



**CITY COMMISSION AGENDA
CITY HALL COMMISSION CHAMBERS
300 W. Plant Street**

REGULAR MEETING

OCTOBER 8, 2009

6:30 P.M.

CALL TO ORDER

Determination of a Quorum

Invocation and Pledge of Allegiance

1. APPROVAL OF MINUTES

Joint Workshop with the Architectural Review and Historical Preservation Board September 17, 2009 and Budget Hearings / Regular Meeting September 21, 2009

2. PRESENTATIONS

Employee recognitions – City Manager Bollhoefer

3. FIRST READING OF PROPOSED ORDINANCES

A. **Ordinance 09-65:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 90, ARTICLE II OF THE WINTER GARDEN CODE OF ORDINANCES TO CONFORM WITH FEDERAL LAW AND NEWLY ENACTED FEDERAL EMERGENCY MANAGEMENT AGENCY REGULATIONS AND COMPLY WITH THE PARTICIPATING CRITERIA OF THE NATIONAL FLOOD INSURANCE PROGRAM AND FLOODPLAIN MANAGEMENT RELATED REQUIREMENTS OF THE STATE OF FLORIDA; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE **with the second reading and public hearing being scheduled for October 22, 2009** – Public Services Director Cochran

B. **Ordinance 09-66:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTION 78-51 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN TO PROVIDE AN EXEMPTION FOR THE PAYMENT OF WATER AND SEWER IMPACT FEES AND CONNECTION FEES FOR PREMISES OWNED AND OPERATED BY THE CITY OR PREMISES THAT ARE OTHERWISE PUBLICLY OWNED AND OPERATED AND DETERMINED TO SERVE A VALID PUBLIC PURPOSE AND BENEFIT THE COMMUNITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONTROL IN EVENT OF CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE **with the second reading and public hearing being scheduled for October 22, 2009** – City Manager Bollhoefer

4. SECOND READING AND PUBLIC HEARING OF PROPOSED ORDINANCE

A. **Ordinance 09-19:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING SECTIONS 118-890, 118-893 and 118-989 AND CREATING SECTION 118-829 and 118-830 OF CHAPTER 118 OF THE CODE OF

ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING TIME RESTRICTIONS FOR FILING AND OBTAINING APPROVAL OF FINAL DEVELOPMENT PLANS AND FINAL PLATS FOR PLANNED UNIT DEVELOPMENTS; PROVIDING A PROCESS FOR CITY COMMISSION APPROVAL OF TIME EXTENSIONS FOR PLANNED UNIT DEVELOPMENTS; PROVIDING FOR RETROACTIVE EXTENSION OF EXPIRED PLANNED UNIT DEVELOPMENTS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONTROL IN EVENT OF CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE – Planning Consultant Williams

5. **PUBLIC HEARING MATTER**

A. Interlocal Agreement with Orange County, Florida, to construct the Magic gymnasium in Winter Garden – City Manager Bollhoefer

6. **REGULAR BUSINESS**

A. Appointments to the Planning and Zoning Board for expiring terms of members in Districts 1, 2, 3, and 4 (*McKinney, Carris, Ramlackhan, and Dunn*) for a two-year term expiring September 1, 2011 – City Clerk Golden

7. **MATTERS FROM CITIZENS** (*Limited to 3 minutes per speaker*)

8. **MATTERS FROM CITY ATTORNEY** – Kurt Ardaman

9. **MATTERS FROM CITY MANAGER** – Mike Bollhoefer

A. Discussion on term limits for all city boards

10. **MATTERS FROM MAYOR AND COMMISSIONERS**

ADJOURN to budget hearings and regular meeting on Thursday, October 22, 2009 at 6:30 p.m. in City Hall Commission Chambers, 300 W. Plant Street, 1st floor

Please Note: In accordance with Florida Statutes 286.0105: Any person who desires to appeal any decision at this meeting will need a record of the proceedings and for this purpose may need to ensure that a verbatim record of the proceedings is made which includes the testimony and evidence upon which the appeal is based, which such written record is not provided by the City of Winter Garden.

Help for the hearing impaired is available through the Assistive Listening System. Receivers can be obtained at the meeting from the Information Technology Director.

Also, in accordance with Florida Statute 286.26: Persons with disabilities needing assistance to participate in any of these proceedings should contact the Office of the City Clerk, 300 W. Plant Street, Winter Garden, FL 34787, (407) 656-4111 x 2254 48 hours in advance of the meeting.

Ord. 09-65

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 90, ARTICLE II OF THE WINTER GARDEN CODE OF ORDINANCES TO CONFORM WITH FEDERAL LAW AND NEWLY ENACTED FEDERAL EMERGENCY MANAGEMENT AGENCY REGULATIONS AND COMPLY WITH THE PARTICIPATING CRITERIA OF THE NATIONAL FLOOD INSURANCE PROGRAM AND FLOODPLAIN MANAGEMENT RELATED REQUIREMENTS OF THE STATE OF FLORIDA; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Florida Constitution and the Legislature of the State of Florida have authorized and delegated in § 2(b), Article VIII of the Florida Constitution, and Chapter 166, Florida Statutes, the authority of local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry;

WHEREAS, The flood hazard areas of the City of Winter Garden are subject to periodic inundation, which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare;

WHEREAS, these flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, flood-proofed, or otherwise unprotected from flood damages;

WHEREAS, it is the purpose of this ordinance to (1) save lives whenever possible, promote the public health, safety and general welfare, and minimize public and private losses due to flood conditions in specific areas by provisions designed to restrict or prohibit uses which are dangerous to life, health, safety and property due to water or erosion hazards, which result in damaging increases in erosion or in flood heights and velocities; (2) require that uses vulnerable to floods including facilities which serve such uses be protected against flood damage throughout their intended life span; (3) assist in controlling the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of flood waters; (4) control filling, grading, dredging and other development which may increase erosion or flood damage; and (5) prevent or otherwise regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands; and

WHEREAS, the objectives of this ordinance are to (1) protect human life, health and to eliminate or minimize property damage; (2) minimize expenditures of public money for costly flood control projects; (3) minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public; (4) minimize prolonged business interruptions; (5) minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, roadways, and bridges and culverts located in floodplains; (6) help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and (7) assist in ensuring that potential homebuyers are notified that property is in a flood hazard area.

