

**FRUITLAND CITY COUNCIL  
TUESDAY, MARCH 9, 2010  
MINUTES**

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The Fruitland City Council met in regular session at City Hall on Tuesday evening, March 9, 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, Wastewater Superintendent George Calloway, Code Enforcement Officer Joe Vogel, and City Clerk Diane C. Nelson.*

Our guests included:

*Bob Marvel, Mike and Nicole Bruno, Earl Holland of the Daily Times, and Amanda Pollack of George, Miles, and Buhr (GMB).*

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President Olinde called the meeting to order at 7:32 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 January 12, 2010 and the Special Meetings of May 11, 2009, May 4, 2009, and September 29, 2008, calling for additions or corrections. As there were none, **Treasurer Ortiz moved to adopt all the minutes as presented; Councilor Carey seconded and the motion passed on a unanimous vote in favor.**

*President Olinde noted that there were no regular meeting minutes from February 2010 to adopt as the February 9, 2010 meeting had been cancelled due to inclement weather.*

**Treasurer Ortiz** delivered Treasurer's Reports for the February 9, 2010 meeting that was cancelled due to inclement weather and the report prepared as usual for the March 9, 2010 meeting.

FEBRUARY MEETING

Cash on Hand 1/01/10	\$ 254,819.21
Deposits	<u>407,905.33</u>
Subtotal	\$ 662,724.54
Disbursements	<u>(633,533.18)</u>
Total Ending 1/31/10	\$ 29,191.36

MARCH MEETING

Cash on Hand 2/01/10	\$ 29,191.36
Deposits	<u>616,133.85</u>
Subtotal	\$ 645,325.21
Disbursements	(346,805.16)
Transfer to Savings	<u>(200,000.00)</u>
Total Ending 2/28/10	\$ 98,520.05

After a question regarding the percentage rate the City is earning on its savings account, **Councilor Tull moved to accept the Treasurer's Reports as presented. Councilor Carey seconded and the motion passed on a unanimous vote in favor.**

Prior to the presentation of Departmental Reports, President Olinde commended and thanked all City staff for their hard work during the recent snow events in Fruitland, noting that he had received many positive comments.

**City Manager McDonnell** reported on upcoming meetings, events, and closings during the month of March 2010, making special mention of the Recreation Commission's Recreational Park Fundraiser Breakfast to be held Saturday, March 20, 2010 at Unos Chicago Grill and the Fruitland Chamber of Commerce sponsored Easter Parade to be held on Saturday, March 27, 2010.

*President Olinde noted that the Fruitland Economic Development Commission (FRED) approved Two (2) new revolving loans totaling Eighty-seven Thousand Dollars (\$87,000.00) at last week's FRED meeting, summarizing Fruitland's participation in the program that receives funds from the United States Department of Agriculture (USDA), program sponsor.*

**Chief Phillips** delivered his report for the months of January and February 2010, noting fluctuations in crime statistics and service calls from prior periods, and the status and operation of the new Speed Monitoring System recently initiated in Fruitland by the placement of equipment provided by vendor RedSpeed USA; he made special mention of newly appointed Code Enforcement Officer Vogel's coordination of efforts with the Police Department in dealing with code violations of the Property Maintenance Ordinance.

Chief Phillips then discussed plans for the replacement of marked police vehicle #216 that was damaged earlier this year; those plans included using a combination of insurance company proceeds and seized drug money to purchase a newer, reconditioned vehicle with less mileage than the damaged vehicle #216. The planned expenditure would not exceed Fourteen Thousand Dollars (\$14,000.00) and the reconditioned vehicle would be outfitted with some of the police equipment that was able to be salvaged from vehicle #216.

