

# Volusia Growth Management Commission Meeting

## MINUTES FOR MEETING HELD Wednesday, April 22, 2015

City of Daytona Beach  
City Commission Chambers  
301 S. Ridgewood Avenue  
Daytona Beach, FL

### MEMBERS PRESENT

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

### REPRESENTING

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

### MEMBERS NOT PRESENT

Douglas deLeon

Volusia County

### 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  
Merry Chris Smith, VGMC Operations Manager  
Erika Hughes, VHB, VGMC Planning Consultant  
James Sellen, VHB, VGMC Planning Consultant

CALL TO ORDER

VGMC Chairman James Wachtel called the meeting to order at 7:03 p.m.

ROLL CALL

Roll call was taken and it was determined there was a quorum present. Chairman Wachtel welcomed newly appointed member Mark McGee representing the City of Oak Hill.

CITIZEN COMMENTS

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

Chairman Wachtel moved the Committee Reports up in the agenda schedule and asked the POP and Budget Committee Chairman to provide any update at this time.

POP Committee Report: Gerald Brandon, Chairman of the POP Committee, stated there were no updates at this time.

Budget Committee Report: Roger Sonnenfeld, Chairman of the Budget Committee, reported that the proposed 2015-16 Budget was submitted to the County and no comments have been received back to date. With respect to the 2014-15 year to date expense worksheet provided in the agenda package, Mr. Sonnenfeld reported that additional staff invoices have been submitted which will raise the total contract services YTD expenses to nearly \$26,000. Overall, he stated the budget is in good shape.

There were no questions relating to the budget update.

PUBLIC HEARING

Consideration of VGMC Case No. 15-009, City of Oak Hill Large Scale Amendment Application

Paul Chipok, GrayRobinson, General Counsel to the VGMC addressed the commission. Mr. Chipok read a statement of policies and procedures into the record which will serve as the format for the scheduled public hearing. He also stated the issue of party status for the petitioners will be addressed prior to the VGMC staff report in the presentation. Mr. Chipok discussed Section 202.3 of the Volusia County Code which established the mission of the VGMC, the narrow scope of the VGMC authority, as well as the criteria for determining consistency.

Mr. Chipok then discussed ex parte communications. He stated that ex parte communications are contacts made with commissioners about this matter, outside of the scope of this public hearing, other than those materials received from the VGMC Operations Manager. Mr. Chipok asked any commission members to disclose any ex parte communications on the matter before them at this time.

Commissioner Lovelace disclosed he was contacted by Steve Unatin who provided a brief introduction. He stated he advised Mr. Unatin he hadn't reviewed the agenda package yet and would keep an open mind at the public hearing.

Commissioner Storke stated in a casual conversation at another meeting earlier in the day, a woman who stated she worked for Planning Solutions asked if he had any questions relating to the Oak Hill application and responded that he did not.

Commissioner Connors disclosed she was contacted by Steve Unatin who asked her if she had any questions relating to the project.

Commissioner Brandon disclosed that he was contacted by Steve Unatin in a brief conversation who discussed his background and the background of the property.

Commissioner Walters stated she contacted Dinah Pulver to find out where she got the date for the April 22<sup>nd</sup> hearing, and also that she reviewed the file at the VGMC office.

Commissioner Walton stated he received a call from the Planning Consultant for the City and was asked if he had read the agenda package and also whether or not he knew if there would be an overhead projector available at tonight's meeting.

Chairman Wachtel disclosed that he had a conversation with Dr. Sharples relating to the project and application. Additionally, he stated he had a brief, general conversation with Rick Karl, the Economic Development Director for Volusia County.

Commissioner Arthur stated she did speak with Beth Lemke who asked if she would be in attendance at the hearing.

Commissioner McGee stated he had been to several community meetings in Oak Hill relating to the Unatin property.

At this time, those in attendance who were planning to give testimony at the hearing were sworn in by the VGMC Operations Manager.

Consideration of Party Status:

Mr. Chipok explained at this time, the commission will consider party status for the SE Volusia and Florida Audubon Societies. He stated the groups have claimed to be a substantially affected party, however, there needs to be some showing of proof that they are a substantially affected party.

Mr. Chipok stated a substantially affected and aggrieved party has the right to participate in the proceeding as a party. Such person or entity may either file a petition for hearing pursuant to Section 90-35(c)(4) as was the case with the two Audubon groups, or file a motion for leave to intervene pursuant to Section 90-38. He stated on April 17, 2015, a petition was timely filed by

numerous individuals petitioning for leave to intervene, which the commission will be considering as well.

Mr. Chipok stated that denial of party status shall not prohibit a person from being heard at the public hearing. He explained the basis test for a substantially affected or aggrieved party is to establish: 1) They are in close proximity to the area under consideration by the amendment; and 2) That they are affected by the amendment to a degree greater than the general public.

Mr. Chipok asked Clay Henderson, counsel to both the Southeast Volusia and Florida Audubon Societies, if he would like to address both groups concurrently, and Mr. Henderson responded affirmatively. Mr. Chipok reminded the commission that they are only considering the issue of standing at this time, and not the substantive matter of the amendment. He also discussed case law under *Renard v. Dade County*, in which the court basically said to be granted standing there needs to be some form of special injury or damage shown by the individual claiming standing different in kind from injury that may be suffered by other residents in the area. Additionally, a second category of standing under *Renard* is that there is a legally recognizable property or other interest affected by the decision that is going to occur. He added that the court went on to state that proximity of the members to the property in question is an important factor when determining standing under this category. Mr. Chipok stated "proximity" is a sliding scale and something for the commission to decide.

With respect to the Audubon groups, Mr. Chipok stated they are trying to get standing for a group. He referenced the case of *O'Donnell v. The Florida Department of Community Affairs*, which stated in general, a group or association has standing to sue on behalf of its members when it can meet a three-prong test: 1) The group's members would otherwise have standing to sue in their own right; 2) Interests the group seeks to protect are germane to the organization's purpose; and 3) Neither the claim asserted nor the relief requested requires participation of individual members in the lawsuit. Mr. Sonnenfeld asked Mr. Chipok if all three items of the three-prong test would have to be met. Mr. Chipok responded affirmatively.

