



CITY OF WINTER GARDEN

CITY COMMISSION REGULAR MEETING MINUTES

February 28, 2013

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, Robert Olszewski and Colin Sharman (*arrived at 6:43 p.m.*)

Also Present: City Manager Mike Bollhoefer, City Attorney Kurt Ardaman, Assistant City Clerk Angee Grimmage, Assistant City Manager–Administrative Services Frank Gilbert, Assistant City Manager–Public Services Don Cochran, Community Development Director Ed Williams, Finance Director Laura Zielonka, Fire Chief John Williamson, Police Chief George Brennan, Economic Development Director Tanja Gerhartz, Parks and Recreation Director Jay Conn, Network Specialist George Strobel, Building Official Skip Lukert, and West Orange Times Reporter Kelsey Tressler

1. **APPROVAL OF MINUTES**

Motion by Commissioner Makin to approve regular meeting minutes of February 14, 2013 as submitted. Seconded by Commissioner Buchanan and carried unanimously 4-0.

2. **PUBLIC HEARING MATTER**

A. Appeal of Planning and Zoning Board's denial of a variance request to reduce the 10-foot side yard setback to 6.86 feet and to reduce the minimum 10-foot wide landscaping around the building to no more than 50 percent landscaping around the building at 1089 Walker Street; Applicants George L. and Maria P. Bori (AutoZone parts store CPH Engineers, Inc.)

Community Development Director Williams stated that the property is located on the north side of State Road 50 and east of Walker Street. The requests are for variances to accommodate an AutoZone auto parts facility. Staff recommends denial of their variance request to reduce the side setback and reduction of landscaping. The Planning and Zoning Board held a hearing on this request and were very concerned that millions of public funds have been spent on widening and landscaping of State Road 50 but felt the applicant produced no justification for the request for variances. The importance of the overlay zone for landscaping, signage control, and those issues were paramount to the Planning and Zoning Board's decision. Absent any justification, the board recommended denial of the application.

Mr. Williams noted that the applicant has indicated that when they submit site plans, additional variances may be requested for development of the site. Because of this, staff and the Planning and Zoning Board recommend denial.

Commissioner Olszewski stated that the City Commission has seen this project appealed previously and asked if this is an additional request after working with them almost a year ago. **Mr. Williams** responded yes; the prior issue was for the annexation and how access would be accommodated. They are now getting into the development stage and the first thing they submitted, without a site plan, was this request for variances. They indicated there would be further variance requests in the future. On a raw piece of property, with a new building, there has to be some strong justification as to why the variances would be granted.

City Manager Bollhoefer noted that all other new businesses coming into our City have not only complied but did so willingly because they wanted to be a part of the City's beautification effort on State Road 50.

Victor Chapman, representing the Bori's, Ms. Fleming and her two siblings, stated that this entire episode started back in April of 2009 when Mr. Bori was invited to annex into the City for which application was made in March 2011. It was subsequently denied. Eventually the City Commission approved the annexation, with conditions, which the applicant has complied. Specifically, the only entrance from State Road 50 or exit is from Walker Street on the side. Exiting would be from the left to minimize the impact on adjacent residential properties to the AutoZone location. He stated they are now seeking is a minimal variance of less than ten to six-and-a-half to seven feet of most of the property in setbacks. He noted that AutoZone must have the space to operate their standard building. He described their standardized plans and explained that AutoZone has made it clear that unless the plans submitted are permissible, they will not do it. He noted that there would be 20 to 30 full time employees, a million dollars of construction, and \$1.5 million estimated in gross sales for this property.

Commissioner Olszewski asked for clarification on the statements made about the changes being so minimal why is this issue before them tonight and the statement about if these changes are not granted AutoZone will not build here. Also, he heard that every single AutoZone is built identically. **Mr. Chapman** replied that he believes there are two separate plans. His understanding is that they are standard; you walk into one and you've been in them all.

