

Volusia Growth Management Commission

MEETING MINUTES FOR  
REGULAR MEETING HELD  
Wednesday, April 23, 2008

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

MEMBERS PRESENT

Gerald Brandon , Chairman  
Robert Pascoe, Vice Chair  
Joan Spinney, Secretary  
Richard Walton  
Danny Allen  
Steve Katz  
Rebecca Mendez  
Karen Hall  
John Heaphy                   Excused  
Ed Blackman                   Excused  
Rick Tresher  
James Kerr  
Donna Steinebach  
Billy Carter  
Sandra Walters  
Rachel Sieg  
Tony Cole                       Excused  
Suzanne Steiner

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  
Pierson  
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 7:03 p.m.

## ROLL CALL

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

## APPROVAL OF MINUTES

Joan Spinney made a motion to approve the minutes of the regular meeting held on January 23, 2008; seconded by Rachel Sieg. Motion carried unanimously.

## PUBLIC HEARING

- 1) Consideration of request from the City of New Smyrna Beach for an extension to comply with VGMC Resolution #2005-02

Mark Rakowski, Development Services Director for the City of New Smyrna Beach, introduced Chad Lingenfelter, Chief Planner for the City of New Smyrna Beach, to address the commission.

Chairman Brandon asked if VGMC planning or legal staff had any comments prior to the City's presentation. Barry Wilcox, MSCW and Paul Chipok, GrayRobinson stated they concur with the City's request for an extension.

Mr. Lingenfelter addressed the commission regarding the conditions and status of Resolution 2005-02. Mr. Lingenfelter stated they have finished all of the modeling for the Southeast Volusia Transportation Study. He discussed the scope of the study, adding that Port Orange, Edgewater and Volusia County have partnered with New Smyrna Beach. Mr. Lingenfelter stated they are awaiting financial capacity information so they can make the amendments to the Capital Improvements Element. He further stated they will likely have the amendments to the Future Land Use and Transportation Elements as required in the Resolution to their Local Planning and Zoning Board in the June or July timeframe.

Mr. Lingenfelter stated that the City notified Volusia County, Edgewater and Port Orange of their request for an extension to comply with Resolution 2005-02, adding that the County and Edgewater communicated they did not have any objections to the extension, but that they had not heard back from Port Orange.

Mr. Lingenfelter stated that the study was impacted and delayed by discussions relating to a potential interchange at I-95.

Mr. Lingenfelter stated the City of New Smyrna Beach currently has approximately 14 pending comprehensive plan amendments which they would like to be able to submit to the VGMC. He indicated that only a couple of those are increasing density, most are text amendments and approximately one-half of them are reducing density.

General discussion ensued concerning the Pioneer Trail/I-95 interchange matter, as well as areas in the city where reduced density is being proposed.

Mr. Rakowski commented that the City was asked not to submit any new comprehensive plan amendments until the conditions of the prior resolution had been met, however, they would like the ability to submit amendments they feel help compatibility and that are in the best interest of the public. Additionally, he stated he felt the primary reason for the prior resolution was to not increase densities, particularly in the western part of the City, unless they knew they had the transportation system in place.

Mr. Chipok explained to the commission that the City currently has an outstanding resolution requiring a traffic study, however it is not yet complete. He stated that the City is working diligently to complete the study, however, because of non-compliance with this resolution, our rules state that any new applications submitted must go to public hearing before the commission. Mr. Chipok further explained if the commission approves the extension of time to comply with Resolution #2005-02, any new applications submitted by the City will be considered on their own merits.

James Kerr made a motion to approve the City of New Smyrna Beach's request for an extension to December 31, 2008 to comply with Resolution #2005-02; seconded by Joan Spinney.

Commissioner Steinebach expressed concern that there are conditions of approval in the resolution which have not been met, other than the traffic study. Mr. Wilcox stated the extension would be for item D only as requested by the City. Mr. Chipok concurred.

Commissioner Steinebach questioned Mr. Lingenfelter concerning rezonings, fair share agreements and matters relating to the other conditions of approval.

