



CITY OF WINTER GARDEN

CITY COMMISSION REGULAR MEETING MINUTES

August 28, 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, and West Orange Times Reporter Michael Laval

1. **APPROVAL OF MINUTES**

Motion by Commissioner Jowers to approve the regular meeting minutes of August 14, 2008 as submitted. Seconded by Commissioner Boulter and carried unanimously 5-0.

2. **FIRST READING OF PROPOSED ORDINANCES**

A. **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. Mayor Rees opened the public hearing.

Commissioner Sharman addressed a map he handed out showing District 3 boundaries from the 1983 court order and his question to the City Attorney is should the City try and maintain that core even with the subsequent boundary adjustments. City Attorney Ardaman replied that he was not present at all the Charter Review [*Districting Commission*] meetings but his assistant, Dan Langley, attended and is available to address any related issues. Mr. Ardaman stated that under the judgment, adopted and

approved by the court in the 1980's, he thinks the relevant language is that any alteration of the boundaries shall ensure that the changes do not lead to a "retrogression in the position of minorities with respect to their effective exercise of the electoral process, or be inconsistent and/or in violation of Section 2 of the Voting Rights Act." It is not a prohibition to change the core District but it is a clear fact that has to be taken into consideration and looked at carefully to make sure that all of the factors are balanced.

Assistant City Attorney Langley stated that the City Commission has before them the map that resulted from the lawsuit in the 1980's. District 3 is indicated in orange and over the years the redistricting process has carved out sections and added them to other districts. Also District 3 has grown east and a little to the north. He explained that the language in the judgment which states no retro-regression was taken out of case law that was developed over many years and is interpreted in the Federal Voting Rights Act. They did a case law analysis of what that language really means and developed a practical and conservative approach to avoid as much liability as possible in a redistricting affect to that district. He explained that the Districting Commission decided to try and maintain the core of District 3 which is not necessarily the same as it existed in the 1980's. They tried not to separate large groups of minorities that have historically been in certain locations in the City. He explained that the data they were relying on is the last census data and any additional information from City records. The protected voters were east of Ninth Street and South of Plant Street. The Districting Commission took this information, crafted multiple maps, and developed the final map that preserves the minority population. The rule that was espoused through the case law is not to split the core of District 3. There is not a right line rule on what can and cannot be done when redistricting. You cannot look at only one criterion when redistricting, you must balance so many things including our Charter that there not be more than five percent difference in each district.

Commissioner Sharman asked what would be the most conservative approach. Mr. Langley responded that when looking at the Federal Voting Rights Act and a potential violation you must understand the protected classes are minorities and women. He thinks protecting poor minority areas in their existing locations is the conservative approach. No one map is the right or wrong map and what the City Commission has before them appears to meet the Charter requirements and the final judgment of the prior lawsuit.

Commissioner Sharman asked if we took a section of District 3 out versus leaving it all intact and adding to it, which would stand the better chance of surviving a challenge. Mr. Ardaman asked if he was referring to the original District 3 back in the 80's. Commissioner Sharman stated yes or the existing map. Mr. Ardaman replied that he is not sure you can really answer this question unless you had the specific demographic data. If what is before the City Commission is consistent with the information and data provided to the Districting Commission and is sufficient to support protection of that core, then you're fine. He stated that the map before you is a defensible map. Anyone bringing a challenge would have to state the reasons you are violating the fundamental principles by taking this core apart and prove it.

Commissioner Boulter stated that he is the Commissioner of District 3 and he attended three Districting Commission meetings. There were some maps he was pleased with and some he was displeased with. He was pleased with the Scenario 8 map which was the final map brought forward. He knew from the beginning of the process that someone would not be happy with the final map. He thinks that the entire process was done fairly and took into consideration the core of District 3. He can't understand why there is so much concern now when all along no one really cared about the historical process of what went on in District 3. We now have an administration that cares about District 3 and as the Commissioner he is willing to fight for whatever decision is made because he will be receiving 4,000 more residents. None of the current Commissioners were drawn out of their districts and each will have a different demographic. He expressed that he is a new politician and he understands that whatever happens he will have to get out and walk the streets, knock on doors, and prove that he is worthy of someone's vote no matter where they are. He likes the Scenario 8 map and thinks that this should be voted on tonight. Get it done because he would like to meet some of his new constituents, introduce himself, and be ready for the March election.

Mayor Rees stated that all of the City Commissioners chose a representative for the Districting Commission and had the opportunity to attend all their meetings. Whether or not we like it is not relevant; what is relevant is that they followed all of the rules and guidelines that were established. They had legal counsel to draw up what is in the best interest of the citizens of Winter Garden. He stated that he echoes Commissioner Boulter's sentiments and he is ready to vote and move on.