City Manager Bollhoefer stated that all cities have their standards. Businesses choosing to come into communities look up those standards and make their decisions accordingly. He stated that AutoZone knew the standards coming in. He has not known a business that in the end will not change their standards. He strongly doubts they will withdraw and will try to find a way to make it happen.

Mr. Chapman stated that they understand that and the variance they are seeking will do minimal negative impact to the established standards. At the end of the day it will be an improvement.

Justin Polk, CPH Engineers, 500 West Fulton Street, Sanford, Florida, stated that he represents AutoZone in this application. He gave a historical summary of the events leading up to this point. He stated that they have never hidden the fact that they would be requesting variances. The variance request is from a side yard setback; the side yard building setback required is ten feet. The code states that within the ten feet, five feet may be sidewalk therefore, with six feet of landscaping you won't see a sidewalk. They are putting in 6.83 feet of landscaping, if there was a sidewalk they would already meet the code requirements. The staff report states that over fifty percent of the building has zero landscaping; that is absolutely not true. They moved the landscaping out towards the road to buffer the residential area more but they can move it towards the building if that is what the City wants. The only place next to the building that has zero landscaping is the doors.

Mr. Polk stated they are here today with a request for variance. He explained that a big part of this corridor agreement is the street frontage and how it looks from the road. He stated that all street frontages meet or exceed the setback and landscaping requirements. He displayed diagrams and explained the position of driveways and landscaping. Mr. Polk noted that there are two base building prototypes for AutoZone stores. **Mr. Bollhoefer** stated that staff called AutoZone who indicated they have nine prototypes. **Mr. Polk** stated that is correct because they flip the door and explained why. He noted that they are trying to be amenable with staff and they have had two separate runs with the residents and no one has objected. At the City's request they had a separate meeting and got full support.

Commissioner Sharman arrived at the end of Mr. Polk's account of the historical events leading to this appeal.

Commissioner Buchanan asked Mr. Williams if he understood it to be only this much of a variance being requested because he took it to be all the way around the building. **Mr. Williams** responded that he (Mr. Polk) is incorrect in stating that they are giving more landscaping than what is required; ten feet is required along that sidewalk. You can have sidewalk of five feet and five feet of landscaping, but not putting in the sidewalk and putting in six feet of landscaping does not meet the code. Secondly, he (Mr. Polk) is assuring the City Commission that the landscaping in the front will meet the City's code; they have not turned in any site plan, any landscape plan, or any drawing on which to make that determination.

City Manager Bollhoefer suggested that it all be brought in at one time instead of piece mill so that the City knows what needs to be considered. **Mr. Williams** noted that this is at the heart of the issue such as how are 18-wheelers going to load, unload, and

maneuvering on the sight safely. He stated that staff is assuming but have nothing on record for which to evaluate these issues.

Commissioner Makin asked if a denial letter was submitted from Florida Department of Transportation (FDOT). **Mr. Williams** responded that he has not seen a denial letter from FDOT. **Mr. Bollhoefer** stated that they can submit the denial letter at the next request.

Commissioner Olszewski asked City Attorney Ardaman that if the Planning and Zoning Board ruled on this issue and by the City's Code of Ordinances the Commission is required to make a decision based on the applicant's appeal, does the City Commission have the ability to require them to submit a complete site plan before making a ruling on this matter. **Mr. Ardaman** noted that the code provides that the City Commission is supposed to make its decision on the appeal within 21 days after the completion of the public hearing. The City Commission may extend the time for holding its hearing and rendering its decision to a time certain after notice to all parties to who notice of such hearing is required. Mr. Ardaman suggested that the applicant address the question of a continuance to a date and time certain.

