Volusia Growth Management Commission

MEETING MINUTES FOR
REGULAR MEETING HELD
Wednesday, February 27, 2008

City Commission Chambers
Daytona Beach City Hall
301 S. Ridgewood Avenue
Daytona Beach, FL

MEMBERS PRESENT		REPRESENTING
Gerald Brandon , Chairman	Excused	Ormond Beach
Robert Pascoe, Vice Chair		Daytona Beach Shores
Joan Spinney, Secretary		South Daytona
Richard Walton		Daytona Beach
Danny Allen		DeBary
Steve Katz	Excused	DeLand
Rebecca Mendez		Deltona
Karen Hall	Excused	Edgewater
John Heaphy		Holly Hill
Ed Blackman		Lake Helen
Rick Tresher	Absent	New Smyrna Beach
James Kerr		Orange City
Donna Steinebach		Port Orange
Billy Carter		Pierson
Sandra Walters		Volusia County
Rachel Sieg		Volusia County
Tony Cole	Excused	Volusia County
Suzanne Steiner		Volusia County

NON-VOTING MEMBERS		REPRESENTING
Sara Lee Morrissey	(not present)	Volusia Co. School Board
Peter Brown	(not present)	SJRWMD

OTHERS PRESENT

Paul Chipok, GrayRobinson, P.A.
Barry Wilcox, MSCW
Merry Chris Smith, VGMC Coordinator

CALL TO ORDER

Vice Chairman Pascoe called the meeting to order at 7:05 p.m.

ROLL CALL

Roll call was taken and it was determined there was a quorum present.

APPROVAL OF MINUTES

John Heaphy made a motion to approve the minutes of the regular meeting held on December 19, 2007; seconded by Rachel Sieg. Motion carried unanimously.

PUBLIC HEARING

1) Consideration of request from the City of DeLand for an extension to comply with VGMC Resolution #2006-05

Barry Wilcox, MSCW explained that Resolution #2006-05 was approved in June 2006 with a number of conditions, and when the City recently submitted a comprehensive plan amendment application, staff contacted the City as to the status of the conditions of approval. Through discussions with staff at the City of DeLand, Mr. Wilcox stated it was determined that condition #9 requiring an interlocal agreement with Volusia County remained outstanding. Mr. Wilcox read the specific condition into the record.

Mr. Wilcox explained that the City of DeLand is currently involved in an area-wide traffic study with several other governmental agencies which is being developed for the west side of the county, and additional time is necessary for that to be completed. Mr. Wilcox stated staff has no objections to the request as they are moving forward in a positive manner, adding that we don't want to penalize anyone for getting involved in a group effort the size of the west-side transportation study.

Commissioner Steinebach asked Mr. Wilcox if he has had any conversations with Volusia County concerning the request. Mr. Wilcox confirmed he spoke with John Thomson from Volusia County who told him he could put into the record that Volusia County does not have any objection to granting the extension to the condition of approval.

General discussion ensued concerning VGMC follow up on conditional approvals. Mr. Wilcox explained that a new application triggers staff to review old resolutions to determine if any existing conditions of approval remain outstanding. It was suggested that we look at establishing a tickler system so that we are reviewing conditional approvals for compliance based on the time frame established in the resolution, rather than waiting until a new application is received.

Commissioner Steinebach expressed concern relating to legal implications with respect to the standard resolution condition which states "Failure to comply with any of the Conditions of Certification shall result in an automatic revocation of this certification, thereby rendering the City's Comprehensive Plan unenforceable" if there is no mechanism in place to confirm the conditions have been complied with. Mr. Chipok responded that it is incumbent upon the jurisdiction and the property owner to ensure there is continuing compliance. He further stated if

a condition is not met, the respective resolution and comprehensive plan can be rendered unenforceable. Additionally, Mr. Chipok stated if something goes amiss, there is a provision in our rules which gives the VGMC the right to go to court to seek a declaratory judgment against the jurisdiction and property to seek enforcement of that particular condition.

