

Volusia Growth Management Commission

MEETING MINUTES FOR
REGULAR MEETING HELD
Wednesday, January 27, 2010

County Council Chambers
Thomas C. Kelly Administration Center
123 W. Indiana Avenue
DeLand, FL

MEMBERS PRESENT

Gerald Brandon, Chairman
Steve Katz, Vice Chairman
Rachel Sieg, Secretary
Richard Walton
Terry Griffiths
Danny Allen
Sandy Lou Gallagher
John Heaphy
Roger Sonnenfeld
Rick Tresher
Robert Storke
Sue Elliott
Debbie Connors
Joan Spinney
Sandra Walters
Dwight Lewis
Gary Huttman Excused
Kenneth Kuhar

REPRESENTING

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

NON-VOTING MEMBERS

Sara Lee Morrissey
Peter Brown

REPRESENTING

Volusia Co. School Board
SJRWMD

OTHERS PRESENT

Paul Chipok, GrayRobinson, P.A.
Barry Wilcox, MSCW
Merry Chris Smith, VGMC Coordinator

CALL TO ORDER

VGMC Chairman Gerald 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 announced the resignations of member Sandy Jones from Edgewater and James Kerr from Orange City. He also announced the appointment of Robert Storke, representing the City of Orange City.

Chairman Brandon then presented a certificate of appreciation to former member James Kerr who served on the commission for 18 years.

APPROVAL OF MINUTES

Joan Spinney made a motion to approve the minutes of the regular meeting held on November 18, 2009 as presented; seconded by Roger Sonnenfeld. Motion carried unanimously.

PUBLIC HEARING

- 1) Consideration of VGMC Resolution #2010-01, Apportionment of Voting Weight

Steve Katz made a motion to approve Resolution #2010-01; seconded by Rachel Sieg. Motion carried unanimously.

- 2) Consideration of request from the City of Orange City for an extension to comply with VGMC Resolution #2006-06.

Barry Wilcox, VGMC Planning Consultant, explained that this is a request for an additional extension in order to complete the Southwest Volusia Regional Transportation Study. He stated that the jurisdictions on the west side of the county, including the county, have been working diligently on this study and the results are expected from their consultant in March.

Elaine Wilson, Interim Development Services Director for Orange City, addressed the commission and stated it is anticipated that a draft of the study will be presented to Volusia County on February 6, 2010. Thereafter, the jurisdictions will work on getting an interlocal agreement in place.

Sandra Walters made a motion to approve the City of Orange City's request for an extension to comply with VGMC Resolution #2006-06; seconded by Dwight Lewis. Motion carried unanimously.

- 3) Consideration of VGMC Case No. 09-021, City of Deltona Large Scale Amendment Application – Water Supply Plan Amendment

Paul Chipok, VGMC Legal Consultant, read a statement of public hearing procedures into the record. He also reminded the commission of the judge's finding with respect to ex parte communications in the Partin v. VGMC matter in which the judge's order stated it is very important, in order for due process to be upheld, that an impartial decision maker is the basic constituent of minimal due process. Mr. Chipok stated that the commission's legal staff recommends that commission members not accept ex parte communications since it could potentially void the action taken by the commission and be viewed as a violation of due process. He added if any of the members have an incident of ex parte communications, they should disclose the person(s) by which the ex parte communication was made, and also disclose the detail of that communication.

Mr. Chipok then asked if any members had ex parte communications on this matter, they should disclose it at this time. Commissioner Sandra Walters stated she had a conversation with Chris Bowley from the City of Deltona who explained to her what a 180 service area is. Commissioner Sandy Lou Gallagher stated she had conversations with Chris Bowley, Dave Denny and Ron Paradise, all staff from the City of Deltona, where she asked questions in order to gain clarification on what is included in the resolution. Mr. Chipok stated for the record that Commissioner Gallagher is the City of Deltona representative on the commission. As explained in the past, Mr. Chipok stated that although it is a form of ex parte communication, they encourage discourse between members and the jurisdictions they represent. Additionally, he stated if the communications occur at a duly noticed public meeting, that would fall outside of the scope of a violation of the sunshine law and are a justifiable type of ex parte communication.

