



CITY OF WINTER GARDEN

OFFICE OF THE CITY CLERK

251 W. PLANT STREET

WINTER GARDEN, FL 34787

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REGULAR MEETING MINUTES

CITY COMMISSION

August 11, 2005

A **REGULAR MEETING** of the Winter Garden City Commission was called to order by Mayor Quesinberry at 6:30 p.m. at 29 W. Garden Avenue, Winter Garden, Florida. The invocation and Pledge of Allegiance were given.

Present: Mayor Jack Quesinberry, Commissioners Rod Reynolds, Theo Graham, Mildred Dixon, and Carol Nichols

Also Present: City Manager Mike Bollhoefer, City Clerk Kathy Golden, City Attorney Frank Bedell, Assistant to the City Manager Marshall Robertson, City Planner Mark Cechman, Utilities Director Fernand Tiblier, Police Chief George Brennan, Recreation Director Jay Conn, Trailer City Manager Johnny Clark, Building Official Willie Herbert, Finance Director Brian Strobeck, Fire Chief John Williamson, Information Technology Director Bob Reilly, Public Works Director Bob Smith, West Orange Times reporter Michael Laval and Orlando Sentinel reporter Sandra Mathers

1. APPROVAL OF MINUTES

Motion by Commissioner Graham to approve the regular meeting minutes of July 11, 2005 as submitted. Seconded by Commissioner Dixon and carried unanimously 5-0.

2. SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCE

A. Ordinance 05-38: RELATING TO THE RESIDENCES OF SEXUAL OFFENDERS (THOSE CONVICTED OF A VIOLATION OF SECTION 794.011, SECTION 800.04, SECTION 827.071, OR SECTION 847.0145, FLORIDA STATUTES, REGARDLESS OF WHETHER ADJUDICATION HAS BEEN WITHHELD, WHEN THE VICTIM OF THE OFFENSE FOR WHICH THE CONVICTION RESULTED WAS LESS THAN SIXTEEN (16) YEARS OF AGE AT THE TIME THE OFFENSE WAS COMMITTED) WITHIN THE CITY LIMITS OF THE CITY OF WINTER GARDEN AND PROHIBITING THE RENTAL OF CERTAIN REAL PROPERTY TO CERTAIN SEXUAL OFFENDERS AND SEXUAL PREDATORS; AMENDING CHAPTER 50 OF THE CODE OF ORDINANCES, CITY OF WINTER GARDEN, FLORIDA, ENTITLED "OFFENSES AND MISCELLANEOUS PROVISIONS," TO CREATE ARTICLE

VII, TO BE ENTITLED "SEXUAL OFFENDERS AND SEXUAL PREDATORS" AND CREATING SECTIONS 50-191 ENTITLED "FINDINGS AND INTENT," 50-192 ENTITLED "APPLICATION OF ORDINANCE/EXISTING CONTRACTS," 50-193 ENTITLED "DEFINITIONS," 50-194 ENTITLED "SEXUAL OFFENDER AND SEXUAL PREDATOR RESIDENCE PROHIBITION; MEASUREMENT; PENALTIES; EXCEPTIONS," PROVIDING FOR A PROHIBITION FOR SEXUAL OFFENDERS AND SEXUAL PREDATORS CONVICTED OF CRIMES UNDER CERTAIN FLORIDA STATUTES FROM LIVING WITHIN 2,500 FEET OF SPECIFIED LOCATIONS WITHIN THE CITY OF WINTER GARDEN AND CREATING SECTION 50-195 ENTITLED "PROPERTY OWNERS PROHIBITED FROM RENTING REAL PROPERTY TO CERTAIN SEXUAL OFFENDERS AND SEXUAL PREDATORS; PENALTIES," PROHIBITING OWNERS OF REAL PROPERTY FROM RENTING OR LEASING ANY PLACE, STRUCTURE, OR PART THEREOF, TRAILER OR OTHER CONVEYANCE LOCATED WITHIN 2,500 FEET OF SPECIFIED LOCATIONS WITHIN THE CITY OF WINTER GARDEN TO SEXUAL OFFENDERS AND SEXUAL PREDATORS CONVICTED OF CRIMES UNDER CERTAIN FLORIDA STATUTES; PROVIDING FOR CODIFICATION, SEVERABILITY, AN EFFECTIVE DATE, AND CONFLICTS

