

# Volusia Growth Management Commission Meeting

## MINUTES FOR MEETING HELD Wednesday, March 25, 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  
Roger Sonnenfeld, Secretary  
Rich Walton  
Sandy Lou Gallagher  
Robert Lott  
Loretta Arthur  
Robert Lovelace  
Robert Storke  
Don Romanik  
Debbie Connors  
Richard Kane  
Douglas deLeon  
Glyn Slay  
Sandra Walters  
William Pouzar

### REPRESENTING

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

### MEMBERS NOT PRESENT

Sid Vihlen, Jr.

DeBary

### NON-VOTING MEMBERS

Sara Lee Morrissey (not present)  
Steven Fitzgibbons (not present)

Volusia Co. School Board  
SJRWMD

### OTHERS PRESENT

Paul Chipok, GrayRobinson, VGMC General Counsel  
Erika Hughes, VHB, VGMC 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.

CITIZEN COMMENTS

There were no citizens present who wished to speak.

APPROVAL OF MINUTES

Gerald Brandon made a motion to approve the minutes of the January 28, 2015 regular meeting of the commission as presented; seconded by Glyn Slay. Motion carried unanimously.

PUBLIC HEARING

There were no items scheduled for public hearing.

REPORT FROM PLANNING CONSULTANT

Chairman Wachtel deferred this item to later in the meeting since Ms. Hughes had not arrived yet.

REPORT FROM LEGAL COUNSEL

Mr. Chipok put the commission members on notice that a petition for hearing was received thru Clay Henderson on behalf of the Florida Audubon Society and SE Volusia Audubon Society relating to VGMC Case #15-009, City of Oak Hill large scale amendment application. He stated the application is still under review by staff, however, whenever a petition for hearing is filed, a hearing is held. In this case, the hearing will likely be at the May VGMC meeting.

Chairman Wachtel stated the commission will be charged with determining party status for the petitioner group at the public hearing and asked Mr. Chipok to discuss that process in preparation for the meeting.

Mr. Chipok explained that when a petition for public hearing is received on an application, the determination as to whether or not there is merit to the petition is not made at the administrative level, but rather is determined by the commission. He also explained that a landowner/applicant to the jurisdiction, the applicant jurisdiction, or an adjacent local government are considered directly affected parties and are automatically granted standing. Any other parties that request a public hearing have to establish their standing.

Mr. Chipok stated there are certain rules and regulations through case law that apply, such as: 1) Closeness in proximity to the property; and 2) Some type of impact from the result of the amendment that would be different and unique to the impact upon the general public. He stated the commission will determine standing of the petitioners prior to the general public hearing. If standing is granted by the commission, those petitioners will participate as a party in the hearing. If they are denied standing, they can still participate in the hearing as a member of the public.

Mr. Chipok then discussed procedurally what will occur at the hearing. He stated that he first reads a statement into the record which sets the standards in which the commission will be conducting the review of the application. Mr. Chipok then read the statement aloud for the benefit of the commission members, which includes the order of the public hearing. He also explained that the commission members will receive a planning report in advance of the hearing which generally includes the staff recommendation. Additionally, as legal counsel to the VGMC, he will prepare a draft resolution consistent with the planning report and recommendation for consideration by the commission.

Mr. Chipok stated the staff report provided by VGMC planning staff is considered competent and substantial evidence in a court of law. He explained that the commission is not required to base their decision on the staff report, however, if they deviate from the staff recommendation they need to have solid reasons based upon competent and substantial evidence presented at the hearing, and those reasons must be stated for the record.

Mr. Chipok then discussed the scope of the VGMC authority which looks at the narrow issue dealing with the consistency of a proposed plan amendment with the comprehensive plans of the adjacent municipalities and the County. He stated the VGMC is to determine consistency based upon competent substantial evidence and testimony presented at the hearing. Commissioner Connors asked whether or not concerns raised by an environmentalist group would meet the criteria of what the commission looks at. Mr. Chipok went over each of the six consistency review criteria, specifically pointing out the criteria relating to impacts on natural resources that extend beyond jurisdictional boundaries.

Mr. Chipok read from Section 202.3 of the Volusia County Charter relating to the commission's power and duty. He stated at a public hearing, the commission is not reviewing the amendment as to whether it is good or bad, popular or unpopular. Instead, their review should be limited to the six consistency review criteria established in Section 90-37 of the VGMC rules. Mr. Chipok stated the standard for determining consistency should be based upon preponderance of evidence, meaning evidence of greater weight and more convincing than evidence offered in opposition.

Mr. Chipok then addressed ex parte communications. He stated ex parte communications are not prohibited, however, when they occur, there is a risk of a violation of due process in that the commission member is receiving information that is not available to the other members of the commission and general public. The burden of disclosing the ex parte communication lies with the person who initiated the communication, however, staff advises any commission members who receive an ex parte communication should disclose at the hearing who the communication was with, and a short statement as to the content of the communication.

With respect to the draft resolutions that come before the commission, Mr. Brandon commented that the commission has three options: 1) Accept the resolution as presented; 2) Deny the resolution; or 3) Modify the resolution. Mr. Chipok added that if the commission votes to deny an application, there needs to be competent substantial evidence in the record to support the decision that it is not consistent. Additionally, the basis for denial must also be clearly stated on the record in the event an appeal is filed with the court. Mr. Chipok stated a court would not second guess a decision made by the commission, but will look at the evidence to determine if the decision was based upon competent substantial evidence.

