

Volusia Growth Management Commission

MEETING MINUTES FOR
REGULAR MEETING HELD
Wednesday, March 23, 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
Richard Walton
Stewart Cruz
Danny Allen (Excused)
Sandy Lou Gallagher
Jason Floyd
John Heaphy
Roger Sonnenfeld (Excused)
Rick Tresher
Robert Storke
Alan Redinger
Debbie Connors
Joan Spinney
Dwight Lewis
James Wachtel
Kenneth Kuhar
Gary Huttman (Excused)
David Michael Halpin (Excused)

REPRESENTING

Ormond Beach
DeLand
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
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, VHB Miller Sellen
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 welcomed Stewart Cruz who was recently appointed to the VGMC by the City of Daytona Beach Shores.

APPROVAL OF MINUTES

Approval of the minutes of the February 23, 2011 regular meeting was continued to the next meeting.

PUBLIC HEARINGS

Chairman Brandon stated he received a request to move item IV.3) of the agenda for consideration first under public hearings.

- 1) Consideration of Proposed Resolution #2011-05 withdrawing VGMC Resolution #2009-04 which authorized transmittal of proposed amendments to the VGMC Certification Rules to the Volusia County Council for adoption

Paul Chipok, legal counsel to the VGMC, addressed the commission, stating that the POP committee has reviewed the proposed resolution and it is being forwarded, as a motion and second from POP, to the full commission for consideration and approval. Mr. Chipok explained the issue deals with the position the County has taken that they can make amendments to the rules proposed by the VGMC. At the last meeting, the commission directed staff to draft a resolution which would take the rules amendments proposed in Resolution #2009-04 off the table from further consideration by the County. Additionally, the draft resolution states the VGMC would relook at the proposed amendments taking into consideration the County Council's comments, make any modifications, and then send a new package back to the County.

Steve Katz, Chairman of the POP committee, stated the committee felt the proposed resolution is the best solution, adding that we should invite the County back to the table, but not lose our integrity for adopting our own rules.

The POP committee recommendation to approve Resolution #2011-05 serves as a motion and second; the motion carried unanimously.

2) Consideration of VGMC Application No. 10-031A, City of New Smyrna Beach large scale amendment application (Proposed Resolution #2011-03)

Chairman Brandon stated the City of New Smyrna Beach has requested a waiver of the 90-day rule and a continuance of this item to the April 6, 2011 special meeting.

Commissioner Katz asked Mr. Wilcox to advise the commission why there is a need for a special meeting. Barry Wilcox, planning consultant to the VGMC, addressed the commission. He stated that staff has been working with the City of New Smyrna Beach on several amendments in the application package right up until a few days ago, resulting in the need to continue the item to a later date. Commissioner Katz commented on the additional expenses involved in scheduling a special meeting and asked Mr. Wilcox to explain the sense of urgency in this situation. Mr. Wilcox advised that the City of New Smyrna Beach has recently had issues with DCA in that they had not submitted to DCA the comprehensive plan amendments they had adopted for quite some time. He stated the City has settled the issue with DCA, however, to avoid further issues with DCA, the City would like to adopt the pending amendment within the 120 day timeframe required by the State. Mr. Wilcox stated the 120 days would expire prior to the regularly scheduled April 27, 2011 VGMC hearing, resulting in the need to schedule a special meeting.

Joan Spinney made a motion to approve the City of New Smyrna Beach's request to waive the 90-day rule and continuance to the special meeting scheduled for April 6, 2011; seconded by Dwight Lewis. Motion carried unanimously.

3) Consideration of Stipulated Settlement Agreement and remedial actions relating to VGMC Case #09-022B-Volusia County Farmton Amendment and corresponding VGMC Resolution #2010-04 (Proposed Resolution #2011-04)

Mr. Chipok read a statement of public hearing procedure into the record and discussed the commission's scope of authority. In addition, he stated that we have not received any motions to intervene, but pointed out that Miami Corporation was granted party status in the prior hearing of VGMC Case #09-022B and since this is a review of additional information on that application, they will still be considered as having party status.

