

**CITY OF NEW BERN
BOARD OF ALDERMEN SPECIAL MEETING
FEBRUARY 01, 2023 – 6:00 P.M.
NEW BERN AREA CHAMBER OF COMMERCE
316 S. FRONT STREET**

Mayor Odham opened the meeting. Prayer by Ethel Sampson. The pledge of allegiance was recited.

Roll Call: Mayor Jeffrey Odham; Aldermen Rick Prill, Hazel Royal (by telephone), Robert Aster, Johnnie Ray Kinsey, Barbara Best (arrived at 6:04 p.m.), and Robert Brinson. Absent: None. A quorum was present.

Also in Attendance: Foster Hughes, City Manager; Jaimee Bullock-Mosley, Assistant City Attorney; and Brenda Blanco, City Clerk.

After announcing Alderman Royal was under the weather and participating by telephone, Mayor Odham asked if the Board wanted to put time limits or regulations on the speakers. If not, the public would have ample time to speak without any restrictions. No one voiced a desire to impose a time limitation or other regulations.

1. Entertain public comment for the sale of 304 and 308 South Front Street.

Nelson McDaniel of 214 New Street said his comments would not take on one of the many sides of the discussion. As a native New Bernian, he has witnessed many decisions made by public officials that have affected the way New Bern is today, like the reconstruction of Tryon Palace and, in his opinion, the destructive choice to build a bridge at the end of Broad Street. He asked that everyone treat each other with civility and respect, despite their differences.

Lynne Harakal of 602 Middle Street read a letter on behalf of the Swiss Bear Board of Directors in support of the sale of the property (copy attached).

Kevin Roberts of 1008 Colleton Way stated the Chamber of Commerce also submitted a letter in support of the sale and development of the lot (copy attached). Some have suggested the property be established as another park, but you can see Union Point Park (“UPP”) when standing on the property. Noting UPP is sacred to many, he suggested instead of using funds to create a new park that money be used to create amenities at UPP. Ward 1 does not suffer for park space and has more parks than any other area.

Walter Perry of 220-D Middle Street expressed concern about the lack of public involvement. He asked that the Board defer its decision on the sale to allow for public input. The property has been used by the City to support major activities

such as MumFest, and he suggested it be used in a manner to honor veterans or as a space for food trucks.

(Alderman Royal terminated her participation in the meeting at 6:13 p.m.)

Maria Cho of 252 Pollock Street asked that the Board answer several questions before voting on the resolution. She questioned the urgency and why the property was being sold at this time, how it was determined to be surplus, and if a formal vote was taken to sell the property. She further questioned who would be financially responsible for and determine how the proceeds from the sale would be expended. She asked whether there had ever been a community-driven plan employed to develop the lot and whether future development plans for the site include incorporating pervious surfaces to help with hazard mitigation. In closure, she asked that the Board not take a vote on the matter, reinstate a formal advisory committee for oversight, and to make shared community vision a priority. The Board was reminded that the citizens are at the top of the City's organizational chart.

(Ms. Blanco notified the Board that Alderman Royal's participation in the meeting ended just prior to Mrs. Cho's comments.)

J. Paul Johnson of 219 Craven Street was called to the podium, but advised he would not speak as his comments would be redundant.

Seth and Nicole Plank of 3311 Tack House Road were called to the podium, but Mr. Plank announced there was no longer a desire to offer comment.

Gary Curry of 1101 Country Club Drive was in favor of the development. He moved to New Bern in 2006, and the lot has been empty the entire time he has lived here.

Jeff Medlin of 606 West Wilson Creek Drive, Immediate Past Chair of the New Bern Area Chamber of Commerce, stated the Chamber's mission is to promote an environment conducive to businesses of all sizes. It strikes him that a willing buyer made an offer to a willing seller, and the transaction needs to proceed. The Chamber is in favor of the deal.

Lisa Edwards of 3602 Fox Chase Road was called forth to speak, but decided to decline the opportunity.

Michael Gleason of 907 Runaway Bay spoke about the process and expressed support for the comments made by Mr. McDaniel.

