

REGULAR MEETING MINUTES

CITY COMMISSION

May 23, 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 and the Invocation and Pledge of Allegiance were given.

PRESENT: Mayor Jack Quesinberry, Commissioners John Harriman, Theo Graham, Mildred Dixon and John Rees; City Manager Hollis Holden, City Attorney Dykes Everett, City Clerk Kathy Montoya, Utilities Director Charlie Tinch, Planning Director Mark Cechman, Finance Director Mike Bollhoefer, Assistance to the City Manager Marshall Robertson, Police Chief Jimmie Yawn, Human Resource Director Victoria Ward, Fire Chief John Williamson, Public Works Director Bob Smith, Assistant Public Works Director Dennis Duckwiler and John Maloney of The West Orange Times

1. **APPROVAL OF MAY 9, 2002 MINUTES:**

Motion by Commissioner Harriman to approve the Regular Meeting minutes for May 9, 2002 as submitted. Seconded by Commissioner Rees and carried 5-0.

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

A. **Ordinance 02-20: Annexation of 9.226 acres located east of Wintermere Harbor and northeast of Lake Luntz (Keene)**

City Attorney Everett read Ordinance 02-20 by title only. City Planner Cechman stated that the proposed annexation is within the City's Joint Planning Area Agreement with Orange County and on April 4, 2002 the Planning and Zoning Board recommended approval. Mayor Quesinberry opened the public hearing.

Mr. John Keating, 749 N. Garland Avenue, Orlando, Florida, stated that he is the contract purchaser for the property from Mr. Keene and they are requesting to be annexed and rezoned to R-1 to allow for 85 foot wide lots, which is the same as Phases I and II of Wintermere Harbor built by Beazer Homes, who is the likely purchaser of this property. He has spoken with about 12 homeowners who have shared their concerns about a loss of value to their homes that have a minimum of 2500 square feet. Mr. Keating stated that he will agree to add a condition to the annexation, that they will not build any homes less than 2500 square feet. The second concern expressed was about construction traffic to and from the development. He has contacted the owners of the

Bronson parcel to the north and Ms. Dickey Hall has stated that she would not have a problem with allowing an easement over the property for the construction traffic.

Mr. Robert Matusevich, 13234 Lakeshore Grove Drive, Winter Garden, Florida, stated that he is opposed to the annexation because the property values of Phases I and II would decrease when Phase III is built with smaller and less priced homes. The second issue is the road damage (pictures of cracks were submitted), because once Beazer is done building, the homeowner's are responsible for repairing the roads. The community was lead to believe that there would only be two phases. The problems encountered with water pressure have been resolved by the City Utility Department. It is not related to City services, but to the builder. The third concern is the additional traffic that they did not expect with a Phase III. They may be in favor of the annexation if the developer could be held to the statements made, otherwise they are not in favor.

Mr. Michale Frotten, 12918 Water Point Blvd., Windermere, (Orange County) Florida, stated that his property backs up to the proposed annexation and that he is opposed to the marketing of the area as having larger homes and then building smaller homes. He asked that the item be tabled until the plans can be seen.

Mr. John Hussey, 13123 Luntz Point Lane, Windermere, (Orange County) Florida, stated that he is concerned about what the proposed development will do to Lake Luntz. The Environmental Protection Agency has told him that a developer can remove the foliage around the lake. There is a drainage issue because the connecting lake is used as a drainage for all the roads that is accumulating oil and asphalt that could potentially go into Lake Luntz.

Hearing no other comments, Mayor Quesinberry closed the public hearing.