BE IT ENACTED BY THE CITY OF WINTER GARDEN:

SECTION I: That Article II of Chapter 90 of the Code of Ordinances, City of Winter Garden, Florida, and all sections and subsections thereunder, is hereby REPEALED in its entirety and that the following new Article II, Chapter 90 of the Code of Ordinances, City of Winter Garden be adopted (underlined text indicates text of the New Article II, Chapter 90 of the Code of Ordinances, City of Winter Garden):

ARTICLE II, FLOOD DAMAGE PREVENTION.

DIVISION 1. GENERALLY

Sec. 90-26. Definitions.

Unless specifically defined below, words or phrases used in this Article shall be interpreted so as to give them the meaning they have in common usage and to give this Article its most reasonable application.

Accessory structure (i.e., Appurtenant structure) means a structure that is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Accessory structures should constitute a minimal investment, may not be used for human habitation, and be designed to have minimal flood damage potential. Examples of accessory structures are detached garages, carports, storage sheds, pole barns, and hay sheds.

Appeal means a request for a review of the Floodplain Administrator's interpretation of any provision of this Article or a request for a variance.

Area of shallow flooding means a designated AO or AH Zone on the community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard is the land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. This term is synonymous with the phrase "special flood hazard area."

Base flood means the flood having a one percent chance of being equaled or exceeded in any given year (also called the "100-year flood" and the "regulatory flood"). Base flood is the term used throughout this Article.

Base Flood Elevation means the water-surface elevation associated with the base flood.

Basement means any portion of a building having its floor sub-grade (below ground level) on all sides.

Building – see Structure.

Datum A reference surface used to ensure that all elevation records are properly related. The current national datum is the National Geodetic Vertical Datum (NGVD) of 1929, which is expressed in relation to mean sea level, or the North American Vertical Datum (NAVD) of 1988.

Development means any man-made change to improved or unimproved real estate, including, but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavating, drilling operations, or storage of materials or equipment.

Elevated building means a non-basement building built to have the lowest floor elevated above the ground level by foundation walls, posts, piers, columns, pilings, or shear walls.

Encroachment means the advance or infringement of uses, plant growth, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

Existing Construction means, for the purposes of floodplain management, structures for which “the start of construction” commenced before September 29, 1978. Existing construction, means for the purposes of determining rates structures for which the “start of construction” commenced before March 1978. This term may also be referred to as “existing structures”.

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before September 29, 1978.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Flood or flooding means:

- (a) A general and temporary condition of partial or complete inundation of normally dry land areas resulting from:
 - (1) The overflow of inland or tidal waters.
 - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
 - (3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a) (2) of this definition and are akin to a river of liquid and flowing mud on the surface of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

- (b) The collapse or subsidence of land along a shore of a lake or other body of water as the result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm or by an unanticipated force of nature, such as a flash flood or an abnormal tidal surge or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a) (1) of this definition.

Flood Boundary and Floodway Map (FBFM) means the official map of the community on which the Federal Emergency Management Agency (FEMA) has delineated the areas of special flood hazard and regulatory floodways.

Flood Hazard Boundary Map (FHBM) means an official map of the community, issued by FEMA, where the boundaries of the areas of special flood hazard have been identified as only Approximate Zone A.

Flood Insurance Rate Map (FIRM) means an official map of the community, issued by FEMA, which delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

Flood Insurance Study (FIS) means the official hydrology and hydraulics report provided by FEMA. The study contains an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (i.e., mudflow) and other flood-related erosion hazards. The study may also contain flood profiles, as well as the FIRM, FHBM (where applicable), and other related data and information.

Floodplain means any land area susceptible to being inundated by water from any source (see definition of “flooding”).

Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including but not limited to emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

Floodplain Administrator is the individual appointed to administer and enforce the floodplain management regulations of the community.

Floodplain management regulations means this Article and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances (such as floodplain ordinance, grading ordinance, and erosion control ordinance), and other applications of police power which control development in flood-prone areas. This term describes Federal, State of Florida, or local regulations in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

Floodproofing means any combination of structural and non-structural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures and their contents.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Floodway fringe means that area of the one-percent (base or 100-year) floodplain on either side of the regulatory floodway.

Freeboard means the additional height, usually expressed as a factor of safety in feet, above a flood level for purposes of floodplain management. Freeboard tends to compensate for many unknown factors, such as wave action, blockage of bridge or culvert openings, and hydrological effect of urbanization of the watershed, which could contribute to flood heights greater than the heights calculated for a selected frequency flood and floodway conditions.

Free of Obstruction means any type of lower area enclosure or other construction element will not obstruct the flow of velocity water and wave action beneath the lowest horizontal structural member of the lowest floor of an elevated building during a base flood event. This requirement applies to the structures in velocity zones (V-Zones).

Functionally dependent use means a use that cannot be used for its intended purpose unless it is located or carried out in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

Hardship as related to variances from this Article means the exceptional difficulty associated with the land that would result from a failure to grant the requested variance. The community requires that the variance is exceptional, unusual, and peculiar to the property involved. Mere economic or financial hardship alone is not exceptional. Inconvenience, aesthetic considerations, physical handicaps, personal preferences, or the disapproval of one's neighbors likewise cannot, as a rule, qualify as an exceptional hardship. All of these problems can be resolved through other means without granting a variance, even if the alternative is more expensive, or requires the property owner to build elsewhere or put the parcel to a different use than originally intended.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to the start of construction, next to the proposed walls of a structure.

Historic Structure means any structure that is:

- a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register:

- b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic or a district preliminarily determined by the Secretary to qualify as a registered historic district:
- c) Individually listed on the Florida inventory of historic places, which has been approved by the Secretary of the Interior; or
- d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - 1. By the approved Florida program as determined by the Secretary of the Interior, or
 - 2. Directly by the Secretary of the Interior.

Lowest adjacent grade means the lowest elevation, after the completion of construction, of the ground, sidewalk, patio, deck support, or basement entryway immediately next to the structure.

Lowest floor means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, used solely for parking of vehicles, building access, or storage, in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design standards of this Article.

Manufactured home means a building, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term also includes park trailers, travel trailers, and similar transportable structures placed on a site for 180 consecutive days or longer and intended to be improved property.

