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PLANNING & ZONING BOARD

To: Jerry Carris
James Dunn
James Gentry
Kent Horsley
Mark Maciel
Mac McKinney
Rohan Ramlackhan

CC: Mike Bollhoefer, City Manager
Dan Langley, City Attorney
Ed Williams, Planning Consultant
Tim Wilson, Community Development
Director
Bill Wharton, Principal Planner
Regina McGruder-Jones, Planner II
Brandon Byers, Planner II

RE: **Revised Agenda** – April 05, 2010 - 6:30 PM
Commission Chambers, City Hall
300 West Plant Street, Winter Garden

1. Call to Order
2. Roll Call and Determination of Quorum
3. Approval of minutes from the March 01, 2010 meeting – Attachment 1

Variances (All Public Hearing)

4. 695 & 711 Garden Commerce Parkway, WGCC (Lots 6 & 7) - Attachment 2
5. 14 W. Garden Avenue (tabled from February 01, 2010 P&Z) - Attachment 3

Ordinances (Public Hearing)

6. Water and Waste Water New Impact Fees, Ordinance 10-21 – Attachment 4
7. Amending Chapters 18, 46 & 88 to remove fee schedules and charges, Ordinance 10-23
Attachment 5

Miscellaneous

8. **Request for grant application to State to assist in land acquisition for Tucker Ranch property for possible future park. Parks and Recreation Director, Jay Conn.**
9. Inform that at the May 03, 2010 P&Z Board meeting, the Board Members will be presented with a report regarding the S.R.50 Overlay Commercial Corridor update.

ADJOURN to a regular Planning and Zoning Board meeting on Monday, May 03, 2010 at 6:30 p.m. in City Hall Commission Chambers, 300 W. Plant Street, 1st floor.

Note: §286.0105, Florida Statutes, states that if a person decides to appeal any decision by a board, agency, or commission with respect to any matter considered at a meeting or hearing, he or she will need a record of the proceedings and that, for such purpose, he or she may need to ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

In accordance with the Americans with Disabilities Act (ADA), if any person with a disability, as defined by the ADA, needs special accommodation to participate in this proceeding, then not later than two business days prior to the proceeding, he or she should contact the City Clerk's Office at 407-656-4111 extension 2254.

THE CITY OF WINTER GARDEN
CITY PLANNING AND ZONING BOARD AGENDA ITEM
ATTACHMENT 2 (Public Hearing)

Date: April 5, 2010

Meeting Date: April 05, 2010

Subject: 695 & 711 Garden Commerce Parkway Setback Variance

Issue: Request approval of a 25 foot front yard setback variance for property located at 695 Garden Commerce Parkway and 711 Garden Commerce Parkway. If approved, this variance will allow construction of a 6,000 square foot warehouse building for Lot 6 located at 695 Garden Commerce Parkway and a 6,000 square foot warehouse building for Lot 7 located at 711 Garden Commerce Parkway with associated infrastructure and parking improvements.

Supplemental Material/Analysis:

Owner/Applicant: June Engineering Consultants, Inc. Fax: (407) 905-6232

Zoning: I-1 (Requires 50' front yard setback)

FLU: Industrial

Summary: The applicant is requesting a 25 foot front yard setback variance to construct a 6,000 square foot warehouse building for Lot 6 located at 695 Garden Commerce Parkway and to construct another 6,000 square foot warehouse building for Lot 7 located at 711 Garden Commerce Parkway with associated infrastructure and parking improvements for site.

This property is located off Story Road in the Winter Garden Commerce Center Industrial Park (Lot 6) and (Lot 7). These lots are located within an approved platted Industrial development and require a minimum 50' front yard setback per the Land Development Regulations for I-1, the light industrial and warehousing zoning district.

City Staff has worked with the applicant to upgrade the building façade with additional architectural elements to enhance the building and to provide additional landscaping and trees for the building frontage. This is a request for a front yard setback variance of 25 feet from the required 50 feet. The applicant will be constructing this project in phases; the two 6,000 square foot warehouse buildings for Lot 6 and Lot 7 will be constructed in Phase 1 of the project.

Each phase of the building construction will require a separate detailed site plan review of the drainage, grading, and utility systems prior to construction of building.

The City Code states that, “A variance may be granted from land development regulations by the planning and zoning board if the planning and zoning board concludes that literal enforcement of the provisions of land development regulations would result in either practical difficulties (for setback and parking provisions) or unnecessary hardships (for all other land development regulations) for the property at issue.” The code also lists the following criteria that have to be addressed before a variance can be approved Underlined are Staff’s comments concerning this particular petition...

