



**CITY COMMISSION AGENDA
CITY HALL CHAMBERS
251 W. Plant Street**

REGULAR MEETING

MAY 8, 2008

6:30 P.M.

CALL TO ORDER

Determination of a Quorum

Invocation and Pledge of Allegiance

1. APPROVAL OF MINUTES

Regular Meeting of April 24, 2008

2. PRESENTATION

A. Comprehensive Annual Financial Report by Sines, Girvin, Blakeslee and Campbell for Fiscal Year ending September 30, 2007 – Finance Director Strobeck

3. FIRST READING OF PROPOSED ORDINANCES

A. **Ordinance 08-28:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 98, ARTICLE II, SECTION 98-32, CITY OF WINTER GARDEN CODE OF ORDINANCES REVISING THE APPEAL PROCESS CONCERNING CITY COMMISSION DECISIONS ON APPEALS FROM THE PLANNING & ZONING BOARD AND ON QUASI-JUDICIAL MATTERS; PROVIDING FOR CODIFICATION, CONTROL, SEVERABILITY, AND AN EFFECTIVE DATE **with the second reading and public hearing being scheduled for June 12, 2008** – City Manager Bollhoefer

B. **Ordinance 08-33:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTIONS 110-154, 110-155, 110-156, 110-157 AND 110-159 OF CHAPTER 110 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN CONCERNING SUBDIVISION INFRASTRUCTURE MAINTENANCE; PROVIDING FOR ADDITIONAL PROVISIONS IN DECLARATION OF COVENANTS FOR SUBDIVISIONS; PROVIDING FOR REPORTING FINDINGS OF COMMUNITY SUBDIVISION INFRASTRUCTURE REPORTS TO CITY; SIMPLIFYING CAPITAL RESERVE ACCOUNT REQUIREMENTS FOR HOMEOWNERS ASSOCIATIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONTROL IN EVENT OF CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE **with the second reading and public hearing being scheduled for June 12, 2008** – City Manager Bollhoefer

4. REGULAR BUSINESS

A. Recommendation to approve the site plan for Beulah Boat and Recreational Vehicle Storage on the southeast corner of Stagg and Beulah Roads with conditions (936 Stagg Road) – City Planner Williams

B. Appointments to the West State Road 50 Commercial Corridor Review Board – Mayor Rees

5. MATTERS FROM CITIZENS *(Limited to 3 minutes per speaker)*

6. MATTERS FROM CITY ATTORNEY – Kurt Ardaman

7. MATTERS FROM CITY MANAGER – Mike Bollhoefer

8. MATTERS FROM MAYOR AND COMMISSIONERS

ADJOURN to a regular City Commission meeting on May 22, 2008 in City Hall Chambers

Please Note: In accordance with Florida Statutes 286.0105: Any person who desires to appeal any decision at this meeting will need a record of the proceedings and for this purpose may need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is based, which such written record is not provided by the City of Winter Garden.

Also, in accordance with Florida Statute 286.26: Persons with disabilities needing assistance to participate in any of these proceedings should contact the Office of the City Clerk, 251 W. Plant Street, Winter Garden, FL 34787, (407) 656-4111 x 2254 48 hours in advance of the meeting.

ORDINANCE 08-28

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING CHAPTER 98, ARTICLE II, SECTION 98-32, CITY OF WINTER GARDEN CODE OF ORDINANCES REVISING THE APPEAL PROCESS CONCERNING CITY COMMISSION DECISIONS ON APPEALS FROM THE PLANNING & ZONING BOARD AND ON QUASI-JUDICIAL MATTERS; PROVIDING FOR CODIFICATION, CONTROL, SEVERABILITY, AND AN EFFECTIVE DATE.

WHEREAS, the City Commission desires to amend the appeal procedures regarding City Commission decisions on land development issues to be more in line with the current state of the law concerning circuit court review of local government quasi-judicial decisions.

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA, AS FOLLOWS:

SECTION 1: Amendment: Section 98-32 of the City of Winter Garden Code is amended to read as follows

(words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 98-32. Appeal from city commission decisions.

