

**CITY OF NEW BERN
BOARD OF ALDERMEN
WORK SESSION
May 18, 2010
CAROLINA COLOURS PAVILION 6:00 P.M.**

Meeting Opened by Mayor Lee Bettis, Jr. **Prayer by** Alderman Taylor followed by the Pledge of Allegiance. Alderman Bucher introduced the Board of Aldermen and welcomed the residents to the Neighborhood Meeting, as well as thanking Ken Gilmore and Kenneth Peregoy for arranging the use of the Pavilion.

Board Members Present:

Mayor Lee Bettis Jr.; Aldermen Sabrina Bengel; Victor Taylor; Denny Bucher; Johnnie Ray Kinsey; Bernard White; and Dana Outlaw.

Also in Attendance:

Ed Wyatt, Interim City Manager; Scott Davis, City Attorney; and Department Heads.

1. Neighborhood Meeting – Comments from the Public.

Edward Gorzalski, 102 Reinach Lane, New Bern asked to City of New Bern to partner with Craven County Government on resolving the issue of individuals not keeping their property up. There are abandoned vehicles, an upholstery building that burned, but the debris has never been removed, and a resident's home located on highway 70 adjacent to the animal hospital that looks like a salvage yard. Mr. Gorzalski feels as though these issues are both county and city problems despite that properties are located in Craven County. Mr. Avery explained land use laws for the city are different from the county, and he has spoken previously with Commissioner Tyson. Mr. Avery stated the county is currently putting zoning laws in place. Mr. Gorzalski asked the question "does the city and county work well with each other". Alderman Bucher replied it was his understanding that the previous board did not work well with the county, but the current board has discussed having a joint meeting. Mayor Bettis asked Mr. Gorzalski to write a narrative of his concerns and deliver it to the Executive Assistant.

Bruce Hargreaves, 3603 Cranberry Lane, New Bern inquired as to whether the city would implement a tax increase this year. Mr. Wyatt explained the board was in the process of putting the budget together and no decisions have been made. Mr. Wyatt expressed there would be two (2) public hearing on the budget, June 1, 2010 and June 8, 2010 at this point and time the public would be allowed to be heard.

2. Discussion of Proposal from The Families of New Bern & Craven County.

David French, 1719 Spencer Avenue, New Bern gave an update on the monument honoring all the people of New Bern and Craven County. Mr. French met with Alderman

Bengel, Mr. Hardison, and Ms. Stone in reference to the location of the monument. It was the consensus of the committee to place the monument on city property between Christ Episcopal Church and City Hall versus Union Point Park. The Historic Preservation Commission approved the location of the monument. Alderman Bengel stated once the monument was in place and the work was completed, this would be named "Heritage Park". Mr. French stated funds will be raised through private donations and the organization would like for the City to establish an account so donations may be received and disbursed. There will be no request of funds from the city.

3. Presentation of Memorial Marker for the Schooner Cassandra at Council Bluff Green.

Mr. Hardison, Parks & Recreation Director received a request from William Green to place a memorial marker at the Council Bluff Park. The event "The Schooner Cassandra Memorial" will take place on July 14, 2010. The Schooner Cassandra was a two masted schooner, built in New Bern and launched in 1848. The Schooner Cassandra left New Bern for West Indies loaded with lumber on July 14, 1852 and it was never heard from again. This marker will be placed permanently in the grass along the walkway of the park. The Historic Preservation Commission has approved for the marker to be placed in Council Bluff Park.

Berdie Grignon, 218 Mellen Road, New Bern wanted to know the significance of placing memorial markers. If you start placing markers in parks this could be an ongoing process. Mrs. Grignon stated what is significant to one person may not be significant to others. Mr. William Green explained the history of The Schooner Cassandra; his great-great-grandfather was the captain. The goal is to highlight the trade and shipping history of New Bern using the Cassandra as a vantage point. The launch of the Schooner Cassandra was published in the local paper, "The Republican".