(a) *Granting the variance will not cause or allow interference with the reasonable enjoyment of adjacent or nearby property owners or negatively impact the standard of living of the citizens of the city;*

The variance request is minimal. Similar lots in other developments have been granted variances to allow smaller front yard setbacks to accommodate their business needs. Adjacent property owners should not be negatively affected by this variance.

(b) *The variance will allow a reasonable use of the property, which use is not out of character with other properties in the same zoning category;*

The requested variance will allow reasonable use of the property. This request is not out of character with other properties in the Industrial zoning category. The applicant will be upgrading the building façade with additional design elements and adding additional landscaping to make the site more visually and aesthetically appealing.

(c) *In the context presented, strict compliance with the land development regulation will not further any legitimate city objective or the benefits that would be achieved under the other variance criteria by the granting of the variance outweigh the benefits under this criteria if the variance were denied;*

Strict compliance with the City Land Development Regulations will not further any legitimate city objective. This request does not encroach into any recorded easement and should not affect the drainage pattern for the site. A detailed site plan review of the drainage, grading, and utility systems will be required prior to construction of any building.

(d) *The granting of the variance is consistent with the city’s comprehensive plan; and*

The variance is consistent with the provisions of the City’s Comprehensive Plan relating to Land Development Regulations and Standards.

(e) The variance requested is the minimum variance that will make reasonable use of the land, building, or structure or the benefits that would be achieved under the other variance criteria by the granting of the variance outweigh the benefits under these criteria if the variance were denied.

The variance requested is the minimum variance that will make reasonable use of the land. Denying this variance does not benefit the property owner or the City.

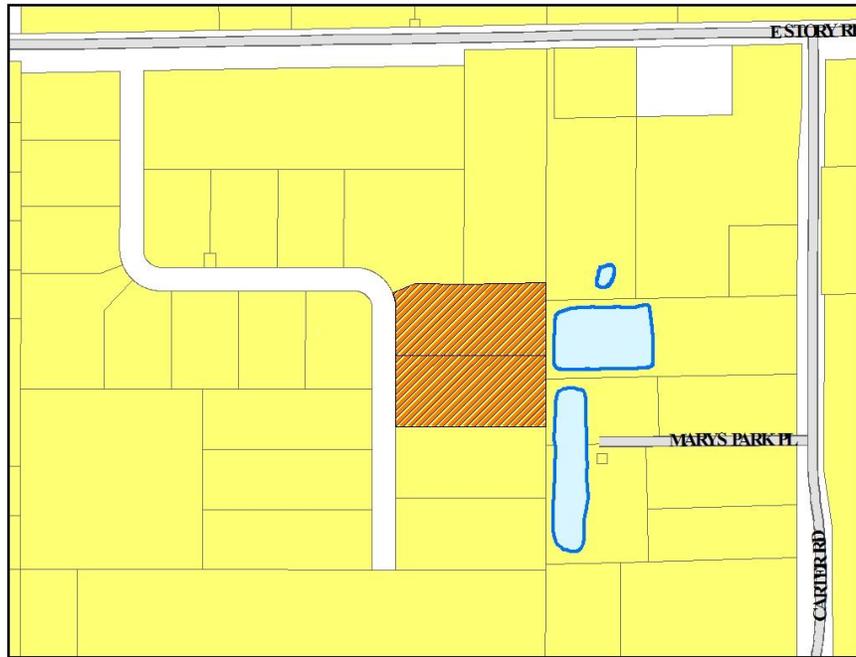
Staff Recommendation:

Staff recommends approval of the 25 foot front yard setback variance to allow construction of a 6,000 square foot warehouse building for Lot 6 located at 695 Garden Commerce Parkway and a 6,000 square foot warehouse building for Lot 7 located at 711 Garden Commerce Parkway with associated infrastructure and parking with the following approval condition:

1. The final approved building elevations and landscape plan submitted for site plan approval shall be similar in architectural design standards as illustrated with the conceptual plan submitted with variance application and reviewed by the Planning and Zoning Board. All building sides shall be constructed with consistent and similar building materials, colors and finishes as the front building façade. The final landscape plan and building elevations for each building shall be reviewed with site plan.
2. All landscape materials and improvements required for front, rear and side yards shall be installed with the infrastructure improvements and site work for Lots 6 and Lots 7 (Phase 1) of this project. A minimum 5' wide landscape buffer shall be required around front buildings for Lot 6 and Lot 7. The building landscape materials and improvement may be installed with issuance of building permits.

