

**FRUITLAND CITY COUNCIL  
TUESDAY, JANUARY 12, 2010  
MINUTES**

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The Fruitland City Council met in regular session at City Hall on Tuesday evening, January 12, 2010 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, City Solicitor Andrew C. Mitchell Jr., Chief of Police Michael J. Phillips,  
Deputy Treasurer Amy B. Caton, Director of Public Utilities Joseph P. Derbyshire, Public Works Director P.  
Cooper Townsend and City Clerk Diane C. Nelson.*

Our guests included:

*Bob Marvel, Chuck Nichols, John Bonas, Mary Davis, Emil and JoAnn Kasper, Cameron Meadows,  
George White, Donna Turnamian, and Richard and JoAnn Littlefield.*

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President Olinde called the meeting to order at 7:33 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 December 8, 2009 and the Closed Meeting of December 8, 2009, calling for additions or corrections. As there were none, **Councilor Carey moved to adopt the minutes as presented; Councilor Lokey seconded and the motion passed on a unanimous vote in favor.**

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

Cash on Hand 12/01/09	\$	97,109.72
Deposits		<u>674,932.27</u>
Subtotal	\$	772,041.99
Disbursements		<u>(517,222.78)</u>
Total Ending 12/31/09	\$	254,819.21

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 unanimous vote in favor.**

**City Manager McDonnell** reported on upcoming meetings, events, and closings during the month of January 2010, making special mention of the Recreation Commission's Recreational Park Fundraiser Breakfast to be held Saturday, January 30, 2010 at Unos Chicago Grill.

*President Olinde noted Saturday, March 27, 2010 as the date for the Fruitland Easter Parade, sponsored by the Fruitland Chamber of Commerce.*

**Chief Phillips** delivered his report for the month of December 2009, noting fluctuations in crime statistics and service calls from prior periods. He discussed year end Uniform Crime Reports (UCR) tabulations that are reported to the Federal Bureau of Investigation (FBI) in conjunction with departmental goals, noting that violent crimes had decreased Fourteen Percent (14%) and the goal was Fifteen Percent (15%); burglaries and motor vehicle thefts were the lowest they have been in ten (10) years.

*Chief Phillips attributed the department's success to dedicated staff and Council support in providing the necessary tools for successful law enforcement.*

Chief Phillips discussed two new departmental hires, noting that one officer candidate is presently in the Police Academy generating positive feedback and one part-time officer will become full time with available grant funding. Also, one officer is recuperating at home from a traffic accident and it is anticipated that he will return to work sometime next week if he is released by his doctor; the insurance adjustor has been contacted and an estimate for repair of the city vehicle is pending.

*President Olinde commended the Police Department for its efforts, diligence, and professionalism within Fruitland as well as the community at large, acknowledging that many officers participated in the recent County search for Sarah Foxwell.*

**Director of Public Utilities Derbyshire** reported that he is preparing his annual average waste water flows report; he acknowledged the December 2009 record flows through Fruitland's system and quoted record water table statistics for November and December 2009 as published by the United States Geological Survey (USGS) based on its monitoring of several wells on the Eastern Shore.

The Waste Water Treatment Plant (WWTP) is meeting Enhanced Nutrient Removal (ENR) requirements for nitrogen without benefit of an ENR Plant, noting that it is only a matter of time before Maryland Department of the Environment (MDE) pushes for ENR at the WWTP given all the initiatives for preservation of local waterways; phosphorus levels are in compliance as well.

Pipeline Rehabilitation, Phase 2 of the Infiltration and Inflow (I & I) Project, is slated to begin within the next two weeks; inflow will be reduced in the process.

*Although Public Works had nothing to report, President Olinde commended Public Works Director Townsend and his department for their efforts during several recent snow events.*

**City Manager McDonnell presented the Code Enforcement Report** for December 2009, stating that one (1) building permit for a four (4) foot fence had been issued for a total value of Three Thousand Dollars (\$3,000.00) and no money collected in fees; fees are not collected for less than a six (6) foot fence.

