



# CITY OF WINTER GARDEN

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## OFFICE OF THE CITY CLERK

251 W. PLANT STREET

WINTER GARDEN, FL 34787

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## REGULAR MEETING MINUTES

### CITY COMMISSION

May 11, 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, H. Gerald Jowers, Mildred Dixon, and Carol Nichols

**Also Present:** City Manager Mike Bollhoefer, Interim City Attorney Drew Smith, Assistant City Manager Marshall Robertson, City Planner Mark Cechman, Recreation Director Jay Conn, Fire Chief John Williamson, 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, and West Orange Times reporter Michael Laval

#### 1. **APPROVAL OF MINUTES**

Regular Meeting Minutes of April 18, 2006 and April 27, 2006. **Motion by Commissioner Nichols to approve the regular meeting minutes of April 18, 2006 and April 27, 2006. Seconded by Commissioner Dixon and carried unanimously 5-0.**

#### 2. **Comprehensive Annual Financial Report by Sines, Girvin, Blakeslee and Campbell for Fiscal Year ending September 2005**

Finance Director Strobeck gave brief highlights of the report and stated that the City received an unqualified opinion called a clinging audit opinion which means that the figures in the report are reliable. Mr. Strobeck stated that once again the City has received the Certificate of Achievement for Excellence in Financial Reporting. **Motion by Commissioner Jowers to approve the Comprehensive Annual Financial report. Seconded by Commissioner Dixon and carried unanimously 5-0.**

*The meeting dispensed as the City Commission and convened as the Community Redevelopment Agency (CRA) at 6:38 p.m.*

**Members Present:** Chairman Jack Quesinberry, Agency Members Theo Graham, H. Gerald Jowers, Mildred Dixon, Carol Nichols, Larry Cappleman, and Dale Crosby.

3. **Appointment to seat vacated by Jerry Baker and expiring seat of Charles Roper on the Community Redevelopment Agency Advisory Board**

Chairman Quesinberry acknowledged board member Dale Crosby as the appointed Orange County appointed representative. Board Member Cappleman stated that the purpose of the meeting was to fill vacancies on the CRA Advisory Board (CRAAB). Charles Roper's term expires in June. Jerry Baker has resigned and Hank Sines' resignation is impending; both whom have conflicting schedules which makes it difficult to meet the board's meeting requirements. The Community Redevelopment Agency Advisory Board met on Tuesday to discuss and review the available applicants expressing a willingness to serve. The CRAAB recommends Charles Roper be reappointed to another term based on his help and performance in the past. **Motion by board member Graham to reappoint Charles Roper to another three-year term. Seconded by board member Jowers and carried unanimously 7-0.**

Board member Cappleman stated that the CRAAB made three recommendations for the other available seats: James Gustino, John Kirby, and Bert Valdes and stated that they have been contacted and are all willing to serve.

**Motion by board member Cappleman to appoint John Kirby to the remaining term of Jerry Baker. Seconded by board member Graham and carried unanimously 7-0.**

**Motion by board member Cappleman to appoint Bert Valdes to the remaining term of Hank Sines effective with his resignation. Seconded by board member Dixon and carried unanimously 7-0.**

Board member Cappleman stated that the board adheres to the attendance policy set by the CRA, but due to special circumstances that have occurred over the last three meetings, member Ms. Charlie Mae Wilder has missed three consecutive meetings due to her service as an elections poll worker for the City. He requested that her absences be excused and waived. **Motion by board member Dixon to waive the absences of Ms. Charlie Mae Wilder. Seconded by board member Nichols and carried unanimously 7-0.**

*The meeting adjourned as the Community Redevelopment Agency and reconvened as the City Commission at 6:45 p.m.*

4. **REGULAR BUSINESS**

A. **Request for \$1,000 donation by the Bethlehem Missionary Baptist Church for their drill team**

Ms. Charlie Mae Wilder stated that they are requesting assistance to help the drill team participate in the National Baptist Convention in Nashville, Tennessee. The drill team performed several drills for the Commission. **Motion by Commissioner Dixon to approve a donation of \$1,000 to the Bethlehem Missionary Baptist Church drill team. Seconded by Commissioner Nichols and carried unanimously 5-0.**