Next Step: Apply for Site Plan Review and Approval.

695 & 711 Garden Commerce Parkway (Lot 6 & 7)



(a) *Granting the variance will not cause or allow interference with the reasonable enjoyment of adjacent or nearby property owners or negatively impact the standard of living of the citizens of the city;*

Staff recommends denial of the requested 6 foot side yard setback variance to allow an open carport on the east side of the property. Per Ordinance 98-56, accessory building and structures shall be designed to blend aesthetically with the principal building. Staff believes that granting this variance will interfere with reasonable enjoyment of nearby property owners and negatively impact the character of the neighborhood. Although other properties within the City have received setback variances to allow open carports, those carports were similar in design and character with the principle structure.

(b) *The variance will allow a reasonable use of the property, which use is not out of character with other properties in the same zoning category;*

The requested variance will not allow reasonable use of the property and the proposed carport is out of character with other properties in the neighborhood and in that same zoning category. This accessory structure is out of character and inconsistent with other accessory structures and carports in the residential zoning category. Many homes currently have open carports that blend aesthetical in color and design with the principle structure to create a cohesive appeal in residential neighborhoods. This type of open carport is not typical in residential neighborhoods.

(c) *In the context presented, strict compliance with the land development regulation will not further any legitimate city objective or the benefits that would be achieved under the other variance criteria by the granting of the variance outweigh the benefits under this criteria if the variance were denied;*

In the context presented, strict compliance with the City land development regulations will not further any legitimate city objective. Staff believes that the benefits received by denying this variance will outweigh the benefits under these criteria if this variance was approved.

(d) *The granting of the variance is consistent with the city's comprehensive plan; and*

The requested variance is inconsistent with the provisions of the City's Comprehensive Plan relating to single-family residential neighborhoods. Per the City of Winter Garden's Comprehensive Plan, Housing Element; he City of Winter Garden has consistently taken actions to preserve and enhance its neighborhoods. The aesthetic quality of neighborhoods is extremely important to residents. Parks and recreation facilities, public safety, refuse collection and code enforcement are major factors in maintaining and improving the aesthetic quality of neighborhoods. Enforcement of codes concerning such matters as fences, tree removal, illegally parked vehicles and satellite dishes are essential to neighborhood quality. Landscaping and buffering of adjacent more intensive land uses is also important in this effort.

(e) The variance requested is the minimum variance that will make reasonable use of the land, building, or structure or the benefits that would be achieved under the other variance criteria by the granting of the variance outweigh the benefits under these criteria if the variance were denied.

The variance requested is not the minimum variance that will make reasonable use of the land, i.e. the applicant can attach the open carport and provide provisions to ensure the structure blends with the principle building, or the applicant can request the open carport be located in the rear of the principle residence etc. Staff believes that the benefits received by denying this variance will outweigh the benefits under these criteria if this variance was approved. The proposed design of the detached open carport does not blend aesthetically with the principle building and the residential character of the neighborhood as required by City Code.

The applicant has supplied additional information regarding metal style enclosures. There are 5-6 examples attached at the end of the staff report where vehicles or boats are parked within an open metal roof structure as well as some other examples of screen rooms and other use of metal structures not relevant to this request. In addition, there are letters from the applicant's neighbors supporting this request.

Staff has reviewed this information and the examples provided appear to be within the building setback requirements and not subject to a variance. Staff is also providing photos of other similar structures or examples of boats and RV parking in the neighborhood which will be illustrated at the meeting.

Therefore, we are still not in support of the request to have a metal enclosure within 4 +/- feet of the property line. However, we would be supportive of a wood style structure with similar materials to the house that would be either attached or detached to the house. We have not received any alternative design (s) from the applicant to change the staff recommendation. The applicant has the option to ask for another continuance or to have a decision made with the information that has been provided.

