

Volusia Growth Management Commission

MEETING MINUTES FOR
SPECIAL MEETING HELD

Monday, June 11, 2007

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

MEMBERS PRESENT

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

REPRESENTING

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

NON-VOTING MEMBERS

Sara Lee Morrissey	
Peter Brown	(not present)

REPRESENTING

Volusia Co. School Board
SJRWMD

OTHERS PRESENT

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

CALL TO ORDER

Chairman Brandon called the meeting to order at 7:00 p.m.

ROLL CALL

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

Chairman Brandon announced to the Commission that Megan Wimer had relocated and was no longer working with MSCW.

PUBLIC HEARING -- Consideration of VGMC Application 06-073, City of DeBary Large Scale Amendment Request

Paul Chipok, GrayRobinson, VGMC Legal Counsel, read the statement of procedures for public hearings into the record, along with the consistency criteria and the commission's scope of authority.

VGMC Coordinator, Merry Chris Smith, swore in the witnesses planning to speak at the hearing.

Mr. Chipok stated the VGMC has received five petitions to intervene that the commission needs to consider and proceeded to address them individually:

1) St. Johns Partners LLC – Mr. Chipok reported that this is the contract purchaser of the property which is the subject of tonight's hearing and it is legal staff's opinion that St. Johns Partners LLC meets the criteria for intervention.

Steve Katz made a motion to grant party status to St. Johns Partners LLC to participate as a party in the proceeding; seconded by Tony Cole. Motion carried unanimously.

2) Fred & Linda Hitt – Mr. Chipok reported this petition to intervene was filed by Attorney Mike Woodward on their behalf. Mr. Chipok stated Mr. & Mrs. Hitt are residents of DeBary and live in close proximity to the subject property, adding that it is legal staff's recommendation that they be granted party status in this proceeding.

Ty Harris of the law firm Storch, Morris & Harris, 420 S. Nova Road, Daytona Beach, representing St. Johns Partners addressed the commission in opposition of this request. Mr. Harris discussed the timing of when the petition to intervene was filed with the VGMC office and the information provided in the original petition, as it relates to VGMC rules. Mr. Harris discussed case law relating to Mandelstam which he submitted for the record in support of the objection to grant party status.

Mr. Chipok addressed the commission relating to the timing and form in which the petition was received, adding that the initial request stating their intent was received 5 days prior to the hearing. Mr. Chipok reiterated legal staff's recommendation that Mr. & Mrs. Hitt be granted party status.

Daniel Langley, Assistant City Attorney to DeBary, addressed the commission in opposition of granting party status to Mr. & Mrs. Hitt, stating their request does not qualify under the criteria in section 90-38 of the VGMC Rules.

Michael Woodward, law firm of Keyser & Woodward, 501 Atlantic Avenue, Interlachen, Florida representing Fred & Linda Hitt, addressed the commission in support of granting party status to Mr. & Mrs. Hitt.

In response to a question from Commissioner Erndl, Mr. Chipok stated there is a provision in our rules that state we should liberally construe our rules to reach the best answers possible, as well as a provision that allows information to be submitted to the commission up to and including the public hearing.

Commissioner Katz asked if all of the required information was submitted, regardless of the timeframe. Mr. Chipok responded affirmatively.

Mr. Chipok also clarified that the decisions made concerning party status do not affect the ability for any of the parties to participate in the public hearing. He added that the significance of the petitions to intervene deals with a party being able to appeal the decision of the commission if granted party status.

Commissioner Mendez asked about the criteria used in qualifying an individual as an affected party, and how that criteria applies to Mr. & Mrs. Hitt. Mr. Chipok responded that the Hitt's petition states they reside in very close proximity to the subject property and the proposed development will have substantial impacts on the roads and streets they use to access their home, their use and enjoyment of the river, and the use and enjoyment of their property as a result of the increased density and intensity of use of the proposed amendment.

Jay Erndl made a motion to grant party status to Fred & Linda Hitt to participate as a party in the proceeding; seconded by Suzanne Steiner. Motion carried unanimously.

3) Sandra & Roy Walters – Mr. Chipok stated the petition filed by Mr. & Mrs. Walters essentially allege the same impacts as those of Mr. & Mrs. Hitt. In this case, however, Mr. Chipok stated it is legal staff's opinion that the Walters' have not established that their property abuts or is in close proximity to the subject property, nor have they established how their interests would be affected any differently than the general public. Mr. Chipok stated that legal staff recommends denial of this request.

