

Volusia Growth Management Commission

MEETING MINUTES FOR  
REGULAR MEETING HELD  
Wednesday, November 28, 2012

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

MEMBERS PRESENT

Steve Katz, Chairman  
Gerald Brandon, Vice Chairman  
James Wachtel, Secretary  
Richard Walton  
Carla Page  
Jack Lenzen  
Sandy Lou Gallagher  
Jack Hayman  
John Heaphy  
Roger Sonnenfeld  
Kenneth Bohannon  
Robert Storke  
Don Romanik  
Debbie Connors  
Joan Spinney  
Kenneth Kuhar  
David Michael Halpin

REPRESENTING

DeLand  
Ormond Beach  
Volusia County  
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

NON-VOTING MEMBERS

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

REPRESENTING

Volusia Co. School Board  
SJRWMD

OTHERS PRESENT

Paul Chipok, GrayRobinson, General Counsel  
Andre Anderson, Planning Consultant  
James Sellen, Planning Consultant  
Merry Chris Smith, VGMC Coordinator

CALL TO ORDER

VGMC Chairman Steven Katz 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.

### APPROVAL OF CHANGES TO AGENDA

Gerald Brandon made a motion to approve the changes to the agenda; seconded by Robert Storke. Motion carried unanimously.

### CITIZEN COMMENTS

There were no citizens present who wished to speak.

### APPROVAL OF MINUTES

Debbie Connors made a motion to approve the minutes of the regular meeting held on August 22, 2012 as presented; seconded by Jack Hayman. Motion carried unanimously.

### REPORTS OF COMMISSION COORDINATOR

Ms. Smith stated the member travel reimbursements were processed in October and all members should have received their checks. She also stated that following the County approval of the amendments to the Consistency Certification Rules on October 4<sup>th</sup>, copies of the revised rules were sent out to the planning directors at each of the local jurisdictions. In addition, she stated modifications have been made to the notice of application as a result of the changes to the consistency certification rules, and the legal ad now includes the specific date in which a petition for hearing by an affected party, as described in the notice, must be received by the commission.

Ms. Smith reported that 12 new applications have been received since the commission last met in August, seven of which have been certified by letter and five are currently under review by staff.

Ms. Smith reported the commission concluded the 2011-12 fiscal year well below budget with expenses totaling approximately \$122,000. She stated the 2012-13 fiscal year budget was approved by the County Council in September with a total budget of approximately \$286,000, and that a budget committee meeting will need to be scheduled in early 2013 to begin discussions for the proposed 2013-14 budget.

Ms. Smith stated the 2013 regular meeting schedule should be finalized shortly and should be published in December.

### REPORTS OF COMMISSION CHAIRMAN

Chairman Katz spoke favorably concerning the Coordinator's performance over the past year and her ability to coordinate with the local governments. He also spoke favorably to the

performance of the VGMC planners and how they are now reviewing applications within the first seven days of receipt in order to coordinate with the local governments to work out issues and potentially avoiding the need for a public hearing.

### NEW BUSINESS

#### 1) Election of Officers

Chairman Katz opened the floor to nominations for the office of Chair and indicated he did not wish to be nominated. Joan Spinney nominated Gerald Brandon as Chairman; John Heaphy seconded the nomination. There being no further nominations, Chairman Katz closed nominations and called for a vote. Gerald Brandon was elected Chairman of the Commission by a unanimous vote.

Mr. Katz opened the floor to nominations for the office of Vice Chairman. Joan Spinney nominated Jack Hayman as Vice Chairman; Debbie Connors seconded the nomination. There being no further nominations, Chairman Katz closed nominations and called for a vote. Jack Hayman was elected Vice Chairman of the Commission by a unanimous vote.

Mr. Katz opened the floor to nominations for the office of Secretary. Joan Spinney nominated Jim Wachtel as Secretary; Debbie Connors seconded the nomination. There being no further nominations, Chairman Katz closed nominations and called for a vote. Jim Wachtel was elected Secretary of the Commission by a unanimous vote.

#### 2) Consideration of VGMC Resolution #2012-04, Amendments to the Volusia Growth Management Rules of Procedure

Mr. Katz stated the resolution comes before the commission as a motion and a second for approval from the POP Committee and asked if there was any discussion.

