



# CITY OF WINTER GARDEN

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## 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

August 9, 2007

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

**Also Present:** City Manager Mike Bollhoefer, City Attorney A. Kurt Ardaman, Assistant City Manager Marshall Robertson, Assistant City Clerk Angee Grimmage, Police Lieutenant Bill Sullivan, Communications Specialist Reid Revels, Finance Director Brian Strobeck, Human Resources Director Frank Gilbert, Building Official Willie Herbert, Fire Chief John Williamson, Information Technology Director Bob Reilly, 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

*Mayor Quesinberry acknowledged that the City Commission was wearing shirts with the new Fire Department logo in honor of the Winter Garden Fire Fighter Appreciation Week as declared in Proclamation No. 07-07*

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

**Motion by Commissioner Boulter to approve the regular meeting minutes of July 26, 2007 as submitted. Seconded by Commissioner Jowers and carried unanimously 5-0.**

### 2. **PRESENTATION**

Ward Britt, representative of the Winter Garden Heritage Foundation, stated that the City of Winter Garden ranked number 19 on a list of the top 100 fastest growing cities in the United States as shown on the Forbes magazine's web site. He thinks this is great, and is a testament to good government and commended the City Commission for this achievement. The City is in a crucial time for historic Winter Garden and gave an example of changes in the City of Winter Park that made businesses begin to fail. He stated that there has been too much work and too much effort put into the downtown Winter Garden district and the Winter Garden Heritage Foundation wants to prevent business failure from happening here. He spoke of the Foundation's contributions to the City and recognized that Kay Cappleman will give a brief overview of the Winter Garden Heritage Foundation's Educational program.

Ms. Cappleman stated that she is the Education Coordinator for the Winter Garden Heritage Foundation and highlighted some of the things that they are doing in the program (*see attachment #1*).

Mr. Britt stated that all of these programs were done with volunteers. In 2008, the museums and the theatre will bring over 50,000 new visitors into downtown Winter Garden. The theatre and museum are tremendous economic engines that next year will produce \$1.1 million in revenues. He spoke of the creation of jobs and revenue for new and existing businesses. So far, the Winter Garden Heritage Foundation has generated over \$2 million for the construction of the theatre on Plant Street, all of which came from outside sources. The City has been generous and the foundation is grateful. He expressed that he is aware that the City has a tough year coming up with the tax-cut issues. He explained that the Winter Garden Heritage Foundation is a small, lean, 501 3(c) organization that controls its expenses and squeezes every dollar. Five years ago, the City of Winter Garden and the Winter Garden Heritage Foundation entered into an agreement and for five years the City of Winter Garden has provided the Winter Garden Heritage Foundation with a \$50,000 grant for operations. This year is the fifth year and next year starts another five year period in which the agreement states that the City of Winter Garden will donate \$75,000 to the Winter Garden Heritage Foundation. The foundation has budgeted for this amount and asked the City Commission to continue to help them help this community by continuing to honor the agreement.

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

A. **Ordinance 07-27:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA; VACATING THE SOUTHERLY FIVE FEET OF THE TEN FOOT DRAINAGE AND UTILITY EASEMENT LOCATED ADJACENT TO THE NORTHERNMOST PROPERTY LINE, LESS 5 FEET OF THE EASTERN AND WESTERN PROPERTY LINES OF 1200 THORNBURY COURT, WINTER GARDEN, FLORIDA; PROVIDING AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 07-27 by title only. Mayor Quesinberry opened the public hearing; hearing and seeing none, he closed the public hearing. Planning Director Williams stated that staff does recommend approval. **Motion by Commissioner Jowers to approve Ordinance 07-27 with the second reading and public hearing being scheduled for August 23, 2007. Seconded by Commissioner Boulter and carried unanimously 5-0.**

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

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. Mayor Quesinberry opened the public hearing; hearing and seeing none, he closed the public hearing.

**Motion by Commissioner Sharman to approve Ordinance 07-39. Seconded by Commissioner Buchanan and carried unanimously 5-0.**

5. **REGULAR BUSINESS**

A. **Requests for donation by the West Orange High School Choral Department**

Sophia Troncoso stated that she is an incoming senior at West Orange High School and is a member of the prestigious West Orange Choir. She informed the City Commission that for her senior year the choir will travel to Germany and sing in a competition. The school depends on the choir members to raise funds from the community and because the City has been very generous in the past, she is requesting a donation for this upcoming event. Mayor Quesinberry stated that \$1,000 was already donated this year and asked the City Commission for their response to this request. City Manager Bollhoefer stated that Phyllis Eury has also submitted a request for this event. Commissioner Jowers stated that West Orange High School has already received \$2,500 of an \$8,000 budget. **Motion by Commissioner Jowers to approve donating \$200 to the West Orange High School Choral Department. Seconded by Commissioner Sharman and carried unanimously 5-0.**

B. **Recommendation to approve the final plat with conditions for Stoneybrook West Unit 8 (Parcel 17) located along CR 545**

