

Volusia Growth Management Commission

MEETING MINUTES FOR
Wednesday, August 23, 2006

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

MEMBERS PRESENT

Gerald Brandon , Vice Chairman
Joan Lee, Secretary
Robert Pascoe
Jay Erndl
Rebecca Mendez Excused
Karen Hall
John Heaphy
Ed Blackman Absent
Sally MacKay
James Kerr
Ann Caneer
Donna Steinebach Excused
Joan Spinney
Doug Weaver
Rachel Sieg
Tony Cole
Suzanne Steiner

REPRESENTING

Ormond Beach
Volusia County
Daytona Beach Shores
DeBary
Deltona
Edgewater
Holly Hill
Lake Helen
New Smyrna Beach
Orange City
Ponce Inlet
Port Orange
South Daytona
Volusia County
Volusia County
Volusia County
Volusia County

NON-VOTING MEMBERS

Peter Brown (not present)
Sara Lee Morrissey (not present)

REPRESENTING

SJRWMD
Volusia Co. School Board

OTHERS PRESENT

Paul Chipok, GrayRobinson, P.A.
Jim Sellen, MSCW
Megan Wimer, MSCW
Barry Wilcox, MSCW
Merry Chris Smith, VGMC Coordinator

CALL TO ORDER

Chairman Brandon 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.

Chairman Brandon introduced and welcomed Sally MacKay as the newly appointed representative of the City of New Smyrna Beach.

APPROVAL OF MINUTES

Ann Caneer moved to approve the minutes of the May 24, 2006 meeting; seconded by James Kerr. Motion carried unanimously.

PUBLIC HEARING

Mr. Chipok read the public hearing statement of procedures and the consistency criteria into the record.

VGMC Coordinator Merry Chris Smith swore in the individuals who wished to present evidence in the two cases scheduled for public hearing.

1) Continuance and Consideration of VGMC Application 05-075, Orange City Large Scale Amendment Request

Mr. Chipok reviewed a letter dated July 3, 2006 addressed to Orange City Attorney Bill Reischmann which outlined the conditions for continuance of the previously scheduled hearing as approved by the Commission at their June 28, 2006 meeting. Mr. Chipok reported that all of the conditions have been met, noting that staff, the County and the City have come to conclusion regarding the traffic study, and the staff report and resolution reflect conditions of approval. Mr. Chipok pointed out a minor change to the resolution, page 7, subsection 26(f), the minimum growth rate should read "2.00%" and not "2.25%". In closing, Mr. Chipok stated that both VGMC legal and planning staff recommend approval of the amendment with the conditions set forth in the staff report and resolution.

Barry Wilcox, MSCW, concurred with Mr. Chipok and advised the meetings which took place subsequent to the previous hearing were amicable and all parties have reached agreement with the conditions of approval.

Don Sikorski, planning consultant representing the City of Orange City stated the City concurs with the conditions of approval. He also commended VGMC staff on the admirable job they did in bringing the City and County to the table to work out the issues and bring closure. In closing, Mr. Sikorski extended appreciation to VGMC staff and stated the process achieved the VGMC's goal to provide a forum for intergovernmental coordination in resolving disputes between local governments.

Jon Cheney, Traffic Engineer for Volusia County, echoed comments made by Mr. Sikorski and stated the County concurs with the recommended conditions of approval.

There was no one present who wished to speak in opposition of the amendment and the public hearing was closed.

Joan Spinney made a motion to approve Resolution #2006-06 as amended; seconded by James Kerr. Motion carried unanimously.

2) Consideration of VGMC Application 06-040, City of Port Orange Small Scale Amendment Request

Mr. Chipok advised this is a small scale amendment in which a group of citizens filed a petition for public hearing pursuant to VGMC guidelines and published requirements. He also explained that the petition reached the level and format of a motion to intervene.

Mr. Chipok stated before going into the public hearing, the Commission needed to first take action on determining the party status of the citizens. He explained if the group were granted party status, it would allow them the right to file an appeal of the Commission's decision with the circuit court, and VGMC would be precluded from challenging their standing since it would have already been granted through the Commission's action of approval.

Mr. Chipok discussed the parameters of Section 90-38 with respect to who can file a motion to intervene, and also read the definition of an affected party as contained in Chapter 163 of the State Statutes.