City Attorney Bedell read Ordinance 05-38 by title only. Mayor Quesinberry opened the public hearing. Hearing or seeing none, the public hearing was closed. **Motion by Commissioner Graham to approve Ordinance 05-38. Seconded by Commissioner Nichols and carried unanimously 5-0.**

3. **REGULAR BUSINESS**

A. **Request for sponsorship by the National Heritage Foundation** *(Continued from July 28, 2005)*

Mayor Quesinberry called Mr. Andre Lancaster who represents Charity for Charities. Mr. Lancaster was not present to address the City Commission. **Motion by Commissioner Dixon to reconsider this request in the future if they reapply. Seconded by Commissioner Nichols and carried unanimously 5-0.**

B. **Recommendation to approve an Interlocal Agreement with Orange County for automatic external defibrillators (AEDs) awarded through a grant**

Fire Chief Williamson stated that the grant application was submitted through Orange County and funded five AEDs at 100 percent. Two are in the Recreation Department, one is going to the Police Department, and two are going to Fire Department vehicles. **Motion by Commissioner Dixon to approve the Interlocal Agreement with Orange County as submitted. Seconded by Commissioner Graham and carried unanimously 5-0.**

C. **Recommendation to approve a letter of support for a traffic signal at the intersection of State Road 50 and Carter Road**

City Planner Cechman stated that the owner of People's Plaza is in the process of redeveloping their site and paid for a traffic warrant study, which has recommended a signal light. The next step is to make the formal request to Department of Transportation. The owners have requested a letter of support from the City Commission, which he has

drafted and included in the agenda package. **Motion by Commissioner Dixon to approve the letter of support to the State of Florida for a traffic signal at the intersection of State Road 50 and Carter Road. Seconded by Commissioner Graham and carried unanimously 5-0.**

D. **Recommendation to approve an easement agreement with the State of Florida for crossing the West Orange Trail at Covington Park Subdivision (Roper/Youngblood)**

City Planner Cechman stated that this item is a proposed easement agreement between the City of Winter Garden and the State of Florida allowing for crossing the State-owned West Orange Trail. Mayor Quesinberry stated the area referenced is north of Division Street and West of Hennis Road. **Motion by Commissioner Nichols to approve the easement agreement with the State of Florida for crossing the West Orange Trail at Covington Park Subdivision as submitted. Seconded by Commissioner Dixon and carried unanimously 5-0.**

E. **Resolution 05-15:** AUTHORIZING THE CONVEYANCE OF CERTAIN REAL PROPERTY GENERALLY DESCRIBED AS BEING LOCATED AT 160 WEST PLANT STREET, WINTER GARDEN, FLORIDA; PROVIDING FOR THE TERMS THEREOF; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Bedell read Resolution 05-15 by title only. **Motion by Commissioner Dixon to approve Resolution 05-15. Seconded by Mayor Quesinberry.** City Manager Bollhoefer gave a brief history of the City's involvement with this property: in March 2003, the City worked with the Heritage Foundation to purchase this property to refurbish it into a theater; in September 2003, a joint operating agreement for 99 years was entered into; in May 2004, a \$500,000 loan was granted to the Heritage Foundation for the refurbishing; in March 2005, the loan was increased to \$1.5 million. The Heritage Foundation is now asking that ownership be transferred to them because the Dr. Phillips Foundation has made this a stipulated condition for their contribution because they fear the City, as a public entity, would force the Heritage Foundation to put on a venue that they would not approve of, as the Dr. Phillips Foundation supports family-oriented shows.

Commissioner Nichols responded that she understands and agrees with the concern, but she has additional questions she needs answered by the Heritage Foundation (HF) and asked Mr. Ward Britt, President of the Heritage Foundation, to provide the answers.

Question: Has the Foundation ever prepared a report on how the money is being spent right now?

Answer: All the money will be spent on the construction of the theater.

Question: Have there been any reports given to the City and is there any projected opening date?