Motion by Commissioner Buchanan to approve Ordinance 08-42 with the second reading and public hearing on October 9, 2008. Seconded by Commissioner Boulter and carried 4-1; Commissioner Sharman opposed.

3. REGULAR BUSINESS

A. Recommendation to reduce fines imposed in Code Enforcement Board Case #07-1136 for 319 East Maple Street

Chief Planner Wilson stated that this item went to the Code Enforcement Board on August 5th and their recommendation is to reduce the fine from \$61,000 to \$2,170 but it was also acknowledged in their action that there was an additional cost that the City incurred for demolishing the structure. To make sure there is a proper reduction in fines, staff is recommending a reduction from \$61,000 to \$9,150 which is all inclusive of the costs incurred by the City. If approved, the appropriate paperwork will be filed for payments to be made by the owner. Once the fines have been satisfied, a release of lien will be prepared on the property. Commissioner Buchanan asked if the owner of the property was in attendance. City Manager Bollhoefer replied that she is not present but she has been contacted by staff and is in agreement with this recommendation. **Motion by Commissioner Boulter to approve reducing the fines to \$9,150 in Code Enforcement Board Case #07-1136. Seconded by Commissioner Buchanan and carried unanimously 5-0.**

B. Recommendation to approve the West Orange High School Homecoming Parade to take place on Plant Street on October 2, 2008

Recreation Director Conn recommended approval of the West Orange High School Homecoming Parade being held once again on Plant Street this year. He stated that staff is happy to have them bring back this great tradition. He noted there is a representative from the student council available in the audience if the City Commission had any questions. **Motion by Commissioner Jowers to approve the West Orange High School Homecoming Parade to take place on Plant Street on October 2, 2008. Seconded by Commissioner Sharman and carried unanimously 5-0.**

C. Recommendation to approve a contract with AshBritt, Inc. for emergency debris management services

Public Services Director Cochran stated that with a recovery from a major storm event it may be necessary for the City to acquire contract services to assist City forces with hauling of debris. The City has an opportunity to piggyback on a bid from the City of Winter Park with AshBritt Environmental, Inc. Compensation would be on an hourly rate and cubic yard for debris removed on an as needed basis. In order not to limit our options, the City will be looking at other contracts with local contractors as well.

Mayor Rees asked if piggybacking with Winter Park would put us behind them. Mr. Cochran replied that is why staff is going out for other contracts.

Commissioner Buchanan asked what provisions are in place so a ton of equipment isn't just sitting around not being used but we are being charged for an hourly rate. Mr. Cochran replied that we will first use our own forces and local contractors. If we get into a situation where we need additional help, we will call them, tell them what we need, and how long we need them. It will be strictly monitored.

Commissioner Sharman referenced storm preparations and addressed the past issue of residents filling in their swells. He suggested sending a notice with utility bills to alert citizens to be prepared. City Manager Bollhoefer described efforts by staff from the perspective of the last storm that allowed staff to assess all flooding issues and do what we can do now and contact residents. Those areas we are not able to fix will have preparations in place such as sand bags, road blocks etc. Mr. Bollhoefer described the efforts being taken to prevent the flooding of Sandy Rice's property. Solutions will be brought back to the City Commission.

Motion by Commissioner Sharman to approve a contract with AshBritt, Inc. for emergency debris management services. Seconded by Commissioner Jowers and carried unanimously 5-0.

4. MATTERS FROM CITIZENS

Richard Napotnik, 1633 Fullers Cross Road, Winter Garden, Florida, stated that last Thursday tropical storm Fay did create flooding in several areas and he thanked City Manager Bollhoefer and Public Services Director Cochran for their quick response on Sandy Rice's property.

He expressed his dissatisfaction with the County Commission's decision to not return unused funds to residents but instead gave it to their aides as bonuses.

5. **MATTERS FROM CITY ATTORNEY**

City Attorney Ardaman advised that the City has two towing service agreements; one with Sly's Towing and one with The Car Store. The one with The Car Store expires today and the one with Sly's Towing expires November 11, 2008. They are looking at agreement modifications but in order to keep the City with two contracts, he recommends approving an amendment to The Car Store to keep that contract in place through the same date of November 11, 2008. Between now and the contract expiration date, staff will come back to the City Commission with revisions to both contracts.

There was discussion on both contracts expiring on the same date. Commissioner Buchanan stated that if the expiration dates were staggered, we would at least have one. **Motion by Commissioner Jowers to extend The Car Store towing contract to expire on November 11, 2008. Seconded by Commissioner Boulter and carried unanimously 5-0.**

6. **MATTERS FROM CITY MANAGER**

• **American Legion request to for a flagpole and memorial in the City's cemetery**

City Manager Bollhoefer recognized American Legion Post 63 Commander David Higgins to address the City Commission. Mr. Higgins stated that the American flag at the City of Winter Garden Cemetery has been missing for quite some time. He proposes, with the cooperation and support of the City Commission, that a new lighted flagpole and monument dedicated to the citizens of Winter Garden and West Orange County be erected. Their post has voted to host a fundraising project for this purpose. They estimate that it will cost \$7,000.

