



CITY OF WINTER GARDEN

OFFICE OF THE CITY CLERK

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REGULAR MEETING MINUTES

CITY COMMISSION

February 23, 2006

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

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

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

1. **APPROVAL OF MINUTES**

Motion by Commissioner Graham to approve the regular meeting minutes of January 26, 2006 and postpone the regular meeting minutes of February 9, 2006. Seconded by Commissioner Nichols and carried unanimously 5-0.

Mayor Quesinberry stated that he would like to change the agenda order and move Regular Business Items 6 A and B forward to allow the young ladies of West Orange High School to perform their solos before the other items of the meeting.

6. **REGULAR BUSINESS**

- A. **Withdrawal of request postponed on February 9, 2006 for sponsorship by purchasing an advertisement for the West Orange High School Theatre Department**
- B. **Request for donation for the West Orange High School Theatre Department to attend the state competition**

Solos were performed by Kate Gordon and Taylor Aldrich. Tina Aldrich stated that Item "A" is being withdrawn and replaced with Item B. The West Orange High School Thespian troop competes in State District 5 and this year won 9 out of 15 "Best of Shows". She asked

the Commission for a donation for the group of approximately 30 to attend the state competition. **Motion by Commissioner Dixon to approve the request for a \$1,000 donation for the West Orange High School Theatre Department to attend the state competition. Seconded by Commissioner Graham and carried unanimously 5-0.**

2. **Presentations on Commuter Rail by representatives from Orange County and MetroPlan**

Jim Harrison, Director of Growth Management for Orange County, stated that he was here to share Orange County's role on the commuter rail project. The Florida Department of Transportation (FDOT) is the lead on this and contacted the County for a resolution of support. Four counties, Orange, Seminole, Volusia, and Osceola were asked for a resolution of support for the commuter rail project as well. The purpose was to secure the Federal funding necessary to make this project happen. The Orange County Board of County Commissioners considered their resolution in August of 2005 with a number of contingencies. Orange County was asked to commit to a dollar amount for the capital cost contribution to the project. The cost is to be distributed among the four counties. Orange County approached the two major cities in the county that would be directly affected by stations in their jurisdiction and asked those cities, City of Orlando and City of Winter Park, for resolutions of support before the Board of County Commissioners took a vote. Transit as a concept is a good idea; is this transit project the correct one, is the issue at hand. There are interlocal funding agreements with the other counties to assure that the other counties pay their fair share of the local match of this project. The project as a whole has the effect of reducing freight bill traffic from the CSX A-line. With those contingencies in mind, Orange County took a resolution of support.

Mayor Quesinberry asked how many years out is the project and what are the transportation dollars that are coming from the roads that might be going into this fund. **Mr. Harrison** replied that he thought a detailed presentation had been heard by the Commission at the City's last meeting covering the schedule and dollar amounts. He stated that the schedule for the implementation of this project is over the next 8 to 10 years. Major investments will start in the next 2 to 3 years if this goes forward. Major decision points will take place in the next six months to a year. He stated that the FDOT is in the process of final environmental analysis, final negotiations with CSX, and through this process they will determine final financial impacts. Once that information is known then we can make a final decision as to whether this project is sensible and if we should go forward.

Commissioner Nichols stated that a previous speaker on this project stated that the whole project would be up and running in three years. **Mr. Harrison** stated that FDOT is the project manager and if she told you three years, he stated that he would have to believe her. **Commissioner Nichols** asked what he foresees as the benefit to the citizens of Winter Garden. **Mr. Harrison** stated that the benefits would lie in two areas. This will run as the spine of future transit systems, which will run north-south and east-west and serve the citizens of Winter Garden from a transit standpoint. He stated that there is also the general benefit that a community receives as transportation alternatives. He stated that he is here to provide information on why Orange County took the stance they did in this issue by providing the facts.

Commissioner Nichols stated that this project or similar projects have already been turned down by the citizens of this county in the past. She stated that she did not know why it keeps coming up. **Mr. Harrison** stated that it also seems to be getting support time and time again. **Commissioner Reynolds** asked if the general fund earmarked for these is not coming from a specific budget. **Mr. Harrison** stated that the final funding source has not been identified. **Commissioner Reynolds** asked if it would be competing for funding for roads. **Mr. Harrison** stated that roads are not paid for through general funds, but paid for through impact fees and gas taxes. Impact fees will not be spent on this project. **Commissioner Reynolds** stated that information was released today from Dr. Randall Holcomb, the Governor's lead financial and economic advisor who calculated it out. This particular project, as it stands now, does not take into consideration the operating costs after up and running, nor does it have the CSX track lease agreement in it. He stated that currently it breaks out to about \$15,321 per resident for the City of Winter Garden. He has a hard time promoting any sort of a tax to that degree, with that kind of burden on the taxpayers of Winter Garden. **Mr. Harrison** stated that he did not think that anyone in Orange County, including himself, would encourage a scenario that costs the residents of the City of Winter Garden \$15,000 per capita. **Commissioner Reynolds** stated that this is where we are according to the Governor's office. **Mr. Harrison** stated that he was curious about that, and stated that the share Orange County has been asked to bear is about \$44 million for the capital cost, the City of Orlando and the City of Winter Park with their financial contribution would further reduce it to about \$24 million which would be countywide. **Commissioner Reynolds** stated this is again without the operating agreement. **Mr. Harrison** stated that operating costs are also subsidized by the State and Federal government. The operating costs that would fall to the citizens of Orange County would fall in the \$2 million a year range, countywide. He reiterated that a larger portion of that burden would be shared by those jurisdictions that actually have stations and are receiving direct benefit. **Commissioner Reynolds** stated that we have an open-ended cost factor that we are being asked to support and we do not know what the end result will be and we don't know what the ridership will be. Countless numbers of examples throughout the country prove to be in the negative and costing the taxpayers money every year. He stated that he could not see why it would be beneficial to Winter Garden, the service is not coming here, and it is going to be deep into our pockets here. **Mr. Harrison** stated that at this point, neither Orange County nor the FDOT is asking any one for an expression of support because at this point we do not have enough information. There was discussion as to why the presentations on this issue were being made and it was determined that they are only to provide information.

