



# CITY OF WINTER GARDEN

## CITY COMMISSION REGULAR MEETING MINUTES

October 11, 2018

**REGULAR MEETING** of the Winter Garden City Commission was called to order by Mayor Rees at 6:30 p.m. at City Hall, 300 West Plant Street, Winter Garden, Florida. An Opening Invocation and Pledge of Allegiance were given.

**Present:** Mayor John Rees and Commissioners

Lisa Bennett – District 1

Bob Buchanan – District 2

Mark A. Maciel – District 3

Colin Sharman – District 4

**Also Present:** City Manager Mike Bollhoefer, City Attorney A. Kurt Ardaman, City Attorney Dan Langley, City Clerk Angee Grimmage, Assistant City Manager of Administrative Services Frank Gilbert, Assistant City Manager of Public Services Jon Williams, Community Development Director Stephen Pash, Economic Development Director Tanja Gerhartz, Finance Director Laura Zielonka, Information Technology Director Chad Morrill, Fire Chief Matt McGrew and Police Chief Stephen Graham

### 1. **APPROVAL OF MINUTES**

**Motion by Commissioner Maciel to approve regular meeting minutes of September 27, 2018 as submitted. Seconded by Commissioner Sharman and carried unanimously 5-0.**

### 2. **FIRST READING AND PUBLIC HEARING OF PROPOSED ORDINANCE**

A. **Ordinance 18-36:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING POLICY 1-1.2.7, POLICY 1-1.2.8, POLICY 1-1.2.10, POLICY 1-1.2.14 OF THE FUTURE LAND USE ELEMENT OF THE WINTER GARDEN COMPREHENSIVE PLAN; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 18-36 by title only. Community Development Director Pash informed that this amendment to the Comprehensive Plan creates density bonuses in the commercial and multi-use development land use designations. He noted that this ordinance also adds a new zoning district of CAPUD, which is character area planned unit development. He described elements of the ordinance and noted that this ordinance makes the comprehensive plan consistent with the guidelines that have been implemented in the East Plant Street Overlay. Staff recommends approval of Ordinance 18-36, with a second reading after State review.

Mayor Rees mentioned that he had read information relating to 5-stories or a density of 30 and wanted to be sure that any such item would need City Commission approval. Mr. Pash noted that this would go through planned unit development, which would all come through the City Commission for approval.

Mayor Rees opened the public hearing; hearing and seeing none, he closed the public hearing.

**Motion by Commissioner Buchanan to approve Ordinance 18-36 with second reading and public hearing scheduled to a date uncertain pending the State's review. Seconded by Commissioner Maciel and carried unanimously 5-0.**

**SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCE**

- B. **ORDINANCE 18-37**: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING CHAPTER 18, ARTICLE II, DIVISION II OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN REGARDING THE BUILDING CODE TO CREATE A NEW SECTION 18-62 RELATING TO PRIVATE PROVIDER ALTERNATIVE PLANS REVIEW AND INSPECTION; PROVIDING FOR PRIVATE PROVIDER REGISTRATION AND A SYSTEM TO VERIFY COMPLIANCE WITH LICENSURE AND INSURANCE REQUIREMENTS; PROVIDING EXPRESS RESERVATIONS OF CITY AUTHORITY, INCLUDING THE AUTHORITY TO ISSUE STOP-WORK ORDERS UPON OFFICIAL DETERMINATION THAT A CONDITION ON BUILDING SITES CONSTITUTES AN IMMEDIATE THREAT TO THE PUBLIC SAFETY AND WELFARE; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 18-37 by title only. Community Development Director Pash stated that staff requests postponement of this item until the October 25, 2018 City Commission meeting at 6:30 p.m.

