



Minutes of the Roanoke Rapids City Council

A Special Meeting of the City Council of the City of Roanoke Rapids was held on **Monday, July 24, 2023, at 5:30 p.m.** in the Council Chambers at the Lloyd Andrews City Meeting Hall.

Present: Emery G. Doughtie, Mayor
Carl Ferebee, Mayor Pro Tem
Sandra W. Bryant)
Wayne Smith)
Rex Stainback)

Council Members

Kelly Traynham, City Manager
Geoffrey Davis, City Attorney
Traci Storey, City Clerk
Shane Guyant, Police Chief
Jason Patrick, Fire Chief
Larry Chalker, Public Works Director

Absent: Tommy Daughtry, Council Member

Mayor Doughtie called the meeting to order and provided an invocation.

Consideration of Resolution Authorizing Acceptance of Final High Offer in Sale of the Roanoke Rapids Theatre

Attorney Davis said at the end of May, City Council voted under NCGS 160A-269 proposing to accept an offer to purchase the Roanoke Rapids Theatre by Wellman & White, PLLC for \$1.5 million. As discussed, the process under the statute for proposing to accept an offer, must be advertised for upset bids. The City went through the process and there were several upset bids. The last round concluded at 4 p.m. last Tuesday, July 18, 2023. Throughout this process there have been two interested parties that have been submitting bids back and forth: Wellman & White, PLLC on behalf of their bidders and TheVictor Enterprises.

He continued to say, last Tuesday at 4 p.m. the bids were opened and there was a check from Mr. Freeman, but there was no bid enclosed with that. He stated they went in depth about that in the last meeting. The question was asked of him and he said he did not feel comfortable accepting that as a valid upset bid because the amount of the bid was not in there. They had a check for a deposit. You could do the

algebra and presume what the bid would be. He was not sure and does not feel comfortable saying that City Council can do that and certainly does not think the other party (Wellman & White, PLLC) would be satisfied with that result.

Attorney Davis said he had suggested to City Council that they come back at a later meeting to consider a resolution to approve a final sale. That's what is before City Council today and that is what they have prepared. He also said that is what the special meeting notice is for which is to consider a resolution authorizing acceptance of final high offer in sale of the Roanoke Rapids Theatre. If City Council approves the resolution, the document allows City personnel to execute the contracts necessary to affect a real estate sale. It would not come back before City Council. He said if City Council rejects the resolution, then he had some suggestions. He stated he did not think City Council was suddenly going to want to keep the Theatre and maintain it. His understanding is the City Council's position is to get out of the theater business and sell the property.

He briefly reviewed the resolution with City Council. He called their attention to the closing conditions on the second page, Section 2. – Section 4. Those were the critical procedural things that would answer some questions should City Council choose to accept the resolution.

Attorney Davis stated let's talk about if City Council chooses not to accept the resolution. Several Council members expressed skepticism about the position he took that the check the City received was not a valid upset bid and he still feels that way. To consider other options, City Council would have to reject approval of this resolution. He advised City Council not to make a motion recognizing Mr. Freeman's check as an upset bid. After the 4 p.m. deadline and after TheVictor Enterprises realized there was an issue, they sent an email to the City Manager informing them of their bid amount. That email came in after the conclusion of the 4 p.m. bid opening. Because of those kind of questions about its effectiveness, he again reiterated that City Council should not consider a motion to recognize that as an upset bid and restart that process. Instead, if City Council wanted to pursue essentially that offer, he advised City Council to formally reject all bids. He reminded City Council they always have the authority to do that under NCGS 160A-269. That basically presses a reset button. The City Council could again go back to the original three options as discussed previously regarding disposition of real property such as this. City Council could accept Mr. Freeman's offer under NCGS 160A-269 which would trigger a new process of upset bids. The gateway to that would be a formal rejection of all offers. That is to keep it clear and communicate to Wellman & White that the City was formally restarting this process. City Council has the authority to do this rather than trying to recognize an upset bid which there are some defects with.