Any person aggrieved by the city commission's decisions ~~from on an appeal of from~~ from the planning and zoning board or on any quasi-judicial matter ~~amending, altering, or changing the comprehensive plan, zoning resolutions, or resolutions establishing classifications or districts, as authorized by this article,~~ may challenge such decision by filing a petition for writ of certiorari as provided by the Florida Rules of Civil Appellate Procedure in the circuit court of the Orange eCounty ~~to review such decision.~~ The petition for writ of certiorari shall be filed within thirty (30) days of the rendition of the city commission's decision, or the right to challenge the decision is waived. The court shall not conduct a trial de novo, but shall be limited to reviewing whether the decision was supported by competent substantial evidence in the record, the essential elements of the law were followed and due process was afforded. The proceedings before the city commission, including the testimony of witnesses, any exhibits, photographs, maps or other documents filed before it, shall be the subject of review by the circuit court. ~~A notice of intention to file a petition for writ of certiorari shall be filed in the circuit court within ten days after such decision of the city commission is filed in the office of the city clerk. The petition together with the transcript of the testimony of the witnesses and record of the proceedings shall be filed in the circuit court within 60 days after the filing of such notice of intention, except the court may extend the time for filing the petition and transcript for good cause shown. Such notice and petition shall be solely addressed to the city commission.~~ The person filing the petition for certiorari shall be responsible for filing with the circuit court a true and correct transcript and the complete testimony of the witnesses from the city commission hearing or meeting in which the decision was rendered. Any aggrieved person may intervene as a respondent in the certiorari proceeding authorized by this section.

SECTION 2: Codification: Section 1 of this Ordinance shall be codified and made part of the City of Winter Garden Code of Ordinances.

SECTION 3: Control: In the event of a conflict or conflicts between this ordinance and other ordinances, this ordinance controls.

SECTION 4: Severability: It is the intent of the City Commission of the City of Winter Garden, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 5: Effective Date: This Ordinance shall become effective upon adoption at its second reading.

FIRST READING: _____ 2008.
SECOND READING AND PUBLIC HEARING: _____ 2008.

APPROVED:

JOHN REES, Mayor/Commissioner

ATTESTED:

KATHY GOLDEN, City Clerk

ORDINANCE 08-33

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTIONS 110-154, 110-155, 110-156, 110-157 AND 110-159 OF CHAPTER 110 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN CONCERNING SUBDIVISION INFRASTRUCTURE MAINTENANCE; PROVIDING FOR ADDITIONAL PROVISIONS IN DECLARATION OF COVENANTS FOR SUBDIVISIONS; PROVIDING FOR REPORTING FINDINGS OF COMMUNITY SUBDIVISION INFRASTRUCTURE REPORTS TO CITY; SIMPLIFYING CAPITAL RESERVE ACCOUNT REQUIREMENTS FOR HOMEOWNERS ASSOCIATIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONTROL IN EVENT OF CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, the City desires to amend its subdivision regulations to require additional provisions in subdivision declarations of covenants, conditions and restrictions to: (i) provide statements concerning the responsibility of HOAs and lot owners to properly assess, collect and reserve sufficient funds to operate, maintain, repair and replace common properties and subdivision infrastructure improvements; (ii) provide the city with access rights over private subdivision roads and alleys; and (iii) prohibit the alteration of subdivision drainage and stormwater systems without the prior consent of the city; and

WHEREAS, the City desires that property owners associations and homeowners associations provide to the City a copy of community subdivision infrastructure reports required by Sections 110-155 and 110-156 in order to verify that subdivisions are meeting certain requirements of Chapter 110, City of Winter Garden Code of Ordinances; and

WHEREAS, the City desires to simplify the capital reserve account requirements of Chapter 110, City of Winter Garden Code of Ordinances, by eliminating the need for separate capital reserve accounts concerning subdivision roads and drainage systems.

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA, AS FOLLOWS:

Section 1: Authority. The City of Winter Garden has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida and Chapter 166, Florida Statutes.

Section 2: Adoption. Section 110-154 through of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 110-154. Declaration.