Commissioner Boulter addressed the fact that there have been two cemeteries; one that is called African-American and one that is the Winter Garden Cemetery. Mr. Higgins stated that there should be two flagpoles then and if the funds are raised they will put up two flagpoles. Commissioner Boulter replied that he doesn't see why we have to have two if there isn't a forest dividing the two cemeteries. Mr. Bollhoefer stated that the trees are scheduled to remain. Commissioner Boulter agreed then that there needs to be two flagpoles. Mr. Higgins stated that they would be happy to work with the City to obtain the funding to have two flagpoles and monuments erected.

A. **Presentation on golf carts on roadways pros and cons** (*Presented after the following Item*)

B. **Settlement Agreement and Release in Orange County, Florida, Case No. 48-2005-CA-1434; City of Winter Garden v. Nugent**

City Manager Bollhoefer stated that this case is on a piece of property located near the Westfield Subdivision. He explained that this agreement essentially allows the Nugent family to install two curb cuts onto that road and restricts them to building three houses on this property. The Mayor asked him how the residents of Westfield felt about this

agreement. Mr. Bollhoefer has since spoken with the Homeowner's Association president and another board member and the community of Westfield is not very happy with this agreement. They would prefer that the City would not settle this case at this point in time. The case is scheduled to be heard on September 15th and the pretrial hearing is September 8th. Mr. Bollhoefer stated that delaying a settlement would cause the City to incur additional legal costs in preparing for the case.

City Attorney Ardaman added that the plaintiffs suing the City may withdraw their settlement offer. Mr. Bollhoefer stated that he thinks the greatest risk to the City was if we do not settle we run the risk of exposure. Somewhere in this process the City ended up taking a little strip about an inch to two inches and a judge could rule that the City has to pay all of the Nugent's legal and court fees that could run anywhere from \$30,000 to \$50,000. Mr. Ardaman stated that he believes the City constructed some improvements onto their property beyond the inch, so the City is also obtaining easements from the property owner to allow the improvements. If the City does not resolve this and gets sued, we will need to proceed with a lawsuit in addition to whatever the cost or value for the area that we have inversely condemned or taken. If the judge were to find that was the case, then the City would be responsible not only for our legal fees and costs but their attorney fees and costs.

Mr. Bollhoefer stated that the area residents would prefer to see only one curb cut and requested that the City include a few more restrictions on Nugent for architectural standards and greater control of the three homes. They fear that even though these three homes are not in their subdivision their proximity may affect their home values. Mr. Ardaman explained that this settlement gives the City the ability to limit the development of this property to just three homes. The property owned by the Nugents is not in the City and is not intended to be annexed into the City. They are in unincorporated Orange County and they can develop in the County without any approval by the City. If the City should say they do not want to settle with this agreement, then they stay in the County and the City would not get the three home restriction.

Mayor Rees stated that the next Commission meeting is September 10th and asked if it were possible to sit down with the Westfield, Nugents, and the City to see if there is some common ground. Mr. Bollhoefer stated that we have not done this and he would like to do this but there is the risk of incurring additional attorney costs.

Commissioner Jowers stated that this has been going on for a while in order for us to work out a deal. This deal was at least embraced by the City's planning staff to get it this far and now suddenly we're saying let's change some things and start all over again. He explained that you take your best stuff to battle to begin with and get it done. Right now you are playing games and once you negotiate a deal a deal is a deal. He asked why you would want to jeopardize the deal in order to add more. They will turn you down and then they will go to the County and build. You have seen it happen before and then we have to go back and renegotiate again. Mr. Bollhoefer stated that is all very possible if not probable. **Motion by Commissioner Jowers to approve the Settlement**

**Agreement and Release in Orange County, Florida, Case No. 48-2005-CA-1434;
City of Winter Garden v. Nugent.**

Commissioner Buchanan requested further discussion. Mr. Ardaman stated that he spoke with the negotiating attorney, Lionel Rubio, and asked him what he believed the Nugents would do if the City came back and asked for a single curb cut and architectural control and he stated that he did not know what their response would be. Commissioner Buchanan stated that he does not think that the Commission should discount what the people feel in Westfield, but he also believes that this has been brought to this point after four and a half years and would be in the best interest of the City to at least have some control because we would have no control if it goes to the County plus we would incur all the costs for attorney fees. **Motion seconded by Commissioner Buchanan.**

Mayor Rees stated that he does not think it is a deal until the City Commission votes on it and if he had been involved, he would have talked with the neighbors while negotiating a deal. Commissioner Sharman asked if whatever gets built has to go through County approvals. Mr. Ardaman replied yes. Commissioner Sharman asked if the County has architectural control. Mr. Bollhoefer replied that the County is very limited. It was noted that the lot size has five usable acres which equates to an acre and a half per house. Mr. Ardaman stated that Mr. Rubio did touch on the fact that because of some of the improvements on the property and how it is set up, they need to be able to get in and out and they need the two curb cuts. Mr. Bollhoefer stated that it has been a primary concern of the Nugents to have two curb cuts because they intend, he believes, to have the houses for separate family members.

