



CITY OF WINTER GARDEN

CITY COMMISSION REGULAR MEETING MINUTES

July 23, 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 (*arrived at 6:34 p.m.*), Bob Buchanan, H. Gerald Jowers and Colin Sharman (*arrived at 6:45 p.m.*)

Also Present: City Manager Mike Bollhoefer, City Attorney Kurt Ardaman, City Clerk Kathy Golden, Police Chief George Brennan, Fire Chief John Williamson, Human Resources Director Frank Gilbert, Finance Director Robin Hayes, Public Services Director Don Cochran, Assistant Public Services Director Mike Kelley, City Planner Ed Williams, Community Development Director Tim Wilson, Building Official Skip Lukert, Recreation Director Jay Conn, Information Technology Director Bob Reilly, and Economic Development Director Dolores Key

1. **APPROVAL OF MINUTES**

Motion by Commissioner Jowers to approve the regular meeting minutes of July 9, and Strategic Planning Workshop of July 11, 2009 as submitted. Seconded by Commissioner Buchanan and carried unanimously 3-0.

Commissioner Boulter arrived at 6:34 p.m.

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

A. **Ordinance 09-36:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS 1.96 ± ACRES LOCATED AT 1301 EAST BAY STREET AND 1360 EDGEWAY DRIVE, 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 09-36 by title only. Community Development Director Wilson stated that the next three items relate to the same property dealing with annexation, land use and rezoning. Each has been reviewed by the Development Review Committee (DRC) and the Planning and Zoning Board, both of which are recommending approval.

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

Motion by Commissioner Buchanan to approve Ordinance 09-36. Seconded by Commissioner Boulter and carried unanimously 4-0.

- B. **Ordinance 09-37:** 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 1.96 ± ACRES LOCATED AT 1301 EAST BAY STREET AND 1360 EDGEWAY DRIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 09-37 by title only. Mayor Rees noted that this is the same property as the prior item.

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

Motion by Commissioner Boulter to approve Ordinance 09-37 with the second reading and public hearing being scheduled for August 27, 2009. Seconded by Commissioner Jowers and carried unanimously 4-0.

- C. **Ordinance 09-38:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING APPROXIMATELY 1.96 ± ACRES OF CERTAIN REAL PROPERTY LOCATED AT 1301 EAST BAY STREET AND 1360 EDGEWAY DRIVE FROM ORANGE COUNTY R-2 TO CITY R-4; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 09-38 by title only. Mayor Rees noted that this is the same piece of property as the prior two items.

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

Motion by Commissioner Jowers to approve Ordinance 09-38 with the second reading and public hearing being scheduled for August 27, 2009. Seconded by Commissioner Boulter and carried unanimously 4-0.

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

- A. **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. Community Development Director Wilson stated that this property is located on Broad Street east of Vineland Road. It is an individual lot with an existing home. The City's land use will become neighborhood residential-commercial and the zoning will become residential-neighborhood commercial (R-NC).

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

Motion by Commissioner Boulter to adopt Ordinance 09-21. Seconded by Commissioner Buchanan and carried unanimously 4-0.

- B. **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.

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

Motion by Commissioner Jowers to adopt Ordinance 09-22. Seconded by Commissioner Boulter and carried unanimously 4-0.

- C. **Ordinance 09-23:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING APPROXIMATELY 40.9 ACRES OF CERTAIN REAL PROPERTY LOCATED SOUTH AND WEST OF SIPLIN ROAD AND EAST OF CR 545 FROM ORANGE COUNTY AGRICULTURAL TO CITY R-2; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE (Sessions)

City Attorney Ardaman read Ordinance 09-23 by title only. Community Development Director Wilson stated that this is the adoption hearing of this property to establish R-2 zoning, but the property will have a future use of a school. The Orange County School Board owns the property and they are in the planning stages of designing both the elementary and middle school for this property. There will be a road on the western point of the property that will provide access from Avalon Road to the school site. This road will be coordinated between the City and the developer of that adjacent property. The property has been reviewed by the DRC, the Planning and Zoning Board, and the Florida Department of Community Affairs (DCA) has approved the land use; approval is being recommended.

Mayor Rees asked if the school board is still looking at two to three years. Mr. Bollhoefer replied that the last he heard the elementary school was scheduled to be opened in August of 2011, but that is subject to change at any school board meeting.

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

Commissioner Jowers asked if this is something the City wants to do right now or do we want to let this sit awhile for other reasons. Mr. Bollhoefer stated that he thinks it is probably best to do this right now. It does not lock the City into having to do anything else such as building a road. He believes that it is important for the school to meet their timeframes in dealing with the DCA. Mr. Wilson agreed and stated that they have already started their design process and all that is really left open is the funding.

