

Volusia Growth Management Commission

MEETING MINUTES FOR
REGULAR MEETING HELD
Wednesday, October 26, 2011

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

MEMBERS PRESENT

Gerald Brandon, Chairman
Steve Katz, Vice Chairman
Dwight Lewis, Secretary (Excused)
Richard Walton
Danny Allen
Sandy Lou Gallagher (Excused)
Jason Floyd (Excused)
John Heaphy
Roger Sonnenfeld
Rick Tresher
Robert Storke
Debbie Connors
Joan Spinney
James Wachtel (Excused)
Kenneth Kuhar
David Michael Halpin

REPRESENTING

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

NON-VOTING MEMBERS

Sara Lee Morrissey (not present)
Cathy Foerster (not present)

REPRESENTING

Volusia Co. School Board
SJRWMD

OTHERS PRESENT

Paul Chipok, GrayRobinson, P.A.
Barry Wilcox, VHB Miller Sellen
Andre Anderson, Planning Design Group
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 several member reappointments: Debbie Connors, City of Port Orange; Bob Storke, City of Orange City; Roger Sonnenfeld, City of Lake Helen; and Jason Floyd, City of Edgewater. He also announced three member resignations: Stewart Cruz, Daytona Beach Shores; Gary Huttman, Volusia County; and Peter Brown, St. Johns River Water Management District (SJRWMD). In addition, he stated that Cathy Foerster has been appointed by the SJRWMD to replace Peter Brown.

APPROVAL OF MINUTES

Steve Katz made a motion to approve the minutes of the regular meeting held on May 25, 2011 as presented; seconded by Joan Spinney. Motion carried unanimously.

PUBLIC HEARINGS

No public hearings were scheduled.

REMARKS OF INTERESTED CITIZENS

None

REPORTS OF OFFICERS

None

REPORTS FROM CONSULTANTS

Case Update: Barry Wilcox, VHB-MillerSellen, provided an update on the pending cases he is presently reviewing. One is an older case from the City of Oak Hill in which the City adopted however, did not transmit to either DCA or VGMC until recently. He stated the amendment primarily deals with creating an eco-tourism plan for the City. The other case is a map amendment from the City of New Smyrna Beach. He stated the 30-day comment period on both of the applications is scheduled to expire next week.

Mr. Wilcox also stated that he has been working with the Orange City Development Services Director in trying to resolve the PD review requirement relating to the mixed-use district in Orange City which has caused issues for both the City and the VGMC. He also stated that he is

scheduled to meet with the west Volusia city/county planners to discuss regional issues for the west side of Volusia County. Chairman Brandon commented that the situation with the mixed-use district in Orange City has created issues for many years and he hopes this can be resolved.

Legal Update: Paul Chipok, GrayRobinson, provided an update on the various litigation matters. With respect to the Farmton/Herrin matter, Mr. Chipok stated this case had gone to court and the appeal period for the 5th DCA has run. He discussed the remedial amendment review process in which the VGMC considers the remedial amendments as additional information to the original application. VGMC staff reviews the remedial amendments and if there are potential additional impacts to the original certification, then a public hearing is scheduled for consideration by the commission. If no additional impacts are created by the remedial amendments, the Chairman sends a letter back to the jurisdiction indicating there are no additional impacts and that it is still consistent with the original certification. In this particular matter, he stated the VGMC remedial amendment review process was challenged in that the parties stated the remedial amendments should have come back to the VGMC in the form of new comprehensive plan amendments. Mr. Chipok stated the court ruled in our favor, that the remedial amendments stem back to the original application and proper procedure was followed by the VGMC. He stated it's been upheld at the circuit court level and has not been appealed to the 5th DCA, so this is good case law for the VGMC to follow.

Mr. Chipok also updated the commission on the Farmton DOAH matter. He stated that a second administrative law hearing was held in September, 2011 and proposed recommended orders are due to the Administrative Law Judge on October 31, 2011. Mr. Chipok stated that Volusia County and Miami Corporation are taking the lead on drafting the proposed recommended orders on behalf of the Respondents, of which the VGMC is one.

Commissioner Tresher asked Mr. Chipok to discuss what occurred at the hearing. Mr. Chipok stated the standard is that there is a presumption of validity of the comprehensive plan amendment in favor of the County. He stated that both sides put on evidence with regard to the validity and extent of the various protections primarily for the environment. Mr. Tresher asked if he had any read on the judge's reaction to the evidence presented. Mr. Chipok responded that it's tough to tell, however, the standard is very difficult for someone challenging when the presumption is in favor of the local government. He added that there would have to be a tremendous amount of evidence overwhelmingly against their position in order for the Administrative Law Judge to rule against the County on the comprehensive plan amendment.