## **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 Treasurer Ortiz that was seconded by Councilor Carey, the paid bills were approved as listed by a four to zero vote in favor.**

*Councilor Tull abstained from voting since he had been unable to review the paid bill report prior to the meeting.*

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

Chief Phillips gave a status report on the project and last week's meeting with AWB, noting that the next meeting would be in two weeks. He reported that AWB has a software program that gives a breakdown of projected energy use and that he hoped to have several *running cost* scenarios for the Council to review at the February 2010 Council Meeting.

*Councilor Carey, a member of the Building Committee, reported that the project was still within budget.*

*City Manager McDonnell stated that he anticipates completion of the loan re-application process for a lower sum than originally approved with the United States Department of Agriculture (USDA) as early as the end of February.*

### **3. Camden East/Storm Water**

City Solicitor Mitchell summarized the Camden East/Storm Water issue as discussed in the below excerpt from the December 2009 Council Meeting.

*Excerpt from the December 8, 2009 Council Meeting Minutes:*

City Solicitor Mitchell reported that although Camden East was listed as a topic of discussion this evening, the generic issue is really storm water management. He explained that an alleged defect in the Maryland statute dealing with storm water management had been raised in court and thereby had brought to a halt all projects needing a storm water permit during construction, and had prompted Maryland Department of the Environment (MDE) to establish a venue for those who felt aggrieved to request a hearing on an individual project. While that corrected the alleged defect it also allows anyone to delay or stop such a project. Mr. Mitchell advised that a hearing had been held regarding the Camden East construction pond planned for the construction phase of the project that would flow into Tuxents Branch; most of the objections at the hearing dealt with attempts to halt the project itself and not wanting any flow at all into Tuxents Branch. He summarized MDE's actions and response that led to MDE granting Camden East its permit for the construction phase of the project, noting that the development had already been approved for its storm water management and sediment and erosion control. At the City's request, GMB required Camden East to engineer a greater retention flow than is required by state statute and MDE so noted this greater retention flow in its response. Aggrieved parties have until December 10, 2009 to appeal MDE's decision. Mr. Mills, one of the Camden East developers, has asked if the City would take a position on this issue since any other development, not just Camden East, with flow into Tuxents Branch, could be in jeopardy if the appellants are successful in their appeal on the basis they have stated to date. After discussion, on motion made by Councilor Tull that was seconded by Treasurer Ortiz and approved by a unanimous vote in favor, Council authorized Solicitor Mitchell to formulate a letter establishing for the record the City of Fruitland's position in concert with MDE's position.....Amanda Pollack of GMB referred back to the discussion regarding Camden East, noting that any earthwork permit, any Notice of Intent (NOI) to discharge storm water during construction is subject to the public hearing process; the process is not limited to just new development. Therefore any planned City construction, like the New Police Building, would be subject to the public hearing process should an aggrieved party request a hearing.

Solicitor Mitchell reported that since the December 2009 meeting, the Camden East project was approved by MDE at the first public hearing, and an objection has been filed requesting a second public hearing; as yet there has been no word from MDE as to whether there will be a second public hearing. Solicitor Mitchell noted that most of the objections were not specific to the Camden East development but apply to any developments with planned flow into Tuxents Branch, which is why the City had made its support of Camden East known to MDE.

*Solicitor Mitchell advised that since there had been no communication from MDE regarding the status of the second hearing request, the developer's engineer had asked Delegate Page Elmore, at his annual Town Hall meeting held last night in Fruitland, to look into the status of the second hearing request; Council will be advised when additional information is available.*

### **4. Other-Bennett Middle School Project**

President Olinde reported that a question had been raised by City Engineer Amanda Pollack of George, Miles, and Buhr (GMB) regarding billing for the Camden Interceptor associated with the new Bennett Middle School Project and whether GMB should bill Wicomico County Board of Education (WCBCE) directly, which would be different than standard operating procedure; Deputy Treasurer Caton explained that when GMB is contracted by the City in conjunction with a particular developer/project, GMB bills the City directly for payment and furnishes a duplicate bill to the developer instructing the developer to pay directly to the City.

After discussion Council decided by consensus, but without vote, to follow standard operating procedure for GMB billing associated with a particular developer/project.