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Market value means the building value, which is the property value excluding the land value and that of the detached accessory structures and other improvements on site (as agreed to between a willing buyer and seller) as established by what the local real estate market will bear. Market value can be established by an independent certified appraisal (other than a limited or curbside appraisal, or one based on income approach), Actual Cash Value (replacement cost depreciated for age and quality of construction of building), or adjusted tax-assessed values.

Mean Sea Level means the average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the floodplain. For purposes of this Article, the term is synonymous with National Geodetic Vertical Datum (NGVD) of 1929, or North American Vertical Datum (NAVD) of 1988.

National Geodetic Vertical Datum (NGVD) of 1929 means a vertical control used as a reference for establishing varying elevations within the floodplain.

New Construction means, for floodplain management purposes, any structure for which the “start of construction” commenced on or after September 29, 1978. The term also includes any subsequent improvements to such structures. For flood insurance rates, structures for which the start of construction commenced on or after March 1978, and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of the first floodplain management code, ordinance or standard.

North American Vertical Datum (NAVD) of 1988 means a vertical control used as a reference for establishing varying elevations within the floodplain.

Principally above ground means that at least 51 percent of the actual cash value of the structure is above ground.

Program deficiency means a defect in the community’s floodplain management regulations or administrative procedures that impairs effective implementation of those floodplain management regulations or of the standards required by the National Flood Insurance Program.

Public safety and nuisance means anything which is injurious to safety or health of the entire community or a neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

Reasonably safe from flooding means base flood waters will not inundate the land or damage structures to be removed from the SFHA and that any subsurface waters related to the base flood will not damage existing or proposed buildings.

Recreational vehicle means a vehicle that is:

- a) Built on a single chassis;
- b) 400 square feet or less when measured at the largest horizontal projection;
- c) Designed to be self-propelled or permanently towable by a light duty truck; and
- d) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

Regulatory floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a designated height.

Remedy a deficiency or violation means to bring the regulation, procedure, structure or other development into compliance with State of Florida, Federal, or local floodplain management regulations; or if this is not possible, to reduce the impacts of its noncompliance. Ways the impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of this Article or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

Riverine means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Sand dune means naturally occurring accumulations of sand in ridges or mounds landward of the beach.

Shallow flooding – see area of shallow flooding.

Special flood hazard area – see area of special flood hazard.

Start of construction means, for other than new construction and substantial improvements under the Coastal Barrier Resources Act P. L. 97-348, includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, or improvement was within 180 days of the permit date. The actual start means the first placement of permanent construction of a building (including a manufactured home) on a site, such as the pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main building. For substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

Storm cellar means a place below grade used to accommodate occupants of the structure and emergency supplies as a means of temporary shelter against severe tornadoes or similar windstorm activity.

Structure means, for floodplain management purposes, a walled and roofed building, including gas or liquid storage tank that is principally above ground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any reconstruction, rehabilitation, addition, or other improvement of a structure, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure before the “start of construction” of the improvement. This term includes structures that have incurred “substantial damage” regardless of the actual repair work performed. This term does not, however, include any repair or improvement of a structure to correct existing violations of State of Florida or local health, sanitary, or safety code specifications, which have been identified by the local code enforcement official prior to the application for permit for improvement, and which are the minimum necessary to assure safe living conditions. This term does not include any alteration of a historic structure, provided that the alteration will not preclude the structure’s continued designation as a historic structure.

Substantially improved existing manufactured home parks or subdivisions is where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

Variance is a grant of relief from the requirements of this Article.

Violation means the failure of a structure or other development to be fully compliant with the requirements of this Article. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this Article is presumed to be in violation until such time as that documentation is provided.

Watercourse means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Water surface elevation means the height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929 or the North American Vertical Datum (NAVD) of 1988, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

A.

Sec. 90-27 – Lands to which this Article applies.

This Article shall apply to all areas of special flood hazard within the jurisdiction of the City.

Sec. 90-28. Basis for establishing areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in the Flood Insurance Study (FIS) for Orange County, Florida and participating areas, dated September 25, 2009, with the accompanying maps and other supporting data, and any subsequent revisions thereto, are adopted by reference and declared to be a part of this Article. The Flood Insurance Study and Flood Insurance Rate Map shall be kept on file at City Hall.

Sec. 90-29. Designation of Floodplain Administrator.

The City Commission of the City of Winter Garden hereby appoints the City Manager or his or her designee to administer and implement the provisions of this Article and such person shall herein be referred to as the Floodplain Administrator.

Sec. 90-30. Establishment of development permit.

A development permit shall be required in conformance with the provisions of this Article prior to the commencement of any development activities.

Sec. 90-31. Compliance.

No structure or land shall hereafter be located, extended, converted or structurally altered without full compliance with the terms of this Article and other applicable regulations.

Sec. 90-32. Abrogation and greater restrictions.

This Article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this Article and another provision conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

Sec. 90-33. Interpretation.

In the interpretation and application of this Article all provisions shall be:

- (1) Considered minimum requirements;
- (2) Liberally construed in favor of the governing body; and
- (3) Deemed neither to limit nor repeal any other powers granted or otherwise reserved to the City pursuant to Florida Statutes and the Florida Constitution.

Sec. 90-34. Warning and Disclaimer of Liability.

The degree of flood protection required by this Article is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This Article does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This Article shall not create liability on the part of the City or by any officer or employee thereof for any flood damages that result from reliance on this Article or any administrative decision lawfully made thereunder.

Sec. 90-35. Penalties for Violation.

Violation of the provisions of this Article or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall be punishable for a non-criminal violation pursuant to

Section 1-15 of this Code. Any person who violates this Article or fails to comply with any of its requirements shall, upon adjudication therefore, be fined not more than \$500, and in addition, shall pay all costs and expenses, including attorney's fees and costs, involved in the case. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Floodplain Administrator from taking such other lawful actions as are necessary to prevent or remedy any violation.

§§ 90-36 through 90-59. Reserved.

DIVISION 2. ADMINISTRATION

Sec. 90-60. Development Permit Procedures.

