



CITY OF WINTER GARDEN

OFFICE OF THE CITY CLERK

251 W. PLANT STREET
WINTER GARDEN, FL 34787
TEL: (407) 656-4111 Ext. 2254 • FAX (407) 656-4952

REGULAR MEETING MINUTES CITY COMMISSION

July 26, 2007

A **REGULAR MEETING** of the Winter Garden City Commission was called to order by Mayor Pro Tem H. Gerald Jowers 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 Pro Tem H. Gerald Jowers, Commissioners Harold L. Boulter, and Colin Sharman

Absent: Mayor Jack Quesinberry and Commissioner Bob Buchanan

Also Present: City Manager Mike Bollhoefer, City Attorney A. Kurt Ardaman, Assistant City Manager Marshall Robertson, City Clerk Kathy Golden, Police Chief George Brennan, Communications Specialist Reid Revels, Finance Director Brian Strobeck, Human Resources Director Frank Gilbert, Building Official Willie Herbert, Fire Chief John Williamson, Recreation Director Jay Conn, Planning Director Ed Williams, Assistant to the City Manager for Public Works Don Cochran, and West Orange Times reporter Michael Laval

1. **APPROVAL OF MINUTES**

Motion by Commissioner Sharman to approve the regular meeting minutes of July 12, 2007 as submitted. Seconded by Commissioner Boulter and carried unanimously 3-0.

2. **FIRST READING OF PROPOSED ORDINANCE**

A. **Ordinance 07-39:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 88 OF THE WINTER GARDEN CODE OF ORDINANCES RELATING TO SITE INSPECTION FEES AND REGULAR WORKING HOURS BY AMENDING THE FOLLOWING SECTIONS THEREOF: 88-8(1) SITE PLAN REVIEW FEES, 88-8(2) PLATTING REVIEW FEES, AND 88-14 ADDITIONAL FEES FOR ROAD, DRAINAGE, WATER, OR WASTEWATER FACILITIES SITE INSPECTION; PROVIDING FOR CODIFICATION, CONFLICT, SEVERABILITY, AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 07-39 by title only. Assistant City Engineer Kelley stated that this proposed ordinance is to increase engineering inspection fees from 1.5 % to 2 ¼ %. Mayor Pro Tem Jowers opened the public hearing; hearing and seeing none, he closed the public hearing. **Motion by Commissioner Sharman to approve Ordinance 07-39 with the second reading and public**

hearing being scheduled for August 9, 2007. Seconded by Commissioner Boulter and carried unanimously 3-0.

3. SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCES

- A. **Ordinance 07-23:** AN ORDINANCE AMENDING THE FUTURE LAND USE MAP OF THE CITY OF WINTER GARDEN'S COMPREHENSIVE PLAN BY CHANGING THE DESIGNATION FROM MEDIUM DENSITY RESIDENTIAL TO COMMERCIAL OF PROPERTY LOCATED AT 13330 WEST COLONIAL DRIVE, 13340 WEST COLONIAL DRIVE, 13350 WEST COLONIAL DRIVE AND 13360 WEST COLONIAL DRIVE (AS RECORDED IN OFFICIAL RECORDS BOOK 3342, PAGE 1436 PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.), ALSO KNOWN AS THE WINDTREE PROFESSIONAL CENTER; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE
City Attorney Ardaman read Ordinance 07-23 by title only. Mayor Pro Tem Jowers opened the public hearing. Planning Director Williams stated that staff recommends approval. Hearing or seeing no other comments, Mayor Pro Tem Jowers closed the public hearing. **Motion by Commissioner Boulter to adopt Ordinance 07-23. Seconded by Commissioner Sharman and carried unanimously 3-0.**
- B. **Ordinance 07-24:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING APPROXIMATELY 1.51 ACRES OF LAND LOCATED AT 13330 WEST COLONIAL DRIVE; 13340 WEST COLONIAL DRIVE, 13350 WEST COLONIAL DRIVE AND 13360 WEST COLONIAL DRIVE, WINTER GARDEN, FLORIDA (AS RECORDED IN OFFICIAL RECORDS BOOK 3342, PAGE 1436 PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.), ALSO KNOWN AS THE WINDTREE PROFESSIONAL CENTER AND MORE SPECIFICALLY DESCRIBED HEREIN FROM CITY R-3 TO CITY C-2; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE
City Attorney Ardaman read Ordinance 07-24 by title only. Planning Director Williams stated that staff recommends approval. City Attorney Ardaman noted that there was no one present to speak on this item. **Motion by Commissioner Sharman to adopt Ordinance 07-24. Seconded by Commissioner Boulter and carried unanimously 3-0.**
- C. **Ordinance 07-25:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA; SUBMITTING AMENDMENTS TO THE CITY CHARTER TO CITYWIDE REFERENDUM THAT: PROVIDE FOR COMPREHENSIVE REVISION, REORGANIZATION, CONSOLIDATION, MODERNIZATION AND CLARIFICATION OF THE CURRENT CHARTER; PROVIDE FOR THE ELIMINATION, REPLACEMENT OR REVISION OF INEFFECTIVE, PREEMPTED OR OTHERWISE OBSOLETE LANGUAGE; SET 3 YEAR TERMS FOR CITY COMMISSIONERS; PROVIDE NEW OR REVISED PROCEDURES FOR FILLING VACANCIES IN OFFICE, HOLDING REGULAR MEETINGS, CALLING SPECIAL AND EMERGENCY MEETINGS,

