

REGULAR MEETING MINUTES

CITY COMMISSION

November 14, 2002

A **REGULAR MEETING** of the Winter Garden City Commission was called to order by Mayor Jack Quesinberry at 6:30 p.m. in City Hall Commission Chambers. The invocation and Pledge of Allegiance were given.

Present: Mayor Jack Quesinberry, Commissioners John Harriman, Mildred Dixon (arrived at 6:32 p.m.), Theo Graham (arrived at 6:31 p.m.) and John Rees

Also Present: City Manager Hollis Holden, City Attorney Dykes Everett, City Clerk Kathy Montoya, Assistant to the City Manager Marshall Robertson, Utilities Director Charlie Tinch, Planning Director Mark Cechman, Finance Director Mike Bollhoefer, Trailer City Manager Hughlan Martin, Human Resources Manager Victoria Ward, Recreation Director Larry Caskey, Police Chief Jimmie Yawn, Public Works Director Bob Smith, Fire Chief John Williamson, and Sanitation Supervisor John Love

1. APPROVAL OF MINTUES

Motion by Commissioner Rees to approve the minutes of October 24, 2002 as submitted. Seconded by Commissioner Harriman and carried 3-0.

Commissioner Graham arrived at 6:31 p.m. and Commissioner Dixon arrived at 6:32 p.m.

2. REGULAR BUSINESS

A. Request for an open-air Christmas tree sale, with tent, by Severt's Tree Farms from November 25 through December 24, 2002 adjacent to AmSouth Bank in the Winter Garden Regional Shopping Center

Wm. Shannon Ireland was present to answer any questions. **Motion by Commissioner Rees to approve the request. Seconded by Commissioner Graham and carried 5-0.**

B. Request for donation of \$500 by the West Orange High Choral Department

Commissioner Rees stated that the City Commission approved \$500 last year and that it would be appropriate to donate the same this year. **Motion by Commissioner Graham**

to donate \$500 to the West Orange High Choral Department. Seconded by Commissioner Harriman and carried 5-0.

C. **Recommendation to approve Change Order No. 2 of the Stoneybrook West Parkway Project**

Public Works Director Smith stated the requested change order consists of some additions to the installation of underdrains to control some groundwater issues, fencing, sleeves to get irrigation to the south side of the parkway, and to pay for thermoplastic lane stripping, for a total change order of \$49,948. **Motion by Commissioner Graham to approve Change Order #2 as requested. Seconded by Commissioner Harriman and carried 5-0.**

D. **RESOLUTION 02-13: A RESOLUTION ADOPTING AND APPROVING A REVISED RATE SCHEDULE FOR COMMERCIAL SOLID WASTE AND RECYCLING SERVICES; PROVIDING FOR CONFLICTING RESOLUTIONS; AND PROVIDING FOR AN EFFECTIVE DATE**

City Attorney Everett read Resolution 02-13 by title only. Public Works Director Smith stated this is the annual increase request by Waste Management based upon the new Consumer Price Index (CPI) increase of 1.3%. **Motion by Commissioner Harriman to adopt Resolution 02-13. Seconded by Commissioner Dixon and carried 5-0.**

E. **RESOLUTION 02-14: PROVIDING FOR THE CONDITIONAL AWARD OF A CONTRACT TO McMAHAN CONSTRUCTION COMPANY, INC., FOR THE CONSTRUCTION OF THE WATER TREATMENT PLANT #4 PURSUANT TO THE FLORIDA STATE REVOLVING LOAN FUND PROGRAM, SUBJECT TO REGULATORY APPROVAL AND AUTHORIZING EXECUTION OF THE CONTRACT DOCUMENTS BY THE MAYOR AND THE CITY CLERK; AND PROVIDING FOR AN EFFECTIVE DATE**

City Attorney Everett read Resolution 02-14 by title only. **Motion by Commissioner Graham to adopt Resolution 02-14. Seconded by Commissioner Harriman.** Utilities Director Tinch stated that the bid did come in at ½ million dollars below the engineer's estimate. **Motion carried 5-0.**

F. **RESOLUTION 02-15: AMENDING THE PLANNED COMMERCIAL DEVELOPMENT (PCD) WHICH WAS ADOPTED BY ORDINANCE 02-02; PROVIDING FOR AN EFFECTIVE DATE (Collins)**

