

**City of New Bern  
Board of Aldermen Meeting  
March 8, 2011  
City Hall Courtroom – 7:00 P.M.  
300 Pollock Street**

1. **Meeting Opened by** Mayor Pro-Tem Bernard White. **Prayer by** Pastor Scott Gleason of Tabernacle Baptist Church. Pledge of Allegiance.
2. **Roll Call.** Alderman Sabrina Bengel; Victor Taylor; and Johnnie Ray Kinsey. Mayor Lee W. Bettis, Jr. arrived 7:10 P.M. from Washington, DC; he departed the meeting after the recess. Alderman Dana Outlaw arrived at 7:30 P.M. from a Washington, DC trip. Alderman Denny Bucher was absent.

Also in Attendance: Mike Epperson, City Manager, who arrived at 7:30 P.M. from a Washington, DC trip; and Scott Davis, City Attorney.

3. **Dedication of Time Capsule.**

Susan Moffat-Thomas, Executive Director of Swiss Bear, gave an update on the time capsule that is placed in City Hall. The capsule will be open in the year 2060, fifty years after the date of the 300<sup>th</sup> Celebration. It is a 3-foot high brushed aluminum capsule, twelve (12) inches in diameter, enclosed in a wooden and glass case. “We felt a time capsule would bring the present and the future together, promote good will, and represent citizens of this community and their spirit into the future,” stated Moffat-Thomas.

Fifty-seven (57) students’ submitted essays describing what they think New Bern will be like fifty years from now. The keepers of the capsule are forty-three (43) Epiphany School six graders. Fourteen (14) fourth and fifth graders from Vanceboro Farm Life and James W. Smith Elementary schools participated in the essay writing. These essays are contained within the capsule as well as an inventory list of keepers. The inventory list is on file in the City Clerk’s office.

Alderman Bengel thanked the students for their participation and informed them they will be responsible in making sure the time capsule is opened in the year 2060. Alderman Bengel expressed to the students as time passes “you will never find a way to replace those special memories as you go through the next 50 years. You had a very, very special part in this time.” Alderman Bengel further stated she plans on being present at the age of 104 when the capsule is opened.

Alderman Taylor asked Susan Moffat-Thomas the procedures for selecting the schools that participated in the essay entries. Alderman Taylor was concerned that more involvement of students from Craven County Schools was not present. An

advertisement was placed in the Sun Journal Newspaper requesting children to take a part in the project, stated Moffat-Thomas.

Alderman Taylor made a motion to recess the meeting, seconded by Alderman Bengel. The motion carried unanimously, time being 7:20 P.M. The meeting reconvened time being 7:35 P.M.

#### **4. Request and Petitions of Citizens.**

Stevie Bennett, 1312 National Avenue, stated the Board issued an application for a conditional-use permit in 2008 for City-own property located at 300 South Front Street. The City received a preservation grant that included surveys that showed an overwhelming concern for building heights. Ms. Bennett is requesting the Board pass a resolution to remove the Certificate of Occupancy (COP) from the City-owned property located at 300 South Front Street. Once a COP is issued, it runs with the land and structure, and the COP will not expire until January 2013. It is understood that only the Board of Aldermen can remove the COP. Passing the resolution would avoid any future inappropriate extraordinary tall building such as the Talbot's design. The next developer would have to appear before the Board to decide on what could be placed on the property. Section 15-62 of the Land Use Ordinance allows this COP to be transferable.

The Sky Sail issue has appeared before the Board a number of times, and Ms. Bennett is requesting the Board to take actions necessary to correct the issues. In 2004, the then Board of Aldermen issued a Certificate of Occupancy to build Sky Sail. One of the requirements of the COP was for Sky Sail to meet the zoning requirement of providing two (2) parking spaces for each condo. In September 2004, the City entered into an option with Sky Sail to lease fifty (50) parking spaces from the City or obtain fifty (50) spaces elsewhere to meet the COP. This option was signed by one of the owners of Sky Sail, and a statement stating that Sky Sail may exercise this option by giving written notice to the City Tax Collector at anytime during a thirty (30) month option period dating September 29, 2004 until March 29, 2007. Sky Sail did not give written notice to the Tax Collector during this thirty (30) month period; therefore, ending the lease option. Currently to date, Sky Sail does not have the required parking spaces leased. The Assistant City Manager instructed the Building Inspector to issue the COP after negotiating with New Bern Riverfront Development. Section 15-59 of the Land Use Ordinance stated the Board of Alderman is the only entity that can notify the Building Inspector to issue a COP, if all requirements are not met. The City violated its own ordinance.

