

**FRUITLAND CITY COUNCIL  
TUESDAY, JANUARY 13, 2009  
MINUTES**

The Fruitland City Council met in regular session at City Hall on Tuesday evening, January 13, 2009 with the following members present:

President Gregory J. Olinde, Treasurer Gloria J. Ortiz, Councilman Raymond D. Carey, and Councilman Richard F. Tull.

Also present were:

City Manager John F. McDonnell, City Solicitor Andrew C. Mitchell Jr., Chief of Police Michael J. Phillips, Deputy Treasurer Polly Caton, Director of Public Utilities Joseph P. Derbyshire, Public Works Director Cooper Townsend, Code Enforcement Officer Danny Scholl, and City Clerk Diane Nelson.

Our guests included:

Amanda Pollack and Michael McArthur of George, Miles, and Buhr, Raven McIntyre, Nancy English, Tracy Duquette, Kenneth Duquette, Samuel Duquette, Peggy and Bill Robbins, Sarah Lake, and Marianna Bromley.

President Olinde called the meeting to order at 7:31 p.m. and welcomed all in attendance. Treasurer Ortiz delivered the opening prayer, requesting special prayers for Councilmember Ted Lokey and Brooke Mulford; all recited the Pledge of Allegiance.

Mr. Olinde acknowledged receipt of the minutes of the regular meeting of December 09, 2008 and the special meeting of December 08, 2008, calling for additions or corrections. As there were none, Treasurer Ortiz moved to adopt both sets of minutes as presented. Councilmember Tull seconded and the motion passed by a four to zero vote.

Treasurer Ortiz delivered the Treasurer's Report as follows:

Cash on Hand 12/1/08	\$ 167,942.09
Deposits	696,167.46
Transfer from Savings	<u>200,000.00</u>
SUBTOTAL	\$1,064,109.55
Disbursements	<u>(707,425.25)</u>
TOTAL ENDING 12/31/08	\$ 356,684.30

As there were no questions, Councilmember Tull moved to accept the Treasurer's Report as presented. Councilmember Carey seconded and the motion passed without dissent by a four to zero vote.

City Manager McDonnell reported on upcoming meetings of the Fruitland Chamber of Commerce, the Lower Eastern Shore Mayors Association, the Recreation Commission, and the Board of Zoning Appeals. He also noted that City Hall would be closed Monday, January 19, 2009 in observance of the Martin Luther King Jr. holiday.

Police Chief Phillips reported that new Criminal Administrator Mark Stephenson began employment the first of the year, new officer candidate Blaine Guard began his training in the Police Academy January 7, 2009, and the two recent Police Academy graduates had completed their first week of field training.

Director of Public Utilities Joseph Derbyshire reported that Allocation of Capacity for calendar year 2009 shows 293,000 gallons still available to be allocated. Two hundred thousand gallons are earmarked for Wicomico County. The remaining 93,000 gallons equals 372 equivalent dwelling units (EDUs). Leaks continue to be found and video is ready to be sent to George, Miles, and Buhr (GMB) for the next phase of the Infiltration and Inflow (I&I) project; slip lining and point repairs will be funded by grant money from Maryland Department of the Environment (MDE). He also reported that the actual number of gallons processed at the plant has been reduced from 543,000 gallons/day to 525,000 gallons/day to 454,000 gallons/day in the last three years. That means we will receive more capacity as the newer flow factors into the 3-year average. Director Derbyshire advised that the I&I projects continue and rehab on one well will start soon; Pump Engineering Sales and Service will be onsite to begin well maintenance February 9, 2009 at the Water Treatment Plant.

Public Works Director Townsend reported that trash collection would continue as usual on Monday, January 19, 2009 even though City Hall would be closed in observance of the Martin Luther King Jr. holiday. President Olinde directed updating the City website to reflect this information.

Code Enforcement Officer Scholl presented his building permit report for December 2008, stating 2 permits were issued for a total value of \$36,900.00 and \$260.00 collected in fees. There are a few new dwellings in progress as of January 2009 and Sonic Restaurant is expected to break ground in Fruitland by the end of the month.

President Olinde called on Fruitland Chamber of Commerce Vice President Marianna "Dizzy" Bromley to make the presentations to the *Christmas House Lighting Winners* of the chamber sponsored contest. Third place was awarded to Samuel Duquette, second place to Walter and Helen Scott, and first place to Nancy English-Bendix.

### **Unfinished Business**

Mr. Olinde acknowledged receipt of the **paid bill report**. As there were no questions, Councilmember Carey moved to approve all paid bills as listed; Councilmember Tull seconded and the motion passed by a four to zero vote.

### **OTHER**

**City Solicitor Mitchell reported that developer Gary Middleton had never completed the punch list for Prosperity Park**, the commercial property that is home to the Hampton Inn, Hebron Savings Bank and Uno's Chicago Grill. He requested council authorization to obtain prices to complete the punch list from GMB and as-builts from Brock Parker and Associates in an effort to determine the total cost of completing the project. Mr. Mitchell did clarify that Brock Parker had done the initial drawings and would be billing the city for the as-builts, not Mr. Middleton, as Parker and Associates had indicated they were done dealing with Mr. Middleton because he has not paid them. Mr. Mitchell would report his findings back to the Council and the Council could then decide how best to proceed.

