



CITY OF WINTER GARDEN

CITY COMMISSION REGULAR MEETING MINUTES

May 28, 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 Kurt Ardaman, Assistant City Clerk Angee Grimmage, Police Chief George Brennan, Human Resources Director Frank Gilbert, Finance Director Robin Hayes, Building Official Skip Lukert, City Planner Ed Williams, Chief Planner Tim Wilson, Recreation Director Jay Conn, Assistant Public Services Director Mike Kelley, Information Technology Director Bob Reilly, Economic Development Director Dolores Key, and West Orange Times Reporter Michael Laval

1. **APPROVAL OF MINUTES**

Motion by Commissioner Jowers to approve the regular meeting minutes of May 14, 2009 as submitted. Seconded by Commissioner Sharman and carried unanimously 5-0.

2. **PRESENTATIONS**

A. **Comprehensive Annual Financial Report by Sines, Girvin, Blakeslee and Campbell for Fiscal Year ending September 30, 2009**

Finance Director Hayes distributed the Comprehensive Annual Financial Report for 2008 and briefly highlighted some items in the report. Ms. Hayes stated that the fund balance decreased by \$2.2 million for an ending fund balance of approximately \$11 million. Of that amount, \$8.2 million is unreserved and stated as a percent of expenditures that represents about 33 percent. Ms. Hayes stated that also included is the Certificate of Achievement that the City has received for the fifth year. Ms. Hayes stated that Sines, Girvin, Blakeslee and Campbell are available for questions.

B. **Presentation of citizen survey results by the President of National Research Council, Thomas I. Miller, Ph.D.**

City Manager Bollhoefer introduced Dr. Thomas Miller, President of the National Research Council who gave a presentation of the citizens survey results (see attached Exhibit "A"). City Manager Bollhoefer stated that he will distribute the full report on the survey, but wanted Dr. Miller to first give a brief summary of the findings.

3. **FIRST READING OF PROPOSED ORDINANCES**

A. **Ordinance 09-24:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTIONS 78-55 AND 78-57 OF CHAPTER 78, CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN, REDUCING THE WATER

AND SEWER SERVICES READINESS TO SERVE CHARGE FOR METERED ACCOUNTS DURING MONTHS OF ZERO CONSUMPTION; PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 09-24 by title only. Finance Director Hayes stated that this Ordinance reduces the water, sewer, and irrigation base rate to zero for zero consumption. If there is consumption there is a charge and the rate will revert back to the normal charge. City Manager Bollhoefer displayed information that explained the charge will be taken away from readiness to serve and the cost allocated to the regular customers who will see a \$1.13 increase each month. Whereas, those customers who have vacant rental properties or leave for periods of time, will have approximately a \$16.00 reduction in their readiness to serve charge. They will still be paying approximately \$24.00 a month. There is a flat rate for garbage and stormwater.

Commissioner Boulter asked if this is the average and may increase for some. City Manager Bollhoefer stated that it will be higher for larger users and lower on those that use less.

Motion by Commissioner Jowers to approve Ordinance 09-24 with the second reading and public hearing being scheduled for June 11, 2009. Seconded by Commissioner Boulter and carried unanimously 5-0.

B. Ordinance 09-26: AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING THE CITY OF WINTER GARDEN FISCAL YEAR 2008-2009 BUDGET; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 09-26 by title and an excerpt from Section 1 that the sum of \$4,545,431 is to be appropriated as follows:

REVENUES	
General Fund	\$ 1,860,612
Downtown Parking District Fund	(233,500)
Community Redevelopment Agency Fund	(20,000)
Law Enforcement Trust Fund	182,715
Local Option Gas Tax Fund	0
General Impact Fee Fund	(1,697,324)
Transportation Impact Fee-South of Turnpike Fund	55,116
Transportation Impact Fee-CR545 Special Benefit Area Fund	(201,160)
Transportation Impact Fee-General Fund	1,412,679
New City Hall Capital Project Fund	0
Utility Operating Fund	770,793
Utility Impact Fee Fund	1,625,463
Utility Renewal and Replacement Fund	551,500
Stormwater Fund	290,487
Solid Waste Fund	(51,950)
Trailer City Fund	0
	<hr/>
	\$4,545,431

Expenses mirror the revenue amounts as itemized.

