

**MOUNT AIRY, NORTH CAROLINA
CLOSED SESSION MINUTES
September 6, 2018**

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

APPROVAL OF AGENDA:

On motion by Commissioner Yokeley, seconded by Commissioner Cawley and passed unanimously, the agenda was approved.

APPROVAL OF MINUTES:

On motion by Commissioner Brown, seconded by Commissioner Brinkley and passed unanimously, the following closed session minutes were approved:

- December 7, 2017**
- December 21, 2017**
- January 22, 2018**
- March 15, 2018**
- April 5, 2018**

CLOSED SESSION:

a) Pursuant to NCGS 143-318.11(a)(3) Attorney Client Privilege:

(Belmont Sayre—Ken Reiter)

Doug Carter: I want to give you a chronology of where we are in Phase I. We were in a TRC meeting today with them. If you recall, the first action I came to you with was an amendment to the development agreement because June 30th had just passed and in the original agreement, the submission of a development compliance permit was basically required by April 30th and had not yet occurred for multiple reasons. The private development was required to begin by June 30th according to that agreement. The current schedule they are on under the amended agreement is they basically sent us a second set of deliverables on the 15th and we received those on the 17th and they also delivered their proforma's on the 20th. They did submit their compliance permit, which I think is very positive. They were very complimentary today to the city and the county for looking at that so rapidly because it is required before we can issue the building permit. They originally told me they were expecting to close their private financing by September 30th. They have changed that and believe it will be by October 31st. They said today they were basically under the same circumstances as phase II—you have to meet a December 31st deadline, in your case, 2019 rather than 2020, in order to get the full impact of your tax benefits. Essentially, if you back up from December 31, 2019 to today, that is one year and a little less than four months. They have to have their financing by October 31st or they are not going to make the schedule and if they don't make the schedule, which is December 31, 2019, then the cost to them will be big enough that they probably won't do it...is my guess or something will have to change. They are very motivated. This has been handled by Hugh and I and I haven't released it but I know who their bankers are, I know who they are using for various things...I would say to you based upon today's meeting, I am much more optimistic they are going to get there, which I think will be a huge positive. What will get them there is they are

doing a design-build scenario. It is an integrated and time-efficient process. I have seen and been involved with design-build for many governmental entities. I think they are moving. They did have their contractor there today. The architect is busy drawing and completing the plans, so bottom line is today was positive. I think they understand how critical this is. If they make October 31st as promised, that will permit the city to then engage their own contractors on the city side of it and there was discussion today about the integration of the city improvements together with the private improvements.

Barbara Jones: I thought the meeting today was positive. If they get their financials to us and close by the end of October, then we would be able to award the bid and would all be working together. One thing we probably need to think about... Jeff and I were talking about the existing bid. I asked him to talk with Jerry again to see now that we feel like we would possibly be making award in November, if he would honor the bid as it stands. If he doesn't honor as it stands, we will have to rebid it and will be time consuming and could be an increase in price because as we heard today, a lot of the construction costs have gone up as much as 30% or more.

Doug Carter: A lot of the city's improvements that have to do with the parking lot, that can't happen until the end because they have to have a staging area for their equipment, etc. so that parking lot is really the staging area and they fully understand that will not be completed until the end. We have until November 30th for infrastructure according to the extension. The city hasn't failed to meet its timeline.

Commissioner Cawley: We have moved on a time table-every time we have been told to jump, we jumped and it was so the tax credits could be met and if they weren't met, we could move the property to another person who could benefit from tax credits. Now, we are at the eleventh hour and there won't be another contractor, which has caused me some cognitive dissidence about at the end of all of this, they are going to squeeze us again and we don't know what that squeeze is going to be. If they continue to do like they have done in the past, all we have now is a building...do we have to give them their money back?

Hugh Campbell: If we exercise the unwind event, they will get the money back and the city will get the building back.

Commissioner Cawley: What if they come back the first week of November and say sorry, we just couldn't make this work. We have a building with no one to sell it to and we have no claw back.

Hugh Campbell: There is no claw back written in the contract.

