

Volusia Growth Management Commission

MEETING MINUTES FOR  
REGULAR MEETING HELD  
Wednesday, October 24, 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  
Daniel Reed  
Danny Allen  
Steve Katz  
Rebecca Mendez  
Karen Hall  
John Heaphy  
Ed Blackman  
Sally MacKay  
James Kerr  
Donna Steinebach  
Billy Carter  
Sandra Walters  
Rachel Sieg  
Tony Cole  
Suzanne Steiner  
Joan Lee

Excused  
Absent

NON-VOTING MEMBERS

Sara Lee Morrissey  
Peter Brown  
(not present)

OTHERS PRESENT

Thomas Cloud, GrayRobinson, P.A.  
Barry Wilcox, MSCW  
Merry Chris Smith, VGMC Coordinator

CALL TO ORDER

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

REPRESENTING

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

REPRESENTING

Volusia Co. School Board  
SJRWMD

### ROLL CALL

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

Chairman Brandon welcomed two new members, Danny Allen representing the City of DeBary, and Billy Carter representing the Town of Pierson.

### APPROVAL OF MINUTES

John Heaphy moved to approve the minutes of the August 22, 2007 meeting as written; seconded by Sandra Walters. Motion carried unanimously.

### PUBLIC HEARING

Chairman Brandon announced a change in the scheduled order of public hearings, stating he understood that the Town of Pierson would be asking for a waiver of the 90 day rule. Bob Keeth, representing the Town of Pierson, requested a continuance and waiver of the 90 day rule in order to allow time to work out the issues. Mr. Cloud stated that staff recommends the commission grant the request.

Commissioner Allen raised a question concerning RAI's and the timeframe of this application. Mr. Keeth stated that DCA had raised objections which took some time to address and that there was also some confusion over the submittal of additional data/new application.

Commissioner Sieg raised a question concerning information in the staff report which indicated the Town would not be splitting the amendment package, would not be submitting response(s) to the RAI(s) and wished to move forward with public hearing. Mr. Keeth responded there again was confusion with respect to the need to address the outstanding RAI(s) once the latest package was submitted. Mr. Keeth added that only two of the amendments have objections, however, they do not plan to split the package as they believe they need to be considered as a whole package. In particular, Mr. Keeth stated there are provisions in parts of the text amendments which will offset some of the impacts identified in the two amendments which have raised objections.

General discussion ensued concerning issues relating to the RAI's.

Steve Katz moved to approve the Town of Pierson's request for a continuance and waiver of the 90 day rule; seconded by Jim Kerr. Motion carried unanimously.

### 1) Consideration of VGMC Case Nos. 06-064A & 07-051A, City of Daytona Beach Shores Large Scale Amendment Applications

Tom Cloud stated there were several parties requesting party status to the proceedings. Specifically, Myra Gercken, Tamara Ray and Michael Clancy, Michael and Terry Durkin,

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Tommy and Debbie Partin, Peter Gjessing, and Klara Gjessing who filed a citizen petition, and also the landowner/developer Lady Godiva 2, LLC. Mr. Cloud stated from a legal standpoint both requests have met the test and he recommends the commission grant them party status.

Sandra Walters made a motion to grant party status to both requests; seconded by Robert Pascoe. Motion carried unanimously.

The VGMC Coordinator swore in those individuals who were planning to present testimony during the public hearing.

Barry Wilcox, MSCW, presented the staff report to the Commission. Mr. Wilcox stated this is a large scale future land use map amendment requesting a change in designation from Volusia County Urban Low Intensity which allows up to 4 dwelling units per acre to the City of Daytona Beach Shores Medium Density Residential which has a maximum density of 35 units per acre. He stated the property is approximately 3 acres in size and located at 3704 Cardinal Boulevard.

Mr. Wilcox reported that the original application was received on September 21, 2006, along with other text amendments, and was assigned VGMC Case No. 06-064. On October 9, 2006, within the 30 day review window, he stated the VGMC received a request for public hearing from Volusia County and issued a Request for Additional Information (RAI). On October 10, 2006, the VGMC received a citizen request for public hearing. Mr. Wilcox reported that on November 29, 2006, the VGMC granted a waiver of the 90 day rule to allow the City additional time to discuss the issues the County had with the amendment. From this time until June, 2007, Mr. Wilcox stated discussions took place between the City and County to work out the various issues, which resulted in a Joint Planning Area Interlocal Agreement that was approved by the County Council on June 21, 2007.

