



CITY OF WINTER GARDEN

CITY COMMISSION REGULAR MEETING MINUTES

December 10, 2009

A **REGULAR MEETING** of the Winter Garden City Commission was called to order by Mayor Rees at 6:30 p.m. at City Hall, 300 West Plant Street, Winter Garden, Florida. The invocation and Pledge of Allegiance were given.

Present: Mayor John Rees, Commissioners Harold L. Boulter, Bob Buchanan, and Colin Sharman

Absent: Commissioner H. Gerald Jowers

Also Present: City Manager Mike Bollhoefer, City Attorney Kurt Ardaman, City Clerk Kathy Golden, Public Services Director Don Cochran, Finance Director Robin Hayes, Director of Information Technology Bob Reilly, Community Development Director Tim Wilson, Human Resources Director Frank Gilbert, Fire Chief John Williamson, Police Chief George Brennan, Code Enforcement Manager Skip Lukert, Recreation Director Jay Conn, and West Orange Times Reporter Michael Laval

1. **APPROVAL OF MINUTES**

Motion by Commissioner Boulter to approve the regular meeting minutes of November 10, 2009 as submitted. Seconded by Commissioner Sharman and carried unanimously 4-0.

2. **PRESENTATION**

Mayor Rees read and presented Proclamation 09-16 to Jerry Carris in honor of him being named Florida Master Gardener of the Year.

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

A. **Ordinance 10-01:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING SECTION 42-55 OF THE CITY'S CODE OF ORDINANCE ENTITLED "ROAD IMPACT FEE SCHEDULE" BY REPLACING EXHIBIT "A" WITH NEW TABLES TO REDUCE THE ROAD IMPACT FEE, ELIMINATING THE ANNUAL INFLATION INCREASE TO THE ROAD IMPACT FEE AND MAKING ROAD IMPACT FEE DUE PRIOR TO ISSUANCE OF CERTIFICATE OF OCCUPANCY; AMENDING SECTION 42-54 ENTITLED "LIMITATION ON ISSUANCE OF BUILDING PERMIT" AND SECTION 42-62 ENTITLED "COLLECTION" OF THE CITY'S CODE OF ORDINANCE TO REQUIRE PAYMENT OF ROAD IMPACT FEE PRIOR TO THE ISSUANCE OF CERTIFICATE OF OCCUPANCY AND TO PROVIDE A DISCOUNT FOR PAYMENT OF IMPACT FEES AT TIME OF ISSUANCE OF BUILDING PERMIT; AMENDING SECTION 42-57 ENTITLED "DEVELOPMENT AGREEMENTS" TO INCLUDE INTEREST FOR DEFERRED PAYMENT AND TO WAIVE SECURITY REQUIREMENTS FOR

CERTAIN CHANGES OF USE; AMENDING SECTION 42-60 ENTITLED "APPLICATIONS AND EXEMPTIONS" AND SECTION 42-64 ENTITLED "COLLECTION OF FEES WHEN BUILDING PERMIT ISSUED BY MISTAKE OR INADVERTENCE; LIENS" OF THE CITY'S CODE OF ORDINANCE TO "COLLECTION OF PAST DUE FEES; LIENS" AND TO REMOVE INCONSISTENCIES REGARDING THE COLLECTION OF ROAD IMPACT FEES; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 10-01 by title only. Community Development Director Tim Wilson stated that this ordinance reduces City's road impact fees. He noted that the last change was a substantial fee increase that included an annual inflation adjustment. Since that adoption, there has been a significant reduction of 50 percent or greater in the cost of road construction projects. Staff thought it was appropriate to review how the fee was being calculated. The fee reduction presented ranges from 33 to 43 percent, depending on the use as noted on the revised table. A comparison chart has been provided showing the current road impact fee rates and the proposed rates in comparison to other jurisdictions within our region. Staff believes that this will make the City more competitive if developers and builders are shopping around.

Mr. Wilson stated that because the pricing will not remain the same forever, a review of the fees will be revisited as needed in the future and brought back to the City Commission as needed.

Mayor Rees asked if there was any way to predict if the fee reduction could jump start construction in this area. Mr. Wilson replied that it would be hard to predict. If the City has a fee that would currently hinder a project, the reduced fees may allow companies to obtain financing that they may not have been able to obtain previously.

City Manager Bollhoefer shared that he is aware of contractors, developers, and builders that have lost jobs because their clients have told them that our impact fees are too high and they have gone to other cities.

Mayor Rees opened the public hearing.

