

REGULAR MEETING MINUTES
CITY COMMISSION
June 23, 2005

A **REGULAR MEETING** of the Winter Garden City Commission was called to order by Mayor Quesinberry at 6:30 p.m. at Tanner Hall, 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: Acting City Manager Mike Bollhoefer, City Attorney Lionel Rubio, City Clerk Kathy Golden, Assistant to the City Manager Marshall Robertson, Police Chief George Brennan, City Planner Mark Cechman, Utilities Director Fernand Tiblier, Information Systems Director Bob Reilly, Public Works Director Bob Smith, Fire Chief John Williamson, Recreation Director Jay Conn, Human Resources Director Frank Gilbert, Building Official Willie Herbert, Trailer City Manager Johnny Clark, Sanitation Supervisor John Love, West Orange Times reporter Michael Laval, and Orlando Sentinel reporter Sandra Mathers

1. **APPROVAL OF MINUTES**

Motion by Commissioner Dixon to approve the regular meetings minutes of May 26, 2005 correcting references to Reverend Snell should be Brother Snell. Seconded by Commissioner Nichols and carried unanimously 5-0.

Dispensed as the City Commission and convened as the Community Redevelopment Agency at 6:35 p.m.

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

Members Absent: Larry Cappleman and Dale Crosby

2. **Appointments to Community Redevelopment Agency (CRA) Advisory Board for three expiring terms**

Mr. Bob Battaglia, CRA Advisory Board Vice-Chairman, came forward and stated that at the last CRA Advisory Board meeting, the Board took action to recommend reappointing himself and Hank Sines, and appointing of Harold Bouler to fill the seat vacated by Jerry Chicone; each to a four-year term expiring June 30, 2009. **Motion by Agency Member Dixon to appoint Bob Battaglia, Hank Sines and Harold Bouler to the CRA Advisory Board for a four-year term expiring June 30, 2009. Seconded by Agency Member Graham.** Agency Member Reynolds asked how the vacancies were advertised. Mr. Battaglia replied that the Board followed the same process it has followed since he began serving, which is to ask the existing members whether or not they would like to be reappointed and if so, the Board voted on it. In the case of Mr. Chicone's seat, he stated he had a schedule conflict and would not be requesting reappointment. The Board took applications for the open seat and chose to recommend Mr. Bouler. Mr. Reynolds asked Mr. Battaglia if he was the only member who was not a Winter Garden resident. Mr. Battaglia

responded that he believes there is another non-resident. Mr. Reynolds thanked Mr. Battaglia for all his service to the Board and asked if there were any members on the Board who had property within the CRA who would be affected by the CRA project area between Plant Street and 419. Mr. Battaglia responded yes. Mr. Reynolds asked how a CRA Advisory Board member with property in the CRA could take action to make any improvements and avoid the appearance of having any conflict of interest. Mr. Battaglia responded that in light of the fact that his Board is strictly an advisory board making recommendations to the CRA and the CRA makes all the decisions, he does not see a conflict. Mr. Reynolds asked if there has been any publicly disclosed owned property in the CRA area. Mr. Battaglia referred him to the City Attorney for the answer. Mr. Reynolds asked where the direction came from for filling the vacancies. Mr. Battaglia stated that he believes it came from the CRA because the protocol has been the same ever since he began serving. Mr. Reynolds asked that it be entered into the business of the CRA that the protocol be revised to at least publicly advertise the vacancies to give everyone in the City the opportunity to participate. Agency Member Nichols asked where the selection protocol is. City Attorney Rubio responded that the application process is that anyone who is interested in serving on any board has the opportunity to submit an interest application that is kept on file and submitted whenever there is an appointment consideration. Ms. Nichols noted the current application has no box to mark for this board. City Clerk Golden noted that the form has since been revised and is available on the City web page. Acting City Manager Bollhoefer stated that the CRA Board makes the decision on the procedure for filling vacancies. Agency Member Nichols stated that she thinks it is improper to sit on the CRA Advisory Board when the person is not a resident of the City and that it should be advertised. She also noted that Mr. Chicone's letter is dated March and she was not made aware of it until she received her agenda package. Therefore, she was unable to contact anyone to ask them if they were interested in being appointed. Agency Member Reynolds suggested postponing this item for further investigation because he is not comfortable with making the decision without all the information and he does not want to do anything that is not legal. Agency Member Graham responded that he doesn't believe that anything the CRA has done since 1992 has been illegal and he doesn't believe a CRA Advisory Board member has to be a resident. Orange County was involved in the original plan and they had to approve it prior to CRA being created. He believes that if there were anything illegal, it would have been dealt with prior to being approved by the City. The current proposed revisions are still with Orange County and as far as he knows, the County has not yet approved it. Agency Member Dixon stated that the advisory board is comprised of those who either live or own property in the CRA. Agency Member Nichols stated that her concern is if the CRA votes in these Advisory Board members and a change is needed, they will be seated for another four years. Mr. Rubio read from City Code Section 98-21 "The board of commissioners of the community redevelopment agency shall appoint a community redevelopment advisory board, which shall consist of no less than seven and no more than nine members, of which a majority shall either reside, own property or operate a business located within the area of operation of the community redevelopment agency." Agency Member Reynolds asked if there was direction in the Code relating to the procedure for filling vacancies and how will the public know when there is a vacancy. Agency Member Graham replied that it is the same procedure as for filling a vacancy on any board and that is to complete and file an interest form. City Clerk Golden stated that based on the discussion, she will be providing the CRA members with a

copy of all future written resignations and simultaneously run a display ad noticing the vacancy.

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

The Community Redevelopment Agency adjourned and reconvened as the City Commission at 6:54 p.m.