Commissioner Katz asked if the commission is saying they are in compliance with all of the conditions or are just extending the date of compliance for the traffic study. Mr. Chipok responded that the commission is saying they have an extension on the traffic study and the rest of the conditions still need to be complied with. Mr. Rakowski commented that most of the conditions revolve around the traffic study and they cannot meet those conditions until the traffic study is completed.

Commissioner Mendez commented that the conditions seem to read for small area studies and asked if the SE Regional Transportation Study will be taking the place of the small area traffic study. Mr. Lingenfelter responded affirmatively and stated the study partners decided to do a regional study. Mr. Wilcox added that we don't want to penalize the jurisdictions for getting a larger study and that it will provide much better information.

Commissioner Sieg asked if individual traffic studies were completed for the projects within the development. Mr. Lingenfelter responded that they were completed on three of the projects and staff has compiled a cumulative list of impacts. Commissioner Sieg asked who determined there was no impact on adjacent jurisdictions. Mr. Lingenfelter replied that City staff did, adding that they have a shared methodology with other jurisdictions. Commissioner Steinebach asked if City staff determined that there was no need for the developer to enter into fair share agreements

and that they agreed with the findings that there were no impacts. Mr. Lingenfelter responded that two of the projects were prior to the requirement, and that they have no problem coordinating with adjacent jurisdictions on Land Mar.

The motion to approve the City of New Smyrna Beach's request for an extension to December 31, 2008 carried 14-1; Commissioner Steinebach voted in opposition.

#### REMARKS OF INTERESTED CITIZENS

None

#### REPORTS OF OFFICERS

None

#### REPORTS FROM CONSULTANTS

Mr. Chipok updated the commission on pending litigation matters. He reported that Lady Godiva had filed a Petition for Writ following their request for rehearing, with the intent to hold everything in abeyance. He stated the court then issued an Order to Show Cause requiring VGMC to respond to the petition, at which time legal staff got with Lady Godiva and filed a joint motion to hold everything in abeyance. Mr. Chipok stated the court denied the motion to hold in abeyance and directed the clerk to close the file and stated they could leave for the petitioners to reopen the case after the Partin v. VGMC case is concluded. As a result, Mr. Chipok stated this matter is closed at this time.

With respect to the Partin v. VGMC matter, Mr. Chipok stated VGMC has filed our response, both Lady Godiva and the City of Daytona Beach Shores has filed their responses, and the County filed an amicus brief. He further stated that Partin has filed their reply to VGMC's response, and it is anticipated their reply to the Lady Godiva and the City's responses will follow shortly. Mr. Chipok also stated a request for oral arguments has been filed.

Mr. Wilcox reported that he is working with the VGMC Coordinator to develop a mechanism for tracking resolutions. He added that the POP committee has discussed establishing procedures which would give the jurisdictions the ability to withdraw and resubmit applications once the issues are addressed, which may reduce the number of conditional approvals.

Mr. Wilcox reported he's become more actively involved with VCOG and their efforts to implement smart growth policies in Volusia County. He provided the commission with an update on the progress being made and added that the County is moving forward quickly to take action in 2008.

Commissioner Mendez stated that DCA only allows two large scale transmittals per year and the jurisdictions compile multiple amendments within the transmittals. She asked if there is anything that prohibits the jurisdictions from submitting individual amendment applications for

consistency certification to VGMC to avoid holding up other amendments should there be outstanding issues on one of the amendments within the package. Mr. Chipok responded that we typically get what DCA gets. Historically, if further review is required with a particular amendment(s) in a package, we would split the case so that certification can be issued on those that qualify. Overall, he stated, it is easier to track as one package and also keeps it consistent with the DCA transmittal.

Referring to the pending case log, Commissioner Allen stated the acreage shown for the small scale amendment for the City of DeBary, VGMC #08-019, is 9.64. He stated that it is only a portion of the 9.64 acres that is currently being amended.

General discussion ensued concerning the monitoring of conditional approvals.

Commissioner Allen raised a question concerning PUD's requiring VGMC certification. Mr. Chipok responded that the impacts of development in mixed use categories cannot be measured up front and any PUD's in the mixed use district need to come to VGMC for review.

