

Volusia Growth Management Commission

MEETING MINUTES FOR
REGULAR MEETING HELD
Wednesday, October 22, 2008

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

MEMBERS PRESENT

Gerald Brandon, Chairman
Joan Spinney, Secretary
Richard Walton
Stephan Dembinsky
Danny Allen
Steve Katz
Sandy Lou Gallagher Excused
Sandy Jones
John Heaphy
Roger Sonnenfeld
Rick Tresher
James Kerr
Billy Carter
Patricia Heller-Jackson
Bobby Ball
Sandra Walters
Rachel Sieg Excused
Tony Cole Excused
Suzanne Steiner

REPRESENTING

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

NON-VOTING MEMBERS

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

REPRESENTING

Volusia Co. School Board
SJRWMD

OTHERS PRESENT

Paul Chipok, GrayRobinson, P.A.
Barry Wilcox, 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.

APPROVAL OF MINUTES

Referring to page 3, paragraph 3 of the August 27, 2008 draft minutes, Commissioner Walters asked Barry Wilcox, VGMC Planning Staff, how the City of Edgewater DRI application could be pending if it was not received until September 2, 2008. Mr. Wilcox responded that it was not pending at that time and the City had contacted VGMC staff in advance of submitting the application.

Commissioner Katz suggested amending the draft minutes to change the word “pending” to “coming”. Sandy Jones made a motion to approve the minutes of the regular meeting held on August 27, 2008 as amended; seconded by Steve Katz. Motion carried unanimously.

PUBLIC HEARING

1) Consideration of VGMC Case No. 08-043, City of Ormond Beach large scale amendment application.

Paul Chipok, VGMC Legal Staff, read the procedures for public hearing and Merry Smith, VGMC Coordinator, swore in the witnesses who would be providing testimony.

Barry Wilcox addressed the commission, stating this is an administrative text amendment submitted by the City of Ormond Beach to address statutory requirements relating to the water facilities supply plan. Mr. Wilcox stated that Volusia County had several minor issues with the amendment package, which primarily related to some map errors which made it appear that the City of Ormond Beach would be planning for unincorporated areas. He stated the City & County have met and agreed upon changes which are included in the staff recommendation.

Commissioner Allen asked why the City & County didn't just handle as a JPA if they were in agreement, rather than bringing it to the VGMC in the form of a public hearing. Mr. Wilcox responded that it could have been handled that way or through an interlocal agreement, but it was a matter of timing. Mr. Chipok added that the only way VGMC can issue consistency certification with conditions is to handle it through a public hearing and resolution. He further stated the jurisdiction is required to include the conditions of approval at adoption.

Commissioner Walters raised a question concerning the findings in the staff report relating to criteria #2. Mr. Wilcox responded that if the water quality does not support development, it could result in a net loss. Commissioner Walters also commented that she has requested that VGMC require colored maps be submitted by the jurisdictions, adding that the quality of black and white maps as contained in the package are difficult to differentiate.

Laureen Kornel with the City of Ormond Beach, and Carol McFarlane of Volusia County addressed the commission in response to a question relating to the service area. Ms. McFarlane explained that in discussions with City staff, they found the area located within the NRMA was not being serviced by the City in anticipation of residential development, but rather they are using it for wellfield production. As a result, Ms. McFarlane stated the County requested the City show that area on the map as a wellfield production area and not a service area.

As a point of clarification, Mr. Chipok referred to map 2.1.1 of the package which is in color and pointed out that the yellow portion is the wellfield production area.

There was no one further present to speak in favor of or opposed to the amendment. Chairman Brandon closed the public hearing.

Mr. Chipok read portions of Resolution 2008-06 relating to this amendment into the record.

Chairman Brandon pointed out a typographical error on page 4, line 1, where the word "no" needs to be changed to "not".

Joan Spinney made a motion to approve Resolution 2008-06 as corrected; seconded by James Kerr. Motion carried unanimously.