A declaration, or an amendment thereto, which, at a minimum, sets forth the responsibilities and obligations for the maintenance, repair and replacement of the community subdivision infrastructure, common areas and private amenities and such other matters as provided in this division shall be required and submitted to the city prior to final plat approval and, in the case of a gated community, prior to the closure or operation of the gates. The declaration, or amendment thereto, shall be recorded simultaneously with the subdivision plat. The terms of the declaration, or amendment thereto, shall be to the city's satisfaction, legally sufficient and enforceable to, at a minimum, accomplish, provide or otherwise ensure or disclose the provisions of this division. Notwithstanding the foregoing, the exclusion of said provisions within the declaration, or amendment thereto, shall not operate as a condition precedent to city's ability to enforce the requirements of this chapter. Further, nothing in this section shall preclude the declaration, or amendment thereto, from addressing other matters so long as the substance of each part of the declaration, or amendment thereto, is not inconsistent with the requirements of this chapter or any other applicable code reference or state law. The declaration, or amendment thereto, shall, as applicable:

- (1) Establish the point at which the developer must turn over control of the HOA consistent with definition of same provided in section 110-56.
- (2) Provide for the preparation of an initial community subdivision infrastructure report and compliance with the provisions of section 110-155.
- (3) Provide for the preparation of a subsequent community subdivision infrastructure report and compliance with the provisions of section 110-156.

(4) Include the following or similar statement: "Property owners within the subdivision shall receive no discount in property taxes or any other tax or fee because of the retention or private ownership of the community subdivision infrastructure."

(5) Include the following or similar statement: "The City of Winter Garden shall have the right, but not the obligation, to access, maintain, repair, replace and otherwise care for or cause to be cared for, any and all private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts _____ and _____ and the improvements thereon. In the event any or all of the said areas, systems, improvements, properties or areas are not maintained, repaired, or replaced in accordance with the standards of the City of Winter Garden Code of Ordinances, good engineering practices, or become a nuisance or in the event the City of Winter Garden exercises its aforementioned right, each of the lot owners of the subdivision are hereby ultimately responsible for payment of the cost of maintenance, repair, replacement and care provided by the City of Winter Garden or its contractors and agents, plus administrative costs and attorneys' fees and costs incurred by the City of Winter Garden. If said costs are not paid within 15 days of invoicing, then said costs shall constitute a lien on the property of the owners which fail to pay such costs and may be enforced, without limitation, by foreclosure, special assessments, or as may otherwise be permitted by law. This right, and the City of Winter Garden's exercise of said right, shall not impose any obligation on the City of Winter Garden to maintain, repair, replace, or otherwise care for said private areas, drainage systems, including without limitation, the retention/detention areas and underdrains, common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the City of Winter Garden, including, without limitation, Tracts _____ and _____ and the improvements thereon."

(6) Provide for the consequences resulting from a default with the provisions of the declaration, or amendment thereto, or the provisions of this chapter by the HOA or developer as set forth in section 110-159.

(7) Provide that any transfer of any portion or component of the community subdivision infrastructure (including the property on which the said community subdivision infrastructure is located) to the city or other governmental entity is prohibited without the concurrence of the city or governmental entity and the owners of two-thirds (or such higher percentage as the declaration may provide) of the platted lots.

(8) Require the establishment and maintenance of an HOA account for annual routine maintenance and repair of the community subdivision infrastructure (referred to in this division as the "routine-community subdivision infrastructure-maintenance account"), and impose the restrictions and requirements set forth in section 110-157 regarding that account.

(9) Require the establishment and maintenance of an HOA account for major capital repair and replacement of the subdivision's roads, curbing, sidewalks, stormwater drainage systems, and walls, etc. (referred to in this division as the "capital-community subdivision infrastructure repair/roads reserve account"), and impose the restrictions and requirements set forth in section 110-157 regarding that account.

~~(10) Require the establishment and maintenance of an HOA account for major capital repair and replacement of the subdivision's drainage systems (including, but not limited to, stormwater retention/detention facilities and underdrains) (referred to in this division as the "capital-repair/drainage systems account") and impose the requirements and restrictions set forth in section 110-157 regarding that account.~~

~~(11) Require the establishment and maintenance of an HOA account for major capital repair and replacement of other subdivision infrastructure such as sidewalks, stormwater conveyance systems, curbing, bike paths, etc. (referred to in this article as the "capital repair/other infrastructure account") and impose the requirements and restrictions set forth in section 110-157 regarding that account.~~

(10) Include the following or similar statement: "The association and the lot and unit owners are responsible for assessing, collecting and reserving sufficient funds to operate, maintain, repair and replace common properties and subdivision infrastructure improvements. The City of Winter Garden shall not be liable or responsible for the maintenance, repair and replacement of private subdivision property and infrastructure improvements."

