



CITY OF WINTER GARDEN

CITY COMMISSION REGULAR MEETING MINUTES

July 8, 2010

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

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

Also Present: City Manager Mike Bollhoefer, City Attorney Kurt Ardaman, City Clerk Kathy Golden, Community Development Director Tim Wilson, Planning Consultant Ed Williams, Public Services Director Don Cochran, Police Lieutenant Bill Sullivan, Building Official Skip Lukert, Economic Development Director Tanja Gerhartz, Finance Director Robin Hayes, Fire Chief John Williamson, Information Technology Director Bob Reilly, Parks and Recreation Director Jay Conn, Human Resources Director Frank Gilbert, and West Orange Times Reporter Michael Laval

1. **APPROVAL OF MINUTES**

Motion by Commissioner Jowers to approve the regular meeting minutes of June 24, 2010 as submitted. Seconded by Commissioner Sharman and carried unanimously 5-0.

2. **FIRST READING OF PROPOSED ORDINANCE**

A. **Ordinance 10-27:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 54, ARTICLE III, SECTION 98-121 OF THE WINTER GARDEN CITY CODE; LIMITING TERMS TO THREE YEARS FOR MEMBERS OF THE COMMUNITY REDEVELOPMENT ADVISORY BOARD; CREATING TERM LIMITS AND IDLE PERIODS FOR MEMBERS OF THE COMMUNITY REDEVELOPMENT ADVISORY BOARD; ARRANGING FOR TERMS OF OFFICE FOR THE COMMUNITY REDEVELOPMENT ADVISORY BOARD TO EXPIRE AND COMMENCE WITHIN THE SAME MONTH; PROVIDING FOR THE FILLING OF VACANCIES; AND PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 10-27 by title only. City Manager Bollhoefer stated that the City Commission previously directed staff to establish term limits for several of the boards. This has been accomplished for the Planning and Zoning Board and the Code Enforcement Board. This ordinance addresses the Community Redevelopment Advisory Board and is essentially the same as what has been done with the other boards. It allows the currently seated board members to complete their current term and serve one additional term thereby limiting members to serving two 3-year terms.

City Attorney Ardaman noted that there was one problem within the existing ordinance and new language was added regarding serving out an existing board member's term whenever there is a vacancy. He noted that this will be a non-substantial change that will be made between this reading and the second reading.

Motion by Commissioner Boulter to approve Ordinance 10-27 with the second reading and public hearing on July 22, 2010. Seconded by Commissioner Sharman and carried unanimously 5-0.

3. **FOURTH READING AND PUBLIC HEARING OF PROPOSED ORDINANCE**

- A. **Ordinance 10-08:** AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING ARTICLES IX AND X OF CHAPTER 118 OF THE WINTER GARDEN CODE OF ORDINANCES PRESCRIBING STANDARDS FOR THE S.R. 50 COMMERCIAL CORRIDOR OVERLAY BY REVISING LANGUAGE; PROVIDING FOR APPLICABILITY IN INSTANCES OF ANNEXATION, SUBSTANTIAL MODIFICATION, AND EXISTING NONCONFORMITIES; PROVIDING ADDITIONAL DEFINITIONS AND REVISING EXISTING DEFINITIONS; PROVIDING AND REVISING DESIGN AND TECHNICAL STANDARDS FOR DEVELOPMENT, INCLUDING BUILDING MATERIALS, SHOPPING CART CORRALS AND SIGNAGE; REMOVING CERTAIN RESTRICTIONS ON LOCATING OUTDOOR VENDING MACHINES AND AMUSEMENTS; MODIFYING SETBACK AND BUFFER REQUIREMENTS; REFERENCING LIGHTING REQUIREMENTS; AND PROVIDING FOR CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 10-08 by title only. Community Development Director Wilson stated that he would provide a brief presentation of Ordinance 10-08, which is known as the West State Road 50 Overlay Ordinance (*see attached Exhibit A*).

Mr. Wilson noted that a summary packet of his presentation has been provided for the public on the meeting room entrance table. Mr. Wilson then highlighted some of the changes and updates and displayed an updated corridor map of the proposed overlay.