Nancy Falcone of 923 Pollock Street simply stated she was not in favor of the sale of the property.

Dan Roberts of 301 South Front Street was in support of the sale. His office is located directly across the street from the lots. Having grown up in New Bern, he could recall when no one wanted to live or have a business downtown. While progress is tough, without it you go the opposite way. The City has lots of parks it could improve and make nicer, and he felt money would be better spent on existing parks than creating a new park at the site. Addressing needs such as affordable housing is not free, and selling the property would generate a higher tax base. In addition to the City's parks, he noted First Baptist Church created a park at the old McClellan's site, and the jury is still out as to whether the Kessler Group may create a park.

Jim Polo of 223 Craven Street said the sale and development of the property are two separate issues, and no one is talking about the development. He expressed concerns about timing, process, and transparency. It was his feeling that there was an urgency to sell, which he questioned, and noted the Board continued to move forward despite concerns that have been brought to its attention. If the property needs to be sold to put money in the Municipal Service District ("MSD") for a commitment that has been made, he questioned why that information has not been shared. The MSD currently has a balance of \$800,000 for which there is no stated plan. He asked why there is need to add an additional \$825,000 to that fund. He referenced a virtual meeting that he was part of a couple of years ago which was attended by former alderman Sabrina Bengel and then alderman Jeffrey Odham. The purpose of the meeting was to discuss an advisory committee for the MSD. During that meeting, the two aldermen stated there was a \$1 million commitment from the MSD as seed money to build a Pepsi museum. He questioned whether the money from the sale of this property would be used to fill that commitment. If so, why can it not be discussed? Dr. Polo asked the Board to vote against the sale and to reestablish an MSD citizen advisory committee so ideas can be vetted and cleared through taxpayers.

Laurie Ingram of 208 New Street was opposed to the sale. She was concerned about the process, a lack of vote when a former alderwoman threw out the idea of putting signage on the lot to sell it, and how a determination was made that the property was surplus. She felt the entire process was not analyzed or thought out. The resolution declaring the property as surplus states the City Manager determined the property to be surplus with input from Department Heads. She has asked for information about that decision, but has not received it. Before the property is sold, she asked the Board to provide the information that was used to make the determination.

Katherine Adolph of 316 Liberty Street recounted it had been 10 years since a developer proposed the Talbot's development. As one of her last actions on the Board of Aldermen, former alderman Sabrina Bengel asked for the sale of the property; not sure why. The then-seated Board immediately agreed, and the City Manager was directed to post a large for-sale sign. While the new Board has the authority to sell the property, it also has the authority to reconsider the sale. Several

weeks ago, this Board halted the sale of a property owned by the Redevelopment Commission to a person who had placed a bid and a deposit. So clearly, there is precedence by this Board to stop and change the future course of action. Dr. Adolph said it was her understanding the potential buyer of the Talbots property was a lovely lady who wanted to invest her money in a way that would honor her family. The potential buyer did what the City asked, followed the process, and must be as frustrated as the taxpayers. A businessman would see this as a simple transaction, but Dr. Adolph suggested this is not a sale for run-of-the-mill surplus land. The property is in the heart of New Bern, is important to the economic wellbeing of the downtown, and is very different from the City's other common surplus sales. She felt the property was too important to the economic wellbeing of the downtown to be left in the hands of the highest bidder. If the City can find \$4 million to build an elevator, certainly it has the capacity to develop a public project on land it owns. Mayor Odham rushed this meeting for the buyer and went to Sabrina Bengel and Danny Batten's business group meeting a few days ago to pitch the sale. The public has been in the dark, which is "business as usual." Dr. Adolph shared a rendering of a potential public space. She found it very insulting that leadership at Swiss Bear, the Chamber, and others were opposed to a public park. Public spaces incentivize business. Properties near rivers and flood plains do not need more concrete. She questioned how the property fits into the City's resiliency plan. Why not use some of the City's \$67 million reserves for the public's good? In closure, Dr. Adolph urged the Board to stop the process or, at the very least, delay it.

