



CITY OF WINTER GARDEN

CITY COMMISSION REGULAR MEETING AND COMMUNITY REDEVELOPMENT AGENCY MINUTES July 12, 2012

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 Bob Buchanan, Kent Makin, and Robert Olszewski

Absent: Commissioner Colin Sharman

Also Present: City Manager Mike Bollhoefer, Assistant City Attorney Dan Langley, City Clerk Kathy Golden, Assistant to the City Manager - Administrative Services Frank Gilbert, Assistant to the City Manager - Public Services Don Cochran, Community Development Director Ed Williams, Economic Development Director Tanja Gerhartz, Finance Director Michael Givens, Recreation Director Jay Conn, Deputy Police Chief Bill Sullivan and West Orange Times Reporter Michael Laval, and Orlando Sentinel Reporter Stephen Hudak

1. **APPROVAL OF REGULAR MINUTES OF JUNE 14, 2012 AND JUNE 28, 2012**
Motion by Commissioner Olszewski to approve regular meeting minutes of June 14, 2012 and June 28, 2012. Seconded by Commissioner Makin and carried unanimously 4-0.

2. **PUBLIC HEARING MATTER**
 - A. **Appeal by A. Jay and Lydia Cummings of the Planning and Zoning Board decision to approve a special exception permit for a columbarium at the First United Methodist Church of Winter Garden located at 125 N. Lakeview Avenue**
City Attorney Ardaman stated that City Commissioner Buchanan has asked him a question as to whether or not he could vote on this item. Commissioner Buchanan indicated that he is a member of the First United Methodist Church and serves on their Finance Committee. Commissioner Buchanan also informed him that he receives no compensation from the church in any capacity and has no contract with the church in any capacity. Mr. Ardaman advised Commissioner Buchanan that he is not prohibited from participating or voting on this De Novo hearing under Florida Statute 112.3143 (3) as there is no special private gain or loss to Commissioner Buchanan by his vote. Mr. Ardaman also informed Commissioner Buchanan that he cannot abstain from voting on this item; the only exception would be that there was a conflict of interest under the Florida Statutes and there did not appear to be any such conflict.

Mr. Ardaman, with respect to the special requirements, specifically addressed criteria that the City Commission must be aware of before it hears from staff, proponents, opponents, and the applicant on this issue. He advised the City Commission that they have the right to reverse, affirm or modify the Planning and Zoning Board's decision. He also advised that after hearing all of the evidence and reading the documentation submitted, if the Commission determines that there is substantial confident evidence that meets the criteria he has indicated then the Commission is required to approve the special exception. If the required criteria for the special exception are not met, then the City Commission would have an obligation to deny the special exception. In addition the City Commission has the authority to modify the request that has been submitted.

Commissioner Olszewski disclosed that he attended the Planning and Zoning Board meeting where this issue was discussed. He also noted that he believes all the City Commissioners received an e-mail from Mr. Jett who would be making a presentation to the City Commission at tonight's meeting. Commissioner Olszewski shared that he responded to Mr. Jett's e-mail by thanking him for the information.

City Attorney Ardaman noted that it is proper for the City Commission to disclose what, if any, information they have received so that the proponents and opponents are made aware of information they may have received outside of this hearing.

Commissioner Makin disclosed that he received a phone call from Gay Annis who wanted to know when this item would be on the agenda. He noted that she asked if she would need representation at this hearing and he advised that if she thought she would need representation that she should call them.

Commissioner Buchanan disclosed that he had discussion with Marion Wagster, Tim Keating, Larry Cappleman, Kurt Ardaman, Andy Davis, Martha Cooper and Richard Mask. His conversations consisted of listening to their views and feelings on the subject. He advised them that he never discusses how he is going to address it until the meeting.

Mayor Rees disclosed that he also received a call from Ms. Annis regarding the ability of people to speak at the hearing.

Community Development Director Williams stated that this is a request from First United Methodist Church of Winter Garden at 125 N. Lakeview Avenue to allow a special exception for a columbarium in conjunction with the existing church and displayed a photo of the church and the area proposed for the columbarium. This matter was approved by the Planning and Zoning Board after they heard substantial competent evidence and two community meetings. This is an appeal hearing of the Planning and Zoning Board's decision.