Commissioner Allen asked why the VGMC has to be involved in the legal process. Mr. Chipok stated that since the VGMC issued an approval subject to conditions, we need to make sure that the conditions remained valid and part of the overall comprehensive plan amendment through the process. Mr. Allen raised concern with the costs to the VGMC by staying involved, stating that if the amendments changed, the County would have to come back before the VGMC anyway. Mr. Chipok responded that it was determined to be more judicially and economically efficient to follow it through on a monitoring basis than to let it sit and have to get back up to full speed if it did, in fact, need to come back before the VGMC. He also added that this particular litigation

was not a routine or common matter and dealt with a number of cutting edge issues, including the application of HB 7207. Mr. Chipok stated that the VGMC was involved primarily in a monitoring and participatory mode to review the work that the County and Miami Corporation were doing. Mr. Allen asked to receive information on the VGMC legal costs associated with the various litigation matters. Brief discussion ensued regarding the ability to recoup legal fees in matters where the commission is sued and the court rules in favor of the VGMC.

With the various litigation matters which have occurred in recent years, Chairman Brandon asked Mr. Chipok if there is something the commission could be doing to potentially avoid future litigation. Mr. Chipok stated that historically the litigation started with the City of DeBary case where there were questions raised regarding the interpretation of some of the VGMC rules. As a result of the DeBary case, the VGMC has drafted amendments to the rules to provide specificity and clarity to avoid ambiguity in the future. The draft amendments have gone full circle and now rest with the POP committee in terms of which changes the commission wants to consider moving forward with. General discussion ensued relating to the status of the proposed rules amendments and the process for implementing changes to the rules.

With respect to the Pacetta litigation, Mr. Chipok stated that arguments were presented in circuit court, proposed recommended orders have been filed, and we await the judge's ruling.

REPORTS OF COMMITTEES

POP Committee: Committee Chairman Steve Katz reported the committee met prior to the regular meeting and have gone through the process of reviewing the three staff contracts (GrayRobinson, VHB-MillerSellen and Planning Design Group) which were included in the agenda package. Similar to what the commission did last year with the GrayRobinson contract, he stated the contract for VHB-MillerSellen has been conformed with respect to how they interact with the commission. As a result, he stated the contracts are very similar and the committee had full cooperation with VHB-MillerSellen in making the changes. Mr. Katz stated the POP recommends the commission approve the contracts as presented, which serves as a motion and second before the commission. He added that the contracts are one year terms and they do not necessarily end, however, they are reviewed and signed by the commission on an annual basis. In addition, he stated all of the costs in the contracts are consistent with what was previously reviewed by the Budget Committee and approved by the commission. The motion and second by the POP Committee to approve the three contracts as presented was unanimously approved.

Budget Committee: Chairman Brandon stated there was a Budget Committee meeting held prior to the regular meeting in which they reviewed the 2010-11 budget expenses and the 2011-12 approved budget which were included in the agenda package. Mr. Brandon stated that although the numbers are not yet final, it appears the VGMC will finish the 2010-11 fiscal year nearly \$67,000 under budget. With respect to the 2011-12 budget, he stated the County did not

approve the \$25,000 litigation contingency, and there were two other very minor changes made by the County in the computer replacement and salaries budget.

UNFINISHED BUSINESS

None

NEW BUSINESS

1) Mr. Chipok generally discussed HB 7207 and the changes resulting from the implementation of the bill. He stated that when the jurisdictions send the comprehensive plan amendments at transmittal to the state agencies for review, they are also required to send them to the VGMC. Through our process, if there are no issues we are authorized to issue a consistency certification letter. If issues do exist, then we need to make the jurisdiction aware of it within 30 days and notify them that we are scheduling a public hearing before the full commission. Mr. Chipok stated that process still fits within the timelines of the revised Chapter 163 with HB 7207. In addition, he stated that the VGMC's charge has not changed under the charter, and our charge has not been challenged or diminished by the changes to Chapter 163 by HB 7207.

Mr. Chipok stated that we've received several inquiries from the local jurisdictions in terms of any VGMC processing changes as a result of HB 7207. He suggested making modifications to the analysis he previously provided to the commission members and send it out to the local governments under the Chair's signature.