Motion by Commissioner Buchanan to adopt Ordinance 09-23. Seconded by Commissioner Boulter and carried unanimously 4-0.

Commissioner Sharman arrived at 6:45 p.m.

4. **REGULAR BUSINESS**

A. **Recommendation to approve setting the proposed tax millage rate at 3.8546 for Fiscal Year 2009/2010**

City Manager Bollhoefer stated that this year the City Commission is being asked to set the initial millage rate at the roll back rate of 3.8546 which is higher than the current rate of 3.3866. This City Commission has the opportunity at the first and second budget hearings to lower it. If you set it at the lower amount now, you will not have the opportunity to raise it at a later hearing. This allows more options and flexibility as you go into the budget process. By setting this amount it does not mean that it will be your final millage. The rollback rate is theoretically the rate that you would have to bring in the same amount of revenues based on last year's property tax values. Staff recommends setting the initial millage at the roll back rate. He displayed a comparison to other local cities and stated that if the City were to use this rate, we would still be at the lower comparable rate when it comes to property tax rates in Orange County. As we go through this process, the City will get better data from all the cities within Orange County.

Mayor Rees asked if by the next meeting the referenced data would be included. Mr. Bollhoefer replied yes, he will definitely have it by the time we get into the budget hearings.

Motion by Commissioner Jowers to approve setting the proposed tax millage rate at 3.8546 for Fiscal Year 2009/2010. Seconded by Commissioner Buchanan and carried unanimously 5-0.

B. **City Manager's employment contract**

City Manager Bollhoefer stated that he has submitted a contract that is similar to the contract previously submitted. The difference is under the duties of the City Manager that he has changed to match what is currently stated in the Charter since the Charter has been amended since his last contract. He has also requested that the contract period be

changed from two years to three years. Other than the items mentioned, the contract is identical to the previous one and he recommended approval.

Commissioner Jowers indicated that he does not like long term contracts. He does not have a problem with a three year contract but he would like to see the agreement renewed annually. Commissioner Buchanan asked why. Commissioner Jowers explained that agreeing to a three year contract has the potential to take Mr. Bollhoefer into a whole new City Commission if the current officials do not seek re-election or are defeated. He believes the seated City Commission Mr. Bollhoefer is serving, should have the right to make decision on his contract annually. He feels this way about all contracts.

Mr. Bollhoefer stated that the reason the three-year term is commonly used with City Manager's is because it is such a risky job. The potential changes after an election could cause a City Manager to lose his job. A renewable contract every year is really no protection to a City Manager and he would lose that protection afforded by a two or three year contract. The Charter states that he could have up to a four year contract. For job security he would prefer the three year contract. Even with a three year contract the City Commission still has the right to terminate him at anytime but with a severance pay-out.

Commissioner Buchanan stated that he read in the contract that if there were reasons the City Commission thought that the City Manager was not doing his duty, then collectively they could remove him from his position at anytime. The length of the contract really does not have anything to do with it.

Mayor Rees stated that the City has the extra liability for the third year. City Attorney Ardaman explained that the difference is whether the City would have to pay the City Manager a severance package. If the contract expires, there is no entitlement to the severance package. By having a three year contract if the City Commission decides to terminate without cause during that three year period, the City would be obligated for the six month severance pay plus other benefits.

Commissioner Boulter stated that he has been on the City Commission for almost three years and he has not seen anything in Mr. Bollhoefer's performance that would preclude the City Commission from giving him a three year contract. If he were in Mr. Bollhoefer's position, he too would probably ask for the same thing. Based on what he has done for the City at this point, he does not see why the City Commission can't grant him his request.

Commissioner Buchanan noted that in the time Mr. Bollhoefer has been the City Manager, this city has grown in such a wonderful way.

Motion by Commissioner Buchanan to approve the City Manager's contract as submitted. Seconded by Commissioner Boulter.

Commissioner Sharman stated that Mr. Bollhoefer has done a good job and he will vote in favor of it now and in another three years unless he completely does a 180, which he does not see that happening.

Motion carried unanimously 5-0.

5. **MATTERS FROM CITIZENS**

Eric Ungerleider, 12892 Daughtery Drive, Winter Garden, Florida, and stated that he hosted a benefit car wash for Firefighter Omar Martinez, which was a huge success that raised approximately \$1,400 for his family. It would not have been possible had the Winter Garden Fire Department not participated. He stated that almost all the officers came by and spent a few hours washing cars as well as the Police officers participated.

Mayor Rees thanked Mr. Ungerleider for his time in hosting this event.

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

7. **MATTERS FROM CITY MANAGER**

• **Habitat for Humanity Local Project**

Mr. Bollhoefer stated that Habitat for Humanity is building a house at 519 Bethune Avenue, which is in unincorporated Orange County. They are requesting that the City waive certain fees. While the City cannot waive the impact fees, we could waive the meter set fee and the sewer tap fee.