Commissioner Steinebach suggested addressing the issue of follow up on conditional approvals during the procedures review. Several members concurred.

Commissioner Mendez asked what happens with the recently submitted application(s) from the City of DeLand. Mr. Chipok explained if the commission approves the extension, the resolution is amended and the city would be in compliance. As a result, any other pending applications can be reviewed for consistency. Ms. Mendez also commented that since the original condition was imposed, the MPO has adopted a standardized methodology for traffic impact analysis'.

Mr. Chipok commented that it is important to recognize the affected jurisdictions are working together in good faith in their negotiations to execute an agreement, but they just aren't there yet due to the technical aspects of getting to that point.

Mike Holmes, Planning Director for the City of DeLand addressed the commission and provided a summary of what has transpired since the original resolution was approved, as well as the joint efforts which have gone into the southwest area traffic study. Additionally, Mr. Holmes stated they have developed an agreement which is currently under review by the County, and additional time is necessary to comply with Resolution #2006-05.

Commissioner Pascoe asked if the City of DeLand has adopted the MPO traffic impact analysis guidelines. Mr. Holmes responded the City Commission has indicated they would adopt a resolution supporting it and they currently utilize the MPO methodology, however, they do not have it in their code at this time.

Commissioner Walters raised a question concerning the RAI relating to an updated traffic impact analysis discussed in Mr. Holmes' letter dated February 7, 2008. Mr. Wilcox clarified it has to do with a pending DeLand application where the County commented and requested further information.

Commissioner Kerr asked Mr. Holmes if he is comfortable with an extension through 2008 as requested. Mr. Holmes responded affirmatively, adding that the southwest area traffic study will not necessarily be complete, however, they expect to have the MPO methodology adopted and also the agreement with the County should be in place as required by the condition of approval.

There were no other individuals present to speak on this matter.

Mr. Chipok stated if the commission desires to make a motion to approve the request, the motion should read similar to the following: "Direct staff to prepare, and authorize the Chairman to execute, a resolution to amend condition #9 of Resolution #2006-05 which required an interlocal agreement pertaining to transportation methodologies and funding strategies to be entered into

between DeLand and Volusia County by June 28, 2007, to provide an extension for the execution of said interlocal agreement until December 31, 2008."

Donna Steinebach made a motion to approve a resolution as read into the record by our legal counsel to be assigned the appropriate number by staff; seconded by Joan Spinney. Motion carried unanimously.

REMARKS OF INTERESTED CITIZENS

None

REPORTS OF OFFICERS

None

REPORTS FROM CONSULTANTS

Mr. Wilcox stated late last year, one of the issues planning staff was tasked with was to become more proactive in terms of planning matters in Volusia County. As such, he stated staff has been attending meetings with VCOG regarding the smart growth initiative. The VCOG Smart Growth Implementation Committee, he explained, has been working for the past couple of years to develop smart growth principles and ways for implementation. Additionally, Mr. Wilcox advised they have recently created a technical advisory committee which staff has been participating in and he asked for the commission's consent for staff's continued involvement.

Commissioner Pascoe asked how this fits within our budget. Mr. Wilcox responded that we currently have fewer applications than this time last year and we will continue to monitor the budget as it progresses forward. Additionally, he commented on the importance of VGMC participation in the smart growth initiative since it is a county wide effort, and that VGMC may ultimately be the implementing body when the effort is concluded.

Several members commented in favor of staying involved, adding that the commission has been trying for years to play a part in such issues.

Commissioner Walters asked Mr. Wilcox how he sees the final recommendations that come out of the smart growth initiative fitting in with the consistency criteria of the VGMC. Mr. Wilcox stated the group is looking at a number of options for implementation which has yet to be determined, however, it may end up as a charter amendment or interlocal agreement. An adopted interlocal agreement, he stated, in many cases becomes part of the local jurisdiction's comprehensive plan which we look at.

