

**City of New Bern  
Board of Aldermen Meeting  
May 24, 2011  
City Hall Courtroom 7:00 P.M.  
300 Pollock Street**

1. **Meeting Opened** by Mayor Lee W. Bettis, Jr. **Prayer by** Pastor Loretta Armond of World in Truth Fellowship Ministries. Pledge of Allegiance. Alderman Bengel requested a moment of silent prayer for Lieutenant Colonel Benjamin Palmer. Lt. Col. Palmer was killed in Afghanistan.
2. **Roll-call.** Aldermen Sabrina Bengel; Victor Taylor; Denny Bucher; Johnnie Ray Kinsey; Bernard White; and Dana Outlaw.

Also in Attendance: Mike Epperson, City Manager, and Scott Davis, City Attorney.

Alderman Bengel made a motion to go into closed session pursuant to NCGS Section 143-318.11 (a) (3) to discuss a legal issue in reference to Electricities, seconded by Alderman Outlaw. The motion carried unanimously, time being 7:05 p.m.

Alderman Bucher made a motion to go back into open session, seconded by Alderman Taylor. The motion carried unanimously, time being 7:30 p.m.

Alderman Outlaw made a motion to intervene and protest in proceedings on the proposed merger of Duke Energy Corporation and Carolina Power & Light holding company Progress Energy, Inc. before the Federal Energy Regulatory Commission and hire John Coyle with Duncan & Allen at an approximate cost of \$80,000, seconded by Alderman White. The motion carried unanimously.

It seems as though \$80,000 is a lot of money for attorney fees, but long term it will keep the electric rates down. The goal is to keep the electrical rates from increasing, stated Alderman Bucher.

Alderman Bengel made a motion to approve hiring of NC Lobbyists David Miner and Jason Deans to represent the City of New Bern in dealing with the NC Utilities Commission and General Assembly at a cost not to exceed \$20,000, seconded by Alderman Kinsey. The motion carried unanimously.

Mayor Bettis informed the public of the proceedings on the Duke Power and Progress Energy merger. The City of Rocky Mount has decided to join New Bern in efforts to stop or condition the proposed merger. It is not clear at this time what action Electricities, the agency that manages power supply and related matters for North Carolina's municipal electric cities, intends to take toward the proposed merger.

The City of New Bern decided to take this stand due to the high electric rates. "The first concern is municipal utilities in eastern North Carolina already face a differential of 30

percent between the retail electric rates to cover the financing of the interests the cities bought in Carolina Power & Light nuclear and coal plants in the late 1970's and early 1980's; when CP&L was in danger of not completing those plants. A competitive market for the 40 plus percent of our power supply that does not come from those plants is vital to the survival of our utilities and the well being of our citizens. This merger would create a mega utility that would dominate power markets around the Carolinas and endanger our ability to use wholesale markets to lower our retail costs. The second concern is Duke and Progress Energy proposes to create an exclusionary power pooling arrangement through the merger. This 'joint dispatch' deal skims the cream from power operations, and may leave the rest of the utilities in the state holding the bag for higher costs".

New Bern and Rocky Mount hope to persuade the Federal Energy Regulatory Commission (FERC) either to stop the merger, or to condition it in such a way as to avoid the threats they see it posing to their cities' utilities. The two cities have hired the best experts in this field to help, and they have uncovered very serious deficiencies in the case Duke Power and Progress Energy put forth in support of the merger.

It is unclear whether ElectriCities, the statewide municipal power agency, planned on tackling the issues raised by the merger in the same way as the two eastern cities. ElectriCities works for all municipals utilities in the state, and it seems that the western part of the state does not face the same threats from this merger that the east faces. According to the law, the FERC has until October to decide whether to approve, condition or reject the merger, unless the federal agency decides to give itself additional time to decide the case.

### **3. Public Hearing Regarding 2010 CDBG Housing Development Grant in support of Kenwood Glenn Apartments.**

Mr. Epperson, City Manager, stated this is the second public hearing regarding the 2010 CDBG Housing Development grant application in support of Kenwood Glenn Apartments.