City Attorney Everett read Resolution 02-15 by title only. City Planner Cechman stated that this property is located on the northeast corner of Story Road and 9th Street. The original Ordinance 02-02 for the PCD required that all future development requires

approval by the City Commission by resolution and that is why this is before the Commission. The applicant is requesting the addition of a car wash and some additional offices. Staff and the Planning and Zoning Board have reviewed the application and are recommending approval. **Motion by Commissioner Graham to adopt Resolution 02-15. Seconded by Commissioner Dixon and carried 5-0.**

G. **RESOLUTION 02-16: AUTHORIZING AND CONSENTING TO THE TRANSFER OF THE FRANCHISE AND CABLE TELEVISION SYSTEM FROM TIME WARNER ENTERTAINMENT-ADVANCED/NEWHOUSE PARTNERSHIP TO A WHOLLY-OWNED SUBSIDIARY AND MANAGEMENT THEREOF BY ADVANCE/NEWHOUSE PARTNERSHIP**

Mayor Quesinberry moved this item to be acted upon with Ordinance 02-61 under agenda item 4 (A) below.

H. **Recommendation to approve the Preliminary Plat for Lulu Creek Subdivision (Earley)**

City Planner Cechman stated that this plat for a 59-lot subdivision adjacent to Lulu Creek is zoned R-1 and is owned by the Youngblood family. Staff recommends approval with the conditions provided in the agenda package. The Planning and Zoning Board also recommends approval. Commissioner Graham asked if the drainage would have to cross the City's right-of-way. Mr. John Kirby, Engineer for the applicant, stated that Lulu Creek is actually between and that it is designed to capture water before it gets to the creek and will decrease the erosion. **Motion by Commissioner Rees to approve the Preliminary Plat for Lulu Creek Subdivision. Seconded by Commissioner Dixon and carried 5-0.**

I. **Recommendation to approve the Main and Maple Subdivision Final Plat for 304 and 310 South Main Street and declare as surplus property**

City Planner Cechman stated that both staff and the Planning and Zoning Board have reviewed the proposed plat and are recommending approval and that the property be declared surplus. **Motion by Commissioner Harriman to approve the final plat for 304 and 310 South Main Street and declare the property as surplus. Seconded by Commissioner Dixon.** Commissioner Rees asked what the property would sell for if it were two lots instead of three. Assistant to the City Manager Robertson stated that the value of two lots would be two-thirds the value of three lots. The zoning and the area it is in is what determine the amount it is worth. If the property is declared surplus, there will be terms associated with the sale of the property that will include: the existing house must be torn down, three single-family homes must be built within two years in the traditional style, and must be a minimum of 1500 square feet. There are currently three interested builders at a minimum bid of \$100,000. No impact fees will have to be paid because the property previously had three houses. The proposed plat is the best way to fit them on the property. Commissioner Rees stated that he would prefer to have the houses facing Main Street, since it is the main street into town and he understands that it cannot be reconfigured to fit three houses on the lot facing Main Street. Mr. Robertson

stated that the purchase contract, with the conditions, will come back to the City Commission for approval. **Motion carried 4-1; Commissioner Rees opposed.**

J. **Recommendation to approve closing Boyd Street from Plant Street to Joiner Street December 12 and 13, 2002, from 6:00 p.m. to 9:00 p.m., for the choral group to sing**

Recreation Director Caskey stated that this request is from the downtown merchants to allow the two middle school choral groups to sing. **Motion by Commissioner Graham to approve the request to close Boyd Street from Plant Street to Joiner Street on December 12 and 13, 2002 from 6 to 9 p.m. Seconded by Commissioner Harriman and carried 5-0.**

3. **SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCES:**

A. **ORDINANCE 02-55: PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS 0.59 ACRES LOCATED AT 941 9TH STREET AND MORE SPECIFICALLY DESCRIBED HEREIN INTO THE CITY OF WINTER GARDEN, FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE (Lizzi/Chasteen)**

City Attorney Everett read Ordinance 02-55 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Harriman to approve Ordinance 02-55 and seconded by Commissioner Rees. Motion carried unanimously 5-0.**

B. **ORDINANCE 02-56: AMENDING THE FUTURE LAND USE MAP OF THE CITY OF WINTER GARDEN'S COMPREHENSIVE PLAN BY INCLUDING PROPERTY GENERALLY DESCRIBED AS 0.59 ACRES OF LAND LOCATED AT 941 9TH STREET AS COMMERCIAL; PROVIDING FOR AN EFFECTIVE DATE (Lizzi/Chasteen)**

City Attorney Everett read Ordinance 02-56 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Rees to approve Ordinance 02-56. Seconded by Commissioner Harriman and carried 5-0.**