Application for a Development Permit shall be made to the Floodplain Administrator on forms furnished by him or her prior to any development activities, and may include, but not be limited to, the following plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing and proposed structures, earthen fill, storage of materials or equipment, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

(1) Application Stage:

- a) Elevation in relation to mean sea level of the proposed lowest floor (including basement) of all buildings;
- b) Elevation in relation to mean sea level to which any non-residential building will be flood-proofed;
- c) Certificate from a registered professional engineer or architect that the non-residential flood-proofed building will meet the flood-proofing criteria in Sections 90-60(2) and 90-71(2) of this Code;
- d) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development; and
- e) Elevation in relation to mean sea level of the bottom of the lowest horizontal structural member of the lowest floor and provide a certification from a registered engineer or architect indicating that they have developed and/or reviewed the structural designs, specifications and plans of the construction and certified that are in accordance with accepted standards of practice in Coastal High Hazard Areas.

(2) Construction Stage:

Upon placement of the lowest floor, or flood-proofing by whatever construction means, or bottom of the lowest horizontal structural member it shall be the duty of the permit

holder to submit to the Floodplain Administrator a certification of the NGVD or NAVD elevation of the lowest floor or flood-protected elevation, or bottom of the lowest horizontal structural member of the lowest floor as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When flood proofing is utilized for a particular building said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work undertaken prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the lowest floor and flood-proofing elevation survey data submitted. The permit holder immediately and prior to further progressive work being permitted to proceed shall correct violations detected by such review. Failure to submit the survey or failure to make said corrections required hereby shall be cause to issue a stop-work order for the project.

Sec. 90-61. Duties and Responsibilities of the Floodplain Administrator.

Duties of the Floodplain Administrator shall include, but are not be limited to:

- (1) Review permits to determine whether sites are reasonably safe from flooding;
- (2) Review all development permits to determine whether the permit requirements of this Article have been satisfied;
- (3) Require copies of additional Federal, State of Florida, or local permits, especially as they relate to Chapters 161.053; 320.8249; 320.8359; 373.036; 380.05; 381.0065; and 553, Part IV, Florida Statutes, be submitted along with the development permit application and maintain such permits on file with the development permit;
- (4) Notify adjacent communities, the Florida Department of Community Affairs – Division of Emergency Management – NFIP Coordinating Office, the Saint John's River Water Management District, the Federal Emergency Management Agency, and other Federal and/or State of Florida agencies with statutory or regulatory authority prior to any alteration or relocation of a watercourse;
- (5) Assure that the flood-carrying capacity within the altered or relocated portion of any watercourse is reasonably maintained;
- (6) Verify and record the actual elevation (in relation to mean sea level) of the lowest floor (A-Zones) or bottom of the lowest horizontal structural member of the lowest floor (V-Zones) of all new and substantially improved buildings, in accordance with Sections 90-71(1) and (2) and 90-72(3) of this Code;
- (7) Verify and record the actual elevation (in relation to mean sea level) to which the new and substantially improved buildings have been flood-protected, in accordance with Section 90-71(2) of this Code;

- (8) Review certified plans and specifications for compliance. When flood-proofing is utilized for a particular building, certification shall be obtained from a registered engineer or architect certifying that all areas of the building, together with attendant utilities and sanitary facilities, below the required elevation are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy in compliance with Section 90-71(2) of this Code;
- (9) Interpret the exact location of boundaries of the areas of special flood hazard. When there appears to be a conflict between a mapped boundary and actual field conditions, the Floodplain Administrator shall make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this Article;
- (10) When base flood elevation data and floodway data have not been provided in accordance with Section 90-28, the Floodplain Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State of Florida, or any other source, in order to administer the provisions contained in Division 3 of this Article;
- (11) Coordinate all change requests to the FIS, FIRM and FBFM with the requester, State of Florida, and FEMA.
- (12) Where Base Flood Elevation is utilized, obtain and maintain records of lowest floor and floodproofing elevations for new construction and substantial improvements in accordance with Section 90-71(1) and (2) of this Code.

§§ 90-62 through 90-69 Reserved.

DIVISION 3. PROVISIONS FOR FLOOD HAZARD REDUCTION

Sec. 90-70. General Standards.

In all areas of special flood hazard, all development sites including new construction and substantial improvements shall be reasonably safe from flooding, and meet the following provisions:

- (1) New construction and substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse, and lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- (2) Manufactured homes shall be anchored to prevent flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This standard shall be in addition to and consistent with applicable State of Florida requirements for resisting wind forces;

- (3) New construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
- (4) New construction and substantial improvements shall be constructed by methods and practices that minimize flood damage;
- (5) Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities, including duct work, shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
- (6) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood waters into the systems;
- (7) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharges from the systems into flood waters;
- (8) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding;
- (9) Any alteration, repair, reconstruction or improvements to a building that is in compliance with the provisions of this Article shall meet the requirements of “new construction” as contained in this Article;
- (10) Any alteration, repair, reconstruction or improvements to a building that is not in compliance with the provisions of this Article, shall be undertaken only if said non-conformity is not furthered, extended, or replaced;
- (11) All applicable additional Federal, State of Florida, and local permits shall be obtained and submitted to the Floodplain Administrator along with the application for development permit. Copies of such permits shall be maintained on file with the development permit. State of Florida permits may include, but not be limited to, those permits issued by the following agencies:
 - (a) Saint Johns River Water Management District (“SJRWMD”): in accordance with Chapter 373.036(2)(a), Florida Statutes, concerning Flood Protection and Floodplain Management;
 - (b) Department of Community Affairs: in accordance with Chapter 380.05, Florida Statutes, concerning Areas of Critical State Concern, and Chapter 553, Part IV Florida Statutes, Florida Building Code; and
 - (c) Department of Health: in accordance with Chapter 381.0065, Florida Statutes, pertaining to Onsite Sewage Treatment and Disposal Systems.

(12) Standards for Subdivision Proposals and other new Proposed Development (including manufactured homes):

- (a) Such proposals shall be consistent with the need to minimize flood damage;
- (b) Such shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize or eliminate flood damage; and
- (c) Such proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(13) When proposed new construction and substantial improvements are partially located in an area of special flood hazard, the entire structure shall meet the standards for new construction.

(14) When proposed new construction and substantial improvements are located in multiple flood hazard risk zones or in a flood hazard risk zone with multiple base flood elevations, the entire structure shall meet the standards for the most hazardous flood hazard risk zone and the highest base flood elevation.

Sec. 90-71. Specific standards.