3. FIRST READING AND PUBLIC HEARING OF PROPOSED ORDINANCES

A. **Ordinance 05-34:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING 233 S. DILLARD STREET MORE SPECIFICALLY DESCRIBED HEREIN FROM R-2 TO CITY C-3; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Rubio read Ordinance 05-34 by title only. **Motion by Commissioner Nichols to approve Ordinance 05-34 with the second reading and public hearing being scheduled for July 28, 2005. Seconded by Commissioner Graham.** Commissioner Graham asked if the owner had purchased the property on First Street to combine them into one parcel. City Planner Cechman replied yes and the applicant is present. **Motion carried unanimously 5-0.**

B. **Ordinance 05-28:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 6 OF THE WINTER GARDEN CODE OF ORDINANCES RELATING TO ALCOHOLIC BEVERAGES BY AMENDING THE FOLLOWING SECTIONS THEREOF: SECTION 6-1, DEFINITIONS, SECTION 6-4, HOURS OF SALE, SECTION 6-5, POSSESSION, CONSUMPTION OR DISPLAY OF ALCOHOLIC BEVERAGES ON PUBLIC PROPERTY OR ON PREMISES OF UNLICENSED COMMERCIAL ESTABLISHMENTS, SECTION 6-6, BOTTLE CLUBS, AND BY ADDING SECTION 6-7, VIOLATIONS; PROVIDING FOR CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE

City Attorney Rubio read Ordinance 05-28 by title only. Police Chief Brennan stated that he requested the revisions to clarify the language and better define a restaurant, live entertainment, audit provisions, and enforcement provisions. **Motion by Commissioner Graham to approve Ordinance 05-28 with the second reading and public hearing being scheduled for July 14, 2005. Seconded by Commissioner Nichols and carried unanimously 5-0.**

C. **Ordinance 05-36:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING ARTICLE IV OF CHAPTER 38 OF THE WINTER GARDEN CODE OF ORDINANCES RELATING TO NOISE BY AMENDING THE FOLLOWING SECTIONS THEREOF: SECTION 38-152, PURPOSE, SECTION 38-153, TERMINOLOGY, STANDARDS AND DEFINITIONS, SECTION 38-155, PROHIBITED ACTS, SECTION 38-156, MAXIMUM PERMISSIBLE SOUND LEVEL LIMITS, SECTION 38-157, SOUND MEASUREMENTS, SECTION 38-158, EXCEPTIONS, SECTION 38-160, ENFORCEMENT, SECTION 38-161, PENALTY, SECTION 38-162, OTHER REMEDIES, SECTION 38-164, ADMINISTRATION, AND SECTION 38-165,

VARIANCES; PROVIDING FOR CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE

City Attorney Rubio read Ordinance 05-36 by title only. Police Chief Brennan stated that he requested the revisions in order to clarify the existing provisions and make them easier to enforce. He noted some of the changes made were the addition for generators, enforcement without the use of a sound meter, and animal noises. Commissioner Dixon asked about the exceptions listed in section 138-158. Police Chief Brennan replied that the items listed would not be enforceable, such as police vehicle sirens and some community events. Commissioner Graham asked if the City currently has a sound level meter. Police Chief Brennan replied that the Public Works Department has one that they use. **Motion by Commissioner Graham to approve Ordinance 05-36 with the second reading and public hearing being scheduled for July 14, 2005. Seconded by Commissioner Dixon and carried unanimously 5-0.**

- D. **Ordinance 05-37:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, PROVIDING FOR AN ADJUSTMENT IN THE SALARIES OF THE MEMBERS OF THE CITY COMMISSION; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

City Attorney Rubio read Ordinance 05-37 by title only. **Motion by Commissioner Reynolds to approve Ordinance 05-37 with the second reading and public hearing being scheduled for July 14, 2005. Seconded by Commissioner Dixon and carried unanimously 5-0.**

4. SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCES

- A. **Ordinance 05-30:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, PROVIDING FOR REPEAL OF ORDINANCE NO. 04-77, WHICH AMENDED SECTION 18-57 OF THE WINTER GARDEN CODE OF ORDINANCES RELATING TO AMENDMENTS TO THE BUILDING CODE BY CREATING SUBSECTION (e): PROVIDING FOR THE SURFACE TREATMENT OF MASONRY WALLS AND STRUCTURES; PROVIDING FOR TRANSMITTAL TO THE FLORIDA BUILDING COMMISSION; AND PROVIDING AN EFFECTIVE DATE

City Attorney Rubio read Ordinance 05-30 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. Mr. Rubio announced that just recently Senate Bill 442 was signed into law that provides that the Florida Building Commission is to address the issues dealing with water intrusion in order to reach a statewide consensus on the matter. **Motion by Commissioner Graham to adopt Ordinance 05-30. Seconded by Commissioner Nichols and carried unanimously 5-0.**

- B. **Ordinance 05-31:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING THE CITY OF WINTER GARDEN BUDGET FOR FISCAL YEAR 2004-2005; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

City Attorney Rubio read Ordinance 05-31 by title and that the total for revenue and expenses equal \$5,389,080. Mayor Quesinberry opened the public hearing. Hearing none, the public hearing was closed. **Motion by Commissioner Dixon to adopt Ordinance 05-31. Seconded by Commissioner Graham.** Commissioner Graham stated he has three items. The first is the overtime on page 6 under the Building Department he asked if it was due to the turnover and hiring from the outside for

inspections. Acting City Manager Bollhoefer responded yes. Commissioner Graham asked about page 13 under Recreation and whether or not the land had already been purchased, 20 acres in the southern area. Acting City Manager Bollhoefer replied no, it has not and it has not yet been identified. If it were, it would have to come back to the City Commission for approval. Commissioner Graham stated that the third item is on page 17 under Utility Operating Fund for the contract installation of 3,600 remote meters because he doesn't believe they have been installed. Acting City Manager Bollhoefer replied no, they have not all been installed. The long-term goal is to replace all meters as remote and has been included in the budget in order to expedite the process, which requires hiring outside assistance. Taking these steps would get most of the City on the new meters this year with the rest being installed next year. The advantage of installing the new meters is that they can all be read in one or two days a month. **Motion carried unanimously 5-0.**

PUBLIC HEARING ON APPEAL OF PLANNING AND ZONING BOARD DECISION

A. Appeal of Planning and Zoning Board Decision regarding Special Exception Permit for rooming houses at 122 and 114 ½ North Center Street as filed by Allister Rodgers – (Continued from May 26, 2005)

