

**REGULAR MEETING MINUTES
CITY COMMISSION**

February 10, 2005

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

PRESENT: Mayor Jack Quesinberry, Commissioners Bill Thompson, Theo Graham, Mildred Dixon (arrived at 6:36 p.m.), and John Harriman

Also Present: City Manager Hollis Holden, Assistant 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, Trailer City Manager Hughlan Martin, Finance Director Mike Bollhoefer, Information Technology Director Bob Reilly, Public Works Director Bob Smith, Recreation Director Jay Conn, Human Resources Director Frank Gilbert, West Orange Times reporter Michael Laval and Orlando Sentinel report Sandra Mathers

1. **APPROVAL OF REGULAR MEETING MINUTES OF JANUARY 27, 2005**

Commissioner Graham noted a correction to page 7; Tildenville should be Tilden Road. **Motion by Commissioner Graham to approve the minutes as corrected. Seconded by Commissioner Harriman and carried unanimously 4-0.**

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

A. **Ordinance 05-03:** ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS 3.79 ACRES LOCATED AT 866 TILDENVILLE SCHOOL ROAD, AND MORE SPECIFICALLY DESCRIBED HEREIN INTO THE CITY OF WINTER GARDEN, FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

Assistant City Attorney Rubio read Ordinance 05-03 by title only. Mayor Quesinberry opened the public hearing.

June Hall, 865 Tildenville School Road, Winter Garden, Florida, asked if the annexation is approved, does the City also get that portion of the road. City Manager Holden replied that Tildenville School Road would remain owned by whoever owns it now. Ms. Hall also asked when someone could call the City and complain about all the hurricane debris that has still not been removed. City Manager Holden responded that anyone can call as soon as the annexation is complete. Ms. Hall stated that it is her understanding that a restaurant is being planned and she wanted to know if they would be allowed to serve alcohol since there is a school nearby. City Manager Holden replied that he doesn't know what the plans are for the property. Commissioner Graham stated that he could answer the question because if it becomes a restaurant and they want to serve alcohol,

they can't because it has to be at least 1,200 feet away from a school or church according to the City ordinance.

Hearing no other comments, the public hearing was closed. **Motion by Commissioner Harriman to approve Ordinance 05-03. Seconded by Commissioner Thompson and carried unanimously 4-0.**

- B. **Ordinance 05-04:** AN ORDINANCE AMENDING THE FUTURE LAND USE MAP OF THE CITY OF WINTER GARDEN'S COMPREHENSIVE PLAN BY INCLUDING PROPERTY GENERALLY DESCRIBED AS 3.79 ACRES OF LAND LOCATED AT 866 TILDENVILLE SCHOOL ROAD, AS LOW RESIDENTIAL; PROVIDING FOR AN EFFECTIVE DATE

Assistant City Attorney Rubio read Ordinance 05-04 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Harriman to approve Ordinance 05-04. Seconded by Commissioner Thompson and carried unanimously 4-0.**

- C. **Ordinance 05-05:** ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS 3.362 ACRES LOCATED AT 898 TILDENVILLE SCHOOL ROAD, AND MORE SPECIFICALLY DESCRIBED HEREIN INTO THE CITY OF WINTER GARDEN, FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

Assistant City Attorney Rubio read Ordinance 05-05 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Thompson to approve Ordinance 05-05. Seconded by Commissioner Harriman and carried unanimously 4-0.**

Commissioner Dixon arrived at this time.

- D. **Ordinance 05-06:** AN ORDINANCE AMENDING THE FUTURE LAND USE MAP OF THE CITY OF WINTER GARDEN'S COMPREHENSIVE PLAN BY INCLUDING PROPERTY GENERALLY DESCRIBED AS 3.362 ACRES OF LAND LOCATED AT 898 TILDENVILLE SCHOOL ROAD AS LOW RESIDENTIAL; PROVIDING FOR AN EFFECTIVE DATE

Assistant City Attorney Rubio read Ordinance 05-06 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Thompson to approve Ordinance 05-06. Seconded by Commissioner Harriman and carried unanimously 5-0.**

- E. **Ordinance 05-07:** ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS 12.16 ACRES LOCATED AT 940 TILDENVILLE SCHOOL ROAD, AND MORE SPECIFICALLY DESCRIBED HEREIN INTO THE CITY OF WINTER GARDEN, FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