City Manager Holden stated that a water pressure test was done and the City water pressure at most residences was at 60 PSI. The problems encountered are on the resident side of the meter because of an insufficient size of pipe from the meter. Winter Garden requires 2 inches over soil cement for the roads, which is what Windermere Harbor has and which is 1 inch more than required by the county. As a gated community, the streets are privately owned and are the responsibility of the residents. The heat can generally cause ¼ inch cracks, the larger cracks appear to be gouged and the dimpling could be fixed by reheating and reflow. Mr. Holden suggested that the annexation be approved subject to the developer agreement being signed that stipulates; 1) alternate route for the construction traffic, 2) 2500 square foot minimum house size, and 3) repairs to any road damage caused by the developer. City Attorney Everett stated that the City Commission could make a condition to the annexation that the developer/owner will agree to the conditions within a 90 day period or roll back the annexation. Commissioner Rees asked if there would be any difference to going forward with the annexation subject to the stipulations or just tabling it until the stipulations have been agreed to. Mr. Keating stated that he agrees with adding the stipulations for the 2500 square foot minimum homes and that they will bring the development traffic from the Bronson property to the north, but he is not sure that he is the proper party to obligate the developer (Beazer) to repairing the existing roads at the turnover of the roads to the homeowner's association, when that is already part of their agreement. Mr. Everett stated that Beazer is not a party to this annexation and he is not certain that the City can include a condition on this property onto another property that Beazer would be responsible for repairing. To the extent that development of the property exacerbates the problem or creates new problems on the existing road base, then it is within the City's province to deal with, but requiring this land owner, who is not part of Beazer to go back and remediate a Beazer caused problem as a condition of annexation, may be difficult to require unless it is voluntarily offered.

There were 15 written communications received, which included one each from Mr. Matusevich and Mr. Frotten, in opposition to the proposed annexation.

Motion by Commissioner to Graham to table Ordinance 02-20 until June 27, 2002. Seconded by Commissioner Rees and carried 41; Favor: Commissioners Rees, Graham, Dixon and Harriman; Opposed: Mayor Quesinberry.

B. Ordinance 02-21: Comprehensive Plan Amendment of 9.226 acres located east of Wintermere Harbor and northeast of Lake Luntz as low-density residential (Keene)

City Attorney Everett read Ordinance 02-21 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner to Harriman to table Ordinance 02-21 until June 27, 2002. Seconded by Commissioner Graham. Motion carried 5-0.**

C. Ordinance 02-22: Rezoning of 9.226 acres located east of Wintermere Harbor and northeast of Lake Luntz from County A-1 to City R-1 (Keene)

City Attorney Everett read Ordinance 02-22 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner to Dixon to table Ordinance 02-22 until June 27, 2002. Seconded by Commissioner Harriman. Motion carried 5-0.**

D. Ordinance 02-24: Ordinance regulating use of City sidewalks

City Attorney Everett read Ordinance 02-24 by title only. City Planner Cechman stated that the downtown renovations will be making the sidewalks wider and the City views it as an opportunity for businesses to use the sidewalks for displaying merchandise and for outdoor cafes. Mayor Quesinberry opened the public hearing. **Ms. Kim Rose**, 22 ½ W Vining Street, Winter Garden, Florida, stated that the definition of public right-of-way is very broad and vague as to what it includes and what this action amounts to is the City's taking of their property without paying for it. She pays taxes on a portion of the sidewalk and this ordinance warrants the taking of their property or inverse condemnation, which infringes on her ability to make a living. The qualifications for a permit in the ordinance are not clear. For example, if she does not display items in front of her store, will other businesses be allowed to? What does the 28 inches include for the entire display? Why would restaurants be granted more sidewalk space than the merchants? Will permits be required for benches and planters? Are the merchants going to be allowed to say anything about the movie productions done on their sidewalks or be compensated? What does "no display of signs" include? If they are required to obtain a permit for displaying items, will they be protected from the bicyclists and rollerbladers? This ordinance is unconstitutional and affects everyone, not just the downtown area. (Commissioner Dixon stepped out at 7:13 p.m.) **Ms. Shirley Smith**, 12 W. Plant Street, Winter Garden, Florida, stated that as a small community she believes that her merchandise displayed on the sidewalk adds personality. She does not want the City of Winter Garden's name added to her insurance policy. **Mr. Reynold Lemp**, 270 Temple Grove Drive, Winter Garden, Florida, stated his opposition to the use of alcohol on the streets in front of children, which will be detrimental. (Commissioner Dixon returned at