Scott Holder, 120 W. Crown Point Road, Winter Garden, Florida, stated that he is in favor of this reduction and explained that his company has a large industrial development on Story Road that has lost business to Apopka whose impact fees are a lot less. He is seeing a reduction in his rental rates that are going back to rates that were charged back in 2000. He suggested that the City go below the levels imposed by Orange County and Apopka so people will come to the City of Winter Garden, thereby building and bringing back jobs to the community. He suggested starting at a lower level to become a grass roots program that will put the little guy back to work and be recognized throughout the State of Florida.

City Manager Bollhoefer stated that the City Commission could make this particular change now and always revisit the issue later.

Mayor Rees closed the public hearing.

Motion by Commissioner Buchanan to approve Ordinance 10-01 with the second reading and public hearing being scheduled for January 14, 2010. Seconded by Commissioner Sharman and carried unanimously 4-0.

- B. **Ordinance 10-02:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS 0.56 ± ACRES LOCATED AT 13000 WEST COLONIAL 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 10-02 by title only. Community Development Director Tim Wilson stated that this ordinance and the next two ordinances deal with the same property. The ordinances deal with the annexation, rezoning and land use change of property located at the southwest corner of 9th Street and State Road 50. These have been reviewed by staff and the Planning and Zoning Board whom both recommend approval.

Commissioner Buchanan asked if there has been any preliminary testing of the ground. Mr. Wilson replied not that the City is aware of but normally when a property is redeveloped, soil tests will be required.

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

Motion by Commissioner Sharman to approve Ordinance 10-02 with the second reading and public hearing being scheduled for January 14, 2010. Seconded by Commissioner Buchanan and carried unanimously 4-0.

- C. **Ordinance 10-03:** AN ORDINANCE AMENDING THE FUTURE LAND USE MAP OF THE CITY OF WINTER GARDEN'S COMPREHENSIVE PLAN BY CHANGING THE DESIGNATION FROM ORANGE COUNTY COMMERCIAL TO CITY COMMERCIAL FOR PROPERTY GENERALLY DESCRIBED AS 0.56 ± ACRES LOCATED AT 13000 WEST COLONIAL DRIVE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 10-03 by title only.

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

Motion by Commissioner Buchanan to approve Ordinance 10-03 with the second reading and public hearing being scheduled for January 14, 2010. Seconded by Commissioner Boulter and carried unanimously 4-0.

- D. **Ordinance 10-04:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING APPROXIMATELY 0.56 ± ACRES OF CERTAIN REAL PROPERTY LOCATED AT 13000 WEST COLONIAL DRIVE FROM ORANGE COUNTY C-3 TO CITY C-2; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 10-04 by title only.

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

Motion by Commissioner Boulter to approve Ordinance 10-04 with the second reading and public hearing being scheduled for January 14, 2010. Seconded by Commissioner Sharman and carried unanimously 4-0.

- E. **Ordinance 10-05:** *(Formerly known as Ordinance #09-60)* AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 118 (“ZONING”) OF THE WINTER GARDEN CODE OF ORDINANCES, SAID CHAPTER BEING PART OF THE CITY OF WINTER GARDEN LAND DEVELOPMENT CODE, BY AMENDMENT TO CHAPTER 98, ARTICLE VII TO BE ENTITLED “CITY OF WINTER GARDEN HISTORIC DOWNTOWN DISTRICT OVERLAY”; PROVIDING FOR UNIFORM STANDARDS AND REGULATIONS FOR NEW DEVELOPMENT AND PROPERTIES WHICH UNDERGO MODIFICATION WITHIN A SPECIFICALLY DESCRIBED AREA OF DOWNTOWN WINTER GARDEN WITHIN THE JURISDICTION OF THE CITY OF WINTER GARDEN, FLORIDA; PROVIDING FOR AMENDMENT OF THE OFFICIAL ZONING MAP; PROVIDING FOR THE ADOPTION OF DESIGN STANDARDS MANUAL; PROVIDING FOR CODIFICATION, ENFORCEMENT, SEVERABILITY, AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 10-05 by title only. Community Development Director Wilson displayed a map showing the historic downtown area that is approximately 116 acres within the prime central core of the City’s downtown area. It incorporates the existing historic commercial and certain designated residential areas. These areas were established back in the mid 90s as well as the addition of some peripheral areas. The boundaries are to the north from West Tilden Street, to the south from Smith Street, to the east two blocks of Dillard Street, and to the west from Park Avenue. This ordinance has been reviewed by staff and the existing committee (*Architectural Review and Historical Preservation Board*) that was established in 2008. It has been a joint effort with the City Manager and City Attorney’s office for over a year.