Motion by Commissioner Jowers to approve waiving the meter setting and sewer tap fees for the Habitat for Humanity house to be located at 519 Bethune Avenue. Seconded by Commissioner Buchanan and carried unanimously 5-0.

A. **Discussion on golf carts**

City Manager Bollhoefer noted that this item has been pending for quite awhile. The State Legislators have passed an interesting law which is House Bill #405. He summarized that this law includes language that from midnight October 15th through midnight December 31st service delivery organizations with 10,000 employees or more will be allowed to drive golf carts on all residential streets within the City of Winter Garden. He stated that this minimizes any liability the City would have had in the past because the State in effect has said that these roads are now safe. They have also established speed limits that also imply which speed limits are safe.

City Attorney Ardaman stated that the Legislators have stepped in and given us some parameters that he thinks gives cities and counties a little better case for adopting safe road designations for operating golf carts. It does not eliminate the liability but it paves the way for the City to move forward as long as we do not exceed the parameters in the legislation.

Mr. Bollhoefer stated that if the City Commission desires to allow golf carts in residential communities, staff recommends following a plan that is similar to what was done in the City of Leesburg. First, create an ordinance establishing how golf carts are to be used and designate the accessible streets by resolution. He stated that he has distributed (*see attached Exhibit "A"*) some suggested elements for the ordinance. The Commission would need to designate a golf cart route or golf cart community by resolution. He spoke of adding a provision that sets the age limit for unlicensed drivers. Additional guidelines are provided in the handout and explained how the City Commission could move forward on this issue.

Commissioner Sharman stated that the City Manager and the City Attorney previously provided the City Commission with details before the House Bill came out and asked if some of their items may change as a result. Mr. Ardaman stated that he is not sure it will change the City's liability but it does lessen it. There is nothing in the legislation that absolutely takes away any of the liability points indicated; potential liability still exists.

Motion by Commissioner Jowers to authorize the City Attorney to draw up a golf cart ordinance for the City of Winter Garden. Seconded by Commissioner Boulter.

Mr. Bollhoefer asked if the Ordinance should be based on the suggested elements provided. Commissioner Boulter and Mayor Rees both responded yes. Mr. Bollhoefer stated that there was one item that was not discussed that may be difficult to do. He included a rule that unlicensed drivers must take a safety course to be certified, but he is not sure if the City can actually do that. There is no safety course offered but he can research this further and possibly include it.

Commissioner Buchanan stated that he definitely wants it known that he is vehemently opposed to this plan and thinks that from a liability, safety, and cost factor to the citizen's this would be a nuisance. He thinks this plan should only be allowed in gated communities. The amount it will cost the City to designate the routes with signage and everything else for the amount of people that will use it, is above what taxpayers should be paying. We have so many other things that the City could be doing. He would like the City Manager to give them some idea of the cost for the entire City rather than just approve it and then go out and spend a ton of money.

Mayor Rees stated that he shares Commissioner Buchanan's concern about the potential cost of the signage. The routes need approval on an area-by-area basis throughout the City in order to be able to limit the number of signs required. When establishing the resolution, he was looking at something more widespread in order to limit the number of signs needed and to limit the cost.

Commissioner Buchanan stated that the signs are only part of the cost there is also the burden added to the Police Department to determine if someone is licensed; whether they have the proper tags and lights if riding at night; and if someone is underage riding on the wrong street. He reiterated that he is opposed to this plan.

Mayor Rees stated that he views the idea as an opportunity for socializing and creating a cleaner environment; by getting people out of their cars and on bicycles or skateboards he sees it all as the same thing. He does feel that there needs to be some type of review of the cost, which will depend on how the ordinance is written and how the areas are designed.

Mr. Bollhoefer stated that he will give the City Commission some idea of the cost when the ordinance has been drafted.

Commissioner Boulter stated that he thinks that estimating the cost will be hard to do until they know what the routes will be.

Motion carried 4-1; opposed Commissioner Buchanan.

8. **MATTERS FROM MAYOR AND COMMISSIONERS**

Commissioner Buchanan stated that it was a good charity car wash.

Commissioner Boulter apologized for being late and stated that he owes it to the City and his constituency to be on time.

Commissioner Sharman stated that the 4th of July fireworks were great. He noted that in the past the City has done a better job at the four-way stop sign by having the Police officers direct traffic. This year they were letting the signs do the work. When the Police directed traffic, he was able to get out in no time at all. He stated that it is just a suggestion.

The meeting adjourned at 7:21 p.m.

APPROVED:

_____/S/_____
MAYOR JOHN REES

ATTEST:

_____/S/_____
City Clerk Kathy Golden, CMC