The lease agreement stated "Riverfront shall have the right to terminate the lease agreement that may arise out of the option granted herein without penalty should it obtain access to sufficient parking spaces as required by its conditional use permit for its contemplated development", and this was not the case. Mr. Meadows negotiated with the with the Soliel Group attorney to pay the City \$67,000 to complete unfinished

sidewalks and replacement lights in exchange for the certificate of occupancy. The \$67,000 was not a condition attached to the COP, but the fifty (50) parking spaces that Sky Sail needed to obtain was a condition. Sky Sail had plenty of time to obtain the necessary parking spaces from mid 2004 when the COP was issued until April 6, 2009. According to Attorney Davis' comments on May 18, 2010 at a work session, Mr. Davis stated Sky Sail knew they were violating Section 15-243 of the Land Use Ordinance. The City did not require Sky Sail to pay upfront the additional \$300,000 to retrofit the individual meters. The developer asked if they could pay the fees in two (2) installments. The developer paid the first installment and filed bankruptcy before the second installment of \$145,580 was due. The City has violated a number of the Land Use Ordinances.

Attorney Davis stated the City cannot discuss pending litigations in opening meeting. The facts that Ms. Bennett brought before the Board cannot be disputed, but the problem is how the City gets its money when the developer has no money. The City is navigating through the system trying to secure an arrangement where the City will receive its money. Typically, in bankruptcies there are large losers, and the City's claims are small under the circumstances since the largest lender is the bank. The bankruptcy protects the developer. The ultimate goal is that the City will receive its money.

Alderman White stated if he did not pay his property taxes, eventually, he could lose his real property. Why has something not happened to Sky Sail? Attorney Davis stated bankruptcy protects Sky Sail and any individual that chooses to file for bankruptcy. Once an individual files for bankruptcy, the Federal government works out an arrangement giving an individual five (5) years' of protection.

Alderman Bengel requested clarification on the conditional use permit for Sky Sail. Sky Sail is not in compliance as to acquiring the fifty (50) parking spaces; therefore, does this mean the condos cannot be sold, stated Alderman Bengel. Attorney Davis stated "it is not that clear", and he cannot speak on this subject in an open meeting.

Ms. Bennett requested the Board to pass a resolution/ordinance stating that no Certificate of Occupancy is issued to anyone with an outstanding debt to the City. Also, she suggested a checklist be created for all zoning and special conditional use permits; therefore, creating a check and balance scenario.

Anthony Bonnici, 512 Jefferson Avenue, gave an update on the top delinquent tax payers (Soliel Group) for the City of New Bern. The businesses are: New Bern Riverfront Development (Sky Sail); New Bern Grand Marina Yacht Club; and Trent Neuse Hotel totaling \$638,261.64 in taxes and other negotiated agreements.

The City entered into an agreement in 2008 with New Bern Riverfront Development that allowed the hotel to encroach on City property. The hotel makes money from the use of the decks and no compensation goes to the City. Mr. Bonnici requested an update on

this ongoing issue, but was told there was no new information at this time. Recently, Mr. Davis presented Mr. Bonnici a draft of possibilities in reference to the encroachment. The draft was written by the hotel and it only benefits them, stated Mr. Bonnici. The hotel is allowing one little dingy dock for citizens and visitors to use. This is not sufficient; there is seven hundred (700) square feet of deck on waterfront property.

Alderman Outlaw asked Mr. Davis to explain other situations where encroachments are allowed on City property. Other encroachments such as commercial and residential encroachments are allowed; for example, the historical district allows an encroachment of steps in the right-of-way; Bear Plaza's condos encroaches on City property; and the Hilton Hotel encroaches seven (7) feet over a length of ninety-seven (97) feet. It is the Board's pleasure on how to precede, stated Attorney Davis.

At a previous meeting attorney Davis stated the City had three (3) options in reference to the encroachment: remove the deck; have a new agreement be signed; or put some reciprocals in place, stated Mr. Bonnici. The deck license expired in October of 1999 and it was not transferrable when the hotel was purchased by the Soliel Group. Mr. White suggested the Board make a decision on one of the three (3) options that was previously discussed.