Mr. Wilcox stated the smart growth committee has essentially developed a Map A and a Map B. Map A, he summarized as those properties identified to conserve and preserve, and Map B representing those properties not within an existing municipality that can be developed. Some of the issues the committee is looking at include transfer of development rights, conservation

sub-divisions, and the current existence of exempt subdivisions. General discussion ensued regarding exempt subdivisions.

There was a general consensus of the commission for staff to continue participating in the VCOG smart growth initiatives.

Commissioner Pascoe asked the VGMC Coordinator to comment on a request received from VCOG. Ms. Smith reported that Mary Swiderski from VCOG contacted the VGMC office indicating the VCOG Smart Growth Committee wanted to meet with the VGMC to discuss our procedures and where the VGMC is going. Ms. Smith had advised Ms. Swiderski the dates scheduled for the March POP and the regular VGMC meetings, however, Ms. Swiderski advised those dates would not work and she asked to schedule a special meeting with the VGMC sometime in the latter part of March. Mr. Pascoe stated the POP Committee discussed the request and generally agreed that it would not be in the best interest of the commission to hold special meetings for any one particular group, and that it would be better to schedule our own meetings where they could attend. Additionally, Mr. Pascoe stated as the review of the procedures gets further along in the process, we will be meeting with the units of government.

There was a general consensus that the commission should not hold individual special meetings, but rather continue to schedule their own meetings with the opportunity for others to attend.

REPORTS OF COMMITTEES

1) POP Committee: Copies of the February 5, 2008 POP Workshop minutes were distributed to all of the commission members. Mr. Pascoe reported that a POP workshop was held in Port Orange on February 5th to begin addressing the comments which were received, and another workshop has been scheduled for March 6th in Orange City. Mr. Pascoe explained that once the POP is through with their review of the comments, legal staff will prepare preliminary draft amendments for review by the full commission, at which time meetings will be scheduled with the units of government and other interested parties. He further stated he anticipated the draft amendments will continue to be modified as additional meetings are scheduled and comments received on the proposed amendments.

   Commissioner Allen suggested the committee resolve the JPA issue as early as possible since there has been concern raised by some County Council members and others that they've been working on a JPA with the City of Deltona for over a year and they don't want to have any surprises at the end. Mr. Pascoe stated that we've received varying comments concerning not only the JPA's but other matters which are currently being reviewed. He added that nothing will be final until it goes through the entire process, including any approvals necessary by the County Council. Mr. Chipok added the process has been to review all of the comments with the POP committee to get an idea of the general direction they are looking at. Once that review is completed, he will be drafting preliminary amendments for review by the full commission. Once a consensus is reached, copies of the draft amendments will

be forwarded to all of the jurisdictions and any other members of the public who have requested them, at which time a series of public workshops are expected to be scheduled to gather additional comments to the draft amendments. At that time, Mr. Chipok anticipates the process will begin again, taking into consideration the additional comments.

Mr. Chipok also explained that we currently have two levels of regulations: One level is the consistency certification review procedures which are adopted by County ordinance and require County Council approval; the other, he stated are the commission's rules of procedures which are internal operating rules and are adopted through a Resolution by the VGMC. Mr. Chipok stated that until the rules changes are processed and appropriately approved and adopted, we are required to conform to our present set of regulations.