Michael Woodward, representing Mr. & Mrs. Walters, stated the petition was filed based on their use of the St. Johns River and their involvement in promoting ecotourism involving the river. Mr. Woodward stated for the purpose of speeding up the hearing, the Walters' have instructed him to withdraw their request for party status.

4) Peggy Belflower – Mr. Chipok stated Ms. Belflower's petition alleges essentially the same impacts as the Walters' and it is legal staff's opinion that she has not established how her interests would be affected any differently than the general public.

Commissioner Steiner asked if party status can be affected by the fact that this involves a river which runs through various communities. Mr. Chipok responded that he would make the analogy that it would be the same as someone living on a roadway.

Michael Woodward, representing Ms. Belflower, stated he disagreed with Mr. Chipok's analogy and that the issue of proximity is not an issue of standing. Mr. Woodward stated that Ms. Belflower owns property on a tributary of the St. Johns River and her concern is the additional boat traffic will have substantial impacts on her use and enjoyment of the river. He added that Ms. Belflower will not be affected by what's happening on the land, but rather what's happening on the water.

Ty Harris stated he disagreed with Mr. Woodward's assertion that proximity is not an issue of standing and objected to party status being granted to Ms. Belflower. Mr. Harris discussed case law relating to intervention, specifically Heatherwood Community Homeowners Association v. Florida Rock Industries which he submitted for the record. Using the analogy that the new Home Depot in New Smyrna will cause significant traffic impacts on his property in DeLand, Mr. Harris stated at some point there needs to be a cut-off for proximity.

Daniel Langley stated the City of DeBary has the same objections discussed by Mr. Harris, adding that Ms. Belflower's property is outside the city limits of DeBary. He also stated that utilizing Mr. Woodward's analysis, anyone who lives on the St. Johns River anywhere in the state or anyone who uses the river would have intervenor status.

Commissioner Steve Katz made a motion to deny party status to Peggy Belflower; seconded by Joan Spinney. Motion carried with a 11-3 vote, representing 66.64% affirmative weighted vote. Commissioners Lee, Steiner and Cole voted in opposition.

5) Friends of Wekiva River – Mr. Chipok advised this is a group petition that alleges the same impacts as previously raised, however, he stated they have not established that any of the members live in Volusia County, the City of DeBary or in close proximity to the subject property. Mr. Chipok stated that legal staff recommends denial of this request.

Michael Woodward, representing Friends of Wekiva River, stated they do have some members who live in Volusia County and the City of DeBary, specifically referencing Mr. & Mrs. Hitt.

Ty Harris stated they have the same objections to this request as they did with the previous one and they recommend the Commission deny party status to Friends of Wekiva River.

Daniel Langley stated the City of DeBary objects to this request as well.

Mr. Woodward stated that the organization should be granted standing through it's members, one of whom the Commission has already granted party status to.

Commissioner Steve Katz made a motion to deny party status to Friends of the Wekiva River; seconded by Becky Mendez.

Commissioner Erndl commented that he does not feel the organization provided sufficient information regarding their membership and organization. Motion carried with a 12-2 vote, representing 74.834% affirmative weighted vote. Commissioners Pascoe and Cole voted in opposition.

Public Hearing for VGMC Case 06-073

Mr. Chipok introduced Barry Wilcox and Bill Eggers from MSCW who will be presenting the staff report. Mr. Chipok added that the commission members had received the original staff report dated 4/12/07 and the addendum staff report dated 5/15/07. In the original staff report, all of the citizen comments received through that date were included as an exhibit. Mr. Chipok stated that a package of subsequently received citizen comments has been assembled by the VGMC Coordinator and is being submitted into the record.

Barry Wilcox, MSCW, submitted his resume for the record. Mr. Wilcox provided a powerpoint presentation with an overview of the proposed development which consists of 250 residential dwelling units, 10-15,000 square feet of commercial development, approximately 50 wet boat slips and 450 dry dock slips.

In reviewing the consistency criteria, Mr. Wilcox stated that staff has found that the amendment is consistent with VGMC consistency criteria #1, as the developer will be required to extend facilities, and Volusia County Public Works has confirmed that adequate capacity is available to serve the proposal.

