

**City of New Bern
Board of Aldermen
Work Session
November 15, 2011
City Hall Courtroom – 6:00 P.m.
300 Pollock Street**

Board Members Present: Mayor Lee Bettis, Jr.; Aldermen Sabrina Bengel; Denny Bucher; Johnnie Ray Kinsey; Bernard White; and Dana Outlaw. Alderman Victor Taylor arrived at 8:20 p.m.

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

1. Discuss Development of Traffic Calming Policy and Give Updates on Street Classifications.

Mark Stephens, Director of Public Works, presented a power point presentation on traffic calming policy and updates on street classifications. Traffic calming is the “combination of mainly physical measures that reduce negative effects of motor vehicle use, alter driver behavior and improve conditions for non-motorized street users”.

The department has received several requests from individuals as well as neighborhoods requesting some sort of traffic calming device for speeding within neighborhoods. Speeding vehicles and unnecessary thru traffic in residential neighborhoods often create safety hazards and negatively affect factors of livability. The intended purpose of a traffic calming policy is to provide an appropriate and consistent treatment of traffic calming measures in the City of New Bern. Currently, the city has no current policy in place, but staff will begin evaluating requests so changes can be implemented.

Traffic calming devices can help in the prevention of fatalities that result from speeding. Speeding plays a vital role in fatalities, as one speed increases the rate of accidents rises. Statistics have proven the greater the speed, the more accidents occur resulting in injuries and fatalities.

There are four types of traffic calming devices: non-physical; vertical; horizontal; and diversion. These devices can be costly depending which type is used. The 4-way stop sign is one of the popular used calming device and less cost effectiveness.

The planning and implementation process for traffic calming is important. Traffic calming programs structured as popularity contests, relying exclusive on neighborhood petitions and financial antes to decide what gets built, are asking for failure. Likewise, programs relying on casual observation of traffic conditions, ad hoc contacts with neighbors, and subjective judgment involving rational reasoning is very difficult to apply.

Street classification determines the validity of traffic calming measures on certain streets. In order to determine whether a street qualifies for traffic calming devices, all streets need to be categorized based on traffic volume and service characteristics. Street classifications are in the Land Use Ordinance, but the list has not been maintained.

A steering committee will be formatted to develop a traffic calming policy as well as updating street classifications. The committee will consist of various groups, city staff, and

neighborhood representatives. Upon developing the policy, the board will be required to adopt a new policy and code changes relevant to traffic calming.

Mr. Stephens and the board discussed the different scenarios of how traffic calming devices would work. Traffic calming devices can be speed humps, speed tables, raised crosswalks, raised intersections, diverters, realigned intersections, traffic circles, and roundabouts. The policy will cover mainly residential areas. A good example would be Hazel Avenue; there is a high volume of traffic due to a school being located in a residential neighborhood.

One of the biggest problems with traffic is people tend to cut through neighborhoods as a short cut to their destination. Therefore, a traffic calming policy will be enforced in neighborhoods mainly. There was a problem with big commercial trucks cutting through neighborhood during the construction of the new bridge.

Alderman Bucher stated the city needs to develop a clear, precise policy because traffic calming devices can be just as harmful as helpful. Brandywine Subdivision in Morehead City had a problem with speed through their neighborhoods and the homeowner's association installed speed bumps. The speed bumps solved the problem of speeding, but created another problem. The speed bumps are destroying vehicles.

Alderman Bengel expressed making sure a comprehensive study is done with input from all parties. The city does not need to address this same issue every two years, it needs to be precise and thorough.

Mr. Epperson, City Manager, stated the number one cause of accidents is people are going the wrong speed. How do you enforce people to stop? The second cause of accidents is people turning left into ongoing traffic. A policy needs to be implemented that will address all the issues. "You have to balance the safety of streets, but streets are made to move traffic", stated Mr. Epperson.