7:25 p.m.) Hearing no other comments, Mayor Quesinberry closed the public hearing. City Attorney Everett stated that the proposed ordinance is not unconstitutional and that the basis of the regulation is not who owns the sidewalk, but on regulating the public health, safety and welfare. The ordinance structure is neutral on alcohol and there is no language that creates a right to serve alcohol on the street that doesn't already exist. It is anticipating a day when there may be one or more restaurants downtown that will have outdoor dining facilities as part of their restaurant operations to serve alcohol. In proposed Section 62-230(w) it states that the City's Code Section 6 must be complied with for serving alcohol and is otherwise permitted by the Code, before a permit can be obtained for an outdoor café. Commissioner Graham stated that this ordinance will create a new law that will allow alcohol on the sidewalk (public property), which cannot be done now. Mr. Everett stated that Code Section 6-5 currently prevents this from happening and there is nothing in this proposed ordinance to change that law. Code Section 6-5 would have to be changed before selling alcohol in a sidewalk café is allowed. City Manager Holden stated that this ordinance is to gain regulatory control over the use of the public sidewalks and to provide for the expansion of businesses onto the sidewalks, while meeting public safety requirements. **Motion by Commissioner Harriman to approve Ordinance 02-24. Seconded by Mayor Quesinberry.** Commissioner Graham asked if this ordinance is approved, will the language within it give ammunition to changing Code Section 6-5 with regard to alcohol sales on the public right-of-way. Mr. Everett stated that Code Section 6-5 currently prohibits alcohol sales on a public right-of-way and this ordinance was not created for that reason. He also stated that he could argue just the opposite that if there is no regulatory scheme in place, and a restaurant comes in down the road and the Commission wants to permit the sale of alcohol outside and change Section 6-5, then the Commission would have no regulatory scheme in place to deal with the problems that come with that decision. **Motion carried 4-1; Favor: Mayor Quesinberry, Commissioners Rees, Dixon, and Harriman; Opposed: Commissioner Graham.** Commissioner Graham submitted, for the record, a petition in opposition to this ordinance from the West Orange Church of Christ with 133 signatures.

E. **Ordinance 02-23: Rezoning of 48.5 acres at the southeast corner of Daniels Road and Beard Road from City R-1 to PUD (Fritschi) and a recommendation to approve the preliminary plat**

City Attorney Everett read Ordinance 02-23 by title only. City Planner Cechman stated that one change made since the first reading, from 90 days to 120 days to deliver the Daniels Road right-of-way and construction easement. Mayor Quesinberry opened the public hearing. **Mr. Kyle Sanders**, representative for Cambridge Homes, distributed two brochures and stated that the project will have 99 homes that will range in price from \$160,000 to \$260,000. Mayor Quesinberry asked how the schools would be impacted by the proposed development. Mr. Sanders stated that they are zoned for Maxey, Lakeview and West Orange. Mr. Holden stated that Maxey is under capacity, Lakeview would not be impacted significantly, and that the high school, which is over capacity, is being dealt with by the Board. Commissioner Rees stated that he is against the rezoning of the property from R-1 to PUD because 86% of the lots will be 60 feet wide. Hearing no comments, the public hearing was closed. **Motion by Commissioner Harriman to approve Ordinance 02-23 and the preliminary plat. Seconded by Commissioner Dixon. Motion carried 3-2; Favor: Mayor Quesinberry, Commissioners Dixon and Harriman; Opposed: Commissioners Graham and Rees.**

F. **Ordinance 02-25: Interim budget for Fiscal Year 2001/2002**

City Attorney Everett read Ordinance 02-25 by title and stated the total revenues are \$8,115,780 and total expenses are \$8,115,780. Mayor Quesinberry opened the public hearing. Commissioner Rees asked if the contingent fund of \$327,000 is still uncommitted. Finance Director Bollhoefer stated yes. Hearing no comments, the public hearing was closed. **Motion by Commissioner Dixon to approve Ordinance 02-25. Seconded by Commissioner Harriman and carried 5-0.**

