

**MOUNT AIRY, NORTH CAROLINA
CLOSED SESSION MINUTES
January 22, 2018**

MEMBERS PRESENT: Mayor David L. Rowe, Commissioners Jim Armbrister, Shirley Brinkley, Dean Brown, Jon Cawley, and Steve Yokeley

CLOSED SESSION:

On motion by Commissioner Brinkley, seconded by Commissioner Brown and passed unanimously, the board entered into closed session pursuant to:

- a) NCGS 143-318.11(a)(3) Attorney-Client Privilege
(*Mayberry Mall*)**

Brandon Hawks updated the Board of the current status of Mayberry Mall. Mr. Kohan canceled the line of credit with ABC Supply due to the pending purchase agreement. No other progress has been made on the roof and no other work has been done. General Statute 168-432 requires the City Board to make a decision to whether it's an order to abate, vacate, or order demolish. Should the Board choose to extent or resend, it is Brandon's opinion they would be generating liability on themselves. If there was a new owner, then they could "restart the clock" but there is no new owner. All they have is a purchase agreement (since October 2017 when the board decided to give a 60-day grace period for the potential buyer transaction).

Hugh Campbell stated there have been an earnest money deposit and then the escrow money that he is holding in trust-the initial portion for K-Mart and the non-mall portion (he still hasn't gotten all of that money).

Brandon Hawks stated that Scott Smith is only buying the non-Kmart portion and there are still unsafe conditions throughout and the only way to separate that is with design special guidance. Brandon would need to see plans from an architect showing the separation and independent systems (ie sprinkler/alarm/etc.). As it currently stands (minus Belk), it is one building and that one building has been designed as one building. If it gets divided, that would create interference for the systems to work as a whole. A design professional is needed to divide it to make sure each independent section could be operated independently. There are multiple definitions of fire partitions, fire barriers, firewalls in the building code. They are trying to establish a fire wall, because a fire wall creates two separate buildings. Taking the mall and dividing it into two separate buildings-one owned by [REDACTED] and the other to be owned by Scott Smith/WRS Realty.

Chris Fallaw, Assistant Fire Chief gave a brief explanation of what a fire separation is and how it would work in this situation. He and Brandon discussed and the easy fix would be for someone to pay for the fire separation, whether it be Mr. Smith, Mr. Kohan, the other potential buyer, or whoever.

Barbara Jones stated she is hearing a couple of different things. Brandon says basically time is up abate, vacate, demolish. It creates a certain sense of liability if it doesn't happen. Brandon and Chris have talked about the fire separation. The question is will Mr. Smith pay for that or who will pay? The main question is public safety. What is the board's decision on extending the order?

Commissioner Armbrister agrees that they should extend it based on this opportunity given and negotiations for Mr. Smith and others regarding the fire separation.

Chris Fallaw stated that [REDACTED] portion includes K-Mart and 8,000 square feet of the northern portion of the mall. Mr. Smith asks that the fire separation be requested to be built within 30-days as a stipulation of rescinding, suspending or whatever, before this order to vacate. Mr. Smith stated he will hire an architect and engineer to study the sprinkler and means of egress and all of the requirements to meet code and allow the tenants to remain during the repairs.

Brandon stated if the city rescinds or extends the order, he believes they are taking on risk for not acting. The fire code needs to be in compliance and remain in place until all repairs are completed and tenant spaces north of the firewall will not be leased or occupied until all repairs are made and a new permit issued for that space.

Consensus: Rescind the order to vacate on condition that a fire separation be constructed within 30 days. The buyer/seller shall work out who will fund the fire separation.

These minutes are sealed until the transaction consummates or terminates.

OPEN SESSION:

On motion by Commissioner Brinkley, seconded by Commissioner Armbrister and passed unanimously, the board entered back into open session with the following motion:

Commissioner Cawley made a motion to rescind the order to vacate on the condition that a fire separation be built within 30 days to separate the two parties who are seeking to purchase different areas of the mall with the buyer/seller working out who funds said separation. Commissioner Armbrister seconded it and it was passed unanimously.

Approved this the 6th day of September, 2018.