

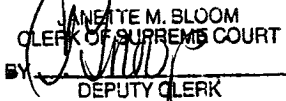
IN THE SUPREME COURT OF THE STATE OF NEVADA

ZANTE, INC., A NEVADA
CORPORATION,
Appellant,
vs.
CITY OF RENO, A POLITICAL
SUBDIVISION OF THE STATE OF
NEVADA,
Respondent.

No. 45837

FILED

OCT 29 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court order denying a petition for judicial review of an administrative decision denying a special use permit. Second Judicial District Court, Washoe County; Janet J. Berry, Judge.

In 2003, appellant Zante, Inc. sought to increase the number of slot machines at the Starlite Lanes Bowling Alley in Reno, to 150. To this end, Zante applied to the Reno City Council for a special use permit. The Council denied the permit on the grounds that Zante lacked standing because it applied for a special use permit when it should have sought a zoning variance. Zante filed a petition for judicial review of the Council's decision, but the district court denied the petition.

Zante appeals the district court's denial of its petition for judicial review. Zante argues that the district court erred by affirming the Council's denial of Zante's application on standing grounds. The parties are familiar with the facts, and we do not recount them here except as necessary for our disposition.

Because statutory and municipal code construction arguments present issues of law, this court undertakes an independent review of the

Council's construction of Nevada zoning law and the Reno Municipal Code (RMC).¹ However, this court recognizes that a city's "interpretation of its own land use laws is cloaked with a presumption of validity and will not be disturbed absent a manifest abuse of discretion."²

The Council possesses authority over special use permits that seek to resume and expand pre-existing nonconforming land uses.³ Zante argues that the Council should consider Zante's application for a special use permit on the merits because Zante seeks to resume and expand its preexisting nonconforming gaming use. Zante argues that under RMC 18.06.1001, its operation of slot machines at Starlite prior to 1982 was "grandfathered" into the City of Reno's zoning laws as a preexisting, nonconforming gaming use and, therefore, its application for a special use permit was proper to expand its nonconforming gaming use expansion under RMC 18.06.1004.

The City argues that Zante seeks to convert a nonconforming, nongaming use to a gaming use in a Community Commercial zone in which gaming is not permitted.⁴ The City also argues that Zante's application for a special use permit is inappropriate and that Zante must seek a zoning variance for this purpose. Therefore, the City concludes, the Council appropriately dismissed the action for lack of standing because Zante's application did not seek a zoning variance. The City asserts that

¹Kay v. Nunez, 122 Nev. ___, ___, 146 P.3d 801, 807 (2006); Vega v. Eastern Courtyard Assocs., 117 Nev. 436, 439, 24 P.3d 219, 221 (2001).

²Boulder City v. Cinnamon Hills Assocs., 110 Nev. 238, 247, 871 P.2d 320, 326 (1994).

³Reno, Nev., Mun. Code § 18.06.1004 (2003).

⁴See Reno, Nev., Mun. Code § 18.06.301 (2003).

Zante's operation of slot machines prior to 1982 was not grandfathered as a gaming use because from 1967 to 1989, Zante operated slots under a restricted license, which limited Zante to the operation of 15 or fewer slot machines. In 1982, the City's land use ordinances excluded the operation of 20 or fewer slot machines from the definition of gaming.⁵ Therefore, the City maintains that Zante never had a lawfully established land use of more than 20 slot machines. We agree.

Zante's operation of slot machines at the Starlite prior to 1982 was not grandfathered as a gaming use when RMC § 18.06.1001 became effective in 1982. In 1982, the definition of gaming in RMC 18.06.1202 excluded the operation of up to 20 slot machines.⁶ Zante operated slot machines under a restricted license, which limited Starlite to the operation of 15 or fewer slot machines. RMC 18.06.1001 grandfathered land uses only as they existed in 1982. Because Zante's pre-1982 restricted license authorized it to operate only 15 slot machines, and the operation of 20 or fewer slot machines did not qualify as gaming in 1982, Zante did not participate in gaming in 1982 and cannot claim grandfather status for any gaming use.

Zante next argues that its operation qualified as a gaming use after December 1999 when the City licensed it to operate 23 machines. The City argues that Zante obtained no land use privilege from the 1999 business license permitting it to operate more than 20 machines. Further, the City argues that the issuance of the license permitting Zante to operate more than 20 machines was the result of an administrative error

⁵Reno, Nev., Mun. Code § 18.06.1202 (2003) (effective January 1, 1982).

⁶Id.

and, in any event, could not transform Zante's preexisting nongaming use to a gaming use. The City asserts that a city employee cannot waive the mandatory requirements of a zoning ordinance. We agree.

The RMC classifies gaming as a privileged activity that a business may conduct pursuant only to a privileged license.⁷ A privileged license is revocable, and the business obtains no vested rights pursuant to its issuance.⁸ Because all Zante received was a privileged license, Zante did not acquire the right to operate more than 20 slot machines. Therefore, the issuance of the license did not convert Zante's nongaming use to a gaming use.

Starlite is located in a district zoned Community Commercial, and gaming is not permitted on land zoned Community Commercial.⁹ The City's land use laws are mandatory, and an official acting within a general grant of authority cannot waive mandatory land use requirements.¹⁰ The issuance of a license to operate more than 20 slot machines was an act by a city official under a general grant of authority. Because a city employee cannot waive mandatory zoning requirements, Zante did not acquire a gaming land use under the license to operate more than 20 slot machines.

The City correctly concluded that Zante does not have standing to seek an expansion of a nonconforming gaming use by way of a special use permit.

⁷Reno, Nev., Mun. Code § 5.05.005 (2003).

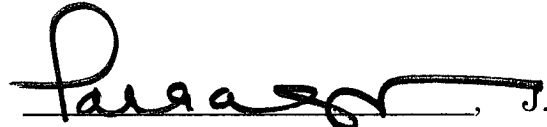
⁸Reno, Nev., Mun. Code § 5.05.007 (2003).

⁹Reno, Nev., Mun. Code § 18.06.301 (2003).

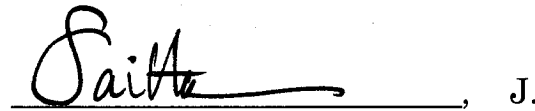
¹⁰See Bankus v. City of Brookings, 449 P.2d 646, 648 (Or. 1969).

Accordingly, we affirm the district court's order denying Zante's petition for judicial review.

It is so ORDERED.


Parraguirre, J.


Hardesty, J.


Saitta, J.

cc: Hon. Janet J. Berry, District Judge
Patrick O. King, Settlement Judge
Zeh & Winograd
Reno City Attorney
Washoe District Court Clerk