



Minutes of the Roanoke Rapids City Council

A Special Meeting of the City Council of the City of Roanoke Rapids was held on **Monday, May 21, 2018 at 5:15 p.m.** in the Council Chambers at the Lloyd Andrews City Meeting Hall.

Present: Emery G. Doughtie, Mayor
Carl Ferebee, Mayor Pro Tem
Ernest C. Bobbitt)
Suetta S. Scarbrough)
Carol H. Cowen)
Wayne Smith)

Council Members

Joseph Scherer, MPA, MS, City Manager
Gilbert Chichester, City Attorney
Traci Storey, City Clerk
Chuck Hasty, Police Chief

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

Adoption of Business Agenda

Motion was made by Councilman Smith, seconded by Councilman Bobbitt and unanimously carried to adopt the business agenda for May 21, 2018 as presented.

New Business

Consideration of Third Amendment to the Theatre Purchase and Sale Agreement

Attorney Chichester stated he had been asked to give Council an update and present where they were with this proposed amendment.

He said a contract was entered into between the City and Thomas and Evon McLean to sell the Theatre to them for \$3 million. It had a due diligence period and then after the due diligence period, a 30 day window for them to close out the transaction. They came to the City and wanted an amendment, which we will call a first amendment, that extended the due diligence period up to and including April 30, 2018. After that they came to the City wanting a second amendment. In doing that, they presented good solid evidence that they were making progress and

moving toward the final close out of the purchase of the Theatre. He stated he and other City staff that met with them felt they were dealing in good faith and acknowledged at that point the City had completed all of their due diligence. Meaning the City had completed their conditions precedent to closing so there would not be anything to fall back on the City. They also acknowledged the property and the building was in good condition. He and the City Manager presented that amendment to City Council which would have taken it to May 14, 2018, but at the meeting it was concluded it would go through to May 21, 2018, which is today. Once that was voted on and approved the contract was put back into full force and effect. He reported recently they have come forward to ask for a third amendment. He said he knows this sounds a bit redundant to the City Council and some of the citizens. He wanted to assure them to the extent that he could, that the Mayor, some Council members and the City Manager have had in depth meetings with them and it appears everything is in place to close with the exception of finalizing the loan they are attempting to get.

He said there was one other element that had to be completed and that was the appraisal. The primary bank they have been working with offered to extend the loan for all of the money except for \$825,000. It was suggested to them to look at a local bank to get the \$825,000 and they did that. He said they were told that within 72 hours that bank agreed to loan them the \$825,000 with certain collateral in place. Once they had that in hand, they went back to the primary bank and the primary bank said they wanted to be able to loan them all the money because they wanted the additional collateral that was being put up. He stated he could not go into what the collateral was because that was their personal business. He said he believed the initial bank had some misunderstanding about the collateral and how they could use it in a loan. They are now finalizing the loan with the initial bank for the entire amount of the loan which the buyers seem to be satisfied they can get that approval; it just takes time.

City Attorney Chichester said he was coming before them this evening to ask for a third amendment. He said he could not speak for the City Manager or anyone on the City Council that has looked into this, but in his opinion it looks like they were moving forward and in good faith and moving toward a closing date. He said they had to have an appraisal done. They have agreed to have an accelerated appraisal done and pay the added cost for an accelerated appraisal. With them having offered \$3 million for the property and the tax value what it is, the appraisal should not be a hindrance to them moving forward.

He said the proposal he was presenting today was to set a closing date on or before July 30, 2018. He knows that pushes it out a ways but it does not have to go out

that far. Another element of this proposal was starting the first week in June, June 1st, that each week after, including that week, that they do not close the transaction, the City would be paid not each week then, but at the end of it, \$5,000 per week as liquidated damages. To be absolutely clear, this \$5,000 per week would be taken out of the earnest money. As a hypothetical, say they go four weeks into June and they cannot get the financing or cannot get it finished and move forward, then the City would be entitled to recover four weeks or \$20,000 from them for liquidated damages. The importance of this is that it certainly costs the City money every week that goes by to keep the Theatre up and running. He did not know what the exact dollar amount was but it is a little less than \$5,000 per week. So this does two things: it would compensate the City by way of liquidated damages for the delay starting June 1st and equally as important to him was that it puts some urgency for the purchasers to move it forward because it would be their money that is being paid and it would help the City recoup some of theirs.

He asked Council to consider a motion to approve the third amendment along the lines of what he just laid out. He said there was one other important thing he wanted to note on this. He said \$3 million is not that gigantic, but it is an unusual piece of property. One of the things looked at in appraisals is comparable properties and what they have sold for. There are not any comparable properties for the Theatre property. So to have to make some adjustments in the contract in order to move forward and to keep the process on course is frustrating to them as a City Council, but it is not really that unusual in commercial transactions of this nature. He asked City Council to consider that.

Mayor Doughtie told Attorney Chichester that he could tell he had spent some time in preparing his statement and thanked him for his dedication to this very important matter that they all would like to see continue to move forward. He said to City Council that as mentioned by Attorney Chichester earlier, they have all seen anytime there was a contract or land acquisition or purchase of property that there are some things buyers sometimes do not want disclosed. As long as it is something that the buyers feel they don't want disclosed, they were not in a position that they were obligated to do it. He asked whatever comments or questions they had to try not to put the attorney in any compromising position.

Mayor Pro Tem Ferebee asked how much earnest money they had on this project. Attorney Chichester replied that amount is set by state statute and is based on the offer price to purchase so it is \$150,000 in this case which is based upon the purchase price. That is on deposit with the City of Roanoke Rapids.

Mayor Pro Tem Ferebee asked if the second contract the City had was that they were extending the date to May 21st or May 30th. Attorney Chichester replied the first amendment City Council approved extended the date to April 30, 2018. The second one City Council considered and approved, initially it was to be extended to May 14th, but at the meeting it was extended to today, May 21, 2018.

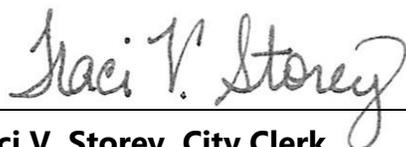
Motion was made by Councilman Smith, seconded by Councilwoman Scarbrough to approve the third amendment to the Theatre Purchase and Sale Agreement. Mayor Doughtie asked if there were comments or discussion.

Councilman Smith said he was aware of the statement he made a couple of meetings ago about no more extensions. But he thinks with the negotiations that the Mayor, City Manager and City Attorney made were a good agreement and Council should approve this.

Mayor Doughtie called for a vote. Councilwoman Scarbrough, Councilman Bobbitt, Councilwoman Cowen and Councilman Smith voted in favor of the motion. Mayor Pro Tem Ferebee opposed. Motion carried by a 4-1 vote.

Adjournment

There being no further business, motion was made by Councilwoman Cowen, seconded by Councilman Bobbitt and unanimously carried to adjourn. The meeting adjourned at 5:35 p.m.



Traci V. Storey, City Clerk

Approved by Council Action on: June 12, 2018