(11) Include the following or similar statement: "It is prohibited to alter the grade of or original drainage plan for any parcel, lot or tract, or change in the direction of, obstruct, or retard the flow of surface water drainage, or alter or remove of any berm, pipe, ditch, weir, manhole, swale, and stormwater collection, storage and conveyance system unless expressly authorized by the City of Winter Garden. This provision shall be considered a restrictive covenant in favor of and enforceable by the City of Winter Garden and in the event of a violation of this provision, the City of Winter Garden shall have the right to obtain injunctive relief, seek damages, and assess

finances and liens in the amount of the cost to remedy the prohibited action (including administrative costs and attorneys' fees and costs) against the violating person or entity and any property owned by such violating person or entity; provided however, such right shall not limit the City of Winter Garden's other available enforcement actions permitted by law or equity."

(12) For subdivisions with private roads or alleys, include the following or similar statement: "There is hereby created, granted and reserved for the benefit of the City of Winter Garden and other public service and emergency service providers, a non-exclusive easement over, under and through the private subdivision roads and alleys for vehicular and pedestrian ingress and egress access for the purpose of providing public and emergency services to the common property and lots, including but not limited to, postal, fire protection, police protection, emergency medical transportation, code enforcement, garbage, utilities and other public and emergency services."

(13) Provide that the HOA may not be dissolved and that no portion of the declaration, or amendment thereto, pertaining to the requirements of this chapter may be amended without the written consent of the city.

Section 3: **Adoption.** Section 110-155 through of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 110-155. Initial community subdivision infrastructure report.

No earlier than 180 days before turnover, the HOA must retain the services of a Florida registered engineer experienced in subdivision construction to inspect the community subdivision infrastructure and prepare a report recommending the amount of scheduled maintenance and unscheduled repair for the subsequent five years that likely will be needed for each component of the community subdivision infrastructure (specifically, at a minimum and as may be applicable, providing for the roads, street lights, sidewalks and drainage system (which includes, without limitation, the stormwater detention/retention areas and underdrains)) which recommends the amounts of money that should be deposited each year in the routine-community subdivision infrastructure-maintenance account, and determining what repairs, if any, are needed prior to turnover of the HOA. The HOA shall pay the cost associated with the preparation of the initial community subdivision infrastructure report, and the HOA may pay such cost from the routine-community subdivision infrastructure-maintenance account. The report must be signed and sealed by the engineer, certified to the HOA and provided to the city and to all owners of lots, blocks, and tracts within the subdivision within 15 days after its completion. Any needed repairs or replacements identified by the report shall be completed by the developer, at the developer's sole expense, prior to turnover. If turnover occurs and the foregoing requirements have not been fulfilled, the rights of the HOA, any of its members, and any and all owners of land within the subdivision to enforce these requirements against the developer shall survive the turnover, with the prevailing party to be entitled to attorneys' fees and costs. Notwithstanding the foregoing and without limiting the city's remedies, the city shall be entitled to withhold the issuances of certificates of occupancy or building permits for improvements within the subdivision until such time as the provisions of this section are met.

Section 4: **Adoption.** Section 110-156 through of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 110-156. Subsequent community subdivision infrastructure reports and maintenance.

The HOA shall obtain an inspection and written report of the community subdivision infrastructure, by a Florida registered engineer experienced in subdivision construction at least once every five years after the initial engineer's inspection required by section 110-155. Using good engineering practice or in accordance with such other standards as may be adopted from time to time by the HOA, or in accordance with such standards as the HOA's engineer may determine to be appropriate, the inspection shall determine and the written report shall document the level of maintenance and repair (both scheduled and unscheduled) needed, the amounts of funding needed each year for the next five years in the routine-community subdivision infrastructure-maintenance account to pay for such maintenance and repair, and any repairs then needed. The report must be signed and sealed by the engineer, certified to the HOA, and provided to the city and to all owners of lots, blocks, and tracts within the subdivision within 15 days after its completion. Within 180 days of receipt of each five year report, the HOA shall complete all remedial work identified and recommended by the engineer. A completion report, signed, sealed and certifying that said remedial work has been completed, shall be submitted to the HOA, to the city, and to all owners of lots, blocks, and tracts within the subdivision 90 days thereafter. The HOA and the lot and unit owners of the subdivision are responsible for assessing, collecting and reserving sufficient funds to operate, maintain, repair and replace common properties and subdivision infrastructure improvements. The city does not have and will not

