



# 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 22, 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)  
Tommy Daughtry)  
Wayne Smith)  
Rex Stainback)

**Council Members**

Kelly Traynham, City Manager  
Geoffrey Davis, City Attorney  
Traci Storey, City Clerk  
Gorton Williams, Interim Police Chief  
Jason Patrick, Fire Chief  
David Wise, Planning & Development Director  
Larry Chalker, Public Works Director  
Tony Hall, Main Street Development Director

**Absent:** Carmen Johnson, Finance Director  
Christina Caudle, Human Resources Director  
John Simeon, Parks & Recreation Director

Mayor Pro Tem Ferebee announced Mayor Doughtie was delayed in traffic due to an accident. He called the meeting to order and opened with an invocation. Mayor Pro Tem Ferebee invited everyone to fellowship until Mayor Doughtie arrived.

Mayor Doughtie arrived at 5:43 p.m. and called the meeting back to order. He called on Attorney Davis to present the matter concerning the Roanoke Rapids Theatre.

**Consideration of Offer to Purchase the Roanoke Rapids Theatre**

Attorney Davis stated the City received an offer on May 17, 2023, on behalf of a group including Weldon Mills which is enclosed in their packet. They are the same group that had proposed the lease agreement where City Council gave them some feedback at the last meeting. As he was formulating and constructing a response to their attorney, basically outlining the feedback City Council had given regarding that lease

agreement, he received this offer from them. The important part of the offer is that it is for \$1.5 million cash. There would be no financing; they would pay cash for the Theatre. There were some other things in their initial offer and he actually spoke with their attorney, Bill White who transmitted a newer revised offer this morning. They will see that following this in the letter dated May 22, 2023. Basically, it makes reference to NCGS 168-269 which is the general statute that governs this process. If City Council accepts an offer such as this, the purchaser has to deposit 5% of whatever that offer is. They will notice in the original agreement there are various different pieces about depositing \$5,000 here and then \$25,000 here. That is not relevant to this process. What matters is that they have made a \$1.5 million cash offer. If City Council were to vote to accept that offer today or another offer that he will get to in a second and there is a reason he was qualifying it that way, then that would trigger an obligation on the purchaser to deposit 5% of the purchase price with the City. Once that amount is deposited that triggers a 10-day upset bid period process so other interested buyers could come in and bid during that period. They too would have to deposit 5% of their bid and the statute lists what the increased bids must be. It cannot be where somebody submits \$1.5 million and then somebody else submits a bid for \$1.5 million and one. There is a formula in the statute and he believes the City Manager has run those numbers.

He stated that was the original purpose of the meeting today. It tends to be a little bit more complicated than that as things tend to be when dealing with a property of this magnitude. He announced that this afternoon, the City received a second offer to purchase. A copy of that offer has also been given to City Council this afternoon. The offer is from a group in New Jersey called TheVictor Enterprises. He spoke with the leader or president of that group today, Victor Freeman and several other individuals that are involved in that. He told them that he received the offer and felt like he and the City Manager had an obligation to put that forward to the City Council as well. He stated the offer had just come in this afternoon, so he and the City Manager have had very little time to review it with everything else they have been juggling. The core part of it is that their proposal is for \$1.75 million dollars. Since local media posted the Weldon Mills offer from last week, he thinks that maybe they kind of tracked along with some of the same language. He explained to them the same thing that he explained to Mr. White this morning which is, under the statutes if City Council were to accept their offer of \$1.75 million tonight that they would be obligated to deposit 5% of that offer down and then that triggers the upset bid process. Anybody can submit an upset bid and as part of that they have to pay the 5% deposit and that continues on until they reach some closure on that.

Attorney Davis said as of right now if City Council takes no action tonight, there is currently an auction scheduled to begin on *GovDeals.com* Thursday, May 25<sup>th</sup>. Mr.

Stewart is here from *GovDeals* to talk to City Council. City Council can hear from him in a few minutes. There are several different options here and he realizes it feels like kind of a rushed thing. The truth of the matter is City Council does not have to take any action. They can proceed with the auction as is. City Council could choose to postpone everything. He stated with the \$1.5 million offer from Weldon Mills, they said in the original offer that their offer was contingent upon City Council agreeing to cancel or postpone the auction of the property. It was in their letter from May 17, 2023 where it stated, if this proposal is not accepted prior to the commencement of the online advertising of the premises for this sale, this proposal terminates automatically. That means it would cancel the offer if City Council allowed the auction to begin, but he questioned whether or not that would mean the group was still going to be interested. He did not know, but that is something they put in their offer as is. He believed everyone on City Council knew Attorney White and how long he has been in practice and knows that he would have advised them. He and Attorney White had the discussion that even if City Council did accept their offer that it will trigger a 10-day upset bid period. So there still has to be some competitive bidding in the process.

He stated the other thing to keep in mind is that regardless of whether City Council goes through the auction process or if they go through this process and the upset bid process, at the end of the day when everything is closed with whichever avenue they use to dispose of the Theatre, City Council can decide to reject all bids or to accept the highest bid.

