

REGULAR MEETING MINUTES
CITY COMMISSION
February 24, 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, and John Harriman

Also Present: City Manager Hollis Holden, 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, Fire Chief John Williamson, Recreation Director Jay Conn, Human Resources Director Frank Gilbert, and West Orange Times reporter Michael Laval

1. **APPROVAL OF MINUTES**

Motion by Commissioner Harriman to approve the regular meeting minutes of February 10, 2005 as submitted. Seconded by Commissioner Dixon and carried unanimously 5-0.

Dispensed as the City Commission and convened as the Community Redevelopment Agency at 6:33 p.m.

Members Present: Jack Quesinberry, John Harriman, Theo Graham, Mildred Dixon, and Bill Thompson

Members Absent: Larry Cappleman

2. **Community Redevelopment Agency Advisory Board (CRAAB) recommendation to the CRA to request the City Commission direct staff to develop an ordinance which would create downtown design standards and an Architectural Review Board to review new and renovated buildings on Plant Street from Park Avenue to the eastern City limits, and south along Dillard Street**

City Manager Holden stated that in the absence of Agency Member Cappleman, he is making the presentation. The agenda package contains draft minutes from the CRAAB meeting of February 8, 2005 and show their discussion regarding new downtown construction and the lack of any architectural guidelines, which is what has generated this agenda item. The draft minutes include a recommendation to address this issue from the CRA to the City Commission, as spearheaded by the downtown Merchants Association. While downtown is designated a historical district, there remains no guidelines as to what a building will look like. To accomplish having a

building's design reviewed, it would require an ordinance by the City Commission because the CRA does not have that authority. Therefore, to establish some standards, the CRAAB needs to make a recommendation to the CRA, and the CRA needs to make a recommendation to the City Commission that such an ordinance be drafted for consideration by the CRA. The second piece discussed by the CRAAB was the review of architectural standards by a review board. A review board typically consists of a group of citizens, not the developer or individual citizens, but a group as in Courtlea Oaks comprised of residents. The merchant element would like the CRA to establish an Architectural Review Board (ARB) for new buildings downtown that would first reviewed by them as the first cut before it goes to staff. This concept for recommendation to the CRA was unanimously supported by the CRAAB.

Motion by Agency Member Dixon to request that the City Commission direct staff to develop an ordinance which would create downtown design standards and an Architectural Review Board to review new and renovated buildings on Plant Street from Park Avenue to the eastern City limits, and south along Dillard Street. Seconded by Agency Member Harriman. Agency Member Graham stated that the agenda item cover memo states the Review Board would "review and approve" but he personally believes the CRA should give the final approval. Mr. Holden stated that the CRA could not give that authority to an appointed board so the CRA would have final approval before going to the City Commission, but it would first go through the ARB. **Motion carried unanimously 5-0.**

The Community Redevelopment Agency adjourned and reconvened as the City Commission at 6:42 p.m.

3. **Recommendation to direct staff to develop an ordinance to create downtown design standards from Park Avenue to the eastern City limits and south along Dillard Street, and an Architectural Review Board**

Motion by Commissioner Dixon to direct staff to develop an ordinance to create downtown design standards from Park Avenue to the eastern City limits and south along Dillard Street, and an Architectural Review Board. Seconded by Commissioner Harriman. City Manager Holden clarified that approval of this item will initiate staff, and possibly a consultant, drafting the ordinance that will first be reviewed by the CRAAB and then the CRA because CRA funds will potentially be expended. Additionally, if there is a County representative on the CRA, they will have the right to vote on the money being spent. Then it would come back to the City Commission. Commissioner Dixon stated that there are enough resources in the city to accomplish this without spending any money on a consultant. The money can be better spent on the east side of town. City Manager Holden replied that this matter is to be decided by the CRA. **Motion carried unanimously 5-0.** Commissioner Graham pointed out that the action includes along Dillard but the CRA District does not go any further than Smith Street. Mr. Holden stated that the City Commission can include anywhere in the ordinance. Commissioner Graham clarified that CRA funds would only be spent within the CRA district boundaries. Mr. Holden stated that was correct.