Brady Lessard, CPH Engineering, 500 West Fulton Street, Sanford, Florida, stated that he thinks he is hearing there is a way to reach a compromise and make it work. **City Attorney Ardaman** expressed that the City Commission needs to see everything in order to make a determination whether it meets the criteria for the variance set forth in the code. The question is whether or not the AutoZone representatives are willing to continue this hearing to a date and time certain and submit a complete packet for the Commission's consideration. *(A short intermission was taken to allow the AutoZone representatives to discuss a continuation.)*

Mr. Lessard indicated they are willing to commit tonight that their site will meet City code and the overlay district, with the exception of this variance request. **Mayor Rees** stated that the City Commission would feel more comfortable if the appellants would get the packet together so they can see it.

Commissioner Makin readdressed traffic flow with no right-hand turnout and if they come back proposing it again will the traffic flow meet our code? **Mr. Williams** responded no, they will not be able to get eighteen wheelers in and out with the turn radius so there will have to be some modification.

Mayor Rees asked how much time is needed to bring this matter back. **Mr. Lessard** responded 90 days would be ample. **Mr. Ardaman** interjected that it must be to a date and time certain.

Motion by Commissioner Buchanan to continue this appeal hearing on April 11, 2013 at 6:30 p.m. Seconded by Commissioner Makin.

Lucille Verhoest, 175 Water Street, Winter Garden, Florida, (*unincorporated Orange County*) stated she lives behind the proposed site and that they have not spoken to all of the residents as they have indicated because they did not come and speak to her. She noted the plans show a wall right up against her street and complained that she did not want to look at a wall; they need to put in landscaping. She mentioned that the plans show a dumpster at the wall where she lives, which is picked up at 3:00 a.m. **Mayor Rees** shared that this should not happen and that she should let the City know. **Ms. Verhoest** noted that the other Discount Auto Parts store next door has trucks in there at 3:00 a.m. and deliveries at 11:00. Their lights are on constantly lighting up her bedroom. If AutoZone is putting up a light, her entire house will be lit up. **City Manager Bollhoefer** stated that staff will get her name and address and take all of her concerns into consideration.

Mr. Lessard noted that they did legal notifications by certified mail and tried to get as many attendees as possible. The wall was not their idea, but was staff's and the City Commission. He noted that there are some lumens issues for which they think they can handle to their satisfaction.

Motion carried unanimously 5-0.

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

- A. **Ordinance 13-12**: AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING ARTICLE III, DIVISION 4 AND 5 OF CHAPTER 110 OF THE CODE OF ORDINANCES OF THE CITY OF WINTER GARDEN CONCERNING FINAL PLAT PROCEDURES AND REQUIREMENTS, AND HOA AND COMMUNITY SUBDIVISION INFRASTRUCTURE; RESPONSIBILITY; PROVIDING FOR CODIFICATION, CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 13-12 by title only. Community Development Director Williams stated that the key provisions and the changes are that the Planning and Zoning Board will no longer review final plats since there is no discretion there was no reason to stretch out the process. The bigger changes include extending the bonding period for maintaining improvements to two years from the current one year, which provides an added protection to the homeowners. Also, it clarifies the need for the developer to fund the reserve accounts for the maintenance of infrastructure within the homeowner's development and homeowner's association common areas. **City Manager Bollhoefer** noted the two years is from the date of the last Certificate of Occupancy is issued.

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

Motion by Commissioner Sharman to approve Ordinance 13-12 with the second reading and public hearing being scheduled for March 14, 2013. Seconded by Commissioner Makin and carried unanimously 5-0.

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

- A. **Ordinance 13-07:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 4.82 ± ACRES LOCATED AT 1751 WILLIAMS ROAD AT THE NORTHEAST CORNER OF WILLIAMS ROAD AND AMBER SWEET LANE 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 13-08:** 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 4.82 ± ACRES LOCATED AT 1751 WILLIAMS ROAD AT THE NORTHEAST CORNER OF WILLIAMS ROAD AND AMBER SWEET LANE FROM ORANGE COUNTY VILLAGE TO CITY URBAN VILLAGE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinances 13-07 and 13-08 by title only. Community Development Director Williams stated that this is a voluntary annexation and designation of the future land use map of the property. There is no rezoning accompanying these ordinances and would have to come back as an urban village planned development. Staff recommends approval and noted it is consistent with the Joint Planning Area with the County who had no objections.

