

Volusia Growth Management Commission

MEETING MINUTES FOR
Wednesday, April 25, 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
John Heaphy Excused
Ed Blackman
Sally MacKay
James Kerr
Donna Steinebach Excused
Doug Weaver
Rachel Sieg
Tony Cole
Suzanne Steiner
Joan Lee

NON-VOTING MEMBERS

Sara Lee Morrissey
Peter Brown (not present)

OTHERS PRESENT

Paul Chipok, GrayRobinson, P.A.
Megan Wimer, 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
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

REPRESENTING

Volusia Co. School Board
SJRWMD

ROLL CALL

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

Mr. Chipok addressed the commission concerning Item III of the agenda, Welcome New Commission Members – Danny Allen, City of DeBary. Mr. Chipok explained that VGMC members are appointed by the municipality or County they represent, adding they are appointed for a specific term of three years. According to Florida case law, Mr. Chipok advised when a public officer is appointed to a position, he has a property right in that position and cannot be dismissed from the Commission without appropriate due cause. He stated that in this situation, Mr. Erndl has not resigned and the Commission has taken no specific action under its rules to remove him from the Commission. As a result, Mr. Chipok stated although Mr. Allen's willingness to serve on the Commission is appreciated, the City of DeBary seat is not vacant.

Commission member Joan Spinney arrived at 7:07 p.m.

Danny Allen stated for the record that he was present at the meeting to represent the City of DeBary. Mr. Allen also stated that the City's attorney has a different opinion than Mr. Chipok and asked if the Commission had voted to determine that he could not represent the City of DeBary.

Commission member Jay Erndl arrived at 7:08 p.m.

Chairman Brandon stated he had asked VGMC legal counsel for a determination as to whether or not the seat was vacated. Since the findings were that there was no vacancy, Mr. Brandon stated a vote of the full commission is not necessary.

George Coleman, Mayor of DeBary, stated he sent a letter to the Commission stating that Mr. Allen is their new representative. Mayor Coleman stated the VGMC has the right under certain conditions to remove a member, however, as a City, DeBary has the right to appoint and remove a representative to the Commission. Mayor Coleman stated as far as the City is concerned, Mr. Allen is their representative on the Commission.

Chairman Brandon stated there are certain stipulations that would be cause for removal and Mr. Erndl did not come under any of those regulations. Mayor Coleman responded that those are VGMC rules, and the City is a different entity and does not operate under the same laws. Chairman Brandon suggested at this point, the matter should be handled through the attorneys. Mayor Coleman suggested that Mr. Erndl not be allowed to vote on any matters at tonight's meeting since Mr. Allen is their representative. Commission member Steve Katz asked Mayor Coleman if he felt the City had the authority to remove a member and not reappoint a new member. Mayor Coleman responded affirmatively.

Commission members Doug Weaver and Saralee Morrissey arrived at approximately 7:10 p.m.

In light of the City's comments, Mr. Chipok suggested the Commission publicly vote on the endorsement of his letter dated April 19, 2007 (Exhibit A of these minutes) to the City of DeBary outlining the VGMC's position with respect to this matter. Commission member Becky Mendez asked to see a copy of the City's letter back to the Commission in response. A copy of the letter dated April 25, 2007 (Exhibit B of these minutes) from Mayor Coleman was distributed to the members.

Commission member Rachel Sieg raised a question concerning the term of appointments made by the City to other City boards. Mr. Chipok responded he had reviewed the City Charter and Code of Ordinances and there was nothing which would specifically give them the right to unilaterally remove a member of an appointed commission. Ms. Sieg asked if the City ever gave a reason why they wished to remove Mr. Erndl. Mr. Chipok responded they did not.

Commission member Becky Mendez asked for confirmation from commission member Jay Erndl that he did not resign. Mr. Erndl responded that he did not resign from the Commission.

Joan Spinney made a motion to accept the position of VGMC legal counsel, GrayRobinson, and endorsement of their letter dated April 19, 2007; seconded by Rachel Sieg.

Commissioner Katz stated he felt what the Commission was trying to do is come up with a rule or procedure as to how a member is removed. Mr. Katz added if the procedure is already in our rules, there is no need for a motion. However, if there is not a procedure for removal of a member, then the letter outlines how a member can be removed. Mr. Chipok stated the rules already specifically list how a member is to be removed from the Commission. Mr. Katz stated that the motion should be about ratifying the action of sending the letter on behalf of the Commission and suggested Ms. Spinney amend her motion to state that we ratify GrayRobinson's action on behalf of explaining VGMC's rule. Ms. Spinney amended her motion as suggested.

Commission member Robert Pascoe stated he does not feel it is appropriate to be voting on this matter. He commented that these are VGMC rules and our attorney's opinion is that there is no vacancy on the Commission.