assume any duty, liability or obligation concerning the operation, maintenance, repair and replacement of common properties and subdivision infrastructure improvements arising out of or relating to any provision of this chapter, including but not limited to, the city's collection of, evaluation of and response to the reports submitted pursuant to Section 110-155 and this section.

Section 5: Adoption. Section 110-157 through of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 110-157. Homeowners association required accounts for maintenance, repair and reserves.

At a minimum, the requirements, restrictions, terms, conditions, and limitations provided for in this section with respect to the accounts required for the maintenance and repair of the community subdivision infrastructure and the monies on deposit in those accounts shall be established and maintained by each HOA.

(1) *Required HOA asset accounts.* The HOA must create, deposit monies into, retain in perpetuity, and replenish from time to time the following accounts, which are referred to in this article collectively as the "required HOA accounts":

- a. A routine-community subdivision infrastructure-maintenance account; and
- b. A capital- community subdivision infrastructure repair/roads reserve account;
- ~~c. A capital repair/drainage systems account; and~~
- ~~d. A capital repair/other infrastructure account.~~

ce. This division does not require the establishment of accounts for either routine maintenance or the capital repair and replacement of private amenities not related to the community subdivision infrastructure, but such accounts may be required by the declaration or as may be established at the discretion of the HOA. However, except as otherwise provided for in this section, monies within the required HOA accounts may not be utilized for the maintenance, repair or replacement of the private amenities.

Each of the foregoing accounts must be asset accounts kept separate and apart from all other funds and accounts of the HOA, and for accounting purposes the HOA may not commingle these accounts, either with each other or with other funds and accounts of the HOA. However, notwithstanding the foregoing, the monies in the above accounts may be commingled with monies in other HOA accounts for banking and investment purposes, and may be pooled with other HOA monies in a common investment program, so long as the financial books and records of the HOA account for these monies separately and apart from all other HOA monies and keep such monies earmarked for the purposes set forth below. All earnings from the investment of monies in the required HOA accounts shall remain in their respective accounts and shall follow their respective principal.

(2) *Use of accounts.*

a. *Routine-community subdivision infrastructure-maintenance account.* Monies on deposit in the routine-community subdivision infrastructure-maintenance account, including any investment earnings, shall be used by the HOA, or by the developer with the written consent of the board of directors of the HOA, only for scheduled maintenance and for unscheduled repair of the roads, drainage system, including, but not limited to, the stormwater detention/retention areas and underdrains, sidewalks, street lights, curbing, bike paths, traffic-control signage and other HOA infrastructure appurtenant to the private roads and drainage systems. If allowed by the declaration, the monies on deposit in the account may also be used for scheduled maintenance and unscheduled maintenance and repair of the entrance and exit gates and their related facilities, but the declaration shall require that the roadways and drainage-system maintenance and repair take priority over the maintenance and repair of the gates and related facilities.

b. *Capital-community subdivision infrastructure repair/roads reserve account.* Monies on deposit in the capital-~~repair/roads~~ community subdivision infrastructure reserve account, including any investment earnings, shall be used by the HOA for: (i) resurfacing and related reconstruction of the roadways, including alleys, in the subdivision; every 12 years after issuance by the city of the certificate of completion for the roads. (ii) major repair, replacement and reconstruction of drainage systems, including, but not limited to, the stormwater detention/retention areas, control structures, underdrains and conveyance systems; and (iii) major repair, replacement and reconstruction of sidewalks, bike paths, curbing, walls, subdivision signage, gates, and other capital infrastructure improvements of the subdivision. The monies on deposit in the account may not be expended earlier than the 12th anniversary of the issuance of the certificate of completion without the consent of no less than a simple majority of the owners of platted lots (excluding the developer) in the subdivision, which consent may consist of written consent and/or voting consent at a meeting called in accordance with the bylaws of the HOA, and the consents will be valid only if obtained after turnover and the conveyance of the community subdivision infrastructure to the HOA. Under no circumstances

may the monies in the account be expended before the developer conveys the community subdivision infrastructure to the HOA.