C. **ORDINANCE 02-57: REZONING A 0.59 ACRE LOT LOCATED AT 941 9TH STREET MORE SPECIFICALLY DESCRIBED HEREIN FROM ORANGE COUNTY R-2 TO CITY C-2; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE (Lizzi/Chasteen)**

City Attorney Everett read Ordinance 02-57 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Graham to approve Ordinance 02-57. Seconded by Commissioner Rees and carried 5-0.**

- D. **ORDINANCE 02-58: PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 3.6 ACRES LOCATED WEST OF THE CITY OWNED PROPERTY ADJACENT TO SR429 AND MORE SPECIFICALLY DESCRIBED HEREIN INTO THE CITY OF WINTER GARDEN, FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE (West Orange Community Development)**

City Attorney Everett read Ordinance 02-58 by title only. Mayor Quesinberry opened the public hearing. Ms. Marvelous Rodgers, 1401 Kenney Court, Winter Garden, Florida, stated that she is with the West Orange Citizen Action Coalition and that the proposed development with any proposed new road or railroad usage will create a great disturbance in her community because it will increase traffic and noise. The surrounding residents are concerned that the annexation will change their property value and they are already having problems with the small wildlife. City Manager Holden explained that this proposed action is only addressing the annexation of the property into the City, which will give the City jurisdiction over the property. The operation Ms. Rodgers is addressing is being discussed and will be heard at a separate future meeting. Hearing no other comments, the public hearing was closed. **Motion by Commissioner Dixon to approve Ordinance 02-58. Seconded by Commissioner Harriman and carried 5-0.**

- E. **ORDINANCE 02-59: AMENDING THE FUTURE LAND USE MAP OF THE CITY OF WINTER GARDEN'S COMPREHENSIVE PLAN BY INCLUDING PROPERTY GENERALLY DESCRIBED AS APPROXIMATELY 2.51 ACRES OF LAND LOCATED NORTH OF PLANT STREET AND WEST OF THE 9TH STREET RIGHT-OF-WAY AS COMMERCIAL; PROVIDING FOR AN EFFECTIVE DATE (Bradford)**

City Attorney Everett read Ordinance 02-59 by title only. City Planner Cechman stated this is a Small Comprehensive Plan Amendment and is identified in our future land use map as low density residential. Mayor Quesinberry opened the public hearing. The applicant, Mr. John Kirby, stated that he concurs with staff's recommendations. Hearing no other comments, the public hearing was closed. **Motion by Commissioner Harriman to approve Ordinance 02-59 with staff recommendations (see attached). Seconded by Commissioner Rees and carried 5-0.**

- F. **ORDINANCE 02-60: REZONING APPROXIMATELY 2.5 ACRES GENERALLY LOCATED NORTHWEST OF PLANT STREET AND LULU CREEK FROM CITY R-1 AND TO CITY PCD; PROVIDING FOR CERTAIN PCD REQUIREMENTS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE (Bradford)**

City Attorney Everett read Ordinance 02-60 by title only. Mayor Quesinberry opened the public hearing. Ms. Teri Bowley of Miller, Sellen, Conner & Walsh, who represents the adjacent property owners Bob and Bill Battaglia, stated that there is still one outstanding

concern regarding the location of the building fronting Plant Street. The design does not follow the traditional downtown main street style with the buildings up along the street, because it has parking in front instead. She is working on the adjacent site plan that has the building up along the street. Commissioner Graham asked if they are requesting that the parking be located behind the building. Ms. Bowley stated yes. City Planner Cechman stated that staff has looked at the site extensively and they took into consideration that Plant Street will become a heavily traveled four-lane road and that putting the buildings up to the road would not be the best solution. They also looked at the retail/restaurant business having two main entrances, one in the back and front, which creates a security issue for them. The applicant wanted to maintain a pedestrian-friendly complex because it is near the Trail and has included a boardwalk at the elbow of the trail with an open-air café. Staff believes that this is the most appropriate plan. The applicant, Mr. John Kirby, stated that the owner has added about 30% to the cost with the added architecture and landscaping. This has been worked on for the past year and concessions have been made. Commissioner Graham asked what the distance was from the Trail to the café. Mr. Kirby stated it is roughly 30 feet. Mr. Bob Bataglia, 250 Park Avenue South, Winter Park, Florida, stated that his project has been designed with all the buildings fronting on the future four-laned Plant Street and that the library is fronting Plant with access off the Trail. He stated that having the two parking lots together would aid any overflow parking. Ms. Bowley stated that the library plans has two sets of bike racks and there are no bike racks in this plan. Mr. Kirby stated that adding the bike racks would not be a problem. Hearing no other comments, the public hearing was closed. **Motion by Commissioner Harriman to approve Ordinance 02-60 and seconded by Commissioner Dixon.** Commissioner Graham suggested making a "T" and putting the café nearer the library. City Manager Holden stated that staff has spent about a year on the proposed plan and if the City Commission wants to look at a redesign, a workshop would be appropriate. There is not much flexibility other than to move the buildings to the front and parking to the back or accept it as it is. **Motion carried 4-1; Commissioner Graham opposed.**

