



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

September 7, 2005

A **REGULAR MEETING** of the Winter Garden City Commission was called to order by Mayor Quesinberry at 6:00 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: 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. **FIRST READING AND PUBLIC HEARING OF PROPOSED ORDINANCES TO ADOPT A FINAL MILLAGE AND BUDGET FOR FISCAL YEAR 2005-2006**

A. **Ordinance 05-50:** AN ORDINANCE LEVYING TAX UPON ALL TAXABLE PROPERTY WITHIN THE CITY OF WINTER GARDEN, FLORIDA, FOR THE TAX YEAR BEGINNING ON OCTOBER 1, 2005 AND ENDING ON SEPTEMBER 30, 2006. City Attorney Bedell read Ordinance 05-50 by title and Section 1 to establish and levy a rate of 4.3040 mills, which exceeds the roll back rate of 3.8592 mills by 11.53 percent. **Motion by Commissioner Dixon to approve Ordinance 05-50 and schedule the second reading and public hearing on September 21, 2005. Seconded by Commissioner Graham. Motion carried unanimously 5-0.**

B. **Ordinance 05-51:** AN ORDINANCE APPROPRIATING AND ALLOCATING ALL REVENUE AND FUNDS OF THE CITY OF WINTER GARDEN, FLORIDA, FOR THE TAX YEAR BEGINNING ON OCTOBER 1, 2005 AND ENDING ON SEPTEMBER 30, 2006. City Attorney Bedell read Ordinance 05-51 by title and stated that it is anticipated that the collection of Ad Valorem will equal \$5,633,082 and Revenue other than Ad Valorem will equal \$ 14,220,363 for a total revenue amount of

\$19,853,445. **Motion by Commissioner Dixon to approve Ordinance 05-51 and schedule the second reading and public hearing on September 21, 2005. Seconded by Commissioner Nichols and carried unanimously 5-0.**

C. **Ordinance 05-52:** AN ORDINANCE APPROPRIATING AND ALLOCATING ALL REVENUE AND FUNDS OF THE COMMUNITY REDEVELOPMENT AGENCY (CRA) OF THE CITY OF WINTER GARDEN, FLORIDA, FOR THE TAX YEAR BEGINNING ON OCTOBER 1, 2005 AND ENDING ON SEPTEMBER 30, 2006. City Attorney Bedell read Ordinance 05-52 by title and stated that is anticipated the collection of Ad Valorem will equal \$277,036 and the Revenue other than Ad Valorem will equal \$352,385 for a total revenue amount of \$629,421. **Motion by Commissioner Dixon to approve Ordinance 05-52 and schedule the second reading and public hearing on September 21, 2005. Seconded by Commissioner Graham and carried unanimously 5-0.**

D. **Ordinance 05-53:** AUTHORIZING THE APPROPRIATIONS OF CITY FUNDS FOR FISCAL YEAR 2005-06 IN ACCORDANCE WITH ARTICLE 3 SECTION 30.4 OF THE CITY CHARTER OF THE CITY OF WINTER GARDEN, FLORIDA AND FLORIDA STATUTE 166.241 FOR THE PURPOSE OF FULFILLING THE FINANCIAL OBLIGATIONS OF THE CITY. City Attorney Bedell read Ordinance 05-53 by title only. **Motion by Commissioner Dixon to approve Ordinance 05-53 and schedule the second reading and public hearing on September 21, 2005. Seconded by Commissioner Nichols and carried unanimously 5-0.**

2. **APPROVAL OF MINUTES**

Motion by Commissioner Graham to approve the regular meeting minutes of August 25, 2005 as submitted. Seconded by Commissioner Dixon and carried unanimously 5-0.

3. **FIRST READING OF PROPOSED ORDINANCES**

A. **Ordinance 05-42:** AMENDING THE FUTURE LAND USE MAP OF THE CITY OF WINTER GARDEN'S COMPREHENSIVE PLAN BY CHANGING THE FUTURE LAND USE DESIGNATION OF PROPERTY LOCATED AT 124 SOUTH HIGHLAND AVENUE FROM RESIDENTIAL NEIGHBORHOOD COMMERCIAL TO COMMERCIAL; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Bedell read Ordinance 05-42 by title only. **Motion by Commissioner Reynolds to approve Ordinance 05-42 and schedule the second reading and public hearing on October 13, 2005. Seconded by Commissioner Dixon.** Commissioner Graham noted corrections needed on Attachment "A" Highland and Henry Avenues are upside down and State Road 486 should be State Road 438. City Planner Cechman stated the changes will be made prior to the next reading. **Motion carried unanimously with the noted corrections 5-0.**

B. **Ordinance 05-43:** REZONING APPROXIMATELY 1.8 ACRES LOCATED AT 124 SOUTH HIGHLAND AVENUE AND 302 WEST PLANT STREET, WINTER GARDEN, FLORIDA AND MORE SPECIFICALLY DESCRIBED HEREIN FROM CITY R-NC TO CITY C-1; PROVIDING FOR SEVERABILITY; PROVIDING FOR

AN EFFECTIVE DATE. City Attorney Bedell read Ordinance 05-43 by title only. **Motion by Commissioner Graham to approve Ordinance 05-43 and schedule the second reading and public hearing on October 13, 2005. Seconded by Commissioner Dixon and carried unanimously 5-0.**