Mr. Wilson noted there was a workshop held in September to review the proposed architectural manual and guidelines, which will be the working document. He anticipates this manual will be brought to the City Commission, by resolution, at the next (*January*) meeting.

Mr. Wilson stated that based on the board's review, staff's review, and the attorney's review, approval is recommended.

Commissioner Buchanan asked if any of the structures, in the designated area, will have additional restrictions if this ordinance is approved.

Mr. Wilson responded that right now the City utilizes the zoning as the baseline for development. Without this ordinance the City really does not have any architectural standards. This ordinance establishes the architectural standards that do not include any retroactive approval or requirements. A citizen would keep what they have until such time as they come in to do something different to their building, then this ordinance would apply. Mr. Wilson added that if the requirements are not met, there is a process for a citizen to request a special review.

Commissioner Buchanan stated that his concern was the delay of any project inside the designated area because they had to go through one more board before any work was done.

Mr. Wilson explained that this issue was addressed. On a commercial project specifically, they would be able to have a simultaneous review of their site plan going through both the DRC and the Architectural Review and Historical Preservation Board.

Commissioner Sharman addressed the issue of the ability to do minor repairs. Mr. Wilson explained by giving an example of someone replacing a post that may need a permit and they would be required to meet the new guidelines with no extra review. General maintenance may or may not need a review.

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

Motion by Commissioner Sharman to approve Ordinance 10-05 with the second reading and public hearing being scheduled for January 14, 2010. Seconded by Commissioner Buchanan and carried unanimously 4-0.

- F. **Ordinance 10-06:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA; AMENDING THE CITY OF WINTER GARDEN COMPREHENSIVE PLAN; BY ADOPTING AN AMENDMENT TO THE CAPITAL IMPROVEMENTS ELEMENT PURSUANT TO SUBSECTION 163.3177 (3) (b), FLORIDA STATUTES TO MAINTAIN A FINANCIAL FEASIBLE 5-YEAR SCHEDULE OF CAPITAL IMPROVEMENTS; PROVIDING FOR CONFLICTS, SEVERABILITY, TRANSMITTAL AND EFFECTIVE DATE

City Attorney Ardaman read Ordinance 10-06 by title only. Community Development Director Wilson stated that this is the required annual capital improvement update of the comprehensive plan. This ordinance takes the capital improvement plan, recently adopted in the budget, and puts it into the comprehensive plan. This plan has been endorsed by the Planning and Zoning Board and staff recommends transmittal to the Department of Community Affairs (DCA).

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

Motion by Commissioner Sharman to approve Ordinance 10-06 with the second reading and public hearing being scheduled for March 11, 2010. Seconded by Commissioner Buchanan and carried unanimously 4-0.

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

- A. **Ordinance 09-64:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING SECTION 98-151 AND 98-153 OF CHAPTER 98, ARTICLE VI OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN CONCERNING THE MEMBERSHIP OF THE DEVELOPMENT REVIEW COMMITTEE; PROVIDING FOR CONTROL IN EVENT OF CONFLICTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION AND PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 09-64 by title only. Mayor Rees explained that this ordinance changes the voting members from seven to five.

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

Motion by Commissioner Boulter to adopt Ordinance 09-64. Seconded by Commissioner Sharman and carried unanimously 4-0.

5. **REGULAR BUSINESS**

- A. **Recommendation to approve purchasing capital equipment for Solid Waste and Wastewater Collections Divisions not to exceed \$652,726.28 for two solid waste trucks and one combination sewer cleaning truck**

Public Services Director Cochran stated that the three pieces of equipment have been included in the 2009-2010 budgets. He explained that the Wastewater Collections Division equipment is for a Vactor 2100 combination sewer cleaning truck priced at \$280,978.28. The Solid Waste Division equipment is for two vehicles; a Lodal side loader priced at \$174,240.00 and a Load Master rear loader priced at \$197,508.00. These prices are based on purchasing the equipment by piggybacking existing contracts with other cities and the Florida Sheriff Department.

Commissioner Buchanan asked if the equipment is new or used. Mr. Cochran replied that they are new.

Commissioner Sharman asked if these pieces are replacements or additions to equipment the City already has. Mr. Cochran replied that the one for wastewater collection is a new vehicle and there is an existing Vactor truck that will be kept as a back-up. The two solid waste trucks are replacing two existing vehicles.