Mayor Doughtie called on Mr. Jim Stewart with *GovDeals*.

Mr. Stewart stated he was the manager at *GovDeals* and he wanted to talk about the process they have been going through to help the City sell the Theatre. He said back in April they embarked on an agreement for a plan to sell the Theatre and they have been following those plans. They have been advertising that property and it has been out on several different venues online for *YouTube*, *Land.com*, and *GoToAuction*. They have MLS listings already out for it. As of this morning there were 12,300 unique visitors that have come to look at your auction. When he says unique visitors that means these are all individuals that haven't been there twice. This is how many people have come to look at your auction. There were 96 watchers. These are people that are extremely interested and they want to see where this auction goes and they're planning on bidding. They've got quite a bit of interest and they've only been working for 30 days on this; there is another 34 days to go. They are really happy that the City got some offers. They would like to see them put those offers on *GovDeals* and drive the competition. They think the City can get a lot more money for this. By putting those offers on *GovDeals*, it will up the ante and create competition. They have the same opportunities as the attorney said on their site. They can accept it or decline it.

If one of these bidders has the highest bid at the end of the auction on *GovDeals* then they will win the auction and get that property if approved by City Council.

Mayor Doughtie they've had a lot of discussion about not doing owner financing and asked if they had that in the information on the site about that or do bidders not know that until they put bids in. Mr. Stewart replied all of the bids they receive and when the auction is over, the requirements are that they pay a down payment which he believes is another 5%. Before they are given the title to the property there is another percentage they have to put down. There is no financing involved here.

City Manager Traynham said to Mr. Stewart, what she believed Mayor Doughtie was asking was if someone bids on *GovDeals*, what kind of security is there as far as them being able to follow through with the payment or if there's any stipulation from the bidder actually being able to get the money together.

Mr. Stewart said the \$5,000 deposit that bidders put down would be forfeited.

Attorney Davis clarified with Mr. Stewart that all of the upset bid process, deposits and all of the things involved with the auction pursuant to the resolution from April is done by *GovDeals* so none of that money comes to the City; they administer all of that. Mr. Stewart replied that was correct.

City Manager Traynham added they have talked about upset bids and an upset bid process, but for an electronic auction the upset bid process is not required. So, at the conclusion of the electronic auction which is scheduled to conclude on June 26<sup>th</sup>, they would present the highest bid to City. She said it would be presented to the City Council to either accept or reject so there is no 10-day additional period required. On the other hand, under the upset bid process for the conveyance of property, once City Council accepts and passes a resolution to accept a bid, they submit the 5% of their bid offer. The City cannot start advertising the 10-day upset period until they have received their bid deposit and by statute it must be 5%. The 10 days would not start until then and they must continue to go through the process of having an upset process until they have no more additional bids that are considered qualifying upset bids. She said she wanted to differentiate that with the online auction for upset process.

Mayor Pro Tem Ferebee asked for clarification. Attorney Davis replied if it goes through *GovDeals*, when the auction closes on June 26<sup>th</sup>, the bids come to City Council and they have the choice to either accept the highest bid or reject all bids. If they accept the highest bid then it is done at that point. There is no upset bid process at that point. The whole purpose behind this is to make sure they get a competitive

price for City property. When they accept a traditional offer like this, the only way they do that is through the upset bid process. When they do an auction, competitive bidding is part of the whole auction framework.

Mayor Pro Tem Ferebee asked for clarification on all bids meaning if that bid did not necessarily come from *GovDeals*, it is the highest bid out there. Attorney Davis stated he thinks City Council would probably accept whatever the highest qualified bid from whatever forum. If it goes through auction on *GovDeals* and at the end of the time period, whatever comes out of it City Council can reject all bids. If the City got a bid outside of *GovDeals*, City Council can look at that bid and if it is higher than from the auction, they could reject all the bids and accept the other one. If they do that though, then that would trigger an upset bid process because that happened outside of the public auction context. He did not see a logical reason why somebody would offer some kind of higher bid outside of the auction process if it is already in the auction process because all that was going to do is trigger a new upset bid period.

Mayor Pro Tem Ferebee stated he asked this because of what he sees before him and what they received today. Attorney Davis added he believed it was the vice-president with Mr. Freeman's group who told him they were watching the auction and they were planning to submit a bid.

Attorney Davis stated he wanted to make clear that the offer presented by Weldon Mills would be withdrawn if the auction goes forward. He did not know whether they would submit an actual bid. If the auction were to go forward on *GovDeals*, he did not know whether TheVictor Enterprises would submit a bid. He could only rely on what they had told him which was what they were planning.

Mayor Doughtie asked Mr. Stewart if a situation like that came about and the auction closed and the City received a bid the next day outside of the auction, how long do they have to accept the bid from the auction. Mr. Stewart replied usually 48 hours after the high bid comes in.