2) Budget Committee – Committee Chair Joan Spinney presented an amendment to the proposed 2008-09 budget which was reviewed at the January 23, 2008 VGMC Meeting. Ms. Spinney reported that we are looking at purchasing a laptop computer and digital recording software for the VGMC office. The laptop would be part of the County's lease program and would result in the need to amend object code 3710 of the 2008-09 budget to add an additional $729 for the annual administrative fee for the laptop. As a result, this would increase the total proposed 2008-09 budget to $323,807. The VGMC Coordinator, Merry Smith, explained that the initial first year cost for the lap top lease program is approximately $2,600, and the digital recording software needed to record meetings is approximately $2,500. She further explained that although there is not sufficient funds budgeted in the current 2007-08 fiscal year for the purchase of the laptop, she spoke with the County's budget analyst who indicated based on the minimal overall impact, it should not be an issue to purchase the laptop in the current fiscal year. Additionally, Ms. Smith stated that she was recently advised the VGMC could get the digital recording software on loan for the balance of the fiscal year with the understanding we would purchase the software in the next fiscal year.

John Heaphy moved to approve an amendment to the 2008-09 proposed budget to add $729 to the computer replacement object code 3710, to purchase a laptop for the VGMC office through the County's lease program in the 2007-08 fiscal year, and the VGMC will agree to purchase the digital recording software in the 2008-09 fiscal year; seconded by Karen Hall.

Commissioner Allen asked how the commission knows if the County will approve it. Following general discussion, Mr. Chipok quoted from the Charter which states "The commission, by a two-thirds vote, shall adopt an annual budget which may provide for independent staff and which shall be funded by the county. The budget may be amended upon two-thirds vote of the full council." Mr. Chipok explained that the County has cut the budget in the past, however, there have been instances when additional funding was necessary and the County has approved those requests.

Ultimately, Mr. Chipok stated, the County is responsible for the bills of the VGMC, adding that the commission has tried to be fiscally prudent in our budget submittals as well as time spent on the necessary items that require action.

Following a roll call vote, the motion carried 12-1 with Danny Allen voting in opposition.

UNFINISHED BUSINESS

None

NEW BUSINESS

Review of the Sunshine Law – Mr. Chipok reviewed the summary outline he prepared which was distributed with the agenda package (copy attached as Exhibit A of these minutes).

Mr. Chipok stated that since a communication via computer between two or more members can be considered a meeting, the members need to direct any comments or email correspondence to the VGMC office and not to other members of the commission. Mr. Chipok also explained that if two or more members are in attendance at an event, they are prohibited from discussing with each other any matters that would foreseeably come before the VGMC for discussion or action. He also stated that during the VGMC meetings, there should be no side conversations that are not audible to the public.

With respect to Mr. Chipok's summary which states "The public has a right to be present and to be heard at deliberations where decisions affecting the public are being made.", Commissioner Walters questioned whether that would apply to one or more staff members discussing a JPA with an elected official. Mr. Chipok stated no, that it applies to discussions between members of the board, adding that staff is not the decision makers. Utilizing the recent POP workshops as an example, Mr. Chipok also explained that since the final decision on any rules changes is not occurring at the workshops, we are not obligated to take public input at those workshops.

With respect to reasonable notice requirements when there is a change in the date, time or location of a regular meeting, Mr. Chipok stated that as a general rule of thumb, notice given three business days before the scheduled meeting constitutes reasonable notice, although it can be more or less.

Mr. Chipok continued reviewing the information contained in the handout and at the conclusion of his presentation opened it up for questions from the commission.

Commissioner Steinebach asked Mr. Chipok to speak to the issue relating to staff or other parties being used as conduits to elicit opinions from other members. Mr. Chipok stated if members have an idea they wish to share with the other members, it should be forwarded to the VGMC Coordinator for distribution. He added, however, that this is a one-way outward communication

and not intended to solicit opinions back for redistribution as this would be a violation of the Sunshine Law.

Commissioner Steiner raised a question concerning ex parte communications. Mr. Chipok stated there is no direct prohibition of ex parte communications, however, it must be disclosed at the public hearing. Ms. Steiner asked if they are required to disclose the specifics of the ex parte communications. Mr. Chipok responded that he would recommend once the public hearing is closed, the member involved in the ex parte communication should disclose it, including whether or not the contents of that discussion went beyond what was discussed at the hearing. He added if the ex parte communication included other subject matter which was not raised during the public hearing, the member should relate that at this time.