The VGMC Coordinator then swore in those individuals who may provide testimony at the hearing.

Barry Wilcox, VGMC Planning Consultant, addressed the commission. Mr. Wilcox provided an overview of the proposed amendment, discussed the City of Deltona 180 service area, and presented the staff report and recommendation.

Mr. Wilcox explained that when the application was originally submitted, the service area map extended beyond the five mile service limit as it included the Leffler property. He stated the Leffler annexation was determined to be invalid and the City will be amending the map. Mr. Wilcox stated that through a series of meetings and correspondence with the City of Deltona, Volusia County, the City of New Smyrna Beach and Utilities Commission, and the City of Edgewater, the recommendation before the VGMC includes the revisions agreed upon by the various jurisdictions. He stated staff recommends approval of the amendment with the proposed conditions outlined in the resolution.

Ron Paradise, Planning Manager for the City of Deltona, addressed the commission. He stated the City of Deltona has met with the various jurisdictions, and he confirmed that the Deltona City Commission passed a resolution pledging that they would modify the City's 180 service area to comply with the statutory five mile limit. Mr. Paradise also stated that the City has agreed to the language modification requiring that they work with the County, the City of New

Smyrna Beach and the City of Edgewater, and he requested the commission conditionally approve the amendment as recommended by VGMC staff.

There was no one else present who came forward to speak in favor of or opposed to the amendment.

Commissioner Gallagher raised a question concerning adoption. Mr. Paradise stated the City Commission adopted a resolution pledging to modify the 180 service area on January 19, 2010, and the language modifications are scheduled for the February 1, 2010 meeting of the City Commission.

Commissioner Walters asked member Peter Brown if he had any comments to add on behalf of the St. Johns River Water Management District. Mr. Brown stated that the issues brought up in this matter were local issues and best served before the VGMC. Additionally, he stated they did not have the same concerns because the planning the City is doing is for an area much less than what Chapter 180 covers in the water supply work plan.

Commissioner Storke stated that the cities of New Smyrna Beach and Edgewater had raised concerns and he asked if both cities are satisfied with the proposed conditions of approval. Mr. Wilcox stated that the issues raised by the two cities were addressed early on in the process. Mr. Chipok added that we received a letter dated November 30, 2009 from Deltona responding to the Edgewater, New Smyrna Beach and the New Smyrna Beach Utilities Commission comments and agreeing to modify the service area boundary. Subsequently, he stated we received a letter dated December 9, 2009 from the City of Edgewater stating they are satisfied with the conditions, a letter dated December 30, 2009 from the City of New Smyrna Beach essentially stating the same, and a letter from the attorney representing the City of New Smyrna Beach Utilities Commission also stating they are satisfied with the proposed conditions.

Commissioner Walton asked if any other 180 service area lines exist that extend more than the allowed five miles. Mr. Chipok stated there may be.

Commissioner Katz asked Mr. Chipok to discuss the County's resolution relating to this matter. Mr. Chipok stated that the City of Deltona and Volusia County had gotten together and specifically worked out language they agreed upon. He stated the County has adopted the resolution, and the City of Deltona has also agreed with the concept and has agreed to amend their plan accordingly at adoption. Mr. Chipok also confirmed that the County's resolution (#2010-08) has been executed and is incorporated as Exhibit B to the proposed VGMC resolution.

Commissioner Storke raised a question with respect to what is allowed under the 180 service area and what the VGMC is looking at with this amendment. Mr. Chipok responded that the issue before the VGMC with the proposed comprehensive plan amendment is the water supply plan component.

