

**FRUITA CITY COUNCIL SPECIAL MEETING
NOVEMBER 13, 2023
6:30 P.M.**

1. CALL TO ORDER AND ROLL CALL

Mayor Kincaid called the regular meeting of the Fruita City Council to order at 6:30 p.m. The meeting was held both in person and with virtual access provided through Zoom.

Present: Mayor Joel Kincaid
Mayor Pro Tem Matthew Breman
City Councilor Jeannine Purser
City Councilor James Williams
City Councilor Amy Miller
City Councilor Aaron Hancey

Excused Absent: City Councilor Ken Kreie

City staff present: City Manager Mike Bennett
Assistant City Manager Shannon Vassen
Deputy City Clerk Deb Woods
Parks and Recreation Director Marc Mancuso
Public Works Director Kimberly Bullen
City Attorney Mary Elizabeth Geiger

Also present: Realtor Lori Chesnick
Members of the public

2. AGENDA – ADOPT/AMEND

- **COUNCILOR BREMAN MOVED TO ADOPT THE AGENDA AS PRESENTED. COUNCILOR MILLER SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.**

3. PUBLIC PARTICIPATION

Mayor Kincaid explained that because none of the agenda items for this meeting were public hearings, the only time the public would have a chance to speak on any item (including those that may be on the agenda) would be now, during Public Participation.

Jim Cook, 2331 S. 15 Rd, Glade Park, thanked the City Council for allowing the “Friends of Enoch’s Lake” the extension of time to figure out how to keep Enoch’s Lake open to the public. He said that sadly, they haven’t been able to get anyone to partner with them to purchase and maintain the property, so he was just in attendance at this meeting to see what was going to happen with it.

Steve Romo, 1130 Aquarius, Fruita, said he didn’t believe that the City of Fruita ought to be involved in recreational areas outside of the city limits and that if Enoch’s Lake was no longer owned by the City, that money could be used to either correct the problems at Fruita Reservoir #2 or on parks

and other local things in town. He stated that he has 88 houses in his HOA and a lot of his neighbors said they never use Enoch's Lake, so he thinks that residents' money could be better spent elsewhere.

Rod Power (one of the people who offered to buy Enoch's Lake), said he has been a landowner on Pinyon Mesa for almost 60 years and during that time, he and his partners Stan Muhr and Ronald Tipping put somewhere between 3,000 and 4,000 acres into conservation easements. He added that the property that he presently and personally owns is somewhere between 4,000 and 5,000 acres, all of which is also in a conservation easement. Mr. Power explained that he and his partners have spent their lives making sure that Pinon Mesa was not subdivided.

Mr. Power said that he and his partners have been stewards of the land and continue to do so. He said they have talked to all the agencies such as Colorado Parks and Wildlife and all of them say that they would have the same problems handling the property that Fruita has. He said he would answer any questions that the Council may have.

Hearing no further comments from the public, Mayor Kincaid closed Public Participation.

4. AGENDA ITEMS

A. ENOCH'S LAKE PROPOSAL

Public Works Director Kimberly Bullen recalled that at the September 19, 2023 Regular City Council meeting, the Council directed staff to work with the City's Realtor, Lori Chesnick (present in the audience) to list the Enoch's Lake property on the Multiple Listing Service (MLS) until November 8, 2023 at the appraised value of \$425,000. The listing included information that the property is encumbered by the Ute Water Right of First Refusal and the 2013 Agreement with Ron Tipping for repayment of the non-monetary obligation as well as an Agreement with Stan Muhr for the delivery of water. The listing also includes the information about the dam being a jurisdictional dam that is subject to the requirements, rules and regulation of Dam Safety from the State of Colorado. The ultimate sale of Enoch's Lake must be approved by City Council through an Ordinance process as prescribed by the Fruita City Charter.

Ms. Bullen invited Realtor Lori Chesnick to speak about the proposal that the City received and answer any questions the Council may have.

Ms. Chesnick provided an overview of the proposal from the three buyers that was basically the same offer that they had presented to the City previously which amounts to \$645,393.36. The actual purchase price is \$500,000 plus the amount that is owed Mr. Tipping that will either be forgiven or waived. Ms. Chesnick explained that the real estate commission would be based on the \$500,000.

Ms. Chesnick continued, saying that it would be a cash transaction, but included in the contract are additional provisions that:

1. Ronald D. Tipping, Stan Muhr and Rodney C. Power are willing to permit public access to Enoch's Lake on a limited basis.
2. Government agencies such as Colorado Parks and Wildlife (CPW), Mesa County and City of Fruita may be able to reserve Enoch's Lake but must provide adequate insurance protection for the liability exposure including coverage for the above-named purchaser, buyers and their entities.