4. Discuss Increasing Visibility of City Activities on the Website.

Dawn Heller, Executive Assistant explained the visibility of city activities on the website. The Mayor and city staff discussed the possibility of sending out weekly bulletins, capturing email addresses and partnering with the Chamber of Commerce. It was suggested to get input on events and projects from the various departments and monthly updates from the Aldermen on topics of interest and events taking place in various wards.

The Mayor suggested the city needs a public information officer, but due to the budget restraints it is not possible at this time. Once the economy improves this could be a position that could be staffed.

Alderman Bengel suggested the city partner with other agencies such as the Tourism Development Authority, Chamber of Commerce, and Convention & Visitors Center. Alderman Bengel asked Dawn Heller to work with Amy Hammond as the point of

contact for the Convention & Visitors Center. Also, one may visit the website: www.visitnewbern.com. You will find a host of related sites about New Bern. Alderman Bengel suggested the Mayor's picture be removed from the front page of the website, so current events could be placed there versus the links being placed on the side bar. Alderman Bengel also asked if the city could change their domain to a new domain that would be easier to remember. Mark Trail, Information Technology Manager stated all the easier domains had already been taken.

5. **Discuss Concerns Raised by Anthony Bonnici.**

Scott Davis, City Attorney gave an update/overview in reference to Mr. Bonnici's questions.

1. What is the current status of the expired deck license issued to the then Sheraton Hotel (Hilton) which expired in October of 2007?

The city owns a 30 foot strip on the waterfront behind the Hilton Hotel. The Hilton's deck encroaches on the 30 foot strip about 7 feet. When the property was constructed the city entered into a license agreement, which lasted about 15 years to allow that encroachment to exist. The agreement expired several years ago; we are now at the point as to how to proceed. The board has a number of options:

- The board may require the owners to remove the encroachment.
- The board may enter into some kind of fee arrangement with the owners.
- Require the Hilton owners to provide digging access along the marina in exchange for the license to encroach. In other words the city would have the arrangement whereas for as long as the deck encroached into the right-of-way the city would have access to dinghy docks along the marina to be used by the general public. Those two licenses would run parallel until either party terminates the license.

Alderman Outlaw stated the board needs to be updated on issues that appeared before the previous board. Chronological order of events should be put in place for certain issues. Alderman Outlaw asked was this issue an easement or encroachment originally? Attorney Davis stated he did not know, it was built seventeen years ago. It could have been either way, it would have to be researched. There are different flavors of encroachments throughout the city. There are stormwater, sidewalk, balcony, and utility encroachments. Attorney Davis stated sometimes encroachments are done by design and sometimes by accident. Attorney Davis did not know how this particular encroachment was done.

2. What is the status of the past-due payment of \$67,700 negotiated between Mr. Meadows and Mr. Rod O'Donohue (attorney for the Soliel group) to the unfinished sidewalk and replacement of lights along the walkway in front of the Sky Sail condo?
 - Attorney Davis updated the board on the debt listed in the New Bern Riverfront Development, LLC bankruptcy filing. There are three (3) claims pending and one (1) claim forthcoming. The three claims are sidewalk reimbursement, water/

sewer tap fees, and taxes. The sewer taps fees are approximately \$145,580 and the unpaid taxes are approximately \$140,762. All the amounts are unsecured claims that have been filed under the bankruptcy. The total current debt outstanding to the creditor is \$25 to \$30 million, which is a large amount to the city, but very small in the scheme of bankruptcy. This process is handled through a Federal Judge and it will take time to resolve. A plan has not been filed yet, and Attorney Davis does not know what they are proposing in respect to payment. In respect to the property taxes, they will fall under priority class and a debt on an estate such as this will propose a five (5) year payout on all the taxes or as the units close. In respect to the unsecured claims, unsecured meaning last to be paid and often times never to be paid. There are 110 units and 42-45 of the units have been closed. The remaining units to be sold will be determined on the sale price per unit that can be captured over a period of time. All the city can do is wait to review the plans and object to the plans if necessary and hope to recoup the money.