Alderman Bengel disagreed with Mr. Bonnici stating the decks are enjoyed by the citizens and visitors of New Bern. The Hilton Hotel is the "key pin" to tourism in downtown New Bern. Without the hotel, tourism does not work, stating she "has been in tourism for months." The encroachment does not impede anyone walking, jogging, or riding bicycles. This public area allows visitors and citizens to sit and view the rivers as well as have dinner. This particular area is an enhancement to the City of New Bern. The City of New Bern is not boater friendly, stated Mr. Bonnici. There are no docks for boaters to use and come ashore. Alderman Bengel asked Thurman Hardison, Director of Parks and Recreation, if boaters could dock at Union Point Park and come ashore. Boaters may dock at Union Point Park, but they cannot stay overnight, stated Mr. Hardison. Mr. Bonnici informed Alderman Bengel that dingy is too low to climb up onto a dock.

Alderman Outlaw asked the attorney if the City needs to enter into another agreement with the Soliel Group since it has expired, or should they wait until the bankruptcy is finalized. Technically, the City should wait until the bankruptcy is finalized stated Attorney Davis. A straw vote was taken: Alderman Outlaw made a motion instructing Attorney Davis to update the current encroachment and report his findings back to the Board for approval or denial. The motion was seconded by Alderman Bengel and unanimously carried.

Edwin Vargas, 230 Attmore Drive, gave an update on House Bill 117, permitting uses of revenue from electric power rates. He asked what will be the contingency plan if the bill takes effect on July 2011. Alderman Bengel stated she has spoken with Representative

Sanderson in reference to the July 2011 deadline. They are working toward an extension over a number of years to wing cities off that use electrical revenues in other departments.

Mary Randolph, 1504 Cobb Street, expressed a number of issues within the City. Ms. Randolph stated her house is sinking, the street light in front of her home is too bright, the trees are blocking the lighting at the canal, the canal needs cleaning, and she is very upset and disappointed that when she telephones the City all she hears is an answering machine. She requested an appointment with the Mayor, the City Manager, and the Public Works Director to visit her home and see the problems. When it rains, the water covers her entire yard and once the water recedes, the water goes under her home.

Alderman Outlaw asked Mr. Hughes, City Engineer, to give an update on the Jack Smith Creek Stormwater Improvement project. Once the project is complete, the City will be able to move water out of the Duffyfield canal and transport the water into a thirty-eight (38) man made wetland facility that will treat the stormwater. Currently when the canal fills up, the water has nowhere to go, but with the project the pumps will continue to move the water all day, every day. This will alleviate the stagnant water.

Alderman Kinsey asked Ms. Randolph what she would like the City to do to solve the problems. Ms. Randolph is requesting a meeting with the Mayor, the City Manager, the Public Works Director, and the Alderman of the 5<sup>th</sup> Ward. Alderman Kinsey informed Ms. Randolph the Manager and the necessary department heads would meet with her within a week.

**5. Approve Refund of Taxes.**

Mr. Epperson, City Manager, stated the majority of these refunds are a result of mortgage companies paying the taxes before the appeals had been finalized and the appraisal corrections made from the 2010 revaluation. The cost of the refunds is \$30,398.54, and the refunds will come from the current year revenue line item.

Alderman Outlaw made a motion approving the refund of taxes, seconded by Alderman Taylor. The motion carried unanimously.

**6. Adopt Resolution Authorizing Submission of Application for FY11 Environmental Workforce Development and Job Training Grant.**

Mr. Epperson, City Manager, stated the city is requesting to submit an application for the US EPA Environmental Workforce Development and Job Training Grant. The goal of the grant is to train residents of the communities impacted by a variety of waste facilities, blighted properties, and contaminated sites for environmental jobs as cleanup contractors. Applicants will be evaluated on the extent to which they have partnered with local contractors and other stakeholders and must establish procedures to ensure

that graduates will be employed in environmental work. The EPA would like to see at least three (3) classes of twenty (20) students during the project period with a 70% employment rate. The maximum grant amount that can be requested is \$300,000 for a two (2) year project period, and the grant requires no matching funds.

Alderman Taylor asked who will review and approve the applicants' applications. The department has been in contact with Craven Community College, and they have already developed a curriculum for environmental workforce training. The staff have also been in contact with several potential employers to assist in the fine tuning of the curriculum and to assess their employment needs, stated Mr. Avery.