REMARKS OF INTERESTED CITIZENS

Barbara Herrin, 465 Wildwood Drive, New Smyrna Beach, Chairperson of ECARD, Inc. read into the record a letter dated October 22, 2008 in opposition of the Edgewater Restoration amendment.

Betty O'Laughlin, 715 McKenzie Road, Lake Helen, stated she is the President of the Volusia/Flagler Environment Council and they support ECARD's findings and position on this matter.

Clay Henderson, law firm of Holland & Knight, representing Hammock Creek who is the applicant to the City on the Restoration development, addressed the commission. Mr. Henderson stated that the application was transmitted to the VGMC, properly advertised and the time has run for substantially affected parties to file a petition. Additionally, he stated during the process both the City of New Smyrna Beach and Volusia County had requested 21-day extensions during which time various meetings were held with representatives of New Smyrna Beach and the County. He stated that on October 14, 2008 following significant discussion, the City of New Smyrna Beach voted not to send comments to the VGMC and also to withdraw their request for public hearing. Mr. Henderson further stated that on October 16, 2008 following lengthy discussion, the Volusia County Council decided not to refer the matter to VGMC. He added that the time has run for adjacent jurisdictions and substantially affected parties to petition the commission and he does not expect a hearing to be scheduled before the VGMC.

Commissioner Steiner raised a question relating to the number of acres located in the NRMA. Mr. Henderson responded approximately 5,000, adding that it is not a consistency issue because the standards the City of Edgewater has proposed in their comp plan exceed the standards for NRMA.

Commissioner Walters asked Mr. Henderson what the Volusia County Council vote was. Mr. Henderson replied that the Volusia County Council was a 4-3 vote, and the City of New Smyrna Beach was a unanimous vote.

REPORTS OF OFFICERS

None

REPORTS FROM CONSULTANTS

Mr. Chipok provided an update on the Partin case. He reported there was a meeting of all the parties on September 23, 2008 and conversations are continuing as a result. Mr. Chipok stated the original request for abeyance ran through October 10, 2008 and the City requested a 30 day extension. He stated the judge's order was just received earlier in the week extending the abeyance to November 10, 2008.

Mr. Chipok reported that staff attended a meeting held today with the County and City managers as well as attorneys representing some of the jurisdictions. Mr. Chipok stated that areas of concern raised included definitions, adjacent jurisdiction and issues of standing. He stated the feeling from the municipalities and the county was that from our charge of the charter, the VGMC should primarily be looking at the intergovernmental coordination between the various local government jurisdictions. With respect to standing, Mr. Chipok stated their thought process is that standing should be limited to adjacent jurisdictions. With that, he stated they are suggesting no independent citizen standing because citizens have access to the comprehensive plan amendment system through Chapter 163. Mr. Chipok stated with the limited issue of intergovernmental coordination, they felt it should be between the local governments and if the citizens wanted to participate in that process they should do so at the local government stage and not before the VGMC.

Mr. Chipok stated the County Manager Jim Dinneen spoke at length and urged the City Manager's to come together with a list of issues and try to reach consensus on how to address those issues, then submit to VGMC to act on.

Commissioner Allen stated he had a conversation with the City of DeBary's attorney Dan Langley and he understood there was an issue raised regarding burden of proof. Mr. Chipok stated this issue was raised and the general feeling was that a proposed amendment should be presumed consistent, with the responsibility lying with the challenging party to prove that it is inconsistent.

Commissioner Allen also asked about the jurisdiction's wanting the ability to remove their appointee at any time. Mr. Chipok stated there was discussion on expanding how an individual appointee can be removed by a local jurisdiction.

Commissioner Walton asked if the County & City Managers and Attorneys present were in agreement on these issues. Mr. Chipok stated that these were some of the issues raised and it is still early in the process. He stated he believed this is the first time a grouping of the cities and county have gotten together to formulate philosophically what their main concerns are. Mr. Chipok stated the information he reported is what he understood their main concerns to be, however, by no means was there a vote taken or specific direction given, adding that the process is still subject to a considerable amount of discussion.