City Planner Williams stated that staff recommends approval of the plat subject to the Engineering memorandum and the Legal Department memorandum. **Motion by Commissioner Buchanan to approve the final plat with conditions (see attachment #2) for Stoneybrook West Unit 8 (Parcel 17) located along CR 545. Seconded by Commissioner Sharman and carried unanimously 5-0.**

C. **Recommendation to approve a Right-of-Way Maintenance Agreement, Hold Harmless and Indemnity Agreement, Road and Utility Easement Agreement, and Amendment #1 to the Developer's Agreement for Johns Lake Pointe located along CR 545**

City Planner Williams stated that the Planning and Zoning Board and staff have both reviewed this item and recommend approval subject to the agreements as stated. **Motion by Commissioner Boulter to approve the Right-of-Way Maintenance Agreement, Hold Harmless and Indemnity Agreement, Road and Utility Easement Agreement, and Amendment #1 to the Developer's Agreement for Johns Lake Pointe located along CR 545. Seconded by Commissioner Jowers and carried unanimously 5-0.**

D. **Recommendation to approve the final plat with conditions for Johns Lake Pointe located along CR 545**

City Planner Williams stated that staff recommends approval subject to the conditions provided in the agenda package. **Motion by Commissioner Jowers to approve the final plat with conditions (see attachment #3) for Johns Lake Pointe located along CR 545. Seconded by Commissioner Sharman and carried unanimously 5-0.**

E. **Recommendation to approve a Right-of-Way Maintenance Agreement for Oakland Park Phase 1A located on the east side of CR 545 (Postponed from July 26, 2007)**

City Planner Williams stated staff is asking for another two week continuance to a date certain. City Attorney Ardaman clarified that the developer has requested this postponement. **Motion by Commissioner Boulter to postpone a Right-of-Way Maintenance Agreement for Oakland Park Phase 1A located on the east side of CR 545 until August 23, 2007. Seconded by Commissioner Jowers.** There was discussion on the two week postponement and whether or not two weeks would be sufficient. **Motion carried unanimously 5-0.**

F. **Recommendation to approve the final plat with conditions for Oakland Park Phase 1A located on the east side of CR 545 and approval of an Environmental Contamination Hold Harmless and Indemnity Agreement (Postponed from July 26, 2007)**

City Planner Williams stated staff is also asking to postpone this item. **Motion by Commissioner Sharman to postpone the final plat for Oakland Park Phase 1A located on the east side of CR 545 and approval of an Environmental Contamination Hold Harmless and Indemnity Agreement until August 23, 2007. Seconded by Commissioner Buchanan and carried unanimously 5-0.**

G. **Recommendation to approve Change Order #1 to the Annual Construction Services Contracts with T. D. Thomson and Emerald Utilities and setting the priced unit costs**

Public Services Director Cochran stated that Change Order #1 consists of adding additional construction activities to the annual construction services contract, mostly related to installing larger diameter pipe. Both contractors have agreed to honor the lower bid and staff recommends approving Change Order #1. **Motion by Commissioner Buchanan to approve Change Order #1 to the Annual Construction Services Contracts with T. D. Thomson and Emerald Utilities and setting the priced unit costs. Seconded by Commissioner Jowers and carried unanimously 5-0.**

H. **Recommendation to approve BRPH Construction Services, Inc., Clancey & Theys Construction Company, and Wharton-Smith, Inc, as pre-qualified general contractors for the City of Winter Garden for a period of five years**

City Manager Bollhoefer stated that staff wanted to pre-qualify some general contractors to have them on board as the City moves forward with its projects. There are several projects in process so the City sent out a Request for Qualifications (RFQ) and 11 statements were received and reviewed. The three recommended companies are BRPH Construction Services, Inc., Clancey & Theys Construction Company, and Wharton-Smith, Inc. Staff recommends approving these three as the City's pre-qualified contractors that would have the opportunity to bid on our jobs.

Mayor Quesinberry asked the City Manager if he thought it was safe to pre-qualify for a period of five years. Mr. Bollhoefer responded affirmative and if there are ever any issues with the contractors this process could be redone. Mayor Quesinberry clarified that if something should happen to one of the contractors there would be the possibility of replacing any one of them.

**Motion by Commissioner Boulter to approve BRPH Construction Services, Inc., Clancey & Theys Construction Company, and Wharton-Smith, Inc, as pre-qualified general contractors for the City of Winter Garden for a period of five years. Seconded by Commissioner Sharman.**

Commissioner Buchanan asked if the opportunity to bid is still open for another qualified contractor to come in and register. Mr. Bollhoefer responded that the interested company would have to go through this same process and they would not be allowed to bid on the same jobs as these three contractors. Commissioner Buchanan questioned whether three would be enough and that he would not want to see any price fixing between the three since they know that they are the only contractors that will be bidding. Mr. Bollhoefer stated these contractors have been thoroughly researched and that the City's experience with them is such that he does not believe that they would price fix, but if the City were to see that situation staff would get rid of all three and start over.