With respect to transportation, Mr. Wilcox stated the developer has agreed to pave Fort Florida Road and according to the traffic study, the proposed development will not create significant traffic impacts. As a result, Mr. Wilcox stated that staff finds the amendment consistent with VGMC consistency criteria #2.

Regarding infrastructure beyond traffic and utilities, Mr. Wilcox indicated the School Board had unresolved issues regarding elementary school capacity. The City of DeBary has agreed that the developer will enter into a capacity enhancement agreement with the School Board. Contingent upon the execution of the capacity enhancement agreement, Mr. Wilcox stated that staff finds the amendment consistent with VGMC consistency criteria #3.

Bill Eggers, Environmental Scientist with MSCW, addressed VGMC consistency criteria #4 related to natural resources. Mr. Eggers presented photographs of the subject site, including the proposed marina. Mr. Eggers discussed concerns relating to impacts of the proposed marina,

including facilities, wetlands, protected species, wildlife movement, flood plains, water quality, historical and archaeological resources. Based on the impacts of the proposed marina, Mr. Eggers stated that staff finds the amendment inconsistent with VGMC consistency criteria #4. His resume was also submitted into the record.

In conclusion, Mr. Wilcox stated that the proposed amendment is not consistent with the plans of adjacent jurisdictions and could adversely impact adjacent jurisdictions. As a result, he stated staff recommends denial of the amendment. Mr. Wilcox added if the Commission wishes to approve the amendment, staff has crafted conditions for their consideration which he reviewed. Mr. Wilcox pointed out the residential development is not of great concern to staff. In discussing the conditions relating to the proposed commercial development, Mr. Wilcox stated the recommendation relating to the dry dock slips is a maximum of 50, which is different than what is currently contained in the language. Mr. Wilcox explained this number was calculated utilizing the number of boats registered per person in the state of Florida, and looking at the marina to serve the development and not the general public.

Commissioner Pascoe stated he did not see reference to dry dock storage in the staff report. Mr. Chipok explained the May 15, 2007 addendum to the staff report did not address dry dock slips. In subsequent meetings with the attorneys of the parties, the City and developer repeatedly made oral representations that their intent is to have dry slips as well. Mr. Chipok added since it was not addressed in the staff report, they did not wish to leave it as an open issue. As a result, when the resolution was being drafted, Mr. Chipok stated the developer was asked what would be the maximum number of dry slips they would be seeking and they advised 450, which is what appears in the draft resolution.

Discussion ensued regarding boat slips and allowable uses under the commercial designation.

Mr. Wilcox completed reviewing the recommended conditions of approval.

Commissioner Steinebach asked how staff intended to enforce the conditions proposed in the resolution. Mr. Chipok responded that once a resolution is adopted and conditions imposed, they essentially run with the jurisdiction. He explained that as part of staff's analysis when processing future applications, prior resolutions are reviewed to ensure all of the conditions have been met. If there are outstanding conditions which have not been met, Mr. Chipok stated the jurisdiction's new application will be held up until the prior conditions of approval have been met.

Mr. Chipok pointed out several typographical errors in the draft resolution. Specifically, on page 2, item #4, forth line down should read "117" acres, not "1117"; on page 8, the title for Section 2 should read "Conclusion of Law and Certification of Consistency"; also on page 8, Section 2.A. forth line down where it refers to "item (2)", this should actually read "items (3) and (4)". Mr. Chipok also pointed out on page 10 under condition 7, the draft resolution reflects 450 dry slips, and staff has recommended 50.

Daniel Langley, Assistant City Attorney for the City of DeBary, introduced City Manager Maryann Courson. Ms. Courson stated she and the City have not had an issue with commission as was represented in the paper, but had issues with the process. Ms. Courson offered her time to work with the commission to iron out the VGMC procedures.

Mr. Langley stated the City of DeBary filed the pending lawsuit because they felt the process was being manipulated. He stated the City fully complied with VGMC procedures by submitting the completed application and addressing the school board comments. Mr. Langley stated that aside from the School Board comments, there were no other timely filed comments from adjacent jurisdictions. Mr. Langley then entered a binder of documents into evidence which he stated supports the City's position that the VGMC lacks jurisdiction over the application and that a public hearing on the application is improper. He added, however, they are here tonight to try to work it out, stating that if the commission approves the draft resolution as originally presented and without change to the number of dry dock slips, the City staff will recommend to the City Council to incorporate the conditions in the PUD ordinance.

