



# CITY OF WINTER GARDEN

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## CITY COMMISSION REGULAR MEETING MINUTES

March 12, 2009

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, Planning Director Ed Williams, Chief Planner Tim Wilson, Fire Chief John Williamson, Police Chief George Brennan, Finance Director Robin Hayes, Building Official Skip Lukert, Recreation Director Jay Conn, Economic Development Director Dolores Key, Director of Information Technology Bob Reilly, Assistant City Engineer Mike Kelley, Recreation Supervisor Mary Mazza, 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 February 26, 2009 as submitted. Seconded by Commissioner Boulter and carried unanimously 5-0.**

### 2. **GENERAL ELECTION RESULTS**

**Resolution 09-05:** A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, DECLARING THE RESULTS OF THE GENERAL ELECTION HELD ON MARCH 10, 2009 FOR COMMISSIONER DISTRICT 2 AND AUTHORIZING ISSUANCE OF A CERTIFICATE – City Clerk Golden

City Attorney Ardaman read Resolution 09-05 by title only.

City Clerk Golden read the results of the March 10, 2009 election with a 9.7% voter turnout for District 2 City Commissioner:

Bob Buchanan	277 votes (72%)
Thomas L. Gregory	110 votes (28%)

**Motion by Commissioner Boulter to approve Resolution 09-05. Seconded by Commissioner Sharman and carried unanimously 5-0.**

### 3. **OATH OF OFFICE**

City Clerk Golden administered the oath of office to Bob Buchanan elected as City Commissioner of District 2.

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

- A. **Ordinance 09-07:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS 0.459 ± ACRES LOCATED AT 778 SOUTH STREET, AND MORE SPECIFICALLY DESCRIBED HEREIN INTO THE CITY OF WINTER GARDEN, FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 09-07 by title only. Planning Director Williams stated that this is a small annexation which is part of an enclave. A portion of the property is already in the City and the applicant wishes to bring the entire property into the City and staff recommends approval.

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

**Motion by Commissioner Jowers to approve Ordinance 09-07 with the second reading and public hearing being advertised for a date certain. Seconded by Commissioner Buchanan and carried unanimously 5-0.**

- B. **Ordinance 09-08:** AN ORDINANCE AMENDING THE FUTURE LAND USE MAP OF THE CITY OF WINTER GARDEN'S COMPREHENSIVE PLAN BY CHANGING THE DESIGNATION FROM ORANGE COUNTY LOW DENSITY RESIDENTIAL TO CITY LOW DENSITY RESIDENTIAL FOR PROPERTY GENERALLY DESCRIBED AS 0.459 ± ACRES LOCATED AT 778 SOUTH STREET; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 09-08 by title only. Planning Director Williams stated that this is to establish the future land use on the property. Staff is asking that this not be scheduled until after June 2009 when the Evaluation and Appraisal Report is complete through the State Department of Community Affairs.

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

**Motion by Commissioner Sharman to approve Ordinance 09-08 with the second reading and public hearing being advertised for a date certain. Seconded by Commissioner Bouler and carried unanimously 5-0.**

- C. **Ordinance 09-09:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING APPROXIMATELY 0.796 ± ACRES OF CERTAIN REAL PROPERTY LOCATED AT 778 SOUTH STREET AND PARCEL ID# 25-22-27-0000-00-070 FROM ORANGE COUNTY CITRUS RURAL AND CITY PUD TO CITY R-1; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 09-09 by title only. Planning Director Williams stated that the acreage is different on this request than the other two, which is to make the zoning consistent on the entire piece. Staff recommends approval and that the hearing be scheduled for June 2009 when the Evaluation and Appraisal Report is complete.

