

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

The Fruitland City Council met in regular session at City Hall on Tuesday evening, October 13, 2009 at 7:30 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, Chief of Police Michael J. Phillips, Deputy Treasurer Amy B. Caton, Public Works Director P. Cooper Townsend, Code Enforcement Officer Daniel M. Scholl, and City Clerk Diane C. Nelson.

Our guests included:

Bob Marvel, Scott Hemmings of RedSpeed, Chuck Nichols, and Michael Hickson and Stephen Capelli of the Rotary Club of Salisbury.

President Olinde called the meeting to order at 7:35 p.m. and welcomed all in attendance. Treasurer Ortiz delivered the opening prayer, and all recited the Pledge of Allegiance.

President Olinde acknowledged receipt of the minutes of the Regular Meeting of September 8, 2009 that were listed on the Agenda in error as *September 9, 2009* and the Special Meeting of September 15, 2009, calling for additions or corrections. As there were none, **Councilor Tull moved to adopt all of the minutes as presented; Treasurer Ortiz seconded and the motion passed on a unanimous vote in favor.**

Treasurer Ortiz delivered the Treasurer's Report.

Cash on Hand 9/01/09	\$	87,106.27
Deposits		<u>808,616.69</u>
Subtotal	\$	895,722.96
Disbursements		<u>(416,749.48)</u>
Total Ending 9/30/09	\$	478,973.48

As there were no questions, **Councilor Carey moved to accept the Treasurer's Report as presented. Councilor Tull seconded and the motion passed on a unanimous vote in favor.**

City Manager McDonnell reported on upcoming meetings and events during the month of October 2009, noting that Fruitland will host the Lower Eastern Shore Mayors' Association (LESMA) October 29, 2009 Dinner Meeting; a Board of Zoning Appeals (BZA) meeting has been tentatively scheduled for Tuesday, October 27, 2009 at 6:30 p.m., contingent upon the applicant paying the required fee in time to meet the publishing deadline for scheduling the public hearing.

Chief Phillips delivered his report for the month of September 2009, noting fluctuations in crime statistics and service calls from prior periods; underage alcohol consumption has been more prevalent since school has been back in session.

Councilor Tull initiated discussion about Handicapped Parking that included violations and citations. Chief Phillips acknowledged that Eighty Percent (80%) of violations involved persons not displaying or even applying for a placard, with the remaining Twenty Percent (20%) involving non-handicapped persons and that City Citations issued for City Ordinance Violations collect fines for the City Treasury.

Officers John Herbert and Joseph Kerr were commended for their quick responses and actions in assisting the Fruitland Volunteer Fire Company in battling a residential fire that ultimately saved the house and prompted a grateful letter of appreciation from the homeowner.

Code Enforcement Officer Scholl presented his report for September 2009, stating that ten (10) building permits had been issued for a total value of Five Hundred Seventy-nine Thousand Dollars (\$579,000.00) and Four Thousand Three Hundred Thirty-three (\$4,333.00) collected in fees; six of the permits issued were for single family homes.

Mr. Scholl elaborated on some issues that had arisen and been corrected regarding setbacks for five of the six new homes that are being built on St. Luke's Road.

Mr. Scholl addressed concerns regarding the warehouse under construction on a specific property, confirming that the owner was presently meeting code requirements with a legitimate project and knew that certain deviations, changes, or upgrades from his current plans would require pre-approval from the Planning Commission prior to enacting those changes.

Mr. Scholl reported that Apple Drug is considering expansion of their current operation into the adjacent, vacant Factory Furniture Outlet location; the addition of a drive-thru is under consideration.

UNFINISHED BUSINESS

1. Paid Bill Report

President Olinde acknowledged receipt of the paid bill report that had generated questions in the Staff Meeting just preceding the Council Meeting. As there were no additional questions, **on a motion made by Councilor Carey that was seconded by Councilor Tull, the paid bills were approved as listed by a four to zero vote in favor**; Councilor Lokey abstained, awaiting more detailed information on several line items.