Alderman Outlaw asked the nature of the tap fees. Attorney Davis stated when the developers proposed their plans for the project, they initially proposed for the building to be master-metered, which is contravention to the city ordinance. During the departmental review process the mistake on that plan was noted. A summary report was done on all the issues that had to be addressed, and the report was given to the engineers and everyone on both sides of the transaction. Another meeting was scheduled months later and the same defect reappeared. The issue was highlighted and presented to the developer. Ultimately, the building was constructed with a master-meter instead of individual meters. The developer paid the one tap fee of \$23,000 for the master meter. Once the building was retrofitted the tap fees would cost the developer \$300,000. The developer asked if they could pay the fees in two installments. The developer paid the first installment and filed bankruptcy when the second installment was due.

Alderman Outlaw asked does the rate structure allow the City Manager to make executive decisions on matters of this nature. Attorney Davis replied the City Manager may make executive decision on behalf of the board. Alderman Outlaw stated if a check and balance system was in place, this situation would have been avoided. Attorney Davis stated a check and balance system would be a direction from the board to the new city manager.

Attorney Davis stated that within the next several months, he will present to the board a comprehensive revision of the water and sewer ordinance. The key is consistency to avoid problems such as master metering an entire building. We have accomplished revisions that will result in "one size fits all rule". Alderman Outlaw expressed concerns that the revision will not allow developers to circumvent the onset of higher increases by bulk purchases. Attorney Davis, Jordan Hughes, and Stake Holders are working on

the comprehensive revision, we will be working on getting the rules solidified, and revisit the rate structure and tap fees.

Alderman Bengel asked Attorney Davis to explain the master meter situation. How are the individual units paying their water/sewer bills? Attorney Davis stated the developer had to go back and retrofit each unit with a wireless meter. Alderman Bengel stated the condos are in bankruptcy and at what point can the process begin for foreclosure so the units can be sold. It is obviously the units are not selling; they were over priced from the very beginning. It would be easier to foreclose on the units in order for the city to recoup their money. There are thousands and thousands of dollars not paid; this is a lot of money for a small city. Alderman Bengel wanted to know the next step to start foreclosure. The bankruptcy protects the foreclosure of the condos, stated Attorney Davis. Wachovia is the largest lender, the bank and debtor will negotiate the process. If Wachovia is not satisfied with their assets, Wachovia may pursue procedures for foreclosure. This process is beyond the city control, despite the money that it is owed.

Anthony Bonnici, 512 Jefferson Avenue stated this issue was discussed with the previous board upon completion of the condos. Mr. Bonnici met with Danny Meadows, Acting City Manager in reference to unfinished work at Sky Sail, and was told do not worry everything is going to be fixed. After the election Mr. Bonnici and Mrs. Bennett met with Mr. Meadows about the unfinished work at Sky Sail. Mr. Meadows stated the city has an agreement with the Soliel group. Mr. Rod O'Donohue (attorney for Soliel group) approached Mr. Meadows and negotiated to pay the city \$67,700 to complete the unfinished side walk and replacement lights in exchange for the certificate of occupancy. Mr. Bonnici stated the \$67,700 is not an accurate figure considering the cost of concrete as well as the cost for labor. The agreement is null and void as of October 2009.