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

**Motion by Commissioner Sharman to approve Ordinance 09-09 with the second reading and public hearing being advertised for a date certain. Seconded by Commissioner Jowers and carried unanimously 5-0.**

5. **FIRST READING OF PROPOSED ORDINANCE**

- A. **Ordinance 09-18:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTIONS 50-193, 50-194, AND 50-195 OF THE WINTER GARDEN CITY CODE; ALTERING THE DEFINITIONS OF "PERMANENT RESIDENCE" AND "TEMPORARY RESIDENCE" CONTAINED IN SECTION 50-193 OF THE CITY CODE TO BE CONSISTENT WITH SUCH DEFINITIONS AS AMENDED IN § 775.21(2), FLA. STAT.; EXPANDING THE APPLICABILITY OF THE CITY'S CURRENT RESIDENCE RESTRICTIONS CONCERNING SEXUAL OFFENDERS TO INCLUDE THOSE INDIVIDUALS WHO COMMITTED A SEXUAL OFFENSE AGAINST A MINOR OUTSIDE THE JURISDICTION OF THE STATE OF FLORIDA AND ANY PERSON COMMITTING A SEXUAL OFFENSE AGAINST PERSONS YOUNGER THAN 18 YEARS OF AGE AT THE TIME SUCH OFFENSE WAS COMMITTED; INCLUDING SCHOOL BUS STOPS AS BEING AMONG THOSE AREAS A SEX OFFENDER MAY NOT RESIDE WITHIN 2,500 FEET OF; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 09-18 by title only. Mr. Ardaman suggested a clarification to the last whereas clause at the bottom of page 1, the second line from the bottom reads "prohibit the residence of sexual predators near designated school bus stops"; should read "prohibit the residence of sexual predators/offenders" because it is not just for sexual predators but also for offenders.

**Motion by Commissioner Buchanan to approve Ordinance 09-18 with the second reading and public hearing being scheduled for March 26, 2009. Seconded by Commissioner Sharman and carried unanimously 5-0.**

6. **SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCE**

- A. **Ordinance 09-03:** AN ORDINANCE OF THE CITY OF WINTER GARDEN AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE III, PENSION PLAN FOR FIREFIGHTERS AND POLICE OFFICERS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING SECTION 54-186, DEFINITIONS; AMENDING SECTION 54-190, CONTRIBUTIONS;

AMENDING SECTION 54-191, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 54-192, PRE-RETIREMENT DEATH; AMENDING SECTION 54-193, DISABILITY; AMENDING SECTION 54-194, VESTING; AMENDING SECTION 54-195, OPTIONAL FORMS OF BENEFITS; AMENDING SECTION 54-200, MAXIMUM PENSION; AMENDING SECTION 54-201, MINIMUM DISTRIBUTION OF BENEFITS; AMENDING SECTION 52-202, MISCELLANEOUS PROVISIONS; AMENDING SECTION 54-203, REPEAL OR TERMINATION OF SYSTEM; AMENDING SECTION 54-204, EXEMPTION FROM EXECUTION, NON-ASSIGNABILITY; AMENDING SECTION 54-206, FORFEITURE OF PENSION; AMENDING SECTION 54-209, DIRECT TRANSFERS OF ELIGIBLE ROLLOVER DISTRIBUTIONS, ELIMINATION OF MANDATORY DISTRIBUTIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 09-03 by title only. City Manager Bollhoefer stated that this has come before the City Commission a couple times and the City finally does have the actuarial statements. This ordinance changes the pension plan to comply with IRS regulations and State statutes. It also changes the vesting for the Fire and Police pension plan from 10 years to 6 years. The estimated per year cost was originally \$60,000, but the actuarial statement looks more like about \$32,000 for this year.

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

**Motion by Commissioner Jowers to approve Ordinance 09-03. Seconded by Commissioner Sharman and carried unanimously 5-0.**

7. **REGULAR BUSINESS**

A. **Recommendation to approve a Developer's Agreement and Stormwater Pond Maintenance Agreement for property located at 14120 W. Colonial Drive (Gardenia Plaza)**

Planning Director Williams stated that this item and the next two are for the Gardenia Plaza, a proposed shopping center on State Road 50 that backs up to several residential areas. Subsequent to the reviews by the Planning and Zoning Board (P&Z) and the Development Review Committee (DRC), an issue has come up in trying to confirm the Florida Department of Transportation (FDOT) requirements on the retention pond. The pond serving the shopping center would be a joint FDOT pond and developer pond. The neighbors have a concern regarding the compatibility of both the pond and the shopping center in relationship to their residential area. A condition was formulated requiring a six foot wall and landscaping to try and buffer the different property uses. The FDOT has the ability to require the wall and landscaping to go away at anytime at their discretion. He stated that without that wall and landscaping it is highly unlikely that P&Z and the neighbors would support approval of this project and it is clear that staff would also not support approval this project.