- C. **Ordinance 05-45:** AMENDING SECTION 118-134 OF THE WINTER GARDEN CODE OF ORDINANCES RELATING TO EXPIRATION DATES FOR VARIANCES; AMENDING SECTION 118-102 OF THE WINTER GARDEN CODE OF ORDINANCES RELATING TO TIME LIMITS FOR SPECIAL EXCEPTIONS; PROVIDING FOR CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE
City Attorney Bedell read Ordinance 05-45 by title only. **Motion by Commissioner Dixon to approve Ordinance 05-45 and schedule the second reading and public hearing on October 13, 2005. Seconded by Commissioner Nichols.** Commissioner Dixon asked what prompted the proposed change. City Planner Cechman stated that currently applicants have six months after Planning and Zoning Board approval of the variance or special exception. The applicant's next step is it to try and get financing in place, which can sometimes take longer than the six months. He stated that in the past the applicants have been required to go back through the same process on a decision that has already been made on something that has not changed that much. This Ordinance will give them an additional six months to start pulling permits or they will have to resubmit their application. Commissioner Dixon stated that she was looking at hardships it may create for the applicants. Commissioner Reynolds asked Mr. Cechman if he felt it was the City staff's fault that the time limits were expiring. City Planner Cechman stated that he does not think it is staff's fault but sometimes developers will get a Special Exception and then get their financing in order that sometimes takes longer to get to the building permit stage and gave some examples. Staff believes that by adding an additional six months to make it valid for a year is not out of the question and the process remains the same. Commissioner Reynolds asked if a six-month extension is already allowed. Mr. Cechman replied that the proposed change would give the applicants a year and then they could request an additional extension of one year from the Planning and Zoning Board. Commissioner Reynolds clarified that the new maximum allowable time would become two years. **Motion carried unanimously 5-0.**

- D. **Ordinance 05-46:** AMENDING CHAPTER 94 ENTITLED NATURAL RESOURCE PROTECTION BY INCLUDING SECTION 94-132.5 ENTITLED "WETLAND BUFFER REQUIREMENTS"; PROVIDING FOR CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE

City Attorney Bedell read Ordinance 05-46 by title only. **Motion by Commissioner Dixon to approve Ordinance 05-46 and schedule the second reading and public hearing on October 13, 2005. Seconded by Commissioner Nichols.** Commissioner Graham stated that this ordinance addresses new development and the St. Johns River Water Management District currently requires buffers on some lakes. Therefore, he would like to include "lakes" in the proposed Ordinance because he feels it would be a good place to add it. Commissioner Dixon stated that she is not prepared to vote on adding "lakes" to the Ordinance because she needs more information on which lakes would be included. Commissioner Graham stated that his point is that they are cleaning

up the lakes and then people are allowed to install their lawns right up to the lake, which will continue to pollute them with their chemicals. The City of Windermere adopted a requirement that there be a swale between the lake and their lawn and that only certain types of fertilizers can be used. City Manager Bollhoefer stated that he believes the term wetlands covers the lakes. Mr. Cechman responded that most of the time there is a wetland right against the lake. Mr. Bollhoefer requested the item be tabled until further clarification can be provided. Commissioner Reynolds requested clarification as to why the PUD's are being exempted. City Planner Cechman stated that many times the a PUD comes through with very specific site planning and for the City to then require them to move everything back at this date would affect how they are doing their development. Mr. Bollhoefer suggested that the issue be tabled until the meeting of October 13, 2005 at which time a presentation will be given. **Both the motioner and seconder withdrew their main motion. Motion by Commissioner Dixon to postpone Ordinance 05-46 until October 13, 2005. Seconded by Commissioner Nichols and carried unanimously 5-0.**

- E. **Ordinance 05-47:** ESTABLISHING DIVISION 9 OF ARTICLE VI OF CHAPTER 118 ENTITLED "ENVIRONMENTAL PROTECTION OF DEVELOPING PROPERTIES"; PROVIDING FOR CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE
City Attorney Bedell read Ordinance 05-47 by title only. **Motion by Commissioner Dixon to approve Ordinance 05-47 and schedule the second reading and public hearing on October 13, 2005. Seconded by Commissioner Graham.** Commissioner Graham stated that Section 118-1320 addresses the Federal and State lists of protected species of animals and believes the City already has an ordinance that addresses the development of a piece of property whereby they will leave as many trees as possible and asked if that provision would need to be included in this Ordinance. City Manager Bollhoefer replied that the tree issue is enforceable under the existing ordinance. City Planner Cechman explained that this item is specific to federally listed species and would require that they at least look for the listed species and come up with some kind of mitigation plan insuring that the City is at least involved in that process. The second part is a Phase I Site Assessment on larger properties that requires them to identify and submit any environmental hazard information to the City of Winter Garden before any development permit is issued. Mayor Quesinberry advised that he has been informed there is an eagle nest on the property at Brayton Road and Bay Street. **Motion carried unanimously 5-0.**

- F. **Ordinance 05-48:** AMENDING SECTION 118-70 OF THE WINTER GARDEN CODE OF ORDINANCES RELATING TO PROCEDURES FOR SITE PLAN APPROVALS; PROVIDING FOR CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE
City Attorney Bedell read Ordinance 05-48 by title only. **Motion by Commissioner Dixon to approve Ordinance 05-48 with the second reading and public hearing being scheduled for October 13, 2005. Seconded by Commissioner Graham.** City Planner Cechman stated that this item is for site plan approvals, which are separate from Preliminary and Final Plan approvals by the City Commission. This ordinance does two things; it creates an expiration date of one year, requires the larger projects to be

reviewed by the Planning and Zoning Board, and must have approval of the City Commission. The Planning and Zoning Board may approve any smaller site plan, less than 25,000 square feet, or less than 2,500 weekday trips. **Motion carried unanimously 5-0.**