Mr. Langley addressed the commission concerning staff's recommendation to limit the dry dock slips to 50, stating that despite numerous prior discussions with staff, tonight is the first they've heard of this recommendation and it is not what the parties previously agreed to. Mr. Langley introduced Kelly Magee to address the commission regarding the marina and the Manatee Protection Plan.

Kelly Magee, Natural Resources Director for Volusia County Environmental Management, provided a brief history of her experience and qualifications. Ms. Magee discussed the Manatee Protection Plan and her role in working with the various cities. Ms. Magee also explained the formula utilized in calculating the number of boat slips of approximately 500, adding that a specific number is unknown until after the state does their analysis and issues a letter of concurrency to the developer.

Commissioner Lee raised questions concerning the size of the proposed dry dock storage facility, the number of slips needed and the intended use of the marina.

Mr. Langley stated the issue regarding the number of slips is a permitting issue and the state will make that determination. He also stated that the proposed marina/yacht club component is not intended to be limited to the residents in the development.

Commissioner Pascoe asked Ms. Magee to comment regarding the calculation utilized in staff's recommendation to limit the dry dock slips to 50. Ms. Magee responded that the State Fish & Wildlife Conservation Commission typically uses ecological, environmental and wildlife factors in their determination and not the number of preexisting boat owners.

Commissioner Mendez asked if DeBary adopted the Volusia County Manatee Protection Plan. Ms. Magee responded affirmatively.

Ty Harris stated the plan all along has been for the marina to be open to the public and not just limited to the residents, adding that the number of allowable slips is still being reviewed by the appropriate agencies. Mr. Harris suggested the language in the resolution relating to the boat slip limitations be amended to read "as permitted by the Department of Environmental Protection and other related agencies".

Mr. Langley added that the developer has agreed to comply with the Manatee Protection Plan and also that the City would support the amended resolution language as recommended by Mr. Harris.

Commissioner Erndl disclosed that he was contacted by the developer regarding this matter and Mr. Erndl advised him it would be best to discuss it at the public hearing.

Roger Wilburn, professional planner with Plan Forward and representing the City of DeBary addressed the commission. Referring to the development potential charts on page 2 of the draft resolution, Mr. Wilburn stated that under the City's comprehensive plan you can get TDR's which would raise the number of units currently allowed in the environmentally sensitive lands portion from 3 to 26 units, for a total of 44 units. Additionally, he stated the total acreage of the property should be 330, explaining that they are amending only 127 acres.

Chairman Brandon announced a brief break at 9:05 p.m. The meeting reconvened at 9:18 p.m.

Daniel Langley stated the City suggests the language in the condition relating to the dry dock storage read "as permitted by the applicable state agencies and permitting agencies". In closing, Mr. Langley stated the developer is prepared to abide by the 11 conditions contained in the draft resolution and the City would accept the resolution with the suggested language relating to dry dock storage, as well as the typographical errors earlier discussed and the corrections to the chart pointed out by Mr. Wilburn.

Commissioner Katz asked Mr. Langley to confirm that the dry slip limitation would be the lesser of 450 slips or what is allowed by the state permitting agencies. Mr. Langley responded affirmatively.

Ty Harris addressed the commission concerning the efforts put forth by the parties throughout the process. Mr. Harris added that the draft resolution before the commission is what the parties had agreed to and it was not until this evening that they'd heard of the staff recommendation limiting the dry slips to 50. He also stated that the marina is what makes it possible to reduce density and impacts on the river by having the dry dock storage. Mr. Harris then introduced the developer, Joe Krzys.

Joe Krzys, 8516 Bellagio Drive, Naples, Florida addressed the commission as a partner with St. Johns Partners LLC. Mr. Krzys provided an overview of the various studies and surveys that have been completed on both the property and marina issues. He also stated that the 50 wet slips, 250 residential units and conservation easements were all self imposed conditions. In

closing, Mr. Krzys stated when all is done, they can only build what is allowed by the state permitting agencies.

Commissioner Katz asked Mr. Harris if they were okay with language suggested concerning the dry slip condition discussed earlier. Mr. Harris responded affirmatively.