Finance Director Hayes stated that the budget is being amended for mid-year adjustments. The interim budget is used as part of the budget process and she highlighted the changes that have happened throughout the year and those changes that are anticipated for the remainder of the year. Ms. Hayes referred to the detailed Exhibit 1 which details eliminated positions and added or changed positions.

Mayor Rees clarified that five positions were the eliminated and one position was added.

Motion by Commissioner Boulter to approve Ordinance 09-26 with the second reading and public hearing being scheduled for June 11, 2009. Seconded by Commissioner Buchanan and carried unanimously 5-0.

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

- A. **Ordinance 09-20:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS 0.17 ± ACRES LOCATED AT 11 BROAD 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 09-20 by title only. Planning Director Williams stated that the City is receiving many requests for annexation throughout the City. This is another indication of the desirability of being in the City. He explained that tonight there are two small annexations. The City is also working with the County to get rid of the enclaves; this is a two year process. He stated that staff recommends approval of this annexation. The second reading on the zoning and comprehensive plan amendment will be held after the City receives the Evaluation and Appraisal Report from the DCA.

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

Motion by Commissioner Jowers to approve Ordinance 09-20 with the second reading and public hearing being scheduled for June 25, 2009. Seconded by Commissioner Sharman and carried unanimously 5-0.

- B. **Ordinance 09-21:** 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 NEIGHBORHOOD COMMERCIAL FOR PROPERTY GENERALLY DESCRIBED AS 0.17 ± ACRES LOCATED AT 11 BROAD STREET; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 09-21 by title only. Planning Director Williams stated that staff recommends approval on the first reading and hold off on the second reading until 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 Jowers to approve Ordinance 09-21 with the second reading and public hearing being scheduled for a date uncertain. Seconded by Commissioner Boulter and carried unanimously 5-0.

- C. **Ordinance 09-22:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING APPROXIMATELY 0.17 ± ACRES OF CERTAIN REAL PROPERTY LOCATED AT 11 BROAD STREET FROM ORANGE COUNTY R-2 TO CITY R-NC; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 09-22 by title only. Planning Director Williams stated that staff recommends approval of the R-NC which allows single family, duplex, and some limited office use on the property. Second reading to be held at a future date after the Evaluation and Appraisal Report has been received.

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

Motion by Commissioner Sharman to approve Ordinance 09-22 with the second reading and public hearing being scheduled for a date uncertain. Seconded by Commissioner Jowers and carried unanimously 5-0.

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

- A. **Ordinance 09-12:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS 0.15 ± ACRES LOCATED AT 629 BETHUNE AVENUE, 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 09-12 by title only. Planning Director Williams stated that staff recommends approval.

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

Motion by Commissioner Boulter to adopt Ordinance 09-12. Seconded by Commissioner Buchanan and carried unanimously 5-0.

- B. **Ordinance 09-15**: AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS 0.34 ± ACRES LOCATED AT 1261 EAST BAY 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 09-15 by title only. Planning Director Williams stated that staff recommends approval of this property as requested by the property owner.

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

Motion by Commissioner Boulter to adopt Ordinance 09-15. Seconded by Commissioner Jowers and carried unanimously 5-0.

Mayor Rees asked if the letters of annexations being mailed out had favorable responses. Mr. Williams replied yes, it is very favorable and there are several large commercial pieces along State Road 50 that are interested. He explained that it is the favorable tax rate and the general perception of the City has people seeing a big advantage to being in the City. Hopefully the enclaves that the City is addressing with the County will be much smaller because of these annexations.

6. **REGULAR BUSINESS**

- A. **Recommendation to extend site plan approval of SunTrust Bank at Avamar located at the southwest corner of CR 545 and Marsh Road, with conditions stated in the Engineering Department's memorandum of June 26, 2007**

City Planner Williams stated that site plans expire after one year if the project has not been built. The code does provide for the extension of those site plans for one year, by application to the City Engineer and endorsement by the City Commission. This property has already received one extension; due to the economic conditions that prevail, right now staff feels it is appropriate to give them an additional extension and it would need the City Commission's approval to do so since the code only anticipated one year extensions. Staff recommends approval subject to those adopted conditions.

