



# CITY OF WINTER GARDEN

## City Commission and Community Redevelopment Agency REGULAR MEETING MINUTES

May 25, 2023

**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. An Opening Invocation and Pledge of Allegiance were given.

**Present:**

Mayor John Rees  
Commissioner District 1 - Lisa L. Bennett  
Commissioner District 2 - Ron Mueller  
Commissioner District 3 - Mark A. Maciel  
Commissioner District 4 - Colin Sharman

**Also Present:**

City Manager Jon C. Williams  
City Attorney A. Kurt Ardaman  
City Clerk Angee Grimmage

1. **APPROVAL OF MINUTES**

**Motion by Commissioner Mueller to approve regular meeting minutes of May 11, 2023 as submitted. Seconded by Commissioner Maciel and carried unanimously 5-0.**

2. **FIRST READING AND PUBLIC HEARING OF PROPOSED ORDINANCES**

- A. **Ordinance 22-40:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA PROVIDING FOR THE ANNEXATION OF CERTAIN ADDITIONAL LANDS GENERALLY DESCRIBED AS APPROXIMATELY 30.24 ± ACRES LOCATED ON TILDEN ROAD; SOUTH OF TILDEN ROAD, WEST OF WEST ORANGE COUNTRY CLUB DRIVE, AND EAST OF TINY 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
- B. **Ordinance 22-41:** 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 30.24 ± ACRES LOCATED ON TILDEN ROAD; SOUTH OF TILDEN ROAD, WEST OF WEST ORANGE COUNTRY CLUB DRIVE, AND EAST OF TINY ROAD; FROM ORANGE COUNTY VILLAGE TO CITY SUBURBAN RESIDENTIAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE
- C. **Ordinance 22-42:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING CERTAIN REAL PROPERTY GENERALLY DESCRIBED AS APPROXIMATELY 30.24 ± ACRES LOCATED ON TILDEN ROAD; SOUTH OF TILDEN ROAD, WEST OF WEST ORANGE COUNTRY CLUB DRIVE, AND EAST OF TINY ROAD; FROM ORANGE COUNTY A-1 (CITRUS RURAL DISTRICT) TO CITY PUD (PLANNED UNIT DEVELOPMENT) AS SET FORTH IN THIS ORDINANCE; PROVIDING FOR CERTAIN PUD REQUIREMENTS AND DESCRIBING THE DEVELOPMENT AS THE TILDEN CLUB PUD; AND PROVIDING FOR SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE

City Attorney Kurt Ardaman read Ordinances 22-40, 22-41 and 22-42 by title only. **Planning Director Kelly Carson** stated that this is a request for annexation, future land use designation and zoning for a 30.24 ± acre property located on Tilden Road. She indicated that a similar presentation for this item had been provided at a previous meeting. She informed that the applicant requests a City future land use designation of suburban residential and zoning of Planned Unit Development (PUD) in order to develop the property with 24 single family homes. She noted that there is approximately 17 acres of wetlands on the south side of this property, which would remain preserved and buffered from the residential development of the subdivision by a 25-foot vegetative wetland buffer. The proposed suburban residential land use designation allows the lowest residential densities in the City with a maximum of four dwelling units per acre. Ms. Carson explained in detail how this is the lowest residential density available in the City and she gave comparisons of neighboring subdivisions. She informed of a community meeting with owners to the west, who own and operate a horse farm. She noted that when this project was originally submitted by the applicant, they noted that the site was laid out with the horse farm in mind and only three residential lots to be located along their shared property line. Ms. Carson further noted conversations with the adjacent property owner regarding her concerns, relayed these concerns to the developer, who amended their plans. Ms. Carson described some of the amendments, which included elimination of a proposed walking trail; a tot lot changed to a planted greenspace and noted the installation of an eight-foot tall privacy fence along the entire property line.

Ms. Carson stated that this property is within the City's JPA annexation boundaries, it has already been approved by Orange County for inclusion in the annexation boundaries, and the property is already a part of the City's utility service area. Ms. Carson stated that the applicant is well within their rights to apply for annexation. She noted suburban residential as the future land use designation the applicant is requesting and informed that it is the most restrictive, in terms of residential density. She indicated that this project would have lower density than any other residential district in the area. Ms. Carson informed that the applicants also had a traffic study performed, which concluded that the project would generate only 25 a.m. peak hour trips, in terms of traffic and 29 p.m. peak hour trips. The project is designed to minimize impacts to the horse farm property. Only three residential lots would be located directly adjacent to the property and those lots as well as all other land, up to the wetland area, would be buffered by an eight-foot fence, dense landscaping, and no active recreation areas would be located adjacent to the lot.

Ms. Carson stated that, based on all of this information, staff sees no valid basis for denial of the request. Staff recommends approval of Ordinances 22-40, 22-41 and 22-42. Ms. Carson noted that she would be available to answer any questions and

recognized that counsel for the applicant was also in attendance to make a presentation.

**Logan Opsahl**, Lowndes Law Firm, 215 North Eola Drive, Orlando, Florida, noted that staff gave a good analysis of this project; he noted that he would go over some items and requested to have reserved time to respond to public comments. He began by noting that this is 30 acres with only 13 acres that are developable, with the southern portion being untouched. He stated that their request is simple, as the City has worked with the County to develop an area for future annexation to provide utility services. The JPA agreed upon between the County and the City requires PUD and suburban residential future land use designation. The PUD has restrictive language within it and they are agreeable to provide additional restrictions as they have worked with the neighbor throughout this process.