G. Ordinance 05-49: AMENDING CHAPTER 106 ENTITLED STORMWATER MANAGEMENT BY INCLUDING SECTION 106-18 ENTITLED "MAXIMUM IMPERVIOUS SURFACE RATIOS"; PROVIDING FOR CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE

City Attorney Bedell read Ordinance 05-48 by title only. **Motion by Commissioner Dixon to approve Ordinance 05-49 with the second reading and public hearing being scheduled for October 13, 2005. Seconded by Commissioner Graham.** Commissioner Graham asked why in the case of a PUD they would be allowed to exceed the impervious surface ratios (ISR). City Planner Cechman stated that it would be very difficult to predefine an ISR percentage for a PUD. What is normally done is when the PUD is approved the construction plans get approved, the PUD engineer has to establish what the ISR's are because he has to design the ponds. That number is what is used for each individual lot. Commissioner Graham stated that it is defeating the purpose because the PUD is causing more run-off than what can be perked into the aquifer. Therefore, he is not in favor of the passing it with the proposed provision for PUDs. Commissioner Reynolds stated that he also is opposed to passage without a current review. **Motion failed 1-4; favor Quesinberry, opposed Reynolds, Graham, Dixon, and Nichols.**

At this time, Mayor Quesinberry asked that ordinances 05-02, 05-22, and 05-24 be opened at once to combine the public hearings and conduct a separate vote on each ordinance. **Motion by Commissioner Graham to open ordinances 05-02, 05-22, and 05-24 as one public hearing. Seconded by Commissioner Reynolds and carried unanimously 5-0.**

4. THIRD READING AND PUBLIC HEARING OF PROPOSED ORDINANCE

A. Ordinance 05-02: AMENDING THE WINTER GARDEN COMPREHENSIVE GROWTH MANAGEMENT PLAN TO ALLOW FOR THE DEVELOPMENT OF AN OPEN AIR MALL ON THAT CERTAIN REAL PROPERTY GENERALLY DESCRIBED AS 174.8 ACRES OF LAND LOCATED NORTH OF THE WESTERN BELTWAY AND EAST OF COUNTY ROAD 535 AND GENERALLY KNOWN AS THE FOWLER PROPERTY BY SPECIFICALLY AMENDING POLICY 1.3 OF THE FUTURE LAND USE ELEMENT BY INCLUDING A "BELTWAY CENTER" LAND USE CATEGORY; AND AMENDING OBJECTIVE 3 OF THE CAPITAL IMPROVEMENT ELEMENT BY ESTABLISHING A POLICY IDENTIFYING PROPORTIONAL SHARE CONTRIBUTION FOR INFRASTRUCTURE IMPROVEMENTS REQUIRED BY A DEVELOPMENT OF REGIONAL IMPACT; AND AMENDING THE FUTURE LAND USE MAP BY CHANGING THE LAND USE DESIGNATION OF THE AFORESAID REAL PROPERTY GENERALLY KNOWN AS THE FOWLER PROPERTY FROM WINTER GARDEN LOW DENSITY RESIDENTIAL AND CONSERVATION OVERLAY TO CITY BELTWAY CENTER WITH A CITY CONSERVATION OVERLAY; AND REVISING POLICY 9.3.2.4 OF THE FUTURE LAND USE ELEMENT BY CHANGING THE DESIGNATION OF THE FOWLER

PROPERTY TO BELTWAY CENTER; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE (Fowler Comprehensive Plan Amendment)

5. **SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCES**

- A. **Ordinance 05-22:** APPROVING THE DEVELOPMENT ORDER OF THE WINTER GARDEN VILLAGE AT FOWLER GROVES DEVELOPMENT OF REGIONAL IMPACT, CONSISTING OF APPROXIMATELY 174.8 ACRES OF LAND LOCATED NORTH OF THE WESTERN BELTWAY AND EAST OF COUNTY ROAD 535; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE (Fowler Groves)
- D. **Ordinance 05-24:** REZONING CERTAIN REAL PROPERTY GENERALLY DESCRIBED AS 174.8 ACRES OF LAND LOCATED NORTH OF THE WESTERN BELTWAY AND EAST OF COUNTY ROAD 535, GENERALLY KNOWN AS THE FOWLER PROPERTY, FROM CITY R-1 TO CITY PCD; PROVIDING FOR CERTAIN PCD REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE (Winter Garden Villages at Fowler Groves PCD)

City Attorney Bedell read Ordinances 05-02, 05-22, and 05-24 by title only and Mayor Quesinberry opened the public hearings for Ordinances 05-02, 05-22, and 05-24 and announced that each speaker would be given up to three minutes, with the exception of Mr. Colin Sharman who will be making a PowerPoint presentation on behalf of others.

City Planner Cechman stated that Florida State Law requires that a sign-in sheet be made available for anyone interested in receiving information regarding the proposed Comprehensive Plan Amendment and that sheet has been made available at the entrance table. Also, staff is recommending approval with the conditions provided in the agenda package, which include a memo from the City Engineer dated August 18, 2005 and a memo from traffic consultant Mr. Jason McGlashan, with HDR, dated August 16, 2005.

Mr. Hal Cantor, P.O. Box 2809 Orlando, Florida, attorney for The Sembler Company, stated that they have delivered their evidence at the first hearing and stand upon that and would like to reserve their comments on any issues that may come up.