City Planner Cechman restated the details of the appeal filed as provided in the agenda package. Since the last continuance, he and the Fire Chief have met with Mr. Anthony and Brother Snell. Mr. Anthony has stated he would provide a written proposal; however, to date, that proposal has not been submitted. Mr. Rodgers has submitted a letter regarding his absence from the hearing due to the death of a family member and he had to travel out of state. Staff still maintains its recommendation of denial of the appeal for the reasons stated in the agenda package. Commissioner Dixon stated that she opposes allowing Mr. Anthony to speak on Mr. Rodgers's behalf because the Commission should be addressing Mr. Rodgers directly. Acting City Manager Bollhoefer stated that he has provided a copy of a letter from the East Winter Garden area religious leaders supporting the elimination of boarding houses. They also support consideration of relocating the residents. In support of relocating the 12 residents, Mr. Bollhoefer suggested providing financial assistance of at least \$3,000 from the contingency fund to work with the area churches and Christian Service Center. Mayor Quesinberry stated that he supports the denial recommendation and does not know if Mr. Rodgers has made any attempts to meet the Fire Code requirements. Commissioner Dixon stated that the problem is the displacement of people and the fact that for the past 25 years buildings have been torn down and not replaced. How long will it take to get them a place to live? Funds could be used to repair some homes the residents could move into. Mr. Bollhoefer suggested that if the Commission decides to deny the appeal, allow the residents three months to find new housing. City staff could work with the pastors and Christian Service Center to find suitable housing. Commissioner Graham suggested denying the appeal and not limiting the time for relocating the residents. Mr. Bollhoefer stated that without a time limit, it does not encourage the residents to try and relocate. He is confident alternate housing could be found. Mayor Quesinberry opened the public hearing.

Shirley Smith, 21 W. Crest Avenue, Winter Garden, Florida, stated that she spoke at the last meeting regarding the property needed for affordable housing and to put a time limit on the residents without finding them a place to live is unquestionable.

Pastor Byron Stevenson, Bay Street Church, 1301 E. Bay Street, Winter Garden, Florida, stated that the ministers indicated on the letter submitted have met and discussed this situation and they are not in favor of displacing anyone, moving anyone against their will, nor in favor of their living conditions, but with a little effort something can be done. The substandard living should be done away with and we need to act now.

Harold Bouler, 813 E. Bay Street, Winter Garden, Florida, stated that he agrees with what Pastor Stevenson has said and that there is too much of this going on in that community. He encouraged the Commission to see the situation first hand and speak with the area residents. Apartments are available for relocating the rooming house residents.

Hearing no other comments, the public hearing was closed.

Commissioner Reynolds stated his agreement with the men's philosophy but he doesn't understand how allowing the situation to continue is the beginning of a solution and he is perplexed as to what the ministers are proposing. Pastor Stevenson replied that for those who want to help themselves, the ministry is here to help them. Commissioner Reynolds asked if the Pastor was saying they could get the residents mobilized in 90 days. Pastor Stevenson replied yes, by taking the funds that will be made available to find them housing within their current rent range. Anyone remaining after 90 days is there because they don't want to leave and don't want the help. Commissioner Dixon pointed out that according to the Comprehensive Plan, the City is supposed to have an affordable housing component, which should be available for the residents. Commissioner Nichols asked what happens to the property if the residents are relocated. Acting City Manager Bollhoefer stated that if the property is not given a special exception, it remains zoned as single-family residential. Mayor Quesinberry asked Fire Chief Williamson to address the violations. Mr. Williamson responded that most of the violations fall under Chapter 26 of the Life Safety Code and FDA 101, which include a sprinkler system, detection and alarm systems, means of egress, hallway width, which would have to be enforced if the special exception were granted. The first inspection occurred because they were inadvertently directed to the building. They first found exposed wiring but they have not been allowed on the property for a second inspection to see if that has been resolved. They also witnessed holes being cut into the walls in an apparent attempt to meet the exception allowed in Chapter 26. They were told at that time that they needed a permit for the repairs but the person there told the Fire Department he was only doing maintenance on the building. Commissioner Reynolds asked how long would it take for Mr. Rodgers to comply with Chapter 26. Fire Chief Williamson replied that his Department was going to work with Mr. Rodgers and have him submit a set of engineered plans for fire protection within 30 days and within another 60 days have the items resolved. Therefore, 90 days would be sufficient to bring the building up to code. Mr. Bollhoefer stated that Mr. Rodgers has been making these promises since 1997 and to date nothing has been accomplished. City Planner Cechman noted that Mr. Rodgers

has been given time to bring another one of his properties at 100 North Street into compliance and to his knowledge, nothing has been done. Mr. Bollhoefer asked the Commission to consider the fact that the City is starting an improvement project in East Winter Garden and by approving a special exception for rooming houses, would hinder the whole economic redevelopment of the area.

Motion by Commissioner Graham to deny the appeal filed by Allister Rodgers of his denied Special Exception application for rooming houses by the Planning and Zoning Board and to allow Mr. Rodgers 90 days (until September 22, 2005) to find alternate housing for the current residents who want to relocate by working with the ministerial association and the City. Seconded by Commissioner Nichols and carried unanimously 5-0.