Commissioner Graham asked if the environmental assessments are finished. **Mr. Harrison** stated that he does not believe they have, they are in the process of being completed. **Commissioner Graham** asked if in order to get federal dollars, will this project have to be compared with other projects in the country to see if it is feasible. He asked if that has been done. **Mr. Harrison** stated that this is a process that they are going through now and will have to share all of this information; then it will be determined if this project is viable and eligible for Federal transportation dollars.

Commissioner Dixon questioned why a motion would be made to not hear information. **Commissioner Reynolds** responded that the motion is to say to the County that this City is not in favor of the current package before them. It will put a burden on the taxpayers for the City of Winter Garden and provide no benefit. He stated we are saying that they need to go back and get another plan. **Commissioner Dixon** stated that she does not have all the information.

Commissioner Graham stated that he got information from Representative Mica that shows \$475 million to complete this project. He asked if this will be from Lake Mary all the way down to Poinciana. **Mr. Bob O'Malley, Director of Public Affairs and Strategic Planning for MetroPlan Orlando**, stated that the project will be from Deland and Volusia County down to Poinciana in Osceola County. **Commissioner Graham** asked if it would take just \$475 million. **Mr. O'Malley** stated that Congressman Mica and FDOT are the project leaders on this. **Commissioner Graham** asked how they come up with these figures without a contract with the railroad or the environmental studies. **Mr. Bob O'Malley** stated that he is with MetroPlan Orlando and the Metropolitan Planning Organization for Orange, Osceola, and Seminole counties. This is exactly the point; we do not have all the information right now. The environmental assessment is still on going and the agreement with CSX is not in place yet, until that happens there is really not an issue to take a position one way or the other. He stated that Winter Garden is very involved in the process, Mayor Quesinberry serves on the MetroPlan Orlando Municipal Advisory Committee, Delmar Johnson from Winter Garden serves on the Citizens Advisory Committee, and City Planner Mark Cechman is very involved with their technical committee. All the information is not available right now and we cannot advocate one way or the other on this issue. **Commissioner Reynolds** asked why the County Commission is considering promoting the project if they do not have the information. He stated that the taxpayers of Orange County voted overwhelmingly to say no. We are back on the table with this thing again. We already know it is up to \$15,000 per resident for Winter Garden and we don't even have the final figures yet, so why is it even being considered. **Mr. Harrison** stated again he is not quite sure he follows the numbers quoted, but what Orange County and the other three counties and two cities were asked to provide is a resolution that allowed the FDOT to go to the Federal Transit Authority and seek funding to put this package together. That is what has happened and he does not foresee any further action by Orange County until full information is available. **Commissioner Reynolds** stated that once those Federal funds are designated, we are committed. **Mr. Harrison** stated that he does not believe that this is the case at all. **Commissioner Reynolds** stated that they have to be used or paid back. **Mr. Harrison** stated used or released. **Commissioner Reynolds** responded correct. It is at the point now that we need to send this resolution to the County to say this is a bad deal for Winter Garden. The price tag is too high; it takes money from busses and roads. Floridians and Winter Gardenians need to have the right to spend their transportation dollars as they deem the best way to use them, not have somebody else tell us how they are going to spend them.

Commissioner Nichols asked Mr. O'Malley what he thinks is the end result for the citizens of Winter Garden, how will it benefit us who are so far away from this rail line. **Mr. O'Malley** responded that he would ask that six months down the line or when it is time to take a position on this issue that she will consider what is the benefit of I-4 to the citizens of

Winter Garden. It does not run from Winter Garden, yet without I-4 he would guess to say that the people that live in Winter Garden would either not be here or the places that they work for would not be here. You can't consider one project on its own when it comes to transportation. He stated that I-4 loses money every year. You need to consider how everything connects and works together. I-4 connects to State Road 50 which connects to Winter Garden. Everything connects together, connects businesses, and connects people. Most people in Central Florida do not work in the city in which they live, they travel to another city. Many of the people that do business in Winter Garden travel from another city into Winter Garden. Commuter rail is a first step of mass transit for people who don't have access to cars, for people who can't afford to live in downtown Orlando or wherever their jobs are. He stated that this will connect to a bus system and a much broader rail system. **Commissioner Nichols** stated that the roads he spoke of all connect and they already exist. In order to bring a rail line out here, you would have to purchase land, or use eminent domain to build rail at a huge expense and additional rolling stock. **Mr. O'Malley** stated that this could be rail or a bus route to the transit system; it could be connecting with the Lynx transportation system. **Commissioner Nichols** stated that we are going to pay for a rail system that will not benefit the citizens of Winter Garden. **Mr. O'Malley** stated that a UCF survey found that in Central Florida, 68 percent of residents support a commuter rail system. **Commissioner Nichols** stated she had not seen those particular figures but has seen opposite figures and she does have the same statement from Dr. Holcomb who advises our Governor, who is totally against this project because of the expense. He says \$15,000 per person who lives in this town; she asked if you are ready to pay that out of your pocket. **Mr. O'Malley** stated that he had not seen that study, which just came out today. Dr. Holcomb is a professor at Florida State University and does not work directly for the Governor's office. No one has had time to check his math. **Commissioner Reynolds** stated that the route that this train crosses is about 70 roads. If the train crosses about every 30 minutes, you will spend more time waiting at the crossovers than you will traveling. **Mr. Harrison** explained the differences between freight rail and commuter rail, emphasizing the wait times. He stated doing math in his head, the \$15,000 per person in Winter Garden would be if the citizens of Winter Garden were bearing the entire \$44 million alone. **Commissioner Nichols** stated that the total price tag is more than \$44 million. **Commissioner Reynolds** stated that this is projected out over several years. **Mr. Harrison** addressed the issue of taxpayers' dollars for federal and state and posed the question whether this money will be spent in our jurisdiction, in Oregon or somewhere else. We should at least investigate whether or not it is better to have the federal and state money coming to our area and provide some benefit to us. **Commissioner Graham** stated that with reference to the gas tax, the Federal government gets 18 cents, the State of Florida gets 18 cents, and then we have a 6 cent tax in Orange County which makes 42 cents. There is no way we can get out of that if you drive a car. Florida donates a lot of money to other states; we do not get nearly the money we send to Washington. Whatever money we can get off of the gas tax is a benefit to Winter Garden.