CONDUCTING AND CANVASSING ELECTIONS, PRESENTING CITIZEN INITIATIVES AND REFERENDUMS, PASSING ORDINANCES, AND REVISING THE CITY CHARTER; CONSOLIDATE FISCAL PROVISIONS; PRESCRIBE NEW AND REVISED PREREQUISITES AND QUALIFICATIONS FOR COMMISSIONERS QUALIFYING AND HOLDING OFFICE; AND CHANGE THE DUTIES AND METHODS OF APPOINTMENT OF CITY OFFICERS SUCH AS THE CITY MANAGER, CITY CLERK, CHIEF OF POLICE AND CITY ATTORNEY; PROVIDING FOR NOTICE OF AN ADVERTISEMENT FOR THE REFERENDUM TO BE PUBLISHED IN ACCORDANCE WITH THE CURRENT CITY CHARTER, CITY CODE, AND STATE STATUTES; PROVIDING THAT THIS ORDINANCE, WHEN ADOPTED, SHALL SUBMIT THE QUESTION AND AMENDMENTS CONTAINED HEREIN TO THE QUALIFIED ELECTORS OF THE CITY OF WINTER GARDEN AT A MAIL BALLOT SPECIAL ELECTION WHERE SUCH AMENDMENTS SHALL BE INCORPORATED INTO THE CITY CHARTER IF APPROVED; CALLING MAIL BALLOT SPECIAL ELECTION TO BE HELD IN SEPTEMBER 2007; PROVIDING FOR CHARTER AMENDMENT CONFLICTS; PROVIDING FOR CODIFICATION OF ORDINANCE AND ADOPTED CHARTER AMENDMENTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 07-25 by title only. Mayor Pro Tem Jowers opened the public hearing; hearing and seeing none, he closed the public hearing. **Motion by Commissioner Sharman to adopt Ordinance 07-25. Seconded by Commissioner Boulter and carried unanimously 3-0.**

- D. **Ordinance 07-26:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, MODIFYING THE CITY'S GENERAL MUNICIPAL ELECTION DATES TO COINCIDE WITH THE PRESIDENTIAL PREFERENCE PRIMARY DATE IN 2008; PROVIDING FOR A 14-DAY QUALIFYING PERIOD AND SCHEDULE FOR RUN-OFF ELECTION TO BE APPLIED IN CONJUNCTION WITH SAID ELECTION; AND PROVIDING FOR CONFLICTS, SEVERABILITY AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 07-26 by title only. Mayor Pro Tem Jowers opened the public hearing; hearing and seeing none, he closed the public hearing. **Motion by Commissioner Boulter to adopt Ordinance 07-26. Seconded by Commissioner Sharman and carried unanimously 3-0.**

4. **REGULAR BUSINESS**

- A. **Request to close a portion of South Park Avenue onto Plant Street to Dillard Street for the West Orange High School Homecoming Parade September 21, 2007**

Daniel Andrews, representative of the West Orange High School, came forward to ask for permission to close Plant Street for their Homecoming Parade on September 21, 2007. He noted a slight change in the proposed route submitted by stating that

instead of starting at Veterans Memorial Park, they thought it would be better to start just east of the intersection at Park Avenue and Plant Street so they would not have to close Park Avenue. Commissioner Sharman asked if they met all of staff's requirements for this event. City Manager Bollhoefer replied yes they have and they have had a successful parade for the past two years. **Motion by Commissioner Sharman to approve closing Plant Street from Park Avenue to Dillard Street for the West Orange High School Homecoming Parade on September 21, 2007. Seconded by Commissioner Boulter and carried unanimously 3-0.**

B. Request by Sunshine Tools to conduct an open-air sale under a temporary tent in the K-Mart Shopping Center, 13373 W. Colonial Drive, from August 21 until September 21, 2007

Building Official Herbert stated that staff recommends denial of this request based on the information provided in the agenda package. City Manager Bollhoefer stated that staff has reviewed this item very closely. The city has had tent sales in the past and this is somewhat different than the others. Factors taken into consideration were the length of a time requested which was initially longer than two months and then it was two months. Staff believes it would be unfair to our local businesses, with the same product, to operate with the extra overhead and compete with Sunshine Tools.

