



CITY OF WINTER GARDEN

CITY COMMISSION REGULAR MEETING MINUTES

July 28, 2011

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, Kent Makin, and Colin Sharman (*arrived at 6:33 p.m.*)

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

1. **APPROVAL OF MINUTES**

Motion by Commissioner Boulter to approve the regular meeting minutes of July 14, 2011 as submitted. Seconded by Commissioner Buchanan and carried unanimously 4-0.

Commissioner Sharman arrived at this time.

2. **PRESENTATIONS**

A. **Comprehensive Annual Financial Report by Sines, Blakeslee and Madyda, Public Accountants, P.A., for Fiscal Year ending September 30, 2010**

Finance Director Hayes came forward and stated that the Comprehensive Annual Financial Report (CAFR) for fiscal year ending September 30, 2010, which concerns the City's finances, is herewith presented. She noted that the City did receive an unqualified opinion from an outside firm that the City is in conformance with generally accepted accounting principles.

Mayor Rees stated that if the City Commission reserves the right to review the report and if they have any questions, they will contact the City Manager or Ms. Hayes.

B. **Odor control alternatives for Lift Station 23 (on 9th Street) by Tetra Tech Engineering**

John Toomey with Tetra Tech Engineering went over his PowerPoint presentation that summarized their findings. (*See attached Exhibit A*)

Mr. Toomey recommended procuring the Vapex System with a performance requirement/guarantee or a 30-day trial period to monitor its performance. Another possibility would be to enter into an agreement for the Vapex system that would include what hydrogen sulfite levels the City will tolerate within the wet-well property for a period of six months. He thinks this would be a good option, if they will agree to it. He noted that Vapex has had no peer review done nor can they provide any data before and after the treatment. His firm has put in this system before and it works well. The installation would cost \$80,000.00. Otherwise, the second option he recommended would be the biological treatment system. While it is expensive, it has a good track record and it has a full performance warranty.

Mayor Rees asked that if after the 30 days we decide we don't want it and agree to pay for the installation, what's included in the installation cost.

Mr. Toomey said it is a simple packaged unit that installs onto a slab. He believes they should be willing to prove to the City that it works. They have been out to the site and used it for two days and it seemed to work pretty well. For an \$80,000.00 piece of equipment, he believes they should be willing to prove that it will work for a longer period.

Commissioner Buchanan confirmed that this location is the last lift station from the sewer plant and asked about converting it to a closed system by putting a pump in or even moving it.

Mr. Cochran advised that that station has a 30 inch pipe going in with a 24 inch force main going out, which would cost millions to make it a closed system. He noted that he has actually used all of the products being suggested in other cities and they all work to some degree. Bio-filters do work but are expensive and are a pain to maintain; you have to change the bio-filter every three to four months.

City Manager Bollhoefer suggested using the equipment and measuring the particles as a more definitive test of the unit.

Motion by Commissioner Buchanan to direct staff to see what they can do to obtain the Vapex system for a 30-day trial period and if they can't, staff will bring the matter back to the City Commission. Additionally, if the Vapex system does work, then staff can proceed. Seconded by Commissioner Sharman and carried unanimously 5-0.

3. **FIRST READING OF PROPOSED ORDINANCE**

- A. **Ordinance 11-18:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING CHAPTER 54, PENSIONS AND RETIREMENT, ARTICLE III, PENSION PLAN FOR FIREFIGHTERS AND POLICE OFFICERS, OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN; AMENDING SECTION 54-186, DEFINITIONS; AMENDING SECTION 54-189, FINANCES AND

FUND MANAGEMENT; AMENDING SECTION 54-191, BENEFIT AMOUNTS AND ELIGIBILITY; AMENDING SECTION 54-203, REPEAL OR TERMINATION OF SYSTEM; AMENDING SECTION 54-204, DOMESTIC RELATIONS ORDERS, RETIREE DIRECTED PAYMENTS, EXEMPTION FROM EXECUTION, NON-ASSIGNABILITY; PROVIDING FOR SEVERABILITY OF PROVISIONS; REPEALING ALL ORDINANCES IN CONFLICT HEREWITH AND PROVIDING AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 11-18 by title only.

