



# CITY OF WINTER GARDEN

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## CITY COMMISSION REGULAR MEETING MINUTES

February 9, 2012

A **REGULAR MEETING** of the Winter Garden City Commission was called to order by Mayor Pro-Tem Boulter 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 Pro-Tem Harold L. Boulter, Commissioners Bob Buchanan, Kent Makin, and Colin Sharman

**Absent:** Mayor John Rees

**Also Present:** City Manager Mike Bollhoefer, City Attorney Kurt Ardaman, City Clerk Kathy Golden, Public Services Director Don Cochran, Community Development Director Ed Williams, Human Resources Director Frank Gilbert, Police Chief George Brennan, Fire Chief John Williamson, Building Official Skip Lukert, Information Technology Director Bob Reilly, Economic Development Director Tanja Gerhartz, Recreation Director Jay Conn, West Orange Times Reporter Michael Laval, and Orlando Sentinel Reporter Stephen Hudak

### 1. **APPROVAL OF MINUTES**

**Motion by Commissioner Makin to approve the regular meeting minutes of January 26, 2012, as submitted. Seconded by Commissioner Buchanan and carried unanimously 4-0.**

### 2. **OATH OF OFFICE AND INTRODUCTION OF NEW POLICE OFFICERS**

Police Chief Brennan introduced new police officers Jeffrey Doyle, Jerald House, Julio Negrón, and Kevin Phelps and then administered the Oath of Office.

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

A. **Ordinance 11-35:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, REZONING APPROXIMATELY 75.94 ± ACRES OF CERTAIN REAL PROPERTY GENERALLY LOCATED ON THE NORTH SIDE OF MARSH ROAD, EAST OF WILLIAMS ROAD AND WEST OF AVALON ROAD (CR 545) AT 16851 AND 17001 MARSH ROAD, FROM CITY NZ TO CITY PUD; PROVIDING FOR CERTAIN PUD REQUIREMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE (Waterside on Johns Lake PUD)

City Attorney Ardaman recommended those planning on testifying be sworn in. City Clerk Golden administered the testimony oath.

Community Development Director Williams stated this is the second reading of the planned development zoning of the Waterside project on Johns Lake. This property is a 75 acre parcel on the south side of Johns Lake and north of Marsh Road. It is for a

residential development of 172 lots; approximately 134 seventy foot lots and 38 ninety foot lots along the lake. This project has been reviewed in great detail by staff and the Development Review Committee (DRC) has concluded and makes the recommendation that it is consistent with the comprehensive plan, the future land use map, and the policies of the growth management plan. It meets the concurrency requirements of the City, including schools. It has been reviewed by the neighborhood community. At the community meeting it received full support of those attending.

Mr. Williams stated that the DRC and the Planning and Zoning Board are both recommending that the City Commission find that the Planned Unit Development (PUD) is consistent with the comprehensive plan, the land development code, and the provisions of the Wekiva Protection Act found in the comprehensive plan. Approval is recommended subject to the conditions as listed in the report.

City Attorney Ardaman asked Mr. Williams if the discussion item in the City Commission agenda packet (the second sentence states “rezoning the subject property from City N-Z to City PUD is not inconsistent with...”) should be “is consistent with” and should be corrected in the packet. Mr. Williams responded yes it should be corrected to say “is consistent with”.

At this time, City Attorney Ardaman read Ordinance 11-35 by title only.

Tom Sullivan of Lowndes, Drosdick, Doster, Kantor, and Reed, P.A., 215 N. Eola Drive, Orlando, Florida, representing the applicant Centerline Homes, which is the applicant for the Waterside PUD, stated that the project team and the planning expert Michael Holbrook, with Boyer Singleton, and the traffic expert Joe Roviario with Luke Transportation Engineering Consultants were in attendance.

Mr. Sullivan stated that they are in complete agreement with staff’s professional analysis and recommendation to approve this PUD. He submitted a copy of the professional resume for Michael C. Holbrook, RLA, as he will be speaking as an expert in his field.

Mr. Holbrook, Director of Planning for Boyer Singleton and Associates, 520 S. Magnolia Street, Orlando, Florida, stated the plans submitted are in compliance with the City’s Comprehensive Land Use Plan and Land Development Code. They have worked to preserve and protect the shoreline of Johns Lake. Extraordinary rear setbacks have been included for lake front homes to minimize grading and to preserve the mature trees. They have addressed the surrounding areas and the through traffic on Marsh Road.