**B. Request for annual fundraiser sponsorship by the Winter Garden Rotary Club**

There was discussion as to the whether this item should be tabled as the representative Tammy Carson was unavailable for comment. Commissioner Graham asked the date of the tournament and it was determined that it was May 25 which would be too late for later consideration. Commissioner Graham asked if the City contributed in the past. City Manager Bollhoefer replied yes by sponsoring two teams. Commissioner Graham stated that he is comfortable in proceeding with a vote. Mayor Quesinberry mentioned keeping in mind the amount already disbursed. **Motion by Commissioner Graham to sponsor two bowling teams at \$200 each for a total of \$400. Seconded by Commissioner Jowers and carried unanimously 5-0.**

**C. Request authorization to expend \$14,965 from the State Law Enforcement Trust Fund for summer youth programs**

Police Chief Brennan stated that this request is to use some of the Law Enforcement Trust Fund. This money is derived from forfeitures from drug dealers and other criminals, it is not taxpayer money. It will be used to fund a Police Athletic League program over the summer. This program is in conjunction with the Central Florida Police Athletic League, the First Baptist Church, the City's Recreation Department, and the Orange County Community Action Division. It was very successful last year. He noted some past logistical problems with working out of the Maxey Center due to space. This year an agreement has been worked out with the First Baptist Church who will allow the use of their facility. He noted the hours: 11:00 a.m. to 3:00 p.m. and it will be for eight weeks instead of six as last year. Transportation will be provided from the Maxey Center on a daily basis by utilizing two Police vans for the children. **Motion by Commissioner Dixon to approve expenditure of \$14,965 from the State Law Enforcement Trust Fund for the summer youth programs. Seconded by Commissioner Graham and carried unanimously 5-0.**

**D. Request authorization to donate \$500 from the Federal Law Enforcement Trust Fund to Mothers Against Drunk Driving**

Police Chief Brennan stated that this is seizure money from criminals and drug dealers. This would be a donation of \$500 to Mothers Against Drunk Driving to help fund their educational assistance programs. He stated that this is not taxpayer dollars. **Motion by Commissioner Graham to approve the request for donating \$500 from the Federal Law Enforcement Trust Fund to Mothers Against Drunk Driving. Seconded by Commissioner Nichols and carried unanimously 5-0.**

**E. Request authorization to donate \$500 from the Federal Law Enforcement Trust Fund to the FBI National Academy Associates hosting the annual training conference**

Police Chief Brennan stated that the Florida Chapter of the FBI National Academy Associates is hosting their annual training conference in Ft. Myers from July 30<sup>th</sup> to August 3<sup>rd</sup>. They are seeking financial assistance from all Police Departments to help fund this event. This qualifies for use of the Trust Fund money which is a confiscation fund and not taxpayer dollars and he is requesting authorization to donate \$500 from this

fund. **Motion by Commissioner Jowers to approve donating \$500 from the Federal Law Enforcement Trust Fund to the FBI National Academy Associates. Seconded by Commissioner Dixon and carried unanimously 5-0.**

- F. **Resolution 06-10:** A RESOLUTION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING RESOLUTION 06-04 BY ESTABLISHING A LIMITED PERIOD OF EXISTENCE; DESIGNATING A METHOD FOR APPOINTMENT AND REMOVAL OF COMMITTEE MEMBERS AND FILLING VACANCIES; PROVIDING A STATEMENT OF DIRECTION; SETTING A FINAL COMMITTEE REPORT DATE; PROVIDING FOR REVIEW OF THE FINAL COMMITTEE REPORT AND A DECISION BY THE COMMISSION ON WHAT RECOMMENDATIONS TO PLACE BEFORE THE VOTERS IN A REFERENDUM; AND PROVIDING FOR AN EFFECTIVE DATE