Clay Henderson, 1016 S. Riverside Drive, New Smyrna Beach provided a power point presentation and addressed the commission relating to the issue of standing for the two Audubon societies. Mr. Henderson stated he is a life member of the Florida Audubon Society, and also a member of the Southeast Volusia Audubon Society. He also stated the Audubon Society has never been denied standing in any growth management or comprehensive plan challenge anywhere in the state of Florida.

Mr. Henderson stated they do accept the *Renard* standard for determining standing and believe their interests are substantially affected adversely because of the long time commitment and relationship between the Audubon Society and the resources of the Canaveral National Seashore. He stated the Canaveral National Seashore is an adjacent property to the subject amendment. Mr. Henderson presented testimony relating to a prior court ruling where specifically with a membership organization it is shown that if there is a close nexus between the organization, its mission, and how the members participate in an activity, that is in addition to the rights and interests of the public. He further described the mission, membership and background of the two Audubon groups.

Charles Lee, Director of Advocacy of Audubon Florida, property manager for the Florida Audubon Society and Central Florida representative of Florida Audubon Society, addressed the commission. Mr. Lee discussed his work experience and the history of the Florida Audubon Society. With respect to membership, Mr. Lee stated they have over 1,200 members in Volusia County. He stated at least 250 of those members are in Southeast Volusia County area, and 5 active memberships in the Oak Hill zip code.

Mr. Lee stated the Florida Audubon Society is also a landowner in Volusia County and he discussed various properties and their locations in relationship to the subject amendment. He provided history on past members and their involvement with the Society. He also stated the Audubon has in excess of 500,000 members throughout the United States, and that the Merritt Island National Wildlife Refuge and Canaveral National Seashore are primary destinations for those members to visit.

Mr. Lee expressed concern about industrialization on the shore of the Canaveral National Seashore and stated the proposed amendment is inherently in conflict with the purposes and the future potential for the management of the Canaveral National Seashore and the Merritt Island National Wildlife Refuge.

Scott Simpson, Attorney for the City of Oak Hill, asked Mr. Lee to clarify how many total members they have. Mr. Lee responded that there are approximately 500,000 members in the United States. Mr. Simpson also asked for clarification of the organization's name and principal place of business. Mr. Lee responded that it is the Florida Audubon Society Inc., and the principal office is located in Miami, Florida.

Mr. Lee submitted the following documents into the record: 1) A map depicting the Farmton tract and Volusia/Brevard County lines; 2) A list of properties Audubon owns in Volusia County; 3) A table from the membership records of the Florida Audubon Society with memberships broken down by Chapter within Volusia County; and 4) An aerial photo which locates the closest real property owned by them.

Don Picard, 1530 Queen Palm Drive, Edgewater, President of the Southeast Volusia Audubon Society, addressed the commission. Mr. Picard discussed the history of the Southeast Volusia Audubon Society as well its membership. He also discussed the mission of the Society, the role of the members, and commented that they feel they have standing in this matter.

Mr. Henderson, in closing, stated he believes the Audubon Society's have met the test to be granted standing.

Scott Simpson, attorney for the City of Oak Hill, addressed the commission in opposition of granting standing to the Audubon groups. In reference to the court case previously referenced by Mr. Henderson, Mr. Simpson stated the case basically stated that in order to get above the general interest of the community's well-being, you have to show that the primary purpose of the organization includes protecting the particular issue you are dealing with. In that particular case, Mr. Simpson stated the petitioner was Save the Homosassa River Alliance Inc., the issue was a

development on the Homosassa River, the individuals who organized the Alliance resided on the Homosassa River, and the primary purpose of their organization was to promote the river.

With respect to the matter before the commission, Mr. Simpson state the Florida Audubon Society is headquartered in Miami, and all of the officers are from Miami except one which is Tallahassee. He also stated they have no property ownership in Oak Hill, and the City of Oak Hill objects to the commission granting party status.

Chairman Wachtel opened the floor for questions and discussion of the commission members.

Commissioner Vihlen asked to hear the opinion of the VGMC Attorney, Paul Chipok, with respect to the arguments made on standing.

Mr. Chipok provided the commission with case law he felt would be applicable in this situation, he reiterated the three-prong test he discussed earlier, discussed the Renard standards, and suggested the commission apply the facts they've heard to those standards. He added that the ultimate decision concerning standing lies with the commission.

Commissioner Walton asked if any of the case law Mr. Chipok referred to related to what the role and mission of the VGMC is. Mr. Chipok responded that specifically to the mission of the VGMC, the answer is no. In the broader purpose of being in the context of land use decisions on a comprehensive planning level, the answer is yes. Mr. Chipok added that under the certification rules adopted by Volusia County ordinance, the VGMC function is to look at whether a comprehensive plan amendment as submitted to the commission, is consistent with the adjacent jurisdictions comprehensive plans. In response to a question from Mr. Walton, Mr. Chipok reviewed the three ways a public hearing can be requested under the VGMC rules.

Commissioner Kane commented that the VGMC is here to compare the comp plan amendment with adjacent jurisdictions comprehensive plans, and not to review environmental or zoning issues.

Commission Lott commented that none of the letters from the review agencies, including the Department of Transportation, St. Johns River Water Management District, Department of Economic Opportunity and the Environmental Protection Agency raised an issue with the proposed amendment. He stated he is trying to understand how the Audubon Societies are being injured.

Commissioner Sonnenfeld asked how the VGMC handles the Federal Government in terms of being an adjacent government for purposes of notification. Mr. Chipok responded that the VGMC rules more specifically state adjacent local governments. He further stated that while the Canaveral National Seashore is adjacent, in the context of the VGMC rules for purposes of notice, they are considered more a property owner than a governmental entity.