#### REPORTS OF COMMITTEES

1) POP Committee – Committee Chair Robert Pascoe reported that the committee has made good progress with the procedures review and another workshop has been scheduled for May 15<sup>th</sup>. Mr. Pascoe stated the committee is getting close to the end of the comment review and will be making a presentation to the overall commission once completed. He also stated the minutes of the workshops are posted on-line.

Mr. Pascoe also stated that the Planning Design Group (PDG) contract was coming due on June 1, 2008. In their committee meeting held earlier in the evening, Mr. Pascoe stated they discussed their relationship and performance and the committee felt the contract should be renewed. He reported that Donna Steinebach made a motion to recommend extending the VGMC's contract with PDG for an additional year, which was seconded by Rebecca Mendez and carried unanimously by the committee. The committee's action serves as a motion and a second to the full commission; the motion to extend the VGMC's contract with PDG for an additional year carried unanimously.

2) Budget Committee – Committee Chair Joan Spinney reported that the 2008-09 proposed budget has been submitted to the County is in the pipeline.

#### UNFINISHED BUSINESS

None

#### NEW BUSINESS

1) Consideration of Request for Attorney General Opinion on Issues of Dual Office Holding and Abstention on Voting:

Mr. Chipok explained that during the POP workshops, significant discussion relating to these issues has occurred and several questions have been raised:

1) Should commission members be allowed to also be city staff members? Mr. Chipok stated there have been Ethics Committee opinions issued that find there is nothing illegal or unethical with this. However, he stated the question becomes – does the commission want to impose some type of rule to prohibit it? Or, as an alternative to that, does the commission want to consider having members abstain from voting on any applications for their jurisdiction? The latter, he stated, regardless of whether the member was also a city staff member, would eliminate the appearance of impropriety. Mr. Chipok stated that our internal rules state you must vote if you are present, and there is a state statute that essentially reads the same. Under strict legal reading, Mr. Chipok stated there is an open question as to whether the make-up of the VGMC constitutes it as a board under state statutes, given the way members are appointed by the cities and county. Therefore, before the commission considers any decision to require members to abstain from voting, which could later be challenged as not allowed under state statute, Mr. Chipok stated an attorney general opinion is necessary in order to determine if the commission is considered a board for the purpose of state statutes.

2) Can a VGMC appointee also be appointed to other county and/or municipal boards? Mr. Chipok stated the make-up of the VGMC is unique in that there are appointees from both the county and individual municipalities within the county. He further stated that it is unclear whether dual office holding prohibition applies to either or both the county and city appointees.

Chairman Brandon asked the commission if they wanted to direct staff to move forward. Mr. Chipok stated they would craft a request and circulate it to the County attorney's office for input as well. Commissioner Katz asked if the VGMC is allowed to request an attorney general opinion. Mr. Chipok stated since we are a dependent special district, he believes we qualify, however, suggested the request be filed jointly with a municipality or the County.

Commissioner Walton asked how much time, money and effort would have to go into this. Mr. Chipok responded that most of the background work has been completed and does not feel it will be extensive. He added that it will cost a lot less than any litigation we may face if the question wasn't asked up front.

General discussion ensued.

Joan Spinney made a motion to authorize legal staff to proceed with requesting an attorney general opinion; seconded by Karen Hall. Motion carried unanimously.

#### REPORTS AND REQUESTS OF COMMISSION MEMBERS

Commissioner Sieg raised a question concerning the extension of time to comply with Resolution 2006-05 granted to the City of DeLand in February, 2008. Ms. Sieg stated that most of the development has occurred and asked what happens if the traffic study fails. She

commented that the conditions should be met before anything is built and raised further concern over the general tracking of conditions associated with resolutions. General discussion ensued concerning the monitoring of conditions of approval.

Commissioner Mendez announced that she was resigning from the commission due to other work-related and personal commitments.

#### REPORTS AND REQUEST OF COMMISSION CHAIR

Chairman Brandon raised an issue relating to individuals submitting materials of opinion to the VGMC office and requesting it be forwarded to all VGMC members. Mr. Brandon stated he felt the commission should establish a procedure to not accept these types of materials if they are unrelated to a matter which would come before the commission.