Commissioner Walton commented that he agrees with Mr. Chipok's interpretation for amendments that have no issues, however, disagreed if there are issues with the amendments. He stated that under the new legislation, the time for DCA and other agencies to issue their findings has been reduced and it is an expedited process. In addition, he stated that if there are objections through the VGMC process and a Request for Additional Information (RAI) is issued, the clock stops for VGMC, however, the DCA clock does not. Mr. Walton expressed concern that the VGMC process could be drawn out and prevent the jurisdictions from completing their process within the established timeframes. Mr. Chipok stated under the expedited review process, the jurisdictions must adopt the amendment within 180 days of the close of the 30-day reviewing agency comment period. He stated the VGMC review would also occur within the same 30-day agency review period and the jurisdiction would know within that timeframe if there are VGMC issues or objections. In the VGMC process, Mr. Chipok stated if we are holding a public hearing on an amendment we would typically conclude our process within 120 days from the date we received the application. General discussion ensued regarding adoption requirements prior to the new legislation. Mr. Chipok commented that at the expiration of the 180 day adoption requirement under HB 7207, the local jurisdiction can extend the time if needed. He stated he believes the VGMC can accomplish most everything we need to, even with RAI's, within the initial 180 day period, adding that it is also within the local jurisdiction's authority to extend that time frame if needed. Mr. Walton commented that his concern may be more with getting the VGMC rules changed as previously proposed to address some of the

processing issues, such as having to go to public hearing on an issue that all parties have come to agreement on.

Chairman Brandon asked if any of the members objected to a letter going out to the jurisdictions regarding VGMC processing under HB 7207. No objections were raised.

2) Sunshine Law Overview - Mr. Chipok reviewed the PowerPoint presentation relating to the Sunshine Law which was included in the agenda package. Commissioner Allen raised a question relating to minutes of committee meetings. Ms. Smith stated that often the committees meet concurrently prior to a regular meeting and she is unable to attend both meetings. In addition, at the regular meeting, the committee chair reports on action taken by the committee and those minutes are recorded.

Discussion ensued regarding the rights of members of the public to be heard at public meetings and public hearings. Overall, Mr. Chipok stated it is best to govern the meetings with a sense of fairness so that everyone has the right to be heard, but to also be cognizant to get to the heart of the issue and avoid having long, repetitive testimony.

Mr. Chipok continued his presentation, including discussion relating to notice requirements, members abstaining from voting, conflict of interest, and consequences of not complying with the Sunshine Law.

3) VGMC Overview – Mr. Chipok reviewed the PowerPoint presentation providing an overview of the VGMC which was included in the agenda package. Mr. Chipok discussed comprehensive planning in general, the history of the VGMC, the process we follow, and issues of zoning.

Commissioner Walton asked if Section 202.3 of the County Charter has changed since the commission's inception. Mr. Chipok responded that it has remained substantially unchanged.

Mr. Chipok concluded his presentation and thanked the commission members for their attention.

4) Election of Officers – Rick Tresher nominated Steve Katz as Chairman and Gerald Brandon as Vice Chairman. There being no further nominations, Joan Spinney moved to close the nominations for Chairman and Vice Chairman; seconded by Debbie Connors. The commission voted unanimously to elect Steve Katz as Chairman and Gerald Brandon as Vice Chairman.

Joan Spinney moved to nominate Dwight Lewis as Secretary; seconded by Rick Tresher. There being no further nominations for the office of Secretary, nominations were closed. The commission voted unanimously to elect Dwight Lewis as Secretary of the commission.

REPORTS AND REQUESTS OF COMMISSION MEMBERS

REPORTS AND REQUEST OF COMMISSION CHAIR

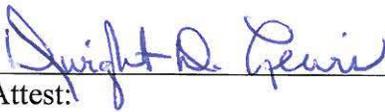
Steve Katz presented a plaque to outgoing Chairman Brandon in recognition of his outstanding leadership and loyalty to the commission. Mr. Katz extended appreciation to Mr. Brandon for all he has done for the commission.

Mr. Brandon provided an update on the scanning of VGMC records. He reported that the VGMC office has completed scanning all but two case files dating back to 2005. As time permits, the coordinator will continue to scan the VGMC records so there is an electronic copy stored in the event the physical records are damaged or destroyed.

Mr. Brandon thanked the commission members and staff for their work over this past year and presented Certificates of Appreciation to each of the commission members and staff.

ADJOURNMENT

The meeting was adjourned at 8:36 p.m.



Attest:



Chairman