

Volusia Growth Management Commission

MEETING MINUTES FOR  
**SPECIAL MEETING HELD**  
Wednesday, June 25, 2008

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

MEMBERS PRESENT

Gerald Brandon , Chairman	
Robert Pascoe, Vice Chair	
Joan Spinney, Secretary	Excused
Richard Walton	
Danny Allen	
Steve Katz	Excused
Sandy Lou Gallagher	
Karen Hall	
John Heaphy	
Ed Blackman	
Rick Tresher	Excused
James Kerr	
Patricia Heller-Jackson	
Donna Steinebach	Excused
Billy Carter	
Sandra Walters	Excused
Rachel Sieg	
Tony Cole	
Suzanne Steiner	

REPRESENTING

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

NON-VOTING MEMBERS

Sara Lee Morrissey	Present
Peter Brown	(not present)

REPRESENTING

Volusia Co. School Board  
SJRWMD

OTHERS PRESENT

Paul Chipok, GrayRobinson, P.A.  
Merry Chris Smith, VGMC Coordinator

CALL TO ORDER

Chairman Brandon called the meeting to order at 7:02 p.m.

ROLL CALL

Roll call was taken and it was determined there was a quorum present.

DISCUSSION ITEM: Discussion of Partin v. VGMC Ruling and Direction to Staff on Consideration of Appeal

Paul Chipok, legal counsel for VGMC, addressed the commission stating that Judge Parsons issued an order granting the Petition of Writ Certiorari in favor of Partin, quashed the Order and Notice Granting the Rehearing, quashed Resolution #2008-02 which found consistency of the amendment and declined to remand the case to the VGMC.

Mr. Chipok stated that should the VGMC choose to appeal the decision, there is a 30-day appeal window which will close on July 9, 2008. He further stated he received a request from the attorneys for the City of Daytona Beach Shores, Lady Godiva 2, and Partin to address the commission with comments.

Attorney Glenn Storch representing the City of Daytona Beach Shores, Attorney Mark Watts representing the landowner, and Attorney Dennis Bayer representing Partin came forward. Mr. Storch stated that the parties are looking at a mechanism for them all to sit down together and craft a solution together. He stated the rights which have already been established need to be vested within the required time frame, however, the City and the landowner can file the appeal. Mr. Storch added there is no need for the VGMC to file the appeal, however, the VGMC would have the right to participate if the City and landowner file. He explained that once they file the writ, which they are required to do in order to preserve their rights, they will ask the court to hold everything in abeyance. This, he stated, would avoid spending taxpayer's money and allow the opportunity for all sides to get together and try to reach settlement. Mr. Storch added if they are successful in doing so, they would come back to the VGMC and present the proposal.

Mark Watts, Cobb & Cole, representing the landowner, stated that what they are suggesting will preserve the right for them to move forward on appeal if necessary, however, will also allow the opportunity for all parties to sit down and try to come up with a solution to this ongoing issue.

Dennis Bayer, representing Partin, stated this has been a long, convoluted and expensive process. He stated they have been looking for a seat at the table all along to address some of his client's concerns. Mr. Bayer stated they agree that this is probably the best process at this time so they can all sit down and hopefully resolve the issues relating to this project, and perhaps look at guidelines for future development in that area. He further added that if for whatever reason it does not work, all parties have retained their legal rights that can be pursued in the courts.

Mr. Storch pointed out that Volusia County was also a party in the litigation. He stated he has spoken with County representatives and understands they would agree to this concept as well.