2. New Police Department Building

Chief Phillips gave a project status report, summarizing that schematic plans had been approved and AWB Engineers were now ready to move forward to the next phase of the project having submitted a contract for their services that encompassed several phases of the project.

City Solicitor Mitchell had reviewed the contract recommending several changes prior to the City committing to the contract and in his absence suggested that Council could approve AWB as the contractor designated to proceed to the next level of the project, subject to the contract revisions being made and approved upon his return.

After discussion, **Councilor Tull moved to approve AWB as the engineers to proceed with the project, and to table the contract issue until the November 2009 Council Meeting, thereby allowing sufficient time for Solicitor Mitchell to complete a comprehensive review of the contract prior to the Council committing to the contract. Councilor Lokey seconded and amended the motion with the caveat that upon Solicitor Mitchell's review of the contract, if Council could not commit to the contract then Council would not be bound to continue with AWB as engineers for the project.**

President Olinde recognized **Chuck Nichols** of Oaklee Drive who offered comment on Omissions and Deletions Insurance in conjunction with the architectural plans as a safeguard measure on behalf of the City; President Olinde thanked Mr. Nichols for his comment, duly noting it for the record.

After additional discussion that included Council's conditional approval of AWB and the Building Committee's objectives for this meeting and for overall project momentum, the aforementioned motion was withdrawn and a new motion initiated.

On motion by Councilor Tull that was seconded by Councilor Lokey and approved by a four to zero vote in favor, the Council tabled all aspects of this item until the November 2009 meeting, pending Solicitor Mitchell's comprehensive review of the contract and his subsequent comments being made known to Councilors prior to the November 2009 meeting.

President Olinde abstained from voting to eliminate any perceived conflict of interest because his employer does business with AWB Engineers.

3. Drug Policy

City Manager McDonnell summarized that the Drug Policy is an amendment revision to the current Employee Handbook and discussion followed that included concerns with wording of specific sections and with Solicitor Mitchell's having an opportunity to review the amendment revision in its entirety prior to a Council vote on the Policy.

On motion made by Councilor Lokey that was seconded by Councilor Tull and approved by a unanimous vote in favor, the Council tabled this item until the November 2009 Council Meeting.

4. Property Maintenance Ordinance No. 236

President Olinde summarized that after discussing the proposed new property ordinance at several meetings, the Council had accepted comments at a Public Hearing that was held at the September 8, 2009 Council Meeting for Ordinance No. 236, with the understanding that Councilors, Staff, and the City Solicitor would continue working on the ordinance in preparation for final consideration and vote at tonight's meeting.

President Olinde acknowledged that City Solicitor Mitchell's new status as a grandfather had precluded his attendance at tonight's meeting.

City Manager McDonnell read into the record, City Solicitor Mitchell's recommendations for improvements and enhancements to Ordinance No. 236 that had been presented to the Council as Proposed Alternate Language/Amendments.

President Olinde called for any additional comments from Messrs. Phillips, Scholl, and Townsend to be read into the record; there were none.

President Olinde acknowledged that additional work was needed on this ordinance; then **on motion made by Treasurer Ortiz that was seconded by Councilor Lokey and approved by a unanimous vote in favor, Council moved to table this for final consideration for passage until the November 10, 2009 Council Meeting and Solicitor Mitchell's return.**

NEW BUSINESS

1. Board of Elections Vacancy

City Manager McDonnell reported that Alexis Dashield has successfully completed her term on the Board of Elections and does not wish to be re-appointed due to conflicts with her work schedule in conjunction with a full day of election activity.

Mr. McDonnell nominated former Board of Elections Member Michelle Buck for re-appointment to the Board to fill the vacancy created by Ms. Dashield's departure. Ms. Buck served on the Board twenty-four (24) years prior to resigning in 2008 in anticipation of relocating to Florida; she did not relocate and has graciously agreed to once again serve on the Board of Elections.