Commissioner Cawley: We said early on that we were going to do infrastructure up to \$4.5 million maximum and from everything I have heard, that isn't enough money. Are we going to be the ones who bend on this or are the developers going to come up with some money?

Mayor Rowe: What happened to the \$5.9 million guestimate is that it went way outside the scope that we originally thought the \$4.5 million would contain, which was inside the Spencer's property. This is water and sewer lines that will go up Oak Street and up and down Willow and down Franklin that weren't estimated in the \$4.5 million plus, the \$4.5 million estimate was done in 2014 and this is 2018. I can testify that costs have gone out the roof.

Commissioner Cawley: So basically, all that to say we have to go up.

Mayor Rowe: Well either go up or come down/change the scope.

Commissioner Cawley: I will say that \$4.5 million is what I agreed on so we might want to change the scope of what we will offer and might want to back off the \$600,000 parking lot...but we need to do something or they need to come up with something. You still have the super majority, but I agreed to the \$4.5 million. If they walk in on November 3rd and say they can't get any money, we have nothing to go in that building or to do with that building.

Doug Carter: You are in a much stronger position when October 31st comes if they get their loan. The best position you could be in is they would get their loan and they will build their building and it is time to talk. When you are talking in theoretical terms and it is just drawings, it is easy to talk about. The best position you will be in is if they get their loans and move forward.

Barbara Jones: Another thing to think about is when we are doing this in phases, phase I is probably going to be ok. Phase II is where the difference is going to run in because that is the place the price goes up. Where are you going to make the cuts and changes? Are you going to do it in both phases? I have asked Jeff to look at what could be cut out and most of that would be in phase II. In your development agreement you agreed to a parking lot and the development agreement does say up to \$4.5 million. I don't think you obligated to do more than that.

Commissioner Cawley: I want to know going in before we spend the \$1.7 million...that everyone understands that we aren't surpassing, or I am not going to surpass \$4.5 million. There is no sense in spending \$1.7 million and then just getting further down the aisle and saying no I am not going to get married. We are the only ones who have done what we said we were going to do out of all the players in the deal. When they gave us a push, we always jumped and they haven't. How do you not have the drawings by now when you were supposed to start in June? I don't get it-it makes me think they aren't ever serious.

Hugh Campbell: I had my doubts but the meeting today with the owner, architect, engineers...they had five people here-they didn't have their banker here but at least they demonstrated they have the right people at the table. That shows to me they are more serious. They are starting to spend their own money.

Doug Carter: Can I say to that I can see where you are coming from. Economic development inside a governmental P-3 environment is ugly-it isn't a pretty process anywhere. Your process isn't really different, it is just not the prettiest process. From that standpoint, that is just what it is.

Commissioner Cawley: I get that. I own property in other cities and I want everything I can get from a city but when the Ad Hoc committee told them no, things changed. That is the first time any of them had ever heard no, except from the LGC.

Doug Carter: I hope that when we go with this process on phase II, part of that is going to be part of the discussion because I think at some point in time, everybody has to "fish or cut bait".

Commissioner Cawley: I just want it understood that is my understanding. We have done everything that we said we would do and all of our fights have been internal. We haven't fought with the Barter...we ask for something, they say no, and we say ok.