4. **FIRST READING OF PROPOSED ORDINANCES**

A. **Ordinance 05-18:** ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS 112.16 ACRES LOCATED ON THE NORTHWEST

AND SOUTHWEST CORNERS OF THE INTERSECTION OF CR545 AND TILDEN 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 (Karr-Allen)

City Attorney Rubio read Ordinance 05-18 by title only. **Motion by Commissioner Thompson to approve 05-18 with the second reading and public hearing being scheduled after the State's approval is received. Seconded by Commissioner Graham and carried unanimously 5-0.**

PUBLIC HEARING ITEM

- B. **Ordinance 05-19:** AMENDING THE FUTURE LAND USE MAP OF THE CITY OF WINTER GARDEN'S COMPREHENSIVE PLAN BY INCLUDING PROPERTY GENERALLY DESCRIBED AS 112.16 ACRES LOCATED ON THE NORTHWEST AND SOUTHWEST CORNERS OF THE INTERSECTION OF CR545 AND TILDEN ROAD AS CITY LOW DENSITY RESIDENTIAL, COMMERCIAL, AND CONSERVATION OVERLAY; PROVIDING FOR AN EFFECTIVE DATE (Karr-Allen)

City Attorney Rubio read Ordinance 05-19 by title only. Mayor Quesinberry opened the public hearing. City Planner Cechman stated that in accordance with State Law he has a sign-in sheet available for more information in the future regarding this petition. Mr. Dan Langley with the Fishback Law Firm, stated that on behalf of the applicant, Kurt Ardaman that could not be here tonight, they are in favor of the staff recommendation. Hearing no other comments, the public hearing was closed. **Motion by Commissioner Harriman to approve Ordinance 05-19 with the second reading and public hearing being scheduled after the State's approval is received. Seconded by Commissioner Thompson and carried unanimously 5-0.**

- C. **Ordinance 05-20:** REPEALING CHAPTER 46, FIRE PREVENTION CODE – LOCAL AMENDMENTS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; ADOPTING A NEW CHAPTER 46 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN ENTITLED FIRE PREVENTION AND PROTECTION; PROVIDING FOR ADOPTION OF THE FLORIDA FIRE PREVENTION CODE AND AMENDMENTS THERETO, GENERAL PROVISIONS, PLAN REVIEW, PERMITTING, INSPECTION FEES, AND AUTOMATIC FIRE PROTECTION EXTINGUISHING SYSTEMS; DIRECTING TRANSMITTAL TO THE FLORIDA BUILDING COMMISSION AND THE STATE FIRE MARSHALL; PROVIDIING FOR CODIFICATION, SEVERABILITY AND AN EFFECTIVE DATE

City Attorney Rubio read Ordinance 05-20 by title only. **Motion by Commissioner Harriman to approve Ordinance 05-20 with the second reading and public hearing on March 24, 2005. Seconded by Commissioner Dixon and carried unanimously 5-0.** Commissioner Graham asked if this ordinance included any change to the size of a building that would require a sprinkler system. Fire Chief Williamson responded no.

- D. **Ordinance 05-21:** AMENDING ORDINANCE 99-60 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN TO EXPAND THE BOUNDARIES OF STONEYBROOK WEST COMMUNITY DEVELOPMENT DISTRICT; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE
City Attorney Rubio read Ordinance 05-21 by title only. **Motion by Commissioner Thompson to approve Ordinance 05-21 with the second reading and public hearing on March 10, 2005. Seconded by Commissioner Harriman and carried unanimously 5-0.**

