



CITY OF WINTER GARDEN

CITY COMMISSION REGULAR MEETING MINUTES

August 14, 2008

A **REGULAR MEETING** of the Winter Garden City Commission was called to order by Mayor Rees at 6:30 p.m. at City Hall, 300 West Plant Street, Winter Garden, Florida. The invocation and Pledge of Allegiance were given.

Present: Mayor John Rees, Commissioners Harold L. Boulter, Bob Buchanan, H. Gerald Jowers and Colin Sharman

Also Present: City Manager Mike Bollhoefer, City Attorney A. Kurt Ardaman, City Clerk Kathy Golden, Public Services Director Don Cochran, Director of Information Technology Bob Reilly, Planning Director Ed Williams, City Planner Tim Wilson, Human Resources Director Frank Gilbert, Fire Chief John Williamson, Assistant City Engineer Mike Kelley, Police Chief George Brennan, Finance Director Robin Hayes, Building Official Skip Lukert, Recreation Director Jay Conn, Economic Development Director Dolores Key, Community Relations Manager Andrea Vaughn, Assistant City Clerk Angee Grimmage, and West Orange Times Reporter Michael Laval

Mayor Rees advised that the he wanted to try going back to voting verbally instead of electronically to expedite the meeting and there were no objections noted.

1. **APPROVAL OF MINUTES**

Motion by Commissioner Jowers to approve the regular meeting minutes of July 24, 2008 as submitted. Seconded by Commissioner Boulter and carried unanimously 5-0.

2. **FIRST READING OF PROPOSED ORDINANCES**

A. **Ordinance 08-41:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE II, PENSION PLAN FOR GENERAL EMPLOYEES, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING SECTION 54-26, DEFINITIONS; AMENDING SECTION 54-35, OPTIONAL FORMS OF BENEFITS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HERewith AND PROVIDING AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 08-41 by title only. City Manager Bollhoefer stated that this ordinance was recommended by the Pension Board that primarily adds another form of benefit payment for the employees. Mayor Rees noted that employees will be able to take up to 25 percent. **Motion by Commissioner Boulter to approve**

Ordinance 08-41 with the second reading and public hearing on September 10, 2008. Seconded by Commissioner Sharman and carried unanimously 5-0.

- B. **Ordinance 08-42:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, ESTABLISHING VOTING DISTRICT BOUNDARIES; ADOPTING THE REPORT OF THE DISTRICTING COMMISSION, INCLUDING THE MAP AND DESCRIPTION OF PROPOSED ELECTION DISTRICTS FILED WITH THE CITY BY THE DISTRICTING COMMISSION ESTABLISHED PURSUANT TO SECTION 25 OF THE CITY CHARTER; ENACTING THE DISTRICT BOUNDARIES PROPOSED BY SUCH REPORT; AND PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 08-42 by title only. City Manager Bollhoefer stated that this is the Ordinance adopting the recommendation made by the Districting Commission. As requested at the last meeting, he distributed a map showing future developments and growth projections for determining what the populations could be in each proposed district.

Commissioner Jowers suggested that now that the City Commission has the maps with future development information to study, this item should be continued for two more weeks. He asked the City Attorney how long the Commission has to make a decision. Mr. Ardaman responded that the Commission has until the 90th day prior to the next election which is December 10, 2008; unless the City Commission chooses not to act then the ordinance is automatically adopted utilizing the Districting Commission's recommendation.

Mr. Bollhoefer addressed his item scheduled for later on the agenda later about revisiting the Charter as to not require that a Commissioner live in the district they represent. He was tasked with finding out from the Orange County Supervisor of Elections if there was the possibility of an election. Mr. Cowles has stated there is no way he could hold an election within the timeframe. The Commission could ask the City Attorney to look at other possibilities that are a little tricky but the County has stated it is impossible.

Mayor Rees stated that he voted against it and in his opinion, City Commissioners do not need to live in a district they represent. Citizens will not necessarily get the best representation with the rule, but that is what the citizens wanted as evidence by it being passed overwhelmingly. This issue does not need to be revisited so soon after just being passed by the voters.