Motion by Commissioner Reynolds to send the resolution as written to Orange County, expressing our non-support for the package as it stands. Seconded by Commissioner Nichols.

Commissioner Nichols stated it was brought to their attention at a previous meeting that Orange County may withhold some of our money if we did not go along with this. She had a long discussion with Representative Randy Johnson and he assured her that it would be impossible. **Mr. Bollhoefer** stated that he has dealt with government for quite a long time and the County allocates funds. When you oppose regional projects that they recommend and they start looking for roads to fund, they will say that Winter Garden has not supported regional funding and they may shift those funds elsewhere. We have several projects that we are working on and our lobbyist is working very closely with Jim Sabasta who is the chairman of the transportation committee for the Senate and is a proponent of commuter rail. They are working very hard to get State Road 50 moved up. He spoke to both lobbyists and they asked why would you pass a resolution in opposition, especially considering it will not be coming up for any action for at least six to twelve months and jeopardize your opportunity for State Road 50. He further explained how funding could be jeopardized. We could risk losing entire road funding for a project that could die on its own. Ocoee reviewed the issue and decided not to pass the resolution. He stated that Randy Johnson is correct, they cannot take funding that has already been awarded to us, but we do not have any funding that has been awarded and we are trying to seek future funding. We should take a step back before we risk all of this funding.

Commissioner Graham stated that he was not for or against this and feels we need more information and have plenty of time. We are using a lot of figures that have been thrown out and we really do not know what we are dealing with. **Commissioner Reynolds** stated that if Federal funds are released for the study we are committed. **Mr. Bollhoefer** stated that until you accept the Federal funds for the construction you are not committed. **Commissioner Reynolds** asked how they could conduct the study without the funding. He resents the fact that we are held hostage to get our fair share of road money. We ought to have the courage to stand up and say no. He disagrees with being told that we are not going to get our fair share of road money and stated that it is totally inaccurate. **Commissioner Nichols** stated that with reference to State Road 50, she was speaking to Representative Johnson who assured her that State Road 50 was already done and that we did not have to worry about it anymore. **Mr. Bollhoefer** stated that if the Commission does not want to take any action tonight and wait and see, then you would vote no on this resolution. If you want to take some action tonight to oppose the rail you would vote yes. He recommended the Commission vote no. **Motion failed 2-3; opposed Mayor Quesinberry, Commissioners Dixon, and Graham.**

3. **FIRST READING OF PROPOSED ORDINANCES**

A. **Ordinance 06-13:** VACATING THE NORTHERLY FOUR FEET OF THE TWENTY FOOT DRAINAGE AND UTILITY EASEMENT LOCATED ADJACENT TO THE SOUTHERNMOST PROPERTY LINE, LESS 10 FEET ON THE EASTERN AND WESTERN PROPERTY LINES OF 2008 HARBOR COVE WAY, WINTER GARDEN, FLORIDA; PROVIDING AN EFFECTIVE DATE

City Attorney Bedell read Ordinance 06-13 by title only. City Planner Cechman stated that one more comment will be presented with the second reading concerning some work that will need to be done on the swale. Commissioner Graham asked for clarification on section one where it describes the footage as the northerly four feet of the southerly twenty foot drainage and utility easement, less ten feet on the eastern and western

property lines of lot 20. What is the less ten feet on the east and west? Mr. Cechman stated that they only need the area behind the pool right behind the house. There are some side easements that we want to maintain. They are not going out into the side yard. **Motion by Commissioner Graham to approve Ordinance 06-13 with the second reading and public hearing being scheduled for March 9, 2006. Seconded by Commissioner Dixon and carried unanimously 5-0.**

- B. **Ordinance 06-14:** VACATING THE NORTHERLY THREE FEET OF THE TWENTY FOOT DRAINAGE AND UTILITY EASEMENT LOCATED ADJACENT TO THE SOUTHERNMOST PROPERTY LINE, LESS 10 FEET ON THE EASTERN AND WESTERN PROPERTY LINES OF 2014 HARBOR COVE WAY, WINTER GARDEN, FLORIDA; PROVIDING FOR AN EFFECTIVE DATE
City Attorney Bedell read Ordinance 06-14 by title only. **Motion by Commissioner Dixon to approve Ordinance 06-14 with the second reading and public hearing being scheduled for March 9, 2006. Seconded by Commissioner Graham and carried unanimously 5-0**

4. **FIRST READING AND PUBLIC HEARING OF PROPOSED ORDINANCES**

- A. **Ordinance 06-09:** AMENDING 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 APPROVAL AND EXECUTION OF FIRST AMENDMENT TO CITY OF WINTER GARDEN DEVELOPMENT ORDER FOR WINTER GARDEN VILLAGE AT FOWLER GROVES; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE
City Attorney Bedell read Ordinance 06-09 by title only. City Planner Cechman stated that these are changes that the Department of Community Affairs (DCA) wanted and are technical in nature. He referred to the latest changes as being very minor. The DCA wanted to remove a couple of things on some signals because they are already included in the widening project. The last change is a requirement that Sembler Florida, Inc. has to pay some additional money for existing CR535 improvements and they have agreed. Mayor Quesinberry opened the public hearing.

