

**FRUITLAND CITY COUNCIL
TUESDAY, AUGUST 18, 2009
SPECIAL MEETING
MINUTES**

The Fruitland City Council met in work session at City Hall on Tuesday evening, August 18, 2009 at 6:30 p.m. with the following members present:

*President Gregory J. Olinde, Treasurer Gloria J. Ortiz, Councilor Raymond D. Carey,
Councilor Theodore O. Lokey and Councilor Richard F. Tull.*

Also present were:

*City Manager John F. McDonnell, City Solicitor Andrew C. Mitchell Jr., Director of Public Utilities
Joseph P. Derbyshire, Wastewater Superintendent George Calloway, Chief Michael J. Phillips, and
City Clerk Diane C. Nelson.*

Our guests included:

*Amanda Pollack of George, Miles, and Buhr (GMB), Brian Foret, Director of Facilities, Wicomico
County Board of Education(WCBOE), Leisl Ashby ,Facility Planner, WCBOE, Earl Holland of the
Daily Times, Ingrid Balea, Leon and Renola Bounds, and Benjamin and Reta Powell.*

President Olinde called the work session to order at 6:35 p.m., noting Bennett Middle School and General Discussion as the only two agenda items slated for this evening.

BENNETT MIDDLE SCHOOL

President Olinde summarized the several meetings that had taken place prior to this evening's meeting between Fruitland Councilors, Staff, Solicitor and Engineers, and Wicomico County Board of Education (WCBOE) Representatives for the purpose of discussing the potential for building a new middle school within Fruitland City limits and how those meetings had generated subsequent communications to and from Fruitland Councilors and WCBOE Representatives.

President Olinde explained that Councilors would now deliberate the most recent communication from WCBOE to Fruitland Councilors, revisions to the list of requirements Fruitland Councilors had submitted to WCBOE, that would be imposed upon WCBOE as part of the location of Bennett Middle School (BMS) to South Division Street in Fruitland, reminding all in attendance that the decision making authority for location of the new Bennett Middle School rests solely with the WCBOE. The City of Fruitland's involvement is limited to the need for water and sewer at the school; as long as the WCBOE meets Fruitland's requirements for water and sewer at the school, the transaction is strictly between the WCBOE and the landowner.

A copy of the document as originally prepared is attached at the end of the minutes to allow for easy referral to points that were approved as written and those that were approved as amended.

Points one (1) through nine (9) of the document were reviewed and discussed separately in order to ascertain consensus among Councilors on each of the nine (9) points presented by the WCBOE.

Point One (1)

City Engineer Pollack of GMB clarified several points in GMB's prepared estimate that validated the WCBOE's proposed "fee" to be paid to the City of Fruitland for the upgrade of the Camden Interceptor; GMB's estimate included contingency of Seventy-five Thousand Dollars (\$75,000.00) and the overall estimate was still less the WCBOE's proposed fee.

Discussion continued regarding whether or not an overrun clause should be added to Point One(1), and then whether or not the WCBOE would be afforded any savings should the actual cash outlay be less than the "fee" quoted in Point One (1)..

Councilor Tull indicated that he was not against the school, but against the City incurring expenses in order for the school to locate in Fruitland.

There was unanimous consent among Councilors for Point One (1) with the understanding that it was to be amended to include verbiage to the effect that the WCBOE would cover the entire cost for providing sewer service to the school, the scope of the cost extending to any other infrastructure costs associated with the Camden Interceptor as a direct result of the City providing sewer to the school.

Point Two (2)

There was unanimous consent among Councilors for Point Two (2) with the understanding that it was to be amended to stipulate that Lot#8 must transfer by deed to the City, at no net cost to the City, for relocation of the Camden Avenue Pump Station.

Utilities Director Derbyshire and City Engineer Pollack of GMB both agreed that the City must have Lot#8 for the Camden Avenue Pump Station should BMS locate in Fruitland.

Point Three (3)

There was unanimous consent among Councilors for Point Three (3) as written.

Point Four (4)

The reason why municipalities and counties historically have not required building permits for schools was clarified during discussion. Local governments traditionally are not equipped to inspect at the *review level* required for state funded projects; in essence the permit fee collected would not provide the inspection level needed, so the permit is generally waived. Also, local governments run the risk that the associated costs of contracting for the review process would be in excess of the permit fee collected.

