



# CITY OF WINTER GARDEN

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## CITY COMMISSION REGULAR MEETING MINUTES

December 9, 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, Assistant City Attorney Dan Langley, City Clerk Kathy Golden, Planning Consultant Ed Williams, Public Services Director Don Cochran, Community Development Director Tim Wilson, Police Chief George Brennan, Finance Director Robin Hayes, Fire Chief John Williamson, Building Official Skip Lukert, Information Technology Director Bob Reilly, Parks and Recreation Director Jay Conn, Community Relations Manager Andrea Vaughan, 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 November 11, 2010 as submitted. Seconded by Commissioner Boulter and carried unanimously 5-0.**

### 2. **FIRST READING OF PROPOSED ORDINANCES**

A. **Ordinance 11-01 (replaces Ordinance 06-37):** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING THE FUTURE LAND USE MAP OF THE WINTER GARDEN COMPREHENSIVE PLAN BY CHANGING THE LAND USE DESIGNATION OF REAL PROPERTY GENERALLY DESCRIBED AS 76.003 ACRES OF LAND LOCATED ON THE EAST SIDE OF COUNTY ROAD 545, SOUTH OF SIPLIN ROAD AND NORTH OF BLACK LAKE FROM ORANGE COUNTY RURAL TO CITY SUBURBAN RESIDENTIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE (Sessions Property LSCPA)

Assistant City Attorney Langley read Ordinance 11-01 by title only.

Mayor Rees announced that Ordinance 11-01 would be postponed to a date uncertain.

**Motion by Commissioner Jowers to postpone Ordinance 11-01 to a date uncertain. Seconded by Commissioner Sharman and carried unanimously 5-0.**

B. **Ordinance 11-02:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING CHAPTER 78, ARTICLE II, WATER AND SANITARY

SEWER SYSTEMS OF THE CITY OF WINTER GARDEN CODE OF ORDINANCES BY AMENDING SECTIONS 78-51, 78-59 AND 78-60 OF THE CITY OF WINTER GARDEN CODE OF ORDINANCES AND CREATING NEW SECTIONS 78-61 AND 78-62 OF THE CITY OF WINTER GARDEN CODE OF ORDINANCES; AMENDING CHAPTER 78, UTILITIES OF THE WINTER GARDEN CODE OF ORDINANCES BY CHANGING REFERENCES OF UTILITIES DEPARTMENT TO PUBLIC SERVICES DEPARTMENT; MODIFYING WATER AND WASTEWATER IMPACT FEE AMOUNTS AND ASSESSMENT METHOD TO A METER BASED IMPACT FEE; PROVIDING FOR WATER AND WASTEWATER IMPACT FEE COLLECTION, ADMINISTRATION, AND DISPOSITION; CREATING AND MODIFYING MISCELLANEOUS CHARGES AND FEES; PROVIDING FOR IRRIGATION ONLY METER CONNECTION FEE; PROVIDING FOR ADOPTION OF ADMINISTRATIVE POLICIES TO IMPLEMENT CHAPTER 78, ARTICLE II OF CITY OF WINTER GARDEN CODE OF ORDINANCES; PROVIDING FOR CONFLICTS, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE

Assistant City Attorney Langley read Ordinance 11-02 by title only.

Public Services Director Cochran stated that several months ago a consultant came before the City Commission and presented a rate study on water and sewer rates. At that time, staff presented a proposed ordinance that was placed on hold pending additional information from St. Johns River Water Management District. Included in the original ordinance was a recommendation to change the water and wastewater impact fees from a fixture count, which is used today, to a meter based method of calculating those impact fees. Staff recommends adopting this ordinance that changes the impact fees and the new methodology. He explained the benefit of changing to a meter size based rate, which allows the developer to know what their impact fee is upfront. He also noted that currently the assessment for a single-family residence is \$3,345.00, but using the new assessment method it would be \$2,853.00.

City Manager Bollhoefer stated that the primary purpose for this change was not to assist developers but to assist businesses with their economic planning. He stated that oftentimes a business does not know the impact of their utility costs until after the development is complete. He noted that the reduction is based on the fact that construction costs have gone down; the consultant has recommended the reduction.

Commissioner Jowers voiced concerns about developers allowing well meaning merchants to place their money into a project only to find out that their impact fees would be sky high on the other end.

Mr. Bollhoefer replied that this ordinance would do the exact opposite because it is based on a meter and not changing fixtures, there will be much more certainty in the fees.

Mr. Cochran stated that the meter is generally the first thing that goes in so the developer or builder would be paying for the meter impact fees when the meter is set, not after the fact.