**Mr. Opsahl** focused on this as being the lowest residential density and spoke of the future land use designation. He noted that there was a request from the neighbor to be joined in this JPA through annexation and they are asking the same thing. He displayed an aerial view and explained the proposed development and proper buffering, which meets and exceeds code restraints. Also noted was the inclusion of an eight-foot security fence in the proposed plan.

**Mr. Opsahl** disclosed meeting with the neighbor, noted that she retained legal counsel, acknowledged that there was some additional proposed items such as the bamboo fencing and landscaping. He spoke of 24 lots or units for this project, and informed that there would be HOA noticing to the future residents that there is an agricultural use next door. He spoke of fencing, removal of the tot lot and walking trails and security fencing along the eastern line as requested by the adjacent golf course. He indicated that these were the voluntary restrictions as encouraged by the City Commission to reach out to the neighbor to discuss. He noted that, visually, this proposed PUD is a 50-foot distance from the horse tract, which is the same distance from the existing roadway. He spoke of noise levels, mentioning that agricultural noise levels are actually higher than that of residential. He mentioned speaking to three neighboring properties and them being mindful of the raised concerns. He stated that they are requesting, in line with staff's recommendations to the City Commission, that annexation be granted and given the PUD zoning district along with all the requirements that go with that, including the noted restrictions and suburban residential land use. He again requested time to respond and answer any questions of the City Commission.

**Mayor Rees and all City Commissioners** disclosed any communications they had or received with reference to this subject matter. This included any conversations and/or correspondence related to the subject property and/or its neighbors.

**Commissioner Maciel** requested a synopsis of the legal position from the Lowndes Law Firm, specifically asking their legal intention and the outcome desired should this item be denied. **Mr. Opsahl** responded that the JPA is designed to provide an avenue of annexation in order to gain utilities for a development. **Commissioner Maciel** focused his question to inquire what would be their next step, should this item be denied. He further asked how they would apply the utility service agreement and the JPA to get this property through the process. **Mr. Opsahl** responded that the City has determined that this property will be annexed one day so that it can receive utility services. He expressed that this is one of those cases where he did not see the need for a land use Attorney as this was contemplated for annexation and rezoning. He expressed that it has to be rezoned to PUD and suburban residential, per the terms of the JPA. Their request is in line with what the City has already determined to be the case, competent substantial evidence has been submitted from City staff, supporting their request. He expressed that given the evidence and staff recommendations, this project would be passed and that is their focus.

**Commissioner Mueller** spoke of the density of the project not being the issue, whereas the density of the area, by adding more homes, is the real issue. **Planning Director Kelly Carson** stated that this property is going to be annexed into the City, whether now or five years from now, and has to be a residential zoning designation as the City does not have an agricultural zoning. She noted that the proposal that is before the City Commission now is the lowest density she has ever seen in the City in her career. This property will be annexed into the City; the question is how do you want it developed. She indicated that the City saw this as a way to meet all of its requirements and literally having the least dense proposal.

**Commissioner Mueller** addressed the traffic study and sought clarification on how the numbers were determined. **Planning Director Carson** explained the traffic study, which was prepared by a traffic consultant. She detailed the information noting that the focus of impact was during the peak hours. This study was to determine the impact on the road, whether the road could handle it. Discussion ensued on the impact imposed by the prior business at this location and it was noted that this information was not available.

**Commissioner Bennett** expressed that she did not think any of the City Commission is pro-development and thinks that all of them are anti-traffic. She noted not being aware, until last meeting, that the horse farm had put in writing that they wanted to also be a part of the JPA. She noted that this needs to be a consideration as it impacts the subject property and voiced her concerns regarding liability. **City Attorney Ardaman** indicated that he would wait to hear from all testimony presented and then have a broader or more detailed discussion.

**Commissioner Sharman** asked about the JPA and the possibility of what development could potentially go into this location. **Ms. Carson** responded that the maximum density is set by the future land use designation; she explained that there could be four dwelling units per acre and they have 30 acres. Discussion ensued regarding the different scenarios.

**Commissioner Maciel** voiced that he felt that they would all like this project to go away, but stressed that, as a City Commission, they must have legal reasons for denial and that this is the information he wants to hear from the public. He also noted that we all deal with congestion and traffic.

**Mayor Rees** opened the public hearing. He requested that the speakers name and address be given and pleaded for non-repetitive comments.

**S. Brent Spain**, Theriaque & Spain, 1809 Edgewater Drive, Orlando, Florida stated that he was appearing on behalf of Ms. Anne Bingler. He indicated that he would provide a PowerPoint presentation and submitted a copy of the presentation to the City Clerk for the record. Mr. Spain then submitted a copy of the March 9, 2023 City Commission meeting minutes, which he stated was also for the record. He referred to conversations at the end of the March 9, 2023 meeting regarding whether there was a legal basis for denial of this project. He indicated that this legal basis for denial would be the point of his presentation.

Mr. Spain's presentation addressed the impact of the proposed project on Ms. Anne Bingler, whose horse farm is immediately adjacent to the west of the project. He spoke of the impact of the Tilden Place project to the west of Ms. Bingler, its sudden noises spooking the horses and those noises leading to injury. He spoke of the legislative and quasi-judicial decisions, explaining that the City Commission has no legal obligation to annex property or approve a future land use. He further explained the quasi-judicial nature of site-specific rezoning and expressed that they must be based on competent substantial evidence (CSE). He indicated that the burden of proof is on the applicant and that the applicant has not met their burden. He stated that a staff report is not competent substantial evidence, however, inserted that citizen testimony is considered competent substantial evidence. Mr. Spain informed that Ms. Bingler owns additional property in the City and he submitted her deeds and title to the City Clerk for the record.