He continued to say if City Council rejects all bids, they could always use one of the two other alternatives. They could put the Theatre out for sealed bids like they did last year. They would have to notice it for a 30-day period. The bids would come before City Council for consideration to accept or reject the highest qualifying bid. The third option is the electronic auction could be resumed. They would have to notice it for 30 days in which the auction would begin. They could choose to do the auction for a short time window or a long-time frame.

Attorney Davis stated the only decision City Council would need to make today is accepting or rejecting this offer from Wellman & White, PLLC because that is what is on the special meeting notice. In that process he suspects some communication to City personnel, himself, and the City Manager on if it is a rejection about where City Council wants to go. Based on whatever that feedback is, they would have a new proposal for City Council at the next meeting. Whether that is a resolution as far as Mr. Freeman's offer accepting that and restarting the upset bid process or one of the other two options they have discussed.

He said TheVictor Enterprises has hired Mitchell Armbruster who is here tonight on behalf of his client. He recalled in a previous meeting City Council gave Mr. Bill White ample opportunity to speak on behalf of his clients so he suggested they give Mr. Armbruster time to speak and let them know his client's feelings on these matters. He thinks that would be appropriate and fair to both sides. He asked City Council to allow that.

Mayor Doughtie asked Mr. Armbruster to come to the podium to speak.

Mr. Armbruster stated he was with the Wake County Bar and the Smith Anderson Law Firm in Raleigh where he has been practicing for the last 20 years. He focuses on government contract litigation and represents some public bodies. He also largely represents contractors with the state government. He said he had been retained as North Carolina counsel by TheVictor Enterprises. City Council received a letter from BlankRome which is their national counsel containing some of their objections to the rejection of their prior offer. He understands the purpose of the meeting tonight is limited but obviously TheVictor Enterprises believes clearly that City Council should reject the resolution that is before them because their bid submitted on July 18th was rejected. He realizes there were some issues taken with the bid. But in these processes, it is often the case that there are some imperfections in a bid. The point of the statute that they were talking about is to maximize the value they can get for the City on the sale of this important property. They have an offer and this resolution before them to sale the property for \$2 million and they have had it confirmed from Mr. Freeman that his offer is for \$2,350,000, which is a significant increase of over

17% of the prior offer. That is a significant amount of money for the City for retiring debt service and serving the purpose of the statute. Albeit if the bid is imperfect or not, by rejecting the resolution to accept the \$2 million bid, they could move forward at a later meeting to accept this offer and restart the upset bid process and perhaps the offer could go higher. They could get even more for this property. He believes it would be premature to stop the process at this time. He stated in looking at the bid Mr. Freeman submitted last week, it had the check in it and said upset bid on the document. He thinks that could have been accepted as a valid bid although that was not what was chosen at the last meeting. He thought that certainly could have been done with that bid. He said for example if they were trying to sell a house and got an offer for \$200,000 and then they got another offer for \$235,000, but there were some minor imperfections. He said they would seek clarification because they would rather sell their house for an extra \$35,000. They would rather try to clarify and work out the imperfections. By rejecting the resolution tonight, they would allow the process to go forward and to allow the City to get the benefit of the higher bids and allow them to maximize the recovery of the City. He was just retained a couple of days ago, but there have been a lot of articles written about this process and a lot of interest. He has seen City Council has made efforts before laudably to try to be flexible during the process. When Wellman & White submitted an offer earlier on and didn't have their check with it, they allowed them to submit a check later. Then there was an issue with the advertising of bids. It would be unfair and arbitrary to not allow the same flexibility to happen regarding Mr. Freeman's bid. They can do that by rejecting the resolution tonight instead of leaving money on the table. He thinks that would be in the best interests of the City. He agreed with Attorney Davis that because this was a special meeting, they could not reject the resolution plus accept Mr. Freeman's bid; it is limited to the resolution. He urged City Council reject the resolution.

Councilman Smith asked Attorney Davis at what meeting did City Council authorize Mr. White to bring in the check the following morning.

Attorney Davis replied the reference was to Wellman & White's original offer. His reading of 160A-269 is that they do not have to make the offer and have the deposit amount with it. When they first make the offer traditionally, it has to come before City Council. There is nothing to deposit until City Council proposes to accept the initial offer. He thinks that is what the reference is being made to. During the upset bid process, as the statute requires, any upset bid has been accompanied by a check for the statutory deposit amount.