Staff has met with developer's attorney and staff recommends an added condition to all three approvals that addresses that in the unlikely event the FDOT causes there not be a

wall with landscaping. Staff is asking that each of the development approvals be modified with an appropriate enforcement mechanism that says “if under any circumstances the wall and landscaping along the retention pond are removed, then the owner shall construct a new six foot wall; the design of which shall be subject to City approval and permitting, along the shopping center’s rear southern property line.” This condition would run with the land, the owner, and his successors, and assigns.

City Attorney Ardaman added that the attorney for the owner/developer is in agreement with this added condition.

Scott Glass, with the Law firm of Shutts and Bowen, 300 S. Orange Avenue, Orlando, FL, stated that they are in agreement with the added condition. Mayor Rees noted that all future owners would be subject to this condition.

**Motion by Commissioner Sharman to approve Developer’s Agreement and Stormwater Pond Maintenance Agreement for property located at 14120 W. Colonial Drive (Gardenia Plaza) with the additional staff recommended condition. Seconded by Commissioner Jowers and carried unanimously 5-0.**

**B. Recommendation to approve a Preliminary Plat for property located at 14120 W. Colonial Drive (Gardenia Plaza), with conditions**

Planning Director Williams stated that staff also recommends approval of the preliminary plat with conditions, including the new condition as discussed under the prior item.

**Motion by Commissioner Sharman to approve the preliminary plat for property located at 14120 W. Colonial Drive (Gardenia Plaza), with conditions and with the additional staff recommended condition (see item A above). Seconded by Commissioner Boulter. Motion and carried unanimously 5-0.**

**C. Recommendation to approve a Site Plan for property located at 14120 W. Colonial Drive (Gardenia Plaza), with conditions**

Planning Director Williams stated that staff recommends approval of the site plan for 14120 W. Colonial Drive (Gardenia Plaza) with conditions and the new condition as discussed earlier.

**Motion by Commissioner Boulter to approve the site plan for property located at 14120 W. Colonial Drive (Gardenia Plaza), with conditions and with the additional staff recommended condition (see item A above). Seconded by Commissioner Sharman and carried unanimously 5-0.**

**D. Resolution 09-06: A RESOLUTION OF THE CITY COMMISSION OF THE CITY WINTER GARDEN, FLORIDA, APPOINTING A MAYOR PRO-TEM**

Mayor Rees read Resolution 09-06 by title only. Mayor Rees stated that Commissioner Jowers is currently the Mayor Pro-Tem and asked if the City Commission desires to leave him in this position.

**Motion by Commissioner Buchanan to approve H. Gerald Jowers as Mayor Pro-Tem. Seconded by Commissioner Sharman and carried unanimously 5-0.**

8. **MATTERS FROM CITIZENS**

Theo Graham, 213 W. Tilden Street, Winter Garden, Florida, thanked the City Manager for repairing the boat ramp and noted the only item not done was the broken post on the west side. He shared that if the City would supply the materials, resident Andy Bruns has volunteered to make the repair.

Thomas Gregory, 407 Inland Seas Boulevard, Winter Garden, Florida, thanked Commissioner Buchanan for running a clean campaign and he thinks it went pretty well. He also thanked City Manager Bollhoefer and Commissioner Bouler for speaking to the Orange County School Board to try and save Maxey Elementary. He also stated that he walked to every door and the residents in Commissioner Sharman's former district stated that they appreciated his service.