Mr. Wilcox reported that on August 20, 2007, VGMC received an additional large scale amendment application from the City of Daytona Beach Shores, VGMC Case No. 07-051, which included four amendments relating to the initial map amendment and terms of the JPA. Mr. Wilcox stated the VGMC received correspondence from Volusia County legal staff on September 17, 2007 withdrawing their request for public hearing, as well as follow-up correspondence from the County's Growth Management Department withdrawing the public hearing request.

Mr. Wilcox reviewed some of the terms of the interlocal agreement, including an overlay zone requirement that limits the height on the property to 35 feet plus any architectural differences, landscape buffer requirements, a PUD requirement, and joint review of the development plans.

Mr. Wilcox stated that one of the amendments in the latest application places a parcel specific density limitation of 20 dwelling units per acre on this property which would theoretically allow approximately 60 units on the site. This represents a net increase of 48 dwelling units over what is allowed under the current land use designation.

Mr. Wilcox reported that the transportation study submitted with the application showed approximately one peak-hour trip per household, for a total of 48 additional peak hour trips, which does not significantly affect the transportation network.

He also stated he understands there has been concern raised that the utilities extended would only provide for single family development. Mr. Wilcox reported that the City of Port Orange provides services to this area and they have confirmed they do have capacity available at potable water and waste water plants to serve this site. Additionally, he stated that Port Orange advised that any necessary improvements would be done so at the cost of the developer.

Mr. Wilcox reported that the City coordinated with Volusia County Schools to address any potential impacts.

Mr. Wilcox read into the record consistency criteria #6 which states "The existence of an agreement among all substantially affected local governments, substantially affected parties (if any) and the applicant which provides for all said governments' consent to the application. If the commission determines that such an agreement exists for any given application, then it shall be rebuttably presumed that said application does not adversely affect intergovernmental cooperation and coordination." In this case, Mr. Wilcox stated the existence of the interlocal agreement signed by Daytona Beach Shores and the County basically resolved those issues, and is the intent of this process.

Commissioner Sieg asked if the substantially affected parties in criteria #6 includes the parties to which the commission granted party status. Mr. Cloud responded that the parties referenced in criteria #6 are the parties to the interlocal agreement. With respect to rebuttable presumption, Mr. Cloud stated when the VGMC rules were developed, the commission unanimously created this for those who entered into interlocal agreements. He added that these agreements are difficult to negotiate, particularly with multiple parties, and one of the main purposes of the commission is to facilitate these types of agreements.

Commissioner Walters asked Mr. Wilcox to explain the condition in Section 3, under C, paragraph 4 of the JPA. Mr. Wilcox responded that he did not author the JPA but believes it was intended to address any environmental concerns relating to the site. He added there was some confusion over an issue regarding a potential City marina and it was assumed this was the site for the marina along with the proposed development. Mr. Wilcox advised that City staff has assured him there is not intended to be any non-residential uses on the site. Ms. Walters asked if this was in writing and signed by the City. Mr. Wilcox stated he does not have anything signed by the City but believes there is a staff report that addresses it. Mr. Cloud stated the City could put that on the record at this hearing if that is their representation.

Commissioner Walters asked why you would need the VGMC if it is presumed consistent when an agreement such as this exists. Mr. Cloud responded there really wouldn't be a need if all the local governments in all of their dealings could enter into intergovernmental agreements that satisfied each other, however, he believes this is the first in all the cases the VGMC has reviewed.

Commissioner Walters asked about the issues contained in Montye Beamer's report dated October 19, 2006, as well as a November 27, 2006 memorandum she obtained via a public records request to the County. Terry James of Volusia County stated at the County Council meeting of October 19, 2006, the County Manager and City Manager from Daytona Beach Shores indicated they would be negotiating a Joint Planning Area agreement. He added the negotiations were between those parties and they were not involved at that point. Mr. James stated the agreement was brought back and approved by the County Council on June 21, 2007.

Commissioner Walters continued to ask questions relating to the County memorandums. Mr. Cloud interjected to clarify the order of the hearing and suggested that since the VGMC staff presentation was complete, they move forward to hear from the applicant and then allow questions of the County be asked when they came forward to comment.

Stewart Cruz, City Planner, Daytona Beach Shores, addressed the Commission, stating the City has been working with the County for nearly a year to arrive at an understanding and point to move forward. He stated that the original proposal was for 106 units and in an effort to address objections and issues raised, the City approached the County to work out these issues, which resulted in the approved JPA. Mr. Cruz added that the scale of the proposal has been reduced significantly to approximately 60 units on the site.

Commissioner Pascoe asked if Wilbur by the Sea was involved in putting together the JPA. Mr. Cruz stated the County of Volusia represented them in the negotiation process.