Attorney Davis reminded the board that this entire project is in bankruptcy. A Federal Judge controls what happens to the estate; therefore, the city has no authority to opt out of agreements or anything. All the city can do is file the claims with the bankruptcy court. Alderman Bengel asked if the 30 foot easement is a part of the bankruptcy. Attorney Davis replied the property (30 ft. easement) still belongs to the city, but the \$67,700 is a part of the bankruptcy. Initially when the project was visualized, the plan was to recreate the 8 foot pedestrian walkway that runs by Union Point Park, wrap around the Convention Center, and designed to run behind the Hilton and pick-up behind Sky Sail. At that point in time the developer was suppose to install the 8 foot sidewalk, but the city was in the process of getting the permits from Division of Water Quality (DWQ) to construct within the Neuse River Buffer the first 50 feet. The regulators would not allow an 8 foot sidewalk to be built under the current rules. After lots of negotiation the regulators finally agreed to an 8 foot wide pervious surface walkway to be built. The cost was extremely expensive and the process also required the city to buy a sidewalk vacuum to keep the pervious surface clean (a pervious surface allows water to pass through). The cost for this project was well over \$300,000,

therefore; the city calculated the cost to put in the 8 foot sidewalk at the city expense. Both parties did not want to spend that much money on the project, at this point Mr. Meadows and Mr. Rod O'Donohue negotiated the \$67,700.

Mayor Bettis asked what organizational lesson can be learned in the near future. Alderman Bucher stated; he is confident the developer does not want to be in bankruptcy. The city needs to stay on top of the situation so as things move forward, the city will get its fair share. Also, the developer did not anticipate the economy slowing down, the units not selling for that reason and it is all not due to the developer. The city needs to have a good organized system as to how to progress on deals.

Ms. Bennett inquired if the city required the developer to take out a performance bond. If developers are required to obtain a performance bond, and they fail to meet their obligations, would not the bond cover the outstanding debt? The problem with the performance bond is often times on the front side you do not know what will be needed on the back side, stated Attorney Davis. There is a performance bond in place to build the structure, and it deals with roads, plats and infrastructure. When condos are built, there is very little city infrastructure to deal with and performance bonds are not required. Ms. Bennett wanted to know what happens if a developer starts building and finds out later there is no money and the building is left unfinished. The developers are required to have that particular performance bond, stated Attorney Davis. Also, Mrs. Bennett stated if the developer had researched the past history of condos built in New Bern, he would have known condos do not sell quickly.

3. What is the status of payment to the City for leased parking spaces? How many spaces are leased and at what price? How much is owed?

Attorney Davis stated that Sky Sail had a commitment to provide so many parking spaces, but they were fifty (50) spaces short. Therefore, Sky Sail entered into an option agreement with the city to lease up to fifty (50) spaces if they could not acquire them otherwise. A certificate of Occupancy was issued in April 2009, but the parking spaces were not acquired, nor did the developer exercise its' option to lease the fifty (50) parking spaces. Recently, the city sent the developer a notice advising them to produce the fifty spaces, or send the money to lease the fifty spaces from the city. The Certificate of Occupancy was issued early April 2009, and the bankruptcy was in the fall of 2009. Any claims that fell prior to the bankruptcy will fall in the unsecured class. Money due post bankruptcy is currently due. The city is now talking with the developer on how they want to proceed. The check is due from the date of bankruptcy for all fifty (50) spaces. If the developer fails to comply, a claim will be filed with the bankruptcy's estate for the amount due from April 2009 up to the bankruptcy date.

Alderman Bengel wanted to know if the parking spaces are needed even though the condos are not occupied. Attorney Davis stated regardless of the occupancy the spaces are needed. Alderman Bengel expressed the parking spaces are being used by the hotel

guest, employees, and the marina, rather than Sky Sail. This parking lot was obtained through additional tax dollars charged on property owners in the downtown Municipal Service District. These parking spaces could be used for employees for downtown businesses. Alderman Bengel wanted to know if the parking spaces could be transferred to the Farmers Market. Attorney Davis stated several years ago the city approached the Farmers Market in reference to subleasing unimproved parking spaces (26) for the overflow from Sky Sail. However, the agreement stated whoever leases the spaces would pay the money directly to the Farmers Market. The question to the board would be if the city wants to shift twenty-six (26) spaces to the Farmers Market, and have the current surface be improved by the Farmers Market since they have the leasehold interest in the property. The board needs to decide if they want the twenty-six (26) spaces transferred to the Farmers Market or all fifty (50) spaces transferred with the money being paid to the city. Alderman Bengel expressed there is another option for the board to review at a later date; the Farmers Market would like to have the lease agreement extended.