Assistant City Attorney Rubio read Ordinance 05-07 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Thompson to approve Ordinance 05-07. Seconded by Commissioner Harriman and carried unanimously 5-0.**

- F. **Ordinance 05-08:** AMENDING THE FUTURE LAND USE MAP OF THE CITY OF WINTER GARDEN'S COMPREHENSIVE PLAN BY INCLUDING PROPERTY GENERALLY DESCRIBED AS 8.45 ACRES OF LAND LOCATED AT 940 TILDENVILLE SCHOOL ROAD, AS LOW RESIDENTIAL; PROVIDING FOR AN EFFECTIVE DATE

Assistant City Attorney Rubio read Ordinance 05-08 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Harriman to approve Ordinance 05-08. Seconded by Commissioner Dixon and carried unanimously 5-0.**

- G. **Ordinance 05-12:** AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE III, PENSION PLAN FOR FIREFIGHTERS AND POLICE OFFICERS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING SECTION 54-194, VESTING; ADDING SECTION 54-213, REEMPLOYMENT AFTER RETIREMENT; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE

Assistant City Attorney Rubio read Ordinance 05-12 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Thompson to approve Ordinance 05-12. Seconded by Commissioner Graham and carried unanimously 5-0.**

- H. **Ordinance 05-13:** AMENDING CHAPTER 78, UTILITIES, SECTION 78-50, SCHEDULE OF DEPOSITS; REFUND, PROVIDING FOR CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE

Assistant City Attorney Rubio read Ordinance 05-13 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Harriman to approve Ordinance 05-13. Seconded by Commissioner Thompson and carried unanimously 5-0.**

- I. **Ordinance 05-14:** AMENDING ORDINANCE 04-56, THE CITY OF WINTER GARDEN FISCAL YEAR 2004-2005 BUDGET TO CARRY FORWARD PRIOR YEAR APPROPRIATIONS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

Assistant City Attorney Rubio read Ordinance 05-14 by title and stated that both revenues and expenses each total \$2,849,400. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Thompson to approve Ordinance 05-14. Seconded by Commissioner Harriman and carried unanimously 5-0.**

- J. **Ordinance 05-15:** AMENDING SECTION 110-203 OF THE WINTER GARDEN CODE OF ORDINANCES RELATING TO EASEMENTS BY PROVIDING FOR MINIMUM EASEMENT WIDTHS AND CREATING SUBSECTION (d) RELATING TO USES WITHIN EASEMENTS; PROVIDING FOR CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE

Assistant City Attorney Rubio read Ordinance 05-15 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed.

Motion by Commissioner Harriman to approve Ordinance 05-15. Seconded by Commissioner Thompson.

Commissioner Dixon stated that there has been prior discussion about the types of trees in the right-of-way and she asked how this ordinance would apply to trees within her subdivision that were planted by Homes in Partnership. City Planner Cechman responded that it would depend on the particular easement such as a utility or water/sewer line that would not permit oak trees. City Manager Holden added that if an existing easement already has a tree and the utility line must be repaired, the tree would be removed and not replaced because it should not have been there in the first place. He also advised that the Public Works Department will not be going out and removing trees unnecessarily. **Motion carried unanimously 5-0.**

- K. **Ordinance 05-16:** AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE II, PENSION PLAN FOR GENERAL EMPLOYEES, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING SECTION 54-26, DEFINITIONS; AMENDING SECTION 54-28, BOARD OF TRUSTEES; AMENDING SECTION 54-29, FINANCES AND FUND MANAGEMENT; AMENDING SECTION 54-43, EXEMPTION FROM EXECUTION, NONASSIGNABILITY; AMENDING SECTION 54-52, DEFERRED RETIREMENT OPTION PLAN; ADDING SECTION 54-53, REEMPLOYMENT AFTER RETIREMENT; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE

Assistant City Attorney Rubio read Ordinance 05-16 by title only. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed.

Motion by Commissioner Graham to approve Ordinance 05-16. Seconded by Commissioner Harriman and carried unanimously 5-0.

