

Emergency Meeting

Davis City Council & Davis Municipal Authority

May 31, 2022 at 6:00 PM
Davis City Council Chambers
308 S 3rd St
Davis, OK 73030

Agenda Item #1: Call to order Davis City Council.

- Call to order Davis City Council and Davis Municipal Authority by Mayor/Chairman Brian Davis. 6:00 PM

Agenda Item #2: Roll Call

- Mayor/Chairman Brian Davis – present, Vice Mayor/Vice Chairman Stan Jones – absent, Councilman/Trustee Josh Oakley – present, Councilman/Trustee Clint Grinstead – present, Councilman/Trustee Jeremy Bumgarner – present.

Agenda Item #3: Prayer

- Prayer led by Andy Holland, City Manager

Agenda Item #4: Pledge of Allegiance

- Pledge of Allegiance led by Davis.

Agenda Item #5: Consideration and possible action regarding Midground Creators, LLC default on lease agreement dated January 10, 2017.

- Motion made by Grinstead to send Notice of Termination to Midground Creators, LLC in default for lack of insurance, failure to pay rents, failure to pay bills and debts and failure to meet benchmarks, with a renegotiated contract presented for review at the June 13, 2022, City Council/DMA meeting. Second by Oakley. Vote: Bumgarner – yes, Grinstead – yes, Oakley – yes, Jones – absent, Davis – yes.
- Mayor/Chairman Davis called meeting to update the council on the status of the lease agreement between Davis Municipal Authority and Midground Creators, LLC, operators of Cross Bar Ranch. Holland stated that due to an open records request, it was brought to our attention that Cross Bar is operating without general liability insurance coverage. A notice of default letter regarding the lack of general liability insurance coverage was issued last week. Holland continued to say that the lack of coverage is a financial issue and not a safety issue. Davis inquired about restructuring the contract. Holland discussed the initial default notice that was sent in December 2020 and that contract negotiations have been ongoing since that time, attempting to seek a fair and equitable agreement for both sides stating that current agreement is very one sided and the lessee has the right to exercise extension. Discussion of Cross Bar Ranch attempt to work with past partners and find new partners to infuse cash for capital improvements. A draft of the renegotiated agreement has been received but it is not yet ready for council/board review. Alisha Thompson, an audience member, inquired about the first notice of default being used by Justin Ramsey to dissolve an unsuccessful partnership. Holland stated that the first notice of default was for failure to meet benchmarks set forth in the lease agreement. Oakley inquired about when the general liability insurance policy lapsed. Cross Bar Ranch employee Brian Trotter responded that the first notice of default was used to “cash call” the partner, but he did not know the date for the general liability insurance lapse, however they are actively searching for a general liability insurance policy. Previous policy experienced significant premium increases and Trotter stated that the previous insurance company didn’t specialize in insuring this type of business and they are searching for one that is more familiar with the offroad venue industry. Shaffer Smith, a representative from ORBA, Off-Road Business Association,