**Motion by Commissioner Boulter to approve Ordinance 11-02 with the second reading and public hearing being scheduled for January 13, 2011. Seconded by Commissioner Jowers and carried unanimously 5-0.**

- C. **Ordinance 11-03:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA; AMENDING CHAPTER 10 OF THE CODE OF ORDINANCES TO CREATE A NEW ARTICLE IV, TITLED PROHIBITION OF COMMERCIAL GAMING DEVICES, SECTIONS 10-250 THROUGH 10-252 CREATING DEFINITIONS, PROHIBITING THE POSSESSION, USE, PLAYING AND OPERATION OF COMMERCIAL GAMING DEVICES WITHIN THE CITY BOUNDARIES AND PROVIDING FOR PENALTIES AND REMEDIES FOR VIOLATIONS; PROVIDING FOR CODIFICATION, SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE

Assistant City Attorney Langley read Ordinance 11-03 by title only.

Community Development Director Wilson stated that staff would like to have a local ordinance that deals with commercial gaming, which is not sufficiently addressed in the state statutes. This ordinance specifically addresses certain types of slot machines and other related devices.

City Manager Bollhoefer added that several counties and cities across the State of Florida have been having issues with companies that come in under the guise of selling internet time and phone time. They are actually allowing people to gamble online. He noted that this ordinance will not have any effect on our current businesses.

Assistant City Attorney Langley stated that he has encountered this issue in other cities that he represents. These establishments will open as internet cafes or phone card services and what they do is pretend to sell internet time. In fact they offer a game they call sweepstakes and people play a slot machine game in order to determine if they won a jackpot or a prize. These people are paying to play the games for a chance to win prizes, which is the definition of gambling. It is his opinion, that the law already prohibits this type of activity. However, a lot of prosecutors in the State of Florida have been very hesitant to prosecute these types of businesses because these organizations have convinced prosecutors that there is enough gray area in the law to prevent them from winning a conviction. This proposed ordinance prohibits the use of a device that would allow someone to insert coins or tokens to play a game that simulates a slot machine or other gambling type games in such a way that reveals that they are going to win a prize, jackpot, or money. There are exclusions in this ordinance, such as people who want to play gambling games at home on their computers. This is strictly to deal with commercial establishments using devices to allow adults to play games that reveal they win prizes.

**Motion by Commissioner Buchanan to approve Ordinance 11-03 with the second reading and public hearing being scheduled for January 13, 2011. Seconded by Commissioner Boulter and carried 4-1; Commissioner Jowers opposed.**

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

- A. **Ordinance 10-33:** 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

Assistant City Attorney Langley read Ordinance 10-33 by title only.

Community Development Director Wilson stated that this is the second reading of Ordinance 10-33, which is the annual capital improvement update to the City's Comprehensive plan. This item basically adopts a fifth year in the comprehensive plan consistent with the City's adopted budget. The plan has been reviewed by staff and the Planning and Zoning Board, both of whom recommend approval.

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

**Motion by Commissioner Jowers to adopt Ordinance 10-33. Seconded by Commissioner Sharman and carried unanimously 5-0.**

4. **REGULAR BUSINESS**

- A. **Recommendation to approve the purchase of a solid waste automated side loading truck for \$211,630.00 to replace an existing 2002 rear loading truck**

Public Services Director Cochran stated that staff is requesting to piggyback on the purchase of a bid from the City of Venice, Florida, for a 2010 side loading refuse truck, Lodal Mag 20 for \$211,630.00 to replace an existing 2002 rear loading truck. This is a fully automated truck that can be operated by one person instead of by two, which is how most of the City's trucks currently operate.

Mayor Rees asked if this means that the City will be reducing its payroll.

Mr. Cochran replied that the City currently uses four workers from a temporary work service. As the City brings on these vehicles, this will allow the City to reduce the need for temporary workers.

City Manager Bollhoefer stated that in the long run you will see a lot of these automated trucks reducing workers compensation and staff. In some of the older neighborhoods it is just not practical. There should be a reduction in the labor costs.

There was discussion that the piggyback purchasing process saving the City time.

**Motion by Commissioner Sharman to approve the purchase of a solid waste automated side loading truck for \$211,630.00 to replace an existing 2002 rear loading truck. Seconded by Commissioner Jowers and carried unanimously 5-0.**

**B. Recommendation to approve the purchase of a solid waste automated side loading truck for \$211,630.00 to replace an existing 2000 truck**

Public Services Director Cochran stated that this item is for the purchase of a another automated side loader at the same purchase price, which will replace an existing 2000 Lodal truck.

**Motion by Commissioner Jowers to approve the purchase of a solid waste automated side loading truck for \$211,630.00 to replace an existing 2000 Lodal MAG 20 truck. Seconded by Commissioner Bouler and carried unanimously 5-0.**

**C. Recommend approving Ryan Tax Credit Services, LLC to act as the broker in the sale of Voluntary Cleanup Tax Credits with the referral fee not to exceed \$10,929.37**

Finance Director Hayes stated staff is recommending that the City hire Ryan Tax Services to act as the broker to sell the Voluntary Cleanup Tax Credits issued by the Florida Department of Environmental Protection (FDEP). Staff has gone through the investment consultants and asked them to look at the brokers used by the FDEP. They provided staff with a list and recommended a broker to be used for this service. The City asked the broker to find a buyer for these Tax Cleanup Credits.