Commissioner Steiner asked for clarification on the number of units since 60 units has been mentioned tonight, while there is a letter dated June 1<sup>st</sup> that refers to a maximum of 36-45 units. Mr. Cruz responded that the future land use amendment proposed produces a maximum of 60 units; the letter she's referring to is a staff estimate of the total units which could be developed based on property constraints. Ms. Steiner also asked if the citizens who have objected were involved in the JPA. Mr. Cruz responded not to his knowledge.

Commissioner Sieg asked about the City of Port Orange letter objecting to the amendment. Mr. Cruz stated that letter was prepared in 2006 prior to the revisions. Since issuing the revised plan, the City of Port Orange did not submit objections, in fact, they issued St. John's Water Management worksheets.

Commissioner Walters commented that if the City thought the site would be limited to 36-45 units, why didn't they include that in the comp plan amendment. Ms. Walters stated she visited the site and took photos which were presented on the overhead projector. She stated she was most concerned with the wetlands and asked how many acres of wetlands are on the property. Mr. Cruz advised he believed it was approximately .25 acres, adding those would not be subject to development and would be controlled through the PUD agreement in the JPA.

Showing photos she took of Cardinal Drive, Ms. Walters commented there are 2, 10-foot lanes and no shoulders. She also stated that she sat in the driveway on Sunday from 12:00 – 12:15 p.m. and counted 77 cars in those 15 minutes.

Mr. Cruz stated there is a 70-foot right of way and if there are any safety or concurrency management issues related to traffic, those will be addressed during the site plan and PUD process. He added he did not believe the land use stage is the appropriate time to be discussing those issues.

In response to earlier questions from Commissioner Walters regarding documents she received from the County as a result of a public records request, Terry James stated the comments dated October 4, 2006 appear to be a rough draft which was later captured in the October 19, 2006 report from Montye Beamer which went to the County Council for direction. He stated at the October 19, 2006 Council meeting, the County Manager and City Manager advised they would negotiate a JPA to work out their differences, adding that they were not involved in those negotiations and could not speak to what specifically transpired or who was involved. Mr. James stated the November 27, 2006 memo he prepared provided review comments on a draft agreement. On June 21, 2007, he stated Mr. Dineen brought the final agreement back before the Council.

Ms. Walters stated she wanted to individually go through the County's objections and understand how they have been addressed in the JPA.

Mr. Cloud clarified the order of process and asked Mr. James if he had any comments to present prior to the questions. Mr. James advised he did not, other than the fact that the County submitted a letter dated September 18<sup>th</sup> indicating the JPA satisfied any issues raised by a letter sent by the County on October 5, 2006. Additionally, Volusia County legal staff had sent VGMC a letter stating it did, in fact, meet all of the County objectives.

Commissioner Mendez asked if the JPA went before the County Council for approval; Mr. James responded affirmatively. She commented that any prior comments from staff would be moot at that point.

Referring to the October 19<sup>th</sup> report, Ms. Walters asked Mr. James how the JPA addresses these issues:

- 1) (County's 1<sup>st</sup> issue) The amendments lack of compatibility with the single family and low rise oriented residential nature of the unincorporated area associated with the Cardinal Boulevard corridor.

Mr. James stated their general concern was the maximum development scenario of approximately 106 units @ 35 units/acre. He stated this was cut down in the JPA and the conceptual plan has proposed 45 town homes. He also stated they felt the 35' height limitation was more compatible.

2) (County's 2<sup>nd</sup> issue) The project's close proximity to the Wilbur by the Sea community which is located within the unincorporated area and is covered by a local plan.

Mr. James stated the County felt the limitation on the maximum development scenario, the landscape buffers and masonry wall in the JPA agreement sufficiently addressed this.

3) (County's 3<sup>rd</sup> issue) The limited hurricane evacuation routes.

Mr. James stated this was addressed by the limitations as well as the transportation study done by the Department of Transportation indicating that segments of the roadway within the vicinity of the current site operate acceptably and are projected to operate acceptably. He stated this was addressed in a letter from DOT to DCA dated October 13, 2006. Ms. Walters asked if that was referring to every day traffic, or emergency situations. Mr. James responded that it was referring to every day traffic.

4) (County's 4<sup>th</sup> issue) Inadequacy of the local roads and traffic impacts.

Mr. James stated when this project originally came in there was a possibility of a public marina which triggered their concerns. He stated that has been addressed to a certain degree in the JPA. Ms. Walters asked if the JPA states no commercial development on the property. Mr. James responded that it does not state that directly, however, it states clear interaction between the development and the Halifax River. If that occurs, they would have to show how it would interact with the community. At this point, he stated it is based on the drawings showing 45 town homes, a gazebo, dock, pool and clubhouse.