After Chief Phillips acknowledged that there are several vendors that have the same type of contract that would be in compliance with the City of Fruitland's purchasing policy, **on motion made by Councilor Tull that was seconded by Councilor Lokey and approved by a unanimous vote in favor, Council moved to approve the purchase of a reconditioned vehicle to replace damaged vehicle #216 using a combination of insurance proceeds and seized drug money, not to exceed a Fourteen Thousand Dollar (\$14,000.00) expenditure.**

*President Olinde suggested a series of press releases be initiated after the first month of operation of the Speed Monitoring Program as a tool to increase public awareness of the program implemented in Fruitland.*

**Director of Public Utilities Derbyshire** reported on the stellar performance of the Waste Water Treatment Plant (WWTP) for calendar year 2009, congratulating all those responsible for no incursions or violations of any sort throughout the entire year.

- Annual average flows were Five Hundred Twenty-three Thousand (523, 000.00) gallons, leaving Two Hundred Seventy-seven Thousand (277,000.00) gallons of allocated capacity available out of an Eight Hundred Thousand (800,000.00) gallon capacity plant.
- The annual average on total nitrogen was Two and eight tenths (2.8) milligrams per liter (mg/l) and the City's permit limit is Eight (8.0) mg/l.
- Biological Nutrient Removal (BNR) at the WWTP has been well within the recommended permit specifications of Four (4.0) mg/l, with a goal of Three (3.0) mg/l, since it began operations.
- Phosphorus levels have been calculated at a One and two tenths (1.2) mg/l annual average which is below the Two (2.0) mg/l permit limit.

Director Derbyshire then discussed ENR requirements for nitrogen and phosphorus levels at the WWTP, noting that it is only a matter of time before Maryland Department of the Environment (MDE) pushes for ENR in conjunction with the City's new discharge permit which will require some changes at the WWTP in order to maintain compliance with the three tenths (0.3) mg/l annual average for phosphorus levels.

Because ENR increases WWTP operational costs which are passed through to residents, Mr. Derbyshire is deferring the process as long as possible in deference to residents given the current economic climate. The inherent risk in deferring the process is that the Federal and State grant money available now through the State of Maryland for WWTP upgrades and expansion may not be available as the MDE deadline date for ENR implementation approaches, and the onus for the plant upgrade and expansion could rest solely on the City.

Mr. Derbyshire did note that as a BNR facility, Fruitland's WWTP surpasses similar facilities in successfully meeting phosphorus and nitrogen permit specified levels given the plant's current operating capacity; MDE is requiring the upgrade to ensure that all permit levels, especially the nitrogen level, are maintained when the plant is operating at full capacity.

Prior to the presentation of the Code Enforcement Report for the month of February 2010, President Olinde introduced new Code Enforcement Officer Joseph Vogel who comes to the City of Fruitland from the Town of South Bethany, Delaware.

**Code Enforcement Officer Vogel** then delivered his report for the month of February 2010 which included statistics for all types of correspondence, meetings, housing inspections, building permits issued, certificates of occupancy issued and code violations issued; letters are being processed for the individual unlicensed vehicle and unnumbered house violations cited. Mr. Vogel made special mention of weather related issues with area roofs, working with the police department coordinating code enforcement efforts, and a nationwide dental franchise, *Cool Smiles*, that is becoming a neighboring tenant to Apple Drug.

The total value of the Two (2) building permits issued was One Hundred Thirteen Thousand Dollars (\$113,000.00) which generated Seven Hundred Eighty-nine Dollars (\$789.00) collected in fees; one (1) of the permits issued was for a new dwelling in Rowen's Mill.

## **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 gave a status report on the project, noting that a productive meeting was held Two (2) weeks ago with project engineers AWB; discussion centered around reasonable adjustments to the project in an effort to go green in compliance with new regulations for water runoff, noting that this was the first time the new regulations have come into play for both Fruitland and AWB.

### **3. Drug Policy**

City Solicitor Mitchell summarized the final revisions made to the drug policy after several meetings between Councilor Lokey, City Manager McDonnell and City Solicitor Mitchell, noting Councilor Lokey's extensive experience in the area of drug testing.