3. **REGULAR BUSINESS**

A. **Request for an open-air auto tent sale by West Orange Auto Sales June 11 - 17, 2002 in the Regional Shopping Center (next to AmSouth Bank)**

Mr. Rick Teets was present to answer any questions regarding the request for a five day auto sale. **Motion by Commissioner Graham to approve the open-air auto tent sale as requested. Seconded by Commissioner Rees and carried 5-0.**

B. **Resolution 02-03: Authorizing a loan agreement for water pollution control from the State Revolving Fund**

City Attorney Everett read Resolution 02-03 by title only. **Motion by Commissioner Graham to table Resolution 02-03 until June 13, 2002. Seconded by Commissioner Harriman and carried 5-0.**

C. **Resolution 02-04: Adopting the Friends of Lake Apopka Basin Master Plan**

City Attorney Everett read Resolution 02-04 by title only. Mayor Quesinberry asked if he owned lake front property, would this resolution give someone the right to come straight across his property. City Manager Holden stated this resolution is to support extending the trail across Division Street near the water treatment plant and it will let FOLA obtain state funding for areas that do not currently have a trail. **Motion by Commissioner Graham to adopt Resolution 02-04. Seconded by Commissioner Rees and carried 5-0.**

D. **Resolution 02-05: Extending the date to enter into a cable franchise agreement**

City Attorney Everett read Resolution 02-05 by title only. Mr. Everett stated that progress is being made with Time Warner and STI Technologies and he is confident this should be resolved soon. **Motion by Commissioner Harriman to adopt Resolution 02-05. Seconded by Commissioner Dixon and carried 5-0.**

E. **Recommendation to approve the Final Replat for Stoneybrook West Unit 3, Parcel 12**

City Planner Cechman stated that because of widening the drainage easement, the replat is required. The Planning and Zoning Board and staff recommend approval. **Motion by Commissioner Rees to approve the final Replat for Stoneybrook West Unit 3, Parcel 12. Seconded by Commissioner Graham and carried 5-0.**

F. **Recommendation to purchase property located at 109 Tremaine Street for downtown parking**

City Manager Holden stated that all the information has been provided in the agenda package and a downtown parking conceptual presentation will be at the next Commission meeting. **Motion by Commissioner Harriman to approve the purchase of the Pounds property located at 109 Tremaine Street as recommended. Seconded by Commissioner Rees and carried 5-0.**

G. **Recommendation to purchase property located at 1 East Cypress Street (Orange County Library building) and contribute to the new Library construction costs**

City Manager Holden stated staff is recommending approval as detailed in the agenda back-up material. **Motion by Mayor Quesinberry to approve the purchase of 1 East Cypress Street and contribute to the new library construction costs. Seconded by Commissioner Harriman.** Commissioner Graham asked when the new library would be complete. Mr. Holden stated that in order to get the grant they have to start the process by November and the opening would be in late 2003, but he will confirm the dates. **Motion carried 5-0.**

At this time, the Mayor moved to **Matters from City Manager:**

A. **Financial Statement for April 2002:** Please see him with any questions and everything is tracking along.

· Mr. Holden stated that at the request of the Tri-County League, Winter Garden will be hosting the June 20th meeting at Tanner Hall.

· Stated that a workshop is needed for some issues such as:

Where the City is at with regard to water management issues and consumptive use permits, Police and Fire services, dispatching, and the Inter-local agreement regarding school overcrowding.

Mayor Quesinberry stated that Winter Garden has been asked to participate, by Resolution, in the support of methods to deal with the overcrowded schools issue. **Motion by Commissioner Rees to approve moving forward with a three-party Resolution between Winter Garden, Orange County and Orange County School Board regarding school overcrowding. Seconded by Commissioner Dixon and carried 5-0.**

4. **FIRST READING OF PROPOSED ORDINANCES:**

A. **Ordinance 02-09: Large Scale Comprehensive Plan Amendment of 104 acres located east of Lake Apopka and north of the Island Point Subdivision from Orange County Low Density Residential to City Low Density Residential and Conservation Overlay (Magnolia Woods)**

