

**KINKAID-REED'S CREEK CONSERVANCY DISTRICT
SPECIAL BOARD OF TRUSTEES MEETING
THURSDAY, JUNE 16, 2022**

The Board of Trustees of the Kinkaid-Reed's Creek Conservancy District held a special board meeting on Thursday, June 16, 2022, Trustee Lisa Byrd called this meeting to order at 5:00 p.m. at 1763 Water Plant Rd, Murphysboro, Illinois.

ROLL CALL:

Nathan Westphal	Yes
David Ardrey	Yes
Lisa Byrd	Yes
Tony Mileur	Yes
Mike Barone	Yes

Also Present: Manager Wilmouth, Cathy Rothe, Ed Heller, Tonya Knust, Tim Rogers and Angie Rogers.

Public Comment: None

OLD BUSINESS: Nothing to report

NEW BUSINESS: Consideration of Lease of Restaurant/Bar Facilities: Trustee Byrd asked legal counsel to address this issue. Attorney Heller stated that the lease was presented to Manager Wilmouth, the committee made a couple of changes to it, sent it to the lawyer for the LLC, and we received this morning a revised draft. There are two issues from the draft coming back to the District. The first one is they crossed off the personal guarantees, deleted them from the lease. That is a problem because we have a brand new LLC. First of all in regular business, when contracts are being made with a corporation or an LLC that is an entity, and not well funded, vendors require that all the members of the LLC guarantee the LLC's contract. The District has always required guarantee by the shareholders. The District cannot have a situation where there is a brand new LLC that has no capital and no assets, and they are wanting to enter into a business arrangement with the District. The District would have no way to recover. The second problem is, the District is looking to fill a very short term need to get through this season to able to provide food and beverages to the camping and boating public. We are not certain how the plans are going to be for next year, we know we are going to be in some transitions. A draft was sent back to the District that called for a 5 year lease. That would obligate us for 5 years, which would mean whatever arrangements we wanted to do with the rest of what is owned would have to be done with that being part of the overall equation. That limits the District in the options that the District might have in getting a new arrangement for everything else. In a normal operation like this, the food and beverage part is a significant part of the operation. People that would be interested in taking on this concession are not going to be interested in doing it if somebody else that is not under their control has the food and beverage concession. That is not what the District proposed to do, and from the legal chair, I cannot recommend their draft of the lease because of those two positions.

Mr. Rogers stated, as one of the members of the LLC, it does not make sense for us to enter into an agreement to build something for 4 months to simply turn over to the Board to give them an established product. It increases the value of the property, I understand that, and therefore you