Mayor Rees asked the City Commissioners their thoughts on the ordinance. Commissioner Boulder stated that he felt that it would only be fair to study the new information given although he likes the map presented to the City Commission by the Districting Commission. Mayor Rees stated that this is new information for the City Commission but the Districting Commission did have all this information when they made their decision and he likes the map presented. Commissioner Sharman asked that a copy of the court ordered map as mentioned in the minutes of the Districting Commission be provided to the City Commission for review. City Manager Bollhoefer stated that the

entire court case file can be provided. **Motion by Commissioner Jowers to postpone the first reading of Ordinance 08-42 until the August 28, 2008, 6:30 p.m. Commission meeting. Motion was seconded by Commissioner Boulter and carried unanimously 5-0.**

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

- A. **Ordinance 08-40:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING ARTICLE V OF CHAPTER 2 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN CONCERNING MUNICIPAL ELECTIONS; PROVIDING FOR CONSISTENCY WITH RECENT CHARTER AMENDMENTS; PROVIDING REGISTRATION PROCEDURES FOR CANDIDATES, ELECTION DUTIES OF CITY CLERK AND ADOPTION FOR CERTAIN PROVISIONS OF THE FLORIDA ELECTION CODE; PROVIDING FOR CODIFICATION; PROVIDING FOR CONTROL IN EVENT OF CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 08-40 by title only. City Clerk Golden stated that this Ordinance is to amend the current City Code on the election process to comply with the revised Charter. It will reflect the new terms of office to three years, it amends the registration period to allow an extra day should a holiday fall within that period, and it include a provision that if there is only one candidate, that candidate will assume the office being sought. Staff recommends adoption.

Mayor Rees opened the public hearing; hearing and seeing none, he closed the public hearing. **Motion by Commissioner Jowers to adopt Ordinance 08-40. Seconded by Commissioner Sharman and carried unanimously 5-0.**

- B. **Ordinance 08-43:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA; RELATING TO THE PROVISION OF FIRE RESCUE SERVICES, FACILITIES, AND PROGRAMS THROUGHOUT THE INCORPORATED AREAS OF WINTER GARDEN, FLORIDA; AUTHORIZING THE IMPOSITION AND COLLECTION OF FIRE RESCUE ASSESSMENTS AGAINST PROPERTY; PROVIDING CERTAIN DEFINITIONS INCLUDING A DEFINITION FOR THE TERM "FIRE RESCUE ASSESSMENT"; ESTABLISHING A PROCEDURE FOR IMPOSING FIRE RESCUE ASSESSMENTS; PROVIDING THAT FIRE RESCUE ASSESSMENTS CONSTITUTE A LIEN ON ASSESSED PROPERTY UPON ADOPTION OF ASSESSMENT ROLL; PROVIDING THAT THE LIEN FOR A FIRE RESCUE ASSESSMENT COLLECTED PURSUANT TO SECTIONS 197.3632 AND 197.3635, FLORIDA STATUTES, UPON PERFECTION SHALL ATTACH TO THE PROPERTY ON THE PRIOR JANUARY 1, THE LIEN DATE FOR AD VALOREM TAXES; PROVIDING THAT A PERFECTED LIEN SHALL BE EQUAL IN RANK AND DIGNITY WITH THE LIENS OF ALL STATE, COUNTY, DISTRICT, OR MUNICIPAL TAXES AND ASSESSMENTS AND SUPERIOR IN DIGNITY TO ALL OTHER PRIOR LIENS, MORTGAGES, TITLES, AND CLAIMS; AUTHORIZING THE IMPOSITION OF INTERIM ASSESSMENTS; PROVIDING AUTHORIZATION FOR EXEMPTIONS AND HARDSHIP ASSISTANCE;

PROVIDING A PROCEDURE FOR THE COLLECTION OF FIRE RESCUE ASSESSMENTS; PROVIDING A MECHANISM FOR THE IMPOSITION OF ASSESSMENTS ON GOVERNMENT PROPERTY; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 08-43 by title only. City Manager Bollhoefer stated that as we go into the budget season with all the upcoming tax cuts, staff is looking at all our options. He explained that staff is recommending approval of the ordinance tonight. He explained that this is not the final rate and it can be adjusted or changed as we go through the budget workshop and budget hearings. There is a resolution coming up on the agenda that will establish an initial rate that will not be staff's final recommendation because it still can be adjusted or changed as needed through the budget process.

Mayor Rees opened the public hearing.

Connie Crawford, 45 W. Division Street, Winter Garden, Florida, asked if this fee is a tax increase and is it what this City Commission intends to do. Mayor Rees responded no, this is a measure being taken to keep the option open if it is needed in the future. Mr. Bollhoefer stated that no one is making a final recommendation yet because we do not yet have all our budget figures. Staff is trying to keep all options open for the City Commission as they go into the budget hearings and look at all the expenditures and possible projects.