These tax credits were issued to the City of Winter Garden in 2009 but the funds were not available at that time. FDEP actually gave the City the certificates in July 2010. City staff is proposing to sell the tax credits at \$0.85 cents on the dollar. The cost to the City will be \$0.05 on the dollar for the brokerage referral fee. These credits are for the 848 E. Plant Street (Brownfield) property.

**Motion by Commissioner Bouler to approve Ryan Tax Credit Services, LLC to act as the broker in the sale of Voluntary Cleanup Tax Credits with the referral fee not to exceed \$10,929.37. Seconded by Commissioner Buchanan and carried unanimously 5-0.**

**D. Recommendation to authorize the purchase of Tucker Ranch property consisting of 204+ acres in unincorporated Orange County located to the south of the Florida Turnpike and on west side of Avalon Road for \$2.1 million**

City Manager Bollhoefer stated that this item has been discussed for quite some time. At the last meeting they were going out to do a Phase II study to look at some items that were found on the property. After the Phase II study, it was found that there were no significant issues. The last issue was regarding some dirt that was used by Turnpike Authority spilled over onto some wetlands. There are some concerns about possible risks or costs this could cause the City. He thinks staff has found a way to resolve this issue. The City Commission could still approve the purchase of the property contingent upon

this issue being resolved. The CPO could have the State give the City a letter assuring the City we would have any cost for the cleanup or incur any fines. They would cleanup that dirt and move it off of the wetlands. Another alternative would be for the City to set up an escrow account to hold the money until there is a final resolution that the taxpayers would have no risk going forward. Because time is of the essence they (Tucker Ranch) want this purchase completed by the end of year.

\*Assistant City Attorney Langley shared that the deadline is December 15<sup>th</sup> for the inspection period. The fill dirt that was put on the wetlands is a potential risk to the city. One option, the seller may not want to explore, is to extend the due diligence period. He suggested that the City Commission give the City Manager the discretion to negotiate either an extension of the inspection period or to enter into an escrow arrangement to set aside an amount decided on by the City Manager after additional documentation is obtained between now and Wednesday that will be used to cure the situation. If negotiations fall apart then it would be possible to come back to the Commission at a special meeting.

City Manager Bollhoefer stated that if things look like they are very different from what is being discussed tonight, he would like to have a special meeting called next week. He clarified that he would be working with both attorneys and not doing this on his own.

Mayor Rees agreed that the City should move forward with it as long as there are no unknown liabilities.

Mr. Bollhoefer clarified that in previous meetings there was discussion on the possibility of \$200,000 from the State. It looks like the City could qualify for the \$200,000 but we would have to spend it within a certain amount of time to do some improvements to the park. Because of the financing, we may not be ready so it may not be feasible.

Mr. Bollhoefer stated that the financing plan is to immediately borrow the money from the road impact fees and then pay the money back to the same fund with interest. Eventually, the park would be paid for with 50 percent from recreation impact fees as they come in and 50 percent from the general fund over time. The idea is that by avoiding having to borrow money from any outside source, the City can forego having to pay any of the borrowing costs.

**Motion by Commissioner Buchanan to authorize City Manager to negotiate the purchase of Tucker Ranch property consisting of 204+ acres in unincorporated Orange County located to the south of the Florida Turnpike and on west side of Avalon Road for \$2.1 million with the contingencies as stated earlier by the Assistant City Attorney\* to close by December 15, 2010. Seconded by Commissioner Jowers and carried unanimously 5-0.**

- E. **Appointment to the Police and Fire Employees Pension Board for a two-year term for expiring term of Mildred Holt-Washington on November 30, 2010 (postponed from October 28 and November 11, 2010)**

Mayor Rees asked for nominations.

Commissioner Buchanan nominated Jerome Rodgers.

**Motion by Commissioner Buchanan to appoint Jerome Rodgers to the Police and Fire Employees Pension Board for a two-year term for expiring term of Mildred Holt-Washington on November 30, 2010. Seconded by Commissioner Bouler and carried unanimously 5-0.**

5. **MATTERS FROM CITIZENS**

Andy Bruns, 3 Palm Drive, Winter Garden, Florida, thanked the Fire and Rescue for their assistance with a medical emergency in Trailer City.