Motion by Commissioner Buchanan to approve purchasing capital equipment for the Solid Waste and Wastewater Collections Divisions not to exceed \$653,000.00 for two solid waste trucks and one combination sewer cleaning truck. Seconded by Commissioner Sharman and carried unanimously 4-0.

B. Recommendation to approve bids and award the Preventative Annual Traffic Signal Maintenance Agreement to Control Specialists Company for Bid #09-060 at \$82.50 per inspection

Public Services Director Cochran stated that for many years the City has contracted out the maintenance of traffic signals through an interlocal agreement with Orange County. Orange County has approached the City looking to modify the agreement but would not tell the City the cost of the new contract. Orange County did say that one cost increase would be the City's preventive maintenance inspections from \$250.00 per inspection to \$2,500.00 per inspection. For that reason, staff looked into other opportunities such as piggybacking other contracts and getting bids because of the current economy. The City received three bids. They are all unit priced items with the work being performed on an as-needed basis, with the exception of the preventive maintenance. Control Specialists appears to be the lowest qualified bidder on most all unit prices and they were very low on their preventive maintenance inspection at \$82.50 per inspection.

Mr. Cochran stated that Orange County was performing inspections twice a year for \$250.00 per inspection. Control Specialists is at \$82.50 and can inspect once a month or every month. Control Specialists are much lower than what the City would have been paying.

Mayor Rees asked how the fees compare to what has been paid to Orange County for the last two or three years. Mr. Cochran stated that the unit prices paid to Orange County is comparable or lower on most items. The one thing that really stood out is the preventative maintenance fee.

Mayor Rees asked Mr. Cochran if he had faith that this company is able to do the work. Mr. Cochran replied that they do this work for many cities in central Florida.

Commissioner Sharman asked if these were flat rate prices for coming out to do an inspection and then come back with a list of items that need repair.

Mr. Cochran stated that Control Specialists will provide the list of items needing repair and a purchase order will be issued for the work. The City will be better informed on

what is going on. Currently, with Orange County, the City would not know what they've done until being sent a bill at the end of the year. There was no way to confirm whether or not the work actually took place. The City will have total control if we enter into this contract. Mr. Cochran stated that staff wanted to have greater control over the timing of the traffic signals and Orange County was unwilling to work with the City on this issue.

Motion by Commissioner Buchanan to approve bids and award the Preventative Annual Traffic Signal Maintenance Agreement to Control Specialists Company for Bid #09-060 at \$82.50 per inspection. Seconded by Commissioner Sharman and carried unanimously 4-0.

C. Recommendation to approve RFP #10-01 rankings and award the construction services contract for State Road 50 utility relocations to DeWitt Excavating, with a 10 percent contingency, for a total approved project amount up to \$3,872,515.07

Public Services Director Cochran stated that the City has advertised for requests of proposals for relocating the utilities in coordination with the State Road 50 widening project from Avalon Road to State Road 429. Staff chose to go with the RFP process in order to evaluate the contractors on price and past performance. There were 14 contractors picking up bid packets but only two submitted bids; DeWitt Excavating and Prince Contracting. DeWitt Excavating was the lowest qualified bidder at \$3,520,468.25; they also appeared to be the most experienced in this type of work. Staff recommends awarding the contract to DeWitt Excavating, with a 10 percent contingency, for a total contract amount of \$3,872,515.07.

Mayor Rees stated that there is such a huge disparity between the two contracts and a large portion comes from the charges per linear foot for PVC pipes. He asked why such a huge difference.

Mr. Cochran replied that staff has also been asking Prince Contracting that question and has not received a very good answer. He shared that a late bidder actually bid \$40,000.00 less than DeWitt and within the City staff's estimated range.

City Manager Bollhoefer noted that the City has received an extreme amount of pressure from Prince Contracting and Florida Department of Transportation (FDOT) to use them as contractors. He explained that the City has a fiduciary responsibility to use the lowest bidder on a project of this nature. He suggested raising the contingency amount so that the award amount would not exceed \$4 million. He would like to have funds available, if necessary, to expedite the project by bringing in one of the push button contractors to assure that there are no delays. He feels that this will put the City in a stronger position and still save a significant amount of money.

City Attorney Ardaman agreed that the comments the City has received are pretty egregious in his estimation. Whatever needs to be done, the City should go above and beyond its obligations to assure that it can perform as timely as possible.