Commissioner Steinebach asked Mr. Harris what the maximum number of residential units and commercial square footage would be if the marina is not constructed. Mr. Harris responded the maximum number of residential units would be 250, and the commercial square footage would be 15,000.

Commissioner Spinney stated the resolution limits the commercial development to the marina, wet slips and dry dock storage and asked what the intention would be for the commercial square footage if the marina is not approved. Mr. Krzys responded that their plan would be to build a community center for the residents.

Saralee Morrissey, addressed the commission relating to School Board issues. Ms. Morrissey stated if the language in the resolution, page 9, condition #1, is misinterpreted, there will be a problem. She stated if the developer waits until final plat approval to submit a capacity enhancement agreement, the School Board will not execute it. Ms. Morrissey added that this type of agreement needs to be executed with a comprehensive amendment or a rezoning which increases density.

Ms. Morrissey stated the School Board has an over capacity situation at DeBary Elementary which is unresolved and they are concerned this amendment is premature. She also stated they have met with the developer on various occasions and the developer has agreed to pay the equivalent of the cost of two classrooms. Ms. Morrissey stated a capacity enhancement agreement was provided to the developer in early April and she reiterated the need for it to be executed at this point in the process.

Commissioner Mendez asked about an earlier recommendation by staff which would've required the agreement be executed within 90 days. Ms. Morrissey stated that requiring it be executed within 90 days would be acceptable.

Ty Harris stated the developer does not have a problem having it executed within 90 days, they were just concerned about having to come up with the money prior to having an approved plan.

Daniel Langley expressed concern that 90 days may not be sufficient to process the agreement. Ms. Morrissey stated the agreement was provided them on April 9th and would be scheduled on a School Board agenda upon return.

Jamie Seaman, Deputy County Attorney, briefly addressed the commission concerning school concurrency and the agreement specific to this matter.

Mr. Langley stated the developer has advised him he has the draft agreement and feels it can be done within 90 days. Mr. Harris stated that the 90 days should apply to when the developer executes and submits to the School Board since they have no control on how long it will take thereafter.

Ms. Morrissey stated that the agreement needs to be in place by September 30, 2007. General discussion ensued concerning the 90-day time frame or a date specific deadline. There was general agreement to amend the condition to state "The City of DeBary shall submit to the VGMC an executed capacity enhancement agreement between the developer and the Volusia County School Board no later than October 1, 2007".

Chairman Brandon asked for those individuals present who are in favor of the amendment to speak at this time.

Kathy Krasnoff, 414 River Drive, representing RCARD (River City Alliance on Responsible Development), spoke in favor of the amendment. Ms. Krasnoff submitted a binder into the record which included a petition with over 1,200 signatures in support of the amendment.

Ms. Krasnoff read into the record letters of support from three other individuals who were not able to attend the hearing. Specifically, letters from: 1) Don Smith, 438 River Drive; 2) Captain Wyndy Glotfelty, 619 15th Street, DeBary; and 3) Laura Lee Clark, 466 Ft. Florida Road, DeBary.

Eugene Stump, 106 Birkwood Court, DeBary, spoke in support of the amendment.

John Likakis, 38 Seminole Drive, DeBary, stated he was neither for or against the amendment, however, raised concern with issues relating to the marina operation and development on the northern portion of the property.

Carol Saviak, 2878 S. Osceola Avenue, Orlando, Executive Director of the Coalition for Property Rights, reviewed her letter dated June 11, 2007 which was submitted into the record in support of the property owners' rights to develop the land.

Mark Meister, 146 Pine Tree Drive, DeBary, spoke in support of the amendment.

Tony Merenda, 462 River Drive, DeBary, spoke in support of the amendment.

Howard Jaffe, 154 Maple Drive, DeBary, President of Meadowlea on the River and representing the 253 homeowners, spoke in support of the amendment.

Carolyn Evans, 387 Magnolia Place, DeBary, spoke in support of the amendment.

Due to the time, Chairman Brandon asked the audience to speak only if they have new information to add.

Anthony Panzino, 792 Ft. Florida Road, DeBary, spoke in support of the amendment.

Vic Butler, River Drive, DeBary, spoke in support of the amendment.

Brad Morley, 450 Ft. Florida Road, DeBary, spoke in support of the amendment and submitted a lab test for water into the record.

Greg France, 168 Community Drive, DeBary spoke in support of the amendment.

