

Volusia Growth Management Commission

MEETING MINUTES FOR
REGULAR MEETING HELD
Wednesday, July 28, 2010

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

MEMBERS PRESENT

Gerald Brandon, Chairman
Steve Katz, Vice Chairman
Rachel Sieg, Secretary
Richard Walton
Terry Griffiths (Excused)
Danny Allen (Excused)
Sandy Lou Gallagher (Excused)
Jason Floyd
John Heaphy
Roger Sonnenfeld
Rick Tresher
Robert Storke
Don Romanik
Debbie Connors
Joan Spinney
Sandra Walters
James Wachtel
Kenneth Kuhar

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

NON-VOTING MEMBERS

Sara Lee Morrissey
Peter Brown (not present)

REPRESENTING

Volusia Co. School Board
SJRWMD

OTHERS PRESENT

Paul Chipok, GrayRobinson, P.A.
Andre Anderson, Planning Design Group
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 announced the resignation of member Dwight Lewis. He also announced several recent member reappointments: Steve Katz representing DeLand, Sandy Lou Gallagher representing Deltona, John Heaphy representing Holly Hill, and himself being reappointed by Ormond Beach.

APPROVAL OF MINUTES

John Heaphy made a motion to approve the minutes of the regular meeting held on March 24, 2010 as presented; seconded by Joan Spinney. Motion carried unanimously.

PUBLIC HEARING

Paul Chipok, legal counsel to the VGMC, reviewed the rules of procedure for the scheduled public hearing, and those individuals testifying at the hearing were sworn in by the VGMC Coordinator.

Mr. Chipok also asked if any of the commission members had any ex parte communications to report relating to the subject hearing. None of the members reported any ex parte communications.

1) Consideration of party status for Tomoka Farms Rural Village, Inc. relating to VGMC Case No. 07-055, pursuant to Section 90-35, Volusia County Code

Mr. Chipok addressed the commission and stated that the Tomoka Farms Rural Village is a group which serves as community betterment in and around their properties which are in the general vicinity of the subject property. He suggested the commission hear from a representative of the group to further establish some of the criteria for standing, such as determining if persons who are part of the Tomoka Farms Rural Village reside in close proximity to the subject property. Mr. Chipok stated that if the commission establishes they are in close proximity, then he would recommend the commission grant party status to the Tomoka Farms Rural Village, Inc.

Kathy Turner, 2430 Meadow Lane, Port Orange, addressed the commission on behalf of the Tomoka Farms Rural Village. Ms. Turner explained that the purpose of their group is to protect and preserve their area in order to live in a rural atmosphere. She discussed the location of the subject property as being within the Rural Village. Ms. Turner stated that the Tomoka Farms Rural Village group is agreeable to allowing 1 unit per acre on the subject property as is currently proposed.

Commissioner Katz suggested if all parties agree to 1 unit per acre as proposed and there are no further objections, then it is not necessary to have parties to the proceeding. Mr. Katz asked Ms. Turner if the Tomoka Farms Rural Village would waive their request for party status if the commission were to approve it as presently proposed. Ms. Turner stated they would not contest the commission's decision if the density was limited to 1 unit per acre. She also confirmed they would waive their request for party status. With that, Mr. Chipok stated it was not necessary for the commission to vote on the party status and they could move into the substantive portion of the hearing.

2) Consideration of VGMC Application 07-055, City of Port Orange Small Scale Amendment Request –VGMC Resolution #2010-06.

Andre Anderson, planning consultant to the VGMC, addressed the commission. Mr. Anderson reviewed the original request and discussed the background which led to the proposed limitation of 1 unit per acre. He stated VGMC staff recommends approval of the amendment restricting the density to 1 unit per acre and rezoning of the subject property to agriculture which is the mechanism for implementing the 1 unit per acre restriction.

