



CITY OF WINTER GARDEN

CITY COMMISSION REGULAR MEETING MINUTES

April 9, 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, Assistant City Clerk Angee Grimmage, Chief Planner Tim Wilson, Fire Chief John Williamson, Police Chief George Brennan, Lieutenant Bill Sullivan, Human Resources Director Frank Gilbert, Finance Director Robin Hayes, Public Services Director Don Cochran, Building Official Skip Lukert, Recreation Director Jay Conn, Director of Information Technology Bob Reilly, Assistant City Engineer Mike Kelley, 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 March 26, 2009 as submitted. Seconded by Commissioner Boulter and carried unanimously 5-0.

2. **FIRST READING OF PROPOSED ORDINANCE**

A. **Ordinance 09-11:** AN ORDINANCE OF THE CITY COMMISSION OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 94; ARTICLE IV OF THE WINTER GARDEN CODE OF ORDINANCES AND REPEALING ORDINANCE 94-134 AND CREATING THE FOLLOWING SECTION THEREOF: ORDINANCE NO. 09-11; ARTICLE IV WATER CONSERVATION ORDINANCE FOR LANDSCAPE IRRIGATION, PROVIDING FOR LOCAL IMPLEMENTATION OF THE WATER CONSERVATION RULE FOR LANDSCAPE IRRIGATION OF THE ST. JOHNS RIVER WATER MANAGEMENT DISTRICT; PROVIDING DEFINITIONS; PROVIDING LANDSCAPE IRRIGATION SCHEDULES; PROVIDING EXCEPTIONS TO THE LANDSCAPE IRRIGATION SCHEDULES; PROVIDING FOR VARIANCES FROM THE SPECIFIC DAY OF THE WEEK LIMITATIONS; PROVIDING FOR APPLICABILITY OF THE ORDINANCE; PROVIDING FOR ENFORCEMENT OF THE ORDINANCE; PROVIDING FOR PENALTIES FOR VIOLATION OF THE ORDINANCE; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 09-11 by title only. Public Services Director Cochran stated that the St. Johns River Water Management District recently adopted a new irrigation rule and they have strongly encouraged all local governments to do the same through an ordinance. This rule provides separate irrigation schedules for Daylight

Savings Time and Eastern Standard Time. One of the major changes is that during Daylight Savings Times from March until November, the irrigation days will remain at two days a week with the even numbered addresses watering on Thursday and Sunday and the odd numbered addresses watering on Wednesday and Saturday. During the Eastern Standard Time period, from November until March, residential and commercial businesses will only have one day to water; even addresses on Sunday and odd addresses on Saturday.

There was discussion on the maximum penalty of \$500 for violations.

Motion by Commissioner Sharman to approve Ordinance 09-11 with the second reading and public hearing being scheduled for April 23, 2009. Seconded by Commissioner Boulter and carried unanimously 5-0.

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

- 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. Chief Planner Wilson displayed an area map of the property located just west of Beulah Road and surrounded by the Sterling Pointe subdivision. The Comprehensive Plan amendment and rezoning will be scheduled after the Evaluation and Appraisal Report is received back from the State Department of Community Affairs.

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

Motion by Commissioner Boulter to adopt Ordinance 09-07. Seconded by Commissioner Jowers and carried unanimously 5-0.

4. **PUBLIC HEARING MATTER**

- A. **Presentation of application for funds from the Edward Byrne Memorial Justice Assistance Grant (JAG) Program**

Police Chief Brennan stated that the Edward Byrne Memorial Justice Assistance Grant program has earmarked \$103,009 for use by the Winter Garden Police Department to enhance its law enforcement services. The official due date for using the funds is May 18, 2009. One requirement is that at least 30 days prior to the deadline for submitting for the grant, it is to be presented to the governing body for public comments. He recognized Sergeant Keith Ralston to present the proposed use of the funds.

Sergeant Ralston presented the City Commission a Power Point presentation of the proposed use of the grant (see attached Exhibit A).

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

Motion by Commissioner Jowers to approve application for funds from the Edward Byrne Memorial Justice Assistance Grant Program as submitted. Seconded by Commissioner Sharman and carried unanimously 5-0.