Mayor Rees asked if approving this will extend it until June 26, 2010. Mr. Williams replied yes, subject to the conditions that the City Commission has already considered and adopted.

Commissioner Buchanan asked why an additional year when there are a lot of banks being built right now; why are they extending up to two years? Mr. Williams stated that a part of the reason is that there are so many other banks competing and the demand is not there. We are probably getting saturated in that area with banks and rather than just

put up the facility and it not draw enough business, some banks have decided to hold off. Were this to come back to staff and the City Commission for approval, there would not be any changes recommended. The review and the conditions were very extensive and if they went away and came back at a later date to build, staff does not foresee any change.

Commissioner Jowers addressed them already being added into our water and sewer forecasts etc. He asked if we are in danger by setting precedence like this for fear that we may have other developers coming back and wanting to do the same thing. Mr. Williams replied that he does not think the City runs that risk. There will be some other businesses that will decide not to build. There are also other projects that are coming online that we did not anticipate, so this is balancing out very well. The demand in that area for other services is fine. We are not putting infrastructure in that will not be utilized. If this project had any other component that we thought we would have to rethink and recommend some different condition, we would not be supporting their extension. Having reviewed it, staff does not see anything that will change on this particular site plan because the rest of the development is set.

Mayor Rees asked if there are any fees for an extension. Mr. Williams responded no, if there were they would probably ask for a waiver.

Motion by Commissioner Sharman to approved the extension of site plan approval of SunTrust Bank at Avamar located at the southwest corner of CR 545 and Marsh Road, with conditions stated in the Engineering Department's memorandum of June 26, 2007. Seconded by Commissioner Boulter and carried unanimously 5-0.

B. Request for approval of a Locally Funded Agreement between the City and Florida Department of Transportation on the State Road 50 road project and two subordination agreements for two lots in front of West Point Commons (AKA Publix)

City Planner Wilson stated that the City has just received a revised agreement from the Florida Department of Transportation (FDOT) and the changes have been highlighted. The changes made were minor except for today's changes to Exhibit D, which deal with the maintenance requirements. While those changes may be good for FDOT, they did create some concern for the City. FDOT is on a tight schedule with this project and staff recommends that the City Commission approve this agreement and authorize the City Manager to negotiate with FDOT for those items the City may have problems with, particularly in the last two pages. Mr. Wilson displayed Exhibit A of the agreement, which is an updated budget showing the cost to the City in four specific categories.

City Manager Bollhoefer stated that the latest significant change came from FDOT at approximately 3:00 p.m. this afternoon and he referred to Exhibit D. The City could spend a lot of money making changes and FDOT could come back years later and remove the City's improvements (approximately \$2 million), with no reimbursement being made to the City.

Mayor Rees suggested including language in the agreement that if the FDOT decides to remove any City improvements, they will reimburse the City. Mr. Bollhoefer replied that this is one of the things that staff is negotiating.

There was discussion on the FDOT's option to say no to reimbursing the City. Commissioner Jowers suggested giving them a tentative approval subject to further negotiation. City Manager Bollhoefer suggested an additional statement that the City Commission has a strong objection to their additional language, which would help with his negotiations.

Motion by Commissioner Jowers to authorize tentative support of the agreement pending further negotiations to remove the current strong language and include a method of reimbursement for City improvements should the FDOT decide to change their mind.

City Manager Bollhoefer asked the City Attorney Ardaman because the agreement has to be finalized by June 7th, would it be possible to call an emergency meeting of the City Commission. Mr. Ardaman responded yes.

Mayor Rees stated that he agrees that he thinks the City Commission should come back together on this issue to be sure that the language will protect the City of Winter Garden.

Commissioner Boulter asked if the FDOT might stop the entire process based on what the City Commission decides. Mr. Bollhoefer responded yes and it has to be done by June 7, 2009 or the opportunity is gone because this is based on stimulus funds.

City Attorney Ardaman suggested that a more reasonable option may be to set a time for perpetuity to bind the FDOT because the improvements will depreciate over time. Maybe a reimbursement over the next ten years and then some reduced reimbursement amount over some time period after that.

Mayor Rees stated that the City needs one of two things to occur or the City Commission will need to meet again; either pull the strong language or add a reimbursement clause.