Mayor Doughtie asked Mr. Stewart if the buyer pays a premium or fee to *GovDeals*. He replied that was correct. Mayor Doughtie asked if they had a clause in their contract if the City sold it to someone outside of the auction the City would still be obligated to pay them because that could be a reason somebody would do something like that to avoid paying. It is like selling a house, it is usually a time frame. Mr. Stewart replied that is right. When bidders have seen it on *GovDeals* due to their marketing and promotion that is when it is a requirement. It is still owed to them because they found it due to their work.

Mayor Pro Tem Ferebee asked Mr. Stewart what was their fee. He replied the buyer pays 5%, the City pays nothing.

Councilwoman Bryant asked if a minimum amount had been established for starting the auction. Mr. Stewart replied \$750,000.

Attorney Davis referred to Step 4 on page 2 of 7 of the UNC School of Government document, once *GovDeals* reports the highest bid to the City Council that bid must be accepted or all bids rejected within 30 days. There is a time limit so City Council could not just sit on it forever.

Councilman Smith asked if City Council accepted one of the two offers presented tonight, could the upset bid go through *GovDeals* within that 10-day period. Mr. Stewart replied yes.

Mayor Pro Tem Ferebee asked Mr. Stewart about his comment concerning getting more money out of it. Mr. Stewart replied having those people with those offers bid online and creating the competition with the other people that are going to bid. If they bid outside, they are not creating that competition on *GovDeals* while the auction is going on.

City Manager Traynham asked once the auction closes on June 26<sup>th</sup> at 9:00 a.m., when does the highest bidder have to complete the wire transfer or what is the time frame that they set up their wire transfer. Mr. Stewart said right now they are going to deposit the 5% and then there is another percentage, he did not have that in front of him.

Attorney Davis said if City Council moves forward with the auction and say he wanted to put in a bid on the property, before *GovDeals* could take his bid he would have to put down the 5% and asked if this was correct. Mr. Stewart replied bidders must put \$5,000 down and then they allowed to bid.

City Manager Traynham referred to the *GovDeals* site and read, "if you are the winning bidder of the asset and you fail to pay per the terms and conditions, you will be in default and the following will occur. 1 – you will forfeit your bid deposit in its entirety; 2 – *GovDeals* account will be locked; and 3- you will be subject to a fee of 40% of the sold amount of the asset as a default fee. She said there are consequences to the online bidding process if the highest bidder does not follow through per the terms and conditions. Her interpretation of this is that anyone who is going to be actively and seriously bidding on this property is not going to want to experience those consequences. There is a high confidence level that whoever the high bidder ends up

being and if City Council were to accept it, more than likely that deal would come to fruition. Mr. Stewart added that is the purpose of having that deposit. They want serious bidders.

Mayor Doughtie asked Attorney Davis if the offer from TheVictor Enterprises was a cash offer. He replied yes, both offers were cash offers. If City Council were to accept either of the offers presented tonight, they would accept the amount upon deposit of the 5% as required by statute. Then they would go through the upset bid process. Once the upset bid process is closed, it would come back before City Council and they would vote to approve it. If they approve it, they will draft and execute a contract for the sale just like any other kind of real estate contract.

Mayor Pro Tem Ferebee asked if City Council decided tonight to not go through with the auction on *GovDeals*, would there be a fee. Mr. Stewart replied there would be no fee.

Mayor Doughtie stated they were in a dilemma. At first, they had no interest, then they got some interest, but found out they could not do some of the things they might be asked to do so they looked at other alternatives. Now they have difficulty in deciding which one to go with. That is why he is glad he doesn't have to vote. He stated as Attorney Davis said, City Council can take no action, they can start the upset bid process or stay on *GovDeals*.

Attorney Davis stated he has tried to reduce it down to a set of options for City Council. These are kind of broad categories, but he has four options.

1. Not accept any offers that have been tendered and go forward with the public auction as advertised. That is the take no action tonight.
2. Accept the \$1.75 million offer. In that case, they could decide to continue with the auction and have that out there. In his opinion, the logistical thing to do would be to cancel the auction since accepting the offer would trigger an upset bid period.
3. Accept the \$1.5 million offer. If they did that, his advice would to absolutely cancel the auction by its terms.
4. Vote to postpone everything until the next City Council meeting or such time as City Council wanted to address it. And see what comes in the meantime.

City Manager Traynham added if City Council accepts one of the written proposals, adoption of a resolution would be required. They cannot start that 10-day clock until the 5% bid deposit is received.

Mayor Pro Tem Ferebee asked what have they traditionally been doing with the bids.

City Manager Traynham said these requirements are all set forth by the general statutes. They are not their local options or local considerations; these processes are outlined by state law.

Mayor Pro Tem Ferebee stated that may have been a Council question. He asked how much did the City totally owe on the Theatre. City Manager Traynham replied as of today, on the 2017A note with Bank of America, the principal is \$7,638,760, not including any daily interest and after they made the payment earlier this month. If they were to request a payoff note it would be just a little bit more than that based on the daily interest added to it.

Councilman Smith referred to the \$1.75 offer. He asked what it meant in the first paragraph of the Letter of Intent where it states the parties hereto agree to negotiate in good faith binding agreements; he thought this was a definite offer. Attorney Davis replied it was a definite offer. If City Council accepts this offer and at the end of the upset bid process if they are still the highest bidder and City Council accepts that, it is still not done at that point. They must do a real estate contract and a deed that has to get worked out. He believes that is just general contract language.

