

**FRUITLAND CITY COUNCIL  
TUESDAY, NOVEMBER 10, 2009  
MINUTES**

---

The Fruitland City Council met in regular session at City Hall on Tuesday evening, November 10, 2009 at 7:30 p.m. with the following members present:

*President Gregory J. Olinde, Treasurer Gloria J. Ortiz, Councilor Raymond D. Carey, and Councilor 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 Amy B. Caton, Director of Public Utilities Joseph P. Derbyshire, and City Clerk Diane C. Nelson.*

Our guests included:

*Bob Marvel, Scott Hemmings of RedSpeed and Gia Colanero of Brekford Group, Chuck Nichols, John Bonas, and Amanda Pollack of George, Miles, and Buhr (GMB).*

---

President Olinde called the meeting to order at 7:32 p.m. by welcoming all in attendance and requesting a moment of silence in memory of Code Enforcement Officer Daniel M. Scholl who passed away on Sunday, November 8, 2009. 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 October 13, 2009, the Special Meetings of September 22, 2009 and October 19, 2009, and the Closed Meeting of September 22, 2009, calling for additions or corrections. As there were none, **Councilor Tull moved to adopt all of the minutes as presented; Councilor Carey seconded and the motion passed on a four to zero vote in favor.**

**Treasurer Ortiz** delivered the Treasurer's Report.

Cash on Hand 10/01/09	\$	478,973.48
Deposits		<u>469,148.54</u>
Subtotal	\$	948,122.02
Disbursements		(455,681.34)
Transfer to Savings		<u>(350,000.00)</u>
Total Ending 10/31/09	\$	142,440.68

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

Councilor Tull initiated discussion regarding the budget that included the status of the Audit Committee's inaugural quarterly review of "Actual to Budgeted" numbers and the scope of the financial reports supplied to the Audit Committee; Deputy Treasurer Caton offered to supply all Councilors with the same financial reports supplied to the Audit Committee.

**City Manager McDonnell** reported on upcoming meetings, events, and closings during the month of November 2009; he announced the recipients of the individual awards and scholarship presented by the Fruitland Chamber of Commerce at its annual awards banquet held on November 5, 2009.

Mr. McDonnell made special mention of the Memorial Service planned for Danny Scholl on Friday, November 13, 2009 at the Salisbury Elks Lodge.

**Chief Phillips** delivered his report for the month of October 2009, noting fluctuations in crime statistics and

service calls from prior periods; several work related injuries have created temporary staff shortages due to light duty restrictions that extend to January 2010. Chief Phillips presented highlights of a recent drug operation that proved extremely successful; it was executed jointly with the Wicomico Task Force, with assistance from federal law enforcement personnel from the Alcohol, Tobacco, and Firearms (ATF) Division.

**Director of Public Utilities Derbyshire** reported on a recent regional mass mailing that offers insurance for failure of underground water service lines running from the curb line to the home; the correspondence was generated from an Annapolis, Maryland post office box. Mr. Derbyshire cautioned “buyers beware” should be the City’s response to this mailing since the legitimacy of the offer could not be confirmed.

**City Manager McDonnell presented the Code Enforcement Report** for October 2009, stating that seven (7) building permits had been issued for a total value of Eighty Thousand Five Hundred Dollars (\$80,500.00) and Six Hundred Fifty(\$650.00) collected in fees; one of the seven permits issued was for a new dwelling.

Plans are in the works for a new Chinese restaurant in the building located in the front of the Food Lion parking lot (previously a Brown Derby Store); work on the Camden Landing Development is expected to begin in approximately one month.

Until a new Code Enforcement Officer can be hired to replace Mr. Scholl, the City has contracted with Wicomico County for temporary Code Enforcement/Building Inspection Services; County Building Inspector Rick Dwyer will be working contractually with the City of Fruitland as needed for inspections that will be billed accordingly.

*City Manager McDonnell noted that historically, the City has contracted with the County for temporary inspection services when there has been a need, referencing a similar situation that had occurred several years ago when Mr. Foxwell passed away while employed as the City’s Code Enforcement Officer.*

**PUBLIC HEARING: SCHOOL AND WORK ZONES SPEED MONITORING ORDINANCE NO. 245 -7:40 P.M.**

**At 7:50 p.m.** President Olinde convened a Public Hearing to discuss 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.

After City Solicitor Mitchell presented the ordinance, President Olinde opened the floor for public comment regarding the Speed Monitoring Ordinance.

Councilor Carey initiated discussion regarding the placement of the monitoring devices. Solicitor Mitchell explained that Council determines general placement of the monitoring devices and suggested that in the contract, Council authorize Chief Phillips to designate the exact placement locations within the Council authorized parameters.

With no further public comment, President Olinde closed the public hearing and called for the motion.

**On a motion by Councilor Carey that was seconded by Councilor Tull and approved by a four to zero vote in favor becoming effective today, November 10, 2009, Ordinance No. 245 was adopted.**

With the adoption of Ordinance No. 245 enabling Council to permit and direct placement of a speed monitoring system within the City of Fruitland, President Olinde proceeded to discussion of the proposed contract with RedSpeed which would authorize RedSpeed to actually place, monitor, and manage the speed monitoring system on behalf of the City of Fruitland.