Ms. Chesnick stated that the buyers are going to put forth that they will allow public access with those caveats.

Councilor Hancey asked if Ms. Chesnick had received any other offers besides the one being considered by the City Council. Ms. Chesnick responded that she received no offers but had sent out 14 packets of information, 7 of which were to other real estate brokers or agents. The last offer came in on November 7th at 5:00 p.m. when she met the buyer at her office and printed off for him the 62 pages of the documents. Ms. Chesnick added that she had ten specific phone calls regarding the sale of Enoch's Lake; however, the lake also came up in many conversations with agents or buyers who called to discuss other properties. She said she gave them the general information that the public has.

Councilor Hancey asked if there was a proposed closing date. Ms. Chesnick explained that first, the City would have to go through the First Right of Refusal with Ute Water, so a closing date had not been scheduled because she wasn't sure how long Ute Water was going to take. She added that there is a process the City also needs to go through, but once that is done, the buyers are willing and ready to close immediately.

Councilor Hancey asked the City Attorney to recap what the City's process is. City Attorney Mary Elizabeth Geiger explained that at this meeting, the Council would decide whether or not to move the offer first to Ute Water for them to decide whether they were going to exercise their Right of First Refusal. If Ute Water decides they do not want the property, then the matter would then move into the Ordinance process including a First Reading of an Ordinance to set the public hearing (Second Reading). At the Second Reading, the Council will accept public comment and ask the buyers any questions they may have. The offer may potentially be amended at that time.

Mrs. Geiger noted that staff was recommending that the Council set the date for the First Reading of the Ordinance because the Second Reading could always be pushed out further into the future if necessary. She added that in her previous conversations with Ute Water, they had indicated that they wanted to see any other offer the City receives, but the decision would be made at the staff level so no one would have to wait for the next meeting of the Ute Water Board of Directors.

Councilor Hancey asked when the original First Reading of an Ordinance had occurred and Mrs. Geiger recalled that it was June 20, 2023, almost six months ago.

Councilor Williams thanked the buyers for considering the possibility of public use at Enoch's Lake and allowing the City to reserve it because those were not things that were included in the original offer. He asked Lori Chesnick to describe that process a little bit more. Ms. Chesnick said that when she met with the buyers, they brought in a handwritten note with a statement on it concerning how they had talked about it between the three of them and knew it was important to keep the lake as public as possible but that in doing that, they would be assuming liability. She said she thought the buyers would decide on a case-by-case basis and someone wanted to reserve the lake, they would have to provide proof of indemnity insurance so that they would be the responsible party and the buyers would be covered. Ms. Chesnick said that if the offer were to move forward, it could be clarified to make sure everyone knows what the responsibilities are. City Attorney Mary Elizabeth Geiger advised that this was not something that could be negotiated at this time; that the matter before the Council was the offer and whether or not to begin moving forward with it. She added that a conversation regarding public access or any other aspect of the offer could be addressed at the public hearing. Councilor Williams stated that he wanted it on record that he appreciated the fact that the buyers brought the issue up on their own.

- **COUNCILOR WILLIAMS MOVED TO DIRECT STAFF TO PROCEED WITH SUBMITTING THE ONE OFFER RECEIVED BY THE CITY FOR THE CONVEYANCE OF REAL PROPERTY REFERRED TO AS ENOCH'S LAKE AND WATER RIGHTS LOCATED ON PINYON MESA TO UTE WATER FOR FIRST RIGHT OF REFUSAL AS REQUIRED IN THE AMENDED AND RESTATED AGREEMENT FOR DOMESTIC WATER SERVICE DATED JUNE 20, 2023, AND TO PROCEED WITH PUBLISHING THE FIRST READING OF AN ORDINANCE FOR CONVEYANCE OF SAID REAL PROPERTY AND WATER RIGHTS ON NOVEMBER 21, 2023 AND THE SECOND READING ON DECEMBER 19, 2023. COUNCILOR BREMAN SECONDED THE MOTION.**

Councilor Hancey said he was really grateful for how the Council had taken action on this matter and that it was good to provide transparency and ample opportunities to citizens to provide input after nearly five months of working on it.

WHEN THE VOTE WAS TAKEN, THE MOTION PASSED WITH FIVE YES VOTES.