Motion by Commissioner Sharman to approve RFP #10-01 rankings and award the construction services contract for State Road 50 utility relocations to DeWitt Excavating with a contingency for a total approved project amount up to \$4 million. Seconded by Commissioner Boulter and carried unanimously 4-0.

D. Recommendation to approve RFQ #10-02 rankings and award the professional engineering services contract for State Road 50 utility relocations to CPH Engineering based on an hourly fee schedule not to exceed \$391,318.45

Public Services Director Cochran stated that to go along with the previous contract, engineering services are required. Staff has advertised for request for qualifications for engineering services for State Road 50 utility relocations. The engineers are ranked on their experience, past performance, and performance with the City. He requested that the City Commission approve the ranking and award the contract to CPH Engineering who appears to be the most qualified in this field. He explained some of their work history with other entities such as FDOT. The proposal is based on an hourly fee schedule with an amount not to exceed \$391,318.45.

Motion by Commissioner Buchanan to approve RFQ #10-02 rankings and award the professional engineering services contract for State Road 50 utility relocations to CPH Engineering based on an hourly fee schedule not to exceed \$391,318.45. Seconded by Commissioner Boulter and carried unanimously 4-0.

E. Recommendation to approve extending the annual agreement for cemetery services by Quality Vaults and Monuments, Inc. for one year at the same rate

Public Services Director Cochran stated that this item is the annual extension of the agreement for cemetery services provided by Quality Vaults. The services are for the opening and closing for funerals at the Winter Garden Cemetery. Staff has contacted other companies that provide this same service and none wanted to quote the services this year. Quality Vaults has agreed to hold to the same prices as last year. Therefore, staff recommends approval.

Motion by Commissioner Sharman to approve extending the annual agreement for cemetery services with Quality Vaults and Monuments, Inc. for one year at the same rate. Seconded by Commissioner Buchanan and carried unanimously 4-0.

F. Recommendation to reduce fines imposed in Code Enforcement Board Case #07-2018 and the utility account lien against 12537 Westfield Lakes Circle for \$1,553.61 and authorize release of liens after payment in full

Code Enforcement Manager Lukert stated that Fulton Bank has requested that the City take a look at the liens against property located at 12537 Westfield Lakes Circle. The utility lien is for installation of meters and actual service costs to the City. The Code Enforcement Board lien is \$7,000.00. Actual costs were calculated and part of the reason enforcement took almost a month is because the lot owner had about \$6,000.00 worth of trusses on the property that did not fit his house design. Staff made a recommendation to Fulton Bank (owner) of what the City would need in order to clear these accounts and they have agreed to pay a reduced amount totaling \$1,553.61.

Mayor Rees suggested limiting the settlement offer to be good through a certain date so if not paid, the amounts would revert back to their original amounts.

Motion by Commissioner Boulter to approve reducing the fines imposed in Code Enforcement Board Case #07-2018 and the utility account lien against 12537 Westfield Lakes Circle to \$1,553.61 and authorize release of liens after payment in full is made no later than the end of January 2010. Seconded by Commissioner Buchanan and carried unanimously 4-0.

G. Recommendation to approve the site plan for 910 Carter Road with conditions (Lighthouse Outdoor Storage)

Community Development Director Wilson stated that this is a request for site plan approval of 910 Carter Road. The City Commission would need to also approve a waiver for the portion of the property that will not be paved. The Development Review Committee (DRC) has reviewed this application and recommends approval.

Motion by Commissioner Buchanan to approve the site plan for 910 Carter Road with conditions (see Attachment "A"). Seconded by Commissioner Boulter and carried unanimously 4-0.

H. Recommendation to approve the site plan for 680 and 690 Garden Commerce Parkway (lots 13 and 14) with conditions

Community Development Director Wilson stated that this project is located at 680 and 690 Garden Commerce Parkway in the Winter Garden Commerce Center industrial park. It consists of two 12,000 square foot buildings that would be office flex space. It has been reviewed by the Development Review Committee and they are recommending approval.

Motion by Commissioner Sharman to approve the site plan for 680 and 690 Garden Commerce Parkway (lots 13 and 14) with conditions (see Attachment "B"). Seconded by Commissioner Buchanan and carried unanimously 4-0.

I. Recommendation to approve the site plan for 303 S. West Crown Point Road (Magic Gym) with conditions

Community Development Director Wilson stated that this item is for a site plan on the project known as the Magic Gym located at 303 S. West Crown Point Road. The project consists of almost a 25,000 square foot recreational building and associated site improvements and parking. This project has been reviewed by City staff and the Development Review Committee and each recommend approval. Mr. Wilson acknowledged that Orange County representatives were available for questions.