guys are able to, quote, unquote, ask more for the property. Then it comes to a concessionaire type contract. Is there a middle ground, or is this simply the stance of the Board, four months and you are out. Attorney Heller replied, I don't now that your expectation that a short term operation is going to give the District any enhanced value for its future operations. That may or may not be correct. I don't envision that happening. What we are looking at here is a way to provide food and beverage for this summer, and not looking beyond that. I don't see that there is any middle ground. We did include provisions in the agreement that obligated us in good faith to discuss potentially carrying on further, but it also expressively gives us the opportunity and the right to solicit other type of businesses as well. That is as far as we can go with our plans for this year. To do more than that would potentially hamstrings us for 5 years of the future. If we were going to do that, we would have to have written a different contract because the default provisions in this contract are very thin, there is no performances provisions in here. If there is going to be a five year lease, we would have to have a lot more provisions in here. We didn't write one for that because we didn't contemplate a five year lease. Mr. Rogers stated, that was what was in the proposal that we had presented initially. The idea that you didn't write it in there is kind of a catch 22, you knew that. You kind of knew what we were looking for. We were not looking for a 4 month in and out thing. Ms. Knust stated that when they met with the transition team, I thought we were all understanding that we wanted a five year lease at the start of January. I thought that everybody was in agreement with that, it's a small enough lease, it's not 20 or 30 years. A lease of 3 to 5 years is what we are looking at because if we are going to sink money and time in this. If we had known that you were just going to do it for 4 months, we would have not wasted the last 3 weeks of our time. Attorney Heller stated, I guess we could say it the other way around, if we had understood your proposal, and the discussion that went on about the proposal, I was not there, but it is my understanding that it was reiterated to you before today, that we were not looking for a 5 year lease. The idea of not having food out there this year, as I read the Board, is not a drastic situation. It is something that we can live with and work around. What we cannot do is enter into a 5 year agreement on this item that we don't know what comes in the next year on all the other items. The District owns the property, my understanding is that it is pretty well stocked in terms of the equipment. I'm not understanding that you would have to make any improvements to the premises. I can only tell you, and this Board can correct me if I am wrong, but I don't believe that it was ever the Districts expectation in having these discussions with you beyond your first proposal that we were going to be in a 5 year lease. I don't know exactly what was said with the transition team. Mr. Rogers asked, can the transition team speak at all on this? We have had conversations, I'm not tying you to anything we said verbally. Trustee Ardrey of the transition team stated, your question of is there any middle ground is a fair question. What I have shared with Ed and with Tonya is, that I can't write this because that is not my expertise. Is there space in there that gets you where you want to be and gives both parties the opportunity to sit at the table, to extend that lease for a period of time? I read both copies, and honestly neither party has a lease agreement for 5 years no matter how it's written, because it contradicts itself in a couple of places. That is just what happens in language contract. I think for me, the other issue that is most important, and it is from a business perspective, is this non personal guarantees. Mr. Rogers stated beyond the personal guarantees, if we were able to work that out amongst ourselves, it still leaves us to where we are out October 31st, and quite honestly, I'm not going to waste my time for 3 months because that is all it is. You can't build something in 3 months, everybody in this rooms knows that, for us to go out there and say we are offering a service, first off you spend one month getting people to quite bringing their beer with them or stop going to town. I'm not here to make friends, I have a lot of them. If we can't get more than a 3 or 4 month contract, if the lawyers want to hash it out something better than that, then we are game. I'm not saying that we are dumping it, but if we can't do anything more than this year, we won't do it. Ms. Knust stated that we have already wasted our lawyers time, insurance people time, health department time, we are all committed to putting in everything to get you guys a great restaurant, bar, and a business out there, that you guys can have something.