In determining whether to grant the petitioners party status, Mr. Chipok indicated that typically a group or association has standing to sue on behalf of its members when it can meet a three prong test: 1) The members would otherwise have standing to sue on their own right; 2) The interests the group seeks to protect are germane to the organization's purpose; and 3) Either the claim asserted or the relief requested requires participation of individual members in the lawsuit. In exploring that further, Mr. Chipok stated that typically the group needs to demonstrate that a substantial number of their members are substantially affected. He also stated it appears that the second prong of the legal test has been met in this case since the interest of the residents seeking protection are germane to the groups purpose. Additionally, Mr. Chipok stated the third prong of the legal test seems to be met as well since the residents are claiming that the Port Orange comprehensive plan amendment is not compatible and does not require individualized proof, that it can be resolved in a group context.

In looking at the standard of whether the group is substantially affected, Mr. Chipok stated it comes down to several categories: 1) Whether the group has some type of special injury that is different and unique than the rest of the citizens; and 2) Whether the group could show they are aggrieved or affected by VGMC's decision and that they have allegedly recognizable property or other interest – Mr. Chipok stated that proximity of the residents property to the property in question is an important factor.

Commissioner Sieg asked if the group is granted party status, would they be considered an adjacent jurisdiction. Mr. Chipok responded they would not be considered an adjacent jurisdiction, but rather it would allow them to appeal the decision of the VGMC to the circuit court.

Ms. Uta Dumermuth addressed the Commission on behalf of the petitioning citizens. Mr. Chipok asked Ms. Dumermuth if she resided close to the subject property. She responded affirmatively, stating she lives at 5088 Riverside Drive, and the subject property is 5156 Riverside Drive. Mr. Chipok then asked what harm the proposed amendment would cause her that would be different from the general public. Ms. Dumermuth responded that it would impact traffic in the area and they also have concerns of flooding. He then asked if other members of the group lived in close proximity to the subject property. Ms. Dumermuth responded affirmatively.

Discussion ensued regarding the issue of granting party status and the relationship of that to the public hearing and proposed comprehensive plan amendment. Mr. Chipok reminded the Commission that the first order of business is to determine party status of the group. Once that is determined, Mr. Chipok advised the public hearing will move forward relating to the city's proposed comprehensive plan amendment.

Jay Erndl made a motion to grant party status to the petitioning citizens; seconded by Suzanne Steiner.

Commissioner Joan Lee asked about the proximity of the petitioning citizens to the property in question. Mr. Chipok stated that case law for establishing standing for a group has been interpreted that a substantial number of the members need to be in close proximity, but not necessarily a majority of the members.

Motion to grant party status carried unanimously.

Public Hearing Portion of VGMC Case 06-040 began at this time

Megan Wimer, MSCW, addressed the Commission and reviewed the proposed amendment. Ms. Wimer noted the property is internal to the City of Port Orange and VGMC received no objections from adjacent jurisdictions. She also stated that staff is recommending approval of the application without conditions.

Ms. Wimer then discussed the existing surrounding land uses, and stated that if the proposed land use change is approved, the City is planning to rezone the property to allow for an accessory wedding gazebo to the existing Wedding Chapel which is located on the adjacent property. She also stated the City of Port Orange submitted information stating the master development agreement for the planned commercial development would prohibit development of anything other than one single family dwelling unit or the 400 square foot gazebo which is planned on the property.

Commissioner Spinney commented that the proposed amendment has no negative impact on surrounding jurisdictions and the Commission has no control over the City's internal zoning decisions.

Mike Disher, Planning & Development Manager with the City of Port Orange, addressed the Commission and stated the City concurs with the staff findings and recommendation. He also agreed this is an internal City of Port Orange issue and the amendment was earlier approved by the City Commission at first reading, and second reading will be scheduled once approved by the VGMC.

Commissioner Pascoe raised concern of transferring a commercial use over Riverside Drive into a residential area. Mr. Disher responded that the City has looked carefully at this particular amendment as well as other amendments proposed by the applicants in this same area.

Commissioner Steiner raised a question concerning access to the property. Mr. Disher responded there are several access points, including Jean Frances Lane which is a private drive located within development.

Debbie Connors, 6023 Heron Pond Drive, Port Orange, General Manager of Clark Properties, addressed the Commission in favor of the amendment. Ms. Connors explained that parking is already in place for the existing wedding chapel which is accessed from US 1. She further added that there are already special events that occur on that property and the proposed amendment is to add a 20' x 20' gazebo.