Richard Napotnik, 1633 Fullers Cross Road, Winter Garden, Florida, asked if all other possibilities have been exhausted to locate funding instead of imposing a fire fee. This fee cannot be deducted from Federal income tax as the property tax can. He spoke of Amendment 9 not being on the ballot that will be some relief. He spoke of the impact of the fees to those on a fixed income. He stated that rumors imply the City of Winter Garden has tax money already in the bank at about \$30 million, which the City may be able to borrow from. Mr. Bollhoefer pointed out that the fund balance is approximately \$12 million.

Commissioner Jowers explained that if the City does not exercise this option now, we may not have the opportunity to do so in the future because of potential legislative acts. Mr. Bollhoefer reiterated that this is a measure to only keep the options open.

Theo Graham, 213 W Tilden Street, Winter Garden, Florida, addressed everyone wanting Amendment One and now you can see how there have been school cuts. If people had not voted for it, we would not have all these problems. Tax information that came out this week disagrees with the savings that was originally promised. He is not sure how much of the \$12 million fund balance will be needed to balance the budget this year. He stated that a lot of this is speculation.

Mayor Rees closed the public hearing.

Mr. Bollhoefer addressed minor corrections made to the Ordinance such as the time and date of the meeting to September 10, 2008 at 6:00 p.m.

Mayor Rees stated that he does not believe that anyone on the City Commission is suggesting that we implement and charge this fee. This is an action to keep available a mechanism for paying for the services.

Commissioner Sharman stated that when the City Commission meets in September he will not vote in favor of it unless all other options have been exhausted. He will vote in favor tonight to keep the option open and prevent the state from telling us what we can and can't do at our local level.

Commissioner Bouler stated that we must make sure that everyone really understands what the Commission is doing. He stated that he feel there should be no fee assessed. He has received several calls and had contacts telling him he should not vote for it.

Motion by Commissioner Buchanan to adopt Ordinance 08-43. Seconded by Commissioner Bouler and carried unanimously 5-0.

4. **REGULAR BUSINESS**

A. **Request by Winter Garden Heritage Foundation and Garden Theatre to hold a music festival October 3, 4 and 5, 2008 on Plant Street from Woodland to Lakeview**

Recreation Director Conn stated that this event has brought thousands to the downtown area for the past two years. Mr. Conn noted a correction to the agenda because the event will go from Woodland to Highland Avenue, not Lakeview. Staff is recommending approval as detailed in his cover memo. In addition, they are requesting that Plant Street be blocked. Mr. Ron Sikes is available to answer any questions. **Motion by Commissioner Jowers to approve the request as recommended by staff (see attached) for the Winter Garden Heritage Foundation and Garden Theatre to hold a music festival October 3, 4, and 5, 2008 on Plant Street from Woodland Street to Highland Avenue. Seconded by Commissioner Buchanan and carried unanimously 5-0.**

B. **Request for reappointment to the General Employees Pension Board Member by Theo Graham whose term expires September 30, 2008**

City Clerk Golden stated that the City Commission has before them a letter submitted by Theo Graham requesting reappointment. **Motion by Commissioner Buchanan to approve reappointing Theo Graham to another term on the General Employees Pension Board. Seconded by Commissioner Jowers and carried unanimously 5-0.**

C. **Recommendation to approve a developer's agreement with Shoppes at Lake Butler, LLC for a church and day care facility at 4008 Winter Garden-Vineland Road aka CR 535 (vacant Winn-Dixie grocery store)**

Planning Director Williams stated that the developer is proposing to change the architecture of the building, create an out parcel along the frontage, upgrade the landscaping and change it to a multiuse building. Staff recommends approval of the

developer's agreement that formalizes certain conditions and includes dedication of some right-of-way for widening CR 535.

Commissioner Sharman asked if the impact of traffic has been looked at. Mr. Williams responded that the County is in the process of widening CR 535 and has been working with city staff on securing sufficient right-of-way. The City will be required to give up several acres at the cemetery. In order for the developer to meet the County's traffic concurrency, the developer is donating a portion of the right-of-way that is necessary for widening CR 535. The value of the donated property is substantial and staff believes that the developer has met their obligation towards concurrency through the property donation.

Commissioner Buchanan stated that he has concerns about the day care center located at the back of the center as it relates to the loading and unloading area and the alley traffic. Mr. Williams responded that staff also had those same concerns and requested parking studies be provided as well as the day care drop off and pick up plans. He stated that it is not actually a day care, but a learning center that does not have the same population that a normal day care would have nor the same hours of operation. Their drop-off will occur earlier than the stores will be opening and hopefully the loading zones will be away from where the children are being dropped off. Staff thinks the design accommodates and minimizes those conflicts. Commissioner Buchanan noted that the zoning would allow a day care to go into this location if the learning center closed. Mr. Williams stated that to change the use to something more intensive, staff would have to look at it again. Mr. Williams stated that this project does meet all of staff's requirements.

