

Volusia Growth Management Commission

MEETING MINUTES FOR  
Wednesday, June 28, 2006

County Council Chambers  
Thomas C. Kelly Administration Center  
123 W. Indiana Avenue  
DeLand, FL

MEMBERS PRESENT

Mark Rakowski, Chairman  
Gerald Brandon , Vice Chairman  
Joan Lee, Secretary  
Robert Pascoe  
Jay Erndl  
Walter Smith           Absent  
Rebecca Mendez  
Karen Hall  
John Heaphy  
Ed Blackman  
Jiles Smith           Absent  
James Kerr  
Deanna Bennett       Absent  
Ann Caneer           Absent  
Donna Steinebach  
Joan Spinney  
Doug Weaver  
Rachel Sieg  
Tony Cole  
Suzanne Steiner

NON-VOTING MEMBERS

Peter Brown                   (not present)  
Sara Lee Morrissey

OTHERS PRESENT

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

CALL TO ORDER

REPRESENTING

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

REPRESENTING

SJRWMD  
Volusia Co. School Board

Chairman Rakowski called the meeting to order at 7:03 p.m.

### ROLL CALL

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

Chairman Rakowski introduced and welcomed Karen Hall as Edgewater's representative on the Commission.

Commission member Suzanne Steiner arrived at 7:05 p.m.

### APPROVAL OF MINUTES

Gerald Brandon moved to approve the minutes of the April 26, 2006 meeting; seconded by Rachel Sieg. Motion carried unanimously.

### PUBLIC HEARING

Chairman Rakowski announced a change in the order of the scheduled public hearings, stating that the City of DeLand public hearing will be considered first, with the City of Orange City to follow.

- 1) Consideration of VGMC Application 06-014, City of DeLand Large Scale Amendment Request

Mr. Chipok read the statement of procedures into the record and also reviewed the consistency criteria.

Commissioner Weaver disclosed that he resides directly west of the Taylor Estates amendment and asked Mr. Chipok if he saw any conflicts. Mr. Chipok responded that a conflict of interest goes to a particular pecuniary gain that may stand when voting on an application, adding that he doesn't necessarily see that in this situation. Mr. Chipok further stated that Mr. Weaver may want to file a disclosure statement for the record following the hearing.

VGMC Coordinator, Merry Chris Smith, swore in the witnesses for the DeLand hearing.

Megan Wimer, MSCW, addressed the Commission regarding the City of DeLand's amendment application and also distributed a supplemental handout to the members which outlined the development potential before and after the proposed amendments (labeled as Exhibit A to these minutes).

In response to traffic concerns raised by Volusia County and capacity concerns raised by the School Board, Ms. Wimer reported that the City amended their original application to propose two new future land use categories: 1) Urban Low Intensity which she stated mirrors the County ULI designation; and 2) Business-Retail which is a less intense Retail-Commercial category than the original proposed Highway-Commercial. Ms. Wimer stated by applying these two new land use designations to some of the proposed amendments, it appears the potential impact to public infrastructure will be equal to or less than the impact under the existing land use designations. Additionally, many of the concerns raised by Volusia County and the School Board have been or will be eliminated.

Ms. Wimer commended the City of DeLand, Volusia County and the School Board on their intergovernmental coordination efforts.

Ms. Wimer reviewed the development potential based on the current land use designation and the proposed amendments. Additionally, she reported concerning prior requests for additional information, and discussed their analysis relating to the consistency criteria as outlined in the final staff report.

With respect to traffic issues, Ms. Wimer stated that only three of the proposed 11 amendments present potential traffic impacts, specifically Items C, I & J of the report. With respect to natural resource impacts, Ms. Wimer reported that only Item C, Volusia Grove & Cattle, appears to contain wetlands and portions of the property are within the 100 year flood plain. Ms. Wimer also stated that the City continues to work with the School Board regarding capacity impacts.

In conclusion, Ms. Wimer stated that staff is recommending conditions of approval be placed upon Items C, D, F, I, and J of the proposed amendments, and then proceeded to discuss several of the recommended conditions as outlined in the final staff report. Ms. Wimer also pointed out that Volusia County & the City of DeLand are proposing revised text changes to conditions #1, #7 and #9 which she read aloud (see Exhibit B of these minutes).

Mike Holmes, Planning Director with the City of DeLand, addressed the Commission, stating that the City is in agreement with the staff recommended conditions, inclusive of the revised text changes to conditions #1, #7 and #9.