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

- A. **Ordinance 05-11:** PROVIDING FOR THE CONTRACTION OR “DEANNEXATION” OF CERTAIN LANDS, GENERALLY DESCRIBED AS 0.21 ACRES LOCATED ALONG A PORTION OF THE NORTH LINE OF THE EXISTING RESERVE AT WATERFORD POINTE PHASE 1 SUBDIVISION, AND MORE SPECIFICALLY DESCRIBED HEREIN, FROM THE CITY OF WINTER GARDEN, FLORIDA CORPORATE LIMITS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE
Assistant City Attorney Rubio read Ordinance 05-11 by title only. City Planner Cechman stated that if this property is not deannexed, the City would be the jurisdictional owners of the end of a cul-de-sac that is in Orange County. Therefore, deannexing is recommended. Mayor Quesinberry opened the public hearing. Hearing no comments, the public hearing was closed. **Motion by Commissioner Graham to approve Ordinance 05-11. Seconded by Commissioner Thompson and carried unanimously 5-0.**

6. **PUBLIC HEARING/APPEAL OF A PLANNING AND ZONING BOARD DECISION**

- A. **Appeal of Planning and Zoning Board decision regarding variances approved for 409 West Bay Street as filed by Donald and Alita Mikiten**
City Planner Cechman stated that the Planning and Zoning (P & Z) Board on February 7, 2005 unanimously approved multiple variances that included; lot width, lot depth, square foot, rear yard setback, and living area square foot for a small lot located at 409 West Bay Street. The adjacent property owner to the west has appealed that approval. The property is zoned R-1B, which requires a much larger lot to be developed. This lot previously went through the variance process, but was postponed by the P & Z Board until the City Attorney could draft a non-conforming ordinance which was done and subsequently adopted. The ordinance still does not address these very small lots and therefore, it is again going through the variance process. Staff has looked at the property, which can either be used for a stand-alone house, remain vacant where litter and debris can accumulate or adjacent landowners could purchase it. Therefore, looking at those alternatives, staff did recommend approval of the variances and staff does not waiver from their recommendation for approving the variances. City Attorney Rubio clarified that the staff recommendations include the same criteria for the variance request. Mr. Cechman stated yes, the same criteria had been presented to the P & Z Board.

Mrs. Alita Mikiten, 411 W. Bay Street, Winter Garden, Florida stated that 409 West Bay Street is a lot 50 by 70 feet that is too small for a conventional home of any kind without allowing the requested variances. She and her husband are very concerned at the prospect of having new construction so close to their own house and it would put it right up against their bedroom. It is their understanding that the setbacks perform both a regulatory and aesthetic function by maintaining conformity to zoning ordinances and building codes. The other homes along Bay Street have been built according to these regulations so they do not feel this one deserves any special consideration. They have a 20-year vested interest in this community and are concerned about the negative impact on their property and the character of the neighborhood. This builder has no stake in this project other than to build it, finish it, sell it, and move on. According to the current plan, it has the dimensions to give the appearance of either being a storage shed or mobile home because the lot is so tiny. They respect the owner's right to do what he wants with the property but it is not as if he doesn't have other alternatives because he does. If the owner can't build a residence within the setbacks, he could sell it. He could hold it for further development of the property to the east. He could also apply for a setback variance on the east boundary and move his house over nearer the short-term rentals. She thinks they can work some things out and asked the Commission to reconsider the variances granted.