Mr. Sonnenfeld asked Mr. Henderson if he was speaking on behalf of the Canaveral National Seashore. Mr. Henderson responded that he is not authorized to speak on behalf of the National

Parks Service, but stated the Superintendent of the National Parks is in attendance and prepared to address the commission.

Chairman Wachtel discussed the role of the commission is to determine consistency of one jurisdiction's comprehensive plan to the comprehensive plans of adjacent jurisdictions. He commented that the Audubon Society is a self appointed group that does not have a comprehensive plan, and he felt it would be way too broad to allow standing based on the limited role of the VGMC.

Mr. Vihlen commented that Chairman Wachtel raised a key issue in that the VGMC is to determine consistency of land use between governmental entities, and to address issues raised by adjacent local governments. He added that he felt the Audubon concerns should be directed to the local government and related agencies during the zoning process.

Commissioner Walters stated she disagreed with Chairman Wachtel's earlier comment relating to the Audubon Society and standing.

Sandra Walters made a motion to grant standing for both the Florida Audubon Society and the Southeast Volusia Audubon Society. She stated the motion is based upon the testimony presented, based upon Mr. Chipok's remarks relating to the Renard criteria, and also based upon the precedent the commission has set from VGMC Case No. 05-034A relating to the Thornby property. Glyn Slay seconded the motion.

Commissioner Arthur asked for confirmation that a substantial number of the members have to be directly affected. Mr. Chipok responded that the court case does not provide a specific measurement as to what substantial means. He stated it's not a percentage, but rather a sliding scale for the commission to determine.

With respect to the vote on the motion, Chairman Wachtel explained it is a weighted vote. Mr. Chipok confirmed that in order for a motion to carry, it requires an affirmative vote of more than 50% of the members in attendance at the meeting, and those votes must represent more than 50% of the weighted vote of the members in attendance at the meeting.

Commissioner Romanik asked for clarification as to whether the commission would be voting on both Audubon groups together, or individually.

Sandra Walters amended her motion, and moved to grant standing to the Florida Audubon Society. Glyn Slay seconded the amended motion. Following a roll call vote, the motion failed with an 8-9 vote and 46.21% of the weighted vote.

For the record, Ms. Smith stated that based upon the members present, an affirmative vote of 9 members representing at least 44.21% of the weighted vote would be required to carry a motion.

Sandra Walters made a motion to grant standing to the Southeast Volusia Audubon Society. Glyn Slay seconded the motion. Following a roll call vote, the motion carried with a 9-8 vote and 46.81% of the weighted vote.

Chairman Wachtel called for a brief recess at 8:30 p.m. and the meeting reconvened at 8:40 p.m.

Mr. Chipok addressed the commission relating to the Petition for Leave to Intervene signed by approximately 160 individuals with diverse addresses received on April 17, 2015. He explained that the petition didn't claim they were acting as a cohesive group, and in order to determine standing they would need to be considered individually.

Mr. Chipok stated he broke the names down into several groupings: 1) Oak Hill addresses within 1,000 feet of the subject property; 2) Oak Hill addresses outside 1,000 feet of the subject property; 3) Addresses of individuals outside the City of Oak Hill; and 4) Persons and/or addresses that were either incomplete or illegible. He then restated the Renard standard for the commission's use in determining standing.

For the record, Mr. Chipok read aloud the names of those individuals with an address within 1,000 feet of the subject property.

Chairman Wachtel asked who submitted the petition. Ms. Smith responded that it was received in the VGMC office with a cover letter signed by Jane Andrews. Mr. Wachtel asked if Ms. Andrews wished to speak on the petition. Jane Andrews, 118 & 120 E. Church Street, Oak Hill, addressed the commission relating to the proximity of her property and stated she facilitated the petition. Mr. Henderson asked Ms. Andrews to tell the commission how the petitioners believe they are substantially affected by the proposed amendment. Ms. Andrews stated they believe they are substantially affected parties because their residences surround the subject property.

With proximity being one of the considerations under the Renard standard, Mr. Chipok described how the information was obtained from the Volusia County Property Appraisers website in order to group them in the four categories. He suggested the commission first consider those individuals listed with addresses located within 1,000 feet of the subject property.

Following several questions from Commissioner Lovelace, Mr. Chipok asked any individuals present whose names were read from the list of those addresses located within 1,000 feet of the subject property to stand and identify themselves. The following three individuals stood and identified themselves as present: David Hall, Gerald Heizmann, and Mamie Huber.

Mr. Henderson stated for the record that the Southeast Volusia Audubon Society has no objection to the commission granting standing to those three individuals present, and denying standing to all others on the petition. Mr. Simpson stated the City of Oak Hill concurs with Mr. Henderson.

Mr. Chipok explained to the commission that anyone who is granted standing can participate as a party in the hearing which allows them to present more evidence, cross examine through the Chair other witnesses to a limited degree, and also if the VGMC's decision is appealed through the circuit court, the commission would not object to them claiming to have standing to bring an appeal. Those individuals who are denied standing can participate in the hearing as a member of the public.

Roger Sonnenfeld made a motion to grant standing to David Hall, Gerald Heizmann and Mamie Huber. Motion was seconded by Glyn Slay. Following a roll call vote, the motion carried with a 14-3 vote and 74.35% of the weighted vote.

In order to allow due process, Mr. Chipok suggested the commission hear from any other individuals present who signed the petition that wished to present additional testimony as to why they should be granted standing.

Jane Andrews, 118 & 120 E. Church Street, Oak Hill addressed the commission concerning her interests that would be affected by the proposed amendment. Following brief discussion, Richard Kane made a motion to grant standing to Jane Andrews. Motion was seconded by Sandra Walters. Following a roll call vote, the motion carried with a 13-4 vote and 72.04% of the weighted vote.