Joseph Roviario, Director of Transportation Planning for Luke Transportation Consultant Group, 29 E. Pine Street, Orlando, Florida, stated his background. The traffic mitigation included the roundabout at the main entrance. There is an east/west road planned for within the development to provide a parallel corridor and stub-out. There will also be a sidewalk and bike facilities along the north side of the roadway and property boundary.

Mayor Pro-Tem Bouler stated this is a public hearing and asked if anyone wished to speak.

Doug Ackerman, attorney representing Ivan and Mala Lindsay they are the property owners immediately to the north of the subject property. He submitted a notebook of documents to the City Commission for the record.

City Attorney Ardaman advised the City Commission that there is no need to formally accept the documents presented; this is not a formal judicial proceeding.

Mr. Ackerman stated that this application is being submitted for approval solely on the ground that it is consistent with the City's residential PUD zoning. The Comprehensive Plan for this property lists Urban Village PUD zoning; it does not list residential PUD zoning. Any suggestion that this application can somehow be reviewed and approved by the City Commission under the newly enacted Urban Village PUD zoning designation should be rejected. The application and first reading was for compliance with residential PUD designation. He thinks the application is inconsistent with both the residential PUD zoning designation and the Comprehensive Plan.

Thomas G. Pelham, 1474 Constitution Place, Tallahassee, Florida, stated his background and credentials. Based upon his review, it is his opinion that this proposal as residential PUD is not allowed under the future land use classification for this property. This property is designated under the Comprehensive Plan as Urban Village. Mr. Pelhem went through the various policy sections of the Comprehensive Plan and identified the inconsistencies. He summed up his presentation by asking who gets the 20 acres of commercial, where will the 107 acres of natural open space be located, what happens if it is developed tract by tract and you get down to one tract left and you need more open space do they have to provide it. Until the City addresses and creates an urban village on the 658 acres of land, piece mill rezoning in his view is premature and inconsistent with the City's Comprehensive Plan.

Patricia Tice, 606 Courtlea Cove Avenue, Winter Garden, Florida, stated her background and that this application is materially inconsistent with the City's Code and Comprehensive Plan in significant ways. She referred the City Commission to the first page of the notebook previously distributed. The surrounding areas have residential subdivisions that are almost a mile away. This area is extremely rural and as an urban village it will grow to become consistent with the area. This individual project is premature. Ms. Tice went into specifics regarding transportation impacts; the road is currently operating at 19 percent over level service F. She summed up her presentation that this application violates the City's Code of Ordinance and Comprehensive Plan of substance. She noted that the waiver for porches is completely inconsistent with the future land use for this project.

Mr. Sullivan, representative for the applicant, came forward and read from the staff report that the proposed development is consistent with the trend in development in the area. It

is consistent with the policies of the City's Comprehensive Plan and the Sixth Amendment of the restated Interlocal Agreement for Joint Planning Area (JPA) between Orange County and the City of Winter Garden that requires applications for rezoning be processed as Planned Unit Developments. The City's Development Review Committee concluded on February 1, 2012 that this development is consistent with the recently adopted Urban Village PUD designation. He read section 1. E. from the JPA that provides for residential development that "no rezoning application or development plan for residential development in the expansion area shall be considered for approval of such rezoning application or development plan has not been processed as a planned unit development." It further states it should include general design guidelines. They have met the guidelines.

Mr. Sullivan stated he disagrees with everything Mr. Pelham and Ms. Tice have stated. The Comprehensive Plan does allow for a variety of uses within this area. There is overall 700 acres that will later be included. The alleged substantive violations of the Land Development regulations provides that a district of not less than 50 acres, this project is 70 plus acres, is designed to promote the establishment of areas in which diverse uses may be brought together as a compatible and unified plan of development. He indicated that many PUD's in the City are comprised solely of residential communities, and to say they violate the City's Code is an absurd position to take.

In conclusion, Mr. Sullivan stated that based upon the testimony of professional staff, staff report, and his planning and traffic experts, the City Commission has been presented with competent substantial evidence in support of this request.

Community Development Director Williams stated that with our density we have the ability to go to a different mobility system and not a concurrency system. We have chosen to have this development meet concurrency. It is not appropriate for all projects in an urban village to have a full diversity of uses allowed in that district. He agrees this development does not have a commercial component; it should not be there. He addressed property rights and the ability of this owner to move forward before the other property owners. He believes residential should be built before commercial. Commercial should not be built before residential because there would be no demand for it. The provision for porches in JPA 6 and 7 are guidelines, not requirements. There are conflicting policies, goals, and objectives in the Comprehensive Plan. The City Commission is the judge who has to weigh the differences. The first criteria are the request is consistent with the comprehensive plan and future land use plan. The proposed rezoning will not substantially devalue or prevent reasonable use or enjoyment of the adjacent property. Adequate facilities are available or a development agreement has been established that will provide these improvements within a reasonable timeframe. The developer is extending the stormwater lines at his expense and installing road improvements to mitigate his traffic. The proposed rezoning will not allow a hyper-intensity development that is premature or presently out of character in relationship to the surrounding area. The rezoning will not interfere with adjacent property owner's reasonable expectation of use or enjoyment. Finally, the rezoning will not significantly

increase vehicular traffic in adjacent residential neighborhoods. When this property mitigates its traffic, it will discourage and reduce the traffic that is occurring in this area.