Mr. Spain spoke of the Joint Planning Agreement (JPA) and the City Commission being told at the March 9, 2023 meeting that they have to annex this property. He informed that the annexation of property is not required and the JPA indicates that they "may" annex. He referenced Chapter 171 of the Florida State Statutes, and read an excerpt from the April 9, 2020 City Commission meeting minutes, where City Manager Mike Bollhoefer stated that the City is not required to annex. He indicated that it is not

completely accurate that Ms. Bingler consented to the Eight Amendment, explaining that the letter shown in the previous hearing was dated September 5, 2013 and the Eight Amendment was not adopted until seven years later in 2020. He stated that there is nothing notating Ms. Bingler reaffirmed being in the JPA. He expressed that that is incomplete to say that their client consented when seven years had passed. **Commissioner Mueller** interjected his inquiry to Mr. Spain, after Mayor Rees urged him to wait until Mr. Spain had finished. **Commissioner Mueller** firmly asked if Ms. Bingler did not consent. **Mr. Spain** responded that in 2013, she most definitely wrote the letter that was shown on the screen and expressed that he was not denying that the letter was written in 2013.

**Mr. Spain** addressed Chapter 171 of the Florida State Statutes annexation law. He indicated that the JPA requires an annexation consistent with Chapter 171 and meet the three requirements of contiguous, reasonably compact and not create enclaves. He provided definitions and comparisons for each as it related to the property he displayed. He gave examples of past-related litigation and addressed issues such as pockets and enclaves.

**Mr. Spain** addressed rezoning, referenced the City's comprehensive plan, its rezoning criteria and approval criteria. He indicated that there was inconsistency with the comprehensive plan, pointing out there was no analysis or evidence that complies with the requirement that it contributes to the area's job-housing balance. He spoke of the City's multimodal transportation element and pointed out that no final development permit shall be issued if constructing the development would create a dangerous traffic or pedestrian situation. He referenced staff's concerns, as noted in the staff report, regarding blind spots as concerns voiced from community meetings and the need for safety improvements on Tilden Road as raised by the West Orange County Country Club. He addressed additional issues such as no sidewalks along the south side of Tilden Road and other safety concerns. Mr. Spain addressed Commissioner Sharman's concerns of the traffic impact as addressed at the March meeting and detailed items in the traffic analysis noting anticipated delays at Tiny Road and the failure of roadways upon the opening of the development.

**Mr. Spain** addressed issues of substantial adverse impacts referencing the Future Land Use (FLU) policy and staff's report. He surmised that there is no factual analysis or data to support the conclusion. He spoke of buffers as being setbacks and displayed photos and played videos relating to the adverse impact of residential development. He compared staff reports from 2019 for Tilden Place and 2023 for Tilden Club.

**Mr. Spain** concluded by requesting denial of all three ordinances and restated his arguments of the proposed annexation not complying with Florida State Statute, Chapter 171, in that the property is not contiguous, it creates an enclave and at a minimum a pocket. He restated that the City Commission is not under the obligation to

annex the property, the zoning does not comply with all of the rezoning and PUD criteria, including the City's comprehensive plan and he again requested denial.

The following public made statements and voiced concerns regarding this development:

Robert Visser	14706 Tullamore Loop	Winter Garden, Florida
Ann Bingler	14810 Tilden Road*	Winter Garden, Florida
Sarah Matin	14265 SunRidge Blvd	Winter Garden, Florida
Hans Krogh-Hansen	1727 Woodlark Way	Winter Garden, Florida
Linda Lopez-Puig	9436 Bolero Road*	Winter Garden, Florida
Sophie Sacagiu	Resident* & Business Owner	Winter Garden, Florida
Dominique Perez	16408 Davenport Road*	Winter Garden, Florida
Julie Visser	14706 Tullamore Loop	Winter Garden, Florida
Ray Poster	1962 Pantheon Drive	Winter Garden, Florida
Jamila Burns	Business Owner	Winter Garden, Florida

\*Unincorporated Orange County

The public statements, voiced concerns and requests included requests to deny this project, the area becoming unlivable and dangerous, history of living near the prior Tilden Club development, meetings with City Staff, notices of development, encounters with developers, a 2013 letter, annexations, the City not recognizing agricultural zoning, property entitlement, property flips, quality of the homes, homeowner's associations, and development effects on horses. They spoke of effects of living near certain developments such as golf courses, transportation issues, safety, no sidewalks or crosswalks, speed limits, and drainage issues. Others mentioned the West Orange County Club, bicycling in the area, unbearable traffic, future contingency plan near Tiny Road, accidents in the area and additional traffic. Also noted was awareness of developments through Facebook, some tours of the horse farm and their operations, project presentations, and neighboring houses and their effect on the horse farm. They encouraged the City Commission to see the horse farm for themselves. Some citizens addressed owning businesses, paying taxes, disappearance of the trees, lack of infrastructure which would devastate Tilden Road. They spoke helping each other as one big family, some of the houses being ugly houses with no character and Winter Garden being a City with a heart. Additionally addressed was noise concerns, which would spook horses, injuries due to the nearby noises and reckless speeding. Also mentioned was the City's strategic plan, goals, preserving the natural environment, providing an attractive community, protecting history, small town character and improving mobility. There were questions, concerns and explanations on the designation of Planned Unit Development (PUD), also mention of orange trees only being seen now in pictures and the effect of chemicals.

