



CITY OF WINTER GARDEN

OFFICE OF THE CITY CLERK

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REGULAR MEETING MINUTES

CITY COMMISSION

April 18, 2006

A **REGULAR MEETING** of the Winter Garden City Commission was called to order by Mayor Quesinberry at 5:44 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 (*arrived at 6:00 p.m.*), and Carol Nichols

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

At this time, City Manager Michael Bollhoefer introduced Cliff Shepard as temporarily filling in as the City Attorney until the Commission appoints a new attorney. The resignation of Gerry L. Clark's created a vacancy. In its role a special counsel, the Winderweeple law firm has contracted with Mr. Shepard, Esq. to attend Commission meetings. He noted that Mr. Shepard comes highly recommended by many former city attorneys and is currently the attorney for the City of Maitland and the Town of Windermere and is very qualified in municipal law.

1. **APPROVAL OF MINUTES**

Regular Meeting of March 9, 2006 and March 20, 2006. **Motion by Commissioner Nichols to approve the regular meeting minutes of March 9, 2006 and March 20, 2006. Seconded by Commissioner Graham and carried unanimously 4-0.**

2. **REGULAR BUSINESS**

A. **Recommendation to approve the Final Plat for Cobblestone AKA (Lott-Hurley)**

City Planner Cechman stated that this is R-1 property that will have 84 units. Staff has reviewed this item and recommends approval of the final plat with the conditions stated in the agenda packet. The Planning and Zoning Board has also reviewed this and recommends approval. Commissioner Graham asked if items 1 through 4 in the City Attorney's memo should be done before the Commission makes the final approval. City

Planner Cechman replied yes. Commissioner Reynolds asked what is Tract "B" designated for. Mr. Cechman stated this is outside of the plat and is not what is being approved tonight. It is an outparcel which received Commission approval for a comprehensive plan amendment. It has not been rezoned and is not part of tonight's request. Commissioner Reynolds asked if Tract "B" is owned by a separate individual. Mr. Cechman stated that it is a separate individual. Commissioner Reynolds asked if it is currently R-1 and if they have applied for commercial. Mr. Cechman stated that they have applied but withdrew it because they are looking for a final buyer of the property and the staff insisted on having a little more to look at instead of just rezoning it. He stated that there is no rezoning petition before staff or the Commission. **Motion by Commissioner Graham to approve final plat for Cobblestone AKA (Lott-Hurley) with staff recommendation. Seconded by Commissioner Nichols and carried unanimously 4-0.**

B. Recommendation to approve the Final Plat for Foxcrest a phase of Stonecrest PUD – Village 3 AND approval of a Termination of Easement

City Planner Cechman stated that this is the final plat for Foxcrest Village 3 zoned PUD for 77 units. He stated that staff is also asking for approval of a termination of easement to release the drainage easement that was required for Daniels Road. It has been replaced with the easements that are identified in the plat presented tonight. Staff has reviewed this and recommends approval of the final plat and termination of easement. The Planning and Zoning Board has also reviewed this at their April 3rd meeting and recommends approval. **Motion by Commissioner Graham to approve the final plat for Foxcrest a phase of Stonecrest PUD - Village 3 and a Termination of Easement. Seconded by Commissioner Nichols.** Commissioner Graham stated that this has the same attorney requirements and asked if these requirements had been met. Mr. Cechman stated yes. **Motion carried unanimously 4-0.**

C. Recommendation to approve the Final Plat for Courtlea Park (Division Street) AND approval of a Right-of-Way Maintenance Agreement

City Planner Cechman stated that this is a request for final plat of 42 units zoned R-1. They are also requesting a maintenance agreement for some of the landscaping along the 9th Street right-of-way. Staff has reviewed this and recommends approval of the final plat with the conditions as stated in the agenda packet. The Planning and Zoning Board has also reviewed this and also recommended approval at their April 3rd meeting. **Motion by Commissioner Graham to approve the final plat for Courtlea Park (Division Street) and a right-of-way Maintenance Agreement with staff recommendations. Seconded by Commissioner Nichols.** Commissioner Graham stated that one of the requirements is for an update of the title opinion before approval. He asked if it had been done. Senior Planner Randall stated that this is a standard comment and they need to provide our special counsel with an updated title before it is recorded.