Commissioner Walters raised a question concerning rezoning of the property at a future date. Mr. Chipok responded that we are dealing with land use and that the City's land use designation will have an additional restriction through a map notation on the Port Orange future land use map that the density will be limited to 1 unit per acre for the subject property. He added that any future change would require them to go through the formal comp plan amendment process, including coming back to the VGMC.

Commissioner Walton asked why we were looking at the zoning issue. Mr. Chipok stated as a general rule, we do not deal with zoning, however, that is how the proposal came to the VGMC. He added that staff analyzed the proposal as submitted to VGMC and it is not objectionable to staff. As a result, he stated staff is recommending approval as proposed.

Tim Burman, Planner with the City of Port Orange, stated the City agrees with the recommendation presented by VGMC staff.

There was no one else present to speak in favor of the application.

Kathy Turner stated that the reason for the rezoning to agriculture is because City of Port Orange agriculture zoning only allows 1 unit per acre. She also asked if the applicant were to go to the City of Port Orange at some point in the future to rezone the property, would the VGMC see that application. Chairman Brandon responded that any request to amend the comprehensive plan would require an application be submitted to the VGMC for review and consistency determination. Mr. Chipok added that the comprehensive plan controls the density on the property and for them to change it would require they go through the full comprehensive plan amendment process which includes numerous public hearings, numerous notice provisions and VGMC review as well.

There was no one present who wished to speak in opposition of the application. Chairman Brandon then closed the public hearing.

Mr. Chipok briefly discussed Resolution 2010-06 which contains the conditions of approval as agreed to by the parties.

Mr. Katz pointed out that the word "Rural" was missing on page 4, paragraph 15 of the Resolution. Ms. Turner pointed out that the group is now known as "Tomoka Farms Village Inc.". Mr. Katz then suggested adding "(formerly known as Tomoka Farms Rural Village Inc.)" on page 4, paragraph 15.

Commissioner Sonnenfeld commented that the map contained in the staff report did not clearly depict the location of the property. Mr. Anderson displayed the City of Port Orange future land use map and pointed out the location of the property. Chairman Brandon asked Mr. Anderson to provide a more detailed location map in future reports.

Commissioner Joan Spinney moved to approve Resolution 2010-06 as amended on page 4, paragraph 15; seconded by Commissioner Debbie Connors. Motion carried unanimously.

REMARKS OF INTERESTED CITIZENS

None

REPORTS OF OFFICERS

None

REPORTS FROM CONSULTANTS

VGMC Case Update: Chairman Brandon asked if any of the members had any questions relating to the pending case log which was in their agenda package. Commissioner Walters asked if it is the Deltona EAR Based amendment (VGMC #10-015) that is being scheduled for public hearing in August. VGMC Coordinator Merry Smith responded affirmatively.

Pending Litigation Reports:

1) Burgess v. City of Edgewater, VGMC & Hammock Creek Green -- Mr. Chipok provided background information to the Commission. He stated that the VGMC issued a letter of consistency for the Restoration amendment and the City of Edgewater adopted the amendment. Mr. Chipok stated that DCA issued a notice of intent to find the application not in compliance, and subsequently there was a stipulated settlement agreement between the City of Edgewater and DCA. He stated the resulting remedial amendments were forwarded to VGMC as additional

information on the original application (pursuant to Volusia County Code Section 90-37(i)) and the VGMC issued a letter stating that the additional information was consistent with the original certification. In the complaint, Mr. Chipok stated the plaintiffs argue that the remedial amendment is set forth in the stipulated settlement agreement and the adopted version of the amendment by the City of Edgewater must be submitted as a new comprehensive plan amendment to the VGMC for review. He stated they are requesting the court to declare that the Edgewater adoption of the remedial amendment is void.

Mr. Chipok reported that the plaintiffs are Richard Burgess and ECARD, and the defendants are the City of Edgewater, the VGMC and Hammock Creek Green LLC. The status of the case is that each defendant has filed a Motion to Dismiss which is scheduled to be heard on August 4, 2010 at 9:45 a.m. in the Volusia County Court House before Judge Terrence Perkins. Mr. Chipok stated that if the Motions to Dismiss are granted, the case is over; if the motions are denied, then we will have to file answers to the petition and the litigation will continue.