Mr. Colin Sharman, 312 Duff Drive, Winter Garden, Florida addressed the following items: His presentation covered wages, project misconceptions, site plan, and just how big the project is. Mr. Patrick Howell, with Taylor and Carls Law Firm, 732 Wilkinson Street, Orlando, Florida, came forward to address the legal issues. First, he addressed ex parte communications that include any time a member of the Commission speaks with someone about the project outside a public meeting such as this. Ex parte is any communication about a matter that is coming before the Commission via email, regular mail, telephone, or face-to-face meeting. If it is a written communication, it must be put into the public record so the public can actually look at it before a final action is taken. If it was a telephone conversation or face-to-face meeting, the content needs to be summarized during this meeting or disclosed by putting it into writing. They feel that during the past 19 months this issue has been pending, there have been ex parte communications and the law has not been followed. Mr. Howell stated that they believe Code Section 118-7(d) has not been followed with regard to the conspicuous posting on the premises between the publication in the newspaper and the time of the hearing. Mr. Sharman stated they

also have some requests that include removing commercial development west of CR 535 for safety reasons; the current site plan already shows only two big box stores, greater than 100,000 square feet, so they would like it included in the development order and PCD; adding back the movie theater; limiting the overall size of the project to 1 million square feet.

Speaking in favor:

Mike Carroll, 1149 Portmoor Way, Winter Garden, Florida
Hal Bekemeyer, 1645 Winter Garden Vineland Road, Winter Garden, Florida
Marise Carroll, 1149 Portmoor Way, Winter Garden, Florida
William M. Roberson, 12100 Marshall Farms Road, Winter Garden, Florida
Crisman Jones, 688 Lake Stone Circle, Ponte Vedra Beach, Florida
Chris Abbott, 567 Groves End Lane, Winter Garden, Florida
Shirley Smith, 21 West Crest Avenue, Winter Garden, Florida
Kurt Ardaman, 170 E. Washington Street, Orlando, Florida
Jose Conty, 2038 Tiptree Circle, Orlando, Florida
Ella Henderson, 207 Avalon Road, Winter Garden, Florida

Speaking in opposition:

Deborah Eichen, 14217 Country Estate Drive, Winter Garden, Florida stated her concerns about the increased traffic. Section 13 of the development indicates that for affordable housing the developer will pay for a study after they have completed 1.1 million square of retail development and cannot develop the next 60,000 square feet of office space in Phase 2 unless they help alleviate affordable housing problems in Winter Garden, which is ludicrous.

Tom Reedy, 14217 Country Estate Drive, Winter Garden, Florida stated his opposition to the traffic impacts this largest mall in Florida will have and asked the Commission to consider Mr. Sharman's requests made in his presentation. Facts not being considered include the huge traffic impacts and that Sembler has convinced people that they are the only ones going to develop the land. There are many loopholes within the PCD Ordinance and Development Order.

Rocky Barra, 744 Home Grove Drive, Winter Garden, Florida stated his opposition to the additional traffic and that the Sembler should be asked to make the surrounding communities gated.

Jennifer Armitage, 663 Groves End Lane, Winter Garden, Florida stated her opposition because of the important implications to public health. There will be increased health hazards from the increased air pollution on busier roads. Her research reveals that those living near busy roads are at an increased risk on warm days and children are most affected because they are outside more often. It is the City's responsibility to keep detrimental affects to residents to a minimum. She is not aware of any health experts being involved in the process.

James Balderrama, 14315 Hampshire Bay, Winter Garden, Florida stated that the rezoning to commercial planned development is for 174.8 acres but Sembler has promised 40-50 acres of residential and the lender he works for will not lend on land that is zoned commercial. There are holes within the proposed ordinances, he has tried in vain to work with staff and various Commissioners to show what their concerns are, and for the most part, he has been ignored.

Gina Balderrama, 14315 Hampshire Bay Circle, Winter Garden, Florida stated she hopes that the City Commission understands how vague the proposed plan is, asked for their full consideration, and delay of the vote, which is proper and appropriate.

Phil Baker, 125 West Smith Street, Winter Garden, Florida stated this mall will cause the City to go from a quiet residential community to a busy regional center, roads will be congested, and the charm and quality of life for those living near the mall will be changed forever. If not voted down, at least put it on hold until all the implications can be researched.

Frank Imbruglia, 14015 Hampshire Bay Circle, Winter Garden, Florida opposes the size of the development in the middle of a residential subdivision. Orange County has stated that the day this project opens the roadways are going to be over capacity.

Elaine Akers, 14015 Hampshire Bay Circle, Winter Garden, Florida requested that the 40 acres along the west side shown as residential not be rezoned or put a stipulation to limit it to residential only.

Hal Cantor, Esquire, stated that he would like to comment on some of the items residents addressed. First, air quality was actually addressed as part of the DRI process whereby they are required to review and deliver a study that is reviewed by state agencies and they are not allowed to proceed if it showed an air quality problem. Comments were made about changing the size of the project when in fact the project was changed substantially after months of discussion with residents, staff, and the Commission. Another comment was made to limit the big boxes, which if you don't you lose control over the traffic impact of the project. This is absolutely not true. The traffic impact is based on the amount of square footage in the project so the City is protected in that regard. The concerns expressed about developing the residential area as commercial is not a valid concern because the PCD has designated the site as residential and it is the only use they can put there, which includes high design standards. They were asked to remove the theater and redesigned the project without it and they cannot simply put it back in. He does not think that is what the bulk of the community wants. They have submitted competent substantial evidence based on expert testimony in the form of reports and an analysis on which to base a decision. There has not been one piece of evidence to support any opposition to the project and he submitted a letter in response to some legal issues raised.

Mel Sembler made his closing remarks at this time.

Mayor Quesinberry closed the public hearing, called for a recess at 8:07 p.m., and reconvened at 8:17 p.m.