Mayor Bettis opened the public hearing for all interested parties to be heard. There were no public comments on the proposed 2010 CDBG Housing Development grant for Kenwood Glenn Apartments.

Alderman Bengel made a motion to close the public hearing, seconded by Alderman White. The motion carried unanimously.

Mike Avery, Director of Planning & Inspections, stated the department was authorized to submit a "Letter of Interest" to the Division of Community Investment and Assistance regarding submission of a grant application in support of Kenwood Glenn, a 56-unit affordable housing development for seniors to be located off Pinetree Drive. The grant application will be in the amount of \$250,000. If funded, \$225,000 of the grant will be loaned to the developer as a 20-year construction/permanent loan at 2% interest to

help finance installation of public infrastructure for the development of the apartments; and \$25,000 will be retained by the City for grant administration.

Alderman Outlaw stated he has spoken with the neighbors, planning staff, and the developers about their concerns. The main concern was the continuation of Lynn Street from Elizabeth Avenue over to Kidsville.

**4. Adopt Resolution Scheduling Second Public Hearing for 2010 CDBG Housing Development Grant in Support of Kenwood Glenn Apartments.**

Alderman Outlaw made a motion to adopt the resolution scheduling the second public hearing for 2010 CDBG Housing Grant in support of Kenwood Glenn Apartments, seconded by Alderman Bucher. Upon a roll-call vote, the motion carried unanimously.

**5. Update on Northwest Interceptor Project.**

Jordan Hughes, City Engineer gave a brief overview on the Northwest Interceptor Project. The cured-in-place-pipe (CIPP) method of sewer line rehabilitation is currently being implemented on the project. The project included 2,600 LF of 30" and 510 LF of 36" CIPP lining. Mr. Hughes further explained that the pre-lining cleaning and camera work has been completed and the actual lining work is scheduled to begin on June 1, 2011. The anticipated completion date is June 20, 2011.

Alderman Taylor asked if the Northwest Interceptor project can be used throughout the city. Certainly, a list of other areas may be generated and prioritized according to need.

Alderman Kinsey stated this is the area where the pipes burst during the bad rainstorm the city endured in September 2010.

**6. Update on Stanley White Recreation Center.**

Tripp Eure, of Darden J. Eure and Associates, P.A., presented a PowerPoint presentation on the newly renovated Stanley White Recreation Center. The City was awarded a grant of \$500,000 from the Parks and Recreation Trust Fund (PARTF) for the renovation of Stanley White Recreation Center, and the remaining cost of the project is paid through an installment purchase. An approximate cost of the project is \$1.2 million.

Alderman Taylor commended the architect and staff for an outstanding job. The rededication ceremony for Stanley White Recreation Center will be Saturday, May 28, 2011, at 11:00 a.m.

**7. Update on Solid Waste Agreement.**

Mark Stephens, Director of Public Works, stated at a previous meeting the board requested the solid waste service be rebid instead of a renewal extension. A new Request For Proposal (RFP) will require a minimum of approximately six months to

develop and send out for bid. Garbage Disposal Service (GDS) has requested a 1-year extension to the current contract and subsequently a 2.1% Consumer Price Index increase. This is consistent with the current terms of the agreement. The proposed cost for a 1-year extension and the CIP increase of 2.1% CPI will increase our current rates as follows:

- Collection of Commercial Waste: \$2.63 to \$2.69;
- Collection of Residential Waste: \$5.67 to \$5.79;
- Collection of Additional Carts: \$5.09 to \$5.20;
- Housing Authority Commercial: \$4.02 to \$4.10; and
- Housing Authority Residential: \$5.67 to \$5.79.

A comparison was done with other benchmark cities to determine if the City of New Bern was in line with other municipalities. New Bern is relatively cheaper compared to surrounding cities. If the board had agreed to a five (5) year extension, GDS was willing to roll back to the 2009 rates. The one (1) year extension is costing the City \$66,000. If the city has agreed on the five (5) year extension, GDS was will to give the city a check for \$66,000 as a thank you for allowing them to serve the City. The new rate for the City will be \$5.79 for the 1-year extension.

Alderman Bengel stated other companies will know what other companies are bidding as it is public information.