On motion made by Councilor Tull that was seconded by Councilor Carey and approved by a unanimous vote in favor, Council moved to re-appoint Michelle Buck to the Board of Supervisors of Elections for a four (4) year term, effective November 1, 2009.

President Olinde noted that the next scheduled Fruitland election would take place in October 2010.

2. Windmill Moratorium Resolution No. 09-09

City Manager McDonnell read Resolution No. 09-09, a resolution of the City Council of the City of Fruitland as recommended by the Planning Commission at its regularly scheduled meeting on October 6, 2009, establishing a six (6) month moratorium on the installation, construction, and placement of metrological towers, small wind energy systems, wind generators, wind towers, windmills and solar panels.

Councilor Lokey initiated discussion regarding whether solar panels should or should not be included in the moratorium and why Solicitor Mitchell had included them in the resolution.

After discussion, **on motion made by Councilor Lokey that was seconded by Councilor Tull and approved by a unanimous vote in favor, Council moved to table this for final consideration for passage until the November 10, 2009 Council Meeting and Solicitor Mitchell's return.**

3. Impact Fees – Meadows/Peninsula Water Conditioning

President Olinde reported that Council discussion of the impact fee issue affecting Tom Meadows and Peninsula Water Conditioning has been stricken from the agenda; new information has become available that necessitates further discussion between the affected parties, which may determine whether Council discusses this issue in the future.

4. Rotary Annexation Petition

Messrs. Michael Hickson and Stephen Capelli submitted documents requesting annexation and rezoning on behalf of the Rotary Club of Salisbury Foundation, Inc; the *Petition for Annexation*, and accompanying zoning requests pertain to the property owned by the Rotary Foundation known as 1715 Riverside Drive, which fronts on Riverside Drive and on West Main Street (Shad Point Road).

Mr. Hickson read the *Petition for Annexation* which legally described the property to be annexed and specified the petitioner's zoning requests for the City of Fruitland to rezone the property to a residential zone classification and to further establish an overlay and/or floating zone that mirrors the County's present R-20 zone in which the Rotary Building is located; this new zone could also be used elsewhere in the City and benefit others in addition to the Rotary Foundation.

Discussion included the Rotary Foundation's chronology of petitioning the City of Fruitland for annexation, complaints (or lack thereof) associated with the Rotary Foundation's use of the property, and the addition of approximately Six Hundred (600) feet of roadway for the City Public Works Department to maintain.

Mr. Hickson also noted that state laws had recently changed, dictating that local Zoning Ordinances should be consistent with local Comprehensive Plans; the excerpt below provides a detailed explanation of the Rotary Foundation's November 2008 withdrawal of their second annexation request.

Excerpt from the November 4, 2008 Planning Commission Minutes

City Solicitor Mitchell stated that the Rotary had asked for a couple of minor changes to the Comprehensive Plan that would make it easier for a future annexation and that Tim Bourcier of Davis, Bowen & Friedel had made those changes with counsel approval. Mr. Mitchell further stated that the Rotary had withdrawn their recent request for annexation, citing Mayor and Council of Rockville VS. Ryland's Enterprises as a case that convinced the Rotary that a match up zone was essential to the approval of their annexation request. Mr. Mitchell explained that previous review of the Rotary's request for annexation had elicited comments from Maryland Department of Planning that the County's R-20 zone that they were exiting and the City's R-1-C zone they were then entering were not the same. Fruitland's R-1-C zone has a certain density while the County's R-20 zone has a "less dense" mode if there is no water and sewer available and a "more dense" mode if there is water and sewer available. The County's "more dense" and Fruitland's "normal" terminologies are substantially the same. MDP took the position that since Fruitland, unlike the County, did not specify that with no water and sewer at a location the R-1-C zone has a "lesser density", the zones were different; Fruitland took the position that with no water and sewer at that location there would be no permission to build. MDP took further exception to the proposed lift station because it was not in the County water and sewer plan; Fruitland, on the other hand, was prepared to request a change to the County water and sewer plan if needed when the installation of the lift station became imminent, which could be years away. In order to eliminate the confusion and technical issues that arise when Fruitland's R-1-C zone is compared with the County's R-20 zone, the Rotary is requesting Fruitland consider passing a zoning district that mirrors the County's R-20 zone; the Rotary would further request that this mirror district be passed prior to the actual passing of the Comprehensive Plan. The end result would be that, without question, the two zones were the same. Mr. Mitchell further clarified that passing the zone would effectively deal with potential issues arising with the future annexation of Timberlake or Tony Tank properties if they have failed septic systems. New issues could arise with allowed uses (such as a bus depot) in the new zone. Mr. Mitchell suggested that if the commission wanted to directly compare the R-1-C to R-20 zones and entertain the Rotary's request, he would advise the Rotary to prepare information and to come back before the commission. After some discussion, Commission members reached a consensus that they would invite the Rotary back to present a detailed request regarding the passing of a mirror zone.