The representative for Sunshine Tools stated that they are only asking for 30 days and they not only have tools but generators for use during hurricanes and other emergency type equipment.

Motion by Commissioner Boulter to deny Sunshine Tools request to conduct open-air sales under a temporary tent in the K-Mart Shopping Center, 13373 W. Colonial Drive, from August 21 until September 21, 2007. Seconded by Commissioner Sharman and carried unanimously 3-0.

C. Recommendation to approve Oakland Park Phase 1A Right-of-Way Maintenance Agreement

City Planner Williams stated that staff has received a request from the developer to withdraw this item and the next agenda item as there is an issue with the easements for the final plat. Therefore, it is not ready to be considered at this point. Commissioner Sharman asked if staff had a date when it would be ready. Mr. Williams replied that staff would not recommend a date certain until the issue has been resolved. **Motion by Commissioner Boulter to postpone the Oakland Park Phase 1A Right-of-Way Maintenance Agreement, final plat and Environmental Contamination Hold Harmless and Indemnity Agreement. Seconded by Commissioner Sharman and carried unanimously 3-0.**

D. Recommendation to approve the final plat for Oakland Park Phase 1A located on the east side of CR 545 north of Oakland Avenue with conditions stated in the Engineering Department's memorandum of July 6, 2007 and the Legal

Department's memorandum of July 17, 2007 AND approval of the Environmental Contamination Hold Harmless and Indemnity Agreement
Postponed with item "C" above.

E. **Recommendation to approve a developer's agreement for Avamar (Avalon Marsh Retail) located on the southwest corner of Marsh Road and CR 545**

City Planner Williams stated that this agreement is to memorialize certain obligations and responsibilities by the developer to the City. A particular concern is the financial obligations for widening of Marsh Road and staff is recommending approval of the agreement.

City Attorney Ardaman stated that in reviewing the final version an error was found on page four. Earlier today staff spoke with the developer's attorney and at the bottom of the page there is a reference to \$85,279 but the top of the page references \$40,153. The lower amount of \$40,153 should appear in both places.

Additionally, on page 10, paragraph number 20 makes reference to "Subject Property" and rather than making this agreement apply to the entire parcel, because SunTrust has purchased the corner parcel, everywhere the phrase "Subject Property" appears in paragraph 20 it should read the "Avamar Parcel", which is everything but the SunTrust parcel on the corner. When the SunTrust development comes through they will have their own separate agreement. This agreement does require the Avamar developers to pay everything just in case SunTrust does not come through, but staff did not want it to bind the SunTrust parcel. The City does have an approval from the developer agreeing to those changes and he has the substitute pages if the City Commission approves it. **Motion by Commissioner Sharman to approve the developer's agreement for Avamar (Avalon Marsh Retail) located on the southwest corner of Marsh Road and CR 545 with the modified changes as submitted by the City Attorney. Seconded by Commissioner Boulter and carried unanimously 3-0.**

F. **Recommendation to approve the site plan for SunTrust Bank (Avamar Outparcel B) located at the southwest corner of CR 545 and Marsh Road with the conditions stated in the Engineering Department's memorandum of June 26, 2007**

City Planner Williams stated that Outparcel B, as just referred to by the City Attorney, is recommended for approval by staff subject to the Engineering report and that they are required to enter into a developer's agreement similar to the Avamar agreement. **Motion by Commissioner Sharman to approve the site plan for SunTrust Bank (Avamar Outparcel B) located at the southwest corner of CR 545 and Marsh Road with the conditions stated in the Engineering Department's memorandum of June 26, 2007 and that they are subject to entering into a development agreement. Seconded by Commissioner Boulter and carried unanimously 3-0.**

G. **Recommendation to approve the site plan for Exotic Car Transport located at 1207 E. Story Road with conditions stated in the Engineering Department's memorandum of May 18, 2007**