Mr. Chipok explained that the VGMC is a party to the administrative hearing case relating to this matter. He stated an administrative hearing was held, and at this point, a recommended order has not been issued. Mr. Chipok stated that the parties to the proceeding, except for ECARD and Herrin, have chosen to enter into a Stipulated Settlement Agreement.

At tonight's hearing, Mr. Chipok explained the VGMC will be considering the Stipulated Settlement Agreement and if approved, authorization of execution. In addition, as part of the Stipulated Settlement Agreement, the County will have to adopt remedial amendments, which are included as Exhibit B of the Agreement. Prior to adopting the remedial amendments, the

County needs certification by the VGMC that the remedial amendments are consistent with and do not change the facts or circumstances of the original Resolution #2010-04 approved by the VGMC. Pursuant to Resolution 2010-04, Section 2.C., Mr. Chipok stated that the remedial amendments could have been reviewed administratively, however, the County requested the public hearing.

Mr. Chipok stated that the VGMC scope of review on this matter will be to determine whether the additional information contained in the Stipulated Settlement Agreement and remedial amendments changes the facts and circumstances of the prior certification in Resolution #2010-04. He stated the basis upon which that determination will be made is the standard review criteria contained in 90-37(c). To summarize, Mr. Chipok stated the VGMC needs to determine whether there are any additional adverse impacts greater than what was certified in the original resolution.

Witnesses planning to speak were sworn in by the VGMC Coordinator.

Barry Wilcox, VGMC planning consultant, addressed the commission. Mr. Wilcox explained that jurisdictions generally forward copies of their adoption packages at which time he reviews them to determine if any modifications to what was originally reviewed by VGMC would cause the need to reopen the case for discussion. As a general rule of thumb, Mr. Wilcox stated that nothing comes back from DCA more intense than what was originally submitted, and typically he would document the VGMC record to indicate that he reviewed the additional information and found the facts by which the case was originally certified have not changed. In this situation, it was decided to bring the remedial amendments for public hearing before the VGMC prior to adoption.

Mr. Wilcox then reviewed the remedial amendments and how they differ from the original approved amendment. The primary changes to the remedial amendments include changes to policies relating to resource based open space, transportation and natural resource protection, and water supply.

Mr. Chipok addressed several items relating to the supplemental materials previously provided to the commission members. He discussed the letter received from Henry Morgenstern in which he made the proposition that the conditions of approval in VGMC Resolution #2010-04 should have been included as amendments to the comprehensive plan in the remedial amendments. Mr. Chipok stated that he firmly disagrees with Mr. Morgenstern's position. He stated that during the course of our discussions prior to the original adoption, VGMC staff worked diligently with County staff to provide revisions to the comprehensive plan amendment. As a result, many of the concerns of VGMC staff were addressed in the comprehensive plan amendment that was actually adopted by the County. Mr. Chipok stated our Resolution #2010-04 was essentially more in the nature of belt and suspenders. He stated while the actual comprehensive plan amendments stated that certain things would occur, our resolution was more in the nature of procedural requirements of how those comprehensive plan amendments would be implemented in the future.

Mr. Chipok stated that not every VGMC condition of approval has to be turned into and adopted as a comprehensive plan policy by the local jurisdiction. He stated that the procedural aspects in conditions #1 - #6 of the VGMC resolution continue to exist, and the commission would be restating and reaffirming Resolution #2010-04 as being valid and effective by adopting Resolution #2011-04 tonight.

Mr. Chipok referenced the letter submitted by Glenn Storch in response to Henry Morgenstern's letter and stated that he agrees with the propositions put forth in Mr. Storch's letter.

Jamie Seaman, Deputy County Attorney for Volusia County, addressed the commission relating to the remedial amendments. Ms. Seaman explained that the Department of Community Affairs raised four issues during the settlement discussions. Specifically, she stated the issues were: 1) The corridors weren't wide enough; 2) There was not adequate protection crossing the arterial roads; 3) The County did not adopt the transportation map into the transportation map series; and 4) DCA wanted the County's water data and analysis to correlate with Brevard County which had just been found in compliance. Ms. Seaman then discussed the remedial amendments and the specific changes made to address DCA's issues.

