-o0o-

DR. VINCENT M. MALFITANO, an individual; VIRGINIA CITY GAMING, LLC, a Nevada limited liability company; and DELTA SALOON, INC., a Nevada corporation,

Petitioners,

vs.

COUNTY OF STOREY, acting by and through the STOREY COUNTY BOARD OF COUNTY COMMISSIONERS and the STOREY COUNTY LIQUOR BOARD,

Respondents.

CASE NO. 15 OC 00008 1E

DEPT. 2

ORDER REMANDING TO STOREY COUNTY BOARD OF COUNTY COMMISSIONERS AND STOREY COUNTY LIQUOR BOARD

Dr. Vincent M. Malfitano, Virginia City Gaming, LLC, and Delta Saloon, Inc. (collectively Malfitano) raised issues they had not raised in their Ex Parte Motion for Temporary Restraining Order and Motion for Preliminary Injunction. Storey County did not object to the court considering the new issues, so the court is going to consider those issues.

The basis for the Boards' decisions to deny the applications is relevant to the new issues. The basis for the Boards' decisions is not clear.

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IT IS ORDERED:

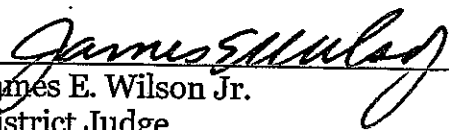
This matter is remanded to the respective Boards for the sole purpose of having the respective Boards state on the record the basis for their decisions to deny the applications.

The Boards will:

1. Set this matter on the earliest possible date consistent with notice requirements;
2. Give Malfitano lawful notice of the meeting; and
3. Within five days after the hearings, file with the court and serve Malfitano with a copy of the minutes of the Boards' meetings.

Within five days after the minutes have been filed the parties will confer and determine whether either or both want to file supplemental briefs. If the parties agree regarding supplemental briefing counsel for Malfitano will file a stipulation and submit a proposed order to the court. If the parties cannot agree, counsel for Malfitano will arrange for a telephone conference with the court and counsel.

December 18, 2015.

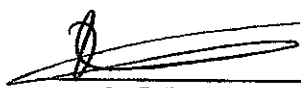

James E. Wilson Jr.
District Judge

1 CERTIFICATE OF MAILING

2 Pursuant to NRCP 5(b), I certify that I am an employee of the First Judicial District
3 Court, and that on this 17th day of December, 2015, I deposited for mailing at Carson City,
4 Nevada, a true and correct copy of the foregoing Order addressed as follows:

5
6 Anne Langer, District Attorney
7 P.O. Box 496
8 Virginia City, NV 89440

9 Matthew Hippler, Esq.
10 5441 Kietzke Lane, Second Floor
11 Reno, NV 89511

12 
13 _____
14 Angela Jeffries
15 Judicial Assistant, Dept. 1
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