4. **REGULAR BUSINESS**

A. **Request to utilize the Law Enforcement Trust Fund (LETF) to make a donation to the Florida Missing Children's award ceremony**

Police Chief Brennan stated that all Florida Police Associations have been asked to donate \$250 to the Florida Missing Children's ceremony in Tallahassee on September 12, 2005. Therefore, he is requesting approval of the donation from the LETF. **Motion by Commissioner Graham to approve the donation as requested. Seconded by Commissioner Dixon and carried unanimously 5-0.**

B. **Recommendation to approve the Final Plat for Belle Meade Subdivision**

City Planner Cechman stated that the project is on County Road 545 basically south of Stoneybrook West. Staff has reviewed the final plat and recommends approval with the conditions provided in the agenda package. The Planning and Zoning Board has also made their review and recommends approval. Applicant Kevin Kramer with Cambridge Homes stepped forward and stated he concurs with the recommendations made to the Commission. **Motion by Commissioner Dixon to approve the Final Plat for the Belle Meade Subdivision. Seconded by Commissioner Nichols.** Commissioner Graham asked why, under note item 3, would the vehicular access to Tilden Road for lots 56 through 66 be dedicated to the City of Winter Garden. Mr. Kramer stated the lot numbers changed at the last minute in order to be in sequence so the note section will also have to be amended. He further explained that the note is included for those lots backing up to Tilden Road as to require internal subdivision access and would not let someone install a driveway out the back of the lot onto Tilden Road. The change affects lots 28 through 38. Mr. Cechman stated the change would be made prior to the plat being signed. *There was no objection made by the motioner or seconder to amending plat note #3 to state lots 28 through 38.* **Motion carried unanimously 5-0.**

C. **Request to settle Code Enforcement Board fines and authorize the release of lien on 420 Winter Garden Vineland Road owned by J&WB, Inc.**

Acting City Manager Bollhoefer stated that back in 2001, J&WB, Inc. was cited with four code violations and subsequently complied with many of the issues with the exception of having too many storage containers. J&WB, Inc. was issued a Notice of Compliance that they believed covered all the violations and therefore took no further action. As a result, fines accumulated totaling \$76,400 and staff is recommending settlement of the fines for half the actual cost to the City because of the misunderstanding

on both sides. Therefore, the recommended settlement amount is \$1,025. Commissioner Reynolds asked how long the fines had accumulated. Code Enforcement Manager Clark responded that the Board heard the case in 2001 and in April of 2003, they were in compliance. Mr. Bollhoefer stated that the Notice of Compliance did not specify which code violations were in compliance so they assumed they were in compliance with everything. Commissioner Reynolds asked if J&WB received any future notices that they were still in violation. Mr. Clark replied no. **Motion by Commissioner Dixon to accept payment from J&WB, Inc. in the amount of \$1,025 to settle and satisfy liens filed in Code Enforcement Board case #01-666. Seconded by Commissioner Graham and carried unanimously 5-0.**

5. MATTERS FROM CITIZENS

Don Miller, 1073 Woodson Hammock Circle, Winter Garden, Florida, stated that two years ago he was appointed to serve as the City's representative on the MetroPlan Orlando Citizens' Advisory Committee without any direction or information being provided to him. He attends a monthly meeting and at the last meeting had a conversation with Dr. Foglesong about their role on the committee. He also discussed possible funding needed for the roads relating to the proposed mall. He found out that the County should be funding the road improvements, and that both the County and State can each fund 50 percent. Mr. Miller stated that he did share some needs of the West Orange County area with board members and they have asked some of the members, including him, to make a presentation. Mr. Miller stated he has already spoken with Acting City Manager Bollhoefer, and asked the Commission and audience to attend the next month's meeting. Anyone may contact him for more information. Commissioner Dixon pointed out that there is money available and all members should be attempting to get what they can.

Speaking in opposition to the proposed Fowler Grove Mall were the following:

Tom Reedy 14217 Country Estate Drive, Winter Garden, Florida
Deborah Eichen, 14217 Country Estate Drive, Winter Garden, Florida
Dean Armitage, 663 Groves End Lane, Winter Garden, Florida
Joyce Robinson, 13743 Glynshel Drive, Winter Garden, Florida
Barbara Pennington, 421 Timbercreek Drive No., Winter Garden, Florida
Colin Sharman, 312 Duff Drive, Winter Garden, Florida
James Balderrama, 14315 Hampshire Bay, Winter Garden, Florida
Lisa LaNasa, 431 Home Grove Drive, Winter Garden, Florida

Speaking in favor of the proposed Fowler Grove Mall were the following:

Shirley Smith, 21 W. Crest Avenue, Winter Garden, Florida
Sarah Arnold, 205 S. Highland Avenue, Winter Garden, Florida

Shirley Smith, 21 W. Crest Avenue, Winter Garden, Florida, addressed earlier comments made by Mr. Bollhoefer about the improvements to East Winter Garden and not rebuilding the boarding houses. Ms. Smith asked how soon it would be before the improvements would begin. Mr. Bollhoefer replied that the CRA is working on a plan to redevelop the East

Winter Garden area and are actually meeting next month and he expects it to begin in a year. The first phase of the plan will include 9th Street to 11th Street, from North Street to Klondike Street. Ms. Smith asked if it includes 9th Street from SR 50 to Plant Street. Mr. Bollhoefer replied yes, that is in the CRA's long-term plan. Ms. Smith addressed her experience with the CRA Advisory Board and her concern with the length of the terms.

Barbara Pennington, 421 Timbercreek Drive No., Winter Garden, Florida, stated she has written the Commission a letter and read her concerns. First, she requested that Mike Bollhoefer be appointed the City Manager without going to the expense of advertising. She does not know him personally, but she is very impressed with Mr. Bollhoefer and her contacts with him. She believes he would be an excellent City Manager. He knows where the City is at right now and it would be detrimental to bring someone in from the outside right now. Her second matter is the City Charter and asked the Commission to look at the districts and require Commissioners to reside in the district they represent. Also, she would like to see the population represented more equitably in the districts so one district does not have so many more voters than another.

Jerry Carris, 347 Bayside Drive, Winter Garden, Florida, stated that he feels the proposed raises for the Mayor and Commissioners are appropriate from what he has read in the newspaper and based on the fact they are not reimbursed for their expenses. Mayor Quesinberry clarified that the Commission can file for travel expense reimbursements. Mr. Carris asked the City Commission to carefully consider the requests made by Ms. Pennington regarding the Charter review.