~~e. *Capital repair/drainage systems account.* Monies on deposit in the capital repair/drainage systems account, including any investment earnings, shall be used by the HOA only for major repair and reconstruction of the drainage systems, including, but not limited to, the stormwater detention/retention area and underdrains, generally every ten years after issuance by the city of the certificate of completion for the drainage system. The reconstruction and repair of the drainage systems will include, but not be limited to, dredging and sediment removal of the detention/retention areas and the repair or replacement of the underdrains. The monies on deposit in the account may not be expended earlier than the 10th anniversary of the issuance of the certificate of completion without the written consent of no less than a simple majority of the owners of platted lots (excluding the developer) in the subdivision, which consent may consist of written consent and/or voting consent at a meeting called in accordance with the bylaws of the HOA, and the consents will be valid only if obtained after turnover and the conveyance of the community subdivision infrastructure to the HOA. Under no circumstances may monies in the account be expended before the developer conveys the subdivision infrastructure to the HOA.~~

~~d. *Capital repair/other infrastructure account.* Monies on deposit in the capital repair/other infrastructure account, including any investment earnings, may be used by the HOA only for major repair, reconstruction, resurfacing, and replacement of the other parts of the community subdivision infrastructure related to the private roads and drainage systems, such as the stormwater conveyance systems, sidewalks, curbing, and bike paths. If allowed by the declaration, the monies on deposit in the account may also be used for the major repair, reconstruction, and replacement of the entrance and exit gates and related facilities, but the declaration must require that the repair, reconstruction, and replacement of the former items of community subdivision infrastructure take priority over the repair, construction, and replacement of the entrance and exit gates and their related facilities.~~

(3) *Required funding; required assessments.*

a. *Routine-community subdivision infrastructure-maintenance account.* The HOA must deposit each year into the routine- community subdivision infrastructure-maintenance account an amount of money sufficient to perform all scheduled maintenance and unscheduled repair of the roads, drainage system, and other community subdivision infrastructure during the subsequent year. The amount deposited, when added to investment earnings, must be no less than the amounts recommended by the engineer's report required pursuant to sections 110-155 and 110-156. If the declaration allows maintenance and repair of the entrance and exit gates and their related facilities to be paid from the routine- community subdivision infrastructure-maintenance account, then the deposits each year must be increased by amounts sufficient to cover those costs.

b. *Capital- community subdivision infrastructure ~~repair/roads~~ reserve account.* The HOA must deposit each year into the capital-community subdivision infrastructure reserve ~~repair/roads~~ account an amount sufficient for: (i) the private roads and alleys to be resurfaced and, as related to the resurfacing, reconstructed no less frequently than every 12 years; (ii) the restoration and repair or replacement of the drainage systems, including, but not limited to, the stormwater detention/retention areas control structures, underdrains and conveyance systems, no less frequently than once every ten (10) years; and (iii) the restoration and repair or replacement of all other community subdivision infrastructure, no less frequently than once every fifty (50) years. ~~and~~ ~~†~~ The amount to be deposited each year into the account must be estimated by the developer and approved by the city prior to issuance of a certificate of completion for the subdivision infrastructure streets. Deposits to the account must begin in the year in which the city issues its certificate of completion, ~~and must be completed no later than the year of the 12th anniversary of the issuance of the certificate.~~ The amount deposited by the HOA must be no less than one twelfth of the estimate approved by the city. However, after turnover of the HOA the schedule of deposits may be altered such that one or more annual deposits is less than one-twelfth of the estimate, but only if a simple majority or more of all owners of platted lots in the subdivision consent in writing and/or by voting at a meeting called in accordance with the bylaws of the HOA to approve the altered schedule. If the property owners in the subdivision consent in writing to a different schedule of deposits, the revised scheduled must result in the aggregate amount of deposits during the 12-year period being equal to or in excess of the estimate approved by the city. At the end of each ~~125-year~~ community subdivision infrastructure reporting period pursuant to section 110-156, the HOA shall revise and update the estimated cost to restorate, repair and replace community infrastructure improvements of resurfacing and, as related to the resurfacing, ~~reconstructing the streets at the end of the next 12-year period~~, taking into consideration actual costs incurred and expected increases in ~~road construction~~ costs, and shall adjust the amount of its annual deposits to the account accordingly. If for any reason expenditures are made from the account prior to the end of the 12-year period, the amount of