Solicitor Mitchell summarized his review of the contract and attached exhibits which included several requested changes relative to procedural issues, citing of the state code, indemnity and liability clauses,

comparative versus contributory negligence phrases, guaranteeing the legality of the equipment, requirements from municipal courts, and the alternative if dispute resolution is unsuccessful.

Discussion included County District Court administration of the system and requirements of Municipal Courts, Chief Phillips' appointment of a Traffic Control Administrator who will testify in court, the selection process and authority for equipment placement, and the disposition of fees collected.

**On motion made by Councilor Tull that was seconded by Councilor Carey and approved by a four to zero vote in favor, Council moved to approve the RedSpeed contract contingent upon the Solicitor's requested changes being made and verified.**

## **UNFINISHED BUSINESS**

### **1. Paid Bill Report**

President Olinde acknowledged receipt of the paid bill report. As there were no questions, **on a motion made by Treasure Ortiz that was seconded by Councilor Carey, the paid bills were approved as listed by a four to zero vote in favor.**

### **2. New Police Department Building**

At the October Council Meeting, Council tabled final consideration and approval of the contract submitted by AWB for their services, which encompassed several phases of the project beyond the schematic plans that had already been approved, until City Solicitor Mitchell's return at the November Council Meeting.

City Solicitor Mitchell summarized that upon previous review of the contract, he had requested AWB make several changes to the document prior to the City committing to the contract. Solicitor Mitchell acknowledged that he had completed his final review of the contract and those changes had been satisfactorily incorporated into the document; the contract was ready to be approved by Council.

**On motion made by Councilor Carey that was seconded by Treasurer Ortiz and approved by a three to zero vote in favor, Council moved to approve the final AWB contract, authorizing Council President Olinde to sign the contract on behalf of the City of Fruitland.**

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

### **3. Drug Policy**

President Olinde gave a status report on the Drug Policy that is an amendment revision to the current Employee Handbook, noting the work that has already been completed as well as the work that still needs to be done in a Council work session; that work session will be scheduled once all calendars have been taken into consideration in an effort to maximize attendance at the work session. In the meantime, Council, Staff, and City Solicitor recommended tabling the issue until a later time.

**On motion made by Councilor Tull that was seconded by Treasurer Ortiz and approved by a four to zero vote in favor, the Council tabled this item until a later date.**

### **4. Property Maintenance Ordinance No. 236**

Solicitor Mitchell chronicled recent activity on the Property Maintenance Ordinance, which included discussing the proposed new property ordinance at several meetings, and the Council accepting

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 the October 13, 2009 meeting.

Solicitor Mitchell presented again to Council, for their final consideration prior to voting on the ordinance, his Proposed Alternate Language/Amendments to Ordinance No. 236 that City Manager McDonnell had previously read into the record at the October 13, 2009 Council Meeting, which Solicitor Mitchell had been unable to attend.

**On motion made by Councilor Carey that was seconded by Councilor Tull and approved by a four to zero vote in favor becoming effective today, November 10, 2009, Ordinance No. 236 was adopted with the Proposed Alternate Language/Amendments as presented by Solicitor Mitchell.**

#### 5. Windmill Moratorium Resolution No. 09-09

City Solicitor Mitchell 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; Solicitor Mitchell acknowledged that it is not so clear that the Planning Commission had voted on the solar panels rather than only the windmills.

*At the October 13, 2009 Council Meeting, Council tabled final consideration for passage of this Resolution until the November 10, 2009 Council Meeting and Solicitor Mitchell's return.*

Discussion included whether solar panels had been discussed along with windmills at the October 6, 2009 Planning Commission Meeting, inviting local industry experts to address the Planning Commission regarding issues inherent to solar panels and windmills, and the length of the moratorium necessary to allow development of an ordinance with input from interested parties.

After discussion, **on motion made by Councilor Tull that was seconded by Councilor Carey and approved by a four to zero vote in favor becoming effective today, November 10, 2009, Resolution 09-09 was adopted as amended to reduce the moratorium from Six (6) Months to Ninety (90) Days.**

#### 6. BENNETT MIDDLE SCHOOL

City Solicitor Mitchell gave a status report on the Bennett Middle School Project that the Wicomico County Board of Education (WCBOE) has undertaken to build in Fruitland which focused on changes to the Memorandum of Understanding (MOU) between the City and the WCBOE.

*Excerpt from the November 3, 2009 Planning Commission Minutes:*

*Since the selection of the Fruitland site, the WCBOE has requested that the lot stipulation be deleted from the MOU and the property owners' attorney has indicated that Fruitland will be deeded the lot; however, Fruitland will agree in writing to the removal of the lot stipulation from the MOU only after the lot has been deeded to the City for the placement of a lift station. Solicitor Mitchell will continue to monitor the situation and report back to Commissioners as new information becomes available regarding the status of the intended lot transfer to the City.*

Solicitor Mitchell also advised that TBH, Inc the successor to Houlihan Enterprises, Inc had presented a deed to Lot 8, but he indicated that the legal description in the deed presented for transfer of the lot needs to be updated to reflect a more current plat reference to a specific lot number rather than the ancient description that is outdated and can no longer be verified; he recommended that Council authorize President Olinde to sign the MOU once the City Solicitor has verified the deed change and recordation thereof.