Shirley Smith, 21 West Crest Avenue, Winter Garden, Florida stated that for the last few months we have been nickelling and diming the Sembaliers to death on road improvements. Widening of State Road 50 is going to take care of the some of the problems from the DCA. She stated that you better watch it and develop something that will be satisfactory to our community. She stated that FDOT has taken our tax dollars and made other places beautiful or just did repairs. They have not kept up our roads and with the new developments coming in we cannot nickel and dime nine million dollars out of them.

Motion by Commissioner Graham to approve Ordinance 06-09 with the second reading and public hearing being scheduled for March 9, 2006. Seconded by Commissioner Dixon.

Commissioner Graham asked why the strike through with reference to the information about State Road 50 signal reconstruction. Mr. Cechman stated that it is a request from FDOT as it will be included in the widening project. **Motion carried 4-1; opposed Commissioner Nichols (District 4).**

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

- A. **Ordinance 06-10: AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING THE WINTER GARDEN COMPREHENSIVE GROWTH MANAGEMENT PLAN IN ACCORDANCE WITH A STIPULATED SETTLEMENT AGREEMENT BETWEEN THE CITY OF WINTER GARDEN AND THE FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS BY AMENDING POLICY 3.3 OF THE CAPITAL IMPROVEMENTS ELEMENT BY PROVIDING FOR PROPORTIONAL SHARE CONTRIBUTIONS FOR TRANSPORTATION IMPROVEMENTS AND ADDRESSING TRANSPORTATION CONCURRENCY PERTAINING TO THE FOWLER GROVES DEVELOPMENT OF REGIONAL IMPACT; ADDING POLICY 1.4 TO THE CAPITAL IMPROVEMENTS ELEMENT TO PROVIDE FOR MAJOR CAPITAL EXPENDITURES TO DANIELS ROAD AND STATE ROAD 50 RESULTING FROM DEVELOPMENT OF A DEVELOPMENT OF REGIONAL IMPACT; AMENDING THE FUTURE TRAFFIC CIRCULATION MAP OF THE TRANSPORTATION ELEMENT BY DEPICTING THE SEGMENT OF DANIELS ROAD THROUGH THE FOWLER PROPERTY AS A SIX-LANE ROAD; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE (Fowler Remedial Comprehensive Plan Amendment)**

City Attorney Bedell read Ordinance 06-10 by title only. **Motion by Commissioner Graham to approve Ordinance 06-10. Seconded by Commissioner Dixon.**

Phil Baker, 125 West Smith, Winter Garden, Florida stated that Disney recently announced that they have constructed a feeder line into the property and intend to take most of the traffic coming from the Turnpike and reroute it through State Road 429 and taking traffic off of I-4. He asked if this was factored into the traffic study. Mr. Bollhoefer stated that our Traffic Engineer is not here tonight and asked if City Planner Cechman knew this information. Mr. Cechman asked when this information was announced. Mr. Baker stated that Disney announced this approximately three to four months ago. The feeder line is in place and they are finishing up the final construction and are preparing to open it. He stated that it comes in from State Road 429 behind Animal Kingdom and feeds right into the property. We need to make sure that this is factored in because it could have a significant impact on the CR535 and State Road 429 area.

Mr. Cechman stated that state law requires the City to have a sign-in sheet for information on comprehensive plan amendments and directed where it was located. Mayor Quesinberry closed the public hearing. **Motion carried 4-1; Commissioner Nichols (District 4) opposed.**

- B. **Ordinance 06-01:** REZONING APPROXIMATELY 2 ACRES OF CERTAIN REAL PROPERTY LOCATED AT 942 WEST STORY ROAD AND MORE SPECIFICALLY DESCRIBED HEREIN FROM R-2 TO CITY R-1B; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE (New Hope Primitive Baptist Church)

City Attorney Bedell read Ordinance 06-01 by title only. Mayor Quesinberry opened the public hearing; hearing and seeing none he closed the public hearing. **Motion by Commissioner Graham to approve Ordinance 06-01. Seconded by Commissioner Nichols and carried unanimously 5-0.**

- C. **Ordinance 06-05:** REZONING APPROXIMATELY 232 ACRES OF CERTAIN REAL PROPERTY GENERALLY LOCATED ON THE NORTHWEST CORNER OF AVALON ROAD AND HARTWOOD MARSH ROAD FROM COUNTY A-1 TO CITY PUD; PROVIDING FOR CERTAIN PUD REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE (Hickory Hammock PUD)

City Attorney Bedell read Ordinance 06-05 by title only. Mayor Quesinberry opened the public hearing; hearing and seeing none he closed the public hearing. City Planner Cechman stated that this item deals with the South Star Development Corporation. They purchased some land and worked with Orange County Public Schools to make sure they had the land for a school site. They have also worked to address the issue of traffic on CR545 and are willing to pay their proportionate share. With reference to our issues of recreation, they have agreed to give us an extra \$150,000 in addition to their recreation impact fees. **Motion by Commissioner Dixon to approve Ordinance 06-05. Seconded by Commissioner Reynolds.** Commissioner Reynolds revealed an ex-parte communication with the developer on this project. **Motion carried unanimously 5-0.**

- D. **Ordinance 06-03:** ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS 0.68 ACRES LOCATED AT SOUTHWEST CORNER OF NINTH STREET AND STORY 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

City Attorney Bedell read Ordinance 06-03 by title only. Mayor Quesinberry opened the public hearing; hearing and seeing none closed the public hearing. **Motion by Commissioner Graham to approve Ordinance 06-03. Seconded by Commissioner Nichols and carried unanimously 5-0.**

6. **REGULAR BUSINESS**

- A. **Withdrawal of request postponed on February 9, 2006 for sponsorship by purchasing an advertisement for the West Orange High School Theatre Department**

This item was acted upon earlier in the meeting.