In all A-Zones where base flood elevation data have been provided (Zones AE, A1-30, A (with base flood elevation), and AH), as set forth in Section 90-28 of this Code, the following provisions, in addition to those set forth in Section 90-70 shall apply:

- (1) *Residential Construction.* All new construction and substantial improvement of any residential building (including manufactured home) shall have the lowest floor, including basement, elevated to no lower than one foot or above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, there must be a minimum of two openings on different sides of each enclosed area sufficient to facilitate automatic equalization of flood hydrostatic forces in accordance with standards of subsection (3) herein.
- (2) *Non-Residential Construction.* All new construction and substantial improvement of any commercial, industrial, or non-residential building (including manufactured home) shall have the lowest floor, including basement, elevated to no lower than one foot above the base flood elevation. All buildings located in A-Zones may be flood-proofed, in lieu of being elevated, provided that all areas of the building components, together with attendant utilities and sanitary facilities, below the base flood elevation plus one foot are water tight with walls substantially impermeable to the passage of water, and use structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied using the FEMA Floodproofing

Certificate. Such certification along with the corresponding engineering data, and the operational and maintenance plans shall be provided to the Floodplain Administrator.

(3) Enclosures below the Lowest Floor. New construction and substantial improvements that include fully enclosed areas formed by foundation and other exterior walls below the lowest floor shall be designed to preclude finished living space and designed to allow for the entry and exit of floodwaters to automatically equalize hydrostatic flood forces on exterior walls.

(a) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet or exceed the following minimum criteria:

(i) Provide a minimum of two openings on different sides of each enclosed area having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;

(ii) The bottom of all openings shall be no higher than one foot above adjacent interior grade, which must be equal to or higher in elevation than the adjacent exterior grade; and

(iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they provide the required net area of the openings and permit the automatic flow of floodwaters in both directions.

(b) Fully enclosed areas below the lowest floor shall solely be used for parking of vehicles, storage, and building access. Access to the enclosed area shall be minimum necessary to allow for parking of vehicles (garage door), limited storage of maintenance equipment used in connection with the premises (standard exterior door), or entry to the living area (stairway or elevator); and

(c) The interior portion of such enclosed area shall not be finished or partitioned into separate rooms.

(4) Standards for Manufactured Homes and Recreational Vehicles

(a) All manufactured homes that are placed, or substantially improved within Zones A1-30, AH, and AE, on sites (i) outside of an existing manufactured home park or subdivision, (ii) in a new manufactured home park or subdivision, (iii) in an expansion to an existing manufactured home park or subdivision, or (iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as the result of a flood, the lowest floor be elevated on a permanent foundation to no lower than one foot above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

- (b) All manufactured homes to be placed or substantially improved in an existing manufactured home park or subdivision that are not subject to the provisions of paragraph 4 (a) of this Section, must be elevated so that either:
- (i) The lowest floor of the manufactured home is elevated to no lower than one foot above the base flood elevation, or
 - (ii) The manufactured home chassis is supported by reinforced piers or other foundation elements of at least an equivalent strength that are no less than 48 inches in height above the grade and securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
- (c) Placement of manufactured homes is prohibited within the regulatory floodway, except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of Section 90-70(2), the elevation standards of Section 90-71(1) and (2), and the encroachment standard of Section 90-71(7)(a), are met.
- (d) All recreational vehicles must meet one of the following conditions:
- (i) Be on the site for fewer than 180 consecutive days,
 - (ii) Be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions), or
 - (iii) Meet all the requirements for new construction, including anchoring and elevation standards in accordance with Section 90-71(4)(a) and (b).
- (5) Adequate drainage paths around structures shall be provided on slopes to guide water away from structures within Zone AH.
- (6) Standards for waterways with established Base Flood Elevations, but without Regulatory Floodways
- Located within the areas of special flood hazard established in Section 90-28 where streams exist for which base flood elevation data has been provided by the Federal Emergency Management Agency without the delineation of the regulatory floodway (Zones AE and A1-30), the following provisions, in addition to those set forth in Section 90-71(1) through (5), shall apply:
- (a) Until a regulatory floodway is designated, no new construction, substantial improvements, or other development including fill shall be permitted within the

areas of special flood hazard, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development will not increase the water surface elevation of the base flood more than one foot at any point within the community.

(b) Development activities which increase the water surface elevation of the base flood by more than one foot may be allowed, provided that the developer or applicant first applies – with the community’s endorsement – for a conditional FIRM revision, and receives the approval of the Federal Emergency Management Agency (FEMA).

(7) Standards for waterways with established Base Flood Elevations and Floodways. Located within areas of special flood hazard established in Section 90-28 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the high velocity of flood waters which carry debris, potential projectiles and have significant erosion potential, the following provisions, in addition to those set forth in Section 90-71(1) through (5), shall apply:

(a) Prohibit encroachments, including fill, new construction, substantial improvements and other developments within the regulatory floodway unless certification (with supporting technical data) by a registered professional engineer is provided through hydrologic and hydraulic analyses performed in accordance with standard engineering practice demonstrating that encroachments would not result in any increase in flood levels during occurrence of the base flood discharge.

(b) Placement of manufactured homes is prohibited within the regulatory floodway, except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision provided the anchoring standards of Section 90-70(2), the elevation standards of Section 90-71(1) and (2), and the encroachment standard of Section 90-71(7)(a), are met.

(c) Development activities including new construction and substantial improvements within the regulatory floodway that increase the base flood elevation may be allowed, provided that the developer or applicant first applies – with the community’s endorsement – for a conditional FIRM revision, and receives the approval of FEMA.

(d) When fill is proposed, in accordance with the permit issued by the Florida Department of Health, within the regulatory floodway, the development permit shall be issued only upon demonstration by appropriate engineering analyses that the proposed fill will not increase the water surface elevation of the base flood in accordance with Section 90-71(7)(a).

Sec. 90-72. Specific Standards for A-Zones without base flood elevations and regulatory floodways.

