

Volusia Growth Management Commission

MEETING MINUTES FOR
Wednesday, November 30, 2005

Daytona Beach City Hall
1st Floor Training Room
301 S. Ridgewood Avenue
Daytona Beach, FL

MEMBERS PRESENT

Mark Rakowski, Chairman
Gerald Brandon , Vice Chairman
Joan Lee, Secretary
Robert Pascoe
Jay Erndl
Walter Smith
Rebecca Mendez
Kenneth Hooper
John Heaphy Excused
Ed Blackman
Darla Lauer Excused
James Kerr Excused
Deanna Bennett
Ann Caneer
Donna Steinebach
Joan Spinney
Doug Weaver
Rachel Sieg
Tony Cole
Suzanne Steiner

REPRESENTING

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

NON-VOTING MEMBERS

Peter Brown (not in attendance)
Sara Lee Morrissey

REPRESENTING

SJRWMD
Volusia Co. School Board

OTHERS PRESENT

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

CALL TO ORDER

Chairman Rakowski called the meeting to order at 7:00 p.m.

ROLL CALL

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

Chairman Rakowski welcomed newly appointed member Ed Blackman who represents Lake Helen.

APPROVAL OF MINUTES

A motion was made by Gerald Brandon to approve the minutes of the July 27, 2005 Commission meeting as presented; seconded by Walter Smith; motion carried unanimously.

PUBLIC HEARING

None.

REMARKS, COMMENTS AND QUESTIONS FROM CITIZENS AND PUBLIC

No one present spoke.

REPORTS OF OFFICERS

None at this time.

REPORTS FROM CONSULTANTS

Teri Bowley, MSCW, asked if there were any questions relating to the case update. Saralee Morrissey asked the status of the remaining Deltona amendments. Ms. Bowley responded that there are outstanding issues to be addressed, including traffic data.

Commissioner Jay Erndl arrived at 7:05 p.m.

Commissioner Ed Blackman raised a question concerning the diversity of traffic reports, all relating to the same amendment, that are presented as evidence. Ms. Bowley responded that the staff of MSCW includes transportation planners which they utilize in their analysis. Additionally, Ms. Bowley stated that while there are broad standards and methodologies, each individual jurisdiction has their own set of standards as well, which are not necessarily consistent among all jurisdictions. She further added that they often follow the methodologies of the County as they have found them to provide a fair assessment of adverse impact on adjacent

jurisdictions. Ms. Bowley commented that the VGMC may want to consider establishing their own methodologies.

Commissioner Walter Smith commented that Rule 9J5 has specific requirements for traffic modeling and specifies density uses. He suggested that if there are inconsistencies in methodologies presented in the traffic studies, that the Commission needs to raise questions at the hearing.

Commissioner Suzanne Steiner asked Ms. Bowley how MSCW determines what documentation is included in the staff report. General discussion ensued regarding the voluminous amount of documentation each individual member used to receive, and the change to reduce the volume and cost.

Commissioner Gerald Brandon asked if there was going to be a mandate on schools and school boards for 10 year projections. Ms. Morrissey responded that there is a mandate in legislation, and the implementation becomes effective in Volusia County in February, 2008, or sooner if all jurisdictions agree and adopt prior to that deadline. She further added that DCA has started to issue objections related to capacity availability with schools and it is clear in legislation that schools are included in the definition of public facilities.

REPORTS OF COMMITTEES

P.O.P. Committee:

Gerald Brandon, Chairman of the P.O.P. Committee, reported that the building which currently houses the VGMC office has been sold and we'll likely have to vacate around the March timeframe. The Committee is currently looking at different options to relocate.

Mr. Brandon advised the P.O.P. Committee is looking at possibly delegating small scale amendment application reviews to consultants outside of MSCW. The primary reasons for doing so include potential cost savings, it would create an outlet to perform application reviews if a conflict should exist with MSCW, and to enhance the perception of the VGMC. Ms. Bowley stated that MSCW would be happy to assist the VGMC if the commission so desires. She further added that Barry Wilcox has joined MSCW and will be assisting Megan with VGMC reviews.