City Manager Bollhoefer advised that the financial adviser was not able to attend this meeting to discuss the proposed investment options. Therefore, he asked that this item be postponed until the August 11, 2011 meeting.

Motion by Commissioner Boulter to postpone the first reading of Ordinance 11-18 until August 11, 2011 as requested by the City Manager. Seconded by Commissioner Buchanan and carried unanimously 5-0.

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

- A. **Ordinance 11-12:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING AND REVISING CHAPTER 78, ARTICLE IV OF THE WINTER GARDEN CODE OF ORDINANCES PERTAINING TO UNIFORM REQUIREMENTS FOR PUBLICLY OWNED TREATMENT WORKS, INDUSTRIAL WASTE HANDLING, AND TREATMENT OF WASTEWATER IN ACCORDANCE WITH THE CLEAN WATER ACT AND RULE 62-625 OF THE FLORIDA ADMINISTRATIVE CODE AND OTHER APPLICABLE FEDERAL AND STATE LAWS AND REGULATIONS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 11-12 by title only.

Public Services Director stated that this item updates our industrial pre-treatment wastewater as required by the Environmental Protection Agency.

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

Motion by Commissioner Buchanan to adopt Ordinance 11-12. Seconded by Commissioner Boulter and carried unanimously 5-0.

5. **PUBLIC HEARING MATTERS**

- A. **Resolution 11-07:** A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, RELATING TO THE FUNDING OF UPGRADES AND REPAIRS TO ROADWAYS, STREETS, AND APPURTENANCES THERETO LOCATED WITHIN THE WEST SIDE TOWNHOMES SUBDIVISION;

ESTABLISHING ANNUAL ASSESSMENTS FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2011; APPROVING AN ASSESSMENT ROLL FOR THE FISCAL YEAR BEGINNING OCTOBER 1, 2011; ESTABLISHING THE LIEN ASSOCIATED THEREWITH; DIRECTING THAT THE ASSESSMENT ROLL BE CERTIFIED TO THE ORANGE COUNTY TAX COLLECTOR; PROVIDING FOR COLLECTION OF THE ASSESSMENTS PURSUANT TO FLORIDA'S UNIFORM ASSESSMENT COLLECTION ACT; AND PROVIDING FOR SEVERABILITY, CONFLICTS, AND AN EFFECTIVE DATE

City Attorney Ardaman read Resolution 11-07 by title only. He noted that the unit of measurement for each parcel is at one unit per parcel.

Mayor Rees opened the public hearing.

Pat Primrose, 117 Steinbeck Street, Winter Garden, Florida, came forward and spoke in favor of the special assessment. She thanked the City Commission and staff for their work on this item.

Mayor Rees closed the public hearing. He noted that the special assessment is for \$64.75 per year for twenty years on the 291 affected parcels. Also, of the 291 notices to property owners, 28 were returned undeliverable and one letter in objection was received.

Commissioner Bouler asked what is being done about the undelivered notices.

City Attorney Ardaman advised that sufficient legal noticing has been achieved by the published notice in the newspaper.

Motion by Commissioner Buchanan to adopt Resolution 11-07. Seconded by Commissioner Sharman and carried unanimously 5-0.

B. **Appeal of denied annexation application for 1089 Walker Street and 176 Water Street for development of an AutoZone business at 13822 W. Colonial Drive (parcels 23-22-27-8104-00-331 and 23-22-27-8104-00-341)**

City Attorney Ardaman swore in four individuals wishing to give testimony in the appeal hearing.