Located within the areas of special flood hazard established in Section 90-28 where there exist A Zones for which no base flood elevation data and regulatory floodway have been provided or designated by the Federal Emergency Management Agency, the following provisions shall apply:

- (1) Require standards of Section 90-70.
- (2) Require that all new subdivision proposals and other proposed developments (including proposals for manufactured home parks and subdivisions) greater than 50 lots or 5 acres, whichever is the lesser, include within such proposals base flood elevation data. Standards set forth in Section 90-71 shall apply.
- (3) The Floodplain Administrator shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from a Federal, State of Florida, or any other source, in order to administer the provisions of this Article. When such data is utilized, provisions of Section 90-71 shall apply. The Floodplain Administrator shall:
 - a) Obtain the elevation (in relation to the mean sea level) of the lowest floor (including the basement) of all new and substantially improved structures,
 - b) Obtain, if the structure has been floodproofed in accordance with the requirements of Section 90-71(2), the elevation in relation to the mean sea level to which the structure has been floodproofed, and
 - c) Maintain a record of all such information.
- (4) Notify, in riverine situations, adjacent communities, the Florida Department of Community Affairs – NFIP Coordinating Office, and the Saint Johns River Water Management District prior to any alteration or relocation of a watercourse, and submit copies of such notifications to FEMA.
- (5) Assure that the flood carrying capacity within the altered or relocated portion of any watercourse is maintained.
- (6) Manufactured homes shall be installed using methods and practices that minimize flood damage. They must be elevated and anchored to prevent flotation, collapse, and lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to applicable State of Florida and local anchoring requirements for resisting wind forces.
- (7) When the data is not available from any source, in accordance with standard set forth in Section 90-72(2) of this Section, the lowest floor of the structure shall be elevated to no

lower than three feet above the highest adjacent grade. Standards set forth in Section 90-71 shall apply.

Sec. 90-73. Standards for AO-Zones.

Located within the areas of special flood hazard established in Section 90-28, are areas designated as shallow flooding areas. These areas have flood hazards associated with base flood depths of one to three feet, where a clearly defined channel does not exist and the path of flooding is unpredictable and indeterminate; therefore, the following provisions, in addition to Section 90-70, shall apply:

- (1) All new construction and substantial improvements of residential structures in all AO Zones shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Flood Insurance Rate Map plus one foot. If no flood depth number is specified, the lowest floor, including basement, shall be elevated to no less than three feet above the highest adjacent grade.
- (2) All new construction and substantial improvements of non-residential structures shall:
 - (a) Have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the Flood Insurance Rate Map. If no flood depth number is specified, the lowest floor, including basement, shall be elevated to at least three feet above the highest adjacent grade, or
 - (b) Together with attendant utility and sanitary facilities be completely floodproofed to no less than one foot above that level to meet the floodproofing standard specified in Section 90-73(2)(a).
- (3) Adequate drainage paths around structures shall be provided on slopes to guide water away from structures.
- (4) Fully enclosed areas below the lowest floor that are subject to flooding shall meet the non-elevation design requirements of Section 90-71.

§§ 90-74 through 90-79, Reserved.

DIVISION 4. VARIANCE PROCEDURES.

Sec. 90-80. Designation of Variance and Appeals Board.

The planning and zoning board as established by the City Commission shall hear and decide appeals and requests for variances from the requirements of this Article.

Sec. 90-81. Duties of Variance and Appeals Board.

The board shall hear and decide appeals when it is alleged an error in any requirement, decision, or determination is made by the Floodplain Administrator in the enforcement or administration of this Article. Any person aggrieved by the decision of the board may appeal such decision to the Circuit Court.

Sec. 90-82. Variance procedures.

In acting upon such applications, the board shall consider all technical evaluations, all relevant factors, standards specified in other sections of this Article, and the following:

- (1) The danger that materials may be swept onto other lands to the injury of others;
- (2) The danger of life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (4) The importance of the services provided by the proposed facility to the community;
- (5) The necessity to the facility of a waterfront location, where applicable;
- (6) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
- (7) The compatibility of the proposed use with existing and anticipated development;
- (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (10) The expected heights, velocity, duration, rate of rise, and sediment of transport of the flood waters and the effects of wave action, if applicable, expected at the site; and
- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

Sec. 90-83. Conditions for Variances.

- (1) Variances shall only be issued when there is:
 - a) A showing of good and sufficient cause;

- b) A determination that failure to grant the variance would result in exceptional hardship; and
 - c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- (2) Variances shall not be issued absent a determination that the variance is the minimum necessary deviation from the requirements of this Article.
 - (3) Variances shall not be granted after-the-fact.
 - (4) The Floodplain Administrator shall maintain the records of all variance actions, including justification for their issuance or denial, and report such variances in the community's NFIP Biennial Report or upon request to FEMA and the State of Florida, Department of Community Affairs, NFIP Coordinating Office.

Sec. 90-84. Variance Notification.

Any applicant to whom a variance is granted shall be given written notice over the signature of a community official that:

- (1) The issuance of a variance to construct a structure below the base flood elevation will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and
- (2) Such construction below the base flood level increases risks to life and property.

A copy of the notice shall be recorded by the Floodplain Administrator in the Office of the Clerk of Court and shall be recorded in a manner so that it appears in the chain of title of the affected parcel of land.

Sec. 90-85. Historic structures.

Variances may be issued for the repair or rehabilitation of "historic" structures – meeting the definition in this Article – upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a "historic" structure.

Sec. 90-86. Structures in regulatory floodway.

Variances shall not be issued within any designated floodway if any impact in flood conditions or increase in flood levels during the base flood discharge would result.

SECTION II. INCONSISTENCY. If any Ordinances or parts of Ordinances are in conflict herewith, this Ordinance shall control to the extent of the conflict.

SECTION III. SEVERABILITY. If any portion of this Ordinance is determined to void, unconstitutional, or invalid by a court of competent jurisdiction, the remainder of this Ordinance shall remain in full force and effect.

SECTION IV. CODIFICATION. That Section I of this Ordinance shall be codified and made a part of the City of Winter Garden Code of Ordinances; that the Sections of this Ordinance may be renumbered or relettered to accomplish such intention; the word “*Ordinance*” may be changed to “*Section*”, “*Article*”, or other appropriate word.

SECTION V. This Ordinance shall become effective upon approval by the City Commission at its second reading.

FIRST READING: _____ October 8 _____, 2009.

SECOND READING AND PUBLIC HEARING: _____ October 22 _____, 2009.