Mr. Chipok stated that while he does not agree with everything in the judge's order, there were two points accurately made that stated VGMC rules do not address rehearings or ex-parte

communications. Mr. Chipok stated rather than VGMC appealing the decision to the 5<sup>th</sup> District Court of Appeals to address the issues raised in the order, he suggested the better course of action would be not to appeal the decision, and to address the rehearing and ex-parte communication issues through future rules amendments. Mr. Chipok stated staff's recommendation to the VGMC is to not have VGMC directly appeal the order. He stated they also recommend the commission direct staff to work with the POP Committee to draft recommended rules on rehearings and ex-parte communications. Mr. Chipok stated in the event other parties appeal the order, the VGMC can file a joinder into the motion to preserve our interests, without incurring the costs of filing the Writ of Certiorari – adding this would allow the VGMC to be involved with the process without taking the lead role. He also reiterated the parties would be filing the appeal for the purpose of preserving jurisdiction as a fallback, but then would continue working in a settlement mode. Lastly, Mr. Chipok recommended the commission authorize staff to continue negotiations toward settlement as appropriate, adding that any final settlement recommendation would have to come back before the VGMC.

Chairman Brandon asked if there was anyone in the audience who wished to address the commission, at which time no one came forward.

Commissioner Allen announced that he had ex-parte communications with Council Members for the City of DeBary regarding this issue and in view of the judge's order, asked what level of detail he needed to provide. Mr. Chipok stated this is one of the issues they will be addressing and suggested at this point and based on case law, if you've had ex-parte communications on a matter coming before the board, you would relate that you've had the communications, who you had them with and the general subject matter of the communications. Commissioner Allen stated the subject matter was this case, and one of the Council Members suggested to just let them bring the amendment back before the VGMC in October, and other Council Members didn't understand the rulings contained in the order. Commissioner Allen stated that there are rules in our procedures that he felt the judge's order did not follow. Specifically, Mr. Allen commented that our rules state that you must vote unless you have a conflict, yet the judge found fault with members who weren't at the original hearing voting at subsequent hearings. Mr. Chipok responded that the judge's findings in that matter stated that while he commended the Chairman for following the rules and statutes as written, the judge's opinion was that constitutionally, due process was not served.

Commissioner Allen firmly commented that he did not feel Mr. Chipok misrepresented the commission in the proceedings as suggested in the judge's order. Several members concurred. Mr. Allen further stated the ruling pertaining to members voting who weren't present at the first hearing doesn't make sense, and compared it to a local jurisdiction having 1<sup>st</sup> reading on a matter with their elected council, but then the 2<sup>nd</sup> reading doesn't occur until after new council members have been elected.

Saralee Morrissey asked if the writ is filed and a settlement occurs, what is the effect on the order. Mr. Chipok responded that if the other parties appeal, the final decision on the judge's quashing will remain open. He further stated they anticipate through settlement negotiations, they will look to find methodology to address the order and through some mechanism bring it

back for certification by the commission. Mr. Chipok stated that all of the details on the process have not yet been determined. Ms. Morrissey commented that if something occurs at settlement it would seem that the rules will need to be amended. She then asked about the long term impact of the judge's opinion if the commission were able to act on it again. Mr. Chipok responded that the judge's opinion would be narrowly confined to that particular application. He further stated that the commission did not have specific rules relating to ex-parte communications and re-hearings at the time this application came before them. If the commission addresses and adopts rules relating to these issues, we will have defined rules in place if the situation arises in the future, and in his opinion the effect of the order prospectively would be minimal.

Commissioner Hall stated she understood that the judge's order takes this back to the original hearing, and if that is the case, why couldn't the City simply bring it back before the commission after the one year term rather than appealing the decision. Mr. Chipok reviewed the order of the prior hearings and stated that the judge's order said the motion for rehearing was improperly granted, and the judge also quashed the second resolution from the January, 2008 hearing. The net effect, Mr. Chipok stated, is that the 1<sup>st</sup> resolution from the October, 2007 hearing is reinstated and represents VGMC's last statement on the application. Mr. Chipok agreed with Ms. Hall's comment that after 12 months of the last pronouncement of the VGMC, which at this point would be the November, 2007 rendering of the October, 2007 decision, they could potentially come back in November, 2008 with a new application. He also stated he agrees that the VGMC should not appeal the decision because it can be addressed in other manners administratively through the rules. He further stated that it is within the discretion of the City, the applicant and the petitioners on how they wish to handle it.