Mr. Brandon advised the P.O.P. Committee would be meeting again just prior to the next regular meeting to discuss this in more detail and welcomed any input from the commission members and MSCW. Chairman Rakowski commented that one of the options previously discussed was having MSCW subcontract with another firm to review smaller, less complicated applications. Ms. Lee asked who and how it would be determined which applications would be delegated. Mr. Brandon responded that the committee is not that far into the process, however, that will be looked at. Ms. Bowley commented that having alternative planners would also offer flexibility during various jurisdictional cycles.

Mr. Brandon reminded the commission that this is an evaluation of where we are at, and the P.O.P. committee would work at preparing a recommendation to bring back before the full commission. Chairman Rakowski asked that the committee keep the full commission informed throughout the process and provide a presentation prior to bringing a recommendation to the full commission in the form of a motion.

Budget Committee:

Joan Lee, Budget Committee Chair, reported that although the final 2004-05 budget numbers have not yet been finalized by the County, based on our own office records, it appears we finished the fiscal year within budget. Ms. Lee added, however, that the final MSCW invoice for the 2004-05 fiscal year representing services rendered through September 30, 2005 was not received until November 1, 2005. As a result, this invoice which totaled nearly \$19,000, was paid out of the 2005-06 budget. Additionally, Ms. Lee reported that beginning with invoices for services rendered in the 2005-06 fiscal year, MSCW is billing at an increased hourly rate for some of their staff members and we were not notified in advance of this change.

Ms. Lee discussed several concerns relating to MSCW billing, as well as recommendations of the Budget Committee to address the concerns. 1) The current billing cycle invoices us every four weeks, as opposed to monthly, resulting in thirteen invoices per year. The committee is recommending we request MSCW adjust their account cycle to bill on a monthly basis; 2) All billing should be within the fiscal year for which services are rendered as stated in our operating rules and procedures; 3) Request MSCW notify us in advance if they anticipate a problem or shortfall in available budgeted funds; 4) Since the VGMC was not notified of the increased billable rates, the committee is recommending that we request MSCW to give strong consideration to bill us at the same rates as charged in the previous fiscal year.

Ms. Sieg asked if the VGMC had a contract with MSCW. Mr. Brandon responded that in previous years, a letter of agreement was secured from MSCW, however, during the 2005-06 fiscal year budgeting process, this was not requested of nor received by MSCW. General discussion ensued relating to the need to obtain a letter of agreement.

The recommendation of the Budget Committee serves as a motion and a second to request that MSCW bill the VGMC based on the previous years rates up until such time as the VGMC is properly notified of the rate change, and adjust the current billing to reflect those rates.

General discussion ensued and the need to notify MSCW of the commission's concerns. Commissioner Joan Spinney commented that we are not indicating we will not pay MSCW for their services rendered, but rather we are opening it up for negotiating the rates being charged.

Motion carried unanimously.

Chairman Rakowski will prepare a letter to MSCW incorporating the concerns and requests of the VGMC.

UNFINISHED BUSINESS

None

NEW BUSINESS

1) Discussion of 20-Working Day Rule

Mr. Chipok distributed a handout (labeled as Exhibit A of these minutes). Mr. Chipok explained that the purpose behind this rule was to create a definitive point in time by which materials must be submitted for consideration in preparing the Staff Report and Resolution. He further explained that the complicated matters are always a dynamic process and once the staff report is written, it is not uncommon for the local jurisdiction or other affected parties to provide comments related to the staff recommendation. Rather than revising the staff reports between the time they are distributed and the scheduled public hearing, staff will prepare an addendum with any pertinent information received after the 20 working day rule and present it at the public hearing for the Commission's consideration.

Ms. Spinney commented regarding taking documentary evidence at the meeting. Mr. Chipok responded that per VGMC rules, nothing prohibits the submission of relevant evidence at any time up to and including the public hearing.

Ms. Steiner raised a question relating to the 20 day rule. Mr. Chipok responded that the 20 day rule is for the purpose of drawing a line in the sand upon which the staff report can be based. He further stated that the creation and distribution of the staff report often raises comments from local jurisdictions, adding that in many complicated cases, staff could be working on issues right up to a matter of hours before the public hearing.