With respect to the recommended interlocal agreement, Commissioner Steiner asked Mr. Holmes what would happen if a financially feasible funding strategy does not occur. Mr. Holmes responded that they would have a year to address that, however, if it did not occur within that time frame, they would have to come back before the VGMC. Mr. Chipok added there is a standard VGMC condition that addresses compliance of conditions.

With respect to the recommended text changes, Mr. Chipok suggested rather than reading “Within one year of the date of adoption of this amendment...”, the language should read “Within one year of the date of adoption of this resolution...” since the Resolution is date certain and is the implementing document that the Commission will adopt the conditions under.

Commissioner Steinebach raised a question concerning development orders and rezoning occurring prior to the interlocal agreement being finalized. Mr. Holmes responded that the City would make sure the developers are aware that final approval is contingent upon an executed interlocal agreement. Mr. Chipok added that state law requires that any rezonings must be consistent and in compliance with the Comprehensive Plan.

John Thomson, Volusia County Growth & Resource Management, stated the County has been working with the City of DeLand and are in concurrence with the recommendations.

Saralee Morrissey, Volusia County School District, addressed the Commission. Ms. Morrissey stated 67% of the total student enrollment growth over the past 10 years in the DeLand area has occurred within the past two years. She stated the School Board has an active and aggressive site search underway and recently closed on one site on the west side, however, they have not located an east side site.

Commissioner Sieg asked if Ms. Morrissey was satisfied with the recommended conditions of approval. Ms. Morrissey commented and responded affirmatively.

There was no one present wishing to speak in opposition of the proposed application.

Commissioner Joan Spinney made a motion to approve the staff recommendation and also accept the recommended text changes to the conditions of approval submitted by Volusia County, except replacing the word “amendment” with “resolution” in line 1, paragraph 2; motion seconded by Gerald Brandon.

Commissioner Hall commented on the number of units being added, stating that the growth seems to be happening too rapidly and prior to the infrastructure being available to support it.

Motion carried with a 15-1 vote; Commissioner Karen Hall voted in opposition.

- 2) Consideration of VGMC Application 05-075, Orange City Large Scale Amendment Request

Mr. Chipok stated for the record that the opening statements he made at the beginning of the DeLand hearing equally apply to the Orange City hearing and are incorporated as part of this hearing as well.

VGMC Coordinator Merry Chris Smith swore in the individuals who wished to present evidence in this case.

Barry Wilcox, MSCW, addressed the Commission. Mr. Wilcox advised it is staff's ongoing desire and preference to coordinate with jurisdictions to work out issues and develop mutually agreeable conditions of approval. This has not occurred in this situation, and as a result, staff is recommending denial of the application.

Mr. Wilcox advised this is a unique application initiated by the City which involves 83 different parcels, making it difficult to break out smaller pieces that may have no adverse impact and possibly could have been easily certified some time ago. He then provided a chronological history of events relating to this case, including an original application, VGMC case 04-018, which was received in June, 2004, later withdrawn by the City, and then resubmitted slightly different in November, 2005 as the current amendment application 05-075. Mr. Wilcox discussed several requests for additional information, responses received from the City, various meetings that were scheduled with the City, and the overall difficulty encountered with the City in attempting to address outstanding issues and concerns.

Mr. Wilcox reminded the Commission that the City requested a continuance of this hearing at both the March and May meetings of the VGMC in order to continue working with VGMC staff. On June 8, 2006, Mr. Wilcox sent a letter to the City to follow up on additional information that was to be submitted. In response, Mr. Wilcox indicated the City advised that there would be no additional information forthcoming and they planned to hear the case at the June 28, 2006 regular meeting of the VGMC. In the absence of any additional documentation and in an effort to avoid an approval of the amendment application by default, Mr. Wilcox stated the staff report prepared for the original March 22, 2006 scheduled hearing date has been submitted to the Commission for their consideration.

Mr. Wilcox then began to review the specific amendment request and development impact. Mr. Wilcox noted a correction on page 5 of the staff report which incorrectly reflects an increase of 845 residential dwelling units. He reported the net increase in development entitlements would be 789 residential units and approximately 368,300 of non-residential square footage, commenting that this is near DRI status with respect to the non-residential portion.

Mr. Wilcox reported the application involves a total of 481 acres. Of that, he stated approximately 419 acres, or 87% of the total acreage, is proposed as mixed use. He further stated at this time, approximately 1,200 acres, or 25% of Orange City, is

currently mixed use and adding the proposed would increase the total city wide mixed use designation to 38%.