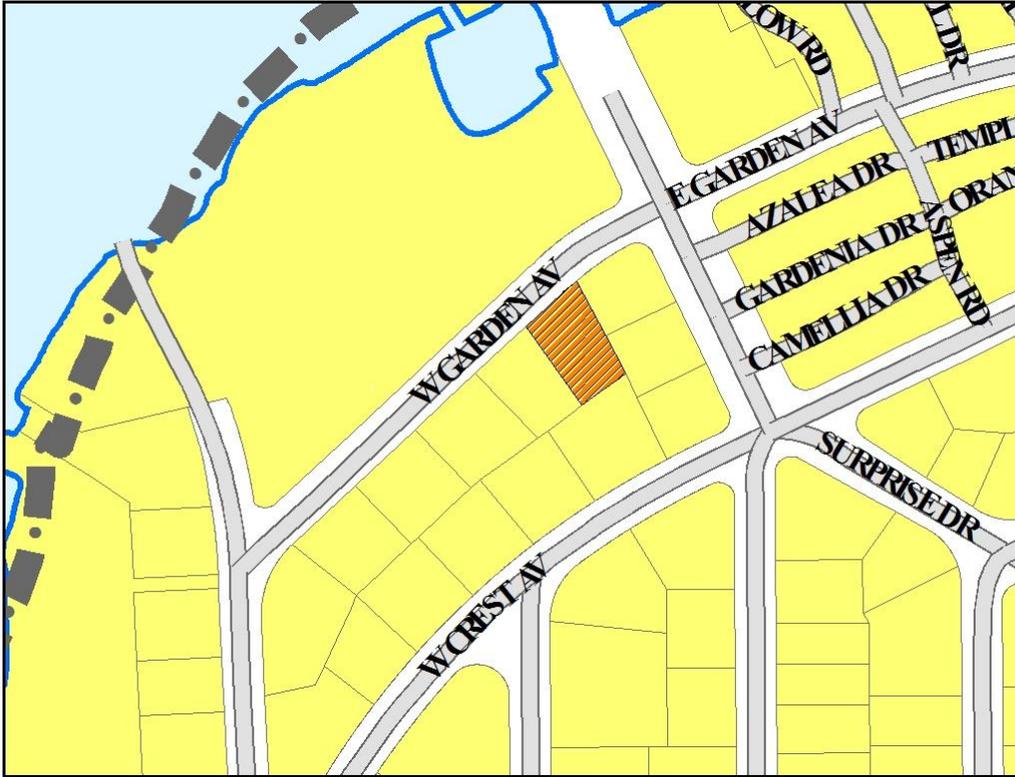
Staff

Recommendation:

For the reasons outline above; Staff recommends denial of the requested 6 foot side yard (east) setback variance to allow construction of a 10'W x 26'L x 12'H detached open carport on the east side of the property.

However, Staff would support a setback variance to allow a traditional open carport attached **or detached** to the existing single family home. The applicant would be required to reapply **or a continuance could be granted** for that requested variance and re-appear before the Planning and Zoning Board for a final decision.

14 Garden Avenue



THE CITY OF WINTER GARDEN
CITY PLANNING AND ZONING BOARD AGENDA ITEM

ATTACHMENT 04 (Public Hearing) - REVISED

Date: April 5, 2010

Meeting Date: April 5, 2010

Subject: Water and wastewater impact fee provisions of Ordinance 10-21. Amending water and wastewater impact fee provisions to change assessment methodology from equivalent residential unit (ERU) based to meter (size) based impact fee assessment methodology and reducing water and wastewater impact fees.

Issue: As the Land Planning Agency for the City, the Planning & Zoning Board reviews land development regulations and makes recommendations to the City Commission on proposed amendments to land development regulations. The Board is requested to review and provide recommendations only on the portions of Ordinance 10-21 that relate to water and wastewater impact fees. Other provisions of the Ordinance are not considered land development regulations. A copy of proposed sections 78-50 through 78-52 that relate to water and wastewater impact fees are attached to this memorandum. The City of Winter Garden contracted with Public Resource Management Group, Inc. ("PRMG") to evaluate the City's water and wastewater impact fee assessment methodology and rates. PRMG recommended changing the impact fee assessment methodology to charge water and wastewater impact fees based on the size of the water meter installed in lieu of the current ERU-based assessment methodology. Staff believes that the meter-based assessment is easier to implement from an administrative stand-point and easier for developers and property owners to understand and make calculations of estimated water and wastewater impact fees for their projects. Moreover, PRMG has recommended reducing water and wastewater impact fee rates. The proposed ordinance adopts PRMG's recommended reductions to water and wastewater impact fees. The proposed ordinance also clarifies provisions on payment schedule, disposition, collection, and protest and appeals of water and wastewater impact fees.