James Balderrama, 14315 Hampshire Bay, Winter Garden, Florida, stated that during the hurricanes last year he heard 911 calls from seniors who were frightened, scared and alone living in their older or manufactured homes. He asked the City to devise a plan or have a sign-up list for homeowners willing to open their homes and help the seniors who live alone whenever there is a hurricane forecasted for the area. He offered his home and sees it as an opportunity to benefit his family by being able to learn more about the history of Winter Garden from our seniors, and encouraged others to do the same.

Tina Aldrich, 141 W. Plant Street, Winter Garden, Florida, stated she is President of the Merchants' Association, CRA Advisory Board member since 1997, and a Planning and Zoning Board member. She was originally approached to serve on the Advisory Board after purchasing her business. The protocol has been that whenever there was an upcoming CRA district project, they try to find those in the CRA district who will provide positive input on the project. The Advisory Board chose to recommend Harold Bouler since he is in the next project area. The ultimate decision has always been by the CRA board. The method in which the CRA Advisory Board approaches their appointment recommendations is strictly up to the CRA. She hopes their track record speaks well of them.

6. **MATTERS FROM CITY ATTORNEY LIONEL RUBIO**

A. **Sexual predator distance separation requirements for a proposed ordinance**

Mr. Rubio updated the Commission by stating that an Ordinance has been drafted and will be provided in the agenda package for the July 14 meeting. Staff is preparing the

related maps using the GIS system that will geographically depict how the different distances will lay out throughout the City.

Village at Fowler Groves as a referendum vote

Mr. Rubio stated he has been asked if the project could be submitted to the voters as a referendum and the answer is no for a variety of reasons but primarily under Chapter 163, F.S., it cannot be done for comprehensive plans and development orders affecting five parcels or less. Also, part of the decision making process, in conjunction with two of the ordinances, is that they are quasi-judicial in nature. The Commission is sitting in a quasi-judicial capacity and as such, the decision must be based on substantial confident evidence as presented to the Commission when the decision is made. A referendum by definition would not have any findings of facts or conclusions, so there would be no findings. There is a State Attorney General Opinion (AGO) that supports that a comprehensive plan by referendum is inappropriate. However, the City Commission may opt to conduct a straw poll that would have no binding effect. It would be merely an unofficial expression of the voter intent. In discussions with the Orange County Supervisor of Elections Office, providing the ballot language is provided to them by the end of this week, they estimate that a straw poll could be conducted with the results to the City Commission by the meeting of August 25. The expenses associated with the straw poll are approximately \$12,000. **Mayor Quesinberry** asked if it would be mailed only to the registered voters. **Mr. Rubio** replied yes. **Commissioner Dixon** questioned why the Commission would want a straw ballot that would have no bearing but cost the City \$12,000. The Commission has been listening to comments for the past three months and should have some idea as to the opinion of the people. **Commissioner Reynolds** stated he is very much in favor of a straw poll ballot as valuable input and would like the wording to be other than a yes and no answer. He wants middle ground such as “are you in favor of a project that is within the current comp plan” or “are you in favor of a project that is 60 to 80 acres” as is proposed now. He wants to know what the silent majority thinks about the proposed mall in the City and everyone should have an opportunity to give their opinion. **Commissioner Nichols** stated that she thought there was going to be some type of a poll. **Acting City Manager Bollhoefer** replied that the polling idea was looked at but after the last meeting, someone mentioned the referendum and Mr. Rubio researched the idea and found it could not be done but a straw ballot poll could. **Mayor Quesinberry** stated that he favors a straw poll but not with questions that confuse people but with more than just a yes or no. **Commissioner Nichols** stated that the first thing people need is to be educated because too many people are asking the same questions over and over again, so that means the word is not getting out. **Commissioner Graham** stated that a mail-in vote will generate a lot more people voting because they can do it in the comfort of their own home. **Commissioner Reynolds** stated that having the postage paid will generate more voting. He also stated that he feels it is irresponsible to have this idea brought up at the last minute and that the ballot questions have to be written immediately. **Mr. Rubio** stated that any postponement of the Sembler items would have to occur on July 28, not tonight. The first question to be answered is does the City Commission want to conduct a straw poll and if so, what are the questions. **Commissioner Nichols** asked who would receive the ballots. **Mayor Quesinberry** replied the registered voters. **Mr. Bollhoefer** stated that the ballot questions given to him

would be provided to the Commission in the next meeting agenda package. **Motion by Commissioner Graham to authorize a mailed straw poll ballot regarding the proposed mall with three proposed questions submitted to the Acting City Manager for inclusion in the next agenda. Seconded by Commissioner Reynolds.**

Commissioner Nichols stated that since there is an issue regarding the voter registration books closing prior to the polling ballots being issued, she would like to have an announcement advertised and that if the residents want their voice heard, they need to register or change their address to ensure receipt of a straw ballot.

Motion carried unanimously 5-0.

7. MATTERS FROM ACTING CITY MANAGER MIKE BOLLHOEFER

A. Establish workshop date(s) for growth management and Winter Garden Village at Fowler Groves

Advised that the workshop for growth management is being planned for after the regular City Commissioner meeting on July 14, 2005. For the village mall workshop, staff wants to present their analysis for consideration at the July 14, 2005 meeting, but since the meeting is in Commission Chambers and the space will not be adequate, staff will release a written report on July 14, 2005 and then make the presentation after the meeting on July 28, 2005. Mayor Quesinberry asked about the procedure for postponing the mall ordinances on July 28, 2005. Mr. Rubio responded that the request for postponement would need to be made by the City.

B. Update on previous Commission meeting items

Stated that in the future he will be providing the Commission, at each meeting, the status of certain items that have previously come before the City Commission.

- Mr. Bollhoefer addressed an earlier comment made about the Burger King property for widening Daniels Road that was actually 17 feet of land that Burger King was asking \$850,000, which is not the cost of the land because the amount has not yet been determined.
- Mr. Bollhoefer corrected a statement he made at the prior Commission meeting that the Comp Plan states the Fowler property has 30 acres that can go up to 40 acres, not 40 that can go to 60 acres for commercial.
- Stated that all questions asked tonight will be part of the next agenda package and answered at one time. Anyone wishing to have individual questions answered can call or email him.