APPROVED:

John Rees, Mayor/Commissioner

ATTEST:

Kathy Golden, City Clerk

ORDINANCE 09-66

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTION 78-51 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN TO PROVIDE AN EXEMPTION FOR THE PAYMENT OF WATER AND SEWER IMPACT FEES AND CONNECTION FEES FOR PREMISES OWNED AND OPERATED BY THE CITY OR PREMISES THAT ARE OTHERWISE PUBLICLY OWNED AND OPERATED AND DETERMINED TO SERVE A VALID PUBLIC PURPOSE AND BENEFIT THE COMMUNITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONTROL IN EVENT OF CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA: THAT THE CODE OF ORDINANCES, CITY OF WINTER GARDEN, FLORIDA IS HEREBY AMENDED BY ADDING A SUBSECTION TO BE NUMBERED § 78-51(h), WHICH SUBSECTION READS AS FOLLOWS:

Section 1: **Authority.** The City of Winter Garden has the authority to adopt this Ordinance pursuant to Article VIII, § 2(b) of the Constitution of the State of Florida, and Chapter 166, Florida Statutes.

Section 2: **Adoption.** Section 78-51(h) of the Code of Ordinances, City of Winter Garden, shall hereby be added to Section 78-51 and reads as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

(h) Exemption for Public Buildings. The following Premises shall be exempt from the requirement under this section to pay water connection fees, water impact fees, sewer connection fees, and sewer impact fees:

- (1) Premises which are owned and operated by the City; and
- (2) Publicly owned and operated parks and recreation facilities.

SECTION 3: Codification: Section 2 of this Ordinance shall be codified and made part of the City of Winter Garden Code of Ordinances.

SECTION 4: Control: In the event of a conflict or conflicts between this ordinance and other ordinances, this ordinance controls.

SECTION 5: Severability: It is the intent of the City Commission of the City of Winter Garden, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 6: Effective Date: This Ordinance shall become effective upon adoption at its second reading.

FIRST READING: October 8, 2009.

SECOND READING AND PUBLIC HEARING: _____, 2009.

ADOPTED this _____ day of _____, 2009, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

JOHN REES, Mayor/Commissioner

ATTEST:

KATHY GOLDEN, City Clerk

ORDINANCE 09-19

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING SECTIONS 118-890, 118-893, 118-889 and 118-989 AND CREATING SECTION 118-829 and 118-830 OF CHAPTER 118 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING TIME RESTRICTIONS FOR FILING AND OBTAINING APPROVAL OF FINAL DEVELOPMENT PLANS AND FINAL PLATS FOR PLANNED UNIT DEVELOPMENTS; PROVIDING A PROCESS FOR CITY COMMISSION APPROVAL OF TIME EXTENSIONS FOR PLANNED UNIT DEVELOPMENTS; PROVIDING FOR RETROACTIVE EXTENSION OF EXPIRED PLANNED UNIT DEVELOPMENTS; PROVIDING FOR CODIFICATION; PROVIDING FOR CONTROL IN EVENT OF CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ENACTED BY THE CITY OF WINTER GARDEN, FLORIDA, AS FOLLOWS:

SECTION 1: Authority. The City of Winter Garden has the authority to adopt this Ordinance pursuant to Article VIII of the Constitution of the State of Florida and Chapter 166, Florida Statutes.

SECTION 2: Adoption. Section 118-890 of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 118-890. Final development plan.

(a) Time limits for submission. Unless otherwise specified by the PUD zoning ordinance, The developer shall have ~~one~~ five years from the ~~approval~~ adoption date of the PUD zoning ordinance preliminary plat or preliminary development plan, whichever is later, in which to: file

- i. file and obtain approval of a final plat of a residential planned unit development, or any portion thereof; or
- ii. file and obtain approval of a final development plan of a residential planned unit development, or a portion thereof and commence construction contemplated by such plan. Site clearing and tree removal activities do not constitute commencement of construction for the purposes of this subsection.

Residential planned unit developments adopted prior to September 30, 2009 are hereby granted an extension to allow five years from September 30, 2009 in order to satisfy the conditions under subsection i. or ii. above.

(b) Site plan. If not platted, a site plan must be presented in accordance with division 2 of article II of this chapter.

(c) Plat. If platted a plat must be presented which complies with chapter 110.

(d) Additional exhibits. Additional exhibits required for the final development plan may include the following:

(1) Development schedule. The development schedule shall contain the following information for the residential planned unit development or the portion thereof which is the subject of the final development plan:

- a. The order of construction of the proposed stages delineated in the development plan.
- b. The proposed date for the beginning of construction on the stages.
- c. The proposed date for the completion of the stages.
- d. The proposed schedule for the construction and improvement of common open space within the stages, including any complementary buildings.

(2) Deed restriction. Deed restriction proposals to preserve the character of the common open space. The deed restrictions shall include a prohibition against partition by any residential property owner.

(3) Association or nonprofit corporation. If the developer elects this method of administering common open space, the proposed bylaws of the association or the certificate of incorporation and the corporate bylaws of the nonprofit corporation shall be submitted for approval by the city attorney.

(4) Instruments. Instruments dedicating all rights-of-way, easements and other public lands shown on the final development plan from all persons having any interest in the land and instruments indicating that all necessary off-site easements or dedications have been acquired. In lieu of originals, certified true copies will be accepted if the recording information from the public records of the county is included thereon.

(5) Bill of sale. A bill of sale, conveying to the city water and sewer utility lines, mains, lift stations, and other personal property required to be installed by this Code.

(6) Title opinion. A title opinion from an attorney showing the status of the title to the site encompassed by the final development plan and all liens, encumbrances and defects, if any.

(7) Tax receipts. Paid receipts from the city and county indicating taxes have been paid in full up to and including the current period.

(e) Procedure.

(1) A fee established by the city commission shall accompany the final development plan application for the purpose of administration.

(2) The city engineer and the city planner shall recommend the approval, approval subject to conditions, or disapproval of the final development plan application based upon the conformity of the final development plan with the preliminary development plan, sufficiency and accurateness of the required exhibits, and the requirements and purposes of this division and ordinances and regulations of the city.

(3) The planning and zoning board and the city commission shall review these recommendations at regular public meetings and shall approve, approve subject to conditions, or deny the final development plan application.

(f) Recording of final development plan.

(1) After approval of the city commission of the final development plan application, it shall be recorded in the public records of the county. No final development plan of a planned unit development, or any portion thereof, within the city shall be recorded unless it shall have the approval of the city commission inscribed thereon.

(2) The transfer of, sale of, agreement to sell, or negotiation to sell land by reference to or exhibition of or other use of a final development plan of a planned unit development or portion thereof that has not been given final approval by the city commission and recorded in the official records of the county is prohibited. The description by metes and bounds in the instrument of transfer or other documents shall not exempt the transaction from such documents.