Commissioner Katz asked for clarification that our position is the remedial amendments do not need to come back before the VGMC. Mr. Chipok responded affirmatively and also explained the VGMC procedure used in reviewing remedial amendments as additional information pursuant to Section 90-37(i).

2) DCA v. Volusia County, DOAH Case No. 10-2419GM – Farnton Amendment – Mr. Chipok stated the issue is that DCA has issued a notice of intent to find the amendment not in compliance. He stated the petitioner is DCA with interveners Barbara Herrin and ECARD; the respondent is Volusia County with interveners Miami Corporation and VGMC. Mr. Chipok stated the hearing is set for September 14-17, 21-24, 28 and 29 at the Volusia County Courthouse. He stated at this time we are responding to the discovery request per orders of the pre-trial instructions.

Mr. Chipok stated the VGMC is involved in this case because we issued a certificate of consistency with a number of conditions and we need to ensure that the VGMC conditions of approval are upheld and honored throughout any negotiations. He added that it is more efficient for VGMC to be part of the process and negotiations in order to champion those prior conditions, as opposed to negotiations being made that would affect the conditions and us having to challenge the administrative hearing at the end.

Commissioner Katz asked if the VGMC had standing. Mr. Chipok responded that VGMC filed a petition to intervene and were granted intervention status.

REPORTS OF COMMITTEES

POP Committee:

Committee Chairman Steve Katz reported that the POP committee had met prior to the regular meeting to discuss the legal services contract. He stated the committee reviewed a draft, made

some changes and hope to provide a revised draft to the full commission at the next meeting for approval. Mr. Katz also explained the committee would like Mr. Chipok to provide some rules and procedures changes in order to implement items in the legal contract relating to special projects. Specifically, Mr. Katz stated the committee is recommending modifications to the rules of procedure which would spell out direction to staff in terms of approval requirements for handling special projects. That being said, he stated the POP committee, serving as a motion and second, is recommending the commission authorize Mr. Chipok to draft revisions to the rules of procedure which will provide specific direction to staff concerning approval requirements for handling special projects. The motion carried unanimously.

Mr. Katz reported that at the next meeting, the POP committee will discuss the next RSQ process which will be for the small scale planning staff. He also stated our current contract with Planning Design Group ends at the end of September, however, it is unlikely there will be much progress with respect to the RSQ by then.

Budget Committee:

Committee Chair Rachel Sieg reported the Budget Committee met prior to the regular meeting. Ms. Sieg stated the committee reviewed year-to-date expenses through June and we appear to be right on target. Additionally, she stated an increase of \$110,000 was approved by the County for contract services for the 2009/10 fiscal year.

Ms. Sieg also reported that the County's budget analyst reviewed the 2010/11 proposed budget and is recommending approval as submitted by the commission, with an additional \$2 for computer replacement but without the \$25,000 litigation contingency. She stated the Budget Committee is recommending the commission approve ratification of the proposed 2010/11 budget as previously submitted to the County, which serves as a motion and second. Motion carried unanimously.

UNFINISHED BUSINESS

None

NEW BUSINESS

Chairman Brandon stated that he asked Mr. Chipok to address the commission relating to VGMC matters for the benefit of new members and also to serve as a review for longer term members.

Mr. Chipok reviewed a prepared presentation relating to the Sunshine Law, a copy of which is attached as Exhibit A. Mr. Chipok emphasized the importance that members of the commission avoid communications outside of a publicly advertised meeting relating to matters that will come before the commission. Commissioner Morrissey raised a question concerning members of local government staff, including herself, that are also members of the commission, having

conversations relating to matters in the normal course of their work. Mr. Chipok responded that the Sunshine Law would apply in that situation. He also stated that as an employee of Volusia County Schools, she should be able to request a formal opinion from the Attorney General. Mr. Chipok added that it would need to be put into context in terms of the discussion occurring while they are acting in the capacity of their employment, and avoiding discussions related to proposed action by the VGMC. Commissioner Katz commented that there is a staff exception to the Sunshine Law and suggested Mr. Chipok look at that and further communicate with Commissioner Morrissey.