City Planner Williams stated that Exotic Car Transport is relocating their business to the City. Staff has reviewed it and recommends approval subject to the Engineering Department memorandum. **Motion by Commissioner Boulter to approve the site plan for Exotic Car Transport to be located at 1207 E. Story Road with conditions stated in the Engineering Department's memorandum of May 18, 2007. Seconded by Commissioner Sharman and carried unanimously 3-0.**

H. **Recommendation to approve Cost Share Agreement with St. Johns River Water Management District and the City of Winter Garden to provide funding for the Phase I Public Access Reuse Water Storage and Pumping Project**

Public Services Director Cochran stated that staff is requesting another postponement and expressed that staff is trying to fine tune the document and work out the agreement with St. Johns Water Management District. It looks like the best opportunity to bring this back to the City Commission would be the August 23, 2007 meeting. **Motion by Commissioner Sharman to postpone considering a Cost Share Agreement with St. Johns River Water Management District to provide funding for Phase I Public Access Reuse Water Storage and Pumping Project until August 23, 2007 at 4:00 p.m. at City Hall. Seconded by Commissioner Boulter and carried unanimously 3-0.**

I. **Recommendation to approve the site plan for Bethlehem Missionary Baptist Church located at 55 Carter Street with the conditions stated in the Engineering Department's memorandum of June 6, 2007**

City Planner Williams stated that staff recommends approval subject to Engineering Department's memorandum of June 6, 2007. **Motion by Commissioner Boulter to approve the site plan for Bethlehem Missionary Baptist Church located at 55 Carter Street with the conditions stated in the Engineering Department's memorandum of June 6, 2007.**

Commissioner Boulter stated that Plant Street is coming into its own. With all the development coming to this area, he thinks the church will enhance the beautification of the area. Mr. Williams stated that there are representatives in the audience that he does not think that they have any objection to approving the site plan. **Motion seconded by Commissioner Sharman and carried unanimously 3-0.**

J. **Resolution 07-05 ESTABLISHING A COMPREHENSIVE RECORDS MANAGEMENT PROGRAM; ESTABLISHING GOALS AND OBJECTIVES; DEFINING PUBLIC RECORDS; ADOPTING RECORDS SCHEDULES; DESIGNATING A RECORDS MANAGEMENT LIAISON OFFICER; ESTABLISHING A RECORDS ADVISORY COMMITTEE; PRESERVATION**

OF RECORDS; AND METHOD OF RECORDS DESTRUCTION; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Resolution 07-05 by title only. City Clerk Golden stated that this resolution officially adopts the current practice. **Motion by Commissioner Sharman to approve Resolution 07-05. Seconded by Commissioner Boulter and carried unanimously 3-0.**

K. Recommendation to establish the budget workshop and public hearing dates for Fiscal Year 2007/2008

Finance Director Strobeck stated that staff is requesting that the budget workshop be scheduled for immediately after the August 9, 2007 regular meeting and if he is unable to attend, that the workshop be rescheduled for immediately after the August 23, 2007 regular meeting. In addition, he requested that the budget public hearings be scheduled for September 13th and September 27th at 6:30 p.m. as the first item on each agenda. **Motion by Commissioner Sharman to approve establishing the budget workshop and public hearing dates for Fiscal Year 2007/2008 as recommended. Seconded by Commissioner Boulter and carried unanimously 3-0.**

L. Recommendation to approve demolishing the old gas building located at 1125 E. Plant Street

City Manager Bollhoefer stated this is a city owned building that people have requested to refurbish and temporarily use. It has been his intent to take the necessary right-of-way for widening Plant Street, tear it down, and redevelop the site for sale in the future. **Motion by Commissioner Boulter to approve demolishing the old gas building located at 1125 E. Plant Street. Seconded by Commissioner Sharman.**

Commissioner Boulter asked when the building would be demolished. Mr. Bollhoefer responded that it would probably be within a month or two. Commissioner Boulter stated that the reason he asked was because there is also a building on North Street that needs to be demolished and asked if a private company would be demolishing the city building. Mr. Bollhoefer replied it would be a private company and if the property owners on North Street are interested in who the city will be using at a very good price, they can contact staff. **Motion carried unanimously 3-0.**

5. MATTERS FROM CITIZENS

James Balderrama, 14315 Hampshire Bay Circle, Winter Garden, Florida, addressed the new Fowler Grove mall by stating that at a City Commission workshop on April 5, 2005, Commissioner Nichols inquired about fast food establishments and was assured that there would be no fast food but high quality restaurants. He has seen a sign that McDonald's is coming and he has concerns about such lies and asked who is challenging the developer on these types of issues. He asked if the current McDonald's was closing on SR 50 to be yet another closed business adding to the blight on SR 50.