Interim City Attorney Smith read the resolution by title only. City Manager Bollhoefer stated that it was brought to his attention that there were several deficiencies in the original resolution. It did not include methodology for replacing committee members so this resolution was drafted to clarify the previous resolution. **Motion by Commissioner Jowers to adopt Resolution 06-10. Seconded by Commissioner Graham.** Commissioner Graham noted a correction to the resolution in Section 4, changing her/her to his/her. **Motion with correction noted carried unanimously 5-0.**

## 5. MATTERS FROM CITIZENS

Richard Napotnik, 1633 Fullers Cross Road, Winter Garden wished Commissioner Nichols well with her appointment in Tallahassee and expressed his appreciation for her listening and responding to the citizens. Mr. Napotnik stated that he would not like having a City Attorney representing him that would, when faced with a question on the legalities of certain issues, turn his back and run. As far as he is concerned, he would not reinstate this Mr. Clark.

Ed Lynch, 660 Home Grove Drive, Winter Garden thanked Commissioner Nichols for her service and stated that representing District 4 is a difficult job. He stated that he did not think the residents of District 4 are as involved in local politics as they should be and again thanked her for being an independent voice for District 4.

Mr. Lynch asked the Commissioners to take their time with the appointment of District 4 Commissioner. It is important that we get a strong and independent voice that will recognize and understand the problems with growth in District 4. If the Commission takes its time and considers many individuals we will be better off as a City.

James Balderrama, 14315 Hampshire Bay Circle, Winter Garden thanked Commissioner Nichols for serving District 4 and for coming to his house when she was invited or meeting with the people who had concerns with the Fowler Grove Mall. He also thanked her for her "No" vote on that issue even though they will have to learn to deal with it one way or another.

He stated that District 4 is a whole new demographic for Winter Garden. Already since the resignation was made public, there has been lobbying and phone calls about candidacy for

this position. He stated that they have built some bridges with Commissioners whom they once disagreed with. He stated that they have worked hard to build bridges of communication and make District 4 a part of this City. He stated that some of the names he heard mentioned are not residents of District 4 nor do they have the interest of District 4 at heart.

He thanked Recreation Director Conn for meeting with District 4 and one of the first questions to Mr. Conn was “where are the bulldozers?” The City owns the land and you have the money in the budget. He stated that a lot of people in District 4 also have those questions.

Jim Gustino, 13914 Eylewood Drive, Winter Garden stated that the determination of a suitable candidate to replace Commissioner Nichols should be a very thorough examination process. There is a need to publicly evaluate a number of qualified candidates to fill that position and without question, the person appointed needs to be a resident of District 4. He wished Commissioner Nichols the best and stated that they have had disagreements about certain issues. He was disappointed when the Fowler Grove Mall issue came up, Commissioner Nichols did not come to the voters of Stoneybrook West to poll them about their position. They were very much in favor of the Mall. He respected her independent judgment and her call on the issue but just wished to be involved in the process. He stated that unfortunately, he felt that Commissioner Nichols aligned herself with someone who demonstrated himself to be very despicable and that has besmirched her by association.

He stated that he is very grateful for the good citizens of Winter Garden to use excellent sense and re-elect the Mayor. He feels the Mayor has done an outstanding job, has the history and the personality, and told the Mayor that it was good to seem him relaxed again and cracking jokes.

#### 6. **MATTERS FROM CITY ATTORNEY**

Mayor Quesinberry introduced Attorney Drew Smith as one of the City’s Interim Attorneys. Mr. Smith stated that he was happy to be present and works with the same firm as Cliff Shepard whose has been at the last couple of meetings. He assured the citizens and the Commission that it is not a brand new firm, just a new face for the evening while Mr. Shepard is out of town.

#### 7. **MATTERS FROM CITY MANAGER**

- **Master Parks Plan**

Mr. Bollhoefer addressed a citizen’s earlier comment as to why the bulldozers were not out, with reference to implementation of parks in District 4. He stated that staff is in the process of doing a master parks plan before building any parks. A lot of surveys have been taken and community input gathered; before we start building, we want to make sure we are building the right thing. The first master plan draft will be coming to the Commission in the very near future.