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

7. **MATTERS FROM CITY MANAGER**

- A. **Proposed ordinance regarding body art (tattoos and body piercings)**

City Manager Bollhoefer stated that this discussion is regarding the zoning of tattoo parlors in light industrial areas. He stated that this is being presented as a draft for the City Commission review. Unless he hears otherwise, he will bring it back to the next Commission meeting.

Commissioner Jowers noted that he voted against the gambling item, not that he wants to see gambling downtown but he sometimes thinks the City tries to regulate a little too much, too fast, and too soon. He stated that a business is a business and right now some businesses may be operating out of code and will not be grandfathered in.

City Manager Bollhoefer stated that the body art business actually moved out of Winter Garden.

- **Reduction of Code Enforcement Case #10-276 fines against 419 Tierra Verde Lane**

City Manager Bollhoefer stated that a swimming pool was being installed at 419 Tierra Verde Lane that was never finished and the Code Enforcement Board assessed the property with fines. This house has since gone through foreclosure with the bank taking over the property and they filled in the pool and sodded the area. The bank is scheduled to close on the property next week and they are requesting a reduction in the fines of \$11,750.00 because they have come into compliance. Staff is recommending that their fines be reduced to \$1,000.00 to cover the City's direct costs of \$500.00 and an additional \$500.00 for incidental costs.

**Motion by Commissioner Sharman to approve the reduction in Code Enforcement fees from \$11,750.00 to \$1,000.00. Seconded by Commissioner Buchanan and carried unanimously 5-0.**

- **Uncle Don's Chili Cook-Off**

Community Relations Manager Vaughn announced the annual Uncle Don's Chili Cook Off in January of 2011 on Tremaine Street and/or South Boyd Parking Lot. She asked for permission to serve beer at this function that benefits the American Cancer Society's Relay for Life.

**Motion by Commissioner Jowers to allow beer to be sold at the Chili Cook-off fundraiser for the American Cancer Society. Seconded by Commissioner Boulter and carried 4-1; Commissioner Sharman opposed.**

- **City Employee Food Drive for Christian Service Center**

Donation boxes are located at City Hall, Police headquarter, and Fire/Rescue headquarters, and Jessie Brock Community Center.

- **Additional Employee Holiday Time Off**

City Manager Bollhoefer stated that certain surrounding cities are granting their employees two days off for the holidays. He requested an additional day off for our employees without shutting down City Hall by allowing a percentage of the employees to take an extra day off on Thursday (December 23, 2010) and the remaining percentage of employees take off on Monday (December 27, 2010). It was noted that the scheduled holiday is on Friday due to Christmas being on a Saturday.

It was the **consensus** of the City Commission to grant an additional day off to each employee for the Christmas holiday.

8. **MATTERS FROM MAYOR AND COMMISSIONERS**

**Commissioner Sharman** asked the status of the County Road 535 turn lane under the State Road 429.

City Manager Bollhoefer stated that the City will actually have to take care of getting this done as it is the City's portion of the road. Staff is working with the county to get the lane added into the design. It is staff's intention to bring it back to the City Commission to get the money into the budget. There is sufficient right-of-way to do it and it is essential that it is done.

Commissioner Sharman asked if the City thinks it can get it in the budget and complete it at the same time that the road is complete. Mr. Bollhoefer responded absolutely.

Commissioner Sharman noted that his Christmas present to former Commissioner Graham (seated in the audience) was his vote against the previous issue of serving beer at the chili cook-off.

**Commissioner Boulter** announced that the West Orange Recreation Center on West Crown Point Road, built by the Orlando Magic, will have its grand opening Monday, December 13, 2010 at 5:00 p.m. He invited everyone to come out for the ribbon cutting.

**Commissioner Buchanan** announced that he had a wonderful time at the Light-Up Winter Garden last Friday night. He said thank you to all the City staff that helped in this event. He requested that there be more slides and rides for the kids next year. He commented on the crowds at the parade the next day and that it was the longest parade in the City's history with about 1 hour and 40 minutes for all of the floats to go by. He said thank you to the staff for a job well done.

**Commissioner Jowers** stated that he knows this issue is being addressed but wanted to put it in the record regarding an employee that has suffered an injustice that prevents him from getting his retirement. He feels that a change needs to be made and that the attorney who recommends these types of action be reprimanded. Mr. Bollhoefer stated he would attend the retirement board meeting in January to make sure this person gets their money.

**Mayor Rees** echoed Commissioner Buchanan's comments and thanked Parks and Recreation Director Conn and staff for all of the hard work and effort for Light-Up Winter Garden and the Christmas parade.

Mayor Rees announced the snow event this Saturday at the mall and wished everyone a Merry Christmas.

The meeting adjourned at 7:21 p.m.

APPROVED:

\_\_\_\_\_/S/\_\_\_\_\_  
Mayor John Rees

ATTEST:

\_\_\_\_\_/S/\_\_\_\_\_  
City Clerk Kathy Golden, CMC