Mr. Williams noted that churches are allowed in the C-1 district. The City Commission is being asked to determine if the columbarium is considered a similar and compatible use to the church. Mr. Williams defined a columbarium as a structure or building substantially exposed above ground that is intended for the use of inurnment of cremated remains. Many will refer to it as a cemetery. A cemetery is a place dedicated to and used or intended to be used for the permanent internment of human remains or cremated remains. A cemetery can include a columbarium but a columbarium cannot be a cemetery.

Mr. Williams explained that the first proposal heard by the Planning and Zoning Board included public input and a new proposal was submitted that included a five foot high brick wall with landscaping that matches the exterior of the existing church and none of the niches are visible from the public right-of-way or road. Staff has determined that there is very little traffic generated from this additional use on the property. The existing parking is sufficient for the additional use. Staff has determined that the hours of operation, from dawn until dusk, will not interfere with the surrounding area. The final proposal is discreet and a person walking or riding by would not know that it was a columbarium unless they were told. It has been built to fit in with the architecture and design of the church and has no noticeable impacts outside of the property.

Mr. Williams addressed the issue of decreased property value by noting that through his extensive research through Williams Development Services for the past twenty years, there are no studies documenting the reduction of property values associated with being adjacent or near a columbarium.

Mr. Williams stated that the City of Winter Garden staff and the Planning and Zoning Board recommend that the City Commission find the columbarium to be similar and compatible to uses that would occur at a church and recommend approval of the special exception to permit it in the C-1 district.

Mayor Rees opened the public hearing.

Karen Consalo, Esquire, 303 Harwood Street, Orlando, Florida, stated that she represents the appellants in this matter, Jay and Lydia Cummings. Ms. Consalo gave a PowerPoint presentation and noted that their written appeal is in the agenda packet. Their basic concern with the columbarium is that at its current location it is not compatible with a street of residential homes, which is part of the requirements for the special exception. It is a major component of the future land use element of the Comprehensive Plan.

Ms. Consalo noted the church campus is massive; it includes two different courtyards, quite a bit of parking and a child care facility or a school. Some of the concerns include the reduction in residential property value, limited market to sell to, psychological effect

on the children, crime, vandalism, and intrusion of noise. She and her clients are not saying the church cannot have a ministry through this columbarium. They are only asking that there be some basic consideration for the people who have to live there. Ms. Consalo shared five other locations the columbarium could be located on the church's property with several options being on Boyd Street. Ms. Consalo addressed the significant traffic counts going through Lakeview Avenue. It is just not compatible.

Repeatedly under Florida case law the courts have said no. Special exceptions are supposed to be tailored to the specific use and issue, and provide clear and objective criteria to get approval. The City of Winter Garden's code does not even mention columbarium, which is a deficiency in the Code. She stated that they do not feel that this is appropriate for a special exception, until such time as the City passes an amendment that states in the C-1 district you may have a columbarium as a permitted use or as a special exception.

At this time, City Attorney Ardaman asked that the City Clerk administer the oath to those who have testified and those who plan on testifying in this matter. City Clerk Golden complied with this request. Those not taking the oath as a group did so individually prior to giving their testimony.

Rulon Munns, Esquire, with the Law Firm of Bogin, Munns and Munns, stated that he was also representing the Cummings family. He shared that he thought there were legitimate consistency issues that the City Commission is being called upon to consider. He stated that there is nothing in the City's code that would have led a family to believe their family would one day be looking out of their window at a columbarium. The way the code is written presently, this family could not have anticipated it; and in that case it does not seem reasonable or fair at this time.