Mr. Wilcox then provided an analysis of the mixed use category and history of the designation in Orange City both within and outside of the Activity Center. He also discussed density/intensity impacts based on the mixed use percentages.

Mr. Wilcox advised that the City asserts that only 100 of the proposed 481 acres is undeveloped and we can only expect impacts from that 100 acres. He further stated that VGMC staff's opinion is that approval would give increased entitlements to a lot of properties, including properties that may be already be developed, yet currently underutilized.

Mr. Wilcox stated the primary issue deals with transportation impacts, and that an understanding is necessary in terms of what needs to be analyzed together with an agreed upon methodology for analysis. Volusia County has raised concern relating to adverse impacts on the regional traffic network. He stated the City has not provided sufficient information to determine the magnitude of impact on adjacent jurisdictions, resulting in staff's finding of inconsistency and recommendation for denial.

In conclusion, Mr. Wilcox stated VGMC staff's door is open for further discussion with the City in order to adequately address the issues.

Mr. Chipok addressed the Commission, stating that pursuant to the terms of the previously approved continuance of this hearing, resolution must occur on this application tonight and formalized by tomorrow, or it would be approved by default for violation of the 90 day rule. Mr. Chipok advised the Commission of several options for their consideration: 1) They can consider the March 22, 2006 staff report recommending denial; 2) They can consider the staff report from the original application (04-018) which was prepared for the November 2, 2005 hearing recommending a conditional approval; or 3) Another continuance can be considered so that staff can further discussions with the City, as well as the County, in order to obtain: a) a map which designates the specific 100 acres, b) the land uses defined within that 100 acres; and c) an understanding that there will be a condition imposed that the other 300+ acres would not be redeveloped unless that acreage comes back for an analysis of traffic impact at the time of redevelopment.

Referring to a letter submitted by the City's attorney which she stated was confrontational and accusatory in nature, Commissioner Spinney questioned whether or not any further dialogue or cooperation would occur if the case were to be continued.

Chairman Rakowski asked the City if they wish to proceed with the public hearing or if they wished to continue it.

Bill Reischmann, Attorney for the City of Orange City, addressed the Commission. Mr. Reischmann advised this matter has been going on for two years and the City is ready to proceed. He further stated that City staff has worked very hard in providing the information to VGMC staff and although it is perceived that the City has taken an adversarial position, they feel they have no other option.

Mr. Reischmann stated the proposal covers 481 acres, however, 381 are already developed. He also stated he has met with VGMC Staff and Volusia County staff on multiple occasions and have been told the only issue here is the 100 acres, and the only issue with those 100 acres is transportation. With respect to the additional information requested by VGMC staff, Mr. Reischmann stated a) The map depicting the 100 acres was contained in the original application submitted on November 22, 2005; b) The mixed use category contains a matrix of land uses which is contained in their comprehensive plan and was provided along with the original amendment application. Since there are a variety of land uses, the City cannot advise at this time what the future land use may be on the undeveloped acres. He also stated that VGMC Staff and Volusia County have indicated that the traffic study prepared by Grant Renne, a certified traffic engineer, is inadequate. Mr. Reischmann further added that pursuant to the City's comprehensive plan as well as an existing VGMC Resolution, any property within the mixed use land category that comes in for a development order or rezoning will require a traffic analysis and will also come back to the VGMC for approval.

Mr. Reischmann stated under Rule 90-35, adjacent jurisdictions have 30 days to file an objection. He stated the City of DeBary filed an objection which was later rescinded, and the County of Volusia submitted comments but no objection. He stated that VGMC staff issued only one legal request for information which was dated December 22, 2005 and the City responded to that. He further stated anything asked for subsequent to that request for additional information, cannot legally be used as grounds for denial. Mr. Reischmann also stated that Volusia County does not have the right to object since they did not request a public hearing or file a motion to intervene.

Mr. Reischmann stated the City has witnesses present and is prepared to move forward with the hearing. He also stated that the City would be more than happy to continue to work with staff.

Several members of the Commission commented in opposition of moving forward without a complete staff report.

Mr. Chipok explained that the City previously requested a waiver of the 90 day rule which is scheduled to expire tomorrow. Therefore, unless an affirmative commitment

is received from the City to extend the waiver of the 90-day rule, than the Commission is obligated to reach a decision on the application tonight.

Mr. Reischmann stated if the City agrees to extend the 90-day rule waiver, they want to meet with staff as soon as possible and also want a commitment of the specific items staff is looking for from the City.