Douglas Clark, owner of the property, addressed the Commission in favor of the amendment and explained that over the past 20 years, Clark Properties has been trying to expand the redevelopment of the area and feels they've done a reasonable job of upgrading the area. He added that everything they've done has been done with the approval of the City Commission.

Chairman Brandon asked if there was anyone to speak in opposition of the request.

Robert Ford, 4876 Halifax Drive, Port Orange, spoke in opposition of the proposed amendment. Mr. Ford cited concerns about commercial development in a residential

area on the river, and traffic concerns on US 1. He also expressed concern that a number of little changes will amount to an overall substantial change.

Grace Gibson, 5089 Palmetto Street, spoke in opposition of the request and expressed concern over the proposed amendment.

There was no one else present who wished to speak in opposition of the request.

Commissioner Steiner asked about a statement made in the citizens objection that referenced an earlier statement of concern they had submitted. Mr. Disher responded it was related to an earlier request that involved two other properties which was denied by the City Commission.

Commissioner Lee asked for clarification concerning the location of the existing wedding chapel and the proposed gazebo. Debbie Connors responded that the gazebo is proposed on the east side of Riverside Drive, directly across the street from the Chapel. Commissioner Lee also asked for clarification regarding the proposed land use of Office Residential Transition versus Commercial as has been mentioned at the hearing. Mr. Disher confirmed the proposed land use is Office Residential Transition and not Commercial.

The public hearing was closed.

Commissioner Sieg commented on the concerns raised by the citizens, however, added that their concerns are outside of the scope of the VGMC.

Rachel Sieg made a motion to approve Resolution #2006-07 as presented; seconded by Ann Caneer. Motion carried with a 13-1 vote, Commissioner Steiner voting in opposition.

REMARKS OF INTERESTED CITIZENS

None

REPORTS OF OFFICERS

Chairman Brandon reported that the election of officers will be scheduled for the September meeting.

Commissioner Steiner asked what will happen with conditions placed on VGMC approvals if the Commission is abolished. Mr. Chipok responded that during the Charter Review Commission discussions it was indicated the County would continue enforcement of resolutions as they exist.

REPORTS FROM CONSULTANTS

Megan Wimer provided a brief case update.

REPORTS OF COMMITTEES

Chairman Brandon reported that Jim Sellen has agreed to extend MSCW planning staff services through the outcome of the November election.

Chairman Brandon also reported that the POP Committee evaluated the performance of the VGMC Coordinator, Merry Chris Smith, and has recommended an 8% salary increase for the full Commission's consideration at the September meeting.

Commissioner Lee stated that in addition to the \$30,000 increase needed for the planning budget, an additional \$15,000 was also estimated as needed for the legal budget in order to complete the 2005-06 fiscal year. Ms. Lee reported that the County Council approved the total requested \$45,000 on August 10, 2006, which increased the total VGMC budget to approximately \$301,000 for the 2005-06 fiscal year. She also stated there are some line items in which the budget will be over such as postage, rent and legal ads, however, it is anticipated that any overage will be offset with other line items where we are under budget.

UNFINISHED BUSINESS

None

NEW BUSINESS

Jim Sellen addressed the Commission concerning the VGMC as a whole. Mr. Sellen stated that the Orange City public hearing held earlier tonight was an incredible example of why the commission exists. He further stated that over the nearly 20 years of existence, a good deal of constructive work has come out of the commission and regardless of the outcome of the November election, he feels it needs to be documented. Mr. Sellen suggested the commission hold a work session to develop a list of the types of issues the VGMC has dealt with together with guidelines on how they've been handled, adding that if the VGMC is ultimately abolished, this would be a constructive and classy way to pass on the wisdom of the VGMC to the newly created commission.

Mr. Sellen suggested that MSCW and GrayRobinson can meet and come up with a preliminary list of the issues and bring them to the commission work session for discussion. It was a general consensus of the commission to endorse the idea and schedule it for the September 27, 2006 meeting.

REPORTS AND REQUESTS OF COMMISSION MEMBERS

Commissioner Erndl suggested that the election of officers which is scheduled to take place in September be postponed until after the outcome of the November election. Following general discussion, it was decided to address that at the next meeting.

REPORTS AND REQUEST OF COMMISSION CHAIR

ADJOURNMENT

The meeting was adjourned at 8:40 p.m.

Attest:

Chairman