- L. **Ordinance 05-17:** RELATING TO THE CONSUMPTION AND SERVICE OF ALCOHOLIC BEVERAGES WITHIN SIDEWALK CAFE AREAS; AMENDING SECTION 6-5 BY AMENDING SUBSECTION (a) TO PROVIDE FOR AN EXCEPTION FOR SIDEWALK CAFE AREAS; AMENDING SECTION 62-207(a) BY CREATING SUBSECTION (7) TO PROVIDE FOR ADDITIONAL GROUNDS FOR THE REVOCATION OR SUSPENSION OF A PERMIT; AMENDING SECTION 62-230 BY AMENDING SUBSECTION (23) PERTAINING TO STANDARDS, CRITERIA AND CONDITIONS FOR SIDEWALK CAFES; PROVIDING FOR CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE

Assistant City Attorney Rubio read Ordinance 05-17 by title only. Mayor Quesinberry advised everyone that because of some issues that have come up, he asked for a motion to postpone this item to an indefinite date. **Motion by Commissioner Thompson to**

postpone Ordinance 05-17 to an indefinite date. Seconded by Commissioner Harriman and carried unanimously 5-0.

4. **REGULAR BUSINESS**

A. **Request renewal of the baseball field sign supporting the West Orange High School baseball team**

Mayor Quesinberry stated that this request is for approval to continue displaying the existing City sign for another season at \$250. **Motion by Commissioner Graham to approve renewing the City's baseball field sign at West Orange High School for \$250. Seconded by Commissioner Dixon and carried unanimously 5-0.**

B. **Request approval to increase the line-of-credit from \$500,000 to \$1,500,000 with the Winter Garden Heritage Foundation and authorize the Mayor to sign both addendums, when completed, for the Old Winter Garden Theater**

Finance Director Bollhoefer stated that the Heritage Foundation is renovating the old theater and are seeking funds. Thus far, the Foundation has secured grants totaling \$1 million and pledges of \$300,000. This funding will come in over the next several years and they need the money now. The Commission has already approved a \$500,000 line-of-credit loan; the Foundation is asking that the loan be increased to \$1.5 million. In order to accomplish this request, it would require amending the loan agreement and the operating agreement, and adjusting the timeframes out by one year. Language would also be added, to the extent allowed by the grant agreements, to use the grants and pledged donations to pay back the loan. He and Mr. Rubio will draft the addendums with the three changes noted and submit to the Mayor for signature if approved. Commissioner Graham stated that the current agreement indicates the theater would open by June 30, 2005 and asked if the addendums would extend the open date. Mr. Bollhoefer stated yes, by the one year. **Motion by Commissioner Graham to approve increasing the line-of-credit loan from \$500,000 to \$1,500,000 and authorize the Mayor to sign both addendums when completed. Seconded by Commissioner Harriman and carried unanimously 5-0.**

C. **Request for honoring Army Sergeant Jose Lopez for his service in Operation Iraqi Freedom**

Joe Fritz, Tiger's Eye Karate, 139 W. Plant Street, Winter Garden, Florida read a letter provided in the City Commission agenda package regarding an event in which he will be hosting a reception on February 19th at 7 p.m. at his Karate school honoring Sergeant Lopez to show how much he is appreciated for the sacrifices he has made. Sergeant Lopez is on a short furlough of 30 days and he has told him of the reception and everyone is invited to attend. He has received expressed support from the American Legion, the Veterans of Foreign Wars, and the History Foundation. Sergeant Lopez has requested, not for himself, but for his comrades who would like to have some basic necessity items such as toiletries and so forth. He will be asking the merchants to donate from a list provided by Sergeant Lopez. Commissioner Dixon stated that we need to support those we know. Commissioner Harriman asked what the timeframe is. Mr. Fritz stated that Sergeant Lopez will be here until February 28 and discharged sometime early this

summer. Commissioner Graham asked about presenting him with a plaque or something. City Manager Holden stated that if the City Commission will authorize an amount, staff will work with Mr. Fritz and the merchants. **Motion by Commissioner Graham to participate in honoring Army Sergeant Jose Lopez by contributing at least \$3,000 from the contingency fund. Seconded by Commissioner Dixon and carried unanimously 5-0.**