2. Discuss Proposal on Modifications to City's Current Alcohol Ordinance.

Attorney Davis explained the current ordinance for consumption of alcoholic beverages in public places. The ordinance stated "no person shall consume, serve, or drink wine, beer, whiskey, or other alcoholic beverages of any kind on public streets, or in any public building or other public places in the city." Consumption on the public street and on municipal property prohibited. Public street means any highway, road, street, avenue, boulevard, alley, bridge, or other way within and/or under the control of the city and open to public use, including the sidewalks of any such street. Often during special events vendors will ask if alcohol can be sold on public streets since the streets are closed or roped off. This is a common question from vendors on Middle Street since the sidewalks are larger, and they would like to put tables and chairs out. There is no mechanism current to address this issue other than one must obtain an ABC permit. Attorney Davis requested some direction from the board as to how to proceed.

Alderman Bengel noted the attorney has been across the state researching with other Main Street cities to determine if they have an alcohol ordinance in place. New Bern is a part of the Main Street program. Alderman Bengel stated the downtown merchants and/or constituents have requested modification to the current ordinance. Entrepreneurs have requested to sell alcohol on city sidewalks during certain times. Modifying the ordinance will be a positive impact on the revenues for the city as well as the economy. There needs

to be a comparison with other benchmark cities. Once the comparison is done, report the findings back to the board.

Alderman Bengel further stated she does have some reservation about alcohol in public parks. On the other hand, there was a winery during the Mumfest and it went very well. The caveat was the trailer had to be placed on private property; it could not be placed on the streets. She is in support of modifying the current ordinance, but nothing like a New Orleans style. Modifying the ordinance would be a plus, especially during special events.

Alderman Bucher stated he has visited a lot of cities that allow this kind of activity and it seems to work. He is interested in seeing how other cities handle it and how they control it. Even though this issue is in the 1st Ward, or the downtown area; it is all of the Aldermens ward. The downtown belongs to all; we eat shop and visit for a variety of reasons. He is in favor of modifying the ordinance and interested in how other cities handle it.

Alderman White stated he could care less about alcohol, "he does not drink". It would be okay with him if was never sold in stores. "Most people that drink a lot of alcohol cause a lot of problems, and they are not pleasing to be around".

Alderman Kinsey stated he would make a decision after the City Attorney reports his finding back to the board.

Alderman Outlaw stated this is a sticky subject, but it is legal. He is open to any discussion and comments.

Mayor Bettis stated safety and commerce is important, but how do you tackle that balance. He is not in support of a free for all drinking at events like the Mumfest versus an event at the Chamber that is controllable.

Attorney Davis suggested the board give him several questions and report his findings back to the board at the December meeting. Alderman Bucher asked how much of the sidewalk can be utilized for tables and chairs as opposed to walking. ADA requires at least 4 feet, stated Attorney Davis. The attorney's plans are to draw up different scenarios and bring them back to the board for their review. The board may share the information with their constituents and all parties decide on a workable plan.

Alderman Kinsey suggested sticking with restaurants first since they have permits already, and extend the offer to other later. Other than the downtown area, nowhere else can a cafe style apply, stated Attorney Davis. Attorney Davis will prepare a draft for the board review.

3. Discuss Recommendation for Purchasing Policy.

Mike Epperson, City Manager, presented a proposed policy regarding purchasing and contract agreements. Presently there is a lack of a formal purchasing policy regarding what appears before the board for approval. Section 36 and 37 of the City Charter states in broad terms that all purchases and contracts for improvements will be done in accordance with the North Carolina General Statutes. Section 29 of the City Charter states "The City Manager shall not make any contract or purchase in the name of the city unless the same shall have been authorized by ordinance or resolution of the Board of Aldermen."

The Board of Aldermen must approve formal bids for construction or repair contracts which have an estimated cost of \$500,000 and above. Approval of contracts for items purchased under the Sole Source or Piggyback exemption from formal bid requirements with an estimated cost of \$500,000 and above as well as purchases of apparatus, supplies, and equipment. Any and all application for financing and/or finance contract for items purchased which are financed. Alderman Outlaw stated he was not a big fan of piggybacking, because it circumvents the RFP process.