Motion was seconded by Commissioner Buchanan and carried unanimously 5-0

C. Appointment for the unexpired term of resigning Planning and Zoning Board member James Balderrama (District 4)

Mayor Rees stated that it is his understanding that the board currently has two each serving from Districts 1 and 2. With Mr. Balderrama's resignation, there remains one each from Districts 3 and 4. Therefore, the appointment should come from either District 3 or District 4.

Commissioner Boulter nominated District 3 resident Mark Maciel and stated that he is a very professional person and would be an asset to the Planning and Zoning Board.

Ms. Grimmage stated that Mr. Maciel's application was received yesterday and she has confirmed that he is a city resident of District 3.

Motion by Commissioner Boulter to appoint Mark Maciel to the Planning and Zoning Board to fill the unexpired term of James Balderrama. Seconded by Commissioner Sharman and carried unanimously 5-0.

Dispensed as the City Commission and convened as the Community Redevelopment Agency at 7:33 p.m.

Present: Agency Chairman John Rees, Agency Members Harold L. Boulter, Bob Buchanan, H. Gerald Jowers, Colin Sharman and CRAAB Chairman Larry Cappleman

D. **Appointments for expiring terms of Bob Battaglia, Charles Roper, Joy Knight-Boulter, and Alan Haughey on the Community Redevelopment/Brownfield Advisory Board**

CRAAB Chairman/CRA Member Cappleman stated that the Community Redevelopment Agency Advisory Board has four members whose terms are set to expire in June. The board has met and considered recommending the current members for reappointment. Each member is willing to serve for an additional term. They have served diligently on the board and their attendance has been exemplary. The advisory board recommends the reappointment of Bob Battaglia, Charles Roper, Joy Knight-Boulter, and Alan Haughey to an additional term on the CRAAB.

Motion by Agency Member Bob Buchanan to reappoint Bob Battaglia, Charles Roper, Joy Knight-Boulter, and Alan Haughey to the Community Redevelopment Advisory Board. Seconded by Agency Member Boulter and carried unanimously 6-0.

Adjourned as the Community Redevelopment Agency and reconvened as the City Commission at 7:35 p.m.

7. **MATTERS FROM CITIZENS** – There were no items.

8. **MATTERS FROM CITY ATTORNEY** – There were no items.

9. **MATTERS FROM CITY MANAGER**

A. **Discussion on open-air vendors** (*This item was postponed until the next meeting*)

B. **Golf cart presentation**

City Manager Bollhoefer stated that during last 9-10 month trial period, there have been no incidents involving golf carts. He gave a PowerPoint presentation and distributed a copy (see attached Exhibit "B").

There was discussion on the City's potential liability and the use of a traffic engineer in designating a safe roadway. City Attorney Ardaman stated that the City would have to

do its due diligence for each roadway segment to be deemed a safe roadway for golf carts.

Commissioner Buchanan asked if he voted for certain streets to be designated for golf carts and there was an accident, could he be sued individually. City Attorney Ardaman replied that you may be sued individually along with the City. There are a lot of lawsuits like that; there is nothing to stop a lawyer from filing a lawsuit against an individual. However, it is unlikely that you would be held personally liable under either the negligence claim or a federal claim. Most of those cases deal with an official making a decision. In a legislative capacity there are defenses; either an absolute or a limited liability because of the position you are in as a legislative body.

There was discussion on establishing guidelines, because every street is different, and include them in the ordinance to offer some protection.

Mr. Bollhoefer stated that in other cities he has seen them include with golf carts the Neighborhood Electric Vehicles that have to be registered and insured. Commissioner Sharman asked about the difference between golf carts and Neighborhood Electric Vehicles (NEV). City Manager Bollhoefer stated that a golf cart by law cannot go any faster than 20 mph and the NEV goes between 20 and 25 mph. He thinks NEV's will become popular in the future.

Commissioner Boulter asked about a 14-year-old being ticketed or held responsible. There was discussion on passing stricter laws for non-licensed drivers. Mr. Ardaman stated the parent or guardian would be held responsible and possibly the juvenile system would kick in.