**Motion by Commissioner Sharman to POSTPONE Ordinance 18-37 until the October 25, 2018 City Commission meeting at 6:30 p.m. Seconded by Commissioner Bennett and carried unanimously 5-0.**

3. **REGULAR BUSINESS**

- A. Recommendation to deny a Site Plan for 111 11<sup>th</sup> Street (Dollar General Store) which did not meet all code requirements

**City Attorney Langley** informed the City Commission that the applicants have requested that witnesses on this matter be sworn in. Also requested is at least 30 minutes to do their presentation, with an opportunity for rebuttal or comment. Mr. Langley outlined procedures as, the swearing in of witnesses, presentation by staff, 30 minutes given to the applicant (unless the City Commission objects to that timeframe), and then citizen comments. Then a few minutes would be given to the applicant for rebuttal. He noted that the applicants have requested opportunity to cross-examine staff during their 30-minute time period. Mr. Langley shared that the applicant would ask approximately five questions and that this would not be treated as though it were a deposition.

**City Attorney Langley** noted that at this time it would be appropriate for the City Commission to disclose any communications they may have had with the applicants,

property owner, or any citizens who may have spoken to them in favor or against this particular site plan. All City Commissioners voiced that they had none.

**Commissioner Buchanan** sought clarification on the 30-minute period, whether it was to be for each or 30 minutes' total. **Mr. Langley** answered that it is 30 minutes' total.

At this point in the meeting all witnesses intending to speak on this matter were sworn in by City Attorney Langley.

Staff began their presentation.

**Community Development Director Pash** stated that this is the site plan for 111 11<sup>th</sup> Street. He noted that the application was originally submitted in 2015 and has gone through a long process, with multiple reviews. He noted that each time the plan was submitted, the Development Review Committee (DRC) submitted comments that the design did not meet all code requirements. He described the history of the submittals and their denials with DRC comments of the plans not meeting code. Mr. Pash disclosed some specific requirements the applicant was requested to provide. He listed them as, the need for proper turning movements, dumpster access verification, semi-truck turning movements for entering and exiting the site. Mr. Pash referred to a screen display and described issues relating to semi-truck movements; noting that it does not meet code. He further described issues with safety relating to vehicles backing up into the entrance, thus backing up traffic into Plant Street. Also noted were issues with the masonry wall on the south boundary, streetscape, and dark areas in the photometric plan. He noted that the plan is also not consistent with the design overlay. Mr. Pash introduced City Urban Designer Kelly Carson to address the design overlay.

**City Urban Designer Kelly Carson** noted that the East Plant Street Character Ordinance was adopted as a tool to completely transform the East Plant Street corridor from Dillard Street on east into Ocoee. She described the future vision for the corridor and the standard set in place for new developments. She explained that the Dollar General would be one of the first buildings constructed in the East Plant Street area under these overlay requirements. She shared that the applicant has been provided alternatives for the development that would meet the design goals and requirements for the area. She stated that the applicant has chosen not to follow any of them. She displayed and explained the plan, noting that it was given to the applicant, by staff, as a way to show ways in which the site could be designed to meet all of the overlay requirements. She noted that this plan was adopted as part of the recently adopted East Winter Garden Master Plan. She shared that throughout their numerous submittals, the applicant clearly made some efforts to meet the regulations found in the ordinance. However, the latest version falls short, not only in the specific measureable requirements in the overlay, but the plans are entirely inconsistent with the major goal of the character area, which is to move away from generic automobile-dominant design on to that which

evokes more of a historic downtown flavor, significantly improving the pedestrian experience.

**Community Development Director Pash** stated that the developer appealed the recommendation made by the Development Review Committee on August 1, 2018 to the Planning and Zoning Board, contending that the site plan should be able to move forward to the City Commission. The Planning and Zoning Board heard the appeal on September 10<sup>th</sup> and made a motion that the Development Review Committee make a recommendation based on the submitted plan; to approve, deny, or to approve with conditions. Mr. Pash stated that after three years of submittals, the applicant has not met engineering requirements for semi-truck access or shown how this site can safely work or meet code. Staff cannot support an unsafe project, so based on these plans, which do not meet code, the Development Review Committee recommended denial at the September 26<sup>th</sup> meeting and staff recommends denial of the applicant's site plan.

**Mr. Pash** additionally introduced to the City Commission and the City Clerk, a transcript from the Planning and Zoning Board meeting to bring awareness to a statement made by the applicant's attorney. Mr. Pash read the following excerpt of the statement: "*we could do what everything they want, but it is not what we want*". Mr. Pash then turned the proceedings over to the applicant.