5. **REGULAR BUSINESS**

- A. **Resolution 09-08:** A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, INFORMING THE NATIONAL LEAGUE OF CITIES OF ITS INTENT TO PARTICIPATE IN THE NLC PRESCRIPTION DISCOUNT CARD PROGRAM AND WILL WORK WITH NLC AND CVS CAREMARK TO IMPLEMENT THE PROGRAM TO THE BENEFIT OF THE RESIDENTS OF WINTER GARDEN; PROVIDING FOR DELIVERY TO THE NATIONAL LEAGUE OF CITIES; PROVIDING AN EFFECTIVE DATE

City Attorney Ardaman read Resolution 09-08 by title only. Community Relations Manager Vaughn stated that the City has been offered an opportunity to help our residents during this stressful time. In a collaborated effort between the National League of Cities and CVS Caremark, this discount prescription card will average out to about 20 percent off of retail prescription drug prices. It is free to City employees as well as our City residents. If passed, the roll out date will be May 1, 2009. The cards will be distributed via three locations to include City Hall, Recreation Department, and our webpage.

Commissioner Buchanan asked if this program is for generic drugs. Ms. Vaughn indicated she would research his question and reply back to the City Commission.

Motion by Commissioner Buchanan to approve Resolution 09-08. Seconded by Commissioner Sharman and carried unanimously 5-0.

- B. **Recommendation to renew the Combined Operational Assistance and Voluntary Cooperation Mutual Aid Agreement with the Orange County Sheriff's Office**

Police Chief Brennan stated that the current mutual aid agreement with the Orange County's Sheriff's office is expiring on April 30, 2009. This is an identical agreement that would go into effect on May 1, 2009.

Motion by Commissioner Boulter to approve renewing the Combined Operational Assistance and Voluntary Cooperation Mutual Aid Agreement with the Orange County Sheriff's Office. Seconded by Commissioner Jowers and carried unanimously 5-0.

C. **Recommendation to approve the First Amendment to the Hickory Hammock Developer's Agreement**

City Planner Wilson stated that this is the first amendment to the developer's agreement which deals with the timing of installing the utilities. It allows the City to obtain easements and right-of-way that is necessary to allow installation of the utilities. Staff recommends approval.

Motion by Commissioner Sharman to approve the First Amendment to the Hickory Hammock Developer's Agreement as submitted. Seconded by Commissioner Buchanan and carried unanimously 5-0.

D. **Recommendation to approve towing contracts with Sly's Towing and The Car Store**

City Attorney Ardaman stated that the two contracts are identical except that the Car Store would tow city vehicles over 25,000 pounds and Sly's Towing would tow all the Police vehicles.

Mayor Rees asked if towing 25,000 pound vehicles versus the Police vehicles works out evenly on an annual basis. Mr. Ardaman responded that there were significant discussions with the vendors and they were both agreeable to this provision.

Commissioner Jowers addressed Saturday openings because he feels that if the company is towing for the City, they should be open for residents to pick them up or to get items out of their vehicles.

Commissioner Sharman asked what would happen if a vehicle is towed on Friday night. City Attorney Ardaman clarified that the contracts provide that the vendor shall be accessible by telephone Monday through Friday from 6:00 p.m. until 7:00 p.m. and on Saturdays from 10:00 a.m. through 3:00 p.m. and the vendor has to be at their storage facility within 60 minutes of receiving a call. The vendor must be open, with an employee on site, Monday through Friday 8:00 a.m. until 6:00 p.m., not on Saturdays.

Ms. Jan Cawley of Sly's Towing approached the City Commission to answer their questions. Ms. Cawley explained a situation that happened in December 2008 that has since been resolved. Ms. Cawley read some statistics of the number of vehicles towed per month and the number of those that were picked up on Saturday. Sly noted that he has been towing for the City for 24 years and gave examples of his courteous service to the citizens. With only one complaint in 24 years, that is not a bad record and it has not been an issue.

Mr. Ardaman addressed a provision, in the contract on the middle of page 14, whereby a tow sheet will be prepared. Commissioner Jowers requested that a visibly posted sign be required stating the hours and contact information. Ms. Cawley replied that it is currently posted on their front door.

Mr. Todd Paquette, owner of The Car Store, stated that he feels the hours of operation for a towing business should be that they are open for lunch, after 5:00 p.m. and open

Saturday from 8:00 a.m. to 5:00 p.m. Commissioner Sharman asked how many vehicles he typically releases on Saturdays. Mr. Paquette replied 10 to 15.