Mr. Chipok also stated there is a difference between waiving the 20 working day rule and considering additional evidence after the 20 days. He explained the waiver of 20 working day rule is typically requested when a local jurisdiction has a need to move forward with a public hearing but not all documentation has been submitted to VGMC staff prior to the 20 days. For example, if the jurisdiction and staff have been working closely on an amendment application, however there is a traffic study needed but not completed prior to the 20 days, staff will work with and try to accommodate the local jurisdictions request to schedule a public hearing. The other issue is accepting additional documentation as evidence after the 20 days. Mr. Chipok explained that once a staff report is prepared and distributed, it is not uncommon for a jurisdiction to submit additional information or documentation in response to information contained in the staff report.

Mr. Brandon commented that he feels the issue is when materials are brought to the public hearing that haven't been reviewed by staff, nor do the commission members have the ability to adequately review them at the meeting. He stated the Commission should not accept new documentation if the amount of material is such that would not allow time for the members to read and give due consideration. He further commented that if materials are submitted at the public hearing that have been reviewed by staff and are supporting documents for the staff report, then the commission should accept those documents.

Chairman Rakowski commented that new evidence can be presented by any party at the public hearing. Mr. Chipok stated there is nothing in the VGMC Rules which would prevent the commission from requesting a continuance of the hearing to allow sufficient time to review the evidence. Chairman Rakowski further commented that the commission also needs to be considerate of time constraints on jurisdictions so as not to be an obstruction to them.

Commissioner Doug Weaver commented this is a dynamic process and the commission is expected to exercise judgment. Mr. Weaver stated he feels this issue needs to be dealt with on a case by case basis and reminded the commission that they have the flexibility to continue an item. He further added that the jurisdictions are trying to get through a process and the commission needs to be mindful of that if considering a continuance.

2) Discussion of Agenda Distribution

Mr. Chipok stated the preferred method of agenda distribution is for the staff report(s) and resolution(s) to be at the VGMC office approximately 14 days in advance of a scheduled public hearing, so the agenda can be sent out and received by the members a week to ten days in advance of the meeting. Mr. Chipok commented that last month was unusual, and explained that staff was working on the supporting documentation right up the day the agenda packages were mailed.

3) Review of the Sunshine Law

Mr. Chipok distributed a handout (labeled Exhibit B in these minutes) relating to the Sunshine Law and provided an overview. He explained that if a commission member has an issue they would like to address, they should contact the VGMC Coordinator who will notify the Chairman and the issue would generally be scheduled for discussion at the next regular meeting.

General discussion ensued relating to examples of prohibited actions under the Sunshine Law. In summary, Mr. Chipok advised the Sunshine Law prohibits off the record contact amongst members of the same board. Mr. Pascoe asked how the

Sunshine Law applies to ex-officio members. Mr. Chipok replied that ex-officio members should follow the same rules as voting members.

4) Discussion of Charter Review Commission (CRC)

Chairman Rakowski reported that the CRC had requested detailed information on each case back to the inception of the VGMC. Since it would take a significant amount of time to provide that level of detail back to inception, he advised that we provided them specific details for the past three years, together with a summary list of cases back to inception. Mr. Chipok commented that contributing to the public's perception is that they only see those cases that come before the commission in the form of a public hearing, while the majority of the comprehensive plan amendments are letter certified. He further stated that all comprehensive plan amendments in Volusia County since 1987 have come through the VGMC, but only those that present conflict reach a public hearing. Ms. Spinney commented that because so many of the applications do not present conflict and are able to move through the process and approved without public hearing, is probably the reason why the VGMC has been accused of rubber stamping.

Ms. Steiner stated since more than 70% of the population voted for urban growth boundaries, she wonders why so many of these applications are approved without objection, and why aren't these individuals coming forward and speaking out. Ms. Spinney responded that the VGMC does not handle objections to a proposed project, unless it impacts neighboring jurisdictions.

Ms. Steiner asked for clarification as to the role and responsibility of the commission members. Mr. Chipok advised that the commission's total charge is to determine consistency on how a specific comprehensive plan amendment affects the adjacent jurisdictions. General discussion ensued regarding the application review process and the scope of the VGMC.