Mayor Rees asked if there could be a stipulation that only a certain number of children would be allowed. Mr. Williams replied that their license requires that they be both a day care and a learning center. Staff believes that the way it will be operated, they will meet their licensing requirement. **Motion by Commissioner Boulter to approve the developer's agreement with Shoppes at Lake Butler, LLC for 4008 Winter Garden-Vineland Road aka CR 535 (vacant Winn-Dixie grocery store). Seconded by Commissioner Jowers and carried unanimously 5-0.**

D. **Recommendation to approve a site plan, with conditions, for Shoppes at Lake Butler, LLC at the corner of CR 535 and West Orange Country Club Boulevard**

Planning Director Williams stated that staff recommends approval of the site plan that goes with the actual construction of the property. He stated that copies have been distributed for the City Commission's review. Staff believes that it is an improvement from what is there now and adequate documentation has been provided to show that it functions properly. Staff recommends approval subject to the conditions in the staff report. **Motion by Commissioner Jowers to approve site plan, with conditions (see attached), for Shoppes at Lake Butler, LLC at the corner of CR 535 and West Orange Country Club Boulevard. Seconded by Commissioner Boulter and carried unanimously 5-0.**

E. **Recommendation to approve a site plan, with conditions, for Crown Point Business Park Lot 5 for an office/warehouse**

Planning Director Williams stated that this is an existing park located at Hennis and Crown Point Circle. Staff recommends approval subject to the conditions provided in the staff report. Commissioner Buchanan declared that he has business dealings with one of the owners of this property on another project, but otherwise he has no interest in this property. **Motion by Commissioner Boulter to approve a site plan with conditions for Crown Point Business Park, Lot 5, for an office/warehouse. Seconded by Commissioner Jowers and carried 4-0-1 with Commissioner Buchanan abstaining.** *After hearing the next agenda item, Commissioner Buchanan identified that he actually needed to abstain from voting on the next item; therefore the vote results for this item was changed to passing unanimously 5-0.*

F. **Recommendation to approve a site plan, with conditions, for Park and Plant Office Building for an office building on the southeast corner**

Planning Director Williams stated that this site plan is for a proposed addition of a 31,800 square foot, three story office building. Architecture will be very distinctive. The developer has participated with the city's master stormwater system and master parking plan and staff recommends approval subject to conditions provided in the staff report. **Motion by Commissioner Boulter to approve the site plan submitted, with conditions (see attached), for Park Avenue and Plant Street office building on the southeast corner. Seconded by Commissioner Boulter and carried 4-0-1; Commissioner Buchanan abstained for the reason stated in prior agenda item E.**

G. **Resolution 08-13:** A RESOLUTION OF THE CITY OF WINTER GARDEN, FLORIDA, RELATING TO THE PROVISION OF FIRE RESCUE SERVICES, FACILITIES AND PROGRAMS IN THE CITY OF WINTER GARDEN, FLORIDA; DESCRIBING THE METHOD OF ASSESSING FIRE RESCUE ASSESSED COSTS AGAINST ASSESSED PROPERTY LOCATED WITHIN THE CITY OF WINTER GARDEN; DIRECTING THE PREPARATION OF AN ASSESSMENT ROLL; AUTHORIZING A PUBLIC HEARING AND DIRECTING THE PROVISION OF NOTICE THEREOF; PROVIDING A VACANCY ADJUSTMENT PROCEDURE; AND PROVIDING AN EFFECTIVE DATE

City Attorney Ardaman read Resolution 08-13 by title only. City Manager Bollhoefer stated that this Resolution, as discussed earlier, establishes the initial rate of the fee which can be changed at the meeting on September 10, 2008 at 6:00 p.m. The highest rate this establishes is \$69 for single family residential and \$38 for multi-family. The rates could be set at zero. Staff recommends approval.

Mayor Rees explained that this is just capping it at a maximum rate and recognized that on September 10th the City Commission can make this a zero rate. **Motion by Commissioner Jowers to approve Resolution 08-13. Seconded by Commissioner Sharman and carried unanimously 5-0.**

5. MATTERS FROM CITIZENS

Richard Napotnik, 1633 Fullers Cross Road, Winter Garden, Florida, stated that he has a concern over an article he read in the West Orange Times. He noted that he served on the Charter Review Committee and the article he read related to single member districts and it indicated that Commissioner Sharman wanted to change that provision in the charter. The Charter should stay the way it is because citizens have already spoken overwhelmingly about ten to one in favor. It could be looked at again when the Charter is up for review in eight years. He is concerned about how tight money is and to use tax money for another vote would not look so good just because someone may not be happy with it. Mayor Rees responded that at the last meeting Commissioner Sharman just asked about looking into it.