Commissioner Walton raised concern relating to possibly setting precedence for future issues, given that the commission followed what they believed to be their procedures and came to a decision, yet the judge overturned that decision. Mr. Chipok responded that the judge was correct in that we do not have specific rules relating to rehearings or ex-parte communications and those items will be specifically addressed through the POP committee and commission. He further stated he felt the balance of the matters are confined to that particular case.

Commissioner Allen asked if the order is not appealed, would it fall into case law. Mr. Chipok responded that in order for it to have wide spread application it would have to go to the 5<sup>th</sup> District Court of Appeals. He added that the best way to contain the judge's opinion and limit its widespread effect is not to pursue it on appeal to the 5<sup>th</sup> DCA through the VGMC.

Commissioner Walton asked if something changed between now and July 9<sup>th</sup> which resulted in the other parties not filing the appeal, would legal staff's recommendation change. Mr. Chipok responded that the recommendation would not change.

Chairman Brandon stated that two members of the commission who are not present submitted letters to be read into the record. VGMC Coordinator, Merry Chris Smith, read the letters into the record, the first from Member Sandra Walters (Exhibit A to these minutes), and the second from Member Rick Tresher (Exhibit B to these minutes).

Richard Walton made a motion to follow VGMC's legal staff recommendation; seconded by John Heaphy. Chairman Brandon clarified the motion is not to appeal the judge's order. Motion carried unanimously.

Mr. Chipok requested further direction on the following matters: 1) In the event the other parties appeal the judge's order, authorize legal counsel on behalf of the VGMC to file a joinder into the petition. 2) Authorize staff to participate in any settlement negotiations as appropriate; 3) Authorize staff to work with the POP Committee to draft rules relating to rehearings and ex-parte communications to bring back to the full board for further discussion.

Commissioner Steiner asked Mr. Chipok to explain why we would file a joinder. Mr. Chipok responded that if the case is kept alive, there are potential issues that would directly affect us through those further discussions and appeal. He further stated the VGMC would want to keep a hand in it so that we could actively address these issues with the court and protect the interests of the board.

Danny Allen made a motion to authorize legal counsel on behalf of the VGMC to file a joinder into the petition in the event the other parties appeal the judge's order; seconded by Rachel Sieg. Motion carried unanimously.

The commission discussed a motion to authorize staff to work with POP committee to draft recommended rules on rehearing procedures and ex-parte communications procedures. Commissioner Steiner commented that she felt member attendance at the meetings is lacking and suggested that the POP committee also look at more stringent rules relating to attendance.

Commissioner Allen requested an update on the procedure review process. Chairman Brandon reported that four lengthy POP meetings have been held to review all of the comments, and staff is in the process of putting together draft amendments for presentation to the full commission. Once reviewed by the full commission, Chairman Brandon stated the draft will be distributed to all of the jurisdictions and other interested parties, which will be followed by meetings with them to take further comment.

Rachel Sieg made a motion to direct staff to work with the POP committee to draft recommended rules on rehearing procedures and ex-parte communications procedures; seconded by Sandy Lou Gallagher. Motion carried unanimously.

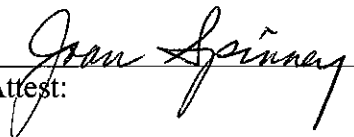
Mr. Chipok clarified for the record that the earlier motion authorizing staff to file a joinder into the process included the concept that if there are settlement negotiations, VGMC staff would participate in those settlement negotiations as appropriate.

Chairman Brandon introduced Sandy Lou Gallagher representing the City of Deltona and Patricia Heller-Jackson representing the Town of Ponce Inlet as new members to the commission.

Chairman Brandon also announced that Bob Pascoe would be leaving the commission and is being replaced by Stephan Dembinsky; Ed Blackman is leaving the commission and we are awaiting formal confirmation from the City of Lake Helen on his replacement; Karen Hall is leaving the commission and being replaced by Sandy Jones. Mr. Brandon thanked the outgoing members for their service to the commission. He also announced that Bobby Ball would be replacing Donna Steinebach as representative for the City of Port Orange.