Ms. Seaman reported that the County Council approved the Stipulated Settlement Agreement at their 2nd meeting in March, and the Planning and Zoning Board approved the remedial amendments on 3/22/11. She stated if the VGMC finds the remedial amendments consistent tonight, they will go before the County Council on April 7, 2011.

Glenn Storch addressed the commission in favor of the remedial amendments. Mr. Storch stated his client has already signed the Stipulated Settlement Agreement and he also discussed the efforts that went into this process over the past several years. Commissioner Katz raised a question regarding the 5 year waiting period. Mr. Storch explained that Farmton is a long term vision. He discussed the development restrictions on the property and the concern of competition raised by Deltona.

Barbara Herrin, 465 Wildwood Drive, New Smyrna Beach, Chair of ECARD (Edgewater Citizens Alliance for Responsible Development), addressed the commission. Ms. Herrin stated she wished to reassert their opposition to the project as being inconsistent with state law and to reassert their standing in the case.

Betty O'Laughlin, President of the Environmental Council of Volusia/Flagler Counties, addressed the commission in opposition of the request.

Mr. Chipok addressed the commission relating to Ms. Herrin's statement reasserting their standing. Mr. Chipok stated that ECARD/Herrin did not file a motion to intervene and they were not granted party status in the VGMC proceeding. He stated they are a party to the DCA Department of Administrative Hearings case, but in the VGMC proceedings they are not a party to the proceedings but rather participating as a member of the public.

Commissioner Tresher asked Peter Brown of the St. Johns River Water Management District (SJRWMD) if water supply had been verified by the SJRWMD. Mr. Brown responded that the applicant had an engineer prepared study that confirmed to the applicant's satisfaction that there is sufficient groundwater to serve Farmton and beyond. Mr. Brown stated there is regional data they have run through their model for the SJRWMD to agree with their findings at this point. He also stated that in the policy changes made to the plan, there is a commitment to develop alternative water supply to the extent that the groundwater is not available. Mr. Brown stated the SJRWMD assisted in writing the policy changes and they are satisfied with the revised policies.

There being no one else present wishing to speak, Chairman Brandon closed the public hearing.

Steve Katz made a motion to approve Resolution #2011-04 as submitted; seconded by Dwight Lewis.

Commissioner Storke raised a question concerning the parties to the Stipulated Settlement Agreement. Mr. Chipok stated that the parties to the agreement are DCA, Volusia County, VGMC and Miami Corporation. He stated that Barbara Herrin & ECARD chose not to be a party in the SSA. Procedurally, Mr. Chipok stated that following adoption of the SSA, the matter will go back to the Administrative Law Judge and the parties will be realigned so that it will be DCA, Volusia County, Miami Corporation and VGMC in agreement on one side; and Barbara Herrin and ECARD on the other. Jamie Seaman added that since the parties will be realigned and the remedial amendments will result in the plan being in compliance, the burden of proof shifts. She stated it is not clear specifically how the Administrative Law Judge will move forward, but added that since the plan will be found to be in compliance, the Administrative Law Judge order will go to the Secretary of DCA, and not to the Governor and Cabinet.

Commissioner Walton asked if the County and the property owner were still in agreement with the original VGMC conditions of approval. Ms. Seaman responded affirmatively.

Commissioner Gallagher commented on how issues that Deltona previously raised have been addressed and worked out over the past year, and she thanked Mr. Storch for his involvement.

Following a roll call vote, the motion to approve Resolution #2011-04 as submitted carried unanimously.

REMARKS OF INTERESTED CITIZENS

None

REPORTS OF OFFICERS

None

REPORTS FROM CONSULTANTS

Legal Update: Mr. Chipok updated the commission on the Burgess v. VGMC case relating to the Edgewater Restoration amendment. He stated this matter is an appeal to the 5th DCA on a procedural matter of denial of standing to Burgess by the Circuit Court. Mr. Chipok reported that all of the legal briefs have been filed and we are currently awaiting a response from the 5th DCA.