Sid Vihlen made a motion to deny standing to all remaining individuals who signed the petition. Motion was seconded by Glyn Slay. Following a roll call vote, the motion carried unanimously.

Public Hearing on the Subject Amendment and Consideration of VGMC Resolution 2015-02:

Erika Hughes, VHB, planning consultant to the VGMC, addressed the commission. Ms. Hughes provided a summary of the amendment request and also presented the planning report, along with a power point presentation. She reviewed the six criteria that are considered when determining consistency as outlined in Section 90-37(c) of the Volusia County Code, along with the findings of staff.

With respect to utilities, Ms. Hughes stated the City did not provide any utility information with the submitted application. She stated VGMC planning staff calculated demand space from the proposed amendments and found there is a small increase in sanitary sewer impacts, however, without any capacity data, the total impact to the area wide utility system cannot be determined. Additionally, she stated the City of Oak Hill does not provide utility services to the area, that it is done through a tri-party agreement with Volusia County and the City of Edgewater.

Ms. Hughes stated that while the original consistency certification to the EAR based amendments to the City's comprehensive plan allowed for residential and commercial development to occur on the subject site, the additional industrial development at an intensity of 1.0 FAR, as well as the uses permitted under the industrial land use designation, raises questions regarding the compatibility of these uses with the adjacent affected community. Specifically, incompatibility as it relates to impacts on water quality and intergovernmental impacts to the National Seashore.

Regarding transportation, Ms. Hughes stated that a traffic impact analysis was not provided with the original application. She stated VGMC planning staff calculated the potential impacts and found there to be a small increase in PM peak hour trips, however, with no capacity data, they cannot determine how much of an impact this would have on the regional transportation system.

With respect to infrastructure, Ms. Hughes stated that the proposed amendment would result in a net decrease in residential entitlements so there are no additional impacts to public schools. However, since Oak Hill does not provide utility service to the area, staff is concerned with the ability to extend utility service to the site since it is not included in the CIP elements for Volusia County, City of Edgewater or the City of Oak Hill.

With respect to natural resource impacts, Ms. Hughes stated the proposed amendment poses significant adverse impacts to natural resources. She stated the Canaveral National Seashore borders the subject site on two sides and is a critical component of the regions eco system. Ms. Hughes stated that no information regarding the impact of the proposed industrial development on natural resources was submitted with the application.

With respect to the final two consistency criteria, Ms. Hughes stated the proposed amendment is not anticipated to result in a duplication of services or competition, and that no interlocal agreement exists.

Ms. Hughes reviewed the planning staff findings and recommendations. She stated the proposed amendment as submitted lacks data and analysis needed to support approval of the application, and may result in significant adverse impacts to the region's central utilities system, transportation system and natural resources. As a result, she stated VGMC planning staff recommends the commission deny the application as submitted. She further added that if the VGMC finds merit for approving the application, staff would recommend issuing the approval with the conditions outlined in the proposed draft Resolution #2015-02.

Ms. Hughes concluded her report and asked if any of the commission members had any questions.

Commissioner Brandon asked why there would be a change in potable water impacts. Ms. Hughes explained that there are two development scenarios, and utilizing the level of service (LOS) standards in the City's comprehensive plan, VGMC staff calculated impacts based upon the current and proposed development scenarios.

Commission Walters commented that the City's comprehensive plan states they will coordinate with the National Parks Service and the County for consistent and coordinated management of marine resources. She asked if that was done in this case. Ms. Hughes stated that based upon the information received with the application, staff cannot determine whether or not that was done. Ms. Hughes responded to several additional questions raised by Ms. Walters relating to the recommendation to locate the industrial development in the center of the site, current allowed uses in the City's conservation land use designation, and building height limits.

Clay Henderson asked Ms. Hughes if the property adjacent to the subject site has a land use designation of Volusia County Conservation with Environmental Core Overlay. Ms. Hughes responded affirmatively. She also responded to a question raised by Mr. Henderson relating to the FAR.

Scott Simpson asked Ms. Hughes to confirm how the impacts were measured. Ms. Hughes responded that the impacts were being measured based upon what is currently adopted in the comprehensive plan to that of the proposed development scenario.

Chairman Wachtel asked the City of Oak Hill to address the commission relating to the proposed amendment.

Scott Simpson, attorney for the City addressed the commission. Mr. Simpson stated that no comments were received from adjacent jurisdictions on the VGMC application. He also commented that all state agencies have reviewed the proposed amendment, the issues have been addressed and all of the state agencies are satisfied. Mr. Simpson then discussed the current and proposed land uses. Under the current land use, he stated the property could be developed 75% residential and 25% commercial. He added that the current land use was previously approved by the VGMC without comments, objections or a public hearing. Under proposed Option #2, Mr. Simpson stated this would allow 30% industrial and 70% conservation. Additionally, he stated the proposed amendment includes a limitation that impacts cannot exceed what is currently allowed, which is why no data and analysis was submitted or necessary. Mr. Simpson also discussed the central location of the industrial land use, buffer requirements, and building height limitations.

Mr. Simpson emphasized that the City cannot increase impacts over what is already allowed on the subject site. He also spoke concerning issues raised by the Southeast Volusia Audubon Society, and commented that he felt much of the opposition is due to concern over a potential launch facility in Brevard County. With respect to infrastructure, Ms. Simpson stated whoever develops the subject site will be required to install water and sewer lines for the City of Oak Hill.

Beth Lemke, Planning Solutions, 206 N. Beach Street, Daytona Beach, City Planner for the City of Oak Hill, addressed the commission. She stated that based upon all of the evidence and information presented relating to the proposed amendment, the commission should issue a clear finding of consistency. In reference to the VGMC staff report, Ms. Lemke clarified that this is not an industrial land use designation, but rather they are proposing an industrial use in an Activity Center future land use designation. She also stated that according to VGMC rules, the commission looks at impacts on adjacent local governments, which in this case are Volusia County and the City of Edgewater, neither of which objected to the amendment. Ms. Lemke stated representatives from both of those jurisdictions are present and asked them to come forward to speak to their position.