George Maret, 434 Ft. Florida Road, DeBary, spoke in support of the amendment. Mr. Maret also submitted a letter of support from LaVon James, 472 Ft. Florida Road, DeBary into the record.

Linda Dill, 112 Ft. Florida Road, DeBary, spoke in support of the amendment.

Harry Shuman, 144 Ft. Florida Road, DeBary, spoke in support of the amendment.

James Evans, Lake Helen, spoke in support of the amendment.

Commissioner Steiner asked the members of the audience to speak only if they have new material to present.

Rebecca Booth, 601 15th Street, DeBary, spoke in favor of the amendment.

Renee Maret, 434 Ft. Florida Road, DeBary spoke in favor of the amendment and submitted a letter of support from Steve and Carol Forslund into the record.

Chairman Brandon asked for those individuals opposed to the amendment to speak at this time.

Fred Hitt, 402 River Drive, DeBary, spoke in opposition of the marina. Mr. Hitt also shared a photo of a West Indian manatee.

Van Conoley, 25 Rosedown Blvd, DeBary, spoke in opposition of the application and commented concerning the City's attempt to remove Jay Erndl as their representative.

Michael Woodward, representing Fred & Linda Hitt, Peggy Belflower, Roy & Sandra Walters, Friends of the Wekiva River and the Seminole Audubon Society, spoke in opposition of the amendment and also stated his clients support the owner's property rights to develop it under the existing land use designation. Mr. Woodward also expressed concern over the reliance of a PUD once a future land use change is approved. Mr. Woodward discussed the draft of conditions for approval and in closing stated the proposed amendment is inconsistent.

Roy Walters, 480 Warrior Trail, Enterprise, reviewed several charts relating to the marina and traffic study, and spoke in opposition of the amendment. He also submitted a copy of the charts into record.

Dennis Elster, 350 Fishing Lane, DeLand, on the Board of Supervisors for the Volusia Soil and Water Conservation District (VSWCD), read a letter into the record stating the VSWCD position is that the amendment will cause significant adverse impacts on natural resources extending beyond DeBary.

At 11:25 p.m., the Chairman announced a brief break. The meeting reconvened at 11:35 p.m.

Faith Jones, speaking on behalf of the Seminole Audubon Society, spoke in opposition of the amendment. Ms. Jones stated their primary concern is with the degradation of habitat which will occur. She also submitted aerial photos of dry storage facilities into the record.

Keith Schue, speaking on behalf of The Nature Conservancy, addressed the commission in opposition of the request. Mr. Schue stated the proposed marina is located within the Wekiva River Aquatic Preserve and within a protection area which prohibits marinas. Mr. Schue discussed his letter dated June 10, 2007 which was submitted into the record. In closing, Mr. Schue suggested the commission consider certifying the amendment without the marina component.

Bill Belleville, 120 W 18th Street, Sanford, representing Friends of the Wekiva River addressed the Commission in opposition of the marina.

Captain Bill Flowers, residing on the river, spoke in opposition of the marina.

Merrick Hoffman, 39 Periwinkle Drive, DeBary, read a letter into the record in opposition of the proposed marina and development.

Eric West, 119 Pine Tree Drive, Ormond Beach, spoke in opposition of the proposed marina and commented concerning boat traffic and pollution.

Pat Rose, Executive Director of Save the Manatee Club, spoke in opposition of the marina and commented concerning the impact of a commercial marina.

Sandra Walters, 480 Warrior Trail, Enterprise, discussed information in the staff report and spoke in opposition of the marina and development.

Chairman Brandon closed the public hearing at 12:10 a.m. and moved forward with rebuttals.

Daniel Langley stated that in order to deny the application, the VGMC would have to find inconsistency with an adjacent jurisdiction's comprehensive plan. Mr. Langley reviewed the individual consistency criteria along with the findings and recommended conditions of staff. He also read into the record portions of an email dated March 6, 2007 from Tom Brooks of Volusia County addressed to other individuals in the County's Growth Management Department which addressed traffic and manatee protection. Mr. Langley also read from the email that it states there are no County land use issues since the property is miles from, and does not adjoin, any

land in the unincorporated County. In closing, Mr. Langley requested the commission find the amendment application consistent, subject to the conditions contained in the resolution, with the following modifications: 1) Change condition #1 to read "An executed capacity enhancement agreement signed by the developer and transmitted to Volusia County Schools between the developer and the Volusia County School Board shall be submitted to VGMC on or before October 1, 2007."; and 2) Change condition #7c to read "Dry dock/storage facilities for vessels, not to exceed the lesser of a maximum of 450 vessels/dry slips or the number of vessels/dry slips permitted by the applicable state agencies."