City Attorney Bedell advised the City Commission that under City Code Section 2-387(1) any ex parte communications must be revealed before final action 1) subject of the ex parte communication and the identify of the person, group or entity with whom the communication took place be disclosed and made part of the record before final action and then 2) an ex parte written communication to or from a local public official that relates to quasi judicial action pending before the board or commission shall either be made a part of the record or the material

provisions of the written document shall be read into the record or summarized for the record before final action on the matter. Commissioner Dixon stated that there was disclosures made at the last meeting and asked if they would have to be made again tonight. Mr. Bedell replied yes. Commissioner Reynolds stated that he did tour the property as a fact-finding mission. Commissioner Graham stated he had a telephone call from The Semblers when this came up last year; has spoken twice since and has told them he wanted to hear what was presented in the meeting and he would make his decision upon the presentations and vote accordingly. Commissioner Dixon stated that she also toured the property and has had no contact with The Semblers. Commissioner Nichols disclosed that her contacts with The Semblers included a meeting with Tom Hareas and Dan Waginspaw, one meeting with Mr. Hareas and Mr. Waginspaw and then with David Murphy. She also had a half hour conversation with Craig Sher and this week she had two emails with David Murphy. Mayor Quesinberry stated he also attended the property tour when developing the site was first discussed. He has not talked with anyone individually. Anything that has come into City Hall is public or has occurred at a Commission meeting and he has not made contact with either side.

Motion by Commissioner Reynolds to adopt Ordinance 05-02. Seconded by Commissioner Dixon. Commissioner Nichols stated that she believes the opposition presentation had a number of points and she still believes that the project needs some readdressing and needs to be adjusted. The points presented by the opposition are not outlandish and there are possibilities that everyone could live with very easily. She believes that it should be looked at again and to ask The Sembler Company to reconsider. Commissioner Graham commented on references made insinuating that elected officials have been bought off and as a matter of public record during his last campaign; he received nothing from The Semblers. He would not accept money to sway his vote. Regarding the statements about health, the government already has environmental health regulations. He has returned every call and has never refused to return a call. **Motion carried 4-1; favor Quesinberry, Reynolds, Graham and Dixon, opposed Nichols.**

Motion by Commissioner Dixon to adopt Ordinance 05-22. Seconded by Commissioner Graham. Motion carried 4-1; favor Quesinberry, Reynolds, Graham and Dixon, opposed Nichols.

Prior to the vote, City Attorney Bedell advised the Commission that the petition of protest filed prior to the last public hearing has been reviewed and determined that it meets the requirements of City Code 188-7. Therefore, passage of Ordinance 05-24 would require a favorable vote of three-fourths of the City Commission and submitted his findings to the City Clerk for the record.

Motion by Commissioner Graham to adopt Ordinance 05-24. Seconded by Commissioner Dixon. Commissioner Reynolds asked if the City has received written confirmation regarding support for a park. City Manager Bollhoefer replied yes and it has been included in the agenda package. They have committed to paying \$400,000 over and above the impact fees for parks and recreation. Commissioner Reynolds added that in the future, he would like to strive to be creative and to have improvements included at no expense to the citizens if at all possible. Mr. Bollhoefer assured the Commission that whenever staff deals with developers they are doing whatever they can to ensure parks and trees. **Motion carried 4-1; favor Quesinberry, Reynolds, Graham and Dixon, opposed Nichols.**

6. **REGULAR BUSINESS**

A. **Request for donation by West Orange High School FFA,**

Mayor Quesinberry called upon Lester Bailey, President of the West Orange High School Future Farmers of America (FFA) Chapter. Mr. Bailey stated that the funds are needed so four representatives and an advisor can go to Louisville, Kentucky to accept an award at the National FFA convention. Commissioner Reynolds asked if the organization had done anything on their own to raise funds. Mr. Bailey stated that they do fundraisers but at the beginning of the school year, it is a little more difficult to get started. **Motion by Commissioner Graham to approve a donation of \$500.00. Seconded by Commissioner Dixon and carried unanimously 5-0.**

B. **Request for sponsorship from the West Orange High School to place an advertisement in their yearbook**

Ms. Jessie Spear, 526 Boyd Street, Winter Garden, Florida came forward and asked for approval of the sponsorship request. **Motion by Commissioner Graham to approve sponsoring the high school by purchasing a full-page advertisement in the West Orange High School yearbook for \$400.00. Seconded by Commissioner Dixon and carried unanimously 5-0.**

C. **Recommendation to approve a Dedication of Right-of-Way and Improvement Agreement with the Florida Auto Auction**

Assistant to the City Manager Robertson stated that this item is a dedication agreement from The Manheim, Inc. d/b/a Auto Auction dedicating 40 feet of right-of-way on the south side of Story Road from Carter Road back towards State Road 429. They are getting a special exception to park in that area and there is also a development improvement agreement that states they must have the parking lot, paving, drainage and retention ponds completed by December 31. Mr. Robertson noted that the State Road 429 bridge over Story Road was originally built wider to accommodate the Auto Auction traffic in order to keep them off Story Road. **Motion by Commissioner Graham to approve the Dedication of the Right-of-Way and Improvement Agreement as submitted. Seconded by Commissioner Dixon and carried unanimously 5-0.**

D. **RESOLUTION 05-19: A RESOLUTION DETERMINING THE NECESSITY TO IMPROVE AND CONSTRUCT A PUBLIC ROADWAY AND AUTHORIZING THE ACQUISITION OF CERTAIN REAL PROPERTY LOCATED WITHIN ORANGE COUNTY, FLORIDA TO BE USED FOR THE PUBLIC PURPOSE OF CONSTRUCTION, OPERATING, AND MAINTAINING THE PUBLIC ROADWAY KNOWN AS "STORY ROAD / NINTH STREET INTERSECTION"**

