

Volusia Growth Management Commission

MEETING MINUTES FOR  
REGULAR MEETING HELD  
Wednesday, November 17, 2010

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

MEMBERS PRESENT

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

NON-VOTING MEMBERS

Sara Lee Morrissey (not present)  
Peter Brown (not present)

OTHERS PRESENT

Paul Chipok, GrayRobinson, P.A.  
Barry Wilcox, VHB Miller Sellen  
Andre Anderson, Planning Design Group  
Merry Chris Smith, VGMC Coordinator

REPRESENTING

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

REPRESENTING

Volusia Co. School Board  
SJRWMD

### 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 welcomed several new members to the Commission. He announced that Volusia County had reinstated Dwight Lewis to the VGMC and also appointed Gary Huttman (who previously served on the commission) and Michael Halpin to replace Rachel Sieg and Sandra Walters.

### APPROVAL OF MINUTES

Joan Spinney made a motion to approve the minutes of the regular meeting held on August 25, 2010 as presented; seconded by Debbie Connors. Motion carried unanimously.

### PUBLIC HEARING

Chairman Brandon explained the order of public hearings for the benefit of the new members.

- 1) Consideration of Request from the Town of Ponce Inlet for a Waiver of the 90-day Rule, VGMC Case No. 10-022, Large Scale Amendment Application

Paul Chipok, legal counsel to the VGMC, addressed the commission and explained that under our present consistency certification rules, the VGMC must take final action on an application within 90 days of receipt. He stated a jurisdiction may request a waiver of that rule, which requires approval by the full commission. Mr. Chipok stated that staff supports the request since they would rather have more time than less to review the appropriate information necessary in order to prepare a recommendation on the application.

Drew Smith, representing the Town of Ponce Inlet, concurred with Mr. Chipok's comments and added that if the hearing on the application had to occur within 90 days, it would put us right at the Christmas timeframe.

Commissioner Lewis asked if there is a specified extension of time given when a waiver of the 90-day rule is granted. Mr. Chipok responded that a waiver of the 90 day rule is not for a specific time, but rather removes the requirement that the VGMC must take final action within 90 days. In this case, he stated Ponce Inlet indicated they would be looking to take the application to public hearing at the January, 2011 VGMC meeting. Commissioner Katz commented that granting a 90-day waiver request allows the VGMC more time to review the application and schedule a hearing at a future date. Mr. Chipok concurred and stated that

according to our rules, if the VGMC fails to act within the 90 days, the application is deemed to be approved automatically.

Drew Smith added that the Town of Ponce Inlet has already requested that the hearing be scheduled for January 26, 2011.

There being no one else present in the audience who wished to speak on this matter, Chairman Brandon closed the public hearing and opened it up for discussion by the Commission.

Steve Katz made a motion to approve the request from the Town of Ponce Inlet for a waiver of the 90-day rule for VGMC Case No. 10-022; seconded by Debbie Connors. Motion carried unanimously.

2) Consideration of party status for Sheldon Rubin pursuant to Section 90-35, Volusia County Code, relating to VGMC application No. 10-028

Mr. Chipok stated that we received a letter from Mr. Rubin withdrawing his request for public hearing, which we've also considered as a withdrawal for standing in this matter as well. As a result, Mr. Chipok stated that no action is necessary on this item, however, the public hearing on the application will need to move forward since it has been advertised.

3) Consideration of VGMC application No. 10-028, County of Volusia, Gardens 207 PUD (VGMC Resolution #2010-09)

Mr. Chipok reviewed the scope of the VGMC and the rules of procedure for the scheduled public hearing. Those individuals testifying at the hearing were sworn in by the VGMC Coordinator.

Andre Anderson, planning consultant to the VGMC, addressed the commission. Mr. Anderson provided an overview of the application and request. He reviewed the current and proposed land use designations. Mr. Anderson also discussed the review process the MPUD went through at the County level.

Mr. Anderson stated that a Request for Additional Information (RAI) had been issued which referenced comments from Sheldon Rubin. He stated that subsequent to the preparation and distribution of the staff report, Mr. Rubin submitted a letter withdrawing his request for public hearing.

Mr. Anderson reviewed staff's findings as well as their recommendation for approval, subject to the conditions of approval contained in VGMC Resolution #2010-09.

