

Volusia Growth Management Commission

MEETING MINUTES FOR
REGULAR MEETING HELD
Wednesday, December 19, 2007

County Council Chambers
123 W. Indiana Avenue
DeLand, Florida

MEMBERS PRESENT

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

Saralee 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.

Chairman Brandon welcomed two new members: Rick Tresher representing the City of New Smyrna Beach and Richard Walton representing the City of Daytona Beach.

APPROVAL OF MINUTES

None presented.

PUBLIC HEARING

Chairman Brandon announced a change in the agenda order, indicating the commission would hear VGMC Case #07-053C prior to VGMC Case #07-053B.

Paul Chipok, VGMC legal counsel, read a statement of public hearing procedures into the record.

The VGMC Coordinator administered the oath to those individuals who would be speaking at the hearing.

1) Consideration of VGMC Case No. 07-053C, City of Daytona Beach, Walker's Green amendment

Barry Wilcox, VGMC planning staff, advised the Commission that the City of Port Orange had submitted a letter late this afternoon withdrawing their original objections and request for public hearing. Mr. Wilcox added that staff does not have any issues with the amendment, and with the withdrawal of objections from the City of Port Orange, the application could be letter certified.

Mike Disher, Planning & Development Manager for the City of Port Orange, stated that after their original objections were issued, the City Managers of both Port Orange and Daytona Beach met and resolved the issues and directed their respective staffs accordingly. With that agreement, the City of Port Orange has withdrawn their objections.

Tanya Gerhartz, a consultant representing the City of Daytona Beach, advised she has had the opportunity to work with the various parties and is pleased that the issues were resolved.

There was no one present who wished to speak in opposition of the request.

Steve Katz moved to accept the withdrawal of the request for public hearing from the City of Port Orange and turn VGMC Case No. 07-053C back over to staff to approve administratively; seconded by Joan Spinney.

Commissioner Steinebach asked if VGMC staff had any objections independent of those originally raised by the City of Port Orange. Mr. Wilcox affirmed that because of the overall reduction, staff does not have any objections.

The motion carried unanimously.

2) Consideration of VGMC Case No. 07-053B, City of Daytona Beach, Riverbend Church Amendment

Barry Wilcox presented the staff report to the Commission, stating the request is to change the future land use map designation from Volusia County Low Impact Urban and Environmental Systems Corridor which are designations which fall under the Natural Resource Management Area (NRMA), to City of Daytona Beach Government and Institutional with the intent to allow construction of a church on the property. Mr. Wilcox provided an overview of the property and its location, as well as surrounding property land uses, adding that the property is within the NRMA. He also discussed various conversations and a meeting which occurred after the application was received in order to exchange additional information with the City and their applicant.

Mr. Wilcox reviewed the individual consistency criteria and staff's findings. Mr. Wilcox stated that potable water and sanitary sewer will be serviced by the City of Ormond Beach, who has verbally confirmed they have the capacity to do so. Given the environmentally sensitive nature of the property and its proximity to the Tomoka River, Mr. Wilcox stated that staff is recommending a condition be placed upon it which would require the project be developed fully on central services. Commissioner Steinebach asked for clarification regarding the confirmation from Ormond Beach that they have the capacity to service this area. Mr. Wilcox stated that the City of Daytona Beach and their applicant have stated that the City of Ormond Beach has verbally advised them that they have the capacity to service the area, although VGMC staff has not received anything directly from Ormond Beach.

With respect to transportation, Mr. Wilcox stated that the applicant's analysis used an FAR of .2 which he stated is reasonable. Additionally, he stated the analysis reflects a reduction in P.M. peak hour trips from the current condition to the proposed condition. Mr. Wilcox stated that staff does not have issues with traffic, adding that they will be held to the concurrency standards of the City of Daytona Beach.

With regard to impact on infrastructure beyond the boundaries of the jurisdiction, Mr. Wilcox stated that roads and utilities have already been addressed, and there would be no impact on schools since this is a non-residential use.