- A. **City Attorney Position**

**City Manager Bollhoefer** stated Gerry L. Clark is obviously not coming back. He has tried to reach him several times to no avail and once again the City is faced with having to deal with the issue of an attorney. He gave the following options: 1) Request for

Qualifications (RFQ) for an outside attorney. 2) Start the process all over again to look for another in-house attorney. 3) Prior City Attorney Kurt Ardaman for the City has expressed an interest in becoming the city's attorney again.

**Mayor Quesinberry** stated that he has spoken with Mr. Ardaman and expressed to him that the City's main goal is an in-house Attorney. He stated that Mr. Ardaman let him know that if it is meant one day a week at the City rather than just occasionally being at a board meeting, he would work with the City. Mayor Quesinberry stated that Mr. Ardaman did a good job when he was with the City before, but it all depends on whether the City needs an in-house Attorney or can use him at Commission meetings and one day a week at City Hall.

**Commissioner Dixon** stated that she also spoke to Mr. Ardaman and that the decision has to be made by the Commission. She stated that she knows Mr. Ardaman is a professional and in her opinion the City does not need a full time attorney. We should let Mr. Ardaman help us out while we look around.

**Commissioner Nichols** stated that she recalls last year when this was discussed it was stated that we do need a full-time in-house attorney. She recalled that City Manager Bollhoefer agreed that it would be appreciated to have someone in the office all the time.

**Mr. Bollhoefer** stated that he wanted to clarify Mr. Ardaman's interest is not to come back as an interim attorney but as a full time attorney. **Commissioner Nichols** asked if he would be giving up his practice to work for the City full time. **Mr. Bollhoefer** replied no, he would be working as he has previously.

**Commissioner Graham** stated that he felt the City needs an in-house attorney and should continue on the path of securing one. The interim attorneys are representing us well and we can continue to use them until we get our own attorney.

**Commissioner Jowers** stated that he has served a lot of years with Kurt Ardaman and Mr. Ardaman was an excellent attorney. Anytime Commissioner Jowers needed him for advice he made himself available. Commissioner Jowers stated that it appears that only the City of Orlando in Orange County has full time attorneys and questions the need for a full time in-house attorney. We are growing at a rapid rate but he feels that a full time attorney would be premature right now.

**Commissioner Nichols** asked about possible conflicts of interest regarding Mr. Ardaman's current clientele. **Mr. Ardaman** addressed the Commission on this issue by stating that he does represent a few clients in town. The Fowler Project is complete. He stated that when he was called and asked if he would come back he was honored after having served them for nine years. He stated that all of the issues that would have been a conflict are no longer a conflict. He stated that his family is from the City of Winter Garden going back several generations and stated that he does know some of the people here. With respect to conflict issues in the City of Winter Garden, he would have to recuse himself from two items: 1)The Florida Auto Auction, which has one issue

remaining and 2) Alexander Ridge, which is now being concluded. He stated that he did represent the Fowler Family, but not the Semblers; they just sold the property.

**Mr. Ardaman** stated that the only city in Central Florida that has in-house counsel that he knows of is the City of Orlando. The City of Winter Garden would save money by using outside counsel. He described his firm's current and past experience in this capacity. He addressed the issue of the independent consulting lawyer and their availability as needed for meeting the City's needs. He expressed his willingness to serve Winter Garden as its Attorney or helping the City until an Attorney is found.

**Commissioner Nichols** asked Mr. Ardaman who had called him regarding the City Attorney position. Mr. Ardaman replied Commissioner Jowers called after Gerry L. Clark resigned. Several residents also called him. **Commissioner Nichols** asked Mr. Ardaman if his Winter Garden clients come back to him how he would handle that. Mr. Ardaman stated that he would have to refuse to represent them.