Mr. Chipok stated that typically the VGMC does not review matters of zoning, however, there are certain circumstances where the impacts from comprehensive plan amendments cannot be determined at the time of the change for reasons such as mixed use designations. He stated in prior VGMC resolutions we've allowed the comprehensive plan amendment to go forward

subject to a condition that when the land is ready for development and it is known what type of mixed uses they intend for that particular mixed use district, that the property has to be developed as a planned unit development and reviewed by the VGMC for an analysis of impacts to determine if it is consistent with surrounding areas. Mr. Chipok again stated it is unusual that we look at planned unit developments, and the reason we would is due to a prior VGMC resolution that looked at the overall comprehensive plan for the area and has earmarked the subsequent projects for that area to come in as planned unit developments for further review by the VGMC.

Becky Mendez, Senior Planning Manager for Volusia County, addressed the commission. She stated that this matter is before the VGMC as a public hearing due to a previous request from an affected party, however, added that none of the adjacent jurisdictions had comments or objections to the proposed planned unit development. Additionally, she stated that only the front 132 acres of the total 831 acre rezoning are within the SE Activity Center local plan area which is subject to VGMC review due to the prior resolution. Ms. Mendez stated the County has no objection to staff's recommendation and the proposed conditions of certification contained in VGMC Resolution #2010-09.

Jim Morris, attorney for the property owner and mortgage holder, addressed the commission and stated the staff report is complete. Mr. Morris stated that the zoning program has been specifically patterned to meet the comprehensive plan requirements of the County, and it is also consistent with what New Smyrna Beach has asked for.

Commissioner Huttman asked if the VGMC has heard zoning matters in the past and if the VGMC decisions have the same affect on zoning matters as they do with comprehensive plan amendments. Mr. Chipok responded affirmatively and stated that based on the prior certification resolution that affects this particular area, the prior comprehensive plan amendment was found to be consistent on the condition that the properties to be developed within that land use area come back to the VGMC as a planned use development for further certification review on the same standards to ensure there are no adverse impacts to neighboring jurisdictions. He added that the SE Activity Center is one of those areas where the condition exists, and there are other areas including areas in Orange City and DeBary that also have that condition. Mr. Chipok stated this is one way the VGMC has dealt with the mixed use concept since the planning review requires the impacts be measured on a worst-case basis, yet the actual impacts cannot be determined until the property is in the planned unit development/zoning stage.

Dwight Lewis made a motion to approve VGMC Resolution #2010-09 as proposed; seconded by Joan Spinney. Motion carried unanimously.

4) Consideration of VGMC Resolution #2010-08 modifying VGMC Rules of Procedure relating to Commissioner requests and duties of the Chairman

Chairman Brandon stated the changes proposed in the resolution have been reviewed by the POP Committee and their recommendation to approve serves as a motion and a second. Commissioner Spinney complimented the POP Committee for their work.

Mr. Chipok addressed the commission and explained that the proposed resolution is clarification of the existing procedures relating to the Chairman's duties and how commissioner's requests for information are to be handled. He added this is basically a codification of the procedures and policies that have been followed for years.

There being no further discussion of the commission members and no one present who came forward to speak on this matter, the public hearing was closed and the Chairman called the question. The motion to approve VGMC Resolution #2010-08 as presented was unanimously approved.

#### REMARKS OF INTERESTED CITIZENS

None

#### REPORTS OF OFFICERS

Chairman Brandon announced that Sandra Walters and Rachel Sieg were not reappointed to the commission by the County. He also stated that the Budget Committee met immediately prior to the regular meeting and reviewed last year's budget expenses, as well as the current fiscal year budget (2010-11) which has been approved by the County Council.

#### REPORTS FROM CONSULTANTS

Legal Update: In the matter of Burgess v. City of Edgewater, VGMC & Hammock Creek Green, Mr. Chipok reminded the commission that Burgess and ECARD had filed a declaratory judgment which was later dismissed at the circuit court level. He reported that the plaintiff chose to appeal to the 5<sup>th</sup> DCA and they have granted a motion relinquishing jurisdiction back to the circuit court. Mr. Chipok explained the reason DCA did that was because when the plaintiff filed the appeal with the 5<sup>th</sup> DCA, it was not a "final order" because there was leave to amend under the circuit court's order. The plaintiff failed to amend and instead chose to file with the 5<sup>th</sup> DCA, however, they do not have jurisdiction since it is not a final order. The DCA relinquished jurisdiction back to the circuit court for the plaintiff to seek a final order from the circuit court. Mr. Chipok stated it is a technical issue, and we still haven't approached the merits of the declaratory judgment.

Mr. Chipok also reported the Farmton DOAH hearing concluded in September and the Proposed Recommended Orders are due on December 1, 2010 to the hearing officer. He stated one order will be prepared by DCA, and another will be prepared by Miami Corporation on behalf of Miami Corporation, the County and VGMC.