Ms. Pollack of GMB noted that Department of General Services (DGS) and Maryland State Department of Education (MSDE) reviews and inspections are rigorous and thorough; the City could be comfortable in waiving the building permit and associated fee.

Mr. Foret of the WCBOE confirmed that Bennett Middle would be a Leadership in Energy and Environmental Design (LEED) Silver facility, prompting President Olinde to acknowledge the stringent review associated with this type of facility. He further acknowledged that the WCBOE would not get the service benefit from the City that would be expected as a result of the building permit fee paid.

Plumbing and electrical permits will still be issued by the County because the County will be providing these inspections.

Consensus to strike Point 4 and waive collection of a building permit was reached by a roll call vote following discussion, which will be reflected in Total FEE's to COF (items 1-4).

AGREE: (Councilor Carey, Councilor Lokey, Treasurer Ortiz; President Olinde)

DISAGREE: (Councilor Tull)

Councilor Tull was opposed to waiving the building permit fee because of the projected loss of tax revenue associated with BMS locating on this property.

Point Five (5)

There was unanimous consent among Councilors for Point Five (5) amended as follows:

- a. Repave (tack coat & overlay of 4 inches) South Division Street ...

Amendment reflects Public Works Director Townsend's input from a prior meeting.

Point Six (6)

Consensus for Point Six (6) as written was reached by a roll call vote following discussion.

AGREE: (Councilor Carey, Councilor Lokey, Treasurer Ortiz; President Olinde)

DISAGREE: (Councilor Tull)

Councilor Tull was opposed to committing future councils to giving a credit to the WCBOE for fees paid for improvements to the Camden Interceptor in Point One (1) should the WCBOE connect to the Southwest Interceptor once it becomes operational; he felt that the "credit" issue should be negotiated at that future time by the sitting council at that future time.

Point Seven (7)

There was unanimous consent among Councilors for Point Seven (7) as written after discussion turned to The Traffic Group as the vendor to provide the traffic study.

Ms. Pollack of GMB endorsed The Traffic Group as the firm that GMB sub-consults for traffic studies.

Point Eight (8)

Solicitor Mitchell gave Councilor Lokey a copy of the boundary and topography survey performed by the

Becker Morgan Group, Inc on November 24, 2008, which indicates and documents Malone Street.

City Engineer Pollack of GMB then authenticated the survey from an engineering perspective, noting that appropriate markings and indications (two concrete markers) were present that accurately documented the location of Malone Street.; Solicitor Mitchell noted an additional concrete marker, a found iron pipe, and a City fire hydrant (that could be located) as additional points that could be used to measure the property.

Discussion continued regarding Malone Street in conjunction with Mr. Powell's property, who is a neighboring property owner.

As discussion concluded, there was unanimous consent among Councilors for Point Eight (8), the documentation of Malone Street as presented in the aforementioned survey.

Point Nine (9)

There was unanimous consent among Councilors for Point Nine (9) as written.

President Olinde continued by summarizing that the Council and WCBOE had now reviewed and discussed each of the nine points of the most recent communication the WCBOE had presented to the City of Fruitland for consideration should BMS locate in Fruitland and that City Solicitor Mitchell had documented the revisions that need to be made in order to formalize the document and prepare it as a proposal to be signed.

Prior to Solicitor Mitchell revising the document and presenting it back to Councilors for review, President Olinde called for a motion that stated in principal that the Council was in agreement in some fashion or another with the nine point document contingent upon the necessary revisions being made, noting that Councilor Tull was in disagreement with a couple of the points of the document; in principal the Council would be agreeing to provide water and sewer services should BMS locate in Fruitland.

Councilor Lokey moved to approve *this* proposal , subject to the revisions being made and a brand new document being prepared and presented for Councilors' review prior to signing and formally accepting the proposal; Councilor Carey seconded and the motion carried on a four to one vote in favor, with Councilor Tull the dissenting vote.

