

**FRUITLAND CITY COUNCIL
TUESDAY, DECEMBER 8, 2009
MINUTES**

The Fruitland City Council met in regular session at City Hall on Tuesday evening, December 8, 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, 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, Joseph Stuetz, Trevor DaLee, Andy Phillips, Kenny
Mills, and Amanda Pollack of George, Miles, and Buhr (GMB).*

President Olinde called the meeting to order at 7:30 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 November 10, 2009, calling for additions or corrections. As there were none, **Councilor Carey moved to adopt the minutes as presented; Councilor Tull seconded and the motion passed on a four to zero vote in favor.**

Councilor Lokey abstained from voting since he was absent from the November 10, 2009 Council Meeting.

Treasurer Ortiz delivered the Treasurer's Report.

Cash on Hand 11/01/09	\$	142,440.68
Deposits		<u>494,152.02</u>
Subtotal	\$	636,592.70
Disbursements		(389,482.98)
Transfer to Savings		<u>(150,000.00)</u>
Total Ending 11/30/09	\$	97,109.72

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 December 2009, making special mention that the Recreation Commission Meeting would begin at 7:30 p.m. instead of the usual 7:00 p.m.; Mr. McDonnell also noted the New Year Holiday closing.

Chief Phillips delivered his report for the month of November 2009, noting fluctuations in crime statistics and service calls from prior periods. He discussed new partnerships Fruitland Police Department has established with other law enforcement communities and networks that are geared toward removing the criminal element from area neighborhoods by sharing intel on drugs and gangs on the east coast; financial resources may become available that could fund future drug operations.

Chief Phillips presented his request to amend the City's current Tuition Reimbursement Policy from employee reimbursement of tuition for a specified performance level achieved to the City's advancement of tuition with reimbursement to the City *only if* a specified performance level is *not* achieved, citing the impetus for his request as the adverse economic impact his recent changes to promotional requirements have had on officers

with larger families. New and existing contracts would be amended to reflect the change in tuition policy; tuition reimbursement to the City would be handled through payroll deduction.

Discussion included performance level requirements for undergraduate and graduate coursework, an example of another municipality's administration of this type of program, promotional requirements within the department's new general orders, the proposed effective date of the policy change, and the affect (if any) on the existing budget.

On a motion made by Councilor Tull that was seconded by Councilor Carey and approved by a unanimous vote in favor, Council adopted Chief Phillips' December 2, 2009 request as presented to amend the Tuition Reimbursement Policy effective January 1, 2010.

Director of Public Utilities Derbyshire reported that the Pipeline Rehabilitation project is slated to begin on January 4, 2010; recent heavy rainfall has increased flows Fifty Percent (50%) which should aid in leak detection for pipeline rehabilitation. He noted that although the scope of the rehabilitation may fluctuate, underground infrastructure rehabilitation is always ongoing for any municipality.

City Manager McDonnell presented the Code Enforcement Report for November 2009, stating that four (4) building permits for home improvements had been issued for a total value of Thirty-three Thousand Dollars (\$33,000.00) and Two Hundred Sixty-four Dollars (\$264.00) collected in fees.

City Solicitor Mitchell reported that he wished to defer his legal retainer increase budgeted for January 1, 2010 through June 30, 2010 until after June 30, 2010 in deference to the City during these difficult economic times, citing his long tenure with the City as the basis for his decision; the Council acknowledged Solicitor Mitchell's gesture and expressed its appreciation.

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 Councilor Tull that was seconded by Treasurer Ortiz, the paid bills were approved as listed by a unanimous vote in favor.**

2. New Police Department Building

Chief Phillips reported that the contractor had signed the contract, propelling the Engineering Phase of the project; he anticipates having another update for Councilors next week.

3. Engineering Proposal – Phase 2 Pipeline Rehabilitation

Amanda Pollack of GMB presented GMB's revised engineering proposal for grant administration and inspections of contractor work completed for Phase 2 of the Pipeline Rehabilitation Project, noting that the proposal had been revised pursuant to Solicitor Mitchell's itemized list which was forwarded to GMB following initial discussion of the proposal at the November 2009 Council Meeting; she highlighted the revisions made and Solicitor Mitchell confirmed that he was in agreement with all the revisions made.

President Olinde acknowledged that GMB's engineering proposal required a mid-year budget amendment to the *Fiscal Year 2009-2010 Budget* adopted at the June 2009 Council Meeting; the funding source for the proposal had not been determined at the time of the November 2009 Council Meeting and staff was to confer with the City Accountant to determine the funding source for the contract expense.

City Manager McDonnell summarized that City Auditor Layton had approved funding from several sources that included diverting Ten Thousand Dollars (\$10,000.00) already budgeted for the Inflow and Infiltration (I & I) Project, Twenty Thousand Dollars (\$20,000.00) already budgeted for a sludge aerator, and Eighteen Thousand Dollars of Fifty Thousand Dollars (\$18,000.00 of \$50,000.00) already budgeted for the Enhanced Nutrient Removal (ENR) Project, with the stipulation that the minutes reflect the proposed re-allocation of funds that Deputy Treasurer Caton will make and then so note in the General Ledger to the original budget.