Erika Hughes, VGMC planning consultant arrived at the meeting.

#### REPORT FROM COMMISSION OPERATIONS MANAGER

Ms. Smith reported that a number of member terms are scheduled to expire on June 30, 2015. She stated she would be notifying the appointing jurisdictions in the May time frame so they can take action to reappoint or otherwise fill the seat for the next term. The affected members will also be copied on the notification.

Ms. Smith also reported that new legislation in the past year requires special districts to have a website, along with specific information that is required to be on the website. She stated the VGMC has a website and much of the required information is already on the website, however, two specific requirements that are not presently on the website are the individual member mailing address and email address. Ms. Smith stated she contacted the State and they advised it is acceptable to use the VGMC office address as the mailing address for all members, however, individual email addresses for each member should be provided. She suggested if any of the members did not want their current email address of record on the website, they may want to create a new email address specifically to be utilized for VGMC business and all VGMC communications would go to that address. Following brief discussion, Mr. Sonnenfeld stated he created an email account specifically for VGMC purposes so that his personal emails are not subject to public record. Ms. Walters questioned whether personal emails are a matter of public record. Mr. Chipok responded that if both personal and VGMC related emails are combined in one email account, the issue of public record could be debatable and could also get complicated if a records request is received.

#### REPORTS FROM PLANNING CONSULTANT

Erika Hughes, VHB, Planning Consultant to the VGMC, apologized for being late, stating there were accidents on I-4 which held her up. Ms. Hughes provided a pending case update and also reported that she was drafting a Request for Additional Information (RAI) for the City of Oak Hill large scale amendment application, VGMC #15-009. In response to a question from Mr. Lovelace, Ms. Hughes stated that other than the aforementioned Oak Hill application, and the two City of Daytona Beach large scale amendments (#15-011 & #15-012), the other large scale amendment application(s) listed on the pending case log have been certified. Additionally, she stated she reviewed the City of New Smyrna Beach application, VGMC #15-006, and a certificate of consistency was issued.

## REPORTS OF COMMISSION CHAIRMAN

Chairman Wachtel stated that he asked Mr. Chipok to review the public hearing procedures tonight since the City of Oak Hill application would be coming before the commission shortly and possibly other high profile applications as well.

Ms. Hughes reported that the two Daytona Beach large scale applications (VGMC #15-011 & #15-012) are being reviewed by Littlejohn because VHB has an ongoing contract with the Florida Department of Transportation (FDOT) and their transportation planning staff has been involved in the review of those projects on behalf of FDOT.

## REPORTS OF COMMITTEES

POP Committee Report: Gerald Brandon, Chairman of the POP Committee, reported the committee met immediately prior to the regular meeting and finalized the Request for Statement of Qualifications (RSQ) for legal services. He reminded the members that each of our consultant contracts are put out for bid on a rotational basis. Mr. Brandon stated the legal RSQ will be released on April 13, 2015, with a closing date/time of 1:00 p.m. on May 13, 2015. The POP Committee discussed a tentative date of May 21, 2015 to review the submitted proposals. Thereafter, the committee will determine if they wish to schedule oral presentations and will eventually bring a recommendation back to the full commission to award a contract. Mr. Brandon thanked the POP Committee members for their work and commented they are a great team.

Budget Report: Roger Sonnenfeld, Chairman of the Budget Committee, reported the committee met immediately prior to the regular meeting.

Mr. Sonnenfeld provided an update on the 2014-15 year-to-date expenditures. He stated there is currently approximately \$2,500 in pending contract services invoices, as well as \$1,700 in pending legal ad invoices. Mr. Sonnenfeld also reported that group insurance costs have increased which will likely result in a shortfall in that line item of approximately \$750 by year end.

## OLD BUSINESS

There was no old business for discussion.

## NEW BUSINESS

### 1) Consider Approval of the 2015-16 Budget

Mr. Sonnenfeld stated the proposed 2015-16 budget is coming before the full commission for the second time. He pointed out that an adjustment was made to increase the group insurance budget by an additional \$1,250 due to the increase in costs. He stated this is the only change from when the commission last reviewed the proposed budget.

Mr. Sonnenfeld stated the proposed contract services budget, which is based upon estimates received from our consultants, is \$12,000 less than our current contract services budget. Additionally, he stated the proposed budget includes a \$25,000 litigation contingency which the commission generally includes each year, and the County typically takes it out. Mr. Sonnenfeld stated if the County does cut the litigation contingency, our proposed 2015-16 budget will be 3.3% less than the current approved budget.

Mr. Sonnenfeld pointed out that the recommendation to approve the 2015-16 proposed budget as presented comes from the Budget Committee as a motion and a second. There being no further discussion, Chairman Wachtel called the question and the motion carried unanimously.

Ms. Smith stated the proposed budget will be transmitted to the County and will first be reviewed by the Budget Office who then makes a recommendation to the County Manager's office. Typically the recommendation to the County Manager's office does not include the litigation contingency. Thereafter, she stated the County Council generally holds their budget hearings in September.

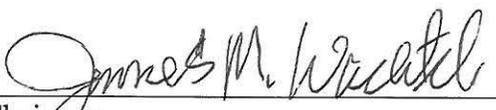
COMMISSIONER REQUESTS OR REMARKS

There were no commissioner requests or remarks at this time.

ADJOURNMENT

There being no further business, the meeting was adjourned at 7:49 p.m.

  
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Attest: Secretary

  
\_\_\_\_\_  
Chairman