Commissioner Tresher raised a question relating to environmental issues that were previously raised by the City of New Smyrna and Volusia County. Mr. Wilcox stated that the concern would be if the service area could be construed as a development area, however, that is not the case here. He stated that any change to what is existing in terms of entitlements would have to come before the VGMC in the form of a comprehensive plan amendment. Mr. Chipok added that the 180 service area is not a Chapter 163 future land use map. He also pointed out that under Section 1 of the County's adopted resolution, they've amended the paragraph addressing the Water Supply Plan Section 3.1.2, Future Service Area Boundary, to include that all such development would need to be consistent with the County's comprehensive land use plan. Mr. Chipok stated that the water supply area as represented on the map, is not a future land use map and does not provide any development rights.

Commissioner Gallagher asked what would happen if the City of Deltona does not adopt as proposed. Mr. Chipok stated the City would be in violation of the VGMC Certificate of Consistency and their comprehensive plan would be void.

In response to a question raised by Commissioner Sonnenfeld, Mr. Paradise and Mr. Wilcox reviewed the map and the respective lines being depicted.

Chairman Brandon closed the public hearing.

Sandy Lou Gallagher made a motion to approve VGMC Resolution #2010-03 as written; seconded by Steve Katz. Motion carried unanimously.

REMARKS OF INTERESTED CITIZENS

None

REPORTS OF OFFICERS

None

REPORTS FROM CONSULTANTS

Legal Update: Mr. Chipok stated there are presently no matters of litigation.

Planning Update: Mr. Wilcox provided an update on the pending cases. With respect to VGMC #09-016, City of Daytona Beach large scale amendment application, he stated that a portion of this application has already been certified, and there is an outstanding RAI on the balance of the amendments. Mr. Wilcox stated there is a special meeting scheduled on February 10, 2010 to hear the County's Farmton Local Plan amendment. He stated staff is presently preparing the staff report which he anticipates will be distributed to the members approximately one week prior to the hearing. Mr. Wilcox encouraged the commission members to review the report in

depth and make any notes they may have in preparation for the hearing. He added that it is anticipated to be a lengthy meeting.

Commissioner Morrissey asked what is expected in terms of member attendance at the special meeting. The VGMC Coordinator stated aside from the current member vacancies, there is only one member who indicated they may not be able to attend the meeting, therefore, a quorum is expected.

Mr. Wilcox also noted that the Farmton amendment was one of a total of ten amendments submitted in the County's original application package. He stated the package was split and the other nine amendments have already been certified.

Commissioner Katz asked that staff advise the commission on a continuous basis what cases are anticipated to be scheduled for public hearing and when the public hearing would likely occur. Mr. Wilcox stated that other than the Farmton amendment, he does not anticipate any of the other items being scheduled for public hearing in February. He also explained that there are a number of variables that come into play when scheduling a public hearing, including the time tables established in our own rules and well as other established timeframes.

REPORTS OF COMMITTEES

POP Committee:

POP Committee Chair Steve Katz reported that the committee met earlier and are recommending three changes to the commission's Rules of Procedures.

The first is to change the caption in Article X., Section 3. to read "Review of Rules", deleting the term "Annually" so that it is consistent with the rule itself.

The second relates to the present rule in Article IX., Section 7, which requires an annual certified audit. Mr. Katz stated the committee had the County's outside auditor attend their meeting to discuss the idea of having an audit and what would be involved. He stated that the auditor responded that all of the VGMC expenses are reviewed by the Budget Committee and are also part of the County audit where they test the different schedules. Mr. Katz stated the auditor suggested that a separate audit of the VGMC expenses is not necessary and she recommended striking that requirement from our rules. Mr. Katz stated the committee concurred and is recommending that this requirement be deleted from our rules since our expenses are included in the County's audit. Additionally, he stated our attorneys receive an audit letter relating to litigation.

The third item deals with Article IX., Section 6.c. relating to travel reimbursement for staff. Mr. Katz stated the current rule is inconsistent with our present practice and the committee agreed that the issue of staff travel reimbursement is more of a contractual provision which will be included in the contracts with staff as we go through that process. Mr. Katz stated the committee

is recommending that this section be amended to read: "Travel will be reimbursed at the hourly rate of pay approved for contracted staff. Travel costs for mileage will be limited to the then current rate approved by Florida law."