Alderman Kinsey stated GDS has had the contract for a number of years and suggested a RFP be done so other companies may bid on the contract.

Alderman Bucher asked if the fuel cost was included in the rates, because the cost of fuel fluctuates up and down. Currently, there is no fuel surcharge in the contract, stated Mr. Stephens.

It was the consensus of the board to extend the contract with Garbage Disposal Service (GDS) for one year and put out an RFP. This would eliminate the contract from expiring June 2011, and give the staff ample time to put out an RFP.

**8. Adopt Resolution Declaring that Construction Financing of Lewis Farm Road Substation Will Have No Material Adverse Effect on Revenues or operation of City's Electrical Distribution System.**

Jon Rynne, Director of Public Utilities, stated Local Government and the Initial Project Sales Agreement with the North Carolina Municipal Power Agency require that any equipment which is to be encumbered through financing be approved by Electricities Board of Directors. The installation of this new substation will significantly enhance system. The new substation will improve load balancing capability, lower distribution line power losses, load transfer and switch capability, and enhance operating capability. The consultant for the design and construction of the new Lewis Farm Road Substation

has completed the modeling of the electric system in the area of the new substation and determined that the requirements for financing have been met. This approval requires that the requesting city validate that the equipment could be removed from service should the terms of the financing be broken and not preclude the utility from serving its customers.

Alderman Bengel questioned if this was standard procedure for ElectriCities Board of Directors to approve any financing in reference to equipment. The provision of Section 6 (d) of the Project Power Sales Agreement dated May 1, 1978 between the City and the North Carolina Eastern Municipal power Agency says that the City may encumber a portion of its electric system taking into account the current operation improvements of the electric distribution system. The burden of responsibility of the construction of improvements must not have an adverse effect on the revenues on the operation of the electric distribution system, stated Mr. Rynne.

Alderman Outlaw made a motion to adopt the resolution declaring that construction financing of Lewis Farm Road Substation has no adverse effect on revenues, seconded by Alderman White. Upon a roll-call vote, the motion carried unanimously.

**9. Adopt Resolution Appointing Chief Aster and Deputy Chief Boyd as Agents for Tornado FEMA Reimbursements.**

Robert Aster, Fire Chief, stated a tornado caused significant damage to the City of New Bern's power distribution system. Due to the extensive property damage, Craven County has received a Federal Declaration allowing users to seek reimbursement through the North Carolina Emergency Management Public Assistance Program. In order to receive reimbursements funds from FEMA, a resolution needs to be adopted appointing a primary and secondary agent. The required authorization would allow the city to continue to execute the necessary FEMA documents to ensure representation on behalf of the city. Chief Aster was appointed as the primary agent, and Deputy Chief Boyd was appointed as the secondary agent.

Alderman Bucher made a motion to adopt the resolution appointing Chief Aster and Deputy Chief Boyd as agents for tornado FEMA reimbursements, seconded by Alderman Outlaw. Upon a roll-call vote, the motion carried unanimously.

**10. Adopt Resolution Affirming Authorization and Compliance Statements for Clean Water Management Trust Fund Reimbursement of Work Completed in Jack Smith Creek Stormwater Improvements Projects.**

Jordan Hughes, City Engineer, stated the Clean Water Management Trust Fund (CWMTF) has committed \$758,550 towards the Phase I of the Stormwater Improvements at Jack Smithy Creek. This phase of the project included the construction of the two (2) stormwater pumping stations and the discharge piping. Now that phase I of the Stormwater Improvements at Jack Smith Creek is complete, staff is preparing the reimbursement package for submittal to the CWMTF. The board must affirm by

resolution several conditions that are outlined in the Grant Agreement dated November 12, 2007 for the reimbursement process.

Alderman White made a motion to adopt the resolution affirming authorization and compliance for Clean Water Management Trust Fund reimbursement of work completed in Jack Smith Creek Stormwater Improvements Project, seconded by Alderman Taylor. Upon a roll-call vote, the motion carried unanimously.