Doug Carter: What Barbara, Hugh, and I and others talked about over time, I know we have folks that are handling administrative processes and all of that but I am a big matrix person. I prepared a simple matrix to show how the process works and how integral various steps are to that process and how not making those steps invariably changes the process. I have defined a date. I have talked about the events or the actions that are needed either by the city, developer, Barter, or county. We started the DFI work and the detailed design work really began to start at that time period and there were discussions about beginning work on the MOU with the county. I will say by this time period, by the end of August, we had seen the first hotel proformas and sources of uses. I think that was something we weren't getting as timely as we should in the past and we all have learned those lessons because if their numbers don't work, then our numbers don't work. Looking at the accuracy and efficiency of their numbers is very important here. By late September, what we have to have to stay on our time frame is the initial lender indications from the hotel developer, final business points from the Barter, the Barter's proformas, we are going to be in the process of the MOU and revenue sharing between the city and county. By mid-October, we need to begin documents. These documents need to give you ample capacity in the future so that you aren't the only one doing your commitment. For example, you contract with a private party to deliver you a theater, that theater will have to have certain criteria. If they don't deliver that, you shouldn't have to make the payment. That will all be part of the documents process and by the middle of October, we should have preliminary DFI and tax data. By late October, we should finalize the hotel term sheets with their lenders, see the more final hotel proformas, the Barter should finalize any proformas they have, and we will receive consultant reports coming from the consultants. In early November, they will continue the document prep but the big part of early November is to have the first formal visit with the LGC. I have talked through this process with people at the LGC and they understand that we aren't going to make a formal visit until we have a lot more data. By early December, we need the final lender and finance commitments and by that time Mr. Angell would need to provide us a letter of credit so we know he can deliver his \$6.2 million at closing. When you have any private development, every form of income to that development has to be made available. For example, the City of Greensboro is doing an \$85 million performing arts building downtown, half of it is private/half of it is public, the private part was being handled by the Greensboro Foundation. At the date the city signed the construction contracts, all of the private money that had not been collected, they delivered a letter of credit equal to the remaining amount so the city knew that the bills could be paid. In early January, we would go to the LGC for approval of this deal.

Hugh Campbell: On the phase II side, it is a little bit flexible but I think they are thinking now that their plans would be available January/February with a construction start date of June, which they say still gives them adequate time to get finished to receive the tax credits. They have done some demo and preliminary work, but this would be their real construction in earnest. That gives a little bit more flexibility but not much because of the phase I part.

Doug Carter: You also see they were going to start construction in January and we would get our approval for our side of the improvements in February because just like phase I, the public under the contracts we have, has never been required to deliver its improvements before they began theirs. We have a time period after they begin for us to begin our improvements. The LGC process will be an interesting one in that, when I said January

approval by the LGC, I assumed we would have contracts by the developer, we would know the cost, etc...if we don't, we will have to think about how that amends the calendar. The best we will get out of the LGC is the approval of a lease of the Barter and trusting they give their approval, they will give that contingent upon the city executing that lease only when the private sector has met all financial commitments. They want to see the lease before they approve it. This will be our big bite at the apple. Of the P-3 concept, I think takes us to a whole different level of what this is and what protections we have. We have to protect ourselves through our written agreements that we get the protections that we have been promised. That is once we have agreed to a lease price, they are going to deliver us a theater that meets our standards and not going to cost us anymore. I think if we fall behind a little bit, it doesn't kill us.

Commissioner Armbrister: What kind of timeline do you think Ken is looking at?

Hugh Campbell: His timeline is based on what he said today. Phase I starting construction in earnest by November 1st.

Doug Carter: They said if they got the loan by Oct. 31st, they would be knocking out glass the next day. They would have to have 13 or so months or they won't make the Dec. 31, 2019 date for the tax credits. If they miss it by one day, they have a year's carrying cost.

Commissioner Armbrister: When they get loan approval, that puts us in a little more solid position with them.

Doug Carter: That is correct. I think we are going to require them to close. They are going to have to send us a letter signed by a senior official of the bank saying this loan is closed and construction proceeds have been deposited to the appropriate bank account. I hope what I have told you today helped. I think the other group is working on a calendar with more specific dates. As you remember, the LGC told me as did the county that...first the county said we love the concept but we aren't going to believe these sales tax numbers until an independent party has looked at it. I think the best thing that could happen to the city is the county would agree to a number and give you that number and then not every year, try to second guess that number. I really think that is what they want to do as best they can. In order to give them comfort, they want to see a study of the sales tax and property tax. I had been informed that DFI did that process, if they have an economist. It takes an economist to do this because there are pretty sophisticated models that exist for sales tax, property tax, income tax for the State of NC, but I found out they really don't do that. The only side they are comfortable in giving us is a review of the developer's numbers and the Barter's numbers so when we go to the LGC, we can say that we have had DFI and they believe these numbers are rational and believable. If we don't have that, we are just wasting our time.