The city must formally bid any construction or repair contract which has an estimate cost of \$500,000 and above; and bid any purchase of apparatus, supplies and equipment which has an estimate cost of \$90,000 and above. Also, the city must informally bid construction or repair contracts which have an estimate over \$30,000 but under \$500,000; and bid purchases of apparatus, supplies, materials, and equipment which has an estimate cost over \$30,000 but under \$90,000.

The manager suggested allowing him to approve all purchases and contracts for items which have been approved as part of the annual budget ordinance as long as they are within the budgeted amount. Alderman Bengel requested a list of what has been approved within the quarterly.

Alderman Outlaw requested staff generate a calendar as an FYI when items are up for renewal. These items should be highlighted in the annual budget workshops. An example would be the chemicals that are renewable yearly for the Water Plant.

Alderman Kinsey asked how often contracts are bided, and why are contracts automatically being renewed versus a Request for Proposal (RFP) done. Often current companies lock themselves into a set price for a numbers of years despite rising cost. The 3rd party health provider and GDS (solid waste) are prime examples. Doing a RFP every few years can open the city up to a worse costly bid, stated Mr. Epperson.

The board directed the city manager to put together a draft policy for their review.

Alderman Outlaw expressed his concerns in reference to the Housing Authority of the City of New Bern. He felt what he had been reading in the local newspaper was incorrect as it relates to Mayor Bettis terminating the entire Housing Authority Board of Commissioners. He realizes there is a conflict with the commission having six (6) members instead of the five (5) members allocated on the board. His concerns are it is not what is always legal, but as a Board of Aldermen you are sitting as an elected official not an appraisal or a gemologist. It is not what is always legal when in fact it is none of your business. "It is about common fairness and justice". Alderman Outlaw's opinion: "if what he has read in the newspaper is true, the Mayor is the judge, jury, and prosecution of the Housing Authority." There has been a lot of talk about increasing the number of commissioners for the Housing Authority. He does not think any member of the Board of Aldermen is complacent about not wanting things to get better as it relates to the Housing Authority. Improving the living conditions of the Housing Authority is a joint effort of the Board of Aldermen, Swiss Bear and the revitalization/redevelopment of the Five Points area. "It is not a good idea to win the scrimmage and loose the battle". If these procedures continue as it relates to terminating the commissioners, and lawyers get involved, he assures 99.9% the City will be paying legal fees for the Housing Authority. He also expressed concerns about personnel issues. In any form of government, you do not discuss private personnel matters.

If the Housing Authority Board needs to be critiqued, ten (10) days is not ample time for a hearing. Accordingly, NCGS 157-8 (Housing Authority) appears to conflict with NCGS 1-254 as to procedures for an impartial hearing. It appears the authority cannot get a fair hearing, because the decision has already been decided by the Mayor. Alderman Outlaw further stated the Board of Aldermen having the majority of votes can petition the General Assembly to reinvent the Housing Authority composition of appointments. This whole situation could be resolved by meeting with both parties in a gentlemanly way to discuss changes. The commissioners have not been given due process; therefore, the Housing Authority Commissioners need to be given another source for their hearings besides Mayor Bettis. The Mayor has concluded the commissioners are incompetent.