Victor Chapman, Esq., 18 Wall Street, Orlando, Florida, stated that he would outline his position on this matter. As a point of order, he noted that this matter is listed as an appeal but it is not. Pursuant to State Statute 171.044, the decision as to whether or not the petition for annexation is granted or not is exclusively the City Commission's decision. Therefore, technically the staff's decision to deny the petition is not correct.

Mr. Chapman stated that George and Maria Bori wish to have their property annexed regardless of what happens with AutoZone. He noted that on April 7, 2009 they were

invited by the City of Winter Garden to annex their property (*see attached Exhibit B*). The initial application included an adjacent landowner and the only residential property immediately adjacent to this property consented by letter on April 19, 2011 (*see attached Exhibit C*) and only requested that the entrance not be off Water Street, which it is not. The entrance will be off Walker Street and there will be minimal traffic impact. The project is over a million dollars in construction with twenty to thirty employees, and would be a taxable business with potential revenue to the City. Staff has repeatedly rejected the annexation and he would like to answer any questions and let them try to understand why it would not be a very good thing for the City.

Justin Polk, 500 W. Fulton Street, Sanford, Florida, added some background information and displayed four photos and two maps (*see attached Exhibit D*). He stated that there was a pre-application meeting on February 1, 2011 and issues were discussed about the site plan, which dealt with a couple of variances. They submitted their annexation application and variance application on March 1, which was denied on March 16.

Staff indicated that they were worried about the residential impact and what the neighbors thought, and it was mentioned that they were worried Advanced Auto Parts next door going out of business. He built the same store in Ocoee right next to Advanced Auto Parts, which you have to actually cross AutoZone to get to Advanced Auto Parts and they are still in business. This matter has been submitted twice and has not yet come the City Commission. He noted that AutoZone is the potential buyer of the property and there is a contingent contract upon getting the permits and all the right entitlements.

Mr. Polk noted that there has been discussion on the two required variances and he wants the City Commission to understand just how minimal they are. One is about three feet off the side set-back and about fifteen feet along the side of the building, which is from a ten foot set-back to a five foot set-back. Staff mentioned that perhaps the [Advanced Auto Parts] unique driveway design was built for both properties to access, but there seems to be no cross access agreement on file. They would love to connect with this driveway.

Commissioner Makin asked why not a curb cut on State Road 50.

Mr. Polk stated that his theory is the DOT probably won't approve a cut based on the proximity of the street to the Advanced Auto Parts curb cut.

Commissioner Makin asked where deliveries will be made.

Mr. Polk stated that deliveries would be made by two trucks a week via Walker Street. He stated that AutoZone produces about 450 trips a day, which breaks down to 30-40 cars an hour or a car every two minutes. Tonight the application is for Mr. Bori to be annexed into the City.

Commissioner Buchanan asked if this an annexation matter and why didn't it go through Planning and Zoning Board instead of coming directly to the City Commission?

Mr. Polk replied that it has been denied twice at the staff level and that is how they ended up at this meeting.

Mr. Ardaman asked which property is being requested to be annexed.

Mr. Polk responded 1089 Water Street.

Commissioner Makin asked if there had been any community meetings held.

Mr. Polk responded no, because staff denied it. He stated that Mr. Bori met with the adjacent property owner, who agrees with it. He confirmed that they had not contacted the mobile home park next door. The mobile home park does have an established buffer and a road in between. The building would be the furthest point away from them.

Commissioner Makin stated that he looked at the ingress and egress with a semi tractor trailer backing in and going out with the customers and residents, which will create congestion on Walker Street.

George Bori, 1515 Blackwood Avenue, Gotha, Florida, stated that he needs to sell the property and he can't fathom why the City is opposed when it initiated the annexation. He encouraged approving the annexation.

Ed Williams, City's consultant as the Community Development Director, 920 Delaney Avenue, Orlando, Florida, submitted a copy of his resume (*see attached Exhibit E*). The issue is not competition staff has no problem with similar or like businesses in the same area. Joint access should be accomplished in this location as it was in Ocoee. Winter Garden's Code requires it, but they don't want to do it.