City Manager Bollhoefer noted that Mr. Pelham noted the area is largely undeveloped and rural and they should not be allowed to develop because of this reason. At some point someone has to be the first. Ms. Tice testified that they should not be able to develop until the property owners in between develop. In effect, she is saying that if the other two property owners decide never to develop, this one property owner will never be able to develop their property and will lose value in their property. He further shared the plans for traffic.

City Attorney Ardaman asked Mr. Williams to share what his expert qualifications are. Mr. Williams came forward and stated his qualifications and that a copy has been submitted for the record.

Commissioner Sharman asked if there is a fixed number within the JPA for conservation and commercial.

Mr. Williams stated there are percentages stated in the plan that there will be so much for commercial, residential, and natural areas. This is a prime recharge area according to the Wekiva requirements with some karst features, which will more than exceed the percentages for natural areas. If anything changes, there may be a need to reduce the commercial acreage because there will not be enough residential to support the amount of commercial anticipated.

Mayor Pro-Tem Boulter closed the public hearing.

**Motion by Commissioner Sharman to adopt Ordinance 11-35. Seconded by Commissioner Makin and carried unanimously 4-0.**

- B. **Ordinance 12-10:** AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA AMENDING ORDINANCE 11-10 RELATING TO PAIN MANAGEMENT TEMPORARY MORATORIUM TO ALLOW RELOCATION OF EXISTING PAIN MANAGEMENT CLINICS UPON PROPER APPLICATION AND APPROVAL BY CITY COMMISSION; PROVIDING CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE

City Attorney Ardaman read Ordinance 12-10 by title only and stated that this is the second reading and modification to the pain management ordinance moratorium allowing the relocation of pre-existing pain management clinics provided they meet the criteria as set forth therein.

Mayor Pro-Tem Boulter opened the public hearing; hearing and seeing none, he closed the public hearing.

**Motion by Commissioner Buchanan to adopt Ordinance 12-10. Seconded by Commissioner Makin and carried unanimously 4-0.**

4. **REGULAR BUSINESS**

- A. **Resolution 12-02:** A RESOLUTION OF THE CITY OF WINTER GARDEN, FLORIDA, CONFIRMING THE AUTHORITY OF THE CITY MANAGER TO MAKE, EXECUTE, AND DELIVER TO THE STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION THE LOCAL AGENCY PROGRAM AGREEMENT FOR THE DESIGN AND CONSTRUCTION OF THE LULU CREEK TRAIL and approve entering into the Local Agency Supplemental Agreement

City Attorney Ardaman read Resolution 12-02 by title only. Public Services Director Cochran stated that the Florida Department of Transportation (FDOT) local agency grant for the Lulu Creek Trail project requires a resolution and agreement for the construction of the Lulu Creek Trail. He noted that after this item the City will be presented the bids for this project. Staff recommends approval and he noted that this project is totally funded by FDOT.

**Motion by Commissioner Sharman to approve Resolution 12-02. Seconded by Commissioner Buchanan and carried unanimously 4-0.**

- B. **Recommendation to approve Lulu Creek Trail Project bids and award contract to Allstate Paving, Inc. for \$169,895.90, with an additional 10 percent contingency, bringing the total project amount to \$186,885.49**

Public Services Director Cochran stated that on December 21, 2011, the City received bids for the Lulu Creek Trail project. Three bids were received of which Allstate Paving Inc. was the lowest bidder and was recommended by the engineer of record. Allstate's bid was \$169,895.90; staff recommends a 10 percent contingency bringing the total project to \$186,885.49.

Commissioner Sharman asked if the bid was only considered on a price basis or was the City looking at terms of qualifications also.

Mr. Cochran replied that the Engineer did check their references as is done with every bid. All of Allstate's references came back positive.

City Manager Bollhoefer noted that it was not a basis of qualification but it was the lowest qualified bidder and the City has worked with Allstate Paving in the past and has had very good luck with them.