- B. **Request for donation for the West Orange High School Theatre Department to attend the state competition** *This item was acted upon earlier in the meeting.*

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

Mike Jernigan, 700 9th Street, Winter Garden, Florida stated he is here to ask for a donation for their Annual Charity Ball. The money they collect from the Annual Charity Ball goes to fund the Harry-Anna Trust Fund, which in turn funds their two major state projects, the Florida Elks Youth Camp located in Umatilla, Florida and the Florida Elks Mobile Therapy Service. **Motion by Commissioner Dixon to approve a donation to the Winter Garden Elks Lodge #2165 for \$1,000. Seconded by Commissioner Graham and carried unanimously 5-0.**

D. **RESOLUTION 06-06:** A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, EXPRESSING THE DECISION OF THE CITY COMMISSION OF SAID CITY TO MAKE APPLICATION FOR A RECREATIONAL TRAIL CONSTRUCTION GRANT

City Attorney Bedell read Resolution 06-06 by title only. Recreation Director Conn stated that staff is applying for a recreation trail construction grant to continue the trail through Newton Park. In 2000 the City of Winter Garden commissioned a Bike Pedestrian master plan study and identified this project as one of the potential projects to enhance the trail. There are several elements of that plan that have already been developed and this would be another portion. He received some preliminary results back from a survey done as part of the recreation and parks master plan, and the number one item is bike and trail paths. He stated that 81 percent of households responding came back that they had a need for a bike or trail pass. We look to enhance safe trail access for residents and explained some of the trail attributes. This resolution will amend the capital improvement plan to include this project, should the grant be awarded. **Motion by Commissioner Graham to adopt Resolution 06-06. Seconded by Commissioner Dixon.**

Commissioner Nichols asked the route of the trail through Trailer City. Mr. Conn stated they looked at a number of options and are still looking to the public for input. Staff has spoken with the Trailer City Homeowners Association and are considering widening some of the existing sidewalks possibly down Crest or a boardwalk that would lead down the east side of the wastewater plant along the lakefront and a boardwalk. He is still analyzing those options. Mayor Quesinberry asked if the boardwalk would be away from the water for the kids. Mr. Conn stated it would, and we would have some high rails. **Motion carried 5-0.**

E. **RESOLUTION 06-07:** CHANGING THE NAME OF CHARLEMANGE COURT LOCATED IN THE TUSCANY SUBDIVISION TO CHARLEMAGNE COURT; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Bedell read Resolution 06-07 by title only. **Motion by Commissioner Graham to approve Resolution 06-07. Seconded by Commissioner Nichols and carried 5-0.**

F. **Recommendation to approve West Orange Business Center site plans**

City Planner Cechman stated that this is a request to approve a commercial development. It is zoned PCD, which was zoned specifically for the use that they are proposing. Staff has reviewed this and recommends approval. The Planning and Zoning Board has also reviewed this and also recommends approval. There are conditions included in the agenda package. He discussed the developer paying \$5,000 toward a signal at CR535 and State Road 50 and another \$10,000 to stripping. **Motion by Commissioner Graham to approve West Orange Business Center site plans. Seconded by Commissioner Dixon.**

Commissioner Graham asked if the drainage outfall had been corrected and would it conflict with the City-owned Dreyfus force main. **Mr. John Kirby** of Kirby Engineering L.L.C. responded yes, it has. We are actually going underneath the pipe and improving the outfall for that property as well as for the neighbors.

Commissioner Reynolds asked if we conducted a traffic study for the 100,000 square feet of commercial development. **Mr. Cechman** replied that an additional traffic study was submitted. **Commissioner Reynolds** asked for the results. **Mr. Cechman** responded that it showed a traffic signal needs to be placed out at CR535 and State Road 50 which they have agreed to do. **Commissioner Reynolds** stated that for the number of trips per day this will generate we do not need a turn lane or anything. The drawings do not show any allowance for widening the Turnpike to six lanes with an easement on both sides. When coming over that overpass the entrance will be very close. He does not understand how this project works in that particular situation, without a turn lane. **Mr. Cechman** asked if he was referring to a turn lane into the project. **Commissioner Reynolds** stated correct. **Mr. Kirby** directed Commissioner Reynolds to look at sheet C8 of the plat map and stated that they do have a turn lane for the project that is actually County right-of-way under a right-of-way utilization from Orange County. It fully meets FDOT standards. **Commissioner Nichols** asked how many feet from the Turnpike is the entrance exit. **Mr. Kirby** responded that it is roughly 250 feet of storage and another 200 feet of transition area. The actual distance is really about 550 to 600 feet and actually lines up with the apartments across the street. **Commissioner Nichols** stated that it seems like a really dangerous spot because of traffic flying over the overpass going southbound. **Mr. Kirby** stated that is the idea of having the turn lane and lining up the two driveways, so that you do not have that situation. The turn lane is probably about 50 percent larger than it should be normally.