Mr. Bonnici asked Attorney Davis to clarify the statement in reference to New Bern Riverfront Development, LLC owing money to the city for parking space. According to the 2004 lease agreement, the Riverfront Development never exercised the option to lease the spaces; therefore, they owe no money to the city. Attorney Davis explained the condos are required to have two (2) parking spaces per condo. In this case twenty-five condos are out of compliance according to the zoning ordinance, and the city can proceed to revoke their Certificate of Occupancy. Revoking their Certificate of Occupancy is the trunk card in making sure the city received the money for the parking spaces. Alderman Bengel asked Mr. Avery, Planning and Inspection Director was the two (2) spaces required because it was new construction. Mr. Avery said the two (2) spaces were required because it was new construction and the zoning location. Alderman Bengel expressed nowhere else in the downtown area is required to have two (2) parking spaces. Mr. Avery stated onsite parking is not required in the C-1, Central Business District. If a business falls in the C-2, Commercial Waterfront District they are required to have off street parking. Mr. Bonnici made the suggestion to the board to erect a sign to make aware that this is a Municipal Service District parking lot, and allow anyone to lease the spaces. Alderman Bengel personal opinion, the units are not sold, why not shift the twenty-six (26) spaces to the Farmers Market and allow the Soliel group to pay the twenty dollars to lease the spaces from them. This would free up the municipal lot and allow the city to lease the space at the rate of twenty dollars per space monthly.

Alderman Outlaw asked Attorney Davis if the city terminated the Certificate of Occupancy on the condos for not having adequate parking, and in negotiation with the bankruptcy court to liquidate some of the units, would this action put the city in a better position to collect on the tap fees.

Attorney Davis replied possible, it definitely gives the city leverage, but the city would have to take the position of the court. Attorney Davis expressed, he would like to see

the tap fees collected as the units are sold. The city has no obligations to provide sewer/water without the payment of tap fees. Alderman Outlaw recalls the night the Farmers Market's agreement was approved by the board; he asked Attorney Davis to define the term "overflow". Attorney Davis replied it would be a situation for example Mumfest: none of the spaces would be earmarked or designated for any particular person. Alderman Outlaw asked Attorney Davis, how would the units be signed to satisfy the parking spaces with the terminology used in this agreement. The city had anticipated there would be a lot of intensive downtown construction (ex. Talbots) which would have required parking spaces stated Attorney Davis. Aldermen Outlaw and Bengel thought the definition of "overflow" was very vague at the time of the meeting. There were many, many discussion in reference to parking after the agreement was approved. Alderman Outlaw stated the problem with the overflow for the Farmers Market was if an event was scheduled the spaces could not be used. In essence, the spaces could not be used on a permanently basis.

Attorney Davis suggested amending the ordinance identifying the monthly rent parking lots. The board can convert the Crayton parking lot to a monthly rented parking lot. Alderman Bengel did not realize the Crayton parking lot was tied to Sky Sail and not rented monthly. Attorney Davis stated he was not aware of a list requesting parking spaces. Alderman Bengel asked Chief Aster to elaborate on the findings in reference to parking on Craven Street between Morgan and Gussman. There are eighteen (18) spaces leased and thirty-five (35) spaces that are not leased. These thirty-five (35) spaces are being used for public parking. After checking with the tax office, it is approximately two-four individuals on the waiting list requesting parking spaces. Mayor Bettis asked Alderman Bengel to work with Attorney Davis on a proposal for the parking.

4. What are the health insurance claims paid on behalf of Swiss Bear employees?

Attorney Davis stated the city does not have or maintain any records that would summarize the total health insurance claims paid on behalf of Swiss Bear employees. The city does have weekly health insurance claims reports that identify the amount of each health insurance claim paid on behalf of an individual during the weekly period.