Mr. Brandon stated this proposed resolution replaces and repeals the prior resolution which was improperly voted on at the August meeting.

Commissioner Bohannon stated he raised a concern at the August meeting concerning the wording of Article VI, Section 5. He presented the commission with a modification to the section prepared by legal staff which breaks it into two sentences and provides more clarity (see Exhibit A of these minutes).

Mr. Katz stated the POP Committee would have to review the modification prior to any changes to the resolution presently before the commission. He added that the resolution could not be passed tonight with the modified language included, but the commission could pass it tonight without the language and then send it back to the POP Committee to consider the proposed language. Mr. Chipok disagreed and stated the item is before the commission for full discussion and changes to the resolution can be made from the floor. Commissioner Bohannon also disagreed and stated that committees typically bring recommendations forward for full

commission discussion, and then a motion and second would come from the floor with any changes which may have come out of the discussion. Mr. Katz stated his view is there are current rules in place as to how the recommendations come before the commission as a motion, second and final action. He added that the proposed language may very well clarify the procedure, however, he did not feel under the present rules that the commission had the ability to make a change to the committee recommendation. Mr. Katz suggested that the proposed language be sent to the POP Committee for their review, and then brought back to the full commission through the amendment process. He stated if the change is approved, thereafter the commission on its own would be able to make changes to the recommendations brought forward by the committees.

Mr. Bohannon suggested the commission could vote down the motion and second for approval of the resolution as presented, then a new motion could be made to approve the resolution with the change to Article VI, Section 5. Mr. Katz stated he felt the procedure should be changed as suggested, however, under the present rules, he stated the commission tonight can only vote up or down on the resolution presented.

Mr. Chipok stated that Section 5 of Article VI is a brand new section to the Rules of Procedure. He stated that as a matter of policy, items from the committees come to the full commission as a motion and second for consideration by the full commission. He added that historically the practice has not limited discussion or modifications by the full commission on what the final product will look like. Mr. Chipok stated there is no provision in the present rules that would prohibit the commission from considering amendments to the items before the commission.

Commissioner Hayman commented the rules need to assure there is adequate discussion through deliberation of the entire commission when recommendations from committees are brought forward to the commission. He also asked what provision the commission has for a substitute motion and/or an amendment to a motion in the event there is a new idea or question raised regarding a recommendation proposed by a committee.

Following further discussion, Mr. Katz proposed the commission approve the resolution as submitted and direct the POP Committee to look at Article VI, Section 5 and bring back changes to the full commission in another resolution. Mr. Chipok read from the present Rules of Procedure and stated the current rules do not address this particular issue. He stated typically any recommendations which come out of committee as a motion and second are presented to the full commission for consideration and action. He added that historically, the process has never limited discussion or modification to the recommendation which has come from a committee.

A brief dialogue occurred between Mr. Katz and Mr. Chipok relating to the newly drafted language. Mr. Katz then asked that the resolution be voted on without the proposed amendment and defer the change to Article VI, Section 5 to the POP Committee for future consideration. There being no further discussion, Mr. Katz called the question. Several members voted in opposition of the motion, however, in the opinion of the Chairman the motion passed.

#### POP COMMITTEE REPORT

Consideration of Proposed 2012-13 Staff Contracts:

1) VHB-MillerSellen

Commissioner Brandon reviewed the proposed contract and discussed several modifications to the originally proposed contract, including a timeframe and clause relating to the termination of services, identification of the assigned project manager, and a clause which states any change in the assigned project manager must be approved by the VGMC. Mr. Brandon stated the proposed contract comes to the full commission as a motion and second from the POP Committee to approve the contract as presented.

Jim Sellen of VHB-MillerSellen addressed the commission. Mr. Sellen stated he is the assigned project manager and they have no problem with the changes to the contract. He also commented on Barry Wilcox who formerly served as the project manager to the VGMC, and also discussed the value of the commission to the jurisdictions in Volusia County.

Commissioner Walton raised a question concerning the reference to "Engineer" in the first sentence on page 2 of Part II of the contract. Mr. Sellen stated he will correct that portion of the contract. Mr. Katz stated the item should be tabled to allow VHB-MillerSellen to make the correction and bring back to the POP Committee to forward a recommendation onto the full commission.

Joan Spinney made a motion to table the motion from the POP Committee for approval of the contract as presented; seconded by Robert Storke. Motion to table carried.