Councilman Smith asked if he recalled correctly that originally when Mr. Freeman put in his offer, didn't City Council give him until a certain date to bring in the check but the time expired and he later brought in a check. Attorney Davis said on May 22nd

City Council accepted TheVictor Enterprises original proposal for \$1.75 million. At that point and before the City could start the upset bid process, they had to receive the deposit check from TheVictor Enterprises. He communicated to them that their offer had been accepted. He said he recalled receiving the offer at the last minute around 3 p.m. on the day it was considered. The City already had a meeting scheduled and already noticed City Council was going to consider an offer from Wellman & White for \$1.5 million. That special meeting notice was a lot broader in that case so it was allowed to be considered and City Council did accept the offer. He indicated to Mr. Freeman that he needed to get the deposit check in so the City could start the upset bid process. He gave Mr. Freeman a tentative deadline. He communicated throughout. He told him City Council would not meet again for two weeks and at that meeting if the deposit has not been received by that point, City Council could vote to reject all bids. He also indicated to him that he felt City Council would have some skepticism given the impulse to get some movement on this. Mr. Freeman did make several guarantees to him and had an attorney for a brief period at that point. Ultimately the deposit was not paid. City Council met on their regular meeting date, June 6, 2023 where they were informed that the deposit had not been submitted. Wellman & White resubmitted their proposal for \$1.5 million. City Council rescinded the resolution number 2023.05 which was the initial acceptance of TheVictor Enterprises offer and then adopted a new resolution number 2023.09 for Wellman & White's offer. That offer is what has initiated this whole process here. In conclusion, the answer is yes, they gave Mr. Freeman a period to pay the deposit but that deposit was not paid in that period. City Council exercised its authority to reject all offers and start the process again.

Councilman Smith asked Attorney Davis if in his opinion has City Council treated both parties the same way concerning getting the check the next day. Attorney Davis replied yes, with the initial deposit before the upset bid process. His position on NCGS 160A-269 when they get into the upset bid period, to submit a valid upset bid, they must have that deposit check included; you cannot submit that later.

Councilman Smith stated the reason he asked that question was because it was only brought up about that one party.

Mayor Pro Tem Ferebee said it was indicated earlier that the City Manager received an email from Mr. Freeman on July 18th and that the email included the bid or dollar amount. He asked if Mr. Freeman was questioning if it was a good bid or what.

City Manager Traynham said they held a bid opening on July 18th. When they opened the envelope there was a check enclosed. She received the email later in the evening at 4:53 p.m. on July 18th. The email from Victor Freeman which stated, "on behalf of

TheVictor Enterprises please accept my bid offer of \$2,350,000 and my 5% deposit of \$117,500 for the upset bid for the Roanoke Rapids Theatre.” That was after the upset bid period had closed at 4 p.m.

Mayor Pro Tem Ferebee asked when the City had received the check. City Manager Traynham replied the sealed envelope was dropped off on July 10th, but under the sealed bid the envelope was sealed until the upset bid period deadline. Shortly after 4 p.m. the envelope was opened.

Mayor Pro Tem Ferebee asked if according to NCGS 160A-269 is there a definite requirement that a dollar value for the bid amount has to be in that. Attorney Davis replied he did not care for the wording of NCGS 160A-269. He thinks it could be clearer in many respects. His reading of it and his legal opinion of it, he does not feel just a mere deposit check qualifies as a valid upset bid. He thinks there are questions with that.