In summary, Mr. Chipok advised the members not to discuss business that will come before the commission outside of a public meeting.

Mr. Chipok reviewed a prepared presentation providing an overview of the VGMC, including comprehensive planning, the history and process of the VGMC. A copy of the presentation is attached as Exhibit B.

Mr. Chipok then reviewed a prepared presentation with respect to the consistency review criteria relating to significant adverse impacts on infrastructure beyond a jurisdiction. A copy of the presentation is attached as Exhibit C. General discussion ensued concerning the nature of the specific amendment in determining potential impacts on non-adjacent jurisdictions and the commission's determination of standing on petitions for hearing.

The commission thanked and commended Mr. Chipok for the presentations.

REPORTS AND REQUESTS OF COMMISSION MEMBERS

Commissioner Katz announced Chairman Brandon's birthday.

REPORTS AND REQUEST OF COMMISSION CHAIR


Chairman Brandon announced that the VGMC Coordinator is currently looking into archiving and storing the VGMC records which go back over 20 years.

ADJOURNMENT

The meeting was adjourned at 8:45 p.m.



Attest:



Chairman

**EXHIBIT A
VGMC MINUTES
JULY 28, 2010**

**LEGAL PRESENTATION
“THE SUNSHINE LAW”**

VOLUSIA GROWTH MANAGEMENT COMMISSION

THE SUNSHINE LAW

PRESENTED BY
PAUL H. CHIPOK, ESQUIRE
GRAY ROBINSON, P.A.

JULY 28, 2010
7:00 P.M.

THE SUNSHINE LAW

- The Sunshine Law is designed to ensure public access to the decision-making process of public boards and commissions, such as the VGMC.
- Found in section 286.011 of the Florida Statutes.

- Basic requirements:
 1. Meetings of public boards or commissions must be open to the public;
 2. Reasonable notice of such meetings must be given;
 3. Minutes of the meetings must be taken.

WHAT IS A MEETING?

- Any formal or informal gathering of *two or more* members of the *same board* to discuss some matter which will *foreseeably* come before that board for action.
- A writing reflecting the views of a board member and circulated among board members with each indicating his or her approval or disapproval, and upon completion of the circulation, the writing has the effect of becoming an official action of the board.
- A telephone conversation among two or more board members.
- Communication via computer among two or more board members.

WHAT IS OPEN TO THE PUBLIC?

- VGMC should take reasonable steps to ensure that the facilities where the meeting will be held will accommodate the anticipated turnout.
- Board members should not discuss issues before the board in a manner not generally audible to the public attending the meeting.
- The public has a right to be present and to be heard at deliberations where decisions affecting the public are being made.

WHAT IS REASONABLE NOTICE?

- Article II, Section 6 of VGMC's Rules of Procedure provides:

The Commission will file annually a schedule of its regular meeting dates with the Volusia County council and each municipality in Volusia County. The schedule shall include the date, time and location of each regular meeting and shall constitute full and adequate public notice of regular meetings. However, if the date, time or location of any regular meeting is changed by either the Commission or its Chairman pursuant to Sections 2 or 3 of this Article II, notice of the change shall be given to the public *in a manner complying with the Government in the Sunshine Law*.

- Three business days before the scheduled meeting constitutes reasonable notice.

FREQUENTLY ASKED QUESTIONS

Must written minutes be kept of all sunshine meetings? While tape recorders may be used to record the proceedings, written minutes of the meeting must be taken and promptly recorded.

Are board members authorized to abstain from voting? No, VGMC board members who are present at a meeting must vote unless there is, or appears to be a conflict of interest under Florida Statutes.