Mr. Gregory stated that he knocked on a lot of doors during his campaign and shared with the City Commission some of the citizen concerns expressed to him.

Edward Ganster, 1252 Brandy Lake View Circle, Winter Garden, Florida, stated that he is a retired Pastor and the founder and CEO of a corporation called Operation Safety 91. He stated that he was speaking in support of Police Chief Brennan's upcoming presentation later in the meeting. Operation Safety 91 is project in which they are trying to instill across America in appreciation to honor America's first responders who are Fire Fighters, Police/Law Enforcement, and Military. These people are at risk every day that they are on duty and even when off duty. He is here to address the red light running situation. He shared a story and stated his support of cameras at intersections.

Pat Primrose, 1070 Dolphin Drive, Winter Garden, Florida, Vice-President of the Winter Garden Community Garden thanked the City for making the garden possible. Ms. Primrose announced that the ground breaking will be Saturday at corner of 9<sup>th</sup> and Pennsylvania.

David Teller, 431 Whipperwill Way, Winter Garden, Florida, stated that he was at the Commission meeting to bring awareness to some issues they are having in Lake Cove Pointe Subdivision. There are approximately 54 homes built from 2005 to 2007 and they are having stormwater and drainage issues that he thinks is a pre-existing issue. He described some of the problems and stated that these issues have been discussed in their homeowners' association meetings. There has been some progress with some of these issues. Mr. Bollhoefer's efforts have lead to a geo-technical evaluation/exploration document on this issue. The next step in resolving the problem is to hire someone to design a fix and layout the scope of work. The cost of this is \$23,000 and he and his fellow homeowners are requesting assistance from the City in this matter.

City Manager Bollhoefer stated that this has been an ongoing issue for quite a while and explained that they have a lot of water being forced up through the ground, through

driveways, sidewalks, in the yard and throughout the neighborhood. The City had Nodarse & Associates, a specialist in this field, find ways to fix it and their estimate is fairly high. He recommended that the City hire an engineer to design a system to fix this problem. Before we can get to the next level, a design should be done to find out what the actual costs will be and work on a solution of who should be paying for this. In his opinion, the developer holds a significant amount of responsibility because they designed and built it, but it may be a lengthy wait to get him to pay. The solution Mr. Bollhoefer requested was that the City Commission authorizes \$23,000 to move forward in getting this fixed.

Mayor Rees agreed to at least get started on a resolution to this problem.

Commissioner Sharman asked if Lake Cove Point is a gated or un-gated community. Mr. Bollhoefer responded that it is a gated community with all private infrastructure.

Commissioner Buchanan stated that the residents in Lake Cove Pointe have had their hands tied. The developer is also the homeowners' association (HOA). The residents cannot do anything because not enough property has been sold for them to step in and do anything.

City Manager Bollhoefer stated that he was just discussing with the City Attorney that he needs to demonstrate that there is a public purpose involved for the expenditure. First, the City does have easements within this subdivision and therefore the City does have some responsibility to maintain certain areas and secondly, for the general safety of our residents.

**Motion by Commissioner Buchanan to approve expending up to \$23,000 to resolve the water drainage problem in the Lake Cove Pointe Subdivision from a safety standpoint for the City. Seconded by Commissioner Jowers and carried unanimously 5-0.**

9. **MATTERS FROM CITY ATTORNEY**

City Attorney Ardaman reported that the lawsuit by Mr. James Gustino was dismissed by the Federal Court judge and Mr. Gustino was given 15 days to amend his complaint in Federal Court. The City has received an e-mail from Mr. Gustino that states "he is ending his crusade to disrupt the City's districting boundaries".

10. **MATTERS FROM CITY MANAGER**

• **Winter Garden Little League**

City Manager Bollhoefer stated that Mark Cressman, President of the Winter Garden Little League, is here to request that the City of Winter Garden donate \$2,500 towards the purchase of a machine to pull equipment around on the fields. Mr. Bollhoefer stated that about two or three years ago when everyone was getting hit with the property tax cuts, the City worked out an arrangements with the Little League that they were going to take over much more responsibility of the labor of the fields. He stated that they are doing an extremely good job in keeping their part of the arrangement. He stated that they do a great service for the City of Winter Garden and \$2,500 to help with their capital improvement is a small amount for what they accomplish.