Mr. Wilcox stated consistency criteria #4 relating to impacts on natural resources extending beyond the boundaries of a jurisdiction was of primary consideration. He stated that the property was designated as NRMA in the County, and staff wants to see the environmental sensitivity of the property recognized in the City of Daytona Beach. In this case, Mr. Wilcox stated the property contains approximately 25 acres of wetlands and is located within the Tomoka River

Basin. He added that NRMA is intended to recognize the environmental significance of large relatively uninterrupted expanses of natural resources which extend throughout the core of Volusia County. Mr. Wilcox reviewed requirements adopted by Volusia County to protect the environmental significance of properties in the NRMA, including the requirement of central utilities services, and the designation of at least 50% of the required open space to be preservation of upland habitat. Mr. Wilcox clarified that the latter requirement is not that 50% of the site be open space, but rather 50% of whatever the determined open space is be upland.

General discussion ensued relating to open space requirements.

As originally proposed, Mr. Wilcox stated staff finds the application inconsistent with criteria #4.

With respect to criteria #5 relating to the coordination and timing of capital improvements, and criteria #6 relating to the existence of agreements, Mr. Wilcox stated that staff has found the application consistent with each of these criteria.

Mr. Wilcox stated that overall, staff recommends denial of the application based on inconsistencies, however, added there are conditions which could be applied if the commission chooses to approve it. Mr. Wilcox then reviewed the recommended conditions of approval as outlined in the staff report, which included open space requirements, and that development of the site would be processed as a planned unit development subject to review by VGMC and the County.

General discussion ensued relating to open space requirements and wetlands. Mr. Wilcox added that the County already had these protections in place and we are simply transferring these safeguards to the City of Daytona Beach designation on this property.

Discussion ensued regarding the Environmental Systems Corridor area.

Referring back to the conditions of approval, Mr. Wilcox stated that if you develop under the NRMA overlay, there is a requirement that an environmental impact analysis be submitted to the County to show all impacts. He added that the City of Daytona Beach has agreed to do that.

Commissioner Steinebach asked if there was any language in the requested land use designation that addresses subdivision of the property. Mr. Wilcox responded that he understands the conditions apply to the property intact and any subdivision of the parcels would carry with it these same conditions.

Mr. Chipok asked Mr. Wilcox to confirm that going from the current County designation to the City's proposed designation of governmental/institutional use, is actually a lessening and cuts out the potential commercial and residential use of the property, limiting it to those governmental/institutional uses. Mr. Wilcox responded affirmatively, stating that you would be reducing the number of uses, but keeping the same protections in place.

Tanya Gerhartz, representing the City of Daytona Beach, addressed the commission. Ms. Gerhartz stated both the City and their applicant agree to the recommended conditions of approval. Ms. Gerhartz explained that anytime a municipality annexes a property, the municipality is required to apply a future land use designation to that property. These land use designations, she added, vary amongst jurisdictions. Additionally, Ms. Gerhartz stated that the planned unit development, together with a developer's agreement, will address many of the issues that have been raised tonight, adding that an open space requirement is part of that process.

Jim Morris, attorney with Storch, Morris and Harris representing Riverbend Church, addressed the commission. Mr. Morris discussed the characteristics of the property, including the wetlands, the ESC corridor and the NRMA overlay. He also stated this is a comprehensive plan review, not a site plan review, adding that the development will have to go through not only the City's site plan review process, but also the St. John's River Water Management District and Army Corp or Engineers permitting processes. Mr. Morris emphasized that the proposed use is much smaller than what is allowed under the current land use designation. Additionally, he stated his clients have agreed to the recommended conditions of approval which includes VGMC's review of the PUD. Mr. Morris further stated that the amendment has been reviewed by DCA and no objections were issued. Likewise, he stated, there were no objections from Volusia County or the City of Ormond Beach.