City Attorney Everett read Ordinance 02-09 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Harriman to approve Ordinance 02-09 and to schedule the public hearing after the State's approval is received. Seconded by Commissioner Rees and carried 5-0.**

B. **Ordinance 02-10: Rezoning of 104 acres generally described as the Magnolia Wood, Hillcrest and Teacup Springs Cove Subdivisions, and adjacent unplatted lands from Orange County R-1A and R-1AA to City R-1**

City Attorney Everett read Ordinance 02-10 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Harriman to approve Ordinance 02-10 and to schedule the public hearing after the State's approval is received. Seconded by Commissioner Dixon and carried 5-0.**

C. **Ordinance 02-11: Large Scale Comprehensive Plan Amendment of 17.7 acres described as Emerald Acres Subdivision from Orange County Low Density Residential to City Low Density Residential and Conservation Overlay (Emerald Acres)**

City Attorney Everett read Ordinance 02-11 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Harriman to approve Ordinance 02-11 and to schedule the public**

hearing after the State's approval is received. Seconded by Commissioner Dixon and carried 5-0.

D. **Ordinance 02-12: Rezoning of 17.7 acres described as Emerald Acres Subdivision from Orange County A-1 to City R-1**

City Attorney Everett read Ordinance 02-12 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Rees to approve Ordinance 02-12 and to schedule the public hearing after the State's approval is received. Seconded by Commissioner Harriman and carried 5-0.**

E. **Ordinance 02-13: Annexation of 40 acres located north of Fullers Cross Road and west of the City's water treatment plant (Fullers Cross III)**

City Attorney Everett read Ordinance 02-13 by title only. **Motion by Commissioner Rees to approve Ordinance 02-13 and to schedule the public hearing after the State's approval is received. Seconded by Commissioner Harriman and carried 5-0.**

F. **Ordinance 02-14: Large Scale Comprehensive Plan Amendment of 40 acres located north of Fullers Cross Road and west of the City's water treatment plant from Orange County Rural to City Suburban Density Residential and Conservation Overlay (Fullers Cross III)**

City Attorney Everett read Ordinance 02-14 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Rees to approve Ordinance 02-14 and to schedule the public hearing after the State's approval is received. Seconded by Commissioner Harriman and carried 5-0.**

G. **Ordinance 02-16: Annexation of 55 acres located southeast of the proposed Western Beltway and CR535 (Bronson)**

City Attorney Everett read Ordinance 02-16 by title only. **Motion by Commissioner Harriman to approve Ordinance 02-16 and to schedule the public hearing after the State's approval is received. Seconded by Commissioner Dixon and carried 5-0.**

H. **Ordinance 02-17: Large Scale Comprehensive Plan Amendment of 55 acres located southeast of the proposed Western Beltway and CR535 from Orange County Rural to City Suburban Density Residential and Conservation Overlay (Bronson)**

City Attorney Everett read Ordinance 02-17 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Harriman to approve Ordinance 02-17 and to schedule the public hearing after the State's approval is received. Seconded by Commissioner Dixon and carried 5-0.**

- I. **Ordinance 02-19: Comprehensive Plan Amendment to the Transportation Element by including a policy that acknowledges the Southwest Orange and Southeast Lake County Transportation Alternatives Study as adopted by Orange for future improvements to CR545**

City Attorney Everett read Ordinance 02-19 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Dixon to approve Ordinance 02-19 and to schedule the public hearing after the State's approval is received. Seconded by Commissioner Harriman and carried 5-0.**

- J. **Ordinance 02-28: Annexation of 820 Coke Avenue (Quilling)**

City Attorney Everett read Ordinance 02-28 by title only. **Motion by Commissioner Rees to approve Ordinance 02-28 and to schedule the public hearing for June 27, 2002. Seconded by Commissioner Dixon and carried 5-0.**

- K. **Ordinance 02-29: Small Scale Comprehensive Plan Amendment of 820 Coke Avenue as Low Density Residential (Quilling)**

City Attorney Everett read Ordinance 02-29 by title only. **Motion by Commissioner Harriman to approve Ordinance 02-29 and to schedule the public hearing for June 27, 2002. Seconded by Commissioner Dixon and carried 5-0.**