Alderman White requested clarification for this project asking if the project is for students who reside outside the city limits to participate and ultimately getting the jobs? Mr. Avery replied this is not the case.

Alderman Taylor made a motion to adopt the resolution authorizing submission of application for FY11 Environmental Workforce Development and Job Training Grant, seconded by Alderman Kinsey. Upon a roll-call vote, the motion carried unanimously.

**7. Adopt Resolution Accepting Bid from Insituform Technologies, Inc for Northwest Interceptor Rehabilitation Project.**

Mr. Epperson, City Manager, stated the purpose of the Interceptor Rehabilitation Project is to repair approximately 3,100 linear feet of the gravity sewer outfall line located on Glenburnie Road. The section of the 30" and 36" concrete pipe has deteriorated where the pipe's structural integrity is compromised. The low bid of \$449,787 exceeded the \$400,000 that has been allocated to fund this project; City staff negotiated with the company to provide the revised bid of \$409,620.98. Due to the uncertainty of the existing subsurface conditions throughout the project area, a five percent (5%) contingency is also recommended to cover unforeseen problems that may arise during the construction. The balance of the estimated construction cost will be funded from other items within the sewer fund where the FY2010-11 expenditures are less than budgeted. The implementation of this project was deferred in the FY2009-10 funding cycle and further delaying the project will enhance the need for increasingly expensive repairs.

Jordan Hughes, City Engineer, further explained the Interceptor Rehabilitation Project, and introduced Amber Montanye, a senior at New Bern High School. Ms. Montanye is working on her senior project and has been in the field as well as the office working. The 3,100 linear pipes have deteriorated, and a new pipe will be built around the old pipe. The proposed rehabilitation project will involve utilizing a Cured-in-Place Pipe (CIPP) lining system to establish a new pipe structure within the existing pipe without the need for excavation. The estimated time of completion is sixty (60) days.

Alderman Outlaw made a motion to adopt the resolution accepting bid from Insituform Technologies for Interceptor Rehabilitation project, seconded by Alderman Kinsey. Upon a roll-call vote, the motion carried unanimously.

**8. Adopt Ordinance Changing NCDOT Route Designations.**

Attorney Davis explained the route designation changes that were requested by the North Carolina Department of Transportation. Alphabets A, B, and C are currently in place, but alphabet D is a new ordinance.

**a. Adopt Ordinance to Amend Section 70-132 Entitled “Maximum Speed Limits on Specific Streets – Twenty-Five Miles Per Hour” of Chapter 70 “Traffic and Vehicles” of the Code of Ordinances of the City of New Bern.**

Amending Section 70-132 of Chapter 70 declares a safe and reasonable speed limit for streets or sections of streets within the City’s corporate limits that are part of the State highway system based upon an engineering and traffic investigation performed by NCDOT. The Code of Ordinances of the City of New Bern is amended by removing the following: “Broad Street (US 70 Business/NC 55) from Queen Street, a point 0.27 miles west of SR1403, eastward to South Front Street, a point 0.05 miles north of the Trent River Bridge.”

**b. Adopt Ordinance to Amend Section 70-133 Entitled “Maximum Speed Limits on Specific Streets – Forty-Five Miles Per Hour” of Chapter 70 “Traffic and Vehicles” of the Code of Ordinance of the City of New Bern.**

Amending Section 70-133 of Chapter 70 declares a safe and reasonable speed limit of streets or sections of street within the City’s corporate limits that are part of the State highway system based upon an engineering and traffic investigation performed by the NCDOT. The Code of Ordinance of the City of New Bern is amended by deleting the following: Neuse Boulevard (NC 55) from the right-of-way of Atlantic and NC Railroad Company; South Glenburnie Road from Neuse Boulevard (NC 55) to Trent Road (SR 1278); US 70 Business from US 70 eastward to NC 55 (Neuse Boulevard); and Washington Post Road (NC 43) from Neuse Boulevard (NC 55) to Briarwood Lane (SR 1483). The Code of Ordinance of the City of New Bern is amended by adding the following streets: SR 1309 (South Glenburnie Rd.) from SR 1278 to NC 55 (Neuse Boulevard); NC 43 (Washington Post Rd.) from NC 55 (Neuse Boulevard) to SR 1483 (Briarwood Lane); SR 1395 (formerly US 70 business) from US 70 to NC 55 (Neuse Boulevard); and NC 55 (Neuse Boulevard) from SR 1005 to Colony Drive.