Everybody that we talk to is (inaudible). We can't do this for 4 months, it has to be at least a 3 year lease. Mr. Rogers stated, if it is a single year contract, which I understand will get us through the end of the year, there has to be some kind of guarantee that you are not soliciting other people to come in. Attorney Heller stated that puts us in the position of we our hampered on everything else we do with the whole premises, if we are bound by that. Mr. Rogers stated that someone said, Luke Estel knows boats, he knows fishing gear, and he knows people. He doesn't know a damn thing about a restaurant, he don't know a damn thing about working on a boat. Attorney Heller asked, what does Luke Estel have to do with this? Mr. Rogers replied, he was in here promoting the other day, I'm just using him for an example. Attorney Heller replied, we are not talking to Luke Estel about running a restaurant. Mr. Rogers replied, it was just a name. To me a visible entity is more marketable than somebody coming in, and saying I know you don't know shit about this, but you have to take it all. That is basically what your next proposal is. Attorney Heller stated, let me read 4-B to you. At the end of the lease term the parties agree to in good faith discuss a further lease or possible agreement of operation of the bar/restaurant or other uses of the premises. By this provision neither party is obligated to enter into a further lease or agreement with the other and landlord is free to solicit or consider offers of others. Mr. Rogers stated, that is the part that we cannot agree with. Attorney Heller stated, I believe this is what we have said from the beginning, if you can't go forward without a longer term than this, and without that good faith language, then(interrupted by Mr. Rogers) Mr. Rogers stated good faith language only goes so far. You had a faith agreement with the Worthen family and said, it's our property, we can do with it what we want to. Attorney Heller replied, no, that is a mistake, that is not correct. There was nothing in the Worthen family arrangement that was a good faith agreement that we would never use for something else. That has been said wrong, many times, that is not correct. We did have a letter in which we advised them that was our intention but that was clearly not a covenant. Mr. Rogers stated, it was a handshake, and that used to mean something. Attorney Heller replied, no, you are wrong. Those people are relatives of mine. I negotiated that deal, that has been made to look like something different, and that does not apply here. Mr. Rogers stated it doesn't and I apologize. Attorney Heller stated, the point here is this, we have an entire operation that we have to transition to a different place than to where it was last year, and that is what our task is, and that is what we face. That is not going to get accomplished in one short summer. It would be like us saying you can have the dock concession for the next 5 years, does somebody want to take a restaurant then somebody else has the dock? It hampers us in what we can do in the future, and that is why we are not prepared to commit to a longer term. We did not come to you asking you to do this. You came to us, telling us you wanted to be able to open the restaurant. Mr. Rogers stated, for 5 years. Attorney Heller stated, you said 5 years, but we didn't okay 5 years. Ms. Knust stated you didn't say okay, I just wish you would have said this 3 weeks ago that the 5 year was out. Your attorney has spoken, you guys have to make up your mind what you want. You can come back to us in January, and we might entertain it. Mr. Rogers stated that we cannot entertain it on a year to year, nobody in their right mind would do a year to year lease on something like this. Would you as a business owner do that? Attorney Heller stated that are there a couple of other people interested. Mr. Rogers stated, are they standing in here? Attorney Heller stated, that is because they didn't understand anything that was going on. Ms. Knust stated, they did not present a proposal. Attorney Heller stated, that is right. Should we take your proposal because it is the only one, I don't think we have that attitude, I think that we are prepared to try to provide food in other ways this year. Manager Wilmouth stated, he thought at the last meeting, after the meeting you guys discussed, I thought I heard it right, you didn't want 5 years right away, you wanted to evaluate the season with the option for another 5. Ms. Knust replied, we wanted to get in there as quickly as possible to get it up and going, to establish a base of people coming in, then slowly build it up, so come January we have a fresh start, and we can create something that we hope is going to be a very good thing. It is not worth us to put in the amount of time. We are giving you our whole summer to get something started for this season for you guys. If we are

going to give up our whole summer, and put our money, blood, sweat, and tears into it, we want to have a 5 year lease starting January 1st. After that 5 year lease we would like to have the first option to renew that, this is what we would like. Would we consider a 3 year lease, yes. We were stepping in at this time to help you guys out because we are seeing all the people that are getting turned away. The county is losing money, and the county is losing business because (inaudible). Mr. Rogers stated, you would not believe the number of people that come in there and say, can I get some beer, some ice, no, it's after 5:00 o'clock. Can I get something to eat, no, the restaurant is not open. It is constant, that is the reality of it. There maybe somebody out there that is willing to come in, and say here is \$15,000 of our money, we will run it for you for 3 months, and then you can give it all to somebody else, that is just not us. Trustee Byrd stated, the Board will go on the recommendation of Attorney Heller. Trustee Ardrey stated, I think the question is, is there any middle ground, is this Board willing to consider. The recommendation now is based upon the last draft of the lease. If there is any negotiations to be done, and if there is any middle ground to have a conversation about, then that conversation should take place. It should be allowed to take place. If we voted tonight, would we vote this particular contract down, probably. The question was is their middle ground, is there further discussion that needs to take place. Are there things on both sides that are simply no way. I have spoken everybody else here needs to talk. I have said what I wanted to say about personal guarantees, and I think that they are critical in a business environment. Mr. Rogers stated, the personal guarantee, with the 4 million dollars' worth of insurance that we are putting up, that may be something that we do have to talk amongst ourselves. That may be something that we can deal with. Ms. Knust stated that they have 6 million in liability insurance. According to our insurance guy he never had a lessor on there, but if it can be put on there, we will put you guys on there. Attorney Heller stated that it would have to be on there, it has always been on there. We went through that with the last concessionaire. Trustee Byrd asked is there middle ground, is there room to talk? Mr. Rodgers stated, is there room in the length of the contract? Ms. Knust stated they could step out, if you guys need to talk about it. Attorney Heller stated he didn't mind talking about it in the open. If you guys have an idea to make a lease that binds us beyond this season, if you are prepared to do that, say so, and do it. I won't get on board with that, but that is not a legal question. The legal question in there is how I protect you from being stuck in a relationship that causes you to not be able to do a concessions that you want to do on the rest of the place. That is the legal question, and the legal answer is, anything the extends beyond the term of the lease the way we wrote the lease would very likely inhibit us in our options for what we do with the rest of the operation. I don't have anything more to say than that. Trustee Byrd asked, does the Board want to discuss it further? Trustee Westphal stated that he never minded the idea of breaking it up in the first place, but I know it makes it tougher to get somebody in there. Somebody that might be interested in running the whole show. I'm with the idea that if you're not restaurant people you might not know what they are doing or not be interested in it. Where you could have a failed half and a successful half. I'm on board with separating, but I know that hinders us in who would be interested in the future. Attorney Heller stated, the difficulty with doing that now, with segregating things now, it is possible by the first of the year or by year 2, as we get through our transition of rebuilding the campground, rebuilding the docks, and continue through that, and get it where we want it, and then we have talked about going out with shorter concession contracts, where the concessionaire didn't have to own the premises so it didn't have to have so much capitol. We might in that long term plan do just that, if we had somebody on the marina, the campground, the boat sales, all those sides who want all that but doesn't want the restaurant, that might be a way we would go. The problem with where we are at today is we are not prepared to designate any of those things yet or make any of those decisions yet, and to do what these guys want us to do today, would take those options away from us. We might end up with separate concessions, but if we start off with a separate concession then we are locked into that. That is the problem here, and I read their proposal, I knew from their proposal that they would like to have a 5 year lease. My understanding was that they were willing