Commissioner Katz stated it was understood earlier that the capacity enhancement agreement would be fully executed and submitted to VGMC by October 1, 2007. Mr. Katz suggested the condition be modified from its current form to simply strike all language beginning with "final plat approval" and replace it with "October 1, 2007". Mr. Langley agreed.

Ty Harris addressed the commission concerning objections raised and commented concerning the degradation of the property as it currently exists. Mr. Harris stated there are only two jurisdictions adjacent to the property, the City of Deltona and Volusia County. He added that it was the County who requested the public hearing and the developer has had an ongoing dialogue with MSCW and the County to address the concerns. In response to earlier testimony concerning changes in the original staff report and that of the addendum, Mr. Harris stated that MSCW did not consider the self imposed limitations made by the developer when preparing the original staff report. Once that information was provided to MSCW, Mr. Harris stated that changed the analysis.

Mr. Harris also generally commented that VGMC staff report recommendations are currently written in the negative and suggested that the commission look at addressing that.

With respect to earlier testimony concerning the position of the Volusia Soil and Water Conservation District, Mr. Harris stated that unless a resolution is presented showing this was adopted by the VSWCD, that the VGMC should accept the statements made as personal testimony of Mr. Elster.

Mr. Harris introduced Craig Barne with the law firm Fallon White, who addressed the Commission concerning the proposed marina, the location and general rules regulating marina sites.

Several Commission members raised questions concerning the marina location and the designation of a Clean Marina. Commissioner Spinney commented that it is the Commission's role to ensure that the regulations are addressed, not the details of how it will be addressed, adding that it should be referred to the permitting agencies to handle as stated in the staff recommendation.

Commissioner Erndl raised a concern relating to the wording of the draft resolution in the event the marina is not approved by the regulatory agencies or the developer withdraws the marina. Mr. Harris responded that if the marina is not approved, the developer proposes to build a

community center on the portion of the property designated as commercial. Commissioner Erndl asked if the developer would be willing to specify that in the resolution; Mr. Harris responded affirmatively.

General discussion ensued regarding modifying the language of condition #7. Mr. Chipok suggested that 7.b. be modified to read “Yacht Club or Community Center, may include a restaurant and ancillary uses not to exceed 15,000 sf.” He also suggested modifying the last paragraph of condition #7 to state that “conditions 7.a. and 7.c. shall not apply....”

Chairman Brandon requested the hearing move into commission member discussion and deliberations. Mr. Chipok provided the members with procedural background relating to the commission’s deliberations, the pending litigation and the court order which allowed the hearing to take place.

Mr. Chipok then reviewed the options of the commission: 1) The commission could deny the entire application; 2) Deny the marina and approve the residential component; or 3) Approve both the marina and residential components, adding that issues relating to the number of dry dock slips approved, along with any other modifications to the existing recommended conditions, need to be clear on the record.

In addition to the typographical corrections in the draft resolution which he noted earlier in the meeting, Mr. Chipok reiterated the condition modifications previously discussed. Specifically, on page 9, condition #1, striking all words following “no later than” and replace them with “October 1, 2007”; on page 10, condition #7, item b. add “or Community Center” following Yacht Club; item c. change “...not to exceed a maximum of 450 vessels/dry slips.” to “...in an amount the lesser of a maximum of 450 vessels/dry slips or the amount that may be permitted by the applicable state permitting agencies.”; the final paragraph of condition #7 should add “7a and 7c” following “This condition”. Mr. Chipok also reiterated the changes to the development potential charts on page 2 of the resolution as previously stated by Roger Wilburn.

Commissioner Steve Katz made a motion to approve Resolution #2007-02 as amended; seconded by Commissioner Joan Spinney. Chairman Brandon opened it up for discussion by the members.