## **NEW BUSINESS**

### **1. Meadows Hydraulics/Peninsula Water**

Cameron Meadows and his attorney George White came before the Council to discuss the amount of impact fees that would be due the City should Peninsula Water relocate from property owned by Andy Phillips to property owned by Meadows Family, LLC at 314 South Division Street. Peninsula Water uses approximately Two Thousand Five Hundred (2,500.00) gallons of water each day, a high usage allowed at their current location that is owned by Mr. Phillips. If the high usage is abandoned at Mr. Phillips' location and relocated to the Meadows' property, there would be nominal impact to the City. However, should Mr. Phillips rent his property to another high usage tenant, which he is allowed to do because the high usage existed at that location prior to the enactment of impact fees, then there would be impact to the City and impact fees would be due to support the additional Equivalent Dwelling Units (EDUs) needed at the Meadows Property. Both Meadows Hydraulics and Peninsula Water need to know the dollar amount of impact fees due, in order to make a final decision regarding the relocation of the business.

Peninsula Water would need Ten (10) EDUs at the Meadows Property; presently the property has one (1) EDU. Meadows Family, LLC is requesting permission to transfer three (3) EDUs from three (3) nearby properties that they own with front footage along Rt. 13 and to purchase the remaining Six (6) EDUs at the "pre-existing lot" discount of One-Half (1/2) the rate charged a new service over a Thirty-six (36) month period; only sewer EDUs are needed as the tenant would be installing an industrial well for non-potable water usage that will have a City water meter installed to measure water usage in order to calculate the sewer usage charge.

Discussion included definitions, dollar amounts, payment requirements, the interpretation by staff of the impact fee ordinance as it pertains to *new* and *existing* service locations and impact fees charged for each, precedent set for transfer of EDUs, development potential for the three (3) lots after transferring EDUs and the price to purchase EDUs back at a later date, designating a time limit for Mr. Phillips to replace Peninsula Water with another high usage tenant, benefit to the City should the relocation take place, and the need for a public works agreement.

After discussion, Council determined that further discussion beyond this meeting was needed before rendering a decision on this matter; Mr. White agreed that deferring the matter one month would not adversely impact Meadows Hydraulics or Peninsula Water.

**On motion made by Councilor Tull that was seconded by Treasurer Ortiz and approved by a unanimous vote in favor, Council moved to table this item until the February 2010 Council Meeting.**

*[Since the meeting, Clerk Nelson has been advised that Peninsula Water has decided not to relocate.]*

### **2. Red Speed - MPIA**

City Solicitor Mitchell reported that a Red Speed competitor had made a Maryland Public Information Act (MPIA) request for copies of the contract the City has with Red Speed for the City's Photo Speed Enforcement Program; Mr. Mitchell spoke with a Red Speed representative that assured him this was standard practice for this industry, explaining that Red Speed had made similar requests for their competitors' contracts as well.

Solicitor Mitchell has prepared a response objecting to the request rather than providing a redacted copy of the contract, the objection being allowed by a provision in the MPIA regarding commercial information. He will consider supplying a copy of the redacted contract only if the City's objection prompts an in-house appeal by Red Speed's competitor; the competitor's final appeal would be through the court system.

### **3. Other – Planning Commission Vacancy**

Councilor Lokey initiated discussion regarding a vacancy created on the Planning Commission on which he serves as a Council representative; Commission Member Robin Townsend has moved and is no longer eligible to serve on the Commission.

In response to City Manager McDonnell's request for recommendations to replace Mr. Townsend, Councilor Lokey suggested Paul Bradshaw; Mr. Bradshaw is presently serving as an alternate on the Board of Zoning Appeals (BZA) and would have to relinquish that position should he be appointed to the Planning Commission.

There being no other nominations, **on motion made by Councilor Lokey that was seconded by Councilor Tull and approved by a unanimous vote in favor, Council appointed Paul Bradshaw to replace Robin Townsend on the Planning Commission.**

*City Manager McDonnell requested Council give thought to recommendations for Mr. Bradshaw's replacement as alternate on the BZA.*

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

**Bob Marvel of W. Main St** initiated discussion by commenting on the *use it or lose it* issue which he hopes Council will address when allocating EDUs; **Chuck Nichols of Oaklee Drive** shared information regarding handling of EDUs in Somerset County.