**Planning Director Kelly Carson** addressed the comments made about the staff report and analysis noting that bits and pieces had been pulled from the report, which do not tell the whole story. She noted extensive analysis; the applicant hired a professional traffic engineer to analyze the traffic based on industry standards. She addressed claims that this property is not contiguous and disagreed noting that the property touches another City of Winter Garden parcel. She informed that this item was sent to Orange County, who would indicate if there was an issue. She disputed the argument of the creation of an enclave or pocket. She also spoke to issues regarding the rezoning and PUD criteria, noting that it was analyzed and found to be consistent with the comprehensive plan. She stated that the proposed rezoning would not substantially devalue or prevent reasonable use or enjoyment of the properties. She expressed that the applicant went above and beyond to mitigate Ms. Bingler's concerns, noting the placement of three large single family properties against the adjacent property. She addressed concerns that were mentioned regarding the project adding to the area's job housing balance, noting that no specific objection was given for this item by the opponent and this project does add to the job housing balance and meets the comprehensive plan criteria. Ms. Carson addressed the argument relating to development creating a dangerous traffic pedestrian situation and explained the decision not to approve the plan with sidewalks adjacent to the development was made due to concerns of safety. She expressed that the City does not have control over Tilden Road at this time as Tilden Road is a County Road. She described that placing an isolated segment of the sidewalk in that location would force someone using it to cross the road when the sidewalk ended. She noted that the City would love to connect all of the sidewalks on Tilden Road and reiterated that because the City does not have control over that road it would not be able to make it safe the entire length. She stressed that this is how it was analyzed and was chosen as the safest option.

**City Attorney Ardaman** inquired of Ms. Carson whether the property is required to annex in order to get utilities. **Ms. Carson** responded yes, this is one of the criteria. She explained that if the property is within the City's annexation boundaries and contiguous with another City of Winter Garden property, annexation is required in order to receive the City's utility services. **Mr. Ardaman** inquired if the property is developed outside of the City in an unincorporated area, are the utilities available to them. **Ms. Carson** responded that if the property were to developed in unincorporated Orange County, and is contiguous, and did not annex in, they would not have access to City utilities.

**Commissioner Mueller** voiced his concern regarding the sidewalk issue.

At this point in the meeting, **Attorney S. Brent Spain** requested to further question Planning Director Carson. Mayor Rees was advised by **City Attorney Ardaman** who noted that none of the witnesses were sworn, but the opponent's attorney requested a rebuttal. **Mr. Ardaman** advised that the City Commission might want to hear Mr.



Spain's questions to Ms. Carson before allowing the rebuttal requested by Attorney Logan Opsahl.

**Mr. Spain** stated that Ms. Carson indicated that staff determined whether the annexation created an enclave and inquired if she could point to the analysis in the staff report. **Ms. Carson** informed that this information is in the Florida Statutes. **Mr. Spain** stated that Ms. Carson indicated that Orange County approved the annexation and did not object, and he asked if there was any evidence in the record. **Ms. Carson** responded that the County never reached out to her, never sent a letter stating their objection, which had been done in the past for other projects. **Mr. Spain** inquired if it was true that Orange County does not have to object to an annexation. **Ms. Carson** noted that they have before. **Mr. Spain** inquired if Ms. Carson knew if a third party has the legal right to object to an annexation. **City Attorney Ardaman** interjected that this was an inappropriate question for Ms. Carson. **Mr. Spain** stated that Ms. Carson made reference to the comprehensive plan requiring annexation for utilities and asked if she knows how that requirement reads. **Mr. Spain** stated that is it not true that annexation, if legally possible. **Ms. Carson** responded yes, if they are not contiguous and in our service area. **Mr. Spain** asked if Ms. Carson knew if they could develop in Orange County. **Ms. Carson** responded that she does not know that.

**Logan Opsahl** thanked the City Commission for allowing his time and he thanked everyone for their time. He stated that the City Commission asked for legal basis to potentially deny this project and none was provided. He stated that pictures, videos of children playing and clapping into microphones is not a legal basis to deny the project. He addressed issues of compatibility and noted current staff reports for this project. He noted that case law is clear and Florida law is very clear regarding this point. Fears of additional traffic or even factors like noise are not competent substantial evidence. **Mr. Opsahl** informed of the competent substantial evidence provided being a traffic report by expert traffic engineers, staff report, staff conclusions and testimony. He addressed similarities in the staff report to past reports being done because of their compatibility to the residential projects. He addressed buffering, an eight-foot fence, and traffic capacity. He noted that competent substantial evidence was provided for the annexation and noted that we have to abide by the Florida State Statute. He noted that all they are asking is the annexation so that this property could be developed. **Mr. Opsahl** noted that their request is consistent with the JPA, with the land development code and with the comprehensive plan.

**City Attorney Kurt Ardaman** noted the expressed emotions of this project and the comments; some items not being perfectly clear and some that were perfectly clear. He noted that the concern is traffic, there are traffic problems and they are key issues for the developer and for the City and the residents. He expressed that this is why staff requests a traffic study, which the applicant obtained and it was determined that there would not be a decrease in the level of service. However reiterating that certainly there

is traffic and traffic issues. The expert consultant and City staff evaluated and concluded that it was not a basis for recommendation for a denial. He spoke of property rights and the ability to develop a property needing professional evaluation. He spoke of the JPA participation of these two properties, Ms. Bingler and the applicant, which are the only two properties in that JPA. Mr. Ardaman spoke of the earlier mentioned letter dated 2013, noted the time in between, and the County and City's reliance on those requests to be included in that JPA, voicing that it was for annexation and development at those intensities. He noted that there is a contract based on what both property owners asked the City to do. The City has a contract with the County for land use development in related matters and there is a utilities agreement in order to obtain those services. He restated both parties positions and noted that they both, as both being a part of the JPA, prove a much more substantial contiguity. He advised that staff and the evidence presented satisfy those issues. He spoke to the other testimony; Florida provisions on witness testimony regarding traffic problems, light, noise, and unfavorable impact of a proposed land use are not considered competent substantial evidence. He noted that the courts also say, with respect to land use devaluation of homes in the area is not sufficient to support that a devaluation would occur, in this case a professional as an expert in the field is required. He additionally noted the importance of this project having a four unit to the acre designation. The applicant, staff and the developer have worked to reduce the density to a level that is less than what is allowed. If the City were to deny the annexation, comprehensive plan rezoning would likely result in a lawsuit by the applicant and would be a significant claim. He noted that the City required that this developer meet multiple conditions that reduced the potential number of lots. This allowed for a quality development with fewer lots and fewer homes. The expenses and conditions the City imposed are a means to help encourage higher quality homes.