Councilman Smith referenced the second part where it states the parties will negotiate the terms. He thought the terms would be established on \$1.75 million. Attorney Davis replied the material term they would handle tonight if City Council chose to do so would be the purchase price. Whether it is this or even if it something that comes out of *GovDeals*, there still must be terms in the final real estate contract that get negotiated back and forth. For instance, due diligence periods to who pays the closing costs and things like that.

Councilman Smith said in this agreement it says that the seller which would be the City, would be obligated to pay all expenses. Attorney Davis said they list some transaction costs and there are others that they bear on the second page such as title insurance policy, escrow and things like that.

Councilman Smith asked Attorney Davis to explain the exclusivity part on page 3. He stated again that he has not spent much time with this document due to just receiving it this afternoon. He asked for a minute to read it. He stated basically what they were talking about is if City Council were to accept this agreement as it has been presented, he did not think City Council necessarily could accept all these terms. Functionally at this point, they are just talking ultimately about the purchase price. He said that section talks about if City Council accepted the document and then went out and

tried to solicit other bids elsewhere or tried to sell it to somebody else in the interim and they were damaged by that that, it would be a problem. If they accept their offer and then if they end up paying the requested 5%, his position is they accept what the City tendered, the purchase price and the agreement on that pursuant to the general statutes. They pay 5% and then go through the upset bid process.

Councilman Smith asked if City Council could put a stipulation that whichever party brought the 5% of their purchase price to the City first would be considered as the person who has the first bid on it and the other party has to come back with an upset bid. Attorney Davis replied no, he did not see how that could be effective under the current statutes.

Councilman Smith said from his understanding and if he remembers correctly, Mr. Freeman originally wanted to owner finance so he asked if this was a cash sale and wouldn't have anything to do with owner financing. Attorney Davis replied that was correct.

Councilman Smith asked once they accept one of these offers, what length of time do they give them to put the deposit down. Attorney Davis replied there is not really anything specific in the statute about that. They do not have to give them a specific time, but it seems like they would want to go ahead and get it in so they could trigger the 10-day upset bid process. Again, they do not have to give them a time, but they could. Especially with the group from New Jersey, there may be some logistical aspects as far as timing. The City Manager has said they could do five business days or something like that. By saying business days with the Memorial Day weekend coming up, probably Tuesday of next week. Councilman Smith said they could say by the next Council meeting which would be June 6<sup>th</sup>. Attorney Davis said absolutely.

Councilman Smith asked about the confidentiality section on page 4. Attorney Davis replied sometimes they may get offers or interest from people that are not familiar with North Carolina's Open Government Laws. Any kind of proposal that was received by the City would not only have to come to City Council in open session, but would be a public record. Additionally, one of the things he was made aware of when he became the City Attorney several years ago, was that all discussions regarding the Theatre would be had in public. During his tenure that has been the case. There have been no closed sessions on the Theatre.

City Manager Traynham added if City Council were to consider the offer or proposal from TheVictor Enterprises, they were not asking for approval of this particular document or its contents. The primary things they were looking at were the purchase price and essentially who it is and then the details of the upset process. Many of these

things in the document would come into a real estate sales contract and it would be North Carolina contract. They do not have a contract from the other proposer either, it is just more of a proposal regarding amounts and time frames. That is what they would garner from either one of those in this case, not specifically signing on this particular document.

Attorney Davis explained with the *GovDeals* auction, one of the terms is that the winning bidder is responsible for all closing costs associated with the purchase including deed filing, etc. That is a specific term of the *GovDeals* auction.

Councilman Daughtry said if they went with one of these other offers, they could write that in. Attorney Davis stated they could and there is no obligation for them to accept those terms. With either of the purchase options, if City Council accepts one of those tonight, the deposit comes in, they go through the upset bid process and if City Council agrees to accept the offer, then at some point after that during the real estate contract the purchaser could say they were going to walk away from it. There were really no consequences they can put on them at this point. Once the real estate contract is entered into and once they sign that contract, there will be some conditions in that contract as far as if they pull out of it at that point. That is the point where the terms and conditions really become operative. Right now, they were really just talking about the price.

Mayor Doughtie asked Attorney Davis if there were any real differences between the two contracts besides the price. He replied he would not call them contracts; he would call them proposals and letters of intent. The only material terms he would say City Council is really considering would be the price, at least at this point. All these other terms are negotiated after the upset bid process.

Councilman Smith asked what happens to the letter of intent if they accept one of them and they suddenly back out; do they have any recourse. Attorney Davis replied they really do not because that deposit they make goes back to them. With *GovDeals* that is different. Those fees in many cases would be forfeited and he thinks Mr. Stewart has talked about that. In this context, they put in the deposit and then they pull out at some point, that deposit goes back to them. That deposit is a credit to the purchase price if the deal closes.