4. FIRST READING OF PROPOSED ORDINANCES

A. ORDINANCE 02-61: GRANTING A NON-EXCLUSIVE FRANCHISE FOR THE PROVISION OF CABLE TELEVISION SERVICES BY TIME WARNER ENTERTAINMENT-ADVANCE/NEWHOUSE PARTNERSHIP; PROVIDING AUTHORIZATION FOR THE EXECUTION OF A FRANCHISE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

City Attorney Everett read Ordinance 02-61 by title only. Commissioner Graham noted that the agreement attached to the Ordinance refers to Time Warner in several places and it should actually be TWEAN. Mr. Everett agreed that the change needs to be made. **Motion by Commissioner Dixon to approve Ordinance 02-61 and to schedule the public hearing for December 12, 2002. Seconded by Commissioner Harriman and carried 5-0.**

RESOLUION 02-16: AUTHORIZING AND CONSENTING TO THE TRANSFER OF THE FRANCHISE AND CABLE TELEVISION SYSTEM FROM TIME WARNER ENTERTAINMENT-ADVANCED/NEWHOUSE PARTNERSHIP TO A WHOLLY-OWNED SUBSIDIARY AND MANAGEMENT THEREOF BY ADVANCE/NEWHOUSE PARTNERSHIP

City Attorney Everett read Resolution 02-16 by title only. Mr. Everett stated that the background to this Resolution is that Time Warner is in the process of restructuring and in conjunction with approving the franchise agreement he is recommending that this Resolution also be approved. The consent to the transfer is part of their overall corporate restructuring and the Resolution provides that the transfer will remain effective throughout the life of the restructuring so it will not have to come back to the Commission. **Motion by Commissioner Harriman to adopt Resolution 02-16. Seconded by Commissioner Rees and carried 5-0.**

B. ORDINANCE 02-62: AMENDING ORDINANCE 02-47 RELATING TO THE CITY BUDGET FOR FISCAL YEAR 2002-2003 TO CARRY FORWARD PRIOR YEAR APPROPRIATIONS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

City Attorney Everett read Ordinance 02-62 by title only. **Motion by Commissioner Rees to approve Ordinance 02-62 and to schedule the public hearing for December 12, 2002. Seconded by Commissioner Dixon and carried 5-0.**

C. ORDINANCE 02-40: AMENDING THE SCHEDULE OF CODES AND ORDINANCES WHICH MAY BE ENFORCED PURSUANT TO THE CODE ENFORCEMENT CITATION PROGRAM, ALSO KNOWN AS EXHIBIT "A" OR ORDINANCE 01-05; PROVIDING FOR SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE

City Attorney Everett read Ordinance 02-40 by title only. City Manager Holden stated that this Ordinance is to incorporate those items relating to the Citation Program that have been previously adopted by other Ordinances. **Motion by Commissioner Harriman to approve Ordinance 02-40 and to schedule the public hearing for December 12, 2002. Seconded by Commissioner Rees.** Commissioner Graham requested that in the future he would like to see the classes of violations with the amount indicated somewhere for easy reference. Mr. Holden stated that the table will be provided in the future. However, the nature of this type of Ordinance cannot affect the assigned violation classes. The only way to change an assigned class is to first change the originating ordinance. **Motion carried 5-0.**

D. ORDINANCE 02-63: ANNEXATION OF 10 ACRES LOCATED AT THE SOUTHWEST CORNER OF MARSHALL FARMS ROAD AND WINDERMERE ROAD AND MORE SPECIFICALLY DESCRIBED HEREIN INTO THE CITY; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE (West Orange YMCA)

City Attorney Everett read Ordinance 02-63 by title only. **Motion by Commissioner Dixon to approve Ordinance 02-63 and to schedule the public hearing for December 12, 2002. Seconded by Commissioner Graham and carried 5-0.**