Commissioner Jowers suggested using them for five years with annual renewal. **Commissioner Boulter and Commissioner Sharman both agreed to the amending the original motion to include that the three contractors must be reapproved each year during the five year period. Motion carried unanimously 5-0.**

I. **Recommendation to approve a new two-year contract with City Manager Michael Bollhoefer**

Mayor Quesinberry stated that the evaluations of City Manager Michael Bollhoefer have been turned in and out of a possible score of 5.0 Mr. Bollhoefer received a 4.5 average.

Commissioner Jowers stated that the evaluation form submitted shows that he did not turn in an evaluation, but he definitely did and noted that his was in align with everyone's scoring. Mayor Quesinberry explained the simplicity of the form he chose and reiterated that the average evaluation score received by Mr. Bollhoefer was 4.5. **Motion by Commissioner Buchanan to approve the new two-year contract with City Manager Michael Bollhoefer. Seconded by Commissioner Jowers.** *(No vote was called and there were no objections made to the overall score of 4.5.)*

Mayor Quesinberry noted there were one or two minor changes to the original contract. City Attorney Ardaman added that his review of the agreement included some minor changes from the prior agreement which were mainly typographical

and consistency changes. There were no substantive changes to the existing contract other than one item that he doesn't remember raising any attention for him.

**Motion by Commissioner Sharman to approve the new two-year contract with City Manager Michael Bollhoefer with the substantive and clerical changes made by the City Attorney. Seconded by Commissioner Boulter.** Commissioner Buchanan noted that he already made the motion. Mayor Quesinberry stated that the first action was regarding the evaluation score and this action is for the contract and called for the vote. **Motion carried unanimously 5-0.**

6. **MATTERS FROM CITIZENS**

James Balderrama, 14315 Hampshire Bay Circle, Winter Garden, Florida, requested that the City draft an ordinance to temporarily suspend all future commercial development and rezoning requests in District 4 and the area surrounding the Winter Garden Village at Fowler's Grove Mall primarily south of State Road 50, north of the City limits from CR 535 to the west, and Daniels Road to the east. He stated that recently, City Manager Bollhoefer has been asking potential developers to meet with home owners in the area regarding future development, specifically commercial development. Although they appreciate the effort, it is getting to the point where homeowner association board members, concerned citizens, and community leaders are being asked to do too much. He asked that this ordinance stay in effect until three things happen; 1) The Fowler's Mall is open and filled almost to capacity, 2) a traffic study is conducted and if necessary changes be made to ease the traffic burdens that they will have, and 3) if the residents and homeowners find a need for any additional future commercial development, a full study be done on the actual impact on residents. When the mall reaches its capacity it should have every type of business needed in that area. He addressed issues of traffic, crime, noise, and the overall inconvenience to the nearby homeowners in that area. He spoke of the latest occupancy information for the mall that is less than 50% capacity. He gave an example of the old Publix shopping center after Publix moved left that center 70% vacant. He asked the City Commission to please help prevent this from happening to their neighborhood. He again asked that an ordinance be drafted as stated. Mayor Quesinberry expressed that the City Commission will take his comments under advisement and the City Manager and City Attorney will see what they can work out.

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

8. **MATTERS FROM CITY MANAGER**

A. Vacancy on the MetroPlan Orlando Citizens' Advisory Committee - *Postponed*

9. **MATTERS FROM MAYOR AND COMMISSIONERS**

**Commissioner Sharman**

Commissioner Sharman stated that he wanted to add to Mr. Balderrama's comments by stating that City Staff recently recommend denial of a commercial piece of property on Daniels Road. He agrees with some of Mr. Balderrama's comments in that the City should wait before rezoning any of the area surrounding the mall. He was not sure if

this issue needs an ordinance, get City Manager's approval, or just get direction from the City Commission. Staff is getting a lot of requests and suggested waiting until the mall opens to see what the traffic impact will be before going forward. It would not be saying no, it would just not be saying yes until there is a full understanding and he asked the City Manager for his comments.

City Manager Bollhoefer stated that he would do some research, but he believes the City Attorney and Planning and Zoning Director will confirm that this probably cannot be legally done because when someone owns property they have a right to due process and be heard by a board. You could almost have an inverse condemnation or do something to the value of their property. As a staff we have told people that there are issues and suggested they wait until after the construction of the mall. In some cases, some still wanted to move forward and they have been told that their first step is a community meeting as requested by the residents. The legal issues need to be researched.

Mayor Quesinberry reminded everyone that the next City Commission meeting will be held at City Hall Chambers at 4:00 p.m. on August 23, 2007.

The meeting adjourned at 7:20 p.m.

APPROVED:

/S/  
MAYOR JACK QUESINBERRY

ATTEST:

/S/  
City Clerk Kathy Golden, CMC