**Motion by Commissioner Makin to approve Lulu Creek Trail Project bids and award contract to Allstate Paving, Inc. for \$169,895.90, with an additional 10 percent contingency, bringing the total project amount to \$186,885.49. Seconded by Commissioner Sharman and carried unanimously 4-0.**

**C. Recommendation to approve State Road 50 (West Colonial Drive) landscape medians bids and award contract to LegacyScapes for \$565,465.36, with an additional 10 percent contingency bringing the total project amount to \$622,011.89**

Public Services Director Cochran stated that this is the bid for the State Road 50 landscape medians project. In the original construction the sleeves for the irrigation had already been installed. The contractor is responsible for coordinating with Progress Energy to get power to the control panels once they are installed. The reason for not putting in the irrigation before now is because with all the other construction going on it would have been torn out and would have had to be reinstalled. He noted that the original estimate was \$1,325,000. Mr. Cochran stated that the City received a total of seven bids of which the City's landscape firm, Foster and Conant, has reviewed and has recommended that LegacyScapes was the lowest responsible bidder at \$565,465.36 with a staff recommended 10 percent contingency, bringing the total project to \$622,011.89.

**Motion by Commissioner Buchanan to approve State Road 50 (West Colonial Drive) landscape medians bids and award contract to LegacyScapes for \$565,465.36, with an additional 10 percent contingency bringing the total project amount to \$622,011.89. Seconded by Commissioner Makin and carried unanimously 4-0.**

**D. Recommendation to approve State Road 50 (West Colonial Drive) utilities relocation bids and award contract to T. D. Thomson Construction for \$833,138.80, with an additional 10 percent contingency bringing the total project amount to \$916,452.68**

Public Services Director Cochran stated that at the last meeting staff brought before the City Commission an agreement from Florida Department of Transportation (FDOT) for the relocation of utilities. The City received two bids with T. D. Thomson being the lowest bidder at \$833,138.80. CPH Engineering was the engineer of record who is recommending, through the reference checks and bid tabulations, that T. D. Thomson was the lowest responsible and responsive bidder. Staff recommends including a 10 percent contingency bringing the total of the project to \$916,452.68.

Mr. Cochran noted that at the last meeting there was a question about the start date and noted that the FDOT start date is now June 11, 2012, which is an 18 month contract that would take them out to January 2014 for the full roadway construction, not including the utility work.

**Motion by Commissioner Sharman to approve State Road 50 (West Colonial Drive) utilities relocation bids and award contract to T. D. Thomson Construction for \$833,138.80, with an additional 10 percent contingency bringing the total project amount to \$916,452.68. Seconded by Commissioner Makin and carried unanimously 4-0.**

E. **Recommendation to approve extending site plan approval for 910 Carter Road until February 11, 2013, with all conditions previously provided by the Development Review Committee dated December 2, 2009**

Community Development Director Williams stated that this property located at 910 Carter Road in 2009 was approved for a vehicle storage yard. The property owner because of personal problems lost the property and never extended the approvals. The new owner has come to the City and has asked to reinstate those approvals so that they can go forward with the project. The Development Review Committee has reviewed the site plan to see if it conforms to any new rules or regulations that would apply and there were none. The Planning and Zoning Board approved the special exception and is asking the City Commission to approve the site plan as it previously existed with the same conditions.

**Motion by Commissioner Buchanan to approve extending site plan approval for 910 Carter Road until February 11, 2013, with all conditions previously provided by the Development Review Committee dated December 2, 2009. Seconded by Commissioner Makin and carried unanimously 4-0.**

F. **Recommendation to approve site plan for 720 Roper Road, with conditions stated in the Engineering memorandum dated January 27, 2012 for Serenades by Sonata**

Community Development Director Williams stated that this site plan is for the Serenades by Sonata. Staff has reviewed the plans and recommends approval.

**Motion by Commissioner Buchanan to approve site plan for 720 Roper Road, with conditions stated in the Engineering memorandum dated January 27, 2012. Seconded by Commissioner Sharman and carried unanimously 4-0.**

G. **Request for a reduction in Code Enforcement Board imposed fines to \$1,000.00 in Case #10-1607 on 14417 Hampshire Bay Circle providing that pool and enclosure are completed within 90 days**

Building Official Lukert stated that the property owners had financial difficulty in finishing their building permits and finishing the pool almost two years ago. They put the property up for sale and it is now involved in a short sale. The potential buyers and their realtor have been trying to close this deal for almost a year. He noted that the short sale makes it very difficult because they have to bring it into compliance before the sale. Mr. Lukert stated that they have asked the City to reduce the lien which would run until the sale closes. The City would get \$1,000.00 for its expenses, they would pull permits within a week, and the City would then release the lien, which will help them close their VA loan. At that time, they would then repair the fence and the pool. They would put the \$6,000.00 for repairs into escrow to be done and can't be used for anything else. He is confident the repairs will be done.