Answer: The HF is in the final permitting phase and should have the permit within the next two days to one week. Minor demolition was done some months ago and the City was given the invoice that the HF paid. Construction will resume at that time. Opening should occur 12 months from the date they break ground and when R. C. Stevens starts, within the next two weeks.

Question: Other than the one invoice, the remainder of the \$1.5 is still intact?

Answer: Yes

Question: Is the Board of the HF paid a salary?

Answer: No. It is completely a volunteer organization.

Question: Is the HF a 501(c)3 organization?

Answer: Correct

Question: She understands that R. C. Stevens is on the HF Board, is that correct?

Answer: Tim Keating, President of R. C. Stevens is on the Board.

Question: She understands that possibly R. C. Stevens is going to be contracted to do the work.

Answer: They are.

Question: Is it ethical for a board member of a not-for-profit organization to contract with the organization to do the labor?

Answer: They have an agreement that R. C. Steven will obtain three bids for every single phase so there will be a competitive bid for each phase; electrical, air conditioning, etc. He has also written HF a letter of agreement that he will do it at his cost, with no profit.

Question: R. C. Stevens is planning on subcontracting?

Answer: Yes, he is.

Question: Based on a story she heard, it is true that IRS is investigating the HF?

Answer: No.

Question: This information has something to do with some political signs posted at the Heritage Foundation in violation of the 501(c) 3 designation.

Answer: As far as he knows, there is no investigation of the Heritage Foundation. The political sign in question was up for about a day without his knowledge and as soon as he saw it, he took it down.

Question: Have there been any plans made or bookings for shows or acts?

Answer: It is a little too early for that, but they have a volunteer committee working on a mock season. A survey is going out to the community to see what the interests are.

Question: A prior statement by Mr. Britt was made that he thought the theater would bring in approximately \$2 million a year into the City.

Answer: A market survey he has states it will bring in at least a million with seating of only 180 and they are going to have 300-plus seating theater.

Commissioner Reynolds stated he also has questions for Mr. Britt.

Question: The revenue stream projection shows \$50,000; is that from the \$500,000 CRA grant?

Answer: No, that is the operating funds from the City they use to run the museums and now the theater.

Question: Wasn't the loan for property improvements and not operations.

Answer: That is a separate item that is budgeted annually for the Heritage Foundation for operations and has nothing to do with the theater loan or theater construction.

Question: Did the \$500,000 loan request start out as a CRA landscape improvement according the CRAAB Board meeting minutes.

Answer: No, it was never that. It was to be used to begin construction on the theater. As they raise the million, it is going to trickle in over a long period of time, hence he went back and asked for a \$1.5 loan to get the project completed, and then the loan would be paid back from grants from Dr. Phillips and others.

Question: Does the Dr. Phillips Foundation have contingencies for their contribution?

Answer: Always, with every foundation, there is a contingency.

Question: Can you state those contingencies?

Answer: Yes, he will try from memory. They want conveyance of property to the HF to be private hands; family-friendly agreement so nothing shown will be shocking to family and children; prove that they can use the money properly by getting three different bids from every part of the construction to get the cheapest price; show that they can operate it after it is built; name it Dr. Phillips Garden Theater.

Question: How much are they contributing?

Answer: Dr. Phillips Foundation is contributing \$500,000; CRA \$500,000; another \$240,000 or \$250,000 from Winter Garden residents; \$1.5 million from the City; and requesting a \$350,000 capital grant from the State towards a \$3 million project.

Question: How much does the Heritage Foundation have invested in the property itself?

Answer: Nothing, they have no funds because they are a 501(c) 3 and only raise funds to support museums and the theater.

Question: If the theater project is not successful, the property is returned to the City?

Answer: Correct.

Commissioner Nichols asked that in light of the information provided, she would like the Resolution amended to include that if the Heritage Foundation should ever lose its tax exempt status or it is determined that any illegal or unethical activity has occurred by the Foundation, the property would immediately revert to the City. City Manager Bollhoefer stated that this item is only the Resolution and the previous documents, the loan agreements, etc., it has that language. When the property transfer documents come back to the City Commission, that language will be included and staff will ensure that the recommended language will be included.

