



101-00193

March 5, 2009

KENNETH R. FOUNTAIN
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VIA CERTIFIED and REGULAR U.S. MAIL

Escambia County
Attention: Alison Rogers, County Attorney
223 Palafox Place
Pensacola, Florida 32591

**RE: Development Review Application
Project Name - Perdido Key Retail
Project Address - 13585 Perdido Key Dr, Pensacola, FL 32507**

Dear Ms. Rogers:

I represent Perdido Key Association, a community service organization comprised of approximately 747 households consisting of 1750 residents, property owners, and businesses.

This letter will address important issues involving a proposed development in Perdido Key. As you are no doubt aware, the development at issue involves proposed gambling on Perdido Key by way of a bingo resort. It is incumbent upon the Association to inform Escambia County that the nature of gaming involved is prohibited by both state and federal law, and I intend to address both in this letter.

Bingo In Florida

To begin, bingo has been recognized as a criminally punishable form of prohibited gambling pursuant to Chapter 849, *Florida Statutes*. Creash v. State, 179 So 149 (Fla 1938). The term "bingo game" is defined in §849.0931(a), Florida Statutes. This section clearly contemplates a "traditional" game whereby players purchase a bingo card (also defined within this Statute). The game is played by having numbers drawn individually and by chance. The numbers are announced as they are drawn and players mark the numbers on their cards. A player wins when the numbers marked on his card are in a given order. This Statute, at §849.0931(f), also defines "instant bingo" as a form of bingo whereby a players removes the cover from a ticket

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to reveal letters, numbers, objects, or patterns in order to win. Although "instant bingo" may be different in form than traditional bingo, the statute explicitly states that "instant bingo" is played at the same location as traditional bingo.

There are exceptions to the general prohibition on bingo in Florida. Specifically, §849.0931(2)(a), *Florida Statutes*, allows for bingo to be conducted by charitable, non-profit, or veterans' organizations, and even then only if all proceeds go to charitable, benevolent, civic, community, religious, or scholastic works. The only other exception to the prohibition on bingo is if the entirety of the proceeds are returned to the players in the form of prizes. §849.0931(3), *Florida Statutes*.

The proposed development at issue in no way fits within the very narrow exceptions provided for in Florida. The gaming proposed appears to involve instant bingo alone, but by definition instant bingo may only take place at the same location as traditional bingo. The entity conducting the gaming is not a charitable, non-profit, or veterans' organization. The proceeds from the gaming do not go toward charitable, benevolent, civic, community, religious, or scholastic works, nor are the proceeds returned to the players in their entirety as prizes. The proposed bingo resort is very clearly intended to be a for-profit gambling enterprise, and is therefore prohibited under Florida Statutes.

Federal Issues

It would seem that the proposed development seeks to avoid the prohibitions in Florida law by fitting into a federally-recognized gambling allowance. Specifically, the Developer, Key Development, LLC, is seeking to align itself with a Native American tribe. In this instance, that group is the Perdido Bay Tribe of Lower Muscogee Creek Indians. However, the facts of the matter show that the federal exceptions are inapplicable.

The controlling authority is provided by the Indian Gaming Regulatory Act found at 25 U.S.C. §2701 et seq ("the Act"). A fairly concise statement of the Act is stated at 25 U.S.C. §2701(5), which reads:

"Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity."

The Act goes on to define the term "Indian tribe" as a group meeting two requirements: 1) recognition by the Secretary of the Interior; and 2) one possessing powers of self-government. 25 U.S.C. 2703 §2703(5). Also defined is the term "Indian lands" which means those within the limits of an Indian reservation, or those held in trust by the United States and over which an Indian tribe exercises governmental power. 25 U.S.C. §2703(4).

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One need not delve deeply into the Act to see that it does not apply to the proposed development. The right to regulate gaming exists only if the State involved does not prohibit gaming. The State involved in this instance is Florida. As demonstrated above, Florida expressly prohibits bingo when operated for profit, which is precisely what is proposed by this development. Without reading any further into the Act, it is evident that it does not apply to the proposed development.

Additionally, the proposed development does not involve an Indian tribe which is eligible for gaming rights. Although the Perdido Bay Tribe of Lower Muscogee Indians may be a united group of Native Americans, they are not, by definition, an Indian tribe because they are not recognized by the Secretary of the Interior. A list of federally recognized tribes is maintained by the Department of the Interior, and the Perdido Bay Tribe of Lower Muscogee Indians is not included. Without such recognition, this group does not have the right to regulate gaming.

Lastly, the proposed development is not located on the requisite Indian lands. The property involved is not within the limits of an Indian reservation. Also, the property is owned by Perdido Hospitality Limited and, prior to becoming vacant, it housed a Best Western hotel. It is not held in trust by the United States. The fact that an Indian tribe does not exercise governmental power over the property is demonstrated by the proposed developer's filing of the Development Review Application.

The Association is very concerned about the Development Review Application for the reasons mentioned herein. I trust that Escambia County will immediately evaluate the Development Review Application and the anticipated illegal gaming activity at the project site. Please do not hesitate to call me to discuss this matter in more detail. Thank you for your consideration.

Very truly yours,
Fountain, Schultz & Associates, P.L.



Kerry Anne Schultz, Esquire
Scott C. Bridgford, Esquire

KAS/SCB/rmb

cc: Commissioner Wilson Robertson (via facsimile)
Commissioner Gene Valentino (via facsimile)
Commissioner Marine Young (via facsimile)
Commissioner Grover Robinson (via facsimile)
Commissioner Kevin White (via facsimile)

NOTES FOR THE DEVELOPMENT REVIEW MEETING

Thank you for your time.

I am not against developing the island. I am pro development.

I am not anti-gambling.

I am asking you to delay your decision on this project until the required procedures are followed.

What concerns me on this development is the review process itself.

I have six specific items I wish to address.

1. The application shows this as a minor site review. The code clearly defines the characteristics of a minor site review and this modification is clearly not within that definition. The code clearly states that modifications that are not minor should be filed as a major site review.
4.06.03
Perdido Key Condominiums Site Plan
2. Traffic Concurrency Worksheet calculations are based on a building of 15,000 sq. ft. The application has been modified to a 18,000 sq. ft. building.
3. Water and Sewer Concurrency. There is not a current water or sewer concurrency statement in the file. The document in the file from ECUA is based upon the Perdido Key Condominiums project. The letter from ECUA clearly states that they can guarantee service for a period of one year. The letter is dated 10-24-2007.
ECUA letter
4. The floor plan is does not have an engineer's seal or signature.
5. The elevation drawing is not a scaled drawing and does not have an engineer's seal.
6. There are inconsistencies throughout the file as to the size of the project.

This project appears to have been placed on the fast track for approval. This concerns me as there are serious and required components that have not been answered.

I sent your office an email on February 20, 2009. Prior to sending the email, I spoke with your staff. I was told by your staff that due to the sensitive nature of my concerns, they would need guidance from Mr. Kerr before they could respond. I have not received a response.

Again, I am asking that this be delayed until the required procedures are followed.

Thank You.