Mayor Rowe: I thought we were getting them to forecast what kind of sales tax we were looking at.

Doug Carter: What we had was that 4-5 page plan that was provided by the private parties. As you remember, the early pages of that had all of the cost of the projects, etc. essentially, that is the kind of data we are going to present data from the private sector saying we are going to get a theater for this amount of money...they are going to look at all of that. It was my understanding that those 4-5 pages-those numbers were what was going to be tested.

Hugh Campbell: Are you talking about two different studies-one for the sales tax and property taxes and a second DFI contract to develop the Barter proformas.

Doug Carter: Yes.

Barbara Jones: When Doug and I talked with DFI, they said they are very comfortable doing one piece but they don't do the sales tax. What we would have to have is the contract with DFI and a separate entity for the sales tax piece. The LGC is going to want to see an independent study for a piece of it but then on the State sales tax, the county is going to want to see that before they would be agreeable to anything. You are looking at \$15,000 for DFI and Doug, did you talk to anyone outside Steve Powell for the other one?

Doug Carter: I talked to one other group and it was all about the same. You have had Steve Powell-he has done some work for you and he understands numbers. He has a college professor, who is a Ph.D. Economist who does this all the time. For \$15,000, they, and a combined \$30,000 for the two studies, would look at all of the taxes including State taxes and make a report with his opinion as an economist for a seven year period. To get what we need from the County, we are going to have to have this second study. If we take to the LGC a paper that said \$460,000 to \$480,000 plus \$100,000 reserve for maintenance...if we can't show how all of that filters through the developer side of it, they are going to say kind of what the Commissioners said earlier-how do you know you are really going to get this number. To which we will say, we will have to by January except we aren't going to have it to them by the end of January because they aren't going to have their ability to make their final construction bids until after the drawings are done. From my point of view, I think it leaves you in a far better position to say this is a P3 deal. It has private elements and public elements and we have an independent look and it's our view that the private elements are an acceptable range of estimation. It will take about four to six weeks to do the study.

Barbara Jones: Since it was a bit different than the last meeting, I haven't signed a contract with DFI yet. I did tell them, however, to go ahead and move with what preliminary work they could do. We wanted the board to understand that it would be a bit different from what we originally talked about. We do need approval if the board wants to move forward with private consultant on the State tax end of it.

Doug Carter: If we have someone say we can't support these sales tax numbers, we need to know that now. If this process moves along like we hope it will, I think that when they come back in session, we all go down there.

Mayor Rowe: What I hear you say is we need consensus.

Barbara Jones: Once you come out of closed session, if you want to move forward with the second consultant, then you vote for approval to do that and we can either bring a budget amendment back to you or you can give us an amendment of up to a certain amount tonight.

Commissioner Yokeley: This is still less than the original estimate. Why can't DFI get someone to do it?

Doug Carter: I am shocked that they didn't say we have a professor in the Economics Department. I believe it is all about risk and I think they want to concentrate so much purely on the development side of it. There have been a lot of developments that people thought were going to get done and didn't.

Barbara Jones: Basically what I heard them say was they were more comfortable with the concrete data. Sales tax is more of a moving number and they weren't as comfortable with that.

Commissioner Armbrister: I would like to see a summary of costs associated with both before I feel comfortable with making a decision.

Doug Carter: Each of these contracts are \$15,000 plus out-of-pockets. The \$15,000 on both has one visit coming to Mount Airy to make a presentation to you. We are talking a total of \$30,000 for both studies. You get a deliverable from the economics people on property taxes-direct and indirect sales taxes-income taxes to the State-sales taxes to the State, both direct and indirect. You get that multiplied effect and that is the hard one to estimate. This is one of the things that the LGC is going to need to see.

Commissioner Cawley: How is what is costing us \$30,000 tonight different than what we voted on to cost us \$15,000 a few weeks ago?

Doug Carter: I was under the impression that they had an economist...they do not, so they will not make a seven-year projection of direct and indirect taxes.

Commissioner Cawley: How are we going to know the economist doesn't just draw numbers out of the air? If he does, so what, we don't have any claw back on him either.