**Mayor Rees** called for the first witness.

**Scott Baker**, Attorney with Zimmerman Kiser Sutcliffe Law Firm, 315 E. Robinson Street – Suite 600, Orlando, Florida 32801 stated that they are seeking site plan approval for a retail development at 111 11<sup>th</sup> Street. The property is retail permitted use of zone C-2. Mr. Baker noted that he would give an outline of the presentation, introduce their team, make introductory remarks from the legal perspective, allow the consultants to provide their professional analysis using a PowerPoint presentation. He noted he would conclude with a few follow up questions of staff. Mr. Baker handed a binder to the City Clerk, noting that it was a paper version of digital files submitted into the record. He described the binder contents as being a PowerPoint presentation, resumes of the professionals, and a chronology of the project with supporting documents. He indicated that the file has also been provided tonight by upload into the City's computer. He noted that he has also distributed a paper version of the chronology to be discussed, a copy of the C-2 zoning district standards and a copy of the East Plant Street overlay plan.

**Mr. Baker** introduced the professionals as Jeremy Anderson, Vice President with Hanlex Civil, Kathy Hattaway Planning Group Leader with Poulos & Bennett an Engineering and Planning Firm in Orlando, and Bob Rabits, a principle with Rabits & Romano Architecture Planning and Design.

**Mr. Baker** referred the City Commission to the staff report as submitted in the City agenda packet, and noted that he would refer to this as to provide an outline. He expressed that he was thrown off by some of the specific comments just made by Ms. Carson. He states the comments had not made it into a staff report in that specific level of detail.

**Mr. Baker** stated that they agree to meet most of the conditions as stated in the staff report, with an exception to a few items, which he will cover right now. He indicated that if they do not mention it, that means that they will meet it; meeting the objective criteria when plans for permitting are submitted.

**City Attorney Langley** inquired as to whether Mr. Baker is stating that the site plan that was submitted and that DRC considered, meet the requirements already. **Mr. Baker** responded no and explained that the site plan that comes in would meet these conditions as modified tonight. **Mr. Langley** asked if the site plan that is for consideration tonight, is the one that DRC reviewed and made a recommendation on and not a site plan that would be submitted in the future. Mr. Langley noted that he was trying to follow as to gain understanding. **Mr. Baker** then referred to the agenda report items as an example; reading an excerpt under engineering that stated “*not underlined comments would become conditions for approval*” for engineering. He stated that therefore, they think there is room for them to meet those conditions in the comments, with a future submittal. They will change the site plans to meet these conditions prior to getting a permit; if it is not changed, there is no permit.

**City Attorney Ardaman** stated that before the City Commission tonight is the site plan that the applicant asked to be moved forward to the City Commission, not some other site plan. **Mr. Baker** responded, that this is correct and they want the City Commission to make a finding that it does comply with code, subject to meeting these conditions in the staff report. There are some textual conditions that are not shown on the site plan, as of right now, that can be reflected in a future site plan. **City Attorney Langley** stated that he thinks they are explaining what they are asking the City Commission to do and asked that they go ahead and move forward [*with their presentation*].

**Mr. Baker** stated that there are some due process concerns as to why they are proceeding this way. He indicated that they cannot get a fair hearing in front of the actual elected decision makers, when staff refuses to acknowledge competent substantial evidence at the DRC level. There has to be room for this City Commission to resolve disagreements between staff and an applicant or they have no due process; then staff is running the City. They are trying to bring this plan forward, as they could not bring an alternate plan forward. He stated that if they brought the plan forward that they wanted, it would not be their plan, it would be their [*staff's*] plan.

**Mr. Baker** continued by listing items to be addressed as numbers 2, 4, 12, 13, 15, 18 and 19. He noted that of those, there are duplicates and numbers 4 and 12, are covered with engineering comments. He noted five comments in disagreement with staff and these are what they would like to draw the City Commission's attention to. He shared that the professionals will focus in on those comments. If the comments are not focused on, it means that they will meet the requirement. He noted that there is a threshold legal issue needing to be addressed before the professional's presentation. He drew the City Commission's attention to the timeline that was distributed, specifically noting staff's project feasibility review, a report to the applicant, and no mention by staff of the Plant Street Overlay Design. Mr. Baker continued reading excerpts from the handout, noting dates, requirements, and an advertisement by the City submitted to the West Orange Times publication for a moratorium ordinance. He noted that their client learned at a DRC meeting that there was a moratorium and that they needed to meet the Plant Street Overlay Design. They feel this is not appropriate and is illegal, in their view.