- Timing of the test was clarified, whether an employee would have to report immediately or be given a designated slot ,and then the manner in which the employee would report for testing was determined
- The *Alford Plea* recognized in Maryland, was added as an additional violation of the drug policy just as being convicted of or entering a guilty plea to a criminal drug or alcohol offense would be in violation of the drug policy; an Alford Plea is entered when a criminal defendant does not admit guilt, but admits that the prosecution could likely prove the charge.
- The United State Department of Transportation (DOT) was specifically referenced in the drug policy in the section that details the City's intention of complying with all federal and state, drug-free work place requirements.

There being no questions or discussion, **on a motion made by Councilor Lokey that was seconded by Treasurer Ortiz and approved by a unanimous vote in favor, the Council adopted the Drug Policy addendum to the Employee Handbook.**

*City Solicitor Mitchell acknowledged that the effective date of the addendum would be noted on the employee sign-off form for the addendum, just as the effective date of the version of the handbook would be noted on the employee sign-off form for the employee handbook in its entirety.*

#### **4. Bennett Middle School**

Councilor Tull opened discussion by revisiting the issue of a rear entrance to the school from Camden Avenue in addition to the front entrance planned from South Division Street. This issue had been raised and discussed during previous deliberations with the Wicomico County Board of Education (WCBOE), without a commitment from the Board to install the access road; however, the City and the WCBOE did agree during deliberations that this issue would be addressed during the independent traffic study that would be done to determine overall traffic needs for the new school.

As yet, the City has not seen proposed plans for the new school, nor has had commentary from the Fruitland Fire Company on this issue; the Traffic Group has not yet completed the traffic study.

As discussion concluded, it was noted that the Council still had the option to make a recommendation to the WCBOE on this issue as well as the option to object to the WCBOE's plans for the school, recognizing that both options are contingent upon the completion of the traffic study and presentation of the school plans, respectively.

#### **5. Other-Tax Differential**

President Olinde summarized the combined efforts of the Town of Delmar, City of Salisbury, and City of Fruitland that began in 1993 toward pursuing a tax differential for taxes paid to the municipality as well as the County for duplicate services such as municipal police officers and county sheriff deputies.

City Manager McDonnell reported that the Municipal and Financial Services Group (MFSG) had completed the study and found a differential amount that could be justified for each of the municipalities; a meeting is scheduled for Tuesday, March 16, 2010 with Wicomico County Executive Pollitt and representatives from the municipalities to discuss the study findings and move forward with pursuing the tax differential for each of the municipalities.

City Solicitor Mitchell advised that in Maryland the tax differential could be administered by the county collecting taxes as usual and then returning the differential to the municipality, by the county reducing the tax rate applied to the municipality's assessable real property, by the county providing the municipality a new service not presently provided, or by the county reducing the municipality's charge for an existing service that is provided.

The Council supported continued efforts in pursuing the tax differential for the City of Fruitland; City Manager McDonnell will attend the meeting and then report back to the Council with an update.

### **NEW BUSINESS**

#### **1. Swear in new Building Inspector/Code Enforcement Officer**

New Building Inspector/Code Enforcement Officer Joseph Vogel was sworn in by City Clerk Nelson and welcomed by all as a new employee to the City of Fruitland.

## 2. Debt Management Policy

City Solicitor Mitchell summarized that in keeping with state law and state mandated deadlines, the Council had enacted a debt management policy by resolution.

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

*Solicitor Mitchell reported that adoption of a debt policy was mandated by the State of Maryland; Resolution No.8-09, while a good initial policy, should be reviewed periodically by Council and by the Audit and Debt Reduction Committees for amendment as deemed necessary and appropriate. City Solicitor Mitchell then presented Resolution No. 8-09, a resolution of the City Council of City of Fruitland establishing a debt management policy to improve the quality of financial decisions, provide justification for the structure of debt issuance, identify goals, and demonstrate a commitment to long-term financial planning. After time allowed for discussion, Councilors adopted Resolution No. 8-09 as presented on motion made by Councilor Tull that was seconded by Treasurer Ortiz and approved by a unanimous vote in favor.*

Solicitor Mitchell reported that his discussion with City Auditor Layton identified the need to amend the policy to make it a more useful tool for planning as well as monitoring the effectiveness of the policy itself, with input needed from Deputy Treasurer Caton, City Manager McDonnell, and City Auditor Layton.