**Richard and JoAnn Littlefield of Indian Lane** and **Donna Turnamian of Covered Bridge Lane** shared their concerns and initiated further discussion regarding the Camden East Development (or any development ) that discharges into Tuxents Branch Creek and adversely impacts their properties.

Discussion included GMB drainage studies of Tuxents Branch Creek and their subsequent recommendations for storm water management, the completion status of those recommendations, the date of the most current study, and clarification of the Camden East issue as discussed at Page Elmore's recent Town Hall meeting.

*City Manager McDonnell will contact GMB for the most current drainage study and make it available to all interested parties.*

**John Bonas of Emily Drive** introduced neighbors **Mary Davis** and **Emil and JoAnn Kasper** that had accompanied him to the Council meeting; he commended the Council for *taking City business seriously*. He expressed concern with the potential for crime in neighboring communities to spill over into Fruitland, inviting Chief Phillips to speak to the residents of Meadowbrook as they wish to partner with the Fruitland Police Department in addressing this issue.

**Chief Phillips** acknowledged Mr. Bonas' overture for Meadowbrook residents to partner with the Fruitland Police Department and briefly outlined his three fold crime initiative planned for 2010 that included community outreach to Fruitland residents, business owners, and landlords.

**Councilor Carey** reported that several people had approached him about the possibility of Fruitland offering a community outreach program similar to one held recently in Delaware that allowed parents to supply DNA, fingerprints, and a current photo (to be updated as needed) of their child (or children) to be kept on file with local law enforcement agencies as a safeguard in identifying and protecting their children.

*President Olinde suggested working with Chief Phillips to coordinate such a program with other local law enforcement agencies.*

**Treasurer Ortiz** thanked the residents of Covered Bridge for sharing their concerns with the Council and acknowledged the Council's commitment to promoting smart growth for Fruitland, taking into consideration all community concerns and issues brought before the Council.

With no further Public Comment or General Discussion, President Olinde thanked all for attending and called for a short recess at 9:18 p.m. to clear the Council Chambers so the Council could go into Closed Session to discuss two personnel matters.

At 9:30 p.m. the City Council reconvened in open session 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., Chief of Police Michael J. Phillips, and City Clerk Diane C. Nelson.*

There were no guests in the meeting.

Prior to going into closed session, President Olinde referred back to Paul Bradshaw's appointment to replace Robin Townsend on the Planning Commission; he wished to clarify that the Council had made an interim appointment by transferring a member of the BZA to the Planning Commission to fulfill the remaining term of a departing member of the Commission. This interim appointment is different than the last new appointment to the Commission that involved several candidates being considered for a new full term appointment directly to a Fruitland Board or Commission; once Mr. Townsend's term has been fulfilled, all parties interested in serving on the Planning Commission will be considered for appointment. It was also noted that Mr. Bradshaw's appointment was really made like a transfer.

As Council was in agreement with this clarification, **on an amended motion made by Councilor Lokey that was seconded by Councilor Tull and approved by a unanimous vote in favor, Council transferred Paul Bradshaw from the BZA as an interim appointment to fulfill the remaining term of departing member Robin Townsend.**

At 9:36 Clerk Nelson was excused from the meeting and immediately thereafter, **on motion made by Councilor Tull that was seconded by Councilor Lokey and approved by a unanimous vote in favor, Council moved to go into closed session to discuss two personnel matters.**

**On motion made by Councilor Tull that was seconded by Treasurer Ortiz and approved by a unanimous vote in favor, Council reconvened in open session at 10:40 p.m.** where it was reported that the Council, City Manager, City Solicitor, and Police Chief had discussed a personnel matter and thereafter, Chief Phillips departed and those remaining took up another personnel matter.

With no further business to discuss, **on motion made by Treasurer Ortiz that was seconded by Councilor Lokey and approved by a unanimous vote in favor, the meeting adjourned at 10:41p.m.**

Diane C. Nelson, City Clerk