Commissioner Graham referenced prior subdivision plats whereby after the home has been built, the owner wants to install a pool or patio, and the lot depth will not accommodate the addition. He stated that he wanted to address this now so it will be in the record that if someone wants to put in a pool or patio later, the owner will not be able

to do so. Maybe the homeowners should know this before they buy the house. Mr. Cechman stated that the builder is aware of that. **Motion carried unanimously 4-0.**

D. Recommendation to award Trunkline "C" (Phase II) to JCB Construction, Inc. for \$3,113,797.52

Assistant City Manager Robertson stated that on January 19, 2006 the City received four bids. This is the second phase of Trunkline "C" that goes from Boyd Street to Tilden Avenue. He stated that based on the references and related experience, staff recommends that the contract be awarded to the second lowest bidder which is JCB Construction Company. Commissioner Reynolds asked if the lower bidder was able to provide surety and performance bonds the same as the other bidders. Mr. Robertson responded yes. Commissioner Reynolds asked the basis of this recommendation and stated that he was trying to understand why we could be spending almost a million dollars more for the second lowest bidder. Mr. Robertson stated that in looking at the related experience, the biggest job Apex had was \$370,000, which was the reconstruction of a landfill with driveway work and ditch improvements. If you look at JCB, their smallest job was \$487,000 up to \$796,000. As far as being qualified, references show they are qualified for a job this size, whereas we did not think that Apex was. Commissioner Reynolds asked if it was thought that Apex could not handle the work and asked if they had bid based on the same parameters. Were there reports that Apex had failed to perform or anything of that nature. Mr. Robertson asked City Engineer Art Miller to address this question as he did the research on this project. Mr. Miller stated that extensive reference checks were done for this project; we talked to representatives from Orange County, City of Orlando and several other municipalities. Apex did fail to perform on a City of Orlando project that was comparable to this. Orange County disqualified them for a project that was of this nature and size. He stated that we were not comfortable recommending them for this project. Commissioner Reynolds stated that was all he needed to know and that it was not included in the information provided. **Motion by Commissioner Graham to approve award Trunkline "C" (Phase II) to JCB Construction, Inc. not to exceed \$3,113,797.52. Seconded by Commissioner Nichols and carried unanimously 4-0.**

E. Canvassing Board for the April 11, 2006 run-off election for City Commissioner District I and Mayor/Commissioner District V

(Commissioner Dixon arrived at this time)

Mayor Quesinberry at 6:00 p.m. called to order the Winter Garden Election Canvassing Board for the purpose of canvassing the election returns cast in the April 11, 2006 run-off elections for District 1 and 5 and called upon the City Clerk to report the total votes cast at the precincts and early voting. City Clerk Golden reported that a copy of each precinct's results signed by the election board has been provided to the Canvassing Board and read the results as follows:

<u>District 1 – Precinct 1103</u>	<u>Total</u>
Bob Buchanan	390
H. Gerald Jowers	422

<i>District 5 - Precinct</i>	<i>1103</i>	<i>2103</i>	<i>3103</i>	<i>4103</i>	<i>Total</i>
Jack Quesinberry	504	369	129	271	1,273
Rod Reynolds	310	102	51	343	806

Motion by Commissioner Graham to approve the precinct and early votes as shown on the unofficial totals sheet from the Orange County Supervisor of Elections office. Seconded by Commissioner Reynolds and carried unanimously 5-0.

City Clerk Golden reported the absentee ballot requests totaled 1,185 of which the Canvassing Board has in its possession 790. **Motion by Commissioner Dixon that all absentee ballots to be counted by the Canvassing Board have been accounted for. Seconded by Commissioner Graham and carried unanimously 5-0.**

Mayor Quesinberry asked the City Clerk if the Orange County Supervisor of Elections office has verified the absentee ballots and if any objections had been filed. City Clerk Golden responded that pursuant to Florida Statutes, the Orange County Supervisor of Elections office has compared the signatures of each elector on the voter's certificate with the signature of the elector in the registration books to see that the elector is duly registered and determined the legality of all absentee ballots in possession of the Canvassing Board, of which 775 have been verified as meeting the statutory requirements by the Orange County Supervisor of Elections office. There have been no objections filed. **Motion by Commissioner Graham to accept 775 verified absentee ballots. Seconded by Commissioner Reynolds and carried unanimously 5-0.**