**Mr. Baker** stated that they still want to work with staff and bring a plan forward that the City staff feels good about, but they contend that the C-2 zoning district is the applicable zoning rule in place here; noting the informal term of grandfathering. He stated that there was no advertising in the newspaper for a pending ordinance, no moratorium in place, staff processed their application and continued to process their application, even after this moratorium supposedly put a freeze on all land development processes. He noted that Mr. Anderson will show how this made the building move from the back of the site to the front of the site, in order to meet the Plant Street Design guidelines. He stated that they are here to ask for site plan approval, meeting the Plant Street Design overlay; however, from a legal perspective they will not abandon their position that the only applicable code here is C-2. He noted that they are trying to work with the City and deliver a good product; a product that looks the way the City wants it to look.

**Mr. Baker** addressed number 15 of the staff report and stated that he is asking for clarification, and City Commission support, as they are being asked to build an access road on the south side of the property to the east. He expressed that they cannot build on private property and that should not be a condition of approval. He stated that they would try to get that under contract so that they can construct the road, but explained that they are the applicant and not the property owner and they cannot control that land. He offered that the property owner would be granted an easement should they [*the property owner*] wish to develop in the future, so that they can tie in to their [*the applicant's*] access road.

**Jeremy Anderson**, with Hanlex Civil, 1000 Color Place, Apopka, Florida noted that it has been quite a process and stated that he would explain how they got to this point. He shared that this is seventh submittal and some items that were missed were simple oversights. He gave background and history of Hanlex Development who have been in

business as a developer for over 10 years. He noted that they are developers with assigned territories by accredited tenants in difficult areas. He addressed being before the City Commission with a recommendation of denial after three years of hard work, and a need for an appeal after feeling they have come to an impasse with staff on the interpretation of a few items. Mr. Anderson gave a PowerPoint presentation covering some history of the site plan approval requests, project feasibility meeting request submittal, staff comments, and meeting results. He addressed items such as the dumpster being adequate, location of the building on the site, setbacks, the site's geometry and challenges with its odd shape. He also addressed the truck access, turn lane, and plans for leaving and entering.

**City Attorney Langley** noted the time limit for the applicant's presentation had been met and asked the City Commission their desire as to whether additional time for the applicant's presentation would be allowed. **City Attorney Ardaman** noted that a lot of time has been spent on the history of what has happened and not the issue before the City Commission for consideration. **Mayor Rees** noted that the City Commission is fairly aware of the history. **Commissioner Sharman** requested another 15 minutes, if they can get to the fact of what is to be considered tonight.

It was the **consensus** of the City Commission to allow an additional 15 minutes of presentation.

**Mr. Anderson** noted that he would address the specific staff comments and spoke of the issue relating to truck access, referring to examples of some businesses located on State Road 50. In summary, he stated, yes, the single dumpster is adequate for the site. Yes, the truck turning movements work as designed, and yes, cross-access driveway safety has been considered.

**Kathy Hattaway**, of Poulos & Bennett, 2602 E. Livingston Street, Orlando, Florida addressed compliance with design standards of the Plant Street Character Area Design plan. She noted that one item that has not been brought out in these proceedings is that the plan does allow for modifications. She explained that this parcel has a very unusual lot configuration; providing challenges for meeting the standards of the plan. She indicated that they specifically request one modification to the plan which is the street side setback to allow a maximum of 33 feet.

**Ms. Hattaway** addressed aspects of the Plant Street design plan that they feel are being met, such as design vision pertaining to building to the street, and transformation from auto related use to commercial and other uses. She expressed that it is tough being the first under a new plan. They have been working a long time trying to meet the standards. She listed requirements noted from the DRC review process and in her opinion they have met all standards and code references. Ms. Hattaway recognized their Building Architect to give the City Commission information on their specific building.