D. **Recommendation to purchase 1125 East Plant Street**

Assistant to the City Manager Robertson distributed a photograph of the subject property (old Amerigas building) and stated that this vacant one-acre piece of property became available for sale and gives the City an opportunity to obtain the property that is needed for retention and extra right-of-way for the future widening of Plant Street. Commissioner Graham asked if the footage along Plant Street is 598 feet and if the depth or length is the larger part. Mr. Robertson replied no, the frontage is something closer to 200 feet. You measure 598 feet from the section line, then you start at that point on to measure this lot, which is 41,946 square feet. **Motion by Commissioner Dixon to approve purchasing 1125 East Plant Street, Winter Garden for \$250,000. Seconded by Commissioner Harriman.** City Manager Holden elaborated that this property is currently zoned I-2 and staff will be bringing back a request for rezoning to commercial so it will tie into the corridor. Additionally, some frontage will need to be taken from this parcel for the widening of Plant Street. If it becomes possible to trade properties that would put a commercial business here and let the City trade for property off Plant Street for retention, staff will bring that request back to the City Commission. PEC has prepared the preliminary layouts for widening Plant Street and has indicated where we need the retention. Retention is the challenge and without it, Plant Street cannot be widened. Commissioner Dixon stated that whenever there is an opportunity to obtain more retention on the north side of Plant Street, it should be exercised. **Motion carried unanimously 5-0.** G. H. Sweeney, 1084 Orange Wharf Court, Winter Garden, Florida asked how much is being asked for this piece of property. City Manager Holden responded \$250,000.

E. **RESOLUTION 05-06: APPOINTING LIONEL E. RUBIO AS CITY ATTORNEY**

City Clerk Golden read Resolution 05-06 by title only. **Motion by Commissioner Harriman to approve Resolution 05-06. Seconded by Commissioner Thompson and carried unanimously 5-0.**

5. **MATTERS OF CONCERN FROM CITIZENS**

Don Miller, 1073 Woodson Hammock Circle, Winter Garden, Florida applauded the City Commission on their action to recognize Sergeant Lopez and asked the Commission take it a step further and issue a proclamation declaring February 19th as Jose Lopez Day and maybe display banners welcoming him home. **Mayor Quesinberry** stated that the action included these items as well.

Andy Bruns, 6 Laurel Drive (Trailer City), Winter Garden, Florida asked why Ordinance 05-17 was tabled indefinitely. **City Manager Holden** stated that he will not go into the details

and deferred the question to the City Attorney. **City Attorney Rubio** stated that there is pending litigation that may potentially affect the outcome of this Ordinance. **Mr. Bruns** stated that if the Ordinance is defeated tonight, there would be nothing to look into. **Mr. Holden** stated that is incorrect. The issues are broader than this Ordinance, only one of which is alcohol. Therefore, it requires careful legal analysis that was identified just this last week on a totally unrelated issue to this Ordinance. **Mr. Bruns** stated that might be true only if it passes, but if you leave it alone, what changes. **Mr. Holden** stated that the issues do not have anything to do with this Ordinance, but existing City Ordinances. **Mr. Bruns** said that given the number of people present to speak against this item, the Commission will wait and approve it when nobody is here to speak against it. **Mayor Quesinberry** stated that is not the case because the Ordinance will be advertised prior to the public hearing. **City Attorney Rubio** stated that if any of the citizens have comments on this issue, they are welcome to express their views, as this is the time. On the agenda, under matters of concern, is the appropriate time for citizens to speak on any issue dealing with the City. **Mr. Bruns** recommended to everyone that they speak to this issue under concerned citizens.

Speaking in opposition to Ordinance 05-17 (allowing alcohol at sidewalk cafes) were:

Richard Napotnik, 1633 Fullers Cross Road, Winter Garden, Florida

Don Miller, 1073 Woodson Hammock Circle, Winter Garden, Florida. Mr. Miller also asked about the rule he heard earlier that no alcohol could be served within 1,200 feet of a church.

City Manager Holden stated that contrary to what was stated earlier (Item 2.A. Ordinance 05-03 annexing 866 Tildenville School Road) a restaurant can be next door to a school or church and serve alcohol as long as it is classified as a restaurant with food sales of at least 51 percent. He is not differentiating whether it is inside or outside.