Planning Update: Mr. Wilcox provided an update on the pending case log. He stated that a 2<sup>nd</sup> Request for Additional Information (RAI) will be going out on Orange City (VGMC Case No. 10-018) and we hope to resolve the outstanding issues. If not, he stated the commission may see that come before them as a public hearing in the early part of 2011. Mr. Wilcox stated the Town of Ponce Inlet is looking to schedule the large scale amendment application (VGMC Case #10-022) for public hearing at the January 26, 2011 meeting. With respect to the City of New Smyrna Beach EAR based amendments (VGMC Case #10-031), he stated that an RAI has been issued and time is currently tolled on the application.

## REPORTS OF COMMITTEES

### POP Committee:

Committee Chairman Steve Katz provided an overview of the work and successes of the POP Committee over this past year.

Mr. Katz discussed the lengthy RSQ process completed for contract legal services which resulted in a renewal contract with GrayRobinson. He stated that the committee was pleased with how the process turned out and that the negotiated contract provides more clarity for both the VGMC and GrayRobinson.

Mr. Katz also stated over the past several months the committee reviewed our contract with Planning Design Group and the recommendation for renewal is scheduled for the full commission's consideration later in the meeting.

Mr. Katz stated the committee did a fresh review of the VGMC Rules of Procedure this past year which resulted in two resolutions amending the Rules of Procedure. The first was approved earlier in the year to correct several inconsistencies within the procedures. The second, which was approved by the commission earlier in the meeting, provides clarity and codifies the policies the commission has practiced.

He stated the POP Committee expects to meet in January to discuss their plans for 2011.

### Budget Committee:

Chairman Brandon stated the committee met earlier and reviewed the 2009-10 fiscal year expenses and the current fiscal year budget. He commented that the committee has worked diligently on the budget.

## UNFINISHED BUSINESS

None

### NEW BUSINESS

- 1) Consider renewal contract with Planning Design Group for continued planning services

Vice Chairman Katz stated the POP Committee is submitting a request to the commission to approve the professional services contract renewal with Planning Design Group. Mr. Katz stated the annual renewal contract is very similar to what the commission has renewed in the past, except that the hourly rate is the same for both large and small scale amendments. He stated that the amendment review process for small scale and large scale amendments is the same and the rate should be as well.

Mr. Katz stated the POP Committee recommendation to approve the renewal contract with Planning Design Group as proposed serves as a motion and second. The motion carried unanimously.

- 2) Election of Officers

Joan Spinney nominated Dwight Lewis to the office of Secretary; Debbie Connors seconded the nomination. There being no further nominations, Chairman Brandon closed the nominations. The commission unanimously elected Dwight Lewis to serve as the Secretary of the commission.

Debbie Connors nominated Steve Katz to the office of Vice Chairman; Rick Tresher seconded the nomination. There being no further nominations, Chairman Brandon closed the nominations. The commission unanimously elected Steve Katz to serve as the Vice Chairman of the commission.

Debbie Connors nominated Gerald Brandon to the office of Chairman; Steve Katz seconded the nomination. There being no further nominations, Chairman Brandon closed the nominations. The commission unanimously elected Gerald Brandon to serve as the Chairman of the commission.

### REPORTS AND REQUESTS OF COMMISSION MEMBERS

Commissioner Lewis requested that Chairman Brandon meet with County Chairman Frank Bruno to find out when the County will be considering the proposed consistency certification rules amendments.

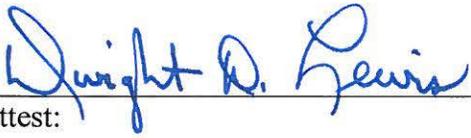
Commissioner Romanik requested that legal staff provide the commission a written status report on litigation matters at each meeting, similar to the report provided by planning staff.

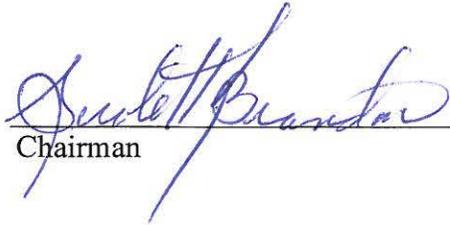
### REPORTS AND REQUEST OF COMMISSION CHAIR

Chairman Brandon wished all of the members and staff a safe and happy Thanksgiving holiday.

ADJOURNMENT

The meeting was adjourned at 7:40 p.m.

  
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Attest:

  
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Chairman