City Attorney Frank Bedell read Resolution 05-19 by title only. Assistant to the City Manager Robertson stated that this is the same type of resolution that was done for Daniels Road. Staff is negotiating with the property owner, which can be done without the Resolution, but if negotiations break down and the City has to go to eminent domain, this Resolution is required by State law. This item is requested in conjunction with the intersection improvements approved in the budget for last year for the design. It will be built next year to include left turn lanes in all four directions and signals at the intersection of 9th Street and Story Road. **Motion by Commissioner Dixon to approve**

Resolution 05-19. Seconded by Commissioner Reynolds. Commissioner Nichols asked if negotiations were coming along okay. Mr. Robertson stated that negotiations have just started and he believes it can be worked out. This is just a step the City has to take whether it is worked out or not. Commissioner Nichols asked Mr. Robertson to explain that with eminent domain proceedings the City does end up paying the owner something for their land. Mr. Robertson responded yes. **Motion carried unanimously 5-0.**

E. **Recommendation to award contract to T. D. Thomson Construction Company for \$434,800.32 to relocate a driveway and retention pond in conjunction with widening Daniels Road**

Assistant to the City Manager Robertson stated that this item is for the right-of-way received from the Church of Christ as part of the Daniels Road north agreement. The City did not actually give the church any cash for their property they deeded to the City, which were a couple acres of land that will have a retention pond for the north portion of the construction. For safety reasons, we needed to line up their entrance with the entrance to Daniels Crossing, which is across the street and their retention ponds are in the front. The agreement was to realign the road and move their retention pond back with the City's retention on the back end of the property. We are not ready to do Daniels Road yet, but they are ready to go ahead with their part of the project so we will go ahead and do our part. This is not part of the construction for the road but for pavement of the right-of-way. Commissioner Dixon asked what will happen to the sign for the Church of Christ. Mr. Robinson stated that once the City is done they can put their sign up. **Motion by Commissioner Reynolds to award the contract as submitted. Seconded by Commissioner Dixon.** Commissioner Reynolds asked what the start date was for the work on moving the retention pond. Mr. Robertson stated that he and contractor will have to meet and discuss a starting time. Commissioner Reynolds asked if there will be some definite answers as to a start date and completion date. Mr. Robertson responded yes. **Motion carried unanimously 5-0.**

F. **Recommendation to award contract to T. D. Thomson Construction Company for \$566,163.13 to improvements to Roper Road from Daniels Road to CR 535**

Assistant to the City Manager Robertson stated that this item is for Roper Road, which is a dirt road right now that connects 535 with Daniels Road. The budget was approved at interim budget. The project has been designed, permitted and is ready to go. Bids were solicited and T. D. Thomson was the only bidder to submit a bid. In speaking with contractors, there is so much work going on that no one wants to do the hard work with all the easy work that is available. He stated that T. D. Thomson has worked for the City off and on for the past 15 years and is a very good contractor. The design engineer for this project checked his references and also recommends him. Mayor Quesinberry stated that the City has used Mr. Thomson's services for quite a few years and he has proven himself worthy. **Motion by Commissioner Dixon to award the contract in the amount of \$566,163.13 for improvements to Roper Road and Daniels Road to T. D. Thomson as submitted. Seconded by Commissioner Graham.** Commissioner Reynolds asked if this is the same contractor doing the work on East Crest Avenue. City Manager Bollhoefer responded no. **Motion carried unanimously 5-0.**

7. MATTERS FROM CITIZENS

Mr. Colin Sharman, 312 Duff Dr, Winter Garden, Florida asked if the Fowler property had rezoning notices posted on the property. Senior Planner Kelly Randall replied three notices were posted, one at the end of Daniels Road, one on 535, and one on Stoneybrook West Parkway.

Reverend Rusty Belcher, 315 Tilden Street, Winter Garden, Florida stated his appreciation of the City and citizens for their caring and compassionate humanitarian response to the disaster in the aftermath of Hurricane Katrina. Their hall is full of donations and the truck will come tomorrow to make a delivery to Mississippi this weekend.

James Balderama, 14315 Hampshire Bay Circle, Winter Garden, Florida stated that when he first relocated to Florida a moving company stole everything his family owned and as a result, he took action in getting a law passed in the State of Florida to protect victims. Their developments have given them a park and through their association dues, they pay to maintain the park, streets and entrances to their developments, yet they pay some of the highest taxes in the City. He stated that what they will get for Central Florida's largest mall is traffic and headaches. He stated that there will be talk in a few weeks about raising our taxes after Sembler has advertised that they are giving \$30 million dollars to the City. He expressed his gratitude to Commissioner Nichols for listening to both sides of the issue and being fair.

Gina Balderama, 14315 Hampshire Bay Circle, Winter Garden, Florida expressed her thanks to Commissioner Nichols in the Sembler mall matter and that she was the only one on the Commission that bothered to listen to what they had to say. She stated that they are not going to go away. We have a big future ahead of us and we will see what comes of it.