Solicitor Mitchell requested authorization to meet with the aforementioned individuals to draft an amended plan for presentation to the Council for consideration; President Olinde offered his assistance from a banking and financial perspective, endorsing the positive perception of fiscal responsibility and good stewardship of taxpayer dollars this type of policy generates in the financial community as the Council conducts City business.

**On motion made by Councilor Tull that was seconded by Treasurer Ortiz and approved by a unanimous vote in favor, Council authorized City Solicitor Mitchell to move forward with his plans as outlined to draft an amended Debt Management Policy for Council review and consideration.**

## 3. Hayward Avenue Parking Issue

City Manager McDonnell reported that he had been asked to include the parking issue as an agenda item because Councilor Tull had been approached by a resident with concerns about vehicles parking on both sides of the street on Hayward Avenue, making it difficult to navigate around the parked vehicles.

Discussion included the need for medical support personnel to have access to park on the street, the lack of reported concerns *from* the Fruitland Fire Company, the lack of reported concerns *to* the Fruitland Police Department as confirmed by Chief Phillips, the ability to successfully navigate the street around the parked vehicles when traveling the posted speed limit, recent observations of Hayward Avenue, and the absence of any Hayward Avenue residents at the meeting, including the complainant.

Public Works Director Townsend advised that the complainant had approached him about this issue because he was concerned about crossing the double yellow line to go around a parked vehicle; Chief Phillips researched the issue through the Office of the State's Attorney and verified that it was legal to break the double yellow line in order to travel around a parked vehicle.

After discussion, President Olinde asked that the complainant be notified that it is acceptable to break the double yellow line when traveling around a parked vehicle and that access to street parking will continue to be available on Hayward Avenue. Future complaints about this same issue, if any, should be referred to City Hall and handled through whichever department deemed appropriate, Public Works, Code Enforcement, Police, or Administration.

#### **4. Camden Interceptor Pump Station Proposal**

City Engineer Amanda Pollack of George, Miles, and Buhr (GMB) summarized GMB's proposal for the design, permitting and bidding, construction administration, and part-time inspection by an inspector on site for key construction and testing issues for the Sharp's Point and Allen Cut-off pump station upgrades necessary as a result of the new middle school being built in Fruitland, noting the constant communication back and forth maintained with the Wicomico County Board of Education (WCBOE ) for the purpose of sharing comments and feedback in conjunction with the proposal; should a notice to proceed be issued mid March, the Eighty-two Thousand Nine Hundred Dollar (\$82,900.00) project could be completed as early as November 2010.

Although the WCBOE is ready to proceed with the upgrades according to the proposal that has been discussed, there is now an outstanding issue regarding additional, higher level controls at the pump stations for Supervisory Control and Data Acquisition (SCADA). Incorporating SCADA into the upgrades would allow the City remote monitoring of the alarms and flow levels, would involve additional equipment being installed in larger cabinets than originally proposed, and would require partial reprogramming of the City's SCADA at the WWTP in order to receive signals from these pumps.

Ms. Pollack reported that while the addition of SCADA to the proposal would not significantly impact the design process, it would add Three Thousand Seven Hundred Dollars (\$3,700.00) and Forty Thousand Dollars (\$40,000.00) to the proposal in design and construction costs respectively.

Discussion included the WCBOE's concerns that SCADA was not part of the agreement, City Staff concerns that SCADA had been discussed between City Utilities Staff and WCBOE's engineers but not included in the agreement, components of the original agreement, contingency percentages and dollar amounts within the original agreement, setting developer precedent for SCADA standard at a pump station, cellular technology options available to reduce SCADA costs, the importance of SCADA to non-perpetual (24 Hour/7 Days a Week) operations, the possibility of SCADA being interpreted as just a re-allocation of the original Five Hundred Two Thousand Dollars (\$502,000.00) agreed upon by the WCBOE, and favorable changes to the agreement perceived for the Board as well as the City.