Mayor Rees called for the vote at this time. **Motion carried unanimously 5-0.**

Pros and Cons of Golf Carts on Roadways

City Manager Bollhoefer distributed a sheet listing the pros and cons of golf carts on roadways as prepared by Police Chief Brennan, who is not in favor of this for safety reasons. Those driving golf carts will incur some risks. He suggested that if the Commission wants staff to move forward that it includes creating standards, road designations, and rules in order to minimize the risks.

Commissioner Jowers suggested starting as a pilot program downtown but not on Dillard Street or places that inhibit or restrict the flow of traffic. He would like to see this move forward and make this happen in a rational manner. He suggested possibility a pilot program north of Plant Street. If it works out well, then possibly go city-wide, but prohibit use near State Road 50 and any crossing of State Road 50.

Mr. Bollhoefer stated that Stoneybrook as a gated community already has approval and are driving golf carts. Commissioner Jowers asked how many golf cart accidents have there been in Stoneybrook. Police Chief Brennan responded there have been none.

There was discussion on age and insurance requirements. Commissioner Buchanan stated that if the City Commission approves golf carts then the City may assume some liability.

Mr. Ardaman stated that there is a distinction in liability between the planning level decisions that of local government and actual operations. He stated that if the City were to allow golf carts, our sovereign immunity should protect us. He explained that there is no liability in establishing the rules and regulations. It is when you begin to enforce the rules and regulations that you may be liable. If enforcement is done negligently then there may be cause for a lawsuit. Mr. Bollhoefer stated that staff would work with the City Attorney in order to create a plan that would cover any issues through the process.

Mayor Rees stated that he has spoken to the City Manager regarding this issue and realizes that everyone is trying to do this for the purpose of going green and saving on gas prices as they are cheaper to operate. He stated that he sees it as promoting a friendly atmosphere where people can stop and talk to each other. He understands that there are some areas in the City where they can't be used but he personally would like to try it to see what happens.

There was discussion on drafting or outlining a plan to be brought back to the City Commission.

Commissioner Buchanan stated that he would like to know if any other cities have such a program. Police Chief Brennan stated that he spoke with the Town of Lady Lake (population 13,500) and they restrict golf carts to individual subdivisions and do not allow them on general public roads. In the last 30 months they have had 57 reported accidents and two fatalities. Commissioner Boulter asked about specific hours of operation. Police Chief Brennan stated that State Law requires dawn to dusk if it does not have the required lighting etc. If they meet the state requirements, then they can be out all hours unless we have an ordinance restricting the hours.

City Manager Bollhoefer stated that staff will bring a draft or pilot plan for the north area to make it easier and not try to look at the whole City. There was **consensus** by the City Commission for the City Manager to bring back a proposed plan.

7. MATTERS FROM MAYOR AND COMMISSIONERS

Commissioner Jowers stated that he has had about three calls regarding the grass in the cemetery and he went out and looked at it. There use to be good St. Augustine grass and it was nice on both sides. There are now sand spurs and although they are mowed down it is not as pretty and well kept as it use to be. City Manager Bollhoefer stated that he will look into this issue and see what it needs to be taken care of.

Commissioner Boulter stated that regarding the cemetery as discussed earlier about the flagpole, a lot of changes have been made due to the different administrations that we have had in this City to bring unity between the different factions. He stated that it rubs him wrong to have to have two flagpoles in what will be one cemetery. He does not like it and did not like agreeing to it but he hopes in the future that whatever barrier that is up between the two cemeteries is finally taken down. Those who died for this country did so for one country. City Manager Bollhoefer stated that he can look into taking the bushes down but

there are not two cemeteries. Those purchasing cemetery plots are making their own selection. Commissioner Boulter noted there has been great effort to alleviate the feeling of disenfranchisement.

City Manager Bollhoefer strongly recommended a community meeting before any action is taken because people are very particular and sensitive when it comes to their cemetery. Commissioner Boulter stated that if you talk with the residents with the current attitude and heart, he does not think they will mind the change.

The meeting adjourned at 7:43 p.m.

APPROVED:

/S/ _____
MAYOR JOHN REES

ATTEST:

/S/ _____
City Clerk Kathy Golden, CMC