Becky Mendez, Senior Planning Manager for Volusia County stated they reviewed the amendment application, identified no impacts, did not request additional information as it was consistent with the County's comprehensive plan, and the County's position is that the commission should issue a finding of consistency without any conditions.

Darren Lear, Development Services Director for the City of Edgewater stated they also reviewed the amendment application, have no objections, it is consistent with the City of Edgewater comprehensive plan, and the City of Edgewater recommends the commission issue a finding of consistency without conditions.

Ms. Lemke read into the record a letter dated April 9, 2015 from the Florida Department of Environmental Protection (FDEP) which states their earlier concerns will be addressed by the City amending the language in Policy 1.1.2.H. as outlined in their letter. She added that FDEP was in consultation with the Canaveral National Seashore during their review of the proposed amendment.

With respect to VGMC consistency certification criteria #1, #2 & #3 relating to public infrastructure impacts, Ms. Lemke stated that these are not applicable because the policy limits impacts. She stated no additional analysis was provided because no additional impacts are allowed. Ms. Lemke also stated that every state agency reviewed the proposed amendment and agreed that it would have no impact, adding that no adjacent local governments had objections.

Referring to criteria #4 relating to natural resource impacts, Ms. Lemke stated this aspect was addressed by the FDEP, adding that the Canaveral National Seashore is not an adjacent local government. She also stated the VGMC staff report cites the St. Johns River Water Management District (SJRWMD) as having authority over those natural resources, and she read from a letter provided by the SJRWMD which indicated they had no comments on the amendment because no adverse impacts to important state resources and facilities were identified. Ms. Lemke stated that the Florida Department of Economic Opportunity raised no objections or issues with the amendment either.

With respect to criteria #5 & #6, Ms. Lemke stated that VGMC staff identified no issues and the City concurs.

Ms. Lemke stated the petitioners did not cite specific inconsistencies between the City of Oak Hill's comprehensive plan and the comprehensive plans of adjacent jurisdictions. She also stated the VGMC staff report repeatedly states that insufficient data and analysis was provided. Ms. Lemke disagreed, adding that VGMC staff did not request any additional information from the City during the 30 day review period. She further stated that the state agencies and adjacent local governments reviewed the amendment based upon the same information and data provided with the VGMC application, and they all supported the amendment.

In closing, Ms. Lemke commented that the proposed amendment is compatible and consistent with each of the VGMC criteria, and the commission should issue a finding of consistency with no conditions.

Mr. Chipok asked Ms. Lemke several questions relating to the date the application was submitted to the VGMC and the date the FDEP added language to the policy to address their earlier concerns. Ms. Lemke stated the original application was submitted to the VGMC on February 24, 2015, and the FDEP issued their letter on April 9, 2015 to added policy language that was not included in the original application submitted to the VGMC. Mr. Chipok also asked Ms. Lemke several questions relating to the proposed land use and any corresponding policies. Ms. Lemke responded that the specific compatible zoning category for the proposed amendment would be Activity Center zoning which would be the standard that would be applied to implement the land use. In response to another question of Mr. Chipok, she also confirmed that the Activity Center

does not currently contain specific standards of how the use is allocated on the property, adding this is done during the design phase.

Commissioner Walters asked Ms. Lemke what is permitted in conservation land use categories in the City's comprehensive plan. Ms. Lemke distributed a map which illustrates the property as currently adopted and also as proposed. She stated the property is currently 68% developable with commercial and residential uses. Under the proposed, she stated the industrial land use will be located near the center of the site to create the buffer around it with conservation/agricultural.

Ms. Walters stated the commission is being asked by the City to approve the amendment without conditions, however, one of the recommended conditions includes locating the industrial category near the center of the site. Ms. Lemke stated she felt the City would be comfortable with that condition since that issue was raised by FDEP, and it is also in the City's zoning requirements they are moving forward for this property.

Commissioner Kane asked Ms. Lemke if she has reviewed the 6 conditions of approval being recommended by the VGMC staff. She responded that condition #4 which addresses the central location of proposed development is acceptable, however, she feels none of the other conditions are valid.

Commissioner Romanik asked if there were any uses on the site prior to the landfill. Steve Unatin, one of the owners of the subject property, responded that the landfill has been closed for a long time and he previously worked with FDEP to monitor the site and they issued him a letter that no further action was required. Mr. Unatin responded to additional questions from Mr. Romanik relating to the landfill and current condition of the subject property.

Mr. Unatin, as the applicant to the City of Oak Hill for the amendment, also addressed the commission in support of the request, adding that all of the review agencies have signed off on it.

Chairman Wachtel called for a brief recess at 10:18 p.m. and the meeting reconvened at 10:25 p.m.

Chairman Wachtel then called forward those individuals who wished to speak in support of the amendment.

Becky Mendez submitted into the record a written letter of support to certify the amendment without conditions from the Volusia County Director of Planning & Development, Palmer Pantan.

The following members of the public spoke in support of the amendment: Ron Engele, 131 Canal Avenue, Oak Hill; Jim Cameron, Senior Vice President of Government Relations, Daytona Regional Chamber of Commerce; Richard Brice, 332 Marsh Landing Loop, Oak Hill; Barbara Weidner, 291 River Road, Oak Hill; Eugene Kowalski, 175 N US Highway, Oak Hill; Mike Arman, Oak Hill; and Doug Gibson, 297 River Road, Oak Hill-Mayor of Oak Hill spoke individually and not on behalf of the City.

With no others else present who wished to speak in favor of the amendment, Chairman Wachtel stated we will now hear from those who are opposed, starting with the parties who were granted standing in this matter.