Commissioner Olszewski asked Ms. Consalo that if the City Commission has to make its decision based on its code that allows for special exceptions, where is the legal challenge for the City Commission to tell a private entity what they can or cannot do with their property as long as it falls within the jurisdiction of the City code. **Ms. Consalo** replied that the City has a zoning matrix that every zoning category lists the permitted uses. If not listed as a permitted use, it is assumed to not be permitted in that zoning category. The courts want a line of special exception uses with the specific criteria. She noted that the courts contemplated that the special exceptions are not to be discretionary once they are written. If a City Commission wants to allow for special exceptions such as a columbarium in C-1, it must be done by amending the zoning code.

Commissioner Olszewski expressed that he did not see the correlation in Ms. Consalos comments about the church having funerals when the church already has funerals. **Ms. Consalos** noted that the recent funeral held at the church was non-intrusive to the street

because it all took place within the structure. She noted that this would also be true if the columbarium were located on Boyd Street.

Commissioner Olszewski noted his confusion with Ms. Consalos giving the City Commission five options of where this columbarium could be placed thereby indicating no issue with a columbarium being on this property but it seems to be with the brick wall. **Ms. Consalo** expressed that her clients do not want a columbarium at all, but in the spirit of compromise they are trying very hard to propose other options. They don't want a visible reminder.

Commissioner Olszewski stated he is trying to understand what the issue is and he hasn't heard it. **Ms. Consalo** expressed that displaying urns inside the church courtyard is a prime location for a columbarium and that is why they are suggesting it be located there.

City Manager Bollhoefer (*did not take testimony oath*) noted there have been two community meetings on this issue and a mailing to 400 homes to make everyone aware of the request. Several changes were made by the church after the first community hearing, which leaves only three households opposing it.

Steven Jett, 205 N. Lakeview Avenue, Florida, stated he decided not to give his presentation. Mr. Jett noted that he has lived across from the First United Methodist Church for 26 years and has also attended the church. He is not a newcomer to the City and bought their home because they thought the church would be a nice stable neighborhood. He expressed that he thought this columbarium was an improper land use. The location is a historical single family residential area. He also noted that the Church of the Messiah has been said to have a columbarium and disputed this by explaining that they have a church that accepts ashes at no charge to the member. The ashes are buried in a totally enclosed courtyard in a biodegradable container. He expressed that once this columbarium is approved, you will not be able to say no again, it is a door that cannot be closed.

Jay Cummings, 112 N. Lakeview Avenue, Florida, expressed that he and his family fear that members will come out of a funeral service and have a grave-side service right in front of his home. Explaining this to his young children is an issue for him.

Deborah Arnold, 205 N. Lakeview Avenue, Florida, stated that she lives across the street and when they bought their home over 25 years ago, their primary consideration was that the house was in a long established neighborhood. There would be no question of what would happen with agriculture, or undeveloped land in the area, no new mall, no theme park, sewage treatment plant, or any other non-residential use. She noted that when the City designated their area as historic, they rejoiced because they believed they would be further protected from other unforeseen changes in their neighborhood. If the

church is permitted to go through with the project within the most heavily regulated area in the City, then no other area in the City would be prohibited from building a similar facility.

Joyce Jackson McWilliams, 302 W. Tilden Street, Florida, stated that she is about three blocks from the Methodist church, which her family attends. She stated that the memorial garden committee has worked very hard to get this memorial garden designed and built. She noted that they strive to make this historically and architecturally correct and it would be an extension of the church. She stated that this is very common practice for many churches. Funerals or gatherings are not planned in their memorial garden; all funeral services will be held inside the church. She noted that the committee researched other sites on the church property and it just will not work anywhere else. She shared that you cannot physically see the niches unless you leave the [street] sidewalk and into their walkway through the gate and peek over. According to their memorial garden rules there will not be jewelry of any kind allowed in the niches, strictly cremains. Ms. McWilliams read a letter in support of the columbarium from former City Commissioner H. Gerald Jowers and his wife Sandra that was submitted to the City Commission.

Fred Crabtree, 174 Roper Drive, Florida, stated that under current law the Methodist could give anyone permission to sprinkle ashes on their front lawn. Markers could be placed as identifiers as to who was there. He shared that he is having difficulty understanding why a columbarium that cannot be seen from the street is a problem. He also noted between he, his wife and their son, they own three pieces of property within range of the church and they are all in favor of the columbarium.