Staff

Recommendation:

Recommend approval of water and wastewater provisions (sections 78-50 through 78-52) of Ordinance 10-21 that adopt a meter-based assessment methodology and reduce water and wastewater impact fees to the City Commission.

Next Step: City Commission will review Ordinance 10-21 at their April 8, 2010 meeting.

Attachments: Proposed sections 78-50 through 78-52 of Ordinance 10-21.

ATTACHMENT 4

(Portions of Ordinance #10-21 concerning Water and Wastewater Impact Fees)

Sec. 78-50. Water and wastewater impact fees.

(a) *Imposition.* A water and wastewater impact fee is hereby imposed and levied on all development requesting capacity from the city’s water system and/or wastewater system to provide service to their properties and on all properties presently connected to the City’s water system or wastewater collection system when structural changes, additions, or changes in permitted use result in an additional impact to the city’s water system or wastewater system. The water and wastewater impact fee will be charged based on water meter size to be installed in accordance with the fee schedule adopted in this Section. A water and wastewater impact fee shall be paid for each individual water meter to be installed. When an existing development increases its water meter size, the development shall pay an additional water and wastewater impact fee equal to the difference between the current impact fee charged for the desired increased water meter size and the existing water meter size. The impact fee will be charged over and above any service connection fee, lateral charge, inspection fee, monthly user charge, and monthly service charge as may be established by city from time to time.

(b) *Impact fees.* Water and wastewater impact fees shall be paid in accordance with this subsection.

(1) Impact fee schedule. The following water and wastewater impact fees shall be paid based on water meter size for each water meter to be connected to the city’s system:

Impact Fees for Water and Wastewater Service – Water Meter Based			
Water Meter Size	ERUs	Water Impact Fees	Wastewater Impact Fees
3/4" Meter	1.00	\$1,086	\$1,767
1" Meter	2.50	\$2,715	\$4,418
2" Meter	8.00	\$8,688	\$14,136
3" Meter	15.00	\$16,290	\$26,505
4" Meter	25.00	\$27,150	\$44,175
6" Meter	50.00	\$54,300	\$88,350
8" Meter	80.00	\$86,880	\$141,360
10" Meter	115.00	\$124,890	\$203,205

(2) Irrigation meter. For potable or reclaimed water meters used for irrigation only, the water impact fee shall be paid for each irrigation meter based on meter size; however, the wastewater impact fee is not charged.

(3) Connection not provided. In the event that the city provides a connection for only water or wastewater service to a development, only the impact fee applicable to the service provided shall be paid.

(c) *Payment schedule for impact fees.* The water and wastewater impact fees based on water meter size as described in this Section shall be due and payable as follows:

(1) New residential development. For proposed residential development, except development described in subsection (c)(2), an amount equal to fifty (50) percent of the water and wastewater impact fees based on all requested water meters for the proposed development shall be due and payable to the city at the time of application for a FDEP permit and prior to issuance of the FDEP permit in order to temporarily reserve water and wastewater capacity for the development. When fifty (50) percent of the water and wastewater impact fees are paid at the time of application for a FDEP permit, the remaining fifty (50) percent of the water and wastewater impact fees shall be paid at the time of application for each building permit requested commencing with the first building permit issued and continuing until one-hundred (100) percent of the water and wastewater impact fees have been paid for the requested water meters which are reserved. The water and wastewater impact fee payment made at the time of application for each building permit shall equal one-hundred (100) percent of the impact fees for water meters associated with the building permit requested, so that the city collects the full amount of water and wastewater impact fees for the development when approximately half of the building permits for the development have been sought. Any sewer and water reserve capacity for and any partial impact fee payment previously made concerning any remaining water meters for the project for which water and wastewater impact fees have not been paid in full shall be forfeited by the applicant unless one-hundred (100) percent of the entire projects' water and wastewater impact fees have been paid no later than 24 months after the date of issuance of the FDEP permit or 12 months from the date of final plat approval, whichever comes first. The applicant may choose to pre-pay remaining impact fees for the development in order to avoid forfeiture of reserve capacity and partial impact fee payments. In the event additional water meters are requested for the development that were not originally contemplated when applying for the FDEP permit, one-hundred (100) percent of water and wastewater impact fee associated with such additional water meters shall be paid to the city at the earlier of at the time of application for a building permit associated with water meter requested, and prior to installation of the water meter requested.