**City Attorney Ardaman** addressed Mr. Spain's points as being accurate, but were taken in pieces. When taking into consideration all testimony, there have been legal arguments, but a legal argument is not competent substantial evidence. He advised that the City Commission first consider the annexation, secondly the future land use and thirdly the rezoning. He stated that the opposition did not, in his estimation although given some factual testimony for consideration, for the most part, did not rise to the level of what the courts would require.

**Commissioner Mueller** asked a hypothetical question of Ms. Bingler; which presented a different scenario for the neighboring property and she responded by noting some of the concessions she would like to see in this matter.

**Commissioner Maciel** thanked everyone for coming out and caring about what happens to the City just as much as the City Commission cares. He stated that he makes his decisions based on the owner's property rights and people have a right to build on their property. He noted that the City Commission wrestles with this issue and that is why the City Commission looks for legal reasons. He voiced that he does listen; he reads Next

Door on social media and take it to heart when he hears these comments. He expressed that this City is not about greed and reiterated that this is about property rights as the City is not the one building this subdivision. He stressed that it is the people that have orange groves and horse farms who decide to sell their property and then houses are built on them, and it is their right to do so. He reiterated that it is not about greed and the City wants to keep the quality of life. He then commended Planning Director Kelly Carson and noted that this is turning into a legal argument between two lawyers. He stated that Ms. Carson did a great job in taking into account all of the residents. He spoke of receiving calls from developers who come and try to develop in this City, he noted the quality of development, PUDs offering stricter code so the City can include items like landscaping and architectural design, which is unlike some other cities. He reiterated and stressed that we do care about the quality of life for the City residents.

**Commissioner Maciel** address arguments made by Mr. Spain and thought some of them were good arguments, but expressed that these legal arguments could end up costing the City a lot of money, noting they are indeed arguments, whether valid or not.

**Commissioner Maciel** asked City Attorney Ardaman for advice on the City's standing as it relates to the specific arguments regarding Chapter 171 in the City's JPA. He wanted to know how the City would fair in court. **City Attorney Ardaman** responded that this is why the City has the testimony from Planning Director Kelly Carson, and the staff report and the JPA itself are very important. He noted that whoever wants to challenge this could make some arguments, stressing that he has been on both sides of the issue, but given that the County, the City Commission and staff all recommend it and what has been heard tonight, there is a strong chance of prevailing. **Commissioner Maciel** then inquired of the earlier mentioned policy 1-2.8.3, which City Attorney Ardaman read and excerpt from and commented on the contribution to the job-housing balance, noting that Ms. Carson and staff reviewed all of these requirements to insure that they are met. It was noted that this is consistent with the comprehensive plan.

**Commissioner Maciel** addressed the issue of a pocket or enclave and had City Attorney Ardaman expound on this argument. **City Attorney Ardaman** noted that he has argued the issue both ways and noted that staff and the County note that this does not create an enclave. He advised that based on the testimony and the evidence, not the argument, the evidence shows a better case.

**Commissioner Maciel** addressed the traffic and noise, noting that there are adverse impacts to Ms. Bingler, mentioning the presented pictures and videos. He inquired how City Attorney Ardaman felt this would hold up in court. **Mr. Ardaman** noted that this mostly keys to the comprehensive plan provision, although there is some zoning PUD criteria. He noted that they did not have a professional planner, but there was resident testimony, which does not equate to competent substantial evidence unless it was fact-

based. He pointed out that what was heard was a lawyer's argument and that is different.

**Commissioner Maciel** noted that he would make one more comment based on his time serving the Planning and Zoning Board years ago. He remembered going through the same arguments when Emerald Ridge and Tilden Place was being built. He noted that people built their homes, when others came to the area to do the same, suddenly no one wanted there to be any more development. Unfortunately, the City does not have a lot of control over it. He expressed that this was just his observation.

**Commissioner Sharman** inquired of City Attorney Ardaman as to who would be qualified as the expert witness in these cases. **Mr. Ardaman** responded noting each category, such as land use planners, traffic planners or professional traffic engineers or people that can demonstrated that they are an expert in a field or have academic qualification. These are people who would provide fact-based testimony that a court would allow for a decision. **Commissioner Sharman** asked about incidents of interruption of a facilities' primary activities and if this is an argument. **Mr. Ardaman** responded that this is speculative and he gave scenarios. He noted the differences in speculation and that of someone who would qualify as what the court would see as an expert. There was discussion on comparisons between this project and past projects. **Commissioner Sharman** requested City Attorney Ardaman revisit some of the criteria, which Mr. Ardaman listed noting references in the staff report. There was discussion on the importance of relying on the City's professional staff.