Doug Carter: He is a PhD professor at UNC and at NC State. The numbers are as good as economic models can project. It is like projecting whether the growth in our economy is going to be 4% or 6% next quarter-it isn't a precise science but it has eliminates of calculation science in it. It has become accepted as the most reliable and really only method we have to figure out what tax impacts are.

Commissioner Yokeley: We have to have this study to go to the LGC and this professor is recognized as an expert and they will accept his opinion.

Doug Carter: I will confirm that.

Barbara Jones: Unless Doug has anything additional, I think when we go back into open session and the board give direction on how to proceed.

Doug Carter: We want to be comfortable that these numbers look right. We want the county to be comfortable and beyond that, they are going to be what they are going to be.

Commissioner Brinkley: It sounds reasonable to me.

Commissioner Brown: I like it.

Doug Carter: I hate we had to have this second element.

Commissioner Cawley: Tonight, it is another \$15,000 and we have no reason to believe that we will be able to do the infrastructure for \$4.5 million. How would you vote because of all of the other circumstances? It seems to me that we ought to be working real hard right now finding out how far \$4.5 million will go on infrastructure.

Barbara Jones: I have asked Jeff to look at that.

Commissioner Cawley: I think we need to know that before we waste any more of anybody's time.

Mayor Rowe: I think we would have to agree of what we would cut out of it or we would have to bid it in such a way to be able to put it together to make it the way we want it.

Commissioner Cawley: No one has even brought up the question of maybe phase II is more important than phase I so maybe we shouldn't go out and spend \$1.7 million on phase I.

Mayor Rowe: I think they will all have to come together regardless. We can't do phase II without phase I, I wouldn't think.

Commissioner Cawley: We are never going to stop this thing. If it gets stopped, it will be someone else telling us no, we won't do that.

Mayor Rowe: I wouldn't necessarily agree with that.

Commissioner Yokeley: We need to spend this \$15,000 as "insurance" to know we are doing the right thing.

Mayor Rowe: I think the \$15,000 will wind up with the county paying us more than we thought they would.

Commissioner Yokeley: I think the \$15,000 will be money well spent.

Commissioner Armbrister: And the timing to do it is good.

Hugh Campbell: Are you going to talk about the Barter meeting tomorrow?

Mayor Rowe: The struggle to talk about it is if we go out there and negotiate something and come back, it probably still won't be a finished deal. It is up to the board.

Commissioner Yokeley: I don't think anyone has anticipation that tomorrow is going to be the final deal. It is going to take several sessions of negotiations. Tomorrow is just one of them.

Commissioner Brinkley: I don't. You all come back and fill us in.

OPEN SESSION:

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

Commissioner Yokeley made a motion to approve \$17,000 (\$15,000 for study and \$2,000 for out of pocket expenses) for a study/contract with Steve Powell, an economic consultant, relating to sales and property taxes for the Spencer's Economic Development Project (if the LGC will accept this expert and if it is necessary to get approved from the LGC and Surry County). Commissioner Brinkley seconded it and it was approved unanimously.

\$1 million for Infrastructure from the State of North Carolina:

Commissioner Brown referenced the \$1 million for infrastructure and there was discussion on this matter. Barbara Jones stated that when Brian Holloway lobbied for the \$1 million from the State, he lobbied for it to be for the Spencer's project. However, Brian said the money had no strings attached to it and it could be used for any infrastructure project. It is up to the board on how to use the money. She did mention that city staff has not received the money or any documents/restrictions on the \$1 million.

Barbara Jones also stated that Charles Anderson with Resource Institute (RI) has stated they lobbied for the monies (along with Brian) and the city does have a contract with RI that any grants/monies they receive for the Spencer's project, RI gets 10% of the total amount which is \$100,000.

The city is paying Brian Holloway \$12,000/year for his services. He is also a lobbyist for RI. The city has two contracts with RI-one for river restoration and another contract for other grants/monies in which he receives 10% for grants they receive for the Spencer's Project.

These minutes are sealed until the transaction consummates or terminates.

Approved this the 7th day of February, 2019.

CLOSED SESSION