



City of Broken Arrow

Request for Action

File #: 17-2425, Version: 1

**Broken Arrow City Council
Meeting of: 07-18-2017**

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

Title: Presentation, discussion, update, and review of a proposed development for the Embers Grill formerly identified as the Red Creek Dance Hall and Restaurant and the surrounding property located between the Creek Turnpike and Tucson Street, West of Olive Street in the City limits of Broken Arrow, Oklahoma, and consideration and discussion of a proposed Resolution objecting to gaming at this location and authorizing the City Manager to take all actions reasonably necessary to stop illegal gaming

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 a Creek Indian Allotment held in trust for Steve Bruner. Of the original 160-acre tract, two portions have been removed from restricted status. The first is an 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 premature. 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 Figueroa, 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. Figueroa to the Kialegee Tribal Town are particularly concerning. One article even indicated 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.

6. The City Attorney and outside counsel met with the First Assistant Attorney General and Tom Gruber, Senior Deputy Attorney General, on June 29, 2017. Background information, including prior action taken by the A.G.'s Office, was reviewed. City representatives requested the assistance of the A.G.'s Office in addressing gaming at this location. Their representatives were going to research whether or not the Kialegee Tribal Town had a compact with the State of Oklahoma. Outside counsel is following up regarding the A.G.'s position and an update will be provided.

Since the July 3rd Meeting, several things have occurred. The City Manager and the Mayor were scheduled to meet with the Principal Chief and the Attorney General of the Muscogee Creek Nation. This meeting was scheduled for Friday, July 14th. Unfortunately, that morning, the City Attorney was advised that the Principal Chief had a conflict and the meeting would need to be rescheduled. The City Attorney will continue to work with the attorney for the Creek Nation Gaming Commission to re-schedule a meeting. She also requested a copy of the letter sent from the Muscogee Creek Nation Attorney General to Mr. Bruner.

Also, on July 14, 2017, the City Attorney sent a letter to Mr. Eric Nelson, the attorney for Mr. Bruner. A copy of the letter is attached for the Council's review. The letter indicates that rumors continue to circulate about gaming at the Embers Grill. It states the City Attorney's understanding that the Muscogee Creek Nation takes the position that they have jurisdiction over this Allotment and that any attempts to game at this location would be addressed not only by the Creek Nation, but also the City of Broken Arrow.

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 City Manager and Staff continue to monitor this situation very closely.

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: Draft Resolution
Letter to Eric Nelson, attorney for Steve Bruner

Recommendation:

No action required.