**11. Adopt Resolution Approving Final Adjusting Change Order to Professional Services Agreement with Chiles Engineering for Jack Smith Creek Stormwater Improvements Project.**

Jordan Hughes, City Engineer, stated now that Phase I of the Stormwater Improvements are complete, a final adjusting change order for professional service needs to be issued amending the professional service agreement. This amendment to the professional service agreement will reflect the additional engineering and surveying work that was required as a result of delays in the permitting and construction process. Issuing Change Order No. 1 will add \$14,000 to the original agreement and finalize the agreement between Robert Chiles and the City.

Alderman Outlaw made a motion to adopt the resolution approving the final change order for professional services with Chiles Engineering for Jack Smith Creek Stormwater Improvements Project, seconded by Alderman White. Upon a roll-call vote, the motion carried unanimously. (Alderman Kinsey left briefly, and he did not vote on this issue).

**12. Adopt Ordinance Establishing Schedule of Capital Recovery Fees and Reducing Connection Fees for Water and Sewer Customers of the City of New Bern.**

Jordan Hughes, City Engineer, stated the Department of Public Utilities recommends certain amendments of the City's water and sewer fee schedule so that fees are more directly related to a customer's anticipated daily use of water and sewer services. The City has previously charged a connection fee that included not only the cost of the labor and materials to make a physical connection to the City's water and sewer lines, but also a portion of the capital costs associated with the production and distribution of water, the collection, and the distribution and treatment of sewerage. The capital recovery fees and the connection fees are two (2) separate components and these two revenue streams fund two separate items that should be evaluated independently.

Moving toward an effort to accurately correlate the cost of providing water and sewer service to customers based on a customer's anticipated daily use of such resources, the staff recommends that a new capital recovery fee be established based upon: the City's capital cost associated with the provision of water and sewer services; and a customer's anticipated daily use of such resources. The proposed capital recovery fee is a new fee which is intended to offset the future cost of major capital improvements to the City's water and sewer system which are driven by the impacts from new development. The fee will be based on the customer's calculated daily flow rate and location (city residents

and non-city residents). A percentage of this revenue will be directed to water and sewer capital reserve fund.

The City Attorney and City Engineer comprised a group of “stakeholders” (December 2009) to assist the city in revising and updating several ordinances as well as policies related to building and development within the City. This revision would provide a more equitable and customer friendly structure. Mr. Hughes further stated this amendment would take effect August 1, 2011.

Alderman Bengel asked if there are any grandfather tap fees from developers. The fees would be lower in some cases. It was asked if there will be any refunds on the developer’s behalf? There are none; once the fee has been paid it is done deal, stated Mr. Hughes. Mr. Hughes spoke with the Home Builders Association informing them of the changes.

Alderman Bengel made a motion to adopt the ordinance establishing a schedule of capital recovery fees and reducing connection fees for water and sewer customers, seconded by Alderman Taylor. Upon a roll-call vote, the motion carried unanimously.

**13. Adopt Ordinance Amending Privilege Tax Ordinance Adopted by the City on June 25, 1991.**

Mary Muraglia, Director of Finance, stated the privilege tax ordinance was a part of fee schedule study. There are only three (3) changes to the ordinance: Amusements-Electronic gaming operations (per machine); Auto Rental-Limousine (per vehicle); and Weapons Dealers-Bowie knives & similar articles. The ordinance amends the ordinance adopted by the board in 1991, entitled “An Ordinance to Levy Privilege Taxes on Trades, Occupations, Professions, businesses and franchises carried on within the City, as permitted by Section 160A-211 of NCGS”. The Schedule of Privilege Licenses of Article II Levy is deleted in its entirety and the new schedule shall be inserted in its stead. The ordinance will take effect on July 1, 2011.

Alderman Bengel suggested that the changes to the fee schedule be noted (highlighted) for a clear clarification in the future. The manager stated the changes to the fee schedule were provided at the April Work Session, but back-up may be attached for clarification. Alderman Bengel also suggested that the new fee schedule be placed on the city website.

Alderman Taylor made a motion to adopt the ordinance amending the privilege tax ordinance adopted by the City on June 25, 1991, seconded by Alderman Kinsey. Upon a roll-call vote, the motion carried unanimously.