Commissioner Sieg who seconded the original motion accepted the amended motion.

Commission member Steiner commented that she understood the vote was more about whether the commission agreed or disagreed with the letter of April 19th.

Motion carried with a 14-2 vote, representing 81.93% affirmative weighted vote; Commissioners Pascoe and Kerr voted in opposition.

APPROVAL OF MINUTES

Chairman Brandon noted a change on page 4, 2nd to last paragraph, last line, correcting the date to September 30th which was brought to our attention by Saralee Morrissey.

Joan Spinney moved to approve the minutes of the March 28, 2007 meeting as corrected; seconded by Sally MacKay. Motion carried unanimously.

PUBLIC HEARING

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

Mr. Chipok stated that a public hearing was scheduled for this application, however, within the past 1 ½ weeks, the Commission was served with a complaint from the City of DeBary on an emergency hearing which was held this past Monday. Mr. Chipok reported that at the hearing, the Judge issued a Supersedeas Order to Show Cause on a Petition for Writ of Prohibition. In the order, Mr. Chipok stated the VGMC has to file a response to the Petition for Writ of Prohibition, whereby they are questioning our authority to hold a hearing, by May 2, 2007. Another hearing has been scheduled before the Judge on May 7, 2007 at 1:30 p.m. In the meantime, Mr. Chipok stated the judge ordered the VGMC to stay its public hearing scheduled for this evening and any other action upon the comprehensive plan amendment, until such time as the court has made a determination on the merits or otherwise lifts the stay. As a result, Mr. Chipok stated the VGMC cannot hold the public hearing tonight relating to this matter. He added that the Judge is aware of the VGMC's desire to move forward, and therefore scheduled an expedited hearing for May 7, 2007 so that the Commission could potentially reschedule the hearing for the May 23, 2007 meeting.

In response to a question from Commissioner Spinney, Mr. Chipok summarized that an amendment application was received and an RAI issued, tolling the time to act on the application. Mr. Chipok stated the VGMC has received no formal response to the RAI from the City, and our position is the application time is still tolled and we can hold a public hearing. The City of DeBary's position, Mr. Chipok reported, is that there was documentation they state constitutes a response, and since the hearing was not held within the 90-day time period a consistency certification was issued by default.

Commissioner Katz raised a question concerning the process relating to ORC reports. Mr. Chipok explained that the governmental jurisdictions will hold a transmittal hearing to determine whether they wish to move forward with a comprehensive plan amendment. If they do, Mr. Chipok stated they transmit it to DCA for review and DCA will issue an ORC report back to the local jurisdiction at which time the local jurisdiction will schedule another hearing taking into consideration the objections, recommendations and comments from DCA. At that point, the jurisdiction will forward it back to DCA who will issue a Notice of Intent to find the amendment either in compliance, or not in compliance. In Volusia County as a result of the Charter and creation of the VGMC, Mr. Chipok stated the jurisdictions are obligated to not only transmit it to DCA, but also to the VGMC for intergovernmental coordination elements in accordance with the consistency criteria.

Commissioner Katz asked if a public hearing could be held prior to an ORC report being issued, or does it occur after an ORC report has been issued. Mr. Chipok responded that it is an independent process and our rules are set up to try to operate within a time frame where our consistency certification could be issued prior to the ORC report. He added, however, that's not always the case which is why if there is not sufficient information to make a determination and an RAI is issued, our rules provide for the time to be tolled. The purpose for doing so, he stated, was to allow time to work with the jurisdictions to address any issues. Mr. Chipok commented that historically, the VGMC has not looked to just say no, but rather looks for answers to alleviate impacts and arrive at conclusion.

In response to additional questions raised by Commissioner Katz, Mr. Chipok explained that our rules state there is an ongoing responsibility for local jurisdictions to provide the VGMC with new information received on an application they've submitted, specifically including ORC reports. If there is information contained in these documents which was not previously known or considered, the VGMC has the right to re-open a certificate of consistency and hold a public hearing.

Commissioner Katz asked what staff was doing specific to the City of DeBary case. Mr. Chipok stated everything has been stayed pending the outcome of the court decision.

Commissioner Mendez raised several questions concerning the two RAI's issued and expressed confusion regarding the tolling of time as it relates to VGMC's rules. Mr. Chipok advised there is a provision in the code that it is to be liberally construed in favor of the VGMC, and under that, there is a provision that the time period is tolled for all time periods when there is a request for additional information issued. He added that historically, we've operated under the premise that the tolling of time periods, is the tolling of all time periods, including the initial 30-day time period for staff to request additional information from the applicant, as well as the 90-day time period. Commissioner Mendez commented that this has been in question in the past and suggested these procedures be clarified. Mr. Chipok stated if the Commission wished to prospectively look at this, they may want to bring it before the POP Committee, however, tonight was not the proper forum. Chairman Brandon commented he felt we should not be discussing this until the court hearing occurred.