- L. **Ordinance 02-30: Rezoning of 820 Coke Avenue from County R2 to City R-1B (Quilling)**

City Attorney Everett read Ordinance 02-30 by title only. **Motion by Commissioner Rees to approve Ordinance 02-30 and to schedule the public hearing for June 27, 2002. Seconded by Commissioner Harriman and carried 5-0.**

- M. **Ordinance 02-31: Annexation of 9 acres located northwest of Tildenville School Road and north of the West Orange Trail (Allen)**

City Attorney Everett read Ordinance 02-31 by title only. **Motion by Commissioner Harriman to approve Ordinance 02-31 and to schedule the public hearing for June 27, 2002. Seconded by Commissioner Dixon and carried 5-0.**

- N. **Ordinance 02-32: Small Scale Comprehensive Plan Amendment of 9 acres located northwest of Tildenville School Road and north of the West Orange Trail from Orange County Low Density to City Suburban Density Residential (Allen)**

City Attorney Everett read Ordinance 02-32 by title only. **Motion by Commissioner Graham to approve Ordinance 02-32 and to schedule the public hearing for June 27, 2002. Seconded by Commissioner Harriman and carried 5-0.**

- O. **Ordinance 02-33: Annexation of 9 acres located on Windermere Road, east of Windermere Crossings Phase II (Lake Whitney Estates)**

City Attorney Everett read Ordinance 02-33 by title only. **Motion by Commissioner Rees to approve Ordinance 02-33 and to schedule the public hearing for June 27, 2002. Seconded by Commissioner Harriman and carried 5-0.**

- P. **Ordinance 02-34: Small Scale Comprehensive Plan Amendment of 9 acres located on Windermere Road, east of Windermere Crossings Phase II as City Suburban Density with a Conservation Overlay (Lake Whitney Estates)**

City Attorney Everett read Ordinance 02-34 by title only. **Motion by Commissioner Harriman to approve Ordinance 02-34 and to schedule the public hearing for June 27, 2002. Seconded by Commissioner Dixon and carried 5-0.**

- Q. **Ordinance 02-35: Rezoning of 9 acres located on Windermere Road, east of Windermere Crossings Phase II from Orange County A-1 to City R-1 (Lake Whitney Estates) and a recommendation to approve the preliminary plat**

City Attorney Everett read Ordinance 02-35 by title only. **Motion by Commissioner Rees to approve Ordinance 02-35 and to schedule the public hearing for June 27, 2002 and approve the preliminary plat. Seconded by Commissioner Harriman and carried 5-0.**

- R. **Ordinance 02-36: Amending City Code Section 2.10 of Appendix "A" regulating driveways**

City Attorney Everett read Ordinance 02-36 by title only. **Motion by Commissioner Harriman to approve Ordinance 02-36 and to schedule the public hearing for June 27, 2002. Seconded by Commissioner Dixon. Motion carried 5-0.**

6. **MATTERS OF CONCERN FROM CITIZENS - None**

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

8. **MATTERS FROM CITY MANAGER – (Item moved)**

9. **MATTERS FROM MAYOR AND COMMISSIONERS**

Mayor Quesinberry: None

Commissioner Rees:

Stated that the new pay for parking lot downtown has opened at a bad time for all the struggling merchants during the street renovations.

Commissioner Graham:

Invited everyone to attend the Memorial Day Service on Monday at 8:30 a.m. at Veteran's Memorial Park.

Commissioner Dixon:

- Stated she will be meeting with Commissioner Sindler for obtaining funding for the Safe Neighborhood Program. She will also be attending a meeting about the Front Porch Initiative and any available grants.

- Requested a letter from the City for Homes in Partnership to get some Brownfield money for 24 acres on the corner of CR 545 that they are negotiating with Ms. Jones to get for a park and some homes.

Commissioner Harriman:

Stated that Governor Jeb Bush has signed Charter School approval for Orange County, which he understands should solve everything.

10. **ADJOURNMENT:** The meeting was adjourned at 8:41 p.m.