

Volusia Growth Management Commission Meeting

MINUTES FOR
MEETING HELD
Wednesday, October 28, 2015

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

MEMBERS PRESENT

James Wachtel, Chairman
Gerald Brandon, Vice Chairman
Debbie Connors, Secretary
Rich Walton
Sid Vihlen, Jr.
Sandy Lou Gallagher
Robert Lott
Loretta Arthur
Roger Sonnenfeld
Robert Lovelace
Robert Storke
Don Romanik
Glyn Slay
Sandra Walters

REPRESENTING

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

MEMBERS NOT PRESENT

Mark McGee
William Pouzar

Oak Hill
Volusia County

NON-VOTING MEMBERS

Sara Lee Morrissey Present
Steven Fitzgibbons (not present)

Volusia Co. School Board
SJRWMD

OTHERS PRESENT

Paul Chipok, GrayRobinson, General Counsel
James Sellen, VHB, Planning Consultant
Merry Chris Smith, VGMC Operations Manager

CALL TO ORDER

VGMC Chairman James Wachtel 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 Wachtel reported that Richard Kane resigned from the commission as he no longer resides in the City of South Daytona, and that we await a new appointment from the City. He also welcomed and thanked the individuals in the audience for attending the meeting.

CITIZEN COMMENTS

There were no citizens present who wished to speak at this time.

APPROVAL OF MINUTES

Debbie Connors made a motion to approve the minutes of the September 23, 2015 regular meeting of the commission as presented; seconded by Loretta Arthur. Motion carried unanimously.

PUBLIC HEARING

There were no items scheduled for public hearing.

REPORT FROM PLANNING CONSULTANT

Mr. Sellen reported that one of the conditions of approval for the Oak Hill application heard by the commission in April was that they were required to submit a planned development (PD) to the VGMC for review, which they have done. The PD is still within the review time frame for other parties to comment, however, he stated planning staff has reviewed the PD and they found it does meet the requirements of the conditions of approval.

REPORT FROM LEGAL COUNSEL

No report at this time.

REPORT FROM COMMISSION OPERATIONS MANAGER

No report at this time.

REPORTS OF COMMISSION CHAIRMAN

No report at this time.

REPORTS OF COMMITTEES

POP Committee: Gerald Brandon, Chairman of the POP Committee, stated there are no POP reports at this time.

Budget Committee: Debbie Connors, Chair of the Budget Committee, reported the committee met immediately prior to the regular meeting. She stated the VGMC will likely conclude the 2014-15 fiscal year at approximately 46% of the approved budget. Additionally, Ms. Connors reported that the 2015-16 budget has been approved by the County Council as submitted, with the exception of the \$25,000 litigation contingency which was removed by the County as they've done in years past.

Mr. Brandon asked how much money the VGMC would be turning back into the County from the 2014-15 fiscal year approved budget. Ms. Connors responded approximately \$150,000.

OLD BUSINESS

There was no old business for discussion.

NEW BUSINESS

Chairman Wachtel stated for the past three or four years, most of the VGMC applications were certified by letter without having to come before the full commission in the form of a hearing. Additionally, he stated there are a number of newly appointed members to the commission who may not be familiar with the planning process or the responsibilities of the VGMC. Mr. Wachtel stated he asked Mr. Sellen & Mr. Chipok to prepare a presentation for the VGMC members that would provide the legal precedence for the planning process at both the state and local level, the responsibilities of the local governments in the planning process, as well as the VGMC's legal precedence in the planning process and the responsibilities of the members and staff within that process.

Mr. Chipok made a power point presentation to the commission which provided an overview of the VGMC. A printed copy of the power point presentation was included in the agenda package. Mr. Chipok stated the VGMC was created by charter in 1986 as a result of concerns over costly annexation lawsuits. He discussed the history and establishment of the VGMC, along with the governing legislation which includes Section 202.3 of the county charter, the VGMC Consistency Certification Rules and Regulations, and the VGMC Rules of Procedure. Mr. Chipok reviewed the goals and objectives of the VGMC, adding that the VGMC creates a level playing field for all of the local governments and forces cooperation early in the process.