City Clerk Golden advised the Canvassing Board that they will need to take action on 15 absentee ballot envelopes outstacked by the Orange County Supervisor of Elections office as containing irregularities. Ms. Golden began with two unusual absentee ballot envelopes. The first ballot was for Carroll Ann Rose who did not sign the ballot envelope. **Motion by Commissioner Nichols to reject the absentee ballot envelope of Carroll Ann Rose as not containing the required signature. Seconded by Commissioner Dixon and carried unanimously 5-0.** Ms. Golden announced that the second absentee ballot envelope was for Eula Mae Windom containing an absentee ballot but the voter actually cast her vote during early voting in Orlando. **Motion by Commissioner Nichols to reject the absentee ballot of Eula Mae Windom. Seconded by Commissioner Graham and carried unanimously 5-0.**

Ms. Golden announced the next absentee ballot envelope of Carmen Ginet Sanoguet was signed by someone other than the registered voter without a request on file with the County. **Motion by Commissioner Nichols to reject the absentee ballot envelope of Carmen Ginet Sanoguet as not containing her signature. Seconded by Commissioner Reynolds and carried unanimously 5-0.**

Ms. Golden announced the next absentee ballot envelope of Marion E. Brantley with no signature. **Motion by Commissioner Graham to reject the ballot envelope missing the signature of Marion E. Brantley. Seconded by Commissioner Dixon and carried unanimously 5-0.**

Ms. Golden advised that the Orange County Supervisor of Elections office has identified the next 11 absentee ballot envelopes as containing signatures not matching the voter's record. The Canvassing Board was provided a sample copy of voter's signature.

Motion by Commissioner Graham to accept Vernon R. Brown's absentee ballot. Seconded by Commissioner Nichols and carried unanimously 5-0.

Motion by Commissioner Nichols to reject James H. Goodwin Jr.'s absentee ballot. Seconded by Commissioner Reynolds and carried 4-1; Commissioner Graham opposed.

At this time, the Canvassing Board authorized the logic and accuracy test (L&A) be performed on the ballot tabulator.

Motion by Commissioner Nichols to reject James K. Grove's absentee ballot. Seconded by Commissioner Reynolds and carried unanimously 5-0.

Motion by Mayor Quesinberry to reject Ceclia Marcella Roth's absentee ballot. Seconded by Commissioner Nichols and carried unanimously 5-0.

Motion by Commissioner Nichols to accept Lenora White's absentee ballot. Seconded by Commissioner Reynolds and carried unanimously 5-0.

Motion by Commissioner Nichols to reject Douglas C. Lord's absentee ballot. Seconded by Commissioner Reynolds and carried unanimously 5-0.

Motion by Mayor Quesinberry to accept Wilbur A. Smith Jr.'s absentee ballot. Seconded by Commissioner Dixon and carried unanimously 5-0.

Motion by Commissioner Nichols to reject Arlene McFarland's absentee ballot. Seconded by Commissioner Reynolds and carried 4-1; Commissioner Dixon opposed.

Motion by Commissioner Nichols to accept Gale H. Little's absentee ballot. Seconded by Commissioner Graham and carried unanimously 5-0.

Motion by Commissioner Nichols to reject Douglas F. Mathews's absentee ballot. Seconded by Commissioner Reynolds and carried unanimously 5-0.

Motion by Commissioner Nichols to reject Lois M. Hartzog's absentee ballot. Seconded by Commissioner Dixon and carried unanimously 5-0.

The L&A test tape was provided by Orange County Supervisor of Elections employee Mr. Torres to the Canvassing Board and verified as being accurate by the Canvassing Board members.

City Clerk Golden summarized the board's action as accepting four outstacked ballots and rejecting seven for a total of 779 absentee ballots to be tabulated. At this time, the accepted ballot envelopes were all opened, secrecy envelopes removed, and ballots removed. Ms. Golden stated that two members of the Canvassing Board need to be selected to work on ballots rejected by the tabulator. One member will mark the original rejected ballot in red with the letter "O" and a sequential number corresponding to the second member who will mark a duplicate ballot "D" with the matching sequential number. It was a consensus of the City Commission that Commissioner Nichols would create and mark the duplicate ballot and Commissioner Graham would read and mark the original rejected ballot providing the rejected ballot has been clearly marked as to voter intent. Any ballot not clearly marked with voter intent would require a decision by the Canvassing Board. Mr. Luis Torres ran the tabulator tape and presented it to the Canvassing Board who verified that it was set to zero. All absentee ballots were processed through the tabulator and all those rejected by the tabulator were duplicated and reprocessed through the tabulator. **Motion by Commissioner Graham to authorize the totals be printed. Seconded by Commissioner Dixon and carried unanimously 5-0.** City Clerk Golden read the combined totals as follows:

<u><i>District 1 – Precinct 1103</i></u>	<u>Total</u>	<u>Percentage</u>
Bob Buchanan	460	46.939
H. Gerald Jowers	520	53.061

<u><i>District 5 - All Precincts</i></u>	<u>Total</u>	<u>Percentage</u>
Jack Quesinberry	1,678	59.043
Rod Reynolds	1,164	40.957

City Clerk Golden noted that the percentage differences do not fall within the automatic recount range. Ms. Golden stated that the next order of business is to canvass the provisional ballots. **Motion by Commissioner Graham to clear the tabulator and begin canvassing the provisional ballots. Seconded by Commissioner Reynolds and carried unanimously 5-0.** Mr. Torres cleared the tabulator as verified by the Canvassing Board. Ms. Golden advised that there were twelve provisional ballots cast of which the Orange County Supervisor of Elections has made their analysis and provided documentation to assist the board in making their decisions utilizing the previously approved criteria.

Motion by Commissioner Graham to reject the provisional ballot cast by Rodney C. Satterfield because he was not registered to vote. Seconded by Commissioner Dixon and carried unanimously 5-0.

Motion by Commissioner Dixon to accept four provisional ballots cast by Jean Pitchford, Alfred Boulduc, Carol Williams, and Susan Quigley who are active registered voters and their signatures matched but who did not present photo identification at the polls. Seconded by Commissioner Graham and carried unanimously 5-0.

Motion by Commissioner Nichols to accept eight provisional ballots cast by Larry White, Carl Weirich, Linda Weirich, Brenda Mask, Amy Lucas, Teresa White, William Hoover, and Kelly Hamilton at the precinct who were issued an absentee ballot that was neither surrendered nor returned. Seconded by Commissioner Dixon and carried unanimously 5-0.

City Clerk Golden reported that of 13 provisional ballots cast, the Canvassing Board has accepted 12. Mayor Quesinberry asked if the tabulator has been reinitialized and a zero tape run. Mr. Torres replied yes. The Canvassing Board authorized the tabulation of the 12 accepted provisional ballots as this time. Ms. Golden read the totals as follows:

<u><i>District 5 - All Precincts</i></u>	<u>Total</u>
Jack Quesinberry	7
Rod Reynolds	5

<u><i>District 1 – Precinct 1103</i></u>	<u>Total</u>
Bob Buchanan	5
H. Gerald Jowers	7

Motion by Commissioner Graham to approve the totals as read. Seconded by Commissioner Dixon and carried unanimously 5-0.

Motion by Commissioner Reynolds to authorize the City Clerk to issue the Canvassing Board certificate of results (see attached). Seconded by Commissioner Graham and carried unanimously 5-0.

The run-off election resulted in Mayor Jack Quesinberry being re-elected Mayor/Commissioner of District 5 and H. Gerald Jowers being elected as Commissioner of District 1.

At this time, Mr. Torres cleared the tabulator and conducted the final L&A test. The results were provided to the Canvassing Board showing the correct test pattern for 20 test ballots.

Mayor Quesinberry announced that the elected officials will be sworn into office at the next regular meeting on April 27, 2006.

- F. **Resolution 06-09:** A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, DECLARING THE RESULTS OF THE GENERAL RUN-OFF ELECTION HELD ON APRIL 11, 2006, FOR CITY COMMISSION DISTRICT 1 AND MAYOR/COMMISSION DISTRICT 5; AUTHORIZING THE ISSUANCE OF CERTIFICATES
Acting City Attorney Shepard read Resolution 06-09 by title only. **Motion by Commissioner Nichols to approve Resolution 06-09. Seconded by Commissioner Graham and carried unanimously 5-0.**

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

A. **Ordinance 06-11:** AMENDING ORDINANCE NUMBER 05-24, RELATING TO THE REZONING OF CERTAIN REAL PROPERTY GENERALLY DESCRIBED AS 174.8 ACRES OF LAND LOCATED NORTH OF THE WESTERN BELTWAY AND EAST OF COUNTY ROAD 535, GENERALLY KNOWN AS THE FOWLER PROPERTY, FROM CITY R-1 TO CITY PCD, BY AMENDING SUBSECTION "t" OF SECTION 2 OF ORDINANCE NUMBER 05-24 PERTAINING TO HOURS OF OPERATION PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE (Winter Garden Villages at Fowler Groves PCD Amendment)
Interim City Attorney Shepard read Ordinance 06-11 by title only. Mayor Quesinberry opened the public hearing. Hearing and seeing none he closed the public hearing. City Planner Cechman stated that we did add the provision that bars and drinking establishments must close at 11:00 p.m. instead of midnight. **Motion by Commissioner Reynolds to approve Ordinance 06-11. Seconded by Commissioner Graham and carried unanimously 5-0.**

7. **MATTERS FROM CITIZENS** – There were none.