ADJOURNMENT

The meeting was adjourned at 7:45 p.m.

Attest:  \_\_\_\_\_

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Chairman

Merry Chris:

RECEIVED  
JUN 22 2008  
Merry C. Smith

Please ask Chairman Brandon to read the following letter at the "special meeting" on June 25:

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TO VOLUSIA GROWTH MANAGEMENT COMMISSION

Unfortunately I am not able to be here tonight but I am very much opposed to VGMC appealing Circuit Judge William Parson's ruling.

First, if we elect to appeal, it could appear to the general public as though the commission has some kind of personal agenda. We were given a lengthy and thorough legal opinion of an experienced judge, and to fight it would cost the taxpayers thousands of dollars in legal fees and costs. We would have to pay for the transcript of the court reporter (which is extremely expensive) and the attorney's fees for the research and prep of several briefs. The party who initiates an appeal has a big cost burden. In fact, if we should file it anyway, and lose, the taxpayers might have to pay the costs and fees of the other side, as well.

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Second, I attended the hearing in Judge Parson's courtroom, so I can personally report to you that he spent two hours asking questions and listening to all 5 or 6 attorneys who were there. I've read his 20-page order in the court file and it details the same points he made that day in the courtroom. His opinions are pretty strong and don't put this commission in the most favorable light. It seems that rather than diverting time and money to fighting his order, we ought to focus on what was done wrong and on doing things right the next time so that another court does not find similar problems.

Sandra Walters

**VGMC - Re: IMPORTANT: VGMC SPECIAL MEETING SCHEDULED**

**From:** <rtresher1@aol.com>  
**To:** <vgmc@co.volusia.fl.us>  
**Date:** 6/18/2008 2:18 PM  
**Subject:** Re: IMPORTANT: VGMC SPECIAL MEETING SCHEDULED

Dear Mary Chris:

Thank you for the message. Unfortunately, I will be on vacation next week and unable to attend the meeting. As I will be absent, may I make several observations. I request that this E-mail be read at the meeting.

First, although the newspaper article was interesting, to get the full force of Judge Parson's ruling, it is necessary to read the text of his opinion in its entirety. I believe it is incumbent on all members of the Commission to read the entire opinion before convening next week and considering whether or not to appeal the decision.

Having read the opinion, it is clear the so called "rehearing" of January 23, 2008 was in fact a trial de novo. That is, a completely new trial where the County and City were provided a second opportunity to seek approval of the application to amend the Future Land Use designation that had previously been rejected. I agree with Judge Parsons' reasoning and succinct analysis which concludes the "rehearing" was nothing more than a second trial that violated the Florida Rules of Civil Procedure and supporting case law. Thus, procedural due process was denied at the "rehearing".

Judge Parsons' ruling clearly quashed the Commission's decision of November 28, 2007, meaning the subsequent "rehearing" was a nullity as it violated Florida law. For good measure, he also quashed the decision at the January 23, 2008 "rehearing" because it too violated Florida law. The ruling in effect reinstates the Commission's initial decision of October 24, 2007.

Finally, it is clear that by not remanding the matter to the VGMC for further consideration, the Court has expressed its disillusionment with the Commission and the ex parte communications described in the opinion. Simply put, the Court is of the opinion that the Commission is incapable of reconsidering this matter in a climate that would afford procedural due process to all parties.

Under the circumstances I respectfully submit that the VGMC abide by Judge Parson's ruling and reinstate the Commission's decision of October 24, 2007, rejecting the application. If further action is to be taken by any party, let it be based on that initial decision. I am against an appeal of Judge Parsons' decision and request that if this issue is raised at the meeting, my vote be counted accordingly.

Although the entire matter is embarrassing, perhaps we as a body can learn valuable lessons from these unfortunate events. For example, we can improve on the way hearings are conducted so that due process is afforded to all. Of equal importance, we now see how damaging ex parte communications are to basic fairness and what we as a commission are trying to accomplish. Let us learn from these mistakes and take positive steps to move forward.

Respectfully submitted.

Rick Tresher