What are the notice requirements when a meeting is adjourned to a later date? If a meeting is adjourned and reconvened later to complete the business from the agenda of the adjourned meeting, the second meeting should also be noticed.

Does the Sunshine Law restrict VGMC from taking action on matters not on the agenda? No.

May a member of the public tape-record a VGMC meeting? Yes.

Does the Sunshine Law apply to one VGMC member meeting with one member of a different board? No, unless one of the individuals has been delegated the authority to act on behalf of his or her board.

CONSEQUENCES FOR FAILURE TO COMPLY WITH THE SUNSHINE LAW

- Any action taken at a meeting not open to the public, whether intentional or unintentional, is void.
- Criminal penalties.
- Removal from office.
- Fines up to \$500.
- Award of reasonable attorney's fees against the committee found to have violated the Sunshine Law.

EXHIBIT B
VGMC MINUTES
JULY 28, 2010

LEGAL PRESENTATION
“OVERVIEW OF VGMC”

VOLUSIA GROWTH MANAGEMENT COMMISSION

OVERVIEW OF VGMC

PRESENTED BY
PAUL H. CHIPOK, ESQUIRE
GRAY ROBINSON, P.A.

JULY 28, 2010
7:00 P.M.

OVERVIEW

- I. COMPREHENSIVE PLANNING
- II. HISTORY OF VGMC
- III. PROCESS
- IV. ZONING
- V. QUESTIONS FROM VGMC

COMPREHENSIVE PLANNING

ESTABLISHED BY F.S. CHAPTER 163 PART II

- **REQUIRES A MUNICIPALITY TO ADOPT AND AMEND A COMPREHENSIVE PLAN TO GUIDE THEIR FUTURE DEVELOPMENT AND GROWTH**

FS SECTION 163.3167 (1)

- **A MUNICIPALITY IS ENCOURAGED TO ARTICULATE A VISION OF THE FUTURE PHYSICAL APPEARANCE AND QUALITIES OF ITS COMMUNITY AS A COMPONENT OF ITS COMPREHENSIVE PLAN**

FS SECTION 163.3167 (11)

- **AMENDMENT TO A COMPREHENSIVE PLAN BY A MUNICIPALITY IS A LEGISLATIVE ACTION**

MARTIN COUNTY v. YUSEM, 690 So. 2d 1288 (Fla. 1997)

COMPREHENSIVE PLANNING

AMENDMENT PROCESS

- **MUNICIPALITY MUST TRANSMIT PROPOSED COMPREHENSIVE PLAN AMENDMENT TO FDCA**
FS SECTION 163.3184(3)
- **FDCA REVIEWS PROPOSED AMENDMENT AND ISSUES ANY OBJECTIONS RECOMMENDATIONS AND COMMENTS (ORC) REPORT**
FS SECTION 163.3184(6)
- **MUNICIPALITY ADOPTS PROPOSED AMENDMENT AT PUBLIC HEARING AND FORWARDS ADOPTION ORDINANCE TO FDCA**
FS SECTION 163.3184(7)
- **FDCA ISSUES NOTICE OF INTENT TO FIND COMPREHENSIVE PLAN EITHER IN COMPLIANCE OR NOT IN COMPLIANCE WITH FS CHAPTER 163, PART II**
FS SECTIONS 163.3184(8), (9) AND (10)

VOLUSIA COUNTY COMPREHENSIVE PLANNING AMENDMENT PROCESS

- **PER CHARTER SECTION 202.3 EXTRA STEP INCLUDED:**
 - **PRIOR TO ADOPTION BY MUNICIPALITY, VGMC CERTIFICATE OF CONSISTENCY IS REQUIRED**
 - **VGMC HAS THE POWER AND DUTY TO DETERMINE THE CONSISTENCY OF A MUNICIPALITY'S AND COUNTY'S COMPREHENSIVE PLANS AND ANY AMENDMENTS THERETO WITH EACH OTHER**
- **VGMC PROVIDES MEANS FOR COORDINATING:**
 - **PLANS BETWEEN MUNICIPALITIES AND COUNTY**
 - **PROVISION OF PUBLIC SERVICES**
 - **INTERGOVERNMENTAL COOPERATION AND COORDINATION**