**14. Adopt Ordinance Establishing City of New Bern Schedule of Fees and Charges.**

Alderman Bengel requested that the schedule of fees be **tabled** until the June meeting due the lack of time for studying, especially when the board received two (2) revisions

within one hour. Clarification was needed for the following: Police off-duty fee, and Public Assembly (parades), Police officers On-Duty Rate vs. Off-Duty Rate. The City Manager clarified the off-duty rate is between the officer and the vendor, that being a 2-hour minimum at the rate of \$25 per-hour. The on-duty officer is paid by the city payroll at the rate of \$33 per hour.

Attorney Davis suggested the board adopt ordinances for (a), (b), (c), (d) and (e), and the schedule of fees at a later date as long as the schedule is approved before July 1, 2011.

- a. **Adopt Ordinance Amending Article II “Fire Prevention Code” of Chapter 30 “Fire Prevention and Protection” of Code of Ordinances of City of New Bern.**
- b. **Adopt Ordinance Amending Article II “Police Department” of Chapter 42 “Law Enforcement of Code of Ordinances of City of New Bern.**
- c. **Adopt Ordinance Amending Article II “Collection” of Chapter 62 “Solid Waste Management” of Code of Ordinances of City of New Bern.**
- d. **Adopt Ordinance Amending Article I “In General” of Chapter 66 “Streets, Sidewalks and Other Public Places” of Code of Ordinances of City of New Bern.**
- e. **Adopt Ordinance Amending Article III “Obstructions” of Chapter 66 “Streets, Sidewalks and Other Public Places” of Code of Ordinances of City of New Bern.**

Alderman Bucher made a motion to adopt the ordinance changes for (a), (b), (c), (d), and (e) amending the ordinance effected July 1, 2011, which allows consolidation of the fees, seconded by Alderman Bucher. Upon a roll-call vote, the motion carried unanimously.

**15. Adopt Ordinance Amending Chapter 50 “Parks and Recreation” Code of Ordinances of City of New Bern.**

Thurman Hardison, Director of Park & Recreation, stated staff is recommending certain amendments to Chapter 50 of the Parks and Recreation of the Code of Ordinance. The ordinance gives the Board of Aldermen authority to establish various fees and charges which shall be set forth and maintained in the City of New Bern Schedule of Fees and Charges located in Section 50-2 is newly added. The other sections are updated to the current ordinance and the rules apply to all parks and facilities. The language in the current ordinance speaks to all eighteen parks vs. the old ordinance addressing parks individually. Emphasis is placed on Section 50-26 Protection of Property: It shall be unlawful to hit golf balls in city parks and recreation areas outside of areas designated specifically for such activity. This has been an ongoing problem at Lawson Creek Park with individuals perfecting their golf skills. Another area of concentration is Section 50-45 Park Hours: Anyone who wishes to enter or stay in a city park before or after hours for any purpose other than as described must first obtain permission in writing from the Director of Parks and Recreation or his/her designee, unless it is a city offered or

sponsored athletic program or special event is scheduled in a specific city park. Therefore, park hours are down to dust unless otherwise posted and approved.

Alderman Bengel stated the board previously discussed their concerns of artifacts being placed in Union Point Park. Is it feasible for some sort of language to be incorporated in Chapter 50 in reference to that discussion? A resolution/policy addressing that issue was adopted previously at a board meeting, stated Mr. Epperson.

Alderman Bucher made a motion to adopt the ordinance amending Chapter 50 "Parks and Recreation" Code of Ordinance, seconded by Alderman Taylor. Upon a roll-call vote, the motion carried unanimously.

**16. Adopt Ordinance Amending Article II "The Cedric M. Boyd Park at Union Point and Lawson Creek Park" of Chapter 86 "Waterways" of Code of Ordinances of City of New Bern.**

Thurman Hardison, Director of Parks & Recreation, stated it is advisable and in the public interest to amend Article II, The Cedric M. Boyd Park at Union Point and Lawson Creek and adding Glenburnie Park to Chapter 86-30 "Overnight camping" is hereby renamed rules and regulations. No overnight camping shall be permitted ashore at any waterfront parks in tents, trailers or self-contained camper units unless authorized in writing by the parks and recreation department.