Commissioner Bouler stated that he feels the City has not had a problem up until now and there have not been numerous complaints, so he sees no reason why it should be changed. If he personally didn't have enough business on Saturday to warrant being open, he wouldn't open.

Mayor Rees noted a change in the contract adding an additional hour from 5:00 p.m. to 6:00 p.m. (*Monday through Friday*) to pick up vehicles after work and associated fees for Saturday pick-ups. Mr. Ardaman noted that on page 11, if the vendor does not show up the gate fee is not allowed to be charged. If the vendor is not accessible, the vendor is not permitted to charge a storage fee for that day. The vendor may charge the vehicle owner the gate fee if their request is made outside the 8:00 a.m. to 6:00 p.m. Monday through Friday or on Saturday. It was suggested that the gate fee be eliminated from both contacts for the period 8:00 a.m. to 5:00 p.m. on Saturday.

Motion by Commissioner Buchanan to approve the amended towing contracts with Sly's Towing and The Car Store by removing the \$75 gate fee charge for Saturdays 8:00 a.m. to 5:00 p.m. Seconded by Commissioner Bouler and carried 3-2; opposed Commissioner Jowers and Commissioner Sharman.

E. **Request authorization to dispose of surplus vehicles and equipment**

Human Resources Director Gilbert stated that this item is a list of vehicles and equipment which has been deemed surplus and/or obsolete due to their condition or because of the repair cost. The vehicles and equipment will be sent to auction in order to recoup as much of the remaining value as possible.

Motion by Commissioner Jowers to approve the list for disposing the surplus vehicles and equipment. Seconded by Commissioner Buchanan and carried unanimously 5-0.

F. **Recommendation to approve bids and award a contract for the E. Plant Street Road Widening Project Segment I to DeWitt Excavating, Inc. for \$2,047,228.70 and approve a 20% contingency for a total project allowance of \$2,456,674.44**

Public Services Director Cochran stated that staff is pleased to bring this contract to the City Commission as it has been a long time coming for widening East Plant Street. He explained that Segment I consists of intersection improvements at West Crown Point Road which includes traffic signals, water and wastewater line improvements, as well as stormwater drainage. There were 12 bids submitted for this project and DeWitt Excavating was the lowest qualified bidder with a bid of \$2,047,228.70. Staff recommends awarding the bid to DeWitt Excavating to include a 20 percent contingency.

City Manager Bollhoefer clarified that staff would come back to the City Commission for any additional improvements beyond the original scope of work such as enhanced

landscaping. The 20 percent contingency allows for additions to the original scope of work.

Commissioner Jowers asked what the completion timeframe was for the first phase of the project. Mr. Cochran responded that the contract allows for 240 days.

There was discussion on there being three phases to the widening project.

Commissioner Boulter stated that the City usually gives plenty of notice on these types of projects and asked when it will begin. Mr. Cochran responded that after approval, notification to the contractor, signing of the contract, and a preconstruction meeting, they will be given a ten day notice to proceed. Arrangements will be made for notifying the public. Mr. Bollhoefer stated that the City will go above and beyond notifying the public because this intersection affects so many people.

Commissioner Boulter asked if there will be any detours. Mr. Cochran responded that he does not believe there will be any and the traffic will be kept flowing by the contractor. There is no feasible detour at that location.

Motion by Commissioner Jowers to approve bids and award a contract for the E. Plant Street Road Widening Project Segment I to DeWitt Excavating, Inc. for \$2,047,228.70 and approve a 20 percent contingency for a total project allowance of \$2,456,674.44. Seconded by Commissioner Buchanan and carried unanimously 5-0.

G. Discussion and possible action to award a contract for stormwater drainage improvements to property located at 1181 W. Crown Point Springs Road (property owner Sandra Rice)

City Manager Bollhoefer stated that at the last meeting the City Commission was provided with estimates for this project. This project includes all the pipe work at the house and further down the street. It fixes issues with the ponds at Chapin Station to be sure they can handle the water for the entire area. It also includes raising the land around the house, underneath the house, and raising the house to bring it up higher. The contract amount is with C. E. James for \$54,000.