Commissioner Pascoe stated he is concerned with the 450 dry docks and requested an amendment to the motion to reduce that number to 50. Both Commissioners Katz and Spinney declined acceptance of the amended motion. Several other commission members stated they had concerns, including the 450 dry docks. Commissioner Erndl asked Mr. Chipok a question concerning VGMC criteria #4 relating to natural resources, stating that it may not be found to be inconsistent with an adjacent jurisdictions comprehensive plan, however, may have adverse impacts on natural resources beyond the jurisdiction. Mr. Chipok stated you need to consider the comprehensive plan as a whole, reading the tone and tenor to determine what objectives the jurisdiction is looking to capture.

Commissioner Spinney stated there was testimony presented that regulations allow 3 boat slips for every 100’ of shoreline, which in this case is 500. Ms. Spinney added that it is not the

VGMC's role to question what is allowed by the regulatory agencies. Several commission members commented concerning the number of wet slips that would be allowed if the marina was not approved.

In response to a question concerning the staff recommendation of 50 dry slips, Mr. Wilcox responded that number was derived utilizing boat registration figures as earlier presented, and also with the assumption that the marina would be private and serving only the proposed residential development community. Mr. Wilcox also reiterated that the planning staff has found the application inconsistent as proposed and recommends denial, however, if the commission chooses to find it consistent, they suggest the commission attach the conditions to the approval.

Chairman Brandon asked how large the building would be to accommodate 450 dry slips. Joe Krzys responded that it may not necessarily be limited to one building, adding they are bound by a 35 foot height restriction as well. Mr. Krzys also stated he senses that you could not fit 450 slips in a dry area on this property, however, that won't be determined until they get to the permitting stage. Commissioner Pascoe asked Mr. Krzys if there is a lesser number of dry slips that would be acceptable to him. Mr. Krzys stated the 450 number came out of the Manatee Protection Plan, but the actual allowable slips will be determined once they meet with all the regulatory agencies. He also added that in order to be competitive, they're seeking approval for as many as will be allowed by the regulatory agencies. General discussion ensued regarding the possible design of the building which would house the dry slips.

With respect to the proposed 50 wet slips in a concentrated area, Mr. Harris reminded the commission that this would take away riparian rights of all of the adjacent land owners so they cannot ask for their own dock. Mr. Harris also stated he feels the commission is going beyond the scope of their review by getting into permitting issues.

Chairman Brandon called for a roll call vote on the earlier motion to approve Resolution #2007-02 as amended. Motion failed with a 5-9 vote – Vote list attached as Exhibit A of these minutes.

Mr. Chipok advised that the commission needed to come to conclusion on this matter and another type of motion is needed that the commission would approve.

Commissioner Suzanne Steiner made a motion to deny the amendment application; seconded by Tony Cole.

Commissioner Erndl stated there are other options the commission may wish to consider, including the possibility of approving without the marina component, or putting more restrictions on the marina. Commissioner Lee agreed, stating that the concerns seemed to be with the marina and not necessarily the residential development.

Discussion ensued concerning the proposed number of dry slips, the size of the marina, and the commission's scope of authority relating to the restrictions on size. Commissioner Steiner asked VGMC planning staff if there were objections to the amendment if the residential development

was approved without the marina. Mr. Wilcox responded that they do not have objections to the residential development portion of the amendment.

Commissioner Steiner withdrew her motion to deny the amendment in order to discussion other options; Commissioner Cole withdrew his second to the motion.

Discussion ensued regarding impacts and potential number of docks if individually permitted versus a commercial marina. Mr. Chipok reminded the commission that docks on individual pieces of property are beyond the scope of the commission and the issue before them concerns the proposed marina.

Commissioner Joan Lee made a motion to approve the residential development with 250 units, deny the marina component, and include conditions #1 (as earlier amended), #2, #5, #6, #7b. & #9; seconded by Commissioner John Heaphy. Chairman Brandon called for a roll call vote. Motion failed with a 5-9 vote – Vote list attached as Exhibit B of these minutes.

Commissioner Rebecca Mendez made a motion to approve the amendment as indicated in the original motion, however, limiting the dry dock storage to 200 slips. Commissioner Katz recommended the motion be amended to read “Adopting Resolution #2007-02 inserting 200 rather than 450 in the language we approved earlier”. Commissioner Mendez amended her motion as suggested; seconded by Commissioner Steve Katz. Motion carried with a 9-5 vote – Vote list attached as Exhibit C of these minutes.

ADJOURNMENT

The meeting was adjourned at 1:30 a.m. June 12, 2007.

Attest:

Chairman