The second and biggest issue is the access on Walker Street. The City's Comprehensive Plan has policies that state the City shouldn't direct commercial traffic through a residential area. This zoning request does just that. This application has four components; the annexation, establishing a comp plan designation, establishing a zoning and the request for variances for joint access and set-backs. The City's Code and case law has said the property owner cannot create their own need for a variance. That is exactly what this case is doing. We cannot grant these variances; they are self-created. They can do other things to get away from the need for the variances.

Mr. Williams addressed the following City Policies:

Policy 1-1.2.7 Commercial uses

Those uses should be developed in a manner which is harmonious to the nearby commercial use, which minimize traffic congestion. Anybody heading east out of this

site is going to go down Walker and through the residential area. We believe the annexation request is inconsistent.

Policy 1-2.3.2 Encroachment: Single family residential areas shall be protected from the encroachment of incompatible uses including industrial and high intensity commercial uses. The issue of the competition also plays in, you have the same use next door. They do not. The property next door backs up to a retention pond to the north. No single family areas, they back up to a retention pond and have no access to that area and that neighborhood. Their [Advanced Auto Parts] access is on State Road 50. Those are the differences in the request.

Policy 1-2.3.3 relates to the need to cross access between properties. This is in the Comprehensive Plan and Land Development Code.

Policy 1-2.3.4 relates to commercial compatibility: Commercial development shall be designed so that it does not have a negative impact on surrounding land uses through the use of buffer areas, landscaping, professional uses, and multi-family uses to make it compatible with the surrounding residential area.

Policy 1-2.3.7 relates to buffers along common property areas: Part of their argument is that they are only abutting across the street only one existing home. They are ignoring the impact of their traffic through that entire subdivision.

Policy 1-2.3.10 relates to the adopted rezoning criteria to determine if zoning requests will be approved. Subparagraph (2) states "The proposed rezoning will not substantially devalue or prevent reasonable use and enjoyment of the adjacent properties"; by directing traffic through the neighborhood, they would be in violation of this criteria.

Subparagraph (5) states "The rezoning will not interfere with an adjacent property owner's reasonable expectation of use or enjoyment." Having the additional traffic will affect their use and enjoyment of their property.

Subparagraph (6) states "The rezoning will not significantly increase the vehicular traffic in adjacent residential neighborhoods." Clearly this application will be inconsistent with this requirement.

Staff has no objection to AutoZone. There are many locations in the City where the use can be accommodated. The proposed site plan could be accommodated for many uses, but it doesn't work at this site.

The issue was raised as to why staff rejected the annexation. The first and foremost reason it was rejected is because for the past five years he has been here, it has been the board's policy and the City Manager's policy to tell applicants and property owners early and often whenever their application cannot be approved. This is before they spend months and months on their application and before they spend tens of thousands of dollars with consultants. We tell them early and often what they can't have. They have the right to appeal the decision and they have brought this matter forward. Staff

recommends denial of the annexation and variance request. Because the appeal letter addresses both matters, staff had to address them.

City Attorney Ardaman asked what the County's Comprehensive land use map zoning designation for the 1089 Walker Street.

Mr. Polk responded residential.

City Attorney Ardaman advised the City Commission that if they were to approve the annexation, and until they adopted a comprehensive future land use map zoning designation, it would maintain the residential zoning.

Motion by Commissioner Buchanan to table this item until the next City Commission meeting of August 11, 2011. Seconded by Commissioner Sharman and carried unanimously 5-0.

The appellant requested that this matter be heard in one month instead of the next meeting.

Commissioner Buchanan amended his motion to table this item until the August 25, 2011 City Commission meeting. Seconded by Commissioner Sharman and carried unanimously 5-0.