Mr. Chipok discussed the membership of the commission and the weighted vote requirement. He reviewed the narrow scope of authority of the VGMC which is to determine consistency of an amendment with plans of adjacent jurisdictions, adding that the VGMC has no jurisdiction to look at internal consistency. Mr. Chipok stated the VGMC is a solution oriented board and if an amendment is not consistent, the commission looks to find ways the amendment could be made to be consistent. He stated this is achieved by working with the local governments to develop conditions that could make the amendment consistent, which is brought to the full commission at a public hearing for approval by the commission.

With the existence of the VGMC creating a level playing field where each of the local government's comprehensive plans are considered equal, Chairman Wachtel asked how it works

in other counties in the state. Mr. Chipok stated the creation of the VGMC in Volusia County has resulted in a minimal number, if any, lawsuits dealing with the supply of services to new areas being annexed. The reason being, he stated, is because the VGMC asks those questions, and deals with the issues, before the event occurs. Mr. Chipok stated annexation lawsuits occur frequently in other counties in the state.

Mr. Chipok reviewed the comprehensive planning process at the state level, the general process the local government follows, and where VGMC fits within the process. He also discussed the VGMC application process, the review timeframes, and the certification process, whether it be by letter certification or through a public hearing.

Mr. Chipok explained who and how a public hearing on an amendment may be requested. He discussed the standard of review for public hearings and also defined various terms such as “preponderance of evidence”, “compatible with” and “in furtherance of”. Mr. Chipok discussed due process requirements, including notice of hearing, providing an opportunity to be heard, and that a party to an application must be allowed to present evidence, cross examine witnesses, and be informed of all facts upon which the commission acts. In terms of providing an opportunity to be heard, he explained the difference between a member of the public and a party to an application. He explained a member of the public is allowed to address the commission, but a party to an application is entitled to participate in the proceeding. Mr. Chipok discussed the standard for determining party status and stated the petitioner must establish they have some type of adverse impact from the result of the application that is different in kind from the impact of the application on the general public.

In terms of the commission’s determination as to standing, Mr. Chipok stated the commission must base their decision upon competent, substantial evidence. He also gave examples of types of evidence deemed to be competent and substantial evidence which includes the professional planning staff report, testimony of city planning officials, expert witnesses, and fact-based citizen testimony.

Mr. Chipok discussed the review criteria relating to impacts on infrastructure. He explained what infrastructure is, he defined the term “significant adverse impact”, and reiterated that the VGMC looks at impacts that extend beyond the boundaries of one jurisdiction, not internal consistency. Mr. Chipok stated the method for measuring impacts is to look at the net change created by an amendment, adding that we have to look at the maximum build out potential by the proposed land use when measuring impacts. He also spoke of methods for mitigating impacts.

Mr. Chipok provided a summary of the application and budget history. He commented that a very small percentage of the applications received actually go to public hearing. Mr. Sellen stated in the late 80’s and early 90’s is when the local governments were establishing their comp plans under state law which required public hearings, which is why there was a greater number of hearings in those years. He also commented on the role of the commission becoming more of a conflict resolution board in encouraging more collaboration in terms of resolving adjacency conflicts.

Mr. Chipok spoke of the increased number of applications received in the 2005-2008 timeframe, and also stated over the years that the budget has stayed relatively constant. He also discussed various factors which impacted higher expenses in some years, including litigation and the comprehensive rules review process which occurred back in the 2007-2009 time frame.

Mr. Chipok concluded his presentation and asked if anyone had any questions. Commissioner Vihlen complimented Mr. Chipok on the conciseness of his presentation, stating it was an outstanding report. Mr. Brandon complimented Mr. Chipok and thanked him for the report. He also stated the minimal amount of required public hearings before the VGMC is attributable to VGMC staff working with the local governments to resolve issues in advance.

Mr. Lovelace asked if the governmental planning boards look at intergovernmental consistency when reviewing comp plan amendments. Mr. Chipok responded there is presently no element in the state statutes that requires that, adding that the VGMC is that review process.