Solicitor Mitchell is to revise the document that will act as a precursor to the Memorandum of Understanding that will be necessary between the City and WCBOE should BMS locate in Fruitland; as such, in addition to review copies for Councilors, review copies of the revised document are to be forwarded to Facilities Director Foret of the WCBOE and the WCBOE's Solicitor Mr. Jeffers as well. *Solicitor Mitchell confirmed that once Councilors had reviewed the revised document, comments acknowledging the accuracy and subsequent acceptance of the revisions as intended would be forwarded to him; this ratification of the revisions would not constitute a new vote on the revised document as that vote had already taken place. The only issue that could still be a problem would be if ratification comments support less than the four to zero vote that initially approved the document.*

On motion by Councilor Lokey, seconded by Treasurer Ortiz and approved on a unanimous vote in favor, Solicitor Mitchell will prepare a Memorandum of Understanding (MOE) and submit it to all

Councilors by email for comments. If comments ratify approval by at least the same four to one vote as tonight, President Olinde will be authorized to sign the MOE on behalf of the City; if not, then Councilors would have to meet again to discuss the MOE.

Councilor Tull noted for the record that his vote represented citizens' opinions of the issue as expressed to him, and not necessarily his own personal opinion of the issue.

President Olinde noted for the record that no other Councilors besides Councilor Tull, had received negative public opinion regarding the BMS issue as of President Olinde's last poll of Councilors.

City Manager McDonnell noted posting of the BMS meeting in the Daily Times, the City website, the City Hall Lobby Bulletin Board, the Post Office Bulletin Board, and a local blogger's site.

GENERAL DISCUSSION

Councilor Lokey asked City Engineer Pollack of GMB to clarify an item as it pertained to the survey previously presented and discussed.

Mr. Benjamin Powell voiced his approval for BMS locating in Fruitland, adjacent to his property.

Mr. Powell's property was mentioned during discussion of Point Eight (8) of the WCBOE document.

Councilor Lokey noted an additional positive comment from another unnamed adjacent property owner to the proposed BMS site.

Councilor Tull noted that he had received four hundred comments.

Mrs. Bounds thanked Fruitland Police for monitoring the intersection at Camden Avenue and Allen Cutoff Road after being apprised at the July 14, 2009 Council Meeting of the traffic issue at that intersection; Chief Phillips acknowledged that monitoring of the intersection would continue.

Chief Phillips updated the Council regarding a function to be held at Uno's on September 15, 2009 that was discussed earlier in the evening at the Wicomico County Alcohol Board Meeting.

Having no further comments or business to discuss, President Olinde called for a short recess at 8:07 p.m. before going into closed session to discuss a personnel matter that Councilor Carey indicated had just come up.

At 8:14 p.m. after a short recess, President Olinde reconvened the meeting with the following in attendance:

President Gregory J. Olinde, Treasurer Gloria J. Ortiz, Councilor Raymond D. Carey, Councilor Theodore O. Lokey, Councilor Richard F. Tull, City Manager John F. McDonnell, City Solicitor Andrew C. Mitchell Jr. and City Clerk Diane Nelson.

President Olinde advised all present that Mr. McDonnell had respectively requested to remain in the meeting after President Olinde had told him he was to excuse himself from the meeting prior to convening in closed session.

Councilor Carey moved that Mr. McDonnell excuse himself from the proceedings prior to convening in closed session for discussion.

Mr. McDonnell forcefully advised that he would like to remain in the meeting.

Solicitor Mitchell advised that there had been no second to the motion.

Councilor Lokey seconded the motion for Mr. McDonnell to excuse himself from the proceedings prior to convening in closed session for discussion.

Prior to the vote on the motion for Mr. McDonnell to excuse himself from the proceedings, President Olinde called for a motion to go into closed session to discuss employee matters and seek legal advice; Treasurer Ortiz so moved, Councilor Lokey seconded and the motion passed unanimously; the Council went into closed session at 8:19 p.m.

President Olinde reconvened in open session having adjourned the closed session at 8:32 p.m. on motion by Councilor Carey, seconded by Councilor Lokey and approved by a unanimous vote in favor, summarizing that Councilors, City Manager, City Solicitor, and City Clerk had met in closed session to discuss two personnel matters.

With no further business to discuss, **Councilor Lokey moved to adjourn. Treasurer Ortiz seconded, and with a unanimous vote in favor, the meeting adjourned at 8:34 p.m.**

Diane C. Nelson

Diane C. Nelson, City Clerk

Approved, September 8, 2009 dcn