was in attendance in support of Cross Bar Ranch and Midground Creators, LLC. ORBA is assisting to provide insurance contacts. Davis inquired about ORBA's role in helping other venues, Smith stated they have been involved in contract negotiations nationally and cited, King of the Hammers event, as well as working with event promoters and the Bureau of Land Management and National Park Service when events are held on their properties. Gary Fielding, an audience member, stated as a lease holder with City of Davis/Davis Municipal Authority, his insurance company provides an updated certificate when his insurance is paid each year and if the lessee is in default, and negotiating a new contract is considered, the public should have the opportunity to bid the operations as well. Oakley inquired about any notice of coverage or default that was received by City of Davis/DMA. Susan Suther, City Clerk/Treasurer, stated that the insurance notice in the file has an old address of 310 E Main, Davis, OK 73030. Discussion of the process of receiving and maintaining certificates of insurance for vendors. Justin Ramsey was made aware of the correct address when he was in the office last week to discuss the insurance. Grinstead inquired about a "checklist" that should be in place to make sure that we have current insurance on all vendors that are required to maintain insurance coverage. Suther stated that there is currently not an audit process in place to track insurance coverage of vendors. Holland stated that the responsibility is on the vendor. Grinstead stated that it would be helpful to protect the city. Holland stated that the city feels vulnerable with the lack of coverage, he asked Trotter how soon coverage would be obtained. Trotter hopes to provide proof of coverage within a week. Holland asked if financially, Midground Creators, LLC can provide the coverage. Trotter stated that yes, they are. Holland followed up that he discussed this with Ramsey, and he knows that they may not be able to provide the full year, but a partial term would be desirable to protect the city. Davis inquired of the Smith if the \$5 million policy limit is an industry standard. Smith did not know the answer to this question. Davis inquired of Mark Melton, City Attorney, if this was a standard amount, Melton stated that he thought the limit was at the request of the city due to the dangerous nature of the activities at Cross Bar Ranch. Oakley inquired about lease payments being made and if we have received the lease payment in 2022. Holland stated that we have not received a payment yet this year, but we received the payment that was due in April 2021 in December 2020. Grinstead inquired about how you can make a payment in advance when it is based on gate attendance. Holland responded that they estimated that portion of the payment. Grinstead asked how we know we received the full payment. Holland responded that he had not received their yearend financial statements, they normally come end of June and he has not received those at this time. Grinstead inquired about the late fee in the agreement. Lessee has 30 days from the due date of the rent payment to avoid late fees. Holland discussed the current agreement and the negotiations of the existing agreement. The negotiations are for the term remaining on this agreement, which is four years. Original agreement is ten-year term with three-year options, no limit on number of options, lessee has the right to exercise the renewal option on the current agreement indefinitely. Any restructure would be for the remaining four years. If a re-negotiated agreement is not reached it would take some time, maybe one year, to put together a bid packet, receive the bids and award to another entity. Ramsey currently brings experience and understanding of the industry to this agreement. The re-negotiation of the agreement was already in the works prior to the finding of no general liability insurance coverage. Oakley inquired as to whether they should be allowed to remain open without current general liability coverage and if there is a risk to the city. Holland answered that there is definitely a risk to the city, but it is a financial risk and what is the risk to closing them down for being in default and do we have the ability contractually to close them down? Grinstead asked if Mr. Sbeity was closed for being in default of his contract? Holland stated that Mr. Sbeity's contract had different terms. The notice procedures in this agreement must be followed. Davis inquired of Melton on the terms of the contract. Melton stated that we would have to send written notice of termination, they have 90 days to cure, he does think operations can be suspended because of the lack of insurance and at a minimum is a reasonable request. Davis inquired if OMAG would cover the liability to the city. Melton responded with yes, there are several safeguards in place to protect the city, our own insurance through OMAG, the Governmental Tort Claim Act, which limits us to \$150,000 per accident, maximum exposure. Bumgarner brought up the number of injuries that have been "flown out" of Cross Bar Ranch in the last several months. Melton added that the patrons also sign waivers releasing of all liability and courts have historically upheld those

waivers. Discussion was had on the inherent risk of the off-road recreation industry. Davis inquired about past experience with lawsuits against Cross Bar Ranch. Trotter was only aware of one issue where injured parties were drunk and high at the time they were injured, and they were not successful in their suit against Cross Bar Ranch. The unit they were driving was a rented unit from Outdoor Power Sports. Trotter added that he and his staff perform active patrols, he is always equipped with a trauma kit to administer aid, he has requested police presence on the main road, which is a county road. Some of the Medi-flights came from accidents on that county road, Cross Bar Ranch is doing their due diligence to deter the behavior that leads to accident and/or injury. Holland stated that police presence on the main road is being addressed in the current negotiations. Grinstead inquired about the workers compensation policy being in place. Trotter confirmed that it is current. Holland stated that in the annual "account statement" it shows they have been paying their workers compensation premiums. Discussion of insurance verification for vendors identified that the task is not assigned to any city employee. Holland stated that this is a lot of administrative burden that we are not prepared to provide. Grinstead inquired if we should be, due to the risk. Holland stated that managing their workers compensation would be governmental overreach. Suther stated that the workers compensation proof of coverage is provided in a certificate of insurance form, the same as general liability or vehicle insurance. Grinstead inquired if OMAG was concerned with the coverage we require of our vendors. Suther stated that OMAG has never inquired, and they have been down to complete a review of all insurance coverages and it was not mentioned. Grinstead confirmed with Melton that any area of default requires a 90-day notice. Melton stated that under Section 21 of the contract they are in violation of Paragraph 1, failure to pay rent when due; Paragraph 3, failure to provide insurance; Paragraph 4, while we have not received a written admission, they are unable to pay their bills and debts, they certainly can't pay their general liability policy; Paragraph 5 failure to meet the benchmarks in the contract. Grinstead asked Melton for his recommendation. Melton replied, send notice of termination, give them 90 days, and if they city is so inclined, and that is the council's decision, suspend operations until they provide insurance. At a minimum Melton recommends sending the notice of termination to procedurally protect us in the event we decide to terminate the agreement. It provides another layer of insulation to protect the city. Oakley inquired if everyone attending is signing the waiver. Smith spoke up about the ease of patrolling because of the one way in and one way out, with the exception of Turner Falls Park. He also mentioned that off road ethics training is available and could be done at Cross Bar Ranch. Davis mentioned doing your best to manage the entrance, but if people want to find a way, they will. Josh Edwards, Gate Guard at Cross Bar Ranch spoke up to support the efforts made using 24/7 monitoring and the security to protect all parties. Other staff and volunteers also spoke about the access, waivers and efforts being made at Cross Bar Ranch. Grinstead confirmed that any default in the current agreement is given 90 days to resolve. Holland stated that the exception applies to any of the items that cannot be remedied in 90 days, they must work diligently toward resolution. Melton clarified that diligently is not defined. Grinstead asked if because of those terms, is that the reason the agreement is being restructured as opposed to terminating and going out for bid. Grinstead stated that he wants everyone treated the same and he asked if renegotiating has anything to do with the 90 days they are allowed to resolve the issues. Holland answered no. Grinstead asked if we are going to allow everyone to renegotiate a contract if they are in default. Holland stated that every contract is unique. Grinstead clarified that the 90 days to correct is the unique part of this agreement. Holland stated that the renegotiating is to protect the city because the current is one-sided against the city. Davis stated that he thought we had renegotiated Mr. Fielding's contract as well. Suther confirmed that Mr. Fielding's contract for the Curio Shop was renegotiated, outside our standard terms, to match the expiration of the 777 Zip Line. Discussion of the length of time to resolve issues for other vendors was brought up by Mr. Fielding. Grinstead clarified that the agreement with Midground Creators, LLC for the lease of Cross Bar Ranch specifically states that we must give them 90 days to resolve any default. Grinstead inquired if we are allowed to restructure the agreement. Melton stated that if both parties agree, the current agreement can be restructured. Grinstead inquired about how long it will take to renegotiate the contract. Holland stated that it has been in the process since 2020 and it needs to be pushed forward. Trotter stated that they are ready. Holland stated that we have a draft of a new agreement. Melton stated that he has not been brought in on the new agreement at this time.