Mr. Lukert explained that the request was stated as such because the VA wanted assurance that the lien would go away in order for the loan to close.

**Motion by Commission Sharman to approve the conditions to be met for a reduction in Code Enforcement Board fines to \$1,000.00 as recommended by staff and if the property violations are not satisfied, the Code Enforcement process will start over. Seconded by Commissioner Makin and carried unanimously 4-0.**

- H. **Resolution 12-03:** A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF WINTER GARDEN, FLORIDA, DECLARING THE QUALIFYING RESULTS OF THE 2012 GENERAL ELECTION FOR DISTRICTS 2, 3 AND 4; AND THE CANDIDATES ELIGIBLE TO RUN FOR DISTRICTS 2, 3, AND 4 CITY COMMISSION TO BE HELD ON MARCH 13, 2012

City Attorney Ardaman read Resolution 12-03 by title only. City Clerk Golden stated that this resolution memorializes what occurred during the election qualifying period for Districts 2, 3, and 4. It declares who the candidates will be on the ballot.

**Motion by Commissioner Sharman to approve resolution 12-03. Seconded by Commissioner Makin and carried unanimously 4-0.**

- I. **Resolution 12-04:** A RESOLUTION PERTAINING TO THE CREATION OF A TRI-CITY PARTNERSHIP FOR THE CITIES OF APOPKA, OCOEE AND WINTER GARDEN; ESTABLISHING A NAME; ESTABLISHING GOALS; ESTABLISHING MEMBERS; ESTABLISHING MEETING TIME FRAMES; PROVIDING FOR FUNDING AND STAFF SUPPORT; PROVIDING FOR TERMINATION

City Attorney Ardaman read Resolution 12-04 by title only. City Manager Bollhoefer stated that there have been many times over the past 50 years that the City of Ocoee, City of Winter Garden, and City of Apopka have been trying to work together and form a partnership that has never come to fruition. He stated that he thinks they have finally reached that point where the three cities can work together in a partnership. He noted that the City of Ocoee already voted on this item and it is going before the Apopka City Commission on February 15, 2012.

Mr. Bollhoefer stated that one of the primary reasons for doing this is so that these cities can work together in economic development, especially along the State Road 429 corridor. We have great opportunities to work together to market this area; create similar design standards so that we are not building conflicting type projects. Although economic development is a key factor in this effort, we will also find ways to share resources. He noted that this partnering would offer the City of Winter Garden a greater voice. He believes this is a great opportunity and staff recommends approval.

**Motion by Commissioner Sharman to approve Resolution 12-04 and authorize the City Manager to sign the tri-party agreement. Seconded by Commissioner Makin and carried unanimously 4-0.**

5. **MATTERS FROM CITIZENS**

Kevin John Rodgers, 6340 Ridgeberry Drive, Orlando, Florida, stated his qualifications and his concerns regarding the award of the median landscape project (agenda item 4. C.). He specifically noted there were policies and procedures that were not followed in the stipulations. Secondly, the City and the tax payer's monies allocated for this project are subsequently being wasted when they do not need to be because the information is not being brought to the attention of the people making the decisions. There is also evidence of inherent collusion in the awarding of this project. Mr. Rodger then read excerpts from the City of Winter Garden's adopted purchasing manual. He thanked the City Commission for allowing his comments and asked that all future bids be impartially evaluated prior to the recommendation being made.

Derek Blakeslee, 230 N. Highland, Winter Garden, Florida, invited the City Commission, staff and the public to view their completed building at 12 W. Plant Street on Sunday, February 19, 2012 from 3:00 to 5:00 p.m.

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

7. **MATTERS FROM CITY MANAGER**

A. State of the City – General Fund (*This item was postponed until a full Commission was present.*)

8. **MATTERS FROM MAYOR AND COMMISSIONERS**

Commissioner Buchanan addressed the concerns of citizens regarding the lack of street lighting along State Road 50 from Dillard Street to Ninth Street.

City Engineer Art Miller shared that Progress Energy is currently installing the street lighting which will eventually go all the way to Hyde Park.

Commissioner Buchanan stated that the Farmer's Market continues to do wonderfully. He noted that the City fund raiser earned \$10,000.00 during the annual Chili cook off and it was a wonderful event.

The meeting adjourned at 8:47 p.m.

APPROVED:

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

ATTEST:

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