Mr. Katz stated the POP committee has made a motion and a second to modify the Rules of Procedure in those three areas as presented. Motion carried unanimously.

Mr. Chipok stated that the Rules of Procedure are adopted by resolution and clarified that the motion is to direct staff to draft a resolution with the recommended changes and bring back to the commission for approval. Mr. Katz concurred.

Mr. Katz stated the committee also evaluated the performance of the VGMC Coordinator so that any salary information can be communicated to the Budget Committee as they prepare the 2010-11 proposed budget. He stated the committee evaluated the coordinator in the nine established performance criteria and are recommending the commission consider her performance to be outstanding. Additionally, Mr. Katz stated the committee is not recommending an hourly rate of pay increase, however, they recognize that the scheduled 20 hours per week may not be truly accurate. As a result, he stated the committee is recommending increasing the paid hours to 22 per week to allow the opportunity to be compensated for that time, plus an additional 3 hours per month for meetings. Mr. Katz stated this recommendation was provided to the Budget Committee for their consideration.

The final item Mr. Katz reported was that the committee will be meeting on February 10, 2010 at which time they will be reviewing a draft Request for Statement of Qualifications (RSQ) for legal staff. He stated that once it is finalized, the RSQ will go out, the POP committee will go through the process of interviewing, and when it comes time for the actual contract, it will come to the full commission for a vote.

Budget Committee:

Committee Chair Rachel Sieg reported that the Budget Committee met prior to the regular meeting and prepared preliminary proposed budget figures for 2010-11. With the proposed POP committee changes, she stated the salary budget would increase to \$26,102 and with FICA, the total would be \$28,098.

In terms of the operating budget, Ms. Sieg stated most of the proposed figures are consistent with the currently approved budget, although they rounded some of the figures. Specifically, she stated our present contract services budget is \$247,425, however, the committee rounded that figure up to \$250,000 in anticipation of more activity. Additionally, she stated the committee is recommending inclusion of a \$25,000 litigation contingency as we've done in the past. She commented that with the pending Farnton amendment, the commission may need this contingency.

Ms. Sieg stated the committee has not included any budget for office equipment and asked the coordinator if she anticipated any equipment needs in the 2010-11 fiscal year. Ms. Smith responded that our present available equipment budget for the 2009-10 fiscal year is \$2,500 and if there are any anticipated needs, she would look to purchase equipment in the present budget year. She also commented there is a possibility the office will need to be relocated in the next fiscal year and there may additional equipment necessary which is not necessarily anticipated at this time. Ms. Sieg stated that the committee is recommending an increase in the rent budget to \$9,000, which is intended to include any necessary relocation expenses and potential increases in rent.

Overall, Ms. Sieg reported the committee came up with a proposed budget of \$345,448.81.

Chairman Brandon explained to the commission that the present location of the VGMC office may possibly be foreclosed upon and the former owner may be taking it back. He stated we do not know the status at this time, however, we want to be prepared in the event we need to make a move.

General discussion ensued relating to the need for the commission to review the budget twice prior to a final vote, the timeframe for commission review based on upcoming meetings and the need to submit the proposed budget to the County by the end of March. If there was not a regular meeting scheduled for February 24, 2010, the commission discussed reviewing the proposed budget at the March 24, 2010 regular meeting, submitting the preliminary figures to the County following that meeting, then schedule a final commission vote at a subsequent meeting.

Ms. Sieg also stated the Budget Committee has suggested we look into office space in a County office building.

Discussion ensued relating to the County Council meeting from November, 2009 where the Council considered the purchase orders for legal and planning staff.

UNFINISHED BUSINESS

None

NEW BUSINESS

None

REPORTS AND REQUESTS OF COMMISSION MEMBERS

None

REPORTS AND REQUEST OF COMMISSION CHAIR

Chairman Brandon reminded the members that the Special Meeting scheduled for Wednesday, February 10, 2010 will begin at 6:00 p.m.

ADJOURNMENT

The meeting was adjourned at 8:12 p.m.



Attest:



Chairman