Commissioner Sharman stated that he did not want boundary decisions being based on where a Commissioner lives.

Commissioner Boulter stated that citizens were given an opportunity to participate in the referendum process, voted, and made their decision to require that a Commissioner lives within the district they represent. He believes a Commissioner should live in the district they represent.

Commissioner Buchanan stated that if everyone had attended all of the redistricting meetings, they would have seen what they went through to get to the point of drawing the boundaries. It was not based on where a commissioner lives, which was a last consideration. They tried to keep as many as possible in their current district.

Barbara Muzeni, 1143 Portmoor Way, Winter Garden, Florida, stated that she was a member of the Charter Review Committee that took their job very seriously and they had a lot of heartache over a lot of issues. One important issue they had was that their Commissioner lives within their district. She lives in District 4, which had a Commissioner that did not live in the district for a period of time and there were problems. She understands that District 4 is the largest and is probably being the one carved up the most. We do need to be fair to all of the citizens. Each Commissioner needs to represent an equal number of citizens and she believes that they need to live within the district where those citizens live.

6. MATTERS FROM CITY ATTORNEY – There were no items.

7. MATTERS FROM CITY MANAGER

A. **Total population of each proposed new district boundary and their projected population growth** *This item was provided earlier in the meeting.*

B. **Police Chief Brennan report on Daniels Road speed limit**

City Manager Bollhoefer stated he has discussed this issue with several Commissioners and the Police Chief has done a lot of research. Staff wants to make sure that there is not the perception that we have a speeding trap. We will be adding signage that states the speed limits will be strictly enforced. He spoke with the Police Chief who has indicated that the speed limit on CR 535 could be safely increased. It will be continually

monitored to make sure the perception is not out there. Police Chief Brennan is available to share his findings.

- **Golf Carts on city streets**

City Manager Bollhoefer stated that he will be presenting a list of pros and cons and a list of recommendations to the next City Commission meeting. Some issues include the state law allows 14 year olds to drive a golf cart but staff believes the minimum age should be 16 years old or at driver's license age. Commissioner Bouler asked if we were requiring the drivers of golf carts to have a driver's license. Mr. Bollhoefer replied that is an option to guarantee they are 16. The City Code can be more restrictive than the state laws for driving golf carts on roadways. Staff does not want to follow state law for the safety of other motorists and those operating golf carts. Commissioner Bouler noted that that enforcement will also be needed.

- **"Unity in the Community Day" Basketball Tournament and Car Show**

City Manager Bollhoefer announced that Anthony Peterson has requested this musical event this Saturday, August 16, 2008 from 12:00 p.m. to 9:00 p.m. at Zanders Park. The event requires Commission approval and staff is recommending approval. Commissioner Bouler stated that he has spoken with Mr. Peterson to be sure that the event will be all that Mr. Peterson has said it will be. He stated that he wanted to give them an opportunity to do something they like to do and have entertainment they enjoy. There will be a lot of security and if there is any hint of anything being not as it should be, it will be shut down immediately. **Motion by Commissioner Bouler to approve the Unity in the Community Day event at Zanders Park, August 16, 2008. Seconded by Commissioner Buchanan and carried unanimously 5-0.**

- **Composition of the Architectural Review and Historical Preservation Board**

Mr. Bollhoefer stated that at a previous meeting he made an error when he said the architect, Michael Morrissey, was a registered architect. He has since found out that he has done a lot of work as an architect but is not registered as an architect. He was the architect for Oakland Park and some of our buildings downtown. Mr. Morrissey was the only architect listed to serve on the board. He stated that he recommends Michael Morrissey because of his experience, but the Commission will need to either replace him with a different architect or amend the ordinance to say that the person must have a certain amount of architectural experience.

Commissioner Buchanan suggested changing the language in the ordinance because everyone on the City Commission did approve him to serve. It was the **consensus** of the City Commission that the ordinance would be amended and brought back to the City Commission as recommended by the City Manager.

C. **Status on a possible referendum to amend the Charter to allow candidates to run for any district regardless of where they reside**

This item was addressed earlier in the meeting while discussing item 2.B.

8. MATTERS FROM MAYOR AND COMMISSIONERS – There were none.

The meeting adjourned at 7:32 p.m.

APPROVED:

/S/ _____
MAYOR JOHN REES

ATTEST:

/S/ _____
City Clerk Kathy Golden, CMC