6. **REGULAR BUSINESS**

A. **Recommendation to approve Environmental Contamination Hold Harmless and Indemnity Agreement and final plat for Oakland Park Unit 1B-1A, with conditions recommended by the Development Review Committee (Applicant Castle and Cooke)**

Planning Director Wilson stated that this item relates to Oakland Park Unit 1B-1A for a final plat, agreement, and recommended conditions as stated in the Development Review Committee memorandum dated June 27, 2011.

Motion by Commissioner Buchanan to approve the Environmental Contamination Hold Harmless and Indemnity Agreement as submitted and the final plat for Oakland Park Unit 1B-1A, with the conditions recommended (see attached Exhibit F). Seconded by Commissioner Boulter and carried unanimously 5-0.

B. **Recommendation to approve Environmental Contamination Hold Harmless and Indemnity Agreement, Right-Of-Way Maintenance Agreement and final plat for Oakland Park Unit 1B-1B, with conditions recommended by the Development Review Committee (Applicant Castle and Cooke)**

Planning Director Wilson stated that this item relates to Oakland Park Unit 1B-1A for a final plat, agreement, and recommended conditions as stated in the Development Review Committee memorandum dated June 27, 2011.

Motion by Commissioner Sharman to approve entering the Environmental Contamination Hold Harmless and Indemnity Agreement, Right-of-Way Maintenance Agreement and the final plat for Oakland Park Unit 1B-1A, with the conditions recommended (see attached Exhibit G). Seconded by Commissioner Makin and carried unanimously 5-0.

C. Recommendation to award the General Banking and Custody/Trustee and Health Savings Account Services to Wells Fargo

Finance Director Hayes stated that the City's Public Financial Management Group (PFMG) has sat in on the selection process and are present tonight to address the City Commission.

David Jang with PFM Group, 300 South Orange Avenue, Orlando, Florida, stated that they have provided staff with guidance throughout this process. They developed and issued the Request for Proposal (RFP). They also assisted with short listing the vendors, which is how they arrived at the highest ranking firms. Four banks were brought in for an interview. The banks were re-ranked based on their interviews and Wells Fargo rated the highest.

Ms. Hayes stated that she has a copy of the contract available for the City Commission.

Motion by Commissioner Sharman to award the general banking and custody/trustee and health savings account services for the City of Winter Garden to Well Fargo. Seconded by Commissioner Buchanan and carried unanimously 5-0.

D. Request from West Orange High School to close the historic portion of Plant Street to hold their annual homecoming parade October 1, 2011

Parks and Recreation Director Conn stated that staff recommends approval and noted it should bring additional people to the Farmer's Market because the parade will be on Saturday this year.

Motion by Commissioner Boulder to approve closing the historic portion of Plant Street on October 1, 2011 for the West Orange High School homecoming parade. Seconded by Commissioner Sharman and carried unanimously 5-0.

E. Recommendation to approve waiving any associated event fees for the Historic Downtown Winter Garden Merchants Guild, Inc. (for profit) to hold their annual Art Festival November 19 and 20, 2011

Parks and Recreation Director Conn stated that staff recommends approval of this item.

Motion by Commissioner Buchanan to approve waiving any associated event fees for the Historic Downtown Winter Garden Merchants Guild, Inc. to hold their annual Art Festival November 19 and 20, 2011. Seconded by Commissioner Makin and carried unanimously 5-0.

F. **Request by Junebug Foundation, Inc. (non-profit) to waive Tanner Hall fees and allow the use of tents, City equipment, fireworks and to serve alcohol outside the hall to benefit the Boys and Girls Club of West Orange on October 14, 2011**

Randy June, 132 W. Plant Street, Winter Garden, Florida, stated that this event has been held annually and they now want to bring it Tanner Hall to generate a larger crowd. In years past, they have raised close to a quarter-of-a million dollars and since the Magic Gym was constructed, they are now directing their funds towards their operations. They hope that this event will bring awareness to the club and what they are doing.