With respect to water and sewer service, Mr. Morris stated their civil engineer contacted the City of Ormond Beach who verbally confirmed they have the capacity to service this area, however, they did not receive this in writing from Ormond Beach. He added that even if the City of Ormond Beach cannot service this area, the City of Daytona Beach will be able to do so.

There was no one else present who spoke in favor of the amendment. Chairman Brandon asked if there was anyone present who wished to speak in opposition.

David Hartgrove, Conservation Chair and President of Halifax River Audubon in Daytona Beach, spoke in opposition of the request. Mr. Hartgrove stated he was primarily concerned that once the property was annexed into the City of Daytona Beach, there's nothing to stop them from changing the plans and potentially adding development such as a multi-story retirement center.

Commissioner Spinney commented that under the Government/Institution category, residential use is not allowed.

Commissioner Steinebach asked the City of Daytona Beach which zoning classifications are considered consistent with this land use designation.

Tanya Gerhartz stated this will be a planned development which allows for creativity on the zoning regulations. Jim Morris added that a planned development is the only classification for this property, pursuant to the recommended condition of approval.

Commissioner Steinebach asked for further clarification for the record with respect to allowable uses for churches. Mr. Morris responded that the church is a campus sort of arrangement, and within the campus configuration there would be various associated uses. The primary use is the sanctuary, but also could include a school and other outreach facilities. Mr. Morris added that a site plan for this property has not yet been completed, however, it must be consistent with the comprehensive plan, and the PUD will have to come back to the VGMC for review as per the recommendation condition of approval.

Margaret McCready read a letter into the record sent in by Aiden Magee, representing the Volusia Flagler Environmental Action Committee, in opposition of the request.

Betty O'Laughlin, President of the Environmental Council for Volusia and Flagler Counties, spoke in opposition of the request. Ms. O'Laughlin raised concerns regarding impacts to the wetlands and environment and asked why the church could not build on the property it currently owns to the north. In closing, Ms. O'Laughlin stated the Environmental Council is requesting the VGMC to deny the request.

There was no one else present who spoke in opposition of the request.

James Morris stated the property is subject to OFW standards whether it is in the City or the County. Additionally, he stated that Volusia County has an environmental section in it's Charter and the minimum standards set by the County apply in the cities as well. Mr. Morris also discussed what is allowed under the current land use designation and that the proposed land use designation reduces the intensity. With respect to Ms. O'Laughlin's statement concerning building on the property to the north, Mr. Morris referred to an aerial photo and pointed out the wetland on that property which the church had preserved. Mr. Morris stated that the NRMA standards have not been lost, VGMC staff has incorporated them into the recommended conditions of approval. Mr. Morris also commented concerning the statements in Mr. Magee's letter regarding sprawl. In closing, he discussed wetlands permitting requirements and also stated that this property still has to pass the concurrency test in the site plan process.

Mr. Chipok reviewed the draft resolution (Resolution 2007-06) which specifically addresses the recommended conditions of approval and he stated staff recommends approval of the resolution.

Commissioner Sieg commented that she believes the proposed use is much better than the current urban land use allowed on the property. Additionally, she stated that she believes the PUD process will help alleviate the environmental concerns.

Rachel Sieg made a motion to approve VGMC Case No. 07-053B/Resolution 2007-06; seconded by Rebecca Mendez. Motion carried unanimously.