Mayor Pro Tem Ferebee asked about the deposit on page 2 of TheVictor Enterprises proposal. Attorney Davis said there was language to this effect in the proposal that was proposed by Weldon Mills as well on May 17<sup>th</sup>. He spoke with Mr. Freeman with TheVictor Enterprises about it and told him that was not a possibility here. They cannot execute on a letter of intent. The most they could do was agree to accept an

offer to purchase and begin working through the process under the general statutes and they would pay the down payment. This is kind of contemplated as if they did not have that whole mandatory down payment kind of aspect.

Mr. Stewart asked to speak. He said both of these entities that have made them an offer because they saw it on *GovDeals*. They've got just two offers. He knows they sound good, but wouldn't they like to have five or ten offers. He asked that they give the process a chance and run it through the next 34 days. Have them put their bids on there and they can drive the price up.

Mayor Pro Tem Ferebee said like Mayor Doughtie said, it was different when they have more than one bidding on the Theatre when at first they couldn't get anybody. He stated it makes sense what Mr. Stewart has said. It also kind of leans to what their tradition usually is which is to go with the highest bidder. They do not always do that, but it is what they usually do. With a \$250,000 difference in a serious proposal, he did not see where they would differ from what they usually do. They really don't know 100% whether either one of them will go through with it.

Attorney Davis stated without being able to tell the future, they do not know what will happen if City Council continues to go through with the auction. They do not know if one or both of these parties would submit bids through *GovDeals*. Clearly, they have expressed some interest. He hopes they are both acting in good faith and he thinks they are and clearly, they are willing to commit a substantial amount of funds to this this project.

City Council discussed scenarios about the minimum bid of \$750,000 for the auction and how the parties submitting the offers could reduce their offers. Attorney Davis reminded City Council that they could always reject the bid. He stated he wondered why someone would put out a second bid if they understood that the upset bid process would have to be followed anyway. If City Council were to accept the \$1.5M offer then state statute specifies what the minimum bid must be under that. He believes that the bid would have to be \$1,575,000. So, only \$75,000 more rather than \$250,000 more. He did not understand why the other bidder would not wait for the upset process to begin.

Mayor Doughtie said his point was they were taking a chance that they may end up getting a lower bid and the buyer is getting an "opportunity" to possibly buy it for less. Attorney Davis stated there are risks with any of the options. They could accept one of the bids tonight and then pull out. Then they will be a couple weeks further behind with disposing of this asset.

Mr. Stewart said he heard the Mayor mention they could possibly get it for \$750,000 because that is the starting bid. He said they could change that and make it whatever they want. Mayor Doughtie said City Council had some discussion about that. He knew *GovDeals* reason for that minimum was to get the most competitive bids.

Attorney Davis said when City Council did the initial resolution setting up the auction, there was no minimum bid in that resolution by design. City Council did not commit itself there to the \$750,000 minimum bid. What Mr. Stewart just indicated is that if City Council decided to continue with the auction and not accept any of these offers, City Council could indicate to either Mr. Stewart or the City Manager to increase the minimum bid up to that amount.

Mayor Doughtie stated he was supposed to be the leader of the Council, but he needed some guidance to which way they wanted to go.

Councilman Smith asked if the auction could be stopped at any time on *GovDeals* even after it has started on May 25<sup>th</sup>. Mr. Stewart replied yes. Councilman Smith said his recommendation was to look at these things good and make a decision on June 6<sup>th</sup> at the City Council meeting.

Mayor Doughtie confirmed that the auction would be open on June 6<sup>th</sup> and they could already have received some bids. Mr. Stewart replied that was correct. Attorney Davis reminded City Council that \$1.5M offer by Weldon Mills states in its terms that if the auction begins, that offer is withdrawn. He did not know if they would make another offer or would say they were done. They do not have any indication of that, but they did make their offer contingent on that.

City Manager Traynham said if the *GovDeals* auction proceeds as planned, she did not think by June 6<sup>th</sup> that would be an appropriate measure of its success. As in most auctions people usually wait until closer to the auction closes to bid. That is really where they see competition taking place right before the close of the auction. So, likely in the early morning hours of June 26<sup>th</sup> prior to 9:00 a.m. would be when they would see those numbers getting much higher. Attorney Davis asked Mr. Stewart if he believed that to be a fair analysis of the situation given his 14 years' experience. Mr. Stewart replied yes, and that is the case with almost every auction with real estate or equipment. There is usually bidding at the beginning of the auction and then there's a long lull until they get near the end of the auction. The bids will start to slowly pick up speed and then a lot at the very last moment of the auction.

Mayor Pro Tem Ferebee asked if City Council decided to go that route, would they have to decline these offers tonight and then ask them to go to *GovDeals* and put

them in. Attorney Davis replied the mere fact that City Council does not accept them in effect declines them. He would then reach out to both parties and explain to them whatever City Council decided tonight. Again, if City Council takes no action and adjourns the meeting, the auction continues. It opens on May 25th and closes on June 26<sup>th</sup>. The bids will get reported to City Council and they can accept the highest bidder or reject all bids. If it is the consensus of City Council to say they like the numbers of the offers tonight and they were definitely interested, they could ask them to submit it through *GovDeals*. They were dealing with very sophisticated buyers here in both contexts so it seems that would go without saying that would be an option available to them. But certainly, he would make that personal contact to them.