Alderman Outlaw asked how the city would manage this policy. The city has the means to lock and secure some of the parks, but not all of them. The parks that cannot be secured by locks would fall under the enforcement within the staff and public safety. There are a number of events that request overnight camping such as the MS Bike Tour; therefore, the enforcement will be done on a case by case according to the event.

Alderman Taylor made a motion to adopt the ordinance amending Article II, of Chapter 86 "Waterways" of Code of Ordinance, seconded by Alderman Kinsey. Upon a roll-call vote, the motion carried unanimously.

**17. Approve Minutes.**

Alderman Bengel made a motion to approve the minutes from April 26, 2011 Board Meeting, seconded by Alderman Taylor. The motion carried unanimously.

**18. Appointments.**

Alderman Taylor made a motion to reappoint Richard Parsons to the Historic Preservation Commission, seconded by Alderman Outlaw. The motion carried unanimously.

Alderman White made a motion to appoint Tim Thompson to the Historic Preservation Commission, seconded by Alderman Outlaw. The motion carried unanimously.

## **19. Attorney's Report.**

Attorney Davis had nothing to report at this time.

## **20. City Manager's Report.**

Mr. Epperson reminded the board the Budget Workshop will be Wednesday, May 25, 2011 at 6:00 p.m., and the assessment interviews for Police Chief is scheduled for Thursday, June 2, 2011 and Friday, June 3, 2011. There are five candidates scheduled to be interviewed.

Tonight is Chief Palombo's final night for attending a Board of Aldermen Meeting as the Chief of Police; he will be officially retiring June 1, 2011. Mr. Epperson stated he has enjoyed working with the Chief during his short time as City Manager. Chief Palombo is the most well adjusted 35-year veteran he has known, stated Mr. Epperson. The manager yields the floor to the Chief to make his final remarks.

Chief Palombo expressed "it has been a spectacular fourteen (14) years", thanking the board for their support of public safety. "It has been an honor and privilege" to have been the Chief of Police for the City of New Bern.

Alderman Bengel, Taylor, Bucher, Kinsey White and Outlaw thanked Chief Palombo for serving the citizens of New Bern and Craven County. Community Watch is going to miss you, stated Alderman Kinsey. Chief you taught me a lot, stated Alderman Outlaw.

## **21. Announcements.**

Alderman Kinsey announced that the 4<sup>th</sup> Ward would be hosting a Community Watch picnic on Saturday, June 4, 2011 at Colony Baptist Church. Also, a group of supporters hosted a fundraiser for Congressman G. K. Butterfield.

Alderman Taylor announced Carolina East Medical System in conjunction with Dr. Sidney Barnwell is hosting a free prostate cancer screening on Saturday, September 24, 2011, 9:00 a.m. until 1:00 p.m. in the lab building behind the Express Care building adjacent to the hospital.

Alderman Bengel requested the board to adopt a resolution opposing Senate Bill 731. This bill is an act to clarify when a municipality or county may enact zoning ordinances related to design and aesthetic controls. It would also restrict the ability of communities to establish and maintain local development standards affecting aesthetics.

Alderman Bengel made a motion to adopt the resolution opposing Senate Bill 731, seconded by Alderman Outlaw. Upon a roll-call vote, the motion carried unanimously. Alderman White did not vote as he needed additional clarification and information in reference to this bill. Alderman Bengel also announced the Eastern North Carolina

Family History Fair will be held at the New Bern Riverfront Convention Center on Saturday, June 4, 2011 from 9:00 a.m. to 6:00 p.m. For more information, visit the website: [www.encfamilies.org](http://www.encfamilies.org).

Alderman White and Alderman Bengel thanked Jon Rynne for all his hard work and commended him on guiding the board in making decisions related to ElectriCities.

**22. Closed Session.**

The closed session was held at the beginning of the meeting.

**23. Adjourn.**

Alderman White made a motion to adjourn the meeting, seconded by Alderman Bucher. The motion carried unanimously, time being 9:30 p.m.

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Mayor

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City Clerk