**Bob Rabits**, of Rabits and Romano Architecture, 5127 South Orange Avenue, Orlando, Florida shared that he has been practicing architecture in Central Florida since 1980 and gave history of Dollar General store locations with which he has worked. He spoke of the Dollar General corporate prototype plans, the approximately 30 stores he has been involved with in the State of Florida. He noted that about 25 percent of them were in towns or cities with architectural standards very similar here. He feels they have met the standards requested and the only one not met may be the façade length not meeting the requirements. He displayed a rendering and noted how they have extended the façade further towards the east to meet that requirement. He also addressed the transparency requirement; noting that it does meet the 60 percent. He indicated that their building is 25 feet to give prominence to the entrance. They strongly believe they have met all design requirements in the design overlay.

**Scott Baker** then stated that he had a few questions for staff. He provided Community Development Director Pash with DRC memo dated December 7, 2015. **Mr. Baker** referred to the opening paragraph of the document; noted as Exhibit C-5 in the binder. He asked Mr. Pash does it state that the City performed a feasibility review of the proposed Dollar General store on June 26, 2015. **Mr. Pash** responded yes. (**City Attorney Langley** advised of five minutes until the pending time limit) **Mr. Baker** referred Mr. Pash to a copy of DRC meeting minutes dated December 9, 2015; noted as Exhibit C-6 in the binder. **Mr. Baker** asked Mr. Pash to confirm a statement in the minutes, specifically Planning's comment number 8, that the DRC advised the applicant to apply the Highway 50 Overlay design requirements. **Mr. Pash** responded that is correct. **Mr. Baker** sought confirmation that Mr. Pash signed the minutes as chairperson; **Mr. Pash** affirmed. **Mr. Baker** provided a memo he states Mr. Pash provided to the West Orange Times, dated February 5, 2016, requesting advertisement of the Plant Street moratorium ordinance; noted as Exhibit C-8 in the binder. **Mr. Baker** asked Mr. Pash if this was the first advertisement for the Plant Street moratorium ordinance, adopted February 25, 2016; **Mr. Pash** stated that he did not recall the dates.

**Scott Baker** requested to ask a couple questions of Urban Design Planner Kelly Carson. **Mr. Baker** informed Ms. Carson that she presented several specific development standards and guidelines that their client does not meet. **Mr. Baker** asked Ms. Carson is that a written report that she provided to the City Commission tonight; **Ms. Carson** responded, no, this was part of her presentation. **Mr. Baker** asked Ms. Carson if her presentation was part of the record in this case. **City Attorney Langley** and **City Attorney Ardaman** noted that this is a legal conclusion and was not up to Ms. Carson to determine; **Mr. Langley** noted that if she testified, it would be part of the record. **Mr. Baker** asked Ms. Carson if those specific standards and objective criteria had been presented to their client in any DRC report, prior to this evening. **Ms. Carson** responded that it was a copy of the overlay standards, which have all of these clearly stated within them. **Mr. Baker** asked Ms. Carson had she ever stated as clearly as she did tonight, the

standards that his client did not meet in their site plan. **Ms. Carson** responded that we have stated that you do not meet the overlay, and we have given you the standards.

**Mayor Rees** recognized Community Development Director Pash for any further comments. **Mr. Pash** noted that there were articles in the newspaper that did discuss the moratorium that were back to July 22, 2015. He noted that it is still felt that they are not creating a safe environment with access onto the road. Staff does not agree with their interpretation of the City's overlay at all. He noted that staff provided samples and although the City's design was slightly altered, there were walls that followed all the way down 11<sup>th</sup> Street meeting that requirement and applicant has not done that in their plans.

**City Attorney Ardaman** inquired if the turning movements informational diagrams displayed before the City Commission tonight were provided by City staff or the applicant. **Mr. Pash** responded that those were provided by the applicant.