Mayor Doughtie asked Public Works Director Chalker had any comments with his experience with *GovDeals*. Public Works Director Chalker stated they've had a very positive experience with *GovDeals* with their automobiles, equipment and things such as that. This was a little different. He wanted to make one point to City Council since he's heard a little bit of discussion to sort of mixing these two processes. From a staff standpoint there are two separate processes. They are either going to take one of these offers tonight and go to a 10-day upset bid period or they are going to turn them down and go with *GovDeals*. He does not see how staff could keep up with mixing them together and trying to run subsequent type interactions. He wanted to make that point because it's been a lot for them to keep up with. They had an open house earlier today knowing that they were going to have this meeting tonight. The open house was already advertised so they wanted to do the responsible thing and be there for that. They do not want to do anything to steer City Council one way or the other; staff is going to support whatever the City Council asks them to do. He requests that they don't try to jump in both of these arenas at the same time because he did not know how they would keep up.

Councilman Smith asked if the open house was with *GovDeals*. Public Works Director Chalker replied yes, it was advertised by *GovDeals* for May 22nd from 9:00 a.m until 3:00 p.m. this afternoon. Mayor Doughtie asked if it was a good turnout. He replied it was very light turn out.

Attorney Davis clarified that as City Attorney along with the City Manager, the Public Works Director or anyone in city government were not trying to sway City Council one way or the other on any of these things. They are not trying to advocate for any of them. They put all of the options before City Council in good faith and are letting City Council make its decision. As the Mayor said, he did not envy the City Council's decision because they have a lot of difficult decisions to make for this property. There is a lot of public skepticism around it and in any action that City Council takes with

it. He feels like they have tried to put the information out there and want to be clear they are trying to be fair to everybody involved.

Councilman Stainback asked Mr. Stewart about the number of hits to the auction he reported earlier and if that was expected or was that low. Mr. Stewart replied different auctions receive different amounts of interest. They have a very interesting piece of property that a lot of people seem to be interested in. They have done an extensive amount of marketing already in the first 30 days. They have reached out to a variety of different venues and sites and emailing previous bidders of real estate property. They have gotten a tremendous response to come and look at their auction. Also, a large number of those have flagged to follow this auction because they are serious about watching it and wanting to bid on it. Councilman Stainback asked if he considered that a high number. Mr. Stewart replied yes.

Councilwoman Bryant stated to remember that they had it listed as \$750,000 too. Mr. Stewart said that was part of the reason to get them interested. If they had \$2M on it they might not have gotten that many. They definitely start it low and let the bidding competition drive that price up. That is one of the reasons he was suggesting they let the parties know they could put their offers online to help drive that price up once the bidding starts.

Mayor Pro Tem Ferebee said they talked for a half hour about putting a floor or not putting a floor on the auction. They decided not to put a floor on it. He asked could they change the minimum to something other than \$750,000. He thinks that is too low. Mr. Stewart said they could put whatever starting amount on it.

City Manager Traynham said there wasn't a minimum threshold set in the resolution document. When the notice was created on *GovDeals*, they talked about \$750,000 being the starting bid. What Mr. Stewart was saying is they can increase that starting bid amount prior to the start of the auction.

Councilwoman Bryant stated this has been quite a process. This was her first term dealing with the Theatre and it has been an experience. She likes what *GovDeals* has done; she was very pleased that there has been some interest. But also, she thinks back to what her grandmother always said to her, a bird in the hand is worth two in the bush. They've already got an offer of \$1.75 million and asked if they know if they were going to get that or more. If it is definitely more then why would they take it.

Councilman Stainback recalled that the first two auctions they did not get any bids. He was thinking about the auction on *GovDeals* and he appreciates what they have done. If it doesn't reach \$1.75M and they did not take one of these offers tonight, then they would not look very smart. He said if it was his theater and in some respect, it

is because he has been paying on it for 15 years or more, so he would take the \$1.75M offer. Plus, it is subject to the 10-day upset bid process. City Manager Traynham reiterated the 10-day upset bid process would begin after the receipt of the 5% deposit. Councilman Stainback continued to say he would hate to walk out tonight with no decision and an offer be withdrawn. It was a bad investment many years ago. He would certainly support accepting the \$1.75M offer and see what happens in the 10-day upset bid.

Councilman Smith expressed his concern whether or not they were going to be developers because they need that area developed. It would be a big difference in the City's tax base so they needed to look at it in different ways.

Mayor Doughtie stated if they do take the highest offer, they will get \$1.75 million and they will get over \$100,000 a year off of the City and the recurring monthly expenses. They would also get tax money on it.

