



City of Broken Arrow

Legislation Details (With Text)

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On agenda:	8/1/2017	Final action:	8/1/2017
Title:	Consideration, discussion, and possible approval of Resolution No. 1039, a Resolution expressing objection to illegal gaming on a Muscogee (Creek) Nation Allotment owned by Bim "Steve" Bruner, and located between the Creek Turnpike and Tucson Street, west of Olive Street, in the city limits of the City of Broken Arrow, Oklahoma (the "Bruner Allotment"); expressing its support for the Leadership of the Muscogee (Creek) Nation, and specifically expressing its appreciation to the Leadership of the Muscogee (Creek) Nation for taking measures to investigate and address illegal gaming within its jurisdiction; authorizing Stephen Bugg, Attorney at Law, to notify the National Indian Gaming Commission (the "NIGC") of the Council's objection to illegal gaming on the Bruner Allotment, and also to the Department of the Interior of the Solicitor and the Bureau of Indian Affairs, of the City Council's objection to illegal gaming on the Bruner Allotment; and approval of and authorization for the City Manager to take all actions reasonably necessary to assist with addressing illegal gaming on the Bruner Allotment and to work to address all matters of concern regarding development on the Bruner Allotment that relate to the health, safety and welfare of the citizens of the City of Broken Arrow		

Sponsors:

Indexes:

Code sections:

Attachments: 1. BRUNER RESOLUTION MCN EDIT Resolution 1039.pdf

Date	Ver.	Action By	Action	Result
8/1/2017	1	Broken Arrow City Council		

**Broken Arrow City Council
Meeting of: 08-01-2017**

To: Mayor and City Council
From: Office of the City Attorney

Title:
Consideration, discussion, and possible approval of Resolution No. 1039, a Resolution expressing objection to illegal gaming on a Muscogee (Creek) Nation Allotment owned by Bim "Steve" Bruner, and located between the Creek Turnpike and Tucson Street, west of Olive Street, in the city limits of the City of Broken Arrow, Oklahoma (the "Bruner Allotment"); expressing its support for the Leadership of the Muscogee (Creek) Nation, and specifically expressing its appreciation to the Leadership of the Muscogee (Creek) Nation for taking measures to investigate and address illegal gaming within its jurisdiction; authorizing Stephen Bugg, Attorney at Law, to notify the National Indian Gaming Commission (the "NIGC") of the Council's objection to illegal gaming on the Bruner Allotment, and also to the Department of the Interior of the Solicitor and the Bureau of Indian Affairs, of the City Council's objection to illegal gaming on the Bruner Allotment; and approval of and authorization for the City Manager to take all actions reasonably necessary to assist with addressing illegal gaming on the Bruner

Allotment and to work to address all matters of concern regarding development on the Bruner Allotment that relate to the health, safety and welfare of the citizens of the City of Broken Arrow

Background:

In August of 2016, City Staff received a request from Dave Sanders, a Civil Engineer with Sanders Engineering, Inc., to meet regarding a proposed dance hall and restaurant. The facility was proposed for location south of the Creek Turnpike and west of Olive (South 129th East Avenue). The property is owned by Steve Bruner and is a Creek Indian Allotment. Of the original 160-acre tract, two portions have been removed from restricted status. The first is area condemned in Federal Court by the Oklahoma Turnpike Authority. The second involved approximately 2.5 acres that were removed so that a family member could obtain a mortgage for a home.

The City Attorney and a Staff Attorney met with Mr. Bruner, Mr. Sanders, and an architect with KKT Architecture. The project was originally described as a dance hall and restaurant, set back from Olive Street and closer to the Creek Turnpike right-of-way. Mr. Sanders told City representatives that the proposed development would be serviced by on-site well water, an on-site wastewater facility, and a stormwater detention pond. Mr. Bruner indicated he was not seeking access to any city infrastructure or utilities. Although a Creek Indian Allotment, Mr. Bruner indicated a willingness to work with City Inspectors and comply with all City Building Codes.

At the time of the meeting, Mr. Bruner was in the process of negotiating for operation of the proposed dance hall and restaurant. When asked about gaming, he indicated that there was a possibility that Class 2 Gaming Machines would be included as part of the operation. His representatives told Staff that no final decision with regard to gaming had been made and incorporation would be at some time in the future.

Because of the controversy involving proposed casinos on nearby Creek Allotments, the City Manager directed Staff to develop action steps to inform the City Council and the public of the proposed development. The City Attorney remained in contact with Mr. Sanders and provided infrastructural information in accordance with the provisions of the Open Records Act.

On October 18, 2016, the proposed project was placed on the City Council agenda for an update and discussion. Mr. Bruner declined an opportunity at that time to make a formal presentation to the Council because he believed it would be pre mature. A number of protestants appeared at that meeting and expressed concerns about the proposed project and the possibility of gaming.

At the July 3rd Council Meeting, the City Attorney updated the Council on the status of this project. The relevant events were presented as follows:

1. The City Attorney and the Economic Development Coordinator met with Mr. Bruner and his representatives on at least two occasions. At these meetings, Staff was allowed to review schematics of the proposed development, including other phases of the proposed development. Although conceptual, the proposed development included an apartment complex, a full-service hotel, an outdoor events area, and retail and other commercial businesses.
2. The City Attorney facilitated provision of plans, records and other documents regarding available City infrastructure in the area, including location of water and sanitary sewer mains. Importantly, information provided fell squarely within the provisions of the Open Records Act. Staff considered the availability of water service to be particularly important, especially with the indication that multi-family development was being considered as part of this project. Provision

of water and fire service is critical to the health, safety and welfare not only of those living within the development, but Broken Arrow citizens living near the proposed development.