Commissioner Katz stated he felt the Commission needs to authorize the lawyers to represent the VGMC.

Several commission members stated they felt this matter should not be discussed. Commissioner Weaver agreed, adding the VGMC has capable legal staff and it is currently being handled in the courts and we need to move on. There was a general consensus in agreement of Mr. Weaver's statement. Commissioner Katz disagreed and stated he felt the Commission needed to authorize GrayRobinson to represent the VGMC. Several members commented that they are hired by the Commission and authorized to act on it's behalf. Mr. Katz indicated he felt there needed to be a procedure established for when a litigation matter arises between regular meetings where the Commission could meet with legal staff to discuss the matter at hand and provide authorization for them to proceed accordingly. Chairman Brandon suggested giving this to the POP

Committee for evaluation and if there is something missing which needs to be addressed for future use, they could bring back a recommendation to the full Commission.

Mr. Chipok stated what legal staff has done at this point in time is taken those actions necessary to preserve the jurisdiction of the Commission over this particular case in defending against the lawsuit that DeBary has filed against the VGMC. He added if the Commission wishes to proceed in a different manner, now would be the time to advise of such. If they wish to ratify the actions legal staff has taken and direct them to vigorously protect the jurisdiction and authority of the Commission, then the Commission could move to do so.

Commissioner Katz made a motion to ratify the actions of GrayRobinson in defending the VGMC in between meetings and also authorize them to continue the litigation we are in now. The motion failed due to a lack of a second.

Becky Mendez made a motion to direct the POP Committee to look at what the procedure is with the 21 days, 30 days, 90 days and come back to the full Commission with interpretations or documentation to avoid confusion on the procedure; seconded by Steve Katz. Motion carried unanimously.

REMARKS OF INTERESTED CITIZENS

Mayor Coleman stated that the City of DeBary is not saying the VGMC is involved with the removal of their representative, and that it is the City who took action to remove their member. He added that the VGMC rules are not the same as the City's.

REPORTS OF OFFICERS

None

REPORTS FROM CONSULTANTS

Megan Wimer, MSCW, provided a case update. Referring to the case log in the original agenda package dated April 10, 2007, Ms. Wimer reported that cases 07-007 through 07-020 have been recommended for certification. She reported that cases 05-055 & 06-050, City of New Smyrna Beach, are still pending awaiting an area-wide traffic study. Additionally, she reported that we recently received a copy of the Town of Pierson's response to the ORC report on pending case #06-051 and are looking at that. Ms. Wimer stated she has followed up on a number of the other pending cases.

Commission member Saralee Morrissey asked if the VGMC has seen any comp plan amendments from Oak Hill. Ms. Wimer responded that we have not received an application from the City of Oak Hill, however, were notified by Volusia County that the City had transmitted it to DCA. Ms. Morrissey stated she had not seen it yet and wants to be sure to review it. Ms. Wimer stated that either she or the VGMC Coordinator would be following up with the City of Oak Hill.

Paul Chipok updated the Commission regarding the Pinder amendment, RKH Investments versus VGMC. Mr. Chipok reported that a response to the Petition for Writ of Certiorari was filed by GrayRobinson on behalf of the VGMC on April 16, 2007, and a reply from the Petitioner is due May 11, 2007. Thereafter, the court will take action, although there is no specific time frame. Additionally, Mr. Chipok reported that Volusia County has filed an Amicus Brief in this case in support of the VGMC in the approval of the application.

Item VIII.B. Discussion of VGMC actions relating to the City of DeBary's adoption of Ordinance #31-06, large scale comprehensive plan amendment, VGMC Case 06-073

Mr. Chipok referred to the documentation in the agenda package addressing the VGMC's position that the City of DeBary was without authority to adopt Ordinance #31-06 because the City did not have a certificate of consistency. Mr. Chipok stated that the City of DeBary held the adoption hearing and adopted it anyway. He added the City has filed suit to prevent the VGMC from holding a certification hearing and the Judge has issued a stay order pending the outcome.

Mr. Chipok asked the Commission if it is their desire to contest DeBary's adoption of Ordinance #31-06 without a certificate of consistency. Mr. Chipok further stated if the Commission wishes to pursue this matter, he suggested it be added as a counterclaim in the present suit of DeBary vs. VGMC. Joan Spinney moved to contest DeBary's adoption of Ordinance #31-06 and add it as a counterclaim in the present suit; seconded by Tony Cole. Motion carried unanimously.