Mayor Pro Tem Ferebee stated he knows they are there to do what is best for the City and they are looking at this big debt they have. They had nobody interested, now everybody is interested, which is a good thing. With the \$7.6 million owed and what the citizens want and the statute indicates is that they try to get the highest amount of monies for this property. Generally, he knows some feel that if it is local that they would know what the City wants and possibly do a better job of making it happen, but they are not talking about the building around the Theatre at this point, they are talking about the Theatre itself and getting the most money. There has been so much ambiguity in this process that no matter what way they look at it he believes neither party are going to be happy. It appears that one party has hired someone to look at this and he knows the other party already has someone on that side looking at this. So no matter what way they go in a selection as it currently is would satisfy that. He does not want to pay Attorney Davis dollars to defend the City. He said they have a \$250,000 offer that is more than what is on the books. From a citizen’s standpoint that is a good thing. If they can look at it so they would not have to worry about Attorney Davis defending the City or Mr. Armbruster defending the other party or whatever the case may be, that would be a halfway win-win for the City. He was not making a motion at this point, but he would like to see City Council reject all these bids and start anew. Not within a 30-day period but somehow, a way they can move forward so they would not have to wait 30 days. He believed Attorney Davis indicated a way they could do that to continue this process. Starting anew would indicate that no party was out at this point or has an advantage over the other party. That is how he was thinking right now. But at the same time, with so much confusion and ambiguity, he would like to see the City Manager develop within that time frame a form that is a fill in the blank so they would not have to worry about this anymore. It

could have a blank for the amount and percentage, etc. so when it came to the City it would be cut and dry. That is the way he would want City Council to go. He understands the first part would be to reject this part, but he thinks that would put everyone on the same page. He will reserve his other thoughts for a little later on.

Mayor Doughtie asked the other Council members if they had any comments.

Councilwoman Bryant stated she realized when they met on July 18th that the bid had been opened at 4 p.m. that day. Apparently, they were just finding out that at 4:53 p.m. that day, an email came through that specified the information that was said to be missing. She looked up NCGS 160A-269 and printed it out and read it. It just says when a bid is raised, the bidder shall deposit with the City Clerk 5% of the increased bid and the Clerk shall readvertise the offer of the increased bid. That is the statute and it does not say anything about any information with it. In her opinion, she did not think City Council had a choice. The statute does not state that it had to be written or specified the amount that it was for. The check was submitted with upset bid on the envelope. She thinks they still have to consider it. She referred to the discussion about checks coming in and not being in on time and stated she recalled TheVictor Enterprises contacting Attorney Davis and City Manager Traynham saying there was some issue with the check being electronically submitted by the date that City Council asked, but it was maybe received the very next day. She asked if she recalled correctly that City Council voted to not accept it.

Attorney Davis replied he did not believe the City ever received anything in that first aborted round with the first resolution accepting the \$1.75 million. It seemed to him that Mr. Freeman was having some difficulty getting the money moved around so he could get a certified check to the City. He did not think the City ever received a check from him before City Council rejected that offer and started the process over again. He said to also answer her question about NCGS 160A-269, the part he would point out and it is the exact same sentence she read. He thinks that first clause, when a bid is raised, carries a lot of weight for him in that because that is the condition. When the bid is raised, the bidder shall deposit. You have to raise the bid and he thinks there has to be some communication doing that. They could do the math backwards to get to what the assumed bid is, but that is just the minimum deposit. Somebody could bid \$2 million, they could submit the deposit for \$2 million. He could see a scenario if they had the money, showing good faith or there could be all kinds of reasons why someone would want to do that. You can submit a deposit beyond the minimum. It gets outside of the discretion of the clerk, city manager or city attorney to go back and do that math in reverse to say this is what their bid was. That is one of the reasons why he doesn't think there is any scenario where City Council should pass a motion to accept this bid and say this is a valid upset bid and keep the process

going on. He thinks there needs to be a clear demarcation. If City Council does not approve the sale here, then he thinks they need to reject all bids then come back and restart the process.

Attorney Davis clarified that the 30 days only comes in if they do an electronic auction or solicit bids. They can always accept a bid they already have. Tomorrow or this evening after rejection, a new offer could be submitted. City Council could consider that offer under NCGS 160A-269 at the next meeting and once the deposit is received and the City has properly noticed it in the local newspaper for the 10 day notice period, they would go into the same familiar process they've been in for approximately the past month and a half.