Motion by Commissioner Jowers to approve and award a contract for stormwater drainage improvements to property located at 1181 W. Crown Point Springs Road. Seconded by Commissioner Buchanan and carried unanimously 5-0.

H. Discussion and possible action regarding the utility readiness to serve charge

City Manager Bollhoefer stated that staff was directed to do an analysis and bring back the figures for drafting an ordinance. To make changes, it would not really be one ordinance because the language appears in several different places in the City's code. He stated that three (3) options have been provided; do nothing, eliminate the readiness to serve fee, or reduce the fee by 50 percent.

Mr. Bollhoefer explained that the readiness to serve fee is applied to a property even when the structure is vacant. The reason it is assessed, is because it is part of an Inequitable Cost Recovery System that passes along a fixed cost to an absent resident because the fixed costs continue regardless of occupancy. The argument against the charge is that during a tough economic time, it puts additional financial pressure on the landowner and it is difficult to explain.

Mr. Bollhoefer stated that if the City Commission chooses to change the charge by reducing it by 50 percent, he suggested leaving the garbage charge in at a straight amount and put the entire shift to water and wastewater charges.

Commissioner Jowers asked if the large apartment complexes would have to pay this charge. Mr. Bollhoefer responded that he believes that they do but he will research this and bring it back to the City Commission.

Motion by Commissioner Jowers to approve drafting an ordinance to reduce the readiness to serve charge by 50 percent and authorize staff to investigate the impact of charges to major rental complexes. Seconded by Commissioner Buchanan and carried unanimously 5-0.

6. **MATTERS FROM CITIZENS**

Beverly Brett, 217 S. Boyd Street, Winter Garden, Florida, stated that the new City Hall was a beautiful building but she was concerned because it has no automatic doors. City Manager Bollhoefer stated that he would research the cost, which was estimated to be around \$30,000 to \$40,000 and bring this information back to the City Commission.

Richard Napotnik, 1633 Fullers Cross Road, Winter Garden, Florida, stated that he would like to thank the City Commission for their decision tonight on the Sandra Rice property.

Shirley Smith, 21 W. Crest Avenue, Winter Garden, Florida, stated that at the last Code Enforcement Board meeting a \$250 per day fine was imposed against her retroactive to February 13, 2009. The Building Official Skip Lukert and Chief Planner Tim Wilson have been very kind to her. She explained that her contractor did not show up for the meeting. There were a lot of issues discussed at the Code Enforcement Board meeting as to whether or not to give her 30 more days. She stated that this is a hardship and explained some of the work they have been attempting to do at her business location. She stated that she would be getting with staff to go through the building probably within the next ten (10) days. She noted that there are possible investors interested and she apologized for the condition of the building.

7. **MATTERS FROM CITY ATTORNEY** - There were no items.

8. **MATTERS FROM CITY MANAGER**

A. **Design presentation of the new Jessie Brock Community Center on Dillard Street**

This item was provided in the agenda package, but it was not addressed at this meeting.

- **Ace Hardware Hot Dog Stand**

Mr. Bollhoefer stated that Ace Hardware wants to place a hot dog stand in front of their business. The City's code is not clear on how it should be done and whether or not it needs to come to the City Commission. He asked the City Commission to grant a temporary 60 day permit for the hot dog stand to operate at Ace Hardware. Within the 60 days staff will come back in a workshop, with the City Commission, to propose how to fix the code. If the City is not careful in resolving this, the City could end up with these types of carts setting up around town in front of businesses and that is why fixing the code will correct this problem.

City Attorney Ardaman stated that the City Commission's authorization should be made under the current code requirements.

Motion by Commissioner Sharman to approve a 60 day temporary permit for a hot dog stand located in front of Ace Hardware. Seconded by Commissioner Buchanan and carried unanimously 5-0.

- **Magic Basketball Gym**

City Manager Bollhoefer stated that City staff has been working with Orange County for quite some time to get one of the five Magic Gyms located in the City of Winter Garden. These gyms are required to be built as part of their deal to build the venues. The City is talking with them about a location at the Mildred Dixon Community Center. An interlocal agreement and a partnership with the County would be required. The City of Winter Garden would probably have to pay \$950,000 for the site work. The Magic Foundation would pay for the rest of the construction costs and Orange County would pay for operating the gymnasium. Mr. Bollhoefer stated that before the City puts any money into this, there needs to be the assurance that the City will have use of the facility. In a meeting with Orange County, the City was asked if the City Commission would take a vote on this concept. The vote would mean that the City is willing to move forward and look into whether or not an interlocal agreement and partnership could be accomplished. Details would be brought back to the City Commission for final approval. For tonight's action, upon an affirmative vote by the City Commission, the County would then have the City come to their April 28, 2009 meeting and make a presentation.