Commissioner Walters placed a FEMA map on the overhead projector and pointed out the 100 year flood plain area.

Commissioner Sieg asked if there was a map that depicts the surrounding area and County/City lines. Mr. Wilcox displayed a location and aerial map, and brief discussion ensued regarding annexations and service issues.

Commissioner Hall asked if there were any other developments in the area that were 35' in height. Mr. Wilcox stated 35' is generally considered the standard for single family homes and pointed out a specific nearby development which exceeds 35'.

Commissioner Mendez asked if neighborhood convenience centers and office would be permitted under the current County land use. Mr. James stated there are locational criteria that would prohibit commercial on this property. Ms. Walters asked if it would be inconsistent if commercial were allowed; Mr. James responded affirmatively.

Commissioner Steiner asked for clarification concerning the DOT traffic study. Mr. James responded.

Michael Woods, Cobb & Cole, representing the property owner, addressed the commission. Mr. Woods stated it has been a long process and there has been a good deal of cooperation between the City and the County to address the combined needs. He stated the major product of the cooperation was the creation of the JPA which addresses the critical issues, including the height limitation, landscape buffering, the obligation that any development would be processed through a PUD, and a parcel specific density cap of 20 units/acre on the property. Mr. Woods noted that the medium density residential (35 units/acre) which was originally requested, is the future land use designation present across the street on Cardinal and down the street.

In response to issues raised earlier, Mr. Woods stated that the original comments raised in Montye Beamer's memo were based on the original application with higher density.

Mr. Woods stated the role of the VGMC is to resolve intergovernmental conflicts and not to act as a second bite for zoning or land use decisions of a specific jurisdiction. He also stated the VGMC staff report indicates the issues raised by the citizen petitioners, though important for discussion, fall outside the scope of VGMC's authority and he objects to the VGMC being the body to address those issues.

Commissioner Katz stated he would like the wetlands issue to be addressed. Mr. Woods stated many of the objections raised will be handled through the PUD and permitting process.

Randy Hudak, Zev Cohen and Associates, pointed out the limits of the wetland areas utilizing the aerial map. From a planning standpoint, Mr. Hudak stated that any wetland impacts are regulated by both Daytona Beach Shores and the SJRWMD. He also stated he does not have the specific size of the wetlands, but agrees it is approximately  $\frac{1}{4}$  acre.

Commissioner Hall asked if there have been any comments from the SJRWMD relating to the wetlands. Stewart Cruz advised the amendment has been transmitted to DCA and other required agencies including the SJRWMD and they did not have any objections to the future land use amendment. He stated the ORC report was received approximately two days ago and the SJRWMD did not object to the future land use amendment as revised.

As a result of additional questions from Commissioner Walters relating to the ORC report, Mr. Stewart stated that DCA and all of the other agencies did not object to the future land use map amendment as revised. He added that DCA provided comments, however, they did not have anything to do with item #11 which is the Lady Godiva future land use map amendment.

Commissioner Sieg asked about trip ends -- how it is different from what is existing, and whether or not it changes the level of service.

Shawn Collins, Ghaybi & Associates, consultant for the developer, stated that trip ends for the original application were 105-106 peak hour trips. Due to the reduced density, it has been reduced to 60 peak hour trips and does not affect the level of service. Mr. Collins stated the currently adopted land use produces 12 peak hour trips. He stated his analysis looked at the highest and greatest use for the adopted land use and all of the segments within the radius of the

study area. Mr. Collins stated when he did the same analysis for both the original proposal and the one before them tonight, the same facilities that were having problems with the adopted land use are experiencing the same problems with the proposed. Ms. Sieg asked if there are any other developments in the area that could affect that. Mr. Collins responded he's sure there is, but that is not their concern.

Commissioner Steiner stated that the original comments from the County stated the proposed increase in density will result in significant impacts to the surrounding transportation network, and the location of the subject property on a barrier island amplifies the need to ensure adequate roadway capacity in the event of evacuation. Ms. Steiner asked Terry James what was based on and how it has changed. Mr. James responded that it was based on the original proposal of 35 dwelling units per acre and also a proposed marina on the site. He stated the reduced density and intensity as a result of the JPA have made a considerable difference. Commissioner Walters stated that the JPA does not require there to be no commercial development on the property. Mr. James reiterated the submitted conceptual plan in the back of the JPA with no commercial development, and also reiterated item C.4. under Section 3 of the JPA which requires submission of a detailed plan in the event of interaction between the development and the Halifax River. Ms. Walters asked who the plan for waterfront treatment would be submitted to. Mr. James responded it would be the City of Daytona Beach Shores, and the County would have the opportunity to review it, but not object to it.