**Commissioner Graham** stated that the Attorney contract and the number of days available at the City for counsel would dictate how the contract amount is written. He gave an example of an Attorney working with developers and stated that the time involved with such a process would offset the expenses. He stated that he felt the City Manager should give the Commission information on an in-house attorney versus outside counsel.

**Mr. Ardaman** stated that this is a question that was asked even when he was Winter Garden's City Attorney. They evaluated whether it would make more sense to have an in-house Attorney or a law firm represent the City. The City has many issues and there is no one lawyer that he knows of that can handle all of the issues. You will still need to utilize an outside lawyer.

**Commissioner Dixon** expressed her thoughts that the City Manager should investigate this issue and come back to the Commission with comparisons for their review. Commissioner Graham stated that the City Manager was the one who asked the Commission to get an in-house Attorney. **Motion by Commissioner Jowers to delay any decisions on this issue until May 25, 2006, when the City Manager will share his recommendations and the related cost factors. Seconded by Commissioner Dixon.**

**Commissioner Dixon** asked to hear from the City Manager. **Mr. Bollhoefer** expressed that he and the staff are torn on this issue and will collect some data for the Commission at the next meeting. **Motion carried 4-1; opposed Commissioner Nichols.**

- **Pumping water out of Lake Apopka**

City Manager Bollhoefer stated that it was noted in the newspaper that the Cities of Minneola, Clermont, and Apopka have intentions of pumping water out of Lake Apopka. He discussed the efforts to restore the lake and mentioned that he was unsure of the damage that would do to the lake. He asked Commission direction to research this subject and direction to produce a resolution that states the City's opposition to this action.

Clermont and Minneola should take water from their own lakes. **Motion by Commissioner Jowers for the City Manager to research this issue and come back to the Commission with his answers and a resolution.** Commissioner Nichols asked Commissioner Graham what St. Johns Water Management had to say about this issue. Commissioner Graham stated that they are dealing with the environmental part. He explained some of the problems and solutions and that he would hate to see them pull water out of our lake. There was some discussion on the reclaimed water the City is currently supplying Ocoee. **Motion seconded by Commissioner Graham and carried unanimously 5-0.**

- **Commissioner Nichols rescinded resignation**

City Manager Bollhoefer stated that because Commissioner Nichols has rescinded her resignation pending the appointment of her successor legal issues are raised. He asked Interim Attorney Smith to address this issue. Mr. Smith read the applicable portion of the charter in Section 16 regarding vacancies in the City Commission. He stated that until the resignation is effective, there is no vacancy to fill. He stated that he spoke to the Florida League of Cities and they agreed with that charter interpretation. He also addressed case law that stated that a resignation can be rescinded up to the minute that it is to take effect. If you elect someone before the resignation is effective you have to have elected a commissioner who cannot take the seat because the seat was not vacated. He cited that there is a problem with the charter and a practical problem if the Commission was to elect before it actually had a vacant seat.

Commissioner Dixon pointed out that there are 15 days before the Governor considers filling the seat and that is why a definite date of resignation is needed in order to avoid action by the Governor.

Commissioner Nichols asked if the issue could be addressed and changed by the Commission. Attorney Smith replied no, this would have to be done by referendum. He stated that this is one of the issues the Charter Review Committee is addressing. Commissioner Nichols stated that she could continue on the Commission even though she would not be living in the City.

There was discussion about the charter, when it was written, establishing single-member districts and the candidate living in the district. City Manager Bollhoefer stated to Commissioner Nichols that if her intention is not to resign then the Interim City Attorney should research the issue of whether a Commissioner is required to live in the City. The Charter does state that you are required to live in the City after being elected, only to run for office.

Commissioner Nichols stated that she will continue as a Commissioner until she gets word otherwise. Mayor Quesinberry asked if her resignation has been withdrawn. Commissioner Nichols stated that it has been withdrawn.