Commissioner Jowers asked if the money would be reimbursed. Mr. Bollhoefer responded no; the City would have to pay the \$950,000. He explained the reason that they are doing it this way is because they are building it on County owned land and using recreation impact fees. The Mildred Dixon Center is within the incorporate limits of the City of Winter Garden and the County can only spend the funds on a building in unincorporated Orange County.

Motion by Commissioner Jowers to authorize the City Manager to move forward on this issue.

Commissioner Boulter requested that the term "East Winter Garden" not be used and stated that he is trying to get those on the east side to stop thinking in the sense that they are separate.

Motion Seconded by Commissioner Sharman and carried unanimously 5-0.

- **State Road 50**

Mr. Bollhoefer stated that the City has a very good chance of having the State Road 50 project moved up with available stimulus funds. If this project is moved up, it would start in December 2009. The City has been working with the Florida Department of Transportation on drafting a Request for Proposal for a design build project. In the past, the City Commission had discussed possible project enhancements whenever this project started to move forward. He described some of the possible enhancements as being street lights, landscaping, burial of perpendicular lines and various other costs for landscape in the medians. Landscaping would have to be done after the project is completed.

Motion by Commissioner Buchanan to authorize the City Manager to move forward in reviewing possible enhancements of State Road 50. Seconded by Commissioner Jowers and carried unanimously 5-0.

- **Lakeview Middle School Exhibits in City Hall**

Mr. Bollhoefer announced that Lakeview Middle School's sixth grade students are creating history projects that the City is happy to exhibit in the City Hall lobby from Monday, April 20th through Friday, May 1, 2009. A special reception announcing the awards will be held on Tuesday, April 21, 2009 from 6:00 p.m. to 8:00 p.m. in Commission Chambers with a photo opportunity for the City Commissioners with the award winning students at 7:30 p.m. This was arranged by Kay Cappleman on behalf of the Winter Garden Heritage Foundation.

- **Paranormal Studies at the Winter Garden Cemetery**

Mr. Bollhoefer informed the City Commission that a request has been made by a group doing paranormal studies to conduct their research at the Winter Garden Cemetery.

It was the **consensus** of the City Commission that this is a sensitive matter and it would not be fitting for the City of Winter Garden to allow this study at the cemetery.

- **Earmarks for Federal Budget**

Mr. Bollhoefer stated that Congressman Grayson has issued two earmarks for the City of Winter Garden. One is for the east area of Winter Garden for affordable housing and the other is for a \$1.75 million reclaimed water project. Congressman Grayson included the items and they are working on them on the Senate side with Senator Martinez, who seemed very open to the idea.

9. **MATTERS FROM MAYOR AND COMMISSIONERS**

Commissioner Buchanan stated that Louis Fazio has lost his position at the Manheim Auto Auction and is in a condition that most of us will never have to deal with. Mr. Fazio has

been extremely helpful everywhere including the City of Winter Garden and Commissioner Buchanan suggested organizing a festival through the Rotary Club for a fundraiser for Mr. Fazio.

Motion by Commissioner Buchanan authorizing the City to close the streets (*downtown*) for a fundraiser festival for Mr. Fazio. Seconded by Commissioner Jowers and carried unanimously 5-0.

Commissioner Boulter stated that on Sunday Ida Mae Jefferson celebrated her 105th birthday. Although she lives in an enclave, she considers herself a Winter Garden resident and Commissioner Boulter asked if the City could acknowledge her with a proclamation.

Mayor Rees responded yes.

Commissioner Sharman thanked the staff for their participation in the Grand opening ceremony of the Winter Garden Community Garden.

Mayor Rees commented that it was a great opening ceremony at the Winter Garden Community Garden and voiced his appreciation to everyone who attended.

The meeting adjourned at 7:59 p.m.

APPROVED:

/S/ _____
MAYOR JOHN REES

ATTEST:

/S/ _____
City Clerk Kathy Golden, CMC