Mr. Wilson briefly explained the two-year history of the advisory board and staff in preparing this ordinance presented to the City Commission tonight. He noted that the number one issue, when starting this process, was the impact this would have on the active existing businesses. Also discussed were sign issues and landscaping.

Mr. Wilson noted that in the original overlay, the median landscaping required a 25 foot buffer next to the right-of-way. It was thought that this was not an applicable standard so the recommendations being presented have a 10 or 15 foot standard as opposed to the 25 foot standard.

Mr. Wilson stated that there have been some substantial changes to the use issues. He thinks it should be made clearer than what has been drafted under definitions of applicability. The intent is that the overlay ordinance should have no retroactive

applicability to any existing businesses; they would be grandfathered in until they make a substantial modification to their property. There was an additional feature that would allow an existing business to make refurbishments to their building and have no requirement to the threshold of the overlay applying.

There was discussion on the substantial change being 50 percent of the current size and instead only applying that definition to change in use and redevelopment of an existing use. Mr. Wilson stated that the 50 percent issue was removed from this version.

There was discussion on the Orange County enclaves. **Commissioner Buchanan** asked if Orange County would adopt these same standards. **Mr. Wilson** responded that Orange County actually was first in implementing their overlay back in year 2002. Orange County's standards apply but if someone wants to annex into the City, we wanted to make sure that the City's standards would then apply. There was discussion that Orange County would have the grandfather clause.

Mr. Wilson stated that in discussions with the board, there were incentives mentioned that could possibly be implemented for existing businesses' landscaping.

There was discussion on creating a Community Redevelopment Agency for State Road 50 and a preliminary proposal is being prepared for presenting to Orange County for the area between Ninth Street and Beulah Road to Main Street as a 20-year plan.

Mr. Wilson gave a brief summary of the changes to the ordinance which include redefining the boundaries on the overlay map, clarification of the exemptions, update of the site amenities (garbage, bus shelters, park corals, etc.), updated sign requirements, landscape buffers, and site lighting.

Mr. Wilson then noted changes that had been made since the last City Commission meeting. The definition for substantial modifications has been clarified as well as a correction to a typo on a previous public handout.

City Manager Bollhoefer again complimented the board and staff for their efforts on this difficult task to draft this ordinance.

Commissioner Jowers addressed the issue of merchants desiring a grandfather clause for their businesses being included in the new overlay ordinance.

Mr. Wilson indicated that a statement could be added that specifically states "Existing businesses are exempt unless they make a substantial modification." **Mayor Rees** stated that is how he interpreted the applicability of the substantial modification clause. *(There were no objections noted.)*

Mayor Rees opened the public hearing.

Krista Carter, Vice-President of the West Orange Chamber of Commerce, 12184 W. Colonial Drive, Winter Garden, Florida, stated that the West Orange Chamber appreciates the efforts of the City of Winter Garden in evaluating and approving this ordinance and its amendments. Ms. Carter noted that the Chamber participated in the public workshops and through their Economic Development Committee they reviewed the changes to the ordinance. After the review, the Board of Directors of the West Orange Chamber voted to support this ordinance.

Mayor Rees closed the public hearing.

Motion by Commissioner Jowers to adopt Ordinance 10-08 with an added exemption for existing businesses as stated. Seconded by Commissioner Sharman and carried unanimously 5-0.

[Transcription Note: After the meeting, a review of Ordinance 10-08 Section 118-1403(1) was done by the Community Development Director Tim Wilson, and it was determined that the ordinance already contains the additional exemption as previously adopted by the City Commission.]

4. **REGULAR BUSINESS**

A. **Recommendation to approve entering into a Tri-Party Road Construction Agreement for Sessions Road to include the roadway, drainage, and utility improvements, between City of Winter Garden, Orange County School Board, and Hickory Hammock, LLC**

Community Development Director Wilson displayed a map and described the location of the Sessions property. He stated that the City has been working with the Orange County School Board the last several months on an agreement that will allow access to the new school site. At the time the school site was donated, they contemplated there would be development in the area surrounding the school. Development has not occurred as planned and the City is in a situation now where we need to install the road and the agreement speaks as to how the City is to recoup its investment costs into the road.