**c. Adopt Ordinance to Amend Section 70-134 Entitled “Maximum Speed Limits on Specific Streets – Fifty Miles Per Hour” of Chapter 70 “Traffic and Vehicles” of the Code of Ordinances of the City of New Bern.**

Amending Section 70-134 of Chapter 70 declares a safe and reasonable speed limit of streets or sections of streets within the City's corporate limits that are part of the State highway system based upon an engineering and traffic investigation performed by the NCDOT. The Code of Ordinance of the City of New Bern is amended by deleting the following: US 17 from SR 1214 to US 70.

**d. Adopt Ordinance to Amend Chapter 70 "Traffic and Vehicle" of the Code of Ordinances of the City of New Bern By Adding Section 70-135.**

Amending Section 70-135 of Chapter 70 declares a safe and reasonable speed limit for streets or sections of streets within the City's corporate limits that are part of the State highway system based upon an engineering and traffic investigation performed by NCDOT. The Code of Ordinance of the City of New Bern is amended by adding the following: NC 43 from 0.98 miles north of US 70 to NC 55. The maximum speed limit shall be fifty-five (55) miles per hour versus fifty (50) miles per hour.

Alderman Outlaw made a motion to adopt the ordinance changing NCDOT route designations, seconded by Alderman Kinsey. Upon a roll-call vote, the motion carried unanimously. (Alderman Taylor did not vote as he had left his post briefly).

**9. Adopt Resolution Accepting NCDOT's Routing Change from US 17 to US 17 Business for that Portion of US 17 from SR 1214 to US 70 and Providing for 50-MPH Speed Limit.**

Attorney Davis stated the traffic and engineering study performed by NCDOT's Traffic Engineering Branch has recommended deleting US 17 and adding US 17 Business from existing US 17/US70/SR 1395 (Martin Luther King, Jr. Boulevard) southward to SR 1214 (Greenleaf Cemetery Road). The enclosed resolution endorses this route change as well as rescinding the state speed limit ordinances 1062171 and 1009901 for US 17 and will amend Section 70-134 of the Code of the City of New Bern to provide a speed limit of fifty (50) miles per hour from SR1214 to US 70.

Alderman Outlaw made a motion to adopt the resolution accepting NCDOT's routing change from US 17 to US 17 Business for that portion of US 17 from 1214 to US 70, seconded by Alderman Bengel. Upon a roll-call vote, the motion carried unanimously.

**10. Adopt Resolution Approving Sale of Property at 910 Bern Street.**

Attorney Davis stated the City received an offer to purchase a parcel of property owned by the City. The property was advertised as required by the statute. The offer to purchase was in the sum of \$3,500 by Catherine Gillette and no increased bids were received. The Board deems it advisable and in the best interest of the City to sell the property to the successful bidder and to convey the property by warranty deed.

Alderman Bengel made a motion to adopt the resolution approving the sale of property at 910 Bern Street, seconded by Alderman Taylor. Upon a roll-call vote, the motion carried unanimously.

**11. Approve Minutes.**

Alderman Bengel made a motion to approve the minutes for February 8, 2011 and February 22, 2011, seconded by Alderman Taylor. The motion carried unanimously.

**12. Appointments.**

There are no appointments at this time.

**13. Attorney's Report.**

Attorney Davis had nothing to report at this time.

**14. City Manager's Report.**

Mr. Epperson had nothing to report at this time.

**15. Announcements.**

Alderman Outlaw gave a brief synopsis of the Washington, DC trip. Mayor Bettis, Alderman Outlaw, Mr. Epperson (City Manager), and Jon Rynne (Director of Public Utilities) appeared before the Department of Justice and the Federal Energy Regulatory Commission. The group expressed their concerns of the Duke Power and Progress Energy merger, and how it would affect Electricities.

**16. Closed Session.**

Alderman Bengel made a motion to go into closed session pursuant NCGS Section 134-318.11(a) (3), seconded by Alderman Kinsey. The motion carried unanimously, time being 9:05 P.M.

Alderman Bengel made a motion to come out of closed session, seconded by Alderman Outlaw. The motion carried unanimously.

**17. Adjourn.**

Alderman Kinsey made a motion to adjourn the meeting, seconded by Alderman Bengel. The motion carried unanimously, time being 10:30 P.M.

---

Mayor

---

City Clerk