Mayor Pro Tem Ferebee asked if they accepted the \$1.75 million offer tonight, does that conclude the *GovDeals* auction or could that be something to drive the \$1.75 million offer up. City Manager Traynham said she believed it would be appropriate to postpone the *GovDeals* auction pending any outcome or failure to perform or if any upset bids come in. She did not feel that they would want to run the same process concurrently. Right now, the City Council has already approved a resolution and *GovDeals* has done what it needs to do so far. Unless the City Council rescinds that original resolution *GovDeals* is going to keep going and they are going to start that auction on Thursday morning. If they intend to accept one of the two offers by resolution then after doing so it would be appropriate to rescind the other resolution to effectively postpone the auction. If City Council wanted to go back in that direction in the future, the information is there. Procedurally they do not want to have both at the same time. They would want to choose one or the other so that only one occurs.

Mayor Pro Tem Ferebee stated he was ready to make a motion.

Mayor Doughtie said he had another question. He asked if somebody was interested in purchasing the Theatre outside of the auction so they wouldn't have to pay the fee, would it be legal for the City to pay that fee for the buyer. Say they got a \$2 million offer, that's \$250,000 better than what they have right now. Then 5% would be \$100,000 so they would end up with \$1.9 million. Attorney Davis replied he did not think they could expend public funds that way.

Mr. Stewart asked if they decided to accept an offer and rescind the resolution for *GovDeals* to take the auction down, would they allow the 10 day process to be put on

*GovDeals*. City Manager Traynham replied that is a question for the City Council. She said they would want to do one or the other. If they choose to handle the upset bid process via *GovDeals* and it needs to be only them, not a combination of interested buyers coming to City Hall and putting down payments. Also, *GovDeals* online transactions automatically update. That is one of the benefits of going with *GovDeals* because the City staff would not have to work with deposits and transactions could only happen during regular business hours.

Motion was made by Mayor Pro Tem Ferebee, seconded by Councilwoman Bryant to accept the \$1,750,000 offer, postpone *GovDeals* and rescind the resolution.

Mayor Doughtie asked if there was any more discussion on the matter.

Councilman Smith stated he would like to see this postponed until the June 6<sup>th</sup> City Council meeting so they can study this information and see what happens between now and June. Both parties could wait until June 6<sup>th</sup> for City Council to make a decision.

Mayor Doughtie called for a vote.

Mayor Pro Tem Ferebee, Councilwoman Bryant, Councilman Daughtry and Councilman Stainback voted in favor of the motion; Councilman Smith voted against. Motion carried by a 4-1 vote.

Attorney Davis asked for a moment. He said City Council needed to be more specific in the motion. By giving the intent in the motion, it also gives them the information to get City Council an amended resolution tonight to vote on. Attorney Davis asked for a few minutes for he and the City Clerk to draft a more detailed motion.

Mayor Doughtie called for a short break.

Mayor Doughtie called the meeting back to order.

Mayor Doughtie asked if they needed to repeat the motion. Attorney Davis said not a repeat, but a new motion with more specific language.

Councilman Smith asked if it was a new motion, did they need to retract the old motion. Attorney Davis replied he did not think so since there was not going to be anything inconsistent with the original motion; it would be a more elaborate version. There is no reason to do that since it is more of a procedural technicality.

Mayor Pro Tem Ferebee asked to amend his motion.

Motion was made by Mayor Pro Tem Ferebee, seconded by Councilwoman Bryant, to adopt Resolution No. 2023.05, with the following amendments: replace the purchase amount to \$1,750,000 submitted by TheVictor Enterprises, LLC, to accept an offer to purchase City owned property, Parcel ID 1205489 and to proceed with the upset bid process under NCGS 160A-269, and hereby rescind Resolution No. 2023.04 authorizing electronic public auction by *GovDeals*.

Mayor Doughtie asked if there was any discussion prior to taking a vote.

Councilman Smith asked if anyone on City Council knew anything about TheVictor Enterprise. The reason he suggested postponing the decision until June 6<sup>th</sup> was so they could look up and find something out about them since they were from New Jersey. He did not know anything about them or anything about the gentleman that says he owns it. Being a Council member, he would like the opportunity to find out what type of business this is before they get into a resolution.

Mayor Doughtie said they were taxed with doing the best job they can for the citizens and most people would equate that to trying to receive the highest bid. They also have an interest in the concept of what the Theatre was supposed to be when it originally came. It was supposed to be an anchor for other businesses that would come around it. He did not know legally how much they can ask people about their business as far as their business plans. This is a lot of money. It doesn't seem like so much money when you pay \$14-\$15 million for a piece of property and a building and then sell it for considerably less money. They have no reason to believe that a contract would not be deemed and executed in a professional way, but on the other hand they have quite a few people interested in the property. He was going to agree with Councilman Smith if legally they can do more investigating or looking around to see what kind of history a person has. Like Attorney Davis said, he had not been given much time to look over the offer because he just received it today. They normally like a little more time than that.

Councilman Smith said they didn't think they needed to do an investigation; each Council member could go online or something to look at the company. Mayor Doughtie said maybe he used the wrong word; research would be better. Councilman Smith said he would just like to know what kind of company it is.