Mayor Doughtie asked if there was a new bid process, it could start over at whatever the first bid that came in, they would not have to start where they are now. Attorney Davis replied they would essentially be treating it as a new offer. Mayor Doughtie clarified that for example, someone could put in an offer for \$1 million in the new process. Attorney Davis replied yes, but he was doubtful City Council would consider that after all of this. He thinks both parties seem to be communicating to the City and hopes they are both acting in good faith. They have this money available and are ready to spend it if it goes to them. He doubted they would come in and submit something lower than they are now. It seems like that would cause some problems.

Mayor Pro Tem Ferebee asked if they reject all the bids and start the process over, could City Council name a starting amount. Attorney Davis replied they could and if they did start the process all over there would be a new resolution that would come before City Council. Just as they discussed, they could put in some conditions. Mayor Pro Tem Ferebee interjected \$2.35 million to start. Attorney Davis said the offer would already be out there so they would essentially be proposing to accept that offer pursuant to some conditions.

Mayor Pro Tem Ferebee asked if they reject all offers and start the process over could they indicate that they were restarting the process and have the City Manager create a form within that timeframe and start the bid at \$2.35 million and have a 10-day upset bid period. Attorney Davis stated they were getting into real technical things, but he thinks what would happen is there would have to be a new offer out there or accepting an old offer such as Mr. Freeman's offer of \$2.35 million that he tendered after 4 p.m. last Tuesday. City Council could accept that in a new resolution which would start the process. That would set the floor in that fashion. He is focusing on that technicality because when they are talking about accepting proposals, they were talking about one of the other processes that they have tried before which is soliciting bids. That is when the City publishes out that they were accepting bids for this piece

of property and the minimum bid they will accept is, for example, \$2 million and everybody gets their bid in. In the process they have been doing, the floor is set by the first offer that City Council accepts.

Mayor Pro Tem Ferebee stated there is an offer out there, but they were not accepting it at this point; they were rejecting all offers.

Attorney Davis said his suggestion to parties to make things simple for themselves and the City would be if City Council rejects all offers would be for them to resubmit. Then City Council would have something before them to accept or reject. He said Mayor Pro Tem Ferebee's reference about having some forms for upset bids, this is not something the City of Roanoke Rapids does very often for a piece of property like this. Just like any new experience, it is a learning experience. If City Council did reject all bids and there was a new offer and new resolution, there may need to be some discussion about the different kind of aspects of what was in that resolution.

Mayor Pro Tem Ferebee said the one thing he did not want to see happen was he did not want the 30-day or start the \$1 million process so they needed some way to start at least at the offer that is there. Attorney Davis gave City Council a solution to that which is to reject all bids and then do an acceptance of the other bid of \$2.35 million. Attorney Davis interjected City Council could do the first part today, but could not do the second part today. Mayor Pro Tem Ferebee continued to say that once they had a new resolution, the 10-day process would start from that.

Councilman Smith stated he had concerns about Freeman's ability to complete this sale. The reason he states that is because he's had some issues with a building in Weldon. He's had an issue getting the deposit in the beginning of this process and the unprofessional way he's been handling all the way through this process. He thinks the City needs to go ahead and have this issue settled. He asked if the Mayor was ready for a motion, he was ready to put one on the table.

Mayor Pro Tem Ferebee said he had a question. Councilman Smith stated he had the floor.

Mayor Doughtie asked Attorney Davis if they were following Robert's Rules of Order with Councilman Smith having the floor. Attorney Davis replied Councilman Smith said he wanted to make a motion. He thinks Councilman Smith can make a motion, see if there is a second and then they can have some more discussion.

Motion was made by Councilman Smith, seconded by Councilman Stainback to accept Resolution No. 2023.12.

Mayor Doughtie asked if there was any discussion.

Mayor Pro Tem Ferebee stated going back to history relating to a former person that was trying to buy the Theatre who probably gave the City millions of dollars; paying the City \$58,000 a month and they had that same question. He did not think they would be here now if they didn't do the same thing they were doing right now, trying to bypass that. He thinks it is unfortunate that they were doing that.

Mayor Doughtie called for a vote. Councilman Smith and Councilman Stainback voted in favor of the motion. Mayor Pro Tem Ferebee and Councilwoman Bryant voted against resulting in a tie. Mayor Doughtie voted in favor of the motion; Motion carried by a 3-2 vote to approve Resolution No. 2023.12.