**Mayor Rees** noted that most of his legal questions had been answered. He addressed the comments made and noted that he has not personally made a decision regarding the financial side of his considerations. He expressed that we work hard for our residents, noting that when he grew up here, there were 3,000 people and now there are over 51,000. The population for the State of Florida was a million and is now 23 million, with some people coming in every day. He expressed that we have tried hard to keep Winter Garden low density and corrected the statement noting that at least he is trying. He talked about trying to stay away from things like apartments and higher density construction which impact the infrastructure. He shared some of his daily travels on certain roads, talked about commute issues and noted that we all struggle. Mayor Rees then addressed people's property rights, the loss of orange groves and the City having once been in the citrus industry. He expressed how the City Commission would try to weigh all criteria. He expressed that the City Commission and the City staff work hard to make this a better place for our citizens. He emphasized that no matter what decision is made tonight, it is not taken lightly and we try to do what is best for the residents of Winter Garden.

**Commissioner Maciel** inquired if the applicant went to the County, received a higher density, would the City still be required to offer them services. Discussion ensued

regarding and already established utility service area agreement and building under the County, outside of the City's control. The requirement of annexing would still be necessary in order to be provided those services.

**City Attorney Ardaman** advised that all three ordinances be considered separately.

**Motion by Commissioner Mueller to approve Ordinance 22-40 with a second reading and public hearing on June 8, 2023. Seconded by Commissioner Bennett and carried 4-1; Commissioner Sharman opposed.**

**Motion by Commissioner Maciel to approve Ordinance 22-41 with a second reading and public hearing on June 8, 2023. Seconded by Commissioner Bennett and carried 3-2; Commissioners Sharman and Mueller opposed.**

**Motion by Commissioner Maciel to approve Ordinance 22-42 with a second reading and public hearing on June 8, 2023. Seconded by Commissioner Bennett and carried 3-2; Commissioners Sharman and Mueller opposed.**

*Commissioner Bennett left at this point in the meeting, there was a two-minute recess, and then the meeting resumed.*

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

- A. **Ordinance 23-08:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING CERTAIN REAL PROPERTY GENERALLY DESCRIBED AS APPROXIMATELY 0.73 +/- ACRES OF LAND GENERALLY LOCATED AT 11 W SMITH STREET & 186 S MAIN STREET, ON THE NORTHWEST CORNER OF W SMITH STREET AND S MAIN STREET; FROM CITY C-1 (CENTRAL COMMERCIAL DISTRICT), CITY R-2 (RESIDENTIAL DISTRICT), TO PCD (PLANNED COMMERCIAL DEVELOPMENT) AS SET FORTH IN THIS ORDINANCE; PROVIDING FOR CERTAIN PCD REQUIREMENTS AND DESCRIBING THE DEVELOPMENT AS THE SMITH AND MAIN PCD; AND PROVIDING FOR SEVERABILITY, CONFLICTS AND AN EFFECTIVE DATE

City Attorney Kurt Ardaman read Ordinance 23-08 by title only. Planning Director Kelly Carson stated that the applicant has asked that this item be continued. She noted that it would be re-advertised and brought back to the City Commission.

**Motion by Commissioner Mueller to POSTPONE Ordinance 23-08 to a date uncertain. Seconded by Commissioner Maciel and carried unanimously 4-0.**

### 4. **REGULAR BUSINESS**

- A. **Recommendation to approve reduction and removal of Code Enforcement lien for 884 Klondike Street, Case No. 07-1312**

Assistant City Manager for Public Services Stephen Pash stated that this is a request to reduce and remove a Code Enforcement lien for 884 Klondike Street. He informed that

in 2007, Code Enforcement had to have the property mowed. He noted that it was mowed one time and a lien was placed on the property. He detailed the fees associated with the lien and stated that since the filing of the lien, interest accrued and the lien currently totals \$2,071.99. He indicated that the property has changed owners several times, there have been no further Code Enforcement issues, and the new owner has built a home on the property. He noted that the new owners are looking to get a reduction and removal of the lien so they can obtain a Certificate of Occupancy and eventually sell the house. Staff has reviewed all related items and determined that \$500 will cover all the City's time and expenses. Staff recommends approval, if paid by June 30, 2023.

**Motion by Commissioner Mueller to approve reduction and removal of Code Enforcement lien for 884 Klondike Street, Case No. 07-1312 to \$500, if paid by June 30, 2023. Seconded by Commissioner Sharman and carried unanimously 4-0.**

B. Recommendation to approve reduction and removal of Code Enforcement lien for 550 West Plant Street, Case No. 20-359

Assistant City Manager for Public Services Stephen Pash stated that this is another request to reduce and remove a Code Enforcement lien for 550 West Plant Street. He noted that in 2021, the Code Enforcement Board imposed fines for two violations: one for an occupied Recreational Vehicle (RV) parked in the driveway and one for parking on unimproved surfaces all over the front yard. He noted that, as of today, the fines have accrued up to \$407,000. He noted that a non-profit group called Love Made Visible has contacted the City and would like to purchase the home and clean it up. He shared that the purchase would be by a different Limited Liability Corporation (LLC) called Dead Saints Society, who would purchase and rent it back or allow a family to live there for free. He noted that these families foster homeless teens.

Mayor Rees noted that he approves the reduction of fines, but questioned the control mechanism related to the family and the fostering, especially inquiring if there was a limit to the number of people that could live there. Mr. Pash noted that this would be subject to the City's broad definition of family; he acknowledged that the owner of the organization was in attendance. However, Mr. Pash explained that this is not done through the Department of Children and Families (DCF). It is not considered a group home and there was discussion on this being a family that may already have children of their own, as well as adopt children. Mayor Rees inquired about the children and the number of children, voicing concerns over their supervision. Mr. Pash noted that these larger homes are purchased for the ability for the children to have the space.

Mr. Pash stated that staff recommends approval of the reduction and removal of the lien, if \$2,500 is paid by the Dead Saints Society by July 11, 2023.