3. The Mayor, the former Vice-Mayor and the City Manager met with Mr. Bruner and his attorney regarding the proposed development. They reviewed the conceptual drawings of the proposed development. The Mayor did not commit to the provision of city utilities and he emphasized several times that he was not in support of any gaming whatsoever at this location. The Mayor and the City Manager also met with Jared Cawley, an attorney that has been very active in citizen groups that oppose gaming in the City of Broken Arrow. Both the Mayor and the City Manager emphasized their opposition to gaming and the city council's commitment to oppose gaming in this area.

4. Very recently, there have been several articles in the *Tulsa World* about the proposed development. Highlights included involvement of Luis Figuerdo, a Florida attorney who was intimately involved with the prior Casino project located to the north of this site on another Creek Allotment owned by Marcella Giles and Wynema Capps. References by Mr. Figuerdo to the Kialegee Tribal Town are particularly concerning. One article even indicates that the Tribal Town sent a 120-day notice letter of intent to issue a facility license to the National Indian Gaming Commission (NIGC). NIGC representatives confirmed receipt of the Tribal Town's notice. That particular article also indicated that the Muskogee (Creek) Attorney General sent a letter to Mr. Bruner advising him that this property is within the Nation's jurisdiction and that he must follow all federal and tribal laws with regard to gaming.

5. The City Attorney has had numerous conversations with the attorney for Mr. Bruner, as well as the City's sovereignty attorney about this proposed development. Mr. Bruner's attorney most recently advised that gaming is likely to be a part of the Embers Grill and future phases of development. He stated that the plan is presently to open the restaurant and sports bar without gaming. The City's expert in sovereignty is closely monitoring the situation and providing important legal advice about proposed actions that can be taken by the City and its officials to prevent gaming at this location.

Importantly, the Acting Public Relations Director for the Muskogee (Creek) Nation released a statement that provided:

“On June 6, 2017, Muskogee (Creek) Nation Attorney General Kevin Dellinger issued a letter to Mr. Steve Bruner regarding a facility being constructed on his restricted property located south of the Creek Turnpike off 129th East Avenue in Broken Arrow, Oklahoma, previously known as the Red Creek Dance Hall and Restaurant and in recent media reports as The Embers Grill. The letter advised Mr. Bruner that the property on which the facility is located is within the jurisdiction of the Muskogee (Creek) Nation and is therefore subject to the laws and regulations of the Nation and that any gaming contemplated or conducted on the property must adhere to the Nation's laws and regulations, the Indian Gaming Regulatory Act (IGRA), and the regulations of the National Indian Gaming Commission (NIGC). The letter also advised Mr. Bruner that failure to adhere to the applicable laws and regulations would result in further action by the nation.”

The statement also provided that:

“The Nation considers any violation of its laws and/or regulations to be a matter of serious concern, and is especially concerned about violations relating to unlicensed gaming operations.

The purpose of the Nation's gaming laws and regulations, the IGRA, and the NIGC is to protect the gaming public, maintain the integrity of gaming operations, and ensure that the revenue generated by gaming is used to increase the quality of life of Indian citizens and the wider community. The Nation accomplishes this through its licensing process, which includes thorough background checks on those who conduct and finance gaming operations and accountability for the disposition of gaming revenue. Unlicensed gaming poses serious risk to the safety and welfare of the general public. The Nation and its agencies will pursue any and all available means necessary to prevent the conduct of unlicensed gaming within the Nation's jurisdiction and will involve any other regulatory body or law enforcement agency required to do so."

At the July 18th City Council Meeting, the City Attorney provided a comprehensive update about this matter. She discussed several contacts with Tribal representatives. She also responded to questions regarding potential actions that could be taken by the City Council. The City Attorney also reviewed a draft Resolution.

On July 27, 2017, the Mayor, the City Manager, and the City Attorney met with officials of the Muscogee (Creek) Nation, including the Principal Chief, the Speaker of the National Council, the Attorney General, and the First Assistant Attorney General. Officials of the Nation affirmed their opposition to the conduct of illegal gaming and its continued commitment to pursue all available means necessary to prevent unlicensed gaming. The parties also discussed other matters of common interest and public safety, including fire protection, emergency medical services, law enforcement, and building and food safety inspection.

As mentioned above, the proposed site is a Creek Allotment. As such, the City has no jurisdiction or authority on this area. On-site water and wastewater facilities remain under the jurisdiction and authority of the Environmental Protection Agency (EPA). In order to ensure that the structures are built in compliance with City Standards, Staff remains willing to review the plans and perform inspections, if asked to do so.

The attached Resolution expresses the Council's objection to illegal gaming on the Bruner Allotment. It also expresses the Council's support for the leadership of the Muscogee (Creek) Nation and its appreciation for taking measures to investigate and address illegal gaming within its jurisdiction. The Resolution further authorizes attorney Stephen Bugg to notify the National Indian Gaming Commission of the Council's objection to illegal gaming on the Bruner Allotment and to notify the Department of the Interior Office of the Solicitor and the Bureau of Indian Affairs of the City Council's objection to the approval of any agreements that would involve illegal gaming. Finally, it authorizes the City Manager to take all actions reasonably necessary to assist with addressing illegal gaming on the Bruner Allotment and to work to address all matters of concern regarding development on the Bruner Allotment that relate to the Health, Safety, and Welfare of the Citizens of the City of Broken Arrow. Staff recommends that the Council approve Resolution No. 1039 and authorize its execution.

Cost: None

Prepared By: Beth Anne Childs, City Attorney

Reviewed By: Assistant City Manager - Operations
Development Services

Approved By: Michael L. Spurgeon, City Manager

Attachments: **Resolution No. 1039**

Recommendation:

Approve Resolution No. 1039 and authorize its execution.