VOLUSIA COUNTY CODE SECTION 90-33(5)

HISTORY OF THE VOLUSIA
GROWTH MANAGEMENT COMMISSION

- ADOPTION OF ELMS II IN 1985
- VOLUSIA COUNTY CHARTER REVIEW COMMISSION CONCERNED ABOUT AVOIDING COSTLY ANNEXATION LAWSUITS
- ON NOVEMBER 4, 1986, VOLUSIA COUNTY VOTERS OVERWHELMINGLY AMENDED THE COUNTY CHARTER TO CREATE THE COMMISSION
- ORIGINAL RULES DEVELOPED BY COMMITTEE WITH PARTICIPATION FROM ALL GOVERNMENTS AND THE COMMUNITY

HISTORY

VGMC GOVERNING LEGISLATION

- **VOLUSIA COUNTY CHARTER §202.3**
- **VOLUSIA COUNTY CODE CHARTER 90, ARTICLE II, GROWTH MANAGEMENT COMMISSION CERTIFICATION RULES**
- **VOLUSIA GROWTH MANAGEMENT COMMISSION RESOLUTION 1987-6, AS AMENDED, RULES OF PROCEDURE FOR MEETINGS, MEMBERSHIP AND OPERATIONS**

HISTORY
VOLUSIA GROWTH MANAGEMENT COMMISSION

GOALS AND OBJECTIVES

GOALS:

TO PROVIDE AN EFFECTIVE MEANS FOR COORDINATING THE PLANS OF MUNICIPALITIES AND THE COUNTY, IN ORDER TO PROVIDE A FORUM FOR LOCAL GOVERNMENTS IN VOLUSIA COUNTY TO COORDINATE DECISION MAKING RELATED TO LAND USE, THE ENVIRONMENT AND PUBLIC SERVICES FOR THE CITIZENS OF VOLUSIA COUNTY.

OBJECTIVE:

REVIEW THE COMPREHENSIVE PLANS AND ANY PLAN AMENDMENTS THERETO FOR EACH GOVERNMENTAL ENTITY IN VOLUSIA COUNTY TO INSURE INTERGOVERNMENTAL COORDINATION AND COOPERATION

HISTORY
SCOPE OF VGMC AUTHORITY

- VGMC SCOPE IS NARROW
 - REVIEW OF COMPREHENSIVE PLAN AMENDMENT TO DETERMINE CONSISTENCY OF AMENDMENT WITH PLANS OF ADJACENT MUNICIPALITIES AND COUNTY
 - IF FOUND NOT TO BE CONSISTENT, UNDER WHAT CONDITIONS COULD THE AMENDMENT BE MADE TO BE CONSISTENT

PROCESS

CONSISTENCY CERTIFICATION RULES

- **VGMC APPLICATION SUBMITTED SIMULTANEOUSLY WITH APPLICATION TO FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS**
- **VGMC ADMINISTRATIVE STAFF NOTICE THE APPLICATION BY MAIL AND NEWSPAPER NOTICE**
- **THE VGMC STAFF HAS 30 DAYS TO REVIEW APPLICATION AND REQUEST ADDITIONAL INFORMATION**
- **IF APPLICATION IS COMPLETE, BUT ANOTHER PARTY REQUESTS A PUBLIC HEARING, THAT HEARING SHALL BE HELD WITHIN 60 DAYS AFTER COMPLETE APPLICATION**
- **IF NO ADDITIONAL INFORMATION IS NEEDED AND NOBODY REQUESTS A HEARING THE PLAN IS AUTOMATICALLY DEEMED CONSISTENT**

PROCESS
CONSISTENCY CERTIFICATION RULES
(CONTINUED)