C. Report on Preferred Employer Plan

Mr. Bollhoefer stated that over the last several months, staff has been reviewing the employee plans offered by the City and what it would take to get people to say they want to work for Winter Garden. Human Resources Director Gilbert has provided the City Commission with a copy of some recruitment enhancements for Winter Garden. Mr.

Gilbert came forward and stated that he has been asked by a City Commissioner to address what the City is doing to improve recruitment and retention of City employees, which is an extremely important part of our human capital goals. He has distributed an outline of enhancements leading to the City of Winter Garden being a "Preferred Employer" and briefly went over the items. Commissioner Dixon stated her support of what is planned. Commissioner Reynolds asked what the schedule is for completing a proposal to submit to the City Commission. Mr. Gilbert replied that some will go into the next fiscal year for budgeting and some items such as pay adjustments are being planned now and forwarded as part of the budget process. Many pay adjustments have already been implemented in the departments such as building inspectors, some solid waste workers, some of the grounds keepers, and others are being looked into.

D. Update on roll-off ordinance and collection of fees

Public Works Director Smith stated that at the last Commission meeting there were some questions about roll-off fees and has researched Chapter 22 of the Code of Ordinances for residential and for commercial. The commercial portion states that we have a non-exclusive franchise, which means that any trash hauler who wants to provide roll-off compactor service can as long as they register with the Public Works Department by providing proof of insurance, passing a background investigation, have having their equipment inspected before being able to provide roll-off or compactor bins to commercial locations. The City is compensated 15 percent of the gross revenue collected by the service. In fiscal year 2003/04 it generated over \$35,000 in revenue for the City. The second part is residential building permits at \$20 for each application, which in fiscal year 2003/04 generated \$15,380. There are three options: 1) leave it as it is, 2) adjust the fees, or 3) go to an exclusive franchise fee. Mr. Smith proposed option three to give roll-off and compactor service to one franchisee to make it easier to police and control. Rates are open to suggestions and he asked for directions, if any. Mayor Quesinberry asked what process is proposed. Mr. Smith responded that staff would have to prepare and issue a Request for Proposal from all licensed trash haulers. A scoring system would have to be created and used to rate a proposal using a point system. A team comprised of staff other than just the Sanitation Department or a citizen, who would then score the proposals. Of the ten surrounding cities surveyed, eight have an exclusive franchise for both commercial and new residential. Commissioner Reynolds stated he thinks it is a win-win-win situation because typically the service provider bids lower, the cost is lower to the builder, and the City receives more revenue because as Mr. Smith has previously stated, roughly \$60,000 has been missed and our fees are relatively low compared to other comparable growth zones. Also, the concept of building a fence, throwing your trash in it, and scooping it up also needs to be addressed also. Mayor Quesinberry questioned whether only one company could handle an exclusive franchise. Mr. Smith replied that it would have to be phased in because no one hauler who would have enough containers to handle the volume. Commissioner Graham asked if we go to an exclusive franchisee, does the City Commission set the rates they charge. Mr. Smith replied yes, by Ordinance or Resolution. Commissioner Reynolds asked about incorporating the hobos as a user fee up front with the building permit. Mr. Smith replied that hobos are addressed in Section 58 for residential sanitation and a recommended change will be forthcoming for a one time \$50 fee payable when someone first opens a utility account on

a new house. **Motion by Commissioner Reynolds to direct staff to draft an exclusive franchise ordinance for commercial and residential roll-off containers. Seconded by Commissioner Nichols and carried unanimously 5-0.**

E. **Discussion on conveyance of the Old Winter Garden Theater**

Mr. Bollhoefer stated that back in May 2004 the City Commission approved an operating agreement and authorized staff to prepare documents to transfer ownership of 160 W. Plant Street, which was to be part of a contribution to assist the Heritage Foundation in rebuilding the old theater. The transfer request comes from the Foundation because they are running into problems with some of the non-profit organizations not wishing to deal with a government owned building because often they are forced to put on or not put on certain shows. Prior to any transfer of property within the CRA, it must first be advertised for 30 days. This action does not require that the property be sold or transferred to anyone in particular, only that it be in the best interest of the City. If the advertising is approved, staff would bring back the related document after 30 days authorizing the transfer of ownership. Commissioner Nichols asked when, why and how much was the property purchased. Mr. Bollhoefer replied that it was two to three years ago with another piece of property for the purpose of a theater for \$275,000. Commissioner Nichols asked if the intent was to buy the property and then give it away. Mr. Bollhoefer stated he was not involved and therefore could not give an answer. Commissioner Reynolds stated the City and CRA previously provided funds and asked if the total City investment in the property is about \$2 million. Mr. Bollhoefer replied that there is \$1.5 million loan, the property was purchased for \$275,000, and there is a pledge by the CRA for \$500,000 to be paid out over 15 years. Commissioner Reynolds asked if the money is there, why can't they just purchase it from the City. Mr. Ward Britt came forward and stated that the project is currently \$3 million. The loan is to be paid back by half a million from Dr. Phillips, CRA half a million, local residents have put in about a half a million that is enough to repay at the loan, with another \$1.5 million needed to complete the project. They have submitted a grant request to the State for \$375,000 and Darden Restaurants has indicated an interest in donating. They are also going after tourist tax money of \$500,000 to \$1 million. Commissioner Reynolds asked for a pro-forma (revenue stream) showing how the payment would be made. Mr. Britt replied that he can produce the information requested. Commissioner Reynolds asked what the loan percentage rate is. Mr. Britt responded three percent. Mr. Reynolds asked if anyone in the CRA can borrow money to renovate buildings. Mr. Bollhoefer replied that anyone in the CRA can approach the City for a loan and it would be up to the CRA Board to make the final decision and the percentage. Mr. Britt also pointed out that an independent study was performed and in the first year of full operation, they will put \$1.5 million in revenue back into the City of Winter Garden. Commissioner Reynolds asked what would happen if for any reason the project did not succeed. Mr. Britt advised that ownership would transfer back to the City. **Motion by Commissioner Dixon to direct staff to place the legal advertisement noticing the disposal for 160 W. Plant Street. Seconded by Commissioner Graham and carried unanimously 5-0.**