Rafael Rivera, 211 Trail Bridge Court, Winter Garden, Florida, stated that he has been a resident of Winter Garden for 13 years and a member of the First United Methodist Church for the last 11 years. He addressed the deceptive information being spread about their church for the last few months regarding this issue. It is important to recognize the history and the contribution of this institution to the community, a relationship that we cannot ignore. He noted that is why the church listened to the concerns of its neighbors. He noted the design of the columbarium would not disrupt the historical look of the building and artistically complements the existing church complex.

Tim Keating, 802 Tildenville School Road, Winter Garden, [*unincorporated Orange County*] Florida, stated he was available to answer any questions.

Mayor Rees asked about the concerns expressed that after a service the members may congregate in the memorial garden for a grave-side type service and whether this issue had been addressed by the church members. **Mr. Keating** responded absolutely. The memorial garden is designed in such a way that you cannot get a lot of people in there; it is a garden for reflection with benches. Mr. Keating indicated that all funeral services will be held inside the church.

Commissioner Makin asked the size of the niches. **Mr. Keating** replied big enough for an urn or approximately 10 inches by 12 inches.

Commissioner Olszewski asked about the church committee's efforts to work with the neighbors in opposition to the columbarium. **Mr. Keating** explained that they completely changed their original design and explained some of those changes.

Commissioner Makin shared his observation from a time he worked at a cemetery that there were not a lot of people gathering at the columbarium. **Mr. Keating** agreed that the times have changed with the costs related to grave site burials.

City Manager Bollhoefer (*did not take testimony oath*) noted that the church is limited to 110 niches.

Mayor Rees called for any final comments. **Ms. Consalo** stated that they just ask that the City Commission keep in mind the issue of compatibility at this location. She stated that the church doesn't like the other locations, but there has not been any architectural or engineering reasons it could not be relocated.

Community Development Director Williams stated that he needed to make some corrections. First, the site is not large enough to be permitted as a cemetery. Secondly, the design noted in the opponents PowerPoint presentation is not the current design being proposed. Thirdly, funerals will not be conducted in the columbarium. He also noted that the church is a C-1 zoning, which is not single family residential. Fourth, when buying a house in the area someone would not know a columbarium could possibly come in. Anyone doing due diligence would have to know the property is zoned C-1 and not strictly a single family residential neighborhood. **Mr. Williams** stated that he hoped that attorney Munns would have reminded the City Commission of the special protections and rights that the churches have under our constitution. In this case the issues of traffic, parking, noise, hours of operation, and visual impact have been addressed and staff recommends that those also be taken into consideration.

Mr. Williams added that every zoning code states the City Manager or Planning and Zoning Director can determine where a use not listed fits into the regulations. Because there was neighborhood concern, staff did not take the easy route, but provided for public input and comment on this issue.

Lowell Thiel, Windermere, Florida, added that the inner courtyards are not an option primarily because the school operates kindergarten and they are full of children every day. He noted that he has not seen any services involving someone's ashes because they are always brought back by the family to the columbarium and interred privately.

Nancy Sines, 13526 Larsen Lane, Winter Garden, Florida, stated that she is sorry that the neighbors are unhappy with their decision. She noted that she is on the committee and they looked at every possible place that they could put the columbarium and this was the most appropriate. She addressed their fear of the unknown and stated that these niches will not be seen unless you are in the courtyard.

Sharon Sines, 12 W. Smith Street, Winter Garden, Florida, stated that the inner courtyard where the children are is very loud and cannot be stopped. Vacation Bible School is coming up. She stated there needs to be a quiet place to reflect, and it is where it needs to be.

Mayor Rees closed the public hearing.