RESOLUTION NO. 2023.12

RESOLUTION OF THE ROANOKE RAPIDS CITY COUNCIL ACCEPTING FINAL OFFER TO PURCHASE REAL PROPERTY PURSUANT TO N.C. GENERAL STATUTE 160A-269

WHEREAS, the City of Roanoke Rapids owns certain real property described as follows: Highway 125, Carolina Crossroads Music & Entertainment District, Lot 1, Roanoke Rapids, North Carolina, and being identified for property tax purposes as Parcel Number 1205489 (“Property”); and

WHEREAS, North Carolina General Statute §160A-269 permits the City to sell property by upset bid after receiving an offer to purchase; and

WHEREAS, the City has received a negotiated offer pursuant to §160A-269, a copy of which is attached hereto and incorporated herein by reference (“Initial Offer”); and

WHEREAS, pursuant to that Initial Offer, Wellman & White, PLLC, and/or assigns (“Buyer”), offered to purchase the property described above for the sum of One Million, Five Hundred Thousand and no/100 dollars (\$1,500,000.00), subject to the terms and conditions contained within the Initial Offer; and

WHEREAS, on June 6, 2023, the City Council via Resolution No. 2023.09 issued a proposed acceptance of the Initial Offer and authorized said Initial Offer to be advertised for upset bids pursuant to N.C.G.S. § 160A-269; and

WHEREAS, the Initial Offer was advertised in the Roanoke Rapids Daily Herald, and after a valid, qualifying upset bid was received for several successive 10-day upset bid periods, the final highest valid and qualifying upset bid was that of the Buyer, for the sum of Two Million and no/100 dollars

(\$2,000,000.00), subject to the terms and conditions contained within that upset bid, a copy of which is attached hereto and incorporated herein by reference (“Final Offer”);

WHEREAS, the final upset bid period was duly noticed and advertised in the Roanoke Rapids Daily Herald on July 8th, 2023 to begin on July 8th, 2023 and conclude on July 18th, 2023 at 4:00 PM.

WHEREAS, at the conclusion of this final 10-day upset period on July 18th, 2023 at 4:00 PM, no valid, qualifying upset bids were received; and

WHEREAS, subject to the terms below, the City Council wishes to issue a final acceptance of the Buyer’s Final Offer.

WHEREAS, the Roanoke Rapids City Council deems it advisable and in the best interest of the City to sell its interest in the subject property to the Buyer as the final highest bidder and convey the City’s interest in said property by special warranty deed.

NOW, THEREFORE, BE IT RESOLVED BY THE ROANOKE RAPIDS CITY COUNCIL,

Section 1. The Council issues a final acceptance of the Buyer’s Final Offer pursuant to the procedures of 160A-269, and authorizes the sale to Wellman & White, PLLC, and/or assigns as allowed by the terms of Buyer’s Final Offer. The City Manager, City Clerk, and the City Attorney are authorized to take all actions on behalf of the City which are consistent with the terms of the Offer, including but not limited to the signature of all necessary documentation, to effectuate the closing on the sale of the Property.

Section 2. The Closing shall occur within thirty (30) days after the adoption of this Resolution and the completion of the title examination confirming title satisfactory to Buyer, whichever date is later.

Section 3. Buyer must pay the balance of the funds with cash at the time of closing. Proof of funds will be delivered to the Seller within five (5) business days of the request of proof of funds.

ADOPTED this 24th day of July, 2023.

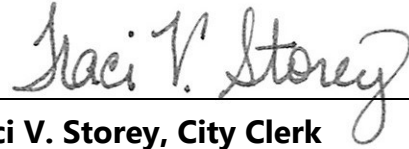
Emery G. Doughtie, Mayor

ATTEST:

Traci V. Storey, City Clerk

Adjournment

There being no further business, motion was made by Councilman Smith, seconded by Councilman Stainback, and unanimously carried to adjourn. The meeting was adjourned at 5:50 p.m.



Traci V. Storey, City Clerk

Approved by Council Action on: August 15, 2023