Mayor Quesinberry stated that the property owner has paid taxes on a non-conforming lot but he still should be allowed to do something with the lot. **City Manager Holden** stated that the reason the City has some non-conforming lots was because the City was built on 50-foot lots and the Commission at some point declared that a zoning of R-2 or R-1B would have to be 75 feet wide thereby making the 50 foot lots non-conforming and created the need for variances. The lot at 409 W. Bay Street complies with the setbacks, has no different setbacks than what Mrs. Mikiten has, and would be built no closer to Mrs. Mikiten than if their lot were 200 feet wide. The rear setback variance is because the lot is not very deep. It is not an infringement of Mrs. Mikiten's house. **Commissioner Dixon** stated that we have 50-foot lots and it would be wasting the lots if we don't allow them to rebuild or build new houses on them. **Commissioner Graham** pointed out that the lot depths are the same and he favors a 10-foot setback on parcel on either side of a house for a 20-foot separation. While he sat as a Commissioner, they increased the lots widths to make them bigger to allow more distance between the homes. However, there are some expensive homes being built with only five feet (10 feet from house to house) so this variance request will put them farther apart with 10 feet than some of the more expensive homes are. **City Manager Holden** reported that Orange County has reported that about 63 percent of the homes being built are on 50 foot wide or less with about 35 percent being built on 40-foot wide lots. **City Attorney Rubio** stated that the basis for the City Commission's decision to grant, deny, or modify the variance request needs to be determined based on the Review Criteria of Code Chapter 118-31; "A variance may be granted from land development regulations by the planning and zoning board (at this point the City Commission is sitting in this position) if the board concludes that literal enforcement of the provisions of land development regulations would result in either practical difficulties or unnecessary hardships" which he believes Mr. Cechman has indicated that the configuration of the lot is the basis for the variance request.

Motion by Commissioner Harriman to deny the variance and hope that the parties can work something out. Seconded by Commissioner Thompson.

Mr. Craig Davis, the contractor, stated he wanted to address statements made by Mrs. Mikiten. She stated that the dimensions of the existing lot are too small for the construction of a conventional house and she is right and that is why he applied for the variance. Secondly, she asked why this deserved a special consideration. He thought they were offered for various reasons. She also stated that the appearance would be that of a storage shed or mobile home, but the picture depicting the house does not look like either and in his opinion will upgrade the neighborhood and be an asset to the community. It will be a rental property that they will take care of and will put a lot of money into it. The only variance requested is for the rear.

Ken White, on behalf of the property owner, stated that the lot was specifically purchased to build a home for someone but those plans changed and they even put the lot on the market for sale. The highest and best use of this lot is a home and encouraged approval.

Mayor Quesinberry asked for clarification of the motion. Commissioner Harriman stated his motion was to deny this variance request for this particular house, which doesn't mean they cannot come back with something else.

Mr. Jerry Carris, 347 Bayside Avenue, Winter Garden, Florida, stated that he was on the Planning and Zoning Board that originally approved this variance after thorough consideration, the board determined this was the best use for the property, did not impact anyone and it would enhance the neighborhood.

Commissioner Thompson withdrew his second to the motion after the clarification. Mayor Quesinberry asked if there was anyone else who wanted to second the original motion. Hearing none, the **MOTION DIED** for lack of a second.

Mayor Quesinberry closed the appeal hearing.

Motion by Commissioner Graham to approve the variances requested. Seconded by Commissioner Dixon. Motion passed by a vote of 4-1.

Mayor Quesinberry-Aye
Commissioner Thompson – Aye
Commissioner Graham – Aye
Commissioner Dixon – Aye
Commissioner Harriman - Nay

7. **REGULAR BUSINESS**

A. **Request for donation by the Winter Garden Elks Lodge 2165**

Russ Pelaquin stated that this request is for a \$1,000 donation to support the Florida Elk's Children's Therapy Services that provides free transportation to those from birth to eighteen years old. There are approximately 30 vans statewide, with two of them right here in this district. **Motion by Commissioner Dixon to donate \$1,000 to the Winter Garden Elks Lodge #2165. Seconded by Commissioner Graham and carried unanimously 5-0.**

B. **Request for sponsoring the LadyHawks 12 U fast-pitch softball team under the non-profit organization of West Orange Girls Club, Inc.**

Sandra Breeding was not present. **Motion by Commissioner Harriman to table this item. Seconded by Commissioner Thompson and carried unanimously 5-0.**

C. **Recommendation to approve a Dedication of Right-of-Way and Improvement Schedule Agreement with Manheim Remarketing Limited Partnership (Florida Auto Auction)**