Commissioner Nichols asked about future development plans on Tract E. **Mr. Kirby** stated that at this point they really don't know. It was the intent of the applicant that if he came back to refigure, there is nothing he could build; it was basically left over from the plat. **Commissioner Nichols** asked about the future development of Tract D that is right on CR535. **Mr. Kirby** stated that it is an out parcel and he does not know what is going to go there, but as they develop the property to the north, then eventually there might be a use but it has to be consistent with the PCD that was approved about two years ago. They do not know right now. **Mr. Cechman** stated that they will more than likely put a sign up stating out parcel for sale. They will have to come back through the Planning and Zoning Board and the City Commission for final approval. **Commissioner Nichols** asked if this

property was owned by someone else. **Mr. Bollhoefer** asked if she was talking about the realty business. **Commissioner Nichols** stated that she might be surprised to know that you have plans for her property. **Mr. Kirby** stated that he thought she was talking about Tract D, which is excess land from the property. **Commissioner Nichols** stated that she is referring to the land where the real estate office sits. **Mr. Kirby** stated that is correct and again it is additional land from the project that is going to be grass. There was clarification by Mr. Kirby that he was referring to Tract D, which wraps around the tract Commissioner Nichols was referring to. **Mr. Cechman** stated that the tract is not included.

Commissioner Reynolds asked Mr. Cechman why isn't the traffic study attached. **Mr. Cechman** stated that historically they have not included the traffic studies. **Commissioner Reynolds** stated that he was perplexed at how we could drop in 100,000 square feet of commercial space and only have an impact of a signal and some striping. He asked how many trips per day and the date of the study. **Mr. Kirby** responded that the date of the study is January 2006 at 1,394 daily trips.

Commissioner Nichols asked about the skinny strip of land that continues to Daniels Road owned by the City and if there were any plans to use that piece of land which was purchased by the City months before this project was approved. Would it be used as an entrance road off of Daniels Road? **Mr. Cechman** stated that his understanding it was used as a staging area for construction of Daniels Road. **Mr. Bollhoefer** confirmed Mr. Cechman's answer and added that it was for the entire construction project. That land was available and purchased for a staging area while the work on Daniels Road is being done. **Commissioner Nichols** asked if it is possible to turn this into an access road into this project. **Mr. Bollhoefer** stated that this could definitely be a possibility.

Commissioner Reynolds stated that in the last meeting we stated we would have to handle the problems on this section of CR535 because the County will not. We are contributing to our own dilemma by putting this project on that same stretch of road. He is amazed at the impact of traffic with \$15,000 worth of road impact fees. We need to look at that again. **Mr. Bollhoefer** stated that this is on top of the impact fees, it's not just \$15,000. **Mr. Cechman** gave a little history on the project and the changes to zoning for that area. **Commissioner Reynolds** asked about the concurrency challenge currently on State Road 50 and the use of State Road 50 as access to this project. **Mr. Cechman** responded yes, that is why staff asked for the studies by a professional engineer that says with these improvements, the project is concurrent. **Motion carried 4-1; Commissioner Reynolds opposed.**

G. **Recommendation to approve Foundation Academy Phase 1 Site Plan and Development Agreement**

City Planner Cechman stated that this is for their campus on Tilden. Staff has reviewed the site plan and recommends approval with the conditions identified in the agenda package to include a future agreement with Foundation Academy dealing with their proportional share for improvements at the intersection of Tilden and CR 545. *(The development agreement was not considered at this time.)* **Motion by Commissioner**

Graham to approve Foundation Academy Site Plan and Development Agreement. Seconded by Commissioner Nichols and carried 5-0.

H. Recommendation to approve West Point Commons Lot 3 Site Plan located at the Publix Shopping Center on W. Colonial Drive

City Planner Cechman stated this is the last phase in the West Point Commons project which was approved years ago with the Publix shopping center. Staff has reviewed the site plan and recommends approval of a 9,400 square foot office retail building. **Motion by Commissioner Dixon to approve West Point Commons Lot 3 Site Plan located at the Publix Shopping Center on W. Colonial Drive. Seconded by Commissioner Graham.**

Commissioner Reynolds asked when the initial site plan was approved for the existing shopping center; this particular out parcel did not take into consideration the traffic concurrency for State Road 50. **Mr. Cechman** stated that he does not believe this is correct. **Mr. Ron Henson**, Project Engineer with Design Service Group, Inc. representing the applicant responded yes, this was considered and at that time it was estimated that it would be 10,000 square feet of commercial retail use and it is slightly below that. He stated all of the improvements agreed to for the total development were for concurrency at that time. **Commissioner Graham** asked if the motion of this traffic goes out on Park Avenue. **Mr. Henson** stated that Park Avenue is one of the access points but would probably be more for a residential type use although they did improve Park Avenue from that driveway all the way up to State Road 50. **Mr. Cechman** stated that staff did have some issues when they first did the entire project and they met with the neighbors. One of the benefits the residents have who live back on Park Avenue is if they want to go south, they do not have to deal with State Road 50, they could cut through the shopping center and get out. The shopping center is almost an access road. **Motion carried 5-0.**

I. Appointments to three seats expiring on the Code Enforcement Board

Mayor Quesinberry read his appointment choices: Harold Boulter, Bradley Lomneck, and Joseph Skubas. There was discussion as to how the vote should be done individually or as a group. Mr. Bollhoefer stated that it is up to the Commission as to how they wanted to proceed. Attorney Bedell stated that it could be done either way. The Mayor stated that he has submitted all three. The code provisions say that it is the Mayor's appointment subject to confirmation by the City Commission. There was more discussion on how to vote. Mayor Quesinberry stated that he tried to split up the locations when he picked them. Commissioner Graham asked Mayor Quesinberry if these citizens are serving now. Mayor Quesinberry stated no. **Motion by Mayor Quesinberry to confirm the three appointments of Harold Boulter, Bradley Lomneck, and Joseph Skubas. Seconded by Commissioner Dixon and carried 3-2; opposed Commissioners Nichols and Reynolds.**

J. Discussion and possible action regarding Canvassing Board criteria for absentee and provision ballots in the upcoming election

City Clerk Golden stated that before the Commission is a matrix of the possible scenarios of absentee and provisional ballots they may be reviewing as a Canvassing Board. This has already been reviewed and approved by the County Canvassing Board. **Commissioner Graham** asked if the absentee ballots will be counted by the County as they were the last time. **Ms. Golden** stated no, that is what the Commission will be doing on March 20th.