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

Motion by Commissioner Makin to adopt Ordinances 13-07 and 13-08. Seconded by Commissioner Buchanan and carried unanimously 5-0.

- C. **Ordinance 13-09:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 4.6 ± ACRES LOCATED AT 17416 AMBER SWEET LANE ON THE SOUTH SIDE OF AMBER SWEET LANE, EAST OF WILLIAMS ROAD 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
- D. **Ordinance 13-10:** 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 4.6 ± ACRES LOCATED AT 17416 AMBER SWEET LANE ON THE SOUTH SIDE OF AMBER SWEET LANE, EAST OF WILLIAMS ROAD FROM ORANGE COUNTY VILLAGE

TO CITY URBAN VILLAGE; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE

City Attorney Ardaman read Ordinances 13-09 and 13-10 by title only. Community Development Director Williams stated that this property adjoins the previous request to the south. Staff recommends approval and noted this is within the Joint Planning Area with the county having no objections. This establishes the voluntary annexation and future land use designation.

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

Motion by Commissioner Olszewski to adopt Ordinances 13-09 and 13-10. Seconded by Commissioner Sharman and carried unanimously 5-0.

- E. **Ordinance 13-11:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, AMENDING ORDINANCE 12-48, THE CITY OF WINTER GARDEN FISCAL YEAR 2012-2013 BUDGET TO CARRY FORWARD PRIOR YEAR APPROPRIATIONS; PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 13-11 by title and the following excerpt as provided in the agenda packet from Section 1 as follows:

REVENUES	
General Fund	\$ 850,978
Local Option Gas Tax Fund	1,582,456
General Impact Fee Fund	840,252
Transportation Impact Fee-South of Turnpike Fund	875,000
Transportation Impact Fee Fund	1,882,509
Utilities Operating Fund	3,143,080
Utilities Impact Fee Fund	3,687,150
Utilities Renewal & Replacement	3,055,700
Stormwater Fund	-
Trailer City Fund	1,056
	<u>15,918,181</u>

Mr. Ardaman noted that the expenditures for each of the items were the same amount.

Finance Director Zielonka stated that this ordinance is to carry forward the projects that were approved last year that are to be completed this year.

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

Motion by Commissioner Olszewski to adopt Ordinance 13-11. Seconded by Commissioner Sharman and carried unanimously 5-0.

5. **REGULAR BUSINESS**

A. **Recommendation to approve entering into a Right-of-Way Maintenance Agreement with Reserve at Carriage Pointe Homeowners Association**

Community Development Director Williams stated this item is requesting permission to install additional landscaping and irrigation along major public roadways. This agreement establishes the procedures and staff recommends approval.

Motion by Commissioner Sharman to approve entering into a right-of-way maintenance agreement with Reserve at Carriage Pointe Homeowners Association. Seconded by Commissioner Buchanan and carried unanimously 5-0.

B. **Recommendation to approve waiving permit fees and closing Plant Street and Lakeview Avenue to accommodate the "Run in the Garden" 5k road race by Tri & Run of Winter Garden on Saturday, April 20, 2013 from 6:30 a.m. until 9:00 a.m.**

Parks and Recreation Director Conn stated that this request is from Jerry Pegram of Tri & Run of Winter Garden who is requesting to hold his spring 5K race in downtown Winter Garden. Approval is needed for blocking the streets and waiving permit fees. It is a benefit race for the Winter Garden Pal Program. Mr. Pegram has also received approval from the Downtown Merchants Association.

Motion by Commissioner Makin to approve waiving permit fees and closing Plant Street and Lakeview Avenue to accommodate the "Run in the Garden" 5k road race by Tri-n-Run of Winter Garden on Saturday, April 20, 2013 from 6:30 a.m. until 9:00 a.m. Seconded by Commissioner Sharman and carried unanimously 5-0.