2) Planning Design Group

Mr. Brandon stated the same modifications made to the VHB-MillerSellen contract were also made to the Planning Design Group contract, and the proposed contract comes to the full commission as a motion and second from the POP Committee to approve the contract as presented.

There being no further discussion, Mr. Katz called the question and the motion carried unanimously.

3) GrayRobinson

Mr. Brandon stated Mr. Katz had comments to make on the proposed GrayRobinson contract so he turned the floor over to him.

Mr. Katz raised a question relating to the 90-day termination of services clause provided for in the proposed contract. Mr. Brandon stated the planning contracts have a 30-day termination clause, however, 90 days was proposed for legal since it would benefit the commission due to the complexity in hiring legal staff. Mr. Katz commented that 90-days would not be sufficient time

for the VGMC to hire new legal staff if GrayRobinson decided to withdraw from representation. He also stated if the VGMC decided to terminate GrayRobinson's services, the commission would hire a new legal firm prior to notification to GrayRobinson which would not require 90 days notice.

Mr. Katz commented that we do not presently have a second/back-up law firm in place and asked Mr. Chipok what he felt was a reasonable period of notice if GrayRobinson chose not to represent the VGMC. Mr. Chipok responded they have no intention of not pursuing continued legal representation of the VGMC. Mr. Katz asked if he felt 90 days notice would be sufficient if a conflict arose where they would be unable to represent the VGMC. Mr. Chipok responded that pursuant to the rules governing attorneys established by the Florida Bar, GrayRobinson cannot take on additional work outside of the VGMC if a direct conflict exists without consent of the parties.

Mr. Katz then raised an issue relating to conflict consent, stating the contract should spell out how the consent is obtained and suggested it require a weighted majority vote of the commission to approve a conflict. Ms. Spinney commented that in 26 years, there's never been a problem relating to this issue. She stated there is a motion and second on the floor from the POP Committee and suggested the commission approve the contract as presented.

Discussion continued relating to issue of conflict consent. Jack Hayman made a motion to call the question on the original motion; motion seconded by Joan Spinney. The motion to end discussion and call the question carried unanimously.

Mr. Katz called the question on the motion and second from the POP Committee to approve the 2012-13 legal contract with GrayRobinson as presented. Motion carried unanimously.

#### REPORTS FROM PLANNING CONSULTANTS

Andre Anderson of Planning Design Group addressed the commission. Mr. Anderson stated two of the five pending applications are large scale amendments that are missing data or require clarification. He stated he is currently working with the local governments to address the issues and hopefully avoid the need to issue a Request for Additional Information (RAI) or request a public hearing. Mr. Hayman asked which jurisdictions have pending applications. Mr. Anderson responded the two large scale amendment applications are from the City of New Smyrna Beach and City of Deltona and the three small scale amendments from the City of Ormond Beach.

#### REPORTS FROM LEGAL COUNSEL

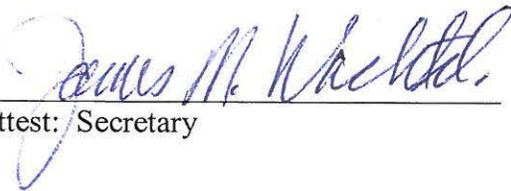
Paul Chipok reported there are no pending legal matters. He also asked the commission if they would like him to present the Sunshine Law review and VGMC Overview at a future regular meeting. There was general consensus from the commission for Mr. Chipok to prepare the presentations for a future regular meeting.

COMMISSIONER REQUESTS OR REMARKS

None

ADJOURNMENT

Mr. Katz thanked the commission members and stated it was a pleasure to serve as the Chairman over the past year. The meeting was adjourned at 7:48 p.m.

  
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Attest: Secretary

  
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Chairman

VGMC RULES OF PROCEDURE  
REVISION TO ARTICLE VI, COMMITTEES  
SECTION 5, COMMITTEE AUTHORITY

For clarity, it is recommended that Article VI Section 5 be revised to read as follows:

Section 5      Committee Authority.

All recommendations voted on by committees shall be forwarded to the full Commission for consideration, discussion and final action at a regular meeting of the Commission. Such recommendations from the committees come to the Commission as a motion and second for consideration.

**Exhibit A**  
**11/28/12 VGMC**  
**Meeting Minutes**