



Minutes of the Roanoke Rapids City Council

A Special Meeting of the City Council of the City of Roanoke Rapids was held on **Tuesday, November 1, 2022 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)
Tommy Daughtry)
Wayne Smith)
Rex Stainback)

Council Members

Kelly Traynham, City Manager
Geoffrey Davis, City Attorney
Traci Storey, City Clerk
Bobby Martin, Police Chief
Davis Wise, Planning & Development Director
Larry Chalker, Public Works Director
Christina Caudle, Human Resources Director*

Absent: Carmen Johnson, Finance Director
John Simeon, Parks & Recreation Director
Jason Patrick, Fire Chief
Tony Hall, Main Street Development Director

*Denotes joining the meeting via Zoom.

Mayor Doughtie called the meeting to order and opened with an invocation.

Consideration of Sealed Bid Sale of the Roanoke Rapids Theatre

City Manager Traynham stated this was the second round of sealed bids as the City did not receive any submittal in the first one. This round they did receive one submittal which is included in their agenda packet. The bid amount was \$1,500,003 and it was accompanied with a 5% deposit. There were some other contingencies and stipulations that were provided within that. Staff has been evaluating that and in consultation with the City Attorney. She asked Attorney Davis to address the stipulations included with the bid.

Attorney Davis stated he had been a big advocate of this process and getting the Theatre sold. He believes it is a real value of having the Theatre off the City's books and having City personnel no longer concerned with it. He is glad to see the interest from Brown Entertain-

ment. He referred to their bid where they make it contingent upon several stipulations. He was not worried about the other stipulations, but there is one that is an issue. He read, "A solution to decrease property taxes by 50% for 10 yrs is reached and applied." He does not believe the City has the authority to do that. Certainly not through this sealed bid process. Since the bid they tendered was contingent upon that and is contingent upon a condition that he sees that the City does not have the authority to enter into. He would say the City Council cannot accept that bid because of that condition. He said property taxes with respect to the Theatre are both levied by the City and Halifax County. The bigger part of the tax levy goes to the County which the City has no say over whatsoever. The City is not authorized through a sealed bid process to agree to reduce taxes on a certain piece of property. Sometimes it happens and the way cities can do that is through the statutes related to economic development. If they follow through those procedures that is something that can be agreed to as part of that. To be able to take advantage of those, there is a lot of preconditions that have to be met. The biggest issue is they have to generate data to show how this will help the local economy, create jobs, bring in revenue and develop surrounding properties. That is not something that City employees have the expertise or time to do so they would need to contract an outside expert to generate the data to rely on with that process. If the City tried to do this by just saying they found the conditions were met and it would spur economy and go under the economic development thing. If they did that without that basis and without the facts and figures, it would cause problems down the road and the actual transaction could be voidable.

Attorney Davis said if that was something City Council wanted to do, to take advantage of the economic development statute and look at potential of forgiving city taxes the City Council could do that. His advice would be for City Council to authorize retention of an outside expert to generate the kind of data necessary for that process. It would be a longer-term kind of process.

He stated as far as tonight goes, because that condition is in the bid that was tendered, he did not believe City Council could accept it. They could not accept the bid and then negotiate that condition away. The bid was made upon that specific condition. It was kind of a take it or leave it at this stage. If the City Council rejects the bid tonight, which is what he advises. He said the City could decide to open up a new bid procedure and readvertise it. Brown Entertainment could resubmit a bid without that condition on it. Unfortunately, the way this process is set up in the general statutes, they must go through the procedure and check off every box each time. They cannot say they receive this bid and this condition doesn't work so just submit us a new bid and it will be okay; they have to start the process all over again.

City Manager Traynham added under the sealed bid process the governing board has the authority to award the highest responsible bidder or reject all bids. She agreed with

Attorney Davis that any tax forgiveness incentives or opportunities would need to be pursued through the economic development appropriations act. It seems quite clear the general statutes under the Machinery Act there are only three possible ways to reduce or forgive any taxes. That is primarily through a tax imposed by a clerical error, illegal tax or tax levied for an illegal purpose. It is expressively prohibited that unless it is for a public purpose under the economic development statutes that the City Council cannot outright waive taxes. It even states they could be personally liable for those who vote in favor of it.

She said they want to follow the process in a lawful way and certainly want to encourage the interest of the Brown's or any other interested persons in the Theatre. They want to make sure that it is done by following the legal procedural guidance.

Councilman Smith asked if the general statutes tell how many days they have to leave the bid open. City Manager Traynham replied it has to be 30 days as stated in NCGS 160A-268. Advertisement has to be published at least 30 days before the bid opening for real property.

Mayor Pro Tem Ferebee asked if there would be any issues with getting a readvertisement done pretty quickly. City Manager Traynham said she did not foresee any issues.

City Manager Traynham stated there was a question about whether City Council would need to approve another resolution.