At 8:40 p.m., the commission took a brief break and reconvened at 8:50 p.m.

Chairman Brandon announced that those present to speak in opposition of the amendment would be heard at this time.

Dennis Bayer, attorney representing the neighbors, addressed the commission. Mr. Bayer stated that most of the development in proximity to the proposed site is single family residential. He stated based upon their study, the most recent multi-family development in proximity to this site occurred in 1981.

Mr. Bayer agreed that the citizens have standing, adding if the project goes through, it will set a dangerous precedent for other areas in close proximity. He also referenced the letter from Ken Parker, City of Port Orange, addressing water/sewer service and single family residential development.

Mr. Bayer discussed concerns relating to increasing density in a coastal high hazard area. He stated his understanding is that the City of Daytona Beach Shores is currently considering changing its evacuation time from 6 hours to 19 hours.

Mr. Bayer stated the height limitation provided by the JPA is really 47 feet. He also discussed setbacks as they relate to the conceptual site plan, and stated the JPA does not call for shoreline buffers which would protect the wetlands.

Mr. Bayer discussed the consistency criteria:

#1 relating to area-wide central utility solutions – Mr. Bayer referenced Ken Parker’s letter which he indicated states “this really isn’t what we had in mind when we provided sewer in this area”.

#2 relating to transportation – Mr. Bayer stated his clients will give specific site traffic studies they have done that shows there are thousands of cars that go through on weekends and other times. He added that this is an evacuation and beach access route not just for DB Shores but also Ponce Inlet, Wilbur by the Sea and other locations in that area.

#4 relating to natural resources – Mr. Bayer stated you basically have an enclave as the property is surrounded to the north and south by properties in the county. He stated there has been discussion concerning a public marina, boat slips, dredging, wetlands. From a planning perspective, Mr. Bayer stated these are reasonably foreseeable impacts that need to be addressed now and not at the permitting stage as the City suggests.

Mr. Bayer stated they dispute the finding in the staff report that states the property east of this project is predominantly medium density residential in nature. He states it is overwhelming single family residential in close proximity to the subject site.

Mr. Bayer also expressed concern with the overlay requiring anything over 2.5 acres to be submitted as a PUD, stating they don’t understand why it doesn’t apply to the entire 3-acre parcel. He stated they are concerned the property could be subdivided, resulting in less than 2.5 acre parcels and eliminate the need for certain reviews.

Mr. Bayer requested that the commission look at the analysis based on the increase from the existing land use to the proposed; and not look at the reduction from the original proposal to the current proposed.

Commissioner Katz asked Mr. Bayer his opinion on the VGMC rule where if there is an agreement between the parties, there is a rebuttable presumption that consistency has been met. He also asked how his clients would rebut it. Mr. Bayer stated he liked the fact it is rebuttable which means evidence can be heard and a determination made if the presumption can be overridden. He stated his clients weren’t given a seat at the table at the meetings which occurred between the City, County and the developer. He also stated the citizens have raised objections all along and their objections have not been met. Mr. Bayer stated they feel it is inconsistent from a density perspective, the staff report erred in the predominant nature of the area, and there are traffic and hurricane evacuation issues. He also stated they have nothing in writing from the City of Port Orange that they are satisfied with the JPA.

Commissioner Allen stated that Section 90-35c4 states that any substantially affected or aggrieved party shall have the right to file a petition within 21 days. He asked if the citizens filed within 21 days and Mr. Bayer responded affirmatively. Mr. Allen stated just because the County dropped it, the citizens filed and met the requirements of section 90-35 so they have a right. Tom Cloud stated that he believes the applicant’s argument is not that the citizens didn’t

properly intervene as a party, but that part of what they are arguing about is not within the VGMC jurisdiction.

Myra Gercken, 3712 Cardinal Boulevard, addressed the commission in opposition of the amendment. Ms. Gercken stated the project is located in the middle of a single family residential area; the west side of Cardinal Boulevard is comprised of 131 properties – 130 of those are SFR, and one is a two-story 16-unit condo. She stated the project with the proposed 45 units is inconsistent, incompatible, and incongruent with the neighboring properties, adding that it is not a project on Peninsula or Atlantic Avenues, it's on the west side of Cardinal. Ms. Gercken stated if Lady Godiva wants to be consistent with the neighborhood, she was quite sure that none of the neighbors would object to a two-story, 16-unit project. She quoted the Volusia County staff report (Oct. 2006) – “The condominium project could also transform the neighborhood from a single-family to high rise multi-family neighborhood. Most of the homes on Cardinal Blvd are modest in size and value for this beachside neighborhood. The planned development represents a radical land use change in the neighborhood and may create a domino effect where the single-family character in the area transitions to a multi-family format.” She stated that is exactly why they are objecting so strongly—based on fear of what’s next. If approved, she asked, how can you prevent a parade of multi-family developments on the west side of Cardinal Boulevard.