Jennifer Armitage, 663 groves End Lane, Winter Garden Florida stated that she e-mailed information yesterday to the City Commission regarding pollution health risks associated with a mall. She also asked Mr. Bollhoefer if health issues were looked into, as there were none referenced in his presentation. City Manager Bollhoefer stated that he will address this issue under Matters from City Manager later on the agenda. She stated that the attorney for The Sembler Corporation mentioned that they passed the air quality test and one of the documents indicated that the standards are not always sufficient to get away from sicknesses and health issues that are a problem associated with traffic pollution. She stated that she believes that one of the recommendations include the City should look into revising those standards. Some of the documents also mention that you can get away from some of the pollution if you live far enough away from it and one traffic researcher she spoke with advised her that after 500 feet the effects are substantially reduced. However, she will live within a couple of hundred feet of the mall and some will live within at little as 25 feet of Daniels Road where 43 percent of traffic will be going by. She asked if there is any reason why the traffic cannot be kept off the residential areas and utilize Stoneybrook Parkway, which does not have any residential homes.

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

9. **MATTERS FROM CITY MANAGER**

City Manager Bollhoefer noted that there was no increase in property taxes this year, the millage rate that the Commission agreed to was the exact same millage rate as last year. What has gone up is the value of properties, which is the tax base that has increased, not the tax rate. When the tax base increases, that is not considered a tax increase. It is the exact same millage rate it was last year and approximately the same as it has been for the past nine years. The “Truth in Millage”, which is referred to as the TRIM, requires the City to put certain language in the property tax notice showing the amounts collected has increased but it is not based on the tax rate increase, it is based on your tax base going up, which is a common misconception.

With reference to the pollution issue, staff based their views on the studies that were done by Sembler. The City did not do a peer review of the pollution but it goes without saying that an increase in traffic will increase pollution. He does not think that traffic can be limited on the four laned Daniels Road because once it is finally constructed, it will be a functionally classified road built to move a lot of traffic. While some may hope people will use Stoneybrook and 429, people will use Daniels Road as the main thoroughfare, which has been planned since 1996. Jennifer Armitage asked if there was any reason traffic could not be stopped there. County Road 535 has Stoneybrook Parkway that has access from Highway 50 just down the street from Daniels Road. Mr. Bollhoefer replied that the traffic study looked at all the main north and south roads and east to west roads and it is going to be a main arterial road for carrying traffic north and south, which was decided a long time ago. A lot of development plans have been based on that information and is why it was built four-lanes and dead-ended there. It was actually decided upon based on the whole regional movement of traffic. Ms. Armitage stated that if there were a way to keep the residential areas residential and keep the traffic into the mall via the byways, like 429 and Stoneybrook Parkway area that has access right in front of the Mall where there are no homes that would be a happy solution for everyone. Commissioner Nichols added that the County, not the City of Winter Garden, made the roadway plan. The County dictates the roadway and we don't have a whole lot of control over it. City Manager Bollhoefer stated that once it is functionally classified, even if we wanted, we could not limit the truck traffic on 535. Ms. Armitage asked what about the health issues since she did not see any in the presentation. Mr. Bollhoefer stated that the City did not do a peer review but on the research that was done as part of the DRI process.

Hurricane Katrina: He wanted to let everyone know about the City's contributions, which include the Fire Chief going up to Mississippi and working in the EOC. They are getting back to us to let us know what type of other resources they need. The biggest problem they are having is the unsanctioned people bringing supplies that are clogging up their supply lines and have really negatively affected the Red Cross and many organizations trying to distribute items. As a City, we are also trying to collect and work with organizations. The most important thing now is coordinating through the Red Cross, EOC, and FEMA. Mayor Quesinberry stated that the Police Chief had two men ready to go Sunday morning and they cancelled out telling us to wait. City Manager Bollhoefer stated that actually two police

officers and a dispatcher are ready to go in two leased Winnebagos so they can be self-sufficient on the second shift to relieve the first workers. City Manager Bollhoefer also stated he and the Mayor will be attending a joint meeting to discuss aid possibilities for the expected 20,000 to 25,000 displaced people coming to Orlando.

City Manager Bollhoefer stated that Bert Valdes, owner of the Mooncricket Restaurant, would like to put on a fundraiser event on September 24th, from approximately 4:00 - 10:00 p.m. to collect money for hurricane victims. He has suggested having some bands and entertainment in the historic downtown area. Mr. Valdes is requesting permission to close Plant Street and to serve alcohol in non-glass containers outside his business. Mr. Valdes came forward and stated that the idea is to have a concert downtown with a nominal admission fee of maybe \$5.00 and sell beer for \$2.00, giving a dollar of it to hurricane relief so he could pay his sales tax, etc., with the other dollar. He would like to do the same thing with Coke, etc. He stated he would also like to open this event up to any other group such as Rotary Club or churches that would like to have their own fundraisers. Mayor Quesinberry opened up the request for discussion.

Commissioner Dixon asked where the drinking of alcohol would be allowed. Mr. Valdes gave examples of prior events. Commissioner Nichols asked who accepts liability if someone is injured. City Manager Bollhoefer stated that a separate liability policy would have to be obtained. Recreation Director Jay Conn added that as a City, we cannot name third parties as additionally insured on our policy. Therefore, we would get a broker to quote a special event policy that we normally offer to groups without insurance coverage. The cost would depend on the expected attendance and event elements such as concert music, entertainment, etc. Commissioner Nichols asked if the City would pay for the policy. Mr. Conn responded that it would be up to the City Commission if they wanted to waive that insurance policy cost. Commissioner Nichols asked about the police involvement and if it would be covered by on duty officers. City Manager Bollhoefer stated that at least two to three officers would be on duty. Police Chief Brennan stated that ultimately, the decision would be up to the Commission but because of the nature of the request, he recommended using on-duty officers. City Manager Bollhoefer stated that Mr. Valdes has indicated that he has volunteers to clean up the event. Commissioner Reynolds stated that it would be beneficial for the City to get behind the event to some degree and solicit some headliners to draw a crowd. Maybe the City of Winter Garden could put up some guaranteed revenue to get a recognizable high profile name. Mr. Valdes stated that if he could get approval, the details could be worked out. Commissioner Nichols stated that in order to control the sale of beer there is normally a limit placed on people. Mr. Valdes agreed that something could be done with that regard. Commissioner Graham stated that he knows the idea is going for a good cause, but he has always been opposed to drinking in public because of children and the poor example it sets. He stated that he believes God can provide without having to go to alcohol and if there is a large crowd, just as much money or more could be raised. Commissioner Dixon stated that a drinking area should be a controlled separate area. Commissioner Reynolds stated that he thinks it would hurt attendance if those who believe differently we not at least given the option to have a minimal amount of alcohol if they chose to. If it is regulated and the amount of alcohol sales were restricted, just as other groups have been allowed, he does not see why it should be prevented now. Commissioner Graham noted