Mayor Bettis stated this is an unelected body which the city has lawfully allowed them to have five (5) commissioners. The Charter allows the five seats for the Housing Authority, but the Board of Aldermen has the authority to increase the number of seats. The Housing Authority board does not have the authority to increase the number of seats only the aldermen, stated Attorney Davis. (i) On February 27, 2005, Joe George, Director of the Housing Authority, decided to increase the Housing Authority Board to six (6) members. The Housing Authority board changed the by-laws on February 22, 2005 to accommodate the appointment of the six (6) members, although they did not have the authority to do so. (ii) Housing Authority Manual-Responsibility of Board of Commissioners – “the board of Commissioners shall establish personnel policies and rules, including the classification and pay plan and shall make and confirm appointments when so specified by law. (iii) Removal of Commissioners- “the mayor may remove a commissioner for inefficiency or neglect of duty or misconduct in office, but only after the commissioner shall have been given a copy of the charges against him (which may be made by the mayor) at least 10 days prior to the hearing thereon and had an opportunity to be heard in person or by counsel”. On November 3, 2011, the Mayor sent by hand delivery letters to the commissioners in reference to the hearings. (iv) Duties of Authority- “the authority shall be under a statutory duty to comply or to cause compliance strictly with all provisions of this Article and the laws of the State and in addition thereto, with each and every term, provision and covenant in any contract of the authority on its part to be kept or performed”. Increasing the number of commissioners without the authority of the Board of Aldermen is not doing things within the law. The City of New Bern Board of Aldermen meetings are run by the law according to the North Carolina General Status, and the City Attorney is present to make sure things are done correctly. Joe George made a unilateral decision to increase the number of commissioners without the proper authority. As mayor of the City, it is his duty to make sure the Housing Authority follows the law. “It is taxpayer’s money they are spending”. Alderman Outlaw referenced Mayor Bettis as being the judge, jury and prosecution, and due process; “guess what? the authority violated the status”. The letters that were hand delivered to the commissioners stated the duties of the authority, removal of commissioners and the violations. Each commissioner would have the opportunity to be heard at the hearing to plead their case. If they can prove the allegations are false, then they will not be terminated. He would terminate his mother if she was violating the status (a volunteer), stated Mayor Bettis. There is no due process as a volunteer. Due process is when an individual is deprived of “life, liberty, and property” which neither one has played into these issues. Bettis stated as mayor he is “going to do his job, you can like it or not like. You can vote him out of office in 2013; bring it on.”

Alderman Outlaw asked the Mayor if he would consider a mediation source for a fair and impartial hearing. They will have a fair and impartial hearing according to the General Status, stated the Mayor. Alderman Outlaw asked the Mayor if had made prejudice

comments to the Sun Journal that would not allow him to make an impartial decision. It is the Mayor's duty to inform the commissioners they have done wrong, he does not have to be impartial, and it is the law. Alderman Outlaw's last statement was, "time will prove you right or me right. Gentlemanly verbiage and dialog would have kept all this from happening". The Mayor had been talking to the Housing Authority Board quietly for approximately four (4) months and got nowhere. What he did get was Guy Smith hollering at Kathy Adolph and accusing her of being a spy for the Mayor. Ms. Adolph requested the personnel ordinance and the by-laws of the authority which prompted Mr. Smith to act in this manner. The Mayor called Mr. Smith to talk with him, but unfortunately, Mr. Smith hung up.

Alderman White wanted to know if the Housing Authority appeared before the Board of Aldermen when they decided to increase the number of commissioners from five (5) to six (6) members. The increase did not come before the Board of Aldermen; it was done during a dinner meeting at the Flame Restaurant, stated the Mayor. The Housing Authority has been operating inappropriately and now there needs to be a change. Alderman White further asked the Mayor, "why was he so hard on the Housing Authority"? At the August 16, 2011 Work Session the board discussed the problems with the authority. During this meeting, the police department gave a brief overview on the crime within the projects. It was then noted that the primary focus for crime was in the areas of Craven Terrace, Trent Court, Duffyfield and the immediate surrounding areas. Alderman White informed the Mayor the board meetings is not a courtroom. He expressed his concerns as it relates to the media; there was a shooting on Lawson and Church Street, but the media stated Trent Court. Those streets are several blocks away from Trent Court, and the Ghent neighborhood is just across the road. It seems as though every time something happens bad near those target areas fingers are pointed. It appears the city is trying to destroy the Housing Authority, stated Alderman White. Mayor Bettis replied; he is not trying to destroy the authority just provide better living conditions. He advised all interested parties to visit the web and look at the Charlotte models of projects. It is a beautiful area with stores, greenery, and commerce as well creating jobs within the communities. The Charlotte models need to be implemented in New Bern. There needs to be better living conditions for African Americans, and these conditions require changes. As the Mayor and as well as an attorney, he did all the research not involving the City Manager or the City Attorney. There was no cost to the city as it relates to attorney fees. If the Board of Aldermen is willing to increase to number of commissioners, Mayor Bettis will drop all of the charges.