~~deposits to the account in the remaining years shall be adjusted so as to ensure that the account contains an amount sufficient at the end of the 12 year period to pay the costs of all expected repair and/or reconstruction and resurfacing requirements.~~

~~c. *Capital repair/drainage systems account.* The HOA must deposit each year into the capital repair/drainage systems account an amount sufficient for the restoration and repair or replacement of the drainage systems, including, but not limited to, the stormwater detention/retention areas and underdrains, no less frequently than once every ten years, and the amount must be estimated by the developer and approved by the city prior to the issuance of a certificate of completion for the drainage system. Deposits to the account must begin in the year of which the city issues its certificate of completion for the drainage system and must be completed no later than the year of the 10th anniversary of the issuance of the certificate. The amount deposited each year by the HOA must be no less than one tenth of the estimate approved by the city. However, after turnover of the HOA, the schedule of deposits may be altered such that one or more annual deposits is less than one tenth of the estimate, but only if a simple majority or more of all owners of platted lots in the subdivision consent in writing and/or by voting at a meeting called in accordance with the bylaws of the HOA to approve the altered schedule. If the property owners consent to a different schedule of deposits, the revised schedule must result in the aggregate amount of deposits during the ten year period being equal to or in excess of the estimate approved by the city. At the end of each ten year period, the HOA shall revise and update the estimate of the cost for the restoration and repair or replacement of the drainage systems, including, but not limited to, the stormwater detention/retention areas and underdrains, at the end of the next ten year period, taking into consideration actual costs incurred and expected increases in drainage system construction costs and shall adjust the amount of its annual deposits to the account accordingly. If for any reason expenditures are made from the account prior to the end of the ten year period, the amount of deposits to the account in the remaining years will be adjusted so as to ensure that the account contains an amount sufficient at the end of the ten year period to pay the costs of all expected restoration and repair requirements.~~

~~d. *Capital repair/other infrastructure account.* The HOA must deposit each year into the capital repair/other infrastructure account an amount sufficient for other community subdivision infrastructure related to the roads and drainage system, such as stormwater conveyance systems, sidewalks, curbing, and bike paths, to be reconstructed and/or repaired no less frequently than once every 50 years, and the amount must be approved by the city prior to issuance of a certificate of completion for those improvements. Deposits to the account must begin in the year in which the city issues its certificate of completion for the improvements and must be completed no later than the 50th anniversary of the issuance of the certificate. The amount deposited each year by the HOA must be no less than one fiftieth of the estimate approved by the city. However, after turnover of the HOA, the schedule of deposits may be altered such that one or more annual deposits is less than one fiftieth of the estimate, but only if a simple majority or more of all owners of platted lots in the subdivision consent in writing and/or by voting at a meeting called in accordance with the bylaws of the HOA to approve the altered schedule. If the property owners consent to a different schedule of deposits, the revised schedule must result in the aggregate amount of deposits during the 50 year period being equal to or in excess of the estimate approved by the city. At the end of each 50 year period, the HOA shall revise and update the estimate of the cost of reconstructing and/or repairing the improvements, taking into consideration actual costs incurred and expected increases in reconstruction and repair costs, and shall adjust the amount of its annual deposits to the account accordingly. If for any reason expenditures are made from the account prior to the end of the 50 year period, the amount of deposits to the account in the remaining years will be adjusted in a manner to ensure that the account contains an amount sufficient at the end of the 50 year period to pay the cost of all expected reconstruction and/or repair requirements.~~