**Motion by Commissioner Mueller to approve reduction and removal of Code Enforcement lien for 550 West Plant Street (Case No. 20-359) to \$2,500 if purchased by Dead Saints Society, LLC. and paid by July 11, 2023. Seconded by Commissioner Sharman and carried unanimously 4-0.**

Commissioner Mueller inquired if there was a mechanism in place that would prevent future accruals of fines like this one to almost a half million dollars. Mr. Pash explained that if the property is never brought into compliance the fine would continue to grow. The only mechanism for the City would be to foreclose on the property, which is typically not done. Mayor Rees noted that the City would have to wait until the property sells.

C. Recommendation to approve purchase of Ambulance Chassis from SBL Freightliner utilizing Florida Sheriff's Association Contract in the amount of \$103,722

Fleet and Facilities Division Manager Michael Caines stated that this is a request for an approval to issue a purchase order to SBL Freightliner for a current year model M2 ambulance chassis. He noted that the chassis is a replacement for one that was damaged by a fire. He informed that the cost of the M2 chassis is \$103,722 and the cost of the replacement chassis and remounting is being covered by insurance. He noted that this is a piggyback of the Florida Sheriffs Association contract and delivery of the unit is expected in early 2024.

City Manager Jon C. Williams noted, for the record, that the ambulance was not carrying a patient at the time.

**Motion by Commissioner Sharman to approve purchase of Ambulance Chassis from SBL Freightliner utilizing the Florida Sheriff's Association Contract in the amount of \$103,722. Seconded by Commissioner Mueller and carried unanimously 4-0.**

D. Recommendation to award purchase order to Dale Beasley Construction to provide maintenance of traffic (MOT) and resurface area around manhole on State Road 50 and 9th Street in the amount \$55,374.59

City Engineer Jim Monahan stated that the existing sanitary manhole at State Road 50 and Ninth Street has been chemically injected and the area is now ready for asphalt to level the travel lane. He noted that sometimes the chemical injection can even things out, but it did not happen in this instance and repair and repaving is needed. Staff recommends the City award a purchase order in the amount of \$55,374.59 to Dale Beasley Construction to provide maintenance of traffic (MOT) and resurface the area around the manhole at State Road 50 and 9th Street.

There was discussion on the cost, location of the work at State Road 50 and Ninth Street, size of the work area, and lane closure required to do the work being a contributor to the cost.

**Motion by Commissioner Sharman to award purchase order to Dale Beasley Construction to provide maintenance of traffic (MOT) and resurface area around the manhole at State Road 50 and 9th Street in the amount \$55,374.59. Seconded by Commissioner Maciel and carried unanimously 4-0.**

- E. Recommendation to approve special event for the Community Juneteenth Celebration at 55 Center Street (Bethlehem Missionary Baptist Church) on Saturday, June 17, 2023 from 10:00 a.m. to 2:00 p.m.

Planning Director Kelly Carson stated that Ms. Charlie Mae Wilder is requesting to hold a Juneteenth Celebration on Saturday, June 17, 2023 at Bethlehem Missionary Baptist Church. She spoke of the event time, speakers, and food and beverages provisions. She noted that the City would help by furnishing tables and chairs for the event and there would be no road closure proposed. Staff recommends approval.

There was discussion on funded assistance by the City as in-kind services.

**Motion by Commissioner Maciel to approve special event for Community Juneteenth Celebration at 55 Center Street (Bethlehem Missionary Baptist Church) on Saturday, June 17, 2023 from 10:00 a.m. to 2:00 p.m. Seconded by Commissioner Sharman and carried unanimously 4-0.**

- F. Recommendation to approve special event for Southeastern Food Bank Distribution (848 E. Plant Street) on Wednesday, June 14, 2023 from 9:00 a.m. to 1:00 p.m.

Planning Director Kelly Carson stated that this request is by the Southeastern Food Bank, feeding families feeding friends. They request to hold a food distribution event on Wednesday, June 14, 2023. She noted the event time, the planned activities and assistance by the Police Department. Staff recommends approval.

Mayor Rees noted that the Southeastern Food Bank also held this kind of event in Ocoee. He expressed that they had quite the crowd and it was very good.

**Motion by Commissioner Mueller to approve special event for Southeastern Food Bank distribution (848 E. Plant Street) on Wednesday, June 14, 2023 from 9:00 a.m. to 1:00 p.m. Seconded by Commissioner Maciel and carried unanimously 4-0.**

*Dispensed as the City Commission and convened as the Community Redevelopment Agency (CRA) at 9:21p.m.*

**Members Present:**

CRA Chairman John Rees and CRA Members Mark A. Maciel, Ron Mueller, Colin Sharman, and CRA Advisory Board Member Larry Cappleman



**Members Absent:**

CRA Member Lisa Bennett and Orange County Appointee Charlie Mae Wilder

- G. Recommendation to approve and authorize City Manager to execute agreement for Facade Matching Grant Application with GatorLily's and Southern Home Bakery/Andrew Wissman for 2 East Plant Street and 6 East Plant Street in the amount of \$19,000

Economic Development Director Tanja Gerhartz stated that this item is for two Facade Matching Grants for 2 East Plant Street and 6 East Plant Street. She noted that the applicant is GatorLily's and Southern Home Bakery. She indicated that the owner of the building is now Andrew Wissman. She stated that both businesses applied for the façade grants to upgrade their storefronts. She informed that the CRA Advisory Board recommends approval of 2 East Plant Street in the amount of \$10,000 and 6 East Plant Street in the amount of \$9,000.