John Skinner of 340 Johnson Street said he did not have a lot of information on the proposal and for that reason did not know whether he was for or against it. He expressed concern about the process for public participation. He felt the Board had already made up its mind and was holding this session just to check the box saying it held a public meeting. If that is true, it is not good governance.

Rusty Ingram of 208 New Street agreed with the comments of Mrs. Cho, Dr. Polo, Mrs. Ingram, Mr. Skinner, and Dr. Adolph. It was his hope that the Board would not move forward with the sale.

Lori Ann Prill of 212 New Street said since the attempt by Mr. (Hubie) Tolson to develop the lot into the Talbots project more than 15 years ago, the City, residents, and guests have used the property as greenspace. Now there is a rush to sell it. She has never seen the property listed on the City's website with other surplus properties. In February of 2022, it became public that there were discussions with the Kessler Group to sell the lots. Paragraph 6 of a Memorandum of Understanding ("MOU") with Kessler restricts the City's ability to solicit, accept, or negotiate any proposal from any party to acquire, lease, or license these lots. When asked if the MOU was terminated or amended, it was confirmed no formal action has been taken by the Board following the execution of the MOU on February 22, 2022. So, there is a strong possibility the MOU is in full force and effect, thereby prohibiting the City from entering into a sale of the Talbots lot. The City may be in breach of

the document by simply putting up the sign suggested by Mrs. Bengel as she was exiting her term as alderman. Once again, the City is in a situation of misinformation and liability. She questioned if the City had the legal right to sell the property and what research was undertaken to determine the property is surplus. Once again, the residents are curious as to what is going on behind closed doors.

Michael More of 215 Lucerne Way was not in favor of another park in downtown New Bern. The activities that happen on that parcel are infrequent and could easily take place elsewhere. Mr. More stated he and his wife were in favor of selling the property and letting it generate tax revenue. It is not a good use of taxpayer dollars to keep and maintain the property.

Barbara Sampson of 480 W. NC Hwy. 55 suggested each Alderman bring potential sales before their wards to make the citizens aware. If the property is kept by the City, control remains with the City. She said she had a problem with the Board stepping over the citizens and making decisions behind closed doors. She asked the Board to remember the underserved may not have dollars, but they do have sense.

Johnny Robinson of 5300 Rossi Road said while he lives in Trent Woods, he owns the property across from the subject property. He was in favor of the sale. An offer was made, and no one submitted an upset bid. If someone wanted to pursue a park, a group of investors could have placed an upset bid. This is a transactional issue; the City made a commitment and needs to follow through.

Ben Bunn of 501 East Front Street commented communities will always search for ways to pay for growth, but at what price? At some point, community growth overwhelms what was special and desirable about a place, and people leave because they no longer find the community desirable. New Bern is a special place, and he questioned what others wanted it to be like for their children and grandchildren once they are gone. He questioned who or what was behind the sense of urgency to sell.

Michael Raines of 312 South Front Street said he did not have a strong feeling either way. He is part owner of the building and parking lot that surrounds the property. His father helped negotiate the City's purchase of the property in 2000. The site used to be junky with broken asphalt, old buildings, fallen chained-link fences entwined with briars, etc. As a developer and someone involved in real estate, there are limitations for development of the property. The property has been used for various things over the years. The proposed use for educational purposes would be the best use he has heard of in the last 12 years or so. If he were trying to purchase the property, he would probably walk away like the last two or three developers who tried to buy it. Mr. Raines said if anyone is 100% against any change or development in their town then it is hard for him to believe they are for the town. He cautioned about the City running off another developer and felt this was a good opportunity. As the closest neighbor to the property and one who

enjoys seeing the grass, a grass field does not really serve a purpose. If every developer is scared off, it won't take long until developers stop coming.

2. Consider adopting a resolution to sell 304 and 308 South Front Street.

Alderman Kinsey said a lot had been said, but a decision must be made that is right for the City. Some of the information presented was misinformation. He revealed he had received a lot of phone calls today that were not nice. The decision he makes will be his, and citizens have to respect that. He asked the City Manager and Assistant Attorney to address some of the misinformation.