Mr. Sellen presented a power point to the commission members which provided an overview of the planning process. A printed copy of the power point presentation was included in the agenda package. Mr. Sellen discussed requirements of the local governments in the planning process in accordance with Chapter 163 of the state statutes. He added that the state comprehensive planning requirements have been reduced under the present administration with the elimination of 9J-5.

In response to an earlier question from Chairman Wachtel asking what occurs in other counties in Florida that do not have a board similar to the VGMC, Mr. Sellen described several scenarios relating to communities and how they choose to coordinate with other local governments. He also provided specific examples of conflict that has occurred in other counties in Florida relating to annexations.

Mr. Sellen stated there used to be a couple other counties in Florida that had an agency similar to the VGMC, however they no longer exist. In his opinion, he stated those agencies failed because they created their own comprehensive plan that all of the local governments were subject to, and the local governments did not like that. Mr. Sellen explained that we are an agency that deals with issues of adjacency and determining whether an amendment to one plan adversely impacts the comprehensive plan of another local government plan. He stated when the VGMC was created and the rules written, it was determined that the commission should not establish its own regional comprehensive plan, but rather establish criteria to look at in measuring the impacts of amendments on the local governments comprehensive plans.

Mr. Sellen provided a history relating to the local governments initial adoption of their comprehensive plans and some of the issues that were dealt with such as utility service areas and transportation concurrency. Since the adoption of the plans, Mr. Sellen stated the majority of applications come in without issue, however, there are still some that have consistency issues that need to be addressed and resolved.

Mr. Sellen stated that one of the questions that has been raised is why does VGMC staff request additional information or a public hearing on applications where no objections have been filed by

an adjacent jurisdiction. He stated that VGMC staff independently reviews the applications to determine if it meets the consistency requirements. If it does not, then additional information and/or a public hearing may be necessary to issue a finding of consistency. Mr. Sellen also stated there are occasions when an adjacent local government has objections to an application, however, to avoid a conflict with a neighboring jurisdiction does not wish to put it in writing so they contact VGMC staff to look at the issue.

Mr. Sellen reviewed the individual criteria established for determining consistency. Ms. Connors raised a question relating to the Oak Hill hearing and the fact that no objections were raised by any other local government in Volusia County. Mr. Sellen responded the reason the Oak Hill amendment came before the VGMC was because of the petition filed by a third party. He stated VGMC staff did not request additional information and was prepared to recommend it be certified. When the petition was filed requiring the hearing, he stated the environmental and utility issues needed to be addressed and resolved.

Mr. Sellen commented that part of the effectiveness of the VGMC is its very existence. It creates the incentive for the local governments to resolve the issues in advance, and avoid having to bring them before the commission in a public hearing. Mr. Sellen also emphasized that the VGMC does not look at land use compatibility, but rather the impacts created by the proposed land use.

Mr. Sellen then discussed several applications that came before the VGMC in the past. He spoke briefly concerning the Oak Hill application, how it came before the VGMC, and also that it was resolved without the petitioning parties suing the city. He felt the Oak Hill amendment was a success and good example of the VGMC process working. Mr. Sellen stated the original recommendation from staff included a condition that would have quantified a setback requirement, which he now feels was more related to zoning. He stated we need to be looking at the applications from the standpoint of the larger issues, and not dictate quantities or specific development standards that you would find in zoning. Mr. Sellen suggested possibly looking at drafting language within the rules that would avoid going in that direction in the future.

Mr. Sellen commented that he keeps hearing the VGMC denied the Oak Hill application. He stated that staff recommended denial as submitted, however, recommended conditions of approval to find it consistent. The commission ultimately approved the application with conditions.

Mr. Sellen then provided an overview of the Farmton amendment and the recommendation from VGMC staff for it to be developed as a Development of Regional Impact (DRI). He discussed the level of cooperation and coordination which occurred, and commented that the product created is magnificent. Mr. Chipok stated the original application came before the VGMC at a public hearing and the commission approved the application with the proposed conditions. Subsequently, the Master DRI was submitted to VGMC for review by staff and that application was certified without the need for a public hearing.