8. **MATTERS FROM MAYOR AND COMMISSIONERS**

A. **Resignation of District 4 City Commissioner Carol Nichols** (*Item previously acted upon above.*)

**Commissioner Nichols**

Commissioner Nichols thanked the citizens for their outpouring of goodwill while she was in the hospital.

**Commissioner Dixon**

Commissioner Dixon stated that eventually we are going to get around to single member districts as they are supposed to be, but she will speak to this issue at another time.

Commissioner Dixon stated that she has been working with Homes In Partnership with Assistant City Manager Robertson. The County is waiting to develop the land for them and the people with the Brownfield funds are also waiting. She stated that we need more affordable housing and all that is needed is for the Commission to say they will donate the 20 acres to Homes In Partnership and they will get started. She called for a vote from the Commission to move on this and called Mr. Robertson to address some of the things that are being done in this process. Mr. Robertson stated that the City has been working with Mr. Louis Kellom and Commissioner Dixon. He described the property's location and stated that this property has been sitting unused since 1978. He described some of the history and uses of the land. There was discussion about the number of acres available and available brownfield funds.

Commissioner Nichols asked if we could assure that the homes will be affordable and available to the people of Winter Garden. Commissioner Dixon explained that the Federal government will not allow you to select who should get the homes, but we can get a list together. Mayor Quesinberry stated that we tried once before to get a list of those people who are living in substandard homes so they could have the first opportunity to move into the new ones being built and most came from other places. City Manager Bollhoefer stated that a scoring system can be established where the people from Winter Garden are given a higher score or certain points for living in Winter Garden. This does not assure all Winter Garden residents but gives them a greater chance. Mr. Robertson also stated that someone needs to make sure those people get on the list. **Motion by Commissioner Graham to donate the land for affordable housing and once permission is given for building, then give them a clear deed.** Commissioner Dixon stated that the Federal government is not going for anything like that, if you are going to give them the land, you have to give it to them and walk away. She stated that you cannot tie the Federal government's hands. **Motion died for the lack of a second.**

Commissioner Nichols asked if there were any other programs available that the land could be given to such as Habitat for Humanity, to make sure Winter Garden residents got the homes. Commissioner Graham stated that Habitat for Humanity cannot build that fast due to everything being done by volunteers. Mr. Robertson stated that Habitat cannot do the infrastructure. He described a joint effort between agencies with the City of Winter Garden

furnishing the land, the County CDBG grant furnishing the money to do the infrastructure, and then Homes in Partnership along with Farmers Homes actually building the houses.

Mr. Robertson stated that what is being asked is for a letter of intent that the land will be built under those conditions. If the City says they will then they can go forward. He stated that we are not giving them a deed tonight, we would be giving them a letter of intent.

**Motion by Commissioner Graham to provide a letter of intent to donate the land to be used for building affordable housing. Seconded by Commissioner Dixon and carried unanimously 5-0.**

Mr. Robertson stated that the old Public Works facility at 160 S. Boyd had a gas spill in 1990 and had a huge amount of dirt excavated out and had the gas burned out. This situation has been resolved after many years and much examination. After all of the money and time involved, the State has decided that it will allow natural annunciation to occur which is the decline of the pollutant over time by nature.

Commissioner Dixon stated that this summer the children at the Maxey Center will have programs and are in the process of locating funds for teachers. She addressed issues concerning recreation for the East side. She stated that the City should be looking into partnering with the County for parks that already exist.

**Commissioner Graham**

Commissioner Graham stated that there is an article in the National City Weekly regarding a bill which will take away local franchise authority from cities. He stated that our franchise is with cable and telephone and we will potentially have no say over it and we would financially lose on this bill. We need to contact our representative to oppose the Communications, Opportunity, Promotion and Enchantment (COPE) telecommunications bill.

**Commissioner Jowers** had no comments.

The meeting adjourned at 8:06 p.m.

**APPROVED:**

/S/ \_\_\_\_\_  
**MAYOR JACK QUESINBERRY**

**ATTEST:**

/S/ \_\_\_\_\_  
**City Clerk Kathy Golden, CMC**