that two previous events where alcohol was allowed were not actually approved by this Commission and there were some problems. Mayor Quesinberry stated that if this were Halloween he would say no, because Halloween is for the children, but this is for a different cause and thinks that we should get every dollar. He stated that he thinks everyone has agreed that the City should have the fundraiser and close the street. **Motion by Commissioner Nichols to close Plant Street downtown and allow the sale of beer on the street as long it is controlled and limited to three beers per person. Seconded by Commissioner Dixon and carried 4-1; opposed Commissioner Graham.**

10. MATTERS FROM MAYOR AND COMMISSIONERS

Mayor Quesinberry stated that there will be a Legislative luncheon on Wednesday, September 28th at Tanner Hall from 11:30 a.m. to 1:30 p.m. with numerous invited guests from about every political branch in the area. **Motion by Commissioner Graham to approve purchasing tickets to the Legislative luncheon as stated. Seconded by Commissioner Dixon and carried unanimously 5-0.**

Mayor Quesinberry announced that this Friday morning he will be conducting a meeting with Mayor Dyer and others to discuss the ways in which cities can assist the victims of Hurricane Katrina.

Commissioner Nichols stated that she has an idea as to where some of the displaced hurricane victims could live; in the City owned trailers in Trailer City, which are habitable on a temporary basis and would allow the City to extend that welcome to them.

Commissioner Dixon stated her agenda item is a request to participate in the annual Headstart Policy Council and County Community Action Board Annual Scholarship and Volunteer Awards Dinner, November 2nd. She stated the City participates each year by sponsoring two tables. **Motion by Commissioner Dixon to approve purchasing two tables from the donation account. Seconded by Commissioner Graham and carried unanimously 5-0.**

Commissioner Dixon stated that Homes in Partnership will be having a 30th anniversary dinner and she would like to have representation from Winter Garden attend so she will be providing more information later.

Commissioner Dixon advised Recreation Director Conn that she will be contacting him regarding Ms. Charlie Mae Wilder helping with senior and children programs possibly at the new senior center.

Commissioner Reynolds asked what the completion date on the Crest Avenue project is. City Manager Bollhoefer asked Utilities Director Tiblier to come forward and answer this question and stated that it is his understanding that in less than 30 days, it will be completed and the road will be open. Utilities Director Tiblier stated that this is his understanding also. The contractor was very good and did quality work, but was slow because they did not have enough people for the job. He would recommend them for other work in the City but it would have to be smaller projects. He stated that two weeks from tonight they are to be

substantially completed. A week after that the road will be passable with asphalt. Commissioner Reynolds asked that if they are not done in the 30 days, that the City provide them with a letter of suspension for x number of months from doing any more work for us because this project is dragging on. City Manager Bollhoefer stated that he has actually gone further in that they will not move any further beyond that because they cannot do the work in a timely fashion and that is not acceptable. Utilities Director Tiblier added that in all fairness to the contractor, they have had some work added onto their contract having to do with the underdrain for the pavement and they were awarded extra days to deal with the issue. City Manager Bollhoefer stated that is true but he has expressed his unhappiness and they will not do any more work on trunk line C. Commissioner Reynolds stated that District 1 residents agree with the City Manager that they are unhappy with the progress rate. Commissioner Reynolds asked if the completion date was supposed to be the 1st of August. Mr. Bollhoefer stated that when he went to the jobsite, after there had not been any rain for 30 days, he saw only two people working, which is not acceptable. Commissioner Reynolds stated that this means there is a definite 30 days for completion. Mr. Bollhoefer responded that he believes it is the third definite completion date.

Commissioner Reynolds asked about the beautification plans for the east and west side of the treatment plant. Utilities Director Tiblier stated that there have been blue flowers planted and some type of jasmine along the fence line to provide odor relief.

Commissioner Reynolds asked if the uniforms for Public Works and Utilities were removed from the budget. City Manager Bollhoefer stated that uniforms are still being discussed for Public Works and Utility Departments. There are enough funds budgeted in the Utilities contingency for when the type of uniforms are decided, adjustments can be made. He stated that the Public Works Director is negotiating with a vendor who can provide uniforms and uniform service at a very affordable price. They may have to come back to the Commission during interim budget to make adjustments, but he does not think it will be a problem. Commissioner Reynolds asked about the feelings of the workers that would be impacted by wearing uniforms. Mr. Bollhoefer stated that their biggest concern is that they are not happy about the idea of not being able to wear denim or jeans but they are working with the employees and there may be compromise on both sides.

Commissioner Reynolds asked where staff was on reporting back on insurance for elected officials. City Manager Bollhoefer stated that he would get back to the Commission at the next meeting.

The meeting adjourned at 9:44 p.m. to a budget hearing on September 21, 2005 at 6:00 p.m. with the regular City Commission meeting following.