City Manager Bollhoefer asked for clarification regarding the alcohol request.

Mr. June indicated that it would be served inside the hall and on the porch area. The tent portion would be a quieter setting with wine available.

Motion by Commissioner Buchanan to approve waiving Tanner Hall fees and allow Junebug Foundation, Inc. the use of tents, City equipment, fireworks and to serve alcohol as indicated to benefit the Boys and Girls Club of West Orange on October 14, 2011. Seconded by Commissioner Sharman and carried unanimously 5-0.

7. **MATTERS FROM CITIZENS**

Gregory Hoggatt, 205 Trail Bridge Court, Winter Garden, Florida, stated that he is here tonight to discuss the sale of Health Central Hospital that partnerships with Orlando Health. In just over 30 days we will cease to have Health Central paramedics serving the western part of the county. There has been no news of who will become our ambulance provider. He shared his concerns regarding what will be in place for the residents. He noted that the City's Fire Department is licensed for advanced life support transport and they are providing first response service to our citizens and then we wait for an ambulance provider. The City Commission is in the perfect position, with only a small investment, to expand services to make it possible for the Fire Department to provide full beginning of treatment, assessment of patients, initial treatment, transport, and continue the care to the local hospital. It has been a nationwide trend for more fire departments to begin EMS transport. Now is perfect time to consider the possibilities. He asked the City Commission to consider whether or not any of the other providers will meet the needs of the City. He encouraged and urged the City Commission to invest in the City's Fire Department to provide the additional service.

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

9. **MATTERS FROM CITY MANAGER**

A. **Discussion on rescheduling September meeting dates for budget hearings**

Every year we have to change our meeting dates because they conflict with the County and he recommended meeting on September 7th and 21st.

Motion by Commissioner Sharman to reschedule the September regular meeting dates from September 8th to the 7th and September 22nd to the 21st. Seconded by Commissioner Boulter and carried unanimously 5-0.

• **Florida Forever Grant for Tucker Ranch**

He shared that the City just received news this week that Winter Garden was ranked number one and we will more than likely get the \$800,000.00 to help pay for the property. He thanked Mr. Wilson and staff for their work on the grant application and Commissioner Buchanan for his early championing of the cause.

• **State Road 50 Update**

He is working on trying to expedite the change to State Road 50 for adding a turn-in lane for Hyde Park.

• **Orlando Magazine Article**

He handed this article out and stated that it covers how Winter Garden is the best downtown in the Central Florida area. Also, the editor ranked our City Hall as the best city building in Central Florida.

• **Water Towers**

He handed out a report for the City Commission's review and stated that no action is necessary tonight. What it comes down to is that there are several layers of paint on the towers with a lot of rust and to do it right, it will require sandblasting before painting it. It is about \$150,000.00 but there will be a return on the investment of \$38,000.00 this year and going forward it will increase to about \$42,000.00 a year. The material distributed is for discussion at the next meeting.

• **West Orange Chamber of Commerce Board seat**

He stated that Commissioner Buchanan has served on this board for approximately four years and has indicated he would like to remain on the board.

Motion by Commissioner Boulter to appoint Commissioner Buchanan to serve on the Board of Directors of the West Orange Chamber of Commerce. Seconded by Commissioner Sharman and carried unanimously 5-0.

• **Ambulance Services**

For the past month-and-a-half he has been working on this issue and noted that we will not have any interrupted ambulance services. It should not be a concern and he should have something to the City Commission probably by the next meeting.

10. **MATTERS FROM MAYOR AND COMMISSIONERS**

Mayor Rees announced that on August 2, 2011 from 6 p.m. to 9 p.m. there will be a National Night Out held by the Police Department at the Winter Garden Village at Fowler Grove and invited everyone to attend.

The meeting adjourned at 8:07 p.m.

APPROVED:

 /S/
Mayor John Rees

ATTEST:

 /S/
City Clerk Kathy Golden, CMC