Mr. Hughes provided the following timeline:

08/09/22	Previous Board gave direction to post signage on the lot advertising it for sale
11/03/22	Current Board expressed consensus to establish minimum bid of \$750,000
11/04/22	Signage posted on property
11/07/22	Ad placed on city's website
11/08/22	Board adopted resolution declaring property as surplus and establishing the minimum bid of \$750,000
11/16/22	Offer of \$825,000 received
12/13/22	Board adopted resolution to initiate the upset bid process
12/27/22	Legal ad published to advertise bid and announce deadline for upset bids
01/06/23	Upset bid period ended; no additional bids received
01/24/23	Board tabled the sale of the property until 02/14/23 to allow for public input prior to consideration of sale
01/26/23	Special meeting called for 02/01/23 to receive public input and consider sale

To provide additional historical context, Mrs. Mosley revealed her office reviewed its files on the property. In 2000 the City utilized MSD funds to purchase the lot, which was a former gas station, for approximately \$150,000. At that time, the City's plan was to use the lot for parking. The City subsequently cleared the lot in preparation for the parking lot. Several unsuccessful attempts were made to bring the parking lot to fruition over the years. Thereafter, the City pivoted and focused its parking efforts on the inner block. The City needed about 1,000 square feet to install an electrical switching device, and those devices were installed in the northeast corner of the property as evidenced by the large green boxes onsite. The Board later turned its efforts for the lot toward a revitalization project that included public space, public restrooms, and retail. The project was to include residential space and a long-term lease for a Jos. A. Banks store and Talbots. This concept in 2005 is what dubbed the property as the "Talbots" project. As permits were issued for the project, a group of concerned citizens appealed, there was litigation, and the project did not come to fruition. As a final effort, the City employed an economic

development group a few years later to perform various studies. A developer was sought, and a conceptual plan again merged. The plan included public space, outdoor seating, a fountain, public restrooms, etc. Despite diligent efforts, a developer could not be located. Subsequently, the City unsuccessfully attempted to market the property through its Development Services department. The next step was initiated in 2022, as outlined by the City Manager.

Mrs. Mosley stated the City does have the legal authority to sell the Talbots lots, if it complies with the statutes; the City has complied. With respect to the MOU with New Bern Historic, LLC (the Kessler Group), it is important to look at the document in its entirety. Paragraph 3 of the document specifically articulates the nonbinding nature of the MOU, meaning the document is an agreement to agree in the future. The MOU establishes a plan to work together to develop an economic incentive package, if that materializes. To the best of Mrs. Mosley's knowledge, an economic incentive package has not subsequently been presented to the Board nor has an economic agreement been agreed to by the Board. This means the other conditions of the MOU are not applicable at this time. Thus, the Board does have the legal authority to approve the sale of the property.

Alderman Best recalled an article in Saturday's paper that indicated an MOU was still in place with the Kessler Group. She questioned whether the MOU had no effect on the Talbots property and "nothing to do with that lot." Mrs. Mosley explained the MOU references a couple of development sites that could be part of an economic incentive package in the future. To date, there is no economic incentive package that includes the property known as the Talbots lot. Therefore, not in play are the portions of the MOU that would restrain the Talbots lot.

Alderman Prill felt the public provided good input on both sides of the issue. He presented two viable options that he felt were pliable: the City retain ownership and make a commitment to develop the lot in a manner that will benefit the downtown business community, downtown residential community, the entire community, and attract visitors to the downtown area. Noting he had been somewhat critical of past boards and administrations, in the last 22 years, the City has tried to market and develop the property. The message is there are issues with the property that do not make it attractive as a developable property. It is unfortunate he and others cannot hear the buyer's vision for the development. Alderman Prill also had concerns about the MOU in that the Kessler Group is still active in the community and he still believed the MOU to be a valid document. He voiced concern about the potential for legal repercussions. His vision for the property is to make it a public plaza with programs. If no action is taken to sell the lots, he would like for the Board to commit to developing it in some fashion. If the sale moves forward, the City will receive a substantial amount of money that will go into the MSD Fund. That money can then be used to further benefit the downtown community. Both scenarios are a win for the City.