Daniel Baer, 3520 Surfside Terrace in the County, stated they are looking for protection from the County. Mr. Baer discussed safety issues, the narrowness of the road, school bus and garbage pick ups. He placed a copy of the conceptual plan on the overhead and raised issues concerning rainwater runoff. Mr. Baer also presented a photograph of water on the road following a 20-minute rainfall. Referring to the number of units and height limitation, Mr. Baer commented that the numbers were all over the place during the first part of the hearing. He stated the lack of infrastructure will lead to safety issues, and the environmental and compatibility issues have not been answered.

Anthony Perna, 3650 Cardinal Blvd, which is the property just to the north of the proposed site. Mr. Perna stated he made the decision to buy the property almost solely based on the fact of what would not happen -- that it is a single unit home area. Mr. Perna discussed earlier offers from Lady Godiva to purchase his property, adding that all offers were rejected.

Peter Gjessing, 3718 Cardinal Blvd, who also owns 3716 Cardinal Blvd, addressed the commission relating to traffic concerns. He stated there are only two roads to travel from Dunlawton to Ponce Inlet – Cardinal Boulevard & A-1-A. Mr. Gjessing stated on April 22, 2007, the County traffic engineer Kevin Scott counted almost 4,000 cars. He also presented photographs of traffic and water on the road. Mr. Gjessing expressed concern with flooding and emergency evacuation issues and he does not feel it has been discussed enough. Lastly, he stated there have been two accidents reported to the police in the past 6 months.

Tamara Rae Clancy, 3812 Amelia Drive, which is  $\frac{1}{4}$  -  $\frac{1}{2}$  mile south of the property. Ms. Clancy stated she has environmental issues with construction impacts on wetlands, manatees, etc. She also stated the schools are already overcrowded.

No one else came forward to speak in opposition.

Michael Woods, referring to a future land use map on the overhead, pointed out the areas which are currently medium density residential. He stated the issue before the commission is not necessarily what is constructed there now, but what the future land use provides for right now and is the application consistent with that. He added that he feels the commission has sufficient evidence on the record to show that it is consistent.

Mr. Woods stated future land use applications do not consider site plan issues. He stated the conceptual site plan was provided at the request of the County to give a worse case scenario after going from a 106 tower structure to a town home structure of what could be in place. He emphasized that it has not been permitted, it has not gone through the PUD process, it hasn't gone through the SJRWMD and it is premature at this point. He added that the commission should not consider that drawing as competent, substantial evidence.

Mr. Woods stated the objections raised have been heard and will continue to be heard through the PUD process.

In response to comments raised by citizens, Mr. Woods emphasized that there may be single family residential structures across the street, but it is medium density residential. He also reiterated that the comments from the County in October, 2006 were based on the original proposal and not the one before the commission tonight. With respect to the fear of the unknown, Mr. Woods stated there is a process for that through elected officials. With respect to the roadway and safety issues, Mr. Woods stated that condition is present now; adding that school buses and garbage trucks go up and down that roadway now and this project is not going to affect that. He added this is a planning issue and not a future land use issue. Regarding traffic counts, Mr. Woods stated they stand by their traffic consultant who has certified his findings. With respect to the photographs of standing water somewhere on the road which were presented, Mr. Woods stated this does not necessarily provide that this project will increase drainage issues or cause further problems. He added that the developer is responsible for stormwater capacity on the site. Mr. Woods stated to point to a pre-existing concern and deny the ability to go forward based on that, would be blending a future land use issue with a planning and zoning issue.

The public hearing portion was closed at 9:35 p.m.

Commissioner Pascoe commented that years ago when he was involved with Daytona Beach Shores, the Wilbur by the Sea residents wanted to remain single family residential. At that time, the City established a line on the ocean side with respect to zoning. Mr. Pascoe asked where you draw the line on the river side, adding that it seems to him the line should be north of where it is now. Pointing to properties on the future land use map, Mr. Pascoe asked if they were medium density residential. Mr. Woods responded affirmatively.

Commissioner Walters asked the proximity of Wilbur by the Sea to the property. Mr. Woods advised it was approximately  $\frac{3}{4}$  of a mile.

Commissioner Katz asked Mr. Woods if he felt the City of Port Orange was excluded from the process. Mr. Woods responded that he felt Port Orange had ample opportunity to respond if they had objections.