C. **Recommendation to approve waiving fees and allowing alcohol sales for Evening at the Pops event Saturday, March 23, 2013 at Newton Park/Tanner Hall**

Parks and Recreation Director Conn stated that the Winter Garden Rotary Club is requesting to hold their annual Evening at the Pops event. He noted that this has been a great event for the City of Winter Garden with about 1,500 attendees since its inception. Approval has been requested to serve beer and wine and waiving of fees for using Tanner Hall.

Commissioner Makin asked if there are to be designated areas for the serving alcohol. **Mr. Conn** responded yes. **Commissioner Buchanan** noted that the entire area is roped off because it is a ticketed event.

Motion by Commissioner Buchanan to approve waiving the fees and allowing alcohol sales at the Evening at the Pops event Saturday, March 23, 2013 at Newton Park/Tanner Hall. Seconded by Commissioner Makin and carried unanimously 5-0.

D. **Appointment to the Code Enforcement Board to fill the unexpired term, until July 1, 2015, of resigning member Bradley Lomneck** *(continued from February 28, 2013)*

Commissioner Buchanan stated that someone had said this seat was formerly held by someone from District 2; after reviewing the applications he feels that the best person for this board would be Johnny Clark. Although he resides in District 1, he has been the Code Enforcement Manager, has passed the test for Code Enforcement, and knows our ordinances. He noted that if he really would like to sit on this board it would be a great fit. City Manager Bollhoefer noted that it is not required to be filled by district; it has just been done that way in the past.

Motion by Commissioner Buchanan to appoint Robert “Johnny” Clark to the Code Enforcement Board to fill the unexpired term, until July 1, 2015, of resigning member Bradley Lomneck. Seconded by Commissioner Makin and carried unanimously 5-0.

6. **MATTERS FROM CITIZENS** - There were no items.
7. **MATTERS FROM CITY ATTORNEY** - There were no items.
8. **MATTERS FROM CITY MANAGER** - There were no items.

9. **MATTERS FROM MAYOR AND COMMISSIONERS**

Commissioner Makin asked Public Services Director Cochran about the progress on Crest Avenue and explained that he has spoken to the City Manager and was told there were problems with the contractor. He stated that he has residents calling and inquiring about when it will be done because they are tired of the detour. **Mr. Cochran** responded that he can understand their frustration because staff is also frustrated. He has been there almost every day for the past two weeks to motivate the contractor as much as possible. He explained that rain slowed their progress but they still assured him that they would have the street temporarily paved tomorrow so that it could be opened up. He shared that this company is Valencia Construction formerly known as Emerald Utilities. Staff will put together a summary report on this contractor so if they are ever the lowest bidder again, he will report their performance on this project to the City Commission.

Commissioner Buchanan spoke of people sharing with him they can't get close to the Farmer's Market on Saturday because of the lack of parking and his inability to find parking at events in the downtown area. **City Manager Bollhoefer** stated that staff will be bringing a presentation to the next meeting on parking.

Commissioner Buchanan also noted that he thought that the last 10K run was better organized than the previous one.

Commissioner Olszewski stated that he wanted to keep everyone informed that the group concerned about the 7-Eleven has been meeting with City staff as well as the attorney and representatives from 7-Eleven. He shared that there are ongoing discussions.

Commissioner Olszewski thanked the City, Orange County Community Action Board, and the East Winter Garden Community Development Corporation for their support with the “How you Can Drive a Mercedes” financial literacy event that was held in east Winter Garden last week. He also thanked Mercedes Benz of Orlando and the Orlando Magic; specifically Bo Outlaw and Nick Anderson for showing up.

Commissioner Olszewski congratulated the West Orange High School Men’s Soccer team who went undefeated the entire season except for the last game at the State Championship.

The meeting adjourned at 7:27 p.m.

APPROVED:

_____/S/_____
Mayor John Rees

ATTEST:

_____/S/_____
City Clerk Kathy Golden, CMC