The Rotary Foundation provided the Planning Commission with material to review at the October 6, 2009 Planning Commission Meeting in conjunction with the Commission's eventual passing of enabling legislation that will take general concepts of the Comprehensive Plan and turn them into an ordinance.

On motion made by Councilor Tull that was seconded by Councilor Carey and approved by a unanimous vote in favor, Council moved to accept the Rotary Foundation's Petition for Annexation subject to the usual and customary annexation process.

5. HRA Plan Document Adoption Agreement

President Olinde introduced the Health Reimbursement Arrangement (HRA) Plan Agreement, a document presented for adoption that pertains to the medical benefits the City provides its employees.

City Manager McDonnell reported that Deputy Treasurer Caton and he had met with representatives from Hollister Benefits to determine the specifics of the employees' medical benefits that would become effective August 1, 2009, the beginning of the current benefit year. The HRA Plan has been in effect since August 1, 2009 but the written agreement was made available only days prior to the

September 2009 Council Meeting; hence the delay until the October 2009 Meeting. Adoption of the plan and agreement is strictly a formality as the plan has been in place and running smoothly, having been implemented with minimal problems (that have since been resolved) and with a realized cost savings to the City of approximately One Hundred Twenty Thousand Dollars (\$120,000.00).

On motion made by Councilor Tull that was seconded by Treasurer Ortiz and approved by a unanimous vote in favor, Council moved to adopt the HRA Plan and Agreement as presented.

6. School and Work Zones Speed Monitoring Ordinance No. 245

City Manager Mc Donnell read Ordinance No. 245, an ordinance adopting a policy to permit and direct the placement of a speed monitoring system in each school zone and work zone within the City of Fruitland.

Chief Phillips and RedSpeed Vendor Representative Scott Hemmings summarized the enabling state legislation that fueled the development process of the camera /video system speed monitoring ordinance; discussion followed regarding technical aspects of the system and enforcement details of the ordinance.

On motion made by Councilor Tull that was seconded by Councilor Carey and approved by a unanimous vote in favor, Council moved to adopt the first reading of Ordinance No. 245 as presented, with a Public Hearing for the second reading of Ordinance No. 245 scheduled for Tuesday, November 10, 2009 at 7:40 p.m.

7. Other?

City Manager McDonnell brought two issues before the Council, the annual United Way Campaign and the annual Christmas Bonus for City Employees; Council deferred discussion of both issues to a separate meeting yet to be scheduled.

Treasurer Ortiz reported concerns and initiated discussion regarding traffic in the Walmart Parking Lot.

With no further business to discuss, **Treasurer Ortiz moved to adjourn. Councilor Tull seconded, and with a unanimous vote in favor, the meeting adjourned at 8:58 p.m.**

Diane C. Nelson

Diane C. Nelson, City Clerk

Approved, November 10, 2009 dcn