E. ORDINANCE 02-64: AMENDING THE FUTURE LAND USE MAP OF THE CITY OF WINTER GARDEN'S COMPREHENSIVE PLAN BY INCLUDING PROPERTY

GENERALLY DESCRIBED AS 10 ACRES LOCATED AT THE SOUTHWEST CORNER OF MARSHALL FARMS ROAD AND WINDERMERE ROAD AS LOW DENSITY RESIDENTIAL; PROVIDING FOR AN EFFECTIVE DATE (West Orange YMCA)

City Attorney Everett read Ordinance 02-64 by title only. **Motion by Commissioner Rees to approve Ordinance 02-64 and to schedule the public hearing for December 12, 2002. Seconded by Commissioner Graham and carried 5-0.**

- F. **ORDINANCE 02-65: REZONING OF A 10 ACRE LOT LOCATED AT THE SOUTHWEST CORNER OF MARSHALL FARMS ROAD AND WINDERMERE ROAD MORE SPECIFICALLY DESCRIBED HEREIN FROM ORANGE COUNTY A-1 TO CITY R-1; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE (West Orange YMCA)**

City Attorney Everett read Ordinance 02-65 by title only. **Motion by Commissioner Graham to approve Ordinance 02-65 and to schedule the public hearing for December 12, 2002. Seconded by Commissioner Dixon and carried 5-0.**

5. **MATTERS OF CONCERN FROM CITIZENS**

City Manager Holden addressed an earlier comment made by a member of the audience who is a County resident who wants to vote in the City elections. He stated that any property owner or group has the right to petition the City to annex into the City, providing they meet certain State requirements. They can even choose to remain in the County, which may create an enclave. In order to vote in the City elections, it requires them to be a City resident and a registered voter. Additionally, a group can petition the City to annex by referendum (election) and if a majority of the voters approves the referendum, then all are annexed into the City. Commissioner Dixon stated that annexation applications were previously given out and Mr. Holden has attended various meetings to explain the process. Commissioner Graham also pointed out that only those properties that are contiguous to existing City property can be annexed and that those qualified property owners that wish to, should apply for annexation into the City.

Ms. Zera Rogers, 629 Bethune Avenue, Winter Garden, Florida, (County area), stated that about a year ago she requested to be annexed into the City and asked what the hold-up was. City Planner Cechman stated that most of the County residents filling out and returning the annexation applications were not contiguous to the City.

6. **MATTERS FROM CITY ATTORNEY** - None

7. **MATTERS FROM CITY MANAGER**

A. **Recommendation to cancel the regular meetings of November 28, 2002 and December 26, 2002 due to the Thanksgiving and Christmas holidays**

Motion by Commissioner Rees to cancel the regular meetings of November 28, 2002 and December 26, 2002 as recommended. Seconded by Commissioner Harriman and carried 5-0.

B. **Discussion on participating in the 2002 Mayor's Luncheon on November 20, 2002**

Motion by Commissioner Harriman to purchase two corporate tables. Seconded by Commissioner Dixon and carried 5-0.

8. **MATTERS FROM MAYOR AND COMMISSIONERS**

Commissioner Harriman: Thanked the Police Department for having Buddy Nash over to Hyde Park to give a presentation on security and Neighborhood Watch.

Commissioner Dixon:

- Asked about what ever happened to the Police substation plans for her District. Mr. Holden stated that the City did not get the grant. She stated that there is a group called Nehemiah's Children who are going to request funding.
- Requested Code Enforcement action on two cars located at 284 11th Street.
- Requested that additional street lighting be installed on 11th Street. Mayor Quesinberry advised her to see the City Manager about this item and that Florida Power should be willing to install them as they have done in the past in other areas.
- Announced that the computer class is running with the assistance of some volunteer teachers and that Ms. Wilder will return on Monday and needs the \$1,000 to pay the teachers that can issue the certificates or pay the teacher directly. Mr. Holden requested a copy of the contract.

Commissioner Graham:

Stated that the downtown area is looking very nice and he is hearing comments from others about how good it is looking.

Commissioner Rees:

Stated that he agrees that the downtown improvements are looking very nice.

Mayor Quesinberry:

Stated that there was a ribbon-cutting ceremony for the first phase of the downtown improvements and there was a good turn out. He thanked those who attended and stated that Ed DeAguilera is doing a fine job coordinating the events. Mr. Holden stated that the City has its first Platinum sponsor for the Centennial celebration from Heller Bros. for \$20,000.

The meeting was adjourned at 7:55 p.m.