Commissioner Sharman noted that the City is excited to work with Orange County on this project.

City Manager Bollhoefer recognized the Orange County representative who shared that there was going to be a ground breaking ceremony held on December 21, 2009 at 10:00 a.m.

Motion by Commissioner Boulter to approve the site plan for 303 S. West Crown Point Road (*Magic Gym*) with conditions (*see Attachment "C"*). Seconded by Commissioner Buchanan and carried unanimously 4-0.

J. Request authorizing the City Attorney to begin foreclosure proceedings on Code Enforcement Board Case No. 08-746 against real property located at 12 W. Plant Street, Winter Garden, Florida (parcel ID #23-22-27-2888-02-010) owned by Shirley Smith DBA Shirley's Trailside Antiques

Community Development Director Wilson shared the history on this property that was originally cited back in June 2008 for violations of the downtown maintenance code. Since that time, it has gone through a series of meetings and hearings before the Code Enforcement Board. He pointed out that the Code Enforcement officer has provided the City Commission with a chronological accounting of events. The most significant of those events being the filing of the Findings of Fact and the Order of Non-Compliance dated February 13, 2009. Since that time, the fine has been accumulating. In addition, there was a hearing held April 7, 2009 by the Code Enforcement Board which made their findings and conclusion date back to the February 13, 2009 date. Since that time, the City has been monitoring the progress on the property. There was a series of items that were required in the order and only one item has commenced. The matter came back before the Code Enforcement Board to consider recommending foreclosure on the lien. They have made their recommendation for the City Commission to review and take action. Mr. Wilson asked, with the information given in the City Commission agenda packet, that they authorize the City Attorney to proceed with the foreclosure proceedings for failure to come into compliance with the Code Enforcement Board action.

City Manager Bollhoefer asked the City Attorney if at any time throughout this process should circumstances change, can the City stop the process. City Attorney Ardaman replied absolutely and stated that the City Commission would need to make a motion to proceed with the foreclosure proceedings.

Commissioner Boulter asked what had been done thus far. City Manager Bollhoefer stated that the building had been pressure cleaned and they have done some caulking.

Mayor Rees recognized the property owner, Shirley Smith, to address the City Commission on this issue.

Ms. Smith stated that they took down light fixtures, an air conditioner, awning brackets, and a sign. At the last meeting, the fact that they had pressure cleaned, caulked and scraped had not been acknowledged. She has had ten gallons of yellow paint for several months. She stated that once she saw what had been done had not even been recognized by the City, she felt that she was throwing money into a dead bucket. She explained some unexpected turns of events in her life and requested tabling of this action. She

stated that the building has been listed for sale at a fraction of its value. She shared some of her leads for potential buyers of the property and stated that she has to disclose items about the structure so she has to hire outside experts to inspect. The new owner will need time to do their due diligence. She shared some of her history and contributions to the community and businesses in the City. She asked for any consideration that the City could give and displayed the sales listing for the building.

City Manager Bollhoefer stated that as mentioned previously, the City Commission can move forward with the foreclosure tonight to ensure that the process keeps moving forward. It can be stopped at anytime. As she moves forward and shows good faith, there is no risk of her losing her property.

City Attorney Ardaman added that clearly the City can pull the plug at any time. It is his understanding that the property is not yet in compliance and the fines are continuing to accrue. Commencing the lawsuit now does not mean that the foreclosure happens the next day. It is a lengthy process and she can come back at any time during the foreclosure proceedings and ask the City Commission for some type of relief.

City Manager Bollhoefer stated that staff can keep the City Commission posted on the status at anytime but his fear is that if action is not taken, things will revert to where they were before. There have been boards on the windows since the hurricanes of 2004. It is because of actions taken by the City that anything has happened at all. If the City backs off of the action, he fears nothing will happen. He reiterated that the City can move forward with these actions and stop them at any time without any risk to Ms. Smith. The City Commission has the full authority to reduce the fines or eliminate the fines going forward.

Commissioner Boulter asked if the City was already 18 months into this process. City Attorney Ardaman responded in agreement from the formal process. He noted this property has had issues for quite some time prior to that.

Mayor Rees asked the City Attorney about his statement regarding the foreclosure process being lengthy. Mr. Ardaman replied that it depends on whether there is an aggressive defense. Mayor Rees asked for a mid to maximum timeframe. Mr. Ardaman replied that the shortest period is approximately four months and the longest being a couple of years.