**Motion by CRA Member Cappleman to approve and authorize City Manager to execute agreement for Facade Matching Grant Application with GatorLily's and Southern Home Bakery/Andrew Wissman for 2 E. Plant Street in the amount of \$10,000 and 6 E. Plant Street in the amount of \$9,000. Seconded by CRA Member Sharman and carried unanimously 5-0.**

- H. Recommendation to approve West Orange Habitat for Humanity Neighborhood Revitalization program in East Winter Garden CRA in the amount of \$40,000

Economic Development Director Tanja Gerhartz stated that this item is for the West Orange Habitat for Humanity Neighborhood Revitalization program. She reminded that the CRA previously approved \$40,000 and noted that enough applications have been accepted to expend all of those funds and there is a waiting list. Ms. Gerhartz noted that when the CRAAB met in April, they recommended an additional \$40,000 to provide for additional homes in the East Winter Garden neighborhood.

CRA Member Cappleman noted that the CRA Advisory Board did review this item and the original request was for a larger amount of funding. He noted that at the time it was requested of staff to monitor the progress to ensure everything was followed through as promised. He noted that the board was assured that this was accomplished and recommended the additional \$40,000 for these home repairs.

**Motion by CRA Member Larry Cappleman to approve West Orange Habitat for Humanity Neighborhood Revitalization program in East Winter Garden CRA in the amount of \$40,000. Seconded by CRA Member Maciel and carried unanimously 5-0.**

- I. BOARD APPOINTMENTS: Community Redevelopment Advisory Board

Economic Development Director Tanja Gerhartz stated that this item has to do with appointments to the CRA Advisory Board. She reminded that back in January, some changes were made to the appointments regarding term limits and staggering of the

appointments, noting that this item is for the first round of board members. She informed of the resignation of board member George Spigener, which left a vacancy and also mentioned of the upcoming July 1<sup>st</sup> term expirations for Derek Blakeslee and Larry Cappleman. She shared that the board recommended approval of reappointing Derek Blakeslee and Larry Cappleman. She stated that the board also recommended the appointment of a new member, Torrance Rhodes, for the replacement of George Spigener. She noted that Mr. Rhodes meets the criteria for the CRA Advisory Board.

**Motion by CRA Member Maciel to re-appoint Larry Cappleman and Derek Blakeslee and appoint new CRA Advisory Board member Torrance Rhodes. Seconded by CRA Member Mueller and carried unanimously 5-0.**

- Discontinuance of Façade Matching Grant Program

CRA Member Larry Cappleman noted that the Façade Matching Grant Program has been in place shortly after the CRA began. He noted that it was used as an enticement to encourage reluctant property owners to invest and improve the look of their businesses in the downtown. He expressed that the board feels that this program has run its course and the incentive to have people fix up their properties is not required in this environment, noting the value of the properties and other incentives to make them desirable for tenants to rent. He stated that the board's recommendation is to immediately terminate the Façade Matching Grants. He also mentioned that their next task is dealing with East Winter Garden and some of its challenges.

CRA Member Cappleman noted that what was accomplished today with the \$40,000 is somewhat of a different kind of incentive for East Winter Garden and the CRA Advisory Board could potentially recommend new programs.

**Motion by CRA Member Larry Cappleman for the immediate termination of the Façade Matching Grant Program. Seconded by CRA Member Mueller and carried unanimously 5-0.**

*Adjourned as the Community Redevelopment Agency and reconvened as the City Commission at 9:30 p.m.*

5. **MATTERS FROM PUBLIC** – There were no items.

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

7. **MATTERS FROM CITY MANAGER**

Pet Alliance of Greater Orlando

City Manager Jon C. Williams stated that the City has budgeted to control the population of feral cats for the last few years. He shared that the initial program relied on local volunteers to trap and transport the cats to local vets. The program has not been effective as only 12

cats benefited this year. Mr. Williams stated that the City has partnered with Pet Alliance of Greater Orlando to help manage our community cat population. He shared some of the benefits of the program, targeted areas and notification efforts. He addressed the need for a voucher program and indicated that it is in process. He indicated that a need has been identified for pet drives for food and a pet shelter.

There was discussions on the threshold for Pet Alliance to come and provide their service, other agency programs, release after surgery concerns, not clipping the cat ears, funding in the budget and capping the costs incurred.

Installation of Traffic Calming Measures

City Manager Jon C. Williams noted that the first of temporary traffic calming measures on Marsh Road has been implemented. He displayed and described the speed table and noted that they are working. There was discussion on the speed table and the inability to cut them out for emergency vehicles.

Event Reminders

City Manager Jon C. Williams reminded the City Commission of the upcoming Memorial Day and Juneteenth events.

**8. MATTERS FROM MAYOR AND COMMISSIONERS**

**Commissioner Maciel** noted that the City of Winter Garden supports Wendell Coates, Jr. and his Global Not Local organization. Mr. Coates is taking some of the local children to a water park. Commissioner Maciel requested that the City of Winter Garden contribute to the field trip.

**Motion by Commissioner Maciel to approve donation of \$3,000 to the Global Not Local non-profit for the purpose of the children’s field trip. Seconded by Commissioner Sharman and carried unanimously 4-0.**

**Commissioner Sharman** thanked staff, especially Planning Director Kelly Carson on a tough night. The City Commissioners agreed that she did a great job.

**Mayor Rees** thanked Planning Director Kelly Carson for a great job. He also thanked staff for the West Orange High School parade, noting that they appreciated staff coming together to try to make it happen.

The meeting adjourned at 9:37 p.m.

ATTEST:

                  /S/                    
City Clerk Angee Grimmage, CMC

APPROVED:

                  /S/                    
Mayor John Rees