Alderman Outlaw stated since you intentionally did not involve the manager and attorney, if the legal counsel for the authority suggests the members did not have an impartial hearing, and they request the City of New Bern to pay the legal fees will you as the Mayor pay those fees. Attorney Davis stated there is no basis in the complaint for attorney fees. It is no statutory authority that they are entitled to legal fees.

As Alderman of Trent Court, New Bern Towers, and half of Craven Terrace, Alderman Bengel has concerns in reference to the authority. Aldermen Bengel and Outlaw met with Mr. Peeler and Ms. Sampson to talk about issues they were violating such as not having open public meetings. The commissioners were having dinner meetings at the Hilton Hotel. It was discussed the meetings should be held in an open and public space. Alderman Bengel further stated she attended the next couple of meetings and had concerns the meeting was run by the vice chair and not the chair. A lot of the discussions during the meetings are not captured in the minutes. There are a lot of concerns that need to be addressed. As Alderman of the 1st Ward, it was discussed among the board if they were

willing to increase the number of commissioners to address the concerns, and the board was only willing to increase the number from five (5) to seven (7). There has been talking between the two boards, but it comes back to the Board of Aldermen as they have the opportunity to increase the number of commissioners. If the board is willing to increase the number of commissioners then no one would have to be removed. There needs to be some fresh blood with fresh ideas in order to revitalize these areas. One of the concerns is that the projects would be torn down displacing families; it was expressed to Ms. Sampson this is not true. "No one will be removed from their home in any way shape or form as Alderman of the 1st Ward. Alderman Bengel has been in contact with a gentleman of a non-profit organization that works with low and moderate income housing throughout the state of North Carolina. The gentleman stated New Bern and Morehead City were the two worse housing projects in the state of North Carolina. These housing projects have been the same as they were when built back in the 40's. She hopes to bring this gentleman before the board in the future to discuss improvements for New Bern Housing Authority. Alderman Bengel directed Attorney Davis to get the minutes of the authority for the past three years.

The Board of Aldermen appoints citizens to the different boards within the city. These appointees live within the city limits, but there are two (2) members of the Housing Authority board that live outside of the city limits. Alderman Bengel finds this very offensive. These individuals make decisions for the city, but do not pay city taxes.

Alderman Bucher stated he has lived in New Bern for eleven (11) years and one point that he has heard over and over again is the "Five Points Corridor" needs to be improved. The city streets have been resurfaced, it looks nice, but the reality is there are no businesses moving into the Five Points area. Noted point, he would not put a business in this area because there is crime on both sides. The only improvements you will get in Five Points would be to put a government building there. The reality, there is no private money going to come into Five Points. There is an old saying, "if you want to see what is going to happen in the future, look at the history" stated Alderman Bucher. In the eleven (11) years nothing has changed with those buildings besides they look worse.

Alderman Taylor apologized for his attire; he just arrived back in town after attending a funeral of a family member. He is not in favor of increasing the number of commissioners to eleven (11). He is in favor of increasing the number to seven (7) with leaving the current commissioners in place. There needs to be some educational training to address the current issues. Alderman Taylor had concerns that he was not invited to a meeting that was scheduled with Aldermen Bengel and Outlaw along with Mr. Peeler and Ms. Sampson. The 2nd Ward is a part of the Housing Authority and he needs to be a part of the meetings.

Alderman Bucher made a motion to go into closed session pursuant to NCGS 143-318.11 (a) (3) to discuss the City's intervention in the Duke Power and Progress Energy merger, seconded by Alderman Bengel, time being 8:25 p.m. The motion carried unanimously.

Alderman Kinsey made a motion to go back into open session, seconded by Alderman Bengel. The motion carried unanimously.

Alderman Outlaw made a motion to adopt the resolution approving joint representation and fee sharing agreement between the City of New Bern, and the City of Rocky Mount, seconded by Alderman Bengel. Upon a roll call vote, the motion carried unanimously.

Alderman Bengel made a motion to recess the meeting until Wednesday, November 16, 2011 at 7:00 p.m., seconded by Alderman Outlaw. The motion carried unanimously, time being 9:25 p.m.

Mayor

City Clerk