Mayor Rees asked what type of expenses would be incurred in the first 90 days. Mr. Ardaman replied that the basic lawsuit would be crafted, filed and then served. The defendant has an attorney which can respond and move to dismiss the lawsuit. The City would then deal with that and ask for a judge to hear it. His guess would be that for the first 30 to 90 days, it would be from \$5,000.00 to \$10,000.00. The level of aggression in the lawsuit could make it a lot more expensive.

City Manager Bollhoefer stated that as long as the City sees progress is being made by Ms. Smith, the process can be slowed at the City's request.

Commissioner Boulter asked if the property is sold would the fines still have to be paid. Mr. Ardaman responded that the fines continue to accrue and a buyer can come ask the City Commission for a waiver. The fines and liens are owned to the City who has the authority to give it away or enforce it. Commissioner Boulter asked if this action would set any precedence. Mr. Ardaman responded that each case is different.

There was discussion that the desired result is compliance and not to seek monies from Ms. Smith. Mr. Ardaman suggested that the filings could be held until after the first of the year.

There was discussion that the City Commission should wait until after the holidays to start the lawsuit proceedings.

Motion by Commissioner Sharman to approve authorizing the City Attorney to begin foreclosure proceedings on Code Enforcement Board Case No. 08-746 against real property located at 12 W. Plant Street, Winter Garden, Florida (parcel ID #23-22-27-2888-02-010) owned by Shirley Smith DBA Shirley's Trailside Antiques after January 1, 2010. Seconded by Commissioner Boulter and carried unanimously 4-0.

K. **Appointment to fill Rodney Hollis' seat on the Firefighters and Police Officers Pension Board**

City Clerk Golden stated that this item is at the request of pension board member Ken Holton for the City Commission to consider, as a ministerial duty per the City's code, affirm the board's appointment. Mr. Cross' term would expire on January 31, 2012.

Mayor Rees noted that the pension board has also elected to appoint Phil Cross to serve out the remainder of Mr. Hollis' term.

Commissioner Sharman referenced prior City Commission discussions regarding term limits for board appointments. City Manager Bollhoefer noted that the City Commission will have the term limits ordinance presented to them at their January 2010 meeting.

Motion by Commissioner Boulter to appoint Phil Cross to fill Rodney Hollis' seat on the Firefighters and Police Officers Pension Board to expire January 31, 2012. Seconded by Commissioner Buchanan and carried unanimously 4-0.

6. **MATTERS FROM CITIZENS**

Kim Rose, 22 ½ West Vineland Street, Winter Garden, Florida, thanked the City Commission for delaying the foreclosure proceedings on her mother's property (*Ms. Shirley Smith*). It is not that they do not want to do anything or that they do not care. Some of it is financial in these economic times as no one is giving loans. This will probably be a challenge as well when they try to sell. They do not want to sell and she wants to stay here. She stated that she knows everyone and her business is here. They feel that it is something that they are being forced to do and do not have a choice. She spoke of some of the circumstances and pressures of trying to keep up as a building owner and not a renter. She

stated that she appreciates the relief and hopes to work out a plan to get the building sold and possibly be able to keep her business in Winter Garden.

7. **MATTERS FROM CITY ATTORNEY**

City Attorney Ardaman stated that the City is party to an interlocal agreement with Orange County for widening County Road 535. Under that agreement, the City had 120 days to deliver deeds for parcels that the City owned and were to convey to the County, which the City did. However, the County would like some changes made to one of the drainage easements and have requested additional time to schedule their acceptance of the deeds and easements to their Board of County Commissioners. The County has asked the City to extend the period by another 120 days so the City can deliver those deeds and work out the language. He stated that he, the City Manager, and staff are all in agreement to ask the City Commission's permission to extend the 120 day period by another 120 days.

City Manager Bollhoefer stated that the County does not think that they will need the full 120 days and they anticipate starting this project in 2010.

Motion by Commissioner Buchanan to approve extending the interlocal agreement with Orange County for completing the related deeds for widening CR 535 another 120 days. Seconded by Commissioner Sharman and carried unanimously 4-0.

8. **MATTERS FROM CITY MANAGER**

A. **Status of current fiscal year capital improvement projects**

City Manager Bollhoefer recognized Public Services Director Cochran to present the status of the current fiscal year capital improvement projects. Mr. Bollhoefer announced that the Jessie Brock Center will be started in January 2010.

Public Services Director Cochran stated that there is a long list of capital projects that are budgeted in this year's budget. Mr. Cochran presented information on the projects as listed in the agenda packet.