Commissioner Walters asked Mr. Woods if the fact that Port Orange did not issue a formal objection could have had anything to do with the fact that the County was entering into the JPA. In other words, she stated, they would not want to interject themselves between the City and County. Mr. Woods stated he could not speak to that.

Commissioner Steiner asked about Mr. Bayer's statements concerning the evacuation time. Stewart Cruz stated the City submitted an amendment to update the evacuation time to be consistent with the County. He stated that Wilbur by the Sea and the entire County have a 19 hour evacuation time. Ms. Steiner also asked him to address shoreline buffers and marina issues in terms of what could be allowed on the property. Mr. Cruz stated he could not speak to that as he has not done any form of analysis and the application did not include a marina. She also asked why the citizens were not included in any of the JPA discussions. Mr. Cruz responded that the elected officials at Volusia County approved the JPA and he suspects that those individuals in the unincorporated area voiced their views to them.

Commissioner Sieg asked if notification of either the City or County hearing to consider the JPA was given to the citizens. Mr. Cruz responded that it was not given directly, but it was advertised pursuant to state law.

Commissioner Walters asked if it was true that Council Member Art Giles represents this area and that he very adamantly opposed this project before the County negotiated the agreement. Mr. Cruz responded that it is his understanding that Councilman Giles represents this area and also that he voted in favor of the JPA.

Commissioner Hall asked Saralee Morrissey how this project will impact schools. Ms. Morrissey stated that they looked at this last year, but enrollment has declined this year. Michael Woods reviewed a June 13, 2007 letter from Ms. Morrissey to him that indicated mitigation was not being requested at this time. He added that school impacts will be addressed at site plan.

Commissioner Allen asked if it is normal to put medium density residential in the middle where you have low density on either side. Mr. Wilcox stated he cannot speak to previous annexations that have occurred here. One of the biggest issues, he stated, is that we have a barrier island that is probably several hundred yards wide with two jurisdictions governing that area. He also stated it is a quick transition, but generally due to the proximity of all the uses.

Discussion ensued regarding the current land use designations on surrounding properties.

Commissioner Steiner stated that there were specific objections originally made by the County, yet the JPA seems broad. She asked what the purpose of the JPA is if it does not specifically address the issues that made it totally inconsistent initially. Mr. Wilcox responded that at this point, we are looking at future land use and would only consider type of use and intensity of use,

both of which he believes are covered in the JPA. He also stated the JPA presumes that the proposed medium density residential land use is what will be adopted, and the JPA addresses the intensity in the height restriction.

Commissioner Walters commented that there is no legal requirement in the JPA that states that commercial cannot go on this property. Mr. Wilcox responded that it his understanding that commercial is not allowed in the medium density residential land use category. Ms. Walters stated it is not spelled out in the JPA that there cannot be commercial. Mr. Wilcox stated that they would need to submit another comp plan amendment to allow commercial and it would have to come before the VGMC.

Commissioner Pascoe asked if they went to low density residential, could they construct up to 36 townhomes. Barry responded affirmatively.

Commissioner Steiner asked again about the purpose of a JPA. Mr. Wilcox stated a joint planning area allows joint review and joint say concerning planning issues that occur in that area. Tom Cloud added that it can also allow a City or County to transfer their planning powers to an adjacent jurisdiction.

Sandra Walters made a motion to deny a certificate of consistency because the applicant has not affirmatively provided VGMC with reasonable assurances that the amendment is consistent with adjacent Volusia County's comprehensive plan, and specifically does not meet VGMC criteria 1 through 5. And furthermore, that the evidence presented at this hearing effectively rebuts the presumption that this application does not adversely affect intergovernmental cooperation and coordination. Tony Cole seconded the motion.

Commissioner Katz asked Mr. Cloud for a foundation on how to determine if it has been a rebuttable presumption or not. Mr. Cloud stated that you can determine a couple of things: 1) no presumption was created, 2) a rebuttable presumption was created and was rebutted, or 3) that the presumption was created and not rebutted.

Commissioner Katz asked Mr. Cloud if the rules say that there is presumed to be consistency if the jurisdictions agree, what does the commission have available to find that is not enough to prove consistency – what do we rebut that presumption with. Mr. Cloud responded the testimony put into the record by Dennis Bayer and his clients.

In response to a request for further clarification, Mr. Cloud added we don't look at compatibility, but we look at stormwater, impacts to adjacent jurisdictions for environmental reasons, impacts to utilities, impacts to adjacent infrastructure and natural resources.

Commissioner Katz asked Mr. Cloud if the commission feels the JPA does not cover those issues, is that enough to rebut the presumption that they've addressed the consistency. Mr. Cloud responded affirmatively.