Clay Henderson, representing the Southeast Volusia Audubon Society addressed the commission in opposition. He provided a power point presentation and discussed issues such as lack of data and analysis provided, burden of proof on the City to demonstrate they affirmatively meet the consistency criteria, the lack of infrastructure to support the proposed use, and the property's proximity to the Canaveral National Seashore. Mr. Henderson stated the subject site is adjacent to property in Volusia County with a land use designation of Conservation with an Environmental Core Overlay.

Mr. Henderson spoke of the role of the Canaveral National Seashore in protecting natural resources, the state agency review process, the lack of coordination with the Canaveral National Seashore, compatibility and consistency issues.

In closing, Mr. Henderson stated the City of Oak Hill has not demonstrated they have met the consistency criteria standards and that he concurs with the VGMC staff analysis. He recommended the commission deny the amendment, but if the commission chose to approve it with the staff recommended conditions, he asked that an additional condition be added requiring the City of Oak Hill to keep the National Parks Service informed and let them comment on what transpires on the subject property.

Mr. Henderson then introduced Myrna Palfrey, Superintendent to the Canaveral National Seashore.

Ms. Palfrey addressed the commission. She clarified that her conversation with Suzanne Ray of FDEP relating to this matter was very brief and not considered a consultation. Ms. Palfrey also discussed the jurisdiction the National Parks Service and other agencies have over the Mosquito Lagoon and she felt they should be considered local governments. She then spoke more specifically on the background and history of the Canaveral National Seashore and the purpose of the National Parks Service. Ms. Palfrey discussed their concerns and stated there is insufficient data to measure the impacts on Canaveral National Seashore resources. If the commission were to approve the amendment subject to the staff recommended conditions, she asked that the City of Oak Hill also be required to provide them notice and opportunity to comment on any development and mitigation plans for the property.

Don Picard, President of the Southeast Volusia Audubon Society, 1530 Queen Palm Drive, Edgewater, stated their primary concern in this process has been the secrecy surrounding it. He stated there have been reports that a rocket parts manufacturing plant may be planned, and it is unknown what types of chemicals or possible explosives may be used in the manufacturing, or potential for toxic spills that could affect the Mosquito Lagoon. Mr. Picard stated that since the process has not been transparent leaving many unknowns, coupled with the proximity of the property to a resource they care about, the Southeast Volusia Audubon Society has issues with the proposed amendment.

Chairman Wachtel then called on the individual residents who were granted standing to address the commission at this time.

Jane Andrews, 118 & 120 E. Church Street, Oak Hill addressed the commission. Ms. Andrews spoke extensively regarding her experience with the amendment review process at the City Commission and planning board level. She stated there presently is no industrial zoning on the east side of US 1 in Oak Hill and to make this change would be precedent setting. Ms. Andrews also spoke of several businesses in the City of Oak Hill and the growth of the City through annexations. She stated she is concerned with the location of the subject site of the amendment and requested the commission deny the application.

Gerald Heizmann, 137 Bills Hill Road, Oak Hill, raised several concerns with the proposed amendment, including: the potential size of an industrial site, noise associated with an industrial use, access to and from the site, building height and the ability for fire services to handle a fire involving a structure of that size, and whether or not hazardous materials would be used on the site. Mr. Heizmann also commented on a map that was printed in a recent News Journal article that inaccurately portrayed the location of the subject site, and also spoke of wildlife on the subject property. In closing, he asked the commission to think about the property, the proposed land use change, and the environmental impacts, and to make an informed decision that commission, the citizens of Oak Hill and Volusia County, and future generations can all live with

Dave Hall, 400 Bills Hill Road, Oak Hill, addressed the commission on behalf of himself and other family members who could not be in attendance. He stated his family has lived on the property adjacent to the subject site for four generations. Mr. Hall spoke about the wildlife on the subject site, as well as the surrounding properties. He stated he feels the change in land use is wrong, will set a precedent and he strongly opposes the change.

Mamie Huber, 245 Sand Avenue, Oak Hill, addressed the commission. She stated her property is immediately adjacent to the subject site. Ms. Huber discussed the rural nature of the area and wildlife. She expressed concerns with the proposed amendment, including: negative impacts on quality of life, lighting and noise impacts, and costs associated with the installation of water and sewer. Ms. Huber also stated the proposed amendment is inconsistent with everything Oak Hill has done in the past. In closing, she felt the proposed amendment has not been thoroughly thought out and the process has not been transparent. Ms. Huber requested the commission deny the amendment.

Chairman Wachtel then called forward those members of the public who wished to speak in opposition of the amendment.

The following members of the public spoke in opposition of the amendment: Claudia Roth, DeLand, President of the League of Women's Voters of Volusia County; Eric West, 3943 S. Peninsula, Wilbur-by-the-Sea; and T. Gray Ames, 124 Randle Avenue, Oak Hill.

There being no further comment from members of the public, Chairman Wachtel closed the public hearing and opened the floor for commission member comments and questions.

Commissioner Gallagher commented that she felt there were too many unanswered questions to move forward with the proposed amendment.

Commissioner McGee stated that he is a life-long resident of Oak Hill and adjacent property owner to the subject site. He commented that he agrees it is a treasure to have the Canaveral National Seashore and Merritt Island Wildlife Refuge just to the south, but added that these would not exist if not for the Kennedy Space Center. Mr. McGee stated the space industry has proven they can co-exist with the wildlife and environmental concerns raised by the Audubon Society, National Parks Services and others.

Commissioner Arthur raised a question regarding any existing industrial land uses in the City of Oak Hill and whether or not the City would allow a rocket launch site within that designation. Ms. Lemke responded that only light industrial exists in the City presently, so there is no place for manufacturing in the City currently. Ms. Arthur then asked if the proposed amendment were allowed and developed as some form of rocket facility, is there an agency that would regulate it to address the environmental and hazardous concerns raised. Ms. Lemke responded that the proposed amendment is for a change in land use only and there is no known user at this time. She stated we are currently at the comprehensive plan review phase and there will be additional levels of review throughout the development process.