Mayor Odham talked about the process, noting every process can be critiqued. There are two ways the City can dispose of property. The first is through the upset bid process, which is what the City did in this case. The second is through a special process, which is how the Dunn Building was sold. Mayor Odham asked how many remembered the front page after that sale? It read "Dunn deal", and implied an underground, underhanded, backroom deal was done. He asked what would happen if the Board announced it was going to give the property to the Kessler Group for an economic development package. The City purchased the property for over \$150,000 twenty years ago and now has an offer of \$825,000 on property that appraised for less than \$600,000.

After several outbursts from the audience following his comments, Mayor Odham reminded everyone that public comment had ended and the Board was in deliberations. He remarked inaction is not action. For decades, the lot has sat green. It was pointed out earlier in the meeting that MumFest had utilized the lot. The Mayor reminded everyone that Swiss Bear, which runs MumFest, was endorsing the sale. The Mayor said he was not in favor of kicking the can down the road. If the Board does not want to sell the property, then vote on it, say you're not going to sell it, and return the bidder's \$41,000 deposit. He implored the Board to make a decision about the property tonight.

Alderman Best said her only concern has been about the MOU. Now she has received information from the City's legal counsel that there is no connection through the MOU with the Kessler Group. Alderman Best said she had no underlying reason for wanting to sell the lot, except that it can generate business resources that will increase the population, provide jobs, and provide revenue to the tax base. By bringing in business and generating tax revenue, citizens do not have to be taxed. A plaza idea would have been a great idea, but the plaza idea can be used to improve UPP and Martin Marietta Park.

Alderman Aster made a motion to adopt a resolution to sell 304 and 308 South Front Street, seconded by Alderman Kinsey. Alderman Brinson said he received phone calls and emails, some of which were Ward 6 residents who were in favor of selling the property. As part of his evaluation. Alderman Brinson parked at UPP tonight and walked to the meeting. He said it appears the City has tried for 20 years to figure out what to do with the property to include development, and now that there is finally someone who is willing to buy and develop it, he felt the City should move on it.

Mayor Odham read the following letter of support:

"Mayor Odham:

The following, being MSD taxpayers support the sale of the lot known as The Talbots lot. The lot was purchased with MSD funds, and we request that the funds from the approved sale be put back into the MSD for future economic development use.

Sincerely,
John Haroldson, Billy Faulkenberry, Jim Bisbee, Johnny Robinson,
David Blythe, David Chargaris, Tommy Faulkenberry, Denny
Bucher, Chris Hoveland, Mike Lentz, Drake Bratton, Steve Bengel,
Michael Raines, Buzzy Stubbs, Aaron Maune, Lyndsay Sims &
Winnie Smith, and Scott Johnston.”

Alderman Brinson said he will push to have the MSD advisory council reconstituted, as well as a downtown advisory council that is separate from the Chamber’s downtown business council. He felt there is a need to have tough decisions in other forums, not just at the Board of Aldermen meetings.

Upon a roll-call vote, the motion on the floor carried 6-1 with Alderman Prill voting against it. Of note, Alderman Royal left the meeting early, thus technically yielding a vote in the affirmative.

3. Adjourn.

Alderman Aster made a motion to adjourn, seconded by Alderman Brinson. The motion carried unanimously 7-0, time being 7:42 p.m. Of note, Alderman Royal left the meeting early, thus technically yielding a vote in the affirmative.

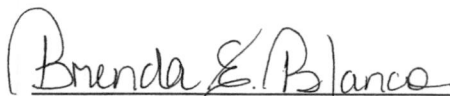
The attached documents are incorporated herewith and are hereby made a part of these minutes.

NOTE: For additional details and information on the Board of Aldermen meetings, please visit the City of New Bern’s website at www.newbernnc.gov. Video and audio recordings of the meeting have been archived.

Minutes approved: February 14, 2023



Jeffrey T. Odham, Mayor


Brenda E. Blanco, City Clerk