- Mr. Bollhoefer stated that he has provided the City Commission with photos of the lake behind Tanner Hall showing severe soil erosion, several sidewalks starting to

sink, and there is a large hole. If there are no objections, he will use contingency funds to hire an engineer to do an engineering study to save the walls and to consider what to use the dock area for in the future. *No objections were noted.*

- Advised that the West Orange High School has requested to use downtown for their Homecoming Parade and will be sending the City a letter with more information.
- A couple of weeks ago Commissioner Dixon brought Mr. Robert Guy to his office. Mr. Guy later brought in a grant offered through HUD called Youth Program Grant that hires locals to train them in construction while they refurbish houses. The grant has been submitted and may be ongoing. The grant application is for \$700,000 and Mr. Bouler was instrumental in going door-to-door to get residents to agree to participate in having their houses repaired as part of the grant application.
- Announced that the Trunkline "C" contractor is obligated to complete the work by August 15, but with all the rains, he is guessing the actual completion date will be September 1. The road will be open for the 4th of July but will not be paved. Commissioner Reynolds asked if there is a date, the contractor is penalized for not being completed. Mr. Bollhoefer replied yes, and it has been extended based on the number of rain days. Commissioner Reynolds noted that the citizens would not like to see the August 15 date moved back any further and to scrutinize any request to extend. Mr. Bollhoefer stated staff will stand firm on the date. Commissioner Graham noted that extensions for rainy days are usually provided for in the contract as a reason for an extension.
- *The May Financials were distributed to the Mayor and Commissioners.*

6. MATTERS FROM MAYOR AND COMMISSIONERS

A. Selection of Mayor Pro Tem

Motion by Mayor Quesinberry to elect Commissioner Graham as Mayor Pro Tem. Seconded by Commissioner Nichols. Commissioner Dixon objected to the election of Commissioner Graham noting he has served as Mayor Pro Tem twice before. **Motion carried 4-1; Commissioner Dixon opposed.**

Commissioner Nichols

- Asked why the City water tastes so bad. Utility Director Tiblier replied that he thinks City water tastes great and he would be glad to sample her tap water because it could be something on her side of the service line.
- Stated there has been a lot of talk tonight about grants, funding, and money available and asked if there has been any consideration to having a full-time lobbyist, someone to work for the City to get the money that is out there and we are entitled to. Mayor Quesinberry stated that the City has had a couple of lobbyists in the past. Commissioner Graham stated that the lobbyists in the past were hired for the legislative session but he thinks Commissioner Nichols is speaking of a grant writer. Commissioner Dixon stated she has information to give the Acting City Manager regarding where there are funds available and we don't have to pay anyone to get it. Commissioner Reynolds stated that there could be a combined position of lobbyist/grant writer. Mr. Bollhoefer stated he could do

some research on a grant specialist and report back. Commissioner Nichols would like to see someone dedicated to the City of Winter Garden in obtaining available funds.

Commissioner Dixon

Stated that Orange County already has an Economic Development person that the City can utilize, so why pay someone else. We need to look seriously at what is going to be done on the east side. Last year \$1,500 was put into the computer room. In the meantime, they have hired a teacher for the computer lab that has 20 students. Recreation does not have the funds need to get the program started.

Commissioner Graham

Responded to the earlier question by Shirley Smith regarding the CRA funds, which can only be spent on properties located within the CRA. His recollection is that the boundary on 9th Street only goes as far as Smith Street and gave a general description of the boundaries.

B. Discuss possible search for City Attorney

Commissioner Reynolds stated that several residents in District 1 have asked him to ask the City Commission for a vote of confidence for continued legal representation by Winderweede, Haines, Ward, & Woodman (WHW&W). The motion put forward is not with any malice towards Mr. Rubio but due to what happened during the recall and other matters, it may be in the best interest of the Commission to seek new counsel. He asked for discussion and a motion to see if it carries. Mayor Quesinberry made reference to the prior City Attorney who resigned because of a conflict and admitted that his firm, of about eight attorneys, did not have the specialized areas that WHW&W has with some 40 attorneys. The Mayor stated he would not be in favor of changing the City's legal counsel from WHW&W and all the expertise they provide the City. There are many aspects to the law and to expect any one attorney to know everything is a lot of pressure. Commissioner Dixon asked what would be accomplished by changing attorneys now.

Commissioner Nichols stated that the issues facing the City are too important to be taken lightly and Mr. Rubio doesn't have the experience. The Commission asks specific questions and they are not getting specific answers. He should not be responding by stating someone should call him tomorrow.

Commissioner Graham stated that he has an issue with Mr. Rubio's advice regarding the recall and appointment process. Mr. Rubio kept bringing up things that were done improperly at a prior meeting. Commissioner Graham told Mr. Rubio that he was just as responsible for his ignorance as he was. When Commissioner Graham made a motion instead of a Resolution, Mr. Rubio did not inform at that time that it was an improper action. When an election date was set, after the fact, the Commission was told it could not be done and it bothered him that all these things were improper. It is something Mr. Rubio should have told the Commission in advance and corrected in the first meeting so he feels they were ill advised at the time, not later. Any action that the Commission may do at a meeting, the City Attorney should advise and correct them at the time. Commissioner Graham stated he is not critical of the law firm and thinks they are good

law firm but if the Commission wants to stick with them, maybe they can give the City someone who is more mature or has more experience. Commissioner Reynolds stated he is okay with interviewing people from the firm of WHW&W or other firms.

Motion by Commissioner Reynolds to dismiss Mr. Rubio and appoint Fred O'Neal as the temporary attorney until a new attorney search is conducted. Seconded by Commissioner Nichols.