Motion by Commissioner Olszewski to affirm the Planning and Zoning Board's approval of and hereby approve the applicant's request for a columbarium as modified by the applicant subject to the conditions proposed by the City Staff report based on the following findings and conclusions supported by competent substantial evidence in the record: 1) The Planning and Zoning Board approved the Special Exception Permit and the City's professional staff recommends approval; 2) The requested columbarium constitutes a special exception under the C-1 Central Commercial District as such request is of the type and intensity of the activity that is similar and compatible with the permitted principal uses and structures within the C-1 District; 3) The requested columbarium is similar and compatible with the church, which is a permitted under the C-1 zoning district, and lastly 4) The requested columbarium meets the criteria and conditions of a special exception permit, including that it is compatible with the surrounding use, will not create traffic hazards or parking problems and does not deviate from the terms of Chapter 118 of the Code, the premises are suitable for the request, the request meets the standards and site/development plan requirements of the Code. Seconded by Commissioner Makin and carried unanimously 4-0.

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

- A. **Ordinance 12-25:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 5.44 ± ACRES LOCATED AT 12201 WEST COLONIAL DRIVE ON THE NORTH SIDE OF WEST COLONIAL DRIVE, EAST OF CARTER ROAD AND WEST OF STATE ROAD 429 INTO THE CITY OF WINTER GARDEN FLORIDA; REDEFINING THE CITY BOUNDARIES TO GIVE THE CITY JURISDICTION OVER SAID PROPERTY; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE
- B. **Ordinance 12-26:** 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 APPROXIMATELY 5.44 ± ACRES LOCATED AT 12201 WEST COLONIAL DRIVE ON THE NORTH SIDE OF WEST COLONIAL DRIVE, EAST OF CARTER ROAD AND WEST OF STATE ROAD 429 FROM ORANGE COUNTY COMMERCIAL TO CITY COMMERCIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

- C. **Ordinance 12-27:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA REZONING APPROXIMATELY 5.44 ± ACRES OF REAL PROPERTY GENERALLY LOCATED AT 12201 WEST COLONIAL DRIVE ON THE NORTH SIDE OF WEST COLONIAL DRIVE, EAST OF CARTER ROAD AND WEST OF STATE ROAD 429 FROM ORANGE COUNTY C-3 COMMERCIAL DISTRICT TO CITY C-2 ARTERIAL COMMERCIAL DISTRICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinances 12-25, 12-26 and 12-27 by title only. Community Development Director Williams stated that these items include the annexation, future land use designation, and rezoning for the Camping World site located on the north side of State Road 50. Staff recommends approval.

Mayor Rees opened the public hearing for all three ordinances; hearing and seeing none, he closed the public hearing.

Motion by Commissioner Olszewski to adopt Ordinances 12-25, 12-26 and 12-27. Seconded by Commissioner Makin and carried unanimously 4-0.

4. **REGULAR BUSINESS**

- A. **Recommendation to approve bids and award contract for Crest Avenue/Lulu Creek Culvert Replacement Project to Valencia Construction in the amount of \$218,889.41 that includes a 10 percent contingency**

Public Services Director Cochran stated that on June 26, 2012 staff received bids for the Crest Avenue/Lulu Creek Culvert replacement project. Valencia Construction was the lowest responsive bidder with a bid of \$198,990.37. Staff recommends awarding the contract to Valencia Construction with a 10 percent contingency bringing the total project amount to \$218,889.41.

Mayor Rees noted that there was a wide difference in the range of bids and asked if staff felt confident that the City would not see a large amount of change orders. Mr. Cochran replied that he does not believe so as this a pretty simple project and gave a brief explanation of the installation.

Motion by Commissioner Buchanan to approve bids and award contract for Crest Avenue/Lulu Creek Culvert Replacement Project to Valencia Construction in the

amount of \$218,889.41 that includes a 10 percent contingency. Seconded by Commissioner Makin and carried unanimously 4-0.

- B. **Resolution 12-11:** A RESOLUTION OF THE CITY OF WINTER GARDEN, FLORIDA SUPPORTING THE WAYFINDING SIGN SYSTEM PLAN TO EFFICIENTLY AND SAFELY GUIDE MOTORISTS AND PEDESTRIANS TO KEY PUBLIC FACILITIES SUCH AS CIVIC, CULTURAL, VISITOR, AND RECREATIONAL DESTINATIONS WITHIN THE CITY OF WINTER GARDEN

Senior Planner Stephen Pash stated that staff has spent some time working on the City's way finding signs and are looking to replace many of the signs. Mr. Pash gave a PowerPoint presentation of the proposed way finding signs. He noted that with the City Commission's support, staff can then approach the Florida Department of Transportation (FDOT) for their approval. He noted that everything is conceptual and staff will be bringing the final designs, pricing, and color options back to the City Commission.