At this same meeting Mr. Hareas stated that they would build a masonry wall on the north side of the project between Stonecrest and the mall at 60 feet away. He does not know if in fact it is 60 feet away but he does know that a prefabricated wall is not his definition of a masonry wall. Again, he challenges the city to go back to Sembler to ask them what they are going to do about correcting the problems.

He does like the closure of CR 535 just past Country Lakes Estates because his neighborhood has never been more quiet and he would like the Commission to consider keeping it closed forever. It would further buffer them from the mega mall, lower end stores, and keep them safer. He thanked Police Chief Brennan for the quick response to when the road was closed and drivers were unclear on which way to make a left turn.

He asked that consideration be given to creating a citizens committee of District 4 residents to look into ways keep their neighborhoods as they are. His research shows that homes for sale in his neighborhood are listed from \$700,000 to \$1 million and they are potentially a significant amount of tax revenue for the city.

Mr. Balderrama readdressed comments he made at a prior meeting regarding changing the townhomes to apartments and whether anything was being done about this.

Ed Lynch, 660 Home Grove Drive, Winter Garden, Florida, stated that he echoes what Mr. Balderrama said with the exception of closing old 535 that would force traffic through the Stonecrest Subdivision, which is probably not a good idea.

6. **MATTERS FROM CITY ATTORNEY** – There were none.

7. **MATTERS FROM CITY MANAGER**

A. Financial Statement for June 2007 (*Distributed by the Finance Director*)

- City Manager Bollhoefer stated that technically at the last Commission meeting the City Commission set the millage rate at the statutory rate which was inadvertently stated as 3.4382 but should have been 3.4296. It comes out to about \$20,000 less in revenues. No action is necessary because the original motion was to establish the rate at the statutory rate. City Attorney Ardaman stated that it was a typographical error.
- There have been some issues with attendance by members of the Planning and Zoning Board. The code currently allows up to four consecutive absences before they can be removed. He would like to change it to three consecutive absences because it is very important for members to be present. It was the **consensus** of the City Commission that the City Manager will prepare a code amendment as stated.

- Addressed possible complaints to the City Commission regarding the speed limit and enforcement on Daniels Road. Part of it is 35 mph and part is 45 mph but it will eventually be 35 mph for the entire road. This is one of the assurances given to residents to keep it a safe road with the added mall traffic.
- Mr. Bollhoefer addressed an issue for the Wintermere Harbor subdivision and the Centerline project next door that staff has tried intervening on and it has not gone as planned. One issue is a two-foot gap between a fence and a wall that was the result of errors by the builder's surveyor that caused one barrier to be built on property owned by Wintermere Harbor residents. They are very close to resolving the problem. He asked the City Commission to approve the use of city funds, if he has to, to have new surveys done and to have the city attorney do title searches on each property to see if there are any related title issues. He also asked to use city staff to correct any title issues if there are any. City Attorney Ardaman stated that a consensus by the City Commission is fine because the City Manager already has the authority in this matter and there is no prohibition to voting on the matter. Commissioner Sharman stated that he would like to give the City Manager direction by approving his plan if there is consensus by the City Commission. Mayor Pro Tem stated he would like to see the City Manager resolve it. Commissioner Boulter stated that he has no problem with the plan. A **consensus** was reached that the City Manager would move forward with his plan as stated.

8. MATTERS FROM MAYOR PRO TEM AND COMMISSIONERS

Commissioner Sharman

Thanked Assistant City Manager Robertson for being out on Daniels Road with the Police Chief to resolve traffic issues.

Asked for clarification regarding developer comments at Commission meetings and what is binding or not. City Attorney Ardaman stated that written documents are critical and are subject to interpretation. If a developer makes representations as part of the approval process it would be hard for them to refute, unless there was a subsequent meeting otherwise. If they presented that there would be no fast food and the document states something completely different then there is a bigger issue. Mayor Pro Tem Jowers addressed the difference in wall materials used. Mr. Ardaman stated that it would need to be reviewed and if it is not provided for in the documentation and there were representations made, they will have a hard time refuting that as well. It is important to review the documents and meetings with what was presented. He has not looked at the material and cannot give advice on it at this time. Commissioner Sharman stated that he brought this issue up for two reasons; to make sure developers deliver on what they have already promised and for future approvals he wants to know when and where to put in the conditions of approval. Mr. Ardaman advised that when approving a planned development (PD) the uses are provided for within the document. Typically if it is not expressly allowed then it is prohibited.

Commissioner Boulter