Mr. Wilson stated that there are various easements and right-of-ways that are being provided to the City to support the road. Those items are being accommodated with this agreement. If the City Commission approves the agreement, it then needs to move onto the Orange County Public School Board for their approval. The City has provided funding for the road in this year's budget. A conservative cost was placed in the agreement in case there are any cost adjustments.

Mr. Wilson stated that the road is designed to be a four-lane road but only two lanes will be constructed initially. The four-lane road will have to be constructed when there is future development.

City Manager Bollhoefer clarified that the cost includes not just the two-lane road but its utilities and all of the work involved. In the long term, when these schools are built, there will be the need for a traffic light at the intersection.

Commissioner Buchanan asked about the including the traffic lights in the agreement provisions. **Mr. Bollhoefer** replied that with impact fees and the traffic warrant study, it is contemplated that this item would have to be on Avalon Road.

Mayor Rees asked if this amount includes the turn lanes on Avalon Road. **Mr. Bollhoefer** replied that in the long term, that feature will have to be added.

City Attorney Ardaman stated that there is potential risk to the City because the City is fronting a considerable amount of funds. This is something that the City will have to spend to make this development happen. The developer was suppose to pay for these improvements and could not. A bank has loaned the developer the money for the development of the Hickory Hammock Property, which has apparently been taken over by the FDIC. The City has asked the bank and the FDIC for the right to have first priority in recovery of its money. Both the bank and FDIC have refused, so the agreement that the City would have would be inferior to the bank's mortgage. In the event that this was foreclosed, the City would not have a lien on the property. He stated that there is the risk that the City may not be able to recover these funds in a worst case scenario. However, because the City is contributing money for the roadway, school and future development will ultimately bring the City some revenue.

City Manager Bollhoefer stated that this is being funded with impact fees. If the City does not proceed, the school board will not build the schools.

Mayor Rees asked if the City is within its rights to assume it will get a reasonable rate of return on the funds provided. **Mr. Ardaman** replied that he believes the City provided for a three percent per year increase to start in 2011, after the City has expended those funds.

Motion by Commissioner Jowers to approve entering into a tri-party road construction agreement for Sessions Road to include the roadway, drainage, and utility improvements, between the City of Winter Garden, Orange County School Board, and Hickory Hammock, LLC. Seconded by Commissioner Buchanan and carried unanimously 5-0.

- B. **Resolution 10-09:** A RESOLUTION OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING THE ARCHITECTURAL FLOOR PLAN OF THE TUCKER OAKS PUD WHICH WAS ADOPTED BY ORDINANCE 04-34; PROVIDING FOR AN EFFECTIVE DATE, including the conditions stated in the Development Review Committee's memo of June 21, 2010

Community Development Director Wilson stated that this is a minor amendment to the Tucker Oaks PUD. The current approval includes uncovered patios. The developer

would like to amend the PUD to allow a 120 square foot covered porch and the patio area may be slightly larger. This issue was addressed with the Development Review Committee and staff recommends approval.

Motion by Commissioner Boulter to approve Resolution 10-09 including the Development Review Committee memorandum dated June 21, 2010 (see attached Exhibit B). Seconded by Commissioner Buchanan and carried unanimously 5-0.

C. Recommendation to declare vehicles, equipment and furnishings as surplus and authorize their sale at auction

Human Resources Director/Risk Manager Gilbert requested authorization for the disposal of surplus vehicles, equipment, and miscellaneous furnishing that have reached or exceeded their usable service life. He noted a modification to the agenda package that should include removing the last three pages of the surplus listing because they are duplicates of the first three pages and should not be included as part of the attachments.

Motion by Commissioner Jowers to approve declaring vehicles, equipment and furnishings as surplus and authorize their sale at auction. Seconded by Commissioner Buchanan and carried unanimously 5-0.