**On motion made by Treasurer Ortiz that was seconded by Councilor Carey and approved by a three to one vote in favor, Council moved to authorize President Olinde to sign the MOU once Solicitor Mitchell has verified that the deed, having been rewritten to reflect the more current lot description in lieu of the ancient legal description, has been properly recorded to reflect the City of Fruitland as the new owner of the lot.**

*Councilor Tull was the dissenting vote.*

## **NEW BUSINESS**

### **1. Recreation Commission Vacancies**

City Manager McDonnell reported that Recreation Commission Chairman Bob Janeski had nominated Kirk and Becky Johnson to fill two vacancies on the Recreation Commission; Mr. and Mrs. Johnson had expressed interest in serving on the Commission and the Commission has unanimously recommended to Council the Johnsons' appointment.

**On motion made by Councilor Carey that was seconded by Councilor Tull and approved by a four to zero vote in favor, Council moved to appoint Kirk and Becky Johnson to serve on the Recreation Commission.**

### **1. Engineering Proposal – Phase 2: Pipeline Rehab.-GMB**

President Olinde summarized that the City of Fruitland has been awarded a grant for the Second Phase of the Infiltration and Inflow (I & I) Project; Phase I has already been completed.

#### *Excerpt from the July 14, 2009 Council Meeting Minutes*

*After summarizing that Maryland Department of the Environment (MDE) had several years ago awarded the City of Fruitland's I & I Project Six Hundred Thousand Dollar (\$600,000.00) in grant money from the Chesapeake Bay Restoration Funds (also known as the Flush Tax), Ms. Pollack explained the allocation of the grant money between Phase I (Manhole Rehabilitation) and Phase II (Pipeline Rehabilitation) of the project; she noted that an additional Two Hundred Thousand Dollars (\$200,000.00) in funds may be available for award to Fruitland because it is ready to immediately move forward with the project. Ms. Pollack explained how Phase II of the project had been bid, mindful of the grant money already awarded and the potential for more to be awarded. She emphasized that the grant money is available for construction costs only; design, inspection, and other ancillary costs are excluded. The bid opening took place on July 7, 2009; A.M. Liner East, with extensive experience from Maine to Florida that includes the City of Fruitland, submitted the low bid that Ms. Pollack and Utilities Director Derbyshire were now recommending Councilors accept. On a motion by Councilor Lokey, seconded by Councilor Tull and approved by a four to zero vote in favor, the low bid submitted by A.M. Liner East was accepted as presented, contingent upon Maryland Department of the Environment's (MDE's) approval of the entire bid package that includes funding of the grant money already awarded and funding of the additional Two Hundred Thousand Dollars \$200,000.00) of grant money potentially available to be awarded from the Chesapeake Bay Restoration Funds.*

Amanda Pollack of GMB presented GMB's proposal for grant administration and inspections of contractor work completed, noting that the grant money is available for construction costs only; design, inspection, and other ancillary costs are excluded.

Contract discussion included types and quantity of inspection services specified, certification of the GMB Inspector through the National Association of Sewer Service Companies (NASSCO) but at no cost to the City, specific tasks included in contract administration, funding for the contract expense, contractor calendar in conjunction with the Notice to Proceed Date (the contractor start date on the

project), Solicitor requested contract changes, GMB waiving contract interest charges for municipality clients, and the impact on the I & I project if approval of the contract is tabled until a later date.

Ms. Pollack recommended continuing with Thursday's Pre-Construction Meeting since MDE was scheduled to attend and discussed options for setting the Notice to Proceed Date. MDE needs only to see that the project is moving forward; Fruitland is under no time constraint to spend the grant. She also reported that there are funds remaining in GMB's Design Contract that could fund GMB's expenses associated with running the pre-construction meeting.

**On motion made by Councilor Tull that was seconded by Councilor Carey and approved by a four to zero vote in favor, Council moved to table final consideration and approval of GMB's proposed contract until the December 8, 2009 Council Meeting thereby allowing sufficient time for the Solicitor requested changes to be made and verified, and for staff to confer with the City Accountant to determine the funding source for the contract expense. The motion included language to go forward with the Pre-Construction Meeting.**

#### **PUBLIC COMMENT/GENERAL DISCUSSION**

**Meadowbrook Homeowners Association Board Member John Bonas** expressed the Association's desire to work more closely with the City Council to address issues and concerns pertinent to both entities.

With no further business to discuss, **Treasurer Ortiz moved to adjourn. Councilor Carey seconded, and with a four to zero vote in favor, the meeting adjourned at 8:53 p.m.**

*Diane C. Nelson*

Diane C. Nelson, City Clerk

*Approved, December 8, 2009 dcn*