REMARKS OF INTERESTED CITIZENS

None

REPORTS OF OFFICERS

None

REPORTS FROM CONSULTANTS

Barry Wilcox updated the commission on the public school facilities amendments. Mr. Wilcox reported that most of the amendments have come back from DCA with an ORC report. He stated there were concerns raised by DCA relating to the concurrency service area exception area which was created with the interlocal agreement. Mr. Wilcox stated that representatives for the school board as well as some of the local jurisdictions recently had a meeting/conference call with DCA to discuss the concerns and try to work out the issues. Commissioner Mendez stated she was involved in the conference call and felt there wasn't really anything that could not be resolved, adding that it may result in simple changes in text. Commissioner Mendez stated the jurisdictions will likely need to process some text amendments as a result of DCA's ORC report and asked what their obligations are with respect to VGMC. Mr. Chipok responded that according to our rules, if there is an ORC Report, and any changes which come about through final adoption after VGMC has already certified, the cities and county are required to provide that to VGMC for analysis. If there are any substantial changes noted, he stated it should be processed as a new comp plan amendment, however, if it is within the scope of the original certification it is just noted for the record.

Paul Chipok provided an update on the Daytona Beach Shores Lady Godiva amendment. Mr. Chipok stated the rehearing for this amendment is scheduled for the January 23, 2008 meeting, however, he stated in speaking with counsel for Lady Godiva, they have filed a petition for writ of certiorari appealing the commission's original decision. Mr. Chipok stated they were required to do that because according to court rules, they have a jurisdictional 30 days to file for an appeal. Therefore, he stated if they did not file they would have been precluded from appealing the commission's decision. Additionally, he stated they have filed motions for abatement of any proceedings until after the rehearing.

Mr. Chipok also stated the City of Daytona Beach Shores wants to adopt their comprehensive plan amendments prior to the end of 2007 in order to meet the twice per year comprehensive allowed. He stated their meeting originally was scheduled for tonight, however, has been postponed until December 27, 2007. Mr. Chipok stated one of the amendments is the Lady Godiva amendment, however, the adoption ordinance is contingent upon a finding of consistency by VGMC. Mr. Chipok stated this is not inconsistent with the way other jurisdictions have handled when they are faced with time limitations. Additionally, he stated the City's attorney will be forwarding him a copy of the draft ordinance so that he can confirm that the language is adequate.

Commissioner Katz requested guidance on rebuttable presumption be provided to the members in advance of the January 23, 2008 meeting.

Commissioner Steinebach asked what the procedural format was for the rehearing in terms of what the members will be reviewing. Mr. Chipok responded that any new information which comes in will be provided to the members along with a new staff report. Mr. Chipok also asked the VGMC Coordinator to calculate the cutoff date for the 20 working day rule and send notice to all parties.

Commissioner Steiner asked Mr. Chipok if it would be a Sunshine Law violation to discuss the procedure review process changes with another commission member. Mr. Chipok stated the Sunshine Law prohibits discussion of any business that would potentially come before the board with another board member. Therefore, he stated there should be no private discussions relating to the procedure review process amongst members.

REPORTS OF COMMITTEES

1) POP Committee – Robert Pascoe reported that the POP Committee met prior to the regular meeting and discussed holiday benefits for the coordinator, however, would be continuing that item to the next meeting. Mr. Pascoe advised the POP Committee will be meeting at 6:00 p.m. on January 23, 2008 to further discuss that item, as well as general discussion of the rules revisions. Additionally, Mr. Pascoe reported that the committee is also planning to meet on either February 5th or 6th in Port Orange. He also stated they discussed meeting agendas at there earlier meeting, however, will discuss that further when the Rules of Procedure are reviewed.

2) Budget Committee – Joan Spinney reported that the Budget Committee was planning to schedule a meeting on January 23, 2008.

UNFINISHED BUSINESS

None

NEW BUSINESS

None

REPORTS AND REQUESTS OF COMMISSION MEMBERS

Commissioner Allen asked about the POP Committee meeting being held behind closed doors. Mr. Chipok responded that the meeting is held there for the sake of convenience and that while the committee is meeting, anyone is invited to attend and listen in. He added that the committee meetings are advertised and are open to the public.

Commissioner Hall commented that the GrayRobinson Holiday party was great.

REPORTS AND REQUEST OF COMMISSION CHAIR

None

ADJOURNMENT

The meeting was adjourned at 9:03 p.m.

Attest:

Chairman