Commissioner Nichols stated that the way our City Charter is currently written, the State Statutes govern our absentee voting policies; one of those statutes in section 104.047 entitled Absentee Ballots and voting; violations” one subsection makes it illegal for someone other than the voter, a member of the voter’s immediate family or voter’s legal guardian to request an absentee ballot on behalf of a voter. She referred to another part of this section that states that the Supervisor of Elections is to accept an absentee ballot request in person or in writing only from the voter, his or her immediate family member, or the voter’s legal guardian. In setting our procedure tonight she stated that she would like to make a **motion to direct the Supervisor of Elections office to first verify that an absentee ballot request being presented in person at the Supervisor’s office is being presented by the voter himself or herself as pertaining to state law, or a member of the voter’s immediate family or the voter’s legal guardian before processing that request. She stated that she would also like request that if it comes to the Supervisor’s office through any other means, other than in person, such as by mail, she would move that the Supervisor’s office first verify that the person sending in the request is the voter him or herself, or a member of the voter’s immediate family or the voters legal guardian, before processing that request. She stated that she would move that if the Supervisor is not satisfied that these requirements have been met with regards to a particular absentee ballot request, the Supervisor not process the request.**

Commissioner Dixon stated that with the stuff that went on the last time, she is quite sure that if Mr. Bill Cowles is not on his job, he won’t have one. This is already the law. **Motion seconded by Commissioner Reynolds.** **Commissioner Dixon** stated that Mr. Bill Cowles ought to handle his business and we handle ours. **Commissioner Nichols** stated that this is to ensure that he does his job for us in the manner in which we want it done. **Commissioner Reynolds** stated that we are voting for the integrity of the process. **Mayor Quesinberry** asked for clarification of what the vote is for. **Ms. Golden** stated that Commissioner Nichols is reading from the Florida State Statute. **Mayor Quesinberry** stated just like it’s always been. **Commissioner Dixon** asked if that was City Clerk Golden’s job. **Commissioner Nichols** stated no, it is not. There was further discussion about the absentees and their authentication. **Commissioner Graham** stated that the matrix is marked what we accept and do not accept and what they have marked here is sufficient. What Commissioner Nichols was referring to is picking up absentee ballots, which is already a law on the books. **Commissioner Reynolds** stated that this Canvassing Board is responsible for making sure that the process is followed for our election. **Commissioner Nichols** stated that this is all she is asking. **Ms. Golden** stated that the absentees and that process is completely handled by the Orange County Supervisor of Elections Office; what they do for us is review that signatures match. She

stated that the Canvassing Board if you adopted will make their decisions based on the matrix to accept or reject. **Commissioner Nichols** stated that what she is asking is for an addition to the matrix that the County will ascertain that the person making the request is in fact the voter prior to accepting the request. She stated that it would not hurt us to pass this motion. There was further discussion about the process. **Mayor Quesinberry** stated that this is what we are doing right now and does not know why we are changing anything. **Mayor Quesinberry** stated that whatever we do should be cleared by Bill Cowles. **Attorney Bedell** stated that if it is under State Statute he is already planning to do this. There was discussion on the absentee request and who can or cannot turn them in for a voter. **Mayor Quesinberry** stated that the motion is not clear with everybody and he thinks we will have to go with Mr. Bill Cowles' office requests. **Commissioner Reynolds** stated that this Canvassing Board is responsible for setting the criteria for enforcement for this election on the request for the absentees to follow the State Statute. **Mayor Quesinberry** stated that he would vote to follow the State Statute. **Motion carried 5-0.**

Motion by Commissioner Graham to approve the Canvassing Board criteria as submitted. Seconded by Commissioner Dixon and carried 5-0.

J. **Recommendation to approve a contribution of \$8,676 to the Early Learning Coalition of Orange County**

City Manager Bollhoefer stated that the State has cut back on funding for the Early Learning Coalition and they have requested that the City pick up some of that shortfall. He stated that if we do not do this, 44 children in the Winter Garden area will no longer be enrolled in the program. They are requesting a contribution of \$8,676. Mr. Billenbeck, Chief Operation Officer for the Early Learning Coalition of Orange County stated that prior to this time they had been in operation for about seven years and provide subsidized child care for the Welfare to Work Program which is about a 40 million dollar program that comes through the Federal government. He explained the change in the program that required them to increase the amount they are required to raise. He stated that they have gone to each one of the individual municipalities within Orange County and asked them to pay their portion of \$372,000. About one percent of their funding goes to the citizens of unincorporated Orange County. He stated that 99 percent of it goes to the rest who are in municipalities within Orange County. In this particular case, Winter Garden has about 94 families which receives subsidized child care. He stated that the local match allows them to draw down the other 94 percent from the Federal government. **Motion by Commissioner Reynolds to approve a contribution to Early Learning Coalition of Orange County for \$8,676 and adjust the interim budget. Seconded by Commissioner Dixon and carried unanimously 5-0.**

7. **MATTERS FROM CITIZENS**

Pam Stewart, 1465 Markel Drive, Winter Garden, Florida congratulated the City for its strength of vision in the support of the Heritage Foundation and the Garden Theater Project. This project had the confidence and support of both the Darden Foundation and Orange County with their recent combined donation of \$600,000. These organizations felt quite confident with the level of accountability and financial management of the Heritage

Foundation which was selected over the Orlando Science Center and the Bob Carr Theater. She was also pleased that the Commission had the foresight to vote against the commuter rail project. At the last Commission meeting she was very discouraged and embarrassed at the way one of the developers was treated as he was trying to get final approval on his project. A situation was made regarding parks and this developer was chided until he had to finally say no. She does not think that's the appropriate place for someone to be called down. We are here to deal with everyone equally.