Mr. Jerry Chicone, 12607 West Lake Butler Road (unincorporated Orange County); gave a brief history from when the State of Florida began a Main Street campaign 15 to 20 years ago and Winter Garden worked hard to get designed as one of the towns and missed getting the designation two or three times. Part of Main Street Winter Garden was the Heritage Foundation. Their accomplishments have included saving the Edgewater Hotel, the clock tower, Kay Cappleman wrote the history book of Winter Garden, then he and his sister purchased the Depot for \$150,000 and gave it to the City. The streetscape could not have been done if they had not given it to the City with a letter that it must be used for historic purposes. If it is ever for anything other than historic purposes, the title then reverts to the Orange County History Center. The City then contacted him about the theater for recreation. He paid for the theater appraisal and contacted the owner and about a year later Mr. Pounds contacted him about a possible sale and it was purchased at a very good price. Meanwhile, the City wanted the lot across from City Hall and he also worked on that as a real estate broker and without any commission. The lot has since been sold. Mr. Chicone stated he has confidence in the citizens of Winter Garden, Mr. Ward Britt's leadership, and the City Commission that this can be worked out. They will gladly accept a reverting clause in the theater conveyance that states when theater projects are no longer viable then the title reverts back to the City. He assures the Commission that with the passionate people who desire the theater, it can be a success and a great asset to the Recreation Department, etc. He asked the Commission to have confidence in everything the Heritage Foundation has done through the years that equals

a contribution of over \$300,000. They are working for the good of Winter Garden and asked the City Commission to work with them.

Commissioner Reynolds asked Mr. Chicone if the board would be willing to guarantee the loan for \$1.5 million. Mr. Chicone responded that this is not a Commission heritage, it is a combined effort and they are going to make it work. He didn't ask the City of Winter Garden to guarantee the clock tower or depot, he did it out of good faith and is asking the Commission to do the same. Commissioner Reynolds asked if he could take that as a no. Mr. Chicone responded that he is not going to answer because he does not think it is an appropriate question.

Commissioner Graham stated that he read a letter from the Dr. Phillips Foundation to Mr. Britt that had some restrictions to the Dr. Phillips Foundation pledge, which is to be paid with an irrevocable transfer of ownership. The City Attorney has, prior to Commissioner Nichols asking, indicated to him that the clause would not be revocable. Mr. Britt responded that Dr. Phillips Foundation has accepted the ownership reversion clause.

Motion carried 3-2; favor Quesinberry, Dixon, and Graham, opposed Nichols and Reynolds.

4. MATTERS FROM CITIZENS

Mayor Quesinberry stated that all speakers will have up to three minutes to address the City Commission and notified those present that the heading has been changed in order to allow both City residents and business owners to address the City Commission at this time.

Ms. Joyce McWilliams, 302 W. Tilden Street, Winter Garden, Florida stated she and her husband joined the Heritage Foundation and believe the foundation is doing a wonderful job.

Mr. Edward Bowman, 14 Laurel Driver, Winter Garden, Florida asked Trailer City Manager Johnny Clark to come forward to accept a card of appreciation from Trailer City residents whom he assisted after a microburst hit the park and he spent over half the night assisting all the residents.

Mr. James Mark Pitchford, 235 N. Dillard Street, Winter Garden, Florida stated he was appalled to see two Commissioners vote against the theater Resolution and he can't believe they sit on the Commission. If any one needs to be recalled, it should be them.

Mr. Kurt Ardaman, 170 E. Washington Street, Orlando, Florida stated he is present in his capacity as a board member of the West Orange Chamber of Commerce and thanked the Commission for voting in favor of conveying the theater to the Heritage Museum. That decision furthers a 2-1/2 year long project that the West Orange Chamber has initiated, sponsored, and paid for as part of the visioning process. This action promotes and concludes the first tier under a visioning goal for cultural facilities, supporting and facilitating regional parks, performing arts centers, amphitheaters, and the like.

Mr. Marshall Robertson, 326 W. Bay Street, Winter Garden, Florida stated his support of hiring Michael Bollhoefer as the City Manager. He has worked for the City for 36 years under four different City Managers and two interim City Managers, and Mr. Bollhoefer is trained, and better than some, he has worked for in the past. He and Mr. Bollhoefer have worked together very closely for the past four years and he has done a terrific job and encouraged the City Commission to vote yes for his contract.