City Manager Bollhoefer noted that the sign itself needs approval by the FDOT and Clear Channel. Staff can change the color but the general size and shape is what FDOT will be asked to approve.

Motion by Commissioner Buchanan to approve Resolution 12-11. Seconded by Commissioner Olszewski and carried unanimously 4-0.

- C. **Appointments to the Architectural Review and Historical Preservation Board for expiring three year terms of residents Christopher Lee and Charles Simikian**

City Clerk Golden stated the City Commission will need to fill two expiring terms currently filled by two members who have expressed their desire to be reappointed. Ms. Golden noted that additional interest applications have also been provided for the City Commission's consideration.

Motion by Commissioner Buchanan to appoint Christopher Lee and Charles Simikian to the Architectural Review and Historical Preservation Board for a three year term. Seconded by Commissioner Olszewski and carried unanimously 4-0.

- D. **Recommendation to approve setting the proposed tax millage rate at 4.2500 mills for Fiscal Year 2012/2013**

City Manager Bollhoefer stated that staff is recommending that the City keep the millage rate at the current rate of 4.2500, which will actually be a tax decrease for the City. Mr. Bollhoefer noted that once this millage rate is established it can be lowered at any time as this is temporary millage rate. If for some reason this rate needed to be raised, the City would have to reissue the notices stating that it is being increased. He noted that the City has several projects that the City would like to do long-term and listed them.

Motion by Commissioner Olszewski to approve setting the proposed tax millage rate at 4.2500 mills for Fiscal Year 2012/2013 with the first public hearing for September 13, 2012 and the second public hearing of September 27, 2012. Seconded by Commissioner Makin and carried unanimously 4-0.

Dispensed as the City Commission and convened as the Community Redevelopment Agency at 8:27 p.m.

Members Present: Chairman John Rees, Members Robert Olszewski, Bob Buchanan, Kent Makin, and CRAAB Chairman Larry Cappleman

Member Absent: Colin Sharman

E. **Appointments to the Community Redevelopment Area/Brownfield Advisory Board for expiring four year terms of Larry Cappleman, John Kirby, Kelly Randall, and Sandy Schupp**

CRA Advisory Board Chairman/CRA Member Larry Cappleman stated that there are four members of the CRA Advisory Board whose terms are expiring and all four wish to continue serving. The advisory board unanimously voted to recommend reappoint of all four members. He shared that all have been active and the board is currently in the middle of several projects and thinks it advisable to reappointment the members to another three-year term.

Motion by CRA Member Cappleman to reappoint Larry Cappleman, John Kirby, Kelly Randall, and Sandy Schupp to the Community Redevelopment Area/Brownfield Advisory Board for an additional three-year term. Seconded by CRA Member Buchanan and carried unanimously 5-0.

Adjourned as the Community Redevelopment Agency and reconvened as the City Commission at 8:28 p.m.

5. **MATTERS FROM CITIZENS** - There were no items

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

7. **MATTERS FROM CITY MANAGER**

A. **Presentation on future capital projects**

City Manager Bollhoefer covered this item under Item 4.D.

8. **MATTERS FROM MAYOR AND COMMISSIONERS**

Commissioner Olszewski shared information about property located at the corner of Windermere and Roberson Road that the developers have received the information and e-mail of the concerns expressed by the citizens of District 3.

Mayor Rees expressed his appreciation and others who have expressed their appreciation of what contributions Larry Cappleman, Mary Cappleman-Zahl and Kay Cappleman, have made to the City.

The meeting adjourned at 8:30 p.m.

APPROVED:

_____/S/_____
Mayor John Rees

ATTEST:

_____/S/_____
City Clerk Kathy Golden, CMC