City Planner Cechman stated that one of the requirements of the Florida Auto Auction special exception is to provide the City with additional right-of-way and that document has been provided in the agenda package. **Motion by Commissioner Graham to approve a Dedication of Right-of-Way and Improvement Schedule Agreement with Manheim Remarketing Limited Partnership. Seconded by Commissioner Dixon and carried unanimously 5-0.**

D. **Recommendation to approve Final Plat for Fuller's Landing**

City Planner Cechman stated that this is a Final Plat for Fuller's Landing Subdivision zoned R-1. The Planning and Zoning Board on February 7, 2005 did recommend approval and staff recommends approval with the conditions provided in the agenda package. **Motion by Commissioner Graham to approve the Final Plat for Fuller's Landing with staff recommendations (see attached). Seconded by Commissioner Harriman and carried unanimously 5-0.**

E. **Resolution 05-07: DESIGNATING THE CHIEF OF POLICE OR IN HIS/HER ABSENCE, THE POLICE LIEUTENANT AND THE CITY MANAGER OR IN HIS/HER ABSENCE, THE PUBLIC WORKS DIRECTOR TO AUTHORIZE AND SIGN FLORIDA DEPARTMENT OF TRANSPORTATION CLOSING/SPECIAL USE OF STATE ROAD PERMITS AND PROVIDING AN EFFECTIVE DATE**

City Attorney Rubio read Resolution 05-07 by title only. **Motion by Commissioner Graham to approve Resolution 05-07. Seconded by Commissioner Dixon and carried unanimously 5-0.** Commissioner Graham asked if this item is for closing a state road for a special event. City Manager Holden stated that this item was generated after he received an electronic mail communication about reaffirming the process with municipalities.

F. Recommendation to satisfy Code Enforcement Board liens for cases 96-23 and 97-57; 737 and 743 E. Bay Street (Dorris & Boyd Holt)

Finance Director Bollhoefer stated that back in 1996 and 1997 these properties had Code Enforcement action against them in the amount of \$2,840 and subsequently had liens filed by the City. Payments previously made amount to \$400. In 1996, the properties were donated to the Ninth Street Church of Christ and the church is building on the property. They have asked that the liens be waived and removed. Staff feels that since the church was not responsible for what lead to the fines and because those conditions no longer exist, the fines be waived, and liens removed on both properties. City Manager Holden stated that the \$400 already paid adequately covers the administrative efforts. **Motion by Commissioner Graham to waive the outstanding fines and remove the liens. Seconded by Commissioner Harriman and carried unanimously 5-0.**

5. MATTERS OF CONCERN FROM CITIZENS

Don Miller, 1073 Woodson Hammock Circle, Winter Garden, Florida stated that Winter Garden did not exist on the Orange County Homeowners Association Alliance web site and he is happy to report that as of March 1, 2005, Winter Garden will be on their web page and publications. He hopes that those looking for a place to live will find Winter Garden here.

Joanne Houwers, 1054 Orange Wharf Court, Winter Garden, Florida, stated she has two children, one of whom is autistic and five years ago she started a program for autistic and related disabilities at the Jim Beech Recreation Center in Ocoee. The program has grown to 180 families strong and they reside in Winter Garden, Ocoee, Windermere, and as far as Lake Mary. She is now non-profit and is conducting her first fundraiser. She is asking the City of Winter Garden to participate in the fundraiser. City Manager Holden stated that Ms. Houwers should submit the donation request form and it will be scheduled for the next agenda. Ms. Houwers stated she has already completed and submitted the form to the City Clerk.