Commissioner Spinney commented that several years ago the commission agreed not to allow themselves to be individually lobbied and voted that the members would not participate in ex parte communications. Following general discussion, it was determined there is nothing in the VGMC Consistency Rules, or Rules of Procedure, which addresses ex parte communications and it was suggested this issue be addressed further through the POP Committee.

REPORTS AND REQUESTS OF COMMISSION MEMBERS

None

REPORTS AND REQUEST OF COMMISSION CHAIR

None

ADJOURNMENT

The meeting was adjourned at 8:45 p.m.

Attest: _____ Chairman _____

THE SUNSHINE LAW

- The Sunshine Law is designed to ensure public access to the decision-making process of public boards and commissions, such as the VGMC.

- Found in section 286.011 of the Florida Statutes.

- Basic requirements:

  1. Meetings of public boards or commissions must be open to the public;

  2. Reasonable notice of such meetings must be given;

  3. Minutes of the meetings must be taken.

EXHIBIT A
VGMC MINUTES
2/27/08 MEETING

WHAT IS A MEETING?

- Any formal or informal gathering of *two or more* members of the *same board* to discuss some matter which will *foreseeably* come before that board for action.

- A writing reflecting the views of a board member and circulated among board members with each indicating his or her approval or disapproval, and upon completion of the circulation, the writing has the effect of becoming an official action of the board.

- A telephone conversation among two or more board members.

- Communication via computer among two or more board members.

EXHIBIT A
VGMC MINUTES
2/27/08 MEETING

WHAT IS OPEN TO THE PUBLIC?

- VGMC should take reasonable steps to ensure that the facilities where the meeting will be held will accommodate the anticipated turnout.

- Board members should not discuss issues before the board in a manner not generally audible to the public attending the meeting.

- The public has a right to be present and to be heard at deliberations where decisions affecting the public are being made.

EXHIBIT A
VGMC MINUTES
2/27/08 MEETING

WHAT IS REASONABLE NOTICE?

- Article II, Section 6 of VGMC's Rules of Procedure provides:

The Commission will file annually a schedule of its regular meeting dates with the Volusia County council and each municipality in Volusia County. The schedule shall include the date, time and location of each regular meeting and shall constitute full and adequate public notice of regular meetings. However, if the date, time or location of any regular meeting is changed by either the Commission or its Chairman pursuant to Sections 2 or 3 of this Article II, notice of the change shall be given to the public *in a manner complying with the Government in the Sunshine Law.*

- Three business days before the scheduled meeting constitutes reasonable notice.

EXHIBIT A
VGMC MINUTES
2/27/08 MEETING

FREQUENTLY ASKED QUESTIONS

Must written minutes be kept of all sunshine meetings? While tape recorders may be used to record the proceedings, written minutes of the meeting must be taken and promptly recorded.

Are board members authorized to abstain from voting? No, VGMC board members who are present at a meeting must vote unless there is, or appears to be a conflict of interest under Florida Statutes.

What are the notice requirements when a meeting is adjourned to a later date? If a meeting is adjourned and reconvened later to complete the business from the agenda of the adjourned meeting, the second meeting should also be noticed.

Does the Sunshine Law restrict VGMC from taking action on matters not on the agenda? No.

May a member of the public tape-record a VGMC meeting? Yes.

Does the Sunshine Law apply to one VGMC member meeting with one member of a different board? No, unless one of the individuals has been delegated the authority to act on behalf of his or her board.

EXHIBIT A
VGMC MINUTES
2/27/08 MEETING

CONSEQUENCES FOR FAILURE TO COMPLY WITH THE SUNSHINE LAW

- Any action taken at a meeting not open to the public, whether intentional or unintentional, is void.
- Criminal penalties.
- Removal from office.
- Fines up to $500.
- Award of reasonable attorney's fees against the committee found to have violated the Sunshine Law.