Speaking in opposition to the proposed Fowler Grove Mall were:

Ms. Deborah Eichen, 14217 Country Estate Drive, Winter Garden, Florida

Mr. James Balderrama, 14315 Hampshire Bay Circle, Winter Garden, Florida

Mr. Ed Lynch, 660 Home Grove Drive, Winter Garden, Florida

Mr. Colin Sharman, 312 Duff Drive, Winter Garden, Florida

5. **MATTERS FROM CITY ATTORNEY** – Frank Bedell had no items.

6. **MATTERS FROM CITY MANAGER** – Mike Bollhoefer

A. **Request for financial assistance by the Central Florida YMCA**

Mr. Wayne Humphries was not present. City Manager Bollhoefer stated that in 2002 to 2003, The YMCA expanded their center, annexed into the City and connected to the City's water and wastewater system. That cost them an additional \$40,000 plus engineering fees. During that time, the YMCA was under the understanding that the fees they paid were going to go to the City Commission to request reimbursement. He has researched this issue and found there was discussion but the item never came to the Commission. He met with the YMCA and now proposes that the City pay the YMCA \$10,000 a year for four years and the YMCA, in return, will establish a scholarship fund to only be used for low-income families of Winter Garden for various activities such as swim classes, summer day camp, and youth sports. He recommends approval of this compromise. Mayor Quesinberry stated that he remembers this issue as indicated by Mr. Bollhoefer, which was an item under the prior City Manager. Commissioner Nichols asked if the YMCA currently has a scholarship program in place with established criteria. Mr. Bollhoefer replied yes. **Motion by Commissioner Dixon to approve allocating \$10,000 a year, for four years, to the Roper Central Florida YMCA, who will disbursed the funds to low-income families through a scholarship program. Seconded by Commissioner Graham.** Commissioner Dixon stated she is working to get more citizens involved in utilizing the YMCA services, which is an asset to the community. Commissioner Graham stated that a lot the expenses incurred by the YMCA at the time was because the City had them make changes in they way they were affecting the water and sewer. At that time, the City could not forfeit the fees to any organization because the City had a loan contract that specifically stated it could not, otherwise it would have come from the impact fees or contingency fund. Mr. Bollhoefer stated that the funds will come from the General Fund and be included in the annual budgeting process at \$10,000 a year. Commissioner Graham asked if the loan has been paid. Mr. Bollhoefer replied that he believes the last payment was made. **Motion carried unanimously 5-0.**

B. **City Manager contract**

Mr. Bollhoefer stated he had discussions during the week with Commissioners and has since provided a revised contract for their consideration and noted the following changes:
Section 1.A - Changed to "contract" shall commence on
Section 4.A - Changed salary to \$97,219.20, which is 5 percent more than he is currently making
Section 7 - Changed Use of Vehicle to eliminate personal use and for the most part follows the same guidelines as all City employees
Section 13 - The language inserted is directly from the ICMA contract guide, which is standard from the Florida State Statutes

Commissioner Reynolds stated he has only just received these changes and has not had an opportunity to meet with Mr. Bollhoefer and he has some proposed changes as well and distributed a copy to the Commission stating that if Mr. Bollhoefer can agree to the minor changes, then we can move forward. Mayor Quesinberry asked Commissioner Reynolds whether or not he had received the proposed contract last week. Commissioner Reynolds stated yes, the initial proposed contract. Mr. Bollhoefer responded that he would not agree to the list just submitted by Commissioner Reynolds except under item 7 as he has no problem with it in theory, but it doesn't belong in a contract; Mr. Bollhoefer stated he has already removed the provision for Ph.D. education and item 13 has already been changed. He added he would not agree with most of the items primarily because most are not common or acceptable items in a general City Manager's contract. The one he has presented to the City Commission is a standard contract based on the ICMA and contracts throughout the state. He thinks his submitted contract is both fair and reasonable. Commissioner Reynolds stated that he actually prepared his proposed changes from the examples provided from other cities and doesn't think anything unusual has been presented. Commissioner Dixon stated that she wants to hire Mr. Bollhoefer and there has been a valid contract presented by him. Mr. Bollhoefer stated that he has personally discussed his proposed contract with each Commissioner and stands by the contract he has submitted. Mayor Quesinberry called for a motion. **Motion by Commissioner Dixon to approve the contract submitted by Mike Bollhoefer. Seconded by Commissioner Graham.** Commissioner Nichols stated she would like an additional opportunity to read the proposed changes presented tonight and that she does not sign a contract until she has read it. **Motion carried 3-2; favor Graham, Dixon and Quesinberry, opposed Reynolds and Nichols.** Commissioner Graham stated that he wanted to point out that the item to purchase of a fuel-efficient vehicle by noting that Mr. Bollhoefer has only driven the prior City Manager's vehicle home twice, which gets very low gas mileage. Someone who looks out enough for the City to save a few dollars on gas, he personally thinks he can trust them. Mayor Quesinberry and members of the audience congratulated Mr. Bollhoefer.