Mayor Rees stated that the issue of liability for the City of Winter Garden and asked what is the best way to protect the City going forward. Maybe the Commission wants staff to start working on an ordinance, continue their research and consult with a traffic engineer.

There was discussion on researching this issue with surrounding cities. City Manager Bollhoefer stated that the best data he has found so far is from Lady Lake. In 30 months they had 50 some accidents and two fatalities. Staff can try to find more data.

It was the **consensus** of the City Commission that staff would do more research and bring back some suggested criteria back to the City Commission at the next meeting.

C. **Discussion on workshop date for signage regulations**

City Manager Bollhoefer stated now that building has slowed down, the City is reviewing a number of projects and improvements to the code. Staff would like to set up workshops with the City Commission to get direction; one item to be reviewed is signage.

There was discussion on establishing workshop dates, times, and the items to be discussed in the workshops. City Manager Bollhoefer concluded that he would contact each Commissioner to set up the workshops.

D. Discussion on workshop date for training on City financial reports

City Manager Bollhoefer suggested that the training session on government finance process be combined with another workshop.

• **Strategic Planning Workshop**

City Manager Bollhoefer stated that as the City goes through the process of survey it will culminate into a strategic planning workshop. Staff would like to schedule this workshop for Saturday morning, July 11, 2009 from 8:00 a.m. to 1:00 p.m. The goal would be to establish the City's strategic direction. The Commissioners indicated they would let him know their availability.

E. Request for waiver of rental fees for Tanner Hall on April 3, 2010 by the West Orange County Culture Keepers (non-profit)

City Manager Bollhoefer stated that the City in the past has waived the rental fee every year for the Orange County Culture Keepers and they are again asking for a waiver of the fees for April 3, 2010. Commissioner Sharman asked if no one who wanted to rent the hall that night so that the City does not lose revenue. Mr. Bollhoefer replied that is correct. *(No objections were noted.)*

10. MATTERS FROM MAYOR AND COMMISSIONERS

Commissioner Jowers stated that the Orange Seminole Osceola Transit Authority has put forth a plan to discontinue bus service to our area. The City Commission represents the taxpayers of Winter Garden, each of whom is paying taxes for bus service to this area. He thinks a resolution should be done or have the City Attorney could talk to them about at least several routes. Commissioner Jowers stated that he has been approached by several people that use the bus as their mode of transportation. He suggested that if they are going to discontinue it, let's take it off of our tax rolls.

City Manager Bollhoefer stated that he thinks a resolution is probably a good direction. He stated that they have two services and they are eliminating one that does affect a lot of people. *(There were no objections noted to a resolution being brought to the City Commission.)*

Commissioner Buchanan commended the City and staff on the job they have done in keeping the streets open and the flooding down to a minimum. He has not heard any complaints with the amount of rain we have had. The City of Winter Garden was very prepared and things went well with a minimum amount of damage or obstruction.

Commissioner Sharman stated that he has discussed with City Manager Bollhoefer a grant process for upgraded landscaping for communities that provide landscaping in their medians. He stated that the City Manager wants to have staff put together some type of program and bring it back to the City Commission.

City Manager Bollhoefer stated that specifically when the Stone Crest subdivision was built, through a deal with the developer they have upgraded landscaping in their median so they are

paying the full cost of maintaining it. It benefits their community but also everyone who drives by. A thought was that perhaps the City could rebate back to them through a grant program a certain amount of those funds to compensate them for paying for that. To be fair to other communities, this would have to be made available to all City communities.

- City Manager Bollhoefer stated that FDOT has given the City permission to change both dedicated rights going north on Daniels Road at State Road 50 to put a right and a straight through. They are also going to give us more green light time for traffic going north and south. This week the City has started working on the road to the Church of Christ property and hopefully the FDOT will pave it. The combination of these three things will hopefully alleviate the distress caused at that intersection of State Road 50, Dillard Street and Daniels Road.

Commissioner Sharman also concurred with Commissioner Buchanan on the good job the City has done with maintaining the drainage during the rains.

Mayor Rees thanked Mr. Graham and the City of Winter Garden for the Memorial Day service event.

The meeting adjourned at 8:15 p.m.

APPROVED:

_____/S/_____
MAYOR JOHN REES

ATTEST:

_____/S/_____
City Clerk Kathy Golden, CMC