B. **Presentation of new downtown park**

City Manager Bollhoefer stated that the City has budgeted \$500,000.00 for a downtown park. The City has presented the park to the Rotary Club, the Kiwanis, and many other organizations. People have told him that this is probably one of the best projects that the City has done downtown since the redevelopment. The splash ponds and the pavilions will bring people downtown seven days a week in the summer. He thinks this will give the downtown an open space which all great downtowns have. After looking into the project, the cost will be more along the lines of a \$750,000.00 to \$800,000.00 with the interactive fountain. The City is going to begin on the site work to get it cleaned up and ready to move forward. Staff would like to get this park done as soon as possible. He stated that with the exception of one or two people, there has been overwhelming support for this project and they want to know when it will be done.

C. **Discussion on Sadler Oaks on Oakland Avenue**

City Manager Bollhoefer stated that Sadler Oaks are the oak trees located in the middle of the road on Oakland Avenue in front of the Oakland Park subdivision. They are in pretty bad shape and Maury Boyd has started working on this issue on his own. So far Mr. Boyd has raised \$11,400.00 towards getting the trees done (*estimate was provided by Valley Crest Tree Care Services of Orlando for 27 trees at \$17,800.00*). These trees belong to the City and are in the City's right-of-way. Mr. Boyd is asking the City to pay the additional \$6,400.00 to clean these trees up and extend their life.

Motion by Commissioner Buchanan to approve the City paying \$6,400.00 to assist in the cleanup of the Sadler Oak trees in the right-of-way on Oakland Avenue in front of Oakland Park Subdivision. Seconded by Commissioner Sharman and carried unanimously 4-0.

• **Strategic Plan**

City Manager Bollhoefer stated that the City Commission has been provided with the strategic plan. He requested approval so it can be posted to the website and staff will begin moving forward with the whole new citizens-based performance budgeting and management process. This is just the strategic plan which is being turned into individual business plans for all the different departments and divisions.

Motion by Commissioner Boulter to approve the Strategic Plan as presented. Seconded by Commissioner Buchanan and carried unanimously 4-0.

• **City owned property at 848 E. Plant Street**

City Manager Bollhoefer stated that he, Mayor Rees, and Commissioner Boulter were at the opening of a new restaurant and noticed the City-owned property across the street at 848 E. Plant Street. Staff would like to move forward with demolishing the shed and old house so that it looks presentable. The demolition will cost approximately \$30,000.00 to \$40,000.00 to remove the building and get rid of the fence. Staff will get quotes for this project.

Motion by Commissioner Buchanan to approve the demolition and removal of the building and fence located at 848 E. Plant Street. Seconded by Commissioner Boulter and carried unanimously 4-0.

Commissioner Boulter asked what will happen to this property. Mr. Bollhoefer responded that the intent is to resale the commercial zoned property. He feels it is important for economic development reasons to bring in attractive buildings that will spur further development and bring in high paying jobs. The person who was originally interested in this property is no longer interested and with the current market, is not a good time to sell. When the market comes back, it will be a valuable piece of clean property.

There was discussion on the property cleanup which was not satisfactory to the State Department of Environmental Protection. Mr. Bollhoefer stated that the contractor was

removed from this project and there are still petroleum contaminants even though a lot of fill dirt was brought in.

- **Community Garden of the Year**

City Manager Bollhoefer announced that the Winter Garden Community Garden was named Community Garden of the Year by the University of Florida. Staff has prepared a certificate and they will be recognized at the January 14, 2010 meeting.

D. **Discuss the December 1, 2009 Board of County Commissioners meeting**

This item was not covered at this meeting.

9. **MATTERS FROM MAYOR AND COMMISSIONERS**

Commissioner Sharman stated that he received a call from one of his constituents regarding the pavement lines not being visible on County Road 535 and wondered if this is something the City can do about it. City Manager Bollhoefer stated that the City cannot stripe it, but he will work with the County to get it done.

Commissioner Buchanan stated that he is glad that Light Up Winter Garden will be this Friday since he was unable to attend last Friday.

Mayor Rees commended the Recreation Department on their work in the Light Up Winter Garden efforts.

Mayor Rees also commended Fire Chief Williamson on the Santa Run and stated that there were a lot of good comments and lots of people outside to view it.

The meeting adjourned at 8:17 p.m.

APPROVED:

/S/
MAYOR JOHN REES

ATTEST:

/S/
City Clerk Kathy Golden, CMC