Attorney Davis stated City Council would need to approve a new resolution, the question is whether or not City Council can do it in this meeting. Attorney Davis said since this was a special meeting and what matters with open records law is the purpose of the special meeting which is stated in the meeting notice. He read the purpose of the meeting notice, "the purpose of this meeting is to consider the sealed bid sale of the Roanoke Rapids Theatre." In his reading of the purpose he believes the City Council could vote on a new resolution to set up a new sealed bid procedure just like they did before with the same stipulations as long as they have 30 days prior to the bid opening. City Manager Traynham and Attorney Davis conversed about the bid opening date since the date must be included in the resolution for their consideration. City Manager Traynham suggested a bid deadline of December 7 or 8 and then have a called meeting the week of December 12th or discussed at the regular meeting on December 20th.

Councilman Smith asked how much time is needed to advertise for a special meeting. City Clerk replied 48 hours. He asked why they would need to wait until the week of December 12th to have a special meeting.

City Manager Traynham replied primarily for time with the receipt of any bids for staff to conduct any due diligence. She said they could do it closer to the bid opening date; she wants to make sure they have enough time to get the notice in the newspaper.

Attorney Davis suggested City Council first address the bid that has been tendered now. They need to vote to accept or reject the bid. If the City Council rejects the bid, the next step would be to sort this issue out. He stated he did not believe City Council had a choice except to reject it because of the tax stipulation.

Motion was made by Councilman Smith, seconded by Councilman Stainback to reject the bid that was presented on the Roanoke Rapids Theatre.

Mayor Doughtie stated before he called for a vote he had a few comments to make. This City Council generally takes great consideration from the city attorney and follow their advice. He was excited the Brown's had interest in the property and made a legitimate bid. He would like this property to be in private ownership. As the city attorney has informed them, they cannot vary from the general statutes. The City Manager, City Attorney and City Council will do what they can to make this process move forward.

Mayor Doughtie asked Attorney Davis if Mr. Brown could make a comment. Attorney Davis replied he believe the Mayor could recognize and allow someone to speak.

Mr. Dewey Brown asked if their bid could be amended. Attorney Davis replied unfortunately it could not because of the conditional nature of it. He wished it was a simpler way to negotiate but the way the general statutes work with the City having to go through this procedure to do it the legal way they have to reopen and readvertise. Mr. Brown stated he needed to speak with them a little more about closure to terms rather than guessing what to do. He can put ten more bids out there but if they were not together then it's just wasting everybody's time. He would love to come together and work this out.

Mayor Doughtie called for a vote. All voted in favor of the motion. Motion carried to reject the bid that was presented on the Roanoke Rapids Theatre.

Attorney Davis stated if City Council wanted to they could pass a resolution tonight at this special meeting to reopen the bidding process. If they did not do it tonight the next option, unless they called a special meeting, would be November 15th.

Councilman Smith stated he would like to see City Council do that tonight. There were no objections. Attorney Davis stated he and the city manager have been working on draft resolution. City Manager Traynham said she had been revising a previous resolution. She suggested for record keeping sake, they should say the resolution number is 2022 and the

next corresponding number. It will have the same language as the last resolution except it will state the new bid opening date of Wednesday, December 7, 2022 at 3:00 p.m. The only change would be the resolution number and the bid opening date.

Councilman Smith asked if during this bidding process someone wanted to rent the Theatre to have a Christmas show, would they be able to do that. City Manager Traynham replied yes, they still have the opportunities for rentals available and City Council approved the fee schedule for that.

Mayor Doughtie asked if potential interested parties such as the Brown's or someone else able to have any discussion with the city manager or city attorney, not about the price, but about any conditions or stipulations; he feels this may have been avoided if they had done so. City Manager Traynham stated they had discussed some of this and there were different stipulations. If that was something they had to have in there, they may want to include that as stipulation because they could not get into it and then start negotiation especially if the bid deposit was going to be returned. This a process, especially at value and level is not one that is conducted very often. She was learning a lot more about it. She wishes they could have had a lot more of these answers ahead of time. They do encourage people to ask questions and they will try to get them answered.

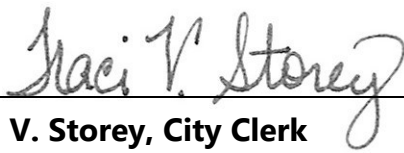
Councilwoman Bryant asked for clarification on the sealed bid process and the economic development process. Attorney Davis explained they were two separate processes. The sealed bid process is a way to dispose of city owned real property. The economic development process is another one they could take. There is usually a buyer in the mix. It requires a lot of work on the front end. On the back end whoever purchases the property generally is going to have some shoestrings on them as far as goal posts they would need to meet such as development of property around it, employment of local people or revenue brought in. If they reopen it up for bids, it doesn't necessarily mean they cannot continue to look at other option if things don't work out here. He was skeptical the economic development was something anyone was going to want to follow. It would be costly on both ends.

Motion was made by Mayor Pro Tem Ferebee, seconded by Councilman Smith and unanimously carried to approve a resolution under the next consecutive number to advertise the Roanoke Rapids Theatre for sealed bids under the same terms and conditions as the previous resolution with a new date for sealed bids to be opened Wednesday, December 7, 2022 at 3:00 p.m.

Adjournment

There being no further business, motion was made by Councilwoman Bryant, seconded by

Councilman Stainback and unanimously carried to adjourn the meeting. The meeting adjourned at 6:07 p.m.



Traci V. Storey, City Clerk

Approved by Council Action on: November 15, 2022