(2) De minimus new residential development. For the following residential development, one-hundred (100) percent of water and wastewater impact fees based on all requested water meters shall be paid at the time application is made to the city for a building permit that requires use of a water meter(s) and prior to issuance of a building permit: (i) a single user individual lot; or (ii) residential development where no FDEP permit for water or wastewater is required.

(3) New non-residential development. The water and wastewater impact fees for one-hundred (100) percent of the water meters for a commercial or industrial development are due and payable to the city at the time of application for a FDEP permit, or, if no such permit is required, at the time application is made to the city for a building permit that requires use of the water meter and prior to the issuance of a building permit.

(4) Existing development. When an existing development increases its water meter size, the development shall pay an additional water and wastewater impact fee as specified in this Section at the earlier of (i) the time application is made to the city for a building permit that requires use of the larger water meter and prior to the issuance of such building permit; and (ii) prior to the installation of the water meter. When an existing development that is not currently connected to the city's system desires to connect to the city's water and/or wastewater system, the development shall pay the city the applicable impact fees based on water meter size prior to connection to the city's system.

(5) Non-transferable. Reserved water and wastewater capacity is not transferable to any other property or development. Water and wastewater impact fee payments or credits are not transferable to any other property or development and cannot be applied towards other types of impact fees.

(6) Administrative policies. The city shall have the right to adopt and enforce policies and rules consistent with this Section in order to administer the collection of water and wastewater impact fees.

(d) *Disposition of revenues imposed by water impact fee.* All revenues derived from the water impact fees imposed by this Section shall be accounted for separately in a capital fund of the public services department enterprise fund. All water impact fee revenues expended from the impact fee capital fund shall be used for the purpose of providing growth necessitated capital improvements and extending, oversizing, or separating existing water system improvements, or constructing new additions to the water plant, distribution or transmission systems or part thereof as authorized by the city commission, including, but not limited to expenses for: (i) design or construction plan preparation; (ii) permitting and related fees; (iii) land or utility system acquisition, including acquisition or condemnation costs; (iv) construction and design of water systems buildings, facilities, or improvements and additions thereto; (v) design and construction of drainage facilities reasonably required by, or convenient to, the construction of water systems buildings, facilities, or improvements and additions thereto; (vi) relocating utilities required by the construction of water systems buildings, facilities, or improvements and addition thereto; (vii) construction management, inspection, or both; (viii) surveying, soils and material testing, and the evaluation and development of raw water, alternative water, and reuse water resources and supplies; (ix) acquisition of plant or equipment necessary or convenient to expand the water system; and (x) payment of principal and interest, reserves and costs of issuance under any bonds or other indebtedness issued by the city to fund growth impacted improvements, and additions to the water system. No part of such water impact fee revenues shall be budgeted or used for the operating expenses of the water system.

(e) *Disposition of revenues imposed by wastewater impact fee.* All revenues derived from the wastewater impact fees imposed by this Section shall be accounted for separately in a capital fund of the public services department enterprise fund. All wastewater impact fee revenues expended from the impact fee capital fund shall be used for the purpose of providing growth necessitated capital improvements and extending, oversizing, or separating existing wastewater system improvements, or constructing new additions to the sewer plant, distribution or transmission systems or part thereof as authorized by the city commission, including, but not limited to expenses

for: (i) design or construction plan preparation; (ii) permitting and related fees; (iii) land or utility system acquisition, including acquisition or condemnation costs; (iv) construction and design of wastewater systems buildings, facilities, or improvements and additions thereto; (v) design and construction of drainage facilities reasonably required by, or convenient to, the construction of wastewater systems buildings, facilities, or improvements and additions thereto; (vi) relocating utilities required by the construction of wastewater systems buildings, facilities, or improvements and addition thereto; (vii) construction management, inspection, or both; (viii) surveying, soils and material testing, and the evaluation and development of reuse water resources and supplies; (ix) acquisition of plant or equipment necessary or convenient to expand the wastewater system; and (x) payment of principal and interest, reserves and costs of issuance under any bonds or other indebtedness issued by the city to fund growth impacted improvements, and additions to the wastewater system. No part of such wastewater impact fee revenues shall be budgeted or used for the operating expenses of the wastewater system.