Commissioner Katz asked if the commission could ask the applicant to go back and address the issues. Mr. Cloud responded that tonight, the commission needs to vote to either approve or deny the request. Mr. Cloud added that they have a staff report that states the JPA is sufficient and recommends approval. Additionally, he stated he has not heard any conditions articulated that the opponents or applicant would agree to, nor any that staff has come up with. Mr. Cloud commented that he is not stating that he agrees or disagrees with the motion, however, he likes the wording of the motion since it was grounded on the provisions of the ordinance.

Commissioner Mendez commented that she agrees the motion was well worded, however, she disagrees with the motion and would be voting against it because she believes intergovernmental coordination has been met. Ms. Mendez added that the JPA is exactly what we ask the governments to do when they disagree, and they did what they were suppose to do.

Following a roll call vote, the motion carried with a 11-2 vote; Commissioners Mendez & Kerr voting in opposition.

#### REMARKS OF INTERESTED CITIZENS

Daniel Langley asked if the commission would be accepting public comment concerning the VGMC procedural review. Chairman Brandon clarified that this agenda item is intended for member comments at tonight's meeting, and comments from the jurisdictions and other interested parties will be heard at subsequent meeting(s).

Mr. Langley commented that he has reviewed the VGMC staff's proposed procedural revisions and he does not feel they address the issues. Mr. Langley commented concerning specific rules and submitted proposed revisions he prepared for the commission's consideration. He also reiterated that the City of DeBary wants to be involved in the procedure review process.

Ty Harris, law firm of Storch Morris & Harris, stated he was present to follow through on the commitment he made to provide input on the procedural issues and will continue to be involved.

#### REPORTS OF OFFICERS

None

#### REPORTS FROM CONSULTANTS

There were no questions relating to the case update.

#### REPORTS OF COMMITTEES

None

UNFINISHED BUSINESS

None

NEW BUSINESS

- 1) Presentation of VGMC Procedures Redraft – Chairman Brandon stated this would be addressed at a later meeting but asked the members if they have any comments currently.

Saralee Morrissey stated that regarding issue #1 relating to notifications, she would request that the School Board always receive notice of the applications. Additionally, she stated there is language in the public school facilities elements that relate to the relationship of jurisdictions to each other by way of school attendance boundaries, and pointed out that impacts to specific schools can affect other jurisdictions based on where that attendance boundary lies but it is not always an adjacent jurisdiction.

Mr. Cloud commented that those are very valid comments. He added that the VGMC is not obliged to follow the time deadlines set out in 163 because we are a charter entity. He stated there are a number of judicial decisions that have come out in the last two years which state that charters can provide changes to the way com plans are processed in any given jurisdiction. Mr. Cloud stated the VGMC has the ability to set its own timeframes, and also the ability to change this from a quasi-judicial proceeding to a quasi-legislative proceeding.

Commissioner Mendez suggested looking at adding a completeness review timeframe to the process and submittal requirements for the application.

Commissioner Allen raised a question concerning Section 90-35(f) and the VGMC review as it relates to DCA review. Mr. Cloud stated our rules encourage a concurrent review, however, it requires cooperation from all parties and it is not an automatic requirement of the rules. Commissioner Allen distributed copies of proposed revisions prepared by the City of DeBary which he asked the members to share with their respective governmental leaders.

Saralee Morrissey suggested the commission establish a schedule for their commitment to review the procedures. Due to the late hour, the commission discussed scheduling this for the November regular meeting. Commissioner Steiner asked if the members should hold their comments until the meeting, or submit any comments in the meantime. Mr. Cloud stated the sooner staff has time to review them, the more responsive they can be. Chairman Brandon suggested that any comments be submitted to the VGMC Coordinator for dissemination to staff and other members.

- 2) Election of Officers

Karen Hall made a motion to retain the current VGMC officers for another term; seconded by Steve Katz. There were no other nominations. Motion carried unanimously.

REPORTS AND REQUESTS OF COMMISSION MEMBERS

Commissioner Walters asked what the policy is concerning attendance at meetings. Chairman Brandon stated that a member cannot have three consecutive unexcused absences.

REPORTS AND REQUEST OF COMMISSION CHAIR

None

ADJOURNMENT

The meeting was adjourned at 10:32 p.m.

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Attest:

Chairman

A large, stylized graphic of the words "DRY" and "EAT" in a bold, italicized font. The letters are filled with a light gray color and have a dark gray outline. The "D" in "DRY" and the "E" in "EAT" overlap significantly, creating a sense of depth and movement. The "R" in "DRY" and the "A" in "EAT" are also partially overlapping. The "Y" in "DRY" and the "T" in "EAT" are positioned at the top right of the graphic.