Mr. Cressman stated that about three years ago the Little League had a four wheeled vehicle donated to them that they used to drag the fields. For three years they have been trying to keep this vehicle working and it finally died. The board of directors shopped around and John Deere can provide them with a discounted utility maintenance vehicle for \$5,000. They have made a request to the City for \$2,500 that the Little League will match dollar-for-dollar. He stated that this year they have enrolled 309 players. The league has received donations from businesses in the community and as of March 4<sup>th</sup> they have received \$4,650. He asked that the City donate \$2,500 and the league would take the rest of the money out of their donated funds to match the City's.

Commissioner Jowers commended the Little League for what they do in our community. He stated that knowing how they stretch a dollar, putting out \$2,500 of their funds would probably be short changing the kids. He recommended the City Commission donate \$4,000.

Commissioner Sharman stated that by the Little League taking over the maintenance, they have been able to reduce the City's budget by at least half of one employee so there is a cost savings to the City.

Recreation Director Conn stated that last year the City had to cut a parks position and that position would have had the duties of maintaining the fields and the Little League agreed at that time to take on the care of the infields. He stated that they actually lost a full time position.

**Motion by Commissioner Jowers to approve donating \$4,000 to the Winter Garden Little League to assist purchasing a machine for infield maintenance. Seconded by Commissioner Sharman and carried unanimously 5-0.**

- **Community Garden**

City Manager Bollhoefer thanked Public Services Director Don Cochran and his staff for help on the garden. They City gave them \$5,000 and that entire amount was spent on the fence, plus a little more. Don's staff went out there and got it installed in a timely fashion.

- A. **Presentation by Police Chief Brennan on red light cameras**

Police Chief Brennan stated that at a prior meeting the City Commission asked him to give a presentation on red light cameras. He gave a background and overview of the system so they can make a decision on whether or not they wanted to proceed with installing read light cameras at intersections (see attached **Exhibit A**).

Mayor Rees stated that he has been personally asking about this and would like to see the City move forward.

Commissioner Sharman stated that he thinks this is a good option and he is in favor of it.

Commissioner Boulter shared his experience with the red light cameras and stated that it was very effective. It is a good thing for the City to install he cameras.

There was discussion that City staff would draft an ordinance and bring it back to the City Commission for approval.

11. **MATTERS FROM MAYOR AND COMMISSIONERS**

**Commissioner Buchanan** thanked everyone that went out and voted whether for or against him. He explained that it is very important and that it is really sad that only 9% of the voters turned out to vote. It was very interesting to go out and talk to people and find out their concerns.

**Commissioner Boulter** thanked City Manager Bollhoefer and staff for their efforts in working along with the community to keep the Maxey Elementary School open.

**Commissioner Sharman** stated that he would like to get back on the topic of expanding the city's golf cart path and have the study brought back to the City Commission.

Commissioner Sharman displayed on the overhead screens the Winter Garden Community Garden logo as donated by a graphic artist. He thanked Public Services Director Cochran and his staff in their efforts. Jerry Carris has acquired four large truckloads of compost that they will be using this weekend. He encouraged people to sign up.

**Mayor Rees** asked everyone to call their Orange County School Board representative and remind them that the City of Winter Garden has already lost two schools: Drew High School and Winter Garden Elementary School. He stated that if we keep calling, the pressure will mount and they will choose another avenue.

Mayor Rees commended City sanitation worker "Carl" who made an extra effort to pick up trash that he was unable to get to with his truck because of a downed line on the road.

The meeting adjourned at 7:43 p.m.

APPROVED:

\_\_\_\_\_/S/\_\_\_\_\_  
MAYOR JOHN REES

ATTEST:

\_\_\_\_\_/S/\_\_\_\_\_  
City Clerk Kathy Golden, CMC