8. **MATTERS FROM CITY ATTORNEY** – Mr. Shepard thanked the Commission for allowing him the opportunity to come and help out. He stated that he looks forward to helping the City ease into a new transition of a new and hopefully permanent City Attorney.

9. **MATTERS FROM CITY MANAGER**

Mr. Bollhoefer stated that there were some issues a while back with reference to a Town Hall meeting as to whether or not to pay the invoice. He stated that it was in the newspapers and people were talking about it. Unless the Commission opposes, he would like move forward and pay the invoice. He stated that as we go forward with these Town Hall meetings it has become apparent that there were no parameters or guidelines established as to how these were to be done, funds were just set aside. It could be done in a much more efficient and effective manner if we can establish some parameters. He suggested utilizing City Staff for the printing and mailing. The notices could be mailed out with the new GIS systems and utility billing system, thereby saving postage. Also restricting the mail out to be one-sided color can cut the cost. Use of the 9-1-1 reverse phone system to notify residents could be utilized. By using these techniques more people could attend the meeting and cut the cost two- or threefold. He reiterated that as we go forward with Town Hall meetings it would be nice to set some parameters so that there are no further misunderstandings. He stated that he attended the meeting in District 4 and it was a very good Town Hall meeting that was useful for staff to hear the citizens. If there are no objections he will go ahead and pay that invoice. Commissioner Dixon stated that the Citizens Action Center should be utilized. It is good to have Town Hall meetings but we have a Citizens Action Center for complaints. There was discussion that if no one objected the City Manager would go ahead and pay the invoice. Mayor Quesinberry stated that he objects as he voted against Town Hall meetings from the beginning. He thinks they are a waste of taxpayer dollars. Commissioner Nichols stated that the people in District 4 were very grateful for the meeting and they did not feel that it was a waste of their money. There was discussion of setting parameters. Mr. Bollhoefer stated that he thought there could be two meetings per year; any more than that could be difficult because staff already attends Commission meetings. He did not want to have them going to

meetings all the time. If you get an established parameter, you will see more and more people come to the meetings. It gives staff a better idea of what people want. He would like to come back to a future meeting with some parameters. Commissioner Graham stated that when we meet at Tanner Hall, citizens have the right to bring up any subject and staff is available. We could make this a little Town Hall meeting twice a month and you will not have to advertise it. Mr. Bollhoefer stated that he will have some ideas to discuss on this at the next meeting, but the ultimate goal is achieve communication between citizens, Commission and staff.

10. MATTERS FROM MAYOR AND COMMISSIONERS

Commissioner Nichols

Stated that the Charter Review Committee has begun their meetings which are open to the public and invited everyone to sit in and listen and add something if they feel it needs to be addressed. She asked City Clerk Golden when the meetings are scheduled. Ms. Golden stated that there is one tentatively scheduled for next Monday night at Tanner Hall at 6:30 p.m. to 8:30 p.m. and then after that it will be on varying Tuesdays. Commissioner Dixon noted that it is not a free for all; this facilitator is coming in and is qualified to teach and give information. You still are an advisory committee and you learn. She stated that ideas should be presented to the advisory board in written format. Her choice for serving on the board was not to represent District 3; she picked them because she thought they were qualified for the position to represent the issues. Commissioner Nichols again reminded everyone that these meetings are being held and stated that anything that the committee decides on does come up as referendum and will be voted on by the citizens at large. The Charter will be as good as you make it. Mr. Bollhoefer stated that in the first meeting the Charter Review Committee established parameters and they have a set aside time just for public comment. You will not be able to participate in the meeting but you will have the opportunity as a public to make comments at those meetings.

Commissioner Dixon

Addressed her medical condition and thanked everyone for their cards and prayers.

Commissioner Graham - Had no items.

Commissioner Reynolds

Stated that it has been an honor to serve and it gives you a great sense of appreciation where you live in a country and see the peaceful transition of government and power. He congratulated Mayor Quesinberry on his campaign and his victory. In closing, he said he will stay active and try to make a difference.

Mayor Quesinberry

Thanked all of those that supported him and stated that achievement is one thing but honesty and integrity has prevailed and he again thanked the residents.

The meeting was adjourned at 9:45 p.m.