D. Appointment of the 2nd alternate on the Election Canvassing Board

City Clerk Golden stated that before the City Commission for their consideration is an interest application for service on the Election Canvassing Board. The volunteer applications were surveyed and Mr. Gregory is interested in serving as the 2nd alternate.

Motion by Commissioner Sharman to appoint Thomas Gregory as the 2nd alternate on the Election Canvassing Board. Seconded by Commissioner Buchanan and carried unanimously 5-0.

5. MATTERS FROM CITIZENS – There were no items.

**6. MATTERS FROM CITY ATTORNEY
State Road 50 Project**

City Attorney Ardaman stated that the City has two primary agreements in place. The first is between the City and Florida Department of Transportation (FDOT). FDOT came to the City before starting the State Road 50 widening project and said that in order for the FDOT to move forward, the City had to sign an agreement that provided for the relocation of the City's sewer and water lines within the State Road 50 right-of-way. Staff did not like the agreement and tried to make changes which were refused by the FDOT who said take the agreement and sign it or they would not move forward. The City Commission approved it and under that agreement, the City had the right to either allow FDOT to select its contractor and do the relocation of the utilities or the City could choose our own contractor. The FDOT's contractor, Prince, came in at \$7 million plus and the City's contractor came in at \$3.5 million, for a substantial savings.

In November of 2009, the FDOT sent the City a letter saying that they considered the agreement between the FDOT and the City null and void and that the City still had to work with Prince and do the relocation. FDOT has responded to a letter from the City to say that the agreement between FDOT and the City is null and void. After a careful review, he believes the current agreement creates more risk and liability for the City than if the agreement were not in place. The FDOT has issued the City a permit to relocate the utilities. He thinks the Commission should agree with the FDOT that the agreement for the relocation of the utilities is null and void and terminated. The City would continue to do its work with the permit that the FDOT has issued to the City for this relocation. This would limit the City's liability under that permit, far more so than what the City's liability would be under the existing contract.

Mr. Ardaman stated that what staff would like to do is to send the FDOT a letter that we agree that the contract between the City and the FDOT is null and void, we have our permit in place, and we intend on continuing the project. He would like the approval of the City Commission to move in this direction.

Commissioner Buchanan asked if the contract being null and void would affect the permit that was issued.

Mr. Ardaman explained that there is nothing in the contract that the termination of the contract makes the permit null and void. What controls what work is to be done is the plans and the utility relocation work schedule that was approved by FDOT in order to get the permit. Staff is asking FDOT for an extension due to delays that have occurred in large part because of other utilities being in the way. The permit states that if you need more time, tell them what we need. There is no legal connection between the contract and the permit once the permit is issued. There is a statute that states that if a utility provider with utilities that interferes with an FDOT project, the FDOT can give the utility provider 30 days to move it. If not, FDOT can move them and the utility provider could be assessed for what it costs the FDOT for moving them. The City can statutorily contest any incorrectly assessed amounts. While there are always risks, especially with construction contracts, the City's best position legally in his option, this is the best way to go.

Motion by Commissioner Sharman to authorize the City Manager to confirm that the agreement with FDOT for State Road 50 is null and void. Seconded by Commissioner Boulter and carried unanimously 5-0.

7. **MATTERS FROM CITY MANAGER**

City Manager Bollhoefer announced that an advertisement was published in the West Orange Times for an additional reading and public hearing on July 22, 2010 of Ordinance 10-20 in the event the Department of Community Affairs (DCA) needed the City to have another hearing on the future land use changes. The City did receive an answer and another public hearing will not be necessary and it is too late to pull the advertisement. Therefore, he publically announced that the hearing is cancelled and notice will be posted for all interested parties. Mr. Bollhoefer noted that Ordinance 10-20, as heard on June 24, 2010, was adopted

and the entire comprehensive plan package has been transmitted to the DCA for their final review and compliance determination.

8. **MATTERS FROM MAYOR AND COMMISSIONERS**

Mayor Rees thanked staff for their efforts in the July 4th celebration.

The meeting adjourned at 7:21 p.m.

APPROVED:

_____/S/_____
Mayor John Rees

ATTEST:

_____/S/_____
City Clerk Kathy Golden, CMC