John Kirby, prior City Engineer, stepped forward and stated there appears to be a vendetta and bad blood on the Commission. The rudeness and bickering going on between the Commission and lack of professionalism upsets him. There have been a lot of great things happening in Winter Garden such as the downtown. Commissioner Reynolds has been on the Commission for two meetings and already wants to fire the City Attorney. One would think he would want to get a better idea of what is going on and who is this other attorney (Fred O'Neal)? He doesn't understand and it doesn't make sense to him. Commissioner Nichols replied that she can answer Mr. Kirby. Mr. O'Neal was formerly with WHW&W, has been the City Attorney for the City of Winter Park, has vast experience and we are only asking that he fill the seat temporarily. Mr. Kirby stated it would be proper to ask the Acting City Manager to speak with WHW&W and have somebody else here immediately. Commissioner Nichols stated we have done that. Mr. Kirby asked the Commission if they had done that. Commissioner Nichols stated of course, individually to Mr. Bollhoefer, because they are not allowed to speak as a group. Commissioner Reynolds stated Mr. O'Neal is in the audience and can answer any questions.

Mr. Fred O'Neal came forward and stated that he has spoken to some of the Commissioners when the recall took place representing the recall committee. Regarding his experience, he stated he was not the City Attorney for Winter Park but was the Assistant City Attorney and later worked for WHW&W for about 10 years. He has been on his own for the past 15 years as a sole practitioner and has not represented any cities in the past 15 years, but has sued every City that can be pronounced in the past 15 years and that is how he has kept his hand in the game, so to speak, in municipal law. He recently represented Mr. Mulavaney regarding the Orlando election, the mayor dispute in Kissimmee, Mayor Vandergrift in Ocoee, and just about every city in Central Florida. He has been practicing for almost 27 years with the first 10 representing a city and the next 17 litigating against cities. Mr. Bollhoefer asked Mr. O'Neal if his experience suing cities shows he has skills to represent the City of Winter Garden. Mr. Bollhoefer suggested going to WHW&W, who has experience representing cities, and see if they have another attorney who can step in at least in the interim. Commissioner Reynolds stated he has a rebuttal. Whenever the FBI wants to stop check fraud, they hire the forger because they are the best at what they do.

City Attorney Rubio stated that as the City Attorney he serves at the pleasure of the Commission, not any individual Commission member. His responsibility is to protect the City for exposed liability to the extent he can, he does so to the best of his abilities. Without going into any details regarding the statements made, he sees it differently. The

WHW&W is a firm of 30 attorneys intertwined with the City of Winter Garden. There are attorneys handling eminent domain matters, evictions, conveyances, acquisitions, and litigation, with about 14 attorneys currently working on City of Winter Garden matters. With regard to Trailer City in District 1, special counsel prepared the nuts and bolts of the Ordinance, he and Mr. Bollhoefer reviewed the Ordinance and actually made it a lot more benign.

Mayor Quesinberry stated there is a motion on the table and asked the motioner if he would like to make any revisions to the motion. (*Note: No call for the vote was made on the original motion and second.*)

Jerry Carris came forward and stated that he has one observation and that is it seems to him there has been some collusion between Mr. Reynolds and Ms. Nichols. He thinks there has been a violation of the Sunshine Law.

Shirley Smith came forward and stated she does not believe that Reynolds or Nichols would go to any degree of collusion. She does feel they are honest people. Commissioner Nichols told her she spoke with Mr. Bollhoefer and she is assuming Mr. Reynolds spoke to Mr. Bollhoefer. In her opinion, she thinks that to change lawyers at this time is a scam and to change lawyers now is detrimental to the citizens.

Commissioner Reynolds restated that he represents District 1 and the majority of the residents who have talked to him expressed to him that they want this item put forward. If it is the pleasure of the Commission to entertain another attorney from the same firm, as he has heard Commissioners Graham and Nichols state about compromising, then he moves that as his motion. Mayor Quesinberry asked for a second to the motion. Commissioner Graham asked for clarification of the motion as to whether it is to consider someone from WHW&W to replace Mr. Rubio. Mayor Quesinberry replied yes. **Motion by Commissioner Reynolds to consider another attorney from the law firm Winderweedle, Haines, Ward & Woodman. Seconded by Commissioner Nichols. Motion carried 3-2; favor Reynolds, Graham and Nichols; opposed Dixon and Quesinberry.**

C. **Inspection of Desert Ridge Mall in Scottsdale, Arizona**

Commissioner Reynolds stated that from what he understands the proposed Fowler mall models a mall located in Scottsdale, Arizona and asked the Commission if anyone has taken it upon himself or herself to actually go and look at the Arizona mall. Mayor Quesinberry stated he doesn't think anyone has to go clear to Arizona because he thinks there is one this side of Jacksonville to see an open mall concept. Commissioner Reynolds stated that a site visit would give the Commission a good idea of the magnitude and how it would interface with the surrounding subdivisions in relation to the way the roads are constructed and intersect. Commissioner Nichols asked Sembler if they have any comparably sized malls to the proposed Winter Garden mall. Mr. Tom Hareas, Sembler Company, replied yes. The project in Arizona is not a Sembler project. Mr. Bollhoefer asked Mr. Cechman if he had stated he knew of an existing mall similar to the proposed Fowler mall. Mr. Cechman stated he has been to the mall in Arizona when the

Fowler mall proposal was for one big mall and he did not think it was a good comparison. The Arizona mall is not surrounded by residential and he has slides available. Mr. Hareas stated that at the time, Desert Ridge was the only large sized open-air project in the United States, which opened two years ago. The St. Johns Town Center project in St. Johns County opened about two months ago with no vacancies in Phase 1. He believes Simon Properties based out of Indianapolis, Indiana is developing the project and it has similar components. Commissioner Reynolds asked if it the project is surrounded by residential. Mr. Hareas stated he believes a residential phase is planned but he did not witness any being built. He would have to research that information. Commissioner Reynolds stated that if the Arizona mall is not applicable, then a site visit would not be applicable.

The meeting adjourned at 11:05 p.m. to the next regularly scheduled meeting on July 14, 2005.

Mayor Quesinberry announced that the scheduled Charter Review workshop was being postponed until after the next regular Commission meeting.