- **A PUBLIC HEARING IS HELD IF:**
 - **AN ADJACENT JURISDICTION FILES A PETITION WITH VGMC WITHIN 30 DAYS; OR**
 - **PUBLIC FILES A PETITION WITH VGMC WITHIN 21 DAYS AFTER NOTICE IS PUBLISHED; OR**
 - **IF THE VGMC STAFF DETERMINES THAT AN APPLICATION DOES NOT MEET PRIOR VGMC CONDITIONS OF CERTIFICATION; OR**
 - **IF THE VGMC STAFF DETERMINES THAT AN APPLICATION IS INCONSISTENT.**
- **FAILURE TO FILE PETITION WAIVES RIGHT TO PUBLIC HEARING**
- **IF A PUBLIC HEARING IS HELD, THE SECTION 90-37(C) CRITERIA APPLY**

PROCESS
CONSISTENCY CERTIFICATION RULES (CONTINUED)

SECTION 90-37(c)
Review Criteria

- 1. Extent to which the amendment provides for area wide or central utility service solutions.**
- 2. Extent to which the amendment provides area wide or regional transportation solutions.**
- 3. Extent to which the amendment causes or may cause significant adverse impacts on infrastructure beyond the boundaries of one jurisdiction.**
- 4. Extent to which amendment causes or may cause significant adverse impacts on natural resources which extend beyond the boundaries of one jurisdiction.**
- 5. Extent to which amendment provides for coordination of timing and location of capital improvements in a manner to reduce duplication and competition.**
- 6. Existence of an agreement between all substantially affected local governments, substantially affected parties (if any) and applicant which provides for all said governments consent to the application.**

PROCESS

STANDARD OF REVIEW

- **QUASI JUDICIAL IN NATURE**
- **APPLICANTS PROVIDE REASONABLE ASSURANCE THAT PLAN AMENDMENT IS “CONSISTENT” WITH PLANS OF ADJACENT OR SUBSTANTIALLY AFFECTED AND AGGRIEVED LOCAL GOVERNMENTS**
- **APPLICANT JURISDICTION MUST ESTABLISH BY A “PREPONDERANCE OF EVIDENCE” ITS ENTITLEMENT TO THE CERTIFICATE**
 - **“PREPONDERANCE OF EVIDENCE” MEANS:**

**EVIDENCE WHICH IS OF GREATER WEIGHT OR MORE
CONVINCING THAN EVIDENCE WHICH IS OFFERED IN
OPPOSITION TO IT**
 - **IN OTHER WORDS, AS A WHOLE EVIDENCE SHOWS THE FACT SOUGHT TO BE PROVED IS MORE PROBABLE THAN NOT**

PROCESS

STANDARD OF REVIEW

- **AMENDMENT SHALL BE “CONSISTENT” IF IT IS “COMPATIBLE WITH” AND “IN FURTHERANCE OF” SUCH ADJACENT AND SUBSTANTIALLY AFFECTED COMPREHENSIVE PLANS WHEN ALL SUCH PLANS ARE CONSTRUED AS A WHOLE.**
- **“COMPATIBLE WITH” MEANS THAT THE PLAN AMENDMENT IS NOT IN CONFLICT WITH ADJACENT PLANS**
- **“IN FURTHERANCE OF” MEANS TO TAKE ACTION IN THE DIRECTION OF REALIZING THE GOALS OR POLICIES OF SUCH ADJACENT AND SUBSTANTIALLY AFFECTED COMPREHENSIVE PLANS.**
- **DOES IT ADVERSELY AFFECT INTERGOVERNMENTAL COOPERATION AND COORDINATION**
- **APPLICATION OF THE SIX FACTORS OF SECTION 90-37(C)**