SECTION 3: Adoption. Section 118-893 of the City of Winter Garden Code is amended to read as follows
(words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 118-893. Reserved. Termination of PUD zone. Under this division, failure of the developer to file a final development plan application within the time periods specified shall automatically revoke approval of the preliminary development plan, and the city may take the necessary steps to return the land to its previous classification or to one which is deemed most applicable.

SECTION 4: Adoption. Section 118-829 of the City of Winter Garden Code is created to read as follows
(words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 118-829. Time extensions. Any time limits imposed by this article or the applicable PUD zoning ordinance may be extended by the city commission for reasonable periods upon the petition of an applicant prior to the expiration of the PUD and based upon good cause, as determined by the city commission.

SECTION 5: Adoption. Section 118-830 of the City of Winter Garden Code is created to read as follows
(words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 118-830. Expiration of PUD. In the event the developer fails to comply with the time limits of Section 118-890(a) or Section 118-989 or fails to comply with the time limits contained in the applicable PUD zoning ordinance, the preliminary development plan shall automatically expire and no further development orders or permits shall be issued and no development shall occur on the land unless and until the city commission reapproves the preliminary development plan or approves a new preliminary development plan. The city may require modifications to the applicable PUD zoning ordinance as a precondition to such approval. After the expiration of the preliminary development plan pursuant to this section, the city shall have the right to terminate the applicable PUD zoning ordinance and related development orders, permits, and agreements and return the land, or any portion thereof to its previous zoning classification or to a zoning classification that is consistent with the comprehensive plan and the city commission deems most appropriate. If approval of a final plat is obtained for a portion of a planned unit development or if a final development plan is obtained for a portion of a planned unit development and the developer has commenced construction contemplated by such plan, then in either of such events the preliminary development plan shall remain in full force and effect with respect to the portion of the planned unit development not included within such final plat or final development plan and such preliminary development plan shall not be subject to termination under the provisions of this section.

SECTION 6: Adoption. Section 118-989 of the City of Winter Garden Code is amended to read as follows
(words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 118-989. Approval of final development plan.

~~(a)~~ Unless otherwise specified by the PUD zoning ordinance, the developer shall have five years from the adoption date of the PUD zoning ordinance in which to:

i. file and obtain approval of a final plat of a commercial or industrial planned unit development, or any portion thereof; or

ii. file and obtain approval of a final development plan of a commercial or industrial planned unit development, or a portion thereof and commence construction contemplated by such plan. Site clearing and tree removal activities do not constitute commencement of construction for the purposes of this subsection.

Commercial and industrial planned unit developments adopted prior to September 30, 2009 are hereby granted an extension to allow five years from September 30, 2009 in order to satisfy the conditions under subsection i. or ii. above.

~~Within six months following the approval of the preliminary development plan of the industrial and commercial planned unit development, the applicant shall file with the planning and zoning board a final development plan containing in final form the information required in the plan approved or approved with modifications.~~

~~(b) The planning and zoning board shall review the final development plan and shall approve the final development plan if it is in substantial compliance with the preliminary development plan. The city clerk shall record the final development plan in the manner provided for recording plats of subdivisions.~~

SECTION 7: Adoption. Section 118-889 of the City of Winter Garden Code is amended to read as follows (words that are ~~stricken out~~ are deletions; words that are underlined are additions):

Sec. 118-889. Preliminary plat.

- (a) For a residential planned unit development, or any portion thereof, the preliminary plat may be omitted if the parcel, or applicable portion thereof, is not to be platted.
- (b) ~~The developer has one year from the date of approval of the preliminary development plan in which to file a preliminary plat application.~~ The developer may request plat approval of the entire PUD or any stage portion thereof (a minimum of 20 acres).
- (c) Procedures for preliminary plat submission will comply with chapter 110 pertaining to subdivisions.
- (d) Additional information on the preliminary plat should include the following for the residential planned unit development or the portion thereof which is the subject of the preliminary plat:
- (1) The proposed residential use other than single-family.
 - (2) The proposed location of the primary residential use and secondary nonresidential use.
 - (3) Acreage in each of the primary residential and secondary nonresidential uses.
 - (4) Phasing or development schedule.
 - (5) Number of units, both total and by type.
 - (6) The proposed method of maintenance of the storm drainage system.
- (e) A topographic data map may be submitted with the preliminary development plan if the property is not to be platted. The topographic data map shall be drawn at a scale of not less than 100 feet to one inch by a registered professional engineer or registered land surveyor showing the following:
- (1) The location of existing property lines, streets, buildings, watercourses, transmission lines, sewers, bridges, culverts and drain pipes, water mains, city limit lines and any public utility easements.
 - (2) Wooded areas, marshes and any other physical conditions affecting the site.
- (f) Engineering drawings of the following proposed utility system improvements must be presented to the city engineer no less than 30 days prior to commencement of construction of such improvements. Further, the

improvements must be constructed and approved by the city engineer prior to presenting the final development plan to the planning and zoning board, unless an acceptable developer's agreement and bond are provided to the city by the developer in accordance with the requirements of this Code. Engineering drawings must include the following:

- (1) Water.
- (2) Sanitary sewer.
- (3) Storm sewer.
- (4) Sidewalks and bicycle paths.
- (5) Streets.
- (6) Lot grading plan.
- (7) Drainage.

SECTION 8: Codification: Sections 2, 3, 4, 5, 6 and 7 of this Ordinance shall be codified and made part of the City of Winter Garden Code of Ordinances.

SECTION 9: Control: In the event of a conflict or conflicts between this ordinance and other ordinances, this ordinance controls.

SECTION 10: Severability: It is the intent of the City Commission of the City of Winter Garden, and is hereby provided, that if any section, subsection, sentence, clause, phrase or provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall be construed as to render invalid or unconstitutional the remaining provisions of this Ordinance.

SECTION 11: Effective Date: This Ordinance shall become effective upon adoption at its second reading.

FIRST READING AND PUBLIC HEARING: September 21, 2009

SECOND READING AND PUBLIC HEARING: October 8, 2009

ADOPTED this 8th day of October 2009, by the City Commission of the City of Winter Garden, Florida.

APPROVED:

JOHN REES, Mayor/Commissioner

ATTEST:

KATHY GOLDEN, City Clerk