Commissioner Allen commented that he understood the City Managers represented that they felt that the VGMC has been exceeding its authority. Mr. Chipok stated there were comments that the VGMC should not act as a super zoning board. He also explained the planning analysis utilized in reviewing a comp plan amendment for consistency must look at the maximum impacts allowed by the proposed land use. In some cases, he explained the jurisdiction's intent is not to develop the property to the maximum allowed, and in order to garner a consistency certification the applicant jurisdiction will suggest conditions limiting densities or other factors to which, in turn, limit the potential impacts from the application and allow the application to move through the process. Mr. Chipok stated these types of conditions may be what is causing the impression that the VGMC is acting as a zoning board.

Mr. Chipok reported that the VCOG Executive Board has also invited VGMC to be on their agenda for their meeting scheduled for Monday, October 27, 2008 at 5:00 p.m. where these same issues are expected to be discussed.

Commissioner Walters commented for the record that the VGMC was created by the voters in 1985 and ratified by the voters in 2006. She further stated that while other groups are allowed to comment on the rules, the final recommendation of changes comes from the VGMC for approval by the County Council. In response, Mr. Chipok read directly from the charter provision relating to the VGMC rules of procedure.

Mr. Chipok stated that the POP committee had met yesterday to discuss some of the procedural issues and another meeting is planning to be scheduled to discuss the comments received from the various jurisdictions.

REPORTS OF COMMITTEES

Chairman Brandon stated the POP Committee had met yesterday for approximately three hours and he commended the committee for the time and effort they have put into this process. Mr. Brandon stated the committee looked at rehearings, 13 of the processing issues, and the application summary. He stated there was not sufficient time to review the comments received from the various jurisdictions and the committee discussed scheduling another meeting in

November to do so. Mr. Brandon stated once they get through those, the committee will bring it all back to the full commission for discussion.

UNFINISHED BUSINESS

Chairman Brandon stated that further consideration of proposed rules changes will be held off until the POP committee has something further to present. General discussion ensued relating to the timeframe of when we should expect additional comments from the manager's and whether to hold off scheduling a POP committee to review the comments they individually submitted earlier.

NEW BUSINESS

1) Election of Officers: Chairman Brandon presented certificates of appreciation to all of the VGMC members on behalf of the commission and himself as outgoing Chair.

Commissioner Katz nominated Gerald Brandon to serve as Chairman. Mr. Brandon stated the rules would not allow him to serve as Chairman for another term.

Commissioner Kerr nominated Joan Spinney as Chair, Gerald Brandon as Vice Chair, and Steve Katz as Secretary. There were no further nominations, and the commission unanimously elected Joan Spinney as Chair, Gerald Brandon as Vice Chair and Steve Katz as Secretary.

Several members of the commission commented on the outstanding job Mr. Brandon has done during his term as Chairman.

REPORTS AND REQUESTS OF COMMISSION MEMBERS

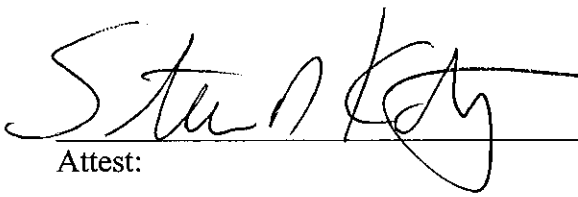
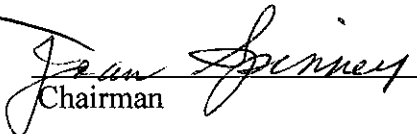
Commissioner Walters reported that the historic Thornby property has been purchased by the City of Deltona as a public park.

REPORTS AND REQUEST OF COMMISSION CHAIR

Chairman Brandon again thanked all of the members and staff for their efforts.

ADJOURNMENT

The meeting was adjourned at 8:00 p.m.

Attest:  
Chairman