Joan Spinney made a motion to establish a policy not to accept materials that are unrelated to commission issues; seconded by Rachel Sieg.

Mr. Chipok added that one exception the commission may want to consider is the VCARD newsletters and announcements. He stated that VCARD generally does not advocate a particular position, but rather tries to make people aware of general issues. Mr. Chipok stated that a general announcement of issues is different than when people are asking for support of advocacy on a particular position. He further stated that this commission and its resources should not be utilized to advocate any one particular position, unless we were to open it up to all positions.

General discussion ensued concerning the various sources of communications. Commissioner Steinebach commented that she felt uncomfortable carving out niches for certain groups or entities and putting staff in the role of determining what should or should not be passed on. Commissioner Spinney stated that any materials that come before the commission are received from staff in the agenda package. She further stated she would amend her motion for staff not to forward any other materials.

Commissioner Joan Spinney reiterated that the motion is for the commission not to honor any requests to forward materials to the individual members; this was seconded by Danny Allen.

Several members commented in favor of receiving announcements, such as news paper articles, as well as case related information. The commission also discussed the issue of materials being sent directly to the commission members. The VGMC Coordinator commented that one of the primary issues which surfaced the discussion is that the VGMC office has received communications that specifically advocate a political position or an opinion on an issue that is not related to the VGMC, with a request from the sender to distribute to all members.

General discussion ensued concerning individuals lobbying the members. Mr. Chipok stated there is no direct prohibition to lobbying, however, full disclosure is required.

Commissioner Katz suggested the motion be voted down so that it can be amended to include the distribution of some materials, such as governmental agency communications, newspaper articles, etc. Commissioner Allen withdrew his second to the earlier motion.

Commissioner Katz made a motion to allow communications relating to governmental agencies, newspaper articles, educational opportunities, or as otherwise directed by VGMC legal staff, to be distributed to VGMC members. Commissioner Steinebach asked to clarify whether the motion includes communications which are submitted by interested parties on case specific matters. Mr. Chipok stated that historically, communications submitted to the VGMC on case specific matters are forwarded to staff for their review and consideration in preparing their report and recommendation. Mr. Wilcox stated they include those communications in the staff report. The VGMC Coordinator added that case related emails and communications can be received after the staff report has been distributed, right up to the time of the scheduled public hearing.

Mr. Chipok commented that a number of valid points have been raised regarding this matter as a whole and suggested that this issue be addressed through the POP committee in order to develop a checklist for use by staff which can be applied across the board.

Commission Katz withdrew his earlier motion.

Commissioner Mendez made a motion for the POP committee to look at how we deal with requests for information to be distributed to the commission members at their next workshop and to bring a recommendation back to the full commission; seconded by Commissioner Hall. Commissioner Pascoe commented that the POP committee has a considerable amount of matters for discussion at the next workshop. Motion carried 14-1; Commissioner Pascoe voted in opposition.

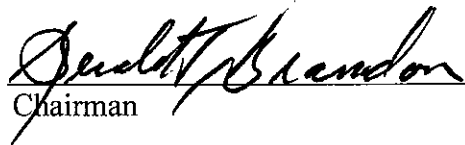
Chairman Brandon asked Mr. Chipok to address the commission relating to JPA's and VGMC's review. Mr. Chipok stated that Chairman Brandon had recently met with various elected officials who expressed concern over VGMC reviewing JPA's. Mr. Chipok stated the VGMC does not review JPA's nor the legitimacy of JPA's, but rather considers it as additional information that is evaluated within the context of a comprehensive plan amendment. He added that the VGMC charge is to determine whether a proposed comprehensive plan amendment is consistent with the comprehensive plans of adjacent jurisdictions.

Chairman Brandon reported that he has met with the individual members of the County Council and questions were raised regarding JPA's and the VGMC's review. Chairman Brandon stated he discussed the scope of the VGMC's review with them, as was explained by Mr. Chipok. Overall, Chairman Brandon stated he felt the visits went well and he feels they are supportive of the VGMC.

#### ADJOURNMENT

The meeting was adjourned at 9:13 p.m.

  
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Attest:

  
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Chairman