to come in here and run this thing to be able to provide this service and get it for \$500 a month and see how things go for the future but in the meantime be able to provide food and beverages here. We apparently have never been on the same page. You can get there tonight, you can make an agreement tonight to do just that, if that is what you want to do. My advice is if you do that you may regret it next year when we are trying to do a bigger piece. Trustee Mileur stated that he would hate to see the District get into a bad deal, but I also hate to see you guys getting into a bad deal too. Everything has happen so fast, and there is so much of a change. I rather have no deal than a bad deal. Attorney Heller stated, from you guys' standpoint it's easy, I understand what motivates your position. That is your best way forward, I don't think that it is our best way forward at this point. Mr. Rogers stated you got to convince 5 other people. Attorney Heller replied, no I don't, I don't have to convince anybody. They get to vote. Ms. Knust stated, we are stepping in at this time frame to help you guys out because there is a lot of change, a lot going on, and a lot of you guys don't know what you are doing, and you guys can admit that or not, but it is there. Just the fuel docks up and running, you guys know how much time you have put in, Scott, Dave and everybody out there. We are willing to do that with you and help build this, but we can't do it for 6 months. We just can't do that. Attorney Heller stated, maybe we all should agree to finish limping on through this season like we started out, knowing we were going to live through this season, we knew we may or may not have any concession contract for the restaurant/bar, go on and get through the season, if you guys want to be in the mix going forward when we have a better plan for where we are going next year, maybe that is the time for you to come back here with this. We had the understanding that you were willing to go do this, and then see what the future brings, but if you want to lock this in now, that is a different proposition. Ms. Knust stated we know what our (inaudible) is. We are willing to put in the time, equity, and everything to get this thing done. We are stepping in at this time for your guys benefit, not ours. Attorney Heller replied, we would not see it that way. Mr. Rogers stated that he had a question, that was a little bit off base. The District has to have some kind of general idea of where you are headed, any other time this place leased to a concessionaire, it had to be written in stone before that happen, so when you guys bought it, you said you had a plan. I believe it was you Ed, that said, we have a plan, however, we are not ready to discuss it yet. That plan apparently does not include dividing it up. Attorney Heller replied, never before, prior to this dividing it up, except when we got started, we knew this year that we would have to divide things up. We were not prepared, we could not be prepared to let out a whole new concession contract for the whole property this year. We have considered a number of things. Just like at the boat dock there is nothing for the future there, it's now. The campground, Jim Pribble taking over the campground. There is no future contract there, he is being paid to do it. That is the way we are going through this year. We don't have to have the food and beverage, we didn't have a lot of food and beverage the last few years that Mac was there. Is it better for everybody if we do? Yes, but the restaurant has been a difficult proposition always for the concessionaires. Mr. Rogers stated, you just said it, it's been a difficult proposition for the concessionaire, and you have someone that is willing to take it over. Attorney Heller relied, you have someone who is willing to take on that difficult proposition if they are given a 5 year lease now and right now the Board is not prepare to do that. We might be prepared to do that in January and we might not. Mr. Rogers stated if we get voted down now, and we want to come back in January so be it. Trustee Bryd asked if there was any more discussion by the Board? Do we want to vote on what is put before us tonight? Attorney Heller stated that what we have before us tonight is their draft of the agreement, we drafted an agreement, that they did not accept, their draft has been presented to us. You could vote on their draft, or you could also vote on a different time frame. Trustee Byrd asked vice President Barone if he had any comments. Vice Present Barone stated he trusts what legal council says as far as the language in agreement. Trustee Byrd asked the Board, are we going to stay with the 5 year or turn it down? Trustee Mileur stated that he would rather have no deal than a bad deal, and the same for them. One thing that we have, we are trying to get a plan together, possible January or