(f) *Disposition of funds not expended.* If the impact fees have not been expended or encumbered by the end of the calendar quarter immediately following six years from the date the fees were paid, upon application of the fee payer of proof of payment or the development for which the fees were paid was never begun, the fees shall be returned with interest at the rate determined by the city based upon the average interest earning rate incurred by the city in accordance with the following procedure:

- (1) The then present owner must petition the city commissioners for the refund within one year following the end of the calendar quarter immediately following six years from the date on which the fee was received.
- (2) The petition must be submitted to the city manager and must contain:
 - (i) A notarized sworn statement that the petitioner is the current owner of the property;
 - (ii) A copy of the dated receipt issued for payment of the fee;
 - (iii) A certified copy of the latest recorded deed; and
 - (iv) A copy of the most recent ad valorem tax bill.
- (3) If reimbursement is approved, the city shall remit to the present owner of the petition within 60 days of approval.

(g) *Disposition of funds on deposit.* Any funds on deposit in the utilities impact fee fund not immediately necessary for expenditure shall be invested in interest-bearing accounts up to and including interfund loans. Interfund loans shall be made by resolution by the city commission payable in full over time at the prevailing interest rate. Applicants shall not receive a credit for or be entitled to interest from the investment of funds except as provided in section (f) above.

Sec. 78-51. Collection of past due impact fees.

In the event that the water and/or wastewater impact fee, or any portion thereof, is not paid when due for any reason, including by mistake or inadvertence, the city shall proceed to collect the impact fee as follows:

(1) The city shall serve, by certified mail, return receipt requested, an impact fee statement notice upon the applicant at the address set forth in the application for the building permit, and the owner at the address appearing on the most recent records maintained by the property appraiser of the county. Service of the impact fees statement notice shall be deemed notice of the impact fees due and service shall be deemed effective on the date the return receipt indicates the notice was received by either the applicant or the owner or the date said notice was attached to the building permit, whichever occurs first.

(2) The impact fee statement notice shall contain a description of the property and shall advise the applicant and the owner as follows:

(i) The amount due and the general purpose for which the impact fee was imposed.

(ii) That a hearing before the city commission to challenge the impact fee assessed may be requested within 30 calendar days from the date of receipt of the impact fee statement notice, by filing a written application to the office of the city manager. The written application shall state with specificity the basis of the challenge.

(iii) That the impact fee shall be delinquent if not paid and received by the city within 30 calendar days of the date the impact fee statement notice, or if a hearing is not requested pursuant to subsection (2) ii. above and, upon becoming delinquent, shall be subject to the imposition of a delinquent fee and interest on the unpaid amount until paid.

(iv) That in the event the impact fee becomes delinquent, a lien against the applicable property for which the building permit was secured shall be recorded in the official records book of the county.

(3) The impact fee shall be delinquent if, within 30 calendar days from the date of the impact fee statement notice, or the date said notice was attached to the building permit, neither the impact fees have been paid and received by the city, nor a hearing requested pursuant to subsection (2)(ii) above. In the event a hearing is requested pursuant to subsection (2)(ii), the impact fees shall become delinquent if not paid within 30 calendar days from the date the City Commission determines the amount of impact fees due upon the conclusion of such hearing. Said time periods shall be calculated on a calendar day basis, including Sundays and legal holidays, but excluding the date of said impact fee statement notice or the hearing date of the city commission's decision in the event of an appeal. In the event the last day falls on a Sunday or legal holiday, the last due date prior to becoming delinquent shall be the next business day. Upon becoming delinquent, a delinquency fee equal to ten percent of the total impact fee imposed shall be assessed. Such total impact fee, plus delinquency fee, shall bear interest at the statutory rate for final judgments calculated on a calendar day basis, until paid.

(4) Should the impact fee become delinquent, the city shall serve, by certified mail, return receipt requested, a "notice of lien" upon the delinquent applicant at the address indicated in the application for the building permit, and upon the delinquent owner at the address appearing on the most recent records maintained by the property appraiser of the county. The notice of lien shall notify the delinquent applicant and owner that due to

their failure to pay the impact fee, the city shall record a claim of lien in the official public records of the county.

(5) Upon mailing of the notice of lien, the city attorney shall cause the recording of a claim of lien in the official public records of the county. The claim of lien shall describe the property, the amount of the delinquent impact fees and the date of their imposition. Once recorded, the claim of lien shall constitute a lien against the property described therein. The city attorney shall proceed expeditiously to collect or otherwise enforce said lien.

(6) After the expiration of three (3) months from the date of recording of the claim of lien, a suit may be filed to foreclose said lien. Such foreclosure proceedings shall be instituted, conducted and enforced in conformity with the procedures for the foreclosure of municipal special assessment liens, as set forth in F.S. §§ 173.04 through 173.12, inclusive, which provisions are hereby incorporated herein in their entirety to the same extent as if such provisions were set forth herein verbatim.