B. BRIEFING ON NRCS PIFR AND DAM BREACH RFP – BRIEFING ON NRCS PRELIMINARY INVESTIGATIVE FEASIBILITY REPORT AND SUMMARY OF PROPOSALS RECEIVED FOR ENGINEERING AND CONSTRUCTION SERVICES FOR DAM BREACH AT FRUITA RESERVOIR #2

Public Works Director Kimberly Bullen began by providing some background on the briefing on the Natural Resources Conservation Service (NRCS) Preliminary Investigative Feasibility Report (PIFR). She explained how staff had reached out to NRCS and applied for some grant funding under the PL-566 Program, which is a Watershed and Flood Protection Program. Identified for the project was repair of Reservoir #2 as well as other infrastructure repairs for which the City was awarded a \$55,000 grant to conduct the PIFR. The money went directly to an engineering firm that was selected by the NRCS to conduct the study. Ms. Bullen stated that staff has not yet received the final report but did receive an email that informed them that Fruita would not be recommended for funding through the PL-566 Program.

Ms. Bullen said that some preliminary information staff received was that the economics just did not present well; the cost-benefit analysis was not in favor of what staff was proposing. She added that some of the options included:

- Repairing Reservoir #2 at a cost of approximately \$2.5 million
- Repairing Reservoir #2, the pipeline and the other infrastructure at a cost of approximately \$4 million
- Decommission Reservoir #2 at a cost of approximately \$1.3 million

Ms. Bullen said staff is hoping to get the report so they can actually dive into it and understand it a little bit better.

In waiting for the report, the City Council gave staff direction to proceed with conducting a Request for Proposal (RFP) for breach of Reservoir #2. Staff received five proposals from qualified engineering firms, two of which were disqualified because they didn't sign the acknowledgment form acknowledging Addendum 2. Staff and an engineer with Dam Safety reviewed the remaining three

proposals to determine who would be best for the project. Construction costs were not included because the design of the breach is pretty intensive and complex involving the requirements of various agencies.

Ms. Bullen stated that staff was recommending (if the Council decides to move forward with breaching Reservoir #2) that the project be awarded to SGM based on their experience, knowledge of permitting and development of dam removal plans and a comprehensive understanding of the Colorado Dam Safety Rules & Regulations and US Forest Service requirements. SGM's proposal was the most comprehensive, showing they fully understand the project and necessary requirements. Ms. Bullen noted that SGM's proposal was valid until December 28, 2023.

Ms. Bullen noted that this agenda was strictly for informational purposes and required no immediate action of the Council. Staff will be coming back before Council with more of an official process for moving forward.

City Manager Mike Bennett further advised that hypothetically, if staff were to take the next step of working with SGM, it would require a budget amendment and execution of a contract for design of the scope of work (working with the US Forest Service and the state's Dam Safety Engineer) to breach Reservoir #2. He reminded the Council that this Reservoir has essentially been inoperable for about seven years now through a no-fill order and that when it has filled, staff has had to go there regularly to siphon the water out of the reservoir until it reaches an acceptable level.

Mr. Bennett added that staff will continue to look into funding mechanisms and opportunities for repair or breach of Reservoir #2.

There was consensus among the Council members to direct staff to move forward with the recommendation of breaching Reservoir #2, awarding the contract for design to SGM and bringing forth the necessary items for Council action at a December 2023 Council meeting.

C. FRUITA MOUNTAIN PROPERTIES RESOLUTION

City Manager Mike Bennett stated that another direction from City Council at the September 19, 2023 regular Council meeting was to prepare a Resolution to provide public clarity on the history, challenges and why the City desires to divest the City's interest in owning and maintaining the Fruita mountain properties. He explained that the details in the Resolution were gathered from recaps and all the information of the City's webpage dedicated to Fruita mountain properties and if there are people who are wondering why the City is taking the position it is, they can be directed to that webpage for a timeline and all the information. There will also be a link on the webpage that directs them to the City Council's statement on what they are striving to do.

Mr. Bennett read proposed [Resolution 2023-34 – Divesting the City of Fruita from owning, maintaining and managing all City of Fruita Mountain Properties](#) (including water rights) into the record.

- **COUNCILOR MILLER MOVED TO APPROVE RESOLUTION 2023-34 AS PROPOSED. COUNCILOR PURSER SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.**

5. CITY MANAGER'S REPORT

City Manager Mike Bennett did not have any reports.

6. COUNCIL REPORTS AND ACTIONS

MAYOR JOEL KINCAID

Joel said that all Council members should have received an email concerning the Mesa County School District #51 letter and asked if anyone had any questions or anything to add.

Jeannine said she thought it was really well done but thought the Council should request the postponement of any decisions until more public input can be considered. She also wanted to include a strong statement that the Fruita City Council has concerns in the letter to the School District.

Joel noted that the School District is doing a Needs Assessment for all of their buildings that is due in March of 2024 and that he, Mike and Matthew discussed why the District would be making a decision on boundary changes before they know what buildings really need the most work.

James asked if the Council wanted to request that the District postpone any decisions until after the Needs Assessment is completed, which is a reasonable request.