The second step to the analysis is to determine if any privacy or confidentiality rules apply to those documents. On this issue, under "HIPPA" the claim information by the individual is protected health information. The general statutes regulations allow the city to de-identify that information. In other words, you black out all the data that can be used to determine the identity of the individual. If this was a request that involved a lot of people it could certainly be done, but Swiss Bear only has two (2) employees. Even though all identifiers are removed from the weekly report, obviously it would be for one employee or the other. By combining date of claim and other information one could easily determine the individual who is the subject of the information.

Mr. Bonnici stated he has researched the records for approval allowing Swiss Bear to be on the City of New Bern health insurance. After researching the resolutions and

ordinances dating back to 1985 to present, there was no record of approval allowing Swiss Bear to participate in the City of New Bern health insurance. Swiss Bear is a non-profit organization; the staff is not city employees. According to the former City Manager, Bill Hartman, Swiss Bear was on the insurance when he began employment with the city.

Alderman Outlaw expressed that the newly elected board got elected on transparency, and he understands Mr. Bonnici concerns, but we need to concentrate on the future. The city is already under staffed and too much money has been spent on lawyer fees.

Alderman Bucher stated there are a lot of issues on the book currently. We are in the process of hiring a city manager; my suggestion would be to table this issue until a city manager is hired. Mr. Wyatt does not have the time to spend on this particular issue; he is trying to get a budget together for FY2010-2011. Once the city manager is hired, the board can address this issue and decide on the practices as to where the city goes from here.

Alderman White expressed the board needs to stay focus and move forward. He has a problem with spinning wheels; the ultimate goal is to move forward. The board has had "more meetings than you can shake a stick at, and I am tired." Alderman White stated he did not realize it would be so many meetings.

Alderman Kinsey stated it has been some bad practices within city government. Currently, there is not enough time or manpower to continue researching this issue. Once a city manager is hired, the board can address this issue on the direction to proceed.

Mr. Bonnici reminds the board they ran and got elected on transparency as well as him. If there is a way to save a buck then it needs to be looked into. The city employees have had to take furlough days, but the board does not have the time to address inappropriate spending. If the city continues to go this route; they will continue to have a budget deficit. This is such an unjust benefit that Swiss Bear has been allowed to make use of, but no other non-profit organization participates.

Alderman Bucher asked Mr. Bonnici if he was requesting the board to take away the health care insurance from Swiss Bear. Yes, Mr. Bonnici replied; the board rescinded the health insurance from the previous board. What is the difference between the previous board and Swiss Bear? Until this issue is investigated, the health insurance should be suspended.

Mayor Bettis instructed Attorney Davis to find out why this has gone on (health insurance for Swiss Bear) and the basis for it. The city cannot ascertain the cost of the claims for Swiss Bear now, but it has cost the city \$500 in attorney fees. The Mayor

asked Attorney Davis to come up with enough information to decide if this is a legitimate policy the board wants to continue.

Mr. William Green, 108 Camelia Road stated; he is familiar with non-profit organizations across the state and it is standard practice that those few employees are covered under the municipality.

Attorney Davis explained that “self insurance” means, an administrator determines what the pool of claims will be for the year. The estimated cost is \$500,000 which is placed into a shoe box. The medical claims are paid out of the city funds rather than contracting with an insurance company for coverage. The city purchase stock lost insurance to cover any claims that exceed the \$500,000 pool. In other words, the city is its own insurance company.

6. **Review of Draft Municipal Agreement with NCDOT Relative to Metcalf Street Reimbursement.**

Item #6 pulled off the agenda until a later date.

7. **Adjourn.**

Alderman Bengel made a motion to adjourn, seconded by Alderman Kinsey and unanimously carried, time being 8:15 P.M.

Mayor

City Clerk