Mr. Bollhoefer updated the Commission on Daniels Road south of the bridge which was decaying and falling apart and becoming a dangerous situation. He had no option but to transfer funds from the contingency fund to repave that portion at \$30,000.

Mr. Bollhoefer distributed a letter from the West Orange High School requesting permission to utilize one side of Plant Street on September 16, 2005 for their

Homecoming parade. **Motion by Commissioner Graham to approve the request. Seconded by Commissioner Nichols and carried unanimously 5-0.**

Mr. Bollhoefer called forward Public Works Director Smith. Mr. Smith stated that the City of Winter Garden is discharging untreated stormwater into Lake Apopka that runs to a canal discharging to Lake Beauclair that is within the Upper Ocklawaha River Basin. There is an executive committee, as mandated by the State Department of Environment Protection, that is requesting the appointment of a City elected official to sit on the committee that meets once a month and report back to the City Commission on what needs to be done and how much it will cost. Commissioner Dixon recommended Commissioner Graham and Mayor Quesinberry agreed with her recommendation. Commissioner Graham accepted the appointment and stated his concerns about the aquifer that is actually dropping. If development keeps going as it is, other water sources will have to be considered and funding for purifying the water system may also be required.

7. **MATTERS FROM MAYOR AND COMMISSIONERS**

Commissioner Reynolds

Stated that for the record the downtown renovations are great, he likes what is going on but we have to balance that with good fiscal policy. The Commission has a responsibility to the taxpayers of the City to do just that, if not, they are not doing their jobs adequately.

In regard to the City Manager contract, basically from person-to-person he likes Mr. Bollhoefer, he just felt that his drafted contract would put more balance into it. It was not a personal vendetta of any issues with Mr. Bollhoefer himself.

Commissioner Graham

Noted that the Florida League of Cities annual conference magazine once again did not include Winter Garden advertisement. Mr. Bollhoefer replied staff is researching why.

Addressed an earlier comment that State Road 50 widening would not be starting until 2012; he has spoken with Senator Webster and encouraged residents to contact the legislators, his information is that it will not be until 2012 but in fact will be moved up sooner. They already have the right-of-way from Highway 27 to the Turnpike. Some Federal funding has already been allocated. He understands that by the year 2012 the road widening will be completed.

Stated his appreciation for what Mr. Chicone has done for the City he was raised in and still lives nearby. Mr. Chicone continues to do a lot for the City one of which is the theater that will be good for the City. Commissioner Graham stated he believes the Heritage Foundation has the City's best interest at heart and everyone may not agree on everything, but he thinks everyone should be able to discuss it and get along afterwards. He encouraged all the citizens to work together for the benefit of Winter Garden.

Commissioner Dixon

Shared her life experiences with the Chicone family and stated he has given back to the City he grew up in and she appreciates him as she does the Britt and Roper families. There is

much diversity in our City and we are able to live together. We need more in common and we need to show our talents and draw on each culture for unity. The theater will help the City in this area.

Mayor Quesinberry

Stated his appreciation of all those in attendance.

The meeting adjourned at 8:00 p.m. to the next regularly scheduled meeting on August 25, 2005.