February, then when these questions are asked, we will know a lot more about what we would like to see done. That is a lot of it right there. Everything has happened so fast. Trustee Ardrey stated that we really don't have anything to vote on because we have a proposal (inaudible). Unless there is a discussion that comes back to this Board to management. I think if it's going to get negotiated, it has to go to management, and to the attorney. This Board has said all it needs to say at this point. We know where the deficiency is, and if that can be negotiated, and we can have a meeting to come up with a plan. Right now for me, I see nothing that I am going to vote on, I don't see anything that your going to offer me to vote on because there are two proposals, one is ours and one is theirs, and there is two points of significant disagreement. I could not recommend voting on either on of them as this point. If continued discussion's want to happen tomorrow morning, and there is some agreement that can be reached that makes sense to this Board, then we should listen to that agreement. Mr. Rogers asked are any of you guys even willing to entertain the option of anything extending beyond this year. It is a yes or no question? Attorney Heller asked, are you asking at this moment, are we willing to (interrupted by Mr. Rogers, not you Ed, we know what your point is.) Trustee Ardrey stated that he is always willing to listen, and I have been from the beginning on this issue. I'm willing to listen to language that protects both parties for their vested interest. Ms. Knust stated, we just asked a simple question, are you guys interested in entertaining a lease for more than 6 months, it's a yes or no question? Mr. Rogers stated it is that simple, even it's a no answer, I don't have a problem with that. Trustee Mileur stated, that this is just my opinion, with where we are at right now, and what we know right now, I would say no. (Several people talking over each other.) Mr. Rogers stated, that tomorrow they were getting their tax id number, and need to be in here in 2 weeks. Everybody was on board with that. We have it set up, if that cannot happen, I'm good with that. I'm going to quite wasting everybody's time. Trustee Byrd stated that we are done with this as far as the Board is concerned. Trustee Mileur stated we will try to work out something to answer a lot of questions that need to be answered. Mr. Rogers stated, thank you for your time.

OTHER MATTERS TO DISCUSS: Manager Wilmouth reported that he met with Dave McKenzie with IDPH about camping on the point. He had a different vision of what he thought it was. I explained what it was, he has to go back to his superiors, and discuss it. I am waiting on his decision. I told him whatever we needed to do to allow it, let us know or if he won't allow it then let us know. I also met with Kyle from the Health Department, the sewer issue that the District is planning on fixing is going to take a little time and money, but we are going to focus on getting it fixed.

ADJOURNMENT:

Trustee Mileur made a motion to adjourn the meeting. The motion was seconded by Trustee Ardrey. All members present voted "Aye" Trustee Byrd declared the motion carried.



VICE PRESIDENT – Michael Barone



SECRETARY – Anthony Mileur