REPORTS OF COMMITTEES

1) POP Committee: Robert Pascoe, Chairman of the POP Committee, reported that the POP Committee originally had three interviews scheduled for the additional planning consultant to handle small scale and some large scale comp plan amendments. One of the firms withdrew, and the committee interviewed the Planning Design Group represented by Andre Anderson and Kendell Keith, and also Land Design Innovations represented by Chris Dougherty. At the conclusion of the interviews and subsequent committee discussion, Tony Cole made a motion, seconded by Jim Kerr, to authorize the VGMC Coordinator to offer the Planning Design Group (PDG) a rate of \$90/hour for small scale amendment reviews and \$125/hour for large scale reviews and if accepted, for PDG to prepare a contract for review. Mr. Pascoe reported that PDG accepted the rate terms and have prepared a contract which was reviewed by the committee at their meeting held earlier this evening. At the meeting, a motion was made by Becky Mendez, seconded by Belinda Collins, to authorize the VGMC Chairman to sign the PDG Proposal for Continuing Professional Planning Services, pending legal approval. Kendell Keith, representing PDG, was in the audience and Mr. Pascoe reviewed several modifications made by the committee and asked Mr. Keith if he had any concerns. Mr. Keith responded they were fine with the changes.

General discussion ensued relating to the budget and the amendment review. Mr. Pascoe stated that PDG would review the small scale amendments and some large scale amendments as determined by MSCW. Additionally, the \$30,000 annual budget estimate would come out of

contract service funds currently earmarked for MSCW and would be handled through purchase orders with the County.

The motion from the POP Committee to authorize the VGMC Chairman to sign the PDG Proposal for Continuing Professional Planning Services, pending legal approval, carried unanimously.

Mr. Pascoe introduced Kendell Keith to the Commission. Mr. Keith briefly spoke concerning their background and stated they look forward to working with the Commission.

2) Budget Committee: Joan Spinney stated there is nothing currently to report concerning the budget.

UNFINISHED BUSINESS

None

NEW BUSINESS

None

REPORTS AND REQUESTS OF COMMISSION MEMBERS

Commissioner Katz commented that he would like to see better communication instead of reading about matters in the paper. Additionally, he suggested the POP come up with a procedure for having a special or emergency meeting if necessary.

Commissioner Hall mentioned the Innovations in Planning Presentation sponsored by VCARD on May 11, 2007 and asked if anyone else was planning to attend. Several members indicated they may attend. Chairman Brandon stated the members could either send the registration in directly, or coordinate through the VGMC Coordinator.

Commissioner Spinney commented to the City of DeBary that in her many years on the Commission, we have always tried to work with the jurisdictions and she hopes the issues the City has with the VGMC can be resolved to the satisfaction of both parties. Ms. Spinney further stated she'd like to see us be able to go forward with the mission of the VGMC to work with them to smooth out bumps in comprehensive plan amendments. Ms. Spinney added that the VGMC is a solution seeking body and not an obstructive body.

Commissioner Steiner asked where we stand with respect to taking proactive measures that have been discussed. Chairman Brandon stated that Tom Cloud and Paul Chipok had presented information on where we are at the January meeting. In February, Jim Sellen presented information on where we might want to go, and that currently is being developed. Mr. Brandon also reported that he, Tom Cloud and Jim Sellen recently had a meeting with Councilman Jack Hayman, and also a meeting with County Chair Frank Bruno, both of which were positive.

Additionally, he stated the VCOG Smart Growth meeting which we attended in March was also positive and supportive of our reevaluation and looking at where we want to go. Mr. Brandon stated the next step is to meet with the other County Council representatives as well. Commissioner Mendez asked if there have been any meetings with the City officials. Mr. Brandon stated he has not met with City officials at this point, however, at the past two meetings he asked the members to meet with their respective City officials. He added that once that occurs and other meetings transpire with the County Council and VCOG, he suggested we schedule a meeting with representatives from all the jurisdictions. Ms. Spinney commented that we do not want to slight the cities. Ms. Morrissey commented that VCOG members are representatives from the cities.

Commissioner Erndl stated he was under the impression that there were materials being put together for the members to utilize in presenting to their respective jurisdictions. Chairman Brandon stated that what we have is the historical information prepared and presented by Tom Cloud at the January meeting, as well as the information prepared and presented by Jim Sellen at the February meeting. Additionally, he stated that we recently condensed the VGMC rules and regulations into a more reader friendly packet and forwarded a copy of this to each of the cities and County planning staff. Chairman Brandon directed the VGMC Coordinator to forward a copy of the condensed version of the rules and regs to all members.

Commissioner Hall suggested we hold some form of seminar for all jurisdictions to attend. Chairman Brandon stated we could look at doing that.

REPORTS AND REQUEST OF COMMISSION CHAIR

ADJOURNMENT

The meeting was adjourned at 8:20 p.m.

Attest:

Chairman