Andy Bruns, 6 Laurel, Winter Garden, Florida (Trailer City), stated that there was a streetlight taken down accidentally on the Pounds property in the parking lot across from City Hall and there is just a stub left that has created problems for trailers. He sees it as a safety hazard that now has a cone over it and it has live wires. Public Works Director Smith stated that the streetlight has been replaced twice already after being ran over and destroyed. The circuit breaker is shut off to that particular light. City Manager Holden pointed out that it is located in the City's right-of-way but the customers of Pounds are running over it. Mr. Bruns recommended moving the light to the north straight across from the one on Plant Street behind the drain. City Manager Holden stated it will be evaluated to see what the lighting levels are and whether or not it is needed. Mr. Bruns asked that he be notified of the outcome.

Wilma Waldren, 1 Laurel, Winter Garden, Florida (Trailer City), stated she was unable to attend the last meeting and wanted to know the outcome on the closing sign posted at Trailer City. Mayor Quesinberry stated that the City Attorney at the next meeting provided the answer. Ms. Waldren stated that it is her understanding that Tallahassee responded that it

can't be changed. City Attorney Rubio responded that it was recommended that the sign not be changed because it is part of the required disclosure. Ms. Waldren requested a copy of the correspondence from both parties on this subject. Mr. Rubio stated it is within Ms. Waldren's right to make a public records request.

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

7. **MATTERS FROM CITY MANAGER**

A. **Financial Statement for January 2005**

The City is in excellent financial health. The reserve fund is the highest it has ever been.

- Reported that the Finance Director has been working with FEMA on the City's claim for reimbursement after the three hurricanes and the best figure, to date, cost the City \$448,138.76. This expenditure has had no affect on the budget because contingencies were budgeted and the City has a healthy reserve. The amount FEMA will reimburse the City is \$454,091.72, but we do not know when we will actually receive the funds.

8. **MATTERS FROM MAYOR AND COMMISSIONERS**

Commissioner Dixon

The east side of Winter Garden is doing very well. They are having programs at the Maxey Center and they are working with the Recreation Director to assist with a County program ran by Charlie Mae Wilder. She emphasized that the programs are essential to the community and for the past three months, after a number of attempts, the program has not had Worker's Compensation. Apparently, Ms. Wilder has until March 9th to get the program up and going or she will lose out on the \$37,000 they are holding. **City Manager Holden** stated that he has been discussing this issue with the City Recreation Director and they will figure out a way to deal with the problem. Commissioner Dixon stated she is in the process of getting a grant written for the Mildred Dixon Center. The baseball field still lies in waste and they need the CDBDG funding before it is transferred to the Department of Commerce. They need some guidance in writing the proposal. She and Ms. Wilder are meeting with Representative Corrine Brown tomorrow in Eatonville where they plan to address the funds needed on the east side. She also hopes that the project for blocking the road will be completed soon. One day they also hope to put in some new equipment in the kiddy park. The boys have requested a karate class and about sixteen girls have also asked about a program. If the funding request is submitted correctly, they will also get some lighting on Crown Point Road that can't be shot out by vandals. The sidewalk should be on the right side and they are trying to obtain some Capital Improvement money. They want to update the Front Porch Program package. **Mayor Quesinberry** stated that when the county installed the ball field, basketball courts, and a retention pond, which made the area hold water he thought they came back and corrected the problem. **Commissioner Dixon** replied that she too heard it was corrected, but it has not and she is still asking to have it fixed.

Commissioner Graham

Reported that he has received complaints from residents living next to Bradford Park because the dead trees have not been removed and have created a habitat for snakes and such. City Manager Holden responded that the Public Works Department will look into it. Commissioner Graham

stated that the other complaints he has received are about the traffic backing up as they park along W. Bay Street waiting for school to get out. The parked cars have been blocking the entrances to the subdivisions and it is happening on Dillard Street. City Manager Holden stated that he, the Police Chief, and the SRO have sat at various times looking into this problem and one of the problems contributing to the traffic congestion is the construction traffic. Once the construction is complete, staff will take aggressive action on the best way to make the traffic flow at Lakeview.

The meeting was adjourned at 7:59 p.m.