Mike announced that the following evening, District #51 Board of Education was due to consider making a boundary change to two elementary schools that come into the Fruita Monument High School boundary. He said when he and Mayor Pro Tem Matthew Breman previously met with the Board President and his staff, he and Matthew mentioned how it was a rushed process without a lot of engagement and therefore, the City of Fruita would like some consideration. Mike noted that the draft letter to the District points out how the District's discussions and survey questions tied Fruita grade reconfiguration to the need of voter-approved funding to expand FMHS to accommodate grades 9-12.

Joel stated that if the results of the School District's Needs Assessment show that there are four other schools that are of higher priority than FMHS, it is going to be very difficult for the City of Fruita to say it should be next. He added that having the study was very important for helping to make the best decision.

The Council asked that the following requests be included in the draft letter to the School District:

1. A delay in deciding the boundary changes to first have more community engagement and feedback
 2. The results of the ongoing Needs Facility Study
 3. More thorough information on other impacts the boundary change would have to FMHS
- **COUNCILOR BREMAN MOVED TO AUTHORIZE THE MAYOR TO SIGN THE LETTER TO THE SCHOOL DISTRICT. COUNCILOR WILLIAMS SECONDED THE MOTION. THE MOTION PASSED WITH FIVE YES VOTES.**

COUNCILOR JEANNINE PURSER

Jeannine reported that the Localism Committee would be meeting on Wednesday and that Communications and Engagement Specialist Ciara DePinto had some good notes about how to kick the meeting off. She asked the other Council members if they had anything specific they wanted the committee to begin with. Joel said a committee's responsibility is to give the Council information on whether the City should form a board for the purpose of focusing on Fruita's local population. He added that the committee should bring forth ideas to the Council concerning what the committee members think the board should do and whether those will meet the goals of the City. Aaron said there were a lot of ideas that were included on the application form. Mike listed a few items the Localism Committee could start with such as:

- Help extend the City's communication efforts further into the community and reach groups that the City may not be reaching well currently
- Educate Fruita residents on more ways they can participate in the community with an emphasis on the City's Comprehensive Plan and goals of *Quality of Place, Economic Health, Core Services and Lifestyle*
- Helping with local community events, messaging and education on supporting localism

Amy said she was excited to see what the committee comes up with because it is a very diverse group that she thinks will represent Fruita well.

COUNCILOR AARON HANCEY

Aaron asked for an update on the RV parking lot at Dinosaur Journey. Mike responded that Parks and Recreation Director Marc Mancuso has been working with the Museum of Western Colorado's (MWC's) curator Dr. Julia McHugh on it. Two of the RVs have been listed for sale on the government surplus auction site govdeals.com and the other two will be moved to the Cross Orchards museum site. Mr. Mancuso and the MWC are looking for more of a long-term solution instead of continuing to move the RVs back and forth and in the meantime, the City has offered to move the RVs to the back of the museum. The MWC said they would take care of that, but they still haven't done it yet.

Aaron noted that he saw signs on 19 Road that say it will be closed next week and asked what staff is doing to make sure the community is well informed about the closure and what the detour will be. Mike said he knew that the City's Engineering Department is involved with the project and that the big steps for the closure have already been taken such as putting up the digital sign. Public Works Superintendent John Carrillo was present in the audience and responded that he was assuming the closure was due to a 65-year old gas line that Xcel Energy owns down the 19 Road corridor because they had done some replacement on 19 ½ Road and K Road already, but none of the permits have hit the City of Fruita within the boundaries yet. Mike said it was his understanding that it's utility work. Aaron noted that a Council meeting was scheduled for the following evening and said it would be nice if staff could bring more information to the Council. Mike said staff would do that. Aaron also requested that staff make sure to get the word out to the public. Public Works Director Kimberly Bullen stated that the Public Works Department does review and approve Traffic Control Plans for any road closure that's done in the City and added that the permits have not yet hit staff's desk as Mr. Carrillo had indicated. Matthew said that Xcel Energy is not always the best at communicating all of their intentions and timelines through the City. Aaron said his point was concerning what the Council should tell people when they start complaining about the road closure. Mike said he would bring more information to the upcoming Joint Workshop with the Fruita Planning Commission meeting the following night.

MAYOR PRO TEM MATTHEW BREMAN

Matthew advised that he had a brief speaking engagement the following evening, so he might be a few minutes late to the Joint Workshop with the Fruita Planning Commission depending on whether everything is running on time.

COUNCILOR AMY MILLER

Amy noted that she RSVPd for the Grand Junction Economic Partnership (GJEP) holiday party. Staff confirmed that the event would be included on the official meeting calendar on the City's website.

7. ADJOURN

With no further business before the Council, Mayor Kincaid adjourned the meeting at 7:42 p.m.

Respectfully submitted,

Debra Woods
Deputy City Clerk
City of Fruita