**On motion made by Councilor Lokey that was seconded by Councilor Carey and approved by a unanimous vote in favor, Council approved Eighty-six Thousand Six Hundred Dollars (\$86,600.00) for GMB's pump station proposal as originally presented at Eighty-two Thousand Nine Hundred Dollars (\$82,900.00) with the addition of SCADA in the design phase at an additional Three Thousand Seven Hundred Dollars (\$3,700.00) to be bid as an alternate construction package during that phase of the project.**

#### **5. Storm Water Regulations**

President Olinde summarized that new Storm Water Management Regulations are slated to go into effect May 4, 2010 that have the potential to hamper future development. The Salisbury Chamber of Commerce and the Wicomico County Executive recently partnered to send a letter to two separate State Legislative Committees opposing the adoption of these regulations, at the very least deferring its adoption to allow time for additional studies to be completed to fully understand the impact these regulations would have on future development.

President Olinde continued that the Fruitland Chamber of Commerce is planning to send a letter, having discussed the issue at a recent chamber meeting; the Fruitland Economic Development Commission (FRED) polled its members and has agreed to send a letter as well.

President Olinde proposed that the City and FRED, in concert with the Fruitland Chamber, send a letter opposing the May adoption of the regulations similar to the Salisbury Chamber-Wicomico County Executive authored letter.

**On motion made by Councilor Lokey that was seconded by Councilor Tull and approved by a unanimous vote in favor, Council authorized City Manager McDonnell and City Solicitor Mitchell to draft a letter under combined City/FRED and Chamber letterhead reiterating the positions of the aforementioned letter sent from the Salisbury Chamber-Wicomico County Executive to the State Legislative Committees in opposition of the May adoption of the regulations.**

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

**Mike and Nicole Bruno of Redwing Drive** shared concerns regarding their Redwing Manor neighborhood which have caused them to relocate out of Fruitland and to put their Fruitland home up for sale; President Olinde acknowledged receipt of the Brunos' letter dated January 19, 2010 which detailed their concerns, noting as well its distribution to the Council and City Manager.

Discussion included topics in the letter, contact with the police department, how other municipalities address the issues, landlords renting to undesirables, Section Eight Housing, homeowners' right to peace in their home and neighborhood, and the Noise and Property Ordinances as tools already in place to deal with the stated issues.

City Solicitor Mitchell noted that the Noise Ordinance does have an element that affects the *landlords* by fining *them* if they do not address the cited problem with their tenants in a timely manner.

City Manager McDonnell acknowledged his research of Business/Rental License Ordinances adopted by other municipalities as an effort to comprehensively deal with the Brunos' stated concerns; he is planning to submit his findings to the Council and Solicitor Mitchell for review, prior to scheduling discussion of adopting a similar ordinance in Fruitland as an agenda item at a later meeting.

President Olinde acknowledged that the City could contact the President of the Salisbury Area Property Owners Association (SAPOA) for the purpose of sharing the Brunos' concerns, noting that this organization polices "its own" in the industry and has enjoyed a measure of success in similar circumstances.

Chief Phillips summarized his plans to work with Code Enforcement Officer Vogel in hosting a Town Hall Meeting for landlords to come and discuss with City Officials many of the aforementioned issues and work toward solutions that will rid Fruitland neighborhoods of undesirable tenants and associated issues.

Utilities Director Derbyshire acknowledged the amount of slope in many of the yards that due to lack of landlord upkeep in the neighborhood as evidenced by the ruts in the yards from erosion which are carrying sediment directly into the City's Storm Drainage System

President Olinde thanked the Brunos for sharing their concerns, acknowledging the City's commitment to address those concerns.

With no further business to discuss, **on motion made by Treasurer Ortiz that was seconded by Councilor Tull and approved by a unanimous vote in favor, the meeting adjourned at 8:55 p.m.**

*Diane C. Nelson*  
Diane C. Nelson, City Clerk  
*Approved, April 13, 2010 dcn*