Commissioner Mendez asked if Volusia County is concerned only with the 100 vacant acres. Ron Paradise, Volusia County, responded that they can work with the 100 acres based on a .50 FAR as used by FDOT. He further added that the County is looking for a traffic study which takes into account all of the entitlements of two major DRI's and other developments.

Commissioner Mendez stated that since this is in the mixed use district, the City would have to bring back to the VGMC any PUD rezonings which would require a traffic study at that time. Mr. Paradise commented that the County is looking for good planning and they want accurate traffic analysis done at the time of the comprehensive plan amendment to avoid being behind the curve with respect to traffic infrastructure. Jon Cheney, Volusia County Traffic Engineer, commented they are not asking anything different of Orange City than is requested by any other jurisdiction. Mr. Cheney further added they are concerned with the historical background and growth rates utilized in the traffic analysis, and are attempting to get clarification from Orange City.

With respect to the traffic analysis, Commissioner Steinebach commented that all of the parties need to agree on the analysis. She also added she feels it is valid to look at what will occur on not just the 100 undeveloped acres, but also the other 300+ acres as well.

Chairman Rakowski asked Mr. Reischmann if the City would be willing to waive the 90-day rule. Mr. Reischmann responded they would waive it until the next meeting, however, they will not submit to a new traffic study. He suggested that Mr. Cheney meet with Orange City's traffic engineer to discuss the components of the traffic study. Mr. Reischmann then submitted a package of documents into the record and commented they are willing to work with VGMC staff but want it limited to addressing the 100 undeveloped acres and traffic. He further added that any rezoning in the mixed use district requires the City to bring it back before the VGMC.

General discussion ensued relating to the traffic study and the need to come to an understanding with respect to traffic impacts. Chairman Rakowski asked the City if they would do a new analysis if necessary. Mr. Reischmann stated they are not willing to perform a traffic study based on the County's parameters. He added that the traffic engineer, Grant Renne, performed an appropriate and valid study which he signed and sealed. Mr. Reischmann also stated that Volusia County does not have the

right to require a traffic study be redone based upon standards that the County knows will result in the conclusion of significant adverse impacts. He further stated Volusia County is trying to protect areas of the DRI and prevent growth in Orange City.

Commissioner Seig commented that we need to look at the maximum density on the entire property, not just limited to the undeveloped 100 acres.

Additional discussion ensued relating to the validity of the existing traffic study. Mr. Reischmann submitted a letter from Melissa Booker of Volusia County into evidence which he states concurs with the City's traffic study.

Mr. Chipok summarized the parameters of discussions should it be determined that the hearing would be continued as follows: 1) the City would provide a map of the 100 acres identifying specifically where those acres are; 2) the land use on the 100 acres would be at a .50 FAR; 3) there would be no redevelopment on the 381 acres in the future unless there is a specific PUD amendment and traffic study submitted to VGMC; and 4) the purpose of getting the information is to review the current traffic study to analyze the history and background impacts and assumptions based on the 3.08 mile radius from the County roads. Overall, he added that we need to 1) get the information; and 2) analyze the information.

Mr. Reischmann stated the City agrees with each of the stipulations except it was previously agreed with Volusia County to use a .25 FAR, not .50 FAR.

Discussion ensued concerning the timing of the continuance, taking into consideration the 20 working day rule for documentation and the 90 day rule for taking action. At Mr. Chipok's suggestion, Chairman Rakowski called a short recess of the meeting at 9:45 p.m.

Chairman Rakowski called the meeting back to order at 9:52 p.m. and announced that a 60 day continuance to the August VGMC meeting would be more appropriate.

Mr. Reischmann stated the City would agree to waive the 90 day rule to hear the case in August, however, without a condition of a .50 FAR. Additionally, he stated they would meet with VGMC, they will present the 100 acre map and will discuss the ratios utilized by Mr. Renne in the traffic study, however, they will not commit to a modification of the traffic study.

Mr. Chipok commented concerning the need for the meetings to be productive. Additionally, he stated he strongly disagrees with Mr. Reischmann's earlier statement that staff only has the ability to issue one RAI pursuant to Rule 90-35. He further added the commission is to consider all evidence submitted at the public hearing and no one is excluded from participating in the public hearing. Additionally, Mr. Chipok stated he strongly disagrees with Mr. Reischmann's contention that the County is

excluded from the process. The issue of standing, he stated, is an entirely separate issue and is not within the VGMC authority.

Mr. Chipok also stated VGMC fully intends to invite Volusia County staff to participate in any discussions since the roadways in question are both County and City.