Planning Update: None

REPORTS OF COMMITTEES

POP Committee: Committee Chairman Steve Katz reported that the POP committee had met prior to the regular meeting and reviewed the performance of the VGMC Coordinator, Merry Smith. He stated the committee rated her performance as outstanding. In addition, Mr. Katz stated the committee looked at her salary and budget. He stated that approximately two years prior, the commission proposed a salary increase, however, she did not accept the increase. Last year, Mr. Katz stated the commission increased the salary budget to \$26,000 to cover the extra hours she works during peak times. Since she has not had an increase in salary in approximately three years, he stated the committee is recommending a \$1,000 salary increase for consideration by the budget committee and commission.

Commissioner Lewis commented that the coordinator does not currently get benefits and that is something that needs to be considered. He also stated, however, that there are many employees who haven't received an increase in several years and given the current economy, he does not feel it is an appropriate time to grant a salary increase. Mr. Lewis commented favorably on her performance, however, stated he could not support a salary increase at this time.

General discussion ensued relating to what the County may be doing in terms of increases in the upcoming fiscal year. Chairman Brandon stated that the POP committee recommendation for a \$1,000 salary increase will go to the budget committee for consideration at their next meeting. Commissioner Spinney also suggested looking at the possibility of providing comp time if a salary increase is not an option.

Budget Committee: Committee Chairman Lewis reported that the budget committee met prior to the regular meeting to discuss current year-to-date expenses and the proposed 2011-12 budget. He reviewed the expenses through February 28, 2011 and stated we appear to be on track with the current year budget. With respect to the proposed 2011-12 budget, Mr. Lewis stated the proposed budget is the same as our current approved budget, except that a \$25,000 litigation contingency is included.

Commissioner Morrissey raised a question relating to mileage to be sure the coordinator is putting in for it.

With the budget committee recommendation to approve the proposed 2011-12 budget serving as a motion and second, the motion carried unanimously by the full commission.

UNFINISHED BUSINESS

None

NEW BUSINESS

None

REPORTS AND REQUESTS OF COMMISSION MEMBERS

Commissioner Morrissey commented on the costs associated with scheduling a special meeting and questioned the need for the special meeting scheduled for the New Smyrna Beach amendments. She stated that everyone knows the VGMC meeting calendar in advance and feels the commission needs to toughen up on its meeting schedule. Mr. Chipok stated that as a general policy, if a jurisdiction requests a special meeting, they will bring that forward to the commission. In the case of New Smyrna Beach, he stated they are running up on the 120 day deadline with the State which will conclude prior to our April 27, 2011 regularly scheduled meeting. Ms. Morrissey commented on the inconvenience to the VGMC in having to schedule a special meeting.

Commissioner Walton asked Mr. Wilcox if he had ever seen a jurisdiction have an issue with DCA if they did not adopt within the 120 day timeframe. Mr. Wilcox replied that he is not aware of any consequences for going beyond the established State timeframes. He added, however, that New Smyrna Beach is in a unique situation. Mr. Wilcox stated that approximately five years of adopted amendments were never submitted to DCA by the City. Because of that, he stated the City is very sensitive to adopting within the established DCA timeframes. He also discussed the impacts of budget cuts at the local jurisdiction level on staffing. Ms. Morrissey commented that there are a number of staff members on the commission whose staff has been cut, yet they still are required to carry the burden and follow through.

Chairman Brandon thanked Ms. Morrissey for her comments. He stated that we may need to coordinate better with respect to special meetings in the future, adding that the commission has had very few special meetings over the years.

Commissioner Katz asked if there will be a quorum for the April 6, 2011 special meeting. Ms. Smith stated that she has communicated with each of the members and as it currently stands, there are 14 members who can attend representing just over 70% of the weighted vote. She further stated that we need a minimum of 11 voting members in attendance representing over 50% of the weighted vote to have a quorum, and she emphasized the importance of attendance for those who indicated they could make the April 6th meeting. Chairman Brandon added for

staff that if this comes up in the future, we need to emphasize to the jurisdictions to be prepared for the regularly scheduled meetings and do what we can to avoid having to schedule a special meeting if at all possible.

REPORTS AND REQUEST OF COMMISSION CHAIR

None

ADJOURNMENT

The meeting was adjourned at 8:15 p.m.

Dwight D. Lewis
Attest:

Gerald H. Brandon
Chairman