PROCESS
APPLICATION REVIEW PROCESS IS
SIMILAR TO 120 LICENSING PROCEDURES

- **STAFF CAN REQUEST ADDITIONAL INFORMATION**
- **ALL LOCAL GOVERNMENTS IN VOLUSIA COUNTY MAY SUBMIT WRITTEN COMMENTS**
- **IF NO ONE OBJECTS AND THE STAFF DETERMINES THERE IS NO PROBLEMS, CERTIFICATION IS ISSUED WITHOUT A PUBLIC HEARING**
- **SMALL SCALE AMENDMENTS ARE FAST TRACKED**
- **IF ANYONE GRIPEs, A HEARING IS HELD**

ZONING

- VGMC TYPICALLY DOES NOT LOOK AT ZONING
- DEFINED AS THE DIVISION OF A MUNICIPALITY INTO DISTRICTS AND REGULATION OF BUILDING AND STRUCTURES ACCORDING TO THEIR STRUCTURE AND NATURE
7 FL JUR 2D, BUILDING ZONING & LAND CONTROLS § 98
- THE APPLICATION OF ZONING REGULATIONS TO A PARCEL IS A QUASI-JUDICIAL ACTION
BOCC of Brevard Co. v. Snyder, 627 So.2d 469 (Fla. 1993)
- AN EXERCISE OF DISCRETIONARY POWERS BY THE MUNICIPALITY
- ZONING MUST BE CONSISTENT WITH THE COMPREHENSIVE PLAN
- VGMC MAY LOOK AT ZONING WHEN ZONING DESIGNATION IS PLACED AS A VGMC CONDITION OF CERTIFICATION TO ENSURE COMPLIANCE
- A ZONING ACTION NOT IN ACCORDANCE WITH A COMPREHENSIVE PLAN IS ULTRA VIRES
Gardens Country Club, Inc. v. Palm Beach County,
590 So.2d 488 (Fla. 3rd DCA 1992)

QUESTIONS?

**EXHIBIT C
VGMC MINUTES
JULY 28, 2010**

**LEGAL PRESENTATION
“SIGNIFICANT ADVERSE IMPACT ON
INFRASTRUCTURE BEYOND THE
BOUNDARIES OF ONE JURISDICTION”**

VOLUSIA GROWTH MANAGEMENT COMMISSION

REVIEW OF
SIGNIFICANT ADVERSE IMPACT
ON INFRASTRUCTURE
BEYOND THE BOUNDARIES OF
ONE JURISDICTION

PRESENTED BY
PAUL H. CHIPOK, ESQUIRE
GRAY ROBINSON, P.A.

JULY 28, 2010
7:00 P.M.

**VOLUSIA COUNTY CODE
CHAPTER 90, ARTICLE II
VGMC CERTIFICATION RULES**

Section 90-37 Criteria for Issuance of Certificate

- (c) In determining whether a plan, element, or plan amendment adversely affects intergovernmental cooperation and coordination, the commission may, in its sole discretion, consider one or more of the following factors:
 - (3) The extent to which the plan, element, or plan amendment causes or may reasonably be anticipated to cause significant adverse impacts on infrastructure beyond the boundaries of one jurisdiction.

WHAT IS INFRASTRUCTURE

- Look to FS §163.3180 Concurrency, for guidance on items to be measured as infrastructure
 - Sanitary sewage
 - Solid waste
 - Drainage
 - Potable water
 - Parks and recreation
 - Schools
 - Transportation facilities
- NOTE: Addressed in Proposed Rules Amendments at §90-37(c)(1) & (2)

WHAT IS SIGNIFICANT ADVERSE IMPACT

- Significant – not minor or incidental
- Adverse – detrimental, unfavorable, harmful
- Impact – effect upon
- Impact must be beyond the boundaries of the applicant jurisdiction

METHOD OF MEASUREMENT OF IMPACTS

- Look at net change
 - what new impacts are caused by proposed land use designation that are greater than existing land use designation
 - must look at maximum buildout potential of land use

- Impacts not otherwise mitigated
- Methods of mitigating impacts
 - Schools – Concurrency Letter
 - Capacity Enhancement Agreement
 - Traffic – Proportionate Share Agreement
 - Existence of an Interlocal Agreement Addressing Impact Mitigation Issues