Commissioner Arthur commented that based upon the information presented and the criteria for VGMC review, it does not appear there will be increased impacts that extend beyond the jurisdictional boundaries and the proposed amendment should be approved.

Commissioner Romanik commented that we've heard extreme viewpoints at the hearing tonight. He also expressed concern over issues of trust.

Commissioner Connors stated the subject property currently allows 75% residential and 25% commercial development and feels the community will be better protected with the proposed amendment which requires 70% conservation and the industrial development centered on the site. She also commented that the commission was established to determine consistency of comprehensive plans between local jurisdictions, not to review matters of zoning. Ms. Connors stated the proposed amendment is consistent with adjacent local government's comprehensive plans.

Commissioner Brandon asked for clarification relating to the relationship between the Mosquito Lagoon, the Canaveral National Seashore and the Merritt Island Wildlife Refuge, as well as their location and proximity to the subject site. Ms. Palfrey responded that the site borders the Canaveral National Seashore which is part of the National Parks Service. She stated the National Parks Service is an agency separate from the Fish & Wildlife Service, however, they are both under the Department of Interior.

Discussion ensued to determine, on a map, which properties were adjacent and contiguous to the subject site. There were differing statements offered in terms of ownership of the properties immediately contiguous to the subject site. Kohn Evans, City Administrator for the City of Oak

Hill stated the Canaveral National Seashore is not contiguous to the subject site, and that the property pointed out is owned by the Federal Government for the Florida Inland Navigational District (FIND). Mr. Unatin concurred with Ms. Evans, stating that he sold the 94 acres to the immediate east of the property to FIND.

Commissioner Brandon asked for clarification in terms of how the industrial development square footage was determined. Mr. Chipok reminded the commission that we are not looking at this at the site plan level, but rather a comprehensive planning level and assigning a comprehensive plan designation. He stated VGMC planners are obligated to look at the most intense use that is applicable in the proposed land use and base the impacts on that. Mr. Chipok stated if the City is claiming lesser impacts, then there would need to be a VGMC condition that would lock them into the less intense scenario and impacts could be calculated based upon that scenario. At this point in time, Mr. Chipok stated we have to base the impacts on the Activity Center designation with 30% of the property being developed as an industrial type use, which is what staff calculations are based upon.

Jim Sellen, VHB, planning consultant to the VGMC, addressed the commission regarding the difference on impacts to wastewater, transportation, etc. if developed residential or if developed industrial. When reviewing the proposed amendment, he stated staff measured the impacts based upon the types of uses allowed in the City's industrial category, and the impacts are what concerns staff, particularly with respect to the extension of sewer and water to the City. Additionally, Mr. Sellen stated the recommended condition requiring the Planned Development to come back to the VGMC is consistent with actions taken in prior amendments and allows staff to determine impacts based upon the actual intended use of the site. He also commented that the VGMC has always been solution based and these conditions allow the proposed amendment to move forward, while protecting the ability to measure the impacts as development of the site is planned. Mr. Sellen stated for the record that he felt we may have made a mistake approving the original Activity Center amendment which allowed 75% residential and 25% commercial without requiring the extension of sewer and water at that time.

Commissioner Romanik commented that the VGMC is not in the business of denial. He stated the VGMC is responsible for facilitating an acceptable resolution among all of the parties, and we look for an inclusive solution.

Commissioner Vihlen commented on the narrow scope of the VGMC review and the additional review process the City will be subject to after the comprehensive plan amendment is approved. He stated he does not feel it is within VGMC authority to review the City's development plans, and also commented that the adjacent jurisdictions, Volusia County and the City of Edgewater, both went on record to state they have no problem with the proposed amendment.

Commissioner Walton stated the original application submitted by the City to the VGMC contains policy language that does not allow the impacts of scenario 2, which would allow for 30% industrial and 70% conservation, to exceed what is currently allowed. Based upon this policy, he asked VGMC staff if they are still recommending the conditions of approval as contained in the proposed resolution. Mr. Sellen responded yes, the conditions are being recommended because the criteria for impacts on industrial uses are different than impacts on

residential developments. Mr. Chipok stated that adding industrial as a use in the comprehensive plan Activity Center land use designation essentially allows any of the individual ultimate user uses to go in there at the zoning level. He added that the various industrial allowed uses have individual quantitative impacts that are unknown at this time. Mr. Chipok explained at the comprehensive plan level, we have to assume maximum impacts. At this point in time, that is why the conditions are being recommended since we do not know what the impacts are. Mr. Walton commented in disagreement and stated the policy text clearly states that impacts cannot exceed what is currently allowed.

Commissioner Lott commented in agreement with Commissioner Vihlen's comments regarding the role and responsibility of the VGMC. Mr. Lott felt the recommended conditions of approval are zoning related which is outside the authority of the VGMC. He also spoke of existing industrial uses near the Canaveral National Seashore, and commented that we aren't going to lose wildlife because of an industrial use. Mr. Lott stated we are looking tonight at giving the City of Oak Hill the opportunity to bring business into the City. Once they do that, they will be subject to the required agency reviews during the development process.

Commissioner Walters thanked the individuals in attendance for their politeness throughout the meeting. Ms. Walters stated that the role of the VGMC is to determine consistency between comprehensive plans. She stated the role is not to pound square pegs into round holes, it is not to create jobs, and is not to worry about people's quality of life. Ms. Walters stated there are six criteria established to determine consistency and she discussed the findings of staff on each of those criteria. She stated there is too much information lacking and she would not be supporting approval of the amendment.

Commissioner Kane commented in agreement with Commissioner Vihlen's comments regarding the role and responsibility of the VGMC. He stated the commission is here to determine consistency, not to look at matters of zoning.

Commissioner Sonnenfeld stated the only two adjacent jurisdictions are Volusia County and the City of Edgewater and both of those jurisdictions testified that the proposed amendment is consistent with their respective comprehensive plans. Mr. Sonnenfeld stated he thinks with our charge, as the VGMC, we have to move in the direction of approval, although he doesn't necessarily agree with it on a personal level. That being said, Mr. Sonnenfeld stated he does agree with the conditions of approval recommended by staff, as they will provide a level of protection from the current unknown factors.