Merv Daniels, 433 North Main Street, Winter Garden, Florida stated that he was glad to read about the theater and he was gratified to see that organizations recognize the value of the theater and are confident in the ability of those in charge who will work hard to ensure the success of this project. He stated that he wanted to thank the Commission in making a smart, intelligent, responsible vote regarding the commuter rail.

Sally Baptiste, Supervisor of the Water, Sewer and Water Conservation District, stated that she went to the Lynx board meeting today and Tawny Olore was there and gave an update. The Environmental Assessment report has not been finished and they are still negotiating with CSX. Bob O'Malley from MetroPlan made reference to a University of Central Florida survey that MetroPlan requested and they came up with some answers that they wanted. She addressed the credibility of Dr. Randall Holcomb and the calculations that were previously presented. She stated that Orange County will continue to ignore the City of Winter Garden because they will not stand up to them.

Richard Napotnik, 1633 Fuller Cross Road, Winter Garden, Florida thanked Commissioner Reynolds for looking out for the taxpayers and appreciates his questions and concerns about taxes. He then congratulated Commissioner Reynolds on his special invitation from President George W. Bush.

Phil Baker, 125 West Smith Street, Winter Garden, Florida stated that the title of this forum is the Matter of Concerns from the Citizens of Winter Garden and he objects to having his time with his elected officials limited by people outside the City of Winter Garden who have no business before this Commission. He strongly urged the agenda be modified to actually say matters of Concerns from the Citizens of Winter Garden and proof of residency be shown when someone signs up to speak.

He stated that he is the Director of the Board of Governors of the Central Florida Chapter of the National Railway Historical Society. The discussion of eminent domain mentioned by Commissioner Nichols neglected to notice that we have railroad tracks from downtown Winter Garden directly into Orlando and we will benefit sooner because once the line is upgraded it will give people in Orlando and everywhere else access directly to Winter Garden. It is very important that we get all the facts and listen to what is going on and make an educated decision.

Brandon Simpson, 2916 Vine Street, Orlando, Florida, spoke in opposition of commuter rail. He stated that the people should decide on this issue.

Myrna DeWeese, 1573 Victoria Way, Winter Garden, Florida stated that she would keep an open mind about the commuter rail and commended the Commission for not making a decision at this time and asked them to keep an open mind until more is known.

Kent Horsley, 1679 Victoria Way, Winter Garden, Florida stated that he was going to talk about campaign ethics and the fact that someone sprayed his candidate signs. This is the United States and we have a right to freedom of expression and we have the right to allow everyone to express their views. You have no right to try and restrict the public's exposure to anyone.

Barbara Pennington, 421 Timbercreek Drive North, Winter Garden, Florida apologized to the audience for the previous accusations. She stated that it was a deplorable act and should be prosecuted. She spoke of the division in our City and there should not be. We do not always have to agree but should be respectful of each other. Winter Garden residents should be weary of outsiders with absolutely no vested interest in our community. She commended the City staff on a job well done and said to keep up the good work.

Rocco Williams, 8 East Cypress, Winter Garden, Florida stated that he is a fourth generation Winter Gardenian and expressed his offense to Mr. Horsley's accusation. He stated that he supports commuter rail and mass transit. He addressed Commissioner Nichols and Commissioner Reynolds regarding the rules of absentee ballots and asked if the Commission changed the rules or following the rules set down by Bill Cowles and addressed his own request for an absentee ballot.

Shirley Smith, 21 West Crest Avenue, Winter Garden, Florida asked City Manager Bollhoefer if there are any provisions for turn lanes on CR535 as she is concerned for safety at the location of CR 535 and State Road 50.

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

9. **MATTERS FROM CITY MANAGER** – Michael Bollhoefer

A. Financial Statements

Financial statements were distributed for January 2006.

● Decertification of the Union

He stated that our Police Department voted this week to decertify the union 28 to 13, because of the work that the Human Resources Director and the Police Chief did and the confidence they have in the Chief's administration. They would rather work with the City than with the union negotiators.

10. **MATTERS FROM MAYOR AND COMMISSIONERS**

Commissioner Nichols

Stated that Chief Brennan is one of the finest Police Officers she has ever had the pleasure of working with; his men and women respect him.

She spoke on the issue of the commuter rail and the time spent researching and studying all of the issues. She is not saying she knows everything about commuter rail, but probably knows a little more than the average person.

She stated that when Mr. Horsley was speaking, she does not think he was accusing any particular person, but is upset because something has happened. She stated that she does not think it was appropriate that there were people sitting the audience laughing about it. She recalled an incident of her own while campaigning last year. She apologized to Mr. Horsley that this happened and apologized that it happened in this City at all.

Commissioner Dixon

Referenced the defacement of the Mildred Dixon sign and stated that it meant she was popular. She addressed the issue of the community wanting to help the children and not allowing them to pay for what they had done.

She attended the Community Development Block Grant meeting and got good news that they are finally going to come over here and do some things through the City Manager.

She stated that citizens should take their complaints to the Citizens Action Center so that the Commission can address certain issues. She stated that she appreciates all the citizens.

Commissioner Graham

Advised that the pier lights are out and at night is when people want to fish.

Commissioner Reynolds

Stated his regrets about Mr. Horsley's signs being painted and spoke of vandalism to his own property. People say "welcome to Winter Garden politics" but this is not the town he grew up in. Parents should take responsibility even though they did not commit the act, because children learn their religion and their politics around the dinner table. He stated that the action is a gut check for the entire City and apologized to Mr. Horsley.

Meeting adjourned at 9:25 p.m.

APPROVED:

MAYOR JACK QUESINBERRY

ATTEST:

City Clerk Kathy Golden, CMC