Holland stated that the goal is a 1 October contract for presentation. Mike D'Aoust, audience member, asked why we would debate "doing this" if we have not received a dime recently. Grinstead asked if Mr. D'Aoust was familiar with the contract, and the late fee after more than 30 days? Mr. D'Aoust asked if the city has received the percentage fees for special events this year. Grinstead confirmed nothing has been received this year. Mr. D'Aoust asked if we have not received any money, why the lack of insurance coverage would not be a bigger issue? Grinstead confirmed that the 2021 payments were paid in advance in December 2020. Suther clarified that the \$13,000 payment that was received in December 2020 was for the percentage portion due in 2021. Davis identified that their estimate was significantly higher than the previous percentage payments. Discussion of the special events that were held and the increase in activity. Trotter stated that they are happy to go through the financials to identify how the amount was determined. Davis reviewed the percentage received historically. Trotter reminded of the donations that were made from the event promoters from those special events. Grinstead asked Mr. D'Aoust if he had answered all of his questions. Mr. D'Aoust asked about benchmarks, specifically completion of a full survey and establish all property corners for the perimeters and in-bound holders. He stated that sounds like a big one combined with no insurance. Grinstead replied that the insurance default was issued, and they have 90 days to resolve, previously a benchmark default was issued in December 2020 and the response was they were working on those. Fielding inquired if the council and other employees are required to pay to enjoy Cross Bar Ranch. Response was that free admission for employees, fire department and police department, is addressed in the contract. Grinstead asked if the only action they can take on this agreement is issuing a notice of termination on the lack of insurance. Melton responded that operations could be suspended. Melton stated that we need to send the appropriate notices and the council/board needs to decide if they want to suspend operations or leave it open. Grinstead asked if we issue the termination notice, we've set the date and they have 90 days, other than that is the city covered? Melton confirmed that we have ample coverage with the waiver, our own insurance, the tort claim act and the agreement from Midground Creators, LLC to indemnify us. As a practical matter, our financial exposure is our insurance which is capped at \$150,000 per incident. Holland recommended that no one walks away underestimating how serious the council/board takes the default, issuing the termination draws a line, but suspending operations would further put Midground Creators, LLC in a financial bind, and it would be a huge damage to Cross Bar Ranch as a business no matter who is operating. Grinstead stated he is concerned about all of the people who worked all year and planned to come down and enjoy Cross Bar Ranch and their plans get canceled due to mismanagement. He inquired how long it will take to get insurance reinstated. Trotter hoped to have an answer by tomorrow. Holland asked for an update by Friday. Grinstead asked if financially they can pay what is owed and acquire insurance. Trotter responded that they would have to figure it out, they have not raised rates because they want people to come to Cross Bar Ranch and ride, they may have to take out additional loans, they are ready to renegotiate and do whatever. Holland added that visiting with the ORBA president he mentioned reviewing the rate for the current market. Trotter discussed the infrastructure that is in place and the goal of adding restrooms. Grinstead responded that he understands not wanting to raise your rates, but you have to be able to operate the business. Holland mentioned in his conversation with the ORBA president, the number one requested thing from patrons was bathrooms and showers. Holland also mentioned that even though many things have been brought to light, but we need to recognize the tangible benefits that Ramsey has brought, mention of controlled burning and being good stewards of the land.

Agenda Item #6: Adjourn.

- Motion to adjourn by Oakley. Second by Davis. Vote: Bumgarner – yes, Grinstead - yes, Oakley – yes, Jones – absent, Davis – yes.

ATTEST:

/s/Susan Suther
Susan Suther
City Clerk/Treasurer

/s/Brian Davis
Brian Davis
Mayor/Chairman