~~ec. *Required assessments.* The obligation to collect and pay assessments shall commence as of the date on which the city issues its certificate of completion for the roads, drainage system, and other related infrastructure improvements for the subdivision. However, if no plat has been recorded as of that date, the obligation to collect and pay assessments shall commence as of the date the plat is recorded in the public records of Orange County, Florida. In the case of the conversion of an existing subdivision to a gated community, the city shall determine the appropriate commencement dates on a case by case basis. The HOA shall impose and collect assessments against each platted lot in the subdivision, including lots owned or controlled by the developer and by any builder, without exception. The assessments must be uniform and equitable and must be imposed and collected in amounts sufficient, when added to investment earnings and other available revenues of the HOA, if any, to make all required deposits to each of the required HOA accounts.~~

Notwithstanding the foregoing, if in the opinion of the city engineer the community subdivision infrastructure has substantially deteriorated at the time a plat is approved, the city may require an additional payment of assessments by the developer to address the loss of useful life of the deteriorated community subdivision infrastructure.

(4) *Financial reports and other requirements.* Each year the HOA shall cause a financial report of the required HOA accounts to be performed and prepared, and a copy of the report shall be submitted to each owner of property in the subdivision and the city within the time frame required under the "Financial Reporting" requirements of F.S. Ch. 720. At a minimum, the report shall confirm the existence of each of the required HOA accounts and report the amounts of deposits into and expenditures from the account during the period year, along with an itemization of the expenditures from the required HOA accounts. Finally, the financial report shall disclose whether any of the required HOA accounts has on deposit less than the amount required under the declaration.

Section 6: Adoption. Section 110-159 through of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 110-159. Default.

The city shall have the right, but not the obligation, to access, maintain, repair, replace and otherwise care for or cause to be cared for, the community subdivision infrastructure, or any component thereof, including, but not limited to, any and all private areas, drainage systems (including without limitation, the retention/detention areas and underdrains), common properties, private roads, screening walls, and such other subdivision infrastructure not otherwise dedicated to the public use or the city. Further, the city shall have the right, but not the obligation, to cause to be prepared any report, study, or inspection required by this division, if the HOA fails to obtain such reports, studies, or inspections required by this division in the time provided. In the event any or all of the components of the community subdivision infrastructure are not maintained, repaired, or replaced in accordance with the standards of the city code, good engineering practices, or become a nuisance, or the required reports, studies, or inspections are not obtained, each of the lot owners of the subdivision are hereby ultimately responsible for payment of the cost of reports, studies, inspections, maintenance, repair, replacement and care provided by or for the city, plus administrative costs and attorneys' fees and costs incurred by the city. If said costs are not paid within 15 days of invoicing to the HOA and the lot owners, then said costs shall constitute a lien on the property of the owner which fails to pay such costs and may be enforced, without limitation, by foreclosure, special assessments, or as may otherwise be permitted by law. This right, and the city's exercise of said right, shall not impose any obligation on the city to maintain, repair, replace, or otherwise care for any or all components of the community subdivision infrastructure or cause to be prepared any reports, studies, or inspections. Without limiting the foregoing, upon any default by the HOA or the developer in any requirement of either this article or the declaration required under this article, the city, at its option (and without limiting its remedies) and after due notice of its declaration of a default and a reasonable time to cure, may prohibit closure of the gates and utilize all HOA monies on deposit in the routine-community subdivision infrastructure-maintenance account and the ~~several~~ capital-reserve ~~repair~~ accounts or, if no monies exist or if an insufficient amount exists, using such other revenues or financing methods as the city may elect, including, but not limited to, special assessments against the all of the subdivision lots.

SECTION 7: Codification: Sections 2, 3, 4, 5, and 6 of this Ordinance shall be codified and made part of the City of Winter Garden Code of Ordinances.

SECTION 8: Control: In the event of a conflict or conflicts between this ordinance and other ordinances, this ordinance controls.

SECTION 9: Severability: It is the intent of the City Commission of the City of Winter Garden, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 10: Effective Date: This Ordinance shall become effective upon adoption at its second reading.

FIRST READING: May 8, 2008.

SECOND READING AND PUBLIC HEARING: _____, 2008.

ADOPTED this _____ day of _____, 2008, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

John Rees, Mayor/Commissioner

ATTEST:

KATHY GOLDEN, City Clerk