**Commissioner Sharman** inquired of staff if the 25-foot minimum height of the building that was mentioned is the height the City wants for its overlay. **Ms. Carson** responded that the intention of the 25 minimum height was to create a two-story volume. It creates a better pedestrian experience, when the buildings are a little bit taller especially adjacent to the street. This was specifically listed in the ordinance as the height minimum. **Commissioner Sharman** sought clarification on if that height is considered a façade or the actual building height is to meet the 25 feet. **Ms. Carson** responded that the requirement given was for the height, to give a two-story volume, but did not dictate that it had to be two-story building. She described other means of meeting that requirement.

Mayor Rees opened the public hearing; hearing and seeing none, he closed the public hearing.

**Motion by Commissioner Buchanan to DENY site plan for 111 11<sup>th</sup> Street (Dollar General Store) with staff given recommendations as the basis for denial. Seconded by Commissioner Sharman.**

**Commissioner Buchanan** expressed that he takes exception to statements made prior in the meeting that the City Commission is ran by staff. He noted that he reviewed the information, and with staff's recommendation, and his own decision, was recommendation for denial made.

**City Attorney Ardaman** inquired if any members of the City Commission were provided with the binder that the applicant's states had been submitted tonight. All City Commissioners denied receipt.

**Motion carried unanimously 5-0.**

- B. Recommendation to approve an easement in favor of Duke Energy for property located at 4225 Ocoee Apopka Road, Ocoee, Florida (Police Department K-9 Training Facility)  
City Manager Bollhoefer stated that staff requests postponement of this item to a date uncertain.

**Motion by Commissioner Buchanan to POSTPONE an easement in favor of Duke Energy for property located 4225 Ocoee Apopka Road, Ocoee, Florida to a date uncertain. Seconded by Commissioner Sharman and carried unanimously 5-0.**

*(Item 5 was heard at this point in the meeting)*

4. **MATTERS FROM PUBLIC**

Sandra Wilt, 1630 Victoria Way, Winter Garden, Florida stated that she is the President of the Tuscany Homeowner's Association. She informed that she has come with a petition signed by 80 of their homeowner's out of the 93, addressing the need of a traffic light at the intersection of East Crown Point Road and Fullers Cross. Ms. Wilt indicated that they have been in touch with City Staff who are aware of this issue. She noted that a newspaper article indicated that a resolution would be presented at this meeting addressing this issue. She offered the signed petitions although she felt that they may not be needed at this point. She addressed the issues noted in the newspaper regarding the possibility of eminent domain for the land on two sides of Fullers Cross, making turn lanes, and developing it into an intersection. She wanted to know why it has to be such an elaborate construction project; when a turn arrow and lights would be sufficient.

City Manager Bollhoefer explained the plans for that location and the addition of certain needed lanes. He noted that the City does not have a resolution as the City has come to a tentative agreement with that owner since the newspaper article was distributed.

Ms. Wilt submitted the signed petitions to the City Clerk.

5. **MATTERS FROM CITY ATTORNEY**

**City Attorney Ardaman** inquired as to the dates desired by the City Commission for their annual Ethics training. It was the **consensus** of the City Commission to set the training dates as November 8, 2018 and December 13, 2018 at 5:30 p.m. It was also noted that an additional hour of home study may also be completed to meet this requirement.

6. **MATTERS FROM CITY MANAGER**

**City Manager Bollhoefer** announced that Tucker Ranch officially open this past weekend and noted that it is was phase one. He stated that Tucker Ranch will be a great gem for the City of Winter Garden for a long time to come. He stated that it is always great to have the opportunity to save green space.

7. **MATTERS FROM MAYOR AND COMMISSIONERS**

**Commissioner Sharman** noted that the City had a great Homecoming Parade tonight.

**Commissioner Buchanan** shared that we are in the process of developing Winter Garden with some fantastic places for all of our citizens to be able to enjoy themselves at places like Tucker Ranch. He noted that Tucker Ranch happens to be the star that is shining brightest at this moment and is a gem for the City. He also named other areas to watch such as Bradford Park, the park area near Tanner Hall; and noted that this makes it a good time to watch all the development in the City of Winter Garden.

The meeting adjourned at 7:50 p.m.

APPROVED:

    /S/      
Mayor John Rees

ATTEST:

    /S/      
City Clerk Angee Grimmage, CMC