Councilman Stainback asked if the \$1.75 million offer would still be a valid offer if they waited until June 6<sup>th</sup> or if it would expire if they didn't do anything tonight.

Attorney Davis replied he guessed they could withdraw it at any time.

Mayor Pro Tem Ferebee stated the \$1.5 million offer was contingent upon tonight so how do they know about the \$1.75 million offer. He stated he believed the \$1.5 million offer being contingent was a stronghold. Councilman Stainback added it was contingent if the online auction started. Mayor Pro Tem Ferebee said he still feels it was a stronghold.

Attorney Davis said if City Council adopts the amended resolution, the online auction does not start. Taking the \$1.75 million offer necessarily rejects the \$1.5 million offer.

Councilwoman Bryant confirmed that they would have 10 days to come back right. City Manager Traynham replied it would be from the date of receipt of the 5% deposit.

Councilman Stainback said he was not opposed to getting a little more information on this group if the offer was not going to expire. Attorney Davis said they do not necessarily know that from the communications that have been made.

Councilman Smith asked when Mayor Pro Tem Ferebee amended his motion, did it kill the first motion. Attorney Davis replied no.

Councilman Smith asked what were the Roberts Rules of Order on that.

City Manager Traynham stated they must have a motion and a vote to rescind the motion that was made and passed. Then create a new motion to effectively delete the other motion. She said the first motion that was made was in generalities about accepting one offer and rescinding another one. They needed more specifics. Since that one was already voted on and passed, they were asking for an additional motion to get more specific about resolution numbers. The intent was made through the first motion.

Councilman Smith questioned whether the original motion could stand. He did not think the Roberts Rules of Order allowed that. City Manager Traynham explained there was already a vote and the motion passed. Mayor Pro Tem Ferebee had new motion, amended or not, with the prepared specific language necessary to formally accept the offer and start the upset bid process and then also rescind Resolution 2023.04 that authorized the *GovDeals* auction as required by general statutes.

Councilman Daughtry asked if they accept this tonight and in 8-10 days they find out that they don't like what they are hearing, reading or seeing, at what point can they

say they don't want to continue or can they. Attorney Davis replied with the qualification that this deals with real estate and when you start to get into they don't like selling it to these people, they want to sell it to these other people, they may get into some kind of equal protection considerations there. Before they open that can of worms, the main answer is that even after they go through this process where City Council accepts this tonight, they go through the upset bid process and whatever comes out of that upset bid process, the final highest bid still must come back in front of City Council to accept or reject all bids. City Council still gets an opportunity at some point down the road to truly accept this. This means they have accepted the offer, but they still get to vote on whether or not to confirm the sale.

City Manager Traynham added before any final decision is made, they would have to authorize a resolution to enter into actual real estate contracts.

Mayor Doughtie said he was not sure how much they could look into a business, but if one of them had a much better business plan, it does make a difference in the community. It makes a lot of difference in the taxes and the jobs.

Attorney Davis said he understood what he was saying, but the general statute does not take into account the benefit to the community aspect of things. If City Council were to reject a higher bid for whatever reason, when it comes time for the upset bid process, there is no other input in it; it is just a simple financial consideration.

Mayor Doughtie asked what if the highest bid was not what they wanted for the community. They have always said City Council could reject any or all bids. It sounds like they were saying two different things.

Attorney Davis replied NCGS 168-269 states this procedure should be repeated until no further qualifying upset bids are received. At which time City Council may accept the offer, that being the highest upset bid received and sell the property to the highest bidder. City Council may at any time reject any and all offers. He did not think that allowed them to reject the highest bidder and then go into the second highest bidder. Their only ability at the end of this process is to accept the offer and sell the property to the highest bidder. That is the only sale that they can do, but they can reject whatever.

Councilman Smith stated this was a cash offer. Where does it show that and where is the money deposited. Attorney Davis replied when they deposit the 5% down payment it goes to the City Clerk by state statute. There is no option.

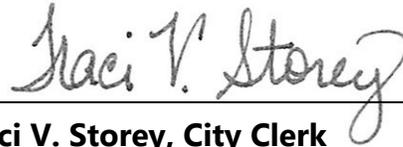
Councilman Smith asked if he answered his question if the original motion still stands. Attorney Davis replied yes. If the amendment fails to be passed then City Council needs some movement on this because the motion that was passed is not effective to do what they need to do. Either they amend the current motion or if it fails then someone on the prevailing side of the original motion could make a motion to reconsider the original motion, seconded and then voted upon.

Councilman Smith called for a point of order. There was a motion and second on the floor.

Mayor Doughtie called for a vote. Mayor Pro Tem Ferebee, Councilwoman Bryant, Councilman Daughtry and Councilman Stainback voted in favor of the motion; Councilman Smith voted against. Motion carried by a 4-1 vote.

<b>Adjournment</b>
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There being no further business, motion was made by Councilwoman Bryant, seconded by Councilman Smith, and unanimously carried to adjourn. The meeting was adjourned at 8:04 p.m.



Traci V. Storey, City Clerk

**Approved by Council Action on: June 6, 2023**