On motion made by Councilor Tull that was seconded by Treasurer Ortiz and approved by a unanimous vote in favor, Council moved to accept GMB's revised engineering proposal, authorizing President Olinde to sign the contract and Deputy Treasurer Caton to re-allocate the funds pursuant to City Auditor Layton's specifications with regard to notations in the General Ledger to the original budget.

NEW BUSINESS

1. Recreation Commission Vacancy

City Manager McDonnell reported that Chuck Nichols had graciously accepted the invitation extended to him at last month's Recreation Commission Meeting to serve on the Commission and that the Commission unanimously recommended Mr. Nichols to Council for appointment to the Recreation Commission.

On motion made by Councilor Carey that was seconded by Councilor Tull and approved by a unanimous vote in favor, Council moved to appoint Chuck Nichols to serve on the Recreation Commission.

2. Meadows Hydraulics / Peninsula Water

President Olinde reported that Mr. Meadows and his attorney Mr. White were unable to attend tonight's meeting and had requested discussion of this item be tabled until the January 2010 Council Meeting.

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

3. Camden East

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.**

4. **Other - City Manager McDonnell** initiated discussion that was prompted by Councilor Lokey's inquiry regarding procedural issues with building permits given that the City has been without a City Code Enforcement Officer/Building Inspector since the untimely death of Mr. Danny Scholl.

Excerpt from the November 10, 2009 Council Meeting Minutes:

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.

Discussion included the cost effectiveness, manner and amount of payment, and nature of the contractual arrangement with Wicomico County for inspection services now compared to several years ago when Mr. Foxwell passed away while employed in the same position, the continuity of inspection services within the City during the interim period with no City Code Enforcement Officer and assistance from the County, the employment advertisement, application deadline, and responses received for the vacant position, potential replacements, and a recent special exception brought before the Planning Commission.

Deputy Treasurer Caton noted that the County has in the past provided coverage at no charge to the City for inspection services when the City's Code Enforcement Officer was away from work for scheduled time off and that this practice will most likely be necessary in the future to provide backup for the City's new Code Enforcement Officer as well .

Further discussion of this matter was suspended, to be continued during the Council's Special Meeting Closed Session scheduled for later this evening.

5. **Other - Treasurer Ortiz** raised concerns and initiated discussion regarding street parking on St. Luke's Road. Public Works Director Townsend acknowledged that parking was not restricted if it was not posted, DO NOT PARK; Chief Phillips agreed to look into the matter.
6. **Other - President Olinde** presented Public Works Director Townsend's request to purchase a new snow plow for Five Thousand Six Hundred Dollars (\$5,600.00).

Mr. Townsend explained the circumstances that prompted his request for the new snow plow as a replacement for the old plow that had been declared surplus property along with the old truck that had been declared surplus property; City Manager McDonnell acknowledged that money was available in the General Fund to pay for the mid-year requested snow plow.

Councilor Tull moved to purchase the snow plow and President Olinde seconded the motion.

Discussion ensued that included maintaining the same number of plows in order to provide the same standard service, the disposition of the truck and plow declared surplus property, impact to the budget, average snowfall versus anticipated snowfall in Fruitland, and citizens' expectations.

President Olinde acknowledged that residents expect Public Works to handle snow and trash removal, the Police Department to do its job, and the water and sewer plants to work properly.

After discussion, **President Olinde called for the vote. The motion to purchase the new snow plow was defeated by a three to two vote against the purchase.**

PUBLIC COMMENT/GENERAL DISCUSSION

Bob Marvel questioned whether a City license was required to start a new business within city limits; discussion followed that included current practices and procedures for obtaining a Traders License through the County compliant with current zoning in Fruitland, other municipalities' practices, and researching the possibility of Fruitland issuing its own municipal business licenses in addition to the County's Traders Licenses.

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.

With no further Public Comment or General Discussion, President Olinde thanked all for attending and called for a short recess at 8:25 p.m. to clear the Council Chambers so the Council could go into Closed Session to discuss a personnel matter and seek legal advice.

At 8:36 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 and City Solicitor Andrew C. Mitchell Jr.

There were no guests in the meeting.

On motion made by Councilor Lokey that was seconded by Treasurer Ortiz and approved by a unanimous vote in favor, Council moved to go into closed session at 8:37 p.m. to discuss a personnel matter and seek legal advice.

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 9:42 p.m. where it was reported that the Council, City Manager and City Solicitor had discussed a retirement policy issue and its application to a particular case, and the vacant code enforcement officer position and resumes received; Council also received legal advice. It was further reported that it was decided to have interviews begin December 14, 2009 with selected candidates.

The meeting continued in open session where it was decided that City Manager McDonnell, City Solicitor Mitchell and Councilor Lokey would meet to discuss the Drug Policy.

Discussion continued regarding Public Works Employee Antoine Key's recent accident. City Manager McDonnell explained that Mr. Key had left the City to get lunch money and he slid off the road in an attempt to avoid an accident; Mr. Key was advised to not take a city vehicle beyond city limits.

With no further business to discuss, **on motion made and seconded with a unanimous vote in favor, the meeting adjourned at 9:45 p.m.**

Diane C. Nelson

Diane C. Nelson, City Clerk

Approved, January 12, 2010