Ms. Connors commented that in cases where impacts cannot be measured at application and are approved by the VGMC with conditions, when the additional information is submitted to the

VGMC in the future, it doesn't necessarily come back before the full commission at a public hearing. Mr. Sellen concurred. Staff reviews the information submitted and if it meets the requirements of the prior condition of approval, it does not come back to the full commission unless someone else raises an objection.

Mr. Sellen provided an overview on the Restoration development amendment. Mr. Sellen discussed the coordination that occurred prior to the application submittal, which resulted in the application being submitted with all of the information and analysis to determine it was consistent with our review criteria. As a result, Mr. Sellen stated the application was certified by letter without the need for public hearing.

Ms. Morrissey commented that several of the examples provided by Mr. Sellen included amendments where the school board had issues, and those issues would not have been resolved if not for the VGMC.

Mr. Sellen provided an overview of the Consolidated-Tomoka amendment. He stated this involved a large property and a proposed increase in density and intensity. Mr. Sellen stated the applicant could not provide the necessary analysis to evaluate the impacts and staff was required to measure the impacts based upon maximum development, which resulted in a recommendation of denial.

Mr. Sellen discussed the mixed-use (M/U) land designation in Orange City which allows a variety of uses, densities and intensities. He explained when the city proposed the mixed-use land designation, they did not know what the development would be, and VGMC staff was required to measure impacts based upon maximum development. In order to resolve the issue, the City agreed that properties within the M/U district would be developed as planned developments (PD), and the PD's would be submitted for VGMC review so that impacts could be accurately measured at that time. Mr. Sellen stated if the city were to apply a specific land use designation to those properties within the M/U district, staff would be able to measure the impacts without the need to review the PD's.

In closing, Mr. Sellen stated the VGMC maximizes consistency among neighboring jurisdictions, minimizes adverse effects on regional systems, and resolves conflicts between stakeholders, without costing the local government a lot of time and money.

Chairman Wachtel thanked both Mr. Sellen and Mr. Chipok for their thorough presentations.

COMMISSIONER REQUESTS OR REMARKS

Chairman Wachtel stated the Charter Review Commission (CRC) will be meeting on December 14, 2015 to discuss the VGMC. He recognized Deanie Lowe in the audience. Ms. Lowe pointed out a couple of the CRC members also in the audience. She stated she served on the 1985-1986 Charter Review Commission which established the VGMC, and she expressed her appreciation and support of the VGMC and its members.

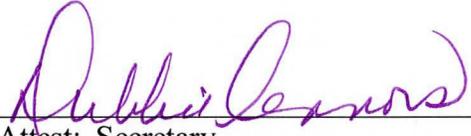
Mr. Vihlen commented that prior to serving on the commission, he did not understand the important role of the VGMC in resolving conflicts between the local governments. He stated he has recently heard a lot of opposition to the VGMC and recommendations that the VGMC be abolished. Pat Drago, a member of the CRC, briefly addressed the VGMC. She stated Reverend Triplett, also a member of the CRC, is present as well. Ms. Drago stated neither of them are speaking for the CRC, and also stated that any recommendations made by the CRC will have to go on the ballot for approval by the voters.

Chairman Wachtel stated the VGMC has been asked by the CRC for information and presentation by the VGMC at the December 14th meeting. He stated Mr. Brandon is working with a committee on gathering information and preparing a presentation for the meeting. The meeting is scheduled to begin at 5:30 p.m. in the Volusia Room at the Daytona Beach Airport, and VGMC members are welcome to attend. Ms. Morrissey asked if the members would see a copy of what will be presented by VGMC prior to the meeting. Mr. Brandon stated he will be sure a copy of the presentation goes out to all of the members.

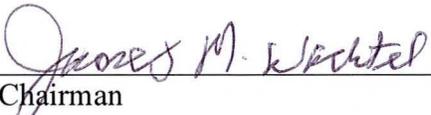
Mr. Brandon thanked Ms. Lowe, Ms. Drago and the other individuals in the audience for attending. He also encouraged the VGMC members to speak with their appointing local government concerning the commission and the current CRC review.

ADJOURNMENT

There being no further business, the meeting was adjourned at 8:47 p.m.



Attest: Secretary



Chairman