President Olinde expressed approval for utilizing appropriate legal avenues as a means to have the punch list completed and to have the City reimbursed for all funds advanced on behalf of the developer.

Councilmember Tull moved to authorize Solicitor Mitchell to obtain prices to complete the punch list from GMB and as-builts from Brock Parker; Treasurer Ortiz seconded and the motion passed by a four to zero vote.

**Solicitor Mitchell then gave a critical areas status report,** summarizing that a letter had been received indicating certain things that had to be done by January 31, 2009. After a joint review of the letter, both Mr. Mitchell and Amanda Pollack of GMB agreed that no action was required from the City; Mr. Mitchell then cited several examples that supported their opinion. Mr. Mitchell concluded his report by summarizing recent communication with Maryland Department of Planning (MDP) regarding Fruitland's critical areas.

**President Olinde initiated discussion regarding the Comprehensive Plan.** He noted Fruitland had submitted it's comprehensive plan to the State by December 31, 2008, well ahead of the October 2009 deadline given all municipalities and that the Comprehensive Plan was currently going through the Wicomico County Review Process. City Manager McDonnell briefly summarized events that had occurred since the Plan had been submitted to Wicomico County. The Comprehensive Plan is scheduled to go before the County Council February 3, 2009; the Planning Commission could conceivably make it's recommendation to the City Council that night at the Planning Commission meeting and then the Comprehensive Plan would become an agenda item at the February 10, 2009 Council Meeting.

### **New Business**

President Olinde proceeded to item one, an action item, **appointing a new member to the Board of Noise Control.** City Manager McDonnell reported that of the two people interested in serving on the Board of Noise Control, only Joseph Jimmerson had complied with the Council's request to submit a letter of interest and/or resume for the Council to review. Mr. McDonnell acknowledged Council's receipt of Mr. Jimmerson's paperwork, as well as the Board of Noise Control's endorsement of Mr. Jimmerson.

Councilmember Tull moved to appoint Joseph Jimmerson to the Board of Noise Control; Treasurer Ortiz seconded, and the motion carried on a four to zero vote. Mr. McDonnell planned to notify Mr. Jimmerson of his appointment and also to coordinate his orientation to both the Board and the City.

President Olinde proceeded to item two under new business, a **First Reading of the proposed Open Container Ordinance.**

City Solicitor Mitchell introduced the proposed new ordinance. He had prepared a violation of the ordinance as a municipal infraction. He suggested that since the Council had not yet seen the document, and because Chief Phillips might want to change it from a municipal infraction to a criminal violation, he needs guidance. Mr. Mitchell read the ordinance that would prohibit the consumption and possession of open containers of alcoholic beverages in public areas. Included in the ordinance were provisions for the temporary authorization of the consumption of alcoholic beverages in designated areas by approval of the City Manager. A written application submitted by an individual or an organization, subject to that individual or organization obtaining any permits as required by State, County, or Municipal laws governing the consumption of alcohol in public areas, would need to be approved by the City Manager.

Chief Phillips determined that the ordinance would be more effective as a criminal violation than a municipal infraction, based on a canvas of other municipalities which gave him feedback on enforcing it both ways. The ability to enforce the ordinance as a criminal violation led to greater enforceability of more serious crimes because enforcing a criminal violation allows broader access than enforcing a municipal infraction.

Chief Phillips clarified that it should be a misdemeanor arrest. Solicitor Mitchell clarified that the City would neither prosecute the violation nor realize revenue from imposed fines.

Councilmember Tull moved to adopt the first reading of the proposed Open Container Ordinance, amended to be a criminal violation and not a municipal infraction; Councilmember Carey seconded and the motion passed on a four to zero vote. A Public Hearing was scheduled for the Open Container Ordinance (Ord. 239) on February 10, 2009 at 7:45 p.m.

With no **Public Comment** or **General Discussion**, President Olinde thanked all for attending and called for a short recess at 8:02 p.m. to clear the Council Chambers so the Council could go into Closed Session to discuss a legal and contractual matter. Both the City Solicitor and City Manager were asked to remain; Department Heads could remain if they wished.

At 8:06 p.m. the City Council reconvened in open session with the following members present:

President Gregory J. Olinde, Treasurer Gloria J. Ortiz, Councilman Raymond D. Carey, and Councilman Richard F. Tull.

Also present were:

City Manager John F. McDonnell, City Solicitor Andrew C. Mitchell Jr., Chief of Police Michael J. Phillips, Deputy Treasurer Polly Caton, and City Clerk Diane Nelson.

Our guests included:

Amanda Pollack and Michael McArthur of George, Miles. and Buhr.

Councilmember Tull made a motion to go into closed session to discuss a legal and contractual matter, and the same was seconded by Treasurer Ortiz, and adopted on four to zero favorable vote.

The Council then reconvened in open session at 9:16 p.m. on a motion by Treasurer Ortiz that was seconded by Councilmember Carey and passed by a four to zero vote; President Olinde advised that the Council had discussed a legal and contractual matter during closed session.

With no further business to discuss, Councilmember Tull moved to adjourn. President Olinde seconded, the motion passed on a four to zero vote, and the meeting adjourned at just past 9:16 p.m.

Respectfully submitted,

Diane C. Nelson  
City Clerk

Approved: 2/10/09