Ms. Bowley commented that when the commission was created, the spirit of determining consistency was to promote intergovernmental cooperation; adding that the commission is not a super LPA board. Mr. Chipok stated the VGMC is not a policy making board as to whether or not they want a particular kind of growth. Those decisions, he stated, are made by the local jurisdictions and incorporated into their comprehensive plans to serve as a guide as to whether a particular type of growth is consistent with their own comprehensive plan. The individual jurisdiction will then forward to DCA and the VGMC at the transmittal stage, and the VGMC is charged with determining whether the type of growth they have planned is consistent with adjacent jurisdictions. Mr. Chipok further added that if the proposed development is an unpopular idea, that should be a consideration of the local government and not within the scope of the VGMC.

Mr. Weaver stated back in the mid-1980's during the Charter Review, there was a good deal of discussion as to whether a body like the VGMC should have the power and authority to adopt a comprehensive plan County-wide. Since it was decided not to have a county-wide plan, the VGMC was crafted to look at how individual comprehensive plans mesh.

Mr. Chipok stated that the VGMC has an interlocal agreement with the Florida Department of Community Affairs who has deferred the intergovernmental coordination review to the VGMC and they will not challenge that aspect of an amendment.

Mr. Brandon mentioned that Broward County looked closely at the VGMC and they have adopted a commission nearly identical to the VGMC.

Chairman Rakowski stated that he wrote a letter to the editor in response to an editorial previously published in the News Journal. He also stated he forwarded a copy of his letter to Glenn Storch who serves on the Charter Review Commission, Jack Hayman, all Volusia County Mayors, VCARD, and several others.

Chairman Rakowski asked the members for suggestions on what further action they would propose in addressing the Charter Review Commission. He also stated that one of the Charter Review members asked if the VGMC could recommend a solution to the growth problems.

Mr. Brandon commented that the VGMC has attempted on numerous occasions to set up a workshop with the County Council to no avail. He requested that we have VGMC staff address the Council, invite the News Journal & Orlando Sentinel, so they can understand what the VGMC's role is.

Chairman Rakowski stated he has gone to his local City Commission to explain the role of the VGMC, and suggested that each member do the same with their respective jurisdictions.

Mr. Smith commented that the narrow focus of the VGMC is critical in terms of the coordination that occurs among jurisdictions and to expand the authority of the VGMC would be overwhelming. He further commented in favor of the Chairman's suggestion for each member to address their respective jurisdiction, and added that he would recommend that we request to appear before the Charter Review Commission and have staff discuss the role of the VGMC.

Ms. Morrissey suggested it may be more effective to have several VGMC members address the Charter Review Commission.

General discussion ensued relating to the VGMC's approach to addressing the Charter Review Commission and/or County Council. Chairman Rakowski stated that he and Mr. Brandon would work on this issue.

Reports and Requests of Commission Members

Ms. Spinney commented that she recently received a letter from the Friends of Thornby and felt it was inappropriate for them to contact members individually. She further stated that commission members cannot engage in dialogue with them.

Mr. Chipok stated that although there is nothing in the VGMC Rules prohibiting contact, ex parte communications are strongly discouraged. He further stated that the commission members' decision must be based on competent and substantial evidence presented at the hearing.

General discussion ensued relating to letters being sent directly to commission members. Mr. Chipok responded that there is no way to prohibit that from occurring and that members should forward those materials to the VGMC Coordinator. He further explained that the Coordinator forwards that to VGMC Staff for review and evaluation. If staff finds that it is relevant material it will be included in the staff report as backup, otherwise, it is placed in the case file. If it is not included in the staff report, the individual who submitted the material has the ability to attend the public hearing and submit copies to the individual commission members at that time. Mr. Chipok stated that is the process, and it is not inconsistent with the practice of other local government agencies.

Mr. Erndl asked if affected parties should be treated any differently in terms of submitting documentation to the commission members.

Mr. Chipok responded that it is a Board decision and also reiterated the process by which information has been collected and handled historically.

REPORTS AND REQUESTS OF COMMISSION MEMBERS

None

A member of the audience, Sandra Walters, 480 Warrior Trail, Enterprise, stated the commission needed to consider making procedural changes.

REPORTS AND REQUESTS OF COMMISSION CHAIRMAN

Chairman Rakowski advised there will be no meeting in December.

ADJOURNMENT

Meeting was adjourned at 9:10 p.m.