Chairman Wachtel stated he believed the intent to add industrial use in the Activity Center is consistent, but also felt the conditions recommended by staff are appropriate due to the lack of data and analysis.

Commissioner Brandon commented in agreement with Chairman Wachtel & Commissioner Sonnenfeld. Due to the unknown factors, Mr. Brandon stated he likes that it would come back to the VGMC as a planned development so the impacts can be measured.

Commissioner Vihlen asked the City of Oak Hill if the recommended conditions of approval would unduly delay the City in moving forward. Ms. Lemke responded that condition #4 relating to locating the industrial development to the center of the site is acceptable to the City. With respect to water and sewer, Ms. Lemke stated the thought process throughout has been to have central water and sewer under the industrial development scenario, and the City would not have an issue with that requirement.

Ms. Lemke stated they are also doing a planned development as part of the zoning and a condition requiring it be developed as a planned development is acceptable, however, she does not recommend that the planned development be required to come back to the VGMC. She added that the VGMC is another layer in the process and they need the ability to have a site available as quickly as possible when an economic opportunity for the City of Oak presents itself. Ms. Lemke stated the City needs local control to go through their processes without having the uncertainty of the VGMC. She commented she felt what's happening tonight is that nothing has been gained, we've just postponed the consistency hearing. Chairman Wachtel commented in disagreement with Ms. Lemke. While she indicated the planned development should have local control, Chairman Wachtel stated there was testimony tonight from members of the City's planning board and members of the public that they haven't been informed and things were changed. Additionally, he stated there is concern among some members of the commission to insure that all parties are included in the process.

Chairman Wachtel called for a motion.

Commissioner Lott asked procedurally whether or not there can be multiple votes on the application. Mr. Chipok responded that the end net result at the hearing has to be a resolution that does something. Either: 1) approves the application with no conditions; 2) approves it with conditions; or 3) denies it.

Roger Sonnenfeld made a motion to approved VGMC Resolution #2015-02 as presented; seconded by Glyn Slay.

Commissioner Walters asked if a condition could be added requiring the City to keep the Canaveral National Seashore notified of the planned development.

Following discussion, Commissioner Sonnenfeld amended his motion to approve VGMC Resolution #2015-02 with an additional condition requiring the City of Oak Hill to notify the Canaveral National Seashore at the time the planned development is submitted to the VGMC; Commissioner Slay accepted the amendment to his second.

Commissioner Vihlen commented that he will not be supporting the motion. Specifically, he stated condition #2 regarding submitting a mitigation plan relating to water quality and wildlife is handled during the zoning process and not within the purview of the VGMC. Additionally, condition #4 establishes a 35' setback which he stated is an internal planning matter and also not within the jurisdiction of the VGMC.

Richard Kane made a motion to amend the motion on the floor to strike conditions #1, #2, #3, #5, and #6, and to add a condition that the City must notify the Canaveral National Seashore at the time of the planned development.

Mr. Chipok addressed the commission relating to conditions #5 & #6. He explained that condition #6 is in every VGMC resolution to insure compliance to any conditions of approval. With respect to condition #5, Mr. Chipok explained that if an amendment is appealed at the state level and modifications are made, this condition requires the jurisdiction to bring it back to the VGMC to insure consistency.

Chairman Wachtel asked Commissioner Kane to restate his motion. Richard Kane stated his motion is to amend the motion on the floor to strike conditions #1, #2 & #3, renumber the current conditions #4, #5 & #6 to #1, #2, & #3 respectively, and to add a fourth condition requiring the City to notify the Canaveral National Seashore at the time of the planned development. Motion was seconded by Debbie Connors.

Commissioner Sonnenfeld commented that condition #3 relating to utilities was one that VGMC staff emphasized was most needed. Commissioner Kane responded that different developments may have different utility services that may not connect through a central utility line.

Commissioner Brandon commented that he felt the condition requiring the planned development to come back to the VGMC was necessary and integral in order to measure the impacts that are presently unknown.

Commissioner Arthur commented there is no real benefit to delete a condition that the City has already agreed to. Several other commission members concurred.

Chairman Wachtel called for a roll call vote on the motion made by Richard Kane. Following a roll call vote, the motion failed with a 7-10 vote and 37.02% of the weighted vote.

Chairman Wachtel stated the original motion is now on the floor. He restated the motion is to approve VGMC Resolution #2015-02 as presented with one additional condition requiring the City of Oak Hill to notify the Canaveral National Seashore at the time the planned development is submitted to the VGMC. Following a roll call vote, the motion failed with a 7-10 vote and 20.74% of the weighted vote.

Sid Vihlen made a motion to approve VGMC Resolution #2015-02 with the following amendments: Delete condition #2; and modify condition #4 to delete the language "and all building setbacks shall be a minimum of 35 feet". Motion seconded by Richard Kane.

Chairman Wachtel asked Commissioner Vihlen if his motion included notification to the Canaveral National Seashore. Mr. Vihlen amended his motion to include a condition that the City notify the Canaveral National Seashore at the time the planned development is submitted to the VGMC. Commissioner Kane accepted the amendment to his second.

Following a roll call vote, the motion carried with an 11-6 vote and 52.30% of the weighted vote.

ADJOURNMENT

Chairman Wachtel thanked everyone for attending and adjourned the meeting at 12:50 a.m., Thursday, April 23, 2015.

  
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Attest: Secretary

  
\_\_\_\_\_  
Chairman

NOTE: These minutes were approved at the September 23, 2015 regular meeting of the VGMC with a revision to include reference to the discussion relating to the prior VGMC approval of the existing land use development of 75% residential and 25% commercial. The revision was made on October 6, 2015 and is reflected on pages 11 and 17.