Elwin Washburn, 1 Laurel Drive (Trailer City), Winter Garden, Florida

Reynold Lemp, 270 Temple Grove Drive, Winter Garden, Florida

K. Fay Desha, 62 W. Crest Avenue, Winter Garden, Florida

Rick Faircloth, 168 Windtree Lane, Winter Garden, Florida

Cory Beech, 368 N. Boyd Street, Winter Garden, Florida

Andy Bruns, 6 Laurel Drive (Trailer City), Winter Garden, Florida asked if he heard the City Manager say there could be alcohol served in a restaurant right next to a church. **City Manager Holden** replied that is correct. The citizens held a referendum that was approved overwhelmingly to allow alcohol in restaurants selling at least 51 percent in food sales. **Mr. Bruns** asked how the sales are monitored. **Mr. Holden** replied that the State DBPR monitors their licenses. **Mr. Bruns** asked if the City could audit the restaurant to see how many of their sales were on food versus alcohol because he doubts they sell more food than alcohol. **City Attorney Rubio** stated that this discussion includes issues that potentially impinge on the legal issues before the City and he advised the Commission to decline from addressing the specific question. The City is working to address some of these very same issues but because of the pending litigation, this is not the forum for discussing the pending matter.

6. MATTERS FROM ASSISTANT CITY ATTORNEY

Lionel Rubio shared his appreciation for the City Commission's expression of confidence in him by appointing him as the new City Attorney and thanked the staff for making the

position enjoyable. He also thanked Dykes Everett for being his mentor over these last several years. Mayor Quesinberry thanked Dykes Everett for what he has done for the City.

7. **MATTERS FROM CITY MANAGER**

- Stated that he can't say enough about what a pleasure it has been to have Dykes Everett as the City Attorney and his counsel and he will continue to provide vital support. He has the greatest confidence in the support Mr. Rubio has given the City.
- Advised the Commission that the City applied for and received a \$150,000 grant for fire protective gear for the Fire Department.

8. **MATTERS FROM MAYOR AND COMMISSIONERS**

Commissioner Thompson

Stated that he has been asked about improving the Park Avenue Sports Complex, including Veterans Park, Walker Field, and the Little League fields. Therefore, he asked the Commission to consider, during the next few meetings, developing a funding plan to upgrade the complex to make it more comparable to the George Bailey Park located past Lake Whitney Elementary School. He has spoken with the Recreation Director who has indicated there is a plan to make improvements and about \$200,000 already donated but he wants further discussion and timely action on this issue.

Commissioner Graham

Stated that he had prepared a speech about the sidewalk café Ordinance but since it was postponed, he won't go into it right now. If his memory serves him correctly, the referendum previously passed was for restaurants on Highway 50 that allowed them to be side-by-side because prior to then, they couldn't be within 1,000 feet of one another. He doesn't recall anything about downtown or elsewhere being included. He had a petition against this and it contained wording that the restaurants had to have seating for 200; had to be on Highway 50 in order to serve alcohol; and did not allow alcohol to be sold on Sunday. City Manager Holden interjected that the exception is that the County enclaves sell it on Sunday. Commissioner Graham stated that he cannot see the difference between someone coming out drunk from a restaurant or out of a bar. It is all the same to him. He personally believes that a restaurant serving alcohol should never be closer than 1,200 feet to a school or church. He doesn't know when the portion about a restaurant being next to school came in. He also noted that when he first became a Commissioner, there was no Ordinance dealing with adult entertainment so one of the first things he did was to compile example Ordinances from other agencies and gave it to the City Attorney to draft the Ordinance that is in our Code today.

Announced that he received a fax from Congresswomen Corrine Brown who will be speaking about transportation priorities on Friday, February 25 from 11:30 a.m. to 1:30 p.m.

Commissioner Dixon

Announced that at the Maxey Center on February 15 and 17, 9 a.m. to 1:30 p.m. applications will be accepted for electric bill assistance. Also, there will be a homebuyer's seminar on February 12th at 10 to 11:30 a.m. at Maxwell Garden.

Stated that she was going to be the president of the West Orange NAACP but has since decided she would work with the Orange County branch since they have reorganized. The first meeting will be held at the Maxey Center on February 14 at 7 p.m. and everyone is welcome.

The Mildred Dixon Center Park, which was started six years or more ago, has never been finished. She sees no reason why the City cannot work with the County to put some recreation there even though the Boys and Girls Club is there. The east side of Winter Garden needs more recreation. The children are standing in the dark and they need more lighting on the east side. She appreciates the barriers to control speed installed on Klondike for the safety of the children. She also wants to see more funds become available for the east side.

Mayor Quesinberry

Stated that he participated in interviewing Dykes Everett for the position of City Attorney and has since sat next to him during the Commission meetings and acquired confidence in him and now he has sat next to Lionel Rubio and he too has acquired his confidence.

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