(7) The liens for delinquent impact fees imposed hereunder shall remain liens, coequal with the liens of all state, county, district and municipal taxes, superior in priority to all other recorded liens and claims whether recorded prior to or after the city's lien, except as otherwise provided by law, until paid as provided herein.

(8) The owner shall be responsible for and the city shall be entitled to reimbursement for the payment of all administrative expenses and costs, including attorney's fees and litigation costs and recording and filing fees, incurred by the city in the collection of impact fees, filing of liens and in actions to foreclose such liens or actions for a monetary judgment.

(9) The collection and enforcement procedures set forth in this section shall be cumulative with, supplemental to and in addition to, any applicable procedures provided in any other ordinance or administrative regulations of the city or any applicable law or administrative regulation of the state. Failure of the city to follow the procedure set forth in this section shall not constitute a waiver of its rights to proceed under any other ordinances or administrative regulations of the city or any applicable law or administrative regulation of the state.

Sec. 78-52. Impact fee protest and appeals.

(a) A person may protest or challenge the imposition of or a decision on an impact fee imposed pursuant to this article by filing with the city manager, within 30 days from the occurrence of the decision, event, or imposition of an impact fee sought to be challenged, a written notice of protest containing the following minimum information:

- (i) The name and address of the person protesting and property owner;
- (ii) The legal description of the property at issue;
- (iii) If issued, the date of the building permit(s) issued for the property at issue;
- (iv) If paid, the date of and the amount of the impact fee paid; and
- (v) A full statement of the reasons why the person is protesting.

The person who files the protests bears the burden of proof to demonstrate that the fee, decision or matter challenged is improper and/or should be modified.

(b) Upon receipt of such protest, including all the information required pursuant to subsection (a), the city manager or his designee shall review the protest, and within forty-five (45) days of the receipt of the complete request, approve or deny the request. If the person making the protest disagrees with the determination of the city manager or his designee, such person may appeal the decision to the city commission, provided a written appeal is filed with the city clerk within ten (10) days from the issuance of the city manager's decision.

(c) Upon receipt of an appeal, a hearing shall be scheduled before the city commission at a regularly scheduled meeting or a special meeting called for the purpose of conducting the hearing and shall provide the person who filed the appeal written notice of the time and place of the hearing. Such hearing shall be held within sixty (60) days of the date the appeal was filed. The determination of the city commission shall be final.

(d) Any judicial action or proceeding to attack, review, set aside or annul the reasonableness, legality, or validity of any impact fee or decision related thereto must be filed within thirty (30) days following the date of the imposition of the impact fee or the final determination of the city commission on an appeal, which occurs later.

(e) Failure to timely file a protest, appeal or judicial action in accordance with these procedures shall constitute a waiver and invalidation of any protest, appeal or challenge to the applicable imposition of an impact fee or decision concerning an impact fee.

THE CITY OF WINTER GARDEN
CITY PLANNING AND ZONING BOARD AGENDA ITEM
ATTACHMENT 05 (Public Hearing)

Date: April 5, 2010

Meeting Date: April 5, 2010

Subject: Ordinance 10-23, Amending Chapters 18, 46 and 88, removing fee schedules and charges from the City Code of Ordinances and allowing fees and charges to be established by Resolution.

Issue: Ordinance 10-23 will allow for the City to amend Chapter 18, Building and Building Regulations; Chapter 46, Fire Prevention and Protection and Chapter 88, Development Review Fee Schedule to remove the building fees and charges, certain fire fees and charges and the engineering site work fees and charges from the City Code of Ordinances and provide for these fees to be adopted by Resolution by the City Commission. These fees are the development permitting fees that are normally paid at the time of site development and building permit issuance. If this ordinance is adopted, City staff will present several Resolutions for these fees to be reviewed and adopted by the City Commission.

Staff

Recommendation:

Recommend approval of Ordinance 10-23, amending Chapter 18, Building and Building Regulations; Chapter 46, Fire Prevention and Protection and Chapter 88, Development Review Fee Schedule to remove the building fees and charges.

Next Step:

City Commission will review at their meeting on April 8, 2010

Attachments:

Ordinance 10-23
Amending Chapter 18, Building and Building Regulations; Chapter 46, Fire Prevention and Protection and Chapter 88, Development Review Fee Schedule.