Mr. Reischmann responded they will discuss the traffic analysis and explain how the conclusions were reached, however, they will not redo a traffic study at the pleasure of Volusia County.

A member of the audience and Orange City property owner, John Kuhl, asked the commission how they will determine who's traffic analysis is correct. Chairman Rakowski advised the commission will hear all of the evidence and make a determination.

Ron Paradise addressed the commission to clarify earlier statements made by Orange City regarding the County protecting or preserving areas for the DRI. Mr. Paradise stated that is not the intent of the County nor the reason they have requested additional information, he stated this is an infrastructure and mobility issue.

Mr. Renne addressed the commission regarding the traffic study he prepared, adding that the report was prepared utilizing the County's methodology as contained in Melissa Booker's memo which was entered into record earlier.

Mike Dyer, Assistant County Attorney, stated his position is that Volusia County does have standing in this matter and requested that Volusia County participate in all future discussions.

Mr. Chipok reiterated the understanding of conditions relating to the continuance: 1) Orange City will provide a map specifically identifying the 100 acres at, or prior to, the meeting; 2) There will be discussion of the ratio of land use, how it was arrived at, and potential discussions as to whether the existing analysis is adequate, or if it needs to be modified; 3) The review will be limited to the 100 undeveloped acres; 4) Further review and discussion of the traffic study to look at the history and background assumptions and impacts, and how they are applicable to the County roads is necessary; and 5) The City of Orange City has already taken action to adopt the subject amendment and will need to agree *not* to transmit the amendment to the Florida Department of Community Affairs or Secretary of State, but rather will hold another adoption hearing following conclusive action of the VGMC.

Mr. Reischmann stated that the City will not transmit the comprehensive plan ordinance that was already adopted by the City until VGMC consistency is rendered.

Mr. Wilcox commented concerning limiting the review to the 100 undeveloped acres.

Commissioner Weaver suggested it would be useful and productive if Jim Sellen became directly involved in the discussions. Mr. Chipok stated he will communicate that to him.

Discussion ensued concerning whether the review should be for the entire 481 acres or limited to the 100 acres. Mr. Chipok stated that both the City and County have agreed the 381 acres are off the table since any future redevelopment will have to come back before the VGMC. Ron Paradise confirmed that limiting the review to 100 acres is acceptable to the County.

It was agreed that in order to allow adequate time, a request for continuance would be extended to August 25, 2006, two days following the August 23, 2006 regular meeting. Discussion ensued relating to quorum requirements and the consequences should there not be a quorum at the August meeting.

A member of the audience and an Orange City property owner, David (last name inaudible) addressed the commission in favor of approving the amendment application.

Joan Spinney moved to approve a continuance of the Orange City hearing to the August 23, 2006 meeting, with the five conditions stated earlier by Mr. Chipok and also the City's agreement to extend the waiver of the 90 day rule through August 25, 2006; motion seconded by Joan Lee and carried unanimously.

#### REMARKS OF INTERESTED CITIZENS

None

#### REPORTS OF OFFICERS

None

#### REPORTS FROM CONSULTANTS

None

#### REPORTS OF COMMITTEES

Joan Lee reported that we anticipate appearing before the County Council on July 20, 2006 to request an additional \$30,000 in planning costs.

UNFINISHED BUSINESS

None

NEW BUSINESS

None

REPORTS AND REQUESTS OF COMMISSION MEMBERS

REPORTS AND REQUEST OF COMMISSION CHAIR

Chairman Rakowski announced that Jay Erndl was recently reappointed to the VGMC by the City of DeBary.

Chairman Rakowski also reported that the Charter Review Commission has made a recommendation to abolish the VGMC. The VGMC Coordinator will email the text to all of the members. Commissioner Erndl asked what happens to all of the conditions and checkpoints of VGMC approvals if the commission is abolished. Mr. Chipok responded it is unknown at this time.

With respect to Orange City having taken action to adopt the amendment without VGMC certification as reported earlier, Mr. Chipok stated he believes that is invalid. He will also follow up with Orange City to confirm their agreement not to transmit it to DCA.

Chairman Rakowski announced that he was not reappointed to the VGMC by the City of New Smyrna Beach and this would be his last meeting. Gerald Brandon thanked Chairman Rakowski for his 15+ years serving with the commission and many of the members complimented him on a great job he's done.

It was also agreed that the Vice Chair, Gerald Brandon, will serve as Chairman until the regularly scheduled election of officers which will occur in September.

ADJOURNMENT

The meeting was adjourned at 10:40 p.m.

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Attest:

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Chairman